TRENDS IN THE INTERPRETATION OF ISLAMIC LAW IN INDIA

ABSTRACT

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Title of the Thesis: Trends in the Interpretation of
     Islamic Law as Reflected in the Fatāwá Litera-
     ture of Deoband School -- A Study of the
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     Social Problems and Inventions.
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This paper studies the trends in the interpre-
tation of Islamic Law in India with particular reference
to the Fatāwá literature of Deoband. It relates mainly
to two important concepts in the interpretation of
Islamic law: bid'ah and ijtihād.

The introduction gives the historical background
of the fatāwá literature and analyzes the concepts of
bid'ah and ijtihād, postulating working definitions for
these concepts.

The first chapter summarizes and the second
analyses the arguments in the relevant fatāwá.

The study concludes that the relevant inventions
and new social practices were not considered bid'ah
and that the reasoning in these fatāwá was based on
analogies made to similar previous cases in fiqh
literature. Such interpretations adhered strictly to
the letter of the law.

TRENDS IN THE INTERPRETATION OF ISLAMIC LAW
AS REFLECTED IN THE FATĀWÁ LITERATURE OF
DEOBAND SCHOOL

A Study of the Attitudes of the 'Ulamā' of
Deoband to Certain Social Problems and
Inventions

by

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of Graduate Studies and Research
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PREFACE

The choice of the present topic has originated
from an interest in Islamic law cultivated during my
stay at the Islamic Research Institute, Karachi,
Pakistan. The idea of this present study materialized
as a result of discussions with Professor Charles
J. Adams.

This paper attempts to study the trends in
the interpretation of Islamic law in the Deoband
School, India, based on an analysis of the attitude of
the muftīs of Deoband to certain new inventions and
social practices.

The problems selected for this study are those
which had not been dealt with as such in previous fiqh
literature. Thus, they provide the proper spectrum for
studying the process of reasoning of the muftīs.
Secondly, these problems also have often been associat-
ed with the concept of "innovation" (bid‘ah). I
chose the Deoband School for this particular study
not only because Dārul ‘Ulūm Deoband ranked next to
Al-Azhar of Cairo in influence in India in particular
and in the Muslim world in general, but also because

the Dārul ʿUlūm Deoband has a considerable number of
followers in both India and Pakistan.

The paper is divided into an introduction and
two chapters. The introduction traces the historical
background of the fatāwá literature of Deoband and
attempts to clarify understanding of the basic terms
of this study. The first chapter summarizes the
arguments of the relevant fatāwá. The second chapter
analyses these arguments with reference to the main
question of the paper.

The main sources of this paper are the
published collections of fatāwá issued by the muftīs
of Deoband: Fatāwá Rashīdīyah, Imdādul Fatāwá and
Fatāwá Dārul ʿUlūm Deoband. Secondary sources have
been used only where an explanation was needed.

Apart from a few booklets on the history of
Dārul ʿUlūm Deoband (e.g., Maḥbūb Rizvī, Tārīkh-e-
Deoband) and Farūqī's Deoband and the Demand for
Pakistan, very little work has been done on the Deoband
School. Even these few existing works have been con-
cerned largely with the structure, history and politi-
cal role of the School. This paper studies Deoband's
method of interpretation of Islamic law which, in my

knowledge, remains unexplored heretofore.

The system of transliteration followed in
this paper is the same as that adopted by the Institute of Islamic Studies, McGill University. A table
showing this system is attached. The dates mentioned
in this paper are according to the Christian Calendar
unless otherwise indicated.

To conclude this preface, I should like to
express my gratitude to those Professors and fellow
students who helped me to clarify my thinking. I am
particularly indebted to Professor Charles J. Adams
for his constant guidance and encouragement. In the
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Montreal, March, 1969   Muḥammad Khālid Masʿūd

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TRANSLITERATION TABLE

<u>Consonants</u>: ʾ initial: unexpressed ʿ medial and final: ʾ

Arabic	Persian	Turkish	Urdu		Arabic	Persian	Turkish	Urdu
ب b	b	b	b		ص ṣ	ṣ	ṣ	ṣ
پ	p	p	p		ض ḍ	z̤	z̤	z̤
ت t	t	t	t		ط ṭ	ṭ	ṭ	ṭ
ٹ			ṭ		ظ ẓ	ẓ	ẓ	ẓ
ث th	s̲	s̲	s̲		ع ʿ	ʿ	ʿ	ʿ
ج j	j	c	j		غ gh	gh	ġ	gh
چ	ch	ç	ch		ف f	f	f	f
ح ḥ	ḥ	ḥ	ḥ		ق q	q	ḳ	q
خ kh	kh	ẖ	kh		ك k	k	k	k
د d	d	d	d		گ	g	g	g
ڈ			ḍ		ڭ		n̄	
ذ dh	z̲	z̲	z̲		ل l	l	l	l
ر r	r	r	r		م m	m	m	m
ڑ			ṛ		ن n	n	n	n
ز z	z	z	z		ں			ṇ
ژ	zh	zh	zh		ه h	h	h	h
س s	s	s	s		و w	v	v	v
ش sh	sh	ş	sh		ى y	y	y	y

<u>Vowels, diphthongs</u>, etc. (For Ottoman Turkish vowels etc. see separate memorandum.)

short: ◌َ a; ◌ِ i; ◌ُ u.

long: ا ā; و ū, and in Persian and Urdu also rendered ō; ى ī, and in Urdu also rendered by ē; ﮯ (in Urdu) ē.

<u>alif maqṣūrah</u>: ى á.   diphthongs: ◌َى ay; ◌َو aw.

long with <u>tashdīd</u>: ◌ِيّ īya; ◌ُوّ ūwa.   <u>tāʾ marbūṭah</u>: ة ah; in <u>iḍāfah</u>: at.

INTRODUCTION

I

This paper studies the "Trends in the Interpretation of Islamic Law as reflected in the Fatāwá Literature of Deoband" with particular reference to the problems which were new in the sense that they had not been dealt with as such previously in fiqh literature. Before we proceed to the study of this literature, the paper needs some introductory remarks on the historical background of the Fatāwá literature of Deoband and the nature of its authority among Muslims.

Authority of the Fatāwá Literature of Deoband

The fatwá is an authoritative opinion given by a muftī (a specialist on sharī'ah, or Islamic law). It derives its authority from the recognition of the practical importance of sharī'ah among Muslims. Unlike a secular legal system, the sharī'ah, for a pious Muslim, in the words of Professor J. Schacht, "comes into play not only when he has to go to the courts; it tells him what his religious duties are, what makes him

ritually clean or unclean, what he may eat or drink, how to dress and how to treat his family and generally what he may with good conscience regard as lawful acts and possessions."[1] Such a concept of law on the one hand extends its application and authority beyond the courts, at least among the sharī'ah — minded Muslims. On the other hand, it constantly requires a specialist's guidance on such problems.

This guidance was provided by the muftīs. "The function of the muftī was essentially private; his authority was based on his reputation as a scholar; his opinion had no official sanction."[2] Those who were interested in knowing the point of view of sharī'ah on certain issues could approach any scholar in whom they had confidence. In short, we may say that the basis of the authority of such fatāwā has been the interest of a pious Muslim in acting according to sharī'ah and his confidence in a particular scholar.

Historically this conclusion may be verified in two ways; first by enquiring on what issues and how often the Muslims consulted the muftīs; and second by investigating the part played by sharī'ah in the administration of justice in various Muslim governments. The first method is almost impossible because we

apparently do not have such documents; the famous
fatāwá collections which have come down to us are not,
most of the time, the actual fatāwá given by a muftī
on a certain issue but rather these are, generally ,
collections of reliable opinions according to which
the fatwá should be given.

We find, however, that the Muslim governments,
either because of the ruler's personal or political
interest in sharī'ah or to mitigate the ignorance of
qāḍīs (judges), now and then appointed the muftīs as
government officials attached to the court. "But their
appointment by the government does not add to the
intrinsic value of their opinions; they have no monopoly
of giving fatwās, and the practice of consulting
private scholars of high reputation has never ceased."[3]
It indicates, however, the significance of sharī'ah
in the judicial systems of such governments.

Historical Background of the Deoband
Fatāwá Literature

The significance of sharī'ah in the judicial
systems varied according to the importance given by the
ruler to the application of sharī'ah; though it might
not affect the public interest in sharī'ah and the

confidence in scholars of repute.

Mughal Period

In India the official title for the mufti had
been invariably ṣadr. In the pre-Mughal period, the
ṣadr enjoyed immense prestige; he was responsible for
selecting qāḍīs and he had an important place in the
judicial system.[4] Akbar introduced changes in this
system. According to his decree, in the matter of a
grant of land the ṣadr had to consult the dīwān. The
decree reduced the ṣadr's powers further by giving the
control of the judiciary to the qāḍīul quḍāt.[5]

Some scholars have attempted to discern a
difference in the jurisdiction of different Courts and
also at times, they have gone so far as to conclude
that in Mughal India there existed two systems of laws;
the "secular law" and the "religious law."[6] Although
we notice a difference in the jurisdiction of different
courts in the Mughal judicial system, and we even
find two different designations: maḥkama-e-'adālat
(court of justice) and maḥkama-e-sharī'at (court of
sharī'ah),[7] since the muftis are also mentioned as
attached to maḥkama-e-'adālat, until further research,
we presently cannot definitely say anything about the

separation of sharī'ah from, or the application of
sharī'ah to, the court of justice. An attempt "to apply
the whole of Islamic law in practice"[8] is, sometimes,
attributed to Awrang Zēb 'Ālamgīr (1658-1707) probably
because of the compilation of the Fatāwá al-'Ālamgīrīyah
at his order. It is, however, difficult to prove that
the 'Ālamgīrīyah was applied wholly in the courts. Yet
this attempt leads us to conclude that the notion of
the application of sharī'ah in courts, even though not
wholly, did exist. The qāḍī often consulted the muftī
when he was in doubt.[9]

British Period

The British settlers in Calcutta, were ruled
according to the laws of England since 1690.[10] In
1726 this jurisdiction was extended to the native
Indians of this city, if they wished.[11] In 1765 the
Mughal Emperor bestowed upon the East India Company
the dīwānī (the authority of the collection of revenue
and civil jurisdiction) in Bengal while the administra-
tion of criminal justice remained in the hands of
Nawab Nāẓim of Bengal appointed by the Mughals. The
farmān insisted on deciding cases "agreeably to the
rules of Mahomet and the laws of the Empire".[12] The

East India Company was also interested in keeping things
as they were. They agreed to administer Muhammadan Law
except where the practice of the Muhammadans themselves
had been to leave disputes between Hindus to be
determined according to their Shāstras. The only excep-
tion to this application was Calcutta where English
law was applied. The regulating act of 1772 was the
first attempt to remove this disparity. It ruled that
"in all suits regarding inheritance, succession,
marriage and caste and other religious usages on
institutions, the laws of the Koran with respect to
Mahammedans, and those of the Shasters with respect to
Gentoos [Hindus], shall be invariably adhered to."[13]

This regulation was the first attempt in modern
times to define the application of sharī'ah (though it
still included usage, 'urf) and limiting it to a
certain area which was later called "personal law". On
the side of criminal law, however, no step was taken
until 1790 when this jurisdiction was withdrawn from the
Nāzim.[14] The muftīs and qādīs were however still
allowed to sit on such tribunals and sharī'ah still
played a role in cases relating to Muslims. Finally
the Code of Criminal Procedure in 1862 entirely repealed
the former system. In 1872 the Indian Evidence Act

furthered the process of replacement.[15]

Now, since the qāḍīs had been replaced by British judges and although the sharī'ah was applied in certain areas ("personal law"), there were no separate courts for it, and some measures had to be adopted to remove the ignorance of the British judges of the sharī'ah. "While immediate relief to perplexed European judges was afforded by attaching learned Mawlawis and Pandits to every Courts [sic], civil and criminal ... the policy was announced of compiling as soon as possible English Codes of Muhammaden and "Gentoo" Law, based on the Arabic and Sanskrit authorities".[16]

The first attempt to translate the Hidāyah was completed by 1791. This work continued, and by the end of the 19th century most of the important works were translated. Through these attempts of codifications combined with frequent legislating acts there emerged a new legal system of the application of sharī'ah, the "Anglo Muhammadan Law". Gradually it was introduced into the law schools in India and consequently the usual legal training was considered enough to replace the muftīs in the courts.

The consequences of the British system of "Anglo Muhammadan Law" were the definition and limitation of the application of sharī'ah, the disappearance of the muftīs from the courts, and the end of the traditional religious education as a source of supplying experts on Islamic law. It also made the necessity of the muftīs emphatically felt for private consultation on the points of sharī'ah, and thus the madrasahs (schools of religious learning) became the only centres of such guidance.

It was probably this need that made a great many people turn to the centres of religious education such as Farangī Maḥal of Lucknow and Dārul 'ulūm of Deoband for religious guidance. A large number of questions began to be hurled at the scholars of these schools. Out of such institutions, for the purpose of present study, we have chosen Dārul 'ulūm Deoband.

Dārul 'Ulūm Deoband

Dārul-'ulūm Deoband started in Deoband (Sahāranpūr: India) soon after 1857 as an 'Arabī Maktab. It is claimed to be a continuation of Madrasah Raḥīmīyah [17] (of Shāh Walīullāh's father Shāh 'Abdur Raḥīm) in Delhi. In 1867 the maktab was raised to the

status of Dārul-'ulūm. The Deoband school, as Faẓlur Raḥmān observes, represents the "moderate orthodox reformism".[18] This school in many respects broke away from the Indian tradition of Islām (which was a combination of local practices, some borrowed notions from Hinduism, and mystic practices) later represented by the Brélvī school. Deoband adopted the Urdu language as the medium of instruction.[19] A reform was also intro-duced in the prevalent curriculum called Dars-e-Niẓāmī.[20] The number of years of instruction was reduced.[21] New subjects such as history and medicine were offered.

The Deoband also waged war against certain social customs which, having acquired religious sanction, were heavily taxing the poor majority of Muslims. These customs were, e.g. fātiḥa (a ceremony to be held on funerals), tīja (a feast on the third day of the funeral), chehlum (the fortieth day of the funeral), niyāz (a feast given in the name of saints etc) and mīlad (celebration of the Prophet's birthday). Likewise, the customs such as jahez (dowery), mehr (dower) and khatna (circumcision) had acquired a prestige value and hence had become extremely expensive. Deoband fought against these customs by declaring them bid'ah, innovation.[22]

The method adopted in this campaign against
bid‘āt was to issue fatāwá on the relevant problems
explaining how these practices, from the point of view
of sharī‘ah, were to be regarded bid‘āt. Deoband's
concept of fiqh, which we will explain in the following
paragraph, thus played an important role in this regard.

Deoband's School of Fiqh

The Deoband maintained that an answer to each
and every problem could and should be found in sharī‘ah.
This function was performed by the institution of
iftā’ by interpreting fiqh sources vis à vis the
questions asked of the muftīs. A large number of
these questions were related to daily life. Many of
them were new problems faced by the Muslim community
in India.

Unfortunately the fatāwá literature is not
compiled chronologically. We cannot say how many and
what kind of questions were asked each year. But we do
know, as one of the historians of Deoband has noted,
that 147,851 fatāwá were issued during 1911-1951.[23]

Deoband Fatāwá Literature

The need to establish a separate Dārul-Iftā',
a department to issue fatwās, was strongly felt within
a decade or so of the establishment of Deoband.[24] In
the beginning, the responsibility for answering these
questions or the office of muftī was entrusted to
Rashīd Aḥmad Gangōhī (1828-1905). Later Ya'qūb 'Alī
(1834-1886) joined him. Dārul-Iftā' was established in
1893. The responsibility of this department was shared
by Gangōhī and Ya'qūb 'Alī. The procedure of the
department was not yet systematised. No arrangement
was made to preserve the copies of these fatāwá or to
register them. The fatāwá of this period now existing
under the title of Fatāwá Rashīdīyah were compiled
later from Gangōhī's available fatwás and from his
letters collected from his addressees.[25] This collection
was made in 1905. The first register to record the
fatāwá available in the library of Deoband dates from
1911.

The second part of this literature is Imdādul
Fatāwá which is mostly the work of Ashraf 'Alī
Thānavī (1863-1943), a pupil of Ya'qūb 'Alī. After the
establishment of Dārul-Iftā' more than eight muftīs
headed the department, but the third and fourth part of

this literature is mostly the work of two muftīs:
Muftī 'Azīzur Raḥmān and Muftī Muḥammad Shafī'.

Thus the Fatāwá literature of Deoband consists
of the following:

1. Rashīd Aḥmad Gangōhī, Fatāwá Rashīdīyah [in one
   volume],

2. Ya'qūb 'Alī and Ashraf 'Alī Thānavī, Imdādul
   Fatāwá [in four volumes],

3. 'Azīzur Raḥmān, 'Azīzul Fatāwá [in eight volumes],

4. Muḥammad Shafī', Imdādul Muftīn [in eight
   volumes].

As mentioned already the arrangement of this
fatāwá literature is neither chronological, nor does
it follow the order of the questions as they came. The
arrangement is subjectwise in accordance with the fiqh
books. It shows, however, that questions were asked
relating to almost all branches of Islamic law.

II

Problems to be Studied

It is rather impossible to survey the entire
content of this literature within the scope and study
of this paper which is specifically concerned with

studying trends in the interpretation of Islamic law.
This can best be done by leaving out the questions and
answers which have been dealt with by the fuqahā
before the muftīs of Deoband. A plausable limitation
would be to select certain issues which were new and
unprecedented so that we can see how Islamic law is
interpreted in such cases. This is why only the
following issues have been selected:

1. The question of learning the English language.

2. Questions relating to inventions like the
    photograph, the phonograph, the telegraph, the
    loud speaker and the tooth brush.

3. Questions relating to the banknote, banking
    and the money order.

4. Questions relating to dress, sports and the
    cinema.

Another significance of this selection is that
these questions are also related to some inventions and
certain new practices in daily life. This aspect, as
some scholars have pointed out,[26] may be studied in
relation to the concept of bid‘ah or innovation.

To sum up, there are two aspects of the present
study; first to study these fatāwá in relation to
bid‘ah and second to study them in relation to taqlīd

and *ijtihād*. In other words, this paper proposes to find an answer to the following questions:

What was the attitude of the *muftīs* of Deoband towards the above mentioned problems?

a) Did they reject these inventions and new practices as *bid'ah*?

b) Did they give other reasons for rejecting / accepting them?

In the latter case: (1) Were these reasons derived from earlier *fiqh* literature, especially from Ḥanafī *fiqh*? Or, (2) did they seek new bases to answer these questions?

III

Basic Terms

Before we go further, we shall try to formulate an understanding of the concepts *bid'ah*, *taqlīd*, and *ijtihād* which are the main terms in our study.

Bid'ah

The concept of *bid'ah* was dealt with substantially by Ignaz Goldziher.[27] He observed that *bid'ah* or *muḥdath*, condemned as the opposite of *sunnah*, is a

continuation of the ancient Arab value system of rejecting what is not <u>sunnah</u>.[28] He also concluded that Shāfi'ī [d. 820] was the first jurist to formulate a definition and distinction between good and bad <u>bid'ah</u>.[29] B. Lewis viewed the concept of <u>bid'ah</u> as related to the terms used for "heresy" in Islam.[30] Robson concluded that the <u>bid'ah</u> is to be distinguished from "heresy".[31] Muḥammad Ṭalbī[32] and Ṣubḥī Labīb[33] edited two important manuscripts on <u>bid'ah</u> belonging to the twelfth and fourteenth centuries respectively.

We are not in a position to give a complete account of the concept of <u>bid'ah</u> in historical perspective.[34] Ṭalbī's account of the concept of <u>bid'ah</u> on this point is in more detail and is more substantive. He has made some significant conclusions. He observes that the doctrine of <u>bid'ah</u> was conceived of at a very early stage in Islam. "It was actually the psycho-social manifestation of early Arab conservatism."[35] He also observes that <u>bid'ah</u> is not always an "innovation". Sometimes an ancient practice reappears and is called <u>bid'ah</u>. According to him, therefore, "La <u>bid'a</u> , en somme, est un constat de <u>déviation</u> de la Voie (<u>Sunna</u>), celle des Anciens en principe, sous l'effet d'idées et de modes perçues

comme nouvelles ou extra-islamiques".[36]

In Islamic literature the problem of bid'ah
came to be dealt with in the second century of Islam.[37]
Among the later books on bid'ah, Shāṭibī's (d. 1388)
Al-I'tiṣām is a well-systematised and well-argued
book. It elaborates the points contested by early
writers on bid'ah. He says that "the notion of bid'ah
derives its sanction from the prophetic saying that
"the worst of things are the muḥdathāt (new things)
and every innovation (bid'ah) is a deviation".[38]

The understanding of the concept of bid'ah
varied among scholars. In the earlier period the term
is very general and vague. There are two important
factors to be considered in this regard. First, most
of the scholars who dealt with this concept were not
jurists; they are muḥaddithūn (traditionists) or
mutakallimūn (theologians). Secondly, the practices
considered as bid'ah were related mainly to beliefs
and 'ibādāt. For example Ibn Waḍḍāḥ in 799 deals with
tasbīḥ (rosary), fasting on Nawrūz and Mihrigān,
story telling, celebration of Laylat al-Qadr (fifteenth
night of the month of Sha'bān) as bid'ah.[39] We find
the same kind of practices counted as bid'ah by others.
Aḥmad Sirhindī (c. 1563-1624) in India condemned some
of the ṣūfī practices on this basis.[40]

Al-Ḥaṣkafī (d. 1677) a Ḥanafī scholar defined bid'ah as follows: "A belief at variance with what is well-acknowledged from the Prophet, not contradictory but doubtful" [would be called bid'ah].[41]

It is, however, difficult to find any evidence that bid'ah acquired a legal value (like makrūh and ḥarām) before the sixteenth century. Wahhābism re-emphasised the idea of bid'ah. The Wahhābīs claimed to go back to the early sunnah of the Prophet in contradistinction to legal schools. With the Wahhābīs bid'ah acquired a legal value. The Deoband school, founded in the wake of the Indian reformist tradition which, it is claimed, was influenced by the same source as was Wahhābism, also made a contribution to this reform of bid'ah. Special chapters entitled Kitābul Bid'āt in the fatāwá literature show that this concept played an important role in the interpretation of Islamic law. But the Deobandi concept of bid'ah is very specific and limited. Gangōhī referred to the definition of bid'ah given by Shāh Muḥammad Isḥāq (d. 1845-6) via Arba'īn as follows: "Any practice which is not reported from the salaf (ancestors) as 'ibādat (a religious duty), if performed as 'ibādat is bid'at".[42] It was on this

basis that Gangōhī did not agree to the classification
of good and bad bid'ah. He said, "There is no bid'at
as a good bid'at. The one which is called good is
actually the Sunnat".[43]

Thānavī agreed with Gangōhī saying that a
"real bid'at would always be bad . The good bid'at is
bid'at only in form. In reality it is Sunnat because
it is a part of some general principle [of religion]".[44]

According to him the definition of bid'ah is
as follows:

> If any matter, which is not a part of religion
> (dīn) in particular or in general, because of
> some similarities, is accepted as a part of dīn
> by way of acknowledgement or in practice, it is
> bid'at.[45]

We can now sum up our discussion of bid'ah
on the basis of the following questions:

a) What is bid'ah?: Is every new thing bid'ah or
   only new religious practices?

b) Has bid'ah a legal value by itself?: Is it a
   valid ground to reject any innovation by
   declaring it bid'ah? or it would be rejected
   only if it contradicts other principles of
   fiqh?

c) Will a _bid'ah_ or innovation be accepted if it
is not in conflict with any principle of
sharī'ah?

We can say that every new thing which runs in
conflict with the _sunnah_ may be called _bid'ah_. Deoband
observes a further detail on this point. According to
them the domain of _bid'ah_ is only _'ibādāt_ or strictly
speaking, religious practices. In other words any
new (unprecedented) religious practice performed as a
religious duty is _bid'ah_. As to the second and third
questions we shall find answers to them in the next
chapter, where we shall study _fatāwá_ and their
arguments.

Ijtihād and Taqlīd

The second consideration is of the terms
ijtihād and _taqlīd_.

The local legal traditions of places like
Madīnah, Kūfah and Makkah later grew up into _fiqh_
schools. The idea of adherence to the teaching of
one's teacher and school turned into _taqlīd_. The legal
traditions of these schools, which were developed by
ijtihād (reasoning) came to be limited within the
schools.

Scholars have tried to explain the sudden acceptance of the idea of taqlīd logically as well as historically. First, it was convenient for the fuqahā' who were the immediate successors of the founders of the fiqh schools, when appointed qāḍīs, to rely on the already existing corpus of the teachings of a fiqh school. Secondly, in case of any conflict of law taqlīd of a particular school took away the responsibility from the shoulders of the qāḍīs. Thirdly, the taqlīd of one school guarnateed a more definite and certain, rather than arbitrary, procedure of justice. Further, historically speaking, during periods of political fragmentation the fear of religious disintegration led to the acceptance of taqlīd. Eventually, taqlīd was accepted as a legal device and the door of ijtihād was supposed to be closed ever after.

In the Mughal court in India, the 'ulamā' inherited from their predecessors another fear. It was the feeling of being a minority in the vast ocean of Hindūs. Almost all of these 'ulamā', from the time of the Slave dynasty, had been foreigners. The fear of absorption into an Indian majority forced them to adhere to their own traditions. The perpetual

reinforcement of newly arriving 'ulamā' from outside
kept this feeling refreshed.

By the beginning of the eighteenth century
the Mughal power had started decaying. The rise of
the Marhatās and that of various Shī'ī principalities
in South India had weakened the centre. The centre
was at the mercy of the 'umarā'. Shāh Walīullāh
(1703-1762), a religious scholar in Delhi, observed
this disintegration. He wrote letters to different
'umarā' and appealed to Kābul. He also tried to
reconstruct the whole system of thought in Indian
Islam. One of his suggestions was to adopt the
principle of takhyīr (an eclectic method of utilizing
all schools of fiqh) in Islāmic law.[46] He re-emphasised
ijtihād. He was much influenced by Ibn Taymīya.[47] He
gave new emphasis to bid'ah and taḥrīf fi'l-dīn.

It appears that the terms, taqlīd and ijtihād,
in the foundational phase of Islamic law, were too
vague and general to be technical terms. In this
period only Shāfi'ī (767-820) appears to have used
them in a relatively technical sense. He condemns
taqlīd and recommends ijtihād,[48] but only in relation
to his concept of sunnah. He rejects taqlīd in its
meaning of following the opinions of others than the

Prophet, and recommends ijtihād only on the basis of the Qurān and the sunnah of the Prophet.[49] Ijtihād, for him, is qiyās (analogy) not simply ra'y (opinion),[50] and thereby he rejects the principle of istiḥsān (a discretionary opinion in breach of strict analogy) of the 'Irāqī school.[51] Probably it would be true to say, as Ru'yānī (d. 1058),[52] a Shāfi'ī scholar, observed, that Shāfi'ī was recommending following (taqlīd) the Prophet while rejecting following others. Thus the use of the term is general rather than definitive.

We can, however, see the emergence of a semantically important understanding of these words. The terms are tending to become pairs of synonyms and antonyms; taqlīd vs. ijtihād and bid'ah vs. sunnah.

As we mentioned earlier, the formulation of legal schools strongly established the notion of taqlīd. Let us now see how these terms were understood in the post-formulative period.

Among the Mālikīs, Ibn Khwāz Mindād al-Baṣrī (a desciple of Mālik) defined taqlīd as follows: "Taqlīd, in shar':, means to have recourse to an opinion for which the opinion-giver gives no proof."[53]

Sind b. ʿInān al-Mālikī (d. 1146) defined it in the following words: "Taqlīd is to accept someone's opinion without proof or evidence."[54]

Among the Ḥanafīs, Abu'l Barakāt Nasafī (d. 1310) said,

> Taqlīd means to follow a man other than oneself, in what one heard from him, regarding it as verified truth and without searching for evidence. It is like hanging the opinion of others around one's neck.[55]

Ibn al-Hummām (d. 1482) said, "Taqlīd is to abide by the opinion of a person whose opinion does not constitute one of the arguments which do not need evidence."[56]

Among the Shāfiʿītes, al-Ghazālī (d. 1111) defined ijtihād as follows: "To exert one's effort in seeking [the basis for judgement] to the extent that further effort would seem impossible."[57] He defined taqlīd as "to accept a statement without [demanding] proof."[58]

Al-Ghazālī is of the opinion that "when one completes his ijtihād (search) and a judgement (ḥukm) dominates his speculation (ẓann), it is not permissible for him, then, to follow someone whose opinion is incompatible with his own findings."[59]

He quotes, however, a difference of opinion on
this point. According to him, Aḥmad b. Ḥanbal (780-
855), Isḥāq b. Rāhuwayh (778-853), Sufyān Thawrī (161/
778) and the Irāqī school, in this case, permitted
the taqlīd of an ʿālim. Some scholars maintianed that
the permissible taqlīd is only that of the ⸱companions,
while Qāḍī [Bāqillānī] did not allow an ʿālim to
follow even the companions.[60]

Shawkānī (1839) defined taqlīd as above, but
he made a significant addition in saying that "the
essence of taqlīd is that the muqallid (follower)
does not look for the Book or the sunnah of the
Prophet but asks for the opinion of his master
(madhhab-a-imāmihī).[61] This, according to him, is a
bidʿah - al-bidʿat al-shayṭānīyah, a devilish innova-
tion.[62]

Shāh Walīullāh also considered taqlīd a
bidʿah and taḥrīf fiʾl-dīn[63] (distortion of religion).
According to him it was only after the 10th century
that the notion of taqlīd in the sense of following a
particular school became popular.[64]

In contradistinction to Shāh Walīullāh, the
Deoband School is strongly in favour of taqlīd and
also, for that matter, strict adherence to the Ḥanafī

School is one of their basic principles.[65]

Rashīd Aḥmad Gangōhī (1828-1905), the first mufti of Deoband, said as follows:

> The absolute taqlīd is obligatory according to the verse: Ask the people of Remembrance [knowledge?] if you do not know.[66] -- Taqlīd is of two kinds: individual -- that is to abide by the opinion of one scholar in all matters of importance, and secondly, non-individual -- that is to enquire of any scholar, whom one likes. The verse, in its non-specifying manner, includes both.[67]

Thānavī, another important mufti of Deoband, defined ijtihād and taqlīd as follows:

> Legally reliable qiyās would either be that of every person in whatever he thinks or only of some persons. It is evident that everybody's qiyās is not reliable according to the Verse: 'If they had referred it to the prophet and the people of authority from among themselves, those who are able to think out the matter would have known it'.[68] So there would be some persons whose qiyās is reliable and some whose qiyās is not reliable. One whose qiyās is reliable is called mujtahid and mustanbiṭ and others muqallid.
>
> Hence it is obligatory for a muqallid to follow a mujtahid.... Evidently the method known in detail with all its details and particularities, is only that of the four imāms... hence the confining of taqlīd within the four schools is proven.[69]

We are perhaps now in a position to sum up and
formulate for ourselves an understanding of ijtihād
and taqlīd. In technical sense ijtihād is a process
of reasoning based mainly on qiyās (analogy). After
the establishment of the legal schools   there
occurred a significant semantic change in the terms
ijtihād and taqlīd. Ijtihād, which was, and technical-
ly still is, a process of reasoning, was associated
with the establishment of a fiqhī school and its
founder. Consequently, to limit the application of
the term ijtihād to the establishment of a certain
number of schools was considered synonymous to the
closing of the "gate of ijtihād". Further, those who
exercised ijtihād were classified into six categories
on the basis of their levels of its exercise.[70]
Accordingly, the imām of the school was called al-
Mujtahid al-Muṭlaq (the absolute mujtahid),while
those who belonged to the other five categories were
regarded as muqallids. In fact, this was an histori-
cal or phenomenal interpretation of the term ijtihād
according to which even the gradual closing of the
gate of ijtihād is dated in 923 (death of Ṭabarī,
founder of a school).[71]

In the technical sense, however, ijtihād

continues until to-day. The functioning of ijtihād
can be seen in two aspects:

1) in view of the person who is exercising
   ijtihād.

2) in view of the problem which is being posed.
If someone acquiring the knowledge of the process of
reasoning and literature in fiqh, searches for the
solution of a problem independently, not limiting
himself to secondary sources, he is in fact exercising
ijtihād.

The second consideration is from the point
of view of the problem itself. Only the injunctions
existing in the nuṣūṣ (Texts of the law) are theoreti-
cally outside the scope of ijtihād.[According to some
Ḥanafī scholars, even the subject matter of the
ijtihād of early Ḥanafī jurists is closed to further
ijtihād].[72] Otherwise the problems which are new, or
about which there exists a difference of opinion, or
for which the basis of judgement has changed, are
mujtahad fīh (open for ijtihād).

Apparently the problems we have selected are
mujtahad fīh. We shall find a fuller answer to this
question in the next chapter. By studying the fatāwá
and analysing them we can find out how far ijtihād was
exercised by the muftīs of Deoband.

Chapter I

FATĀWÁ

In this chapter we study the Deoband fatāwá on the issues enumerated in the preceding chapter.[1]

For the sake of convenience we classify these questions into four sections:

1. Education: [the question of learning the English language]

2. Inventions: [questions relating to the following :

    i) the photograph   ii) the toothbrush

    iii) the loudspeaker   iv) the telegraph

    v) the phonograph.]

3. Commerce: [questions relating to i) the bank-note, ii) banking, and iii) the money order.]

4. Social life: [questions relating to dress, sports and the cinema].

Our main concern in this chapter is to study the fatāwá on these questions and to summarize the arguments and explanations given by the muftīs of Deoband in answer to them.

1. Education

Learning of the English Language

The issue of the English language[2] appears
to be very acute for the enquirers. This can be seen
from the istiftās (questions). One of the enquirers
does not like a certain job because he has to learn
and speak English[3] for it. Another enquiry reads as
follows: "Does the person who learns the English
language lose the light of Faith? In what class of
sin would the learning of English be: major or minor,
or is it close to kufr· (unbelief)?[4]

Another common question was whether prayers
said with an imām who had learned English were valid
or not.[5]

There were, however, some enquirers who wanted
to explore the permissibility of learning English if
one had first completed his religious education and
was faithful to his belief.[6]

Rashīd Aḥmad Gangōhī allowed the learning of
English on one condition: "Learning of the English
language is permissible provided that it does not lead
to a sinful action and that it does not bring about
any harm to religion."[7]

A cogently argued _fatwá_[8] was issued by Ashraf
'Alī Thānavī. Extracts from his _fatwá_ follow:

> English is a language like other languages.
> No language is evil in itself; rather, it is
> one of the blessings of God.... Languages are
> the signs of God.... The Prophet himself spoke
> words of Persian, which was the language of
> the fire-worshippers. [9]

> English, like other languages, is permissible.
> The following three accidentals have made it
> harmful. First, it comprises certain sciences
> which are contrary to the _sharī'ah_...; second-
> ly, even if one avoids such sciences one
> frequently keeps company with irreligious
> persons...; thirdly, even if the company is
> not bad or if it has no influence, at least
> the motive for learning this language is to
> create a source of livelihood -- no matter
> whether the method of earning is lawful or not.
> It is proven both traditionally and rationally
> that if something [A] which is permissible
> becomes a means of something [B] which is forbidden,
> it [A] becomes forbidden itself. Besides, such
> a motive is itself a sin of the heart. Thus, it
> is not only external immorality (_fisq_) but
> internal as well...

> If somebody frees himself from these acciden-
> tals -- his beliefs are not damaged -- the
> convenient or rather specific way for him to
> [achieve] this purpose [i.e. to learn English]

would be first to seek knowledge of religion
with certitude, to act accordingly, and to
resolve that by this language [English] he will
earn only that livelihood which is permissible
according to shar'. Learning of English for
such a person would then be permissible. If he
has a higher target, i.e., serving the cause of
religion by this means, the action in this
case becomes 'ibādat (religious duty).[10]

When these accidentals do exist it is obliga-
tory to refrain from learning English... It is
mentioned in the ṣiḥāḥ [six reliable collec-
tions of ḥadīth]. The Prophet forbade 'Umar to
read the Torah, because it embodied the poten-
tiality of many harms... The person who is an
adolescent, he is probably more inclined
towards them [kuffār(unbelievers) and fujjār
(sinful person) who teach this language]. His
faith will be weakened... [In this case the
learning of the Englsih language] is definitely
prohibited...[11]

In summary, the learning of English [is to be
judged according to the situation. Thus it] is
sometimes forbidden, sometimes permissible and
sometimes religiously obligatory.[12]

Although the prohibition and permission in
these fatāwá were conditional, it seems from a later
fatwá that the most commonly accepted view was that
of prohibition.[13]

2. <u>Inventions</u>[14]

This section deals with the <u>fatāwá</u> on the following innovations: the photograph, loudspeaker, telegraph, phonograph and toothbrush.

a) The Photograph

A portrayal or a sculpture of an animate being has been considered forbidden by the <u>fuqahā'</u>. A photograph was made analogous to portrait painting and hence forbidden. Some of the questioners tried to distinguish between a portrait and a photograph. For instance, one of the questioners pointed out that a photograph was like a reflection in the mirror with the difference that in a photograph this reflection was relatively permanent.[15]

The <u>muftīs</u> maintained, however, that there is no such difference. Hence photography is as forbidden as portraiture. Posing for a photograph, printing one or keeping one will be condemned according to the prohibitions mentioned in the <u>aḥādīth</u>.[16] The reason for this prohibition is that making an image suggests equality and partnership with God by imitating His act of creation.[17]

Muḥammad Shafī' elaborated this argument in
the following manner:

> A photograph is a kind of picture just as a
> picture printed by a printing press is a kind
> of picture. The only distinction is that the
> picture drawn by hand or by pen is done by
> using pen and ink, in a press it is done by
> using a roller of ink while in a photograph it
> is done by using chemicals and instruments on
> the reflection. It is absurd to make it [the
> photograph] analogous to a reflection in a
> mirror or in water because this kind of reflec-
> tion cannot be stabilized by any chemicals and
> if this stabilization is done it will be counted
> also as a picture and will no more be a reflec-
> tion. The reason is that a reflection is such
> as long as it is dependent upon the thing whose
> reflection it is and as long as it cannot be
> separated from it. It is evident that the
> reflection in photograph continues to exist
> even after the death of the person whose
> reflection it is.[18]

Following this injunction any photograph,
whether for decoration, medical, geographic, or stra-
tegic purposes, was declared unlawful.[19]

A photograph required for a passport, however,
was allowed by Muḥammad Shafī' who referred, as he put
it, to a 'weaker' statement in the Radd al-Muḥtār.[20]

b) The Loudspeaker

A considerable number of questions was posed about the loudspeaker. This is why Ashraf ʿAlī Thānavī and Muḥammad Shafīʿ issued a detailed fatwá, comprising twenty-six pages, in 1938.[21]

Elsewhere, in a fatwá regarding the installation of a loudspeaker in the Āgrah mosque, Muḥammad Shafīʿ neatly summarized the arguments of the more detailed fatwá. For the sake of brevity we quote from the latter:

> The instrument in reference is a modern invention. Although a definite verdict on the use of loudspeaker, as a particular case, is not found in fiqh literature, a fairly definite injuction can be deduced from the "general fundamentals" (qawāʿid-e-kullīyah)[22] and the particulars of analogous cases found in fiqh books.
>
> It is, in my opinion, as follows:
> a) In a congregational prayer (namāz-e-jamāʿat), the use of a loudspeaker to carry the calls of prayer (takbīrāt) and the recital (tilāwat) of the imām to the followers (muqtadīs) is unlawful. As for those who join prayers listening to the first call (takbīr-e-taḥrīmah) from this instrument, their prayer will be void...
>
> b) Although the use of a loudspeaker for the sermon (khuṭbah) does not invalidate the sermon

it is necessary to refrain from this.

c) Its use in other speeches, in order to carry the voice further to the audience, is permissible, provided that this does not lead to amusement (lahw-o-la'b)...[23]

Muḥammad Shafī' gives several reasons for this judgement:

It is required of a mukabbir or muballigh, [who conveys the call of the imām to the followers] that he must be a member of the congregation. It is evident that the instrument is not a member of the congregation. Ḥaẓrat Hakīmul-Ummat Ḥaẓrat Mawlānā Ashraf 'Alī ṣāḥib, may his greatness endure, has diligently veri- fied, with the scientists and the inventors of this instrument,[24] the fact that the voice which travels farther is not exactly the voice of the imām but its imitation as it is in a gramophone.[25]

The voice therefore is the voice of this ins- trument, not exactly that of the imām...

[Secondly] to use instruments to convey the sermon to every listener is exaggeration (ghuluww) in religious matters, and such exagge- ration is prohibited...[26]

Again, arrangements were never made in the past to convey the sermon to the whole audience.[27]

C) The Telegraph

The problem of telegraph arose in relation to its use as a medium of reporting the appearance of the first moon in Ramaḍān or Shawwāl. The question was whether a telegraphic report was reliable and if it was, how reliable?

Gangōhī was of the opinion that it was unreliable because the kuffār are intermediaries in the transmission of a telegraph, it becomes necessary not to accept it. Otherwise a telegram is the same as a letter in its legal effect.[28]

On another occasion he elaborated on this point:

> The report by telegraph is not reliable. First, it cannot be known whether the man who sent this telegram is actually the man whose name appears on it or whether someone else has deceitfully used his name. This happens very often with telegrams. Although a written letter may have the same fault, the style of hand-writing and other indications such as the contents of the letter can help in establishing its authorship. The telegram has no such indication or signs... Secondly, it cannot be established whether the telegraph-clerk who sends this message is reliable [as a witness] or is sinful (fāsiq). Thirdly, the clerk who

receives the message... Fourthly, often signals can be misunderstood; for instance, the interrogative form of a sentence might be taken as affirmative. Fifthly, there can be mistakes in translating a message. Now, since a report by telegram contains so many doubts, it cannot be reliable in religious matters. If all these doubts are removed, which is apparently impossible, only then can it be relied upon.[29]

Thānavī took a more emphatic stand on virtually the same grounds. He considered it analogous to cannon or drum signals rather than to a letter. Such a report, therefore, was reliable only as a source of speculation (ẓann).[30] Accordingly, in answer to a query from the Anjuman Nu'māniyah, Lahore, who wanted to arrange receiving and sending of the news of the appearance of the moon to the major cities of India by telegrams and letters, Thānavī disagreed with the proposal.[31]

By the time of 'Azīzur Raḥmān, however, Deoband's stand on the issue became stronger. 'Azīzur Raḥmān said, "the news of the appearance of the first moon in Ramaḍān or Shawwāl reported by a letter or a telegram is not reliable according to shar' and it is not permissible to rely upon it".[32]

d) The Phonograph

The problem of the phonograph arose in the
context of music in general which, according to the
Ḥanafī school, is prohibited. Nevertheless, the recital
of the Qur'ān was recorded on discs. Hence the issue
required reconsideration. Thānavī offerred this
formula in answer to the issue: the injunction about
the records would follow from the voice recorded
thereon; if it is a recording of instrumental music
or a song sung by an ajnabīyah [stranger-woman], it
would be forbidden. On the other hand if the sound is
lawful, listening to it would also be lawful.[33]

He elaborated this point on another occasion:

There are two points to be considered in this
regard: First, whether the sound recorded in the
disc is in itself permissible, and secondly,
whether the permissible sound may become unlawful
because of some accidentals.

With regard to the first aspect, the verified
view is that if it is a recording of songs and
music, it is unlawful, either because the
recording is similar to the sound recorded or
because the evils which make the listening to
the sound prohibited exist in the recording...

If we observe we can see that as a matter of
fact the recording and the sound are not different.
Rather, we listen to exactly the same sound that

stirred the air -- the same cause which makes it possible to listen to somebody speaking. A Physical scientist would readily accept this fact...

With regard to the second aspect... it depends upon the motive. If the motive is pleasure and amusement, then listening to the words of the Qur'ān, for example, in this way, would be unlawful. Otherwise it is lawful.[34]

e) The Toothbrush

Shafī' gave the following fatwá on the question of the toothbrush:

If by chance one does not have a miswāk[35] with him, the use of a brush can be substituted. But to make it a habit to use a brush as a fashion is not recommended. It cannot replace the miswāk except in necessity. This is so especially because toothbrushes nowadays usually are made of pig-hair. It is, therefore, preferable to avoid them. If a miswāk is not available the teeth can be cleaned with a finger or a cloth [instead of a brush].[36]

3. Commerce

The introduction of a banking system, managed coinage, and paper currency[37] disturbed the old money

exchange system in India. New devices in commercial transactions were introduced. Accordingly, a number of problems arose. From these questions the banknote, banking, and the moeny order are our concern in this section.

a) The Banknote

The questions about banknotes usually arose in relation to paying zakāt on them,[38] or exchanging them for other forms of money.[39] It appears from the questions that people felt uncertain about the monetary value of the banknote.[40]

The muftīs, however, considered it an acceptable form of currency. This is evident from the definitions they applied to the banknote.

Gangōhī defined it as follows:

> The note is a wathīqah (testimoney; certificate) of the rōpeyah (cash, bullion) deposited in the treasury. It is like tamassuk (promissory note, bond; stock), because if it is damaged or lost it can be claimed from the government.

Thānavī defined the banknote in this way: "The note, in fact, is a sanad (certificate) of the rōpeyah (cash, bullion)."[42] On another occasion[43] Thānavī

referred to the banknote as a ḥawālah[44] (novation; transfer of debt).

'Azīzur Raḥmān referred to the banknote as a certificate of bullion.[45]

Muftī Shafī' defined it as a "transfer of debt".[46]

Accordingly the banknote was a valid and acceptable form of money and it was obligatory to pay zakāt on it.

The other questions which arose were, first, whether a certain number of banknotes can be exchanged for an unequal number. Further, can a banknote be changed into cash with excess on either side?

The muftīs related this exchange (called bay' al-ṣarf,[47] exchange or transaction of money and valuable metals) to ribā.[48] The implication of ribā complicated the problem of exchange.

Ghangōhī was doubtful even about the first form of this exchange:

> The sale and purchase of banknotes even at
> equal value is not lawful, but this transaction
> can be made under the ḥīlah (escape; legal
> device) of ḥawālah (novation), but the sale for
> less or in excess is usury and unlawful.[49]

The muftīs usually agreed to the unlawfulness of a transaction by which a certain number of notes were exchanged for a lesser or greater number.[50]

To clarify this point, let us explain that an exchange can occur in these four forms:

1) Note for note

2) Note for Ropeyah

3) Note for small change (Athannīs and Chavannīs)

4) Note for Paysahs, Duvannīs and Annās

Two important points must be added here. First, the Ropeyah, the Athannī ($\frac{1}{2}$ Rupee) and the Chavannī ($\frac{1}{4}$ Rupee) were silver coins in those days. The Duvannī ($\frac{1}{8}$ Rupee), the Annā ($\frac{1}{16}$) were mixed. The Paysah was copper. Secondly, according to the Ḥanafī understanding of ribā, silver cannot be unequally exchanged for silver, nor gold for gold. But silver can be exchanged for gold or for other metals in unequal quantities.

Now, with respect to the first, second and third forms of exchange, the note is an acceptable form of money, so it cannot be exchanged in unequal quantities. But in the fourth form of exchange the metals differ and hence unequality is lawful.

The following fatwá of Gangōhī confirms this

understanding:

> If a <u>Ropeyah</u> is exchanged for small change
> inequality is not allowed, but if it is exchang-
> ed for <u>Paysahs</u>, then inequality is lawful; i.e.,
> fourteen <u>Annās</u> for a Rupee is as lawful as
> seventeen <u>Annās</u> for it.[51]

b) Banking

Interest on a bank deposit was generally
considered <u>ribā</u> and hence forbidden. Nonetheless, the
question about bank interest arose recurrently with
reference to a particular Ḥanafī standpoint. Some
scholars in the Ḥanafī school considered the <u>ribā</u>
transactions lawful if they were performed in <u>dārul</u>
<u>ḥarb</u> (a territory ruled by the enemy/ non-Muslims) or
if one of the parties to the transaction was a non-
Muslim.[52]

The Deband school, however, unanimously dis-
regarded this standpoint and did not allow any such
<u>ribā</u> transaction. This formula was applied to
banking as well. The <u>muftī</u>s of Deoband did not allow
any form of banking or deposit, whether the depositor
took interest or not.[53]

'Azīzur Raḥmān observed that , from the viewpoint

of <u>shar</u>ʿ, the so-called profit as a yearly fixed
amount received by a person on depositing his assets
in a bank, is <u>sūd</u> [<u>ribā</u>, usury]. [54]

Muḥammad Shafīʿ examined the problem of bank-
ing in great detail.[55] His argument is revealed by
these extracts from his <u>fatwá</u>:

> Having known the frightening warnings pro-
> nounced against <u>sūd</u> in the Qurʾān and <u>Ḥadīth</u>,
> which are <u>qaṭʿī</u> (definite) in every respect, no
> Muslim can ever dare to enter into a transaction
> which entails the slightest risk of <u>sūd</u>...
>
> As a precaution, therefore, the ʿ<u>ulamā</u>ʾ are
> against the accepting of interest from non-
> Muslim banks. Even if a person wants to deposit
> his money in a bank for security, without intend-
> ing to take interest, it would not be lawful.
> Because he [by doing so] is giving assistance to
> the interest-mongers and infidels, which if
> deliberate, is forbidden... If a person intends
> to spend the interest for charity, it would still
> be unlawful, because stealing and robbing, with
> the intention of spending the gains on charity,
> are not allowed. Similarly the taking of interest
> [with such an intention is unlawful].[56]

c) The Money Order

Another new commercial device was the money
order. It was regarded by the <u>muftī</u>s as analogous to

hundi (bill of exchange) and associated with ribā. It was thus forbidden. This view, as one question reveals, continued to exist until as late as 1320-5/ 1903-8.[57]

Gangōhī's opinion on this issue was that sending money by money order is not lawful; it entails ribā. The maḥṣūl (surcharge, tax) paid in this case is unlawful. [58] According to him, "there is no difference between the money order and hundī (bill of exchange).[58]

Thānavī gave a detailed fatwá on this issue as follows:

> It should be verified whether the money depo-
> sited in the post-office as a money order is an
> amānat (trust) and the post-office is its ajīr
> (servant), or whether it is a loan and the post-
> office is a borrower. It is evident that it is
> not exactly the same money which is sent. Also
> it is a rule that if the money thus deposited
> is lost by the post-office, the post-office pays
> zamān (compensation). On the bais of these two
> factors, therefore, the nature of this transaction
> is not that one of a trust but that of a loan
> which is to be repaid at another place. The fee,
> therefore, is part of the loan. Since the fee is
> deducted from the amount at the [time and] place
> of payment, it constitutes inequality in the
> payment of the loan. This is why it is prohibited.

Even if there is no fee, according to the
[prohibitive] formula that "every loan that
begets profit is ribā," this transaction would
still be considered as makrūh [reprehensible]
because it has the advantage of security from any
risk of loss in transit and thus belongs to the
category of suftijah (bill of exchange).[59]

4. Social Life

a) Dress

The wearing of western dress was another dis-
turbing problem. Nazīr Aḥmad's (1836-1912) novel
Ibnul Waqt (The Opportunist), written in 1888, accu-
rately portrays the intensity of the problem. Ibnul
Waqt was called Kristān (Christian) because he
started wearing English dress.[60]

The questions on this problem indicate two
types of attitude. First, there is a hesitation and a
prior judgement, as shown, for example, in the
following istiftā': "If a Muslim wears a zunnār (Brah-
manical thread) of Hindūs, he becomes kāfir. Is the
same verdict applicable to a Cross or a hat?"[61] The
second attitude favoured the adoption of this dress
because it was comfortable. As an instance, we have
the following istiftā': The English cap (hat) is light

and airy for the head. For those who ride on bicycles
and horses, this cap is very useful in the sun..."[62]

Answering the question about the Cross and the
hat, Rashīd Aḥmad Gangōhī said the following:

> To hang a Cross around the neck is <u>kufr</u>
> because it is the symbol of Christianity. The
> Prophet said: Whosoever resembles a people is
> one of them...

> But wearing a hat, a shirt or pantaloons is
> not a symbol of <u>kufr</u>. It is the habit of those
> people. To wear this dress in India is a resem-
> blance with them and so it is a sin. But in
> their country, where even Muslims wear this
> dress, it would not be a sin, because there it
> is not a symbol of Christianity but is common
> among Muslims and non-Muslims.[63]

Thānavī's <u>fatwá</u> is based on the same arguments:

> Resemblance with the <u>kuffār</u> in dress or other
> things is prohibited on the basis of the tradi-
> tions of the Prophet...

> Nobody would like to appear in public wearing
> his wife's dress... Is it not strange that the dress
> of a Muslim woman is more undesirable than
> the dress of an infidel?[64]

One of the questioners argued in favour of
this dress on the principle of <u>ṣalāḥ al-ʿibād</u> (public
good). He referred to Abū Yūsuf who "inspite of their

resemblance with the shoes of the Christian monks, wore the nailed shoes."[65]

In response to the above question, Muḥammad Shafī' argued as follows:

> Abū Yūsuf's viewpoint relates to the two aspects of resemblances; one of them is permissible, the other is not. Two factors are to be considered. The first is an unintentional resemblance and conformity. Illustrations of this kind are bodily features, complexion, language etc... The second is a deliberate adoption of the waz' (style, mode) of a particular people (qawm) or person. In this case a particular mode, dress or utensil is considered as a special characteristic of a particular people. If a Muslim adopts such a thing, this involves "resemblance" and is unlawful. Furthermore, if the motive is resemblance and pride, it is an even greater sin.[66]

With particular reference to the question of wearing a hat he had this to say:

> The wearing of a hat is not permissible for Muslims. Notwithstanding its popularity nowadays it is still peculiar to the English people. It is therefore not void of resemblance with the Christians. As for the necessity, many other forms are possible. It is also possible to make a cap in such a fashion that it might be different from the Christian cap [and still have the same advantages]...

Even if it is permitted it would be... only in the sun and only while riding a horse or a bicycle. On other occasions it would be prohibited.

It is frequently observed that if a conditional permission is given, the condition and stipulation are usually disregarded and things are taken as entirely permissible.[67]

b) Sports

some new games, like football, hockey and tennis, came to India with the British. Questions were asked about them, so Muḥammad Shafī' issued the following basic formula:

A game, whether with a ball or without, is impermissible, if the purpose is only playing and law-o-la'b (amusement). But if the purpose is relaxation and the gaining of energy, it is permissible provided that it does not entail a shar'ī prohibition.[68]

In the particular case of football, according to Muḥammad Shafī', there are some other reprehensible things, or prohibitions involved. For instance, the parts of the body which must be covered (satr) are uncovered; usually shorts are worn.[69]

The same opinion was held by 'Azīzur Raḥmān.[70] Muḥammad Shafī' elaborated his view on the

issue in more detail in the following _fatwá_:

From the _aḥādīth_ and _fiqh_ texts the following rules can be deduced:

a) Any game which does not serve any worthwhile religious or non-religious purpose is unlawful...

b) Any game which is intended for a worthwhile religious or non-religious purpose is lawful, provided that does not involve anything contrary to _shar'_. Resemblance with _kuffār_ is one of them.

c) Any game which serves such a purpose but which is mixed with some factors which are unlawful or contrary to _shar'_ is unlawful, for instance, archery and horse-racing when they entail gambling... Or if some game is considered to be peculiar to a certain religious group it would be unlawful...

It becomes evident, therefore, that ball games, whether cricket or native games, are by themselves lawful, because the purpose is relaxation, gaining energy, and exercise. It serves religious as well as non-religious purposes.

But the condition is that these games should be played in a manner which is in no way contrary to _shar'_ and which bears no resemblance to the ways of non-Muslims. Dress and manner must not be English. Knees must be covered, yours as well as others! Indulgence should not hinder the Islamic obligations...

Since these conditions are not usually
observed in present games, these [games] are
considered unlawful.[71]

c) The Cinema

The moving and talking pictures in India
were called bioscope, talkies, theatre, picture and
cinema according to their stages of development. The
shar'ī opinion seemed to remain constant; the change
in technique in cinema did not change the shar'ī
opinion.

Muḥammad Shafī' issued the following fatwá
on the cinema:

[Going to the theatre or the cinema] is
itself a great sin and moreover it involves
many other major sins...

1) lahw-o la'b (amusement)...
2) singing,
3) music,
4) dancing or watching a dance,
5) changing one's features by disguise and
   make up, particularly disguising a man as
   a woman,
6) the mingling of persons of both sexes,
7) the showing of pictures,
8) the obscenity and immorality in the shows,

9) the showing of women singing and dancing,
10) the presentation of stories which are con-
    trary to actual happenings...
11) the portrayal of characters who are ridi-
    culed or deformed; this is <u>ghībat</u> [to
    mention someone with bad words in his
    absence] and defamation...

That something should involve so many sins is
sufficient cause for a Muslim to abjure it.[72]

Chapter II

ANALYSIS

The preceding chapter surveyed the _fatāwá_
on the relevant problems and summarized their arguments.
This chapter analyses these arguments with reference
to the main question discussed in the introduction.

This analysis is presented from two points of
view: first, the logistics of the arguments, and
secondly, the pattern of references to the _fiqh_
literature. This chapter is, therefore, divided into
two sections. The first section deals with the
arguments of the _fatāwá_, the second with the pattern
of references. The first section is divided further
into three sub-sections, which proceed from the
details of the arguments on individual problems to a
general analysis of the arguments employed in these
fatāwá. Similarly, the second section proceeds through
a discussion of the detailed pattern of references on
individual problems to the general observations on
this aspect.

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The first section, then indicates how the muftīs argued in reference to these questions and the second reveals to what degree they depended on their legal traditions. The second section also shows to what limits they went back to discover analogies to the problems in question. From the extent of the muftīs' dependence on previous fiqh literature, we can discern whether they were employing the device of taqlīd or that of ijtihād.

Section I

Analysis of the Arguments

A) Analysis in Detail

a) The Learning of English Language

1. Gangōhī permitted the use of English in principle with the general proviso that it must not lead to any sinful action or be contrary to faith.[1]

2. We may infer from Gangōhī's fatwā that, in his judgement, the case for permissibility is stronger than the one for prohibition.

3. The balance shifts in Thānavī's fatwá. Although he does not deny the permissibility of

learning English as a language, he stresses the opposite; i.e., the prohibition.

4. Three factors, which Thānavī calls accidentals, strengthen the case for prohibition. The formula in this instance is the following: "A <u>mubāh</u> (permissible act), which leads to a <u>harām</u> (forbidden act), becomes <u>harām</u>".[2]

b) The Photograph

1. The argument is based on the analogy of a photograph to an image (painting or sculpture) which is already regarded as sinful on the basis of <u>ahādīth</u>.

2. The reason advanced by ʿAzīzur Rahmān for the prohibition of making a picture is that to do so suggests equality with God by the perpetration of an act of creation which should be peculiar to God.

3. To establish the analogy with painting, Shafīʿ refutes the possibility of regarding a photograph as a "reflection".

4. In case of necessity, as for a passport, however, Shafīʿ permits a photograph. He reasons that on the question of partial portrait (e.g., a picture of the subject's head and shoulders) there exists a

difference of opinion among the ʿulamāʾ [which makes
this problem mujtahad fīh (open for ijtihād)].

c) The Loudspeaker

The question and answer are recorded only in
Imdādul Muftīn, but it appears that, Shafīʿ was
reproducing an earlier more detailed fatwá given by
Thānavī. This detailed fatwá is something of a
treatise on the issue.

1. The treatise is divided into four major
sections. In the first section Shafīʿ remarks that

a) The Qurʾān and Ḥadīth contain all the injunc-
    tions relevant to ongoing changes and new
    inventions.

b) Islamic principle is the iʿtidāl (middle way);
    it neither prevents the use of these new
    inventions nor allows their usage without
    restriction. It disallows them wherever they
    are repugnant to the sharīʿah.

2. In the second section he explains the diffe-
rence between two kinds of religious actions: those
which are ʿibādāt themselves like ṣalāt, and those
which are not so, like travelling for ḥajj or preaching

a lecture (wa‘z). The use of inventions in the latter category is not objectionable, but in the former it is conditional.

3. In the third section he deals with the use of inventions in ‘ibādāt. Here he observes that the use of the loudspeaker

a) manifests an exaggeration in ‘ibādāt

b) destroys the simplicity of ‘ibādāt

c) intervenes with the form of ‘ibādāt,

and all these actions are not permissible.

4. The fourth section declares that a prayer in which a loudspeaker is used would be invalid.

d) The Telegraph

1. The argument is based on making a telegraphic report analogous to a report (riwāyah) [of ḥadīth] or a legal testimoney (shahādah).

2. The telegraph does not fulfil the conditions of reliability because

a) the intermediaries are kuffār,

b) there are many possibilities of errors in transmission,

c) the identity of the sender cannot be absolutely established.

3. According to Thānavī, a telegram is similar to a letter, hence it is a source of speculation (ẓann) and not one of reliable knowledge (ʿilm).

e) The Phonograph

1. The phonograph may contain music which is forbidden. It may contain also the recital from the Qur'ān which is permissible.

2. The injunction on its listening will depend on the permissibility or prohibition of what it contains.

3. The injunction on the instrument itself is not discussed.

f) The Toothbrush

1. The toothbrush is not a sunnah of the Prophet.[3]

2. The sunnah (i.e. miswāk) may be replaced, but only if a miswāk is not available.

3. Since it is likely that the toothbrush is made of pig-hair, it should be avoided.

g) The Banknote

1. The banknote was made analogous to wathīqah and ḥawālah which were current in medieval Muslim commercial transactions and approved by the jurists.

2. The unequal exchange of banknotes for small coins was considered lawful in accordance with the rules of bay' al-ṣarf.

h) Banking

1. Without exception the muftīs made banking analogous to ribā and hence forbade it.

2. The muftīs disagreed on the question of regarding India as dārul ḥarb. According to some Hanafī jurists, such a status would allow Muslims to accept interest from kuffār.

i) The Money Order

1. Gangōhī regarded the money order as analogous to the hundī (bill of exchange) which is unlawful because it entails ribā.

2. In addition, Thānavī considered the money order a loan rather than a trust. Furthermore, a fee

is paid for the money order and this [excess in payment] makes the loan a <u>ribā</u>.

j) Dress

1. The principle applied in this case is that of <u>tashabbuh</u>[4] (resemblance), based on a <u>hadīth</u> which says that to resemble other people in any form, dress, culture, etc. is not allowd.

2. Gangōhī distinguishes between religious symbols, <u>shi'ār</u> (like the Cross and the <u>zunnār</u>), and modes of dress. He considers the latter unlawful insofar as they are a specific sign of a particular people.[5]

k) Sports

1. About games in general, the rule laid down by Shafī' is that if they are played for purposes of amusement, they are not permissible. If they are played to regain physical energy, they are permitted.

2. Most sports contain certain <u>makrūhāt</u> [reprehensible things] like uncovering the <u>satr</u>. These factors make them unlawful.

e) The Cinema

1. This is forbidden because it involves many major sins: pictures, lahw, music, etc.

B) The Bases of the Fatāwá

To recapitulate the detailed analysis of the preceding pages we give here a summary of the bases of the fatāwá under study.

Question	Argument	Judgment
1. The learning of the English language	The attached accidentals are not permissible	conditionally permissible
2. The photograph	It is analogous to the picture which is forbidden	forbidden
3. The loudspeaker	The voice coming from the loudspeaker is not that of the imām, and it is not equivalent to mukabbir	disallowed in prayer, otherwise conditional

Question	Argument	Judgment
4. The telegraph	It is doubtful as a reliable source of information and as a witness	prohibited in religious matters, otherwise permissible
5. The toothbrush	It is not a sunnah 2), there is a suspicion that pighair is used	reprehensible
6. The phonograph	It contains music which is forbidden	forbidden
7. The banknote	It is analogous to the wathīqah or the hawālah	permissible
8. Banking	It contains ribā which is forbidden	forbidden
9. The money order	It contains or is suspected of ribā	forbidden/reprehensible
10. ["Western"] dress	It is a tashabbuh with the Christians	prohibited
11. Sports	The attached accidentals are forbidden	conditionally prohibited
12. The Cinema	It involves many major sins	forbidden

C) <u>The Logistics of the Fatāwá</u>

If we carefully scan the logistics of these
<u>fatāwá</u> we can divide them into two categories:

1. To the first category belong those <u>fatāwá</u>
in which analogy was made to certain precepts of
<u>sharī'ah</u>. These concern the photograph, the phonograph,
banking, the cinema, the money order, the loudspeaker
and the telegraph.

2. The second category embraces those problems
which directly or indirectly defy certain rules of
the <u>sharī'ah</u>. These concern dress, the English language,
sports, and the toothbrush.

We find that almost all scientific inventions
under consideration fall under the first category.
This indicates that the <u>muftīs</u> conceived analogies for
almost all of them in order to determine their legal
value (<u>ḥukm</u>). But this does not mean that they were
all declared forbidden. On this point we can divide
them further into two categories.

First, those whose analogy in <u>sharī'ah</u> was
forbidden. These include the photograph (<u>taṣwīr</u>), the
phonograph (<u>ghinā</u>), banking (<u>ribā</u>), the cinema (<u>taṣwīr</u>
and <u>lahw</u>) and the money order (<u>hundī</u>).

Secondly, those in which the analogy was made to a <u>fiqhī</u> institution in order to determine the stipulation. The loudspeaker was made analogous to the <u>mukabbir</u> in prayer and the telegraph to the <u>shāhid</u> (witness). Since, according to the <u>muftīs</u>, the qualifications of a <u>mukabbir</u> and <u>shāhid</u> are not fulfilled in this case, the inventions in question are not reliable. But it is important to note that this disqualification relates only to religious matters. Otherwise they are not objectionable.[6]

This trend manifests itself more clearly in the following extracts from the relevant <u>fatwá</u>:

> These injunctions as well as all other Islamic principles are based on the principle of the <u>i'tidāl</u> (middle way). Islam is not so ascetic as to abjure the use of newly invented instruments and to reject the benefits of the blessings of God. Nor is it like those carried away with the currents of atheism and materialism who consider themselves free from all religious teachings and regard every usage as entirely lawful. Rather a usage is allowed as long as it does not entail any harm to religion; otherwise it is prohibited.[7]

> The use of new things [innovations] as means and media for <u>ibādāt</u> is not harmful. Whoever considers them <u>bid'at</u> is mistaken.[8]

We can, therefore, draw the general conclusion that the scientific innovations, according to these fatāwá, are not forbidden unless they contravene some principle of sharī'ah or unless they are analogous to something forbidden.

With regard to the second category, the prohibition is derived from the basis of a prohibitive element involved. It is, however, only accidental and hence liable to change. For instance, the factor that prohibits the wearing of English dress is its tashabbuh with the 'Christians', but it is subject to change. If it is so common that it no longer remains a peculiarity of 'Christians', it would no longer entail tashabbuh. We have seen this in case of wooden sandals.[9] They were allowed when the resemblance became immaterial.

Section II

The Pattern of References

This section deals with the extent to which the muftīs referred to the fiqh literature.

a) The English Language

1. Gangōhī does not refer to any authority or precedent.

2. Thānavī refers to the Qur'ān and Ḥadīth on the question of the permissibility of learning any language.

3. He does not, however, refer to any authority for the three factors which prohibit it, neither to prove their existence nor to render them prohibited.

b) The Photograph

1. 'Azīzur Raḥmān refers to two Prophetic sayings to the effect that the muṣawwirūn (painters, sculptors) will receive the most severe punishment and that they attempt to equal an act of God.

2. He refers also to Radd al-Muḥtār[10] on the interpretation of these Prophetic sayings.

3. Muftī Shafī' adds similar Prophetic sayings.

4. On other details of his argument Shafī' refers to Al-Badr al-'Ayni,[11] Ma'ānī al-'Āthār,[12] Sharḥ Iḥyā 'Ulūm,[13] Talqīḥ Mafhūm [sic] Ahl al-Athar,[14] Fatḥ al-Bārī,[15] Al-Badāi'[16] and Radd al-Muḥtār.

5. Muftī Shafī' refers to <u>Radd al-Muḥtār</u> to cite the difference of opinion among the jurists on the partial portrait.

c) The Loudspeaker

1. In the first section references are given to a Qur'ānic verse and its interpretations in <u>Aḥkām al-Qur'ān</u>,[17] <u>Rūḥ al-Ma'ānī</u>[18] and <u>Tafsīr Aḥmadī</u>.[19]

2. In the second section references are given to <u>Al-I'tiṣām</u>.[20]

3. In the third section Shafī' quotes again the Qur'ān, <u>aḥādīth</u> [from <u>Mishkāt al-Maṣābīḥ</u>,[21] <u>Jam' al-Fawā'id</u>,[22] <u>Tanbīh al-Mughtarrīn</u>,[23] <u>Al-Mu'aṭṭā</u>],[24] <u>Fatḥ al-Qadīr</u>[25] and <u>Ḥujjat Allāh al-Bālighah</u>[26] on the point of exaggeration in religion.

4. He quotes the Qur'ān and <u>aḥādīth</u> [<u>Sunan al-Bayhaqī</u>][27] on simplicity in '<u>ibādat</u>. He does not, however, quote any authority on the necessity of maintaining the form of '<u>ibādat</u> without change.

5. In the fourth section he refers to <u>Radd al-Muḥtār</u>.

d) The Telegraph

1. Gangōhī does not refer to any authority.

2. Thānavī refers to Al-Durr al-Mukhtār through Fatḥ al-Qadīr, and Al-Hidāyah[28] on the question of letter's being a source of speculation.

3. 'Azīzur Raḥmān does not refer to any specific source.

e) The Phonograph

No authority is mentioned.

f) The Toothbrush

1. There is only one reference. It is to Al-Hidāyah to the effect that a finger can be substituted for a siwāk.

g) The Banknote

1. Gangōhī does not quote any authority.

2. Thānavī quotes al-Hidāyah on the question of accepting interest on a promissory note from a non-Muslim;

he quotes no other authority.

3. ʿAzīzur Raḥmān quotes <u>Al-Durr al-Mukhtār</u> on the non-salability of a <u>wathīqah</u>.

h) Banking

1. Gangōhī does not quote any authority.

2. Nor does Thānavī quote any authority directly relevant to the question.

3. ʿAzīzur Raḥmān refers to the Qurʾān, Ḥadīth, and the jurists without giving any specific reference.

4. Shafīʿ refers to <u>Mushkil al-Āthār</u>.[29] <u>Durr al-Mukhtār</u>, <u>Mishkāt al-Maṣābīḥ</u> and <u>Kanz al-ʿUmmāl</u>[30] on the impermissibility of transactions involving interest.

i) The Money Order

1. Gangōhī does not quote any authority.

2. Thānavī refers to <u>Al-Durr al-Mukhtār</u> on the question of the money order's being a <u>suftijah</u> (bill of exchange).

j) Dress

1. Gangōhī refers to aḥādīth on the prohibition of tashabbuh.

2. Thānavī refers to Aḥdīth [Abū Daʻūd,[31] Tirmidhī,[32] Bukhārī,[33] and Muslim[34]] on tashabbuh in dress.

3. Shafīʻ refers to Radd al-Muḥtār on this point.

k) Sports

1. Shafīʻ refers to Radd al-Muḥtār on the impermissibility of sports, the purpose of which is talahhī (amusement).

2. ʻAzīzur Raḥmān quotes a ḥadīth on "lahw" and refers to Al-Durr al-Mukhtār on the prohibition of these games

l) The Cinema

1. Shafīʻ refers to Al-Durr al-Mukhtār on the impermissibility of lahw, music, dance, the mingling of members of both sexes together. He also refers to aḥādīth via the same book.

B) <u>The Pattern of References</u>

To recapitulate   the analysis of the pattern of references in the foregoing pages, we present it here in condensed tables:

i) the reference pattern in general[/]

	FR	IF	AF	IM	Total
1. Numbers of <u>fatāwá</u> based on sources	1	4	7	14	26
2. Number of the <u>fatāwá</u> which mention <u>fiqh</u> authorities but do not give the detail of the source	1	-	1	-	2
3. Number of <u>fatāwá</u> which mention no authority or source	12	10	4	3	29
Total	14	14	12	17	57

[/]1. FR = <u>Fatāwá Rashīdīyah</u>; IF = <u>Imdādul Fatāwá</u>; AF = <u>'Azīz ul-Fatāwá</u>; IM = <u>Imdādul Muftīn</u>

2. The table shows that the answers which are not based on any source outnumber those which are based on sources.

3. The table also shows a gradual increase in references to sources.

ii) <u>The Sources Mentioned in the Fatāwá</u>/

1. Basic sources:

	Number of <u>fatāwá</u> using the source
a) The Qur'ān	5
b) Aḥādīth	
six main collections [<u>Ṣiḥāḥ</u>]	5
other than <u>Ṣiḥāḥ</u>	16

2. General sources

a) Literature written in the 10th century	1
b) " " " " 14th "	2
c) " " " " 18th "	1

3. Ḥanafī Fiqh Literature

a) Literature written before the 11th century	-
b) " " during " 12th "	3
c) " " " " 13th "	-
d) " " " " 14th "	-
e) " " " " 15th "	2
f) " " " " 16th "	2
g) " " " " 17th "	14
h) " " " " 18th "	-
i) " " " " 19th "	5

/ The details of the Ḥanafī <u>fiqh</u> literature are given
in the following pages, while the details of other
sources are supplied in the appropriate footnotes.

C) The Sources

Following six Ḥanafī fiqh books are cited in the fatāwá literature:

1. Al-Durr al-Mukhtār, cited 13 times, was written in 1660 by 'Alā' al-Dīn Muḥammad b. 'Alī al-Haṣkafī (d. 1677), the Muftī of Damascus. This book is an abridgement of the author's own work, Khazā'in al-Asrār wa Badā'i' al-Akfār, which was a commentary on Shams al-Dīn al-Timartashī's (d. 1595) Tanwīr al-Abṣār wa Jāmi' al-Biḥār (written in 1586). Al-Durr al-Mukhtār is also significant because it was updated by the author with the latest fatāwá of the Ḥanafī jurists.

2. Al-Radd al-Muḥtār, cited 5 times, is a commentary on Al-Durr al-Mukhtār. The author of Al-Radd al-Muḥtār Muḥammad Amīn (d. 1836) is invariably known as Ibn 'Ābidīn or Shāmī.

3. Al-Hidāyah, cited 3 times, written by Burhān al-Dīn 'Alī b. Abū Bakr al-Marghīnānī (d. 1195), is a commentary on his other work Bidāyat al-Mubtadī, which was based on Shaybānī's (d. 802) Al-Jāmi' al-Ṣaghīr and Abu'l Husayn Qudūrī's (d. 1036) Mukhtaṣar.

4. Al-Baḥr al-Rā'iq, cited twice, is a

commentary by Zayn al-'Ābidīn b. Ibrahīm b. Nujaym al-Miṣrī (d. 1562) on <u>Kanz al-Daqā'iq</u>, which was written by Abu'l Barakāt al-Nasafī (d. 1310) in the manner of <u>al-Hidāyah</u>.

5. <u>Fatḥ al-Qadīr</u>, cited twice, is a commentary on <u>al-Hidāyah</u> by Kamāl al-Dīn Muḥammad b. 'Abd al-Wāḥid b. Humām (d. 1456).

6. Al-Shurunbalālī, cited once, was a Ḥanafī jurist. His full name was Ḥasan b. 'Ammār b. 'Alī al-Shurunbalālī al-Miṣrī (d. 1659). His name is quoted alone without any reference to his books. Apart from his two independent major works, <u>Nūr al-Īḍāḥ</u> and <u>Marāqī al-Falāḥ</u>, he wrote forty eight treatises.

D) <u>Observations on the Pattern of the References</u>

We can derive certain observations from the data in the tables.

1. The most references are made to the <u>fiqh</u> literature of the seventeenth century and secondly to that of the nineteenth century.

2. The <u>muftī</u>s referred very little to basic sources.

3. The fewest references were made to the

earliest _fiqh_ sources; i.e., those of the seventh to the eleventh centuries.

We can, therefore, draw three conclusions:

1. The _muftīs_ of Deoband referred to late _fiqh_ literature more than to earlier _fiqh_ literature.

2. The tradition of _iftā'_ was not directly linked with the earlier period of _Ḥanafī fiqh_ but through the latest sources in Islamic law.

3. The _iftā'_ was not an institution fossilized in the seventh century but a living one. It survived through the eighteenth and nineteenth centuries.

CONCLUSION

We have seen in the preceding pages that the attitude of the ʿulamā' of Deoband towards the inventions and social practices in question conforms to their theoretical explanation of the concept of bid'ah. The issues under consideration were not disposed of on the basis of bid'ah, and there was no mention of bid'ah in this connection, -- neither in their arguments nor in their decisions. This shows that the muftīs did not consider these inventions and practices as bid'ah.

One could suggest, however, that the muftīs' rejection of them was due basically to their viewing them as bid'ah, while they advanced other arguments to justify and support their opinions. This hypothesis is difficult to substantiate for the following reasons.

First, we have already seen that the concept of bid'ah is very specific to the muftīs of Deoband. They never use this term in these fatāwá, even in a general sense. We have also seen that the domain of

bid'āt, according to the muftīs of Deoband, is
restricted to religious matters such as 'ibādāt.
Bid'ah is an unprecedented addition to the religion
and which is considered a part of religion (in terms
of obligation). This definition is not applicable to
the issues discussed in this paper.

Secondly, some of these inventions (e.g., the
banknote) were accepted unconditionally. Others of
them (e.g., the telegraph and the loudspeaker) were
prohibited only on certain occasions. This shows
either that the term bid'ah was inapplicable in these
cases or that the muftīs distinguished some inven-
tions from others on the basis of their understanding
of the concept of bid'ah.

Thirdly, even if one accepts the original
suggestion, it means only that declaring something as
bid'ah is not a sufficient and valid reason for
rejecting it -- in other words, the term bid'ah
has no legal value in such matters.

The main reason of the muftīs' non-acceptance
of the concept of bid'ah in general terms was that
their legal tradition was not confined to a specific
period; it followed from the Ḥanafī school of Kūfah

and continued through to the eithteenth century. In fact, the sources mentioned in the <u>fatāwá</u> belong mainly to later centuries and the later sources are more frequently cited than the earlier ones.

The concept of <u>bidʿah</u>, in its general sense, could logically be acceptable to those who believed in a limited span of legal tradition, confined to the "pre-formulatory" period of <u>fiqh</u>. These groups (usually called the fundamentalists, like the Ahl al-Ḥadīth and the Wahhābīs) relied on the concept of <u>bidʿah</u> as a legal value in rejecting any new thing which was not found in that legal tradition. In contradistinction to these groups the Deoband school did not accept the term <u>bidʿah</u> as such a legal value applicable to all areas of Islamic law.

We may conclude, therefore, that in Deoband the idea of innovation (<u>bidʿah</u>) had no legal significance in the case of inventions and such practices as those which we have considered.

2.

We have observed that the technical senses of the terms <u>taqlīd</u> and <u>ijtihād</u>, even according to the

muftīs of Deoband, are different from the popular
understandings of these concepts. In its technical
sense, ijtihād is a process of reasoning with an
awareness of the basis of this reasoning, while taqlīd
is the following of injunctions without questioning
their basis. Accordingly, ijtihād can be exercised
even within the traditions of a school of fiqh. On
this basis we can say that the muftīs of Deoband
exercised ijtihād in the fatāwá under consideration.
The evidence is found in the pattern of references to
the sources of these fatāwá.

References to the sources are made in two
ways. First, there are references to the details of
an argument. Secondly, there are references to the
grounds on which the issue was decided. The first kind
of references is immaterial for our purpose. It is
significant to note, however, that this kind of
reference gradually becomes frequent in the later
period of the fatāwá literature; it is seldom found in
Gangōhī's fatāwá and is much more frequent in those
of Shafī'.

The second kind of reference is more signifi-
cant for our purpose. We have seen that the grounds
for the decision on banking were sought in the Qur'ān

and Ḥadīth; those concerning the photograph, the phonograph, dress and sports were sought in the Ḥadīth; and those concerning the telegraph, the loudspeaker, the toothbrush, the banknote and the money order were sought in Ḥanafī _fiqh_. the decisions based purely on Ḥanafī _fiqh_ were, thus, fewer than those based on the Qur'ān and Ḥadīth. It also reveals a trend which transcends Ḥanafī _fiqh_ books in seeking grounds for decisions.

It should be noted, however, that the _muftīs_ of Deoband believed that _ijtihād_ could not be exercised in the areas of earlier interpretations of Islamic law. They also believed that the interpretation of the original sources (i.e., the Qur'ān and Ḥadīth) was to be done in accordance with the interpretation of 'ancestors' (_aslāf_).

As a general conclusion we can say that the ʻulamāʼ of Deoband interpreted Islamic law in accordance with their legal tradition with the assumption that the letter of the law was more important than the application of general principles such as expediency and the public good. In other words the _muftīs'_ understanding of the Islamic law was this: man is made to obey the law; the law is not made to serve man.

NOTES AND REFERENCES

Introduction

1. Joseph Schacht, An Introduction to Islamic Law,
    (London: Oxford, 1966), p. 74.

2. Ibid.

3. Ibid.

4. Muḥammad Bashīr Aḥmad, The Administration of
    Justice In Medieval India, (Publications, Karachi,
    1951), p. 137.

5. Ibid.

6. Wahed Husain, Administration of Justice During
    the Muslim Rule in India, (University of Calcutta,
    1934), p. 14.

7. Aḥmad, The Administration of Justice., op. cit.,
    p. 142.

8. Schacht, op. cit., p. 94.

9. Ibid., p. 74.

10. Roland K. Wilson, Anglo Muhammadan Law, (Thacker,
    Calcutta, 1921), p. 28.

11. Kashi Parsad Saksena, Muslim Law as Administered
    in India and Pakistan, (Eastern Book Co., Lucknow,
    1963), p. 41.

12. As quoted by Wilson, op. cit., p. 27.

13. Ibid.

14. Ibid.

15. Ibid.

16. Ibid., p. 43.

17. Muḥammad Shafī', "Fatāwá Dārul 'Ulūm Deoband kī Mukhtaṣar Tārīkh [A Brief History of Fatāwá Dārul 'Ulūm Deoband], in Fatāwá Dārul 'Ulūm Deoband, (Raḥīmīyah, Deoband, second ed. 1366 A.H.) vols. 1-2, p. 1. (introduction).

18. Faẓlur Raḥmān, Islām, (Weidenfeld and Nicolson, London, 1966), p. 205.

19. Ẓiyā'ul Ḥasan Fārūqī, Deoband and the Demand for Pakistan, M.A. thesis, (McGill, 1959), p. 38.

20. This system of education was called after its founder's name Mullā Niẓāmuddīn (d. 1748) of Farangī Maḥal, Lucknow. See Fārūqī, op. cit., p. 29. n. 1.

21. Ibid., p. 30.

22. See for instance "chapter on Bid'āt" in Fatāwá Rashidīyah (Quran Maḥal, Karachi, n.d.), pp. 101-150. This chapter considers, among other things, the visiting of the tombs of saints, the celebration of the Prophet's birthday, the feast of the eleventh of the month, feast on the completion of the recitation of the Qur'ān as bid'at.

23. Maḥbūb Rizvī, Tārīkh-e-Deoband, (Delhi, 1952), p. 131.

24. See "Proceedings of Dārul 'Ulūm Deoband of year

1304/1886" as quoted by Muḥammad Shafīʿ in "Fatāwá Dārul ʿulūm Deoband kī Mukhtaṣar Tārīkh" in Fatāwá Dārul ʿUlūm Deoband, op. cit., p. 6. The proposal aimed at a compilation of fatāwá like the Fatāwá ʿĀlamgīrīyah.

25. Ibid., p. 5.

26. It was probably Snouck Hurgronje [Mekkanische sprichworter und Reden sarten, p. 23, via Ignaz Goldziher, Muhammedanische Studien, (Hildesheim, 1961), vol. II, p. 23] who first pointed out to this aspect of bidʿah as being the basis of rejecting the use of knife and fork by Muslims. He was followed by Goldziher [Muhammedanische Studien, op. cit., vol. II, pp. 22-27], and Bernard Lewis ["Some Observations on the Significance of Heresy In the History of Islam", Stvdia Islamica, vol. I, pp. 43-63], J. Robson ["Bidʿā" in the Encyclopaedia of Islām, new edition, vol. I, (Leiden, 1960), p. 1199], and Muḥammad Ṭalbī ["A une époque plus proche de nous le Wahabisme le tabac, l'imprimerie, les couteaux et les fourchettes", "Les Bida " in Stvdia Islamica, XII, Paris, 1960, p. 57].

When it came to Percival Spear he interpreted this phenomenon in these words: "Innovations like the telegraph were thought to be evil..." A History of India, vol. 2, (Perlican, n.d.),p. 140.

27. "Le Bidʿa" in Bulletin des Études Arabes, (Alger, Nov. Dec. 1942), pp. 131-134, translated into French by G.-H. Bousquet.

28. Goldziher, "The Principles of Law in Islam" in Historians History of the World, (Hooper, London, 1908-1909), vol. VIII, p. 295.

29. "La Bidʿah", op. cit.

30. B. Lewis, op. cit.

31. Robson, op. cit.

32. Al-Ṭurṭūṣī, k. al-ḥawadith wa al-bidaʿ, ed. M. Talbī, as referred to in "Les Bidaʿ", op. cit., p. 45.

33. Ṣubḥī Labīb, "The Problem of Bidʿa in the Light of an Arabic Manuscript of the 14th century" in Journal of the Economic and Social History of the Orient, vol. VII, Brill, 1964, pp. 191-196.

34. On this point Talbī's account (op.cit.) presents a detailed study.

35. Talbī, op. cit., p. 74.

36. Ibid., p. 75.

37. Two important books dealing with this problem are the following:
Muḥammad b. Waḍḍāḥ al-Qurṭubī (d. 900), Kitāb al-Bidaʿ wa al-Nahy ʿAnhā, Damascus, Maṭbaʿ al-Iʿtidāl, 1349 A.H.
Al-Shāṭibī, Al-Iʿtiṣām, Cairo, Maṭbaʿ Muṣṭafá, n.d.

38. Ṣaḥīḥ Muslim, vol. 3, (Maṭbaʿ M. ʿAlī, Cairo, n.d.), p. 11.

39. Al-Waḍḍāḥ al-Qurṭubī, op. cit., pp. 8,9, 12-14, 20,46.

40. See M. Farmān, Radd-e-Bidʿat, Imām Rabbānī Ḥaẓrat Mujaddid Alf Sānī kī Taʿlīmāt kī Rawshanī mēn, (Deoband, Tajallī, 1963), p. 80f.

41. As quoted by Ashraf ʿAlī Thānavī, Imdādul Fatāwá, vol. 4, (Rahīmiyah, Deoband, n.d.), p. 83.

42. As quoted in Fatāwá Rashīdiyah, op. cit., p. 139, n. 1.

43. Ibid., p. 102.

44. Imdādul Fatāwá, op. cit., vol. 4, p. 78.

45. Ibid.

46. See Miʿrāj Muḥammad, Shāh Walī Allāh's Attempt to Reconcile the Schools of Fiqh, M.A. thesis, McGill, 1968.

47. Muḥammad Uvays Nadvī, "Shāh Ṣāḥib kā ek ʿilmī ma'khadh" [An Academic Source for Shah Wali-ullah], Al-Furqān, VII, 9-12 (1359 A.H.), pp. 347-351. Nadvi established the following: 1) Shaykh Ibrāhīm Kurdī, Shāh Waliullāh's teacher in Mecca (1143 A.H.), was a follower of Ibn Taymīya. 2) On many places, in his works, Shah not only agreed with Ibn Taymīya, but actually borrowed his words, sometimes without mentioning his name.

48. Al-Shāfiʿī, Al-Risālah, ed. A.M. Shākir, (Muṣṭafā, Cairo, 1940)pp. 22, 42.

49. Ibid., pp. 503 - 505.

50. Ibid., p. 40.

51. Ibid., p. 507.

52. As quoted by Shawkānī, Irshād al-Fuḥūl, (Maṭbaʿ Muṣṭafā, Cairo, 1937), p. 265.

53. Shawkānī, <u>Al-Qawl al-Mufīd fī Adillat al-Ijtihād wa'l Taqlīd</u>, (Munīriyah, Cairo, n.d.), p. 13.

54. <u>Ibid</u>., p. 16.

55. Nasafī, <u>Kashf al-Asrār</u>, commentary on <u>Al-Manār</u>, vol. 2, (Kubrá, Cairo, 1316 A.H.), p. 99.

56. As quoted in <u>Irshād al-Fuḥūl</u>, <u>op. cit</u>., p. 265.

57. Al-Ghazālī, <u>Al-Mustaṣfá</u>, vol. 2, (Muṣṭafa, Carro, 1937), p. 101.

58. <u>Ibid</u>., p. 123.

59. <u>Ibid</u>., p. 122.

60. <u>Ibid</u>.

61. <u>Al-Qawl al-Mufīd</u>, <u>op. cit</u>., p. 3.

62. <u>Ibid</u>., p. 14.

63. Shāh Waliullāh, <u>Hujjat Allāh al-Bālighah</u>, Urdu trans, ʻAbdur Rahīm, (Qawmī Kutub Khāna, Lahore, 1953), vol.,I, p. 580.

64. <u>Ibid</u>., p. 685.

65. Fārūqī, <u>op. cit</u>., p. 26.

66. <u>Al-Qur'ān</u>, 16:43.

67. <u>Fatāwá Rashīdiyah</u>, <u>op. cit</u>., p. 180.

68. <u>Al-Qur'ān</u>, 4:83.

69. <u>Imdādul Fatāwá</u>, <u>op. cit</u>., vol. 3, p. 146.

70. Nicholas P. Aghnides, <u>Mohammedan Theories of Finance</u>, (Columbia, New York, 1916), pp. 121-123.

71. Shacht, <u>op. cit</u>., p. 212.

72. Karakhī (d. 950) <u>Al-Uṣūl</u> in <u>Ta'sīs al-Naẓar</u>, (Adabīyah, Cairo, n.d.), p. 85.

Chapter I

1. See p. 13.

2. The issue of the English language, though in its
   other dimensions, was already a subject of con-
   troversy among the educationists and bureaucrates
   of the East India Company in the last decade of
   the eighteenth century. On the question of
   adopting English as the only medium of instruc-
   tion and hence adopting the syllabi consisting
   of only English books, there existed two groups
   of opinion; generally called Anglicists and
   classicists. The classicists, sometimes called
   orientalists, like Minto, Princep, and H.H.
   Wilson emphasized the worth of the ancient in-
   degenous literature, and the necessity of
   preserving such sciences. On the other hand,
   the Anglicists, like Charles Grant, Bentinck and
   Macaulay advocated the entire replacement of
   oriental culture by that of the west. According
   to them if students studied the oriental sciences,
   they would "waste their youth in learning how
   they are to purify themselves after touching an
   ass..." Denying the argument that the oriental
   sciences are part of religious education and
   that the Company should not interfere with
   native religions, Macaulay said, "We are to
   teach false history, false astronomy, false
   medicine, because we find them in company with
   a false religion."
   Syed Nasrullah and J.P. Naik, _A History of
   Education in India (During the British Period)_,
   (Macmillam, London, 1951), pp. 107 and 138.

3.   Imdādul Fatāwá, (Rahīmīyah, Deoband, n.d.)
     vol. 3, p. 73.

4.   Ibid., vol.4, p. 151.

5.   Ibid., vol. 4, p. 180.

6.   Ibid.

7.   Fatāwá Rashīdīyah, (Qur'ān Mahal, Karachi, n.d.)
     p. 466.

8.   Ashraf 'Alī Thānavī wrote a separate treatise on
     the issue entitled Risālah Tahqīq-e-Ta'līm-e-
     Angrēzī (A treatise on the Investigation of
     Learning English). The fatāwá included in Imdād-
     ul Fatāwá are a summary of this treatise. See
     Imdād ··· vol. 4, p. 151.

9.   Ibid., p. 180.

10. Imdādul Fatāwá, op. cit., vol. 4, pp. 151-152.

11. Ibid., p. 181.

12. Ibid., p. 152.

13. See Muhammad Shafī', Imdādul Muftīn (Rahīmīyah,
     Deoband, n.d.) vol. 3, p. 189.

14. Technical changes and innovations are as old as
     civilization. The response to a technical inno-
     vation is not always the same. Usually this
     response is based on the use of the innovation
     but very often in spite of its use the new tools
     are resisted because they do not have the sanc-
     tion of the tradition or religion. For details
     see Margaret Mead, Cultural Patterns and
     Technical Change, (Mentor, New York, 1960) p. 12
     and William F. Ogburn's article, "Social Change"

in the <u>Encyclopaedia of Social Sciences</u>, vol. 3, (MacMillan, New York, 1930), pp. 330-334.

15. 'Azīzul Fatāwá, (Rahīmīyah, Deoband n.d.) vols. 1-2, p. 190.

16. <u>Ibid</u>. and <u>Imdādul Muftīn</u>, <u>op. cit</u>., vol.I, p. 47.

17. 'Azīzul Fatāwá, <u>op. cit</u>., vols. 1-2, p. 190.

18. <u>Imdādul Muftīn</u>, <u>op. cit</u>., vol. I, pp. 47-48.

19. <u>Ibid</u>.

20. 'Azīzul Fatāwá, <u>op. cit</u>., vol. 4, p. 112.

   The fuller statement containing this weaker statement (which is underlined) is follows:

   [Ibn 'Ābidīn, commenting on <u>al-Durr al-Mukhtār</u>'s statement about wearing clothes which have pictures on them, while praying, says:] "This statement rejects the opinion that [the term] pictures are general, [without distinguishing whether they are] animate or not. The word tamthāl [used by Haṣkafī] particularizes the sense to the picture of an animate. In the sequel we will see that the picture of an inanimate is impermissible. <u>Quhistānī said that this statement indicates that the picture of a head will not be impermissible. There exists, however, a difference of opinion</u>..."

   Ibn 'Ābidīn, <u>Radd al-Muhtār</u>, vol. I, (Amīriyah, Cairo, 1323 A.H.), p. 454.

21. <u>Imdādul Muftīn</u>, <u>op. cit</u>., vol. 5, pp. 175-200. The introductory remarks to this <u>fatwá</u> indicate to this fact.

22. "Al-Qawā'id Al-Kullīyah", according to al-
     Shāṭibī [see Maḥmaṣānī, Falsafah al-Tashrī'
     fi'l Islām, Urdu trans. Rizvī, (Taraqqī-e-Adab,
     Lahore, 1955), p. 225] "are those eternal prin-
     ciples by which the world is created and on
     which the public good depends. The commandments
     in Islamic Sharī'ah are in accordance with these
     principles." In Ḥanafī jurisprudence, however,
     Al-Qawā'id al-Kulliyah are those universal rules
     which are deduced from the fatāwá of early
     Ḥanafī jurists and those which can be applicable to
     the particular details of a case in question.

23. Imdādul Muftīn, op. cit., vol. 8, pp. 73-74.

24. He is referring to the queries sent by Thānavī
     via some schoolteachers to Sayyid Shabbīr 'Alī,
     M.A., Professor, Department of Science [sic],
     Alīgadh, Birj Nandan Lal, B.A. B.Sc., Science
     master at Alexander High School, Bhopal and
     another 'scientist' whose name is not mentioned.
     See Imdādul Muftīn, op. cit., vol. 5, pp. 195-98

25. Cf. below pp. 38-9 the view on gramophone.

26. Imdādul Muftīn, op. cit., vol. 8, p. 74.

27. Ibid., p. 75.

28. Fatāwá Rashīdiyah, op. cit., p. 365.

29. Ibid., p. 369.

30. Imdādul Fatāwá, op. cit., vol. I, p. 165.

31. Ibid., p. 169.

32. 'Azīzul Fatāwá, op. cit., vols. 1-2, p. 82.

33. Imdādul Fatāwá, op. cit., vol. 2, p. 169.

34. <u>Ibid</u>., vol. 2, p. 170.

35. A small stick, the tip of which is softened by chewing or beating, used for cleaning teeth.

36. <u>Imdādul Muftīn</u>, <u>op. cit</u>., vol. 3, p. 109.

37. The period from 1858 on is called the "opening up period of the Indian Economy". (T. Walter Wallbank, <u>A Short History of India and Pakistan</u>, Mentor, New York, 1965, p. 87.)

 An important factor that affected the Indian Economy was the rapidly growing Indian debt to Britain. The drainage of Indian metallic wealth was cause of a decline in the price of silver. Consequently it depreciated the Indian Rupee. On the request of Lord Canning (1856-62), James Wilson, a political economist of repute, was sent to India. He initiated a state paper currency to meet the situation. For details see A. Yusuf Ali, <u>The Making of India</u>, (Black, London, 1925), p. 286 and Romesh Dutt, <u>The Economic History of India in the Victorian Age</u>, vol. II, (Routledge, London, 1956), p. 578f.

38. <u>Fatāwā Rashīdiyah</u>, <u>op. cit</u>., p. 356, <u>Imdādul Fatāwá</u>, <u>op. cit</u>., vol. I, p. 151 and ʿ<u>Azīzul Fatāwá</u>, vols, I-2, p. 72.

39. <u>Fatāwá Rashīdiyah</u>, p. 418, <u>Imdādul Fatāwá</u>, vol. 3, pp. 33 and 36, and ʿ<u>Azīzul Fatāwá</u>, vols. 1-2, pp. 148 and 152, vol. 5, p. 48.

40. As mentioned by Gangōhī, <u>Fatāwá Rashīdiyah</u>, <u>op. cit</u>., p. 357.

41. <u>Ibid</u>. ,p. 356.

42. <u>Imdādul Fatāwá</u>, vol. I, p. 151.

43. _Ibid_., vol. 3, p. 33.

44. "Hawalit [ḥawālah], in its literal sense, means a removal: and is derived from tahool [taḥawwul],... In the language of the law it signifies the removal or transfer of a debt, by way of security and corraboration, from the faith of the original debtor, to that of the person on whom it is transferred."

   Marghīnanī, _Hedaya_ [_Al-Hidāyah_],English translation by Charles Hamilton, (New Book Company, Lahore, 1957), Book XIX,p. 332.

45. _'Azīzul Fatāwá_, vols. 1-2, p. 72, vol. 5, p. 49.

46. _Imdādul Muftīn_, vol. 1, p. 178.

47. _Bay' al-ṣarf_ "... A Sirf [sic] sale means the sale of price in exchange for price: and price implies dirms and deeners. In this mode of sale it is a necessary condition that the interchange of properties take place at the meeting, because the Prophet has ordained the exchange of silver, in exchange of silver, from hand to hand..." [_Hedaya_ op. cit., p. 291].

   "Usury cannot take place with respect to Faloos [a copper coin], as they are articles of sale. The sale of one specific Faloos, in exchange of two other specific Faloos, is valid, according to Haneefa." [_Ibid_]

48. Ribā: "Ribba [sic], in the language of the law, signifies an excess, according to a legal standard of measurement or weight, in one of two homogenous articles... opposed to each other in a

contract of exchange, and in which such excess is
stipulated as an obligatory condition on one of
the parties, without any return, -- that is,
without anything being opposed to it.

"The sale, therefore, of two loads of barley
(for instance) in exchange of one load of wheat
does not constitute usury [ribā], since these
articles are not homogeneous. [Hedaya, op. cit.,
p. 289]

"It [ribā] consists in the sale of an
article (of weight or measurement of capacity)
in exchange for an unequal quantity of the same
article..." [ibid.]

49. Fatāwá Rashīdiyah, op. cit., p. 418.

50. Imdādul Fatāwá, vol.3, pp. 33,34, ʿAzīzul Fatāwá,
     vols. 1-2, p. 149, vol.5, p. 49.

51. Fatāwá Rashīdiyah, op. cit., p. 429.

52. Hedaya , op.cit., records this as follows:
     "Usury cannot take place between a Mussulman
     and a hostile infidel in a hostile country. This
     is contrary to the opinion of Aboo Yoosaf [Abū
     Yūsuf] and Shafei [Shāfiʿī], who conceive an ana-
     logy between the case in question and that of a
     protected alien within the Mussulman territory.
     The arguments of our doctors upon this point are
     twofold. First, the Prophet has said, "There is
     no usury between a Mussulman and a hostile
     infidel, in a foreign land." -- Secondly, the
     property of a hostile infidel being free to the
     Mussulmans, it follows that it is lawful to take
     it by whatever mode may be possible, provided there
     be no deceit used" [p. 293]

53. <u>Fatāwá Rashīdiyah</u>, pp. 431, 432; <u>Imdādul Fatāwá</u>, vol.3, p. 38; '<u>Azīzul Fatāwá</u>, vols.I-2, p. 151; <u>Imdādul Muftīn</u>, vol.I, pp. 163-165 and vol. 3, p. 113.

54. '<u>Azīzūl Fatāwá</u>, vols. 1-2, p. 151.

55. He wrote two separate treatises on the subject, entitled as follows:

　　　　1) <u>Taḥdhīr al-Akhwān 'an al-Ribā fī Hindustān</u> (A warning to brothers against the Ribā in India)

　　　　2) <u>Raf' al-Ḍank 'an Manāfi' al-Bank</u> (Removal of hardship (or weakness of argument) from the profits (interests of Bank).

56. <u>Imdādul Muftīn</u>, vol. I, pp. 164-165.

　　　　It would be interesting, however, to note the escape (<u>ḥilah</u>) suggested by Gangōhī: "Taking of interest is not permitted at all. It is absolutely forbidden... There is, however, one escape. One may argue that the [British] government takes many taxes from her subjects which are not lawful, according to <u>shar'</u>... They must be reimbursed. Hence this person argues that the amount taken by the government as tax contrary to <u>shar'</u> is being reimbursed by the government [in the form of bank interest]. Such money, retrieved from the govern-ment would be spent on the persons from whom the government had taken it against <u>shar'</u>. <u>Fatāwá Rashīdiyah</u>, p. 432.

57. This question is recorded in <u>Imdādul Fatāwá</u>, vol. 3, p. 33) which is (as mentioned in the introduction to Ibid., vol. I, p.8)a collection of <u>fatāwá</u> issued until 1907.

58. <u>Fatāwá Rashīdiyah</u>, p. 431.

59. <u>Imdādul Fatāwá</u>, vol. 3, p. 30.

60. Nazīr Aḥmad, <u>Ibnul Waqt</u>,(Taraqqī-e-Adab, 1961), p. 93. The following paragraph from the novel illustrates how Nazīr Aḥmad interpreted this situation:

"If it were today, nobody would have noticed it. The main reason for his notriety was that he adopted the English style of living at a time when the learning of Englsih was considered as heteredox and using English materials as apostacy. I myself witnessed that when someone in a train wanted to smoke a pipe, he would hide it from his acquaintances. A friend of mine was appointed as an officer away from town [Delhi]. He had to wade through fields on his inspections. His Indian shoes would not stand this hard job. He had to wear English shoes. Now whenever he came to Delhi on vacation, he would search all over his house for his dilapidated Indian shows. Then he would put them on an go out."[p. 1].

61. <u>Fatāwá Rashīdiyah</u>, p. 61.

62. <u>Imdādul Muftīn</u>, vol. I, p. 44.

63. <u>Fatāwá Rashīdiyah</u>, p. 61.

64. <u>Imdādūl Fatāwá</u>, vol. 4, p. 182.

65. <u>Imdādul Muftīn</u>, vol. I, p. 44.

66. <u>Ibid</u>., p. 45.

67. <u>Ibid</u>.

68. <u>Ibid</u>., p. 49.

69. <u>Ibid</u>.

70. 'Azīzul Fatāwá, vol. 5, p. 81.

71. Imdādul Muftīn, vol. 6, pp. 136-137.

72. Ibid., vol. 4, pp. 145-147.

Chapter II

1. This stipulation is very general and can apply
    to almost any action. This is why this kind of
    stipulation is disregarded, even by the muftīs.
    For instance, 'Azīzur Raḥmān was asked about
    certain advertisements which usually appeared
    even in religious journals. These were about the
    medicines for virility. The enquirer argued that,
    "since these medicines are used often by those
    who commit adultery, does this kind of advertise-
    ment not help and encourage adultery and, there-
    fore, should it not be disallowed?" The Muftī
    disagreed with the enquirer and expounded a
    basic formula for such cases; if there are both
    [good and bad] potentialities in a certain
    matter, the judgment cannot be given by consi-
    dering only one of the sides.
    'Azīzul Fatāwá, vol. 7, p. 73.

2. Imdādul Fatāwá, vol. 4, p. 152.

3. If it is not sunnah, is it then bid'ah? But there
    is no mention of bid'ah in the fatwá.

4. Qārī Muḥammad Ṭayyib, the rector of Deoband, wrote
    a booklet "Al-Tashabbuh fi'l Islām," (Raḥīmīyah,
    Deoband, 1365 A.H.) on this issue.

It would be interesting to note how politi-
cal developments and nationalistic thinking in
India affected the arguments on the issue of
dress. In earlier stages tashabbuh seemed to
have religious bearings, but with the growth of
Muslim nationalism, the tashabbuh was interpreted
in nationalistic terms. The best illustration is
an article by Abul A'lā Mawdūdī, "Libās kā
mas'alah" (The problem of Dress), in Ma'ārif,
vol. 24, no: 6, ('Aẓamgadh, 1929), pp. 414-428.

5. Fatāwá Rashīdiyah, p. 463.

6. Nevertheless a hesitation can be seen in the
usage of scientific inventions. For instance, on
the question of using astrological instruments
to determine the direction of the qiblah [facing
towards the Ka'bah], Shafī' says the following:

"In a city where there already exist ancient
mosques, built by Muslims, those mosques should
be imitated. In such places to go into the details
of astrological instruments and geometrical regu-
lations is against the sunnat of the elders and
hence troublesome and improper. However in forests
and new cities where there are no ancient mosques,
it is not harmful".

Imdādul Muftīn, vol. 7, p. 130.

7. Ibid., vol. 5, p. 177.

8. Ibid., p. 178.

9. Gangōhī was asked whether wearing wooden sandals
was bid'at. He said the following:[words under-
lined are mine]

"To wear wooden sandals is not <u>bid'at</u>. But [rather] because sandals are useful and because they are analogous to shoes and socks, they are permissible. In the past, however, they were prohibited on the basis of their <u>mushābihat</u> to the footwear of [Hindu] yogis. <u>But now they are common among Muslims and unbelievers and so the resemblance is no longer prohibited.</u>"
     <u>Fatāwá Rashīdiyah</u>, p. 472.

10.   See p. 73.

11.   Abū Muḥammad Maḥmūd b. Aḥmad Badruddīn al-'Aynī (d. 1451). The <u>muftī</u> does not mention the title of the book. Probably he means 'Aynī's commentary on <u>Ṣaḥīḥ Bukhārī</u> entitled '<u>Umdat al-Qārī</u>.

12.   By Abū Ja'far Aḥmad b. Muḥammad b. Salāmah al-Ṭaḥāwī (d. 933).

13.   The <u>muftī</u> does not mention the name of the author of this commentary.

14.   <u>Talqīḥ Fuhūm ahl al-Athar fī 'Uyūn al-Tārīkh wa'l Siyar</u>, by Jamāl al-Dīn 'Abdur Raḥīm ibn al-Jawzī (d. 1201), edited: M. Yūsuf Brelavī, (Delhi, 1927).

15.   A commentary on <u>Ṣaḥīḥ Bukhārī</u> written by Aḥmad b. 'Alī b. Ḥajr al-'Asqalānī (d. 852).

16.   <u>Al-Badā'i' al-Ṣanā-i' fī Tartīb al-Sharā'i'</u>, by Abu Bakr Mas'ūd b. Aḥmad al-Kāsānī (d. 1191). The book is based on his teacher, 'Alā'uddin al-Samarqandī's <u>Tuḥfat al-Fuqahā'</u> which, according to Kāsānī, was the only systematic book on <u>fiqh</u> before him.

17. Exegesis of the <u>Qur'ān</u> by Abū Bakr Aḥmad b. al-Jaṣṣāṣ al-Rāzī (d. 981).

18. <u>Rūḥ al-Maʿānī fī Tafsīr al-Qur'ān al-ʿAzīm wa'l Sabʿ al-Mathānī</u>, an exegesis of the <u>Qur'ān</u> written by Shihāb al-Dīn Maḥmūd b. Abdullah al-Alūsī (d. 1854).

19. <u>Al-Tafsīrāt al-Aḥmadīyah fī Bayān al-Ayāt al-Sharʿīyah</u>, an exegesis of selected legal verses of the Qur'ān by Shaykh Jīwan al-Laknawī (d. 1717), teacher of Awrang Zēb ʿĀlamgīr.

20. A detailed and comprehensive account of the problem of <u>bidʿah</u>, written by Shāṭibī (d. 1388).

21. By Muḥammad b. ʿAbdullāh al-Khaṭīb al-Tibrīzī (d. 1336). This book is an enlargement of al-Baghawī's (d. 1117) <u>Maṣābīh al-Sunnah</u>.

22. <u>Jamʿ al-Fawā'id min Jamīʿ al-Uṣūl wa Majmaʿ al-Zawā'id</u>, by Ibn al-Athīr al-Jazarī (d. 1210).

23. <u>Tanbīh al-Mughtarrīn fi'l Qarn al-ʿĀshir ʿalā mā Khālafū fīhi Salafuhum</u> by Abd al-Wahhāb al-Shaʿrānī (d. 1565), a mystic and <u>muḥaddith</u>.

24. By Mālik b. Ans (d. 795).

25. See p.74.

26. By Shāh Walīullāh (d. 1762).

27. <u>Kitāb al-Sunan al-Kabīr</u>, by Abū Bakr Aḥmad b. al-Ḥusayn al-Bayhaqī (d. 1066).

28. See p.73.

29. By Abū Jaʿfar al-Ṭaḥāwī (d. 933).

30. <u>Kanz al-'Ummāl fī Sunan al-Aqwāl wa'l Af'āl</u>, a collection of <u>aḥādīth</u> by an Indian scholar Alā'uddīn al-Muttaqī (d. 1567).

31. <u>Sunan Abī Dā'ūd</u>, by Abū Dā'ūd b. al-Ash'ath al-Sijistānī (d. 889).

32. <u>Al-Jāmi'</u>, a collection of <u>aḥādīth</u> by Abū 'Īsā Muḥammad al-Tirmidhī (d. 892). This collection is considered one of the six reliable (<u>siḥāḥ sittah</u>) collections.

33. <u>Al-Jāmi' al-Ṣaḥīḥ</u>, by Abū 'Abdullāh Muḥammad b. Ismā'īl al-Bukhārī (d. 870). This collection is considered the most reliable book, next to the Qur'ān only.

34. <u>Al-Jāmi' al-Ṣaḥīḥ</u>, by Abu'l Ḥusayn Muslim b. al-Ḥajjāj al-Nishāpūrī (d. 875).

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