

*Trends in the Justificatory Force of the Fatāwā of the
Deobandī Muftī*

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System of Transliteration

alif	ا	bā'	ب	tā'	ت
thā'	ث	jīm	ج	ḥā'	ح
khā'	خ	dāl	د	dhāl	ذ
rā'	ر	zā'	ز	sīn	س
shīn	ش	ṣād	ص	ḍād	ض
ṭā'	ط	ẓā'	ظ	'ayn	ع
ghayn	غ	fā'	ف	qāf	ق
kāf	ك	lām	ل	mīm	م
nūn	ن	hā'	ه	wāw	و
yā'	ي				

Vowels and Diphthongs

Fathah (short) a, (long) ā

Kasrah (short) i, (long) ī

Dammah (short) u, (long) ū

I have followed a standard system of non-phonetic transliteration with slight variations. Names which begin with the article "al" have been used uniformly without distinction between the so-called "*shamsī*" and "*qamarī*" categories, such as, al-Rāzī instead of ar-Rāzī. The *tā' marbūtah* is indicated by the "h", as for example, *maṣlahah* instead of *maṣlahā* or *maṣlahat*. The Arabic titles and the authors of English works are not transliterated. Needless to say, names of places that have been anglicized, such as, Damascus (for Dimashq) have not been transliterated.

Trends in the Justificatory Force of the Fatāwā of the Deobandī Muftī

Abstract

The collapse of Muslim rule in the Subcontinent of India during the nineteenth century generated a new role for the 'ulamā'. The study traces how the 'ulamā' profited from the decline in the central authority, to the extent that they emerged from a position of relative obscurity to the *de facto* leaders of a vanquished nation. They mobilized on the basis of the "Walī Allah" tradition and pursued two options. The political option was oriented towards the re-establishment of Muslim rule through *jihād*. The intellectual option was directed at the masses in an attempt to revive their religious consciousness and create a greater awareness for the *Sharī'ah*.

After the Mutiny of 1857 a group of 'ulamā' in Deoband, in pursuit of the second option, launched an Islamic seminary named, Dār al-'Ulūm which gained rapid acceptance throughout the Northern Provinces of India. The Deobandī 'ulamā' emerged as a very powerful religious force within the Subcontinent of India. How did they exert their power, authority and influence over the general masses? The basic thesis of this study is that their authority and influence over the masses was galvanized through the institution of *iftā'*.

The ultimate objective of the study is to scrutinize the development, and the contribution of the Deobandīs, through the process of *iftā'*. Through the scrutiny of a number of *fatāwā* dealing with modern exigency, I identify certain definite justificatory trends within the *fatāwā*. By focusing on the dual role of the Deobandī as *muftī* and *ṣūfī shaykh* I develop the concept of a "vision of law" and believe that the justification of most of the *fatāwā* dealing with modern social exigency is rooted more in the *muftī's* vision of law than in strictly legal arguments. I believe that the dual role of the *muftī* generates a *Sharī' / Tariqī* mentality (vision) which is characterized by formalism, generated by the doctrine of *taqlīd*.

Amongst the most important findings of this study is that it contradicts the general perception that the strength of the *fatāwā* lies in its legal justificatory force, and proves that the strength of the Deobandī *fatāwā* is located elsewhere, *inter alia*, in the charisma of the deciding *muftī* and in the authority of the institution of *iftā' per se*.

Table of Contents

Introduction	1
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Chapter One

'Ulamā' in Transition

1.1 The Role of the 'Ulamā' during Stable Muslim Rule	10
1.2 The Role of the 'Ulamā' during Non-Muslim Rule	23
1.3 Continuation of the Walī Allah Tradition	26
1.4 The <i>Jihād</i> Legacy of Shāh Walī Allah	33
1.5 Sayyid Aḥmad Shahīd the <i>Mujāhid</i>	33
1.6 The Indian Mutiny	38
1.7 The 'Ulamā' and the Mutiny	43
1.8 Conclusion	45

Chapter Two

The Rise of Deobandism

2.1 Muslim Reaction to British Education	47
2.2 Sayyid Aḥmad Khān	49
2.3 The <i>Madrasah</i> as the Locus of Muslim Communal and Religious Life .	54
2.4 The Rise of Deoband	64
2.5 Conclusion	75

Chapter Three

The 'Ulamā' of Deoband

3.1 The Deobandī <i>Maslak</i>	78
3.1.1 The <i>Ṭarīqah</i> of the Pioneers of Deoband	82
3.1.2 The <i>Sharī'ah</i> of the Pioneers of Deoband	87
3.2 The Institution of <i>Iftā</i>	91
3.5 Conclusion	105

Chapter Four

The Deobandī *Fatāwā* Literature

4.1 Deobandī <i>Fatāwā</i> Literature	111
4.2 Conclusion	121

Chapter Five

Deobandī Legal Epistemology

5.1 The Barelwī and the Ahl al-Ḥadīth	124
5.2 Major Differences between Ahl al-Ḥadīth and the Deobandīs	124
5.3 Deobandīs and Barelwīs	133
5.4 The Deobandī <i>Fatwā</i> on <i>Taqlīd</i>	134
5.4.1 Analysis	148
5.4.2 <i>Taqlīd Shakhsī</i> and <i>Talfiq</i>	155
5.5 Deobandī Departure from the <i>Madhhab</i>	158
5.6 Conclusion	164

Chapter Six

The Deobandī Fatāwā

6.1 The Money-Order	166
6.2 Sport	170
6.3 The Game of Chess	173
6.4 Studying English	174
6.5 Educating Females	175
6.6 Performing <i>Ṣalāh</i> on a Plane	176
6.7 The Status of Gold Teeth	178
6.8 The Use of the Toothbrush	179
6.9 Listening to the Radio	180
6.10 Responses to Scientific Questions	181
6.11 Dress	182
6.12 Cinema	185
6.13 Injections while Fasting	187

Chapter Seven

Juristic Trends in Deobandī Fatāwā

7.1 The Dilemma of <i>Ijtihād</i>	191
7.2 <i>Sharī'ah</i> and <i>Ṭarīqah</i>	193
7.3 <i>Taqīd Shakhṣī</i> and <i>Fanā fī Shaykh</i>	195
7.4 The Inherent Evil Nature of Man	197
7.5 The <i>Sharī'ah</i> Dimension of the Deobandī Vision of Law	202

7.5.1 Textual Arguments	203
7.5.2 Systemic Arguments	204
7.5.2.1 Precedents	205
7.5.2.2 <i>Qiyās</i> and Syllogism	207
7.5.3 Evaluative - Teleological Arguments	208
7.6 Modes of Argument Deployment	210
7.7 Critique of the Deobandī Legal Approach	216
7.8 Conclusion	217
Conclusion	219
Bibliography of English Works	225
Bibliography of Arabic and Urdu Works	247

Appendices

Appendix A: Muslim Population in Government Institutions	260
Appendix B: Chronological Table of Dār al-‘Ulūm’s Muftis	261
Appendix C: Full Translation of the <i>Fatwā</i> on Voting	262
Appendix D: Full Text of the <i>Fatwā</i> on Voting	270
Appendix E: Full Translation of the <i>Fatwā</i> on Copy Rights	274
Appendix F: Full Text of the <i>Fatwā</i> on Copy and Patent Rights	280
Appendix G: Full Text of the <i>Fatwā</i> on the Doctrine of <i>Taqlīd</i>	282
Appendix H: List of Endorsements for Thānwī’s Project	289

INTRODUCTION

Throughout the course of Islamic history it has been common to find the presentation to the *qāḍī* of scholarly opinions [*fatwas*] on particular points of law. . . . There have also been some wonderfully humorous inquiries, as, for example, the time the great medieval jurisconsult Ibn Taimiyya was approached by an illiterate Bedouin who inquired: ‘ Is it permissible (O great and learned sir!) to ride upon a camel - that has drunk wine?’

Lawrence Rosen, *Anthropology of Justice*

The rise of modern technology gave birth to a number of challenging legal problems which could not be addressed except through the process of juristic decree (*iftā'*). The role of *fatāwā* (juristic opinions) has throughout history enjoyed the privilege of being regarded as the single most accepted legal means through which Islamic law was mediated. As a scholar of Islamic law, I am often called upon to interpret and apply the law to novel situations. In fulfilling this task, I am continuously perplexed when confronted with the prospect of having to give precise meaning to indeterminate and ambiguous legal standards and to choose from among a wide array of competing juristic opinions. Most often, perplexities arise from the burden of choice among alternative propositions available as potential bases for rulings. I soon realised that the justification for my choice of opinion was as much influenced by extra-legal considerations as it was guided by legal factors. When confronted with a choice between precepts that are equally legally tenable, I am often swayed by extra-legal value-commitments to decide in one way rather than another. Although I tended to

justify my rulings in terms of obedience to legal logic or precedent, rather than in terms choice-making based on value-commitment, I was nevertheless painfully aware of the realities of value-choices. Thus, this study initially grew out of a personal need to examine the legitimacy of extra-legal factors in the decision-making process and a need to develop a balanced strategy towards facilitating the choice-making and interpretive elements germane to the decision-making process.

I turned to works on Islamic jurisprudence in an attempt to seek guidance for choice-making. Since *tarjih bayn al-adillah* or "juristic preference" is recognized as an intrinsic part of the decision-making exercise, elaborate legal guidelines have been formulated to instruct and direct the Muslim jurist in his task of choice-making. In terms of Islamic jurisprudence, the central role of choice-making (*tarjih*) in the decision-making process has always been conceived in purely legal terms. Therefore any *tarjih* that is not clearly rule-governed, tends to be disregarded and placed outside the purview of law and legal analysis. This study challenges the assumption that justification for juristic preference is rooted exclusively in legal arguments and posits the thesis that justification for *tarjih* is also derived from extra-legal factors.

Being a Deobandī graduate, I decided to closely scrutinize the juristic opinions (*fatāwā*) of the Deobandī *muftīs* (jurists) in an attempt to see how they dealt with the problems of decision-making. I was anxious to know by what factors, or combination of factors was the Deobandī *muftī* ultimately swayed to decide as he did? What factors did he give preference to, and why? Why did he fail to take into serious account other factors? What was the relationship between the socio-cultural environment of the Deobandī *muftī* and the justificatory force

of his rulings? I sought answers to these questions in the *fatāwā* literature of the Deobandī *muftīs*. This readily available form of written legal judgments (*fatāwā*) present a particularly rich field for investigation into trends of juristic activity. For this study, I decided to scrutinize the legal reasoning and the justificatory force behind certain Deobandī *fatāwā* dealing with modern problems and social exigency.

The basic thesis of this study is that some features of the legal justification appropriated by the Deobandī *muftī* may be accounted for in terms of a mosaic of interlocking and reinforcing factors. Below the surface of what may appear to have been a straight-forward and clear-cut verdict, there remained many unarticulated considerations. For example, the way the *muftī* determined what constituted social exigency and what he considered to be in the interest of public welfare, were assessments suffused with characteristic assumptions prevalent in the wider community. It is therefore necessary but not sufficient for the analyst to understand the tensions and the interactions of the various forces operative in the *muftī's* environment. It is also necessary for the analyst to recognize the factors which generate the terms through which issues are discussed, shaped, disputed over, and fought for. The subtleness in which these factors constitute the terms through which legal propositions are interpreted and applied, very often eludes the analyst. Hence, it is imperative to examine the *fatāwā* within a context of interacting forces, and to evaluate the coercive power of the social and political forces, its terms, its tensions, its dependence, its struggles, and its values interwoven into the decision-making (*iftā'*) process. So, even though the *muftī* may ostensible have exercised his judgment, the real mystery lay in the particular

way in which his judgment was influenced and shaped by the network of forces operative in his milieu.

By focusing on the dual role of the Deobandī as *muftī* and *ṣūfī shaykh* I develop the concept of a "vision of law". In terms of this study the justification of most of the *fatāwā* dealing with modern social exigency was rooted more in the Deobandī *muftī's* vision of law than in strictly legal arguments. By "vision of law" I mean the inarticulate and perhaps unconscious prejudices held by the *muftīs*. Since the primary focus of this study lies in the evaluation of the justificatory force behind specific rulings, an intriguing array of questions about both *Sharī'ah* and *ṣūfī* phenomena could be formulated and used to shed light upon Deobandī *iftā'*. Instead of simply directing questions at legal phenomena in search of explanations, I examined some of the key concepts that are fundamental to both *Sharī'ah* and *Tarīqah* and how they interacted to produce a *fatwā*. Through the scrutiny of a number of *fatāwā* dealing with modern exigency, I identify certain definite justificatory trends within the *fatāwā*, and relate them to the *muftī's* vision.

The study commences with the rise of the 'ulamā' in the subcontinent of India. The general activities of the early Deobandī 'ulamā' have been studied in depth by Barbara Metcalf, to whom I am greatly indebted.¹ Accepting her insight on the institution I focus on a specific dimension of the Deobandī reform programme, namely, their *iftā'*. Islamic legal institutions have recently been receiving increasing attention. In a brilliant study on the judicial system of a small Moroccan town, Professor Rosen examined the relationship between aspects of

¹ Barbara Metcalf, *Islamic Revival in British India: Deoband, 160-1900* (Princeton, 1982)

Moroccan society and culture and the *qāḍī* courts. In his study he developed an approach that integrated the disciplines of law and anthropology.² This study is in some measure an endorsement of Rosen thesis that there are distinct cultural reasons for certain legal rulings. He explains:

For it is by moving back and forth across the analytic line that separates law and culture that we can perhaps best see how problems raised in each domain find their responses not within their own confines alone but within the ambit of both.

Although there is an overlap between Rosen's study and the current one, the focus of this study is on the juristic activity of the *muftī*. This study investigates how the *muftī* attempts to legally justify his ruling within the restricted ambit of the Ḥanafī *madhhab* without ostensibly resorting to cultural influences. In his study on the changing relationship between writing and authority in Muslim society, Brinkley Messick also analyses the activities of the Muftī of Ibb in Yemen and other areas of the Yemenite judicial system.³ Messick's study also confirms the impact of extra-legal phenomena on the judicial activity of Yemen. In all these studies the impact of extra-legal phenomena on the judicial or juristic activity of the *qāḍī* or *muftī* is highlighted. This study further expands the basic concept of extra-legal phenomena to include what I believe to have been overlooked in the other studies, namely, the role of the *muftī* as representative of both *Sharīah* and *Ṭarīqah*.

Professor Khalid Masud conducted a study into the attitudes of the

² Lawrence Rosen, *The Anthropology of Justice Law as culture in Islamic Society* (Cambridge, 1989).

³ Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley, 1993).

Deobandī *muftī* towards social problems.⁴ Although his study is closely akin to mine, I have focused on the justificatory force of the *fatāwā* with the aim of determining the strength of its legal arguments as well as finding explanations for them.⁵

In Chapter One I discuss the various stages of the 'ulamā' in transition. This chapter is primarily oriented to establishing the changing role of the 'ulamā' after the decline of the Mughal Empire in the nineteenth century, from one in which they were relatively obscure, to one in which they were to act as a group in pursuit of defined ideals. I proceed by positing the notion that the 'ulamā' were mobilized on the strength of the Walī Allah tradition which postulated two distinct methods. One method was political mobilisation and *jihād*. This method reached its climax during the 1857 Mutiny, which became the turning point for the Muslims of U.P. The harsh reprisals against the Muslims in the aftermath of the Mutiny alienated the northern Muslims from their colonial rulers.

This study suggests that the 'ulamā' profited from these developments. After the dissipation of Muslim rule, the 'ulamā' felt especially responsible for the protection of the intellectual heritage of Islam. After suffering political and military defeat, the 'ulamā' turned their efforts towards the masses in an attempt

⁴ Khalid Masud, "Trends in the Interpretation of Islamic Law as Reflected in the *Fatāwā* Literature of the Deoband School: A study of the Attitudes of the 'Ulamā' of Deoband to Certain Social Problems." M. A. thesis, Institute of Islamic Studies, McGill University, 1969.

⁵ Other studies into the institution of *iftā'* are currently under way. John Willis, a professor of Near Eastern Studies at Princeton is conducting research into the "institution of *fatwā*." Willis's research attempts to "bring to the fore issues that arose on the local levels as well as those that modern historians have neglected in their concentration on urban areas." Florence Eid, "Studies of Islam, Economics, and Governance: A Survey of Some New Development" in *The American Journal of Islamic Social Sciences*, Vol. 11, 1994, p. 63. Another study that is forthcoming is *Islamic Legal Interpretation: Muftīs and their Fatwās*, ed Khalid Masud, Brinkley Messick and David Powers.

to revive their religious consciousness and create a greater awareness for the *Sharī'ah*. In Chapter Two I deal with the role of the 'ulamā' in this new era and focus on their efforts at reorganization. I show how the *madrasah* became the locus of Muslim community and religious life. The founders and foundation of Deoband forms the central focus of this chapter. The Deobandī program of reformation was constructed upon a double theme of protest; against internal deterioration and external encroachment.

Chapter Three moves the study into the institution of *iftā'* as the primary instrument of Deobandī reform. In particular, it deals with the qualifications and characteristics of the Deobandī *muftī*. In Chapter Four I identify the Deobandī *fatāwā* compilations and include a brief biographical sketch of the early Deobandī *muftīs*.

In Chapter Five I identify the two trends prevalent in the *fatāwā*, one which was orientated towards the education of the general masses in their daily activities, and the second directed towards the defense of what was perceived to be Islamic values. The second trend which I refer to as the "defensive strategy", was directed at two perceived threats, one internal and the other external. For the Deobandīs, there were two groups of Muslims which they considered to be especially detrimental to the Muslim's cause; the Barelwīs and the Ahl al-Ḥadīth. In Islamic legal terms, the Deobandī opposition to the latter forced them to develop a unique approach to *taqlīd* and *ijtihād*.

Chapter Six examines a number of *fatāwā* dealing with modern issues, and Chapter Seven analyses the justificatory trends in the *fatāwā*. Here I establish the grounds for my main thesis that the Deobandī *muftī* tends to employ a fairly

predictable mode of justification when deciding modern issues - justification that is not entirely rooted in legal arguments but rather in his "vision of the law".

CHAPTER ONE

'Ulamā' in Transition

Five hundred years of Muslim rule in India drastically altered the political, economic, social, and religious landscape of that country. The administrative and social institutions of the Mughals resulted in the crystallization of two distinct attitudes among the governing and influential classes of the northern provinces.¹

A moderate group of leaders drew their inspiration from Akbar's (r. 1556-1605) conciliatory policies. They believed that Indian society, with its many cultures and religions, could not be governed by the brute force of the *mujāhids* (warriors).² The group militated for the abolition of discriminatory laws and advocated a policy of non-interference with other religious traditions and forms of worship. Understanding the complexities of Indian social structures, this group realized that force would not destroy indigenous loyalties and local power concentrations. They believed that it was necessary to provide structures and opportunities for the political participation of all religious groups and communities.³

A second group were fairly indifferent to the complexities and diversity

¹ S. A. A. Rizvi, *Shāh Walī-Allah and His Times* (Canberra, 1980), pp. 394 ff.

² Ibid.

³ Ibid.

in Indian society. They believed that military force was sufficient to crush any uprising. In religious terms, a return to the ideals of the Prophetic age and the orthodox caliphs was promoted.⁴ This group advocated strict adherence to the orthodox religious principles of Sunnism and discouraged co-operation with Shī'īs and Hindus. They disapproved of Akbar's abolition of the *jizyah*, opposed his conciliatory policies, and insisted that the Hindu remain subservient to Islam (*Hindū mutī-i Islam*).⁵

1.1 The Role of the 'Ulamā' during Stable Muslim Rule

Despite the fact that Islam does not formally recognize a tradition of priesthood; that there exists no sacrament that sets apart laity and clergy, religious leaders do nevertheless occupy a distinct position within the Muslim community. Indeed, there have been occasions in history where the 'ulamā' emerged as a distinct class. During the Saljūq period (1055-1141), for example, the ideological onslaught of the *Shī'ahs* was countered by the creation of a network of state sponsored *madrasahs*, which produced *Sunnī 'ulamā'* that ultimately constituted a distinct class.⁶ Such occasions were the result of specific developments and

⁴ Ibid.

⁵ *Jizyah* is a tax levied on all non-Muslims living under Muslim protection in an Islamic state. Rizvi, *Shāh Walī-Allah and His Times*, p. 91.

⁶ The development and financing of this class was specifically to provide an institutional basis for an ideological framework that could hold 'Abbāsi society together and counteract the wide opposition movement whose ideology was Shī'ism. William Cantwell Smith, *On Understanding Islam* (The Hague, 1981), p. 201.

peculiar circumstances. The function of the 'ulamā' as a class vis à vis the state has traditionally been characterized by ambivalence. Mostly it has served to legitimate the *status quo* and actively support the authority in power. However, there have been those occasions in history when the 'ulamā' have emerged as the custodians of the conscience of the community and its normative tradition over and against the political authority. For example, when *Shaykh* 'Abd al-Nabī, Emperor Akbar's *Ṣadr al-Ṣudūr*, refused to give a verdict in accordance with the monarch's wishes, he lost his high office and faced exile. He was ultimately imprisoned, beaten to death and his corpse thrown into the public square.⁷

The role of the 'ulamā' during times of political stability differed substantially from their role during periods of political turmoil and social upheaval. In the case of stable and powerful Muslim rule, the role of the 'ulamā' as the legitimating force was eclipsed by the state and its network of influences. The duty of the Muslim state was to provide and nurture an environment within which the Islamic system as a whole could be made functional. In situations in which there was a powerful central government with large bureaucracies, the role of the 'ulamā' was central to the smooth functioning of the system, for they tended to become members of the state bureaucracy. Moreover, they were responsible for the education of the nobility and the bureaucrats who staffed the various levels of the judiciary and who oversaw the charitable establishment

⁷ Qureshi, *Ulema in Politics* (Karachi, 1974), p. 370.

(*awqāf*) of the state.⁸ The leadership of the 'ulamā' ranged from those who led the prayers in the local mosques (*imāms*) to the most influential of courtiers. The bright and intelligent among them were sought after as "adornments" in the entourages of the nobility.⁹

During Mughal rule in particular, those 'ulamā' who completed their training were inclined to seek official positions or grants and endowments offered by the nobility. Once a student had completed his studies, he usually sought enrolment for official duties. If admitted, he moved through a graded series of teaching positions and similarly graded ranks of the religious bureaucracy comprising of mosque functions, jurisconsults and judges. Once admitted, he was exempted from taxation and received other privileges.¹⁰ In spite of these privileges, however, the Mughal 'ulamā' did not emerge as a particularly powerful group, for they merely supported and propped up the various functions of the state. Their strength and utility was developed within and under the aegis of the Muslim state. Those 'ulamā' who disagreed or opposed the policies of the political authority had little choice but to tolerate the rulers or resign from active service. In such situations they had to seek other forms of employment. There was little scope for of the 'ulamā' to operate independently and without official

⁸ Barbara Metcalf, *Islamic Revival in British India: Deoband, 1860-1900* (Princeton, 1982), p. 18.

⁹ *Ibid.*, p. 19.

¹⁰ For a discussion on the various forms of support given to the 'ulamā' see Irfan Habīb, *The Agrarian Systems of Mughal India* (London, 1963), Chapter 8. Privileges included exemption from confiscation of personal estates after death. See also Metcalf, *Islamic Revival*, p. 21.

Aurangzeb realized the complexities of the political situation and foresaw that his sons were not capable of bearing the imperial burden. Consequently, he suggested that the Empire be divided after his death. He knew that the forces of disintegration were growing stronger and could not be kept at bay for long.¹⁴ Given smaller areas and less responsibilities could perhaps be a solution to stave off the impending disaster and anarchy. He may thereby have accelerated the process of political decline, as no solution to the decline of the empire could be successfully implemented. The aftermath of Aurangzeb's rule is succinctly captured in the following passage:

No ruler of ability or possessing sufficient vigour to control the selfish and intriguing nobles followed. The lack of proper leadership left the Muslims confused and ineffective. They had no sense of purpose or direction left. Many of them did not even realize that they had some responsibility in the malaise that developed. Lack of purpose and despair regarding the possibilities of retrieval plunged the community and its leaders into a vortex of inactivity, irresponsibility, pettiness and moral decay. It was a situation in which no effort to save the common heritage or rescue even the little parts of it from total destruction seemed worthwhile and the utmost individual achievement was considered to be able to grab some portion for oneself.¹⁵

There were two scholars in particular who came to prominence during this period. The first was Mulla Nizām al-Dīn (d. 1161/1747) who in 1693, was granted a magnificent mansion which became known as the famous Farangī Maḥall.¹⁶ Farangī Maḥall operated on a personalized system of tuition. Family

¹⁴ Ibid., p. 106.

¹⁵ Ibid., p. 107.

¹⁶ This was the Madrasah Nizāmiyyah where the religious curriculum was structured and is still being taught at the various Islamic seminaries today. From Farangī Maḥall there arose many great scholars, among them, Mulla Ḥasan (d. 1199/1784), Baḥr al-'Ulūm Maulānā 'Abd 'Alī

members taught students at their homes or in some corner of a mosque. No library facilities were available, neither was the course of study fixed and consistent. Students would receive a *sanad* (certificate) listing the books they had studied under the supervision of an *ustādh* (teacher). Students could move from one teacher to another after completing the books they had set out to study. The *madrasah* was dependent for its survival upon endowments (*awqāf*) and the generosity of courtly patrons. Graduates from the Farangī Maḥall were trained to take up official positions and become government servants.¹⁷ The most significant intellectual contribution of the 'ulamā' of the Farangī Maḥall was their systemization of a new religious curriculum which, after certain modifications, became entrenched in the Indian Subcontinent. That system is operational to this very day. The Farangī Maḥallis expanded the curriculum to include a number of works on the rational sciences (*ma'qulāt*).¹⁸ Emphasis was placed upon the study of Arabic grammar, logic, philosophy, mathematics, *fiqh*, and theology (*kalām*). The Qur'ān and *ḥadīth* were also studied through certain commentaries¹⁹ Although it has undergone various changes, it is still known as the *Dars-i Nizāmī*

(d. 1225/1810), Maulānā 'Abd al-Ḥalīm (d. 1304/1868), and Maulānā 'Abd al Ḥayy (d. 1304/1886). Sayyid Maḥbūb Raḍwī, *Tarīkh Dār al-'Ulūm Deoband* (Deoband, 1977), p. 78.

¹⁷ Ibid., p. 94.

¹⁸ Mulla Nizām was born in 1089 A. H. at Sahāli in the district of Barabankī. He studied under Shaykh Gulām Naqshabandī. He started the famous *Madrasah* at Farangī Maḥall and taught for nearly a half a century. It is one of the oldest existing *madrasahs* in India. Sayyid Maḥbūb Raḍwī, *Tarīkh Dār al-'Ulūm Deoband*, p. 78.

¹⁹ See, Ziya-ul-Hasan Faruqi, *The Deoband School and the Demand for Pakistan*, (Lahore, 1962), p. 33-36, for a detailed description of the various classical works that constituted the Dars-Nizāmī curriculum. Also M. Mujeeb, *Indian Muslims* (London, 1967), pp. 406-8.

curriculum. The Farangī Maḥallī 'ulamā' also developed the tradition of combining scholarly learning with Sufism, thus perpetuating the *ṭarīqahs*.²⁰

The second prominent scholar during this period, Shaykh 'Abd al-Raḥīm (1644-1718), was requested during the reign of Aurangzeb to assist in the compilation of *Fatāwā-i 'Ālamgīrī*.²¹ Due to his dislike of courtly life, Shaykh 'Abd al-Raḥīm withdrew and established the Madrasah Raḥīmiyyah in Delhi.²² It was this college that provided the platform for one of the most illustrious scholars in Indian Islamic history. Shaykh 'Abd al-Raḥīm's son Qutb al-Dīn Aḥmad, known as Shāh Walī Allah, studied at this college and succeeded his father as its principal. Most of the religious movements that emerged in the region after the collapse of Muslim rule drew inspiration from Shāh Walī Allah's teachings.

Shāh Walī Allah was born on Wednesday the 4th Shawwāl 1114 (21 February 1703), in Phalit.²³ Walī Allah (God's protégé) was the sobriquet by which he has become well-known. The name Qutb al-Dīn was given to him by his father who dreamt of a son when visiting the shrine of a famous Chistī *ṣūfī* of

²⁰ For a detailed description of the Farangī Maḥallīs and their spiritual and intellectual contribution in the subcontinent see, Muḥammad 'Ināyatullah Farangī Maḥallī, *Tadhkirah-i 'Ulamā'-i Farangī Maḥall* (Lucknow, n.d.). Also, Metcalf, *Islamic Revival*, pp. 29-34.

²¹ *Fatāwā-i 'Ālamgīrī* is the name of a compilation of the authentic rulings of the Ḥanafī *madhhab*. Emperor Aurangzeb commissioned this compilation during his rule, hence its name was derived from its sponsorer, Aurangzeb 'Ālamgīr.

²² Azīz Ahmad, *Islamic Modernism in India and Pakistan 1857-1964* (London, 1967), p. 19, also Metcalf, *Islamic Revival*, p. 36.

²³ Phalit is situated in the district of Muzaffar Nagar in Uttar Pradesh, which is not very far from Delhi. Shāh Walī Allah's mother came from Phalit. Qureshi, *Ulema in Politics*, p. 107. Also Rizvi, *Shāh Walī-Allah and His Times*, p. 213.

Delhi, Qutb al-Dīn Bakhtiyār Kākī (d. 633/1235).²⁴

Shāh Walī Allah's education started in earnest at the age of five. By the age of eight he had read the whole Qur'ān, and at ten was conversant with Persian and was studying the famous Sharḥ Mullah.²⁵ He had also studied *ḥadīth* with his father. At the age of fifteen he was initiated by his father into the Naqshbandiyyah *ṣūfī* order.²⁶ Later, his father also initiated him into the Qadiriyyah and Chistiyyah orders.²⁷ Shāh Walī-Allah mentions in his *Al-Juz' al-Laṭīf* that by the age of fifteen he had studied many important works on *tafsīr*, *ḥadīth*, *kalām*, and *fiqh*.²⁸ Apart from his father, Shāh Walī Allah had two particularly prominent teachers. These were Shaykh Abū Ṭāhir Muḥammad bin Ibrāhīm al-Kurdī al-Madanī (d. 1145/1733) and Shaykh Tāj al-Dīn Ḥanafī, a *muftī* of Mecca.²⁹

On the death of his father, the responsibilities of his father's seminary, Madrasah

²⁴ Rizvi, *Shāh Walī-Allah and His Times*, p. 213.

²⁵ *Al-Kāfiyah* is a famous work written by a renowned grammarian and jurist of Egypt Jamāl al-Dīn 'Amr 'Uthmān bin 'Umar (d. 646/1249), which deals with Arabic syntax. A large number of scholars wrote commentaries on this work. The most popular one used in Muslim seminaries in India is *Al-Fawā'id al-Dīy'iyah* by Mullah Nūr al-Dīn 'Abd al-Raḥmān Jāmī, nicknamed *Sharḥ Mullah Jāmī*.

²⁶ His father married him at the age of fourteen.

²⁷ Shāh Walī Allah, *Al-Qawl al-jamīl fī bayān sawā' al-sabīl* (Lahore, 1950), pp. 111-20 gives a full description of the *sūsalahs* into which Shāh Walī Allah was initiated by his father.

²⁸ *Al-Juz' al-Laṭīf* on the margins of *Anfās al-'Arifīn* (Delhi, 1897) p. 193-96.

²⁹ *Shāh Walī-Allah and His Times*, p. 215.

Raḥīmiyyah, fell on him.³⁰ For the next twelve years he was engaged in teaching. Thereafter, he travelled to Arabia on pilgrimage and to further his studies.³¹ Shāh Walī Allah wrote extensively and covered virtually all branches of traditional Islamic learning. Some authors have put his works at over two hundred.³² Abū Muḥammad Raḥīm Bakhsh, an early biographer of Shāh Walī Allah, however, puts the number at forty five.³³ His *magnum opus*, *Hujjat-Allah al-Bāligah* was written in Arabic as a result of inspiration whilst in Mecca. The work examines aspects of *ḥadīth*, *fiqh*, *kalām*, and reasons for the rules of the *Sharī'ah*.³⁴

The political conditions in the Indian subcontinent had deteriorated to the extent that Shāh Walī Allah was advised by some of his well-wishers not to return to Delhi. However, upon arriving in the city in 1732,³⁵ he turned his attention to research and writing.³⁶ Meanwhile, events on the political front were degenerating at a very rapid pace and Shāh Walī Allah felt obliged to enter the political arena.

³⁰ Rizvi, *Shāh Walī-Allah and His Times* p. 215. Also Qureshi, *Ulema in Politics*, p. 109.

³¹ Shāh Walī Allah, *Al-Juz' al-laṭīf fī tarjuma 'abd al-da'īf*, printed with his *Anfās al-'ārifīn* (Delhi, 1897) sketches the main events of his early life and education. Also Shāh Walī Allah, *Hujjat-Allah al-Bāligah* (Deoband, n. d.), vol 1.

³² Rizvi, *Shāh Walī-Allah and His Times*, p. 221.

³³ For a comprehensive bibliography of Shāh Walī Allah's works see; Maulānā Raḥīm Bakhsh, *Ḥayāt-i Walī* (Delhi, n.d.), pp. 296-331. Also Rizvi, *Shāh Walī-Allah and His Times*, pp. 221-27.

³⁴ Rizvi, *Shāh Walī-Allah and His Times*, p. 221.

³⁵ According to Qureshi, Shāh Walī Allah stayed for fourteen months in the Hijāz and returned to Delhi on 9 July 1732. Qureshi, *Ulema in Politics*, p. 108. According to Rizvi, the Shāh departed in April 1731 and only returned to Delhi on 31 December 1732, p. 215, 218.

³⁶ Qureshi, *Ulema in Politics*, p. 109.

In 1739, Delhi was invaded by Nādir Shāh, resulting in the massacre of its inhabitants.³⁷ The latter's forays left a trail of destruction described by Gulām Husayn Ṭabāṭabā'ī:

The capital, Delhi had been reduced to shambles and the little prestige that the central government had still managed to maintain in the popular mind was irretrievably gone, leaving only a legal myth in the place of sovereign authority. The Treasury was empty; the riches of the Imperial Household had been plundered and the Emperor was left without resources, even if he had possessed the talent and the vigour to build up an army³⁸

In an attempt to redress the decaying state of affairs, Shāh Walī Allah embarked upon a series of letter writings to those whom he felt possessed the courage and military strength to rescue Muslims rule. He wrote to Niẓām al-Mulk Āṣaf Jāh (d. 1748), the *wazīr* of Deccan, and attempted to persuade him to mount a rescue mission. Āṣaf Jāh declined, for he was convinced that the situation was beyond retrieval.³⁹ Shāh Walī Allah also wrote to the Afghan ruler, Aḥmad Shāh Abdālī Durrānī, a renowned military officer who had gained considerable experience in the art of warfare under Nādir Shāh.⁴⁰ In the letter he pleaded with Durrānī to assist the Muslims in their task of annihilating *shirk* (polytheism).

We beseech you (Durrānī) in the name of the Prophet to fight a *jihād*

³⁷ Ibid., p. 109.

³⁸ Gulām Husayn Ṭabāṭabā'ī, *Siyar al-muta'akhhirīn* (Lucknow, n.d.), vol 2, p. 485.

³⁹ Khalīq Aḥmad Niẓāmī, *Shāh Walī Allah ke Siyāsī Maktūbāt* (Delhi, 1969), pp. 68-69.

⁴⁰ Shāh Walī Allah thought that if Nādir Shāh could be persuaded to involve himself in the affairs of the Subcontinent, he could prove very useful to the Muslim's interest in northern India. Qureshi, *Ulema in Politics*, p. 111.

against the infidels of this region. This would entitle you to get rewards from God the Most High and your name would be included in the list of those who fought *jihād* for His sake. As far as worldly gains are concerned, incalculable booty would fall into the hands of the Islamic warriors, and Muslims would be liberated from their bonds. The invasion of Nādir Shāh who destroyed the Muslims left the Marāthas and Jāts secure and prosperous. This resulted in the infidels regaining their strength and in the reduction of the Muslim leaders of Delhi to mere puppets.⁴¹

Even though Shāh Walī Allāh exhorted Durrānī to invade Delhi and restore Sunnī supremacy, he was deeply concerned about Muslim safety during the attack, for experience taught him that the attacking forces tended to leave a trail of destruction in their path. He suggested the following plan for the protection of the Muslims:

When the conquering army arrives in an area with a mixed Muslim-Hindū population, the imperial guards should transfer the Muslims from their villages to the towns and at the same time care for their property. Financial assistance should be given by governments to the deprived and the poor as well as to the Sayyids and the 'ulamā'. Their generosity would then become famous with prompt prayers for their victories. Each town would eagerly await the arrival of the Islamic army ('that paragon of bounty'). Moreover, wherever there was even the slightest fear of a Muslim defeat, the Islamic army should be there to disperse infidels to all corners of the earth. *Jihād* should be their first priority, thereby ensuring the security of every Muslim.⁴²

The anticipated reestablishment of Muslim rule through the military exploits of Durrānī was indeed a vain dream, for the latter's main preoccupation was with the Sikh Marāthas, and the protection of the Punjāb provinces under his rule. Thus, the elimination of Marātha control in Delhi, and not necessarily

⁴¹ Nizāmī, *Shāh Walī Allāh ke Siyāsī Maktūbāt*, no. 2.

⁴² Ibid.

its replacement by Muslim control, was the main goal of Durrānī's Indian interests.⁴³ In 1760, Durrānī reached Lūnī, a place near Delhi, and although the invasion of Delhi was not intended, stray columns of Durrānī's army could not resist the temptation of enriching themselves, and joined Najīb al-Dawla's (d. 1184/1770) forces in attacking Delhi.⁴⁴ An eye-witness, Mīr Taqī Mīr (d. 1137/1810), wrote the following account.⁴⁵

In the evening Rāja Nāgar Mal (Mīr's patron at the time) left the city, and in due course safely reached the forts of Sūraj Mal (ruler of the Jāt Kingdom). I stayed behind to look after my family. After evening, proclamation was made that Shāh Abdālī had granted security to all, and that none of the citizens should be in any fear. But night had scarcely fallen when the outrages began. Fires were started in the city and houses were burnt down and looted. The following morning all was uproar and confusion. The Afghans and Rohillas (Najīb's soldiers) started their work of slaughter and plunder, breaking down the doors, tying up those they found inside, and in many cases burning them alive or cutting off their heads. Everywhere was bloodshed and destruction, and for three days and three nights this savagery continued. The Afghans would leave no article of food or clothing untouched, They broke down the walls and roofs of the houses, and ill-treated and tormented the inhabitants. The city was swarming with them. Men who had been pillars of the state were brought to nothing, men of noble rank left destitute, family men bereft of all their loved ones. Most of them roved the streets amid insult and humiliation. Men's wives and children were made captive, and the killing and looting went on unchecked, The Afghans humiliated and abused their victims and practised all kinds of atrocities upon them. Nothing which could be looted was spared, and some would strip their victims even of their underclothing. The new city (Shāh Jāhānābād) was ransacked.

On the third day some sort of law and order was introduced, but the officer in charge himself completed the work of despoliation; and when at last the looters were driven out of the new city; they simply turned their attention to the old, where they put countless people to the sword.

⁴³ Rizvi, *Shāh Wall-Allah and His Times*, p. 305.

⁴⁴ *Ibid.*, p. 306.

⁴⁵ Mīr Taqī Mīr was one of the great Urdu poets of the time. See Rizvi, *Shāh Wall-Allah and His Times*, p. 17.

For seven or eight days the tumult raged. Nobody was left with clothes to wear or with enough food even for a single meal. Many died of the wounds they had received, while others suffered greatly from the cold. The looters would carry off men's stores of grain and then sell it at an extortionate price to those who needed it. The cry of the oppressed rose to heaven, but the king (Abdālī), who considered himself a pillar of true religion, was quite unmoved. Large numbers of people left the city and fled into the open country, where many of them died. Others were carried off by force to the invader's camp. I who was already poor, became poorer . . . My house which stood on the main road was levelled with the ground.⁴⁶

Although Durrānī scored a resounding success against the Marāthas at Pānipat in 1761, his military exploits were viewed with misgivings.⁴⁷ Modern historians are of the view that the Durrānī invasions benefited the Sikhs more than they did the Muslims.⁴⁸ Indeed, although Shāh Walī Allah had the satisfaction of seeing Sikh Marātha power broken during his lifetime, he never saw the defeat of the Jāts at the hands of Najīb al-Dawla in 1764,⁴⁹ another military adventurer who remained in control of Delhi until 1770.⁵⁰

In the midst of the internal feuds on the Indian subcontinent, the East

⁴⁶ J. N. Sarkār, *Fall of the Mughal Empire* (Calcutta, 1934), p. 376. Also Rizvi, *Shāh Walī Allah and His Times*, p. 307.

⁴⁷ Rizvi, *Shāh Walī Allah and His Times*, p. 307.

⁴⁸ Durrānī was the bitterest antagonist of the Sikhs and paradoxically their greatest benefactor. His repeated incursions destroyed Mughal administration in the Punjāb and at Pānipat he dealt a crippling blow to Marātha pretensions in the north. Thus, he created a power vacuum in the Punjāb which was filled by the Sikhs. Durrānī failed to put down the Sikhs because they refused to meet on his terms. Khushwant Singh, *A History of the Sikhs* (Oxford, 1963), pp. 167-68. Annemari Schimmel regarded him as "a great warrior, but certainly not the liberator of north-west India". See A. Schimmel, *Pain and Grace* (Leiden, 1976), p. 12.

⁴⁹ He died before they were defeated.

⁵⁰ During his stay in Delhi, Shāh Walī Allah continued to write to Najīb al-Dawla, calling him "*ra'īs al-mujāhidīn*" (leader of the *mujāhids*) and *amīr al-umarā'* (the *amīr* of the commanders). Rizvi, *Shāh Walī Allah and His Times*, p. 307.

which supported the educational system, were annulled. This was a crucial blow to the 'ulamā', but they recovered from the setback and emerged more independent and authoritative. Indeed, after the collapse of Muslim rule, the role of the 'ulamā' assumed new dimensions, and the responsibility to maintain and protect the identity of the Muslim community shifted onto them. They were expected to provide guidance and direction in Islamic affairs. Therefore, with the collapse of Muslim rule, implementation of the *Sharī'ah*, including both religious and political dimensions, was no longer feasible. In such a situation, implementing Islam for the 'ulamā' assumed a new dimension, one in which the ideal was not existentially of an operating social system, but, in essentialist fashion, of an abstracted entity, a set of intellectualized norms, of which only a few could actually be implemented, but the rest revered.⁵⁴ Thus, the function of the 'ulamā' became that of custodian of a cherished idealized tradition, enshrined in the Islamic legacy.

The emergence of the 'ulamā' as a formidable force in the Indian subcontinent crystallized after the collapse of Muslim rule and the disintegration of the Mughal empire. Their emergence as a force was accompanied by the parallel development of an ever expanding constituency - a constituency comprising the disempowered and its defeated political leadership. It was this rapidly changing political situation with its accompanying uncertainty and shattered hopes that gave birth to a class of men who eventually emerged as *de*

⁵⁴ William Cantwell Smith, *On Understanding Islam* (The Hague, 1981), p. 202.

facto leaders.

The major difference between the style of leadership prior to political degeneration was that whereas traditionally the 'ulamā' focused almost exclusively on either their official duties or the "other worldly" dimension, they now increasingly focused on "this worldly" matters. The breakdown of traditional society caused by foreign domination precipitated the need to reconstruct social life in a way that was not only faithful to the Islamic dictates but whose basis was sound enough to withstand attempts at placing it in foreign cultural and intellectual bondage.⁵⁵ This dialectic was a new experience for the 'ulamā' who had in the past been content to guide the Muslims masses towards acquiring the means of eternal salvation, leaving the organization of social life to custom and friendly political authority.

The need for religious guidance was further precipitated by the intrusion of a foreign force whose political power was matched by its ideological and cultural vigour. If the Muslim political structure could not be restored, at least the Islamic value structure should be protected and preserved in its purity. The 'ulamā' were convinced that the breakdown of traditional society would expose the Muslims to the subtle cultural and social influence of the dominant forces. They would then run the very definite risk of loosing their identity, resulting in

⁵⁵ For an excellent expose on the breakdown of traditional Muslim society in India see, S. A. A. Rizvi, "The Breakdown of Traditional Society" in *Cambridge History of Islam*, vol 2, pp. 67-96.

gradual assimilation.⁵⁶ Thus, we find the move towards puritanical Islam gaining rapid momentum.

1.3 Continuation of the Walī Allah Tradition

The religious leadership of India saw itself in the Walī Allah tradition. The immediate legacy of Walī-Allah was perpetuated by his three capable sons, Shāh °Abd al-°Azīz (1746-1824), Shāh Rafī° al-Dīn (1749-1817), and Shāh °Abd al-Qādir (1753-1827). The eldest son, Shāh °Abd al-°Azīz, was the head of the family and the centre of an important circle of reformist teachers in Delhi.⁵⁷ When he was only seventeen he commenced his teaching career. He was soon lecturing to advanced students and within a short period of time, established a reputation for erudition and clarity of thought.⁵⁸ Together with his three brothers, he taught the religious sciences, particularly *ḥadīth*, to large numbers of students, many of whom had journeyed great distances to come to Delhi to hear him.⁵⁹ Thus, for example, when asked about the legitimacy of pointing the index finger during the attestation of faith in the *ṣalāh*, he justified that practice primarily on

⁵⁶ Qureshi, *Ulema in Politics*, p. 24.

⁵⁷ Metcalf, *Islamic Revival*, p. 47.

⁵⁸ Qureshi, *Ulema in Politics*, p. 135. Shāh °Abd al-°Azīz was deemed, in the words of a traveller from Bukhāra, a great scholar from whom "rivers of *Sharīah* would flow into the world." Zuhūr al-Ḥassan Kasūlī, *Arwāḥ-i Thalāthah* (Sahāranpūr, 1950), p. 144.

⁵⁹ Kasūlī, *Arwāḥ-i Thalāthah*, p. 144.

the basis of valid *ḥadīth*.⁶⁰ In his *fatāwā*, he generally discussed in great detail the technical problems of sifting and understanding *ḥadīth*.⁶¹

Shāh 'Abd al-'Azīz was known as an excellent teacher. He provided advanced students an opportunity to voice their opinions, and supervised the teaching of those students who had completed their studies.⁶² He was not as original a thinker as his father, for he did not propound any new theories, but he was an organizer who was endowed with a practical disposition.⁶³ Like his father, he was well trained and a practising *ṣūfī* whose knowledge was enriched by spiritual sensitivity. Apart from acting as *ṣūfī shaykh* to chosen disciples and being very active in their spiritual training, he also adopted a method of creating religious awareness. For more than sixty years he preached twice a week to large audiences. It is recorded that he never absented himself even once, and when his health began to fail, he attended the mosque supported by two persons. He usually spoke for two hours and then answered questions.⁶⁴

Shāh 'Abd al-'Azīz had to face the sectarian conflict between Sunnīs and Shī'īs. The two groups could not be induced to unite against a common enemy. When the interests of the leaders of the two groups coincided, a short-lived and

⁶⁰ Shāh 'Abd al-'Azīz, *Fatāwā 'Azīzī* (Delhi, 1396.), p. 13-14.

⁶¹ *Ibid.*, pp. 22-23.

⁶² *Ibid.*, p. 47.

⁶³ *Ibid.*, p. 135.

⁶⁴ He was an effective speaker and was renowned for his eloquence. People from far and near gathered to listen to his sermons. Qureshi, *Ulema in Politics*, p. 136.

fragile alliance was formed. But hostilities were more the norm than the exception.⁶⁵ During the occupation of Delhi in January 1761, for example, Aḥmad Durrānī's Sunnī troops and Shujā° al-Dawla's Shī° troops were engaged in battle. The latter was forced to leave Delhi early in March. For three days, the retreating troops plundered and ravaged Delhi.⁶⁶ Some years later, Shāh °Abd al-°Azīz wrote,

It so happened that my revered father said that next year no Shī°s would be left in our city. This came to be true as Durrānī killed them.⁶⁷

There was an inherent dilemma in the situation. The Muslim community could not be mobilized and re-awakened to a sense of responsibility except on the basis of religion. And religion had become divisive because of deep sectarian schisms.⁶⁸

Shāh °Abd al-°Azīz could not escape his responsibility as a Sunnī leader, and was obliged to guide his followers as best he could under the circumstances. He held that those Muslims who did not deny the fundamentals of Islam were believers.⁶⁹ As far as the Shī°s were concerned, he ruled that the majority of the Sunnī 'ulamā' held them to be Muslims and not beyond the pale of Islam.⁷⁰ At the same time, Shāh °Abd al-°Azīz spent a great deal of effort in preparing an

⁶⁵ Much effort and resources were wasted on these feuds which often degenerated into open warfare.

⁶⁶ J. N. Sarkār, *Fall of the Mughal Empire* (Calcutta, 1934), p. 376.

⁶⁷ *Malfūzāt Shāh °Abd al-°Azīz*, cited in Rizvi, *Shāh Walī-Allah and His Times*, p. 306.

⁶⁸ Qureshi, *Ulema in Politics*, p. 136.

⁶⁹ Shāh °Abd °Azīz, *Fatāwā*, vol 1, pp. 40-41.

⁷⁰ *Ibid.*, p. 48.

intellectual response to the challenges of Shi'ism. His major work on this topic, *Tuḥfah-i Ithnā-ʿAshariyyah* is a polemical exercise, but well argued on the basis of authoritative Shi'i works.⁷¹ Shāh ʿAbd al-ʿAzīz did not want to foment strife or unnecessary controversy, and warned that "only that person should read this treatise who was fully familiar with the fundamentals and details of the teachings of both the schools, the Shi'i as well as the Sunnī. A person who knows only one and does not possess a full knowledge of the other is not qualified to study this book."⁷² Although he wanted to maintain the discussion at an academic level and inspire the sober minded scholar, it resulted in his persecution.⁷³ He incurred the displeasure of Najaf Khān, a Shi'i leader, who confiscated his property.⁷⁴

The issuing of *fatāwā* was not an important concern of Shāh Walī Allah, but for his sons and other 'ulamā' of the post-Mughal period, it became an important means of guidance. The reason for that shift in emphasis was the breakdown of Muslim rule and its structures which created a vacuum filled by the 'ulamā' of the day. Despite having no coercive power, the issuing of *fatāwā* was however increasingly becoming a powerful and influential instrument for disseminating detailed guidance in the minutia of everyday life. Rulings on

⁷¹ No reference is made to Sunnī works.

⁷² Shāh ʿAbd al-ʿAzīz, *Tuḥfah-i Ithnā-ʿAshariyyah*, Urdu translation by Mawlānā Khalīl Al-Raḥmān (Karachī, 1982), p. 22.

⁷³ Qureshi, *Ulema in Politics*, p. 137.

⁷⁴ Shāh ʿAbd al-ʿAzīz, *Fadā'il-i Ṣaḥābah wa ahl al-Bayt* (Lahore, 1967), pp. 55-6. According to some other reports, the entire family, including his brothers and their families were exiled from Delhi. *Ibid.* p. 137.

customary practices that had been of little concern to the state were also brought within the purview of *iftā* (issuing *fatāwā*). However, the rulings became important to the Muslims seeking to preserve an authentic expression of their faith under foreign domination.⁷⁵ Through his *fatāwā*, Shāh 'Abd al-'Azīz was able to disseminate instructions in *Sharī'ah* beyond the circle of his students and disciples. The *fatāwā* provided individual Muslims with day-to-day guidance and created a distinctive pattern of religious fidelity irrespective of the vicissitudes of political events.⁷⁶

One of the first issues addressed through *iftā* was the legal status of the country.⁷⁷ In his famous *fatwā* of 1803, Shāh 'Abd al-'Azīz protested against British domination over Muslim affairs.

In the city [of Delhi] the *Imām al-Muslimīn* wields no authority, while the decree of the Christian leaders are obeyed without fear [of consequence]. Promulgation of the command of the *kāfir* means that in matters of administration and the control of the people, in the levy of land-tax, tribute, tolls and customs, in the punishment of thieves and robbers, in the settlement of disputes, in the punishment of offences, the *kāfirs* act according to their discretion. There are, indeed certain Islamic rituals, e.g., the Friday and 'īd prayers, the *adhān* and cattle slaughter, with which they do not interfere. But that is of no account. The basic principle of these rituals are of no value to them, for they demolish mosques without the least hesitation and no Muslim or *dhimmi* can enter the city or its suburbs except with their permission. It is in their interest that they do not object to travellers and traders visiting the city, whereas distinguished dignitaries such as Shujā' al-Mulk and Wilāyatī Begum cannot dare enter the city without their permission. From Delhi to

⁷⁵ Metcalf, *Islamic Revival*, p. 50.

⁷⁶ *Ibid.*, p. 47.

⁷⁷ The first bold and perhaps logical step towards Muslim reorientation was to address the issue of Muslim political control, or lack of it.

Calcutta, the Christians are in complete control.⁷⁸

Shāh °Abd al-°Azīz not only vented the growing dissatisfaction of many Muslims with the turn of events, but more significantly laid to rest all claims that India was still a *Dār al-Islām* (House of Islam). It is interesting to note that Shāh °Abd al-°Azīz mourned the loss of the *Imam al-Muslimīn's* authority and decried the power of the *kāfir* ruler.⁷⁹ Implied in this acknowledgement of the failure of Muslim authority in religious affairs was the recognition that the *status quo* had changed so radically that a reassessment of the legal status of the state was warranted.

Although the *fatwā* deliberately avoids the highly contentious issue of *dār al-ḥarb* (hostile territory), it is clear from the tone and the language that Muslim disempowerment could no longer be ignored and a reassessment had become necessary. The ambiguity of the *fatwā* could also have been the result of the lack of clear consensus within the Ḥanafī school on what state of affairs constituted *dār al-ḥarb*. The fact that there clearly existed certain conditions in India like

⁷⁸ Shāh °Abd al-°Azīz, *Fatāwā °Azīzī*, p. 17. Muhammad Mujeeb, *The Indian Muslims* (London, 1967), p. 390. Also Ziya-ul-Hasan Faruqi, *The Deoband School and the Demand for Pakistan*, pp. 2-3.

⁷⁹ The British were not mentioned by name, therefore there arose some controversy as to precisely which "kāfirs" the Shāh was referring to. Maulānā Muḥammad Ja'far Thānesārī was emphatic that there was no intention of turning the movement against the British, but rather against the Sikhs. The reason for this was that the Sikhs suppressed Islamic practices, whereas the British were tolerant. See M. J. Thānesārī, *Ḥayāt-i Sayyid Aḥmad Shahīd* (Karachi, 1968), pp. 170-71. By contrast, Qureshi feels that Thānesārī deliberately misinterpreted the *fatwā* for political purposes. Qureshi contends that Thānesārī was guilty of replacing the word *Nasārā* (Christians, referring to the British) by the words *sikhān* or *darāz mūyān* (long haired) and making other changes necessary in the text. Qureshi argues that the "correct version of the text mentions the British quite clearly." Qureshi, *Ulema in Politics*, p. 144.

freedom of worship as well as the fact that some dimensions of Muslim personal law were in place, militated against the territory being declared *dār al-ḥarb*.⁸⁰ Most scholars are nevertheless convinced that this *fatwā* had in fact declared India a *dār al-ḥarb*.⁸¹ W. W. Hunter summed up the importance of the *fatwā* as follows:

When Infidels get hold of a Muhammadan country and it becomes impossible for the Musalmāns of the country and the people of the neighbouring districts to drive them away or retain reasonable hope of ever doing so; and the power of the infidels increases to such an extent that they can abolish or retain the ordinances of Islam according to their pleasure; and the (Musalmān) inhabitants do no longer live so secure as before; such a country is politically a Country of the Enemy (Dār al-Ḥarb).⁸²

The *fatwā* was a clear attempt to undermine "kāfir" authority by emphasizing the extent of *kāfir* control over religious issues; highlighting the restrictions placed on Muslim movement in and around the city; and drawing attention to the highly sensitive issue of the demolition of mosques. At the same time, the *fatwā* also reflected the 'ulamā's growing tendency to conscientize and influence the masses in some direct way through the use of religious language

⁸⁰ Metcalf, *Islamic Revival*, p. 50.

⁸¹ Ziya-ul-Hasan Faruqi in his work *The Deoband School and the Demand for Pakistan*, is very emphatic that this *fatwā* was nothing less than a declaration of *dār al-ḥarb*. p. 3. See William Cantwell Smith, *On Understanding Islam*, p. 207 who also interprets the *fatwā* as a declaration of *dār al-ḥarb*. Also Qureshi, *Ulema in Politics*, p. 144 is of the same view. Aziz Ahmad, *Islamic Modernism in India and Pakistan 1857-1964* (London, 1967), p. 19 also espouses the very same view. One notable exception to this reading of the *fatwā* is Mushir U. Haq, "Indian Muslims' Attitude to the British in the Early Nineteenth Century: A Case Study of Shah Abdul Aziz." Master's thesis, McGill University, Institute of Islamic Studies, 1964.

⁸² W. W. Hunter, *The Indian Musalmans* (Benares, 1969), p. 134.

and symbols. The importance of this more popular focus on the part of Shāh 'Abd al-'Azīz was clearly related to the changing context of social and political life.

1.4 The *Jihād* Legacy of Shāh Walī Allah

The *fatwā* of 1803 also had other implications. If the *fatwā* was conceived to be a definite ruling that India was *dār al-ḥarb*,⁸³ one of its major legal implications would then be that it became the religious duty of every Muslim to partake in an effort to restore the Subcontinent to its former status of *dār al-Islām*.⁸⁴ Therefore, the *fatwā* embraced a veiled exhortation to *jihād*. In this sense a military option was legitimated through the *fatwā* which heightened Muslim antagonism towards the British. It is believed that Shāh 'Abd al-'Azīz drew up plans for a military confrontation that his student Sayyid Aḥmad Shahīd (1786-1831) was to execute.⁸⁵

⁸³ In a *dār al-ḥarb*, for example, Muslim relations with an "enemy" are governed by a set of rules designed to undermine non-Muslim rule, economically, politically, and militarily. The question whether a Muslim may take interest (*ribā*) from a non-Muslim in a *dār al-ḥarb*, is a classical example of the sort of economic strategies that were designed to undermine the enemy. It is fair to say that such strategies served to benefit the individual entrepreneur much more than the struggle for power.

⁸⁴ Qureshi, *Ulema in Politics*, p. 139.

⁸⁵ *Ibid.*, p. 142.

1.5 Sayyid Aḥmad Shahīd the *Mujāhid*

Under the leadership of Sayyid Aḥmad Shahīd of Rae, one of the more ambitious and utopian movements of modern India entered the struggle to restore Muslim authority.⁸⁶ Sayyid Aḥmad Shahīd was born into a *sayyid* family who were recognized as descendants of the Prophet and respected for their piety and learning. As a child, his inclination was not towards scholarly activity. He distinguished himself as a physically strong boy with a deep sense of religious values. Well-born, educated, and yet impoverished, he was like many other youths of similar background found it increasingly difficult to gain employment with a courtly prince. At the age of eighteen, Sayyid Aḥmad Shahīd went to Lucknow in search of employment and after a stay of several months, moved to Delhi.⁸⁷ There he was warmly welcomed by the Walī Allah family and became a student of Shāh 'Abd al-Qādir, the third son of Shāh Walī Allah.

At the age of twenty five, Sayyid Aḥmad Shahīd left Delhi for central India to join Amīr Khān (1768-1834) who had organized a band of raiders to establish control in the area. However, in 1818, the British awarded Amīr Khān the principality of Tonk and the position of *nawāb*.⁸⁸ Some of Sayyid Aḥmad Shahīd's

⁸⁶ The most extensive study on the *Jihād* movement of Sayyid Aḥmad is in Urdu. See Ghulām Raṣūl Mihr, *Sayyid Aḥmad Shahīd* (Lahore, 1955). A more recent work in English is by Muhiuddin Ahmad, *Sayyid Ahmad Shahid: His Life and Mission* (Lucknow, 1975).

⁸⁷ Metcalf, *Islamic Revival*, p. 53.

⁸⁸ *Ibid.*, p. 54.

later disciples interpreted his close association with the *nawāb* of Tonk as his first endeavour to carve out a Muslim state that would be completely organized on the basis of the *Sharī'ah*.⁸⁹

Sayyid Aḥmad Shahīd then returned to Delhi, apparently overwhelmed by a vision of *jihād*. He quickly assumed a position of leadership among those who shared a similar perspective. Among them were Shāh Walī Allah's grandson, Muḥammad Ismā'īl (1781-1831), and Shāh 'Abd al-'Azīz's son-in-law, 'Abd al-Ḥayy (d. 1828). Both men took *bay'ah* (oath of spiritual allegiance) at the hand of Sayyid Aḥmad Shahīd.⁹⁰

Sayyid Aḥmad Shahīd was committed to reforming popular custom and practice, bringing them in line with *ḥadīth* teachings. Other Islamic leaders of the time had undertaken a more pragmatic mode of reform that was more intellectual in character. For example, Shāh 'Abd al-'Azīz engaged in certain customs in the very fashion that the *mujāhidūn* denounced, like distributing food after reading the *Fātiḥah* (prayer) at his father's grave.⁹¹ Sayyid Aḥmad Shahīd, on the other hand, embarked upon a campaign on reforming the numerous

⁸⁹ Ibid.

⁹⁰ From this the orientation of some of the younger members of the Walī Allah family could be gleaned, for one would have expected these two distinguished men to have taken the *bay'ah* at the hands of the elders of the family, Shāh 'Abd al-'Azīz or Shāh 'Abd al-Qādir.

⁹¹ See Mujeeb, *Indian Muslims*, pp. 508-11. The younger members of the Walī Allah family, such as Shāh Muḥammad Ishāq, his ultimate successor, quietly left when he began such practices. Shāh 'Abd al-'Azīz, however, commended Sayyid Aḥmad's refusal to practice *ṭasawwur-i shaykh*, meditation on the image of the *shaykh*, another objectionable practice from the point of view of the reformists. See Metcalf, *Islamic Revival*, p. 55.

customs that had grown around the various *ṣūfī* shrines.⁹² His radical reformist program was based upon the perception that Muslims had been disempowered because they had failed to fulfill the strict requirements of the *Sharī'ah*.⁹³ In his view, there were three major threats to the beliefs of the Muslims that emanated from within the Muslim community. These threats included false Sufism, Shī'ism, and popular custom.⁹⁴ Sayyid Aḥmad Shahīd favoured a scripturalist emphasis on the original Prophetic practice, and rejected local interpretations of practices. Muḥammad Ismā'īl, for example, admitted that when he taught his sister *Mishkāt al-Masābīḥ* (a collection of *ḥadīth*), he deliberately omitted the parts permitting the remarriage of widows, in conformity with local Indian custom. Only when he fell under the influence of Sayyid Aḥmad Shahīd did Muḥammad Ismā'īl encourage his sister to remarry.⁹⁵

According to the followers of Sayyid Aḥmad Shahīd, his teachings were contained in two works. The *Sirāt al-Mustaḳīm* (*Straight Path*) was compiled by Muḥammad Ismā'īl in 1819. It was originally written in Persian but was later translated into Urdu in order to reach a wider readership.⁹⁶ The second work,

⁹² Ibid., p. 55. He embarked upon a campaign for the eradication of customs after turning to *jihād*.

⁹³ Metcalf, *Islamic Revival*, p. 56.

⁹⁴ For a concise analysis of his reformist teachings on these three issues, see *ibid.*, 57-60.

⁹⁵ *Ibid.*, p. 56.

⁹⁶ *Ibid.*, p. 56.

Taqwīyah al-Imān (Strengthening of the Faith) was written in Urdu.⁹⁷ Based upon the puritanical beliefs contained in these works, Sayyid Aḥmad Shahīd desired to pattern his *jihād* movement on the Prophetic model. In that sense, he planned to wage war against non-Muslims from a frontier territory under Muslim control.⁹⁸ His operational base would be one of the new states on the frontier, carved out from the empire in the post-Mughal period. While stationed on the frontier, he once remarked:

There are many who advised me to carry on *jihad* in India, promising to provide me with whatever was necessary by way of material, treasure and weapons. But I could not agree to this, for *jihad* must be in accordance with the *sunnah*. Mere rebellion was not intended.⁹⁹

In keeping with the requirement of fighting from a Muslim territory, Sayyid Aḥmad Shahīd set out from North India in January of 1826.¹⁰⁰ This journey covered some three thousand miles through some of the toughest terrains in India, including the rigour of Rajasthan, Sind, Baluchistan, and Afghanistan. In January of the following year, Sayyid Aḥmad Shahīd was declared *Amīr al-Mu'minīn* (caliph) after his victory against the Sikhs at Akorā

⁹⁷ These works are available in numerous editions. Excerpts were translated into English and published. "Taqwiyat ul-Iman," translated by Shahamat 'Alī in the *Journal of Royal Asiatic Society* 13 (1852), pp 310-72. "Notice of the Peculiar Tenets Held by the Followers of Sayed Ahmad, Taken Chiefly from the Sirat ul Mustaqim . . .," translated by "J. R." in the *Journal of the Asiatic Society of Bengal* I (1832), pp. 479-98.

⁹⁸ The Prophet waged war on the Meccans only after he had established Muslim control in Medina.

⁹⁹ Mujeeb, *Indian Muslims*, p. 391.

¹⁰⁰ Metcalf, *Islamic Revival*, p. 61.

Khattak.¹⁰¹ As caliph, he concentrated his energy on the Sikhs of the Punjāb, whom he blamed for interfering with Muslim religious life.¹⁰² It was at the hands of the Sikhs, however, that Sayyid Aḥmad Shahīd was finally defeated in 1831.¹⁰³

Qureshi narrates:

On 5 May the Sikhs were led to the top of the ridge on the slopes of which Bālākot is located. A small detachment posted to guard the route which was known only to some locals was overwhelmed and could not inform the main army in time. Next day the Sikhs attacked Bālākot. The battle had been really lost when the Sikhs had occupied the ridge practically unopposed and undetected. Next day the Mujāhids fought a desperate battle. The losses were severe. Nearly six hundred Mujāhids lost their lives, and Shāh Ismā'īl and Sayyid Aḥmad Shahīd were killed.¹⁰⁴

The *jihād* movement was an expression of post-Mughal Muslim political struggle, inspired by the rich Islamic tradition of warrior-saints. For the Muslims, the military option was characterized by a sad mixture of fortune, betrayal and ultimate defeat. The defeat of Sayyid Aḥmad Shahīd, in particular, was regarded as a major setback in the series of military defeats suffered by Muslims. For the British, the military option, inspired by the radical wing of the 'ulamā', proved to be a continuous source of provocation and destabilization.

¹⁰¹ Ibid.

¹⁰² For detailed reasons why Sayyid Aḥmad Shahīd focused on the Sikhs see Qureshi, *Ulema in Politics*, pp. 146-148. Also Mohiuddin Ahmad, *Saiyid Ahmad Shahid*, pp. 133 ff.

¹⁰³ The following account is based on Qureshi, *Ulema in Politics*, p. 152. The same account is recorded in much more detail in Mohiuddin Ahmad, *Saiyid Ahmad Shahid*, pp. 267 ff. Also Mihr, *Saiyid Aḥmad Shahīd*, pp. 394-434.

¹⁰⁴ Qureshi, *Ulema in Politics*, p. 152. The losses of the *Mujāhidīn* were very severe. Some put the death toll as high as 1,300. A more accurate figure according to Mohiuddin Ahmad, is 587 dead and approximately 700 casualties. See M. Ahmad, *Saiyid Ahmad Shahīd*, p.283..

1.6 The Indian Mutiny¹⁰⁵

The arrival in Calcutta in 1828 of the Governor-General, Lord William Bentinck, marked the rise of British fortunes in India. Both Bentinck and his successor, Marquis Dalhousie (d. 1860) the Governor-General of India from 1848 to 1856, believed in the superiority of British rule.¹⁰⁶ Dalhousie introduced many far-reaching changes, including the "Doctrine of Lapse". That doctrine was employed to usurp the territories of princely states. As the major political power on the subcontinent, the British held the right to regulate succession to the thrones of India. When there was no direct natural heir to the throne, the government considered it its right to annex that state. Under normal circumstances, the prince was able to avert annexure by adopting a son who would succeed him. Dalhousie's measure required the British government to sanction such adoptions. According to a minute of 30 August 1848.

Where heirs natural shall fail, the territory should be made to lapse, and adoption should not be permitted, excepting in those cases in which some

¹⁰⁵ Many works have been written on the famous Mutiny of 1857. See for example, Sayyid Ahmad Khan, *An Essay on the Causes of Indian Revolt* (Calcutta, 1860); R. C. Majumdar, *The Sepoy Mutiny and the Revolt of 1857* (Calcutta, 1957); Asoka Mehta, *The Great Rebellion* (Bombay, 1946); Charls Ball, *The History of the Indian Mutiny* (London, n.d.); P. Hardy, *The Muslims of British India* (Cambridge, 1972), pp. 61-115; M. Edwards, *Red Year: The Indian Rebellion of 1857* (London, 1973); G.H.Gimlete, *A Postscript to the Records of the Indian Mutiny* (London, 1927); T. R. Holmes, *A History of the Indian Mutiny* (London, 1898); T. R. Metcalf, *The Aftermath of the Mutiny*, (Princeton, 1965); Eric Stokes, *The Peasant Armed: The Indian Revolt of 1857* (Oxford, 1986).

¹⁰⁶ Thomas R. Metcalf, *The Aftermath of Revolt - India, 1857-1870* (Princeton, 1965), p. 33.

strong political reason may render it necessary to depart from this general rule.¹⁰⁷

Through the ruthless application of this doctrine, the British successfully took possession of seven states in as many years.¹⁰⁸

Another of Dalhousie's controversial reforms, "The Widow Remarriage Act", legally sanctioned the remarriage of Hindu widows, a policy that evoked hostility and resentment from Hindus.¹⁰⁹ In the whole of India, however, only sixteen widows remarried under the provision of the Act. In every case, the widow, her husband, and their family were ostracized by the community.

As a consequence of these and other reforms, both Muslims and Hindus were in a sense well-disposed towards the revolt of 1857. The revolt was called the Indian Mutiny because it originated with Indian conscripts who refused to follow British orders in Meerut. Soldiers at Meerut were totally outraged when they were given to believe that the cartridges they had to bite off before use contained pork or beef fat. This triggered an explosion of discontent and unrest which contributed towards the Mutiny.¹¹⁰

The aftermath of the Mutiny led to the destruction of whatever remained

¹⁰⁷ R. Metcalf, *The Aftermath of Revolt*, p. 32.

¹⁰⁸ Ibid.

¹⁰⁹ A District officer remarked, "they [the Hindus] regard it with extreme aversion and deprecate Government interference in what they declare to be directly a matter of religion". (Magistrate of Muzaffarnagar to Commissioner of Meerut, 20 April 1858). Thomas R. Metcalf, *The Aftermath of Revolt*, p. 93.

¹¹⁰ Aziz Ahmad, *Islamic modernization in India and Pakistan 1857 - 1964*, p. 27.

of Muslim imperial power.

On all sides the aftermath of the fighting was to create a scar never erased from Indo-British relations. If the British took the Mutiny as a symptom of barbarity, the Indians did so no less. British revenge was extensive in the countryside - but it was worse in Delhi. The city had grown and prospered with the British peace, but now that peace was gone. The royal claims to the throne were abolished, and the old king himself exiled in disgrace to Burma. The entire population of the city was expelled for a time. The mosques of the city were occupied: the Jami^c Masjid for five years, the Fatehpuri Masjid for twenty. The Zinatu'l Masajid in Darya Ganj was used as a kitchen until it was restored almost half a century later by Lord Curzon . . . there was no recompense for losing a building like the Akbari Masjid, built by a Begum of Shah Jahan, and long a major centre of the reformist effort. Madrasahs, including the Darul-Baqa, restored by Mufti Sadrus-Sudur Azurdah, were razed, as well. In the Kuchah Chelan *mahallah*, where Shah Abdul-Aziz had preached and the great religious and intellectual families had long resided, the British shot perhaps fourteen hundred people.¹¹¹

It would seem that Muslims were disproportionately blamed for their part in the Mutiny.¹¹² Many British believed that whilst Muslims fought because of political grievances, Hindus fought because of economic motives. The former was understood to be more invidious and more dangerous.¹¹³

The aftermath of the Mutiny saw severe British reprisals against Muslims. George Campbell (1824-1892) expressed the fear that the British would degrade

¹¹¹ Metcalf, *Islamic Revival*, p. 84. In 1860 it was decided to clear a large area around Red Fort. The Akbari Mosque was located within that area and was demolished.

¹¹² Most of the modern historians accept the view that Muslims were singled out as targets of British vengeance and had to face a spate of unprecedented atrocities. See Sayyid Maḥbūb Raḍwī, *Tārīkh Dār al-'Ulūm Deoband*, p. 136; Aziz Ahmad, *Islamic modernization in India and Pakistan 1857 - 1964*, p. 29; Tara Chand, *History of the Freedom Movement in India*, (Delhi, 1967), vol 2, p. 349; Qureshi, *The Muslim Community of the Indo-Pakistan Subcontinent* (S-Gravenhage, 1962), p. 233; Hafeez Malik, *Moslem Nationalism in India and Pakistan* (Washington D. C., 1963), p. 207; P. Hardy, in *Muslims of British India* attempts to argue in favour of a non-biased British retaliation. pp. 61-91.

¹¹³ Metcalf, *Islamic Revival*, p. 85.

the Muslims as a class.¹¹⁴ William Howard Russell openly conceded that:

The Mahomedan element in India is that which causes us most trouble and provokes the largest share of our hostility. . . Our antagonism to the followers of Mahomed is far stronger than that between us and the worshippers of Shiva and Vishnu. They are unquestionably more dangerous to our rule.¹¹⁵

Muslim accounts of atrocities committed by the British are far more horrific in detail. In Delhi, the famous Urdu poet Ghalib (1797-1869) described the massacre that occurred as a result of the Mutiny: "there is a vast ocean of blood before me, God alone knows what more I shall have to behold."¹¹⁶ Lieutenant Hodson (1821- 1858) summarily shot three Mughal princes. Another twenty four princes (*shahzadas*) were later tried and also executed.¹¹⁷ Molvi Imām Baksh and his two sons were arrested and taken to Raj Ghat Gate and shot dead. Their bodies were then dumped into the Jumna River.¹¹⁸ The English Prime Minister, Viscount Palmerston (1784-1865) wrote to Lord Charles Canning (1812-1862) that every civil building connected with the Muslim tradition (a vague reference to the Jāmi' Masjid) should be raised to the ground "without regard to antiquarian veneration or artistic predilection."¹¹⁹ Thāna Bhowan, which was

¹¹⁴ Campbell, *Memoirs*, vol 2, p. 397. Cited in Hardy, *The Muslims of British India*, p. 70.

¹¹⁵ William Howard Russell, *My Dairy in India in the Years 1858-9* (London, 1860), vol 2, pp. 73-74. Quoted in Hardy, *The Muslims of British India*, p. 70.

¹¹⁶ Hardy, *The Muslims of British India*, p. 70.

¹¹⁷ *Ibid.*, p. 70.

¹¹⁸ Quoted in S. N. Sen, *Eighteen Fifty-Seven* (Delhi, 1957), p. 116. The text has been published by the Punjab Academy of Literature (Lahore, 1955), p. 171.

¹¹⁹ Hardy, *The Muslims of British India*, p. 71.

considered a Muslim stronghold, became the sight of fierce British reprisals, because the Muslims had succeeded to initially expel the British and established a miniature theocracy there.¹²⁰ Eye witness reports of genocide, looting, arson, and pillage were recorded by Manāzir Aḥsan Gīlānī in *Sawānih-i Qāsmī*.¹²¹ Thāna Bhowan was virtually raised to the ground after the British recaptured it. Houses were set alight and fleeing inhabitants were shot. In the ensuing mayhem many families together with their entire belongings were wiped out.¹²² Although there were clearly many political, economic, cultural, and religious causes that contributed to the Mutiny, what is of special interest to this study is the response of the 'ulamā'.

1.7 The 'Ulamā' and the Mutiny

There is no doubt that the 'ulamā' in North India played a very active role in events leading up to the 1857 Indian Mutiny.

The *Mujāhidīn* on the frontier seemed to express the real spirit of militant Islam and the presence of many 'ulamā' among the rebels in 1857-8 merely confirmed a belief that those who devoted their lives to studying the Faith knew what it demanded when opportunity offered.¹²³

¹²⁰ During the early stages of the Mutiny, the Muslims scored some successes. Aziz Ahmad, *Islamic modernization in India and Pakistan 1857 - 1964*, p. 28.

¹²¹ Manāzir Aḥsan Gīlānī in *Sawānih-i Qāsmī*, pp. 170- 72. Also 'Āshiq Ilāhī in *Tadhkirah al-Rashīd* (Deoband, n.d.), pp. 73-75.

¹²² Manāzir Aḥsan Gīlānī in *Sawānih-i Qāsmī*, p. 170.

¹²³ Hardy, p. 82.

Many famous 'ulamā' joined in the uprising and were involved in physical combat with the British troops in Thāna Bhowan and Shāmlī.¹²⁴ In order to comply with the strict dictates of the *Sharī'ah* pertaining to *jihād*, some 'ulamā' decided at a meeting in Thāna Bhowan to elect an Imām under whose guidance the armed struggle would be conducted.¹²⁵

Hājī Imdād Allah (1815-1899) was elected to the position of the local *Amīr al-Mu'minīn*, under whose personal guidance the war would be waged.¹²⁶ The oath of allegiance (*bay'ah*) was duly taken and other officials were appointed to important positions. Among those officials were Rashīd Aḥmad Gangohī (1829-1905) who was placed in charge of mass mobilization and recruitment (*lām bandī*); Muḥammad Qāsim (1833-1877) who was appointed to Chief Commander of the Muslim forces; Maulānā Munīr who acted as Muḥammad Qāsim's Chief Assistant and head of security; and Hāfiz Dāmin Shahīd¹²⁷ who became General (*amīr of jihād*) of the armed forces.¹²⁸

When the revolt was crushed the 'ulamā' were singled out by British authorities for particularly harsh reprisals. "In the British view it was Muslim

¹²⁴ For details of the 'ulamā's involvement in the uprising see Manāẓir Aḥsan Gīlānī, *Sawānih-i Qāsmī*, vol 2, pp. 97-170. Also Sayyid Muhammad Miyān, *'Ulamā'-i Hind kā Shāndār Mādī* (Delhi, 1957), vol 2.

¹²⁵ Manāẓir Aḥsan Gīlānī, *Sawānih-i Qāsmī*, vol 2, p. 123.

¹²⁶ *Ibid.*, p. 127.

¹²⁷ Unfortunately for the Muslims, he was martyred during a confrontation with the British forces at Shāmlī. His death was a big setback for the Muslims. *Ibid.*, p. 151.

¹²⁸ *Ibid.*, p. 127. It is very significant to note that members of the hierarchy of this very "war cabinet" ultimately became the founding members of Dār al-'Ulūm, Deoband, some ten years later.

intrigue and Muslim leadership that converted a sepoy mutiny into a political conspiracy, aimed at the extinction of the British Raj.¹²⁹ In reality, it was a revolt which the 'ulamā' had tried to convert into a final, but vain attempt to restore Muslim political supremacy.

1.8 Conclusion

The role of the 'ulamā' under Mughal rule substantially differed from functions that characterized the 'ulamā' during the period of non-Muslim domination. The decline of Muslim rule found the 'ulamā' in disarray and desperately holding on to the dream of reinstating Muslim authority. Shāh Walī Allah attempted to use his influence by inviting various princes and warriors to invade Delhi and restore Muslim rule. His son, Shāh 'Abd al-'Azīz, devised new strategies to safeguard the Islamic heritage. Under the leadership of Sayyid Aḥmad Shahīd and Ismā'īl Shahīd, however, the military option was launched but came to a tragic end in 1831. Whatever little hopes the Muslims cherished of defeating the British, were savagely crushed during the 1857 Mutiny. Many of the 'ulamā' who were convincingly defeated on the military front now turned their attention towards the intellectual legacy of Shāh Walī Allah.

¹²⁹ R. Metcalf, *The Aftermath of Revolt*, p. 298. For an elaborate discussion on Muslim involvement in the uprising see Hardy, *The Muslims of British India*, pp. 66-91.

CHAPTER TWO

The Rise of Deobandism

During Mughal reign a sizeable contingent of '*ulamā*' independently managed to function without direct state aid. Following the Indian Mutiny and the conquest of India by Britain, these '*ulamā*' became the ideal foundation for a new role that the '*ulamā*' were to play. Far from relics of a traditional, unchanging past, the '*ulamā*' emerged to fill the vacuum created by the new political domination. At this point, the '*ulamā*' felt especially responsible for the protection of the intellectual heritage of Islam.¹ Therefore, where once political power was the coercive force in defining the practice of Islam, the personal charisma of members of the '*ulamā*' now predominated. As Metcalf suggests,

In this period the '*ulamā*' chose a strategy of turning within, eschewing for the time all concern with organization of the state and relations with other communities. Their sole concern was to preserve the religious heritage - the classic role of the '*ulamā*' from the post-^cAbbasid centuries on - and to disseminate instruction in authentic religious practice and belief. They sought to be, and to create in others, personalities that embodied Islam. To this end they preached and wrote, offered advisory legal opinions, and acted as spiritual guides to their followers. Their form of organization and their techniques of communication were new; their broad-based audience was new; and their emphasis within their religion and their consciousness of it were new in

¹ For a detailed analysis of the role of the '*ulamā*' in fulfilling that responsibility see Qureshi, *Ulema in Politics*. Also Sayyid Muḥammad Miyān, '*Ulamā*'-i Ḥaqq (Delhi, n.d.).

their time.²

The influence of the 'ulamā' grew as Muslim vulnerability increased. While the Mutiny was indeed a severe setback for the 'ulamā', its reality was in the background of all they did. Hence, the ruthless demonstration of British strength served to redefine their options.³ Initially, the 'ulamā' concentrated their efforts of defending the faith against what they considered the intellectual imperialism of the British. Subsequently, the emphasis of many 'ulamā', especially in the northern provinces, shifted toward education, for they believed that only through a healthy educational program would Islam survive the powerful onslaught of the British.⁴

2.1 Muslim Reaction to British Education

British domination substantially altered the social and political milieu of northern India, to the extent that it not only successfully dispossessed the Muslims of whatever remained of their political power but also destroyed in the process, systems of private and courtly patronage that were vital to the survival of a

² Metcalf, *Islamic Revival*, pp. 11-12.

³ Metcalf, *Islamic Revival*, p. 85

⁴ Qāri Muḥammad Ṭayyib in the preface to Raḍwī's, *Tārīkh Dār al-'Ulūm Deoband*, p. 39. The writer of the preface to Raḍwī's *Tārīkh Dār al-'Ulūm Deoband*, Qāri Muḥammad Ṭayyib was also the rector of Dār al-'Ulūm until his death in 1989. He was the grandson of Muḥammad Qāsim Nānautawī.

Muslim educational infra-structure.⁵ The implementation of a British educational program was undoubtedly one of the most contentious issues of colonial rule, and generated tremendous suspicion.

Establishing a network of state-aided schools, the British introduced an educational system which was completely alien to the natives of India. Muslims, in particular, were sceptical of the network of state-aided schools and regarded it as a strategic move on the part of the British to capture and influence the mentality of their unwary and impressionable offspring.⁶ As Maulānā Faḍl Ḥaqq points out,

In order to teach and instil their language and religion, the English have opened schools in towns and villages across the country for the education of our small children and the ignorant. They have made an all out effort to wipe out the traditional sciences and academic achievements.⁷

Convincingly beaten on the military and political front, the Muslims were reluctant to allow their children to be subjugated on the intellectual front. By staying aloof from the British system of education, Muslims thought that they could safeguard against further erosion of the Islamic legacy and value structure.⁸

The significance of the 'ulamā' in reinforcing public fears and suspicion

⁵ Ibid., p. 149.

⁶ For discussions of Muslim responses to British education see Miyān, 'Ulamā'-i Ḥaqq, pp. 17-32. Also S. A. A. Rizvi, "The Breakdown of Traditional Society" in *Cambridge History of Islam*, vol. 2, pp. 81-90, and Hafeez Malik, *Sir Sayyid Ahmad Khan and Muslim Modernization in India and Pakistan* (New York, 1980), pp. 125-73.

⁷ Maulānā Faḍl Ḥaqq, *Al-Thawarah al-Hindiyyah* (Bijnore, n.d.), pp. 356-57.

⁸ Qureshi, *Ulema in Politics*, p. 13.

of the British educational system is recognized by many historians.⁹ From this embittered and forlorn state of affairs, however, there arose a scholar, Sayyid Aḥmad Khān (1817-1898), who braved the wrath of the traditional 'ulamā' by advocating the importance of Muslim participation in British state-run schools.

2.2 Sayyid Aḥmad Khān

Sayyid Aḥmad Khān was born to a well-placed *sayyid* family of Delhi.¹⁰ His family had long and notable ties with the Mughal government. His education was entirely patterned on the traditional system. Respect for the elderly, irrespective of social standing, was religiously observed by the family. Servants were treated as part of the family and no infringement of either rule was tolerated. At the age of twelve, Sayyid Aḥmad Khān, slapped an elderly servant. Mortified by the act of her son, the mother turned him out of the house and left him in the street. The boy took refuge in his aunt's house where he stayed for three days. After solitary confinement of three days, his aunt took him back home and begged the child's mother to forgive him. Only after Sayyid Aḥmad Khān secured a pardon from the servant was he finally readmitted to the family home. "Undoubtedly a good mother is by far superior to the thousands of teachers" was the fond

⁹ See note 6 for some references.

¹⁰ Biographical details are drawn from Malik, *Sir Sayyid Ahmad Khan*, pp. 59 ff and Wilfred Cantwell Smith's *Modern Islam in India* (Lahore, 1963), pp. 9 ff. For additional details on the works on Sayyid Aḥmad Khān, see Malik, *Sir Sayyid Ahmad Khan*, pp. 330-31.

reflection of Sir Sayyid Aḥmad Khān.¹¹

At the age of eighteen, Sayyid Aḥmad Khān ended his traditional education and against the wishes of his family, entered the British service. Up to the Mutiny in 1857, his noteworthy activity was his writings on a wide range of topics. He produced tracts that ranged from medieval science to theological inquiry.¹² With the advent of the Mutiny in 1857, however, Sayyid Aḥmad Khān emerged from the ordeal not only a loyal supporter of the British Government, but also traumatized into a staunch Muslim nationalist.¹³ Several decades later, he described the tragic events of the Mutiny:

I was in Bijnore in those days. A great misfortune befell the English and Christian men, women and children. Motivated exclusively by humanitarianism I helped them in their affliction. And what devastation did our own nation suffer! Many well-known families perished; the narration of these events cuts my heart into pieces. After the Mutiny I cared neither for my home nor other possessions which had been destroyed. I grieved only at the destruction of our nation, and the suffering of the British which had been caused by the Indians. . . . At that time I did not think that our nation would survive or attain prestige. I could not bear to see the condition of our nation. For several days I remained in deep depression. Believe me, this grief aged me prematurely and my hair turned grey. When I came to Moradaabad, it was to a big house of mourning for the death and destruction of our nation's well-to-do families - my grief was deepened.¹⁴

Sayyid Aḥmad's remorse was of a dialectical nature, simultaneously reflecting love for his nation and devotion to the British, whose policy during 1857-58 and

¹¹ Malik, *Sir Sayyid Ahmad Khan*, pp. 69-70.

¹² For a detailed bibliography of the Sayyid's works see *Ibid.*, pp. 325-29.

¹³ *Ibid.*, p. 77.

¹⁴ Aḥṭaf Ḥusayn Hālī, *Ḥayāt-i Jāwīd* (Lahore, 1957), p. 116.

immediately after the reconquest of Delhi was undoubtedly repressive of the Muslims.¹⁵ This predicament created in him acute emotional tensions throughout the next decade. He attempted to resolve these tensions by seeking to establish an acceptable *modus vivendi* between the Muslims and the British.¹⁶ In order to bring about this ideal, he turned his attention to education. Sayyid Aḥmad believed that the tragedy of the 1857 Mutiny had shattered any illusion of the continued rule of Muslims in India. This tragedy resulted in the Muslims withdrawing into a "purposive cultural isolation."¹⁷ Consequently, Sayyid Aḥmad Khān organized a committee to evaluate the underlying reasons for Muslim withdrawal.¹⁸ On 26 December 1870, the Committee for the Better Diffusion and Advancement of Learning among Muhammadans of India was constituted. Sayyid Aḥmad acted as its secretary. Firstly, the committee aimed to determine Muslim reasons for ignoring the study of Western sciences. Secondly, the Committee sought to ascertain why Muslims failed to take advantage of the educational opportunities offered by the British government. Thirdly, the Committee recommended remedial action for the elimination of Muslim objections.¹⁹ In order to assess Muslim views to these questions, the committee organized an

¹⁵ Malīk, *Sir Sayyid Ahmad Khan*, p. 80.

¹⁶ *Ibid.*, p. 80.

¹⁷ Malīk, *Sir Sayyid Ahmad Khan*, p.125.

¹⁸ Although both the British and Sayyid Aḥmad were equally anxious to assess the extent of Muslim apprehension, there is no proof that Sayyid Aḥmad's initiative was in any way sponsored by the British.

¹⁹ Hālī, *Ḥayāt-i Jāwid*, p. 224.

essay competition. Cash prizes of Rs. 500, Rs 300, and Rs. 150 were offered for the three best essays addressing these three problems.²⁰ By July 1871, the Select Committee scrutinized the thirty-two essays that were submitted. The following prominent causes were identified. The essayists suggested that lack of religious education in the British curriculum promoted disbelief in religion which led to the corruption of morals. Furthermore, the findings also suggested that absence of traditional politeness and courtesy among modern students, and the depressed economic status of the Muslims resulted in their withdrawal.²¹ Moreover, there seem to have been total agreement between the essayists and the Select Committee that English education undermined the student's faith in Islam.²² Even Sayyid Ahmad Khān, who generally supported British education, stated that "he had never yet met a man who knew English and who had still full respect for all the religious beliefs and venerations". Citing W. W. Hunter, he noted that the "luxuriant religions of Asia shrivel into dry sticks when brought into contact with the icy realities of Western sciences."²³ The Select Committee found that modern education had proved a failure in British India. As one member of the Committee concluded,

For more than forty or fifty years the Government has been exerting itself by every possible means to instruct and educate the people of this country, but I have never heard of any person who became a great philosopher or a renowned and distinguished

²⁰ Ibid.

²¹ Malik, *Sir Sayyid Ahmad*, p. 127.

²² Ibid., p. 128.

²³ Hunter, *Indian Musalmans*, p. 184.

author. Why is the effect of education in India not similar to that in England?²⁴

With the exception of people like Sayyid Ahmad Khān, Muslims were much too sceptical about their political master's agenda, to consider abandoning their traditional educational curricula in favour of the *kāfir's* alternative.²⁵ In fact, it appears that it was precisely out of that acute suspicion of British education that the need to concentrate more thoroughly on religious education was born. Suspicion of the British agenda propelled the Muslims into taking some sort of action. The result was that the over-whelming majority of Muslims refused to send their children to government schools and continued to support the traditional religious schools (*maktabs*). The challenge of British education generated a whole new interest in religious education. Whereas traditionally Muslims were not very conscious or even inclined to formally educate their offspring, except for the bare basics, and were content with training them in the skills of the family occupation, they increasingly began to regard religious education as a necessary reaction and counter-measure to the corrupting influences of the British. The drive towards Islamic education was in many cases not primarily motivated by intrinsic needs, but rather as a fulfilment of a perceived moral obligation to insulate Muslim children from the corrupting influence of the British. This new surge in interest in Muslim religious education resulted in the establishment of many new *madrasahs* (learning institutions).

²⁴ Malik, *Sir Sayyid Ahmad Khan*, p. 132.

²⁵ For a survey of the student population at government institutions during the post-Mutiny period see Appendix A.

Simultaneously, a need for better and more well equipped personnel to staff them was created.

2.3 The *Madrasah* as the Locus of Muslim Communal and Religious Life

During Mughal rule, the educational system that sustained Muslim cultural and religious life was supported by an extensive network of courtly patronage.²⁶ However, after the dissipation of that rule, fewer princes and royal courtiers were able to sponsor the construction of grand tombs, city mosques, ceremonial gateways, learning institutions, forts, and other magnificent land marks that had traditionally been the material statement on the physical landscape of Muslim culture.²⁷ After the dissipation of Muslim rule, there were no remaining formal state institutions from which Muslim communal life could receive patronage and protection. The Muslims were thus left to their own resources and were compelled to fend for themselves by finding alternate sources of support for their centres of learning. Hence, in the post-Mughal period, the *madrasah* (learning institution), though structurally considerably humbler, increasingly emerged as the locus for the organization of Muslim religious life, the concrete evidence of Muslim presence.²⁸

²⁶ For details of the accomplishments of some of the Mughal rulers and Sultans see Raḍwī, *Tārīkh Dār al-ʿUlūm Deoband*, pp. 71-86.

²⁷ *Ibid.*, p. 112.

²⁸ Prior to the termination of Muslim rule the role of the *madrasah* was not central to the organization of Muslim communal life.

The model for the new *madrassah* under British rule was not a duplication of the Mughal models. Ironically, it was the Delhi College, established with a British principal, that became a source of inspiration for independent Muslim educational institutions in India.²⁹ Delhi College was established in 1825 as a result of the report of the General Committee on Public Instruction, which lamented the state of the private *madrasahs* of the city. It expanded with the lavish *waqf* endowment of Nawwāb I'timād Allah of Oudh in 1828.³⁰ The primary goal of the college was the education of influential and respectable people so that they would find suitable employment. There were two branches of the school: An English branch where English language, literature, and modern European sciences were taught; and an Oriental branch for Arabic, Persian, and Sanskrit, together with geography, history, mathematics, and science were taught.³¹ Although Delhi College was closed after the Mutiny of 1857, it remained a model school for those 'ulamā' who later turned their efforts to strengthening independent religious education in India.³² Indeed, it was at this college that many prominent 'ulamā' studied and after its closure, established their own institutions in the *qasbahs* (villages).

Among the famous 'ulamā' who taught at Delhi College was Mamlūk

²⁹ Mr Taylor was the head-master of Delhi College for 30 years starting in 1825. He also acted as its principal for three years. He was killed during the uprisings in 1857. See Raḍwī, *Tārīkh Dār al-'Ulūm Deoband*, p. 103.

³⁰ 'Abd al-Ḥaqq, *Marhūm Dihlī Kālij* (Delhi, 1945), p. 4.

³¹ Metcalf, *Islamic Revival*, p. 72.

³² *Ibid.*

°Alī (d. 1267/1851). "The teacher of teachers" (*ustādh al-ustādh*), Mamlūk °Alī was closely associated with the Walī Allah family. He came to Delhi explicitly to study from them.³³ He studied under Maulānā Rashīd al-Dīn Khān (d.1249/1833), a student of Shāh °Abd al-°Azīz, who was the first head of the Arabic department at the college. Mamlūk °Alī succeeded Maulānā Rashīd al-Dīn Khān in this post in 1833.³⁴ Mamlūk °Alī's close links with the Walī Allah family continued, for he accompanied Maulānā Muḥammad Ishāq and his brother to Arabia in 1842. His closest associates were Maulānā Muzaffar Ḥusayn Kandhlawī and Ḥājī Imdād Allah with whom he shared a commitment to the widow remarriage cause, and actually married a widow from Manglaur.³⁵ Unfortunately the marriage caused a rupture in the relations between Muslims of that town and those of his home town of Nānautah.³⁶

After Mamlūk °Alī returned from *ḥaj*, he took his nephew, Muḥammad Qāsim, then only thirteen years old, and his son Muḥammad Ya°qūb, to Delhi to further their education. It was in Delhi that Muḥammad Qāsim met Rashīd Aḥmad Gangohī, who had also come to study Arabic under Mamlūk °Alī, who was reputed to have a photographic memory.³⁷ He died in

³³ For an historical background of Mamlūk °Alī see Raḍwī, *Tārīkh Dār al-°Ulūm Deoband*, pp. 97-100. Also Metcalf, *Islamic Revival*, pp. 72-75.

³⁴ Shaik Muḥammad Ikrām and Ainslee T. Embree, *Muslim Civilization in India* (New York, 1964), p. 280.

³⁵ Muḥammad Ayyūb Qādirī, *Maulānā Muḥammad Aḥsan Nānautawī*, (Karachi, 1966), p. 175-79.

³⁶ *Ibid.*, pp. 39-40.

1851 and was buried in front of a mosque in Shāh Walī Allah's graveyard, called Mahandiyūn.³⁸ Among his prominent students were Ḥājī Imdād Allah (1817-1899); Muḥammad Qāsim Nānautawī (1833-1880); and Rashīd Aḥmad Gangohī (1829-1905), all of whom later became instrumental in founding independent *madrasahs* in India.

Ḥājī Imdād Allah studied little in his early life, but at the age of sixteen, on the insistence of Mamlūk °Alī, went to Delhi.³⁹ Although he studied Persian, he possessed a natural inclination and interest in mysticism. The years in Delhi provided an opportunity to seek guidance from *ṣūfis* in the reformist tradition, particularly from Nasīr al-Dīn Dihlawī, a grandson of Shāh Rafī° al-Dīn and the successor of Sayyid Aḥmad Shahīd.⁴⁰ Ḥājī Imdād Allah, by his own admission, placed enormous importance on this link with Sayyid Aḥmad Shahīd:

Externally, my initiation is in the Ṭarīqah Naqshbandīyyah from Hazrat Nasīr al-Dīn Ṣāḥib Dihlawī . . . but internally, it is without intermediary to the Prophet. I saw him shining with light on a high place and Sayyid Aḥmad held his blessed hand and I, out of respect, stood afar. And Hazrat Sayyid Ṣāḥib took my hand and put it in his.⁴¹

After the demise of Nasīr al-Dīn, Ḥājī Imdād Allah took Miyānjī Nūr

³⁷ In the words of Sir Sayyid Aḥmad Khān: "He had such complete mastery over both the rational and the traditional sciences, that if supposedly the entire treasury of knowledge were to be erased it would be possible to reproduce them from his memory. Above this greatness and merit, his politeness and forbearance are truly beyond description. Sir Sayyid Aḥmad Khān, *Āthār al-Sanādīd* (Delhi, 1965), part 4, p. 70.

³⁸ His grave is now untraceable. Raḍwī, *Tārīkh Dār al-°Ulūm Deoband*, p. 100.

³⁹ For a biography of Ḥājī Imdād Allah see Muḥammad Anwār al-Ḥasan, *Ḥayāt-i Imdād* (Karachi, 1965).

⁴⁰ Metcalf, *Islamic Revival*, p. 79.

⁴¹ Anwār al-Ḥasan, *Ḥayāt-i Imdād*, p. 175.

Muḥammad, a *khalīfah* (spiritual successor) of Sayyid Aḥmad Shahīd as his spiritual mentor. Miyānjī Nūr Muḥammad authorized Ḥājī Imdād Allah to take his own disciples (*murīds*). Ḥājī Imdād Allah was to hold a unique position as guide to many of the most important 'ulamā' of North India. Some seven or eight hundred learned men took *bay'ah* (spiritual allegiance) on his hand.

Muḥammad Qāsim Nānautawī, a *khalīfah* of Ḥājī Imdād Allah founded Dār al-'Ulūm (house of knowledge) at Deoband.

We remember this individual as Qāsim al-'Ulūm, Maulānā Muḥammad Qāsim, (may Allah shower His mercy upon him) who was the epitome of the thought of Shāh Walī Allah, Shāh 'Abd al-'Azīz, Shāh Muḥammad Ishāq and Shāh 'Abd al-Ghānī. He embodied the very quintessence of their teachings and put forth to the world in a philosophical manner of the day that which they had produced for their era.⁴²

Muḥammad Qāsim was born in 1248/1833 in an old village of Nānautah in the district of Sahāranpūr.⁴³ His family had traditional links with the Delhi 'ulamā'.⁴⁴

⁴² QārīṬayyib in the preface to Raḍwī's, *Tārīkh Dār al-'Ulūm Deoband*, pp. 21-22.

⁴³ Nānautah is situated some 16 miles West of Deoband. A distinguished family of *Siddiqī Shaykhs* had settled there in the 9th century Hijrī. Muḥammad Qāsim is linked genealogically to this family. See Raḍwī, *Tārīkh Dār al-'Ulūm Deoband*, p. 102.

⁴⁴ For an excellent biographical account of Muḥammad Qāsim's career see Manāẓir Aḥsan Gīlānī, *Sawānih-i Qāsmī* (Deoband, 1375), vol. 1, pp. 23-56, 203-40. The account provided is primarily based upon the that work. The elaborate work comprises of three volumes and deals with all the aspects of Muḥammad Qāsim's life. The three volumes were published by Dār al-'Ulūm, Deoband in 1373. Volume One deals with the early life of Muḥammad Qāsim; his birth (pp. 23-48); his education at Delhi (pp. 209-21); his comradeship with Rashīd Aḥmad Gangohī during their studies in Delhi (pp. 227-29). Volume Two deals with Muḥammad Qāsim's reformist movement. The author sketches the background to the Mutiny of 1857 and the establishment of Dār al-'Ulūm as a compensation for the defeat that the Muslims suffered during the Uprising (pp. 97-99). The author depicts the state of antagonism that existed between Maulānā Qāsim and the British. A detailed account of the Maulānā's involvement in *jihād* against the British, under the command of Ḥājī Imdād Allah (pp. 111-124). The author describes the oath of allegiance taken at the hand of Ḥājī Imdād Allah by all the latter's *murīds* to fight the British (pp. 125-134). A vivid description of the events of the Battle of Shāmlī and of British retaliation of razing Thāna Bhowan to the ground. (pp. 135-170). Warrants of arrest were issued for Maulānā Qāsim who

As *Ṣiddīqī shaykhs* his family was in possession of land which granted them economic security. Muḥammad Qāsim completed his primary education in the local school. At a very early age he met Ḥājī Imdād Allah, who often came to Nānautah. Imdād Allah introduced both Muḥammad Qāsim and his cousin Muḥammad Ya'qūb Nānautawī (d. 1302/1883) to Sufism and to the practical craft of bookbinding.

Muḥammad Qāsim's childhood was characterized by tension within the family, particularly after Tafaddul Ḥusayn converted to Shi'ism. The latter was a contemporary of Muḥammad Qāsim's grandfather, who was, in fact, killed in a family dispute. The matter was brought before the British courts which failed to redress and defuse the tense situation. The elder members of Muḥammad Qāsim's family then feared for his life and sent him to Deoband. He lived there for a time with relatives, studying with Maulānā Mahtāb °Alī and Shaykh Nihal Aḥmad. He then joined his maternal grandfather in Sahāranpūr, where he continued his study of Arabic with Molvī Muḥammad Anwar. After the death of his grandfather in 1842, he returned to Nānautah.⁴⁵ Mamlūk °Alī then took him to Delhi and admitted him to Delhi College. Muḥammad Ya'qūb writes: "My late father got Muḥammad Qāsim admitted to the Delhi College and said: Experience Euclid yourself and study arithmetic".⁴⁶ At the very end, however, Muḥammad Qāsim withdrew from the college without sitting for the final

escaped to Arabia and went for *ḥaj* in 1860, (pp. 180-91), and for Rashīd Aḥmad Gangohī, who was arrested, tried, imprisoned and ultimately released (pp. 204-8).

⁴⁵ He studied several Arabic works under Mamlūk °Alī.

⁴⁶ This statement of his father is cited by Raḍwī, *Tārīkh Dār al-'Ulūm Deoband*, p. 103.

examination.⁴⁷ According to Muftī Muḥammad Shafī^c, Muḥammad Qāsim also studied at Madrasah Raḥīmiyyah.⁴⁸

After completing his studies, Muḥammad Qāsim worked at a Delhi printing press called Maṭba^c-i Aḥmadī.⁴⁹ In 1277/1860 he went for ḥaj in a bid to escape the British authorities, who had issued a warrant for his arrest after his involvement in the Battle of Shāmlī. On his return he joined the publisher Maṭbā^c-i Mujtabāī in Meerut and remained there till 1285/1868. After the establishment of Dār al-^cUlūm in Deoband, he taught at the college, but refused to be remunerated for his services. His dedication to the *madrasah* is reflected in Manāzīr Aḥsan Gīlānī's description:

It is a well known fact that he founded the *madrasah* in Deoband, and what a small government it turned out to be, but he never took advantage of anything. In the beginning the members of the council requested him to accept a meagre salary for his teaching, but he refused. He never accepted even a grain from the *madrasah*, although he toiled day and night in its management and teaching services. If perchance he wrote any of his letters with the pen and ink of the *madrasah*, he would immediately pay one *anna* into the treasury of the *madrasah*.⁵⁰

Muḥammad Qāsim was renowned for his debating ability and was involved in

⁴⁷ Manāzīr Aḥsan Gīlānī, in *Sawānih-i Qāsmī*, engages in a lengthy discussion in an attempt to dispel the notion that Muḥammad Qāsim was officially enrolled at the college. Gīlānī, *Sawānih-i Qāsmī*, vol. 1, pp. 222-30. He finally concedes that at most Muḥammad Qāsim could have been officially enrolled at the college for a period of one academic year.

⁴⁸ Muftī ^cAzīz al-Raḥmān, *Fatāwā Dār al-^culūm Deoband* (Deoband, 1973), vol. 1, p. 3. Muftī Shafī^c wrote the preface.

⁴⁹ Maṭbā^c-i Aḥmadī was a famous publishing house which specialized in the printing of *ḥadīth* books. They were the pioneers for the printing of *ḥadīth* books in India. *Jāmi^c Tirmidhī* was published in 1256/1848; *Ṣaḥīḥ Bukhārī* in 1270/1853 and *Mishkāt al-Masābīḥ* in 1271/1854. After the 1857 Revolt, the publisher moved from Delhi to Meerut. During his stay in Meerut, Muḥammad Qāsim was given the momentous task of editing and collating the last six sections of *Ṣaḥīḥ Bukhārī* by Maulānā Aḥmad ^cAlī Sahāranpūri (1225/1810 - 1297/1880).

⁵⁰ Gīlānī, *Sawānih-i Qāsmī*, vol. 3, p. 536.

several huge public debates with Hindu Pundits and Christian priests.⁵¹ He was also an active supporter of the widow remarriage reforms. Sayyid Aḥmad Khān recalled that,

The people thought that after Muḥammad Ishāq no man of such qualities was to be born, but Maulānā Muḥammad Qāsim has proven by his perfect righteousness, his religiosity, his piety, his abstinence and his humility that, through the education and training of the city of Delhi, Allah had created another man of the calibre of Muḥammad Ishāq and even superior to him in certain things.⁵²

He passed away in 1297/1880 at the age of forty-nine and lies buried to the North of the Dār al-ʿUlūm in the graveyard known as Qabrastān-i Qāsmī. After his death, his life long friend, Rashīd Aḥmad Gangohī (1829-1905), became chief patron (*Sarparast*) of Dār al-ʿUlūm, a position he was to hold till his death.⁵³

Rashīd Aḥmad Gangohī was born in 1829/1242 at Gangoh. His family was connected to the 'ulamā' of Delhi for some time.⁵⁴ His father studied with the family of Shāh Walī Allah and received spiritual training from Shāh Ghulām ʿAlī Mujaddidī Naqshbandī. At the age of seven Rashīd Aḥmad lost his father. The family was imbued with reformist ideals and influenced the child at an early

⁵¹ For a few of these public encounters, see Raḍwī, *Tārīkh Dār al-ʿUlūm Deoband*, pp. 117-20.

⁵² This is a small extract of a very long eulogy of Muḥammad Qāsim written by Sir Sayyid Aḥmad Khān and printed in *Aligarh Institute Gazette*, dated 24 April 1880. Shāh Muḥammad Ishāq (1778-1846) was Shāh ʿAbd al-ʿAzīz's grandson and successor.

⁵³ Raḍwī, *Tārīkh Dār al-ʿUlūm Deoband*, p. 129.

⁵⁴ For a detail biography of Rashīd Aḥmad Gangohī see, Muḥammad ʿĀshiq Ilāhī, *Tadhkirah al-Rashīd* (Meerut, n.d.), pp. 17-80.

age.⁵⁵ Like Muḥammad Qāsim and other boys of his background, Rashīd Aḥmad lived with various relatives, studying in both Karnal and Rāmpūr before going to Delhi. In Delhi, Muḥammad Qāsim and Rashīd Aḥmad shared the company of distinguished scholars. When Mamlūk ʿAlī died, Rashīd Aḥmad left Delhi and returned home to teach. He briefly undertook a post as tutor to the children of a famous family of Sahāranpūr. After six months he gave this up, and subsequently, as a manifestation of piety, depended on whatever contributions came his way. At an early age, he not only preached the reformist message, but implemented it.⁵⁶ At the age of twenty-five, he reorganized the family's financial affairs by cancelling all debts whose interests paid over the years had equalled the capital debt, refunding money paid above that. When he could no longer afford the refunds, he sold his wife's jewels. He also attempted to end the various ceremonies and celebrations held at the grave of his ancestor, Shāh ʿAbd al-Quddūs Gangohī (d. 1538).

Rashīd Aḥmad was involved in the 1857 Mutiny and participated in the battle at Thāna Bhowan and Shāmlī under the command of his *ṣūfī* mentor, Ḥājī Imdād Allah. When Ḥāfīz Dāmin (d. 1857) was martyred, Rashīd Aḥmad picked up the body and took it to a mosque nearby and started reading the Qur'ān. After the encounter at Shāmlī, he was arrested and imprisoned at a jail in Sahāranpūr from where he was transferred to Muzaffar Nagar. He was

⁵⁵ His mother even ignored a vision of a saint who threatened that her son would die if she did not sacrifice perfume at his tomb. Metcalf, *Islamic Revival*, p. 78.

⁵⁶ He used the occasion of his wedding to the daughter of a pious soldier from a princely state to demonstrate his reformist zeal. He threw dust at the singing girl who began to recite the traditional obscenities, and refused the substantial dowry offered him. *Ibid.*, p. 78.

released after six months in prison.⁵⁷

Rashīd Aḥmad led a very disciplined and austere life. He rapidly acquired substantial influence because of his exemplary life, his training as an °ālim, his ṣūfī piety, and his impressive skills as a medical practitioner.⁵⁸ He received *khilāfah* (authorization from his ṣūfī mentor to initiate novices) from Imdād Allah within the comparatively short period of forty days.⁵⁹ When he returned to Gangoh, Rashīd Aḥmad decided to occupy and revive the *khānqah* (cloister) of Shaykh °Abd al-Quddūs which lay uninhabited and desolate for three and a half centuries.

Rashīd Aḥmad lectured mainly on *ḥadīth* to students who attended his classes from far and wide. His lectures on Tirmīzī (a famous *ḥadīth* collection) was published under the title "Al-Kaukab al-Durrī."⁶⁰ Among his most famous pupils was Maulānā Yaḥyā Kandhlawī, the father of Maulānā Muḥammad Zakariyyah of Sahāranpūr, who was among the leaders of the world-renowned Tablighī Jamā'at. He wrote fourteen books on *ṭaṣawwuf* and *fiqh* before he passed away in 1323/1905 at the age of seventy-eight.⁶¹

⁵⁷ For a very detailed account of his involvement against the British, his arrest, the subsequent treason trial, and his ultimate imprisonment, see °Ashiq Ilāhī, *Tadhkirah al-Rashīd*, pp. 73-87. When he was asked by the presiding judge during his trial, what weapons were used against the British, he pointed to the rosary (*tasbīh*) in his hand. *Ibid.*, p. 85. Also Raḍwī, *Tārīkh Dār al-°Ulūm Deoband*, p. 128 ff.

⁵⁸ Metcalf, *Islamic Revival*, p. 79.

⁵⁹ Raḍwī, *Tārīkh Dār al-°Ulūm Deoband*, p. 128.

⁶⁰ *Ibid.*, p. 129.

⁶¹ *Ibid.*

2.4 The Rise of Deoband

Sobered by the terrible events that followed the suppression of the Indian Mutiny, many 'ulamā' now tended, by and large, to desert their beloved but desolate Delhi in favour of the *qasbahs* in which many of them had their roots.⁶² The places they chose, including Thāna Bhowan, Deoband, Sahāranpūr, Kāndhlah, Gangoh, and Barely, were less affected by the British presence and were more conducive to preserving Muslim cultural and religious life.⁶³ It was from these villages that the reform programme of the 'ulamā' was eventually launched. The 'ulamā' turned their attention to the establishment of educational institutions and the training of men to teach and guide Muslims towards greater adherence to the dictates of the *Sharī'ah*. Thus, at the end of the nineteenth century, the reform program began to manifest itself in a new form, one of looking inwardly and primarily concerned with the Islamic quality of individual lives. Turning towards education was in part a response to the destruction of Delhi which was traditionally the seat of Muslim learning.

Foremost among the institutions established in the post-Mutiny era was Muḥammad Qāsim's famous seminary, Dār al-'Ulūm, at Deoband. Deoband was a very old settlement, situated approximately 144 kilometres northeast of Delhi,

⁶² Those 'ulamā' who did not hold any hope of Muslim rule in India emigrated to Arabia. Among those who emigrated were Shāh Muḥammad Ishāq who left in 1257/1841, Shāh 'Abd al-Ghanī who left in 1274/1857 and Imdād Allah who left after 1274/1857.

⁶³ Metcalf, *Islamic Revival*, p. 85.

in the district of Sahāranpūr.⁶⁴ Muslim presence in the town may be traced back to the thirteenth century, during the reign of Qutb al-Dīn Aibak (602/1206 - 606/1210).⁶⁵ The town was typical of the northern Indian districts. The distinct architecture of the town bore ample testimony of Muslim presence, and even to this day, domes and minarets are visible from far afield in the rather flat countryside.⁶⁶ The town was characterized by "tall mosques, famous tombs, lush gardens and trees, a fine climate and sweet water, and a thriving marketplace."⁶⁷ Some of the splendid mosques built during Muslim rule still exist.⁶⁸ Its dominant Muslim families were the Ṣiddīqī and °Uthmānī *shaykhs*.⁶⁹ However, many of the °ulamā' of the outlying *qasbahs* including Nānautah, Gangoh, and Ambahtah, had family ties in Deoband. Muḥammad Qāsim and his cousin Muḥammad Ya°qūb (d. 1302/1884) both married into a family of the town.⁷⁰

⁶⁴ For detailed description and historical background to the town see Sayyid Maḥbūb Raḍwī, *Tārīkh Deoband* (Deoband, 1972) p. 129 ff. Also Metcalf, *Islamic Revival*, pp. 87-93.

⁶⁵ A disciple of Khwājāh °Uthmān Hārūnī (d. 607/1210), Qāḍī Danyāl Qaṭrī was stationed there. See Raḍwī, *Tārīkh Dār al-°Ulūm Deoband*, p. 130. The shrine of Shāh °Alā al-Dīn Jungalbāsh (d. 742/1341), a prominent student of a pupil of Ibn Jawzī, is also located on the southeastern side of the town. The shrine is still visited by many to this day.

⁶⁶ In 1901 there were 11,825 Muslims and 7,958 Hindus. The Hindu and Muslim communities were separated by a long bazaar that ran north and south. See Metcalf, *Islamic Revival*, p. 91.

⁶⁷ Raḍwī, *Tārīkh-i Deoband*, pp. 49-53.

⁶⁸ Masjid-i Qil°ah of Sultān Sikandar Lodhī's reign (894/1488 - 923/1517); Masjid-i Khānqah of Emperor Akbar's regime (963/1555 - 1014/1605); and Masjid-i Abū al-Ma°ālī of Awrangzeb's period (1068/1657 - 1118/1706); Masjid-i Chattah, where the great *sūfī* Hazrat Bābā Farīd al-Dīn Shagr was said to have meditated, are among the few existing mosques.

⁶⁹ Ṣiddīqī and °Uthmānī *shaykhs* trace their lineage directly to the first Caliph Abū Bakr and to the third Caliph °Uthmān respectively.

⁷⁰ Gilānī, *Sawānih-i Qāsmī*, vol. 1, pp. 498-99.

The town had suffered with the decline of Mughal rule. During the Mutiny, thirty- four men from the town were hanged and many more were given lengthy jail sentences.⁷¹ Deoband shared the fate of many villages of the post-Mutiny period. Three neighbouring villages were raised to the ground and the estates of many families were confiscated.⁷² Nevertheless, in the aftermath of the conflict, Deoband prospered more than other villages because of its network of canals, post and telegraph services, and most of all from the railroads. In 1868, the Northwest Railway was completed, effectively linking the town to cities throughout North India.⁷³

Although religious divisions and differences among the Muslims in the village were a permanent feature, the cultural and intellectual ambience of Deoband and the presence of those who were favourably disposed to scriptulist reform, enhanced the prospects of establishing a religious institution.⁷⁴ In the pre-Mutiny period, many of the leading families of Deoband responded favourably to the reformist movement of Sayyid Aḥmad Shahīd. He was entertained several times in Deoband by Shaykh Niḥal Aḥmad.⁷⁵ The father and uncles of Maulānā Rafīʿ al-Dīn, *Muhtamim* (rector) of Dār al-ʿUlūm from 1872 to 1889, were active in *jihād* on the frontier. During the Battle of Bālakot in 1831 three of Maulānā

⁷¹ Metcalf, *Islamic Revival*, p. 91.

⁷² This left its mark not only on the material situation of the influential, but also on their outlook. *Ibid.*, p. 91.

⁷³ Raḍwī, *Tarīkh Dār al-ʿUlūm Deoband*, p. 23.

⁷⁴ Metcalf, *Islamic Revival*, p. 92.

⁷⁵ Miyān, *ʿUlamā'-i Hind*, pp. 67-68.

Rafī° al-Dīn's uncles died.⁷⁶

In choosing Deoband, the founders of Dār al-°Ulūm did not cite political and material considerations, but rather perceived the location of Deobandī as divinely ordained. Maulānā Rafī° al-Dīn, for instance, experienced a dream in which the Ka°bah was located in Deoband's garden and the Prophet himself was seen giving milk to students. These and other similar dreams gave the founding-fathers a self-fulfilling confidence in their mission and choice of location. It was believed that all the founding-fathers received simultaneous inspiration in establishing the college there: "The idea of Dār al-°Ulūm was not the result of cognition but was a drop from the overflowing sea of divine inspiration."⁷⁷ Qārī Muḥammad Ṭayyib, (a recent rector of Dār al-°Ulūm), waxed lyrical about the inspiration behind the establishment of the Dār al-°Ulūm:

It goes without saying that when the actual reality behind the establishment of this *madrasah* was divine inspiration (*ilhām*), its formation, its structures and its location, too, were the result of divine inspiration . . . thus, its foundation, its commencement, its construction and its system of administration, so much so that even in the very selection of its founding fathers, the standard and customary method of judicious individuals consulting and then arriving at a mutually acceptable strategy and design for the establishment of a *madrasah* of this nature, was not followed. Rather, like the inspirational reality behind the central idea, the hearts of the saints of the time were enkindle with the flames of divine inspiration, that flowed through the Walī Allah family and into the hearts of Ḥaḍrat Qāsim and Rashīd Aḥmad and without any exception these eminent souls, at once expressed in chorus, as though, in conformance with the prophetic *sunnah* as expressed in the Qur'ānic verse "and consult with them" (Q. 3:159), the desire to establish the institution of Dār al-°Ulūm. Although there was an outward form of consultation and deliberation among these pious souls, the actual consultation was

⁷⁶ Kāsūlī, *Arwāḥ-i Thalāthah*, pp. 325-26.

⁷⁷ Anwār al-Ḥasan Hāshimī, *Mubashsharāt-i Dār al-°Ulūm* (Deoband, 1955), pp. 13-14.

with the divine. So, whenever these holy men consulted, they used to put their mystical revelations (*mukāshifāt*) before each other. If one pious soul said; ' My heart has been inspired and I believe that the time has now come to establish a *madrasah* so that religious education could spread throughout India, another say: "I have experienced the very same inspiration'. . . . Since all the basic matters (*bunyādī umūr*) of the *madrasah* were being implemented through tidings from the Unseen, the attention and concentration of the pious founders were towards Allah, towards invocation (*du'ā*), towards supplication and mystical experiences, rather than consultation and mutual understanding.⁷⁸

The opinion that divine inspiration played a major part in the establishment and construction of Dār al-^oUlūm seems to be posited not only to emphasize the spiritual nature and divine sanctions for its coming into existence, but also to underscore the piety and spiritual calibre of its founding-fathers.⁷⁹ It was believed that divine intervention played a role even in the choice of building sites:

Maulānā Rafī^c al-Dīn, the second vice-chancellor of Dār al-^oUlūm, and one of the great saints of the Naqshbandiyyah order, saw the Holy Prophet in a vision, descending with a staff in his hand to the foundation that had been dug for the erection of the *madrasah* and said: "This foundation has been dug in a northerly direction, therefore the courtyard of the *madrasah* will become small and narrow." Having said this, the Holy Prophet proceeded some ten or twenty yards northward and with his staff he drew a long line and said: "The foundation should be dug here." As soon as the Maulānā got up the next morning, he went to the site and found the line in the same place that he had seen the Prophet drawing it in his dream. Without asking or consulting with anyone, he gave instructions for the new foundation to be dug.⁸⁰

⁷⁸ Ibid., pp. 38- 41.

⁷⁹ Ibid., p. 38.

⁸⁰ Ibid., p. 46 When Sayyid Ahmad Shahīd, while enroute to the North-west Frontier province during his *jihād* campaign, happen to pass through Deoband and when he reached the place where the *madrasah* is situated today, he remarked: "Here I am smelling the fragrance of knowledge", although at the time of his remark, it was the site upon which the rubbish of the town was being dumped. Ḥājī Imdād Allah once remarked: "The thought use to occur to me that the *madrasah* would be established in Thāna Bhowan or Nānautah, but what did we know, the people of Deoband walked off with it". Ibid.,p. 42

Notwithstanding such appeals to divine origin, Dār al-°Ulūm was established out of a number of fears harboured by its founders. On the one hand, the political and military defeat of the Muslims generated a feeling of impending annihilation of Muslim culture. On the other hand, the destruction of the Muslim educational structures through the British confiscation of endowments compelled the Muslims to seek alternatives. The fear that Christian missionaries with the blessing and support of the British, would convert the unwary Muslim, further precipitated the move towards educating the masses.⁸¹ Thus, in addition to external fears, it was felt that internal Muslim disarray could be resolved by resorting to education.

Qārī Muḥammad Ṭayyib sketches the intellectual milieu out of which Deobandism grew:

Factional disunity was the order of the day. Each group, due to the differences in their *maslak* (religious program) were engaged in squabbles and wrangles with opposing factions. If a *faqīh* (jurist) opposed the *ṣūfī*, the *ṣūfī* would declare him a man deprived of esoteric knowledge (*mahrūm al-bāṭin*), an externalism, one without insight (*bê baṣīrat*), and devoid of aesthetics. The *faqīh* on the other hand regarded the *ṣūfī* a prisoner of unauthentic fancies and superstitions, operating under the cloak of esoteric knowledge, one suffering from intellectual vertigo and deviating from the path of the past masters. The *muhaddith* was opposed to the *mutakallim* (theologian) and vis versa.⁸²

Qārī Muḥammad Ṭayyib believed that the program initiated by Muḥammad Qāsim also served to unite.

Qāsim al-°Ulūm and his Dār al-°Ulūm developed a truly comprehensive *maslak* in which *ḥadīth*, *tafsīr*, *fiqh*, *uṣūl al-fiqh*,

⁸¹ Raḍwī, *Tārīkh Dār al-°Ulūm Deoband*, p. 116, p. 484.

⁸² Qārī Ṭayyib in the preface to Raḍwī's, *Tārīkh Dār al-°Ulūm Deoband*, p. 27.

kalām, taṣawwuf, ḥaqīqah (reality), *maʿrifah* and all other religious sciences, were presented as a rich and multicoloured bouquet of flowers in such a complete way that it became the rallying point of many different *maslaks*. . . . The aim of Qāsim al-ʿUlūm and Dār al-ʿUlūm was to unite all the orders and their respective followers. His objective was to unite the academic orders so that the *ṣūfī* and the *mutakallim*, the *muḥaddith* and the jurist, the *uṣūlī* (jurisprudent) and the *ʿarif* (gnostic) may not remain aloof and distinct from one another, but should rather be integrated to form one cohesive holistic discipline.⁸³

With hindsight, it was relatively easy for Qārī Muḥammad Ṭayyib to attribute such noble motivations to the Muḥammad Qāsim. However, I believe that the true motivation behind the establishment of Dār al-ʿUlūm was captured in a speech given by Muḥammad Yaʿqūb Nānautawī during a prize-giving function of Dār al-ʿUlūm, held in 1301/1883,

This *madrāsah* was founded only for the revival of the religious sciences. It was established in the aftermath of the Mutiny. From the conditions prevalent at the time, it appeared as if religious knowledge was about to become extinct. No one could learn, nor could anyone teach. The big cities which were once major centres of learning were desolate, and in ruins. The *ʿulamāʾ* were in disarray, books were unavailable, and tranquillity was gone. If there was eagerness in the heart of anyone to acquire knowledge, where was one to go and from whom should one lean? It seemed as if the *ʿulamāʾ* who were still alive would in twenty or thirty years time set off to their ultimate destination, Paradise, and then there would be none left to even teach the method of *wuḍūʾ* (ablution).⁸⁴

One of the most immediate problems that faced the founding-fathers of the college was the matter of finance. During Muslim rule, that issue was the least of the problems attached to the establishment of a learning institution. With the advent of British rule, however the question of funding became critical. Despite

⁸³ Ibid., pp. 28-35

⁸⁴ Cited in Raḍwī, *Tārīkh Dār al-ʿUlūm Deoband*, p. 143.

whatever faith the founders of Dār al-‘Ulūm had in Unseen assistance, they were pragmatic men. Before opening the doors of their learning institution, they knew that funds were required and to that end they strived.

On Friday 2 Dhī Qa‘dah, 1282, at the time of *ishrāq* (about 20 minutes after sunrise) Ḥājī Muḥammad ‘Ābid (d. 1331/1913) put three rupees into his scarf and set out from Chattah Masjid all alone to call on the late Molvi Mehtāb ‘Alī (d. 1293/1876) who most cheerfully donated six rupees with his blessings. Molvī Faḍl al-Raḥmān donated twelve and this author, six rupees. Rising up from there, he went to Molvi Dhul Fiqār ‘Alī (d. 1322), who was a patron of learning, and gave twelve rupees. . . . by dusk fall, three hundred rupees had been collected.⁸⁵

The system of public funding became a distinctive and innovative feature of Dār al-‘Ulūm.⁸⁶ Part of the success and popularity of Dār al-‘Ulūm could perhaps be attributed to this novel way of establishing a "peoples college," a college where anyone, irrespective of rank or position was able to be affiliated through some donation. Replacing the old system of state and courtly endowments, this new method of public funding proved to be very successful.⁸⁷ This system required the keeping of records which were published annually. Thanks to the printing press, detailed lists of donors were printed in order of the size of the donation. People were encouraged to contribute their *zakāt* (obligatory alms) to the college fund.⁸⁸ Many wealthy people were among the donors and many, no doubt, expected

⁸⁵ Faḍl al-Ḥaqq, *Sawānah Makhtūṭah*, cited in Raḍwī, *Tārīkh Dār al-‘Ulūm Deoband*, p. 150.

⁸⁶ It was indeed a very strange and novel exercise to start an institution of learning purely on the basis of public donations without any fixed income. *Ibid.*, p. 151.

⁸⁷ *Ibid.*, p. 152.

⁸⁸ In the early days, people donated books, clothing and food for the students, and household items to furnish the college. Metcalf, *Islamic Revival*, p. 97.

some recognition in return. The system of popular support proved extremely effective, both financially and symbolically, for it provided the much needed alternative to state and courtly support.

Interestingly, the founders of Dār al-ʿUlūm never restricted their source of income to Muslims. The college welcomed donations from all sectors of the community.⁸⁹ In fact, there were two Hindus in particular who were very generous towards the college and their charity was duly acknowledged:

Our special thanks are due to Munshī Nawl Kishore, proprietor Maṭbāʿ-i ʿĀzam and Janāb Rao Amar Singh, proprietor of the newspaper Saḥīr Budhāna, that despite the fact that these distinguished gentlemen are Hindus, they bestow their generosity and favour on this *madrāsah*. . . . All the counsellors thank them from the bottom of their hearts and pray for the good of them all.⁹⁰

Muḥammad Qāsim, the founder of Dār al-ʿUlūm, stressed that it was necessary to abstain from fixed and assured sources of income as these would undermine trust in Allah.⁹¹ While the need for funds was recognized and a clear method for collecting such funds was stipulated, the *ṣūfī* dimension of "trust in Allah" was emphasized. Clause Six of the founding principles stated that:

As long as this college has no secured and fixed sources of income, Inshā Allah, it will remain operating, provided we posit our trust in Allah. If the income is secured from a source like *jāgīr* holdings, factories, trading interests, or pledges from nobles, the *madrāsah* will lose the fear that inspires submission to Allah, and the Unseen assistance (*ghaybī imdād*) will disappear and

⁸⁹ Raḥwī, *Tārīkh Dār al-ʿUlūm Deoband*, p. 152. The particular clause dealing with donations stipulated: "No specific amount has been fixed, nor is there any restrictions on the grounds of *madhhab* and *mūllat* (religions)."

⁹⁰ *Ibid.*, p. 167.

⁹¹ *Ibid.*, p. 154.

disputes will result.⁹²

Another interpretation of Clause Six suggests that Muḥammad Qāsim may have wanted to ensure that the new method of supporting the educational institutions would neither be contaminated by financial grants from the government nor from the feudal landlords, so as to keep the institution unencumbered.⁹³

Dār al-ʿUlūm commenced on 15 Muḥarram 1283/1866 in the open courtyard of the old Chattah Mosque under the famous pomegranate tree (that still stands today). The first teacher was Mulla Maḥmūd, a pious *ṣūfī*.⁹⁴ The young student who sat before the *ustādh* (teacher) and read the opening lines of the *kitāb* (book) was Maḥmūd Ḥassan, later renowned as Shaykh al-Hind.⁹⁵ The inauguration was very brief, modest, unceremonious and unpublicised, attracting virtually no attention.⁹⁶

From its inception the college was unlike other *madrāsahs*. Its founding fathers implemented the British bureaucratic style for educational institutions.

⁹² Ibid.

⁹³ Ibid., p. 150.

⁹⁴ While in Meerut, Maulānā Muḥammad Qāsim Nānautawī successfully recruited Mulla Maḥmūd Deobandī by offering him Rs. 5 more than the Rs. 10 he was earning in Meerut. Muḥammad Qāsim wrote to Ḥāji Muḥammad ʿĀbid: "I am sending you Mulla Maḥmūd on Rs. 15 per month. You may commence the educational program without waiting for me, for I shall join you later." Ibid., p. 41.

⁹⁵ The historical facts about the college are derived primarily from the annual published report. The report called "*Rudād-i Dār al-ʿUlūm*" consists of three parts. The first consists of important events and issues that occurred during the year. The second deals with the accounts, and a detail description of income and expenditure, together with a comprehensive list of donors. The third lists the results of the annual examinations.

⁹⁶ Ibid., p. 155.

Despite its humble beginnings, the college was always administered as an independent institution and not relegated to a wing of a mosque. It soon acquired classrooms and a central library. It was run by qualified staff and its students were admitted for a fixed term of study. They were required to take examinations and they were even rewarded for outstanding performance at a special annual prize-giving event. Many of the founders were exposed to the educational system and administration of Delhi College, where they learned the effectiveness of such a system.⁹⁷ From the beginning Dār al-‘Ulūm proved popular, despite initial setbacks. During the second year of its existence, the college was badly affected by an epidemic.

The epidemic that broke out in Deoband affected several teachers and students, with the result that some of them returned to their native villages and teaching grounded to a halt for nearly two months. But thanks to Allah, when the epidemic was over, the teachers and the students made good the loss by virtue of their unusual effort and the prescribed syllabus was completed. What was astonishing was that in spite of the severity of the epidemic, there was an extraordinary increase in the number of outside students. In the previous year there were 78 student, that year the number increased to 120. In comparison with the previous year, even the donations doubled. In 1283, a total of Rs. 649 was received and that year Rs. 1275 were received.⁹⁸

Gradually, an informal system of affiliated colleges emerged. These colleges were invariably staffed by Deobandī graduates. The name Deoband came to represent a distinct *maslak* (religious ethos).⁹⁹ Thus, by 1880 there were

⁹⁷ Metcalf, *Islamic Revival*, p. 94.

⁹⁸ Raḍwī, *Tārīkh Dār al-‘Ulūm Deoband*, p. 162..

⁹⁹ When the great poet Iqbāl was asked: "What is this thing of Deobandī, is it a creed or a sect? He replied: "It's neither a creed nor a sect, Deobandī is the name of every rationalist religious man." Qārī Tayyīb in the preface to Raḍwī's, *Tārīkh Dār al-‘Ulūm Deoband*, pp. 24-5.

already over a dozen colleges that identified themselves as Deobandī, and by the turn of the century, there were nearly forty, some in places as distant as Chittagong in Madras, and Peshāwar. In 1967, after one hundred years, there were some 8,934 Deobandī aligned schools.¹⁰⁰ In the Sahāranpūr annual report of 1904, Maulānā Maḥmūd al-Ḥassan termed these colleges "deputies" of the Prophet.

Previously in Hindustan knowledge was so scarce . . . that one could hardly find someone to read the *janāzah salāh* (funeral prayers). But today knowledge is so widespread that every city, nay, every village indeed probably every village, has its own *molvi* there.¹⁰¹

The 'ulamā' no longer instructed only the classes of princes and bureaucrats. The latter no longer held a monopoly on education in India.¹⁰² The 'ulamā' found a new basis of support and adapted to their own ends the modern organizational style of the new institutions. They were also successful in training and fielding a large number of 'ulamā' who in turn were to influence and shape the standards of piety and beliefs of a substantial number of Muslims. These achievements significantly enhanced the influence and authority of the 'ulamā'.

2.5 Conclusion

Whatever hopes the Muslims had cherished of recapturing their past glory were

¹⁰⁰ Metcalf, *Islamic Revival*, p. 136.

¹⁰¹ Muḥammad Zakariyyah, *Tārīkh-i Mazāhir* (Sahāranpūr, 1312), p. 119.

¹⁰² Metcalf, *Islamic Revival*, p. 136.

finally shattered during the Mutiny and its cruel suppression. Having been convincingly defeated on the military front, Muslims emerged a vanquished nation who had to come to terms with the realities of British domination. The acceptance of this reality was accompanied by Muslim fear that their culture and religious values were going to be suppressed or even destroyed. They feared that with government support, the Christian missionaries were intensifying their missionary and proselytization campaigns among the masses. The confiscation by the British of many of the endowments necessary to sustain the Muslim educational infrastructure resulted in the collapse of the educational system. And finally, the introduction of British education through a network of state-run schools generated suspicion and precipitated a move towards Muslim reorganization.

The role of the *'ulamā'* was significantly strengthened by these developments, for they emerged as the *de facto* leaders. They retreated into the districts and started to reorganize educational institutions on the basis of religious values and British-style administration. They made the *madrasah* their institutional base, with many of the founding figures acting as *ṣūfī* mentors commanding enormous respect and support for their endeavours. Many of the *'ulamā'* especially in the northern provinces, focused their attention on education, for they felt it to be the only effective shield against a British intellectual and cultural onslaught. Notwithstanding the modern trappings, the first college at Deoband was established by former college-fellows in Delhi. With the support of the community, such institutions mushroomed and flourished in British India.

CHAPTER THREE

The 'Ulamā' of Deoband

During the formative period of Islam, there arose several competing conceptual systems each embracing ideals of the perfect person and society; *sharī'ah*, *ṭarīqah*, *Imāmiyyah*, *adab*, and *falsafah*.¹ Of these, two epitomise the poles of Islamic life: *Sharī'ah* and *Ṭarīqah*. Whereas the *Sharī'ah* placed emphasis on rituals and was primarily oriented towards governing the physical, exoteric aspect of life. *Ṭarīqah* stressed the need for transformation from within and was primarily oriented towards the inculcation of a good spiritual character. In terms of the *Sharī'ah*, human perfection was characterized by obedience to the revealed laws of God. Thus, the ideal legal personality was one who mastered the knowledge of the laws of the *Sharī'ah* and lived and propagated them.

Although most of the 'ulamā' exercised no formal role in the political administration of British India, they commanded widespread respect among the people. Many of 'ulamā' acted as *Sharī'ah* guides (*muftīs*) in determining

¹ Marshall G. S. Hodgson postulates five competing orientations: *sharī'ah*, *taṣawwuf*, *Imāmiyyah*, *adab*, and *falsafah*. See *The Venture of Islam* (Chicago, 1974), vol. 1, pp. 238 ff. Franz Rosenthal has identified *kalām*, *taṣawwuf*, *falsafah*, and *adab* as four contending systems. See *Knowledge Triumphant* (Leiden, 1970). Gustave E. von Grunebaum singles out two competing scribal cultures, that of the *faqīh* and that of the *kātib*. See *Islam and Medieval Hellenism: Social and Cultural Perspective* (London, 1976). George Makdisi, in *Rise of Colleges* (Edinburgh, 1981), pp. 1-10, seem to favour law (*sharī'ah*) as the single most powerful Islamic orientation.

appropriate action and response to a wide range of social and religious exigencies. They also acted as *ṣūfī* mentors offering spiritual guidance to their disciples. Many of them wrote and provided amulets (*ta'wīz*), and some even practised folk medicine, called *yunānī*, or Greek medicine.² They also filled the traditional public roles of preachers, leaders of congregational prayers (*imāms*), debaters with opposing groups, teachers of the young, and lecturers at seminaries.

3.1 The Deobandī Ethos (*Maslak*)

The Deobandīs were notably successful in performing both the role of the *Sharī'ah* guide and *Ṭarīqah* mentor.³ Their effectiveness as a distinct *maslak* stemmed primarily from their ability to synthesize the two major streams of Islamic orientation, namely, intellectual learning (*Sharī'ah*) and spiritual experience (*Ṭarīqah*). The Deobandīs believed that their *maslak* was the embodiment of perfect religious values. Radwī spares no accolade in his assessment of the Deobandī *maslak*.

While comprehensiveness of knowledge and morals (*akhlāq*) was always a distinctive feature of this group, service to religion, community, nation and country was its special motto. With its broad vision, its most important function was the imparting of the prophetic sciences. . . . Hence, this rich ethos is inclusive of knowledge and *ma'rīfah* (gnosis), it embraces *'amal* (action) and *akhlāq*, it is inclusive of *mujāhidah* (spiritual striving) and *jihād*, it is inclusive of rectitude (*diyānat*) and politics, it is inclusive of tradition and intelligence, it embraces *khalwat* (seclusion) and *jalwat* (public appearance), devotion and patriotism, law and wisdom, and

² The native practice of medicine according to Greek sciences is referred to as *yunānī ṭibb*.

³ Metcalf, *Islamic Revival*, p. 138.

it is inclusive of the exoteric and the esoteric.⁴

The Deobandīs were firm believers in the unity of *Sharī'ah* and *Tarīqah*, taking The Law and The Path not to be opposed to each other but as complementary.⁵ Since the efforts of al-Ghazālī (d. 1111) who was successful in rehabilitating Sufism and presenting it as an integral part of the *Sharī'ah*, the once exclusive provinces of law and mysticism were made accessible to each other. The Deobandīs were not alone and unique in offering this type of composite leadership and guidance, for many of the great religious leaders of the past also acted in this dual capacity. The 'ulamā' belonging to the Walī Allah tradition were men who were schooled in *Sharī'ah* and trained in *taṣawwuf*, and acted as both 'ālim and *ṣūfī pīr* (spiritual mentor).⁶ What was however different about the Deobandīs, beyond their successful innovations in their educational system and structure, was the extent to which they insisted upon their reformist interpretation of faith and practice. It was not enough for one who followed a Deobandī to turn to him for intercession (*wasīlah*) or miraculous intervention, as one might turn to a Barelwī *pīr* or *sajjadah nashīn* (heir to a shrine). The follower was required to abandon popular customs, fulfill all religious obligations, and submit himself to Deobandī guidance in all aspects of his life.

⁴ Raḍwī, *Tārīkh Dār al-'Ulūm Deoband*, p. 428. This quote is an illustration of the extent of Deobandī veneration for their *maslak*.

⁵ This synthesis could be traced back to al-Ghazālī (d. 1111), who is well-known for uniting the two orientations.

⁶ Although in some areas the traditional distinction between the 'ālim, whose expertise lay in matters of the *Sharī'ah*, and the *ṣūfī*, who exemplified the *tarīqah*, had been maintained, increasingly in the post-Mughal era that distinction was to become blurred.

By achieving the unity of *Sharī'ah* and *Ṭarīqah* the Deobandī 'ulamā' were able to considerably broaden their base. Drawing on the charisma generated by their *ṣūfī* status as well as being exemplars of the *Sharī'ah*, they were able to assert their authority and extend their influence over the affairs of the Muslims with relative ease.

The Deobandīs encouraged comprehensiveness in their teachings. They sought to teach all the essential Islamic disciplines and to represent all the *ṣūfī* orders.⁷ Although the Deobandī 'ulamā' understood both *Sharī'ah* and *Ṭarīqah* to be an inherent part of Islam, it was not always easy for all of them to act in both capacities as *‘ālim* and *ṣūfī shaykh* with equal ability. Lamented Muḥammad Qāsim: "Among the 'ulamā' I have a bad name and among the *ṣūfīs* I have the stain of *mawliyyat*."⁸ The tension between *‘ālim* and *ṣūfī shaykh* was caused by the traditional suspicion that each discipline was inclined to neglect an important dimension of the other. Qārī Muḥammad Ṭayyib vividly sketches that tension:

If a *faqīh* (jurist) opposed the *ṣūfī*, the *ṣūfī* would declare him a man deprived of esoteric knowledge (*mahrūm al-bāṭin*), an externalist, one without insight (*bē baṣīrat*), and devoid of aesthetics. The *faqīh* on the other hand regarded the *ṣūfī* a prisoner of unauthentic fancies and superstitions, operating under the cloak of esoteric knowledge, one suffering from intellectual vertigo and deviating from the path of the past masters.⁹

⁷ For a comprehensive and detailed description of the entire Dār al-'Ulūm curriculum see Raḍwī, *Tārīkh Dār al-'Ulūm Deoband*, pp. 261-302. The author painstakingly recorded the name of every course reader of each academic year of the entire eight year course together with the post-graduate courses.

⁸ The term "*mawliyyat*" simply means one that was schooled in the religious sciences. Kasūlī, *Arwāḥ-i Thalāthah*, p. 230. Also Gilānī, *Sawāniḥ-i Qāsmī*, vol. 1, p. 340.

⁹ Qārī Ṭayyib in his preface to Raḍwī's, *Tārīkh Dār al-'Ulūm Deoband*, p. 27.

Qārī Muḥammad Ṭayyib believed that the Deobandī *maslak* united the contrasting ideals of Islam.

Whilst not neglecting *Ṭarīqah* at one level, the Deobandīs believed that adherence to the laws of the *Sharī'ah* was the only solution to problems confronting the Muslims. Although the goal of the Deobandī 'ulamā' was to follow the Law and the Path, emphasis on obedience to the *Sharī'ah* ultimately enjoyed greater attention. Indeed, the creation of individually responsible Muslims was conceived to be at once a solution to the personal concerns and the survival of Islamic culture, whatever political vicissitudes ensued.¹⁰ At the heart of the Deobandī *maslak* was complete obedience and total submission to the *Sharī'ah*, in the way it was interpreted by the pioneers of the institution. They saw in the submission to the dictates of the *Sharī'ah* the success of both worlds. In the words of Metcalf: "The Deobandīs thought of their foundational role as that of *muftī*, giving advisory opinions on the Law. No single concern was more central to them than the quest for correct belief and practice in the light of classical texts."¹¹ The ultimate goal of the Deobandī *maslak* was obedience to the law of the *Sharī'ah*, and on that account a program of reformation was instituted.

Qārī Muḥammad Ṭayyib summarized the Deobandī *maslak* and recorded seven principles upon which it was based.¹²

¹⁰ Metcalf, *Islamic Revival*, p. 140.

¹¹ *Ibid.*, p. 140.

¹² Raḍwī, *Tārīkh Dār al-'Ulūm Deoband*, pp. 224-235. Qārī Muḥammad Ṭayyib wrote a treatise entitled, *Maslak-i Dār al-'Ulūm*, in which he outlined the Deobandī position. Sayyid Maḥbūb Raḍwī basically quotes from this work. No publishing details are given.

1. A comprehensive knowledge of the laws of the *Sharī'ah*.
2. Self-purification and *sulūk-i bātin* (spiritual progression).
3. Emulating the prophetic practice in every walk of life.
4. Precedence of the Ḥanafī position over other *madhhabs*.
5. Following the Ash'arī and Māturīdī theological (*kalām*) schools.
6. Defending the faith against evil and depravity, including the fight against innovation (*bid'ah*), popular customs, and other forms of religious "deviance."
7. Inculcating the *dhawq* (taste, nature) of *Qāsimiyyat* and *Rashīdiyyat*, in reference to Muḥammad Qāsim Nānautawī and Rashīd Aḥmad Gangohī. This was also known as the Deobandī *mashrab* (literally, a place of drinking, but also disposition, nature). Emulating the methods and program of the founding-fathers of Dār al-^cUlūm was believed to be an integral part of the success of the institution.¹³

3.1.1 The *Ṭarīqah* of the Pioneers of Deoband

An important dimension of Deobandī Sufism was their affiliation with all major *silsilahs* (*ṣūfī* orders).¹⁴ During the nineteenth century, the practice of multiple initiation from a single *shaykh* became virtually standard practice. Ḥājī Imdād Allah, the revered *shaykh* of all the pioneers of Dār al-^cUlūm, initiated his disciples in all the major *silsilahs* of the time, among them Chistī Sābirī and Chistī Nizāmī, Qadarī, Naqshbandī and Naqshbandī Mujaddidī, Suhrawardī, and Quddūsī.¹⁵

Although it weakened the distinct character of each *silsilah*, multiple initiation strengthened the influence of the individual *shaykh*.¹⁶ Through multiple

¹³ Ibid., p. 431.

¹⁴ Muḥammad Ṭayyib Qāsimī, *Dār al-^cUlūm Deoband kī ṣad Sālah Zindagī* (Deoband, 1968), p. 24.

¹⁵ Āshiq Ilāhī, *Tadhkirah al-Rashīd*, vol. 2, pp. 105-11.

¹⁶ Metcalf, *Islamic Revival*, p. 158.

affiliation, the *shaykh* became the recipient of many chains of succession, linking him through the great men of the past to the Prophet himself. Multiple affiliation also enhanced the *shaykh's* ability to draw on a wide range of techniques that could be employed when instructing disciples. The *shaykh* was thus free to choose a technique from any *silsilah*, for such eclecticism was considered necessary to service a wide range of disciples who came from varied backgrounds. For example, the *shaykh* could instruct a disciple (*murīd*) in a method of *dhikr* (repetition of the name of God) based upon the Qadarī *silsilah*, which was characterized by strong rhythmic gestures and intonation. Or, he could resort to the Naqshbandī method of silent recitation. He could instruct the disciple to read the genealogies of saints (*shajarah*).¹⁷ He could even synthesize the methods of the various *silsilahs*. When Rashīd Aḥmad Gangohī was asked by a disciple to be taught the Naqshbandī method, the *shaykh* responded by saying that "he taught the final instruction in which all the *silsilahs* joined."¹⁸

Although most of the early leaders, including Muḥammad Qāsim, were disciples of Ḥājī Imdād Allah who emphasized the Chistī *silsilah*, the Deobandīs were more inclined to the Naqshbandī *silsilah* on certain issues. They especially favoured the method of silent *dhikr* as opposed to loud *dhikr*. They found a special affiliation with the Naqshbandī *silsilah* in which obedience to the *sunnah*

¹⁷ In the act of initiation (*bay'ah*) the *barkah* (blessings) inherent in these various distinguished chains were passed on to the recipient disciple.

¹⁸ Ḥusayn Aḥmad Madnī, *Naqsh-i Ḥayāt* (Deoband, 1953), vol. 1, p. 106. Rashīd Aḥmad Gangohī was a descendant (twelfth generation) from the great Chistī *shaykh*, Shāh 'Abd al-Quddūs Gangohī (d. 1537), and revived his *khānqah* which was deserted for three hundred years. For biographical details of 'Abd al-Quddūs Gangohī, see I'jāz al-Ḥaqq Quddūsī, 'Abd al-Quddūs Gangohī *awr un kī Ta'limāt* (Karachi, 1961).

was preeminent.¹⁹ In the case of Hājī Imdād Allah, it is fair to say that the pioneers of Deoband treasured their allegiance not to any one *silsilah*, but rather to the specific *shaykh*, whose spiritual guidance and insight were sought.

It was primarily through Sufism that the first generation of Deobandī 'ulamā' fostered intense personal ties between themselves and their students. Students at the College often became disciples of their teachers, a practice that deepened the bond among Deobandīs. In contrast, initiation into Sufism was previously sought from relatives.²⁰ The knowledge acquired in the Deobandī classroom was given deeper spiritual meaning in the teacher's *khānkah* (*ṣūfī pīr's* place of teaching).

Popular *ṣūfī* practices that could not be reconciled with *Shar'ī* norms taught in the classroom were invariably opposed. Thus, certain *ṣūfī* customs such as 'urs (annual celebration of the death of a saint) and other activities that revolved around the tombs of famous saints, were challenged. The Deobandī *ṣūfīs* offered an alternate style of spiritual leadership, geared to individual instruction rather than mediation, stripped of what they deemed to be deviant custom.²¹

The important position of *Sarparast* (chief patron) of Dār al-'Ulūm Deoband was always occupied by revered and influential *ṣūfīs* of the day.

¹⁹ The Deobandīs had very strong ties with the Naqshbandī *silsilah* through their common teacher, Shāh 'Abd al-Ghanī Dihlawī who taught *ḥadīth* in Delhi. Maulānā Rafī al-Dīn, who was one of the pioneers of *Dār al-'Ulūm*, was his disciple.

²⁰ See Husain Madnī, *Naqsh-i Ḥayāt*, vol. 1, p. 76 for an example of the protests that occurred when a person broke the pattern of seeking initiation within the family. Also 'Ināyahtullah, *Tadhkirah-i 'Ulamā-i Farangī Mahall* for a description of how, in each generation, one member of this distinguished family would serve as the *Shaykh* to many relatives.

²¹ Metcalf, *Islamic Revival*, p. 157.

Muḥammad Qāsim, Rashīd Aḥmad, Maḥmūd Ḥasan, and Ashraf °Alī Thānwī, were all famous *ṣūfīs*, each having several thousand disciples. Through this network of Sufism, the fame and respect for the college gained rapid momentum.

Muḥammad Ya°qūb Nānautawī was not only a learned scholar in the field of the revealed and rational sciences, but was a sojourner on the mystic path. . . . Indeed, not only his family, but the entire city was influenced by his dignity and majesty. . . . He was a man of great perfection and a recipient of inspiration. He had numerous disciples and pupils.²²

Similarly, Muḥammad Qāsim was regarded by his followers to be among the highest order of men close to the angels,²³ whilst Rashīd Aḥmad Gangohī was ranked as the spiritual pole (*qutb*) and the rejuvenator of religion (*mujaddid*) of the time.²⁴

The Deobandī *shaykhs* were not favourably disposed to a disciple seeking spiritual guidance from more than one *ṣūfī shaykh* at a time. They emphasized the importance and value of investing complete and total trust and confidence in one *shaykh*.²⁵ Total commitment and dedication to one *shaykh* was believed to induce respect not only for the *shaykh* but more so for his teachings. Thus, the key in choosing a *shaykh* was not the *silsilah* he represented, for the *shaykh* was invariably connected to all the major ones, but rather the strength of the relationship (*ta°alluq*) that could be fostered between him and the *shaykh*.

²² Ḥakīm Amīr Aḥmad Nānautawī, Introduction to *Maktūbāt-i Ya°qūbī wa Bayād-i Ya°qūb* by Muḥammad Ya°qūb Nānautawī (Thāna Bhowan, n.d.), p. 13.

²³ Metcalf, *Islamic Revival*, p. 138.

²⁴ Kāsoli, *Arwāh-i Thalāthah*, p. 240. Also °Ashiq Ilāhī, *Tadhkirah al-Rashīd*, part 2, pp. 18, 162-65.

²⁵ °Ashiq Ilāhī, *Tadhkirah al-Rashīd*, part 2, p. 85.

Compatibility, or *munāsabah*, with the *shaykh* was considered very essential for spiritual progress. If the *murīd* differed with his *shaykh*, he was required to discuss the disagreement with the *shaykh*. If the difference still remained, the *murīd* was required to increase his trust and confidence in his *shaykh* by relinquishing his personal position in favour of the *shaykh*.²⁶ By emphasizing loyalty and commitment to one *shaykh*, the Deobandīs provided a corollary to the their juristic position that in matters of law one should follow one *madhhab*.²⁷ In exceptional cases, differences between *shaykh* and *murīd* were tolerated as long as there remained sufficient confidence, trust and goodwill in the *murīd*. Rashīd Aḥmad Gangohī, for example, had great admiration and reverence for his *shaykh*, Hājī Imdād Allah, despite the fact that he disapproved of some of the practices of his *shaykh*. Loyalty and total commitment to one's *shaykh* were considered a prerequisite for spiritual purification. Rashīd Aḥmad Gangohī ruled in one of his *fatwās* that a *murīd* should not abandon a suitable *shaykh* even if urged to do so by his parents.²⁸

instead
with
by shaykh
Imdad Allah

The Deobandīs did not initiate everybody who expressed such a desire. The granting of initiation usually took place only after a period of contact in which the good intentions of the aspiring *murīd* were established.²⁹ When Ashraf 'Alī Thānawī, while still a student at Dār al-'Ulūm, expressed the desire to be

²⁶ Muḥammad Ya'qūb, *Maktūbat-i Yāqūbī*, pp. 20-22.

²⁷ Metcalf, *Islamic Revival*, p. 163.

²⁸ Rashīd Aḥmad Gangohī, *Fatāwā Rashīdiyyah*, p. 53.

²⁹ Metcalf, *Islamic Revival*, p.162.

initiated by Rashīd Aḥmad, the latter refused.³⁰

Thus, in the case of the Deobandīs, the functions of *mufī* and *ṣufī pīr* were often united in one person. As the legitimate representative of the *Sharī'ah*, the *mufī*'s influence went far beyond the limited range of his disciples, for his rulings were intended to influence all Muslims. The function of the *pīr* was primarily to guide those who had turned to him. Although the function of the *mufī* was more general (*‘āmm*) and applicable to all, it was primarily due to the *mufī*'s function as *pīr* that his rulings received considerable authority and respect. The early Deobandī leaders drew enormous strength from this dual function.

3.1.2 The Sharī'ah of the Pioneers of Deoband

For the Deobandīs, every Muslim, with no exception, was summoned to submit to the commands of God. There could be no intermediary, no privilege status, no exemption, and no evasion of any sort from the obligation to obey the divine will. Therefore, for the Deobandī 'ulamā' there was only one paradigm that could form the basis of Muslim society, that of Prophetic Medina.³¹ The *sunnah* of the Prophet, as reflected in the ethos of pristine Medina, was to be reestablished, institutionalized, and emulated by all future generations. The rejection of *bid'ah*

³⁰ 'Azīz al-Raḥmān, *Tadhkirah Mashā'ikh Deoband* (Bijūr, 1967), p. 334. See pp. 331-35 for a detailed description of Ashraf 'Alī's initiation (which was ultimately granted by Ḥāji Imdād Allah) while he was on pilgrimage to Mecca.

³¹ For an excellent discussion on the issue of recapturing the ethos of pristine Medina, see Hodgson, *Venture*, vol. 1, pp. 318-26.

(innovation) was the first step towards the reestablishment of that paradigm. The task the Deobandīs set for themselves was one of identifying those beliefs and practices that they considered to be inconsistent with "historical" *Sharī'ah*. By historical *Sharī'ah* I imply the normative practice that prevailed in Medina during the early period of Islam. Whatever could be authoritatively linked to pristine Medina was to become the basis of organizing Muslim life. To this end, it was imperative for Muslims to ascertain precisely what aspects of *Sharī'ah*, in pristine Medina should form the basis for current Islamic society, and then proceed to systematically reproduce it. Recapturing and emulating the minute details of the Prophetic life style (*sunnah*) became an exercise that pervaded the Deobandī *fatāwā*. Thus, the rejection of *bid'ah* (innovation) was erected into a system of law, and individual morality was defined in terms of a return to the true values of Islamic society that once prevailed in Prophetic Medina.

Faced with the problem of how to determine what was normative Prophetic practice, the Deobandīs resorted to the doctrine of *taqlid* (following a specific legal school).³² The Deobandīs were extremely loyal followers of the Ḥanafī school. They were very proud of this fact because they were truly convinced of the superior status of the Ḥanafī school vis à vis the other legal schools.³³ The Deobandīs believed that the founder of the Ḥanafī school, Abū Ḥanīfah (d.150/767), possessed a legal acumen unsurpassed by any subsequent

³² An examination of the Deobandī's concept of *taqlid* follows in Chapter Five.

³³ *Fatāwā Dār-al-'Ulūm* (Deoband, 1973), the *Fatāwā* of Muftī 'Azīz al-Raḥmān, compiled by Muḥammad Zafīr al-Dīn under the supervision of Qārī Muḥammad Ṭayyīb, pp. 61-124

scholar.³⁴ The Deobandīs marshalled historical data to underscore the point that Imām Abū Ḥanīfah was no ordinary jurist, but rather a legal genius, whose wisdom, piety, and above all, juristic expertise was one of the greatest treasures of Islam. For the Deobandīs, the Ḥanafī position was viewed not merely as one juristic opinion competing with others, but rather as the *sine qua non* of Islamic legal thought.³⁵

The Deobandīs claimed that Abū Hanifah "assembled a huge cadre of professional men, whose expertise extended to every essential science of the time and whose piety, wisdom, and religious dedication" was brought to bear upon every issue.³⁶ The assembly of men was reputed to number one thousand, of whom forty were particularly noteworthy.³⁷ It is believed that "each and every legal issue was debated in this huge assembly, with some debates continuing for months before finality could be reached."³⁸ These inflated claims about Ḥanafī history procedure was part of an intellectual strategy employed by the later Ḥanafīs in a bid to assert supremacy over rival schools.³⁹ The Deobandīs claimed

³⁴ Ibid., p. 65.

³⁵ Ibid.

³⁶ Ibid., p. 63.

³⁷ In substantiation of this point a reference is cited from *Durr al-Mukhtār* p. 62. The number forty has always held some sort of special traditional significance, hence, it is not the quantitative accuracy that is always intended, but rather the projection of a consequential amount.

³⁸ *Fatāwā Dār al-'Ulūm Deoband*, vol. 1, p. 69.

³⁹ Similarly, the erudition, piety, deep insight, and powerful personality of the founder of the *madhhab* were cited in order to further entrench the notion of Ḥanafī superiority. *Fatāwā Dār-al-'Ulūm*, vol. 1, p. 70.

that Abū Ḥanīfah had the privilege of studying under the guidance of "no less than four thousand 'ulamā of the *Tābī'in* (followers of the Companions of the Prophet)."⁴⁰ Abū Ḥanīfah was the only Imām that acquired the esteemed status of *Tābī'i*, for Ibn Ḥajr (d. 973/1565) reports that Abū Ḥanīfah met "a number of *Ṣaḥābahs*" (companions of the Prophet) during his life.⁴¹ Abū Ḥanīfah's *Tābī'i* status supported the notion that the Ḥanafī *madhhab* was superior by virtue of its closer proximity to the Prophet.

These claims seemed to address hidden criticism levelled at the Ḥanafī school. The strength of the Shāfi'i school, the arch rival of the Ḥanafī school, was believed to lie in its treatment of *aḥādīth*. Traditionally, the Shāfi'is were thought to "rule the horizon of *aḥādīth*," a claim the Deobandī Ḥanafīs attempted to disprove. Thus, the Preface to *Fatāwā Dār al-'Ulūm* tried to establish the "*muḥaddith*" status of Abū Ḥanīfah by asserting that he "was first a *muḥaddith*, then a jurist"⁴² One such argument was a quote from Imām 'Alā al-Dīn Trābusī who claimed that Imām Abū Yūsuf, a student of Abū Ḥanīfah, memorized twenty thousand *mansūkh aḥādīth* (abrogated), let alone authentic ones.⁴³ From this, the extent of the Ḥanafīs' expertise in the field of *aḥādīth* could be gleaned.

⁴⁰ Ibid., p. 64.

⁴¹ "Verily, he [Abū Ḥanīfah] met a number of *Ṣaḥābahs* in Kufa, a feat accomplished by no other Imām, neither by Awzī'i in Syria, nor Ḥammād in Basra, nor Thawrī in Kufa, nor Mālik in Medina, nor Layth bin Sā'd in Egypt". This is a quotation of Shaykh al-Islām, Ibn al-Ḥajr. See *Khayrāt al-Ḥisān*, cited in *Fatāwā Dār al-'ulūm Deoband*, vol. 1, p. 74.

⁴² Ibid., pp. 74-6. Much effort was spent on establishing Abū Ḥanīfah's "*muḥaddith*" status. See Muḥammad Qāsīm al-Ḥārithī, *Makānah al-Imām Abī Ḥanīfah bayn al-Muḥaddithīn* (Karachi, 1413)

⁴³ Ibid., p.75. Quote from Imām 'Alā al-Dīn Tarābusī's *Kitāb al Mu'īn*. Cited in ibid., p.74.

3.2 The Institution of *Iftā*

Another aspect of the Deobandī *Shari'ah* ethos was their involvement with *iftā*. *Iftā* is the systematic employment of legal formula, especially to novel and unfolding situations, to procure new rulings. The *muftī's* engagement with *iftā* resulted in a *fatwā* (pl. *fatāwā*), which was considered to be the extended Divine decree. The person soliciting such a verdict was called a *mustaftī*.⁴⁴ The practice of *iftā*' was grounded in the notion that Islam is the complete and final message to humanity.⁴⁵ Islam is believed to embrace the answers to all potential religious problems facing the Muslim community. It possesses the internal mechanism and legal formulae necessary to address any contingency facing Muslims.⁴⁶ Thus, it is believed that every Muslim stands in need of this vital and truly indispensable process of *iftā*' to sustain his/her religious life.⁴⁷

Society being in flux, there remains the constant need to direct the religious life of Muslim society so that it maintains its Medinan character. However, such directives can only be sought from a *muftī*, one qualified to

⁴⁴ *Iftā*' is the process of issuing rulings on matters submitted for judgment. The term *fatwā* (pl. *fatāwā*) refers to the ruling or verdict issued by a *muftī*. A *muftī* is a specialist in Islamic law and is consulted by individuals as well as by officials on a wide range of issues with the object of extracting a ruling from him. He also issues verdicts (*fatāwā*) in his own right on matters confronting the community. *Istiftā*' is the act of petitioning or the question submitted to the *muftī* for a ruling.

⁴⁵ *Fatāwā Dār-al-'Ulūm*, vol. 1, p. 79.

⁴⁶ *Ibid.*, p. 78.

⁴⁷ *Ibid.* The Deobandīs claimed that no true Muslim can profess that they never once required the ruling of a *muftī* on some matter. A true Muslim is constantly in need of the expertise of the *muftī* to "guide him through the very many complications of life." *Ibid.*, p. 79.

practice *iftā'*, who could utilise the legal resources of the *Shār'ah* to extend the Divine ruling to new situations.⁴⁸ According to Makdisi, "the chief goal of Islamic education was the training of the jurisconsult, the *muftī*; for the Muslim believer, the layman, had to have recourse to an authority on the law which covered all phases of his life, civil as well as religious."⁴⁹ Deobandī education was no different.

In the Qur'ān the word "*istiftā'*" is used to denote the seeking of a ruling, a usage that is still in vogue: "And they seek a ruling from you with regard to women, say Allah will give you the *fatwā* about women." (Q. 4:127)⁵⁰ Such verses were used by legal scholars to support the notion that the Prophet acted as the first *muftī* of Islām.⁵¹ Hāfiz Ibn Qayyim (d. 751/1350) placed the number of companions of the Prophet that were active in the field of *iftā'* at 130, seven of whom were very prominent.⁵²

The process of *iftā'* gradually developed into a very powerful instrument

⁴⁸ The Deobandīs firmly believed that since Islam was the complete and perfect way, there was no possible problem relating to a Muslim's religious life that could not be addressed by a qualified *muftī*. Ibid., p. 78.

⁴⁹ Makdisi, *Rise of Colleges*, p. 148.

⁵⁰ On another occasion the same terminology is used to refer to the seeking of a legal ruling. "They ask thee for a legal decision Say: God directs (thus) about those who leave no descendants or ascendants as heirs." (Q. 4: 176).

⁵¹ *Fatāwā Dār al-'Ulūm Deoband*, vol. 1, p. 80.

⁵² The seven were: 'Umar al-Khattāb, 'Alī bin Abi Tālīb, 'Abd Allah bin Mas'ūd, 'Ā'ishā, Zayd bin Thābit, 'Abd Allah bin 'Abbās, and 'Abd Allah bin 'Umar. Ibid., p. 84. For a list of *Ṣaḥābahs* that were active in *iftā'* see Ṭāhā Jābir Al-'Alwānī, *Uṣūl al-Fiqh al-Islāmī, Source Methodology in Islamic Jurisprudence*. Translated by Yusuf DeLorenzo and Al-Shaikh 'Alī. (Herndon, 1990), pp. 11-13.

and an effective means of extending the *muftī's* influence beyond the limited circle of his associates. During the latter part of the first century and the first half of the second, *fatwā* gatherings (*ḥalqahs*) were convened by the master *muftī* which consisted of disciples and colleagues who congregated to discuss the law in an attempt to arrive at an opinion that had been solicited.⁵³ One such disciple describes the *ḥalqah*: "We were forty *muftīs* in the *fatwā-ḥalqah* of Zayd b. Aslam and the least of our qualities was that we shared with one another our worldly goods"⁵⁴

As Muslim societies became more sophisticated, certain accepted behavioral practices and etiquette for the *muftī* were established. Treatise on the code of conduct evolved and ultimately became institutionalized and known as "*ādāb al-muftī*". In classical Islamic usage the concept of *adab* was applicable to norms of correct behaviour that referred to the ethical and practical norms that regulated the life of a good Muslim.⁵⁵ Urbanity, aristocratic learning, refined manners, cultivated conversation, and general decorum, constituted the *adab* of the gentleman and the courtier.⁵⁶ The term was also applicable to knowledge necessary for the correct execution of official duties, and to the learning and

⁵³ Makdisi, *Rise of Colleges*, p. 149.

⁵⁴ *Ibid.*, p. 194. Another jurist, Muhammad b. 'Ajlan (d. 148/365) had a *ḥalqah* for *fatwās* in the Mosque of the Prophet in Medina. *Ibid.*, p. 224.

⁵⁵ Ira M. Lapidus, "Knowledge, Virtue and Action: The Classical Muslim Conception of Adab and the Nature of Religious Fulfilment in Islam," in *Moral Conduct and Authority The Place of Adab in South Asian Islam*, (ed.) B. Metcalf (Berkeley, 1984), p. 38. During the eighth and ninth centuries, *adab* referred to the courtly etiquette of the Abbasid age.

⁵⁶ *Ibid.*, p. 38.

correct behaviour of scholars.⁵⁷ The *adāb al-muftī* genre applied this concept to the definition of a *muftī*. Compilations of *fatāwā*, or compendium of *fiqh*, usually contained these guide-lines for the prospective *muftī*.⁵⁸

The process of *iftā* is closely linked to another institution of Islamic life, that of *qādā* (judicial judgement). The major difference between the *qādī* and the *muftī* is that the former is an integral part of the Islamic judiciary, and whose appointment is made by the Muslim ruler. Consequently, the verdicts of the *qādī* are binding upon the litigants. The *muftī's fatwā* is, in the final analysis, merely an opinion which has to overcome competing opinions issued by other *muftīs*. On the other hand, the *qādī's* opinion, unlike that of the *muftī*, did not face the problem of competition because it was binding.⁵⁹ The freedom and latitude enjoyed by the *muftī* in arriving at his decision was matched by the freedom of the *mustaftī*, who may follow the ruling of his choice.⁶⁰ In spite of this apparently less binding nature of *iftā*, it carried considerable prestige. A classical distinction was made in *ādāb* literature between the *qādī* and the *muftī* by explaining that

⁵⁷ For a general introduction to the concept of *adab* see G. E. von Grunebaum, *Medieval Islam* (Chicago, 1945), pp. 250-57.

⁵⁸ Since my objective is to analyse the juristic discretion of the Deobandī *muftīs*, I have deemed it applicable to focus almost exclusively upon their perceptions of the perfect *muftī*, as recorded in the *Muqaddimah* (Preface) to *Fatāwā Dār-al-'Ulūm*, vol. 1, pp. 61-124. The term *adab* is also used in legal texts under the heading "*Ādāb al-Qadī*" (judicial ethics) which often includes *ādāb al-muftī*. See *Fatāwā 'Ālamgīrī*, (Kānpūr, 1932), vol. 3, pp. 141-99. Also Ibn al-Humām, *Fath al-Qadīr* (Cairo, 1970), vol. 7, pp. 251-338; Ibn 'Ābidīn, *Radd al-Muḥtār* (Cairo, 1966), vol. 5, pp. 351-76; and Imām Nawawī, *Al-Majmū' Sharḥ Muḥadhdhab* (Cairo, 1925), vol. 1, pp. 40-69.

⁵⁹ For a historical discussion on the office of the *qādī* see Makdisi, *Rise of Colleges*, pp. 200-3.

⁶⁰ A practice which the Deobandī 'ulamā' have discouraged.

the former was a deputy of the ruler whereas the latter was a deputy of the Prophet. Thus, the *muftī's* authority was derived from the Prophet as the interpreter of Revealed Law.⁶¹

The official role of the *muftī*, however, appears to have been a later development. During the formative period of Islamic law, the role of the *muftī* was usually confined to delivering verdicts on matters referred to him by individuals of the community. Later, this role was incorporated into the political organization of the state. According to Makdisi, the first state-appointed *muftī* was made in Damascus with the creation of the Dār al-ʿAdl (House of Justice), during the latter part of the seventh century.⁶² The first appointee was Sharaf al-Dīn b. Salām (d.717/1317), a well known teacher in the Shāfiʿī *madrasah* al-Jarukhiyah.⁶³ Thereafter the post of state *muftī* was also institutionalized by the Ottomans.⁶⁴ The literature on *ādāb al-muftī* recognized the political implications of the *muftī's* office, and consequently discouraged scholars from showing

⁶¹ M. Khalid Masud, "Ādāb al-Muftī: The Muslim Understanding of Values, Characteristics, and the Role of the Muftī", in *Moral Conduct and Authority The Place of Adab in South Asian Islam*, (ed.) B. Metcalf (Berkeley, 1984), p. 142.

⁶² Ibid., p. 199.

⁶³ al-Nuaymī, *Al-Dāris fī Tarīkh al-Madāris* (Damascus, 1948-51), vol. 1, p. 229. Also Ibn al-ʿImād al-Ḥanbalī, *Shadharāt al-dhahab fī akhbār man dhahab* (Cairo, 1931), vol. 6, p. 44.

⁶⁴ Makdisi, *Rise of Colleges*, p. 199. By the time Ibn Khaldūn (d. 808/1405) came on to the scene, the *muftī's* post was already part of the judiciary, hence, he included the appointment of qualified *muftīs* and the dismissal of unqualified ones, as an important function of the Caliph. Ibn Khaldūn, *Muqaddimah*, p. 165. Most secondary sources include the *muftī* as part of the judicial system. M. B. Ahmad, *The Administration of Justice in Medieval India* (Aligarh, 1941), pp. 115, 119.

eagerness in accepting official appointments.⁶⁵ *Ādāb al-muftī* also called upon the authorities to ensure that the post was filled by qualified *muftīs* and demanded the removal of unqualified personnel.⁶⁶ The *ādāb al-muftī* literature insisted on the *muftī* serving God, and discouraged the acceptance of remuneration for services rendered.⁶⁷

Contemporary sources examining Mughal rule do not give any clear information about the appointment of *muftīs*, whereas detailed information about other appointments, including *ṣadr qādī* (chief justice), and *muḥtasib* (public censor) are readily available. Saran's detailed research into the Mughal provincial administration suggests that the *muftī* was not a regular official of the state.⁶⁸ By contrast, Qureshi and Ahmad claim that the *muftī* was an official attached to the courts.⁶⁹ It seems that *muftīs* did enjoy some official benefits, because as a token of recognition for their services and scholarship, the state bestowed rights upon them to land revenue called *madad-i-ma'āsh* (living assistance).⁷⁰ Masud

⁶⁵ Ibid., p. 140.

⁶⁶ *Fatāwā Dār al-'Ulūm Deoband*, vol. 1, pp. 98-9.

⁶⁷ Thus, it must be assumed that by the time the *ādāb al-muftī* literature was compiled, the official office of the *muftī* was already part of the judicial system. Hence, the *ādāb* literature covers both the official and the private *muftī*.

⁶⁸ Saran, *The Provincial Government of the Mughals, 1526-1658* (Lahore, 1976), pp. 345-46.

⁶⁹ Qureshi, *The Administration of the Sultanate of Delhi* (Karachi, 1958), p. 158. Qureshi cites Diyā al-Dīn Baranī's *Tarīkh-i-Fīroz Shāhī*, although the latter does not provide convincing details on this point. See Ahmad, *The Administration of Justice*, pp. 115-19.

⁷⁰ Masud, "Ādāb al-Muftī", p. 141. *Fatāwā 'Ālamgīrī* recommended such grants. See *'Ālamgīrī*, vol. 3, p. 142.

maintains that the *muftī* was not a regular official of the state during Mughal rule, and that the notion of an official *mufti* stemmed from two sources. Firstly, from the Ottoman rule where the *muftī* was an official of the state, and secondly, during the initial period of British rule in India, when *muftīs* were appointed as aids to presiding court officials.⁷¹

Despite this, the relationship between *muftī* and judge in British India was maintained as long as Islamic law remained in force.⁷² With the growth of Anglo-Muhammedan Law,⁷³ which was an anglicization of Islamic law, the official role of the *muftī* gradually dissipated.⁷⁴ Because the British were unfamiliar with Islamic law, a number of Islamic legal texts were translated. Since most of the Muslims on the subcontinent were followers of the legal school of Abū Ḥanīfah (d. 150/767), an important twelfth-century Ḥanafī legal work, *al-Hidāyah*, by

⁷¹ Masud, "Ādāb al-Muftī", p. 141.

⁷² This relationship was governed by the Regulating Act of 1772, that required the services of qualified Muslim legal expert in certain matters pertaining to the Muslims. See Ibid., p. 142.

⁷³ Although the Muslims remained subject to Islamic law many problems developed in the application of religious law without British interference and interpretation. Certain central issues like the law of evidence and the interpretation of political offences had become anglicized. This combination of British justice and Islamic law became known as "Anglo-Muhammadan" law.

⁷⁴ It is at this juncture, i.e. the termination of the official role of the *muftī* that the role of the private *muftī* was enhanced in British India. The *muftī* became the *de facto* custodian of the *Sharīah* and its authentic transmitter and interpreter. As Metcalf observed, "It was in this context that *fatāwā* took on new importance. *Fatāwā* in the Muslim state were traditionally given by a court official, the *muftī*, for the guidance of the *qāḍī* or judge. Now in India they were given directly to the believers, who welcomed them as a form of guidance in the changed circumstances of the day. They had, of course, no coercive power, and they could no longer deal with a whole range of issues related to the organization of the state. They were, however, to become a vehicle for disseminating ever more detailed guidance in minute concerns of everyday life, including in their purview decisions about customary practices that had been of little concern to the state, but were of great moment to Muslims seeking to preserve an authentic expression of their religion under alien rule." See Metcalf, *Islamic Revival*, p. 50.

Burhān al-Dīn Abū al-Ḥasan ʿAlī Marghinānī, was translated for British officials.⁷⁵

As British officials played a greater role in the administration of Anglo-Muhammadan law, the role of the Indian *muftīs* gradually diminished.⁷⁶ This development changed the role of the *muftī* and the process of *iftā* in India. Whereas traditionally the *muftī's fatwā* was primarily for the guidance of the *qādī*, who had to apply the law in the light of such guidance, now they were directed at the Muslim masses as a source of guidance and inspiration in the face of foreign domination. Thus, the process of *iftā* was to become a vehicle for the dissemination of detailed guidance on a very wide range of day-to-day issues.⁷⁷

The Deobandī *muftī*, then, was heir to a history of independent non-official guides in *Sharīʿah*. In later Islamic times, officially appointed *muftīs* served the state and the community. Under British rule, however, the non-official *muftī* re-emerged, but within the institution of Deoband. In defining the *adāb al-muftī*, the *muftīs* of Deoband generally emphasized the classical expectations of a *muftī*, but introduced interesting caveats.

In terms of classical theory, one of the main qualification for a *muftī* was

⁷⁵ This work was translated into English by Charles Hamilton in the late eighteenth century. He omitted the entire section on *ʿibādāt* (devotional issues), except for certain sections on *zakāh*. In 1870 Standish Grove Grady prepared an edition of Hamilton's translation, deleting such topics that were irrelevant to British India, including the role of the *qādī*. This edition was reprinted under the title *The Hedaya or Guide: A Commentary on the Mussalman Laws* (Lahore, 1963).

⁷⁶ Metcalf, p. 49.

⁷⁷ *Ibid.*, p. 50.

his capacity for *ijtihād*.⁷⁸ *Ijtihād* was a prerequisite for one wishing to act as a true and genuine *muftī*.⁷⁹ That principle caused problems for many Deobandīs who believed that the *muftī* of today lacked the vital skills and qualification necessary for a *mujtahid* (independent jurist).

In today's age, it is almost impossible to find a person who fulfils all the conditions necessary for a *muftī*. However, since the books on *ḥadīth* and *fiqh* have been duly compiled and published, and since the retention capacity of modern man is not the same as in the old days when one learned scholar could recall hundreds of thousands of *aḥādīth*, those persons displaying a profound aptitude for *fiqh* and *ḥadīth*, and who have developed a sound taste for research and who have formally studied under the regular guidance of religious scholars, will be entrusted with the responsibility of *iftā'*.⁸⁰

The Deobandī position permitted one who was not truly a *mujtahid* to engage in *iftā'*. In order to overcome the condition stipulated by classical legal theory that a *muftī* must also be a *mujtahid*, the Deobandīs made a distinction between a *mujtahid muftī* and a *muqallid muftī*. Only the former was considered to be the real and true *muftī* whereas the latter was considered to be a *muftī* only figuratively (*majāzan*).⁸¹ The *mujtahid muftī* was considered to be the interpreter of the law and the *muqallid muftī* was regarded as a transmitter of the law.⁸² A *muqallid muftī* was deemed to have attained the level of a *rāwī* (narrator of

⁷⁸ A complete analytical study of *ijtihād* with specific reference to the Deobandī interpretation follows in Chapter Five.

⁷⁹ Ibn 'Ābidīn, *Radd*, vol. 1, p. 64. Also *Fatāwā Dār al-'Ulūm Deoband*, vol. 1, p. 93, and *'Ālamgīrī*, vol. 3, p. 143.

⁸⁰ *Fatāwā Dār al-'Ulūm Deoband*, vol. 1, p. 92.

⁸¹ *Ibid.*, p. 94.

⁸² *Ibid.*

ḥadīth) and all the qualification necessary for a *rāwī* would also apply to him.⁸³ In pursuance of their commitment to the Ḥanafī *madhhab*, the Deobandīs favoured the *muqallid muftī*. Therefore, when answering the *istiftā*, the Deobandīs insisted that the *muftī* was obliged to accept the preferred view of the 'ulamā' of the Ḥanafī *madhhab*.⁸⁴

Since the Deobandīs believed that the capacity for *ijtihād* was virtually non-existent, it was felt that a *muftī's* training should embrace a method of transmitting the most "authentic" view of the *madhhab*. That method could only be imparted by the recognized experts of the *madhhab*.⁸⁵ It was felt that even if an individual studied and committed to memory all the books of the *madhhab*, it remained essential that he sought the instruction and guidance of the experts:⁸⁶

I have read in the *fatāwā* of 'Allāmah ibn Ḥajar a question about one who had studied the books of law (*fiqh*) by himself without any formal instruction and guidance from a learned scholar (*shaykh*) and then he hands down *fatāwā* based upon his own research. Is this action of his permissible or not? He replied that under no circumstances can the self-taught engage in *iftā'* because he is regarded as an 'āmmī (layman) and a *jāhil* (ignorant one) who knows not what he is saying. The task of *iftā'* is reserved for those who have acquired their knowledge from the authentic 'ulamā'. Thus, it is not permissible for him to deliver verdicts on the strength of a book or two, in fact according to Imām Nawawī, even on the strength of ten or even twenty books. For it is possible that the authors of those books could have relied upon a weak opinion of the

⁸³ 'Ālamgīrī, vol. 3, p. 143.

⁸⁴ Ibid., p. 106. The Deobandī *muftī* was advised to use Ibn 'Ābidīn's *Radd al-Muḥtār* as his standard reference for it presented the preferred view of the Ḥanafī *madhhab*. It was for this reason that most of Dār al-'Ulūm's *fatāwā* are based upon the *Radd al-Muḥtār*.

⁸⁵ The Deobandīs were very reluctant to acknowledge anyone as an expert who has not undergone training under the supervision of a recognized legal scholar. Ibid., p. 96.

⁸⁶ Ibn 'Ābidīn, *Rasm al-Muftī*, in *Majmū'ah Rasā'il Ibn 'Ābidīn*, vol. 1, p. 46.

madhhab, hence it is not permissible to follow them.⁸⁷

Those not formally instructed in the religious sciences by qualified 'ulamā' were considered by the Deobandīs unsuitable for the position of *muftī* and were not allowed to deliver rulings.⁸⁸

Talammudh, or apprenticeship, was considered by the Deobandīs a necessary prerequisite for a *muftī*.⁸⁹ In terms of the Deobandī educational agenda, apprenticeship for *muftī* formed part of the College's post-graduate programme. Apprenticeship consisted in teaching and examining the rules and verdicts of the Ḥanafī *madhhab*, especially Ibn 'Ābidīn's *Rasm al-Muftī*.⁹⁰ Most of the legal training at Dār al-Iftā' was directed at enhancing the student's skills of extracting the law from the recognized Ḥanafī legal works by following a strict procedure. The *iftā'* student was required to prepare answers to questions sent in by the public. The "correctness" of the answer largely depended upon the student's ability to extract a precedent from the Ḥanafī works, that was similar to the question in hand. To the extent that the student could establish or display complete similarity and harmony with the precedent, to that extent would the answer be "correct" and "authentic".

⁸⁷ Ibn 'Ābidīn, *Rasm al-Muftī*, p. 16. Also quoted in *Fatāwā Deoband*, vol. 1, pp. 95-96.

⁸⁸ It is significant to note that the well known Abū al-Kalām al-Āzād and Abū al-A'īn Mawdūdī were never accepted by the Deobandī 'ulamā' as fully-fledged members of the 'ulamā' fraternity because they did not go through a recognized system of training.

⁸⁹ Before one was permitted to assume the function of a *muftī*, one was required to have acquired traditional training under the competent supervision of an established scholar.

⁹⁰ One other classical legal text, namely, *Al-Ashbāh wa Al-Nazā'ir* of the famous Ḥanafī scholar, Ibn Nujaym is also taught to *iftā'* students.

The *iftā'* program of Dār al-Iftā', Deoband, consist of a one year post-graduate course in which basic research skills were imparted. Inspiration for much of the Deobandī educational innovations was no doubt drawn from the experience which the founding-fathers gained at Delhi College. Thus, the Deobandī procedure of *ijāzah* (authorization from an expert to give *fatāwā*) was not patterned on the informal medieval style, but rather on a system of fixed courses.⁹¹ Traditionally, there was no specified time limit required for the preparation of a *mufīī*. Authorization was usually given after years of study by another authorized *mufīī* to students at an advanced age of thirty or forty or even later.⁹² There were, however, notable exceptions. Imām Shāfi'ī who studied law under the great *mufīī* of Makkah, Muslim b. Khālid (d. 294/907), was authorized to issue *fatwā* at the age of fifteen.⁹³ Taj al-Dīn al-Subkī was authorized to issue *fatwās* at the age of eighteen.⁹⁴ Fakhr al-Dīn b. Kātib Qutlubak (d. 751/1350) was authorized to issue *fatāwā* at the age of twenty three.⁹⁵

⁹¹ For a detailed discussion of the procedure of *ijāzah* see, Makdisi, *Rise of Colleges*, p. 148-52. Some *shaykhs* were very strict and withheld authorization. Abū Ishāq Ibrāhīm b. Yahyā al-Damishqī (d. 732/1332) frequently refused to authorize candidates and sent them away declaring them unqualified. *Ibid.*, p. 150.

⁹² Makdisi, *Rise of Colleges*, p. 149.

⁹³ Ibn al-Imād al-Ḥanbalī, *Shadharāt al-Dhahab fī Akhbār man Dhahab* (Cairo, 1350) vol. 2, p. 9.

⁹⁴ His *shaykh*, Shams al-Dīn b. al-Naqīb died in 754 h. when Subkī was eighteen years of age. See Makdisi, *Rise of Colleges*, p. 149.

⁹⁵ Ibn Ḥajar al-Asqalānī, *al-Durar al-Kāminah fī a'yān al-Mi'a al-Thāminah* (Cairo, 1966) vol. 4, pp. 170-1. A student could also acquire authorization from more than one expert. Authorization to issue *fatāwā* presupposed a level of knowledge beyond that required for the teaching of law. According to Shāfi'ī, if the *mufīī's* knowledge fell short of the required sciences, he may still teach law, but could not issue *fatāwā*. During *iftā'* training, the student-*mufīī* was trained in research and disputation. Under the strict supervision of a teacher, the student spent much time on practicing the process of arriving at legal opinions. This phase was known as

The Deobandī *adāb al-muftī* included warnings to those *muftīs* who gave verdicts without proper knowledge and training. According to a *ḥadīth*: "One who says that which I [Prophet] did not say, must prepare to take his place in the fire of Hell. And he who delivers opinions⁹⁶ without proper knowledge will carry the blame (sin) of those who take his opinions."⁹⁷ The Deobandīs were emphatic that if a *muftī* had any doubts about his qualifications, he was not to deliver opinions, for it was regarded as a serious breach of trust to do so.⁹⁸ Apart from academic qualifications and age restrictions, the Deobandīs also considered personal characteristics and moral qualities necessary prerequisites for a *muftī*. The *muftī's* level of personal piety or *taqwā* for example, was regarded as essential.⁹⁹

The ultimate relevance of moral qualities for a *muftī* may also be seen by asking if those qualities were essential for the competence of a *muftī* or for the validity of his *fatāwā*. Indeed, the question as to whether or not a depraved

tabaqāt al-iftā', the phase of apprenticeship as a *muftī*. Only on satisfactory completion of this phase of intensive training would the student be granted *ijāzah* or *idhn bi al-iftā'* (permission to deliver *fatāwā*). Makdisi, *Rise of Colleges*, p. 170.

⁹⁶ In this *ḥadīth*, the word "*afī*" (to deliver an opinion) is used, which supports the claim that the terms "*iftā'*" and "*fatwā*" were already in use during the time of the Prophet.

⁹⁷ Cited in *Mishkāt al-Maṣābīḥ*, "Kitāb al-ʿIlm" (Book of Knowledge) Some scholars also held that the petitioner is equally blameworthy because he should not have asked a "*jāhūl*" *muftī*. *Fatāwā Dār al-ʿUlūm Deoband*, vol. 1, p. 87.

⁹⁸ *Ibid.*, p. 89. Imām ibn Ḥanbal was quoted as having said that until an individual was not materially independent and conversant with the prevailing ethos, and had sincere intentions, patience and integrity, as well as of sound insight into the law, he should not engage in *iftā'*.

⁹⁹ *Fatāwā Dār al-ʿUlūm Deoband*, vol. 1, p. 87. Although the term *taqwā* is loosely defined as fear of God, it is much more richer in meaning than that translation. The term incorporates the whole notion of piety and connotes a very strict adherence to a rigid code of conduct. Abstention from even doubtful things forms part of *taqwā*.

person (*fāsiq*) could become a *muftī* was the subject of considerable debate. The Deobandīs stressed that it was neither permissible for a *fāsiq* to act as a *muftī*, nor permissible to petition him.¹⁰⁰ A number of jurists, including al-Nawawī (d. 676/1358), the author of *al-Majmū'*, also answered in the negative, whereas the compilers of the *'Ālamgīrī*, maintained that a *fāsiq* could act as a *muftī*. With the notable exception of *'Ālamgīrī*, other sources including the Deobandīs agree that a *fāsiq* may not act as a *muftī* for he could not be trusted with the guidance of the Muslims.¹⁰¹ Thus, according to Masud,

The only explanation that we can offer is that perhaps a distinction has been made from the points of view of the competence of the *mufti* and validity of a *fatwā*. The Aini and others viewed the question as that of the competence of the *muftī* and therefore maintained depravity as a disqualification. The compilers of the *'Ālamgīrī*, on the other hand, looked at the problem as that of a *fatwā* and considered that the depravity of a *muftī* could not invalidate the *fatwā*.¹⁰²

It could be argued that the *'Ālamgīrī* was intent on avoiding possible political ramifications for the Muslim state, that might be confronted with the prospect of having to remove some of the *fāsiq muftīs* that had entrenched themselves as part of the state bureaucracy. The Deobandīs, on the other hand, declared the rulings of the *fāsiq* to be invalid. They were not influenced by political implications, because they considered the office of the *muftī* independent of the structure of the state.

According to the Deobandīs it was also imperative for a *muftī* to be

¹⁰⁰ Masud, "Ādāb al-Muftī", p. 130.

¹⁰¹ *Fatāwā Dār al-'Ulūm Deoband*, vol. 1, p. 102. *'Ālamgīrī*, vol. 3, p. 142.

¹⁰² Masud, "Ādāb al-Muftī", p. 130.

conversant with the prevailing norms (*'urf*) of the community he wished to guide.¹⁰³ The Deobandīs laid great emphasis on the *muftī's* ability to understand the various forces at work within his community. Only a *muftī* who was conversant with social exigency can successfully rule in favour of *maslahah* (public welfare).¹⁰⁴

really?

3.5 Conclusion

The Deobandī *maslak* was in part a product, and in part a reaction, to the new post-Mughal political and social dispensation. The *maslak* drew on the strengths of both *Sharī'ah* and *Tarīqah*. On the one hand, through their function as *ṣūfī shaykhs*, the early Deobandīs commanded considerable influence over their disciples. The breakdown of traditional structures that ensued in the aftermath of the decline of Mughal rule, and the challenges created by the intrusion of British politics and culture into the lives of the Muslims, coerced the Deobandīs to engage in *iftā'* as a means of guiding a vanquished nation. As religious leaders, the Muslims increasingly turned towards them for guidance in *Sharī'ah* matters.

¹⁰³ *Fatāwā Dār al-'Ulūm Deoband*, vol. 1, p. 96. On the issue of being conversant with prevailing norms, the Deobandīs were essentially inspired by Ibn 'Abidīn's track *Nashr al-'Arf fī Binā Ba'd al-Aḥkām 'ala al-'Urf*. In *Majmū'ah Rasā'ul Ibn 'Abidīn*. 2. vols. (Beirut, n.d.).

¹⁰⁴ *Ibid.*, p. 114. The Deobandī concept of the perfect *muftī* outlined many character traits. A fairly comprehensive list of good qualities are recorded in that work. It enumerates more than sixteen such qualities, including good intention; magnanimity; staidness; perception; freedom from avarice; greed and vanity; modesty; piety; intelligence; balance of mind; self-reliance; cheerfulness; emotional control; and a sense of responsibility. Above all, the *muftī* was to have a profound sense of justice. The external appearance of the *muftī* was at all times to be dignified. His dress was neither to be lavish nor lack decorum. *Ibid.*, pp. 104-5.

The Deobandī's authority and influence over the masses was thus galvanized through their *iftā'* operation. Unlike his predecessors, the official state appointed *muftī* of Mughal rule, the Deobandī *muftī* used the *madrasah* as his institutional base. The institution of Deoband with its distinctive *maslak* entrenched certain norms which was not only based on traditional notions of the ideal *muftī* but also derived from the reality of the situation in which the Deobandīs found themselves.

CHAPTER FOUR

The Deobandī Fatāwā Literature

The Deobandīs believed that the primary cause of the state of Muslim disempowerment together with its troubles and hardships could be attributed to moral decadence and neglect of the laws of the *Sharī'ah*.¹ The Deobandīs sought to reassert their religious identity by summoning the forces from within their faith and tradition in the hope of overcoming social disorganization.

The Deobandī program of reformation was constructed upon a double theme of protest; against internal deterioration (moral decadence) and external encroachment (foreign domination). In addressing these two problems, the 'ulamā' developed a strategy that was to significantly influence the subcontinent. Essentially, this study examines the central thrust of that strategy, namely, the effective use of *fatāwā* as an instrument of reform.²

Although the 'ulamā' of the late nineteenth century filled public roles as prayer leaders, preachers, and *ṣūfī shaykhs*, they also appropriated new methods

¹ Other Muslim societies also felt that neglect of the *Sharī'ah* was the sole cause of their problems. See Abdullahi Ahmad An-Na'im, *Toward an Islamic Reformation* (New York, 1990), p. 4.

² There were, of course, other important aspects to their program of reformation. In an endeavour to live and to create in others an Islamic ethos of pristine Medina, they also preached, taught, entered into public disputation, wrote, and acted as *ṣūfī shaykhs*.

that brought them in touch with large numbers of people. There was one particularly important invention that had a tremendous impact on the work of the 'ulamā'. The Christian missionaries introduced the lithographic press into India as a means of proselytizing.³ Muslim leaders were quick to adopt the new opportunity offered by the printing press to advance their preaching through publication.⁴ The 'ulamā' had always written, but what was new to this period was the technology that gave them unprecedented publicity.

New as well, and intrinsic to that publicity was the use of Urdu. Urdu was known beyond its immediate region by urban Muslims and particularly by the *ashrāf* (respectable) of Bengal.⁵ Urdu publications had an audience among the Muslim upper class of the east and much of the population of the north. In 1837 the government made the decision to replace Persian as the court language by the various vernaculars of the country. Urdu was identified as the regional vernacular in Bihar, Oudh, the North-Western Provinces, and the Punjab. Urdu was thus made the language of the government across upper India.⁶ The 'ulamā' seized the advantages of Urdu as a common language binding the Muslims scattered throughout India. Dār al-'Ulūm and its satellite colleges used Urdu as

³ Lithographic presses were first introduced in northern India to the towns that were dominated by Muslims; Bareilly, Morādabād, Agra, Meerut, and Delhi. Kenneth W. Jones, *Arya Dharm* (Berkeley, 1976), pp. 19-20.

⁴ Metcalf, *Islamic Revival*, p. 198.

⁵ *Ibid.*, p. 200.

⁶ *Ibid.*, p. 207.

a medium of instruction.⁷ Students from non-Urdu backgrounds then spread Urdu in their own localities on their return. Assisted in no small measure by these developments, Urdu gradually became an important symbol of Muslim identity in the post-Mughal period.

Prominent among the publications of the latter half of the nineteenth century was the Qur'ān. Several different translations of the Qur'ān were published. Translations of the Qur'ān were not only motivated by the desire to make the Qur'ān available to the general public, but by the rivalry among religious leadership. The 'ulamā' of virtually each tendency produced their own. 'Ashiq Ilāhī Mīratī, Ashraf 'Alī Thānwī, and Maḥmūd Ḥassan, among the early Deobandīs, each translated the Qur'ān into Urdu. Their theological rival, Aḥmad Riza Khān of the Barelwīs, did the same. Sayyid Aḥmad Khān produced a translation, and so did his associate Deputy Nazīr Aḥmad.⁸ All the groups believed that familiarity with the Qur'ān would enhance their program of reformation.⁹ In addition, the 'ulamā' also published other materials of interest to the public. Maulānā Ashraf 'Alī Thānwī, for example, wrote his celebrated *Behishtī Zewar* (Heavenly Jewel) to provide vital guidance to the Muslim woman. Beginning with the Urdu alphabet, it also covered letter writing, religious duties

⁷ Special courses in Urdu were taught at these seminaries.

⁸ Ibid.

⁹ A newspaper article published in 1876 stated the following: "Whatever the current defects and fallings away among Muslims, because of the existence of the Qur'ān, peace and accord among Muslims must of necessity take its place. In Arabia where Arabic is used, there is not the discord there is here. . . . Since the Qur'ān accompanied by a word-for-word translation in Hindustani, is now available, we hope that the true essence of Islam will be manifest". Quoted in Metcalf, *Islamic Revival*, p. 204.

and devotions, stories of the prophets, practical advice on cookery, domestic management, and methods of caring for the sick. The Behishtī Zewar was reprinted several times and became a popular gift for new brides.¹⁰ The lithographic press had indeed improved the system of education through the printing of scarce books. In 1895 Nazīr Ḥusayn described the major transformation in religious education as a result of publications.

The *°Ālamgīrī* used to be unavailable. The government published it in Calcutta before the Mutiny, but sold it for 90 Rupees. Similarly, the *Tafsīr-i Kabīr* sold for 300 Rupees. The king had a copy of it and when Shāh °Abd al-°Azīz needed it, he borrowed it from him. No one even knew the *Fath al-Bārī*, for in all of Delhi there were only parts of it, scattered among three places. There were only eighteen copies of Bukhārī, and of these, generous people had divided copies into parts and distributed them among students so that they could study them. When I studied Tirmīzī from Miyan Sahib [Shāh Muḥammad Ishaq] three of us shared one copy; and we three lived in different sections of the city. . . . One of us would study for a few hours, then another would carry it off. . . . No one had a chance to study a whole book. A copy of *Hidāyah* was divided among student: one would start from one place, another from another. . . . Because of reading incompletely and out of order, [the study of] every book was deficient. If a person had even a faulty copy of a book, that was considered a great blessing and he was held to be very wealthy.¹¹

The *iftā'* operation of Deoband benefited tremendously from the publishing industry. It became common practice to publish *fatāwā* and make them available in multiple copies. Rashīd Aḥmad Gangohī, even issued a *fatwā* banning trade in unacceptable books of the Barelwīs and the Ahl al-Ḥadīth.¹² The Deobandīs

¹⁰ Ibid., p. 211. For a partial translation of Behishtī Zewar see Barbara Metcalf, *Perfecting Women* (Berkeley 1990).

¹¹ °Abd al-Ḥayy, *Delhī awr us ke Atrāf : Ek Safamāmah aur Roznāmā Unnīsīwī Ṣadī ke Ākhir men* (Lucknow, 1958), pp. 39-40.

¹² Gangohī, *Fatāwā Rashīdiyyah*, p. 103. Trade in books on *bid'ah* published by the Barelwīs and the *gayr muqallid* (no fixed *madhhab*) books published by the Ahl al-Ḥadīth was declared to be impermissible. See Appendix E for a full translation on the Deobandī *fatwā* on

exploited the press to publicise their concept of the *Sharīah*. The press guaranteed the proliferation of Deobandī *fatāwā* literature.

4.1 Deobandī *Fatāwā* Literature

The *fatāwā* literature of the Deobandīs cover virtually the whole spectrum of religious affairs. Over the years there has been a steady flow in the published works on Deobandī *fatāwā*, including compilations and personal contributions.

During the formative period of the institution (1867-1879), questions (*istiftas*) were answered in an informal way by its founders, Maulānā Muḥammad Qāsim and Muftī Rashīd Aḥmad Gangohī.¹³ No records were kept of the answers and rulings delivered by Muḥammad Qāsim who generally referred questions to Rashīd Aḥmad Gangohī.¹⁴ The latter already established his reputation as a brilliant *muftī* and attracted a flood of *istiftās* from both the general Muslim public and other ‘*ulamā*’. Muḥammad Anwar Shāh Kashmīrī (d. 1352/1933) described Rashīd Aḥmad Gangohī as "*faqīh al-naḥs*". The title *faqīh al-naḥs* was usually conferred upon one who was considered to have a natural ability in

Copy and Patent rights.

¹³ *Fatāwā Dār al-‘ulūm*, vol. 1, p. 5.

¹⁴ Although no complete record was ever kept of the questions and answers addressed by Muḥammad Qāsim, there briefly appeared on the scene a publication entitled "*Qāsim al-‘Ulūm*," of which only four editions were published. These four editions which are now virtually extinct, did not directly deal with legal matters, but rather with problems relating to the Qur’ān and *Sunnah*. *Ibid.*, p. 5.

resolving legal problems; one whose expertise in the field of Islamic law reached the stage that it became "second nature" to him to answer legal queries. It was an appellation strictly reserved for those whom he held in extremely high regard. The only other scholar upon whom Muḥammad Anwar Shāh Kashmīrī conferred that accolade was Zayn al-Dīn Ibn Nujaym (d. 970/1562), the author of "*Baḥr al-Rā'iq*". Even the famous author of *Radd al-Mukhtār*, Muḥammad Amīn Ibn °Ābidīn (d. 1252/1836), one of the foremost authorities of Ḥanafī *fiqh*, was not honoured by that title.

The central role of Rashīd Aḥmad Gangohī in Deobandī *iftā'* cannot be over-emphasized. His influence over those who were charged with the task of delivering rulings on behalf of the institution was enormous.¹⁵ Other Deobandī *mufītīs* frequently consulted with him, and that is how he set the legal tone for the subsequent generation of Deobandī *mufītīs*.¹⁶ Thus, the first phase of Dār °Ulūm's *iftā'* operation was primarily linked to Muftī Rashīd Aḥmad Gangohī who became known as the "Abū Ḥanīfah" of his time.¹⁷ Unfortunately, no formal record was kept of the scores of his *fatāwā* which dealt with a host of issues from all over India. Even when there did eventually emerge an *ad hoc* system to collect and record his *fatāwā*, the arrangement fell far short of a professional

¹⁵ Ibid., p. 21.

¹⁶ It is generally agreed that the process of *iftā'* initiated by Muftī Rashīd Aḥmad, who became *Sarparast* (chief patron) of Dār al-°Ulūm after the death of Muḥammad Qāsim in 1297/1880, formed the foundation of the juristic and legal ethos that is associated with the College.

¹⁷ Ibid.

accomplishment, and left much to be desired.¹⁸

The collection and publication of Muftī Rashīd Aḥmad Gangohī's *fatāwā* under the title "*Fatāwā Rashīdiyyah*" was completed posthumously.¹⁹ *Fatāwā Rashīdiyyah* is published in one volume. It comprises of 1,134 *fatāwā* spanning over 504 pages. It deals with a whole spectrum of legal issues, commencing with *Kitāb al-Imān* (Book of Faith) and ending with *Kitāb al-Farā'id* (Book of Succession). What is interesting to note is that the most detailed *fatāwā* are directed at the Ahl al-Ḥadīth. The lengthiest *fatwā* comprises of nineteen pages and deals with the issue of the number of *raka'at* which should be read in the *tarāwīḥ* prayer during the month of Ramadān (pp. 304-23). The other issue that was hotly debated between the Ahl al-Ḥadīth and the Deobandīs was whether it was permissible to read the Friday congregational prayer (*jumā'*) in a village. The *fatwā* dealing with this issue spans over fourteen pages (pp. 332-46), compared to the average *fatwā* of less than a half page. Furthermore, the chapter (*kitāb*) dealing with *bid'ah* (religious innovations) comprises 79 *fatāwā* which is substantially more than any other single *kitāb*. Here again it is evident that the Barelwīs were targeted.

A number of disputes have occurred concerning the authenticity of some *fatāwā*. During the latter stages of his life, Rashīd Aḥmad Gangohī lost his eyesight, and from 1312/1894 onwards, was obliged to dictate his *fatāwā* to

¹⁸ Ibid.

¹⁹ *Fatāwā Rashīdiyyah* of Maulānā Rashīd Aḥmad Gangohī, ed. Subḥān Maḥmūd, (Deoband, n.d.) This work is the earliest compilation of Deobandī *fatāwā*.

Maulānā Yaḥyā Kāndhlawī (d. 1334/1915), who was also later entrusted with the responsibility of answering the *istiftās*. Furthermore, the published version of the *fatāwā* is believed to contain some retracted views of Muftī Rashīd Aḥmad Gangohī. Since the publication comprised of *fatāwā* which were dispatched at different periods of the Muftī's career, it is extremely difficult to ascertain whether the view expressed in the collected *fatwā* was still the view held by the Muftī during his final days.²⁰ Some of Muftī Rashīd Aḥmad Gangohī's prized students attributed to him *fatāwā* which were at variance with the published version.²¹ For example, the published version of a *fatwā* declared that taking *ribā* (usury) from non-Muslims in a *dār al-harb* (hostile country) was impermissible, based upon the view of Abū Ḥanīfah. However, some of the Muftī's *khalīfahs* (spiritual successors) and students, among them, Ashraf °Ali Thānwī (d. 1362/1943), maintained that the Muftī's (revised) *fatwā* was one of permissibility, based upon the view of Imām Muḥammad (d. 189/805) and Imām Yūsuf (d. 183/799).²² It was felt that the view expressed by his close students was the final view of Muftī Rashīd Aḥmad Gangohī.²³ Consequently, the discrepancy between the published version of some of the *fatāwā* and the version held by some of the Muftī's closest students compromised the authenticity of the published version.

By the turn of the nineteenth century, the fame of Dār al-°Ulūm had

²⁰ Ibid., pp. 5-6.

²¹ Ibid.

²² The two Imāms ruled in favour of taking *ribā* from non-Muslims in a *dār al-harb*. *Fatāwā Dār al-°ulūm*, vol. 1, p. 5.

²³ In other words, the view expressed in the published *fatwā* was the retracted one. Ibid.

increased considerably, attracting many more *istiftās*. When Ashraf °Ali Thānwī²⁴ became a student of Muḥammad Ya°qūb Nānautawī in 1296/1879, he was assigned the task of researching many of the *istiftās*. After scrutinizing and revising the *fatāwā* written by Thānwī, Muḥammad Ya°qūb Nānautawī used to sign and dispatched them as the verdicts of Deoband. The *fatāwā* that were answered by Ashraf °Ali Thānwī under the supervision of Muḥammad Ya°qūb Nānautawī,²⁵ were meticulously recorded and later published.²⁶ Ending in 1301/1883, this represented the first period of Ashraf °Ali Thānwī's *iftā'* career.²⁷ The second period consisted of his *iftā'* while stationed in Kānpūr from 1301/1883 to 1315/1897, while the third lasted between 1315/1897 and 1325/1907, when he was stationed in Thānah Bhowan.²⁸ The influence of Muftī Rashīd Aḥmad on the *fatāwā* of Ashraf °Ali Thānwī was considerable. According to the latter's admission, he was in constant contact with Rashīd Aḥmad Gangohī with whom

²⁴ Ashraf °Ali Thānwī was born in 1280/1863 in Thānah Bhowan, a *qasbah* in the district of Muzaffarnagar. He committed the Qur'ān to memory under the tutorship of Ḥāfiẓ Ḥusayn °Ali. Ashraf °Ali Thānwī enrolled at Dār al-°Ulūm Deoband in 1295/1878 and graduated in 1301/1883. Among his teachers were, Maulānā Muḥammad Ya°qūb Nānautawī, Shaykh al-Hind, Maḥmūd Ḥassan, and Mullah Maḥmūd. After completing his studies in Deoband he took up a teaching post in Kānpūr. After teaching for fourteen years in Kānpūr, he resigned his post and moved to Thānah Bhowan. For the next forty-seven years he dedicated his life to writing, preaching, and guiding the many *murīds* that turned to him. In Thānah Bhowan, he occupied Khānkah Imdādiyyah, which was previously occupied by Ḥāji Imdād Allah, his *ṣūfī* mentor. Ashraf °Ali Thānwī was a *khalīfah* (spiritual successor) of Ḥāji Imdād Allah. He was also in close contact with Rashīd Aḥmad Gangohī. He wrote about three hundred and fifty books on virtually the whole spectrum of religious science. He became known as Ḥakīm al-°Ummat. He spent the latter part of his life concentrating on guiding the many thousands of *murīds* that flocked to him. He died in 1362/1943 leaving behind many *khalīfahs*.

²⁵ This was during the period 1296/1879 to 1301/1883.

²⁶ Ibid., p. 6.

²⁷ Ashraf °Ali Thānwī divided his *iftā'* career into three distinct epochs.

²⁸ Ibid., p. 21.

he consulted.²⁹ The collection of Ashraf °Ali Thānwī's *fatāwā*, called *Imdād al-Fatāwā*, which included all his *fatāwā* to date, was published in 1327/1909 by Maṭba° Muḥtabā'ī.³⁰

When the task of answering the many queries became too burdensome for the lecturers, the College Assembly (*Majlis al-Shūrā*) decided in 1301/1883, to officially appoint Maulāna Muḥammad Ya°qūb Nānautawī to the post of *muftī* of Dār al-°Ulūm.³¹ Unfortunately, Muḥammad Ya°qūb Nānautawī died shortly after his appointment. Once again the burden of answering the many *istiftās* was placed upon the lecturing staff of the college.³² The increasing number of *istiftās*, and the absence of an officially appointed *muftī* began to take its toll on those delegated to fulfill the task of answering questions.³³ Consequently, there was a delay between the receipt of the *istiftā* and the dispatch of the *fatwā*.³⁴ This became a matter of serious concern for the administrators of the College, who prized themselves in having replied to the bulk of the *istiftās* on the very day of

²⁹ Ibid.

³⁰ Ibid. Since the first publication there have been others. Ashraf °Ali Thānwī, *Imdād al-Fatāwā*, ed. Muftī Muḥammad Shafī, 8 vols. (Karachi, 1386), also Ashraf °Ali Thānwī, *Imdād al-Fatāwā*, ed. Muftī Muḥammad Shafī, revised version 4 vols. (Deoband, 1394), also Ashraf °Ali Thānwī, *Imdād al-Fatāwā*, also known as *Fatāwā Ashrafīyyah* 4 vols. (Deoband, n.d.)

³¹ The following notice appeared in the official college records of 1301/1883: "Due to the problem created by the huge inundation of *fatāwā* from all corners of the country, it was decided by the members of the Assembly (Ahl al-Shūrā) that the teaching burden of Muḥammad Ya°qūb be reduced in order to facilitate his answering these *istiftās*." Ibid., p. 6.

³² In 1301/1883, Muḥammad Ya°qūb Nānautawī was appointed the first official *muftī* of Dār al-°Ulūm, but unfortunately, he passed away soon afterwards, and the position remained vacant until 1310/1892. Ibid., p. 7.

³³ Ibid., p. 7. It would seem that the increase in the number of incoming *istiftās* was directly related to the increase in the college's fame.

³⁴ Ibid.

their receipt.³⁵ Aiming to create a collection of *fatāwā* similar to that of the famous compilation, *‘Ālamgīrī*, of the Emperor Aurangzeb, the Assembly embarked upon a process of formalizing the *iftā’* operation.³⁶ The Assembly took a decision in 1304/1886 to engage the services of "an independent expert in the field of *iftā’*" whose task it would also be to keep a register of all outgoing *fatāwā*.³⁷ A decision was also taken to establish a separate judiciary, *Dār al-Iftā’*, (House of *iftā’*). By establishing a separate and independent "judiciary," the College moved towards a greater degree of professionalism demanded by the public image they so eagerly projected during their fund-rising campaigns.³⁸ The Assembly also resolved to implement the idea of keeping a "register" in which all the *fatāwā* would be recorded and that would later be used to compile an important handbook.³⁹ It was, however, only some six years later that these resolutions were implemented.⁴⁰

In fact, after Muḥammad Ya‘qūb Nānautawī, the administration was fairly reluctant to appoint an outsider to the powerful post of Grand Muftī of *Dār al-‘Ulūm*. In 1309/1891 after some serious deliberations and the blessing of Rashīd

³⁵ Muḥammad Rafī‘, *Dār al-‘Ulūm Deoband kī Sayr awr uskī Mukhtaṣar Tārīkh* (Delhi, 1916), p. 6.

³⁶ *Ibid.*, p. 7. The advent of the lithographic press must in part have motivated this idea of publishing a hand-book of law.

³⁷ *Fatāwā Dār al-‘Ulūm*, vol. 1, p. 7.

³⁸ The whole idea of a *Dār al-Iftā’* was publicized in a fund rising campaign launched in 1304/1886. *Ibid.*

³⁹ *Ibid.*

⁴⁰ Six years after the Assembly’s original resolutions.

Aḥmad Gangohī, it was decided to appoint Muftī °Azīz al-Raḥmān (d. 1347/1928) a teacher at Madrasah Islāmiyyah in Meerut, to the post of deputy Vice-Chancellor (*Nā'ib Mohtamim*).⁴¹ This appointment seemed probationary, one designed to evaluate Muftī °Azīz Raḥmān's merit and at the same time prepare the political groundwork necessary to install an outsider to the post of Muftī of Dār al-°Ulūm. In 1310/1892, with the support of Rashīd Aḥmad Gangohī, Muftī °Azīz al-Raḥmān was finally installed as Muftī of Dār al-°Ulūm, a post which he held for some thirty four years, until 1344/1925.⁴² The *Fatāwā* of Muftī °Azīz al-Raḥmān,⁴³ have been compiled by Muḥammad Zafīr al-Dīn under the supervision of Qārī Muḥammad Ṭayyib under the title *Fatāwā Dār-al-°Ulūm*, (Deoband, 1973).⁴⁴ Muftī °Azīz al-Raḥmān was succeeded by his deputy, Maulāna Mas'ūd Aḥmad.⁴⁵ The *iftā'* operation at Dār al-°Ulūm was indeed a gigantic one,

⁴¹ On 27th Rabī al-Awwal 1309. Ibid.

⁴² He was born in the year 1275/1858, he was well connected to the pioneers of Deoband. He had very strong ties with some of the founding members of Dār al-°Ulūm, Maulānā Faḍl al-Raḥmān and Maulānā Muḥammad Qāsim Nānautawī. His brother, Maulānā Ḥabīb al-Raḥmān, was the sixth principal of Dār al-°Ulūm. He was the *khalīfah* of Maulānā Muḥammad Raḥīf al-Dīn, who was not only the second principal of Dār al-°Ulūm, but also acted as the college's *muftī* during the period 1301-1304. After completing his studies in 1298/1881, he assumed a teaching post in Meerut until he was invited to become the *Nā'ib Muhtamim* (deputy Vice-Chancellor) of Dār al-°Ulūm in 1309/1891. He was officially installed as the *muftī* of Dār al-°Ulūm the following year, 1310. He was also the longest serving *muftī* of Dār al-°Ulūm, (1310/1892-1344/1925). Ibid., pp. 7-8.

⁴³ Muftī °Azīz al-Raḥmān (d. 1347/1928) He was the longest serving *muftī* of Dār al-°Ulūm, from 1310/1892 to 1344/1925. See Appendix B for chronological table.

⁴⁴ Muftī Muḥammad Shaḥīf also published selected *fatāwā* of Muftī °Azīz al-Raḥmān, alongside his own, under the title *Fatāwā Dār-al-°Ulūm Deoband*, comprising of °Azīz al-Fatāwā of Muftī °Azīz al-Raḥmān, alongside the *Fatāwā* of Muftī Muḥammad Shaḥīf, *Imdād al-Muftīn*, 4 vols (Deoband n.d.).

⁴⁵ He was the son-in-law of Maulāna Maḥmūd Ḥassan, Shaykh al-Hind (1268/1851-1339/1921).

but unfortunately, accurate assessment of the quantitative extent of the operation is made impossible by the absence of proper documentation.⁴⁶ Since official records date back to 1329/1911,⁴⁷ most of the *fatāwā* dispatched before that time were not recorded.⁴⁸ Where records do exist as in the exceptional case of Thānwī, they are generally confined to the short period between 1296/1879 and 1301/1883.

Those who attempted to scrutinize official registers of Dār al-Iftā' were confronted by many difficulties.⁴⁹ The illegibility of the script makes it difficult to read all records. The hand-written entries made by many different scribes were often entered without care to legibility.⁵⁰ It seems, therefore, clear that Muftī °Azīz al-Rahmān did not review recorded *fatāwā*. Even where entries were legible, they were not free from all sorts of writing and linguistic errors.⁵¹ Furthermore, the entries were made chronologically, and were not recorded under specific headings, or other recognizable criteria.⁵² This resulted in repetitions, because the same question was often asked by different individuals

⁴⁶ At the conclusion of its first century, the College counted a total of 269,215 recorded *fatāwā*. Bearing in mind that recording of *fatāwā* commenced forty seven years after the inauguration of the College. Some historians have placed the number of *fatāwā* in excess of a half a million, attributing over a hundred and twenty thousand *fatāwā* to Muftī °Azīz Rahmān. See Radwī, *Tarīkh Deoband*, p. 340

⁴⁷ This was the year in which *Dār al-Iftā'* started its official register.

⁴⁸ From 1283/1866 to 1329/1911 no official record was kept.

⁴⁹ Muftī Shafī' in his preface to *Fatāwā Dār al-'Ulūm*, expresses grave misgivings about the state of these official registers. *Ibid.*, p. 9.

⁵⁰ *Ibid.*, p. 9.

⁵¹ *Ibid.*

⁵² *Ibid.*

at different times. The Dār al-Iftā' records are therefore suffused with unnecessary repetitions which could easily have been avoided⁵³

Although Muftī Muḥammad Shafī^c belonged to the next generation of famous Deobandī *muftīs*, his contribution towards Deobandī *iftā'* cannot be over emphasized.⁵⁴ At a very early stage of his career Muftī Muḥammad Shafī^c displayed exceptional skills in matters pertaining to Islamic law. His legal talent was recognized by his teachers, which included Muftī °Azīz al-Raḥmān.⁵⁵ On several occasions Maulānā Ashraf °Alī Thānwī also acknowledged Muftī Muḥammad Shafī^c's unusual skill in solving legal issues.⁵⁶ Muftī °Azīz al-Raḥmān's departure from Dār al-Iftā' in 1925 left a major void in the Deobandī *iftā'* program. Between 1925 and 1929, Dār al-Iftā' was headed by Maulāna Mas'ūd Aḥmad and Maulāna Riyāḍ al-Dīn respectively.⁵⁷ When Muftī Muḥammad Shafī^c was appointed to the post of Muftī of Dār al-Iftā' in 1930, he

⁵³ Ibid.

⁵⁴ Muḥammad Shafī^c was born in 1314/1896 in Deoband. Originally his father named him Muḥammad Mubīn, but later changed it to Muḥammad Shafī^c on the suggestion of Rashīd Aḥmad Gangohī who was his father's *ṣūfī* mentor. In 1330/1912, after committing to memory the Qur'ān, he enrolled at Dār al-'Ulūm, Deoband. Among his teachers were Anwar Shah Kashmirī (d. 1356/1937), Muftī °Azīz al-Raḥmān (d. 1347/1928), and °Allāmah Shabīr Aḥmad °Uthmānī (d. 1364/1945). After graduating in 1336/1918 he was appointed to the teaching staff of the College. In 1349/1930 he was appointed to Muftī of Dār al-Iftā'. He immigrated to Pakistan in 1368/1949 where he helped in drawing up the Islamic Constitution of Pakistan. In 1951 he established a seminary under the name of Dār al-'Ulūm in Karachi. He took *bay'ah* (spiritual allegiance) with Shaykh al-Hind. After the latter's demise, he turned to Maulānā Ashraf °Alī Thānwī from whom he received *khilāfah*. He was a renowned *ṣūfī* with several hundred *murīds*. He himself was the author of more than fifty works including a number of *Fatāwā* compilations. He wrote a *tafsīr* (exegesis) on the Qur'ān entitled *Ma'ārīf al-Qur'ān* which gained wide acclaim. He died in 1396/1976.

⁵⁵ Muḥammad Taqī Uthmānī, *Al-Balāgh* (Karachi, 1399.) p. 165.

⁵⁶ Ibid., p. 179.

⁵⁷ See Appendix B for Chronological table of Deobandī *muftīs*.

drastically improved the *iftā'* operation. During his first term between 1930 and 1936, he delivered 20,848 *fatāwā*.⁵⁸ During his second term which lasted from 1939 to 1943 he delivered 17,687 *fatāwā*.⁵⁹ What distinguished him most from the other Deobandī *muftīs* was his focus on modern issues. He wrote several legal tracts addressing such issues as life assurance, provident funds, organ transplantation, photography, birth control and injections while fasting. In total, he wrote over fifty works, most of which dealt with *fiqhī* issues.⁶⁰ He also compiled the *fatāwā* of Muftī °Azīz al-Raḥmān⁶¹ and Ashraf °Alī Thānwī, both of which are used in this study.⁶² Most of his own important legal tracts are published in two volumes entitled *Jawāhir al-Fiqh*.⁶³

4.2 Conclusion

The Dār-al-Iftā' of Deoband took advantage of the lithographic press to publish their *fatāwā*. The latter were not only responses to individuals in need of

⁵⁸ Muḥammad Qārī Ṭayyib, *Dār al-°Ulūm, Deoband* (Deoband, 1965), p. 100.

⁵⁹ Ibid.

⁶⁰ For a comprehensive bibliography of Muftī Muḥammad Shafī's writings, see Muftī Muḥammad Shafī, *Jawāhir al-Fiqh*, (Karachi 1975) vol. 2, pp. 495-508.

⁶¹ *Fatāwā Dār-al-°Ulūm*, (Deoband, n.d.) a compilation of two sets of *fatāwā*; the *Fatāwā* of Muftī Azīz al-Raḥmān, entitled °Azīz al-Fatāwā alongside the *Fatāwā* of Muftī Muḥammad Shafī, entitled, *Imdād al-Muftīn*, compiled by Muftī Muḥammad Shafī.

⁶² Ashraf °Alī Thānwī, *Imdād al-Fatāwā*, ed. Muftī Muḥammad Shafī 8 vols (Karachi, 1386). Also Ashraf °Alī Thānwī, *Imdād al-Fatāwā*, ed. Muftī Muḥammad Shafī, revised version 4 vols (Deoband, 1394).

⁶³ Muftī Muḥammad Shafī, *Jawāhir al-Fiqh* 2 vols (Karachi 1975).

religious guidance, but available to a community of believers in similar situations. No doubt, the *iftā'* process of Deoband began in an informal and *ad hoc* manner. Soon, however, it became an institution by itself. Though sometimes imperfectly recorded, it nevertheless represents a remarkable record of Deobandī juristic thinking.

The introduction of the lithographic press into India during the nineteenth century generated a new publishing culture. Many '*ulamā*' became prolific writers, knowing that their message would reach the masses through inexpensive publications. This avenue of propagation which was denied to the '*ulamā*' of the Mughal period substantially enhanced the sphere of influence of the '*ulamā*' of British India.

The Deobandīs exploited the press to the extent that in a town like Deoband today, one can scarcely count the number of publishers and bookstalls, for the business in books is one of the major activities of the town. The Deobandī publications covered virtually the entire spectrum of religious sciences. No doubt, the availability of the press must have played a substantial role in motivating the College Assembly to introduce a *fatwā* register from which a Deobandī "*Ālamgīrī*" would eventually be compiled. Through the press, teachings and the ideas of the '*ulamā*' achieved ever-wider currency, and the intellectual orientations they represented created a familiarity with religious issues that was unprecedented in Indian history.

CHAPTER FIVE

Deobandī Legal Epistemology

Many of the Deobandī *fatāwā* formed part of an elaborate educational programme and was directed at educating Muslims masses in the religious activities of their daily life. In addition, a substantial number of *fatāwā* formed part of a defensive strategy and was aimed at confronting forces considered to be a threat to the religious well-being of Muslims. Those forces included "modernity" and Muslim groups whom the Deobandī 'ulamā' considered to have deviated from the true path. Groups such as the Ahl al-Ḥadīth, the Barelwīs, the Shī'īs, the Aḥmadīs, and the Qādiyānīs were targeted by the Deobandīs for particularly harsh criticism. Muslim intellectuals including Sayyid Aḥmad Khān, Amīr 'Alī, and Maudūdī, were also subjected to severe criticism. The defensive strategy of the Deobandīs was particularly directed at the Barelwīs and the Ahl al-Ḥadīth, albeit with different emphases. Whilst the Deobandīs focused on reforming popular customs espoused by the Barelwīs, they also engaged the Ahl al-Ḥadīth in legal (*fiqhī*) polemic. Since this study is concerned primarily with the legal dimension of the Deobandī programme, the focus of analysis is directed more at the Ahl al-Ḥadīth than the other groups because the latter's *fiqhī*

difference with the Deobandīs was most profound.¹

5.1 The Barelwī and the Ahl al-Ḥadīth

During the late nineteenth century, in addition to the Deobandīs, two other influential groups of ‘*ulamā*’ made their mark in India: The Ahl al-Ḥadīth and the Barelwīs. There were certain commonalities among them. All three groups placed emphasis on the law at the forefront of their teachings, albeit based on different and contending premises.² In all three movements, the ‘*ulamā*’ were the focus of religious leadership. During the formative period of their development, each group appealed to Muslims of somewhat different social strata and geographical location. Gradually, each attracted a more geographically dispersed and more sociologically heterogeneous following.³ Eventually, all three groups, the Deobandīs, the Barelwīs, and the Ahl al-Ḥadīth, institutionalised, their respective agenda and evolved into clear alternatives to each other.

5.2 Major Differences between Ahl al-Ḥadīth and the Deobandīs

The Ahl al-Ḥadīth programme was grounded in the notion that *taqlīd* of *madhhabs* was tantamount to giving preference to specific jurists rather than to

¹ Both the Deobandīs and the Barelwīs are staunch followers of the Ḥanafī *madhhab*.

² Metcalf, *Islamic Revival*, p. 264.

³ *Ibid.*

the Prophet. Their focus on *ḥadīth* entailed the denial of the legitimacy of the classical works of the *madhhabs* and the *fatāwā* based upon them. The group's best-known leaders were Sayyid Nadhīr Ḥusayn (d. 1902) and Nawwāb Ṣiddīq Ḥasan Khān.⁴ The Ahl al-Ḥadīth insisted upon substantial individual responsibility in determining the law from its primary sources. Therefore, they were totally opposed to the concept of *taqlīd al-shakhṣī* (following one *madhhab*) that formed the cornerstone of the Deobandī legal epistemology. The Deobandīs felt that in the case of the learned, the Ahl al-Ḥadīth had a plausible approach, but what they expected the uneducated to do, was not very clear.⁵ Their focus seemed to be on the educated spiritual elite who were called upon to discard all intermediaries, both in matters of law and spirituality.

The Ahl al-Ḥadīth's epistemological point of departure was the literal interpretation of the Qur'ān and *Sunnah*. In order to remain loyal to the texts, the Ahl al-Ḥadīth admitted only one meaning and were particularly hostile to esoteric and symbolic meanings which certain *ṣūfīs* attached to verses. Thus, their opponents labelled them *ẓāhirprast* because they refused to entertain non-literalist interpretations.⁶ For the Ahl al-Ḥadīth, the quest for a single and simple standard of religious interpretation and exclusiveness formed the core of an orientation

⁴ Sayyid Maḥdī 'Alī Khān Maḥsin al-Mulk, *Taqlīd awr 'Amal bī al-Ḥadīth* (Aligarh, 1906). Sayyid Maḥdī 'Alī Khān succeeded Sayyid Aḥmad Khān as administrator of Aligarh College. In this work *Taqlīd awr 'Amal bī al-Ḥadīth* (*Taqlīd* and practice on *Ḥadīth*), Sayyid Maḥdī 'Alī Khān Maḥsin al-Mulk, argued very strongly against the trend to follow the *Imāms* of the law-school, instead of turning directly to the *aḥādīth*.

⁵ Metcalf, *Islamic Revival*, p. 272.

⁶ *Ibid.*, p. 270.

both religious and psychological.⁷

In contrast to the Deobandīs, the Ahl al-Ḥadīth discouraged the institutional forms of Sufism. However, like the Deobandīs, the Ahl al-Ḥadīth, were very critical of *ṣūfī* institutions and techniques of meditation linked to the shrines of the medieval *pīrs*. Both the Ahl al-Ḥadīth and the Deobandīs were oriented towards revitalizing personal commitment to the laws of the *Sharīʿah* by reforming popular custom. They introduced certain social reforms, by opposing, for example, lavish marriage ceremonies, by encouraging simple functions with modest dowries, and encouraged the remarriage of widows.⁸ The issue, however, that most distinguished the Ahl al-Ḥadīth from the Deobandī Ḥanafīs was the style of their *ṣalāh* (canonical prayer). In contrast to the Deobandīs, the Ahl al-Ḥadīth said "*āmīn*" aloud after the reading of *sūrah fātiḥah* (*āmīn bi al-jahr*); lifted their hands before bowing (*rafʿ al-yadayn*); and read the *sūrah fātiḥah* behind the *imām* (*qirāʾ khalf al-imām*). These differences led to severe tension between the Deobandīs and the Ahl al-Ḥadīth, and disputes landed in the British courts. "A vital question of religion," mocked a British official fearing a riot, "no doubt a most important question . . . should Amen be said loudly with the hands crossed over the chest, or should it be said softly with the hands crossed over the stomach."⁹

Like most Indian Muslim religious groups of the late nineteenth century,

⁷ Ibid. p. 269.

⁸ For example, they took as their model the dowry of the Prophet's daughter, Fātimah.

⁹ Metcalf, *Islamic Revival*, p. 275.

the Ahl al-Ḥadīth claimed that they drew inspiration from the reform programme initiated by Shāh Walī Allah. Sayyid Nadhīr Ḥusayn was regarded by the Ahl al-Ḥadīth to be the intellectual heir to Shāh Muḥammad Ishāq (1778-1846),¹⁰ in a genealogy that ascended to Shāh °Abd al-°Azīz and finally to Shāh Walī Allah.¹¹ The case of the Ahl al-Ḥadīth was strong, for Shāh Walī Allah, after his return from Arabia, did not only emphasize the study of *ḥadīth* but also propagated the principle of its primacy over the rulings of the law schools. In Shāh Walī Allah's view, if an authentic *ḥadīth* was found to contradict a ruling of a law school, there would be no question as to which would take precedence.¹² Shāh Walī Allah had taken exception to scholars who "cared only for *fiqh* and theoretical sciences, the former for securing governmental posts and the latter for holding verbal duels and hair-splitting controversies among themselves."¹³

Shāh Walī Allah's position was not a dogmatic one but rather fairly balanced by the acceptance of many rulings of the law schools that were consulted eclectically, and by a willingness to exercise *ijtihād* in interpreting *ḥadīth*.¹⁴ Neither the Deobandīs nor the Ahl al-Ḥadīth fully subscribed to Shāh Walī Allah's position. The Deobandīs, on the one hand, insisted on *taqlīd shakhṣī*

¹⁰ He was the grandson of Shāh °Abd al-°Azīz.

¹¹ Muḥammad Ibrāhīm Mīr Siyālkotī, *Tārīkh Ahl al-Ḥadīth-i Ḥadīth* (Lahore: 1952), p. 427. However, this claim was rejected by others who argued that °Abd al-Ghanī Dihlawī (1819-1878) was the successor to Muḥammad Ishāq. Raḥmān °Alī, *Tārīkh-i °Ulamā'-i Hind*, translated by Muḥammad Ayyūb Qādirī (Karachi, 1961), p. 410.

¹² Metcalf, *Islamic Revival*, p. 276.

¹³ Muin-ud-din Ahmad Khan, *Farā'idī Movement*, p. xliii.

¹⁴ Aziz Ahmad, *Islamic Modernism*, pp. 114-15.

(following one specific *madhhab*) and complete loyalty to the Ḥanafī *madhhab*. The Ahl al-Ḥadīth, on the other hand, wholly rejected the rulings of the *madhhabs* and insisted on following *aḥādīth*. Gradually, the emphasis on one or another element of the Walī Allah tradition became institutionalized into the formal agenda of the competing parties.

The Ahl al-Ḥadīth were very apprehensive about their fellow Muslims who opposed them. They regarded Muslims who opposed them as the greatest threat to their movement. They derived enormous inspiration from the conviction that they stood forth as embodiments of authentic faith. During the Ambala trials,¹⁵ an old Bengali, the father of one of the accused, epitomized this attitude towards the Ḥanafīs: "A broken-down old man, upwards of seventy years of age . . . who appears to have thrown himself into the movement with the zeal of a new convert embraced his son when the sentence of transportation had been passed against him. 'My son,' he cried out, 'never forsake *āmīn* and *raf-i-yadayn*. Keep firm in the Faith. It is not Christians and Jews who have destroyed you, but the Ḥanafīs."¹⁶

The high moral ground claimed by the Ahl al-Ḥadīth and the deep Deobandī loyalty to the Ḥanafī *madhhab* led to severe tensions between the groups, and as I have pointed out, British officials were ultimately involved in

¹⁵ In 1863 the British government undertook a major campaign against the last of the activists on the frontier. A number of suspected activists were tried for treason and ultimately imprisoned. Among those imprisoned were Sayyid Nadhīr Ḥusayn of the Ahl al-Ḥadīth. Trials were held in Ambala and Patna in 1864 and 1865 and continued intermittently until 1871. See Hardy, *Muslims of British India*, pp. 82-4.

¹⁶ Quoted in Muhammad Mujeeb, *The Indian Muslims* (London, 1967), p. 398.

arbitrating differences between them.¹⁷ Although the British thought that they could solve disputes, their very involvement exacerbated the situation, for their presence acted as an incentive for the parties to test their strength.¹⁸ Since neither group was prepared to compromise, each side sought to use the power of the government to its own advantage.

Disputes often revolved around control of mosques. In a Benaras case of 1884, for example, the District Magistrate ruled in favour of the Deobandī Ḥanafīs and awarded them the control of the mosque. A subordinate judge reversed that decision and ruled in favour of the Ahl al-Ḥadīth by declaring that the mosque could not be closed to any Muslim. However, a district judge of the High Court again reversed his subordinate's decision and ruled in favour of the Deobandī Ḥanafīs. Finally, the Privy Council declared the mosque open to both Ḥanafī and Ahl al-Ḥadīth.¹⁹ In Meerut in 1892, however, the deciding magistrate simply divided the mosques of the city between the feuding parties. Five were turned over to the Ahl al-Ḥadīth and the rest to the Ḥanafīs.²⁰

British law courts were also asked to decide on religious issues that occurred inside the mosque. In 1889, at the Shāhī Masjid in Agra, a dispute arose over the pronouncement of *āmīn* aloud in the mosque. When the Ahl al-Ḥadīth sought the ruling of the district magistrate, he referred the matter to his Deputy

¹⁷ Metcalf, *Islamic Revival*, p. 285.

¹⁸ *Ibid.*, p. 285.

¹⁹ *Ibid.*, p. 287.

²⁰ *Ibid.*, p. 288.

Collector, who ruled that *āmin* was not to be pronounced aloud. The Ahl al-Ḥadīth then ceased to utilize the mosque.²¹

British officials were, it seems, not so much partisan to any group, but were rather anxious to maintain order.²² The three decisions handed down by the Privy Council in the late nineteenth century to adjudicate disputes over the usage of mosques were hailed as exemplary rulings of neutrality and impartiality. The issue in all three cases was whether the Ahl al-Ḥadīth could be banned from the use of the mosques. The Privy Council's decisions were based upon the precedent of Justice Maḥmūd of the Allahabad High Court.²³ In the Ramadān of 1889, the Benaras court ruled that mosques must be opened to all Muslims.²⁴ The Judge argued that:

A mosque cannot be dedicated or appropriated exclusively to any particular school or sect of Sunni Muhammadans. Members of the Muhammadi or Wahabi sect are Muhammadans and as such entitled to perform their devotions in a mosque. But any Muhammad would commit a criminal offence who, not in the *bona fide* performance of his duties, but *mala fide*, for the purpose of disturbing others engaged in their devotions, made any demonstration, oral or otherwise . . . *āmin* must be said, but there is no rule on whether it is to be said loud or low.²⁵

²¹Ibid.,

²² In Mōradabad, the district superintendent of police, on the request of the Ahl al-Ḥadīth, attempted to persuade a visiting *maulūd khwān*, a reciter of poems on the occasion of the celebration of the Prophet's birth, to leave the town for it was feared that his performance would lead to public disorder. The preacher petitioned the deputy magistrate for redress, but the ultimate decision was made in favour of the Ahl al-Ḥadīth. Metcalf, *Islamic Revival*, p. 288.

²³ He was the son of Sir Sayyid Aḥmad Khān and could have been influenced by his association with Muḥsin al-Mulk at Aligarh.

²⁴ Metcalf, *Islamic Revival*, p. 286.

²⁵ Ibid., pp. 286-87.

The rulings of the Privy Council were conceived as a clear victory for the Ahl al-Ḥadīth. The decisions handed down by the lower courts were usually in favour of the Ḥanafīs, who were invariably in the majority. In the cases that came before the Privy Council, the first decision was to exclude those who had caused the disturbance, that is those who said *āmin* aloud. In two of the other cases, the Privy Council reversed the initial ruling by arguing that the technique of reading the prayer could become a pretext for excluding people with whom there was a dispute over the control of the finances of the mosque. Thus, there was a particular reason for not basing the ruling on the practice of prayer.²⁶

As expected, the tensions between the Deobandī Ḥanafīs and the Ahl al-Ḥadīth were not eased by these court rulings. A report in a Delhi newspaper summed up the situation:

A reconciliation has been effected between two sects of Musalmans, called the Ahl al-Ḥadīth-i Hadīth and the Ahl al-Ḥadīth-i Fiq. . . . The two sects of Musalmans, owing to a difference of opinion on some minor points of their belief hate each other. But the leaders of the two classes at Delhi lately executed and signed a deed of compromise in the presence of the Commissioner. According to this agreement, the members of the two sects are not to hate each other, but to treat each other as friends and can offer prayers at the same mosque.²⁷

By the late nineteenth century, the *‘ulamā’* of the Ahl al-Ḥadīth were deeply involved in attempting to create a community of religiously responsible individuals, attentive to the *Sharī‘ah* as determined, not by the legal schools, but rather by the content of *ḥadīth*. They succeeded in defining for themselves a style of practice much like that of the Deobandīs, as a religious leadership at once

²⁶ Ibid., p. 287.

²⁷ *Ataliq-i Hind* (Lucknow) 19 October 1882, p. 719.

removed from the political concerns and from the conventional network of the *pīrs* of the shrines.²⁸

The strength of the Ahl al-Ḥadīth movement resided in its challenge to opponents to give preference to the primary sources of the law over the secondary sources, a position which in theory, the Deobandīs could not oppose. The strength of this position could not be intellectually rebutted by the Deobandīs without betraying a sense of loyalty to *ḥadīth*. Thus, the Deobandīs resorted to discredit the Ahl al-Ḥadīth not on the basis of theoretical argument, but rather on the basis of practical implication. They accused the Ahl al-Ḥadīth of prescribing a radical approach to the law that imposed too great a responsibility upon the individual. The question as to how the uneducated were to strictly follow the *aḥādīth* of the Prophet, since they were unable to consult the sources, remained substantially unresolved. When the ‘*ulamā*’ of the Ahl al-Ḥadīth were challenged on this point, they could not respond satisfactorily. They admitted that they did not expect all Muslims to consult the *ḥadīth* literature, but expected them to refer to the learned.²⁹

It is true that the Ahl al-Ḥadīth drew most of its support from amongst the educated and the nobility.³⁰ The élitist style of the Ahl al-Ḥadīth was evident

²⁸ Metcalf, *Islamic Revival*, p. 283.

²⁹ Some Ahl al-Ḥadīth, when confronted with this question, suggested that the uneducated should even consult the law schools. See, for example Sayyid Abū Bakr Ghaznawī, *Ḥadīth Maulānā Dā‘ūd Ghaznawī* (Lahore, 1974), pp. 373ff.

³⁰ In the biographical dictionary of the Ahl al-Ḥadīth for Delhi and the U.P., one fifth of the supporters of the Ahl al-Ḥadīth were recorded as *sayyid*. This number represents a strikingly high percentage of descendants of the Prophet. A further ten percent were from socially eminent families, among them descendants of the Mughals, *nawāb* and *zamindārs*. See Abū Yaḥyā Imām

from the fact that instead of writing in the Urdu vernacular the 'ulamā' continued to write in Persian and Arabic.³¹ The use of these languages were also aimed at a readership abroad.³²

5.3 Deobandīs and Barelwīs

The differences between the Deobandīs and the Barelwīs were more substantial. The Barelwīs did not emerge as a consequence of attempts to reform popular custom, but rather as result of the desire to protect them. In this regard, the Barelwī 'ulamā' were opposed by Deobandī and Ahl al-Ḥadīth 'ulamā'.

In matters of *fiqh*, the Barelwīs, like the Deobandīs, were followers of the Ḥanafī school. In Sufism, however, the Barelwīs subscribed to a custom-laden style of Sufism, which was closely tied to the *pīrs* of the medieval shrines.³³

The Barelwīs did not emphasize the role of individual responsibility in the same manner as the Deobandīs or the Ahl al-Ḥadīth, but placed more emphasis on the intercession of the 'ulamā' and *pīrs*. This type of "mediated spiritualism" appealed to a certain class of society that was accustomed to accepting authority without question. Consequently, the teachings of the Barelwīs were characterised

Khān Naushaharawī, *Tarājim-i 'ulamā'-i Ḥadīth-i Hind* (Delhi, 1356).

³¹ Persian and Arabic were considered to be the languages of the educated. Of the large number of works attributed to Siddiq Ḥasan, some 84 were in Urdu; 54 were in Arabic, including 17 on *ḥadīth*; and 43 in Persian. See Abū Yaḥyā Naushaharawī, *Tarāji-i 'Ulamā'*, p. 298.

³² Metcalf, *Islamic Revival*, p. 279.

³³ *Ibid.*, p. 267.

by hierarchism, a hierarchy that elevated the status of the Prophet, the *pīrs*, and the 'ulamā' to the position of patrons, benefactors, and intercessors.³⁴

The Deobandī programme becomes much clearer in the context of these competing movements. Although all three movements were deeply committed to defining what they held to be the correct basis for Muslim society, all three nevertheless thrived at the expense of the other. Reconciliation never formed part of their agenda. For example, the Ahl al-Ḥadīth become readily recognizable by the style of their *ṣalāh*, often in their own mosques. The Barelwīs, on the other hand, were easily recognizable by their customs such as the 'urs and celebrations in honour of the Prophet and saints.

5.4 The Deobandī *Fatwā* on *Taqīd*

Taqīd simply means to accept or follow another's opinion without knowledge of the validity of that opinion.³⁵ According to Al-Shawkānī, the doctrine of *taqīd* gained currency only after the end of the "golden era" (*khayr al-qurūn*).³⁶ The importance of *taqīd* in the Deobandī reformation programme cannot be overemphasized. The Deobandī notion of *taqīd* formed an integral part of their defensive strategy and was central to their application of the law. Therefore,

³⁴ Ibid.,

³⁵ Al-Zuhaylī, *Al-Wasīṭ fī Uṣūl al-fiqh al-Islāmī* (Damascus, 1978), p. 561; Al-Ghazzālī, *Al-Mustasfā*, vol. 2. p. 123; Al-Āmidī, *Al-Iḥkām*, vol. 3. p. 166.

³⁶ Al-Shawkānī, *Al-qawl al-Mufīd*, p. 13. Implied in this detail is the idea that *taqīd* is an aberration which is not connected to the pure and golden age. Al-Shawkānī is one of the most ferocious opponents of the doctrine of *taqīd*.

fatāwā on *taqlīd* were primarily directed at countering the claims made by the Ahl al-Hadīth.

I found it appropriate to commence with the Deobandī *fatwā* on *taqlīd* because it formed the basis of their *iftā'*. The most comprehensive Deobandī *fatwā* on *taqlīd* was delivered by Muftī Muḥammad Shafī'.³⁷ What follows is a full translation of that *fatwā*, followed by an analysis. The *fatwā* comprised of four questions and answers.³⁸ The full text of this *fatwā* is included in appendix G.

³⁷ Muftī Muḥammad Shafī', *Jawāhir al-Fiqh* (Karachi, 1975), vol. 1, pp. 119-55. Both Ashraf 'Alī Thānawī, and Rashīd Aḥmad Gangohī delivered *fatwās* on *taqlīd*. Ashraf 'Alī Thānawī, *Imdād al-Fatāwā*, also known as *Fatāwā Ashrafīyyah* (Deoband, n.d.) vol. 4, pp. 145-47. *Fatāwā Rashīdiyyah* of Maulānā Rashīd Aḥmad Gangohī, ed. Subḥān Maḥmūd (Deoband, n.d.), pp. 180-82. Muftī Shafī' based his *fatwā* on the their rulings and expanded upon their basic arguments.

³⁸ For the purpose of distinguishing the normal text of the chapter from the text of the translation, I have placed a border around the pages of the translated text.

The Deobandī *Fatwā* on *Taqīd*

Question 1

In terms of the Qur'ān and the *sunnah*, what is the answer to the following question?

1.) Is the following (*taqīd*) of a *Mujtahid Imām* obligatory (*fard* or *wājib*) or merely permissible?

Answer

General *taqīd* is made obligatory by virtue of the text of the Qur'ān. "If you do not know, then ask the learned." In another verse it is stated, "Follow Allah and his Messenger and the *Ulū al-amar*." Commentators including Hazrat Jābir bin 'Abd-Allah, Hazrat Ibn 'Abbās, 'Atā, Mujāhid, Dihāk, 'Abu al-'Āliyah, Ḥasan Basarī, and other *ṣaḥābah* (companions), *tābī'īn* (followers of companions), and *taba' tabī'īn* (followers of the followers) have all interpreted the term "*ulū al-amar*" to mean the caliphs and the jurists (*fuqahā*).

Even the deceased, Maulāna Ṣiddīq Ḥasan Khān, head of the *Ahl al-Hadīth*, [in India] has accepted this interpretation in his commentary on the Qur'ān.

In a *ḥadīth* it is stated, "The cure for ignorance lies in asking." The question remains as to whether any one who is designated as an 'ālim will be able to fulfill this task, or whether a specific calibre of 'ālim or jurist is meant. The learned scholars of the past have established certain criteria that must be met in an 'Ālim before he is worthy of being followed. Shāh Walī-Allah, Muḥaddith Dehlawī, says in his book "*Iqd al-Jid*":

The definition of *ijtihād*, as it is gleaned from the writings of the 'ulamā'

is the utilization of maximum intellectual effort in the extrapolation of specific rules and regulations of the *Shari'ah* from their detailed sources, whose principles divide into four; *Kitāb Allah, Sunnah, Ijmā'* and *Qiyās*. . . . And the conditions imposed upon one making *ijtihād* are that he should [a] be familiar with the Qur'ān and the *Sunnah* and whatever is related to the law, [b] know the occasions of *ijmā'* [c] understand the conditions of *qiyās*, [d] grasp the methods of research, [e] be conversant with Arabic, [f] recognize which law abrogates which, and [g] be acquainted with the science of narration. There is no need for the knowledge of theology (*kalām*) and positive law (*fiqh*). . . . It is not inappropriate to recall here the view of al-Baghawī, who says that a *mujtahid* is he who has acquired the five types of knowledge. [1] Knowledge of the Qur'ān, [2] knowledge of the *Sunnah* of the Prophet SAW, [3] knowledge of the views of the previous (*salaf*) 'ulamā', their agreements and disagreements, [4] knowledge of the Arabic language and [5] knowledge of *qiyās*. *Qiyās* is the science of extrapolating a law from the Qur'ān and the *Sunnah* when there is no clear textual evidence (*nass*) for such a law to be found either in the Qur'ān and *Sunnah*, or in *ijmā'*. Knowledge of the Qur'ān includes knowing [a] the abrogating as well as the abrogated verses, [b] the unclear (*mujmal*) and the explicit (*mufassar*), [c] the specific and the general, [d] the perspicuous (*muhkam*) and the intricate (*mutashābih*), [e] the disliked (*karāhah*), the prohibited and the permissible, [f] the encouraged and the obligatory. Knowledge of the *Sunnah* incorporates in addition to the above, the science of *ḥadīth* which entails all the different categories of *ḥadīth* such as, authentic (*ṣaḥīḥ*), weak (*da'īf*), suspended (*musnad and mursal*). Understanding the relationship between the Qur'ān and the *Sunnah* in terms of status is necessary to the extent that a reconciliation may be required if there arises an apparent contradiction between the *Sunnah* and the purport of the Qur'ān, for the *Sunnah* is a clarification of the Qur'ān and is not in opposition to it. Only knowledge of those *aḥādīth* that relate to law is imperative, and not those others that deal with stories and moral guidance. Similarly, only that linguistic knowledge of Arabic is essential which enables one to understand the laws in the Qur'ān and *Sunnah*. It is not essential that one's Arabic knowledge embraces the complete spectrum of language. It is, however, necessary to be conversant with the language to the extent that one is clear about the intent that underpins the differences that inhere in diverse usages. This is essential because the directives are in Arabic, and if one is ignorant of Arabic, it will not be possible to know the purpose of the Law-Giver (*al-Shāri'*). And one must be familiar with the views pertaining to the law, as well as the opinions of the companions (*ṣaḥābah*) and the followers (*tābi'īn*). It is also essential to know most of the juristic decrees (*fatāwā*) of the jurists so that a contrary verdict is not adopted, thereby violating the dictates of *ijmā'*. If one is conversant with most aspects of the five sciences, it is not essential to know every last detail of them, then one is considered to be a *mujtahid*. If, however, one is not conversant with any of these sciences, then one has no alternative but to make *taqlīd*. Even though a person may be an expert in a particular *madhhab*

of a past jurist, it is not permissible for him to assume the position of a judge (*qādī*) and deliver juristic decrees. On the other hand, if one possesses, in addition to the above mentioned five sciences, the ability to abstain from following one's lower desires, avoid the introduction of innovations (*bid'ah*), eschew major sins, and not persist in committing smaller ones, then one may practice *ijtihād* and deliver juristic decrees. And whosoever does not possess these qualities, must follow (*taqlīd*) others in matters that confront him. End of al-Baghawī's statement.

In short, it has been absolutely incontrovertibly proven from the many textual evidences (*mutawātir*) that it is essential for one to make *taqlīd* of the learned in matters in which one has no knowledge. Most of the *Ahl al-Ḥadīth* support the notion that generally *taqlīd* is obligatory. There remains a difference of opinion in the matter of *taqlīd shakhṣī*, (the practice of sticking religiously to the opinions of one specific *mujtahid* in all legal matters). *Taqlīd shakhṣī* according to the 'ulamā' of the *Ahl al-Sunnah wa al-Jamā'* is obligatory because general *taqlīd* (which is acceptable to both parties, *Ahl al-Ḥadīth* and *Ahl al-Sunnah wa al-Jamā'*) are of two kinds, viz., *taqlīd shakhṣī* and *taqlīd gayr shakhṣī* (eclecticism; meaning that *taqlīd* is not confined to one specific *mujtahid*). So if both parties accept the obligation of *taqlīd*, in principle, one is exonerated from this obligation by either following *taqlīd shakhṣī* or *taqlīd gayr shakhṣī*. The reason for this is that compliance with any aspect of a general obligation will be regarded as fulfilment of that obligation. For example, if one instructs a servant to call someone, he (the servant) will have the choice to call either 'Umar, Bakr or whoever, and in so doing, he will be regarded as having fulfilled his obligation.

In terms of Qur'ānic injunctions, general *taqlīd* was prescribed. The two methods of *taqlīd* were both in vogue during the time of the companions and the followers (*Tābrīn*). Some of them fulfilled the obligation of *taqlīd* through *taqlīd shakhṣī*

and others through *taqlīd gayr shakhṣī*. Each group was completely tolerant of the other's position, and there were no recriminations, as illustrated in the following examples.

During the time of the companions and the followers, both methods of *taqlīd* were in vogue, but towards the end of the second century, many new *madhhabs* began to mushroom. Very few rules remained that were not subject to disputes involving issues of permissibility (*jawāz*) and prohibition (*ḥarām*), acceptability (*mubāḥ*) and the disliked (*karāḥah*). Under the heavy influence of their passions, the people of the day began to search among the many different opinions of the jurists (*mujtahids*) and adopted those rulings that were in consonance with their personal whims and fancies and discarded the rest. This eclecticism progressed to the extent that there developed the real danger that religion (*dīn*) would degenerate into a conglomeration of personal fancies based upon passion. Instead of the Muslims following the *dīn*, they made the *dīn* follow their personal passions and fancies.

The wise and sagacious scholars had the foresight to perceive the potential evils that were likely to develop out of that type of unbridled following of the passions. They felt that the corrupting effect of eclecticism (*taqlīd gayr shakhṣī*) which began to manifest itself would drastically increase in the future unless its tide were effectively stemmed. The interest of the Islam (*maslahah al-Shar'ī*) dictated that right to *taqlīd gayr shakhṣī* be revoked and the obligation of *taqlīd shakhṣī* be imposed upon the Muslims.

Consensus (*ijmā'c*) was reached on this point. Hence, the *muḥaddith* Shāh Walī

Allah, whose erudition in the field of *ḥadīth* is recognized even by the late Nawāb Ṣiddīq Ḥasan Khān of the *Ahl al-Ḥadīth*, states in his treatise *Al-Insāf* on page 59:

After the second century, there developed the trend to follow the *madhhabs* of the *mujtahids*. This practice was *wājib* (obligatory) during that time.

Because one of the two approved methods of *taqlīd* had proven to be detrimental and subsequently banned, there only remains one method of fulfilling the obligation of *taqlīd*, that is, *taqlīd shakhṣī*. Since the basis of establishing the only method of fulfilling the obligation (*farad*) of *taqlīd* is rational (*ḡanni*), it is regarded as *wājib* instead of *farad*.

A Clear Example of the Obligation of *Taqlīd Shakhṣī* during the Era of the Rightly Guided Caliphs.

It is no secret to the learned scholars that despite the fact that Arabic was the common language of the Arab tribes, there were different dialects. In India, Europe, the West, Delhi and Lucknow, each have their respective dialects. Therefore, the Prophet SAW appealed (made *du'ā*) for the Qur'ān to be revealed in seven dialects so that no tribe had any grounds for objecting to the difficulties inherent in understanding a different dialect. In response to this wish of the Prophet SAW, the Qur'ān was revealed in seven dialects, which are described as *sab'ah 'aḥruf* (seven letters) in the *ḥadīth*, (*Muwatta'* Imām Mālik). During the Prophetic era, the Qur'ān was read in these seven dialects.

During the reign of Hazrat °Uthmān RA, the Muslims had conquered foreign lands and the Qur'ān began to be propagated to the foreigners, who were confused by the many different dialects. It was feared that these seven different dialects, whose very purpose was to promote better understanding among the tribes would become the source of confusion in the foreign lands, to such an extent that there developed the real danger that the purity and authenticity of the Qur'ān would be compromised (*tahrīf*). For this reason, Hazrat °Uthmān ordered the Qur'ān to be read and written in only one dialect and forbade the use of the other dialects. The entire community of *ṣahābahs* endorsed and sanctioned this move as an important and necessary step. There was absolutely no objection to it. Thus, by virtue of the consensus of the *ṣahābahs* (*ijmā'*) it was decided to prescribe (make *wājib*) one of the seven dialects and abandon the others.

Exactly the same predicament applied to the issue of *taqlīd shakhṣī* and *taqlīd gayr shakhṣī*, for both methods were acceptable during the formative period, when following the passions was not in vogue. During that period, the choice was up to the individual, but towards the beginning of the third century, when following the passions became the order the day, and in fulfilment of the prophecy of the Prophet, people were becoming slaves of their private fancies and whims, the 'ulamā' of the day unanimously decided (*ijmā'*) to prohibit (declare *ḥarām*) *taqlīd gayr shakhṣī* and prescribe (make *wājib*) *taqlīd shakhṣī*.

Imām Ibn Taymiyyah, who is also recognized by the *gayr muqllids* (those who do not subscribe to the notion of *taqlīd*) as a learned leader, has claimed in his *fatāwā* that it has been prohibited by *ijmā'* to following ('*ittibā'*) a *ḥadīth* or

madhhab of a *mujtahid*, if such following is guided by the dictates of the lower passions.

One whose marriage was solemnized in the presence of depraved (*fāsiq*) witnesses, divorces his wife thrice. In order to circumvent the law applicable to irrevocable divorce (*talāq mughallazah*), he claims that the marriage contract was incorrect in terms of the Shāfi'ī *madhhab*, hence, the divorce is ineffectual. This position runs counter to the *ijmā'* of the Muslims. The Muslims are agreed that if one believes in the legitimacy of something, he is bound to that belief, whether it runs counter to his interests or not. By the same token, if one believes in the prohibition of something, one is bound to that belief whether it serves one's interests or runs counter to them. Those who claim that their marriages are invalid on the grounds that the witnesses to the marriage are disqualified, do so only when confronted with the issue of divorce, and not when they are enjoying the cardinal pleasures and other fruits of the marriage, such as inheritance. In other words, they selectively invoke the law when it suits their interest, and this is not permitted by agreement of the entire Muslim community.

After three lines he continues:

An example of this (eclecticism) is when someone claims the preemptive right to purchase his neighbour's property, but refuses to acknowledge his neighbour's right to preemption when selling his own property. This type of eclectic behaviour is not permissible according to *ijmā'*. Similarly, (it has been rejected by *ijmā'* that) one cannot accept the validity of the marital contract and enjoy all the conjugal rights and privileges then declare the marital contract to be invalid for purposes of avoiding the ramifications of issuing an irrevocable divorce. If a specific petitioner (*mustaftī*) claims: "I was unaware of this, and I only learnt about it today" his argument is unacceptable, because it opens the door to playing games with religious values and ultimately becomes the means of subjecting the laws dealing with the lawful and the unlawful to the personal fancies and whims of the passion. (*Fatāwā Ibn Taymiyyah*, vol. 3, pp. 240-41.)

How do those who criticize the *muqallids* respond to the fact that the revered *ṣahābah* prohibited the use of all the other dialects which were sanctioned by the Prophet SAW and prescribed the use of only one? Whatever answer is given by the *gayr muqallids* in support of this move, could also be used to substantiate the position of the *muqallids* vis à vis the issue of *taqlīd*. Out of this arises a legal question concerning the seven dialects of the Qur'ān established through

consecutive (*tawātur*) reports from the Prophet SAW. Reading the Qur'ān in the seven revealed dialects has always been an acceptable practice, but the commentator of Mūniyyah, °Allāmah Ḥalabī has written that due to the pervasive ignorance and inexperience of the time, it is better that one should confine oneself to the dialect that is in vogue in one's country and avoid the use of the other dialects which may generate confusion in the minds of the masses.

Question 2

When did *Taqlīd Shakhsī* commence, and why?

Answer

As already mentioned, during the golden age i.e. the era of the *ṣaḥābahs* and the *tābī'īn*, if someone did not know a law, he would inquire from someone learned and make his *taqlīd*. During the golden age, we find examples of both methods, *taqlīd shakhsī* and *taqlīd gayr shakhsī*. Since the *Ahl al-Ḥadīth* (*gayr muqallids*) also accept the practice of *taqlīd gayr shakhsī*, there is no need to present examples. Only examples will be presented which prove that during the time of the *ṣaḥābahs* and the *tābī'īn* there were those who also practised *taqlīd shakhsī* to an extent that they would chose a guide and religiously follow him despite all the alternate and opposing views.

The *Muḥaddith* of Hind, Shāh Walī-Allah states in his book, *Hujjah Allah al-Bāligah*: "Hazrat Ibn °Abbās differed in matters of the law with many of the residents of Mecca, and some of them gave preference to his *fatāwā*." The act of giving preference to Ibn °Abbās's view and adopt his *fatwā* in the face of differing opinions is in fact *taqlīd shakhsī*. It is also stated in *Hujjah Allah al-Bāligah*:

"Ibrāhīm Nakhī and his students regarded Ibn Masūd and his students as the most authentic and competent (*Athbah al-Nās*) scholars of law." In other words, on occasions of controversy, Ibrāhīm Nakhī and his students gave preference to the views of Ibn Masūd and his students by virtue of their superior knowledge of the law and this is precisely what is meant by *taqlīd shakhṣī* and nothing more. Abū Dāwūd Muḥtabā'ī records on page 68 that Amr bin Maymūn narrated:

I was attracted to Mu'ādh after his arrival in Yemen, as the ambassador of the Prophet, and I never left his side till his death and burial in Syria. Thereafter, I searched for the most knowledgeable person and I found Ibn Masūd to whom I remained loyal and committed till his death.

Hence, during the time of the Prophet SAW, *taqlīd* was in vogue. It came about through Prophetic injunction and remained with the companions. Some of them practised *taqlīd gayr shakhṣī* while others practised *taqlīd shakhṣī*.

Now remains the question as to why there must be *taqlīd*. Firstly, since it has been established that, as the Prophet SAW ordered it and the majority of the companions practised it, there should be no room for a Muslim to question it. Beside this, the wisdom of *taqlīd* is no secret because *taqlīd* in spiritual affairs is similar to *taqlīd* in worldly affairs. Those who are ignorant of the science of medicine, or mathematics, or astronomy, or trades such as carpentry and masonry, cannot do without the expertise of those possessing these skills. In the same way, the ignorant has no alternative but to make *taqlīd* of the learned in matters of religion.

Question 3

Why must *Taqlīd* be Restricted to the Four *Imāms*? Is there no other equally competent *imām* to follow? Is the *taqlīd* of these four *imāms* supported by any

textual evidence (*naṣṣ*)?

Answer

The restriction of *taqlīd* to the four *imāms* is not grounded on any rational or religious grounds, but the result of historical circumstances. By the will of Allah, all the other *madhhabs* became extinct. Even if there exists a few, two, four, or fifty, or even a hundred different recorded views of someone, they cannot form an independent *madhhab* without the other thousands of laws that constitute a complete *madhhab*. After investigation, it was found that all the other *madhhabs* became extinct and only four survived, therefore *taqlīd* was confined to them.

Ibn Khaldūn, commenting on the *Zāhiriyyah madhhab*, writes in his *Muqaddimah*: "Then the *madhhab* of the present day *Zāhiriyyah* was taught along-side the four *madhhabs*, but the *majhūr* (majority) rejected his pretences and [consequently] the *Zāhiriyyah* [*madhhab*] remained confined to the books."

Shāh Walī Allah states: "When all the other authentic *madhhabs* became extinct, except these four, following them was like following the dominant force and abandoning them (four *madhhabs*) was like deserting the dominant culture." (*Iqd al-Jīd*, p. 38.)

Shaykh Ibn Humām writes in *Fath al-Qadīr*: Consensus was reached (*ijmāʿ*) on abandoning practice on any *madhhab* that contradicted the four *madhhabs*.

ʿAllāmah Ibn Ḥajr Makkī writes in *Fath al-Mubīn, Sharḥ al-Arbaʿīn*, "During our time, the learned scholars have forbidden the *taqlīd* of any *imām* other than al-Shāfiʿī, Mālik, Abū Ḥanīfah, and Aḥmad ibn Ḥanbal."

Tahtāwī on the *Hāshiyah* of *Rad-al-Mukhtār* wrote: "One who deviates from the

four *madhhabs*, is of the innovators and among the inmates of Hell."

Hence, the whole question of why *taqlīd* is confined to the four *madhhabs* is completely misplaced, and analogous to someone having many children and due to the death of some, including the father, there survived only four children. Now, it is obvious that despite the fact that were other children, the inheritance will devolve exclusively on the four surviving heirs. You have never heard anyone questioning why the inheritance should be confined to those four. But, if one should ask, he would be told that there are no other survivors, and that was the Divine wish.

Mullah Jiwan has written in his *Tafsīr Aḥmadī*: "It is fair that *taqlīd* is restricted to the four *madhhabs*, which is an act of benevolence from Allah and a sign of their acceptance. There is no further scope due to the [extensive] dimensions and arguments they embrace."

Now remains your request for textual evidence (Qur'ān and *ḥadīth*) confirming the names of the *imāms*. This I find to be a very strange request. The laws of the *Sharī'ah* are not constructed around names, for if that were the case, then show to me where in the Qur'ān or the *ḥadīth* is it mentioned by name that you may eat bread or wear clothes? In which verse is your name mentioned, allowing you to sleep and awake? If it was necessary for the law to be established on the basis of names being mentioned, then nothing on earth today would be considered compulsory and forbidden. In which verse or *ḥadīth* were you informed by name of the obligation to perform your *ṣalāh*? Similarly, in the above example, could it be asked in what Qur'ānic verse or *ḥadīth* was the names mentioned of the

four heirs that share the inheritance? Definitely not, the law is established for all including the law of *taqlīd*. Allah says: "Ask the *ahl al-dhikr* if you do not know."

The four *imāms* are definitely of the *ahl al-dhikr*.

Question 4

Is the *Imāmah* (leadership in prayers) of one who does not follow a specific *madhhab*, acceptable?

Answer

Although the *imāmah* of such a person is permissible, certain actions of those who do not make *taqlīd* and profess to practice on the *ḥadīth* are of such a nature that invalidates the *ṣalāh*. For example, they do not use clay lumps (*delā*) during purification (*istinjā*), and this nowadays almost certainly results in droplets of urine soiling the pants. Since, in most cases their pants are soiled by droplets of urine, one should avoid following them in prayers.

And Allah knows best.

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Date. 1335 H.

5.4.1 Analysis

The Deobandī justification for *taqlīd* was based on a combination of complex considerations. The justification for the obligation of general *taqlīd* was derived from the Qur'ānic verse, "Ask the *ahl al-dhikr* if you do not know" (Q. 16:43). On the basis of that verse, one is obligated to *taqlīd* by virtue of the positive command "ask" (*amr*). Once the Deobandīs established that the obligation of *taqlīd* was imposed upon all those who "did not know," it was necessary to determine exactly who fell into that "ignorant" category. This was achieved through isolating those who "knew", the *mujtahids*, from those who "did not know," the non-*mujtahids*. Thus, according to the Deobandīs, only the *mujtahid* "knew," and only the *mujtahid* was exempt from the obligation of *taqlīd*. Therefore, the *fatwā* on *taqlīd* engaged in a lengthy quotation of Shāh Walī Allah in which a definition of *ijtihād* was postulated. In the light of that definition very few, if indeed any contemporary Muslim, would qualify as a *mujtahid*. By quoting Shāh Walī Allah's definition of *ijtihād*, the *fatwā* succeeded in appealing to an authority that was acceptable to both the Deobandīs and the Ahl al-Ḥadīth. However, by deliberately quoting Shāh Walī Allah's definition of *ijtihād*, in reply to a question on *taqlīd*, the Deobandī *muftī* deliberately avoided the torturous task of having to disagree with Shāh Walī Allah, whose view on *taqlīd* was at variance with the Deobandī's. By positing a narrow definition of *ijtihād* and by stipulating stringent conditions to be met for *ijtihād*, the Deobandīs attempted to impose *taqlīd* upon virtually all Muslims. For, although in theory the

Deobandīs were willing to admit that *taqlīd* was not obligatory on the *mujtahid*, the stringent criteria that must be met before one can qualify as a *mujtahid*, effectively eliminated virtually all, as in practice they were not disposed to according anyone *mujtahid* status. In this way, *ijtihād* was effectively banished to the realm of the ideal and every Muslim was obligated to *taqlīd*.

In principle, the Deobandīs imposed *taqlīd* on both laity and learned. That practice differed with presentations by classical scholars including Shāh Walī Allah who maintained that there was a distinction between the *‘āmmī* (lay person) and the *‘ālim* (learned).³⁹ The Deobandīs made no such distinction in the application of the doctrine of *taqlīd shakhṣī*. The obligation of *taqlīd shakhṣī*, they argued, was applicable as much to the Deobandī *muftī* as it was to the *jāhil* or the *‘āmmī*. The majority of the *‘ulamā’* subscribed to the notion of *al-‘āmmī lā madhhaba lahū* (the *‘āmmī* was not obligated to a fixed *madhhab*). Shāh Walī Allah was also clear as to what type of *taqlīd* was expected of the laity.

The *jāhil muqallid* may follow any *mujtahid* of his choice. If any *mujtahid* rules and the *jāhil* follows, then he has fulfilled the obligation of *taqlīd*. . . . There is no significance in the inclinations of the *‘āmmī* with regard to his estimate of the correctness or incorrectness of a ruling. If he petitioned two *mujtahids*, and they disagree,⁴⁰ it is better for him to accept the ruling towards which he feels more inclined. And according to me, even if he accepts the ruling towards which he is not inclined, it is permissible because his inclinations bear no significance. He is obligated to follow, and if he follows any one of the two rulings, he has fulfilled that obligation.⁴¹

³⁹ Shāh Walī Allah makes a clear distinction between the *‘ālim muqallid* and the *jāhil muqallid*. The former is not bound to a *madhhab*, whereas the latter is. Ibid., pp. 51, 76.

⁴⁰ In other words, they deliver opposing verdicts.

⁴¹ Shāh Walī Allah, *‘Iqd al-Jīd fī Ahkām al-Ijtihād wa al-Taqlīd*, p. 91.

Theoretically, the Deobandīs had little alternative but to concede that in terms of classical law, there was no obligation of *taqlīd shakhṣī* upon the lay person.

Even Muftī Muḥammad Shafī noted that:

Justification for this could be found in the consensus of the *ṣaḥābahs* who condoned the liberty of the *‘āmmī* to follow whoever he wished.⁴² Furthermore, it has never been reported from any of our predecessors (*salaf*) that they took any objection or prevented the *‘āmmī* from following whoever he wished.⁴³

On this point, the Deobandī *fatāwā* deviated from the classical view that clearly postulates that the lay person did not have a fixed *madhhab* (*al-‘āmmī lā madhhaba lahū*).⁴⁴

The Deobandīs also differed with classical scholarship on the extent to which they imposed *taqlīd shakhṣī* in the face of *aḥādīth*, or competing opinions of other legal schools. Shāh Walī Allāh’s view on *taqlīd* was very clear:

Whenever a clear *ḥadīth* contradicts a view of a *madhhab*, the latter should be discarded and the *ḥadīth* should be followed. And the four Imāms have indicated so. Shafī said ‘ If the *ḥadīth* is authentic, then it is my *madhhab*. If you find my views contradicting the *ḥadīth*, act upon the dictates of the *ḥadīth* and throw my views against the wall’. . . . And Abū Ḥanīfah said, "It is not applicable to rule according to my view without knowing my justification (*dalīlī*)."⁴⁵

After citing the views of the four Imāms in support of following the *ḥadīth*, when the latter contradicted the view of a *madhhab*, Shāh Walī Allāh proceeded to

⁴² Muftī Muḥammad Shafī "Itimām al-Khayr fī al-Iftā bi Madhhab al-Gayr," published in his *Jawāhir al-Fiqh*, p. 163.

⁴³ Ibid.,

⁴⁴ This clearly seems to support our basic thesis that the Deobandī *mufī* was not guided exclusively by strictly legal phenomena, but rather by a "vision of law" that was rooted both in legal and extra-legal phenomena.

⁴⁵ Shāh Walī Allāh, *‘Iqd al-Jīd*, p. 70.

prohibit such blind *taqlīd*.⁴⁶

And such *taqlīd* is *ḥarām* when a *muqallid* regards the *mujtahid* to have reached the state where it is not possible for him to have made a mistake. Whenever the *muqallid* is confronted by an authentic *ḥadīth* which contradicts the *mujtahid's* view, he still refuses to discard the *mujtahid's* view. Or he believes that since he has chosen to follow a *madhhab*, Allah has obligated him to stick to that *madhhab*.⁴⁷

If there existed a contradiction between *ḥadīth* and the dictates of a law school, Shāh Walī Allah had no hesitation in declaring that one was obligated to the *ḥadīth* and not to legal opinion.⁴⁸ Clearly, Shāh Walī Allah's loyalty to *ḥadīth* was at variance with the Deobandīs. Many scholars have expressed views similar to that of Shāh Walī Allah. For example, al-Zuḥaylī, a contemporary scholar in Damascus, divided *taqlīd* into two categories.⁴⁹ The first category he termed *al-taqlīd al-madhīm* (reprehensible *taqlīd*), and the second *al-taqlīd al-maḥmūd* (plausible *taqlīd*) or *ittibā'*. According to al-Zuḥaylī, if the level of incompetency was such that a person required the guidance of another in the requirements of the *Sharī'ah*, then such a person was obliged to follow the more competent.⁵⁰ Ignorance and incompetency became the overriding factors which necessitated

⁴⁶ Ibid., p. 71.

⁴⁷ Ibid., p. 70.

⁴⁸ In a question (*istiftā*) addressed to Maulānā Rashīd Aḥmad Gangohī, it was stated that Shāh Walī Allah recommended acting on *ḥadīth* rather than legal opinion. In the *istiftā*, some of Shāh Walī Allah's advices are quoted to substantiate his preference for *ḥadīth*. In response, Rashīd Aḥmad Gangohī confirmed that he agreed with Shāh Walī Allah's position. *Fatāwā Rashīdiyyah*, pp. 185-86.

⁴⁹ Al-Zuḥaylī, *Al-Wasīṭ*, pp. 570-71 .

⁵⁰ Ibid., p. 571.

al-taqlīd al-maḥmūd.⁵¹ On the other hand, al-Zuḥaylī cited numerous verses of the Qur'ān, and no less than fifteen eminent scholars in substantiation of his view that (blind) *taqlīd* was *ḥarām* (unlawful).⁵² He concluded his discussion of *taqlīd*, citing Ibn ʿAbd al-Salām:

It is a matter of great surprise and astonishment that when a member of *al-fuqahā al-muqallidūn* (the imitating jurists) is confronted by a weakness in what he has accepted from his (*mujtahid*) *imām*, a weakness from which there is no escape, he persists in following his *imām*, and spurns those who show him [contrary evidence in] the Qur'ān and *Sunnah*.⁵³

In response, however, the Deobandīs drew inspiration from the arguments forwarded by Ibn ʿĀbidīn, a leading Ḥanafī expert:

It has been authentically reported that Abū Ḥanīfah said, ' if a *ḥadīth* is authentic, then it is my *madhhab*'. . . . My [Ibn ʿĀbidīn's] view is that it is obvious that this directive applies only to those who possess the capability of researching the texts (*nuṣūṣ*) and know the extant from the abrogated.⁵⁴

The Deobandīs maintained that only those who possessed the rare qualifications of *ijtihād* were in a position to decide what *ḥadīth* could be given preference over the rulings of the *madhhab*. Thus, by restricting Imām Abū Ḥanīfah's directive

⁵¹ Al-Zuḥaylī claims that a *jamāʿah* (group) of ʿulamā' have distinguished between *taqlīd* and *ittibā* (literally, following). Whereas both concepts involve following, *taqlīd* means blind following, i.e. without knowledge of the validity of the law being followed. *Ittibā* on the other hand, means to follow with full knowledge of the reasons behind what is been followed. Al-Zuḥaylī, *Al-Wasīṭ*, p. 562.

⁵² Here are some examples of quotes: a) "According to al-Ghazzālī, al-Āmidī, al-Bayḍāwī and most ʿulamā', *taqlīd* is not permissible". b) Imam Aḥmad said: "Do not follow (*taqlīd*) me, and do not follow Mālik, nor al-Thawrī, nor al-Awzā'ī, but take from where they have taken". c) Imām Yūsuf said: "It is unlawful for someone to quote without first knowing from where I have taken." d) "it is an indictment upon the intelligence of the individual to follow (*taqlīd*) the *dīn* of men." (Attributed to Imām Aḥmad). Al-Zuḥaylī, *Al-Wasīṭ*, pp.571-75.

⁵³ Ibn ʿAbd al-Salām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, vol. 2, p. 135. Also Al-Zuḥaylī, *Al-Wasīṭ*, p. 576.

⁵⁴ Ibn ʿĀbidīn, *Rasm al-Mufī*, p. 24.

to the qualified *mujtahid*, the Deobandīs insisted on *taqlīd shakhṣī* for all non-*mujtahids*. If it were accepted that Abū Ḥanīfah's directive was in fact addressed only to the *mujtahids*, then the question arises as to why the Deobandīs followed Abū Ḥanīfah's rulings when they were clearly informed by a subsequent *mujtahid*, Imām Shāfi'ī, that certain of Abū Ḥanīfah's rulings contradicted authentic *aḥādīth*? While the Deobandīs accepted that Imām Shāfi'ī was a *mujtahid* in principle, they did not follow him when he rejected the views of Abū Ḥanīfah in preference to *aḥādīth*.⁵⁵ Furthermore, what Ibn 'Ābidīn regarded as "obviously" applying to one with special qualifications, was not so "obvious" to Shāh Walī Allah, who classified *taqlīd* into two types; *wājib* (compulsory) *taqlīd* and *ḥarām taqlīd*.⁵⁶ The obligation of general *taqlīd* was imposed upon the lay person (*jāhil*). Having said that, Shāh Walī Allah cautioned the lay person not to follow the view of a specific *madhhab* when that view contradicted an authentic *ḥadīth*.⁵⁷ To substantiate this, he quoted the views of the four Imāms, amongst them, the one quoted by Ibn 'Ābidīn. Therefore, according to Shāh Walī Allah, the directive issued by the four Imāms including Abū Ḥanīfah's, was addressed not to the *mujtahids* alone, but to all Muslims.⁵⁸

Relying upon their trust in the erudition and legal genius of their

⁵⁵ In other words, if the Deobandīs found themselves incapable of following that directive, then why did they not follow someone who was capable of fulfilling that directive?

⁵⁶ Shāh Walī Allah, *Iqd al-Jid*, p. 69.

⁵⁷ Ibid. Shāh Walī Allah engaged in a lengthy discussion on the issue of *tafīq* and cited a number of prominent jurists, among them Al-Āmidī, Ibn al-Ḥājjib, Ibn al-Humām, (a renowned Ḥanafī scholar), Imām Nawawī, Ibn Ḥajr, and Ramlī to negate the obligation of *taqlīd shakhṣī*.

⁵⁸ Ibid., pp. 69-71.

mujtahid, the Deobandīs were not willing to concede that authentic *aḥādīth* could have evaded the attention of Abū Ḥanīfah and his learned students.⁵⁹ The Deobandīs set out to further justify their position by recourse to the following strategy. They emphasized the superior nature and quality of the Ḥanafī rulings. They wrote extensively on this issue. The general sentiment expressed in their defense of the Ḥanafī position was that the *madhhab* had taken account of all those *aḥādīth* that may appear to contradict the rulings of the *madhhab*. If the *madhhab* failed to act upon a *ḥadīth*, that *ḥadīth* was either regarded as having been abrogated by a subsequent *ḥadīth*, or interpretive skills would invariably be employed to justify the *madhhab's* position. Often rhetorical skills were used to take advantage of ambiguities in the *aḥādīth*.

The Deobandīs were aware of accusations that the Ḥanafī *madhhab* relied on *ra'y* (personal opinion) rather than *ḥadīth*. The Deobandī defense of the Ḥanafī *madhhab* resulted in a substantial effort aimed at disproving this accusation. Maulānā Ashraf °Alī Thānwī supervised an elaborate eighteen volumed work that attempted to prove the superiority of the Ḥanafī *madhhab* in terms of its loyalty to *aḥādīth*.⁶⁰ Another elaborate work written by the same author also sought to disparage the notion that the Ḥanafīs followed *ra'y* more

⁵⁹ Even if authentic *aḥādīth* have evaded the Ḥanafīs, the Deobandīs certainly did not regard themselves as capable of conceding to that suggestion. If the early Ḥanafīs, who were better equipped and more competent to detect any contradiction did not deviate from the *madhhab*, how could the Deobandīs, who were much less qualified, depart from the *madhhab* on the basis of an apparent contradiction?

⁶⁰ Maulānā Ashraf °Alī Thānwī, *Flā al-Sunnan* (Karachi, n.d.), 18 volumes, *Idārah al-Qur'ān wa al-'Ulūm al-Islāmiyyah*. Although the work is attributed to Maulānā Ashraf °Alī Thānwī, in actual fact it was written by Maulānā Zafar Aḥmad °Uthmānī (d. 1973) under the instruction and supervision of Ashraf °Alī Thānwī.

than *naṣṣ*.⁶¹ These works served to entrench blind loyalty or *taqlīd shakhṣī* through their promotion of the superiority of the Ḥanafī *madhhab*.

5.4.2 *Taqlīd Shakhṣī* and *Talfīq*

The Deobandīs promoted *taqlīd shakhṣī* and also stressed the validity and authenticity of all four Imāms. The former imposed a commitment to one truth, while the latter admits to four. The opening lines of the published version of Muftī Rashīd Aḥmad Gangohī's *Fatāwā* begins with the statement:

All the *madhhabs* are equally true, therefore do not criticize any of them but regard them all as your Imām.⁶²

To impose *taqlīd shakhṣī* and then to claim that all other three competing *madhhabs* are equally true, raises certain problems. If every *mujtahid* is correct (*kull mujtahid muṣīb*), then why is it necessary to follow only one Imām? The basis of the principle of "equal correctness" (*al-mu'ammimah fī al-taṣwīb*) is a *ḥadīth* in Bukhārī and Muslim where the Prophet is reported to have said: "If a jurist reaches the right answer, he is rewarded twice, if not, he is still nevertheless rewarded."⁶³

Faced with a complete balance of evidence for different rulings, *muqallids* may logically take one of two approaches. They may freely choose whichever rule

⁶¹ Maulānā Ashraf ʿAlī Thānwī, *Aḥkām al-Qurʾān - Dalāʾil al-Qurʾān ʿalā Masāʾil al-Nuʾmān* (The Laws of the Qurʾān- Qurʾānic Proofs of the Laws of Abū Ḥanīfah) (Karachi, 1370), 6 vols.

⁶² *Fatāwā Rashīdiyyah*, p. 4.

⁶³ Bukhārī, *Kitāb al-Iʿtīsām*, Muslim, *Kitāb al-Aqḍiyah*.

they wanted (*takhyīr*) or they could choose to follow the rulings of one specific *mujtahid*, knowing that the other opposing rulings were equally valid. In an endeavour to address this question, Muftī Muḥammad Shafī^c collected some references from various works. However, he did not use the material to write an article, so he decided to publish it for the "benefit of future scholarship".⁶⁴ Interestingly, the references clearly reveal the dilemma of the Deobandī *muftī* in relation to classical Islamic law. Muftī Muḥammad Shafī^c cited a query which asked whether it was compulsory for a lay person to remain loyal to the view of a *madhhab* after he had already followed that *madhhab*. He answered as follows:

Some scholars have prohibited the lay person to change from one *madhhab* to another on an issue on which he had already begun to practice. He is however allowed to practice on a ruling of another *madhhab* provided he did so before commencing with the act.⁶⁵

The following citation summed it all up:

If one feels legally bound to a specific *madhhab* like that of the Ḥanafī and Shāfi^c, is it then obligatory to remain committed to that *madhhab*, and may one not depart from it on any point of law (*mas'alah*)? Some have said that it is obligatory to stick to one *madhhab*. . . . Others have held that it is not obligatory to stick to one *madhhab*, and this is the most authentic view (*al-aṣaḥ*) as it is recorded in *Al-Rāfi^c* etc. Regarding something to be legally binding does not constitute a legal obligation because there is no other obligation except that which Allah and his Messenger have obligated. And neither did Allah or his Messenger impose the obligation upon any human being to follow a specific *madhhab* on any member of the *‘ummah* in such a manner that he is obliged to follow every dictate of that *madhhab* to the exclusion of all others.⁶⁶

Muftī Muḥammad Shafī^c also cites Ibn ‘Ābidīn:

⁶⁴ Muftī Muḥammad Shafī^c named this collection of excerpts "Itimām al-Khayr fī al-Iftā bi Madhhab al-Gayr" and is published in his *Jawāhir al-Fiqh*, pp. 157-168.

⁶⁵ Shafī^c, *Jawāhir al-Fiqh*, vol. 1, p. 163.

⁶⁶ Shafī^c, *Jawāhir al-Fiqh*, vol. 1, p. 165.

There is no obligation upon any human to follow a specific *madhhab*. And it is permissible for one to act on something contrary to the ruling of the *madhhab* one has chosen to follow, provided that one fulfils the conditions of the respective *madhhab* and restrict compliance with two opposing rulings to two separate occasions in such a manner that one is not directly joined with the other.⁶⁷ . . . one is not legally prevented from performing the daily prayer (*ṣalāh*) according to one *madhhab* on one day and according to another *madhhab* on another day.⁶⁸

Furthermore, Maulānā Ashraf °Alī Thānwī wrote a treatise on the question of *talfiq*, entitled "*Al-Taḥqīq fī al-Talfiq* (research into eclecticism) in which he attempted to justify Deobandī opposition to *talfiq* through a series of rational rebuttals of those who permitted *talfiq*. Interesting, he concludes by citing *inter alia* the classical views which seem to contradict what he had set out to prove in the first place.⁶⁹ For example, he cites Ibn °Ābidīn,

If he performed his prayer thinking that it was done correctly according to his *madhhab*, but it turned out to be incorrect according to his *madhhab* and correct according to another *madhhab*, he may follow the other *madhhab* and his prayer will be regarded as being fulfilled. . . . It was reported that Imām Abū Yūsuf performed his Friday prayer (*jum'ah*) after bathing at the public baths (*ḥammām*). After having been told that a dead rat was found in the well of the *ḥammām*,⁷⁰ he retorted, ' we take the view of our brethren in Medina, if the capacity of the water has reached two *qullitayn*, it does not bear any impurities.⁷¹

⁶⁷ Ibn °Ābidīn, *Radd al-Muḥtār* (Cairo, 1966), vol. 1, p. 75. To refrain from joining two opposing perspectives in one act as seen in the quotation of Ibn Taymiyyah, (cited in the *fatwā*) is regarded as unacceptable.

⁶⁸ By confining compliance with one *madhhab* to a specific day and with another to another day is merely an example of clearly separating two competing perspectives. *Ibid.*, p. 75.

⁶⁹ Maulānā Ashraf °Alī Thānwī *Al-Taḥqīq fī al-Talfiq*, this treatise form part of the preface (*muqaddimah*) of his celebrated *Fī al-Sunnan* (Karachi, n.d.), pp. 189-201.

⁷⁰ The discovery of a dead animal in the well would result in the impurity of the water, which would then mean that Abū Yūsuf would be required to repeat his prayer.

⁷¹ Ibn °Ābidīn, *Radd al-Muḥtār* p. 75. There has been different definitions given to *qullitayn*. Some have held that it is equivalent to approximately 124 litres of water. Ibrāhīm Sīlqīnī, *Muḥāḍarāt Fiqh al-Islāmī* (Damascus, 1976), p. 67

Thus, it must be concluded that in terms of legal theory the Deobandīs were willing to concede that despite the opposing view being legally tenable, and indeed very strong, they nevertheless ruled against it.⁷²

A noticeable disparity between classical legal theory relating to the issue of *talfiq* and Deobandī rulings against it is clearly present. Even though Muftī Muḥammad Shafīʿ had declared *talfiq* to be impermissible,⁷³ the view in favour of *talfiq* was declared to be *aṣaḥ* (most authentic) in the classical references, which he compiled.⁷⁴

5.5 Deobandī Departure from the *Madhhab*

In spite of their dogmatism with regard to *taqlīd shakhsī*, Deobandīs departed from this principle in response to social exigency. During the middle of the Twentieth century there developed a social crisis in India. Many Muslim married women renounced their faith out of frustration at not being able to obtain equitable legal redress for the matrimonial injustices they were forced to endure. The absence of recognized Islamic structures like *qāḍī* courts generated a culture

⁷² My assertion that the Deobandīs are willing to concede that *taqlīd gayr shakhsī* (eclecticism) is also a tenable position is firstly based upon Muftī Muḥammad Shafīʿ' s track "Itimām al-Khayr fī al-Iftā bi Madhhab al-Gayr" in his *Jawāhīr al-Fiqh*, pp. 157-168, and secondly on his *fatwā* on the doctrine of *taqlīd*.

⁷³ Shafīʿ, *Jawāhīr al-Fiqh*, vol. 1, p. 160.

⁷⁴ One of the references clearly stated: "There is no other obligation except that which Allah and his Messenger have obligated. And neither did Allah or his Messenger impose the obligation upon any human being to follow a specific *madhhab* of any member of the *cummah* (Muslim community) in such a manner that he is obliged to follow every dictate of that *madhhab* to the exclusion of all others." Ibid., p. 165.

of unbridled domestic tyranny.⁷⁵ Because husbands abused their conjugal rights with impunity, many of the wives renounced their faith through which they hoped to achieve the desired separation from their husbands. In terms of Islamic law, the act of renunciation of faith by any one of the spouses resulted in the immediate cessation of all conjugal rights. This was indeed a serious state of affairs, and the Deobandī 'ulamā' were compelled to act to save the situation from degenerating into social mayhem.

The need to resort to another *madhhab* was precipitated by the inflexibility of the Ḥanafī *madhhab* on certain vital issues pertaining to the disillusionment of Muslim marriages. Firstly, the Ḥanafī *madhhab* did not cater for a situation in which there existed no functional *Shari'ah* courts.⁷⁶ In terms of the Ḥanafī *madhhab* a wife could only petition the *qāḍī* of a *Shari'ah* court for the disillusionment of her marriage.⁷⁷ Only the *qāḍī* of a *Shari'ah* court was legally empowered to annul (*faskh*) a Muslim marriage.⁷⁸ Since the system of *Shari'ah* courts was dysfunctional in British India, women were left in a precarious predicament if faced with the need to have their marriages annulled.⁷⁹ Secondly, according to Ḥanafī *madhhab*, a wife may not be granted a divorce in the event of the disappearance of her husband. She was only entitled to a divorce

⁷⁵ Wives were often subjected to a reign of terror from which there was little recourse to legal solutions.

⁷⁶ Ashraf 'Alī Thānwī, *Al-Ḥilāh al-Nājjizah li Ḥalīlah Al-'Ājjizah* (Deoband, n.d.), p. 40, 184.

⁷⁷ Ibid.

⁷⁸ Ibid., p. 45.

⁷⁹ Ibid., p. 41, 185.

after it was presumed that there "existed no hope of her husband being alive".⁸⁰ The Hanafīs stipulated that a missing husband could only be presumed dead after most of his contemporaries passed away.⁸¹ Even then, it was the sole prerogative of the *qāḍī* to grant the order of divorce.

The Mālikīs made provision for an alternate authority in the event of there being no functional *qāḍī*. Muslims may then form an organization comprising of the religious leadership to execute the functions of a *qāḍī*.⁸² Furthermore, according to the Mālikī *madhhab*, a wife may be granted an order of divorce four years after the disappearance of her husband.⁸³

Maulānā Ashraf °Alī Thānwī embarked upon an extensive project which was to become one of the most widely canvassed projects ever handled by the Deobandīs. In the project he sought to ⁸⁴ use the process of *iftā* as a substitute in places where there existed no *qāḍī*,⁸⁵ and provide sufficient redress for the afflicted wife by resorting to *tafīq*.⁸⁶ The main emphasis of the project was to find a more lenient legal position among the four *madhhabs* on the following issues:

⁸⁰ Ibid., p. 183.

⁸¹ Ibid., p. 183.

⁸² Ibid., p. 185.

⁸³ Ibid.,

⁸⁴ This project was later published under the title Ashraf °Alī Thānwī, *Al-Ḥilāh al-Nājizah lī Ḥalīlah Al-°Ajizah* (Deoband, n.d.).

⁸⁵ This was based on the principle that "a *muftī's fatwā* takes the place of judicial judgement" (*Fatwā al-muftī yaqūmu maqām al-qāḍā*). Thānwī, *Al-Ḥilāh al-Nājizah*. p. 41.

⁸⁶ Ibid.,

The disappearance and desertion (*mafqūd* and *ghā'ib*) of the husband;⁸⁷ insanity (*majnūn*) and sexual impotency (*ʿinnīn*) of the husband;⁸⁸ violent behaviour (*mutaʿannit*) of the husband;⁸⁹ and the husband's failure to financially support his wife despite being in a position to do so (*mutaʿannit fī al-naḥqah*).⁹⁰

Of the four *madhhabs*, the Mālikī position proved most lenient. However, the Deobandīs did not regard themselves competent to interpret the Mālikī *fiqh*, and therefore sought the rulings from Mālikī *muftīs* in Mecca and Medina.⁹¹ After entering into extensive communication with the latter, the Deobandīs finally adopted the Mālikī position. In the only instance when the Deobandī *muftī* was compelled by the pressure of social exigency to overtly deviate from the Ḥanafī *madhhab* in favour of a more lenient position. The enormity and seriousness of the exercise could be gleaned from the extremes to which the *muftī* went to canvass support for this move.⁹² Comment was invited from virtually all of the reputable learning institutions and *ʿulamā'* across the length and breadth of the country. It is fair to say that on this issue the Deobandīs obtained consensus (*ijmāʿ*).⁹³

⁸⁷ Ibid., pp. 68-79, 83-88.

⁸⁸ Ibid., pp. 53-9.

⁸⁹ Ibid., pp. 81-2.

⁹⁰ Ibid.,

⁹¹ Ibid., p. 23. The full text of the Mālikī *fatāwā* from Mecca and Medina is printed in the second part of the book, pp. 125-165.

⁹² See Appendix H for a list of endorsements.

⁹³ Muftī Taqī ʿUthmānī (son of Muftī Shafīʿ) declared that the Ḥanafī *ʿulamā'* had reached an *ijmāʿ* on these issues. *Aḥkām al-Qurʾān*, p. 5

The motivation to seek consensus was directly linked to the Deobandī concept of *taqlīd shakhsī*. Faced with a pressing social problem, one which was traditionally handled by the *qādī* in the *Shari'ah* courts, the *muftī* had no option but to face the problem and provide a solution that would be a realistic option to the grieving wife. One might conclude that it was the drastic nature of the act of renunciation of faith that compelled the Deobandīs to deviate from the Ḥanafī *madhhab*, rather than the concern for the predicament of the abused wife. For wife abuse was fairly widespread and continued relatively unaddressed for a long time.

Faced with the obligation to remain committed and faithful to one specific *madhhab* on the one hand, and the serious nature of the social exigency on the other, the Deobandī *muftī* on that occasion decided in favour of deviating from the Ḥanafī *madhhab*, for the situation impinged very heavily on matters of belief.

For the Deobandī *muftī* deviation from the Ḥanafī *madhhab* was indeed a major shift from its *iftā'* principles which could not be sanctioned except through the process of maximum consensus. Thus, in order to remain faithful to the concept of *taqlīd shakhsī*, no individual *muftī* could depart from the chosen *madhhab*.⁹⁴ Realizing the seriousness of allowing departure from the chosen *madhhab*, and its ramifications for *taqlīd shakhsī*, the Deobandīs were quick to insist that, if there ever arose a genuine need to depart from the *madhhab*, such departure could be approved only by a number of "authentic *‘ulamā'*" whose

⁹⁴ Thānwī, *Al-Ḥilāh al-Nājizah*. p. 46.

personal qualifications and piety were beyond reproach.⁹⁵ The Deobandīs argued that if the right to depart from the chosen *madhhab* were extended to every *muftī* without external approval, it would "result in the total destruction of the *madhhab*."⁹⁶ There was however, a slight difference between the view of Thānwī discussed so far, and Muftī Muḥammad Shafī^c. According to the latter, the general rule prescribing that a *muftī* could not give a *fatwā* on the basis of any *madhhab* other than the one to whom he subscribed, prevailed.⁹⁷ He, however, conceded that there were rare occasions when necessity (*iḍtirār*) required a more lenient ruling.⁹⁸ Furthermore, before any departure could be regarded as legitimate, there must exist a common need affecting a large sector of the community (*ibtalā al-‘āmm*)⁹⁹ Although Muftī Shafī^c did not directly link the legitimacy of departure from the *madhhab* to consensus, as did Ashraf ‘Alī Thānwī, he nevertheless endorsed the position that departure *per se* was not permissible unless warranted by extreme necessity. This position was at variance

⁹⁵ Ibid.,

⁹⁶ Ibid., p. 47

⁹⁷ Shafī^c, *Jawāhir al-Fiqh*, vol. 1, p. 160. He cites Ibn ‘Ābidīn as saying that it was contrary to *ijmā‘* to rule on the basis of another *madhhab*.

⁹⁸ Ibid., p. 157. The concepts of *iḍtirār* and *darūrah* (best translated as dire and extreme need) are legal in nature. Once it has been decided that there exists a state of extreme necessity (*hālah al-iḍtirār*), the general rule is lifted and any other action that is required to satisfy that need will be deemed legitimate. Such action will not be generally applicable but restricted to fulfilling that specific need.

⁹⁹ Another legal concept is used to safeguard the right to depart from the *madhhab*. The concept of *ibtalā al-‘āmm* (common affliction) applies only to those circumstances where a large section of the Muslim community is directly affected. If very few Muslims are affected, then this principle cannot be applied. Once again, the principle of "common affliction" allows for the general rule to be suspended in favour of a more lenient one.

with the classical view.¹⁰⁰ In principle, the Deobandī position regarding *taqlīd shakhṣī* remained firm. However, there was some scope for departure from that position if warranted by social exigency and confirmed by consensus.

Thus, the Deobandī approach towards *taqlīd shakhṣī* and *talfīq*, as we have seen was not always legally justifiable. I believe that such an approach was essentially motivated by extra-legal factors, generated by their vision of the law.¹⁰¹

5.6 Conclusion

The legal epistemology of the Deobandīs became much clearer in the context of opposing movements. Despite the intense rivalry among the Deobandīs, the Barelwīs, and the Ahl al-Ḥadīth, all three shared religious symbols which became the site of intense conflict. While the Deobandīs and Barelwīs shared in a commitment to following the Ḥanafī *madhhab*, they nevertheless remained firmly opposed to each other's orientation towards popular custom. The Deobandī's obsession to reform popular custom was matched by the Barelwīs fervour to protect it. Although the Deobandīs shared with the Ahl al-Ḥadīth an orientation away from the *pīr*-based mediational religion of the shrines in favour of individual moral responsibility, they differed fundamentally on defining boundaries. Epistemologically, the Deobandīs not only felt obligated to the Ḥanafī *madhhab*, but imposed *taqlīd shakhṣī* on virtually all Muslims. The Ahl al-Ḥadīth, on the

¹⁰⁰ Shāh Walī Allah, *Iqd al-Jid*, pp. 58-66.

¹⁰¹ A detailed exposition of a "vision of law" will follow in Chapter Seven.

other hand, rejected *taqlīd shakhṣī* and the legitimacy of the *madhhabs*, and imposed the obligation to follow *ḥadīth* upon the Muslims. All three movements claimed to have been inspired by Shāh Walī Allah, but selected eclectically from his teachings. The Deobandīs were willing to follow the Ḥanafī *madhhab*, but on their own terms. They chose a definition of *taqlīd* which meant giving preference to dictates of the Ḥanafī *madhhab* irrespective of opposing evidence, whether in the form of *aḥādīth* or juristic opinion. On this score, the Deobandīs were not willing to comply with the dictates of classical legal theory which clearly stipulated that such blind *taqlīd* was impermissible. The Deobandī justification for the obligation of *taqlīd shakhṣī* on both learned and ignorant was lacking and support for their position was not rooted in strictly legal arguments. The fact that the Deobandīs could cite classical references which rejected their position, and yet rule against them, supports the notion that such rulings were not based on legal arguments, but rather on their vision of the law. In the next chapter I advance my basic thesis of a Deobandī vision of law by applying it to a number of *fatāwā* dealing with modern exigency.

CHAPTER SIX

The Deobandī Fatāwā

Years of study, incalculable hours of memorization, torturous bouts of disputation and months of apprenticeship, at long last, the coveted rank of jurisconsult is attained. What was it finally like to be a *muftī*. . . . What were the most vexing challenges facing a jurisconsult? From where did these emanate, and how prepared was the *muftī* to deal with them? And how did all of this affect the actual practice of issuing *fatwās*?¹

In this chapter I proceed to examine a number of Deobandī *fatāwā* dealing with modern exigency in order to identify certain juristic trends implicit in Deobandī *fatāwā*.² I essentially summarize the *fatāwā* and present the main features of each. Sample *fatāwā* in full translation are included as appendices.³ Here an attempt is made to investigate characteristics of the legal reasoning employed by the *muftī* in support of his ruling.

6.1 The Money-Order

¹ Sherman A. Jackson, "The Second Education of the Muftī: Notes on Shiāb al-Dīn al-Qārāfī's Tips to the Jurisconsult" *The Muslim World*, Vol. LXXXII October 1992 pp. 201-17.

² I have chosen a cross section of the *fatāwā* for my analysis. *Fatāwā* dealing with economic, recreational, devotional, educational, technological and medical issues were chosen.

³ See appendices C, D, E, and F.

During British rule in India, the postal system was upgraded and some innovative services were made available to the public. Among other services introduced, was the money-order service. This was indeed of great benefit to the public because it enabled them, for a small fee, to send money from virtually any part of the country to even the most remote village, without any fear of loss to either the sender or addressee. Asked to decide the permissibility of using this service, the Deobandī *muftīs* sought a precedent that would provide a basis for their ruling.

Muftī Rashīd Aḥmad Ganghoī ruled that using the money-order service was impermissible because it involved *ribā* (usury).⁴ He did not cite any legal principle to substantiate this ruling, except that he equated the money-order to *hundī* (bill of exchange) which according to him was also prohibited.⁵ When asked how one should send money, Muftī Rashīd Aḥmad Ganghoī simply replied that one should send banknotes by registered mail.⁶

Ashraf °Alī Thānwī, on the other hand, provided a more elaborate justification for his original ruling. In a lengthy *istiftā*, the questioner presented arguments against those who rejected the new system of money transfer. The questioner presented three arguments in favour of using the service.⁷ He argued

⁴ Rashīd Aḥmad Gangohī, *Fatāwā Rashīdiyyah*, p. 431.

⁵ *Ibid.*, p. 432.

⁶ *Ibid.*

⁷ Ashraf °Alī Thānwī, *Imdād al-Fatāwā*, ed. Mufti Muḥammad Shafi° (Karachi, 1386), vol. 3, p. 142.

that all things were permissible unless proven otherwise (*al-aṣal al-ibāḥah*);⁸ that paying someone in advance for services to be rendered was also permissible;⁹ and that common affliction (*ibtilā al-āmm* or *‘umūm al-balwā*) warranted a ruling of permissibility.

In his response, Thānwī sought similarities between the money-order transaction and other established and conventional transactions. He finally settled for comparing the money-order transaction with that of two other conventional transactions namely, lending (*qard*) and depositing money in trust (*amānah*).¹⁰

The money that is deposited at the post office is either entrusted to it, making the deposit a transaction of trust (*amānah*) and the post office official then becomes the contractor (*ajir*). Or the post office official becomes the borrower and the depositor, the lender.

Since the original money deposited does not reach the addressee, coupled to the fact that if the post office official loses the money, the post office is liable and reimburses the addressee, these two facts clearly indicate that the transaction is not one of trust (*amānah*), but one of lending and borrowing (*qard*).¹¹

After he identified the only two possible comparable precedents (*qard*) and (*amānah*), Thānwī proceeded to argue against using either precedent by pointing to the dissimilarities that existed between the money-order and the two precedents. He argued that the money-order was not the same as a transaction

⁸ Ibid.

⁹ The fees charged on the money-order could be regarded as an advance payment for services to be rendered. Ibid.

¹⁰ Ibid., pp. 142-43. It is important to note is the extent to which these *Muftīs* went in trying to find precedents. The vital role of *qiyās* was consequently endorsed.

¹¹ Ibid., p. 143.

of *amānah* because even though the correct sum of money reached its destination, the fact that the original money deposited with the post office was not delivered to the addressee, was sufficient to regard the service as a betrayal of trust.¹² Furthermore, in any Islamic transaction of trust, the trustee was not generally held liable for losses, which was not the case with the post office. Therefore, Thānwī argued that the money-order transaction was "definitely not a transaction of *amānah* but one of *qard* (loan)."¹³ Thānwī then argued that the fee charged by the post office for providing the service constituted an excess, turning the money-order transaction into *ribā* (undue gain).¹⁴ In terms of Islamic law governing loan transaction, no excess may change hands.¹⁵ Responding to the issue of *ʿumūm al-balwā*, he argued that concessions based upon the latter were only applicable to matters of cleanliness (*tahārah*) and impurity (*najāsah*).¹⁶ Since no other suitable precedents could be found upon which the issue of the money-order could be based, and given the fact that the two precedents invoked militated for a ruling in favour of prohibition, a verdict of impermissibility was

¹² Ibid. In terms of the Islamic law governing *amānah*, the original money deposited must be returned. If any other equivalent sum is returned, it would be regarded as a breach of trust.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

recorded.¹⁷ However, in a subsequent *fatwā*, Thānwī reversed his earlier verdict¹⁸ What was interesting and noteworthy about the later *fatwā* was that Thānwī posited the very argument (*qard*) to support his ruling in favour of the permissibility of the money-order transaction. Furthermore, Thānwī also used the concept of *‘umūm al-balwā*, which he had previously dismissed, as the main justification for his revised ruling. In the later *fatwā* Thānwī stated:

The money-order comprises of two transactions; the transaction that relates to the capital sum deposited is regarded as *qard*, the other transaction which relates to the fees charged is regarded as *ijārah* (hiring). Since both these transactions are individually permissible, a combination of both is therefore also permissible. And furthermore, since the use of money-orders has become very widespread and affects most people (*ibtilā al-‘āmm*), it is deemed applicable to base the *fatwā* of permissibility upon leniency.¹⁹

Clearly, the *muftīs* chose to evaluate the issue of the money-order in the narrow light of conventional transactions of Islamic law and refused to treat it as a completely new development which should have been settled, not by recourse to *qiyās*, but by *ijtihād*.

6.2 Sport

The Deobandī *muftīs* were generally opposed to the idea of engaging in sport for

¹⁷ In this *fatwā*, Thānwī dismissed the argument of *‘umūm al-balwā*, and refused to use it as a basis for ruling in favour of using the money-order.

¹⁸ *Ibid.*, p. 146.

¹⁹ *Ibid.*

purely recreational purposes. They regarded sport in general as a form of *lahwū* and *la'ab* (play and amusement) and, therefore, unbecoming for Muslims. In response to an *istiftā* whether it was lawful to play football while people were cheering and clapping hands, Muftī Shafī^c's reply was characterized by extreme caution and suspicion.

If sport is played merely for amusement (*lahwū* and *la'ab*), it is *makrūh* (reprehensible). But, if it is played for entertaining the spirit (*tafrīh-i taba'*) or for ridding laziness (*rafa'-i kasl*) or for acquiring physical strength, then it is permissible provided it does not embrace any un-Islamic activities. . . . Although playing football in itself is permissible, it has become *makrūh* because nowadays it is fraught with not only reprehensible activities (*makrūhāt*) but also with forbidden actions (*muḥramāt*). Exposing the *satr* (private section of the human body) etc. has become an intrinsic part of the sport²⁰. Moreover, those associated with the sport are generally oblivious of the religious laws, for they wear shorts that expose their *satr*, therefore, under the current circumstances, playing football is *makrūh*.²¹

In another *fatwā*, Muftī Shafī^c responded to the question whether it was permissible to play any of the "*kuffār*" sport introduced in India by the British, including tennis, football, and cricket.²² Muftī Shafī^c argued that participation in any sport without aiming to acquire valid religious or material benefit was impermissible (*nā jā'iz*). Similarly, participating in sport for the purpose of

²⁰ The term "*satr*" here refers to the knees and thighs which are exposed when shorts are worn.

²¹ *Fatāwā Dār-al-'Ulūm*, (Deoband, n.d.) a compilation of two sets of *fatāwā*; the *Fatāwā* of Muftī Azīz al-Raḥmān, entitled *'Azīz al-Fatāwā*, and the *Fatāwā* of Muftī Muḥammad Shafī^c, entitled *Imdād al-Muḥtāj*, and compiled by Muftī Muḥammad Shafī^c, vol. 8, p. 290.

²² In this case, the question of sport was examined in the light of its connection with the British.

achieving some valid religious or material benefit was only permissible on condition that it did not embrace any action that was contrary to the dictates of the *Sharī'ah*. Moreover, imitating the *kuffār* (*tashabbuh bi al-kuffār*) was contrary to the dictates of the *Sharī'ah*. Thus, participating in sport for the purpose of achieving some valid religious or material benefit became impermissible when it was tinged with un-Islamic activities.²³

Although Muftī Shafī^c found no objection to participating in sport *per se*, he was extremely apprehensive as were most Deobandīs. Principally, the Muftī was apprehensive about violating the *Sharī'ah* by exposing the knees, and imitating the *kuffār*.²⁴ In theory, Muftī Shafī^c permitted participation in such sport on three conditions, namely, that the participants did not adopt the sport wear advocated by the *kuffār*, that no dictate of the *Sharī'ah* was violated, such as exposing the knees, and that participation did not interfere with the execution of any religious duty, such as *ṣalāh*.²⁵ In practice however, the Muftī firmly believed that under the given circumstances, Muslims in general would not be able to abide by those conditions, and therefore, had no hesitation in ruling against participation.²⁶ Thus, the ultimate basis of the *fatwā* was an evaluative argument

²³ Ibid., p. 285.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

rooted more in the Muftī's assessment of human nature than in legal arguments.

6.3 The Game of Chess

In a question, a *mustafī* indicated that he believed that in terms of the Shāfi'i *madhhab*, it was permissible to play chess and wanted further clarification.²⁷ In his *fatwā* Thānwī ruled that even though playing chess may be conditionally permissible in terms of the Shāfi'i *madhhab*, the other three *madhhabs* have nevertheless ruled against it.²⁸

Though it may be conditionally permissible according to the Shāfi'i *madhhab*, but owing to the obvious fact that nowadays such conditions are virtually extinct, and even if they were not completely extinct, continuous indulgence in such things with an attitude of indifference (*istikhfāf*) becomes *ḥarām*. Moreover, it is *ḥarām* for a follower (*muqallid*) of one *mujtahid* to follow another *mujtahid* when he is guided by the lower passions (*hawā*).²⁹

In this *fatwā* the doctrine of *taqlīd shakhsī* was upheld on the basis that it was forbidden to follow the lower passions. Therefore, the justification of the *fatwā* was based more on the Muftī's concern that Muslims not follow the passions, rather than on strictly legal arguments.

²⁷ Thānwī, *Imdād al-Fatāwā* known as *Fatāwā Ashrafīyyah*, vol. 2, p. 132.

²⁸ *Ibid.*, p. 132.

²⁹ *Ibid.*

6.4 Studying English

The sentiment towards the study of the English language could be gleaned from the hostile tone of the following *istiftā*:

Is it a big sin or a small one, or is it almost an act of *kufr* to study English for the purpose of gaining material or worldly benefit?³⁰

Thānwī ruled that:

Although studying English is permissible like all other languages, it has acquired a diabolical dimension from three angles. Firstly, some of those involved in the study of the language are against the *Sharīah* and are ignorant of it, therefore they entertain beliefs that are *kufr* and near *kufr*. Secondly, they mostly keep company with the irreligious and the corrupt, therefore they too become influenced and corrupted by the impious. . . . Thirdly, even if they are not corrupted, their intention is to use it to earn a living whether lawful (*halāl*) or unlawful (*ḥarām*). It is accepted rationally (*ʿaqlan*) and established textually (*naqlan*) that if any permissible means result in the unlawful, they become impermissible (*ḥarām*).³¹

After warning against what he considered the evils associated with studying English, Thānwī ruled that although the study of English was not *ḥarām per se*, due to the perceived evils associated with its study, it was only conditionally allowed.³² Therefore, once again, the arguments employed to restrict the study of English, like the arguments used to restrict participation in sport, were more evaluative than strictly legal.

³⁰ Thānwī, *Imdād al-Fatāwā* known as *Fatāwā Ashrafiyyah*, vol. 6, p. 163.

³¹ *Ibid.* pp. 163-64.

³² *Ibid.*, p. 164.

6.5 Educating Females

In a very lengthy *istiftā*, various rulings pertaining to *purdah* were requested, *inter alia* the following:

Nowadays, mature (*bāligah*) girls travel in open vehicles with their face and hands exposed, to schools and colleges to receive education and training from strange men (*gayr mahram*)³³. Is this permissible in terms of the Shari'ah? . . . Did the Shari'ah extend the same right to education and training to the female? Is it permissible or totally *ḥarām* for women to acquire advanced English education?³⁴

The *mustaftī* refers to various Qur'ānic arguments used to substantiate the permissibility of female education. In his *fatwā*, Muftī Shafi' addressed what he perceived to be the problem:

Firstly, you must understand that the motive for their [those who reject *purdah*] revolt is most definitely not derived from the Qur'ānic and *ḥadīth* texts, from which they purport to receive inspiration to uncover themselves. The underlying motive and inspiration lies in their ardent desire to emulate the Europeans and free themselves from religious constraints. Thus, the problem cannot be solved through the issuing of *fatāwā* or through the presentation of authentic views of the Qur'ān and *ḥadīth*, but only through the inculcation of the greatness and majesty, the fear and love of Allah and his Messenger and the Qur'ān and *ḥadīth*. Only after this fear and love have settled in the heart will Allah remove any reasonable doubt that occurs to the thinking soul.³⁵

Arguing that enough had been written on the subject of *purdah*, the Muftī reemphasized that the solution to the problem did not lie in seeking authentic

³³ The term *mahram* refers to that category of relatives with whom marriage is *ḥarām*.

³⁴ Shafi', *Imdād al-Muftīn*, vol. 8, p. 259.

³⁵ *Ibid.*, p. 260.

views and interpretations, for there was no dearth of them for those who sincerely sought guidance.³⁶ With regard to female education, he ruled:

It is very problematic to sanction English education for the males, so how much more problematic is it to sanction such education for women. Women should only be given the necessary religious education together with domestic skills and no further. English education is thus not permitted for women.³⁷

However, Muftī Shafī^c did make some concession. Referring to English education as an "*āfat*" (disaster, calamity) that was not essential for women, he nevertheless conceded that in the "unlikelihood of there developing some exigency which compels her to acquire English education, she should do so from some *maḥram* (blood relative)."³⁸

6.6 Performing *Ṣalāh* on a Plane

In order to solve the problem of performing *ṣalāh* on a plane, Thānwī resorted to a technical analysis of one of the parts of *ṣalāh*, namely *sajdah* (prostration). He commenced his *fatwā* by grappling with the definition of *sajdah* and concluded that for "*sajdah* to take place, the forehead (*jabhah*) must prostrate on

³⁶ Ibid., pp. 260-61.

³⁷ Ibid., p. 262.

³⁸ Ibid., p. 262-63. A *maḥram* is that relative to whom one may not be married, for example a brother, an uncle or father.

the ground (*ard*).³⁹ Citing *al-Durr al-Mukhtār*, he concluded that whatever was stationed on the ground was considered to be part of the ground. There were, however, two exceptions: firstly, live animals, for it was not permissible to perform the *ṣalāh* upon the back of an animal unless there was a valid reason,⁴⁰ and secondly, it was not permissible to perform *ṣalāh* on something "tied between two trees" (like a hammock), because the forehead would not "touch" the ground.⁴¹

In order to settle the pivotal question of what constituted being stationed on the ground, Thānwī established certain basic categories: firstly, direct contact with the ground and secondly, indirect contact with the ground.⁴² Having established that a vital part of the *ṣalāh*, namely, the *sajdah* could only take place on the ground, or on whatever was considered to be the "ground," the Muftī proceeded to apply this analysis to the question of performing *ṣalāh* on a plane. He argued that,

It is obvious that the [airborne] plane is not stationed on the ground, nor is comparable to something suspended between two trees. . . . Thus, there remain two possibilities, one, that it is similar to a vehicle [on the

³⁹ Maulānā Ashraf °Alī Thānwī, *Bawādir al-Nawādir* (Lahore, 1962), p. 125.

⁴⁰ Such as danger to one's life if one were to disembark. *Ibid.*, p. 126.

⁴¹ *Ibid.*

⁴² Indirect contact with the ground could take different forms such as, (i) being stationed on something that rests on the ground like a couch, or a vehicle, (ii) being stationed on something that is suspended like hammock, and (iii) upon the back of an animal. *Sajdah* is not permitted in the case of the latter two. *Ibid.*

ground] and two, that it is similar to an animal [stationed on the ground].⁴³

After discounting the apparent similarities between the plane and a vehicle or an animal, the Muftī concluded that because the airborne plane was not directly or indirectly connected to the ground, one could not perform *ṣalāh* on it.⁴⁴

This *fatwā* was a classical example of the excessive reliance on the principle of *qiyās*. By choosing to invoke a precedent recorded in *Durr al-Mukhtār* as his major premise on which he based his ruling, the Muftī refused to acknowledge the novelty of the case before him. Bringing the present case of *ṣalāh* on a plane within the purview of the precedent, was a typical example of the extent to which the Muftī took for granted that the ambit of the precedent, that is, the range of circumstances for which it was applicable and binding, was clear.

6.7 The Status of Gold Teeth

The important issue in this ruling was the Muftī's reaction to a question pertaining to the legal reasoning behind the law. When asked in an *istiftā* what the reason (*‘illah*) was for permitting gold teeth, Muftī Shafī^o answered:

For the general public (*‘awām*) the *fatwā* of the *muftī* is the *‘illah*. The danger of furnishing arguments from the Qur’ān or *ḥadīth* or *qiyās* to the

⁴³ Ibid., p. 125.

⁴⁴ Ibid., p. 126.

awām, is that they tend to make *ijtihād* in these arguments and apply them to other laws. Since they possess neither the qualifications nor the *sharī* sanction to engage in such activity, it is deemed most appropriate to deliver a *fatwā* without any supporting arguments.⁴⁵

It was apparent from the tone in the *fatwā* that the Muftī was disturbed by this question. Eventually, he directed the *mustaftī* to an Arabic reference (°*Ālamgīrī*, vol. 4 p. 214) if he wanted to know the °*illah* for the permissibility of gold teeth. He concluded his *fatwā* by citing an Arabic text endorsing the permissibility of implanting gold teeth.⁴⁶

This *fatwā* clearly reflected the attitude of the Muftī's predisposition towards distrusting human nature to the extent that he attempted to justify withholding supporting legal arguments (*dalā'il*). Thus, the ultimate justification for the *fatwā* was rooted in the Muftī's predisposition towards the belief in the inherent corruptibility of human nature.

6.8 The Use of the Toothbrush

Asked whether it was permissible to use a toothbrush instead of the *miswāk* (twig), Muftī Shafī° responded by firstly emphasizing the Prophetic practice of using the *miswāk* and then ruled:

If, however, per chance no *miswāk* is available, then one should use in

⁴⁵ Shafī°, *Imdād al-Muftīn*, vol. 8, p. 252.

⁴⁶ *Ibid.*

its place the finger or a thick cloth etc. to clean the teeth. It is obvious that the toothbrush falls into the category of a substitute in the event of no *miswāk* being available. But, to use it merely as a fashion is unacceptable and it should not be used as a replacement for the *miswāk*. Moreover, since the likelihood of the bristles being derived from swine is so great, it is preferable to avoid using the toothbrush. In the event of a *miswāk* not being available, one should rather use the finger to clean the teeth.⁴⁷

This *fatwā* reflected the Deobandī suspicion of modern technology. Here, the Muftī discounted the benefit of using the toothbrush because he suspected that it would be derived from swine hair.

6.9 Listening to the Radio

In his *fatwā* on the question of listening to the radio, Thānwī initially admitted that if a radio programme was free from the "evils of music and singing," then listening to lectures and Qur'ān recitals was permissible.⁴⁸ He argued,

If there is music and singing over the radio, then to recite the Qur'ān and even to listen to it (over the radio) is forbidden.⁴⁹

Having stated that listening to the radio was conditionally permitted, he, however, finally ruled that

Since it is almost impossible for the lay person to observe conditions, it is compulsory (*wājib*) to stop them from listening to the Qur'ān being

⁴⁷ Ibid., p. 251.

⁴⁸ Thānwī, *Bawādir al-Nawādir*, p. 871.

⁴⁹ Ibid., p. 871.

read over the radio.⁵⁰

The major thrust of the *fatwā* was that although it was not impermissible *per se* to listen to lectures and Qur'ānic recitals over the radio, but since lay persons were generally inclined to violate the strict conditions, they were not permitted to listen to the radio.⁵¹ Once again, this *fatwā* was a clear reflection of the Deobandī *muftī's* suspicion vis à vis that the general public. Instead of basing his verdict on some legal proposition, the Muftī chose to rule on the basis of his personal suspicion.

6.10 Responses to Scientific Questions

Muftī Shafi^c was asked in an *istiftā* some astronomical questions concerning the locations of the sun and the moon, the setting and rising points of the moon and stars, and the revolution of the sun and earth in relation to each other.⁵² In his response Muftī Shafi^c disregarded the question and instead, rebuked the *mustaftī* for indulging in "idle and useless concerns" and advised him to enquire about those thing that were "of benefit to his *dīn* (religion)".⁵³

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Shafi^c, *Imdād al-Muftīn*, vol. 8, p. 343.

⁵³ Ibid., p. 342.

Al-Ghazālī has written that when a servant (*‘abd*) of Allah is absorbed by useless endeavours, it is a clear sign that Allah has turned away from him.⁵⁴

Muftī Shafi‘ refused to answer what he considered to be an idle and useless question. This *fatwā* clearly reflected the role of the Muftī as moral guide. As a *ṣūfī shaykh*, the Muftī chose to ignore the question and rebuke the questioner.

6.11 Dress

The Deobandī attitude towards the British, in particular, and the Hindu in general, was one of suspicion and distrust. The Deobandīs thought that Muslim religious survival was dependent on the extent to which they could successfully resist the cultural and intellectual onslaught of non-Muslims. After the collapse of Muslim rule, fear of defeats increased. Preserving the Muslim cultural identity became a vital part of Deobandī strategy. They felt that imitation of non-Muslim would result in wholesale assimilation, and thus, mark the end to traditional Muslim identity. The Deobandīs were, therefore, very apprehensive about the issue of dress and adopted a particularly rigid stance with regard to the wearing of western modes of dress.

In a fairly lengthy *istiftā*, a questioner attempted to make a case for wearing the "English hat". His main arguments in favour of wearing the hat were firstly, that it was worn by most civil servants of all denominations and not

⁵⁴ Ibid.

exclusively by the English. Secondly, the hat was convenient and beneficial even though this meant "imitating the Christians and transgressors (*tashabbuh bi al-nasārā wa al-fussāq*)".⁵⁵ Thirdly, Imām Abū Yūsuf set a precedent when he permitted the wearing of a particular type of sandle which was exclusive to the monks of his time. He felt that Muslims would derive benefit and comfort from wearing them.⁵⁶ Despite these arguments in favour of wearing the English hat, Muftī Shafiʿ had no hesitation in ruling against the permissibility of wearing the hat.

Wearing the English hat is impermissible because, even though it has become the general trend, it is nevertheless, still associated with the English. Therefore, it is definitely not free of *tashabbuh bi al-nasārā* (imitation of the Christians). As far as the need (*ḍarūrah*) to wear such a hat is concerned, other ways are possible, for example, by altering the appearance of the hat so that it is distinguished from the Christian hat. . . . Even if it were permissible to wear the hat while mounting a horse or bicycle to avoid the sun, it would still be impermissible to wear it on all other occasions. And those who wear such hats would never observe such a restriction, for experience has shown that in such matters, if restrictions and conditions were imposed on the permission granted, the general public would ignore those restrictions and continue as if it were completely permissible. Therefore, wearing the English hat is not permissible.⁵⁷

Furthermore, the Muftī ruled that if people wore such hats flauntingly, they were even greater sinners.

⁵⁵ The benefit of not having to use an umbrella for shade when a person was mounted on a horse or bicycle was cited by the questioner as a convenience which should not be overlooked when deciding the permissibility of wearing an English hat. Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid., pp. 240-41.

Responding to the precedent of Imām Abū Yūsuf cited in the *istiftā*, Muftī Shafī^c made a distinction between voluntary and involuntary imitation. The former being permissible while the latter being impermissible.⁵⁸ The Muftī argued that Imām Yūsuf's granting of permission for wearing sandals fell within the first category of involuntary and unintentional imitation.⁵⁹ Moreover, Muftī Shafī^c argued that it was established that even the Prophet wore foot wear which was also worn by the Christian priests, but that such imitation was merely coincidental and was definitely not intentional.⁶⁰

Thus, if something, whether clothing or utensil is exclusive to a nation, and the Muslims intentionally and voluntarily adopt that thing, it is regarded as *tashabbuh* and impermissible.⁶¹

In another *istiftā* addressed to Thānwī, a questioner asked:

If one observes the *ṣalāh* and fast⁶² is he permitted to change his mode of dress and wear a coat? ⁶³

After citing five *aḥādīth* against imitation of the non-Muslim, the Muftī outlined

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid. p. 241.

⁶² Implied, is that a person is quite religious.

⁶³ Thānwī, *Imdād al-Fatāwā* known as *Fatāwā Ashrafiyyah*, vol.4, p. 181.

his ruling.⁶⁴

It is obvious to any rational being (*‘āqil*) that it would be highly embarrassing for a husband to appear in a gathering wearing his wife’s cloths. In an *ḥadīth*, the wearer of such clothes is cursed (*la‘nat*).⁶⁵ It is very astonishing that the wearing of a *mu‘mina’s* (believing female) dress by a male is considered to be repulsive and the *kuffār’s* dress, worthy.⁶⁶

These *fatāwā* reflect the apprehension of the Deobandī *muftīs* towards what they regarded as a process of cultural assimilation. They refused to entertain the legal precedent of Abū Yūsuf and chose rather to rule on the basis of their disdain for the British. The Deobandī *muftīs* thus gave precedence to personal feelings instead of strictly legal justification.

6.12 Cinema

This form of recreation was singled out by the Deobandīs for particularly harsh condemnation, for they believed that it contained a variety of evils. In an *istiftā*, the questioner enquired about the status of those films which portrayed the caliphs of Islam and Muslim ladies in an immodest and immoral way. Responding in a very lengthy *fatwā* Muftī Shafi^c spelt out in detail the inherent

⁶⁴ The Muftī stresses that there are many more *ahādīth* which could be cited to underscore the importance of countering non-Muslims, but due to a shortage of time, he had stopped at five. Ibid., p. 182.

⁶⁵ The curse is believed to apply to the male that wears female clothes. Ibid.

⁶⁶ Ibid.

evils associated with "bioscope".⁶⁷ He based his ruling upon the prohibition of pictures of animate objects (*taṣwīr*, pl. *taṣāwīr*) recorded in the *aḥādīth*.

The prohibition of *taṣāwīr* which is established from successive *aḥādīth* (*tawātur*) extends to their making, their use, their viewing etc., is very clear and unambiguous, therefore, the four Imāms and the entire *ummah* have reached consensus (*ijmāʿ*) on its impermissibility.⁶⁸

Muftī Shafīʿ also denounced the display of pictures. He ruled that "Exhibiting *taṣāwīr* is in direct violation of the rules of the *Sharīʿah* and even more sinful than making them."⁶⁹ He regarded the whole cinema industry as totally un-Islamic and proceeded to list a few evils associated with it. The evils were manifold:

To invite and encourage people to such evil through adverts and announcements constitute a violation. . . . The one who invited others to evil shares in the sin of all those who succumbed to that evil.⁷⁰

Muftī Shafīʿ continued with his severe disparagement of the cinema arguing that "Even if the issue of *taṣāwīr* were overlooked, this ludicrous amusement is still prohibited, for it is recorded in *al-Durr al-Mukhtār* that every amusement is *ḥarām*."⁷¹ Finally, responding to the portrayal of Muslim women in an immodest way, the Muftī stated:

⁶⁷ Shafīʿ, *Imdād al-Muḥtār*, vol. 8, pp. 286-88.

⁶⁸ *Ibid.*, p. 286.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ All forms of amusement have been prohibited with the exception of three; playing with one's spouse, training one's horse and practising archery. *Ibid.*, pp. 286-87.

Portraying Muslim ladies in an immodest (*be purdah*) fashion constitutes many sins. . . . If strange men view these ladies with lust then such viewing is sinful. . . . If Muslim ladies are viewed by non-Muslim men, then coupled to this sin there is an added indignity (*ghayrat*).⁷²

For the Deobandīs, the cinema was one of the major evils of the day, and they viewed it as source of destruction of Muslim values. They were particularly opposed to singing and dancing on the screen, for they felt that such scenes would arouse lust.

6.13 Injections while Fasting

Both Thānwī and Muftī Shafī^c ruled on the permissibility of taking injections while fasting. These *fatāwā* were primarily based upon the classical understanding of the nutritional passages. Anything that entered the *jawf -i baṭān* (stomach) or the *jawf -i dimāg* (cranial cavity) rendered the fast invalid.⁷³ If anything entered any other part of the body, the fast was not broken.⁷⁴

There are numerous legal cases (*juz' ṭyāt*) which prove that even though medicine etc. entered the body and did not reach the *jawf -i baṭān* or the *jawf -i dimāg*, the fast is not broken. For example, if medicine was induced through the penis of the male, according to all three Imāms, the fast was not broken. . . . Similarly, if water enters the inner ear, the fast will not break. . . . In the same way, if one swallows a grape which is tied to a string and withdraws it before it reached the stomach, the fast was

⁷² Ibid., p. 287

⁷³ Thānwī, *Bawādir al-Nawādir*, p. 446. Also Muḥammad Shafī^c, *Ālāt -i Jadīdah ke Sharī Aḥkām* (Deoband, n.d), p. 165.

⁷⁴ Thānwī, *Bawādir al-Nawādir*, p. 445.

not broken.⁷⁵

Through a series of analogical arguments, both *muftīs* ruled that if anything entered the *jawf -i baṭān* or the *jawf -i dimāg*, the fast was broken;⁷⁶ but if a substance entered any other part of the body, like the bladder etc., the fast was not broken.⁷⁷

Using these arguments as major premises, the Deobandī *muftīs* argued that the substance induced by injection neither reached the *jawf -i baṭān* nor the *jawf -i dimāg*, but got taken up by the blood instead. Hence, injections did not break the fast.⁷⁸

There is no doubt that the effect of the medicine induced by way of injection reaches every part of the body, but this was not through the natural nutritional passages for the veins are not natural passages. Therefore, if during summer one takes a cold bath and water enters the pores and reduces one's thirst, no one will regard the fast as having been broken. This answers the objection that taking an injection is introducing nourishment and strength into the body. For it is clear that strengthening the body is not generally impermissible, like in the case of taking a cold bath. However, what breaks the fast is when something reaches the *jawf -i baṭān* or the *jawf -i dimāg* through the *manfadh -i aslī* (natural passages). That does not happen in the case of the injection, even though

⁷⁵ Ibid., p. 447.

⁷⁶ Ibid.

⁷⁷ Ibid., p. 448.

⁷⁸ Ibid., p. 448. According to Muftī Shafī, for the fast to break, the substance induced into the body must be by way of the "natural passages" (*manfadh -i aslī*). In other words, if the substance reached the *jawf -i baṭān* or the *jawf -i dimāg* through some other means, like through the blood stream, then the fast was not broken. Shafī, *Ālāt -i Jadīdah ke Sharfī Aḥkām*, p. 166.

it strengthens the body.⁷⁹

In addition to the final destination of the substance injected into the body, Muftī Shafī^c also considered the principle of injection itself. Admitting to the novelty of the issue in hand, he nevertheless chose an interesting parallel.

It is obvious that injections were neither available during the time of the Prophet nor during the time of the *mujtahid* Imāms. Therefore, if no clear juristic directive is available, nor any *hadīth* is found, then *qiyās* must be made upon some juristic principle and a law formulated. A clear example is when one is stung by a scorpion or bitten by a snake. Even though the poison affects the entire body . . . no jurist in the world has ruled that this breaks the fast.⁸⁰

The supporting arguments employed by the Deobandī *muftī* in many of these *fatāwā* clearly exhibit the Deobandī *muftī*'s attitude towards novel issues generated by the changing social conditions of the late nineteenth and early twentieth-century. In the next chapter we identify the juristic trends within these *fatāwā*.

⁷⁹ Ibid., p. 167.

⁸⁰ Ibid.

CHAPTER SEVEN

Juristic Trends in Deobandī Fatawā

What is it I do when I decide a case? By posing a further set of questions: To what sources of information do I appeal for guidance? In what proportions do I permit them to contribute to the result? To what proportion ought they to contribute? If a precedent is applicable, how do I reach the rule that will make a precedent for the future? If I am seeking logical consistency, the symmetry of the legal structure, how far shall I seek it? At what point shall the quest be halted by some discrepant custom, by some consideration of the social welfare, by my own or common standards of justice and morals? Into that strange compound which is brewed daily in the caldron of the courts, all these ingredients enter in varying proportions.¹

In this chapter I consider, in the context of the Deobandī milieu, how the *muftī* faced the problem of determining the law - how he went about discerning the facts of a problem, - what part *ṣūfī* norms played in the decision-making process, - or indeed what style of reasoning the *muftī* finally appropriated that was both institutionally distinctive and culturally recognizable, yet legally tenable. I investigate how the Deobandī *muftī* calculated the impact of his judgements and how he assessed what was in the public's (*ʿawām's*) interest, for those factors were very vital to the decision-making process. By what complex of competing and legitimating influences was the *muftī* swayed? A number of these issues will

¹ A quote of Justice Benjamin Cardozo, pondering the issue of judicial discretion. B. Cardozo, *Nature of the Judicial Process* (New Haven, 1921), P. 2.

be analyzed and drawn together in order to determine the justificatory force underlying Deobandī *fatāwā*

7.1 The Dilemma of *Ijtihād*

Modern technology brought in its wake a host of legal implications for the Deobandī *muftī*. Whilst committed to *taqlīd shakhsī*, the *muftī* was compelled to offer Islamic rulings on new social and technological issues. When *taqlīd* proved ineffectual due to the novel nature of these issues, recourse to *ijtihād* was inevitable.

The doctrine of *taqlīd* entrenched a refusal to admit the role of *ijtihād* in the decision-making process. The Deobandī *muftī* was very reluctant and seldom ever openly admitted that he arrived at his decision through *ijtihād*. Admitting that *ijtihād* contributed to his decision would not only have betrayed the Deobandī *muftī's* loyalty to *taqlīd*, but also contradicted his argument that there no longer were any *mujtahids* available. When the *ṣūfī muftī*, who was nurtured in the culture of strict obedience to authority was compelled to rely upon his own individual *ijtihād* in deciding modern issues, he was unable to admit the centrality of his own individual worth and masked his own *ijtihād* by invoking precedents. This denial of the right or need for *ijtihād* was a reflection of the Deobandī vision of law. This sentiment is amply illustrated by Maulānā Masīḥ Allah, one of the leading Deobandī representatives in recent times:

If it is argued that *ijtihād* is necessary for resolving modern issues like

performing *ṣalāh* on the plane, [permissibility of] the radio, accepting information over the phone, injections while fasting, and other modern developments, it will be answered that there is no need for new *ijtihād*. All these modern developments will be governed by the established laws which were systematically extrapolated (*masā'il mudawwanah*).² The laws pertaining to these modern developments would be extracted by way of *qiyās* (syllogistic argument) on the pre-established laws. Thus, right up till now, whatever new developments there arose, none of them were left unanswered. Our seniors have answered them all and *inshā -Allah*, answers to all future modern developments will be forthcoming.³

In the face of modern developments, the Deobandīs argued that there existed sufficient "settled" rules (*masā'il mudawwanah*) that could be used to resolve modern exigency. Justification for the rejection of the need for new *ijtihād* rested on the notion that if certain established interpretive procedures and rules of *qiyās* were followed,⁴ the process of decision-making would yield the "right" answer. *Ijtihād* was consequently supplanted by interpretive procedure. Elaborate treaties were written to outline the minute details of that procedure. The Deobandī *muftī* argued that if these procedures were adhered to, the need for *ijtihād* would be eradicated, or at least reduced to a minimum. On occasions when the Deobandī *muftī* reluctantly acknowledged the necessity of limited *ijtihād*, such admissions were made without prejudice to his loyalty to *taqlīd*.

On examining the justificatory force of the *fatāwā*, there seem to exist just below the surface, a host of assumptions, beliefs, attitudes and modes of

² *Masā'li mudawwanah* refers to a "corpus of settled rules" which were established by the legal theorists (*uṣūlīs*).

³ Maulānā Masīh -Allah, *Taqīd wa Ijtihād* (Jalālābād, 1980), p. 80. Maulānā Masīh -Allah was one of the most celebrated *khalīfahs* of Ashraf °Alī Thānwī and was the founder and rector of the Miftāh al-°Ulūm, Jalālābād, a satellite institution of Dār al-°Ulūm, Deoband, until his death in 1991.

⁴ Like those laid down by Ibn °Ābidīn in *Rasm al-Muftī*.

reasoning, which I have termed a "vision of law" that warrants closer scrutiny and whose distinctive attributes must be carefully unpacked in order to shed light on the decision-making process. Some elements in that "vision of law" were rooted in Sufism, whereas others were based on a particular Deobandī approach towards the *Sharī'ah*. Therefore, the Deobandī *mufī's* "vision of law" was influenced by both Sufism (*Ṭarīqah*) and *Sharī'ah* and each of the two disciplines with their own distinctive norms joined in the decision-making process. Instead of primarily focusing upon strictly legal phenomena in search of justifications and explanations for the *fatāwā*, the focus should be broadened to include extra-legal phenomena. By positing the notion of a dual dimension of the vision of law, I expand the scope of analysis to include the other, overlooked, and often ignored dimensions of the Deobandī decision-making process, *Ṭarīqah*. I argue that *Sharī'ah* and *Ṭarīqah* phenomena are so inextricably linked that any analysis of the Deobandī *fatāwā* cannot *ipso facto* ignore either.

7.2 *Sharī'ah* and *Ṭarīqah*

He who learns the Law and neglects Sufism becomes a reprobate; he who learns Sufism and neglects the Law becomes an apostate; and he who combines both attains the realization of the Truth.⁵

The Deobandī *mufī's* task was a dual one, for he not only acted as *mufī*, but also as *ṣūfī shaykh*. By offering this type of composite leadership, the Deobandī '*ulamā*' were able to extend their influence far beyond their limited circle. The

⁵ A quotation attributed to Imām Mālik, cited in Seyyed Hossein Nasr, *Ideals and Realities of Islam* (London, 1972), p. 125.

early Deobandī *muftīs* were all dynamic *ṣūfīs*, and in most cases their *ṣufī* programmes became the object of their vocation and their life's ambition. Many Deobandī *muftīs* were renowned *ṣūfīs*.

Maulānā Ya'qūb Nānautawī was not only learned in the revealed and rational sciences, but he was a sojourner on the mystic path. . . . Indeed, not only his family, but the entire city accepted the influence of his dignity and majesty. . . . He had hundreds of disciples and pupils.⁶

Similar and even more lavish accolades were showered upon Rashīd Aḥmad Gangohī, Ashraf °Alī Thānwī, °Azīz al-Raḥmān, and Muḥammad Shafī°. Whenever the excellence of these *muftīs* were recorded, their commitment to Sufism was always portrayed as their greatest achievement. In the words of Maulānā Rashīd Aḥmad Gangohī, "*Sharī'ah* and *ṭarīqah* are interdependent, to act from the outside is *shar'*, to have injunctions enter the heart is *ṭarīqah*."⁷ The Deobandī *muftīs* were very firm in their conviction that *Sharī'ah* and *Ṭarīqah* were so intrinsically linked that either discipline could not function independently.

The deep and intense commitment to Sufism had a profound effect on the Deobandī *muftīs*, to the extent that certain basic *ṣufī* norms and perspectives became ingrained in their juristic reasoning and decision-making process. Two such perspectives were clearly reflected in the Deobandī *fatāwā*, namely, *fanā fī al-shaykh*, and the nature of the self (*nafs*).

⁶ Ḥakīm Amīr Aḥmad Nānautawī, Introduction to *Maktūbāt -i Ya'qūbī wa Bayād -i Ya'qūbī* by Muḥammad Ya'qūb Nānautawī, (Thāna Bhowan, n.d.), p. 13.

⁷ Rashīd Aḥmad Gangohī, *Fatāwā Rashīdiyyah*, pp. 76, 81, and 90.

7.3 *Taqīd Shakhsī* and *Fanā fī Shaykh*⁸

I have described the fervour with which the Deobandī *muftī* argued in favour of the obligation to remain committed to a single *mujtahid*. The imposition of blind *taqlīd* upon both *‘ālim* and *‘āmmī*, despite substantial evidence to the contrary, strongly suggests that justification for that position lay more in *Ṭarīqah* than in *Sharī‘ah*. Indeed, central to Sufism was the obligation to chose an appropriate *shaykh* and then to remain totally committed to him alone. The *murīd* was not allowed to either deviate from the teachings of his *shaykh* nor was he permitted to consult with another *shaykh*.⁹ The importance of *taqlīd shakhsī* in Sufism cannot be over-emphasized. Maulānā Muḥammad Ya‘qūb once explained: "The *shaykh* was the channel through which Divine Grace reached the disciple, and he was, accordingly, to be obeyed as the magistrate of a city on behalf of the king."¹⁰ The bond between *shaykh* and *murīd* was built upon *taqlīd shakhsī*. Total submission of the *murīd* to the dictates of the *shaykh* was a prerequisite for spiritual salvation. Loyalty, absolute obedience, total commitment, and love for the *shaykh* formed the foundation of the *shaykh-murīd* relationship. When love for the *shaykh* reached a stage where the *shaykh* became the object of the *murīd*'s perpetual contemplation (*tasawwūr al-shaykh*), the relationship was then

⁸ *Fanā fī al-shaykh* is a *ṣūfī* concept which refers to the state of the *murīd* where his identity is sacrificed out of love and reverence for his *shaykh*. Literally translated the term *fanā* means disintegration or annihilation.

⁹ Ashraf ‘Alī Thānwī, *Ḥaqīqat-i Taṣawwuf wa Taqwā* (Lahore, 1971), p. 592.

¹⁰ Muḥammad Ya‘qūb, *Bayād*, pp. 71-72.

conceived to be fertile, and ready to yield results. The contemplation of the *shaykh* culminated in a state where the *murīd's* self was completely annihilated. This annihilated state was called *fanā fī-al-shaykh*. *Fanā fī-al-shaykh* was considered to be the first stage towards attaining the annihilation of the self in relation to the Prophet, *fanā fī al-rasūl*, followed by annihilation in relation to God, *fanā fī Allah*.¹¹ Confirming this pattern, Maulānā Rashīd Aḥmad Gangohī stated:

For three years the face of Imdād Allah was in my heart and I did nothing without consulting him first. . . . Then, for three years the face of the Prophet was in my heart. . . . Then there existed the state of complete spiritual realization (*iḥsān kā martabah*).¹²

To the Deobandī *shaykh*, the obligation of total submission to one was a foundational pillar of *ṭarīqah*. The Deobandī *muftī* demanded the same relationship from the *mujtahid imām* and the *muqallid*. The *mujtahid* took the place of the *shaykh*, whilst the *muqallid* took the place of the *murīd*. Deobandī justification for the obligation to remain totally committed and obedient to a single *mujtahid* lay in *Ṭarīqah*. The parallels between the Deobandī *muftī's* esteem, respect, and total confidence in Imām Abū Ḥanīfah, and his love and commitment for his *ṣūfī shaykh*, was certainly no coincidence. The former was completely modelled on the latter. Thus, central to the Deobandī "vision" was complete loyalty to the chosen authority. Any departure from the chosen

¹¹ Much has been written on these basic *ṣūfī* norms. Ashraf °Alī Thānwī as well as his spiritual successors (*khalīfahs*) have written numerous works outlining all these and other basic *ṣūfī* norms. Ashraf °Alī Thānwī, *Ḥaqīqat-i Taṣawwuf wa Taqwā* (Lahore, 1971), *Tarbiyah al-Sālik*, (Lahore, 1975), *Iṣlāh-i Inqilāb*, (Deoband, n.d.), and Masīh Allah Khān, *Sharī'at wa Taṣawwuf*.

¹² Zuhūr al-Ḥasan, *Arwāḥ -i Thalāthah*, pp. 290-91.

authority was regarded as a form of disobedience and deliberate rejection of one's link with the Prophet.

The authoritative structure that governed the *shaykh-murīd* relationship had a profound impact upon the juristic attitude of the Deobandī *muftī*. For example, the *mustaftī* (questioner) was expected to show obedience to the *fatwā* that represented not only the view of the *muftī* but also the view of the chosen *mujtahid imām*. Neither the *muftī* nor the *mustaftī* was allowed to depart from the chosen *mujtahid*.

Entrenching the unquestioning obedience of the questioner, the early Deobandī *muftīs* rarely justified their rulings by providing a framework of their analysis in their *fatāwā*. Indeed, Muftī Rashīd Aḥmad Gangohī seldom cited references in his *fatāwā*. His rulings were very short and prescriptive. Only when he delivered a ruling to rebut an opposing party like the Ahl al-Ḥadīth, would he engage in lengthy arguments. Similarly, when Muftī Shafīʿ was asked to clarify the juristic reason for the permissibility of gold teeth, he responded that "it is deemed most appropriate to deliver a *fatwā* without any supporting arguments."¹³

7.4 The Inherent Evil Nature of Man

The *ṣūfī* view of the lower self (*nafs*) was another dimension that influenced Deobandī *iftā*. The *ṣūfīs* developed an elaborate schemes and strategies to subdue

¹³ Muḥammad Shafīʿ, *Imdād al-Muftīn*, vol. 8, p. 252.

the impulses of the *nafs*. They divided the *nafs* into three distinct spiritual states: Firstly, the *nafs ammārah* was a condition where the self was deemed to be inherently evil and prone to sin. If not constantly checked and controlled, the *nafs ammārah* was liable to lead to perdition.¹⁴ Secondly, the *nafs lawwāmah* was a condition where the self was thought to be conscious of evil and able to resist it. The *nafs ammārah* sincerely made amends for any wrong it had committed and begged God's grace and pardon. Through struggle, the *nafs lawwāmah* still hoped to achieve salvation.¹⁵ The highest spiritual state was *nafs muṭma'innah*, wherein the self became an embodiment of good and worthy of God's pleasure.¹⁶

The Deobandīs regarded the impulse to commit evil to be inherent in all human beings, and believed that salvation was possible only when those impulses were subdued.¹⁷ Indeed, spiritual progress was measured by the extent to which one was able to control the inherent impulses. In terms of this worldview, therefore, the greatest challenge facing the individual was the extent to which he was able to subdue or conquer his "worst enemy," his *nafs*.¹⁸ Consequently, when the Deobandī *mufī* was called upon to deliver a ruling, foremost in his mind was

¹⁴ This category of *nafs* is derived from the Qur'ānic verse 12:53 which clearly states: "Verily the *nafs* is prone to evil".

¹⁵ The notion of *nafs lawwāmah* (self-reproaching spirit) is based upon the Qur'ānic verse 75:2 "And I do call to witness the self-reproaching spirit".

¹⁶ Based upon the Qur'ānic verse 89:27: "O righteous soul return to thy Lord, well pleased thyself and well pleasing unto Him."

¹⁷ Masīh Allah Khān, *Sharḥat wa Taṣawwuf*, p. 122. Also Thānwī, *Ḥaḳīqat-i Taṣawwuf wa Taqwā*, pp. 128, 134, and 146.

¹⁸ Muftī Muḥammad Shafī, *Ma'ārif al-Qur'ān*, vol. 5, p. 74. Also, Thānwī, *Ḥaḳīqat-i Taṣawwuf wa Taqwā*, p. 130.

the extent to which his ruling would contribute towards the ongoing struggle to maintain a tight control over the *nafs*. If the *muftī* believed that his ruling would result in the questioner giving vent to the lower *nafs* he would rule against such action. The Deobandī *fatāwā* were thus suffused with indications of the *muftī's* basic strategy of imposing some control on the *nafs*. For example, Muftī Shafī's *fatwā* on the doctrine of *taqlīd* constantly emphasised the role of the *nafs*.

Under the heavy influence of their passions, the people of the day began to search among the many different opinions of the jurists (*mujtahids*) and adopted those rulings that were in consonance with their personal whims and fancies and discarded the rest.

again

Instead of the Muslims following the *dīn*, they made the *dīn* follow their personal passions and fancies.

again

The wise and sagacious scholars had the foresight to perceive the potential evils that were likely to develop out of that type of unbridled following of the passions.

again

During that period, the choice was up to the individual, but towards the beginning of the third century, when following the passions became the order the day, and in fulfilment of the prophecy of the Prophet, when people were becoming slaves of their private fancies and whims, the *'ulamā'* of the day unanimously decided (*ijmā'*) to prohibit (declare *ḥarām*) *taqlīd gayr shakhṣī* and prescribe (make *wājib*) *taqlīd shakhṣī*.

again

Imām Ibn Taymiyyah, who is also recognized by the *gayr muqllids* (those who do not subscribe to the notion of *taqlīd*) as a learned leader, has claimed in his *fatāwā* that it has been prohibited by *ijmā'* to following (*'ittibā'*) a *ḥadīth* or *madhhab* of a *mujtahid*, if such following is guided by the dictates of the lower passions.

Similarly, this becomes apparent when scrutinizing Rashīd Aḥmad Gangohī's

response to *taqlīd shakhṣī*. The latter created a dilemma for him, which he could not quite resolve in his usual confident manner. Rashīd Aḥmad Gangohī's response to the issue of *talfīq* was characterized by a deep-seated love and respect for the four *madhhabs* on the one hand, and his fear of moral degradation that would result from permitting free choice (*talfīq*), on the other.

All the *madhhabs* are equally true (*haqq*). If there is a need to practice on the Shāfi'ī *madhhab*, there is no harm in doing so, provided it is not done to satisfy the lower passions (*nifsāniyyat*). . . . All the *madhhabs* are equally true, therefore do not criticize any of them but regard them all as your Imām.¹⁹

Whenever he argued in favour of *taqlīd shakhṣī*, Rashīd Aḥmad Gangohī's strongest argument was that freedom of choice would translate into abuse and result in giving vent to the lower passions.²⁰ When asked whether it was permissible to make *talfīq* if one were not guided by the lower passions, but by the strength of the arguments of the respective *madhhab*, Rashīd Aḥmad Gangohī had no hesitation in declaring it permissible.²¹ Thus, it must be concluded that Rashīd Aḥmad Gangohī was not against *talfīq per se* but rather, that he was concerned about the moral ramifications of free choice.

The recurring theme in these *fatāwā* was the fear of submitting to the dictates of the *nafs*, a fear which influenced the *muftī's* ultimate ruling. I have illustrated how the *muftī* ruled against participation in sport for fear that lay

¹⁹ This is the opening statement of the published version of Muftī Rashīd Aḥmad Gangohī's *Fatāwā Rashīdiyyah*. Ibid., p. 4.

²⁰ In all Rashīd Aḥmad Gangohī's *fatāwā* on *taqlīd shakhṣī* the issue of following the *nafs* or *hawā* (passions) is central to his position. *Fatāwā Rashīdiyyah*, pp. 180-88.

²¹ Ibid., p. 184.

persons would not observe the necessary conditions. Clearly, the *fatwā* was also premised on the belief that the *nafs* would not be able to be controlled. In his *fatwā* on the permissibility of playing chess, Ashraf °Alī Thānwī similarly referred to the issue of following the *hawā* (lower passions), or *nafs*. The *fatwā* on studying the English language was also permeated with the notion that the individual would be corrupted by associating with those who followed their *hawā*. The same underlying justification applied to listening to the radio, i.e. the *nafs* would not be able to be controlled. Therefore, even listening to Qur'ānic recitals over the radio was declared unlawful. Because of its inherent evil nature, the *nafs* would not abide by conditions placed on the wearing of the English hat, it too was prohibited.²²

The Deobandīs regarded the duty to purify (*tazkiyah*) the *nafs* as an obligation equal to that of the prescribed *ṣalāh*.²³ Since the essence of *mujāhidah* was curbing the dictates of the *nafs*,²⁴ the *ṣūfī muftī* felt obligated to rule in a manner that would deny the *nafs* access to liberties which he regarded as potentially harmful to the spiritual well-being of the adherent. Clearly, therefore, *ṣūfī* classificatory schemas, particularly, those schemas relating to the *nafs*, played a significant role in shaping Deobandī *iftā*.

Although the *muftī* often attempted to mask his "vision of law" by recourse

²² Although other arguments, such as imitation of the *kuffār*, were also cited, the issue of controlling the *nafs*, or rather inability to do so, was the main argument.

²³ Thānwī, *Sharḥ at awr Ṭarīqat*, p. 28.

²⁴ *Ibid.* p. 70.

to legal arguments, or by invoking certain legal principles, it was not on the legal arguments *per se* that the justification of the *fatwā* rested. *Sūfī* culture with its authoritative structure of total obedience and its negative view of human nature were central to the Deobandī's "vision of law."

7.5 The *Sharī'ah* Dimension of the Deobandī Vision of Law

The *muftī's* determining vision was not only influenced by *sūfī* notions. There were some key patterns of legal (*Sharī'*) arguments infused into Deobandī *fatāwā*. What often started out as an abstract legal principle, formulated as part of legal theory, was appropriated by the *muftī* and invested with meaning and specificity in terms of his vision of law and distinctive understanding from within his particular institutional framework. Gradually, by the universalization of the legal reasoning behind each decision, distinctive patterns and modes of reasoning crystallized over time into fixed and settled paradigms of legal discourse. What started out as discretionary principles, or *ijtihādī*, were then translated into normative patterns which were institutionalized over time. This process of institutionalization which I call "formalism" seemed to characterize many of the Deobandī *fatāwā*. Formalism tended to accentuate the element of pure and mechanical logic in the decision-making process, whilst neglecting or even masking the voluntaristic, discretionary element of choice. The vice known to legal theory as "formalism" consists in an attitude of the jurist towards the body of law, which tends to freeze the meaning of the legal standard so that its

application to all situations becomes virtually mandatory. This is often done at the cost of blindly prejudicing the social consequences of the *fatwā*.

Deobandī formalism was particularly apparent when the *muftī* attempted to resolve a modern issue in which he had to rely on a choice of major premise from among a wide range of competing premises. Often the *muftī* attempted to reduce the decision-making process to a mechanical application of legal standards by appealing to syllogistic argument. Through formalism, the Deobandī *muftī* exhibited his unswerving commitment to the doctrine of *taqlīd*. However, Deobandī formalism was manifest in a variety of argument types, including, textual arguments, systemic arguments, and finally evaluative or teleological arguments.

7.5.1 Textual Arguments

The *Sharʿī* dimension of the Deobandī vision of law included a peculiar approach to the primary sources of Islamic law. Despite the fact that in terms of Islamic law, the Qurʾān and *ḥadīth* are considered the primary textual sources of the law, the Deobandī *muftī* seldom directly invoked these sources as the justificatory basis of his *fatwā*. When Ashraf ʿAlī Thānwī was asked in an *istiftā* to provide an "answer from *ḥadīth*" he responded, "I recall the answers from *fiqh*. I do not recall them from *ḥadīth*, therefore excuse me."²⁵

²⁵ Ashraf ʿAlī Thānwī *Malfūzāt-i Husn al-ʿAzīz* (Thāna Bhowan, n. d.) p. 163.

It would seem that whenever the *muftī* did cite textual evidence in support of his *fatwā*, that evidence was essentially directed at the Ahl al-Ḥadīth, or used to overwhelm those who did not subscribe to the Ḥanafī *madhhab*. In the *fatwā* on *taqlīd*, for example, Qur'ān and *ḥadīth* citations were frequent, since those citations were primarily directed at the Ahl al-Ḥadīth. Qur'ān and *ḥadīth* were also occasionally used by the *muftī* in a supporting role, especially when they were invoked to nuance a moral code. In his *fatwā* on dress codes, Maulānā Thānwī cited five *ahādīth* against imitation of non-Muslims. It is fair to say, however, that textual arguments derived directly from Qur'ān and *ḥadīth* did not in most cases form the essential part of the justificatory force of the Deobandī *fatwā*. In the *fatwā* on female education, for example, even though the *mustafī* referred to various Qur'ānic arguments used to substantiate the permissibility of female education, Muftī Shafī^c simply based his *fatwā* on the fear that such education may result in moral decadence and ruled against it. It is not difficult to understand why the Deobandī *muftī* seldom referred to the primary textual sources. The Deobandī *muftī* was a staunch believer in *taqlīd* and therefore preferred to seek justification in the works of the *madhhab* rather than in the primary sources.

7.5.2 Systemic Arguments

The concept of systemic argument as it is applied in this study would refer to the logical element, incorporated in the justificatory force of the ruling, whether it

takes the form of syllogistic argument, or is displayed through the application of precedents. The governing idea behind the deployment of systemic arguments was that conformance with the canons of legal logic ought to minimize if not eliminate decision-making by whim and chance. The primary purpose for complying with the canons of logic is to invest the rulings with well reasoned and intelligible arguments. I have identified two types of systemic arguments employed by the Deobandī *muftīs* namely, precedents and *qiyās*.

7.5.2.1 Precedents

For the Deobandī *muftī* who was a firm believer in *taqlīd*, precedents set by classical Ḥanafī masters in the past were a binding source of law. The coercive nature of the doctrine of *taqlīd* compelled the *muqallid muftī* to seriously take account of precedents of the *madhhab* when delivering a *fatwā*. To the Deobandī *muftī*, precedents were not merely persuasive, but were binding. The *muftī* was obliged to follow the rulings of the *madhhab* unless he could provide an exceptional legal reason to depart from it. The *fatwā* on injections was a typical example of how the Deobandī *muftī* viewed the binding force of precedents. It was established through precedent that only substances that entered the body through the nutritional passages would nullify the fast. Consequently, any substance not entering the body through the nutritional passages, including injections, did not invalidate the fast. By sticking to precedent, the *muftī* refused to acknowledge the novel nature of injections.

As already pointed out, the Deobandī *muftī* considered the Ḥanafī *madhhab* to be the main source of law. The dictates of the Ḥanafī *madhhab* more than any other source represented the final authority for the Deobandī *muftī*. Applying the law entailed extrapolating (*istkhrāj*) it from authoritative Ḥanafī sources. However, a number of Ḥanafī sources revealed contradictory rulings on the same issue. In order to minimize choice-making among Ḥanafī rulings, certain canons of preference were established to direct the *muftī* towards specific Ḥanafī works. The Deobandīs adopted the order of preference developed by Ibn ʿĀbidīn in his celebrated work, *Rasm al-Muftī*.²⁶ In addition, the Deobandīs adopted Ibn ʿĀbidīn's work, *Radd al-Muḥtār ʿalā Durr al-Mukhtār*, as their preferred reference.²⁷

In terms of the doctrine of *taqlīd*, authenticity was linked to proximity, i.e. the duty to remain as loyal and faithful as was humanly possible to previous rulings of Ḥanafī masters. If the jurist managed to satisfactorily portray his *fatwā* as a logical extension of some pre-existing legal standard or forged a link with a precedent, his ruling was automatically invested with authenticity, and thus, justified. Justification through this process of "linking" was essentially to oblige the *muftī* to remain loyal and within the "limits" of the pre-established legal standards and precedents.

Under the doctrine of *taqlīd*, the extent to which authenticity was compromised depended upon the extent to which there was deviation from

²⁶ See, Ibn ʿĀbidīn, *Rasm al-Muftī*, pp. 33-42.

²⁷ *Fatāwā Dār al-ʿUlūm Deoband*, vol. 1, p. 113.

established precedents. Thus, an extremely important corollary to the doctrine of *taqlīd* was the procedure of justification through a narrow and restricted process of authentication. The powerful control over the legitimating process of *iftā* was ensured by curtailing the discretion of the jurist through the canons of authenticity. A ruling was only authentic if its justification was in harmony with what has been decided by the past Ḥanafī masters. In his *fatwā* on whether it was permissible to perform *ṣalāh* on the plane, for example, Maulānā Thānwī linked his ruling to the definition of *ard* (ground), as established by the past masters and extended its scope to include *ṣalāh (sajdah)* on the plane. Since the airborne plane did not comply with the classical Ḥanafī definition of *ard*, Maulānā Thānwī ruled against performing *ṣalāh* on the plane. In so doing, his ruling was justified because it was in harmony with previous Ḥanafī rulings.

7.5.2.2 *Qiyās* and Syllogism

For the Deobandī *muftī*, *qiyās* (analogical reasoning) occupied a special status, featuring very prominently in determining the rule with regard to modern issues. By relying heavily upon *qiyās*, the Deobandī *muftī* functioned within the ambit of *taqlīd*. It is possible to point to three stages in juristic reasoning by analogy.²⁸ The first stage was the perception of relevant likeness and similarity between the precedent and the instant case. Next was the task of determining the *‘illah* (*ratio*

²⁸ Although in theory there are three stages, but in practice the stages are not separated.

legis) of the precedent and to ascertain whether it was common to the instant case. Finally, there was the decision to apply the previous rule to the instant case.²⁹ However, *qiyās* relied on a substantial element of discretion in the perceptions of analogies between the instant case and a number of previous ones, Discretion also played a part in the determination of the *ratio legis* of the previous rulings, and in the decision to apply the rule, or one of the competing rules, to the instant case. The importance of *qiyās* as a legal justification for ruling on modern issues was underscored in the Deobandī acknowledgement that "the laws pertaining to these modern developments would be extracted by way of *qiyās* on pre-established laws."³⁰ Rashīd Aḥmad Gangohī used *qiyās* as his basis to rule against money-orders. Similarly, Maulānā Thānwī used *qiyās* to rule against performing *ṣalāh* on the plane, as well as in his *fatāwā* relating to wearing non-Muslim cloths and attending cinema. Muftī Shafīʿ also used *qiyās* in several of his *fatāwā*, *inter alia*, the issue of *taqlīd*, attendance at the cinema, and taking injections while fasting.³¹

²⁹ Analogy may be said to be employed at the first stage; plays no part in the second stage; and is frequently decisive at the third stage; where the *mufī* has to determine whether the salient facts before him resemble those of the previous ruling sufficiently to warrant the application of the previous rule to the instant case. Once the dissimilarities as well as resemblances between the two cases had been ascertained, and the *ʿillah* determined, the *mufī* has to decide whether to extend the previous rule to the instant case. The decision whether to apply the previous ruling to the instant case is frequently characterized by a substantial element of discretion.

³⁰ Masīh Allah, *Taqlīd wa Ijtihād*, p. 80.

³¹ See appendix G for table on the analysis of the arguments recorded in the *fatāwā*.

7.5.3 Evaluative - Teleological Arguments

The Deobandī *muftī* often invoked his discretion in deciding whether a certain course of action was in the interest of the Muslim public (*‘awām*). This discretionary or teleological argument was based upon the legal principle of *sadd al-dharā’ī* (blocking the means). The principle of *sadd al-dharā’ī* was applied when the *muftī* believed that an adherent should be prohibited from some lawful activity out of fear that such activity would eventually lead to the transgression of the law.³² Other teleological or evaluative arguments such as *maslahah* (public welfare), *‘umūm al-balwā* (general affliction), and *darūrah* (necessity) were also occasionally invoked to justify certain rulings.

The role of the Deobandī *muftī* as *ṣūfī shaykh*, no doubt, influenced recourse to teleological arguments because such arguments were generally based on the *muftī*'s perception of his role as moral guide. In his revised *fatwā*, for example, Maulānā Ashraf ‘Alī Thānwī invoked the principle of *‘umūm al-balwā* to justify his ruling in favour of sending money via money-order, despite discounting it as a bases of justification in an earlier ruling.

I have thus argued that the Deobandī "vision of law" was influenced by *Shar‘ī* arguments; that the "vision" was gradually crystallised in a process I have called "formalism"; and that textual, logical (systemic), and teleological arguments were manifestations of that legal process. Textual arguments gave the stamp of

³² For details of this principle see; M. H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge, 1991), pp. 310- 19.

divine authenticity to the Deobandī approach in relation to its adversaries. Logical or systemic arguments of precedents and analogy wedded the Deobandī *fatāwā* to Hanafism, while the teleological arguments united the Deobandī *muftīs* to Sufism. Nevertheless, the Deobandī *muftī* delivered *fatāwā* that also made some allowance for the expediencies of modern inventions and exigencies.

7.6 Modes of Argument Deployment

The mode in which the Deobandī *muftīs* deployed their arguments was also crucial to the justificatory force inherent in the final verdict. In its simplest form, the *muftī* deployed no argumentation to justify his ruling, or he marshalled a single major argument as the only or primary reason for his verdict. The argument would then consist of no more than an Arabic citation of one of the Hanafī *fiqh* sources, usually Ibn ʿĀbidīn's *Radd al-Muḥtār*. In this simple mode, the justification was invariably reduced to a juristic syllogism. This form of justification was a marked characteristic of the *fatāwā* of Muftī Rashīd Aḥmad Gangohī. For example, he simply ruled that using the money-order service was impermissible because it involved *ribā* (usury).³³ He did not cite any legal principle to substantiate his ruling, except to equate the money-order to *hundī* (bills of exchange).³⁴

Other rulings often contained a more elaborate, "cumulative" argument.

³³ Rashīd Aḥmad Gangohī, *Fatāwā Rashūdiyyah*, p. 431.

³⁴ *Ibid.*, p. 432.

In this mode of deployment, several different arguments of significance featured in the *fatwā*, but all of them in the final analysis pointed in varying degrees to the same conclusion. Here a series of syllogisms similar to the "legs of a chair" where its most important feature was that each conclusion, and mainly the final verdict was supported by several logically derived arguments. Cumulative arguments were motivated by such factors as doubt about the justificatory force of any single argument, the social importance of the issue being resolved, and the strength of opposing arguments. In his *fatwā* on *taqlīd*, Muftī Shafī^c used several types of arguments to support his ruling when the case of *taqlīd shakhsī* was not that strong. Similarly, in his *fatwā* on cinema, Muftī Shafī^c also used many different types of arguments in support of his ruling.

Often, when the sheer novelty of the issue at hand defied precedent, the deployment of many types of arguments became standard practice. Textual, systemic, and teleological arguments were skilfully marshalled to converge and support the ruling. This form of argumentation was usually deployed when the problem was conceived to be of great general purport, or where the *muftī* wished to emphasize that his ruling was based on strong legal grounds rather than on personal preference. This form of justification was the hallmark of Muftī Muḥammad Shafī^c, who resorted to this form of justification in almost all his *fatāwā* dealing with modern issues. The *raison d'être* for this style of argument appears to have been that the more arguments the *muftī* deployed in support of the final conclusion, the more persuasive the ruling. However, I believe that the force of arguments were not additive, for merely stringing together a disparate

set of individually weak systemic arguments did not in itself amount to making a powerful cumulative case for the interpretation proffered. In his *fatwā* on *taqlīd shakhṣī* for example, Muftī Shafī³⁵ postulated a set of disparate arguments ranging from textual evidence (*nass*) to following the lower passions (*nafs*) in support of his ruling.³⁵ This was done as part of his attempt to overwhelm the Ahl al-Hadīth with an assortment of arguments, the sum total of which ought, in his estimate to have been sufficient justification. Concealing a weak ruling behind a battery of ill-assorted arguments, though perhaps preferable to the conclusory presentation of a single argument, is in my view one of the most conspicuous legal vices of the Deobandī institution of *iftā*. The extent to which the *muftī* was driven to seek justification for his ruling was in itself a fair index by which to judge the *muftī*'s confidence in his choice of arguments. If he indulged in marshalling a host of disparate arguments which were in themselves open to different interpretations, then the justificatory force of the *fatwā* must indeed be lacking in a substantial way.

It is clear that not only the types of arguments *per se*, but their mode of deployment, underscored the Deobandī "vision of law." The single argument, with little or no justification, emphasized the total commitment expected of the questioner. The cumulative argument, often consisting of several weaker arguments, entrenched the authority of the Deobandīs in dealing with modern issues.

³⁵ The same style applied to virtually all Muftī Shafī's *fatwā*, including those relating to injections, copyrights, and cinema.

7.7 Critique of the Deobandī Legal Approach

To the Deobandī *muftī*, law was conceived as a corpus or collection of authentic and settled rules, that were applicable to all situations displaying some resemblance with the original. Whatever element of choice or *ijtihād* may have been involved lay buried in legal doctrine, processes and methods of legal reasoning. Consequently, the accuracy of the ruling did not, in this view, depend upon *ijtihād* but rather upon the accurate application of systemic arguments. Once a precedent had been laid down, its justificatory force was frozen, i.e. the original legal and extra-legal factors that influenced and shaped the precedent were ignored and the precedent was "mechanically" applied to any new situation that even remotely resembled some of the factors of the original ruling. The new situation was "mechanically" brought within the scope of the precedent whether it possessed complete or sufficient similarity, whether it possessed enough features or too little features, or whatever the social consequences of applying the precedent may be. A striking example of this "mechanical" application of precedents is found in the *fatwā* on injections. The precedent of a scorpion-sting was used as the bases of *qiyās* to support the ruling in favour of taking injections while fasting. This kind of "force-fit" application was also used in the case where the wearing of non-Muslim clothing was likened to a male wearing female attire. The perception of relevant resemblances or dissimilarities between the two cases was largely dependant upon context, which entailed a large element of subjective assessment.

The determination of the *‘illah*, which lay at the very heart of *qiyās*, was also an exercise which depended upon personal and subjective assessments. In his ruling on the English hat, Muftī Shafī^c settled on the *‘illah* as being *tashabbūh* (imitation) and ruled against wearing it. In that case, the determination of psychological attitudes involved a substantial element of the *muftī*'s personal and subjective assessment.

The syllogistic reasoning commonly used by the *muftī* to arrive at a verdict must be recognized as barren, logic having no existential or value reference. Verdicts that were ostensibly reached through syllogistic argument, were in fact ultimately determined not by syllogism, but rather by the premise chosen by the *muftī* from a host of competing legal propositions. Rashīd Aḥmad Gangohī, for example, chose the bill of exchange (*hundi*) as the premise upon which to rule against money-orders, whereas Maulānā Thānwī, in a later *fatwā* chose three other legal principles, including loans (*qard*), hiring (*istijārah*), and common affliction (*ibtīlā al-‘āmm*) as premises upon which to rule in favour of the money-order. Therefore, syllogistic arguments were often deployed to invest the ruling with authenticity while at the same time masked the *muftī*'s discretionary role.

Although the Deobandī *muftīs* elevated *qiyās* to the status of *methode par excellence* in applying existing rules to modern issues, it must be noted that *qiyās* involved a substantial element of choice-making and juristic discretion. It entailed evaluating and balancing, giving consideration to practical and moral consequences. It meant employment of not only arguments of abstract logic, but those of economics and politics, ethics, and psychology. The *fatwā* on dress was

a typical example of the type of practical, political, ethical, psychological, and moral considerations that were embraced by the ruling.

In spite of the various arguments and their modes of deployment, the Deobandī *muftī* cannot assume that the law was absolutely clear, predetermined, objectively "settled", and ready for him to apply. His personal, moral, cultural, political no less than juristic, responsibility was involved whenever he was confronted with a choice.

On occasions Deobandī decisions were justified by invoking rules that the *muftī* was antecedently disposed to observe and whose relevance to the current issue could be disputed. In the course of interpreting and understanding the facts and the justificatory force of previous judgments, there seemed to develop a curious relationship between the ability of the deciding *muftī* to "create" facts by proffering them as the basis of the earlier judgment, and the need to perform his task in a manner that was both acceptable and in consonance with the dictates of the legal system. This "fabrication" of facts was often born out of the need to attribute to previous rulings a basis of justification that could be legally recognized and then be expediently employed to form the justificatory basis in the current case. The whole exercise of retrospectively creating central facts and postulating them as the basis of previous rulings is linked to the overarching doctrine of *taqlīd* and made easy by the fact that most precedents are abstracted from their original contexts. If the *muftī* wanted to rule on the issue in hand in a manner which may appear to deviate from precedent, he could "create", within bounds, certain central facts and present them as the basis of the previous ruling

and simultaneously attribute selected facts to the current issue in order to emphasize the difference between the central facts of the precedent and the facts of the issue in hand. In his *fatwā* on the English hat, for example, we clearly saw how the *muftī* "created" reasons for Imām Abū Yūsuf's ruling in favour of wearing sandals that were exclusive to the monks. In the case of Imām Abū Yūsuf's ruling, the *muftī* argued that the justification for the Imām's permission was based upon "involuntary" imitation which was not the case with donning the English hat. By neatly "creating" reasons like "involuntary" imitation and proffering them as the basis of Imām Yūsuf's ruling and then attribute facts like "voluntary" imitation to the case of wearing the English hat, the *muftī* had succeeded in remaining "loyal" to precedent and masking his discretionary role.

Occasionally, the *muftī* wanted to seek support, endorsement, or justification for his current ruling in precedent by postulating and emphasizing the resemblance between the "created" set of facts and the facts of the issue in hand. By postulating the argument of the scorpion-sting, for example, the *muftī* emphasized the resemblance between it and the injection, and then used it as a precedent to endorse his ruling. That made the situation look much more tidy than it really was.

The Deobandī claim that no new *ijtihād* was necessary because the past masters, the classical *fuqahā*, had already established all the legal principles (*uṣūl*) was fundamental to Deobandī *iftā*. Ruling on modern issues, nevertheless, meant that the *muftī* enjoyed a sphere of autonomy in the selection of the "settled" standards, and their application to the current facts. No matter how settled the

standards and seemingly clear they may be, the decision as to whether a given situation falls within the ambit of those standards, often involved elements of interpretation, discretion, opinion and appreciation, such that may give rise to alternate, competing conclusions, each of which could itself be justifiable. The decision whether the primary facts of the issue under scrutiny fell within the purview of an invoked legal doctrine was invariably an interpretive matter of assessment involving *ijtihād*. When invoking a standard and applying it to the extrapolated facts, the *muftī* had to determine both the precise meaning of the standard and the merits, and suitability of the facts in terms of that determined meaning. In determining the permissibility of playing sport, Muftī Shafi^c, for example, declared the latter to be idle amusement (*lahwū* and *la^cab*). There is no doubt that such an assessment entailed a substantial element of personal discretion.

A clear reflection of a Deobandī "vision of law" emerged from their denial of the need for *ijtihād*. However, the notion that there existed such an elaborate and all-inclusive corpus of settled standards, capable of governing all possible contingencies, so much so that the need for *ijtihād* no longer existed was not rooted in legal theory, but was a projection of the "vision of law". The Deobandī belief that the past masters had thoroughly exhausted the option of *ijtihād* to the extent that their formulae have obviated the need for new *ijtihād*, cannot be justified in terms of legal principles but rather in terms of their vision of law.

7.8 Conclusion

In this chapter I have demonstrated the significance and implications of the dual function of *muftī* and *ṣūfī shaykh* for the Deobandī juristic interpretation and application of the law. I noted that the dual function of the Deobandī *muftī* profoundly influenced the process of *iftā* and that it created within the *muftīs* a "vision of the law" which came to characterize their rulings. I demonstrated how the deep and intense commitment to Sufism had a profound effect upon the Deobandī *muftī*. The notion of the *nafs*, for example, became ingrained in Deobandī juristic reasoning and the decision-making process. In addition I illustrated how the *Sharʿī* dimension of the Deobandī vision generated "formalism" in their legal reasoning. I also identified three types of major arguments namely, textual, systemic, and teleological, that formed the justification of the Deobandī *fatāwā*. Furthermore, the Deobandī vision was also exhibited in the deployment of the supporting arguments. Sufism, legal arguments, and modes of deployment thus emphasized that there was no real need for *ijtihād*; that the questioner ought to remain committed to Ḥanafism as a matter of principle; and that a guard against the lower self at all times was to be enforced. In order to achieve this, the Deobandī *muftī* searched for precedents that did not always "fit", deployed multiple arguments to strengthen weak justification, and "fabricated" facts. In doing so, however, the Deobandī *muftī* engaged in discretion (*ijtihād*) he was not ready to admit.

CONCLUSION

The socio-political turbulence during the nineteenth century in the Indian subcontinent culminated in the rise of many reformists movements. The stimulus to these movements lay in social and political transformations that called into question received emphases and patterns of action. This study suggests that the disintegration of the Mughal Empire not only resulted in the loss of Muslim political power, but more significantly, generated an organised effort to compensate for that loss through the establishment of religious institutions to protect religious autonomy.

The changing role of the 'ulamā' after the decline of the Mughal Empire from one in which they were invariably part of the bureaucracy and relatively obscure, to one in which they acted as a group in pursuit of ideals, substantially increased the 'ulamā's authority as the *de facto* leaders of a vanquished nation. Mobilized on the strength of the Walī Allah tradition, some 'ulamā' of post-Mughal rule embarked on a vain attempt to re-establish Muslim political supremacy. This *jihādī* option reached its climax during the 1857 Indian Mutiny. The reprisals against the Muslims in the aftermath of the Mutiny alienated the northern Muslims from their colonial rulers. Whatever hopes the Muslims had cherished of recapturing their past glory were finally shattered. Nevertheless, Muslims came to terms with the realities of British domination. The realization

of that reality was accompanied by Muslim fear that their culture and religious values were under threat. They feared that with government support, Christian missionaries were intensifying their proselytization campaigns among the masses. The confiscation by British authorities of the endowments sustaining Muslim educational infrastructure resulted in the collapse of the traditional educational system. And the introduction of British education through a network of state-run schools generated suspicion that precipitated a move towards Muslim reorganization. The 'ulamā' profited from these developments, for it was towards them that the masses ultimately turned.

The rise of Deobandism must be seen against this backdrop of political instability and Muslim vulnerability. Under these circumstances, a group of 'ulamā' sought to revive the Law (*Sharī'ah*) by conveying the tradition in its many facets to individual followers. They fostered a turning away from issues of state and society, towards a concern with the moral qualities of individual Muslims. Retreating into the villages, they reorganised educational institutions on the basis of religious values and British style administration. With the *madrasah* as their institutional base, many of the founders of Deoband also acted as *ṣūfī* mentors commanding enormous respect and support. The Deobandī 'ulamā' assumed many roles; those of *mufī*, of scholar of the Qur'ān and *ḥadīth*, and of *ṣūfī shaykh*. It was, however, through the institution of *iftā'* that they extended their influence beyond their circle of acquaintances, and galvanised their influence and authority over the Muslim masses. The introduction of the lithographic press was in no small measure responsible for the popularisation of the *iftā'* process. This

study in fact suggests that the institution of *iftā'* was the mainstay of the Deobandī programme of reformation.

The decline of the Muslim State and its organs gave birth to a new form of *'ulamā* "government" and its concomitant institutions. At the centre of this new "government" was the Dār al-iftā (House of Juristic Decrees) with the *madrasah* as its institutional base. The Dār al-iftā, served as the new Muslim "parliament", clearly prescribing to the Muslim public adherence to the laws of the *Sharī'ah* as interpreted by the Deobandī *muftīs* who occupied the seats of power in the Dār al-iftā. Through the institution of *iftā'* the Deobandī *muftī* spoke as the legal representative of the *Sharī'ah*.

The Deobandī *muftī* was an intermediate figure. In relation to the wider institutional scheme for the interpretive transmission of the Hanafī laws, Deobandī *muftīs* occupied a niche between the jurist as teacher and *ṣūfī* mentor, and the jurist as *qāḍī*, mediating in identity and function between the spheres of the *madrasah* and the Muslim court. During British rule, the Deobandīs transformed the *iftā'* process by amalgamating and assuming the role of *muftī* and *qāḍī*. One of their key innovations within Deobandī *iftā'* was the introduction of the *muqallid muftī* who exercised *ijtihād* under the aegis of *taqlīd*.

This study's investigation into the justificatory force behind the Deobandī *fatāwā* challenges the assumption that justification for juristic opinions is exclusively located in legal factors and posits that justification is rooted in the "vision" of the deciding *muftī*. Generally, justification for a *fatwā* is conceived in terms of rules and regulations in terms of which juristic activity is assessed. Any

juristic activity that is not considered clearly rule-governed tends to be disregarded and placed outside the purview of law and legal analysis. Instead of simply directing the investigation at legal phenomena in search of the justificatory force behind the various rulings, I examined some of the key concepts in both *Sharī'ah* and *Tarīqah*, and demonstrated how they interacted to produce a *fatwā*. I illustrated how the dual role of the Deobandī as *ṣūfī shaykh* and *muftī* created within the *muftī* a distinct "vision of the law". Through the scrutiny of a number of *fatāwā* dealing with modern exigency, I identified certain definite justificatory trends within the *fatāwā* related to the *muftī's* vision. We clearly saw how *ṣūfī* assumptions, moulded and articulated by juristic reasoning, deeply suffused the content and application of the *muftī's* assessment of facts. In addition, the systemic arguments in the *fatāwā* were also marshalled in a very idiosyncratic manner, not always very convincing. A series of factors cohered in a single act of juristic reasoning. Not only was there a clear choice of one analogy over another, but a distinctive set of assumptions itself shaped the process and the goal of the choice made.

The legal justification appropriated by the Deobandī *muftī* could be accounted for in terms of a mosaic of interlocking and reinforcing legal and extra-legal factors. I identified some of these *Shar'ī* and *ṣūfī* factors and related them to the modes of justification appropriated by the Deobandī *muftī*. The argument types deployed in the various *fatāwā* revealed a "juristic vice", which I term "formalism". The formalistic legal argumentation that characterise so many of the Deobandī *fatāwā* was generated both by the *muftī's* total commitment to

taqlīd, and by the culture of conformity inherent in the *ṣūfī* tradition. I believe that formalism in Deobandī legal reasoning resulted in a burdensome standardization that not only limited the *mufī*'s realm of creative spontaneity but also artificially arrested the development of Islamic law in relation to modern social exigency. As a *muqallid mufī*, the Deobandī *mufī*'s competence in giving *fatāwā* on issues that had already been decided by the past masters was exceptional. Unfortunately, the same degree of competency was not exhibited when ruling on issues that were not decided by the past masters. Whenever the *mufī* was faced with a novel situation which extended beyond the framework of the classical legal texts, his rulings were characterized by justifications that left much to be desired. Often juristic reasoning in such cases was reduced to the mechanical application of code to circumstance.

The arguments deployed by the Deobandī *mufī* in support of his *fatwā* appeared in different roles. They were often deployed to entrench the submissive role of the laity. Muftī Rashīd Aḥmad Gangohī's *fatāwā*, for example, were generally very brief and purported to prescribe rather than justify. Secondly, many arguments were deployed to attack and undermine other and often opposing arguments.¹ Most often, however, arguments were invoked in the *fatāwā* as legal reasons to justify the verdict reached, thus, they formed the most basic ingredient of the justificatory exercise. Although the Deobandī *mufī* often invoked a precedent or another formal reason as a legal argument in support of

¹ This was particularly relevant to those *fatāwā* in which the opposing arguments were perceived to be supportive of actions regarded as inimical to conservative values. See, for example, the *fatwā* on female education.

his ruling, very often his choice of precedent or major premise was, as I have demonstrated, influenced more by his vision of the law than by the strength of legal reasoning. I illustrated how the *mufī* during the course of his legal reasoning tended to abstract the invoked legal concepts from their original social settings and then exaggerated the scope of their relevance in order to justify a ruling towards which he was predisposed. Sometimes, in doing so, he even "fabricated" facts to justify his ruling.

This study challenges the publically cultivated impression that the strength of a ruling resides in its justificatory force. The question as to precisely where the strength of the Deobandī *fatāwā* lies must be left to future research. However, I believe that the strength of the Deobandī *fatāwā* is derived from the authority of the office of *mufī* and the institution of *iftā'* and not from the justificatory force of the ruling.

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Appendix A

Muslim Student Population In Government Institution (1872)

Institutions	Hindus	Muslims
Government Colleges	1,012	81
Government Zilla (High) Schools	2,438	448
Government Tahsily Schools	7,129	1,937
Government Halkabandily Schools	85,356	16,603
Grant-in-aid Schools	8,771	2,688
Unaided Private Schools	36,368	17,354
Total	141,074	38,111

College Education Enrollment

College Students	Hindu Students	Muslim
Dacca	108	2
Hughly (founded by a Muslim, Muhammed Mohsin)	130	21

Zilla (High School) Enrollement: 1871

Zilla School Students	Hindu Students	Muslim
Chittgong	123	44
Noakhally	109	14
Mymensing	342	19
Burrisaul	347	27
Commillah	145	21

Rural School Enrolment 1871

Chittagong district	1,272	348
Sylhet district	1,244	208

Levels of Institution	%
University and College Examinations	5
Zillah or High Schools	6
Normal (teachers training) Schools	13
Aided Higher Class English Schools	2.5
Aided Middle Class English Schools	7.5
Aided Middle Class Vernacular Schools	20
Aided Lower Class Vernacular Schools	30
Day Patshalas	27
(Rajshahye Patshalas	40
Night Patshalas	35

Appendix B

Chronological Table of Dār al-‘Ulūm’s Muftīs

		No. of <i>Fatāwā</i>
1867 - 1879	Muḥammad Qāsim and Rashīd Aḥmad Gangohī ¹	Unknown
1879 - 1883	Ashraf ‘Alī Thānwī under Muḥammad Ya‘qūb	Unknown
1883	First official <i>mufī</i> -Muḥammad Ya‘qūb	Unknown
1883 - 1886	Muḥammad Rafī al-Dīn ²	Unknown
1886- 1892	Lecturing staff of the college	Unknown
1892 -1925	Muftī ‘Azīz al-Raḥmān	42,621 ³
1925 - 1928	Maulāna Mas‘ūd Aḥmad	Unknown
1928 -1930	Maulāna Riyāḍ al-Dīn	4,448
1930 - 1936	Muftī Muḥammad Shafī‘	20,848
1936 - 1938	Professor Suhūl Bihārī	5,185
1939	Muftī Kifāyat Allah Mīratī	5,840
1939 - 1943	Muftī Muḥammad Shafī‘	17,687
1943 -1945	Maulāna Fārūq Aḥmad Anbatwī	8,427
1945 -1947	Maulāna Izāz ‘Alī	20,407
1948 - 1966	Muftī Sayyid Mahdī Ḥasan	133,752

¹ During this period Muḥammad Ya‘qūb also assisted in delivering *fatāwā*. Muḥammad Qārī Ṭayyib, *Dār al-‘Ulūm, Deoband* (Deoband, 1965), p. 100.

² Muḥammad Rafī‘ al-Dīn (1253/1837-1308/1890) was the *muhtamim* at the time when he assumed responsibility for Dār al-‘Ulūm’s *fatāwā*. Incidentally, he was also the spiritual mentor of Muftī ‘Azīz al-Raḥmān (d. 1347).

³This number does not include the nineteen years from 1310/1892 to 1329/1911) of *fatāwā* that were not recorded. *Ibid.* p. 100.

Appendix C

The Sharī Status of the Voter, Voting and the Election Candidate¹

Question

[In terms of the *Sharī'ah*] How does one [qualify to] stand as a election candidate for some assembly, council or any other official position?

How [in terms of the *Sharī'ah*] should a voter use his vote to support a candidate?

Generally, people regard voting as a personal and individual affair, whereas it is entirely a religious matter. In view of this, explain the *sharī* duties and responsibilities of both, the voter and the candidate.

Answer

Nowadays, under the guise of democracy, a game is being played in which all the evil means of coercion and intimidation are used during elections for assemblies, councils, municipalities, and other organizations. Through these elections, a temporary and imaginary honour and esteem are achieved. The tense and passionate election results bear ample testimony to this. There are those caring and sympathetic patriots and religious zealots, who attempt to do the best within their power to redress the situation. But generally, election has become a game of win and loose and voting and standing for election are conceived purely in worldly terms. The educated as well as the religious Muslims are not persuaded or convinced that this election "game" impinges not only upon religious duties

¹ Shaffī, Muftī Muhammad, *Jawāhir al-Fiqh*. (Karachi, 1975), vol. 2. pp. 295-301. The full text of the original *fatwā* follow in Appendix C.

and responsibilities with ramifications of sin and reward, but also embraces worldly dimensions of social benefit and harm. The consequences of this "game" extend to the other world and may either become a necklace of fire in Hell or a means of salvation in the Hereafter, by attaining a high status in heaven.

In today's age, the champions in this arena [elections] and the men operating in that field, are generally those who are unencumbered by obedience and disobedience to Allah and his Prophet. It is therefore considered to be a fruitless exercise to present to them the laws of the Qur'ān and *ḥadīth*. It has always been a miracle of Islām that its adherents can never all collectively go astray. In every age and place, there are those adherents that maintain and foster the cause of truth, and are always conscious of *ḥarām* (the prohibited), and *ḥalāl* (the permissible) and ceaselessly contemplate the pleasure of Allah and his Prophet. The Qur'ān states: "And advise, for verily advice benefits the believer." In view of this it was considered appropriate to outline the *sharī* role of the voter and the candidate. For maybe there are some servants of Allah who will take heed and this defective game might some day be corrected.

The Election Candidate

When a candidate stands for election to any public organization, it is as if he is laying claim to two things in front of the entire community. Firstly, he is claiming to be capable and worthy of the candidacy, and secondly that he is promising to fulfill his task religiously and faithfully.

Now, if he is really honest and sincere in his claims, i.e. he is capable of the task and he has the fervour and zest to serve the community in a worthy and

honourable manner, then his action (to stand for election) is to some extent acceptable and justified.

An even better method would be that a candidate should not volunteer himself, but rather that a Muslim organization should nominate the candidate it considers to have the requisite qualities.

And, whosoever does not possess the requisite qualities, yet stands for election, is a betrayer and a cheat of the community. His success in the election becomes the cause of destroying the country as well as religious values. Because he is cheat and a fraud he is eligible for the punishment in the fire of Hell.

Now, before anyone who has serious concern for the Hereafter, enters the arena and stands as a candidate, he must firstly assess himself and understand that up till then (before standing for election) he was only responsible for himself and his family, because according to the text of the *ḥadīth*, every individual is also responsible for his family. But, after standing as a candidate, he is held responsible for everyone that is connected to that organization he represents, and will carry that burden of responsibility on his neck, as well as being accountable for that responsibility in both worlds.

Voting and the Voter

In the light of the Qur'ān and the *sunnah*, there are various *aḥādīth* related to the issue of voting for a candidate. One such *ḥadīth* deals with testimony (*ṣahābah*)

Voting or a candidate means that the voter is testifying that the candidate is capable as well as trustworthy and honest. If these qualities do not exist in the

candidate, and the voter is aware of it, then he (the voter) is delivering false testimony, which is a serious and major sin, for which there will be retribution in both worlds. In a *ḥadīth* of *Ṣaḥīḥ Bukhārī*, the Prophet SAW included the act of delivering false testimony with *shirk* (association), in the category of major sins. (*Mishkāt*)

In another *ḥadīth* the Prophet declared false testimony to be the greatest of major sins. (*Bukhārī* and *Muslim*).

If there are a number of opposing candidates, and despite the fact that the voter is aware that a certain candidate is more honest and capable, and worthy of preference, he still disregards him and vote for some other [less worthy] candidate, then he is involved in the greatest of major sins.

The voter has to take cognizance of the Hereafter and the consequences of his actions and when he votes he should not merely regard voting as a custom. Nor should he get implicated in this misfortune (*wabāl*) out of some personal gain or fear.

From another angle, voting is comparable to intercession (*sufārish*). In other words, through the act of voting, the voter intercedes on behalf of the candidate.

The Qur'ān has this to say about intercession: "Whosoever recommends and helps a good cause, becomes a partner therein; and whosoever recommends and helps an evil cause, shares in its burden". (Q.4:85)

Intercession can only be considered to be honourable if made on behalf of a candidate who is not only both capable and trustworthy, but also faithfully fulfils his religious duties. On the other hand, intercession (voting) that results in the election of an incompetent, miscreant, degenerate tyrant, is reprehensible in the

extreme, because the election of such a villain leads to [evil] domination.

Thus, the voter should be conscious of the fact that during the elected candidate's five year term of office, he (the voter) shares the burden of accountability in terms of the good and bad deeds committed by the elected candidate, for his election was due to the support of the voter.

There is a third dimension to voting, namely, authorized delegation (*wikālah*). By supporting a candidate, the voter is delegating or mandating him (the candidate) to represent him. If this delegation and representation were only confined to personal interests, then the voter would have been solely responsible and accountable for his own actions. But, in the case of public elections it is not so, for this act of delegation and representation impinges very heavily upon the interests of the whole community. Therefore, if the voter delegates (votes for) a delinquent candidate to represent him, and he (the candidate) violates the rights of the community, the voter too has to share the burden of this sin.

To summarize, the act of voting incorporates three dimensions.

Firstly, it entails the bearing of testimony (*ṣahābah*). Secondly, it is considered to be an act of intercession (*sufārish*), and thirdly, it is an act of delegation (*wikālah*). In terms of each one of these dimensions, the voter will be greatly rewarded if he supports a capable and honourable candidate, and by the same token, voting for an irreligious delinquent, is tantamount to bearing false testimony, diabolical intercession, and impermissible delegation, which not only produce the fruits of destruction, but also results in being held jointly accountable.

Necessary Warning

From the above discourse, it has become clear in the light of the Qur'ān and *sunnah* that voting for an unfit, incompetent, miscreant, degenerate tyrant, is a major sin. Similarly, voting for a good and honourable candidate, is not only an act worthy of great reward, but a religious obligation. Whereas the Qur'ān has prohibited the bearing of false testimony, it has also commanded the delivering of truthful testimony.

"Stand out firmly for Allah, as witnesses to just dealing" (Q. 5:9) In another verse, "Stand boldly for justice as witnesses for Allah." (Q.4:135)

In both these verses, Allah has commanded the Muslims to stand up and bear truthful testimony. In a third verse in *Sūrah Ṭalāq*, Allah Commands the bearing of truthful testimony. "And bear testimony for Allah. (Q. 65:2)

In another verse, Allah has prohibited the bearing of false witness. " Conceal not testimony, for whoever conceals, his heart has sinned." (Q. 2:283)

All these Qur'ānic verses have placed upon the Muslims an obligation towards bearing truthful testimony.

One of the major contributory factors towards election malpractice is the problem of abstinence which is practised by the pious and devout Muslims. This in turn results, as is clearly visible today, in the election of those candidates who were able to buy votes. The quality and calibre of the person that is elected on the basis of purchased votes, can clearly be seen in the type of representation that today's communities have been compelled to contend with. Therefore, if there is a capable and good candidate contesting the election in a particular

constituency, then the act of abstaining from voting for him, is reprehensible in terms of the *Sharīah* and contributes towards subjecting the entire community to despotism. If, the character of all the candidates contesting an election is not in consonance with religious values, but, there is however, one candidate from among them that possesses the potential of being good, and in relation to the others, is more God fearing, then to support him in order to minimize the evil, is not only permissible, but also encouraged. Similarly, in the case when one is not able to remove all the dirt (*najāsah*) from one's cloths, or not able to totally eliminate oppression, then to contend with some minimized form of this inevitable evil has been sanctioned by the jurists.

And Almighty Allah knows best.

Conclusion

The *sharī* status of voting in an election is at least similar to the act of bearing testimony. The concealment of truthful and the fabrication of false testimony are reprehensible acts. Receiving remuneration for voting is equally reprehensible. To reduce the voting exercise to a political game of win and loose is a big mistake. To support a candidate is to bear testimony to the fact that he (the candidate) is more capable, in terms of honesty and knowledge than the other candidates, contesting the election. Bearing this reality in mind, the voter must accept the following ramifications.

- 1.) The voter will share the burden of the good and evil that is perpetrated by the candidate elected to the assembly as a representative of the voter whose support secured his (candidate's) success.

2.) Under the circumstances, it is essential not to lose sight of the fact that any mistake that may occur in some personal or private matter, is usually confined to the individual involved, and reward and punishment are restricted to him. On the other hand, public and community affairs affect the entire community, therefore, occasionally, even a small mistake can become the cause of the downfall of the entire nation. Hence, the reward and punishment attached to the act of voting are very severe.

3.) Concealment of truthful testimony is *ḥarām* in terms of the Qur'ān. Therefore, if there is a honourable and trustworthy candidate with a balanced, moral perspective, standing for election, one must support him, for any shortcoming on this score is regarded as a major sin.

4.) To support a candidate that holds a perspective that runs counter to the Islamic system, is to bear false testimony which is also a major sin.

5.) To receive payment for voting is the worst type of corruption and bribery. It is an act of treachery against Islam and country, and that, for the sake of a few measly coins. In the process of fostering another's material gain, the sacrifice of one's religion (*dīn*) for any amount of wealth can never be considered an act of wisdom. The Prophet SAW has warned that: "He who relinquishes his *dīn* for the sake of another's *dunyā* (worldly gain) is in the most acute state of ruination."

And Allah knows best.

Muftī [Muḥammad Shafī] and Head of Dār al-'Ulūm

Karachi

20 Shābān 1380.

Appendix D

Full Text of the Fatwā on Voting and the Election Candidate

۲۹۵

انتخابات میں ووٹ، ووٹر

اوس امیدوار کی

شرعی حیثیت

تاریخ تالیف _____ ۲۰ شہبان ۱۳۸۰ھ

مقام تالیف _____ دارالعلوم کراچی

اشاعت اول _____ شعبہ نشر و اشاعت دارالعلوم کراچی

● اسمبلی، کونسل یا کسی دوسرے ادارے کے انتخابات

میں کسی شخص کو کس صورت میں امیدوار مہرنا چاہیے

_____ نیز کسی امیدوار کے حق میں ووٹر کو اپنا

ووٹ کس طرح استعمال کرنا چاہیے؟

● عام طور پر لوگ اس کو ذاتی اور نجی معاملہ سمجھتے ہیں، ممالک کی

خاتمی دینی معاملے _____ پیش نظر مضمون میں ان دونوں

موضوعوں کے شرعی فرائض کی تفصیل بیان کی گئی ہے۔

۲۹۸

دے رہا ہے اس کے متعلق اس کی شہادت دے رہا ہے کہ یہ شخص اس کام
کی قابلیت بھی رکھتا ہے اور بیانات اور اہانت بھی اور اگر واقعہ میں اس شخص کے
اندزے صفات نہیں ہیں اور وٹریہ ہاتھ پوتے ہوئے اس کو روٹ دینا اور توت ہے تو
وہ ایک جھوٹی شہادت ہے جو سخت کیے کا گناہ اور وبال و نیا اور توت ہے
صحیح بخاری کی حدیث میں رسول کریم صلی اللہ علیہ وسلم نے شہادت کا ذکر فرمایا
کے ساتھ کہا کہ تمہیں شہاد زور دانا ہے (مشکوٰۃ) اور ایک دوسری حدیث میں جھوٹی
شہادت کو بکریا ٹر فرمایا ہے (بخاری) و مسلم جس طعن میں جھڑا میدا رکھ لے
ہوں اور وٹریہ معلوم ہے کہ تقابلیت اور بیانت کے اعتبار سے
غلاں اولیٰ قابل تزیح ہے تو اس کو چھوڑ کر کسی دوسرے کو روٹ دینا اس کو بکریا
میں اپنے آپ کو مبتلا کرنا ہے۔

اب وٹریہ دینے والا اپنی آفرت اور انعام کو دیکھ کر روٹ دے وٹریہ
رہی روٹ دینے کی وجہ خوف کی وجہ سے اپنے آپ کو اس وبال میں مبتلا کرے، اور وٹریہ
حقیقت و روٹ کی شفاعت یعنی شہادت کی ہے کہ وٹریہ اس کی ناسندگی کا سبب
کرتا ہے، اس شہادت کے بارہی ترکان کریم کا یہ ارشاد و وٹریہ اپنے سامنے
رکھنا چاہیے وٹریہ شفاعت حستہ حستہ کیونکہ لہ نصیب متھا و
من یشفق شفاعتہ شیشہ کیونکہ لہ کفل متھا۔ یعنی جو شخص بھی شہادت
کرتا ہے اس میں اس کو بھی حستہ متا ہے اور وٹریہ شہادت کرتا ہے تو اس کی
برائی میں اس کا بھی حستہ متا ہے۔ اچھی شہادت میں ہے کہ قابل اور بیانت و ابر
آوی کی شہادت کے جوئے متعلق خدا کے حقوق صریح طور پر ادا کرے۔ اور وٹریہ شہادت
یہ ہے کہ قابل تالیق، ناقص کلام کی شہادت کے اس کو قطعاً شرعی تسلط کرے۔
اس لئے حکم ہر اک ہار سے وٹریہ سے کامیاب ہونے والا امیدوار اپنے بیخ سالہ
دور میں جو نیک یا بگیل کرے گا ہم بھی اس کے شریک سمجھے جائیں گے۔
وٹریہ کی ایک شہری شہادت کو کالت ہے کہ وٹریہ دینے والا اس

۲

۲۹۹

امیدوار کو اپنا نامہ اور قول بنانا ہے کیونکہ اگر یہ کالت اس کے کسی شخصیت کی متعلق
ہوئی اور اس کالت فقہان صرف اس کی ذات کو پہنچا کر اس کا بیخ و زور ہوتا
کر گیاں ایسا نہیں کیونکہ یہ کالت ایسے حقوق کے متعلق ہے جن میں اس کے ساتھ
قوم شریک ہے۔ اس لئے اگر کسی کالت کو اپنی بیخ و زور ہونے کے لئے وٹریہ دینے کا
بنا تو یہ کالت کے حقوق کو ہال کر لے گا کہ اس میں کالت ہوا۔

خاص یہ ہے کہ ہا راز وٹریہ میں حقیقتیں رکھتا ہے۔ ایک شہادت
دوسرے شہادت تیسرے حقوق شریکوں کالت، تیسریں بیخ و زور میں ہیں
طرح نیک، صالح، قابل آوی کی روٹ وٹریہ موجب ہر اب تکم ہے اور اس کے
غرات اس کی روٹنے والے ہیں، اس طرح آہل یا غیر شریک شخص کو وٹریہ دینا جھوٹی
شہادت بھی ہے اور وٹریہ شہادت بھی اور تا جائزہ کالت بھی اور اس کے بنا کالت
میں اس کے تا سر مالہ لکھے جائیں گے۔

صورتوں میں تنبیہ **۱** مگر راصد بیان میں ہر صریح قرآن و سنت
کی کو سے یہ واضح ہوا کہ تاہل، ظالم، ظالم اور ظالم کو روٹ دینا ناگہم
اسی طرح ایک اور قول آوی کی روٹ دینا تنبیہ ہے۔ بلکہ ایک ضابطہ شریک ہے۔ قرآن کریم نے
ہرئی شہادت کو ہر زور ہا ہے۔ اہل صریح کالت کو واجب، ظالم ہی نہ ہوا ہے۔ ارشاد باری ہے۔
کو نواظروا میں اللہ شہد اء بالقسط اور دوسری جگہ ارشاد ہے۔ صلیوا
توا میں بالقسط لئہم اء اللہ ان دونوں آیتوں میں مسلمانوں پر فریضہ
ہے کہ کسی شہادت سے جان نہ چرائیں، اللہ کے لئے اور ان کی شہادت کے واسطے
کھڑے ہو جائیں۔ تیسری جگہ سورہ طلاق میں ارشاد ہے۔ و اقیمو اللشہادۃ للہ
یعنی اللہ کے لئے ہی شہادت کو قائم کرو۔ ایک آیت میں یہ ارشاد فرمایا کہ سبھی
شہادت کا پیمانہ اور گناہ ہے۔ ارشاد ہے۔ ولا تکتموا اللشہادۃ و من
یکتمہا فاشہ اشم قلبہ یعنی شہادت کو چھپاؤ اور جو چھپائے گا اس کا
دل گناہ کا رہے۔

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وَأَمَّا الْوَلِيُّ وَالْمَوْلَىٰ فَهُمَا يَتَّبِعُونَ مَا يَرَوْنَ مِنْ عَمَلِ الْوَالِدِ وَالْوَالِدَاتِ فَإِنْ رَأَوْهُنَّ يَتَّبِعْنَ مَا رَأَيْنَهُنَّ يَتَّبِعْنَ مَا رَأَيْنَهُنَّ يَتَّبِعْنَ مَا رَأَيْنَهُنَّ

كيفية التصويت

لما اختلفت في التصويت

في التصويت في الانتخابات...
1- يجب ان يكون المرشح من المسلمين الذكور البالغين العقلاء...
2- يجب ان يكون المرشح من اهل البلد...
3- يجب ان يكون المرشح من اهل الذمة...
4- يجب ان يكون المرشح من اهل الذمة...
5- يجب ان يكون المرشح من اهل الذمة...
6- يجب ان يكون المرشح من اهل الذمة...
7- يجب ان يكون المرشح من اهل الذمة...
8- يجب ان يكون المرشح من اهل الذمة...
9- يجب ان يكون المرشح من اهل الذمة...
10- يجب ان يكون المرشح من اهل الذمة...

...

التصويت

في التصويت في الانتخابات

في التصويت في الانتخابات...
1- يجب ان يكون المرشح من المسلمين الذكور البالغين العقلاء...
2- يجب ان يكون المرشح من اهل البلد...
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5- يجب ان يكون المرشح من اهل الذمة...
6- يجب ان يكون المرشح من اهل الذمة...
7- يجب ان يكون المرشح من اهل الذمة...
8- يجب ان يكون المرشح من اهل الذمة...
9- يجب ان يكون المرشح من اهل الذمة...
10- يجب ان يكون المرشح من اهل الذمة...

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Appendix E

The Sharī Status of Copy and Patent Rights

Question

- 1.) Authors register copyrights over their books so that others may not publish them. According to the *Sharīah* is this permissible or not?
- 2.) What is the ruling on buying and selling a copy right or patent right?

Answer

1.) To register copyrights over any publication and prevent others from distributing or publishing them is not permissible. The reason for this is that there are only two legal grounds for preventing someone from exercising his right of utilization (*ḥaqq al-taṣarruf*).

Firstly, if exercising that right of utilization extends to someone else's property without the owner's consent.

Secondly, if the exercise of that right of utilization results in harm being caused to any individual or group. In the above mentioned case, both these grounds are absent.

Why there exists no grounds on the first score is because a publisher of books, or manufacturer of patented goods, do not extend their right of utilization to someone else's [tangible] property. In fact, the publisher commissions the typesetting (*kitabāt*), provides the printing] paper, pays for the printing etc., and [even] pays for the original copy, or acquires it through some legitimate means. As far as the copyright is concerned, it is neither considered to be wealth (*māl*) nor intrinsically capable of being regarded as a possession. Off course, the

current government has legalized patent and copyrights in the same manner as it has reclassified and legitimised many illegal rights.

Why there exists no grounds on the second score, is because the [prospective] publisher does not prevent the author or anyone else from publishing, thus causing no harm. In fact, by [the book] being published elsewhere, the author or inventor [of some patented item] is prevented from subjecting consumers to overcharging and exploitation. Essentially, there is no harm done to the one holding the copyright. This is rather [a case of] no profits, or lower profits, and the difference between lower profits and harm is obvious.

In [the book] *Mabsut*, the author, Shams al-I'immah, in the chapter [titled] "The book on Procession and War", clearly outlines the rule that one may not be the cause of harm to another, but if one's work is the direct cause of another's drop in profits, it is acceptable. If, in the market place, as the result of there being many competing traders selling the same commodity, one (trader) makes little or no profits, it cannot be said that the other traders have harmed him. Thus, there exists no *sharī* or rational argument in favour of preventing others from trading in the same commodity. Moreover, the motive of the author or the inventor behind preventing others from reproducing, can only be to fix a profit margin which is higher than what is commonly made by the general traders, or at least to restrict all the profits that accrue through the sale of that commodity. Restricting others from making legitimate profits is in itself an act that is detrimental to the general public. Instead of others being prevented (from reproducing), the one seeking copyrights will be prevented from holding such a right, because no one is allowed to profit to the detriment of the general public.

The *Shari'ah* does not permit such (detrimental) profiteering.

Authentic *ahādīth* literature is suffused with such examples.

The Prophet SAW forbade the purchasing of wheat from the farmers before they enter the town, and also (forbade the purchase of wheat from the outlying farm lands and villages. He also forbade a city dweller from becoming the agent of the village traders through which their (village traders) crops are sold to the city traders, because this would result in one or a few traders holding the monopoly and fix prices that are damaging to the general public. And the [practice] of the villagers to sell their merchandise in the towns at a low price will come to an end, resulting in considerable harm to the general public. The norm among the village traders is to get rid of their merchandise as soon as possible so they could return to their outlying homes in good time. This concern of retreating in good time, induces the village trades to sell off their merchandise at very low prices. If a city or town dweller becomes an agent of the village traders, (as is the norm nowadays, and trading is done through some brokerage) then the village traders' merchandise will be sold through the city traders, which will result in considerable harm to the general masses. Therefore, this type of trading has been prohibited through prophetic injunction. Similarly, hoarding of grains has been prohibited in the authentic *ahādīth*. In other words, purchasing of grain with the intention of withholding [stockpiling] it until it becomes scarce and then resell it [at a substantially higher profit], is not permissible, because it is detrimental to the general public. Despite the fact that one is exercising one's legitimate right to utilization of one's own possessions (grain), the *Shari'ah* does not grant one that right. Hence, with regard to something [copyright] that is not even conceived

as a possession, and is a cause of general harm, how could it be tolerated?

By registering a copyright or patent right, the author or inventor wishes to prevent others from reproducing (the registered items). Similarly, the honourable jurists have extrapolated from the Qur'ān and *ḥadīth* a complete code which is recorded in [the book] *Ashbāh wa Nazā'ir* under the title "Harm must be Eliminated." Many examples are recorded there. The point is that in the elimination of general harm, the *Sharī'ah* is even willing to tolerate individual harm. Hence, during times of necessity, the religious ruler (*ḥākim*) has the prerogative to fix the prices on certain important commodities and no one is allowed to sell at higher prices. (*Ashbāh wa Nazā'ir*)

Now, in the elimination of general harm [i.e. denial of copyrights] in a manner that does not adversely affect anyone, in fact it does not completely deny profits, but potentially minimizes profits that are envisaged. It is obvious that the *Sharī'ah* cannot condone something that is harmful to the general public on the basis of an envisaged loss in profits.

If closely examined, the existing state of world-wide turmoil and chaos (*idṭirāb*) in which neither the poor and dispossessed nor the rich and mighty are at ease, even though there are thousands of legitimate and illegitimate methods of acquiring wealth, being devised daily. One of the primary contributing factors to this state of affairs is that the intrinsic rights to the general means of production which the *Sharī'ah* has bequeathed to the public, have either been appropriated by existing capitalist governments and their aids or turned into some commercial venture and owned by those who can afford to pay the taxes. This has sparked the struggle between the capitalist bosses and the workers. And Communism

which is both unnatural and unbalanced, with its sympathy for the workers, has appeared on the scene and brought in its wake a host of different calamities.

Until the straight path of Islam and its pure and just economic system is not adopted, this turmoil cannot be eliminated and general peace will never be restored. To achieve this [perfect and ideal] state, the resources that Almighty Allah have bequeathed to the general public must be freed and removed from the personal clutches of the exploiters. Personal possessions should not be allowed to be coveted by the exploiters. For example, the sea and all that is produced by it, the mountain and all its resources, the forests and natural springs and all that they yield, must be freed. Copy and patent rights should be abolished and every labourer and investor should be given the opportunity to profit through their efforts. Only this just economic system will be able to guarantee general peace.

In summary, copy and patent rights do not in reality constitute something [tangible] which allows them to become private possessions. If someone sees a book or a new invention, and he acquires it, or through his own effort, copies it, then to prevent him (from copying) is to prevent a legitimate (*mubāh*) action to which he was entitled. And it is obvious that such a prevention is unjust.

Warning

Some people posit the excuse that by registering a copyright, the [ruthless] traders [publishers] are prevented from reprinting an altered and incorrect copy of the book, which may be the result of economic considerations [of cutting costs]. In this manner, the author's object of writing the book may be lost or

distorted. The answer to this is that in such a case the author will have the *sharʿī* right to institute action against the publisher for attributing (statements) to him that are in fact not his. As the result, the publisher will be prevented from reprinting the [incorrect] book or he will be cautioned for the future. However, there are no *sharʿī* restrictions on publication. And Allah knows best.

2.) Since it is established that the author or the inventor may not restrict the right to reproduction, the sale and purchase of such rights are not permissible because [lawful] trading is contingent upon them [copy or patent rights] being considered tradable commodities (*māl*). Although abstract rights (*ḥuqūq al-mujarradah*) can become the means of acquiring wealth they are nevertheless not considered to be [tangible] wealth or property.

And Allah knows best.

Muḥammad Shafīʿ.

Deoband, 1362.

بسم الله الرحمن الرحيم
 الحمد لله رب العالمين والصلاة والسلام على سيدنا محمد
 وآله الطيبين الطاهرين من بعد الأنبياء والمرسلين
 أما بعد فقد استأذن مني رجل من بني فلان
 أن يكتب لي كتاباً في الفقه والحديث
 وأما الكتاب الذي كتبته فليس هو
 الذي كتبته بل هو الذي كتبته
 من قبل أن يكتب لي كتاباً في الفقه
 والحديث وأما الكتاب الذي كتبته
 فليس هو الذي كتبته بل هو الذي
 كتبته من قبل أن يكتب لي كتاباً
 في الفقه والحديث وأما الكتاب
 الذي كتبته فليس هو الذي كتبته
 بل هو الذي كتبته من قبل أن يكتب
 لي كتاباً في الفقه والحديث
 وأما الكتاب الذي كتبته فليس هو
 الذي كتبته بل هو الذي كتبته
 من قبل أن يكتب لي كتاباً في
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 كتبته فليس هو الذي كتبته بل هو
 الذي كتبته من قبل أن يكتب لي
 كتاباً في الفقه والحديث

Appendix G

Full Text of the Fatwā on Taqlid

۱۲۱

مشرفہ شخصی

مسئلہ تعلقید

پر

چند سوالات و جوابات

یہ سوالات میرے استاذ محترم مفتی اعظم ہند اور دارالعلوم دیوبند کے
سب سے پہلے مستقل مفتی حضرت مولانا مفتی عزیز الرحمن صاحب کا علی
ہیں جو برہانہ طالب علمی ۱۳۳۵ھ میں جب کہ احترام دارالعلوم دیوبند میں دورہ
حدیث کا ایک طالب علم تھا حضرت ممدوح نے اس کو جواب لکھنے کے لئے
علاؤ لائے تھے اور جواب چونکہ کچھ مفصل ہو گیا تو اس کو دارالعلوم دیوبند کے
ایک اہ نامہ میں شائع کر دیا گیا تھا۔ وہاں سے نقل کیا جاتا ہے۔

واللہ العلیق والصلی

بندہ محمد شفیع عفا اللہ عنہ

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

الحمد لله وكفى وسلام على عباده الذين اصطفى

استفتاء

کیا حکم ہے کہ اب اللہ اور حدیث رسول صلی اللہ علیہ وسلم کا مسائل ذیل کے بارہ میں اسے عاکریم
تم پر اللہ کی رحمت ہو۔ بینوا تو جروا
(۱) کسی امام مجتہد کی تقلید عام مسلمانوں کے لئے فرض ہے یا واجب یا مباح؟

۱۲۳	سنہ تفسیر شمس	سنہ تفسیر شمس
۱۲۳	سنہ تفسیر شمس	سنہ تفسیر شمس

۱۲۴	سنہ تفسیر شمس	سنہ تفسیر شمس
۱۲۴	سنہ تفسیر شمس	سنہ تفسیر شمس

۱۲۵	سنہ تفسیر شمس	سنہ تفسیر شمس
۱۲۵	سنہ تفسیر شمس	سنہ تفسیر شمس

Appendix H

List of Endorsements for Ashraf 'Alī Thānwī's Project.

A list of some of the institutions and 'ulamā' whose support was canvassed.

Madrasah Fatahpūr (Delhi)

Madrasah Ḥusayniyyah (Delhi)

Madrasah 'Abd al-Rabb (Delhi)

Madrasah Islāmiyyah (Meerut)

Madrasah 'Ālamiyyah (Meerut)

Madrasah Imdādiyya (Murādabād)

Madrasah Shāhī Masjid (Murādabād)

Madrasah Khayr al-Madārisin (Jālandahr, Punjab)

Madrasah Rashīdiyyah (Jālandahr, Punjab)

Madrasah Rānder (Sūrat, Gujrat)

Madrasah Na'māniyyah (Amritsir)

Madrasah 'Arabiyyah (Bahāwalpūr)

Madrasah Mazhar al-'Ulūm (Karachi)

Madrasah Anwār al-'Ulūm (Gujrānwālah)

Madrasah Hāliyyah (Decca)

Madrasah Imdādiyyah (Thāna Bowen)

Madrasah Dār al-'Ulūm (Deoband)

Madrasah Mazāhir al-'Ulūm (Sahāranpūr)

Dār al-Fatāwā (Kashmir)

Imārah al-Sharīah (Bihār)

Dār al-Iftā (Deoband)

‘Ulamā’ of Mecca

‘Ulamā’ of Medina

‘Ulamā’ of Meerut

‘Ulamā’ of Murādabād

‘Ulamā’ of Jālandahr (Punjab)

‘Ulamā’ of Gujrāt

‘Ulamā’ of Amritsir

‘Ulamā’ of Bahāwalpūr

‘Ulamā’ of Karachi

‘Ulamā’ of Gujrānwālah

‘Ulamā’ of Kashmir

‘Ulamā’ of Decca

‘Ulamā’ of Bihār

‘Ulamā’ of Deoband

‘Ulamā’ of Sahāranpūr

‘Ulamā’ of Thānah Bhowan

Maulānā ‘Āshiq Ilāhī (Meerut)

Endorsed by no less than 150 of the leading ‘ulamā’ of the Subcontinent.