

## BAI SALAM; IN THE LIGHT OF THE HOLY QURAN & SUNNAH AND ITS ROLE IN ISLAMIC BANKING

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### Abstract:

"Allah made halal to Bain ad made haram to Riba. All the types of Riba are categorically haram; likewise all the types of Bai are halal except those which are declared prohibited in the Ahadith. Among the permissible Byuoo, one is As Salam or a type of deferred sale in which goods are received or delivered later while the payment is made in advance. This type of Bai is being used in the Islamic banking industry as a mode of financing for small business as well as agricultural purpose. It is also very useful for the Muslim agricultural countries i.e. Pakistan as they wish to replaced the interest based banking system with Islamic banking. This study helps to understand the validity of salam in the light of Holy Quran and Sunnah as well as importance for Pakistan."

**Keywords:** Halal, Haram, Prohibited, Financing.

### Definition of Bai-Salm:

Bai-Salam is a combination of two Arabic words Bai and Salam. Bai refers to Purchase and Sale while Salam means "Advance" another parallel word "as-salaf" is used. Payment of Bai-Salam transaction is made in advance. It is a form of sale on delayed terms in which the money may be paid first and the goods delivered at a later date.<sup>1</sup>

A sale with advance payment is the sale of specified merchandise that a guaranteed (i.e it will be given later). This is when someone buys a specific thing with a known description, such as food, animals or otherwise, for a fixed term. He pays the price in advance and will wait for the specified delivery time to receive the goods. If the fixed time comes, then the seller will deliver him prescribed goods.<sup>2</sup>

Al-Nawawi states: "It is the sale of a defined thing [that is] owed," i.e. a debt.<sup>3</sup>

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The Hanbalis say that salam is a contract about something that it is proper to sell and which is characterized as owed. According to Ibn Hanbal, it is permitted by consensus of opinion and entered into by using any wording accepted as indicative of it. The Hanbalis see salam as that which is handed over in exchange for something defined that is owed for a known period. <sup>4</sup>

Shafi define it as the selling of something that is specified and owed. They see it as a debt and therefore do not make it a condition that the period (within which the sale object is to be delivered) be defined. <sup>5</sup>

The Malikis define salam as the sale of something owed and specified by description in exchange for a price, the delivery of the thing being put off for a time they permit postponement of the transfer of the price to the buyer for a period of no more than three days. For them, the salam contract is simply an exchange or substitution contract stipulating binding obligation on the seller to be fulfilled by him by delivery of the sale object, not any equivalent for it nor for ready money. <sup>6</sup>

The Hanafis view is as a sale for a period, as the sale of an object bought and paid for in advance. They also see it as buying something postponed in exchange for something given in the moment, or as selling a time to come for the time now. Thus, it is a contract involving something that it is proper to sell, that is specified, that is owed; the delivery of it being postponed, in exchange for a price collected at the contract session. <sup>7</sup>

### **Legitimacy of Bai-Salam in the Holy Quran & Sunnah:**

The Islamic legitimacy of the salam contract is based, to begin with, on its concordance with the Quranic verse that forbids usury but permits/enjoins commerce:

“Those who eat riba will not stand (on the Day of Resurrection) except like the standing of a person struck by Satan leading him to insanity”. <sup>8</sup>

“That is because they say: “Trading is only like riba,” whereas God has permitted trading and forbidden riba”. <sup>9</sup>

The salam contract also conforms to the Quranic instruction to write down/record any debt transactions: “O you who believe! When you contract a debt for a fixed period, write it down”. <sup>10</sup>

This verse, according to Ibn Abbas, “was revealed to address the salam in particular”<sup>11</sup>. It should be noted that ‘debt’ is

comprehensive of whatever is owed and therefore may take the form not only of monetary loans but any objects like foodstuffs (e.g. wheat and barley), manufactured articles (e.g. paper, cars, machines) or raw materials (e.g. copper, iron, petroleum etc.), duly specified as to quantity and quality<sup>12</sup>. This explains the tafsir credited to Ibn Abbas, that the Quranic verse 2:282 was revealed to deal with salam in particular, for in permitting lending, the verse has also permitted salam<sup>13</sup>.

Also narrated from Ibn ‘Abbas is the Prophetic hadith: “when God’s Messenger came to Madinah, the people of Madinah were paying in advance to purchase fruit before one and two years, so he said: “Those who pay in advance for anything must do so for a specified weight and for a definite time.”<sup>14</sup>

The same is suggested by the following hadith reported by Muhammad Ibn Al-Majalid:

“Abdullah bin Shaddad and Abu-Burdah sent me to [Abdullah bin Abi Awfa and told me to ask him whether the people in the lifetime of the Prophet used to pay in advance for wheat [to be delivered later]. Abdullah replied, “We used to pay in advance to the peasants of Sham for wheat, barley and olive oil of a known specified measure to be delivered in a specified period.” I asked: “Was the price paid in advance] to those who [already] had [possession of] the things to be delivered later?” [Abdullah ibn Abi Awfa replied, “We did not use to ask them about that.” Then they sent me to [Abd al-Rahman ibn Abza and I asked him. He replied, “The Companions of the Prophet used to practice salam in the lifetime of the Prophet; and we did not use to ask the people whether they had standing crops or not.”<sup>15</sup>

In the Ahadith the word “Salaf” was also used for Salam<sup>16</sup> which is meant same as the meaning of salam.

After the Holy Quran and Sunnah, the highest source of legitimacy in Islamic law is juristic consensus or ijma, Ibn Qudamah<sup>17</sup> states:

As for consensus, Ibn al-Mundhir asserts that all known authorities on the subject have upheld salam. He also claims that salam is “facilitation and an extension that closes up the door against usury. That is because the owner of business [the seller] needs

financing for his farm, goods or trade while for the salam owner [the buyer] there is the benefit of investing his money and making good (halal) profits.” Ibn al-Mundhir indeed affirms the consensus, adding a wonderfully concise illustrative definition of the contract:

The consensus of opinion is that permissible salam is when a man delivers to another some known and described food from the produce of common land of known measure and weight for a definite period in exchange for a known amount of money, the price having to be paid before they separate and leave their place of transaction, not forgetting to name the place where the food is to be handed over. If they did that, the deal would be appropriate<sup>18</sup>.

By analogy (qiyas) with a basic principle in Shariah law, the salam should be disallowed, namely the principle expressed in the Prophetic hadith reported by Ibn- Abbas that,

“He who buys food grain should not sell it until he has taken possession of it.”<sup>19</sup>

Maliki, Hanbali, Shafi and Hanafi scholars all regard salam as a permissible contract, as a necessary relaxation of or exception to that principle. Ibn al-Qayyim more forthrightly says that is not an exception to a general rule because it is a self-contained, independent contract. Moreover, just as it is permissible in any sale transaction to delay payment of the price, so also it is allowed to postpone the other side of the sale transaction, namely delivery of the sale object.<sup>20</sup>

### **Elements of Bai-Salam:**

According to Hanafi that there are three elements, components (arkan) of Basi-Salam:

- i) Aqid means al-musallim refers to the owner of capital, the party purchasing the object or goods: hereafter, ‘the buyer’ and al-musallam alayhi refers to the party who takes on the responsibility to deliver the object or goods at a future date: hereafter, ‘the seller’.
- ii) Ma’aqud means “al-musallam fihi” refers to the subject of the contract, the object or goods to be delivered: hereafter, ‘the sale object’. And “ra’s-mal al-salam” refers to the capital, the price paid in advance of delivery of the sale object, hereafter, ‘the price’.
- iii) Using the words of offer and acceptance.<sup>21</sup>

According to Hanabila the following elements should be added:

- iv) Using the words of As-salam or As-salaf or Al-bai.<sup>22</sup>

**Conditions or features of Bai Salam:**

A valid Salam contract requires the following conditions (“it goes without saying that it should also fulfill the conditions of a normal valid sale”).

In the Fiqh literature there are lengthy details regarding subject matter, price, delivery of the commodity, substitution of the subject matter and other aspects of Salam sale.<sup>23</sup>

**1. Subject Matter of Bai-Salam:**

- i. The contract of Bai-Salam is not permissible for ready goods.
- ii. There is a consensus that everything that can be specifically determined in respect of quality and quantity can be made the subject matter of Salam sale. Salam cannot be affected on a particular commodity or on a product of a particular field or farm.
- iii. The commodity should be well-defined but not particularized to a specific unit of farm, tree or garden. Only those fungible (Mithli) things various units of which do not differ from each other in a significant manner can be contracted under Salam.
- iv. Salam cannot take place where both items of exchange are identical, e.g. wheat for wheat and potato for potato. Similarly, the commodity to be sold through Salam should, in itself, not be of the nature of money, like gold, silver or any currency.<sup>24</sup>
- v. It is necessary, according to the Hanafi school, that the commodity (for which salam is effected) remains available in the market right from the day of contract upto the date of delivery. Therefore, if a commodity is not available in the market at the time of the contract, salam cannot be effected in respect of that commodity, even though it is expected that it will be available in the markets at the date of the delivery.<sup>25</sup>

However, the other three schools of Fiqh (i.e. Shafi’, Maliki, and Hanbali) are of the view that the availability of the commodity at the time of the contract is not a condition for the validity of salam. What is necessary, according to them, is that it should be available at the time of delivery.<sup>26</sup>

**2. Payment of Price, Salam Capital:**

- i. Price is normally set and paid in the form of any legal tender. However, it can be in terms of goods as well, on the condition that it should not violate the prohibition of Riba in barter

transactions as laid down by the Shariah. Usufruct of assets can also be considered as Salam capital, which is regarded, particularly by Maliki jurists, as immediate receipt of the capital on the basis of the legal maxim that says: "Taking possession of a part of a thing is like taking possession of the whole thing". Hence, making usufruct capital of Salam does not mean debt against debt, which is prohibited.<sup>27</sup>

- ii. Outstanding loans/debts due on the part of the seller cannot be fully or partially fixed as price, nor can a loan outstanding on a third party be transferred to the seller in future adjustment towards the price, as this amounts to an exchange of obligation for obligation (debt for debt), which is forbidden. This is also to avoid Gharar (uncertainty). This emphasis by the jurists is justified since the equity in Salam contracts depends on the very existence of the Salam capital, otherwise such transactions are invalid. The very term Salam (Salam) means advance payment; if payment is delayed, it cannot be called Salam.<sup>28</sup>
- iii. The buyer in Salam should advance the whole price of the commodity at the time of making the contract. However, while the jurists are agreed on immediate payment of the price, they differ on defining the term "immediate". According to the majority of the jurists, the buyer must pay the amount at the time of signing the contract, in that very meeting. Imam Shafi emphasizes that the time must be fixed and payment of the price must take place on the spot and before separation of the parties. But some jurists allow delayed payment provided this delay is not prolonged to make it like a debt. Imam Malik allows a delay of up to three days.<sup>29</sup>

Contemporary jurists also allow a delay of two to three days, if it has been stipulated between the parties, provided it is before the delivery period of the commodity involved (in the case of Salam for a short period of a few days).<sup>30</sup>

### **3. Period and Place of Delivery:**

According to the hadith of Hazrat Muhammad (PBUH); the period and place of delivery of goods or articles must be decided by the both parties mutually in Bai Salam. In this regard Hanafi and Hanabli stated that the period of delivery should be at least one month otherwise it will not be valid. Maliki opined that period should be not less than fifteen days. While Shafi and some Hanafis disagreed and

opined that Muhammad (PBUH) did not say for the fixation of period.

#### **4. Khiyar (Option) in Salam:**

1. The jurists do not allow the option (Khiyar alShart) in the case of Bai-Salam because this effects or delays the seller's right of ownership over the price of the goods. The purchaser also does not have the "option of seeing" (Khiyar al Ro'yat), which is available in the case of normal sales. However, after taking delivery, the purchaser has the "option of defect" (Khiyar al'Aib) and the option of specified quality. This means that if the commodity is defective or it does not have the quality or specification as agreed at the time of contract, the purchaser can rescind the sale. But in that case, only the paid amount of price can be recovered without any increase.<sup>31</sup>

#### **5. Amending or Revoking the Salam Contract:**

In Salam, a seller is bound to deliver the goods as decided in the agreement. Similarly, the buyer has no right to unilaterally change the conditions of the contract in respect of the quality or quantity or the period of delivery of the contracted goods after payment is made to the seller. Both parties, however, have the right to rescind the contract with mutual consent in full or in part. The buyer will thus have a right to get back the amount advanced by him; but not more or less than it. <sup>32</sup>

#### **Application of Bai-Salm in the recent Islamic banking:**

According to Islamic Sharaih, Salam is permitted, it basically a Bai but in the recent Islamic banking is also being used as mode of financing and particularly for poor farmers. It is being used as mode of financing in the field of agriculture areas as practiced for same also in the period of Hazrat Muhammad (PBUH). In the Islamic banking, this instrument is as per the decision of the International Islamic Fiqh Academy's ninth meeting and the Shariah Standards issued by the regulatory body AAOIFI (Accounting and Auditing Organization of Islamic Financial Institution<sup>33</sup>). This financing is done on lower price as compare to the spot price and to process it some security or guarantee or hypothecation or mortgage by the bank. If the customer may default then the financing is recovered by the securities or hypothecation or mortgage.

**Salam based financial products in the recent Islamic banking:**

- Agriculture financing
- Working Capital Financing
- Commercial and industrial financing
- Export financing
- Operations and capital cost financing

**Procedure of Salam Financing in Islamic banking of Pakistan:**

Salam is used by Islamic Financial Institutions to provide agricultural finance. As in modern economy role of banks is not trader hence they are not interested to create trading wings. Furthermore national laws are also not allowing banks to act as traders hence Salam sale contract is another device used to avoid interest in commercial transactions. Generally, banks after signing first transaction of Salam, search for a buyer of the goods and enter into parallel Salam contract. In a complete transaction of modern Salam contract normally following steps are involved:

- Step.1.** Customer requests to an Islamic Financial Institution for finance and sell the commodity with deferred delivery hence Salam sales contract is executed while payment is made by bank at spot.
- Step.2.** Islamic Financial Institution enters into contract of parallel Salam with another party, receives the payment and signs contract of Salam with promise to deliver the goods at a point in time in future.
- Step.3.** Seller in first Salam contract delivers the goods to Islamic Financial Institution on due date to discharge his liability.
- Step.4.** Islamic Financial Institution delivers the goods to buyer in Parallel Salam contract hence transaction closed on profit.

**Observation on Salam as mode of financing:**

Islamic banks have been in operation in various parts of the world for about a quarter of a century, but they have not generally used Bai-Salam as a financing mode. The reason may be that Salam has no practical advantage over (mark-up based) Murabaha–Mu’ajjal. Its main conditions emphasize that the price fixed in the contract must be paid in full in cash, immediately at the time of contract, and banks have to take delivery of goods in the future, not money. Marketing the goods so received and any type of default, e.g. delivery of inferior



goods or failure in timely delivery, etc. may also cause problems for the banks.

The practical problems in using this mode to finance agriculture, industry and other commodity sectors can be easily imagined: taking delivery of the produce, assessing its quality, then storing and disposing of it. But the banks perceive such problems when they compare this with the conventional banking practice of not dealing in goods or the easier way of entering into a Murabaha to Purchase Ordered with the client serving as the bank's agent. Once they realize the requirement of actual involvement in business, avenues of risk mitigation in Salam and the fact that Salam is the only mode allowed expressly by the holy Prophet (SAWS) himself, they will surely be inclined towards its greater use.

Salam has its own benefits as well, particularly for farmers. Further, it can be more profitable for Islamic banks provided they are equipped with expertise in dealing in commodities. It has great potential, which Islamic banks and financial institutions need to realize. Of late, a number of IFIs have used Salam as a separate mode and also in combination with Murabaha in respect of export financing.<sup>34</sup>

#### **Difference between Istisna'a and Bai-Salam:**

1. The subject of istisna'a is always a thing which needs manufacturing but Bai-Salam can be affected on anything, no matter whether it needs manufacturing or not.
2. It is not necessary in Istisna'a that the price is paid in full in advance while it is necessary in Bai-Salam that the price is paid in full in advance.
3. The contract of Istisna'a can be cancelled before the manufacturer starts the work but the contract of Bai-Salam, once affected, cannot be cancelled unilaterally.
4. It is not necessary in Istisna'a that the time of delivery is fixed but the time of delivery is an essential part of the sale in Bai-Salam.

(Zuhali,1989, v.4, p.634-5)

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