

The Theory of
Interest in Islamic Law
and the effects of the interpretation of this
by the Hanafī School up to
the End of the Mughal Empire

by

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SYSTEM OF TRANSLITERATION

Consonants

Persian-Urdu Additions

پ	- p	د	- d	ض	- ' ,	ا
چ	- <u>ch</u>	ط	- t	ب	- b	ب
ژ	- <u>zh</u>	ظ	- z	ت	- t	ت
ٹ	- <u>t</u>	ع	- c	ث	- <u>th</u>	ث
ڈ	- <u>d</u>	غ	- <u>gh</u>	ج	- j	ج
ر	- <u>r</u>	ف	- f	ح	- h	ح
گی	- g	ق	- q	خ	- <u>kh</u>	خ
بھ	- bh	ک	- k	د	- d	د
پھ	- ph	ل	- l	ذ	- <u>dh</u>	ذ
تھ	- th	م	- m	ر	- r	ر
دھ	- dh	ن	- n	ز	- z	ز
جھ	- jh	ہ	- h	س	- s	س
چھ	- ch	و	- w	ش	- <u>sh</u>	ش
کھ	- kh	ی	- y	ص	- ṣ	ص
گھ	- gh					
رھ	- rh					

Long vowels

ی	ا	-	ā
	و	-	ū
	ی	-	ī

Short vowels

<u>1</u>	-	a
<u>2</u>	-	u
<u>3</u>	-	i

Diphthongs

اَوْ	-	aw
يَيَّ	-	yy (final form ī)
وَو	-	ww (final form ū)
اَيَّ	-	ay

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INTRODUCTION

Interest and profit are often difficult to distinguish from one another in practice. Interest may be looked upon as a payment for the use of capital, and profit as the reward of the entrepreneur for his services, or interest may be regarded as income from money capital, and profit as income from real capital, but interest and profit are often inextricably confused by the Muslim scholars. The Qur'ān forbids lenders to receive back from borrowers more money than is lent, because it considers it unjust. It does not, however, raise any objection to the payment of rent for land although money may have been borrowed for the purpose of buying the land.

This attitude to the payment of interest is, however, more readily appreciated if the difference between borrowers of today and borrowers of the Prophet's time is taken into consideration. At the present time the most important lenders are banks, and a vast majority of the borrowers are those whose financial position is basically sound. The practice of pre-Islamic days against which the relevant passages of the Qur'ān were directed,

involved a large majority of those borrowers who sought loans for purposes of consumption. The prohibition of interest reveals that Islam looked upon the lender accepting an additional payment as taking advantage of another man's poverty or misfortune.

The money-lenders of today who do business with the poor and exploit their poverty are no more respected members of society than those of the early days of Islam; nevertheless, they provide a service for those who would be unable to get timely financial assistance elsewhere.

An Islamic state should establish co-operative movements, national insurance and national provident funds to ensure the poor the minimum of the necessities of life. Since these essential services for a healthy society are not yet in existence anywhere, and since capital is scarce relative to the demand for it, and it is an adjunct to an advanced economic system, payment of interest is unavoidable for its distribution among all the various users competing for it.

The aim of this study is to show that credit is an essential human necessity, and that Muslims, in spite of

the Qur'ānic prohibition, have always borrowed money on interest, especially at the downfall of the Mughal sovereignty, when agriculturalists could not get timely financial assistance elsewhere except from Hindu usurers.

In spite of the fact that the Qur'ān recognises the necessity of credit, Muslim scholars virtually banned such transactions, even if they did not carry interest. As a result of this, the theory of interest, which was intended to deal with an essential aspect of human existence, was completely divorced from reality, and what was left was only the dry bones of the subject. It was, thus, probably the growing need of commerce for money and credit in production that forced some of the jurists to reevaluate the theory of interest and to establish the institution of hiyal. On the whole, however, they prevented the growth of competitive large scale enterprises and widespread credit among the community. Loans remained primarily to relieve distress, and a lender was to expect no more than repayment of his capital. Taking advantage of the necessitous circumstances of a member of the community by accepting an additional payment over and above the original loan was frowned upon. A lender was advised to advance a loan without investigating

the character or repaying capacity of the borrower.

The jurists touched upon economic phenomena only when incidental to religious problems, and all subjects of study were to them merely different aspects of one comprehensive subject: religion. This outlook, while producing a consistent and logical code of law, tended to disregard some of the practical aspects of economics, which did not always fit in conveniently with this code. In economics, it is usual for a lender, before advancing a loan, to confirm that the applicant intends to repay his loan even in adverse circumstances, that he has the capacity to pay and possesses a specific security for the protection of the lender's capital, if matters go awry. A large majority of lenders will prefer to keep cash in hand and refuse to loan it out unless there is a reasonable return from the loan, and adequate compensation offered for the risk of nonpayment.

The second half of the thesis is a rehearsal of the facts and events which illustrate this aspect of economics. At the downfall of the Mughals prosperous Muslims refused to advance monetary help to the poor members of the community, perhaps because they were convinced that the borrowers had little capacity to repay their loans, mostly

borrowed for financing their agriculture or merely for meeting the needs of their daily life. In fact, there was a great risk of nonpayment to be set against no return, unless it was a reward after death. Hindu money-lenders, however, were willing to accept this risk, but naturally charged rates of interest anywhere between 100% and 150%, which ensured that a loan not quickly repaid grew rapidly to the point where it could not be repaid from the current income of the borrower. Ultimately only the transfer of the property of the borrower would wipe the slate clean. Consequently the money-lenders, in one village after another dispossessed the Muslims of their farms for the payment of their debts.

The introduction of civil courts contributed to this process. The courts provided the money-lenders with regular facilities, of a kind hitherto unknown, for enforcing the payment of debt, which resulted in the extensive alienation of land to the Hindu money-lenders.

Had the community been taught to adapt the legal interpretation of its economic theories to the changing circumstances, it would not have faced the intense financial difficulties that it did. A large majority of British officers appealed to the Government for legislation to

protect borrowers from the exploitation of money-lenders, and considered this problem a question of political danger. Arthur Brandreth and Septimus Smet Thorburn played a vital and creative role, and used their pens to influence the higher authorities who, at first, were not in favour of any legislative remedy on economic and political grounds. The Government, at last, passed legislation and threw the weight of the administration in favour of the borrowers as opposed to the money-lenders.

Had the legal interpretation, which had handicapped Muslims in investment matters, been changed with the change in circumstances and economic conditions, the economic development of the community would have proceeded on entirely different lines. The Government did its best by introducing drastic changes in the judicial administration and starting cooperative credit societies based on easy terms of loan and low rates of interest. The re-interpretation of the theory itself was a task beyond its duties. This was something that could only be done by Muslim scholars. The answer lay in re-examination and re-evaluation of the basic texts, but the large majority of the jurists of earlier periods had, disagreed with this and believed that everything prohibited or permitted by a text would remain prohibited or permitted

for ever even if it was contradictory to the changing attitudes and customs of the times.

The jurists lacked any sense of the necessity for evolution in the law as in everything else. A community that refuses to adapt its theories and principles to the requirements of the times ceases to evolve. By so doing, it dooms not only itself to stagnation and decline, but also the very theories and principles that brought about this state of affairs to disrepute and eventually oblivion.

SUMMARY

The practice of ribā in pre-Islamic days, against which the relevant passages of the Qur'ān were directed, appears to have consisted in charging interest on a mere loan. The earlier commentators of the Qur'ān extended this concept to credit transactions on the authority of the Successor Qatāda, who is reported to have maintained that the practice of ribā consisted in a person's selling a certain article to another person, agreeing to receive the sale-money at a certain fixed date. If the purchaser could not pay this money within the prescribed period another easing-time was allowed to him on stipulation of an additional amount payable with the dues.

The idea of 'fixed term' repeatedly mentioned by the exegetic scholars from the earlier sources onwards, is not derived from any verse of the Qur'ān in which interest is mentioned. It is derived from the verse of the Qur'ān (2:282) which recognises the necessity of contracting debts and discusses in detail the ordinance governing the recording of credit transactions. This marks a link which connects loans with credit transactions and thus permitted scholars in their dis-

cussions to distinguish between hand-to-hand transactions and deferred transactions, itself a distinction acknowledged by the Qur'ān (2:282).

This distinction is prominent in all the ḥadīth discussions, to such a degree that certain groups could even argue that delay in settlement was the exclusive factor in the system of ribā. Such an idea was embodied in the slogan لا ربا الا في النسيئة .

Another group of Traditionists developed and extended this concept to exchange of six commodities - gold, silver, wheat, barley, dates, salt - and demanded not only (a) an immediate delivery of the two commodities being exchanged, but also (b) absolute equality if they were of the same kind.

The jurists extended these rules to exchange of other commodities which were deemed to possess the same essential characteristics as those specified in the ḥadīth, on the ground that the same effective cause (علة) which lay behind the original ruling, was present also in those new cases.

The divergence of opinions as to the nature of this effective cause produce variant theories in the ancient

schools of law. In the Shāfi^cī and Ḥanbalī schools, the 'ribā rules' were applied to the exchange of all foodstuffs; in the Mālikī school only to foodstuffs which can be stored; while in the Ḥanafī school the rules were extended to the sale of all commodities normally sold by weight or measurement.

The Ḥanafī doctors were the most concerned to codify the doctrine, and it appears from their discussions on the topic of ribā that they were speculative and philosophical jurists, that their system of law was not based upon the exigencies of day-to-day experience, and hence that it did not arise from an attempt to meet actual cases. It was a system of casuistry built upon scientific principles, and a set of rules which attempted to provide an answer on every conceivable question of law. At the same time it also appears that Abū Ḥanīfa's legal thought was not regarded as final and his disciples had occasion to diverge from him.

The theory of Interest, as it had come to be understood, could not fail in its application to cause considerable hardship and inconvenience to the people; the jurists, therefore, acted to devise means by which to get over these difficulties while still keeping within the Sharī^ca. They are given in various lawbooks

and are expressly permitted. One of the earliest transactions of this kind is the double contract of sale in which one person sells to another person who intends to borrow on interest something against the total sum of capital and interest which are to be due for payment at a fixed date, and at the same time buys the article back for the capital which is at once handed over.

We may conclude that the system of evading the Shari^c was the only method by which the theory of interest could retain some semblance of control over actual practice. We may also conclude that the theory represented less of actual practice than an ideal.

The Mughals were Hanafī Turks from Central Asia; and their political state was based on Hanafī jurisprudence. Likewise a large majority of the Muslims in India followed this school.

Until the death of Awrangzīb ^cĀlamgīr in 1707, a large proportion of the national wealth was concentrated in the hands of the Muslim community, and it was almost impossible for a Muslim family to be in such a state of penury as could lead him to borrow on interest.

Awrangzīb, although faced with financial difficulties, depended on his usual sources, and Hindu bankers had no power during his reign. After his death the empire began to decline rapidly. His successors, in order to meet the expenses of internecine wars, took large loans from the great Hindu bankers at a ruinous rate of interest. This crippled the borrower, and when debts were repudiated, the bankers conspired against their authority and supported their rivals. Omī Chand, one of the representatives of the banking house to whom the Nawāb of the Bengal owed large sums, conspired against him with Mīr Ja^Cfar Khān, his rival, and the East India Company, and helped not only the downfall of the Muslim sovereignty in the Bengal but also to the general disintegration of the Mughals. In 1757, the East India Company which defeated Nawāb Sirāj al-Dawla with the help of the bankers, at Plassey, was, a hundred years later to try the Mughal Emperor, Bahādur Shāh, for rebellion and high treason against its authority. Had the Muslims been permitted to receive and give a reasonable rate of interest, at a time of necessity, instead of borrowing at a high rate of interest from the Hindu bankers, Muslim sovereignty in India would have certainly proceeded on entirely

different lines.

The disintegration of the Mughal Empire had a direct and adverse effect on the economic prosperity of the Muslims which they had enjoyed for several hundred years. Loss of political power in a province meant that the Muslims lost the benefits from that province. Every new loss meant an additional loss, and the already narrow field of employment was still further contracted.

The East India Company gradually gained political power, gradually did away with the intermediary Muslim nobles and Jagirdars and removed Muslims from their service because they were distrustful of those who had been in it previously. Consequently the usual source of income of the Muslims was dried up by the new Administration.

Shāh ^CAbd al-^CAzīz declared India Dār al-Harb, the abode of war, for Muslims; and by doing so, he made it legal for Muslims to invest their capital in trade, industry, agriculture or other programs of capital development, without infringing the prohibition of interest. Those who were forced to borrow for their

existence could borrow from a Muslim at a much lower rate of interest than that charged by the Hindu money-lenders. However, Shāh ^CAbd al-^CAzīz failed to persuade the Muslim nobility to participate in interest-carrying commercial transactions, and the entire field of fiscal operation remained in the hands of non-Muslims. The nobility decided to live on their resources, and when their hoardings ran dry, then on money borrowed from Hindu money-lenders. As a result of this a large majority of the Muslim community were left at the mercy of the Hindu money-lenders who charged exorbitant rates of compound interest. This ensured that a debt not quickly repaid grew rapidly to the point where it could not be repaid from the usual income of the borrower.

A new system of administration of justice provided the money-lender with regular facilities, of a kind hitherto quite unknown, for enforcing the payment of debts, just or unjust. The law guiding the courts prescribed that agreements, however loose, between a borrower and a money-lender, should be enforced, without detailed enquiry into the circumstances. This system of justice was a boon to the money-lender who being the only literate party, kept the accounts or had the bonds

drawn up, and it could place much of the borrower's moveable and immoveable property at his disposal. Consequently, the borrower could be reduced to such a condition, socially and economically, as never to be able to regain his footing in society.

Previously, money-lenders had never demanded a higher rate of interest than was sanctioned by usage and public opinion, and had no legal means of enforcing payment from their debtors. They could, however, refer any case of a defaulting debtor to the village court, panchāyat, but since the members of this institution were recruited from the cultivators of the village, it was inclined to give judgements which showed more than a legitimate concern for the interest of the borrower, and the money-lender had no chance of recovering his debt unless he could persuade some powerful Zamīndār to intervene on his behalf. More frequently he had recourse to throwing himself on the threshold of the debtor, and refusing to budge till the debt was settled.

The judicial innovation introduced by the Company Government had a direct and adverse effect on the relationship of the cultivator and the money-lender. The

courts not only diminished his judicial independence, by diminishing that of the panchāyat, but their judgement, based upon principles of equity, favoured the money-lender more than him. The Company's officers, who were practically involved in village administration, observed that throughout the country in one village after another the cultivators had been gradually dispossessed of their holdings by the Hindu money-lenders who thrived under the new dispensation. The officers reported to their higher authorities that if that course of affairs continued, a great part of the property of the cultivators would be transferred to a small monied class which would become disproportionately wealthy by the impoverishment of the rest of the population. Thornburn warned the Government:

'The point to which I would draw attention at present is that nearly six million of Muhammadan peasants and their dependents are under the operation of laws and a revenue system created by us within the last 36 years, being harassed and expropriated in the interest of some 40,000 Bunniah (sic) who contribute little to the

expense of Government, and would be a source of weakness to it in critical times.¹

Despite their awareness of the magnitude of the evil, the British administrators who ruled the country were far too committed to laissez-faire principles to intervene between debtor and creditor.

The process of land-transfer to the money-lender continued. Every year large numbers of estates were put to sale under the decree of the courts in payment of debts, which gave rise to widespread agrarian discontent throughout the country. The cultivators took advantage of the disturbances of 1857 throughout the country, and in 1875 in the Deccan, to burn and destroy the houses and property of the money-lenders, and to seize and destroy those legal documents which proclaimed their bondage to them.

Although there was a considerable opposition to the view of Thorburn and other British officers who were thinking on the same lines, the Government, at last,

1. loc. cit. p. 43.

decided to introduce legal reforms for the protection of those who could not protect themselves against the sophisticated money-lenders, and passed in 1879 The Deccan Agriculturalists' Relief Act, and in 1900, The Punjab Land Alienation Act as a solution to the problem.

CHAPTER 1

Interest and the Qur'ān Literature

The concept of additional payment made by the borrower to the creditor generally understood as interest in Economics, is represented in Arabic by the term ribā (ربا), which literally means 'excess' 'increase' or 'addition':¹ الزيادة على الشيء. It is discussed in the following passages of the Qur'ān:

وما آتيتم من ربا ليربو في أموال الناس فلا
يربو عند الله وما آتيتم من زكاة تريدون وجه
الله فأولئك هم المضعفون

(And what you give in usury, that it may increase upon the people's wealth, increases not with God; but what you give in alms, desiring God's Face, those - they receive recompense manifold).²

1. Al-Ṭabarī, Tafsīr, Cairo, 1954, Vol. VI, p.7.

2. The Qur'ān, 30:39 (English translation from The Koran Interpreted, A.J. Arberry, Karachi, 1964.)

يا أيّها الذين آمنوا لا تأكلوا الربا أضعافا
مضاعفة واتّقوا الله لعلكم تفلحون

(O believers, devour not usury, doubled
and redoubled, and fear you God; haply
so you will prosper).³

الذين يأكلون الربا لا يقومون إلا كما يقوم الذى
يتخبط الشيطان من المسّ ذلك بأنهم قالوا إنما البيع
مثل الربا وأحلّ الله البيع وحرم الربا فمن جاءه
موعظة من ربه فانتهى فله ما سلف وأمره الى الله
ومن عاد فأولئك أصحاب النار هم فيها خالدون يمحى
الله الربا ويرتّب الصدقات والله لا يحبّ كلّ كفّار أثيم
إنّ الذين آمنوا وعملوا الصالحات وأقاموا الصلوة وآتوا
الزكاة لهم أجرهم عند ربهم ولا خوف عليهم ولا هم
يحزنون يا أيّها الذين آمنوا اتّقوا الله وذروا ما
بقي من الربا إن كنتم مؤمنين فإن لم تفعلوا فاذنوا
بحرب من الله ورسوله وإن تبتم فلكم رؤوس أموالكم
لا تظلمون ولا تظلمون

(Those who devour usury shall not rise again

3. Ibid, 3:125.

except as he rises, whom Satan of the touch prostrates; that is because they say, 'Trafficking is like usury' God has permitted trafficking, and forbidden usury. Whosoever receives an admonition from his Lord and gives over, he shall have his past gains, and his affair is committed to God; but whosoever reverts - those are the inhabitants of the Fire, therein dwelling forever. God blots out usury, but freewill offerings He augments with interest. God loves not any guilty ingrate. Those who believe and do deeds of righteousness, and perform the prayer and pay the alms - their wage awaits them with their Lord, and no fear shall be on them neither shall they sorrow. O believers, fear you God; and give up the usury that is outstanding, if you are believers. But if you do not, then take notice that God shall war with you, and His Messenger; yet if you repent, you shall have your principal, un-
wronging and unwronged).⁴

4. Ibid, 2:276-479.

In 30:39, the Qur'ān contrasts the practice of ribā with the obligation of zakāt. It affords some reason for assuming that people made loans and expected an additional amount at the time of payment. This additional payment over and above the original loan is called ribā. Later evidence corroborates this opinion.

Mālik b. Anas cites the following statement alleged to be from Zayd b. Aslam, the Successor 'التابعي'.

كان الربا في الجاهلية أن يكون للرجل الحق إلى أجل فإذا حلّ الأجل قال أتقضي أم تربي فإن قضي أخذ وألا زاده في حقه وزاده الآخر في الأجل

(In the Jāhiliyya, ribā operated in this manner: a person would owe another a debt for a specified period and at the time of its maturity the creditor would ask the debtor, 'Will you pay off the debt or pay it with an additional amount?' If the latter paid, the creditor took the payment, otherwise the debtor increased the debt of his creditor and the creditor extended the

term for payment).⁵

It appears from this statement that a loan was made for a certain period. At the time of its maturity the creditor would, in the view of Mālik, ask the debtor, 'Will you pay off the debt or will you pay it in future with an additional amount in consideration of an easing time?' If the debtor was unable to discharge the debt, he would communicate his willingness to pay a certain amount with the original debt on the stipulation of a further term for payment.

It seems reasonable to suppose that this additional payment made by the borrower to the creditor over and above the original debt may be what is referred to as ribā in the Qur'ān.

Zujjāj, a prominent grammarian of the third century of the Islamic era, defines ribā in the following way:

5. Mālik b. Anas (d. 179 A.H.), Al-Mawatta,
Kitāb al-buyū^c, Bāb al-ribā, Cairo, 1951.

كلّ قرض يؤخذ منه أكثر منه أو تجرّ به منفعة
هو الربا

(Every loan from which something more than the original amount is received or from which some benefit accrues is ribā).⁶

In other words ribā signifies that additional amount which is paid by the debtor to his creditor over and above his creditor's principal.

Abū Bakr Jaṣṣāṣ elaborates ribā as:

هو القرض المشروط فيه الاجل وزيادة مال على المستقرض

(It is a loan payable at a specified date, plus an additional amount to be paid by the debtor).⁷

It is again confirmed that ribā denotes interest payable at a certain time by the debtor to the creditor.

6. Zujjāj (d. 311 A.H.) Tāj al-^cArūs [رجا]

7. Jaṣṣāṣ (d. 370 A.H.) Aḥkām Al-Qur'ān, Istunbūl,

Ibn Al-Athīr gives a general as well as a technical definition of the term ribā as follows:

الربوا الاصل فيه الزيادة وفي الشرع الزيادة
على أصل المال

(Al-ribā means increase on the original, and in the Shar^c, increase on original money).⁸

This again suggests that ribā corresponds in pre-Islamic terms to 'interest' and 'usury'.

Al-Rāzī gives a somewhat different description of the operation of ribā

كانوا يدفعون المال على أن يأخذوا كل شهر قدرا
معينا ويكون رأس المال بافيا ثم اذا حلّ الدين
طالبوا المديون برأس فان تعذر عليه الاداء زادوا في
الحق والاجل فهذا هو الربا الذي كانوا في الجاهلية
يتعاملون به

(People gave money on condition that they
should receive a certain amount every
month, while the original amount remained
the same. At the expiry of the term of
the debt, they demanded the principal of

8. Ibn Al-Athīr, (d. 606 A.H.), Nihayat fī Gharīb al-Hadīth wal-Āthār, Cairo 1322 A.H., Vol.2, p.66.

the debtor. If the debtor was unable to pay, they increased the amount of the debt and extended the term of repayment. This is what was practised as ribā in the Jāhiliyya).⁹

According to this, a loan was advanced for a certain period on payment of a certain amount of interest every month, without reduction of the principal. At the expiry of the date of the payment, the creditor increased the principal and extended the term of repayment.

Al-Rāzī's description of ribā is different from that of Mālik. Owing to the great distance of time and lack of contemporary historical evidence, it is hard to know which one is the exact kind of ribā of the Jāhiliyya. Therefore we may suppose, at least, that the term ribā discussed in Qur'ān 30:39 and in the various statements means interest or usury as translated in English by Schacht.¹⁰

9. Al-Rāzī, Tafsīr, Vol. IV, p.130.

10. Schacht J., Encyclopaedia of Islam, [ribā]

The internal evidence of the opening verses of Sūra 30 furnishes some basis for assuming that verse 39 regarding interest might have been revealed in the early years of the Prophet's Mission.¹¹ The opening verse:

غلبت الروم في أدنى الأرض وهم من بعد غلبهم
سيغلبون في بضع سنين

(The Greeks have been vanquished in the nearer part of the land; and, after their vanquishing, they shall be the victors in a few years)

refers to the conflict of the Persians and Byzantines in Syria and Palestine. The armies of the Eastern Roman Empire had been defeated by the Persians in the territories near Arabia. In the year A.D. 614 Jerusalem and Damascus fell, and in the following year Egypt. A Persian army invaded Anatolia and was threatening Constantinople itself in the year A.D. 615 or 616. (The sixth or seventh year before the Hijra).¹²

11. Al-Ṭabarī, op. cit.; Noldek-Schwabley,

Geschichte des Qorāns, 1, 1909.

12. Gibbon, E., History of the Decline and Fall of the Roman Empire, London 1819, Ch. XLVI.

It is not astonishing that interest is condemned in so early a revelation; the absence of such early condemnation would have been astonishing because the verses of the Qur'ān are full of denunciations of economic injustices such as cheating in weights and measures etc.¹³ It is, then unlikely that the Qur'ān would have failed to condemn interest, which had been commonly declared as economic injustice by earlier religions.¹⁴ Here, however, it contrasts interest with zakāt. It does not directly prohibit it, but passes only a stricture on interest. When the Prophet migrated to Medina, this mild admonition was followed by an express prohibition of usury or compound interest in 3:125.

This prohibition seems to have been revealed in Medina, as the Muslims' defeat at Uhud is referred to in verses 134-135 of the same Sūra:

ان يمسكم قرح فقد مس القوم قرح مثله

13. The Qur'ān, 11:129, 188; IV:29; V:33,38,90,91.

14. Encyclopaedia of Religion and Ethics, [usury]

(If a wound touches you, a like wound
already has touched the heathen).

Here, however, people are merely forbidden excessive rate of interest on loans.

Al-Tabarī cites a statement from Zayd b. Aslam, the successor (التابعي) which supports this. The statement runs as follows:

انما كان الربا في الجاهلية في التضعيف وفي السن يكون للرجل فضل دين فيأتيه اذا حلّ الاجل فيقول له تقضيني أو تزيدني فان كان عنده شيء يقضيه قضي والا حوله الى السن الذي فوق ذلك ان كانت ابنة مخاض يجعلها ابنة لبون في السنة الثانية ثم حقة ثم جذعة ثم رباغيا ثم هكذا الى فوق وفي العين يأتيه فان لم يكن عنده أضعفه في العام القابل فان لم يكن عنده أضعفه أيضا فيكون مئة فيجعلها الى قابل مئتين فان لم يكن عنده جعلها أربعمئة يضعفها له كل سنة أو يقضيه قال فهذا قوله لا تأكلوا الربا أضعافا مضاعفة

(Ribā in the Jāhiliyya consisted in doubling (in the case of a monetary loan) and age (in the case of a loan of cattle). Part of a debt owed to a man might be outstanding. He would approach the debtor, at the expiry of date of payment, and ask him: 'Will you pay it off or increase the amount?' If the debtor had something to repay him, he paid, otherwise he would advance the age of the animal to be repaid by a year. If a one-year-old she-camel was due, he would be required, in the second year to give a two-year-old she-camel. Then (if a further extension was granted) he would return a she-camel which has passed her third year but was not four years old, then a camel which has passed its fourth but was within its fifth year, then that which had passed its fifth year but was not six years old - so on. The same prevailed in money transactions, that is, if the debtor was unable to pay, the creditor would double the amount the next year, if he would not pay then, he would double it again. For instance, if 100 dirhams were due, in the following year, he increased it to 200 dirhams, and if he had not got it, in the third year to

400 dirhams, doubling it until the debtor paid the debt. This is what is stated in the verse: ¹⁵ (لا تأكلوا الربا أضعافاً مضاعفة)

It is stated that if the debtor was unable to pay off the debt in due time, the loan was doubled, and another time for repayment was granted. If he could not pay again, the amount was doubled again. The process of doubling and redoubling went on until the borrower paid off whole the accumulated amount.

Mālik's quotation of Zayd b. Aslam differs from Ṭabarī's in the respect that it did not specify any rate of interest while, according to Ṭabarī, the debt was doubled every year until it was paid off. Mālik also did not give any information about a loan of cattle, which is discussed in detail in Ṭabarī's quotation.

The various descriptions of ribā in the Jāhiliyya given by the exegetic scholars do not represent any historical situation. They rather reflect various attempts at suggesting the custom preparatory to what was thought to be the effect of the prohibition referred to in the Qur'ān. It is clear, however, that

15. Al-Ṭabarī, op. cit., vol. V, pp. 204-205.

the Qur'ān prohibits the charging of excessive increase on loans, even though we are not in a position to say exactly what the terms of these loans were or exactly what the rates of interest were. The following statement of Al-Rāzī may be no more than an example of this:

كان الرجل في الجاهلية اذا كان له على الانسان
مائة درهم الى اجل فاذا جاء الاجل ولم يكن المديون
واجدا لذلك المال قال زدنى المال حتى ازيد في
الاجل فرتباً جعله مائتين ثم اذا حلّ الاجل الثاني
فعل ذلك ثم الى آجال كثيرة فيأخذ بسبب تلك المائة
أضعافاً فهذا هو المراد من قوله أضعافاً مضاعفة

(In the Jāhiliyya, if a person was owed 100 dirhams by another person to be paid by a certain date, and the debtor could not find the money at that time, the creditor would say: 'Increase the amount you owe me, and I will extend the term of payment.' Accordingly many a time he made it 200 and when the second time of repayment expired, he doubled the amount again. So he went on (doubling the amount) for a number of periods with the result that he

received the loan of 100 dirhams many times over. This is what أضافا مضاعفة means).¹⁶

According to this, an unpaid loan was doubled and then quadrupled if it remained unpaid at the second date of payment. It could be redoubled if the debtor could not repay it. This rate of interest is not mentioned in the earlier statement of Al-Rāzī.¹⁷

However Al-Bayḍāwī did not accept the earlier commentator's interpretations of 'أضافا مضاعفة'. In the following statement he suggests a somewhat different meaning of these words:

لا تزيدوا زيادات مكررة لعلّ التخصيص بحسب الواقع
إذا كان منهم يربي إلى أجل ثمّ يزيد فيه بزيادة
أخرى حتى يستغرق بالشئ الطفيف مال المديون

('Do not increase repeatedly (the principal)' perhaps refers particularly to what happens when a man advances a loan on interest for a certain term and then increases it again until by a small

16. Al-Rāzī, op. cit.

17. See above p. 25.

debt he swallows up all the property of the debtor).¹⁸

According to Al-Bayḍāwī it might be the custom of the Jāhiliyya that the creditor repeatedly increased the debt so exorbitantly that he devoured all the property of the debtor. This is possible, because there is nothing in verse 30:125 which would invalidate this interpretation. The prohibition is against an excessive rate of interest being added to the principal. In Sūra 2:276-279, however, it was completely prohibited.

These verses, which constitute an unprecedented threat against usurers, must have been revealed in Medina and are the last of the verses regarding interest.

Here the Qur'ān strongly forbids interest transactions but allows trade since it rejects the view that interest is the same as profit. The usurers are permitted to receive back their original capital without accumulated interest.

Al-Ṭabarī, commenting on this verse, holds that interest consisted in credit sale in which a purchaser agreed to make pecuniary payment at a fixed date in

18. Al-Bayḍāwī, Tafsīr, Cairo N.D., p. 89.

future. If he could not pay it off at that date, he agreed to add some interest to the original amount and the creditor gave him another date for payment.

Al-Ṭabarī produced the following statement from Qatāda, the Successor (التابعي) in support of his opinion:

انّ ربا أهل الجاهليّة أن يبيع الرجل البيع الى
أجل مسمّى فاذا حلّ الاجل ولم يكن عند صاحبه قضاء
زادوا وأخر عنه

(In the Jāhiliyya, ribā was charged in this manner: a man would sell something against payment at a fixed date. If the purchaser could not pay the purchase-money on that date, the amount of the debt was increased and he was given a later date to pay).¹⁹

This is the third type of ribā alleged to be practised in the Jāhiliyya: that a person who could not pay the sale-money at a specified date was given another date for payment but he had to pay a certain amount of interest with the purchase-money. One may argue that the process of charging interest on credit-sale as well

19. Al-Ṭabarī, op. cit.

as on loan is pretty much the same in principle. In both cases the creditors would advance money or value for a definite period. If the debtor was unable to make pecuniary payment within the prescribed period the creditors would grant him another term to pay on the stipulation of a certain amount of interest. Thus we may believe that both the cases (i) interest on loans قرض , and (ii) interest on credit sales بيع النسبة , are considered to be closely related to each other, perhaps on the ground that both dealings involving credit and those involving loans possessed the same essential characteristics and, also, employed the same process of charging interest.

The term bay^c, sale, in its ordinary concept signifies a transfer of property in consideration of a price in money, but, the term has a more comprehensive meaning in Islamic law and is applied to every exchange of property for property with mutual consent. It, therefore, includes barter as well as sale, and also loan when the articles lent are intended to be consumed and replaced by a similar quantity of the same kind or by the price in money.²⁰ Even to-day, the evolution of mone-

20 Schacht, J., Introduction of Islamic Law, Oxford, 1964, p. 132;

Hughes, T.P., Dictionary of Islam, p. 31.

tary and credit institutions and of modern monetary theory has recognised credit-transactions as uniquely pecuniary. Thus R.G. Hawtrey points out that credit, in fact, is best understood as simply another name for debt.²¹ We may conclude that the discussion seems to be quibbling over the words, and what was actually practised was that if a person owed another a debt, or purchase-money, payable at a definite time, he would communicate his willingness to pay interest for use of the loan of money or goods. If it was not settled at the fixed time, additional interest was added to the debt with an extension of the term of payment. The process could be repeated until the debtor paid what was due with the accumulated interest. This is what seems to have been understood by Zamakhsharī:

كان الرجل منهم اذا بلغ الدين محله زاد في
الاجل فاستغرق بالشئ الطفيف مال المديون

(A man among them (having a loan) at the
expiry of the term of payment of the debt,

21. Hawtrey, R.G., Encyclopaedia of the Social Sciences,
[credit]

Halm, G.N., Monetary theory, Philadelphia, 1940, Vol. I, p. 320

would extend the term of the payment to (another) term of payment. The whole property of the debtor would be swallowed up by a small matter).²²

The idea of fixed term ' الى أجل مسمى ' repeatedly mentioned from the earlier sources onwards, which plays a basic role in all the discussions on interest in the Tafsīr literature is not derived from any verse of the Qur'ān in which interest is mentioned. The expression ' الى أجل مسمى ' marks a link which connects loans with sales and thus permitted scholars in their discussions on sale the introduction of the distinction between immediate and deferred transactions, itself a distinction acknowledged by the Qur'ān (2:282). This distinction is prominent in all the Tafsīr and hadīth discussions to such a degree that certain groups could even argue that delay in settlement was the exclusive factor in ribā. Such an idea was embodied in the slogan: ' لا ربا الا في النسبة '.²³

The expression ' الى أجل مسمى ' is doubtless derived from the following verses of the Qur'ān, which recognises

22. Zamakhsharī, Tafsīr, Cairo 1967, Vol. I, p.302.

23. Detailed discussions follow in the next Chapter.

the necessity of contracting debts and discusses in detail the ordinance governing the recording of exchanges, treated under three categories, viz: immediate sale, deferred settlement sale, and loan proper. Hence the connection between loans and deferred payment, and between the two sorts of sale:

يا أيّها الذين آمنوا اذا تدايّنتم بدين الى أجل
مستقّى فاكتبوه وليكتب بينكم كاتب بالعدل ولا يأب
كاتب أن يكتب كما علّمه الله فليكتب وليملل الذي
عليه الحقّ وليتّق الله ربه ولا يبّخس منه شيئا فان
كان الذي عليه الحقّ سفيهاً أو ضعيفاً أو لا يستطيع
أن يملّ هو فليملل وليّه بالعدل واستشهدوا شهيدين
من رجالكم فان لم يكونا رجلين فرجل وامرأتان ممن
ترضون من الشهداء ان تخطّ احداهما فتذكر احداهما
الاخرى ولا يأب الشهداء اذا ما دعوا ولا تسئموا أن
تكتبوه صغيراً أو كبيراً الى أجله ذلكم أقسط عند
الله وأقوم للشهادة وأدنى ألا ترتابوا ألا أن تكون

تجارة حاضرة تديرونها بينكم فليس عليكم جناح ألا
تكتبوها واشهدوا اذا تبايعتم ولا يضار كاتب ولا
شهيد وان تفعلوا فانه فسوق بكم واتقوا الله
ويعلمكم الله والله بكل شيء عليم

(O believers, when you contract a debt
one upon another for a stated term,
write it down, and let a writer write it
down between you justly, and let not any
writer refuse to write it down, as God has
taught him; so let him write, and let the
debtor dictate, and let him fear God his
Lord and not diminish aught of it. And if
the debtor be a fool, or weak, or unable to
dictate himself, then let his guardian
dictate justly. And call in to witness two
witnesses, men; or if the two be not men,
then one man and two women, such witnesses as
you approve of, that if one of the two women
errs the other will remind her; and let the

witnesses not refuse, whenever they are summoned. And be not loth to write it down, whether it be small or great, with its term; that is more equitable in God's sight, more upright for testimony, and likelier that you will not be in doubt. Unless it be merchandise present that you give and take between you; then it shall be no fault in you if you do not write it down. And take witnesses when you are trafficking one with another. And let not either write or witness be pressed, or if you do, that is ungodliness in you. And fear God; God teaches you, and God has knowledge of everything).²⁴

Three types of transactions are here envisaged; debt, immediate exchange and contracted exchange. The words **تجارة حاضرة** were a reference to an immediate, on-the-spot transaction of the kind later to be referred to in a ḥadīth as **يدا بيد**, and their position in the verse suggests that the Qur'ān here envisages two types of sale transaction:

24. The Qur'ān, 2:282.

the immediate exchange, and the agreement to sell with deferred payment. This latter would appear to be referred to in the words immediately following:

واشهدوا اذا تبايعتم ولا يفارّ كاتب ولا شهيد

which certainly separate, such a deferred payment sale from the immediate sale. The transaction of the latter need not be recorded; the preparation of a document of agreement for the former is recommended. It will be seen presently that this differs radically from the terms of ḥadīth discussion with its emphatic prohibition of payment-deferred transactions, frequently summed up in the tag: لا ربا إلا في النسيئة (it is not ribā unless it is in a credit transaction).

Commenting upon this verse, Al-Ṭabarī defines the meanings of the words , تجارة حاضرة (present sale) as ما كان يدا بيد (from hand-to-hand) and اذا تداييتم بدين الى أجل مسّى (when you contract a debt one upon another for a stated term) as:

اذا تبايعتم بدين أو اشتريتم به أو تعاطيتم
أو أخذتم به الى وقت معلوم

(If you agree on a debt, or buy or exchange
or take anything on credit with a specified

date of payment).²⁴

In an attempt to support his opinion, Al-Ṭabarī produced the following statement:

عن ضحّاک قال ما کان من بیع حاضر فان شاء
أشهد وان شاء لم يشهد وما کان من بیع الى أجل
ما أمر الله أن يكتب ويشهد عليه

(Dahhāk says: if it is an on-the-spot exchange, one is given the option of calling or not calling witnesses, but in the case of a transaction in which payment is deferred for a certain time, God has ordained that it shall be written down in the presence of witnesses).²⁵

This suggests that the Qur'ān envisages two types of sale: hand-to-hand sale, and a contract of sale in which delivery is postponed for a certain period. The former need not be written down or witnessed; in the case of the latter, both are ordained because it may include interest which accrues as the result of the transaction and which was not precisely calculable at

24. The Qur'ān, 2:282.

25. Al-Ṭabarī, op. cit.

the time the transaction was concluded. It also appears that the Qur'ān separates profit ' ربح ' in hand-to-hand trade, from interest or gain ' ربا ' on loan, and seeks to avoid misunderstanding arising as the result of unwritten agreements of credit transaction.

After a careful study of the above-mentioned verses of the Qur'ān (30:39, 3:125, 2:276-279, 2:282) regarding interest and debt we may note at least that the custom of investing capital on interest at the time of the Prophet, against which the relevant passages of the Qur'ān were directed, was a system of loan in which the borrower would express his willingness to pay a given amount of interest over and above the amount of the loan. The Qur'ān emphatically prohibits this, but it does not specify any punishment or penalty except punishment in Hell. It is as if it did not intend to lay down legal rules regulating the forms and effects of the contract, but to establish moral norms under which the practice was prohibited.

The theory of on-the-spot sale and credit was further developed and restricted to certain types of transaction, as will be seen in the following Chapter.

CHAPTER II

Interest and Hadīth Literature

Hadīths give different answers to the question of what forms of business come under the Qur'ān prohibition of ribā. The general ignorance of the correct interpretation is emphasised in the best known hadīth of the subject, attributed to the Caliph ^CUmar and recorded in the Musnad of Aḥmad b. Ḥanbal, the Sunan of Ibn Mājah, Dalā'il Al-Nubuwwa of Al-Bayhaqī and other similar compilations of the traditionists of the later period, which runs as follows:

عن عمر بن الخطاب أن آخر ما نزلت آية الربا
وأن رسول الله صلى الله عليه وسلم قبض ولم يفسرها
لنا فدعوا الربا والريبة

(It is related by ^CUmar that the last verse to be sent down was that on ribā, but the Apostle of God expired without explaining it to us. Therefore give up ribā and anything doubtful (resembling

it).¹

The report implies that the verse on ribā was the last revelation, and the Prophet did not explain the term of ribā. This seems to contradict the claim of the Qur'ān 5:5 : ' اليوم أكملت لكم دينكم ' (To-day I have perfected your religion for you, and I have completed My blessing upon you). The Caliph ^CUmar himself is reported to have said that the above verse was revealed on the day of ^CArafāt during the last pilgrimage of the Prophet.² Now if the verse on ribā was the last revelation, as stated in ^CUmar's report, the above verse must have preceded it, and therefore it could not be claimed at that time that 'the faith was perfected'. It is for this reason that Al-Suddī and some commentators have stated that after the revelation of the verse 5:5, no verse was sent down relating to permission (حلال) and prohibition (حرام).³

1. ^CAlī al-Muttaqī, Kanz al-^CUmmāl, Cairo, 1312 A.H., Vol. II, p. 321.

2. Muslim, Ṣaḥīḥ, Kitāb al-Tafsīr; Suyūṭī, Al-Ittiqān fī ^CUlūm al-Qur'ān, Cairo, 1390 A.H., Vol. I, p. 23.

3. Suyūṭī, op. cit. p. 35.

In spite of the report that the Prophet did not explain ribā, however, Usāma reports the following statement attributed to the prophet: لا ربا الا في النسبة: (There is no ribā except in nasī'a or there is no ribā in hand-to-hand transactions).⁴

The report implies ribā as the additional payment which accrues in a credit transaction, i.e. a person buys a commodity on credit and agrees to pay something over and above the original amount. This additional payment payable in the future is called ribā; while gain in on-the-spot transactions is not considered ribā.

In another hadīth, this notion is restricted to five commodities: gold, silver, wheat, dates and barley, as follows:

قال رسول الله صلى الله عليه وسلم الذهب بالذهب ربا الا هاء وهاه والورق بالورق ربا الا هاء وهاه والبر بالبر ربا الا هاء وهاه والتمر بالتمر ربا الا هاء وهاه والشعير بالشعير ربا الا هاء وهاه

(The Apostle of God said: (excess payment in the exchange of) gold for gold, silver

4. Bukhārī, Saḥīḥ, Kitāb al-Tafsīr

for silver, wheat for wheat, dates for dates, barley for barley, is ribā unless payment is made on the spot).⁵

This shows that additional payment made in on-the-spot exchange of gold, silver and staple foodstuffs was allowed but if the commodities for exchange belonged to the same kind and the transaction involved deferred payment, it came under the definition of ribā.

This statement agrees with the Prophet's previously expressed disapproval of a time-lag in the transaction, but defines this more precisely in limiting the prohibition to the exchange of five commodities.

These rules were further developed in a group of ḥadīths to the extent that the exchange of gold, silver and the staple foodstuffs for an unequal quantity of the same kind was illegal even if it was bartered on the spot:

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5. Mālik, op. cit., Kitāb al-buyū^c, Bāb mā ja'ā fī al-sarf;
 Bukhārī, op. cit., Kitāb al-buyū^c, Bāb al-ribā;
 Muslim, op. cit., Kitāb al-buyū^c, Bāb al-ribā

عن أبي سعيد الخدري قال قال رسول الله صلى
الله عليه وسلم الذهب بالذهب والفضة بالفضة والبر
بالبر والشعير بالشعير والتمر بالتمر والملح بالملح
مثلا بمثل يدا بيد فمن زاد أو استزاد فقد أربى
الآخذ والمعطي فيه سواء

(Abū Sa^cīd al-Khudarī relates that the
Apostle of God said: gold for gold, silver
for silver, wheat for wheat, barley for
barley, dates for dates, salt for salt,
(may be bartered in such a manner, that
they are) equal for equal, hand to hand.
If anyone gives more or asks for more, he
has dealt in ribā. The receiver and the
giver are equally guilty).⁶

In this statement the view previously restricted
to apply to the barter of five commodities, is extended

6. Bukhārī, op. cit.;

Muslim, op. cit.;

Nisā'ī, Sunan, Kitāb al-buyū^c, Bāb al-ribā

Ibn Mājah, Sunan, Abwāb al-tijāra.

to the barter of six commodities: gold, silver, wheat, dates, barley, salt. On-the-spot exchange of unequal quantities of the same commodities, lawful in the previous statements, is forbidden here.

The following statement restricts the barter of green dates for ripe ones.

عن سعيد بن أبي وقاص قال سمعت رسول الله صلى الله عليه وسلم يسئل عن شري التمر بالرطب فقال أينقص الرطب اذا يبس قالوا نعم نهى عن ذلك

(Sa^cd b. Abī Waqās says: I heard the Apostle of God asked concerning the barter of dry dates for fresh. He said, 'Do fresh dates diminish when they become dry?'. The questioners said, 'Yes.' The Apostle of God prohibited it.⁷

This implies that a man intending to purchase

7. Shāfi^cī, Risāla, p. 277.

Mālik, op. cit.

Nisā'ī, op. cit.

Abū Da'ūd, Sunan, Kitāb al-buyū^c Bāb al-ribā

dried dates and pay unripe ones in exchange, was not allowed to do so, on the ground that he did not know whether the quantity of the green dates would be equal, after they were dried, to the quantity of the dried dates which he was taking at that time. Abū Ḥanīfa, however, contrary to the opinions of Shaybānī, Abū Yūsuf, Mālik, Shāfiʿī and Aḥmad b. Ḥanbal, refused to take the report as authentic because to him, the transmitter of the report was not trustworthy.⁸

The same notion is mentioned in the following report:

عن أبي سعيد الخدري وعن أبي هريرة أن رسول الله صلى الله عليه وسلم استعمل رجلا على خيبر فجاءه بتمر جنيب فقال له رسول الله صلى الله عليه وسلم أكلت تمر خيبر هكذا فقال لا والله يا رسول الله أنا لنأخذ الصاع من هذا بالصاعين والصاعين بالثلاثة فقال رسول الله صلى الله عليه وسلم لا تفعل بع بالدراهم ثم ابتع بالدراهم جنيبا

8. This is discussed in the next Chapter.

(Abū Sa^cīd al-Khudarī and Abū Hurayra relate that the Apostle of God appointed a man governor of Khaybar. He brought selected dates to the Apostle of God who said: 'Are all dates of Khaybar the same?' The man replied, 'No! by God, O Apostle of God we purchase one sā^c of these dates for two sā^cs (of the ordinary kind) and two for three.' Said the Apostle of God, 'Don't do so again, sell the common dates for dirhams and then purchase with those selected ones.')

This ~~is~~ again implied^s that the barter of unequal quantities of dates^{is forbidden}, even if the transaction is made on the spot.

The exchange of gold and silver for the same commodity is mentioned in the following report

عن يحيى بن سعيد أنه قال /رسول الله صلى الله عليه وسلم سعدين أن يبيعا آنية من مغانم خيبر من ذهب أو فضة فباعا كل ثلاثة بأربعة عينا أو كل

9. Bukhārī, op. cit.

Muslim, op. cit.

Nisā'ī, op. cit.

أربعة بثلاثة عينا فقال لهما رسول الله صلى الله
عليه وسلم أريتهما فردّا

(Yahyā b. Sa^cīd narrates that he said:
the Apostle of God ordered the two sa^cds
(Sa^cd b. Abī Waqās and Sa^cd b. ^cAbbāda)
to sell articles of gold or silver from
the booty of Khaybar. They sold every
three (articles) for four, or every four
for three, of the same kind. The Apostle
of God said to them, 'You have dealt in
ribā; return (the exchange)).¹⁰

On-the-spot transactions of unequal quantities of
gold and silver for the same commodity are prohibited,
and any excess paid by one of the contracting parties
in favour of the other is declared as ribā in this
statement.

One observes a clear tendency of gradual development
in the definition of ribā in the ḥadīth literature. The
view mentioned in the statement
(there is no ribā except in nasi'a) was developed and

10. Mālik, op. cit.

extended to the five commodities.¹¹

Then another group of ḥadīths defines ribā as an additional payment made in an on-the-spot transaction. Time-lag in such a transaction is completely prohibited in the following way:

ان استنظرك الى أن يلج بيته فلا تنظره

(If he asks you to wait until he enters his house, do not wait for him).¹²

However, the Qur'ān acknowledges credit transactions and orders the agreement to be written down in the presence of witnesses. It also allows hand-to-hand transactions and refers to them as: تجارة حاضرة.¹³ Ibn ^CAbbās, Ibn Mas^Cūd, Ibn Musayyib and ^CUrwa b. Zubayr are reported to have refused to accept the reports from Abū Sa^Cīd al Khudarī, Abū Huraira and Sa^Cd b. Abī Waqās as genuine and propagated the earlier view reported by Usāma.¹⁴

11. See above pp. 47-49.

12. Mālik, op. cit.

13. See above, Chapter I, pp.

14. Shāfi^Cī, Ikhtilāf ^CAlī wa ^CAbdullah Ibn Mas^Cūd, p. 12.

The two sets of ḥadīths are in conflict, which was not overlooked by the early experts on this subject. They harmonised them. The most famous and popular attempt to resolve this contradiction is that of Shāfiʿī who says:

ويكون أسامة سمع رسول الله صلى الله عليه وسلم يسئل عن الصنفين المختلفين مثل الذهب بالورق والتمر بالحنطة أو ما اختلف جنسه متفاضلا يدا بيد فقال إنما الربا في النسيئة أو يكون مسألة سبقت بهذا فأدرك الجواب فروى الجواب ولم يحفظ المسئلة أو شك فيها لأنه ليس في حديثه ما ينفي هذا عن حديث أسامة فاحتمل موافقتها لهذا

(it is possible that Usāma heard the Apostle of God asked about hand-to-hand exchange, with additional payment of two different kinds of commodities, for instance, (the exchange of) gold for silver, of dates for wheat and other articles of different kinds. The Apostle of God said: 'ribā occurs only in credit transactions'; (or it may be that) that a question

had already been asked (when Usāma arrived) so he (Usāma) heard only the reply. He reported the reply, but did not remember the question, or he may have had doubts about it because there is nothing in his ḥadīth that prevents this being in Usāma's ḥadīth, so, in this way, there is a possibility of harmonising the two (contradictory sets of ḥadīths).¹⁶

Though Shāfi^{Cī} attempted to harmonise the contradiction, yet the fact remains that additional payment in hand-to-hand transactions, which is accepted as profit and acknowledged by the Qur'ān 2:282, is hardly to be considered as interest. This is why the report لا ربا الا في النسيئة is clearly protesting against the opposite opinion, that the additional payment is ribā even if it occurs in on-the-spot transactions.

It eventually happened that additional payment was considered ribā when it appeared in a transaction of gold, silver, wheat, barley, dates and salt when these items were bartered for their like. So the exchange of a commodity was completely banned unless it was exactly equal in weight, and payment was made on

16. Shāfi^{Cī}, op. cit.

the spot. This concept seems totally inappropriate to day-to-day commercial dealings, in that it was out of touch with practical needs and circumstances. It is hard to see a realistic commercial point or purpose in a transaction in which a person takes a certain amount of something in exchange for the same quantity of the same thing from another person at the same meeting. Transactions other than these unrealistic ones, however, could be carried out only by evading the law, and this is perhaps the prime reason for the institution of the *hiyal* (devices) that are discussed in Chapter IV.

Purchase and Sale of Animals

Another example of the contradictory hadīths concerning interest is that which relates to the barter of animals for animals (بيع الحيوان بالحيوان).

One view repeatedly expressed, but also challenged, that the sale of animals in exchange for animals, with additional payment, does not come under the definition of ribā.

Mālik b. Anas reports from ^CAlī that he sold one of his camels and obtained in exchange twenty camels. He also represents ^CAbdullāh b. ^CUmar, Ibn Shahāb and Sa^Cīd b. Al-Musayyib as according sanction to such a transaction.¹⁸ The statements run as follows:

عن حسن بن محمد بن علي بن أبي طالب أن علي
ابن أبي طالب باع جملا يدعى عصيفيرا بعشرين بعيرا
الى أجل

(Hassan b. Muḥammad b. ^CAlī b. Abī Tālib narrates that ^CAlī b. Abī Tālib sold a camel of his called ^CUṣayfīr on credit for twenty camels).

18. Mālik: op. cit, Kitāb Al-buyū^C, Bāb mā Yajūz min bay^C al-bayawān.

This shows that additional payment in the exchange of camels is not considered ribā even if it accrues in a credit transaction.

عن نافع أن عبد الله بن عمر اشترى راحلة
بأربعة أبعرة مضمونة عليه يوفىها صاحبها بالريضة

(Nāfi^c says that ^cAbdullāh b. ^cUmar purchased one camel for four on credit and agreed to give the four camels to the seller at Al-Rabadha).

This statement again shows that the profit gained from the exchange of animals was not considered ribā even if it was in a deferred payment transaction.

Bukhārī, in his Saḥīḥ, devotes a whole chapter to establishing the permissibility of such transactions. The chapter is entitled:

باب بيع العبيد والحيوان بالحيوان

(Chapter on the sale of slaves and animals for animals).

In this chapter a number of companions of the Prophet and their successor, all of whom were eminent jurists, e.g. ^cAbdullāh b. ^cUmar, ^cAbdullāh b. ^cAbbās, Rāfi^c b. Khadīj, Sa^cīd b. Al-Musayyib and Ibn Sīrīn, accord sanction to such transactions. The conclusion of all such reports is that:

لا بأس ببيع ببيعين نسيئة

(there is nothing wrong in the exchange of one camel for two on credit).¹⁹

The Sunan of Abū Da'ūd, the Musnad of Ahmad b. Hanbal and the Sunan al-Kubra of Bayhaqī also record a ḥadīth from the Prophet which runs as follows:

عن عبد الله بن عمرو بن العاص أن رسول الله
صلى الله عليه وسلم أمره أن يجهز جيشا فنفت الإبل
فأمره أن يأخذ من قلاص الصدقة وكان يأخذ البعير
بالبعيرين إلى ابل الصدقة

(^CAbdullāh b. ^CAmr b. Al-^CĀṣ reports that the Apostle of God told him to equip for an army. The camels were deficient, so he told him to take camels given as alms. Therefore, he effected a transaction at the rate of one camel for every two to be received in alms.)²⁰

This shows that the companion of the Prophet, with the approval of the Prophet, received one camel instead

19. Bukhārī, op. cit., Kitāb al-buyū^C, Bāb bay^C

Al-^Cabīd wa-'l-ḥayawān bi-'l ḥayawān nāsī'a

20. Abū Da'ūd, op. cit., Kitāb al buyū^C, Bāb fī-'l

rukḥṣa;

Ahmad b. Hanbal, Al-Musnad;

Al-Bayhaqī, op. cit.

of two to be received in future. This also indicates that an additional payment in the exchange of animals was not considered as interest by the Prophet himself.

In contrast to the opinion held by the traditionists of the earlier period, like Mālik and others cited above, their successors displayed a gradual increase of strictness in interpreting the Sharīʿa. The Jāmiʿ al Tirmidhī contains the following ḥadīth:

عن جابر رضي الله عنه قال قال رسول الله صلى
الله عليه وسلم الحيوان اثنین بواحدة لا يطلع نسيتا
ولا بأس به إذا بيد

(Jābir reports that the Apostle of God said: 'The exchange of one animal for two on credit is not permissible.

However, if it is a hand-to-hand transaction it does not matter.')²¹

An additional payment on-the-spot transaction is permitted, but if it is in a deferred-payment transaction, it is regarded as ribā and so prohibited.

21. Al-Tirmidhī, Jāmiʿ, Kitāb al buyūʿ, Bāb mā jāʿa fī Karāhiyya bayʿ al-ḥayawān nasīʿa.

The compilers of the Sunan works later on collected ḥadīths which totally prohibited the exchange of animals, on credit:

عن سمرة أن النبي صلى الله عليه وسلم نهى
عن بيع الحيوان بالحيوان نسيئة

(Samura says that the Prophet prohibited the exchange of one animal for another on credit).²²

The same ḥadīth also occurs in the Musnad of Aḥmad b. Ḥanbal. The significant point is that it is found not in the main text of the Musnad but in the supplement added to it by one of his sons and so was not transmitted by him himself.²³

In short, ḥadīth collected in the later period reflect more strictness in interpreting the sharīʿa than those of the former period. If we go back to an earlier period we find that the exchange of animals on credit is permitted. Shāfiʿī and Abū Ḥanīfa hold this view.²⁴

22. Abū Da'ūd, Sunan, Kitāb al-buyūʿ, Bāb al-ḥayawān.

23. Aḥmad b. Ḥanbal, op. cit.

24. Shāfiʿī, op. cit. p.241

Also see pp. 73-74.

CHAPTER III

Interest and Hanafī jurisprudence

The ḥadīth related by Abū Sa^cīd al-Khudarī was generally accepted by the founders of the ancient schools of Islamic law as genuine: In this it is stated that an additional payment in an exchange of gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, constituted ribā. These transactions were allowed only when the quantity of both the commodities being exchanged was exactly the same weight and the delivery was on the spot. The exchange of unequal quantities was permitted when the commodities belonged to different kinds such as gold for silver, wheat for dates, etc., provided the transaction did not involve credit.¹ Some of the earlier jurists, however, did not agree with the doctrine.²

Da'ūd ^cAlī b. Khalāf, the Imām of the Zāhirī School confined the rules given in the ḥadīth: 'equality of weight and measurement' and 'the transaction on the spot'

1. See above p. 49.

2. See above p. 56.

to the exchange of the six commodities specified in the statement.³ Mālik ibn Anas, al-Shāfi^Cī and Ahmad b. Ḥanbal applied these ribā rules to the exchange of all foodstuffs as well as gold and silver. This notion is summed up as لا ربا الا في النقد أو في طعام (there is no ribā unless it (the additional payment) is made in the exchange of gold, silver or of foodstuffs).⁴ Abū Ḥanīfa extended these rules, on the basis of personal opinion (رأى) to the exchange of all fungible merchandise normally sold by weight or measurement:

الربا محرم في كلّ مكيل أو موزون اذا بيع
بجنسه متفاضلا فالعنة عندنا الكيل مع الجنس أو
الوزن مع الجنس ويقال القدر مع الجنس وهو أشمل
والأصل فيه الحديث المشهور وهو قوله عليه السلام
الحنطة بالحنطة مثل بمثل يدا بيد والفضل ربا
وعدة الاشياء الستة الحنطة والشعير والتمر والملح

3. Al-Shaṭṭī, Fī Masā'il al Imām Da'ūd al-Zāhirī,
Damascus, 1330 A.H., p. 135.

4. Mālik ibn Ans, op. cit.; Al-Shāfi^Cī, op. cit.;
Ibn Al-Ukhuwwa al-Shāfi^Cī, Ma^Cālim Qubra;
Al-Ma^Carrī, Dalīl al-Tālib, Kitāb al-buyū^C, Bāb
al-ribā

والذهب والفضة على هذا المثال

(Interest is unlawful on all commodities sold by weight or measurement, when sold for the same commodity with additional payment. The ground for the prohibition, in our opinion, is 'measurement for the same commodity' or 'weight for the same commodity'. It is (also) said 'quantity for the same commodity', which is more comprehensive. The origin of this is the well-known hadīth of the Prophet: 'Wheat for wheat, like for like, hand to hand, and the additional payment is interest.' He enumerated six articles to be regarded in this way: wheat, barley, dates, salt, gold and silver).⁵

For example if a person lends 1 lb gold which is to be returned (in the form of gold) together with an additional quantity, either in the future or on the

5. Al-Shaybānī, Kitāb al-Aṣl, ed. Shafīq Shahata, Cairo, 1954, pp.1-2.

spot, this additional quantity over and above the original quantity constitutes interest.

According to Abū Ḥanīfa, in a transaction where an article, the quantity of which is not measurable or weighable, is exchanged for an article of a different kind (e.g. eggs for shoes) additional payment and credit are both allowed, and the additional payment is not interest, because the grounds of the prohibition of interest 'the sameness of kind' and 'the quality of being measurable or weighable' do not exist. Where both the grounds appear, as in an exchange of gold for gold or wheat for wheat in unequal quantities, additional payment as interest and deferred payment are both prohibited, but in a transaction where only one of the two causes exists, such as the exchange of gold for silver or wheat for barley, in unequal quantities, additional payment does not constitute interest; this, however, should be a hand-to-hand transaction:

إذا عدم الوصفان الجنس والقدر حلّ التفاضل
والنساء لعدم العلة المحرمة والاصل فيه الإباحة وإذا
وجد حرم التفاضل والنساء لوجود العلة وإذا وجد
أحدهما وعدم الآخر حلّ التفاضل وحرم النساء

(When both the qualities, '(sameness of) kind' and '(equal) quantity', are absent, additional payment and credit are both lawful, because of the absence of the ground for the prohibition. The basis of this is the permission (given in the hadīth)* where both (the grounds for prohibition) exist, additional payment and credit are both prohibited, because of the existence of the cause; when one of the two exists and the other is absent, additional payment is permitted but deferred payment is unlawful).⁶

According to this if القدر (kind) and الجنس (quantity) differ, additional payment is lawful but credit prohibited. If الجنس but not القدر differs, additional payment is again lawful but credit prohibited. If الجنس and القدر are both the same, additional payment prohibited as well as credit. The rules are operative only in barter sales. Credit is unlawful. This suggests that the interest rules originally do not refer to sales but only to loans.

6. Al-Marghīnānī, Al Hidāya, Vol. III, p. 46.

* see above p. 49.

Gypsum, iron or other metals cannot lawfully be exchanged for their like with additional payment. This additional quantity will constitute interest:

ولو تباعا مكيلا أو موزونا غير مطعوم بجنسه
متفاضلا كالجص والحديد لا يجوز عندنا لوجود القدر
والجنس

(If a measurable or a weighable commodity, which is not edible, is exchanged for its like, with an additional payment such as gypsum and iron, this is unlawful according to us, because of the presence of '(equality of) quantity' and '(sameness of) kind').⁷

We have observed that in the Hanafī School additional payment is interest and is unlawful when it accrues in an exchange of commodities of the same kind capable of being weighed or measured. Additional payment in an exchange of commodities which are not customarily estimated by weight or measurement, like animals for animals or eggs for eggs, does not constitute interest:

ويجوز بيع الحفنة بالحفنتين والتفاحة بالتفاحتين

7. Ibid

لعدم المعيار فلم يتحقق التفضل ويجوز بيع البيضة
 بالبيضتين والتمر بالتمرين والجوزة بالجوزتين لعدم
 المعيار فلا يتحقق الربا

(It is lawful to sell one handful for two, and one apple for two apples, because of the absence of a criterion of measurement; additional payment is not established. It is lawful to sell one egg for two eggs, one date for two dates and one nut for two nuts because of the absence of a criterion of measurement; interest is not established).⁸

It seems unlikely that this rule arose from an attempt to meet actual cases. It is one of the scholastic subtleties which are the marked characteristic of the Ḥanafī School.

It is also observed that if a man sells a certain quantity of unripe dates for the same quantity of ripe ones, the transaction is perfectly legal, according to Abū Ḥanīfa, because the equality in quantity of the

8. Ibid. p. 47.

commodities is established at the time of the sale. This is contrary to the ḥadīth of the Prophet generally accepted as genuine.⁹ Abū Yūsuf and Shaybānī, however, maintained the illegality of such a transaction:

ويجوز بيع الرطب بالتمر مثلا بمثل عند أبي حنيفة رحمه الله وقال لا يجوز لقوله عليه السلام حين سئل عنه أينقص الرطب إذا يبس فقل نعم فقال عليه السلام لا إذا وله أن الرطب تمر لقوله عليه السلام حين أهدى إليه رطب أوكل تمر خبير هكذا سمّاء تمر أو بيع التمر بمثله جائز لما روينا ولأنه لو كان تمرًا جاز البيع بأول الحديث وإن كان غير تمر فبآخره وهو قوله عليه السلام إذا اختلف النوعان فبيعوا كيف شئتم ومدار ما روى علي زيد بن عياش وهو ضعيف عند النقلة

(The sale of a certain quantity of green dates

9. See above p. 50.

for the same quantity of ripe ones, is lawful, according to Abū Ḥanīfa. The two disciples say: it is unlawful, because of what the Prophet said when he was questioned (about this transaction): Do the green dates diminish when they dry? The person answered: 'Yes.' The Prophet said, 'No (this transaction is not lawful).' According to Abū Ḥanīfa: raṭb (رطب) is (used) for tamr (تمر) in a ḥadīth of the Prophet, when raṭb were presented to him, he said, 'Are all tamr of Khaybar like this?' The Prophet named 'raṭb' tamr. So if raṭb is (considered) tamr. The sale of its like is lawful (according to the ḥadīth) as we have reported* So if raṭb is (considered) tamr the sale is lawful according to the first part of the ḥadīth, and if it is not, it is lawful according to the last part of the ḥadīth which is the statement of the prophet: 'If the two kinds are different, then sell as you like.'

The statement made by the two disciples rests on (the report of) Zayd b. Ayyāsh who is considered a weak authority by traditionists).¹⁰

Here we see that a ḥadīth not accepted by Abū Ḥanīfa is taken as genuine by his two disciples and also that Abū Ḥanīfa's legal thought was not blindly accepted and considered as final. His students had occasions to diverge from him.

The exchange of flesh for a living animal is lawful according to Abū Ḥanīfa and Abū Yūsuf, and any additional payment on either side does not constitute interest. According to Shaybānī, however, it is unlawful.

ويجوز بيع اللحم بالحيوان عند أبي حنيفة رحمه الله وأبي يوسف رحمه الله وقال محمد إذا باع بلحم من جنسه لا يجوز إلا إذا كان اللحم المجزأ أكثر ليكون اللحم بمقابلة ما فيه من اللحم والباقي بمقابلة السقط لأنه إذا لم يكن كذلك يتحقق الربا

10. Al-Marghīnānī, op. cit. p. 48.

ولهما أنه بيع الموزون بما ليس بموزون لأن الحيوان
لا يوزن عادة ولا يمكن معرفة ثقله بالوزن لأنه يخف
نفسه مرة وهو جائع وينقل أخرى وهو شبعان

(It is lawful to exchange flesh for an animal according to Abū Ḥanīfa and Abū Yūsuf. Muḥammad says: when exchanged for flesh of the same species, (it is) unlawful except when (the quantity of) the slain flesh is more (than that of the living flesh) so that (a certain quantity of) the flesh may be set against the flesh (of the living animal), and the remaining (part of the slain flesh) set against what is not flesh. If it is not like this, ribā occurs. According to Abū Ḥanīfa and Abū Yūsuf, (the case in question is) the sale of an article, which is sold by weight for one which is not sold by weight, since it is not customary to weigh an animal. And it is not possible to ascertain

its weight by weighing it because it becomes lighter sometimes (when hungry) and heavier sometimes (when filled with food)).¹¹

An additional payment in an exchange of flour for flour is interest but the exchange of flour for wheat or gruel for wheat is completely banned on the ground that measured quantities of flour and gruel are not directly comparable with measured quantities of wheat:

لا يجوز بيع الحنطة بالدقيق ولا بالسويق لأنَّ
المجانسة باقية من وجه لائها من أجزاء الحنطة
والمعيار فيهما الكيل لكنَّ الكيل غير مستو بينهما
وبين الحنطة لاكتنازهما فيه وتخلخل حبات الحنطة
فلا يجوز وان كان كيلا بكيل ويجوز بيع الدقيق
بالدقيق متساويا كيلا لتحقيق الشرط

(The sale of wheat for flour or gruel is unlawful, because similarity (of kind), to a certain

11. Ibid.

degree, remains. Flour and gruel are products of wheat. (Although) these commodities are all sold by measurement, the measure for the former two is not equal to that for wheat, since flour and gruel are close-packed in the measure but wheat has space between its grains. So in spite of the fact that these are measured commodities, it is not lawful. It is lawful to sell flour for flour, provided the quantities are equal by measurement, because the condition is fulfilled).¹²

According to Abū Ḥanīfa and Shaybānī the commodities normally sold by measurement like wheat, dates, barley, etc., and the commodities sold by weight such as gold, silver, etc., at the time of the Prophet, will always be considered measurable or weighable commodities, even if the tradition of measuring wheat, barley and dates, and weighing of gold, silver is given up by mankind. Abū Yūsuf holds the contrary:

12. Ibid.

كلّ شيء نصّ رسول الله صلى الله عليه وسلّم على
 تحريم التفاضل فيه كيلا فهو مكيل أبدا وان ترك
 الناس الكيل فيه كالحنطة والشعير والتمر والملح وكلّ
 شيء نصّ رسول الله صلى الله عليه وسلّم على تحريم
 التفاضل فيه وزنا فهو موزون أبدا وان ترك الناس
 الوزن فيه مثل الذهب والفضة لأنّ النصّ أقوى من
 العرف والأقوى لا يترك بالأدنى وما لم ينصّ عليه فهو
 محمول على عادات الناس لأنّها دلالة وعن أبي يوسف
 أنّه يعتبر العرف على خلاف المنصوص عليه أيضا لأنّ
 النصّ على ذلك لمكان العادة فكانت هي منظور اليها
 وقد تبدّلت

(Everything for which the Apostle of God
 provided a text prohibiting the charging
 of additional payment on it, as a measurable
 commodity, such as wheat, barley, dates and

salt, it is to be considered a measurable commodity for ever even if people give up the tradition of measuring it. Everything for which the Apostle of God provided a text prohibiting the charging of additional payment on it, as a weighable commodity, such as gold and silver, is to be considered a weighable commodity for ever, even if people give up the tradition of weighing it. For the text is stronger than custom, and the stronger cannot be superseded by the inferior. What is not prohibited by a text is permissible according to the customs of the people, for they are an indication. Abū Yūsuf says that custom should be considered as opposed to what has textual authority, for the text concerning that acts in place of the custom; the latter was looked at and has been replaced by the text).¹³

Interest, understood in the Qur'ān as an additional payment made by the debtor to the creditor at a certain time, is defined by the Ḥanafī doctors as an agreed

13. Ibid.

monetary advantage in respect of one of two homogeneous weighable and measurable commodities;¹⁴ this links interest with the sale of all weighable as well as measurable commodities. The Qur'ān, however, separates the two commercial gains: an additional amount on loan (ربا) and an additional amount in normal trade (ربح); it allows sale and prohibits interest (أحلّ الله البيع وحرم الربا).*

This definition is developed on the authority of the ḥadīth of Abū Saʿīd al-Khudarī in which credit transactions are completely prohibited even if they do not carry interest.* This is against the Qur'ān 2:282. The ḥadīth also bans gains in cash sales, which are also allowed in the Qur'ān. The Ḥanafī doctors, by employing personal reasoning extended the rules mentioned in the ḥadīth to the sale of all things normally sold by weight or measurement.

14. Al Shaybānī, op. cit. p.3.

* See above p.39.

* See above p.49.

Cash Transactions

The term sarf indicates an exchange of commodities both of which constitute a medium of exchange, such as gold for gold, or silver for silver.¹⁵ The usual objects of this transaction are dirhams and dinars.¹⁶ Delivery on the spot is essential for its legality, and the items must also be exactly equal in weight, without taking account of the quality:

فان باع فضة بفضة أو ذهباً بذهب لا يجوز إلا
مثل بمثل وان اختلفا في الجودة والصياغة لقوله
عليه السلام الذهب بالذهب مثل بمثل وزناً بوزن
والفضل ربا ولا بدّ من قبض العوضين قبل الاقتراق
لقول عمر رضي الله عنه وان استنظرك أن يدخل
بيته فلا تنظره

(If silver is purchased for silver or gold for gold, this (transaction) is lawful except like for like, even if they differ in quality and workmanship, according to the

15. Shaybānī, op. cit.

16. Sarakhsī, op. cit.

Prophet's saying: gold for gold (is allowed) on the basis of like for like and weight for weight. Any additional payment constitutes ribā. Mutual seisin is essential before the separation of parties, according to ^CUmar's statement: 'If he asks you to wait until he enters his house, do not wait for him.')

According to this a contract in which a person borrows a certain amount of dirhams or dinars on condition that he pays back the same amount in the future, is totally prohibited. Such contracts are, however, acknowledged by the Qur'ān 2:282.

This also prohibits cash transactions in which a man purchases an article ^{containing a certain quantity} of gold ~~of a certain~~ quantity and pays the price of it in dinars, amounting to more than the quantity of the article. It is essential that the quantities of both the article and dinars must be the same. This is also contrary to the Qur'ān's teaching regarding cash trade.¹⁸ Mālikī doctors, however, allow the exchange of bullion for a

17. Shaybānī, op. cit. p.5;

Al-Marghīnānī, op. cit.

18. The Qur'ān, 2:282.

smaller amount of coin of the same metal so as to cover the minting expenses.¹⁹

If the metals for exchange are of different sorts, such as gold and silver, additional payment in quantities is not interest, provided the exchange takes place on the spot:

وان باع الذهب بالفضة جاز. التفاضل لعدم المجانسة
 ووجب التقابض لقوله عليه السلام الذهب بالورق ربا
 الا هاء وهاء فان افترقا في الصرف قبل قبض العوضين
 أو أحدهما بطل العقد لفوات الشرط وهو القبض ولهذا
 لا يصح شرط الخيار فيه ولا الاجل لان بأحدهما لا
 يبقى القبض مستحقا

(Additional payment is lawful in the exchange of gold for silver because the sameness (of kind) is absent, and (mutual) seisin is essential according

19. Mālik ibn Anas, op. cit.

to the Prophet's saying: 'Gold for silver is ribā unless the exchange is on the spot. In a sarf sale, if the parties separate before seisin takes place of one or both of the things being exchanged, the contract is invalid because of the breaking of the condition 'seisin'. Accordingly it is not lawful to stipulate 'an optional condition' in the transaction at fixed term of payment' because seisin can no longer be required for one of the two things).²⁰

An additional amount in the exchange of different metals is not interest, but if a person intends to borrow dinars on condition that he pays back dirhams in the future, this is not permitted. This is, probably, to avoid interest. The Qur'ān, however, allows this sort of contract (2:282).

The opinions of Shāfi^cī, Aḥmad b. Ḥanbal and Abū Dā'ūd regarding sarf sale as summed up as follows:

20. Shaybānī, op. cit.;

Al-Marghīnānī, op. cit.

وعلى الصيرفي أن يحترز من النسبنة والفضل أمّا
النسبنة فإن لا يبيع شيئاً من جواهر النقدين بشيء
من جواهر النقدين إلا يدا بيد وتسليم الصيارفة
الذهب الى دار الضرب وشراء الدينانير المضروبة به
حرام من حيث النماء ومن حيث أنّ الغالب أن يجرى
فيه تفاضل اذا لا برّد المضروب بمثل وزنه

(The money changer must avoid credit and additional payment, as far as credit is concerned, this means that he may only exchange any quantity of the two monetary metals for another amount of these in a hand-to-hand transaction. Money changers are forbidden to deliver gold to the mint and buy dinars coined from it, because of the delay, and because it is likely to involve additional payment since the coined money will not be returned equal to the

original weight).²¹

We have seen that the jurists prohibited credit transactions as well as any gain resulting from a cash transaction of gold, silver and certain foodstuffs on the basis of a ḥadīth of Abū Sa^cīd Al-Khudarī. The Qur'ān, however, does not prohibit transactions of this kind but rather acknowledges them as a legal form of commercial transactions (2:282).

The ribā rules adduced from the ḥadīth literature are contradictory to the Quranic prohibition of any additional payment on a loan repaid by the debtors to the creditor at a certain time.

The Hanafī doctors, in formulating these rules were probably more concerned with academic points of law than with actual cases. The result of their formulations, however, was certainly to make it difficult for those who wished to take part in any normal commercial activities. To overcome a number of these difficulties, jurists devised certain expedients, whereby they could circumvent the law without actually transgressing it, this will be discussed in the following Chapter.

21. Ibn al-Ukhuwwa Al-Shāfi^cī, op. cit.

CHAPTER IV

Devices (حيل) and the prohibition of interest

Hīla (حيلة) singular, plural Hiyal means artifice, device or strategem for evading a thing.¹ In Islamic law, legal devices can be described as legal means provided by the Shari'ah to achieve certain ends. These tricks and devices enabled those who would otherwise have had no choice but to act against the provisions of the Shari'ah to arrive at the desired results.

Commerce and civil transactions in the Muslim Empire of the Middle Ages were not, ~~however~~, entirely controlled by the theoretical rules of Islam, but also by a customary law, which had been called into being by the normal needs and necessities of commercial life.² This law was created by the commercial elements in the great cities of Islam and was elaborated by the

1. Encyclopaedia of Islam, New Edition, See Hiyal

2. Schacht J., Die arabische Hiyal
Literatur Der Islam, p. 212.

specialists in Islamic law. It did not put itself into direct opposition to the Sharīʿa; on the contrary, it maintained its main features, such as the prohibition of interest, which it never dared to challenge openly, but it nevertheless managed to evade most of its restrictions through certain devices. As we have said above, the Qurʾān prohibited the practice of charging interest on loans but allowed credit transactions.³ At the same time there was an imperative demand for loanable funds on interest to meet commercial needs. In order to satisfy these needs, and at the same time to observe the legal prohibition, a number of devices were developed to evade the rigidity of the law. One of these devices is the 'double sale': L (the lender) would purchase an object from B (the borrower) for an agreed price of X, payable immediately in cash. B would then contract to repurchase this same object from L for a price of X+Y (Y representing the agreed rate of interest) payable by a future specified date. Muftī Aḥmad Ridā Bralwī recorded the following devices, attributed to Abū Yūsuf, Shaybānī and Abū Layth:⁴

3. Ibid.

4. Bralwī, Aḥmad Ridā, Kifl al-Faqīʿah,

Mecca, 1324 A.H., pp. 76-77.

رجل له على رجل عشرة دراهم فأراد أن يجعلها
ثلاثة عشر درهما إلى أجل يشتري من المديون شيئا
بتلك العشر ويبيعها على المشتري مرة أخرى بثلاثة
عشر درهما إلى الأجل فيقع التحرز عن الحرام

(A person owing another person ten dirhams wants to make it thirteen at a fixed date; he should buy something for ten dirhams from the debtor and sell it back to the seller for thirteen dirhams payable at a future date. What is forbidden is thus evaded).

رجل طلب من رجل ليقرضه مائة درهما فيضع
المستقرض متاعا بين يدي المقرض ويقول بعت لك هذا
المتاع بمائة درهم يشتري المقرض ويدفع عليه الدراهم
ويأخذ المتاع ثم يقول المستقرض بعني هذا المتاع

بمائة وعشرين الى أجل فيبيعه ليحصل للمستقرض
مائة درهم ويعود اليه متاعه ويصير للمقرض عليه
مائة عشرون درهما

(A man asks another man to lend him a hundred dirhams; the borrower should put something in front of the creditor and say: 'I sell this thing to you for a hundred dirhams.' The creditor should buy it, pay the dirhams, and take the thing. Then the borrower should say: 'Sell me this thing for a hundred and twenty dirhams payable at a future date.' The creditor should sell it to the borrower; thus the borrower will obtain a hundred dirhams, the creditor will have his thing returned to him and will be owed one hundred and twenty dirhams by him.)

فان كان المتاع للمقرض وليس للمشتقرض شيء
ويريد أن يقرضه عشر بثلاثة عشر الى أجل فان المقرض
يبيع السلعة للمستقرض بثلاثة عشر درهم الى أجل
المستقرض يبيع السلعة لأجنبي بعشرة دراهم يبيع

ويأخذ الاجنبي الثمن الذي دفعه للمستقرض وللمقرض
على المستقرض ثلاثة عشر الى أجل

(If the article belongs to the creditor, the borrower had nothing, and the creditor intends to loan him ten dirhams in order to receive thirteen at a certain date, he should sell this article to the borrower for thirteen dirhams payable at a future date. The borrower should sell it to a stranger for ten dirhams, and the stranger sell it to the creditor for ten dirhams and receive the amount which he had paid to the borrower. The creditor is then owed thirteen dirhams by the borrower, to be paid by a certain date).

It is clear from the above quotations that in order to meet the demand for loanable funds on interest, credit

x transactions were employed. The Sharīʿa regarding interest was thus not challenged openly. These passages refer only to minor transactions but it is likely that these devices (credit transactions) were also employed in major commercial transactions during the early centuries of Islam. The earlier Muslim legal sources justify the assertion that in the second and third centuries credit arrangements of various types constituted an important feature of both trade and industry.⁵ Credit arrangements, which would both facilitate trade and provide a framework for the use of credit as a means of investment in trade, are already found in a developed form in some of the earlier Islamic legal works. Buying and selling on credit, as we have seen above, was an accepted and apparently widespread commercial practice, whether a merchant was trading with his own capital or with capital entrusted to him by an associate. In Shaybānī's Kitāb al-Aṣl a provision entitling each of the parties to a partnership to buy and sell on credit (اشترى أحدهما) is included in the very text of the suggested contract formula.⁶

5. Shaybānī, op. cit.,

6. Shaybānī, op. cit.;

Sarakhsī, op. cit., vol XI, p.177.

References to the widespread use of credit in commerce continue to appear in all the subsequent literature of the early schools of law. Sarakhsī declares that selling on credit is an absolute feature of trade,⁷ and Kasānī, referring to merchants, states that it is their custom to sell for cash and credit.⁸ According to Sarakhsī, credit dealings were almost indispensable to successful and profitable trading. In discussing the right of the agent or managing partner, he says:

ولكنّا نقول البيع بالنسيئة من صنع التجار وهو أقرب الى تحصيل مقصود صاحب المال وهو الربح فالربح في الغالب انما يحصل بالبيع بالنسيئة دون البيع بالنقد ولدليل على أنّ البيع بالنسيئة تجارة مطلقة قوله تعالى إلا أن تكون تجارة حاضرة تديرونها بينكم فهذا يبين أنّ التجارة قد تكون غائبة وليس ذلك إلا بالبيع بالنسيئة

7. Sarakhsī, op. cit. vol. XXIII, p. 38.

8. Kasānī, Badā'i al-Sanā'i fī Tartīb al-Sharī'a,

Cairo, 1910, Vol. VI, p. 68.

(We hold that selling for credit is part of the practice of merchants, and that it is the means most conducive to the achievement of the investor's goal which is profit. In most cases, profit can only be achieved by selling for credit and not selling for cash. Proof that selling for credit is an absolute feature of trade is found in God's statement: 'Unless it be local trade that you are conducting amongst you (2:282)'. This shows that trade can also be long-distance and this latter type of trade cannot come about except by selling on credit).⁹

We have attempted to translate the Quranic passage quoted by Sarakhsī as he understood it, and not as it is usually rendered in English translation. The passage reads:

إلا أن تكون تجارة حاضرة تدبرونها بينكم

Bell translates: 'Unless it be present merchandise that ye are circulating amongst you'¹⁰ and Arberry

9. Sarakhsī, op. cit.

10. Bell, R., The Qurān translated, Edinburgh, 1937, Vol. I, p. 42.

renders it: Unless it be merchandise present that you give and take between you¹¹ The key phrase here is *تجارة حاضرة* (literally, 'present trade'). It is understood by Sarakhsī to mean 'local trade' and by *تجارة غائبة* (literally, 'absent trade') which he opposed to the former, he means 'long-distance trade', and he tells us:

فالتجارة نوعان حاضرة في بلدة وغائبة في بلدة
أخرى ولا يتمكن من مباشرتهما بنفسه

(Trade is of two types: local (*حاضرة*) in a man's own town, and long-distance (*غائبة*) in another town, and a man cannot directly engage in both these types by himself).¹²

According to Sarakhsī, therefore, not only is long-distance trade impossible without the use of credit but a credit sale is the surest, if not always the swiftest, method of achieving profit - why this is so is explained by Sarakhsī in another passage where he states that a thing is sold on credit for a larger sum than it would be sold for in cash,¹³ which means that there is a greater profit to be derived from credit transactions which, as we have seen above, play an important role in evasion of

11. Arberry, A.J., op. cit. p. 70.

12. Sarakhsī, op. cit.

13. Ibid.

the law of interest. The difference in price between a credit transaction and a hand-to-hand transaction also helps explain why the prohibition of interest did not exercise any crippling restriction on the conduct of commerce. For, while the difference between the price for which one sells on credit and the price for which one sells for cash does not legally constitute interest, it does fulfil, from the point of view of its economic function, the same role as interest by providing a return in the transactions and compensating for the absence of capital.

Credit, however, played a very important function in minor as well as in major economic needs of medieval trade. The credit transaction, acknowledged in the Qur'ān (2:282), perhaps provided a legal basis for evading the rules and it is acknowledged by Sarakhsī that the written documents, as comprising the agreement of several credit transactions between the interested parties, which were perfectly legal in themselves, often form an essential element of the devices.¹⁴

Another form of device challenged by Shāfi'ī is the credit partnership in which the capital of the parties

14. Ibid.

consists not of cash or merchandise but entirely of credit. It is the one form of partnership for which ready cash is not required for the validity of the contract. According to Shāfi^{cī} the chief function and purpose of the institution of the partnership is the augmentation of the capital investment. This can be achieved, in his view, only with a tangible investment such as cash, but not credit. For this reason Shāfi^{cī} rejected the validity of credit partnership.¹⁵ Kasānī counters Shāfi^{cī}'s objection by arguing that people have been engaging in this sort of credit partnership for

15. Shāfi^{cī}, op. cit.; (Shāfi^{cī} does not recognise the credit partnership which the Hanafī doctors do. Sarakhsī names it 'the partnership of penniless' (شركة المفاليس) (a partnership without any capital) or 'the partnership of good reputation' (شركة الوجوه); and says that credit is extended only to him who has a good reputation among people (Mabsūt, Vol. XI, p. 152). This reflects two situations; one in which traders without sufficient resources seek financing and hire capital, second in which the capital is seeking a profitable investment outlet and hires the traders.

centuries without rebuke from anyone, and that surely, as the Prophet himself said, 'His community would not unanimously agree on an error.'¹⁶

Ibn al-Ukhuwwa al-Shāfi^cī in his work written as a guide for the official responsible for the enforcement of the Sharī^ca (محتسب) in the markets of the great cities of Islam points out the prevailing devices as follows:

وقد يفعله بعض الصيارف والبزازين على غير هذا
الوجه فيعطيه دينارا ويجعله قرضا ثم يبيعه ثوبا
بدينارين فيصير له ثلاثة دنائير الى أجل معلوم
ويشهد عليه بجملتها وهذا حرام أيضا لا يجوز فعله
لأنه قرض جرّ منفعة ولو لم يقرضه الدينار ما اشترى
منه الثوب بدينارين

(Money changers and drapers practise this
(the charging of interest) in another fashion:

16. Kasānī, op. cit., Vol. VI, p. 57.

They will give a man a dinar as a loan, then sell him a garment for two dinars so that three dinars will be due to them on a definite time, and it will be witnessed that he owes all those. This is also prohibited, it is not lawful because it is a loan bringing benefit (to the lender). If the borrower had not received the dinar he would not have purchased the garment from him for two dinars).¹⁷

Other devices to avoid restrictive rules concerning interest were also frequently used, e.g. selling a future date crop at much less than its normal price, which is called 'salam'.¹⁸ It was often used as a device, for the immediate payment of a small price will be accepted by a person in urgent need of cash, for the future delivery of a considerably more valuable quantity of dates, etc.

17. Ibn al-Ukhuwā, op. cit.

18. Salam is a contract of sale of goods in the future limited to things which can be replaced (e.g. so many bushels of wheat) and must be actually described, and also the place and the time of delivery. For details see: Hughes: op. cit.,

Bay^c al-wafā' بيع الوفاء was also a form of conditional or redeemable sale which was somewhat similar to the mortgage, whereby an advance of money might be obtained, not only on the security of land or a house, but by the provision of what virtually amounted to interest out of its produce or rental. The usual practice was for the creditors to retain the property on lease from the borrower, the rent representing the interest on the loan; it was judicially declared that Qādīs had repeatedly upheld this transaction to enable persons needing money to obtain credit without incurring the possible guilt of dealing in a transaction that formally involved interest.¹⁹

It is also reported that in the time of the Abbasid Caliph al-Muqtadir (295-320 A.H.), the Diwān al-Jahbadh (جهبذ) emerged as a state bank, which in addition to its common functions was liable to advance huge sums to the Caliph, the ministers and other court officials on credit terms.²⁰ The officials of the Diwān were appointed mostly from among Christians and Jews by a special decree issued in 295 A.H. by the

19. Bralwi, op. cit. p. 82.

20. Encyclopaedia of Islam, New Edition, 'Djahbadh';

Caliph. By virtue of their ~~colossal~~ financial resources these Jews and Christian merchants and bankers were considered the pillars of the financial administration of their time, and they established the first state bank in Islamic history through which the urgent financial needs of the state could be satisfied.²¹

We have also reports that these bankers were given interest on their loans and securities in the form of the tax revenue of the province of Ahwāz; and under the successors of Al-Muqtadir the Diwān continued to play the role of banker not only in Baghdād but also in Basra and other cities of the Abbasid Empire.²²

Opinions Regarding the Legal Devices

The Ahl al-Ḥadīth regarded as legal only those commercial transactions which are prescribed by the Qur'ān and the Ḥadīth, and only in the manner in which they are prescribed. They claim that formal traditions from the Prophet, even though they were transmitted only by isolated

21. Ibid.

22. Ibid.

individuals, supersede sunna, Ijtihād and Qiyās.²³

Mālik strongly disapproved of ḥiyal for the evasion of the religious law, and particularly outlawed the device of double sale.²⁴ Al-Tirmidhī and Nasā'ī followed him.²⁵

Al-Bukhārī, one of the highest authorities on Hadīth, devoted a whole book of his ṣaḥīḥ to combating the prevailing custom of evading the law of interest.²⁶

Abd Allāh b. Mubārak fiercely attacks Abū Ḥanīfa and, considering him the writer of Kitāb al-Ḥiyal, says that he and the users of it were unbelievers and apostates.²⁷

Aḥmad b. Ḥanbal strongly upholds the view of the invalidity of Ḥiyal.²⁸

It is generally assumed that the Hanafī doctors were inclined to justify the validity of the devices and produced the first special work about Ḥiyal in commercial transactions.²⁹ In the opinion of some, Abū Ḥanīfa is directly responsible for the institution of Ḥiyal while some say Abū Yūsuf produced the first special work on

23. Shāfi'ī, op. cit. pp. 19, 32, 46.

24. Mālik, op. cit., Kitāb al-buyū.^c

25. Al-Tirmidhī, op. cit.;

Al-Nasā'ī, op. cit.

26. Al-Bukhārī, op. cit.

27. Khatīb al-Baghdādī, Ta'rīkh, Vol. XIII, p. 426.

28. Ibid. p. 428.

29. Ibid. p. 427.

hiyal and held that to practise hiyal on the ground of necessity was a good deed.³⁰ After that followed the treatise of Shaybānī, which incorporated long extracts from that of Abū Yūsuf, which was edited and commented upon several times by Sarakhsī in his work Kitāb al-Mabsūt;³¹ then another Ḥanafī doctor, the court lawyer of the Caliph Al-Muhtadī, Al-Khaṣṣāf, followed his predecessors by writing a book legalising hiyal in civil transactions.³²

Shāfiʿī and his followers in the first generations after him regarded as illegal and rejected the hiyal concerned with monetary matters. Muḥammad b. al-Ḥasan al-Qazwīnī collected and distinguished legal and illegal hiyal, but the legal validity of all hiyal was strongly and definitely upheld by the prominent Shāfiʿī authority, Ibn Ḥajar al-ʿAsqalānī.

The Hanbalites remained opponents of Hiyal; Qādī Abū Yaʿlā' composed Kitāb Ibtāl al-Ḥiyal, and the great scholar Ibn Taymiyya, in a special work, Iqāma al-Dalīl fī Ibtāl al Tahlīl, declared them illegal.

30. Bralwī, op. cit. p. 92.

31. Sarakhsī, op. cit. Vol. XXX, p. 52.

32. Bralwī, op. cit., p. 91.

We may conclude that the concept of interest expounded by the early exegetes of Islam ~~was of a highly idealistic character and~~ had been developed to a degree of systematic rigour totally unrealistic in commercial dealings.

The hiyal system was introduced by specialists in law who saw this as the only method by which the doctrine could retain some semblance of control over actual practice. We have also observed that they utilised and manipulated the existing law and created a system to achieve purposes fundamentally contrary to the spirit of the Sharīʿa; despite the prohibition of the practice of charging interest, they made possible, by simple expedients, a loan with interest in such a way that the mutual obligations arising thereunder would be enforced by a Sharīʿa court.

CHAPTER V

Further Development in India

So far we have discussed the theory of Interest as developed, systematized and finally settled in the second century of Islam. After this formative period, jurisprudence was confined to the explanation, application and interpretation of the theory laid down once and for all, within the framework of the accepted principle of the particular school of law. In other words, it was an end to independent thinking and the beginning of unquestioning adherence to received views.

Since as we have seen, it was the Ḥanafī School who were more concerned to codify this theory of interest, it is natural that we should look to India for the effects of this theory, this being the principal area where this school held sway.

The Mughals were Ḥanafī Turks from Central Asia. Long before the establishment in India of their political state based on Ḥanafī jurisprudence, there are references to the presence of Muslims there, mainly from ʿIrāq, Kūfa

and Basra, at Qannawj, Badāi'ūn, Banāras and Ajmaīr.¹ By the beginning of the eighteenth century the vast majority of Muslims in India followed the Hanafī School which had been the official state school since the establishment of the Tughluq dynasty in 1320.² Two classics of Hanafī jurisprudence were compiled during the reign of Fīrūz Shāh Tughluq (1351-88): Fiqh-i-Fīrūz Shāhī, a test book for the administration; and Fatāwā-i Tātār Khāniyya, structurally modelled on al-Marghīnānī's Hidāya, compiled in 1375, by ʿĀlim b. ʿAlā under the patronage of a nobleman, Tātār Khān.³

1. ʿAbd al-Jabbār Khān, Maḥbūb al-Waṭan, Delhī, n.d., p. 40;

Qudāma ibn Jaʿfar, Kitāb al-Kharāj MS. No. 1076,

Nizāmī, K.A., Salātīn-i-Dehlī Kay Madhhabī rujhānāt, Delhī, 1958, pp. 338-45.

2. Ābū-l-Qāsim Firishṭa, Gulshan-i-Ibrāhīmī (Taʾrīkh-i-Firishṭa), English translation by J. Briggs, London, 1829, vol. I, p. 402.

3. Amīr Khurd, Siyar al-Awliyā, Delhī, 1884, p. 529; Rahmān ʿAlī, Tadhkira-i ʿUlamā'-i Hind, Lucknow, 1914, p. 130;

Another comprehensive work of jurisprudence, Fatāwā-i Ibrāhīm Shāhī, was compiled under the patronage of Sultān Ibrāhīm Sharqī (1402-36) at Jawānpur.⁴

The growth of Hanafī thought continued under the Mughals. Neither the electicism of Akbar (1556-1605) nor his heresy appears to have interfered with the continuance of the predominance of this school which was reinforced by the scholarship of ^CAbd al-Haqq Muhaddith Dihlawī (1551-1642).⁵ The state was run again as a theocracy by the Mughal emperor Awrangzīb ^CĀlamgīr (1658-1707) and the law of his Government was entirely based on Hanafī jurisprudence. Another outstanding work on Hanafī jurisprudence was written by Muhibb Allāh Bihārī (d. 1707), entitled Musallam al-Thubūt.⁶ Under the personal supervision of Awrangzīb, Fatāwā-i ^CĀlamgīriyya

4. Nihāwandī, ^CAbd al-Bāqī, Ma^Cāthir-i Raḥīmī, MS. in Asiatic Society of Bengal, f. 21.

5. ^CAbd al-Haqq Dihlawī, al-Makātib wa al-rasā'il, Delhi, 1879, p. 127.

6. Rahmān ^CAlī, op. cit.

was edited by Shaykh Nizām al-Dīn Burhān purī and twenty four other 'Ulamā' including Shaykh Wajīh al-Dīn Gopāmawī, Shaykh Jalāl al-Dīn Muḥammad Machlīshahrī, Qādī Muḥammad Husayn Jawānpurī and Mullā Hamīd Jawānpurī.⁷ All these followed the traditional pattern in the collection of the Ḥanafī rulings. The 'Ulamā' did not attempt to break any fresh ground in jurisprudence, and consequently the theory of Taqlīd remained unchanged.

Until this time, the Mughals dominated the land as well as the commercial resources of the country through their control over the military and bureaucratic apparatus of the empire. A large proportion of the national wealth was concentrated in the hands of the Muslim community,⁸ and it was ^{unusual} ~~impossible~~ for a Muslim family to be in such a state of penury as could lead him to borrow on interest.⁹ Consequently the enforcement of

7. Walī Allāh, Shāh, Anfās al-ʿArifīn, Delhī, 1817, p.24.
Nizāmī, op. cit.

8. Bernier, F., Voyages, translated by Irvine and annotated by A. Constable, London, 1891, pp. 154-192;
Manucci, Storia do Mogor, translation by Irvine-John Murray, London, 1907, Vol. II, p. 150.

9. Hunter, W.W., Our Indian Musalmans, p. 131.

the prohibition of interest remained possible throughout the country.

After the death of Awrangzīb in 1707, the Mughal empire began to decline rapidly, being damaged by internecine wars among the higher dignitaries and nobility. Awrangzīb, although faced with acute financial difficulties,¹⁰ entirely depended on his usual sources, and Hindū bankers had no power during his reign. His successors, however, in order to meet the expenses of constant wars, took loans from the great Hindu bankers at a ruinous rate of interest. This crippled the borrowers and when debts were repudiated, the creditors were forced to conspire against their authority and support their rivals.¹¹

There are widespread references in contemporary works to the large amounts of wealth being hoarded by the muslim nobility. Had the muslims been allowed to accept or pay a reasonable rate of interest, at a time

10. Nizāmī, op. cit., p. 113;

Sarkār, Sir Jadūnāth, Fall of the Mughal Empire, Calcutta, 1949, p. 64.

11. Sarkār, Ibid;

O'Malley, L.S.S., Modern India and the West, London, 1941, p. 28;

Detailed discussion follows in the next Chapter.

of necessity, instead of contracting loans at an exceedingly high rate of interest, muslim sovereignty in India would have certainly proceeded on entirely different lines.¹²

The disintegration of the Mughals decreased the economic prosperity of the muslim community. Loss of political power in a province meant that the muslims lost the benefits from that province and reduced the amount of opportunity open to them. Every new loss meant an additional loss, and the already narrow field of employment was still further contracted.¹³

Although Shāh Walī Allāh (1703-62) realised the need for the re-interpretation of Islamic law in the light of the specific social, economic and legal requirements of society, and declared that Taqlīd without any attempt at understanding was a characteristic of the lowest type of mind,¹⁴ this did not disturb his fixed

12. Khawāfī Khān, Muntakhab al-Lubāb, Calcutta, 1869,
Vol. I, pp. 13-26, 53;

Tripathī, R.P., Some Aspects of Muslim Administration,
Allāhbād n.d., p. 63.

13. Sarkār, op. cit.;
Hunter, op. cit. p. 18.

14. Walī Allāh Shāh, Al-Insāf fī Bayān fī Asbāb al-Ikhtilāf, Delhi n.d., p.70.

belief in the innate perfection of the theory of interest as it had come to be understood.

He divided the discussion of Ribā into two sections: (1) Ribā al-nasī'a (an additional payment made by the borrower to the lender on a loan, at a fixed date) - the ribā prohibited by the Qur'ān; (ii) Ribā al-Fadl (an additional payment made by one of the contracting parties in an exchange of certain articles) - the ribā prohibited in the ḥadīth. It was still prohibited for the creditor to receive and for the borrower to give either kind. This was summed up in a tag: الآخذ والمعطي (the receiver and the giver are equally guilty).¹⁵

Here Shāh Walī Allāh ignored the possibility of the fact that changing fiscal circumstances might affect the attitude of muslims towards morality and law. His theory which he taught with great enthusiasm, assumed that the muslims were living in accordance with a fiscal system that could not be improved upon, and therefore, should not be changed according to the change in circumstances. In other words, his approach to economic questions lacked

15. Walī Allāh Shāh, Hujjat Allāh al-Bāligha, Lahore, 1953, pp. 113-115.

an evolutionary outlook, and seems to have been operated on the assumption that economic phenomena had been reduced to certain hard and fast rules, to which the situations of real life must fit themselves as best as they could.

Soon after in 1803, the Mughal emperor Shāh ^ḤĀlam gladly became a pensioner of the East India Company; and the real power passed into the hands of the British, the Marāthās and the Sikhs. The muslim community had thrown itself on the mercy of Hindū and Sikh money-lenders for its existence.¹⁶ Shāh ^ḤAbd al-^ḤAzīz (1746-1824), son of Shāh Walī Allāh, declared India Dār al-Harb, 'the abode of war', for the muslims¹⁷ and on the basis of a fatwā attributed to Abū Hanīfa, he also declared that since India had ceased to be Dār al-Islām, interest was no longer prohibited, and it was perfectly legal for a muslim to invest his capital, or borrow, on interest.¹⁸

This fatwā was designed to help the community. Those who had capital acquired during their governmental

16. Discussion follows in Chapter 7.

17. ^ḤAbd al-^ḤAzīz Shāh, Fatawā-i-^ḤAzīziyya, Dēlhī, 1904, p. 17.

18. Ibid. p. 21.

connections with the Mughals, and who had been prohibited ~~to~~^{from} invest^{ing} it, were now thrown out of their employment by the new rulers,¹⁹ and were permitted to invest it in trade, industry, agriculture or other programmes of capitalistic development originated by the British, without infringing the prohibition of interest. Those who were forced to borrow for their existence could borrow from a muslim at a much lower rate of interest than that charged by the Hindu money-lenders. However, religious factors weighed so

19. William Hunter says: 'With regard to the first great sources of Muhammadan wealth, viz, the Army and the higher administration of the Revenues, we had good reasons for what we did, but our action has brought ruin upon Muhammadans the third source of their greatness was their monopoly of judicial, political, or, in brief, civil employ. It would be unfair to lay much stress on the circumstances, but it is nevertheless a significant fact, that none of the native gentlemen who have won their way into the Covenanted Civil Service, or up to the bench of the High Court, are Musalmans. The Muhammadans are now shut out equally from Government employ and from the higher

heavily with the muslims that even a fatwā from a leading authority failed to persuade them to participate in interest-carrying commercial transactions. They did little in this direction and the entire field of fiscal operation remained in the hands of non-muslims.²⁰ Darling stated: 'there is one other feature that must be noted in regard to debt almost the whole of it has been advanced by Hindus and Sikhs, neither being debarred by religion from the taking of interest.'²¹ Buchanan believed that 'the muslims inherited the early Christian attitude towards the taking of interest, and although this feeling is dying out, it probably helped to keep them poor and due to this they had been one of the

occupations of non-official life they have now sunk so low, that, even when qualified for governmental employ they are studiously kept out of it by government notifications. Nobody takes any notice of their helpless condition, and the higher authorities do not deign even to acknowledge their existence.' (op. cit., pp. 163-64.)

20. Buchanan, D.H., The Development of Capitalistic Enterprise in India, London, 1966, p. 142.

21. Darling, M.L., The Punjab Peasant in Prosperity and Debt., London n.d., p. 213.

least productive business groups in India.'²²

Had the community not been debarred by earlier religious leaders, it was unlikely that it would have suffered from the monopoly of the Indian money-lenders, and have sunk into such depths of despair and general penury.²³ The prohibition, in fact, had prevented them from investing further and hindered the creation of credit transactions and mutual co-operation among the community. The nobility decided to live on their resources, and when their hoardings ran dry, then on money borrowed from non-muslims. Hunter describes their past and present condition: 'of such families I have personally known several their mosques and countless summer pavilions glittered round the margin of an artificial lake, and cast their reflections on its surface, unbroken by a single water-weed. A gilded barge proudly cut its way between the private staircases and an island in the centre covered with flowering shrubs. Soldiers relieved guard on the citadel; and ever, as the sun declined, the laugh of many children and the tinkling

22. Buchanan, op. cit., p. 18.

23. Darling, op. cit.

of ladies' lusters rose from behind the wall of the Princesses garden. Of the citadel nothing now remains but the massive entrance. Their houses swarm with grown-up sons and daughters, with grandchildren and nephews and nieces, and not one of the hungry crowd has a chance of doing anything for himself in life. They drag on a listless existence in patched verandas or leaky outhouses, sinking deeper and deeper into a hopeless abyss of debt, till the neighbouring Hindu money-lender fixes a quarrel on them, and then in a moment a host of mortgages foreclose, and the ancient Musalman family is suddenly swallowed up and disappears for ever).²⁴

The titular emperor, Bahādur Shāh II followed this fatwā and raised funds from the public. He offered 10% per month to his creditors until he paid off the original loan, and in 1857 used these funds for the restoration of his sovereignty but was arrested and condemned to exile in Rangoon, where he died in 1869.²⁵

24. Hunter, op. cit., pp. 152-153.

25. For further development see note at the end of the Chapter.

Note

The major theoretical development in the definition of interest occurred in the second half of the nineteenth century, when Sayyid Aḥmad Khān, founder of the Naturī school of thought rejected the classical theory of Taqlīd, and laid down what he termed the criterion of conformity to nature for judging the contents of systems of belief and practice. Thus reason in accordance with nature became his overriding principle for explaining the situations of real life. This method of approach gave him so much independence in interpretation of religion that he rejected the traditional definition of interest understood in the relevant passages of the Qur'ān as an additional payment made by the borrower to the creditor over and above the original loan. He contended that the Qur'ān prohibited excessive rates charged on a loan in the pre-Islamic period. The compound interest operated in India by the Hindu and Sikh money-lenders might be × considered as prohibited but simple interest on loans for productive purposes, especially bank interest or interest on government bonds, insurance, etc., did not

come under the Qur'ān ruling.¹

This dynamic religious approach towards the new problems created by changing circumstances was certainly influenced by the nineteenth century European rationalism and natural philosophy which he assimilated during his visit to England in 1867-70.² This approach brought the theory of interest more into consonance with the spirit of the modern world, making it less rigid. It is evident that strict application of the classical theory of interest implied the abandonment of most fiscal operation to non-muslims.

There was a considerable opposition to the views of Sayyid Ahmad Khān and his followers,³ but this was insufficient to prevent the practical expansion of his theory of interest which eventually prevailed throughout the country, and was adopted as the basis of the economy by the majority of the muslims of the newly-born Islamic state of Pakistan in 1947.

1. Sayyid Ahmad Khān, Ākhirī Mazāmin, Delhi n.d. pp. 143-5.

2. Farquhar, J.N., Modern Religious Movements in India, Delhi, 1967, p. 79.

3. Nānotawī, Tasfiyyat al-^cAqā'id, Delhi, 1901, p. 33; Thānawī, Al-Intibāqāt al-Mufīda ^can al-Ishtibahāt al Jadīda, Lahore, 1952, pp. 33-59, 98-104.

CHAPTER VI

The Downfall of the Mughals

After the death of Awrangzib in 1707, the Indian bankers came to control the destiny of the Mughal Empire. The historians describe his successors as puppets in the hands of their chief ministers and commanders-in-chief. Till 1720, Husayn ^ḤAlī and his brother ^ḤAbdullāh dominated the affairs of the empire.¹ Fateh Chand, nephew and adopted son of Mānick Chand, head of the banking house of Murshidabād was appointed to control the fiscal and financial matters of the empire, to which he advanced large loans. It is believed that he was allowed to keep a large amount as interest from the land-tax he collected on behalf of the provincial government. Ironically the materials of the history of this period are not so complete as could be wished; it is very difficult

1. 'The King makers' abolished Jizya, offered high jobs to the Hindus and the Rajputs, made far-reaching concessions to the Marathas recognising Raja Shahū's right to levy 35% of the revenue in the six Provinces of the Daccan, and granted the East India Company the right to carry on trade free of duty in Bengal, Bihar, Orisa, etc. for details see:

Wilson, C.R. (ed.) Early Annals of the English in Bengal, London, 1895, Vol. II, p. 235.

to trace out the detailed effects of the money transactions conducted by the Mughal administration and the Indian bankers. Due to religious, political and diplomatic complications, the rulers did not want accounts of this nature to be made public. Most of the historical works appear to be for the most part court chronicles written to order to draw a veil over the vices of the rulers. However, it is believed that the Mughal Emperor Farrukhsiyār intrigued against the activities of the Sayyid brothers and the banking house. This cost him his life. The bankers encouraged the chief minister, ^CAbdullāh and the commander-in-chief, Husayn ^CAlī to depose the Emperor. They deposed and killed him in 1719.² Then they, in the course of 1719, in turn raised to the throne, deposed and executed four Emperors: Rāfi^C al-Darajāt, Rāfi^C al-Dawla, Neku Siyār and Muḥammad Ibrāhīm. The fifth Emperor set up by them was Muḥammad Shāh Bahādur who proved more than a match for the two kingmakers, and Husayn ^CAlī Khān assassinated, and in 1720, captured ^CAbdullāh, poisoning him in 1722.³

After deposing the Sayyid brothers, the Emperor tried to adjust the accumulated loans raised by the Sayyids.

2. Khawāfī Khān, op. cit. Vol. II, 153.

Imdād Khān, op. cit.

Irvine, W., Later Mughals, London, 1921, pp. 58-61.

3. Ibid.

He invited Fateh Chand to Delhi and conferred on him the title of 'Jagat Seth' (the Banker of the World). References to the activities of these bankers are numerous in the contemporary political writings and speeches of English statesmen. It is said that the 'Jagat Seth' performed for the government many of the functions which the Bank of England performed for the British Government in the 18th century.⁴

In spite of the considerable financial support from the bankers, the Mughal power deteriorated rapidly. In 1724 Nizām al-Mulk of the Deccan, and in 1735, Bajī Rāo of Mālwa declared their independence; and the Emperor gladly recognised them as independent rulers. In 1738, an Afghān Tribe, the Rohillas, established the state of Rohilkhand to the north-east of Delhi, under an imperial officer, ^CAlī Muḥammad Khān.⁵ In 1739, Nādir Shāh of Persia invaded India and entered Delhi after receiving the submission of the Mughal Emperor. When the people of Delhi misunderstood his strength and attacked some of his troops, he ordered a massacre lasting

4. Ibid. Kanishka: Jagat Sether Kahinī, Calcutta, n.d. p. 110.

5. Ṭabā'ṭabā'ī, Ghulām Ḥusayn, Siyar al Mutā'akhkhirīn
Lukhnow, 1276 A.H., Vol. I., p. 139.

nine hours, in the course of which 20,000 lives are believed to have been lost.⁶

In Bengal ^CAlī Wardī Khān, the Deputy Governor, overthrew the Governor Sarfarāz Khān, and became independent, with the title of Nawāb.⁷ He persuaded Swārup Chand, a relative of the great banker Mahābat Chand, to advance him some money. This house advanced large loans to him, and, in return, enjoyed great influence and control over the economy of Bengal. It helped the Nawāb in the establishment of a mint at Murshidabad, received on behalf of the Government the land revenue paid by the Zamindars, controlled the purchase of bullion in Bengal and regulated the rate of exchange on all moneys that came to Bengal by way of trade and commerce.⁸ After the death of the Nawāb, this House, however, played a crucial part in a conspiracy against his successor, which led not only to the downfall of the Bengal State, but also to the general disintegration of the Mughal sovereignty.⁹ The East India Company,

6: Ibid

7. Ibid

8. Ibid; Kanishka, op. cit.

9. Ibid.

which defeated Nawāb Sirāj al-Dawla with the help of Omī Chand in 1757, was a hundred years later, to try the Mughal Emperor, Bahādur Shāh, for rebellion and high treason against its authority.¹⁰

In this age of political anarchy, Shāh Walī Allāh wrote letters to various rulers and generals including the Rohilla General Najīb al-Dīn, and the Afghān Ahmad Shāh Abdālī, and invited them to fill the political vacuum and to occupy India in order to protect the muslim position.¹¹

In 1748 Ahmad Shāh Abdālī, invaded India but was repulsed by Prince Ahmad Shāh, who succeeded to the throne a month later, at the death of his father. Abdālī renewed his attacks and compelled Delhi to cede the province of Punjab.¹² The chief minister, Ghāzī al-Dīn blinded the Emperor and dethroned him in 1754. Abdālī invaded India again in 1756, sacked Delhi, seized Sindh and left his son, Taymūr to govern the Punjab and Sindh

10. Irvine, op. cit.

11. Nizāmī, K.A. (ed.) Shāh Walī Allāh ke Siyāsī Maktūbāt, Aligarh, 1951, p. 106.

12. Irvine, op. cit.

on his behalf.¹³ The Marāthās soon followed suit and in 1758, drove away Taymūr and occupied the Punjab.¹⁴

Nawāb ^CAlī Wardī Khān died in 1756, and his grandson Sirāj al-Dawla succeeded him. The bankers, Mahātab Chand and Mahārāja Swārup Chand, approached him to ask him to acknowledge the loans made to his predecessor. He accepted the liability, but asked for more financial support. The bankers refused him, whereupon the Nawab refused to honour the outstanding loans. He also removed Omī Chand, one of the representatives of the Banking House, from his post at court. Omī Chand conspired against him with Mīr ja^Cfar Khān, his rival and the East India Company; he helped them very materially with large contributions.¹⁵ As a result Nawāb Sirāj al-Dawla was defeated at the battle of Plassey in 1757. The historians agree that the victory at Plassey, ^{largely} ~~entirely~~ achieved by the conspiracy and intrigue of the great bankers, was one of the most decisive victories in ^{Indian} ~~the~~ history;¹⁶ it set the British upon that imperial journey which came

13. Ṭabā'ṭabā'ī, op. cit., Vol. II, p. 151.

14. Ibid.

15. Kanishka, op. cit.

16. Hill, S.C., (ed.) Bengal in 1756-57, London, 1905, Vol. II, p. 215.

to an end in 1947. This made the British 'kingmakers', and behind the front of the puppet Nawabs, the British extended their influence outwards across India. Using Bengal as base, the British slowly conquered the whole of India.¹⁷

Mīr ja^cfar was made Nawāb of Bengal by the Company, but was eventually deposed and replaced by his son-in-law, Mīr Qāsim. Mīr Qāsim required finance for various purposes. He contacted the great bankers and promised them a high rate of interest. When they refused him, he expressed his intense displeasure by having Mahātab Chand and his cousin Mahārāja Swārup Chand killed.¹⁸

In 1759, Ghāzī al-Dīn killed the Mughal Emperor, ^cAziz-al-Dīn, in Delhi and set up his son, Prince ^cAlī Gowhar, known in history as Shāh ^cĀlam II, in his place.¹⁹

17. Edwardes, Michael, The Battle of Plassey,
London, 1963, p. 158.

18. Bhatacharia, op. cit., p. 479.

19. Ṭabā'ṭabā'ī, op. cit.

It is said that in Bengal the new Nawāb, Mīr Qāsim imposed certain trading restrictions on the Company and by doing this lost its favour.²⁰ The Company tried to arrest him but he escaped and fled to Owadh, where he entered into an alliance with the Nawāb Wazīr and the Mughal Emperor against the Company. The allies were completely defeated by the Company at the battle of Baxer in 1764. The Nawāb Wazīr of Owadh fled for safety to the neighbouring state of Rohilkhand, Mīr Qāsim died in extreme poverty several years later in Delhi and the Mughal Emperor, Shāh ^CĀlam II, made peace with the Company by the Treaty of Allahbād. He granted to the Company the right of collection of revenue over Bengal, Bihar and Orrisa, on condition of being paid an annual sum of twenty six lakhs of rupees. The Emperor, in order to return to Delhi, from which he was being excluded by the intrigues of the Wazīr Ghāzī-al-Dīn, was obliged to throw himself on the protection of the Marathas and to transfer the districts of Allahbād and Kora to their chief, Sindhia. The Company made the Emperor's weakness an excuse for refusing to pay the sum on which

20. Ibid.

they had agreed.²¹

The Nawāb of the Carnatic, Muḥammad 'Alī had borrowed large amounts from the English bankers and had mortgaged a considerable amount of his state to his creditors.²² His accumulated loan amounted to so much that it was unlikely that he would ever be able to pay it off. His state was, consequently annexed by the Company in 1801.²³

The Company annexed Maysore in 1799, defeated the Marathas in 1803, and the Rajputs submitted without striking a single blow in self defence. The Emperor now passed under the protection of the Company and became its pensioner. Ṭabā'ṭabā'ī says 'He was not only a puppet but was treated like one; the members of his family regarded the palace as the Sultān's prison from which there was no escape.'²⁴ The Emperor's poem translated by Captain W. Franklin, and published as an Appendix to his 'History of the Reign of Shah Aulum', goes as follows

21. Irvine, op. cit.

22. Dutt, Romesh, Economic History of British India,
Bombay, 1950, p. 99.

23. Irvine, op. cit.

24. Ṭabā'ṭabā'ī, op. cit.

'Time was, O King, when clothed in power supreme,
 Thy voice was heard, and nations hailed the theme,
 Now sad reverse - for sordid lust of gold,
 By traitorous wiles - thy throne and empire sold.'

Soon after the Mughal Emperor, Shāh ^CĀlam became a pensioner of the Company in 1803, Shāh ^CAbd al-^CAzīz (1746-1824), son of Shāh Walī Allāh, declared that India was no longer a place of peace for the Muslims but had become 'Dar al-Harb', 'the abode of war', because the Emperor was utterly helpless and the real power was in the hands of the British.²⁵ He also accused the British of wantonly demolishing mosques and restricting the freedom of the Muslims and the Hindus alike.²⁶

This ruling led to the great controversy, whether or not the Muslims were bound by their law to strive against the British for the restoration of their authority. A large majority of the orthodox ^Culamā' considered that they were, and it was only because of a number of technicalities that a few of them rejected this view. The Christian rulers had to be equated with

25. ^CAbd al-^CAzīz, Shāh, op. cit., Vol. I, p. 17.

26. Ibid.

Kāfirs.²⁷ This could not be done without stretching the law considerably; it had to be proved that they restrained the Muslims by force from the practices of their religion.²⁸ It had to be proved also that the Mughals whom the Christians had replaced had showed greater regard for freedom of trade and travel, and provided greater security. This could not be done in the face of all the memories of the recent past and all the contemporary evidence to the contrary. The new rulers were not idolaters. They were indifferent, but not actively hostile, to Islam; and therefore, according to the minority group of 'ulamā', India was not technically Dār al-Ḥarb. The opposite group automatically became guilty of rebellion, which was not only a political crime but a sin as well. Besides, in the context of a discussion so basically theological, it had to be shown that there was in existence a Muslim ruler who recognized the Islamic law and had the power to enforce it, so that the Muslims could transfer their

27. An indispensable condition regarded by the early Hanafī jurists: see Shaybānī, op. cit., Vol. XIV, pp. 85, 261, 262.

28. Ibid.

allegiance to him and fight on his behalf,²⁹ otherwise all armed opposition could be considered as rebellion and not jihād. This was summed up later as follows:

'The Musalmans here (in India) are protected by the Christians, and there is no jihād in a country where protection is afforded, as the absence of protection and liberty between Musalmans and Infidels is essential in a religious war, and that condition does not exist here. Besides, it is necessary that there should be a probability of victory to the Musalmans and glory to Islam. If there is no such probability, the jihād

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29. The same fatawā were given by Jamāl b. ^CAbd Allāh Shaykh ^CUmar al-Ḥanafī, the Muftī of Mecca; Ahmad Zainī Dahlan, Mufti of the Shāfi^Cī School of Mecca, Husayn b. Ibrāhīm, Muftī of the Mālikī School of Mecca; and Sir Sayyid Ahmad Khān, the founder of the Naturī School in India; and others mentioned by W.W. Hunter in his work: 'Our Indian Musalmans: Are they bound in conscience to Rebel Against the Queen?'

is unlawful.³⁰

In spite of the opinions of the minority, the British knew that India had become Dār al-Harb for the Muslims, and the latter were bound by their

30. Lees W.H., Indian Musalmans, London, 1871, p. 4-6:

Lord May posed the question: 'Are the Indian Musalmans bound by their religion to rebel against the Queen?' W.W. Hunter's 'Our Indian Musalmans' was written in answer to that question. The book was first published in 1871 in which the writer says: 'The Musalmans of India are and have been for many years, a source of chronic danger to the British power in India. India has become a country of the enemy (Dār al-Harb) because the religious status which the Musalmans enjoy is entirely dependent on the will of their Christian rulers, and they enjoy it to only such a degree as we choose to grant. This degree falls short of the full religious privileges, which they formerly possessed. The British Government taxes the Muhammadans, and applies the taxes to the erection of Christian Churches, and the maintenance of a Christian clergy. It has substituted Englishmen for the Muhammadan Governors whom

religion to rebel against the British rule³¹

It is believed that Shāh °Abd al-°Azīz was desirous of personally carrying on jihād, but he was disabled by old age and weak sight.³² He chose one of his disciples, Sayyid Ahmad for this purpose, asked his nephew Shāh Ismā°īl, and his son-in-law, °Abd al-Haiy, to accept him as their spiritual leader,

it found in charge of the districts and provinces. It has formally abolished the Musalman judges and law officers. It allows pork and wine to be openly sold in the market places. It has introduced English into the courts. It has superseded the whole Muhammadan procedure and criminal law ... The stamps required by our courts on a plaint, our statutes of limitation, the orders by our judges to pay interest upon money found to be due and our entire system of legal procedure and religious toleration, are opposed to the Muhammadan law, and are infringements of the full civil and religious status, which our Musalman subjects enjoyed under their own rulers.' pp. 126-127.

31. Nawshahrawī, Tarājim-i-°Ulāmā'-i-hadīth Hind,
Delhi, 1938, p. 87.

32. Ibid.

robed him in his own white cloak and black turban and sent him to enrol followers. W.W. Hunter describes this journey in the following words:

'The Apostle journeyed slowly southwards, his disciples rendering him menial services in acknowledgement of his spiritual dignity, and men of rank and learning running like common servants, with their shoes off, by the side of his palanquin. A protracted halt at Patna so swelled the number of his followers as to require a regular system of Government. He appointed regular agents to go forth and collect a tax from the profits of trade in all the large towns which had lain on his route. He further mentioned four Caliphs or spiritual vicegerents, and a High Priest, by a formal deed such as the Muhammadan Emperors used in appointing Governors of Provinces. Having thus formed a permanent centre at Patna, he proceeded towards Calcutta, followed the course of the Ganges, making converts and appointing agents in all the important towns by the way. In Calcutta the masses flocked to him in such

numbers that he was unable even to go through the ceremony of initiation by the separate laying on of hands. Unrolling his turban, therefore, he declared that all who could touch any part of its ample length became his disciples.³³

There can be little doubt that this enthusiasm of the people encouraged Sayyid in making his arrangements for a jihād. He decided to fight the Sikh Kingdom of the Punjab probably because the Sikh rule was oppressive and showed extreme intolerance towards Islam,³⁴ and also because the Punjab was part of the area in which there was a majority of Muslims. If the Punjab and the Pathān territories were liberated, they would form a nucleus for further activities.³⁵

In spite of ample contributions from his followers, Sayyid faced acute financial difficulties in preparing a well-organized expedition. The bankers promised to

33. Hunter, W., op. cit. p. 13.

34. Mihr, Ghulām Rasūl: Sayyid Ahmed Shahīd, Lahore, n.d. p. 116.

35. (Abū Hanīfa has permitted the sale of one dirham for two in Dār al-Harb), Al-Jaṣṣās, op. cit. Vol. II, p. 297.

support him if interest was paid on their loans.

Shāh ^CAbd al-^CAzīz, on the basis of a fatwā attributed to Abū Hanīfa,³⁶ declared that since India had become 'Dar al-Harb' interest was no longer prohibited.³⁷

This ruling of Shāh ^CAbd al-^CAzīz certainly helped Sayyid to make a contract with the Indian bankers according to which the bankers agreed to finance the movement.³⁸

Sayyid Ahmad chose the Pathān territories as the scene of the action because it was necessary to ensure that there would be no hostile action in the rear. The Pathāns were resisting the expansion of the Sikhs into their territories. They not only needed support but would also prove good allies. Also the Muslims were not yet in a position to undertake active hostilities against the British, although an attack on the Sikhs from the East would be more advantageous as the Muslim army would be near their homes and the lines of supply more secure,

36. ^CAbd al-^CAzīz, Shāh, op. cit., p. 113.

37. Kanishka, op. cit., p. 126.

38. Mihr, op. cit.

it was certain that the British would not permit hostilities against their ally, Ranjīt Singh, to be based on their territory.

The Muslim army could not reach the area by the direct route, because they could not march through the Sikh Kingdom; therefore they took a circuitous route through Gawāliyār, Rajputana, Sindh, Balūchistān, Qandhār, Ghaznī and Kābul. They reached Nawshehra in 1826, but their financial resources were used up, and the Muslim rulers on their way refused to extend any assistance. The shortage of supplies was soon felt. Messengers were sent back through the Sikh territories for the funds promised by the bankers but they betrayed them and refused to make any payment. At Balākot the Šikhs attacked with a better equipped and numerically superior army, and killed Sayyid Aḥmad, Shāh Ismā^cīl and six hundred Muslim volunteers. The supporters of the movement later sued the bankers who had failed to make payment of the funds in the British Courts.³⁹

In Delhi, Shāh Ālam died in 1806 and his son Akbar was set up as Emperor, remaining titular sovereign until he died in 1837; he was followed by Bahādur Shāh II,

39. Sindhī, Shāh Walī Allāh Aūr Aunki Siyāsī Ta'rikh,
Lahore, n.d., p. 107.

who tried to restore his sovereignty. As his sources of income had been dried up by the British, the Marathas and the Sikhs, he decided to raise funds from the people. Since Shāh ^CAbd al-^CAzīz had permitted the payment of interest on loans, the Emperor offered to pay 10% per month (120% per annum) to his creditors until he paid off the original loan. It is not known how he spent these funds but he took a very active part in the revolt of 1857, and acted as leader to both the Hindus and Muslim mutineers.⁴⁰ Because of this, he was condemned to exile in Rangoon, where he died in 1869. On the day of his arrest his two sons were shot dead; this ended Mughal rule in India.

The decline of the Mughal Empire had a direct and adverse effect on the economic prosperity, political hegemony and social and cultural dignity of the Muslims which they had enjoyed for several hundred years. The East India Company had done away with the intermediary Muslim nobles and jāgīrdārs, who used to let out their estates to the Hindu farmers, and dealt directly with these farmers whom it made hereditary landlords by the permanent settlement of 1793. The Company also gradually

40. Irvine, op. cit.

removed muslims from their service because they were distrustful of those who had been in it previously. A large part of the community were and remained engaged in agriculture. The effects of the theory of interest on this section of the community will be seen in the following Chapter.

CHAPTER VII

Interest and the Community

Despite the prohibition of interest in Islam, the agriculturalist had occasion to borrow capital for his agricultural operations from an Indian banker, on stipulation of a certain amount of interest.¹ During the heyday of the Mughal administration, despite the indispensable role as a financier which the banker played in the rural economy, he was a despised figure in the village, probably because of his acquisitiveness and greed for money, and also because of his dealing in interest, which Islam considered an illegal profession for a livelihood.² Officially he was not allowed to live in a superior house, or to ride a horse. If he wanted to ride he could ride a donkey.³ He could usually outwit his borrower but, because of the manner in which social power was distributed in the village,⁴

1. Khawāfī Khān, op. cit., p. 211.

2. See above Chapter 1.

3. Kanishka, op. cit., p. 82.

4. Discussion follows.

he was unable to do so. Consequently he was obliged to consider himself a servant and accountant of the cultivator,⁵ working in harmony with him and sharing in his prosperity or adversity.⁶

~~[Because of the prohibition of interest]~~, The cultivator ^{was afraid} ~~feared~~ to borrow ^{money},⁷ and he rarely did so except to pay the state revenue or fines, in case of famine, failure or destruction of crops, or when there was really no food to be got in any other way, and sometimes on the occasion of marriage or death.⁸ Under ordinary circumstances he was content to live in a state of poverty rather than borrow.⁹ Similarly the banker was careful in advancing loans. If the money was wanted for extravagance, he would not usually lend. The common rate of interest was one per cent per mensem, though when the banker was doubtful if the loan could be repaid, or if he had only a small capital he might charge 2%.¹⁰ There was no security for repayment of the loan except public opinion, which reprobated repudiation; no matter what interval had elapsed, even

5. Thorburn, S.S., Musalmans and Money Lenders in the Punjab, Edinburgh, 1886, p. 48.

6. Ibid.

7. Ṭaba'ṭabā'ī, op. cit., Vol. 11, p. 117.

8. Ibid.

9. Ibid.

10. Cust, R.N., Pictures of Indian Life, London, 1881, p. 36.

even a borrower's heirs were bound to pay.¹¹ The banker had virtually no legal means of enforcing payment from his debtor. He chiefly trusted to the honesty and good faith of the intending borrower, and advanced him as much as he felt satisfied that he could and would repay.¹² He never demanded a higher rate of interest than was sanctioned by usage and public opinion. If he insisted on a higher rate of interest, the borrower could in any case probably not have maintained his regular installments. He could, of course, refer any case of a defaulter debtor to the village court (panchāyat) but since the members of this institution were recruited from the cultivators of the village, it was inclined to give judgements which showed more than a legitimate concern for the interest of the borrower, and the banker had no chance of recovering his debt unless he could persuade some powerful Zamindar to intervene on his behalf.¹³ More frequently he had recourse to throwing himself on the threshold of the debtor, and refusing to budge till the debt was settled.¹⁴ So the relations between cultivator

11. The Teaching of Islam regarding the payment of debt can be seen in all Hadith Collections, see (Dayn).

12. Cust, op. cit.

13. Bhattacharya, H., The Cultural History of India, Vol. 11, p. 13.

14. Ibid.

and banker were determined on an equitable basis. The cultivator provided land and labour, the banker assisted him with capital, and the interest was deducted in kind from the produce without reference to outside authority.¹⁵

The social order in the Indian village began to disintegrate with the political anarchy which lasted throughout the century from the death of Awrangzīb. The provincial Governors became independent rulers and embarked on internecine wars either with the object of future conquest or with that of merely preserving usurped power. To finance their campaigns they required money. Since agriculture formed a major source of their revenue, the cultivators were subjected to ~~enormous extortions~~ and an increasing number of new taxes.¹⁶ The Zamindars who failed to pay their fixed land-tax to the ruler were dismissed, and their land was re-alloted on a temporary basis to the highest bidder, who naturally wished to extract the maximum profit from it during his tenure. The rulers were no longer concerned as to what amount these intermediaries realised from the cultivators,

15. Thorburn, op. cit.

16. Ṭaba'ṭabā'ī, op. cit.

or by what means they realised it.¹⁷ An intermediary, after acquiring a particular district, would relet it in proportions to several Zamindars, who again made over their leases, in whole or in part, to other Zamindars of inferior status.¹⁸ New Zamindars ^{appeared} ~~were~~ indifferent to the welfare of the society and demanded higher rents than the cultivators had previously paid. Consequently a cultivator who, as frequently happened, was unable to pay his rent, turned to the village banker for a loan, and was thus forced to pay interest. The banker could now charge him interest at a rate anywhere between 25% and 150% and often kept him perpetually in debt, by means of false accounts.¹⁹ Contemporary works are full of denunciation of the banker, but some felt that he was misrepresented.²⁰ He was a product of the political state of India at that time and probably behaved no worse than anyone else in similar circumstances.

17. Sykes, W.H., Minutes of Evidence before the Select Committee on the affairs of the East India Company in 1832.

18. Ibid.

19. Ibid.

20. Stewart, Sir James, The Principles of Money, London, 1772, p. 81.

In fact, he offered a great deal of financial assistance to the cultivator. In the words of William Hunter, 'he had made life possible for millions who must otherwise have perished or never been born.'²¹

The rise of the British Power had a direct and adverse effect on the economic prosperity and political, social and cultural dignity of the Muslims. Although the Mughal Power had declined long before the British eventually conquered the country, the village institutions generally remained on the broad pattern of the great Mughal's administration.²² The Rajpūts, the Marāthās and Sikhs who carved out independent principalities 'retained', in the words of W. Hunter, 'the Muhammadan code as the law of the land, appointed Muhammadan law officers to carry it out and in every matter acted merely in the name of the Mughal Emperor.'²³ The British gradually conquered different territories from the Muslims, the Marāthās the Rajpūts and the Sikhs, which violently disturbed the edifice of the Muslims. The series of changes in the land management system introduced by the new rulers, ending

21. Hunter, W., The Indian Empire: It's People, History and Products, London, 1886, ed. p. 168.

22. Hunter, W., Our Indian Musalmans, p. 181, Nizāmī, op. cit.

23. Hunter, W., op. cit., p. 192.

in the permanent settlement of 1793 by Lord Cornwallis, virtually brought about the extinction of the superfluous Muslim aristocracy. Gradually the East India Company shut the Muslims out of the army, believing that their exclusion was necessary to British security. It was gradually removing the Muslims from civil services.²⁴ The high handedness of the Company's agents and the repercussion of the Industrial revolution in England undermined the Muslim artisan class who possessed hereditary means of production and adhered to the traditional system of manufacture, and forced them to fall back upon the land for their livelihood.²⁵ Sayyid Ghulām Husayn Ṭaba'ṭabā'ī, who in many respects admires and shows readiness to accord praise to the forceful foreigners, says, 'the English have deprived the inhabitants of the country of various branches of commerce and benefit which they had ever enjoyed heretofore.'²⁶

Of the Zamindars, some were left in undisturbed possession of their estates, but when they were called

24. Ibid.; Ṭaba'ṭabā'ī, op. cit., Vol. 1., p. 151.

25. Ibid; Nizāmī, op. cit.

26. Ibid.

on to pay up the arrears of revenue which were due to them, they resisted the demand which in most cases ended in the confiscation of their estates.²⁷ The cultivators were not less affected. It may be gathered from various minutes and official reports that in many parts of the country the assessments were made, in the first instance, at too high a rate.²⁸ Due to the scarcity of, and great demand for, capital, the Indian bankers, who ~~contrary to~~ ^{unlike} the Muslims, were allowed to lend on interest, were gaining enormous power over the Muslim community. A Zamindar, having no resources to pay his revenue to the Government would approach the money-lender for a loan. Consequently agricultural indebtedness became possible on a hitherto unknown scale.²⁹ High rates of compound interest ensured that a debt not quickly repaid grew rapidly to the point where it could not be repaid from the current income of the borrower.³⁰

27. Thorburn, S.S., Problems of Indian Poverty, London, 1902, p. 181.

28. Selections from Papers of Indebtedness and Land Transfers, Vol. I., pp. 13-15; Mill, J., Minutes of Evidence before a Select Committee of the House of Commons, 1831.

29. Ibid.

30. Ibid.

Under the company rule, a new system of administration of justice,³¹ provided the banker with regular facilities, of a kind hitherto quite unknown, for enforcing the payment of debts, just or unjust. The law guiding the courts prescribed that agreements however loose, between a cultivator and a banker should be enforced, without detailed enquiry into the circumstances. This system was a boon to the banker who, being the only literate party, kept the accounts or had the bonds drawn up, and it placed much of the cultivator's assets at his disposal.

In India, generally speaking, the cultivator did not pay his land-tax direct to the Revenue officer, but the village headman either collected from him if he had any, or arranged a loan from the village banker, and

31. Although the new administration upheld the village court, 'Panchāyat', it superimposed on it an imposing structure of courts of law to guard against injustice arising out of partiality on the part of members of Panchāyat. This structure of courts, which dispensed justice according to Western principles, comprised the Native Commissionership of Justice, the District Court and the Supreme Court; so that a disputant could appeal to a higher court if

then paid collectively the obligations of the whole village to the Revenue Officer. The headman had various other responsibilities including the maintenance of peace and order in the village, presiding over the village court, Panchāyat, and above all, negotiating with the Revenue Officer to determine the amount of the land-tax for the village, determining the individual contribution of each cultivator.³²

The land-reforms introduced by the Company, which stemmed from the fact that the cultivator had suffered hardships under the old system, granted him transferable rights of ownership in land and obliged him to pay land-tax in cash directly to the Government. Under the new system, the services of the native revenue officers and

he had reason to believe that he had been denied justice. For details see: Fawcell, Sir Charles, First Century of British Justice in India, London, 1934.

32. Baden-Powell, B.H., The Origin and Growth of Village Communities in India, London, 1908 (ed) p. 118; Selections from the Records of the Bombay Government No. IV, R.N. Goodine's Report on the Village Communities of the Deccan, 1845.

the village headman were retained but they were made subordinate to the Company's Collector of Taxes. The function of the headman in negotiating the amount of the tax with the cultivators had now become redundant. Direct negotiations originated by some of the collectors in various parts of the country weakened the ties and associations between him and the cultivators,³³ for the sense of solidarity which inspired the cultivators was largely a result of the division of the total tax liabilities of the village into individual contributions in which the headman played a significant role.

Although the reforms were designed to promote the welfare of people who were suffering under the misfortunes of an unjust judicial and agricultural system which subjected the many to a degrading subjection by the few, and to put an end to the ravages of brigands in a country whose government had disintegrated, they involved a most important and fundamental change in village institutions, through which rural society lost some of its cohesion and no longer flourished in full vigour. A

33. Ibid; Stokes, E., The English Utilitarians and India, Oxford, 1959, p. 281.

general picture of the community is provided by a British observer:

'There can be no doubt that, one by one the forces which have hitherto held native society together, are being loosened, and that the whole masses of the community are being melted as in a crucible, and are gradually losing the form and colour which have hitherto distinguished them, to take what new shape or to reappear in what combination it is premature to conjecture.'³⁴

These reforms reveal the depth of the new rulers' insight into the judicial problems of the country. However, they were bound to undermine the solidarity of the village institutions. 'To the Banniah class,' writes Thorburn, 'the change to fixed cash assessments, the creation of individual rights in land, and the introduction of civil courts administering laws and procedures code framed on European models, were as welcome as would be the succession to a great estate of an impecunious Anglo-Indian, or the discovery of a

34. Miller, J.O., Condition of Lower Classes in India (1881-91), India Office, Parliamentary Branch Collection, p. 220.

gold mine on his land to an Australian settler.

With their inherited business habits, their want of sympathy for Musalmans, their unscrupulous greed for gain, their established position as accountants and factors for the agricultural population, their monopoly of education, of general intelligence, and of trade most particularly of money-lending prospects of wealth and position never before attained in their history, were opened for the Banniah class.'³⁵

The state of the rural economy and devising of reforms that would best ensure the prosperity of the cultivator presented the new rulers with an urgent problem. They were aware that the revenue paid by the cultivator which formed a major part of the state revenue, was largely borrowed from the bankers.³⁶

A moderate tax on land would enable the cultivator to meet his various expenses, while a more severe tax would further impoverish him, with unfortunate consequences for social peace and political stability.³⁷

35. Thorburn, op. cit., p. 50.

36. Sykes, op. cit.

37. Maine, Sir Henry, Village - Communities in the East and West, London, 1876 (ed.) p. 17.

Although the life and property of the cultivator were secured as they had never been secured before, arbitrary taxes had been abolished, the Zamindars and Revenue officers who had formerly oppressed him were firmly under the control of the administration,³⁸ the judicial innovations nevertheless had a direct and adverse effect on his relationship with the banker. The court had not only diminished his judicial independence by diminishing that of the Panchāyat, but their judgements, based upon principles of equity, favoured the banker more than him. We find the Company's officers, who were confronted with the practical tasks of administration, complaining about the deficiency of the courts and the rigidity of the legal system which relied on written rather than oral evidence.³⁹

The banker was no longer obliged to trust to his good faith and could inveigle him into inequitable but legal contracts. If the cultivator failed to fulfil such a contract, the banker had a civil case against him, and might obtain complete control of his moveable and

38. Ṭaba'ṭabā'ī, op. cit.

39. Thorburn, op. cit.; Sykes, op. cit.; Mill, op. cit.

immoveable property. Consequently he was reduced to such a condition, socially and economically, as never to be able to regain his footing in society.⁴⁰

Sir G. Wingate discussed the relationship between the banker and the cultivator and the causes conducing to the enslavement of the latter by the former:

'The grinding oppression of the ryot by the village Bunniah or money-lender, is familiar to the experience of all public officers, whether Revenue or Judicial, and has become proverbial it remains to be shown, how it is that the creditor in our provinces has acquired a degree of power over his debtor, which is wholly unknown in Native States. This power, it is clear to me, has been conferred by our laws, which enable the creditor to obtain a decree against a debtor, for whatever may be written in his bond, and an enforcement of that decree by the attachment and sale of whatever property moveable

40. Ibid.

or immoveable, his debtor may possess or acquire.'⁴¹

There are references that the cultivators protested against the facilities provided to the banker for the recovery of his loan; and appealed to the Government to bring back the old system of resolving disputes concerning debts:

'Although we live under great protection and prosecute our labour free of any apprehension or oppression, yet our families are reduced to a miserable condition, so much so that their ordinary wants even cannot be supplied.'⁴²

The reason behind the pecuniary difficulties of the cultivators was their dependence on the banker for their daily life; he charged exorbitant rates and eventually deprived them of their belongings. 'Under the late Government we suffered great oppression but our immoveable property could not be sold and therefore we were able to endure the oppression both of

41. Wingate, G., Revenue Commissioner, Report - 1852, Selections from the records of the Bombay Government, Para. 22, No. CXIII.

42. Records of the Revenue Department, Vol. 110/1194; petition signed by seven thousand cultivators of Thana District of the province of Deccan, July, 1840.

Government and of the banker. Under the present government, by the sale of our immoveable property, we are reduced to a starving condition in the same manner as a tree when its roots are pulled out, dies.' Finally the cultivators begged that, 'our cases may be referred to the Panchāyat, who should decide on the claims and liabilities of the parties, with reference to the circumstances of each, agreeably to the ancient custom.'⁴³ The reason behind this state of affairs, according to the majority of the British officers who were practically involved in village administration, was the rapacity with which the banker conducted his fiscal dealings with cultivator.⁴⁴ It was generally believed that if the present course of affairs continued, a great part of the property of the cultivators would be transferred to a small monied class which would become disproportionately wealthy by the impoverishment of the rest of the population.⁴⁵ Suggestions for withdrawing legal

43. Ibid.

44. Thorburn, op. cit.

45. Letter from H.E. Jacomb to C.E. Fraser - Tytter, December, 6, 1858, Letter to the Deccan Riots Commission by H.B. Boswell, October, 1875; Similar viewpoints were expressed by a large number of the British Officers throughout the country. See Selections from Papers on Indebtedness and Land Transfers, Vol. 1, pp. 12,15,28,36,115,etc.

facilities from the banker were put forward by some officers, but it was also believed that exorbitant rates of interest charged by the banker were in keeping with his risk, and did not exceed the normal profits of his capital.⁴⁶

The petition presented by the cultivators was doomed to failure because the administrators felt that 'though the cultivators were loud in their complaints against their creditors, yet they would be first to suffer by, and not less ready to complain against, any restrictions which would deprive them of the aid of so useful a class.'⁴⁷

The intensity of the malaise among the rural community was perhaps painted in lurid and heightened colours by the cultivators in their petition. The facts, however, which were widely accepted by ~~a large majority of the~~ ^{many} British Officers, remain, that the cultivator rarely possessed any reserve of capital,

46. Pringle R.K., Collector of Taxes, Letter to the Bombay Government, July, 1840: Revenue Department, Vol., 1664 of 1844.

47. Ibid.

and that he was forced to borrow for his social, religious and agricultural activities from the village banker who advanced him capital to pay his land-tax.⁴⁸

The laws regarding the recovery of debts were unintelligible to the cultivator who was unaware of the implications and significance of his contracts with the banker for the bare necessities of daily life.⁴⁹

The village banker, consequently, was absorbing proprietary interests in the village communities to an alarming extent and the body of ex-proprietors was enormously on the decrease.⁵⁰ In the district of Ahmadnager of the Deccan, for instance, suits regarding the cultivators' indebtedness increased from 2900 to 5900, practically 100 per cent, between 1835 and 1939; and a substantial share of them ended in the transfer of the holdings from the cultivators to the bankers.⁵¹

48. Ibid.

49. Campbell, op. cit.; Thorburn, op. cit.

50. Ibid; Also Selections from the papers of Indebtedness and Land Transfer, Vol. II, pp. 136-139.

51. W.G. Pedder's Report quoted in Precis of Correspondence Regarding Indebtedness of Agricultural Classes in Bombay and Upper India. (the Deccan Riots Commission, Vol. II)

Since direct participation in farming was contrary to the style of caste and social values of the village banker, he allowed the cultivator to cultivate his newly acquired land, and appropriated all of the profits of his labour, after giving him the bare means of subsistence.⁵² In this way he became one of the greatest obstacles in the way of the prosperity and progress of the cultivators,⁵³ because he hindered a change through which the small cultivators would have given way to a class of capitalist cultivators who possessed large landed estates, and who possessed the resources to cultivate them efficiently. A British officer writing to his colleague, says:

'Seldom do you see them (the bankers) improving any property that may have come in hand, or in embarking on any speculation such as sugar plantations, cotton or the cultivation of silk. Their thoughts and speculations are confined to their ledger and money transactions, and in no instance have I ever found a bunion (sic) step

52. Thorburn, op. cit. Sykes, op. cit.

53. Letter from B. Frere, Assistant Collector Poona to R. Stewart, Collector of Poona, dated 2

forward to aid in any work of public activity.⁵⁴

Many village headmen and Zamindars, who had previously presided over village affairs, and had a privileged social position, were reduced to the position of tenants cultivating the lands owned by the bankers.⁵⁵ The cultivators, despite the growth of economic activities in the great cities of the Empire which had opened a wide alternative avenue of employment, remained attached to their old style of life, accepting the suffering, frustration and humiliation that it now generally entailed. Nevertheless, although normally submissive, if oppressed beyond a certain point, they could turn fiercely on their tormentors as they did during the disturbances of 1857 and 1875 and force the rulers to pass a law for their

54. Ibid.

55. Ibid. Selections from the Papers Regarding Indebtedness and Land-Transfer, Vol. I, pp. 5-6, Vol. II, p. 18-19.

protection.⁵⁶

The reforms which had been introduced by the company in Bengal and the North-Western provinces were extended to the newly annexed territories such as the Punjab and Owadh. Although a large majority of the British officers supported this policy, there were officers who did not favour it.⁵⁷ For instance Lord Stanley strongly criticised it. L.E. Rees stated: "I speak with a warning voice, because I have opportunities of seeing and hearing what the

56. Until the downfall of the East India Company and direct British rule, there was almost no information available as to the extent to which the cultivator was in debt. However, throughout the country, in one village after another, the cultivators had been gradually dispossessed of their holdings by the banker who thrived under the new dispensation. In village after village the British officers observed identical changes. For details see Appendix at the end of the chapter; also Punjab Famine Report 1878-9; Report of Deccan Riots Commission 1875, and other later enquiries of this nature.

57. Pringle, op. cit.; George Edmonstone, Richard Temple, Henry Davies. Phillip Sandys Melvill, Hector Mackenzie, J. Vibart and others, were in favour. Their opinions are mentioned in the Appendix at the end of the chapter.

people think of the policy now pursued. If this be the policy it will be working its own ends and purposes Outh (sic) will be the scene of our national disgrace, dishonour and bloody massacres.'⁵⁸ Thorburn warned: 'If these doctrines are endorsed throughout India, it will eventually lose us India.'⁵⁹ George Campbell in his book entitled 'India As It May Be, An Outline of a Proposed Government and Policy', suggested about the Punjab that if it was even to have civil courts such as those in the North-Western Provinces, which had transferred land in execution of decree on a large scale, the village communities would be destroyed, for no banker would ever become part of these communities. He contended that land was not so far a separate property that individuals could sell it to a banker without the consent of the community, and proposed that the land of those in pecuniary difficulties should be transferred to the community. He considered the establishment of the courts 'in every way most undesirable, pernicious, and unfair' to the village communities, that is 'to facilitate their premature dismemberment by laws

58. Rees, L.E.R., A Personal Narrative of the Seige of Lucknow, London, 1858, p. 17.

59. Thorburn, op. cit., p. 88.

altogether inconsistent with their previous constitution and rights.⁶⁰

He regarded village bankers as not the least useful of men, accumulating capital as they did, and providing the village cultivators with credit and other essential services. Their interest might be exorbitant at times, and the British might decry them, but it was after all the pursuit of self-interest which provided the right principles of political economy.⁶¹

However, the object of the Government throughout the country had been the creation of a valuable and marketable proprietary right in the land, so that the revenue would be secured, and capital be obtained for the improvement of the tax-paying capacity of the land.⁶² The government also defended the desirability of the introduction of the civil courts on the social and political grounds throughout the country.⁶³

60. Campbell, op. cit., pp. 136, 178, 181-182.

61. Ibid. pp. 186, 372.

62. Abstract Principles of law circulated for the Guidance of Officers employed in the Administration of Civil Justice in the Punjab, London, 1865, Part 1, p. 16-17.

63. Ibid.

The Government, from the experience gained from the old provinces, however, decided to adopt a protective policy. The sale of land for arrears of revenue was restricted and a defaulter was given an opportunity to pay it by installments while care was taken that 'landed property shall not unnecessarily be brought to the hammer.'⁶⁴ As for the compulsory sale for debt, the Government decided that the land should be offered to the proprietary community in the first place. 'If it could not be sold in this way, then it could be offered to bankers.'⁶⁵ This shows that the transfer of land to banker was considered by the Government as a threat to the unity, solidarity and prosperity of the village community. Alienations, however, at that time, were very uncommon and there was no widespread anxiety. Throughout the province, except for the Muzzaffargarh

64. Parliamentary papers, 1854, LXIX, (General Report on the Administration of the Punjab, (1849-50 and 1850-1 para 227) p. 528.

65. Circular No. 38, May 3, 1852, Circular Orders Vol. 1, pp. 178-9.

district, hardly over 2% of the assessed land was mortgaged.⁶⁶ In 1854, Richard Temple wrote in regard to the regular settlement operations in the Punjab that 'sums began to be advanced to the peasant proprietors by the money-lending classes on the new security afforded by the property their privilege was not abused, nor did any extensive indebtedness set in.'⁶⁷ This observation might not be strictly accurate for every district but it is consistent with contemporary evidence which shows no indication of special anxiety among cultivators.

Due to the political stability and abolition of various arbitrary taxes, the cultivators were better

66. Temple, R., Men and Events of My Time in India, London, 1882, p. 89.; Selections from the papers of Indebtedness and Land-Transfer, Op. cit.

In the South-Western Punjab the sale of land for debt, in the ^CAlīpur Tahṣīl of the Muzaffargarh district attracted the attention of the Financial Commissioner. He expressed his surprise and concern at the number of transfers made to Hindu bankers, and noted that nothing of the kind had occurred elsewhere in the Punjab: O'Brien's report of ^CAlīpur, 1877, para, 39.

67. Temple, op. cit.

off than under the former rule. The value of agricultural produce had considerably increased; the pressure of land-tax was minimal. Many of the cultivators were capable of paying off their old debts with a rapidity which was quite unexpected. The contemporary politico-religious scholars had legalised the payment of any rate of interest on loans.⁶⁸ Consequently the cultivators lost the fear of debt which originally restrained them. Two or three harvests would enable them to repay a sum which they would hardly have dared to borrow before. Therefore they began to borrow on much less weighty grounds than before, and no longer restricted their borrowing to occasions of real necessity.⁶⁹ Their intelligence, however, did not increase with their prosperity. They borrowed recklessly, and accepted the bankers' accounts blindly.⁷⁰ Thorburn says:

'We converted collective into individual ownership of land, plus the right to alienate it at pleasure. By so doing we made an unconditional

68. See above page. 133.

69. Roe, Charles Arthur and Rattigan, H.A.B., Tribal Law in the Punjab, so far as it relates to right in Ancestral land, Lahore, 1895, p. 165.

70. Darling, Sir Malcolm, The Punjab Peasant in Prosperity and Debt. London, 1925, p. 21.

gift of a valuable estate to every peasant proprietor in the Punjab, and raised his credit from the former limit of the surplus of an occasional good crop to the market value of the proprietary right conferred. It is difficult for us now to realise the revolution effected in the status and relations introduced in 1849-50. Until then his borrowing was limited to a few rupees, recoverable only at harvest time ... In one day the old order passed away and gave place to a new one, which imposed upon this unsophisticated Punjabi a responsibility to which he was unequal, in that he who had never handled coin in his life before was required to pay to his government twice a year a fixed sum of money - crop or no crop. To his surprise and delight he found that his former petty borrowing powers were now practically unlimited, his Bania (sic) being ready to accommodate him to any extent.⁷¹

The banker charged a high rate of compound interest for his debt which grew rapidly to the point where it could

71. Thorburn, op. cit., pp. 48-49.

not be settled by the cultivator. The banker, eventually, brought a suit in the civil court and obtained complete control over the property of the cultivator.

Consequently the transfer of land in payment of debt, and debt slavery, became regular features of village life,⁷² which gave rise to widespread agrarian discontent throughout the country.

The process continued. The bigger proprietors as well as the cultivators were hard hit. Every year large numbers of estates were put up for sale under the decrees of the courts in payment of debts, which assumed significance when it was found that in many places throughout the country the cultivators took advantage of the disturbances of 1857, and burned and destroyed the houses and property of the bankers to revenge themselves on the bankers who had robbed and enslaved them.⁷³ The District Officers, W. Edwards of Badāuh, H.D. Robertson of Sahāranpur and M. Thornhill

72. Debt slavery was clinched by legal provisions which required a borrower to work for the account of the person who had advanced him money, or go to jail. The act, however, was repealed in 1925. For details see Fawcett, op. cit. p. 138.

73. Edwards, W., Personal Adventures during the Indian Rebellion, London, 1858, p. 14.

of Mathura observed that the first proceedings everywhere were to take revenge on the money-lenders.⁷⁴

'By fraud or chicanery, a vast number of the estates of families of rank and influence have been alienated, either wholly or in part, and have been purchased by the buniyas (sic)', who could not command any influence over their tenantry. They practised unmitigated usury, treated their debtors harshly, and naturally became the targets of attack. Their account books and their household property were thrown into the flames. Edward describing the cause of these attacks says, 'The English Courts which offered facilities to the most oppressive money-lenders in executing a decree for the satisfaction of an ordinary debt against an ignorant peasantry produced the greatest resentment amongst the agricultural population and a dangerous dislocation of the social structure.'⁷⁵ Thus the exorbitant rate of interest charged by the bankers not merely uprooted the ordinary people from their small holdings but also destroyed the nobility of the country. Both the orders being the victims of the rapacity of the banker and the

74. Ibid. also Thornhill, M., The Personal Adventures and Experiences of a Magistrate during the Indian Mutiny, London, 1884, p. 34.

75. Thornhill, Ibid. p. 35.

operations of the civil courts took advantage to unite in the Revolt in a common effort to recover what they had 'invariably termed as 'Jān say^cazīz' dearer than life',⁷⁶ and were losing. During the disturbances of 1857, the situation remained fairly under control, and there were no widespread disturbances of this kind. The neighbouring villages of Siyālkot, Ludhiyāna, Panīpat, Balsī and Korana, however, all rose, refused to pay land-tax and directed their attacks against the bankers and specially the auction purchasers who had gained possession of their lands.⁷⁷ But in most parts of the province, the cultivators remained loyal to the government. Thorburn says:

'That the Musalman peasant is a shortsighted and long suffering animal, is demonstrated from his history during the last twenty years. So long as the paternal acres remain in his possession and the pinch of actual poverty is not felt, he is content to rub along from day to day, deliberately oblivious of accumulating debts until Fate's decree removes him to paradise. Though a good deal of indebtedness was incurred within the first decade of our rule,

76. Cooper, F., The Crisis in the Punjab, London 1858, p. 140.

77. Chick, N.A., The Annals of the Indian Rebellion, London, 1860, p. 719.

the area of land alienated to non-agriculturists in that period was small. Except in localities in which summary settlements had broken down in consequence of over-assessments, no popular discontent at the insidious transfer of the rights of the people of the soil to nerveless aliens anywhere manifested itself before 1860. It cannot be doubted that the loyalty of the Punjab peasantry during the Sepoy mutiny was largely due to the absence, in 1857-58, of good cause of agrarian discontent. In the older Gangetic districts of the N.W. Provinces, that Mutiny was largely taken advantage of by the agriculturists to wreak their vengeance on the money-lenders and auction-purchasers who had dispossessed them.⁷⁸

In Meerūt, the cultivators took a more prominent part in the slaughter of bankers and auction-purchasers. 'The whole country was rising; native drums, the signal to the villagers to assemble, were being beaten in all directions, and crowds were seen moving up to the gathering place ahead.' The surrounding country was soon ablaze, the tahsīl of Sardhāna was attacked and escaped prisoners

78. Thorburn, op. cit. pp. 51-52.

murdered their money-lenders.⁷⁹

On the banks of the Eastern Jumna Canal, as witnessed by English refugees from Delhi, 'villages in flames in all directions, and their auction-purchasers ejected and dispersed, while their women flung themselves into wells to escape dishonour.'⁸⁰

In Muzaffarnagarh, the people plundered the courts, bungalows and destroyed the jail and the bankers were despoiled. The rebel 'insurgents were so furious that they did not even spare those of the Baniyas and mahajans (sic) who fled to the mosques for shelter.'⁸¹

Among the noted leaders, mentioned in official correspondence in this connection, were Ismā'īl Khān, Munīr Khān, Raḥīm 'Alī, Hurmat Khān, 'Abd al-Laṭīf, A'zīm Khān, Walīdād, but most of them were killed in hand to hand fighting.⁸²

79. Ibid.

80. Ibid.

81. Kaye, J.W., A History of the Sepoy War in India, London, 1880, Vol. 11, p. 506.

82. Forrest, G.W., Selections from the Letters, Despatches and other State Papers Preserved in the Military Department of the Government of India, 1857-58, pp.353-462.

In Mathura, Agra Division, the uprisings did not occur all at the same time or in the same manner, owing to local conditions, yet in type and pattern these were much the same. The news of the political disturbances spread with great rapidity and the whole country rose almost simultaneously. The police and revenue establishments and courts were everywhere ejected, or if permitted to remain, 'were allowed to remain on mere sufferance; the Bunjahs (sic) were plundered and new proprietors ejected and murdered.'⁸³

In Allāhabād Division, the incidents of this kind were 'worse' and more widespread, 'particularly in the Doāb Parganas inhabited mostly by Mahomedans (sic), who, to a man, were disaffected.'⁸⁴ In Sekandra were the clashes between the ex-zamindars and the auction purchasers were more extensive than in any other part of Allāhabād,⁸⁵ the excited cultivators and the dispossessed Zamindars made a common cause in outstaining the auction purchasers and decree holders and in

83. Thornhill, op. cit., pp. 100-6.

84. Chick, op. cit., p. 820.

85. Ibid; also Dodd, G., The History of the Indian Revolt, London, 1859, p. 157.

plundering everything they could lay their hands on.

The leading rebels were named as Fazl^c Azīm Ghulām Murtāza, Faqīr Bakhsh and ^cAzīm Allāh Khān.⁸⁶

The cultivators of the neighbouring villages of Allāhabād destroyed courts and hunted the auction-purchasers and decree holders.⁸⁷

In Rohīlkhand Division, the great bankers, Misr Bajīnāth and Kunjatlāl were repeatedly dispoiled.⁸⁸

In Benares Division, even old women and boys joined in plundering the money-lenders' deserted houses.⁸⁹ In Braylī, the cultivators and Zamindars whose rights had passed into the hands of money-lenders attempted to regain their ancestral holdings and hunted out their auction-purchasers, who suffered the same fate as elsewhere.

The village communities of the villages around Hamīrpur, Jalāun, Jhānsī, Sāgar, Jabalpur committed the usual outrages. They directed their attacks against the

86. Ibid.; Forrest, op. cit.

87. Ibid.

88. Forrest, op. cit., p. 321.

89. Ibid., p. 521.

bankers, the money-lenders and especially the auction-purchasers 'who had gained possession of their lands,'⁹⁰ Hanging, flogging and murdering them, burning and destroying their houses became general.⁹¹

In short, the village communities felt that they had been downtrodden by the bankers, who practised unmitigated usury under the legal protection, and naturally directed their attacks on them. Their account books and household property were thrown into the flames.

It is generally believed that the British Courts which offered facilities to the money-lenders in executing a decree for the satisfaction of a debt produced the greatest resentment amongst the agricultural population; and this was the sole reason why the cultivators, to whom borrowing was the only resource, were so uncompromisingly hostile to the new rulers. However, the fact remains that the theory of interest, as understood by the community, played an important part in the decadence of the Muslims. In the words of Thorburn, 'It unfits them for the struggle of life.'⁹² There was a

90. Ibid.

91. Thornhill, op. cit.; Further papers relative to the Mutiny in India of 1857-58. Vol. VII, p. 275

92. Thorburn, op. cit. p. 38.

complete ban on such fiscal activities amongst Muslims, the Hindu bankers charged maximum interest from them, and enjoyed a complete monopoly of the money market:

'Had Islam arisen in the fertile plains of Hindostan instead of in the deserts of Arabia, its attitude towards the taking of interest might have been different. Financing the village, marketing its produce and supplying its necessities, the money-lender in India frequently stood between the cultivator and death.'⁹³

However, a number of senior administrators proposed to intervene to alter the bankers' attitude towards their clients, and resolved that the courts should not be used by them to oppress the cultivators. In 1858, John Lawrence, the head of Punjab province, expressed his deep concern that the courts did not sufficiently protect ignorant cultivators from unscrupulous bankers.⁹⁴ This was certainly a significant comment from the head of the administration on the prevailing conditions in the country.

93. Darling, op. cit., p. 132.

94. Selections from the Papers of Indebtedness and Land Transfer, op. cit., p. 371.

In the eyes of the law the position of the litigants, the banker and the cultivator, was simply of a debtor and creditor. But, in fact, the cultivator in money matters, as described by Thorburn, 'was a crass and hardly-intelligible simpleton', and the banker, 'a sharp unscrupulous businessman whose sole interest was self-interest.'⁹⁵ To ensure that the banker should not take advantage of the ignorance of the cultivator, Lawrence introduced the registration of bonds and the keeping of proper account books. He proposed to place restrictions on the compulsory sale of land for the payment of debt. Although such sales were placed at the discretion of the Divisional Commissioner, and in this way, were made rare, he wanted to make them still rarer, for he believed that 'such sales foster hatred between classes who will tear each other to pieces directly the bonds of civil order are loosened.'⁹⁶

Despite the fact that the government followed a protective policy in order to preserve the proprietary

95. Thorburn, op. cit. p.

96. Judicial Commissioner's circular No. 103 30 October 1858; Proceedings of the Punjab Government, Judicial Department, November 1858, Nos. 40-1.

bodies, sale of land for debt gradually increased:

'By all means let land fetch its value in the market, and let people sell and buy it if it be their interest to do so. But experience shows that such transactions are not frequent when people are prosperous; whenever they are frequent, we may suspect that there is either some distress capable of remedy, or some pressure of the revenue, or some sinister influence at work.'⁹⁷

This created a sharp antagonism in the rural society, led to the disturbances of 1875 in the province of Deccan, and forced the Government to pass the Deccan Agriculturists' Relief Act in 1879. In the Punjab, the widespread discontent among the rural society also resulted in the passing of the Punjab Alienation of Land Act in 1900. This may be seen in the Appendix at the end of the chapter.

97. Parliamentary papers, 1859, XVIII, p. 469.

Report prepared by Richard Temple regarding sales of Land, in 1856-1858.

APPENDIX

The decision of the Government of Bombay in the 1860's to revise land-tax maximised the bitterness in the rural society. The tax was raised by practically 50 per cent, and in the case of some villages, by 200 per cent. The cultivators who had a considerable increase in assessment were bound to become hopelessly involved in debt.¹ The fact that the cultivators were in a situation that made it necessary for them frequently to borrow for the payment of their dues had been confirmed by Colonel Sykes, who conducted a minute and extensive survey of the Deccan over many years, questioning between three and four million people. In his evidence before the select committee on the affairs of the East India Company in 1832, he stated: 'I am afraid they are in such a state of poverty, as there is a great deal of improvidence in the ryot.' The cultivators either had to lose their land or to turn to the banker for financial assistance in meeting their obligations.² But this assistance ensured

1. Selections from the Records of the Bombay Government, new series No. CL1. (Report by Col. J. Francis dated 12 February 1867); Memorandum by Sir G. Wingate, dated 12 February 1869.

2. Ibid.

for them a fate that was even worse, for they were thereby reduced to becoming bond slaves of the bankers; this is demonstrated by a petition from the cultivators to the Bombay Government:

'The monstrosity of our subordinate rulers has been so great that words cannot express them. The usurpation of our rights by the money-lenders, really brings to our recollection the jolly old times in which our fathers swayed the sceptre in prosperity. It really cuts one to the core to reflect on the past and present conditions, i.e. the freedom and affluence in which our fathers lived and died, and the serfdom in which we are doomed to live and die.'³

The statement reveals the intensity of the social malaise which was both alarming and explosive. A British officer, who attempted to explain logically the reasons for the reassessment, wrote to his higher authority:

'I endeavoured to reason with them and to point out the grounds on which it was but equitable that their payment should be raised. I had scarcely concluded my explanatory remarks, when most of the

3. The paragraph is taken from the petition from the cultivators of Indapur to the Government, dated July, 29, 1873, The records of the Revenue Department, Vol. 96 of 1874.

assembled ryots stood up so excited and disrespectful was their demeanour that I felt myself bound to report the matter to you for further instructions.⁴

Consequently the Revenue Commissioner called a meeting of the officers of the various districts in order to devise measures which would relieve the tension and discontent in the rural community.⁵ At this, it was resolved that the assessment of a group of villages should never be raised by more than 50 per cent or that of a single village by more than 75 per cent. It was also resolved that if a cultivator was unable to pay his tax, then the revenue department would, in the first instance, attach his moveable property and his holdings would not be auctioned unless his moveable property proved insufficient to cover the full amount of the tax.⁶ The imposition of a limit on the extent to which the land tax could be increased avoided the

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4. Letter from W. Waddington, dated April 18, 1874, The Records of the Revenue Department, Vol. 104 of 1874.
 5. W.H. Havelock, The Revenue Commissioner, Letter to the Collector of Poona, dated 20 December 1874. The Records of the Revenue Department, Vol. 97 of 1874.
 6. Resolution by Bombay Government dated 29 October 1874, The Records of the Revenue Department, Vol. 97/1874.

hostility of the cultivator, but the initial source of discontent in the village remained. The cultivator depended upon the capital of the banker for the payment of the land revenue. The decision first to auction a cultivator's moveable property, if he was unable to meet his obligations, was a concession which was immediately exploited by the banker. He had formerly advanced capital to the cultivator, for the payment of his obligations, in the knowledge that if he defaulted, then the only security which he had to offer, namely, his land, would be attached by the Revenue Department, and the debt could never be recovered. Since the Government now resolved, in 1874, to attach the cultivators' moveable property in the first instance, the banker did not see any threat to his security and consequently refused to advance further funds to pay the land revenue.⁷ In this way the banker inflicted unbearable hardships on the cultivators. The cultivators attempted to bear the bankers down by social sanctions against them, and completely severed social and agricultural relations

7. Letter from J.B. Richey, member of the Bombay Executive Council, to W.G. Pedder, dated August 30, 1875; The Records of the Revenue Department, Vol. 118/1875.

with them.⁸ As a result of this, the antagonism between the cultivators and the bankers was transformed into an open conflict in the village, to such an extent that a violent clash between the two groups became inevitable. The news of sanctions against the bankers spread very swiftly from village to village, and on 12 May 1875, the cultivators in the village of Supa suddenly rose against the bankers in order to dispossess them of the title deeds and the mortgage bonds which they looked upon as the instruments of oppression. The bankers refused to surrender the bonds and decrees in their possession. The cultivators stripped and burnt their houses and shops, but no physical harm was done to anyone.⁹ In a few days the disturbance spread and bankers everywhere faced murderous assaults.¹⁰ On the whole, the main object of the cultivators was to seize and to destroy those legal documents which proclaimed their bondage to the bankers. According to the Deccan Riot Commission report: 'It was not so much a rebellion

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8. An Agreement by the cultivators of the village of Kalas in Indapur area, dated May, 7, 1875; Report of the Deccan Riots Commission, Vol. II, p. 13.
9. Report of the Deccan Riots Commission, Vol. II.
10. Ibid.

against the oppressor, as an attempt to accomplish a very definite and practical object, namely, the disarming of the enemy by taking his weapons (bonds and accounts) and for that purpose mere demonstration of force was usually enough.¹¹

We have seen that the poverty of the cultivator, the rapacity of the banker and the rigidity of the judicial administration were the main factors in the outbreak. Despite their awareness of the magnitude of the evil, the administrators, who controlled the province, were far too committed to laissez-faire principles to intervene between debtor and creditor.

Although the cultivator was free to deal with the banker of his choice, he was entirely dependent upon the capital of that banker. Moreover he was needy, thoughtless and ignorant, and the banker, who was shrewd and sophisticated, enjoyed a complete monopoly of the money market.¹² This state of affairs undoubtedly revealed the irrelevance of the application of laissez-faire to the rural economy. The question was now whether the concept of legality which guided the newly established

11. Ibid.

12. Sykes, op. cit.

courts of law required modification in view of its adverse effect on the prosperity of the cultivator. Bartle Frere, confronted with the practical tasks of administration, showed strong doubts about the relevance of laissez-faire principles in the village society¹³ and pressed the authorities to fix a ceiling on the rates of interest which the banker could charge the cultivators.¹⁴ The Revenue Commissioner of the Southern Division, J. Vibart, despite his belief that the banker charged exorbitant rates of interest,¹⁵ objected to this proposal, and said 'However injurious, in some respects, the perfectly free traffic in money may be to the advancing prosperity of the country, any interference on the part of the Government, in the way of limiting the legal rate of interest, would be of doubtful tendency.'¹⁶

13. B. Frere, Assistant Collector of Poona, op. cit.

14. Ibid.

15. J. Vibart, Revenue Commissioner of the Southern Division, to the Bombay Government dated February, 28 1840. The Records of the Revenue Department, Vol. 1664/1844.

16. Ibid.

P. Stewart, collector of Poona, agreed with Vibart, when he objected to the decrease of interest rates. He believed that an attempt to lower the rates of interest would have precisely the reverse effect to that intended. It would encourage the banker to evade the law by raising his rates of interest in order to insure himself against the risks involved.¹⁷

Fixing a maximum rate of interest might be a help to the cultivator but it would hardly solve the real problem, the prime cause of his pecuniary difficulties, his need for cheap credit for his daily life and for fulfilment of his obligations to the state. His position could only be improved by providing him with an alternative source of cheap credit, so that he could reduce his dependence on the village banker. To provide such facilities P. Stewart proposed the establishment of a financial institution to 'Protect the helpless and needy from being plundered by irresponsible persons like the village banker.'¹⁸ This was rejected by Vibart on the ground that the government was under no obligation to assume the responsibilities of a banker.¹⁹

17. Stewart, op. cit.

18. P. Stewart, op. cit.

19. J. Vibart, op. cit.

The banker's reluctance to advance loans and the absence of an alternative source of credit placed the cultivator in so desperate a position that J.B. Richey, a member of the executive council also directed the attention of the Bombay Government to the need for such a source.²⁰ The cultivator had no money of his own. Richey proposed that the Government should assist him in paying outstanding debts to the banker, so that he could renew relations with the banker with a clean slate.²¹ W.G. Pedder, the Secretary of the Bombay Government, supported this idea, and, in a memorandum about its implications, he pointed out that the Government would have to finance cultivators who were not badly involved in debt. They, in return, would mortgage their crops to the Government till their debts were paid.²² Pedder pointed out that it would involve a considerable financial risk, but the benefits gained from it would be most substantial.²³ He concluded, 'We shall have to spend a great deal more than this if we have a famine in the Deccan and shall then only save life, instead of providing the rise of the

20. J.B. Richey's letter to the Bombay Government, op. cit.

21. J.B. Richey, op. cit.

22. Memorandum by W.D. Pedder, date 31 August, 1875, The Records of the Revenue Department, Vol. 118 of 1875.

23. Ibid.

people as well.²⁴

This proposal resembled Stewart's proposal but reflects a more sensitive understanding of the rural problems. It was, however, rejected by Sir Phillip Wodehouse, the Governor of Bombay, on the ground that it would virtually oblige the state to take upon itself the role of the banker, who provided the cultivator with advances for the cultivation of his land, and for the payment of the land tax. It would be impolitic for the Government to assume so heavy a responsibility.²⁵ He concluded, 'Our aim must be to maintain friendly relations with the Sowcar' (banker) to satisfy him that while we will do our best to prevent extortion, we will throw no obstacle in the way of the reasonable involvement of his money.'²⁶

Since the proposal to provide some other source of credit to the cultivator was rejected and ruled out by the Governor, a remedy had to be found by reforming the legal system so that the relations between the cultivator and the banker could be improved.

24. Ibid.

25. Minute by Sir Philip Wodehouse, Governor of Bombay, dated 17 September, 1875. The Records of the Revenue Department Vol. 118 of 1875.

26. Ibid. Also see his minute dated 19 October 1875 in The Records of the Revenue Department, Vol. 118 of 1875.

The Governor also believed that if the Government upheld the right to private property, it was also incumbent upon it to enforce the repayment of debts which had been justly contracted, even if such enforcement resulted in the large-scale transfer of landed property into the hands of the banker.²⁷ In other words he opposed drastic changes in the legal system. However, a commission was appointed to enquire into the outbreak and proposed remedies for the rural problems within the terms of reference set by the Government.

The commission reported that the ignorance of the cultivator placed him under a grave handicap in his dealing with the shrewd and grasping banker. The removal of the cultivator's ignorance would of necessity be a slow and laborious process, and it concerned issues which fell outside the commission's terms of reference. But until the cultivator's ignorance was removed, the Government bore a moral responsibility to see that his lack of sophistication did not put him at a disadvantage in the courts of law.²⁸ The commission recommended the compulsory registration of bonds by public notaries, followed by a minute record of subsequent proceedings.²⁹

27. Ibid.

28. Deccan Riots Commission Report, Vol. 1, para. 13-14.

29. Ibid.

The commission also found the cultivator unable to attend the courts situated at a great distance from his village, and recommended the establishment of courts of circuit which would tour the country districts to try civil cases.³⁰ The commission also recommended increasing the strength of judicial officers.³¹

The recommendations proposed by the commission were, perhaps, to secure the approval of the Governor, Sir Phillip Wodehouse. Before any further action was taken, Sir Phillip was succeeded in 1877 as Governor of Bombay by Sir Richard Temple, who proved to be more concerned for the prosperity of the cultivator than his predecessor. He looked to a vision of India consisting of a 'community of strong and independent yeomen farmers', who had to be protected from the corrosive influences of a commercial society.³² As a result, the judicial administration was radically changed in favour of the cultivator.

Previously the courts of law had investigated cases of debt without reference to wider problems of social

30. Ibid.

31. Ibid.

32. Stokes, op. cit., p. 244.

equity. When a judge was presented with a bond which was properly executed, he immediately decided against the debtor who had executed the bond. The bond, however, could be unjust.³³ The money originally borrowed by a cultivator was in most cases only a small fraction of the sum for which he was sued, and the rest of his debt was made up of interest which was added to the principal at successive renewals of the bond.³⁴ It was also possible that the debt had since incurred not by the cultivator himself but by his ancestors. The Governor strongly recommended that the judges should examine the detailed history of the debt. He also recommended changes in legal administration which would help the cultivator. Although the draft bill did not question the principles which were favoured by the British Administration, it was opposed by the Government of India on the grounds that it would cast upon the courts a burden of work which it seemed questionable

33. Sykes, op. cit., Darling, op. cit., p. 136, Thorburn, op. cit., p. 53. Ṭaba'ṭabā'ī, op. cit., Vol. 11, p. 17, Minute by Sir Richard Temple, dated November 12, 1877. Bombay Government Selections, No. 157.

34. Ibid.

whether they could, as then constituted, get through; it would afford many opportunities for fraud and evasion by dishonest debtors; and it might be an incentive to reckless borrowing.³⁵

Although the Government of India did not see any reason to amend the legal system, the Secretary of State felt that the system in fact, induced a condition of helplessness in the cultivator which could be resolved only by far-reaching reforms, so that the cultivators could achieve justice according to their notion of social equity.³⁶ He wrote to the governor 'Your Government has distinctly perceived that the courts of justice we have constituted and law they administer, operate most hastily and frequently with injustice, on debtors, who form the bulk of the population. Here, therefore, is an opportunity for the beneficial interference of extending the power of judges to modify the contracts entered into between man and man.'³⁷

35. Letter to Bombay Government dated July 1, 1878, Bombay Government Selections No. 157.

36. Letter by Lord Cranbrook to Bombay Government, dated 20 December, 1878, Bombay Government Selections, No. 157.

37. Ibid.

The new administration granted the cultivator transferable property rights in land, developed a rational policy of land revenue under which every cultivator was obliged to pay his due directly to the State; and established a modern system of justice. Its efforts were rewarded with success³⁸ but at the same time it created acute tension between the cultivator and the banker which led to the Riots of 1875. Lord Lytton in the discussion preceeding the passing of the Deccan Ryots Act in 1879, asked his council the following question:

'Is it not obvious that if in any part of India the actual cultivators of the soil see not only the proceeds of their labour, but actually their personal freedom passing from them into the hands of a class whom, rightly or wrongly, they regard as the authors of their ruin, and under the protection of laws which, rightly or wrongly, they regard as engines of it, the bitterness of sentiment, the sense of hopelessness and irremediable wrong engendered by such a state of things must be a chronic

38. Dutt, op. cit., Ṭaba'ṭabā'ī, op. cit. Sir Sayyid Aḥmad Khān, op. cit.

incentive, if not to social disturbances, at least to personal crime?'³⁹

The Bombay Government in a decisive attempt, answered the questions and passed the Deccan Relief Act as a remedy, to restore the cultivator to his former position. According to this all disputes concerning debt were to be resolved through the panchāyat. The parties could however resort to litigation, if the panchāyat proved abortive, by approaching newly created officers known as munsifs. The courts of the munsifs were situated within easy reach of villages. The District Courts which heard the appeals made against the awards of the munsifs, were generally supervised by a special judge appointed for the purpose. Above all, all courts of law had to investigate the history of each case, for the bond signed by a cultivator was considered no more value as a proof of debt than the confession of a man under torture of the crime he was charged with. The judge had to establish firmly the extent of a cultivator's responsibility for a loan before giving judgement.⁴⁰

39. Lord Lytton before the Legislative Council dated 17 July 1879, Bombay Government Selections No. 157, new series.

40. The Agriculturalists Relief Act of 1879: Bombay Government Selection No. 157, new series.

While the cultivator warmly welcomed the act as a measure for his protection and a hopeful augury for a prosperous future, the banker considered it as something designed to undermine his position. He was aware of his importance in the rural economy and of the fact that the cultivator was still his dependent. So, as a protest against the 'iniquitous' provisions of the act, he refused to 'attend to agricultural work,' and asked the Government to point out a way in which the agriculturalists would be enabled to get 'timely pecuniary aid.'⁴¹ Later on, the bankers proposed an Agricultural Bank.⁴² The system of credit before 1879 had brought about the dominance of the bankers over the cultivators in the village; equally, the Act of 1879 had amended the law in favour of the cultivators and had, the bankers believed, undermined their own position. The bankers thought that the bank would avoid both of these evils. For if the bankers were organised in banks with the blessings of the Government, then they would not aspire to dominate the cultivators, since the banks would be able to protect their interests 'without involving them in litigation of dubious morality.'⁴³ They

41. Petition presented by the Poona Bankers mentioned in A.D. Pollen's Report, dated June 7, 1880; Deccan Agriculturalist's Relief Act, Vol. 1, pp. 223-6.

42. Ibid.

43. Ibid.

suggested that the Government should undertake the payment of the amount owed by the cultivators, and the cultivators should pay it off to the Government by annual instalments.⁴⁴ In return the bankers agreed to purchase shares in the proposed bank equivalent to the amount of money which the Government would agree to give them as a pyament of the debts of the cultivators.⁴⁵ The whole matter, it seems, was a fictitious transaction, and the bankers wanted the Government to accept the responsibility of collecting their loans on their behalf. The Government, however, rejected this idea and replied:

'It is desirable for the Government to render some assistance to capitalists or bankers who undertake to advance money to the landholders, and to exercise some control over their business. But in deciding to what lengths the Government should go the former must be left to private enterprise and if this private enterprise is to be floated with cork-jackets by a Government guarantee, it will not be private enterprise, but a spurious form of state interventionism.'⁴⁶

44. Ibid.

45. Ibid.

46. Memorandum on the question of State Assistance to Agricultural Banks in India by W. Warner, dated 20 April, 1882. The Records of the Department of Revenue proceedings, No. 13/20 of June 1884.

The Act was aimed at reforming the law in conformity with the principles of social equity which had prevailed before British rule, and to provide a basis for a healthy relationship between the banker and the cultivator, by throwing the weight of the administration in favour of the latter. The establishment of an agricultural bank however, was seen by the Government as an undesirable step. The Secretary of State stated:

'There is a strong presumption that Government cannot directly do much more for the relief of the agricultural debtor than take care that in disputes between him and his creditors the law shall provide, and the courts shall administer speedy, cheap and equal justice, and that the ryot shall be as little liable as possible, from his ignorance, his poverty, or his position, to be defrauded or oppressed.'⁴⁷

Although it was certain that the bank would not be able to dominate the cultivator in the way the banker had previously done, but would act on behalf of the banker, and collect his dues, accepting the complex job

47. Parliamentary Papers, Vol. LXII of 1877,

Dispatch to the Government of India dated 23 October 1884.

of providing the cultivator credit for his daily life was not so easy, at that time, for the British Administration. The administration, therefore, refused at this time, to provide him with this alternative source of credit, and confined its reforms to the judicial system. But the attitude of the banker towards the rural economy, and his rapacity in his fiscal dealings with his debtor, eventually forced the Administration to solve the pressing problem of the scarcity of cheap capital for agriculture by establishing agricultural banks, co-operative banks and co-operative societies. The introduction of co-operative farming, the development of a modern irrigation system, the building of railways, roads and other means of transport and communications raised the cultivator to a state of considerable prosperity.⁴⁸ In 1918 The Deccan Riots Association demanded for him, a position in keeping with his newly acquired economic status, separate representation in the legislatures; this was to be implemented under the new constitution.⁴⁹

48. H.W. Wolff, Co-operation in India, London 1925, p. 155.

Ballhatchet, op. cit., pp. 125-127. Dutt, op. cit.

49. Ibid.

The Punjab Land Alienation Act.

Robert Cust, the judicial commissioner of the province of Punjab, believed that the compulsory sale of land for debt was the natural and just result of owning land. The restrictions on such sales could not be justified in terms of political economy; they were bound to reduce the value of landed property; they would raise the rates of interest and retard the improvement of the land.⁵⁰ He made it clear, however, to his opponents that he would never sanction the compulsory sale of hereditary land under any circumstances.⁵¹ The cultivator usually gave almost all the produce of his farms, at the harvest time, to the banker and for his own common expenses, again depended upon the assistance of the banker. Some officers opposed the Government policy and argued that a cultivator who could not derive an adequate profit from his land should resign it and seek his livelihood elsewhere.⁵²

50. Cust, Robert, Manual for the Guidance of Revenue Officers in the Punjab, Lahore 1866, pp. 3, 30-1.

51. Ibid.; Proceedings of the Punjab Government, Judicial Department, June 21, 1862, Nos. 5-6.

52. Minute by Donald Friell McLeod, Lieutenant Governor of the Punjab, August, 27, 1867, para, 8,10.

In 1860-61, a famine year, the contraction of debts became possible on a hitherto unknown scale. Land being valuable and transferable, mortgages and sales for debts assumed unprecedented forms. Robert Cust issued a circular in October 1860, reaffirming that the transfer of land to the banker must be confirmed by the commissioner. If the cultivator was driven to sell or mortgage his land to the village banker by pressure of the revenue, the matter must be immediately investigated, and the assessment must be reduced.⁵³

The policy of protecting the cultivator from the rapacity of the banker through various restrictions was sharply criticised by some British Officers. For instance Hector Mackenzie, settlement officer of Gujrāt District where a goodly number of bankers lived, opposed the restriction on the banker's purchasing the land from his debtor. He pointed out the difficulty of the cultivators who were forced to sell their land at prices lower than ^{the real value} ~~those which had induced them to agree to sell~~.⁵⁴ To overcome this difficulty Cust amended the regulation to prescribe that 'only where the price offered by a stranger was a fictitious and fraudulent one, should the assessors

53. Circular No. 96, October 13, 1860, Book Circular Orders, Vol. 3, pp. 396-400.

54. Hector Mackenzie's Settlement Report of Gujrāt, 1859, para. 178.

be allowed to fix a lower price in lieu of it. Where a stranger made a genuine offer, it was the collector's duty to overrule any attempt by the assessors to fix a lower price for pre-emptors. This would enable the owner to obtain the legitimate value of his land, according to the law of supply and demand.⁵⁵

This reveals that the Government Policy stemmed from assumptions that the alienation of land was harmful for the prosperity and solidarity of the cultivators. Although the banker provided great help for agricultural operations in the province, he was not fair in his dealings with his debtor, and, taking advantage of his ignorance and poverty, was pressing him for the sale of his farms for debt. The senior authorities, however, believed that the discouragement of such transfers was a measure of distinctly temporary character.⁵⁶ The village communities would have sooner or later, to melt away and give place to a more modern distribution of property.⁵⁷ It was argued that in the evolution of a

55. Cust, op. cit. p. 116.

56. Ibid.

57. Ibid. pp. 29, 186.

community institutions and values which had once performed a creative role and satisfied a genuine need often became completely purposeless. It was foolish and even dangerous to oppose the abolition of such values and institutions.⁵⁸ The measure, however, could not be forced through. The government, therefore, in spite of some opposition, controlled the money market to a certain extent, and did not permit the monied class to absorb village proprietors.⁵⁹

In 1866, the system of judicial administration was recognised. The judicial commissioner, who had to sanction the compulsory sale of land for debts, was replaced by the Chief Court, and the code of civil procedure (which asserted that all property was liable to attachment and sale in execution of a civil decree) was extended to the province of Punjab. Although the Chief Court's policy was to avert compulsory sale when the money due could be raised in other ways, some judges considered this system much less satisfactory than the protective measures adopted earlier,⁶⁰ and demanded more precise and

58. Colebrooke, T.E., Life of Honourable Mount Stuart Elphinstone, London, 1884, Vol. 1, p. 6.

59. Cust, op. cit.

60. The judges, Charles Boulnois and David Simson were in close agreement in their preference for legislation

definite regulations regarding the restrictions on land transfer for debt. Since no principles had been laid down to guide the courts in the exercise of their discretion, which was exercised in an unregulated manner in other parts of the country, the judges in the Punjab seeing the social and economic evils which resulted from this system expressed their preference for legislation which would provide a substantial check on the sale of land in execution of decrees.⁶¹ They rejected the notion that the permission for such sale helped credit in a rural society, and argued that compulsory sales of land for debt had been unknown under native rule, and yet the cultivators had had as little difficulty in attaining money as at present any restriction on agricultural credit, because of the complete prohibition of the sale of land in execution of decrees, would be

which would provide a substantial check on the sale of land in execution of decree: Register of the Chief Court of the Punjab, No. 1550 May, 10, 1869. Minute by Boulnois, Judge of the Chief Court of the Punjab, March, 1869, and Minute of Simson, Judge of the Chief Court, no date.

61. Ibid.

beneficial rather than injurious, perhaps instituting reckless and unnecessary expenditure on marriages and other social and religious functions.⁶² If the limitation of credit, Charles Boulnois concluded, made it impossible for landowners to pay an excessive revenue demand, the reduction of that demand was a duty which the Government fully recognized.⁶³ These proposals were strongly supported by various British Officers. Lieutenant Colonel Coxe, the Commissioner of Jullandar Division expressed his entire agreement with them. He argued that the cultivator was entirely at the mercy of the banker who exploited his advantage ruthlessly. The banker could enter in his account almost any amount he pleased; and if his books had been kept according to law, he was almost certain to win a decree in court.⁶⁴ On the other hand the cultivator was ignorant and utterly incapable in money matters.⁶⁵ Arthur Brandreth, a settlement

62. Proceedings of the Punjab Government, Judicial Department,
May, 1869, 13A.

63. Ibid.

64. Abstract of A.H. Coxe, Report, No. 200, June 29, 1869,
Proceedings of the Punjab Government, Judicial
Department, November, 1869, 17A.

65. Ibid.

officer, also supported the protective measure advocated by the judges. He argued that the restrictions on land alienation would avoid the sort of ill feeling and antagonism in rural society which were a direct result of compulsory sales of property due to the defective judicial administration and faulty revenue arrangements which forced cultivators to borrow at high rates of interest.⁶⁷ Philip Sandys Melvill, the officiating Financial Commissioner, however, criticised the notions put forward by the judges. He argued that the sweeping away of the security of land for loans would result in a contraction of agricultural credit which could not fail to be harmful for cultivators requiring short term loans for various purposes.⁶⁸ Melvill, in fact, was less concerned with agricultural indebtedness than with the improvement and prosperity of the province.⁶⁹ Land previously had had little value, but now its value had increased considerably. The cultivators had freed themselves from the overwhelming burden of debt which had

67. Abstract of A. Brandreth, No. 196, August 28, 1869, Proceedings of the Punjab Government, Judicial Department, November, 1869, 17A.

68. Proceeding of the Punjab Government, Judicial Department, November, 1869, 17A.

69. Ibid.

previously weighed them down. Both cultivators and bankers were more precise in their contracts than they had been.⁷⁰ In spite of the judges' opinions on agricultural credit, Melvill seems to have clung to the views of credit frequently put forward by certain officers who had argued along similar lines.⁷¹ He concluded that the law should be slightly altered to ensure that land was not sold in execution until it has been shown that the debt could not be realised in any other way.⁷² Charles Lindsay, another judge of the chief court, agreed with Melvill in opposing the proposals advocated by his colleagues. He argued that the Punjab was not in tutelage, and that the people were able to take care of themselves, knowing the increased value of land and money the legislation was likely to make matters worse, by depreciating the value of land as security, and hence impairing the cultivators' ability to obtain a loan in time of need.⁷³ He was opposed to maintaining a family that had 'lived its time, and through foolishness had ruined itself.'⁷⁴ He also believed

70. Ibid.

71. Edward John Lake, Thomas Douglas Forsyth, Captain Tighe, Hector Mackenzie opposed the protective policy; for details see Extracts from the Land Revenue Reports, 1861-2 pp. 48, 56, 113.

72. Ibid.

73. Note by C. Lindsay, Judge of the Chief Court, Feb. 1870, 4A.

74. Ibid.

that the arrival of a capitalist was likely to infuse new energy into and give life to, the decaying property.⁷⁵ Donald McLeod, the head of the Punjab Government, examined the social and economic conditions which prevailed in Punjab rural society and the opinions held by British Officers. He expressed his entire agreement with views presented by the judges. He contended that the compulsory sale of land had never been recognised under native rule, and such sales were abhorrent to the feelings and opinions of the majority of the people of the Punjab. He supported his argument with references to scenes witnessed in 1857 'villages in flames in all directions, and the bankers ejected and dispersed'.⁷⁶ He asked the Chief Court judges to prepare a draft enactment for an absolute prohibition of the sale of land for debt.⁷⁷

In 1871, Arthur Brandbreth found bankers absorbing village proprietors to a serious extent. Referring to the alienation of land as a political question of extreme

75. Ibid.

76. Proceedings of the Punjab Government, Judicial Department, February, 1870 4A.

77. Secretary to the Government, No. 227, February, 18, 1870.

importance he requested a solution from the authorities.⁷⁸ The political danger outlined by Brandbreth was denied by the Lieutenant Governor, Henry Davis. He criticised Brandreth's views, and expressed his regret that an officer in such a responsible position should have put on official record opinions which could not be supported by admitted fact or reasonable argument.⁷⁹ This was in February, 1872. In June 1872, Philip Sandys Melvil who had opposed the restrictions on land alienation, and maintained that cultivators were able to take care of themselves, protested against the great amount of injustice done by transferring the land from cultivators to bankers. He warned the Government that the prevailing conditions were bound to give rise to serious rural discontent, leading to political danger, just as had happened in 1857.⁸⁰ While he was officiating judge of the Chief Court, a memorandum was submitted to the Government in which Melvill illustrated the origins of alienation. He believed that civil courts often, and

78. Extracts from the Revenue Reports, 1868-9. Remarks by A. Brandbreth, p. 53.

79. Proceedings of the Lieutenant-Governor of the Punjab No. 162, February 3, 1872, para. 16, Proceedings of the Punjab Government Revenue Department, February, 1872, 6A.

80. Memorandum by P.S. Melvill, June 11, 1872. Proceedings of the Punjab Government, Home Department, June 1872, 26A.

perhaps generally, decreed excessive interest on sums due for the time that passed between the date the debt became due and the institution of suit; this led frequently to the transfer of land in execution of decree.⁸¹ Sometimes cultivators against whom decrees had been passed had transferred their land to bankers without awaiting the coercive processes of court.⁸² The cultivators who had not been brought into court at all were commonly selling and mortgaging their land to bankers, in payment of debts swollen by compound interest; they feared that if they were sued, the court would give no relief from the interest charged. Under native rule, there were customary restrictions on the rates of interest.⁸³ Melvill urged the government to impose a similar restriction immediately and demanded a detailed enquiry into all the major issues raised in the memorandum.⁸⁴ Henry Davis, who probably had little sympathy for the policy in favour of the cultivators, which he had expressed earlier, this time allowed the Chief Court to make the proposed enquiry.⁸⁵

81. Ibid.

82. Ibid.

83. Ibid.

84. Ibid.

85. Officiating Under Secretary to the Government's No. 2271 June 28, 1872, Proceedings of the Punjab Government, Home Department, June 1872, 26A.

In November, 1872, the cultivators of the District of Montgomery presented a petition in which they explained their pecuniary difficulties, and the rapacious conduct of their bankers.⁸⁶ They begged the Government to help them by liquidating their enormous debts, which had been increased by compound interest. Their lands had been mortgaged and even sold, and application had been made for the imprisonment of some of them.⁸⁷

G.E. Wakefield, the officiating Deputy Commissioner of the Jhang District, in view of widespread discontent and ill feeling in the area, urged the lieutenant-governor to extricate the cultivators from their accumulating debts.⁸⁸

The growing body of opinion that the condition of the landed proprietors was deteriorating, the increasing amount of land transferred to bankers each year, and demands for measures to avert the danger of political trouble, created a distinct change in the outlook of the lieutenant-governor, Henry Davis. The change was

86. Proceedings of the Punjab Government, (Revenue Department) December, 1872, contain the translation of petition made by Fāzil Shāh, Sayyid Maḥammad Shāh and others.

87. Ibid.

88. Memorandum by G. Wakefield, December, 3, 1872, Proceedings of the Punjab Government, Revenue Department, May, 1875, 6A.

apparent in his review of the provincial revenue report for 1871/72; in January 1873, hardly a year after his condemnation of Arthur Brandreth, he agreed that the bankers were absorbing village property to an alarming extent, and that this required a remedy.⁸⁹ He predicted that 'if the Government were to forget the source of its strength and left the proprietors to be absorbed by the bankers, the feelings of the people in times of uncertainty would be in opposition to the Government.'⁹⁰ Colonel Coxe, who had drawn attention to rural indebtedness in 1869, stated that in the Jallandhar Division a large portion of the agricultural community was being ruined by land transference arising from extravagance, litigation and exorbitant interest rates.⁹¹ In 1873, James Lyall, the settlement Commissioner, urged the importance of preventing the transference of land from the hands of the cultivators into those of the monied classes.⁹² In order to slow

89. Proceedings of the Punjab Government, Revenue Department, Officiating Secretary to the Government of the Punjab, No. 4C - 1657, 1694 November 1872, May, 1875.

90. Ibid.

91. Remarks by H.W.H. Coxe, cited in the Extracts of the Land Revenue Reports, 1872-3, pp. 3-9-13.

92. J.B. Lyall, The Settlement Commissioner, Report Nos. 67, July 2, 1873, and 127, October 22, 1873.

down the process of transferences, he wanted legislation passed for extending the period after which the banker had the right of pre-emption in long term usufructuary mortgages.⁹³ In August, 1873, Wakefield again asked the Government to consider the possibility of agricultural relief in various parts of the province. Owing to the poverty and ignorance of the cultivators and the bankers' monopoly of the money market, he raised doubts about the relevance of laissez-faire in Punjab villages, and alluded to the dangers in blind adherence to English theories in dealing with India.⁹⁴ The political danger caused by alienation, he stated, had been manifested in the North Western provinces in 1857; in the Punjab they were still 'on the right side of the hedge.' He warned the Government that 'if the present rate of transfer of land continued, another twenty years would see the transfer of sixty per cent of the assessed land to bankers.'⁹⁵

In answer to the petition presented by the cultivators of the Montgomery district in 1872, which was

93. Ibid.

94. G. Wakefield, No. 307, August, 23, 1873, Proceedings of the Punjab Government, Revenue Department, January, 1874, 13A.

95. Ibid.

re-presented in 1873, the district authorities reported that nothing could be done for them under the existing law because most of their debts were secured by registered bonds with the bankers on land mortgaged as security.⁹⁶

In April, 1874, the Chief Court submitted the reports of the judges to the Government. Charles Boulnois proposed, as he had proposed in 1869, that the sale of land on a decree held by the banker for debts due from the cultivator should not be permitted.⁹⁷ He also proposed the abolition of imprisonment for debt.⁹⁸ Charles Lindsay opposed the maintenance of careless and extravagant cultivators. Only those should be maintained who strove to maintain themselves they should be taught habits of thrift, and should come to feel the responsibilities of property conferred on them by the British rule.⁹⁹ He also believed that if a limit

96. Proceedings of the Punjab Government, Revenue Department, January 1874, 13A. Secretary to the Government of the Punjab No. 160, January, 24, 1874.

97. Note by C. Boulnois, Judge of the Chief Court, March 13, 1874 Proceedings of the Punjab Government, Home Department, August 1874, 12A.

98. Ibid.

99. Proceedings of the Punjab Government, Home Department, August 1874, 12A, Note by C.R. Lindsay, Judge of the Chief Court, no.date.

was set upon the rate of interest recoverable, bankers would find new outlets for their money, and cultivators would not be able to borrow in times of scarcity.¹⁰⁰ For existing indebtedness, Lindsay recommended certain remedies. The debtor who borrowed on the security of his land could be further protected by a law compelling the banker to produce his accounts yearly; and, in addition, it would be well if the courts looked more closely into accounts between creditors and debtors.¹⁰¹ The minimum limit of interference which he thought tolerable was to lay down that the interest recoverable at any time should not exceed the principal.¹⁰² The third judge, Philip Sandys Melvill, who had believed, in 1869, in a great improvement in the prosperity of the rural community, and the decline of agricultural indebtedness, noted that land transfers to bankers, chiefly due to agricultural indebtedness, had been extensive. The cultivators were undergoing a gradual but certain process of extinction. The value which British rule had given to land enabled cultivators to borrow

100. Ibid.

101. Ibid.

102. Ibid.

freely, and they had shown a great want of caution in making use of this credit.¹⁰³ The banker, with his superior intelligence, and his rapacity and unscrupulousness, took unconscionable advantage of the cultivators' necessity, ignorance and carelessness. Melvill noted that the officers consulted during this enquiry were almost unanimous in the view that the existing law regarding interest caused undue hardships to the cultivators.¹⁰⁴ A large majority of these officers recommended that the law should be altered, that a maximum rate of interest should be fixed, that the court should be granted the power to make an equitable judgement of interest, notwithstanding any agreement made by the parties.¹⁰⁵ Melvill himself was not prepared to recommend any alteration in the law where the rate of interest had been agreed upon by the creditor and the debtor. He proposed however, that no voluntary transfer of land should be permitted in payment of a debt to a banker, whether alien or of the village brotherhood, the sole exception being a mortgage

103. Proceedings of the Punjab Government. Home Department, August, 1874, 12A; Minute by P.S. Melvill, Officiating Judge of the Chief Court, April 1, 1874.

104. Ibid.

105. Ibid.

limited to the lifetime of the mortgagor.¹⁰⁶ In 1869, Melvill had combatted further restrictions on compulsory sales by pointing to the harm which would ensue when cultivators were no longer able to obtain short term loans. In 1874, he did not ignore this problem. He agreed, however, that restrictions on voluntary transfers would not prevent bankers continuing to make advances to the cultivators on whose business they largely depended.¹⁰⁷ Earlier he had anticipated that the sale of land to bankers would lead to the improvement of the land, at any rate in some part of the province;¹⁰⁸ in 1874, he concluded that while this might be true in some cases, hitherto the bankers had not been in the habit of spending money on the land, and confined themselves to squeezing as much as possible out of their tenants.¹⁰⁹ He advocated the abolition of imprisonment for debt, and the restriction of the power of the banker in regard to the attachment and sale of crops in execution of decrees for debt.¹¹⁰

106. Ibid.

107. Ibid.

108. See above pp. 201-2.

109. Melvill, op. cit.

110. Ibid.

He concluded that 'the cultivators, having been ousted altogether from their farms, and having lost their right to cultivate their ancestral property, would become disaffected and disloyal subjects.' He predicted, 'Let this process go on for another fifty years and the Government might find itself face to face with a serious political danger.'¹¹¹

We have seen that Melvill and Boulnois were in favour of, but Lindsay was against, any drastic changes in legislation. The Lieutenant-Governor, Henry Davis, after considering the arguments of the Judges, did not see any need for any further legislation. He dwelled on the probability that further restrictions on the transfer of land would do more harm than good, depreciating the value of land as a security, raising still higher the rates of interest, and destroying that self-reliance and industry which characterised many Punjab cultivators and which were among the causes of the agricultural prosperity of the province.¹¹² Accordingly he rejected all proposals for further legislation, and in this way, prepared an elaborate and confident defence of a laissez-faire policy. In fact the protective

111. Ibid.

112. Proceedings of the Lieutenant Governor of the Punjab.
in Home Department No. 4609, December, 23, 1874.

policy adopted by the Government was a departure from political economy. Although the policy had made its mark on the administration, it did not make much difference, because it did not invalidate the absolute practicability and truth of the principles of political economy in the eyes of the rulers. However, political economy had been set aside once, which might have provided an excuse and precedent for the Lieutenant-Governor's drawing up further legislation. Nevertheless, political economy still proved to be a barrier which every proposal for intervention between a creditor and a debtor had to overcome. Some officers had, in fact, attempted to persuade the Government to surmount the barrier erected by the laws of political economy, by assuming that British Government in India was the chief or real landlord and hence could interfere to protect its tenants.¹¹³ Davis, however, rejected this view and upheld the British theory of non-interference. In fact, the key posts in the province, from the annexation, remained hitherto in the hands of those who had been associated with one or other aspect of the protective policy in regard to land. After John Lawrence, in 1859, Robert Montgomery took up the Lieutenant-Governorship. He was succeeded in 1865 by Donald McLeod. Edward Thornton and Robert Cust simultaneously retained the office of

113. A.Brandreth, op. cit. p. 174.

judicial commissioners. The preservation of the landed community and its protection from the rapacity of money lenders were the remarkable feature of the policy of these officers,¹¹⁴ and they had often defended in writing their measures for the protection of the cultivators.¹¹⁵ Now the key executive posts were, and remained for many years, held by opponents of the protective policy. Robert Egerton remained Financial Commissioner till 1877, then he succeeded Henry Davis as the head of the Punjab Government. He generally believed that alienations of land as a whole were not very much compared with the general increase in prosperity which had taken place throughout the province.

Arthur Brandreth, as a commissioner of the Multan Division, pointed out various agrarian difficulties, and suggested that the Government introduced legislation as a remedial measure, in 1875, in 1876 and again in 1877.¹¹⁶

114. Edwardes, Sir Herbert B., and Mericale, Herman: Life of Sir Henry Lawrence, London, 1873, ed. p. 153; Stokes, op. cit. p. 138.

115. For the views expressed by the earlier administration, see above pp. 173, 198, 204.

116. Selections from the Records of the Office of the Financial Commissioner, Punjab new series No. 11, Lahore 1887 (Egerton's opinion) pp. 837-9.

In spite of the general prosperity which, according to the Government view, was prevailing throughout the country, cultivators were still dependent upon the village banker for their necessities of life as well as for their farming. The banker charged them high rates of compound interest. As a result the cultivators had become hopelessly involved in debt. There were numerous cases where the communities which had not yet sunk to this level were so little above it that unfavourable seasons might at any time reduce them to it; only the greatest economy and forethought could enable them to rise above their present position:

'The glory of the Government has been that it has hitherto secured to a great extent the prosperity of the masses; and the highest credit of our Revenue Survey has been that it appears to have settled these on a firmer basis than ever. How then can it but be a matter of great anxiety and uneasiness to discover that the prosperity of the masses is declining and their happiness passing away before the encroachment of an alien community.'¹¹⁷

117. H.B. Boswell's statement cited in The Deccan Riots Commission Report, October 5, 1875.

Septimus Thorburn, engaged in the settlement of the Bannu District, observed that since the annexation, the Hindus of Bannu were growing wealthy and becoming large landowners.¹¹⁸ In 1878, he submitted his settlement report, which revealed more signs of uneasiness, though nothing like alarm. The people, he believed, though generally better off than under their former rulers, were not extricating themselves from debt, a fact which he attributed to increased expenditure on domestic ceremonies, on jewels, food and clothes, as well as to the widespread practice of gambling. Although his report revealed that the problem of land transfers to bankers had assumed a political dimension, he was not certain that this fear was a real one.¹¹⁹

William Coldstream, the Deputy Commissioner of the Hoshiarpur District, conducted an enquiry into indebtedness, and found, out of sixty villages, two to be free from debt. The rest of them were hopelessly involved in debt.¹²⁰ He believed that the next generation of cultivators might be better able and willing to look after itself. Yet he admitted that in many cases, another generation would not

118 Extracts from the land revenue reports, 1882-3

(Remarks by Thorburn) pp. 148-150; also Thorburn, S.S. Bannu or our Afghan Frontier, London 1876, p. VII

119. Ibid. p. 245, 123, 132.

120. Remarks by W. Coldstream, Punjab Report, Lahore 1878-9, pp. 432-4.

see them in possession of their ancestral land.¹²¹

The land was already changing hands to a large extent. The banker carried away most of the grain from the threshing floor, and the cultivator was forced to borrow again for his daily life. H.E. Perkins, who as the Deputy Commissioner of Rawalpindi, had supported the Government policy in 1875,¹²² in 1878, as a Commissioner of Amritsar Division, reported that the land transfers to the bankers were taking place to a much larger extent than had been admitted by the Government.¹²³ The Lieutenant-Governor repudiated his assertion and indicated in 1879 that complete statistics were necessary before the conclusion could be accepted.¹²⁴

The drought of 1877-8 gave impetus to further alienations. J.W. MacNab, the Commissioner of Umbālla, found no village clear of debt. Most of them owed the equivalent of three or four years revenue, and many more than that.¹²⁵

121. Ibid.

122. Selections from the Records of the Government of the Punjab, op. cit. (H.E. Parkin's opinion), p. 19-20.

123. Extracts from the land revenue reports, 1876-7
(Remarks by H.E. Perkins) p. 21.

124. Proceedings of the Punjab Government, Revenue Department, June 1879, 6A.

125. Ibid.

There was hardly any report which did not mention the economic decay of the cultivator and the dominance of the banker over villages. In spite of the fact that the Punjab Government was aware of the prevailing conditions, it was most reluctant to eradicate the evil.

The Government of India, in 1879, took the initiative in relieving cultivators from their debts; and in connection with this, asked the Punjab Government to consider the possibility of a more elastic system of revenue collection.¹²⁶ Some British Officers believed that the origin of the debts which led to these frequent transfers of property was, in the great majority of cases, the pressure of the revenue system.¹²⁷ Although the main principles of that system were sound, it had been administered in a 'very harsh' and 'unbending manner'.¹²⁸ 'Collectors and their subordinates,' Sir John Strachey wrote, 'have far too much become mere machines for grinding revenue out of the people.'¹²⁹ Although James Lyall, the Financial Commissioner, and several other officers, supported the

126. Selections from the records of the Government of the Punjab, Lahore 1887 (note by J.B. Lyall, August 30, 1879) pp. 839-45.

127. Thorburn, op. cit., A. Brandrath, op. cit., Melvill, op. cit., Colstream, op. cit., p. 17.

128. Cited by Thorburn op. cit., pp. 66-7.

129. Ibid.

proposal made by the Government of India, the Lieutenant-Governor, Robert Egerton, did not think it practicable to relax the present system for the sake of the comparatively few districts that would benefit from such a relaxation. The Government Revenue would suffer if taxes were collected in kind rather than in cash, and collection in kind was the only means of preventing cultivators in these districts borrowing money.¹³⁰ This shows that Egerton's opposition to the adoption of a measure which would diminish the dependence of the cultivator on the banker remained unchanged. In fact changes in revenue administration might have had some favourable effect on rural indebtedness, but they could not have provided any real relief so long as the cultivator was unable to find an alternative source of advances on reasonable terms. His growing poverty and dependence on the banker were facts accepted by almost everyone. Speaking in the India legislative council in July 1879, Robert Egerton noted that the circumstances which led to the passing of the Deccan Agricultural Relief Act were generally prevailing in the Punjab, which might lead to the same upheaval.¹³¹ The manner in which they were to be treated

130. Selections from the Records of the Government of the Punjab (Egerton's opinion July 10, 1880) pp. 837-9.

131 Speech by R.E. Egerton, Lieutenant-Governor, July 17, 1879, India Legislative Council proceedings, 1879.

in the Deccan might possibly form an example for their treatment in the Punjab.¹³² There were many cultivators in the Punjab whose condition in many ways resembled the description given in regard to the Deccan. In 1880, he informed the Government of India, of his own accord, that, in the province, he was favourably disposed to an amendment of the law which would empower courts to investigate the circumstances behind bonds; to a gradual extension of rural courts and to a limitation of the attachment of produce in execution of decree.¹³³

The gradual deterioration of circumstances in the Punjab, and the Deccan legislation, had a direct influence on the strong opposition of Robert Egerton to the transfer of land. In earlier years he had helped to convince Henry Davis that the transfer of land posed no serious problems.¹³⁴ He adopted the same attitude when he succeeded Davis as Lieutenant-Governor in 1877. So the modification of his opposition to alienation provides an interesting example of the importance of the time factor in influencing political and intellectual beliefs. In 1880,

132. Ibid.

133. Egerton, op. cit.

134. Selections from the Record of the Punjab Government, op. cit., p. 837-9.

E.G. Wace, the Settlement Commissioner of Ludhiyāna expressed his great concern at the increasing number of land transfers to the bankers.¹³⁵ In 1882, in an attempt to get to the heart of the situation, he stated that the root of the trouble lay in the nature of the society itself. A society of a rather loose moral and social constitution had been advanced rapidly by the British from a condition of comparative adversity and depression to one in which the cultivators had few anxieties, and a very considerable command of money.¹³⁶

In fact, the grant of transferable proprietary rights in land to the cultivator was an innovation, and he had not known anything like it under native rule. The banker took advantage of his ignorance and pecuniary circumstances, and inveigled him into contracts of dubious equity, charged him high rates of interest and finally deprived him of his proprietary rights. Wace believed that the trouble had been aggravated by the failure to adopt a civil law and procedure framed on the European model to requirements of the cultivators.¹³⁷

135. Papers connected with revenue rate of Hoshuarpur,
1882, para. 7, Remarks of Edward Scorge Wace,
July 10, 1882, para. 7.

136. Ibid.

137. Ibid.

In 1882, H.E. Parkins, the commissioner of the Multan Division, found that the numbers of transfers in his division were much greater than had been admitted.¹³⁸ C.A. McMahon considered the problem 'A matter of considerable political importance.' He asked himself (and probably his colleagues) why cultivators were getting more and more indebted at a time when the value of land and agricultural produce had risen so much.¹³⁹ He attributed it to the growing pressure of population, the sub-division of land and the transfer of land into the hands of the bankers.¹⁴⁰ He stated, 'Everywhere in our villages we see handsome new idol temples rearing their spires aloft, and marking the growing influence, wealth and supremacy of the village baniah.'¹⁴¹

The necessity for agricultural relief was again urged in 1882 by James Wilson, who proposed that the government should advance capital to the whole of North India 'to pave the way for grand reform, the

138. Extracts from the land revenue report, 1881-2.

Remarks by H.E. Perkins, pp. 350-6.

139. Charles Alexander McMahon's reference in proceedings of the Lieutenant-Governor, Home Department 1874, 18A (December 23, 1874).

140. Proceedings of the Punjab Government, Revenue Department, May. 1875, 2A.

141. Ibid.

revocation of the power to alienate ancestral land.¹⁴² Lyall, as a Financial Commissioner, rejected this view on the grounds that the government would face considerable risk in order to relieve the cultivators from debt¹⁴³ as it would have difficulties in collecting the instalments from the cultivators afterwards.' He, however, favoured agricultural banks, and noted that 'they seemed most desirable in the most indebted tracts.'¹⁴³

Direct financial help from the government would be a temporary solution while a permanent source of cheap advances could really eradicate the evils of usury and the banker's dominance over the cultivators. Probably on the same grounds, Charles Aitchison, the Lieutenant-Governor, dismissed Wilson's proposal of making a government loan. He argued that it would not prevent the cultivators again falling into the hands of the bankers.¹⁴⁴ An alternative means of credit to the bankers for the future requirements of the cultivators was necessary; this could be provided only by the government itself, or by the establishment of agricultural banks.

142. Proceedings of the Government of the Punjab, Revenue Department (J. Wilson, Scheme for the Redemption of Mortgages) April 1883.

143. Ibid. (J.B. Lyall views, 19 March 1883).

144. Proceedings of the Government of the Punjab, Revenue Department, April 1883, 5A (Aitchison's opinion - 20 April 1883)

On a permanent basis, the former course was out of the question, while the establishment of banks was attended by various difficulties which Aitchison saw no clear way of solving.¹⁴⁵

The grant of transferable rights in land to the cultivators, moderate assessment of the land tax, general peace and political stability had made land a valuable property. Above all the permission to borrow on interest by religious authorities enabled cultivators to borrow much more freely. But uncertain seasons and variability in rainfall often proved too much for the greatest thrift and economy. The establishment of an inflexible system of judicial proceeding, which in a way had enforced the hasty promises made by ignorant and needy cultivators, certainly had given the bankers an unfair advantage over their debtors. It was not fair to neglect those people who could not quickly adjust themselves to judicial innovations and assist those who could. The loss of ancestral land by debtors and their children was a severe penalty to impose on ignorance, carelessness or even extravagance. It was the moral duty of the government to protect the ignorant debtors, who had to borrow in order to survive.

145. Ibid. (J.B. Lyall's views, 19 March 1883).

Ṭabaṭṭabā'ī, a contemporary writer, although he admired the British in various respects,¹⁴⁶ pointed out that rather than requiring the people to adapt themselves to the British system, the Government should adapt its system to the state of society.¹⁴⁷ The Government, however, thought that the creation of rights of property in land and the institution of a modern system of judicial administration, were irreversible changes, even though it was legitimate to assume that they heightened social conflict in the province.¹⁴⁸ S.S. Thorburn who had urged the Government, during his service in Bannu, that sweeping legislation was necessary to avert further agrarian trouble, reaffirmed this in 1883. In 1884, he submitted a paper entitled 'The Indebtedness of the Muslim Cultivators of the Punjab.' In his paper he warned the Government to avert the political danger caused by growing agrarian discontent.¹⁴⁹ He proposed the limitation of the rates of interest, the abolition of imprisonment for debt, the exemption of part of the crop from attachment and sale, and the extension of the

146. Ṭabaṭṭabā'ī, op. cit., Vol. III, p. 161.

147. Ibid. Vol. II, p. 17.

148. Temple, Sir Richard, India as I Know It, London 1926 (ed.) p. 36; also Minute by Sir Richard Temple, dated November 12, 1877, Bombay Government Selection, No. 157, new series.

149. Thorburn's remarks in Sections from the Reports of the Punjab Government, op. cit., pp. 930-55.

limitation period for debt.¹⁵⁰ The Government dismissed the possibility of usury laws on the grounds that they could be evaded, and in the long run brought greater evils in their train, adversely affecting that credit which was so indispensable in a poor agricultural country like India.¹⁵¹ It did, however, accept the application of the Financial Commissioner, McMahon, to submit the rest of the proposals for the opinions of Revenue and Judicial officers.¹⁵² Later on, the Lieutenant-Governor recommended detailed studies of the circumstances prevailing in village society.

A large majority of the officers who took part in this enquiry expressed opinions which were more in accord with those of Thorburn than those held by the superior authorities. Robert Clarke stated that rather than run the risk of disturbance, he would cast political economy to the winds.¹⁵³ Denziel Ibbetson thought that the root of the evil lay, not where Aitchison said it lay (in the nature of society) but rather in the extension

150. Extracts from the Land Revenue Reports of the Punjab Government, 1882-3, pp. 148-150.

151. Proceedings of the Lieutenant Governor, No. 256, November, 15, 1883, para. 9.

152. Officiating Junior Secretary to the Financial Commissioner, No. 1189, October, 24, 1884, Selections, op. cit., pp. 923-8.

153. Ibid.

of a sort of law and system of Government unsuited in some respects to the people and their circumstances.¹⁵⁴

The majority of officers thought that the people should be allowed to manage their affairs in the way in which they, and not the British, understood them.¹⁵⁵ However, it was believed that it was too late to go back.

Ibbetson noted that in Ireland and in the Deccan, the British had retreated in this sense.¹⁵⁶ Alexander

Anderson thought that it was too late to arrest the transfer of land from the cultivators to the bankers, and that the most that could be done was to try to make the process gradual by introducing certain reforms in law.¹⁵⁷ Charles Roe, however, dismissed the threat of any future agrarian trouble and the necessity of forming any measures to alleviate agricultural indebtedness. In this he was in a minority of one.¹⁵⁸

Thorburn, who had originated the whole discussion; published, in 1886, another controversial work entitled

155. Selections, op. cit., p. 836.

156. Ibbetson, op. cit., (Selections) p. 931.

157. Selections from the Punjab Administration, op. cit.,

A. Anderson's opinion, pp. 982-3.

158. Selections, op. cit., pp. 967-9.

'Musalmans and Money-Lenders in the Punjab', in which he stated that land alienations in the western Punjab, due to the British system, were annually increasing and the political danger involved was very great. In the opening passage of his book, he stated:

'The Punjab is an agricultural Province, a land of peasant proprietors, a large and annually increasing portion of whom are sinking into the position of serfs to the money-lenders. The gradual transfer of ownership of the soil from its natural lords the cultivators, to astute but influential Hindu traders and bankers, is directly due to a system of law and administration created by ourselves, which, unless remedied in time, must eventually imperil the stability of our hold on the country.'¹⁵⁹

He suggested that as a remedy for the problem, 'anyone deriving profits from a shop or from money-lending be debarred from acquiring interests in arable or pasture land.'¹⁶⁰ He contended that all indigenous Governments had placed restrictions on alienation, and that no

159. Thorburn, op. cit., p. 1.

160. Ibid, pp. 1,6,79.

contemporary state countenanced the acquisition of land by its trading and money-lending classes, and he noted the disabilities of the Jews in Russia and Eastern Europe in this respect.¹⁶¹ Yet he did not place all his hopes on the restrictions on the power of alienation, for he went to considerable trouble to elucidate the reforms required in revenue and judicial administration:¹⁶²

'Without some radical charges, in the substantive civil law and its mode of administration, and for certain tracts in the revenue system, the impatience which now finds expression in the occasional murder, maltreatment or plundering of an obnoxious money-lender, or in resistance to the attachment of cattle or grain, or other necessities of life, will soon grow into widespread disaffection. The fuel will then be ready for ignition, and a spark - a sympathetic breeze down the frontier from the hot-bed of Mahomedan fanaticism - Afghanistan - a famine, the ex-

161. Ibid. p. 103.

162. Ibid., pp. 106-15, 139-53.

hortations of an agitator, whether aspiring Mahdi or Land-Law reformer - will kindle such a flame that Government will, in order to quench it hurriedly and fearfully pass some Act of Bunniah spoilation more drastic than the famous Deccan Ryots Act of 1879.¹⁶³

In 1887, Alfred Kingsington expressed his deep concern over the increasing number of alienations. He predicted that the Government within the next ten or fifteen years would be almost compelled to step in and enforce wholesale measures of relief similar to those adopted in the Deccan.¹⁶⁴ In the same year, James Douie, a settlement officer, predicted that the decay would go on, and that the future of the Karnal and Umballa districts was dark unless drastic measures, such as the Deccan Ryots Act, were taken.¹⁶⁵ In the same year A.R. Bulman, the Officiating Commissioner, and Colonel Grey, the Commissioner, both of the Delhi Division, expressed their absolute agreement with the advocates of drastic legislation.¹⁶⁶

163. Ibid. pp. 40-4.

164. Selections. op. cit. (Remarks by A. Kensington) pp. 990-1.

165. Ibid. pp. 983-4.

166. Ibid. pp. 967-9, also Charles, Lewis Tupper, (ed) Punjab Customary Law, Calcutta 1881, Vol. I, p. 16.

The reports from various British officers who were practically confronted with the problems created by the bankers in the province indicate that the existence of the problem of land alienation would be more likely to increase than decrease with the passage of time. Although some officers, Roe for instance, felt no anxiety whatever, and saw little need for the legal protection of landed proprietors,¹⁶⁷ a large majority was convinced that one remedy or another was required to deal with this unsatisfactory situation. This approach by the majority, reflecting some elements of reality, attracted the attention of the Secretary of State, who wrote to the Punjab Government calling for a report on the indebtedness of the cultivators of the Western Punjab. James Lyall, as Lieutenant-Governor, admitted that a grave situation existed in various parts of the province. He dismissed, however, the probability of legislation similar to the Deccan Ryots Act.¹⁶⁸ He suggested for certain tracts of the province that the courts should be empowered to investigate bonds; interest should be separated from principal; and the judges should

167. Ibid. pp. 967-9, also Charles, Lewis Tupper (ed), Punjab Customary Law, Calcutta 1881, Vol. 2, p. 45.

168. Ibid., pp. 30-5.

be empowered to decree only reasonable interest. He thought these steps necessary to avert the political danger which was, according to him, by no means confined to the Western Punjab, for the alienations in the east were more indicative of poverty and distress than those in the west.¹⁶⁹ Lyall had expanded the possibility and scope of the question mentioned by Thorburn, for the whole province. In 1888, the Government of India forwarded this dispatch to the Financial Commissioner and the Chief Court, to consider whether legislation on the lines of the Deccan Act was necessary; and the revenue officers were asked to report whether alienations were proceeding to an increasing ratio and whether such increases involved any political danger.¹⁷⁰

In response to this enquiry, 44 officers replied, and there was more or less general agreement among them that the transfers of land to bankers were increasing. A large majority believed that the process involved a grave

169. Ibid; Also notes by J.B. Lyall, July 17, 1888, The Punjab Civil Secretariate printed files, Revenue, 18, notes pp. 65-6, 72-3, 75-6.

170. Officiating Junior Secretary to the Government of the Punjab Nos. 231-3, November, 7, 1888, Punjab Civil Secretariate printed Files, 18.

political danger.¹⁷¹ The cultivators, who supplied the man-power for the native army, represented a political force in the country, and they were being deprived of their farms by bankers, men of no political significance.¹⁷² If the cultivators were discontented beyond a certain point and were given a chance they would certainly become a great danger for the Government.¹⁷³

Lyall admitted 'the great unsuitability of some parts of the legal system to the condition and circumstances of the agriculturalists of the province.'¹⁷⁴ and a vast majority of the revenue and judicial officers replied to the Government that legislation similar to the Deccan Act was urgently required in the Punjab.¹⁷⁵ In 1889, the Government of India forwarded these opinions to the Punjab Government. The Lieutenant-Governor expressed his absolute agreement with the opinions expressed by the majority,¹⁷⁶ and proposed measures which followed the Deccan Act closely.¹⁷⁷ He argued that it would reduce the

171. For the replies submitted in 1888-9 see Proceedings of the Government of India (Revenue Department) December 1891-2, 10-11A.

172. Ibid., note by Thorburn, Ommanney, Miller, Clarke, Ibbetson.

173. Ibid.

174. Proceedings of the Government of India, op. cit., Notes by J.B. Lyall, Lieutenant Governor, June 1891, para. 1.

175. Proceedings of the India Government, op. cit., December, 1891.

176. Ibid.

177. Ibid., Lyall proposed empowering courts to go behind

huge number of suits instituted by the bankers against the cultivators. It would discourage those bankers who deliberately aimed in the conduct of their business at getting possession of their clients' land and who used the courts to that end, and those who 'lent recklessly at high interest to improvident cultivators, trusting to make their business pay by prompt recourse to the courts.'¹⁷⁸ The bankers, he predicted would be forced to report to the more old fashioned course of business trying to get a good interest on their capital as a whole, but not trying to acquire cultivators' land, and disinclined to resort to the courts.¹⁷⁹

Lyall had never been entirely in agreement with the notion that the land alienation involved political danger. It was just that he was now fully convinced of the probability of political danger in the near future. He had ^{been} a constant opponent of all measures to check land transfer to the banker. In the early 1870's, for instance, he had proposed the extension of the law of pre-emption to slow down the process of land transfer.¹⁸⁰ But now he wanted more than that, something radical and drastic, to prevent further decay. In August, 1891, the Punjab Govern-

bonds, separate interest from principal and decree only reasonable interest. For details see The Proceedings of the Government of India, June 1891, 10-11A.

178. Ibid.

179. Ibid.

180. See above p.208.

ment despatch reached the office of the Government of India. The Government of India, in November 1891, appointed a commission to report on the local working of the Deccan Act, and on the possibility of extending the act to other parts of India.¹⁸¹ The commission reported in favour of the Deccan Act and its extension to other parts of the country.¹⁸² It discussed the restrictions on the transfer of land to bankers, which was not recommended for the Deccan; and recommended that the true remedy of the prevailing evils lay in the restriction of the right of transfer.¹⁸³

Lord Lansdowne, in December, 1893, on the eve of his departure, recorded his opinion that the Government of India was faced with a serious political problem which could be solved only by restrictions on the power of land transfer, political economy notwithstanding.¹⁸⁴

In July 1894 the Government of India proposed to the Punjab Government certain amendments of the law regarding usury, and of the contract and Evidence Acts

181. Proceedings of the Government of India, Revenue Department, September, 1893, 46-9A; Resolution of November, 20, 1891.

182. Ibid. June 1893, 11-1A, See Home Department Office Memorandum of August 25, 1892, in note by E.D. Maclagan, May, 19, 1893.

183. Ibid.

184. Ibid., September 1894, 43-6A, Note by Lansdowne, January 3, 1894.

and proposed to add to the contract act that a contract should be voidable on account of a creditor having taken undue advantage of a debtor's simplicity or need.¹⁸⁵ Although the Lieutenant Governor, Dennis Fitzpatrick, criticised these amendments, he nevertheless accepted them.¹⁸⁶ In 1895 the Government of India again informed the Punjab Government that 'the Governor-General in council

185. Ibid., October, 1897; 'The Home Department circular requested consideration of the following changes of law: to amend the law regarding usury so as to make it clear by a specific enactment to this effect that the courts, before judging stipulated interest, shall be bound to enquire as to coercion, undue influence, fraud, or misrepresentation, whenever there is a reasonable suspicion of any of these; to provide in the Contract Act that taking an undue advantage of a debtor's simplicity or necessities shall, equally with the above causes, render an agreement voidable, by additions to the evidence act, to enable the court to require independent evidence of the transaction if it disbelieves, or doubts the recorded consideration, and likewise to require proof of bona fides from the party who contracted when in a position of decided advantage.'

186. Proceedings of the Government of India, Home Department, October, 1897, 317-576A (Notes by D. Fitzpatrick, Lieutenant-Governor, January, 24, 1895).

was distinctly of the opinion that some action in the direction of restriction upon the right of transfer of land was generally advisable, and even necessary.¹⁸⁷

Any prompt action on this circular was delayed by the famine of 1896-7, which gave impetus to alienations and the general decadence of cultivators. In 1898, the Government of Punjab nominated a committee of British revenue officers to propose legislation.¹⁸⁸ The committee resolved that permanent alienation of land to non-agriculturalists without the sanction of the collector should be void, and defined non-agriculturalists as 'those who were neither in their own names nor in those of their agnate ancestors recorded as owners of land or as hereditary tenants in any estate at the first regular settlement.'¹⁸⁹ The definition was imperfect, for in some districts bankers had considerable areas transferred in their name before annexation, and at the regular settlement; permanent transfer of land to them, there-

187. Ibid. The Records of the Revenue Department, October, 1895, 72-3A. Officiating Secretary to Government of India's circular 24/75-1, October 26, 1895.

188. Punjab civil secretarial printed files, 190 (Note by William Mackworth Young, the Lieutenant-Governor of the Punjab, June 22, 1898) p. 264.

189. Proceedings of Barnes Court Committee, July 1,2, 1898; Proceedings of the Government of India, Revenue Department, November, 1898, 3-22A.

fore, would be permissible. The committee also recommended that temporary transfer of land should be universally restricted,¹⁹⁰ which meant that all the restrictions would apply to the banker who owned landed property. It also resolved that hypothecation of a share of the produce of land should be prohibited for any term exceeding a year, and that the person in whose favour the pledge was made was legally responsible for the payment of a proportional share of the land-revenue. The committee also accepted the resolution that no alteration was required in the law and the rules under which land was sold in execution of decree.¹⁹¹ Mackworth Young, the Lieutenant Governor, obtained the agreement of its members to the proposition that it was not desirable or safe to adopt any more stringent measures.¹⁹² He remarked that he was personally opposed to legislation, but that if the government of India were determined to adopt general and stringent measures he would support the proposals of his committee to the maximum.¹⁹³ In other words, the Punjab Government wanted

190. Ibid.

191. Ibid.

192. Ibid., November 1898 (Note by W.M. Young, the Lieutenant-Governor, July, 20, 1898) 3-22A.

193. Ibid.

to keep the power of transfer of land to itself. The Government of India, which, influenced by the rising tide of opinion, was determined to make unlimited restrictions on land alienation, wanted either that the power of exemption given to the local government should be subject to its own sanction - otherwise, a Lieutenant-Governor like Young, who had half-heartedly supported the proposals, might nullify the whole measure - or that the sale of land in execution of decree should be entirely abolished.¹⁹⁴

The Government of India carefully considered the Punjab Government's recommendations. It made some minor additions, and further suggested that all permanent transfers made without official sanction should be void; no document purporting to transfer land permanently would be submitted to registration without a certificate of sanction. When the transferee was an 'agriculturalist' holding land in the village or descended in the male line from the same ancestor as the alienator, sanction would be given as a matter of right; in other cases sanction would be at the discretion of the revenue officers, guided by executive instructions.¹⁹⁵ In July 1899, the members of

194. Ibid. Home Department 274-439A.

195. Government of India, Department of Revenue and

the India council approved the proposals. The proposal to impose restrictions on permanent alienation by non-agriculturalist proprietors was defeated. yet it was not of the most material importance because the bankers were unable to improve the tax-paying capacity of this land, and it was good for the Government if the cultivators would redeem their land.

Agriculture's dispatch to Secretary of State No. 59 of 1898, 3 November 1898, para 26, and notes by T.W. Holderness, Secretary of Revenue Department 21 October, 1898.

(The Government of India outlined the executive instructions by which it proposed to regulate the grant of sanction. There would be three classes of cases. When an agriculturalist or non-agriculturalist proprietor proposed to transfer land to an agriculturalist in the same village or to an agnate, the Tahṣīldār would sanction the transaction as a matter of course if he was satisfied that the purchaser was really buying for himself. When a non-agriculturalist proprietor wanted to transfer land to a person outside these limits, enquiry would be made whether any agriculturalist in the village was willing to purchase at a fair full price. If so, the proposed transfer to the outsider would be disallowed; if not, the transfer would ordinarily be permitted, even if the alienee was a non-agriculturalist. Power of sanction in this class of cases would rest with the Deputy commissioner. In the most important class of cases, those in which an agriculturalist wanted to transfer land to a person outside the original

In September 1899, the Bill was introduced into the Governor General's Legislative Council. The proceedings were postponed till the next session, for Lord Curzon, the Governor General, thought that, in the interim, he would be able to gauge public opinion.¹⁹⁶

stock of the village or the agnates, the same procedure would be allowed, sanction being refused if an agriculturalist of the village was prepared to buy. If not, and the proposed transfer was to an agriculturalist of the same tribe as the alienor, sanction would ordinarily be given. If the proposed transfer was to an agriculturalist of the same tribe, enquiry should be made as to whether an agriculturalist of the same tribe as the alienor was willing to buy. If such a man was found, permission to the proposed transfer would be refused; if not, permission would be given, unless it looked as if the proposed alienee might become a mischievous element in the village community. If the proposed transfer was to a non-agriculturalist, permission would be refused save only in very exceptional cases of real necessity where no agricultural purchaser of any sort was forthcoming. In the third class of cases the power of sanction would be exercised by the Deputy Commissioner, except where the transfer was to a non-agriculturalist in which the Commissioner's sanction would be required; for further details see Government of India, Department of Revenue and Agriculture's dispatch to Secretary of State for India, No. 59 of 1898, November, 3, 1898, para. 26.)

196. Curzon Papers, Volume 158, Part 2, No. 43.

The bankers raised a loud outcry against the Bill, and considered it something designed to undermine their position. They attacked it not so much as an interference with their rights to acquire land, but as an imposition on the cultivators. The arguments that they put forward against it were presented in the language of the laissez-faire political economy. They argued that if the Bill was passed, agricultural credit would be restricted.¹⁹⁷ In fact, in Jehlum district, the bankers had already restricted credit facilities to the cultivators, which imposed hardships on them, and gave rise to widespread dacoities and murderous assaults on the bankers.¹⁹⁸ They also contended that if the Bill became law the rate of interest would be higher; the value of land would fall; more land would have to be pledged to obtain the same amount of money; mortgagers would be ejected from their land; sales would rise; the cultivators would be impoverished and rural crime would increase; and the Government would

197. Punjab Correspondence of 1899-1900, and petition pamphlets, letters, etc., in Legislative Papers; Selections from Punjab Native Paper, 1899-1900 (Chiefly sections under heading 'Punjab Land Alienation Bill).

198. Ibid.

find it difficult to collect its revenue or enlist its soldiers.¹⁹⁹ They formed Land Alienation Bill Committees in various districts, which had petitions signed by a large number of cultivators and sent to the Government.²⁰⁰

In June 1900, the legislative council referred the Bill to a select committee. The Parliamentary report of the select committee was presented in August and did not propose any fundamental changes.²⁰¹ The Bill was passed in October 1900. It was originally designed to secure the preservation of the cultivators by restricting their credit, and thus decreasing their opportunities for reckless expenditures, and to decrease sales and mortgages. In the case in which a cultivator was forced to sell, through the sub-division of the land, extreme thriftlessness or poverty, it would ensure that his land would pass to another cultivator, instead of to a banker. The Act was undoubtedly effective in preventing the permanent acquisition of land by the bankers.

199. Ibid.

200. Ibid.

201. Legislative Papers, op. cit., 1900; Report of Select Committee, August, 6, 1900.

The decrease in the area of land sold and mortgaged each year appeared to be directly traceable to the Act. At first the area of land redeemed also decreased, not surprisingly, as often land had been redeemed only to be re-mortgaged.²⁰² After a few years, with rising agricultural prices, redemption increased. Every year, the cultivators redeemed more land than they mortgaged, and the provincial percentage of cultivated area under mortgage began to fall. The less provident cultivators continued to lose land, though perhaps not as quickly as before, and the more provident cultivators continued to acquire it.²⁰³ The decrease in the value of land, predicted by the bankers and many British Officers, did not occur. There was a temporary depreciation, but after a few years, it began to rise again. By 1908, it certainly stood at a higher level than ever before.²⁰⁴ The Government did not see any difficulties in collecting the land-tax. A significant

202. Selections from Punjab Native Papers, 1901-7.

(Sections headed 'Punjab Land Alienation Act')

203. Ibid., Also, Articles by Mian Muhammad Shafī^c, Qāzī Muhammad Aslam, W.M. Young, The Progress of the Punjab.

204. Ibid., pp. 162-70.

decrease in extravagant expenditure on litigation was apparent. The bankers began to show greater care in lending. The Act did not greatly increase the work of the revenue authorities, it rather decreased it with the decreased litigation. The Bankers found their investment in land restricted, and as a result there was widespread discontent and illfeeling among them. They thought that they had been unjustly dealt with.²⁰⁵ The cultivators looked on the Act as 'the charter of their rights' in preventing the acquisition of their land by the despised Hindus.²⁰⁶ Since the Act laid the basis for a healthy relationship between cultivators and bankers by throwing the weight of the administration in favour of the former, it successfully achieved its immediate purpose. It failed, however, to fulfill all the expectations, such as averting the political danger, with which it had been sent forth. For, like the Deccan cultivators, the Punjab cultivators sought to transform their prosperity into political power. They demanded communal electorates, but in 1919, under the leadership of Mohandās Karamchānd Gāndhī they became mutinous and attempted to gain further autonomy by their commission of political crimes of violence, to an extent unknown in other

205. Selections from the Punjab Native Papers.

206. Young, op. cit., p. 159.

parts of the sub-continent, and thereby began to shake the foundations of the whole of the Indian Empire.

CONCLUSION

The Qur'ān prohibited interest on mere loans, but Muslim scholars gradually extended this prohibition to every credit transaction, even if it did not involve any interest. Since credit plays an essential role in successful business, and there was a considerable demand for loanable funds in the great cities of the Muslim empire, commercial elements managed to devise certain methods to overcome the rigidity of the theory.

Abū Hanīfa and his companions emerged as the first to accept the justification and validity of hiyal, which found outspoken opponents in the founders of other schools of law. This period was, of course, unique in the history of the formation of Muslim legal thought, in that it was one of independent thinking and the expression of individual opinion. It ended with the establishment of the various schools of law, and it was followed by a period in which unquestioning adherence to these prevailed, and affiliation with one of them became mandatory. Taqlīd held sway until the second half of the eighteenth century, when Shāh Walī Allāh, in view of the changing political social and

economic circumstances, felt the need for reconsideration of the basic principles of Islamic law. Sir Sayyid Aḥmad Khān's contributions were made during the closing stages of this period.

In fact, no historical period can ever be visualised in absolute terms because scholars differ one from the other, and respond in different ways to similar stimuli; there will also always be individual exceptions to general rules. What one has to discover above all is the major influences on the minds of the protagonists, who are, in legal matters, the scholars.

In the present context, it was social, political and economic influences which were to the fore. A great demand for loanable funds in the commerce of the second century, led the Hanafī doctors to recognise and even to establish the institution of hiyal. In India, the decaying political social and economic conditions of the Muslim community and changes in the possession of agricultural land were exerting their influence in a number of ways. The opening stages of this period saw a gradual acceptance of the notion that distinct changes in the political, social and economic circumstances of the community were taking place. The continuation of

these changes stimulated the thinking of various scholars throughout the period and attempts to re-evaluate the classic theory, in order to control these changes, marked its closing stages.

Scholars such as Shāh ^CAbd al-^CAzīz and Sir Sayyid Ahmad Khān re-explained the conventional theory. But conservative orthodoxy played a very considerable role in the whole process. In the opening years of the last period, it hindered the recognition of the need for the re-interpretation of the theory, in view of changing conditions. Throughout the period its effects were apparent. Even at the end it had much to say about the views of Sir Sayyid Ahmad Khān. So one may conclude that it was the strong conservatism of the orthodox Muslim, and his consequent commitment to the doctrine of Taqlīd, that was responsible for most of the evils associated with interest; but for this the problems could have been quickly solved. It was orthodox Muslim conservatism which ensured that a new revolutionary explanation of the theory would not have an easy success. Shāh ^CAbd al-^CAzīz's attempts were in vain and even the attempts made by Sir Sayyid did not succeed for many years.

The British Government, due to its commitment to individual property and laissez-faire, was loth to amend the legal system. This produced widespread anxiety throughout the country, and a rising tide of opinion that it was necessary to intervene in the relations between debtor and creditor. As time went on, general opinion favouring legislation became steadily stronger and, as a result, the Government passed such legislation in favour of the debtor and against the creditor.

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