

***Murābahah* – A Typical Commercial Transaction of Islamic Commercial Law and its Possible Role in the Development of Local Agricultural Farming Newly Islamic Law Based Model**



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Abstract:

Being a comprehensive code of life, Sharī'ah (Islamic Law) offers a comprehensive mechanism for the solution of every aspect of life. Among these aspects, local agricultural sector as one of the important one. Farmers related to such sector are, generally, from the lower class of the society and, therefore, do not have the financial abilities to fulfill their day to day needs. The option available to them is either to borrow money from relatives/ friends or resort to conventional banks for interest based loans. The previous option is some time not available while the second option is not in line with the principles of Islamic commercial law. In such a situation, the Islamic banks provide, as an alternative, a typical transaction of Islamic commercial law i.e. *Murābahah* (cost plus profit based sale.). By using this, various agricultural needs of such local farmers can be fulfilled. These needs included, predominantly, threshers, power tillers, power & boom sprayers, ploughs, cultivators, riggers, drills, draggers, cotton pickers, saw machines for crate making and etc. Finding show that majority of farmers consider this transaction of Islamic law as a viable solution for their problems. A focused group technique, one of the important techniques of qualitative research, has been adopted in the present work to investigate the issue appropriately.

Keywords: Sharī'ah, Legal, Agricultural, *Murābahah*, Islamic Law, Farmers, Islamic Banks, Commercial Transaction, Crop, Non-crop, Local Farming, Islamic

1. Introduction:

As mentioned in the earlier discussion that *Sharī'ah* strictly forbids Muslim to secure loans on interest basis from any formal or informal institutions. Therefore, Muslim farmers in order to fulfill their agricultural requirements, both for crop and non-crop sectors have to resort to some other sources of financing recognized by Islamic commercial law in general, and by the Islamic financial system in particular. Among these sources *Murābahah* (cost plus profit based sale) is the most important and suitable financing that can be applied to the agricultural sector both for crop and non-crop activities. Before the practical application of this peculiar mode of Islamic finance for financing agriculture, it

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is appropriate to discuss its theoretical background both in classical and contemporary Muslim jurists' work.

A comprehensive work has been put in by the classical jurists on the concept of *Murābahah* like Imām al-Shawkānī¹, Imām al-Kāsānī², Ibn Qudāmah al-Maqdisī³, Abū al-Walīd Muhammad ibn Ahmad ibn Rushd⁴, Imām Muhammad ibn Ahmad ibn Abī Sahal al-Sarkhasī⁵, and Ibn ‘Ābidīn⁶. Among these jurists, the work of Imām Muhammad ibn Ahmad ibn Abī Sahal al-Sarkhasī⁷ is remarkable in nature. In addition to the description of benefits for the society in a general way, they also discuss all rules and regulations of the concept in a very comprehensive manner. However, their discussions do not include the role of *Murābahah* in the agriculture sector. This may be owing to fact that majority of these jurists belonged to non-agriculture environments, unlike that of Pakistan. Some of the contemporary scholars also discussed the same transaction with a special reference to the modern Islamic banking and finance. These scholars include Muhammad Taqī Usmani,⁸ Wahbā-al-Zuhaylī,⁹ Shahid Hussain Sidique,¹⁰ Mahmoud A. Gulaid,¹¹ Yūsuf Al Qardāwi (a renowned contemporary Muslim jurist)^{12, 13} Abu Umar Faruq,¹⁴ Muhammad Tahir Mansoori¹⁵ etc. However, their discussion is very general in nature and does not include *Murābahah*'s application as a mode for financing agriculture.

“*Murābahah*” is a term of Islamic jurisprudence which literally means “profit”. This literal meaning shows that it is a sale involving the original price along with additional profit.¹⁶ In view Imām Al-Qurtabī “It is that kind of contract in which the seller describes price of the commodity to the buyer with conditional profit”.¹⁷ A well renowned Hanafī Jurist Imām Sarakhsī defines *Murābahah* in similar words, adding that it was a trust contract.¹⁸ Imām Kāsānī, another great jurist of the same school views it as “the sale of a commodity at its original price along with additional known profit”.¹⁹ The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)²⁰ defines it as “The selling of a commodity as per the purchasing price with a defined and agreed profit mark-up”.²¹ While summarizing these definitions, this typical kind of sale can be defined as “a special kind of sale in which the seller expressly tells the purchaser how much cost he has incurred over the commodity and how much profit he is going to charge in addition to the cost”. It is pertinent to mention if the seller does not disclose the cost incurred, it will not be *Murābahah* but another form of sale i.e. Musawamah²² or Wadih’ah.²³

Like other commercial transactions, Islamic commercial law also describes various rules and regulation for *Murābahah*. Being a special kind of sale, some of its rules are very much similar to that of normal sale transaction while others are merely related to it. However, for the purpose of brevity, all of these rules will be presented together.

Firstly, the seller must own the subject matter of sale or be an authorized agent of the owner.²⁴ Secondly, the sale must be instant and absolute in nature and therefore, any sale attributed to future date or conditioned to any future date is void.²⁵ Thirdly and more importantly, the price of sold commodity must be certain and predetermined at the time of contract. The main purpose behind this rule is to avoid any future dispute.²⁶ Fourthly, the subject matter of sale must be legal from the perspective of Islamic law, and hence, sale of wine, pig, intoxicants, blood etc are not allowed.²⁷ Fifthly, the seller must be in possession to deliver the subject matter to the purchaser at the prescribed time mentioned in the contract.²⁸ Sixthly, the sold commodity must be certain in all aspects

i.e. quality, quantity etc. The lack of such requirement renders the contract void.²⁹ The special rules prescribed by Islamic commercial law for a valid *Murābahah* includes the disclosure of original price at which the seller purchased the commodity. A transaction where the first price is unknown cannot be declared a legal *Murābahah* in view of Muslim jurists.³⁰ Moreover, the seller must inform the purchaser regarding the profit in addition to the original price. Furthermore, the exact cost incurred by the seller on the commodity must be known at the time of the contract. According to Muhammad Taqi Usmani Such cost includes freight, custom duty etc.³¹ The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) also recognizes the inclusion of insurance cost under the same heading.³²

2. *Murābahah* - A Typical Transaction o Islamic Commercial Law for Financing Local Agriculture:

Before presenting a viable model for financing agriculture on *Murābahah* basis, it is appropriate to set out the needs of farmers, particularly of those who are related to lower and middle class. The lower class farmers are generally in need of basic agricultural inputs e.g. seeds, fertilizers, insecticides, pesticides, herbicides, weedicides, manual sprayers etc. In the researchers' point of view, this is an area of vital importance to the nation, which must be facilitated through agricultural finance. The logic is simple; superior quality inputs will give superior production both in terms of quality and quantity. During the study, a conclusion is drawn that most of the farmers, particularly in the rural area, buy seeds from the corresponding local market. Usually these seeds are of an inferior quality, and do not come with any guarantee provided from the local traders. In addition, this class of farmers is also in need of transport facility for various purposes. As for as the middle class of farmers are concerned, they have different agricultural needs than the previous class. For instance, they are in need of having agricultural machinery and equipment like threshers, power tillers, power & boom sprayers, ploughs, cultivators, riggers, drills, draggers, cotton pickers, saw machines for crate making, press machine for wheat straw and dry fodder, chisel ploughs, potato planter, sugar cane planter, rice trance planter, and self propelled reaper for harvesting wheat and rice crops.³³ Like the lower class farmers, such class of farmers is also in need of basic agricultural inputs like seeds, fertilizers, insecticides, pesticides, herbicides, weedicides, manual sprayers etc.

The above mentioned requirements can be easily fulfilled by Islamic banks and other Islamic financial institutions through *Murābahah*, if the transaction is followed in its true spirit, rules and regulation prescribed for it in Islamic law. Therefore, the majority of farmers are supporting the same fact when they were asked whether they are willing to purchase agricultural machinery or purchase farm inputs (like seeds, fertilizers, pesticides, insecticides, herbicides, weedicides, manual sprays etc.) from a bank, if it can provide a commodity or farm inputs of good quality.(See figure No.2)

3. Legal Flow of the *Murābahah*:

The agricultural requirements, both of lower and middle class farmers, mentioned in the previous paragraphs can be fulfilled through a very simple model where a farmer approaches the bank for the conclusion of commercial transaction. At the very first stage, the Islamic banks and other Islamic financial institutions go for the preparation

of a feasibility report, owing to the fact that agriculture is always prone to natural risks drought, floods, hail, earthquakes, pests attack, mudslides and a multitude of other mishaps. Therefore, such institutions do not go for the investment of their liquidity without profound investigation of the application placed for the provision of financing facility. The farmer must sign an agreement with the financial institution, called Mastert *Murābahah* Facility Agreement (MMFA) or General Agreement (GA) or Mastert *Murābahah* Agreement (MMA).³⁴ The content of this agreement includes different details about the contract. These include the cost price of the agricultural commodity, profit, quality and quantity specification of the goods, the mode of payment, the nature of delivery, a promise from the bank that it will purchase the required commodity for the farmer and a promise from the farmer that after acquiring the asset he will purchase it from the bank etc. According to the majority of contemporary jurists, such a promise is binding in nature and, therefore, legal action can be taken against the farmer whenever he breaches his commercial promise.³⁵ The financial institution must purchase the agricultural commodity from the original seller by itself, however, this is the ideal situation and in case of dire need it can appoint the farmer as its agent.³⁶ For instance, as the Islamic banks and other Islamic financial institutions have no time to take such responsibilities themselves, they normally appoint an agent. Moreover, these institutions have no experience in dealing, identifying such assets or negotiating an efficient price and hence need an agency arrangement.³⁷ The contemporary jurists allow this mechanism with certain conditions. For example, it must pay the price of the commodity to the supplier directly and all title and shipping documents will be on its name. This arrangement will be mutually beneficial for both the Islamic bank and the farmer. The Islamic bank on this way will acquire the right commodity without its active participation, and hence would save time and cost. The farmer on the other hand will receive charges for his agency from Islamic bank, which will automatically reduce the price of the commodity for him. Moreover, he will acquire the commodity as per his/her own choice. However, majority of farmers denied this arrangement when asked about their willingness for the acceptance of customer agency (See figure No.3)

When the constructive possession of the agricultural commodity and its related risks and liabilities of the financial institution are confirmed, the same can be sold to the farmer on the conditions mentioned therein in *Murābahah* Facility Agreement (MMFA) or General Agreement. After the actual sale, the farmer can be asked to furnish security or guarantee as majority of the jurists have an opinion that the price becomes a debt on the buyer, and taking securities and guarantee for the protection of debt is permitted in Islamic commercial law.³⁸ Some of the scholars have the opinion that the Islamic bank can even ask for securities before the actual sale.³⁹ Such securities may be in the form of third party guarantee, a pledge of the investment account of the farmer, or mortgage of his immovable property.⁴⁰ However, ground realities are against the provision of securities as majority of farmers belong to lower class and consequently are not in position to fulfill such requirements (See figure No.4).

Murābahah is a very useful transaction for all farmers. It is beneficial for the farmer in the sense that he acquires a commodity of good quality as compared to the quality of the same commodity that he can purchase from the local market. Similarly, if he buys the agricultural commodity from an Islamic bank then he has to pay the price in installments,

but if he purchases the same from the local market, he has to pay the total price on the spot. This facility (payment in installments) is very much useful for lower class of farmers. The data collected on the same fact through focused group technique has proved the same fact (See figure No.5). In addition, by purchasing commodity from the Islamic bank, the farmer will receive two discounts i.e. discount received by the Islamic bank from the original supplier, and discount in the shape of subsidy given by the government on that commodity.

***Murābahah* Based Model and its Legal Flow**

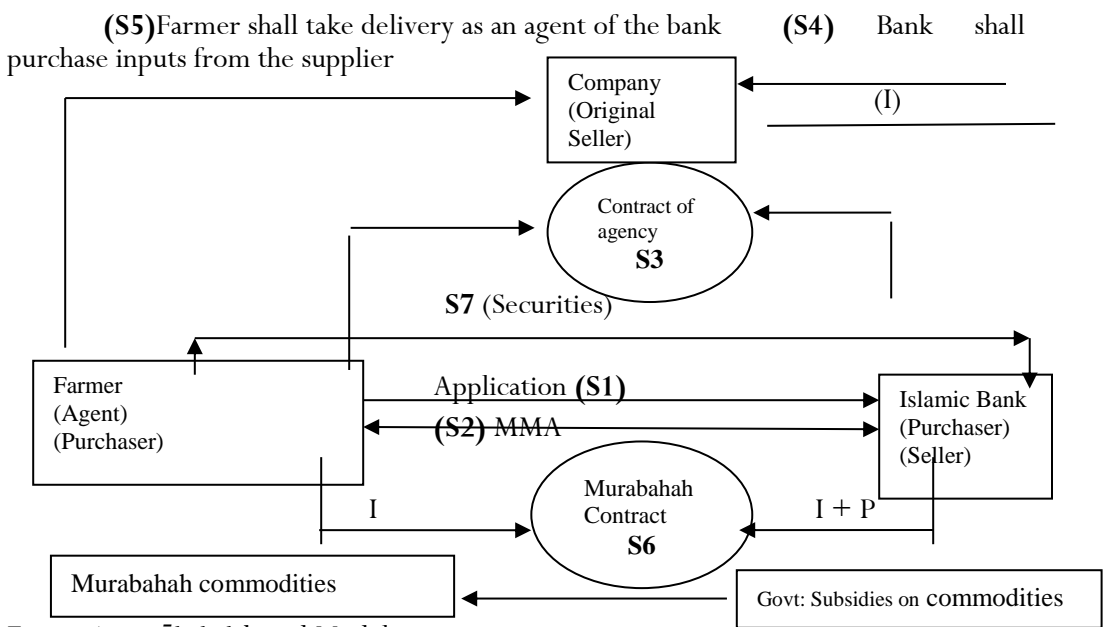


Figure.1 *Murābahah* based Model

Murābahah is a very viable transaction that can be used successfully for the development of agricultural sector, particularly local farming in rural parts of the country. However, there are some issues in the existing structure of such transactions which must be considered before its application. Firstly, the bank must charge the minimum profit margin from the farmer. Arguably, by charging a reasonable profit from a farmer the banks can draw indirect benefits accruing in terms of future business possibilities. In addition, even the farmers are not ready to pay higher price to the bank for a commodity more than its price in the local market (See figure No.6).

After purchasing a commodity at a reasonable price, the poor farmer will continue his resort to the Islamic bank for other modes of Islamic financing. It is also possible that he will start depositing his savings with the same bank. If the institution intends to increase its business in the agricultural sector, particularly in the rural area, then it must lower the profit percentage and keep itself focused on better future business prospects and possibilities. Secondly, the concept of *Hamish Jiddiyaha* (earnest money)⁴¹ and ‘Arbuwn

(advance payment)⁴² should be eliminated as for as financing agriculture is concerned. In agricultural *Murābahah*, it does not seem suitable to take ‘*Arbūn* (advance payment) from a small farmer. It is advisable for the Islamic banks and other Islamic financial institutions to adjust the whole price of the commodity in installments rather than to take advance payment. However, being a permissible concept, ‘*Arbuwn*’ can be taken from the middle and upper class of farmers. As mentioned before, the purpose of agricultural finance is to cooperate and help the poor farmers by providing them the basic agricultural needs and requirements. Looking from that angle the application of *Hāmish Jiddiyyaha* does not appear logical. Even the farmers’ community has rejected the concept of earnest money and is not ready to pay this amount (See figure No.7). It is the obligation of the Islamic financial institutions to help such farmers rather than to increase their burden.⁴³ However, one needs to find some alternatives for the Islamic financial system for safeguarding their interest, without which they would not be in a position to compete with the conventional banks. The basic principle of Islamic commercial law which states that “commercial promises are binding in nature”, can serve this purpose.⁴⁴ Thirdly, the customer agency should be revised in financing agriculture and a very different approach should be made in this regard. For example, the Islamic banks and other Islamic financial institutions can appoint a farmer, other than the farmer who applies for *Murābahah*, to purchase the commodity. This farmer, based on his agricultural experience, will be able to identify the asset and negotiate an efficient price on behalf of the Islamic bank. It can appoint such a person for a series of *Murābahah* transactions. The appointment of such farmer, other than the customer, is the ideal solution in the sense that the bank will not have to buy the commodity itself, and will also avoid customer’s agency, which is not advisable from *Sharī‘ah* perspective. The agency agreement between the farmer and the bank needs to be signed by both parties. The period for which such agency will be effective must be mentioned in the contract. This mandates the Islamic banks and other Islamic financial institutions to provide funds for the purchase of commodities required by the farmer.⁴⁵ He also has a duty to define a comprehensive list of assets and commodities that he, as an agent of the bank, may procure during the course of business from time to time. Fourthly, the minimum securities and guarantees should be demanded particularly from lower class of farmers as such farmers cannot afford the same and mostly avoid financing because of lack of appropriate securities. Fifthly, the existing procedure described by *Sharī‘ah* Standards (AAOIFI) is very complex in nature and should be replaced with a simple procedure; understandable by illiterate farmers. Sixthly, the involvement of Islamic financial institutions in the business activity must be assured even if it is indirect. If all these suggestions are met, *Murābahah* based financing will be very helpful for the development of agricultural sector; both for crop and non-crop activities. The majority of farmers have the same opinion regarding this typical mode of Islamic finance (See figure No.2).

4. *Murābahah* Based Model on Trial through a Typical Methodology of Islamic Jurisprudence:

The above mentioned model is tested through focused group research in order to examine its viability, both for farmers and financial institutions. The following responses have been received from the respondents.

- Majority of farmers (70%) are willing to purchase agricultural machinery or purchase farm inputs (like seeds, fertilizers, pesticides, insecticides, herbicides, weedicides, manual sprays etc.) from a bank, if it can provide these (commodities or farm inputs) of good quality. The following graphical presentation is confirming the same.

willingness to take farm inputs from the bank

■ willingness to take farm inputs from the bank

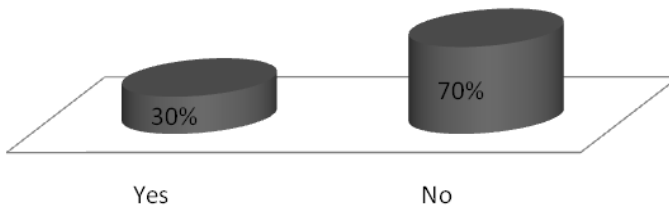


Figure 2: Willingness to take farm inputs from the bank

- Majority of farmers (respondents) do not accept the arrangement of customer agency and unwilling to become agent of the bank. The following graphical presentation has been drawn from response of the respondents.

willingness to work as an agent of the bank

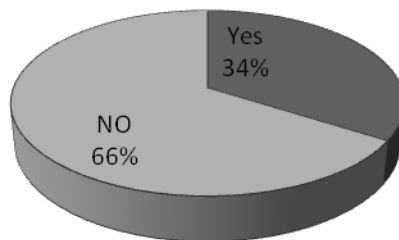


Figure 3: Willingness to work as an agent of the bank

It means that some alternate arrangements will be made for customer agency. The possible solution is that any other farmer, not the customer, of the same locality can be appointed by the bank as its agent (details are given in the discussion of *Mushārakah*).

- Ground realities are against the provision of securities (in case of *Murābahah*) as majority of farmers belong to lower class, and consequently, are not in position to provide securities and other forms of collaterals. The following graphical presentation can be cited as evidence, derived from the collected data.

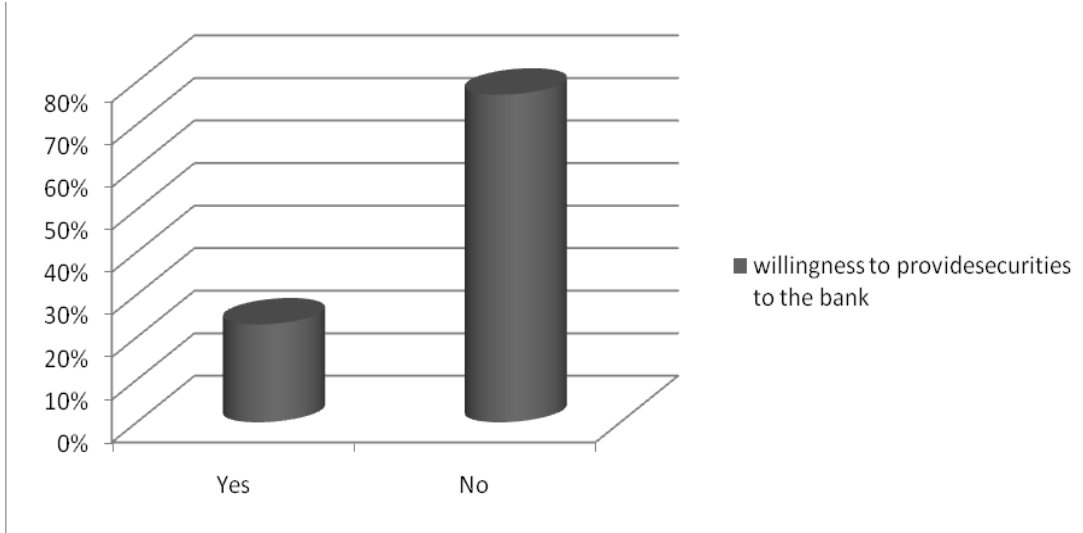


Figure 4: willingness to provide securities to the bank

Therefore, some other techniques should be followed by the financial institution for the protection of their liquidity. The best possible solution in this regard may be the provision of personal or group based securities.

- The facility of payment in installments is very much constructive for the lower class of farmers. Therefore, majority of farmers (respondents) accept to pay price of the *Murābahah* commodity in installments rather than to pay the same on immediate basis. The data collected on the same fact through focused group technique has proved the same fact.

Willingness to pay in instalments

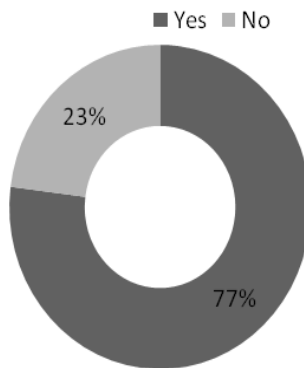


Figure 5: Willingness to pay in installments

- The farmers are not ready to pay higher price to the bank for a commodity more than its price in the local market. The following graphical presentation can be shown for their unwillingness on the same issue.

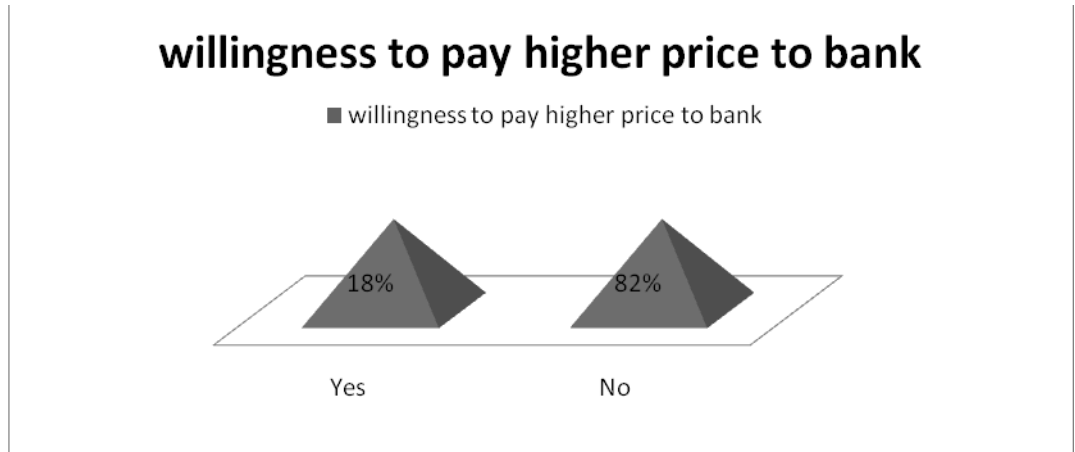


Figure 6: Willingness to pay higher price to the bank

It is, therefore, recommended that the Islamic banks and other Islamic financial institutions should take fewer profit margins from farmers as compared to ordinary customers. The government can also provide help through the provision of subsidies in this regard.

- Even the farmers' community has rejected the concept of earnest money and is not ready to pay this amount. The following graphical presentation may show their rebuff of the concept in the best possible manner.

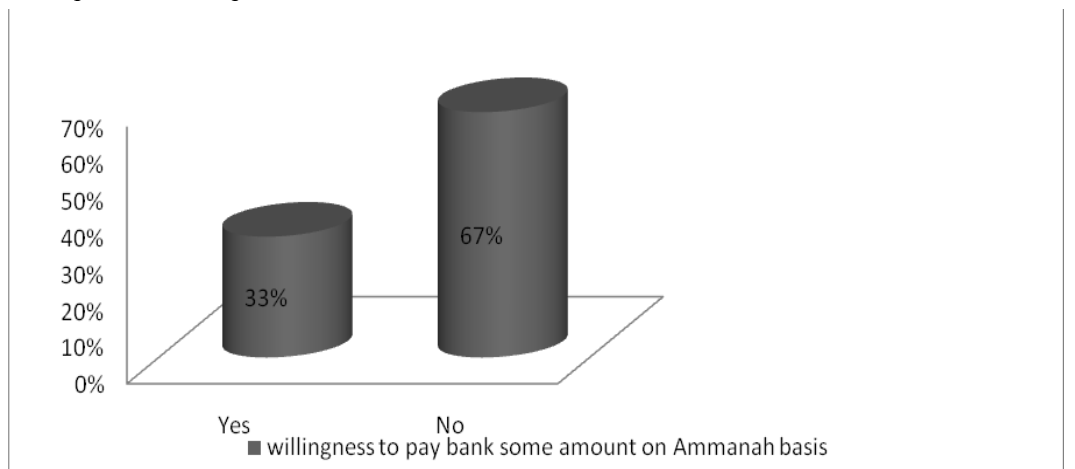


Figure 7: Willingness to pay bank some amount on *Amānah* basis

- If all these suggestions are met, *Murābahah* based financing will be very helpful for the development of agricultural sector; both for crop and non-crop activities. The majority

of farmers (88%), from the groups, have the same opinion regarding this typical mode of Islamic finance. The following graphical presentation confirms the same fact.

hopefulness to obtain benefits from *Murabaha* based financing

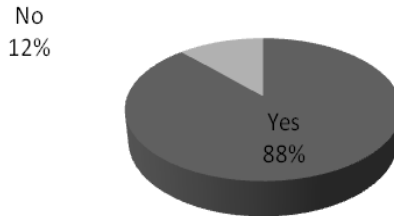


Figure 8: Hopefulness to obtain benefits from *Murābahah* based financing

5. Conclusion:

The development of agriculture sector is very much crucial for the economic development of a country. A country, of course, is of course stable when its agricultural sector full its basic food needs. Agriculture sector mainly include local farming, horticulture, livestock, poultry farming, dairy farming, fish farming and etc. However, local farming is the most important one; owing to the fact of its being a main source of basic food. Unfortunately, the people who are related to such sector facing severe financial problems. In Pakistan, for instance, they do not have money to fulfill their basic agricultural requirements – both for crop and non-crop activities. In Pakistan, the financial conditions of local farmers are not different. Being typical Muslims, they avoid getting financial assistance from conventional financial institutions on interest basis – as any interest based loan is strictly prohibited by Islamic law. As an alternative, they want to resort to Islamic banks and other Islamic financial institutions where their financial needs can be coped through various commercial transactions. These transactions include, overwhelmingly, *Murābahah*, *Musāwamah*, *Salam*, *Istisnā'*, *Mushārakah*, *Diminishing Mushārakah*, *Musāqah*, and *Muzāra'h*, *Ijārah* etc. Among these, however, *Murābahah* is the most important one. Such transaction is a typical kind of sale which is called 'cost plus profit sale' in Islamic commercial law. In such a transaction, it is incumbent on the seller to reveal his cost incurred on the commodity along with the profit. Such transaction, indeed, can be applied effectively for the fulfillment of all requirements of local farming. For instance, the Islamic bank can purchase high quality seeds, fertilizers, herbicides, weedicides and etc. from the authorized dealers and can sell the same to the farmers on *Murābahah* basis. As it is not necessary to pay the price in such Islamic commercial transaction on the spot, therefore, the farmers will have an opportunity to get these requirements from the Islamic bank in the beginning of a season and pay its price at the end of the harvesting cycle. Further, such transaction can also be used effectively

for the purchase of various agricultural machinery i.e. threshers, power tillers, power & boom sprayers, ploughs, cultivators, riggers, drills, draggers, cotton pickers, saw machines for crate making, press machine for wheat straw and dry fodder, chisel ploughs, potato planter, sugar cane planter, rice transplanter, and self-propelled reaper for harvesting wheat and rice crops etc. Finding show, while using focused group technique, that majority of farmers consider this arrangement of Islamic law is much viable for the solution of their problems. However, majority of farmers do not support the provision of securities in such transaction- as they do not have the required movable and immovable property to be provided for security purposes. On the same way, they are not ready to pay the earnest money to the bank because of their meager economic condition. In addition, they are very much with the payment of price in installments – an inbuilt character of *Murābahah* transaction.

Endnotes:

¹Shawkānī, *Nayl al-Awtār*. (Dār Ehiā al-Tourath al-‘Arabī, 1st Edition.2001)

²Kāsānī, *Bādā‘i al-Sanā‘i*. 1st Edition, (Beirut: Dār al-Fikr Labnan, 1996)

³Ibn Qudāmah al-Maqdisī, *Al-Kafī*, (Beirut: Al-Maktab al-Islāmī, 1988, 5th Edition)

⁴Abū al-Walīd Muhammad ibn Ahmad ibn Rushd, *Bidāyt al-Mujtahid wa Nihāyat al-Muqtasid*, 1st Edition. (Beirut: Dār al-Fikr Labnan, 2003).

⁵ Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, *Al-Mabsūṭ*, (Beirut: Dar-Ehyā al-Turāth al-Arabi, Edition.2002)..

⁶Ibn ‘Ābidīn, *Radd al-Muhtār*.

⁷ Imām 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.

⁸Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, (Karachi: Maktaba Ma‘ariful Quran, Edition August 2008)

⁹Wahbah-al-Zuhaylī, *Al-Fiqh-al-islāmī –Wa-Adilatuhū*, (Nashr Ihsan, 3rd Edition, 2006)

¹⁰ See for exam his work... Shahid Hasan Siddiqui, *Accounting Article Instruments of Islamic Banking in Operation*, Published on 4/21/2008, <http://www.accountancy.com.pk/articles>. (accessed July 25,2009)

¹¹ See for example his work ... Muhamoud 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) ResearchNo.34

¹² Yūsuf Al Qardāwi is a prominent Muslim scholar belongs to Egypt. He was borne in September 9, 1926. He has written so many books on different subjects of Sharī'ah and his great efforts make him famous in the Muslim world. His work, unlike other contemporary scholars, related to the new issues faced by the Muslim world. His great work "*Al-Halāl Wal-Harām Fil-Islām*" can be cited as an example in this connection. He has also a lot of work on Islamic commercial law and has issued many Fatawas for the modern Islamic banking and finance. He has received many international awards for his unmatched contribution to the development of both Islamic jurisprudence and Islamic Law.

¹³ Yūsuf Al Qardāwi, *Bay' al-Murābaha lil-Aamir bi-Shirā Kamā Tujrīhi al-Masrif –al-Islamiyya: Dirssa fi Daw al-Nusūs wa-al-Qawā'id al-Shar'iyyah*. (Cairo: Martabat Wahba, 1987).

¹⁴ Abu Umar Faruq Ahmad, *Theory and Practice of Modern Islamic Finance: The Case Analysis from Australia* (United States, Florida, Brown Walker Press Boca Raton, 2010), p.200.

¹⁵ Muhammad Tahir Mansoori, *Use of Hiyal in Islamic Finance*, journal of Islamic Business and Management, Riphah International University Islamabad Pakistan, Issue No.1, November 1st 2011, vol.1.

¹⁶ Burhānu Din abī al Hasan Ali Ibni Abī Bakar al Marghinānī, *Al Hidāyah Sharh Bidāyat ul Mubtadī*, (Karachi, Pakistan, Maktabatul Bushra, Second Edition 2008), vol.5. p.152.

¹⁷ Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtasid*, vol.2, p.375.

¹⁸ Sarakhsī, *Al-Mabsūt* vol.5, p.77.

¹⁹ Kāsānī, *Bādā'i' al-Sanā'i'*, Kitāb al Baoy', vol.5, p.326.

²⁰ The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is an Islamic international autonomous non-for-profit corporate body that prepares accounting, auditing, governance, ethics and Shari'a standards for Islamic financial institutions and the industry. Professional qualification programs (notably CIPA, the Shari'a Adviser and Auditor "CSAA", and the corporate compliance program) are presented now by AAOIFI in its efforts to enhance the industry's human resources base and governance structures. This institution was established in accordance with the Agreement of Association which was signed by Islamic financial institutions on 1 Safar, 1410H corresponding to 26 February, 1990 in Algiers. Then, it was registered on 11 Ramadan 1411 corresponding to 27 March, 1991 in the State of Bahrain. <http://www.aoofi.com> (accessed December 25, 2011)

²¹ *Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)*, English Version, 2010, Sharī'ah Standard No.8, p.132.

²² *Musāwamah* is a kind of sale in Islamic Commercial Law in which the seller is not in position to mention accurately the exact cost of the commodity or asset to the buyer. It is different from *Murābaha* in the sense that in the previous the seller is not obliged to mention the exact cost he incurred on the commodity, while in the latter he is obliged for mentioning the same. This type of commercial transaction is very useful for business activities as the parties agree on the price in the shape of bargaining before the contractual relation. Being a kind of sale, it has the same rules and regulations applicable to a regular sale.

²³ Marghinānī, vol.5. p.152.

- ²⁴ Ibn Rushd, *Bidāyt al-Mujtahid wa Nihāyat al-Muqtasid*, vol.2, p.300; Kāsānī, *Bādā'i 'al-Sanā'i'*, vol.5, p.20.
- ²⁵ Wahbah-al-Zuhaylī, *Al-Fiqh-al-islāmī – Wa-Adilatuhū*, vol.5, p.3347.
- ²⁶ Ibid, vol.5 .p. 3353.
- ²⁷ Ibn Rushd, *Bidāyt al-Mujtahid wa Nihāyat al-Muqtasid*, vol.2.221.
- ²⁸ Ibn Qudāmah al-Maqdisī, *Al-Kafī*, vol.2, p.11.
- ²⁹ Ibid, vol.2, p.12.
- ³⁰ Kāsānī, *Bādā'i 'al-Sanā'i'*, vol.5, p.327.
- ³¹ Muhammad Taqi Usmani, *Islam our Jadid Maeshat our Tijarat*, (Maktaba Marif-al-Quran, Karachi), p.164-147
- ³² *Accounting and Auditing Organization for Islamic Financial Institutions*, English translation, p.119, Rule No.3/2/5.
- ³³ *Guidelines on Islamic Agricultural Finance*, Agricultural Credit Department Islamic Banking Department, State Bank of Pakistan, p.5. <http://www.sbp.org.pk/guidelines/IslamicAgriculture/Guidelines-Islamic-Financing-Agriculture-01-09-2008.pdf> (accessed December 27, 2011).
- ³⁴ Ejaz Ahmad Samdani, *Islamic Banking and Murābahah*, (Karach, Pakistan, Darul-Ishaat, First Edition ,2008), p.16.
- ³⁵ The tradition of the Holy Prophet (SAW) is clear about the non-binding nature of the Wa'ad (Promise) which states: "Malik related to me from Safwan ibn Sulaym that a man asked the Messenger of Allah (SAW), "Can I lie to my wife, Messenger of Allah?" The Messenger of Allah (SAW) said, "There is no good in lying." The man said, "Messenger of Allah! Shall I make her a promise and tell her?" The Messenger of Allah (SAW) ,said, "It will not be held against you"..... (Mālik ibn Anas ibn Malik ibn 'Āmr al-Asbahi (93-179 AH/711-795 AD), "*Muwatā'*", vol.2, Hadith No. 1791, Dar al-turath al-Arabi, Egypt.). However, there are a number of Muslim jurists, especially Malikī who opine that promises are enforceable through the court of law especially when they are related to commercial transactions (Siti Salwani Razali, *The Concept of WA'AD in Islamic Financial Contract*, <http://www.kantakji.com/fiqh/Files/Finance/N418.pdf>, (Accessed 20th April, 2012). Several verses of the Holy *Qur'ān* support their arguments For instance in the Holy *Qur'ān* Allah (SWT) states "And fulfill the commitment, for the commitment will be inquired into on the Day of Judgment" (Qurān, 17:24) and in another verse the same instructions are given "Fulfill the covenant of Allah when you have entered into it" (Qurān, 16:92.). The Hanafī Jurists have the opinion that promises cannot be enforced through the court, however, they accept the concept of a particular sale called "*Bay'-Bilwafā'*". The view of the Malikī should be preferred as promises can be made enforceable as needed. (Lutfullah Saqib; Kellie W. Roberts; Mueen A. Zafar; Khurram Khan; Aliya Zafar, *Mushārakah—A Realistic Approach to the Concept in Islamic Finance and its Application to the Agricultural Sector in Pakistan*, Arab Law Quarterly, vol 28, issue 1, 2014, pp.: 1–39 (39).
- ³⁶ "The original principle is that the institution itself purchases the item directly from the supplier. However, it is permissible for it to carry out the purchase by authorizing an agent, other than the purchase order, to make the purchase, and the customer should not be

appointed to act as an agent except in a situation of dire need. Furthermore the agent must not sell the item to himself; rather, the institution must first acquire the title of the item and then sell it to the agent”... *Accounting And Auditing Organization for Islamic financial institution (AAOIFI)*, 2010, English version, ,Sharī ‘ah Standard No.8 R.3/1/3, p.117.

³⁷Muhammad Tayyab Raza, *Murābahah Finance*, (Karachi, Pakisatn: Al-Huda IBE workshop at Avari Hotel). [http://. www.alhudacibe.com/](http://www.alhudacibe.com/)(accessed June 16 ,2011).

³⁸Sarakhsī, *Al-Mabsūt*, Kitāb-al-Sarf, vol.5, p.6.

³⁹Ejaz Ahmad Samdani, *Islamic Banking and Murābaha*, (Karach, Pakistan, Darul-Ishaat, First Edition ,2008) p.73.

⁴⁰*Accounting And Auditing Organization for Islamic Financial Institutions (AAOIFI)*, 2010, Sharī ‘ah Standard No.8, English Version, Rule.5/2, p.121.

⁴¹*Hāmish Jiddiyyaha* is sum of money paid by the customer at the request of the institution, both as an indication of the financial capacity of the customer and to ensure the compensation of any damage to the institution arising from a breach of the customer of his binding promise. Having taken the *Hāmish Jiddiyyaha*, the institution need not to demand compensation for damage as this may be charged against *Hāmish Jiddiyyaha*. (AAOIFI, Standard No.8, Rule No 2/5/3, p.116).

⁴²*‘Arbūnis* called Down Payment. It is the amount paid by the customer to the institution as a part of the price. According to Accounting And Auditing Organization For Islamic Financial Institutions (AAOIFI) “It is permissible for the institution to take *‘Arbūn* after concluding the *Murābahah* sale with the customer . This may not be done during the contractual stage at which the customer has given the promise to purchase . It is preferable that the institution return to the customer the amount that remains after deducting the actual damage incurred from the *‘Arbūn* as a result of the breach , namely the difference between the cost of the item to the institution and its selling price to a third party . (AAOIFI, Standard No.8, Rule No 2/5/6, p.117).

⁴³Lutfullah Saqib, *Financing Agriculture Through Islamic Commercial Transactions* , 1st Edition 2011. (Lambert Academic Publishing, Germany). pp.101-102.

⁴⁴See for details Mufti Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, p.120.

⁴⁵Lutfullah Saqib, *Financing Agriculture Through Islamic Commercial Transactions*, p.98.