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 Literature of Deoband School -- A Study of the Attitude of the 'Ulamā of Deoband to Certain Social Problems and Inventions.

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This paper studies the trends in the interpretation 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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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 associated 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 concerned largely with the structure, history and political 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 Calender 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 actual writing of this paper I am grateful to Professor Niyazi Berkes for his invaluable suggestions and criticisms. I am also thankful to Dr. H. Landolt and Dr. M.A. R. Barker for their help on certain technical points.

I must also express my thanks to Mr. S. Brown, Miss D. Wharton and Mr. A. Rabb who went through the final draft. I am particularly thankful to Miss Karen L. Koning who was patient enough to read my first draft and give many valuable suggestions.

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TRANSLITERATION TABLE

Consonants: ʾ initial: unexpressed ʿ medial and final: ʾ

Arabic		Persian	Turkish	Urdu
ب	b	b	b	b
پ		p	p	p
ت	t	t	t	t
ٹ				ṭ
ث	th	s	s	s
ج	j	j	c	j
چ		ch	ç	ch
ح	ḥ	ḥ	ḥ	ḥ
خ	kh	kh	h	kh
د	d	d	d	d
ڈ				ḍ
ذ	dh	z	z	z
ر	r	r	r	r
ڑ				ṛ
ز	z	z	z	z
ژ		zh	zh	zh
س	s	s	s	s
ش	sh	sh	ş	sh

Arabic		Persian	Turkish	Urdu
ص	ṣ	ṣ	ṣ	ṣ
ض	ḍ	ẓ	ẓ	ẓ
ط	ṭ	ṭ	ṭ	ṭ
ظ	ẓ	ẓ	ẓ	ẓ
ع	ʿ	ʿ	ʿ	ʿ
غ	gh	gh	ğ	gh
ف	f	f	f	f
ق	q	q	ķ	q
ك	k	k	k	k
گ		g	g	g
ڻ			n̄	
ل	l	l	l	l
م	m	m	m	m
ن	n	n	n	n
ں				n̨
ه	h	h	h	h
و	w	v	v	v
ی	y	y	y	y

Vowels, diphthongs, etc. (For Ottoman Turkish vowels etc. see separate memorandum.)

short: ـَ a; ـِ i; ـُ u.

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

alif maqṣūrah: ى á.

diphthongs: ـَي ay; ـَو aw.

long with tashdīd: ـِيّ īya; ـُوّ ūwa.

tā' marbūṭah: ـة ah; in iḍāfah: 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 fatāwá 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 muftī 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 muftīs 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 administration 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 exception 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 Nāẓim.[14] The muftīs and qāḍīs 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 introduced 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), tījа (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 ʻAzīzur Raḥmān and Muftī Muḥammad Shafīʻ.

Thus the Fatāwá literature of Deoband consists of the following:

1. Rashīd Aḥmad Gangōhī, Fatāwá Rashīdīyah [in one volume],
2. Yaʻqūb ʻAlī and Ashraf ʻAlī Thānavī, Imdādul Fatāwá [in four volumes],
3. ʻAzīzur Raḥmān, ʻAzīzul Fatāwá [in eight volumes],
4. Muḥammad Shafīʻ, 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 sunnah.[28] He also concluded that Shāfi'ī [d. 820] was the first jurist to formulate a definition and distinction between good and bad bid'ah.[29] B. Lewis viewed the concept of bid'ah as related to the terms used for "heresy" in Islam.[30] Robson concluded that the bid'ah is to be distinguished from "heresy".[31] Muḥammad Ṭalbī[32] and Ṣubḥī Labīb[33] edited two important manuscripts on bid'ah belonging to the twelfth and fourteenth centuries respectively.

We are not in a position to give a complete account of the concept of bid'ah in historical perspective.[34] Ṭalbī's account of the concept of bid'ah on this point is in more detail and is more substantive. He has made some significant conclusions. He observes that the doctrine of bid'ah 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 bid'ah is not always an "innovation". Sometimes an ancient practice reappears and is called bid'ah. According to him, therefore, "La bid'a , en somme, est un constat de déviation de la Voie (Sunna), 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-Haṣkafī (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 questionswe 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 innovation.[62]

Shāh Walīullāh also considered taqlīd a bidʿah and taḥrīf fi'l-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 muftī 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 muftī 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 technically 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 historical 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 theoretically 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 ʿAlī 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 sharīʿah...; secondly, 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 accidentals -- 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 obligatory to refrain from learning English... It is mentioned in the ṣiḥāḥ [six reliable collections of ḥadīth]. The Prophet forbade 'Umar to read the Torah, because it embodied the potentiality 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. Inventions[14]

This section deals with the fatāwá 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 fuqahā'. 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 muftīs 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 aḥādīth.[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 reflection 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 reflection. 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 strategic 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 'Alī Thānavī and Muḥammad Shafī' 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 Shafī' 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" (qawā'id-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-jamā'at), 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 Ḥakīmul-Ummat Ḥaẓrat Mawlānā Ashraf 'Alī ṣāḥib, may his greatness endure, has diligently verified, 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 instrument, 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 exaggeration 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 handwriting 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 (zann).[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 (½ Rupee) and the Chavannī (¼ Rupee) were silver coins in those days. The Duvannī (⅛ Rupee), the Annā (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 Ropeyah is exchanged for small change inequality is not allowed, but if it is exchanged for Paysahs, then inequality is lawful; i.e., fourteen Annās for a Rupee is as lawful as seventeen Annās for it.[51]

b) Banking

Interest on a bank deposit was generally considered ribā 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 ribā transactions lawful if they were performed in dārul ḥarb (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 disregarded this standpoint and did not allow any such ribā transaction. This formula was applied to banking as well. The muftīs 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 shar', the so-called profit as a yearly fixed amount received by a person on depositing his assets in a bank, is sūd [ribā, usury]. [54]

Muḥammad Shafī' examined the problem of banking in great detail.[55] His argument is revealed by these extracts from his fatwá:

> Having known the frightening warnings pronounced against sūd in the Qur'ān and Ḥadīth, which are qaṭ'ī (definite) in every respect, no Muslim can ever dare to enter into a transaction which entails the slightest risk of sūd...
>
> As a precaution, therefore, the 'ulamā' 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 intending 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 muftīs 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 deposited 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 ẓamān (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 disturbing problem. Naẓīr Aḥmad's (1836-1912) novel Ibnul Waqt (The Opportunist), written in 1888, accurately 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 (Brahmanical 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 kufr 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 kufr. It is the habit of those people. To wear this dress in India is a resemblance 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 fatwá is based on the same arguments:

> Resemblance with the kuffār in dress or other things is prohibited on the basis of the traditions 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 ṣalāḥ al-ʿibād (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 <u>laʰw-o-laʿb</u> (amusement). But if the purpose is relaxation and the gaining of energy, it is permissible provided that it does not entail a <u>shar'ī</u> 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 (<u>satr</u>) 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 contrary to actual happenings...
11) the portrayal of characters who are ridiculed or deformed; this is ghībat [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.

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 mubāḥ (permissible act), which leads to a ḥarām (forbidden act), becomes ḥarām".[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 aḥādīth.

2. The reason advanced by 'Azīzur Raḥmān 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, Shafī' refutes the possibility of regarding a photograph as a "reflection".

4. In case of necessity, as for a passport, however, Shafī' 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 'ulamā' [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, Shafī' 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 Shafī' remarks that

a) The Qur'ān and Ḥadīth contain all the injunctions relevant to ongoing changes and new inventions.

b) Islamic principle is the i'tidāl (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 sharī'ah.

2. In the second section he explains the difference between two kinds of religious actions: those which are 'ibādāt 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 ('ilm).

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 Ḥanafī 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 ribā.

j) Dress

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

2. Gangōhī distinguishes between religious symbols, shi'ār (like the Cross and the zunnār), 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 makrūhāt [reprehensible things] like uncovering the satr. 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 pig-hair is used	reprehensible
6. The phonograph	It contains music which is forbidden	forbidden
7. The banknote	It is analogous to the wathīqah or the ḥawālah	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) The Logistics of the Fatāwá

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

1. To the first category belong those fatāwá in which analogy was made to certain precepts of sharī'ah. 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 sharī'ah. 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 muftīs conceived analogies for almost all of them in order to determine their legal value (ḥukm). 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 sharī'ah was forbidden. These include the photograph (taṣwīr), the phonograph (ghinā), banking (ribā), the cinema (taṣwīr and lahw) and the money order (hundī).

Secondly, those in which the analogy was made to a fiqhī institution in order to determine the stipulation. The loudspeaker was made analogous to the mukabbir in prayer and the telegraph to the shāhid (witness). Since, according to the muftīs, the qualifications of a mukabbir and shāhid 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 fatwá:

> These injunctions as well as all other Islamic principles are based on the principle of the i'tidāl (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 ibādāt is not harmful. Whoever considers them bid'at 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 Radd al-Muḥtār 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 Aḥkām al-Qur'ān,[17] Rūḥ al-Ma‘ānī[18] and Tafsīr Aḥmadī.[19]

2. In the second section references are given to Al-I‘tiṣām.[20]

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

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

5. In the fourth section he refers to Radd al-Muḥtār.

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. 'Azīzur Raḥmān quotes Al-Durr al-Mukhtār on the non-salability of a wathīqah.

h) Banking

1. Gangōhī does not quote any authority.

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

3. 'Azīzur Raḥmān refers to the Qur'ān, Ḥadīth, and the jurists without giving any specific reference.

4. Shafī' refers to Mushkil al-Āthār.[29] Durr al-Mukhtār, Mishkāt al-Maṣābīḥ and Kanz al-'Ummāl[30] on the impermissibility of transactions involving interest.

i) The Money Order

1. Gangōhī does not quote any authority.

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

j) Dress

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

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

3. Shafī' refers to Radd al-Muḥtār on this point.

k) Sports

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

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

l) The Cinema

1. Shafī' 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) The Pattern of References

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[1]

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

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

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) The Sources Mentioned in the Fatāwá[1]

	Number of *fatāwá* using the source
1. Basic sources:	
a) The Qur'ān	5
b) Aḥādīth	
six main collections [Ṣiḥāḥ]	5
other than Ṣiḥāḥ	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

[1] The details of the Ḥanafī *fiqh* 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 Kanz al-Daqā'iq, which was written by Abu'l Barakāt al-Nasafī (d. 1310) in the manner of al-Hidāyah.

5. Fatḥ al-Qadīr, cited twice, is a commentary on al-Hidāyah 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, Nūr al-Īḍāḥ and Marāqī al-Falāḥ, he wrote forty eight treatises.

D) Observations on the Pattern of the References

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

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

2. The muftīs 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 'ulamā' 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 inventions 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 fatāwá belong mainly to later centuries and the later sources are more frequently cited than the earlier ones.

The concept of bid'ah, 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 fiqh. These groups (usually called the fundamentalists, like the Ahl al-Ḥadīth and the Wahhābīs) relied on the concept of bid'ah 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 bid'ah as such a legal value applicable to all areas of Islamic law.

We may conclude, therefore, that in Deoband the idea of innovation (bid'ah) 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 taqlīd and ijtihād, 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 significant 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 'ulamā' 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.

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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 Farūqī, 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 Shafī‘ in "Fatāwá Dārul ‘ulūm Deoband kī Mukhtaṣar Tārīkh" in Fatāwá Dārul ‘Ulūm Deoband, op. cit., p. 6. The proposal aimed at a compilation of fatāwá like the Fatāwá ‘Ālamgīrīyah.

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 bid‘ah 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 ["Bid‘ā" 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 Bid‘a" 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 Bid'ah", op. cit.

30. B. Lewis, op. cit.

31. Robson, op. cit.

32. Al-Ṭurṭūšī, k. al-ḥawadith wa al-bida', ed. M. Talbī, as referred to in "Les Bida'", op. cit., p. 45.

33. Ṣubḥī Labīb, "The Problem of Bid'a 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 Ṭalbī's account (op.cit.) presents a detailed study.

35. Ṭalbī, 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-Bida' wa al-Nahy 'Anhā, Damascus, Maṭba' al-I'tidāl, 1349 A.H.
Al-Shāṭibī, Al-I'tiṣām, Cairo, Maṭba' Muṣṭafá, n.d.

38. Ṣaḥīḥ Muslim, vol. 3, (Maṭba' M. 'Alī, 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-Bid'at, Imām Rabbānī Ḥazrat Mujaddid Alf Sānī kī Ta'līmāt kī Rawshanī mēn, (Deoband, Tajallī, 1963), p. 80f.

41. As quoted by Ashraf ʻAlī 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 Miʻrāj Muḥammad, Shāh Walī Allāh's Attempt to Reconcile the Schools of Fiqh, M.A. thesis, McGill, 1968.

47. Muḥammad Uvays Nadvī, "Shāh Ṣāḥib kā ēk ʻilmī ma'khadh" [An Academic Source for Shah Waliullah], 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-Shāfīʻī, 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, (Maṭbaʻ Muṣṭafā, Cairo, 1937), p. 265.

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

54. Ibid., p. 16.

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

56. As quoted in Irshād al-Fuḥūl, op. cit., p. 265.

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

58. Ibid., p. 123.

59. Ibid., p. 122.

60. Ibid.

61. Al-Qawl al-Mufīd, op. cit., p. 3.

62. Ibid., p. 14.

63. Shāh Waliullāh, Hujjat Allāh al-Bālighah, Urdu trans, 'Abdur Rahīm, (Qawmī Kutub Khāna, Lahore, 1953), vol.,I, p. 580.

64. Ibid., p. 685.

65. Fārūqī, op. cit., p. 26.

66. Al-Qur'ān, 16:43.

67. Fatāwá Rashīdiyah, op. cit., p. 180.

68. Al-Qur'ān, 4:83.

69. Imdādul Fatāwá, op. cit., vol. 3, p. 146.

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

71. Shacht, op. cit., p. 212.

72. Karakhī (d. 950) Al-Uṣūl in Ta'sīs al-Nazar, (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 controversy 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 instruction 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 indegenous 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, (Raḥīmīyah, 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 Maḥal, Karachi, n.d.) p. 466.

8. Ashraf 'Alī Thānavī wrote a separate treatise on the issue entitled Risālah Taḥqīq-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 Muḥammad Shafī', Imdādul Muftīn (Raḥīmīyah, Deoband, n.d.) vol. 3, p. 189.

14. Technical changes and innovations are as old as civilization. The response to a technical innovation 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 sanction 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 Encyclopaedia of Social Sciences, vol. 3, (MacMillan, New York, 1930), pp. 330-334.

15. ʿAzīzul Fatāwá, (Raḥīmīyah, Deoband n.d.) vols. 1-2, p. 190.

16. Ibid. and Imdādul Muftīn, op. cit., vol.I, p. 47.

17. ʿAzīzul Fatāwá, op. cit., vols. 1-2, p. 190.

18. Imdādul Muftīn, op. cit., vol. I, pp. 47-48.

19. Ibid.

20. ʿAzīzul Fatāwá, op. cit., vol. 4, p. 112.

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

[Ibn ʿĀbidīn, commenting on al-Durr al-Mukhtār'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 Ḥaṣkafī] particularizes the sense to the picture of an animate. In the sequel we will see that the picture of an inanimate is impermissible. Quhistānī said that this statement indicates that the picture of a head will not be impermissible. There exists, however, a difference of opinion..."

Ibn ʿAbidīn, Radd al-Muḥtār, vol. I, (Amīriyah, Cairo, 1323 A.H.), p. 454.

21. Imdādul Muftīn, op. cit., vol. 5, pp. 175-200. The introductory remarks to this fatwá 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 principles 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. Ibid., vol. 2, p. 170.

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

36. Imdādul Muftīn, op. cit., vol. 3, p. 109.

37. The period from 1858 on is called the "opening up period of the Indian Economy". (T. Walter Wallbank, A Short History of India and Pakistan, 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, The Making of India, (Black, London, 1925), p. 286 and Romesh Dutt, The Economic History of India in the Victorian Age, vol. II, (Routledge, London, 1956), p. 578f.

38. Fatāwá Rashīdiyah, op. cit., p. 356, Imdādul Fatāwá, op. cit., vol. I, p. 151 and ʻAzīzul Fatāwá, vols, I-2, p. 72.

39. Fatāwá Rashīdiyah, p. 418, Imdādul Fatāwá, vol. 3, pp. 33 and 36, and ʻAzīzul Fatāwá, vols. 1-2, pp. 148 and 152, vol. 5, p. 48.

40. As mentioned by Gangōhī, Fatāwá Rashīdiyah, op. cit., p. 357.

41. Ibid. ,p. 356.

42. Imdādul Fatāwá, 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 Fātāwá, vol.3, pp. 33,34, 'Azīzul 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 [Shāfi'ī], who conceive an analogy 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. Fatāwá Rashīdiyah, pp. 431, 432; Imdādul Fatāwá, vol.3, p. 38; ʻAzīzul Fatāwá, vols.I-2, p. 151; Imdādūl Muftīn, vol.I, pp. 163-165 and vol. 3, p. 113.

54. ʻAzīzūl Fatāwá, vols. 1-2, p. 151.

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

1) Taḥdhīr al-Akhwān ʻan al-Ribā fī Hindustān (A warning to brothers against the Ribā in India)

2) Rafʻ al-Ḍank ʻan Manāfiʻ al-Bank (Removal of hardship (or weakness of argument) from the profits (interests of Bank).

56. Imdādul Muftīn, vol. I, pp. 164-165.

It would be interesting, however, to note the escape (ḥilah) 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 sharʻ... They must be reimbursed. Hence this person argues that the amount taken by the government as tax contrary to sharʻ is being reimbursed by the government [in the form of bank interest]. Such money, retrieved from the government would be spent on the persons from whom the government had taken it against sharʻ. Fatāwá Rashīdiyah, p. 432.

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

58. Fatāwá Rashīdiyah, p. 431.

59. Imdādul Fatāwá, vol. 3, p. 30.

60. Nazīr Aḥmad, Ibnul Waqt,(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. Fatāwá Rashīdiyah, p. 61.

62. Imdādul Muftīn, vol. I, p. 44.

63. Fatāwá Rashīdiyah, p. 61.

64. Imdādūl Fatāwá, vol. 4, p. 182.

65. Imdādul Muftīn, vol. I, p. 44.

66. Ibid., p. 45.

67. Ibid.

68. Ibid., p. 49.

69. Ibid.

70. ʿAzīzul 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, ʿAzīzur 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 advertisement not help and encourage adultery and, therefore, 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 considering only one of the sides.

   ʿAzīzul Fatāwá, vol. 7, p. 73.

2. Imdādul Fatāwá, vol. 4, p. 152.

3. If it is not sunnah, is it then bidʿah? But there is no mention of bidʿah 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 political 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 regulations 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 underlined are mine]

"To wear wooden sandals is not bid'at. 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 mushābihat to the footwear of [Hindu] yogis. But now they are common among Muslims and unbelievers and so the resemblance is no longer prohibited."

Fatāwá Rashīdiyah, p. 472.

10. See p. 73.

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

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

13. The muftī does not mention the name of the author of this commentary.

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

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

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

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

18. Rūḥ al-Ma'ānī fī Tafsīr al-Qur'ān al-'Azīm wa'l Sab' al-Mathānī, an exegesis of the Qur'ān written by Shihāb al-Dīn Maḥmūd b. Abdullah al-Alūsī (d. 1854).

19. Al-Tafsīrāt al-Aḥmadīyah fī Bayān al-Ayāt al-Shar'īyah, an exegesis of selected legal verses of the Qur'ān by Shaykh Jīwan al-Laknawī (d. 1717), teacher of Awrang Zēb 'Ālamgīr.

20. A detailed and comprehensive account of the problem of bid'ah, written by Shāṭibī (d. 1388).

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

22. Jam' al-Fawā'id min Jamī' al-Uṣūl wa Majma' al-Zawā'id, by Ibn al-Athīr al-Jazarī (d. 1210).

23. Tanbīh al-Mughtarrīn fi'l Qarn al-'Āshir 'alā mā Khālafū fīhi Salafuhum by Abd al-Wahhāb al-Sha'rānī (d. 1565), a mystic and muḥaddith.

24. By Mālik b. Ans (d. 795).

25. See p.74.

26. By Shāh Walīullāh (d. 1762).

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

28. See p.73.

29. By Abū Ja'far al-Ṭaḥāwī (d. 933).

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

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

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

33. Al-Jāmi' al-Ṣaḥīḥ, 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. Al-Jāmi' al-Ṣaḥīḥ, by Abu'l Ḥusayn Muslim b. al-Ḥajjāj al-Nishāpūrī (d. 875).

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