

*war or fai' except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islam, demand from them the Jizya. If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them. When you lay siege to a fort and the besieged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and his Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you besiege a fort and the besieged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His Command, but do so at your (own) command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them."*

**3169.** Sacred Compilation **Hadith Sahih Muslim (Vol. III) Hadith 1732 and 1733** p. 182 reveal that when Holy Prophet deputed anyone of his Companions on a mission he always directed him to show leniency and not to create aversion towards religion. The said Hadiths says:

*“(1732) It is narrated on the authority of Abu Musa that when the Messenger of Allah (may peace be upon him) deputed any of his Companions on a mission, he would say: Give tiding (to the people); do not create (in their minds) aversion (towards religion); show them leniency and do not be hard upon them.”*

*“(1733) It has also been narrated by Sa'id b. Abu Burda through his father through his grandfather that the Prophet of Allah (may peace be upon him) sent him and Mu'ath (on a mission) to the Yeman, and said (by way of advising them): Show leniency (to the people); don't be hard upon them; give them glad tidings (of Divine favours in this world and the hereafter); and do not create aversion. Work in collaboration and don't be divided.”*

**3170.** Sacred Compilation **Hadith Sahih Bukhari** 2.559 p. 381, 4.387 p. 837, and 5.351 p. 1103-1104 reveal that Holy Prophet allowed the King of Aila as well as Bahrain who were non-Muslims to remain and rule over their respective countries subject to payment of Jizya. Relevant extract from the Hadith 2.559 and 5.351 as well as full text of hadith 4.387 is as under:

*"....A strong wind blew at night and a man stood up and he was blown away to a mountain called Taiy, The King of Aila sent a white mule and a sheet for wearing to the Prophet as a present, and wrote to the Prophet that his people would stay in their place (and will pay Jizya taxation.)"*

*(Hadith Sahih Bukhari 2.559 at p. 381)*

*“Narrated Abu Humaid As-Saidi: We accompanied the Prophet in the Ghazwa of Tabuk and the king of 'Aila presented a white mule and a cloak as a gift to the Prophet. And the Prophet wrote to him a peace treaty allowing him to keep authority over his country.”*

*(Hadith Sahih Bukhari 4.387 at p. 837)*

*"Allah's Apostle sent Abu 'Ubaida bin Al-Jarrah to Bahrain to bring the Jizya taxation from its people, for*

*Allah's Apostle had made a peace treaty with the people of Bahrain and appointed Al-'Ala' bin Al-Hadrami as their ruler. So, Abu 'Ubaida arrived with the money from Bahrain."*

*(Hadith Sahih Bukhari 5.351 at p. 1104)*

**3171.** Sacred Compilation of **Jami' At-Tirmidhi (Vol. 3) Hadith 1587 and 1588** p. 355 reveal that Holy Prophet took Jizya from the Zoroastrians of Hajar & Bahrain, Caliph Umar and Caliph Uthman took it in Persia from Persians. The said Hadiths read as follows:

*"1587. Bajalah narrated that 'Umar would not take the Jizyah from the Zoroastrians until 'Abdur-Rahman bin 'Awf informed him that the Prophet took the Jizyah from the Zoroastrians of Hajar." (Sahih) There is no more dialogue in the Hadith than this. And this Hadith is Hasan Sahih."*

*"1588. Malik narrated from Az-Zuhri, that Saib bin Yazid said: "The Messenger of Allah took the Jizyah from the Zoroastrians of Bahrain, and 'Umar took it in Persia, and 'Uthman took it from the Persians."*

*(Jami' At-Tirmidhi (Vol. 3) Hadith 1587 and 1588 at p. 355)*

**3172.** Sacred Compilation **Hadith Sahih Bukhari 2.475, 4.287, 4.388 and 5.50** reveal the recommendation of Caliph Umar to his successor to abide by the rules and regulations concerning the Jimmis/Dhimmis (protectees). Relevant portion of the said Hadiths read as follows:

*". . . I recommend him to abide by the rules and regulations concerning the Dhimmis (protectees) of Allah and His Apostle, to fulfill their contracts completely and fight for*

*them and not to tax (overburden) them beyond their capabilities."*

*(Hadith Sahih Bukhari 2.475 at p. 355)*

*"Narrated 'Amr bin Maimum: 'Umar (after he was stabbed), instructed (his would-be-successor) saying, "I urge him (i.e. the new Caliph) to take care of those non-Muslims who are under the protection of Allah and His Apostle in that he should observe the convention agreed upon with them, and fight on their behalf (to secure their safety) and he should not over-tax them beyond their capability."*

*(Hadith Sahih Bukhari 4.287 at p. 798)*

*"Narrated Juwairiya bin Qudama at-Tamimi: We said to 'Umar bin Al-Khattab, O Chief of the believers! Advise us. "He said, "I advise you to fulfill Alla's Convention (made with the Dhimmis) as it is the convention of your Prophet and the source of the livelihood of your dependents (i.e. the taxes from the Dhimmis.)"*

*(Hadith Sahih Bukhari 4.388 at p. 837)*

*". . . I also recommend him concerning Allah's and His Apostle's protectives (i.e Dhimmis) to fulfill their contracts and to fight for them and not overburden them with what is beyond their ability."*

*(Hadith Sahih Bukhari 5.50 at p. 1004)*

**3173.** The Sacred Compilation **Hadith Sahih Bukhari 4.657** reveals that the Holy Prophet said that incarnation of Jesus would abolish Jizyah from non-Muslims. The said Hadith reads as follows:

*"Narrated Abu Huraira: Allah's Apostle said, "By Him in*

*Whose Hands my soul is, surely (Jesus), the son of Mery will soon descend amongst you and will judge mankind justly (as a Just Ruler); he will break the Cross and kill the pigs and there will be no Jizya (i.e. taxation taken from non Muslims). Money will be in abundance so that nobody will accept it, and single prostration to Allah (in prayer) will be better than the whole world and whatever is in it." Abu Huraira added "If you wish, you can recite (this verse of the Holy Book):--'And there is none Of the people of the Scriptures (Jews and Christians) But must believe in him (i.e. Jesus as an Apostle of Allah and a human being) Before his death. And on the day of Judgment He will be a witness Against them."*

**3174.** The Sacred Compilation **Hadith Sahih Bukhari** 8.809 and 8.825 reveal that the Holy Prophet administered justice to a Jew according to his scripture Torah. The said Hadith reads as follows:

*Narrated Ibn 'Umar : A Jew and a Jewess were brought to Allah's Apostle on a charge of committing an illegal sexual intercourse. The Prophet asked them. "What is the legal punishment (for this sin) in your Book (Torah) ?" They replied, "Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." 'Abdullah bin Salam said, "O Allah's Apostle, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold ! The Divine Verse of the Rajam was*

*under his hand. So Allah's Apostle ordered that the two (sinners) be stoned to death, and so they were stoned. Ibn 'Umar added : So both of them were stoned at the Balat and I saw the Jew sheltering the Jewess."*

*"Narrated 'Abdullah bin 'Umar: The jews came to Allah's Apostle and mentioned to him that a man and a lady among them had committed illegal sexual intercourse. Allah's Apostle said to them, "What do you find in the Torah regarding the Rajam?" they replied, "We only disgrace and flog them with stripes." 'Abdullah bin Salam said to them, 'You have told a lie the penalty of Rajam is in the Torah.' They brought the Torah and opened it. One of them put his hand over the verse of the Rajam and read what was before and after it. 'Abdullah bin Salam said to him, "Lift up you hand." where he lifted it there appeared the verse of the Rajam. So they said, "O Muhammad! He has said the truth, the verse of the Rajam is in it (Torah)." then Allah's Apostle ordered that the two persons (guilty of illegal sexual intercourse) be stoned to death, and so they were stoned, and I saw the man bending over the woman so as to protect her from the stones."*

**3175.** Sri Misra argued that according to the Holy Prophet, in one land there cannot be two Qibalahs and/or Idgah and Mosque as such Sri Ramjanmasthan temple and a mosque cannot and could not have co-exist in the disputed site.

**3176.** The Holy Prophet has commanded that there must not be two sacred buildings of worship of two different religions in one land, in other words **there cannot be a Masjid and an Idol Temple in one land.** The Holy Prophet has said that as

Jizyah cannot be imposed upon Muslim, two Qiblas cannot be in one land, **coexistence of two Qiblas one of Hindus and other of Muslims in one land is mandatorily forbidden according to Shar. The Holy Prophet also says that neither prayer can be offered by forming rows between two columns nor funeral prayer can be offered in a mosque.** An Idgah is a place where funeral prayers or the prayers of the two Ids are usually offered, as such same site cannot be a Masjid from very first day must be laid on piety not on hypocrisy and it must be always maintained by the Muslims. The Holy Prophet says that a Masjid must not be used as a home and place of gossiping. Imam Aboo Yoosuf and Imam Moohummud the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. The Mosque retained columns of Hindu Temple. Presence of Chulha, found during the ASI's excavation, indicates that said building was being used as home of Deities and Sevayats & Pujaris; it never acquired the status of a Masjid according to Muslim Law and belief.

**3177.** The Sacred Compilation **Jami' At-Tirmidhi (Vol. 2)** **Hadith** 633 reveals that in one land there must not be two Religious buildings of two different religions. Said Hadith reads as follows:

*633. Ibn Abbas narrated that the Messenger of Allah said:  
"Two Qiblahs in one land are of no benefit, and there is no Jizyah upon the Muslims." (Da'if)*

**3178.** Neil B.E. Baillie in his Book '**A Digest of Mahommedan Law' Part-First** (Second Edition 1875) at its page 616 records that Imam Aboo Yoosuf and Imam

Moohummud, the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. Relevant extract from the above referred pages reads as follows:

*"When an assembly of worshippers pray in a masjid with permission, that is delivery. But it is a condition that the prayers be with izan, or the regular call, two times or more, and be public, not private. For though there should be an assembly, yet if it is without izan, and the prayers are private instead of public, the place is no masjid according to the two disciples. But if one person were appointed to officiate both as mooezzin and imam, and he should make the call, and then stand up and pray alone, the place would become a masjid by general agreement."*

**3179.** Divine "**The Holy Quran Surah 9 At-Taubah Ayat 107-110**" commands that foundation of a Mosque must be laid from the first day on piety not hypocrisy otherwise a mosque built by hypocrite is destined to crumble down. The said Holy Ayat reads as follows:

*"107. And as for those who put up a mosque by way of harm and disbelief and to disunite the believers and as an outpost for those who warred against Allah and His Messenger (Muhammad) aforetime, they will indeed swear that their intention is nothing but good. Allah bears witness that they are certainly liars."*

*"108. Never stand you therein. Verily, **the mosque whose foundation was laid from the first day on piety is more** worthy that you stand therein (to pray). In it are men who love to clean and to purify themselves. And*

*Allah loves those who make themselves clean and pure [i.e. who clean their private parts with dust (which has the properties of soap) and water from urine and stools, after answering the call of nature.]”*

*“109. Is it then he who laid the foundation of his building on piety to Allah and His Good Pleasure better, or he who laid the foundation of his building on the brink of an undetermined precipice ready to crumble down, so that it crumbled to pieces with him into the Fire of Hell. And Allah guides not the people who are the Zalimun (cruel, violent, proud, polytheist and wrong-doer).”*

*“110. The building which they built will never cease to be a cause of hypocrisy and doubt in their hearts unless their hearts are cut to pieces. (i.e till they die). And Allah is All-Knowing, All-Wise.”*

(Be it mentioned herein that this Holy Ayat came down in respect of Masjid-i-Jarar built in Madina by the hypocrites with ulterior motive. Ultimately this Masjid was burnt and destroyed on command of the Holy Prophet.)

**3180.** The Sacred Compilation **Hadith Sahih Bukhari 4.403** reveals that the Holy Prophet has termed such a person hypocrite who breaks promise, did not honour covenant, tells lie and behave in a very imprudent and misleading manner. The said Hadith reads as follows:

*"Narrated 'Abdullah bin 'Amr : Allah's Apostle said, "Whoever has (the following) four characteristics will be a pure hypocrite: "If he speaks, he tells a lie; if he gives a promise, he breaks it, if he makes a covenant he proves*

*treacherous ; and if he quarrels, he behaves in a very imprudent evil insulting manner (unjust). And whoever has one of these characteristics, has one characteristic of a hypocrite, unless he gives it us."*

**3181.** The Sacred Compilation **Jami' At-Tirmidhi (Vol. 5)** **Hadith 2684** reveals that two things will not be together in a hypocrite that is to say good manners and fiqh in the religion. Said Hadiths and comments thereto read as follows:

*"2684. Abu Hurairah narrated that the Messenger of Allah said: "Two things will not be together in a hypocrite: Good manners, and Fiqh in the religion." (Da'if)*

**3182.** The Sacred Compilation **Jami' At-Tirmidhi (Vol 1)** **Hadith 321** reveals that Masjid cannot be used as a home nor a place for gossiping. Relevant portion of said Hadith reads as follows:

*"Ibn Abbas said, "It is **not to be used as a home nor a place for talking about this or that.**"*

**3183.** In view of the fact that during the ASI's excavation at suit premises a Chulha (an oven) has been found. It leaves no doubt that said structure was being used as home of Hindu deity and Chulha was being used for preparing food for the deity as such said structure cannot be inferred to be a Masjid.

**3184.** Sacred Compilation **Jami' At-Tirmidhi (Vol. 1)** **Hadith 229** reveals that the Holy Prophet had commanded the Muslims not to pray between two columns. Said Hadith reads as follows:

*"229. Abdul-Hamid bin Mahmud said: "We prayed behind one of the Amirs, the people compelled us such that we prayed between two columns. When we had prayed, Anas*

*bin Malik said: 'We would be prevented from this during the time of Allah's Messenger.'" (Sahih)*

**3185.** In the disputed structure there were several columns and in course of forming rows for offering prayer those columns were unavoidable, the said structure thus was not fit for offering prayer.

**3186.** Sacred Compilation **Hadith Sahih Muslim (Vol. II) 973** as interpreted by Imam Abu Hanifa on the basis of a Hadith recorded in Abu Dawud reveal that funeral prayer in the Mosque was prohibited.

*“(973) 'Abbad b. 'Abdullah b. Zubair reported that A'isha ordered that the bier of Sa'd b. Abu Waqqas be brought into the mosque, so she can pray for him. The people disapproved this (act) of hers. She said: How soon the people have forgotten that the Messenger of Allah (SAW) had offered the **funeral prayer of Suhail b. Al-Baida but in a mosque.**”*

**3187.** There is a difference of opinion among the jurists whether a funeral prayer can be offered in a mosque or not. It is on the basis of this hadith that Imam Shafi'i of the view that it can be offered in a mosque. Imam Abu Hanifa and Imam Malik on the basis of a hadith recorded in Abu Dawud (viz. The Messenger of Allah said: He who offers funeral prayer in the mosque has nothing for him) disapprove saying the funeral prayer in the mosque. The scholars of Hadith.

**3188.** In Idgahs/Musallas funeral prayers can be offered. In his book "**Mahommedan Law**", **Syed Ameer Ali**, describes Mosques and Idghas or Musalla as follows:

*"The word masjid is derived from sijda, devotion, and*

*means a place of devotion or a place where prayers are offered to the Almighty.*

*A very fair description of an ordinary mosque is given by Herklot in his Qanoon-i-Islam. Musallas are prayer-grounds, and the word is derived from the word salat or prayers. In India, they are generally called Idgahs or namaz-gahs, and consist of a plot of ground set apart for the performance of the daily prayers or the Id prayers."*

*"Every ground set apart for prayers is not necessarily a musallah and subject to the rules governing a mosque. A musalla is a place where funeral prayers or the prayers of the two Ids are usually offered. In such cases only the place where the congregation gather and the worship is performed that is governed by the rules governing a mosque."*

(Mahommedan Law by Syed Ameer Ali, 5<sup>th</sup> Edn. Reprint 2009, published by Hind Publishing House, Allahabad, p. 418, 419 and 420)

**3189.** The next submission is that structure having images/idols and designed cannot be a Masjid under Law of Shar as such the disputed structure as it was cannot be termed "mosque". This argument was elaborated and supported as under:

A. The holy prophet has said that **angles do not enter in a house which has images, portraits, pictures, idols etc. and even the designed garments detract attention from prayer** and, for that reason **prohibited to decorate a mosque with pictures**. As the disputed structure on its columns and other parts had engraved/chiseled

images/idols of Load-bearing Yakshas, Devis, Divine – couples, Kalash, Lotus, Leaves, Varah, Swastikas, Srivatsa, Kapot-pallis, etc. it does not come within the definition of Masjid according to Muslim Religious Law and belief but it comes within the definition of a Hindu Temple according to Hindu Personal Religious Law and belief.

B. The sacred Compilation **Hadith Sahih Muslim (Vol.-I) 528** reveals that the Holy Prophet prohibited to decorate Mosques with pictures. Said Hadith reads as follows:

*(528) A'isha reported: Umm Habiba and Umm Salama mentioned before the messenger of Allah (may peace be upon him) a church which they had seen in Abyssinia and which had pictures in it. The Messenger of Allah (may peace be upon him) said: **When a pious man amongst them (among the religious group) dies they build a place of worship on his grave, and then decorate it with such pictures. They would be the worst of creatures on the Day of Judgement in the sight of Allah.***

From the aforesaid Hadith it is crystal clear that there is forbiddance in Islam to decorate the Mosque with pictures. As such a building decorated with pictures can't be declared as a Masjid.

C. The sacred Compilations **Hadith Sahih Muslim (Vol.-III) 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111 and 2112** as well as **Jami' At Tirmidhi (Vol.-V) Hadith 2804** reveal that the Holy Prophet has

acknowledged that the Angels do not enter a house in which there is an object of images or a dog. Said Jami' At Tirmidhi read as follows:

*"2804. Ibn Abbas narrated: "I heard Abu Talhah saying: 'I heard the Messenger of Allah saying: "The **angels do not enter a house in which there is a dog or an object of images.**" (Sahih)*

**Comments:**

*The taking or drawing of a picture is not allowed, keeping it is also not permissible, and whoever does so is deprived of the blessed and merciful supplications of the angels; while a person is in need of mercy and blessing at every moment. Likewise, a dog is an impure animal and some are of a satanic nature and the angels despise the devil."*

*(Jami' At Tirmidhi (Vol.-V) Hadith 2804)*

From the aforesaid Hadiths it is crystal clear that a building which contains images or dogs does not come within the definition of an "Abode of Angels" for the reasons of such building being hated by the angels.

D. The sacred Compilation **Hadith Sahih Muslim (Vol.-I) 556** reveals that the Holy Prophet prohibited to use designed garment at the time of prayer. Said Hadith reads as follows:

*"(556) A'isha reported: The Apostle of Allah (may peace be upon him) prayed in a garment which had designs over it, so he (the Holy Prophet) said: Take it to Abu Jahm and bring me a plain blanket from him, because its designs have distracted me."*

From the aforesaid Hadiths it is known that designs detract attention from prayer wherefrom it can be necessarily inferred that a Masjid wherein prayer is offered to Almighty must not have design in it otherwise it will detract the attention of the worshippers from prayer and lose its status of being a Masjid.

E. The **Muwatta' Imam Malik (para 1743)** reveal that the Holy Prophet declined to use a pillow (mattress) painted with pictures and said that no angles enter the house that contains a picture as also that the makers of pictures will suffer punishment on the day of judgment said Muwatta 1743 reads as follows:

*"(1743) 'A'ishah reported that she bought a pillow (mattress) on which were painted pictures. When the Messengers of Allah (may peace be upon him) saw it, he kept standing at the door of her apartment and did not enter and his face showed signs of displeasure. She said : Messenger of Allah, I repent and ask forgiveness of Allah and His Messenger ; what fault is mine? He asked : What pillow (mattress) is this? She said : I bought it, so that you may sit on it, recline on it. The Messenger of Allah (may peace be upon him) said : The makers of pictures will suffer punishment on the Day of Judgment. They will be told to give life to what they had painted in the world. Then he added : No angels enter the house that contains pictures."*

**3190.** There cannot be a mosque in a place surrounded by graves as facing towards graves Namaz cannot be offered. This according to Sri P.N.Mishra, Advocate, is another reason for not

treating the disputed building a mosque. Elaborating the above submission, Sri Misra said:

A. In the schedule of the plaint the suit premises has been shown to be surrounded on all four sides by the graves, and sacred Hadiths prohibit from – offering prayers towards graves, visiting the graves of strangers, sitting on graves and erecting tent over a grave as such according to Islamic Law and tenets the scheduled Premises was never appropriate place for offering prayers to Merciful Almighty Allah. As such no deceleration of Mosque as prayed for can be granted.

B. The Sacred Compilation Jami' At-Tirmidhi (Vol.-2) Hadith 1050 reveals that the Holy Prophet has commanded not to sit on the graves nor perform Salat i.e. prayer towards graves.

*1050. Abu Marthad Al-Ghanawi narrated that the Prophet said: "Do not sit on the graves not perform Salat towards them." (Sahih)*

*(He said:) There are narrations on this topic from Abu Hurairah,' Amr bin Hazm, and Bashir bin Al-Khasasiyyah.*

*(Another route) with this chain, and it is similar.*

C. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-2) Hadith 1054 and ibid (Vol.1) Hadith 230** reveal that the Holy Prophet had prohibited Muslims from visiting the graves except the grave of their mothers. The said Hadith reads as follows:

*"1054. Sulaiman bin Buraidah narrated from his father that the Messenger of Allah said: "I had prohibited you*

*from visiting the graves. But Muhammad was permitted to visit the grave of his mother: so visit them, for they will remind you of the Hereafter."*

*Jami' At-Tirmidhi (Vol.-2) Hadith 1054*

*"320. Ibn 'Abbas narrated: "Allah's Messenger cursed the women who visit the graves, and those who use them as Masajid and put torches on them." (Da'if)*

*Jami' At-Tirmidhi (Vol.-1) Hadith 230*

As such to go an alleged Mosque surrounded on all four sides by graveyards means to visit the graves of strangers every day which act has been prohibited in Islam wherefrom it can be safely inferred that the Muslims are forbidden from offering prayers in a graveyard-locked place/building.

D. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-5) Hadith 2890** reveals that even a tent cannot be erected over the grave as it incites sin.

*"2890. Ibn Abbas narrated: "One of the Companions of the Prophet put up a tent upon a grave without knowing that it was a grave. When he realized that it was a person's grave, he recited Surat Al-Mulk until its completion. Then he went to the Prophet and said, 'O Messenger of Allah (Indeed) I erected my tent without realizing that it was upon a grave. So when I realized there was a person in it I recited Surat Al-Mulk until its completion.' So the Prophet said: 'It is a prevention, it is a salvation delivering from the punishment of the grave." (Da'if)*

E. Neil **B.E. Ballie** in his Book '**A Digest of**

**Mohammedan Law' Part- First (Second Edition 1875)**

containing the doctrines of the Hanifeea Code of Jurisprudence at page 621-22 records that the bodies buried in the ground can be exhumed by the rightful owner if the land was usurped. Relevant extract from the above referred paged reads as follows:

*"When a body has been buried in the ground, whether for a long or short time, it cannot be exhumed without some excuse. But it may be lawfully exhumed when it appears that the land was usurped, or another is entitled to it under a right of pre-emption."*

Be it mentioned herein that the Plaintiff witnesses have admitted that the graves were dug up by the Hindus after purchasing the lands wherein graves were located. It is settled law that public Graveyard can not be sold wherefrom it becomes crystal that it was not a public Graveyard meant for the Muslims.

F. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-2)** **Hadith 1052** reveals that the Holy Prophet had prohibited plastering graves, writing on them, building over them and treading on them.

*"1052. Jabir narrated:" The Messenger of Allah prohibited plastering graves, writing on them, building over them and treading on them."(Sahih)*

As such it cannot be inferred that the plasterd graves mentioned in Commissioner's report in 1950 were built by Emperor Babur of his soldiers who died in alleged was between him and the then ruler of Ajodhya because the Emperor Babur was a scholar of Hanafi School of Islamic

Law which does not permit to built plastered graves of soldiers.

**3191.** Sri Mishra pointed out certain other prohibitions in Islamic Law which according to him amounts to a 'command' against construction of a mosque in violation thereof and said:

A. In vicinity of bells there cannot be a mosque because it is revelation of the holy Prophet that bell is abode of saitan, contrary to it bell is integral part of 16 organs of religious customs of worship of the hindus as such as all along bells remained in the disputed site it can't be a mosque.

B. In a Hindu Temple ringing of bell is integral part of worship while according to Shar bell is considered to be an instrument of Satan and angels do not enter in such a house where bell is as such. A place where angels do not enter can't be a Masjid. The Gazetteer of 1877-78 and Millet's Settlement Report say that till 1855 Hindus were worshipping in the same and one building which was allegedly known as Mosque-temple said to be erected by Moghul Emperor Babur over the sacred site of Sri Ramajanamsthan by demolishing Hindu temple of that shrine and on annexation of Oudh to British India (on 13<sup>th</sup> February, 1856 and Lord Canning's proclamation on 15<sup>th</sup> March, 1859, confiscating all proprietary rights in the soil of the Oudh Province) the Administration made an enclosure bifurcating the Temple compound and thereby ordered Hindus not to enter inside the said building in consequence whereof Hindus erected a platform in the Temple compound just after enclosure and started

worshipping thereon. From the several applications of the persons claiming to be Mutvallis/ Muezzins/ Khattibs, it however is apparent that even after 1855 and onwards Hindus were continuously worshipping in the said temple and, from their application of 1883 it becomes crystal clear that in addition to performing Idol worship in the said disputed Temple-Mosque building Hindus were celebrating their festivals as such for all practical purposes said building was a Hindu temple and according to Musalman Law due to presence of Idols & Bells it was not at all a Masjid.

C. The Sacred Compilation **Hadith Sahih Muslim (Vol.-III) 2113 and 2114** reveal that the Holy Prophet had said that Angels do not accompany the person who has with him a bell because the bell is the musical instrument of the Satan. The said Hadiths read as follows:

*“(2113) Abu Huraira reported Allah's Messenger (may peace be upon him) had said: Angels do not accompany the travellers who have with them a dog and a bell.”*

*“(2114) Abu Huraira reported that Allah's messenger (may peace be upon him) had said: The bell is the musical instrument of the Satan.”*

D. The Sacred Compilation **Hadith Sahih Muslim (Vol.-I) 377** as well as **Jami' At-Tirmidhi (Vol.-1) 190** reveal that the Holy Prophet did not approve the method of giving Ajan/ Adhan by ringing the bell like the persons of other faith; of course, reason behind this was that it was an instrument of Satan. Said Hadiths read as follows:

*“(377) Ibn Umar reported: When the Muslims came to*

*Medina, they gathered and sought to know the time of prayer but no one summoned them. One day they discussed the matter, and some of them said: Use something like the bell of the Christians and some of them said: Use horn like that of the Jews. Umar said: Why may not a man be appointed who should call (people) to prayer? The Messenger of Allah (may peace be upon him) said: O Bilal, get up and summon (the people) to prayer.”*

*(Hadith Sahih Muslim (Vol.-I) 377 at page 256)*

*“190. Ibn ' Umar narrated. "When the Muslims arrived in Al-Madinah, they used to assemble for the Salat, and guess the time for it. There was no one who called for it (the prayer). One day they discussed that and some of them said that they should use a bell like the bell the Christians use. Others said they should use a trumpet like the horn the Jews use. But 'Umar [bin Al-Khattab] said: 'Wouldn't it be better if we had a man call for the prayer?" He said: "So Allah's Messenger said: 'O Bilal Stand up and call for the Salat."*

*(Jami' At-Tirmidhi (Vol.-1) 190 at page 215)*

E. In **'Ibn Battuta' Travels in Asia and Africa' (1325-1354)** on page 142, Ibn Battuta writes that he became surprised when he heard bells ringing on all sides of the mosque wherein he was staying. In his note on page 357 of the said book the editor/translator explains that the Muslim hold the ringing of bells in the greatest abhorrence and believe that the angles will not enter in the house wherein bells are rung. As the suit premises was

surrounded by all sides from the temples and even in the alleged Temple – Mosque building Hindus were worshipping by Ringing bells, according to Shar it cannot be termed as mosque. Relevant extracts from the said book read as follows:

*"We stayed as Kafa in the mosque of the Muslims. As hour after our arrival we heard bells ringing on all sides. As I had never heard bells before, I was alarmed and bade my companions ascend the minaret and read the Koran and issue the call to prayer. They did so, when suddenly a man entered wearing armour and weapons and greeted us. He told us that he was the qadi of the Muslims there, and said "When I heard the reading and the call to prayer, i feared for your safety and came as you see.*

*Muslim hold the ringing of bells in the greatest abhorrence, and attribute to the Prophet the saying : "The angels will not enter any house wherein bells are rung."*

*F. The Sacred Compilation **Hadith Sahih Muslim (Vol.-II) 851 & 851R3** reveal that it was commanded by the Holy Prophet that Muslims must observe silence during sermon on Friday. The said Hadiths read as follows:*

*"(851) Abu Huraira reported what Allah's Messenger (SAW) had said: If you ask your companion to be quiet on Friday while the Imam is delivering the sermon, you have in fact chattered."*

*(851R3) On the authority of Abu Huraira that the Holy Prophet said: "If you said to your companion: Be quiet,*

*on Friday, and the Imam is delivering the sermon, you have in fact chattered.*

From the aforesaid Hadith it becomes clear that in the noisiest place where bells were/are being rung and Conch Shells were/are being blown prayer could not be offered. As it is admitted by the then alleged Mutawalli that Conch Shell was being blown by the Pujari Neehang Singh even in 1861 said Structure can't be a Masjid but for all practical purposes it was/is only Temple.

G. As there was no provision of water for Wadu in the disputed structure it can't be a mosque it was all along a Hindu temple. Without performing wadu by pure water in a mosque cannot offer prayer. One Hadith says that for Friday's prayer one should take a bath in his house and thereafter perform wadu (Vazu) in a Mosque and then he should offer prayer from which it becomes crystal clear that performing wadu in a mosque is mandatory pre condition for offering one's prayer to Almighty Merciful Allah. As Friday's prayer is offered in congregation at least on that day huge quantity of water is required but in the alleged Temple-Mosque premises there was no such provision of water for Muslims for performing wadu from which it can be safely inferred that said structure was neither meant for offering Salat nor was a Masjid at all but all along it was a temple as such the same cannot be declared Baburi Masjid.

H. The Sacred Compilation **Hadith Sahih Muslim (Vol.-II)** 844 & 855 reveal that before offering Friday's prayer one should take a bath in his house and thereafter

perform Wadu in a Mosque. Said Hadiths read as follows:

*(844) 'Abdullah reported that he heard Allah's Messenger (SAW) who said: When any one of you intends to come for Friday prayer, he should take a bath.*

*(845) 'Abdullah (b. 'Umar) reported from his father, that while he was addressing the people on Friday (sermon), a person, one of the Companions of the Messenger of Allah (SAW), entered (the mosque). 'Umar said to him loudly: What is the time hour (for attending the prayer)? He said: I was busy today and I did not return to my house when I heard the call (to Friday prayer), but I performed ablution (only). Upon this 'Umar said: Just ablution! You know that the Messenger of Allah (SAW) commanded (us) to take a bath (on Friday).*

I. The Sacred Compilation **Hadith Sahih Muslim (Vol.-I) 225; (Vol.-II) 844-847R1** and **Jami' At-Tirmidhi (Vol.-1) Hadith 1-5, 90, 200-201, 497-498** say that prior to offering prayer performance of Wadu by pure water is necessary and for Friday's prayer it is must to take bath in one's house then visit the Masjid and perform Wadu in it by water prior to offering prayer.

*“(225) Hammam b. Munabbih, who is the brother of Wahb. Munabbih, said : This is what has been transmitted to us by Abu Huraira from Muhammad, the Messenger of Allah (SAW), and then narrated a hadith out of them and observed that the Messenger of Allah (SAW) said: The prayer of no one amongst you would be accepted in a state of impurity till he performs ablution*

*(844) 'Abdullah reported that he heard Allah's*

*Messenger (SAW) who said: When any one of you intends to come for Friday prayer, he should take a bath.*

*(844R1) 'Abdullah b. 'Umar reported that the Messenger of Allah (SAW) said when he was standing on the pulpit: He who comes for Friday prayer he should take a bath.*

*(844R2) This Hadith has been narrated by Ibn 'Umar by another chain of transmitters.*

*(844R3) 'Abdullah (b. 'Umar) reported on the authority of his father that he heard the same thing from the Messenger of Allah (SAW).*

*(845) 'Abdullah (b. 'Umar) reported from this father, that while he was addressing the people on Friday (sermon), a person, one of the Companions of the Messenger of Allah (SAW), entered (the mosque). 'Umar said to him loudly: What is the time hour (for attending the prayer)? He said: I was busy today and I did not return to my house when I heard the call (to Friday prayer), but I performed ablution (only). Upon this 'Umar said: Just ablution! You know that the Messenger of Allah (SAW) commanded (us) to take a bath (on Friday).*

*(845R1) Abu Huraira reported: 'Umar b. Khattab was delivering a sermon to the people on Friday when 'Uthman b. Affan came there. 'Umar insinuated to him and said: What would become of those person who come after the call to prayer ? Upon this 'Uthman said: Commander of the faithful, I did no more than this, that after listening to the call, I performed ablution and came (to the mosque). 'Umar said: Just ablution! Did not you hear the Messenger of Allah (SAW) saying: When any*

*one of you comes for Friday prayer he should take a bath.*

*(846) Abu said Al-Khudri reported what Allah's Messenger (SAW) had said: Taking a bath on Friday is essential for every adult person.*

*(847) A'isha reported: The people came for Friday prayer from their houses in the neighbouring villages dressed in woollen garment full of dust which emitted a foul smell. A person among them (those who were dressed so) came to the Messenger of Allah (SAW) while he was in house. The Messenger of Allah (SAW) said to him: Were you to cleanse yourselves on this day.*

*(847R1) A'isha reported: The people (mostly) were workers and they had no servants. Bad-smell thus emitted out of them. It was said to them: If you were to take bath on Friday.*

***'Jami' At-Tirmidhi'***

*1. Ibn Umar narrated that the Prophet said: "Salat will not be accepted without purification, nor charity from Ghulul" (Sahih) Hannad said in his narration, "except with purification" (Sahih)*

*2. Abu Hurairah narrated that Allah's Messenger said: "When a Muslim, or believer, performs Wudu, washing his face, every evil that he looked at with his eyes leaves with the water-or with the last drop of water, or an expression similar to that-and when he washes his hands, every evil he did with his hands leaves with the water-or with the last drop of water- until he becomes free of sin." (Sahih).*

3. 'Ali narrated that the prophet said: "The key to Salat is the purification, its Tahrim is the Takbir, and its Tahlil is the Taslim. (Hasan)

4. Jabir bin 'Abdullah, may Allah be pleased with them, narrated that Allah's Messenger said: "The key to Paradise is Salat and the key to Salat is Wudu." (Hasan)"

5. Anas bin Malik said: "When the Prophet entered the toilet he would say: 'O Allah! Indeed I seek refuge in You.'"

Shu'bah (one of the narrators) said: "Another time he said: 'I seek refuge in You from Al-Khubthi and Al-Khabith.' Or: 'Al-Khubthi and Al-Khaba'ith.'" (Sahih)

90. Ibn 'Umar narrated: "A man greeted the Prophet (with Salam), and he was urinating, so he did not respond to him." (Sahih)

**200.** Abu Hurairah narrated that Allah's Messenger said: "None should call the Adhan except for one with Wudu." (Da'if)

**201.** Ibn Shihab narrated than Abu Hurairah said: None should call for the prayer except for one with Wudu."

**497.** Samurah bin Jundab narrated that Allah's Messenger said: "Whoever performs Wudu on Friday, then he will receive the blessing, and whoever performs Ghusl then Ghusl is more virtuous." (Hasan)

**498.** Abu Hurairah narrated that Allah's Messenger said "Whoever performs Wudu', performing his Wudu' well, then he comes to the Friday (prayer), and gets close, listens and is silent, then whatever (sin) was

*between that and (the last) Friday are forgiven for him, in addition to three days. And whoever touches the pebbles, he has committed Lagha (useless activity)."*  
(Sahih)

J. **The Holy Quran Surah 5 Al-Maidah Ayat 6** and the Sacred Compilation **Hadith Sahih Muslim (Vol.I) 367-370** provides that Tayammum i.e. purification by clean earth can be done only in extreme exigency at the time of travelling or war campaign when water is not available otherwise Wudu must be performed by water.

*"6. O you who believe! When you intend to offer As-Salat (the prayer), wash your faces and your hands (forearms) up to the elbows, rub (by passing wet hands over) your heads, and (wash) your feet up to the ankles. If you are in a state of Janaba (i.e. after a sexual discharge), purify yourselves (bathe your whole body). But if you are ill or on a journey, or any of you comes from the Gha'it (toilet), or you have been in contact with women (i.e. sexual intercourse), and you find no water, then perform Tayammum with clean earth and rub therewith your faces and hands. Allah does not want to place you in difficulty, but He wants to purify you, and to complete His Favour to you that you may be thankful."*

*(367) A'isha reported: We went with the Apostle of Allah (may peace be upon him) on one of his journeys and when we reached the place Baida or That Al-Jaish, my necklace was broken (and fell some where). The Messenger of Allah (may peace be upon him) along with other people stayed there looking for it. There was*

*neither any water at that place nor was there any water with them (the Companions of the Holy Prophet). Some people came to my father Abu Bakr and said: Do you see what' Aisha has done? She has detained the Messenger of Allah (may peace be upon him) and the people accompanying him, and there is neither any water here or with them. So Abu Bakr came there and the Messenger of Allah (may peace be upon him) was sleeping with his head on my thigh. He (Abu Bakr) said: You have detained the Messenger of Allah (may peace be upon him) and the people and there is neither water here for with them. She (Aisha) said: Abu Bakr scolded me and uttered what Allah wanted him to utter and nudged my hips with his hand. And there was nothing to prevent me from stirring but the fact that the Messenger of Allah (may peace be upon him) was lying upon my thigh. The Messenger of Allah (may peace be upon him) slept till it was dawn at a waterless place. So Allah revealed the verses pertaining to Tayammum and they (the Holy Prophet and his Companions) performed Tayammum. Usaid b. Al- Hudair who was one of the leaders said: This is not the first of your blessings, O Family of Abu Bakr. Aisha said: We made the camel stand which was my mount and found the necklace under it.*

*(368) Shaqiq reported: I was sitting in the company of Abdulla and Abu Musa, when Abu Musa said: O' Abdel – Rahman (kunya of Abdullah b. Masud), what would you like a man to do about the prayer if he experiences a seminal emission or has sexual*

*intercourse but does not find water for a month? Abdullah said: He should not perform Tayammum even if he does not find water for a month. Abdullah said: Then what about the verse in Sura Maida: If you do not find water betake yourself to clean with dust ? Abdullah said: If they were granted concession of the basis of this verse, there is a possibility that they would perform Tayammum with dust on finding water very cold for themselves. Abu Musa said to Abdullah: You have not heard the words of Ammar: The Messenger of Allah (may peace be upon him) sent me on an errand and I had a seminal emission, but could find no water, and rolled myself in dust just as a beast rolls itself. I came to the Messenger of Allah (may peace be upon him) and mentioned that to him and he (the Holy Prophet) said: It would have been enough for you to do this. Then he struck the ground with his hands once and wiped his right hand with the help of his left hand and the exterior of his palms and his face. Abdullah said: Didn't you see that Umar was not fully satisfied with the words of Ammar only ?*

*(369) Umair, the freed slave of Ibn' Abbas, reported: I and Abdel-Rahman b. Yasir, the freed slave of Maimuna, the wife of the Apostle (may peace be upon him) came to the house of Abu'l -Jahm b. Al- Harith Al-Simma Ansari and he said: The Messenger of Allah (may peace be upon him) came from the direction of A-Jamal well and a man met him; he saluted him but the Messenger of Allah (may peace be upon him) made no*

*response, till the Holy Prophet came to the wall, wiped his face and hands and then returned his salutations.*

*(370) Ibn Ymar reported: A man happened to pass by the Messenger of Allah (may peace be upon him) when he was making water and saluted him, but he did not respond to his salutation.*

Since there was no provision of water reservoir in the disputed premises the question of performing wadu by huge crowd for Friday's prayer did not arise at all in other words the said structure was never used as Masjid for offering congregational prayer on Friday but all along remained as Hindus' Shrine.

**3192.** Besides above, there are some more references from Holy Quran relied and referred by Sri Mishra during the course of his arguments i.e.

***Surah 9 Part 10***

*"18. The Mosques of Allah shall be maintained only by those who believe in Allah and the Last Day; perform As-Salat (Iqamat-as-Salat), and give Zakat and fear none but Allah. It is they who are on true guidance."*

*"19. Do you consider the providing of drinking water for the pilgrims and the maintenance of Al-Masjid Al-Haram (at Makkah) as equal to the one who believes in Allah and the Last Day, and strives hard and fights in the Cause of Allah? They are not equal before Allah. And Allah guides not those people who are the Zalimun (polytheists and wrong-doers)." (Page 189)*

***Surah 9 Part 11***

*"111. Verily, Allah has purchased of the believers their*

*lives and their properties for (the price) that theirs shall be the Paradise. They fight in Allah's Cause, so they kill (others) and are killed. It is a promise in truth which is binding on Him in the Taurat (Torah) and the Injil (Gospel) and the Qur'an. And who is truer to his covenant than Allah? Then rejoice in the bargain which you have concluded. That is the supreme success.” (Page 204)*

**3193.** Sri Mishra referred to **Hadith, Volume 1, Bk. 23: Funerals (Al-Janaa'iz) Paras 2.475, 2.476, 2.477, 2.478 (extract) and 2.559 (extract)**, which read as under:

*“Narrated 'Amr bin Maimun Al-Audi: I saw 'Umar bin Al-Khattab (when he was stabbed) saying, "O 'Abdullah bin 'Umar! Go to the mother of the believers Aisha and say, 'Umar bin Al-Khattab sends his greetings to you, 'and request her to allow me to be buried with my companions." (So, Ibn 'Umar conveyed the message to 'Aisha.) She said, "I had the idea of having this place for myself but today I prefer him ('Umar) to myself (and allow him to be buried there). "When 'Abdullah bin 'Umar returned, 'Umar asked him, "What (news) do you have? " He replied, "O chief of the believers She has allowed you (to be buried there)." On that 'Umar said, "Nothing was more important to me than to be buried in that (sacred) place. So, when I expire, carry me there and pay my greetings to her ('Aisha) and say, 'Umar bin Al-Khattab asks permission; and if she gives permission, then bury me (there) and if she does not, then take me to the graveyard of the Muslims. I do not think any person has more right for the caliphate than those with whom Allah's Apostle (p. b. u.*

*h) was always pleased till his death. And whoever is chosen by the people after me will be the caliph, and you people must listen to him and obey him," and then he mentioned the name of "Uthman, 'Ali, Talha, Az-Zubair, 'Abdur-Rahman bin 'Auf and sad bin Abi Waqqas. By this time a young man from Ansar came and said, "O chief of the believers! Be happy with Allah's glad tidings. The grade which you have in Islam is known to you, then you became the caliph and you ruled with justice and then you have been awarded martyrdom after all this." 'Umar replied, "O son of my brother! Would that all that privileges will counterbalance (my short comings), so that I neither lose nor gain anything. I recommend my successor to be good to the early emigrants and realize their rights and to protect their honor and sacred things. And I also recommend him to be good to the Ansar who before them, had homes (in Medina) and had adopted the Faith. He should accept the good of the righteous among them and should excuse their wrongdoers. I recommend him to abide by the rules and regulations concerning the Dhimmis (protectees) of Allah and His Apostle, to fulfill their contracts completely and fight for them and not to tax (overburden) them beyond their capabilities." (Page 354/355)*

*"Narrated 'Aisha :*

*The Prophet (p.b.u.h) said, "Don't abuse the dead, because they have reached the result of what they forwarded."*

*(Page 355)*

*"Narrated Ibn 'Abbas.: Abu Lahab, may Allah curse him, once said to the Prophet (p.b.u.h), "Perish you all the day."*

*Then the Divine Inspiration came: "Perish the hands of Abi Lahab! And perish he!" (Page 355)*

*"Narrated Ibn 'Abbas: Thy Prophet sent Mu'adh to Yemen and said, "Invite the people to testify that none has the right to be worshipped but Allah and I am Alla's Apostle, and if they obey you to do so, then teach them that Allah has enjoined on them five prayers in every day and night (in twenty-four hours)...." (Page 355)*

*"....A strong wind blew at night and a man stood up and he was blown away to a mountain called Taiy, The King of Aila sent a white mule and a sheet for wearing to the Prophet as a present, and wrote to the Prophet that his people would stay in their place (and will pay Jizya taxation.) (1) When the Prophet reached Wadi-al-Qura he asked that woman how much her garden had yielded. She said, "Ten Awsuq," and that was what Allah's Apostle had estimated." (page 381)*

**3194.** Next, he cited from **Sahih Bukhari: Hadith Bk.30: Virtues of Madinah** paras 3.92, 3.425, 3.528, 3.529, 3.599, 3.627, 3.629, 3.632, 3.633, 3.634, 3.890 and 3.895 as under:

*"Narrated Anas:*

*The Prophet came to Medina and ordered a mosque to be built and said, "O Bani Najjar! Suggest to me the price (of your land)". They said, "We do not want its price except from Allah" (i.e they wished for a reward from Allah for giving up their land freely). So, the Prophet ordered the graves of the pagans to be dug out and the land to be leveled, and the date-palm trees to be cut down. The cut date-palms were fixed in the direction of the Qibla of the*

*mosque.” (Pages 476)*

*"Narrated Abu Huraira: Allah's Apostle said, "By Him in Whose Hands my soul is, son of Mary (Jesus) will shortly descend amongst you people (Muslims) as a just ruler and will break the cross and kill the pig and abolish the Jizya (a tax taken from the non-Muslims, who are in the protection, of the Muslim government). Then there will be abundance of money and nobody will accept charitable gifts.” (Page 557)*

*"Narrated 'Aisha:*

*The Prophet said, "He who cultivates land that does not belong to anybody is more rightful (to own it)." 'Urwa said, "Umar gave the same verdict in his Caliphate." (Page 591)*

*"Narrated 'Abdullah bin 'Umar: While the Prophet was passing the night at his place of rest in dhul-Hulaifa in the bottom of the valley (of Aqiq), he saw a dream and it was said to him, "You are in a blessed valley. "Musa said, "Salim let our camels kneel at the place where 'abdullah used to make his camel kneel, seeking the place where Allah's Apostle used to take a rest, which is situated below the mosque which is in the bottom of the valley; it is midway between the mosque and the road." (Page 591)*

*"Narrated 'Abdullah bin Mas'ud: Allah's Apostle said, "Whoever takes a false oath so as to take the property of a Muslim (illegally ) will meet Allah while He will be angry with him." Al-Ash'ath said: By Allah, that saying concerned me. I had common land with a Jew, and the Jew later on denied my ownership, so I took him to the Prophet who asked me whether I had a proof of my ownership. When I*

*replied in the negative, the Prophet asked the Jew to take an oath. I said, "O Allah's Apostle! He will take an oath and deprive me of my property." So, Allah revealed the following verse: "Verily ! Those who purchase a little gain at the cost of Allah's covenant and their oaths." (Page 611/612)*

*"Narrated Ibn 'Umar: The Prophet said, "Oppression will be a darkness on the Day of Resurrection." (Page 621)*

*"Narrated Abu Huraira: Allah's Apostle said, "Whoever has oppressed another person concerning his reputation or anything else, he should beg him to forgive him before the Day of Resurrection when there will be no money (to compensate for wrong deeds), but if he has good deeds, those good deeds will be taken from him according to his oppression which he has done, and if he has no good deeds, the sins of the oppressed person will be loaded on him."(Page 621)*

*"Narrated Sa'id bin Zaid : Allah's Apostle said, "Whoever; usurps the land of somebody unjustly, his neck will be encircled with it down the seven earths (on the Day of Resurrection)." (Page 622)*

*"Narrated Abu Salama: That there was a dispute between him and some people (about a piece of land). When he told 'Aisha about it, she said, "O Abu Salama! Avoid taking the land unjustly for the Prophet said, 'Whoever usurps even one span of the land of somebody, his neck will be encircled with it down the seven earths." (Page 622)*

*"Narrated Salim's father (i.e 'Abdullah): The Prophet said, "Whoever takes a piece of the land of others unjustly, he*

*will sink down the seven earths on the Day of Resurrection.” (Page 622)*

*“Narrated Ibn 'Umar: When the people of Khaibar dislocated 'Abdullah bin 'Umar's hands and feet, 'Umar got up delivering a sermon saying, "No doubt, Allah's Apostle made a contract with the Jews concerning their properties, and said to them, 'We allow you ( to stand in your land) as long as Allah allows you.' Now 'Abdullah bin 'Umar went to his land and was attacked at night, and his hands and feet were dislocated, and as we have no enemies there except those Jews, they are our enemies and the only people whom we suspect, I have made up my mind to exile them." When Umar decided to carry out his decision, a son of Abu Al-Haqiq's came and addressed 'Umar, "O chief of the believers, will you exile us although Muhammad allowed us to stay at our places, and made a contract with us about our properties, and accepted the condition of our residence in our land?" Umar said, "Do you think that I have forgotten the statement of Allah's Apostle, i.e ; what will your condition be when you are expelled from Khaibar and your camel will be carrying you night after night ?" The Jew replied, "That was a joke from Abul-Qasim." 'Umar said, "O the enemy of Allah! You are telling a lie." 'Umar then drove them out and paid them the price of their properties in the form of fruits, money, camel saddles and ropes, etc." (Page 704/705)*

*“Narrated Ibn 'Umar: bin Khattab got some land in Khaibar and he went to the Prophet to consult him about it saying, "O Allah's Apostle I got some land in Khaibar*

*better than which I have never had, what do you suggest that I do with it? The Prophet said, "If you like you can give the land as endowment and give its fruits in charity." So Umar gave it in charity as an endowment on the condition that would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the Kith and kin, for freeing slaves, for Allah's Cause, to the travelers and guests; and that there would be no harm if the guardian of the endowment ate from it according to his need with good intention, and fed others without storing it for the future." (Page 714)*

**3195. Sahih Bukhari: Hadith Bk. 52: Fighting for the Cause of Allah (Jihad) para 4.287:**

*"Narrated 'Amr bin Maimun: 'Umar (after he was stabbed), instructed (his would-be-successor) saying, "I urge him (i.e. the new Caliph) to take care of those non-Muslims who are under the protection of Allah and His Apostle in that he should observe the convention agreed upon with them, and fight on their behalf (to secure their safety) and he should not over-tax them beyond their capability." (Page 798)*

**3196. Sahih Bukhari: Hadith Bk. 53: One-fifth of Booty to the Cause of Allah (Khumus) paras 4.354, 4.386, 4.387, 4.388, 4.403, 4.404, 4.407, 4.417 and 4.418:**

*"Narrated Aslam:*

*'Umar said, "Were it not for those Muslims who have not come to existence yet, I would have distributed (the land of) every town I conquer among the fighters as the Prophet*

*distributed the land of Khaibar." (Page 821)*

*"Narrated Jubair bin Haiya: 'Umar sent the Muslims to the great countries to fight the pagans. When Al-Hurmuzan embraced Islam, 'Umar said to him, "I would like to consult you regarding these countries which I intend to invade." Al-Hurmuzan said, "Yes, the example of these countries and their inhabitants who are the enemies of the Muslims, is like a bird with a head, two wings and two legs; if one of its wings got broken, it would get up over its two legs, with one wing and the head; and if the other wing got broken, it would get up with two legs and a head, but if its head got destroyed, then the two legs, two wings and the head would become useless. The head stands for Khosrau, and one wing stands for Caesar and the other wing stands for Faris. So, order the Muslims to go towards Khosrau." So, 'Umar sent us (to Khosrau) appointing An-Nu'man bin Muqrin as our commander. When we reached the land of the enemy, the representative of Khosrau came out with forty-thousand warriors, and an interpreter got up saying, "Let one of you talk to me!" Al-Mughira replied, "Ask whatever you wish." The other asked, "Who are you?" Al-Mughira replied, "We are some people from the Arabs; we led a hard, miserable, disastrous life: we used to suck the hides and the date stones from hunger; we used to wear clothes made up of fur of camels and hair of goats, and to worship trees and stones. While we were in this state, the Lord of the Heavens and the Earths, Elevated is His Remembrance and Majestic is His Highness, sent to us from among ourselves a Prophet whose father and mother*

*are known to us. Our Prophet, the Messenger of our Lord, has ordered us to fight you till you worship Allah Alone or give Juizya (i.e. tribute) ; and our prophet has informed us that our Lord says:--- "Whoever amongst us is killed (i.e. martyred), shall go to Paradise to lead such a luxurious life as he has never seen, and whoever amongst us remain alive, shall become your master." (Al-Mughira, then blamed An-Nu'man for delaying the attack and) An-Nu'man said to Al-Mughira, "If you had participated in a similar battle, in the company of Allah's Apostle he would not have blamed you for waiting, nor would he have disgraced you. But I accompanied Alla's Apostle in many battles and it was his custom that if he did not fight early by daytime, he would wait till the wind had started blowing and the time for the prayer was due (i.e. after midday)." (Page 836/837)*

*"Narrated Abu Humaid As-Saidi: We accompanied the Prophet in the Ghazwa of Tabuk and the king of 'Aila presented a white mule and a cloak as a gift to the Prophet. And the Prophet wrote to him a peace treaty allowing him to keep authority over his country." (Page 837)*

*"Narrated Juwairiya bin Qudama at-Tamimi: We said to 'Umar bin Al-Khattab, Jo Chief of the believers! Advise us. "He said, "I advise you to fulfill Alla's Convention (made with the Dhimmis) as it is the convention of your Prophet and the source of the livelihood of your dependents (i.e. the taxes from the Dhimmis.)" (Page 837)*

*"Narrated 'Abdullah bin 'Amr : Allah's Apostle said, "Whoever has (the following) four characteristics will be a pure hypocrite: "If he speaks, he tells a lie; if he gives a*

*promise, he breaks it, if he makes a covenant he proves treacherous ; and if he quarrels, he behaves in a very imprudent evil insulting manner (unjust). And whoever has one of these characteristics, has one characteristic of a hypocrite, unless he gives it us." (Page 843)*

*"Narrated 'Ali:*

*We did not, write anything from the Prophet except the Qur'an and what is written in this paper, (wherein) the Prophet said, "Medina is a sanctuary from (the mountain of) Air to so and-so, therefore, whoever innovates (in it) an heresy or commits a sin, or gives shelter to such an innovator, will incur the Curse of Allah, the angels and all the people; and none of his compulsory or optional good deeds of worship will be accepted And the asylum granted by any Muslim Is to be secured by all the Muslims even if it is granted by one of the lowest social status among them. And whoever betrays a Muslim in this respect will incur the Curse of Allah, the angels and all the people, and his compulsory and optional good deeds of worship will not be accepted. And any freed slave will take as masters (befriends) people other than his own real masters who freed him without taking the permission of the latter, will incur the Curse of Allah, the angels and all the people, and his compulsory and optional good deeds of worship will not be accepted." Narrated sa'id: Abu Huraira once said (to the people), "What will your state be when you can get no dinar or dirhan (i.e. taxes from the Dhimmis)?" on that someone asked him, "What makes you know that this state will take place, O Abu- Hu raira?" He said, "By Him in*

*Whose Hands Abu Huraira's life is, I know it through the statement of the true and truly inspired one (i.e. the Prophet). "The people asked, "What does the Statement say?" He replied, "Allah and His Apostle's asylum granted to Dhimis, i.e non-Muslims living in a Muslim territory) will be outraged, and so Allah will make the hearts of these Dhimmis so daring that they will refuse to pay the Jizya they will be supposed to pay." (Page 843/844)*

*“Narrated Asma 'bint Abi Bakr: During the period of the peace treaty of Quraish with Alla's Apostle, my mother, accompanied by her father, came to visit me, and she was a pagan. I consulted Allah's Apostle! My mother has come to me and she desires to receive a reward from me, shall I keep good relation with her? He said, :“Yes, keep good relation with her.” (Page 845)*

*“Narrated Muhammad bin Ibrahim bin Al-Harith : from Abu Salama bin 'Abdur-Rahman who had a dispute with some people on a piece of land, and so he went to 'Aisha and told her about it. She said, "O Abu Salama, avoid the land, for Alla's Apostle said, 'Any person who takes even a span of land unjustly, his neck shall be encircled with it down seven earths." (Page 849)*

*“Narrated Salim's father : The Prophet said, "Any person who takes a piece of land unjustly will sink down the seven earths on the Day of Resurrection." (Page 849)*

**3197.** Para 5.50 from **Volume 5 of Sahih Bukhari: Hadith** (supra):

*“Narrated 'Amr bin Maimun : I saw 'Umar bin Al-Khattab a few days before he was stabbed in Medina. He was*

*standing with Hudhaifa bin Al-Yaman and 'Uthman bin Hunaif to whom he said, "What have you done ? Do you think that you have imposed more taxation on the land (of As-Swad i.e. 'Iraq) than it can bear ? " They replied, "We have imposed on it what it can bear because of its great yield. 'Umar again said, "check whether you have imposed on the land what it can not bear. " They said, "No, (we haven't )." 'Umar added, "If Allah should keep me alive I will let the widows of Iraq need no men to support them after me." But only four days had elapsed when he was stabbed (to death)..... I also recommend him concerning Allah's and His Apostle's protectives (i.e.Dhimmis) to fulfill their contracts and to fight for them and not overburden them with what is beyond their ability." (Page 1000/1004)*

**3198. Bk.59: Military Expeditions led by the Prophet (pbuh) (Al-Maghaazi) of Sahih Bukhari: Hadith paras 5.351, 5.542 and 5.543 is as under:**

*“Narrated Al-Miswar bin Makhrama : That 'Amr bin 'Auf, who was an ally of Bani 'Amir bin Luai and one of those who fought at Badr in the company of the Prophet, said, "Allah's Apostle sent Abu 'Ubaida bin Al-Jarrah to Bahrain to bring the Jizya taxation from its people, for Allah's Apostle had made a peace treaty with the people of Bahrain and appointed Al-'Ala' bin Al-Hadrami as their ruler. So, Abu 'Ubaida arrived with the money from Bahrain. When the Ansar heard of the arrival of Abu 'Ubaida (on the next day) they offered the morning prayer with the prophet and when the morning prayer had finished, they presented themselves before him. On seeing*

*the Ansar, Allah's Apostle smiled and said, "I think you have heard that Abu 'Ubaida has brought something?" They replied, "Indeed, it is so, O Allah's Apostle !" He said, "Be happy, and hope for what will please you. By Allah, I am not afraid that you will be poor, but I fear that worldly wealth will be bestowed upon you as it was bestowed upon those who lived before you. So you will compete amongst yourselves for it, as they competed for it and it will destroy you as it did them." (page 1103/1104)*

*"Narrated 'Umar bin Al-Khattab: By Him in Whose Hand my soul is, were I not afraid that the other Muslims might be left in poverty, I would divide (the land of) whatever village I may conquer (among the fighters), as the Prophet divided the land of Khaibar. But I prefer to leave it as a (source of) a common treasury for them to distribute it revenue amongst themselves." (page 1183)*

*"Narrated 'Umar:*

*But for the other Muslims (i.e. coming generations) I would divide (the land of) whatever villages the Muslims might conquer (among the fighters), as the Prophet divided (the land of) Khaibar." (page 1183)*

**3199. Bk.65: Food, Meals of Sahih Bukhari: Hadith paras 7.354:**

*"Narrated Jabir bin 'Abdullah : There was a Jew in Medina who used to lend me money up to the season of plucking dates. (Jabir had a piece of land which was on the way of to Ruma). That year the land was not promising, so the payment of the debt was delayed one year. The Jew came to me at the time of plucking, but gathered nothing*

*from my land. I asked him to give me one year respite, but he refused. This news reached the Prophet whereupon he said to his companions, "Let us go and ask the Jew for respite for Jabir." All of them came to me in my garden, and the Prophet started speaking to the Jew, but the Jew said, "O Abu Qasim ! I will not grant him respite." When the Prophet saw the Jew's attitude, he stood up and walked all around the garden and came again and talked to the Jew, but the Jew refused his request. I got up and brought some ripe fresh dates and put it in front of the Prophet. He ate and then said to me, "Where is your hut, O Jabir? " I informed him, and he said, "Spread out a bed for me in it." I spread out a bed, and he entered and slept. When he woke up, I brought some dates to him again and he ate of it and then got up and talked to the Jew again, but the Jew again refused his request. Then the Prophet got up for the second time amidst the palm trees loaded with fresh dates, and said, "O Jabir! Pluck dates to repay your debt." The Jew remained with me while I was plucking the dates, till I paid him all his right, yet there remained extra quantity of dates. So I went out and proceeded till I reached the Prophet and informed him of the good news, whereupon he said, "I testify that I am Allah's Apostle." (Page 1575/1576)*

**3200. Bk.80: Laws of Inheritance (Al-Faraa'id) of Sahih Bukhari: Hadith** paras 8.755, 8.756 and 8.760 is as under:

*“Narrated Abu Huraira: The Prophet said, "If somebody dies (among the Muslims) leaving some property, the property will go to his heirs; and if he leaves a debt or dependants, we will take care of them." (page 1903)*

*“Narrated Usama bin Zaid: the Prophet said, **"A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim."** (page 1903/1904)*

*“Narrated Abu Huraira: Allah's Apostle said, "There were two women with whom there were their two sons. A wolf came and took away the son of one of them. That lady said to her companion, 'The wolf has taken your son.' The other said, 'But it has taken your son. ' So both of them sought the judgment of (the Prophet ) David who judged that the boy should be given to the older lady. Then both of them went to (the Prophet) Solomon, son of David and informed him of the case. Solomon said, 'Give me a knife so that I may cut the child into two portions and give one half to each of you.' The younger lady said, 'Do not do so; may Allah bless you ! He is her child.' On that, he gave the child to the younger lady." Abu Huraira added : By Allah ! I had never heard the word 'Sakkin' as meaning knife, except on that day, for we used to call it "Mudya." (page 1904/1905)*

**3201.** Next comes **Bk. 81: Limits and Punishments set by Allah (Hudood)** from which paras 8.763 and 8.809 are as under:

*"Narrated Abu Huraira : Allah's Apostle said, "When an adulterer commits illegal sexual intercourse, then he is not a believer at the time he is doing it; and **when somebody drinks an alcoholic drink, then he is not believer** at the time of drinking, and when a thief steals, he is not a believer at the time when he is stealing: and when a robber robs and the people look at him, then he is not a believer at the time of doing it." Abu Huraira in another narration, narrated the same from the Prophet with the exclusion of*

robbery."(Page 1905/1906)

*"Narrated Ibn 'Umar : A Jew and a Jewess were brought to Allah's Apostle on a charge of committing an illegal sexual intercourse. The Prophet asked them. "What is the legal punishment (for this sin) in your Book (Torah)?" They replied, "Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." 'Abdullah bin Salam said, "O Allah's Apostle, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold ! The Divine Verse of the Rajam was under his hand. So Allah's Apostle ordered that the two (sinners) be stoned to death, and so they were stoned. Ibn 'Umar added : So both of them were stoned at the Balat and I saw the Jew sheltering the Jewess."(Page 1916/1917)*

**3202.** Para 9.447 of **Bk. 92: Holding Fast to the Qur'an and Sunnah** is as under:

*"Narrated Abu Huraira : While we were in the mosque, Allah's Apostle came out and said, "Let us proceed to the Jews." So we went out with him till we came to Bait-al-Midras. The Prophet stood up there and called them, saying, "O assembly of Jews ! Surrender to Allah (embrace Islam) and you will be safe !" They said, "You have conveyed Allah's message, O Aba-al-Qasim" Allah's Apostle then said to them, "That is what I want: embrace Islam and you will be safe." They said, "You have conveyed the message, O Aba-al-Qasim." Allah's Apostle*

*then said to them, "That is what I want," and repeated his words for the third time and added, "know that the earth is for Allah and I want to exile you from this land, so whoever among you has property he should sell it, otherwise, know that the land is for Allah and His Apostle." (Page 2069/2070)*

**3203.** Referring to the above, it is contended by Sri Mishra, that what emerges from the above is that the Prophet never intended to get a mosque constructed at a place which has not been acquired validly and in this regard he set up very high principles which have to be treated "the law of Sharii" binding on all the Muslims and cannot be ignored at all.

**3204.** The next authority in this regard he placed is **Sahih Muslim** by Imam Muslim (1<sup>st</sup> Edition 2001, fourth edition 2005) (published by Islamic Book Service, New Delhi). He cited paras 142 and 142R1 (Chapter 63), paras 226 and 226R1 (Chapter 3), paras 227, 227R1, 227R2, 228, 229, 230, 231, 231R1, 232, 232R1 (Chapter 4), paras 240, 240R1, 240R2, 240R3, 241, 241R1, 241R2, 242, 242R1, 242R2 (Chapter 9), para 244 and 245 ((Chapter 11)) which are as under:

*"(142) Hasan reported; Ubaidullah b. Ziyad paid a visit to Ma'qil b. Yasir Muzani in his illness which caused his death. Ma'qil said : I am going to narrate to you a hadith which I have heard from the Messenger of Allah (SAW) and which I would not have transmitted if I knew that I would survive. Verily I have heard the Messenger of Allah (SAW) saying : There is no one amongst the bondsmen who was entrusted with the affairs of his subjects and he died in such a state that he was dishonest in his dealing with those*

*over whom he ruled that the Paradise is not forbidden for him.”*

*“(142R1) Hasan reported : 'Ubaidullah b. Ziyad went to see Ma'qil b. Yasir and he was in agony. He ('Ubaidullah) inquired (about his health) to which he (Ma'qil) replied : I am narrating to you a hadith which I avoided narrating to your before. Verily the Messenger of Allah (SAW) said : Allah does not entrust to his bondsman the responsibility of managing the affairs of his subjects and he dies as a cheater (ruler) but Paradise is forbidden but Allah for such a (ruler). He ((Ibn Ziyad) said : Why did you not narrate it to me before this day? He replied : I (in fact) did not narrate it to you as it was not (fit) for me to narrate that to you.”*

*“(226) Humran, the freed slave of 'Uthman, b. 'Affan called for ablution. He performed ablution: He washed his hands thrice. He then rinsed his mouth and cleaned his nose with water (three times). He then washed his face three times, then washed his right arm up to the elbow three times, then washed his left arm like that, then wiped his head: then washed his right foot upto ankle three times, then washed his left foot like that, and then said: I saw the Messenger of Allah (SAW) perform ablution like his ablution of mine. Then the Messenger of Allah (SAW) said : He who performs ablution like this ablution and then stood up (for prayer) and offered two bows of prayer without his thoughts to be being distracted, all his pervious sins are expiated. Ibn Shihab said : Our scholars remarked: This is the most complete of the ablution performed for prayer.”*

*“(226R1) Humran, the freed slave of 'Uthman, said : I saw 'Uthman invoking in a vessel (of water) and poured water over his hands three times and then washed them. Then he put his right hand in the vessel and rinsed his mouth and cleaned his nose. Then he washed his face three times and his hands up to the elbow three times; then wiped his head, then washed his feet three times. Then he said that the Messenger of Allah (SAW) had said : He who performed ablution like this ablution and offered two bows of prayer without allowing his thoughts to be being distracted, all his pervious sins would be expiated.”*

*“(227) Humran, the freed slave of 'Uthman, said : I heard from "Uthman b.'Affan and he was in the courtyard of the mosque, when the Muaththin (announcer of the prayer) came to him at the time of afternoon prayer. So then (Uthman) called for the ablution and performed it. He then said : By Allah, I am narrating to you a hadith. If there were not a verse in the Book of Allah, I would have never narrated it to you. I heard Allah's Messenger (SAW) saying: **If a Muslim performs ablution and does it well and offers prayer, all his (sins) during the period from one prayer to another would be pardoned by Allah.**”*

*“(227R1) This hadith is also narrated on the authority with the same chain of transmitters. And in the hadith of Abu Usama the words are: He who performed the ablution well and then offered the obligatory prayer.”*

*“(227R2) Humran reported when 'Uthman performed ablution he said : By Allah, I am narrating to you a hadith. Had it not been thise verse in the Book of Allah. I would*

*not have narrated it to you. Verily I heard the Messenger of Allah (SAW) saying : There is no man who performed ablution, and did it well, then offered prayer, but his sins (which he committed) were not pardoned between the prayer that he offered and the next one. "Urwa said : The verse is this : Those who suppress the clear proofs and the guidance which we have sent down.. to his words: The cursers. (ii.15)."*

*“(228) 'Amr b. Said b. Al-As reported: I was with Uthman that he called for ablution. He said: I heard Allah's Messenger (SAW) saying : When the time for a prescribed prayer comes, and any muslim perform ablution well and offers his prayer) with humility and bowing, it will be an expiation for his past sins, as long as he has not committed a major sin; and this applied on all times.”*

*“(229) Humran, the freed slave of 'Uthman, reported : I brought for 'Uthman b. 'Affan the ablution. He performed it and then said: Verily the people narrate from the Messenger of Allah (SAW) a hadith. I do not know what these are, but ( I know this fact) that I saw the Messenger of Allah (SAW) perform ablution like this ablution and then said: He who performed ablution like this, all his pervious sins would be expiated and his prayer and going towards the mosque would have an extra reward. In the tradition narrated by Ibn 'Abda ( the words are )" I came to 'Uthman and he performed ablution.”*

*“(230) Abu Anas reported that 'Uthman performed ablution at Maqaid and said: Should not I show you the ablution performed by Allah's Messenger (SAW)? He then*

washed (the different parts of the body) three times. Qutaiba has added in his narration the words: There were with him (with Uthman) some of the companions of Allah's Messenger (SAW).”

“(231) Humran b. Aban reported: I used to fetch water for 'Uthman for his purification. No day came but he took a bath with a small quantity of water. And "Uthman said: The Messenger of Allah (SAW) all the time of returning from our prayer told us (certain things pertaining to purification). Mis'ar said I find that it was afternoon prayer. He said: I do not know whether I should tell you a things or keep quiet. We said: Messenger of Allah, tell us if it is good and if it is other wise, Allah and his Apostle know better. Upon this he said : A muslim who purifies (himself) and completes purification as enjoined upon him by Allah and then prayer, that will expiate (his sins, he committed) between these (prayers).”

“(231R1) Jami'b. Shaddad reported: I heard Huimran b. Aban narrating to Abu Burda in this very mosque during the governorship of Bishr that 'Uthman b. 'Affan said : The Messenger of Allah (SAW) said: He who completed ablution as Allah, the Exalted, enjoined upon him, his obligatory prayers would be expiatiuous (for his minor sins that he would commit) during (the interval) between them. This hadith is transmitted by Ibn Muath, and in the hadith narrated by Ghundar, the words "during the governorship of Bishr" are ommitted and he did not mention the obligatory prayers.”

“(232) Humran, the freed slave of 'Uhtman, reported: One

day "Uthman b. 'Affan performed the ablution well, and then said : I saw Allah's Messenger (SAW) performing ablution, the best ablution and then observed: He who performed ablution like this and then went towards the mosque and nothing (but the love of ) prayer urged him (to do so), all his previous (minor) sins would be expiated."

**“(232R1)** Humrran, the freed slave of 'Uthman b. 'Affan, reported on the authority of 'Uthman b. Affan that he heard Allah's Messenger (SAW) saying : He who performed ablution for prayer, and performed it properly, and then went (to observe obligatory prayer and offered it along with people or with the congregation or in the mosque, Allah would pardon his sins.

#### Chapter 9

#### **The Washing of feet Properly is an integral part of Wudu”**

**“(240)** Salim, the freed slave of Shaddad said: I came to Aisha, the wife of the Holy Prophet (SAW), on the day when Sa'd b. abi Waqqas died. 'Abdel-rahman b. Abu Bakr also came there and he performed ablution in her presence. She (Hadrat A'isha) said: 'Abdel-Rahman, complete the ablution as I heard the Allah's Messenger (SAW) say: Woe to the heels because of Hell-fire.”

**“(240R1)** 'Abdullah, the freed slave of Shaddad, came to A'isha and transmitted from her a hadith like this (which she narrated) from the Holy Prophet (SAW).”

**“(240R2)** Salim, the freed slave of Mahri, reported I and 'Abdel-Rahman b. abu Bakr went out (in order to join) the funeral procession of Sa'd b.Abi waqqas and passed by the

*door of the residence of 'Aisha, and then transmitted a hadith like this from her who (narrated it) from the Holy Prophet (SAW)."*

*"(240R3) Salim, the freed slave of Shaddad b. Al-Had said: I was in the presence of 'Aisha, and then narrated on her authority a hadith like this from the Holy Prophet (SAW)."*

*"(241) 'Abdullah b. 'Amr reported: We returned from Mecca to Medina with the Messenger of Allah (SAW), and when we came by water on the way, some of the people were in the hurry at the time of the afternoon prayer and performed ablution hurriedly; and when we reached them, their heels were dry, no water had touched them. The Prophet (SAW) said: Woe to (dry) heels, because of Hell-fire. Make complete ablution."*

*"(241R1) In the hadith transmitted by Shu'ba these words are not there: Complete the Wudu, and there is the name of Abu Yahya Al-A'raj (a narrator)."*

*"(241R2) 'Abdullah b. Amr reported: The Messenger of Allah (SAW) lagged behind us on a journey. We traveled (back) and he took him; and then came the time of the afternoon prayer, and as we were going to wipe our feet he (the Holy Prophet) called out: Woe to the heels because of Hell-fire."*

*"(242) Abu Huraira reported: Allah's Apostle (SAW) saw a man who did not wash his heels and he remarked: Woe to the heels because of Hell-fire."*

*"(242R1) Abu Huraira reported: He saw people perform ablution from a water jar. He said: Complete the ablution for I heard Abu al-Qasim (SAW) saying: Woe to the*

*hamstrings because of Hell-fire.”*

*“(242R2) Abu Huraira reported: The Messenger of Allah (SAW) said: Woe to the heels because of Hell-fire.”*

*“(244) Abu Huraira reported: Allah's Messenger (SAW) said: When a bondsman (a Muslim or a believer) washes his face (in course of ablution), every sin he contemplated with his eyes will be washed away from his face along with water, or with the last drop of water; when he washes his hands, every sin they committed will be effaced from his hands by water, or with the last drop of water; and when he washes his feet, every sin towards which his feet have walked will be washed away with the water, or with the last drop of water, with the result that he comes out pure from all sins.”*

*“(245) 'Uthman b. 'Affan reported: The Messenger of Allah (SAW) said He who performed ablution well, his sins would come out from his body even coming out from under his nails.”*

**3205.** He placed before us **Book 4 Kitab Al-Salat** and placed reliance on para 377 (Chapter 1) paras 524, 524R1, 524R2 (Chapter 1), para 525, 525R1, 526, 526R1, 527 (Chapter 2), paras 528R1, 528R2, 529, 530, 530R1, 531, 532 (Chapter 3) as under:

*“(377) Ibn Umar reported: When the Muslims came to Medina, they gathered and sought to know the time of prayer but no one summoned them. One day they discussed the matter, and some of them said: Use something like the bell of the Christians and some of them said: Use horn like that of the Jews. Umar said: Why may not a man be*

*appointed who should call (people) to prayer ? The Messenger of Allah (may peace be upon him) said: O Bilal, get up and summon (the people) to prayer.”*

*“(524) Anas b. Malik reported: The Messenger of Allah (may peace be upon him) came to Medina and stayed in the upper part of Medina for fourteen nights with a tribe called Bani Amr b Auf. He then sent for the chiefs of Bani Al-Najjar, and they came with swords around their necks. He (the narrator) said: I perceive as if I am seeing the Messenger of Allah (may peace be upon him) on his ride with Abu Bakr behind him and the chiefs of Banu Al-Najjar around him till he alighted in the courtyard of Abu Ayyub. He (the narrator ) said: The Messenger of Allah (may peace be upon him) said prayer when the time came for prayer, and he prayed in the fold of goats and sheep. He then ordered mosques to be built and sent for the chiefs of Banu Al-Najjar, and they came (to him). He (the Holy Prophet) said to them: O Banu Al-Najjar, sell me your hands. They said: No, by Allah, we would not demand their price, but (reward) from the Lord. Anas said: There (in these lands) were trees and graves of the polytheists, and ruins. The Messenger of Allah (may peace be upon him) ordered that the trees should be cut, and the graves should be dug out, and the ruins should be levelled. The trees (were thus) placed in rows towards the Qibla and the stones were set on both sides of the door, and (while building the mosque) they (the Companions) sang rajaz verses along with the Messenger of Allah (may peace be upon him):*

*O Allah: there is no good but the good of the next world,  
So help the Ansar and the Muhajirin (emigrants).”*

*“(524R1) Anas reported: The Messenger of Allah (may peace be upon him) used to pray in the folds of the sheep and goats before the mosque was built.”*

*“(524R2) Abu Al – Tiyyah reported: I heard from Anas a narration like this from the Messenger of Allah (may peace be upon him).”*

*“(525) Al – Bara' b. Azib reported: I said prayer with the Apostle (may peace be upon him) turning towards Bait – ul Maqdis for sixteen months till this verse of Surah Baqara was revealed: And wherever you are turn your faces towards it (ii. 144). This verse was revealed when the Apostle (may peace be upon him) had said prayer. A man amongst his people passes by the people of Ansar as they were engaged in prayer. He narrated to them (this command of Allah) and they turned their faces towards the Ka'ba.”*

*“(525R1) Abu Ishaq reported: I heard Al-Bara saying: We prayed with the Messenger of Allah (may peace be upon him) (with our faces) towards Bait -ul-Maqdis for sixteen months or seventeen months. Then we were made to change (our direction) towards the Ka'ba.”*

*“(526) Ibn Umar reported: As the people were praying at Quba'a man came to them and said: it has been revealed to the Messenger of Allah (may peace be upon him) during the night and he has been directed to turn towards the Ka'ba. So turn towards it. Their faces were towards Syria and they turned round towards Ka'ba.”*

*“(526R1) Ibn Umar reported: As the people were engaged in the morning prayer a man came to them. The rest of the hadith is the same.”*

*“(527) Anas reported: The Messenger of Allah (may peace be upon him) used to pray towards Bait-ul-Maqdis, that it was revealed (to him): Indeed We see the turning of the face to heaven, where of we shall assuredly cause thee to turn towards Qibla which shall please thee. So turn thy face towards the sacred Mosque (Ka'ba) (ii. 144). A man from Bani Salama was going; (he found the people) in prostration (while) praying the dawn prayer and they had said one bow. He said in a loud voice : Listen ! The Qibla has been changed and they turned towards (the new) Qibla (Ka'ba) in that very state.”*

*“(528R1) A'isha reported: They (some Companions of the Holy Prophet) were conversing with one another in the presence of the Messenger of Allah (may peace be upon him) during his last illness. Umm Salama and Umm Habiba mentioned the church, and then (the hadith was) narrated.”*

*“(528R2) A'isha reported: The wives of the Apostle of Allah (may peace be upon him) mentioned the church which they had seen in Abyssinia which was called Marya, and the rest of the hadith is the same.”*

*“(529) A'isha reported: The Messenger of Allah (may peace be upon him) said during his illness from which he never recovered: Allah cursed the Jews and the Christians that they took the graves of their prophets as mosques. She (A'isha) reported: Had it not been so, his (the Prophet's)*

*grave would have been in an open place, but it could not be because it may be taken as a mosque.”*

*“(530) Abu Huaira reported: The Messenger of Allah (may peace be upon him) said: Let Allah destroy the Jews for they have taken the graves of their apostles as places of worship.”*

*“(530R1) Abu Huraira reported: The Messenger of Allah (may peace be upon him) said: Let there be curse of Allah upon the Jews and the Christians for they have taken the graves of their apostles as places of worship.”*

*“(531) A'isha and Abdulla reported: As the Messenger of Allah (may peace be upon him) was about to breathe his last, he drew his sheet upon his face and when he felt uneasy, he uncovered his face and said in this very state: Let there be curse upon the Jew and the Christians who have taken the graves of their apostles as places of worship. He in fact warned (his men) against what they (the Jews and the Christians) did.”*

*“(532) Jundub reported: I heard from the Apostle of Allah (may peace be upon him) five days before his death and he said: I stand acquitted before Allah that I took any one of you as a friend, for Allah has taken me as His friend, as he took Ibrahim as His friend. Had I taken any one of my nation as a friend, I would have taken Abu Bakr as a friend. Beware of those who preceded you and used to take the graves of their prophets and righteous men as places of worship, but you must not take graves as mosque; I forbid you to do that.”*

**3206.** He also referred to footnote 1, 2 and 3 at page 332:

*“(1) The Holy Prophet has explained how polytheism gradually develops. It starts from the pious intention, i.e. building of a temple by the grave of a pious man so that there should be association of a religious piety to a place of worship. But steadily the people begin to look upon the religious man as a demigod and then elevate him to a higher status of Godhood. This undermines the belief in the oneness of Allah.*

*The pictures of the pious men are displayed in the temples in order to keep alive their sacred memories, but with the march of time the people begin to worship them.*

*(2) Perhaps this church was named after Mary, the mother of Jesus.*

*(3) The Holy Prophet was buried in the small room of Hadrat A'isha (Allah be pleased with her) where he died. It is a coffered place with walls built on all sides of it.”*

**3207.** Next he placed reliance on **paras 556 and 556R1 (Chapter 15) and its footnote 1**, which say:

*“(556) A'isha reported: The Apostle of Allah (may peace be upon him) prayed in a garment which had designs over it, so he (the Holy Prophet) said: Take it to Abu Jahm and bring me a plain blanket from him, because its designs have distracted me.”*

*“(556R1) A'isha reported: The Messenger of Allah (may peace be upon him) stood for prayer with a garment which had designs over it. He looked at these designs and after completing the prayer said: Take this garment to Abu Jahm b. Huthaifa and bring me a blanket for it has distracted me just now.”*

*“Footnote (1) It is permissible to say prayer with shoes on one's feet provided these are not soiled with impurities. Before saying prayer it is essential to remove the impurities by rubbing them against dust or on sand.”*

**3208.** Reliance was also placed on "**Sahih Muslim**" by **Imam Muslim Vol. II** Book 7, the relevant paras are as under:

*“(847R2) 'Abdel-'Rahman son of Abu Said Al-Khudri reported on the authority of his father that the Messenger of Allah (SAW) said: Bathing on Friday for every adult, using of Miswak and applying some perfume, that is available, are essential. As far as perfume is concerned, it may be used by a lady.”*

*“(851) Abu Huraira reported what Allah's Messenger (SAW) had said: If you ask your companion to be quiet on friday whiel the Imam is delivering the sermon, you have in fact chattered.”*

*“(973) Abbad b. Abdullah b. Zubair reported that A'isha ordered that the bier of Sa'd b. Abu Waqqas be brought into the mosque, so she can pray for him. The people disapproved this (act) of hers. She said: How soon the people have forgotten that the Messenger of Allah (SAW) had offered the funeral prayer of Suhail b. Al-Baida but in a mosque.”*

*“(973R1) 'Abbad b. 'Abdullah b. Zubair reported on the authority of A'isha that when Sa'd b. Abu Waqqas died, the wives of the Apostle of Allah (SAW) sent a message to bring his bier into the mosque so that they can pray for him. They (the participants of the funeral) did accordingly. It was placed in front of their apartments and they prayed for him.*

*It was brought out of the door (known as) Bab al-Jana'iz which was towards the side of Maqa'id (seats). The news reached them (the wives of the Holy Prophet) that the people had criticised this (i.e offering of funeral prayer in the mosque) that it was not desirable to take the bier inside the mosque. This was conveyed to A'isha. She said: How quickly the people criticise about what they know little. They criticise us for carrying the bier in the mosque. The Messenger of Allah (SAW) did not offer the funeral prayer of Suhail b. Baida' but in the innermost part of the mosque.”*

*“(973R2) Abu Salama b. 'Abdel-Rahman reported on the authority of A'isha that when Sa'd b. Abu Waqqas died she said: Bring it (the bier) into the mosque so that I pray for him. But this act was disapproved. She said: By Allah, the Messenger of Allah (SAW) prayed in the mosque for the two sons of Baida', viz, for Suhail and his brother.”*

*“Footnote: (1) There is a difference of opinion among the jurists whether a funeral prayer can be offered in a mosque or not. It is on the basis of this hadith that Imam Shafi'i of the view that it can be offered in a mosque. Imam Abu Hanifa and Imam Malik on the basis of a hadith recorded in Abu Dawud (viz. The Messenger of Allah said: He who offers funeral prayer in the mosque has nothing for him) disapprove saying the funeral prayer in the mosque. The scholars of Hadith.”*

**3209.** Next is "**Sahih Muslim**" by **Imam Muslim Vol. III**, Chapter 30 paras 1610 and 1610R1 (Page 83) as under:

*“(1610) Sa'id b. Zaid b. 'Amr b. Nufail (Allah be pleased*

*with them) reported that Allah's Messenger (SAW) had said: **He who wrongly took a span of land, Allah shall make him carry around his neck seven earths.***”

*“(1610R1) Said b.Zaid b. 'Amr b. Nufail (Allah be pleased with them) reported that Arwa (bint Uwais) disputed with him (about a part of the land) of his house. He said: Leave it and take off your claim from it, for I heard Allah's Messenger (SAW) saying: he who took a span of land without his right would be made to wear around his neck seven earths on the day of Resurrection. He (Sa'id b. Zaid) said: O Allah, make her blind if she has told a lie and make her grave, in her house. He (the narrator) said: I saw her blind groping (her way) by touching the walls and saying: The curse of Sa'id b. Zaid ha hit me. And if so happened that as she was walking in her house, she passed by a well in her house and fell therein and that became her grave.”*

**3210.** Next is "book of the **Holy Struggle-32**", paras 1731, 1731R1(Chapter 2), paras 1732 and 1733 (Chapter 3), paras 1827, 1828 and footnote 2, para 1828 R1, 1829 and footnote 2 (Chapter 5), para 1839, 1839R1, 1840, 1840R1:

*“(1731) On the authority of Sufyan that the Holy Prophet (SAW) said: He dictated it one us.”*

*“(1731R1) It has been reported from Sulaiman b. Buraid through his father that when the Messenger of Allah (may peace be upon him) appointed anyone as leader of an army or detachment he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say: **Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make***

*a holy war; do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and keep from doing them any harm. **Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Muhajirs and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajirs. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or fai' except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islam, demand from them the Jizya. If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them. When you lay siege to a fort and the beseiged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and his Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you beseige a fort and the beseiged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His***

*Command, but do so at your (own) command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them.”*

*“(1732) It is narrated on the authority of Abu Musa that when the Messenger of Allah (may peace be upon him) deputed any of his Companions on a mission, he would say: Give tiding (to the people); do not create (in their minds) aversion (towards religion); show them leniency and do not be hard upon them.”*

*“(1733) It has also been narrated by Sa'id b. Abu Burda through his father through his grandfather that the Prophet of Allah (may peace be upon him) sent him and Mu'ath (on a mission) to the Yeman, and said (by way of advising them): Show leniency (to the people); don't be hard upon them; give them glad tidings (of Divine favours in this world and the hereafter); and do not create aversion. Work in collaboration and don't be divided.”*

*“(1827) It has been narrated on the authority of Abdullah b. 'Umar that the Messenger of Allah (may peace be upon him) said: Behold ! The Dispensers of Justice will be seated on the pulpits of light beside God, on the right side of the Merciful, Exalted and Glorious. Either side of the Being is the right side both being equally meritorious. (The Dispensers of Justice are) those who do justice in their rules, in matter relating to their families and in all that they undertake to do.”*

*“(1828) It has been reported on the authority of Abdel-Rahman b. Shumasa who said: I came to A'isha to inquire something from them. She said: From which people art*

*thou? I said: I am from the people of Egypt. She said What was the behaviour of your governor towards you in this war of yours ? I said: We did not experience anything bad from him. If the camel of a man from us died, he would bestow on him a camel. If any one of us lost his slave, he would give him a slave. If anybody was in need of the basic necessities of life, he would provide them with provisions. She said: Behold! The treatment that was meted out to my brother, Muhammad b. Abu Bakr, does not prevent me from telling you what I heard from the Messenger of Allah (may peace be upon him). He said in this house of mine: O God, who (happens to) acquire some kind of control over the affairs of my people and is hard upon them – be Thou hard upon him, and who (happens to) acquire some kind of control over the affairs of my people and is kind to them – be Thou kind to him.”*

*“(1828R1) This hadith has been narrated on the authority of Abdel-Rahman b. Shumasa with another chain of transmitters.”*

*“(1829) It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: Beware, every one of you is a shepherd and every one is answerable with regard to his flock. The Caliph is a shepherd over the people and shall be questioned about his subjects (as to how he conducted their affairs). A man is a guardian over the members of his family and shall be questioned about them (as to how he looked after their physical and moral well being). A woman is a guardian over the household of her husband and his children and*

*shall be questioned about them (as to how she managed the household and brought up the children). A slave is a guardian over the property of his master and shall be questioned about it (as to how he safeguarded his trust). Beware, every one of you is a guardian and everyone of you is a guardian and every one of you shall be questioned with regard to his trust.”*

*“Footnote (2): In this tradition, the government's responsibility towards the citizens has been put on a par with father's or a mother's responsibility towards their children. Just as the father is a shepherd – that is, a guardian – morally and legally bound to ensure the maintenance and well being of his family, the government is morally and legally bound to endure the moral, spiritual, social and economic well-being of its citizens, whose affairs it has under-taken to as minister.*

*The simile of a shepherd is highly significant in this connection. It recalls to one's mind the sympathetic tale of The Prophet as a guide of mankind going astray. The idea behind it is that the shepherd is more careful of the well-being of his flock than even the flock itself. He is always on the alert with regard to his flock and takes full care of the animals so that these may not go astray and fall victims to the beasts of prey. The Prophet is shepherd of humanity, always thinking of their welfare, of their sufferings and always exhorting them to move along the path of righteousness and religious piety. There is a deep love in the hearts of The Prophet for the ailing humanity and a strong will to cure it. It is with a spirit of deep love,*

*affection and self-sacrifice that the father serves his family and it should be with the same emotions of love and spirit of sacrifice that the rulers should serve the people of the State.”*

*“(1839) It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: It is obligatory on a Muslim that he should listen (to the ruler appointed over him) and obey him whether he likes it or not, except that he is ordered to do a sin. If he is ordered to do a sinful act, a Muslim should neither listen to him nor should he obey his orders.*

*“(1839R1) This hadith has been transmitted on the authority of 'Ubaidullah.”*

*“(1840) It has been narrated on the authority of Abu 'Abdel-Rahman from Ali that the Messenger of Allah (may peace be upon him) sent a force (on a mission) and appointed over them a man. He kindled a fire and said: Enter it. Some people made up their minds to enter it (the fire), (carrying out the order of their commander), but the others said: We fled from the fire (that's why we have some into the fold of Islam). The matter was reported to the Messenger of Allah (may peace be upon him). He said to those who contemplated entering (the fire at the order of their commander): If you had entered it, you would have remained there until the Day of Judgement. He commended the act of the latter group and said: There is no submission in matters involving God's disobedience or displeasure, submission is obligatory only in what is good (and reasonable).”*

*“(1840R1) It has been narrated on the authority of 'Ali who said: The Messenger of Allah (may peace be upon him) sent an expedition and appointed over the Mujahids a man from the Ansar. (While making the appointment), he ordered that his word should be listened to and obeyed. They made him angry in a matter. He said: Collect for me dry wood. They collected it for him. Then he said: Kindle a fire. They kindled (the fire). Then he said: Didn't the Messenger of Allah (may peace be upon him) order you to listen to me and obey (my orders) ? They said: Yes. He said: Enter the fire. The narrator says: (At this), they began to look at one another and said: We fled from the fire to (find refuge with) the Messenger of Allah (may peace be upon him) (and now you order us to enter it). They stood quiet until his anger cooled down and the fire went out. When they returned, they related the incident to the Messenger of Allah (may peace be upon him). He said: if they had entered it, they would not have come out. Obedience (to the commander) is obligatory only in what is good.”*

*“(1854R2) Another version of the tradition narrated on the same authority attributes the same words to the messenger of Allah (may peace be upon him). But he said: That who denied got free, and that who hated is saved.”*

*“Footnote (1) This hadith gives a clear idea for how long and to what extent should the citizen exercise patience with an unjust government. Upholding and establishing of prayer on the part of a ruler is his main qualification for which he deserves obedience from the citizen in Ma'ruf and*

*which does not permit them to overthrow his government by violent means. The upholding of prayer says Muhammad Asad has a far wider meaning than the mere holding of congregational prayers, it denotes as it does at the beginning of the second chapter of the Qur'an a positive upholding of the faith.*

*The Holy Qur'an in Surat xxv, verse 41, lays down in clear terms the main functions of the Head of an Islamic State: Muslim are those who, if We give them power in the land, establish prayer and Zakat (popor-due) and enjoin virtue and forbid evils."*

*"(2104) 'A'isha reported that Gabriel (peace be upon him) promised Allah's Messenger (may peace be upon him) to come at a definite hour. That hour came but he did not visit him. And there was in his hand (in the hand of Allah's Apostle) a staff. He threw it from this hand and said: Never has Allah or His Messengers (angles) ever broken their promise. Then he case a glance (and by chance) found a puupy under his cot and said: 'A'isha, when did this dog enter here? She said: By Allah, I don't know. He then commended and it was turned out. Then Gabriel came and Allah's Messenger (may peace be upon him)said to him : You promised me and I wanted for you, but you did not come, whereupon he sad: It was the dog in your house which prevented me (to come), for we (angels) do not enter a house in which there is a dog or a picture."*

*"(2104R1) This hadith has been narrated on the authority of Abi Hazim with the same chain of transmitters that Gabriel had promised Allah's Messenger (may peace be*

upon him) that he would come; the rest of the hadith is the same, but it is not so lengthy as the other one.”

“(2105) Maimuna reported that one morning Allah's Messenger (may peace be upon him) was silent with grief. Maimuna said: Allah's Messenger: I find a change in you mood today. Allah's Messenger (may peace be upon him) said : Gabriel had promised me that he would meet me tonight, but he did not meet me. By Allah, he never broke his promises, and Allah's Messenger (may peace be upon him) spent the day in this sad (mood). Then it occurred to him that there had been a puppy under their cot. He commanded and it was turned out. He then took some water in his hand and sprinkled it at that place. When it was evening Gabriel met him and he said to him: You promised me that you would meet me the previous night. He said: Yes, but **we do not enter a house in which there is a dog or a picture.** Then on that very morning he commanded the killing of the dogs until he announced that the dog kept for the orchards should also be killed, but he spared the dog meant for the protection of extensive fields (or big gardens).”

“(2106) Abu Talha reported that Allah's Apostle (may peace be upon him) had said: **Angels do not enter a house in which there is a dog or a picture.**”

“(2106R1) Abu hadith reported: I heard Allah's Messenger (may peace be upon him) saying: **Angles do not enter the house in which there is a dog or a statue.**”

“(2106R2) This hadith has been reported on the authority of Zuhri with the same chain of transmitters.”

*“(2106R3) Abu Talha, the companion of Allah's Messenger (may peace be upon him), reported that Allah's Messenger (may peace be upon him) had said: Verily, **angles do not enter the house in which there is a picture.** Busr reported: Zaid fell ill and we went to inquire after his health and (found) that there was hanging at his door a curtain with a picture on it. I said to 'Ubaidullah Khaulani who had been under the patronage of Maimuna, the wife of Allah's Apostle (may peace be upon him): Did not Zaid himself inform us before about (the Holy Prophet's command pertaining to the pictures), whereupon 'Ubaidullah said: Did not you hear when he said: Except the prints on the cloth?”*

*“(2106R4) Abu Talha reported that Allah's Messenger (may peace be upon him) said: Angles do not enter a house in which there is a picture. Busr said: Zaid b. Khalid fell sick and we visited him to inquire after his health. As we were in his house (we saw) a curtain having a picture on it. I said to 'Ubaidullah Kahulam: Did not he narrate to us (the Holy Prophet's command pertaining to pictures) ? Thereupon he said: He in fact did that (but he also said): Except the prints upon the cloth. Did not you hear this? I said: No, whereupon he said: He had a mentioned this.”*

*“(2106R5) Abu Talha Ansari reported that Allah's Messenger (may peace be upon him) had said: Angles do not enter the house in which there is a picture or portraits.”*

*“(2107) I came to 'A'isha and said to her: This tells me what I have received from Allah's Apostle (may peace be*

*upon him) had said: Angles of not enter the house in which there is a picture or a dog, (and further added) whether she had heard Allah's Messenger (may peace be upon him) mentioning it. She said: No (I did not hear this myself), but I narrate to you what I saw him doing. I testify that he (the Holy Prophet) set out for an expedition. I took a carpet and screened the door with it. When he (the Holy Prophet) came back he saw that carpet and I perceived signs of disapproval on his face. He pulled it until it was torn or it was cut (into pieces) and he said: God has not commanded us to clothe stones and clay. We cut it (the curtain) and he (the Holy Prophet) did not find fault with it.”*

*“(2107R1) 'A'isha reported: We has a curtain with us which had portraits of birds upon it. Whenever a visitor came he found them in front of him. Thereupon Allah's Messenger (may peace be upon him) said to me: Change them for whenever I enter the room I see them and it brings to my mind (the pleasures) of worldly life. She said: We had with us a sheet which had silk badges upon it and we used to wear it.”*

*“(2107R2) This hadith has been transmitted on the authority of Ibn Muthanna. But he added: Allah's Messenger (may peace be upon him) did not command us to tear that.”*

*“(2107R10) This hadi'th has been narrated on the authority of Shu'ba with the same chain of transmitters.”*

*“(2107R11) 'A'isha reported : Allah's Apostle (may peace be upon him) visited me when I had screened (my door) with a carpet having pictures on it. He removed it*

*and we made cushions out of that.”*

*“(2107R12) 'A'isha, the wife of Allah's Messenger (may peace be upon him), reported that she had hung a curtain which had pictures upon it. Allah's Messenger (may peace be upon him) entered (the room) and he pulled it, 'A'isha said: I then tore it and prepared two cushions out of that. A person who was then in that company and whose name was Rabi'a b. 'Ata the freed slave of Banu Zahr, asked Did you hear Abu Muhammad mentioning what 'A'isha has ..... that Allah's Messenger (may peace be upon him) used to recline upon them? Ibn Al-Qaa'sim said: No, but I heard Qa'sim b. Muhammad saying so.”*

*“(2107R13) 'A'isha reported that she bought a carpet which had pictures on it. When Allah's Messenger (may peace be upon him) saw that, he stayed at the door and did not get in. I perceived or I was made to perceive upon his face signs of disgust. She said: Allah's Messenger, I offer repentance to Allah and His Messenger, (but tell me) what is the sin that I have committed. Thereupon Allah's Messenger (may peace be upon him) said: What is this carpet? She said: I bought it for you so that you might sit on it and take rest. Thereupon Allah's Messenger (may peace be upon him) said: 'The owners of these pictures would be tormented and they would be asked to bring to life what they tried to create. He then said: Angels do not enter the house in which there is a picture.”*

*“(2108) Ibn 'Umar reported that Allah's Messenger (may peace be upon him) had said: Those who paint pictures would be punished on the Day of Resurrection and it would*

*be said to them: Breathe soul into what you have created."*

**Footnote 1:** *"...What is idolatry? It is nothing but the worship of someone else besides Allah. In old days pictures were employed as a means to propagate the worship of saints and apostles, but now in our days these pictures are used as a means to propagate hero-worship which is another name of idolatry. The idea of "personality cult" has been popularised mainly with the help of pictures and statues – the idea which has gone a long way in the defecation of national heroes and leaders. This is nothing exterminated root and branch and there is no fear of its beings revived and hence no harm in painting of pictures, is not sound. The form of idolatry has in fact changed in the sense that now the idols of saints and apostles are not worshipped, but the pictures, but the pictures and statues of heroes are today revered with the same devotion and passion with which the demigods were worshipped in the past."*

*“(2110) Muslem said: I read this before Nasrb, 'Ali Al-Jahdami and he read it before other narrators, the last one being Ibn Sa'id b. Abi Al-Hasan that a person came to Ibn 'Abbas and said: I am the person who paints pictures; give me a religious verdict about them. He (Ibn 'Abbas) said to him: Come near me (still further). He came near him so much so that he placed his hand upon his head and said: I am going to narrate to you what I heard from Allah's Messenger (may peace be upon him). I heard him saying: all the painters who make pictures would be in the fire of Hell. The soul will be breathed in every picture prepared by*

*him and it shall punish him in the Hell, and he (Ibn 'Abbas) said: If you have to do it at all, then paint the pictures of trees and lifeless things; and Nasrb. 'Ali confirmed it."*

*“Footnote (2) These words of Ibn 'Abbas implied a sanction for the painting of lifeless things, for example, trees, flowers, landscapes, mountains and rivers, etc. But the style in which the eminent Companion of The Holy Prophet (may peace be upon him) expressed this sanction clearly indicated that it is not something very much desirable. It should not, however, lead on to conclude that Islam is opposed to art. Art is the expression of spiritual values in terms of beauty, art is thus a response to the glory of God, to the beauty of God, and to Divine goodness also which it interprets in terms of beauty. Thus, as long as the sense of ideal beauty exists in the world, love for art cannot be banished from the human souls. Islam is not opposed to art; it is rather in one sense akin to religion as both art and religion are an expression of man's sense of spiritual significance of the universe. Both are an attempt to perceive, not the things which are temporal, but the things which are unseen and eternal. It is, however, wrong to conceive that the expressions of art should necessarily be the same as the so-called Lovers of art have suggested. These expressions differ with the fundamental attitude that the people adopt in regard to the unseen realities of the universe and to the ideals of beauty. The painting of pictures and the carving of statues are not, therefore, the only channels of artistic expressions. There are hundred and one other ways of giving captivating forms to one's*

*sense of beauty and to one's perception of unseen Reality. Islam has no doubt prohibited the painting of living and the carving of human statues, but Muslim artists have expressed their artistic genius in so many other forms. The essence, almost the symbol, of that tradition was the arabesque: That rather involved arrangement of geometrical forms stylized plan-elements and lettering that has become the hall-mark of Islamic art, and on which so much of Islam's artistic genius has been expended.*

*“(2111) Abu Zura' reported: I visited the house of Marwan in the company of Abu Huraira and he found pictures there, whereupon he said: I heard Allah's Messenger (may peace be upon him) saying : Allah, the Glorious and Exalted, said: Who is a wrongdoer than one who tries to create creation like My creation. Let him create an atom or a grain of wheat or that of barley.”*

*“(2111R1) This hadith has been transmitted on the authority of Abu Zura and he said: Abu Huraira went to the house of Sa'id or Marwan which they had built in Madina and he (Abu Huraira) saw a painter who had been painting pictures in his house, whereupon he told that Allah's Messenger (may peace be upon him) had said like this, but he mentioned the words: "Let him create the grain of barley.”*

*“(2112) Abu Huraira reported that: Allah's Messenger (may peace be upon him) had said: Angels do not enter the house in which there are portraits or pictures.”*

*“(2113) Abu Huraira reported Allah's Messenger (may peace be upon him) had said: Angels do not accompany the*

*travellers who have with them a dog and a bell.”*

*“(2113R4) This hadith has been reported on the authority of Suhail with the same chain of transmitters.”*

*“(2114) Abu Huraira reported that Allah's messenger (may peace be upon him) had said: The bell is the musical instrument of the Satan.”*

**3211.** Sri Mishra placed before us English translation of **Jami' At-Tirmidhi Volume 1 to 5** compiled by Imam Hafiz Abu Eisa Mohammad Ibn Eisa At-Tirmidhi translated by Abu Khaliyl (USA), Ahadith edited and referenced by Hafiz Abu Tahir Zubair 'Ali Za'i, final review by Islamic Research Section Darussalam published by Maktaba Dar-us-Salam, 2007. The relevant paras are as under:

*“190. Ibn ' Umar narrated. "When the Muslims arrived in Al-Madinah, they used to assemble for the Salat, and guess the time for it. There was no one who called for it (the prayer). One day they discussed that and some of them said that they should use a bell like the bell the Christians use. Others said they should use a trumpet like the horn the Jews use. But 'Umar [bin Al-Khattab] said: 'Wouldn't it be better if we had a man call for the prayer?' He said: "So Allah's Messenger said: 'O Bilal Stand up and call for the Salat." (Sahih) Abu 'Eisa said: This Hadith is Hasan Sahih Gharib as a narration of Ibn 'Umar.*

**Comments:**

*The prophet told 'Abdullah bin Zaid to teach Bilal these words, because he had a sweet and loud voice. Some said. Anda (In Hadith no 189) means 'beautiful and some said: 'loud'”*

*“Adhan, he calls the Iqamah, (Da'if)*

*[He said:] There is something on this topic from Ibn Umar. Abu Eisa said: We only know of the Hadith of Ziyad from the narration of Al-Ifriqi, and Al-Ifriqi is weak according to the people of Hadith Yahya bin Sa'eed Al-Qattan and others graded him weak. Ahmad said: 'I do not write the narrations of Al-Ifriqi.'*

*He said: I saw Muhammad bin Isma'il strengthening his case, and he was saying: "He is Muqarab (average) in Hadith."*

*Most of the people of knowledge act according to this: (They say) [that] whoever calls the Adhan, he calls the Iqamah.”*

**Comments:**

*This Hadith is Weak. (for more details see: Ad-Daifah, Hadith: 35]. Therefore it is incorrect to prove the right of calling Iqamah by the Caller of Adhan only.”*

**“Chapter-55. What Has Been Related About The Dislike For Forming Rows Between Columns**

*229. 'Abdul-Hamid bin Mahmud said: "We prayed behind one of the Amirs, the people compelled us such that we prayed between two columns. When we had prayed, Anas bin Malik said: 'We would be prevented from his during the time of Allah's Iyas Messenger" (Sahih)*

*There is something on this topic from Qurrah bin Al-Muzani.*

*Abd Eisa said: The Hadith of Anas is a Hasan Sahih Hadith*

*There are those among the people of knowledge who*

*disliked lines being formed between columns. This is the opinion of Ahmad and Ishaq.*

*And there are those among the people of knowledge who permitted it.”*

*“Qutaibah bin Saeed narrated that to us (saying): "Nuh bin Qais narrated that to us: from 'Abdur Rahman the freed slave of Qais, from Ziyad Al-Numairi, from Anas, from the prophet.*

*Mahmud bin Labid (One of the narrators in no. 318) saw the prophet and Mahmud bin Ar-Rabi saw the prophet. They were both small boys in Al-Madinah.*

**Comments:**

*The mosques in the world are the houses of Allah, the centre of the spread of His religion and of preaching, an explicit place for His remembrance and every need will be compensated in the Hereafter accordingly: therefore the construction of a mosque is a deed of great fortune: the more sincerity there is in a deed the more marvellous the house will be in Paradise. Participating in the construction of a mosque is also a form of it.”*

**“Chapter 121. Undesirability Of Taking The Grave As A Masjid**

*320. Ibn 'Abbas narrated: "Allah's Messenger cursed the women who visit the graves, and those who use them as Masajid and put torches on them." (Da'if)*

*He said: There are narrations on this topic from Abu Hurairah and Aishah.*

*Abu Eisa said: The Hadith of Ibn Abbas is a Hasan Hadith.*

**Comments:**

*Women's wailing and crying over the graves, demonstrating indecency in dress or committing acts contrary to the Shari'ah is impermissible, but if they visit the graves merely for learning a lesson for the Hereafter and to take heed, which will decrease the interest of worldly life and increase the concerns about the Hereafter, then they are allowed. Likewise constructing a building over a grave or to kindle a lamp or candle over it is also prohibited."*

***"Chapter 122. What Has Been Related About Sleeping In The Masjid***

321. *Ibn 'Umar narrated: "We would sleep in the Masjid during the time of Allah's Messenger and we were young men." (Sahih)*

*Abu 'Eisa said: The Hadith of Ibn Umar is a Hasan Sahih Hadith.*

*There are those among the people of knowledge who allowed sleeping in the Masjid.*

***Ibn Abbas said: "It is not to be used as a home nor a place for talking about this or that."***

*There are those among the people of knowledge who agreed with the saying of Ibn 'Abbas.*

***Comments:***

*If the sleeping of a person in a mosque is for religious purposes, that it makes easy Congregational prayer. Night prayer, recitation and remembrances etc. then doubtlessly it is allowed, **but using it habitually as a relaxing place is not allowed**; yet it is allowed if there is an emergency and difficult circumstance."*

*“It has been reported that (Abdullah) bin al-Mubarak said about this Hadith: "Whoever bathes completely and 'Whoever performs Ghusl' means washes his head and performs Ghusl.*

*(He said:.) There are narrations on this topic from Abu Bakr, 'Imran bin Husain, Salman, Abu Dharr, abu Sa'eed, Ibn 'Umar, and abu Ayyub.*

*Abu 'Eisa said: The Hadith of Aws bin Aws is a Hasan Hadith, and Abu Al-Ash'ath As-San'ani's name is Sharahil bin Adah.*

*(And Abu Janab is Yahya bin Habib Al-Qassab Al-Kufi).*

**Comments:**

*It is evident from this Hadith that **if a person takes a bath with great care and sets out early for Friday prayers and he listens to the sermon attentively, this will yield him a great reward and recompense. The reward of each step is equal to the standing in prayer and observing fast for a whole year.***

**“Chapter 6. What Has Been Related About Going Ear'y To The Friday Prayer**

*499. Abu Hurairah narrated that Allah's Messenger said: "Whoever performs Ghusl on Friday – the Ghusl for Janabah – then he goes, he is like one who gave a camel in charity. Whoever goes in the second hour, then he is like one who gave a cow in charity.”*

*“624. Muhammad bin Bash-shar (Al-'Abdi) narrated to us, Muhammad bin Jafar narrated to us, from Shu'bah, from 'Amr bin Murrah who said: "I asked Abu 'Ubaidah bin Abdullah: 'Did yo remember anything from 'Abdullah?' He*

said, 'No.'

**“Comments:**

*Some of the scholars divided Jizyah into two categories. A): Jizyah which is levied on the non-Muslims with their consent. It has no fixed amount. The ruler will decide the appropriate and affordable amount according to the circumstances. B): The second category of Jizyah is levied on non-Muslims after gaining victory and authority over them; its due amount is fixed. Four Dirham monthly which will make forty-eight Dirham annually are due from a well off person, two Dirham monthly which will make twenty-four Dirham annually are due from a middle class, and one Dirham monthly which will make twelve Dirham annually are due from the poor.”*

**“Chapter 11. What Has Been Related About: There is No Jizyah Required From The Muslims**

**633.** *Ibn Abbas narrated that the Messenger of Allah said: "Two Qiblahs in one land are of no benefit, and there is no Jizyah upon the Muslims." (Da'if)*

**“Comments:**

*Allamah Taur Bishti said, **two religions cannot function together equally in the same land.** No Muslim should be disgraced and humiliated in the country of disbelievers, and a disbeliever cannot live in an Islamic country without paying the Jizyah and neither is he allowed to preach and propagate his religion openly.”*

**“Chapter 57. What Has Been Related About It Being Disliked to Tread On Graves, Sit On Them, (And Pray Towards Them)**

1050. *Abu Marthad Al-Ghanawi narrated that the Prophet said: "Do not sit on the graves not perform Salat towards them."*

*(He said:) There are narrations on this topic from Abu Hurairah,' Amr bin Hazm, and Bashir bin Al-Khasasiyyah.*

*(Another route) with this chain, and it is similar.*

1051. *(Another chain) from Abu Marthad Al-ghanawl from the Prophet, similar (to no. 1050), but it does not contain "from Abu Idris" and this is what is correct.*

*Abu Eisa said: Muhammad said: "The narration of Ibn Al-Mubarak is mistaken, Ibn Al-Mubarak is the one who made the mistake, he added from Abu Idris Al-Khawlani which it is Busr bin Ubaidullah, from Wathilah."*

*This is how it was reported by more than one from 'Abdur-Rahman bin Yazid bin Jabir, it does not contain Abu Idris Al-Khawlani. And Busr bin 'Ubaidullah heard from Wathilah bin Al-Asqa'.*

**Comments:**

*It is not proper to destroy the graves. Sitting of walking over the graves is also not allowed. Praying or performing prayers facing the graves is unlawful."*

**“Chapter 58. What Has Been Related About It Being Disliked To Plaster Graves And Write On Them**

1052. *Jabir narrated:" The Messenger of Allah prohibited plastering graves, writing on them, building over them and treading on them."*

*Abu 'Eisa said: This Hadith is Hasan Sahih, it has been reported through other routes from Jabir.*

*Some of the people of knowledge, among them Al-Hasan Al-Basri, permitted covering it with clay.*

*Ash-Shafi said: "There is no harm if the grave is covered with clay."*

***“Chapter 60. What Has Been Related About The Permission To Visit the Graves***

*1054. Sulaiman bin Buraidah narrated from his father that the Messenger of Allah said: "I had prohibited you from visiting the graves. But Muhammad was permitted to visit the grave of his mother: so visit them, for they will remind you of the Hereafter."*

*(He said:) There are narrations on this topic from Abu Saeed. Ibn Mas'ud, anas, Abu Hurairah, and Umm Salamah.*

*Abu Eisa said: The Hadith of Buraidah is a Hasan Sahih Hadith. This is acted upon according to the people of knowledge. They did not see any harm in visiting the graves. This is the view of Ibn Al Mubarak, Ash-Shafi'i. Ahmad and Ishaq.”*

***“Chapter 65. What Has Been Related About Who The Martyrs Are***

*1063. Abu Hurairah narrated that the Messenger of Allah said: "the martyrs are five: Those who die of the plague, stomach illness, drowning, being crushed, and the martyr in the cause of Allah." (Sahih)*

***“Chapter 31. About Taking The Jizyah From The Zoroastrians***

*1586. Bajalah bin 'Abdah narrated: "I was a scribe for Jaz bin Mu'awiyah at Manadhir when 'Umar's letter came to us*

*(saying): 'Inspect the Zoroastrians around you to take the Jizyah from them. For indeed 'Abdur-Rahman bin 'Awf informed me that the Messenger of Allah took the Jizyah from the Zoroastrians of Hajar.'"*

*(Abu 'Eisa said:) This Hadith is Hasan."*

**"1587.** *Bajalah narrated that 'Umar would not take the Jizyah from the Zoroastrians until 'Abdur-Rahman bin 'Awf informed him that the Prophet took the Jizyah from the Zoroastrians of Hajar." (Sahih)*

*There is more dialogue in the Hadith than this. And this Hadith is Hasan Sahih."*

**"1588.** *Malik narrated from Az-Zuhri, that Saib bin Yazid said: "The Messenger of Allah took the Jizyah from the Zoroastrians of Bahrain, and 'Umar took it in Persia, and 'Uthman took it from the Persians." (Hasan)*

*I asked Muhammad about this, so he said: "It is: Malik from Az-Zuhri from the Prophet."*

**"Comments:**

*A tax (Jizyah) is imposed on non-Muslims living in a Muslim country against the security and protection provided to them to live in peace. They are supposed to help the Muslims in defense of the country as well as paying the tax."*

**"Chapter 32. What Has Been Related About What Is Lawful From The Wealth Of Ahl Adh-Dhimmah**

**1589.** *'Uqbah bin 'Amir narrated: "I said: 'O Messenger of Allah! We come across a people and they do not host us, and they do not give us our rights, and we do not take anything from them. So the Messenger of Allah said: 'If*

*they refuse such that you can only take by force, then take."*  
(Sahih)

*(Abu Eisa said:) This Hadith is Hasan. It has been reported by Al Laith bin Sa'd from Yazid bin Abi Habib as well.*

*This Hadith only means that they would go out for battles and they would pass a people amount whom they would not find any food to buy for a price. So the Prophet told them: If they refuse to sell to you, such that you have to take it forcefully, then take it. This is how the explanation has been related in some of the Ahadith. And it has been related that Umar bin Al-Khatab, may Allah be pleased with him, would order similarly."*

**“Comments:**

*Hospitality of Arabs was an exemplary tradition, but the conduct of non-Muslims was extraordinarily biased against the Muslims. They not only neglected their traditional hospitality, but also refused to sell food to Muslims to show their hatred against them. There was no way out against their harsh behaviour, so the Muslims were allowed to use force for obtaining food, as it is impossible to continue a journey without foodstuff."*

**“Chapter 33. What Has Been Related About Hijrah**

*1590. Ibn Abbas narrated that on the day of the Conquest of Makkah, the Messenger of Allah said: There is no Hijrah after the conquest, there is only Jihad and intention, and when you are called to go forth (for battle), then go."*  
(Sahih)

*(He said:) There are narrations on this topic from Abu*

*Sa'eed, Abdullah bin Amr. And Abdullah bin Habshi.*

*(Abu Eisa said:) This Hadith is Hasan Sahih. Sufyan Ath-Thawri reported it similarly from Mansur bin Al-Mutamir."*

**“Comments:**

*After the conquest of Makkah, the people started entering the religion of Islam, and there was no problem with manifesting one's Islam in the land. People made homes where ever they wanted, and lived in different towns. Now there was no need for emigration. (from Makkah to Al-Madi'ah) but people moved from one place to another place for Hajj 'Umrah, Jihad and .....*

*“Then he passed the kettles and ordered that they be weighted, then he distributed it between them and equated a camel to ten sheep.” (Sahih)*

*(Abu 'Eisa said:) Sufyan Ath Thawri reported it from his father, from 'Abayah, from his grandfather Rafi' bin Khadij, and he did not mention "from his father" in it.*

*This was narrated to us by Mahmud bin Ghailan (who said): "Wakf" narrated it to us from Sufyan," And this is more correct. 'Abayah bin Rifa'ah heard from his grandfather Fafi' bin Khadij.*

*He said: There are narrations on this topic from Tha'labah bin Al-Hakum, Anas, Abu Rihanah, Abu Ad-Durda', 'Abdur-Rahman bin Samurah, Zaid bin Khalid, Jabir, Abu Hurairah, and Abu Ayyab.”*

**“Comments:**

*Most people of knowledge agree that when the warriors enter the land of the enemy, they are allowed to*

*take food and fodder from there according to their needs, however it should be rationed as indicated in this narration. (Al-Mughni v. 13. p.176.)”*

**“1601.** *Anas narrated that the Messenger of Allah said: "Whoever plunders then he is not of us." (Sahih)*

*(Abu Eisa said:) This Hadith is Hasan Sahih Gharib as a Hadith of Anas.”*

**“Comments:**

*Plundering and looting the property of others is an open violation of Islamic Law and against the basic concept of brotherhood in Islam, therefore, according to the words used in this narration "He is not from us".*

**“Chapter 55. What Has Been Related About Having Amicable Relations With People**

**1987.** *Abu dharr said: "The Messenger of Allah said to me: 'Have Taqwa of Allah wherever you are, and follow an evil deed with a good one to wipe it out, and treat the people with good behavior." (Hasan)*

*He said: There is something on this topic from Abu Hurairah.*

*(Abu Eisa said:) This Hadith is Hasan Sahih.*

*(Another chain) with similar. And (another chain) from Mu'adh bin Jabal, from the Prophet with similar.*

*Mahmud said: "What is correct is the Hadith of Abu Dharr."*

**Comments:**

*The fountain head of all virtue and bulwark against all evil is the fear of Allah, and the remedy for all ills is goodness and virtue. As for the believer, all his grandeur*

*and glory lies in inculcating virtuous behaviour.”*

**“Comments:**

*Allah has, without a doubt, invested eloquence some speech, elegance of style, sweetness of the tongue and grandeur and aptness of the articulated phrases and words with such a power that they can keep the audiences spell bound and mesmerize the listeners.”*

**“Chapter 83. What Has Been Relate About Oppression**

*2030. Ibn Umar narrated that the Prophet said: "Oppression shall be darkness on the Day of Judgement." (Sahih)*

*(Abu Eisa said:) There are narrations on this topic from 'Abdullah bin 'Amr, 'Aishah, abu Musa, Abu Hurairah, and Jabir. This Hadith is Hasan Gharib Sahih as a narration of Ibn Umar.*

**Comments:**

*Tyranny and oppression in this world shall be requited by darkness and doom on the Day of Judgement to which the Qur'an refers when Allah rhetorically poses the question: "Who rescues you from the darkness of the land and sea?" (6.63)”*

**“Chapter 13. What Has Been Related About 'The Most Virtuous Jihad Is A Just Statement Before A Tyrannical Ruler'**

*2174. Abu Sa'eed Al-Khudri narrated that the Prophet said: "Indeed, among the greatest types of Jihad is a just statement before a tyrannical ruler." (Hasan)*

*(Abu Eisa said:) There is something on this topic from Abu Umamah.*

*And this Hadith is Hasan Gharib from this route.*

**Comments:**

*The expression 'Kalimat Al-'Adl' (just statement) as used here, means commanding what is good and prohibiting what is evil. To enjoin good to a tyrannical ruler or prohibit him from doing wrong is inviting disaster for oneself, may perhaps signing one's own death warrant, while going out to face an enemy is not necessarily to court injury or death. That is why admonishing a tyrannical ruler has been described in the Hadith as the highest form of Jihad."*

***“Chapter 2. Whoever Guards Most Against The Unlawful, then He Is The Most Worshipping among The People.***

*2305. Al-Hasan narrated from Abu Hurairan that the Messenger of Allah said: "Who will take these statements from me, so that he may act upon them, or teach one who will act upon them?" So Abu Hurairah said: "I said: 'I shall O Messenger of Allah! So he took my hand and enumerated five (things), he said: "Be on guard against the unlawful and you shall be the most worshipping among the people, be satisfied with what Allah has allotted for you and you shall be the richest of the people, be kind to your neighbor and you shall be a believer, love for the people what you love for yourself and you shall be a Muslim. And do not laugh too much, for indeed increased laughter kills the heart." (Daif)*

*(Abu Eisa said:) This Hadith is Gharib, we do not know of it except as a narration of Jafar bin Sulaiman (a narrator*

*in the chain), and Al-Hasan did not hear anything from Abu Hurairah.*

*This is what was reported from Ayyub, Yunus bin 'Obaid, and Ali bin Zaid, he said, Al-Hasan did not hear from Abu Harairah Abu Ubaidah An Najji reported this Hadith from al Hasan as his saying he did not mention. "From abu Hurairah from the Prophet in it.*

**Comments:**

a. *Every one of us should learn the Ahadith with the mention of acting upon them in case due to some reason, he is not able to act upon them, he must teach them to those who would act upon them.*

b. *It is an accepted fact that warding off harm and destruction is of greater importance in life than going after gains and profits. It is also a patent truth that a person who has the gut to avoid unlawful acts also has the courage to perform virtuous deeds. It must also be noted that failing to carry out the commanded acts is an act of sin. Therefore, the greatest form of worship and obeisance to Allah is to avoid all things declared hateful or unlawful by Him."*

***"Chapter 15. The Hadith: "The World Compared To The Hereafter Is But Like What One Of You Gets When Placing His Finger Into The Sea"***

*2323. Qais bin Abi Hazim said: I heard Mustawrid, a member of Banu Fihri, saying. The Messenger of Allah said: "The world compared to the Hereafter is but like what one of you gets when placing his finger into the sea so look at what you draw from it." (Sahih)*

*( Abu Eisa said ) this Hadith is Hasan Sahih. (Ismail)*

*bin abi Khalid's ( a narrator in the chain) Kunyah is Abu Abdullah, and Qais bin Abi Hasim's father's name is 'Abd bin 'Awl and he was a Companion.*

**Comments:**

*The Hadith is in fact intended to convey the idea that the world, when compared to the Hereafter, is as insignificant as is the drop of water sticking to a man's finger in comparison with the sea. The parable has just been coined to deliver a message. Otherwise in reality, the world does not weigh even as much as we understand from the parable since the world, along with all its paraphernalia, is at best temporal and limited while the Hereafter is limitless and never ending. And it is a known fact that the limited and temporal cannot be compared with the never ending and limitless.”*

**“Chapter 16. What Has Been Related About "The World Is A Prison For The Believer And A Paradise For The Disbeliever"**

*2324. Abu Huraitah narrated that the Messenger of Allah said: "The world is a prison for the believer and Paradise for the disbeliever." (Sahih)*

*(Abu Eisa Said:) This Hadith is Hasan Sahih.*

**Comments:**

*The main characteristic of a prison is that the prisoner in it is not free to lead a life of his choice, but is bound by the laws of the prison and the whims of its officers. He is neither free in eating and drinking, nor in sleeping and awakening, nor in moving about nor in meeting with the people at will. In short, he has no freedom*

*of any kind in a prison house, and has willy-nilly to obey the orders of others. The second thing is that no prisoner loves his prison like home, but is always on the lookout to somehow get out of it. Paradise, on the other hand, is a place where the inhabitants will have no such restrictions. Each person will live a life of his choice, and every desire of his will be fulfilled, and he will never feel the desire to get out of it.”*

**“Chapter 44. What Has Been Related About Angels Do Not Enter The House that Contains An Image Or A Dog 2804.** Ibn Abbas narrated: *“I heard abu Talhah saying: ‘I heard the Messenger of Allah saying: “The angels do not enter a house in which there is a dog or an object of images.” (Sahih)*

*(Abu 'Eisa said:) This Hadith is Hasan Sahih.*

**Comments:**

*The taking or drawing of a picture is not allowed, keeping it is also not permissible, and whoever does so is deprived of the blessed and merciful supplications of the angels; while a person is in need of mercy and blessing at every moment. Likewise, a dog is an impure animal and some are of a satanic nature and the angels despise the devil.”*

**3212.** Next is **Muwatta' Imam Malik** translated by Professor Muhammad Rahimuddin (First Edition in 1981, Seventh improved edition in 2006) published by Kitab Bhavan, New Delhi. Para 958 (Chapter 272 page 205/206) is as under:

*“Yahya b. Sa'id reported that when Abu Bakr Siddiq sent an army to Syria, he went on foot with Yazid b. Abu Sufyan*

*who was the commander of a quarter of the forces. Yazid said to Abu Bakr : Either you mount up or I shall dismount. Abu Bakr replied : Neither you will dismount nor will I ride. I consider these steps to be a virtue in the path of the Lord. You will find some people who imagine they have devoted their lives to Allah (the hermits), leave them to their work; you will find some people who shave their heads in the middle (the Magi), strike them with your swords. I instruct you in ten matters : Do not kill women or children, nor the old and infirm; do not cut fruit-bearing trees; do not destroy any town; do not cut the gums of sheep or camels except for purposes of eating; do not burn date-trees nor submerge them; do not steal from booty and do not be cowardly.”*

**3213.** Next is Chapter 273 Para 960 page 206 as under:

*“(960) A man of Kufah reported that 'Umar b. al-Khattab wrote to a commander of the army: I have received information that some of you call an unbeliever when he mounts a hillock and gives up fighting, and ask him not to fear and then, getting the opportunity, kill him. I swear by Him Who is the Master of my life, if I should learn anyone doing so, I shall behead him.”*

**3214.** Then Chapter 284 at page 218 as under:

***“About the Land of the Dhimmi Who Embraces Islam***

*Imam Malik was asked: If an imam levies jizyah on a nation of the non-believers, and one of them embraces Islam, will his land and property remain his or become the property of the Muslims? Imam Malik said : **If the non-believers agree to pay jizyah amicably without resort to***

*fighting anyone converting to Islam his land and property will be his, but if they are subdued by the sword, their lands and other property will become Muslim property even if any one of them converts to Islam.”*

**3215.**        **Book XXIV Kitab Al-Aqdiyah**, Para 1393 (Chapter 430), para 1683 (Chapter 540) and Para 1741 (Chapter 560) are as under:

*“(1393) Umm Salamah, wife of the Prophet (may peace be upon him), reported that the Messenger of Allah (may peace be upon him) declared: I am a human being too. You come to me disputing and quarreling. Perhaps some of you indulge in logic to prove your assertions and it may be that I give my decision on the strength of your argumentation. Should I, therefore, give one that which his brother is entitled to, he should not take it, for it would be as if I am giving him a coal of fire.”*

*“(1683) 'Abbad b. Tamim reported that Abu Bashir Ansari informed him that he was with the Messenger of Allah (may peace be upon him) on one of his journeys. The Messenger of Allah (may peace be upon him) sent word through a man when people were sleeping, to cut off from the necks of camels straps of wool or any kind of strap.”*

*“(1741) Rafi b. Ishaq, who was the freedman of Shifa, reported : I and 'Abd Allah b. Abi Talhah went together to Abu Sa'id Khudri to see him in his illness. Abu Sa'id said : The Messenger of Allah (may peace be upon him) told me that angels did not enter a house where there were pictures and images. Ishaq is doubtful whether Abu Sa'id said*

*pictures or images.”*

**3216.** Then reliance was placed on “**The Spirit of Islam (A History of the Evolution and Ideals of Islam with a Life of the Prophet)**” by Syed Ameer Ali (First Published in 1923, reprinted in LPP 1990, 1995, 1997, 2002, 2010 published by Low Price Publications, Delhi), the relevant parts are as under:

*"A mosque was soon built, in the erection of which Mohammed assisted with his own hands; and houses for the accommodation of the exiles rose apace. Two brothers, who owned the land on which it was proposed to build the mosque, had offered it as a free gift; but as they were orphans, the Prophet paid them its value.*

*The building was simple in form and structure, suited to the unostentatious religion he taught. The walls were of brick and earth, and the roof of palm leaves. A portion of the mosque was set apart as a habitation for those who had no home of their own.*

*Everything in this humble place of worship was conducted with the greatest simplicity. Mohammed preached and prayed standing on the bare ground or leaning against a palm tree, and the devoted hearts around him beat in unison with his soul-stirring words.*

*"He who is not affectionate to God's creatures and to his own children," he would say, "God will not be affectionate to him. Every Moslem who clothes the naked will be clothed by God in the green robes of Paradise."*

*In one of his sermons he thus dwelt on the subject of charity : "When God created the earth, it shook and trembled, until He put mountain upon it to make it firm.*

*Then the angels asked, 'O God, is there anything in Thy creation stronger than these mountains?' And god replied, 'Iron is stronger than the mountains, for it breaks them.' 'And is there anything in Thy creation stronger than iron?' 'Yes; fire is stronger than iron, for it melts it.' 'Is there anything in Thy creation stronger than fire?' ' Yes, water, for it quenches fire.' 'O Lord is there anything in Thy creation, stronger than water?' 'Yes; wind, for it overcomes water and puts it in motion.' 'Oh, our Sustainer, is there anything in Thy creation stronger than wind?' 'Yes; a good man giving alms; if he give with his right hand and conceal it from his left, he overcomes all things.' (Page 54)*

*"It was about this time that the Prophet granted to the monks of the monastery of St. Catherine, near Mount Sinai, and to all Christians, a Charter which has been justly designated as one of the noblest monuments of enlightened tolerance that the history of the world can produce. This remarkable document, which has been faithfully preserved by the annalists of Islam, displays a marvellous breadth of view and liberality of conception. By it the Prophet secured to the Christians privileges and immunities which they did not possess even under sovereigns of their own creed; and declared that **any Moslem violating and abusing what was therein ordered, should be regarded as a violater of God's testament, a transgressor of His commandments, and a slighter of His faith. He undertook himself, and enjoined on his followers, to protect the Christians, to defend their churches, the residences of their priests, and to guard***

*them from all injuries. They were not to be unfairly taxed; no bishop was to be driven out of his bishopric; no Christian was to be forced to reject his religion; no monk was to be expelled from his monastery; no pilgrim was to be detained from his pilgrimage. Nor were the Christian churches to be pulled down for the sake of building mosques or houses for the Moslems. Christian women married to Moslems were to enjoy their own religion, and not to be subjected to compulsion or annoyance of any kind on that account. If Christians should stand in need of assistance for the repair of their churches or monasteries, or any other matter pertaining to their religion, the Moslems were to assist them. This was not to be considered as taking part in their religion, but as merely rendering them assistance in their need, and complying with the ordinances of the Prophet which were made in their favour by the authority of God and of His Apostle." (Page 84)*

*"Accordingly, towards the end of this year, during the month of pilgrimage, Ali was commissioned to read a proclamation to the assembled multitudes, on the day of the great Sacrifice (Yeum-un-Nahr), which should strike straight at the heart of idolatry and the immoralities attendant upon it : "No idolater shall, after this year, perform the pilgrimage; no one shall make the circuit (of the temple) naked ; whoever hath a treaty with the Prophet, it shall continue binding till its termination; for the rest, four months are allowed to every man to return to his territories; after that there will exist no obligation on the Prophet, except towards those with whom treaties*

***have been concluded." (Page 108)***

*"The great Teacher, who was fully conscious of the exigencies of his own times, and the requirements of the people with whom he had to deal,- people sunk in a slough of social and moral despond, - with his keen insight and breadth of views, perceived, and one may say foretold, that a time would come when the accidental and temporary regulations would have to be differentiated from the permanent and general. "Ye are in an age, "he declared, "in which, if ye abandon one-tenth of what is ordered, ye will be ruined. After this, a time will come when he who shall observe one-tenth of what is now ordered will be redeemed.*

*As we have already observed, the blight which has fallen on Musulman nations is not due to the teachings of the Master. No religion contained greater promise of development, no faith was purer, of more in conformity with the progressive demands of humanity.*

*The present stagnation of the Musulman communities is principally due to the notion which has fixed itself on the minds of the generality of Moslems, that the right to the exercise of private judgment ceased with the early legists, that its exercise in modern times is sinful, and that a Moslem in order to be regarded as an orthodox follower of Mohammed should belong to one or the other of the schools established by the schoolmen of Islam, and abandon his judgment absolutely to the interpretations of men who lived in the ninth century, and could have no conception of the necessities of the twentieth.*

*Among the Sunnis, it is the common belief that since the four Imams, no doctor has arisen qualified to interpret the laws of the Prophet. No account is taken of the altered circumstances in which Moslems are now placed; the conclusions at which these learned legists arrived several centuries ago are held to be equally applicable to the present day. Among the Shiah, the Akhbari will not allow his judgment to travel beyond the dictates of "the expounders of the law." The Prophet had consecrated reason as the highest and noblest function of the human intellect. Our schoolmen and their servile followers have made its exercise a sin and a crime."* (Page 183/184)

*"And hence it is that most of the rules and regulations which govern now the conscience of so many professors of the faith are hardly derived from any express and positive declarations of the Koran, but for the most part from the lego-religious books with which the Islamic world was flooded in the later centuries. "Just as the Hebrews deposed their Pentateuch in favour of the Talmud," justly observes an English writer, "so the Moslems have abolished the Koran in favour of the traditions and decisions of the learned." "We do not mean to say," he adds most pertinently, "that any Mohammedan if asked what was the text-book of his religion, would answer anything but the 'Koran' , but we do mean that practically it is not the Koran that guides his belief or practice. In the Middle Ages of Christendom it was not the New Testament, but the Summa Theologica of Thomas Aquinas, that decided questions of orthodoxy; and in the present day, does the*

*orthodox churchman usually derive his creed from a personal investigation of the teaching of Christ in the Gospels? Probably, if he refers to a document at all the Church Catechism contents him; or if he be of a peculiarly inquiring disposition, a perusal of the Thirty-nine Articles will resolve all doubts. Yet he too would say his religion was drawn from the Gospels, and would not confess to the medium through which it was filtered. In precisely the same way modern Mohammedanism is constructed, and a large part of what Moslems now believe and practise is not to be found in the Koran at all."*

*And yet each system, each school contains germs of improvement, and if development is now stopped, it is not even the fault of the lawyers. It is due to a want of apprehension of the spirit of the Master's enunciations, and even of those of the fathers of the Church." (Page 185)*

*"In the hour of his greatest triumph, when the Arabian Prophet entered the old shrine of Mecca and broke down the idols, it was not in wrath or religious rage, but in pity, that he said-"Truth is come, darkness departeth," -announcing amnesty almost universal, commanding protection to the weak and poor, and freeing fugitive slaves.*

***Mohammed did not merely preach toleration; he embodied it into a law. To all conquered nations he offered liberty of worship. A nominal tribute was the only compensation they were required to pay for the observance and enjoyment of their faith. Once the tax or tribute was agreed upon, every interference with their religion or the liberty of conscience was regarded as a direct***

*contravention of the laws of Islam. Could so much be said of other creeds? Proselytism by the sword was wholly contrary to the instincts of Mohammed, and wrangling over creeds his abhorrence. Repeatedly he exclaims, "Why wrangle over that which you know not; try to excel in good works; when you shall return to God, He will tell you about that in which you have differed." (Page 213)*

*"...An examination, however, of the principles upon which the relations of Moslem states with non-Moslem countries were based, shows a far greater degree of liberality than has been evinced by Christian writers on international law. It is only in recent times, and under stress of circumstances that non-Christian states have been admitted into the "comity of nations." The Moslem jurists, one the other hand, differentiate between the condition of belligerency and that of peace. The expression, Dar ul-Harb, thus includes countries with which the Moslems are at war; whilst the States with which they are at peace are the Dar ul-Aman." The harbi, the inhabitants of the Dar ul-Harb, is an alien, pure and simple. He has no right to enter Islamic States without express permission. But once he receives the aman or guarantee of safety from even the poorest Moslem, he is perfectly secure from molestation for the space of one year. On the expiration of that period, he is bound to depart. The inhabitant of the Dar ul-Aman is a mustamin. The aman may be for ever or for a limited duration; but so long as it lasts, the mustamin's treatment is regulated in strict accordance with the terms of the treaty with his country." The mustamins were governed by their*

*own laws, were exempt from taxation and enjoyed other privileges." (Page 215)*

*"It has been said that a warlike spirit was infused into medieval Christianity by aggressive Islam! The massacres of Justinian and the fearful wars of Christian Clovis in the name of religion, occurred long before the time of Mohammed.*

*Compare, again, the conduct of the Christian Crusaders with that of the Moslems. "When the Khalif Omar took Jerusalem, A.D. 637, he rode into the city by the side of the Patriarch Sophronius, conversing with him on its antiquities. At the hour of prayer, he declined to perform his devotions in the Church of the Resurrection, in which he chanced to be, but prayed on the steps of the Church of Constantine; for, said he to the Patriarch, 'had I done so, the Musulmans in a future age might have infringed the treaty, under colour of imitating my example.' But in the capture by the Crusaders, the brains of young children were dashed out against the walls, infants were pitched over the battlements; men were roasted at fires; some were ripped up, to see if they had swallowed gold; the jews were driven into their synagogue, and there burnt; a massacre of nearly 70,000 persons took place;" (Page 220)*

*"This latter document has, for the most part, furnished the guiding principle to all Moslem rulers in their mode of dealing with their non-Moslem subjects, and if they have departed from it in any instance the cause is to be found in the character of the particular sovereign. If we separate the political necessity which has often spoken and*

*acted in the name of religion, no faith is more tolerant than Islam to the followers of other creeds. "Reasons of State" have led a sovereign here and there to display a certain degree of intolerance, or to insist upon a certain uniformity of faith; but the system itself has ever maintained the most complete tolerance. Christians and Jews, as a rule, have never been molested in the exercise of their religion, or constrained to change their faith. If they are required to pay a special tax, it is in lieu of military service, and it is but right that those who enjoy the protection of the State should contribute in some shape to the public burdens. Towards the idolaters there was greater strictness in theory, but in practice the law was equally liberal. If at any time they were treated with harshness, the cause is to be found in the passions of the ruler or the population. The religious element was used only as a pretext." (Page 272)*

*"The non-Moslem subjects were not precluded from building new churches or temples. Only in places exclusively inhabited by Moslems a rule of this kind existed in theory. "No new Church or temple," said Abdullah bin abbas, "can be erected in a town solely inhabited by Moslems; but in other places where there are already Zimmis inhabiting from before, we must abide by our contract with them." In practice, however, the prohibition was totally disregarded. In the reign of Mamun, we hear of eleven thousand Christian churches, besides hundreds of synagogues and fire-temples within the empire. This enlightened monarch, who has been represented as "a bitter enemy" of the christians, included in his Council the*

*representatives of all the communities under his sway,- Moslems, Jews, Christians, Sabaeans and Zoroastrians; whilst the rights and privileges of the Christian hierarchy were carefully regulated and guaranteed.*

*It is a notable fact, with few parallels even in modern history, that after the conquest of Egypt the Caliph Omar scrupulously preserved intact the property dedicated to the Christian churches and continued the allowances made by the former government for the support of the priests.*

*The best testimony to the toleration of the early Moslem government is furnished by the Christians themselves. In the reign of Osman (the third Caliph), the Christian Patriarch of Mery addressed the Bishop of Fars, named Simeon, in the following terms: "The Arabs who have been given by God the kingdom (of the earth) do not attack the Christian faith, on the contrary they help us in our religion; they respect our God and our Saints, and bestow gifts on our churches and monasteries."*

*In order to avoid the least semblance of high-handedness, no Moslem was allowed to acquire the land of a zimmi even by purchase. **"Neither the Imam nor the Sultan could dispossess a zimmi of his property."***

***The Moslems and the zimmis were absolutely equal in the eye of the law. "Their blood, "said Ali the Caliph, "was like our blood." (Page 274)***

*"An examination of the political condition of the Moslems under the early Caliphs brings into view a popular government administered by an elective chief with limited powers. The prerogatives of the head of the State*

were confined to administrative and executive matters, such as the regulation of the police, control of the army, transaction of foreign affairs, disbursement of the finances, etc. But he could never act in contravention of the recognised law.

*The tribunals were not dependent on the government. Their decisions were supreme; and the early Caliphs could not assume the power of pardoning those whom the regular tribunals had condemned. The law was the same for the poor as for the rich, for the man in power as for the labourer in the field.*

*As time advances the stringency of the system is relaxed but the form is always maintained. Even the usurpers, who, without right, by treachery and murder seized the reins of government and who in their persons represented the pagan oligarchy which had been displaced by the teachings of Islam, observed more or less the outward semblance of law-abiding executive heads of a representative government. And the rulers of the later dynasties, when they overstepped the bounds, often unlimited, of arbitrary power, were restrained by the sentence of the general body of jurisconsults, which in all Musulman States serves as a constitutional check on the sovereign. In the early times, however, the "Companions" of the Master formed as it were an effective Council of the State. The consideration attached to the title of "Companion of the Prophet "was as great in the camp as in the city. The powerful influence which they possessed increased with the conquests of the Moslems." (Page 278)*

*"The importance which Islam attaches to the duties of sovereigns towards their subjects, and the manner in which it promotes the freedom and equality of the people and protects them against the oppression of their rulers, is shown in a remarkable work on the reciprocal rights of sovereigns and subjects, by Safi-ud-din Mohammed bin Ali bin Taba Taba, commonly known as Ibn ut-Tiktaka. The book was composed in 701 A.H. (1301-2), and is dedicated to Fakhr ud-din 'Isa bin Ibrahim, Ameer of Mosul.*

*The first part deals with the duties of sovereigns to their subjects, and the rules of the administration of public affairs and political economy. The author describes the qualities essential for a sovereign,-wisdom, justice, knowledge of the wants and wishes of his people, and the fear of God; and adds emphatically that this latter quality is the root of all good and the key to all blessings, "for when the king is conscious of the presence of God, His servants will enjoy the blessings of peace and security." The sovereign must also possess the quality of mercy, and "this is the greatest of all good qualities." He must have an ever-present desire to benefit his subjects, and consult with them on their wants; for the Prophet consulted always with his Companions, and God hath said." "Consult with them on every affair." In the administration of public affairs, it is the sovereign's duty to superintend the public income, guard the lives and property of his subjects, maintain peace, check the evil-doer, prevent injuries. He must always keep his word, and then, adds the author significantly. "the duty of the subject is obedience, but no subject is bound to*

*obey a tyrant." Ibn Rushd (the great Averroes) says, " the tyrant is he who governs for himself, and not for his people."*

*The laws of the Moslems, based on equitable principles, and remarkable for their simplicity and precision, did not demand an obedience either difficult to render or incompatible with the intelligence of mankind. The countries where the Moslems established themselves remained exempt from the disastrous consequences of the feudal system and the feudal code. "Admitting no privilege, no caste, their legislation produced two grand results, -that of freeing the soil from factitious burdens imposed by barbarian laws, and of assuring to individuals perfect equality of rights." (Page 288/289)*

**3217.** Sri P.R.Ganpati Ayyer while adopting the submission of Sri Mishra also placed before us certain extracts from "**Hindu and Mahomedan Endowments**" by **Abdur Rahim 1918**. Chapter XIV relating to Mohammeden Law of Waqfs, to the following effect:

*"It may be a truism to say that the appropriator can only constitute such property as wakf as over which he has a disposing power. **If he is not the owner of the property, no wakf can attach.** This is also the Shiah Law. Although this may be a truism certain other consequences may appear to flow from this. It may be thought that if somehow the appropriator acquires the ownership later on or the true owner consents later on, the wakf will not be affected. The former part of the statement at that seems, however, not to represent the Mahomedan Law. Thus Baillie in his Digest*

*of Mahomedan Law says: "It is also a condition that the thing appropriated be the appropriator's property at the time of the appropriation; so that if one were to ...rp a piece of land, appropriate and then purchase it from the owner, and pay the price, or compound with him for other property, which is actually delivered up it will not be a wakf. Then a man make an appropriation for certain good purposes if had belonging to another, and then becomes the proprietor of the wakf is not lawful, though it becomes so if allowed by the proprietor." so also, according to the Shiah Law, "if one should appropriate a thing which is not his own, the wakf will not be valid. But if the real owner should sanction the appropriation, that will give it validity according to some of .doctors, the sanction being tantamount, in their opinion, to the new appropriation." If the appropriator is owner only of the shares out of 16 and purports to make the whole wakf it will good to the extent of the appropriator's share.*

*If possession is necessary for the validity of a wakf the some other consequences flow from the condition that a person should own the property which he appropriates as wakf. Thus it is said in Baillie : "If a bequest were made of land of which the legatee immediately makes a wakf, after which the testator dies, the land is not wakf; or if a donee of lands should make an appropriation of it before taking possession, and should make an appropriation of it before taking possession, and should thus take possession, the wakf will not be valid. Yet if possession were taken of land given by an invalid gift, and it were ten made a wakf, it will*

*be lawful, the donee being responsible for its value; and if one should purchase by an invalid sale, take possession, and then make an appropriation of the subject of sale in favour of the poor, the wakf will be lawful, subject to the like responsibility for its value to the seller; but if the appropriation were made before taking possession, it will not be lawful. When a man buys land by a lawful sale and make an appropriation of it before taking possession and paying the price, the matter is in suspense until he pays the price and takes possession, when the wakf is lawful, but if he die without leaving any property, the land is to be sole, and the wakf is void. And if a right is established in the property or it is claimed by a shoofee, under his right of pre-emption, after the purchase has been made, the wakf is void." The principle deducible from the above is that a wakf of property before the full proprietary rights in it have vested in the person appropriating it is, generally and subject to certain exceptions, invalid."*

**3218.** He also placed reliance on the "**Principles of Mahomedan Law**" by Sir D.F.Mulla, First Edition 1906, 19<sup>th</sup> Edition revised by Mr. M. Hidayatullah in 1990 (Fourth Reprint in 1993). Paras 174 and 176 are as under:

*"174. The dedication must be permanent.- The dedication must be permanent. A wakf, therefore, for a limited period, e.g., twenty years, is not valid. Further, the purpose for which a wakf is created must be of a permanent character."*

*"176. Subject of wakf must belong to wakif.- The property dedicated by way of wakf must belong to the wakif (dedicator) at the time of dedication. A person who is in*

*fact the owner of the property but is under the belief that he is only a mutawalli thereof is competent to make a valid wakf of the property. What is to be seen in such cases is whether or not that person had a power of disposition over the property."*

**3219.** Sri Ravi Shankar Prasad, Senior Advocate contended that the impugned mosque is contrary to Quranic injunctions and cannot be termed as mosque in terms of Islamic Law. Referring to "**Mulla's Principle of Mohammedan Law**" edited by M. Hidayatullah 19<sup>th</sup> Edition, he submitted that there is a consistent view of various authorities, i.e., Macnaghten, Amir Ali, Baillie and Hedaya as translated by Hamilton mentioned in the said book there is a consistent view that where the title of the land was disputed no valid mosque can be constructed thereat.

**3220.** A mosque built without the consent of the land owner is against the wishes of Allah and is clearly prohibited. In "**Principles and precedents of Moohummudan Law**" by **W.H. Macnaghten**, 1825 (Second Edition), Chapter X, Case No. V page 335 which deals with the case of mosque build without the consent of the land owner. He refers to the following:

*"Both land and building are included in the term mosque. It is neither simply land nor simply building but it comprises both. The land is the chief part of it because the foundation of the mosque stands upon it and the superstructure is dependent on the land. Under these circumstances without the consent of the Fakeer who is the landlord, the building cannot in the legal sense be termed a mosque because no one is at liberty to erect a building on*

*the land of another without that other's consent and if he do so the law sanctions its being razed to the ground."*

**3221.** He refers to page 336-337 of the aforesaid book of **W.H. Macnaghten** where the author has quoted Kaze Khan:

*"The appropriation of a superstructure without its basis is not allowable, an edifice independently of its founder is not a mosque. Further as per **Shurhi Viqya** if anyone build or plant on the land of another let the thing built or planted be razed or rooted out."*

**3222.** In "**The Law Relating to Gifts, Trusts and Testamentary Dispositions Among the Mahommedans**" by **Syed Ameer Ali** (Tagore Law Lectures, 1884) at page 236 and 337it says:

*"A sovereign cannot give any portion of the land acquired by treaty and negotiation to be converted into a mosque without the consent of the owners, but he can give any portion of the land acquired by war, provided it does not interfere with the rights of way possessed by any individual."*

*Hedaya is quoted as " If a person usurps land and build and plant thereon , he will be desired to eradicate and raise his plants or buildings"*

**3223.** He submitted that the above passage shows that if the right of way of an individual is important then the right of an entire community to offer worship at the land in question is of greater sanctity. He also referred to the following passage from "**A Digest of Moohummudan Law**" by **Neil B.E. Baillie** (1875), Chapter VII, page 616, title "How a Musjid is Constituted" says:

*“A sick man has made his mansion a Musjid and died but it neither falls within a third of his property nor is allowed by his heirs: the whole of it is heritage and the making of it a Musjid is void because the heirs having a right in it there has been no separation from the rights of mankind and a confused portion has been made a Musjid which is void.”*

**3224.** In **"The Hedaya"** (A Commentary on the Mussulman Laws) translated by the order of the Governor General by Charles Hamilton (Premier Book House, Lahore):

*"If a person convert the centre hall of his house into a mosque giving general admission into it, still it does not stand as a mosque but remains saleable and inheritable because a mosque is a place in which no person possesses any right of obstruction; and wherever a man has such a right with respect to the surrounding parts the same must necessarily affect the place enclosed in them. The place, therefore, cannot be a mosque; besides it is necessarily a thoroughfare for the family and consequently does not appertain solely to God."*

**3225.** **"The History of Islam"** by **Akbar Shah Najeebabadi**, revised by Safi-ur-Rahman Mubarakpuri, published by Darussalam, Riyadh, Saudi Arabia, he submitted that the said book was written in Urdu Language in 1972 and became a classic thereafter. It contains an authentic events in concise form from the famous histories of Islam written in Arabic and Persian languages. Its English translation was done by Darussalam in three volumes. He refers from Vol. I page 148. It narrates the histories of prophet into Al-Madinah. There is a

specific reference about a deserted land being the property of two orphan boys Sahl and Suhail. The said land was offered by Muadhbin Afra for building a mosque as the two orphan boys were related to him and he would make them part of the land. But the Prophet asserted "*I want to buy it and will not take it without paying the price.*" Sri Prasad contended that authentic real life of Prophet shows that the Holy and Noble sole imposed strict injunctions for building a mosque, i.e., land of an orphan despite the consent of guardian was not agreed to be taken unless price is paid for, could the Babari mosque erected forcibly by breaking a temple at a place held sacred by Hindus, be at all described as a valid mosque and can the plaintiffs seek any declaration as such when the disputed structure is not a valid mosque in terms of Islamic Law. He also referred to certain extracts of Holy Quran by Mohammad Abdul Haleem Eliasi, translated in English by Abdullah Yusuf Ali, first published in 1934 revised edition 2000 by Eliash Family Book Service, Charminar, Hyderabad, India.

*"Chapter-II (The Cow-II), Part-III, at Page 44, Verse 256: "Let there be no compulsion in religion".*

*Chapter-II (The Cow-II), Part-I, Page 7, Verse 42: "And cover not Truth with falsehood nor conceal the Truth when ye know (what it is)."*

*Chapter-III (The Family of Imran-III), Part-IV, at Page 71, Verse 140: "Allah loveth not those that do wrong."*

*Chapter-VII (The Heights), Part-IX, Page 170, Verse 157: "For He commands them what is just and forbids them what is evil; He allows them as lawful what is good (and pure) and prohibits them from what is bad (and impure)."*

**3226.** He pointed out that the meaning of the word Islam means peace and submission. Koran is Al-Furqan, i.e., one showing truth from falsehood and right from wrong. Hence any forcible construction of a mosque is against Quranik injunctions and void ab initio. The disputed structure known as Babari mosque is an invalid structure and has no protection in Islamic Law.

**3227.** Sri G. Rajagopalan, learned Senior Advocate advancing the submissions in the line of Sri P.N. Mishra, Advocate and Sri Ravi Shankar Prasad, Senior Advocate submitted that the meaning of the word mosque or a waqf needs satisfaction of certain essential ingredients required by Islamic texts. It is admitted by the plaintiffs that the disputed structure built after a war between the Babar and then King of Ayodhya. No pleading that it was a vacant site and the mosque was built thereat for the benefit of muslims. It is well said that "*Men may lie but circumstances never*". A bare look of the photographs of the disputed structure would show that non islamic structure was converted into Islamic one. On the victory at Ayodhya, Babar or his commander built the structure in question with view to deprive Hindus of their Holy spot, i.e., the revered and pious place of birth of Lord Rama. Their attempt to continue with the building in question, to maintain as mosque felt later on, also that the construction of Ram Chabutara and others which were non-Islamic structures and continuously worshipped by Hindus. A mosque cannot have several Hindu features including idols carved on the pillars affixed in its building. Then he refers to the essential conditions of the arrangement of wazoo, absence of minarets to contend that the building in dispute could not be a

mosque since these are the essential features of all mosque. For this purpose he placed reliance on "**Hindu and Mohammeden Endowments**" by **P.R. Ganapathy Iyer** 1918, page 388. Whether built or could not be built as a mosque, the portion of the site continued to be worshipped by Hindus. When the building had several Hindu idol carvings and the outer courtyard of the building was used for Hindu idol worship, the structure could not be used as mosque at all. It cannot be presumed that the muslims would offer prayer/Namaz at a structure which is against the tenets of Islam. He also contended that the necessary pleadings are absent. The details as to who was the wakif, whether Babar or his commander, what was the nature of dedication, whether he was owner of the site, in what manner the property was acquired and was there a divestment of interest are some important questions which have not been pleaded at all and in the absence of relevant pleadings and facts the same cannot be added by evidence only. He also pleaded that there is no evidence that Babar was sovereign as there was no coronation of Babar at all. Even if it is admitted that Babar was a king he has no proprietary right in the soil so as to dedicate the land in question to God. In India as well as in Islamic countries king never own the soil but only collect tax. If in Islamic countries only the king own soil, the concept of waqf itself would not have originated. He refers to **Dr. Paras Diwan's "Law of Endowments, Wakfs and Turst"** mentioning about first waqf in Islam, as follows:

*"The Wakfs are founded on the two traditions of the Prophet though the fact of the matter is that they were developed in the later Islam by ijma, the consensus of the*

*learned. The first wakf is Islam came into existence in the following circumstances: The land on which the prophet laid the foundation of Masjid Navi in Medina in the first century of Islam belonged to two orphans. The Prophet insisted to pay the price of land, but the orphans entered. "No, by God we will not take the price, we will take it from God". The second tradition is: One omer Ibn-al-khattab on acquiring land in Khyber went to the Prophet and sought his counsel as to how could be make the best use of the land, for a pious and charitable purpose. The Prophet declared, "Tie up the property (corpus) and devote the usufruct to human beings, and it is not to be sold or made the subject of gift or inheritance; devote its produce to your children, your kindered and the poor in the way of God. "Acting accordingly, Omer laid down that the property would not be sold or given away in gift, nor would it devolve by succession; its income would be devoted to charity, for the poor, slaves should be freed, provisions should be made for travelers, and guests should be entertained."*

**3228.** In order to constitute a waqf ownership of land is mandatory and in case of conquer by a person as king, the only right he had is to collect tax but would not own the soil. He refers to various instances when the muslim kings had purchased lands for construction of Tombs etc. In the alternative he submitted that the outer courtyard is occupied by Hindus since a long time and a property partly cannot be occupied by muslims and Hindus so as to constitute a waqf. If there is no valid creation of waqf the fact that prayers offered therein would

not make it a waqf. He lastly submitted that Sunni Board has no right to file a suit since the property in question is not a waqf in accordance with the Islamic tenets.

**3229.** Sri R.L. Verma adopting all the above arguments advanced on behalf of learned counsels for various parties moved ahead with his arguments relying on "**Muslim Vidhi (A Text-Book of Mahomedan Law)**" by Mahesh Prasad Tandon, 5<sup>th</sup> Edn. published by Allahabad Law Agency wherein on page 212 the learned author has referred to Amir Ali's book (Vol. 1, 4<sup>th</sup> Edn. Page 201 to the following effect:

*“परिणामतः यदि एक वक्फ, किसी ऐसी सम्पत्ति के लिए किसी व्यक्ति द्वारा सृजित किया जाता है जिसे कि विधि-विरुद्ध ढंग से अर्जित किया गया है, तो वह अवैध होगा।”*

**3230.** Sri R.L. Verma placed reliance on "**Law of Endowments (Hindu & Mahomedan)**" by A. Ghosh, Second Edn. published by Eastern Law House, Calcutta. It says that the waqf is the detention of a thing in the implied ownership of Almighty God, in such a manner that its profits may revert to or be applied for the benefit of mankind; and the appropriation is obligatory, so that the thing appropriated can neither be sold, nor given, nor inherited. Under Shia law, waqf is a contract while under the Sunni law, it is a unilateral disposition of property, and as such not subject to the rules of contract. In respect to the Shia law of waqfs, the author has further said on page 491-492 as under:

*"Perhaps the most notable of these cases is Wasiq Ali Khan v. The Government which, though a case relating to a Shia Wakf, viz, the celebrated endowment under the will of Haji Muhammad Mohsin for the Imambara at Hooghly was*

*dealt with by the Sadar Dewani Adalat upon the principles of the Sunni school of Mahomedan law which was then prevalent as the Mahomedan law administered by the Courts of British India. The case was decided so long ago as the 22<sup>nd</sup> of September 1836, and it is a matter of doubt whether in those days the Shia law was ever administered by the Courts of the British India as the rule of decision, even when Shias were concerned. Mr. Baillie at the outset of the introduction to his Imameea law describes the history of the manner in which the Shia law came to be recognised in India, and it may be safely stated that it was not till the ruling of their Lordships of the Privy Council in *Rajah Deedar Hossien v. Ranee Zahooroon-nissa* decided in 1841 that the enforceability of the Shia law by the British Courts in India was placed upon a firm footing. In that case their Lordships observed, 'it is true that the Sunni law has generally prevailed, because the great majority of the Indian Mahomedans are Sunnis, there being very few families of the Shia sect except those of the reigning princes, which will account for the prevalence of the Sunni doctrines in the Courts, but there is no practice which excludes the application of the Shia law to the rights of persons professing the tenants of that sect.'*

**3231.** In Sunni law, according to Abu Hanifa, a detaining of it in the ownership of the appropriator, but without the power of alienation, and a bestowing of its produce in charity. The learned author on page 498-499 says:

*"It must, therefore, be taken that the Shia law recognises wakf not as a unilateral disposition of property, as it is*

*recognised in the Sunni law, but as a contract which , according to the requirements of juristic notions, irrespective of either of these two systems, must be a transaction inter vivos, and this ex necessitate rei. The Sharayi-ul-Islam in describing the rule as to wakf goes on to say: Conditions that relate to the waqf itself, which are four in number, first, it must be perpetual; second, absolute and unconditional; third; possession must be given of the mowkoof, or thing appropriated , and, fourth it must be entirely taken out if the waqif or appropriator himself. So that if the appropriation is restricted to a particular time or made dependent on some quality of future occurrence, it is void.' Under the Shia law, a wakf can be created by will. A mental act although afterwards sufficiently expressed in conduct will not, unless clothed in appropriate words, create a wakf. A mere statement in a will of some gift in the past cannot be referred back to the date, still undetermined, when that gift is afterwards alleged to have been made, or such a narrative statement cannot in any view be an adequate substitute for the oral deceleration of dedication to God, which the Mahomedan law appears imperatively to require, synchronously with the act of dedication itself. There is a plain distinction between giving in charity and declaring that one had given in charity. And for the purpose of fixing the origin of the wakf, if there is a wakf at all, the mere statement in a will that at some past date the testator had set apart such and such funds for charitable objects, is of comparatively slight value. Where there has been no actual delivery a clear declaration is necessary to*

*create a valid wakf. "The Mahomedan law, which only allows a testator restricted powers of disposition over his property, contains no such restriction as regards gifts inter vivos but does not recognise such gifts as valid unless possession is given to the donee. This also applies to wakfs or gifts for religious or charitable purposes, at any rate among Shias. Further, in the case of wakfs or gifts for charitable purposes, the Shia law imposes a further restriction that the wakif or settlor shall not retain for himself any interest in the subject or the gift. This restriction, for which reasons of a religious character are assigned, undoubtedly operates as check on the creation of wakfs not from purely religious motives, but with a view of defeating the rights of heirs and transmitting the possession and control of the settlor's property after his death to other persons in the character of mutawallis. This restriction is the last of the four conditions as to the validity of wakfs laid down in the Suraya, the leading Shia authority, as follows: '(i) It must be perpetual; (ii) absolute and unconditional; (iii) possession must be given of the mowkoof of the thing appropriated, and (iv) it must be entirely taken out of the wakif or appropriator himself. Where the settlor under colour of fixing her salary as mutawalli, was really reserving for her life-time a portion of the income or usufruct of the property far in excess of what was assigned in the deed to future mutawalis or could reasonably have been assigned to them, it was a clear violation of the condition."*

**3232.** On page 600-601, with respect to Mosque, it says:

*"Where a mosque is a public mosque open to the use of all Mahomedans without distinction of sect, a Mahomedan who, in the bonafide exercise of his religious duties in such mosque, pronounces the word 'Amin' in a loud tone of voice, according to the tenets of his sect, does nothing which is contrary to the Mahomedan ecclesiastical law or which is either an offence or civil wrong, though he may by such conduct cause annoyance to his fellow worshippers in the mosque. But any person, Mahomedan or otherwise. Who goes into a mosque not bonafide for religious purposes, but malafide to create a disturbance there and interferes with the devotion of the ordinary frequenters of the mosque, will render himself criminally liable. **A mosque, from its very nature, is dedicated for worship and is open to all Muslims local and others.** It is dedicated for a specific purpose and not to the local Muslims for such benefit as they may choose to derive therefrom. They cannot of right claim to use it for any other purpose however meritorious or beneficial it may be to the members of the local Muslim community. "It is a well recognised principal that if a person has an undoubted legal right to say his prayers in a mosque the Courts cannot refuse to recognise that legal right merely because an anticipated breach of peace is to be committed by the other side. A mosque does not belong to any particular sect; for once it is built and consecrated, any reservation for people of a particular locality or sect is void, and persons not belonging to that locality or sect are entitled to worship in it, whether or not any particular sect had*

*contributed towards the site or the building of the mosque and had been saying their prayers in it and every person who believes in the unity of God and the mission of Mahammad as a prophet is a Mussalman, to whatever sect he may belong, and that the Shias satisfy the test; and that **there is no such thing as a Sunni or a Shia mosque** though the majority of the worshippers at any particular mosque may belong to one or other sect either generally or at various times." In Mahomedan law there can not be any private mosque. When **once a place is dedicated to be a mosque, it becomes public property, it is property of God.** Therefore where a person in charge of such a mosque claims the property as his private estate, he is liable to be removed from charge of such mosque. But there can be right of exclusion in case of mosques belonging to a particular sect."*

**3233.** It also says that a place may be dedicated as mosque or Masjid without there being any building.

**3234.** In **Syed Mohd. Salie Labbai & others Vs. Mohd. Hanifa & others AIR 1976 SC 1569**, the Court observed:

*"Once the founder dedicates a particular property for the purpose of a public mosque, the Mahomedan Law does not permit any one from stopping the Mahomedan public from offering prayers and reciting Koran etc. ...Under the Mohammedan Law if a land has been used from time immemorial for burial ground then the same may be called a wakf although there is no express dedication. ...in cases where a graveyard has existed from time immemorial or for a very long time, there can be a presumption of a lost*

*grant. It is open to a Court to infer from circumstances that a plot of land covered by graves, which has been used as a graveyard, is in fact a graveyard and had been set apart as such by the original owners and made a consecrated ground even though a registered document is not now forthcoming."*

*"The word **"wakf"** means detention or appropriation. According to the well recognized Hanafi School of Mahomedan Law when a Mahomedan dedicates his property for objects of charity or to God, he completely parts with the corpus which vests in God and never returns to the founder. Mahomedan Law contemplates two kinds of Wakfs- a wakf which is private in nature where although the ultimate object is public charity or God. but the property vests in a set of beneficiaries chosen by the founder who appoints a Mutawalli to manage the wakf property. We are, however, not concerned with private wakfs which are normally known as wakf-alal-aulad. We are concerned with public wakf i.e. dedication made for the purpose of public charity e.g. an Imam-Bada, a mosque, a Serai and the like. **So far as the dedication to a mosque is concerned, it is governed by special rules and special equity in the light of which a particular dedication has to be determined. A mosque is obviously a place where the Muslims offer their prayers. It is well-known that there are certain formalities which have to be observed by the Muslims before they observe the prayers. These formalities are-***

*(i) Wazoo i.e. washing of hands and feet in a manner*

*prescribed by Shariat:*

*(ii) the recitation of "Azaah" and "Ikamat" which is usually done by the Pesh Imam or the Muayzin;*

*(iii) there must be a person who possesses virtuous qualities and a knowledge of Koran and other religious rites who should lead the prayers.*

*This is necessary in case of prayers offered in congregation.*

**3235.** In "**Law of Endowments (Hindu & Mahomedan)**" by **A. Ghosh**, Second Edn. published by Eastern Law House, Calcutta, on page 602 it is provided that the questions raised in a Mahomedan community relating to a Mahomedan mosque and tomb ought to be decided by Mahomedan law so far as the same is applicable to the particular community and not expressly or impliedly negatived by the general law of the land. (See: **Advocate General of Bombay vs. Yusufally 24 Bom. L.R. 1060**).

**3236.** Sri M.M. Pandey, learned counsel for the plaintiffs (Suit-5) has submitted that according to established Mohammedan Law and evidence on behalf of Plaintiffs of OOS 4 of 1989, no Wakf can be created over property which is not owned by the Wakif and if a Masjid is erected at a religious place of another religion, Allah does not accept any Namaz offered at such place. Islam does not recognise Wakf of property which belongs to another or has been obtained by use of force or by demolishing place of worship of another religion. PW 3 Farookh Ahmad (at p. 16), PW 10 Mohd Idris (at p. 24 & 104) and PW 11 Mohd Burhanuddin (at p. 7 & 14) admit this position under Islam. **Paper No. 107 C1/218 to 225** is write-up by Dr.

Amaresh Arya, M.A., M.O.L., Ph D (formerly Dr. Amir Ali who taught Islamic theology at Medina in Saudi Arabia) captioned "Mosque, Mausoleum and Endowment in Islamic Shariat". At page **107C1/221** it is mentioned: "According to Shariat the site which has been occupied unauthoritatively should not be used for constructing any Mosque or for cultivation (Fathva Siddeeq-ul-Itasan)", and "Also all the temples which are deliberately replaced by Mosques, performing of 'Namaz' on such a place is also prohibited". Disputed building is therefore is Un-Islamic.

**3237.** A compilation of 'Problems & Solutions' issued by the highest theological authority of Iran, sets out 9 Conditions for an appropriate place of worship. The publication, 73rd Edition, dt. 21 Ramzanul-mubarak 1413 Hijri (=1992), is captioned: "Tauzihul-masayal, mutabiq ba Fatwai, Murajja Azimushshan Jahan Tashbih, Hazrat Ayatullah Al-azami Aaqai-Haaj Syed Mohammad Raza Mausooi Galpayagani, Madzallah-ul-Aala". It is published by Darul-Quranul-Karim, Iran. Problem No. 875 deals with 'Makan Namaz Guzar' and the solution sets out 9 conditions of which the 1st Condition is that the place is Ankah, i.e., saying Namaz at such a place is 'Batil' (=false/illegal) which is 'Ghasbi' (taken forcibly), and even if Namaz be said on land, or on own sheet (farsh) or wood (takhat) thereat, it would be Batil.

**3238.** One is reminded of what QURAN says. A 'Dar Al-Chaura, Beirut, Lebanon' publication of English Translation of Quran, approved by 'The Supreme Sunni and Shii Councils of Republic of Lebanon', quotes verse No. 2:186 (at page 20), 'Do not usurp another's property by unjust means .....' Verse No. 2:190 (at page 21) commands: ' Fight for the sake of Allah those

that fight against you, but do not be aggressive. Allah does not love the aggressors. Similar Hindi translation of these verses is contained at page 67 of "Quran Sharif" 5th Edition 1981, of Hafiz Mohd. Hanif & Sons, Book-sellers, Mubarakpur Azamgarh (UP) published by "Lucknow Kitabghar", printed by 'Lucknow Publishing House', Lucknow. It is absolutely clear that if Babar ordered disputed structure to be erected at the site of a Hindu Temple or if Mir Baqi erected it, under Babar's order, at the site of a Temple demolished for the purpose, both the acts violated Quranic injunctions thereby both are guilty of erecting an Un-Islamic Mosque. The so-called Babri Masjid, therefore, was void ab initio, violated Islamic mandate and must be treated to be non-est, i.e, even if physically existent, it had no legal existence.

**3239.** Sri Pandey relied on **Keshavan Madhava Menon v. State of Bombay, 1951 SC 128**, wherein the Hon'ble Supreme Court relied on Black's Law Dictionary (III Edn.) for the meaning of the word 'void' in para 18:

“The meaning of the word "void" is stated in Black's Law Dictionary (3rd Edn.) to be as follows:-

*"null and void; ineffectual; nugatory; having no legal force or binding effect; unable in law to support the purpose for which it was intended; nugatory and ineffectual so that nothing can cure it; not valid."*

**3240.** A Masjid erected in violation of injunction of Islam was 'unable to support the purpose for which it was intended', namely offering namaz, but Allah could not accept namaz in such a masjid. He sought support from **Baljinder Singh v. Rattan Singh, JT 2008(10) SC 98** (para 25) where Hon'ble

Supreme Court quoted from “**Words and Phrases by Justice R.P. Sethi**” and said: “Void- Black's Law Dictionary gives the meaning of the word "void" as having different nuances in different connotations. One of them is of course "null or having no legal force or binding effect" and the other is "unable in law, to support the purpose for which it was intended".

**3241.** He further submits that on facts, justice, equity and good conscience are in favour of plaintiffs of (Suit 5) rather than plaintiffs (Suit 4).

**3242.** In para 1204 of **Halsbury's Laws of England (supra)** it is stated that 'equity implies a system of law which is more consonant than the ordinary law with opinions current for the time being as to just regulation of mutual rights and duties of men living in a civilised society. When Babar became Emperor as a conqueror and did not frame any law governing Hindu Deities/Temples, the Hindu Law prevailing at that time had to be applied by him as indicated above.

**3243.** In general, when the word 'conscience' was used, this denoted the conscience of the Defdt., and the Court by decree in personam can prevent of making an unconscionable use of rights at common law. The correction of Defendant's conscience was the ground of the interference of equity in case of fraud, breach of trust and 'wrong and oppression generally (Ft.Note 1, HLE Supra). The special imperfections of medieval common law, as to its administration were that its judgments were not capable of being adapted to meet special circumstances or were turned into a means of oppression. The Court of Chancery, in so far as it remedied these defects, afforded an improved system of attaining justice, but this was the difference

between law and equity. Law and equity have both the same end, which is to do right. Where it differed from the law, this was in order to moderate its rigour, to supply its omissions, to assist the legal remedy, or to relieve against the evasion of the law or the abuse of legal rights; it supply omissions by exacting conscientious conduct from the defendant when the law recognised no binding obligation (Ft. Note 3, HLE Supra). Babar could not be permitted, in equity or good conscience, arbitrarily to deprive the Deity of its rights and possession at the disputed site.

**3244.** An application of these principles of equity to the present suits, entitles the plaintiffs (Suit 5) to the relief sought. The pith and substance of the plaint case in Suit 5 is that the disputed site is the birthplace of Bhagwan Shri Ram, that before Babar's invasion, a Temple stood there, that worship of the birthplace and the temple by Hindu public had been going on since ancient/immemorial time, that the temple was destroyed by the hordes of Babar and at its site Babri Masjid was constructed, that a structure raised by force of arms on Deities' land after destroying their temple, could not be treated to be a legal/valid mosque according to Islam, and the Quran as shown above. In view of this command of Quran, conversion of Temple into Mosque did not create a valid dedication of the property to Allah in fact or in law (para 24 of Plaint). In reply to these pleadings, Sunni Central Boards of Wakf, Defdt. No 4, stated (in para 24 of WS) that the quotation of Quran was 'out of context', 'not correct' 'nor complete'; but the Sunni Board did not set out any context, nor the 'correct' or 'complete' quotation in written statement or anywhere in evidence. Regarding Plaintiff's case of

failed dedication to Allah, the reply is that Babar was the Emperor, "the vacant land on which the Babri Masjid was built lay in the State territory and did not belong to anyone and it could very well be used for the purpose of the Mosque and specially so when the Emperor himself consented and gave approval for construction of the said Mosque". This is incorrect. Babar never became Emperor. The land was a Hindu Deity as birthplace of Bhagwan Shree Ram, hence was owned by the Deity, whose Temple was standing thereat, as Deity's House in possession of Bhagwan Shree Ram; therefore it could not vest in the Conqueror/Emperor. As conqueror, it was Babar's duty to protect the birthplace/temple. A significant fact stated by Supreme Court in **Ismail Farooqui's case, (1994) 6 SCC 360** (para 11) is that in the White Paper (Chapter II, para 2.8) of the Central Government preceding the Acquisition of Certain Areas at Ayodhya Ordinance No. 8 of 1993, re-enacted as Central Act No. 33 of 1993, Muslim leaders had stated that if it was proved that a Hindu Temple had existed on the site of the Disputed Structure and was demolished on Babar's orders for construction of Babri Masjid, the Muslims would voluntarily hand over the disputed shrine to Hindus. It is also important that according to para 4 of the Supreme Court Judgment, the Acquisition "Bill was introduced in the Parliament leading to the above enactment and the said Reference to this Court was made in the historical background set out in the White paper". The legal effect is that since these facts stand proved, the Central Govt. itself would be estopped from denying the remedy sought by the Plaintiffs in Suit 5, and would have to feed the estoppel by grant by the equitable doctrine of Estoppel, vide, **Renu Devi V. Mahendra**

**Singh & Others (2003)10 SCC 200.**

**3245.** Lastly he submits that these very established facts would amount to "wrong and oppression" and "unconscionable use" of his rights as Emperor, if at all, in as much as he violated settled Usage/Custom of Hindu Community which Babar was bound to protect as 'conqueror' enjoined by Hindu Law (the Law of the 'Subject'). In the case of **S. Darshan Lal Vs. Dr. R.S.S Dalliwall, 1952 All 825 (DB)**, it is stated in para 16: "In an inhabited country, obtained by conquest or cessation, law already prevailing therein continues to prevail except to the extent English Law has been introduced, and also except to the extent to which such law is not civilised law at all....." Earlier, Privy Council had ruled in Mosque known as Masjid Shahidganj Vs. Shiromani Gurdwara Parbandhak Committee, 1940 PC 116 at page 120, 'There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property'. It also constituted violation of injunctions of Babar's own religion contained in the Quran, and equity would require Babar to purge his own conscience of the 'wrong, oppression, and violation of Holy Laws of his own Subjects and those of his own religion'. Similar equities would prevail between the present parties to these suits in as much as 'wrongs' committed by Babar, could not become 'right' by mere lapse of time, and would continue to be wrongs even today. The 'general law' of extinction of rights contained in the Limitation Act is not enough to over-ride the substantive rights of the Deity under 'special' Hindu Law; no law of limitation can apply to the rights and property of Deity.

**3246.** So far as the general principles of Islamic law as

referred to in these very authenticated books are concerned, the same are not disputed by any of the learned counsels for the muslim party i.e. by Sri Jilani, Siddiqui and Irfan Ahmad. The authority and authenticity of the english translation of the aforementioned books are also not disputed.

### **Essentials of Waqf in Shariat Law**

**3247.** Having given our anxious considerations, we find that in a simple and well elaborated manner various aspects of waqf are contained in above Islamic religious scriptures. It is really strange, despite such clarity in the thoughts and its solution contained in Shariyat scriptures exceptionally large number of cases have come up before British Indian Courts, as well as the Indian Courts after independence involving disputes relating to waqf and waqf property. We propose to consider some of the authorities, relevant on this aspect hereinunder:

**3248.** A Division Bench of Bombay High Court in **Said Maher Hussain Vs. Haji Alimahomed Jalaludin and others, AIR 1934 Bombay 257** has summarised essential condition to constitute a waqf and on page 264 has held:

*“there must be a declaration of dedication which should be made contemporaneously with the act of dedication ..... The wakif must divest himself of the ownership of the property ..... Physical delivery is not essential, but such possession as is possible must be given.”*

**3249.** About mosques, it had been observed that there are some special rules. **Wilson's Anglo-Mahomedan Law, Amir Ali's Muhammadan Law** and **Tyabji's Principles of Muhammadan Law** are referred to and the Court has said:

*“When once a building has been set apart as a*

*mosque it is enough to make it wakf if public prayers are once said there with the permission of the owner. But though a declaration of dedication and completion by some act giving practical effect to it are essential, it was not always necessary that there should be any direct evidence of these things. **Dedication may be inferred from long user as wakf property . . . . .** there can be no doubt as to this principle which is recognised in all the text books.”*

**3250.** In **Har Prasad and others Vs. Fazal Ahmad and others, AIR 1933 PC 83** it was held that the capacity and intention of wakif at the time of executing waqfnama is relevant and crucial. If subsequently it is found that the waqfnama was executed believing certain facts existing which subsequently found non existing, the waqf, merely because the waqfnama was executed, would not stand created.

**3251.** In **Commissioner of Wakfs and another Vs. Mohammad Moshin, AIR 1954 Calcutta 463** a Division Bench of Calcutta High Court held that waqf is a purely Mohammedan institution and concept. Its creation and incidents are governed by the Mohammedan law. The Court cannot sanction creation of waqf contrary to the Mohammedan law. In Mohammedan law no one but the owner of the property can make a waqf of it. In that case a waqf was sought to be created on behalf of a minor by a guardian and that was claimed to be sanctioned by the District Judge under Section 29 of Guardians and Wards Act 1890. The Court held it impermissible in law for the reason that the Mohammedan law says that a minor cannot create a waqf. If the creation of waqf by the guardian is really an act of the minor through the guardian, then to uphold it would amount to

allowing something being done indirectly which could not be done directly. It also observed that the idea of agency in relation to an infant is foreign to Muhammadan law and from that point of view also guardian under Muhammadan law has no power to make a waqf of the ward's property as the creator himself is not owner of the property.

**3252.** In **N.C.Ramanatha Iyer Vs. Board of Commissioners for Hindu Religious Endowments, Madras AIR 1954 Madras 492**, the Court observed that dedication is a fact which can be inferred from the circumstances of the particular case and need not necessarily be based upon documentary evidence. It also observed following the commendation of P. B. Ganapathi Aiyar's Hindu & Mahomedan Endowments at' page 136.

**3253.** The term "waqf" has recently been considered in the light of the law of Islam in **Faqrudin Vs. Tajuddin 2008 (8) SCC 12** and in para 35, it says:

*“`Wakf` would mean taking out something out of one's ownership and passing it on to God's ownership dedicating its usufruct - without regard to indigence or affluence, perpetually and with the intention of obtaining Divine pleasure - for persons and individuals, or for institutions or mosques and graveyards, or for other charitable purposes.”*

**3254.** The question as to whether a public mosque is open for worship to all Muslims irrespective of the consideration that in different sects, there is difference in the manner of offering Namaz, came to be considered before a Full Bench of this Court in **Jangu & others Vs. Ahmad Ullah & others 1889-1891 ILR**

**13 (All.) 419.** It was held that in a public mosque all Mohammadans were entitled to say their prayers. Justice Mahmood in his concurrent but separate judgement referred with approval his earlier observations in **Queen-Empress Vs. Ramzan ILR, 7 All. 461:**

*“Now, it is the fundamental principle of the Muhammadan law of wakf, too well known to require the citation of authorities, that when a mosque is built and consecrated by public worship, it ceases to be the property of the builder and vests in God (to use the language of the Hedaya) 'in such a manner as subjects it to the rules of Divine property, whence the appropriator's right in it is extinguished, and it becomes a property of God by the advantage of it resulting to his creatures.' A mosque once so consecrated cannot in any case revert to the founder, and every Muhammadan has the legal right to enter it, and perform devotions according to his own tenets, so long as the form of worship is in accord with the recognized rules of Muhammadan ecclesiastical law. The defendants therefore were fully justified by law in entering the mosque in question and in joining the congregation, and they were strictly within their legal rights, according to the orthodox rule of the Muhammadan ecclesiastical law, in saying the word 'amin' aloud.”*

**3255.** His Lordship further held :

*“I have no doubt that under the Muhammadan law of wakf, and the Muhammadan ecclesiastical law, which we are bound to administer in such cases under s. 24 of the Civil Courts Act (VI of 1871), the provisions of which have been*

*reproduced in s. 37 of Act XII of 1887, a mosque when public is not the property of any particular individual or even a body or corporation of any other human organization which in the law has a personality. In the eye of the Muhammadan law a mosque is the property of God, it must be recognized as such, and subject only to such limitations as the Muhammadan ecclesiastical law itself provides, it is public property, being the property of God for the use of his servants, and every human being is entitled to go and worship there so long as he conforms to the rules of the Muhammadan ecclesiastical ritual of worship."*

**3256.** In **Ata-Ullah & another Vs. Azim-Ullah & another 1889 ILR 12 (All.) 494** another decision was rendered by a five-Judges Bench of this Court on 5<sup>th</sup> November, 1889, i.e., the very next day when the Full Bench judgment in **Jangu Vs. Ahmad Ullah (supra)** was rendered wherein also a similar question was considered as to whether the Mohammedans of different sects as a matter of right can offer prayer in a public mosque built by one of the sect of Mohammedans. Facts show that the mosque was built by Hanafis sect of Mohammedans and used as their place of worship since inception. Plaintiffs described themselves as Muhammadis to whom the defendants, i.e., "the Hanafi sect of Muslims" called Wahabis sought to offer prayer in the above mosque which was objected to by the defendants saying that the system of prayer of two is different, therefore, the plaintiffs cannot offer prayer in the mosque established by Hanafi sect of Muslims. Rejecting this contention it was held by Sir John Edge, Kt., Chief Justice as under :

*“...no authority has been brought to our notice to show that a mosque which has been deviated to God can be appropriated exclusively to or by any particular sect or denomination of the Sunni Muhammadans, and without very strong authority for such a proposition, I for one could not find as a matter of law that there could be any such exclusive appropriation. As I understand, a mosque to be a mosque at all must be a building dedicated to God and not a building dedicated to God with a reservation that it should be used only by particular persons holding particular views of the ritual. As I understand it, a mosque is a place where all Muhammadans are entitled to go and perform their devotions as of right, according to their conscience.”*

**3257.** It was also held that merely for the reason that there is some difference in the practice of offering prayer, it cannot be said that though these persons are Muhammadans but belong to category who are other than followers of prophet and it was observed :

*“No authority has been brought before us to show that these persons by reason of any views which they may entertain as to ritual, could be treated by any orthodox Muhammadans as persons other than followers of the prophet.”*

**3258.** Hon'ble Justice Mahmood in his separate but concurrent judgment observed :

*“...so long as a mosque is a mosque, that so long as the plaintiffs are persons who call themselves Muhammadans and entitled to worship, there is absolutely no authority to*

*say that any sect or any creed or any portion of the community can restrain others who claim to have the right which to use the language of Muhammadan law, God and his Prophet gave them, from putting such right into exercise."*

**3259.** In **Musaheb Khan Vs. Raj Kumar Bakshi, AIR 1938 Oudh 238** the question was whether a compound having a mosque, an Imambara and a number of tombs are liable to be attached and sold in execution of a decree obtained against their owner, inasmuch as they were alleged to have become dedicated property or waqf, on account of a term contained in the will executed by the owner, whereby he had transferred full proprietary rights to a legatee and his representatives in perpetuity, but had made a direction to continue certain religious celebrations on the premises. The Chief Court of Oudh referring to certain passages appearing in Baillie's "**Commentary on Mohammedan Law**"; Syed Ameer Ali's "**Principles of Mohemmadan Law**" and Tyabji's "**Mohammedan Law**", held:

*"Even if a mosque, that is a building having the appearance of a mosque, is built in a place which is not enclosed, that is, is not situated in such a man's house, something more than the mere appearances of a mosque are needed before it will become entitled to be treated as a mosque for all time. There **must be proof of dedication or of permission or of user** such as by the saying of prayers in congregational manner . . . . . the **mere construction of a mosque in a private house does not make it a mosque in the sense of a public place of worship.**"*

**3260.** In **Khalil Ahmad and another Vs. Sheikh Mohd. Askari and others, AIR 1965 Allahabad 320** the question came up for consideration was whether the building in dispute was a public mosque or a private place of worship. A Single Judge of this Court held that before a building can be said to be a public mosque, the requisite essentials are (i) the building must be set apart as a mosque; (ii) public prayers must have been said in it at least once, even with the permission of the owner; and (iii) there must have been long user of the same as a place of worship by the public at large. This Court also held that like a private chapel in England or a private Hindu temple in India there could also be a private mosque for offering prayers by the owners and the members of his family, and such private mosque are not unknown in India. The two glaring examples of such mosques are in the Red Fort at Delhi and Agra, where the members of Mughal Royal family used to offer prayers in the mosques situate within the four walls of their forts. The Court further observed, *“obviously it could not have been suggested that simply because those buildings were shaped and domed like mosques and the members of the royal family regularly offered prayers therein, the same had become wakf property so as to entitle the general public to get into such private mosques and offer prayers in congregation as of right.”*

**3261.** In **Garib Das and others Vs. Munshi Abdul Hamid and others, AIR 1970 SC 1035** it was held that a waqf inter vivos is completed by a mere declaration of endowment by the owner. It was also held that the founder of a waqf may constitute himself the first mutawalli and in such a case when the founder and the mutawalli are the same person, no transfer or physical

possession is necessary. It is also not necessary in such a case that the property should be transferred from the name of the donor as owner into his name as mutawalli.

**3262.** In **Abdul Ghafoor Vs. Rahmat Ali & others AIR 1930 Oudh 245**, a learned Single Judge considered the question of proof of Waqf by user and held that once it is established that Mahomedan public used the land as burial ground, in the absence of direct evidence of dedication, the wakf can be established by evidence of user. The Court further said that if there is no authority to establish the land as public wakf, on the ground of user there must be evidence of continued use upto the present day. The rule which allows evidence of user to take the place of dedication is a rule of necessity. In the case of old wakf, it is not possible to secure direct evidence of dedication and so it has been ruled that even in the absence of such direct evidence, a Court can hold a wakf to be established on evidence of long user. It also observed that once land has been dedicated for the purpose of a cemetery, it must always be regarded as a cemetery unless for any reason the land turns out of the use as a cemetery. Once a wakf is established either by evidence of dedication or by evidence of user, it is in essence of the wakf that it should be permanent.

**3263.** In **Chhutkao Vs. Gambhir Mal AIR 1931 Oudh 45** it was reiterated by another Single Judge that it is a well understood principle of Mahomedan law that a wakf may be established by the evidence of user. It is also reiterated that land once used as a cemetery is always regarded as cemetery unless for any reason, it turns out to be unfit for use as such and that once a wakf is established either by evidence of dedication or by

evidence of user, it is in essence of the waqf that it should be permanent.

**3264.** In **Punjab Wakf Board, Ambala Vs. Capt. Mohar Singh AIR 1975 SC 1891** it was held that mere mention of a property in a notification issued under Section 55 (2) of Wakf Act, 1954 showing the property to be an Idgah or the exercise of power by the Board under the Muslim Wakfs Act by itself would not establish and identify the property to be a wakf property unless it is shown that there was a valid wakf created and existed which was so notified under the Act.

**3265.** In **Anjuman Islamia & others Vs. Munshi Tegh Ali & others 1971 (3) SCC 814**, it was held that if there is a very big property, the mere fact that there existed a Mosque and a School which is probably a Wakf property would not mean that the entire area is a Wakf property unless the evidence is so made available. In order to show that the entire area is a wakf property by long and immemorable user, the evidence has to be produced to the effect that the entire property is a wakf and not only the Mosque or the School and the land occupied thereat.

**3266.** The question with respect to plot of land as to whether it is a graveyard in the sense of Mahomedan law, i.e. to say "extra commercium" and dedicated for the benefit of Mahomedans in general in such sense that private ownership therein does not exist, was considered in **Ballabh Das and another Vs. Nur Mohammad and another AIR 1936 Privy Council 83**. The matter had arisen from the judgment reported in **AIR 1931 Oudh 293**. History of dispute was set out by the learned Subordinate Judge, stating that in the mutiny of 1857 many people left the city of Lucknow. At the first Regular

Settlement the Government found it extremely difficult to determine the title to the tenements of the persons who returned and occupied them. Seeing the previous insecurity of life and property from which the people had suffered at the hands of ruffians, it was not only difficult for them to prove their title, but an enquiry into title was bound to prolong the settlement operations to an inordinate length. The Government therefore ordered that persons in possession be recorded as proprietors of their tenements and the sites thereof. One Kale Khan was recognized by the Government as the owner of plot No. 108. Lord Canning's Proclamation of 15 March 1858 confiscated all land in Oudh, and every right in the soil in the city of Lucknow was vested in the Crown. By the letter of the Financial Commissioner of Oudh dated 7<sup>th</sup> August 1868, lands were granted to people whom the Crown liked to grant. It was at the first Regular settlement, therefore that for the first time in the city of Lucknow anybody's title was created to any land. All previous rights including those of the grandfather of Mirza Mahmud Beg, if any, had been swept away by confiscation. The subordinate Judge observed that neither it could be proved that Kale Khan made a Waqf nor that he ever divested himself of his rights so as to deprive him of the ownership of the plot in suit. The District Judge confirmed the judgement of the Subordinate Judge but it was reversed in the Chief Court of Oudh. The Privy Council disagreed with the view taken by the Chief Court that the land would become a Waqf immediately upon the burial of even a single person but observed that if a landowner allows one or two of his relatives to be buried in his orchard, he would not necessarily be held to have dedicated the land as a cemetery. It

held:

*“The owner who permits one or two burials to take place in his orchard would not describe his orchard as qabristan. If the plaintiffs had to make out dedication entirely by direct evidence of burials being made in the ground, and without any record such as the khasra of 1868, to help them, they would undoubtedly have to prove a number of instances adequate in character, number and extent to justify the inference that the plot of land in suit was a cemetery. The plaintiffs however are not in this position.”*

**3267.** It further held that when in Khasara of 1868 one comes across a description of certain land by the word “qabristan” or “grave-yard”, this, prima facie at all events, means that the land is a grave-yard in the sense known to the Mohamedan Law. With respect to the entry in khasara of First Settlement the Privy Council observed that the khasara itself is the instrument which confers or embodies the right and there is no other document which creates title and khasara and map are not merely “historical materials” but are instruments of title or otherwise the direct foundation of rights. For this purpose reliance was placed on **Wali Mohammad V. Mohammad Bakhsh AIR 1930 PC 91.**

**Status of Mosque and Mutwalli**

**3268.** In **Shanker Das Vs. Said Ahmad (1884) P.R. No.153 of 1884** Lahore High Court considered the rights of Mutawalli of a mosque and observed:

*“We are of the opinion that though theoretically wakf property belongs to no human owner, nevertheless a*

*mosque, as a concrete example of wakf, is an institution, and its possession is legally maintained by its lawful guardian for the time being: in virtue of his position, the guardian can resist trespass, recover debts, make purchases and mortgages all in virtue of the right which resides in the institution. In the same way we think the mosque, as an institution, might acquire an easement by prescription; and that being so, we cannot think of any rule or principle by which we could deny to the mosque (as an institution) the same right of preventing strangers approaching its walls by the exercise of a right of pre-emption, as other house-holders have. The object of the right of pre-emption is to secure the cohesion of families, and obviate the inconvenience of a mixed or alien neighbourhood among private house-holders. Now it can hardly be denied that exactly the same convenience, which results to a private house from the exercise of the right may result also to a mosque.*

*“We have no hesitation in deciding, on this principle, that the mosque as an institution has practically proprietary rights exercised through the guardian, and that one of the rights is to claim, on the ground of vicinage a right of pre-emption in the case of sales of adjoining properties.”*

**3269.** This has been followed in **Jindu Ram Vs. Hussain Baksh & Anr. AIR 1914 Lahore 444** where the Court observed:

*“.....all that is necessary for him to establish is that he is the sole guardian and manager of the mosque and of the property appertaining thereto; that the legal ownership in*

*the mosque and the property attached does not vest in any other person; and that he alone deals and is entitled to deal with the outside world on behalf and for the benefit of the mosque in all its legal relation. It is in this sense that the muttawali of a mosque or the manager of a Hindu religious institution by whatever name he may be called, can be appropriately said to be “a person whose immovable property,” though it is not his private property, clothes him with a right of pre-emption regarding property contiguous to the mosque or temple, as the case may be, under clause seventhly of S. 13(1) Punjab Pre-emption Act.”*

**3270.** In **Wahid Ali & another Vs. Mahboob ali Khan AIR 1935 Oudh 425**, the Court held that a Muslim Wakf is not a trust and a Mutwalli cannot be said to be trustee. This Court relied on two judgments of Privy Council in **Vidya Varuthi Thirtha Vs. Balusami Ayyar AIR 1922 PC 123** and **Abdur Rahim Vs. Narayan Das Aurora AIR 1923 PC 44** and also pointed out that contrary and otherwise view taken by the Bombay High Court in **Dattagiri Vs. Dattatraya (1904) ILR 27 Bom 236**; Allahabad High Court in **Behari Lal Vs. Muhammad Muttaki (1898) 20 All 482** and Calcutta High Court in **Nilmony Singh Vs. Jagabandhu Roy (1896) 23 Cal 536** wherein the persons holding properties generally for Hindu or Mohammadan religious purposes were treated as trustee were dissented by Privy Council. It held that a Muslim Wakf in which the property is vested in God, the Mutwalli has no power of alienation and he cannot be compared with a Mahant of a Hindu religious endowment.

**3271.** With respect to position of 'Mutawalli' and

'sajjadanashin', also the Apex Court says in **Faqrudin (Supra)** in para 36:

*“It is beyond any doubt or dispute that a Mutawalli is the temporal head. He is the manager of the property. Office of Sajjadanashin, however, is a spiritual office. It has to be held by a wise person. He must be fit for holding the office.”*

**3272.** With respect to a waqf, the Court considered as to who can file a suit to recover possession of a waqf and in para 55 and 58 held as under:

*"55. It may further be true that the land in question were not Wakf lands but `Wakf Aulad'. Indisputably, however, both Wakf land as also the land in question are under the management of Mutawalli. He, apart from the Wakf land, holds the land in suit on behalf of the beneficiaries. The present appellants are also beneficiaries of the Wakf. If the right to recover possession must vest in a Mutawalli and if by reason of his status of `Matmi', Tajuddin did not become a Mutawalli, which declaration in his favour must be held to have been legally made by the High Court, the respondents relying on or on the basis of the purported Wills executed in their favour cannot claim independent right to recover possession."*

*"58. The said principle was applied in a case of Debendra Nath Mitra Majumdar v. Sheik Safatulla AIR 1927 Cal 130, stating:*

*"That the right of the plaintiff to hold the properties of the wakf is a right appurtenant to his office as the Mutwalli cannot be disputed : Gnanasambandha*

*Pandara Sannadhi v. Velu Pandara (1899) 23 Mad. 271."*

**3273.** Besides Sharii text and precedents, plaintiffs (Suit 4) produced six witnesses as Experts in "Islamic religious matters" to depose on the above aspect of the matter. These are PW 10, Mohd. Idris; PW 11, Mohd. Burhanuddin; PW 19, Maulana Atiq Ahmad; PW 22, Mohd. Khalid Nadvi; PW 25, S.M.Naqvi; and, PW 26, Kalbe Jawwad.

**3274.** **PW 10, Mohammad Idris**, claims to have appeared as an expert in religious matters:

*"मैंने अपना जो भी बयान दिया है वह जातीय इल्म से दिया है। जो कि ज्यादातर वाक्यात के बारे में है। मैंने अपना बयान बतौर एक माहिर (एक्सपर्ट) होकर दिया है। यह दूसरी बात है कि कुछ वाक्यात का इल्म मुझे जातीय तौर पर भी है। . . . जो बातें मैंने किताबों के द्वारा लिये गये इल्म से कही हैं वह भी मेरे जातीय इल्म की ही समझी जाये।"* (पेज 100)

*"My statement is based on my personal knowledge, which is mainly regarding incidents. I have given my statement as an expert, although I know few facts on personal basis as well . . . . The facts given by me to be on basis of books, be also considered to be on basis of my personal knowledge."* (E.T.C)

**3275.** He also admits to have deposed statement on behalf of Waqf Board:

*"मैं तो वक्फ बोर्ड की तरफ से अदालत में गवाही देने आया था मुझे पहले मालूम नहीं था कि मुझसे क्या सवालात किये जायेंगे। . . . मुझे तो इस मुकदमें की निसबत सिर्फ हाशिम अंसारी ने बतलाया था।"* (पेज 103)

*"I had come on behalf of Waqf Board, to give evidence in court. I did not know about the questions to be put to me. . .*

*I was told about this case only by Hashim Ansari.” (E.T.C)*

**3276.** About his qualification etc., he says:

“फाजिल की तालीम के लिए मैं बनारस गया था। जब मैं बनारस गया तो मेरी उम्र तकरीबन 15 साल रही होगी। फाजिल का कोर्स करने के लिए दो साल लगाने होते हैं। आलिम होने की सनद मुझे इलाहाबाद कैंट बोर्ड से मिली है और कहीं से नहीं मिली।” (पेज 7)

*"I had gone to Benares to pursue 'Fazil' course. When I went to Benares, I would have been nearly 15 years of age. It takes two years to do 'Fazil' course. I have got certificate for successful completion of 'Aalim' course from the Allahabad Cant Board and from nowhere(else)." (ETC)*

“बनारस में मैंने तारीख (हिस्ट्री) भी पढ़ी थी। . . . .हिस्ट्री की किताबों को मैंने कुछ तो फारसी में पढ़ा कुछ उर्दू में और अरबी में भी पढ़ा था। . . .अरबी की एक किताब का नाम था तारीखउल खुलफा जिसे मौलाना जलालुद्दीन सुयती ने लिखा है और दूसरी किताब रिजालुसिन्धवलहिन्द जिसे काजी अतहर मुबारकपुरी ने लिखा है वह मैंने पढ़ी थी।” (पेज 8)

*"I studied the history as well in Benares. . . Of the history books I read some in Persian some in Urdu and some in Arabic too. . . . An Arabic book was named 'Taarikh-ul-Khulfa', which Maulana Jalaluddin Suyati has written, and the other one was called Rizalusindhvalhind, which Kazi Athar Mubarakpuri has written; I had gone through that." (E.T.C)*

“इनमें से पहली किताब जो मौलाना जलालुद्दीन साहब ने लिखी है हिजरी से शुरू होकर यानी हिजरी के पहले साल से शुरु होकर हिजरी के 600 साल तक चलती है। जबकि दूसरी किताब जिसे हाजी अतहर मुबारकपुरी ने लिखा है, हिन्दुस्तान की तमाम तारीख उनकी किताब लिखने तक यानी आज से 20-25 साल के पहले तब के दौर को बतलाती है।

फारसी की किताब जो मैंने पढ़ी थी उसका नाम

तारीखे फरिश्ता है। इसे काशिम साहब ने लिखा है। फारसी की मैंने और कोई तारीख की किताब नहीं पढ़ी। यह किताब मुगलों का दौर आने से पहले तक के पीरीयड को बतलाती है।

उर्दू जुबान में लिखी हुई मैंने बहुत सी किताबें पढ़ी हैं। मैंने बाबरनामा पढ़ा है। जनीब अकबराबादी की किताब "औरंगजेब हिन्दुओं की नजर में" और "मुफ्ती शौकत अली फहमी" की किताब "हिन्दुस्तान पर मुसलमानों का हजारसाला दौरे हुकूमत" पढ़ी है।

ये जितनी किताबें मैंने बतलायी हैं और जिनको मैंने पढ़ा है मुसलमान लेखकों की लिखी हुई हैं। इनके अलावा किसी विदेशी लेखक की किताब या उसका तर्जुमा उर्दू या फारसी में था किसी मशहूर भारतीय इतिहासकार की तारीख की किताब नहीं पढ़ी।" (पेज 9)

*"Of them, the first book, written by Maulana Jalaluddin, begins with Hijri, that is, with the first year of Hijri and covers six hundred Hijri years. On the other hand, the other book, written by Hazi Athar Mubarakpuri, deals with the entire history of Hindustan up to the time of its being written, that is, up to 20-25 years back.*

***A Persian book which I studied is named 'Taarikh-e-Farishta'. 'Kasim Sahib has written it. I did not go through any other history book in Persian. This book deals with the history of the period preceding the onset of the Mughal reign.***

*I have written many books written in Urdu. I have read 'Baburnama'. I have gone through Janib Akbarabadi's book 'Aurangzeb Hinduon Ki Nazar Mein' and Mufti Shaukat Ali Fahmi's book 'Hindustan Par Musalmanon Ka Hajaar Saala Daur-e-Huqumat'.*

*All these books which I referred to and which I have gone through, are written by the Muslim writers. Except for these, I did not go through any book of foreign writer or*

*through its translation in Urdu or Persian or through any history book of a famous Indian historian.” (E.T.C)*

“मैंने सन् 76 में सदर मुदर्रिस की जगह संभाली थी . . . . .  
बनारस की मैंने 1962 में छोड़ दिया था। बनारस से मुझे सनद मिली थी।  
. . . . .सबसे पहली नियुक्ति इस मदरसा में मेरी दर्जे आलिया के लिए हुई  
थी। मैं भाषा और तारीख भी पढ़ाता हूँ।” (पेज 10)

*“I took over as the Head Master in 1976 . . . . I had left Benares in 1962. I had got certificate from Benares. . . . . First of all I was appointed to teach class I in this school. I teach language as also history.” (E.T.C)*

**3277.** He has disclosed his knowledge about Holy Quran and other Islamic literature as follows:

“इस्लाम अरबी जवान का लफ्ज है जिसकी इस्तलाह में मसदर कहते हैं जिसका तर्जुमा फरमाबरदारी में गर्दन रख देना लिखा हुआ है। ईश्वर एक है, वह सर्वशक्तिमान है, कुरान शरीफ उसकी देन है, सारी कायनात उसने बनाई है, हजरत मोहम्मद साहब उसके पैगम्बर हैं, आदमी को नेकी के रास्ते पर चलना चाहिए, यह चीजें इस्लाम में सिखाई जाती हैं। . . .जो इस्लाम में यकीन रखता है और इसका अनुयायी है, वह मुसलमान माना जायेगा। . . . कुरान शरीफ उस किताबे पाक का नाम है, जो खुदा की तरफ से पैगम्बर साहब को मिली। कुरान शरीफ पैगम्बर साहब को 23 साल के वकफे में मुख्तलिफ मौकों पर मिली। इसमें कुल 113 सूरे हैं। इसमें 6666 आयतें हैं। मैं उन आयातों की तादाद नहीं बता पाऊँगा, जिनमें कानूनी मसलों को हल करने की हिदायत दी गई है। (अजखुद कहा कि ऐसी आयातें जिनमें एहकाम का बयान है, उन आयातों की एक तफसीर मुल्ला अहमद जीवन ने लिखी है, जिसका नामू तफशीराते अहमदिया है, यह साहब औरंगजेब के उस्ताद थे, लेकिन उसमें कितनी आयतें लिखी गई, उनकी तादाद मैं नहीं बता पाऊँगा।) कुरान शरीफ में इस चीज का हुक्म बार-बार है कि इन्सान को क्या करना चाहिए। बहुत से ऐसे भी एहकाम हैं, जिनके करने की मनाही है। यानी जिनमें कुछ काम न करने की हिदायत हैं। जो भी बाबा-आदम दुनिया के बनने पर सबसे पहली बार उतरे, वह इस्लाम लेकर आये, लेकिन वह

दुनिया के कौन से कोने पर उतरे, इस चीज के बारे में आज तक तय नहीं हो पाया।

जिरत मोहम्मद साहब अरब देश में पैदा हुए थे। इस्लाम की तबलीग यानी प्रचार मोहम्मद साहब ने की है। इनसे पहले भी मुसलमान होते थे, क्योंकि दुनिया का पहला आदमी ही इस्लाम लेकर आया था।

मोहम्मद साहब ने मक्का से मदीना हिजरत की थी। मक्का में उनकी लड़ाई बुतपरस्तों से थी और उन लोगों से थी, जो एक से ज्यादा खुदा मानते थे। उस वक्त अरब देश के बहुत से हिस्सों में मूर्ति पूजा चल रही थी। . . . . . उन्होंने जंग और लड़ाई जरूर की, कुछ इलाके भी जीते, लेकिन मकसद इलाके या मुल्क जीतने का नहीं था, बल्कि एक खुदा का कलमा पढ़ाने के लिए था। यह ठीक है कि उनका हुक्म था कि जो तुमसे जंग करता है, अल्लाह के नाम पर तुम उसके साथ जंग करो, लेकिन जो तुमसे जंग नहीं करता, उसके मुल्क पर जमीन पर, इबादतगाह पर या जिस्म पर जबरदस्ती कब्जा मत करो।”  
(पेज 12–13)

*“Islam is an Arabic word, which is called ‘Masdar’ in Istlaah which is rendered in ‘Farmabardaari’ as ‘laying the neck’. God is one; he is omnipotent; the holy Quran is his gift; he has created the whole universe; Hazrat Muhammad Sahib was his Prophet; a man should follow the path of goodness. All these things are taught in Islam. . . . . One who believes in Islam and one who is its follower; will be considered to be the Muslim. . . . . The holy Quran is the name of that holy book which came to Prophet Muhammad from Khuda (God). The holy Quran came to Prophet Muhammad on several occasions over the period of 23 years. It has 113 ‘suras’ in all. There are 6666 ‘Ayats’. I am not in position to tell the number of ‘Ayats’ counseling on solution in legal matters. (Stated on his own – Mulla Ahmad Jivan has written ‘Tafsir’ (an explanation) on ‘Ayats’ containing rulings. It is*

*called 'Tafsirat-e-Ahmadiya'. This fellow was a teacher of Aurangzeb, but I am not in a position to tell how many 'Ayats' are written in it.) The holy Quran repeatedly ordains for what a man should do. There are many rulings forbidding certain things to be done, that is to say, they advise for certain things not to be done. The Adam who for the first time descended after the creation of the world, took Islam with him, but it is not still settled in which corner of the world he descended.*

*"Prophet Muhammad Sahib was born in Arab. Muhammad Sahib propagated Islam. Even before him there used to be Muslims, because the very first man of the world had come along with Islam.*

*Muhammad Sahib migrated from Mecca to Medina. In Mecca, he was pitted against idol worshipers and against those who believed in more than one God. The worship of idol was prevalent in several parts of Arab at that time. . . . . He was certainly engaged in war and battle; he conquered some hamlets as well, but his purpose was not to conquer regions or provinces. Rather, it was meant to pronounce the 'Kalma' of one God. It is true that his command was - 'Fight, in the name of God, against a person who fights with you, **but in case of one who does not fight with you, do not forcibly capture his country, land, worship place and person.**' (E.T.C)*

*"शिया और सुन्नी जमातें हजरत साहब के बहुत बाद बनी हैं। हजरत साहब के बाद पहले खलीफा हजरते अबूबकर सिद्दीकी हुए। उनके बाद हजरते उमर फारूक, तीसरे हजरते उसमान गनी। हजरत साहब ने अपनी हयात में किसी को खलीफा नामजद नहीं किया था। . . . . . हजरते अबूबकर रिश्ते में मोहम्मद साहब के ससुर लगते थे। . . . . .*

खलीफा का पद मुसलमानों में हजरत साहब की जानशीनी को जाकिर करता है, इसलिए यह दीनी और दुनियाई दोनों तरीके से उनका जॉनशन माना जाता है।” (पेज 15–16)

*“There came to be Shia and Sunni communities much after Prophet Muhammad. Khalifa Hazrat-e-Abubakar Siddiqui preceded Prophet Muhammad. After him came Hazrat-e-Umar Farooq and the third Hazrat Usman Gani. Hazrat Sahib had not nominated any one as Caliph in his Hayat. . . . . Hazrat Abu Bakr was father-in-law of Muhammad Sahib by relation. . . . . The office of Caliph depicts the succession of Hazrat Sahib. Hence, Caliph is taken to be his successor both worldly and religiously.” (E.T.C)*

‘ यह दुरुस्त है कि हजरत अबूबकर साहब हजरत मोहम्मद की बेगम आइशा के वालिद थे। . . . . हजरते उसमान, मोहम्मद साहब के दामाद थें हजरत मोहम्मद साहब की दो साहबजादियों की शादी एकेबाद दीगरे यानी पहली का इन्तमाल हाने के बाद दूसरी की, हजरत उसमान साहब से हुई थी।” (पेज 16–17)

*“It is true that Hazrat Abu Bakr was father of Ayesha, wife of Prophet Muhammad. . . . . Hazrat Usman was the son-in-law of Muhammad Sahib. The two daughters of Hazrat Muhammad Sahib were married to Hazrat Usman one after the other, that is, the second one was married after the death of the first one.” (E.T.C)*

“अबूबकर साहब तकरीबन तेरहवीं हिजरी के आसपास खलीफा बने। हजरते उसमान साहब का इन्तकाल चन्द बदमाशों के हाथ शहादत से हुआ था। . . . . उनके बाद हजरत अली के खलीफा बनने में भी कुछ मतभेद हुए थे।” (पेज 17)

*“Abu Bakr Sahib became Caliph in or around the 13<sup>th</sup> Hijri year. Hazrat Usman embraced martyrdom at the*

*hands of certain hooligans. . . . . After that some differences also cropped up over Hazrat Ali's becoming Caliph.”(E.T.C)*

“यह जंग 32 या 33 हिजरी साल के आसपास हुई हैं हजरत अली साहब का इन्तकाल भी चन्द्र बदमाशों द्वारा शहीद करने पर हुआ था। यह शहादत कूफा शहर की मस्जिद में हुई थी। उस वक्त हिजरी का 42 या 43 वां साल रहा होगा।” (पेज 18)

*“This battle took place in or around 32<sup>nd</sup> or 33<sup>rd</sup> Hijri year. Hazrat Ali Sahib had also to martyr himself at the hands of hooligans. This martyrdom took place at the mosque of Kufa city. At that time it would have been the 42<sup>nd</sup> or 43<sup>rd</sup> Hijri year.”(E.T.C)*

“कुल्फायेराशदीन चार हैं। इस शब्द का मतलब है—सब्बा खलीफा। हजरत अली साहब इन चार खलीफाओं में शामिल हैं, जो सच्चे माने जाते हैं।

बद्र एक मुकाम का नाम था। जंगे बद्र काफी मशहूर है। यह गालबन छः या सात हिजरी साल में हुई थी। यह लड़ाई पैगम्बर साहब के अनुयायियों और कबीला कुरैश के बीच में लड़ी गई थी।” (पेज 18)

*“Khulafa-e-Rashideen are four in number. This word means Sabba Khalifa. Hazrat Ali Sahib is among these four Caliphs, who are considered to be truthful.*

*‘Badra’ is the name of a place. The battle of Badra is quite famous. It had taken place perhaps in 6<sup>th</sup> or 7<sup>th</sup> Hijri year. This battle was fought between the followers of Prophet and the Quraysh tribe.” (E.T.C)*

“सभी शिया, यह नहीं मानते कि हजरत अली पैगम्बर साहब के सबसे पहले, सबसे चहेते और सबसे ज्यादा योग्य खलीफा थे। . . . . अली साहब के बाद 6 महीने तक इमामें हसन को खलीफा माना गया था।” (पेज 19)

*“All the Shias do not believe that Hazrat Ali was the foremost, most favourite and worthiest Caliph of Prophet*

*Muhammad. . . Imam-e-Hasan was regarded as Caliph up to six months after Ali Sahib.” (E.T.C)*

“हजरते माबिया के बाद उनकी जगह तख्त पर यजीद बैठा था। रवायत बयान की जाती है कि हसन साहब के पानी में किसी ने जहर मिला दिया, जिसे पीने के बाद आहिस्ता-आहिस्ता उनका इन्तकाल हो गया। इमामे हसन के छोटे भाई इमामे हुसैन खिलाफत के दावेदार बने थे। वह मदीना से मक्का गये और मक्का से कूफा की तरफ गये और यजीद से जंग की।

कर्बला की लड़ाई में 72-73 लोग शहीद हुए थे। . .छोटे साहबजादे हजरत अली असगर जरूर शहीद हुए थे उनकी बेगम और बहन को कैद कर लिया गया था। . .मोहर्रम पहले भी मनायी जाती थी वह पहले भी मुतबरिक थी। यह हादसा दसवीं मोहर्रम के रोज हुआ था इसलिए उसके बाद इसे और भी पुरजोश तरीके से मनाया जाने लगा। . . .मेरा कहना है कि शिया और सुन्नी दोनों हजरात मोहर्रम को मनाते हैं।” (पेज 20)

*“After Hazrat-e-Mabiya, Yazid sat on the throne in his place. It is said that somebody had poisoned the water offered to Hasan Sahib drinking which he passed away by and by. Imam-e-Hussain, younger brother of Imam-e-Hasan, had been a claimant to the office of Caliph. He had gone from Medina to Mecca and from Mecca to Kufa and was locked in battle with Yazid.*

*72-73 people had martyred in the battle of Karbala. . The younger son, Hazrat Ali Asgar, had certainly martyred and his wife and sister had been imprisoned. . . Muharram used to be celebrated even earlier and it was in existence earlier as well. This incident had taken place on the 10<sup>th</sup> day of Muharram. So, after that it came to be celebrated with much more fervour . . . . I have to say that both Shia and Sunni communities celebrate Muharram.” (E.T.C)*

“पैगम्बर साहब के कौल फेल और जो कुछ भी उनके सामने किया और उन्होंने मना नहीं फरमाया उसके मजमुएं का नाम हदीस है। ऐसे ही साहबा

के औला और फैल और तकरीर के मजमुआं का नाम हदीस है और कुछ लोगों ने ताबीरी के औल और फेल और तकरीर को भीर हदीस कहा है।

हदीस इस तौर पर हजरत पैगम्बर साहब की हयात में लिखी नहीं गयी थी। यह बाद में तहरीर हुयी हैं सुन्नत के मायने हैं तरीका। पैगम्बर साहब के छोड़े हुए जितने भी तरीके हैं वह सब सुन्नत हैं। हजरत साहब के किए हुए अमाल को फैली सुन्नत कहते हैं। जो उन्होंने फरमाया उसे कौली सुन्नत कहते हैं।" (पेज 22)

*"The actions of Prophet Muhammad as also the actions not forbidden by him when done in his presence, are called 'Hadis. The name of Hadis is given to such words, actions and sayings, and some persons have called the words, actions and sayings of 'Tabiri' Hadis.*

*'Hadis' was not, in this way, written in the life time of Prophet Muhammad. It came to be written afterwards. Sunnat means method. All the methods introduced by Prophet Muhammad are Sunnat. The actions done by Prophet are called 'Faily Sunnat' and whatever he decreed is called 'Kauli Sunnat'. (ETC)*

*"जो दूसरे लोगों ने हजरत साहब के सामने किया और उन्होंने उसे नामंजूर नहीं किया उसे तकरीरी सुन्नत कहते हैं। अगर कोई ऐसा सवाल हो जिसका जवाब कुरान शरीफ और हदीस में हमें न मिले तो उसकी तलाश इजमाए-उम्मत और कयाते मुजतहिद में की जाएगी। इजमा उसे कहते हैं जो पैगम्बर साहब के जमाने के बाद दीने-इस्लाम के बड़े जानकार लोग, जिस बात पर सहमत हो गए हो वह इजमा है। इजमा का फैसला एक जमाने तक महमूद नहीं रहता वह लगातार लागू रहेगा।" (पेज 23)*

*"Whatever others did in front of Prophet Muhammad and which did not attract disapproval from him, is called 'Takriri Sunnat'. If there is any question to which we do not come across any answer in the holy Quran and 'Hadis', we*

*will look for the answer in 'Izma-e-Ummat' and 'Kayat-e-Muzat-Hid'. The point on which distinguished scholars of Islam agree after the time of Prophet Muhammad is called 'Izma'. 'Izma' does not hold good just for a particular time; rather, it will continue to be consistently in force.'*  
(E.T.C)

*“इस्लामिक तौर और तरीकों की बुनियाद इन्हीं चार आधारों पर यानी कुरान शरीफ, हदीस, इजमा और क़यास पर आधारित है। यही शरीयत कहलाता है। शरीयत अरबिक भाषा का शब्द है और इस्लामिक कानून के मजमुए का नाम है। यह ठीक है कि शरीयत के मायने हैं वह रास्ता जिस पर चलना चाहिए। फिकह शरीयत की एक शाख है। फिकह भी एक अरबि शब्द है। फिकह का तरजुमा समझ है।” (पेज 23)*

*“Islamic ways and manners hinge on these very four bases, that is, the holy Quran, 'Hadis', 'Izma' and 'Kayas'. Only this is called Shariyat. Shariyat is a word of Arabic language and it is the name of Islamic law. It is true that Shariyat means a path which should be followed. 'Fiqh' is a branch. 'Fiqh' means 'understanding'. ”(E.T.C)*

*“मजहब का ताल्लुक खुदा की इबादत से भी है। मजहब को पेश करने वाली एक शख्सियत होती है जिसे पैगम्बर कहा जाता है और जब कभी उस मजहब का जिक्र होगा तो पैगम्बर का नाम सामने जरूर आयेगा। यह ठीक है कि अलग अलग वक्त पर दुनिया के अलग अलग हिस्सों में ऐसे बड़े बड़े लोग पैदा हुए जिन्होंने विगड़े हुए समाज की दशा को सुधारने के लिए सही रास्ता दिखलाया। यह जो बड़े बड़े लोग पैदा हुए इन्होंने अपने जन्म स्थान के आसपास के माहौल को तो देखा होगा लेकिन काम वह किया जिसका उन्हें खुदा की तरफ से फरमान था।*

*मो० हजरत साहब की पैदाईश मक्का में हुई थी। उन्होंने अपनी 40 साल की उम्र में मक्का में ही अपने पैगम्बर होने का एलान किया था।”*

(पेज 41)

*“Religion is also concerned with worship of God. There is a figure, which presents/introduces religion, who is called Prophet and whenever religion is referred, the name of Prophet also comes to light. It is true that such renowned persons were born in different parts of world from time to time, who showed the correct way to improve the condition of an out of order society. These renowned persons must have seen the atmosphere surrounding their birthplace, but they did what was the command of God.*

*Prophet Mohammad was born in Mecca. He declared himself to be Prophet in Mecca itself at the age of 40 years.” (E.T.C)*

*“यह ठीक है कि उन्होंने यह भी एलान किया था कि जो एक खुदा पर यकीन लायेगा और एक किताब यानी कुरान शरीफ पर यकीन लायेगा वह सच्चा मुसलमान कहलायेगा यह ठीक है कि उनके पहले इस तरह से कलमा पढ़कर बनने वाला कोई मुसलमान नहीं था। खुदा शब्द अरबी का नहीं है अल्लाह शब्द अरबी का है लेकिन यह कहना गलत होगा कि पैगम्बर साहब के नबी होने के ऐलान से पहले अल्लाह के शब्द का प्रयोग न होता हो। जिस वक्त हजूर का जन्म मक्का में हुआ उस वक्त वहां बहुत कम लोग पढ़े लिखे थे। छोटे छोटे कबीलों में लोग बढें हुए थे। उनकी आपस में लड़ाईयां होती थी। वह लोग बुतों की भी इबादत करते थे और अल्लाह का भी नाम लेते थे। . . .हजूर साहब को कुरान शरीफ का इलहाम एक नहीं बल्कि कई स्थानों पर हुआ। . . . कुरान शरीफ को एक किताब की तरतीब दूसरे कातिबों ने दी है। कुरान शरीफ को हजूर साहब ने अपनी कलमी नहीं लिखा। . . .लेकिन किसी दूसरे के मजहब में जबरदस्ती मदाखलत करने की इजाजत उन्होंने मुसलमानों को नहीं दी।” (पेज 42)*

*“It is true that he had also declared that one who shall believe in one God and one book i.e. the holy Quran, shall be called a true Muslim. It is true that prior to him none could become Muslim in this manner by reading*

*'Kalma'. The word 'Khuda' is not a Arabic word. The word 'Allah' is an Arabic word but it would be wrong to say that the word 'Allah' was not used prior to Mohammed Saheb being declared the prophet. At time of birth of Prophet Mohammad in Mecca, very few literate people existed over there. People lived in small tribes. They had mutual clashes. They also used to worship idols and take the name of 'Allah'. . . . . The holy Quran was revealed to Prophet Mohammad at not just one but many places. . . . . The holy Quran was given the shape of a book by other 'Qatibs' (scribe). The holy Quran was not penned down by Prophet Mohammad himself. . . . . However, he did not permit the Muslims to forcefully oppose any other religion." (E.T.C)*

*“फतेह मक्का से मेरा मतलब है कि हिजरी के आठवें साल में जब हजूर वापस मक्का आये तो बुतपरस्तों ने और उन लोगों ने जो उनकी मुखालफत किया करते थे अपने हथियार हजूर के कदमों में रख दिये, खाने-काबा से बुत उठवा लिये, उसे साफ सुथरा कर दिया और हजूर के अनुयायी बन गये। नमाज पढ़नी शुरू कर दी। इस काम में कोई तलवार नहीं चली और खानेकाबा में नमाज शुरू हो गयी। . . . . कुरान शरीफ में बुतपरस्ती के खिलाफ आयतें तो हैं ही।” (पेज 43)*

*“By 'Fateh Mecca' I mean that when Prophet Mohammad returned to Mecca in the 8<sup>th</sup> year of Hizri era, the idolaters and his opposers, surrendered their weapons in his feet, removed idols from 'Khan-e-kaba', cleaned it and became followers of Prophet Mohammad. (They) started offering namaz. No force was used in this and namaz started in 'Khan-e-kaba'. . . . . The holy Quran does contain 'Ayats' (a sentence of Quran) against idolatry.” (E.T.C)*

*“यह लड़ाईयों तकरीबन 8 हिजरी तक चली और उस वक्त तक*

तकरीबन सारा अरब ही मुसलमान बन चुका था।" (पेज 45)

*"These battles continued approximately till 8 Hizri era and by that time, almost the entire Arab had become Muslim." (E.T.C)*

"कुरान शरीफ 23 साल में मुखतलिफ मौकों पर उतरता रहा उसे उसी तरह से तरतीब दिया जाना जारी रहा यानी कातिबों द्वारा लिखा जाना जारी रहा और इस बीच में हजूर की लड़ाइयों भी जारी रही थीं। तकरीबन सारा अरब देश ही इस्लामिक बन गया था किसी दूसरे मजहब को मानने वाला अरब देश में काबिले जिक् तादाद में बाकी नहीं रहा था।" (पेज 46)

*"The holy Quran was revealed on different occasions over a period of 23 years. It was written in the same manner and in the same period, the battles of Prophet Mohammad also continued. Almost the entire Arab country had turned Islamic and the population of followers of other religions, became negligible in Arab." (E.T.C)*

"किताब "तफसीर जलालैन" दो आलमों ने मिलकर लिखी है। उनके नाम हैं मौलाना जलाउद्दीन सूयती और दूसरे हैं "मौलाना जलालुद्दीन महल्ली"। सूयती और महल्ली जगहों के नाम हैं जो समरकंद के आसपास थे। ये दोनों साहबान उन्हीं जगहों के रहने वाले थे। यह किताब अरबी जबान में लिखी गयी है।" (पेज 51)

*"The book 'Tafsir Jalalen' has been written together by two Alams. Their names are Maulana Jalaluddin Suyati and Maulana Jalaluddin Mahalli. 'Suyati' and 'Mahalli' are names of places around Samarkand. Both these gentlemen belonged to said places. This book has been written in Arabic." (E.T.C)*

"दूसरी किताब का नाम "मदारेकुत्तनजील यह किताब भी अरबी जबान में है इसके लेखक का नाम मुझे इस वक्त याद नहीं आ रहा।

किताब तफसीर बजाबी भी अरबिक में लिखी हुई है। . . . . .  
तफसीराते अहमदिया" भी अरबी जबान में है। इसे मुल्ला अहमद जीवन ने

लिखा है। . . . . .किताब "तफसीरे कबीर" के लिखने वाले इमाम फखरुद्दीनराजी हैं। यह भी अरबी जबान में है।" (पेज 52)

*"The other book titled 'Madarekuttanjil' is also in Arabic. Presently, I am unable to recollect the name of its author.*

*The book 'Tafsir Bajabi' is also in Arabic. . . 'Tafsirate Ahmadiya' is also in Arabic. It has been written by Mulla Ahmad Jeevan. . . .The author of 'Tafsire Kabir' is Imam Fakhruddinraji. It is also in Arabic."* (E.T.C)

*"तफसीरे कस्साक भी अरबी जबान में है।*

*ये जितनी भी ऊपर बतलायी गयी किताबें हैं इन सबको लिखने वाले इस्लाम के हामी थे।*

*किताब बुखारीशरीफ के लेखक इमाम मोहम्मद इस्माइल साहब है। ये हिजरी की दूसरी सदी में लिखी गयी है। उस वक्त तक कुरान शरीफ को मुकम्मल तौर पर तरतीब की जा चुकी थी। ये किताब भी अरबी जुबान में है। किताब मुस्लिम शरीफ भी अरबी भाषा में है इसके लेखक का नाम इमामे मुस्लिम है। यह किताब बुखारी शरीफ के कुछ दिनों बाद लिखी गयी थी। तिरमिजी शरीफ किताब भी अरबी भाषा में है इसके लेखक का नाम इमाम अबू ईसा है।" (पेज 53)*

*"Tafsire Kassak' is also in Arabic.*

*The authors of all the books mentioned above, were 'Hami' (Protector/Patron/Supporter) of Islam.*

*Imam Mohammed Ismail was the author of the book 'Bukharisharif'. It has been written second century of Hizri era. By that time, the holy Quran had been formally prepared. These books are also in Arabic. The book 'Muslim Sharif' is also in Arabic and its author is Imame Muslim. This book was written subsequent to 'Bukhari Sharif'. The book 'Tirmiji*

***Sharif' is also in Arabic and its author is Imam Abu Isa.***” (E.T.C)

“किताब अबुदाउद शरीफ भी अरबी भाषा में है इसके लेखक का नाम अबूदाउद है ये ऊपर वाली दोनों किताबों के कुछ बाद लिखी गयी है।

किताब इब्नेमाजा शरीफ भी अरबी में है इस किताब के लेखक के अपने नाम पर है और यह भी उसी जमाने में कुछ आगे पीछे लिखी गयी है।

यह ठीक है कि इन सब किताबों के लेखक इस्लामी देशों के रहने वाले थे।

फिकह की किताब हिदाया अरबी भाषा में लिखी गयी है लेकिन इसके तरजुमे बहुत सी भाषाओं में किये गये हैं। इसके लेखक का नाम बुरहानुद्दीन अबुल हसन अली है। किताब सरे उकाया भी अरबी जबान में है और इसके लेखक का नाम मुझे याद नहीं आ रहा। किताब मुनियातुल—मुसल्ली अरबी जबान में है इसके लेखक का नाम भी मुझे याद नहीं है। किताब फतावा हिन्दीया अरबी में है जिसे बहुत सारे उलमाओं ने मिलकर तैयार किया है। किताब फतहुलकदीर भी अरबी जबान में है इसके लेखक का नाम मुझे याद नहीं आ रहा। एक किताब है दुर्रे मुख्तार जो कि अरबी में है जिसे एक अल्लामा साहब ने लिखा है उनका नाम मुझे याद नहीं आ रहा है। किताब रददुल मुहतार भी अरबी में लिखी गयी है। इसके लेखक का नाम मुझे याद नहीं है।” (पेज 54)

*“The book ‘Abudawood Sharif’ is also in Arabic and Abudawood is its author. It was written after the aforesaid two books.*

*The book ‘Ibnemaza Sharif’ is also in Arabic, and it is in the name of its author and it has also been written around that period.*

*It is true that the authors of all these books, were residents of Islamic countries.*

*‘Hidaya’, the book of ‘Fiqh’ is written in Arabic but it has been translated into many other languages. Its author is Burhanuddin Abul Hasan Ali. The book ‘Sare*

*Ukaya' is also in Arabic, but I do not remember the name of its author. The book 'Fatawa Hindiya' is in Arabic and has been prepared collectively by many Ulemas. The book 'Fathulkadir' is also in Arabic, whose author's name I am unable to recollect. There is a book 'Durre Mukhtar' is in Arabic, which has been written by one Allama, whose name I am unable to recollect. The book 'Raddul Muhtar' is also in Arabic. I do not remember the name of its author.'”(E.T.C)*

“फतावा हिन्दीया आलमगीरी बहुत से उलेमाओं ने इकट्ठे होकर लिखी थी इनके सदर मौलाना निजामुद्दीन साहब थे जो कि हिन्दुस्तान के बाशिंदे थे।” (पेज 55)

*“'Fatawa Hindiya Alamgiri' was written collectively by many Ulemas (clerics in Islam). Their head was Maulana Nizamuddin, because he was a resident of India.'”(E.T.C)*

“इस्लाम में चांद की अहमियत है। चांद की अहमियत मुस्लिम कैलेण्डर के त्योहारों की तारीख जानने के लिए है न कि कोई सजावट करने के लिए।” (पेज 55)

*“Moon has importance in Islam. The importance of moon is for determining the dates of festivals in Muslims calender and is not for decoration purposes.” (E.T.C)*

“हजरत मो० साहब से पहले नबी ईसा आये जिन्हें अंग्रेज लोग ईसा मसीह कहते हैं। . . . हजरत ईसा से पहले जो रसूल आये उनकी मैं तरतीब नहीं बता सकता। लेकिन उनमें से बहुतों के नाम बता सकता हूँ और उन पर नाजिल हुई किताबों के नाम भी बता सकता हूँ। जैसे कि हजरत मूसा अल हिति सलाम, इन पर अल्लाह की किताब तौरत, हजरत दाउद अल सलाम, उन पर अल्लाह की किताब ज़बूर नाजिल हुई यह 4 बड़ी आसमानी किताबें हैं। और दूसरे रसूलों पर किताबें नाजिल नहीं हुई। . . . . बहुत से ऐसे नबी भी हुए जिन पर

अल्लाह ने कोई भी किताब छोटी या बड़ी नाजिल नहीं की। और कुछ ऐसे भी थे जिन पर छोटी किताब नाजिल की गयी। उन छोटी किताबों को शहीदा कहा जाता है।” (पेज 58–59)

**“Prophet Christ came before Prophet Mohammad, who is called Jesus Christ by the English people . . . I cannot tell the ‘Tarteeb’ (sequence) of the Prophets, who came prior to Jesus Christ. However, I can name many of them, as also the books revealed to them e.g. Allah’s book ‘Tauret’ on Hazrat Musa Al Hiti Salam, Allah’s book ‘Zabur’ on Hazrat Dawood Al Salam. These four books are major heavenly revelations. Books were not revealed to other Prophets. . . There have been many such Prophets, on whom Allah did not make any minor or major revelation, and there were few on whom Allah made minor revelations. Such minor revelations are called Shahida.” (E.T.C)**

“दीन-ए-इस्लाम में सबसे पहले ईमान लाने वाले शख्स के बारे में कुछ इख्तलाख है, लेकिन बाद में एक राय यही बनी कि बुजुर्गों में ऐसा पहला आदमी अबूबकर साहब हुए, औरतों में हजूर खुदैजा हुई और बच्चों में हजरत अली हुए। एक राय यह भी है कि सबसे पहला शख्स हजरत खुदैजा को माना जायेगा, क्योंकि हजूर ने पहली बही उन्हीं को सुनाई थी।

हजूर को काफी जंगे लड़नी पड़ी थीं, जिन जंगों में उन्होंने खुद शिरकत की, उसके बारे में एक रवायत यह है कि उन्होंने 19 लड़ाईयों में खुद हिस्सा लिया था, जबकि दूसरी रवायत यह है कि ऐसी लड़ाईयों की तादाद जिसमें उन्होंने खुद शिरकत की, 17 थी। इन लड़ाईयों का बुनियादी सबब तो यही था कि हजूर दीन-ए-इस्लाम की तबलीग करते थे और दूसरे लोग उनकी मुखालफत करते थे।” (पेज 65)

**“There are some ‘Ekhtlakh’ regarding the first persons to have faith in the religion of Islam. However, it was subsequently decided that the first amongst the elderly**

*people was Abu Baqr, Khudaija amongst women and Hazrat Ali amongst children. There is another view that Hazrat Khudaija would be considered to be the first person because the first 'Bahi' was read by Prophet Mohammad to him.*

*Prophet Mohammad had to contest many battles. As regards the battles participated by him, there is one line of thought giving the number of such battles to be 19, whereas another line of thought gives the said number to be 17. The basic cause of these battles was that Prophet Mohammad used to propagate the religion of Islam whereas others used to oppose the same.” (E.T.C)*

**“पहले पैगम्बर बैतुल मुकददस की तरफ रुख करके नमाज पढ़ते थे, फिर खुदा के हुक्म के मुताबिक खान-ए-काबा की तरफ मुँह करके नमाज पढ़ने लगे।**

*हजरत बेलाल के बारे में मैं जानता हूँ। हजूर ने मस्जिदे नवबी पर सबसे पहली अजान देने का रूतबा इनको बख्शा था, इसी तरह से खान-ए-काबा को अजान देने का पहला मौका भी इन्हीं को बख्शा गया था। पहले यह गुलाम थे, हब्शी था। हब्शी से मतलब इस बात का है कि वह हब्शा के रहने वाले थे।” (पेज 69)*

**“Originally Prophet Mohammad used to offer namaz facing sacred Baitul, and then on command of God, he started offering namaz facing 'Khan-e-Kaba'.**

*I know about Hazrat Bilal. Prophet Mohammad had given him the opportunity to give the first 'Ajaan' call from the Nabvi mosque. Similarly, the opportunity of giving the first 'Ajaan' call from 'Khan-e-Kaba', was also given to him. Earlier he was slave i.e. 'Habshi'. By 'Habshi', I mean he was resident of Habsha.” (E.T.C)*

**“तिरमिजी शरीफ हदीस की किताब है, जिसे इमाम अबू ईसा**

तिरमिजी ने लिखा है। मैंने उसे भी पढ़ा है।

उन दोनों किताबों में मस्जिद पर मीनार और गुम्बद न होने की बात नहीं लिखी गई। . . . मैंने जामे सहीलिल बुखारी नाम की किताब पढ़ी है। इस किताब को इस्लामी कानून के बारे में सारी दुनिया में मान्यता दी जाती है।” (पेज 92-93)

*“Tirmiji Sharif’ is a book of ‘Hadis’, which is written by Imam Abu Isa Tirmiji. I have read it as well.*

*The absence of minarets and domes has not been in both the said books. . . . I have read the book titled ‘Sahilil Bukhari’. This book is recognized all over the world as regards the Islamic law.” (E.T.C)*

3278. Regarding the structure and construction of a Mosque, he says:

“जबरदस्ती किसी की जमीन पर जो इमारत बनायी गयी वह मस्जिद ही नहीं होगी इसलिए उसका जायज या नाजायज होने का कोई सवाल ही नहीं है। किसी के भी इबादतखाने को तोड़ना इस्लाम में मना है इसलिए उसे तोड़कर मस्जिद बनाने का सवाल ही पैदा नहीं होता। अगर किसी गिरे हुए मंदिर के मलबे को मालिक लोग बेंच दें तो उसे खरीदकर मस्जिद बनाने की कोई मनाही नहीं है। यह दूसरी बात है कि वह इस मलबे को जबरदस्ती हथिया कर मस्जिद नहीं बना सकते।” (पेज 24)

*“A building built on somebody’s land by force will not be a mosque. So, there is no question of its being legitimate or illegitimate. Demolishing any place of worship is forbidden in Islam. So, there is no question of breaking the same and building a mosque instead. If the debris of any fallen temple is sold by its owner, then there is no prohibition on building a mosque by purchasing such materials. It is another thing that they cannot build a*

*mosque by forcibly grabbing this debris.” (E.T.C)*

“मस्जिद साफ-सुथरी और पाक जगह पर बनायी जाती है। मस्जिद उस जगह का नाम है जहां अल्लाह की इबादत के लिए जमीन को वक्फ किया गया हो। चाहे वहां पर इमारत बनायी जाए या न बनायी जाए। वक्फ करने का काम उस जमीन का मालिक ही कर सकता है। हदीस में मस्जिद की शकल और सूरत के बारे में जिक्र आया है। हदीस की मशहूर किताब-मिशकात शरीफ है। एक हदीस तो यह है कि अपनी मस्जिद को चाहे बगैर मीनार के बनाओ मुण्डी बनाओ और दूसरी हदीस में सादगी रखने का भी हुक्म दिया गया है। यह किताब मिशकात शरीफ अरबी जबान में है। इसका उर्दू में भी कई लोगों ने तरजुमा किया है।” (पेज 25)

*“A mosque is built at a tidy and holy place. Mosque is the name of a place where land is given in ‘Waqf’ for the worship of Allah, irrespective of the fact whether a structure is raised or not there. **Only the owner of the land can give it in ‘Waqf’.** ‘Hadis’ speaks of the face and shape of the mosque. A famous book on ‘Hadis’ is ‘Mishkat Sahrif’. There is also a ‘Hadis’ to construct a mosque even without a minaret or in a bare shape. And the other ‘Hadis’ has ordained simplicity to be maintained. This book ‘Mishkat Sharif’ is in Arabic. Many people has rendered it in Urdu too.” (E.T.C)*

“कुरान शरीफ में मस्जिद के शकलों सूरत का जब जिक्र ही नहीं है तो यह सवाल ही पैदा नहीं होता कि उसके मुताबिक मीनारें बनायी जाएं या न बनायी जाएं मीनार बनाने का हुक्म कहीं किसी किताब में नहीं मिलता।” (पेज 25)

*“When there is no mention of size and shape of mosque in the holy Quran, there is no question of minarets being built or not being built in accordance with it. There is no command in any book for building minarets.” (E.T.C)*

“किसी भी किताब में गुम्बद के बनाए जाने या न बनाए जाने का भी हुक्म नहीं मिलता। हदीस में ऐसा हुक्म नहीं है कि मस्जिद के लिए एक दीवार ही काफी है। . . बिना किसी तामीर के भी मस्जिद बन सकती है।” (पेज 26)

“No book decrees for dome to be built or not to be built. There is no decree in ‘Hadis’ which says that a wall alone is sufficient for a mosque. . . .There may be a mosque even without any construction.” (E.T.C)

“मस्जिद की हिफाजत के लिए अगर उसे बन्द करके कभी ताला लगाया जाये, तो कोई हर्ज नहीं है, . . . हर मस्जिद के लिए किसी मुतवल्ली का होना जरूरी नहीं है। मुतवल्ली के जिम्मे कोई मजहबी फरायज नहीं होते। उसका काम इन्तजाम देखने का है। इमाम का पद एक धार्मिक पद है। वह नमाज पढ़ाने का मुखिया होता है, तमाम मजहबी काम उसके जिम्मे नहीं होते। . . .मस्जिद में इमाम की नियुक्ति मुतवल्ली करता है। . . .कुछ मस्जिदों में बकायतदा बजाडता मोअज्जिम होते हैं और कुछ मस्जिदों में कोई भी नमाजी आन देने का काम कर देता है। मोअज्जिम की नियुक्ति भी मुतवल्ली करता है।” (पेज 27)

“If a mosque is ever closed and locked for its safety, that is not objectionable. . . .Every mosque needs to have a Mutvalli. Mutvalli is not assigned with any religious functions. His job is to look after its management. The office of Imam is a religious post. He is the head pronouncing namaz. He is not assigned with many religious functions. . . . Mutvalli appoints Imam at a mosque. . . . Some mosques have Muazzins in a due process, and in certain mosques, any namazist performs the job of giving ‘Ajaan’(Ayaan) call.” (E.T.C)

“मस्जिद की सफाई करना, सफे बिछाना या वजू के लिए पानी का इन्तजाम करना मोअज्जिन के फरायज में शामिल नहीं है, उसका काम अजान देने का होता है” चाहे इमाम हो, चाहे मोअज्जिन हो या कोई दूसरा आदमी हो, जो एक ही जगह

पर काफी अर्से तक रहेगा, उसे उस जगह पर बनी हुई इमारत, उसकी बनावट, उसकी छत और दीवारों की सजावट इन सब चीजों की जानकारी वक्त के साथ अपने आप हो जायेगी। अगर किसी इमाम को इस बात की जानकारी हो कि किसी इमारत में पशु पक्षियों के चित्र या मूर्तियाँ बनी हुई हों, किसी मनुष्य की मूर्ति बनी हुई हो या किसी स्त्री की सीधी या टेढ़ी मूर्ति या चित्रण हो, तो नमाज पढ़ाने से पहले वह उन्हें हटाने की कोशिश करेगा, लेकिन अगर वह ऐसा नहीं करता है या कर पाता है, तो भी नमाज तो हो ही जायेगी। ऐसी नमाज की नवयत और सबाब के बारे में मैं पहले ही कह चुका हूँ कि वह कुछ हालात में मकरूह हो जायेगी और कुछ में मकरूह भी नहीं होगी। **अगर इमाम इस किस्म के चित्र और आकृतियों को हटाने की कोशिश नहीं करता, तो यह उसका जुर्म है।**

अगर किसी मस्जिद की इमारत में बीच में कोई ऐसा पार्टिशन डाल दिया जाये, जो जंगले की दीवार टाइप का हो और जिससे वह दोनों हिस्से उस पार्टिशन के बावजूद भी आमने सामने नजर आते हों, तो भी नमाज पढ़ी जा सकती है, ऐसा पार्टिशन के एक तरफ अगर मूर्ति-पूजा हो तो भी दूसरी तरफ नमाज पढ़ी जा सकती है, लेकिन इस सूरत में इमाम का यह फर्ज होगा कि वह वहाँ से उन मूर्तियों को हटवाने की कोशिश करे।”

(पेज 28)

**“Cleaning of the mosque, laying mattresses or arranging water for ‘Vaju’ is not included in the duties of Muazzin. It is his job to give ‘Ajaan’(Ayaan) call. With the passage of time, a person who stays at one and the same place for quite sometime – whether he is an Imam or a Muazzin or any other person – will naturally come to know all about the structure built there and about its construction, ceiling and wall decorations. If an Imam has the knowledge that pictures of animals and birds, or idols, or statues of human beings, or straight or crooked images or representations of any women are engraved in any structure , he will try to remove such engraving before the**

*recital of namaz. But if he does not do so even then the namaz will get offered. I have already spoken about the status and efficacy of such namaz. It will be Mawrooh in some circumstances and it will not be so in some circumstances. **If the Imam does not try to remove this types of pictures and shapes, it will be a crime on his part.***

*If any partition, which may be in the shape of grill wall and which may even allow both the portions to be seen face to face even after such partition, is made in the middle of the structure of any mosque, even then there may be idol worship on one side of such partition and namaz may be offered on its other side. But in this circumstance, it will be the duty of Imam to try to get those idols removed from there.” (E.T.C)*

*“मस्जिद कब्रिस्तान में भी बनाई जा सकती है, बशर्त कि वह जगह, जहाँ मस्जिद बनाई जा रही हो, ऐसी हो, जिसमें किसी की कब्र न पड़ती हो। इस तरह की मस्जिद तो हमारे मेंहदावल में ही है, जो कब्रिस्तान के बीच में बनी हुई है। कुछ लोग कब्रिस्तान की हिफाजत के लिए और इन्तजाम के लिए मुलाजिम रख लेते हैं, ऐसे मुलाजिमीन को तकियेदार कहा जाता है।” (पेज 34)*

***“A mosque may be built even at a graveyard, provided that there lies no grave at the place where such mosque is being built. This type of mosque is certainly situated at our place ‘Mehdawal’ and it is built in the centre of the graveyard. Some people engage employees for safety and management of graveyard; such employees are called ‘Takiyedaar’.”(E.T.C)***

*“लेकिन यह जरूरी नहीं है कि हर कब्रिस्तान के लिए तकियेदार हों।*

खानवाह उस जगह को कहते हैं, जहाँ कोई बड़ी मजहबी शक्सियत बैठकर, रहकर इबादत, रियाजत करती है और अपने मुरीदों को दीनी मजहबी बातें बताती है, उस जगह का नाम खानकाह है। . . . खानकाह के बनावट का कोई विशेष रूप नियमित नहीं है। खानकाह के लिए दरगाह का होना कोई जरूरी नहीं है। दरगाह में सज्जादा नसीन होते हैं। सज्जादा नसीन दो शब्दों का जोड़ है यानी कि 'सज्जादा जमा' नशीन' इसका अर्थ है जगह पर बैठने वाला। खानकाह पर भी सज्जादा नशीन होता है। सज्जाद के अर्थ हैं—बहुत ज्यादा सजदा करने वाला। सज्जादा के मायने हैं—बैठने वाली जगह। सज्जाद और सज्जादा दो मुख्तलिफ शब्द हैं। सज्जाद के मायने चादर या दरी नहीं है।" (पेज 35)

*"But it is not necessary for every graveyard to have a 'Takiyedaar'*

*The name of 'Khankah' is given to a place where any distinguished religious person seats himself, performs worship and tells his followers about religious matters. That place is called 'Khankah'. No particular shape is fixed for 'Khankah'. It is not necessary for any 'Khankah' to have a 'Dargah'. There are 'Sajjada Naseens' in a 'Dargah'. The term 'Sajjada Naseen' is coined by putting two words together. That is to say, 'Sajjada Jama Naseen' means 'one who sits at a place'. A Khankah also has a 'Sajjada Naseen'. 'Sajjad' means 'one who does Sajda a great deal'. 'Sajjada' means 'a sitting place'. 'Sajjad' and 'Sajjada' are two different words. 'Sajjad' does not mean 'Chadar'(sheet) or 'Dari'(mattress)."* (E.T.C)

"मैंने अपने बयान में जहाँ मन्दिर की जगह मस्जिद बनाये जाने की कही है, वह सीधी सी बात यह है कि अगर मन्दिर के गिरने के बाद साफ जमीन की मल्लिक्यत पर कोई तनाजा न हो और मालिक अपनी मर्जी से उस जमीन को दे दे, तो उस पर मस्जिद बन सकती है। मैंने यह बात महज अपनी राय से नहीं की है, बल्कि शरियत के हिसाब से की है और जैसा किताबों में लिखा गया है, उसको

मददेनजर रखते हुए भी है। यह बात शरियत की बड़ी किताबों में लिखी है, जैसे कि फतवाये-आलमगीरी। . . .यह बात उसके चेप्टर “बाबुल मसाजिद” में लिखी हुई है।” (पेज 36)

*“My statement about building a mosque at the site of the temple, basically means that if there is no dispute on the ownership of the land vacant after demolition of temple and if its owner donates the land out of his free will, then mosque can be built over there. I have not stated this only on basis of my views and instead it is in accordance with ‘Shariyat’ (the body of doctrines that regulate the lives of those who profess Islam) and the books. It is written in authentic books of ‘Shariyat’ such as ‘Fatwaye Alamgiri’. .This fact is contained in its chapter ‘Babul Masajid’.”(E.T.C)*

“इसी तरह से शरियत में यह भी लिखा हुआ है कि अगर मस्जिद की दीवारों या खम्बों पर किसी जानदार चीज की तस्वीरें या मूर्तियां बनी हुई हो, तो वहाँ चन्द सूरतों में की गई नमाज मकरूह होगी। यह फिकह की “हिदाया” में लिखा हुआ है। यह किताब भी मैं साथ लेकर नहीं आया, अगर हुक्म हो तो ला सकता हूँ। यह हिदाया अव्वलेन में लिखा है। मैंने यह बयान किया है कि अगर मस्जिद के किसी हिस्से में मूर्तियाँ रखी हुई हैं, तो भी नमाज जायज होगी। इसके साथ मैंने और भी जुमले कहे थे। यह भी बात ऊपर वाली किताब हिदाया में आई है। यह बात भी अव्वलैन नामक चैप्टर में है। यह बात फिकह की सभी मशहूर किताबों में मिल सकती है। दूसरी किताबें हैं— आलमगीरी, फतावा काजी खाँ, दुर्रे मुख्तार, रददुल मोहतार वगैरह। अगर किसी मस्जिद में कई वर्षों तक चाहे वह सैकड़ों या हजारों में क्यों न हो, नमाज नहीं पढ़ी जाये, तो भी कोई फर्क नहीं पड़ता, वह मस्जिद बरकरार रहेगी। अगर ऐसी मस्जिद पर हिन्दुओं का कब्जा रहा हो या वहाँ सैकड़ों वर्षों तक उनकी पूजा-पाठ भी होती रही हो, उसे बावजूद भी वह मस्जिद बरकरार रहेगी। (अजखुद कहा कि

खानाये-काबा के गिर्दागिर्द बहुत से बुत बड़े जमाने तक रखे रहे, मगर उसके मस्जिद होने में कोई फर्क नहीं पड़ा।” (पेज 37)

“Similarly it is mentioned in the ‘Shariyat’ that if picture or idol of any living being exists over the walls or pillars of mosque, then the namaz offered there would be ‘Makruh’ (undesirable) under certain situations. **It is so mentioned in the ‘Hidaya’ of ‘Fiqh’.** I have not brought along even this book, but if directed, I can bring it. **It is mentioned in ‘Hidaya Awwalen’.** I have stated that even if idols have been kept in some part of a mosque, the namaz offered there would be proper. I had said many other things along with it. **This fact is also mentioned in the aforesaid ‘Hidaya’ book. This fact is also contained in the chapter titled ‘Awwalen’.** This fact can also be found in all famous books of ‘Fiqh’. The other books are- Alamgiri, Fatwa Kazi Khan, Durre Mukhtar, Raddul Mohtar etc. Even if namaz is not offered in any mosque for years, may be hundreds or thousands, it shall have no effect and it would remain a mosque. Even if the Hindus had been in possession of such mosque and had been offering their prayer-worship over there for hundreds of years, then also it would remain a mosque. (Stated on his own that many big idols were kept of very long period around the Khane-kaba, but it had no effect on its status of mosque).” (E.T.C)

“हजरत मो० साहब ने मस्जिद तामीर करवाई थी। मक्का से जब वह मदीना तशरीफ ले गये तो वहां उन्होंने एक मस्जिद बनवाई थी जो मस्जिद कबा के नाम से मशहूर है। फिर शहर मदीना में उन्होंने एक बड़ी मस्जिद तामीर कराई जो आज भी नबवी

मस्जिद के नाम से मशहूर है। इन मस्जिदों में दीवारों बनाई गयी और छत के लिए खजूर की पत्तियों और डालियों का इस्तेमाल किया गया। वहां पर गुम्बद बनने का सवाल ही पैदा नहीं होता था क्योंकि छते खजूर की पत्तियों और डालियों की थी। इनमें मीनारे भी नहीं बनवाई गयीं। बहुत से कैलेण्डर हैं जिनमें इन दोनों मस्जिदों की तस्वीरें छपती रहती है। लेकिन यह तस्वीरें मौजूदा तामीरात की है, न कि शुरू में बनाई गयी मस्जिदों की।” (पेज 56)

*“Prophet Mohammad had built a mosque. When he went to Medina from Mecca, he built a mosque over there which is famous as Kaba mosque. Thereafter, he built a big mosque in the city of Medina, which is still famous as Nabvi mosque. Walls were built in these mosques and palm leaves & branches were used for roof. The issue of construction of domes did not arise over there because the roof were made up of palm leaves & branches. Minarets were also not built in them. There are many calenders, which publish the photographs of these two mosques. However, these photographs are of the existing constructions, and not of the mosques built originally.” (E.T.C)*

“मैंने मस्जिदों की तर्ज तामीर की बाबत जो बयान दिया है, वह महज लोगों का सुनी-सुनाई बातों पर नहीं है, बल्कि मैं ने ऐसा किताबों में पढ़ा है। मैंने यह किताबों में पढ़ा है, सुना नहीं है। फिकेह की तमाम मशहूर किताबों में यह लिखा हुआ है कि मस्जिद कब्रिस्तान में भी बनाई जा सकती है। इस वक्त जहाँ तक मेरी याद जाती है, यह बात “हिदाया” में भी लिखी हुई है। इस किताब को बुरहानुद्दीन अबुल हसन अली ने लिखा है। यह ताशकन्द के इलाके के रहने वाले थे। इसी किताब में उन्होंने यह भी लिखा है कि जहाँ पर बुत रखे हुए हों, वहाँ पर भी नमाज पढ़ी जा सकती है। उस किताब में यह भी लिखा हुआ है कि जहाँ पर गैरमुस्लिम लोग हों और अपनी पूजा-पाठ करते हों, वहाँ पर भी नमाज पढ़ी जा सकती है। यह किताब हिजरी की पाँचवी सदी में लिखी

गयी है।" (पेज 62)

*"My statement regarding the manner of construction of mosques, is not merely based on hearsay and instead I have read so in books. I have read it in books and not heard the same. In various famous books of 'Fiqh' (Islamic jurisprudence) it is mentioned that mosque can be built even in graveyards. **To the best of my present memory, this fact is mentioned in 'Hidaya' as well.** This book has been written by Burhanuddin Abul Hasan Ali. He was a resident of Tashkand. In this very book he has also written that namaz can be offered even at places where idols have been kept. It has also been written in said book that namaz can be offered even at places where non-Muslims are present and perform their prayer-worship. This book has been written in fifth century of the Hizri era."* (E.T.C)

*"मस्जिद में मीनार बनाने की मनाही है, जैसा कि मैं पहले बयान कर चुका हूँ। लेकिन वह मनाही सख्ती वाली नहीं है, हल्की-फल्की है, जिसका मतलब है कि मीनार को बनाना पसन्द नहीं किया गया है यह बात मैंने हदीस शरीफ में पढ़ी है। यह रवायत मशहूर किताब "बैहाकी" में दर्ज है। इस बाबत हदीस शरीफ में यह हज़ूर पैगम्बर साहब का ही कौल है। कौली हदीस और कौली सुन्नत एक ही चीज है और यह बात मीनारों वाली इस दर्जे में आती है।" (पेज 63)*

*"As already stated by me, building of minarets is prohibited in mosques. However, that restriction is not strict and instead is casual, which means that construction of minarets has not been appreciated. I have read this in 'Hadis Sharif'. This practice is contained in the famous book 'Baihaki'. The words of Prophet Mohammad in this behalf, are contained in 'Hadis Sharif'. 'Kauli Hadis' and 'Kauli Sunnat' are same and this fact of minarets, falls in*

*this category.” (E.T.C)*

“मस्जिद बनाने के लिए जमीन को सिर्फ का मिल मालिक यानि जो मुक्कमल तौर पर उस जमीन का मालिक हो अपनी मर्जी से छोड़ेगा तो मस्जिद बनेगी। वह उस जमीन को वक्फ करेगा और वक्फ अपनी मर्जी से होता है।” (पेज 105)

***“A mosque can be built over a land only when its legal owner voluntarily donates the land for the same. He would execute Waqf of that land, and the Waqf is executed voluntarily.” (E.T.C)***

“किसी मस्जिद के लिए जमीन को वक्फ करने का सीधा तरीका है कि उसका मालिक उसे वक्फ कहकर छोड़ दे।” (पेज 106)

***“The simple manner of executing Waqf of land for any mosque, is that its owner leaves it by saying Waqf.” (E.T.C)***

“जिस चीज को भी वक्फ किया जाये, वाकिफ उसका पूरा का मिल मालिक होना चाहिए और वक्फ उसकी पूरी मर्जी से होना चाहिए। वक्फ चाहे जबान से इकरार करके करे और चाहे दिल से इकरार करके करे, वही काफी है। . . पहला मुतवल्ली वाकिफ ही होगा, फिर वह अपनी मर्जी से जिसे चाहे मुतवल्ली बना दे। . . मैंने किसी तारीख की किताब में ऐसा नहीं पढ़ा कि विवादित भवन के बाहरी हिस्से में कोई चबूतरा रहा हो। इस तरह की बात मेरे जातीय इल्म में भी नहीं है। मुझे मालूम नहीं कि ऐसे किसी चबूतरे पर मूर्ति स्थापित करके हिन्दू लोग पूजा करते रहे हों।” (पेज 112)

***“Whatever is given in Waqf, must be wholly owned by its owner and the Waqf must be executed voluntarily. The execution of Waqf is good enough, whether executed orally or in writing. . . .The first Mutwalli is the Waqif (executor of Waqf) and then subsequently he may appoint anyone on his will. . . . I have not so read in any history book that there was any platform in outer part of the disputed structure. Such fact is not within my personal knowledge as well. I do not know that Hindus installed and worshiped***

*idols over any such platform.” (E.T.C)*

“किसी मंदिर को तोड़ने की इस्लाम में इजाजत नहीं है। हम किसी मंदिर को तोड़कर मस्जिद नहीं बनायेंगे। अगर मंदिर में मूर्ति स्थापित हो तो मूर्ति को भी नहीं तोड़ेंगे। उस मंदिर को या मूर्ति को तोड़कर वहां मस्जिद बनाने का सवाल ही पैदा नहीं होता। . . मुझे मालूम नहीं कि जिस जगह पर मुतदाविया इमारत बनी हुई थी वह नजूल सरकार थी या नहीं। . . . मैं 1962 में अपनी तालीम पूरी करने के बाद ही पढ़ाने लगा था और 1976 में सदर मुदरिस (प्रधानाचार्य – प्रिन्सिपल) लग गया था।” (पेज 115)

**“Islam does not permit the demolition of any temple. We would not demolish any temple and build a mosque. If idols have been installed in the temple, then would not damage the idols as well. The issue of building a mosque over there after demolishing that temple or idol, does not arise. . . . I do not know whether the place where the disputed structure stood, was public Nazul or not. . . . I started teaching in 1962 just after completing my education and became the Principal in 1976.” (E.T.C)**

**3279. PW 11, Mohd. Burhanuddin** has also towed the same line in his cross-examination. He has said:

“मुस्लिम कानून के चार उसूल हैं, जिन्हें अंग्रेजी बोलने वाले सोर्स कह सकते हैं। उनके नाम हैं— कुराने मजीद, सुन्ना (हदीस), इजमा, कयास। शरियत का मतलब है— वह कानून जो उल्लाह ने अपने बन्दों के लिए दिया है।” (पेज 3-4)

**“There are four principles of Muslim law, which can be termed as ‘source’ by English speaking people. They are- holy Quran, ‘Sunna’ (Hadis), ‘Ijma’, ‘Kayas’. ‘Shariyat’ means the law laid down by ‘Allah’ for his fellows.” (E.T.C)**

“यह ठीक है कि ऐसी कोई तफशील कुरान शरीफ में भी नहीं है कि मस्जिद की क्या शकल व सूरत हो या वहाँ पर पशु-पक्षी, देवी-देवता या

आदमी व औरत के शक्लों के बनने पर क्या होगा या गिरी हुई मस्जिद भी मस्जिद मानी जायेगी या उसके चारो तरफ किसी इबादतगाह के होने का क्या असर होगा वगैरह-वगैरह।” (पेज 4)

*“It is true that the holy Quran does not contain any description either regarding the form & shape of a mosque, or as to what would happen in case of depiction of animals-birds, Gods-Goddesses or men & women faces over there, or will a collapsed mosque also would be considered a mosque, or as to what would be the effect of presence of any other worship place around it, etc.” (E.T.C)*

“मस्जिद का मतलब है कि नमाज पढ़ने की जगह यानी सजदे की जगह। नमाज या सजदा हर पाक जगह पर अदा किया जा सकता है। इस मायने में मस्जिद के लिए किसी खास जगह की जरूरत नहीं है। मस्जिद अल्लाह के लिए बनाई जाती है, ताकि उसका नाम लिया जा सके। मैं यह बात हदीस की किताबों के मुताबिक बता रहा हूँ और कुरा शरीफ में भी यही कहा गया है। . . . . मस्जिद बनाने के लिए यह जरूरी नहीं कि वहाँ पर मुसलमानों की आबदी हो। मस्जिद मुसाफिरों के लिए भी बनाई जाती है। मुतवल्ली का ताल्लुक वक्फ से है, मस्जिद से नहीं, इसलिए जरूरी नहीं कि हर मस्जिद का मुतवल्ली हो। . . . . शरियत के मुताबिक मुतवल्ली उसी वक्फ का होगा जो अल्लाह के लिए किया गया है। जो जायदाद अल्लाह के लिए वक्फ की गई है, उसकी देखभाल करना मुतवल्ली का काम है। उस वक्फ से ताल्लुक रखने वाला जो भी काम है, चाहे वह दीनी काम है, चाहे इन्तजामिया काम है, उसको निभाना मुतवल्ली का काम है।” (पेज 4-5)

*“Mosque implies the place of offering namaz i.e. the place of ‘Sajda’ (bowing down in reverence). Namaz or ‘Sajda’ may be offered at all holy places. As per this meaning, no particular place is required for a mosque. A mosque is built for Allah, so that he can be remembered. I am stating this fact in accordance with the books of ‘Hadis’, and similar versions are found in holy Quran as*

*well. . . . Existence of Muslim populace is not essential for building a mosque at that place. Mosque is built for travelers as well. A 'Mutwalli' is related to Waqf and not mosque, and as such it is not necessary that there is a 'Mutwalli' of every mosque. . . . According to 'Shariyat' (the body of doctrines that regulate the lives of those who profess Islam), a 'Mutwalli' shall exist in case of only such Waqf, which is executed in the name of Allah. It is the duty of the 'Mutwalli' to look after the property, whose Waqf has been executed in the name of Allah. It is the duty of the 'Mutwalli' to perform all the duties related to Waqf, whether religious or managerial." (E.T.C)*

“अजान सुनने के बाद ही नमाज होती है, लेकिन अगर कोई मशवाता हालात हों तो इमाम साहब इस बात की तस्दीक कर लेंगे कि अजान दी गई है या नहीं और फिर नमाज पढ़ायेंगे। . . . जुम्मे की नमाज के लिए भी यह लाजिम नहीं कि अजान हो। यह दूसरी बात है कि उसके लिए ताकीद दूसरी नमाजों से ज्यादा है। . . . अजान के बगैर भी नमाज हो सकती है, यह फिकेह की किताबों में लिखा हुआ है।

शरियत के मजमुए का नाम फिकेह है। डिक्शनरी के हिसाब से फिकेह का मतलब है “बुद्धि”, “इण्टेलीजेन्स” और इस्तलाही (प्रेक्टिकल तौर) तौर से इसका मतलब है— कुरान, हदीस, इजमा, कयास से जो मसायल निकले हैं, उन्हें शरियत कहते हैं। . . . . शरियत में नमाज से पहले अजान का पढ़ना सुन्नत है।” (पेज 6)

“*Namaz is offered only after hearing the 'Ajaan' call, but in case of any 'Mashwata' (doubtful) circumstance, the Imam shall verify whether the 'Ajaan' call has been given or not, and thereafter shall administer the namaz . . . . It is not 'lajim' (necessary) to give 'Ajaan' call for the namaz of 'Jumma'. It is different that there is more 'Taqid' for it in comparison to other namaz. . . . It is mentioned in the*

*books of 'Fiqh' (Islamic jurisprudence) that namaz can be offered even in absence of 'Ajaan' call.*

*'Fiqh' is the summary of 'Shariyat'. The dictionary meaning of 'Fiqh' is 'wisdom', 'intelligence' and practically 'Shariyat' means the 'Masail' (problem/topic/issue) of Quran, Hadis, Ijma, Kayas. . . . Giving of 'Ajaan' call before namaz, is Sunnat in 'Shariyat'." (E.T.C)*

“फिकेह की बहुत अहम किताबें कई हैं। . . मेरे हिसाब से बहुत अहम किताबों में – रद्दुलमुख्तार मशहूरे शामी के नाम से मशहूर है। इसके लेखक का नाम—मोहम्मद अमीन इबने आबीदीन शामी है। . . शरियत और फिकेह में कोई बुनियादी फर्क नहीं है। फिकेह में शरियत को तरतीब दी गई है। शरियत को पढ़कर ही और इस पर गौर करके फिकेह में तरतीब दी गई है। हिदाया में मस्जिद की बाबत काफी कुछ कहा गया है। लेकिन उसमें मस्जिद की शकल की बाबत कोई बुनियादी हिदायत नहीं है। . . यह ठीक है कि किसी गैर की जमीन पर जबरदस्ती मस्जिद बनाने की मुमानियत भी है। अगर किसी दूसरे की जमीन साबित हो तो उसके मालिक की मर्जी के बगैर वहाँ पर मस्जिद कायम नहीं होगी। . . अगर गैर मुसलम की या चाहे मुस्लिम की भी अपने कोई जायदाद हो तो उसे किसी भी सूरत में तोड़कर या तरमीम करके वहाँ पर जबरदस्ती मस्जिद नहीं बनाई जा सकती। अगर ऐसा साबित हो जाता है तो वह मस्जिद जायज नहीं मानी जायेगी। यह बातें जो मैं बतला रहा हूँ, यह फिकेह की है और ऐसा हिदाया में पाया जाता है और भी कई किताबों में पाया जाता है। ऐसा फतावा आलमगीरी में भी पाया जाता है फतावा हिन्दीया और आलमगीरी एक ही किताब के नाम हैं। . . कम से कम 10–12 उलेमाओं ने औरंगजेब की रहनुमाई में यह किताब लिखी हैं। जिन बातों का मैंने जिक्र किया है, यह चीजें भी उस किताब में आई हैं।” (पेज 7–8)

*“There are many important books of 'Fiqh' (Islamic jurisprudence). . . . According to me, out of the very important books 'Raddulmukhtar' is famous as 'Mashhoore Shami'. Its writer is Mohammed Amin Ibne Abidin Shami. . . . There is no fundamental difference between*

*'Shariyat' and 'Fiqh'. 'Shariyat' has been given 'Tartib' (sequence/arrangement) in 'Fiqh'. After reading the 'Shariyat' and giving it due thought, has it been given 'Tartib' in 'Fiqh'. The 'Hidaya' discuss mosques in detail, but it does not contain any fundamental instruction regarding the form of a mosque. . . . . It is true that there is a restriction on forcefully building a mosque over someone else's land. If the ownership of someone is proved over a land, then a mosque would not be built over there in absence of the consent of owner. . . .If any property belongs to a non-Muslim or even a Muslim, then a mosque cannot be forcibly built over there under any circumstance by demolishing the same. If it is so proved, then the mosque would not be considered legal/proper. The facts being stated by me, are of 'Fiqh' and are found in 'Hidaya' as well as in many other books. It is so found in 'Fatwa Alamgiri' as well. 'Fatwa Hindiya' and 'Alamgiri' are the names of the same book. . . . .This book has been written by at least 10-12 Ulemas under the patronage of Aurangzeb. The facts stated by me, are also contained in that book." (E.T.C)*

“सुन्ना और हदीस तकरीबन एक ही चीज हैं। हजरत मोहम्मद साहब ने जो काम किये या जो उन्होंने बाते फरमाई या जो बातें उन्होंने दूसरे आदमियों को करते हुए देखा और उनको मना नहीं किया या जिन बातों को उन्होंने मन्जूरी दे दी वह सब सुन्ना में आती हैं। फैली, कौली और तकरीरी इस तीन शाखाओं में सुन्ना को बँटा जा सकता है। उनको बोलते हैं— सुन्नते फेली, सुन्नते कौली और सुन्नते तकरीरी। इन पर सैकड़ों किताबें लिखी गई हैं। इसी को हदीस कहते हैं। हदीस लिखने वालों में सबसे पहले अब्दुला इब्ने अम और इब्ने आस और अबूब इब्ने हज्म और हजरत अनस के नाम आते हैं। . . . . जो लोग पहले मुखतलिफ हदीसों को जबानी याद कर लेते

थे, उनका निचोड़ सबसे पहले तरतीब देने वालों में इमाम थे, मालिक जिनकी किताब आज भी पाई जाती है। . . . . उसमें मस्जिद की बनावट यानी शकल व सूरत के बारे में कोई जिक्र नहीं है।” (पेज 8)

“‘Sunna’ and ‘Hadis’ are almost the same thing. The acts of Prophet Mohammad or his sayings or the things seen by him being done by others and not objected by him or the things approved by him, all fall within ‘Sunna’. ‘Sunna’ can be divided in three branches viz. ‘Faily’ (acts), ‘Kauli’ (promises) and ‘Takriri’ (preachings). They are called ‘Sunnate Faily’, ‘Sunnate Kauli’ and ‘Sunnate Takriri’. Hundreds of books have been written on them. This is called ‘Hadis’. Amongst the first ones to write the ‘Hadis’ are Abdul Ibne Aam, Ibne Aas, Abu Ibne Hazm and Hazrat Anas. . . . . The first Imam to have memorized different ‘Hadis’ and summarized them, was Malik whose book is still available. . . . . It does not mention about the construction i.e. form and shape of mosque.” (E.T.C)

“मैंने कभी कोई कनाती मस्जिद नाम का शब्द नहीं सुना। अगर कोई जगह तीन तरफ से गैर मुस्लिम इबादतगाहों से घिरी हुई हो तो वहाँ पर नमाज पढ़ी जा सकती है, किसी हदीस में इस पर मुमानियत नहीं है। . . . . अगर किसी इमारत में सिर्फ दो दरवाजे जाने के लिए हों, पूरब और उत्तर की तरफ और उन्हीं दोनो दरवाजों पर हिन्दुओं के पूजन स्थल हों, तो भी अन्दर नमाज पढ़ी जा सकती है, बशर्ते कि अन्दर जाने का रास्ता हो। ऐसा जिक्र फिकेह में आया है, हदीस में ऐसी तफसीलात नहीं हैं।” (पेज 9)

“I never heard the name of Kanati mosque. If any place is surrounded on three sides by non-Muslim worship places, then also namaz can be offered over there, and none of the ‘Hadis’ prohibit the same.. . . . If there are only two gates, in east and north, for entering any building,

*and worship places of Hindus exist at both the said gates, then also namaz can be offered inside it provided there is a way leading to it. It is so mentioned in the 'Fiqh', but no such detail is found in the 'Hadis'.*" (E.T.C)

“अगर वजू न किया हुआ हो और मस्जिद में वजू करने का इन्तजाम भी न हो और दूर-दूर तक पानी दस्तयाब न हो तो तयमुम करके नमाज अदा की जा सकती है। . . . मैंने भी ऐसी मस्जिदें देखी हैं, जहाँ वजू के लिए पानी का इन्तजाम न रहा हो।” (पेज 9)

*“Namaz can be offered even by performing 'Taimum' (substitute for Vazoo), if 'Vazoo' has not been performed and there is no arrangement in the mosque for performing 'Vazoo' and water is not 'Dastyab' (available) even at distant places . . . I have also seen such mosques, where there was no arrangement for performing 'Vazoo'.”*

(E.T.C)

“किसी जमाने के उलमा एक मसले पर जब एक राय हो जायें तो वह इजमा कहलाता है। . . . मस्जिद की बनावट या शकल सूरत के बारे में कोई इजमा नहीं हुआ। ऐसा मसला अब तक उठा ही नहीं कि जिस मस्जिद के चारो तरफ कब्रिस्तान हो तो वहाँ नमाज पढ़ी जाये या नहीं। . . इस बात पर भी कोई इखतलाफ नहीं हुआ कि जिस इमारत के दो तीन या चारों तरफ भी कोई गैर मुस्लिम इबादत गाह हो तो वहाँ पर नमाज पढ़ी जा सकती है या नहीं, दरअसल वहाँ पर नमाज भी पढ़ी जा सकती है। ये मुद्दे हाल के हैं इन्हीं दिनों में इन्हें उठाया गया है इन पर अभी गौर हो रहा है क्योंकि अभी तक इखतलाफ किसी ने नहीं किया।” (पेज 10)

*“When the Ulemas of a period become unanimous on any issue, the same is called 'Ijma'. . . . There is no Ijma regarding the form or shape of mosque. Such an issue has not arisen till date as to whether namaz be offered or not in a mosque, which is surrounded on all sides by graveyard. . . . There has been no 'Ekhatlaf' (disagreement)*

*on this issue as well as to whether namaz can be offered or not in a building which is surrounded on 2-3 or all sides by non-Muslim worship places. Actually namaz can be offered over there as well. These issues are recent and have been raised recently. They are still being considered because none has done Ekhatlaf' as yet.” (E.T.C)*

“मस्जिद बनने के बाद कभी खत्म नहीं होती। अगर मस्जिद वजूद में आ गयी तो वहाँ पर चाहे नमाज पढ़ी जाये या न पढ़ी जाये वह हमेशा मस्जिद मानी जायेगी। अगर वहाँ पर जमाती नमाज न भी पढ़ी गयी हो तो भी वहाँ पर मस्जिद रहेगी। अगर मस्जिद बनाने वाले ने तामीर मुक्कमल करके उसे लोगों के हवाले कर दिया तो भी वह मस्जिद मानी जायेगी चाहे वहाँ एक बार भी नमाज न पढ़ी गयी हो। अगर तामीर करने वाले की नियत मस्जिद की थी और लोगों को मस्जिद बनाकर दे दी तो मस्जिद बन गयी।” (पेज 11)

*“A mosque never ceases to exist after it is built. If a mosque has come into existence, then it will always be treated as a mosque even if namaz is offered over there or not. It would remain a mosque, even if the ‘Jamati’ (collective) namaz is not offered over there. If the builder of the mosque has delivered the mosque to people after completion of its construction, then also **it will be treated a mosque even if namaz has not been offered over there even once.** If the intention of the builder was a mosque and he delivers a mosque to people after its constructions, then a mosque comes into existence.” (E.T.C)*

“अगर कोई दूसरे लोग मस्जिद को गिरा दे तो भी वह जगह मस्जिद कहलायेगी ऐसा इज्मा है। ऐसा हर किताब में लिखा है। लेकिन ऐसी कोई खास मिसाल देने के लिए मेरे इल्म में नहीं है जहाँ इस तरह की बात हो या जहाँ मस्जिद गिराई गयी हो। . . . गिरायी हुई मस्जिद के स्थान को मस्जिद माना

जायेगा इस बाबत इज्मा हर दौर में हुआ है। अगर कहीं मस्जिद गिरती है तो वह मस्जिद ही रहेगी इस पर हर जमाने के मौलानाओं का इत्फाक रहा है ऐसा मैंने पढ़ा है। **ऐसा मैंने फिकह में पढ़ा है।** ये इज्मा इसलिए भी जारी हुआ कि आने वाले दौर के बहुत से मसायल पर भी गौर होता था और इसी तरह से इस इमकान का भी इज्मा बना।”

(पेज 12)

**“There is a ‘Ijma’ to the effect that if others demolish a mosque, then also that place would be called a mosque. It is so written in every book. However, there is no specific example in my knowledge where such a situation exists or where mosque has been demolished. . . . The site of a demolished mosque, would always be treated as a mosque and a ‘Ijma’ to said effect has taken place in all times. I have so read that if any mosque collapses, then it would remain a mosque and the clerics of all times have been unanimous in this regard. I have so read in ‘Fiqh’. Such a ‘Ijma’ was also issued because many future issues were also considered and accordingly a ‘Ijma’ of this ‘Imkan’ (probability/situation) was also formed.”** (E.T.C)

“ये जिक्र फिकह की किताबों में आया है कि अगर किसी इमारत की दीवारों पर या खम्भों पर या सिवाये क़िबला वाली दिवार पर पशु पक्षी देवी देवता या और जीव जन्तुओं की तस्वीरें हों तो भी नमाज हो सकती है और अगर ऐसी इलामात क़िबला वाली दिवार पर हो तो भी नमाज हो सकती है हलांकि वो मकरूह हो जायेगी। अगर सजदे वाली दिवार और नमाजी के बीच में कोई खम्भा हो जिस पर ऐसे इलामात हो तो भी नमाज होगी लेकिन अगर ये अलामात नमाजी के बिलकुल सामने होंगे, तो ये नमाज मकरूह हो जायेगी।” (पेज 12)

**“It is mentioned in the books of ‘Fiqh’ that namaz can be offered even if pictures of animal, bird, God,**

*Goddesses or living being exist on all the walls or pillars of any building except for the wall facing Kibla, and if such 'Ilamat' (symbol) exist on the wall facing Kibla, then also namaz can be offered although it would be 'Makruh' (undesirable). If there are such 'Ilamat' over a pillar in between the wall of 'Sajda' and the namazist, then also namaz would be offered but if these 'Alamat' (symbol) are immediately opposite the namazist then the namaz would become 'Makruh'.*" (E.T.C)

“शरीयत के अहकाम की पांच किस्में हैं वे हैं— 1. फर्ज 2. हराम 3. मकरूह 4. मन्दूब 5. जायज। इनको धार्मिक हुक्म कहा जा सकता है। . . . हराम की किस्म में वो काम आते हैं जिनकी मनाही की गयी है। वो मनाही बहुत सख्ती और पक्की दलीलों से की गयी है मकरूह में दिये गये कामों की मनाही की गयी है लेकिन उतनी सख्ती से नहीं। जायज की किस्म में वो काम आते हैं जो किये भी जा सकते हैं और न किये भी जा सकते हैं। उनके करने पर कोई सबाब नहीं और न करने पर कोई गुनाह नहीं।” (पेज 14)

“There are five kinds of 'Ahkam' (ordain) of 'Shariyat'- 1. 'Farz' (duty), 2. 'Haram' (forbidden act), 3. 'Makruh' (undesirable), 4. 'Mandub' (representative/ delegate), 5. 'Jayaz' (justified/legal). They can also be termed as tenets. . . . . 'Haram' includes such actions, which have been prohibited. The prohibition has been imposed by very strict and strong reasons. 'Makruh' includes the actions restrained but not that strictly. 'Jayaz' includes such acts, which can and cannot be done. Their performance does not yield any 'Sawab' (virtue) nor does their non-performance entail any offense.” (E.T.C)

“यह सभी किताबों में आता है कि अगर किसी दूसरे मजहब की इबादतगाह को या किसी दूसरे आदमी की जगह को जबरदस्ती तोड़कर

मस्जिद बना ली गयी हो तो वह ठीक नहीं है।" (पेज 14)

*"It is contained in all the books that if a mosque has been built by forcibly demolishing the worship place of another religion or the place of any other person, then it is not proper."* (E.T.C)

*'वक्फ कभी खत्म नहीं होता।'* (पेज 18)

*"A Waqf never terminates."* (E.T.C)

*'पैगम्बर साहब ने इस्लाम नहीं चलाया यानी इस्लाम की शुरूआत नहीं की इसका आगाज तो आदम अलेहुसलाम से है। मोहम्मद साहब आखिरी पैगम्बर थे और उन्होंने इस्लाम को आखिरी मुक्कमल शकल दी। उनसे पहले इस्लाम की मुक्कमल शकल नहीं थी।'* (पेज 24)

*"Prophet Mohammad did not found Islam i.e. he did not start it. It began with Adam Alehusalam. Mohammad Saheb was the last Prophet and he gave Islam its final shape. Prior to him, Islam did not have a final shape."*(E.T.C)

*'मेरे इल्म में ऐसा नहीं है कि मोहम्मद साहब से पहले मक्का में कुदरत की इबादत होती थी। लेकिन यह ठीक है कि बुत की इबादत होती थी।'* (पेज 24)

*"It is not in my knowledge that prior to Prophet Mohammad, nature was worshiped in Mecca. However, it is true that idols were worshiped."* (E.T.C)

*'इस्लाम के हिसाब से मालिकों की मर्जी के खिलाफ मंदिर तोड़ना नाजायज है।'* (पेज 27)

*"According to Islam, demolition of temple without the consent of owners, is illegal/unjustified."* (E.T.C)

*'बुतपरस्ती इस्लाम के खिलाफ है। यह कहना गलत है कि जहाँ मूर्तियां स्थापित की गयी हो वहाँ पर मस्जिद नहीं बन सकती बशर्ते वो जमीन मुसलमानों ने जायज तरीके से हासिल की हुई हो। जायज तौर से हासिल करने का मतलब है मालिक ने अपनी मर्जी से दे दी हो, हिबा कर दिया हो या उसने बेच दी हो बशर्ते कि उस जमीन का कोई मालिक*

था। यह जमीन खुदा की भी हो सकती है, हाकिम की हो सकती है हुकूमत की भी हो सकती है और किसी प्राइवेट आदमी की भी हो सकती है अगर जमीन हुकूमत की है तो उस पर हाकिम का पूरा अख्तियार है। अगर सरकारी जमीन है और हाकिम मुसलमान है और जायज हाकिम है तो उस जमीन पर हाकिम मस्जिद बना सकता है। अगर एक हाकिम पर दूसरा हाकिम असूल के मुताबिक फतह हासिल कर लेता है तो वह जमीन फतेहआब हाकिम की हो जायेगी।” (पेज 27)

*“Idolatry is contrary to Islam. It is wrong to say that mosque cannot be built at a place where idols have been installed, provided the land has been obtained legally/justifiably by Muslims. ‘Obtaining legally/justifiably’ means given voluntarily by the owner or gifted or sold, provided the land had some owner. The land can be of God, of ‘Hakim’ (ruler), of Government and of some private person as well. If the land is of Government, then the ‘Hakim’ (ruler) would have total rights over the same. If the land is public and the ‘Hakim’ (ruler) is Muslim and is a legal/justified ‘Hakim’ (ruler), then the ‘Hakim’ (ruler) can build a mosque over that land. If one ‘Hakim’ (ruler) conquers another ‘Hakim’ (ruler) principally, then that land would become of the ‘Fatehaab Hakim’ (victorious ruler)” (E.T.C)*

“कोई भी मुसलमान जो मस्जिद बनवायेगा उसके अन्दरूनी या बाहर वाले किसी हिस्से में किसी तस्वीर को नहीं बनवायेगा वो जानदार चीज की तस्वीर नहीं बनवायेगा। किसी सुअर की तस्वीर बनवाने का सवाल ही नहीं पैदा होता। मुस्जिद की चारदीवारी के बाहरी हिस्से पर अगर किसी जानदारचीज की सूरत बनवा दी जाती है तो वह जायज नहीं है।”

(पेज 29)

**“No Muslim, who builds a mosque, would depict**

*any picture in any part of inside or outside of the mosque. (He) would not depict the picture of any living being. The question of depicting the picture of any pig, does not arise at all. If the figure of any living being is made on outer part of the boundary wall of the mosque, the same is not legal/justified.” (E.T.C)*

“कोई मुसलमान जब नये सिरे से मस्जिद बनवायेगा तो उसके अन्दर वो कोई जानदार चीज नहीं बनवायेगा चाहे वह पशु पक्षी हो चाहे नर नारी हो चाहे कोई देवी देवता हो और अगर वह ऐसा करेगा तो वह गुनहगार होगा। लेकिन वह मस्जिद फिर भी कहलायेगी अगर और शरायत पूरी होती हों तो।” (पेज 30)

*“When any Muslim would build a mosque afresh, then he would not get the picture of any living being be it animal-bird or male-female or God-Goddess, depicted inside it and if he does so, he would be an offender. However, it would still be called a mosque if other ‘Sharayat’ are observed.” (E.T.C)*

“मैंने देवबन्द के दारुल उलम में हदीस, फिकह, तफसीर, मंतिक, फालसफा उसूलेहदीस, पढ़े। मैंने आलिम का दर्जा भी पास किया था। आलिम की पढाई मे मेरे मजामीन नोह, सर्फ, बलागत, उसूलेफिक, उसूले तफसीर, अदब, फिकह, हदीस, तफसीर थे।” (पेज 31)

*“I studied ‘Hadith’, ‘Fiqh’, ‘Tafsir’(exhaustive explanation) , ‘Mantik’ (logic), ‘Falsafa’ (philosophy), ‘Usulehadis’ (principles of Hadith) at the Darul Uloom, Deoband. I also passed the ‘Alim’ (degree). During my ‘Alim’ course, ‘Noh’(branch of grammar), ‘Sarf’ (branch of grammar), ‘Balagat’ (experts), ‘Usulefik’ (principles of Fiqh), ‘Usuletafsir’ (principles of exhaustive explanation), ‘Adab’ (literature), ‘Fiqh’, ‘Tafsir’ (exhaustive explanation) were my ‘Majamin’ (subjects).” (E.T.C)*

“नमाज के लिए वजू जरूरी है।” (पेज 33)

“‘Vazoo’ is essential for namaz.” (E.T.C)

“ऐसा मसलन तिरमिजी हदीस की किताब में भी लिखा है। आमतौर से इस तरह की बातें बाबुल वजू में लिखी होती हैं।” (पेज 34)

“It is so written in the book of ‘Tirmiji Hadis’ as well. Usually such facts are mentioned in ‘Babul Vazoo’.”(E.T.C)

“इस्लाम की शुरुआत आदम अलेहुइस्लाम से हुई जिनके बारे में मशहूर है कि वह सबसे पहले लंका में आये थे। इस्लाम की आखिरी मुकम्मल शकल आखिरी पैगम्बर साहब ने दी और उन्होंने इसे बड़े पैमाने पर फैलाया। हजूर साहब अरब में ही पैदा हुए थे और वहीं से उन्होंने इस्लाम को फेलाने का काम शुरू किया था।

मस्जिदे हराम एक मुकद्दस मुकाम है वो अरब के मक्का शहर में है। हर वो मुसलमान जो माली ताकत रखता हो जिस्मानी ताकत रखता हो और जिसे सवारी हासिल हो उसके लिए यह फर्ज है कि वह उम्र में एक बार वहाँ जाकर हज करें यह फर्ज बालिग मुसलमानों के लिए है।”

(पेज 41)

“Islam began with Adam Alehuislam, about whom it is famous that he had first arrived in Lanka. The final shape to Islam was given by the last Prophet, Mohammed Saheb and he propagated it on a large scale. Prophet Mohammad was born in Arab and from here he started propagating Islam.

‘Masjide Haram’ is a sacred place and is situated in the city of Mecca in Arab. It is the duty of each such Muslim, who is financially competent, physically fit and has the conveyance, to go there once in his life and perform Haj. This duty is for adult Muslims.” (E.T.C)

“मदीना शरीफ से चलने पर फतेह हासिल करने के बाद जब मक्का शरीफ हजूर तशरीफ लाये तो काबा शरीफ पर खड़े होकर पहली अजान देने का रूतबा भी हजूर ने हजरते बिलाल को सौंप

था। . . . . जमात की नमाज पढ़ने के लिए नमाजियों को बुलाने के लिए अजान दी जाती है इस बात को मद्देनजर रखते हुए हज़ूर ने यह रूतबा हजरते बिलाल को इसलिए बक्शा था क्योंकि उनकी आवाज बहुत बुलंद थी। बुलंद आवाज इसलिए पसंद की गयी ताकि दूर दूर से सुनकर नमाजी आ सकें क्योंकि उपर चढ़कर आवाज देने से दूर दूर तक जाती है इसलिए हजरते बिलाल ने छत पर खड़े होकर अजान दी थी।”  
(पेज 49)

“On proceeding from holy Medina and after registering victory when Prophet came to holy Mecca, he bestowed Hazrat-e-Bilal with a standing to give the first ‘Azaan’ by standing at holy Kaba. . . . . ‘Azan’ is given in order to call namazists to offer the mass prayer. Taking this point into account, Prophet bestowed this standing on Hazrat-e-Bilal because his voice was very eloquent. His eloquent voice was liked because it was audible enough for namazists to hear it from far away places because when a call is given from an elevated place it goes far and wide. This was the reason why Hazrate-e-Bilal had given the ‘Azan’ call by standing on the roof.”(E.T.C)

“वक्फ की जायदाद को जो कि खुदा की बन जाती है, कोई भी आदमी चाहे कितना छोटा और चाहे कितना बड़ा ही क्यों न हो, मालिकाना तौर पर हासिल नहीं कर सकता।” (पेज 54)

“Nobody, howsoever big or small he may be, cannot as an owner acquire a Waqf property, which becomes that of ‘Khuda’ (God).” (E.T.C)

“जिसका काबा नाम है उस इमारत पर कोई मीनार नहीं है और न ही पहले थी। काबा के चारों तरफ जो मस्जिद है उस पर मीनारे हैं।” (पेज 58)

“There is no minaret over that structure which is

*named 'Qaba', nor did it exist earlier. There is minarets over the mosque surrounding 'Qaba'.*" (E.T.C)

“हिदाया में यह लिखा हुआ है कि जहाँ पर एक दफा मस्जिद बन जाये वह हटाई नहीं जा सकती। वह जगह हमेशा ही मस्जिद रहेगी।”

(पेज 62)

*“It is written in 'Hidaya' that a mosque once built at a particular place cannot be shifted from there. That place will always remain to be mosque.”* (E.T.C)

“वक्फ के लिए वाकिफ होना जरूरी है . . . . .अगर जबरदस्ती हथियाई जगह का वक्फ किया जाये तो वह हराम है वह वक्फ ही नहीं होगा। . . . . मेरे इल्म में किसी हदीस में नमाज पढ़ने के वक्त रंगीन या बेल बूटे वाले कपड़े पहनने पर मनाही नहीं डाली गई।”

(पेज 63)

*“It is necessary for there to be a 'Waqif'(executor of Waqf) for the purpose of 'Waqf'. . . . . If 'Waqf' is executed in respect of forcibly captured land, it is 'Haraam'(a forbidden act) and it would not certainly be 'Waqf'. . . . . To my knowledge, no 'Hadith' imposes any restriction on wearing coloured clothes and the ones designed with embroidery at the time of offering namaz.”* (E.T.C)

“विवादित जायदाद के अलावा हमारे यहाँ संभल में एक मस्जिद है जिसका नाम बाबरी मस्जिद के नाम से मशहूर है। उसके बारे में मैंने कोई तारीख की किताब नहीं पढ़ी है मस्जिद के कदबा पर लिखा है वही पढ़ा है।” (पेज 66)

*“Besides the disputed structure there is also a temple at our place which is famous by the name of Babri mosque. I have not read any history book about that. It is so mentioned in the mosque epitaph; I have read about it from that very source.”* (E.T.C)

“कुरान शरीफ में इस बात का जिक्र नहीं है कि मस्जिद किस तरह की जमीन पर बनाई जाये। . . . . कुरान शरीफ में मूर्ति तोड़ने का हुक्म नहीं है। बहराल उसमें हजरत इब्राहिम का जिक्र है मूर्ति तोड़ने की बाबत। जिसे पसंद किया गया है।

किसी मस्जिद में भूत या शैतान को या किसी भी जानदार चीज की शकल और सूरत बनाना जायज नहीं है। किसी भी मस्जिद की दीवारों पर चाहे अन्दर की तरह हो या बाहर की तरफ हो किसी जानदार चीज की शकल और सूरत बनाना जायज नहीं है।” (पेज 67)

*“The holy Quran does not mention at what type of land a mosque should be constructed. . . . The holy Quran does not command the breaking of idols. Nevertheless, it approvingly mentions about Hazrat Ibrahim in connection with the breaking of idols.*

*It is not legitimate to construct the face and shape of any spirit or demon or of any animate thing at a mosque. It is not legitimate to carve the face and shape of any animate thing on either side-outer or inner- of the walls of any mosque.”(E.T.C)*

“मैं मुस्लिम लॉ के बारे में बतौर एक्सपर्ट बयान देने के लिए हाजिर हुआ हूँ।” (पेज 70)

*“I am present to depose as an expert in Muslim law.” (E.T.C)*

“अगर यह साबित हो जाये कि मालिकान ने खुशी से रजामन्दी नहीं दी है, तो वह मस्जिद जायज नहीं मानी जायेगी।” (पेज 71)

*“If it is proved that owners have not given their consent with pleasure, that mosque will not be taken to be legitimate.” (E.T.C)*

“मेरी समझ में और मेरे इल्म में इस वक्त हिन्दुस्तान में मेरे से ज्यादा मुस्लिम ला के बारे में जानकारी रखने वाला कोई आलिम नहीं है, मेरे बराबर के हो सकते हैं लेकिन मुझसे बेहतर नहीं हैं।” (पेज 73)

*“To my understanding and knowledge, there is no ‘Aalim’ in Hindustan having better knowledge of Muslim law than I. They may be equal to me but they cannot be better than I.” (E.T.C)*

*“मैं फिक की तालीम देता हूँ।” (पेज 77)*

*“I teach ‘Fiqh’.” (E.T.C)*

*“यहां मस्जिद से मतलब मस्जिद के लिए वक्फ का है न कि इमारत का। दरसल अगर इमारत गिर भी जाये तो वक्फ कायम रहेगा। मुशा जमीन पर मस्जिद नहीं बन सकती। अगर किसी दूसरे आदमी का भी जमीन में हिस्सा हो या हक हो और वह उसे मस्जिद के लिए वक्फ करने की इजाजत न दे तो वहां मस्जिद नहीं बनेगी।” (पेज 81)*

*“Here ‘mosque’ means ‘Waqf for the mosque’, not its structure. Even if the structure crumbles, the Waqf will continue to be there. A mosque cannot be constructed on ‘Musha’ land. If any other person has a share or title in a particular piece of land and he does not allow the said land to be given in Waqf for the purpose of mosque, then mosque will not be built there.” (E.T.C)*

*“तस्वीर वाली बात कई फिकह की किताबों में मौजूद है मसलन बहयर राईक, रददुल मुख्तार, बदाय असनाय। मुझे इस वक्त याद नहीं कि किस खास किताब में मैंने यह पढ़ा था कि मस्जिद पर मीनारें या गुम्बदों की जरूरत नहीं या वहां पर वजू के इंतजाम की जरूरत नहीं। यह बात मैंने मुख्तलिफ किताबों को पढ़कर मुजमुई तौर पर समझी है। मेरे यह बयान सही है कि कुरान शरीफ और हदीस में मस्जिद की शकल सूरत या तर्जे तामीर पर कोई खास हिदायत नहीं है।” (पेज 84)*

*“A fact as to picture is present in many ‘Fiqh’ books i.e. ‘Bahyar Raik’, ‘Raddul Mukhtar’ and ‘Baday Asnay’. At present I do not remember in which particular book I read that there is no requirement of minarets or domes*

*or of any arrangement for 'vaju' in a mosque. I have developed an overall understanding about this thing by going through different books. This statement of mine is true that the holy Quran and 'Hadith' do not have any specific piece of advice regarding the face and shape of a mosque or its style of construction."* (E.T.C)

“लेकिन यह बात ठीक है कि नजायज तौर पर यानी शरई कानून के हिसाब से नाजायज हरकत कर के जो जमीन हथियाई जाती है उस पर मस्जिद बनाये जाने की मनाही है। उसमें पढ़ी नमाज मकरू हो जायेगी।

यह ठीक है कि हनफी कानून के मुताबिक अगर कोई मालिक किसी जमीन या जायदाद का वक्फ करे तो उसके लिए यह जरूरी है कि वह खुद मालिक हो।” (पेज 85)

*“But it is true that it is forbidden to build a mosque on any land which is grabbed in an illegitimate manner or by resorting to illegitimate activities as per the 'Shariyat' law. Offering namaz at such a mosque will be 'Maqrooh' (undesirable).*

*It is true that under the 'Hanfi' law, in order to give any land or property in 'Waqf', it is not necessary for the person making such 'Waqf' to be its owner."* (E.T.C)

“यह ठीक है कि हमारे अकीदे के मुताबिक जो कुछ कुरानशरीफ में कहा गया है और जो कुछ हजरत मोहम्मद साहब फरमा गये हैं और मन्सूस नहीं हुआ है उसमें कोई कमी बेशी नहीं की जा सकती।” (पेज 91)

*“It is true that as per our tradition, **no change can be effected in what is stated in the holy Quran or in what Hazrat Muhammad Sahib has ordained and what has not been forbidden.**”* (E.T.C)

“हम सरकार का नहीं शरीयत का कानून पढ़ाते हैं। मैं नहीं कह सकता कि हमारे दारुलउलूम का पैसा कहीं से आता है आया कि विदेशों

से आता है या नहीं क्योंकि यह मेरा मजमून नहीं है मैं माली मामलात का जिम्मेवार नहीं हूँ। . . . .लेकिन यह मुझे मालूम है कि हम सरकार से कोई इमदाद नहीं लेते।” (पेज 92)

*“We do not teach laws framed by the British Government. We teach the law of ‘Shariyat’, not that of the Government. I cannot say from where money comes or came for our ‘Darul Ulum’ and whether such money came from abroad or not; because it is not my concern and I have no responsibility in financial matters. . . . . But it is know to me that we do not take any grant from the government.” (E.T.C)*

**3280. PW 19, Maulana Atiq Ahmad:**

“मुस्लिम काल के पहले शासक मो० बिन कासिम हुए थे। . . . . मो० बिन कासिम की राजधानी सिन्ध में थी। . . . . ऐसा नहीं है कि मो० बिन कासिम राजा दाहिर से हारने के बाद लौट गए। खुद कहा – वह जीते थे और खलीफा के बुलाने पर लौट गए। . . . . इससे पहले मुस्लिम ताजिर हिन्दुस्तान आ चुके थे और साहिल पर उनकी आबादियां थीं। इन ताजिरों की आबादी मौजूदा केरल राज्य एवं गुजरात राज्य में थी।” (पेज 6)

*“Mohammad Bin Qasim was the first ruler of the Muslim period. . . . . The capital of Muhammad Bin Qasim was in Sindh. . . . . It is not that Muhammad Bin Qasim had returned after being defeated by King Dahir. (Stated on his own) he had won and had returned on being called back by the Caliph. . . . . Prior to that, the Muslim merchants had come to Hindustan and their settlements were found on sea-shores. These merchants had their settlements in the existing states of Kerala and Gujrat.” (E.T.C.)*

“अल्लाह का सबसे पहला घर काबा यहीं बनाया गया था। हजरत मोहम्मद साहब की वहां पैदाइश थी यह भी एक कारण था। यह कहना ठीक नहीं होगा कि काबा मोहम्मद साहब के बाद बना बल्कि वह उनसे

बहुत पहले बन चुका था।" (पेज 8)

*"The first abode of Allah was built at Qaba over here itself. Another reason was that Prophet Muhammad was born here. It would not be correct to say that Qaba came into existence after Prophet Muhammad; rather it had come into existence much earlier." (E.T.C.)*

"फाजिल की डिग्री एक एम0ए0 की डिग्री की तरह है। फाजिल में जुगराफिया वगैरह नहीं पढ़ाया जाता और खास तौर से इस्लामी उलूम पर पढ़ाया जाता है। मैंने फाजिल, हदीस, तफसीर, फिकह वगैरह में किया।"

(पेज 9)

*"The degree of Fazil is like an M.A. degree. In Fazil course, geography etc. is not taught and Islamic disciplines are particularly taught. I did my Fazil in Hadis, Tafsir, Fiqh, etc." (E.T.C.)*

"मुअस्ता सबसे पुरानी हदीस की किताब है। इसके लेखक इमाम मालिक थे।

हिदाया और शर्रवकाया नामक किताबों में मस्जिद की बनावट के बारे में कोई तफसील नहीं दी गयी।" (पेज 10)

*"'Muasta'(Muwatta) is the oldest book of Hadis. Imam Malik was its writer.*

*No details have been given about the construction of the mosque, in the books called 'Hidaya' and 'Shar-e-Vakaya'." (E.T.C.)*

"इस्लाम में कानून धर्म का हिस्सा है।" (पेज 11)

*"In Islam, law is a part of religion." (E.T.C.)*

"इस एकेडमी की आखिरी मीटिंग जो 13 से 16 अप्रैल, 2001 में हुई उसमें मस्जिद की शरयी हैसियत के बारे में बातचीत हुई थी और यह फैसला हुआ कि मस्जिद हमेशा मस्जिद रहती है उसको गिरा देने की वजह से मस्जिद की हैसियत खत्म नहीं हो जाती।" (पेज 17)

*"In the last meeting of this academy which was*

*held between 13<sup>th</sup> to 16<sup>th</sup> April, 2001, deliberations were held about the religious status of the mosque and it was decided that the mosque is always a mosque and it does not lose its status of mosque on account of being demolished.”(E.T.C.)*

“लोधी वंश की हुकूमत के दौरान उलेमाओं का हुकूमत में कोई खास दखल नहीं होता था, पर अदालती निजाम में उनका दखल होता था।” (पेज 19)

*“During the reign of Lodhi dynasty, there used to be no particular interference on the part of Ulemas in governance, but there used to be their interference in the court administration.”(E.T.C.)*

“मैं इस मत से सहमत नहीं हूँ कि ईश्वर को किसी भी नाम से पुकारा जा सकता है, बल्कि वह उसी नाम से पुकारा जा सकता है, जो उसने खुद अपने लिए पसन्द किया। . . . . मुझे यह बात मालूम नहीं है कि ख्वाजा मोइनिउद्दीन चिस्ती ने अजमेर के पास अन्न सागर के तट पर एक हिन्दू राजा की कन्या से शादी की थी। मुझे यह बात भी मालूम नहीं है कि उनसे जो लड़की पैदा हुई बेगम हफीजा, उसे देश-विदेश सूफी मत का प्रचार करने के लिए भेजा गया।” (पेज 20)

*“I do not agree to the view that God can be called by any name; rather, he can be called only by that very name which He liked to be used for Himself. . . . . I do not know that Khwaja Moinuddin Chisti got married with the daughter of Hindu King on the shore of ‘Anna Sagar’ near Ajmer. I also do not know whether Begum Hafiza, a daughter that he begot out of their wedlock, was sent in and outside the country for the propagation of Sufism.”(E.T.C.)*

“कुरान में छः हजार छः सौ सोलह आयते हैं। . . . . कुरान में ऐसा कोई हुक्म नहीं है कि किसी दूसरे की जमीन पर

जबरदस्ती मस्जिद बनाई जाये। . . यह ठीक है कि कुरान आने के पहले बुतपरस्ती हो रही थी। . यह ठीक है कि अरब में जो लोग बुतपरस्ती करते थे कुरान आने के पहले उन्हें काफिर कहा गया। कुरान में कोई ऐसा हुक्म नहीं है कि काफिर को मार दिया जाये। यह ठीक है कि इस्लाम धर्म आने के पहले हिन्दू मूर्ति पूजा भी करते थे। . . . . कुरान में मतइययन तौर से हिन्दू मूर्तियों को तोड़ने का कोई जिक्र नहीं है।” (पेज 25–26)

*“The Quran has six thousand six hundred sixteen ‘Ayats’(verses). . .The Quran does not ordain for forcibly constructing a temple on the land of any other person. . . .It is true that idolatry was being practised even before the Quran. . . . It is true that those who performed idol worship in Arab were called ‘Kafir’(a blasphemous person) before the advent of Quran. The Quran does not ordain for ‘Kafir’ to be killed. It is true that Hindus practised idolatry as well before the advent of the Quran. . . .There is no specific mention about breaking the Hindu idols in the Quran.”(E.T.C.)*

“पैगम्बर साहब की जिन्दगी में किसी हिन्दू देवी-देवताओं की मूर्ति को तोड़ने की कोई घटना नहीं हुयी। . . .यह ठीक है कि अगर कोई मस्जिद किसी दूसरे की जमीन पर जबरदस्ती बनायी जाती है तो ऐसा करना हARAM होगा और वह मस्जिद नहीं है।” (पेज 27)

*“No incident of breaking idols of male and female Hindu deities occurred in the lifetime of Prophet Muhammad. . . . It is true that if a mosque is constructed forcibly and on another’s land, such an act will be ‘Haram’(a forbidden thing) and it (such a construction) is not a mosque.” (E.T.C.)*

“यह ठीक है कि नमाज का सम्बन्ध खुदा से है। जमीन से नहीं है। . . . . और यह लाजमी है कि वक्फ करने वाला उस जमीन का मालिक हो।” (पेज 28)

*“It is true that namaz relates to ‘Khuda’(God), not to the earth. . . . and it is natural for the person making the ‘Waqf’ to be owner of that land.”(E.T.C.)*

“चित्र संख्या-20 . . . .- इसमें यह कहना मुश्किल होगा कि इसमें सबसे ऊपर कोई शेर का चित्र बना हुआ है। दो आंखे बनी मालूम होती है। चित्र संत्रयश -32 को देखकर गवाह ने कहा कि :- इसमें मूर्तियों दिखायी पड़ रही है। ऐसी मूर्तियों के रहते हुए यदि नमाज हो तो वह नमाज मकरूह होगी। मूर्तियों के रहते हुए वहां पर नमाज पढ़ना जायज नहीं होगा।” (पेज 29)

*“Picture No. 20. . . . – It is difficult to say that the image of a lion is carved on the top in it. Two eyes appears to be carved. Looking at Picture No. 32 the witness stated – Idols are seen in it. If namaz is offered in the presence of such idols, that namaz will be ‘Maqrooh’. It will not be legitimate to offer namaz there in presence of the idols.”(E.T.C.)*

“अगर मस्जिद के बाहरी सेहन में घण्टा घडियाल शंख भजन कीर्तन आदि होता रहे तो भी उस समय मस्जिद के अंदर नमाज अदा की जा सकती है। मस्जिद के अंदर कुर्यें का होना जरूरी नहीं है।” (पेज 31)

*“Even if the outer yard of a mosque continues to witness ringing of bells and gongs, blowing of conchs, singing of devotional song etc., namaz may be offered inside that mosque. It is not necessary for there to be wells inside a mosque.”(E.T.C.)*

“इज्मा यह है कि किसी जमीन पर जो दूसरे की मिल्कियत हो उस पर जबरदस्ती कब्जा करके मस्जिद बनाना जायज नहीं है। इज्मा सरीह में ऐसा कोई दृष्टांत नहीं मिलता है कि अगर किसी इमारत में चित्र हो या मानव आकृति हो तो उन को ढककर नमाज पढ़ी जा सकती है पर उल्माओं में तकरीबन ऐसा इत्तिफाक है कि उस सूरत को ढककर कर नमाज पढ़ी जा सकती है।” (पेज 33)

*“It is Izma that it is not legitimate to build a mosque*

*by forcibly capturing a piece of land owned by somebody else. No instance is found in Islam allowing namaz to be offered by covering a picture or human figure, if there be any, in a building ; but Muslim clerics are almost one in opinion that namaz may be offered by covering that figure.”(E.T.C.)*

“मेरे इल्म में ऐसा नहीं है कि उ०प्र० में या हिन्दुस्तान में कोई ऐसी मस्जिद हो जिसके तीनों तरफ दूसरे धर्म के इबादत गृह मंदिर या मूर्तियाँ हो क्योंकि मैंने ऐसा कोई सर्वे नहीं किया है। . . . . मेरे इल्म में इस तरह की कोई जगह नहीं है जहाँ मस्जिद के तीन तरफ दूसरे मजहब मंदिर या मूर्ति हो।” (पेज 34–35)

*“I do not have the knowledge as to whether there is any mosque in Uttar Pradesh or Hindustan which is surrounded by worship-places or idols of another faith on three sides, because I have not carried out any such survey. . . . . In my knowledge, there is no such type of place where there are temples or idols of another faith surrounding a mosque on its three sides.” (E.T.C.)*

“मुत्तवल्ली और इमाम में फर्क है।” (पेज 36)

*“There is difference between ‘Mutvalli’ and ‘Imam’.”(E.T.C.)*

“बाबरनामा में विवादित स्थल यानी बाबरी मस्जिद बनवाने का कोई जिक्र नहीं है। . . . यह सही है कि मस्जिद में मंदिर नहीं बनाया जा सकता।” (पेज 37)

*“‘Baburnama’ does not have mention of building the disputed structure, that is, Babri mosque. . . It is true that a temple cannot be constructed in a mosque.”(E.T.C.)*

“कोई भी मुसलमान इस बात की इजाजत नहीं देगा कि मस्जिद के अन्दर हिन्दू देवी-देवताओं के चित्र बना दे।

सर्वप्रथम पहले नबी आदम अलैहिस्सलाम इस्लाम धर्म लेकर आए।

. . . . . मोहम्मद साहब ही नहीं बल्कि अल्लाह के हर नबी ने यह पैगाम दिया कि बुतपरस्ती को खत्म किया जाए और सिर्फ अल्लाह की इबादत की जाए। . . . . इसी वजह से मस्जिदों में कहीं भी बुत नहीं बनवाए गए।”

(पेज 40)

**“No Muslim will allow images of male and female Hindu deities to be built inside the mosque.**

*The First Prophet Adam ('alayhis-salaam) introduced Islam first of all. . . . . Not only Muhammad Sahib but all other messengers of 'Allah' gave the message that idolatry be disbanded and God alone be worshipped. . . . . for this very reason idols were not constructed in mosques anywhere.” (E.T.C.)*

“इस्लाम की हिदायत तो यही है कि मस्जिद में मूर्ति न बनायी जाए पर यह हो सकता है कि उसकी खिलाफती करते हुए मस्जिद में मूर्ति बनाते हों। . . . . मैं इससे सहमत नहीं हूँ कि ऐसे स्थान जहां मस्जिद में मूर्ति हो वहां मुसलमानों ने मंदिर में जबरदस्ती कब्जा करके मस्जिद बना लिया हो। . . . . मुझे याद नहीं है कि कोई ऐसी मस्जिद है जिसमें पड़े हुए पत्थरों जिन पर देवी-देवताओं के चित्र हों उठाकर मस्जिद में लगा दिए गए हों।” (पेज 41)

**“Islam does advise that an idol should not be carved in a mosque. It may be that people, while opposing him, carve idols in mosques. . . . . I do not agree to the view that the presence of idols in a mosque may be attributed to forcible capturing of a temple and converting the same into such mosque. . . I do not remember whether there is any mosque in which lying stones with pictures of male and female deities engraved on them may have been used.” (E.T.C.)**

“यह सही है कि किसी मंदिर में जहां देवी-देवताओं के चित्र हों या स्थान हो वहां कोई मुसलमान नमाज पढ़ने

नहीं जाएगा।” (पेज 41)

***“It is true that no Muslim will go to offer namaz at any temple where there are images or places of male and female deities.” (E.T.C.)***

“यह ठीक है कि मोहम्मद साहब के अलावा बहुत से रसूल अल्लाह ने भेजा है पर उनकी सही तादाद हमको पता नहीं है। उनमें से कुछ रसूलों के नाम मैं जानता हूँ। यह ठीक है कि हजरत मूसा अल्लाह के एक रसूल थे। उन पर तौरत नाजिल हुई जो अल्लाह की एक किताब थी। यह भी सही है कि हजरत ईसा अल्लाह के रसूल थे और उन पर जहूर नाजिल हुई। मुझे नहीं मालूम कि वेद भी अल्लाह की किताब है या नहीं। या वह किन पर नाजिल हुई। नाजिल का मतलब है कि किसी चीज का ऊपर से नीचे आना।” (पेज 55)

*“It is true that Allah has sent many other Prophets besides Mohammed Saheb, but their exact number is not known to me. I know names of few of those Prophets. It is true that Hazrat Musa was a Prophet of Allah. Tauret, a book of Allah, was revealed to him. It is also true that Hazrat Isa was a Prophet of Allah and Zahoor was revealed to him. I do not know whether Veda is a book of Allah or not, or to whom was it revealed. ‘Nazil’ means something coming down (to earth) from top (heavens).”*

(E.T.C.)

“हजूर मोहम्मद साहब के पहले काबे में बुत रखे हुए थे और उनकी पूजा होती थी।” (पेज 56)

*“Statues had been kept in Kaba prior to Prophet Mohammed and they were worshiped.” (E.T.C.)*

“यह सही है कि मोहम्मद साहब लिखना नहीं जानते थे इसलिए दूसरों से लिखवाते थे यह भी सही है कि लोग सुनते थे, याद करते थे और लिख लेते थे। मैं इससे सहमत हूँ कि कुरान पाक सुनने याद करने व अमल करने की श्रेणी में है। अर्थात् सुनने याद करने एवं अमल करने की एक किताब है।” (पेज 58)

*“It is true that Mohammed Saheb did not know to write and as such got others write down the same. It is also true that people used to hear, memorize and write. I agree that the holy Quran is in the category of being heard, memorized and acted upon i.e. it is a book to be heard, memorized and acted upon.” (E.T.C.)*

“हुजूर ने ऐसा कोई हुक्म नहीं दिया है कि किसी दूसरे मजहब के धर्मस्थल को तोड़कर उसके मलबे से मस्जिद बनायी जायी। यह ठीक है कि अगर किसी धर्मस्थल पर बनी इमारत को तोड़कर उसके मलबे से कोई मस्जिद बनायी जाती है तो ऐसा करना मकरुह है हुजूर के इहकाम के हिसाब से।” (पेज 59)

*“The Prophet did not give any command to demolish the worship place of some other religion and build a mosque out of its debris. It is true that according to ‘Ehkam’ (sanction) of the prophet, if any building is demolished and mosque is built from its debris, then the same is ‘Makruh’ (not desirable).” (E.T.C.)*

“अक्सा की मस्जिद इस समय इजराइल के कब्जे में है। बैतुल मुकद्दस मस्जिदे अक्सा का ही दूसरा नाम है। यह सही है कि शुरू में मो० साहब का हुक्म था कि नमाज बैतुल मुकद्दस की ओर मुंह करके पढ़ी जाये। उनका यह हुक्म वही के बुनियाद पर था।” (पेज 61)

*“The Aksa mosque is presently in possession of Israel. Sacred Baitul is another name of Aksa mosque. It is true that it was always the command of Mohammed Saheb that namaz be offered facing sacred Baitul. This command of his, was on basis of ‘Wahi’.” (E.T.C.)*

“मैं कुरान का हाफिज नहीं हूँ।” (पेज 61)

*“I am not a ‘Hafiz’ (one who memorizes the complete Quran) of Quran.” (E.T.C.)*

“यह सही है कि हुजूर के वफात के बाद हजरत अबू वकर

सिद्दीकी के जमाने में कोई शख्स कोई लिखी हुई चीज देता था और यह कहता था कि हुजूर ने लिखवाया था, तो शहादत यानी दो गवाहों की गवाही पर उसे मान लिया जाता था। . . . . इस कुरान पाक को हजरत अबू बकर के जमाने में जैद इब्ने साबित ने मुरत्तब किया था।” (पेज 63)

*“It is true that after the death of Prophet Mohammad, in the times of Hazarat Abu Waqar Siddiqui, if any person produced any written material and said that Prophet Mohammad had dictated the same, then it was accepted on evidence of two witnesses. . . . This holy Quran was prepared by Zaid Ibne Sabit in the period of Hazarat Abu Baqr.” (E.T.C.)*

“यह ठीक है कि हिदाया में ऐसा कहा गया है कि पब्लिक प्लेस पर मस्जिद नहीं बनायी जाये।” (पेज 70)

*“It is true that it is contained in the ‘Hidayas’ that mosque be not built at a public place.” (E.T.C.)*

“हदीक में शोहदा नाम की किताब मैंने पढ़ी तो नहीं है पर देखी है। . . . . उसके मुसन्निफ का नाम शायद मिर्जा जान है। . . . . मैं यहां गवाही देने मस्जिद शरयी हैसियत के बारे में एक्सपर्ट की हैसियत से गवाही देने आया हूँ।” (पेज 71)

*“As regards ‘Hadiqs’, I have not read but seen the book titled ‘Shahda’. . . . It was probably written by Mirza Jaan. . . . I have come to give evidence as an expert on ‘Sharyi’ (according to Islamic Shariyat) status of mosque.” (E.T.C.)*

“बाबरी मस्जिद विवादित स्थल पर मीरबाकी ने बनवाया था। पर बाबर के हुक्म से। बाबरी मस्जिद पर वह कत्बा लगा हुआ था उसमें यह बात लिखी हुई थी कि यह मस्जिद मीरबाकी ने बाबर के हुक्म से बनवाई है। वह कत्बा मैंने खुद नहीं देखा पर उपरोक्त किताब बाबरी मस्जिद में उसका हवाला है कत्बे के आसार उसमें छिपे हुए है।” (पेज 76)

*“Mir Baqi had built Babri mosque at the disputed site, but on the command of Babar. An inscription was fixed*

*at the Babri mosque in which it was mentioned that this mosque had been built by Mir Baqi on command of Babar. I did not see this inscription myself, but the contents of the inscription have been published in the aforesaid book 'Babri Masjid'.*” (E.T.C.)

“विवादित ढांचा जिस जमीन पर स्थित था उसकी मिल्कीयत के बारे में मैंने जानकारी की . . . . . जमीन की नवईयत क्या थी उसकी तफसील मुझे नहीं मालूम। चूँकि मस्जिद बहुत पुरानी थी इसलिए उस जमीन की मिल्कीयत के बारे में हमें नहीं पता। मैंने इतनी जानकारी की कि यह एक पुरानी मस्जिद थी पर उस जमीन की क्या नवईयत थी, मस्जिद से बनने से पहले क्या थी, इसकी जानकारी नहीं की।” (पेज 77)

*“I inquired about the ownership of the land, over which the disputed structure stood. . . . . I do not know the details of status of the land. Since the mosque was very old, I did not get to know about ownership of the land. I inquired this much that it was an old mosque, but did not inquire about the status of said land or about its status prior to construction of the mosque.”* (E.T.C.)

“डा० अमीर अली . . . . मैं उनकी इस बात से सहमत नहीं हूँ कि किसी विवादित जमीन पर मस्जिद नहीं बन सकती।” (पेज 78)

*“Dr. Amir Ali . . . . I do not agree with this version of his that mosque cannot be built over any disputed land. Shekhul Islam is not a name, and instead is a title.”*(E.T.C.)

“मेरे इल्म में कोई ऐसी किताब नहीं है जिसमें मस्जिद के ढांचा और मस्जिद बनाने के तरीके के बारे में कोई हिदायत दी गयी हो। . . . . . शरियत के हिसाब से वह जमीन जो खाली हो उस पर कोई बिल्डिंग न हो वह भी मस्जिद हो सकती है यदि उसे मस्जिद के लिए वक्फ कर दिया गया हो।” (पेज 79)

*“There is no book in my knowledge, which lays down the shape of mosque and the manner of its*

*construction. . . . . According to Shariyat, if any land is vacant and there is no building over it, then it can be a mosque if Waqf has been executed for a mosque.” (E.T.C.)*

**3281. PW 22, Mohd. Khalid Nadvi** in his statement said that there is no reference about the form or shape in a particular manner to be observed for construction of a mosque in Holy Quran or Holy Hadis. No such reference is found in other books of Shariat law. Neither a dome nor a minarate nor a well nor arrangement of water for wazoo are essential conditions for constructing a mosque. He further said that once there constructed a mosque, it would remain for ever as it is and neither placement of any idol nor otherwise its status or position would stand altered. Even if, followers of any other religion start practicing their religious faith in a mosque, that would not affect the status of mosque at all. In his cross-examination on pages 3 and 4 he says:

“कुरान के लुगवी मायने पढ़ना के हैं। कुराने शरीफ की व्याख्या कुछ इस प्रकार की जा सकती है कुराने पाक अल्लाह का नाजिल करदा आखिरी किताब है जो मोहम्मद (स०अ०व०) पर 23 साल की मुदत में हजरत जिब्ररील (अ०स०) के वास्ते से मक्के और मदीने मे नाजिल हुई।.....अग्रेंजी मायने मे भी कुरान को खुदा की किताब कहा जा सकता है।” (पेज-3)

“ *The Quran literally means 'to read'. The Quran can be explained as the last book of Allah(God) which descended to Muhammad(S.A.V. i.e. peace be upon him) in Mecca and Medina through Angel Gabriel(A.S. i.e. salutation to him) in the span of 23 years. The Quran, as per its English meaning also, may be called the Book of God.*” (E.T.C.)

“कुराने पाक के कुल 30 पारे हैं। हर पारे में अलग अलग सूरा यानी चेप्टर हैं और हर सूरे में आयते हैं।” (पेज-4)

*“There are total 30 'Paras'(parts) of the holy Quran. Each part has separate 'Suras'(chapters) and each chapter has 'Ayats' (sentences).” (E.T.C.)*

**3282.** But then as pointed out by learned counsels for some of the defendants (Suit-4) he admits that a mosque cannot be constructed on a land which has not been acquired in a just and fair manner and further it cannot be constructed on the religious place of another religion or by desecrating a place of worship of another religion. He said:

“कुरान पाक में ऐसा कहीं नहीं कहा गया है कि किसी की जमीन या जायदाद का जबरन कब्जा या अतिक्रमण कर लिया जाये। किसी की जमीन पर जबरन और बगैर उसकी रजामंदी के आम हालात में नहीं जाया जा सकता है। सुन्नत उसे कहते हैं जिसे हजूर मोहम्मद साहब ने कहा हो या” ( पेज-6)

*“The holy Quran has ordained nowhere for anybody's land or property to be forcibly captured or encroached upon. Capturing someone's land forcibly and without his consent cannot be taken to be valid in ordinary circumstances. Sunnat is what Prophet Muhammad has stated.” (E.T.C.)*

“किसी इमारत को तोड़कर भी जबरन मस्जिद हजूर मोहम्मद स0अ0व0 ने नहीं बनवायी।” (पेज-8)

*“ Muhammad Sahib(S.A.V.) did not forcibly build any mosque even by demolishing any building.” (E.T.C.)*

“मस्जिद के ताल्लुक से मैंने ऐसा पढ़ा है कि मस्जिद जब बनायी जाये तो वह क़िबला रुख हो, किसी ऐसी जमीन पर बनायी जाये जिसे जायज तरीके से हासिल किया गया हो खाह मिल्कियत या वक्फ के जरिये/किसी ऐसी जगह पर जो दूसरे की हो, जुल्म और जबरदस्ती

करके उस जगह पर मस्जिद नहीं बनायी जा सकती है।” (पेज-18)

*“I have read in relation to mosque that whenever it is constructed, its face should be towards Quibla and it should be constructed on a piece of land acquired in a legitimate manner by way of ownership or waqf (gift for a religious purpose). A mosque cannot be constructed, forcibly and by inflicting excesses, at a place which belongs to another person.” (E.T.C.)*

“यह ठीक है कि किसी मजहब की इबादतगाह को जबरन तोड़कर मस्जिद नहीं बनायी जायेगी। इसी प्रकार किसी दूसरे मजहब की इबादतगाह पर जबरन कब्जा करके मस्जिद नहीं बनायी जा सकती है।” (पेज-18)

*“It is true that a mosque will not be constructed by forcibly demolishing a place of worship belonging to any religion. Similarly it cannot be constructed by forcibly capturing a place of worship belonging to any other religion.” (E.T.C.)*

“स्वयं कहा कि इस बयान की वजाहत यूं की जा सकती है कि जहाँ मस्जिद बनायी जाये और जो बनाये वह सच्चाई के साथ अल्लाह के लिए बनाये और किसी की जमीन पर ज़ालीमाना या गासीबाना कब्जा करके न बनाये।” (पेज-32)

*“(Himself stated) This statement can be explained in such a way that wherever and by whosoever a mosque is built, it should be built for the sake of Allah (God) with truthfulness and not on anybody else's land by grabbing it in a fraudulent or forcible manner.” (E.T.C.)*

“यह ठीक है कि वह जमीन चाहे जिसके इस्तेमाल में हो लेकिन अगर वह उस पर सहमति दे दे तो मस्जिद बनवाई जा सकती है।” (पेज-36)

*“It is true that whosoever may be using the land, a mosque can be constructed on it if he consents to that.”(E.T.C.)*

**3283.** He also says that Waqif must be the owner of the land:

*“यह कहना भी सही है कि मस्जिद शिया बनाए या सुन्नी, उस जमीन को मस्जिद के नाम वक्फ करना ज़रूरी होगा। यह कहना सही है कि जो जमीन को वक्फ करेगा, वह मस्जिद वाली जमीन का मालिक होना ज़रूरी है।” (पेज-21)*

*“ It is also correct to say that it will be necessary for land to be gifted in the name of mosque, no matter it is constructed by Shias or Sunnis. It is correct to say that a man making waqf of land needs to be the owner of the masjid land.” (E.T.C.)*

**3284.** He has also said in his cross-examination that the land in dispute was vacant when the disputed building was constructed and it was in the ownership of muslims prior to 1528 AD.

*“मेरी जानकारी के मुताबिक बाबरी मस्जिद जिस जमीन पर बनी थी वह जमीन मस्जिद बनने के पहले यानी 1528 से पहले खाली जमीन थी, उस पर कोई निर्माण नहीं थे। मेरी यह जानकारी कि 1528 से पहले विवादित स्थल खाली जमीन थी 1986 के बाद छपी छोटी किताबों से हुई।” (पेज-22)*

*“To my knowledge, the land on which the Babri mosque was built was a vacant land before 1528, that is, prior to the construction of the mosque. My knowledge that the disputed site was a vacant land before 1528, stemmed from little books published after 1986.” (E.T.C.)*

*“जहां तक मुझे याद है सबाहुददीन अब्दुल रहमान साहब ने अपनी पुस्तक में कई हवालों का जिक्र इस मुतलिक किया है*

कि मस्जिद से पहले विवादित स्थल खाली जमीन थी। इसी सम्बन्ध में उन्होंने एलेक्जेंडर कनिंघम की रिपोर्ट का हवाला दिया है जो इस समय हमें याद है और दूसरे संदर्भ याद नहीं है।” (पेज-23)

“ *As far as I remember, Sabah-ud-Din Abdur Rehman has, in his book, quoted several references saying that before the construction of the mosque the disputed site was a vacant land. In this very regard, he has quoted the report of Alexander Cunningham which I remember as of now. But I do not remember other references.*” (E.T.C.)

“यह कहना सही है कि किसी भी धर्म की इबादतगाह को यदि गिरा दिया जाये तो वह उसी धर्म की इबादतगाह रहेगी यह कहना सही है कि यदि मंदिर को तोड़कर मस्जिद बना दी जाये तो उसकी हैसियत नहीं बदलेगी और वह मंदिर ही रहेगा और यदि मस्जिद को तोड़कर मंदिर बना दिया जाये तो वह मस्जिद ही रहेगी। यदि यह साबित हो जाये कि विवादित स्थल पर मंदिर था जिसे जबरन तोड़कर मस्जिद बनायी गयी तो वह मंदिर ही माना जायेगा। मेरी मालुमात में 1528 के पहले विवादित स्थल मुसलमानों की मिल्कियत थी। यह जानकारी मुझे मज्कूराबाला किताब से हुई । .....का दूसरा प्रकाशन 1977 में प्रकाशित हुआ था।”

(पेज 25-26)

“*It is correct to say that if a place of worship belonging to a particular faith is demolished, it will remain to be a place of worship belonging to that very faith. It is correct to say that a temple will not lose its character and will remain to be a temple even if it is demolished to build a mosque. If any mosque is demolished and a temple is constructed in its place, the mosque will remain to be a mosque. If it is proved that there was a temple on the disputed site forcibly demolishing which a mosque was*

*constructed, then such a temple will continue to be treated as a temple. To my knowledge, the disputed site was the property of Muslims before 1528. I came to know of this from the book mentioned above. The second publication of . . . came out in 1977.” (E.T.C.)*

**3285.** With respect to his statement-in-chief about the characteristics of mosque he however has admitted on page 27 that he has not acquired any special knowledge in this regard as under:

*“मैंने इस सिलसिले में कोई विशेष ज्ञान अर्जित नहीं किया कि मस्जिद का आकार व स्वरूप क्या हो। फिकह की ब्राज किताबों में मैंने यह पढ़ा है कि मस्जिद के आदाब और अहकाम क्या हो। परन्तु उसकी बनावट के बारे में कहीं नहीं पढ़ा है। और न ही उसके तर्ज तामीर का कोई तरीका बताया गया है।” (पेज-27)*

*“I did not acquire any specific knowledge as to what the shape and form of a mosque should be. In certain books of Fiquah I have read what 'Aadab'(manners) and 'Ahkam'(orders) should be followed in a mosque. But I have nowhere studied about its structure, nor is there any mention of any style of its construction.” (E.T.C.)*

**3286.** Neither he has ever visited Ayodhya nor has himself seen the disputed building, therefore, other part of his statement in cross-examination in this regard is wholly irrelevant. His admission about visit to Ayodhya is on pages 24/25:

*“यह कहना सही है कि चूंकि मैं कभी अयोध्या नहीं गया इसलिए मुझे इस बात की जानकारी नहीं है कि विवादित स्थल कहां पर है और किस स्थिति में है।” (पेज 24-25)*

*“It is correct to say that since I never visited Ayodhya, I do not know where the disputed site stands and*

*in what position it is.” (E.T.C.)*

**3287.** He has tried to explain the reason of construction of disputed building of Babari Mosque by Mir Baqi while stating on pages 11/12 that Mir Baqi lived at Ayodhya and since there was a large population of muslims thereat he found it necessary to construct Babari mosque thereat since mosque is normally constructed where there is a settlement of muslims. He, however, denied any knowledge about the exact muslim population at the relevant time of Ayodhya and also any knowledge about the existence of any mosque at Ayodhya as is evident from page 11/12 and 22 as under:

“मीर बाकी अयोध्या में रहता था। बाबरी मस्जिद बनाने की जरूरत इसलिए थी कि वहाँ पर मुसलमानों की कसीर आबादी थी और इसलिए जहाँ मुसलमानों की आबादी होती है वहाँ मस्जिद बनाई जाती है। आबादी की तादाद (संख्या) का इल्म मुझे नहीं है।” (पेज 11-12)

*“Mir Baqi lived at Ayodhya. The Babri mosque was needed to be constructed because there was a large population of Muslims. A mosque is constructed where there is a settlement of Muslims. I do not know exact figures of the Muslim population.” (E.T.C.)*

“विवादित ढाँचा/बाबरी मस्जिद तामीर करने के समय अयोध्या में और भी मस्जिदें थीं। कितनी मस्जिदें थीं, यह तफसील से नहीं बता सकता हूँ।” (पेज-22)

*“At the time of constructing the disputed structure/ Babri masjid, Ayodha had certain other mosques as well. I cannot detail how many mosques were there.” (E.T.C.)*

**3288.** PW 25, S.M. Naqvi is of Shia sect and is active in politics as admitted on page 2:

‘मैं शिया मत का हूँ। मैंने शिया फिक्हा पर कुछ किताबों का अध्ययन किया है। . . .शिया फिक्हा को फिकहे जाफिरिया भी कहा जाता है।

राजनीति में मेरा ताल्लुक राजनीतिक दलों से रहा है। शुरू में मैं महीना दो महीना कांग्रेस में फिर सोशलिस्ट ग्रुप ने अपने आपको कांग्रेस पार्टी से अलग कर लिया तो मैं सोशलिस्ट पार्टी में आया गया और तब से मैं राजनारायण जी के साथ लगा रहा, राजनारायण जी की मृत्यु के बाद से मैं मुलायम सिंह जी की पार्टी में तीन चार साल पहले तक रहा। मैं अकबरपुर नगर निकाय का प्रधान रहा हूँ। मैं वहाँ की आखिरी टाऊन ऐरिया कमेटी का चेयरमैन रहा हूँ और पहली नगर परिषद का भी चेयरमैन रहा हूँ। मैं एक इन्टर कालेज और एक हाईस्कूल का प्रबंधक हूँ। ये दोनों जिला अम्बेदकरनगर में हैं। . . . मैं 1990 में अल्प संख्यक वित्त एवं विकास निगम उ०प्र० का चेयरमैन रहा हूँ।

‘मैं आल इंडिया शिया कान्फ्रेस की सेंट्रल कमेटी का बहुत दिनों तक मेम्बर रहा हूँ।’ (पेज 2)

*“I am of Shia faith. I have read certain books on Shia Fiquah..... Shia Fiquah is also called Fiquahe Zafiria.*

*In politics I had contacts with political parties. Initially in Congress for a month or two. Then the Socialist group separated itself from the Congress party then I joined the Socialist party and since then I remained with Sri Raj Narayan. After the death of Sri Raj Narayan I was in the party of Sri Mulayam Singh till three to four years back. I was the Chairman of Akbarpur Municipal body. I was the Chairman of its last town area committee and the Chairman of its first Municipal board. I am the manager of an Intermediate college and one High school. Both of them are in District Ambedkar Nagar..... In 1990 I was the Chairman of Minorities Finance and Development Corporation U.P.”*

*“I was member of central committee of All India Shia Conference for many days.” (E.T.C.)*

“अल्पसंख्यक वित्त एवं विकास निगम लि०, उत्तर प्रदेश सरकार ने गठित किया है। मैं इस बाडी का चेयरमैन था पर आजकल जिलों में इसकी शाखा स्थापित हो गई है। मुझे सरकार ने मनोनीत किया था, अर्थात् 1990 में मुलायम सिंह की सरकार ने किया था।” (पेज 10)

*“The Minorities Finance and Development Corporation Limited has been constituted by the Uttar Pradesh Government. I was the Chairman of this body but these days its branches have been established in districts. I had been nominated by the Government, that is in 1990 by the Government of Sri Mulayam Singh.” (E.T.C.)*

**3289.** His statement is basically to the extent that since the mosque vests in Allah irrespective of sect muslim belong, he can offer Namaz and on the basis of sect, i.e., Shia or Sunni no difference can be made out. On page 6 he is said to have heard about offering of Namaz in the disputed building before 1948 as under:

“मैंने ऐसा सुना है कि सन् 1948 के पहले भी बाबरी मस्जिद में नमाज हुआ करती थी।” (पेज 6)

*“I have heard that Namaz was offered in Babri masjid even before year 1948.” (E.T.C.)*

**3290.** On page 8 he admits of big difference in the manner of offering Namaz by Shia and Sunni and said:

“शिया और सुन्नी में बहुत बड़ा फर्क है। . . . शिया और सुन्नी के नमाज पढ़ने के तरीके में भेद है।” (पेज 8)

*“There is much difference between Shia and Sunni. .... There is difference in the manner of offering Namaz between Shia and Sunni.” (E.T.C.)*

**3291.** He, however, admits to have never offered Namaz at

Ayodhay and said:

“चुनाव प्रचार के बाद 1948 में एक दो बार फिर अयोध्या गया था। मैंने अयोध्या में कभी भी किसी मस्जिद में नमाज अदा नहीं की।” (पेज 15)

“After the election campaign, I again visited Ayodhya on couple of occasions in 1948. I never offered Namaz in any mosque in Ayodhya.” (E.T.C.)

**3292.** Though he says that he had seen some of his other acquainted persons to have visited the disputed building for offering Namaz but on page 16 he says:

“मैंने विवादित मस्जिद में मुख्य दरवाजे के अन्दर घुसते किसी को नहीं देखा। . . . मैंने उन्हें नमाज पढ़ते नहीं देखा।” (पेज 16–17)

“I did not see anybody entering the disputed mosque through the main gate... .. I had not seen them offer Namaz.” (E.T.C.)

**3293.** Then further he could not explain the exact extent of difference in the manner of offering Namaz between Shia and Sunni as evidence from page 26:

“मैंने सुन्नी फिकह का अध्ययन नहीं किया इसलिए मैं शिया और सुन्नी लोगों के नमाज पढ़ने के तरीके में क्या क्या फर्क है पूरी तरह से नहीं बता सकता। लेकिन जाहिरा तौर पर शिया हाथ खोल कर नमाज पढ़ते हैं और सुन्नी हाथ बांधकर नमाज पढ़ते हैं। शिया और सुन्नी की अजान में यह अंतर है कि शिया जिन कल्मों को अजान में कहते हैं उन सबको सुन्नी अजान में नहीं कहते हैं। और उतनी बार नहीं कहते।”

(पेज 26)

“I have not studied Sunni 'Fiquah'. As such I can not fully tell about the differences in the manner of offering of Namaz by Shia and Sunni people. However, apparently Shia offer Namaz open handed and Sunni offer Namaz close handed. The difference in 'Ajan' (prayer call given

*from mosque) of Shia and Sunni is that the 'Kalmas' (Fundamental formula of the Quran) in 'Ajan' of Shia are not present in the Sunni 'Ajan' and they are not announced that number of time.' (E.T.C.)*

**3294.** Rest of his statements in respect to Babar, Mir Baqi, construction of building etc. are wholly irrelevant and inadmissible since he neither is an Expert Historian nor claims to possess any personal knowledge but whatever statement he has given are on hearse basis.

**3295.** From the books of 'Sharii' and the relevant extracts mentioned above, broadly, some of the features, which are permissible or impermissible for a believer of Islam while offering Namaz in a mosque or for construction of a mosque or for spreading islamic religion and religious practices, are as under:

- i. No compulsion in religion.
- ii. People of other religion are permitted to carry out other religious practices according to their own religion but if they are residing under an Islamic reign, he may have to pay certain amount.
- iii. Messengers of the almighty born in every community or nation.
- iv. No Prophat be given superiority over another. Superiority to a learned has been given only for the purpose to tell the people what is right or wrong according to religion.
- v. Freedom of religion was subject to payment of Jizya. The Islamic Rulers and army of Islam are under duty to protect religions, shrine and life of those isolator who

paid tax (Jazya) which was in the nature of a protection tax.

- vi. The temples of non-islamic people could be utilized for stay by a muslim travellers.
- vii. At one place, two separate building of worship or two religions cannot exist.
- viii. No Jizya upon the Muslim.
- ix. In a public mosque, there cannot be a prayer without adhan (Ajan)
- x. An assembly of worshippers pray in a Masjid with permission, that is delivery.
- xi. Foundation of a mosque must be laid on piety and not hypocrisy.
- xii. A mosque cannot be used as a home nor a place of gossips.
- xiii. Prayer between two columns is prevented.
- xiv. Funeral prayer in the mosque is not permitted.
- xv. Images, portrait, pictures, idols etc. as also designed garments having pictures are prohibited in a mosque.
- xvi. Sitting on the graves and performing of Salat towards graves is not permitted.
- xvii. Musical instrument i.e. bell etc. is not permissible in the mosque or in the vicinity thereof.
- xviii. Where bells are ringing or conch shells are blown, prayer would not be offered.
- xix. Before offering Friday prayer, one should take a bath in a house and perform Wudu (ablution) in the mosque.
- xx. Before other prayers, Wuzu i.e. cleanliness of hand, face and feet is necessary.

xxi. A mosque is to be built on a land obtained in a valid manner and by the owner or with the permission of the owner. In other words, user of land for the purpose of mosque in an unjust manner strictly prohibited.

**3296.** For the purpose of a waqf, valid in Shariyat Law, one must satisfy the following requirements:

- i. The land must belong to Waqif.
- ii. There must be dedication which is permanent.
- iii. For a public waqf, the delivery to Mutawalli or anyone else on his behalf.

**3297.** The above factors have been enumerated on a careful reading of the books of Sharii, as also the relevant authorities on the subject, noticed above. We find that the so called religious experts at several places have made statements which are strictly not in conformity to what has been said in the texts, the extract whereof, we have already referred, and at times is contrary thereto. It is now settled that in the matter of the principles or laws of Muslims or Hindus, the Courts are supposed either to obtain opinion of those who claimed to be 'Expert' in religious matter nor must rely thereon but should consider itself the relevant religious scripture to find out the correct position. The decision in this regard we have already referred to i.e. **Mosque known as Masjid Shahid Ganj Vs. Shiromani Gurdwara Prabandhak Committee, Amritsar, 1940 PC 116.**

**3298.** The case of the plaintiffs is that Babar conquered Hindustan after defeating Ibrahim Lodhi in the battle of Panipat in 1526 AD and thereby became emperor of the entire territory over which Ibrhim Lodhi had been reigning at that time. The

area of Oudh was within the reigning territory of Ibrahim Lodhi and therefore, it also fell under the authority of Babar. He being the conqueror of the territory was a sovereign authority enjoying complete ownership on the entire land which fell within his reigning territory and thus was entitled to use any land for the purpose as he liked. Mir Baqi, his agent, with the permission and approval of Babar used the land in question for construction of the disputed structure. Since the Babar as conqueror was owner of the entire land, it cannot be said that the land was not owned by him. In this regard Sri Jilani had placed reliance on the following:

**A. Travels in the Moghal Empire, AD 1656-1668 by Francois Bernier**, translated by Archibald Constable (1891), Second Edition revised by Vincent A. Smith published in 1916 by Oxford University Press, Page 5:

*"It is usual in this country to give similar names to the members of the reigning family. Thus the wife of Chah Jehan- so renowned for her beauty, and whose splendid mausoleum is more worthy of a place among the wonders of the world than the unshapen masses and heaps of stones in Egypt-was named Tage Mehalle, or the Crown of the Seraglio; and the wife of Jahan-Guyre, who so long wielded the sceptre, while her husband abandoned himself to drunkenness and dissipation, was known first by the appellation of Nour-Mehalle, the Light of the Seraglio, and afterwards by that of Nour-Jahan-Begum, the Light of the World.*

*The reason why such names are given to the great, instead of titles derived from domains and seigniories, as*

*usual in Europe, is this: as **the land throughout the whole empire is considered the property of the sovereign**, there can be no earldoms, marquises or duchies. The royal grants consist only of pensions, either in land or money, which the king gives, augments, retrenches or takes away at pleasure."*

B. Under the title "**Letter to Colbert**" at page 204, in the above book, it mentions as under:

*"The importation of all these articles into Hindoustan does not, however, occasion the export of gold and silver; because the merchants who bring them find it advantageous to take back, in exchange, the productions of the country.*

*Supplying itself with articles of foreign growth or manufacture, does not, therefore, prevent Hindoustan from absorbing a large portion of the gold and silver of the world, admitted through a variety of channels, while there is scarcely an opening for its return.*

*It should also be borne in mind, that the Great Mogol constitutes himself heir of all the Omrahs, or lords, and likewise of the Mansebdars, or inferior lords, who are in his pay; and, what is of the utmost importance, **that he is proprietor of every acre of land in the kingdom, excepting, perhaps, some houses and gardens which he sometimes permits his subjects to buy, sell, and otherwise dispose of, among themselves."***

C. At page 205 it mentions:

*"Second.-the empire of the Great Mogol comprehends several nations, over which he is not absolute master. Most*

*of them still retain their own peculiar chiefs or sovereigns, who obey the Mogol or pay him tribute only by compulsion. In many instances this tribute is of trifling amount; in others none is paid; and I shall adduce instances of nations which, instead of paying, receive tribute."*

D. **"The English Factories in India" (1668-1669) by Sir William Foster**, published at the Clarendon Press, Oxford (1927) on page 184, it says:

*"..for here in this country there are noe firme estates in land to be purchased, the **whole country being the Kings and not held by any tenure.**"*

E. **"The History of British India" by James Mill (Vol.1)** published by Associated Publishing House, New Delhi, First Published 1817, Second Edition in 1829 and Second Reprint in 1978, Page 136, says:

*"At different times, however, very different rights and advantages are included under the idea of property. At very early periods of society it included very few: originally, nothing more perhaps than use during occupancy, the commodity being liable to be taken by another, the moment it was relinquished by the hand which held it: but one privilege is added to another as society advances: and it is not till a considerable progress has been made in civilization, that the right of property involves all the powers which are ultimately bestowed upon it.*

*It is hardly necessary to add, that the different combinations of benefits which are included under the idea of property, at different periods of society, are all equally arbitrary; that they are not the offspring of nature, but the*

*creatures of will; determined, and chosen by the society, as that arrangement with regard to useful objects, which is, or is pretended to be, the best for all.*

*It is worthy of remark, that property in moveables was established; and that it conveyed most of the powers which are at any time assigned to it; while, as yet, property **in land had no existence.** So long as men continue to derive their subsistence from hunting; so long, indeed, as they continue to derive it from their flocks and herds, the land is enjoyed in common. Even when they begin to derive it partly from the ground, though the man who has cultivated a field is regarded as possessing **in it a property till he has reaped his crop, he has no better title to it than another for the succeeding year.***

*In prosecuting the advantages which are found to spring from the newly-invented method of deriving the means of subsistence from the ground, experience in time discovers, that much obstruction is created by restricting the right of ownership to a single year; and that food would be provided in greater abundance, if, by a greater permanence, men were encouraged to a more careful cultivation. To make, however, that belong to one man, which formerly belonged to all, is a change, to which men do not easily reconcile their minds. In a thing of so much importance as the land, the change is a great revolution. To overcome the popular resistance, that expedient which appears to have been the most generally successful, is, to vest the sovereign, as the representative of the society, with that property in the land which belongs to the society; and*

*the sovereign parcels it out to individuals, with all those powers of ownership, which are regarded as most favourable to the extraction from the land of those benefits which it is calculated to yield. **When a sovereign takes possession of a country by conquest, he naturally appropriates to himself all the benefits, which the ideas of his soldiers permit.***

*In many of the rude parts of Africa, the property of the land is understood to reside in the sovereign; it is in the shape of a donation from him, that individuals are allowed to cultivate; and when the son, as is generally the case, succeeds to the father, it is only by a prolongation of the royal bounty, which, in some places at least, is not obtained without a formal solicitation. It is known, that in Egypt the king was the sole proprietor of the land; and one fifth of the produce appears to have been yielded to him as revenue or rent. Throughout the Ottoman dominions, the Sultan claims to himself the sole property in land. The same has undoubtedly been the situation of Persia, both in ancient and modern times. "It is established", says the late intelligent Governor of Java, "from every source of inquiry, that the sovereign in Java is the lord of the soil." And when the fact is established in regard to Java, it is established with regard to all that part of the eastern islands, which in point of manners and civilization resembled Java. It is not disputed that in China the whole property of the soil is vested in the Emperor. By the laws of the Welsh, in the ninth century, all the land of the kingdom was declared to belong to the king; and we may safely, says Mr. Turner, believe,*

*that the same law prevailed while the Britons occupied the whole island.*

*To those who contemplate the prevalence of this institutions, **among nations contiguous to the Hindus, and resembling them in the state of civilization, it cannot appear surprising, that among them, too, the sovereign was the lord of soil.** The fact is, indeed, very forcibly implied, in many of the ancient laws and institutions. "Of old hoards," says one of the ordinances of Manu, "and precious minerals in the earth, **the king is entitled to half by reason of his general protection, and because he is the supreme lord of the soil.**" The king, as proprietor, and as fully entitled to an equitable return for the land which he has let, is empowered to punish the cultivator for bad cultivation. "If land be injured, by the fault of the farmer himself, as if he fails to sow it in due time, he shall be fined ten times as much as the king's share of the crop, that might otherwise have been raised; but only five times as much, if it was the fault of his servants without his knowledge." Among other ancient memorials of Hindu institutions and manners, are certain inscriptions engraved on durable materials. Some of them are records of grants of land, commonly to favourite Brahmans; and afford strong indication of the proprietary rights of the sovereign. The sovereign gives away villages and lands, not empty, but already occupied by cultivators, and paying rent. It appears from an ordinance of Yagyavalkaya, one of the most sacred of the law sages, that the kings alienated the lands within their dominions, in the same manner, and by*

*the same title, as they alienated any portion of their revenues. On this point, it is of material importance to remark, that up to the time, when the interests of the Company's servants led them to raise a controversy about the rights of the Zamindars, every European visitor, without one exception that I have found, agrees in the opinion, that the sovereign was the owner of the soil.*

*Wherever the Hindus have remained under the influence of their ancient customs and laws, the facts correspond with the Inference which would be drawn from these laws. Under the direction of the Governor-General of Bengal, a journey was undertaken, in the year 1766, by Mr. Motte, to the diamond mines in the Province of Orissa. In a narrative of his journey, he gives an account of the distribution of the land as Sambalpur, which till that time had remained under the native government. Each village being rated to the government at a certain quantity of rice, which is paid in kind, the land is thus divided among the inhabitants: To every man, as soon as he arrives at the proper age, is granted such a quantity of arable land as is estimated to produce  $242 \frac{1}{8}$  measures of rice, of which he must pay  $60 \frac{5}{8}$  measures or about one fourth to the raja or king. Mr. Motte adds; "The reserved rent of three or four villages, being one fourth the produce of the land, is applied to the use of the raja's household. The reserved rent of the rest is given to his relations or principal servants, who by these means have all the inhabitants dependent on them." Dr. Buchanan gives a particular account of the manner in which the crop, in those parts of India which are*

most purely Hindu, is divided between the inhabitants and the government. In Bengal it is not allowed to be cut down till the rent or tax is first paid: but in those countries to which his journey principally relates, it is the custom, after the grain has been thrashed out in the field, to collect it into heaps and then to divide it. A heap generally consists of about 110 Winchester bushels, of which he presents the following distribution as a specimen of the partition which is usually made. For the gods, that is, for the priests at their temples, are deducted five seers, containing about one-third of a Winchester gallon each; for charity, or for the mendicant Brahmans, an equal quantity; for the astrologer and the Brahman of the village, one seer each; for the barber, the potmaker, the washerman, and the Vasaradava, who is both carpenter and blacksmith, two seers each; for the measurer, four seers; for the Aduca, a kind of beadle, seven seers; for the village chief, eight seers, out of which he has to furnish the village sacrifices; and for the accomptant, ten seers. All these perquisites are the same, whatever be the size of the heap beyond a measure of about twenty five Winchester bushels. When these allowances are withdrawn the heap is measured; and for every candaca which it contains, a measure equal to  $5 \frac{1}{20}$  Winchester bushels, there is again deducted half a seer to the village watchmen, two and a half seers to the accomptant, as much to the chief of the village; and the bottom of the heap, about an inch thick mixed with the cowdung which in order to purify it had been spread on the ground, is given to the Nirgunty, or conductor of water.

*These several deductions, on a heap of twenty candacas, or 110 Winchester bushels, amount to about 5  $\frac{1}{4}$  per cent on the gross produce. Of the remainder, 10 per cent is paid to the collectors of the revenue, as their wages or hire; and the heap is last of all divided into halves between the king and the cultivator.*

***From these facts only one conclusion can be drawn, that the property of the soil resided in the sovereign: for if it did not reside in him, it will be impossible to show to whom it belonged. The cultivators were left a bare compensation, often not so much as a bare compensation, for the labour and cost of cultivation: they got the benefit of their labour: all the benefit of the land went to the king.***

*Upon the state of facts, in those places where the present practices of the Hindus have not been forced into a disconformity with their ancient institutions, the fullest light has been thrown, by those servants of the Company, who made the inquiries requisite for the introduction of a regular system of finance, into the extensive regions in the south of India added to the British dominions during the administrations of the Marquisses Cornwallis and Wellesley. Place, Munro, Thacheray, Hodgson, were happily men of talents; sufficiently enlightened to see the things which were before them with their naked eyes; and not through the mist of English anticipations. From the reports of these meritorious gentlemen, presented to their superiors, the Committee of the House of Commons, which inquired into East India affairs in 1810, have drawn the*

following as a general picture: "A village, geographically considered, is a tract of country, comprising some hundreds, or thousands, of acres of arable and waste land. Politically viewed, it resembles a corporation, or township. Its proper establishment of officers and servants consists of the following descriptions: The Patail, or head inhabitant, who has the general superintendence of the affairs of the village, settles the disputes of the inhabitants, attends to the police, and performs the duty of collecting the revenues within his village: the Curnum, who keeps the accounts of cultivation, and registers every thing connected with it: The Tallier and Totie; the duty of the former appearing to consist in a wider and more enlarged sphere of action, in gaining information of crimes and offences, and in escorting and protecting persons travelling from one village to another; the province of the latter appearing to be more immediately confined to the village, consisting, among other duties, in guarding the crops, and assisting in measuring them: The Boundaryman, who preserves the limits of the village or gives evidence respecting them in cases of dispute: The Superintendent of water courses and tanks, who distributes the water for the purposes of agriculture: The Brahman, who performs the village worship: The Schoolmaster, who is seen teaching the children in the villages to read and write in the sand: The Calendar Brahman, or astrologer, who proclaims the lucky, or unpropitious periods for sowing and thrashing: The Smith, and Carpenter, who manufacture the implements of agriculture, and built the dwelling of the ryot: The Potman

*or potter: The Washerman: The Barber: The Cow-keeper, who looks after the cattle: The Doctor: The Dancing Girl, who attends at rejoicings; The Musician, and the Poet.*

***"Under this simple form of municipal government, the inhabitants of the country have lived, from time immemorial. The boundaries of the villages have been seldom altered: and though the villages themselves have been sometimes injured, and even desolated, by war, famine, and disease, the same name, the same limits, the same interests, and even the same families, have continued for ages. The inhabitants give themselves no trouble about the breaking up and division of kingdoms; while the village remains entire, they care not to what power it is transferred, or to what sovereign it devolves; its internal economy remains unchanged; the Potail is still the head inhabitant, and still acts as the petty judge and magistrate, and collector or renter of the village."***

*These villages appear to have been not only a sort of small republic, but to have enjoyed to a great degree the community of goods. Mr. Place, the collector in the jaghire district at Madras, informs us, that "Every village considers itself a distinct society; and its general concerns the sole object of the inhabitants at large; a practice," he adds, "which surely redounds as much to the public good as to theirs; each having, in some way or other, the assistance of the rest; the labours of all yield the rent; they enjoy the profit, proportionate to their original interest, and the loss falls light. It consists exactly with the principles upon which the advantages are derived from the division of*

*labour; one man goes to market, whilst the rest attend to the cultivation and the harvest; each has his particular occupation assigned to him, and insensibly labours for all. Another practice very frequently prevails, of each proprietor changing his lands every year. It is found in some of the richest villages; and intended, I imagine, to obviate that inequality to which a fixed distribution would be liable."*

F. It is said that similar facts have been stated by certain other writers namely:

**i.** Letters from the Mughal Court, 1593-1617 Jerome Zenxavir translated by H.Hosten, Journal of Asiatic Society of bengal, NS, XXIII (1927), page 121-22, 105.

**ii.** John Fryer, A New Account of East India and Persia, being Nine Years' Travels, 1671-82, ed. W. Crooke, 3 Vols., Hakluyt Society, London, (1909, 1912, 1915), Vol. I, page 137

**iii.** Nicolao Manucci, Storia do Mogor, 1656-1712, translated by W.Irvine, 4 Vols., Indian Texts Series, Government of India, London, 1907-08, Vol. II, P.46.

**3299.** It is not disputed that king had purchased land at times. Regarding payment made by Shahjahan for acquiring land to construct Taj Mahal, it is stated that there existed a house built by Raja Maan Singh succeeded by Raja Jai Singh and therefore pursuant to an agreement certain other properties was transferred to him in lieu of the aforesaid land. A facsimile of Firman issued on 28<sup>th</sup> December, 1533 to Raja Jai Singh is available in "Jaipur Kapaddwar Collections" and copy thereof has been published recently in a book "**Tajmahal, the**

**Illumined Tomb"** compiled and Translated by W.E.Begley and Z.A.Desai published by the University of Washington Press, 1989. At page 41 para 5.1 reads:

*"QAZWINI*

*Body of the Queen Taken to Akbarabad*

*[fol. 235A] In short, after six months her blessed corpse was dispatched to the Abode of the Caliphate, Akbarabad, escorted by the branch of the tree of sovereignty and caliphate, prince Sultan Shah Shuja' Bahadur, the 'Umdat ul-mulk Wazir Khan, and the veiled lady possessing the virtues of Rabi'a Satti Khanam, who had attained the high rank of first Lady-in-Waiting of that recipient of divine pleasure in Paradise by her laudable services, sincere faith and purity of intention.*

*As there was on the southern side of Akbarabad, adjoining the city, on the bank of the river Jumna, a tract of land (zamini), which formerly (sabiqa) was the house (khana) of Raja Man Singh, but at this time was in the possession of his grandson Raja Jai Singh, and which from the point of view of eminence and pleasantness appeared to be worthy of the burial of that one whose residence is Paradise, it was selected for this purpose. And the Raja as a token of his sincerity and devotion, donated the said land (zamin) and considered this to be the source of happiness. However, His Majesty, in exchange (iwad) for that, granted to the Raja a lofty house (khana-i-'ala) which belonged to the crown estate. And even though the Raja's consent was obvious, the Emperor obtained permission for the repose of that companion of the Houris of Paradise.*

*And it was decided that her auspicious body should be buried in that heart-pleasing land (zamin); but until its arrival at the Abode of the Caliphate, everywhere on the roads, there should be distributed food and drink [fol. 235B] and innumerable coins should be given in alms to the poor and the deserving. And the prince of the people of this world and his companions, having carried the blessed dead body to the Abode of Caliphate, entrusted it to that holy earth. And having halted in the seat of the kingdom for three or four days, they returned to the exalted court.*

*And in compliance with the order which is obeyed by the World, the overseers (mutasaddiyan) of the affairs of the Abode of Caliphate hurriedly covered the top (bala) of that grave (turbat), having the signs of divine mercy, so that it remained hidden from the public gaze (nazar)."*

**3300.** At page 43, it says:

*"As there was a tract of land (zamini) of great eminence and pleasantness towards the south of that large city, on which there was before this the mansion (manzil) of Raja Man Singh, and which now belonged to his grandson Raja Jai Singh, it was selected for the burial place (madfan) of that tenant of Paradise. Even though Raja Jai Singh considered the acquisition (husul) of this to be his good fortune and a great success, by way of utmost care, which is absolutely necessary in all important things, particularly in religious matters, a lofty mansion from the crown estates (khalisa-sharifa) was granted to him in exchange ('iwad).*

*After the arrival of the dead body in that highly*

*dignified city, on the 15<sup>th</sup> of Jumada II 1041 (8 January 1632] of the next regnal year, the luminous body of that heavenly essence was consigned to the holy earth. The overseers (mutasaddiyan) of the Abode of the Caliphate, under exalted orders, hastily concealed from the public gaze (nazar) the heaven-ranked grave (turbat) of that world of chastity."*

**3301.** Firman dated 28<sup>th</sup> December, 1633 to Raja Jai Singh translated in English at page 169 reads as under:

*"Be it known through this glorious farman marked by happiness, which has received the honor of issuance and the dignity of proclamation, that the mansions (haveli) detailed in the endorsement (dimn), together with their dependencies, which belong to the august crown property, have been offered to that pride of peers and vassal of the monarch of Islam, Raja Jai Singh, and are hereby handed over and transferred to his ownership—in exchange for the mansion (haveli), formerly belonging to Raja Man Singh, which that pride of the grandees willingly and voluntarily donated for the mausoleum (maqbara) of that Queen of the ladies of the world and Lady of the ladies of the Age, that honor of the daughters of Adam and Eve and upholder of the stature of chastity of the Time, that Rabi'a of the world and chastity of the World and Religion, that recipient of Divine Mercy and Pardon, Mumtaz Mahal Begam.*

*And it shall be incumbent upon all present and future governors, officials (amil), overseers (mutsaddiyan), agents and inspectors (mushrif), in the implementation and execution of this august lofty order, to hand over to his*

*possession the said mansions, and convey to that one worthy of bounty their absolute ownership. Moreover they should never and by no means bring about any obstruction or deviation, nor should they ever require a fresh farman or deed; and they should neither depart or deviate from this order, nor fail to execute it promptly.*

*Written on this date, the 7<sup>th</sup> of the month of Dai, Ilahi year 6, corresponding to the 28<sup>th</sup> of Jumada II, year 1043 Hijri [28 December 1633].*

*Endorsement on Reverse of the Farman*

*....Sunday, the 28<sup>th</sup> of the month of Dai, Ilahi year 6, corresponding to the 14<sup>th</sup> of Rajab, year 1043 (?)*

*The memoranda (risala) of the Pillar of the State ('Umdat al-Mulk), the.....of the government and support of the kingdom, the trust of the great.....and organizer of the affairs of kingship, the Plenipotentiary of the government (Jumlat al-Mulk) and pivot of important affairs (Madar al-Maham) [i.e., the Prime Minister], 'Allami Fahami Afzal Khan; and that asylum of ministership of and minstay of good fortune and glory, Mir Jumla; and that asylum of ministership .....Makramat Khan; and the holder of the secretariat (diwani), the least of the servants, Mir Muhammad:*

*The ever-obeyed farman, as effulgent as the sun and axalted as the sky, was issued [to the effect that]:*

*The mansions (Haveli), together with their dependencies, belonging to the august crown estate, in exchange for the mansion (Haveli) belonging to Raja Jai Singh, which that Pillar of the State ('Umdat*

*al/Mulk), for the sake of the Illumined Tomb, willingly and voluntarily donated as a gift (peshkash namudand), have hereby been granted by us to the said Raja and settled on him in full ownership.*

*And by way of attestation, this note (ya'd-dasht) has been put into writing. And endorsement (sharh) in the handwriting of Jumlat al-Mulki Madar al-Mahami [Afzal Khan] is that: "This should be entered in to news-register." Another endorsement in the handwriting of Jumlat al-Mulki is that: "The haveli of the late Shahzada Khanam [?] which was granted to the said Raja is confirmed."*

*The endorsement in the handwriting of that asylum of ministership and mainstay of good fortune and glory, Mir Jumla, is that: "As specified in the memorandum (barisala) of Jumlat al-Mulki Madar al-Mahami, it should be entered in the news-register (waqi'a)." The endorsement in the handwriting of that asylum of good fortune and mainstay of glory, Makramat Khan, is that: "It should be entered in the news-register."*

*The endorsement on the margin (hashiya) is in the handwriting of the news-writer (waqi'a-navis), attesting its entry in the news-register [?].*

*Another endorsement in the handwriting of the Jumlat al-Mulki Madar al Mahami, 'Allami Fahami, is that: "It should be resubmitted." The endorsement in the handwriting of that favorite of the royal court, Hakim Muhammad Sadiq Khan, is that: "It should be placed again before the august notice on Tuesday."*

*Another endorsement in the handwriting of that*

*favorite of the royal court, the administrator [?] of the foundations of the Gurgani rule and enforcer [?] of the rules of justice, the model of the lords of high station and choice of the peers of the world, Jumlat al-Mulki Mdar al-Mahami, 'Allami Fahami Afzal Khan, is that: "A farman of high dignity should be issued."*

*List of the Properties*

*Four " Properties" (manzil) have been granted to the Raja:*

*Haveli of Raja Bhagwandas.....*

*Haveli of Madho Singh.....*

*Haveli of Rupsi Bairagi, in the locality  
(mohalla)*

*of Atga Khan Bazar*

*Haveli of Chand Singh, son of Suraj Singh, in  
the aforementioned locality*

*Attestation and Seal*

*Certified as a true copy of the original:*

*THE SERVANT OF THE RELIGIOUS CODE OF  
MUHAMMAD*

*.....ABUL-BARAKAT"*

**3302.** Clarifying the legal position of 'Firman' issued by a Ruler, the Apex Court in **Faqrudin (supra)** observed that Maharana of Udaipur possessed executive and legislative power both. The rule by him are therefore statutory. It relied on an earlier decision in **Tilkayat Shri Govindlalji Maharaj Vs. State of Rajasthan AIR 1963 SC 1638** and observed:

*"In appreciating the effect of this Firman, it is first necessary to decide whether the Firman is a law or not. It*

*is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur, it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby. This position is covered by decisions of this Court and it has not been disputed before us, vide Madhaorao Phalke v. State of Madhya Bharat AIR 1961 SC 298. Ameer-un-Nissa Begum v. Mahboob Begum AIR 1955 SC 352 and Director of Endowments, Government of Hyderabad v. Akram Ali AIR 1956 SC 60"*

**3303.** Per contra Sri P.N.Mishra Advocate appearing for defendant no.20 (Suit-4) submits:

A. Plaintiffs' claim of creation of mosque and graveyards by Emperor Babur falls during the period of 1526 to 1530 AD ,the validity of the wakf and the title of the wakif which is precondition for creation of a wakf can be decided only by applying the law of 'Shar' (Haneefi School) which was the Law for the time being in force.

B. **Neil B.E. Baillie** in his Book '**A Digest of Mahomedan Law**' compilation and translation from authorities in the original Arabic on the subjects to which it was usually applied by British Courts of Justice in India in preface of its Part-First containing the doctrines of the **Hanifeea Code of Jurisprudence** at page vii-viii (Second Edition 1875 published by Smith Elder, & Co., London )

records that in the Province of Oudh since inception of Muslim rules in India the Hanifeea Code was the general law of the country and after the assumption of regal dignity (on 19th October, 1818) by Ghazi-ooddeen Hyder, the Hanifeea was gradually superseded by the Imameea Code. In the preface of Part-Second of the said book at page xi-xii (2nd Edn. 1887 published by Smith Elder, & Co., London) he reiterate that in the United Provinces of Oudh since inception of Muslim rules in India and till the accession of Umjad Ally Shah (who reigned from 17<sup>th</sup> May, 1842 to 13<sup>th</sup> February, 1847) the law of the Oudh province was Soonnee Hanifite Law. Relevant extracts from the said compilations read as follows:

*“The Moohummudan Sovereigns of India were Soonnees of the Hanifeea sect, and the Hanifeea code was the general law of the country, so long as it remained under the sway of Moohummudans. Even in Oude, where the actual rulers were of the Shia persuasion, yet, so long as they preserved a nominal allegiance to the Sovereigns of Delhi, the Hanifeea code remained the law of the province. After the assumption of regal dignity by Ghazi -ood-deen Hyder, the Hanifeea was gradually superseded by the Imameea code, until at length the latter had become the general law of the country at the time of its annexation to the British empire.”*

*“The Mussulmans of India are generally Soonnes of the Hanifite sect.*

...

*The process of assimilation was less rapid in India, where, though several of the Nawabs, or local Governors, were Sheeuhs, they acknowledged at least a nominal dependence on Delhi, and never ventured to make any ostensible change in the law of their provinces. This was eminently the case in Oude, the Nawabs of which were hereditary Viziers of the empire, and though long virtually independent, did not throw off their allegiance to it till the year 1818, when the Nawab Vizier Ghazi-ood-deen Hyder, with the consent, and, indeed, at the suggestion, of the British Government, assumed the title of Padshah or King. It was not, however, till the accession of Umjad Ally Shah, that any formal alteration was made in the law.”*

C. The **Gazetteer of India (Vol.II at p.361-363)** records that during the Sultanat & Mughal period the medieval state under Muslim rule was a theocracy. The sovereignty of Allah was unquestioned. The supremacy of the Shar was always acknowledged. Relevant portion of the said Gazetteer reads as follows:

*“The medieval state under Muslim rule was definitely a theocracy since it had all its essential elements- the 128 Argued by P N Mishra & assisted by R Agnihotri, Advocates on behalf of the Defendant No. 20. sovereignty of God and government by the direction of God through priests in accordance with divine laws. The Sultans of Delhi considered themselves as deputies or assistants of the Caliph*

*who was God's viceregent. Sher Shah and Islam Shah assumed the title of Caliph and the Mughal emperors, from Akbar to Aurangzeb, those of 'Shadow of God', 'Caliph of God', and 'Agent of God on Earth'. The sovereignty of God was unquestioned. The supremacy of the shar was always acknowledged, though Akbar added to the shar the state-laws. Under him and his two immediate successors, Islamic law ceased to be the exclusive code of government. Jahangir and Shah Jahan, however, did not regard themselves as above Muslim law and the former even assumed the role of 'Protector' of Islam and Shar. The Shar is based on the Quran, the word of God, and Hadith or the Prophet's interpretation of the word of God. Hence, the Shar consists of divine commands and not human ordinances."*

D. The **Gazetteer of India (Vol.II at p.361-363)** records that during the Sultanat & Mughal period the law of Shar which is based on Quran, the word of God, and Hadith or the Prophet's interpretation of the word of God was the law of the land. Relevant portion of the said gazetteer reads as follows:

*"The first question that arises in this context is whether the state under the Sultans of Delhi and the Mughal emperors was Islamic or otherwise. This has been the subject of a lively controversy among modern historians. According to Muslim constitutional law, the world is divided into dar-ul-*

*harb or 'abode of war' and dar-ul-Islam or 'abode of Islam'; and a darul- Islam is a country which is under the rule of a Muslim sovereign and where the ordinances of Islam have been established. The Sultans of Delhi acknowledged the sovereignty of the Caliph and considered their kingdom as a part of Dar-ul-Islam of which the Caliph was the juridical head. India under the Mughal emperors was governed by the Muslim law Shar. The fact that the bold and daring Alau'ddin Khalji consulted the Qadi of Bayana to ascertain what was legal proves the supremacy of the shar; and neither he nor Muhammad Tughlaq with his revolutionary inclinations, dared violate it. Even Akbar the Great, considered infidel by orthodox Muslims, did not disregard Muslim law."*

E. The **Gazetteer of India (Vol. II at p.368-369)** records that till 1579 AD. the Muslim rulers of India acknowledged the legal sovereignty of the Caliph. Relevant portion of the said gazetteer reads as follows:

*"The Sultans of Delhi acknowledged the legal sovereignty of the Caliph. According to Muslim political jurisprudence no Sultan had legal right to the throne unless he was recognized by the Caliph.*

...

*The claim of caliphal supremacy over the Mughal empire was finally overthrown when Akbar assumed the title of Imam and Amir-ul-muminin by virtue of the Mahdar (Declaration) of A.D.*

*1579. The coins and the Khutba mention him as Caliph and Amir-ul-muminin. By becoming the chief mujtahid, he also challenged the pretensions of the Safavi Shahs of Persia who claimed suzerainty over the Mughal empire, on the ground that both Babur and Humayon had sought and obtained their military help. It was under Akbar that the monarchy in India became absolutely independent of any foreign or external authority. His successors maintained this tradition. The Mughal emperors from the time of Akbar assumed the authority of the Caliph and called their capital daru'l-khilafat.*

F. In **(2008) 8 SCC 12, Faqrudin v. Tajuddin**, the Hon'ble Supreme Court held that a title does not remain in vacuum. It has to be determined keeping in view the law operating in the field viz. religious law or statutory law or customary law, etc. Relevant paragraph nos.44 & 45 of the said judgment read as follows:

*“44. The jurisdiction of the Board of Revenue being limited, no title could have been conferred upon the plaintiff. Title in or over a land will depend upon the statutory provisions. A title does not remain in vacuum. It has to be determined keeping in view the law operating in the field viz. religious law or statutory law or customary law, etc.*

*45. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense. The provisions of Rule*

*13 of the Matmi Rules laying down a rule of primogeniture will have no application in relation to the offices of sajjadanashin and mutawalli, which are offices of different nature. They are stricto sensu not hereditary in nature. It is well settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title.”*

G. In **AIR 1980 SC 707 "Krishna Singh v. Mathura Ahir"** the Hon'ble Supreme Court held that in applying the personal law of the parties, a Judge cannot introduce his own concepts of modern times but should enforce the law as derived from recognised and authoritative sources of Hindu law, i.e., Smritis and commentaries referred to, as interpreted in the judgments of various High Courts, except where such law is altered by any usage or custom or is modified or abrogated by statute. Relevant paragraph no. 17 of the said judgment read as follows:

*“17. It would be convenient, at the outset, to deal with the view expressed by the High Court that the strict rule enjoined by the Smriti writers as a result of which Sudras were considered to be incapable of entering the order of yati or sanyasi, has ceased to be valid because of the fundamental rights guaranteed under Part III of the Constitution. In our opinion, the learned Judge failed to appreciate that Part III of the Constitution does not touch upon the personal laws of the parties. In applying the personal laws of the parties, he could not introduce his own concepts of*

*modern times but should have enforced the law as derived from recognised and authoritative sources of Hindu law, i.e., Smritis and commentaries referred to, as interpreted in the judgment of various High Courts, except where such law is altered by any usage or custom or is modified or abrogated by statute.”*

H. In **AIR 1953 SC 394 "Rao Shiv Bahadur Singh v. State of Vindhya Pradesh** the Hon'ble Supreme Court held that on the change of sovereignty over an inhabited territory the pre-existing laws continue to be in force until duly altered. Relevant paragraph nos.10, 17 & 21 of the said judgment read as follows:

*“10. In this contention our attention has been drawn to the fact that the Vindhya Pradesh Ordinance 48 of 1949 though enacted on 11-9-1949, i.e. after the alleged offences were committed, was in terms made retrospective by S. 2 of the said Ordinance which says that the Act "shall be deemed to have been in force in Vindhya Pradesh from the 9th day of August 1948", a date long prior to the date of the commission of the offences. It was accordingly suggested that since such a law at the time when it was passed was a valid law and since this law had the effect of bringing this Ordinance into force from 9-8-1949 it cannot be said that the convictions are not in respect of 'a law in force" at the time when the offences were committed. This, however, would be to import a somewhat technical meaning into the phrase*

*"law in force" as used in Art. 20. "Law in force" referred to therein must be taken to relate not to a law "deemed" to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law. Otherwise, it is clear that the whole purpose of Art. 20 would be completely defeated in its application even to 'ex post facto', laws passed after the Constitution. Every such 'ex post facto' law can be made retrospective, as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act. It is obvious that such a construction which nullifies Art. 20 cannot possibly be adopted. It cannot, therefore, be doubted that the phrase "law in force" as used in Art. 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws. It follows that if the appellants are able to substantiate their contention that the acts charged as offence in this case have become such only by virtue of Ordinance No. 48 of 1949 which has admittedly been passed subsequent to the commission thereof, then they would be entitled to the benefit of Art. 20 of the Constitution and to have their convictions set aside.*

*This leads to an examination of the relevant pre-existing law."*

*17. It has been urged, however, that though this may have been the intention, the intention did not become operative for reasons to be presently stated. Section 2 of Ordinance No. 4 of 1948 while extending the laws of Rewa State to the rest of Vindhya Pradesh refers to the publication of such laws in the Rewa Gazette as a requisite therefor, and it is pointed out that the Rewa Gazette itself came into existence only in October 1930 (Vide page 386 of the printed Paper book), whereas the Penal Code and the Criminal Procedure Code were brought into operation in the Rewa State in 1921 and 1922. It is also pointed out that the deletion of the requirement of previous publication in the Rewa Gazette by Ordinance No. 20 of 1949 came into operation only when that Ordinance was published in the Vindhya Pradesh Gazette, i.e. on 15-5-1949 sometime after the commission of the offence in this case. To substantiate the view that only such of the Rewa laws which were previously published in the Rewa Gazette were understood as having been originally extended to Vindhya Pradesh by Ordinance No. 4 of 1948, a decision of the Vindhya Pradesh High Court dated 29-10-1949 in Criminal Appeal No. 27 has been brought to our notice which assumes that the Prisoners Act in force in India was not in force in Vindhya Pradesh as there was no previous publication of it, in the Rewa Gazette. On*

*the other side a notification of Vindhya Pradesh Government dated 19-3-1949 and published in the Vindhya Pradesh Gazette dated 30-3-1949 has been brought to our notice which specifically mentions all the laws by then in force in Vindhya Pradesh and shows "Indian Penal Code - 'mutatis mutandis'- with necessary adaptations" as item 86 thereof. This is relied on to show that there must have been a previous publication thereof in the Rewa Gazette before integration. There seems to be considerable force in this argument that in respect of the various Rewa State laws which have been enumerated in the above-mentioned Gazette as having been brought into force in Vindhya Pradesh (some of these are Acts prior to 1930) there must have been previous publication in the Rewa Gazette sometime after 1930, and that neither Ordinance No. 20 of 1949 nor the decision of Vindhya Pradesh High Court relating to Prisoners' Act (which is not one enumerated in the above Gazette) can be taken to negative it. We are 'prima facie' inclined to accept this view and to think that the Indian Penal Code as in force in Rewa became extended to Vindhya Pradesh by Ordinance No. 4 of 1948. But even assuming that S. 2 of the Ordinance failed to achieve its purpose on account of misconception as to the previous publication of any particular Rewa law in the Rewa Gazette, it is clear that that Rewa law would continue to be in force in the Rewa portion of United State of Vindhya Pradesh,*

*as the Vindhya Pradesh law therefor, on the principle recognised in - 'I Moo Ind App 175 (PC) (H)', that on change of sovereignty over an inhabited territory the pre-existing laws continue to be in force until duly altered. Since in the present case we are concerned with offences committed in relation to the Rewa State portion of Vindhya Pradesh, there can be no reasonable difficulty in holding that the Criminal Law of Rewa State, i.e., the Indian Penal Code and the Criminal Procedure Code with adaptations 'mutatis mutandis' was the relevant law for our present purpose by the date of integrated administration, viz., 9.3.1948."*

*21. It must therefore be held that the rulers of the native States had prior to 1947, the authority to pass extraterritorial laws relating to offences committed by their own subjects and vesting in their own courts the power to try them, except where the contrary is made out by evidence in the case of any individual State, and that so far at least as Rewa State is concerned, the contrary cannot be held to have been proved."*

I. In **AIR 1940 P C 116 "Shahid Ganj v. S. G. P. Committee"** the Privy Council held that Court cannot uproot titles acquired prior to annexation by applying law which did not then obtain as law of land as also that there is every presumption in favour of the proposition that a change of sovereignty would not affect private rights. Relevant extracts of the said judgment reads as follows: