

Participatory Based Transactions in Sharī'ah (Islamic Commercial Law) and their Role in the Development of Rural Local Agricultural Sector in Khyber Pakhtunkhwa (Sharī'ah Based Newly Proposed Models)

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Abstract:

Local farming is, indeed, the most important sector of agriculture through which farmers grow food. However, owing to their weak financial conditions, they are not able to get maximum benefits from their labours for most of the times. The case of Pakistani farmers, particularly in rural areas of KP (Khyber Pakhtunkhwa), is not different in this connection. They frequently resort to formal and informal sources of financing to accomplish their basic agricultural requirements: both crops and non-crops inclusive. However, all these sources advance financing facility on interest basis. Being typical Muslims, such agricultural credit is, therefore, avoided by these farmers and, as a result, they always endure on their financial grounds. In such situations, some substitute arrangements are recommended to reciprocate with their problems. This alternative is offered by Sharī'ah through various commercial transactions – among which participatory based transaction i.e. Mushārah is the most suitable and important one. In the present work, various models are proposed on the basis of such transaction to fulfill various agricultural requirements of farmers, living in rural areas of KP. In addition, such models are structured in the light of basic theory, available in the classical literature of Islamic law, in order to make them more Sharī'ah based rather Sharī'ah compliant. The proposed models are then, at the second stage, tested at ground level to strengthen further their viability for all stake holders. Findings show that all agricultural requirements, particularly heavy machinery and transport, can be realized through such models provided if they are applied in their true spirit. Moreover, content analysis and focused group technique of qualitative research have been used, as a research methodology, for the investigation of the

issue in the present work.

Keywords: *Shari'ah, Rural, Agricultural, Musharakah, Models, Farmers, Islamic Banks, Financial Institutions, Crop, Non-crop, Local Farming, Islamic Agricultural Finance*

1. Introduction:

On a normal day, any man, during waking hours, one way or another, typically uses and consumes many agricultural commodities.¹ Owing to this fact, agriculture, in all probabilities, is the most significant source through which farmers grow food for themselves and others, meeting the current and future demands. In addition to this, a substantial portion of the world's labor force is attached to this sector and, at the same time, it, directly or indirectly, contributes significantly to the world's economic development. In case of Pakistan, for instance, agriculture accounts for 23% of its GDP, and employs 42% of its labor force.²

As a matter of fact, an overwhelming majority of the farming class, almost in all countries, lives in rural areas. For instance, in Bangladesh, the rural population has reached up to as much as 80% of the whole inhabitants.³ An empirical research showed the same fact regarding the state of Ghana; where half of the population in rural savannah zones is extremely poor.⁴ The case of Pakistan, on the other hand, is not unlike in this connection; where 62% of the country's population is living in rural areas and, directly or indirectly, allied with agriculture as their livelihood.⁵ Khyber Pakhtunkhwa, a typical province of the country, has the same dynamics. Agricultural, for the occupants of such area, is a source of life rather a source of business. However, their agricultural activities are, predominantly, related more to local farming comparatively to other sectors of agriculture like horticulture, dairy farming, livestock, poultry farming, fish farming and etc. There are many reasons, natural and unnatural, for this typical tendency towards the local farming. However, the poor economic conditions of farmers, in rural areas, can be counted as one of the most leading among them. Because of this reason, they are not in a position to bear out their agricultural requirements, arising at different times of the harvesting cycles – both for crop and non-crop activities.⁶ Since, money is required at all stages, and a vast majority of farmers faces shortage of financial resources, they, therefore, have to borrow money from various sources, including individuals, organizations, banks and government. In other words, they fulfill their agricultural requirements, through availing finance, from formal⁷ and informal⁸ institutions of credit.⁹

As mentioned above, farmers of rural Khyber Pakhtunkhwa opt formal and informal sources of financing for their agricultural needs. Of course, both these sources advance agricultural credit on interest basis which is against the religious norms of Muslim farmers who are prohibited by *Shari'ah* (Islamic law) to get interest-based loan. There are numerous verses of the *Qur'an* and *Sunnah* (tradition) of the Holy Prophet (SAW) that confirms the prohibition.¹⁰ In addition, it (interest based loan) adds to a farmer's

problems rather than solving the same; as he has to repay the principal amount as well as the interest.

Being a complete code of life, *Shari'ah* presents a wide-ranging and easy ways for farmers, Islamic banks and Islamic financial institutions to enter into various commercial transactions. These transactions are viable for all stakeholders and, at the same time, also indispensable for the development of agricultural sector - both for crop and non -crop activities. These transactions, further, can be divided into trade based modes, such as, *Murabahah* (sale with cost plus profit), *Musawamah* (bargaining contract), *Salam* (advance payment sale), and *Istisna'* (manufacturing contract); participatory modes, such as, *Musharakah* (partnership), *Diminishing Musharakah* (partnership that comes to an end at sale), *Musaqah* (watering contract), and *Muzara'ah* (share cropping); rent based modes, such as, *Ijarah* (leasing) which can be further divided into *Ijarat-ul-Ashkhās* (lease of personal services) and *Ijarat-ul-Ashyā* (leasing of asset against specified rentals). However, among these, the participatory modes are the most suitable modes for financing purposes.

There are many jurisprudential, as well as, logical reasons for opting *Musharakah* as a tool for financing agriculture. Firstly, such transaction is, at first, originated by *Shari'ah* for the expansion of agricultural activities. The contract of *Musaqah* and *Muzara'ah*, for instance, being typical kind of *Musharakah*, can be cited as best examples in this connection. Secondly, *Musharakah* is the ideal form of transactions in the contemporary mechanism and structure of Islamic finance, having more potential to be *Shari'ah*-based rather than *Shari'ah* compliance. This fact has been recognized by Muhammad Taqi Usmani, a contemporary scholar in the field of Islamic banking and finance.¹¹ Thirdly, majority of farmers in Khyber Pakhtunkhwa belongs to lower class and, therefore, cannot furnish collaterals and other securities, required by Islamic banks for the sanction of financing facility.¹² Being a trust contract, farmers are not in need to provide any security/collaterals to financial institutions. This distinguishing nature is based on the established principle of Islamic commercial law where guarantee in trust contracts is not permitted.¹³ The Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) clear up this characteristic by stating, "It is not permissible to stipulate any guarantee in trust contracts like agency contract, contract of deposits, and therefore, no guarantee can be taken in the contract of *Musharakah* or *Mudarabah*".¹⁴ However, if they enter in any other type transaction i.e. *Murabahah*, *Musawamah*, *Salam*, *Istisna'* and etc. they will have to furnish security by one way or another. This fact is confirmed by the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) where it positions that a contract of guarantee is permissible in the contracts of exchange, for instance, contract of sale or contract of rights, and, right of intellectual property.¹⁵ The case of *Ijarah* is not different in this regard.

There are some inherent objectives of the present work. Firstly, to

explore the practicability of *Mushārah* based models for financing rural local farming of Khyber Pakhtunkhwa. Secondly, to find out various requirements of farmers in such areas, related to crop and non-crop sectors. These requirements, commonly, start from the basic agricultural inputs and ends at heavy agricultural machinery and equipment. Thirdly, to suggest *Shari'ah* based models for the accomplishment of such requirements on the basis of *Mushārah*. Fourthly, to establish the profitability of these transactions for Islamic banks, farmers and other stake holders. Moreover, it is endeavored, in the present work, to realize all these intended objectives at ground level, by applying the participatory based transactions in their true spirit, envisaged by *Shari'ah* at the time of their inception.

2. Literature Review:

The literature on *Mushārah*, in terms of agribusiness, can be appropriately divided into two subheadings i.e. classical literature and contemporary literature. The following discussion may elucidate the above with minute details.

2.1 Classical Literature on Mushārah (in Terms of Agribusiness):

Mushārah is discussed, primarily, by the classical Muslim jurists in their works for general enterprise other than agribusiness. The possible reason, for this, may be the undivided involvement of the people of that time in general commercial business activities rather than agribusiness. It seems that their inclination towards the general trade was due to the lack of suitable environment for agricultural activities.¹⁶ However, it does not mean, under any stretch of explanation, that such transaction (*Mushārah*) has no potential for the growth of agricultural sector. Its generic nature, indeed, makes it more flexible and applicable to agribusiness too; provided its general rules, prescribed by *Shari'ah*, are kept intact.

Muzārah and *Musāqah*, being typical kinds of *Mushārah*, are purely related to local farming and, as a result, extensively discussed by the classical *fuqahā* (Muslim jurists) in their scholarly works. These jurists include Imām al-Shawkānī¹⁷, Imām al-Kāsānī¹⁸, Ibn Qudāmah al-Maqdisī¹⁹, Abū al-Walīd Muhammad ibn Ahmad ibn Rushd²⁰, Imām Muhammad ibn Ahmad ibn Abī Sahal al-Sarkhasī²¹, and Ibn 'Ābidīn²². Among these jurists, the work of Imām Muhammad ibn Ahmad ibn Abī Sahal al-Sarkhasī²³ is very remarkable in nature; as he discusses these two agricultural specific transactions with much detail. Like *Muzārah* and *Musāqah*, *Salam*, another known transaction in *Shari'ah*, is discussed by the classical Muslim jurists for financing agriculture.²⁴ However, its discussion is not intended in the present research work and, therefore, can be possibly left for another study.

2.2 Contemporary Literature on Mushāraka (in Terms of Agribusiness):

Some of the contemporary scholars have done a wide-ranging work on the application of various modes of Islamic finance, including *Mushāraka* and its other types, with a special reference to the agricultural and its sub sectors. These scholars include Muhammad A. Gulaid²⁵, Maulana Muhammad Taqī

'Uthmānī, Brian B. Kettell²⁶, Monzer Kahf and M. Fahim Khan²⁷, Magda Ismail Abdel Mohsin²⁸, Laurence M. Crane and David J. Leatham²⁹, Adam B. Elheraika³⁰, Ali Yasserī³¹, Saeed Yazdanī³² etc. Nevertheless, the works of all these scholars, for the most part, elaborate the whole theoretical structure of Islamic finance in terms of Islamic agriculture finance, as a whole, and no separate discussion is devoted to a particular mode. In other words, *Mushāraka*, *Muzāra'ah* and *Musāqah* are discussed as ancillary in a general discussion of Islamic agriculture finance. However, still, there are some scholarly works which are directly related to these transactions. The following discussion will further illuminate this statement.

Some of the contemporary scholars deliberate *Mushārakah* and its effective application for the development of agricultural sector, both for crop and non-crop activities. They elaborate, painstakingly, that how such commercial transaction can be applied with true spirit, aims and objectives for the development of agriculture, predominantly, local farming. In addition, they have developed various concepts for agricultural projects, including methods for the distribution of profit, sharing of loss, risk minimization in agricultural finance, the monitoring and supervision of agricultural projects and etc. With a special focus on local farming in rural areas, they have developed various methods and techniques for the minimization of cost.³³

Muzāra'ah and *Musāqah* transactions are discussed by Abdul Aziz Muhmmad Rizwan in his notorious work.³⁴ He provides, for instance, an amalgamation of classical and contemporary research on Islamic agricultural finance and agribusiness.³⁵ In his view, modern Islamic banks and other Islamic financial institutions can offer financing facility to agro-entrepreneurs through participatory modes of financing. However, his study is purely conducted in the context of Malaysia and, hence, cannot be applied to the rural agricultural sector in Pakistan. Al-Hashimi and Muhammad Ali Alula, on the other hand, also contribute a scholastic contribution for the development of agricultural sector through *Mudārabah*, a special kind of *Mushārakah*.³⁶ In their view, such transaction is more constructive for farmers than an interest based credit; as the latter contains the element of exploitation. Their study, however, has limited application; as it largely focuses on the development of Islamic agricultural finance in Sudan.³⁷ Mahmoud A. Gulaid,³⁸ a renowned scholar of the field, has also discussed *Mushārakah*, in terms of its application to rural agricultural sector. His work is technically very much sound, owing to his practical experience in the field of Islamic banking and finance.

Ahmad Kaleem, a prominent scholar of the field, proposes a viable model, based on Diminishing *Mushārakah*, for local farming.³⁹ He adds, with solid evidences, that such a model is very supportive for the development of rural agricultural sector; provided if applied in its true spirit, avoiding the usual profit maximization approach of financial institutions. However, his results are not consistent as they are based on unreliable data. The study of

Badawi B. Osman also reflects contribution of *Mushārahah* for the development of lower class of farmers, predominantly, those living in rural areas.⁴⁰ He argues that if the agricultural partnership is well guided and supervised, by the Islamic banks, then it can, indeed, yield more returns as compared to other modes of Islamic finance. Furthermore, this mode (*Mushārahah*) is fit for farmers in the sense that they are not required to provide collaterals or other forms of securities, which mostly act as a hurdle for them to secure financial backing.

The role of *Mushārahah* in the development of the agricultural sector of Iran is also discussed by Kazem Sadr⁴¹ with minute details.⁴² In his view, agricultural banks in Iran have earned more profit through the investment of their liquidity in *Mushārahah* based projects comparatively to other modes. He adds that such profit ratio can further be increased through effective mechanism of supervision, technical assistance and proper observation of the fund, provided to a farmer.

3. Methodology:

Being a discipline of social sciences, the qualitative research technique has been used for the investigation of the issue in the present research endeavor. While following this, the content analysis method is utilized, in the first part of the paper; where the secondary data, available on the *Mushārahah*, has been used to offer the newly proposed models. At this part, the secondary data has been obtained from the Holy *Qurān*, *Sunnah* of the Holy Prophet (SAW), work of the classical *Fuqahā* and contemporary Muslim jurists. However, the work of classical *Fuqahā* is preferred more comparatively to that of contemporary Muslim jurists, owing to the fact its more reliability. Moreover, the research of non-Muslim scholars is also resorted whenever deems beneficial. Libraries, both online and classical, journals and official websites are used as sources of secondary data. In case of journals, only the reputed and related journals (i.e. journals which are related to the discipline of Islamic banking and finance) are resorted to maintain the reliability of the data. The same approach is made in case of official websites of various organizations. At the second part of the present work, where the proposed models are tested at ground level, the focused group technique is used. In this case, the proposed models are explained to the farmers in a very simple way, followed by their open group discussion. At the end, they (farmers) are asked, through various questions, regarding the viability and feasibility of the models. Their suggestions are inculcated at this stage in order to strengthen the practical utility of such models at ground level.

4. Theoretical Background of Mushārahah:

At a practical level, prior to the discussion as to how *Mushārahah* can be applied for rural local agricultural financing in Khyber Pakhtunkhwa, it is deemed appropriate to present its theoretical background, envisaged by *Sharī'ah*. "*Sharikāt*"⁴³ is an Arabic word, literally means, 'mixing' or '*Ikhtilāt*', as said by the Holy *Qurān*, "Most of the partners are transgressing on each

other."⁴⁴ *Sharikāt*, in Islamic jurisprudence, is used for describing a contract of partnership. It can be divided into three classes i.e. *Sharikat-ul-Ibāha* (common sharing of things),⁴⁵ *Sharikat-ul-Milk* (co-ownership)⁴⁶ and *Sharikat-ul-'Aqd* (partnership through contract). This classification is very exhaustive in nature as it covers all related areas of partnership in Islamic law. However, the present work is mainly related to the last one i.e. *Sharikat-ul-'Aqd*, and hence, more focus has made over it. According to *Majallah al-Ahkām al-'Adliyah*, "It is a partnership which comes into being as a result of agreement between two or more persons in order to share profit".⁴⁷ This important kind of *Sharikāt* is further divided into three classes by the Hanafī school of thought i.e. *Sharikat-ul Amwāl*, *Sharikat-ul-Amal* and *Sharikat-ul-Wajūh*.⁴⁸ However, *Sharikat-ul-Amwāl* is more practicable and workable, as for as, the present mechanism of banking sector is concerned. In the view of Ibn 'Ābidīn, a renowned Hanafi jurist, "It is a contract between two or more persons for participation in capital and its profit"⁴⁹ The other prominent schools of thought (Malikī, Shafa'ī and Hanbalī) define *Sharikāt* on the same way, with some minor variation, and therefore, there is no need of their discussion distinctly. The definition given by Hanafī school of thought, indeed, is more elaborative in nature; as it covers all essential components of a valid partnership (i.e. parties, agreement, capital investment, sharing of the profit) and, therefore, be used in this work.

Like other commercial transactions, there are some governing rules prescribed by *Shari'ah* for *Mushārakah*. All these rules must be followed, both in letter and spirit, in order to achieve the intended results, envisaged by Islamic law from the application of such mode. These rules are, undeniably, copious in nature; however, for the purpose of succinctness, the most important has to be discussed in the coming lines.

Firstly, as *Mushārakah* is a contract, and therefore, all rules and regulations of a valid contract will be applicable. It means that there must be proper offer and acceptance, legal obligation, free consent, capacity of the parties, lawful object, possibility of performance and etc. Secondly, as the main purpose of *Mushārakah* arrangement is to earn profit, therefore, the issue of its distribution must be settled in the beginning of the contract.⁵⁰ In addition, the profit, to be divided between the shareholders, must be related to the actual profit, accrued by the business, and its sharing must be pre-determined in clear terms. For example, one-half (1/2), one-third (1/3), one-fourth (1/4); or a given percentage of actual percentage of the profit, e.g. 10% or 20%, etc.⁵¹ Moreover, it is not allowed to determine a fixed lump sum amount for any or all partners nor it should be related, by any means, to the amount of capital invested by each party.⁵² Some of the financial institutions provide a fixed amount of profit for their customer in case of *Mushārakah*, but it should be subjected to a final settlement at the end of the banking year.⁵³ Fourthly,⁵⁴ according to *Hanafī* School of thought, it is lawful that the capital of each partner may be equal and yet the profit be shared unequally.⁵⁵ In their view, the profit share in the contract of *Mushārakah* is related to the agreement,

not to the capital.⁵⁶ However, this school considers it as a rule for a normal business activity.⁵⁷ However, it recognizes that in a special situation, where a partner explicitly agrees not to participate in the management of the business (a sleeping partner), their share of profit cannot be more than the ratio of their investment.⁵⁸ Fifthly, the contract can come to an end by various means i.e. death of a party or lost of legal capacity, issuing of notice by any party for the termination of the contract, completion of the time period prescribed in the contract, destruction of the subject matter of the contract and etc.

5. Needs of Farmers in Rural Areas of KPK:

Before presenting various models on *Mushārahah* basis, it is appropriate to know about the basic needs of rural local farmers in KPK, more importantly, those which can be fulfilled through this mode of Islamic finance. These needs include the following.

1. Farmers in rural areas of KPK are, all the time, in need of funds to purchase agricultural inputs like seeds, fertilizers, pesticides, herbicides, weedicides and etc. They also require, at the same time, means to bring their agricultural yields to the local markets so that the portion of their profits, normally used to pay others for transporting their goods, may also accrue to them.

2. Farmers are also in need of heavy agricultural machinery and equipment (see figure No.3). These equipment and machineries, which are numerous and expensive in nature, required by almost all farmers in their fields. While having meager economic conditions, the lower and middle class farmers are not in a position to purchase such equipment for themselves (see figure No.4). The machinery, customarily used by the farmers, can be divided into various groups, based on their purposes and functions. These include, for instance, traction and power (like tractor), soil cultivation (like cultivator, cultipacker, chisel plow, harrow, spike harrow, plow, spading machine, stone removal implement, subsoiler, rotator and etc.), planting equipment (like broad cast seeder, planter, plastic mulch layer, potato planter, seed drill, air seeder, transplanted and etc.), fertilizer and pest control (like fertilizer spreader, terragator, liquid manure, manure spreader, sprayers and etc.), irrigation (center pivot irrigation, drip irrigation, hydroponics and etc.), produce sorter (like weight sorter, color sorter, blemish sorter, diameter sorter, shape sorter and etc.), harvesting (like baler, beet harvester, beet cleaner loader, bean harvester, cane harvester, cart carrot harvester, chase bin, combine harvester, corn harvester, cotton picker, cradle, gleaner, grain cleaner, grain dryer, grape harvester, gravity wagon, potato spinner, potato harvester, rake, reaper, reaper, binder, rice buller, sickle, silage trailer, sugarcane harvester, swather, thresher, tractor and etc.), hay making (like bale mover, bale wrapper, baler and big baler, conditioner, hay rake, haytedder, mower, bale lifter, loading (like backhoe loader, front end loader, skid steer loader and etc.) milking (like bulk tank, milking machines, milking pipeline and etc.), obsolete farm machinery (like stationary steam engine, portable

engine, traction engine, reaper binder, flail, hog oiler, reaper, winnowing machine, threshing machine and drag harrow) and etc.

3. Farmers in rural areas of KPK are always in need of transport facilities in order to carry their products to the local market on time. This facility may include tractors, refrigeration vans, farm cooling tanks, motorcycles for milkmen, small pickups, mini trucks and chiller carriers and etc.⁵⁹ Effective transportation, indeed, plays a vital role in the development of agricultural sector.

4. A considerable number of farmers hold the land units of less than 12.5 acres, which is barely enough for providing subsistence standards of living. They are, therefore, in need of land for yielding agricultural products.

Table. Land units held by farmers

Categories of Farmers	No. of Farms		Farm Area	
	Million	Percent	Total (million acre)	Percent
Marginal farms up to 5 acre	2.41	58.64	5.31	28.92
Small farms (5 – 12.5 acre)	1.70	41.36	13.05	71.08
Total small farms	4.11	100.00	18.36	100.00

Source: Agriculture census organization, 1990

Table 1: Land units held by farmers

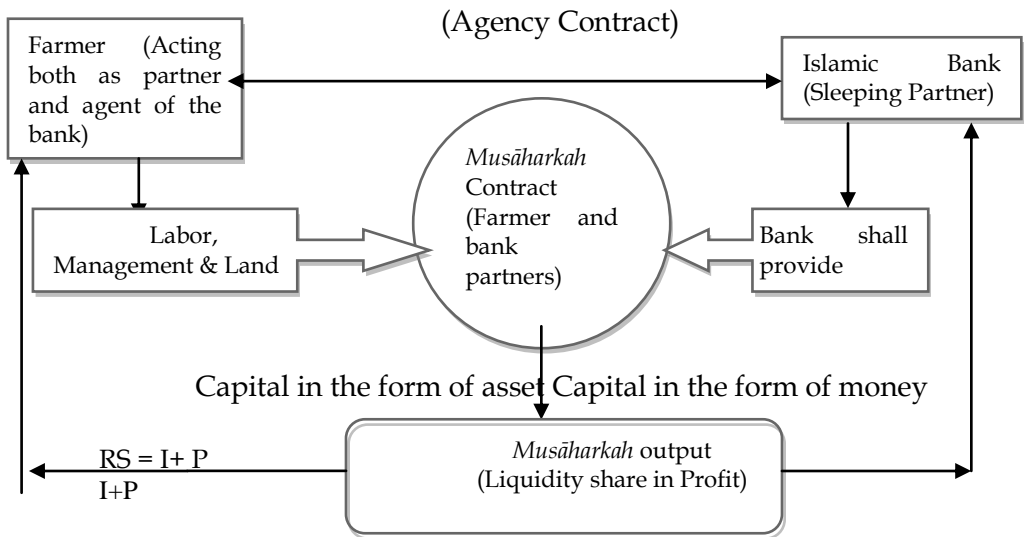
6. Solution of the Farmers’ Problems through Musharakah Based Models:

The above table illustrates that, except for a few big landlords, the average farmers generally remain poor as they hold a very small piece of land for cultivation of agricultural crops. This actuality puts them in the back lines of poverty and, hence, they always face financial problems. Some arrangements, therefore, must be made under the contract of *Musharakah* in such a way to provide them land for cultivation purposes. It will really increase their agricultural production and, consequently, their income and life standard.

All the requirements, mentioned above, can be fulfilled through various models, structured on the basis of *Musharakah*. For instance, requirements mentioned in category No.1, can be fulfilled through an arrangement whereby an Islamic bank provides the required funds for the agricultural inputs and the farmer, on the other hand, contributes land, labor and management-from sowing to harvesting the crop(s). The profits of the joint venture, which can be called, “We Cultivate Together” can be shared by the Islamic bank and the farmer under a predetermined ratio. The risks normally associated with agriculture are drought, floods, hail, earthquakes, pests attack, mudslides and a multitude of other mishaps.⁶⁰ Ironically, these risks are not common in other sectors.⁶¹ All these risks may be mitigated under *Takaful* (Islamic insurance) cover. Putting together all the factors of

production for a gainful business pursuit, will create a form of *Mushārahkah* between an Islamic bank and a farmer. As discussed earlier, the Islamic bank may assume the role of a sleeping partner, thus, confining its share of profit, as well as the loss, to its investment. The farmer, on the other hand, will manage the entire production process and, as such, will be entitled to claim managerial costs (*ujrat-ul-'Amal*)⁶²; as the deductible business expenses before arriving at the distributable profit from the venture. It must be noted in that an Islamic bank, under such an arrangement, will not be a lender of the money to a farmer but an active or sleeping partner who provides all or most of the agricultural inputs (e.g. tools, seed, fertilizer, pesticides, irrigation etc.) and, therefore, shares the profit or loss of the partnership. The farmer, therefore, will not be required to offer any collaterals⁶³ (e.g. guarantees, pledging of assets or mortgage of properties) to Islamic banks, which are normally required by conventional banks against their lending facility. The following proposed model may explain the theory in the best way:

Model 1



Profit and initial investment

Figure 1: Mushārahkah based model 1

The requirements, on the other hand, which are mentioned under the category No.2 and No.3, can be fulfilled through a variety of models based on a contemporary type of *Mushārahkah* known as the Diminishing *Mushārahkah*.⁶⁴ While following this arrangement, the Islamic banks and other Islamic financial institutions use Diminishing *Mushārahkah* for the purchase of heavy agricultural machinery and transport facility, including purchase of tractors, refrigeration vans, farm cooling tanks and transport vehicles, etc. ⁶⁵ Under this model, the Islamic bank and the farmer acquire the vehicles collectively and, thus, become co-owners of the asset. This arrangement has been accepted by majority of farmers (see figure No.5). Once

this relationship is time-honored, the farmer will take share of the Islamic bank on rental basis. This understanding has also been accepted by majority of farmers (see figure No.6). The share of the Islamic bank will be divided into small units and the farmer will purchase these units periodically. It is sensible for Islamic banks and other Islamic financial institutions to divide their shares comparatively in small units than they do in their normal business with ordinary customers. A special relaxation, therefore, will be provided to farmers in their payment structure and mechanism; owing to the fact of their meager economic condition. While doing so, such financial institutions will also put their share in the development of agricultural sector; which is always considered a national sacred cause. This process will be continued until the share of the farmer increases to full ownership of the vehicle. The division of bank's share in various units and their subsequent sale has been appreciated by majority of farmers (see figure No.7).

All risks and liabilities, related to the ownership, are supposed to be divided by the parties according to their share in the asset. Through mutual agreement, however, they can divide these liabilities otherwise. This contract of Diminishing *Mushārahah* is very useful because most of farmers are very poor and these assets, while very expensive, are, at the same time, essential for their livelihood. Since, they do not have the necessary resources to purchase these assets, Diminishing *Mushārahah* can be a viable option for them in such circumstances.⁶⁶ Majority of farmers have the same opinion. The following model can be developed in light of the theory mentioned above.

Model 2: Diminishing Musāharkah Based Mode of Financing (Provision of Heavy Agricultural Machinery and Transport Financing)

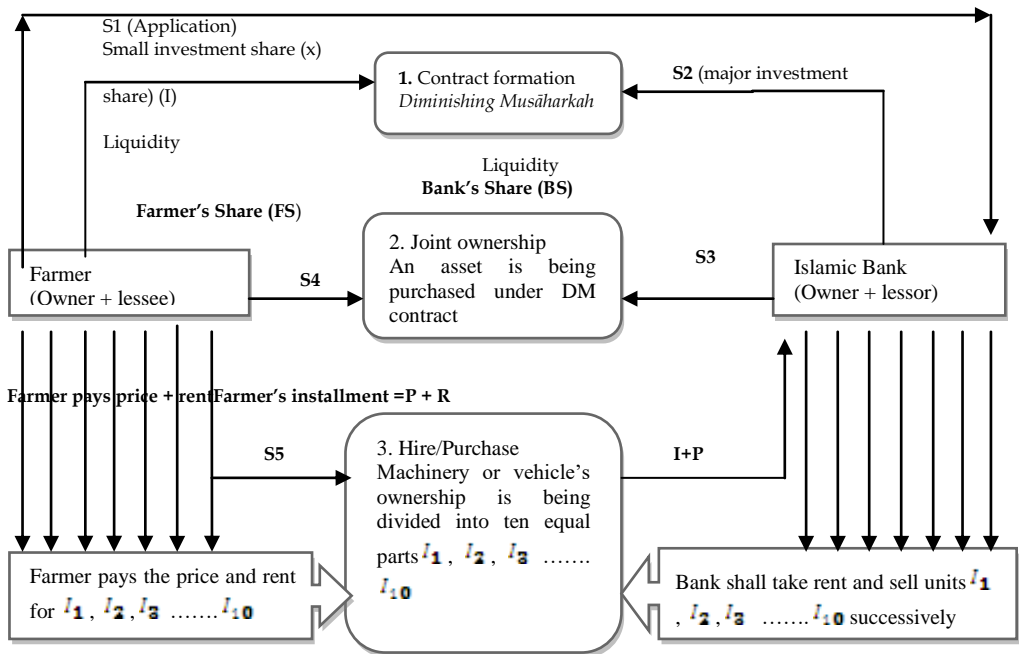


Figure 2: Model 2 Diminishing *Musāhakah* based mode of financing (provision of heavy agricultural machinery and transport financing)

7. *Mushārah* Models on Trial:

A focused group survey is conducted for checking the viability and practicability of the proposed *Mushārah* based model for local farming sector in rural KPK. The farmers are asked various questions, related to the whole mechanism of the model. The following response has been received.

- The farmers are always in need of heavy agricultural machinery for various purposes. This requirement of heavy machinery is also confirmed by 95% of the respondents as shown in the following graph.

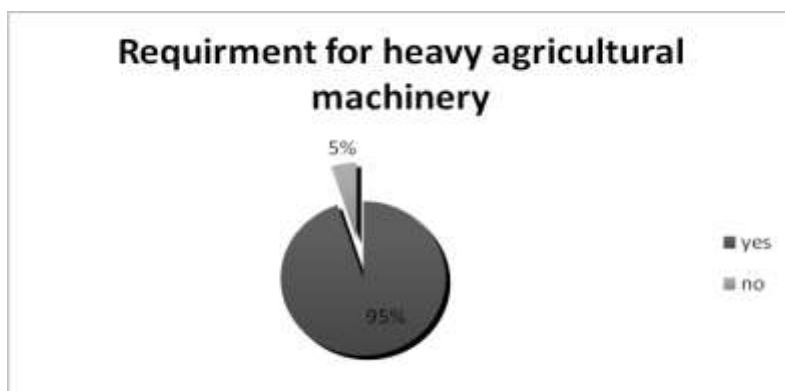


Figure 3: Requirement for heavy agriculture machinery

The lower and middle class (lower middle class) farmers are not in a position to purchase heavy agricultural machinery. This fact has been established through the data, collected from the respondents.



Figure 4: Self purchasing capacity

The graphical presentation clearly indicates that 70% of the farmers have confirmed their financial inability to purchase agricultural machinery. It means that Islamic banks and other Islamic financial institutions can target this potential area in their financing policies.

- Under Diminishing *Mushārah* model, an Islamic bank and a farmer can acquire the vehicles collectively and, thus, become co-owners of the asset.

This arrangement has been accepted by majority of farmers as shown in the following paragraph, designed from the collected data

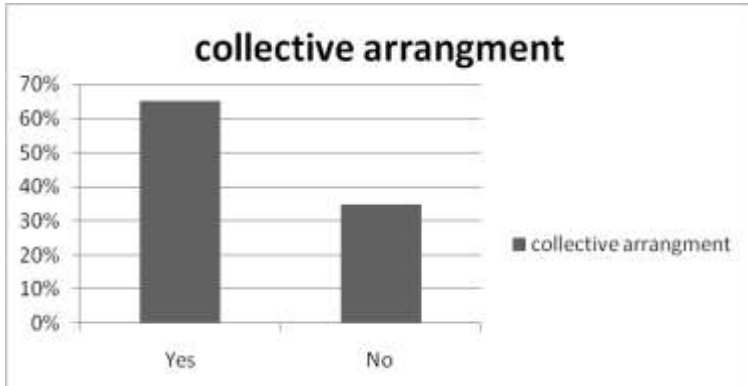


Figure 5: Collective arrangement

In the above graphical presentation, 65% farmers are agree to purchase the agricultural machinery jointly with the financial institutions through the arrangement of Diminishing *Mushārahah*. This positive response, indeed, shows the viability of this arrangement for the development of agricultural sector.

- Under the Diminishing *Mushārahah*, the farmer will take share of the Islamic bank on rental basis. This arrangement has been accepted majority of farmers. The following graphical presentation can be presented as an evidence in this regard.

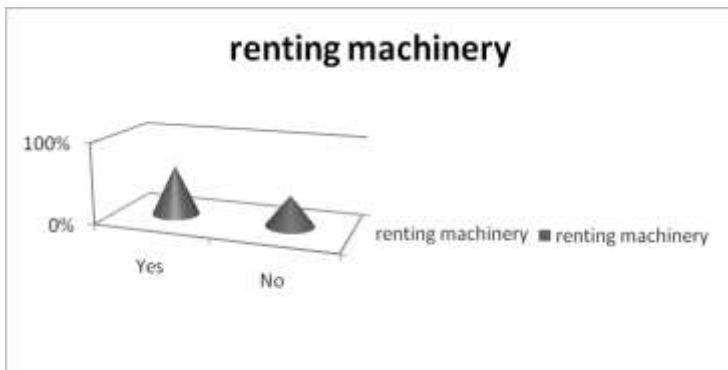


Figure 6: Renting machinery

- The division of bank's share in various units and their subsequent sale (in Diminishing *Mushārahah*) has been appreciated by majority of farmers from the various groups. The following graphical presentation can explain their view in a better way.



Figure 7: Willingness to pay in the form of installments

The graphical presentation shows that 57% of the respondents are willing to pay price of the agricultural machinery/commodity in installments rather than on spot. This fact illustrates appropriateness of the Diminishing *Mushārah* for financing local farming in rural areas of KPK.

- The farmers are asked, in a generic way, regarding the beneficial nature of *Mushārah*. The following data is obtained from their positive perception

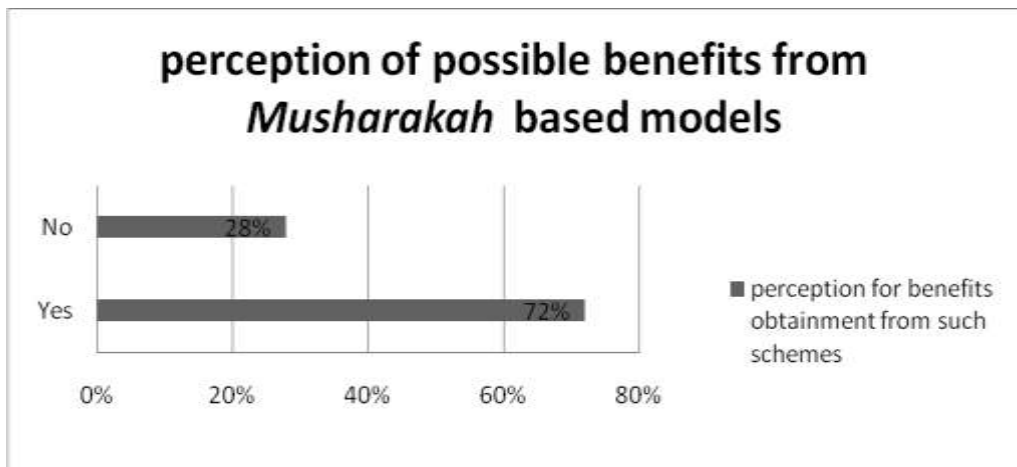


Figure 8: Perception of possible benefits from Mushārah based models

The graphical presentation indicates that 72% of the farmers have positive perception regarding the role of *Mushārah* (particularly the Diminishing *Mushārah*) in the development of agricultural sector.

8. Scope and Limitation of the Study:

The present research is connected, primarily, with the development of *Shari'ah* based models, on the basis of *Mushārah*, for local farming in rural areas of Khyber Pakhtunkhwa. However, the finding and results can be used, with minor amendments, for other rural areas of the country; as they almost have the same agricultural environment and climate and, thus, having the same agricultural requirements. The question may come to the mind that why rural local farming is focused more in the present research work while other

sectors of agriculture i.e. horticulture, dairy farming, livestock, poultry farming, fish farming, etc., on the other hand, are entirely ignored. There are many, natural and unnatural, reasons for this priority. Firstly, other sectors of agriculture, like horticulture, dairy farming, livestock, poultry farming, fish farming, etc., do not exist in rural areas of Khyber Pakhtunkhwa. Secondly, majority of population in rural areas is related to local farming, by one way or another, and, therefore, development of this sector is very much crucial. Thirdly, it is more significant for human life as compared to other sectors of agriculture, being a source of basic food. Fourthly, as local farmers are related to lower class of the society, therefore, helping them financially is in line with objectives of *Shari'ah*. Besides these, there are some other inbuilt limitations in the present work. For instance, the work of classical Muslim jurists is not widely used as far as the structure of the proposed models is concerned. It is intentionally done in order to keep such models much close to the contemporary financing techniques, used by the modern financial institutions. This fact has, undeniably, molded the models more feasible and practicable at ground level. However, the work of such classical Muslim jurists is extensively used, while mechanizing the rules and regulations (procedure) for such models. Another limitation is faced at the stage where the data has to be collected from the local farmers of Khyber Pakhtunkhwa. They show reluctance to answer simple questions, asked by the researcher i.e. "What are your basic agricultural requirements in the beginning of a season?", "Do you own any property?", "What types of tools do you require for agriculture?" and "Have you ever visited a bank?" The sample data is, hence, based on two sets of information; (a) the actual answers given by the respondents and (b) the self-presumed answers based on the already obtained data. Moreover, the same reluctance is tackled when the financial institutions are approached for obtaining the previous records on agricultural finance. This really put the quality of the proposed models at the back-foot, as such records can help in improving the existing procedure, used by the financial institutions in agribusiness. However, a part of such record is, later on, obtained from their official website and annual reports.

9. Conclusion and Findings:

Local farming is the most important source of food since the inception of this earth. The basic food, required by a human being on daily basis, is entirely owing to this sector of agriculture. However, majority of farmers, related to local farming, belongs to lower segments of the society. Having such economic status, they are not in position to fulfill their basic agricultural requirements, arising at various stages of the harvesting cycle.

The case of rural areas' farmers in KPK (Pakistan) is not variant in this regard. In such a situation, if they are not financially supported, it may lead to, in worst case, the shortage of basic food. Being a complete code of life, *Shari'ah* offers various ways, for the financial facilitation for such farmers. Among these, *Musharakah* is the most important and appropriate one. Various

models, in the present work, are presented that can be used by Islamic banks and other Islamic financial institutions for financing rural local farming in KPK. The mechanism of such proposed models are structured in the light of rules and regulations, available in the work of classical *fuqahā*. The reason for such approach is to keep the proposed models more *Shari'ah* based rather *Shari'ah* compliance.

To enhance the practical utility, the theoretical models are then tested though focused group techniques at ground levels. Moreover, the models are simply explained to the farmers, followed by group discussions and question answer session. At the end, they are asked, regarding various aspects of the proposed models. The indispensable changes are made, at this stage, in the light of collected data- provided such changes are not inconsistent with the basic principles of *Musharakah*.

Moreover, the procedure required for the conclusion of *Musharakah*, is kept very simple; owing to the fact that majority of farmers are illiterate and, therefore, cannot understand the more technical nature of commercial transactions. It is noticed, from various studies, that majority of farmers avoid availing financing facility because of such technicalities.

Finding shows that 95% local farmers are in need of heavy agricultural machinery where 70% of them (farmers) cannot afford their purchasing. A majority of respondents i.e. 65% show their consent to acquire such heavy agricultural machinery through a typical kind of *Musharakah*, known as, *Diminishing Musharakah*. Further, 65% of the farmers come to an agreement to purchase Islamic banks' share (in such machinery) through installments and, thus, becomes the sole owner at the end. Above all, 72% farmers have shown very positive perception regarding the viability of the *Musharakah* based models for the fulfillment of their various agricultural requirements. The intended objectives from the proposed models, however, can be achieved if they are applied in their true spirit, envisaged by *Shari'ah*, and not mere as a source of financing.



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¹ It is rightly said by Kierra De Camp 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 on our body 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 makeup, 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...

See: Kierra De Camp, "The Importance of Agriculture in Everyday Life", <http://www.growmark.com/.../Illinois%20Winning%20Essay.pdf> (accessed February 28,2014)

²Draft *Guideline for Livestock Financing*, Agricultural Credit Department, the State Bank of Pakistan,p.1, www.sbp.org.pk/acd/2006/Draft-Gls-Livestock-Financing.pdf (accessed: February 28, 2014)

³ *Strengthening Agricultural support Services For Small Farmers*, Report of the APO Seminar on Strengthening Agricultural Support Services for Small Farmers held in Japan, 4-11 July 2001 (SEM-28-01), Asian Productivity Organization, 2004

⁴ William F. Steel, David O. Andah, *Rural and Micro Finance Regulation in Ghana: Implications for Development and Performance of the Industry*, Africa Region Working Paper Series No.49 June 2003. <http://www.worldbank.org/afr/wps/index.htm>. (accessed :December 25, 2012).

⁵ Omer Farooq, *Pakistan Economic Survey 2009-10*, Government of Pakistan Ministry of Finance, 2:13. www.finance.gov.pk (accessed : January 12 ,2013)

⁶ For example, at the start of the cycle, money is required to buy basic agricultural inputs like seeds, fertilizers, herbicides, ploughing tools etc. Similarly, during the middle of harvesting cycle, money is required to purchase pesticides, herbicides, weedicides, sprays and different agricultural tools.

⁷ Formal financial institutions mean those institutions which are registered, licensed and regulated by a specific national authority. These institutions include banks (including both public and private banks), insurance companies, macro finance institutions (MFIs), government funded bodies, formal money transfer service providers, NGOs and etc. These institutions are called formal in the sense as they follow certain rules and regulations prescribed by the country concerned in which they exist...*Study on Informal and Non-Formal Rural Financial Services Concern Universal*, Final Report, June (2012): 8-9. www.concernuniversal.org (accessed: April 10, 2013), This report was conducted by Kadale consultants in March and April 2012 .

⁸ The informal sources include lending and gift from relatives, merchants, friends and local money lenders. These sources are usually non-governmental. The farmers have more inclination towards the informal sources of finance as compared to formal sources; as the previous are more flexible in terms of procedure and repayment structure.

⁹Waiter Schaefer - Kehnert, Jhon D.Von Piodike, *Agricultural Credit Policy in Developing Countries*, (World Bank Reprint Series: Number 280, January.1982), 17.

¹⁰*Shari'ah* strictly prohibits interest based loans. There are many verses of the Holy *Qur'an* and *Hadith* of the Holy Prophet (SAW) that confirm this prohibition. For instance, in the Holy *Qur'an Allāh*, the exalted, says "O Ye Who Believe! Fear *Allāh*, 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 *Allāh* 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'an*, 2:278-279). In another verse the Lord of Universe says, "That they took *Ribā* (usury), though 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'an*, 4:161)From Jābir, may *Allāh* be pleased with him, said: "The messenger of *Allāh* (SAW) has cursed one who charges *Ribā*, he who gives it, one who records it,

and the two witnesses; and he said, "They are equal" (*Muslim Sahīh*, Ḥadīth # 1598).

¹¹ Muhammad Taqī Usmani, *An Introduction to Islamic Finance*, (Karachi: Maktaba Ma'arif al Qur'ān, August 2008), 22.

¹²In Pakistan 88% of the total farming population has less than five hectare of land. They are living from hand to mouth. Moreover, majority of these farmers do not have collateral and thus are deprived of the loan facilities... Urooba Pervaiz, Dawood Jan, Muhammad Zafarullah Khan, Mahmood Iqbal, Rukhsana Javed, "Disbursement of Agricultural Loans, Constraints and its Future Policy Implication," *Sarhad J. Agric.* 27, no.2

¹³ Ibn Qudāmah al-Maqdisī, *Al-Kafi*, (Beirut: Al-Maktab al-Islāmī, 5th Edition, 1988)

¹⁴ Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI), Shari'ah Standard No.5, Rule No. 2/2/1, English Version, 57

¹⁵*Ibid.*, Shari'ah Standard No.5, Rule No. 2/1/2, English Version, 57

¹⁶ Even today the majority of the Arab countries have less arable land and their economy mostly relies on industries like crude oil production, petroleum refining, basic petrochemicals, ammonia, industrial gases, sodium hydroxide (caustic soda), cement, fertilizer, plastics, metals, commercial ship repair, commercial aircraft repair, and construction. For instance, Saudi Arabia, a major Arab country, has only 2% arable land. (The information are taken from the official website of Fact Monster, <http://www.factmonster.com> > World > Countries (accessed: December 25, 2013). Other Arab countries like Iraq, Jordan, Egypt, Syria, and Kuwait have 13.2%, 3.32%, 3%, 25%, and 0.84% respectively. (The facts are taken from the official website of infoplease, www.infoplease.com (accessed: December 25, 2013).

¹⁷ See Shawkānī, *Nayl al-Awtār*, (Dār Ihyā' al Turāth al 'Arabī, 1st Edition, 2001)

¹⁸See Al Kāsānī, Abū Bakr bin Mas'ūd, *Bādāi' al Sanāi'*, (Beirut: Dār al Fikr, 1st Edition, 1996), Kitāb-al Sharikah

¹⁹See Ibn Qudāmah al-Maqdasī, *Al-Kafi*, (Beirut: Al-Maktab al-Islāmī, 5th Edition, 1988)

²⁰ See Ibn Rushd, Abū al Walīd Muḥammad bin Aḥmad, *Bidāyah al Mujtahid wa Nihāyah al Muqtaṣid*, (Beirut: Dār al-Fikr, 1st Edition 2003), Vol. 2

²¹See Al Sarakhasī, Abū Bakr Muḥammad bin Abī Sahal, *Al-Mabsūt*, (Beirut: Dār Ihyā' al Turāth al 'Arabī, 2002)

²² Ibn 'Ābidīn, *Radd al-Muḥtār*, (Beirut: Dār al-Fikr, 2005), Vol. 6

²³Imām Abū Bakar Muhammad ibn Abī Sahal Sarakhsī was a prominent jurist of the Hanafi School in the 11th century .He was also known as "Shams ul al-A'imma ("the sun of the leaders").He was in prison for more than 15 years due to his juristic opinion against the ruler of the time. The mentioned book is a collection of his lectures delivered by him to his disciples while he was in prison. It is a very comprehensive book, spread over 30 volumes, contains detailed discussion of *ibādah* and *mu'amalah*. He discusses all their related issues in very details and tries to elaborate each and every single issue with practical examples from daily life. His work can be affectively used for introducing new methodology in the field of research related Islamic jurisprudence. He also has a book on the principle of Islamic jurisprudence which is an evidence of his intellectual capacity both in Islamic Law and its jurisprudence. He is considered an authority by the classical and contemporary jurists and weightage is always given to his jurisprudential verdicts.

²⁴ The statement of Mufti Muhammad Taqī Usmani, can be cited as "Salam was allowed by the Holy Prophet (SAW) subject to certain conditions. The basic purpose of this sale was to meet the needs of the small farmers who needed money to grow

their crops and to feed their family up to the time of harvest. After the prohibition of *Ribā* they could not take usurious loans. Therefore, it was allowed for them to sell the agricultural products in advance”...

Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, 186

²⁵Muhammad A. Gulaid, “Financing Agriculture Through Islamic Modes and Instrument: Practical Scenario and Applicability,” *Islamic Research And Training Institute, Islamic Development Bank*, (1995): 50.

²⁶Brian B. Kettell, *Introduction to Islamic Banking and Finance*, (John Wiley & Sons, 2011)

²⁷Monzer Kahf & M. Fahim Khan, “Short-Term Financing of Commodity Production in Islamic Perspective,” Paper to be presented to the *7th Annual Meeting of Experts in Islamic Banking*, (1992)

²⁸Magda Ismail Abdel Mohsin, “The Practice of Islamic Banking System in Sudan”, *Journal of Economic Cooperation*, 26:4 (2005): 27-50.

²⁹Laurence M. Crane & David J. Leatham, “Profit and Loss Sharing in Agriculture: An Application of Islamic Banking,” *Agribusiness*, 9:4, (1993): 403-412.

³⁰Adam B. Elhiraika, “On the Experience of Islamic Agricultural Finance in Sudan: Challenges and Sustainability,” *Islamic Research and Training Institute Islamic Development Bank*, (2003): 74, See also Adam B. Elhiraika, “Risk-Sharing and the Supply of Agricultural Credit: A Case Study of Islamic Finance in Sudan,” *Journal of Agricultural Economics*, 47:1-4 (1996): 390-402

³¹Ali Yasser, “The Experience of the Islamic Republic of Iran in Musharakah Financing,” *Arab Law Quarterly*, 14:3 (1999): 231-224.

³²Saeed Yazdani, “An Evaluation of Agricultural Credit System in Iran”, *Giordano Dell-Amore Foundation, Savings and Development*, 29:2 (2005), 117-132.

³³See for example the work of Lutfullah Saqib, Kellie W. Roberts, Mueen A. Zafar, Khurram Khan, Aliya Zafar, “Musharakah-A Realistic Approach to the Concept in Islamic Finance and its Application to the Agricultural Sector in Pakistan,” *Arab Law Quarterly*, 28, no. 1, (2014): 1-39

³⁴Ab. Aziz, Muhammad Ridhwan, *Agriculture in Islam from the Perspective of Economics, Banking & Finance*, (Penerbit UTM, Skudai, Johor Bahru, 2012)

³⁵For example his work includes a series of topics which are directly related to agricultural sector like agribusiness from the Islamic perspective, agriculture as a tool to resolve the issue of unemployment, various contract of agriculture in Islamic commercial law, various *Shari'ah* based models which can be easily applied by the contemporary banks for the development of agricultural sector both for crop and non crop activities etc. The book discusses all these issues with a special reference to Malaysian's agriculture. See for further details Ab. Aziz, Muhammad Ridhwan, *Agriculture in Islam from the Perspective of Economics, Banking & Finance*.

³⁶Muhammad Ali Alula Al-Hashimī, *The Influence of Islamic Banking on Agricultural Development in Sudan*, Graduate Research Masters Degree Plan B Papers 10994, (Michigan State University, Department of Agricultural, Food, and Resource Economics, 1989)

³⁷ The authors have discussed the contract of *Mudārabah* with a special reference to Sudan's agriculture. However, based on the logic that each and every country has its own agricultural environment, it is quite possible that the same transaction particularly with the same mechanism can not be applied for the development of agricultural sector of each and every state. It may be more beneficial for those countries that have the same agricultural climate, values and norms.

³⁸See Mahmoud A. Gulaid, *Financing Agriculture Through Islamic Modes and Instrument: Practical Scenario and Applicability*, (Jeddah Saudi Arabia : Islamic Research And Training Institute Islamic Development, Bank, 1995) Research No.34.

³⁹ Ahmad Kaleem, *Outlook for Islamic financing of agriculture*, March 2007, www.pakissan.com (accessed :February 15 , 2014)

⁴⁰Badawi B. Osman, The Experience of the Sudanese Islamic Bank in Partnership (Mushārah) Financing as a Tool for Rural Development among Small Farmers in Sudan, *Arab Law Quarterly*, Vol. 14, No. 3 (1999): 221-230.

⁴¹Kazem Sadr is formerly professor in the department of Economics, School of Economics and Political Science., Shahid Beheshti University Tehran. The author has a great contribution to the existing body of knowledge related to Islamic economics, Islamic banking and Islamic finance. He teaches various subjects like Economics, Economics Theory, Agriculture and Resource Economics, Islamic Finance etc. His writing on agricultural finance is more practical in nature owing to the fact that he remained a committee member at Agriculture Bank of Iran. The learned author has two books and fourteen research articles published in various academic journals.....see for details [http:// www.inceif.org/faculty-members/emeritus-prof-dr-seyed-kazem-sadr-2ac](http://www.inceif.org/faculty-members/emeritus-prof-dr-seyed-kazem-sadr-2ac) (accessed: February 20 , 2014).

⁴²Kazem Sadr, The Role of Mushārah Financing in the Agricultural Bank of Iran, *Arab Law Quarterly*, 245-256.

⁴³ The *Sharikāt* can be divided into three classes i.e. *Sharikat-ul-Ibāha* (common sharing of things), "It is the common right of the people in ownership by acquisition or gathering of items that are permissible and not originally owned by any one". This means that if the item is not permissible in *Shari'ah*, or when it is acquired by someone else, then such common right cannot be exercised. Most classical jurists like Imām Sarakhsī and Imām Kasanī, etc do not discuss the concept of *Sharikat-ul-Ibāha* in their works..... *Sharikat-ul-Milk* (co-ownership), on the other hand, according to Imām Sarakhsī, "It is the partnership between two persons in a property"..... Sarakhsī, *Al-Mabsūt*, 11:142, Ibn-'Ābidin defines the term more comprehensively as, "It is an ownership by a number of persons of any ascertained property or Dayn (debt not ascertained by weight or measure or other means) arising through inheritance or through exchange (bay) or through other means"... Ibn 'Ābidīn, *Radd al-Muhtār*, (Beirut: Dār al-Fikr, 2005), 11:301, and *Sharikat-ul-'Aqd* (partnership through contract). This classification is very exhaustive in nature and covers all related areas of partnership in Islamic law.

⁴⁴*Qur'ān*, 38:24.

⁴⁵"It is the common right of the people in ownership by acquisition or gathering of items that are permissible and not originally owned by any one" This means that if the item is not permissible in *Shari'ah*, or when it is acquired by someone else, then such common right cannot be exercised. Most classical jurists like Imām Sarakhsī and Imām Kasanī, etc do not discuss the concept of *Sharikat-ul-Ibāha* in their works.

⁴⁶According to Hanfī jurist Imām Sarakhsī, "It is the partnership between two persons in a property", Sarakhsī, *Al-Mabsūt*, 11:142, Ibn-'Ābidin defines the term more comprehensively as, "It is an ownership by a number of persons of any ascertained property or Dayn (debt not ascertained by weight or measure or other means) arising through inheritance or through exchange (bay) or through other means"...Ibn 'Ābidīn, *Raddul al-Muhtār*, 11:301.

⁴⁷Commission of Ottoman Jurists, *Majallah al-Ahkām al-'Adliyah* (Constantinople, 1305),

Article: 1329

⁴⁸Sharikat-ul-Amwāl is a contract whereby two or more persons invest certain capital into a commercial enterprise. This is considered the ideal form of Sharikat-ul-'Aqd. Sharikat-ul-'Amal is a contract involving two or more persons who provide services to their customer and the fee charged for the services, is distributed among them according to the agreed ratio. Sharikat-ul-Wajūh is a contract whereby two or more persons use their good-will, their credit worthiness and their contacts for promoting the business without contributing to the monetary capital.... Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, 32

⁴⁹Ibn 'Ābidīn, *Raddul al-Muhtār*, 6:208.

⁵⁰Burhān al Din abī al Ḥasan 'Alī Ibn Abī Bakar al Marghinānī, *Al Hidāyah Sharh Bidāyat ul Muhtadī*, (Karachi, Pakistan, Maktabatul Bushra, 2nd Edition 2008), 4:378

⁵¹Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, 36

⁵² Mohammad Nejatullah Siddiqi, *Partnership and Profit-Sharing in Islamic Law*, (Leicester, UK The Islamic Foundation, 1985), 22-23

⁵³ Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, 386

⁵⁴The issue is comprehensively discussed in another article with minute details... Lutfullah Saqib; Kellie W. Roberts; Mueen A. Zafar; Khurram Khan; Aliya Zafar, "Mushārah-A Realistic Approach to the Concept in Islamic Finance and its Application to the Agricultural Sector in Pakistan," *Arab Law Quarterly*, Volume 28, Issue 1 (2014): 1-39

⁵⁵Wahbah-al-Zuhaylī, *Al-Fiqh-al-islāmī -Wa-Adilatuhū*, 5:3901

⁵⁶Marghinānī, *Al Hidāyah Sharh Bidāyat ul Muhtadī*, 4:378

⁵⁷Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, 37

⁵⁸Wahbah-al-Zuhaylī, *Al-Fiqh-al-islāmī -Wa-Adilatuhū*, 5:3901

⁵⁹*Guidelines on Islamic Finance for Agriculture*, Islamic Banking Department, State Bank of Pakistan, 5, www.sbp.org.pk (accessed: 28th February, 2014).

⁶⁰Mahmoud A. Gulaid, *Financing Agriculture Through Islamic Modes and Instrument: Practical Scenario and Applicability*, (Jeddah Saudi Arabia: Islamic Research And Training Institute Islamic Development, Bank, 1995) Research No.34, p.50.

⁶¹Waiter Schaefer - Kehnert and Jhon D. Von Piodike, *Agricultural Credit Policy in Developing Countries*, (World Bank Reprint Series: Number 280, January. 1982), p.17.

⁶² According to the Hanāfi school of thought a person is entitled to profit because of *Māll* (capital), or *'Amal* (work) or *Damān* (liability). So it is permissible that a party to the contract of *Mushārah* may get more profit irrespective of his capital share as he may contribute more in the shape of work as compared to other parties. This is based on the Hadith of the Holy Prophet (SAW) "The profit will be distributed according to the agreement and lost will be borne according to the capital". Wahbah-al-Zuhaylī, *Al Fiqh al Islāmī Wa Adilatuhū*, 5:3901

⁶³ The concept of *Rahn* (pledging of asset) is applicable to loan and sale transactions. It can also be applied for the securing of *Ujrah* (rent), *Mahr* (dower) ... see for further details (Ibn Qudāmah al-Maqdisī, *Al-Kafī*, 2:128); The concept of *Kafālah* is applicable for any liability in general, while the concept of *Hawālah* (assigning of debt) is only applicable in case of loan transaction. Abū al Walid Muhammad ibn Ahmad Ibn Rushd, *Bidāyt al Muhtadī Wa Nehāyat al Muqtaṣid*, 2:525-536

⁶⁴ Some of the scholars trace back the legality of *D. Mushārah* in the Holy *Qurān* "If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth;

but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus it is ordained by Allah. Allah is All-knowing, Most Forbearing". (*Qur'ān* 4: 12). It is defined in AAOIFI " A form of partnership in which one of the partners promises to buy the equity share of the other partner gradually until the title of the equity is completely transferred to him"...Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010, Bahrain, English Version,,Rule.5/1,p.214, <http://www.aoifi.com> (accessed December 25, 2011)...It is totally a new concept to the Islamic financial system, envisaged by the contemporary scholars, i.e. Mulana Mufti Muhammad Taqi Usmani,Wahbā-al-Zuhaylī,Adullah bin Suliman-al-Manee, Abdurrehman bin Sālih, Al-Sādiq Muhammad-al-Ameen, Ajeel Jasim , Yousf Muhammad and etc....(See for the detailed rules of Diminishing *Mushārahah* ...Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010, Bahrain, English version, Shari'ahStandard.12, *Al-Sharikha wa Al-Sharikatul-Hadītha*, p.205 and onward.)....The International *Fiqh* Academy of OIC in its 15th session has made a detailed discussion on this mode of Islamic finance where the *Shari'ah* scholars have discussed its fundamental characteristics"...see for example International *Fiqh* Academy of the Organization of Islamic Conference, 2004, 15 Th Session, "Resolutions of *Mushārahah Mutanāqisah* and its *Shari'ah* Principles," www.fiqhacademy.org.sa (accessed 15th December, 2011).

⁶⁵*Guidelines on Islamic Agricultural Finance*, Agricultural Credit Department Islamic Banking Department, State Bank of Pakistan, p.5, www.sbp.org.pk, (accessed December 27, 2011)

⁶⁶ The idea has been taken from the work of Lutfullah Saqib, Kellie W. Roberts; Mueen A. Zafar, Khurram Khan and Aliya Zafar regarding the concept of *Mushārahah* and its Application to the Agricultural Sector in Pakistan, published in a well renowned journal on Islamic research i.e. Arab Law Quarterly