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Title of Dissertation: ZAKAT AND RURAL DEVELOPMENT IN MALAYSIA

An Ethical Analysis of the Concepts of Growth and Redistribution of Income and Wealth in Islam and their Practices in a Contemporary Muslim Society

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ZAKĀT AND RURAL DEVELOPMENT IN MALAYSIA

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Contemporary Muslim Society**

by

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Zakāt and Rural Development in Malaysia

An Ethical Analysis of the Concepts of Growth and Redistribution of Income and Wealth in Islām and their Practices in a Contemporary Muslim Society

Abdul Aziz Bin Muhamad
Temple University, 1986
Doctor of Philosophy
Major Advisor: Dr. Isma'īl R. al-Fārūqī

ABSTRACT

This study focuses on the practice of zakāt among the peasants in Malaysia. Zakāt, which is one of the Five Pillars of Islām is meant to purify one's soul and one's property. It is supposed to be levied on all income and wealth in excess of certain minimum levels for a period of one year or in the case of farmers (according to the Shāfi'ī school) who produce in excess of specified minimum production. Thus, it is a kind of 'tax' on the haves to relieve the circumstances of the have-nots.

In practice however, zakāt in Malaysia is primarily paid by the paddy farmers, who are (according to the Malaysian government statistics) the poorest group in Malaysia. The irony is that other Muslims in Malaysia, such as the salary earners or for that matter agricultural farmers who cultivate more lucrative crops such as cocoa, palm oil, peppers, etc. hardly pay any zakāt.

This study attempts not only to explain the above anomaly from the historical, juristic and economic point of views but also to seek solutions within the existing 'secular' democratic political system in Malaysia. It would focus on the ethical dimension of zakāt and its role in achieving the Equilibrium (al-ʿAdl) in society in the context of the spirit and overall objective of the Sharīʿah (maqāṣid al-Sharīʿah).

The recommendations given in this study, if implemented will not only help to alleviate the poverty of the peasants, but also complement the government's efforts to eradicate poverty and to reduce income inequality in Malaysia.

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Last, but not least I am forever grateful to my wife, Sapura Yaacob for her patience in typing this dissertation and enduring so many sacrifices throughout the course of my study and research.

To my children Azura, Shahriz and Ahmad Fairuz, I hope they have benefited from their stay in the United States and in the Holy Lands of Mecca and Medina. I hope they will grow up remembering the Ever Merciful God always in their heart.

TRANSLITERATION

<u>Arabic</u>			<u>Diacritical Signs</u>	
<u>Letter</u>	<u>Transliteration</u>		<u>Short Vowels</u>	
ا)			
ب	b	Fathah	(— /)	a
ت	t	Dammah	(— ˘)	u
ث	th	Kasrah	(— ˙)	i
ج	j			
ح	ḥ			
خ	kh	<u>Long Vowels</u>		
د	d	Alif Mamdūdah	آ, ا	} ā
ذ	dh	or		
ر	r	Yā Mamdūdah	ي	
ز	z			
س	s	Wāw Sākin preceded by Dammah	(و ˘)	ū
ش	sh			
ص	s			
ض	ḍ	Yā Sākin preceded by Kasrah	(ي ˙)	ī
ط	t			
ظ	z			
ع	(<u>Diphthongs</u>		
غ	gh	Wāw Mushaddad pre- ceded by Dammah	(و ˘)	uww
ف	f			

ق	q	Waw Mushaddad preceded by Fathah	(قَ) aww
ك	k		
ل	l	Waw Sākin preceded by Fathah	(لَ) aw
م	m		
ن	n	Yā Mushaddad preceded by Fathah	(نَ) ayy
و	w		
هـ	h	Yā Mushaddad preceded by Kasrah	(هـِ) iyy
ي	y		
ة	ah	Yā Sākin preceded by Fathah	(ةَ) ay
ال	(article) al		
	(even before the antepalatal)		

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INTRODUCTION

1. The Problem

Zakāt, which is one of the Five Pillars of Islām, has been instituted for the purpose of purifying and cleansing both one's soul and one's property. In a wider context, however, it is also intended as a means to achieve an Equilibrium (al-'Adl), or what is now often referred to as social justice.

As an instrument of income and wealth redistribution, zakāt is supposed to be levied on all income and wealth in excess of certain minimum levels acquired or earned over the period of a year or, in the case of farmers (according to the Shāfi'ī school) all produce in excess of a specified minimum production for each harvest.

In Malaysia, however, the major portions of the zakāt revenue collected is derived from zakāt on paddy, an agricultural produce; while other agricultural producers, property owners, wage and salary earners etc. hardly pay any zakāt at all. This is indeed a very serious problem, especially considering the fact that, according to the Fourth Malaysia Plan (1981-1985), in 1970 about 88% out of the total of 140 thousands households engaged in paddy production fell below the 'poverty line'. What this means is that in Malaysia it is the poor who mainly contribute zakāt for the benefit of the 'poorest of the poor' and other beneficiaries of zakāt specified in the Qur'ān. This is definitely against any sense of social justice and contrary to

the very spirit of zakāt or the Shari'ah.

One of the many explanations given for this problem (which is indeed a serious anomaly) is that it is the logical outcome of a situation where Islāmic injunctions, such as zakāt, are merely grafted on an alien socio-economic system - i.e. the western free enterprise system. Thus, according to this explanation, such an anomaly could only be overcome when Islām, as a 'complete way of life' is fully instituted - i.e. when an Islāmic state is fully established.

Even though there is some truth in the above explanation, it does not, however, provide any immediate solution to the plight of the Malaysian farmers. In this respect, it should be emphasized that this anomaly is in our opinion mainly due to the fact that the implementation of zakāt in Malaysia has been dictated largely by juridical and legalistic considerations. For instance, according to the Shāfi'ī School of Islāmic jurisprudence, the dominant school in Malaysia, salary earners are not obligated to pay zakāt if their incomes are consumed and nothing is saved or kept idle (beyond a certain limit) for the duration of one year. Moreover, the agricultural producers who are engaged in more lucrative crops such as cocoa, palm oil, pepper etc. are not obligated to pay zakāt. In contrast, the paddy farmers are obligated to pay zakāt at each harvest, when the nisāb (the minimum level at which zakāt becomes obligatory) is fulfilled.

This study, will attempt to trace the historical, juristic, political and economic explanations for the above anomaly. It will

also seek solutions to this serious anomaly, which is also a very gross injustice. It will focus on the ethical dimension of zakāt and its role in achieving Equilibrium (al 'Adl) in society in the context of the principles of Islāmic jurisprudence (uṣūl al fiqh), and the overall objectives of the Sharī'ah (maqāṣid al Sharī'ah).

2. The Significance of the Study

Most of the works in the new body of literature called 'Islāmic economics' that has emerged in the last two decades are of a theoretical nature. There is a conspicuous absence of any major study that is empirically-based. This study is a modest attempt to fill that gap.

However, from another perspective, this study will make other significant contributions. First, this would be the first attempt to deal with the problems of the peasants in Malaysia from an Islāmic perspective. Hitherto, many of the works regarding the peasants in Malaysia are based on liberal neo-classical economics models. The critique of these models, and of the policy prescriptions that were adopted based upon these models, has been articulated mainly by the radical or neo-Marxist scholars. There is not a single scholarly work on Malaysia, so far, that has attempted to analyze the issue of development in general, or the socio-economic problems of peasants in particular, from the 'world-view' of the peasants themselves, i.e. from the perspective of the Sharī'ah. This study partially (due to its limited scope) attempts to fill this gap.

Second, the approach of this study itself is quite different.

Hitherto, much of the research done on Islāmic studies, particularly in 'Islāmic Economics', has been based on the premise that the workability of the system is dependent on the existence of an Islāmic state. This study does not make such a presupposition. In fact, this study is based on the assumption that there will be in the near future few changes in the socio-political structures of the Malaysian State, however desirable in themselves these changes might be. As such this study will try to find a more immediate and less "complete" solution. Despite this limited objective, we believe that if the recommendations made in this study are carried out, it will go a long way towards alleviating the poverty of the peasants in Malaysia. It will complement the Malaysian government's policy to eradicate poverty and to reduce income inequality among its people.

Third, this is a first study that attempts to analyze comprehensively the problems of the administration of zakāt with special reference to the farmers in Malaysia. Previous studies were either focused at the village level, or concentrated on certain aspects of zakāt such as its economic 'burden' on farmers.

Finally, this is the first attempt (at least in Malaysia) at an interdisciplinary approach which seriously incorporates a religious dimension (with its own 'world-view') in seeking to solve a specifically socio-economic problem.

3. The Scope and Limitations of the Study

As will be elaborated in Chapter II, zakāt in Islām can be

divided into many categories - namely zakāt on property (such as gold and silver), zakāt on livestock, zakāt on agricultural produces and zakāt on hidden treasures or minerals. This study is primarily focused on ‘ushr (literally means one-tenth or tithe), i.e. zakāt on agricultural produces. This is because zakāt in Malaysia hitherto has been primarily collected from paddy (unhusked rice) farmers.

The focus of this study will be on the two States of Kedah and Kelantan in Peninsular Malaysia. This is because, first, both these states combined produce more than sixty percent of the total rice production in Malaysia. And second, the paddy farmers in both these States are almost exclusively Muslims. Thus, a study which focuses on these two States will, to a large extent, represent also the problems of the administration of zakāt in other paddy producing states such as Perak, Trengganu, Selangor and Perlis.

Considering the above factors, this study is indeed very exploratory. Further studies need to be carried out regarding zakāt on salaries, stocks, shares, insurance policies, minerals (such as petroleum and industrial machineries, etc.). Some of these forms of wealth were inexistent in classical Islām. However, some of the administrative and organizational changes recommended in this study are of general applicability irrespective of the types of zakāt collected.

Further research needs to be carried out, too, regarding the apparent overlapping (in some areas at least) between zakāt and other taxes imposed by the government. Definitely there is a necessity to

harmonize these two types of 'taxes', especially if the 'coverage' of zakāt is to be extended while presuming (as we do in this study) that there would be no changes in the immediate future of the present socio-political arrangements.

4. Methodology

The primary research method adopted in this study is library research. The writer carried out library research not only in the United States but also in Al-Azhar University, Cairo; the International Center for Research in Islāmic Economics, King 'Abdul 'Azīz University, Jeddah and also in the libraries of local universities in Malaysia: namely, the National University of Malaysia, Bangi ; the University of Malaya, Kuala Lumpur, and the Science University of Malaysia, Penang.

Since this study focuses on the peasants and the problem of rural development, the field of library research also encompasses other related disciplines such as 'rural development', 'regional development', 'sociology of development' etc., along with the broader disciplines of economics, sociology, political science and history. As will be discussed in Chapter I, this writer is aware of the 'world-view' that is implicit to each of these disciplines. Needless to say, however, this in no way diminishes the utility of some of the information and data available in these disciplines.

Besides the library research, interviews were conducted both with

the 'ulamā' (religious scholars), such as the muftīs and qāḍīs, and also with the officials in charge of zakāt administration in the various states in Malaysia. The opportunity for such extensive interviews became easily available to the writer because of his participation (when the writer was doing his field research in Malaysia) in The National Seminar on Bayt al Māl (Islāmic Treasury) held in the National University of Malaysia at Bangi on 15th-16th December, 1984. The participants in this Seminar were mostly religious officials who work in the bayt al māl offices (which primarily deal with the collection and distribution of zakāt in the various States in Malaysia). These interviews were extremely useful in eliciting the views of the 'ulamā' regarding some of the changes recommended in this study.

Other than the above interviews, the writer also visited and interviewed the officials of the Zakāt Office of Kedah, Bayt al Māl Office of Perak and the Bayt al Māl Office of the Federal Territory, Kuala Lumpur. Interviews were also conducted with the officials of MADA (Muda Agricultural Development Authority), the largest single government agency in Malaysia that deals with the problem of peasants, particularly with the paddy farmers. This agency is located in the 'rice-bowl' State of Kedah.

Even though the writer visited several paddy-growing villages, an in-depth study of these villages was not carried out for several reasons: (i) constraint of time; (ii) numerous such studies have been carried out before, especially by the students of the local univer-

sities; and (iii) the emphasis of this study is at the macro level, and thus it is interested more in aggregate data. However, this writer has made extensive use of the various village level studies carried out by others before.

5. Order of Dissertation

This dissertation is divided into three parts. Part One, which has only one chapter, deals with zakāt in the context of contemporary socio-economic development perspectives. It traces very briefly the philosophical foundations of modern social sciences and discusses its limitations. It highlights the reactions against this paradigm expressed by some of the leading intellectual in the West, who strongly advocate the need for an alternative paradigm. This chapter will then discuss the Islāmic 'world-view' and its concept of 'development' with special reference to zakāt.

Part Two of this dissertation is divided into three chapters (II, III and IV) This part essentially deals with the practice of zakāt in Early Islām. Chapter II traces the concept of zakāt, or its equivalent, in other religions, both in the East (Chinese, Hinduism and Buddhism) and in the other two Abrahamic religions, namely Judaism and Christianity. This chapter discusses the concept and practice of zakāt during the Prophet's time (with close references to the Qur'ān), as well as during the period of Rāshidūn (pious) caliphs, followed by their successors (ṭābi'ūn).

Chapter III focuses on the development of the science of Islamic

jurisprudence (fiqh) with special reference to the codification of law regarding agricultural zakāt ('ushr). A comparative study of the four Sunnī schools on a number of selected issues that are relevant to this study will also be made. Chapter IV will discuss the ethics of the redistribution of income and wealth in Islām and the role of zakāt. This Chapter concludes with a discussion of the juristic principle of al-maṣāliḥ-al-mursalah, which enables new rulings be made out of consideration for the best interests and welfare of society.

Part three of this study, which is divided into four chapters (V-VIII) would then concentrate on the practice of zakāt in Malaysia. Chapter V traces the historical and socio-political background of the practice of zakāt in Malaysia. It will discuss the nature of traditional Malay society prior to the advent of British colonial rule, with emphasis on the role of Islām in general and the practice of zakāt in particular. The impact of colonialism on the Malay socio-political system, with emphasis on the bureaucratization of the 'administration of Islām' and the centralization of the administration of zakāt will be highlighted.

Chapter VI deals with the administration of zakāt in post-colonial Malaysia in the context of the Federal Constitution of Malaysia. Taking cognizance of the fact that 'Islām' in general, and the administration of zakāt in particular, falls within the jurisdiction of the state governments, this Chapter will then highlight the contemporary practice of zakāt in Malaysia with particular reference to the

State of Kedah.

Having stressed the role of the state governments in the administration of zakāt, Chapter VII will approach the issue of zakāt from the perspective of Malaysia's national development policies, with emphasis on rural development and the New Economic Policy. This Chapter shows to what extent these development policies are integrated into or impinge upon the administration of zakāt in Malaysia.

Finally, Chapter VIII will conclude with a number of policy recommendations. Besides a number of changes recommended with regard to the current practice of zakāt, this study strongly recommends the decentralizing of the administration of zakāt. The need and the justification for the creation of a Central Zakāt Foundation will also be highlighted. If this 'package' of policy recommendations is accepted and implemented, it will go a long way towards helping to alleviate the poverty of the Malaysian peasants, especially the paddy farmers.

PART ONE:

ZAKĀT IN DEVELOPMENT PERSPECTIVES

CHAPTER I

THE CONTEMPORARY SOCIO-ECONOMIC DEVELOPMENT PERSPECTIVES AND ZAKĀT

This chapter will be divided into three broad sections. The first section will discuss the conceptual framework that will be adopted, namely the Sharī'ah-based holistic paradigm.⁽¹⁾ It will be introduced by a critical analysis of the limitations of the conventional paradigm of modern economics and other social sciences. The emerging trend (or is it a return to a more traditional approach?) towards inter-disciplinary approaches to the study of human phenomena will be highlighted. We will also evaluate contemporary efforts by Muslim economists to develop the discipline of 'Islāmic Economics' in the light of the Sharī'ah. The second section will then focus on the Islamic concept of development (tazkiyah) with emphasis on the redistribution of income and wealth and the role of zakāt. The third section will conclude with a review of literature concerning zakāt, and other related fields relevant to this study.

A. THE LIMITATIONS OF THE CONTEMPORARY PARADIGM

1. The Philosophical Foundations of Modern Social Sciences

Prior to the sixteenth century, the dominant world-view in Christian Europe, as was in other civilizations, was organic. People lived

in "small, cohesive communities and experienced nature in terms of organic relationship, characterised by the interdependence of spiritual and material phenomena and the subordination of individual needs to those of the community".⁽²⁾ The intellectual framework of this organic world view rested on two authorities - Aristotle and the Church.⁽³⁾ In the thirteenth century, Thomas Aquinas provided the grand synthesis. He combined Aristotle's comprehensive system of nature with Christian theology and ethics and thus established the conceptual frame-work that remained unquestioned throughout the European Middle Ages.

It should also be noted that the nature of medieval science was very different from modern science. It was based on both reason and faith. Its main objective was to understand the meaning and significance of things, rather than on prediction and control. The scientists, then, while contemplating the purpose underlying various natural phenomena, considered questions relating to God, the human soul and ethics to be of the highest significance.⁽⁴⁾

However, in the sixteenth and seventeenth centuries this organic, living notion of the universe was replaced by that of the world as a machine. In fact the 'world-machine' became the dominant metaphor of the modern age. This significant development was brought about by revolutionary changes in physics and astronomy. The main protagonists of these changes were Copernicus, Galileo, F. Bacon, Descartes and Newton. Due to the crucial role of science in the sixteenth and seven-

teenth centuries, this period has often been referred to as the Age of Scientific Revolution.

A great deal has been written⁽⁵⁾ about this age, especially with regard to the relationship between the church, the scientific community, and the impact of the Copernican system (the earth was no longer the center of the universe but merely one of the many planets) upon the religious consciousness of man (particularly European man). What happened to man when he was robbed of his proud position as the central figure of God's creation?

However, we will only focus here on three features which are relevant for our understanding of the so-called 'scientific foundations' that characterized modern social sciences: i) the secularization of knowledge; ii) The compartmentalization of knowledge and iii) the legitimization of 'value-free' knowledge.

(i) The Secularization of Knowledge

Among the above-mentioned figures it was probably Rene Descartes who made the greatest impact upon the development of modern science and philosophy. Descartes did not accept traditional knowledge, but set out to build a whole new system of thought. Bertrand Russel states:

"This had not happened since Aristotle, and is a sign of the new self-confidence that resulted from the progress of science. There is a freshness about his work that is not to be found in any eminent previous philosopher since Plato".(6)

Descartes firmly believed in the certainty of scientific knowledge and considered it his vocation in life to distinguish truth from error in all fields of learning. He wrote: "All science is certain, evident knowledge. We reject all knowledge which is merely probable and judge that only those things should be believed which are perfectly known and about which there can be no doubts."⁽⁷⁾

Twentieth-century physics has demonstrated to us very forcefully that there is no absolute truth in science. That all our concepts and theories are limited and approximate only. However, due to the widespread belief today in the certainty of 'scientific' truth, it is imperative for us to know the essentials of Descartes' scientific method. There are two crucial elements in Descartes' method. One is called 'radical doubt', and the other 'analytic'. We will discuss the latter in the next sub-section. Descartes doubted everything -- all traditional knowledge, the impressions of his senses, and even the fact that he had a body -- until he reached one thing he could not possibly doubt, the existence of himself as a thinker. Thus he arrived at his celebrated statement, "cogito, ergo sum", "I think, therefore I exist."⁽⁸⁾ From this Descartes deduces that the essence of human nature lies in thought, and that all the things we can conceive clearly and distinctly are true.

Descartes' cogito made mind more certain for him than matter and led him to the conclusion that the two were separate and fundamentally different. Thus he asserted that, "there is nothing included in the

concept of body that belongs to the mind; and nothing in that of mind that belongs to the body."⁽⁹⁾ Needless to say this Cartesian division between mind and matter has had a profound effect upon Western thought. It affected all branches of learning. According to Heisenberg:

"This partition has penetrated deeply into the human mind during the three centuries following Descartes and it will take a long time for it to be replaced by a really different attitude toward the problem of reality."⁽¹⁰⁾

Thus Descartes based the whole view of nature on this fundamental division between two independent and separate realms: that of mind, or res cogitans, the "thinking things", and that of matter, or res extensa, the "extended thing". However for Descartes, the existence of God was essential to his scientific philosophy. According to him both mind and matter are the creations of God, being the source of the exact natural order and of the light of reason that enabled the human mind to recognize this order. In subsequent centuries, however, (partly as a result of Cartesian mechanistic view of the universe) scientists and social scientists who followed generally omitted any explicit reference to God and developed their theories according to the Cartesian division: the humanities concentrating on the res cogitans, and the natural sciences on the res extensa.⁽¹¹⁾ This mechanistic conception of the universe had a direct effect upon the secularization of knowledge in the West.⁽¹²⁾

(ii) The Compartmentalization of Knowledge

As stated above, one of Descartes essential methods of scientific inquiry is analytic. It consists in breaking up thoughts and problems into pieces, and arranging these in their logical order. This analytic method of reasoning could well be Descartes' greatest contribution to science. It has become an essential characteristic of modern scientific thought. It has undoubtedly proved to be extremely useful in the development of scientific theories and the realization of complex technological projects. However, as Fritjof Capra aptly observed, over-emphasis on the Cartesian method "has led to the fragmentation that is characteristic of both our general thinking and our academic disciplines, and to the widespread attitude of reductionism in science - the belief that all aspects of complex phenomena can be understood by reducing them to their constituent parts."⁽¹³⁾

This compartmentalization of knowledge is in fact the main characteristic of the social sciences. This fragmentary and reductionist approach typifies, for instance, modern economics. Economists generally fail to recognize that the economy is merely one aspect of a whole ecological and social system - composed of human beings in continual interaction with one another and with their natural environment.

The major error of the social sciences is to divide such a^a complex system into fragments assumed to be independent, and to be dealt with in separate academic disciplines such as sociology, political science, anthropology, economics, etc. Thus we find political scientists tend

to neglect basic economic forces, while economists fail to incorporate political and social dimensions into their models. These fragmentary approaches are also reflected in government policy, in the operation of numerous departments and agencies⁽¹⁴⁾ and the split, for instance, between social and economic policies.

It should also be noted that the founders of modern economics such as Adam Smith and David Ricardo had much wider perspectives than their followers. Nevertheless, the few contemporary economists, who wish to study economic phenomena as they actually exist, embedded within society and the ecosystem, are virtually forced to place themselves outside of economic 'science'.⁽¹⁵⁾ This, in turn saves the economic 'scientists' from dealing with the issues their critics raise. Thus, J.K. Galbraith⁽¹⁶⁾ and R. Heilbroner⁽¹⁷⁾ are often considered as sociologists, Kenneth Boulding⁽¹⁸⁾ as a philosopher, and Hazel Henderson⁽¹⁹⁾ (who subtitled one of her books: "The End of Economics") is considered a futurist.⁽²⁰⁾

(iii) The Legitimization of 'Value-Free' Knowledge

In attempting to provide 'scientific' rigor to their disciplines, many social scientists, especially economists consider their disciplines to be 'value-free'. The evasion of value-related issues has led economists to retreat to easier but less relevant problems. They also disguise value-conflicts by using elaborate technical language. Such a trend is particularly strong in the United States, where there is a

widespread belief among the economists who are trained in qualitative methods that all problems - economic, political or social -- have technical solutions.

Thus the TNCs (transnational corporations), for instance, hire armies of economists to prepare cost/benefit analyses that convert social and moral choices into pseudotechnical ones and thereby conceal value-conflicts that can probably be resolved only politically.⁽²¹⁾ Kenneth Boulding has rebuked such attempts as "a monumentally unsuccessful exercise which has preoccupied a whole generations of economists with a dead end, to the almost total neglect of the major problems of our age."⁽²²⁾

Undoubtedly modern economics is in profound conceptual crisis. There are numerous social and economic anomalies it can no longer address: poverty, global inflation, unemployment, uneven development, mal-distribution of wealth, etc. The failure of the economic profession to come to grips with these problems is beginning to be recognized by many, including the economists themselves.

However, at the deepest level, the re-examination of modern economic concepts and models will reveal its underlying value system, and its relation to the specific cultural context. In fact, the emergence of economics as a separate discipline from philosophy and politics coincided with the emergence in Western Europe, at the end of the Middle Ages, of what Sorokin⁽²³⁾ called sensate culture. With its basic emphasis on material wealth, economics today is the quintessen-

tial expression of sensate values.(24)

As Fritjof Capra perceptively observed, the value system that developed during the seventeenth and eighteenth centuries gradually replaced a coherent set of traditional values and attitudes, such as:

"belief in the sacredness of the natural world; moral strictures against money-lending for interest; the requirement that prices should be 'just'; convictions that personal gain and hoarding should be discouraged; that work was for the use value of the group and the well-being of the soul; that trade was justified only to restore the group's sufficiency, and that all true rewards were in the next world."(25)

Until sixteenth century Europe there was no separation between economic phenomena and other aspects of life. In fact throughout most of history, food, clothing, shelter and other basic resources were produced for use value, and were distributed within tribes and groups on a reciprocal basis.(26) It should be noted, of course, that economic organizations of great complexity involving an elaborate division of labour and operated entirely by the mechanism of storing and distributing common commodities such as grain, existed in almost all major civilizations. This did not preclude the age-old motives of power, domination and exploitation. But the idea that human needs were boundless was generally not held before the Enlightenment, or specifically before the rise of capitalism.

However, such a shift of value, must be given a moral legitimacy. Thus, according to Max Weber's thesis (in his famous Protestant-Ethics and The Rise of Capitalism) the development of the capitalist

mentality was closely related to the religious idea of a 'calling', which emerged with Martin Luther and the Reformation. This idea combined with the notion of a moral obligation to fulfill one's duty in worldly endeavors, projected religious behavior into the secular world. This was emphasized even more forcefully by some Puritan sects, which saw worldly activity and the material rewards accruing from industrious behavior as a sign of divine predestination. Thus arose the famous Protestant Work Ethic, in which hard, self-denying work and worldly success were equated with virtue.

2. Reactions To The Conventional Paradigm

The reactions noted above to the conventional economic paradigm have been raised by many perceptive intellectuals in the West, including Theodore Roszak⁽²⁷⁾, E.F. Schumacher, Erich Fromm⁽²⁸⁾, Fritjof Capra, Hazel Henderson and Tage Lindbom⁽²⁹⁾ to name a few.

We will not be able to discuss all their views here. Briefly stated, what these intellectuals essentially advocate (in varying degree, of course) is not just an interdisciplinary approach to the study of human phenomena, but a holistic approach that integrates both the material and spiritual needs of man and his interaction with other men and with the encompassing Universe.

We can take some aspects of Schumacher's criticism of modern economics (which is well-known from his book Small is Beautiful) as an illustration. Economics is conventionally defined as the discipline

dealing with the production, distribution, and consumption of wealth. It attempts to determine what is valuable at a given time by studying the relative exchange values of goods and services. Economics is, therefore, clearly the most value - dependent and normative among the social sciences. Its models and theories will always be based on a certain value system and on a certain view of human nature - that is, on a body of assumptions which Schumacher calls "meta-economics".⁽³⁰⁾

However, these assumptions are rarely included explicitly in contemporary economic thought. To illustrate the value dependence of economics, Schumacher then compares two economic systems, embodying entirely different values and goals. One is the Western materialist system, in which the 'standard of living' is measured by the amount of annual consumption, and which tries to achieve, therefore, the maximum consumption, along with an optimal pattern of production. The other is a system of Buddhist economics, based on the notions of "right livelihood" and the "Middle Way", in which the aim is to achieve a maximum of human well-being with an optimal pattern of consumption.⁽³¹⁾

B. THE SHARĪ'AH AND 'ISLAMIC ECONOMICS'

A somewhat extended discussion concerning the epistemology of modern social sciences has been given in order to situate and understand the Islāmic conception of 'economics', which is in fact completely integrated to and governed by the Sharī'ah.

Before we elaborate further, the above discussion enables us to

categorically state at the beginning what Islamic economics is not: (i) it is not and cannot be of secular orientation; (ii) it is not and cannot be 'compartmentalized' since it is completely integrated to other aspects of human activities and to the Sharī'ah; and (iii) it is not and cannot be value free.

The above characteristics would be accepted even by the most 'Westernized' of the contemporary Muslim economists, who would also like to elevate 'Islāmic economics' into a 'science'⁽³²⁾ as was done by their counterparts in the West. This is only another instance of the intellectual captivity⁽³³⁾ of some modernist Muslims. This may be partly a result of their ignorance of the close connection between an academic discipline (especially in the social sciences) and its world-view and belief system. Indeed they might not even be aware of the criticism leveled by some of the profound thinkers in the West itself against, for instance, the conventional paradigm of social sciences, especially economics.

The criticism against Western epistemology in general and its effects upon the Muslim world (especially its educational system) in particular, have been eloquently raised by many Muslim thinkers - including Naṣr,⁽³⁴⁾ al-ʿAṭṭās⁽³⁵⁾ and al-Fārūqī.⁽³⁶⁾ Moreover, as regards the scope and methodology of 'Islāmic Economics', many contemporary Muslim economists have also made significant contributions. These include: Khurshid Aḥmad,⁽³⁷⁾ S.N. Haider Naqvī,⁽³⁸⁾ Nejātullah Ṣiddīqī,⁽³⁹⁾ Anas Zarqā,⁽⁴⁰⁾ Monzer Kahf⁽⁴¹⁾ and M.A. Mannān.⁽⁴²⁾ We

do not intend to elaborate these views here. However, we will make use of many of their views, as well as the views of the classical Muslim jurists and scholars, in our discussion below regarding 'Islāmic economics' in general, and the meaning of 'development' from an Islāmic perspective in particular.

The Sharī'ah and the Science of Jurisprudence (Fiqh)

The fundamental principle that unifies all branches of knowledge (and actions) in Islām is the principle of tawḥīd⁽⁴³⁾ (God's Unity). Since Islam consider knowledge ('ilm) as something sacred because ultimately all true knowledge concerns some aspects of God's Names and Attributes, Muslim scholars took pain in classifying all branches of knowledge. In fact, almost all major thinkers of Islām like Fārābī, Ibn Sīnā, al-Ghazālī, the Ikhwān al-Ṣafā', Ibn Khaldūn, al-Shirāzī, al-Āmūlī and others developed schemes for classifying the sciences.⁽⁴⁴⁾ Such a continuous development of Islāmic sciences took place because the Muslims were constantly exposed to new branches and forms of science due to their interactions with other civilizations. Thus there was a continuous need to 'Islāmize' the sciences.

What we want to stress here is the underlying unity that exists in all the sciences, since each of them is anchored in the principle of tawḥīd. With regard to what we now refer to as the 'social sciences', (which Fārābī, for instance, categorized as the 'science of society and their branches'), these are subject to Sharī'ah laws and in

fact come under the purview of the Muslim jurists. Thus, the science of Islāmic jurisprudence (fiqh) is truly a holistic method.

What is Sharī'ah? "Islām" literally means submission to the Will of God and:

"...the will of God is that we should pursue ḥusn, that is beauty of life and character and avoid qubḥ, that is ugliness of life and character. What is ḥusn or morally beautiful and what is qubḥ or morally ugly, can only be discovered from divine revelation. The value of each human action must be considered in the sight of God; its earthly consequences are incidental. What is morally beautiful must be done; what is morally ugly must not be done. That is the path to be pursued, the Sharī'ah."(45)

The term Sharī'ah is applied to the whole system of the law of Islām, the totality of God's commandments. Each one of such commandments is called ḥukm (pl. aḥkām). The term Sharī'ah is also defined as "that which would not be known had there not been a divine revelation".(46) This definition is wide enough to include all the divine revelations, including those made by the Hebrew Prophets and Jesus. But the divine revelations through Muhammad are considered as confirming the earlier revelations, and therefore constitute the Sharī'ah in its purest and final form. Only what is expressly stated in the divine revelations, or may be inferred from them, properly comes under the Sharī'ah. Thus the term Sharī'ah embraces all human actions. It is, therefore, strictly speaking not law in the modern sense but might be regarded as a guide to ethics.(47)

The term which corresponds more closely in Islām to law is fiqh. The term fiqh is defined as "the deduction of the Sharī'ah values

relating to conduct from their respective particular (tafṣīlī) evidences".⁽⁴⁸⁾ A Sharī'ah value (ḥukm Sharī') is defined as the quality determined as a result of divine revelation - e.g. the fact that a human act is prohibited in the Sharī'ah is its Sharī'ah value. The Sharī'ah evidence (al-adillat al-Sharī'yyah) are the prescriptions contained in the Sharī'ah, and with reference to the source from which these evidences are obtained. The four main sources of Sharī'ah are the Qur'ān, the Sunnah (traditions of the Prophet), the ijmā' (consensus) and qiyās (analogy). There are other subsidiary sources, such as istiḥsān, al maṣāliḥ al mursalah etc. For further discussion on this see Chapter III.

The Sharī'ah deals with matters of conduct (sulūk), matters of belief ('aqīdah), and matters of ethics (wijdāniyyāt). This makes fiqh wider than law in the modern sense because the purview of fiqh includes not only religious ritual ('ibādāt) but also all forms of transactions (mu'āmalāt) between man and man. Thus, fiqh deals with the economic, the political and social aspects of human interactions. The views of the classical jurists, especially Al-Ghazālī and Al-Shāṭibī, with regard to the overall objective of Sharī'ah (maqāṣid al Sharī'ah) and their classification of the needs of man into necessities or basic needs, conveniences and refinements or (embellishments) clearly illustrates this wider perspective of Sharī'ah which includes all aspects of human life. (Further elaboration of this in Chapter III). In the contemporary context, these are in fact issues of

"development".

TAZKIYAH: ISLAMIC CONCEPT OF DEVELOPMENT

The term 'development' has been defined in various ways according to ideological persuasions: liberalist,⁽⁴⁹⁾ Marxist,⁽⁵⁰⁾ structuralist,⁽⁵¹⁾ or that of the 'dependency' school.⁽⁵²⁾ Some of these schools such as the Marxist and dependency schools, claim to adopt a holistic or an interdisciplinary approach. Indeed, their perspective upon development is wider than for instance, the neo-classical school, which mainly focuses on economic growth.⁽⁵³⁾ However, the philosophical foundations of all these schools are essentially the same: secularism and materialism. Even though some of these schools do give weight to the religious need of man, this 'need' constitutes just another aspect of human needs. Religion, in these schools, neither determines nor shapes their 'world-view'.

Dudley Seers,⁽⁵⁴⁾ for instance, defined 'development' as the eradication of the unholy trinity of poverty, unemployment and inequality. He emphasized that development should not be measured by the growth at the GNP (Gross National Product) but by the extent to which we have managed to reduce poverty, unemployment and inequality. Undoubtedly these are desirable objectives to achieve at the material plane. However, Muslims would raise further questions: how are these objectives to be achieved? Why should we try to achieve these objectives? Or what is, in fact, the very purpose of life on this earth?

The Ultimate Goal of 'Development'

In the Marxist framework the ultimate goal of development is the achievement of the 'class-less' society. In the liberal or neo-classical framework the goal of development is the realization of mass consumption, such as found, in the United States and in some Western European countries. For the 'social democrats' it might be the realization of a welfare society alá the 'Swedish' model!

The ultimate goal of development from an Islamic perspective, however, is Eternal Bliss - to be able to hear God's Beautiful words:

"O Soul at peace,
Return to your Lord content
and He pleased with you.
Enter into the company of
my servants.
Enter into My Paradise!" (89:27-30)

This surely would sound strange to the materialists. However, it is this vertical relationship (between man and God) that Muslims believe ultimately determine the nature of horizontal relationships - the relations between man and man on this earth.⁽⁵⁵⁾ This is also how faḷāḥ - prosperity in this world and the Hereafter - is achieved.

The Ethico-Philosophical Foundations of Development

Some of the contemporary Muslim economists, especially Khurshid Aḥmad⁽⁵⁶⁾ and Naqṽī,⁽⁵⁷⁾ in their attempt to explain the Islāmic concept of development, have based it on certain philosophical foundations and/or ethical axioms. As their views are pertinent for our

understanding of Islāmic conception of development, we take the liberty of listing these axioms (which are of course interrelated).

- (i) Tawhīd (God's unity and sovereignty). This lays down the rules of God-man and man-man relationships.
- (ii) Al-ʿAdl (the Equilibrium or Justice). At the absolute level this is the supreme Attribute of God and its denial constitutes the denial of God Himself. It follows that, at the relative level, the quality of Equilibrium must also characterize all His creation, which must reflect His qualities. On the plane of social existence, it denotes a binding moral commitment of the individuals in any society to uphold a delicate balance in all of their lives (as individuals and as a collectivity).⁽⁵⁸⁾
- (iii) Rubūbiyyah (divine arrangements for nourishment, sustenance and directing things towards their perfection). This is the fundamental law of the universe, which throws light on the divine model for the useful development of resources and their mutual support and sharing. It is in the context of this divine arrangement that human efforts take place.
- (iv) Khilāfah (Man's Role as Vicegerent on Earth). Subsumed under this are also the ethical axioms of Free Will⁽⁵⁹⁾ and Responsibility.⁽⁶⁰⁾ This defines man's status and role, specifying the responsibilities of man as such, of a

Muslim, and of the Muslim ummah as the repository of this khilāfah. From this follows the Islāmic concept of man's trusteeship - moral, political and economic - and the principles of social organisation.

- (v) Tazkiyah (purification plus growth). The mission of all the prophets of God was to perform the tazkiyah of man in all his relationships - with God, with man, with the natural environment, and with society and state.

The word 'development' (like the word 'progress') has a particular connotation in the West. It is the perpetual quest for material well-being. This term is used here due to the absence of a better substitute in English. However, in our context it is used as a substitute for the word tazkiyah (the word zakat is also related to this word) which means both purification and growth. "Development" thus addresses the problems of human development in all its dimensions, and is concerned with growth and expansion towards perfection through purification⁽⁶¹⁾ (within oneself and outside oneself). The ultimate result or goal of tazkiyah, as stated earlier, is falāḥ - prosperity in this world and the hereafter.

Based upon the above ethico-philosophical foundations, we can say that the Islamic concept of development has the following features:

- (i) it is comprehensive - including moral, spiritual and material aspects. Development becomes a goal and value-

oriented activity, devoted to the optimisation of human well-being in all these dimensions. The moral and the material, the economic and the social, the spiritual and the physical are inseparable. It is not merely welfare in this world that is the goal. The welfare it seeks extends to the life hereafter, and there is no conflict between the two; in fact, each reinforces the other.

- (ii) the focus of development is man. Development thus entails the development of man and his physical and socio-cultural environment. As such human attitudes, incentives, tastes and aspirations are as much policy variables as physical resources, capital, labor, education, skill, organization, etc. It also emphasises maximum participation of the people at all levels of decision-making and plan-implementation.
- (iii) it emphasises the optimal utilization of resources that God has endowed upon man and his physical environment. It also means the equitable use and distribution of these resources for the promotion of human relationships on the basis of al-Haqq (Truth), and al-'Adl (the Equilibrium or Justice).

Zakāt and Development

The above discussion is primarily focused on the general theoretical foundations of 'Islāmic Economics', and the Islāmic concept of

development in particular. We may ask here: how do we realize this vision of development? What are the legal or institutional instruments that distinguish an Islāmic economy?

There are two main institutional instruments that determine the characteristics of an Islāmic economy:

- (i) a ribā - an interest free economy; and
- (ii) a well-functioning zakāt system and other forms of 'taxation'.

To these two we could also add:

- (i) the Islāmic law of inheritance; and
- (ii) the institution of waqf (pious foundation)

This study is focused on zakāt. The meaning of zakāt in general, and its redistributive role in particular, are discussed in the following three chapters. Particularly, Chapter IV focuses on the role of zakāt as an instrument for the redistribution of income and wealth in Islām. The other instruments, especially an interest-free economic system, have been adequately dealt with by others, especially N. Şiddīqī⁽⁶²⁾ and Monzer Kahf.⁽⁶³⁾

C. REVIEW OF LITERATURE ON ZAKAT

Due to the critical role of zakāt as an instrument of redistribution of income and wealth in Islām, a great deal has been written about it by Muslim jurists, Islāmic economists, and the Orientalists. Taking into consideration the focus of this study, we have divided these literatures into two categories: (i) the general literature on

zakāt; and (ii) the literature on the practice of zakāt in Malaysia.

General Literature on Zakat

As zakāt is one of the Five Pillars of Islam, almost all major works in Islamic jurisprudence (fiqh) by the fuqahā' (doctors of law or jurists) of the past have a section that specifically deals with zakāt. (See Chapter III). Most of the collections of Ḥadīths (like Saḥīḥ Bukhārī, Saḥīḥ Muslim and Sunan Abū Dāwūd) have separate chapters that deal with zakāt.

Other than the above works, which are all in Arabic, the most comprehensive and outstanding work in Arabic on zakāt is by Yūsuf al Qara ḍāwī. His seminal two-volume work is entitled Fiqh al-Zakāt (Principles of Zakāt). In this, al-Qaraḍāwī compares zakāt with modern taxation and explains the virtues of zakāt as a tax on capital. He treats zakāt on agricultural produce ('ushr), mineral wealths, salaries and rent as a tax on income. After making a comparative study of zakāt and other taxes in the light of universally acclaimed principles of taxation, he proceeds to explain why there is no progression in the rate of zakāt, and dispels the misconception about there being a negative progression in the rates of zakāt on livestock.⁽⁶⁴⁾

Contemporary Muslim economists have also written a great deal on zakāt. Mabid Maḥmūd,⁽⁶⁵⁾ for instance, in his discussion on zakāt correlates the distribution of political power and the distribution of wealth. He finds that:

- "(i) The degree of association between the distribution of wealth and that of power increases with the size of the political unit measured in terms of the number of voters.
- (ii) That degree of association increases with the degree of monopoly in information media."(66)

He then concludes: "the association between the distribution of wealth and that of political power can be broken by a redistributive scheme. This scheme must operate on wealth, not income....It should be designed to check accumulation on an asset by asset basis, taxing more remunerative assets more heavily, for they provide a greater prospect for power accumulation the conditions of such a redistributive scheme are all fulfilled in az-Zakāt".(67)

Other writers, such as Maḥmūd Aḥmad,(68) Nāṣir A. Sheikh(69) and Ḥasanuzzamān,(70) stress that zakāt discourages hoarding and the accumulation of idle wealth. Ḥasanuzzamān argued that zakāt's distributive role involves an allocative role too, as the zakāt funds are used mostly on essential goods and services. Factors of production are thus diverted to the production of necessities from that of luxuries on which the taxed persons might otherwise have spent these amounts. Thus zakāt will also lead to "a fall in the rich man's demand for imported luxury items", (71) which in turn would result in foreign exchange savings.

Others who have written on zakāt in the general context of fiscal policy of Islām are Farīdī,(72) Monzer Kahf and Metwally.(73)

It should be stressed here that most of the works of contemporary Muslim economists mentioned above are very theoretical in nature and heavily influenced by the terminologies used in modern neo-classical economics. In this context, the single most useful document on zakāt (produced in recent years) that is of practical or operational value is the Zakāt and ‘Ushr Ordinance 1980 of Pakistan. Due to the importance of this document (it has been translated into Arabic from English) for our study (as a basis of comparison) we have given a summary of the operation of zakāt in Pakistan in Appendix A.

Specifically, with regard to agricultural zakāt (‘ushr), which is the main focus of this study, there are no major works written in this field except the articles by M.L. Qureshī,⁽⁷⁴⁾ A.H. Kadri⁽⁷⁵⁾ and Farishta G. de Zayas.⁽⁷⁶⁾

The Orientalists who have written on Islāmic taxation in general with some references to zakāt are Aghnides,⁽⁷⁷⁾ Ben Shemesh⁽⁷⁸⁾ and F.Lokkegaard.⁽⁷⁹⁾ All these works refer to the practice of zakāt in classical Islām. In fact Ben Shemesh’s work is the translation of Abū Yūsuf’s and Qudāma B. Ja‘far’s two separate treaties (with the same title, called Kitāb al Kharāj). Aghnides work is probably still the best summary in English of the views of the classical Muslim jurists on zakāt.

Literature on Zakāt in Malaysia

We would like to divide this literature in two sub-categories:

(i) those works that specifically deal with zakāt. (ii) those works that generally deal with political or economic conditions in Malaysia, but which make references to zakāt due to its impact upon the farmers.

At the outset it should be stressed that in both these categories there is not a single book ever published in Malaysia that specifically deals with zakāt.

In the first category almost all the published works on zakāt in Malaysia are in the form of articles or papers presented to seminars or conferences on zakāt. The most important contribution in this respect is the work by Ismail M. Salleh and Rogayah Ngah⁽⁸⁰⁾ entitled Distribution of Zakāt Burden on Padi Producers in Malaysia. This short paper, which is based on empirical data, is a useful contribution in understanding the economic effects of zakāt on the paddy farmers in Malaysia.

In this category there are also a number of seminar papers written in Malay presented to various seminars on zakāt. The frequent contributors are ‘Abd Allah Ibrāhīm,⁽⁸¹⁾ Raslīd Dail,⁽⁸²⁾ Azmī Aḥmad⁽⁸³⁾ and Ḥussain Rejab.⁽⁸⁴⁾ In this category we should also include numerous academic exercises written by undergraduate students at local universities in Malaysia. Some of these works, which are based on field works in villages in Malaysia, are very useful indeed for understanding the effect of zakāt at the village level. All these works, however, are not published (see Bibliography).

In the second category, there are numerous works written.

Roff,⁽⁸⁵⁾ Kessler⁽⁸⁶⁾ and 'Afīfuddīn⁽⁸⁷⁾ give a good historical background to the practice of zakāt in Malaysia, especially with regard to the use of the zakāt fund and the bureaucratization of the 'administration of Islām' in Malaysia during the colonial period.

Shirlie Gordon,⁽⁸⁸⁾ Purcal,⁽⁸⁹⁾ Wilson,⁽⁹⁰⁾ Horii,⁽⁹¹⁾ Fujimoto⁽⁹²⁾ and 'Afīfuddīn⁽⁹³⁾ specifically deal with the problems of Malay peasants, especially the paddy farmers. These writers touch on zakāt generally in the context of income and expenditure patterns of farmers. They are generally interested to investigate the economic effects of zakāt upon the peasants. 'Afīfuddīn, Horii and Fujimoto have also discussed briefly the effect of zakāt on the redistribution of income in the villages they surveyed.⁽⁹⁴⁾ However their works, even though extremely useful and informative are still based on the conventional economic paradigm. Apart from 'Afīfuddīn to a limited extent, no other works attempt to see zakāt from the world-view of the farmers themselves.

NOTES

- (1) This comprehensive or holistic approach is not unique to Islām. It is found in varying degrees in all authentic religions.
- (2) Capra, Fritjof, The Turning Point: Science, Society and the Rising Culture, Bantam Books, Toronto - N. York, 1982, p.53.
- (3) Ibid
- (4) Ibid
- (5) See A. Koyre, From the Closed World to the Infinite Universe, New York, 1958. See also Seyyed Hossein Naṣr, Man and Nature: The Spiritual Crisis of Modern Man, Allen and Unwin, London, 1968.
- (6) Russell, Bertrand, History of Western Philosophy, London: Allen & Unwin 1961, p.542.
- (7) Garber, Daniel, "Science and Certainty in Descartes" in Hooker, Michael (ed.) Descartes, John Hopkins University Press, Baltimore 1978. Also cited in F. Capra, op. cit., p.57.
- (8) Ibid
- (9) Quoted in Fred Sommer's "Dualism in Descartes" in Hooker, Michael (ed.) op. cit.
- (10) Heisenburg, Werner Physics and Philosophy, Harper & Row, N. York 1962, p.81.
- (11) F. Capra op. cit., p.60
- (12) Naṣr, Seyyed Hossein, Knowledge and the Sacred, Crossroad, New York 1981.
- (13) F. Capra, op. cit., p.59
- (14) See for instance our discussion in Chapter VII regarding the number of government agencies that deal with rural development in Malaysia.
- (15) See the criticism regarding the absurdity of raising the pseudo rigor of mathematical economics to the status of science by Hasel Henderson, The Politics of the Solar Age: Alternatives

- to Economics, Anchor Books, N. York, 1981, p.175.
- (16) Galbraith, J.K. has written a number of books. His well-known books are The Affluent Society and The New Industrial State, Signet Books, N.York, 1968.
 - (17) Heilbroner, Robert. The Worldly Philosophers, Simon & Schuster, N. York, 1980.
 - (18) Boulding, Kenneth, Beyond Economics, University of Michigan Press Ann Arbor, 1968.
 - (19) Hazel Henderson, op. cit. See also her other famous work: Creating Alternative Futures. Putnam, N. York, 1978.
 - (20) For the origin of economic ideas in general and the impact of Descartes ideas on William Petty (1623-87), the founder of modern economics in particular, see Guy Routh, The Origin of Economic Ideas, Vintage, 1977. W.Petty's Political Arithmetick, (which later influenced Adam Smith) seems to owe much to Descartes, its method consisting of replacing words and arguments by numbers, weights and measures and "to use only arguments of sense and to consider only such causes as have visible foundations in nature". (Routh, p.45)
 - (21) Henderson, Creating Alternative Futures, op. cit., p.78.
 - (22) Quoted in F. Capra, op. cit., p.191
 - (23) Ibid, p.193. See also Sorokin, P., Social and Cultural Dynamics, 4 Volumes, American Book Co., New York, 1937-1941.
 - (24) Capra, F., op. cit., p.193
 - (25) Ibid, p.194
 - (26) Ibid. See also Polanyi, Karl., Primitive, Archaic and Modern Economics, Doubleday/ Anchor, 1968.
 - (27) Roszak, Theodore. The Making of Counter Culture. Doubleday/ Anchor, 1969.
 - (28) Fromm, Erich, To Have or To Be?, Harper & Row, 1976.
 - (29) Lindbom, Tage, The Tares and the Good Grains (Trans. by Alvin Moore Tr.) Mercer University Press, 1983.

- (30) Schumacher, E.F., Small is Beautiful, Harper & Row, N. York, 1975.
- (31) Ibid; p.46
- (32) See for instance Muḥammad ʿĀrif's "Toward the Sharīʿah Paradigm of Islāmic Economics: The Beginning of a Scientific Revolution", The American Journal of Islāmic Social Sciences, Vol. 2, No. 1. Jointly published by the Association of Muslim Social Scientists and International Institute of Islamic Thought, Washington D.C., July, 1985.
- (33) To borrow S. Ḥussein Al-ʿAtṭas's term. See his work: "The Captive Mind and Development Studies", International Social Science Journal, 24(1), p.25.
- (34) Naṣr, S.Ḥ., op. cit. See also his Man and Nature: The Spiritual Crisis of Modern Man. Allen & Unwin, London, 1968 and Islāmic Life and Thought. SUNY, Albany, 1981.
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- (38) Naqvī, Syed Nawāb Haider. Ethics and Economics. The Islāmic Foundation, London, 1981.
- (39) Ṣiddīqī, M. Neḡātullah. Economics of Islām, Islāmic Thought, Vol. 14 (3), Aligarh, 1971. See also his works in the Bibliography.
- (40) Zarqāʾ, Anas. Islāmic Economic: An Approach To Human Welfare in Khurshid Ahmad.
- (41) Kahf, Monzer. The Islamic Economy, The Muslim Students' Association of the United States and Canada, 1978.
- (42) Mannān, M.A., Islamic Economics: Theory and Practice, Muhammad Ashraf, 1970.

- (43) See the elaboration of this concept in Isma‘il Rājī al-Fārūqī, Tawhid: Its Implications for Thought and Life, International Institute of Islāmic Thought, Wyncote, Pennsylvania, 1982.
- (44) Naṣr, S.Ḥ., Islāmic Science, An Illustrated Study, World of Islām Festival, London, 1976, p.14
- (45) Ibrāhīm, Aḥmad. Islāmic Law in Malaya, Malaysian Sociological Research Institute, Singapore, 1965, p.1.
- (46) Ibid, p.2
- (47) Ibid
- (48) Ibid
- (49) There are many economists who belong to this school. The most influential of them all is Simon Kuznets. Some of his famous books are: Modern Economic Growth: Rate, Structure and Spread (New Haven: Yale University Press, 1966); Economics Growth of Nations (Cambridge: Belknap Press of Harvard University, 1971).
- (50) See for instance A.G. Frank, Capitalism and Underdevelopment in Latin America. Monthly Review Press (N. York 1969) and P.A. Baran, The Political Economy of Growth (N. York, 1957).
- (51) See for instance Oswaldo Sunkel, An attempt at Interpreting Latin American Development (Mimeo) Institute of Development Studies, Sussex and his External Economic Relations and the Process of Development: Suggestions for an Alternative Analytical Framework, IDS Discussion Paper No. 51, June, 1974.
- (52) Dos Santos, T., "The Structure of Dependence", American Economic Review, May, 1960.
- (53) See Kuznets, op. cit.
- (54) Seers, Dudley, What Are We Trying To Measure?, IDS Discussion Paper No. 45, 1974.
- (55) See a penetrating discussion on this in Frithjof Schuon's Understanding Islām, Mandala Books, Allen & Unwin, London, 1976, p.29-30.
- (56) Aḥmad, Khurshid, op. cit., pp. 178-179.

- (57) Naqvī, S.N. Haider, op. cit.
- (58) Ibid, pp. 49-50
- (59) Ibid, pp. 51-53
- (60) Ibid, pp. 53-57
- (61) Khurshid Aḥmad, op. cit., p.179
- (62) Şiddīqī, M.N. op. cit.
- (63) Kahf, Monzer, op. cit.
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- (71) Ibid
- (72) Farīdī, F.R., "A Theory of Fiscal Policy in an Islāmic State" in Ziauddin Aḥmed, M. Iqbāl and M.F. Khān, Fiscal Policy and Resource Allocation in Islām, Institute of Policy Studies, Islāmabād, 1983.

- (73) Metwally, M.M. "Fiscal Policy in an Islāmic Economy" in Ziauddin Aḥmed and others, *ibid*, pp. 59-82.
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- (81) 'Abdullah bin Hājī Ibrāhīm, "Zakāt Pertanian" (Agricultural Zakāt) and "Agihan Zakāt kepada Aṣṇāf Lapan" (Distribution of Zakāt to the Eight Categories of Beneficiaries). Papers presented to The National Conference on Zakāt, organized by the Religious Section of the Prime Minister's Department at the University of Malaysia, October 2-3. 1984.
- (82) 'Abdul Rashīd bin Hājī Dail, "Zakāt Gaji dan Pendapatan Bebas" (Zakat on Salary and Income). Jurnal Islāmiyyāt, K. Lumpur., Vol. II, November, 1979.
- (83) 'Azmi Aḥmad, Sheikh. "Pengalaman Pengurusan Baitulmal Negeri Kedah". (The Experience in Managing Bayt al Māl in Kedah), National Seminar on Bayt al Māl, organized by Sharī'ah Department, Faculty of Islāmic Studies, National University of Malaysia, Bangi, 15 - 16 December, 1984.

- (84) Hājī Hussain Bin Hājī Mohd. Rejab, "Pengalaman Pengurusan Baitulmal" (The Experience in Managing Bayt al Māl), The National Seminar on Bayt al Māl, Ibid.
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PART TWO:

THE PRACTICE OF ZAKĀT IN EARLY ISLĀM AND
ISLAMIC JURISPRUDENCE

CHAPTER II

THE CONCEPT AND PRACTICE OF ZAKĀT BEFORE AND AFTER ISLĀM

The primary objective of this chapter is to trace the concept and practice of zakāt in early Islam. To achieve this objective, this chapter is divided into four sections. After a brief definition of zakāt in the first section, we will trace the concept of zakāt or its equivalent in other religions both in the Eastern (Chinese, Hinduism and Buddhism) and the other two Abrahamic religions, namely Judaism and Christianity in the second section. The third section will focus on the concept and the practice of zakāt during the Prophet's time (with close references to the relevant Qur'anic verses) as well as during the period of Rāshidūn Caliphs followed by the their Successors (tābi'ūn). This chapter will then conclude with the descriptions of the general principles governing the development of zakāt laws in early Islām.

A. THE MEANING OF ZAKAT IN ISLAM

In almost all the major works in Islāmic jurisprudence (fiqh) , both by the "classical"⁽¹⁾ as well as by the contemporary jurists⁽²⁾, we find elaborate discussions on the meaning of the term zakāt. The preoccupation of the jurists to define and analyze this term in

minute details, is not prompted merely by the fact that zakāt happens to be one of the Five Pillars of Islam. This term even though clear and precise in its juristic application, is extremely rich in meaning. Despite of the claim of some Orientalists⁽³⁾ as to the origin of the term, it has its root in the Qur'ān.

The word zakāt, literally means 'growth' or 'increase' (as in the phrase zakāt al zar, the crop grew) and also 'purity' (as in the Quranic phrase qad aflaha man tazakkā (87:14) which means 'verily the pure one prospered'). As such this religious obligation which is also an important instrument for social justice, has been named zakāt "with respect to the first meaning of the word because its giving leads to increase of prosperity in this world, and growth of religious merit (thawāb) in the next; and with respect to the second meaning, because its payment purifies from sins".⁽⁴⁾ The Qur'ān states: "Take from their property alms (ṣadaqah) in order thus to purify them (tuzakkī-him) i.e. from their sins". (9:104)

In fact the words zakāt and ṣadaqah are used interchangeably in the Qur'ān, so much so, some jurists particularly al-Shafī'ī and al-Māwardī held that there is no difference in meaning between these two terms. Technically, however, most jurists have used the former for "compulsory due" and the latter for "voluntary charity". In other words, while every zakāt is ṣadaqah, only the ṣadaqah which is farḍ (obligatory) is zakāt. The word ṣadaqah which comes from the root word ṣidq means 'truth' or 'trustworthiness'. This denotes that 'ṣadaqah'

or zakāt when practiced, create the necessary bond or trust between the haves and have-nots.

The Qur'ān categorically states:

"And those in whose wealth is a recognized right
(ḥaqq ma'lūm) for the needy who asks and him
who is prevented (for some reason from asking)"
(70:24-25)

We shall elaborate later the application of these verses, especially during the Prophet's time. However, it suffices to conclude here that it is due to such clear injunctions of the Qur'ān that zakāt is technically defined by the Muslim jurists as the "transferring the ownership of a thing (tamlīk) as an act of piety, of a legally (shar'a) stated portion of one's property to the poor, in such a way as to preclude for the giver any sort of benefit."⁽⁵⁾

B. THE CONCEPT OF TITHE/ALMSGIVING BEFORE ISLĀM

1. EASTERN RELIGIONS

The custom of giving a certain percentage of one's income, particularly the fruits of the harvest annually to the deity or the king was quite widespread in almost all religions and civilizations. The Chinese sacred literature, for instance, mentioned a tenth of the produce of 'the fields' being annually levied. The Confucian Analects tells of the following:

"the Duke Gae enquired of Yew Jo saying, 'the year is one of scarcity and the returns for expenditure are not sufficient. What is to be done?'. He desired to take two tenths, instead of the usual statutory

single tithe, from the allotments cultivated in common, against which Ye Jo protested".⁽⁶⁾

In Hinduism, however, we find more references to almsgiving. In the Vedic literature generally and in the later smrtis, especially in the Dharmasastra and Puranas, we find that the chief duties incumbent upon a householder is charitable giving (datrta datrtva); and careful definitions are given as to the persons (danapatra) upon whom such alms may be given.⁽⁷⁾

The only rightful recipients of alms are the Brahmans and the various orders of ascetics. They alone have a claim to the gifts and support from all other classes of the community. Merit accrues to the giver of such donations and the degree of merit is in direct proportion to the value of the gift.⁽⁸⁾ In fact, among the six duties enumerated for a Brahmana are the giving and receiving of gifts (dana). The Ksatriya and Vaisyas castes are specifically forbidden to receive gifts.

Broadly speaking, such gifts in Hinduism comprise two categories. The first category comprises grants of landed estate, dwelling houses, etc., taxes derived from villages and tithes.⁽⁹⁾ The second category which is more irregular and occasional is the donations of money or food which the Brahmans received as their perquisites at all festivals, anniversaries, household ceremonies, etc. To this latter category belong the contributions in kind which the army of wandering ascetics and medicants receive from the villagers in India.

It should be stated here that the idea of almsgiving as known in

the West, as a bestowal of gifts upon the poor and needy prompted by a feeling of sympathetic compassion, is not known in Hinduism.⁽¹⁰⁾ However, the habit of generosity of sharing possessions with others and relieving their wants, is perhaps more widespread in India than in many other countries. The need and opportunity for almsgiving in the wider sense, "within the laity and among the non-Brahmanical part of the population, have always been met to a considerable extent in India by the usages and institutions of caste and the joint family life, which throw upon the whole circle the burden and obligation of the support of each individual."⁽¹¹⁾

In Buddhism we find that the early Buddhists adopted Indian views on this subject. In fact, almsgiving (dana) is not mentioned in the Eightfold Path or in the Five Precepts for laymen. Even when the author or editor of the Dhamapada made that anthology of verses on each of twenty-six subjects important in Buddhism, dana was not one of them. However, dana occurs in several passages of the older books.⁽¹²⁾ It is considered as an ethical, sutta nipata, and very meritorious things to do. The five right ways of giving mentioned in them, are "to give in faith, to give carefully, to give quickly, to give firmly, and to give so as not to injure oneself or the other."⁽¹³⁾

As Buddhism developed, dana was made one of the paramitas (not found in the older books), that is, of the qualities in which Buddha must, in previous births, have perfected himself. It is in this

context that we have the well-known stories of the extremes of almsgiving, such as that of King Sivi who gave away his eyes, and of Vessantara who gave away not only his kingdom, but all that he possessed, and even his wife and children.⁽¹⁴⁾ These "legends" both of which have a happy ending, are most popular among the Buddhist peasantry. However, the best gift of all in Buddhism is the gift of dharma (truth) and the Five Great Gifts are the five divisions of one's own virtuous life which are regarded as 'gifts' to others.

2. THE CONCEPT OF TITHE IN JUDAISM AND CHRISTIANITY

Judaism

The giving of tithes for sacral purposes was common all over the Ancient West Asia. However, well-documented and first-hand evidence concerning tithes comes mainly from Mesopotamia.⁽¹⁵⁾ Although these Mesopotamian documents come from the neo-Babylonian period, i.e. sixth century before the Christian era, there is no doubt that the institution is much older. In the Syro-Palestine area the tithe (ma'sartu), Hebrew (ma'ser) is found in Ugarit in the 14th century B.C. The tithe then was not assigned to temples only. It could also be a royal tax which the king could exact and give to his officials."⁽¹⁶⁾

According to the Jewish account, the ambiguity of the tithe, as a royal due on the one hand and as a sacred donation on the other, is to be explained by the fact that the temples to which the tithe was assigned were royal temples, and as such the property and treasures in

them were put at the king's disposal.⁽¹⁷⁾ This is best exemplified by the two instances of tithe mentioned in older sources of the Pentateuch. In Genesis 14:20 Abraham gives a tithe (after his battle with the four kings of the north) to Melchizedek, the King-priest of Shalem (Jerusalem) and in Genesis 28:22, Jacob vows to pay a tithe at Beth-El, the 'royal chapel' of the Northern Kingdom.⁽¹⁸⁾

The property that was subject to tithe in the Ancient West Asia was grain, new wine and new oil (Deut. 14:23) as well as cattle and sheep (Lev. 27:32). In a general context, however, the tithe appears to embrace all kinds of property. Abraham is reported to have given Melchizedek, a tenth of everything and Jacob vows that "he will set a tithe from all that God will give him." (Gen.28:22). From Mesopotamian documents, there is evidence of tithe from agricultural produce, cattle and sheep, slaves, donkeys, wool, cloth, wood, metal production, silver, gold, etc.

With the exception of Deuteronomic Code, all other sources dealing with tithe give the impression that it was indispensable for the maintenance of the temple and its personnel. From the Mesopotamian documents we learn that tithe was stored in the treasuries of the temple, the cattle were marked with the temple mark and the tithe of grains and dates could be converted into money when desirable. In the Babylonian documents, we find evidence on how the tithe was generally collected and spent by the temple personnel. Agricultural produce was largely consumed by the temple personnel and also applied for

the maintenance of various enterprises and institution attached to the temple. Cattle and sheep were mainly used for sacrificial purposes. Every citizen then was obliged to pay tithes and even the temple personnel and tithe collectors themselves were not exempted.

Only the Deuteronomic Code prescribes the setting aside of a tithe of grain, wine and oil every year and its consumption at the chosen place (i.e. the central sanctuary). The tithe may also be converted into money and spent on the festive meal in the chosen place. Every third year, however, "The tithe has to be left in the local settlement, for the benefit of the levite, who has no land of his own, and the stranger, the fatherless and the widows."⁽¹⁹⁾ After giving away the tithe to these "personae miserabiles, the owner has to proclaim a confession in which he declares that he has given it to the indigent and not desecrated it by using it for impure purposes."⁽²⁰⁾

Christianity

In Christian usage tithe or the tenth is generally defined as "part of a person's income that was required by law (ecclesiastical, civil, or both) to be paid the Church for the maintenance of its institutions, the support of its ministers, the promotion of its works, and the relief of the poor."⁽²¹⁾

However the system of tithe was not generally resorted to for several centuries. Until the 4th century (A.C.) little is heard of it,

and some writers regard the matter from a totally different perspective from that which was later adopted. Irenaeus, referring to tithes in the Jewish system, says that Christians, as those who have received liberty, set aside all their possessions for the Lord's purposes, bestowing joyfully and freely not the less valuable portions of their property. Origen regards tithes as something to be far exceeded in Christian giving,⁽²²⁾ and Epiphanius, says on the other hand, that "tithe is no more binding than circumcision."⁽²³⁾ Augustine regards the tithe as something due by Christians to God, though he and others are prompted also by what most Christians consider the finer ideal of freedom in all Christian giving.⁽²⁴⁾

However, as Christianity spreads far and wide, circumstances make it necessary to fall back upon rule, based upon legal provision, and thus the old Biblical standard of tenth was revived, and the Christian priest was compared to the Jewish priest and levite. Ambrose and many other Christian Fathers accordingly maintained that tithe should be given, but their views were not generally accepted in the Eastern Church. There is evidence that even in the West that "this species of ecclesiastical property was acquired not only by decrees, but with considerable opposition."⁽²⁵⁾

The moral duty of paying tithe was then generally taught, but even after it was made a matter of law, tithe was paid irregularly and reluctantly. Thus, the Council of Macon in 585 A.C., ordained its payment with the proviso that the priests were to use it in helping

the poor and in redeeming captives.⁽²⁶⁾ Anyone who refused to pay it was to be excommunicated. Other Councils also enjoined it. However, it was only at the time of Charlemagne that it became a matter of law. During his rule, when there was a unity between the Church and the State for the first time in Christian history, he stipulated that the tithe collected should be divided into three portions: for the bishop and clergy, for the poor, and for the support of the activities of the church.⁽²⁷⁾ In later times, however, tithe was usually apportioned to particular churches, and to monastic foundations.⁽²⁸⁾

However, as a general practice of the Church in Europe, the institution of tithe did not continue long. In the secularization of the State that followed the Reformation and the attendant circumstances of social and economic change, the system as it was known and practiced in earlier times was considered unworkable.⁽²⁹⁾ The French Revolution brought tithing as a general method of church support to an end.

In the United States, no tithing system was ever practiced except in the North Central and Mississippi Valley area where it was introduced by the French and continued to be observed under English rule according to the provision of Quebec Act. It was, however, brought to an end when these lands were acquired by the United States. The Church in the United States has been supported mainly by voluntary contributions. In the 20th century the difficulty of finding funds to provide for the growing needs of the Catholic Church, especially those

connected with education, together with increasing dissatisfaction with certain methods of Church support that had sometimes to be employed, led to the adoption of a modified and voluntary system of tithing in some places.⁽³⁰⁾

C. THE PRACTICE OF ZAKĀT IN EARLY ISLĀM

1. THE PROPHETIC PERIOD

The twenty-three years of the mission of the Prophet of Islām consist of thirteen years in Mecca and ten years in Medina. The Meccan period commenced in 610 of the Christian era after he proclaimed himself as Prophet at the age of forty and started his prophetic mission which the Qur'ān describes as the revival of the religion of Abraham.⁽³¹⁾

The Qur'ān and Zakat

The Prophet started his mission by reciting Qur'ānic āyāts (verses) or sūras (chapters) which the Muslims believed to have been revealed to him piecemeal by God. The Qur'ān is also known as al-Furqān, that is discernment or discrimination. It is thus the instrument by which man can come to discriminate between Truth and falsehood, to discern between the Real and the unreal, the Absolute and the relative, the good and the evil, and justice and injustice.

The Qur'an contains a set of moral and juridical injunctions which form the basis of the Sharī'ah and which in turn concerns the life of man in every detail. In the context of this study, the foundation of all the zakāt laws are contained in the Qur'ān and the practice of the Prophet. As the Qur'ānic verses were revealed to the Prophet by piecemeal for the entire span of the Prophet's life (i.e. for 23 years), we could trace the development of the zakāt laws, especially during the time of the Prophet, by going through these Qur'ānic verses according to their chronological order of revelations. We will divide these into the Meccan Revelations and the Madinan Revelations.

THE MECCAN REVELATIONS

The Meccan āyāts and sūras mainly consist of direct criticism of the doctrines, morals, social outlook and behavior of the pagan Arabs as well as sharp warnings and graphic depictions of the punishments and rewards of the Hereafter. However, some of these Meccan sūras constitute the earliest and most authentic source for the study of the early basic concept of zakāt and its gradual application.

We will not be able to go through all the relevant Meccan āyāts and sūras here. But we will mention the pertinent ones, which are: Sūrah al Duḥā, Sūrah al Muddaththir, Sūrah al Ma'ārij and Sūrah Maryam (Virgin Mary).

The Surahs al Duḥā and al Muddaththir are among the early Meccan

revelations.⁽³²⁾ In Sūrah al Duḥā the Prophet is reminded that when he was ignorant He showed him the right path, when he was poor He made him independent of any worldly needs, and then the Prophet is instructed not to be hard on orphans and not to chide the ones who ask and to proclaim openly the Blessing of God.⁽³³⁾ In Sūrah al Muddaththir, while describing the Hereafter, the Qur'ān states that those on the right will be in the Gardens and will ask the guilty ones about what brought them to Hell-fire. They will then answer that they did not pray nor did they feed the poor, and they joked and denied the Day of Judgement.

In Sūrah al Hāqqah, while depicting the Hereafter, it is stated that the order of God for the criminal will be for him to be seized and fettered and cast into Hell and bound and chained for the crime of neither believing in God nor urging others to feed the poor.

The same message is also stated in Sūrah al Dhāriyāt and Sūrah al-Ma'ārij but in much stronger terms. In both these sūras there are statements of the definite right of the needy and deprived to a share in the property of those who are well-off. In Sūrah al Dhāriyāt, while describing the heavenly blessings for the pious in the Hereafter, it is explained that they deserve these blessings on account of the fact that in their previous life they slept little at night and in the later phase of night asked for His forgiveness; further, the needy and deprived had a ḥaqq (share) in their wealth.⁽³⁴⁾ In Sūrah al Ma'ārij where the vivid depiction of the punishment in the Hereafter is des-

cribed, it is stated that the guilty would wish that he could give his wife, brother, other relatives who protected him and all the people of the world to save himself, but he will not be able to escape from wrath, for there will be a flaming fire that will lick his flesh and which will call everyone who turned his back and retreated, hoarded-wealth and withheld it, to itself. Only those who pray regularly and in whose wealth the needy and deprived have a ḥaqq maʿlūm (definite or recognized right) can escape this vice.⁽³⁵⁾

Zakāt vs the Concept of Charity / Generosity

The Arabs, especially the beduins were well-known for their generosity and hospitality. To organize public meals and spend generously on such occasions was one of their established customs. However, what was unacceptable and new for them was to give to the poor, not charity but a rightful share.⁽³⁶⁾ The terms ḥaqq (share or right) and ḥaqq maʿlūm (definite or recognized rights) of the needy and deprived in the wealth of the well-to-do people indicates a concept which is very much different from the concept of generosity or charity. The above sūras of the Qurʾān as well as the following verses which castigate the general moral condition of the non-believing Arabs clearly illustrate this point:

"Nay, nay! But ye honour not the orphan, nor do ye encourage one another to feed the poor,
And ye devour Inheritance, all with greed,
And ye love wealth with inordinate love...."(89:17-20)

"These are verses of the Wise Book, a Guide and

Mercy to the Doers of Good. Those who establish regular Prayer and give regular Charity (zakāt) And have (in their hearts) the assurance of the Hereafter...."

Would that you knew what the steep road (Salvation⁽³⁷⁾) is!
It is the freeing of a captive,
or giving food on a day of famine
to an orphan, next-of-kin,
or to a needy man in destitution.
And also that he be one of the people of faith
who enjoin one another in steadfastness and mercy...
(90:12-17)

The Qur'ān also stressed that such an "obligatory charity" is not new and had been revealed to the earlier Prophets. For instance, in Sūrah Maryam (Virgin Mary), this has been beautifully described. When the Blessed Virgin Mary was confronted about her chastity, she could only point to the child (Jesus) who miraculously spoke:

"He said: I am indeed a servant of God:
He hath given me Revelation and made me a Prophet;
And He hath made me Blessed wheresoever
I be; And hath enjoined on me Prayer and
Charity (zakāt) as long as I live...." (19:31)

During the early thirteen years in Mecca, the Muslims were encouraged to spend their wealth to alleviate the plight of the poor, the needy, and the slaves. However, we do not have any evidence to prove whether or not any specific rate or minimum limit of wealth that made it obligatory to pay zakāt, was imposed on the Meccan community. We also do not know whether a system of collection and distribution was introduced among them or whether it was left to the individual to distribute it himself on the deserving. The latter had already been

specified in the Meccan verses.⁽³⁸⁾ In fact these early believers who were well-off (who were very small in number) were known to have spent a major portion of their wealth to help their brethren in faith who were persecuted and victimized for upholding their faith. Abū Bakr for instance, freed several slaves after buying them over from their former masters.⁽³⁹⁾

THE MADINAN REVELATIONS

With the migration (known as Hijrah which also marked the beginning of the Islāmic Calendar) of the Prophet to Madīnah in 623 A.C., the Prophet's mission entered a new phase under totally changed conditions. Even though armed encounters with the exponents of the old order were inevitable, the fact that the Prophet was in command of a territory enabled him to institute changes which were consistent with the teachings of the Qur'ān and which later became the model of the Islāmic State.

As such it is not surprising that the general instructions pertaining to zakāt, given in the Meccan verses of the Qur'ān were elaborated in detail in Madīnah. Practical steps were also taken to regulate and systematize the implications of the Meccan verses. It should also be noted that the first speech delivered by the Prophet in Madīnah, just after Hijrah, contains obligations to zakāt and infāq; that everyone should spend for the sake of God, even if it is a meagre amount.⁽⁴⁰⁾ In the verses of Sūrah al Ḥajj, which was revealed at a

very early stage in Madinah,⁽⁴¹⁾ the qualities of the believers were outlined (in the context of them being given permission to fight for the first time) as those who when power were given to them on earth, they would perform ṣalāt (prayer) and pay zakāt, in addition to enjoining good and forbidding evil.⁽⁴²⁾

Sūrah al Ḥajj is only one of the many instances in which the words aqīmu al ṣalāt and ātu al zakāt (prayer and zakat) were mentioned side by side. As much as Muslim obligatory prayers were governed by the example and practice of the Prophet, the fundamental principles and practices governing the implementation of zakāt were also set by the Prophet himself.

A lot has been written both by the traditional Muslim scholars⁽⁴³⁾ specializing in Islāmic jurisprudence (fiqh) as well as by contemporary Muslim economists and scholars⁽⁴⁴⁾ on the practices of zakāt during the Prophet's time. We do not intend to repeat what has been said except to briefly highlight some of the pertinent issues, especially those that are relevant to the present study.

There are at least three areas which are significant and concern us here, namely: (i) The items on which zakāt were levied; and (ii) the nisāb (minimum exemption limit) and the rate of zakāt; (iii) the administration of zakāt which encompasses such issues as the collection and distribution of zakāt.

Types of Zakat

During the Prophet's time, zakāt was levied on al māshiyah (animal properties), al -ʿayn (gold, silver and coins), al-ḥarḥ (agricultural produce) and al-rikāz (buried treasure)⁽⁴⁵⁾. As al-ḥarḥ (agricultural produce) is our major focus here, it will be dealt with separately later.

Some reports also indicate that during the Prophet's time zakat was also levied on merchandise⁽⁴⁶⁾ and on honey.⁽⁴⁷⁾ However, horses and slaves (considered as properties then) were totally exempted from zakāt.⁽⁴⁸⁾

Beside the above types of zakāt, there was another type of zakāt introduced during the Prophet's time, i.e. zakāt al fiṭr. It was first made obligatory in the month of Ramaḍān, in the second year after Hijrah. This zakāt made it obligatory on every well-to-do-Muslim to provide one day's food for a number of his poor brothers in faith, equivalent to the number of the members of his family including domestic servants and slaves on the occasion of the ʿĪd day (a festive Muslim day marking the end of fasting in Ramadan). The amount fixed for this was equal to one Ṣā⁽⁴⁹⁾ per member in the household. One of the main objectives of this zakāt was that everyone should be able to celebrate and participate in the festive atmosphere of ʿĪd.

Nisāb and the Rate of Zakāt

With regards to animal properties, five or more camels and forty or more sheep were subject to zakāt. As the number and age of camel were important criteria for justly determining the zakāt due, a rather complex arrangement had to be devised. The rate for sheep, however, was somewhat lower compared to camel or al-‘ayn or al-ḥarth. This was because though lambs or younger animals were counted in the assessment for the purpose of zakāt, they could not be accepted for payment of zakāt by the collector. Only an animal of average age was legally accepted. The Prophet had given instruction that beside the young animals, the very old or defective animals should not be accepted for payment of zakāt. Nor will better animals be demanded from the owner which he wished to retain for breeding or other purposes of his own.⁽⁵⁰⁾ Thus, from the juridical point of view the Prophet probably tried to maintain a balance between the needs of the payers and the needs of the recipients of zakāt. For a discussion on the ethical dimension of this, see Chapter VI.

The nisāb for al-‘ayn and al-rikāz were quite different. Five uwaq⁽⁵¹⁾ for silver and twenty dinar for gold were the minimum limit beyond which zakāt became obligatory. The zakāt rate for al-‘ayn was two and one half percent paid annually. Zakāt levied on buried treasure (al-rikāz) was 20% at the time of their extraction. Zakāt on agricultural produce (‘ushr) was 10% or 5% depending on whether the land was irrigated or unirrigated. ‘Ushr had to be paid at the time

of harvest (see further discussion in Chapter III).

The Administration of Zakat

As stated earlier the administration of zakāt involves at least two broad aspects, namely its collection and distribution. We will focus our discussion here mainly on the collection of zakāt. Only some general remarks on the distribution of zakāt will be made here, as this important issue that deals with the beneficiaries of zakāt will be discussed separately in Chapter IV.

Collection

The role of the State in collecting and distributing zakāt began rather late in the holy Prophet's Medina. Even though the covenant with the Anṣār at al-ʿAqabah required them to pay zakāt, it seems to have been prescribed as a personal obligation without any specific rules and legal requirements imposed by the State. Zakāt as a compulsory levy supervised by the State with its whole set of rules was introduced by the Prophet probably when he sent his collectors to different tribes. These collectors were instructed to collect zakāt from the well-to-do and distribute them among the poor.⁽⁵²⁾ The earliest account by Balādhurī indicates that the holy Prophet sent ʿAlā al Hadramī to Baḥrayn in the year 6 or 8 of Hijrah.⁽⁵³⁾ Ṭabarī not only confirms that the holy Prophet sent ʿAlā to Baḥrayn in the year 8 Hijrah but also mentions that ʿAmr was sent to ʿUmān during the same

year.⁽⁵⁴⁾ However, it is almost certain that most of the collectors were sent about the year 9 Hijrah including the famous Mu'ādh by Jabal to Yemen. One of the most recent studies⁽⁵⁵⁾ confirms that the holy Prophet himself sent Zakāt collectors to 31 places/tribes all over Arabian Peninsular.

Although in the early stage the items on which zakāt were levied were not too many, the differentiated rates in the case of live-stock were rather complex. Because of this, the zakāt collectors were particularly trained for the job. Several reports indicate that the holy Prophet not only informed the collectors of the rates etc., but also advised them about the method of assessment and collection, and the moral conduct which they should demonstrate.⁽⁵⁶⁾ Despite that, it seems that some of the collectors forgot these instructions and gave cause for complaint.⁽⁵⁷⁾ This made it necessary to put down the relevant details of the subject and send them to the officials in order to avoid grievances from the zakāt-payers. Eventually this was done. A document was written (Kitāb al ṣadaqa) and copies circulated as a basic set of rules for practice in the future.⁽⁵⁸⁾ Beside these safeguards, zakāt-payers were also advised to be tolerant to and cooperative with these officials.⁽⁵⁹⁾

The Share of the Center and the Regions

"The Prophet sent Mu'ādh to Yemen and said:
Invite the people to certify that none has the right
to be worshipped but Allah and I am Allah's Apostle,

and if they obey you, then teach them that Allah has enjoined on them five prayers in everyday and night (in 24 hours) and if they obey to do so, then teach them that Allah has made it obligatory for them to pay zakāt from their property and it is to be taken from their rich and be given to their poor."(60) (emphasis mine)

The above Hadith which states that zakāt is to be collected from "their rich" and to be distributed among "their poor" clearly point to the fact that zakāt is essentially to be spent within the region in which it is collected. This implies that the role of the central Bayt al Māl (Treasury) is only nominal in respect of zakāt, and it would be entitled basically to only that amount which was collected in the capital city. Beside the above Ḥadīth, there are also other evidences to support this argument. It is stated that the holy Prophet sent ‘Amr as collector of zakāt to ‘Uman where he took it from the rich and disbursed it among the poor.(61) Another report states that Mu‘ādh used to spend the zakāt collection in Yemen . But when in Caliph ‘Umar ibn al Khaṭṭāb’s time he sent some of the residual funds of zakāt to Madinah, ‘Umar criticized it.(62) Yet another report states that Ziyād deputized a Prophet’s Companion to collect zakāt from a city in ‘Irāq. When he returned, Ziyād enquired about the funds: "Oh, you mean the zakāt funds", retorted the Companion, "Well I took it in the way I used to in the Prophet’s time and disposed it in the way I used to in his time."(63)

However, there are also reports to indicate that the holy Prophet also used to receive funds from outside Madīnah. In some instances

there may be confusion as to the nature of these funds: whether they were Zakāt or Jizyah (poll tax) which may also have been collected by the same collectors. But there are also clear evidences which prove that the holy Prophet had also received zakāt from remote regions. A report by Balādhurī states that Hamzah bin Nu‘mān, a chief of Banū ‘Udhrā was the first to bring the zakāt/ṣadaqah of his tribe to the holy Prophet.⁽⁶⁴⁾ Here it is possible to infer that the Collector might have carried to the holy Prophet a portion of zakāt or in some cases the residual zakāt funds which had remained undistributed.⁽⁶⁵⁾ The most relevant argument, however, in support of the central government share in zakāt can be adduced in the context of caliph Abu Bakr’s war against the apostates which will be discussed later.

From the evidences and argument given above, it can safely be stated that as a general rule zakāt was collected and distributed within a tribe or region. On some occasions, however, the collectors might not necessarily distribute all their collection to the paying community. The criteria of distribution here was mainly governed by the needs of the community. The collectors of relatively rich tribes might leave a credit balance for transfer to the Central Bayt al Māl. Furthermore, there could also be situations where a number of Muslims in a particular locality was much less than non-Muslims and the fellow Muslims were mostly payers but not claimants of zakāt. In such cases zakāt funds also would be transferred to the Central Bayt al Māl.

Distribution

No where can we find any statement on the total amount of zakāt received by the holy Prophet. There are many valid explanations for this. Firstly, as stated above, a large portion of zakāt was distributed by the collectors locally and the accounts were not kept in writing, nor any register maintained at the central level. Secondly, the proceeds of zakāt which were received by the holy Prophet were immediately distributed as a matter of principle.⁽⁶⁶⁾

Zakāt funds were distributed among the eight categories of beneficiaries mentioned in the Qur'ān (see Chapter IV). It must also be stressed here that the holy Prophet never spent anything from the zakāt fund on his kinsmen. He declared several times that sadaqah/-zakāt is unlawful for his family members.⁽⁶⁷⁾ He was so conscious of this that he refused to appoint some of his relatives as zakāt collectors because of the fact that the collectors were paid from zakāt funds. He was so strict about this that he even refused to allow Abu Rafi, his domestic helper (mawlā) to act as assistant to a zakāt collector on the grounds that "mawlā is part of my kinsmen."⁽⁶⁸⁾

There are also reports that some of his kinsmen wished to be appointed as zakāt collectors but he refused on the same ground. The Holy Prophet's aim behind this was most likely to make an example before society and to eliminate any misunderstanding and doubt about the purposes of the collection and distribution of zakāt. Furthermore

the Qur'ān states:

"And among them are men who slander thee in the matter of (the distribution of) the alms: If they are given part thereof, They are pleased, but if not, Behold! they are indignant! (9:58)

Thus it seems probable that the holy Prophet, to eliminate any sort of doubt in this regard, declared sadaqah/zakāt as unlawful for himself and his family. His example was later followed by his pious successors.⁽⁶⁹⁾ However, it was the result of the holy Prophet's strictness on this principle that even after his death, the members of his family were not only themselves reluctant to accept zakāt but the zakāt fund was considered by some jurists as unlawful for them.⁽⁷⁰⁾

2. THE PERIOD OF THE PIOUS CALIPHS

During the time of the Prophet, the central position of spiritual, intellectual and practical guidance among the Muslim Community was completely occupied by the living personality of 'Muḥammad' (The Praised One) who was regarded as the Prophet of God and the temporal leader of the community as well. After his death, this position of leadership was occupied either by an individual or a group but neither of these had the sanction of prophethood. This spiritual and practical guidance of the community was succeeded by al saḥābah al kibār⁽⁷¹⁾ (the elder companions of the Prophet) which the Qur'ān also refer to as the vanguard of Islām ('al sābiqun al-awwalūn)⁽⁷²⁾ These companions, like the disciples of Jesus had been consistently present at

the side of the Prophet, especially at the early difficult stages of his missionary struggle. Due to their close proximity with the Prophet, they would have been most familiar with the content and spirit of the true Islāmic vision.

Among these companions, the ones that played prominent roles were Abū Bakr, ‘Umar, ‘Uthmān and ‘Alī who became caliphs for the period of two and a half, ten and a half, twelve and five years respectively. These caliphs who were often referred to as Rāshidūn (pious) caliphs, not only strictly followed the fundamentals of zakāt laid down in the Qur’ān and Sunnah of the Prophet but exercised their own ijtihād in the implementation of this important pillar of Islam. We will briefly discuss some of their ijtihād which are relevant for our study .

Abū Bakr:

The Question of the Role of the State

The brief period of Abū Bakr’s caliphate, when several expeditions were being sent out to different parts of Arabia to subdue the tribal revolt of apostates and claimants of a new prophethood, is very important because as it temporarily posed a challenge to the very existence of the institution of zakāt . However, some historians⁽⁷³⁾ have mixed up the issue of apostasy and the non-payment of zakāt. For a clear analysis of this issue, we could divide the tribes that Abū Bakr later subdued into three categories:

- (a) The claimants to prophethood such as Musaylimah,

- "prophetess" Sajāh, Ṭulayḥah and followers of Aswad al Ansī who had been killed before the death of the holy Prophet;
- (b) The tribes of Banū Kalb, Tayy, Dhubyān and others which refuse to pay zakāt even though they were not actually the followers of the claimants of prophethood;
- (c) Those tribes which neither believed in these "prophets" nor pressed their refusal to pay zakāt, yet, were perhaps in serious doubts about the future of Muslims and Islām. They did not like to take sides in this period of uncertainty, and therefore, were reluctant to pay zakāt to the Collectors of the central Government. Sulaym, Hawāzin and ʿĀmir⁽⁷⁴⁾ are examples of such tribes.

It is obvious that believing in the prophethood of the above mentioned claimants was, in Islāmic law, tantamount to apostasy. But the refusal to pay zakāt could be termed apostasy when it was established that they altogether disbelieved in the obligatory nature of zakāt.

It should be noted here that the Arab tribes traditionally were not used to surrendering themselves to any superior government or paying tax to them.⁽⁷⁵⁾ Thus, the wavering loyalties of these newly

converted tribes and the cautious attitude they demonstrated in weighing the situation and developments, should not be considered as something unusual. Under such situations it was not surprising that some tribes would have chosen not to pay zakāt even though they claimed to be Muslims. However, it appears that some of these tribes did not totally refuse to pay zakāt. Instead, as reported by al-Ṭabarī, some zakāt collectors, who were generally the members of the same tribes where they were deputed, had already collected the outstanding zakāt payment of the year and the zakāt fund was with them.⁽⁷⁶⁾ In fact, there were even cases under the unsettled condition where some tribe members even paid zakāt twice.⁽⁷⁷⁾

Thus, it is clear the real issue was whether or not the supremacy of Medina should be accepted, i.e. whether the collection (i.e. the surplus) would be sent to the center or at least, with regard to the expenditure of the fund, the instruction from the center should be followed.⁽⁷⁸⁾ In other words: what is the role of the State with respect to zakāt? Or should zakāt be considered as purely a 'tribal' matter?

This contention is supported by a report of 'Amr b. Dinār which states that 'Umar ibn al Khaṭṭāb once said with much regret that he wished he had asked the Prophet whether or not a war could be waged against those persons who refuse to pay zakāt, arguing that they themselves would spend it on its categories as mentioned in the Qur'ān.⁽⁷⁹⁾ The same report confirmed that 'Umar then stated that Abū

Bakr's view in this regard was in favor of war.⁽⁸⁰⁾

In whatever way we interpret this event, it was really a challenge to the institution of zakāt through which a system of collection and distribution had already been organized under both local and central control.⁽⁸¹⁾ The question of how the challenge should be dealt with appears to have been a matter of dispute, perhaps because the challenge posed a legal or juristic problem. The problem was to ascertain whether or not a war could be declared against those who neither joined the claimants of prophethood nor openly declared themselves as apostates but, on the other hand, claim to be Muslims. However, they refused to pay zakāt and/or to hand it over to the central authority. The differences of opinions on this legal issue, as stated above, is well known. Sa'āni for instance, stated in his al Muṣannaf that 'Umar asked Abū Bakr: "How can you wage war against these people when the Prophet has said that he, 'who believes in God and in my prophethood, should be spared his blood and property'?"⁽⁸²⁾

It was probable that 'Umar was not in favor of war against these people considering the situation at the time. There were widespread revolts and these tribes, at least verbally, claimed to be Muslims. Another possibility might be that 'Umar, in the presence of the Prophet's clear statement, could not really find a legal justification for war against these peoples.

However, in the light of repeated Qur'ānic injunctions aqīmu al-ṣalāt wa ātū al zakāt⁽⁸³⁾ and the emphasis given by the Prophet on

performing prayer and paying zakāt, it is quite possible that some Companions might have considered those who evaded the payment of zakāt as apostates. ‘Abd Allah bin Mas‘ūd, a prominent jurist of this time, for instance, declared non-payers of zakāt as non-Muslims. Moreover, if a man performs his prayers but evades the zakāt which is due, his prayers do not have any value at all.⁽⁸⁴⁾ Abū Bakr, as the ruling caliph, was also not prepared to make any distinction between ṣalāt (prayer) and zakāt based on the clear injunctions of the Qur‘ān stated above as well as the practice of the Prophet. He considered zakāt not only as an obligatory duty for eligible Muslims but also the duty of government to collect and spend on those categories of people specified in the Qur‘ān. This is clearly implied in his reply to ‘Umar: "I will wage war against those who separate prayer from zakāt and I will not condone them even if they exclude an animal which they used to pay to the Prophet."⁽⁸⁵⁾ Undeniably, it was due to Abū Bakr’s ijtihād, followed by his swift, and successful military action, that the institution of zakāt, (especially the State’s role in it) was safeguarded during the critical period after the death of the holy Prophet. ‘Umar, after observing the result of Abū Bakr’s action was reported to have said: "God had opened Abū Bakr’s heart for war, and now I have found that his view was quite right."⁽⁸⁶⁾

From the discussion above, it is clear that there are at least two significant points that could be deduced from the timely action taken by Abū Bakr. Firstly, his action signified in the most unequi-

vocal terms, the importance attached to zakāt in Islām. Secondly, his action also indicated the extent and role of the State in administering zakāt.

It is clear that wherever and whenever a properly constituted Islamic State (one that upholds the Sharī‘ah) is established, it is incumbent upon the authority to administer the collection and disbursement of zakāt.

‘Umar ibn al Khaṭṭāb

(1) Extension of the ‘Coverage’ of Zakāt

‘Umar’s ten years rule as second caliph is very significant for a number of reasons, including the changes he brought in the administration of zakāt. One of the changes he made was the introduction of new items upon which zakāt was levied.

As stated above, the holy Prophet had already exempted horses from zakāt. This animal had been kept and used for speedy travelling and warfare in Arabia since earliest times, and owning a horse was regarded as a sign of prestige. Unlike camels or sheep, horses were not considered basic to the common people. Horses continued to be exempted in the time of Abū Bakr and in the initial stage of ‘Umar’s reign. However, after the conquest of Syria and Palestine the situation changed. Horses were reared and bred in these regions on a large scale for purposes of trade. It was considered a lucrative business and involved the great traders of the region.⁽⁸⁷⁾ Thus, the question

arose as to whether or not zakāt should be levied on these animals which had become a major source of income. However, it is pertinent (but somewhat strange from our so called 'modern' perspective) to note that the issue was not initiated by the State. It was first raised by the people and traders themselves. They insisted that zakāt should also be levied on this property of theirs!⁽⁸⁸⁾

In the above case, the zakāt collector (‘āmil) in Syria, Abū ‘Ubaydah b. al Jarrāḥ, was reluctant to act on this matter. In the Muwatta’⁽⁸⁹⁾, it is stated that he wrote to ‘Umar in Medina seeking his advice on this issue. ‘Umar, fully aware of the Prophet’s exemption on horses at first rejected the idea. When the people were not satisfied with the reply, Abū ‘Ubaydah wrote again to ‘Umar. After consultation with other elder companions, including ‘Alī, ‘Umar eventually approved the idea of levying zakāt on horses.⁽⁹⁰⁾ It should also be stressed that ‘Umar’s view on this was also influenced by similar cases in Yemen at the time. He learnt from Ya‘lā b. Umayyah,⁽⁹¹⁾ a zakāt collector in Yemen, that horses were traded in Yemen and were a valuable and precious property. ‘Umar expressed surprise at this, and is reported to have said: "We levy zakāt on forty sheep, and we don't levy anything on these valuable horses."⁽⁹²⁾ ‘Umar then instructed Ya‘lā that he should charge zakāt on horses at the rate of one dinār per horse.⁽⁹³⁾

Beside the levying of zakāt on horses, another development during ‘Umar’s time was the inclusion of lentils, peas and olives in the

categories of agricultural products upon which zakāt could be levied. During the Prophet's time zakāt were levied only on wheat, barley, dates, grapes and raisins. It was possible that lentils and peas were not generally produced on a large scale in the Arabian Peninsula at that time. As such, the question of zakāt on them would not have arisen.

However, even though 'Umar later included these items on the categories of agricultural produce upon which zakāt was levied, there is no record that indicates any hesitation on his part, or disagreement or consultation with his Companions. The reason for this was probably the presence of all inclusive Qur'ānic verses and the statements of the Prophet demanding the people to pay ḥaqq or zakāt from their agricultural produce in general.⁽⁹⁴⁾ This will be discussed in greater detail later. However, it is important to note that even in this matter there were points of disagreement among later jurists. A few of them appeared to insist that zakāt should be levied only on those kinds of grain which were actually levied by the Prophet himself in his own time. Where the early Companions, such as Abū Bakr and 'Umar, paid attention more to the spirit and purpose of the law (rather than the literal wording), some later jurists show trends toward rigidity, immutability and strictness in following the Prophet's statements and his practices.

(2) Administrative 'Innovation' in the Implementation of Zakāt

The terms "administrative innovation", a fashionable contemporary public administration jargon, is used here with caution -- knowing the sensitivity and connotation of the term 'innovation' (bid'ah) in Islamic legal theory.⁽⁹⁵⁾ No one, however, can legitimately accuse 'Umar of bid'ah in introducing a change in the implementation of zakāt, when common sense and justice demands it. From the various regulations introduced by 'Umar, it appears that, on the one hand, he intended to strengthen respect and obedience to the law. And on the other, he was very cautious concerning the danger of a rigid application of the law, which in some cases could cause hardships and injustices to the people.⁽⁹⁶⁾ The basic principle that was followed in this regard was that "all the incentives, which might lead men to any act of dishonesty, should be removed first, by giving them the maximum possible flexibility in applying the law. But even after this, if a person is found guilty, due to his evil nature, then a deterrent punishment should be there to deal with him."⁽⁹⁷⁾

The innovations introduced by 'Umar in implementing the fundamentals of zakāt specified in the Qur'ān and Sunnah of the Prophet were many. For brevity some of these are listed below:

- (a) postponement of zakāt collection in the year of al-Ramada (drought) for one year, which undoubtedly was intended to

- minimize hardships to the people;
- (b) stipulation that items of average quality should be demanded as payment of zakāt and that the best or in the case of animals, the well-bred animals should never be demanded as part of the payment of zakāt;⁽⁹⁸⁾
- (c) that items for assessment of zakāt such as cattle, for instance, should not be assembled except in a place which should be convenient and in the best interests of the zakāt payers;⁽⁹⁹⁾
- (d) instruction to the guardians of the orphans to invest their properties in some profitable concern so that the property could provide for the zakāt rate annually without being exhausted;⁽¹⁰⁰⁾
- (e) zakāt funds were given to non-Muslim beneficiaries by virtue of their being destitute (masākīn).⁽¹⁰¹⁾

[This seems to be a rather new development of this period. However, there does not appear to be any legal hinderance because not only did there exist the category of al mu'allafah al-qulūbuhum (those in whom inclination towards

Islam is to be strengthened or created). But in general the major categories of al fuqarā' and al-masākīn (the poor and the needy) mentioned in the Qur'ān could also be interpreted to imply non-Muslims as well.](102)

- (f) prescription of the punishment for the person who dishonestly conceals a part of their actual possession from being assessed in zakāt.(103)
- A fifth (20%) portion of the total property of the evader of zakāt could be seized as a penalty.(104)

'Uthman ibn Affan

Problem Relating to Zakāt on Loans/Debts and the Qur'ānic Principle of al'afw

In comparison to 'Umar's time, no remarkable development took place in 'Uthman's time that necessitated any important new ijtihād with respect to the implementation of zakāt. It should also be noted that in the ten critical years of 'Umar's rule, zakāt law had already been evolved in a rather well-organized and elaborated shape to meet the needs of the time.

However, the significant feature of 'Uthmān's time was the affluence of society that had then reached its zenith.(105) Most historians interpret the situation as an outcome of the successful military campaigns and the rapid expansion of the boundaries of the nascent

Islāmic State. However, the underlying factor in this situation that improved the economic well-being of the general public and thus strengthened the purchasing power of the common man, seems to be ignored by the historians. An exception is one recent scholar⁽¹⁰⁶⁾ in this field who holds the view that there is ample evidence to assume that zakāt law was one of the main factors which caused the widespread circulation of wealth, its expansion and consequent use as an instrument of general productivity. The author argues that the decade of ‘Umar’s rule provided sufficient time for the law to manifest its impact on the society. Therefore the results of zakāt law naturally would have appeared in ‘Uthmān’s time.⁽¹⁰⁷⁾

One of the outcomes of this era of prosperity was the emergence of new problems relating to debts and loans in zakāt law. For instance, in the case of the property which included the debts, should the zakāt be levied on the entire amount, or should the debt be subtracted before charging zakāt? Another related question was: Should someone who has given a loan to others be charged for the amount before or after the loan has been returned to him? And if he is charged zakāt after the repayment of the loan, then in case the loan is returned after several years, should he be charged for all those years or only for one year? Most probably, to avoid such complications ‘Uthmān adopted the practice of urging people during the month of zakāt collection to repay their debts so that an accurate assessment of zakāt on one’s property could be carried out.⁽¹⁰⁸⁾ It is

quite obvious that this was not always practicable and consequently the above questions required ijtihād to solve them.

With respect to the first question, there appears to be agreement that the loan which was owed must first be subtracted, and zakāt should be levied only on the balance, provided that the balance is greater than or equal to the nisāb (i.e. the minimum amount that is subject to zakāt). This can be inferred from the above mentioned practice of ‘Uthmān. Some conclusion could also be drawn from the practice of ‘Umar which is reported by Sa‘ānī.⁽¹⁰⁹⁾ On being questioned by a person as to whether he should pay zakāt immediately on his entire possessions, while at the same time he would have to repay his debts and to meet his family expenses, ‘Umar replied: there was no need to hurry. Before paying zakāt he should assess his borrowing and lending and estimate subsequent family expenditure as well.⁽¹¹⁰⁾ Similar views were reported to be held among others by ‘Alī and ‘Aishah and also by later juriconsults such as Abū Ḥanīfah⁽¹¹¹⁾ and Mālik.⁽¹¹²⁾ Despite the absence of any direct reference to this issue by the Prophet, near unanimity among jurists in this matter is most probably due to the Qur’ānic principle of al ‘afw. Under this principle, the only part of a man’s wealth which was liable to be demanded was al ‘afw - i.e. the surplus or the part in excess of one’s own needs. Al ‘afw can also be regarded as a leading principle that determined the nisāb and the rates for various types of properties during the Prophet’s time.⁽¹¹³⁾ Thus, by using the same principle,

debts owed must first be excluded and then the rest assessed to determine whether or not it is below or above the nisāb.

With respect to the second question - namely if someone had given a loan to others, should he be charged for the amount before or after the loan has been recovered? - there is such a case attributed to 'Umar. It was reported that at the time of zakāt collection, he charged merchants zakāt on their assets which were hāḍir (in their possession) and ghā'ib (assets owned to them).⁽¹¹⁴⁾ 'Alī was reported to hold a different view. He was inclined to charge zakāt after the recovery of the loan. But according to his view the person will have to pay zakāt for all the past years in which his property had remained as a loan and in the possession of others.⁽¹¹⁵⁾

We could say that 'Uthmān's practice reflects an intermediate position between the two mentioned above. He is reported to have declared that if the creditor was able to recover his loan at the time of zakāt collection but was reluctant to do so, he would then be charged zakāt on his entire property, including his credits. Ibn 'Abbās (d.68 A.H.) and 'Abd Allah b. 'Umar (d.74 A.H.) were reported to have adopted the same view later. It was the same practice of 'Uthmān, which was considered to have developed later into a theory of dividing the credits into two categories, namely marjū al adā' (expected to be returned) and ghayr marjū al adā' (dead-debts). Zakāt on the first kind of credits were considered to be obligatory every year at the time of zakāt collection, while the others were exempted and only due

after the recovery of the debt.

‘Alī ibn Abi Tālib:

Exemption of Zakāt on Animals employed in some Work
(al-ḥawāmil wa al-‘awāmil)

The fourth caliph, ‘Alī, one of the closest companions of the Prophet and who was also his son-in-law and referred to by the Prophet as the "Gate of Knowledge",⁽¹¹⁶⁾ naturally had acquired an eminent position in the field of ijtihād during the time of Abū Bakr and ‘Umar. His advice was often sought for by his contemporaries and his name is frequently mentioned in the major sources of early works in Islamic jurisprudence, particularly in connection with ijtihād during ‘Umar’s time. However, due to the continuous state of civil war which he had to face during his five years of rule, no major decisions pertaining to Islāmic law were made. Still, in the field of zakāt law, the total exemption of al ḥawāmil wa al ‘awāmil (literally translated, beasts of burden or animals employed in work) from zakāt on animal property has often been attributed to ‘Alī.⁽¹¹⁷⁾ There are many reasons which would have directed ‘Ali to make the above ijtihād. As M.A.S. Ṣiddīqī⁽¹¹⁸⁾ pointed out, the first possibility in this regard is the interpretation and application of the Qur’ānic principle of al ‘afw to the new situation. The principle stipulates that zakāt should be levied only on the surplus wealth after essential personal needs.⁽¹¹⁹⁾ As stated above, this principle was strictly observed by the Prophet while fixing the different zakāt rates on different items.

Thus, it is quite possible that in interpreting and applying the same principle, ‘Ali in his time exempted al-ḥawāmīl and al-‘awāmīl from zakāt, considering them as essential for the peasants.

The second possibility to be considered here is the total exemption of horses from zakāt during the Prophet’s time. This could have been the basis for ‘Alī to exempt some other animals as well. As stated above, during the Prophet’s time horses were not generally reared on a large scale for the purpose of breeding and trade; instead, they were kept for the individual’s private needs, such as speedy travelling and particularly for purposes of warfare. Hence, they were exempted from zakāt. Based on this precedent, ‘Alī might have considered that al-ḥawāmīl and al-‘awāmīl could be excluded for the private needs of the farmer. Furthermore, these animals were different from the general flocks and herds in the sense that they were not pasture animals, and were fed on forage. Therefore, ‘Alī might have considered this difference as a ground for their exclusion from the general livestock upon which zakāt is obligatory.

The third possibility is the consideration of the zakāt rates for agricultural produce. The Prophet had already fixed a 10% and 5% zakāt rate on the total produce at the time of harvest. As al-ḥawāmīl and al-‘awāmīl constituted only a part of the process of agricultural production at that time, the zakāt rate on the harvest would have been considered enough, and an additional rate on the above animals perhaps was considered to be unjustified by the zakāt payers. This argument

was reported to have been presented by al-Zuhrī (d.124 A.H.) and in later time by al-Tanūkhī (d.168 A.H.).⁽¹²⁰⁾

3. THE PERIOD OF THE SUCCESSORS

The Controversy Pertaining to the Obligatoriness of Handing Over Zakat to the State

Starting from the end of the rule of the Rāshidūn Caliphs, and even more after the rule of Mu'āwiyah, (the last of the close companion of the Prophet), which was followed by a civil war, there was a general lack of confidence in government. The general public had reservations about the disbursement of zakāt income by the government. In this respect, the first major controversy relating to zakāt was the question whether or not it was a religious obligation for a Muslim to hand over his zakāt under all circumstances to the rulers only, and not directly to the beneficiaries of zakāt. Another related issue was whether a person who had handed over his obligatory zakāt directly to the beneficiaries had fulfilled his religious obligation.

A number of reports confirm that people during this time were coming to the jurists and were repeatedly asking them whether they should pay their zakāt directly to the beneficiaries as their rulers did not spend zakāt income on its specified beneficiaries.⁽¹²¹⁾ Quite diversified views were presented by the jurists to these questions. A considerable number of the jurists were reported to hold the

view that collection of zakāt is religiously a responsibility of the government.

Thus, in every situation it must be handed over to the State. Among those who held this view were Sa‘d b. Abī Waqqās (d.55 A.H.), Abū Hurayrah (d.57 A.H.); Abū Sa‘īd al-Khadrī (d.74 A.H.) and ‘Abd ‘Allah b. ‘Umar (d.73 A.H.). It was reported that ‘Abd Allah b. ‘Umar, was so strict in his opinion that he once said that if a person had handed over his zakāt to the beneficiaries he had not in fact fulfilled his religious obligation, and he would have to repay his zakāt.⁽¹²²⁾ According to another report, it was stated that he went so far as to say that "even if the rulers purchased lynx and falcons from the income of zakāt, it would be incumbent on the Muslims to hand over their obligatory zakāt to their rulers".⁽¹²³⁾ Yet, in another instance it was reported that "even if you find your rulers eating dog's flesh, you have to pay your zakāt to them".⁽¹²⁴⁾ However, the attribution of such statements to him was doubted by the people even in the time of the successor jurists.⁽¹²⁵⁾ What can be inferred is that even though ‘Abd Allah b. ‘Umar was strict in his view on this issue, such statements were most probably fabricated and then attributed to him by those who had the vested interests to seek legitimacy for their actions.

In contradiction to these views, there were some jurists who held the view that in a situation when the rulers do not spend the income of zakāt on its specified heads, it is preferable to hand over zakāt

to its beneficiaries directly. Ibn ‘Abbās and his student Ṭā’ūs and Sa‘īd b. al-Mussayyib were reported to have held such a view.⁽¹²⁶⁾ It is most probable that many other jurists might also have held the same view except for the political circumstances of the period. It must be stressed here that it was not easy for those jurists who held the above view to express it in public. This contention is supported by a report of San‘ānī that once ‘Abbās b. ‘Uthmān (d.105 A.H.) met secretly with Ḥasan al Baṣrī when he was in hiding in the house of Abū Khaḫīfah to avoid arrest at the time of al-Ḥajjāj b. Yūsuf. ‘Abbās reported that on this occasion, a man came and said to Ḥasan al Baṣrī, that he had once asked ‘Abd Allah b. ‘Umar about his view of handing over zakāt to the State in every situation. The man said that ‘Umar answered that you can pay your zakāt directly to the beneficiaries. Ḥasan, addressing ‘Abbās, then reminded him saying: "Look! I have not said that if ‘Abd Allah b. ‘Umar felt himself safe (to speak openly), he usually suggested that the questioner pay zakāt to the beneficiaries directly rather than to the government".⁽¹²⁷⁾

It could be interpreted from the above statements that the general opinion of those who held the above views was that the portion of wealth which had been taken by the government as zakāt would be considered as paid zakāt. As such, the person who paid such a zakāt, should assess only the outstanding zakāt on that property which remained unassessed by the government. He should pay this portion of zakāt directly to the beneficiaries.⁽¹²⁸⁾ Such a view is reported from

Anas b. Mālik and Saʿīd b. al-Musayyib.⁽¹²⁹⁾ In later times Ibrāhīm Nakhāʿī, Muḥammad b. ʿAlī, Abu Jaʿfar and Ḥammād were reported to have followed the same view.

It is apparent that the theory of al- māl al zāhir (checkable property) and al- māl al- bāṭin (uncheckable property) which were adopted by some later jurists, originated from this period and was due to the above political situation. According to this theory "the later jurists had generally given their judgements in favor of handing over zakāt of the checkable property to the government, while the zakāt of uncheckable property should be spent directly on the beneficiaries".⁽¹³⁰⁾ The checkable properties comprise of al- ḥarth (agricultural produce) and al- māshiyah (livestock); while uncheckable property comprises of al- ʿayn (silver, gold, cash, etc.). Acknowledging the legitimate domain of the State with respect to the 'checkable properties', the jurists of the successor's time generally held the view that in respect of al- māl al- bāṭin a Muslim is free to pay to the State, or to pay directly to the beneficiaries without the intermediary of the State. This view can clearly be concluded from the fatāwā (juridical rulings) and statements among others attributed to Anas b. Mālik (d.93 A.H.), Saʿīd b. Musayyib (d.95 A.H.), Nakhāʿī (d.95 A.H.), Ḥasan al Baṣrī (d.110 A.H.) and Maymūn b. Mihran (d.117 A.H.)

However, under the above categorization, merchandise should come under the definition of al- māl- al bāṭin. Yet there were several

reports that suggest that the previous practice of appointing the ashirīn on the important trading routes and bridges was continued by the state during this period. These State officials, beside other duties, were also responsible for levying zakāt on the merchandize of Muslim traders according to the specified rates.⁽¹³¹⁾ Their authority in this respect was also acknowledged by the jurists of the time. Thus, it can be inferred that in the above case, merchandise, since it was checkable by the collectors was converted in terms of law from the category of al- māl al- bāṭin to the category of al- māl al- zāhir. It may be the difficulties in categorizing all items into these two categories that prompted jurists like Qatādah (d.118 A.H.) and Ṭā'ūs to give a decision prohibiting the government from taking an oath from a zakāt payer to the effect that he did not possess any property other than he had already declared.⁽¹³²⁾

CONCLUSION

The General Principles Governing the Development of Zakāt Laws in Early Islām

From the above discussion on the evolution of zakāt laws from the Prophet's time until the beginning of the emergence of various schools of Islāmic jurisprudence, we can infer a number of general principles which govern the development of Islāmic law in general and the development of zakāt law in particular. We shall list down and briefly comment upon some of these principles,⁽¹³³⁾ as they have great bearing

upon our present study:-

(i) The supremacy of the Qur'ān, followed by the Sunnah of the Prophet

The Community of the Prophet in Madīnah was basically built on the belief that God is not only a Supreme Being to be worshipped in a religious sense, but He is also the Absolute Ruler, the Supreme Legislator and the Final Arbitrator. Thus, the Qur'ān which was presented by the Prophet was considered by the Community as the very Word of the Highest Legal Sovereign Power. The Qur'ān of course, by its very nature deals only with general principles. With respect to the concept of zakāt for instance, it generally stipulates only the aims and objects of zakāt, and specifies the categories of its beneficiaries. It was left to the Prophet to formulate the details of the zakāt laws, based on these Qur'ānic guidelines and instructions.

(ii) The emphasis on the overall aims and purposes of the laws rather than their literal meanings

In the application of specific zakāt laws, due emphasis is given to the general instructions or exhortation of the Qur'ān. In other words, if we compare the Qur'ānic general instructions and the practical details of zakāt law, the real emphasis was given to the spirit, aims and

ends of any particular legislation, rather than the literal wordings of a rule. (See further discussion on this in the conclusion of the next chapter).

(iii) The principles of gradualism

This principle is clear from the fact that since the Qurʾān itself was revealed in fragments and in gradual process, instructions pertaining to zakāt were also gradually given to the Prophet, and its implementative details and other relevant legislations were gradually shaped and evolved.

(iv) The principle of 'realism'

The legislation was meant to deal with actual events and happenings only. Speculation, hypothetical issues and presuppositions were excluded from the philosophy of legislation and legislative process.

(v) The principle of natural justice and equity

The operation of this principle can be seen not only from the exemption of the goods of personal use from zakāt, and the fixing of certain exemption limits for every kind of wealth. It can be seen in the determination of definite rates for different kinds of wealth. For example, the rate on buried

treasure or mines, whose production does not require much labor was determined at 20%; on agricultural produce which require human labor, 10%, and if irrigated by human effort it was reduced to 5%. The money in circulation, which requires not only hard labor and entrepreneurial skills for its production, but also the investment of capital (combined with the abolition of interests), was subject to the lowest zakāt rate of 2.5%. And as stated above, in the case of herd of sheep which comprises many lambs, which were counted in the assessment but were not accepted as zakāt payments, the rate is only 1%.

(vi) The principle of *maṣlahah* (public benefits) and the protection of individual interests

This principle is related to principle (v) just mentioned. Beside fixing of exemption limits and rates, the best illustration of this principle is the general rule in the case of animal property. The very young, very old, and defective animals were not to be accepted as zakāt payment, nor those better animals which were especially kept by the owner for breeding or other purposes of his own. From this principle,

it is clear that an attempt is made to maintain a balance between the interests of the zakāt payers and the interests and welfare of the beneficiaries of zakāt.

(vii) The principle of 'elimination of hardship'

An example of this principle is the introduction of the rule of acceptance of older or younger animals in the case of non-possession of animals of appropriate age, provided a fixed compensation is given in lieu of this. In fact this principle emerges from the Qur'ān: "There is no hardship in religion".⁽¹³⁴⁾ And also from the Hadīth:

"Create ease for people and do not create hardship for them".⁽¹³⁵⁾

(viii) The emphasis on the ethico-moral aspect and taqwā (love and fear of God) as the primary motivation for the observance of the Law

Although the zakāt law, which was enforced in the last years of the Prophet's life and later (especially Abū Bakr's time), had undoubtedly the strong backing of the State for its enforcement; nevertheless, both the Qur'ānic verses and the Prophetic statements clearly indicate the basically moral and spiritual dimension of the zakāt law, and the element of taqwā as the primary motivation.

After all, as discussed earlier the word 'zakāt' itself holds the concept of the purification of the soul.

NOTES

- (1) By classical jurists we refer to the founders of the schools of Islamic jurisprudence (fiqh) such as Abū Ḥanīfah, Mālik, Shāfi‘ī, Ibn Ḥanbal and others including their followers. (See Chapter III).
- (2) Some of the important contemporary jurists who have written on this subject are Shaltūt, Abū Zahrah, Muṣṭafā al-Zarqā’, Yūsuf al-Qaradāwī and others. There are also a number of Islāmic economists who have written on zakāt. (See Bibliography).
- (3) See, for instance, Joseph Schacht’s “Zakāt” in Shorter Encyclopaedia of Islam, H.A.R. Gibb and J.H. Kramers, ed. Leiden: E.J. Brill, and London: Luzac and Co. 1961 and Udovitch, Abraham L. Partnership and Profit in Medieval Islām. Princeton, H.J. 1970 Schacht considered the Arabic word ‘zakāt’ to be of Jewish origin.
- (4) N.P. Aghnides, An Introduction to Mohammedan Theory of Finance, Lahore, 1969, p.203.
- (5) Al-Baghdādī, Muṣaffar al-Dīn ‘Alī al Sā‘ātī, Majma‘ al Baḥrayn wa Multaqā al Nahrayn, (696 A.C.), p.157. Cited also in Aghnides, *ibid*, p.204.
- (6) J.Legge, The Chinese Classics, Hong Kong, 1861-72, p.119. See also title: The Encyclopaedia of Religion and Ethics James Hasting (ed.), Vol. XII, 1922, p.347.
- (7) A.S. Geden, "Charity, Almsgiving (Hindu)", in The Encyclopaedia of Religion and Ethics, James Hasting (ed.), Charles Scribner’s Sons, N. York, 1913, p.387-388.
- (8) *Ibid*
- (9) *Ibid*
- (10) *Ibid*
- (11) *Ibid*
- (12) T.W. Rhys Davids, ‘Charity, Almsgiving (Buddhist)’ in The Encyclopaedia of Religion and Ethics, *ibid*, p.381-382.

- (13) Ibid
- (14) Ibid
- (15) Encyclopaedia Judaica, under 'Tithe', The Macmillan Co., Jerusalem 1971, p.1156.
- (16) Ibid, p.1157
- (17) Ibid
- (18) Ibid
- (19) Ibid, p.1160
- (20) Ibid
- (21) D. Dietlein, 'Tithes', The New Catholic Encyclopaedia, Vol. XIV The Catholic University of America, Washington D.C. Mc Graw Hill, 1967, p.174.
- (22) J.A. Mac Culloch, 'Tithes', The Encyclopaedia of Religion and Ethics, op.cit. p.348.
- (23) Ibid, p.349
- (24) Ibid
- (25) Ibid
- (26) Ibid
- (27) Ibid
- (28) Ibid
- (29) D. Dietlein, op. cit. p.175
- (30) Ibid
- (31) Qur'ān (6:162)
- (32) Ibn Hishām, Al-Sīrah al-Nabawiyah, Vol.I, Cairo 1937, p.260.
- (33) Qur'ān (93:7-13)

- (34) Qur'ān (51:17-19)
- (35) Qur'ān (70:12-26)
- (36) 'ḥaqq ma'lūm', *ibid.*
- (37) The word "salvation" with its special connotation in Christianity is not a satisfactory translation for the word 'aḡabah' in the Qur'ān - even though it convey the meaning somewhat in this particular context.
- (38) Qur'ān (30:38), (90:11-16), (36:47) and (17:26).
- (39) Abū Bakr, one of the earliest and closest companion of the Prophet spent substantial portion of his wealth to free slaves who embraced Islam including the famous Bilāl, a black African who became the first mu'adhhdhin (one who calls for prayer) of Islām.
- (40) Ibn Hishām, *op. cit.* Vol. II, p.118.
- (41) This has been controversial among the orthodox mufassirīn (interpreters of the Qur'an) that whether this sūrah was revealed at Mecca or it belonged to the period of Madīnah. See *al-Qurṭubī, al-Jāmi' li Ahkām al-Qur'ān* (Cairo, 1967 A.D.) vol. XII, p. 1. Maudūdī, on the basis of his criticism and observation of its internal content, concludes that out of its 78 verses, the first 24 most probably belonged to the last years of the Prophet's stay at Mecca, while the rest were revealed at the very early time in Medina, most probably in the first year A.H. See Maudūdī's Tafhīm al Qur'ān., vol. 3, p. 196. See also M.A. Saeed Şiddīqī The Early Development of Zakāt Law and Ijtī hād, Islamic Research Academy, Karachi 1983.
- (42) Qur'ān (22:39-41). See also Section C of Chapter 3.
- (43) See footnote (1), especially the work of Yusuf al Qaradāwī's Fiqh al Zakāt, (See Bibliography).
- (44) See Bibliography
- (45) 'Buried treasures' here not only refer to hidden or lost 'treasures' (such as gold, silver, jewelries) found dug in the ground or beneath the sea but also mineral deposit, such as gold, copper, tin and petroleum.
- (46) Abū Dāwūd, Sunan, Vol.II, p. 95

- (47) Mālik b. Anas, al-Muwattaʿ (version of al-Shaybāni), p.118.
- (48) Ibid (version of Yaḥyā) p. Vol.I, p.206
- (49) Ṣāʿ is a classical Arabic measurement. 60 Ṣāʿ is one wasq (or wisq) which is about a camel's load. (See Aghnides, op. cit. p.286).
- (50) Saḥīḥ Musiim, Vol.IV, pp. 9-17
- (51) Uwaq is plural of uqiyaḥ that was equal to 40 dirham. See al-Suyūṭī, Tanwīr al-hawālik in the margin of al-Muwattaʿ (version of Yaḥyā), Vol. I, p.188. Cited in M.A.S. Siddiqi, op. cit., p.46.
- (52) See the Ḥadīth reported by Muʿādh in footnote (60).
- (53) S.M. Ḥasan-uz-zamān, The Economic Functions of the Early Islāmic State, Ph.D. Thesis, Edinburgh University, 1973. International Islāmic Publishers, Karachi 1981, p.135.
- (54) Ibid
- (55) Ibid
- (56) Ibid, p.137
- (57) Ibid, cited from Abū Dāwūd's Sunan, Vol.II, p.141.
- (58) Ibid, p.137
- (59) Ibid
- (60) Saḥīḥ al-Bukhārī, Kitāb al-Zakāt
- (61) al-Tirmidhī, Sunan, Vol. 3, p.148.
- (62) Abu ʿUbayd, Kitāb al Amwāl, p.1911, cited in Ḥasan-uz-zamān, op. cit. p.140
- (63) Ibid
- (64) Jizyah is a poll-tax levied on the non-Muslim.
- (65) Ibid
- (66) Ibid, p.141

- (67) Ibn Hishām, Sīrah, Vol.II, p.381
- (68) Ibn Sa‘d, al-Ẓuhrī, al-Tabaqāt al Kubrā, IV, p.51. Cited in Ḥasan-uz-zamān, op. cit. p.143.
- (69) Especially by the Rāshidūn Caliphs
- (70) See ‘Abd al Raḥmān al-Jazīrī, al-Fiqh ‘ala Al-Madhāhib al Arba‘ah, Vol.I,(Cairo, 1970) for the views of different schools on this issue.
- (71) Beside the four Rāshidūn caliph, the important companions of the Prophet are Salmān al Fārsī (d. 36 A.H.), Abu Dharr al Ghifārī (d. 31.A.H.), Abu‘Ubaydah al-Jarrāḥ (d.18 A.H.), Mu‘ādh b. Jabal (d. 19 A.H.). ‘Abd. al Raḥmān al ‘Awf (d. 32. A.H.), Hudhayfa al-Anṣārī (d. 36. A.H>), Bilāl b. Abi Ribāḥ (d. 20. A.H.) and others.
- (72) Qur’ān (9:100)
- (73) Details of this is described in Ṭabarī’s Ta’rīkh al-Rusul wa al Mulūk, Leiden, 1793. Cited also in Ḥasan-uz-zamān, op. cit. p.147.
- (74) Ibid
- (75) Ibid
- (76) Ibid
- (77) Ibid
- (78) Ibid. See also M.A.S. Ṣiddīqī, op. cit. p.85
- (79) Qur’ān (9:60). See also next chapter.
- (80) M.A.S. Ṣiddīqī, op. cit. 85
- (81) Ibid
- (82) Al-San‘ānī, al-Muṣṣanaf, Vol.IV, p.43. Aḥmad ibn Ḥanbal, Musnad, Vol.I, p. 67 and 335.
- (83) For instance verse 58:13. The command to ‘establish the prayer and pay the zakāt’ had been stated so often in the Qur’ān and by the Prophet, so much so that when Heraclius asked about

the Prophet to Abū Sufyān (who was then an enemy of the Prophet he replied: "He (the Prophet) order us to establish the prayer to pay the zakāt, to keep good relation with kith and kin and to be chaste". (From Saḥīḥ al Bukhārī, Kitāb al al Zakāt, narrated by ibn 'Abbās as he was told by Abū Sufyān)

- (84) Abu 'Ubayd, Kitāb al-Amwāl, p.354.
- (85) Mālik b. 'Anas, al-Muwatta' (version of Yaḥyā) p. 201; Aḥmad ibn Ḥanbal, Musnad, Vol.I, p. 181. Cited also in M.A. Saeed Ṣiddīqī, op. cit. p.86.
- (86) San'ānī, op. cit. Vol.IV, p.44. These words are also mentioned in ibn-Ḥanbal's Musnad, Vol.I, p.206.
- (87) al-Muwatta' (Yūsuf's version), p.206.
- (88) Ibid
- (89) Ibid
- (90) Ibid
- (91) Ya'īlā was deputed to al-Janad as a zakāt collector by the Prophet himself (see Ṭabarī, Vol.III, p.228). 'Umar b. al-Khaṭṭāb probably deputed him to some coastal town. (See Abū Yūsuf's Kitāb al Kharāj, p.76.
- (92) San'ānī, op. cit. Vol.IV, pp. 35-36. Cited in M.A. Saeed Ṣiddīqī. p.90.
- (93) Ibid
- (94) Qur'ān 6:41. For the Prophet's general statements on this see, for instance, San'ānī, op. cit. Vol.IV, pp. 133-134.
- (95) bid'ah is a term generally used for any innovation introduced to the 'rituals' of Islām.
- (96) M.A. Saeed Ṣiddīqī, op. cit., p.96.
- (97) Ibid
- (98) Ibid, p.97

- (99) Ibid
- (100) Ibid, p.98
- (101) Ibid, p.99. See also Al-Balādhurī, Futūḥ al Buldān, p.135.
- (102) Ibid
- (103) Ibid, p.95
- (104) Ibid
- (105) Ibid, p.101. See also al-Suyūṭī, Jalal al-Din, Tārīkh al Khulafā', (New Delhi, 1345 A.C.), p.116-7.
- (106) M.A. Saeed Ṣiddīqī, ibid, p.101
- (107) Ibid
- (108) Ibid, p.102
- (109) Sanʿānī, Vol.IV, p.102. Cited also in M.A. Saeed Ṣiddīqī, ibid p. 102.
- (110) M.A. Saeed Ṣiddīqī, p.103
- (111) Ibid. See also Abū Ḥanīfah, Kitāb al Āthār, (Shaybāni version), p.94.
- (112) Ibid. See also al-Muwatta'.
- (113) Qurʾān: "They ask what they should spend, say what is surplus from your need", 2:219. See also Chapter II above.
- (114) Sanʿānī, op. cit., Vol.IV, p. 103
- (115) M.A. Saeed Ṣiddīqī, ibid
- (116) Reference to his profound knowledge in matters both temporal and spiritual.
- (117) M.A. Saeed Ṣiddīqī, op. cit., p.122
- (118) Ibid, p.124
- (119) Ibid

- (120) Ibid, p.125. See also Abu 'Ubayd, Kitāb al Amwāl, p.381.
- (121) Ibid, p.130
- (122) Ibid, p.131. Quoted from San'ani op. cit., Vol.IV, p.46
- (123) Ibid. Also, ibn Abī Shayba, Abū Bakr, al-Muṣannaf. Vol.IV., p.45
- (124) Ibid
- (125) Ibid. It is reported that when Ḥammād (d.120 A.H.) heard the above statement, he expressed his scepticism about its attribution to 'Abd Allah b. 'Umar. See San'ānī, Vol.IV, p.46.
- (126) Ibid
- (127) Ibid, p.132. A similar statement is reported by Sa'īd b. Jubayr (d.94 A.H.) as well. On being asked about zakāt by Hassan b. Yaḥyā al-Kindī, he replied: "Pay it to the rulers"; However, when Sa'īd left the place, Yaḥyā followed him and repeated the question, mentioning that the rulers were doing such and such with the zakāt collection. Sa'īd then, said: You can spend the zakāt directly on the beneficiaries. However, how could I say it when you asked me this question in public?" Abū 'Ubayd, Kitāb al-Amwāl, p. 572.
- (128) Ibid
- (129) Ibid
- (130) Ibid, p.133
- (131) Zakāt on merchandise is also called 'ushr because of the rate 'ten percent'.
- (132) Ibid
- (133) These principles which I have modified are based on the findings of a number of authors including M.A. Saeed Ṣiddiqī, op. cit.
- (134) Qur'ān (22:78) and Qur'ān (2:286), where it is mentioned "God

taketh not a soul beyond its capacity". Saḥīḥ al-Bukhārī,
Vol.I, p. 69.

(135) Bukhārī, Vol.I, p.69 and Muslim Vol.II, pp.131-2.

CHAPTER III

ISLĀMIC JURISPRUDENCE AND ʿUSHR

The main objective of this chapter is to highlight some of the relevant issues related to ʿushr in Islāmic jurisprudence (fiqh). To achieve this objective this chapter is divided in two sections. The first section which serves as a prelude to the second section would give a brief panoramic sketch of the historical background of the application of Sharīʿah with emphasis on the development of the science of Islāmic jurisprudence (uṣūl al fiqh) which later led to the founding of various schools of jurisprudence (madhāhib). The second section would then focus on some aspects of ʿushr in Islāmic fiqh. Due to the enormous amount of literature in this field, only certain issues are discussed here. The selection of these issues are made purely on the basis of the relevance of these issues to the contemporary application of ʿushr in Malaysia.

A. THE RISE OF THE VARIOUS SCHOOLS OF JURISPRUDENCE

The history of the Muslim application of Sharīʿah could be divided into several distinct periods.⁽¹⁾ We have discussed the first three periods in Chapter II with respect to the application of zakāt laws; namely (i) the Prophetic Period (Year 13 before Hijrah to 10 Hijrah; 622-632 A.C.); (ii) the Rāshidūn Caliphs Period (10-40 Hijrah;

631-660 A.C.) and (iii) the Period of the Umawī Caliphs (41-132 Hijrah; 661-750 A.C.). The subsequent periods, which are the focus of this section, could be divided, at least with respect to Sunnī Islām, into the following: (iv) The Period of the Great Jurists of the Sunnī Schools (132-350 Hijrah; 750 to 961 A.C.); (v) the Period of the Development of the Separate Schools (351 Hijrah to the fall of Baghdād in 656 Hijrah; 962 - 1258 A.C.); (vi) the Period of 'Imitation' or 'Imitative' Jurists or in Arabic called Muqallidūn (656 Hijrah to the 'official' abolition of the Caliphate in 1922); and finally (vii) the Period of the Rise of Nationalism followed by various attempts and approaches at 'modernizing' Islāmīc law to meet what was perceived to be the challenges of the contemporary world.

The periodization given above is purely for analytical purposes. In reality one period might overlap with another as much as there might have been exceptions to the dominant feature described for each period. This would become clear as we proceed.

As discussed in Chapter II, in the time of the Prophet, the basis of Sharī'ah was founded on the Qur'ān and the personal guidance of the Prophet, the latter being referred to as Sunnah,⁽²⁾ A great deal has been written by Muslim jurists⁽³⁾, orientalist⁽⁴⁾ and contemporary Muslim scholars⁽⁵⁾ with respect to the Sharī'ah in general, and the extent of the role of Sunnah in particular, besides the other two sources of uṣūl al-fiqh⁽⁶⁾ - namely ijmā' and qiyās,

It suffices to state here (which we believe to be a traditional

Muslim position) that although the Qurʾān is the word of God, it was nevertheless immediately addressed to a given society, that is, the seventh century Arabs with reference to their social and economic condition. As Shāh Walī Allāh⁽⁷⁾ says, the prophetic method of teaching is that, generally the Law revealed through a prophet takes special notice of the habits, ways and peculiarities of the people to whom he is specifically sent. Thus, the Prophet of Islam, while aiming to lay down all embracing principles, can neither prescribe different principles for different people nor leave them to work out their own rules of conduct. His method is thus to train one particular people, and to use them as a nucleus for the building of a universal Sharīʿah. In doing so, he emphasizes the principles underlying the social life of mankind and applies them to concrete cases in the light of the specific habits of the people immediately before him. What is implied here is that the Sharīʿah values resulting from this application are in a sense specific to that people. Since their observance is not an end in itself, they cannot be enforced in toto in all cases in all times in a uniform manner.

The Companions of the Prophet (sahābah), in particular the Rāshidūn caliphs, understood this well. They were able to make the fine distinction between the Qurʾān (and Sunnah) as the basis of Sharīʿah and as actual texts or as the system of the Law.⁽⁸⁾ The second caliph, ʿUmar ibn al Khaṭṭāb, for example, discontinued the payment of zakāt to "those whose hearts are to be reconciled", even

though the Qur'an (9:60) allowed such a distribution. Similarly, even though it has been the policy of the Prophet in his time to distribute among the soldiers the fruits of their conquest, 'Umar ibn al Khaṭṭāb suspended this policy in the cases of the conquests of Iraq and Egypt in order to protect the interests of the peasants concerned, as well as taking into consideration the long term welfare of the Ummah.⁽⁹⁾

In the third period, i.e. during the Umawi Caliphate, partly due to the political situation of the time, the learned among the Muslims, including some of the Companions and Successors (tābi'ūn), spread out into the various parts of the Muslim Empire. The twin cities of Irāq, Baṣrah and Kūfah, became the centers of intellectual activity. During this period the difference between the Shi'ah and the Sunnīs, which originated with political matters especially with respect to the issue of leadership of the Ummah, eventually grew into a separation on doctrinal and legal points as well. However, despite the opposition of the Shi'ah and the 'political pacifism' (based on the doctrine that any law is better than lawlessness) of the Sunnīs, the Umawīs consolidated their rule by appointing Qāḍīs at various regions of the Empire. The judgements given by these Qāḍīs according to their own discretion or opinion (ra'y) after reference to the Qur'ān and Sunnah, became the foundation which eventually led to the systematization of the application of Sharī'ah.

The customary legal practices of the various regions were interpreted and modified in the light of religious and ethical ideas based

on the Qur'ān and Sunnah. As the groups of pious specialists in Sharī'ah, some of whom were qāḍīs and/or successors (tābi'ūn) of the Prophet's companions, grew in number and cohesion, they developed in the first few decades of the second century Hijrah into what may be called the 'ancient schools of law', although there was as yet no definite organization or any easily discernible uniformity of doctrine in each school. The most important 'ancient schools of law' were those of Kūfah and Baṣrah in Irāq and of Makkah and Madīnah in Hijāz.⁽¹⁰⁾

The Four Sunnī Schools

The fourth period is the period of the great jurists of the Sunnī Schools of Law in whose names the four main schools of law were subsequently established. They were Abū Hanīfah (65-85 to 150 Hijrah; 684-705 to 767 A.C.); Mālik ibn Anas (90-97 to 179 Hijrah); Muḥammad Idrīs al-Shāfi'ī (150-204 Hijrah; 767-820 A.C.) and Aḥmad ibn Ḥanbal (164-241 Hijrah; 780-855 A.C.).

After the Umawīs had been deposed by the 'Abbāsīs in 132 Hijrah, the early 'Abbāsī caliphs continued and reinforced the islāmizing trend set by the Umawī with respect to the various institutions and customs of the expanded Muslim Empire. In the field of Sharī'ah proper, the office of the qāḍī was in this period permanently connected to it, and it became a fixed rule that a qāḍī had to be a specialist in Sharī'ah. He was no more the legal secretary of the governor but was normally appointed from the center of the empire. The centralizing tendency of

early 'Abbāsī caliphs led to the creation, for instance, of the office of Chief Qādī, which was first held by Abū Yūsuf. The 'Abbāsī caliph Harūn al Rashīd not only consulted him on financial policy, such as on kharāj and zakāt and other issues, but also on the appointment of all qādīs in the empire.

The early 'Abbāsī caliphs were patrons of learning and their encouragement and support gave rise to the growth and development of various Islāmic sciences, especially in Baghdād and Kūfah. The scholars did not confine their thirst for knowledge to Islāmic learning but also sought to learn from foreign cultures, notably from Greek philosophy. The climate was conducive for freedom of thought and opinion and allowed room for differences of views and opinions. As such, there was also a greater inclination to deal with matters in the abstract. In specifically Sharī'ah matters, for example, the scholars began to interest themselves in the analysis of legal concepts of rights and duties, and of the sources (uṣūl) of law. These various influences set the stage for the flowering of ideas in general, and the rise of different schools of law in particular.

The Ḥanafī School

The first of the four great jurists, Abū Hanīfah, who died eighteen years after the 'Abbāsīs came to power, studied under Ja'far al-Ṣādiq (a descendent of the Prophet who was noted for his learning and piety and regarded as the sixth Imām of the Shi'ī) and Hammād ibn Abī

Sulaimān, a disciple of Ibrahim Nakhā'ī, the noted jurist of Kūfah. Abū Ḥanīfah was noted for his remarkable powers of reasoning and deduction which, when combined with the resources of retentive memory and a clear and acute mind, brought him into rapid prominence as a master of jurisprudence. He played the role of a theoretical systematizer who achieved remarkable progress in technical legal thought. He relied on his personal judgement (ra'y) and conclusions drawn by analogy (qiyās). His School subsequently came to be known as the Upholders of Private Opinion (Ahl al Ra'y). However, it would be an error to suppose that Abū Ḥanīfah lacked sufficient knowledge of the tradition or Sunnah, or that he did not regard them as a legitimate source of law.

Abū Ḥanīfah's analogical reasoning is strictly based on the Qur'ān. He accepted aḥādīth only when he was fully satisfied as to their authenticity. It must be noted that the great collectors of aḥādīth had not yet commenced the work of collection. Later on, when aḥādīth were collected and sifted, his followers made more use of the aḥādīth.

The juristic methods and opinions which later became characteristic of the Ḥanafī school were not introduced or formulated by him. Thus, with regards to two basic conceptions of ijmā' and qiyās it is recorded that it was the Ḥanafī jurists, after Abū Ḥanīfah's death, who deduced those juristic rules from what they had collected of his opinions on different issues. Abū Zahrah in his biography of Abū

Ḥanīfah, when referring to Abu Hanifah's juristic method, especially with respect to ijmā' (consensus), stated (quoting from Sahl ibn Muzāhim an early Ḥanafī jurist):

"The course of Abū Ḥanīfah was (1) the authoritativeness of authentic texts; (2) the strong reaction to all indecency and (3) the consideration of human dealings in order to see what is best for their benefit and stability".(11)

It was also based on Abū Ḥanīfah's teaching that the later Ḥanafī jurist introduced the concept of Istiḥsān which technically denotes the abandonment of the opinion to which reasoning by analogy (qiyās) lead in favor of a different opinion supported by stronger evidence. Such a departure from qiyās may be justified by evidence based on ḥadīth or ijmā' (consensus) or necessity and in such cases would be allowed by all the Sunnī schools of law. However, it may happen that the law deduced by analogy fails to commend itself to the jurist, owing to its narrowness and inadaptability to habits and usages of the people, and therefore likely to cause hardships and inconveniences. In that situation also, according to the Ḥanafīs, a jurist is at liberty to refuse to adopt the law to which analogy points and to accept instead a rule which in his opinion would better advance the welfare of men and the interests of justice.(12)

On ijmā' (consensus of opinion), the Ḥanafī jurists affirmed its validity for every age. This contrasts to other jurists who confined the validity of ijmā' as a source of law to the Companions of the Prophet, and still others who would extend it to their successors but no further.

The chief disciples of Abū Ḥanīfah were Abū Yūsuf (d.182 Hijrah) who, as stated earlier, was the first Chief Qādī and Muḥammad al-Shaybāni (d.189 Hijrah) who compiled the application of the principles laid down by his master into a corpus juris - the al Jāmi' al-Saghīr. This constitutes the most authoritative source-book for the Hanafi doctrines.

The Mālikī School

The second great Sunnī jurist, Mālik ibn Anas, was considered one of highest authorities on the Sunnah in his time. He relied more on the traditions attributed to the Prophet and the precedents established by the Companions of the Prophet. Being in a better position than Abū Ḥanīfah to be acquainted with the laws and rules laid down by the Companions and their successors, he embodied them more extensively in his juristic system. He gave importance to the usages and customs of Madīnah, relying on the presumption that they must have been transmitted from the time of Prophet. His al-Muwatta', a small collection of traditions arranged under legal titles with his own views and decisions thereon, is considered the oldest work on Islamic Law still extant. (13)

The Shāfi'ī School

The third great jurist of this period Muḥammad Idrīs al-Shāfi'ī was born in Ghazzā and died in Egypt. He studied under Malik and under

Muḥammad, the disciple of Abū Ḥanīfah. At a very young age he showed proof of great talents and even delivered lectures in jurisprudence. He originally conceived the idea of harmonizing the two schools of Abū Ḥanīfah and Mālik but succeeded instead in founding a distinct school of law.

Al-Shāfi‘ī was in fact considered the architect of Islāmic jurisprudence. The classical theory of Islāmic jurisprudence with its dependence on the four principal sources, the Qur’ān, the ḥadīth, ijmā‘ and qiyās was in its essentials created and systematized by Al-Shāfi‘ī. He recognized in principle only strictly qiyas or analogical reasoning, to the exclusion of arbitrary opinions and discretionary decisions (ra’y) such as had been customary among his predecessors. As a general precaution against arbitrariness, Shāfi‘ī insisted that analogy must start from the outward and obvious meaning of the text (nass) on which it is based. This is one of the important innovations which made his legal theory completely different from that of the ‘ancient schools’. It also had far reaching implications for the future, as will be illustrated in our discussion of laws related to ‘ushr later.

This conception of al-Shāfi‘ī is based on the thesis that nothing could override the authority of a formal tradition or ḥadīth of the Prophet. For Shāfi‘ī, the Sunnah was no longer the approved practice as recognized by the representative scholars, but was identical with the content of formal traditions or ḥadīth from the Prophet, even

though such a tradition was transmitted by only one person. This novel idea of the Sunnah as embodied in a 'textual' ḥadīth from the Prophet, disposed of the concept of the 'living Sunnah' of the 'ancient schools', even when the 'living Sunnah' was loosely called the "Sunnah of the Prophet."⁽¹⁴⁾

Similarly, Shāfi'ī's notion of ijmā' was radically different from that of the early schools. He argued that the claims of the representatives of the older schools to have arrived at a state of general ijmā' was quite unacceptable. Apart from certain basic facts, like the number of prayers for example, in fact no ijmā' prevailed on almost all issues. Moreover, no formal council of Muslim representative had ever been convened to reach agreements nor was such a step feasible. His idea of ijmā' was that of a formal and a total one. He demanded an agreement which left no room for disagreement. Al-Shāfi'ī was undoubtedly responding to the exigencies of the time and represented the trend that had long set in, working towards equilibrium and uniformity.

However, the notion of ijmā' exhibited by the early schools was very different. For them ijmā' was not an imposed or manufactured static fact but an on-going democratic process. It was not a formal state but an informal natural growth which at each step tolerated, and indeed demanded, fresh and new thought and therefore must live not only with but also upon a certain amount of disagreement. The early jurists contended that ijtihād must be exercised, and progressively

the area of agreement would widen. The remaining questions must be considered through fresh ijtihād or qiyās so that a new ijmāʿ could be arrived at. It was this living and organic relationship between ijtihād and ijmāʿ that was severed in the successful formulation of Shafiʿi. In place of the living Sunnah-Ijtihād-Ijmāʿ he put the textual Prophetic Sunnah, which for him did not serve as a general directive but as something absolutely literal and specific, whose only vehicle was the transmission of ḥadīth. Ijmāʿ, instead of being a process and a 'progressive' principle - coming at the end of free ijtihād, came to be something static and 'backward-looking'. It is that which, instead of having yet to be accomplished, is already accomplished in the past. As Fazlur Raḥmān stated, Shāfiʿi's genius provided a mechanism that gave stability to the 'medieval' socio-religious fabric but at the cost in the long run of creativity and originality.(15)

Ḥanbalī School

Aḥmad ibn Ḥanbal, born in Baghdād, studied under different masters including al-Shāfiʿī. He is considered to be more well-versed in the traditions than in the science of law. He adhered strictly to the traditions, his interpretation of which was literal and unbending. He allowed but a narrow scope to the principles of ijmāʿ and qiyās. Ibn Ḥanbal did not write any book on jurisprudence. He is known to have left only a compilation of authenticated tradition.

The legal doctrine which Al-Shāfi‘ī had brought to technical perfection, had not satisfied the uncompromising traditionists. They preferred not to use any human reasoning in law, and chose as much as possible to base every single item in their doctrine on the tradition from the Prophet, preferring even a weak tradition to a strong analogy. In practice, however, they were unable to do without reasoning. But the reasoning they used was concerned with moral issues and differed greatly from the systematic legal thought elaborated by al-Shāfi‘ī.

For some time Ibn Ḥanbal and his followers were regarded not as jurists but more as specialists in traditions. Generally, the traditionists of the third century Hijrah do not seem to have shown much interest in legal theory except for the general ideas of the authority of the traditions. However, when the scholars of the Ḥanbalī school came to elaborate a complete system of doctrine, they also had to adopt the classical legal theory, which was based not just on traditions but also on consensus and recognized analogical reasoning. However, it was later left to Ibn Taymiyyah, the great independent Ḥanbalī thinker, to systematize the Ḥanbalī doctrine, by for instance rejecting the all-embracing function of consensus in law and by affirming the necessity of analogical reasoning of an improved kind.⁽¹⁶⁾

Other Schools

In the age of the four Imāms of the Sunnī schools, there were

also other teachers who for some time enjoyed a considerable following of their own. Among them were Ibn Shibrimah (d.144 Hijrah), Ibn Abī Laylah (d.148), al-Awzā'ī (d.157 Hijrah); Sufyān al-Thawrī (d.161 Hijrah) Dawūd ibn Khalaf (d.270 Hijrah), Abū Ja'far al-Ṭabarī (d.310 Hijrah) and many others. Ibn Khalaf's work was in fact a kind of reaction to what he considered to be mere speculative innovations fabricated upon juristic rules without any authority in the Qur'ān. His juristic position represented in what was later referred to as the Zāhirī school. He relied exclusively on the literal meaning (zāhir) of the Qur'ān and the traditions of the Prophet and rejected, as contrary to religion, not only the free exercise of personal opinion, which had been customary before Shāfi'ī, but also the use of analogical and systematic reasoning which Al-Shāfi'ī had retained. The Zāhirī school produced one of the most prominent and brilliant Muslim jurist in Ibn Ḥazm more than three centuries after Ibn Khalaf. But they never had a large following.

The fifth period - i.e. from the middle of fourth century Hijrah to the fall of Baghdad in 656 Hijrah (1258 A.C.) was the period when the schools of Islāmic jurisprudence were developed into separate or independent schools. This was also the period of the decline of the political strength of the Muslim empire. The majority of the jurists of this period did not exercise independence of thought and judgement. They tended to follow and support the views held by the Imāms who founded the schools of law, and as such were called the murajjihūn.

In contrast to the atmosphere of friendliness, respect for each other, cooperation and healthy exchange of ideas that existed among the founders of the schools, this period witnessed rivalry and sectarianism between various schools of law. The followers of a particular school actively supported the views of the founder and wrote books in support and explanation of those views; and these books came to be regarded as authoritative statements of the law. The qādīs in this period generally also tended to consider themselves as belonging to particular schools of law and each qādī generally tended to confine himself to the administration of the doctrine of the particular school to which he belonged.

The doctrines of the various schools were also consolidated and codified during this period. The jurists of this period also devoted their attention to concrete questions, which had not been dealt with by the founders of the respective schools nor by their immediate disciples. Among the great representatives of the various schools are the following:

- (1) Hanafī School: al-Sarakhsī (d.483 Hijrah); al-Qudūrī (d.428 Hijrah); al-Kashānī (d.587 Hijrah); al-Marghinānī (d.593 Hijrah) and al-Uzjandī Qādī Khān (d.592 Hijrah)
- (2) Shāfi‘ī School: al-Juwaynī (d.478 Hijrah); al-Shirāzī (d.476 Hijrah), al-Ghazālī (d.505 Hijrah) and al-Iṣfahānī (d.before 500 Hijrah) and al-Nawawī (d.676 Hijrah).
- (3) Māliki School: al-Qairawānī (d.386 Hijrah) and Ibn Rushd/Averroes

(d.595 Hijrah).

(4) Hanbali School: Ibn Ja'far (d.363 Hijrah) and Ibn Qudāmah (d.620 Hijrah).

It should be noted that some of these jurists, like al-Ghazāli and Ibn Rushd, were also great thinkers who wrote in other branches of Islamic learning such as philosophy and taṣawwuf.

The Period of the 'Imitators' (Muqallidūn)

The sixth period of the history of the application of Islāmic law could be said to have started from the year of the fall of Baghdād 656 A.H./1258 A.C. and extended to the 'official' abolition of the caliphate in 1922 A.C. The jurists of this period are called the muqallidūn, as they regarded themselves as the followers of the different schools of law. They generally took a very limited view of their functions. They occupied themselves with determining which of the conflicting versions of the founders of each schools and their disciples on a given question was correct, and in the event of differences among them, whose view was to be taken as representing the law.

It should be noted that by the beginning of the fourth century Hijrah, the point had been reached where the jurists of all the surviving schools felt that all essential questions with respect to the application of Sharī'ah had been thoroughly discussed and settled. A consensus gradually established itself to the effect that from that time onwards no one could be deemed to have the necessary qualifica-

tion for independent reasoning in law. All future activity would have to be confined to the explanation, application, and at the most, interpretation of the doctrine already laid down.

This denial of ijtihād (literally means 'striving with full exertion') brought with it the unquestioning acceptance of the doctrines of established schools and authorities (taqlīd). During this period, a jurist generally did not approach a legal problem on his own evaluation of the Sharī'ah values, but followed the law of the school to which he belonged, as interpreted by its founder, his disciples and followers.

However, by the middle of this period, particularly by the end of eight century Hijrah (14th century A.C.), we find a lot of commentaries and annotations of classical legal texts. It would be wrong however, to suppose that these commentators merely explained the texts and added nothing to the law. In fact, it is only in the writings of the commentators and annotators that it is possible to find the doctrine of the different schools expounded in their fullness. Generally, no Muslim jurist would undertake to answer a question, for example on the Shāfi'ī law, without consulting the Shāfi'ī commentaries. However, the excessive reliance on commentaries and annotations, and the process of taqlīd meant there was little room for ijtihād in this period. At times, even the writings of the founders of the schools and their immediate disciples tended to be forgotten.⁽¹⁷⁾

The activity of the later jurists, after what is often referred

to as the 'closing of the door of ijtihād', cannot be considered less creative than that of their predecessors within the limits set by the very nature of the Sharī'ah. From time to time, new sets of facts arose and they had to be mastered and moulded with the traditional tools provided by the science of Islamic jurisprudence. This activity was carried on by the muftīs. Their fatāwā (juristic judgements) were often collected in separate works, which are of considerable historical interest as they reveal the most urgent problems which arose from the practice of that particular place and time. Some of these fatāwā would be incorporated in the handbooks of a particular schools, and these fatāwā acquired an authority only slightly less than that of the handbooks themselves.⁽¹⁸⁾ The judgements of the qādīs of this period, on the other hand, had no comparable influence on the application of Sharī'ah as was the case of the qādīs of the early 'Abbāsī time.

Reaction to 'Taqīd'

Many reasons have been given for what is often referred to rightly or wrongly as the 'petrification'⁽¹⁹⁾ (not to be confused or equated with 'immutability') of Islāmic law during this period. The bitter and unending controversy about the dogma of eternity of the Qur'ān became complex and impossible to resolve. The two opposing camps, the 'Rationalists' and 'Conservatives', grew further and further apart in the nature of their convictions. Thus, to preserve the social integrity of Islām, the Conservatives, which constituted the

majority, wished to render the structure of their legal system as rigorous as possible.

Secondly, "the dry as dust subtleties of the contemporary jurists drove some of the most acute minds of Islām to Sufism, which fostered a kind of revolt against the verbal quibbles of the early doctors of law".⁽²⁰⁾ With the exception of few intellectual giants such as al-Ghazālī and later Sirhindī and Shāh Walī Allah, not many Ṣufīs actually wrote on fiqh. The development of fiqh was thus left generally in the hands of intellectual mediocrities. While the unthinking masses, having no possibility of a higher calibre to guide them, found their security in strictly (some would say 'blindly') observing their respective schools.

Thirdly, the fall and the destruction of Baghdad had a serious and lasting effect on the Muslim conscience. This devastating blow aggravated the period of political decay that preceded it. The conservative thinkers of Islām, fearing further disintegration, focussed all their efforts on one point: the preservation of a uniform social life for the people by the jealous exclusion of all innovations in the law of the Sharī'ah and/or in the structure of Islāmic jurisprudence as expounded by the early jurists.⁽²¹⁾

It was against this background that Ibn Taymiyyah's (661-728 A.H.) reaction should be evaluated. Even though he belonged to the Ḥanbalī School, he did not follow all its opinions blindly, as was the case with most of his contemporaries. On many points he rejected

taqlīd and even ijmāʿ (consensus). He held that to hold an opinion contrary to ijmāʿ is neither infidelity nor impiety. In all his works he claimed to follow the letter of the Qurʾān and Sunnah. But he did not hesitate to employ qiyās when necessary in his arguments. In some cases he rejected the opinions of the earlier jurists including the views of some of the founders of the school. For example, he held the view that taxes which are not prescribed by divine order are admissible if necessary for the welfare of the Ummah, and if one pays them one is freed from zakāt.⁽²²⁾ He attached great importance to the role of the State in the implementation of Sharīʿah and due to its relevance in this study some of his ideas will be discussed in the next chapter.

The teachings of Ibn Taymiyyah did not only influenced his immediate disciple, Ibn Qayyim (d.751 A.H./1350 A.C.) but were also the inspiration for the Wahhābī movement, started by Muḥammad ibn ʿAbd al Wahhāb in the early eighteen century in the Arabian Peninsula. The impact of this was later felt throughout the Muslim world. It was initially directed against the laxity of manners and corruption of religious practices in the local settlements and tribes. The Wahhābī movement condemned saint-worship and other Ṣūfī 'innovations' as heresy and infidelity, and finally attacked the other orthodox schools as well for their alleged compromises with these 'innovations'.

Another reaction to taqlīd, but with a different approach was that of Shāh Walī Allah of Delhī (1703-1763 A.C.). He grew up watching the political decay of the Mughal Empire and, unlike Ibn ʿAbd al-

Wahhāb, thought and worked from within rather than from outside. Shāh Walī Allah's object was to re-fashion and revive rather than to reject. He sought the reconciliation of opposite extremes. Even though he attacked the degeneration of the corrupted Ṣūfī practice of his time, he was himself a Ṣūfī. Despite being an accomplished philosopher, he kept a distance from ultra-rationalism, refusing to allow any selfish, evasive pleading of reason to undo the obligations of the law. Thus, he tried to temper authority with reason. Consistent with this, he voiced disapproval of blind taqlīd. However, he did not go beyond such disapproval but rather recommended the adoption of the best opinion within the four schools. As Gibb rightly observed, Shah Wali Allah's works show a keen awareness of the necessity of conserving what is best in the Muslim heritage.⁽²³⁾

It will not be possible for us here to go into details regarding some of the other movements that emerged in the Islāmic world in the nineteenth and early twentieth centuries when the major part of the Muslim world was subjected to Western colonialism - politically, economically, and intellectually. Some of the movements such as the Salafiyah movement led by Muḥammad 'Abduh and Rashīd Riḍā had a great impact, especially among the educated intelligensia of the Muslim world, including Malaysia. Some other movements such as the Sanūsiyyah Movement in North Africa and Mahdī Movement in Sūdān, both of which had strong Ṣūfī orientation, were confined to a certain geographic locality.

However, there were also a few individuals like Jamāluddīn Afghānī (who inspired the Salafiyyah Movement) who emerged in many parts of the Muslim world and gathered their own followings. In India for instance, we find Sir Sayyid Aḥmad Khān, Sayyid Amīr ‘Alī and later Muḥammad Iqbāl. In the writings of some of these figures we do not only find veḥement criticism of taqlīd, but an unabashed attempt at reformulating Islāmic doctrine in terms of Western thought. In the writings of Sayyid Amīr ‘Alī, especially, we find a detailed and systematically analyzed apologetic for Islām in the matters of war, women, slavery, scientific spirit, democracy, etc.

The sixth period could be considered to have ‘officially’ ended with the abolition of the Ottoman caliphate in 1922. After that, the Muslim ummah in general, and Sunnī Islām in particular, had no recognized spiritual leadership. After decades of colonialism and Western influences, especially nationalism in the political sphere, we find the rise of independent Muslim countries like Turkey, Egypt, Pakistan, Indonesia, Malaysia, Saudi Arabia, Iraq, Jordan and Nigeria.

The history of Sharī‘ah after this period is the history of its application in separate Muslim countries. This application may vary according to the nature and extent of the secularization of the state. In Turkey, the Sharī‘ah has been totally abandoned and has been replaced by codified secular laws.⁽²⁴⁾ In many other countries, the Sharī‘ah has been replaced by codified secular laws in all fields except those relating to family law and personal status. Even in these

fields, some changes have been made in some Muslim countries.

However, since the early seventies, and more so after the revolution in Irān, we find various attempts in a number of Muslim countries to gradually introduce 'Islām' in other domains of life, which for a long time, (especially after colonial period) had been considered 'secular' domains. Thus, we find the introduction of the interest-free banking system in a number of Muslim countries. In Pakistan and briefly in Sudan⁽²⁵⁾, separate legislative Acts or Ordinances were introduced with regard to the implementation of zakāt. As the Zakāt and 'Ushr Ordinance of Pakistan (1980) is relevant for our present study, it will be discussed separately in Appendix A.

As this particular study itself is an illustration of the application of Sharī'ah in a contemporary Muslim society, it is sufficient at this juncture to make few important observations to conclude this section. Firstly, despite all the attempts to overthrow 'the reign of taqlīd' by the Muslim modernists, and some were sincere and well-intentioned Muslims, we find the majority of Muslims strictly adhering to their own madhāhib. The orthodox Sunnī Muslim of today belong to one or another of the four schools of fiqh. The Malays of Malaysia and Indonesia belong to the Shāfi'ī school, and the adherents of this school are also found in parts of the eastern and southern coasts of Arabia, the Malabar and Coromandel Coasts of India, Lower Egypt and East Africa. The majority of Muslims in Turkey and Indo-Pakistan subcontinent are Hanafīs. The Mālikī school alone is recognized in the

religious courts of Morocco and Algeria, and the Ḥanbalī school is officially recognized in Saudi Arabia.

Secondly, despite the presence of various currents for 'modernizing' the Sharī'ah to meet the perceived challenges of the Muslims in the contemporary world, we still find sizeable numbers of Muslim jurists strictly adhering to the traditional methodology⁽²⁶⁾ without being oblivious of the changes around them. Muḥammad Shaltūt, 'Abd al Ḥalīm Maḥmūd, Muṣṭafā al-Zarqā', Ṭāḥā Jābir are among the twentieth century jurists who have shown critical awareness of the necessity of preserving the best heritage of Islām and at the same time had significant insight into the challenges facing the Muslims in the contemporary world. In the field of zakāt we find these qualities in the writings of Yūsuf al Qaraḍāwī, which are extensively quoted in the next section.

B. VIEWS OF THE VARIOUS SCHOOLS ON 'USHR

The Obligatoriness of 'Ushr

"O ye who believe!
Give of the good things
Which ye have (honorably) earned
And of the fruits of the earth
Which we have produced" (2:267)

The command 'give' or 'spend' in the above verse, which is obligatory, refers to zakāt or 'ushr. In fact there are many instances in the Qur'ān where the same terms is used with reference to zakāt.⁽²⁷⁾

In another verse of the Qur'ān:

"It is He who produceth gardens, with trellises
And without, and dates, and tilth with produce
Of all kinds, and olives and pomegranates,
Similar (in kind) and different (in variety):
Eat of their fruit in their season, but render
The dues that are proper on the day that the
Harvest is gathered....."(6:141)

The phrase 'render the dues that are proper on the day that the harvest is gathered' is an explicit reference to ‘ushr and the Arabic terms 'al-ḥaqq' in the above verse has been unanimously accepted by the jurists as reference to 10% (‘ushr) or 5% (niṣf al ‘ushr) based on the authentic ḥadīth:

"For cultivations that depend on rivers and rain the zakāt is 10% and for that which depend on irrigation the zakāt is 5%".(28)

As Yūsuf al Qaraḍāwī pointed out, based on the above Qur'ānic verses and the ḥadīth, the Muslim jurists unanimously agree on the obligatoriness of ‘ushr at 10% or 5% depending on the situation. They only differ in their details (tafṣīl).

(1) On the extent of 'Coverage' of 'Ushr

As stated above, during the time of the Prophet, agricultural zakāt was confined only to barley, wheat, raisins and dates. This was based on the Prophet's instruction to Mu'ādh b. Jabal when he was sent to Yemen:-

"Do not collect zakāt except on four items: barley, wheat, raisins and dates".(29)

Based on this ḥadīth a few very early jurists⁽³⁰⁾ confined ‘ushr

only on these four items. To these, some jurists added another grain called al-zarrah based on another ḥadīth. However, as Ibn Mālik and others had pointed out, even though no one denied the authenticity of the above ḥadīth, the majority of jurists agree that the intention of the ḥadīth was not to confine zakāt only on these four agricultural produces but the Prophet stated them only as examples. This is the reason no school of Islāmic jurisprudence had used the ḥadīth as argument to confine ‘ushr only to those four items. As stated in Chapter (III), during the time of the second caliph, ‘Umar ibn al Khaṭṭāb, ‘Ushr was extended to cover lentils, peas and olives. However as time passed the issue became more complex, which will be seen in the following discussion.

Al-Shāfi‘ī School

Al-Shāfi‘ī based on the above Qur’ānic verses and ḥadīth, derived a general principle that ‘Ushr is applicable to all agricultural produces that are considered as basic or staple food that are either consumed directly or turned into bread or cooked and that which can be dried and stored. Thus, from al-Shāfi‘ī’s point of view two elements are important: that the item is a ‘staple food’ and that it can be stored.

Al-Nawawī of the Shāfi‘ī school amplified the view of his master by stating that ‘ushr is confined only to agricultural produce such as dates, raisins, wheat, barley and rice that when consumed, can relieve hunger.⁽³¹⁾ The jurists of the Shāfi‘ī school further argued that on

the basis of these considerations that the Prophet, for instance, collected agricultural zakāt in Madīnah only on dates and raisins, as these two were the basic food of consumption of the people of Hijāz. Besides, both these items could be stored.⁽³²⁾ They also used the following hadīth, narrated by Muādh b. Jabal, to support the argument:

"That pumpkins, melons, pomegranates, sugar canes and vegetables were exempted by the Prophet of Allah from zakāt".⁽³³⁾

However, some hadīth specialists (muḥadithīn) considered this hadīth to be weak (due to the break in the chain of narrators or isnād)⁽³⁴⁾ and thus do not consider it valid to be used as proof or argument (ḥujjah). However, another argument of the Shāfi‘ī jurists is that staple food that could relieve hunger has a great benefit or merit similar to the zakāt on cattle.⁽³⁵⁾

However, as al-Qaraḍāwī correctly argued, that the views of the Shāfi‘ī jurists were inadequate, and not consistent with the all-encompassing nature of the relevant Qur’ānic verses and Hadīth which stipulated zakāt on everything that’s grown on earth and all vegetation that require rain for its growth without specifying its classification.

Mālikī School

Al-Shāfi‘ī, as stated above, was in fact a student of Mālik, the author of al-Muwatta’, the oldest collection of hadīth still extant. With respect to the ‘coverage’ of ‘ushr we find very little difference between the two. In fact the only noticeable difference between the

two in this issue is whether or not the fig is subject to ‘ushr. The source of the conflict lies in the fact that Mālik considers the fig to be a ‘staple food’ (i.e. food that relieves hunger) whereas Shāfi‘ī, based on his revised version in Egypt, considered the fig not to be a ‘staple food’.(36)

Hanbali School

What distinguishes Aḥmad ibn Ḥanbal from Mālik and Shāfi‘ī on this issue is that ibn Ḥanbal did not specify that ‘ushr be confined only to ‘staple food’. However, the Ḥanbalī jurists introduced another element: That the items must be those that can be ‘measured’. The argument put forward for this is the following ḥadīth:

"That no zakāt be levied on dates or grains that is less than five wasq".(37)

They argued, based on the above ḥadīth, that agricultural zakāt should be levied only on those items that can be measured, such as grains and dates, with a measuring instrument such as a wasq that was widely used at the time.

The Ḥanbalīs agree with the Mālikīs and Shāfi‘īs that agricultural zakāt is only applicable to those items that can be dried and preserved . Thus, they do not levy zakāt on fruits such as apples or oranges or on vegetables.

Hanafi School

According to Abū Ḥanīfah all agricultural produce are subject to zakāt (irrespective of whether they constitute a 'staple food' or not, or whether they are perishable, measurable or can be dried or not).⁽³⁸⁾ Abū Ḥanīfah based this on the above quoted Qur'ānic verse which specifically states: "and of the fruits of the earth which we have produced". This verse, according to Abū Ḥanīfah does not make any distinction as to the nature of the agricultural produce, nor does it make any distinction as to whether the produce was cultivated or not.

However, in the application of this rule Abū Ḥanīfah gave exception to three items: namely firewood, bamboo and grass. As al-Qaraḍāwī later argued, Abū Ḥanīfah gave exception to these three items because in his time these items were available in abundance and were not tradeable. It would be quite different in the contemporary situation when these items are produced commercially. This is also supported by the general principle set by a Ḥanafī jurist, Ibn Qudāmah, who stated that zakāt is applicable to all agricultural produce which are of 'productive' nature.⁽³⁹⁾

(2) On the Determination of Nisab

Even though there are some differences among the jurists with respect to the nisāb of agricultural products, the majority of them agree that ʿushr is not obligatory if the production is less than five wasq on the basis of the relevant ḥadīth quoted above. They also use

the hadīth which states: "For cultivations that depend on rivers and rain the zakāt is 10%....."(40) As both these hadīth are considered sahīh (authentic) and based on the juristic principle that the dalīl (proof) that is particular or specific depended on the dalīl that is general, some jurists considered nisāb to be obligatory.(41)

However, Abū Ḥanīfah and some of the Hanafi jurists considered zakāt to be obligatory irrespective of whether the production is small or large in quantity. They based their argument on the second hadīth quoted above. They argued that as this particular hadīth which is general in nature contradict the former hadīth (i.e. no zakāt for production that is less than five wasq), which is specific in nature, the the juristic 'principle of choosing the safer course' applies.(42) On the basis of this, they considered that it is safer to make it obligatory to pay zakāt irrespective of whether the production is large or small.(43)

Many jurists, both classical and contemporary were critical of Abū Ḥanīfah's view on this issue. Ibn Qayyim, for instance, argued that we should accept both these aḥādīth and it is an error to contradict them. The purpose of the general hadīth is to distinguish the cultivation that is subject to 10% from that which is subject to 5% zakāt. In this hadīth the nisāb is not stated, whereas it is stated in another hadīth which is specific in nature.(44)

Yusuf al Qaradāwī on the other hand, argued that if we were to accept Abū Ḥanīfah's view on this, it would be tantamount to rejecting

a hadīth which is authentic and which clearly stipulated the requirement of nisāb. He further argued that it is also against the general characteristic of Shari‘ah which makes zakāt obligatory only on those who can afford it. And nisāb is the boundary which distinguishes the haves from the have-nots. Nisāb for agricultural produces is necessary, as it is also necessary and applicable to other items and properties.⁽⁴⁵⁾

If we accept the validity of nisāb for all agricultural produces, then another related issue has to be raised: how to determine nisāb for items that cannot be measured?

Abū Yūsuf was of the opinion that for those items, such as cotton or vegetables that cannot be measured, that we should give monetary values to such items based on the lowest priced or least valuable produce measured by wasq, e.g. millet. For instance, ‘ushr on cotton falls due when the production level is equal to the value of five wasq of millet at its lowest prices.⁽⁴⁶⁾ The choice of the lowest priced commodity was justified by Abū Yūsuf on the ground of protecting the interests of the poor.⁽⁴⁷⁾

Al-Qaraḍāwī, even though implicitly accepting Abū Yūsuf’s argument of giving monetary value to the non-measurable commodities, criticized Abū Yūsuf for choosing the commodity of the lowest value for determining the nisāb. He argued that the prices compared to should be based not on the maximum or minimum but on the average prices, in order to protect the interest of both the giver and the

recipient of zakāt.

Ibn Hanbal refined further the above mentioned method used by Abu Yusuf and others and suggested that those items that cannot be measured should be assessed or valued by weight. Thus, for instance, he said, cotton should be weighed and should weigh 1,600 Irāqī pounds or its equivalents, for fixing the nisāb. Ibn Hanbal's view is also consistent with the view of Ibn Hibbān of the Shāfi'ī school which also stipulated that five wasq is equivalent to 1,600 Irāqī pounds for certain items presumably taking into consideration the value of the items which were 'measurable' then.⁽⁴⁸⁾ Five wasq were also considered then to be equivalent to 300 sā', another form of measurement used in Baghdād.⁽⁴⁹⁾ It is based on this Baghdādī measurement that the nisāb for paddy is fixed by the various States in Malaysia (see Chapter VI).

Another related issue that was debated by the jurists in the determination of nisāb was whether or not certain items should be dried first; and whether they should be measured with the skin on or not. Al-Sharbīnī, of the Shāfi'ī school, for instance advocated that the nisāb for produce like dates, raisins and others should be dried first before determining the nisāb. With respect to paddy he stated that nisāb should be at 10 wasq with the skin and 5 wasq after removing the skin and dried. Al-Ghazālī who also belonged to the Shāfi'ī school stated on the other hand that for grains like paddy, which are normally stored with the skin, the nisāb should be measured with the

skin. Otherwise it would be an unnecessary burden on the producers. Al-Qaraḍāwī concurs with this position.⁽⁵⁰⁾

(3) Regarding the necessity of Estimating the expected Yield

The early jurists also debated the necessity of estimating the expected yield of a particular agricultural produce before determining the nisāb. The rationale given for this was that it would be in the best interest of the producers, the ʿamīl as well as the beneficiaries of zakāt.⁽⁵¹⁾ However, the majority of the jurists agree that only certain crops such as dates and grapes shall be estimated.

The justification given for estimating the expected yield is based on a number of ḥadīth, including the following narrated by Abū Ḥumaid al-Saidi quoted by Bukhārī:

"We were together with Prophet of Allah during the battle of Tabūk. When we approached Wādī al Qurā, we saw a woman in her orchard, and the Prophet said: 'Estimate all of you' and the Prophet himself estimated the crops in the orchard to be 10 wasq and informed the woman, 'I have estimated your crops'"⁽⁵²⁾
(Translation mine)

Based on the above ḥadīth and others, Malik al-Shāfiʿī, Ibn Ḥanbal and many other jurists agreed on the necessity of estimating the expected yield. Mālik considered it to be obligatory (wājib) whereas al-Shāfiʿī and Ibn Ḥanbal considered it to be recommended (mandūb). Abū Ḥanīfah on the other hand considered it to be unnecessary. He argued, since 'estimation' is purely based on 'guessing', it should not be accepted as a ḥukm (a religious commandment).⁽⁵³⁾ How-

ever, due to the existence of the relevant authentic hadīth, the majority of jurists reject Abū Ḥanīfah's stand on this issue. However, they insist that a person who is appointed to make such an appraisal must be trustworthy, just, and have the expertise.⁽⁵⁴⁾

(4) Issue Relating to the Costs of Production

This issue had been discussed by the very early jurists including the two Companions of the Prophet, Ibn 'Umar and Ibn 'Abbās; the latter being the uncle of the Prophet. As reported by Abū 'Ubayd in his 'Al-Amwāl (the Wealth), for a person who had incurred debts for the maintenance of his family and for the expenses related to his cultivation Ibn 'Abbās was of the opinion that only the debts related to the expenses of his cultivation should be deducted in the calculation of nisāb. Ibn 'Umar, on the other hand, stated that both these expenses should be deducted.⁽⁵⁵⁾

What happens if these expenses were paid in cash? Both Ibn 'Abbas and Ibn 'Umar were silent on this. On the other hand 'Aṭā' who was also an early jurist was of the view that all expenses, either incurred through debts or paid cash, should be deducted before the calculation of nisāb. 'Aṭā's views had been considered by many jurists to be consistent with the purpose and spirit of zakāt, as it is obligatory only upon those who can afford it. Ibn Humam, of the Hanafi school in supporting this argument, for instance, compared these expenses with the 5% rate of 'ushr (half) on cultivation which depended on irriga-

tion (which incur cost) compared to full 10% rate for cultivation which depended solely on natural water sources such as rain and rivers.

The cost of cultivation would also include land tax, charged by the government. Ibn Ḥanbal was of the view that the land tax charged by the government should be deducted in the calculation of nisāb. It was also reported that caliph ‘Umar ibn ‘Abd al ‘Azīz specifically instructed his ‘āmil, ‘Abd Allah ibn ‘Awf in Palestine, to deduct the land tax before determining the nisāb for zakāt collection.⁽⁵⁶⁾

(5) Issue Relating to the Obligatoriness of Zakāt on the Tenants

On this important issue, which has a far reaching implication for the well-being of the peasants, the jurists were divided. Abū Ḥanīfah (in the ‘modern’ context he would have been considered to have held the most ‘radical’ view!) and his followers were of the opinion that the responsibility of zakāt falls upon the landlord and not the tenant. He argued that since the yield or ‘productivity’ of a crop depended on the land (and not on the ‘act of cultivation’), and since the land concerned belong to the landlord, he should pay the stipulated zakāt. In other words, since the tenants enjoy the use of the land in consideration of the rental paid, he is not subject to zakāt anymore than the purchaser of the produce is. To support this argument some Ḥanafī jurists gave the analogy of land tax (kharāj) which is paid by the landowner and not by the tenant.⁽⁵⁷⁾

The majority of jurists including Shāfi'ī, however, were of the opinion that the responsibility of zakāt falls upon the tenants. They argued that the ten percent zakāt or 'ushr is based on the fruits of harvest, which involve the effort of cultivation and farming, and not so much the use of the land. That is why zakāt lapses when the produce is destroyed accidentally or through natural calamities. Muḥammad Shaltūt, a twentieth century jurist, in supporting this argument, for instance, stated that zakāt is also a form of appreciation or gratitude to the Almighty God for the good harvest, and as such it is the responsibility of the tenant.⁽⁵⁸⁾

Ibn Rushd, a Mālikī jurist on the other hand viewed 'ushr as both the responsibility of landlord and the tenant.⁽⁵⁹⁾ Yusuf al-Qaraḍāwī supports this view. He argues that 'ushr should be shared by both parties, considering the fact that both parties benefited from the good harvest.⁽⁶⁰⁾ In our view, undoubtedly, this is an appropriate and equitable arrangement in case of 'share-cropping' as practiced, for instance, widely in Malaysia (see Chapter VI). However, there would be a problem of enforcing this method in case of other tenurial arrangements - such as long-term leasing or rent that is paid in cash in advance.

(6) On the Permissibility of Payment of 'Ushr in Monetary Terms

In this respect the jurists were divided into at least two

groups. The first group, which comprised the jurists of the Shāfi‘ī school and some jurists of the Mālikī and Ḥanbalī schools, completely forbid the payment of ‘ushr of a particular commodity in equivalent monetary value. The second group which comprised mainly jurists of the Hanafi schools and some jurists of the Mālikī and Ḥanbalī schools, permit such conversion without setting any condition.

The main cause of the difference of opinion appears to be due to the difference in perception as to the purpose of the obligatoriness of zakāt. Is it intended more as an act of worship (‘ibādāt) to bring oneself closer to God, or is it intended more as a means relieving the poverty and hardship of the have-nots by those who have.

No jurist denies that it is both, but it appears to be a question of emphasis. Al-Juwaynī, a famous jurist of the Shāfi‘ī school who represents the first group, stated that the element of ‘ibādāt (worship) in zakāt should be given priority and as such it should be consistent with the relevant nass (text).⁽⁶¹⁾ One of the relevant texts referred to was a ḥadīth related by Abū Dāwūd concerning a message given by the Prophet to Muādh b. Jabal when he was sent to Yemen:

"Zakāt for grains should be collected with grains, sheep with sheep, camels with camels, cattle with cattle..."⁽⁶²⁾

Thus, al-Juwayni argued that if zakāt is paid in monetary value it would go against the nass (text) stated above.

Abū Bakr ibn ‘Arabī, a Mālikī jurist who represented the second group, argued that since zakāt is primarily intended to detach one-

self from his property, zakāt may be paid from his property.⁽⁶³⁾ This group used a text of the Qur'ān to support their argument:

"Of their wealth take alms (zakāt or ṣadaqah)
That so thou mightiest
Purify and sanctify them....." (9:103)

The above text states that zakāt should be taken from one's wealth, and since monetary value of a commodity also constitute a form of wealth or property, such monetary payment in lieu of a commodity would fulfill the above commandment.⁽⁶⁴⁾ They also base their argument on logic and reason. Since zakāt is intended to relieve the burden of the poor, this objective could also be achieved, they argued, if paid in monetary value. They further supported the case by stating that the second caliph, 'Umar ibn al Khaṭṭāb, had paid in monetary value.⁽⁶⁵⁾

Al- Qaraḏāwī in supporting the view of the second group stated that in the contemporary context it would be economical and in the best interests of the poor that zakāt should be allowed to be paid in monetary values, taking into considering such factors as the costs of storage, supervision and transportation.⁽⁶⁶⁾

C. CONCLUSION

The above discussion on the issue of ḥuṣhr illustrates (to some extent) the reasons (some legitimate, of course) for the dissatisfaction among some Muslim modernists not only with the views expressed by some of the classical jurists but also with the classical methodo-

logy of Islāmic jurisprudence. The prescriptions of the modernists take many forms and vary in intensity with regard to the changes they would like to introduce to the methodology of Islāmic jurisprudence.⁽⁶⁷⁾ Some of them, however, have undoubtedly been influenced by the false idol of the eighteenth and nineteenth century European philosophy, namely progress. Thus they tended to equate 'change' with progress. And since they consciously or unconsciously "surrendered their intelligence to the dictum of historicism, they evaluate all things in the light of change and becoming rather than with regard to their immutable aspect".⁽⁶⁸⁾

On the other hand, the substance of the criticism of some of the Orientalists is that the 'monolithic' Sharī'ah had one and only one truly great moment in its history, namely the moment it reached perfection.⁽⁶⁹⁾ Once this apex was reached it could only decline, since a monolithic system cannot change and cannot be expected to change in order to adapt itself to new situation. Every change would then be construed as bid'ah. This, to some extent, is a valid criticism, but not against the Sharī'ah or the methodology of Islāmic jurisprudence. Rather it applies to the narrow outlook of some of the jurists of the past. Some of these jurists (for legitimate reasons) might have found it necessary, for instance, to restrict the freedom to use ijtihād. Or others might have found it appropriate for juristic and/or political reasons to declare ijmā' to be valid only for the Companions of the Prophet and their successors.

This in no way affected the immutability of the Sharīʿah nor the relevance of the basic structure of the fiqh. As al-Fārūqī⁽⁷⁰⁾ correctly observed, the uṣūliyyūn (the jurists who constructed the structure of Islamic jurisprudence) and who crystallized the methodology in the past) had not only brought it to a high level of perfection, but had included with it the finest machinery for its self-renewal.⁽⁷¹⁾ Some of these juristic tools are ijtihād, ijmāʿ, istiḥsān and maṣāliḥ-al mursalah.⁽⁷²⁾ As the first three had been discussed above, we will further elaborate maṣāliḥ al mursalah in the context of the ultimate objective of Sharīʿah (maqāsid al sharīʿah) in the concluding part of the next chapter.

NOTES

- (1) Some writers divide this only to four periods: early Islām, the rise of madhāhib, the period of 'imitation' and modern period. See some of the names of the the authors on Islamic jurisprudence (both by Muslims/jurists and Orientalists) in the Bibliography.
- (2) 'Sunnah' consists the words, actions and reactions (which includes the act of being 'silent') of the Prophet to others. See the usage of the term 'living sunnah' in the discussion in this chapter later.
- (3) See footnote No. 1, Chapter II.
- (4) To name a few of the outstanding Orientalists who wrote on Islāmic jurisprudence are Schacht, Coulson, Mac Donald, Anderson Fitzgerald and Lammens. See Bibliography.
- (5) Beside the classical/traditional Muslim jurists who wrote in Arabic, there are also a number of contemporary Muslim scholars who have written on issues relating Islāmic jurisprudence in English. To name a few who have written major works are Aḥmad Ḥassan, A. Raḥīm, Kemāl A. Farūkī, Saīd Ramaḍān and Fazlur Raḥmān. See their works in the Bibliography.
- (6) Beside these four sources, there are also some other subsidiary sources such as istiḥsān, sadd al dharā'i, al-maṣāliḥ al mursalah which would be discussed later.
- (7) See G.N. Jalbanī, The Teachings of Shah Waliyullah of Delhi, Muḥammed Ashraf, Lahore, 1979, pp. 103-119. See also M.Iqbāl, Reconstruction of Religious Thought in Islām, p. 171-172 and Islamic Studies, Vol.II, p.289.
- (8) Some overzealous Muslims would declare, for instance, that "the Qur'ān is our Constitution and we don't need any man-made constitution!". This is a pious conviction but not based on knowledge. The Qur'ān does definitely provide the principles for a constitution but it is not the constitution as much as it is not a handbook of fiqh or handbook of economics. It should be recalled that the Prophet himself had drafted a constitution for Madīnah which is in fact considered the first written constitution. See Ḥamidullah, M; "The First Written Constitution of the World", Islāmic Review, Woking 1941.

- (9) The 'community of Muslims' both in a particular and universal sense.
- (10) For further accounts of these schools see Schacht, Coulson and others. (refer Bibliography).
- (11) Abū Zahrah, Abū Ḥanīfah, p. 309.
- (12) See Schacht, "Pre Islāmic Background and Early Development of Jurisprudence", p.50-52 Law in the Middle East, Vol.I, Origin and Development of Islamic Law (Middle East Institute, Washington D.C., 1955), pp.57-84
- (13) 'Abdur Raḥīm, The Principles of Muḥammadan Jurisprudence, p.27f
- (14) For further discussion on this see Schacht, Introduction to Islāmic Jurisprudence.
- (15) Fazlur Raḥmān, "Sunnah Ijtihād and Ijmā' in the Early Period", in Islāmic Studies, Vol.I, No.I (Karachi 1962), Pg. 5-21.
- (16) 'Ibn Taymiya', Shorter Encyclopaedia of Islām.
- (17) Saīd Ramaḍān: Islāmic Law, pp. 80-85. See also Aḥmad Ibrāhīm, Islamic Law in Malaya, Malaysian Sociological Research Institute, Singapore 1965, p.68.
- (18) Aḥmad Ibrahim, *ibid*, pp.89-90.
- (19) The term 'Petrification' of the Law is normally used in contrast to the 'dynamic' nature of Sharī'ah. A rather moderate view on this issue is of Sa'īd Ramaḍān who says that while the unequivocal ordinances of the Holy Qur'ān and Sunnah must for all times remain valid as the unchangeable Muslim Law, the Muslims are not only permitted but definitely encouraged to develop side by side with this unchanging law, a changeable and changing law, which would apply the spirit and the actual injunctions of the Divine Law to the social requirements of each time and place. See Sa'īd Ramadan: "Three Major Problems Confronting the World of Islam", World Muslim League Magazine, Vol.I, No. 4, Singapore, 1964.

- (20) Ahmad Ibrahim, op. cit., p.91
- (21) M.Iqbāl, The Reconstruction of Religious Thought in Islām, p. 149-151.
- (22) "Ibn Taymiya", Shorter Encyclopaedia of Islām. See also his Al Siyāsah al-Sharīyyah for a general description of the role of the State.
- (23) Gibb, Mohammedanism. p.166 and Modern Trends in Islām, p.25f.
- (24) Schacht, "Problems of Modern Islāmic Legislation", p.119 Studia Islāmica, Vol. XII (1960) pp.99-129.
- (25) Especially during the reign of Ja'far Numeiri.
- (26) For further comments on this see the conclusion of this chapter and the conclusion of the next chapter.
- (27) See Chapter II. Most of the relevant Meccan Revelations use the term Anfiqū (spend, give).
- (28) Sahīḥ al Bukhārī, Kitāb al Zakāt.
- (29) Yūsuf al-Qaraḏāwī, Fiqh al-Zakāt, Vol.I, p.348-350. See also al-Baihaqī, Abū Bakr b. Ḥusayn b. 'Alī Al-Sunan al-Kubrā, Vol. 4, p.125.
- (30) Including Ḥasan al-Baṣrī, Ḥasan ibn Ṣalleh, Thaurī, Ibn Sīrīn See Yūsuf al-Qaraḏāwī, op. cit., p.349.
- (31) Al-Shāfi'ī, Abī 'Abd Allah Muḥammad ibn Idrīs, Al-Umm, Vol.II p.34 and al-Nawawī, Abī Zakariyyā ibn Sharf, Minhāj al Ṭālibīn, p.30.
- (32) Al-Nawawī, ibid
- (33) Al-Baihaqī, Abī Bakr ibn al-Ḥusayn ibn 'Alī, Al-Sunan al-Kubrā, Vol.IV, p.129.
- (34) Al-Kahlānī, Al-Sayyid Imām Muḥammad ibn Isma'īl, Subul al Salām, Vol.2, 1960, p.133.
- (35) Al-Nawawī, Al-majmū' shar' al Muhazzab, Vol.5, no date, p. 471.

- (36) Al-Saiyyid Sābiq, Fiqh al Sunnah, Vol.3, p.576.
- (37) Saḥīḥ Muslim, Vol.II, p.674.
- (38) Al-Hammām, Kamāluddīn Muḥammad ibn ʿAbd al Wāḥid, Fath al Qadīr, Vol.II, p.2.
- (39) Ibn Qudāmah, Abī Muḥammad ʿAbd Allah ibn Aḥmad, Al-Mughnī, Vol.II, p.576.
- (40) Saḥīḥ Bukhārī, Vol.2, op. cit., p.156.
- (41) Ibn Rushd, Abī al Walīd ibn Aḥmad, Bidāyat al Mujtahid, Vol. I, p.227.
- (42) Al-Sayyid Sābiq, op. cit., p.45
- (43) Ibid
- (44) Yūsuf al Qaraḍāwī, op. cit., 363
- (45) Ibid
- (46) Aghanides, op. cit., p.286
- (47) Ibid
- (48) Ibn Qudāmah, op. cit., p.581
- (49) Sharbīnī, Muḥammad al-Khatīb, Mughnī al Muḥtāji, Vol.I, p.382. See also Aghanides, op. cit., p.286f.
- (50) Yūsuf al Qaraḍāwī, Vol.I, p.375
- (51) Al-Nawawī, op. cit, p.461
- (52) Saḥīḥ Bukhārī, Vol.2, p.155
- (53) Al-Shaukānī, Muḥammad ibn ʿAli ibn Muḥammad, Nail al Aurthār, (no date), p.162.
- (54) Ibn Qudāmah, op. cit., p.579

- (55) Yūsuf al Qardāwī, op. cit., Vol.I, p.391
- (56) Ibid, p.396
- (57) Ibn Hammām, op. cit., p.8
- (58) Muḥammad Shaltūt, Al-Fatāwā, p.122
- (59) Ibn Rushd, op. cit., p.211
- (60) Yūsuf al Qardāwī, op. cit., p.401
- (61) Al-Sajistānī, Abī Dāwūd Suleimān, Ma‘ālim al-Sunan, Vol.2, p.42.
- (62) Ibid
- (63) Ibn al ‘Arabī, Abī Bakr Muḥammad ibn ‘Abd Allah. Aḥkām al Qur’ān, Vol. 2, p.945.
- (64) Yūsuf al Qardāwī, op. cit., p.802
- (65) Ibid, p.805
- (66) Ibid
- (67) Even if we take the key figures of the Salafī Movement in Egypt, we find discernable difference of opinions and approach between, for instance, Rashīd Riḍā and his master Muḥammad ‘Abduh. The difference between them and ‘Ali ‘Abd al Rāziq or Ṭāḥā Ḥussein is wellknown and need no elaboration. See, for instance, Islām and Modernism in Egypt (London, 1933), and ‘Ali ‘Abd al-Raziq, Al-Islām wa uṣūl al-ḥukm (Beirut, 1966). See also the writings of Gibb, Malcolm. Kerr in the Bibliography.
- (68) Naṣr, Seyyed Ḥossein, "The Sharī‘ah and Changing Historical Conditions" in Islāmic Life and Thought, SUNY Albany, 1981, p. 27.
- (69) See footnote No. 14. See also comments on their views in al-Fārūqī, Isma‘īl Rājī, Internal Dynamics of the Muslim Community, Al-Ittiḥād, Summer 1975, p.5. See also his Tawḥīd: Its Implication for Thought and Life, IIIT, 1982, p.147.

- (70) Al-Fārūqī, Ibid .
- (71) Ibid
- (72) See Section D, Chapter IV.

CHAPTER IV

ZAKAT AND THE ETHICS OF REDISTRIBUTION OF INCOME AND WEALTH IN ISLAM

This chapter is a continuation of the last chapter but with an emphasis on the ethical dimensions of the redistribution of income and wealth in Islām, with particular reference to the role of zakāt. This chapter is divided into four different sections dealing with four interrelated issues (from the particular to the general), namely: (i) the beneficiaries of zakāt; (ii) the ethical principles governing the distribution of zakāt seen both from the perspective of the State and the individual; (iii) the role of the State; (iv) the overriding objective of Sharī'ah with emphasis on al-Maṣāliḥ al-Mursalah, a principle of legal reasoning where new rulings are made out of consideration of the best interests and welfare of society.⁽¹⁾

A. THE BENEFICIARIES OF ZAKĀT

The issue of redistribution of income and wealth is of great importance to men as it directly affects the interaction and interrelationship between them. The Qur'ān often⁽²⁾ addresses such vital issues very specifically. Thus, on the distribution of zakāt proceeds, for instance, the Qur'ān specifies eight categories of beneficiaries as follows:

"Alms are the for the poor and the needy, and those employed to administer the (fund); for those whose hearts have been (recently) reconciled (to Truth), for those in bondage and in debt; in the cause of Allah; and for the wayfarer. Thus it's ordained by Allah, and Allah is full of Knowledge and Wisdom." (9:60)

It is pertinent to note that at least two of the eight categories⁽³⁾ mentioned above specifically refer to the poor (fuqarā) and the needy (masākīn). It should also be noted that beside the zakat collectors (ʿāmilīn), most of the other categories mentioned above in one way or other include all those in need of what in the contemporary context is called 'welfare assistance'.

1. Fuqarā (The poor or indigent)

The classical Muslim jurists have deliberated at great length upon the distinction between the term fuqarā and the term masākīn. We do not intend to go into details about their debates and discussions⁽⁴⁾ on this issue but will only raise some salient points.

The word faqīr (singular) is often used in at least two senses: (i) a destitute or a poor man who has practically nothing to sustain his life, or (ii) an unemployed person who has no source of income. The word faqīr is used in the Qurʾān in the latter sense in the story of Moses:

"So he watered (their sheep) for them, then went back to the shade and said: My Lord, I stand in need of whatever good Thou mayest send to me."(28:24)

The word faqīr (translated as "in need" in the context above), is used for an unemployed person who has left his country for fear of oppression to seek refuge in another country. As such the word may

equally be used for all emigrants who are forced to leave their country by political changes or natural calamities such a drought, flood, etc. During the Prophet's time the Muslims who emigrated to Medīna to seek refuge from cruelty and oppression of the Meccans were also called fugarā', as referred to in the Qur'ān:

"(It is) for the poor who fled who were driven from their homes and their possessions seeking grace of God and (His) pleasure, and helping God and His messenger."
(59:8)

It should also be noted that the references to the word 'fugarā'' in the two Qurānic verses quoted above happened to be individuals who sacrificed and left almost everything they owned merely for the sake of seeking God's pleasure⁽⁵⁾. This might be the reason why some jurists like Imām Mālik and Al-Zuhrī⁽⁶⁾ defined the faqīr as someone who is poor but does not beg from others. This is also based on the Qur'ānic verse:

".....the ignorant man thinks, because of their modesty that they are free from want. Thou shalt know them by their (unfailing) mark: They beg not importunately from all and sundry..... And whatever of good ye give, be assured God knoweth it well". (2:273)

Al Shāfi'ī was of the opinion that faqīr is someone who neither possess any property nor has any steady employment. Or he may possess some property and have legitimate occupation but the earnings are sufficient to meet less than half of his needs.⁽⁷⁾

In the Hanafī school, however, the term faqīr is defined as someone who possess something, but less than the nisāb even though he

is healthy and productive⁽⁸⁾. It appears that the Ḥanafī school lays more stress on ownership than on needs. This is in contrast to other schools of jurisprudence which emphasize the fulfillment of basic needs. The implication of this argument is that those who are not in need are forbidden to receive zakāt even though they do not own any tangible property. This is quite clear from the statements of al-Shāfi‘ī, Mālik and Ibn Ḥanbal, who stressed that the fulfillment of one’s basic needs is the basic criterion for the distribution of zakāt.⁽⁹⁾

(ii) Masākīn (The Needy)

A person is considered needy if he has to depend on others for his sustenance. In this general sense there is no distinction between the word ‘faqīr’ and the word ‘miskīn’. That might be the reason why some jurists like Ibn Qassim and Abū Yūsuf were of the opinion that there is no difference in meaning or in reality between the two terms⁽¹⁰⁾. For Abū Ḥanīfab, however, the needy are in a worse position than the poor because they are rendered quite helpless for lack of money. They encompass all those who need monetary assistance and the cooperation of others, temporarily or permanently.⁽¹¹⁾ In other words, the needy are people who possess something but much less than the nisāb (i.e. not enough to meet their needs). Or they are those who possess something, but not enough to enable them to live without the assistance of others.

It should also be stressed that according to some Muslim jurists, the Sharī'ah do not only advocate the provision of the bare necessities of life to the poor and the needy, but goes much further and advocates that they should enjoy what is now termed as a reasonable 'standard of living'.⁽¹²⁾

In the previous chapter we have discussed how seriously Islām views the issue of poverty. The Prophet of Islām is reported to have prayed: "Yā Allah, I ask thy refuge from apostasy and poverty". Thereupon a person enquired, "Are the two similar?" The Prophet said "yes".⁽¹³⁾ We shall discuss the relationship between the concept of 'poverty' and nisāb, or the issue of measurement of 'poverty', in Chapter VIII. It suffices to state here that even though the difference between the term faqīr and the term miskīn is rather subtle, what is important to stress is that they constitute two different categories of beneficiaries of zakāt, and each of them has at least one or a combination of characteristics mentioned below:

- i. those who do not possess any form of wealth
or any source of income;
- ii. those whose possession of wealth or source of
income has not reached the level that is
obligatory to pay zakāt;
- iii. those whose income is sufficient to meet their
basic necessities of life only partially;
- iv. those who are unemployed and do not have any

means to sustain their life;

- v. those who face hardship temporarily or permanently, and do not have any means to sustain their life adequately;
- iv. those who are unable to work either because of a physical or mental handicap or because of other factors that inhibit them from being gainfully employed.

This is justified by the Qur'ānic verse:

"(Charity is) for those in need, who, in God's cause are restricted (from travel), and cannot move about in the land, seeking (for trade or work)." (2:273)

(iii) Al-ʿĀmilīn (The Zakāt Collectors)

Zakāt is not just an individual responsibility. It is also a societal responsibility. If an individual is obligated to pay zakāt in Islām, the society or the State is also obligated to collect from those who are privileged to give zakāt, in order to ensure that every Muslim who has the nisāb also pays Zakāh adequately. This is where the role of the ʿāmil comes in. And that is also the reason why the Qurān has institutionalized the role of the ʿāmil by making him one of the categories of the beneficiaries of zakāt.

The Imam or Ruler of the State is responsible for the appointment of the ʿāmil. As stated in the last chapter, during the Prophet's time, he personally appointed the ʿāmilīn. So did all the Pious Caliphs. Based on this tradition, all the Muslim jurists are unanimous

in their view that the ‘āmilīn must be appointed by the Rulers of the states. A contemporary jurist, Yūsuf al Qardāwī, in summarizing the views of the previous jurists states that an ‘āmil must have the following characteristics:

- i. a Muslim;
- ii. a Mukallaf (a sane adult);
- iii. a trustworthy person;
- iv. well-versed in all aspects of Zakāt;
- v. have the physical and mental capacities to execute his duties in a responsible manner.⁽¹⁴⁾

Being trustworthy is an important quality. This is to ensure that the interest of the poor and of the needy are well protected. Thus, in an attempt to avoid malpractice or misappropriation of funds, some jurists like Ibn Qudāmah, for instance suggests that the ‘āmil must come from a well-to-do family or be related to those who are privileged to give zakāt⁽¹⁵⁾. Imām Mālik on the other hand, laid emphasis on two important qualities that makes the appointment of an ‘āmil legitimate and valid: (i) a high sense of justice; and (ii) well-versed in all the regulations governing zakāt.⁽¹⁶⁾

(iv) Al-Mu'allaf-al-Qulūb (Those whose hearts are to be Inclined)

Since there is no priesthood in Islām, it is incumbent upon every Muslim to bring the message of Islām to anyone who has not been exposed to the message. And if such a contact results in conversion, it is the duty of the Muslim ummah to ensure that the welfare of the new convert is taken care of. Islām institutionalizes this arrangement by making this category of people as one of the beneficiaries of zakāt.

The term "those whose hearts are to be inclined", however, has much wider application. If for instance, the Muslims in a particular country or locality are not allowed to preach and practice their religion and are tyrannized and oppressed in any land, this allocation of the zakāt fund could be utilized, in whatever manner deemed legitimate and necessary, in removing or alleviating those restrictions and oppressions. (17)

The Prophet of Islām used this allocation for a number of purposes. For instance, he has given such zakāt proceeds very generously to the leaders of a number of tribes who have just converted to Islām in Medina. In those days tribal affiliation and patronage were very strong, and the leaders of tribes command complete respect and obedience from their followers. Such an act of generosity on the part of the Prophet did not only ensure the growth of Islām but also gave an excellent example to the rich within the tribes to give zakāt generously later. Such a practice, however, decreased during the Caliphate

of Abū Bakr. And when Islām gained strength during the time of the second Caliph, ‘Umar ibn al Khaṭṭāb, he stopped this expenditure completely.

Based on the precedence of ‘Umar ibn Khaṭṭāb some jurists, especially from Ḥanafī and Mālikī schools, are of the opinion that this expenditure or allocation should now stand abolished.⁽¹⁸⁾ However, other jurists, including Yūsuf al-Qarḍāwī, believed that such an allocation from zakāt should be used if and when such a need arises. Among other things, he argues that there is no reason to conclude from the action of ‘Umar ibn al Khaṭṭāb that he had disallowed forever the expenses that were permitted by the Qur’ān under certain conditions for the good of Islām and of humanity.⁽¹⁹⁾

(v) Ransoming of Slaves

Islām arose when the practice of slavery was rather rampant in the world. Islām used various methods to remove the curse and stigma of slavery from the shoulders of humanity.⁽²⁰⁾ However, the fact that the Qur’ān set aside a separate allocation from the zakāt proceeds to be used for the ransoming of slaves is the greatest testimony of all to the commitment of Islām to the abolition of slavery. This is more remarkable if we consider the fact that this provision was made in the 7th Century A.C.. It took a millenium for the rest of humanity to come up with any effective means to abolish slavery.

Under the above allocation, slaves could be paid a sufficient sum

of money to purchase their freedom, or they could be purchased directly and then freed from the bondage of their masters.

However, the pertinent question to ask today is: since slavery as (commonly understood) has long been abolished, is this provision still relevant and valid in the contemporary world?

Even though slavery in a rigid legal sense might not exist today, it has undoubtedly taken different forms. In its crudest form it has manifested itself on the individual level in the form of 'indentured labourer' (often called 'modern slavery')⁽²¹⁾ in many of the capitalist plantation economies of the 'Third World'. On a societal level, it can be found when a country is subjected to foreign occupation, colonialism, or a political system that robs an individual of all his rights and freedoms. In this category we could also include political prisoners who have been imprisoned unjustly, or women who have been forced into prostitution. Many contemporary Muslim jurists⁽²²⁾ agree that zakāt fund could definitely be used to assist or free these people.

Has not 'slavery' also manifested in a subtler form? What about people who have been indoctrinated with certain ideas? This is the reason why a prominent Muslim jurist of this century, Sheikh Maḥmūd. Shaltūt, boldly declared that zakat and the common treasury could be utilized to free a nation from an intellectual or mental captivity to regain their authority, property and freedom.⁽²³⁾

(vi) Al-Ghārimīn (The Debtors)

The collective view of the Muslim jurists is that the debtors who are qualified to be considered under this heading can be classified into two main categories:

- (a) those who incurred their debts as a result of fulfilling one of the basic necessities of life and are neither rich nor do they possess wealth over the prescribed nisāb;
- (b) those who incurred debts in assisting people.⁽²⁴⁾

Thus under the first category, those who incurred debts as a result of buying properties to enrich themselves or due to indulgence in luxuries, drinking, gambling or speculation are not entitled to receive any zakāt fund. In the second category those who incurred debts as a result of helping people, for instance, by becoming guarantor etc., are entitled to receive zakāt if they are not in a position to settle the debt. This provision is also strengthened by the Ḥadīth of the Prophet: "Whoever leaves property, it is for his inheritors and whoever leaves any debt it is for us".⁽²⁵⁾ The phrase "for us" here refer to the State:

(vii) In the Cause of Allah (Fī sabīl allah)

The word fī sabīl allah (i.e. in the cause of Allah) is one of the most comprehensive terms in the Islāmic religious terminology. Literally it means any action that is done, purely for the sake of seeking God's pleasure. It is normally used after the word 'Jihād' - meaning struggle or war - not for the sake of any material gains such

as wealth, power or a piece of territory, but purely for the sake of establishing the Truth (al-Ḥaqq) and Equilibrium or Justice (al-ʿAdl).

The early Muslim jurists, e.g. Al-Shāfiʿī and Mālik generally confined this category to those individuals who were willing to take up arms in defence of their State and al-Dīn.⁽²⁶⁾ Imam al-Nawawī in elaborating the view of Imam Shāfiʿī says that fī sabīl allah is meant for loyal fighters of Islām who are not bound to any State or in the payroll of any State.⁽²⁷⁾ This means that the soldiers who are paid from the State Treasury are not qualified to receive any zakāt fund. If we reflect on this, it is indeed a very significant if not a very 'revolutionary' idea. This means such a corp of fighters can defend Islām if the need arises to uphold the Truth (al-Ḥaqq) and Justice(ʿAdl). The greatest jihād in Islām, beside the jihād against our carnal soul, is to tell an unjust ruler about his injustice.⁽²⁸⁾

It should also be stressed that according to Al-Shāfiʿī, this particular allocation given to the qualified individuals should not in any way be more than the amount allocated to the poor and the needy.⁽²⁹⁾

Muslim jurists, especially of this century, have given a much wider meaning to the term fī sabīl allah. Muḥammad ʿAbduh when defining this term states:

"The word fī sabīl allah is most comprehensive. It covers in the order of priority:

- a. Millitary preparedness or Defence;

- b. propagation of Islām;
- c. payment of salaries to teachers who teach the Science of al-Dīn as well as for those who impart other knowledge on which the people's progress and prosperity depends;
- d. generally for bringing about all-round improvement in matters of al-Dīn and State."⁽³⁰⁾

To these Sayyid Qutb adds "the facilities for healing of the sick."⁽³¹⁾ A. Raḥmān Anṣāry goes to the extent of saying that zakāt money can be given to "those who are poor students in secular schools and colleges. Money from zakāt funds could be given to them for fees, textbooks, boarding and lodging, expenses for clothes, etc."⁽³²⁾

No one would deny the priority of spending this allocation for those who sincerely struggled when the need arises for the defence of their State, Truth, Justice and more so of their Faith. Such a struggle, however, is not only confined to the use of arms or force. It could also be used, sometimes more effectively, through the pen. Didn't the Prophet say: "The pen of the scholar is holier than the blood of the martyr".⁽³³⁾

(viii) Ibnu Sabīl (The Wayfarers)

A person who is stranded having no access to his property by being away from his home on a journey is called ibn sabīl, or wayfarer. Such a person is also entitled to a portion of the zakāt fund.

Islām enjoins its adherents to travel and migrate - with noble motives such as to earn a living, or to seek knowledge, or to perform Hajj, or for any other reasons for the sake of seeking

God's pleasure. Many verses of the Qur'ān stress this. For example:

"That have passed away before you: travel through the earth, and see what was the end of those who rejected Truth". (3:137)

Some contemporary jurists have argued that in this age of rapid communications where, for instance, funds can be transferred rather quickly, this provision becomes redundant. Yūsuf al Qardāwī rightly rejected this argument by saying that not every part of the world enjoys the facilities of rapid communications. Nor does every Muslim, including the rich, keep bank accounts.⁽³⁴⁾ This provision thus is as valid as ever. Furthermore, some contemporary jurists, including Yūsuf al Qardāwī, argue that even refugees or emigrants who had to leave their homes and all their belongings due to political oppression, war, religious and racial hatred and persecution, which are quite common in this age, could also be included in the definition of wayfarer.

B. THE ETHICAL PRINCIPLES GOVERNING THE DISTRIBUTION OF ZAKĀT

As stated above, the Qur'ān has specifically referred to the eight categories of people who are the beneficiaries (aṣṇāf) of zakāt. However, the important questions to consider here are: How much is each of these aṣṇāf entitled to? What are the guidelines or ethico-religious principles that determine the distribution of zakāt among the aṣṇāf? Do any of these aṣṇāf take precedence over others?

These questions have occupied the energies of Muslim jurists and thinkers. Even though there are areas of agreement among them, there are also areas where they disagree. However, these issues are closely intertwined with the general principles that govern the distribution of zakāt. These general ethical principles can be divided into two parts, each of which provide a particular perspective. The first part deals with the ethical principle seen from the perspective of the State or administration. And the second part sees it from the perspective of the individual.

The first part, which is elaborated below, can be divided into at least seven⁽³⁵⁾ principles namely: a) the Principle of Exclusiveness to the Aṣnāf; b) the Principle of 'Comprehensive Coverage'; c) the Principle of 'Sufficiency'; (d) the Principle of 'Separate Account'; (e) the Principle of 'Collective and individual responsibility'; f) the Principle of 'Economy' and lastly; g) the Principle of 'Openness'.

(1) FROM THE PERSPECTIVE OF THE STATE/COMMUNITY

(a) The Principle of the "Exclusiveness of Zakāt for the Aṣnāf"

This principle is directly derived from the Qur'ānic verse quoted in the beginning of this chapter. This verse clearly states the categories of people who are entitled to zakāt. As such zakāt proceeds are exclusively divided among the aṣnāf and no one else is entitled to it. Clearly no ijtihād is called for with regard to this principle

except those that concern the implementation of the principle. Adherence to this principle ensures that no State will be able to appropriate or to allocate this fund for purposes other than those intended.

(b) The principle of 'Comprehensive Coverage'

This principle is also derived from the Qur'ānic verse quoted above. This principle not only ensures that all the aṣṇāf, when they do exist, get a portion of the zakāt proceeds, but it also ensures that no particular beneficiary can monopolize the proceeds. It sets a ceiling on the amount each of the aṣṇāf gets, especially for the zakāt collectors (al-ʿāmilīn). Most schools of jurisprudence set the ceiling for the ʿāmilīn at not more than 1/8 of the proceeds.⁽³⁶⁾

It should also be stressed here that the distribution of zakāt to all the aṣṇāf is considered obligatory (wājib) in the Shāfiʿī school, and highly recommended (mandūb) in other schools of jurisprudence.⁽³⁷⁾

(c) The Principle of "Sufficiency"

This principle dictates that the amount of zakāt given to a particular person should be sufficient to fulfill his needs. For instance, if he belongs to the category of the poor or the needy he should be given sufficient amount to fulfill his basic needs such as food, clothing, shelter, for himself and if he is married, his family.

If the person belongs to the category of the debtor, the amount should be sufficient to clear his debt. And if he is a wayfarer, the amount should be enough to continue his journey.

According to the Shāfi'ī school, the zakāt given to the poor and the needy, should not be given just once a year but should be given continuously, as long as he lives in the state of poverty.⁽³⁸⁾ The mode of distribution of zakāt here depends on the condition of the poor. If he is old, handicapped, etc., and has no other source of income, the zakāt should be given to him continuously to sustain him for the rest of his life. If the person is young and healthy, however, he should be given zakāt in the form of capital to enable him to earn a living. This capital could be in the form of tools, equipments, etc. And the amount varies according to the trade he is engaged.⁽³⁹⁾

(d) The Principle of "Separate Accounts"

This principle is also derived from the Qur'ānic verse quoted above and is closely related to the principle of 'exclusiveness to the aṣnāf' mentioned above. According to this principle, the zakāt proceeds, whether in the form of cash or properties, should be maintained on a separate account and should not be mixed with other funds or revenues of the Treasury (bayt al māl). This principle is intended to safeguard the interest of the beneficiaries of zakāt.

Adherence to this principle ensures that zakāt funds will not be used for other purposes than intended. This means, even if the bayt-al māl is in deficit, zakāt funds should never be touched. The zakāt

fund can be mixed with other funds only with the intention to increase or expand, with the proviso that the identity of the zakāt fund can be maintained.⁽⁴⁰⁾

(e) The Principle of "Collective and Individual Responsibilities"

This principle dictates that everyone who is involved in the administration of zakāt, whether at the top i.e. policy-making level or at the bottom, i.e. at the level of collectors, are equally and individually responsible for the safety of the fund collected. If the zakāt fund is lost or destroyed due to the negligence of the collector, he is held responsible. He is not only required to replace it, but he can also be punished, depending on the gravity or seriousness of the case. However, if it was lost or destroyed not because of his negligence or mismanagement, he is still entitled to his portion of the zakāt proceeds collected. But this must be paid not from the zakāt proceeds but from the bayt al māl.⁽⁴¹⁾

This principle of Sharī'ah ensures that those in authority are mindful to protect the interest of the poor and the needy. If appropriate measures are not taken against those who are negligent in this respect, the State is thus considered to have collaborated in the act, or at least considered to have betrayed the right of the poor and the needy.⁽⁴²⁾

(f) The Principle of "Economy"

This principle is meant to ensure that the expenses for the administration of zakāt should be at the barest minimum. There should not be, for instance, too many layers of administration so that the 'slippage' on the way far exceed the amount that "trickles down" to the beneficiaries. This is also the reason why, as stated earlier al-Shāfi'ī stipulated that the amount given to the zakāt collectors (al-'amilin) should not be more than 1/8 of the total collected. If this amount is not sufficient, the additional amount required should be paid from the State Treasury (bayt al māl). Imām Nawawī and also Al-Māwardī rightly justify this by saying that the administration of zakāt is one of the public duties of the State.⁽⁴³⁾

(g) The Principle of "Openness"

This principle ensures that everyone who is involved in the the administration of zakāh is subject to the scrutiny of the public at large. In other word, it must be an open system. This means complete data such as the names of those who paid zakāt, the amount paid, the names of the beneficiaries of zakāt, the expenses involved; data of those who should pay zakāt and those who did not pay zakāt; the modes of payment, the criteria of selection of the recipient of zakāt etc. All these are to be open for public scrutiny and inquiry.⁽⁴⁴⁾

Public participation and involvement in every state of the administration of zakāt is thus consistent with this principle. The rich who pay zakāt , the poor who receive zakāt, the jurists, zakāt collectors, economists, community leaders, etc. can be brought together from

time to time to discuss various aspects of the collection and disbursement of zakāt.⁽⁴⁵⁾ This is not only to ensure that those who are supposed to pay do really pay zakāt, but also to ensure that the interest of the truly needy and the genuinely poor are protected.

(2). FROM THE PERSPECTIVE OF THE INDIVIDUAL

There are numerous ethical principles or qualities that an individual Muslim should practice in daily life in order to seek the pleasure of God. These qualities at times varies in proportion to the level of sincerity and the sense of devotion of the person. From the purely legal or Sharī'ah point of view, some of these qualities are not obligatory (wājib) in nature but highly recommended in order to seek felicity in this world in and the Hereafter.

Al-Ghazzālī in his Ihyā' 'Ulūm al Dīn not only inspired the Muslims to value the "inner dimensions of Islāmic worships",⁽⁴⁶⁾ but also prescribed certain ethical principles for the moral and spiritual upliftment of the society as a whole. These principles which are derived from the Qur'ān and Sunnah, if strictly adhered to, not only would cure the 'diseases' of the heart but also would create a sense of mutual respect which helps to strengthen the bond between the various members of society, especially between the haves and the have-nots. This is particularly so with respect to the ethical principles governing the distribution of zakāt.

Al-Ghazālī has beautifully summarized the legal views of his

predecessors, and added to them the ethical dimension. We will not be able to go into detail on all of his ethical principles on zakāt here. We will mention only the essential ones.

The principles described here may be strikingly simple, but they are highly profound and sublime. Some of these principles, at first encounter, might appear to contradict the principles mentioned earlier. However, these are ethical principles seen from the perspective of the individual and, seen from a broader perspective, in fact complement the ethical principles mentioned earlier.

These ethical principles⁽⁴⁷⁾ are: (a) Secrecy, (b) Modesty, (c) Humility, (d) Generosity (i.e. willingness to part with the best), and (e) Earnestness in seeking those who are really worthy and deserving.

(a) The Principle of 'Secrecy'

The advantage of secrecy, according to Al-Ghazālī, is that "it confers deliverance from the perils of hypocritical ostentation and reputation-seeking",⁽⁴⁸⁾ The Prophet has said: "The most meritorious form of Almsgiving is the effort to help a poor man, made in secret, by one who is himself of little means."⁽⁴⁹⁾ The Prophet has also said: "God does not accept from a braggart, a hypocrite or one who always looks for gratitude."⁽⁵⁰⁾

Whenever fame or gratitude become the objective of the giver, his work will be in vain, since the purpose of zakāt is to eliminate miserliness and to weaken the love of wealth. But the love of status, Al-Ghazālī argues, has a stronger hold over the soul than the love of

wealth. And both of them have deadly consequences in the Hereafter.

However, there are cases where zakāt and sadaqah can be given openly: either to set a good example or because a beggar, for instance, has made his request in public. Al-Ghazālī in fact included "giving zakāt openly" as one of the meritorious act, especially if the situation requires it, provided one is always inwardly on guard against hypocrisy.

This principle of 'secrecy' might appear to contradict the 'Principle of Openness' stated above. However, as mentioned earlier, we are viewing it here from the perspective of the individual. One should attempt to give zakāt as discreetly as possible, but that does not forbid others investigating such a transaction, especially for auditing purposes, when the zakāt was given through the bayt al māl. It should also be stressed that zakāt al bāṭin (i.e. zakāt on property) can be given directly by the owner concerned without going through the bayt al māl.

(b) The Principle of "Modesty"

What is meant by modesty in this context is that when one gives zakāt one should avoid "taunting" and "hurting". This is based on the Qur'ānic verse:

"Do not make your Almsgiving void by taunting and hurting". (2:264)

There is some disagreement as to the correct interpretation of the words 'taunting' and 'hurting'. Some have interpreted the word

'taunting' to mean reminding the recipient of zakāt of the favor, and talking about it. According to others, taunting is to exploit a person in return for a gift; while 'hurt' lies in making him feel ashamed of his poverty.⁽⁵¹⁾ And still others say that taunting means making one's gift an excuse for arrogant behaviour, while 'hurt' is cause by scolding and rebuking a man for begging. On this, the Prophet have said: "God does not accept the Alms of a taunter."⁽⁵²⁾

Al-Ghazālī, in giving his own opinion, says that taunting has its root and origin in the condition and qualities of the heart, from which it then ramifies into external manifestations on the tongue and other organs. It stems from:

"seeing oneself as the bountiful benefactor, whereas one ought really to look upon the poor person as one's own benefactor, by virtue of the fact that he accepts what one owes to God, Great and Glorious is He, and allows one to attain purity and salvation from the Fire. Had he not accepted, one would have remained under obligation. One is therefore indebted to the poor person inasmuch as he makes the palm of his hand a surrogate for God, Great and Glorious is He, to collect what is due to Him."⁽⁵³⁾

He then quotes one of the Tradition of the Prophet: "Alms fall into the hand of God, Great and Glorious is He, before they reach the hand of the receiver."⁽⁵⁴⁾

As for hurtfulness, its outward manifestations, are coarseness of speech, derision, frowning, and every type of ridicule. Its inner source, according to Al-Ghazālī, is twofold: (i) reluctance to part with money and the painfulness of the experience, which inevitably

causes bad temper, and (ii) regarding oneself as better than the poor man and considering him inferior by reason of his need. Both attitudes, according to him, stem from ignorance. The only remedy for this is for us to be conscious of the truths: "understanding the necessity of zakāt, and coming to see that the beneficiary is the real benefactor, in that by his acceptance he enables us to purge ourselves."⁽⁵⁵⁾

(c) The Principle of Humility

When one gives zakāt one should think little of it, for to regard it highly is "to invite that sanctimonious pride which is one of the deadly sins, making good deeds worthless."⁽⁵⁶⁾ Sanctimonious pride and self-importance do tend to infect all acts of worship, and their antidote according to al-Ghazālī is knowledge and action.

Through knowledge one should be able to recognize that the ten or the two-and-a-half per cent one gives as zakāt is a tiny fraction, and that to pay only this is to content oneself with the least generous level of expense. According to al-Ghazālī, this is something to be ashamed of rather than to boast about. Even if one rose to the highest level, disbursing all or most of one's wealth, one should still reflect on where it came from in the first place. So Al-Ghazālī asks: why pride oneself on spending for the sake of God, what is actually His property all along?

With regard to action, one's giving should be done with a sense of shame at one's meanness in holding back the rest of one's wealth

from God. For all wealth belongs to God. If He has not commanded His servants to give away all that they possess, it is only because that would be too hard on them. As the Qur'ān states:

"If He were to ask you for all of them, and press you, ye would covetously withhold....." (47:37)

(d) The Principle of Generosity

One should select from one's wealth what is best and dearest to one, for God, is good and accepts only what is good. If the offering has been acquired by dubious means, it may not strictly belong to the giver and will then be disqualified.⁽⁵⁷⁾ This is supported by the Tradition of the Prophet: "Blessed is the servant who spends out of the wealth he has earned without sin."⁽⁵⁸⁾

Even when we give from what we earned legitimately, we should give that which is good and preferably that which is dearest to us.

It is stated in the Qur'ān:

"O ye who believe! Give of the good things which ye have (honourably) earned, and of the fruits of the earth which we have produced for you, and do not even aim at getting anything which is bad, in order that out of it ye may give away something, when ye yourselves would not receive it except with closed eyes. And know that God is Free of all wants, and Worthy of all praise."

(2:267)

Al-Ghazālī in stressing the ethical merits of parting with the best, quoted a Tradition of the Prophet: "A single coin may overtake a hundred thousand".⁽⁵⁹⁾ This happens when one's offering represents the best and the finest part of his wealth, and is made in a spirit of pleasure and happiness in giving. On the other hand, if he were to

offer a hundred thousand times as much, but out of the part of his wealth he disliked, that would only go to show that he would not offer to God anything he was fond of. The punishment for such an attitude is obvious:

"They set aside for God what they themselves dislike, and their tongues expound the lie that the better portion will be theirs. No doubt about it: theirs is the Fire." (16:62)

(e) The Principle of Earnestness in Seeking the Truly Worthy and Deserving

In giving zakāt one should be earnest in seeking out a truly worthy recipient, rather than be content with just anybody who happens to fall within the eight categories of legally qualified beneficiaries. For among them there are some with special qualities. Al-Ghazālī says attention should be paid to these special qualities which he classified into six ;(60)

- (i) those truly pious people who have devoted themselves exclusively to God;
- (ii) the recipient should be chosen from among the people of learning, to support him in his quest for knowledge;
- (iii) the recipient should be sincere in his piety and exclusive worship and devotion to God alone. This singleness of worship and devotion (Tawḥīd) is apparent when on accepting a gift, he offers

- praise and thanks to God, regarding Him as the source of the blessing rather than intermediary;
- (iv) the recipient should be a person who has remained anonymous and kept his need to himself, not being given to fuss and complaint; or one of those magnanimous people who, though fortune has departed, still remain unaffected and preserve their high standard of integrity;
 - (v) the recipient should be someone saddled with a large family, or disabled by illness or some other cause;
 - (vi) the recipient should be a close relative, whether paternal or maternal. The offering will then serve the additional purpose of strengthening ties of kinship, the reward for which is incalculable.

In Islam, when a relative falls under one of the eight categories of the beneficiaries of zakāt, he or she takes precedence over a non-relative, as much as friends and fellows in a good cause should be preferred over mere acquaintances.⁽⁶¹⁾

C. THE ETHICAL ROLE OF THE STATE

Many aspects of the role of the State with regard to the collection and distribution of zakāt have been discussed in the last two

chapters as well as in the previous sections. In this section we would only deal briefly with those aspects that have not been covered adequately before. The traditional Muslim scholar-jurist, such as al-Māwardī, al-Ghazālī, al-Shāḥibī, Ibn Taymiyah and others, had judiciously avoided elaborate discussions of the forms of government. Instead they focused their discussion on the necessity, goals and responsibilities of the State. According to Ibn Taymiyah, for instance, "the greatest goal of the State is to enjoin the ma'rūf (good, fair, right and proper) and forbid what is munkar (evil, unfair, wrong and improper).⁽⁶²⁾ This according to him could be achieved effectively only through the institution of the State which possessed both power (quwwah) and authority (imārah).⁽⁶³⁾ For almost all the scholar-jurists of the past, authority is preferable to anarchy. Ibn Taymiyah, for instance, even though he asked the Muslims not to obey orders contrary to the commandments of Allah and forbid them to cooperate with unjust rulers⁽⁶⁴⁾, did not advocate open rebellion or encourage the deposition of the ruler. He is quoted as saying: "Sixty years of an unjust imām (ruler) are better than one night without a Sultān".⁽⁶⁵⁾ In this respect these scholar-jurists share the same views with some of the Greek philosophers, as well as Thomas Aquinas.⁽⁶⁶⁾

Responsibilities of the State

Al-Mawardi is one of the earliest scholar-jurist who had systema-

tically listed the responsibility of a caliph or ruler. These can be summarized as follows: (i) the Guardian of Faith; (ii) the preservation of justice ('adl); (iii) the protection of life or security (so that people may freely engage in earning a livelihood); (iv) the obligation to ensure that the punishment for offences (ḥudūd) is meted out; (v) defence of the territory; (vi) the responsibility to declare war (jihād) against the enemy of the State; (vii) management of zakāt and fai'; (viii) the obligation to ensure sound financial administration; (ix) judicious selection of competent and loyal officials; and (x) responsibility to make personal supervision of public affairs.⁽⁶⁷⁾ It is based on the writing of these classical scholar-jurists that some contemporary Muslim scholars such as M.S. El-Awa enumerated the political responsibilities of an Islāmic State.⁽⁶⁸⁾

Al-Māwardī⁽⁶⁹⁾, Al-Ghazālī⁽⁷⁰⁾ and others also have given the qualities that are required of a leader. It is not correct to consider these descriptions of the responsibilities of the State and the qualities of the leader as 'ideal types' which would be a more appropriate description for the writings of al-Fārābī (in his al Madīnat al-Fādilah) for instance. However, even from these lists, the predominant role of ethics in the conduct of a true Islāmic State as envisaged by many of the scholar-jurists, is clear. This vision is diametrically opposed to so-called political realists like Machiavelli (1469-1527 A.C.) who had a great impact upon the development of modern political theory. As Heckscher quite correctly remarked, these political rea-

lists "were amoral in a two-fold sense, both in their aims as also in the means for the attainment of their ends. This twofold amorality arose from their widespread indifference towards mankind, both in its capacity as a reasoning animal, as also in its attitude towards the eternal".⁽⁷¹⁾

The Qur'ānic phrase, "to enjoin the ma'rūf and to forbid the munkar" is a very comprehensive term and applies to all aspects of life. For Ibn Taymiya "the welfare of the people and the country can be achieved only through commanding the ma'rūf and forbidding the munkar".⁽⁷²⁾

What constitutes the welfare of the people at the material level, according to the traditional scholar-jurists,⁽⁷³⁾ is the fulfilment of basic needs like food, shelter, clothing, education, medical care, etc. It should be noted here that what in the modern context is called the "welfare state"⁽⁷⁴⁾ had not only been the ideal vision of the scholar-jurists, but had been concretely realized in history during the reign of 'Umar ibn Khaṭṭāb⁽⁷⁵⁾ and 'Umar ibn 'Abd al-'Azīz.⁽⁷⁶⁾ Both these caliphs are reported to have supplied attendants to the invalid and the blind.⁽⁷⁷⁾ 'Umar ibn Khaṭṭāb is also reported to have provided transport to the needy⁽⁷⁸⁾, and 'Umar ibn 'Abd al-'Azīz even gave financial grants for marriage.⁽⁷⁹⁾

In this context, the policy statement made by the second caliph, 'Umar, during the lean years of famine in Medina is pertinent and very revealing:

"It is reported by Ibn 'Umar that 'Umar said: "If I had no money to fulfil the need of the people and the only way left (to fulfil their needs) was to make every household share their provisions with an equal number, everyone being only half fed, till Allah gave us rain, I would have done so. For men could still survive on half the food they need."(80)

The Institution of Hisbah

One of the unique institutions that is inseparable from the ethical role of the Islāmic State is the institution of hisbah. Due to its all-encompassing and peculiar characteristics, it probably has no direct equivalent in any other conception of state or society.⁽⁸¹⁾ Ibn Taymiya defined hisbah as the controls on individuals so as to observe what is commonly known as ma'rūf and to forbid what is commonly known as munkar, as consistent with the goal of State discussed above. This control is concerned with what does not fall under the authorities of governors, judges, or other specified public officers.⁽⁸²⁾ However, due to the all-encompassing nature of its functions, a contemporary writer⁽⁸³⁾ defined hisbah as "a control function of the government through persons engaged, especially in the fields of morals, religion, economy, and generally in their social lives, to achieve justice and righteousness according to the principles of Islām and to commonly known good customs of the time and environment".⁽⁸⁴⁾

From the classical definition of hisbah given by Ibn Taymiya, for instance, it is clear that the institution, even though an important instrument of the State, ideally should be independent of the govern-

ment, and even of the judiciary. This is consistent with the verse of the Qur'ān which categorically enjoins:

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: they are the ones to attain felicity." (3:104)

However, in practice more often than not this institution, which was practiced till the advent of this century⁽⁸⁵⁾ in many countries of the Muslim world, had been to some degree part of the government machinery.⁽⁸⁶⁾

The officer in charge of hisbah is called muhtasib. A muhtasib is not only responsible to oversee individuals with respect to their observance of religious rituals such as prayers, etc. but also on their socio-economic activities such as the operation of the market and the sufficient supply of essential necessities. His task also includes supervision of industry, services, trade, etc., to ensure correct weights and measures, the maintenance of a 'just price', the discouraging of monopoly and hoarding, the elimination of corruption and other fraudulent practices that affect the interests and welfare of the public.

In the context of our study, the muhtasib would also be able to ensure that (i) those who are eligible to pay zakāt, do actually pay zakāt; (ii) the 'āmilīn (zakat collectors) do perform their work properly and give zakāt proceeds to their rightful beneficiaries; and (iii) the department in charge of administering zakāt do discharge its

obligation consistent with the Sharī'ah.

Undoubtedly, the functions of the muhtasib in the contemporary world has to be carried out by a variety of government, semi-government and/or voluntary agencies.(87)

The responsibility of commanding what is ma'rūf (good, fair, right and proper) and forbidding what is munkar (evil, unfair, wrong and improper) is undoubtedly a noble duty. However, if these were carried out with excessive zeal it could be horrifying. That is why Ibn Taymiyah calls for a moderate and realistic approach, with great stress on the importance of knowledge, gentleness, patience, forbearance and generosity of spirit. To quote him:

"These three are essential: knowledge, gentleness and patience. Knowledge precedes command and prohibition, gentleness accompanies it, and patience follows, although all three really go hand in hand....As the Prophet, on him be peace, said: 'Gentleness beautifies; harshness disfigures....' If one is not forbearing and patient one will do more harm than good.(88)

D. THE OVERRIDING OBJECTIVE OF SHARĪ'AH AND AL-MASĀLIH AL-MURSALAH

Another way of approaching the question of ethics and justice in Islam is to see it from the perspective of the overriding objective of Sharī'ah (maqāsid al Sharī'ah). The early Muslim jurists, especially Abū Hanīfah and Mālik insisted that every Muslim should understand the law in order to practice it. They had what we now call an 'holistic' approach to Sharī'ah. As such, they emphasized that any right, just as

any prohibition, may be exercised only to achieve its purpose (maqāsid), and that the purpose of every right (to the extent we can understand it on our human/temporal level) is to maximize the total benefits (maṣāliḥ , pl. maṣlaḥa) to, or welfare of Allah's creation - just as every prohibition is to minimize costs or harm (mafsada, pl. mafāsīd).⁽⁸⁹⁾

This principle is not only based upon numerous Qur'ānic verses⁽⁹⁰⁾ but also on the following ḥadīth, which is very explicit:

"Created beings are the dependents of Allah, so the creature dearest to Allah is he who does most good to Allah's dependents. The merciful are shown mercy by the Allah-Merciful. Show mercy to those on earth, and He in Heaven will show mercy to you. Allah, be He blessed and exalted, has prescribed goodness toward everything."⁽⁹¹⁾

It is based on this consideration that al-maṣāliḥ al mursalah (literally meaning the maṣāliḥ that are not 'tied down' to specific texts) became an important principle of Islamic jurisprudence. This principle is closely related to the principle of istiḥsān, discussed in the previous chapter, and the principle of sadd al-dharā'i⁽⁹²⁾ (obstruction of the means leading to illegitimate ends). By the principle of al-maṣāliḥ al mursalah, new rulings are made which are without precedent, and/or previous rulings are suspended out of consideration of the best interests and welfare of society.⁽⁹³⁾ Even though this principle is the central theme of the Mālikī legal theory, it is accepted in principle by well-known jurists of the other schools, such as al-Ghazali (Shāfi'ī) and ibn Taymiyah (Ḥanbalī).

Undoubtedly, the unrestricted use of this principle (see for example some of the views of Modernist Muslims)⁽⁹⁴⁾ would undermine the immutability of Sharī'ah. This is the reason why Malik only approves the use of this principle under three conditions:

- (a) that it is applied in the area of social and economic transactions (al-mu'āmalāt) and not in the area of worship (al-'ibādāt);
- (b) that the interest (maṣlaḥa) should be in harmony with the spirit of the Sharī'ah; and
- (c) that the interest should be of the essential and necessary, and, not of the perfectionist or 'luxury' type. The essential and necessary type includes the preservation of religion, life, reason, offspring and property.⁽⁹⁵⁾ The perfectionist or 'luxury' type is one referring to 'decoration or embellishments'⁽⁹⁶⁾

Al-Ghazālī, consistent with al-Shafī'i's reservation on the use of this principle, cautiously restricted the use of this principle to necessity and need (ḍarūrāt wa ḥājāt). In his al-Mustaṣfā he says:

"We have restricted use of it (maṣlaḥa) to implementation of the purposes of the Law determined by the Qur'ān, Sunnah and Ijmā'. Every maṣlaḥa that does not consist of implementing the understood intent of the Qur'ān, Sunnah and Ijmā' is foreign and inappropriate to the operations of the Law. It is therefore void and rejected, and whoever has recourse to it is arrogating the power of legislation, just as whoever uses istiḥsān is legislating. Every valid maṣlaḥa is based on implementing the intent of the Law, which must be determined by the Qur'ān, Sunnah, and Ijmā', and must not fall outside the scope of these sources"⁽⁹⁷⁾

Ibn Taymiya, Ibn Qayyim⁽⁹⁸⁾ and of course al-Shāṭibī⁽⁹⁹⁾ all concur with this view, which consider 'needs and necessities' as the crucial factors in determining what constitutes public interest or welfare.

Undoubtedly, some of the clearest illustration of al-maṣāliḥ al-mursalah are decisions of the early caliphs. For example, Abū Bakr's compilation of the Qur'ān, 'Umar ibn al-Khaṭṭāb's decision to establish public registries (dawāwīn) according to Persian models, his refusal to distribute the conquered territories of Irāq and Egypt as booty to the victorious Muslim soldiers⁽¹⁰⁰⁾, and his suspension of the distribution of zakāt to the beneficiary referred to in the Qur'ān as al-mu'alaf al-qulūb.

It is based on this principle that al-Ghazālī permitted the if unavoidable the killing of Muslim captives who were used by the enemy as 'shield' in war.⁽¹⁰¹⁾ It is based on this principle also that al-Shāṭibī holds the view that it is legitimate for a just Muslim ruler to levy taxes upon the wealthy and upon agricultural produce, when the proceeds from zakāt prove to be insufficient to support the army, or meet other essential needs of the State.⁽¹⁰²⁾

Thus, based on this principle, it would be perfectly legitimate, for instance, to introduce changes in the collection and distribution of zakāt (as will be discussed in Chapters VII and VIII), taking into account contemporary situations, as long as these changes are consistent with the overall objectives of the Sharī'ah. In this respect it should be emphasized that juristic rulings established or suspended on

the principle of al-maṣāliḥ al-mursalāh, sadd al-dharāʾiʿ or istiḥsān are not regarded as having intrinsic permanence, like well-established precepts of Islamic law. Al-Qarāfī's explanation in this respect is pertinent. He states that: "precepts and rulings of law are divided into two categories: 1) those that are ends in themselves (maqāṣid) and 2) those that are means to ends (wasāʾil). Rulings made on the basis of al-maṣāliḥ al-mursalāh, for example, are only means to ends. Thus, he reasons, they are legally valid only as long as they continue to secure the ends for which they were first established."⁽¹⁰³⁾

NOTES

- (1) See the elaboration of this in Section D of this chapter.
- (2) An example of another instance where the Qur'an is very specific is related to the issue of inheritance (4:11) which in itself is intended to avoid concentration of wealth in one or few persons.
- (3) Each of the categories of beneficiaries is discussed separately in the following paragraphs.
- (4) Al-Qurtubī had, for instance, classified the views of jurists on this issue into nine groups. See his Al-Jāmi' li Ahkām al Qur'an, Dār al Kātib 'Arabī, Cairo, 1967, p.168-171.
- (5) It should be noted that the term faqīr (pl. fugarā') is also used by the Ṣufīs, denoting a member of a ṭarīqah. In this context it has a double meaning: a person who detaches himself from worldly desires and needs. He considers himself to be 'poor' in every sense compared to the Majesty, Greatness and the Glory of the Almighty God.
- (6) Al-Qurtubī, op. cit. See also al-Jassās, Abī Bakr Aḥmad bin 'Alī, Ahkām al Qur'an, p.122.
- (7) Al-Jazīrī, 'Abd Raḥmān, Kitāb al Fiqh 'Ala al-Madhhab al 'Arba'a, Vol.I, p.625.
- (8) Muhammad al-Jawād, al-Fiqh 'Ala al-Madhhab al Khamsah, p.177.
- (9) Al-Jazīrī, op. cit. and al-Jawad, op. cit.
- (10) Al-Qurtubī, op. cit.
- (11) 'Abdool 'Azīz Shaik, "Concept of Zakah: A Survey of Qur'ānic Texts and Their Explanations in Sharī'ah and Concemporary Economics in Some Aspects of the Economics of Zakah, M.Raquibuz-zamān (ed.) p. 9.
- (12) Ibid
- (13) Nasā'ī: Sunan, Kitāb al Isti'ādah. Bāb al Isti'ādah min shar'ī Kufr, reported by Abū Sa'īd Khudrī.

- (14) al-Qaradāwī, op. cit. p.586-587
- (15) Ibn Qudāmah, al-Mughnī, p.488
- (16) Al-Jazīrī, op. cit. p.623 (17) ‘Abdool ‘Azīz Shaik, op. cit. p.10
- (18) Ibid, p.11
- (19) al Qaradāwī, p.601-602
- (20) See further discussion on this subject by Muḥammad Qutb, Islām, the Misunderstood Religion, IFFSO, 1980.
- (21) This term had been used by many writers with respect to the use of local and immigrant laborer in the plantation industries in Southeast Asia, Africa, Latin America and the Carribean countries. With respect to Malaysian immigrant laborer see Jackson, R.N., Immigrant Labour and the Development of Malaya (1786-1920), K.Lumpur 1961.
- (22) See, for instance, the views of Mahmud Shaltut, Al-Islām ‘Aqīdah wa Sharī‘ah, p.123.
- (23) Ibid
- (24) Al-Qaradāwī, p.622
- (25) Cited in ‘Abdool ‘Azīz Shaik, op. cit., p.12
- (26) Al-Jazīrī, op. cit., p.624
- (27) Ibid
- (28) Mishkāt al Maṣābīh Bāb al Jihād.
- (29) Al-Qaradāwī, p.641
- (30) Muḥammad ‘Abduḥ, Tafsīr al Manār, Vol.10, p.587
- (31) Sayyid Qutb, Social Justice in Islām, p.133-138
- (32) ‘Abdul Raḥmān Anṣāry, Zakāt - The Religious Tax of Islām, p.22. Cited in ‘Abdool ‘Azīz Shaik, op. cit., p.14.
- (33) Saḥīḥ al Bukhārī, and Mishkāt al Maṣābīh.

- (34) Al-Qaraḍāwī, op. cit., p.68-685
- (35) These principles are mainly derived from the relevant Qur'ānic verses and the interpretation of the jurists. Even though these seven principles in this part had been mentioned by others (see, for instance, 'Abd Allah Ibrāhīm: Agihan Zakat kapada Aṣṅāf Yang Lapan di-Tinjau dari Sudut Siyāsah Sharī'ah (The Distribution of Zakat to the Eight Beneficiaries from the Perspective of 'Siyāsah Sharī'ah' (in Malay), A paper presented at the Conference of Zakāt organized by the Religious Section of the Prime Minister's Office, 2-3rd October, 1984 at the University of Malaya, K. Lumpur). This is probably the first time an attempt is made to integrate these principles (seen from the perspective of the State) with the ethical principles of distribution of zakat seen from the perspective of the individual.
- (36) Al-Qaraḍāwī, op. cit., p.590
- (37) Ibid. See also al-Nawawī, al-Majmū' Shar' al Muḥadhdhab, p. 164.
- (38) 'Abd Allah Ibrāhīm, op. cit., p.5. See also, al-Thawrī, al-Majmū', op. cit., p.133 and 164.
- (39) Al-Nawawī, op. cit., pp.161-162
- (40) Ibid, p.133
- (41) Al-Māwardī, al-Aḥkām al Sultāniyyah, p.123
- (42) 'Abd Allah Ibrāhīm, op. cit., p.12
- (43) Al-Nawawī, op. cit., p.133, and al-Māwardī, p.123
- (44) 'Abd Allah Ibrāhīm, op. cit., p.13
- (45) Ibid
- (46) Borrowing the title of the translation of an extract of Al-Ghazālī's Iḥyā' by Mukhtār Holland: "Inner Dimensions of Islāmic Worship," The Islāmic Foundation, London 1983.
- (47) Al-Ghazālī did not call these as principles but as "certain inward attitudes and duties incumbent on those who seek, through the payment of their Alms, the way that leads to the Hereafter" - Mukhtār Holland (trans), ibid, p.53.

- (48) Al-Ghazālī, *ibid*, p.58
- (49) *Ibid*, Ḥadīth from Aḥmad ibn Ḥanbal (M. Holland, footnote).
- (50) *Ibid*. The source cannot be traced in this formulation. Al-Ghazālī has often been accused of quoting ḥadīth which is either weak or cannot be traced its source. However, some of such ḥadīth are requoted here because they effectively convey the message intended and they do not seem to contradict the spirit of the Sharī‘ah.
- (51) *Ibid*, p.62
- (52) *Ibid*
- (53) *Ibid*, p.62
- (54) *Ibid*
- (55) *Ibid*, p.64
- (56) *Ibid*, p.65
- (57) *Ibid*, p.67
- (58) *Ibid*
- (59) *Ibid*, p.68, Traced to al-Nasā’ī and Ibn Hibbān (M.Holland, p.140)
- (60) *Ibid*, p.68-73
- (61) *Ibid*, p.73
- (62) Ibn Taymiyah, Public Duties in Islām, The Instituton of the Ḥisba, M. Holland (trans.) The Islamic Foundation, London, 1982, p.15.
- (63) Ibn Taymiyah, Al-Siyāsah al Shar‘īyyah, pp.184-185. See also Abdul Azim Islahi, Economic View of Ibn Taymiya. Ph.D. Thesis Aligarh University 1980, p.163-164.
- (64) Rosenthal, Erwin I.J. Political Thought in Medieval Islām, Cambridge U.Press 1962, p.44.
- (65) Ibn Taymiyah, *op. cit.*, p.185

- (66) Dunning commenting on Thomas Aquinas: "In respect to individual action in slaying tyrants, he observes that it is more often bad men than good that undertakes such an enterprise and that, since bad men find the rule of kings no less burdensome than that of tyrants, the recognition of the right of private citizen to kill tyrants involves rather more change of losing a king than of being relieved of a tyrant". Dunning, W.A., A History of Political Theories, 1966, p. 200.
- (67) Al-Māwardī, op. cit., pp.15-16.
- (68) Muḥammad S.El-Awa, On the Political System of Islāmic State, American Trust Publication, Indiana 1980.
- (69) Al-Māwardī, op. cit.
- (70) See the summary of the view of Al-Ghazzali regarding this in Sherwānī's Muslim Political Thought and Administration.
- (71) Heckscher, Eli F., Mercantalism, trans. Shapiro, (London: George Allen & Unwin Ltd. 1962), Vol.II, pp.285.
- (72) Ibn Taymiya, op. cit.
- (73) We refer here to Ibn Taymiya, al-Ghazālī, al-Shāṭibī beside the founders of the schools of jurisprudence and their followers.
- (74) The concept of 'Welfare State' introduced in Europe had always emphasized the fulfillment of material needs of men, either tangible (food, shelters, etc.) or untangible such as 'freedom' etc. According to one definition: "The term welfare state with its specific meaning of social and economic security of basic minimum came into widespread use only during and after World War II. Such general publicly sponsored programs of social and economic welfare were first called "Welfare State programs in Britain." (Ebenstein, W., Encyclopaedia Americana, Vol.XXVIII, p. 606.)
- (75) Al-Shaybānī, Muḥammad bin al Ḥassan, Kitāb al Āthār, Chapter: Faḍā'il al Ṣaḥābah (Hadith No.852). Cited in M. Neḡātullah Ṣiddīqī, Gaurantee of Minimum Level of Living in an Islāmic State: Basis in Sharī'ah, Rationale and Contemporary Implications, Second International Conference on Islāmic Economics (Islamic University, Islāmabād, March 19-23, 1983), p.17.
- (76) Ibn al Jauzī, Seerat 'Umar bin 'Abd al 'Azīz, pp.154-155

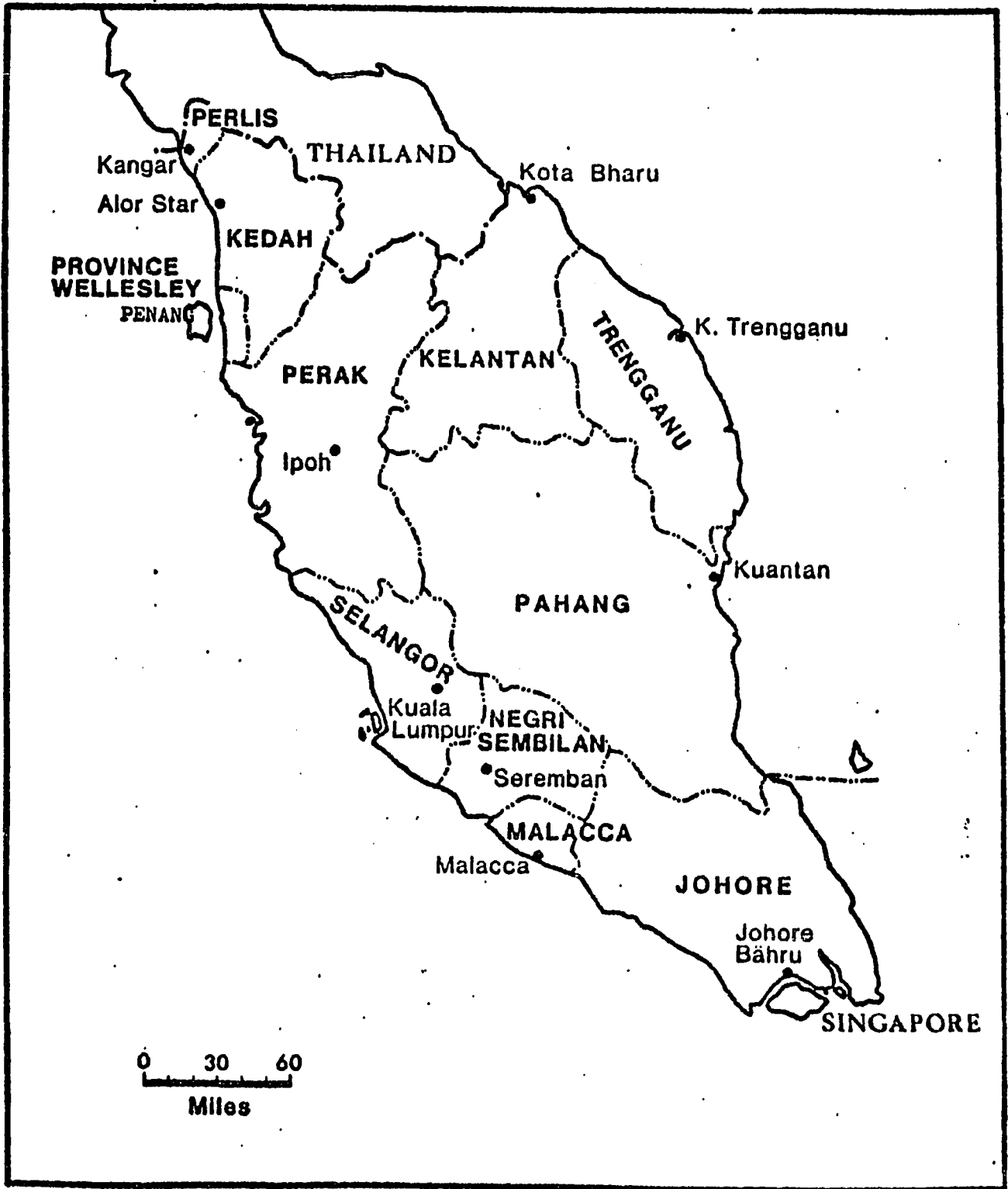
- (77) Al-Shaybānī, op. cit., al-Jauzī, ibid. Cited by Nejātullah Şiddīqī, op. cit., p.17.
- (78) Ibn Sa'd, al-Tabaqāt al Kubrā, Vol.3, p.283. Cited also by Nejātullah Şiddīqī.
- (79) Ibn 'Abd al Ḥakam: Seerat 'Umar bin 'Abd al 'Azīz, p.67, and Abu 'Ubaid: Kitāb al Amwāl, p.251. Cited by Nejātullah Şiddīqī, op. cit.
- (80) Muḥammad ibn Sa'd, op. cit., Vol.3, p.317
- (81) The officer in charge of ḥisbah is called muḥtasib. Since one of the primary function of the muḥtasib in practice has been to look after the market activities and control them, some considered it to be of Greek origin where such department existed by the name of agoranomos. But there is no sufficient proofs regarding muḥtasib's link with Hellenistic agoranomos. The early writers on ḥisbah ascribe its origin to the verses of the Qur'ān (3:104) and to the act of the Prophet himself.
- (82) Al-Māwardī, op. cit., p.240
- (83) N. Ziadah, Al-Ḥisbah wa al Muḥtasib fī al Islām. (Beirut, Catholic Press, 1963), p.32.
- (84) Ibid
- (85) Muḥammad Akram Khān, Al-Ḥisba and the Islāmic Economy, in Public Duties in Islām (Trans. M. Holland), op. cit., p.135-148.
- (86) Ibid
- (87) Ibid
- (88) Ibn Taymiya, Public Duties in Islām, op. cit., p.15.
- (89) Al-Shāṭibī, Al-Muwāfaqāt, Vol. 2, pp. 331-333
- (90) Qur'ānic verses such as (4:165); (21:107); (11:7) and (39:10) See further discussion on this in Othman A.R. Llewellyn's, "Islāmic Jurisprudence and Environmental Planning", Journal of Research in Islāmic Economics, Vol. 1, No. 2, Winter 1984.

- (91) Mishkāt al-Maṣābīh, (compiled by al-Tabrīzī, 737 Hijrah/ 1337 C.E.), Vol. 2, p. 613.
- (92) "Sadd adh dharā'ī" [lit., the obstruction of means (to illegitimate ends)] is the distinctive feature of Mālikī and Ḥanbalī schools. It is a principle of legal reasoning whereby ostensibly permissible acts are prohibited [i.e. obstructed] whenever they become means [dharā'ī] to impermissible ends. It is used primarily for invalidating legal fictions [hiyal], and Ibn Taimiyah praises Malik highly for the consistency with which he applies sadd adh-dharā'ī to that end." 'Abd-Allah, U.F. Malik's concept of "Amal" in the Light of Mālikī Legal Theory, Ph.D. Thesis, University of Chicago, 1978.
- (93) For an excellent discussion on this see 'Abd-Allah, U.F., *ibid*, pp. 268-273.
- (94) See Muḥammad Musleḥuddīn, Philosophy of Islamic Law and the Orientalist, Islamic Pub. Ltd., Lahore (n.d.), p. 156-179.
- (95) *Ibid*
- (96) *Ibid*, p.162
- (97) Ghazālī, al-Mustaṣfā, pp. 143-144.
- (98) See 'Abd-Allah, *op. cit.*
- (99) *Ibid*
- (100) *Ibid*, p.273
- (101) Ghazālī, *op. cit.*
- (102) Al-Shāṭibī, Al-I'tisām, vol.2, p. 295-298, cited also in 'Abd-Allah, *op. cit.*, p.274.
- (103) 'Abd-Allah, *Ibid*, p.273.

PART THREE:

THE PRACTICE OF ZAKAT IN MALAYSIA

Peninsular Malaysia



MAP 1

CHAPTER V

**HISTORICAL AND SOCIO-POLITICAL BACKGROUND TO THE
PRACTICE OF ZAKĀT IN MALAYSIA**

The primary objective of this chapter is to trace the historical origin as well as the socio-political background of the contemporary practice of zakāt in Malaysia. Following a brief introduction to the main outline of Malaysia's geography and history, this chapter will then be divided into two broad sections: the 'pre-colonial' and 'colonial' periods. The section on the pre-colonial period will discuss the nature of traditional Malay society prior to the advent of British colonial, rule with emphasis on the role of Islām in general and the practice of zakāt in particular. Special reference will be given to the State of Kedah. The section on the colonial period will focus on the impact of colonialism on the Malay socio-political system, with emphasis on the bureaucratization of the 'administration of Islām' and its effects on the practice of zakāt in Malaysia. To illustrate the full significance of this impact, we will focus our discussion on another Malay State, namely Kelantan.

A. MALAYSIA: AN OVERVIEW

Peninsular Malaysia is located on the southernmost part of the Southeast Asian peninsula, below Thailand and Burma, and is bounded on the east by the South China Sea and on the west by the Straits of

Malacca. The country measures less than 500 miles from north to south and 200 miles from east to west at its widest point. The southern tip is one degree of latitude north of the equator.

Malaysia is a federation of thirteen states, eleven of which are located in Peninsular Malaysia, while Sabah and Sarawak, the two states in East Malaysia, are located on the island of Borneo. The Peninsular Malaysian states are (from north to south) Perlis, Kedah, Penang, Perak, Selangor, Negeri Sembilan and Malacca on the west coast; and Kelantan, Trengganu and Pahang on the east coast. The southernmost state is Johore with the independent island republic of Singapore at its southern tip.

Due to its strategic geographic location, the Malay world has been subjected to various cultural influences throughout its history. From the earliest Christian era it was already exposed to the cultural encroachment of India, and the process of 'Indianization' was widely felt by the 5th century A.C.⁽¹⁾ This resulted in the rise of a number of Indianized states geographically defined by rivers. Between the 7th and 14th centuries Palembang, an ancient Malay Kingdom in Sumatra which is considered the historical home of the Malay race, became a powerful Buddhist kingdom whose domain extended north in Malaya as far as Perak. The ascendancy of this Malay power virtually collapsed with the conquest by the Hindu Majapahit empire of Java in the middle of the fourteenth century. By this time, also, Islam already had established its presence and influence in the coastal regions of the Malay

world, through the missionary works of some devout Muslims and traders⁽²⁾, particularly in Trengganu⁽³⁾ and Pasai in Sumatra.⁽⁴⁾

However, the major turning point for the history of the Malay world was the founding of the Malacca Sultanate and its reception of Islam. By 1500, the Sultanate had extended its political control over many of the river states in East Sumatra and the Malay Peninsula. The Malacca Sultanate also managed to counter effectively, at least temporarily, the Siamese rule which in 1400 A.C. had prevailed over the northern part of the Malay Peninsula. With Islām came the Arabic alphabet, an Arabic vocabulary, and an Islāmic culture in place of the Hindu and Buddhist traditions. The profound impact of these changes transformed Malaya into an historical, political, cultural and geographic entity.⁽⁵⁾

European colonizers appeared in the Malay world in the early part of the 16th century. The Portuguese captured Malacca in 1511, and were followed by the Dutch who ousted them in 1641 and gained control. The Dutch were later displaced by the British. By 1824, Britain had established its first foothold on the Malay Peninsula at Penang, Singapore and Malacca which collectively were known then as Straits Settlements. Between 1874 and 1888 Britain imposed its control upon Perak, Selangor, Negeri Sembilan and Pahang. Directed initially by British 'advisors' (known as 'Residents') forced upon their native rulers, these four states were conjoined in 1895 under a central administration known as the Federated Malay States. Subsequently,

Britain acquired Kedah, Perlis, Kelantan and Trengganu (all ceded by Siam in 1909), and later also Johore.

These last five states (two of which - Kedah and Kelantan - are the major focus of this study) refused to be included in the Federation and were known as the Unfederated Malay States. These States were individually administered under a form of 'indirect rule' by British 'Advisers,' who governed the states in the name of the traditional Malay rulers. British officials in these states were few in number, and thus had to work through Malays officers recruited from leading local families. These Malay elites identified themselves closely with their wards, "zealously protecting their individuality and administrative autonomy, and attempting to preserve their traditional Malay character".⁽⁶⁾ In most cases, they also discouraged both the immigration of aliens, especially Chinese and Indians, and the development of modern industry and commerce. This was in direct contrast to the situation prevailing in the Federated Malay States with their tin mines, rubber plantations, modern trade and commerce. There became the economic niches for the immigrant sectors of a cosmopolitan population attracted by British policies.⁽⁷⁾

After the short break of Japanese rule during World War II, the British introduced a highly centralized administrative arrangement known as the 'Malayan Union'. Due to strong opposition from the Malays, this scheme was abandoned in favor of a 'Federation of Malaya', comprising all of the Federated and Unfederated Malay States and also

the Straits Settlement (with the exception of Singapore, which became independent in 1957). In 1963 this federation was expanded into the Malaysian federation with the inclusion of the East Malaysian States of Sabah, Sarawak and Singapore.

With the separation of Singapore (where more than 80% of the population are Chinese) from Malaysia in 1965, the demographic breakdown of Malaysia based on the census of 1970, was about 53% Malays, 35% Chinese and 11% of Indian origin.⁽⁸⁾

B. PRE-COLONIAL PERIOD

This section which primarily deals with the traditional Malay society before the advent of British rule, is divided into three subsections: (i) the traditional Malay political system; (ii) the role of Islam in the traditional Malay society and (iii) the socio-economic profiles of traditional Malay villages with special references to the peasants, the practice of zakāt, and landlordism.

1. AN OUTLINE OF THE TRADITIONAL MALAY POLITICAL SYSTEM

Any general account of the political or socio-economic systems in pre-colonial Malaysia⁽⁹⁾ as a whole would be an abstraction and simplification which does not necessarily correspond exactly with the complexity of the situation. It may be able to show the shape and the nature of the wood if not each of the trees. However, to enable

us to have a closer look at some of the trees, we will focus our discussion in this section on one of the popular modes of land settlement at the village level. Namely, we shall look close at the paddy-growing state of pre-colonial Kedah, which is also the main focus of his study.

The largest political unit in pre-colonial Malaysia was negeri (which more or less corresponds with the present 'State' in the Malaysian Federation). Significantly, in view of the derivation of the Malay political system from the Malacca Sultanate,⁽¹⁰⁾ negeri originally meant a city. By the nineteenth century, however, negeri generally denoted an extent of territory under an independent ruler.⁽¹¹⁾ The territory comprised in a State (Negeri) was related to the geographical structure of the peninsula and to the use of rivers as the main lines of communication and trade. At the apex of the State as a political unit was its ruler, who was drawn from a royal family and bore the title yang di pertuan besar (he who is made lord) or Raja. In most cases he bore the Arabic honorific prefix of sultān (which in Arabic denotes an independent ruler).

It should also be noted that in the Malay language the word for 'government' is kerajaan (derived from the root-word raja, which means a king). Thus in pre-colonial Malaysia 'state' and 'government' are synonymous. The functions of the royal ruler were to exercise the limited powers of central government: to conduct external relations, to provide leadership in foreign wars, and to embody and symbolize the

unity and welfare of the State. He was assisted and supported by his kinsmen in the royal lineage and by a number of executive assistants.

In descending order of size, the next political unit was the district (jajahan or daerah). Like the State, the district was a territory shaped by the use of rivers as lines of communication. A fort at the down-stream end of the district provided an effective means of control. The ruler of a district was a chief drawn from a lineage, which usually had a long established connection with the district. The functions of a chief in his district were local administration, justice, defense, revenue collection and general leadership. The chief had few ritual functions. He was assisted by a number of helpers and deputies who were generally close kinsmen.

The smallest political unit was the village (kampong). This was a unit of common residence and, to some extent, of kinship and economic cooperation. Only secondarily was it a unit of political control. The head of the village (except in Negeri Sembilan) was the Penghulu (Headman), who was the bridge and channel of communication between the residents of the village and the district chief. Besides the Penghulu who enjoyed high status within his village, there were also other elites within a village, such as the religious elites which we will discuss later.

According to Gullick, in the context of the Malay States the obvious bases of human association was residence, and communication and participation in a single economic system.⁽¹²⁾ To this, one

should add another element which many sociologists, anthropologists and political scientists, especially of Marxist persuasion, tend to ignore or downgrade, i.e. a common faith.⁽¹³⁾ The village definitely was the convenient unit of common residence. The peasant economy of the villages was by no means autarchic; and it dictated a system of communication and economic participation. Both were based on the use of rivers as the main channel of movement and trade. As a result, there had to be a measure of peaceful intercommunication and trade over the area of a river basin. It was impossible for people to live in inland villages unless traders serving their needs could (at a price) pass the villages further downstream. These factors determined the extent and frontiers of the Malay State.

However, if these factors had been everything, one would expect to have found a relatively strong and centralized system of government in each State. But the Malay techniques of communication and political organization were incapable of operating as a unitary system of control over so large an area. Within the State, power was dispersed among district chiefs.

There was thus a conflict, or balance of centrifugal and centripetal forces. The "King's Peace" over the area of a State was an economic necessity.⁽¹⁴⁾ On the other hand, the predilection of the chiefs in the exercise of their power, was to break up the State into smaller warring districts. In fact to a certain extent some of the Malay States did break up, which led to economic chaos and depopula-

tion. This process of disintegration of the indigenous political systems, at least temporarily, took place in the middle of 19th century when the British Empire with its modern capitalistic system began to penetrate and expand into the mainland of Peninsular Malaysia following their occupation of Penang (1789), Singapore (1819) and Malacca (1824) - the three trading ports (called Straits Settlements) situated in the strategic Straits of Malacca.⁽¹⁵⁾ We shall again take up the question of the impact of British rule on the Malay society once we have discussed the role of Islām in traditional Malay society and the socio-economic conditions at the village level in pre-colonial Malaysia.

2. THE ROLE OF ISLAM IN TRADITIONAL MALAY SOCIETY

W.R. Roff, in one of his influential studies, remarked that prior to the 'protectorate period', i.e. before the Malay States came directly under British rule, "Islām in Malaysia had not, in any effective sense, been a 'State religion'."⁽¹⁶⁾ It is difficult to agree or to disagree with such a statement due to the operative phrase 'in any effective sense' and the ambiguity, or more precisely, the lack of clarity, of his term 'state religion'. Roff continues the statement by saying that, "In the realm of religious belief, as in that of political organization, the Malay State as a rule lacked the resources necessary for the centralization of authority."⁽¹⁷⁾ The lack of central authority in the administration or enforcement of "religious

belief" (what he means here is probably "religious practice") do not constitute a convincing reason for doubting the position of Islām as 'State religion' in the Malay States. If by the former statement he meant that the Malay ruler had been rather lax in the implementation of Sharī'ah, or that Malay rule in general had been more influenced by Malay custom than Islām, we can quite understand, even if it does not totally agree with our observation. It should be emphasized that what is considered to be Malay custom has been very much influenced by Islam. (18)

As Roff himself correctly observes:

" There certainly did exist a clear if frequently inactive association between the secular power and the religious life of the people. Indeed to speak 'secular' power in this context is a misnomer, for the relationship between ruler and ruled was one that did not admit of simple classification and certainly embraced the spiritual as well as the material well-being of the state as an entity." (19)

At the installation of a Malay ruler for instance, it is customary for an official of the court mosque to invoke God's blessings upon the ruler and the State and to recite the Qur'ānic text, "Lo, We have set thee as a Viceroy upon the Earth," (20) as a warranty of the ruler's responsibilities as defender and arbiter of the Faith. (21)

Even if the formal discharge of these responsibilities were not often practiced, or allowed to decay because of lack of interest or piety on the part of some rulers (as were also the case in some other Muslim kingdoms in West Asia or India), this, however, was not always

true. In the 1880s in Kelantan, for instance, the Chief Minister of the State, Maha Menteri, a devout Muslim himself, was successful in enforcing Shari'ah upon a large portion of the population.⁽²²⁾ In the State of Perak, on the other hand, an office corresponding to the State Mufti, was in fact exercised by one of the eight major hereditary chiefs, the Orang Kaya2 Imam Paduka Tuan. In 1818 when the holder of the title was promoted to a higher rank, the office of Imam Paduka became a non-hereditary title, the appointment of which was made by the Sulṭān. In theory, the Imam Paduka held religious jurisdiction over the subjects, even though in practice actual enforcement depended upon the incumbents' own devotion to the faith.⁽²³⁾

3. A PROFILE OF A TRADITIONAL MALAY VILLAGE:

The Peasants, Zakat and Landlordism

The villages in Malaysia, as in other parts of the world, evolved through land settlement or colonization. There are a number of methods of land settlement or colonization that were practiced in pre-colonial Malaysia. One of the popular methods of land colonization, after the advent of Islām, was the collective pondok system,⁽²⁴⁾ which was particularly common in the Muda Region of Kedah (see Map 2 following page). By this system, a group of settlers would gather around a person who is well-versed in Islāmic knowledge or who had already established himself as a religious teacher. When they found a suitab-

le area in the Muda Region, for instance, they would stake a claim there and build their pondok (huts) around a madrasah - i.e. a religious center for worship as well as teaching. In the case of an already established group, they would invite a religious teacher from elsewhere to set up a madrasah among them. This religious teacher was also the imām of the community, in the sense that he led the five daily prayers in the mosque or madrasah.

The routine of these peasants would be that during the day they would go out to open up lands around the cluster of their pondok, leaving their children to the teacher for religious education. Some of the wives, who were unable to follow them to the fields, also obtained religious instructions from the teacher. The peasants themselves would receive religious education from the teacher at least once or twice a week, usually between the two evening prayers of Maghrib and 'Ishā'. On the eve of every Friday the session would run longer because it was a day of rest. On Friday, the peasants spend more time in the mosque than in the field.

As an appreciation for the service provided by the teacher, the peasants normally would collectively clear a piece of land and cultivate it for the teacher. Gradually, as lands became more productive and the production level of each peasant family exceeded the nisāb of 480 gantang⁽²⁵⁾ each harvesting, they would pay zakāt at the rate of 10 percent of the gross yield of the paddy.⁽²⁶⁾ According to 'Afīfuddīn⁽²⁷⁾, in those early days all the zakāt from a particular group in the

pondok system would go to the teacher. As such, a group of 50 zakāt paying peasants would contribute a minimum of 2400 gantang to the teacher annually. Through the years a substantial amount of wealth could accumulate.

We do not have concrete evidence on how these zakāt proceeds were spent by the religious teachers. It is possible that some of the religious teachers, at least, would have spent a substantial portion of the zakāt they received to the aṣṅāf, mentioned in the Qur'ān, as well as for the maintenance and expansion of the madrasah. This is supported by the fact that until the early part of the 20th century some of the famous and important madrasah in Kedah for instance, were mainly supported by the peasants through the zakāt proceeds.⁽²⁸⁾

However, some writers such as 'Affuddīn⁽²⁹⁾ believed that most of the religious teachers, who were endowed with such wealth, invested their wealth in more land. This, he argues, was especially possible after land ownership was allowed to the peasantry.⁽³⁰⁾ Most of the lands bought by the teachers.....

"were located at a distance from the pondok community in order to make less apparent their gradual economic differentiation from the ordinary peasants. The new lands acquired were usually rented to peasants residing near these parcels. Thus religious teachers who once were on the same economic level as ordinary peasants, now moved up the economic ladder, although most of them maintained life styles not very different from those of their followers."⁽³¹⁾

However, it would be a gross error to assume that zakāt was a

cause or even the main cause, for the rise of landlordism in the Muda region of Kedah. As we shall see, the factors that contributed to this were many, and appear to be part and parcel of what is referred to, rightly or wrongly, as the 'feudal' system.

The pondok pattern of land colonization was quite common in paddy-growing areas in Malaysia, as can be seen from the well dispersed nature of this mode of peasant settlements in the Muda region (Map 2). At the initial stage, each community was rather homogeneous. But after few generations there emerged stratification within the community, as well as acceptance of other social groups into the community. This happened because of a number of factors, such as accumulation of land and wealth among some, as well as the improvement in communication between villages with the building of roads and canals to augment the traditional transportation system of rivers and the sea. However, the situation became more acute with the introduction of a cash economy after the coming of the Western powers to the region.

What was the nature of the relationship between this pondok community and the State? Did the peasants have to pay any other taxes or services to the State? What role did the religious scholars ('ulamā') play at the State level?

It has been said that from the pondok community, the ruling elites obtained much of the 'spiritual' services.⁽³²⁾ For example at times, an entire pondok community would congregate at the funeral service of a member of the ruling elites. In return, each of them

would be a given sadaqah, alms, usually in the form of money. In fact, the conduct of all ceremonies such as religious anniversaries, weddings, important feasts, etc., celebrated by the ruling elites were led by the religious teachers and attended by their followers.

The close associations between the 'ulamā' and the ruling elites undoubtedly strengthened the legitimacy of the traditional political system. The ruling elites generally recognized the piety of the religious teachers, who were also often invited to the palace or to the residence of the district chief to conduct religious classes, to counsel, and to perform Islamic ceremonial prayers during court rites. The 'ulamā' were well rewarded both materially and in terms of social rank and prestige.

The spread of new means of transportation such as canal and roads, also enabled the ruler and ruling elites to strengthen the power base of the State by further extending their jurisdiction over agrarian land which had hitherto been owned and/or operated on a communal basis, such as the pondok system mentioned above. This was sometimes reinforced by the promulgation of a land code, such as the Laws of Dato' Seri Paduka Tuan in 1667 A.C. in Kedah.⁽³³⁾ With respect to the colonization of land, it stresses the prerogatives of the State, as embodied in the following excerpt:

"due to the significant functions of roads, their absence would not enable the people to open new areas....if a land-owner refuses the right of way for road construction, the State would purchase the land, but if he is still adamant,

force should be used..."⁽³⁴⁾

(translated)

Much has been written on what is often referred to as 'the proprietary theory of the State'⁽³⁵⁾ in a 'feudal' system. G.E. Lenski is credited to have propounded this theory first. He states:

"According to this theory, the State is a piece of property which its owner may use, within broad and somewhat ill defined limits, for his personal advantage. Also like most other forms of property it can usually be transmitted to one's heirs..... Guided by the proprietary theory of the State, agrarian rulers saw nothing improper or immoral in the use of what we, not they, could call 'public office' for private gain."⁽³⁶⁾

As such, even though the peasants operated the land, ownership⁽³⁷⁾ was in the hands of the ruler or Sultan. Even though in Islāmic political theory the ruler is supposed to be the 'Guardian' of such 'property' which belongs to God,⁽³⁸⁾ the practice in Malaysia generally was that the Sulṭān would either extract rent himself, or grant it, together with the rent obligation of the operating peasant, to anyone of his choice-- usually a member of the ruling elites. In the latter case the peasant had to pay rent in the form of krah (a compulsory free labor) to two landlords, the Sulṭān and the grantee, if the grantee happened to be a district chief.⁽³⁹⁾ If not, the peasant had to perform the krah to more than two landlords. In fact, before the 18th century, most of the lands where the ruler did not hold ownership himself were ceded to the district chiefs, other members of the royal family, bureaucrats, or anyone whom the Sulṭān favored. Peasants would have to pay rent to whoever happened to hold the grants over the

lands they cultivated.

The usual land tenure arrangement between the peasants and their land owners was either through what was called pawah, or the bagi dua (share-cropping) system, -- to be paid in the form of free labor under the krah system, or later, when this was abolished, paid either in kind or in cash. Income of the ruling elites was largely derived from these sources.

Although in theory, the tenurial arrangement was stipulated by the land code, in practice there was a high degree of abuse and malpractice in favor of the ruling elites. In 1830, --i.e. long before Kedah came under British rule J.J.Scott observed that:

"certain months are allowed the many to plant and reap their paddy, and this when stored is sacred, and cannot be taken away from their possession; with this exception all the rest of their time, exertions or acquirements, may be taken by the King or his officers, if so inclined...."(40)

Other writers such as Windstedt commented that:"in Kedah there was a tax on every plough.....The system of taxation encouraged reckless improvidence and discouraged thrift and enterprise."⁽⁴¹⁾ The peasantry was left with only the basic needs of subsistence living. What was observed in Kedah was also true for other States in Malaysia. In fact it was, and it is to some extent, applicable to agrarian societies in general. As Ḥabīb succinctly observed in the case of the Mogul Empire of India:

" Imperial revenue policy was obviously shaped by two

basic considerations. First,...the tendency was to set the revenue demand at the highest rate possible so as to secure the greatest military strength for the Empire. But, secondly it must also have been clear that if revenue rate was raised so high as to leave the peasant not enough for his survival, the revenue collections would soon fall in absolute terms. These considerations explain why the revenue demand as set by the imperial authorities usually approximated to the surplus produce, leaving the peasant only the barest minimum needed for subsistence."⁽⁴²⁾

This state of affair in the case of Kedah undoubtedly produced conflict, not so much in the form of organized peasant rebellions but, paradoxically, in the form of quarrels among the ruling elites themselves. Organized peasant protest "seldom went beyond banditry preying upon the properties of the ruling class."⁽⁴³⁾

The conflicts among the ruling elites were basically due to the varying degree of fertility of the lands they had been granted. Some of them became wealthier and more powerful than others, resulting in special relationships with the Sulṭān. Those district chiefs who were relatively less wealthy would attempt to extract even more from the peasantry. However, there is a limit to this. Under extreme abuse, the peasantry would either push further inland to open up new frontiers. Or, as Gullick pointed out, they would join other district chiefs⁽⁴⁴⁾, whom in their view were more just or less exploitative.

Thus, the traditional socio-economic system had its own form of checks and balances, which to some extent managed to provide a degree of stability and prosperity. Thus, it is not surprising when Logan in

1885 (i.e. not long before the coming of British) describes the Muda region of Kedah as...

" a magnificent plain which I can only compare to one of the wide plains of Bengal for there is nothing like it in the rest of the Peninsula. The whole is an immense paddy field broken at great intervals by clumps and belts of trees."⁽⁴⁵⁾

C. THE COLONIAL PERIOD

This section, which primarily focuses on the practice of zakāt during the colonial period, is divided into three sub-sections, the first two of which highlights its socio-political background: (i) the disintegration of traditional political structures as a result of colonialism; (ii) the genesis of the bureaucratization of the 'administration of Islām' as a result of colonial policies, and finally (iii) the administration of zakāt under colonial rule with special reference to the experience of the State of Kelantan.

1. THE DISINTEGRATION OF TRADITIONAL POLITICAL STRUCTURE

The existence of the three trading enclaves (Straits Settlements) mentioned earlier, which were declared as "free ports" by the British, marked the beginning of the incorporation of Malayan States into the international capitalist system.⁽⁴⁶⁾ The treaty of 1842 ending the Napoleonic War, permitted the Dutch and the British to carve up among themselves all the islands of Southeast Asia and the

Malay Peninsula. The present territory of Malaysia (including Sarawak and Sabah) and Singapore came under the sphere of influence of the British; while the present territory of Indonesia came under the sphere of influence of the Dutch. However, it was only in 1874 that the British for the first time formally "intervened" in Perak - a State in which the largest tin mine in the world is located. The basis of British "intervention" in the Malay States was to be found in the key passage (Clause VI) of the Treaty of Pangkor by which the Malay State of Perak capitulated to the British:-

" That the Sulṭān receive and provide a suitable residence for a British Officer, to be called Resident, who shall be accredited to his Court, and whose advice must be asked and acted upon in all questions other than those touching Malay religion and custom."(47)

This arrangement was further stressed by a clause which stipulated that the collection and control of all revenues and the general administration of the State should "be regulated under the advice" of the Resident. Similar treaties were also later signed with other Malay States: Selangor (1874), Negeri Sembilan (1876) and Pahang (1888).

What was meant by 'Malay religion' in the provision above is of course Islam. This was also the origin of the concept of separation of Islām from the 'secular' affairs of the State in Malaysia. By this provision, also, the Sulṭān in each Malay State became the 'Head' or 'Guardian' of Islām in his own state.

The Treaty of Pangkor, however, formed the basis for what is often called the system of 'indirect rule' in Malaysia. This system,

as we shall see, is not something voluntarily accepted by the indigenous Malay Sultāns but was imposed on them by the combination of military operations and financial inducements.

However, "the feeling of loss of real power, possibly of national dignity, of constraint and forced obedience to law, compensated for only by a moderate salary or pension, will not at once die out in the breasts of many Rajas and of their immediate followers."⁽⁴⁸⁾ The solution to the problem was found in converting the unemployed and frustrated aristocrats into civil servants. The first attempt, however, was a dismal failure. In the 1880s the Malay chiefs were often appointed to the honorific post of 'Malay Magistrate' in the districts which they had once governed, so that they might advise the British District Officer who had displaced them. However, lack of education combined with traditional attitudes to the obligations of kinship, and the customary perquisites of authority (misdescribed by the British as 'nepotism' and 'bribery'), rendered the old-style Malay aristocrat unsuitable as a partner to the new colonial regime.

The second attempt consisted in educating the next generation of Malay aristocrats in the English fashion. After some ineffectual experiments in particular states, a training center, organized on the lines of an English public school, was established in 1905. It was known as the Malay College, Kuala Kangsar (Perak), and was to serve all states. This 'Malay Eton', as it was sometimes called, was a first attempt at 'westernizing' the Malay elites. It initially took

only pupils of royal or aristocratic birth. The main function of the college was to train its pupils for appointment to the administrative branches of the civil service.

Another factor which helped to reconcile the Malay ruling elites to the Residential System was the tactfulness of some of the British advisers themselves in distinguishing between executive control and the constitutional basis of power. The Residential system meant government in the name of the Sultān of the State. In addition to the consultative machinery of the State Councils, the early British Residents took the trouble to confer with the Malay rulers, to keep them informed and to treat them with due deference as royalty.

2. THE GENESIS OF THE BUREAUCRATIZATION OF THE ADMINISTRATION OF ISLĀM IN MALAYSIA

As stated earlier, the Pangkor Treaty which became the model for all subsequent treaty arrangements with the Malay States, explicitly excluded from compulsory British Resident's "advice" questions pertaining to "Malay religion and custom". Beside Perak, only in the States of Kelantan, Kedah and Johore was this provision left intact; whereas in the remaining States only "Islām" was specifically mentioned. However, the general principles of non-interference in religious matters do not necessarily imply that the British rule had no effect on Islām in the Malay States. On the contrary, "the preserva-

tion and reinforcement of the traditional bases of authority and social organization implicit in this policy, together with greatly improved means of communication and centralization and backed by the effective sanctions open to British-supported Sulṭāns, combined to produce an authoritarian form of religious administration much beyond anything known to the peninsula before."⁽⁴⁹⁾

The rulers and traditional Malay elites sensing the loss of real power to influence the destiny of their States, naturally decided to focus their attention on the only fields now left to them, namely 'religion and custom'. Thus, a direct consequence of colonial rule was the concentration of doctrinal and administrative religious authority in the hands of a hierarchy of officials directly dependent on the Sultans for their position and power. This can be seen, for instance, in the establishment in each Malay State of a central organization such as The Council of Religion and Malay Custom in Kelantan, The Council Chiefs and 'Ulamā' in Perak, etc., to oversee and coordinate the implementation of various aspects of the Sharī'ah among the Muslims within their respective States.

The introduction of an alien system of civil and criminal law to regulate all departments of life, other than those touching upon "Malay religion and custom", resulted understandably in pressure to establish a more 'formal' system of Islāmic law (meaning backed by statutes, acts, legislation etc., in the Western sense) than had hitherto existed. Thus, the State Councils⁽⁵⁰⁾ during the colonial

period, passed a number of acts or statutes pertaining to various aspects of interpersonal Islāmic laws such as dealing with marriages, inheritance and also relating to the administration of zakāt. Such legislations also specified the jurisdiction of the Qāḍīs, the limit of authority of the religious courts, etc.. W.R. Roff observed that these developments in addition "to responding to a real need, may also be seen as a reflection of the desire to emulate Western administrative systems in a field the Malays felt to be peculiarly their own."⁽⁵¹⁾ This is indeed an over-statement. The British themselves had a great interest in these matters. The British "advisors", for instance, had always regarded the proper organization and supervision of the Qāḍīs, who administered the Islamic law of marriage and divorce or such other affairs as breaches of religious observances, as matters which closely affected the peace and good order of the States.⁽⁵²⁾

Thus, by the second decade of the twentieth century, the Malay States were equipped with an extensive bureaucratic machinery for 'governing' Islāmic matters. As stated earlier, in each state generally there was a central organization to exercise overall control over religious matters.⁽⁵³⁾ These organizations such as the Majlis-Ugama Islām dan Isti'adat Melayu Kelantan (Kelantan Council of Religion and Malay Custom) had a majority of non-'ulama' members drawn from the royal household and senior chiefs with the ex-officio addition (in most States) of the State Muftī and Chief Qāḍī. The State Muftī as juriconsult, had the authority to give fatwā (legal opinion)

and the Chief Qādī performed the duty of senior magistrate' at the head of the State system of religious courts of Qādīs and assistant Qādīs.

The rigidity with which these Councils operated varied considerably between the States, and from time to time, depending on the religious orientations of those in authority. There is a report for example, that a teacher of mysticism who received the royal favor in one state was arrested later just across the border in another for preaching the same doctrine.⁽⁵⁴⁾ In the administration of zakāt there were also differences, for instance in the determination of nisāb. However, the nominal control of these Councils over all aspects of religious practices within the State were to some extent constrained by the isolation of the rural areas and the relative efficiency of the district Qādīs and other religious officials.

3. THE ADMINISTRATION OF ZAKĀT DURING THE COLONIAL PERIOD

Wilkinson, one of the first orientalist to write about the Malays, when referring to zakāt in his Malay Beliefs, remarked that, "Malay chiefs, by identifying themselves with Imāms and by liberal interpretation of the term 'pious poor', succeeded in securing the tax for themselves."⁽⁵⁵⁾ From our discussion below it will become clear that this is not just a gross over-statement but a sweeping generalization. However, this devastating remark brings into focus two significant and interrelated factors: (a) the nature of the relationship

between the traditional Malay political elites and the 'ulamā', and (b) the role of zakāt as the only 'tax' (if we could borrow Wilkinson's term for a moment) left that came under the 'jurisdiction' of the Malay rulers after the arrival of the British.

As a detailed discussion of these issues in all the nine Malay States would be complex and needlessly cumbersome, we will focus our discussion here only on Kelantan. We chose Kelantan for at least four reasons. Firstly, Kelantan, like Kedah, is predominantly populated by Muslims. Secondly, like Kedah, Kelantan has a substantial peasant population mainly engaged in paddy-cultivation. Thirdly, Kelantan was the first state in Malaysia to establish a Majlis Ugama (abbreviation for Kelantan Council of Religion and Malay Custom) which became a model⁽⁵⁶⁾ for other states in Malaysia. Last, but not least, the political and socio-economic environments in Kelantan during this period also reflect the conditions⁽⁵⁷⁾ in other Malay States to a large extent. This is especially so in States with predominant Muslim populations, such as Kedah, Perlis and Trengganu.

THE KELANTAN EXPERIENCE

Kelantan, which was known to the early Chinese and Arab navigators for its agriculture, mineral deposits and handicrafts, remained on the periphery and beyond the domination of the early great empires in Southeast Asia --such as the Sri Vijaya, Majapahit and Malacca Sultanate. Due to lack of a dominant power within Kelantan itself, it

remained until the nineteenth century a congeries of contiguous but independent principalities. It first attained a measure of political unity under Sulṭān Muḥammad I (1800-1838 A.C.), who managed to substantially enlarge his power base by curtailing the independence of Limbat, a 'sub-state' with its own 'raja'. He did this by making the raja his principal minister. However, due to its proximity with Siam, Kelantan remained under the suzerainty of Siam⁽⁵⁸⁾ until the early twentieth century.

As a result of Anglo-Siamese rivalry in the Northern Malay States, Kelantan was subjected to an Anglo Siamese administration headed by W.A. Graham, an English officer of the Siamese Government in 1902. In 1909, however, Kelantan came under exclusive British 'protection' and became one of the Unfederated Malay States. The British officials, ostensibly pursuing policies 'favorable' to the Malays, did not encourage the commercial development or non-Malay immigration that would have quickly overwhelmed Kelantanese Malay peasant society.⁽⁵⁹⁾ The professed aims of the British were to 'protect' Kelantan Society from what was seen as undesirable alien influences, and to encourage the development of "a model Malay monarchy from its own resources, primarily the thrift and diligence of its peasantry."⁽⁶⁰⁾ The actual motive of the British, which was clearly evident later (in the Depression of 1930's when there was also a shortage of grain), was to make Malaya self-sufficient in food, in order to ensure that the labor engaged in the 'modern capitalist sector' (i.e. those engaged in tin

mining and rubber plantation) were adequately and cheaply fed.

Although the administration of W.A. Graham and the British regime later stripped many of the traditional prerogatives of the estuarine elites, their age-long rivalries continued unabated. They now vied for positions and influences in the new colonial regime as well as for control in what was left of the traditional bases of power, namely the 'Islāmic administration'.

The Power of the Village Imāms

The rudimentary religious administration created by Muḥammad I and later Muḥammad II (who ruled from 1838-1886) had been effective only around the capital, Kota Bahru. In the outlying districts, the local religious leaders, i.e. the imāms, enjoyed substantial independence.⁽⁶¹⁾ Possessing sufficient material resources, and perhaps only a rudimentary religious knowledge, the imām derived his position from two sources: consensual recognition by kin and neighbors who followed him in prayer; and the backing, not necessarily always involving any recognition of religious competence, of the district chief.⁽⁶²⁾

Thus, the traditional Kelantanese village community, like the Kedah village community mentioned earlier, defined itself in religious terms as a congregation of prayer behind an imām, whose functions were varied. Among others, he solemnized marriages, performed burials, administer zakāt collection and supervised the division of inherited property. However, unlike their counterparts in Kedah and other Malay

States, the village imāms in Kelantan also had more 'secular' functions. As an agent of the district chief he assisted in the surveying of land, mediated disputes, and collected poll-tax contributions towards fulfilment of the annual tribute owed to Siam.⁽⁶³⁾ Thus, the imām was an unrivaled local leader competent to act in all matters of public concern. The attempt by Sulṭān Muḥammad II, prior to the coming of the British, to create an effective civil administration and to restrict the imām to his traditional 'religious' functions failed, as did his efforts to bring them under central control. With the exception of the officials of three royal mosques near the capital, the ruler's control of the imām remained nominal.

Attempts To Centralize 'Islamic Administration'

With the death of Sulṭān Muḥammad II who ruled Kelantan for nearly fifty years, the issue of succession preoccupied the Kelantanese elites. However in 1890's, despite such a divisive issue, the religious administration under the office of the Muftī was expanded. The religious courts were developed; attempts were made again to 'regulate' imāms centrally; and strict observance of religious obligations among the people were fostered through public lectures. Impious pastimes were forbidden and attendance at prayers and observance of fasting in the month Ramaḍān were enforced. These developments were sponsored by several successive muftīs who were both pious and forceful men related to powerful aristocrats in the capital. Thus, the

basis for the close bond between the aristocracy and the religious elites at the center was laid.

The imposed appointment of W.A. Graham as 'advisor', and his subsequent action, inadvertently strengthened this bond. Graham, who was strongly committed to the concept of the separation of 'church and state', and tied down by the treaty from interfering in matters of Islām and Malay custom, resorted to his own administrative apparatus to dominate the indigenous Malay-Islāmic forms of government.

As Roff⁽⁶⁴⁾ and Kessler⁽⁶⁵⁾ pointed out, Graham's method was to outflank them, especially the religious courts under the muffī. But the muffī who was naturally unwilling to be eclipsed by the civil administration, responded by expanding his hierarchy, and Graham's refusal to permit his own police to assist the religious courts only prompted growth of the muffī's constabulary.⁽⁶⁶⁾ These men were empowered to enforce the observance of religious duties and to encourage attendance at prayers, sermons and lectures. The pertinent question to ask here is : how did the central religious authority finance itself? This was the reason why the central religious hierarchy sought to harness the village imāms as its agents.

Zakat as Source of Financing 'Islamic Administration'

In order to finance its intensified activities, the State required the imāms to surrender part of the zakāt they collected at the village level. As will be elaborated later, this measure was only

partially successful. However, as Roff aptly observed, by the time the British regime replaced Graham's, the 'Islamic administration', expanded by the 'ulamā' connected to the aristocracy, was becoming a "counter-weight to a secular state apparatus increasingly alien in content, personnel and ideology."⁽⁶⁷⁾

The impact of this alien form of government at the village level was much more serious. When Graham took charge of civil administration, he divested the imāms of their 'civil' functions, which were transferred to the headmen (Ketua Kampung or To'Kweng). As Graham himself observed in his book ⁽⁶⁸⁾ published in 1908 that the imām was "the only local governing influence,"⁽⁶⁹⁾ before the creation of the territorial administration operating through the headmen.

Graham's reforms were carried much further when the British administration intervened more forcefully into village affairs. The headman, with his increased responsibilities, became the dominant force within the village and overshadowed the imām. At the same time the latter also suffered loss of independence as 'religious functionary'. In fact, as stated earlier, when Graham and later the British 'advisors' took over the civil administration, the traditional Kelantanese elites at the Center began to expand and tighten their hold over the so-called 'Islāmic administration'. Thus, the hitherto independent imām became the direct (instead of the nominal agent) of the Sultān and the State Muftī. Accordingly, registers of imāms were prepared, and new regulations were introduced: (i) enabling the ruler

to demarcate the kariah masjid (parish) boundaries; (ii) making provisions for the collection of zakāt and for the surrender of a portion of them to the ruler/central authority; (iii) forbidding imām to impose fines and requiring them instead to report violations of Sharī'ah by their kariah members to the State religious courts; (iv) appointing State religious officials to supervise imāms; and (v) specifying grounds for their being warned, fined and dismissed.⁽⁷⁰⁾

The Establishment of the 'Majlis Ugama'

However, it was the creation of the Majlis Ugama dan Isti'adat-Melayu Kelantan (Kelantan Council of Religion and Malay Custom, hereafter referred to as Majlis Ugama) in 1915 that further strengthened the subordination of the village imāms to the central authority.

The Majlis Ugama was established in the aftermath of a peasant revolt, popularly known as the Tok Janggut Rebellion of 1915. Most historians agree that the seed-bed of the rebellion was clearly the dislocation of the power of a traditional Malay chief with the creation of a new district administration system by the British.⁽⁷¹⁾ However, the fact that the chief managed to get the support of a substantial number of peasants, showed the widespread discontentment of the peasants as a result of the heavy burden of taxes⁽⁷²⁾ imposed on them by the new colonial regime. The revolt, at the initial stage at least, was directed at the British. But the fact that the State was ruled by the British in the name of the Sultān, meant the revolt

was construed, or made to be construed, as a revolt against the Sultan. The revolt spread to other adjacent areas, but was quickly subdued by the superior fire-power of the British.

The key figure who played a prominent role in ending the peasant revolt, Hāji Nik Maḥmūd, a loyal and trusted man of the Sulṭān, emerged as the most powerful Malay official in Kelantan, succeeding the then 'Chief Minister'.⁽⁷³⁾ He was the one who suggested⁽⁷⁴⁾ establishing the Majlis to the Sulṭān. The Sulṭān, who was eager to consolidate his position and still determined to assert his authority through 'Islām and Malay Custom' against his British 'protectors', welcomed this idea.

Composition of the 'Majlis Ugama'

The 'politics' of the Majlis as well as the role it played in the indigenous Malay power structure in Kelantan, has been dealt by others⁽⁷⁵⁾ and we do not intend to dwell on that here. It is sufficient to state that much of the 'politics' of the Majlis is apparent from the composition of its membership. Those excluded were precisely those the Sulṭān felt himself most threatened by - the members of the royal family with whom he had had political differences during the peasant rebellion. Another notable absence was the Muftī, Hāji Wan Mūsā with whom the Sulṭān, for a particular reason,⁽⁷⁶⁾ had a strained relationship. Most of the twelve members included were clearly the ruler's own men, especially the civil servants, most of whom were his

palace officials. However, there were at least four ʿulamā⁽⁷⁷⁾, relatively a large number compared to such institutions established later in other Malay States. This was perhaps intended to give some real Islāmic content to its deliberations and a kind of 'theological respectibility' (78) The Majlis was initially presided over by the Sulṭān's son-in-law, but due to ill-health he was later succeeded by Hājī Nik Maḥmūd, who had always been the real driving force of the Majlis.

The Diminishing Role of The Village Imam: As 'Amil of the Majlis

From the perspective of the imāms the creation of the Majlis not only subordinated them to central authority, but it transformed them into servants of a powerful bureaucracy without the benefit of fixed salaries. In fact, the Majlis arranged to finance its own activities through the imāms and at their 'expense', and consequently, at the expense of some of the deserving villagers. As stated earlier, previous efforts at central control of the collection of zakāt had succeeded only partially. Imāms of the villages near the capital used to surrender part of the zakāt to the ruler or his agents, but the less easily controlled rural imāms still retained the zakāt for use in their own villages. We have only little information on how exactly the zakāt proceeds were distributed. What we know is that the zakāt proceeds were distributed locally presumeably to the religious per-

sonnel, to the poor and the needy and to other aṣṇāf as well as for other religious activities within the villages.⁽⁷⁹⁾ In 1907 and 1908, for instance, even though the muftī's department had attempted to enforce surrender of a "ruler's share" of the zakāt, its regulations were largely ignored. However in 1916, empowered to receive on the ruler's behalf three-fifths of all zakāt collected, the Majlis managed to enforce widespread compliance among the imāms. The zakāt proceeds thereafter, provided the Majlis with most of its considerable revenue.⁽⁸⁰⁾

Opposition To The 'Majlis Ugama'

As to be expected the Majlis failed to win universal acceptance. Many of the 'ulamā' in Kelantan became suspicious of the activities of the Majlis. This came to surface especially when the Majlis in 1917 required imāms to surrender seven-eighth of the zakāt al fiṭr (called fiṭrah in Malay) they collected at the end of Ramadhān. Those who were already suspicious of the Majlis resented and criticized these regulations. The opponents of the Majlis rallied to the institution and to the man at whose expense the Majlis was created: the muftī. Excluded from the Majlis and stripped of many of his powers, the incumbent muftī resigned. Subsequently, his brother, who was then a member of the Majlis executive also resigned and sent a petition signed by more than five hundred people to the British Advisor complaining that the Majlis had no right to appropriate zakāt and fiṭrah as it did, and that its proceeds were being expended in contravention of Islāmic

law. (81)

Opposition to the Majlis was also expressed by the rural imāms, not through petitions but by non-compliance with the regulations. Even though the Majlis decided in 1919 to reduce its share to four-fifths in order to appease them, discontent among the imāms continued. However, the creation of the Majlis was a fait accompli leaving the imāms little hope of bringing about any changes, especially after the zakāt proceeds were committed in advance for the construction of a new central mosque. (82) However, many imāms still refused to obey for some years to come. This is evident in the 1924 notice that threatened delinquent imāms with both dismissal and legal action, and a notice in 1927 providing for the appointment of zakāt inspectors over them. (83) Thus, finally, the Majlis, through bureaucratic means succeeded in enforcing the surrender of its share of the zakāt. Or we could say, more than succeeded, if the claim of the State Legal Advisor (in a memo dated July 17th, 1930) that the Majlis was forcing the surrender of both its designated share and the portion for local religious purposes, is to be believed. (84)

The Grievances of The Imams

The manner with which the Majlis distributed, or rather spent the zakāt proceeds is discussed below. However, seen from the perspective of the villagers, particularly the imām, the Majlis had deprived them much of their independence. It had also appropriated a large part of

the zakāt and fitrah proceeds of which they had been the principal beneficiaries. The prestige of the imāms, who were formerly independent village notables, had been reduced to mere 'dependent functionaries' of a central authority. As the Majlis gradually strengthened its control over them, some imāms came to see themselves as "underpaid villagers, harnessed to toil in the service of the Majlis and the well-born elite controlling it."⁽⁸⁵⁾ The emotional and spiritual consequences of this change were more serious. Comparing themselves with the school teachers (whose influence was rapidly eclipsing theirs in rural society), or other employees of the civil administration, or the Majlis's own clerical staff, they began to feel that they also deserved the prestige and security of fixed salaries.

Instead of redressing their grievances, the revised Majlis-Ugama Act of 1938 worsened their position. By this act, the portion of the zakāt for the surau upkeep, which some imāms might not have rigorously distinguished from their personal shares,⁽⁸⁶⁾ were abolished. Secondly, the financial power of the Majlis over the imāms was also strengthened, by stipulating for instance that imāms were now required to forward all proceeds to Majlis. Only after this only would their portion be disbursed.⁽⁸⁷⁾ The new enactment of 1953 also did not address the grievances of the imāms.

The prolonged dissatisfaction of the imāms in particular, and the villagers in general, as we shall see in subsequent chapters, had serious implications for the political development in post-independent

Malaysia, especially in the State of Kelantan. After serving the majlis and those controlling it during the colonial period, the majority of the imāms supported the Pan-Malayan-Islāmic-Party (PMIP), an opposition party. They played a critical role in bringing this party to power in the first general election held in 1959 in the state of Kelantan after the independence of the Federation of Malaya. This opposition party was in power in the states of Kelantan and Trengganu for more than a decade, and is still a potent political force to this day in both these states, as well as in Kedah.

The Methods of Collection and Distribution of Zakāt under the Majlis

By a Notice 3/1916 drafted by the Majlis and passed in the State Council of Kelantan on 25th January 1916, the Majlis became, in effect, the recipient of some two-fifths of all zakāt collected in the State.⁽⁸⁸⁾ With respect to nisāb, this regulation was not different from the previous regulations in force, i.e. the nisāb was fixed at 400 gantangs (Malay gallons) of paddy (unhusked rice). Anyone harvesting more than this was obliged to deliver 25 gantangs to the imām of his mosque/surau besar⁽⁸⁹⁾ in return for the proper receipt. Of the total amount collected by the imāms, 1/5 goes for the maintenance of the mosque or surau, and another 1/5 for its officials, which included the imāms.

The provision for the remaining three-fifth was somewhat modi-

fied. By the regulations then in force (i.e. the Surau Regulations of August 1908, Section 11 and 23 issued by the Mufti's office), the imāms had merely to deliver the proceeds of this portion of zakāt to the State capital for proper distribution by the ruler (on the basis of one-third of the amount for the poor and needy and other similar categories and the remaining two-third for the three central mosques). But the new regulation required the imāms to sell this portion of the zakāt proceeds (at a price to be fixed annually by the Majlis) and the whole of the proceeds be deposited in the government treasury. From this one-third was to be paid out again (in theory at least) to the ruler, for distribution to the poor and needy and such other categories, and the remainder to stand to the account of the Majlis, in order to pay its own staff, and after that to disburse as it should think fit for the maintenance of the central mosques or "for such other religious purposes as it may decide upon."⁽⁹⁰⁾

What the Majlis in fact did was to put all officials of the central mosques for the first time on fixed salaries, and then allocated some funds for religious celebrations in the central mosques. Despite these expenses, the Majlis at the end of the first year emerged with a credit balance of about \$7,000/- (see Table 1)

Table 1

Statement of Account the Majlis
 (1916)

	<u>Income</u>		<u>Expenditure</u>
Zakat, 21 May-24. Dec.	\$12,264	Salaries, 3 Mosques	\$3,295
Bayt al Mal	111	Majlis staff & exps.	168
Other	94	Commissions to Imams	31
		Payment to Sultan	2,000
		Miscellaneous	102
	-----		-----
	\$12,469		\$5,596
		Balance	\$6,873

Source: Kenyataan(Report) of Majlis Ugama 1916⁽⁹¹⁾

98% Of The Majlis 'Income' Derived From Zakāt

Thus from the Statement of Account of the Majlis for 1916 (Table I) a number of observations can be made. Firstly, more than ninety-five percent (95%) of the 'income' of the Majlis was derived from zakāt paid mainly by the peasants. Secondly, payment to the beneficiaries of zakāt were not highlighted at all. It was supposedly subsumed under "Payment to Sultān." Thirdly, the amount paid as salaries for the officials of the three central mosques was larger than the amount paid to the aṣṅāf or the legitimate beneficiaries of zakāt. Fourthly, more than half of the zakāt collected was not dis-

tributed at all, and considered as 'balance' or 'surplus' in the account of the Majlis.

With this 'success' behind it, the Majlis, as discussed earlier, decided in the following year, 1917, to centralize also the collection of zakāt al fiṭr. This was indeed an unprecedented act. This zakāt which is collected from every independent Muslim adult⁽⁹²⁾ who could afford it before the eve of the Ēd al Fiṭr celebration (marking the end of fasting in Ramadhān), was meant primarily for the poor and the needy, so that they could also join the celebration. Even though from the long preamble to this new regulation⁽⁹³⁾, the Majlis recognized that "any attempt to centralize and make fiṭrah collection compulsory was likely to meet with some resentment",⁽⁹⁴⁾ it nevertheless legitimized its action by stating:

"it being the desire of the Sultan not only to spread the influence of Islam by provision of places suitable for the proper performance of all religious obligations, but to seek means of advancing the state and enabling all its sons to reach the heights of worldly achievements as well as favor in the hereafter by providing schools for the teaching of all kinds of knowledge and skill in every mukim and district of Kelantan"⁽⁹⁵⁾

The regulations that followed this preamble used rather complex formulae. But essentially it required all households in the state to pay approximately half of the customary fiṭrah of one gantang of husked rice per person to the imām of their mosque/surau. Of this total, one-eighth (as stated above, this was later amended to one-

fifth) was to be retained by the surau for its officials and building maintenance. The remainder was to be sold and the proceeds sent to the treasury account of the Majlis, which was supposed to use the money "to build mosques and schools."⁽⁹⁶⁾ In 1917, in the first year of operation of both zakāt and zakāt al fiṭr collection, the Majlis found itself in receipt of no less than \$29,000 (\$10,515 from zakāt and \$18,712 from fiṭrah) and at the end of the year had a credit balance of more than \$20,000/- after 'expenditure'.⁽⁹⁷⁾

Zakāt For 'Modernization' of the State

The summary of the distribution or rather the division of zakāt proceeds between the Majlis and the imāms of villages from 1916-1966 is given in Table 2. From the financial point of view the Majlis was initially at least, was a great 'success'. For the Malay aristocratic and bureaucratic elites as well as the British officials, the Majlis initially at least appeared as an instrument of 'progress' or 'modernization' or as a means of "indigenous social revolution."⁽⁹⁸⁾ This was considered so because the 'revenues' of the Majlis were devoted to "educational and philanthropic ends."⁽⁹⁹⁾ However, when the Majlis later (i.e. 1922) committed vast funds for the construction of a new state mosque in the capital, those 'other ventures' were curtailed. The 'revolution' was considered to have been 'deflected', especially when plans to create vernacular schools throughout the state were dropped and resources concentrated instead within the capital- upon a

Malay and a religious school, but primarily on an English school which prepared the sons of the old elites for employment in the British administration.⁽¹⁰⁰⁾

This naturally served the interest of the British who then wanted to rule the State with minimum cost - by using a small European staff. The old elites and their sons⁽¹⁰¹⁾ thus needed to be trained to fit into the colonial pattern of administration. Many of the sons of the elites were trained not only in the English school in Kelantan but also in the Malay College ('Eaton') of Kuala Kangsar. They were also sent to England⁽¹⁰²⁾ at the Majlis's expense, the 'income' of which derived almost exclusively from zakāt given by the peasants.

A Former Muftī's Criticism of the Majlis

From the explanation above, it is clear how the major portions of the zakāt funds were spent. It also explains why some of the 'ulāmā', including a former muftī, opposed the activities of the Majlis. To them the activities of the Majlis were not in accordance with the requirements of the Sharī'ah. The principles of the distribution of zakāt such as the "principle of exclusiveness to the aṣṅāf" or "principle of comprehensive coverage" discussed in Chapter IV, were not adhered to. In fact these were not the only reasons for their opposition towards the Majlis. In fact, what was resented most, particularly by the imāms of the villagers was the very principle of giving the Majlis the sole authority to collect and distribute zakāt state-

wide. As discussed in Chapter III, this was not the way it was practiced in early Islām, particularly during the time of the Prophet and Rāshidūn caliphs. The practice then was to distribute zakāt proceed first at the locality where it was collected, and only the surplus, if there was anything left, was sent to the Central Treasury (Bayt al Māl). It must also be pointed out that the opposition to the Majlis by some of the 'ulamā' was at times so intense that there were those who went to the extent of questioning the legitimacy of handing over zakāt to an unjust ruler or regime⁽¹⁰³⁾. To back their argument they quoted the historical precedents, as well as juristic arguments, discussed in Chapter III.

Many ulama, for understandable reasons, were silent, if not supportive of the idea of using zakāt proceeds for the construction of the state mosque (a building "of some pretensions"⁽¹⁰⁴⁾ costing at the time \$300,000/-) at the wish of the Sultan. However, the former muftī, Haji Wan Musa who was familiar with the teachings of M. 'Abduh and Rashīd Riḍā, refused to the very end to legitimize the usage of the zakāt fund for the construction of the state mosque (which was built with money advanced by the State in anticipation of future zakāt to be collected by the Majlis). A pious and upright man belonging to Tarīqah Shādhliyyah, Hājī Wan Musa abided by the saying of the Prophet, 'Lā ṭā'ata li makhlūq- fi ma'ṣiyat alkhāliq' (Obedience to men ceases when it involved disobedience to the Creator). Hājī Wan Mūsā's son, Muḥammad Salleh, who was himself a great 'ālim' educated in

Mecca and in Deoband, India under ‘Ubaydullah al-Sindhi, when referring to the controversial view of his father in an article much later, wrote:-

" For Ḥājī Wan Mūsā, zakāt and fiṭrah monies were the right of the poor. If this right were to be taken from them, or used for needs of other kinds, nothing at all would remain to them. This, he argued, would be unjust and oppressive. His views on the subject prompted furious debate, and a state of enmity developed between him and the state officials in power at the time. True to his principles, however, he continued to refuse to accept the Majlis Ugama’s position, despite the fact that construction of the Masjid Muḥammadi was begun in 1922. To the day of his death, in 1939, he declined to set foot inside the completed building."(105)

NOTES

- (1) A. Lamb, "Early History", in Malaysia ed. Wang Gangwu, London, 1964, p.105.
- (2) Sayyid Muḥammad Naguib al-ʿAttās, Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago, K.Lumpur, 1969.
- (3) Ibid
- (4) Ibid.
- (5) N.Ginsberg and Chester F. Roberts, Malaya, Seattle, 1958, p. 26.
- (6) C.S. Kessler, Islam and Politics in a Malay State, Cornell University Press, 1970, Ithaca, p.22.
- (7) Ibid
- (8) Malaysia, Department of Statistics, 1970 Population and Housing Census of Malaysia: Community Groups (K.Lumpur, 1972), p.24-27
This demographic breakdown is only for Peninsular Malaysia.
- (9) As emphasized before, this is basically referred to Peninsular Malaysia only. Most of the description in this sub-section is based on the pioneering work of J.M. Gullick: The Indigenous Political Systems of Western Malaya, London School of Economics. Monograph on Social Anthropology, No. 17, 1956.
- (10) As stated in Section A, Malacca Sultanate was a flourishing empire in the 15th century until its capital was occupied by the Portuguese in 1511. The present Malay States not only were once part of the Malacca Empire but many of their Sultans also claim lineage to the Malacca Sultanate.
- (11) J.M. Gullick, op.cit. p.21
- (12) Ibid
- (13) The role religion played among early settlers in America including the Quakers in Pennsylvania vividly illustrate this point.
- (14) J.M. Gullick, op.cit. p.21

- (15) Britain had a foothold in Peninsular Malaysia in 1789 when it managed to get a concession to build a trading post in the Island of Penang by rather fraudulent means from the Sultan of Kedah. Malacca at that time was under the Dutch and Singapore was only 'found' in 1819. See R. Bonney, Kedah, 1771-182 The Search for Security and Independence, OUP, K.Lumpur 1971.
- (16) W.R. Roff, The Origins of Malay Nationalism: Yale University Press, 1967 p.67.
- (17) Ibid
- (18) A number of writers had made this observation. See the latest work on this by Isma'īl bin Mat: 'Ādat and Islām in Malaysia: A Study in Legal Conflict and Resolution, Ph.D. Thesis, Temple University 1984.
- (19) Roff, op. cit. pg. 68.
- (20) Qur'ān, Sūrah 38, Verse 7.
- (21) Roff, op.cit. See also Wilkinson, "Some Malay Studies, Journal of Malayan Branch of Royal Asiatic Society (JMBRAS, No.10, January 1932), p.79.
- (22) Ibid
- (23) Ibid p. 68-69
- (24) 'Afīfuddīn bin Hājī Omar, Peasants, Institutions and Development in Malaysia: The Political Economy of Development in The Muda Region, Ph.D. Thesis, Cornell University 1978. See also Zaharah Mahmud, Change in a Malay Sultanate : A Historical Geography of Kedah Before 1939 (K.Lumpur: Unpublished M.A. thesis University of Malaya, 1965, p.5).
- (25) 'Gantang' is a Malay measurement which in volume is equivalent to 1 gallon and in weight about 5.6 pounds.
- (26) Afifuddin, op. cit. p.51
- (27) Ibid
- (28) Some of these madarasah now are supported by the zakāt office, Kedah. See Chapter VI.
- (29) 'Afīfuddīn, op. cit.

- (30) Ibid
- (31) Ibid, p.51-52
- (32) Ibid
- (33) Ibid
- (34) R.D. Windstead, "Kedah Laws", JMBRAS, Vol:2 (1928), p.29.
- (35) G.E. Lenski, Power and Privileges: A Theory of Social Stratification (N.Y. Mc Graw Hill, 1966).
- (36) Ibid p.214
- (37) 'Afifuddīn, op. cit. p.56.
- (38) This is based on numerous Qur'ān verses.
- (39) Afiffudin, op. cit. p.57
- (40) J.J. Scott, a letter, cited in Stamford Raffles, Memoirs of the Life and Public Services of Sir Stamford Raffles (London, 1830), p. 51-52.
- (41) R.O. Winstead, The Malays -A Cultural History (London: Routledge and Kegan Paul, 1961), p.121.
- (42) 'Irfān Habīb, The Agrarian System of Mughal India (1556-1707), London: Asia Publishing House, 1963, Cited also in J.H. Kautsky, The Politics of Aristocratic Empires, The University of North Carolina Press, Chapel Hill 1982. See also B. Moore's classical work, The Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World, Boston: Beacon Press, 1966.
- (43) 'Affifuddīn, op.cit. p.59.
- (44) Gullick, op. cit.
- (45) J.R. Logan, "Notes on Penang and Kedah", JMBRAS 16 (1885), p. 173.
- (46) Initially Britain's relationship with the States of Peninsular Malaysia was predominantly in commerce, particularly in the buying of tin (which was produced in small scale by traditional methods) and selling of manufactured goods. As Collin Leys

points out for Kenya, in Malaysia too "the essence of it was backed by superior force on the side of the capital traders." (Underdevelopment in Kenya: The Political Economy of New Colonialism), 1964-1970, London, Heinemann 1975, p.9.

- (47) J.M. Gullick, Malaysia, Ernest Benn Ltd. 1969, p.53.
- (48) Ibid, p.56
- (49) W.R. Roff, op.cit. p.71-72
- (50) State Councils were the legislative body under the colonial regimes. In the Unfederated Malay States these Councils were presided by their respective Sultān. However, the real powers were held by the British 'Advisors'.
- (51) W.R. Roff, op. cit. p.72
- (52) Law and order is obviously necessary in any society. But in a colonial regime this is imperative not only to ensure the continuity of the regime but also to ensure the smooth functioning of its business enterprise.
- (53) Roff, op. cit.
- (54) Ibid
- (55) R.J. Wilkinson, Malay Beliefs, (London, 1906). p. 112-13.
- (56) On this Roff states, "as an institution for the governance of Islām, it was without apparent models either in the remaining Malay States or in the Islāmic world in general" - see W.R. Roff: The Origin and Early Years of the Majlis Ugama, in W.R. Roff (ed.) Kelantan: Religion, Society and Politics in a Malay State, OUP, K. Lumpur 1974. See also A.A.M. Mackeen, Contemporary Islāmic Legal Organization in Malaya, Monograph Series No. 13/Yale University, Southeast Asia Studies 1969, p.39. Mackeen quoted this view from C. Snouck Hurgronje, Moḥammedanism, (N.York, 1916), p.84.
- (57) The actual sequence of events that happened during this period might be different from State to State but due to their close proximity with each other, a change in a State quickly affected and influenced the others.

- (58) In the past, Siam, had frequently dominated the Northern Malay States. It should be noted that some of the Malay States such as Yala and Patani are still under Siamese domination to this day.
- (59) C.S. Kessler, op. cit. p.31
- (60) Ibid
- (61) See below, the remark by W.A. Graham.
- (62) Kessler, op. cit., p.195
- (63) Ibid
- (64) Roff. op. cit., "The Origin and Early Years - pp.147-149.
- (65) Kessler, op. cit., p.197
- (66) Ibid
- (67) Ibid, p.53
- (68) Graham, Kelantan Annual Report 1904/5, p.18. Cited in Kessler, ibid p. 196.
- (69) Ibid
- (70) Kessler, op. cit., p.196
- (71) See Nik Ibrahim b. Nik Mahmood, The Tok Janggut Rebellion (1915), in W.R. Roff (ed.) Kelantan: Religion, Society and Politics in a Malay State, op. cit.
- (72) Ibid
- (73) In Malay called 'Menteri Besar'. During colonial days the Chief

Minister who was appointed by the Sultan, acted as an important intermediary between the Sultan and the British advisor.

- (74) It is possible that this idea might have originated from To' Kenali, a very well-known and highly respected 'ulamā' of Kelantan at this time. He later became the only member of the 'Majlis Ugama' who was not in the payroll of the Kelantan Government or the Majlis Ugama. He was a close friend of Hj. Nik Mahmood. See article on To' Kenali in W.R. Roff's (ed.) Kelantan, op. cit.
- (75) See Kessler, op. cit. and Roff, The Origin and Early Years, op. cit.
- (76) In the words of his son, Muḥammad Ṣalleh: "Ḥājī Wan Mūsā was well-known to be an ālim possessed of sound knowledge of the religious sciences, and despite his short temper was always willing to retract his opinion in the interests of establishing truth. Along with such characteristics of modesty and piety, went a refusal ever to follow the instructions of or bidding of another, even of a ruling Sulṭān, if these should appear to him to conflict with the law of God and the teaching of his Prophet - an intransigence which was later to lead to one of the major turning points of his life". This refers to a complex inheritance case concerning the disposition of a royal palace and the land associated with it. When the case came to the Sharī'ah Court. Haji Wan Musa as a Muftī was asked by the Sultan to give a decision according to Sharī'ah. When upon the evidence presented to him, he decided to give the property to someone who was not favored by the Sulṭān, "the Sulṭān thereupon endeavoured by argument and other means to persuade him to reverse his decision, but failed to do so, Ḥājī Wan Mūsā resigning as Muftī in mid 1916". (From Muhammad Salleh b. Wan Musa and S. Othman Kelantan, Theological Debates: Wan Musa b. Haji A. Samad and His Family in Roff's Kelantan: Religion, Society and Politics in a Malay State, op. cit.
- (77) The four are To' Kenali; Haji Wan Muhammad b. A. Samad, senior imam of the Kota Bahru mosque and brother to then Mufti Haji Wan Musa; and two Khaṭīb of the Central Mosque, Ḥājī Moḥd. Said bin Jamāluddīn, and Ḥājī Wan 'Abdullah b. 'Abdul Ṣamad, another brother of the Mufti. (see Roff: The Origin and Early Years, op. cit., p.133)
- (78) Ibid, p.134

- (79) These religious activities would normally include the celebration of the birthday of the Prophet, etc.
- (80) Roff, The Origin and Early Years..., op. cit., p.135-136.
- (81) Kessler, op. cit., p.55
- (82) Ibid, p.56
- (83) Ibid, p.196
- (84) Ibid, Cited as footnote in p.197
- (85) Ibid p. 198 based on an interview Kessler had with a veteran imam.
- (86) Ibid
- (87) Ibid
- (88) Roff. The Origin and Early Years..., op. cit. 135
- (89) Ibid
- (90) Ibid, p.137
- (91) Cited in Roff, ibid, p.136
- (92) That is when the person can afford it. Normally it is paid on a per head basis. There are also those jurists who were of the opinion that children who were not of age were not required to pay zakāt al fiṭr. See for instance, the controversial view of Muhammad Salleh (Haji Wan Musa, former Muṭī Kelantan's son) in Malaysia in his Riṣalah Masalah Fiṭrah dan Fiṭrah Kanak2 yang belum Baligh (On the Question of Fiṭrah, and Fiṭrah for Children not yet of Age), Al-Kamaliah Press, Kota Bahru, Kelantan 1947.
- (93) Roff, op. cit.
- (94) Ibid, p.136
- (95) Ibid, pp. 136-137
- (96) Ibid
- (97) Ibid

- (98) Kessler, op. cit. p.56
- (99) Ibid
- (100) Ibid pp. 56-57
- (101) Ibid
- (102) In fact two sons of the Majlis President were educated abroad at Majlis expense. One of the sons, who later became Deputy Chief Minister and later a leading diplomat and politician in Malaysia after independence was educated in K.Kangsar as well as at the Inns of Court, London. The other son, was similarly educated at Al-Azhar in Cairo, with the intention some felt, to his rising like his grandfather in the religious administration in Kelantan (See Kessler, Ibid, p.61).
- (103) See Chapter III
- (104) Roff. op. cit.
- (105) Muḥammad Ṣalleh and S. Kelantan, op. cit.

CHAPTER VI

THE MALAYSIAN CONSTITUTION AND THE ADMINISTRATION OF ZAKAT

This chapter is divided into three broad sections. In the first section, a general outline on the political background prior to Malaysian independence is given in order to situate the context of the Malaysian Constitution which is the focus of the second section. In the second section, emphasis is placed on the division of power between the Federal and State governments. Taking cognizance of the fact that 'Islām' in general, and the administration of zakāt in particular, falls within the jurisdiction of the States, the third section would then focus on the general description of the practice of zakāt in Malaysia, with particular emphasis on Kedah. If we compare this chapter and the last with chapters III and IV, we will then be in a position to evaluate the extent to which the contemporary practice of zakāt in Malaysia conforms to the practice of zakāt in Early Islām. A critical evaluation of some of the pertinent issues involved will be discussed in Chapter VII.

As stated in the previous chapter, the 'Majlis Ugama' of Kelantan (established in 1915), which provided the institutional framework for the 'administration of Islām' under colonial rule, became a model for the other Malay states. True, the state of Trengganu had much earlier

centralized the collection and disbursement of zakāt through the Department of Religious Affairs that was under the direct command of the Chief Minister.⁽¹⁾ But it was Kelantan which first established a religious council (Majlis Ugama) that was later backed by a statute or enactment giving it an institutional framework, as well as the legitimacy, to operate within the British colonial legal system. In other words, the implementation of Sharī'ah for the Muslims in the Malay States started to become subservient to the Common Law of the British colonial government.⁽²⁾ Thus, the enactment which was passed in Kelantan in 1915 was followed by Perlis in 1930, by Johore in 1934 and by Kedah in 1936. The other Malay states, especially the former Federated Malay States, followed later. The last one to do so was Negri Sembilan in 1957, the year of political independence of the Federation of Malaya.

A. THE POLITICAL BACKGROUND PRIOR TO INDEPENDENCE

At the outbreak of World War II in 1941, Malaysia was still under colonial rule. In socio-economic terms, there were three major communities in Malaysia engaged in different economic sectors and residing in different areas. The Malays, engaged in traditional agricultural farming mainly resided in the rural areas. The Chinese, as tin miners and petty traders, resided in the towns and ports. And the Indians mainly stayed on the rubber plantations. The small number of Europeans, mostly British, dominated the colonial state apparatus and the

"agency houses" (predecessors to today's Transnational Corporations which were at the time controlling imports and exports), mainly resided in the state capitals and major ports. Politically, there were four kinds of colonial administrative arrangements: (i) the Federated Malay States (ii) the Unfederated Malay States (iii) the Straits Settlements and (iv) the Protectorates of Sarawak and North Borneo which were respectively under the rule of the Brooke family and North Borneo Chartered Company).⁽³⁾

The Rise of Malay Nationalism

The Japanese interregnum⁽⁴⁾ in Malaysia and Southeast Asia can be viewed as a catalyst, accelerating developments that were inevitable in the long run. Colonialism would have disappeared from Southeast Asia in any case. But due to the impact of the Japanese occupation, the length of the colonial period was reduced considerably.

When Britain recaptured Malaya, it turned to a scheme called 'Malayan Union' - a highly centralized administrative system, with common and easily obtainable citizenship for all communities residing in Malaya. The scheme reduced the Malay rulers to mere figureheads. Not only did they hold very limited power affecting 'Islām and Malay custom', but the borders of the states they symbolized were virtually erased.

The British miscalculated the adverse Malay reaction to the scheme, a scheme which they had no hand in creating. In response, it brought about the 'integration' of the indigenous Malay-Muslim commu-

nity and intensified the rise of Malay nationalism, the seed of which was already in existence in the early part of the nineteenth century with the spread of the influence of Afghānī and Muḥammad ‘Abduh to the Malay states.⁽⁵⁾ The Malays reacted by gathering all Malay organizations of different orientations - nationalistic, Islāmic and even leftist - to form, in 1948, the first effective pan-Malayan political party, known as United Malay National Organization (UMNO). It is still today the leading political party in Malaysia.

Even though the initiative was taken by the Malay ruling elites, it is an undeniable fact that it had almost the full backing of the Malay community of all classes. The Malay peasants in the rural areas, rightly or wrongly, perceived that their future lay in the preservation of their traditional political and social structures. This ‘unity’ of the Malays was not merely a manifestation of Malay nationalism, but more a reaction to the large immigrant communities in the country.

Due to strong opposition from the Malays, the British abandoned the ‘Malayan Union’ scheme and in 1948 yielded to a new administrative system called the ‘Federation of Malaya’. Administratively, this brought together all the nine Malay States in Peninsular Malaya for the first time.

The Communists and the Peasants

The decision of the British Government to abandon the ‘Malayan

Union' in favor of the Federation of Malaya antagonized the non-Malays, especially the left-wing Chinese who collaborated with the British during the Japanese period. This and other post-war policies of the British led to the communist uprising which lasted for about twelve years, but the remnants of which are still present to this day.

The failure of the communist uprising in Peninsular Malaysia in this period, in our view, was due to the 'ideological dependence' of the Malaysian left-wing leaders (predominantly Chinese).⁽⁶⁾ They completely failed to grasp the structural constraints that exist in a 'plural' society like Malaysia. Firstly, they naively believed that "class struggle" would transcend ethnic and religious affiliations and appeal to the general 'masses', who hitherto undoubtedly had to some extent, been 'exploited'. Secondly, they adopted the technique of warfare from abroad, especially Mao's 'encirclement of countryside before capturing the urban areas'. The predominantly Malay peasants of the country side, mainly due to their strong religious attachment, did not give moral or material support to the guerrillas, who were mainly comprised of Malaysian Chinese. Thus, they had to operate from the thick Malaysian jungle. The British policy of emphasizing the revolt as 'Chinese' in character, and the establishment of 'New Villages' for the Chinese, also worked against the guerrillas.

The Emergence of Political Parties

However, there was a major external factor that also contributed

to the failure of the communist take-over. After World War II, the United States of America had emerged as the most powerful capitalist country in the world. Even though the United States did not play a direct role in the suppression of communist movements in Malaysia, as it did later in Vietnam, the overall U.S. containment policy of the Cold War period, and specifically the Korean War, put a serious check on the communists' success. Not only was the source of arms for the guerrillas seriously restricted, but the Korean War had the unexpected effect of producing an economic boom in Malaysia. The price of rubber and tin, the most important sources of foreign exchange for Malaysia rose to their highest levels since the beginning of the century. This boom not only made it easier for the British to finance the counter-insurgency measures, but even the Malay peasants, especially the rubber smallholders, were able to improve their income during these years. The Indian estate workers and the Chinese petty traders also benefited temporarily. This enabled the British authority to cultivate 'moderate' groups among all the races and to launch a program 'to win the hearts and mind' of the people. This latter policy was pursued by giving active support to 'moderate' political parties such as the United Malay National Organizations (UMNO). Similarly, the Chinese and Indian elites formed their own political parties, called respectively the Malayan Chinese Association (MCA) and Malayan Indian Congress (MIC). Since they were 'moderate' in their approach, they were allowed to develop and even encouraged to do so. At the same time

strong pressures from metropolitan and local interests were raised against radical parties and union movements.⁽⁷⁾

The General Election

In 1955 the first general election was held in the Federation of Malaya. The three communally-based parties, the UMNO, the MCA and the MIC, won 50 out of the total of 51 seats. The sole opposition seat was won by the Pan-Malayan Islāmic Party, formed by a group of Malay-Muslims that broke away from UMNO, due to the differences in orientation with regard to the extent of the political role of Islām in post-independent Malaya. The three victorious parties, learning from the experience of the failure of non-communally based parties earlier, agreed to cooperate during the general election by forming an "Alliance". UMNO members contested in the predominantly Malay rural areas, MCA in urban areas, and MIC in few constituencies where there was a substantial Indian population. Much has already been written on this issue of "communalism and political process in Malaysia". However, since our attempt here is to emphasize the continuity of social and political structures from colonial to post-colonial periods it ought to be emphasized that the leadership of these three political parties were mainly comprised of the traditional aristocratic Malay elites, Chinese business elites or capitalists, and Indian elites.⁽⁸⁾ As these ruling elites were economically, ideologically and politically influenced by the British, any formal or 'direct' rule

by the British was rendered unnecessary.

B. THE MALAYSIAN CONSTITUTION, ISLĀM AND THE SULTĀNS

On 31st August, 1957, the Federation of Malaya formally became an independent state. The post-colonial, and to some extent the pre-colonial structures, were retained with minimum modifications. The nine Malay states still retained their former boundaries and Rulers (Sultāns) with the modification that every five years one of the Rulers would sit by turn as the Head of State or Paramount Ruler called (Yang Dipertuan Agong) of the Federation. Even though they are considered constitutional monarchs, these rulers, especially at the level of the state, exert considerable influence.⁽⁹⁾ Constitutionally, the power lies with the Parliament at Federal level together with the Legislative Assemblies at the State level. Both are democratically elected every five years. It ought to be mentioned that the Constitution was considered a compromise between UMNO and the Malayan Chinese Association (MCA). The functions assigned to the Rulers, the choice of Islām as the 'official religion' (as the Church of England is in England), and the choice of Malay as the official language, and the provision of "special position" status ('affirmative action' in American terminology) for the economically handicapped Malays under Article 153 of the Constitution - these were part of the 'bargain' which relaxed the citizenship provisions for the non-Malays, mostly Chinese and Indians. The structures described above did not change

when the Federation was extended in 1963 to include Singapore, Sarawak and Sabah, to form what is called Malaysia.

Federal and State Powers

The Malaysian Constitution was in many ways the consummation of earlier attempt at creating a kind of federation⁽¹⁰⁾ of the existing Malay States, to form an acceptable basis for the centralization of authority. As a federal structure, the Constitution clearly stipulated the division of power between the federal and state governments. The Ninth Schedule of the Federal Constitution set out the division of power under Federal, State and Concurrent Lists.⁽¹¹⁾ The Federal List broadly included such subjects as external affairs, defence and security, the administration of justice, citizenship and naturalization, finance, trade and industry, communications, education, health, labor and social security. The State List included the Muslim Law and Malay customs, land, agriculture, forestry, the machinery of the State Government, state works and water, and local government. The Concurrent List included social welfare, town and country planning, public health, drainage and irrigation.

The State Constitutions

Every state in Malaysia has its own written state constitution and Head of State. With the exception of Penang, Malacca and later the

Federal Territory⁽¹²⁾, the Heads of State are the hereditary rulers of royal blood bearing the title sulṭān (or raja in Perlis and yang di-pertuan besar in Negeri Sembilan). In Penang and Malacca, the Heads of State are not rulers but governors appointed by the King (Yang di-Pertuan Agong) at his discretion.⁽¹²⁾ The established historical tradition was maintained by prescribing that the hereditary rulers shall be of the Malay race,⁽¹³⁾ shall be males, and shall profess Islām, which is the 'official religion' of the states. Their position as heads of the Muslim religion in their respective states is expressly confirmed by the federal constitution, in the manner and to the extent acknowledged by the constitution of the states concerned.⁽¹⁴⁾ The position of these constitutional monarchs, together with their rights pertaining to Islām and their privileges and powers, appears to be permanently guaranteed by the federal constitution, a provision which cannot be amended except with the consent of the Conference of Rulers.⁽¹⁵⁾ Thus, any change in the status of the rulers in their respective states can take place only at the state level in accordance with the state constitution.

The state constitutions,⁽¹⁶⁾ which were already in operation before the formation of the Malaysian federation, further provide for the appointment by the head of state of a chief minister (menteri-besar) who was also to be a Malay Muslim. But after independence in 1957, this was changed to allow the ruler to waive this religious qualification and appoint as chief minister even a non-Muslim who, in

his opinion, commands the confidence of the majority of the members of the State Assembly (who are democratically elected by the people).

In Penang and Malacca, where the heads of states are not hereditary rulers, neither of these states has a requirement that the head of state and/or chief minister must be a Muslim. In lieu of this, however, the King (Yang di Pertuan Agong) has assumed the position of head of the Muslim religion by virtue of Article 5 of the constitutions of these two states. The implication being that Islam is also the state religion of Penang, Malacca and the Federal Territory, although there is no specific statement to this effect anywhere.⁽¹⁷⁾

The Yang di Pertuan Agong as Supreme Head of the Federation, being elected by the Conference of Rulers from among the hereditary rulers⁽¹⁸⁾, is himself necessarily therefore a Muslim, and Article 3 of the Malaysian Constitution declares Islām to be the 'official religion' of the federation; while allowing the practice in peace and harmony of other religions in any part of the Federation. It should also be stressed that although Islām is the 'official religion' of the whole federation, the power to 'legislate' on matters pertaining to the application of Islāmic Law, such as the zakāt law, is vested solely in the state legislature. In theory, each ruler could exercise his authority as the head of Islām only in his own state. But a formula was devised by which the rulers of all the states, acting together as the Conference of Rulers can authorize the Yang di-pertuan Agong to represent them in certain Islāmic matters in the

country as a whole.⁽¹⁹⁾ This is provided by Article 3(2) of the Malaysian Constitution, which states that the Conference of Rulers could inter alia consider extending of religious acts, observances and ceremonies to the Federation as a whole. In reality, however, the state rulers rarely if ever relinquish any of their powers to the federal authority, except those of a purely ceremonial nature.⁽²⁰⁾

As matters pertaining to Islāmic law fall under the jurisdiction of the State Rulers, all aspects relating to the administration of zakāt are handled by the State through their respective Religious Councils or Majlis Ugama, except in Kedah which has a separate Zakāt Office directly responsible to the Ruler.

Islam as 'Official Religion'

It should be stressed here that the term 'religion' is used in the Malaysian Constitution in the Western sense. It is definitely not in the context or meaning of the Qur'ānic term al-Dīn, which covers all aspects of human life. Thus when Islam is referred to as the 'official religion' of Malaysia or as 'religion of the State', it does not imply that Malaysia is not a secular state. This is clearly emphasized in the Report of the Federation of Malaya Constitutional Commission based on a memorandum submitted by the then ruling Alliance Party, which states:

"The Religion of Malaysia shall be Islām. The observance of this principle shall not impose any disability on non-Muslim Nationals professing and practising their own religion and shall not imply that the State is not a

secular State".(21)

The Malaysian Constitution as such is a unique document among the written constitutions of the world.⁽²²⁾ It has undoubtedly evolved through the peculiarity of Malaysian historical experience, as well as reflecting the impact of Western political concepts. As Groves⁽²³⁾ correctly observed, "even the concept of 'federation' was not foreign to Malaya, for a federation, albeit not a very homogeneous one, existed among the old Nine States of Negri Sembilan".⁽²⁴⁾ Even though, the Malaysian Constitution presupposes a democracy, a representative government responsible to the electorate, yet "at the root of this political organization lies, however remote and modified, the vestiges of the concept of the Sultānate which not only dominated the political history of the country but has also been the sole custodian of the Sharī'ah law for many centuries".⁽²⁵⁾ Thus as A.M.M. Mackeen has aptly observed, the role of Islāmic law in contemporary Malaysia can only be understood against "a full appreciation of the constitutional theory of the Sultānate, both as it matured in classical Muslim thought, and as it unfolded itself in local history".⁽²⁶⁾

The impact and pervasiveness of modern Western political and constitutional ideas have, unfortunately, eclipsed the institutional value of the concept and operation of the 'Sultānate', at least in the context of Malaysia. Although the term sultān is often used in practically all relevant modern writings, the significance of this institution for determining the nature of the development of Islamic law in

Malaysia, has not been given adequate attention.⁽²⁷⁾ This is quite unfortunate. Unless this imbalance is redressed, there is bound to be a lacuna in our knowledge and understanding of the constitutional significance of Islamic law in Malaysia. This subject warrants greater attention in an entirely separate study. However, our observations on the administration of zakāt law in Malaysia not only proves this point but also serves, to a limited extent, to fill this gap.

C. THE ADMINISTRATION OF ZAKAT IN MALAYSIA

As stated in the beginning of this chapter, the Majlis Ugama of Kelantan became a model for other Malay States in providing the institutional framework for operationalizing the authority of the Sultān as the custodian of Islām in his state. Although there are many similarities in the various enactments that established these religious councils, which were continuously influenced by one another through the various amendments⁽²⁸⁾ made from time to time, there yet remain a number of major divergences in the detailed application of Islamic Law in these states. Nowhere is this more apparent than in the administration of zakāt. We do not intend to detail the practice of zakāt in each of the nine Malay States in Peninsular Malaysia. Because this study is mainly concerned with agricultural zakāt (ʿushr), we will focus our discussion here on the administration of zakāt in Kedah, the 'rice-bowl state' of Malaysia. Where necessary, comparison will be made with Perak. Kedah, like those Malay states

such as Kelantan (which we have discussed in Chapter 5), Trengganu, Perlis and Johore⁽²⁹⁾, has a predominant Muslim population. Their economies are mainly peasant-based and were formerly under a colonial arrangement called the 'Unfederated Malay States'. On the otherhand Perak represents those Malay States which have a substantial non-Muslim population whose economies are affected largely by modern capitalist mining and plantation sectors (with pockets of peasant economies remaining intact). Under colonial rule these became part of the 'Federated Malay States'. No doubt each of the Malay States is rather unique in a sense, but these two 'models' or their mixture, largely represent the other states. For the sake of clarity and brevity, we would focus our discussion on the following six areas: (i) the organizational structure of the administration of zakāt; (ii) the procedure of selecting the 'āmil (zakat collectors); (iii) items on which zakāt is collected; (iv) the determination of nisāb; (v) the zakāt collection method and (vi) the zakāt distribution method.

1. The Organizational Structure

In Kedah we find not only a separate enactment which established The Council of Religion and Malay Custom (1948) but also a separate enactment called Zakat Enactment 1955, which established a State Zakāt Committee directly answerable to the Sultan.⁽³⁰⁾ This was the first legislation on zakāt in Kedah since the imposition of colo-

nial rule. It was probably then that the zakāt administration was effectively centralized. The Zakat Enactment was later amended at least twice, once in 1961 and again in 1962 (the Zakat Rule) which to this day basically governs the practice of zakāt in Kedah.

The State Zakat Committee of Kedah is comprised of the State Secretary as the Chairman of the Committee, four district officers from the main rice-growing districts; the chief qāḍī and four assistant qāḍīs mainly from rice growing districts, the Secretary of the State Council of Religion and Malay Customs, the Private Secretary to the Sultan, and eight other members mainly comprised of ‘ulamā’.⁽³¹⁾ Although this Committee is the authoritative body with respect to the collection and distribution of zakāt, the actual work is carried out by a sub-committee, called the Zakāt Working Committee. The sub-committee is comprised of the following ten members: the State Secretary of Kedah (Chairman), two district officers, one qāḍī and six ‘ulamā’, all of whom are also members of the Zakāt Committee itself. At the district level, the District Zakāt Committee is headed by the district officer. Below this level, there is also a Zakāt Committee for each mosque zone (‘parish’, or in Malay as kariah masjid).

It should be noted that the State Secretary and the district officers in Kedah, as elsewhere in Malaysia belong to the ‘secular’ administration. Thus, what is particularly striking in Kedah is the overlapping of the secular and religious administrations in the mana-

gement of zakāt. By contrast, in Perak, no State Secretary or district officers are included at any level in the administration of zakāt. In Perak, as in most other Malay States, even though there is a State Zakat and Fitrah Committee, the administration of zakāt comes under the jurisdiction of the State Council of Religion and Malay Customs (Majlis Ugama). As such, it is answerable to the Sultān only. The members of the Zakat Committees at various levels in Perak are comprised only of religious functionaries, as well as traditional Malay aristocrats.⁽³²⁾

No one has given a satisfactory explanation concerning the close collaboration, or the overlapping of 'secular' and religious administrations, in Kedah and, by contrast the absence of it in Perak. We feel, that such a close collaboration in Kedah is possible because the state's 'secular' officers such as the State Secretary and district officers belong to the state civil service. Whereas their counterparts in Perak belong to the federal civil service.⁽³³⁾ As such, if the civil servants in Perak were to be involved in anyway in the administration of zakāt, it would be tantamount to the state's relinquishing of its authority on the 'administration of Islām', which belongs constitutionally to the jurisdiction of the State.

However, with respect to the actual functions of the local or kariah masjid Zakat Committee, there are no significant differences between the two states. The members of the local Zakāt Committee in both states were provided with several administrative powers, inclu-

ding the power to:

- (a) appoint or nominate⁽³⁴⁾ an ‘āmil for the kariah masjid concerned;
- (b) inspect the work of the ‘āmil;
- (c) inspect the survey card⁽³⁵⁾ of the ‘āmil in order to make sure of the expected amount of zakāt;
- (d) investigate whether or not the poor and the needy actually received the benefit from zakāt;
- (e) send any complaints on the zakāt system, seconded by another person, to the Sultān through the qādī; and
- (f) receive petitions from indebted rice farmers for exemptions from zakāt payment and to submit their petitions to the Sultān through the qādī.

In Kedah, when a penghulu select an ‘āmil, he is supposed to take into consideration among other things the integrity, piety and the knowledge of Islām of the person concerned.⁽³⁶⁾ In view of this, the imām of a surau or mosque should logically be the natural choice, as practiced in Kelantan. However, in the particular mukīm surveyed in Kedah only two of the seven imāms in the mukīm were appointed as ‘amilīn, constituting only 10 per cent of the total of twenty ‘amilin in the area.⁽³⁷⁾ This may be the result, as Kenzo Horii observed, of governmental administration taking control of the religious jurisdiction, as demonstrated by the appointment of ‘amīl by the penghulu rather than by the imām.⁽³⁸⁾

In Kedah it is thus clear that at the level of mukīm administration, at least, the authority of the penghulu goes beyond the general administration to include religious administration, a power which

constitutionally belongs only to the Sultān. This overlapping of general (or 'secular') with religious administration naturally would have, as stated earlier, serious political implications, especially after the introduction of western-style political parties in post-independent Malaysia. Considering the fact that the imām usually enjoyed a high reputation among the villagers, the still higher authority of the penghulu naturally caused the villagers to respect him too. If the penghulu were a supporter of the ruling party, he would be able to influence villagers through the ketua kampung (village headman), the imām and the ‘āmil. Therefore, as was stated, "the administrative system in which the penghulu played a more important role than the imām in matters related to zakāt can be considered a very astute political move on the part of the government".⁽³⁹⁾

2. The Appointment of the ‘Āmilīn (Zakāt Collectors)

The above major difference is also clearly reflected in the selection and appointment of the ‘āmil. In Kedah there is a Zakāt Committee for each mosque zone, or kariah masjid, which is responsible for the selection of the ‘āmil. The penghulu, the lowest level government official in a mukīm,⁽⁴⁰⁾ is on the committee and, in practice, empowered to select and supervise the ‘āmil. In fact the penghulu himself normally plays the role of ketua ‘āmil⁽⁴¹⁾ (chief or head of all the ‘āmilīn under his mukīm). Considering the fact that the penghulu is under the authority of the district officer, his selection

of the ‘āmil indicates not only the interpenetration of ‘secular’ and religious administration, but also the control of the latter by the former.

In contrast, there is little influence exercised by the ‘secular’ administration on religious affairs in Perak. According to the Zakāt Rule, (Peratoran Zakāt dan Fiṭrah) enacted in 1952⁽⁴²⁾, the ‘āmil should be selected by the Zakāt and Fiṭrah Committee of each mosque zone. In effect this means by the farmers themselves. This provision was somewhat modified by the Administration of Muslim Law-Enactment 1965 which gives the final authority of appointment of the ‘āmil to the President of Majlis Ugama. It remains clear that there is little interference by the ‘secular’ officials in the administration of zakāt in Perak. This relative independence of the farmers in Perak in the selection of the ‘āmil and other religious officials of the mosque is not without political implications, especially during general elections. We noted previously that during the first general election held in Malaya in 1955, the only opposition candidate appointed to the Federal Legislature was from the then Pan-Malayan Islamic Party (PMIP), namely from the pre-dominantly rice-growing Muslim community of Upper Perak. The independence of the local religious functionaries, such as the ‘āmilin, contributed to helping the Islāmic political force to exercise influence over devout Muslim villagers and farmers. Later this was also the case in Kelantan, even though for somewhat different reasons.⁽⁴³⁾

3. The 'Coverage' of Zakat

The agricultural zakāt ('ushr') in Malaysia is confined only to paddy. Until the advent of colonialism this was quite justifiable, considering the fact that this was the only major agricultural crop in the Malay States. However, after colonialism, the British introduced commercial cash-crops such as rubber and palm oil which gave relatively better yields and incomes to the cultivators. Despite this development, the 'ulamā' in Malaysia to this day still confine 'ushr' only to paddy and the rest of the agricultural produces are exempted from zakāt. The juristic arguments for this, and its socio-economic implications, are discussed in Chapter VIII.

4. The Determination of Nisab

One of the glaring differences among the states in Malaysia with respect to the administration of zakāt is the determination of nisāb -i.e. the minimum exemption level of zakāt. For instance, the nisāb of paddy in Kedah is 480 gantang⁽⁴⁴⁾, 363 gantang in Perak and 375 gantang in the states of Trengganu and Kelantan.

These differences are rather alarming, considering the fact that all the 'ulamā' in Malaysia accept the fact that the determination of nisāb on paddy is based on the classical measurement of five wasq (which have been calculated to be equivalent to 1,000 kilogram⁽⁴⁵⁾). If this lack of uniformity were due to the difference in the price of

paddy in the various states, then it raises a much bigger issue. Is the determination of nisāb itself subject to change depending upon, for instance on the cost of living or the fulfilment of the basic needs of the farmers. This would be elaborated in Chapter VIII.

5. The Collection of Zakāh

5.1. The Extent of Responsibilities of each ‘āmil

There is a difference, between the two states of Kedah and Perak with respect to the extent of responsibility of each ‘āmil in zakāt collection. In Kedah, an ‘āmil is assigned to collect zakāt from about a hundred rice-growers, whereas in Perak the ‘āmil collects zakāt based upon acres -approximately a hundred acres of rice land. Thus, in Kedah, the method of zakāt collection is based on individual farmers. But in Perak, it sometimes happens that one farmer has to pay zakāt to more than one ‘āmil, if his paddy fields are scattered, since the ‘āmil is responsible for a particular block of land.⁽⁴⁶⁾

Although the cause of this difference is uncertain, the Perak system, as Kenzo Horii⁽⁴⁷⁾ correctly observed, appears to be more efficient and accurate because the zakāt collection is imposed directly upon the product of the land. However, where fields are fragmented or cultivators of certain fields unknown, or where the cultivators' houses are far from the field, the Perak system can result in inaccuracies, and the Kedah system might become more practical.⁽⁴⁸⁾

5.2 The Method of Estimating Collection of zakat on paddy

With respect to the procedure of estimating zakāt collection on paddy, there are great similarities between the two states. In both these states, as well as in other Malay states, it involves a number of steps. Bureaucratic procedures must be followed and numerous forms must be filled out in the whole process.⁽⁴⁹⁾ However, the ‘āmil would have to make at least two investigations a year: once around October when paddy starts ripening, he would have to survey the cultivated rice acreage. And on the second round, i.e. immediately prior to harvesting, he would have to survey again in order to estimate the expected yield. In the case of Kedah both these reports must be sent to the Zakat Working Committee, with copies given to the individual farmers concerned. It should be stressed that both these surveys are carried out by the ‘āmil purely for the purpose of zakāt collection, and have no relationship whatsoever to yield-surveys carried out by the Drainage and Irrigation Department or by the Department of Agriculture. The significance of this will be discussed later.

5.3. The Gap Between The Estimate And The Actual Collection

In both Kedah and Perak, as well as in other Malay States, we find at least two common occurrences: the tendency for the ‘āmil to underestimate, sometime grossly, the expected yield and thus the

amount of zakāt to be paid by the peasants and, secondly, the actual zakāt paid is normally far less than even the underestimated yield.

Take the case of a particular village in Perak as an example (see Table 6-1). Based on the ‘āmil’s estimate before harvesting, all the forty-four paddy growers should have paid a total of 2,865 gantang of zakāt, or about 65 gantang per grower. However, it is clear that only thirty-two paddy growers actually paid; and the average amount paid was 29.7 gantang per grower, or less than half the expected amount. It is glaringly obvious that sizeable differences exist between the expected and the actual amount of zakāh paid. Moreover the estimated production was based on the assumption of 300 gantang per acre, which was actually less than half the real productivity in the area at the time of the study.⁽⁵⁰⁾ As a result of these two manipulations, the actual payment of zakāt was much less than the prescribed amount.

The pertinent question to ask here is whether or not this underestimated amount of zakāt still constitutes a burden or not to the peasants concerned. To enable us to see this clearly, we have to translate the zakāt paid into monetary terms. By using Table 6-2 let us look into the payment of zakāt in Kedah on a per household basis. In addition to a particular village (Kampung Aris), data are presented on mukim, kariah masjid and state basis. Although it is difficult to obtain the exact figure from this table, it is safe to say that the average amount of zakāt paid during this time was about twenty Malaysian ringgit, or thirty gantang per household. Whether or not this

amount was a heavy burden on the economy of each household depended, of course, upon the relative economic standing of each household. However, in view of the then prevailing wage rate of three to five ringgit per day in the village, this amount was not a light burden to the poor farmers, especially tenants who also had to pay rent for the use of land.⁽⁵¹⁾ We will elaborate on this in Chapter VIII.

5.4. Collection Based on Gross Production

In this respect, there is complete uniformity among all the States in Malaysia. The zakāt on paddy is imposed at a flat ad-valorem rate of 10% on paddy produced in excess of the nisāb. The rate is applied on total gross production rather than on total net production. Gross production would include all the costs of production such as rent, use of fertilizers, insecticides, tools and machineries, etc. The cost of all these are quite substantial, especially in the Muda Region of Kedah, where the use of new padi varieties makes farmers increasingly dependent on these purchased inputs in order to achieve potential high yields. In view of the increasing costs of purchasing these inputs, some of which are imported, the zakāt rate which at one time appeared to be acceptable in terms of gross production, may prove today to be excessive in terms of the net production and income. However, the majority of the 'ulamā' in Malaysia, based on the views of some of the classical Shafi'i jurists⁽⁵²⁾ strictly adheres to the principle that zakāt should be imposed on the gross

production at the time of harvesting (See Chapter III). This matter will be discussed further in Chapter VIII.

6. The Distribution of Zakat

6.1. The Share of the Center and of the Regions

Another important difference in the administration of zakāt between Perak and Kedah lies in the manner in which the zakāt proceeds are shared between the Center and the regions or, more precisely, between the State and the villages. As we can see from Table 6-1, in Perak $3/8$ ths of the total proceeds of zakāt from a village is retained within the village. And the proceeds are equally divided between (i) the ‘āmil, (ii) the poor and (iii) the needy with each getting $1/3$ of the share. The remainder $5/8$ ths of the proceeds is forwarded to the State, i.e. to the Majlis/Department of Religious Affairs.

In Kedah, however, up till 1963, $4/8$ ths of the zakāt proceeds were retained in the villages and the balance forwarded to the State Zakāt Committee. However, in 1963 a new procedure was introduced which required the ‘āmil to forward the total collection to the State Zakāt Committee. The Sultan of Kedah announced this amendment to the State zakāt law and requested the cooperation from the farmers in the following message:

"I would like to bring to your attention the method of zakāt collection. During my late father's reign, according to the regulation then in force, the ‘āmil collected only four-eighths of the zakāt payable. However, most of the religious schools (sekolah ugama ra'ayat) are now in a

very poor condition, and the number of poor people seems to be increasing. It is also sad to see the poor condition of surau and masjid in villages in this state. Most residents in farming areas are hardly in a position to receive proper religious education, and even in well-established religious schools, whose graduates are entitled to attend institutions of higher learning, the situation is similar. For these reasons, under my reign, legislation has been passed to implement the full payment, i.e., 100 per cent of zakāt to the government. I believe that zakāt and other government assistance will help solve the sad situation in the state. I believe that all of you who are present here would give full cooperation to collectors of zakāt throughout the state. Let us pray to Allah to aid this attempt at success for the benefit of Islāmic society in Kedah".⁽⁵³⁾

Needless to say, doubling the amount of zakāt payable to the state must have had considerable impact on the rice-farmers. Precisely what their immediate reaction was then to the increased payment of zakāt cannot be ascertained. But according to one study conducted in Kedah⁽⁵⁴⁾ around this period, there appeared to be some temporary animosity against the government. However today, the amount of zakāt payable to the state has been well-established. The question is how the rice farmers adjusted to (or circumvent) this regulation?

To answer this question, we have to take note of the difference between the estimated and the actual zakāt collection, which was discussed earlier with respect to a village in Perak. In Kedah, we have in Table 6-3 data of a case-study⁽⁵⁵⁾ conducted in 1967 -i.e., shortly after the introduction of this new regulation. This study was conducted in a village called Kampung Sungei Bujur, which had fifty-two rice growers. The important findings of this study⁽⁵⁶⁾ are summarized below:

- (a) The cultivated rice acreage reported by the ‘āmil at the time of the first survey corresponded only to half or one-third of the actual acreage cultivated by the farmers concerned;⁽⁵⁷⁾
- (b) Judging from the amount of zakāt collected, the ‘āmil underestimated the expected yield in the second survey, just before harvesting. According to the ‘āmil’s estimation of zakāt, two naleh⁽⁵⁸⁾ per three relong⁽⁵⁹⁾ or two - thirds of a naleh per acre, appeared to be an unwritten agreement between the ‘āmil and the farmer.⁽⁶⁰⁾ However, the average productivity of rice at the time of this survey in Kedah was at least two kunca⁽⁶¹⁾ per relong, which was equivalent to about 450 gantang per acre. Thus, it was possible to expect twenty naleh per relong as an average production in the state, the amount of zakāt payable being two naleh per relong instead of two naleh per three relong. This indicates not only "the practice of the ‘āmil taking into account the farmers’ standard of living and ability to pay zakāt but also suggests an established agreement between the ‘āmil and ordinary farmers in the village community".⁽⁶²⁾
- (c) In spite of the above increase in the amount of zakāt claimed

by the state at the time of the above study, many farmers still paid only half of the prescribed amount of zakāt. From discussion with the farmers,⁽⁶³⁾ they indicated that they would pay only half to the ‘āmil, and the other half to the surau and mosque officials, such as to’ siak and bilal.

It should also be noted that what the farmers called "half the amount" was actually far less than half the real quantity due, because of the ‘āmil's underestimation of the gross production. In other words, the farmers appeared to be paying more zakāt within the village society, and of their own free-will, rather than paying the prescribed amount to the government.

- (d) Moreover, seven farmers out of the total of fifty-two who did not pay zakāt at all. Two of them belong to the category whose production level was below nisāb. Two others were new-comers to the village. One suffered severe damage to his crop from rats. One was very poor(fakir). And the remaining farmer worked on rented land under the pajak⁽⁶⁴⁾ system. Of the two farmers in the category "below nisāb", one was a lessor-owner farmer, cultivating 1.0 relong of owned land renting out 20.5 relong; while the other was a pure tenant cultivating 1.5 relong. Surely the difference

in acreage between the two farmers points to the imbalance or inequity in the administration of the zakāt collection. This was due to the regulation that zakāt should be paid by the cultivators, not by landowners. This principle which has been criticized by many scholars is discussed in Chapter VIII.

- (e) Finally, new settlers, very poor villagers, pajak tenants, and those farmers who suffered extensive damage from pests and diseases were exempted from the payment of zakāt. According to the Kedah Zakat Rule, only those farmers whose crop suffered extensive damage from pests, disease, flooding and other unexpected damage, were eligible for a reduction in or exemption from the payment of zakāt. All other exemption stated above were granted by the ‘āmil on an unofficial and personal basis, which indicates the informal and flexible relationship between the ‘āmil and the ordinary villager.

In fact, as stated earlier, the ‘āmil normally resides in the same or neighboring village and naturally maintains constant contact with the farmers in social-religious life as well as in productive activity. As such, in most cases the ‘āmil tends to empathize with the farmers. Still, knowing the economic conditions of the farmers, if he were to be overzealous in enforcing the zakāt rules "his own reputation as a

man of character and religious knowledge would collapse and he would be estranged from the village society".⁽⁶⁵⁾

The above findings, which were observed in the late 1960's after the introduction of the new zakāt regulations in Kedah, are still relevant and valid to this day. Our own investigation⁽⁶⁶⁾ in November, 1984 confirmed this. In fact, what is rather disturbing in our finding is the usage of the term 'zakāt kerajaan' (government's zakāt)-thus denoting a distinction between the zakāt given to the ʿāmil and the zakāt distributed by the farmers themselves - implying the latter to be an 'Islāmic zakāt' and the former to be government's zakāt!. Even though this could be politically motivated by the opposition Islamic Party (PAS) in some villages in Kedah, the manner with which the zakāt had been administered in Kedah (particularly the way the zakāt proceeds had been distributed) clearly contributed to this.

6.2. Distribution to the Asnaf

With respect to the distribution of zakāt to the asnāf, all the states in Malaysia, theoretically at least, make provisions to each of the asnāf as specified in the Qur'ān. (See Tables 6-4 for Kedah, 6-5 for Perak and 6-6 for Kelantan). In fact in Kedah, the total zakat proceeds were divided into eight equal portions, one for each category of the asnāf. But, this appears to have been a purely a theoretical division, consistent with the relevant Qur'ānic verse as interpreted in the Shāfi'ī school.⁽⁶⁷⁾ In actual practice, as we shall discuss

shortly, the pattern of distribution was quite different. The states concerned also determined the actual recipients under each category. Table 6-7, for instance, lists the actual recipients of zakāt in Kedah. From this list we can make the following observations:-

- (a) Fakīr (the poor) and miskīn (the needy). This includes allowances for the poor and the needy students in religious schools as well as for the religious teachers and for other emergency expenses.
- (b) mu'allafah qulubūhum. Half of the allocation is reserved for paying salaries to the officers of the State Zakāt Committee. The other half is paid for missionary works, such as organizing Qur'ān reading competitions, trust funds for mosque officials, as well as contributions to the PERKIM (which takes care of small numbers of converts, mostly Chinese) and to the Association of Religious Scholars ('Ulamā') in Kedah.
- (c) Al-riqāb (the slaves): As this category is considered non-existent, 1/2 of the allocation is used once again for the salaries of the officers and staff of the State Zakāt Committee, and the other half for the maintenance of the state zakāt building and for investments in halāl ventures;
- (d) Al-Ghārimūn (The Debtors). This allocation is assigned solely to the Nizāmī People's Religious School, Kedah.

- (e) Fī sabīl Allah (in the cause of Allah). This allocation is used for the construction of mosques, suraus and religious schools.
- (f) Ibn al Sabīl (The Wayfarers). This allocation is for the wayfarers and scholarships to students. Another 1/8 of this allocation is assigned for administrative expenses of the State Zakāh Committee. And the balance distributed to the first four aṣnāf.

No explanation is given in the Kedah Zakāt Report as regards the basis or religious justifications for the selection of the above recipients. Even though some of the selection of the recipients are consistent with Sharī'ah, others are controversial, if not improper. We may ask, for instance, how could the Association of 'Ulamā', Kedah (which is comprised mostly of Al-Azhar graduates earning fixed salaries from the government working as Qādīs and religious teachers) be given contributions from the zakāt proceeds meant for al mua'alafah qulūbhum ("those whose hearts to be reconciled")? There is a great irony in this. We do not doubt the presence of 'ulamā' of great learning and piety in Kedah. But if the Association of 'Ulamā' were to take the lead in refusing to accept zakāt funds for its activities, and thus refusing "to be reconciled" to views and actions which are prejudicial to the legitimate rights and interests of the poor and the needy, that would go a long way in redressing most of the ills of the zakāt administration in Kedah. If this 'contribution' is justified on the ground that

the association performs certain da'wah works, then that should be specifically stated in order to avoid any misunderstanding. From the list of the recipients, it appears that there were no debtors in Kedah, at least none appear as recipients of zakāt allocations.

We will find more revealing information on the actual practice of zakāt in Kedah if we scrutinize Table 6-8 and Table 6-9, which lists the actual 'expenditure' (or distribution) of zakāt proceeds for the years 1980/81 to 1982/83. If we analyze Tables 6-8 and 6-9 we can make the following observations.

- (a) The actual amount distributed to the poor and needy was only about half of the amount allocated to these two categories. In 1980/81, for instance, each of the two aṣṇāf was allocated \$183,864.93 (see Table 6-4); whereas in actual fact both these aṣṇāf combined received a total of only \$183,105.00 - less than 50% of the total allocated in that year. (See details in Table 6-10). Even if we add the amount given to the needy students of religious schools to this total amount distributed to the poor and the needy, it would still be less than 50% of the total amount allocated .
- (b) The administrative expenses of the State Zakāt Committee constitute the largest single expenditure paid from the zakāt proceeds. (See Table 6-10).
- (c) The contribution to the Association of 'Ulamā' in Kedah,

even though relatively negligible, has tripled from the 1980/81 (\$2,000/-) to 1982/83(\$6,000/-).

- (d) The undistributed balances of the zakāt proceeds were often larger than the amount distributed to the poor and the needy. (See Table 6-10).

All the above observations, with the exception of (c), are also applicable to most other states in Malaysia.

6.3. The Method of Zakat Distribution

An equally important issue to consider is how zakāt proceeds are distributed. In Kedah, the selection of the poor and the needy villagers is carried out by the Zakāt Working Committee, on the recommendation of the penghulu and the ‘āmil. The procedures in other states are about the same. Here again it is clear the critical role of the ‘āmil, as intermediary between the village society and the zakāt administration. This does not necessarily imply that the village community itself derives sufficient benefit from the zakāt system as administered by the state authority. The value of assistance given to the selected poor and the needy range from \$20/- to \$30/- a year per person.⁽⁶⁸⁾ This assistance is given normally just before the religious celebrations of ‘Īd al Aḍḥā and ‘Īd al Fitr. In the majority of cases, the recipients include the following: (i) elderly persons, mostly women, who have no children supporting them; (ii) female single parents with no stable source of income and (iii) handicapped persons.

This method of zakāt distribution only enables the recipients to participate in the religious celebrations - nothing more than that. Even though in some instances, the State Zakāt Committee did give some 'instruments of trade' (such as bicycles)⁽⁶⁹⁾ to enable a few of the poor to earn a living on their own; this remained more an exception than the rule. This 'hand-out' method of zakāt distribution, which is undoubtedly necessary in some cases, seems to be the only method which is common in Malaysia in recent years with the exception of the Federal Territory⁽⁷⁰⁾. We shall discuss this problem in Chapter VIII.

CONCLUSION

From the above discussion on the administration of zakāt in post-colonial Malaysia we are able to see to what extent the practice of zakāt in Malaysia conform to the principles and practices of zakāt in Early Islām. Some of the pertinent issues and problems raised can be summarized as follows.

- (a) There is an increasing tendency to centralize all aspects of zakāt administration at the level of the states, with the result of discouraging most of the Malay-Muslim peasants from paying zakāt to the central authorities.
- (b) Agricultural zakāt is imposed only on the traditional paddy farming sector. Other, relatively more lucrative and modern agricultural sectors, such as rubber and palm oil

are still exempted from paying zakat.

- (c) Zakāt on paddy is imposed at a flat ad valorem rate of 10% on paddy farmers producing in excess of the nisāb. The rate is applied to the total gross production rather than to the total net production.
- (d) Zakāt is paid by tenants and owner-operators. A landlord who rents out his land is not required to pay agricultural zakāt on the produce of his land.
- (e) The distribution of zakāt proceeds to the aṣṇāf appears to be concentrated in favor of the ‘āmil and the bureaucracy of zakāt, rather on the poor and the needy.
- (f) Substantial portions of the zakāt proceeds collected were not distributed to the aṣṇāf, but were kept and used for investment purposes.
- (g) The method of zakāt distribution is almost exclusively based on a ‘hand-out’ method. No serious effort was made to ensure that some of the recipients were able to use zakāt funds as capital to change their economic conditions.

These are some of the major issues in Malaysia that seriously affect the fulfillment of one of the overriding objectives of zakāt on the earthly plane: the achievement of ‘social justice’ through an equitable distribution of income and wealth. Some of these issues are not

without historical antecedents and juristic arguments and legitimacy. These will be elaborated later. However considering the fact that the ultimate objective of Sharī'ah (maqāsid al sharī'ah) is maslahah (the welfare) of all God's creatures, the specific application of the zakāt laws necessarily have to take into account the new and changing situations in Malaysia. In order to place in perspective the magnitude and gravity of the above problems, we also have to understand the 'national ideology', or the socio-economic priorities and policies, of the Malaysian government as a whole. That will be the major focus of the next chapter.

NOTES

- (1) Abdul Majeed Mohamed Mackeen, Contemporary Islāmic Legal Organization in Malaya, Yale University, Southeast Asia Monograph No. 13, New Haven. Yale University 1969. p.29.
- (2) This is quite obvious from all the enactments passed regarding 'Islāmic Law' in the various Malay States. As long as the various provisions of interpersonal Islāmic laws do not contravene the British interests or British sense of 'justice', they were allowed or approved. But Hudūd, for instance, were not allowed.
- (3) Brooke family named after James Brooke (known as Raja Brooke) was a British adventurer who managed to take 'possession' of Sarawak in 'perpetuity' for services rendered to the Sulṭān of Brunei in the nineteenth century. North Borneo, now called 'Sabah' was ruled like a huge estate by the Chartered Company until it was ceded to the British Government in 1941.
- (4) During World War II, Japan ruled Malaya and other parts of Southeast Asia from 1941 to 1944. During this period, it did not only demonstrated to the natives the myth of the invincibility of the British Empire but also attempted to cultivate 'nationalism' or at least anti-British feelings among the people.
- (5) See W.R. Roff, The Origins of Malay Nationalism, New Heaven and London, Yale University Press, 1967.
- (6) 'Abdul 'Aziz BinMuḥamad, Some Aspects of the State in Colonial and Post-Colonial Malaya, (mimeo) a paper presented for M.Phil Course in Development Studies at University of Sussex, Brighton, U.K., 1974.
- (7) M.R. Stenson, Industrial Conflict in Malaya, OUP, Kuala Lumpur 1970, p.236.
- (8) Indian 'elites' is quite insignificant and here refers to Hindu-Indian business community mostly belonging to the moneylending 'chettiar' class.
- (9) Unlike the monarchy of Britain which has a long tradition of being 'constitutional monarchs', the Rulers in Malaysia at times had difficulties in adjusting to this new rule. The Malaysian Rulers have considerable influence among their Malay subjects and sometimes they do 'display' their political muscle. There was an occasion for instance, in the early seventies, when the then Sulṭān of Perak openly declared that 'the State's Chief Minister was "appointed on my pleasure", a reference to the fact that the then Prime Minister of Malaysia approached the Sulṭān when assigning the then Chief Minister to this post from his former post as a Federal Cabinet Minister. The royal consent in this case was merely a formality, but the Ruler interpreted it

to be an authority. His public utterances even though unconstitutional were apparently not challenged then. It was due to such occurrences as well as other factors that led to the Constitutional Amendment (restricting the powers of the Rulers by making it possible to pass State and Federal laws without their signatures) in 1984, which resulted in a major political crisis in Malaysia between the Prime Minister and the Malay Rulers. Even though this matter has since been settled, the severity of the crisis again prove the above point.

- (10) A.M.M. Mackeen (op.cit.) p.21. This has been discussed earlier. 'Federated Malay States', and 'Malayan Union' were the earlier attempts. The former succeeded whereas the latter failed.
- (11) 'Federal Territory' comprised of the capital of Malaysia, Kuala Lumpur and its suburb. Recently, the island of Labuan in Sabah has also been declared a Federal Territory.
- (12) 'Discretion' is a legal euphemism. Such appointments are made by the King after consultation with the Prime Minister who actually submit to the King the names of those to be appointed.
- (13) The Malaysian Constitution defines the term 'Malay' not ethnically but culturally. Malay is someone who professes Islam and lives by Malay customs in his daily life.
- (14) A.M.M. Mackeen, op.cit. p.22
- (15) 'Conference of Rulers' is a constitutionally institutionalized gathering of Heads of States of Malaysia which takes place at regular intervals.
- (16) Most of the State constitutions predates the Federal Constitution. The earliest one being the constitution of Johore (1895) followed by the Constitution of Trengganu (1911). The title of the Trengganu Constitution is in Arabic: "Itqānūl al Mulk bi Ta'dīl al Sulūk".
- (17) A.M.M. Mackeen, op.cit.
- (18) With the exception of the governors of Penang, Malacca, Sarawak and Sabah, all others are hereditary rulers in Malaysia.
- (19) Harry E. Groves, The Constitution of Malaysia (Singapore 1964), p.48.
- (20) Every State, as to be expected jealously guard their State rights. A State Ruler who in his own person possesses certain rights such as being the 'head' of Islām in the State, also jealously guards this right. Because of this there were occasions when different States in Malaysia celebrated 'Īd al Fitr (which depend on the citing of the moon) on different dates.
- (21) Political Testament of the Alliance Party, in Report of the

Federation of Malaya Constitutional Commission, Government Printer, Kuala Lumpur, p.20.

- (22) A.M.M. Mackeen, op.cit. p.24.
- (23) Groves, p.33.
- (24) Groves, Ibid, R.O. Winstead, The Malays: A Cultural History (London, 1958) p.90.
- (25) A.M.M. Mackeen, op.cit. p.24.
- (26) Ibid
- (27) Ibid, p.24-25
- (28) These amendments were made from time to time. Due to the close proximity of the various states in Malaysia, changes in one state do bring about change in another state.
- (29) Johore, due to its close proximity to metropolitan Singapore has a sizeable number of non-Malay population.
- (30) Zakāt Enactment 1955, Government Printers, Alor Star, Kedah, 1955.
- (31) Penyata Zakat Negeri Kedah (Zakāt Report of Kedah), issued by Zakāt Office Kedah, 1983. The Zakāt Enactment 1955 only stipulated that the Zakat Committee should consist of a Chairman, a Secretary, a Treasurer and not less than eight other members. It also states that half of the members shall be Muslims who are well-versed in the Zakāt Law.
- (32) Kenzo Horii, Rice Economy and Land Tenure in West Malaysia: A Comparative Study of Eight Villages, Institute of Developing Economies, Tokyo 1981.
- (33) Most of the former 'Unfederated Malay States', namely, Kedah, Kelantan, Trengganu and Johore as well as Sabah and Sarawak have their own State Civil Services. The civil servants in other states belong to the federal establishments.
- (34) In the case of Perak, the ‘āmil is appointed by the farmers themselves and later approved by the State Religious Council. Whereas in Kedah, the ‘āmil is nominated by the penghulu and the Kariah Masjid Committee, and then approved by the State Zakat Committee.
- (35) Each ‘āmil in both the states has to maintain a card which stipulates the estimated and actual zakāt collection. From time to time, a supervisor from the zakāt office (Kedah) or Majlis Ugama (Perak) has the authority to inspect the card.
- (36) This is consistent with the juristic requirement stated in Chapter III.

- (37) Kenzo Horii, op.cit. p.148.
- (38) Ibid
- (39) Ibid, p.148-149
- (40) Mukim is a subdivision of a district which consists of few villages.
- (41) An ‘āmil is entitled to 1/8 of the zakāt collected and a ketua ‘āmil in turn gets 1/10 of the total commission given to the ‘āmilin in his mukim. This is not a negligible amount, especially if an ‘āmil collect zakāt from a hundred rice growers. This naturally caused a strong desire for such appointments among the villagers.
- (42) See also Kenzo Horii, op.cit. p.140.
- (43) See a critical discussion of this in Clive S. Kessler's Islām and Politics in a Malay State: Kelantan (1838-1969), Ithaca, Cornell University Press, 1978.
- (44) See footnote (25) in Chapter V.
- (45) See ‘Abdool ‘Azīz Shaik, Concept of Zakah: A Survey of Qur’ānic texts and their Explanations in Shari‘ah and Contemporary Economics, in M. Raquibuz Zamān, Some Aspects of the Economics of Zakah (Editor), The Association of Muslim Social Scientists, Plainfield, Indiana, 1980.
- (46) Kenzo Horii, op.cit. p.139-1940.
- (47) Ibid
- (48) Ibid
- (49) Some of these requirements are definitely inevitable and necessary to ensure accountability. However, excessive centralization would also contribute to cumbersome procedures.
- (50) Kenzo Horii, op.cit. p.145.
- (51) Some of these expenses are dealt with in the following section
- (52) Mostly of the Shāfi‘ī school. See the discussion on the sources they use in Chapter III.
- (53) Kedah, Department of Religious Affair, Penyata Tahunan (Annual Report) 1963-64 (in Malay), p.2.

- (54) Kenzo Horii, op.cit. p.149-150.
- (55) Ibid
- (56) Some of these findings are applicable even to this day.
- (57) Kenzo Horii, op. cit.
- (58) Naleh is a Malay measurement which is equivalent to 16 gantangs.
- (59) Relong is also a traditional Malay measurement for the size of a plot of paddy land which sometimes varies in size from state to state. In Kedah and part of Perlis, one relong is equivalent to 0.71 acre and in Perak 1.32 acres.
- (60) Kenzo Horii, op. cit.
- (61) Kunca, again another Malay unit of measurement. 10 naleh is equivalent to one kunca which means one kunca is equivalent to 160 gantang.
- (62) Kenzo Horii, op.cit. p.151.
- (63) Ibid
- (64) Pajak in Malaysia is a type of tenancy agreement: a lease under which land is rented out for periods longer than one year.
- (65) Kenzo Horii, op.cit. p.152.
- (66) This is based on our interviews with officials working in paddy-growing areas in Kedah.
- (67) See Chapter III.
- (68) This is quite a well-known fact in Kedah.
- (69) Penyata Zakāt (Zakat Report) 1980-1983, Zakāt Office, Kedah.
- (70) The Baytal Māl office of the Department of Religious Affairs of the Federal Territory which handle zakāt matters is currently one of the well-organized zakāt office in Malaysia. This is partly because it comes directly under federal control and receptive to changes which are beneficial, and partly because it does not have a long established bureaucratic procedure which is at times difficult to dismantle.

CHAPTER VII

THE NATIONAL DEVELOPMENT POLICIES, THE PEASANTS AND ZAKĀT

This chapter is a continuation of the previous two chapters which primarily dealt with both the historical and political backgrounds of the practice of zakāt in Malaysia. This chapter, however, will approach the issue of zakāt from the perspective of Malaysia's national development policies, with emphasis on rural development and the 'New Economic Policy' (which was declared after the racial riot of 1969.) The discussion of these development policies is imperative for at least two major reasons. First, it will enable us to judge to what extent these development policies affected the conditions of the peasants who pay zakāt. Second, it will also show us to what extent these development policies are integrated into or impinge upon the administration of zakāt in Malaysia.

This chapter is divided into three sections. The first section will discuss very briefly the overall development policies of the Malaysian Government, with emphasis on the 'New Economic Policy' within the context of Rukunegara (National Ideology). The second section will focus primarily on rural development policies, which are intended to raise the 'standard of living' of the rural people, comprised mainly of Malay-Muslim peasants. The third section will discuss the nature and extent of the relationship between these development

policies and the administration of zakāt in Malaysia.

1. THE NATIONAL DEVELOPMENT POLICIES, PLANS AND PRIORITIES

Development Plans before the 'New Economic Policy'

The World Bank Mission to Malaya in 1954, three years before Malayan independence, was the first systematic attempt to 'manage' the Malaysian economy. Its recommendation resulted in the drawing up of the First Five Year Plan for Malaya (1956-1960).⁽¹⁾ From independence to 1985, there have been five more development plans implemented in Malaysia: namely the Second Five Year Plan (1961-1965) the First Malaysia Plan (1966-1970) the Second Malaysia Plan (1971-1975), the Third Malaysia Plan (1976-1980), and the Fourth Malaysia Plan (1981-1985). The Malaysian government is currently in the process of finalizing the draft of the Fifth Malaysia Plan (1986-1990).

The Second Malaysia Plan (1970-1975) is the beginning of the era of the 'New Economic Policy' which incorporates the twenty years development plan called "Outline Perspective Plan" which ends in 1990, coinciding with the end of the current Fifth Malaysia Plan. This will be discussed separately in the next sub-section.

The 'Dual Economy'

It has often been stated that one of the obvious consequences of the colonial policy was the emergence of 'dual economy' - one 'traditional' and the other 'modern'. The modern sector is comprised of tin mining, rubber plantations, commercial activities, etc.; while the traditional section consists of paddy farming, rubber smallholdings, fishing, etc. The former was primarily managed by the immigrant communities and the latter, the indigenous Malays. It would be a mistake, however, if we assume that the two sectors remained as separate entities. In fact, the two were related in such a way that it has always been to the advantage of the 'modern' sector. As stated before, the 'traditional' sector played the role of providing staple food (rice) and other food items at the lowest possible price to the manpower employed in the modern sectors, mainly located in the urban areas. Much has already been written on how the colonial government's policies and regulations, especially with respect to land utilization, often favored the development of rubber plantations and tin mining managed mainly by British enterprises.⁽²⁾ In fact, some of the most fertile lands were used for cash-crops for export. Conversely, the land codes were also formulated in such a way that the majority of the Malay peasants remained as peasants.⁽³⁾ When some of the enterprising Malays ventured into rubber smallholdings they had to face unfavorable restrictions⁽⁴⁾ as compared to the big estates managed and

owned by European companies.

Under such economic arrangements, a 'moral' justification had to be found to explain the continuing poverty of the Malays. The economic backwardness of the Malays came to be explained in term of their cultural values.⁽⁵⁾ In response, the Malays were encouraged to discard their 'dysfunctional' cultural values and to adopt, for instance, a 'this worldly' enterprising spirit similar to the immigrant Chinese community. This 'explanation', which the sociologists referred to as 'cultural amelioration', led to the half-hearted attempt to establish the RIDA (Rural Industrial Development Authority). But this was not even able to marginally improve the economic conditions of the Malays.⁽⁶⁾

Emphasis on 'Economic Infrastructures'

With this background, it is not surprising that the First Five Year Plan (1956-1960) emphasized the provision of an economic infrastructure such as telecommunications, electric power, roads, railways and port facilities. These serviced the primary commodity export economy.⁽⁷⁾ Even though this plan period covers the first three years after Malaya attained political independence, responsibility for the plan's formulation and implementation rested mainly, if not exclusively, with the top British officials in the Malayan Treasury.

Approximately 80% of the allocation of the First Five Year Plan was spent on economic sectors which targeted mainly infrastructure

and also 'agricultural development', which in this period meant primarily the development of 'New Villages' (a resettlement scheme for rural Chinese) set up for the sole purpose of cutting the supplies from Chinese rural residents to the communists-led insurgents.⁽⁸⁾ Only 14.4% was allocated for social services. These broad allocations reflected the underlying commitment of the State to protect the interests of the British plantation and mining concerns.

In the colonial officials' view, if too much was allocated for expanding social services, such as education, health, housing and others, people's expectations would be raised, making subsequent curtailment of expenditures difficult during hard times ⁽⁹⁾ More importantly expansion of social services would mean less financing available for investment projects in the economic sector.⁽¹⁰⁾

The 'Politics-of-Compromise' Development Policy

The second Five Year Plan (1961-1965) was the first plan in which the ruling Alliance Party⁽¹¹⁾ played an important role. The 'politics of compromise' inherent in such an alliance⁽¹²⁾ is reflected in the basic characteristics of the plan itself. The inter-ethnic 'compromise' meant that the post-colonial government was committed to defend the interests of the British and foreign capitalists; while permitting local, predominantly Chinese capitalists to consolidate and further strengthen their position.⁽¹²⁾ However, due to the fact that the rural Malays are politically the dominant power in the elec-

toral process, a substantial portion of the Plan's expenditures was allocated to rural development.⁽¹³⁾

As a result of this 'compromise', the government adopted a basically laissez-faire development strategy with minimum interference from the state, except by way of ensuring conditions suitable for rapid capital accumulation. This strategy is summed up in the following passage of the Plan:

"Perhaps the basic contribution that the government can make to industrial growth is the preservation of a sound and stable monetary and financial climate, free from all the restrictions, controls and uncertainties which are the inevitable accompaniments of financial instability and inflation."⁽¹⁴⁾

Main Features of the Development Strategies of 1960's

The First Malaysia Plan (1965-1970) which followed the Second Five Year Plan for Malaya (1961-65) pursued almost the same economic philosophy and strategy. Some of the main features of development strategies of the sixties can be summarized as follows. There is an emphasis on:

- (i) infrastructural development such as the building of roads, schools, clinics, irrigation schemes, mosques, community halls, etc., especially in the rural areas;
- (ii) the opening up of new land schemes, especially by the Federal Land Development Authority (FELDA), which was primarily intended to resettle landless peasants;
- (iii) the diversification of agricultural crops in order to

avoid over-dependence on rubber, which was often subjected to price-fluctuation in the international market. Thus, palm oil, for instance, was not only grown on a large scale by generally foreign-owned plantations, but also in the FELDA-sponsored land schemes;

- (v) the adoption of an industrialization strategy of the 'import-substitution' type by which foreign-owned capital, mostly belonging to Transnational Corporations (TNC's), often in collaboration with local interests, moved behind tariff walls to gain control of the local market. Most of these import-substituting industries have little linkage effects with other sectors of the local economy because they primarily involve the final assembly and packaging of component parts manufactured abroad. This was later replaced, in the late sixties, by an export-oriented industrialization strategy encouraging 'labor-intensive' industries (such as 'run-away' electronic firms) seeking 'cheap' labor supplies and thus generating considerable employment opportunities (but not without social costs), especially among young women from rural areas.⁽¹⁵⁾
- (iv) the expansion of the manufacturing sector by offering incentives, providing infrastructure

and pursuing a 'sound fiscal and monetary policy.'⁽¹⁶⁾ Thus, a very low proportion of public development expenditures was allocated to commerce and industry (not exceeding 3.3%) during the sixties. This low proportion is consistent with the laissez-faire development strategy of the State which abstained from direct participation in profitable economic activities, preferring to rely instead on the private sector as the engine of growth.

Consequences of the Development Strategies of the 1960's

Increasing Inequality in the Distribution of Income

As stated above, development planning in Malaysia in the sixties, as was the case with many other developing countries, was aimed at achieving high rates of economic growth. Sophisticated planning techniques and models, such as the Harrod-Domar growth model,⁽¹⁷⁾ were used with the aim of generating high rates of economic growth on the assumption that its benefits would 'trickle down' to the poor masses. Such an expectation, was ill-founded. In fact, what happened was that, despite Malaysia's Gross National Product (GNP) growing on average of 6-7% annually in the sixties,⁽¹⁸⁾ it was accompanied by a growing inequality in the distribution of income: the rich became richer and the poor became poorer. Table 7-1 shows that inequality in the distri-

bution of income grew between 1957/58 and 1970; while the household income of the poorest 10% of all households declined in absolute terms.

In fact, the Malaysian Treasury Report of 1974⁽¹⁹⁾ frankly states that the average absolute incomes of the bottom 10% of all households decreased by 31% from M\$48 to M\$33 per month between 1957 and 1970. Table 7-2 also shows that inequality in the distribution of income, as measured by the Gini Co-efficient,⁽²⁰⁾ seems to have worsened between 1957 and 1970. It was estimated to be 0.247 in 1957-58, 0.513 in 1967-68 and 0.516 in 1970.

Disenchantment of the Rural Malays

Even though the post-colonial government of Malaysia allocated substantial funds for rural development in the sixties (See Table 7-2), and many of its achievement were quite impressive compared to many other developing countries,⁽²¹⁾ it did not fulfill the rising expectation of the Malays. The rural development strategy which mainly emphasized the provision of infrastructure, such as roads, bridges, etc. in the rural areas, largely benefited the Chinese businessmen and a small number of Malays who became contractors. It also benefited the middlemen, mostly Chinese, who enjoyed greater access to the rural areas, not only to buy rural products cheaply (and sell them at higher profits in the urban areas), but also to dispose of other merchandise through their established outlets in the rural areas. Much has been written about this arrangement, which the economists in Malaysia often

referred to as 'monopoly-monopsony' system.⁽²²⁾

The reluctance of the ruling Alliance government in the 1960's to break this economic arrangement which worked to the disadvantage of the rural Malays is exemplified in the case of A. Aziz Ishak in early 1960's. There was a conflict within UMNO (the Malay component of the ruling Alliance Party) and the Alliance Party itself over which rural development strategy should be followed. This came about when the then Minister of Agriculture and Cooperatives, 'Abdul 'Azīz Ishak, sought to alleviate peasant poverty by establishing more marketing, credit and processing cooperatives to reduce exploitation by the predominantly Chinese merchants.⁽²³⁾ He also attempted to break the monopolistic control of fertilizer supply by foreign interests by establishing a local fertilizer (urea) factory, owned by farmers' cooperative societies. The opposing faction (which undoubtedly had been lobbied by both local and foreign business interests) had the support of the then Prime Minister, emerged victorious in this struggle. 'A. 'Azīz Ishak was later expelled from both UMNO and the cabinet and subsequently incarcerated without trial during the mid-sixties.⁽²⁴⁾

The disenchantment of the Malay masses with the rural development policies of the government was reflected in the general election results of 1959,⁽²⁵⁾ and in 1964.⁽²⁶⁾ The ruling government's response to these trends approached 'development realism', when in the First Malaysia Plan (1966-70), an additional goal was introduced in the rural development program. This goal was the overcoming of the...

"existing institutional shortcomings in the fields of land tenure, credit, the processing of agricultural commodities and marketing so as to enable the agricultural community to be adequately rewarded for its efforts and to have excess at reasonable cost to the means of production."(27)

Consequently, the Malaysian Parliament passed a new Control of Rent and Security of Tenure Act in 1967, replacing the old Ordinance of 1955. Earlier there was in the establishment in 1966 of Majlis-Amanah Rakyat (MARA) to replace the floundering RIDA,⁽²⁸⁾ and the establishment in 1965 of the Federal Agricultural Marketing Authority (FAMA). These, together with the land tenure legislation, and to some extent the Farmers Association Act in 1967,⁽²⁹⁾ were to form the first major basis for a change in emphasis from 'cultural amelioration' to what is referred to as an attempt at 'realistic economic restructuring'.⁽³⁰⁾

However, the ineffectiveness of such a piece-meal approach to rural development, which is still essentially based on 'institution-building', has been recognized by many.⁽³¹⁾ Such proliferation of institutions for rural development benefited the ruling elites -the politicians and the bureaucracy⁽³²⁾ -and not the peasantry. In fact, the peasants became more confused given the number of bureaucratic institutions they had to cope with.⁽³³⁾

With this continuing disenchantment of the Malay peasants, it was not surprising that in the critical general election of 1969, the Pan-Malayan Islamic Party (PMIP) captured about one-half of the Malay votes, mostly in the rural areas⁽³⁴⁾. The increase in popularity of

the PMIP (later known by its Malay acronym PAS) was not due so much to its religious rhetoric⁽³⁵⁾ and its 'ulamā' leadership (since UMNO also had its equal share of influential 'ulamā' and 'religious' manifestoes) as to the disillusionment of the large portion of the Malay peasantry with the government's 'promise' of economic development. Rural infra-structures, without significant structural changes in economic relationships, mostly benefited those peasants and elites who had considerable endowments (especially in land and capital) and the already entrenched Chinese 'monopoly-monopsony' system. More and more peasants became entangled in the exploitative middlemen credit network, despite the government supported cooperatives movement. Even though the top political leaders urged the need for bureaucracies to be more responsive to peasant demands, the peasant-bureaucrat relationship improved only marginally as compared to the colonial period. Furthermore, the increasing amount of development funds handled by the bureaucracies increased the probabilities of nepotism, misuse and corrupt practices. This was especially the case in the dispensation of direct development grants in rubber replanting schemes (for the smallholders) and the fertilizer subsidies for the paddy farmers.

The growing disenchantment of the peasants in the late sixties were combined with the increasing discontentment of the nascent Malay 'middle-class', especially in the business sector (where they found it hard to compete with the well-established Chinese and foreign capitalists). They grew restless and frustrated with the poor attempt of the

government to promote their interests. They wanted the State to play a more assertive and interventionist role in their favor. In fact it was this growing assertiveness of the Malay middle class which eventually led to the declaration of the New Economic Policy in 1970.

THE RUKUNEGARA (NATIONAL IDEOLOGY) AND THE NEW ECONOMIC POLICY

Even though the ruling Alliance government was returned to power in the general election of 1969, its majority in Parliament had been considerably reduced and it lost a few state governments to the opposition parties.⁽³⁶⁾ This general election was followed by bloody racial riots, especially in the federal capital of Kuala Lumpur, which led to a declaration of emergency and the temporary suspension of the rule by Parliament. Much has been written about the causes of this racial riot, which is popularly known as the 13th May 1969 Tragedy⁽³⁷⁾. It suffices to say here that after this tragedy there was an earnest attempt by the leaders of the various races in Malaysia to find a long-term solution to the precarious racial problems of the country. During the two interim years when the Parliament was suspended, Malaysia was ruled by the National Operation Council⁽³⁸⁾ and the National Consultative Council. The latter represented the political, social and intellectual leaders of the various communities in Malaysia. The deliberation of the National Consultative Council eventually led to the acceptance of two important documents which had far

reaching implications for the socio-economic development of Malaysia, namely "the Rukunegara" (the National Ideology) and the "New Economic Policy".

The principles of the Rukunegara are stated in the following pledge:

"Our nation, Malaysia, being dedicated

to achieving a greater unity of all her peoples;

to maintaining a democratic way of life;

to creating a just society in which the wealth of the nation shall be equitably shared;

to ensuring a liberal approach to her rich and diverse cultural traditions;

to building a progressive society which shall be oriented to modern science and technology;

We, her peoples, pledge our united efforts to attain these ends guided by these principles:

Believe in God

Loyalty to King and Country

Upholding the Constitution

Rule of Law

Good Behavior and Morality"(39)

This declaration obviously contained certain universal-humanistic principles acceptable to the dominant intellectual elites of all the races. Its purported aim was to blunt the 'edges of conflicts' between the various races.⁽⁴⁰⁾

However, it is the New Economic Policy (which some considered to

be the true 'national ideology' of Malaysia)⁽⁴¹⁾ which provided the blueprint for realizing the objectives of the Rukunegara. The New Economic Policy (NEP) has two major objectives:

- "(a) eradication of poverty by raising income levels and increasing employment opportunities for all Malaysians irrespective of race, and
- (b) accelerating the process of restructuring Malaysian society to correct the economic imbalance so as to reduce and eventually eliminate the identification of race with economic functions."⁽⁴²⁾

This two-prong strategy resulted in the partial abandonment of the previous laissez-faire policy in favor of greater intervention over resource allocation as well as ownership and control of business enterprises. What is implied in the restructuring of Malaysian society is not only at 'modernizing' the Malay peasantry, and in some cases turning them into petty traders and 'capitalists', but also changing the structure of ownership in the commercial and industrial activities.

The NEP, which was first given expression in the Second Malaysia Plan (1971-1975), has the projected target that within twenty years (i.e. the Outline Perspective Plan 1970-1990), the ratio of ownership of the Malaysian economy would change from 1.9% to 30% for Malays, from 22.5% to 40% for Chinese, and from 60.7% to 30% foreign.⁽⁴³⁾ (See Table 7-4) However, the Plan makes it clear that its aim is only a redistribution of the accrual, not a redistribution of the already acquired wealth.

This undoubtedly requires a steady high rate of overall economic

growth. For a peripheral country like Malaysia, which mainly specializes in the production of primary commodities - the prices of which fluctuate heavily depending on the demand of the advanced industrialized countries, such faith in a steady high rate of economic growth is rather far-fetched. However, it is the only politically acceptable target. This is the reason why writers such as Rudner⁽⁴⁴⁾, Milne⁽⁴⁵⁾, Craig⁽⁴⁶⁾ and Mac Andrews⁽⁴⁷⁾ have commented to the effect that: the "Malaysian plans are always political as much as economic documents."⁽⁴⁸⁾

The Establishment of Public Enterprises

The very ambitious target of raising the Malays and other Bumiputras⁽⁴⁹⁾ (the sons of the soil) share in the Malaysian economy, from 1.9% in 1970 to 30% in 1990 in the Malaysian economy requires massive government intervention and assistance. The Second Malaysia Plan states:

"the government will participate more directly in the establishment and operation of a wide range of productive enterprises. This will be done through wholly owned enterprises and joint ventures with the private sector. Direct participation by the government in commercial and industrial undertakings represents a significant departure from past practices. The necessity for such efforts by the government arise particularly from the aims of establishing new industrial activities in selected new growth centers and of creating a Malay commercial and industrial community."⁽⁵⁰⁾

Thus a wide range of public enterprises which operate in almost every sector, usually in collaboration with private capital, was esta-

blished. Some are statutory bodies established by special legislation (such as MARA, FAMA). Others operate as private companies registered under the Companies Act. From a modest figure of ten public enterprises in 1957, this number multiplied more than six-fold to sixty-seven by the end of 1974.⁽⁵¹⁾ These public enterprises, fully owned by the federal and state governments, in turn have many wholly owned subsidiaries and joint-ventures. As a result of the large number of public enterprises involved in the process of capital accumulation, the average annual rate of growth of share ownership in the corporate sector by the Malays and other Bumiputra interests was the highest compared to the other ethnic groups between 1971-80, even though to date (1986) it has not even achieved half⁽⁵²⁾ of the projected target of 30% set for 1990. In order to achieve this growth target (for the Malay community as a whole), many of the Religious Councils and Zakāt-Committee at the state level invested large portions of the zakāt fund in government-sponsored public enterprises or unit-trust companies (such as the Amanah Saham Mara). This will be discussed in Section C below.

B. THE RURAL DEVELOPMENT STRATEGIES

Many aspects of the rural development strategies have been discussed already in the context of the overall national development plans and strategies. In this section we will specifically elaborate some of the rural development strategies which are relevant to this

study, as well as the persistent of poverty in some areas such as in the paddy-growing areas.

In term of economic philosophy and strategy, the Malaysian government pursued what it called the 'pragmatic', or ideologically eclectic,⁽⁵³⁾ approach to rural development. Essentially, the rural development approaches of the sixties were continued under the NEP, but with greater intensity, and with more focus on regional development. This resulted in the establishment of several new growth centers.⁽⁵⁴⁾ This approach was adopted because it was found socially, economically and politically difficult to disrupt the traditional Malay villages.⁽⁵⁵⁾

With the setting up of new growth centers in new frontiers (formerly jungle lands), new settlers (mostly landless farmers and fishermen from traditional Malay villages) were brought in. This strategy even though costly,⁽⁵⁶⁾ was considered to have several advantages. First, it relieved the population pressure and poverty in traditional Malay villages. Second, in the new environment the settlers could be easily inculcated with new values and techniques of 'modern' farming with estate/plantation type cultivation. Third, as these settlers were clustered in certain areas (unlike in traditional Malay villages where the houses are mostly at a distance from each other), social amenities such as schools, medical clinics, electricity and piped-water supply could be easily provided. As such, in the long run these areas could be urbanized.⁽⁵⁷⁾ Fourth, regional development would be able to bridge

the economic disparity between the rich and poor states/regions in Malaysia.

With this strategy of rural development hundreds of thousands of families, mostly rural Malays were resettled in FELDA schemes (mentioned earlier) such as in JENKA (Pahang) and in other new growth centers such as KESEDAR di Kelantan, KEJORA in Johor and KETENGAH in Trengganu. (See the list of the new growth centers and the number of families involved in Table 7-5). Most of these new settlers, who on average owned 8-10 acres, plant cash-crops such as rubber or palm oil. In addition, they have small fruit orchards. As to be expected, their average income is far more than the income of the traditional paddy farmers. In fact, most of them earned about M\$1,552/- per month (palm oil) and M\$759/- (rubber)⁽⁵⁸⁾ This is approximately two to five times above the 'poverty line', but it depends upon the commodity prices maintaining high levels at the international market. As we shall discuss later, none of these new settlers are obligated to pay 'ushr or agricultural zakāt.

'Development' or 'Underdevelopment' in the Traditional Malay Villages

By traditional Malay villages, we mean not only the paddy farming areas but also the old rubber smallholding areas, which have been in existence for generations. To these we could also add those villages (but relatively small in number) primarily engaged in coconut cultiva-

tion and fishing⁽⁵⁹⁾. Some of the strategies adopted by the government to raise the income level of the peasants in the villages are as follows:

- (i) Establishment of regional authorities (such as MADA in Kedah, KEMUBU in Kelantan and BESUT in Trengganu) in primarily rice-growing, poor regions/states in Malaysia. The major aim of these organizations is to increase the productivity of the farmers through the double-cropping of rice. To realize this objective, major dams⁽⁶⁰⁾ were built, many miles of irrigation and drainage canals were constructed, beside the massive provision of agricultural extension services and inputs.⁽⁶¹⁾
- (ii) To ensure a steady and reasonable income for the rice-growers, the government also stipulated guaranteed minimum price for paddy. This price was raised from M\$15/- per pikul (= 60.5 kilograms) in the early 1960's to M\$28 - \$32 in mid 1980 and to M\$38 - \$40 per pikul in 1984. To oversee this and to provide milling facilities to the rice farmers, the National Padi and Rice Authority was established.
- (iii) For the rubber smallholders in traditional villages the government through RISDA (Rubber Industry Smallholders development Authority) encouraged the replanting of rubber trees. Through proper replanting, a smallholder

could normally more than double his income.⁽⁶²⁾

- (iv) For the coconut smallholders the government also encouraged replanting and rehabilitation, under a program called Coconut Area Rehabilitation Scheme, which emphasized the planting (in between coconut trees) of inter-crops such as cocoa, coffee and fruits to increase income⁽⁶³⁾
- (v) For other agricultural farmers such as tobacco growers, mixed farmers, pepper smallholders, pineapple smallholders and vegetable and fruit farmers, the government introduced the integrated Agricultural Development Projects (IADPs). The IADPs provided the necessary agricultural infrastructure, inputs and services through an integrated package, thereby increasing their productivity and income.⁽⁶⁴⁾ Through this, as well as the subsidies provided by the Department of Agriculture, some of these farmers today earn quite a lucrative income. The tobacco growers (but small in numbers) in Kelantan and Trengganu, for instance, earn on average M\$2,400/- per hectare per season in 1982.⁽⁶⁵⁾

As mentioned earlier none of these farmers (other than the paddy farmers) pay any zakāt.

Persistence of Poverty

Despite all the above efforts, which are quite remarkable compared to other developing countries,⁽⁶⁶⁾ the relative poverty⁽⁶⁷⁾ in the rural areas, especially in the traditional Malay rice-farming and rubber smallholding villages persists. The Mid-term Review of the Fourth Malaysia Plan (See Table 7-5), published by the Economic Planning Unit of Malaysia, states that the overall incidence of poverty was estimated to have increased from 29.0% in 1980 to 30.3% in 1983.⁽⁶⁸⁾ At the end of 1983, it was estimated that as many as 717,600 households were in poverty, compared with 635,900 households in 1980. Rural poverty was estimated to have increased from 37.4% in 1980 to 41.6% in 1983, while the incidence of urban poverty declined from 12.6% to 11.1% in 1983.⁽⁶⁹⁾

Table 7-5 indicates that paddy farmers are one of the poorest groups, with a very high incidence of poverty. Even though the incidence of poverty among paddy farmers has improved compared to the 1970 figures (See Table 7-6), due mainly to double cropping and the increase in the guaranteed minimum price set by the government, the majority of the paddy farmers (54% in 1983) are still below the poverty line.⁽⁷⁰⁾ Ironically, as we noted in the last chapter and shall analyze more fully later, a substantial number of the poor farmers are also obligated to pay zakāt.

Many major studies,⁽⁷¹⁾ including those by David Gibbons,⁽⁷²⁾

Snodgras,⁽⁷³⁾ Sudhir Anand,⁽⁷⁴⁾ Tan Tat Wai⁽⁷⁵⁾ and others ⁽⁷⁶⁾ have been conducted which explain the factors that contribute to the persistence of poverty among paddy farmers. We will not be able to go into their findings in detail here. Beside the improper implementation of (zakāt), which will be discussed later, there are at least two other interrelated factors that should be emphasized here. First, compared to other crops, income from paddy is rather low. Estimates in 1981 indicated that 1.2 hectare of double-cropped paddy would be necessary to generate income above the official poverty line, compared with 0.1 hectare for chillies and 0.2 hectare for cucumbers or long beans.⁽⁷⁷⁾ Second, over half of the double-cropped paddy holdings in Malaysia are less than 1.2 hectares in size.⁽⁷⁸⁾

Due mainly to political reasons,⁽⁷⁹⁾ any form of land reform in Malaysia in the immediate future is a remote possibility. As a substitute, especially for paddy farmers, two approaches are now in the process of being implemented. First, paddy farmers are persuaded through the provisions of various incentives to cultivate their land on a 'collective' basis, in order to minimize costs and maximize production.⁽⁸⁰⁾ This approach, which is intended to 'modernize' peasant farming, requires mechanization. These paddy farms will be managed like estates or plantations. It is too early to predict the outcome or the prospect for the success of this program. However, it is bound to have major socio-economic implications including the organization and administration of (zakāt).⁽⁸¹⁾

The second approach being adopted is the opening-up of new land suitable for paddy cultivation. Two projects, one in Rompin-Endau (Pahang) and the other in Trans-Perak are being implemented, covering some 29,000 hectares. These two projects, the cultivation of which would be run on an estate basis,⁽⁸²⁾ are expected to benefit about 9,300 households. These lucky few are expected to earn three or four times more than the average income of the peasants in the traditional paddy fields. Each of the household in these two projects is expected to own 10-12 acres of paddy land.⁽⁸³⁾ It should be noted that even though the productivity of paddy is low compared to other crops, the government continued to encourage its cultivation because of social and strategic considerations.⁽⁸⁴⁾

Rubber smallholders are the other major group among whom the incidence of poverty is the highest. As shown in Table 7-5, the incidence of poverty among this group increased from 41.3% in 1980 to 61.1% in 1983, due largely to the decline in rubber prices in the international market as a result of an economic recession in the developed countries.⁽⁸⁵⁾ These estimates are the average incidence of poverty among the rubber smallholders. As such, the incidence of poverty among the very small rubber smallholders with the average holding less than 2.65 hectares (the majority of whom are Malays) undoubtedly would be higher than the estimate of poverty among rubber smallholders as a whole. This is partly the reason for the continued social unrest in poverty-stricken areas such as Baling and Sik in

Kedah. (86)

C. THE NATIONAL DEVELOPMENT POLICIES AND THE ADMINISTRATION OF ZAKAT

In this section we will discuss the extent to which the administration of zakāt in Malaysia is related to (or more precisely unrelated to) the national development policies in general, and the rural development strategies in particular.

The 'New Economic Policy' and Zakāt

The only significant relationship we find between the zakāt administration and the national development policy is with respect to the use of the zakāt fund for investment purposes. This is meant to achieve one of the objectives of the New Economic Policy, to eliminate the income gap between the ethnic groups in Malaysia, especially between the Muslim-Malays and the Chinese.⁽⁸⁷⁾ To achieve this, in the early 1970's, the then Minister of National and Rural Development, Ghaffar Baba, who was also the Chairman of MARA, urged all the State Religious Councils to invest substantial portions of their money (mostly derived from the collection of zakāt and zakāt al fiṭr) in Amanah Saham Mara (Mara 'Unit Trust' Shares). This fund is used to buy shares in the corporations and companies listed on the 'stock exchange' as well as in the 'private limited companies'.

The rationale given for this is that by pooling together the

financial resources of Malays, they would not only be able to 'progress' economically more rapidly, but they would also be able to participate more actively in commercial and manufacturing activities which hitherto had been monopolized by the Malaysian Chinese and foreign companies.

The above objective is undoubtedly laudable, considering the necessity of achieving racial harmony and equitable sharing of income and wealth in the country. However, whether the zakāt fund should be used for this purpose is altogether another question. Even though the above method may make a lot of sense from a purely economic analysis, it is questionable from the point of view of Sharī'ah as well as from the 'development' perspective. As mentioned in Chapters II and IV, the zakāt fund is specifically meant for the beneficiaries, especially the poor and the needy, and the Prophet used to distribute it to them directly.⁽⁸⁸⁾ As will be discussed in the next chapter, if the zakāt fund were distributed properly and directly to its rightful beneficiaries, it would also achieve, one of the main objective of the NEP - i.e. the eradication of poverty.

Lack of Coordination

Beside the use of the zakāt fund at the national level for investment purposes, there is a complete lack of coordination between the administration of zakāt and the activities of other government agencies and statutory bodies. As has been explained in the last two

chapters, this is mainly due to constitutional and political reasons. This lack of coordination is not just between the religious departments/councils and other 'secular' government departments. With the proliferation of numerous government departments and agencies to 'assist' the rural farmer, there is a lack of coordination among them, even though the top national leaders have always urged such a cooperation and coordination.⁽⁸⁹⁾

In a state such as Kedah, where the District Officers are also members of the State Zakat Committee, the absence of any attempt at coordination between the administration of zakāt and the functions of other departments, is rather glaring. Under the present constitutional arrangement, this is quite understandable. It should be noted that a District Officer in every district in Malaysia acts as the Chairman of the District Development and Security Committee, which is supposed to coordinate the activities of all the government departments and statutory bodies that have branches within the district. Even though the District Officer is also the Chairman of the District Zakāt Committee, he appears to wear a different cap, and perform this function completely separately, from his role as Chairman of the District Development and Security Committee. The reason for this is that as Chairman of the latter, he is answerable to the State Development Officer and the State Secretary, and in some aspects, ultimately to the Federal government. Whereas, in his former role he is responsible to the State Zakat Committee, and ultimately answerable to the Sultān of the State

who is the 'head of Islam' in Kedah.

No Zakat On More Lucrative Agricultural Produces

As has been stated above, agricultural zakāt in Malaysia is primarily imposed on paddy. As paddy was the only major crop cultivated in Malaysia, this has not been a major problem until the beginning of this century. However, with the advent of colonialism and the introduction of cash-crops such as rubber, and later more lucrative crops such as palm oil and cocoa, the practice that only paddy farmers are required to pay zakāt, is utterly indefensible. The reason why the 'ulamā' in Malaysia have not been responsive to these changes will be discussed in the next chapter.

It suffices to state here that such a practice not only goes against any sense of equity and social justice, but has the potential to lead to violence and conflict. We are aware of a few cases⁽⁹⁰⁾ of enmity between the poor, traditional Malay villages and the new settlers (in FELDA land schemes) settling close to these traditional villages. After a few years these new settlers earned lucrative incomes mainly due to high prices for palm oils. As a result, envy and jealousy developed between the traditional villagers and the more fortunate newly arrived settlers nearby. In this instance, if the new settlers were required to pay zakāt and distribute them locally, such conflicts could have been minimized.

Zakat and the Increasing Inequality in the Distribution of Income

Zakāt, as has been stated before, is intended (at the temporal level) to serve as an instrument for the redistribution of income and wealth in a Muslim society. However, due largely to the manner with which it is implemented in Malaysia, it not only failed to achieve the desired objective, but on the contrary, in many instances, on the aggregate level, it accentuated income inequality.

First, as stated above, this is because zakāt in Malaysia is essentially borne by paddy farmers, the majority of whom constitute the poorest group in Malaysia. Those farmers who plant palm oil, rubber, cocoa, tobacco, pineapples, vegetables⁽⁹¹⁾ and others are not required to pay zakāt. Under such conditions, when the rich farmers do not pay zakāt and the poor peasants do pay zakāt, we do not require any sophisticated statistical studies⁽⁹²⁾ to prove that such a system of zakāt collection will not be able to achieve the redistribution of income.

Second, if we analyze the pattern of zakāt collection among the paddy farmers, we find (as discussed in Chapter VI) that it is the poor (mostly tenants or owner-operators with very small holdings) - i.e. those below the official 'poverty line'⁽⁹³⁾ - who mostly pay zakāt. As mentioned in the last chapter, there are at least two major factors that contribute to this. First, the niṣāb (which we could consider as the classical 'poverty line' stipulated by the Sharī'ah)

for paddy as practiced in Malaysia does not take into account the changing economic and social conditions of the farmers. This will be discussed in the next chapter.

Second, as also mentioned before, zakāt in Malaysia is paid by the cultivator, not by the landlord. Most of the paddy farmers in Malaysia, especially in Kedah and Kelantan, are either tenant farmers or owner-operators whose average size of holding is less than 1.3 hectares (= 3.1 acres). As stated above, the government considers this (based on average yield or production) to be below the official poverty line.

Third, (a factor closely related to the first), zakāt in Malaysia is imposed on gross production. Many economists and sociologists including Purcal,⁽⁹⁴⁾ Afifuddin,⁽⁹⁵⁾ Ismail M. Salleh and Rogayah Ngah⁽⁹⁶⁾ have discussed this issue. In a study conducted by Purcal⁽⁹⁷⁾ which deals with expenditure patterns of the paddy farmers (see Table 7-7), he estimated the zakāt and fiṭrah constitute about 51% of the total value of farm produce used as payments in kind. In fact the zakāt payment is higher than rent, which is less than 42% (see Table 7-7).

The study conducted by Afifuddin⁽⁹⁸⁾ in Kedah, is still more revealing. Table 7-9 shows the cost of production per acre per season to produce the average production of 600 gantang per acre. If we take the average farm size of a tenant farmer to be 3.1 acres,⁽⁹⁹⁾ the total volume of production would be 1,860 gantang fetching a price of

M\$1,045.00.⁽¹⁰⁰⁾ After deducting the cost of production of M\$671.37 per season from his gross income of \$1,045.00, he is left with only \$373.63 net income per season. This marginal amount would be further reduced when he pays 10% of his gross production, or up to 36% of his net production, as zakāt, which amounts to \$104.50. This means that in the end he is left with only \$269.13 per season.

Assuming that the same peasant, produces 60% of the first-season's gross production for the second season, the monetary value for his gross production per annum would be M\$(1,045.00 + 627.05) which is M\$1,672.05. After deducting \$1,342.73 for cost of production and \$167.20 for zakāt, he is left only with \$162.12 to support a family of six (average size) for one year. In terms of monthly income he gets only M\$13.15.⁽¹⁰¹⁾ These paddy farmers must be compared with other agricultural producers (such as those in the FELDA land schemes) or non-farmer,⁽¹⁰²⁾ who not only do not have to pay zakāt, but most of whom do not have to pay income tax either.⁽¹⁰³⁾ By contrast, as 'Affuddīn rightly observed, the poor tenant paddy farmer has to pay 36% of his net income in taxes, which in Malaysia approximates the proportion paid by people who have taxable incomes of more than \$30,000/- per annum. This "economic paradox which is distasteful to any person with a sense of economic justice"⁽¹⁰⁴⁾, led 'Affuddīn (even though some of his findings are debatable⁽¹⁰⁵⁾) to lament justifiably as follows:

"The above figures illustrate how economically low the tenant

farmers are even before the payment of zakāt. This poverty is further aggravated after the payment of zakāt which he cannot escape since it is imposed upon him as a religious duty. Under the present organization and administration of zakāt he is liable to be sued in the court of law if he does not pay up. Many cases of tenant farmers being sued and punished for failure of payment. The interesting point is that some Malay tenant farmers who are well known in their absolute allegiance to the basic laws of Allah (zakāt is one of the five pillars of faith) are prepared to face legal action in the court of law on the arguable point of the administration of the zakāt institution by the zakāt authority not amounting to any criticism of the zakāt in its pure form. Malay Muslim farmers are never known to question the validity of the Laws of Islām. Hence it can be construed here that they are questioning the right of the zakāt authority to levy the tithe on them, the poor, while zakāt in its pure form is meant to tax the wealthy."(106)

CONCLUSION

The above discussion illustrates the nature of the relationship (or the absence of it) between the administration of zakāt and national development policies. The bifurcation between the 'secular' and 'religious' administration, a continued legacy of the colonial era, has far-reaching implications for the welfare of the farmers.

In the present arrangement, the only significant connection between the administration of zakāt and the national development policy is related to the use of the zakāt fund for investment purposes to increase the ownership of the Malays in the commercial and manufacturing section of the Malaysian economy. The use of such fund is questionable from the point of view of the Sharī'ah (see Chapter IV) as well as from a 'developmental' perspective. It might benefit the

Malay-Muslim community as a whole in the long run. However, whether this should be done at the expense of the welfare of the poor and the needy Malays (the rightful beneficiaries of zakāt), who immediately need such assistance is highly questionable from both the Sharī‘ah and the universal ethical point of view.

The ‘ulamā’ in Malaysia, especially those in a position to bring about changes, have to do major rethinking with regard to the organization and administration of zakāt. These include such questions as the ‘coverage’ of zakāt, the determination of nisāb, the legitimacy of collecting zakāt only from tenants, etc. The solution to these problem, however, not only requires exertion and ijtihād on the part of ‘ulamā’ but also the cooperation of economists, sociologists, political scientists, politicians and others, both Muslim and non-Muslim. A prolonged negligence of these issues will ultimately affect the welfare of all Malaysians irrespective of race, color or religion.

NOTES

- (1) Before this there was another crude 'development' plan drafted and implemented by the British colonial officers, who essentially intended to protect the interests of the British economy after the War. See M. Rudner, (1972), "The Draft Development Plan of the Federation of Malaya 1950-1955, Journal of South East Asia Studies, No. 3,1.
- (2) See a detail discussion on this and other references in J.T. Thoburn, Primary Commodity Exports and Economic Development: Theory, Evidence and a Study of Malaysia, John Wiley & Sons, London, 1977.
- (3) Ibid, page 72. See also M. Rudner, 'The State and peasant innovation in rural development: the case of Malaysian rubber', Asian African Studies, reprinted in David Lim: Readings on Malaysian Economic Development. OUP, Kuala Lumpur, 1975.
- (4) Ibid, p.72-73
- (5) In a proceedings of the Legislative Council in 1956 (before Malaysian independence a non-Malay Councillor is reported to have said that, "(i) Malays are lazy and improvident, and (ii) these values are dysfunctional for economic development". See G.D. Ness, Bureaucracy and Rural Development in Malaysia. University of California Press, 1967, p.115.
- (6) One of the objectives of RIDA is 'to foster in the rural people a spirit of self-reliance and initiative'. See Ness, *ibid*, p. 125. Ness's proposition that "Malay poverty was also due in part to dysfunctional Malay value system" (p. 125) implies also the need for 'cultural ameliorations' as the basis for economic development. Such views were also expressed by others. See for instance, B.K. Parkinson, "Non-Economic Factors in Economic Retardation of the Rural Malays", in David Lim (ed.) Readings in Malaysian Economic Development, O.U.P., Kuala Lumpur, 1975.
- (7) See one of the latest brief analysis of development plans in Malaysia by Toh Kin Woon and J.K. Sundram: The Nature of the Malaysian State and its Implications for Development Planning, a paper presented in the National Seminar on the Fourth Malaysia Plan, Kota Kinabalu, 21-22 October, 1981, p.25
- (8) Ibid, p.28

- (9) Ibid
- (10) Ibid
- (11) See the discussion on the composition and the background of the formation of Alliance Party in Chapter VI.
- (12) See for instance M. Rudner's comment: "Malayan economic development strategies harbored a number of political assumptions. Central to Alliance economic philosophy was an overriding faith in private enterprise as a logical concomitant of political democracy. Indeed the "democratic" qualities ascribed to capitalism received much greater emphasis than the economic. Nor was the commitment to free enterprise based exclusively on ideology, for it incidentally enabled the Alliance to sublimate potentially embarrassing internal stresses over communal patterns of ownership and control, under the slogan 'human freedom'. Allied to this equation of capitalism with democracy was the Alliance conviction that Malaya's heavy dependence on internal trade required continuation of Malaya's traditionally 'liberal' trade policy. It followed that economic expansion would have to depend largely on foreign capital investment in Malaya." Martin Rudner, Nationalism, Planning and Economic Modernization in Malaysia: The Politics of Beginning Development. Sage Publication, London, 1975, p.25.
- (13) See a discussion on this in E.K. Fisk's "Rural Development Policy" in T.H. Silcock and E.K. Fisk (eds.): The Political Economy of Independent Malaya, Eastern Universities Press, Singapore 1963, p.174.
- (14) Second Five Year Plan For Malaya, 1961, p.19
- (15) The exodus of young workers, especially women from traditional villages to 'modern' urban areas did not only lead to cultural disorientation but also caused shortage of labor in the villages especially in the paddy farms. Even though these so-called new industrial workers might earn more, the new income, however, is mostly spent on consumption items acquired as a result of modern urban values. If formerly, for instance, they wear the 'sarong' now they would like to wear imported jeans.
- (16) Second Five Year Plan for Malaya, 1961, p.19
- (17) This growth model is based on the mathematical formula used by Roy F. Harrod, (Toward a Dynamic Economics, Mac Millan 1948)

and Evsey Domar of MIT who wrote an article using the same formula. Because both used similar formula, many economists have assumed that the two growth models are the same, and they refer to them as "Harrod-Domar growth model". As Gardner Ackley (Macro economic Theory, New York, Mac Millan, 1961, p.522). has pointed out, their approaches, however, are quite different: "Harrod advanced a theory of growth that attempted to explain the process, whereas Domar was concerned only with one aspect of the problem of growth, namely, the rate of growth required to avoid a buildup of excess capacity. Since idle capital earns no return, but does incur the cost of interest payments, businessmen attempt to avoid excess capacity. The equilibrium rate of growth of an economy, according to Domar, is one that will permit the existing stock of capital to be fully utilized, but at the same time will not cause a shortage of capital." See W.H.Miernyk, Economics. Random House, New York, 1971.

- (18) K. Young, W.C.F. Bussink and P.Hasan, Malaysia: Growth and Equity in a Multiracial Society, Published for World Bank, John Hopkin University, Press, Baltimore, 1980, p.24.
- (19) Published Annually by the Malaysian Treasury.
- (20) Gini Coefficient is one of the most common measures of inequality used by economists. It is based on the 'Lorenz curve' and it is defined as the ratio of the area bounded by the Lorenz curve and the diagonal to the area below the diagonal. The coefficient varies from zero to one with zero indicating perfect equality and one perfect inequality. See Henry H. Theil's Economics and Information Theory, North Holland Publishing Company, Amsterdam 1967.
- (21) This is admitted by many foreign observers and economists. See for instance, G.N. Ness, op.cit.
- (22) This concept was first introduced by U.A. 'Aziz who has written a number of articles on the subject. See, for instance, U.A. 'Aziz,...."Poverty and Rural Development in Malaysia", Kajian Ekonomi Malaysia, Vol.I, No. 1, June 1964 and "Footprints on Sands of Time: The Malay Poverty Concept over Fifty Years from Za'ba to Aziz and the Second Malaysia Five Year Plan in Chee and Khoo (ed.) Malaysian Economic Development and Policies, Malaysian Economic Association, 1975.
- (23) Essentially, based on the 'monopoly-monopsony' system. Crudely stated the system works this way: Normally, a Chinese retail shop in a village provides all the essential provisions for the daily needs of the farmer. Since he is normally the sole

supplier of these essential needs, he would give credit to the farmers, during non-harvesting season (paddy) or to the rubber smallholders during the 'rainy season'. Because of this credit these farmers or rubber tappers were also forced to sell their produce to the Chinese merchant at a price fixed by him which is normally lower than the market price.

- (24) Toh Kin Woon and J. Sundram, op. cit., p.32
- (25) As stated in Chapter VI, in the first 1955 general election, the Alliance won 51 or the total 52 seats. In the 1959 election, it won the election not only with reduced majority but also lost two States, i.e. Kelantan and Trengganu to the opposition party (PMIP).
- (26) The Islām Party (PMIP) continued to retain control of the two States despite all the efforts by the Alliance Party (with its powerful election machinery) to regain control of the two States with 'promises' of development to the poor Malay peasants of the two States.
- (27) First Malaysia Plan, 1966-70, p.105-106
- (28) See footnote 6. MARA essentially continued the work of RIDA but it is now given larger amount of fund. Its greatest success so far is in training the Malays and other Bumiputras (the sons of the soil) in technical, professional and managerial fields.
- (29) This act led to the formation of Farmers Associations among the peasants. It was first established by the Department of Agriculture as a reaction to the weakness of the rural co-operation movement, first in the form of a vehicle for agricultural extension and later, as "an economic institutional device for promoting the farmers' material interests; improving their knowledge and skills; increasing their farm productivity and income; and raising their living standard. See Stephen Chee, Rural Local Governance and Rural Development in Malaysia (Ithaca: Rural Development Committee, Centre of International Studies, Cornell University (November, 1974), p.58
- (30) 'Affīfuddīn, Peasants, Institutions and Development In Malaysia: The Political Economy of Development in the Muda Region, Ph. D. Thesis, Cornell, 1978,
- (31) Ibid. See also Toh Kin Woon and J. Sundram, op. cit.
- (32) Ibid, p.189

- (33) Ibid. However, some of the peasants, normally those who are relatively educated and rich, are able to take advantage of the presence of these numerous agencies by taking more than their due shares (in term of fertilizer subsidies, etc.).
- (34) Some of causes of the dissatisfaction of the peasants, especially the imān has been discussed (in the context of Kelantan) in Chapter V.
- (35) 'Affifuddīn, op. cit.
- (36) It lost Kelantan and Trengganu to PMIP and Penang to Gerakan Party which is dominated by Chinese Malaysians.
- (37) See, for instance, Tengku Abdul Rahman Al-Haj, May 13th: Before and After, Kuala Lumpur 1969.
- (38) Headed by Tun 'Abdul Razak, the second Prime Minister of Malaysia. The members of the Council comprised of civilians and chiefs of the army and the police. It ruled by decree for nearly two years.
- (39) Government of Malaysia, Rukunegara, Government Printer, K. Lumpur 1971.
- (40) Ibid
- (41) Milne, R.S., "The Politics of Malaysia's New Economic Policy", Pacific Affairs, No. 49, 1976.
- (42) Second Malaysia Plan (1971-75)
- (43) Ibid
- (44) Rudner, M. op. cit.
- (45) Milne, R.S., op. cit.
- (46) Craig, J.A. "The Politics of Planning: Third Malaysia Plan". Institute of Development Studies Bulletin, No.8, 1977.
- (47) Mac Andrews, C. "The Politics of Planning: Malaysia and the New Third Malaysia Plan", Asian Survey, 17.
- (48) Ibid
- (49) This term is used to refer to all the indigenous Malaysians including the Malays in Peninsular Malaysia and the Ibans in

Sarawak and the Kadazan (who are mostly Christians) in Sabah. However, as this study is focused on Peninsular Malaysia the terms 'Malays' and 'Bumiputra' could be used interchangeably.

- (50) Second Malaysia Plan (1971-1975), 1971, p.7
- (51) Engku M. Anuar, The System of Performance Evaluation of Public Corporation: A Case Study of Malaysia with respecial reference to the Urban Development Authority, Ph.D. thesis, University of Pittsburgh, 1979.
- (52) Mid-term Review of the Fourth Malaysia Plan, 1982, p.101.
Even though the Bumiputras as a whole in 1982 were suppose to own (share capital in the corporate sector) 18.7%, 11.1% are held by Bumiputra "trust agencies" such as PNB (an agency set up to buy shares on behalf of Bumiputras), MARA, PERNAS (a Malaysian trading company) and others).
- (53) Even though the ruling government of Malaysia since independence is generally committed to the maintenance of a 'free-enterprise' system, some of its policies appears to be of 'socialistic' nature - such as its involvement in commerce and industries through the creation of numerous public enterprises as well as its involvement in resettling thousands of farmers.
- (54) The 'growth center' strategy is based on the contention that a deliberate policy of concentration of investment at chosen points (growth centers) not only enjoys high cost-effectiveness in public expenditure but it will in the long run have substantial 'spread effects' and subsequently intra and interregional disparities in welfare will be eradicated. See Kamāl Ṣālih, "Rationalized Growth Center Strategies in Malaysian Regional Development" (Paper presented to the Malaysian Economic Association Annual Meeting, Kuala Lumpur March 25-27, 1974).p.16. For a good analysis of growth center approach to development in Malaysia see Johari bin Mat's Regional Development in West Malaysia A Comparative Effectiveness Study of Jengka, Dara, Kejora, and Ketengah, Monograph No. 2 of the National Institute of Public Administration, Malaysia, 1983.
- (55) To date, the Malaysian government finds it difficult or unwilling to introduce, for instance, any form of 'land reform'. The main reason for this may be because such an action might alienate support of some groups within the ruling party. However, with abundant jungle land still to be cleared and cultivated, such a need has not been very pressing yet. How long this costly approach would continue, especially with the declining resources of the government (with falling prices of

export commodities such as rubber, palm oil, tin, timber and lately petroleum) only time would tell.

- (56) Some studies have shown that it is more costly to resettle a farmer in a felda scheme in Malaysia than to produce a highly trained industrial worker.
- (57) 'Rural urbanization' is an explicitly stated strategy of the government. It's objectives are to reduce migration of rural people to the urban areas as well as to achieve regional balance in development and to arrest continuation of 'economic dualism'.
- (58) Zulkifly Hj. Muṣṭaphā, 'The Agricultural Sector', in E.K. Fisk and H. Osman-Rani, The Political Economy of Malaysia, OUP Kuala Lumpur 1982, p.222.
- (59) Malay fishermen are mostly found in the East Coast State of Peninsular Malaysia. They are among the poorest group in Malaysia but their number is small. Many sociological, anthropological studies have been conducted about them. See, especially R.M. Firth's, Malay Fishermen, Their Peasant Economy, R. & Kegan Paul, London 1946.
- (60) One of the biggest dams in Malaysia was built for the Muda area in Kedah with a loan from World Bank at the cost of more than M\$240, primarily to introduce double-cropping of paddy in the region. It should be noted here that the Muda region which comes under the jurisdiction of MADA (Muda Agricultural Development Authority) also cover part of the State of Perlis.
- (61) These "agricultural extension services and inputs" include the 'innovative' methods of cultivation, new varieties of high yielding paddy, fertilizer etc. As mentioned in the last chapter the use of these inputs even though they might increase productivity, also make the farmers dependent on these inputs. The farmers with large holdings naturally also benefit more than those with small holdings.
- (62) Estimates showed that at the farm gate price of 154 cents per kilogramme, a smallholder with two hectares of land could earn an income between \$348 to \$456 per month after replanting, compared with only \$104 to \$208 before replanting. Mid-Term Review, 4MP, op. cit., p. 81.
- (63) Ibid
- (64) Ibid, p.85

- (65) Ibid, p.86
- (66) Attested by many observers. See, for instance, Kevin Young et al, op. cit. p.3.
- (67) Some writers argue that the Malaysian government views poverty in 'absolute' rather than in 'relative' term. (See , for instance Ishak Shari & Jomo K. Sundram, "The New Economic Policy and National Unity: Development and Inequality 25 Years After Independence" in S. Husin Ali, Ethnicity, Class and Development in Malaysia, Malaysian Social Sciences Association Publication, 1984, p.331
- (68) Mid-Term Review ,4MP, p.79
- (70) The actual cut-off point for 'poverty line', is not disclosed in the Development Plans of Malaysia. Sudhir Anand (Inequality and Poverty in Malaysia: Measurement and Decomposition, published for the World Bank, Oxford University Press 1983), estimated it to be M\$25 per month for 1970. According to K. Young et. al (1980, op. cit., p.116), the Economic Planning Unit of the Prime Minister's Department of Malaysia had updated the official poverty-line income to M\$29 per capita per month in 1970 prices. Adjusting for the 107% increase in the Consumer Price Index between 1970 and 1982, gives a poverty-line income of M\$60/- per month for the latter year. See one of the latest work in this field in David S. Gibbons, Paddy Poverty and Public Policy, A Preliminary Report on Poverty in the Muda Irrigation Scheme Area, 1972 and 1982, Center for Policy Research, Monograph Series No. 7, Universiti Sains Malaysia, 1984.
- (71) 'Major Studies' here refer to books or monographs.
- (72) David Gibbons, op. cit.
- (73) Snodgrass, D.R. Inequality and Economic Development in Malaysia, OUP, K.Lumpur 1984.
- (74) Sudhir Anand, op. cit.
- (75) Tan Tat Wai, Income Distribution and Determination in West Malaysia, OUP, K. Lumpur 1982.
- (76) There are numerous articles written on this subject too. See for instance, Mohd. Shukrī Hj. 'Abdullah: Rural Poverty and Rural Development in Malaysia. and Sulaimān Maḥbob: Poverty

in Malaysia: An outline of the Problem, Strategies and Programmes. Paper presented to Seminar on 'Development and the Consumer'. Penang, 1980.

- (77) Mid-Term Review 4MP, p.83.
- (78) Ibid
- (79) See footnote
- (80) This is presumeably based on the economy of large scale production and management. David Gibbons (op. cit. p.49/50) argues that the proposed estate type of paddy farm probably would be less productive, at least until the necessary core of trained and experienced managers is produced. The national economy, "as well as the poor paddy farmers, would suffer from the resulting underutilization and misallocation of human resources. Poor paddy farmers can best serve the economy, as well as help themselves, by continuing to do what they know best - growing paddy. Most of them have no training or experience for anything else. As the economists would put it, their 'opportunity cost' to the economy is virtually zero. But the opportunity cost to the economy of the capital that would have to be invested in the proposed paddy estates, for mechanization and the training of estate-type management, is high." D,Gibbon, op. cit., p. 50
- (81) In Kedah, for instance, with the introduction of mechanization, there are already areas where the paddy farmers are not able to see exactly the volume of their production on their own piece of land. They could see their produce only in the rice-mill together with the produce of others who belong in the same 'collective' farm. Under such arrangement, the 'āmil who previously estimated and collected zakāt on individual basis would have to adjust his role.
- (82) Mid-Term Review 4MP, p.
- (83) Base on my interview with the Malaysian Economic Planning Unit officials.
- (84) Rice is a major staple food for Malaysians. Thus, the government of Malaysia believes it should be 'self-sufficient' in the production of rice. It has the target that by the year 2,000 A.C. Malaysia should be able to produce 80-85% of its need.
- (85) Mid-term Review of 4MP, p.81

- (86) As late as last October (1985) there was a major social unrest in Baling in which a number of people including the police were killed. Even though the immediate cause of the incident was related to 'religious extremism' but its underlying cause was the economic deprivation and poverty of the people there.
- (87) We are discussing here in the context of Peninsular Malaysia.
- (88) See Chapter II
- (89) From the early 1960's the then Deputy Prime Minister and Minister of National and Rural Development, Tun 'Abdul Razak through the 'Red Book System' of rural development already urged the bureaucracy to avoid department jealousy and to coordinate in the implementation of rural development programs and projects.
- (90) These incidents (even though very few) were reported to have happened in some Felda Schemes in Selangor and Pahang.
- (91) Some 'ulamā' might question the permissibility of charging zakāt on vegetable based on the Ḥadīth discussed in Chapter III. However, during the Prophet's time vegetables were not produced on a large scale as it is now. Thus, there is a need for the 'ulamā' to make an ijtihād and give a fatwā on this.
- (92) An attempt at a statistical study on this, see Isma'īl M. Şalleh and Rogayah Ngah, "Distribution of the Zakat Burden on Padi Producers in Malaysia", in M. Raquibuz-zaman (ed.) Some Aspects of the Economics of Zakat, The Association of Muslim Social Scientists, Plainfield, Indiana, American Trust Publication 1980.
- (93) See the discussion on the official 'poverty-line' and nisāb in the next chapter.
- (94) Purcal, J.T., Rice Economy: Employment and Income in Malaysia, An East-West Center Book, The University Press of Hawaii, Honolulu 1972.
- (95) Affifudin Haji Omar, Some Aspects of the Socio-Economic Value System of the Muda Rice Farmers in Development Perspective, Mada Pub. No. 24, June 1973.
- (96) Ismail M. Salleh and Rogayah Ngah, op. cit.
- (97) Purcal, op. cit., p. 41

- (98) 'Affifuddīn, op. cit, p. 63-64
- (99) Ibid
- (100) This is based on the guaranteed minimum price of paddy for 1973. Even though this price have been revised upward, the cost of living of the farmers also have gone up. As such, this figure is still valid as a rough estimate of the level of poverty of the farmers in comparison to other occupations.
- (101) According to 'Afifuddīn, if labour cost of M\$103.35 per season is not included in the calculation of the production cost, then the net cash income per annum for the tenant farmer would be \$386.82. Labour cost is included for the purpose of comparison.
- (102) For instance, office workers or industrial employees.
- (103) An office worker or school teacher who earns about M\$750/- per month, if he has more than five children, he would not have to pay income tax.
- (104) 'Afifuddīn, op. cit., p.64
- (105) He says, "many cases of tenant farmers being sued". Our findings and also the research of K. Horii (stated in Chapter VI) indicate that in Kedah at least, the 'āmil as well as the State Zakat Committee had been quite lenient with those who do not pay zakāt. In our view, if this is not the case, with the present system of zakāt collection and distribution, there would have been major unrest in Kedah.
- (106) Afifuddin, op. cit., p. 64

CHAPTER VIII

MAJOR POLICY RECOMMENDATIONS AND CONCLUSIONS

The discussion in the last two chapters illustrates the urgency and the imperative in Malaysia for a comprehensive, 'total', or 'Islāmic' approach to 'development'⁽¹⁾ in general, and 'rural development' in particular. Despite the significance of zakāt, seen either positively (as a potential instrument for the redistribution of income) or negatively (due to its present 'defective' organization and administration and consequently, its effects upon the poor peasants), it is surprising that no five-year development plans in post-colonial Malaysia ⁽²⁾ ever made any reference to it.

This conspicuous silence may be due to the 'sensitive' nature of zakāt in Malaysia, as it is considered a 'religious' matter and constitutionally comes directly under the jurisdiction of the State Sultāns/Rulers as 'Heads of Islām' in their respective States. Such an explanation, however, is not justifiable considering the fact that development plans in Malaysia have always been considered as 'indicative' plans.⁽³⁾ They only act as guides to provide general direction, mainly through fiscal policy and resource allocation instruments of the government, to the desired and/or likely growth of the economy. This is quite different from the centrally planned economies of USSR or communist countries. If the development plans of Malaysia could define the role of 'private' sector or 'foreign'

investment, it could equally legitimately mention the role of the zakāt, especially with respect to its impact upon the paddy farmers and the federal government's commitment to the eradication of poverty.

Needless to emphasize here, an improved organization and administration of zakāt, based on some of the principles and 'guidelines' stated in Chapters II, III and IV would play a significant role in the redistribution of income in Malaysia, especially in raising the income level of the bottom ten to twenty per cent of its population.⁽⁴⁾ A complete overhaul or re-organization of the administration of zakāt in Malaysia, however, would require not only a separate major study but would also require major 'reforms' in Malaysia's political and economic institutions. This is not attempted here. As stated in the Introduction, what we are trying to achieve here is a less 'complete' solution, within the 'given' socio-economic and political systems or 'superstructures'. Within these parameters, however, it does not mean that we cannot question the operation of the institution of zakāt. This examination can also include, for instance, the nature and the extent of the 'role' of the Sultān as the 'Head of Islam' in the State.

Many of the issues raised in the following pages are intricately intertwined. However for purposes of clarity, these issues will be divided into the following headings:

- (a) The Constitutional Issues: (i) the role of State Ruler as 'Head of Islām' with special reference to the adminis-

- tration of zakāt; (ii) the need for decentralizing the administration of zakāt; (iii) the justification for the creation of a 'Central Zakat Foundation';
- (b) the critical role of 'ulamā' in ensuring the proper administration of zakāt; and
- (c) some of the proposed changes in the current practices of zakāt.

These three categories will be discussed in separate sections below. As stated above, these issues are closely linked to each other. We will not be able to bring about any effective change, for instance, in the current practices of zakāt without the involvement and cooperation of the 'ulamā'.

A. THE CONSTITUTIONAL AND ADMINISTRATIVE ISSUES

1. The Ruler as 'Head of Islām' and the Administration of Zakāt

As stated in Chapter V, the origin of the idea of the Sultān as the 'Head of Islām' (in the Malay States) started after colonialism, specifically after the Treaty of Pangkor in 1874. Such an idea is probably of British origin - an extension of the role of the Queen of England as 'Head' of the Church of England. It is quite foreign to Islam. In Islāmic history the institution of sultānate, or amīrate, emerged in various Islamic provinces after the weakening of the central authority and power of the caliphate. In traditional Islām, the

sultān in addition to being a sovereign prince also maintained a close association with and responsibility for the Sharīʿah. However, his role as 'guardian' of the Sharīʿah did not entitle him to any special immunity from the provisions of Sharīʿah, being himself no more than a servant of the law. In the context of Malaysia, this raises a significant question. What is the role of the sultān with respect to the 'legislation' on Islāmic matters (such as the administration of zakāt) that is passed by the democratically elected legislature of a modern constitutional system?

To answer this question we have to discuss, first, the role of the sultān in the traditional Islāmic State, as well as the changes that have taken place in some 'modern' Muslim States in West Asia and North Africa.

In a traditional Islāmic State, which is governed by the Sharīʿah, the competence of the ruler to legislate for the state has been defined as much as it has been restricted:

"In theory neither the ruler nor for that matter any governmental organ has legislative powers in those matters that formed the exclusive substance of the Sharīʿah law, the interpretation - as opposed to legislation - of which, in answer to new situations, remained the prerogative of the learned fuqahā' (doctors of law) and the mufī (an expert who pronounce specialist legal opinions). The competence of the ruler was solely confined to administrative regulations (siyāsah sharʿīyyah) in those areas not the immediate concern of fiqh, the substantive law of Islām, with the further proviso that such regulations must not themselves lead to a breach of the Sharīʿah law".(5)

This ban on the legislative powers of the ruler did not deny him

reasonable authority to restrict the competence of the courts in respect of their spheres of jurisdiction, or to limit or to extend the jurisdiction of the judges in the name of public expediency.⁽⁶⁾ However, in practice it is not uncommon for Muslim sovereigns to rule by arbitrary interventions in neglect of the Sharī'ah rulings.⁽⁷⁾

In the contemporary Muslim world, the question of the relationship between modern legislatures and the Sharī'ah hinges on the legitimacy or the competence of the former to encroach upon the jurisdiction of the latter. This widely debated issue in many Muslim countries like Turkey and Egypt⁽⁸⁾ in the last century and the beginning of this century has remained a crucial problem in Muslim countries to this day. The consequences of this legislative invasion of the province of Sharī'ah law led Shacht to comment: "Whereas a traditional Muslim Ruler, and even the former Ottoman Caliph, must by definition remain the servant of the sacred law of Islām, a modern government and particularly a parliament can constitute its master."⁽⁹⁾

As we shall see later, Shacht's comment does not quite accurately describe the situation in Malaysia. As stated in Chapter III, despite the fact that the Malay States have been exposed since the late nineteenth and early twentieth century to a steady current of Islāmic modernist influence from Egypt, where the Sharī'ah courts were entirely abolished in 1955, such a bold and sweeping reform did not induce any parallel changes in the Malay States.⁽¹⁰⁾ On the other hand, Malaysia with what remained of her Islāmic heritage, combined

with her reception of Western political and constitutional ideas as a result of British colonialism, produced "an admixture of trends which in their diversity remain distinct from those in the countries either wholly of modernist or wholly of traditional orientation."⁽¹¹⁾

The doctrine of al siyāṣah al shar'īyyah stated above which recognized the ruler's right to legislate on matters of public administration (in addition, though not contradictory to the substantive law of fiqh) was used as a justification for the promulgation in different Malay States during the colonial period, of the 'Administration of Muslim Law Enactment' (see Chapter V). These enactments, modeled on Western legislation, not only declared new rules of procedure and evidence, but also defined the position, the powers and the prerogatives of the ruler in his association with Islāmic religion and law in the country.⁽¹²⁾

However, since independence in 1957 the temporal authority of a Malay ruler⁽¹³⁾ has largely been that of a constitutional head, bound "to act in accordance with the advice of the Executive Council or of a member thereof acting under the general authority of the Council."⁽¹⁴⁾ On the other hand, the Federal Constitution⁽¹⁵⁾ guarantees the right of the ruler "to act in his discretion inter alia in the exercise of his function as head of the Muslim religion or on matters of Malay custom."⁽¹⁶⁾ In actual practice, however, the ruler is assisted and advised in the exercise of this function by the Majlis (see Chapter V), which "on behalf of and under the authority of the ruler is so re-

quired to function by the provisions of the State enactments providing for the constitution of the Majlis."⁽¹⁷⁾ But since the religious authority of the ruler is not subordinate to that of the Majlis, he is not bound to act on the advice of the Majlis.⁽¹⁸⁾

In this arrangement it appears (stated rather crudely) that the ruler is neither bound fully (constitutionally speaking) to the Sharī'ah (as was the case in traditional Islamic State where the Sharī'ah is the law of the land), nor to the legislature, nor to the majlis (which in the Malaysian context approximates ahl al ḥal wa al-‘aqd).⁽¹⁹⁾ There is only a 'moral' or social pressure upon the Ruler to abide by the dictates of Sharī'ah.

Even though the Malay rulers, so far, have been generally responsible in the discharge of their responsibilities as the 'Heads of Islām' in their respective States, this does not necessarily imply that the potential for such a crisis is not there. Thus, some clarification is called for on the actual nature of their powers and jurisdiction, especially when changes are contemplated in some current practices, such as those pertaining to the zakāt laws.

As stated in Chapter VI, the framers of the Malaysian constitution considered 'Islām' as a religion in a Western sense. If the practice of Islām in Malaysia had been confined to its ritual aspects such as salāt, or fasting in the month of Ramaḍi:ān, or to family laws⁽²⁰⁾, this would not have been a major problem. However, the issue of zakāt, for instance, even though constitutionally defined as

a 'religious' issue, cannot be compared to the problem of the citing of the moon for determining the beginning of Ramadhān!⁽²¹⁾ The institution of zakāt is of socio-economic significance and affects all Muslims in general, and the welfare of hundreds of thousands of poor peasants (due to the nature of its implementation in Malaysia) in particular. Thus, it naturally concerns and certainly overlaps with the jurisdiction of the constitutionally elected governments. Therefore, there is an urgent need to define the nature and extent of the role of the ruler in such issues under the present political arrangement.

As stated above, it is not our attempt to provide details concerning of the legal and constitutional mechanisms for the solution of this problem. It is beyond the scope of this study. We could only raise some of the pertinent issues involved, and provide the necessary ingredients for the proper functioning of zakāt within the given political framework.

It should be noted that the present state constitutions in a way do provide the mechanism for a possible resolution of this problem. Unlike the constitutional arrangement in colonial times,⁽²²⁾ the power to 'legislate' laws, such as those pertaining to zakāt, at present rests with the democratically elected State Legislative Assembly. The responsibility to draft such a law, however, lies with the relevant departments. In the case of zakāt, it would be the Majlis or the State Religious Council and/or State Zakat Committee. This law, however,

would come into effect only with the signature of the ruler. Thus, there are three parties involved in the whole process which in a way provide a mechanism of 'checks and balances'. If earnest attempts are made, it is not beyond the ingenuity of each state to formulate a system of zakāt administration that is consistent with the fundamental requirements of Sharī'ah which would ultimately optimize benefits to the people, especially the poor and the needy, both materially and spiritually.

The most important role undoubtedly has to be played by the Majlis and/or State Zakat Committee. They should have not only well-qualified 'ulamā' of wide perspective⁽²³⁾ in Islamic jurisprudence, but also members trained in contemporary social sciences, including economics and development studies. Only then would they be in a position to have a wider perspective upon the problem. This would also help in integrating, either directly or indirectly, the institution of zakāt to the national development plans and policies, especially in achieving redistribution of income and the eradication of poverty.

2. The Justification for the Decentralization of the Administration of Zakāt

In our discussion in Chapter II we have clearly demonstrated that during the times of the Prophet, the Rāshidūn caliphs and their successors (tābi'un), zakāt was distributed at the same place it was collected, and only the surplus was sent to the Central Treasury

(Bayt al Māl). All the relevant ḥadīth to support this have already been discussed. We have also shown in Chapter V, that in the Malay States prior to colonial period, zakāt generally was collected and distributed at the village level. The centralization of the administration of zakāt at the State level started only during the colonial period. In some states, such as Kelantan, it started in the early part of this century. And in others such as Negri Sembilan, it started only in the late 1950s, just prior to independence. In Chapter V we also gave the background and explained the reasons that led to the centralization of the administration of zakāt, a practice which continued after independence.

In this age of the "bigger is better" syndrome⁽²⁴⁾, which reflects the capitalist ideal of an 'aggregative scale economy', any talk of decentralization will quickly be construed by some as 'retrogressive'!. There are already voices in Malaysia, for instance, that call for the centralization of the administration of zakāt at the federal level.⁽²⁵⁾ However, in our view the decentralization of the administration of zakāt is not only consistent with the requirement of Sharī'ah but, under the present political arrangements in Malaysia, it is the only feasible alternative that will protect the interests of the poor and the needy and other rightful beneficiaries of zakāt.

The Prophet's practice of not centralizing⁽²⁶⁾ the administration of zakāt and his insistence on distributing the zakāt fund as a matter of principle, locally and directly, demonstrates more than just

his paramount concern to protect the right of the poor and the needy and other beneficiaries of zakāt. These were also acts of great foresight.

We can list here the numerous advantages of distributing zakāt at the local level (i.e. at the place it is collected), before its surplus is sent for distribution elsewhere. To mention a few: (i) It would create harmony and goodwill and foster a sense of brotherhood within the local community. (ii) At the local level, one is able to identify easily and correctly those who are obligated to give zakāt and those who are eligible to receive zakāt. (iii) At the local level when the giver of zakāt, for instance, could feel for himself the goodwill that is created by such an act, he will be encouraged to give more. (iv) The recipient of zakāt, especially one who is able-bodied, would feel ill-at-ease to continually receive zakāt and thus would be encouraged to work hard and be independent of zakāt and possibly would aspire instead to be a 'giver' of zakāt. And (v) the distribution of zakāt at the local level would naturally avoid animosity between the regions and the central authority, and thus help to achieve national integration.

The advantages stated above are based on the presupposition that in each region there is a reasonable mix of the rich and the poor. What about those villages or regions which are extremely poor, where practically everyone's income is below the nisāb? This is where the role of the central authorities (State, federal or both) comes in.

This is the reason why, in the context of Malaysia, we recommend the continuation of the state's jurisdiction (but with some devolution of powers with respect to the collection and distribution of zakāt to the districts and villages) and the creation of a Central Zakat Foundation at the federal level, which will be discussed separately below.

We will not be able to go into details here on the administrative mechanism required for the proper and smooth functioning of the proposed devolution of powers to the district and village levels. The appropriateness and feasibility of a particular administrative system depends on a number of variables - the most important of which is the socio-political constraint.⁽²⁷⁾ Ideally, the collection and distribution of zakāt at the village level should be managed by the Jawatan-kuasa Kemajuan dan Keselamatan Kampung (JKKK) or Village Development and Security Committee,⁽²⁸⁾ with the proviso that the JKKK have the confidence and support of the majority of the villagers in the locality. We consider this arrangement to be ideal for a number of reasons. First, JKKK is supposed to keep the socio-economic profile⁽²⁹⁾ of the village, including data on the land holdings, cultivations, etc., which would enable it to know the number of the poor, the rich and other relevant information. Second, the JKKK, which is considered by the government as the most important agent of development at the grassroots level,⁽³⁰⁾ is in a position to help to coordinate⁽³¹⁾ all the development projects by various government or semi-government agencies that goes into the village. With these roles JKKK is in the

best position also to administer zakāt in the village provided, as stated earlier, that it enjoys the confidence of the villagers and that it is also non-partisan⁽³²⁾ and has representatives of the religious elites within it. The JKKK then could appoint (if the authority is delegated to it) ‘āmil/‘āmilīn, or recommend the appointment of the ‘āmil/‘āmilīn to the higher authority.

If for some reason the JKKK is found unsuitable, the second best alternative would be the formation of a separate Village Zakāt Committee. The members of this Committee should preferably be elected by the villagers themselves, as was the case in the fifties in Perak (see Chapter VI). In whatever manner these members are elected, they should have all the prerequisites for the ‘āmilīn mentioned in Chapter IV. This Committee should also work very closely with the JKKK. The advantages of such a collaboration cannot be over-emphasized. Only with such collaboration can the potential givers and recipients of zakāt be correctly identified. It will also enable both the Committees to optimize all the resources available for the development of the village and for the eradication of poverty.

3. A Proposal For the Creation of a Central Zakāt Foundation

As stated in Chapter VI, the federal government does not have any jurisdiction on ‘Islamic matters’ in Peninsular Malaysia, except for the Federal Territory (Kuala Lumpur) and for the states of Penang and Malacca, which do not have any hereditary Malay rulers. Even though

the federal government established the Majlis Hal Ehwal Agama Islām Malaysia (Malaysian Federal Council for Religious Affairs) to coordinate and bring some form of uniformity into the administration of Islām in Malaysia, its function remains purely advisory in nature. Despite this, we believe that the federal government (at least as far as zakāt is concerned) cannot but be involved in some way or other in the administrative processes of zakāt. Since the federal government is committed to eradicate poverty and to reduce inequality of income, it is only proper that it play a more active role in assisting the upgrading of the administrative machineries ⁽³³⁾ of zakāt at the State level. In this way, the above objectives could also be achieved.

It is significant to note that even now (that is, without any amendments to the zakāt law) the Federal Territory of Kuala Lumpur has the highest amount of zakāt collection annually in the country.⁽³⁴⁾ There are many factors which contributed to this. Being the federal capital, it has the largest concentration of people with middle and high income brackets. The Muslims among them work as civil servants, executives of public enterprises or as business executives. A substantial number of them voluntarily choose to pay zakāt, especially since the early 1980's when the Federal Inland Revenue Department gave full relief of income tax on the amount one chooses to pay zakāt. Secondly, there are a number of Muslim financial institutions, such as the Tabung Haji (Pilgrims' Fund Board) or the recently established Bank-Islām Malaysia, which pay zakāt on behalf of their members.

For all the above reasons, we strongly advocate the creation of a Central Zakāt Foundation. It must be emphasized here that this Foundation is not intended to usurp the existing powers of the States with regard to zakāt administration. On the contrary, it is intended to supplement and to assist the state governments, especially as regards its distributional aspects with focus on the eradication of poverty. Due to its potential role as the largest custodian of the zakāt fund (especially when the 'coverage' of zakāt recommended below is implemented), the Foundation undoubtedly can play a significant role in helping the poor regions in Malaysia, like Baling and Sik in Kedah which have a large number of population below the 'poverty line'.

The exact functions and jurisdictions of this Foundation have to be studied carefully. Malaysia is a federation, and naturally the powers and functions of this Foundation have to be different in comparison, for instance, to the Central Zakāt Office or the National-Zakāt Foundation of Pakistan (see Appendix I). A more careful examination also need to be made of how best to channel and utilize the zakāt fund to assist the rightful beneficiaries of zakāt.

B. THE CRITICAL ROLE OF THE 'ULAMA

As stated earlier, the 'ulamā' in Malaysia as elsewhere will play a crucial role in any attempt to bring about changes in the administration of zakāt. The 'stagnation' of the zakāt rules in Malaysia,

which in many instances go against the overall objectives of Shari'ah (maqāsid al Shari'ah) or maṣlahah (public interests) are mainly due to the narrow outlook of the 'ulamā', who gave disproportionate emphasis to the views of the Shāfi'i school. This is clearly illustrated in the following provision:

"When the Majlis or the Shari'ah Committee give a fatwā (juristic ruling) it will follow the stronger opinion or consensus (qaul-qaul muktamad) of the Shāfi'i school. However, if such an opinion go against the public interests, then the Majlis or the Shari'ah Committee may, except His Majesty (the Sulṭān) decide otherwise, follow the weaker opinion (qaul-qaul dhaif) of the Shāfi'i school. However, if both the stronger and weaker opinion of the Shāfi'i school also go against the public interest, then the Majlis or the Shari'ah Committee, with a special permission of His Majesty, may follow the opinion of any of the three remaining orthodox schools of Islām as may be deemed appropriate."(35) (Translation mine)

The dominant position of the Shāfi'i school in Malaysia is manifestly clear from this quotation. The weaker opinion of the Shāfi'i jurists is given priority over the stronger opinion or consensus of the other schools. This attitude is in clear contrast to the attitudes of the Founders of the Schools themselves. As stated in Chapter III, the early jurists, especially the founders of the schools, not only had great respect for each other, they also never claimed their opinions were the only ones that are valid. When the famous 'Abbāsī caliph, Harūn al Rashīd, for instance, wanted to use Mālik's book al-Muwatta' as the standard text for the enforcement of Shari'ah throughout the Muslim empire, the latter humbly replied:

"Difference among Muslim scholars is but a divine mercy for

this nation. Each of them is following what he considers to be right, and each of them has his argument, and all of them are sincerely striving in the way of God."(36)

The Founders of the Schools and the early jurists were not dogmatic at all about their views. Al-Shāfi'ī himself, for instance, changed his opinion on many issues when he moved from Iraq to Egypt. When asked "why have you changed your mind?" he answered, "that was according to what we saw, and this is according to what we see."(37)

The early Muslim jurists had earnestly endeavored to interpret the Sharī'ah in face of the continually new problems of life (regarding which the Qur'ān and Sunnah had been silent) in the light of the public good, and with due regard for the circumstances of their age. Contemporary Muslim jurists, especially those in Malaysia should certainly follow the footsteps of these great jurists - not in every opinion they gave - but in their attitude, approach and the methodology they adopted. The Muslim jurists of today should treat the circumstances of today as the great jurists did during their times. The highly refined science of Islāmic jurisprudence (fiqh) left by them should be observed by the contemporary jurists. However, it is totally unrealistic to seek from the jurists of the past solutions to the problems of our time. Neither should we impose upon ourselves regulations devised to fit circumstances which no longer exist. While the unequivocal ordinances of the Holy Qur'ān and the Sunnah must remain immutable for all time, "the Muslims are not only permitted but definitely encouraged to develop side by side with this immutable Law, 'a

changeable and changing law', which would apply the spirit and the actual injunctions of the Divine Law to the special requirements of each time and place."⁽³⁸⁾

C. SOME OF THE CHANGES RECOMMENDED IN THE CURRENT PRACTICES OF ZAKĀT IN MALAYSIA

2. The Determination of Nisāb and the 'Poverty Line'

As discussed in Chapter II, nisāb for different types of properties were fixed by the Prophet himself. For instance, he fixed five uwaq for silver, twenty dīnār for gold and five wasq for dates as the minimum limit beyond which zakāt became obligatory. Even though we do not know exactly the criteria he used, it is reasonable to assume that these were the comparable levels of incomes above which one is considered to be relatively 'well-off', and thus be in a position to pay zakāt. Certainly we can assume that the Prophet did not fix these limits arbitrarily. Didn't the Qur'ān says:".....And when ye judge between man and man that ye judge with justice..."(4:58)

In contemporary economic terminology nisāb could be considered as the 'poverty line'. Considering the reality of the contemporary world, when almost every item is given monetary value, it would be in the public interests that a standard monetary value be given to the classical notion of nisāb (which we could in fact legitimately consider as the classical 'poverty line'). Furthermore, this would be consistent with the Qur'ānic verse stated above. Since every item nowadays can be

given monetary value, a standard unit of measurement of income (or the value of property possessed), such as the 'poverty line', would be fair to everyone.

Some contemporary Muslim economists such as Farīdī,⁽³⁹⁾ raised this issue but did not give any juristic argument for it. Undoubtedly any attempt at 'tinkering' with nisāb is a very serious matter, both from the 'theological' and economic point of view. It requires careful study, as well as the consensus of the 'ulamā'. The arguments put forward here merely intend to highlight the issue, as it is relevant directly to the issue of poverty in Malaysia. The jurists in Malaysia would naturally have to give serious deliberation. The national 'poverty line' is obviously not something static. It changes from time to time. And it may be different from one region to another region, and from one community to another, depending on their consumption patterns, cultural habits and other factors.⁽⁴⁰⁾ This is why the 'ulamā' should be involved and be acquainted with this issue.

The nisāb for paddy in Malaysia, even though varying slightly from state to state (see Chapter VI), could be considered on average to be 400 gantang. If we calculate this, based on the Guaranteed Minimum Price for Paddy in 1985/1986 at \$38 - \$40 per pikul (which includes the price subsidy), the monetary value of 400 gantang of paddy would be:

1 <u>pikul</u>	=	60.5 kg.	=	133.1 lbs.
1 <u>gantang</u>	=	2.5401 kg.	=	5.6 lbs.
Price 1 lb.	-	0.2855 cent	-	0.3005 cent
Price: 1 <u>gantang</u>	-	\$1.5988	-	\$1.6828
Price: 400 <u>gantang</u>	-	\$639.52	-	\$673.12

If we take the higher figure of M\$673.12 as the monetary value of nisāb for paddy (400 gantangs), we can calculate (based on the above conversion) whether the nisāb for paddy approximates or not the nisāb for other properties, such as gold⁽⁴¹⁾ or the government's 'poverty line'.

As this study is focused on the agricultural zakāt (ʿushr), we will only compare the nisāb for paddy with the government's 'poverty line'. If we assume the government's 'poverty line' to be M\$60 per capita per month (see Chapter VII footnote 70) and the average family size of a paddy farmer to be six,⁽⁴²⁾ then the 'poverty line' for paddy farmers per household per annum would be M\$60 x 6 x 12 = M\$4320/- (or M\$360/-per month). Thus, the difference between the nisāb for paddy and the government's 'poverty line' is M\$4320/- minus \$673.12 or \$3646.88.

This is indeed a very rough calculation. We have not taken into account, for instance, the amount of paddy ⁽⁴³⁾ (normally 1/3 in the Shāfi'ī school) that the farmer can keep for his personal consumption before calculating the nisāb. However, even then the disparity between the nisāb and the government's 'poverty line' is too glaring. The

nisāb for paddy in monetary value is only 15.5% of the government's 'poverty line' level. To state this in another way: a paddy farmer in Malaysia is obligated to pay zakāt when the 'monetary value' of the paddy he produces is 84.5% below the national 'poverty line' figures!

This we have based on the assumption that the average family size of the farmer to be six.⁽⁴⁴⁾ We have not taken into account here of the fact that a substantial number of farmers live as extended family. Sometimes more than one household work a single farm.⁽⁴⁵⁾ We have also not taken into account the costs of production involved (especially for tenant-farmers), which will be discussed separately below.

The Qur'ānic verse stated above should be sufficient as a justification to re-evaluate the level of nisāb for paddy for the sake of equity and justice. We have also discussed in Chapter III, Section B(6), on the juristic view on the permissibility of payment of 'ushr in monetary term. The Second Caliph, 'Umar ibn al Khaṭṭāb has been reported to have given zakāt in monetary form.⁽⁴⁶⁾ If zakāt can be given in monetary form, the nisāb could also be calculated in monetary value. However, the crucial point is whether the rate of nisāb itself can be changed. In this respect the ijtihād of 'Alī, the fourth caliph, with respect to zakāt on camels is relevant. On this M.A. Saeed Ṣiddīqī, based on al-San'ānī's al-Muṣannaf, states:

"This minor amendment was actually relevant to the clause of compensation, where in the case of non-possession of the animal of particular age, fixed by the law, it was allowed

to take a younger or older animal in zakāt, provided that the party affected by it was compensated at the rate of two sheep or twenty dirham against the difference of one year in age. This clause of compensation continued to be practised in the time of ‘Alī as well, but probably the rate of compensation had been amended by him as two sheep or 10 dirham instead of 20 dirham, as was prescribed before, against the difference of one year in age of the animal to be taken as zakāt. This inference is based on the reports in which the detailed zakāt law of camels is related by ‘Alī. It could be perhaps that in the time of ‘Alī the price of sheep had fallen, hence, taking sheep instead of dirham as the criterion, ‘Alī amended the law accordingly."(47)

From the above quotation we can make at least two inferences. First, ‘monetary value’ in lieu of sheep is considered valid. Second, ‘Alī appears to have considered it just and proper to change even the ‘rate of compensation’ when the price of sheep had fallen. This incident clearly illustrate that the early Muslims, including the Companions of the Prophet, emphasized more the spirit and the overall aims and purposes of the laws, rather than their literal meanings. Based on this incident and on the principle of justice stated in the above quoted Qur’ānic verse, we recommend that there is sufficient basis for the jurists in Malaysia to consider the possibility of re-evaluating the rate of nisāb taking into account contemporary realities and the maṣlaḥah, or public interest, of the community.

2. The Need for Extending the ‘Coverage’ of Zakāt

The practice of confining agricultural zakāt (‘ushr) to a single crop, for example paddy, is probably one of the greatest anomalies committed (consciously or unconsciously) in the name of Sharī‘ah by

the official 'ulamā' of Malaysia. They might have done this with good intention. However, the consequence of this narrow juristic view, as discussed in Chapter VII, has led to serious imbalances in equity.

We have explained the historical background for this in Chapters V and VI. As stated in Chapter VII, this was not a problem until the advent of colonialism, because until then paddy was the only major agricultural product in Malaysia. With the introduction of cash-crops, like rubber, in the colonial days, and further diversification of agricultural produces in the post-colonial period (see Chapter VII), the juristic decision of confining zakāt only to paddy becomes highly untenable whether from the point of view of reason, social justice or the overall objectives of Sharī'ah.

We have explained the difference of views among jurists in Chapter III, especially between the Shāfi'ī and Ḥanafī schools with regard to this matter. The Shāfi'ī school confines 'ushr' to agricultural produces that are classified as 'staple foods' which can be stored. The Ḥanafī school, on the other hand, based on the Qur'ānic verse (2:267) do not make any exception⁽⁴⁸⁾ as to the nature of the agricultural produce. Based on the evidence, especially the explicit Qur'ānic verse quoted (2:267), it is plain that the position of the Shāfi'ī jurists on this matter is untenable in contemporary Malaysia. We have also shown in Chapter II that the Rāshidūn caliphs, especially 'Umar ibn al Khaṭṭāb, extended the coverage of zakāt to include items which the Prophet previously had not included. Even though the Prophet

stated only barley, wheat, raisins and dates, ‘Umar later extended ‘ushr to cover lentils, peas and olives. As also stated in Chapter II, ‘Umar even extended the ‘coverage of zakāt to include horses, which the Prophet specifically excluded. ‘Umar’s action, which was based on the exigency of time, was agreed upon by all the ṣaḥābah (companions of the Prophet) (see Chapter II, Section B2).

We have interviewed⁽⁴⁹⁾ a number of ‘ulamā’ including some muftīs and qāḍīs in Malaysia, with regard to this matter. The majority of them, especially after reading al-Qaraḍāwī’s ‘Fiqh ul Zakāt’, seem to agree that ‘ushr in Malaysia should be extended to other agricultural items. However, they were reluctant to make any official pronouncement or give a fatwā on this matter. They fear such a fatwā would create public alarm and confusion. What is implied is that such a sudden pronouncement would raise the problem of credibility. Why did it take such a long time for the ‘ulamā’ in Malaysia to realize this anomaly? This also involves the problem of convincing the non-paddy agricultural farmers concerning the obligatoriness of zakāt upon their products, which for generations they have not been paying.

We can appreciate the reasons for the reluctance of the ‘ulamā’ to give an immediate fatwā on this issue. They seem to believe that these changes should be done gradually. It should start with the process of re-educating and raising the ‘consciousness’ of the people involved on the need to pay zakāt.⁽⁵⁰⁾ When more and more non-paddy farmers voluntarily start paying zakāt for their agricultural produces, then a

fatwā, or juristic ruling to that effect, would create less alarm and may be accepted more favorably.

We concur with the wisdom of the above method. However, what is lacking so far is the concerted effort to raise the 'consciousness' of the people involved concerning the obligatoriness of zakāt upon them. Only a few religious scholars from local universities⁽⁵¹⁾ have been from time to time actively involved in organizing and participating in seminars on zakāt or bayt al māl (Islāmic treasury).⁽⁵²⁾

As stated in Chapter VII, there are hundreds of thousands of non-paddy farmers in Malaysia who do not pay any zakāt, even though some of their income are four or five times higher than the average income of the paddy farmers. In Table 8-1 we have given the total hectareage of major crops in Malaysia.⁽⁵³⁾ We find paddy constitute approximately only 15% of the total cultivation. If we very roughly estimate that only 30%⁽⁵⁴⁾ of the rest of the agricultural cultivations belong to the Muslims who are eligible to pay zakāt, the amount of zakāt that can and should be collected would be substantial. This definitely will more than off-set the amount of zakāt the paddy farmers would be exempted from paying due to the various recommendations we are proposing in this study.⁽⁵⁵⁾

The extension of the 'coverage' of zakāt discussed above only focused only on agricultural products. If we were to extend this to include wage earners⁽⁵⁶⁾ and zakāt on minerals, such as tin⁽⁵⁷⁾ and petroleum,⁽⁵⁸⁾ the amount of zakāt that could be collected would be

substantial. This, of course, requires separate studies. The 'ulamā' in Malaysia also need to deliberate on these issues more seriously with the cooperation and participation of Muslim economists and development specialists. These new sources of the zakāt fund that would be available to the State Zakāt Offices and the Central Zakāt Foundation could be used effectively (if administered properly) to achieve the paramount social objectives of zakāt which are also the fundamental objectives of national development policy; namely, to eradicate poverty and redistribute income and wealth in the country.

3. Zakat should be based on Net Production

As stated above, this issue is very closely connected to the determination of nisāb. In the last two chapters we have discussed this issue quite extensively. It has also been raised by others including 'Affuddīn,⁽⁵⁹⁾ Isma'īl M. Şalleh and Rogayah Ngah.⁽⁶⁰⁾ We do not intend to go into detail on this issue here. It is sufficient to mention some of their major findings.⁽⁶¹⁾

The study by Isma'īl Salleh and Rogayah Ngah⁽⁶²⁾ shows that if the rate of 10% zakāt is charged on net production (i.e. after taking into account the costs of production in determining the nisāb), inequality of incomes is found to have improved. The Gini Coefficient drops from 0.640 to 0.601 (see Table 8-1). This is statistically quite significant. Since zakāt is one of the elements of 'cost' to the paddy farmers (88% of whom in 1970 were below the 'poverty line'), they

state that any measures that could help to alleviate its 'burden' would move in the direction of redressing poverty among this group.

They further state:

"When one looks at the percentage of producers that are exempted from paying zakāt under the existing zakāt structure as well as under the proposed 10% zakāt based on net production, one finds that 40.9% of padi producers compared to 17.15% would be exempted from zakāt payment under the latter zakāt structure. In addition 44.47% of the tenants would fall below nisāb compared to only 16.78% under the existing zakāt structure. Thus if zakāt is imposed on net production rather than gross production, it would have a significant effect in alleviating poverty among padi producers."(63)

Based on the above figures, it is quite legitimate to claim that if zakāt on paddy is levied on net rather than gross production it would help to achieve the objective of income redistribution and economic justice.

As stated in Chapter III, the jurists of the Hanafi school give allowance for deductions to be made for costs incurred in the production of a crop in the calculation of nisāb. In the Shafi'i school only the deduction of unavoidable debts incurred in the process of production are allowed. On the juristic basis of maṣlaḥah, i.e. public interest, it is imperative for the 'ulamā' in Malaysia to consider seriously the adoption of the consensus of the Hanafi jurists on this issue. This issue has been raised and hotly debated in a number of seminars on zakāt in Malaysia in the last few years.⁽⁶³⁾ The Majority of Muslim scholars recommended the adoption of Hanafi practice on this issue.

4. The Case for Sharing the Obligatoriness of Zakāt by both the Tenant and the Landlord

The controversy among the jurists regarding this matter has been discussed in Chapter III Section B(5). The Ḥanafī and the Shāfi‘ī schools hold diametrically opposite views on this issue. The former considers zakāt to be the responsibility of the landlord whereas the latter considers it as the responsibility of the cultivators or tenants. Some other jurists like Ibn Rusd (a Maliki jurist) and al-Qardāwī (a contemporary jurist) consider that both parties should share the responsibility of paying zakāt. As stated before, we believe the sharing of zakāt by both parties is the most equitable arrangement, especially in case of the pawah system (share-cropping) which is widely practiced in Malaysia.

As stated in Chapter VI, the current practice in Malaysia is that only tenants are obligated to pay zakāt. When a person who owned more than 20 acres of paddy land does not pay any zakāt (because he rented out the land) and a tenant who cultivates less than two acres has to pay zakāt, this points to a grave imbalance in equity. It is our belief that had al-Shāfi‘ī himself been alive today and seen this anomaly in Malaysia, he would have changed this decision on this matter, as he changed some of his decisions when he moved from Irāq to Egypt.

We believe that the sharing of the responsibility of zakāt by

both parties is the most equitable arrangement from the viewpoint of social justice. However, since zakāt is also an act of worship, it is also spiritually beneficial to both the parties. In the context of Malaysia, such a provision has an additional advantage. If such a provision is implemented (and provided other things remain equal), there is a possibility it would act as a disincentive for landlords to accumulate more paddy land. They might be better off in investing their surplus income in other sectors of the economy. This would indirectly help to achieve a more equitable distribution of the land - without, possibly, the need to resort to 'land reform'.

Recommended Changes Regarding The Distribution of Zakat

Lastly, but not least, the method of distribution of zakāt is as important as any other issues raised above. It is due to the importance of this issue that the Qur'ān itself is specific with regard to the beneficiaries of zakāt. As this matter had already been discussed in Chapter IV, VI and VIII, we will only recapitulate some of the pertinent points in the form of recommendations:

- (i) All the ethical principles (from the perspective of the State) that govern the distribution of zakāt stated in Chapter IV should be strictly adhered to.
- (ii) Each of the asnāf (beneficiaries) mentioned in Qur'ān should be given their due share. If such a category as al-riqāb (the slave) is considered no longer valid

in the contemporary world,⁽⁶⁴⁾ this portion (or at least the major portion of it) should be re-distributed to the categories of the poor (al-fuqarā) and the needy (al-masākīn).

- (iii) The zakāt fund meant for the category of the debtors⁽⁶⁵⁾ (al-ghārimīn) should be used fully and properly in such a way that will extricate the poor peasants from the 'vicious circle of poverty'.⁽⁶⁶⁾ At this time in many states in Malaysia this portion of zakāt is generally not distributed at all to this category.⁽⁶⁷⁾ There are thousands of peasants who are indebted to landlords, to middlemen and others. Sometimes due to their indebtedness they even lose the title to the small plot of land they have. Under such circumstances of indebtedness which results from poverty and not extravagance, it is only proper that the zakāt fund be used to help to alleviate the burden.
- (iv) The current practice of investing large portions of the zakāt fund in banks and other financial institutions for the purpose of increasing the Malays' share in the business and corporate sector in Malaysia should be re-considered. As stated in the last chapter, the immediate and proper distribution of the zakāt fund to

its rightful beneficiaries, especially the poor and the needy, would also effectively achieve one of the objectives of the New Economic Policy, i.e. the eradication of poverty. [The Malays, especially those who can afford to, instead should be encouraged to invest voluntarily (perhaps with inducements and incentives as is being done by the PNB⁽⁶⁸⁾ for increasing the Malay participation in the commercial and corporate sector of the economy.]

The zakāt fund should not be mixed with this.

- (v) The method of disbursement of zakāt in Malaysia (except for the Zakāt Office of the Federal Territory)⁽⁶⁹⁾ needs to be changed, so that the recipients of zakāt, especially those who are able-bodied, will be able to sustain themselves gradually without having to depend on zakāt continuously. Thus, zakāt should be given in the form of capital (cash or 'tools of trade') or by building shops or stalls where the rightful beneficiaries of zakāt can be gainfully employed. This method of disbursement of zakāt might not be practicable when the zakāt collection itself is small, and the beneficiaries who are handicapped, or old-aged, or widowed are many. This is why the administration of zakāt should be coordinated

(in the context of Malaysia) with the activities of other governmental agencies such as the Social Welfare Department. Decentralization of the administration of zakāt, and the creation of the Central Zakāt Foundation recommended above, would provide not only the appropriate administrative framework but also the additional funds, (especially for the poor regions and villages) required to disburse zakāt fund in the manner recommended above.

NOTES

- (1) See the discussion on these concepts in Chapter I.
- (2) We specifically refer here to the five year development plan documents produced by the Economic Planning Unit, Prime Minister's Department, Malaysia. As stated in Chapter VII, some statutory bodies like MARA did attempt to mobilize zakāt for investment purposes to increase Malay-Muslim participation in the business or corporate sector.
- (3) See literature on 'development planning'. For instance, D. Seers' Crisis in Planning, Sussex, U.K., 1972.
- (4) The majority of the poor in this category are paddy farmers and rubber smallholders. See Chapter VII.
- (5) Mackeen, A.M.M., Contemporary Islāmic Legal Organization in Malaya, Monograph series No. 13, Yale University Southeast Asian Studies, 1969, p.32.
- (6) Ibid
- (7) Ibid. See also R. Levy, The Social Structure of Islām, Cambridge, 1957, p.296.
- (8) Schacht, J., "Islamic Law in Contemporary States", American Journal of Comparative Law, Vol.VIII, 1959, p.134-135. See also, J.N.D. Anderson, "Recent Developments in Sharia Law", Muslim World, No. 40 (1950), p.244-251.
- (9) Schacht, p.135
- (10) Mackeen, op. cit. p.33
- (11) Ibid, p.34
- (12) Ibid
- (13) See the historical and political background of the role of the Malay Ruler in Chapter V and VI.
- (14) Federal Constitution, Eighth Schedule, Section 1(1).
- (15) See also Chapter VI

- (16) Federal Constitution, Article I(2)(d) of the Eighth Schedule.
- (17) Mackeen, op. cit. p.35
- (18) Ibid
- (19) This term which literally means "those who loosen and bind", refers to the body of 'ulamā' who are consulted in state affairs in a traditional Islāmic State.
- (20) Family laws for Muslims in Malaysia are codified and enacted by the various states. See Ahmad Ibrahim, Islāmic Law in Malaya, MSRI, Singapore 1965.
- (21) Even on this relatively minor religious issue, the State Rulers often jealously uphold their prerogatives and demonstrate their independence. Even though there is a coordinating mechanism such as the Conference of Rulers, we still find quite often in the past some Rulers refusing to abide by the decision of the majority. There were quite often cases when one state would celebrate the end of Ramadhān festival one day later (or earlier) than the rest of the States in Malaysia.
- (22) In the colonial days the State Rulers acted as Chairman of the State Councils. See Chapters V and VI.
- (23) What is meant here is that the 'ulamā' should not confine their views and judgements purely based on the writings of Shāfi'ī jurists.
- (24) For an excellent critique of this syndrome, see E.F. Schumacher, Small is Beautiful: Economics as if People Mattered, Harper & Row, N. York & London, 1973.
- (25) In fact a resolution to this effect was passed by the Persidangan Alim 'Ulamā' Malaya (Conference of Islāmic Scholars in Malaysia) which was convened by the federal government in 1968. However, no state governments ever adopted this resolution.
- (26) See Chapter II
- (27) The introduction of Western style 'democratic' institutions such as political parties, general elections, political rallies and campaigns have highly politicised and divided the hitherto relatively peaceful and close-knit traditional Malay village communities. This division often spilled over into 'religious'

matters, especially as a result of the participation of Islāmic parties such as the PMIP in the general elections. See also Chapter VI.

- (28) JKKK was first established in 1962 (then known as Jawatan-kuasa Kemajuan Kampung or Village Development Committee) as an important 'change agent' at the village level. It was entrusted to resolve what was then considered to be four major social problems: poverty, inadequate health facilities, illiteracy and social 'apathy' (tidak apa attitude). Panduan Arahan No.3 Rancangan Pembangunan Negara dan Luar Bandar (Directive No.3, National and Rural Development Plan), Ministry of National and Rural Development. 1966, p.15-16.
- (29) For further information on JKKK see Kajian Evaluatif Mengenai Kekesanan JKKK sebagai Agen Pembangunan di-Peringkat Akar-Urbi (An Evaluative Study of the Effectiveness of JKKK as Development Agent at the Grassroot Level), Socio-Economic Research Unit, Prime Minister's Department, K. Lumpur, Jun 1982.
- (30) Ibid, p.11
- (31) Ibid, p.11-12
- (32) Due to the vary nature of JKKK it tends to be very politicised. The Chairman of JKKK is the Village Headman himself who is appointed by the Chief Minister of the State with the recommendation of a Selection Committee comprising the District Officer, State Representative and the Penghulu. The Chairman and members of the Committee are not considered civil servants. When there is a change of government in the State, as happended in Kelantan, for instance, the composition of JKKK also changed.
- (33) The State Zakāt Office of Kedah, for instance, does not have even a single accountant (full-time or part-time) to handle its sizeable accounts. With the exception of Federal Territory and Perak, none of the State Religious Councils or State Zakāt Offices in Peninsular Malaysia have qualified manpower to handle the various zakāt changes recommended in this study. Many of their annual financial reports are long over due. This has been criticized by the Malaysian Auditor General's Office.
- (34) Penyata Zakāt Wilayah Persekutuan (Zakāt Report of the Federal Territory) 1984, Kuala Lumpur.
- (35) Undang-Undang Pentadbiran Agama Islām Selangor (Selangor Administration of Muslim Law), No. 3/1952, Section 42(1).

- (36) Quoted from Aḥmad Ibrāhīm, op. cit., p.118.
- (37) Abū Zahrah, Mālik, p. 211-214; Said Ramaḍān, op. cit., p.78.
- (38) Ahmad Ibrahim, op. cit., p.117.
- (39) Farīdī, F.R., "A Theory of Fiscal Policy in an Islāmic State" in Ziauddin Aḥmed, M. Iqbal & M. Fahim Khan (eds.) Fiscal Policy and Resource Allocation in Islām, Institute of Policy Studies, Islāmabād, 1983.
- (40) Even in Malaysia different studies have been conducted on the consumption patterns of the different racial groups. Details of the monthly 'food basket' for different racial groups and age groups were conducted by the Malaysian Social Welfare Department. See Department of Social Welfare, "A Joint State and Federal Public Assistance Programme", Ministry of Welfare Services, K.Lumpur 1975. See also discussion on this in S. Anand, Inequality and Poverty In Malaysia ,Measurement and Decomposition, p. 114-116. However, the Economic Planning Unit, is believed to maintain a standard 'poverty line' for the whole country for the purposes of development planning and analysis.
- (41) In fact in Malaysia the price of 'gold' which varies from time to time ,is used to calculate the nisāb for zakāt on savings and is fixed at 20 'misqal' of gold or its monetary equivalence. See Suara Majlis (Majlis Voice), Islāmic Religious Council and Department of Religious Affairs, 28th August 1984, Ipoh, Perak.
- (42) See Chapter VI
- (43) The Shāfi'ī school allows a maximum of 1/3 of agricultural produce to be set aside for the personal consumption of the farmer and his family before calculating the nisāb. This is on a ḥadīth quoted by al-Nasā'ī, Sunan-al-Nasā'ī, Vol. 5, p. 32.
- (44) Afifuddin, Some Aspects of the Socio-Economic Value System of the Muda Rice Farmers in Developmental Perspective, p.65.
- (45) Ibid
- (46) See Chapter III, Section B(6)
- (47) M.A.S. Şiddīqī, Zakāt Law and Ijtihād, p.127

- (48) See Chapter III, Section B(1)
- (49) These interviews were conducted in November - December 1984 in Malaysia.
- (50) Some farmers, especially those working in new land settlements (such as the Felda scheme), even though they earn much higher income than the paddy farmers, do not pay any zakāt because many of them believe that they do not have to pay zakāt.
- (51) Some of the local scholars who are actively involved in this effort such as 'Abdullah Ibrāhīm and Rashīd Dail are from the Islāmic Studies Faculty of the National University of Malaysia.
- (52) In the 1980's a number of seminars on zakāt were conducted in K. Lumpur and at the state levels. The latest one was conducted by the State Zakāt Office of Kedah on 12-14 April, 1985.
- (53) For the approximate number of families involved see Table 7-4, Chapter VII.
- (54) This is a very conservative estimate considering the fact that a large proportion of Malays are involved in agriculture in the rural areas - especially in the new land settlements.
- (55) See the subsequent discussion, especially sub-section 3 and 4.
- (56) As stated in Chapter VII, the number of wage earners who are paying zakāt now is increasing rapidly due to the amendments to the income tax law.
- (57) Tin is a mineral which should be subjected to zakāt at the rate of 20% (see Chapter II). So far, no religious council in Malaysia had given any fatwā to this effect. However, the tin-miners do pay taxes to the state and federal governments. See also the following footnote.
- (58) Petroleum is also a mineral which should be subjected to zakāt. This is the view of many contemporary Muslim scholars, including al-Qaradāwī and the 'ulamā' of al-Azhar University. The muftī of Trengganu (a state which produces petroleum in Peninsular Malaysia), however, gave a fatwā to the effect that no zakāt is necessary on petroleum. (This information was given to us by an official of the Trengganu Religious Council). Many Islamic scholars in Malaysia do not seem to agree with this ruling. We feel there is a need for an ijmā' (consensus) on this issue. Undoubtedly, this is a complex matter. Petronas

(the National Petroleum Corporation), which operates the petroleum fields, does pay royalty to the State and Federal governments. Could these taxes be considered as zakāt or substitute for zakāt? If so, how should the revenue be distributed from the Islamic point of view?

- (59) 'Affuddīn, op. cit.
- (60) Isma'īl M. Şalleh and Rogayah Ngah, op. cit. p.113-114
- (61) As 'Affuddīn's findings have been given in the last chapter, we will focus here only on Isma'īl Şalleh and Rogayah Ngah's findings.
- (62) Ibid, p.114
- (63) Ibid
- (64) For instance, in a Zakāt Seminar organized by the Islāmic Religious Council of Selangor in conjunction with the Department of Religious Affairs of the Federal Territory on 2-4 January, 1980, Petaling Jaya, Selangor.
- (65) As stated in Chapter VII, many of the peasants in the rural areas were indebted to landlords or middlemen. We also know some of the rubber smallholders (in Baling and Sik) do not have titles to their holdings because they could not pay land taxes to the government for the last thirty to forty years. In such instances, we believe it is justified to use the zakāt fund to alleviate the plight of such peasants.
- (66) This term was first used by Gunnar Myrdal in his celebrated work Asian Drama: An Inquiry into the Poverty of Nations and also his Challenge to World Poverty. (See Bibliography)
- (67) In Kedah, for instance, this portion is fully used for running a religious school. (See Chapter VI). See also Penyata Zakāt (Zakāt Report) 1980-83, State Zakat Office, Kedah.
- (68) PNB or Perbadanan Nasional Berhad (National Corporation Ltd.) is the public corporation set up by the federal government to buy shares in corporate sector on behalf of the Malays and other Bumiputras. See Chapter VII.
- (69) For a brief description of how zakāt in the Federal Territory is disbursed see Haji Hussain b. Haji Mohd. Rejab, Pengalaman

Pengurusan Baitulmāl (Experience in Managing Bayt al Māl),
paper presented to the National Seminar on Bayt al Māl,
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T A B L E S

Table 6-1

Amil of Kampung Akir

Total area (tanah kampung & rice land)	138 acres 3 roods 29 pools
Cultivated rice acreage	100 acres
Number of rice growers	44
Number of rice growers who paid zakat	32
Amount of zakat collected (padi)	949 gantang
Total value of zakat	\$726.70 (100%)
Commission for amil	\$90.83 (1/8)
Paid to the poor & the needy	\$181.66 (2/8)
Forwarded to the Department of Religious Affairs	\$454.21 (5/8)

This record was kept by the zakat clerk of the mukim. See Perak, Department of Religious Affairs, "Rekod2 Amil Mukim Bagan Tiang" [Record of amil in Mukim Bagan Tiang] (Bagan Tiang, 1966).

c.f.

Kenzo Horii: Rice Economy and Land Tenure in West Malaysia: A Comparative Study of Eight Villages.
Institute of Developing Economies, Tokyo, 1981

Table 6-2

Average Amount of Zakat Paid Per Household
In Perak (1964-67)

	1964		1966		1967	
	\$	Gtg.	\$	Gtg.	\$	Gtg.
Kariah Masjid Sungei Megat Aris	19.0	30.8	—	—	—	—
Mukim Bagan Tiang	17.8	30.4	—	—	20.5	34.7
Mukim Tanjong Piandang	18.7	31.1	—	—	14.3	26.0
Mukim Kuala Kurau	23.0	41.1	—	—	11.8	24.3
Mukim Parit Buntar	16.7	26.1	—	—	21.8	39.0
Perak State	19.7	38.3	—	—	—	—
Kampung Aris	—	—	22.7	29.7	—	—

Sources: For 1964, Perak, Department of Religious Affairs, *Penyata Kutipan Zakat, Fitrah, Baitul-Mal dan Kawalan Wakaf, Negeri Perak* [Report of zakat collection, fitrah, baitul-mal and maintenance of wakaf in Perak State] (Ipoh, 1964). For 1966, idem, "Rekod2 Amil Mukim Bagan Tiang" [Record of amil in Mukim Bagan Tiang] (Bagan Tiang, 1966). For 1967, idem, "Senarai Kutipan Zakat dan Fitrah, Wilayah Khadi Parit Buntar, Krian" [List of zakat collection and fitrah: administrative area of Khadi of Parit Buntar, Krian] (Parit Buntar, 1967).
c.f.

Kenzo Horii: Rice Economy and Land Tenure in West Malaysia: A Comparative Study of Eight Villages.
Institute of Developing Economies, Tokyo, 1981

Table 6-3

Payment of Zakat in Kampung Sungei Bujur, Kedah (1967)

Culti- vated Rice Acreage Surveyed by Amil (Relong)	No. of Farms	Amount of Zakat Paid (Naleh)										Total Amount of Zakat (Naleh)	Total Rice Acree- age (Relong)			
		0	1	2	3	4	5	6	7	8	9			10	Un- known	
0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
2	5	1	1	2	1	0	0	0	0	0	0	0	0	0	8	10
3	11	1	1	8	0	1	0	0	0	0	0	0	0	0	21	33
4	4	0	0	0	1	2	0	0	1	0	0	0	0	0	18	16
5	7	1	0	0	1	2	1	1	0	1	0	0	0	0	30	35
6	7	0	0	0	1	1	1	2	0	2	0	0	0	0	40	42
7	2	0	0	0	0	0	0	1	0	0	0	1	0	16	14	
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9	1	0	0	0	0	1	0	0	0	0	0	0	0	4	9	
10	1	0	0	0	0	0	0	1	0	0	0	0	0	6	10	
12	1	0	0	0	0	0	0	0	0	0	0	1	0	10	12	
18	1	0	0	0	0	0	0	0	1	0	0	0	0	7	18	
Unknown	4	0	0	0	0	0	0	0	0	0	0	0	4	-	-	
Total	52	11	2	10	4	7	2	5	2	3	0	2	4	160	200	

Note: Kampung Sungei Bujur consisted of fifty-six households, including fifty-two rice cultivators and four farms laborers. The above statistics were derived from the amil's investigation.

C.F. Kenzo Horii: Rice Economy and Land Tenure in West Malaysia: A Comparative Study of Eight Villages. Institute of Developing Economies, Tokyo, 1981.

Table 6-4

State Zakat Committee, Kedah:
Distribution To The Asnaf*

	1980/1981	1981/1982	1982/1983
The Poor	183,864.93	148,598.46	156,142.89
The Needy	183,864.93	148,598.46	156,142.89
The 'Amilin	183,864.93	148,598.46	156,142.89
Muaalaf al qulub	183,864.93	148,598.46	156,142.89
Al-Riqab	183,864.93	148,598.46	156,142.89
Al-Gharim	183,864.92	148,598.45	156,142.89
Fi-sabil-Allah	183,864.92	148,598.45	156,142.89
Ibn Sabil	183,864.92	148,598.45	156,142.89
	1,470,919.41	1,188,787.65	1,249,143.12
Income from land and buildings	196,648.56	197,906.87	251,630.67
Others	61,830.93	148,233.19	189,079.29
Total	1,729,398.90	1,534,927.71	1,689,853.08

From: Penyata Zakat, Negeri Kedah (Zakat Report, Kedah) 1980-1983
Published by the State Zakat Committee, Kedah.
(Translation)

* This is purely a theoretical allocation to each asnaf.
What was actually distributed see Table

Table 6-5

Bayt al Mal Office of Perak
The Collection and Distribution of
Zakat and Zakat al Fitr, 1983
(Estimate)

<u>Income</u> (Collection)	\$	¢	\$	¢
1. Zakāt		550,000.00		
2. Zakāt al Fitr	1,520,000.00			
3. Other income	283,420.00		<u>2,353,420.00</u>	
 <u>Expenditure</u> (Distribution)				
1. Administrative cost		781,802.00		
2. Fakir		270,000.00		
3. Miskin		270,000.00		
4. Mualafah qulubuhum		200,000.00		
5. Gharimun		50,000.00		
6. Ibn Sabil		50,000.00		
7. Fi sabil Allah		534,100.00		
8. Surplus		197,518.00	<u>2,353,420.00</u>	

Source: Majlis Ugama Islam Perak. Laporan Anggaran Pendapatan dan Perbelanjaan tahun 1983.
(Religious Council Perak. Estimate of Income and Expenditure 1983).

Table 6-6

Summary of Kelantanese Legislation Pertaining to Zakat

Year of Act/Notice	Tax	Portion surrendered	Share of Majlis/ruler	Surau upkeep	Officials
1907/8	Zakat	All	3/5	1/5	1/5
1916	Zakat	All	3/5	1/5	1/5
1917	Fitrah	About 1/2	7/8	1/24	*1/12
1919	Fitrah	About 1/2	4/5	1/15	*2/15
1938	Zakat	All	4/5	-	*1/5
	Fitrah	About 1/2	4/5	-	*1/5
1953	Zakat	All	4/5	-	*1/5
	Fitrah	About 1/2	4/5	-	*1/5
1966	Zakat	All	Not less than 4/5; generally 9/10	-	*Up to 1/5; generally 1/10
	Fitrah	About 1/2	Not less than 4/5; generally 9/10	-	*Up to 1/5; generally 1/10

* Except for the three central mosques at Kota Bharu, Kampong Laut, and Langgar.

Source: Kessler, C.S., Islam and Politics in a Malay State, Cornell University Press, 1978, p. 251.

Table 6-7

The List of the Beneficiaries of Zakat (Kedah)

Asnaf	Distributed to:
The Poor	the poor
The Needy	the needy poor students from religious schools poor students from other than religious schools public (village) religious teachers religious teachers in people's religious schools (normal class) emergency
The 'Amilin (Zakat Collectors)	'Amilin
Muaalaf al Qulub (Those whose heart to be reconciled)	new converts missionary works under the patronage of the ruler missionary and information services PERKIM, Kedah Association of 'Ulama, Kedah Kedah Mosque Officials Fund Kedah Mosque Trust Fund Qur'an Reading Competition organized by mosques Qur'an Reading Competition (secondary schools) teachers of people's religious schools (academic) voluntary courses in Qur'anic recitation salary of officials 1/2
Al-Riqab (The Slaves)	land tax maintenance of Zakat Office

Table 6-7 (cont.)

<u>Asnaf</u>	<u>Distributed to:</u>
	salary of officials 1/2 savings for profits
Al-Gharimin (The Debtors)	Nizami people's religious schools
Fi sabil Allah (In the cause of Allah)	building of mosques, religious schools, etc.
Ibn Sabil (Wayfarer)	wayfarer scholarship 1/8 for administrative costs the balance divided to the top four <u>asnaf</u>

Source: Penyata Zakat, Negeri Kedah (Zakat Report, Kedah) 1980-83.

Table 6-8

Distribution of Zakat
By The State Zakat Committee, Kedah

Type of Recipients	1980/1981	1981/1982	1982/1983
Poor/Needy	183,105.00	197,735.00	213,750.00
Poor students of Religious Schools	59,676.10	63,300.00	6,460.00
Poor students from other than Religious Schools	510.00	610.00	250.00
Village Religious Teachers	29,475.00	43,500.00	29,225.00
Emergency Expenses	2,458.00	4,295.00	4,174.00
New Converts	7,448.91	9,632.11	11,996.39
Association of Religious Scholars ('Ulama), Kedah	2,000.00	5,000.00	6,000.00
Mosque Official's Fund	-	30,000.00	-
People's Religious Schools	114,775.00	161,078.30	128,360.00
Construction of mosques, suraus and religious schools	137,119.05	275,989.06	103,666.80
Ibn Sabil (Wayfarer)	145.00	203.00	85.00
Scholarships	50,840.00	36,915.50	70,520.00
Kedah Fraternity in Egypt	-	-	2,000.00
Missionary works under the patronage of the Sultan	5,000.00	5,000.00	-
Contribution to Muslim Welfare Association of Malaysia	3,000.00	-	2,000.00
Total	\$595,552.06	\$833,257.97	\$776,481.19

From: Penyata Zakat Negeri Kedah (Zakat Report, Kedah) 1980-1983
Published by the State Zakat Committee, Kedah.
(Translation)

Table 6-9

Administrative Expenses of the State
Zakat Committee, Kedah

Categories of Expenditure	1980/1981	1981/1982	1982/1983
Information and Da'wa	1,946.90	14,047.10	8,939.40
Contribution to 'Amil and Chief 'Amil	144,978.86	120,836.38	116,771.96
Travelling Expenses	14,935.79	13,939.40	16,459.36
Miscellaneous Expenses	1,241.00	2,435.45	507.00
Office Furniture	1,141.80	140.00	310.01
Meeting Expenses	7,145.87	5,098.69	1,434.94
Uniform for Peon and Despatch Men	298.00	295.00	350.00
Telephone Bills	1,582.02	2,294.00	1,470.40
Maintenance of Vehicles	2,749.33	2,176.86	2,431.72
Maintenance of Zakat Building	8,922.44	12,612.68	7,152.24
Salary of Officers	222,767.74	229,977.08	230,422.15
Workers' Provident Fund	17,610.00	21,127.00	21,354.00
Payment to Workers' Social Security	663.10	1,806.30	1,321.70
Quit Rent	9,596.04	9,199.77	9,598.32
Printing of Zakat Report	4,750.00	-	-
Meeting Allowances	1,973.55	2,435.45	2,172.55
Stamps and Other Postal Expenses	1,373.40	1,517.40	1,733.10
Water and Electricity	4,569.45	1,412.95	1,472.32
Solicitors' Fee for Legal Actions	550.00	1,000.00	50.00
Zakat Auditors' Fee	3,360.00	3,500.00	
Office Security & Maintenance	4,372.40	2,930.00	3,306.00
Total	\$452,155.29	\$448,781.51	\$427,257.17

From: Penyata Zakat, Negeri Kedah (Zakat Report, Kedah) 1980-1983
Published by the State Zakat Committee, Kedah.
(Translation)

Table 6-10

THE DISTRIBUTION OF ZAKAT (ACTUAL)
State Zakat Office Kedah

Year	1980/1981	1981/1982	1982/1983
Total Proceeds of the State Zakat Committee	1,729,398.90 (100%)	1,534,927.71 (100%)	1,689,853.08 (100%)
Total Administrative Costs (inclusive of the share of the ' <u>Amilin</u>)	452,155.29 (26%)	448,781.51 (29%)	427,257.17 (25.2%)
Total Amount Distributed	595,552.06 (34%)	833,257.97 (54%)	776,481.19 (45.9%)
Amount Distributed to the <u>Poor</u> and the <u>Needy</u>	183,105.00 (10.58%)	197,735.00 (12.8%)	213,750.00 (12.6%)
Undistributed Balances	498,586.7 (28.8%)	55,153.3 (3.6%)	272,364.8 (16.1)

Source: Penyata Zakat, Negeri Kedah (Zakat Report, Kedah) 1980-83.

TABLE 7-1

Household Income Distribution, Peninsular Malaysia
 1957/58, 1967/68 and 1970

Percentage of income accruing to	HBS 1957/58	SES 1967/69	PES 1970
Top 5% households	23.3	26.1	27.7
Top 10% of households	34.1	38.7	39.7
Top 20% of households	49.3	56.1	55.0
Top 40% of households	69.8	76.2	75.7
Top 60% of households	84.1	90.7	88.1
Top 80% of households	94.2	98.1	96.0
Mean Income (\$ month)	217.00	199.00	271.00
Gini Concentration Ratio ¹	0.247	0.513	0.516

Source: Martin Rudner, The Political Economy of Planning in Malaysia: Goals, Policies and Role Expansion, 1977.

Note: HBS - Household Budget Survey
 SES - Socio-Economic Sample Survey of Households
 PES - Post Enumeration Survey

Although the scope of these three surveys varies, the figures are broadly comparable.

The SES, however, refers to cash income only.

TABLE 7-2

Expenditure in M\$ on Rural Development in the
First Three Plans (1956 - 1970) for Peninsular Malaysia

	First Malaya Plan (Actual) (1956 - 1960)	Second Malaya Plan (Estimated) (1961 - 1965)	First Malaysia Plan (Estimated) (1966 - 1970)
1) Agriculture and rural development	227.5	411.1	911.2
2) Transport	103.2	294.3	177.9
3) Communications	25.8	56.7	79.8
4) Utilities	119.3	260.3	322.4
5) Social services	69.4	260.3	322.4
6) Total rural development expenditure	545.2	1286.1	1814.7
7) Total non-security develop- ment expenditure	964.0	2344.4	2964.5
(6) as a percent of (7)	56.6%	54.9%	61.2%

Source: Stephen Chee, Rural Local Governance and Rural
Development in Malaysia (Ithaca: Rural Development
Committee, Center for International Studies, Cornell
University (November, 1974), p. 58.

TABLE 7-3

WEST MALAYSIA: OWNERSHIP OF SHARE CAPITAL IN LIMITED COMPANIES, 1970-1975

	1970 ¹⁴		1971 ¹⁵		1972 ¹⁵		1973 ¹⁵		1974 ¹⁴		1975 ¹⁶		Average annual growth rate (%) 1971-75
	\$ million ¹⁷	(%)	\$ million	(%)	\$ million	(%)	\$ million	(%)	\$ million	(%)	\$ million	(%)	
Malays and Malay Interests	125.6	2.4	210.1	3.5	286.0	4.2	436.6	5.1	628.4	6.7	768.1	7.8	43.6
Malays ¹⁸	54.4	1.6	114.5	1.9	131.1	1.9	173.8	2.1	207.4	2.2	227.1	2.3	21.9
Malay Interests ¹⁹	41.2	0.8	95.6	1.6	154.9	2.3	262.8	3.2	421.0	4.5	541.0	5.5	67.4
Other Malaysians	1,826.5	34.3	2,104.7	35.8	2,418.3	35.7	3,015.8	36.6	3,451.4	37.1	3,637.3	37.5	15.1
Chinese	1,450.5	27.2	1,603.7	28.8	1,935.4	28.6	2,308.9	27.8	2,626.4	28.2	2,755.9	27.9	13.7
Indians	55.9	1.1	71.7	1.2	75.3	1.1	97.4	1.2	111.3	1.2	119.2	1.2	16.3
All Others ²⁰	320.1	6.0	339.3	5.8	407.6	6.0	629.5	7.6	713.7	7.7	812.2	8.2	20.3
Foreign ²¹	3,377.1	63.3	3,573.1	60.7	4,059.0	60.0	4,813.0	58.1	5,233.3	56.2	5,434.7	54.6	10.0
Total private sector ²²	5,329.2	100.0	5,887.9	100.0	6,763.3	100.0	8,285.4	100.0	100.0	100.0	9,890.1	100.0	13.2

¹⁵ Actual

¹⁶ Estimated.

¹⁷ Totals for 1970 differ from those presented in the SMP and its Mid-Term Review because of the reclassification of trust agencies as Malay interests and reallocations of most of the shares previously categorised as "held by other companies" to the shareholders of those "other companies".

¹⁸ Include Institutions channelling private Malay funds such as Amanah Saham MARA and Lembaga Urusan dan Tabung Haji.

¹⁹ Shares considered to be held in trust by agencies such as MARA (excluding Amanah Saham) PERNAS, UDA, SEDCS, Bank Bumiputra and Bank Pembangunan.

²⁰ Includes nominee companies and third-company minority holdings.

²¹ Non-residents, Shares held by individuals and net assets, in 1970 prices, of branches of companies incorporated abroad.

²² Excludes the Government and its agencies except the trust agencies.

Source: Third Malaysian Plan (1976-80), Table 3.3, p. 184.

TABLE 7-4

MALAYSIA: REGIONAL DEVELOPMENT PROGRAMS, 1978

Program Title	Area Size (Acres)	Location (State)	Year Start	Target Population	Organization Form
MUDA	261,500	Kedah & Perlis	1966	60,000 families	Corporate (in-situ)
KEMUBU	85,969	Kelantan	1969	45,000 families	Corporate (in-situ)
JENKKA	300,000	Pahang	1971	90,000 families	Corporate (Resource frontier)
BESUT	35,000	Trengganu	1970	4,000 families	Coordinative (in-situ)
DARA	2,500,000	Pahang	1972	500,000 people	Corporate (Resource frontier)
KEJORA	750,000	Johor	1972	300,000 people	Corporate (Resource frontier)
KETENGAH	1,090,000	Trengganu	1973	134,000 people	Corporate (Resource frontier)
WEST JOHOR	350,000	Johor	1974	200,000 people	Coordinative (in-situ)
NORTH KELANTAN	720,800	Kelantan	1976	108,000 people	Coordinative (in-situ)
N. WEST SELANGOR	224,530	Selangor	1978	32,000 families	Coordinative (in-situ)
KESEDAR	2,630,000	Kelantan	1978	350,000 people	Corporate (Resource frontier)

Source: Johari bin Mat, Regional Development in West Malaysia A Comparative Effectiveness Study of Jengka, Dara, Kejora and Ketengah Monograph No. 2 of the National Institute of Public Administration Malaysia 1983.

TABLE 7-5

PENINSULAR MALAYSIA: INCIDENCE OF POVERTY BY
RURAL-URBAN STRATA, 1985¹

<i>Stratum</i>	<i>Total households ('000)</i>	<i>Total poor households ('000)</i>	<i>Incidence of poverty (%)</i>	<i>Percentage among poor (%)</i>
<i>Rural</i>	1,513.5	501.5	33.1	83.3
Agriculture	890.7	379.4	42.6	63.0
Rubber smallholders	401.9	157.5	39.2	26.2
Oil palm smallholders	22.5	1.3	5.7	0.2
Coconut smallholders	29.7	9.2	31.1	1.5
Padi farmers	134.3	78.3	58.3	13.0
Other agriculture	158.8	75.4	47.5	12.5
Fishermen	39.8	17.3	43.5	2.9
Estate workers	103.7	40.4	39.0	6.7
Other industries	622.8	122.1	19.6	20.3
<i>Urban</i>	983.6	100.4	10.2	16.7
Mining	5.2	2.2	42.0	0.4
Manufacturing	259.4	29.8	11.5	5.0
Construction	41.9	5.2	12.4	0.9
Transport and utilities	99.7	14.1	14.1	2.3
Trade and services	577.4	49.1	8.5	8.1
TOTAL ..	2,497.1	601.9	24.1	100.0

Note:

¹ The calculations took into consideration the effects of programmes implemented during the latter part of 1970s and the period 1981-85 as well as changes in other factors, such as prices and costs. Data from studies conducted by the Economic Planning Unit, the Socio-Economic Research Unit and the Department of Statistics in the Prime Minister's Department, Ministry of Agriculture and other agencies were also used in the computations.

Source: Mid-Term Review of the Fourth Malaysia Plan 1981-1985

TABLE 7-6
PENINSULAR MALAYSIA:
INCIDENCE OF POVERTY BY SECTOR, 1970, 1975 AND 1980

	1970				1975				1980			
	Total house- holds (000)	Total poor house- holds (000)	Incidence of poverty (%)	Per- centage among poor (%)	Total house- holds (000)	Total poor house- holds (000)	Incidence of poverty (%)	Per- centage among poor (%)	Total house- holds (000)	Total poor house- holds (000)	Incidence of poverty (%)	Per- centage among poor (%)
Agriculture:												
Rubber smallholders	350.0	226.4	64.7	28.6	396.3	233.8	59.0	28.0	425.9	179.9	41.3	26.4
Oil palm smallholders	6.6	2.0	30.3	0.3	9.9	0.9	9.1	0.1	24.6	1.9	7.8	0.3
Coconut smallholders	32.0	16.9	52.8	2.1	34.4	17.5	50.9	2.1	34.2	13.3	38.9	2.0
Padi farmers	140.0	123.4	88.1	15.6	148.5	114.3	77.0	13.7	151.0	83.2	55.1	12.5
Other agriculture	137.5	126.2	91.8	16.0	157.4	124.1	78.8	14.9	172.2	110.5	64.1	16.6
Fishermen	38.4	28.1	73.2	3.5	41.6	26.2	63.0	3.1	43.8	19.4	45.3	2.9
Estate workers	148.4	59.4	40.0	7.5	127.0	59.7	47.0	7.1	112.5	39.5	35.2	5.9
<i>Sub-total</i>	<u>852.9</u>	<u>582.4</u>	<u>68.3</u>	<u>73.6</u>	<u>915.1</u>	<u>576.5</u>	<u>63.0</u>	<u>69.0</u>	<u>963.2</u>	<u>443.7</u>	<u>46.1</u>	<u>66.6</u>
Non-Agriculture:												
Mining	32.4	11.1	34.3	1.4	31.8	10.1	31.8	1.2	32.6	11.1	34.0	1.7
Manufacturing	150.2	48.5	32.3	6.1	206.9	59.6	28.8	7.1	301.1	55.4	18.4	8.3
Construction	35.0	12.8	26.6	1.6	44.0	13.4	30.5	1.6	56.3	21.0	21.3	1.8
Transport and utilities	74.1	27.1	36.6	3.4	108.1	29.0	26.8	3.5	137.2	31.5	23.0	4.7
Trade and services	461.4	109.9	23.8	13.9	595.5	146.5	24.6	17.6	793.6	112.4	14.2	16.9
<i>Sub-total</i>	<u>753.1</u>	<u>209.4</u>	<u>27.8</u>	<u>36.4</u>	<u>946.3</u>	<u>258.6</u>	<u>26.2</u>	<u>31.0</u>	<u>1,320.8</u>	<u>222.4</u>	<u>16.8</u>	<u>33.4</u>
Other rural industries	350.5	123.5	35.2	15.6	433.3	153.4	35.4	18.1	546.4	124.8	22.8	18.7
RURAL Sub-total	<u>1,203.4</u>	<u>705.9</u>	<u>58.7</u>	<u>89.2</u>	<u>1,348.4</u>	<u>729.9</u>	<u>54.1</u>	<u>87.4</u>	<u>1,709.6</u>	<u>568.5</u>	<u>37.7</u>	<u>85.3</u>
URBAN Sub-total	<u>402.6</u>	<u>85.9</u>	<u>21.3</u>	<u>10.8</u>	<u>553.0</u>	<u>105.2</u>	<u>19.0</u>	<u>12.6</u>	<u>774.4</u>	<u>97.6</u>	<u>12.6</u>	<u>14.7</u>
TOTAL	<u>1,606.0</u>	<u>791.8</u>	<u>49.3</u>	<u>100.0</u>	<u>1,901.4</u>	<u>835.1</u>	<u>43.9</u>	<u>100.0</u>	<u>2,284.0</u>	<u>666.1</u>	<u>29.2</u>	<u>100.0</u>

Source: 4MP, p. 33, Table 3.2.

Note: 1. The calculations took into consideration the effects of programmes implemented during 1971-80 as well as changes in other factors, such as prices and costs.

2. Data from studies conducted by Economic Planning Unit and Socio-Economic Research Unit in the Prime Minister's Department, Ministry of Agriculture, Department of Statistics and other agencies were used in the computations.

TABLES 7-7

**VALUE OF FARM PRODUCE USED FOR
PAYMENTS IN KIND**

	<i>Average per Household</i> <i>(Dollars) (Percentage)</i>	
Rent in Kind	117.80	41.7
Payment for Buffaloes	8.70	3.1
Seed Padi Expenses	11.80	4.2
<i>Zakat and Fitrah</i>	144.50	51.0
Total	282.80	100.0

**TOTAL FARM INCOME
(Per Year)**

	<i>Average per Household</i> <i>(Dollars) (Percentage)</i>	
Value of Farm Produce Retained for Home Consumption	330.70	19.6
Cash Income from Marketing of Surplus Farm Produce	1,076.40	63.7
Value of Farm Produce Used as Payments in Kind	282.80	16.7
Gross Farm Income	1,689.90	100.0
Farm Expenses	644.00	38.1
Net Farm Income	1,045.90	61.9
Net Farm Income per Adult Worker	458.60	

Source: J.T., Purcal, Rice Economy: Employment and Income in Malaysia, An East-west Book, The University Press of Hawaii, Honolulu 1972.

TABLE 7-8

Cost of Production Per Acre Per Season to
Produce 600 gtgs. For a Tenant Farmer

Land Rent per crop	\$ 60.00
<u>Chemicals (Retail Prices at Recommended Input Levels)</u>	
Basal Fertiliser 186 lbs (30:30:20)	\$ 18.19
Urea 62 lbs (30N)	\$ 6.20
Ammophos (Nursery) 5.6 lbs	\$ 1.69
<u>Insecticides</u>	
Gamma BHC 28 lbs	\$ 12.13
Sevin 1.9 oz.	\$ 0.56
Ploughing (Tractor) 1 rotavation	\$ 12.65
Seed (3 gantang)	\$ 1.80
<u>Labour</u>	
Nursery Preparation (1 acre equiv.)	\$ 1.97
Raking, levelling, Bund repair	\$ 12.65
Transplanting	\$ 19.06
Weeding (2 rounds)	\$ 11.14
Harvesting and Threshing	\$ 39.40
In-Field Transport (600 gantangs)	\$ 15.38
Winnowing (600 gantangs)	\$ 3.75
	<hr/>
	\$216.57
	<hr/>

Source: Afifuddin Haji Omar: Some Aspects Of The Socio-Economic Value System Of The Muda Rice Farmers in Developmental Perspectives. MADA Publication No. 24.

Table 8-1

MALAYSIA: CROPS BY HECTARAGE , 1980-85
(hectares)

	1980	1981	1982	1983	1984	1985
Rubber	2,010,000	2,006,488	1,966,400	1,990,000	2,000,000	2,012,000
Oil Palm	1,069,507	1,140,538	1,212,486	1,226,585	1,306,000	1,400,000
Pepper	12,720	13,405	12,800	11,362	11,007	10,800
Cocoa	108,556	150,030	190,000	205,000	211,000	237,000
Timber	383,000	391,197	486,950	585,907	560,000	560,000
Padi	735,215	767,640	758,400	764,200	769,750	775,220
Pineapple	12,101	11,685	9,734	8,170	7,177	7,003
Tobacco	12,535	12,970	13,610	14,160	14,955	15,749
Vegetables	18,367	15,330	16,106	18,278	20,745	23,546
Orchards	93,000	87,800	89,000	90,000	92,000	94,000

Table 8-2

Before and After Zakat Gini Coefficients
Based on 10% Rate on Gross
And Net Production

Gini Coefficients	Before Zakat	After Zakat at 10% on Gross	After Zakat at 10% on Net
Gini Coefficient for gross income distribution of total producers	0.58	0.58	---
Gini coefficient for net income distribution of total producers	0.647	0.663	0.601

Source: Ismail Muhd. Salleh and Rogayah Ngah, "Distribution of Zakat Burden on Padi Producers in Malaysia", Some Aspects of the Economics of Zakat, AMSS, 1980.

LOCAL UNIT OF MEASUREMENT

Weight:

1 kati	= 0.01 pikul	(= 1.33 pounds)
	= 16 tahil	(= 0.6 kilogram)
1 pikul	= 100 kati	(= 133.3 pounds)
		(= 60 kilograms)
1 koyan	= 40 pikul	(= 2,400 kilograms)

Capacity:

1 gantang	= 4 cupak	(= 1 gallon)
		(= 4.54 liters)
1 naleh	= 16 gantang	
1 kunca	= 10 naleh	
	= 160 gantang	

Length:

1 relong		(= 176 feet)
		(= 53.64 meters)
1 batu	= 30 relong	(= 1 mile)

Area:

1 relong (in Kedah and a part of Perlis)	(= 0.71 acre)
	(= 0.285 hectare)
1 relong (in Perak)	(= 1.32 acres)

Malaysian currency:

Currency units used in this study are Malaysian ringgits. At this time one U.S. dollar is approximately two and a half ringgits.

APPENDIX A

THE ADMINISTRATION OF ZAKĀT AND ʿUSHR IN PAKISTAN

(Under the Zakāt and ʿUshr Ordinance 1980)

I. INTRODUCTION⁽¹⁾

[On June 20, 1980, the Government of Pakistan issued the Zakāt and ʿUshr Ordinance 1980 (Ordinance XIII of 1980) which was amended by the Zakāt and ʿUshr Amendment Ordinance 1980 issued on 29th October, 1980 (Ordinance LII of 1980) and has been amended thrice in 1983. The preamble to the law states that the rationale for its promulgation is the responsibility of the Islamic state to arrange for the collection, disbursement and utilization of zakāt.

(i) Compulsory Collection of Zakāt

Under the law, zakāt is recovered from all Muslim citizens of Pakistan, and from all private and public companies and other associations and bodies of individuals whether incorporated or not, the majority of the shares of which is owned or the benefit of which is held by Pakistani Muslims, if on the valuation date (the date on which assets are valued for purposes of zakāt liability), such persons or bodies of persons are, and for the preceding zakāt-year have been sāhib-e-nisāb as defined in the zakāt law.

Sāhib-e-nisāb is a person or institution who owns or possesses nisab, but does not include: government, public sector organizations wholly owned by the government; charitable and social welfare organizations and orphanages fulfilling certain conditions; religious institutions such as mosques and others. Nisāb is assets liable to zakāt (excluding agricultural produce and animals fed free in pastures) equivalent in value to 612.32 grams of silver, or, where this asset is only gold, 87.48 grams of gold.

The law provides that zakāt will be collected on a compulsory basis on items specified in the first schedule to the law, including, inter alia, savings bank accounts; fixed deposits and investment; specified savings and investment certificates issued by the government or other public sector agencies, (including government securities; securities, shares and debentures, and annuities, insurance policies, provident fund etc.), at the rate of 2.5 of their value on the valuation date.

(ii) Compulsory Collection of 'Ushr

Under the law, 'ushr is collected at the rate of 5% on all agricultural produce, provided where any plot of land is used for growing one crop, and a small part thereof not exceeding one-fourth of an acre is used for growing another crop, 'ushr will not be charged on the produce of this small portion. No 'ushr is chargeable if the landowner is eligible to receive assistance from the Zakāt Fund, or if

the produce of the land is less than 5 wasq (948 kilograms) of wheat or its equivalent in value in the case of other crops. To facilitate calculations, the Administrator-General of Zakāt will notify the currency equivalent of five wasq of wheat every year. In computing ‘ushr liability, one-fourth of the total value of the produce is allowed as a reduction for expenses on production. In cases where tubewells are used for irrigating the land, one-third deduction is allowed (under an amendment brought in 1983).

(iii) Assessment and Collection of ‘Ushr

The ‘ushr demand is assessed on the basis of the average acre yields of crops and on average farmgate prices. The average acre yields and farmgate prices are determined by the District Committees. These averages are to be on the low side and are termed as "Low Average Yield" and "Low Average Farmgate Price." This is done to err on the lower side in respect of the ‘ushr demand.

The Patwari (the lowest level functionary of the Land Revenue Department) who maintains a record of the land holdings and of the crops sown prepares an estimate of the ‘ushr demand on the basis of the average yields and farmgate prices determined by the District Committees. This leaves very little discretion to the Patwari, whose integrity is frequently considered to be questionable. The assessee can also give his own assessment. Ultimately the Local Zakāt & ‘Ushr Committee decides the ‘ushr demand.

The 'ushr demand can be paid by the assessee directly to the Local Zakāt Fund maintained by the Local Zakāt and 'Ushr Committee in a local bank office. Or it can be collected by the Local Committee through the Parwari, tanedar or lumbar-dar for credit to the Committees' account in the bank in accordance with the prevailing practice in the locality for the collection of land revenue demand. The cost of collection is kept low.

The assessment and collection of 'ushr by a Local Committee is subject to inspection and supervision by the Tensil Zakāt and 'Ushr Committee and/or the District Zakāt and 'Ushr Committee concerned to ensure that the assessment has been carried out in a fair manner and that the collection has been effectively and properly organized.]

II. ORGANIZATIONAL STRUCTURE⁽²⁾

[There is a Central Zakāt Council at the Federal Level, four Provincial Zakāt Councils at the Provincial level, 65 Zakāt Committees at the district level, 282 Zakāt Committees at the tehsil level and over 32000 Zakāt Committees at the local grass roots level.

(i) Central Zakāt Council

The Central Zakāt Council is nominated by the President of Pakistan and consists of a Chairman and fifteen members as follows:-

1. Chairman who is, or has been, a judge of the Supreme Court of Pakistan, nominated by the President of Pakistan in consultation with the Chief Justice of

Pakistan.

2. Four persons, three of whom are ‘Ulamā’ (Scholars on Islām), nominated by the President of Pakistan in consultation with the Council of Islāmic Ideology.
3. Four persons, one from each province, nominated by the President.
4. Four Chief Administrators of Zakāt, one from each Province.
5. Secretary to the Government of Pakistan, Ministry of Finance.
6. Secretary to the Government of Pakistan, Ministry of Religious Affairs.
7. The Administrator General, Zakāt, who is also the Secretary General of the Council.

The Central Zakāt Council provides general guidelines for, and exercises general superintendence and control over, matters relating to zakāt and ‘ushr, and the maintenance of zakāt and ‘ushr accounts.

The Administrator General has the status and grade of, and is, ex-officio Secretary to the Government of Pakistan. He is the Chief Executive of Zakāt and ‘Ushr and acts under the superintendence of the Central Zakat Council.

The members of the Central Zakāt Council have the status of Secretaries to the Government of Pakistan.

(ii) Provincial Zakāt Councils

There is a Provincial Zakat Council in each of the four pro-

vinces. Each provincial Zakāt Council consists of a Chairman and nine other members, as follows:-

(a) Chairman:

The Chairman of a Provincial Zakāt Council is, or has been, a judge of the High Court, nominated by the Governor of the Province in consultation with the Chief Justice of the High Court.

(b) Five members, three of whom are to be ‘ulamā’ (religious scholars), nominated by the Governor.

(c) Secretaries of the Provincial Government in the Departments of Finance, Local Government and Social Welfare.

(d) Chief Administrator, who is also the Secretary of the Council, appointed by the Governor in consultation with the Federal Government. He has the status and grade of, and is ex-officio member of the Board of Revenue. Members of the Council have the status of members of the Board of Revenue.

(iii) District Zakāt and ‘Ushr Committees

In each district of the country there is a District Zakāt and ‘Ushr Committee, constituted by the Provincial Council. The District Committee is, by and large, a supervisory body to oversee the functioning of the Tehsil/Taluqa/Sub Division Committee, the assessment

and collection of zakāt and ‘ushr and the disbursement and the utilization of the moneys by the Local Zakāt Committees.

The District Committee consists of a Chairman, who is a non-official, the Deputy Commissioner, one non-official member from each Tehsil and one member to be nominated by the District Council.

The Chairman is nominated by the Provincial Council and the members are nominated by the Provincial Council in consultation with the Chairman.

(iv) Tehsil Zakāt and ‘Ushr Committees

There is a Tehsil Zakāt and ‘Ushr Committee in each Tehsil of the District. The Tehsil Committee, subject to such guidelines as may be given by the Central Zakāt Council, Provincial Zakāt Council or the District Zakāt and ‘Ushr Committee, oversees the assessment of ‘ushr and collection of zakāt and ‘ushr and the disbursement and utilization of funds by the Local Zakāt and ‘Ushr Committees.

The Tehsil Committee consists of the Assistant Commissioner, six members elected by the Chairman of the Local Zakāt and ‘Ushr Committees from amongst themselves and one member to be nominated by the Tehsil Council from amongst the non-official Muslim members. The members of the Committee elect one of their member as Chairman of the Committee.

(v) Local Zakāt and ‘Ushr Committees

A Local Zakāt and ‘Ushr Committee has been established in each

revenue estate in a settled rural area, or in a village in unsettled area or a ward in an urban area.

The Local Committee, subject to such guidelines as may be given by the Central Council, the Provincial Council, the District Committee or the Tehsil Committee, determines the 'Ushr demand compulsorily realizable, collects ‘ushr, zakāt and donations disburses and utilizes the moneys in the Local Fund, and prepares and maintains accounts of the Fund.

The Local Committee consists of seven non-official members selected by the residents of the locality at a gathering organized by a team of two or more persons nominated by the District Committee. The members of Local Committees elect one of their members as the Chairman of the Local Committee.

The following considerations appear to have been uppermost in designing the organizational set up:

1. The organization should have a very high level leadership to inspire public confidence both in its competence and integrity. This is evident from the composition of the Central Council and Provincial Councils which are to provide guidelines and general direction to the lower levels of the administrative set-up.
2. The organization is not subject to any political influence for it is autonomous and no minister, who might be exposed to political pressures, or ministry, is to be involved in

its policy decisions or in its day to day working.

3. There is no scope for high level distribution of political patronage, for no funds are to be disbursed for individual charity except at the lowest level, namely the Local Committee level. Besides, the funds to be disbursed in each individual case are very small. The Local Committees are composed of members who are residents of the locality and who are morally answerable to the people who are likely to know them personally.
4. The role of the bureaucracy has been minimised. There are no members of the bureaucracy at the Local Committee level which is the real operational level. At the Tehsil Committee level, the Assistant Commissioner is just one of the eight members, six of whom are elected by the Chairman of the Local Committee. At the District level, the Deputy Commissioner is just a member of the District Committee but not the Chairman, who is a non-official nominated by the Provincial Council. The Policy appears to be intended to play down the role of bureaucracy and to rely mainly on non-officials.
5. The entire organization is run by honorary workers with the exception of a few officials who are ex-officio members of the Central and Provincial Councils and the District and Tehsil Committees. The number of honorary

workers runs into hundreds of thousands. The purpose is to inculcate the spirit of social service amongst the people. The services provided under the system is not performed for any material reward. It is more of the nature of a religious duty for one's own spiritual satisfaction.

III. ESTABLISHMENT AND UTILIZATION OF ZAKĀT FUNDS

(i) Establishment of Zakāt Funds

The following Zakat Funds have been established under the Zakāt and 'Ushr Ordinance 1980.

(a) A Central Zakat Fund

The zakāt deducted at source by the various financial institutions is credited to this Fund. Zakāt paid voluntarily and other donations can also be paid into it. Allocations from this Fund are made by the Central Zakāt Council for various purposes.

(b) Provincial Zakāt Funds

A Provincial Zakāt Fund has been established for each of the four provinces. Allocations into these Funds are made from the Central Zakāt Fund by the Central Zakāt Council. Zakāt in excess of the compulsory levy and other donations can also be paid into these Funds.

(c) Local Zakāt Funds

A Local Zakāt Fund has been established for each Local

Zakāt and ‘Ushr Committee. The funds transferred from the Provincial Zakāt Fund, the proceeds of ‘Ushr, zakāt paid voluntarily in excess of the compulsory levy, and donations are credited to the Local Zakāt Funds.

(ii) Utilization of Zakāt Funds

The zakāt funds are to be utilized for providing assistance to the needy, the indigent, and the poor, particularly orphans and widows, the handicapped, and the disabled for their subsistence and/or rehabilitation, either directly, or indirectly, through assistance to religious schools, vocational educational institutions, or public hospitals or clinics, dispensaries or health laboratories.

The zakāt funds can also be utilized for collection, disbursement and administration of zakāt and ‘ushr. However, the administrative expenditures chargeable to the zakāt and ‘ushr funds are kept to the barest minimum, so that the bulk of zakāt and ‘ushr moneys are used mainly for the alleviation and reduction of poverty.

IV. ESTABLISHMENT OF NATIONAL ZAKĀT FOUNDATION

There are certain expenses in connection with the institutions for the rehabilitation of the poor, which under religious precepts cannot be charged to zakāt and ‘ushr moneys. To overcome this difficulty the Government established a National Zakāt Foundation in 1980 for which it provided a budgetary grant of Rs.100 million (About U.S. \$7.5 million) in the first instance. The Foundation is expected

to establish institutions for the rehabilitation of the poor and support the expansion of existing institutions. The Foundation receives grants from the zakāt funds for meeting such expenses of the institutions for the rehabilitation of the poor as can be charged to zakāt moneys. Other expenses which cannot be so charged are met out of its own resources.

The Foundation has allocated funds out of its own money for various provinces and purposes and can ask for an equivalent amount from the Central Zakat Council. It maintains a separate account of the expenditure met out of zakāt funds.

The Foundation is not a part of the Zakāt and ‘Ushr Organization. It is a separate autonomous institution under the Ministry of Finance. But it supplements the work of the zakāt organization and works in close cooperation with it. Its affairs are administered by a Committee of Administration with the Minister of Finance as Chairman and, Secretaries to the Government of Pakistan for Finance, Religious Affairs, Women's Division, Health, Labour and Education, and the Administrator General Zakat as members. The Managing Director of the Foundation acts as member Secretary. The Committee of Administration has appointed a Smaller Committee, namely an Executive Committee, for dealing with day to day work. It has also appointed a sub Committee for each of the four Provinces for dealing with Provincial Schemes for the rehabilitation of the poor.

The work of this Foundation is still in its early stages.

V. ADMINISTRATIVE COSTS

A policy has been followed to keep the costs of administration as low as possible, particularly the costs chargeable to zakāt and ‘ushr funds. For this purpose certain costs are charged to the Federal and Provincial budgets. The administrative costs of the Central Zakāt Council and the Central Zakāt Administration are charged to the Federal budget. The administrative costs of the Provincial Zakāt Council and the Provincial Zakāt Administrations, the District Zakāt and ‘Ushr Committees, the Tehsil Zakāt and ‘Ushr Committees, and the land revenue staff which prepares the initial assessment of the ‘Ushr demand are charged to the Provincial budgets. The salaries and emoluments of the Ex-officio members of the Zakāt Councils and the Zakāt Committees are also chargeable to the Central and Provincial Governments concerned. All these costs have been kept to the minimum and according to one estimate. They amounted to less than one percent of the total zakāt collections.

The administrative costs of the Local Zakāt and ‘Ushr Committees are met out of the Zakāt and ‘Ushr funds. However, these are not to exceed ten percent of the receipts of the funds during the year.

The services of the various financial institutions for the assessment and deduction of zakāt at the source have been provided free of cost by these institutions. However, these institutions are partly compensated by the increase in their business which is implicit

in the opening of thousands of new accounts of the Zakāt Councils and Committees.

The non-official members of the various Zakāt Councils and Committees, whose number runs into hundreds of thousands work honorarily and free of cost to the Zakāt and 'Ushr Organization.

VI. MAINTENANCE AND AUDIT OF ACCOUNTS

The maintenance and audit of accounts is of special importance in the administration of zakāt funds. This is essential for inspiring confidence in the donors that the moneys provided by them are used for the purposes for which they are intended.

In order to ensure proper use of funds for the purposes for which they are provided and the timely provision of relief and rehabilitation to the deserving poor, the audit of accounts assumes very great importance. The accounts are audited by Chartered Accountants appointed by the Central Council for the Central Fund and by the Provincial Councils for the Provincial funds. The accounts of the Local Funds are to be audited by qualified auditors appointed by the District Committees concerned.

The work of the auditors is to some extent supplemented by the District and Tehsil Committees whose role is mainly supervisory for overseeing the disbursements and the utilization of Funds by the Local Committees. Procedures have been established for quick investigations of allegations about the improper use of funds. These are devices for

preventing misuse of funds and for prompt action in the event of such misuse.

VII. REVIEW OF PROGRESS (1980-81 To 1982-83)

It took quite some time to bring the Zakāt Organization to being after the initial decision to establish it had been taken. This is not surprising considering the enormous size of the Organization. It comprises the Central Zakāt Council, the Central Zakāt Administration, the Provincial Zakāt Councils and Provincial Zakāt Administrations, and District, Tehsil and Local Zakāt Committees. There are four Provincial Zakāt Councils and Zakāt Administrations in the four provinces, 65 District Zakāt Committees, 282 Tehsil Zakāt Committees and over 32000 Local Zakāt Committees. The Central Zakāt Council has 16 members, the Provincial Councils have ten members each, the District and Tehsil Committees have seven to eight members each and Local Committees have eight members each.

There are about 250,000 members of these Councils and Committees in all. Barring a few ex-officio members, all members work honorarily. This is a mobilization of manpower for honorary work on an enormous scale. The involvement of such a large number of persons for work connected with the alleviation of poverty is by itself a big achievement. It must be having an impact on the creation of social consciousness for the relief of suffering and the rehabilitation of the needy and the indigent.

Need for Training

However, it has been found that in many cases the maintenance of accounts at Local Committee Level and submission of progress reports and relevant statistical information are not satisfactory. This is partly due to the lack of ability on the part of the Chairmen and the members of the Local Committees for the preparation and maintenance of accounts and the compilation of statistical information. This points to the need for the training, not only of the Chairmen and members of the Local Committees, but also of training in supervisory work, of members of the Tehsil and District Committees. Necessary training programs have been established. However, these programs need to be greatly strengthened and expanded. Proper training of the personnel of the Zakāt Committees at various levels is essential for improving efficiency in the use of zakāt funds.]

- Sources: (1) Extracted from M. Riyāzul Haque, The Islāmic Economic System Its Theory And Its Operation in Pakistan, Research Assignment for International Centre for Research in Islāmic Economic, King 'Abdulāzīz University, Jeddah.
- (2) Extracted from M.L. Qureshi, Zakāt and 'Ushr Systems for Relief and Rehabilitation of the Poor In Pakistan, APDC, Kuala Lumpur.