

## **BEYOND FORMAL COMPLIANCE: EVALUATING SALAM AND ISTISNA THROUGH MAQAŞID AL-SHARIAH**

**1-Yusra Qaisrani**

Email: [yusraqaisrani14@gmail.com](mailto:yusraqaisrani14@gmail.com)

ORCID ID: <https://orcid.org/0009-0002-5595-3530>

MPhil. Scholar, Islamic Research Centre, Bahaudin Zakariya University, Multan, Punjab, Pakistan

**2- Muhammad Arif Mateen (Corresponding Author)**

Email: [arifmateen@bzu.edu.pk](mailto:arifmateen@bzu.edu.pk)

ORCID ID: <https://orcid.org/0000-0003-0633-6261>

Assistant Professor, Islamic Research Centre, Bahaudin Zakariya University, Multan, Punjab, Pakistan

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## **BEYOND FORMAL COMPLIANCE: EVALUATING SALAM AND ISTISNA THROUGH MAQAŞID AL-SHARIAH**

Yusra Qaisrani, Muhammad Arif Mateen

### **ABSTRACT:**

Salam and Istisna occupy a central position in Islamic commercial law as carefully regulated exceptions to the general prohibition of forward sales. Their classical permissibility was grounded in considerations of necessity (ḥājah), public interest (maşlahah), and the ethical objectives of justice, transparency, and equitable risk allocation. These contracts were historically intended to support producers, facilitate manufacturing, and ensure that financial activity remained closely linked to real economic transactions. In contemporary Islamic finance, Salam and Istisna have been extensively institutionalized through standardized Shariah governance frameworks, particularly those developed by AAOIFI. While such standardization has enhanced legal certainty and operational efficiency, it has also generated growing concern regarding an overemphasis on formal Shariah compliance. This article evaluates the modern application of Salam and Istisna through the analytical framework of Maqaşid al-Shariah, moving beyond contractual form to assess substantive ethical and socio-economic outcomes. By examining their classical juristic foundations alongside contemporary financial practices, the study demonstrates how the widespread use of parallel contracts, binding unilateral promises, and risk neutralizing mechanisms has diluted genuine risk sharing and weakened the connection between finance and productive economic activity. The article argues that a maqaşid-oriented

approach is essential for restoring the moral integrity and developmental role of Islamic finance and offers policy-relevant insights for Shariah governance and institutional practice.

**KEYWORDS:** Maqāṣid al-Shariah, Salam, Istisna, Islamic Finance, Shariah Compliance, Risk Sharing, Ethical Governance.

### **1. Introduction:**

### **3. Conceptual Framework: Maqāṣid al-Shariah:**

The concept of **Maqāṣid al-Shariah** refers to the higher objectives and purposes that Islamic law seeks to realize. Although early jurists implicitly considered these objectives, systematic articulation emerged with<sup>4</sup>, who identified five essential protections: religion, life, intellect, lineage, and wealth<sup>5</sup>. These essentials form the ethical foundation of Islamic legal reasoning.

The maqāṣid framework was further refined by al-shatibi, who emphasized that Shariah rulings must be interpreted in light of their purposes rather than isolated textual literalism. According to al-Shāṭibī, legal compliance devoid of ethical substance contradicts the spirit of Sharīah<sup>6</sup>. This principle is particularly relevant in commercial law, where formal legality can conceal injustice.

In economic transactions, **ḥifẓ al-mal (protection of wealth)** occupies a

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<sup>4</sup> Moosa, Ebrahim El. "The legal philosophy of al-Ghazali: law, language and theology in al-Mustasfa." (1995).

<sup>5</sup> Moustafa, Safeer. "The theology of the Mustafā." PhD diss., University of London, 2024.

<sup>6</sup> Moosa, Ebrahim. "The Reconciliation of the Fundamentals of Islamic Law (al-Muwāfaqāt fī Uṣūl al-Sharī'a), written by Ibrāhīm ibn Mūsā Abū Ishāq al-Shāṭibī, 2012." *Islamic Law and Society* 23, no. 3 (2016): 318-322.

central position. This includes safeguarding property rights, preventing unjust enrichment, ensuring transparency, and promoting equitable risk-sharing. Maqāsid also require that economic activity be linked to real assets and productive enterprise, thereby discouraging speculative and exploitative practices.

Contemporary scholars have further developed maqāsid theory to address modern economic challenges. Chapra (2008) argues that Islamic finance must contribute to human well-being (*falāḥ*) rather than merely offering Shariah compliant alternatives to conventional products. Kamali (2011) similarly contends that maqasid provide a normative framework for evaluating the ethical quality of financial transactions beyond legal form.

Contemporary scholars have emphasized the relevance of maqāsid in evaluating modern Islamic finance<sup>7</sup>, argues that Islamic finance must contribute to human well-being and socio-economic justice, while Shariah compliance should be assessed in light of outcomes rather than contractual form alone.<sup>8</sup>

Applying a maqāsid-based approach to Salam and Istisna allows for a comprehensive assessment of whether these contracts fulfill their original ethical purposes in contemporary practice. This approach shifts the focus from technical compliance to substantive outcomes, aligning Islamic finance with its moral foundations.

In the realm of economic activity, **ḥifẓ al-mal** plays a central role. This

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<sup>7</sup> Chapra, Muhammad Umer. "The Islamic vision of development in the light of Maqāsid al-sharī 'ah." *Islamic Research and Training Institute Islamic Development Bank Jeddah*, DOI 10 (2008).

<sup>8</sup> Kamali, Mohammad Hashim. "Islam and sustainable development." *ICR Journal* 7, no. 1 (2016): 8-26.

objective encompasses the protection of property rights, prevention of unjust enrichment, promotion of fair exchange, and encouragement of productive economic activity. Islamic law therefore emphasizes transparency, mutual consent, and equitable risk-sharing as essential elements of legitimate commerce.

Thus, a maqāṣid-based framework provides a comprehensive lens through which Salam and Istisna can be evaluated, ensuring alignment between legal structure and ethical purpose.

#### **4. Salam: Classical Basis and Contemporary Application:**

Salam is a forward sale contract in which the buyer pays the full purchase price in advance for goods to be delivered at a future date. Its permissibility is firmly established in the Sunnah. Ibn Abbās reported that the Prophet ﷺ permitted Salam provided that quantity, quality, and delivery date were specified<sup>9</sup>

Classical jurists imposed stringent conditions to mitigate uncertainty and injustice. These conditions include full advance payment, precise specification of goods, and a fixed delivery date. The **Ḥanafi**, **Maliki**, **Shafi**, and **Ḥanbali** schools unanimously recognized Salam as a lawful exception justified by necessity<sup>10</sup>.

In contemporary Islamic finance, Salam is primarily used in commodity financing and liquidity management. Islamic banks frequently engage in **parallel Salam** transactions to hedge price risk and secure predictable

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<sup>9</sup> (Ṣaḥīḥ al-Bukhārī).

<sup>10</sup> Al-Obead, Fadwa M. *Kitāb al-jihād in al-Mughni by Ibn Qudāmah*. University of Glasgow (United Kingdom), 2005.

returns. While such arrangements ensure Shari‘ah compliance in form, they often eliminate genuine risk-sharing.

These conditions include full advance payment at the time of contract, precise specification of goods, and a fixed delivery date. The ethical rationale underlying these requirements was to protect both parties and ensure fairness.

From a maqāsid perspective, Salam’s ethical purpose is compromised when it becomes a risk-free financing tool. The original objective of supporting producers and sharing market risk is undermined, raising concerns about substantive compliance with Shari‘ah objectives.

#### **5. Istisna: Juristic Foundations and Modern Practice:**

Istisna is a manufacturing contract whereby one-party commissions another to produce a specified item. Unlike Salam, payment in Istisna may be deferred or made in installments. The contract was primarily developed by the **Hanafi school** based on customary practice <sup>11</sup>

In modern Islamic finance, Istisna is widely used in manufacturing and project finance, including infrastructure and construction projects. **AAOIFI Shariah** governs its application, emphasizing specification, delivery obligations, and liability.

Istisna‘ has strong potential to promote real economic activity and industrial development. However, contemporary practices often rely on **parallel Istisna** structures that transfer risks away from Islamic banks,

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<sup>11</sup> Wadi, Munshid Falih. "Al-‘Urf as a source of legislation according to Imam al-Nawawi in the book "Al-Majmu": A Jurisprudential and Fundamental Study: *العرف مصدراً للتشريع عند الإمام النووي في "كتاب المجموع": دراسة فقهية أصولية*." *Al-Marjān* 3 (المرجان), no. 1 (2025): 01-21.

thereby diluting ethical responsibility and partnership.

From a maqāsid perspective, Istisna promotes real economic activity and industrial development. However, ethical concerns arise when Islamic banks transfer all risks to manufacturers or rely excessively on parallel Istisna arrangements, thereby diluting the spirit of partnership and responsibility.

### **6. Beyond Formal Compliance: Critical Maqāsid Analysis:**

A maqāsid-based evaluation reveals several structural concerns. First, modern practices emphasize risk transfer rather than risk sharing, contradicting Islamic economic principles. Second, fixed pricing mechanisms may result in injustice under volatile market conditions. Third, excessive legalism weakens the linkage between finance and the real economy.

In classical Salam, the buyer assumes price and delivery risk by paying the full price in advance, thereby supporting the producer's liquidity needs. Similarly, Istisna requires the financier to bear manufacturing and performance risks until delivery. However, contemporary Islamic financial institutions frequently neutralize these risks through parallel Salam and parallel Istisna arrangements combined with binding promises (*wa'd*). While juristically defensible in isolation, the cumulative effect of these mechanisms often eliminates meaningful commercial risk for the financier, effectively guaranteeing returns.

Furthermore, issues of legal enforceability, particularly regarding unilateral promises (*wa'd*), raise concerns about wealth protection and

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contractual justice in non-Shariah jurisdictions <sup>12</sup>.

As Ibn al-Qayyim asserts, any legal ruling that results in injustice contradicts Sharī‘ah, regardless of formal validity.<sup>13</sup>

### **7. Policy and Practical Implication:**

A maqāṣid al-Shariah based evaluation of Salam and Istisna necessitates a fundamental reorientation of policies and practices governing contemporary Islamic finance. While current institutional frameworks prioritize contractual validity and procedural Shariah compliance, a maqāṣid oriented approach requires a deeper assessment of the ethical, socio-economic, and developmental consequences of financial transactions. This shift has significant implications for Islamic financial institutions, Shariah supervisory boards, regulatory authorities, and the real sectors of the economy.

Operationally, Islamic banks should integrate maqāṣid considerations into internal governance, product approval processes, and performance evaluation. Instead of focusing solely on profitability and balance-sheet certainty, institutions should assess whether Salam and Istisna‘ financing contributes to real economic activity, supports producers and manufacturers, and promotes long-term economic stability. Kamali (2011) emphasizes that maqāṣid al-Shariah provide a normative benchmark for evaluating whether financial practices advance human welfare <sup>14</sup>or merely

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<sup>12</sup> Usmani, Muhammad Imran Ashraf. *Meezanbank's Guide to Islamic Banking*. Karachi: Darul-Ishaat, 2002.

<sup>13</sup> Ovdia, Miriam. "Ibn Qayyim al-Jawziyya." *Qur'ānic Hermeneutics from the 13th to the 19th Century* (2024): 173.

<sup>14</sup> Ishak, Muhammad Shahrul Ifwat. "The principle of maṣlaḥah and its application in Islamic banking operations in Malaysia." *ISRA International Journal of Islamic Finance* 11, no. 1 (2019): 137-146.

comply with legal technicalities. Incorporating such benchmarks would help realign Islamic finance with its foundational ethical commitments.

**Shari‘ah supervisory boards (SSBs)** play a pivotal role in operationalizing maqāsid-based governance. Traditionally, SSBs have concentrated on ex ante Shariah compliance, reviewing contractual documentation and transaction structures prior to implementation. However, classical maqāsid theory, particularly as articulated by al-Shatibi, requires attention not only to legal form but also to outcomes and consequences. Accordingly, SSBs should extend their oversight to include post-implementation reviews, evaluating whether Salam and Istisna transactions actually fulfill their intended socio-economic purposes.

This approach may necessitate a more critical stance toward the widespread use of legal stratagems (*hiyal*). While jurists have historically tolerated certain stratagems to facilitate ease and flexibility, al-Shāṭibī and Ibn al-Qayyim strongly cautioned against practices that preserve form while subverting substance. Where contemporary Salam and Istisna‘ structures effectively guarantee returns and eliminate meaningful risk-sharing, SSBs should reassess their maqāsid legitimacy, even if such structures comply with established standards<sup>15</sup>. Such a recalibration would strengthen the moral authority and credibility of Shari‘ah governance.

### **9. Conclusion:**

This article set out to evaluate the contemporary application of Salam and Istisna beyond the confines of formal Shariah compliance by employing

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<sup>15</sup> El-Gamal, Mahmoud A. *Islamic finance: Law, economics, and practice*. Cambridge University Press, 2006.

the analytical framework of Maqāṣid al-Sharī‘ah. While both contracts enjoy well-established legitimacy in classical Islamic jurisprudence, their permissibility was historically grounded in considerations of necessity (*ḥājah*), public interest (*maṣlahah*), and ethical facilitation of trade and production. The analysis demonstrates that these objectives remain central to understanding the true Shariah rationale of Salam and Istisna‘ and must therefore guide their modern institutional implementation.

The study highlights that classical jurists permitted Salam and Istisna as carefully regulated exceptions to the general prohibition of forward sales, emphasizing certainty, transparency, and equitable risk allocation. These conditions were designed to protect weaker market participants, link finance to real economic activity, and prevent exploitation. However, the findings of this article indicate that contemporary Islamic financial practices often prioritize formal compliance with contractual requirements while marginalizing the substantive ethical objectives that originally justified these contracts. The extensive use of parallel contracts and binding unilateral promises has, in many cases, transformed Salam and Istisna into instruments that closely resemble conventional debt-based financing.

From a maqāṣid perspective, this divergence between form and substance raises serious concerns. The principle that profit must be accompanied by risk is frequently diluted, undermining the Shariah objectives of justice (*‘adl*), fairness, and equitable wealth circulation. Moreover, when financial institutions insulate themselves from commercial risk while transferring it entirely to clients, the developmental and welfare-oriented potential of Salam and Istisna is significantly weakened. Such practices risk reducing Islamic finance to a system of legal engineering rather than a morally grounded alternative to conventional finance.

The article contributes to existing literature by offering a holistic maqāsid-based critique that integrates classical jurisprudence with contemporary financial practice. It underscores the importance of evaluating Islamic financial products not only in terms of their legal structure but also in light of their economic consequences and social impact. In doing so, it responds to growing scholarly calls for a paradigm shift in Islamic finance from rule-based compliance to objective-oriented governance.

The policy implications of this study are substantial. Islamic financial institutions must recalibrate their approach to risk-sharing and product design to ensure that Salam and Istisna genuinely support productive activity and socio-economic development. Shariah supervisory boards should expand their oversight beyond ex ante contractual approval to include post implementation assessment of outcomes, in line with the maqāsid principle of considering consequences. Regulators and standard-setting bodies are likewise encouraged to embed maqasid considerations into Shariah governance frameworks, thereby promoting ethical authenticity alongside legal certainty.

In conclusion, Salam and Istisna possess significant potential to contribute to an ethical, stable, and development oriented financial system. However, this potential can only be realized if Islamic finance moves decisively beyond formal compliance toward substantive alignment with the higher objectives of Shariah. Future research may build upon this study by empirically examining the socio-economic impact of Salam and Istisna financing and exploring maqāsid-based metrics for evaluating Islamic financial performance. Such efforts are essential to ensuring that Islamic finance remains faithful to its moral foundations and responsive to contemporary economic challenges.

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