Islamic Institutions

THE LAW AND PHILOSOPHY OF ZAKAT

(The Islamic Social Welfare System)

by

Farishta G. de Zayas

Volume I

With an Introduction by

Dr. Omar A. Farrukh, Ph. D.

Member of the Arab Academy, Damascus,
Member of the Islamic Research Association, Bombay.

and a Foreword by

H. E. Al-Syed Abdul Hameed al-Khateeb

ex-Ambassador of Saudi-Arabia to Pakistan,
Lecturer in the Holy Mosque at Mecca.

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THESE PAGES ARE DEDICATED

to

the venerated memory of

the late

Muslih ul-Millat u Sadr ud-Dîn

SYED GHALEB SHAH ABBASI

to whose inspired guidance

I owe

my understanding of Islam

and of

the Philosophy of Zakât.

حبّ دولت را فنا سازد زکوٰۃ — هم مساوات آشنا سازد زکوٰۃ

دل زحبّی تنفقوا محکم کند — زر فزاید الفت زر کم کند

این همه اُسباب استحکام تست — پختهٔ محکم اگر اسلام تست

اقبال

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ERRATA.

ge 150 n., *for* «Al-Ma'arfat» *read* «Al-Ma'ârif».

« 177, para. 5, line 4, *for* the Ummayade Caliph, Marwân *read* the Umayyade Caliph, 'Abd ul-Mâlik ben Marwân.

« 212, para. 3, line 1, *for* All agricultural produce *read* All produce of the land.

« 229, para. 6, line 1, *for* wild agricultural produce *read* the wild produce of the land.

« 288, para. 6, line 5, *for* pp. 370, foll. *read* pp. 371, foll.

INTRODUCTION

(Zakât is a yearly premium on all forms of accumulated productive wealth) as well as on a variety of agricultural products, calculated at various rates according to the nature of the wealth or product, (and due to the needy individuals of the Muslim community for their rehabilitation. It is the third of the five pillars of Islam) and the counterpart of the Christian tithe. It differs from the tithe, however, in that it is destined wholly to eight classes of needy Muslims designated by the Qurân, and in that no part of it may go to the State, the function of which is only to supervise its levy, custody and distribution. The tithe, on the other hand, went to the Church which discharged it as it deemed fit.

Besides its basic religious value, Zakât has a social aspect which aims at freeing the community from the blight of poverty. It has also an economic aspect : to drive hoarded money into circulation. This, in turn, helps to relieve the community of most of its charitable burdens.

In Volume I of her scholarly work : «The Law and Philosophy of Zakât», the author has presented a rather exhaustive exposition of the whole Institution of Zakât in its religious, social and economic aspects. The subject is treated, therein, profoundly and substantiated copiously with relevant extracts from the Qurân, the «A*h*adîth» and the different works of the Muslim jurists. The extracts from the Qurân and the «A*h*adîth», in particular, are reproduced first in Arabic and then translated into English to give the reader a picture as complete and as precise as possible of this important Institution. This will help him, at the same time, to make his own inferences should he choose to develop the subject further.

The author has attempted, furthermore, to formulate a scheme which would render the Institution of Zakât workable and practicable not only within the limited scope of the well-to-do Muslim individuals, but also in the general fields over which the Muslim States have cognizance.

Zakât, after all, is neither ordinary charity nor voluntary

alms-giving. It is a right which, as some jurists hold, the poor may claim by force from the rich. In making Zakât a right and not mere charity, Islam has in view the full dignity of the human being. Islam does not intend to render any Muslim servile to his brother-in-faith, and even less so to a non-Muslim. Though Zakât was an official Institution for a very short time only, and afterwards became the concern of individuals instead, and so worked very imperfectly, still it has barred the way of Communism to Islam. It has done so because real socialism was wisely interwoven into the Institution of Zakât. Western Socialism, very late to appear, was used as a contrivance for political attainments rather than as a device for social reform. In this way, Socialism became in Europe a foothold for Communism.

The author of the present work, though she has laid great emphasis on the religious side of Zakât, is always intensely aware of the intrinsic importance of Zakât in its social aspect, as well as of the urgent need for the reintroduction of the Institution of Zakât in the public life of the Muslims. Her efforts would be duly repaid if her scheme were sincerely studied by Muslim jurists and Muslim statesmen.

Omar A. Farrukh

Beirut, January 3, 1960.

FOREWORD

Islam came to the world as a universal religion, with its divinely-inspired Constitution, comprehensive of mankind's social, economic and political needs and requirements as well as of their moral and spiritual guidance. And it was these sublime constitutional Principles that Almighty God commanded His Prophet Mu*h*ammad ben 'Abd Allah (ص) to convey to all the peoples so that they might order their lives thereby and thus gain the best of both worlds.

Imbued with a spirit of sincere dedication, our forefathers, the early Muslims, established their relations among themselves and between themselves and their Creator on the basis of the Islamic constitutional Principles expounded in the Holy Qurân; and in so doing they achieved their dignity as human beings and as a nation, and asserted their superiority over the peoples of their time in every sphere of human striving and endeavour, instituting a rule of justice, and ushering in a period of success so brilliant as to be unequalled in the history of civilization. For a short time in the annals of human history, the evils of ignorance, poverty and misery ceased to hold sway.

There followed a period of decline, when people dominated by personal greed and self-interest and ignoring the superior principles and right teachings of Islam, failed to abide by its constitutional order, and thus gave rise to a decadence which gradually spread to every part of the Muslim world. While poverty and ignorance once more became rampant, most Muslims became slack in their observance of the Quranic Precepts. Fraud and deceit became the order of the day when and wherever the Muslims sought to evade the obligations that the Holy Qurân lays upon them, and more especially the obligation of Zakât, the third Pillar of Islam.

It is a cause for deep satisfaction that the Muslim Governments are at long last awakening to the realization that the Zakât is not only a religious obligation but also a social and economic institution enacted by Islam in order to ensure the material interests of the individual as well as of society as a whole.

The Government of Pakistan, the largest Muslim State, has evinced keen interest in the matter of the Zakât, and has appointed a Committee to study the ways and means of reviving this institution on modern lines, with special care for establishing a practical administrative programme to achieve the required aim.

I am very pleased that Miss Farishta G. de Zayas, a Pakistani Muslim scholar of repute, who has studied Arabic and has dedicated many years to the study of Islamic jurisprudence and especially to Islamic socio-economics, has taken special interest in making a thorough and exhaustive study of the Institution of Zakât. Her book, «The Law and Philosophy of Zakât», the result of more than five years of intensive research by the author, deserves the deepest gratitude of the Muslim peoples.

Based on the Principles and fundamental rules laid down in the Holy Qurân and the reliable «A*h*adîth», the present volume explains in detail the body of rules set forth by the several Schools of Islamic Law, governing the payment of Zakât, the collection of Zakât dues and the distribution of Zakât funds to the lawful beneficiaries, amplified to suit the requirements of present-day conditions and adapted to prevailing values. (It explains the rates of payment and limits of taxability for each type of taxable wealth, and shows how the Institution of Zakât can be made to function in the socio-economic life of a modern Muslim nation and effectively contribute to maintaining a standard of material sufficiency for every Muslim citizen.)

The author has fully discussed the points of controversy dividing the several Schools of Law, as well as those dividing the opinions of modern scholars and she has sought to solve them in the light of the Principles laid down by the Holy Qurân and the Prophet (ص). For instance, the Nisâb for agricultural produce, which the *H*anafite School disregards, has been maintained in accordance with the tradition of the Prophet himself. The taxability of horses, admitted only by the *H*anafite School, Imâm Zafar and Imâm Abû Bakr ar-Râzî, is maintained in accordance with the «A*h*adîth» referring to the taxability for Zakât of pasturing horses. The taxability for Zakât of women's gold and silver ornaments, which Imâms Shâf'î, Mâlik and Al-Ghazzâlî do not admit, is maintained in accordance with the «A*h*adîth» of the Prophet(ص), and that of pearls and

precious stones has been re-argued and advocated in the light of the fundamental principles of the Law of Zakât. A modern controversy, that of the taxability or not of the currency note is minutely analysed with the conclusion that the currency note is necessarily taxable for Zakât according to the principles of the Law.

Primarily written for the information of present-day Muslims who are seeking to mould Muslim society and government on Islamic lines, and for whom it constitutes an exhaustive work of reference, this scholarly book will prove also of particular interest to all non-Muslims concerned with modern social welfare and with solving the age-old problem of poverty which the Institution of Zakât, when properly implemented, permanently eradicates. It offers a clear-cut, practical answer to the urgent problems of social unrest and upheaval that are the direct result of socio-economic injustice.

Abdul Hameed Al Khateeb.

Damascus, January, 1960.

AUTHOR'S PREFACE

The following pages are a humble effort to set forth in detail the aims of, and the administrative rules that should govern, in modern practice, the Islamic Institution of Zakât.

An Institution of vital importance to the socio-economic life of the Muslim peoples, aiming to control and eliminate want from the midst of the Islamic social order, (the Law of Zakât stands as one of the six Quranic Precepts on which the Islamic economic policy of free, unobstructed and constant circulation of wealth is based.)

When functioning in an efficiently organized manner, the (1) Institution of Zakât ensures a constant readjustment of the distribution of the Nation's wealth, and thus embodies on the economic plane the best guarantee that any human community could possibly hope for against the disintegrating forces of class hatred, that terrible evil born of social injustice. And so, by its very nature and purpose (2) the Institution of Zakât is a most powerful means of translating the Islamic principle of human brotherhood into a living reality. It induces the social group to think and feel as a whole, to realize in fact that the prosperity of the group is the best safeguard for the prosperity of the individual, and that the poverty of the individual inevitably jeopardizes the prosperity of the group. It establishes the maxim that all social ills present within the group must be remedied from within the group itself if the remedy is to be of a permanent nature; in other words, that, as a living, thinking and acting organism, the social group bears the responsibility for its own welfare.

And it is for this very reason that the Institution of Zakât lays special stress on rehabilitation : on promptly restoring the impoverished individual to a condition of self-sufficiency, thereby enabling him to once more take his place as a productive member of the social group, actively contributing to its prosperity.

Second only to prayer as an essential Article of the Faith, Zakât forms an integrant, compulsory and inseparable part of the

Islamic Way of Life, the non-observance of which is tantamount to a negation of the Faith itself.

The early history of Islam offers a practical example of this all-important fact in the stand taken by Abû Bakr as-Siddîq, the first Caliph, when, shortly after the Prophet's death, he declared upon the refusal of certain Arab tribes (among whom the powerful Banu Hanîfa and Banu Yarbu'a) to comply further with the sacred obligation of Zakât : أينقص الدين وأنا حيّ ! («Is it possible (that I allow) that the religion of Islam be curtailed in aught while I am still alive (to defend it) !»).

Faced with a serious crisis, Abû Bakr sent Khâlid ibn ul-Walîd at the head of an army to Mâlik ben Nuwaira, chieftain of the tribe of Yarbu'a, who, after his conversion to Islam, had been entrusted by the Prophet (ص) with the responsibility of levying the Zakât from among his own people. In reply to Khâlid's exhortation to fulfil his obligation, Mâlik ben Nuwaira said : أنا آتي بالصلاة دون الزكاة («I will keep the prayer but will not give the Zakât»). Whereupon Khâlid retorted : أمّا علمت أنّ الصلاة والزكاة معاً لا تقبل واحدة دون الاخرى («Knowest thou not that the prayer and the Zakât are complementary, that the one is not accepted without the other?»).

In order to overcome their unyielding attitude and compel them to carry out the terms of their Islamic covenant, Abû Bakr did not hesitate to fight against the dissident tribes and subdue them by force of arms. For, had the dangerous precedent been connived at and the matter settled by compromise, one of the main pillars of the Islamic socio-economic set-up would have been shattered, perhaps irremediably, at the very dawn of its history.

Indeed, whereas the unwholesome, heart-hardening custom of usury which, because of the superficial attractiveness of easy gain that it offers, has stood throughout the ages as a major temptation for men of greed and has proved to be one of the most pernicious factors in destroying the true science of economy and thereby undermining the economic stability and well-being of individuals and nations alike, the Institution of Zakât, by making fast the bond of human sympathy, naturally creates in the heart of every Muslim a sense of solidarity with, and genuine compassion for, all his fellow Muslims whose material welfare is in jeopardy. In the words of the Qurân :

وَمَا آتَيْتُمْ مِنْ رِبًا لِيَرْبُوَا فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُوا عِنْدَ اللهِ ، وَمَا آتَيْتُمْ مِنْ زَكَاةٍ تُرِيدُونَ وَجْهَ اللهِ فَأُولَئِكَ هُمُ الْمُضْعِفُونَ • (٣٠ : ٤٠)

«That which you give in usury in order that it may increase on (other) people's wealth has no increase with Allah; but that which you give as Zakât, seeking Allah's Countenance, has increase manifold.» (XXX : 40).

Although, in the past, the Law of Zakât has been expounded by many a great jurist of Islam, in modern times the value and function of this Institution has, to a great extent, been lost sight of. So much so, that many of the present generation of Muslims hardly realize the meaning thereof and still less appreciate the grave responsibility incurred by neglecting to fulfil one of the most sacred duties required of them by the very fact of their Islam.

On the other hand, changed circumstances call for a general reconsideration of detail in every branch of jurisprudence. Such a reconsideration of existing laws is not only within the right of every thinking Muslim, but is, in fact, incumbent on all those Muslims who sincerely aspire to the reform of Muslim society and who capacitate themselves for the undertaking of this tremendous task.

In view of a common misunderstanding, it is necessary to define here the correct meaning of the Arabic term «Sharî'ah»(الشريعة). This term, as it occurs in Surah XLV, verse 18 of the Qurân, refers to the Law of God as revealed in the Qurân, i.e., to *the body of Quranic Precepts.* :

ثُمَّ جَعَلْنَاكَ عَلَى شَرِيعَةٍ مِنَ الأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ • (٤٥ : ١٨)

« And now We have set thee (Mu*h*ammad) on a clear way of (Our) Commandment (على شريعةٍ من الأمر) , so follow it, and follow not the whims of those who know not.» (XLV : 18).

Thus, the «Sharî'ah» is forever valid, infallible, unalterable, and unabrogable. The use of this same term in reference to the various Islamic Codes of Law based on and evolved from the Quranic

Precepts has had the undesirable effect of creating in the minds of those Muslims who are not well-versed in the science of Islamic Jurisprudence, an awe which only the Quranic Principles and Precepts themselves should inspire, and has led them to attribute to these Codes of Law an infallibility and finality which they cannot claim. The Islamic Codes of Law, being human interpretations and applications of the Quranic Precepts, are, by their very nature, forever open to revision and to amplification in accordance with the changing requirements of human existence. Never and in no case can infallibility, finality or absolute perfection be ascribed to human intellect, nor have any of the great jurists of the past ever claimed for themselves these divine attributes.

«Ijtihâd», or intellectual striving, is the right and duty of every thinking human being. To renounce this right and to shirk this duty is equivalent to denying the freedom and growth of human thought, to stunting the structure of human society and bringing about its gradual paralysis. For, in the words of 'Allâma Muḥammad Iqbâl : «Ijtihâd» is the principle of movement in the structure of Islâm.

The present generation of Muslims are the fortunate heirs of the intellectual achievement of all those who have preceded them in the field of «Ijtihâd». This, coupled with nearly fourteen centuries of experience which have taught the bitter lesson that both excess and neglect — both the going beyond the measure and the falling short thereof — can only be a hindrance to progress and prosperity, should prove to be a priceless asset, enabling the modern Muslim to go forward in the right direction. Besides having over the earlier expounders of the Law the undeniable advantage of being in a position to avail himself of all the knowledge and experience that was theirs, he has at his disposal the testimony that later history bears to the real value in terms of effect and result of their interpretation and exposition of Quranic Law. Thus, in conformity with the maxim upheld by the early jurists of Islam : تتغيَّر الاحكام بتغيُّر الازمان (« The details of the law must vary according to the exigencies of changing times»), it behoves the modern Muslim to undertake the tremendous task of reform, to ponder over the great legacy of the past, to select therefrom that which has proved to be good, to reject whatever has proved to be mistaken and to modify that which

can no longer satisfy the circumstances of the present age — always in the light of Quranic dictates, and to create new values, in keeping with those dictates, that may prove to be the key not only to the progress and prosperity of the present-day Muslim peoples but to that of future generations as well.

The present work is not a mere translation of any given version of the Law of Zakât. It purports to set forth the full significance of the Law of Zakât, revised strictly in the light of Quranic Principles and, always bearing these Principles in mind, amplified whenever it has been judged necessary, in order to present a practical scheme that may serve modern requirements.

Full consideration has at all times been given to the opinions of the recognized authorities on Islamic Jurisprudence, such as Imâms Abû *H*anîfa, Mâlik, Shâf'î, *H*anbal, Ghazzâlî, Mu*h*ammad, Abû Yûsuf, and others, who, in their day, exercised to the best of their ability and wisdom, in view of the circumstances prevailing at the time, their God-given right of «Ijtihâd».

The main body of the Law being derived from the Quranic Precepts and from the historical data provided by the reliable «A*h*adîth», or Traditions of the Prophet (ص) , these have been adhered to faithfully and, for the most part, the Law has been conserved as expounded by the early jurists who themselves derived their respective versions from identical sources. But in no case has any one School of Law, or the opinions or reasons of any one leading doctor of Law been adhered to blindly. Each point of law has been tested in the light of the Quranic Principles and the opinion adhered to has been the one that seemed most in accordance with the true spirit of Islamic Justice, regardless of School or scholar. I wish, however, to assure those living scholars with whom I have ventured to disagree on certain points, that my criticism is not motivated by any personal antagonism to their views, but rather by the firm conviction that a more exact appreciation of the fundamental issues involved is essential if we are to achieve our common aim of successfully reconstructing an institution of such socio-economic importance as is that of Zakât.

It is in this spirit that I have sought to rectify certain serious departures from principle conspicuous in the old texts, and have endeavoured to bring the whole of the Law to conform strictly to

the fundamental principles on which it was originally based. Whenever an opinion has been expressed or the scope of the Law amplified, it has been done with full consciousness of responsibility to God and after thorough consideration of the issue involved, always keeping in mind the beautiful saying of the Prophet (ص) :

من سنَّ في الاسلام سنَّةً حسنةً فله اجرُها واجرٌ من عمل بها بعده ، مِن غير أن ينقص من اجورهم شيء" ؛ ومن سنَّ في الاسلام سنَّةً سيئةً كان عليه وزرُها ووزرٌ من عمل بها من بعده ، من غير أن ينقص من اوزارهم شيء" • (مسلم)

«Whoever establishes in Islam a good custom will enjoy the reward thereof together with the reward of those who shall abide thereby after him, without that their reward be diminished in aught. And whoever establishes in Islam an evil custom will bear the responsibility of his sin, together with the responsibility of the sins of those who abide thereby after him, without that their responsibility be diminished in aught.» (Imâm Muslim).

Of late, certain scholars, basing themselves on the unquestionably correct view that finality and eternal validity may only be attributed to the Quranic Principles and Precepts, have expressed the opinion that as the rates of Zakât have not been explicitly laid down in the Qurân, they should be considered as flexible and so liable to be increased or decreased according to changing conditions. It should therefore be emphasized that if, in the present work, the rates of Zakât laid down by the Prophet (ص) have been adhered to faithfully in every case, it is through conviction of the wisdom they embody. In this connection, it is necessary to point out that the fluctuations of monetary values have no bearing whatever on the rates of Zakât. The rates, as laid down by the Prophet (ص) , represent not values but *proportions* of wealth (i.e., a given weight of silver or of gold, a given measure of agricultural produce, a given number of heads of domestic animals) so calculated as, on the one hand, to imply no *excessive burden* for the Zakât-payer and, on the other, to provide a sufficiency of funds both to satisfy the requirements of the needy members of the Muslim community and to afford ready relief in time of emergencies. In those rare instances where Zakât funds may not suffice to cover immediate needs, not only may

the State mobilize other assets of the Nation through any other form of taxation, but the very lives and totality of the wealth of the Muslims may lawfully be called upon to meet the situation .

انَّ اللهَ أشتَرَى مِن المؤمِنِينَ أنفُسَهُمْ وأَمْوَالَهُمْ بِأنَّ لَهُمُ الجَنَّةَ ... (٩ : ١١٢)

«Allah hath bought from the believers their lives and their wealth because the Garden will be theirs . . . ». (IX : 112).

Furthermore, it must be kept in mind that the fundamental rules of the Law of Zakât are, one and all, based on the Principles of Right and Justice set forth in the Qurân, and so should stand unaltered and unalterable.

With few exceptions where a more literal rendering was deemed necessary, I have followed the late Muhammad Marmaduke Pickthall's explanatory translation of the Qurân for the English version of the Quranic verses quoted in this work. The English translation of all other quotations, including that of the «Ahadîth», are my own.

The present work has been divided into two volumes: Volume I dealing with the technical aspects of the Law and Institution of Zakât, and Volume II being a study of the history and philosophy of the Institution of Zakât.

I wish to express my profound gratitude to my mother who so untiringly assisted me during the many years of research and study spent in the preparation of this work, and to all those who have given me constant and enthusiastic encouragement.

I am especially endebted to the eminent scholar, Dr. Omar A. Farrukh, Ph. D., Member of the Arab Academy, Damascus, and of the Islamic Research Association, Bombay, who very kindly looked over the manuscript and wrote the Introduction to Volume I; to H. E., Al-Syed Abdul Hameed al-Khateeb, former Ambassador of Saudi-Arabia to Pakistan and Lecturer in the Holy Mosque at Mecca, who graciously contributed the Foreword; and to Maulvi Muhammad Yusuf of Akori, for the kind loan of valuable reference books in the early stages of my labours. I am likewise deeply grateful to Dr. V. A. Hamdani, Ph. D., Oxford, for his very valuable and helpful

suggestions; and to Mrs. James H. Hanford of the Princeton University Press, and Syed Rizwan Ali Nadvi, Lic., Islamic Law, Damascus University, whose practical advice has greatly contributed to the successful publishing of this volume.

I also wish to acknowledge, with sincere thanks, the courtesy, patience and efforts of S. Reshad Daoudi and S. Muḥammad Daoudi, of Al-Jadidah Printing Press, and their staff, in dealing with and solving the various technical difficulties that arose during the printing of this work.

It is my humble prayer that the following pages may find acceptance with Almighty God and prove to be of some help in furthering the sacred Cause of Islamic Reform.

F. G. Z.

Damascus, August, 1960.

NOTE ON TRANSLITERATION

At the time of printing, the universally accepted transliteration signs for Arabic characters were, as yet, unavailable in intertype at Al-Jadidah Printing Press. Those characters of the Arabic alphabet that have no corresponding letter in English have, therefore, been represented in the text either by italics or by combined letters. The circumflex accent has been used to transliterate the long vowels.

Ex. : أحمد = A*h*mad

خراج = Kharâj.

Thus, ث = th

ح = *h*

خ = kh

ذ = dh

ش = sh

ص = *s*

ض = *d*

ط = *t*

ظ = *z*

ع = 'a, 'i or 'u

غ = gh

Unfortunately, this system could not be fully followed in the footnotes and index, as italics in 8 point intertype were also, as yet, not available at the time of printing.

بسم الله الرحمن الرحيم

وَمَا أُمِرُوا إِلَّا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ
وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ وَذَٰلِكَ دِينُ الْقَيِّمَةِ
(٥:٩٨)

FUNDAMENTAL RULES OF THE LAW OF ZAKAT

What is Zakât ?

The exact meaning of the Arabic word « Zakât » (زكاة) is : GROWTH, and, by extension, growth in purity of the soul through honest actions and dealings. The word « Zakât » occurs in the Quranic text in this sense. It also occurs in a figurative sense to designate the contribution that every Muslim, man or woman, of means must make to further social assistance and subsidize establishments and works of public welfare for the benefit and progress, i.e., *the growth* of the Islamic Nation.

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللهَ وَرَسُولَهُ أُولَٰئِكَ سَيَرْحَمُهُمُ اللهُ انَّ اللهَ عَزِيزٌ حَكِيمٌ • (٩ : ٧١)

« And the believers, men and women, are protecting friends one of another; they enjoin the right and forbid the wrong, and they establish worship and they pay the Zakât, and they obey Allah and His Messenger. On these Allah will have mercy. Allah is Mighty, Wise. » (IX : 71).

The Arabic word « Sadaqah » (صدقة) , meaning charity or alms in a general sense, also occurs both in the Quranic text and in

the old versions of the Law of Zakât, as referring to the obligatory aspect of charity constituted by the Zakât-tax itself. Care must therefore be taken to distinguish between the use of the term « *S*adaqah » in reference to the voluntary aspect of charity (صدقة التطوع) and its use in reference to the obligatory aspect thereof (صدقة الفرض). For whereas both aspects of charity are covered by the term « *S*adaqah », only the term « Zakât » designates exclusively its obligatory aspect.

As will be readily appreciated from the method of payment, Zakât is not an income-tax. In fact, Zakât is not at all a government tax in the modern sense of the term. It is, strictly speaking, an obligatory social tax which, with the one exception of the spoils of war, must be satisfied exclusively in the shape of *surplus wealth of lasting value*. By « surplus wealth » is meant whatsoever is over and above the lawful necessities of an individual and his/her dependents, in keeping with the standard of life required by the position and sphere of activity of the said individual. This fact is clearly stated in the following Quranic verse :

وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ ، قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللهُ لَكُمُ الآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ فِي الدُّنْيَا وَالآخِرَةِ • (٢:٢١٩)

« . . . And they ask thee what they should spend (for others). Say : *That which is superfluous*. Thus Allah makes plain to you His Revelations that perchance you may reflect upon the World and the Hereafter. » (II : 219).

Mr. S. A. Siddiqi's definition of Zakât as « . . . one generic term applicable to all ordinary compulsory contributions which an Islamic State levies on its Muslim inhabitants . . .»(1), is dangerously misleading and apt to create a good deal of confusion as to what is the true nature of Zakât and the exact place this Institution occupies in the structure of the Islamic body politic.

As will presently be seen, the scope of Zakât is clearly set forth in the Qurân and, consequently, this all-important Institution

(1) « Public Finance in Islam », by S. A. Siddiqi, Lahore, 1948, p. 10.

cannot be confused in any way with other forms of compulsory taxation that a Muslim State may impose on its Muslim citizens. In the first place, Zakât is *not a tax imposed by the State*. Nor is Zakât a tax destined to the State as such. What is more, Zakât does not even primarily depend on the State for its function. Once properly organized, in full conformity with the Quranic Principles relating thereto and with due deference to the instructions given by the Prophet (ص) , the very nature of the Institution of Zakât requires that the part the State is to play in its function be merely one of *supervision* and not one of full control as is the case where government taxes are concerned. In fact, in Islam the main responsibility for the observance of all obligatory duties devolves on the individual and not on the State. And so, as regards Zakât, the authority of the State lies in the right granted it by verse 170, Surah VII of the Qurân, to hold every responsible Muslim, man or woman, to the observance of the Quranic Injunctions.

وَالَّذِينَ يُمَسِّكُونَ بِالْكِتَابِ وَأَقَامُوا الصَّلَاةَ إِنَّا لَا نُضِيعُ أَجْرَ الْمُصْلِحِينَ ۝ (٧ : ١٧٠)

« And (as for) those who make (others) keep the Scripture, and establish prayer : We squander not the wages of reformers. » (VII : 170).

Hence, the fundamental difference between full control and supervision cannot be over-emphasized. The former would imply the right to increase or modify the tax, to extend or limit its scope, to suspend the imposition thereof or even to abrogate it altogether. Whereas, in its role of supervisor, the right of the State is only to enforce observance of the Quranic Law, as directed by verse 170 of Surah VII, and to watch over the smooth functioning of the Institution, being itself bound to abide by the rules that govern it. The State is only authorized to modify these rules in matters of detail, and this always within the spirit of the Quranic Precepts relating thereto.

As regards the practical application of the Law of Zakât, all Schools of Islamic Law (1) adhere to the rulings of the Prophet (ص)

(1) All the great jurists of Islam are unanimous on this point.

and unanimously lay down that the Zakât attaches exclusively to *productive wealth* (مال نماء) [1], that is to say, to wealth represented by :

a) Agricultural produce.

b) Pasturing domestic animals.

c) Things constituting a ready medium of exchange, such as : silver, gold, and money invested (i.e., trade capital in cash and articles of trade) or kept as savings in the form of cash, gold or silver ornaments, or gems.

The Law of Zakât considers the productivity of wealth as either potential (نماء تقديري)[2] or actual (نماء تحقيقي)[3]. Potential productivity inheres in such wealth as silver, gold, and money, etc., kept as savings. Actual productivity inheres in such wealth as agricultural produce, pasturing domestic animals, and invested money (i.e., trade capital in cash and articles of trade).

Of further importance for the exact application of the Law of Zakât is a correct understanding of both the *cause* and *object* of the act of Zakât. The rule dictated by the very principles of the Law and, in fact, generally acknowledged by the Muslim jurists, is that the cause of the act of Zakât is the fact of the productivity of wealth existing in a quantity, number, or value equal to or over and above the established minimum taxable limits, i.e., over and above the average normal requirements of human existence; the object of Zakât being the profession of Islam by the legitimate owner of the wealth under taxation.

It is necessary to mention here that although the jurists of the *H*anafite School of Law uphold this rule in respect of other kinds of taxable wealth, they have established for agricultural produce a system of taxation definitely at variance therewith. This system, which we will discuss more in detail when explaining the rules governing the Zakât of agricultural produce, confuses the nature of Zakât with that of « Kharâj » and unalterably fixes both the Zakât and the « Kharâj » tax (the payment of which is incumbent on non-

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(1) In modern Arabic economic terminology : الثروة الانتاجية

(2) Idem : القوة الانتاجية العتيدة

(3) Idem : القوة الانتاجية الراهنة

Muslim subjects by reason of their non-Islam) *to the land* (1); in so doing, it displaces the object of the act of Zakât from the Zakât-payer's profession of Islam to the legal nature attributed to the land in question.

On Whom is Zakât Incumbent ?

(To pay Zakât is incumbent on every adult Muslim of sound mind, man or woman, who is the legitimate owner of wealth taxable under the Law of Zakât.)

(Zakât must likewise be paid from the taxable wealth of Muslim minors and orphans (2) (boys and girls), and Muslims of unsound mind.)

The responsibility for the payment of Zakât due from wealth

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(1) Zakât attaches to preservable produce, by virtue of the legitimate owner's profession of Islam. «Kharâj» attaches to the productivity of the land, and is incumbent on non-Muslims only.

(2) (On the ground that the Zakât is an act of worship and therefore should be complied with voluntarily,) the Hanafite School of Law holds that no Zakât other than that of the Id-ul-Fitr is incumbent on, or on behalf of, minors (be they orphans or not), or on insane persons, as in either case the condition of voluntary compliance cannot be fulfilled due to their lack of understanding.

While it is indisputable that the Zakât is an act of worship, the Shâfiite argument that, being an obligatory impost on Muslim-owned wealth, the Zakât must be discharged regardless of age or condition of mind, is no less correct.

As a matter of fact, since the Zakât attaches compulsorily to Muslim-owned wealth by virtue of its legitimate owner's profession of Islam, the only point of difference between the Zakât of adult Muslims and that of minor and insane persons lies in the fact of **responsibility** which, where adult Muslims are concerned, devolves directly upon the legitimate owner of the wealth under taxation, and where minors or insane persons are concerned upon the legal guardian or custodian.

Indeed, one of the fundamental teachings of Islam is that needy citizens of the Muslim community have an inherent right in the wealth of every Muslim of means, and nowhere in the Quranic text is any justification to be found for exempting the wealth of irresponsible persons. Therefore the opinion that lack of understanding in minor or insane persons is sufficient to warrant exempting their taxable wealth from the imposition of Zakât is incompatible with the Quranic Precept. Such action would not only be unfair to the lawful beneficiaries thereof, but actually tantamount to considering the wealth in question as temporarily not constituting Muslim property, an obvious incongruity.

belonging rightfully to minors (1) rests with the person legally entrusted with the care and administration thereof (i.e., the child's father, mother, or any other responsible and trustworthy person) until the child's legal coming of age when, in conformity with the Law, the responsibility for control and administration of existing wealth passes from the legal custodian to the legitimate owner.

As regards the Zakât of wealth belonging rightfully to orphaned children, responsibility for the payment of dues rests with the orphan's legal guardian until the orphan's legal coming of age, when, in conformity with the Law, the responsibility for control and administration of existing wealth passes from the legal guardian to the legitimate owner.

Taxable wealth belonging rightfully to Muslims of unsound mind, men or women, is considered in the same light as the taxable wealth of orphans, the responsibility of paying Zakât dues from such wealth resting with the legal custodian thereof.

Trade capital, i.e., both the reserve and working capital (cash money and articles of trade) belonging to individuals or companies, is also subject to the payment of Zakât whenever its value is equal to or above the minimum taxable limit established therefor.

Likewise wealth (including reserve and working capital) belonging to privately owned (by individuals or companies) or endowed establishments *that have the character of business concerns*, as for instance : educational institutions, hospitals, hotels, transport companies of every description, farms, factories, etc., is subject to the payment of Zakât whenever taxable under the Law of Zakât.

Responsibility for the payment of the Zakât dues of privately owned business concerns rests with the owner or owners; in the case of endowments, such responsibility rests with the individual or committee entrusted with the administration of the endowment in question.

All establishments privately owned or endowed, that are either totally devoted to charitable purposes (i.e., free hospitals, orphanages, homes for the poor, the disabled, or the aged, etc.) or

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(1) For instance, wealth inherited from the mother, or received as a gift or bequest.

to the service of humanity (i.e., scientific research institutes, free educational institutes, etc.) are exempt from the obligation of paying Zakât, as by their very nature they fulfil the purpose to which the proceeds of Zakât may be dedicated.

Wealth that has been purposefully set aside to cover the expenses of a *first* pilgrimage to the Holy Ka'aba at Mecca, is exempt from taxation under the Law of Zakât, regardless of the period of time that it remains in the possession of its owner. This is because, according to Islamic Law, one pilgrimage to the Holy Ka'aba is obligatory in the lifetime of every Muslim, man or woman, who is physically and materially able to fulfil this essential duty. Subsequent pilgrimages being purely optional, wealth set aside to cover the expense involved is considered as savings and is thus subject to taxation for Zakât whenever it is in quantity or value equal to or above the minimum taxable limit.

Conditions determining Responsibility for the Payment of Zakât Dues and the Taxability of Wealth.

The Law of Zakât bases responsibility for the payment of dues on three factors :

A — The person subject to taxation, man or woman, must be an avowed Muslim, legally of age. In the case of minors and orphans, as the legitimate owner of the wealth under taxation is under age, he/she does not bear the responsibility of any failure on the part of the legal guardian of his/her wealth to effectuate the payment of Zakât dues.

B — The person subject to taxation must be of sound mind, that is to say, fully capable of understanding the meaning of the Law and the nature of his/her duty to God and to his/her fellow-beings. Where insane persons are concerned, as the legitimate owner of the wealth under taxation is legally incapacitated, he/she does not bear the responsibility of any failure on the part of the legal custodian of his/her wealth to effectuate the payment of Zakât dues.

C — The person subject to taxation must enjoy full freedom of action to dispose of his/her wealth. If, for any reason, he/she be under any kind of duress, his/her responsibility remains suspended until full freedom of action is recovered. If the loss of free-

dom extends over a period of one or more years, Zakât dues must be paid retrospectively for the full period of non-payment, on condition that the wealth in question has remained intact and is still of an amount or value taxable for Zakât at the time of the legitimate owner's recovery of freedom. But, in case the period of duress has caused severe loss of wealth to the individual concerned through no fault of his/her own, retrospective payment cannot be required.)

On the other hand, the taxability of wealth depends on eight conditions laid down by the Law of Zakât and which, with the rules they imply, are detailed as follows :

I — Legitimate Ownership :

The first condition that warrants taxation under the Law of Zakât is the fact of legitimate ownership. According to Islamic Law, « legitimate ownership » implies that the thing possessed has been acquired lawfully and that the person who possesses it has full right to use and dispose of it in any way that he/she wills, always within the just limits of Quranic Law.

II — Lasting Value :

The second condition that determines the taxability of wealth is the fact that it be potentially or actually productive, i.e., that it be by its nature of *lasting value* (مال نماء) . By wealth of lasting value is meant :

a) All those things which are universally classified as precious, and which do not deteriorate appreciably by use or with the passage of time; such as : silver, gold, gems, and money kept as savings, which items represent a potential medium (نماء تقديري) for the further acquisiton or production of wealth.

b) Wealth that proceeds naturally from the permanent values represented by land, i.e., agricultural produce (نماء تحقيقي) .

c) Herds and flocks of pasturing domestic animals which, being maintained at little or no cost to their legitimate owner, fulfil the condition of *lasting value* (نماء تحقيقي) through breeding.

d) Things representing an actual medium (نماء تحقيقي) for

the further acquisition or production of wealth, i.e., trade capital (cash money and articles of trade).

III — Tallying of the Taxable Wealth with the Taxable Limits laid down by the Law of Zakât :

This rule implies that the value of the wealth in question must be equal to, or above, the minimum taxable limit established for its kind. Any quantity or value less than the minimum taxable limit can in no case be taxed under the law of Zakât.

In the terminology of Islamic Jurisprudence, the minimum taxable limit is referred to as the « Nisâb » (النصاب) , i.e., the origin or beginning, or in other words, the limit from which taxability for Zakât begins. Since this single word correctly expresses the meaning of « minimum taxable limit » and is understood by Muslims the world over, we will as a rule prefer its use to the English translation thereof.

Established by the Prophet (ص) himself as one of the most important principles of the Law of Zakât, the minimum taxable limits, or «Nisâbs» pertaining to the various kinds of taxable wealth purport to allow a basic tax-free provision, sufficient in every case to satisfy the normal and reasonable yearly necessities of an average family. Thus, the established « Nisâbs » adequately protect the Muslim of very limited means and ensure that he/she will not be made to suffer any sort of embarrassment through the imposition of Zakât.

IV — Possession for a Period of One Full Year and the Reckoning of Plural Computations :

قالَ رسولُ الله : لا زكاة في مالٍ حتى يحولَ عليهِ الحولُ .

« The Prophet (ص) said : No Zakât is to be imposed on wealth until it has been in the possession of its owner for a period of one full year. »

The possession of wealth for a period of one full year as an essential condition warranting taxation for Zakât, is one of the most characteristic features of the Law of Zakât. This rule, established

by the Prophet (ص) in conformity with the afore-cited verse219, Surah II of the Qurân, and applying to all taxable wealth «cept agricultural produce, the produce of silver and gold mines, treasure troves, and spoils of war, is the very one that distinguishe the Zakât-tax as being leviable in the shape of *surplus wealth only*.

The fundamental importance of this rule is further enphasized by the following « *H*adîth », related on the authority of 'Abd Allah ibn 'Umar ibn ul-Kha*ttâ*b :

عن ابن عمر قال : قال رسول الله صلّى الله عليه وسلّم : من استفاد مالاً فلا زكاة فيه حتّى يحول عليه الحول • (رواه الترمذي)

« (It is related) on the authority of Ibn 'Umar, who said : The Messenger of Allah (ص) said : Whosoever possesses wealth, bears no obligation to give the Zakât thereof until it has been in his/her possession for a period of one full year. » (Imâm at-Tirmadhî).

Although the fact that this rule, as a condition warranting taxation, does not apply to agricultural produce, the produce of silver and gold mines, treasure troves and spoils of war, may give rise to the objection that, at least in so far as these exceptions are concerned, the Zakât-tax does take on the character of an income-tax, on closer examination it will be realized that even as regards these four types of wealth, the Zakât-tax loses nothing of its peculiar character of being leviable in the shape of *surplus wealth only*.

This proposition holds true where agricultural produce is concerned by the very fact that only those kinds of produce are subject to taxation for Zakât which, being non-perishable by nature, may be preserved in good condition for a minimum period of one year. These are : cereals, pulse, nuts, dried fruits, as well as cotton, cocoa, coffee, etc. Perishable produce, such as fresh fruits and vegetables, is not taxable for Zakât as it does not conform to the condition of preservability for a minimum period of one year.

Furthermore, according to the Law of Zakât, only that crop may be subject to taxation for Zakât which is over and above the normal yearly requirements of an average family; it is thus clear that, as regards agricultural produce, Zakât is levied in the presence of *a preservable surplus only*.

As for the produce of silver and gold mines and treasure troves, the Law of Zakât views these two types of wealth in the same light as the spoils of war and so brings them under verse 41, Surah VIII of the Qurân, which is as follows :

وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ إِنْ كُنْتُمْ آمَنْتُمْ بِاللَّهِ وَمَا أَنْزَلْنَا عَلَى عَبْدِنَا يَوْمَ الْفُرْقَانِ يَوْمَ الْتَقَى الْجَمْعَانِ وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ • (٨ : ٤١)

« And know that whatever you take as spoils of war, a fifth thereof is for Allah, and for the Messenger and for the kinsman (who is needy) and orphans and the needy and the wayfarer, if you believe in Allah and in what We revealed unto Our servant on the Day of Discrimination, the day when the two armies met. And Allah is able to do all things. » (VIII : 41).

Indeed, treasure troves, like the spoils of war, being prizes accidentally acquired, basically constitute surplus wealth. This fact alone justifies the imposition of Zakât.

It is true that the produce of silver and gold mines is, as a rule, the result of regular labour, which is not the case for the spoils of war and treasure troves. But the vast disproportion between effort and reward that it implies, considering that the produce involved is *precious metal,* lends to the produce of silver and gold mines the same character of surplus wealth as pertains to the spoils of war or to treasure troves and, hence, the imposition of Zakât is likewise fully justified.

The rules governing wealth belonging to the category subject to a year's term of possession as an essential condition warranting taxation, are as follows :

1) For all practical purposes, the computation of the year's term of possession of taxable wealth must be based on the solar year.

2) Whenever the amount or value of taxable wealth is less at the end of the one year's term than at the beginning, Zakât must

be paid only on that taxable wealth which is actually existing at the completion of the term, i.e., which has actually remained in the possession of its owner for a full period of one year.

3) On the other hand, should the value of taxable wealth *be more* at the end of the year, Żakât must be paid, in conformity with the instructions laid down by the Prophet (ص), *only on that wealth which has been in possession for the full year.* Whatever wealth of a taxable amount or value has been added thereto during the said period, will only be subject to the payment of Zakât when, in turn, it has been in the possession of its owner for a full period of one year.

4) If during the period of one year the amount of taxable wealth has, for any reason, decreased in quantity or value, but at the completion of the period of one year is once more the same as at the beginning of that period, Zakât should be paid on the value of the said amount. But, in all justice, this rule should only be applied when the temporary decrease in quantity or value has been for a very short period. Otherwise, as the computation of the year's term will have been effectively broken in so far as the full amount is concerned, should the period of the decrease be prolonged for any length of time, a new computation of time should be calculated, i.e., Zakât should be paid at the end of the first computation on the amount that has throughout remained intact, and the computation of a new term begun for any addition thereto. This point should, in all justice, be decided by the person concerned, on his/her own responsibility to God.

انَّ الَّذِينَ يَخْشَوْنَ رَبَّهُمْ بِالغَيْبِ لَهُمْ مَغْفِرَةٌ وأَجْرٌ كَبِيرٌ ، وأَسِرُّوا قَوْلَكُمْ أوِ اجْهَرُوا بِهِ انَّهُ عَلِيمٌ بِذَاتِ الصُّدُورِ • (٦٧ : ١٢ — ١٣)

« Those who fear their Lord in secret, theirs will be forgiveness and a great reward. And (whether you) keep your opinion secret or proclaim it, He is Knower of all that is in the breasts (of human beings). » (LXVII : 12 - 13).

As in such a case the computation of a year's term of posses-

sion would effectively have been broken, payment should not be compelled on the amount that was not present during the full period of one year.

The rule requiring the possession of wealth for a period of one full year as an essential condition warranting taxation for Zakât, coupled with the fact that the computation of the term is not in relation to the calendar year but naturally depends on the actual date on which the wealth in question attains taxability or is acquired, is eventually bound to give rise to the existence of more than one computation of a year's term in relation to wealth belonging to one and the same individual. This oddity necessitates the drawing up of a few rules, in order to regulate the situation created by the plurality of computations and establish a method of calculation entirely compatible with the fundamental principles of the Law of Zakât.

The old versions of the Law of Zakât eliminated the occurrence of plural computations by establishing the rule that wealth acquired during the year's term should at once be added to the wealth for which a computation has already begun and should, thus, also be subject to the payment of Zakât when the computation of a year's term in relation to the original wealth is completed, regardless of the fact that in so far as the newly acquired wealth is concerned, the year's term of possession would, as yet, be incomplete.

But, the very fact that it is a fundamental principle of the Law of Zakât that wealth belonging to this category is not taxable before the year's term of possession is complete, invalidates the above view as contrary to the spirit and letter of the Law.

The occurrence of plural computations should in no case be considered as undesirable, nor as unnecessarily complicating a Muslim's life. Much to the contrary, the benefits to be derived from plural computations, resulting as they do in a *continuous* contribution of dues from taxable wealth to the Zakât fund, can hardly be over-estimated. Admittedly, the reckoning of more than one computation in relation to wealth of a same kind requires of its legitimate owner still more meticulous care than otherwise as to the dates marking the acquisition and the disposal of wealth. But such circumspection is precisely one of the aims of the Law of Zakât.

Islam means to instill into the human being a very keen sense of duty and responsibility in every field of action. Islam does not consider the human being's wealth as his absolute property for him to dispose of in any and every way that he may fancy, regardless of the consequences that his actions may have for the other members of his community. In the view of Islam, the human being's wealth is only a God-given trust bestowed upon him to test his wisdom and competence in wordly affairs.

Islam requires of every Muslim, man or woman, to keep a very strict account of his worldly possessions. It is the Muslim's business to accurately know what is his income, expenditure and balance or surplus. It is his business to know fully well which of his possessions are by nature taxable for Zakât and which of them are not. It is his business to know what are the rates of payment relating to each category of taxable wealth. It is his business to know when his Zakât falls due and what is the amount owed. And it is his business to discharge his obligation in a responsible way, punctually and graciously. If he is incapable or unwilling to do so, he has no right to expect that God will choose him as the trustee of His bounty by granting him wealth.

In order to secure not only his «pound of flesh» but the very life-blood of his hapless brother, the unregenerate human being has given more than sufficient proof of his cleverness, patience and meticulousness in dealing with the intricacies of, for instance, compound interest. Why then should the Muslim shrink from the far less complex operation of reckoning plural computations in regard to his taxable wealth, for the furtherance of a cause the purpose of which is to restore both the « flesh » and the « life-blood » to the less fortunate members of his community ?

انَّ اللهَ اشتَرَى مِنَ المُؤمِنِينَ أنفُسَهُم وأموَالَهُم بِأنَّ لَهُمُ الجَنَّةَ • (٩ : ١١١)

« Allah has bought from the believers their lives and their wealth because the Garden (of Paradise) will be theirs.» (IX : 111).

It may be that the reckoning of plural computations will seem, at first sight, a very complex affair; but actually it is not so.

Such a view is only an idea born of the human being's tendency to shirk his responsibilities and choose the easiest way out regardless of rules or results. In fact, such a lazy attitude is one of the besetting sins of humanity.

The reckoning of plural computations is not only useful from the point of view of the administration of Zakât : it is a rule dictated by the very principles on which the Law is based.

The particular rules which should govern plural computations, and the circumstances under which they should be applied, are as follows :

1) Whenever taxable wealth that is subject to the rule requiring the possession thereof for a period of one full year as an essential condition warranting taxation for Zakât, attains in quantity or value what is equal to the Nisâb established for its kind, or is constituted at one time to an amount that is equal to or over and above the Nisâb, a computation of a year's term of possession is at once begun and, should the wealth in question remain safe in the possession of its legitimate owner till the completion of the term, the corresponding Zakât is to be paid on the amount or value thereof.

2) Wealth of the same kind as that for which a computation of a year's term of possession has already begun, that is acquired during the year's term and is in itself not of a taxable quantity or value, being less than the Nisâb established for its kind, is not to be added to the amount under computation until *after* the latter has completed the year's term of possession and so, in conformity with the Law of Zakât, remains free from taxation until that time, both by virtue of its falling short of the Nisâb and by virtue of its non-completion of a year's term of possession.

When the computation of a year's term of possession for the original wealth is completed, the non-taxable amount of wealth newly acquired during the past year is to be added to what remains thereof after the payment of Zakât and a new computation of a year's term of possession begun for the new sum thus constituted, as from the day following the end of the former computation.

Should the original amount have been only equal to the Nisâb

and so have been reduced to less than the Nisâb by the payment of Zakât dues, and taxability *not restored* after adding to the remainder thereof the non-taxable amount of wealth acquired during the past year, the question of computation does not arise.

For the sake of clarity, we will base the following examples on the original Nisâb established for silver (the Nisâb being 200 dirhems (1) and the Zakât-free interval every 40 dirhems), although exactly the same method will apply to domestic animals, articles of trade, etc.

Let us suppose that on the 1st of April, 1949, 200 dirhems are acquired, for which is begun a computation of a year's term ending on March 31st, 1950. Thereafter, a sum totalling not more than 199 dirhems is acquired by, for instance, September 1st, 1949. On March 31st, 1950, a Zakât of 5 dirhems will fall due on the 200 dirhems, the payment of which will naturally reduce the amount under taxation to below the Nisâb (i.e., to 195 dirhems). Then on April 1st, 1950, the 199 dirhems will be added to the remainder of the original wealth (i.e., the 195 dirhems) and a new computation of a year's term of possession will begin for the sum thus constituted (i.e., 199 + 195 = 394 dirhems), ending on March 31st, 1951, when a Zakât of 9 dirhems will fall due on 360 dirhems only, 34 dirhems falling within a Zakât-free interval.

The remainder, after payment of Zakât (i.e., 360 - 9+34=385 dirhems) will again be added to any non-taxable amount that may be acquired during the term : April 1950 - March 1951, and a new computation of a year's term of possession, from April 1st, 1951 to March 31st, 1952, begun for the sum thus constituted; etc.

On the other hand, if the non-taxable addition to what remains of the original 200 dirhems after the first payment of Zakât (i.e., 195 dirhems) is, for instance, only 4 dirhems, the taxability of the wealth in question, i.e., 195+4=199 dirhems, will not thereby be restored.

3) Whenever wealth of the same kind as that for which a computation has already begun is acquired during the year's term, and *is in itself of a taxable amount,* being equal to or over and above

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(1) Monetary unit in the time of the Prophet (ص) . Gr. drachma.

the Nisâb established for its kind, a separate computation of a year's term of possession thereof is at once begun. Thus several computations in relation to wealth of a same kind, and belonging to one and the same individual, may come into existence, beginning and ending on different dates. (1).

Taxable amounts acquired on different dates can never be joined together to bear one single computation so long as the taxability of *all* amounts involved subsists. As will be understood from the following rules, for such an operation to take place in a way entirely compatible with the fundamental principles of the Law of Zakât, it is necessary that not more than *one* of the amounts involved be equal to or above the Nisâb and that the other amount or sum total of amounts to be joined be reduced to *less* than the Nisâb :

a) When both the original wealth, i.e., the wealth for which a computation has already begun, and the wealth acquired during the year's term are equal in quantity or value to the Nisâb, a separate computation is begun for the latter, at the completion of which Zakât will normally fall due. In this case, the payment of Zakât will naturally reduce both amounts involved to below the Nisâb.

Then if no wealth of the same kind is acquired before the time when the Zakât of the second amount falls due, which by its quantity or value restores the taxability of what remained from the original amount after the payment of Zakât, the non-taxable remainder of the second amount will be added to the non-taxable remainder of the original amount and a new computation begun for the sum thus constituted, as from the day following the end of the computation of the year's term of possession for the second amount.

Example : On April 1st, 1949, 200 dirhems are acquired for which is begun a computation of a year's term ending on March 31st, 1950. By August 15th, 1949, another 200 dirhems are acquired, for which is begun a second computation of a year's term ending on August 14th, 1950.

On March 31st, 1950, a Zakât of 5 dirhems will fall due on the first 200 dirhems, the payment of which will reduce the amount

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(1) Where domestic animals are concerned, computations should be fixed on regular dates. See rules governing the Zakât of domestic animals.

to 195 dirhems, i.e., to below the Nisâb.

Likewise, on August 14th, 1950, the second 200 dirhems will be reduced to 195 dirhems by the payment of 5 dirhems' Zakât.

Then, if between April 1st and August 14th, 1950, no more wealth of the same kind is acquired, on August 15th, 1950, the first 195 dirhems will be added to the second 195 dirhems and a new computation ending on August 14th, 1951, will begin for the sum of 390 dirhems thus constituted.

b) On the other hand, if before the time when the Zakât of the second amount falls due wealth is acquired that, by its quantity or value, restores the taxability of the remainder of the original wealth (be it in itself of a taxable amount or not), a new computation of a year's term of possession is at once begun, which will run its course separately. In this case, the non-taxable remainder of the second amount will not be added thereto immediately following the payment of the Zakât thereof, but will remain free until the new computation begun in relation to the first amount plus the wealth added thereto is completed and the Zakât thereof falls due, after which to the remainder thereof will be added what remained from the second amount and a new computation begun for the new sum thus constituted.

But should the taxability of the second amount be restored by the addition thereto of wealth of the same kind acquired at any time during the course of the second computation in relation to the first amount, a separate computation will at once begin for the new sum thus constituted.

Example : On March 31st, 1950, the first 200 dirhems are reduced to below the Nisâb by the payment of 5 dirhems' Zakât (i.e., to 195 dirhems). Then between April 1st and August 14th, 1950, for instance, by July 15th, 1950, a sum totalling 50 dirhems is acquired, increasing the amount to 245 dirhems and restoring the taxability thereof; whereupon a computation of a year's term of possession is at once begun, which will end on July 14th, 1951.

On August 14th, 1950, the Zakât of the second 200 dirhems falls due, thus reducing the sum to 195 dirhems, which amount being less than the Nisâb will remain free until July 14th, 1951, when the second computation in relation to the 245 dirhems comes to an

end and a Zakât of 6 dirhems falls due on 240 dirhems only, the 5 dirhems being within a Zakât-free interval. The first amount, after payment of Zakât, thus becomes : 240 - 6 = 234 + 5 (the 5 dirhems of the Zakât-free interval) = 239 dirhems.

If between July 15th, 1950, and July 14th, 1951, i.e., during the course of the second computation relating to the first amount, no more wealth of the same kind has been acquired which, by its quantity or value, will have restored the taxability of the remainder of the second amount (i.e., the 195 dirhems), on July 15th, 1951, these will be added to the remainder of the first amount (239 dirhems) and a new computation begun for the new sum thus constituted (i.e., 239 + 195 = 434 dirhems), ending on July 14th, 1952, when a Zakât of 10 dirhems will fall due on 400 dirhems only, 34 dirhems being within a Zakât-free interval.

It is important to note here that any wealth of the same kind acquired between July 15th, 1950 and July 14th, 1951, *must* at once be added to the 195 dirhems either on August 15th, 1950 or on whatever date thereafter the wealth in question may be acquired. Regardless of whether or not it restores the taxability of the 195 dirhems, this additional sum must not be kept apart until July 15th, 1951 to only then be added to the remainder of the first amount after the second payment of Zakât (i.e., to the 239 dirhems).

Should the additional sum restore taxability to the 195 dirhems, a separate computation of a year's term of possession will at once begin.

But should the additional sum be too small to restore taxability to the 195 dirhems (i.e., less than 5 dirhems), the resulting non-taxable sum will necessarily be added to the remainder of the first amount on July 15th, 1951.

c) When the wealth for which a computation of a year's term of possession has already begun is equal to the Nisâb established for its kind, and the wealth acquired during the year's term is of an amount over and above the Nisâb, each amount will bear its own computation separately till the completion thereof. Then, as the first amount will be reduced to below the Nisâb by the payment of Zakât and will, consequently, cease to be taxable, it will remain free until the end of the computation relating to the second

amount, when it will be added to the remainder thereof after the payment of Zakât, and a new computation will begin for the sum thus constituted.

As in the case of rule b), should there be any more wealth of the same kind acquired before the Zakât of the second amount falls due, which wealth by its quantity or value restores the taxability of the remainder of the first amount, a separate computation will at once begin for the sum thus constituted.

Example : On January 15th, 1949, 200 dirhems are acquired, for which is begun a computation of a year's term ending on January 14th, 1950. Thereafter, a sum of 320 dirhems is acquired on September 1st, 1949, for which a separate computation is at once begun, ending on August 31st, 1950.

On January 14th, 1950, a Zakât of 5 dirhems will fall due on the 200 dirhems, the payment of which will reduce the amount in question to below the Nisâb, i.e., to 195 dirhems. Then, on August 31st, 1950, a Zakât of 8 dirhems will fall due on the 320 dirhems, there being no part thereof falling within a Zakât-free interval. This payment will reduce the second amount to 312 dirhems. On the following day (i.e., on September 1st, 1950), the 195 dirhems, which will have remained free from January 15th to August 31st, 1950, will be added to the 312 dirhems and a new computation will begin for the sum thus constituted (i.e., for 312 + 195 = 507 dirhems), at the completion of which a Zakât of 12 dirhems will be paid on 480 dirhems only, 27 dirhems being within a Zakât-free interval.

As mentioned in rule b), any more wealth of the same kind acquired between January 15th, 1950 and August 31st, 1951, *must* be added to the non-taxable amount (i.e., to the 195 dirhems) and, in case taxability is thereby restored, a separate computation of a year's term of possession will at once begin for the sum thus constituted.

d) When the position explained in rule c) is reversed, i.e., when the wealth for which a computation of a year's term of possession has already begun is of an amount that is over and above the Nisâb established for its kind, and the wealth acquired during the year's term is equal to the Nisâb, each computation will likewise run its course separately till the completion thereof. Then, when

the computation relating to the first amount is completed and Zakât falls due, a new computation will at once begin for the remainder thereof, plus any wealth of a non-taxable amount that may have been acquired during the past year's term.

When the computation of the second amount is completed, as the payment of Zakât will reduce the amount in question to below the Nisâb, the remaining amount will be free from taxation until the second computation relating to the first amount is completed, and will then be added to what remains thereof after the payment of Zakât, unless taxability be restored before that time by the addition of other wealth of the same kind acquired during the course of the second computation relating to the first amount, in which case a separate computation for the second amount will at once begin.

Example : On March 10th, 1949, 300 dirhems are acquired for which a computation of a year's term of possession, ending on March 9th, 1950, is begun. Thereafter, another 200 dirhems are acquired by, for instance, July 15th, 1949, for which a computation ending on July 14th, 1950, is begun. On March 9th, 1950, a Zakât of 7 dirhems will fall due on 280 dirhems only (20 dirhems being within a Zakât-free interval), which payment will bring the amount of 300 dirhems to 280 - 7 = 273 + 20 = 293 dirhems. If between July 15th, 1949 and March 9th, 1950, any non-taxable amount of wealth of the same kind is acquired, for instance, 160 dirhems, it will also be added to the 293 dirhems on the following day, i.e., on March 10th, 1950, and a new computation, ending on March 9th, 1951, begun for the sum thus constituted, i.e., 293 + 160 = 453 dirhems.

On July 14th, 1950, a Zakât of 5 dirhems will fall due on the 200 dirhems, the payment of which will reduce this amount to below the Nisâb, i.e., to 195 dirhems. Then, unless a non-taxable amount of wealth of the same kind is acquired between March 10th, 1950 and March 9th, 1951, which added to the 195 dirhems would at once reconstitute a taxable amount following the payment of Zakât, or would subsequently restore its taxability at any time before March 9th, 1951, the 195 dirhems will remain free until that date, when a Zakât of 11 dirhems will fall due on only 440 dirhems of the 453 dirhems (13 dirhems being within a Zakât-free interval), bringing that amount to 440 - 11 = 429 + 13 = 442 dirhems.

Whereupon the 195 dirhems will be added thereto and a new computation begun on March 10th, 1951, for the sum thus constituted, i.e., 442 + 195 = 637 dirhems.

e) When wealth for which a computation of a year's term of possession has already begun is, in quantity or value, over and above the Nisâb established for its kind and the wealth acquired during the year's term is also over and above the Nisâb, each amount will bear its own yearly computation separately until such a time as one of the amounts be reduced to less than the Nisâb. Whereupon, according to the circumstances, the aforegoing rules will apply.

f) Whenever there are three or more amounts of taxable wealth of a same kind acquired on different dates, the joining together thereof should likewise be effectuated according to the aforegoing rules. For instance, any amount of wealth which, by its quantity or value, falls short of the Nisâb established for its kind, whether at the time of acquisition or whether it be reduced to less than the Nisâb by the payment of Zakât dues or by disposal of a part thereof, and which therefore is not in itself taxable for Zakât is, in conformity with Rule 2, to be added to the remainder of whatever amount under computation *first* reaches the end of its term, unless taxability be restored before that time, in which case Rules 3b and 3c apply.

The exact date marking the beginning of a computation must depend upon the circumstances under which the surplus wealth is acquired. For instance, if an individual's earnings are in the shape of a regular monthly salary, the computation relating to any wealth of a taxable amount that is surplus to his/her monthly expenses, will begin as from the date that the salary in question is received.

On the other hand, if the earnings are gradual, as in the case of trade, or if they are in the shape of daily wages, the computation in relation to any surplus wealth will begin either on the date when an amount that is equal to the Nisâb has been accumulated or, if there be a surplus that is, in itself, of a taxable amount, as from the end of the month, when the total monthly earnings and expenses are definitely known, and consequently the amount constituting savings or surplus wealth is likewise clear.

When the acquisition of surplus wealth is *regular* and *continuous*, for instance, on a monthly basis, surplus wealth laid aside

TABL

TRADE C

Column 1	Column 2		Column 3		Column 4		Colum
Computation begins :	Trade Capital and/or Company shares (gross amount or value newly invested) :		Value of Zakât-free portion of wealth : (2)		Net amount or value taxable for Zakât : (3)		Amount o of non-in silver, gol or curr notes
January 1st 1959	5000/0/0	—	2000/0/0	=	3000/0/0	+	1500/
February 15th «	2000/0/0	—	750/0/0	=	1250/0/0	+	—
March 30th «	———		———		———		2350/
April 1st «	———		———		———		530/
May 10th «	———		———		———		525/
June 1st «	10000/0/0	—	4105/0/0	=	5895/0/0	+	—
July 1st «	———		———		———		900/
August 1st «	———		———		———		—
September 1st «	8550/0/0	—	4500/0/0	=	4050/0/0	+	—
October 15th «	3400/0/0	—	1000/0/0	=	2400/0/0	+	—
November 5th «	1500/0/0	—	700/0/0	=	800/0/0	+	200/
December 1st «	———		———		———		600/
January 1st 1960	———		———		———		—
January 12th «	———		———		———		600/
February 15th «	———		———		———		—
March 30th «	———		———		———		—
April 1st «	———		———		———		—
May 10th «	1078/12/0 (8)	—	475/0/0	=	603/12/0	+	—
etc.							

(1) All figures, combinations and dates are purely hypothetical and are given here n

(2) Representing value of buildings, machinery, tools, furniture and vehicles.

(3) Representing value of reserve and working capital in cash and articles of trad

(4) Underlined are the amounts or values falling below the Nisâb.

TABLE INDICATING THE METHOD OF CALCULATING THE ZAKAT

ADE CAPITAL AND WEALTH INVESTED IN COMPANY SHARES, AN

Hypothetical Nisâb of Rs. 525/- (1) Taxa

Column 5		Column 6		Column 7		Column 8	Column 9		Colu
ount or value non-invested er, gold and/ r currency notes :		Total amount or value taxable for Zakât :		Net decrease in amount or value by end of year's term :		Remaining amount or value :	Amount or value falling within a Zakât-free interval :		Zakâ be o
1500/0/0	=	4500/0/0	—	———	=	4500/0/0	— 90/0/0	=	4410
———	=	1250/0/0	—	———	=	1250/0/0	— 95/0/0	=	1155
2350/0/0	=	2350/0/0	—	———	=	2350/0/0	— 40/0/0	=	2310
530/0/0	=	530/0/0	—	———	=	530/0/0	— 5/0/0	=	525
525/0/0	=	525/0/0	—	———	=	525/0/0	— ———	=	525
———	=	5895/0/0	—	———	=	5895/0/0	— 15/0/0	=	5880
900/0/0	=	900/0/0	—	———	=	900/0/0	— 60/0/0	=	840
———		———		———		———	———		———
———	=	4050/0/0	—	530/0/0	=	3520/0/0	— 55/0/0	=	3465
———	=	2400/0/0	—	2400/0/0	=	———	———		———
200/0/0	=	1000/0/0	—	500/0/0	=	500/0/0	— ———		———
600/0/0	=	600/0/0	—	600/0/0	=	———	———		———
———		4940/4/0(5)	—	———	=	4940/4/0	— 5/0/0	=	4935
600/0/0	=	600/0/0	—	———	=	600/0/0	— 75/0/0	=	525
———		1521/2/0(6)	—	———	=	1521/2/0	— 51/2/0	=	1470
———		2292/4/0(7)	—	———	=	2292/4/0	— 92/4/0	=	2200
———		———		———		———	———		———
———	=	603/12/0	—	———	=	603/12/0	— 78/12/0	=	525

etc.

re merely as examples.

trade.

(5) Carried from column 16, January computation.

(6) Idem, February computation.

(7) Idem, March computation.

(8) Carried from column 16, May computation.

on the same days and months of each year will at once be added to the remainder of the amount for which a computation has just been completed and so join the new computation which will, in this case, normally be its own. As Zakât falls due on each one of the amounts concerned, this method will result in a monthly contribution to the Zakât fund, which event can only be an asset to its administration.

g) (1) Lastly, whenever there is more than one computation in relation to the wealth of a same kind belonging to one and the same individual, and the said individual wishes to dispose of a part thereof, he/she should first dispose of the amount or amounts for which a computation of a year's term of possession has most recently begun, and this especially where cash money is concerned.

The afore-going rules governing plural computations apply generally to every kind of taxable wealth subject to a year's term of possession as an essential condition warranting taxation for Zakât, which category of wealth comprises : silver, gold, pearls and precious stones, currency notes, articles of trade, and domestic animals; provided that such wealth be acquired either by means of earning (i.e., as profit or in the shape of a salary or wage), as a gift, as inheritance, or through the sale of non-taxable property.

These rules do not apply when the newly acquired taxable wealth has been received in exchange for other taxable wealth belonging to this same category, in such circumstances as described in Rule 4 of the Rules governing such transactions. In this case, the computation borne by the wealth given in exchange *is not broken* by the transaction but is applied to the wealth newly acquired.

V — Freedom from Debt (and Rules Governing Amenable Wealth) :

Contrary to the *H*anafite and Mâlikite Schools of Law, the Shâfiite School holds the view that the taxability of wealth is in no way affected by the fact of the legitimate owner's indebtedness.

At first sight, this view may find support in the argument that if a person owns wealth taxable for Zakât and therefore surplus to his/her basic needs, there is no reason why he/she should bear

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(1) See Rule 6 governing the exchange of taxable wealth constituting personal property.

the burden of a debt. Furthermore, even if he/she should contract a debt, there is no reason why, in the presence of surplus wealth of a taxable nature, he/she should not discharge his/her obligation of paying Zakât, since the debt in question would evidently be one not born of necessity but contracted for the sake of convenience.

However, on closer consideration it will be seen, firstly, that indebtedness actually does affect the taxability of wealth and, secondly, that a debt may justifiably be contracted despite the fact that the debtor possesses taxable wealth. For instance, should a person owning a taxable number of domestic animals be in immediate need of cash money and be either unwilling or unable to sell them, he/she could justifiably borrow the money required, applying the debt against his/her taxable animals. Another instance would be of the owner of a taxable quantity of silver or gold which is insufficient for the purpose of trade or which, being in the shape of ornaments or other objects of sentimental value, he/she were unwilling to sell. Here also the person concerned could justifiably contract a debt and apply it partially or totally against his/her taxable wealth.

Still another instance is that of a person on a journey far from home and compelled, due to unforseen circumstances, to incur a debt of convenience, being momentarily unable to enjoy free access to his/her wealth. In this case too, existing taxable wealth would become amenable to the extent of the debt and thus temporarily exempt from taxation for Zakât.

The effect indebtedness has on the taxability of wealth lies in the fact that so long as the debt subsists, it actually impairs the full right of ownership over, and hence the free disposibility of, whatever wealth is amenable for it. This, in itself, is sufficient to warrant exemption from the obligation of Zakât on the value of the debt, the full right of ownership and the free disposibility of wealth being essential conditions for its taxability under the Law of Zakât.

The position is generally summed up in the following rules :

1) A debtor, whose debt is equal to or more than the value of his/her taxable wealth, is exempt from paying Zakât until he/she has freed him/herself from the obligation of his/her debt. The legal

reason being that so long as the debt subsists the debtor is considered as temporarily deprived of his/her full right of ownership and, consequently, existing taxable wealth, whether or not it has actually been given in pledge, does not constitute a surplus since it is legally amenable until the debt is discharged.

2) In case the amount of the debt does not cover the entire value of taxable wealth, only that part of the wealth amenable for the debt is exempt from taxation. The remaining taxable wealth (i.e., that which is over and above the amount of the debt) continues to be subject to normal taxation for Zakât.

3) The Law of Zakât requires that, whenever the circumstance arises, debts be applied against productive wealth, i.e., against wealth of lasting value.

This rule implies that never, and in no case, can amenability for a debt be shifted to the debtor's Zakât-free property (such as household effects, land, or income) in order to levy Zakât from wealth which normally would be subject thereto.

4) Any kind of taxable wealth may become amenable for a debt and thus temporarily exempt from taxation for Zakât.

5) Once the debt is discharged, the amenability and, consequently, the exemption from taxation for Zakât of the wealth in question ceases.

6) Even if wealth has remained amenable for debt for a period of one or more years, it is not subject to the retrospective payment of Zakât once the debt is discharged. This is because during the whole period of exemption from taxation for Zakât, the full right of ownership is impaired by the amenability of the wealth in question.

7) As the computation of the year's term of possession is effectively broken by the fact of amenability, once the debt is discharged a new computation is begun and Zakât paid normally at the completion of the term.

8) Debts incurred after the Zakât on existing wealth has fallen due, do not constitute a cause for exemption from the obligation of Zakât for the past term. On the other hand, should the debt subsist till the completion of another year's term or beyond, the

wealth amenable for it will remain exempt from taxation for Zakât until such a time as the debt is discharged.

9) Should the debtor pay off his/her debt by instalments, the amenability of his/her wealth will decrease in proportion to the amount paid off and the wealth thus freed will once more be normally subject to taxation for Zakât.

10) When by mutual agreement the payment of a woman's marriage portion (المهر) , of a taxable value, has been deferred, as the amount involved constitutes a debt against the husband, he is exempt from the obligation of Zakât thereon, the wealth it represents being legally amenable.

Once the marriage portion is handed over to the wife, exemption from taxation ceases and she alone becomes responsible for paying the Zakât thereof whenever due.

11) Although debts of convenience are permissible whenever their purpose is lawful, the contracting of long term debts (i.e., debts standing for a period of more than one year) should, as much as possible, be avoided. For this reason, the debtor whose income alone does not allow him/her to pay off his/her debt but who is the legitimate owner of taxable wealth, should prefer to pay off at least part of his/her debt, if not the full amount, out of his/her taxable wealth *before* Zakât thereon falls due. In which case, Zakât will be paid only on the remaining taxable wealth, if any, even if the discharge of the debt be effectuated one single day before the date marking the completion of the year's term of possession.

Should the wealth in question consist of agricultural produce, the debtor should be allowed, if he/she so desires, to first dispose of whatever amount thereof may be necessary to pay off all or a part of his/her debt and then pay Zakât only on the remainder if it be still of a taxable amount.

12) In accordance with the following Quranic Law, never and in no case can a Muslim creditor claim the discharge of a debt so long as such action would inevitably imply distress or destitution for the debtor, or even result in undue embarrassment.

وَانْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ اِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا
خَيْرٌ لَكُمْ اِنْ كُنْتُمْ تَعْلَمُونَ ۝ (٢ : ٢٨٠)

« And if the debtor is in straitened circumstances, (then let there be) postponement to (the time of) ease; and that you remit the debt as alms-giving would be better for you if you did but know. » (II: 280).

The prohibition contained in this Quranic verse requires utmost circumspection of a creditor whenever forcibly claiming the payment of a debt, especially when the wealth under claim consists of agricultural produce which might represent the sole and irreplaceable provision of the debtor.

Should the creditor be in dire need, unable to await the debtor's convenience, the Law of Zakât allows him/her to avail him/herself of Zakât funds, at least to the extent of his/her immediate necessity. If the debt be small, it may be totally covered by Zakât funds if these be plentiful. But should the debt involve a larger sum, or should the immediate necessity of the creditor be less than the amount of the debt, the creditor may only take from the Zakât funds what is needed to meet his/her urgent requirements.

When the debt has been partially covered by Zakât funds, the difference (between what the creditor has received from those funds and the total amount of the debt) remains the responsibility of the debtor to be discharged by him/her at his/her earliest convenience.

The Qurân requires of the Muslim a deep sense of social responsibility and so directs him/her to a far-sighted course of action in the planning of his/her everyday life. To pursue selfish aims regardless of others' interests, to sacrifice collective well-being for the sake of personal gratification and ambition, is not only unworthy of the follower of Islam, it is a clear negation of Quranic socio-economic principles.

For this reason, and as a corollory to its economic policy of free, unobstructed and constant circulation of wealth, the Qurân exhorts the Muslim to always live within his/her lawful means and to spend of his/her wealth in a way that will benefit both him/herself and the community in general. Moreover, as a practical measure against inflation, the Qurân exhorts the Muslim to refrain from useless spending and, above all, *to abstain from spending what he/she does not possess*. It condemns both interest-bearing debts and the unnecessary incurring of debts which, in fact, is spending what one does not possess at the expense of another person who, moved by

often undeserved sympathy, voluntarily consents to paralyse a part of his/her wealth, either to redress a situation that need not have been or to finance irresponsible undertakings that so often end in disaster.

Even when a debt is contracted for a perfectly lawful purpose, to relieve actual poverty or for any other justifiable reason, Islamic Law takes a very serious view of the matter and requires of the debtor to discharge his/her debt at the first opportunity, i.e., as soon as his/her means allow without placing him/herself in an unduly difficult position.

Since the Qurân absolutely forbids the practice of usury in any shape or form, thereby depriving money-lending of the pecuniary attraction that attaches to it in usury-ridden societies, the Muslim creditor, in granting a loan, is motivated by sentiments of disinterested kindness and charity, and a genuine sense of social responsibility. Such altruistic motives call for a corresponding sense of social responsibility on the part of the debtor, evinced by his/her thorough appreciation of the creditor's position and due consideration and respect for the creditor's interests.

إنَّ اللهَ يَأمُرُكُمْ أنْ تُؤدُّوا الأمَانَاتِ الَى أهْلِهَا ... (٤ : ٥٨)

« Lo ! Allah commands you that you restore deposits to their owners . . . » (IV : 58).

يَا أيُّهَا الَّذِينَ آمَنُوا لاتَخُونُوا اللهَ وَالرَّسُولَ وتَخُونُوا أمَانَاتِكُمْ وأنْتُمْ تَعْلَمُونَ . (٨ : ٢٧)

« O you who believe ! Betray not Allah and His Messenger, nor knowingly betray your trusts.» (VIII : 27).

Thus, when circumstances permit, the early discharge of his/her obligation is incumbent *as a sacred moral duty* on the debtor, so as to ensure that the creditor will be deprived of the free use of his/her wealth for the shortest time possible.

VI — Freedom from Loan (and Rules Governing the Zakât of Wealth under Loan).

The Law of Zakât requires that taxable wealth be in its legitimate owner's full control at the time of its Zakât falling due.

When such is not the case, although basically the obligation of Zakât does not cease, it remains suspended until the wealth in question once more comes under the full control of its legitimate owner.

Thus, whenever taxable wealth is given on loan — and is therefore temporarily outside the full control of its legitimate owner, as it does not cease to be his/her rightful property, it takes on the character of *reserve wealth* and remains subject to Zakât on the following conditions :

1) When the loan consists of a taxable amount, i.e., an amount in quantity or value equal to or above the Nisâb established for its kind, and has been repaid within the period of the current year's term of possession relating to it, Zakât must be paid normally at the time of its falling due.

2) When the loan has stood for a full period of one year and has been repaid on the date corresponding to the end of the current year's term of possession relating to it (having been made at the beginning of that term), Zakât must be paid normally at the time of its falling due.

3) When the term of the loan is of more than one year, Zakât is to be paid retrospectively at the time of repayment (and not until then), for the full period that the loan has stood (1). If the amount repaid is less than the full loan, Zakât should be paid as laid down in Rule 9 (see below).

4) When the loan consists of wealth which, in quantity or value is less than the Nisâb established for its kind, and constitutes the only wealth of its kind belonging to the legitimate owner, the obligation of Zakât naturally does not arise. But, if at any time during the term of the loan, wealth of the same kind is acquired in sufficient quantity or value to constitute together with the loan a taxable amount (i.e., equal to or above the Nisâb), a computation

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(1) The Hanafite School of Law considers loaned wealth in the same light as wealth that has been lost and recovered (المال الضمار) , and hence does not subject such wealth to Zakât at the time of repayment, regardless of the period the loan has stood. Imâms Mâlik, Shâf'i and Zafar oppose this view and maintain that wealth under loan is not exempted from Zakât. Indeed, the comparison made by the Hanafites is inadmissible, since where loaned wealth is concerned the act is voluntary, whereas in the case of wealth that has been lost, the act is involuntary.

of a year's term of possession for the sum total of both amounts must begin as from the date on which the new wealth is acquired. Then if the newly acquired wealth is of a non-taxable amount, it will not be subject to Zakât until the amount of the loan is repaid to the legitimate owner. Whereupon Zakât dues will be paid retrospectively for the sum total of both amounts.

Since a computation of a year's term of possession would already have begun for the wealth in question, even though temporarily only a part thereof is in the legitimate owner's full control, any other taxable amount of wealth of the same kind acquired subsequently will begin a separate computation; and any non-taxable amount will await the completion of the said computation, whereupon it will be added to what remains of the wealth under taxation after payment of Zakât.

On the other hand, if the newly acquired wealth is in itself of a taxable amount, the Zakât thereof will be paid when it falls due; while the amount constituting the loan — which, although not in itself of a taxable amount, has acquired taxability by the fact of the additional wealth and thenceforward forms part of a taxable whole — will not be subject to taxation for Zakât until it is repaid to the legitimate owner. Then its Zakât will be paid retrospectively as from the date on which it attained taxability through the acquisition of the new wealth and according to the computation of the year's term of possession that it shares therewith. That is to say, if the loan is repaid during the course of a computation, Zakât will be paid retrospectively up to the date marking the end of the last computation prior to repayment. After the discharge of Zakât dues, what remains of the amount (of the repaid loan) will be added to the other wealth bearing the same computation and the Zakât of the sum total thereof will be paid when it normally falls due, at the completion of the current computation.

5) Whenever the taxability of wealth is suspended by the granting of a loan involving either a taxable or non-taxable amount, i.e., whenever the wealth remaining in the legitimate owner's full control is reduced by reason of a loan to less than the Nisâb established for its kind, it will not be subject to taxation for Zakât until the loan is repaid, whereupon Zakât will be paid retrospectively as explained above (Rule 4), in accordance with the original computation for the sum total of both amounts.

6) If the loan is of a taxable amount and is the only wealth of its kind belonging to the legitimate owner, and subsequently a non-taxable sum is acquired, the latter will be computed together with the amount under loan as from the end of its current computation. Upon repayment of the loan, Zakât will be paid retrospectively a) for the amount which was under loan : for the period up to the end of the computation current at the time of acquisition of the non-taxable sum and b) as from that date, for the two sums together (constituting henceforth a taxable whole), until the end of the computation, if any, prior to repayment. After the discharge of retrospective dues, the remaining amount will be subject to normal taxation at the completion of the then current computation.

7) Should the granting of a loan, whether of a taxable or non-taxable amount, not suspend the taxability of the wealth remaining in the legitimate owner's full control, the Zakât of the latter will continue to be paid normally when it falls due; the Zakât of the amount given on loan will be paid retrospectively, at the time of repayment, in accordance with the computation that it does not cease to share with the taxable wealth of which it is an integrant part and in consideration of the dates on which its Zakât would normally have fallen due.

Following repayment, whatever remains of the recovered wealth (whether of a taxable or non-taxable amount) after the discharge of retrospective Zakât dues, will once more be added to the wealth of which it is an integrant part and the sum thus reconstituted will be subject to normal taxation for Zakât on completion of the computation current at the time.

8) A loan granted from wealth of a kind acquired at different times and therefore involving separate computations — in accordance with Rule 3g of those governing plural computations — should be given, by order of dates, from the amounts for which a computation of a year's term of possession *has most recently begun,* this especially where cash money is concerned.

In this case, the loan in question will only affect that wealth with which it shares a computation. Should the amount constituting the loan be made up of wealth bearing separate computations, each portion thereof will be dealt with individually according to its own computation.

9) If the wealth constituting the loan is repaid to the legitimate owner by instalments, the retrospective payment of Zakât dues will be made as follows :

Firstly, the instalments, whether individually of taxable or non-taxable amounts, will be subject to retrospective taxation for Zakât immediately upon recovery, and the remainder thereof will at once be added to the wealth of which it forms an integrant part :

a) when the instalment is, in quantity or value, of an amount falling short of the Nisâb and the wealth of which it is an integrant part (i.e., the wealth that has remained in the legitimate owner's full control) is of an amount equal to or above the Nisâb;

b) when the instalment is of an amount that is equal to or above the Nisâb and the wealth of which it forms an integrant-part is of an amount falling short thereof;

c) when both the instalment and the wealth of which it forms an integrant part constitute individual amounts that are equal to or above the Nisâb;

d) when both the instalment and the wealth of which it forms an integrant part constitute individually amounts that fall short of the Nisâb, but together constitute an amount that is equal to or above the Nisâb.

The sum thus constituted will, thereafter, be subject to normal taxation for Zakât.

Secondly, should the instalment added to the wealth of its kind in the possession of the legitimate owner and bearing the same computation, constitute an amount that falls short of the Nisâb — although the sum total of the wealth involved (i.e., the amount loaned plus the balance remaining with the owner) be equal to or above the Nisâb, the wealth recovered through the payment of the instalment will not be subject to retrospective payment of Zakât immediately upon its recovery, but will await such further recovery of the loaned wealth as would bring the portion of the wealth in the legitimate owner's full control up-to a taxable amount. Once the taxability thereof is established, the Zakât due thereon will be paid retrospectively. And subsequent instalments will be dealt with, according to the circumstances, in conformity with Rules 9a or 9c explained above.

Likewise, when the loan constitutes the only wealth of its kind bearing a single computation of a year's term of possession, and the instalment paid back falls short of the Nisâb, it will not be subject to retrospective taxation for Zakât immediately upon its recovery, but will await such further recovery of the loaned wealth as would bring the portion of the wealth in the legitimate owner's full control up to a taxable amount and so warrant the payment of the Zakât due retrospectively on the part recovered from the amount loaned.

10) Should wealth recovered from a loan be disposed of before the Zakât retrospectively due has been paid, the wealth in question is not exempt from such retrospective taxation for Zakât, and the discharge of whatever amount is due remains the sole responsibility of the original legitimate owner and must, in all cases, be effectuated.

11) It must be borne in mind that although wealth given on loan is temporarily outside the legitimate owner's full control, his/her full right of ownership does not cease and, consequently, the granting of a loan in no way affects the computation of a year's term of possession relating to the wealth in question. Hence the rules governing plural computations must be applied whenever the circumstances they govern arise, regardless of whether or not part of the wealth is, at the time, under loan.

In no case can the payment of Zakât from loaned wealth be compelled before the return of such wealth to the legitimate owner. This rule is in accordance with the following Quranic Law :

وَانْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ الَى مَيْسَرَةٍ وأَنْ تَصَدَّقُوا خَيْرٌ لَكُمْ انْ كُنْتُمْ تَعْلَمُونَ ۝ (٢ : ٢٨٠)

« And if the debtor is in straitened circumstances, then (let there be) postponement to (the time of) ease; and that you remit the debt as alms-giving would be better for you, if you did but know.» (II : 280).

In the light of Quranic teaching, until the substance of a loan (or any part thereof) has actually been returned to its legitimate

owner, there always remains a possibility of its being forgiven as charity.

For this reason, only upon repayment does the loan really take on the character of « reserve wealth» in regard to the creditor and, thus, only then can the payment of Zakât be lawfully required.

In the opinion of Imâm Mâlik, whenever, for any reason foreseen by the Law (i.e., loan, theft, loss, or prolonged absence of the legitimate owner), Zakât dues have remained unpaid for a number of years, only the amount corresponding to the Zakât of one year should be levied on the wealth in question upon recovery. Strictly speaking, in the case of loan or of voluntary prolonged absence, such a rule does not satisfactorily fulfil the spirit and purpose of the Law of Zakât. In fact, the levying of only one year's Zakât in the case of recovered loans is unfair to the Zakât beneficiaries. This especially if the amount involved is of some importance. Taxable wealth which has been loaned voluntarily, takes on, upon repayment, the character of reserve wealth in respect of its legitimate owner (i.e., the Zakât-payer) whose actual ownership over it has never ceased. It would therefore seem more in keeping with the spirit of Islamic justice that the retrospective payment of Zakât dues be effectuated in the same way as would have been the case had the wealth in question remained uninterruptedly in the full control of its legitimate owner. The same holds true in the case of voluntary prolonged absence of the owner, when the wealth has not ceased to be in his control. Failure to arrange for the payment of his Zakât dues cannot exempt him therefrom.

Payment of Zakât arrears in the above-mentioned cases should be as follows :

a) Should wealth in quantity or value equal to the Nisâb for its kind remain out of its legitimate owner's full control for a period involving one or more yearly payments, upon recovery Zakât is to be paid for the first year only, as the payment thereof will reduce the amount or value of the wealth in question to below the Nisâb, thus dissolving its taxability.

b) Should the amount or value of the wealth in question be above the Nisâb for its kind, Zakât is to be paid for the first year on the taxable part of the whole (i.e., excluding the Zakât-free interval, if any). This first retrospective payment of Zakât must be

counted as corresponding to the date on which it would have normally fallen due had the wealth in question remained in its legitimate owner's full control. The second payment of Zakât is to be made according to what would have fallen due one year after the first payment, on the *sum total* of the remaining wealth less whatever portion thereof may in its turn come within the Zakât-free interval. This same operation is to be repeated for each subsequent year in order to determine the exact amount of Zakât due.

Should the wealth in question be reduced to below the Nisâb by the successive deductions of dues, taxability for Zakât will lapse as from then.

Although this method naturally implies that the Zakât might have to be paid a number of times on a same definite rate (as normally happens even if the payments are not retrospective), when an important sum or a very long period is involved, the Zakât-payer will clearly benefit by the gradual lightening of his/her obligation, as will the beneficiaries of Zakât by the fact that the normal amount of Zakât due is levied.

If we take for example the original Nisâb for gold (the Nisâb being 20 mithqâls and the taxable increase every 4 mithqâls), the retrospective payment of Zakât on 25 mithqâls for, let us say, a twelve year period of non-payment would be as follows :

Term	Amount to be taxed	Zakât-free interval	Taxable part of wealth	Zakât	Remaining wealth
End of	Mithqâls of Gold	Mithqâls of Gold	Mithqâls of Gold	Mithqâls of Gold	Mithqâls of Gold
1st year :	25	- 1	= 24	- 6/10	= 23 4/10+1 =24 4/10
2nd « :	24 4/10	- 4/10	= 24	- 6/10	= 23 4/10+ 4/10=23 8/10
3th « :	23 8/10	- 3 8/10	= 20	- 1/2	= 19 1/2 +3 8/10=23 3/10
4th « :	23 3/10	- 3 3/10	= 20	- 1/2	= 19 1/2 +3 3/10=22 8/10
5th « :	22 8/10	- 2 8/10	= 20	- 1/2	= 19 1/2 +2 8/10=22 3/10
6th « :	22 3/10	- 2 3/10	= 20	- 1/2	= 19 1/2 +2 3/10=21 8/10
7th « :	21 8/10	- 1 8/10	= 20	- 1/2	= 19 1/2 +1 8/10=21 3/10
8th « :	21 3/10	- 1 3/10	= 20	- 1/2	= 19 1/2 +1 3/10=20 8/10
9th « :	20 8/10	- 8/10	= 20	- 1/2	= 19 1/2 + 8/10=20 3/10
10th « :	20 3/10	- 3/10	= 20	- 1/2	= 19 1/2 + 3/10=19 8/10
11th « :	19 8/10	= No Zakât to be paid for the eleventh and subsequent years.			

According to the above example, the Zakât due on 25 mithqâls of gold for a period of twelve years would be 5 1/5 mithqâls, as compared to 5/8 mithqâl according to Imâm Mâlik, who would have levied only one year's Zakât on the full amount of 25 mithqâls without recognizing the Zakât-free interval for gold. Had the Zakât been calculated on 25 mithqâls for the twelve year period without taking into account the Zakât-free intervals, the Zakât would have amounted to 7 1/5 mithqâls.

To give another example, the retrospective payment of Zakât on, for instance, 4000 mithqâls of gold for a period of, let us say, seven years, would be :

Term End of	Amount to be taxed	Zakât-free interval	Taxable part of wealth	Zakât	Remaining wealth
	Mithqâls of Gold	Mithqâls of Gold	Mithqâls of Gold	Mithqâls of Gold	Mithqâls of Gold
1st year :	4000	—	4000	- 100 =	3900
2nd « :	3900	—	3900	- 97 1/2 =	3802 1/2
3rd « :	3802 1/2	- 2 1/2 =	3800	- 95	=3705+2 1/2 =3707 1/2
4th « :	3707 1/2	- 3 1/2 =	3704	- 92 6/10	=3611 4/10+3 1/2 =3614 9/10
5th « :	3614 9/10	- 2 9/10 =	3612	- 90 3/10	=3521 7/10+2 9/10=3524 6/10
6th « :	3524 6/10	- 6/10 =	3524	- 88 1/10	=3435 9/10+6/10 =3436 5/10
7th « :	3436 5/10	- 5/10 =	3436	- 85 9/10	=3350 1/10+5/10 =3350 6/10

3350 6/10 = Remaining wealth after deducting the Zakât due for the seven year period of non-payment.

According to this example, the Zakât due on 4000 mithqâls of gold for a period of seven years would be 649 2/5 mithqâls, as compared to 100 mithqâls, as Imâm Mâlik would have it. Had the Zakât been calculated without taking into account the Zakât-free intervals, it would have amounted to 700 mithqâls.

If the wealth in question consists of domestic animals, in calculating the Zakât due after a long period of non-payment, consideration should be given to the natural incidences of breeding and death which, incidence for incidence and barring exceptional events such as disease or other accidental causes that might result in the decimation of the herd or flock, usually imply a yearly increase in the herd or flock. It need hardly be said that should the herd or flock be reduced to below the Nisâb, or even be totally destroyed, during the period of non-payment, the obligation of Zakât would

cease as from the time the taxability of the herd or flock is effectively dissolved. Otherwise, under normal circumstances, the number and/or age of the animals to be given in payment of Zakât will or will not vary according to how the yearly increase (i.e., those animals that by the end of the year's term have themselves reached the age of one year) affects the size of the herd or flock. For this reason, if the Zakât dues on a herd or flock of domestic animals remain unpaid for a period of one or more years (which only the prolonged absence of the legitimate owner would justify, it being hardly logical or likely that a whole herd or flock would be given on loan), it is the duty of both the authorities responsible for the collection and administration of Zakât funds and of the caretaker, on behalf of the legitimate owner, to ascertain at the completion of each year's term the existing number of taxable animals in the herd or flock in question. The account thus kept will establish definitely the number and/or age of the animals to be given as Zakât on the return of the legitimate owner.

If, in order to demonstrate the method of increase, we take as an example a flock of originally 204 sheep, and purely hypothetical figures for the overall incidence of increase, the retrospective payment of Zakât dues for a 4 year period would be effectuated thus:

Original animal wealth		Yearly increase		Total		Zakât-free interval		Taxable part of wealth		Zakât		Remaining wealth
204	+	48	=	252	-	52	=	200	-	3	=	197+52=249
249	+	60	=	309	-	9	≒	300	-	4	=	296+ 9=305
305	+	78	=	383	-	83	=	300	-	4	=	296+83=379
379	+	93	=	472	-	72	=	400	-	5	=	395+72=467
										16		

467 sheep = Remaining wealth after the fourth yearly payment of Zakât.

According to the above example, in this particular case the Zakât due for the four year period of non-payment would be 16 sheep.

It is interesting to note the anomaly that arises if the wealth under retrospective taxation consists of a herd of camels. The fact that the Zakât for the first twenty camels is one *sheep* for every five camels makes that whenever the herd consists of less than

twenty five head, the number of camels present when the Zakât falls due is the same as after the payment thereof.

Lastly, should the wealth under retrospective taxation consist of agricultural produce, as neither the computation of a year's term of possession nor a scale of taxable limits would have to be taken into consideration, there would be no difficulty in determining the amount due as Zakât. The quantity of taxable produce of each past crop of a kind being known, the corresponding Zakât would be paid on the sum total thereof.

VII — Freedom from Larceny or from Accidental Loss.

Whenever taxable wealth has been stolen or accidentally lost before the completion of one full year, or at the end of the period, when the payment of Zakât falls due, the legitimate owner is exempt from the obligation of paying Zakât on such wealth, as the fact of larceny or loss represents for him/her a total dispossession. But if the stolen or lost wealth has been recovered partially or totally within a very short period of the event of larceny or loss, and remains safe thereafter in the possession of the legitimate owner, Zakât should be paid normally, at the time of its falling due, on whatever has been recovered, on condition that the value be still taxable.

On the other hand, if the stolen or lost wealth has been partially or totally recovered a long time after the event of larceny or loss and is taxable, a new computation should be started as from the time of recovery, since the wealth in this case should be treated as newly acquired. And if the said wealth remains safe in the possession of the legitimate owner, Zakât must be paid one full year after the event of recovery.

As both larceny and accidental loss of wealth imply that abstraction from the full control of the legitimate owner has not been voluntary as in the case of loans, upon recovery the wealth in question is not subject to retrospective payment of Zakât. Imâm Mâlik opines that only one year's Zakât should be paid on such wealth irrespective of the period it has been totally outside the legitimate owner's control. This view, as stated above, is open to question, as both larceny and loss imply a very real break in the year's term of possession and hence, if recovery is delayed beyond the

period of the Zakât's falling due, the payment of Zakât cannot be lawfully compelled, but remains purely optional.

But if the legitimate owner of taxable wealth has failed to pay the Zakât at the time of its falling due, and the wealth in question has been stolen or lost sometime *after* completion of the period of one full year, the fact of the total dispossession of his/her wealth does not exempt him/her from the obligation of paying whatever was due as Zakât therefrom. In this case the person involved is considered sinful and must bear the penalty of his/her non-fulfilment of an essential duty.

VIII — Free Accessibility to & Free Disposability of Taxable Wealth.

The perfect functioning of the Islamic Institution of Zakât depends on the existence of taxable wealth within the boundaries of Muslim territory, as only then can free accessibility to the wealth in question and free disposability thereof be at all times guaranteed.

However, the constant spread of Islam has given rise in the past, and is bound to give rise in the future, to Muslim communities within the boundaries of non-Muslim countries. By the fact of their Islam, these Muslim communities become automatically part and parcel of the Muslim Nation, and strict observance of the Quranic Precepts and fulfilment of the duties that they impose are no less incumbent on them as on other Muslim peoples. For this reason, taxable wealth belonging to Muslims in a non-Muslim country where there exists a Muslim community, is subject to the payment of Zakât in conformity with the Law, whether the legitimate owner of such wealth be a local resident or not. Zakât funds thus constituted must be dedicated to the welfare of the same community from which they derive. This same rule holds good for those Muslim peoples who, having fallen under the domination of non-Muslim rulers, have not yet regained their independence.

On the other hand, should a Muslim possess wealth in a non-Muslim country where there exists no Muslim community and the laws of which do not allow the transfer of the wealth in question to a Muslim country, there can be no compulsion on the legitimate owner to pay Zakât from such wealth, even if it be taxable under the Law of Zakât by its nature and value, as the conditions of free

accessibility and free disposability are not fulfilled and the non-existence of a Muslim community precludes the local use of Zakât funds. Under the circumstances, the payment of Zakât would have to be made out of wealth existing within the boundaries of Muslim territory (which, if taxable, is already subject to Zakât) and therefore, in all justice, the decision for payment or non-payment of Zakât on wealth owned in non-Muslim territory where there exists no Muslim community, out of wealth owned in Muslim territory, must remain purely optional and entirely at the discretion of the person involved.

Punctuality in the Payment of Dues and the Posthumous Discharge of Dues.

One all-important rule, on which depends the smooth administration and, consequently, the full realization of the aim of the Institution of Zakât, is *punctuality* in effectuating the payment of dues. Unwarranted and purposeful postponement of the payment of Zakât dues falls under the same category of censurable behaviour as unlawful postponement of the sacred months :

اِنَّمَا النَّسِيْءُ زِيَادَةٌ فِي الْكُفْرِ يُضَلُّ بِهِ الَّذِيْنَ كَفَرُوْا ..
(٩ : ٣٧)

« Postponement is only an excess of disbelief whereby those who disbelieve are misled . . . » (IX : 37).

Once the payment of Zakât is due, it constitutes, in fact, a sacred debt of the individual to the Muslim Nation, a debt that must be paid. So much so that if at the time of death any Zakât dues remain unpaid, they must, in accordance with Islamic Law, be paid out of the wealth of the deceased Muslim, man or woman, along with any other debts, *before* the sharing of the inheritance.

In this regard, the Shâfiite School of Law maintains that unpaid Zakât dues may be posthumously collected in full and from the entire wealth constituting the inheritance. Whereas Imâm Mâlik is of the opinion that not more than one third of the inheritance should be held amenable for the unpaid Zakât dues, and this only in case the deceased has so directed in his/her will. In the absence

of a will, Imâm Mâlik opines that the discharge of the unpaid Zakât dues may not be compelled, but should depend entirely on the free will of the heirs.

It is more than probable that Imâm Mâlik's opinion is based on the Quranic Injunction which requires that the bequeathing of legacies and the paying of debts contracted by the deceased be satisfied in such a way as not to deprive the lawful heirs of their rightful share of the inheritance, i.e., غَيْرَ مُضَارٍّ («without injuring (the heirs) »). In conformity with this Injunction (Qurân : IV, 12), Islamic Law provides that not more than one third of the inheritance may be bequeathed to persons not ranking as lawful heirs.

Islamic Law stipulates that posthumous debts must be paid; but where important sums or difficult circumstances are involved, it allows that the method and time of payment be a matter of compromise between the creditors and the lawful heirs.

But, as regards the posthumous discharge of unpaid Zakât dues, the necessity for compromise need rarely, if ever, arise. For it is hardly likely that the discharge of unpaid dues would, to any great extent, cause embarrassment to the heirs, as the Zakât on ordinary taxable wealth ranges, according to its category, from only one per cent to not more than ten per cent. Only if the deceased has failed to pay his/her Zakât for a number of years prior to his/her death, would the posthumous discharge thereof have any serious effect on the taxable part of the wealth constituting the inheritance. In a well-organized Muslim State, such an event would only be possible in the case of a prolonged involuntary absence of the legitimate owner prior to his/her death, or in the case of long-standing loans granted by the deceased and not recovered till after his/her death.

Loans recovered *after* the legitimate owner's death are not retrospectively taxable for Zakât because the effective ownership of the lender, and hence his/her responsibility, has ceased with the fact of his/her death. As part of the deceased's estate, such loans take on the character of newly acquired wealth in respect of the heirs.

On the other hand, if the loan (or a taxable part thereof) is recovered before the death of the legitimate owner and in his/her

knowledge or the knowledge of his/her responsible representative, retrospective Zakât dues must be paid. However, if the said loan (or a taxable part thereof) is paid back just before the death of the legitimate owner but without his/her knowledge or that of his/her responsible representative, the responsibility of the legitimate owner in regard to retrospective Zakât dues on that sum should be considered as having lapsed with his/her death.

Thus, barring very exceptional cases, unlikely to arise under normal circumstances, the point afforded by the Quranic Injunction of غَيْرَ مُضَارٍّ , i.e., « without injuring (the heirs) », does not, as we have shown, directly concern the obligation of Zakât. It refers rather to legacies and other types of debts, the posthumous discharge of which may need be a matter of compromise between the heirs and the creditors, especially should the debt or debts be of such importance as to involve all or a large portion of the inheritance.

From the purely legal point of view, wealth of any kind lawfully bequeathed to others than the natural heirs (such bequests can never exceed one third of the entire inheritable wealth), or amenable for debts contracted by the deceased during his/her lifetime, does not form part of the inheritance but indisputably becomes the lawful property of the beneficiaries of the legacy, or of the creditors of the deceased, and in consequence the lawful heirs can have no claim thereto. The specification contained in the Qurân, Surah IV, verses 11 and 12, definitely clears this point, stating that the inheritance is to be shared between the lawful heirs « *after* any legacy that he/she (the deceased) may have bequeathed or debt (that he/she may have contracted has been paid) » :

مِن بَعْدِ وَصِيَّةٍ يُوصِي (يُوصِينَ) بِهَا أَوْ دَيْنٍ •••

The payment of Zakât being a sacred duty enjoined upon the Muslim, an Article of Faith, the moment Zakât falls due the wealth that it represents becomes a debt on the Zakât-payer and the rightful property of all needy Muslims. This implies that simultaneously the legal right of ownership of the Zakât-payer ceases over the wealth due as Zakât; consequently neither the Zakât-payer nor his/her heirs, in the event of death, can have any option whatsoever in the matter of discharging unpaid dues.

There can therefore be no question of subjecting the posthumous discharge of unpaid Zakât dues to the option of the deceased, whose responsibility it was to effectuate the payment thereof accurately and punctually. To consider the posthumous discharge of unpaid Zakât dues as optional is to belie the sacred character of the act of Zakât as an obligation to God and the Nation. It furthermore constitutes a transgression on the rights of the needy Muslims. Such unfair leniency is inconsistent with the very nature and significance of Zakât.

In view of the afore-going observations, the posthumous discharge of unpaid Zakât dues should be effectuated according to the following rules :

1) Should the death of the legitimate owner of taxable wealth occur after the payment of Zakât dues or before the completion of the computation of the year's term of possession, the taxability of the said wealth ceases in respect of the deceased and consequently the question of Zakât does not arise.

As the inheritance, as such, is not taxable for Zakât, the lawful heirs will only pay Zakât on whatever taxable wealth they inherit, when it falls due in respect of them as legitimate owners thereof. That is to say, if the taxable wealth inherited is by its nature subject to the rule requiring the possession thereof for a period of one full year as a condition warranting the imposition of Zakât, the computation of a year's term will begin individually as from the time that each heir enters into full possession and control of his/her respective share of the inheritance (i.e., not necessarily from the actual date of the original owner's death) and Zakât will be paid normally when it falls due at the completion of the year's term. On the other hand, if the taxable wealth inherited consists of standing crops, which by their nature are not subject to the rule requiring a year's term of possession, Zakât is to be paid normally by the respective new legitimate owners, i.e., the heirs, at the completion of the harvest.

2) Should the legitimate owner's death occur at the time when the Zakât falls due or thereafter, but before the payment of dues has been made, the discharge thereof, in full, is incumbent on the lawful heirs before the sharing of the inheritance takes place.

3) In a Muslim State in which the Institution of Zakât is well organized and functioning properly, the dates marking the beginning and end of the computation of the year's term of possession will in each case be officially known. But in countries where the Institution of Zakât is not functioning in an organized manner, it may happen that the dates in question be unknown as well to the lawful heirs of the deceased as to the local authorities. In such circumstances, unless it were possible to ascertain the date on which the last payment of Zakât was effectuated by the deceased — which date, if known, would normally mark the beginning of a new computation — it would be unjust to compel the posthumous payment of Zakât as such action would, in the absence of concrete evidence, have to be based on mere conjecture; and conjecture as a basis for justice is, in itself, inconsistent with the spirit and Law of Islam.

As regards agricultural produce and the produce of silver and gold mines, which are not subject to the rule requiring the computation of a year's term of possession, it should be comparatively easy to ascertain whether or not the Zakât was paid at the completion of the harvest or at the time of extraction from the mine.

An adult Muslim of sound mind, man or woman, who is the legitimate owner of taxable wealth and who enjoys full freedom of action and full freedom of access to his/her wealth, can offer no valid excuse to justify any appreciable delay in effectuating the payment of his/her dues. Whenever a Muslim, who is the legitimate owner of taxable wealth, intends for any reason to undertake a journey implying an absence beyond the term when the payment of his/her Zakât falls due, it is his/her bounden duty to make whatever arrangements possible to avoid any delay in the fulfilment of his/her obligation. This especially when the intended absence is likely to last for one or more years and/or the amount involved is important.

Advance Payment of Zakât dues.

With the exception of agricultural produce, honey, raw silk, and the produce of silver and gold mines, the Law of Zakât, as expounded by the jurists of old, allows the payment of dues ahead of time (1).

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(1) The Zakât of agricultural produce normally falls due once the harvest

This ruling is substantiated by the following *H*adîth reported by Imâms Abû Dâûd and At-Tirmadhî and related on the authority of 'Alî (رض) ben Abî *T*âlib :

عن عليٍّ انَّ العبَّاس سأل رسول اللهِ (ص) في تعجيل صدقته قبل أن تحلَّ فرخص له في ذلك • (رواه أبو داود والترمذي)

« (It is related) on the authority of 'Alî that Al-'Abbâs asked the Messenger of Allah (ص) for the permission to effectuate the payment of his Zakât dues before the completion of the year's term of possession (of his taxable wealth). So he (i.e., the Prophet) allowed him to do so. » (Imâms Abû Dâûd and At-Tirmadhî).

Accordingly, in the case of an intended prolonged absence, the person involved may, if he/she so desire, pay prospective dues before his/her departure on such wealth as pasturing domestic animals, silver, gold, articles of trade, etc., for which a computation of a year's term of possession has already begun. Or better still, a responsible person may be appointed and legally authorized to effectuate the payment on behalf of the legitimate owner at the time of its falling due. But if no such arrangement has been or can be made, the person involved must be prepared to effectuate the payment of his/her dues retrospectively for the full period of non-payment.

As laid down by the Shâfiite School of Law, the extreme limit for the advance payment of dues is one year. The Mâlikite School, however, restricts the period of anticipation to not more than one month before Zakât normally falls due. To our mind, the

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is completed and the total amount of each kind of produce is known. To allow the payment thereof before cultivation takes place, or even before the harvest, would be tantamount to a conjectural reckoning of the Zakât of, as yet, non-existing wealth or, in any case, of an unknown quantity thereof and, hence, the payment in question would be invalid. This same principle applies to the produce of silver and gold mines, the initial Zakât of which normally falls due upon extraction from the mine. Where such wealth is concerned, the advance payment of dues would likewise represent the Zakât of an, as yet, unknown quantity and would therefore be invalid. For this reason, the Law of Zakât only allows the advance payment of dues on wealth **in actual existence and in the possession of the Zakât-payer at the time** and for which a computation of a year's term of possession has already begun.

Shâfiite view in this matter is perfectly sound, for to allow a period of anticipation exceeding one year would undoubtedly contravene the most fundamental principles of the Law. On the other hand, the Mâlikite ruling that Zakât dues may not be discharged more than one month ahead of time, tends to defeat the very purpose of the allowance. Indeed, considering that the satisfying of Zakât dues ahead of time is allowed only under special circumstances for the convenience of the Zakât-payer, and is not meant to be a general or regular practice, let alone an obligation, it appears that no fixed limit of less than one year should be imposed.

Individual Responsibility and Shared Responsibility.

Every Muslim, man or woman, is individually responsible to God for the fulfilment of his/her Islamic duties. « . . . no burdened soul can bear another's load . . . » . (Qurân : XXXV, 18).

The Qurân clearly warns the human being :

وَاتَّقُوا يَوْماً لَا تَجْزِى نَفْسٌ عَنْ نَفْسٍ شَيْئاً وَلَا يُقْبَلُ مِنْهَا شَفَاعَةٌ وَلَا يُؤْخَذُ مِنْهَا عَدْلٌ وَلَا هُمْ يُنْصَرُونَ •
(٢ : ٤٨)

« And guard yourselves against a day when no soul will in aught avail another, nor will intercession be accepted from it, nor will compensation be received from it, nor will they be helped.» (II : 48).

Thus, each legitimate owner of taxable wealth personally bears the responsibility of discharging his/her sacred debt to the Muslim Nation. Men and women are individually responsible to God and the Muslim Nation for what they possess in their own right.

Shared responsibility born of partnership does not imply exemption from individual responsibility. Rather it implies double responsibility, for it is the duty of each partner to audit the other and to compel, if necessary, the fulfilment of all those duties that Quranic Law imposes on the Muslim. The most perfect instance of partnership and shared responsibility is afforded by the Islamic Institution of Marriage.

It is not our purpose to expound here in detail the Islamic

Law of Marriage. But it is necessary to say something of the economic aspect of marriage in Islam and its bearing on the Law of Zakât.

As we have said before, marriage in Islam is a perfect example of active partnership and shared responsibility. Partnership and shared responsibility naturally call for consultation between the partners who, in the case of marriage, are the husband and the wife. The need for consultation among Muslims in matters of common interest is a Quranic Precept, a duty enjoined by the Qurân as an unfailing means to human success.

وَمَا عِنْدَ اللهِ خَيْرٌ وَأَبْقَى لِلَّذِينَ آمَنُوا وَعَلَى رَبِّهِمْ يَتَوَكَّلُونَ ... وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ ۔
(٤٢ : ٣٦ ــ ٣٨)

« . . . and that which Allah hath is better and more lasting for those who believe and put their trust in their Lord . . . And those who answer the call of their Lord and establish prayer, *and whose affairs are a matter of counsel,* and who spend of what We have bestowed on them. » (XLII : 36 - 38).

Also in the following Quranic verse, the need for consultation between husband and wife is emphasized :

فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ... (٢ : ٢٣٣)

« . . . if they (the husband and wife) desire to wean the child *by mutual consent and (after mutual) consultation,* it is no sin for them . . . (II : 233).

In so far as the purely economic aspect of marriage is concerned Islam imposes on the husband the duty of providing all the

material necessities of life for himself, his wife and their children.

... وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيماً حَكِيماً ۰ (٤ : ٢٤)

« . . . Lawful unto you (men) are all beyond those (women) mentioned (as forbidden unto you), *that you seek them with your wealth in honest wedlock*, not debauchery. And those of whom you seek content (through marriage), give unto them their portions as a duty, and there is no sin for you in what you do by *mutual agreement* after the duty (has been done). Allah is Knower, Wise. » (IV : 24).

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ... (٤ : ٣٤)

not rulers

« Men are the supporters of women in that Allah hath favoured the one more than the other (in the matter of physical health), and in that they spend of their wealth (for the sustenance of their families) . . .» (IV : 34).

The Quranic verses quoted above establish the fact that after marriage both the husband's existing wealth and his subsequent earnings become the *shared or common property* of the two spouses and, thus, the *shared responsibility* of them both. The economic partnership thus set up is absolute and stands so long as the marriage bond subsists, i.e., so long as it has not been broken by divorce or ceased to exist actively by the event of death.

The wife's position of active partner and shareholder in the life, wealth and responsibilities of her husband, coupled with the Quranic Precept of mutual consent and consultation, not only entitle her but in fact compel her to take an active interest in the management of their affairs, all of which have become of mutual concern by the fact of their marriage. It is her duty to be vigilant as to the

lawfulness of the means by which their wealth is acquired and as to the lawfulness of the purpose for which it is used. Should she herself indulge in any sort of dishonesty, hoarding or squandering, or encourage or connive at such indulgence on the part of her husband, she and her husband would be equally guilty and bear the same responsibility for their transgression.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلَا تَعَاوَنُوا عَلَى الْاِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللهَ اِنَّ اللهَ شَدِيدُ الْعِقَابِ • (٥ : ٢)

« . . . help one another unto righteousness and pious duty. Help not one another unto sin and transgression. And keep your duty to Allah. Allah is Severe in punishment. » (V : 2).

In the light of the above-quoted Precepts, the wealth contributed by the husband, and which by virtue of the marriage bond becomes the shared property of both spouses as long as the marriage endures, is classified under the heading of Undivided or Absolute Partnership (1). Hence the payment of Zakât dues may be legally effectuated on behalf of both partners, either by the husband or, should he be absent or guilty of default, by the wife, out of the common wealth.

The following tradition of the Prophet (ص) significantly stresses the partnership which the marriage bond establishes between husband and wife :

حدّثنا يحيى بن يحيى وزهير بن حرب واسحاق بن ابراهيم جميعاً عن جرير ، قال يحيى : أخبرنا جرير عن منصور عن شقيق عن مسروق عن عائشة قالت : قال رسول الله صلى الله عليه وسلّم : اذا أنفقتْ المرأة من طعام بيتها غير مفسدة ، كان لها أجرها بما أنفقتْ ولزوجها أجره بما كسب ••• لا ينقص بعضهم أجر بعض شيئاً • (مسلم وبخاري)

« Ya*h*yâ ben Ya*h*yâ, Zuhair ben *H*arb and Is*h*âq ben Ibrâhîm have related (this *H*adîth) on the authority of Jarîr. Ya*h*yâ said : Jarîr

(1) See Part II, Rule 4 of the Rules governing the Zakât of collectively owned wealth.

informed us, on the authority of Mansûr, who said on the authority of Shaqîq, who said on the authority of Masrûq, who said on the authority of 'Ayesha, who said : The Messenger of Allah (may Allah bless and preserve him) said : ' If a woman spend of the food of her house without malice, she will have her reward for what she has spent and her husband will have his reward for what he has earned . . . Neither diminishes the reward of the other '. » (Imâm Bukhârî and Imâm Muslim).

Thus the wife may give in charity from the wealth she shares with her husband. The discharge of Zakât dues being the obligatory aspect of charity and an essential duty for her as well as for her husband, a duty for which they both are equally responsible, she is all the more legally bound to effectuate the payment thereof, should her husband be absent or guilty of default.

Islamic marriage, that perfect example of cooperation and shared responsibility, requires that while the husband attends to earning the livelihood of his family, the wife be the active and responsible administrator of the household, thus being in fact the partner responsible for the proper administration of the common wealth. And this function of responsible administrator actually invests her with the prime responsibility for the punctual and accurate discharge of Zakât dues from that wealth.

وَرَحْمَتِي وَسِعَتْ كُلَّ شَيْءٍ فَسَأَكْتُبُهَا لِلَّذِينَ يَتَّقُونَ وَيُؤْتُونَ الزَّكَاةَ وَالَّذِينَ هُمْ بِآيَاتِنَا يُؤْمِنُونَ • (٧ : ١٥٦)

« . . . and My Mercy embraceth all things, therefore I shall ordain it for those who keep their duty and pay the Zakât, and those who believe in Our Revelations. » (VII : 156).

PART II

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَعْلُومٌ لِلسَّائِلِ وَالْمَحْرُومِ
(٧٠، ٢٤-٢٥)

RATES OF PAYMENT AND LIMITS OF TAXABILITY

The establishment of fixed rates of payment for Zakât is a Quranic Precept, as evidenced by verses 24 and 25 of Surah LXX :

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَعْلُومٌ لِلسَّائِلِ وَالْمَحْرُومِ .
(٧٠ : ٢٤ — ٢٥)

« And in whose wealth there is a right acknowledged for those who beseech (for aid) and for the destitute.» (LXX : 24 - 25).

But, except for the single instance of the specified rate of one fifth (20%) to be given from the spoils of war, nowhere in the Quranic text are the rates governing the payment of the regular Zakât made known. We must, therefore, turn to a recognized source of Islamic historical data, namely the reliable « A*h*adîth » (1), in order to discover the original rates and limits of taxability established and enforced by the Prophet (ص) and to understand the reasons therefor.

The great Schools (2) of Islamic Law have, for the most part, evolved the Law of Zakât from the historical data contained in the « A*h*adîth ». Even the few differences of opinion that exist between the leading Muslim jurists regarding the method of payment are, in reality, no more than varied interpretations of the formulae set forth therein, and center mainly on the method of establishing the scale of taxable limits. Of these differences of opinion, two are fundamentally important and relate to the following points :

1 — Whereas the *H*anafite School of Law favours the view

(1) Traditions of the Prophet (ص) .
(2) i.e., the Hanafite, Shâfiite, Mâlikite, and Hanbalite Schools.

that, in the case of agricultural produce, the existing amount should be subject to the payment of Zakât regardless of a minimum taxable limit (i.e., of a Nisâb), the Shâfiite and Mâlikite Schools of Law, and Imâms Abû Yûsuf, Mu*h*ammad, Ghazzâlî and others, admit the Nisâb as mentioned in the « A*h*adîth ». On the other hand, all the leading jurists admit the Nisâb established for cash value, but some of them, among whom Imâms Shâf'î, Mâlik, Thaurî, Abû Yûsuf, Mu*h*ammad and others, advocate the imposition of Zakât on whatever amount is in excess thereof. Others agree with Imâm Abû *H*anîfa in establishing a scale of taxable limits for cash value as is the case for domestic animals.

2 — Those of the prominent jurists who adhere to the scale of taxable limits set forth in the «A*h*adîth», are not always agreed as to whether the intervals between the limits indicated should or should not remain absolutely free from taxation.

To satisfactorily decide these two important points in a true spirit of Islamic Justice, we must seek to detect from the body of the « A*h*adîth » itself the spirit in which the Law of Zakât was put into practice in the Prophet's lifetime, and the purpose it was meant to serve.

As stated above, the Qurân specifies that the portion reserved for the needy, i.e., the Zakât, must be acknowledged, i.e., clearly known, or legally specified (حق معلوم) . This specification clearly indicates the necessity of establishing fixed rates of taxability for the payment of Zakât. It also shows that the actual rates of taxability were to be laid down and taught to his followers by the Prophet (ص) himself. The instance of the Zakât is, in fact, analogous to that of the ritual prayer, the details of which are not expounded in the Quranic text, but were, in like manner, taught to the Muslims by the Prophet (ص) .

When considering whether or not to establish a minimum taxable limit warranting the payment of Zakât, below which any existing amount or value remains Zakât-free, we must bear in mind that the purpose of Zakât is *to protect the needy* : in the words of the Qurân, Zakât is « the acknowledged right of those who beseech (for aid) and of the destitute ». The following « *H*adîth » fully reflects the spirit of this Quranic Precept :

حدّثنا أبو عاصمٍ الضحّاك بن مخلدٍ عن زكريّا بن اسحاق عن يحي بن عبد الله ابن صيفيٍّ عن أبي معبدٍ عن ابن عبّاس رضي الله عنهما أنّ النبيّ صلّى الله عليه وسلّم بعث معاذاً رضي الله عنه الى اليمن فقال : ادعهم الى شهادة أن لا اله الاّ الله وأني رسول الله ، فان هم أطاعوا لذلك فاعلمهم أنّ الله قد افترض عليهم خمس صلواتٍ في كلّ يومٍ وليلةٍ ، فان هم أطاعوا لذلك فأعلمهم أنّ الله افترض عليهم صدقةً في اموالهم تؤخذ من أغنيائهم وتردّ على فقرائهم • (بخاري)

« Abû 'Asim ad-*Dahh*âk ben Makhlad has related unto us, on the the authority of Zakarîyâ ben Is*h*âq who said on the authority of Ya*h*yâ ben 'Abd Allah ibn Saîfî (who said) on the authority of Abî Ma'abad, (who said) on the authority of Ibn 'Abbâs (may Allah be pleased with both of them), that when the Prophet, (ص) sent Mu'âdh (may Allah be pleased with him) to Yemen, he instructed him as follows : ' Call upon them (the people of Yemen) to bear witness that there is no God save Allah and that I am the Messenger of Allah. And if they obey, then inform them that Allah has imposed upon them the duty of saying prayers five times a day. And if they obey, then inform them that Allah has imposed upon them the duty of giving alms from their wealth, which will be taken *from the rich among them* and dedicated *to the poor among them* '.» (Bukhârî).

The argument of the *H*anafite School favouring the exclusion of a Nisâb for agricultural produce, is based on the following two Quranic verses :

يَا أيُّهَا الَّذِينَ آمَنُوا أنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أخْرَجْنَا لَكُمْ مِنَ الأرْضِ وَلاَ تَيَمَّمُوا الخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ الاّ أنْ تُغْمِضُوا فِيهِ وَاعْلَمُوا أنّ اللهَ غَنِيٌّ حَمِيدٌ" • (٢ : ٢٦٧)

« O you who believe ! Spend of the good things which you have

earned, and of that which We bring forth from the earth for you, and seek not the bad (with intent) to spend thereof (in charity) when you would not take it for yourselves save with disdain; and know that Allah is Absolute, Owner of Praise. » (II : 267).

وَهُوَ الَّذِي أَنْشَأَ جَنَّاتٍ مَعْرُوشَاتٍ وَغَيْرَ مَعْرُوشَاتٍ وَالنَّخْلَ وَالزَّرْعَ مُخْتَلِفاً أُكُلُهُ وَالزَّيْتُونَ وَالرُّمَّانَ مُتَشَابِهاً وَغَيْرَ مُتَشَابِهٍ ، كُلُوا مِنْ ثَمَرِهِ اذَا أَثْمَرَ وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ وَلاَ تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ • (٦ : ١٤١)

« He it is Who produceth gardens trellised and untrellised, and the date palm, and crops of different kinds of foods, and the olive and the pomegranate, like and unlike. Eat of the fruit thereof when it fruiteth, and pay the due thereof upon the harvest day, and be not prodigal. Allah loveth not the prodigals. » (VI : 141).

Yet the first of these two verses clearly does not relate exclusively to the payment of Zakât, but rather to charity in a general sense. Nor does verse 141 of Surah VI definitely state that the payment of Zakât is obligatory regardless of the amount harvested. The command to the Muslim to « pay the due thereof (i.e., the Zakât) upon the harvest day » may well be understood to apply to crops of some importance and not indiscriminately to any amount however big or small.

The very fact that Zakât is the legal right of the needy calls for the fixing of a Nisâb in order to exclude all possibility that the meagre possessions of less fortunate Muslims be affected in any way by the imposition of Zakât. For in the absence of such a precaution the very purpose of Zakât would be defeated.

وَمَا اللهُ يُرِيدُ ظُلْماً لِلْعِبَادِ • (٤٠ : ٣١)

« And Allah does not want that (His) servants be oppressed in any way. » (XL : 31).

Thus the Nisâb must take into consideration the normal and

reasonable necessities of the human being, and so allow of a basic Zakât-free provision. It must be such as to ensure that the partial sacrifice of his/her wealth will not cause any embarrassment to the Muslim of limited means. This rule should hold good especially as regards agricultural produce, where a small crop may represent the essential food provision of an individual and his family.

One therefore cannot help but disagree with the opinion of Imâm Abû *H*anîfa as regards the non-establishment of a Nisâb for agricultural produce. For the Qurân teaches that it is the Muslim's duty to spend (for others) from what is *superfluous* to his own necessities :

وَيَسأَلُونَكَ مَاذَا يُنفِقُونَ قُلِ العَفْوَ ... (٢ : ٢١٩)

« . . . And they ask thee what they should spend (in charity). Say : That which is superfluous . . . » (II : 219).

The Qurân also asserts that :

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ... (٢٢ : ٧٨)

« . . . (Allah) hath not laid upon you in religion any hardship.» (XXII : 78).

It would therefore seem nearer to the spirit of Islamic Justice to let the Nisâb for agricultural produce stand as laid down in the « A*h*adîth ».

The principal «A*h*adîth» on which are based the Nisâbs warranting the payment of Zakât are the following :

حدّثنا عمرو بن محمّد بن بكيرٍ الناقد : حدّثنا سفيان بن عُيينة قال : سألت عمرو بن يحيى بن عمارة فأخبرني عن أبيه عن أبي سعيدٍ الخدريّ عن النبيّ صلّى الله عليه وسلّم ، قال : ليس فيما دون خمسة اوسقٍ صدقة ، ولا فيما دون خمس ذودٍ صدقة ، ولا فيما دون خمس اواقٍ صدقة . (مسلم)

« 'Amr ben Mu*h*ammad ben Bukair an-Nâqid said : Sufyân ben 'Uyayna related to us as follows, saying : I asked 'Amr ben Ya*h*yâ

ben 'Umâra, who informed me on the authority of his father (Ya*h*yâ ben 'Umâra ben Abî al-*H*asan), on the authority of Abû Sa'îd al-Khudrî, on the authority of the Prophet (ص) who said : 'No alms are to be taken from less than 5 camel-loads (about 1568 kgs. or 1680 seers), and no alms are to be taken from (a herd of) less than 5 camels, and no alms are to be taken from less than 5 awâq (of silver) (726 grs. or 62.22 tolas)'.» (Imâm Muslim) (1).

عن أبي سعيدٍ الخدريِّ قال : قال رسول الله صلّى الله عليه وسلّم : ليس فيما دون خمسة أوساق من تمرٍ ولا حبٍّ صدقة • (مسلم)

« (It is related) on the authority of Abû Sa'îd al-Khudrî, who said : The Messenger of Allah (ص) said : 'No alms are to be taken from less than 5 camel-loads of dates or grain'.» (Imâm Muslim).

عن أبي سعيدٍ الخدريِّ أنّ النبيّ صلّى الله عليه وسلّم قال : ليس في حبٍّ ولا تمرٍ صدقة حتّى يبلغ خمسة اوسقٍ ، ولا فيما دون خمس ذودٍ صدقة ، ولا فيما دون خمس أواقٍ صدقة • (مسلم)

« (It is related) on the authority of Abû Sa'îd al-Khudrî that the Prophet (ص) said : 'No alms are to be taken from grain or dates until there be an amount equal to 5 camel-loads, nor are alms to be taken from (a herd of) less than 5 camels, nor are alms to be taken from less than 5 awâq (of silver)'.» (Imâm Muslim).

عن جابر بن عبد الله عن رسول الله صلّى الله عليه وسلّم أنّه قال : ليس فيما دون خمس أواقٍ صدقة ، وليس فيما دون خمس ذودٍ من الابل صدقة ، وليس فيما دون خمسة أوسقٍ من التمر صدقة • (مسلم)

« (It is related) on the authority of Jâbir ben 'Abd Allah, on the authority of the Messenger of Allah (ص) , who said : 'No alms are to be taken from less than 5 awâq of silver coins, and no alms

(1) This same Hadîth is also reported in the Sahîh Bukhârî by Ishâq ben Yazîd through Shu'ayb ben Ishâq, Al-Auzâ'î, Yahyâ ben Abî Kathîr, 'Amr ben Yahyâ ben 'Umâra, Yahyâ ben Abî al-Hasan and Abû Sa'îd al-Khudrî.

are to be taken from (a herd of) less than 5 camels, and no alms are to be taken from less than 5 camel-loads of dates '.» (Imâm Muslim).

عن عبد الله بن عمر ، وأخرجه الدارقطني من رواية عبد الكريم عن عمرو ابن شعيب عن أبيه عن جدّه عن النبيّ صلّى الله عليه وآله وسلّم ، قال : ليس في أقلّ من خمس ذودٍ شيء ، ولا في أقلّ من الاربعين من الغنم شيء ، ولا في أقلّ من ثلاثين من البقر شيء ، ولا في أقلّ من عشرين مثقالاً من الذهب شيء ، ولا في أقلّ من مائتي درهم شيء ، ولا في أقلّ من خمس اوسقٍ شيء ، والعشر في التمر والزبيب والحنطة والشعير ، وما سُقي سيحاً ففيه العشر ، وما سُقي بالقرب ففيه نصف العشر • (بخاري)

« (It is related) on the authority of 'Abd Allah ben 'Umar, and (likewise) reported by Ad-Dârqutunî, on the authority of 'Amr ben Shu'ayb (who said) on the authority of his father, (who said) on the authority of his grandfather, (who said) on the authority of the Prophet (may Almighty Allah bless and preserve him and his followers), who said : ' No Zakât is to be paid on (a herd of) less than 5 camels, nor on less than 40 sheep and/or goats, nor on less than 30 oxen, nor on less than 20 mithqâls of gold, nor on less than 200 dirhems (of silver), nor on less than 5 camels-loads (of agricultural produce). And (a Zakât of) 10% (is to be paid) on dates, raisins, wheat and barley. And crops watered by natural means (i.e., rainfall, rivers, etc.) are subject to a Zakât of 10%. And crops watered with well water are subject to a Zakât of 5% '. » (Bukhârî).

The above-quoted « A*h*adîth » make known the Nisâbs that govern the payment of Zakât on cash value, domestic animals and agricultural produce. Of these three categories of taxable wealth two, i.e., cash value and domestic animals come under the rule requiring possession of taxable wealth for a period of one full year as one of the essential conditions warranting taxation for Zakât.

As the third category (agricultural produce) is not subject to this rule, it is particularly interesting that the Nisâb fixed by the Prophet (ص) is 5 camel-loads (approximately 1568 kgs. or 1680

seers, each camel-load, according to the Medina system, being equal to a measure of 60 *sa'as*, which in turn is equal to a weight of approximately 314 kgs. or 336 seers). Thus it appears that the Nisâb for agricultural produce is so calculated as to ensure that the payment of Zakât will not cause hardship to owners of small crops. Should the amount under taxation represent the main food of the Zakât-payer, still the quantity remaining after the payment of Zakât (i.e., 1567.64 kgs. - 10% Zakât = 1410.88 kgs, or 1680 seers - 10% Zakât = 1512 seers) is sufficient to allow for a year's provision at a daily rate of consumption of 3 kgs. 865 or 4.14 seers per family.

The second important point that has given rise to differences of opinion among the leading Muslim jurists is whether or not to establish a scale of taxable limits for cash value and domestic animals respectively, allowing for Zakât-free intervals between the stated limits.

Although, as regards cash value, Imâms Shâf'î, Mâlik, Abû Yûsuf, Mu*h*ammad and Ghazzâlî maintain the paying of Zakât on whatever is over and above the Nisâb, as regards cattle, with the exception of Imâm Mu*h*ammad, they all agree with Imâm Abû *H*anîfa in establishing a scale of taxable limits with Zakât-free intervals. Imâm Mu*h*ammad and Imâm Zafar favour taxation for Zakât on whatever is over and above the Nisâb.

The historical precedent quoted in support of maintaining Zakât-free intervals in the scale of taxable limits for cash value and domestic animals is found :

a) in the instructions given by the Prophet (ص) to Mu'âdh when he appointed him governor of Yemen in the year 9 H.

عن معاذ رضي الله تعالى عنه أنّ رسول الله (ص) أمره حين وجّهه الى اليمن أن لا يأخذ من الكسر شيئاً : اذا كانت الورق مائتي درهم فخذ منها خمس دراهم ، ولا تأخذ ممّا زاد شيئاً حتّى يبلغ أربعين درهماً ، فاذا بلغت أربعين درهماً فخذ منها درهماً • (العيني)

« (It is related) on the authority of Mu'âdh (may Allah Exalted be pleased with him) that when the Prophet (ص) sent him to Yemen,

he commanded him not to levy (Zakât) on the fractions. (He said :) When there be 200 silver dirhems, take from them 5 dirhems and take nothing from what is in excess thereof until it reach 40 dirhems. Then, when it reaches 40 dirhems, take from it 1 dirhem (more) . » (Al-'Aynî).

قال رسول الله صلّى الله عليه وسلّم لمعاذ رضي الله عنه : لا تأخذ من أوقاص البقر شيئاً • (العيني)

« The Messenger of Allah(ص)said to Mu'âdh (may Allah be pleased with him) : ' Take no Zakât from the fractions of the (scale of taxable limits for) cows ' . » (Al-'Aynî).

b) in the instructions given by the Prophet (ص) to 'Amr ben *H*azm when he sent him to Yemen :

روى أبو أوس عن عبد الله ومحمّد ابني أبي بكر بن عمرو بن حزم عن أبيهما عن جدّهما عن النبيّ صلّى الله عليه وسلّم أنّه كتب هذا الكتاب لعمرو بن حزم حين أمّره على اليمن ، وفيه : الزكاة ليس فيها صدقة حتّى تبلغ مائتي درهم ، فاذا بلغت مائتي درهم ففيها خمسة دراهم ، وما زاد ففي كلّ أربعين درهماً درهم ، وليس فيما دون الأربعين صدقة • (العيني)

« Abû Aus related on the authority of 'Abd Allah and Mu*h*ammad, the two sons of Abî Bakr ben 'Amr ben *H*azm, (who related) on the authority of their father (who related) on the authority of their grandfather, (who related) on the authority of the Prophet (ص) that he wrote to 'Amr ben *H*azm the following (instructions) when he sent him to Yemen, and concerning the Zakât (he wrote) : There is no Zakât (on silver) until there be 200 dirhems. On 200 dirhems, 5 dirhems must be given as Zakât. And for every 40 dirhems over and above (the sum of 200 dirhems), 1 dirhem must be given as Zakât. And there is no Zakât to be paid on less than a 40 dirhem increase.» (Al-'Aynî).

c) in the instructions given by the second Caliph 'Umar ibn ul-Kha*tt*âb to Abû Mûsa al-Asharî and to Anas, whom he had placed in charge of the administration of the Zakât funds :

روى ابن أبي شيبة عن عبد الرحمان بن سليمان عن عاصم الأحول عن الحسن البصري قال : كتب عمر رضي الله تعالى عنه لأبي موسى : فما زاد على المائتين ففي كلّ أربعين درهماً درهم ٠ (العيني)

« Ibn Abî Shayba related on the authority of 'Abd ur-Ra*h*mân ben Sulaymân (who related) on the authority of 'Asim al-A*h*wal (who related) on the authority of Al-*H*asan al-Basrî (who) said : 'Umar (may Allah be pleased with him) wrote to Abû Mûsa (saying) : And on every 40 dirhems over and above the 200 dirhems, 1 dirhem (is to be given as Zakât).» (Al-'Aynî).

روى أبو عبيد القاسم بن سلام في كتاب الأموال : حدّثنا يحيى بن بكير عن الليث بن سعد عن يحيى بن أيوب عن حميد عن أنس ، قال : ولاّني عمر ابن الخطّاب رضي الله تعالى عنه الصدقات فأمرني أن آخذ من كلّ عشرين ديناراً نصف دينار ، وما زاد فبلغ أربعة دنانير ففيه درهم ، وأن آخذ من كلّ مائتي درهم خمسة دراهم ، فما زاد فبلغ أربعين درهماً ففيه درهم ٠

« Abû 'Ubaîd al-Qâsim ben Salâm related in the Kitâb ul-Amwâl (as follows) : Ya*h*yâ ben Bukair has related to us on the authority of Al-Laîth ben Sa'ad, (who related) on the authority of Ya*h*yâ ben Ayûb, (who related) on the authority of *H*amîd (who related) on the authority of Anas (who) said: 'Umar ibn ul-Kha*tt*âb (may Allah be pleased with him) placed me in charge of the administration of the Zakât funds. He commanded me to take (as Zakât) $^1/_2$ dînâr from every 20 dînârs, and 1 dirhem from every 4 dînârs over and above that sum. And (he commanded me) to take 5 dirhems (as Zakât) from every 200 dirhems, and 1 dirhem from every 40 dirhems over and above that sum.»

The significance of establishing Zakât-free intervals in the scale of taxable limits for cash value and domestic animals is twofold.

Firstly, the Zakât-free intervals serve a purely practical purpose, the necessity for which will be easily understood from the fact that, as a rule, the payment of Zakât is supposed to be made

either out of, or in the same kind as, the wealth under taxation. For instance, the Zakât of silver is silver; the Zakât of cereals, cereals; that of dates, dates; that of sheep, sheep; etc. A noteworthy exception to this rule is afforded by the Law of Zakât for camels which requires, for the first 20 camels, the payment of 1 sheep for every 5 camels. The reason for this exception is to maintain a correct proportion between the *value* of the camels under taxation and the Zakât imposed. Exceptionally, and under certain specified circumstances, Zakât dues may be paid in cash; but as a rule they should be paid in kind. In the case of taxable agricultural produce, it is a simple matter to levy an exact 10% from whatever amount is present. This is also true of native and unrefined metal (silver and gold), which is subject to a Zakât of as much as 20%, and for which there is likewise no scale of taxable limits. But such is not the case with animals (or gold and silver coins, ornaments or precious stones).

A person who owns, for instance, a taxable number of domestic animals, may not be and, in fact, often is not in a position to satisfy his/her dues in cash money or even in agricultural produce, which would be the only logical manner of effectuating payment on the *exact* number of domestic animals he/she may possess. Nor would such an arrangement, if established as a rule, conform to the spirit of the Law of Zakât which wants that something of the wealth itself be given in payment of dues.

Moreover, the system of the Law of Zakât, the same as all other Islamic laws, must be one for all Muslim peoples and so, of necessity, must be equally practicable at all times, in all countries, and in all cases. When understood in the light of a uniform and practicable law, the meaning of the Zakât-free intervals becomes obvious. For, in the absence of cash money or agricultural produce, it would be impossible to pay the Zakât, for example, on a single cow. Neither could the cow be sacrificed in order to secure $2\frac{1}{2}\%$ of its value (in the shape of its flesh). Thus the Zakât-free intervals purport to allow for making up the value of a whole animal to be given as Zakât in proportion with the size and value of the herd under taxation.

For similar reasons, the Zakât-free intervals in the scale of taxable limits for gold and silver coins, etc., are quite justified; they facilitate the payment of Zakât dues, by eliminating the need

for the minute reckoning of dues on fractions, which dues would unavoidably have to be paid partly in coins of smaller denominations than the smallest gold or silver coins and naturally of less valuable metal. As stated above, this would not conform to the spirit of the Law of Zakât which prefers the payment of dues out of, or in the same kind as, the wealth under taxation. So here also the Zakât-free intervals serve the purpose of making up a round figure before Zakât is again imposed.

Secondly, with regard to the Zakât-payer, the Zakât-free intervals actually constitute a relief from the burden of taxation, which is quite in keeping with the Quranic verse :

يُرِيدُ اللهُ أَنْ يُخَفِّفَ عَنْكُمْ • (٤ : ٢٨)

« Allah would make the burden light for you . . . » (IV : 28).

The realization of this point should have the psychological effect of promoting greater incentive on the part of wealthy Muslims to perform punctually and accurately the sacred duty of giving Zakât.

The Standard Medina System of Weights and Measures.

Before stating in detail the rates of payment and taxable limits, it is necessary to make a comprehensive, though brief, study of the system of weights and measures which was adopted by the Prophet (ص) as the standard thereof and which was subsequently adjusted by the second Caliph 'Umar ibn ul-Khaṭṭâb.

Before the advent of Islam, two systems mainly prevailed among the Arab peoples : the Greco-Roman and the Persian. As the respective weights and measures of these two systems varied in value from place to place, they were unsuited to serve as a legal standard for so important an institution as that of Zakât. Therefore, in order to avert confusion and to stabilize the value of those weights and measures by which the payment of Zakât was to be made, an adjustment of values was effectuated, resulting in a system which we will henceforth refer to as the Medina System of Weights and Measures.

قال النبيُّ (ص) : الميزان ميزان أهل المدينة • (صحيح البخاري : العيني)

« The Prophet (ص) said : ' The system of weights and measures is the system of the people of Medina ' .» (*Sahîh* Bukhârî: Al-'Aynî's Commentary).

The principal weights and measures in use among the Pre-Islamic Arab peoples and which were adopted in the Prophet's life-time as standard values for the Institution of Zakât, are the following :

Weights = The Grain (al-*H*abba, الحبّة) , the Qîrât (القيراط) , the Dirhem (الدرهم) , the Mithqâl (المثقال) or Dînâr (الدينار) , the Okia (al-Uqiya, الاوقية), and the Rotl (الرطل) .

Measures = The *S*a'a (الصاع) and the Wasq (الوسق) .

Of these, the smallest unit of weight was the grain (being the weight of one barley grain and used even today in the troy system for weighing precious stones and metals), 4 of which were equal to the weight of 1 qîrât. It is well established that the relation of the dirhem to the okia and the rotl, was fixed at 40 dirhems to 1 okia and 12 okias to 1 rotl.

The sa'a is described in the old versions of the Law of Zakât as a measure of capacity equal to $5\ ^1/_3$ *H*edjâzî rotles. However, there is every reason to believe that this rotl was not the rotl adjusted to the equivalent of 12 okias, i.e., to a weight of approximately 1 kg. 74 or 1 seer and 68 tolas, but a much lighter weight equal to not more than 980 grs., i.e., to slightly more than 1 seer or approximately the weight of the great rotl of Cairo (1).

This assumption is reasonably substantiated if we consider that in actual fact the full or maximum carrying capacity of an average quality camel is of about 336 standard seers ($8\ ^2/_5$ maunds or 313 kgs 528).

In Pakistan, for example, the maximum load fixed by the army for camels in regular war service is 5 maunds. If 5 maunds (200 seers) are estimated to be a fair load for camels put to the

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(1) Even today the weight of the rotl varies considerably from one place to another, being in some places equivalent to as much as 2 kgs. 564, and in others to as little as 715 grs.

regular and strenuous effort required by war service, it is no exaggeration to affirm that the wasq (or camel-load, حمل بعير) of the Medina system, representing a quantity of grain, dates, etc., borne by camel from the field or grove to the market, i.e., over a relatively short distance, is a measure of capacity equivalent to a *full or maximum camel-load.* Hence, the wasq being evaluated at 60 *sa'as*, each *sa'a* must represent a weight of approximately 5 kgs. 225, or $5\ ^{3}/_{5}$ seers, i.e., of *three* 12 okia ro*t*les.

It is more than probable that the ro*t*l not being directly involved where the Law of Zakât was concerned, the early 'ulemâ did not give any special importance to the proportionate weight of the 12 okia ro*t*l to the *sa'a*, but confined themselves to quoting the *H*edjâzî ro*t*l still in common use at the time. Moreover, it is safe to assume that in those days, when the use of camels for transport was still more widespread than today, a fair proportion of the people must have had a correct knowledge of the carrying capacity of a camel and, hence, of the exact amount of grain, etc., represented by a wasq or by a *sa'a*, and so, at the time, there was no need of going into further details.

As for the dirhem, it is well established that the relation (in weight) thereof to the mithqâl or dînâr, was fixed at 10 dirhems to 7 mithqâls, and the relation in value (of exchange) at 10 dirhems to 1 mithqâl. On the other hand, the various accounts of how and when this adjustment was made and what was the exact weight in grains or qîrâ*t*s legally assigned to each one of these two units in the Medina System, definitely disagree.

That these weights were known and in use before Islam is a fact beyond dispute. In the following Quranic verses, mention is made both of the dirhem and the dînâr, although unfortunately no clue is given as to their exact value.

وَشَرَوْهُ بِثَمَنٍ بَخْسٍ دَرَاهِمَ مَعْدُودَةٍ وَكَانُوا فِيهِ مِنَ الزَّاهِدِينَ ۝ (١٢ : ٢٠)

« And they sold him for a low price, a number of *dirhems;* and they attached no value to him.» (XII : 20).

و مِن أهلِ الكِتَابِ مَنْ انْ تَأمَنْهُ بِقِنطَارٍ يُؤَدِّهِ اليْكَ وَمِنْهُمْ مَنْ انْ تَأمَنْهُ بِدِينَارٍ لا يُؤدِّهِ اليْكَ الاّ مَا دُمْتَ عَلَيْهِ قَائِماً ... (٣ : ٧٥)

« Among the People of the Scripture is he who, if thou trust him with a weight (1) of treasure, will return it to thee. And among them is he who, if thou trust him with a *dînâr*, will not return it to thee unless thou keepest standing over him . . . » (III : 75).

From these verses it is clear that both the dirhem and the dînâr, whatever their value may have been, were well known in the days of pre-Islam.

As the dirhem is the pivotal unit of weight of the Medina System, it is of the utmost importance to determine as accurately as possible its correct equivalent in grains, the grain being the system's basic unit of weight. From the data contributed by the various scholars quoted by Imâm al-'Aynî in his Commentary on the *Saḥîḥ* al-Bukhârî, it would appear that the weight of the dirhem was legally fixed at 6 dâniqs, 10 of these dirhems being equal to the weight of 7 mithqâls. This adjustment, reported by An-Nawî and Al-Mâwardî in « Al-A*ḥ*kâm », is said by Abû 'Ubaid al-Qâsim ben Salâm in his « Kitâb ul-Amwâl » (2) to have been the result of fusing the Persian and the Greco-Roman dirhems, weighing respectively 8 dâniqs and 4 dâniqs, into one legal dirhem of 6 dâniqs, the mean between these two weights.

According to the « Qâmûs al-Mu*ḥît* », the dâniq was a weight equal to 2 qîrâ*t*s or 8 grains. Were this correct, the 6 dâniq dirhem would weigh 48 grains, or 12 qîrâ*t*s. 10 such dirhems would weigh 480 grains, thus attributing to the mithqâl the weight of 68 grains 571. According to Ibn Sa'ad, in « A*t*-*T*abaqât », this adjustment was made by the Ummayade Caliph 'Abd ul-Mâlik ben Marwân in the year 75 H., when, for the first time in the history of Islam the dirhem and the dînâr were coined and stamped with the inscription :

« لا اله الاّ الله محمّد رسول الله »

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(1) The qintâr (القنطار) is today equivalent to 100 rotles.
(2) in the Chapter on Almsgiving.

On the other hand, Al-Wâqidî, in his « Kitâb ul-Makâyîl », reports on the authority of Ma'abad ben Muslim, himself on the authority of 'Abd ur-Ra*h*mân ben Sâbet, that the weight of the mithqâl coined by 'Abd ul-Mâlik was evaluated in Damascus at 21 $^{3}/_{4}$ qîrâ*t*s or 87 grains. If this were so, 7 mithqâls would weigh 609 grains which, being equal to 10 dirhems, should assign to the dirhem the weight of 60.9 grains or 15 qîrâ*t*s 225. This same scholar by way of adjustment fixes the dirhem at 15 qîrâ*t*s or 60 grains.

Furthermore, Al-Qûr*t*ubî reports that the dirhem coined by 'Abd ul-Mâlik ben Marwân was equal to 55 grains, or 13 $^{3}/_{4}$ qîrâ*t*s. This evaluation would attribute to the mithqâl the weight of 78 grains 571, or 19 qîrâ*t*s 842.

Al-Qarâfî, in « Adh-Dhakhîra», reports that the relation of the Egyptian dirhem weighing 64 grains, to the Medina dirhem was 180 Egyptian dirhems plus 2 grains to 200 Medina dirhems, thus attributing to the latter the weight of 57 $^{3}/_{5}$ grains, or 14 $^{2}/_{5}$ qîrâ*t*s, and to the mithqâl 82 $^{3}/_{10}$ grains, or 20 $^{3}/_{4}$ qîrâ*t*s.

The *H*anafite School of Law, the earliest one established in Islam, evaluates the legal weight of the Medina dirhem at 14 qîrâ*t*s, or 56 grains, and the mithqâl at 20 qîrâ*t*s, or 80 grains; the relation in weight of the dirhem to the mithqâl being 10 to 7, and the relation in value 10 to 1. This evaluation is said to be the result of an adjustment effectuated in the time of the second Caliph 'Umar ibn ul-Kha*tt*âb. The report of this adjustment in the «Fatâwa As-Sughrâ» states that before the Caliphate of 'Umar there were three kinds of dirhems in use among the Muslims. One of these weighed 20 qîrâ*t*s, or 80 grains, being equal in weight to the mithqâl «of which there was only one kind ». Another weighed 12 qîrâ*t*s, or 48 grains (5 $^{3}/_{5}$ of a mithqâl), 10 being equal to 6 mithqâls. A third weighed 10 qîrâ*t*s, or 40 grains ($^{1}/_{2}$ mithqâl), 10 being equal to 5 mithqâls.

When 'Umar (رض) wished to collect the Zakât, taking as basis the largest of these three dirhems, the people requested him to lighten the tax. Thereupon, 'Umar consulted those who had been companions of the Prophet (ص) and together they decided to legally fix the weight of the Medina dirhem at 14 qîrâ*t*s, or 56 grains; this quantity representing one third of the sum total of

the weight of the three dirhems (20+12+10 = 42 qîrâ*t*s ÷ 3 = 14 qîrâ*t*s). As 10 of these 14 qîrâ*t* dirhems weighed 560 grains, they were equal to the weight of 7 mithqâls of 20 qîrâ*t*s each, which also weighed 560 grains.

So we have, on the one hand, the Medina dirhem variously evaluated at 48 grains, or 12 qîrâ*t*s; 55 grains, or 13 $^{3}/_{4}$ qîrâ*t*s; 56 grains, or 14 qîrâ*t*s; 57 $^{3}/_{5}$ grains, or 14 $^{2}/_{5}$ qîrâ*t*s; and 60 $^{9}/_{10}$ grains, or approximately 15 $^{1}/_{5}$ qîrâ*t*s. On the other hand, we have the Medina mithqâl variously evaluated at 68 $^{57}/_{100}$ grains, or 17 $^{14}/_{100}$ qîrâ*t*s; 78 $^{57}/_{100}$ grains, or 19 $^{21}/_{25}$ qîrâ*t*s; 80 grains, or 20 qîrâ*t*s; and 82 $^{3}/_{10}$ grains, or 20 $^{3}/_{4}$ qîrâ*t*s. It is more than evident that we are in the presence of a good many mistaken evaluations of these two Medina weights and that, if any, only one of them can be the correct one. From both the historical and logical points of view, it would seem that the account of 'Umar's adjustment, which gave rise to the 14 qîrâ*t* dirhem, is the most trustworthy. As stated above, the *H*anafite School of Law adheres to the 14 qîrâ*t* dirhem and to the 20 qîrâ*t* mithqâl as the legal evaluation of these weights in the Medina System. In the present work, we shall follow this lead and evaluate all weights of the Medina System accordingly.

It is possible that in the Prophet's time, the Zakât was taken on the 12 qîrâ*t* dirhem (= 6 dâniqs). Be this as it may, the fact that 'Umar, who had been one of the Prophet's closest companions and who, therefore, was in a position to know fully well what had been the Prophet's instructions concerning this important matter, felt justified in requiring the payment of Zakât on the 20 qîrâ*t* dirhem and subsequently made an adjustment fixing the weight of the dirhem at 14 qîrâ*t*s would show that in the Prophet's lifetime no fixed weight in grains or qîrâ*t*s had been definitely assigned to the dirhem of the Medina System. This despite the fact that the relation of the dirhem to the okia, ro*t*l, sa'a and wasq was definitely established at that time (1).

As regards the dînâr (2), which usually is mentioned as merely another name for the mithqâl, a tradition, related on the

(1) See remark above, p. 67, foll.

(2) From the Latin «denarius», a Roman silver coin, equivalent to 8 d.

authority of Jâbir, states that the Prophet (ص) said : « The weight of the dînâr is 24 qîrâts ». (1).

Whether or not there was originally a difference in weight between the mithqâl and the dînâr has no bearing on the Law of Zakât, as it requires that the Zakât on gold be paid *per mithqâl* and not per dînâr. That ulteriorly these two units were considered one and the same, the term « dînâr » being used especially to designate the coined mithqâl of gold, does not change this fact.

Today both the silver dirhem and the gold dînâr have ceased to be legal tender. Moreover, it is noteworthy that even when they were legal tender, their monetary value did not remain stable, either because the weight of silver or gold that they originally contained was modified or because the actual value attributed to these precious metals was subject to fluctuations. The result of this instability was that the proportionate value, i.e., 10 to 1, assigned to them in the Medina System was seriously upset. We must therefore only consider these two units in the light of their original nature, i.e., as weights and not as monies.

The tables given herewith will give the reader a general idea of the Medina System of weights. In order to afford a better appreciation thereof, the equivalent of the Medina weights in tolas, seers, and grammes (metric system) has also been indicated.

Another very important point, which must be thoroughly realized if *the real values on which the Institution of Zakât was originally built, are to be re-established,* is that the reason why the Prophet (ص) fixed the Nisâb for silver at 200 dirhems and the Nisâb for gold at 20 mithqâls, was that either of these two sums *represented, in his day, the market price of 5 camel-loads of grain or, in other words, of one year's provision of essential foodstuffs* (2). Thus, in the first epoch of Islam, the purchasing power of 200 dirhems was 5 camel-loads of essential foodstuffs, which amount was correctly estimated to be a reasonable year's provision for an average family. Unfortunately, in the year 1378 H., 200 dirhems' weight of silver (about $62\frac{1}{5}$ tolas, evaluated at approximately Rs. 122/-), will no longer buy 5 camel-loads (1680 seers

(1) Reference here would be to a pure gold dînâr. It is interesting that even today pure gold is standardized at 24 carats. (qîrâts).

(2) Imâm al-'Aynî, « Commentary of the Sahîh Bukhârî ».

URES

ricultural produce.

حبّات Grains		تولـه Tolas		سیر Seers		Oz. Troy
1	=	—		—		0.002
4	=	—		—		0.008
8	=	$^{2}/_{45}$	=	—		—
15.4	=	—		—		0.0431
40	=	$^{2}/_{9}$	=	—		—
56	=	$^{1}/_{3}$	=	—		0.15655
80	=	$^{4}/_{9}$	=	—		0.2236
180	=	1	=	$^{1}/_{80}$	=	0.4527
280	=	$1\,^{55}/_{100}$	=	—		0.7545
320	=	$1\,^{77}/_{100}$	=	—		0.8944
477	=	—		—		1 oz.
560	=	$3\,^{11}/_{100}$	=	—		—
1,600	=	$8\,^{22}/_{25}$	=	—		4.472
2,240	=	$12\,^{11}/_{25}$	=	—		6.036
11,200	=	$62\,^{11}/_{50}$	=	—		30.18
14,400	=	80	=	1		—
—	=	—	=	$1\,^{7}/_{100}$		—
26,880	=	$149\,^{1}/_{3}$	=	—		—
40,320	=	224	=	$2\,^{4}/_{5}$		—
80,640	=	448	=	$5\,^{3}/_{5}$		—
4,838,400	=	26,880	=	336		—
24.192.000	=	134,400	=	1,680		—

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ABLE OF THE MEDINA SYSTEM OF WEIGHTS AND MEA

esponding weights in Grammes, Tolas, Seers and Troy Ounces

measures directly concerned with the Zakât of silver, gold and a

اواق Okias		ارطال Rotles		صاعات Sa'as		اوساق Wasqs		كيلوغرام Kilogrammes	غرام Gramn
—		—		—		—		—	0.064
—		—		—		—		—	0.259
—		—		—		—		—	0.518
—		—		—		—		—	1
—		—		—		—		—	2.592
1/40	=	—		—		—		—	3.628
1/28	=	—		—		—		—	5.184
—		—		—		—		—	11.664
1/8	=	—		—		—		—	18.144
1/7	=	—		—		—		—	20.736
—		—		—		—		—	31.1035
1/4	=	—		—		—		—	36.288
5/7	=	—		—		—		—	103.68
1	=	1/12	=	—		—		—	145.152
5	=	5/12	=	—		—		—	725.76
6 3/7	=	5 1/2	=	—		—		—	933.12
6 6/7	=	57/100	=	—		—			1 Kg.
12	=	1	=	1/3	=	1/180	=		1,741.824
18	=	1 1/2	=	1/2	=	1/120	=		2,612.736
36	=	3	=	1	=	1/60	=		5,225.472
2,160	=	180	=	60	=	1	=		313,528.32
10,800	=	900	=	300	=	5	=		1,567,641.6

TABLE SHOWING THE PROPORTIONATE VALUE OF SILVER TO GOLD IN THE TIME OF THE PROPHET (ص)

(MEDINA SYSTEM)

SILVER		GOLD
200 Dirhems	=	20 Mithqâls
10 «	=	1 «
1 «	=	$^{1}/_{10}$ «

TABLE SHOWING THE PROPORTIONATE WEIGHT OF SILVER TO GOLD IN THE MEDINA SYSTEM

SILVER		GOLD
200 Dirhems	=	140 Mithqâls
10 «	=	7 «
1 «	=	$^{7}/_{10}$ «

or about 1568 kgs.) of either wheat, barley, maize or rice. In other words, 200 dirhems' weight of silver no longer represents potentially a year's provision of essential foodstuffs. Whereas the amount of essential foodstuffs that an individual or a family may consume in the period of one year is, according to all logic, roughly the same today as nearly fourteen centuries ago.

On the other hand, while the price of silver has greatly depreciated over the centuries, the present day evaluation of gold in the world markets is far above what it was in the early days of Islam. Today, in Pakistan for instance, the price of 20 mithqâls' weight of gold (8.88 tolas) may amount to as much as Rs. 1154/-, which means that the proportionate value of silver to gold has come to be about 95 to 1. This fact is more than significant. The devaluation of silver versus the over-evaluation of gold will be further appreciated when we realize that whereas in the Prophet's time the market price of a year's provision of cereals was 200 dirhems (about 62 $^{1}/_{5}$ tolas of silver), which today would be evaluated at about Rs. 122/-, actually the same amount of cereal (say, wheat) costs about Rs. 525/-, which sum will purchase over 311 tolas of silver, i.e., about 1000 dirhems. In other words, in the Prophet's time, silver was about *five times more valuable than it is today*. (In Damascus, the proportionate value of silver to gold today is 39 $^{1}/_{4}$ to 1).

As for gold, whereas in the Prophet's time 20 mithqâls were needed to purchase the year's provision of cereals, today less than 9 mithqâls (less than 4 tolas of gold) will purchase Rs. 525/- worth of wheat. Which means that in Pakistan today gold is more than twice as valuable as it was in the Medina of the Prophet's time.

Also we must bear in mind that the computation of Zakât is based on the silver and not on the gold standard; the minimum rate of Zakât for gold having been fixed at 20 mithqâls because this quantity represented at that time the value of 200 dirhems' weight of silver, which in turn represented the market price of five camel-loads of essential foodstuffs, and for no other reason.

Hence it is clear that the fundamental issue involved where the Nisâb for silver and gold is concerned, is *to allow for a potential year's provision of essential foodstuffs*. The Nisâb for silver and gold must, therefore, fulfil at all times *the real purpose* for which it was originally destined, regardless of the ever-varying evaluations

of silver and gold, of which the true function in human society is merely to serve as a medium of exchange.

It is of paramount importance that the codification of Islamic laws be built on permanent life values. Food as a prime necessity of life represents in itself a permanent basis of evaluation in human society. Silver and gold share the attribute only in so far as the human being's immediate interests and convenience may dictate. Furthermore, a mechanical adherence to past estimates, which no longer conform to present reality, is bound to be a real stumbling-block in the way of progress. Whereas an organic appreciation of reality will surely better fulfil the spirit of Islamic Law and better serve the interests of the Muslim peoples.

If, for instance, we take the average price of wheat in Pakistan in the year 1959 to be about Rs. 12/8/0 per maund, we should agree that the Nisâb for cash value (silver, gold, currency notes, precious stones) be fixed in Pakistan for the current year at Rs. 525/-, i.e., the actual average market price of one year's provision of essential foodstuffs (1680 seers).

Should the proportionate value of silver to gold ever be restored to its original estimate in the Medina System, (10 to 1), and the proportionate value of silver to foodgrains (200 dirhems to 5 camel-loads) also be restored, the Nisâbs for silver and gold as laid down by the old Law of Zakât would, of course, be binding. Unfortunately such an auspicious event may never come to pass. We are thus compelled to face reality and accept that henceforth the Nisâbs for silver and gold be established on the same basis as practised by the Prophet (ص) , i.e., *on the proportionate value of the year's provision of essential foodstuffs in relation thereto, as dictated by the prevailing market price.* Thus we must face the fact that the Nisâbs for gold and silver must vary from year to year in conformity with the price fluctuations of essential foodgrains.

Taxable Limits and Rates of Zakât for Silver and Gold.

لقول النبيّ صلّى الله عليه وسلّم : ليس فيما دون خمسة أواقٍ صدقة • (البخاري)

« The Prophet (ص) said : ' There is no Zakât to be paid on less than five awâq (okias) (of silver) ' . » (Imâm Bukhârî).

Pure silver and pure gold, whether in the form of bullion or wrought (i.e., dust, nuggets, ingots, coins, plate, foil, ornaments, vessels, cloth, embroidery, lace, or other wares), (and whether the gold or silver object in question be of every day use or not) constitute by their very nature surplus wealth of lasting value and are taxable for Zakât whenever the value thereof is equal to or above the Nisâb established by the Law of Zakât. Both silver and gold are included in the category of wealth requiring possession for a period of one full year as one of the essential conditions warranting taxation for Zakât.

Original Nisâbs :

Silver :

The Nisâb for pure silver was established by the Prophet (ص) at 200 dirhems. Any amount of silver falling short of this Nisâb was, in no case, taxable for Zakât.

On 200 dirhems of pure silver (i.e., the market price of 5 camel-loads of foodgrains), 5 dirhems ($2\frac{1}{2}\%$) were to be paid as Zakât. (The $2\frac{1}{2}\%$ Zakât of silver and gold is based on a ruling of the Prophet (ص) which prescribes : وفي الرقع ربع العشر « And from cash value, one fourth of the tenth part thereof (i.e., $2\frac{1}{2}\%$). »

Thereafter, on every increase of 40 dirhems, (i.e., the market price of 1 camel-load of foodgrains), 1 dirhem ($2\frac{1}{2}\%$) was to be paid as Zakât.

Gold :

The minimum amount of gold taxable for Zakât, as established by the Prophet (ص), was 20 mithqâls, this sum representing the value of 200 dirhems of silver (the price of 5 camel-loads of foodgrains). Any amount falling short of 20 mithqâls was in no case subject to taxation for Zakât.

(The Zakât on 20 mithqâls of pure gold was $^1/_2$ mithqâl or 5 dirhems of pure silver ($2\frac{1}{2}\%$).)

Thereafter, on every increase of 4 mithqâls, $^1/_{10}$ mithqâl or 1 dirhem was to be paid as Zakât.

Modern Nisâb for Silver and Gold :

The Nisâb for silver and gold must be determined by the official market price of 5 camel-loads (1680 seers or about 1568 kgs.) of whatever foodgrains normally constitute the staple food of the country's inhabitants. For instance, in countries where the staple food is wheat, the standard is to be set by the official price thereof. In countries where the staple food is rice, barley, maize, or rye, the standard is to be set by the official price of whichever of those cereals constitutes the staple food of the inhabitants.

Thus a person who possesses for a period of one full year a quantity of silver and/or gold, the value of which is at least equal to the official market price of 5 camel-loads (1680 seers, or about 1568 kgs.) of whichever cereal constitutes the country's staple food, must pay $2\frac{1}{2}\%$ Zakât on that value, which thus represents the Nisâb.

Thereafter $2\frac{1}{2}\%$ Zakât must be paid on every increase that is equal to $^1/_5$ of the Nisâb. Any amount falling short thereof remains free from taxation, Zakât being paid only on the preceding figure warranting taxation.

If we take the market price of 5 camel-loads of wheat to be Rs. 525/- (1) (approximate average for 1959 in Pakistan), the taxable increase will be every Rs. 105/- carrying each time an increase in Zakât of Rs. 2/10/-. Thus the Zakât on Rs. 525/- worth of pure silver and/or gold will be Rs. 13/2/-. On Rs. 525/- plus the

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(1) It must be borne in mind throughout that the minimum taxable limit of Rs. 525/-/-, on which these computations are based, is given here merely as an example and not as a fixed Nisâb. The Nisâb should vary from year to year in accordance with the fluctuations of the official price of the cereal that is to serve as standard therefor.

Should the official price of wheat in West Pakistan be fixed at Rs. 15/8/- per maund for the year 1960, the local Nisâb would be, for that year, Rs. 651/-/- the taxable increase being every Rs. 130/3/2.

Should the official price of rice in East Pakistan be fixed at Rs. 26/-/- per maund in 1960, the local Nisâb for that year would be Rs. 1072/-/- and the taxable increase every Rs. 214/8/-.

taxable increase of Rs. 105/-, i.e., on Rs. 630/-, the Zakât will be Rs. 15/12/-. On the following increase, i.e., Rs. 630+105=Rs. 735/-, the Zakât will be Rs. 18/6/-; etc. But on Rs. 600/- the Zakât will be the same as on Rs. 525/-, i.e., Rs. 13/2/-, as the Rs. 75/- over and above the Nisâb fall within a Zakât-free interval.

Rules governing the Payment of the Zakât of Silver and Gold :

1) The taxability or non-taxability for Zakât of a given amount of silver or gold possessed for a period of one full year, is to be determined at the end of the term.

2) Whenever the official price of the cereal which constitutes the staple food of a country's inhabitants has varied during the year, the *average price* is to be taken as the standard by which to establish the Nisâb for silver and gold.

3) Alloyed silver and gold are subject to taxation for Zakât according to their percentage of pure precious metal : when the silver or gold represents at least 90% of the alloy, the object under taxation may be considered as being of pure precious metal and Zakât reckoned on the whole. When the alloy is more than 10% of the combination, Zakât should be reckoned only on the content of pure silver or gold.

4) In the case of combinations composed of silver and gold instead of an alloy of baser metal, if the content of silver, or of gold, is only slight, the object under taxation is considered as being composed entirely of the predominating metal and Zakât reckoned accordingly.

Whenever the proportion of the precious metal to the baser metal in a combination is unknown, it may be determined by the method of water displacement (Law of Densities). This test consists of immersing the object in a receptacle containing water, and marking the level reached by the displaced water. Equal weights of the pure precious metal and the alloy are then immersed in turn and the level reached by the displaced water is, in each case, marked. The proportion of precious metal and of alloy is then calculated according to the levels thus obtained. If the mark corresponding to the level of the water displaced by the object that is being tested

is equally distant from the other two marks, the proportion of the precious metal and the alloy is half and half.

5) Artistic objects of silver or gold are subject to taxation for Zakât according to their content of pure precious metal and not according to their artistic value. A gold object of artistic value worth Rs. 1600/- and containing 10 tolas of pure gold which, if evaluated at for instance the rate of Rs. 130/- per tola, would be worth Rs. 1300/-, is taxed only for its 10 tola gold content warranting a Zakât of Rs. 31/8/- reckoned on Rs. 1260/- of its gold value (Rs. 1300/- being within the Zakât-free interval between Rs. 1260/- and Rs. 1365/- (1).

6) When estimating whether the quantity of silver and/or gold in a person's possession is taxable for Zakât, the sum total thereof constituting his/her legitimate property and existing within the territory or territories under the jurisdiction of a same government must be taken into consideration.

7) From the Islamic point of view, the primary and, so to say, only function of silver and gold is to serve as a stable medium of exchange, intended to facilitate the economic activities of human society. In so much as they both share this function, they are considered as belonging to the same legal genus, notwithstanding the fact that they are different in substance and value(2). This function that Islam assigns to these two precious metals is evident from the following Quranic verse :

... وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالفِضَّةَ وَلاَ يُنْفِقُونَهَا فِي سَبِيلِ اللهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ • (٩ : ٣٤)

« . . . to those who hoard gold and silver *and spend it not in the way of Allah,* give tidings of a painful doom. » (IX : 34).

In conformity with the rule requiring that dues be paid out of, or in the same kind as, the wealth under taxation, and in consi-

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(1) See footnote, p. 76.

(2) Most of the 'ulemâ agree on this point. Among the few who do not admit the view that silver and gold belong to one and the same genus, are Imâms Shâf'î, Ahmad, Abû Thor and Dâûd.

deration of the function that they share, the Zakât of silver should be paid in silver *or gold* and the Zakât of gold, in gold *or silver*. This rule is further supported by the following «*H*adîth» relating to the instructions given by the second Caliph 'Umar ibn ul-Kha*tt*âb to Anas, whom he had placed in charge of the Zakât funds :

حـــدّثنا يحيى بن بكير عن الليث بن سعد عن يحيى بن أيوب عن حميد عن أنس ، قال : ولاّني عمر بن الخطّاب رضي الله تعالى عنه الصدقات فأمرني أن آخذ من كلّ عشرين ديناراً نصف دينار ، وما زاد فبلغ أربعة دنانير ففيه درهم ، وأن آخذ من كلّ مائتي درهم خمسة دراهم ، فما زاد فبلغ أربعين درهماً ففيه درهم • (العيني)

« Ya*h*yâ ben Bukair related unto us on the authority of Al-Laîth ben Sa'ad, on the authority of Ya*h*yâ ben Ayûb, on the authority of *H*amîd, on the authority of Anas (who) said: ' 'Umar ibn ul-Kha*tt*âb placed me in charge of the Zakât funds and instructed me to take $^1/_2$ dînâr (as Zakât) from every 20 dînârs, and *1 dirhem* from every increase of 4 dînârs. And (he instructed me) to take 5 dirhems (as Zakât) from every 200 dirhems, and 1 dirhem from every increase of 40 dirhems' .» (Al-'Aynî).

The Zakât of silver and gold dust, coins or nuggets can easily be paid in their own kind. The Zakât of silver and gold ingots, plate, foil, vessels, ornaments and other objects made of or containing silver or gold should, as a rule, likewise be paid in kind. But should the necessary loose silver or gold not be available, it may be paid in the local currency to the amount of the exact value due.

It is pertinent to recall here that Islamic Law rightly forbids the use of silver and gold vessels and utensils. If we have included such items in the list of taxable silver and gold objects, it is because too many wealthy Muslims have disregarded, and still do disregard this Islamic prohibition, and because in no case should wealth invested in such objects escape the imposition of Zakât, even though their very existence contravenes both the spirit and the letter of the Law.

On the other hand, where an uncorruptible metal is required for a useful purpose of other than purely economic significance, as for instance in surgery, dentistry or medicine, the use of gold must be considered as perfectly lawful, and gold so used should, for all time, remain free from taxation for Zakât.

As for seals and ornaments, although the use of silver and gold in their making is not actually prohibited, the fact that the Qurân exhorts the human being *to spend*, is sufficient to establish that such use is to be within very reasonable limits and that in no case should it be allowed to take on the character of hoarding. The justification of these restrictions and prohibitions is that every grain of silver or gold withdrawn from public circulation means so much less capital of real value available for financing undertakings beneficial to society as a whole.

The *H*anafite School of Law (1) deems the taxability of silver and gold as absolute, and so maintains that these two precious metals, in whatever shape they may be cast, lose nothing of their liability to taxation for Zakât. This view of the *H*anafite School is perfectly sound, especially if we consider : a) that the natural qualities of silver and gold, and hence their value, remain intact regardless of the shape given to them, and b) that silver and gold ornaments, whether actually worn or not, usually do represent the surplus wealth of their legitimate owner, who for reasons of personal convenience prefers to keep it safe in this form rather than in the shape of coins. This being the case, to exempt silver and gold ornaments from taxation for Zakât *because* they are *ornaments* constitutes an absolutely unjustified, if very convenient, means of escape for the Zakât-payer from a sacred obligation. On the other hand, it is most unfair to the would-be beneficiaries, depriving them as it does of their rightful due.

The following «A*h*adîth», reported by Imâm at-Tirmadhî and according to which the taxability of ornaments made of precious metals was established by the Prophet (ص) himself,

(1) 'Umar ibn ul-Khattâb, 'Abd Allah ben 'Umar, 'Abd Allah ben Abbâs and 'Abd Allah ben Mas'ûd are prominent among the very early 'ulemâ quoted as having upheld the taxability of silver and gold ornaments for Zakât.

fully substantiate the *H*anafite view in this matter :

عن زينب امرأة عبد الله قالت : خطبنا رسول الله صلّى الله عليه وسلّم فقال : يا معشر النساء تصدّقن ولو من حليّكن • (رواه الترمذي)

« (It is related) on the authority of Zaînab, wife of 'Abd Allah, who said : The Messenger of Allah (ص) addressed us saying : 'O company of women ! Spend in charity, even if it be of your ornaments' .» (Imâm at-Tirmadhî).

عن عمرو بن شعيب عن أبيه عن جدّه أنّ امرأتين أتتا رسول الله صلّى الله عليه وسلّم ، وفي أيديهما سواران من ذهب فقال لهما : أتؤديان زكاته ، قالتا : لا ، فقال لهما رسول الله صلّى الله عليه وسلّم أتحبّان أن يسوّركما الله بسوارين من نار ، قالتا : لا ، قال : فأديا زكاته • (رواه الترمذي)

« (It is related) on the authority of 'Amr ben Shu'ayb, (who said) on the authority of his father, (who said) on the authority of his grandfather, that two women wearing two gold bracelets came to the Messenger of Allah (ص) , who asked them : 'Do you both pay the Zakât thereof ?' Both women replied : 'No' . Then the Messenger of Allah (ص) asked them : 'Would you like Allah to put two bracelets of fire on your arms ?' Both replied : 'No '. Whereupon he said : 'Then pay the Zakât thereof' .» (Imâm at-Tirmadhî).

عن أمّ سلمة قالت : كنت ألبس أوضاحاً من ذهب فقلت : يا رسول الله أكنز" هو ، فقال : ما بلغ ان تؤدي زكاته فزكّي فليس بكنز • (رواه مالك وأبو داود)

« (It is related) on the authority of Umm Salma, who said : I used to wear ornaments of gold. So I asked (the Prophet) : 'O Messenger of Allah, do they constitute a hoard ?' He said : 'Regardless of their quantity, if thou payest the Zakât thereof and they be thereby purified, they do not constitute a hoard' .» (Imâms Mâlik and Abû Dâûd).

The usual argument advanced in favour of exempting silver and gold ornaments from taxation for Zakât, is that they are articles *used* by their legitimate owner. It would be more correct to say *worn, displayed, shown off,* or *kept safe !* Indeed a thing that is *used* implies, or at last should imply, that some benefit will accrue to the user as a result of its use. The only possible benefit accruing from the wearing of ornaments is the satisfaction of self-enhancement. And self-enhancement is surely no valid excuse for the failure to carry out one of the fundamental Articles of one's Faith ! Moreover, the taxability or non-taxability of wealth does not at all depend on the usefulness of the wealth in question. Nor does it depend on the wealth in question actually being or not being put to use. As laid down by the Law of Zakât, the main factors determining the taxability of wealth are that it be of *lasting value* and that the amount possessed be *surplus* to the lawful necessities of its legitimate owner.

For instance, oxen, whether pastured or non-pastured, are of use to their owner : besides providing him with their young, with lawful food (milk, flesh, etc.) and with their hide, they may be put to the plough, used as draught animals, etc. Yet while non-pastured oxen (i.e., stall-fed for more than six months of the year) are not subject to taxation for Zakât, pastured oxen (i.e., pastured for more than six months of the year) are taxable for Zakât. The same applies to pastured camels, sheep and goats, and horses, also of unquestionable use to their owner.

Thus, *usefulness* is definitely not a factor warranting exemption from taxation for Zakât. The imposition of Zakât on pastured animals and the exemption from taxation of non-pastured animals has nothing to do with their usefulness. The difference lies in that the former are *of little or no expense* to their owner and so, when in number equal to the Nisâb established for their kind, do represent for him *surplus wealth of lasting value.* Whereas the latter, being stall-fed animals, necessarily entail a regular expense and so, regardless of their number, do not represent for their owner surplus wealth of lasting value, but rather wealth of *limited value.* This fact

alone suffices to classify non-pastured animals in the category of Zakât-free wealth.

But as regards silver and gold ornaments, it is undeniable that, once paid for, they entail no further expense on their owner, even should they remain in his/her possession for a whole lifetime. On the other hand, artistic value aside, silver for silver and gold for gold (1), the value of the precious metal remains unchanged and so represents for its legitimate owner wealth of very real lasting value, that may be converted into coin or into any kind of legal currency at discretion.

Imâm Shâf'î, undoubtedly influenced by the habits and customs of the society and epoch in which he lived, takes the view that Zakât should not be imposed on women's precious ornaments which he compares to dress, nor on men's seals, these being lawful articles of daily use. Likewise, both Imâm Mâlik and Imâm Ghazzâlî favour the opinion that no Zakât should be imposed on precious ornaments kept for personal *use*. Imâm Mâlik bases his opinion on a report by 'Abd ur-Ra*h*mân ibn al-Qâsim, who related on the authority of his father that Umm ul-Mominîn 'Ayesha used not to pay Zakât on the gold ornaments belonging to the orphaned daughters of her deceased brother, who were in her care. And also on a report by Nâfi' who related that 'Abd Allah ben 'Umar used not to pay Zakât on the gold ornaments that he had given to his daughters and maid-servants.

But, granted that these two reports are correct, there is absolutely no reason to believe that in either case the ornaments in question were at all taxable for Zakât. In both instances the weight of precious metal belonging to *each individual owner* thereof was most probably *belo*w the Nisâb.

Imâm Mâlik also lays down that silver and gold ornaments that are broken and kept for repair in view of wearing them, are exempt from taxation for Zakât, and are to be

(1) It must be borne in mind that the fluctuations in the price of silver and gold are in relation either to non-precious metals or to paper currency. Otherwise, a given weight of pure gold or pure silver is equal in value of gold or silver to the same weight of pure gold or pure silver regardless of its shape or form, today as a thousand years ago or a thousand years hence.

considered in the same light as other non-taxable property. It is difficult to agree with this opinion. For, as the Zakât on silver and gold is imposed on the *weight* of the precious metal and not on the artistic value of the ornament, the fact that the latter be broken is no excuse for exemption from taxation for Zakât. In such a case, only the artistic value of the ornament has been impaired, whereas the value of the silver or gold content remains the same.

Far from prohibiting them, the Qurân definitely allows the wearing of ornaments. However, we must not overlook the important fact that the very same verses that establish the lawfulness of wearing ornaments, also warn against excessive indulgence in doing so. Which clearly implies that the wearing of ornaments must be kept within the limits of sobriety and good taste.

يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ ۝ قُلْ مَنْ حَرَّمَ زِينَةَ اللهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ ، قُلْ هِيَ لِلَّذِينَ آمَنُوا فِي الْحَيَاةِ الدُّنْيَا خَالِصَةً يَوْمَ الْقِيَامَةِ كَذَلِكَ نُفَصِّلُ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ ۝ (٧ : ٣١ ــ ٣٢)

« O Children of Adam ! Look to your adornment at every place of worship, and eat and drink, *but be not prodigal. Truly He loveth not the prodigals.* »
« Say : Who hath forbidden the adornment of Allah which He hath brought forth for His bondmen, and the good things of His providing ? Say : Such, on the Day of Resurrection, will be only for those who believe during the life of the world. Thus do We detail our Revelations for people who have knowledge. » (VII : 31 - 32).

The term «ornament» by no means implies that the articles in question need be made of pure, or even of an alloy of, silver or gold; nor does it imply that a silver or gold ornament need contain such a quantity of precious metal as to warrant taxation for Zakât. Ornaments of artistic beauty may just

as well be made of other materials of less vital importance to the Nation's economy. The Qurân also suggests this :

وَمَا يَسْتَوِي البَحْرَانِ هَذَا عَذْبٌ فُرَاتٌ سَائِغٌ شَرَابُهُ وَهَذَا مِلْحٌ أُجَاجٌ ، وَمِن كُلٍّ تَأْكُلُونَ لَحْماً طَرِيّاً وَتَسْتَخْرِجُونَ حِلْيَةً تَلْبَسُونَهَا ... (٣٥ : ١٢)

« And the two waters are not alike : this, fresh, sweet, good to drink; this (other) bitter, salt. And from them both you eat fresh meat and *derive ornaments* that you wear . . . » (XXXV : 12).

The place silver and gold ornaments should occupy in the life of a rational human being, is unambiguously stated in the following Quranic verses :

وَلَوْلاَ أَنْ يَكُونَ النَّاسُ أُمَّةً واحِدَةً لَجَعَلْنَا لِمَنْ يَكْفُرُ بِالرَّحْمَانِ لِبُيُوتِهِمْ سُقُفاً مِنْ فِضَّةٍ ومَعَارِجَ عَلَيْهَا يَظْهَرُونَ • وَلِبُيُوتِهِمْ أَبْوَاباً وَسُرُراً عَلَيْهَا يَتَّكِئُونَ • وَزُخْرُفاً وَانْ كُلُّ ذَلِكَ لَمَّا مَتَاعُ الحَيَاةِ الدُّنْيَا وَالآخِرَةُ عِنْدَ رَبِّكَ لِلْمُتَّقِينَ • (٤٣ : ٣٣ ــ ٣٥)

« And were it not that mankind would have become one community (through the love of riches), We might well have appointed for those who disbelieve in the Beneficent, roofs of silver for their houses and stairs (of silver) whereby to mount,

« And for their houses doors (of silver) and couches of silver whereon to recline.

« And ornaments of gold. Yet all that would have been but a provision of the life of the world (i.e., of temporary and relative worth). And the Hereafter with thy Lord is for those who keep from evil. » (XLIII : 33 - 35).

Imâm Shâf'î's argument that women's ornaments, being similar to dress, should not be subject to taxation for Zakât even if they be of silver or gold, is a rather exaggerated comparison. Dress in Islam is one of the essential necessities of human life, its purpose being to cover the nakedness of the body, a purpose not intended by ornaments. The material of which dress is made is most certainly not of lasting value. Whereas silver and gold ornaments fully conform to the condition of lasting value. Unlike dress, ornaments, as a rule, whether of silver or gold or any other material, are by their very nature superfluous items and thus cannot be compared to so indispensable an item as dress.

8) If a person possesses both silver and gold, neither or only one of which is equal in value to the Nisâb, but the combined value of which is equal to or above the Nisâb, Zakât must be paid on the combined value of the silver and the gold.

It should be noted that some 'ulemâ, among whom is Imâm Shâf'î, do not accept the view that silver and gold are one legal genus, and so do not agree that the value of these two precious metals be combined to bear taxation for Zakât.

9) Whenever silver and/or gold is exchanged for (i.e, given or received in payment of) wealth that is equally taxable under the Law of Zakât (i.e., for purposes of trade, or to purchase, for personal use, articles which are by nature taxable for Zakât), the transaction is subject to the rules governing the exchange of taxable wealth..

10) Unless definite proof exists that the Zakât-payer is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of silver and/or gold, whose personal responsibility it is to keep a correct account of the amount he/she possesses and of the Zakât due thereon.

طَاعَةٌ وَقَوْلٌ مَعْرُوفٌ فَإِذَا عَزَمَ الأَمْرُ فَلَوْ صَدَقُوا اللهَ لَكَانَ خَيْراً لَهُمْ ۝ (٤٧ : ٢١)

« Obedience and a statement in conformity with the Law. Then,

when the matter is determined, if they are loyal to Allah it will be well for them. » (XLVII : 21).

11) If all or part of a taxable amount of silver and/or gold is disposed of in exchange for non-taxable articles of personal use (i.e., articles not intended for trade), given as a gift, stolen, or accidentally lost, *after* Zakât falls due but before it has been paid, the obligation to effectuate the payment stands and is not annulled by the fact that the wealth in question or a part thereof is no longer in the possession of the person concerned. All the conditions and rules warranting taxation being fulfilled, including the completion of the year's term of possession, Zakât *must* be paid. This rule applies equally to every other category of taxable wealth.

12) On the other hand, if any such disposal or loss as described in Rule 11 occurs *before* the completion of the year's term of possession, the taxability of the wealth and consequently the obligation of Zakât will, according to the circumstances, either decrease or totally cease by the fact of the partial or total non-possession thereof for a full period of one year. This rule holds good even if ownership has ceased immediately before the completion of the term.

13) Lastly, should it be proven that the wealth in question has been maliciously disposed of or loss thereof simulated in order to evade the payment of Zakât dues, the guilty person is liable to punishment and, in any case, to forcible discharge of his/her dues.

Taxability of the Currency Note.

Whether or not surplus wealth kept in the shape of currency notes should be subject to taxation for Zakât, is one of the controversial problems confronting the modern Muslim, whose aim must be to restore the Institution of Zakât to its proper function in Muslim society.

In itself, the universal use of currency notes is not incongruous with the exact application of the Law of Zakât. But, in order to correctly appreciate the position, it is essential to have a clear notion as to what a currency note really is : a) How did it originate? b) What is it supposed to represent ? c) What does it actually represent ? d) And wherein lies its taxability for Zakât ? A few

words concerning the history of the currency note are therefore necessary to clear the point.

It was in medieval Europe, behind the walls of the goldsmith's shop, that the ancestor of the modern currency note first saw the light of day. At that time, the function of the goldsmith was twofold : besides the normal activities connected with his craft, he also had become, with time, the depositary of large quantities of gold entrusted to his care by wealthy merchants. It was, in fact, those wealthy merchants themselves who first prepared the ground in which a subsequently fraudulent monetary system was to take root. For, having deposited their gold for safe-keeping, they would often demur from claiming it again from the goldsmith, preferring, for the sake of convenience, to use the receipts thereof as a medium of exchange and payment. Once this practice was generally adopted, the opportunity for mischief presented itself and was quickly seized upon by the interested goldsmith. Indeed, this custom soon encouraged the depositaries of the merchants' gold to give full vent to their blind greed for easy money and the spoils of interest, by inventing an ingenious, albeit outrageous, method of creating artificial currency. This first took shape when the dishonest goldsmiths passed into public circulation, in the guise of loans, their own personal notes backed, at first, partly by their own gold and partly by the gold entrusted to them for safe-keeping, and subsequently *by only a very nominal quantity of gold* (rarely more than ten per cent) which, more often than not, was not even their rightful property. To gain a clearer insight into exactly what happened, we refer the reader to Mr. Jeffery Mark's graphic and fascinating description of the extraordinary activities of the medieval goldsmiths of Europe and their successors and followers, in his book, « The Modern Idolatry » (1).

Affording an answer to our first question, this account of Mr. Jeffery Mark's conclusively establishes that the ancestor of the present-day currency note was born at the hands of the unscrupulous money-lending goldsmiths of Europe, whose sole aim was to exploit the unsuspecting public.

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(1) See also : G. Ferro, «The Greatness and Decline of the Roman Empire», Vol. VI, p. 223; Dr. A. I. Qureshi, «Islam and the Theory of Interest», pp. 143 - 153; Ernest Sykes, « Banking and Currency » (London, Butterworth, 1925).

In answer to our second question, we know that the currency note was generally supposed to represent a given amount of precious metal, i.e., gold, existing in the strong-boxes of the goldsmith or in the vaults of the bank responsible for issuing it. In fact, until the years following the first World War, the illusion of the absolute convertibility of the currency note was successfully maintained in certain countries by the fact that the amount of gold specified on the note was actually paid to the bearer on demand. The payment, of course, was made relying on the same foregone conclusion as had prevailed since the Middle Ages, namely, that only a limited number of note-bearers would go so far as to claim the gold backing their notes. Be it as it may, this situation lasted in England and Mexico till 1931, in the United States till 1933, in Switzerland till 1936, etc.

The answer to our third question is found in the unpleasant truth that the ancestor of the currency note was, at its best, nothing more than a 90% fraud. As a matter of fact, the main difference between the old notes and the modern notes is that the former were supposedly convertible, while the latter are admittedly inconvertible. In other words, the real nature of the currency note is not that of a voucher; it is, and has always been, that of a mere *monetary token.*

We will now seek an answer to our fourth question : Wherein lies the currency note's taxability for Zakât ? Let us begin by asking : Wherein lies the taxability for Zakât of silver and gold ?

Most people will say that silver and gold being 'par excellence' the symbol of wealth, are of course taxable for Zakât.

It is true that since the dawn of history, both silver and gold, particularly the latter, have been highly prized by most cultured peoples of the world. The superiority of the physical qualities of silver and gold over those of other metals, won for these two elements, at a very early date, the epithet of «precious». But it is also true that to attribute the quality of «precious» to any material thing that is not, in itself, essential to human life, is nothing but an expression of a human, and very variable, sense of material values and so is a purely relative proposition.

The most interesting example that history offers of the relativity of material values is that of the Aztec Civilization which

flourished in Mexico up to the time of the Spanish Conquest (16th century, C.E.). The peculiarity that the Aztecs shared with all the other pre-Columbian peoples of the American continents and which is of the utmost interest to us, was that they had no monetary system in the modern sense of the term. Both silver and gold were plentiful in the land, and goldsmithery was one of the crafts in which the Aztecs excelled, producing objects of exquisite workmanship and artistic beauty; but neither of these metals played any part in the economic life of the nation and consequently no specific purchasing power was assigned to them. Among the Aztecs, trade was based on a system of barter, in which the highly prized cocoa bean was universally accepted as the standard product of exchange, should no other be desired. In other words, the cocoa bean was the nearest approach to money in the economic organization of these cultured people.

This patent example of the relativity of the human being's appreciation of material values, goes to show that silver and gold need not necessarily be classified as «precious», nor need these two metals represent a vital factor in a nation's economic life. The fact that they were so easily available to the Aztecs made that no extraordinary value at all was attached to them.

Thus, had the Law of Zakât been instituted among those people, neither silver nor gold could have been lawfully subject to the Zakât-tax. On the other hand, in view of the fact that the cocoa bean was universally accepted as the standard of exchange, (which means that a specific purchasing power was assigned to the cocoa bean), it would have been perfectly lawful to subject this product upon harvesting, not to the normal taxation of 10% applicable to agricultural produce, but to the Zakât of 20% to which are subject silver and gold at their source, i.e., upon extraction from the mine.

One must therefore recognize that had it not been that silver and gold acquired importance as a *medium of exchange* due to their durability and the attribution to them of the quality of «precious», there would have been no point in taxing these two metals for Zakât. It is a fact that there are other substances, such as copper, mercury, or platinum, which are quite durable and even quite pleasing to the eye, but which, not happening to enjoy the same esteem as silver

and gold, play no especially important part in our economic life and are therefore exempt, except as articles of trade, from taxation for Zakât. It is precisely because silver and gold have acquired universal recognition as a standard medium of exchange that they are liable to taxation for Zakât. In other words, it is not the substance itself that is taxed, but what it has come to represent, i.e., *the purchasing power attached thereto.*

Should silver and gold, by universal agreement, be declared non-precious metals and unanimously repudiated as a standard medium of exchange, their taxability for Zakât would automatically cease. Hence we come to the conclusion that whatever represents, by common agreement, a standard medium of exchange in the economic life of a people, be it a silver or gold coin, a cocoa bean, a shell (1), a stone (2), *or a currency note*, is naturally and compulsorily subject to taxation for Zakât.

The answer to our question : Wherein lies the currency note's taxability for Zakât ? is therefore : The taxability of the currency note lies *in its recognized, specific and effective purchasing power.*

As in the case of silver and gold, the act of paying the Zakât of currency notes implies the transfer of a given percentage of the Zakât-payer's *surplus purchasing power* to the beneficiaries of Zakât.

Today the function formerly assigned to silver and gold has been shifted to the currency note which constitutes, in most countries, almost the only means of purchase available to the private citizen. Thus when the modern Muslim sets aside surplus wealth, he more often keeps it in the shape of currency notes. This necessarily implies the withdrawal from public circulation of a corresponding — sometimes considerable — amount of purchasing power. For this reason, so long as the currency note conserves its validity as a medium of exchange, i.e., so long as its purchasing power subsists, its taxability for Zakât cannot be questioned. Hence, failure or refusal to pay the Zakât of surplus wealth kept in the shape of

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(1) The Maldives islanders used to use small white shells as currency. And in India, under the Imperial Guptas (5th centry C.E.), cowrie shells were used as currency, while two centuries later, besides cowries shells, silver and gold coins and pearls were also used for the purpose.

(2) The Maya peoples of Yucatan used to use certain kinds of stones as currency.

currency notes is, from the Islamic point of view, as much a sin as is failure or refusal to pay that of any other kind of surplus taxable wealth.

One last possible objection to the taxability of the currency note is that, contrary to silver and gold, paper is not intrinsically of any lasting value, deteriorating as it does by use and the passage of time, nor is it in itself of much value whatsoever. In reply it must be said that if, despite its artificiality, the currency note is universally accepted as a medium of exchange instead of silver and gold, there is no valid reason why a token quality of « lasting value » should not also be ascribed to it, since the banks responsible for issuing it readily replace worn and torn notes on demand. And as regards its value as paper, as stated above, it is not this aspect of the currency note which warrants the payment of Zakât, but its recognized and effective purchasing power.

Taxable Limits and Rate of Zakât for Currency Notes.

The Nisâb and rate of Zakât for currency notes are naturally bound to those established for pure silver, and so the currency note must admit the same rate and taxable limits as those applying to silver and follow the same basic rules. (See above : Original Nisâbs for Silver and Gold, p. 75).

Nisâb :

The same principle which, in the case of silver and gold, warrants the re-establishing of the Nisâb at the level of the prevailing market price of a year's provision of staple food, must likewise apply to the currency note.

Hence, in practice, the Nisâb for currency notes must be determined by the official market price of 5 camel-loads (i.e., 1680 seers or about 1568 kgs.) of whichever cereal constitutes normally the staple food of the country's inhabitants.

Thus a person who possesses for a period of one full year an amount in currency notes, the value of which is equal to the official market price of 5 camel-loads of the cereal that constitutes the country's staple food, must pay $2\frac{1}{2}\%$ Zakât on that amount, which amount represents the Nisâb.

Thereafter a 2½% Zakât must be paid on every increase equal to the fifth part of the sum representing the Nisâb. Any amount falling short thereof remains free from taxation, Zakât being paid only on the preceding figure warranting taxation.

If we accept as Nisâb for the current year the sum of Rs. 525/-/- (1) the yearly Zakât on that sum will be Rs. 13/2/-. Each taxable increase of Rs. 105/-/- (i.e., one fifth of Rs. 525), will carry a Zakât of Rs. 2/10/-.

Rules governing the payment of the Zakât of Currency Notes :

1) Whenever the official price of the cereal which constitutes the staple food of the country's inhabitants has varied during the year, the average price over the year is to be taken as the standard by which to establish the Nisâb for currency notes for that year.

2) Since the currency note is recognized as a standard medium of exchange, it must be considered as belonging to the same legal genus as silver and gold. Consequently, when estimating whether the quantity of wealth kept in the shape of currency notes, silver and/or gold and belonging to one and the same person, is taxable for Zakât, the sum total thereof owned by him/her within the territory or territories under the jurisdiction of a same government and bearing a same computation of a year's term, must be taken into consideration :

a) Should the person concerned possess, besides currency notes, silver and/or gold the value or combined value of which is *less* than the Nisâb, this value should be added to that of the currency notes and the total, i.e., the sum total value of his/her surplus purchasing power, should be calculated, and if the resulting amount is equal to or above the Nisâb, the corresponding Zakât must be paid. In this case, payment of Zakât may be made entirely in the local currency and not necessarily in silver and/or gold.

b) On the other hand, should the person concerned possess, besides currency notes, a taxable amount of silver and/or gold, the Zakât due on the combined value thereof should preferably be paid according to the proportion of each, partly in silver and/or gold and partly in currency notes.

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(1) See above, footnote p. 76.

c) If the silver and/or gold possessed is in the shape of ornaments, vessels, etc, there being no loose silver or gold on hand, the Zakât due may be paid entirely in the local currency.

3) Should the entire amount under taxation be in the shape of currency notes, the person concerned possessing no silver and/or gold, the Zakât due is to be paid in the local currency. Never and in no case can the Zakât of currency notes be exacted in silver and/or gold.

In view of the fact that the rupee (1) actually in circulation in Pakistan and in India is a nickel coin having no silver content at all and thus is, to quote Dr. A. I. Qureshi, a «currency note printed on metal instead of paper », surplus wealth kept in the shape of such coins must be considered in that light and so subject to Zakât.

This same rule applies to coins of a high denomination having no silver or gold content, that are recognized as legal tender in any other country.

4) All coins of small denomination should normally remain Zakât-free.

As a rule, important savings are not kept in the shape of small coins, nor should they be, as to do so would seriously handicap the economic life of the people by withdrawing from public circulation large quantities of small change. If such a practice be indulged in for the purpose of evading Zakât, it would constitute a deception and be punishable if and when found out.

5) Whenever currency notes are exchanged for (i.e., given or received in payment of) wealth that is also taxable under the Law of Zakât (i.e., for purposes of trade, or to purchase articles for personal use by nature taxable for Zakât), the transaction is subject to the rules governing the exchange of taxable wealth.

6) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of surplus wealth kept in the shape of currency notes, whose personal responsibility it is to keep a correct account of the value involved and of the Zakât due thereon. (2).

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(1) The rupee was formally a silver coin of 1 s. 6 d. par value.

(2) See Rule 10 governing the payment of Zakât on silver and gold p. 86.

7) Should all or a part of the currency notes be disposed of to purchase non-taxable articles for personal use, given as a gift, accidentally lost, or stolen, *after* the Zakât thereof falls due and before the payment thereof has been made, the obligation to effectuate the payment stands and is not annulled because of the wealth in question being no longer in the possession of the person concerned. All the conditions and rules warranting taxation being fulfilled, including the completion of the year's term of possession, Zakât *must* be paid.

8) Should any such disposal or loss of taxable currency notes as described in Rule 7 occur *before* the completion of the year's term of possession, be it a single day, the obligation of Zakât either decreases proportionately or ceases by the fact of the partial or total non-possession of the said wealth for a full period of one year.

9) But should it be proven that the currency notes in question have been maliciously disposed of or loss thereof simulated in order to evade the payment of Zakât dues, the guilty person is liable to punishment and, in any case, to forcible discharge of his/her dues.

Taxability of Pearls and Precious Stones.

The generally accepted opinion which, for centuries, has exempted pearls and precious stones from taxation for Zakât, is another important feature of the old versions of the law that requires to be reconsidered in the light of its fundamental principles.

The following «*H*adîth» is quoted in support of this age-old exemption :

لا خُمس في الحجر •

« The fifth (i.e., 20% Zakât) is not to be taken from (precious) stones.»

The interpretation of this «*H*adîth», as expounded by most of the 'ulemâ of old (1) , is that pearls and precious stones are to be *absolutely* exempt from taxation for Zakât. Such a sweeping decision neither reflects the clear meaning expressed in the above «*H*adîth»,

(1) It is interesting to note that both Hasan al-Basrî and Imâm Abû Yûsuf consider pearls as liable to the 20% Zakât.

nor does it conform to the principles of the Law of Zakât. Granted that the Prophet (ص) did rule that precious stones are exempt from the 20% Zakât (الخمس) imposed on treasure trove, the spoils of war and the produce of silver and gold mines, there is no valid reason why pearls and precious stones *that have acquired the character of personal property* should be exempt from Zakât. Such an exemption not only disregards the spirit of the Law, but runs counter to the purpose that the Zakât is meant to achieve. If the exemption applied to pearls and precious stones at their source (i.e., upon extraction from the sea or mine) is justifiable, the same when applied to pearls or precious stones constituting personal property is both morally and legally unwarranted.

The reason why silver and gold, whether in a native or combined state, are subject to Zakât at their source, is that a) these two precious metals are admitted by Islamic Law as a standard medium of exchange, and b) both pure silver and pure gold, like all other metals in a pure state, are intrinsically unvarying in quality. This is not true of pearls and precious stones. First of all, pearls and precious stones are not recognized as a standard medium of exchange. Secondly, the quality and hence the value of each individual gem may vary considerably. In fact, the value of a pearl or of a precious stone depends in a great measure not only on its water but also on the skill displayed in its cutting and polishing. Until the process is completed, it is difficult, not to say impossible, to estimate what the ultimate value of the gem will be. Besides, whereas one stone extracted from a mine may be of extraordinary value, another stone of the same kind, extracted from the same mine, may be little more than worthless from the jeweller's point of view. A good illustration of the great disparity in value attached to gems of a kind is that of an industrial diamond versus a brilliant or a rose-cut diamond of the first water. Thus the fact of chance being unavoidable where pearls or precious stones are concerned, were the fifth part of a given amount of rough stones to be levied as Zakât upon extraction from the mine, it could happen that the fifth in question consist mainly of either the finest stones or of stones of inferior quality. In the first case, it would constitute an unfair deal to the Zakât-payer and, in the second, an unfair deal to the beneficiàries of Zakât. This circumstance alone suffices to justify the Prophet's (ص) injunction of : لا خمس في الحَجر (« The fifth is

not to be taken from (precious) stones. »)

But once a pearl or a precious stone, cut and polished, has been evaluated and put on the market, the position is entirely changed. At that time, like any other commodity, it automatically becomes subject to the Zakât of trade. Likewise, when the gem passes from the hands of the jeweller to those of a private owner and so takes on the character of personal property, there is no valid reason why it should not be subject to the Zakât of personal property of lasting value, the same as any other kind of taxable wealth.

Like silver and gold, pearls and precious stones have been highly prized since the dawn of history. But, whereas silver and gold soon came to be used as a standard medium of exchange, pearls and precious stones have remained almost the exclusive possession of the select few. Owing to their durability and the exquisiteness of their lustre, they were and are esteemed above all other substances as ornaments for the ostentatious human being.

With the rise of pompous civilizations, the value attached to pearls and precious stones increased to such a degree as to imply the expenditure of huge sums of money for their acquisition. Although valuable gems are at times purchased for gifts, the fact remains that usually pearls and precious stones are acquired either for the ostentation of their artistic beauty or as a sure means of conserving surplus wealth, or for both reasons ! Because the very preciousness of the gems makes that the money invested in them is readily recoverable should their legitimate owner so desire. Thus an important portion of an individual's cash capital, while maintaining its value, is often diverted from other investments of a really useful nature, and so lies dormant, sometimes for a whole lifetime and even for generations, in a form in which it is of *real use* to no one. This being so, to exempt the wealth represented by pearls and precious stones from taxation for Zakât is unreasonable. For the wealth thus immobilised could have been invested in some useful enterprise, in turn providing a means of lawful livelihood for other members of the community, and so have become a definite asset to the Nation as a whole.

From every point of view, pearls and precious stones fulfil the fundamental conditions warranting taxation for Zakât. They

fulfil the condition of «lasting value» as completely as do silver and gold, for they neither deteriorate by use nor by the passage of time. Besides, even if they are not recognized as a standard medium of exchange, they certainly do represent a very potential purchasing power by virtue of their ready convertibility. Thus pearls and precious stones must be included in the same category as reserve or surplus wealth kept in the shape of silver, gold, or currency notes, and so must be subject to taxation for Zakât in conformity with the same rules as govern the taxation of these types of wealth.

In view of which, failure to pay the Zakât of pearls and precious stones is, for the Muslim, no less sinful than failure to pay the Zakât of any other kind of taxable wealth. Surely a person who can afford to possess surplus wealth in the shape of pearls and/or precious stones, can also well afford to give the required $2\frac{1}{2}$ % of their value as Zakât to its legitimate beneficiaries, whose legal right it is by the very fact of their Islam.

Taxable Limits and Rate of Zakât for Pearls and Precious Stones.

The Nisâb and rate of Zakât for pearls and precious stones are naturally bound to those established for pure silver and so these gems must admit the same rate and taxable limits as those applying to silver and follow similar rules. (See above : Original Nisâbs for Silver and Gold p. 75).

All gems rated as «precious» are liable to taxation for Zakât; as for instance : Pearls, Diamonds, Rubies, Emeralds, Sapphires, Turquoises, Opals, Agates, Beryls, Topazes, etc.

Nisâb :

The same principle which, in the case of silver and gold, warrants re-establishing the Nisâb at the level of the prevailing market price of a year's provision of staple food, must likewise apply to pearls and precious stones. Hence the Nisâb for pearls and precious stones must be determined by the official market price of 5 camel-loads (i.e., 1680 seers, or about 1568 kgs) of whichever cereal normally constitutes the staple food of the country's inhabitants.

Thus a person who possesses, for a period of one full year, one or more pearls and/or precious stones, the value of which is

equal to the official market price of 5 camel-loads of the cereal constituting the country's staple food, must pay a 2½ % Zakât on the amount of their value, which thus represents the Nisâb for the current year.

Thereafter a 2½ % Zakât must be paid on every increase in value equal to the fifth part of the sum representing the Nisâb. Any value falling short thereof remains free from taxation, Zakât being paid only on the preceding figure warranting taxation (1).

Rules governing the payment of the Zakât of pearls and precious stones :

1) Whenever the official price of the cereal which constitutes the staple food of the country's inhabitants has varied during the year, the average price is to be taken as the standard by which to establish the current year's Nisâb for pearls and precious stones.

2) All gems must be considered as belonging to one legal genus. But as pearls and precious stones are not recognized as a standard medium of exchange, they cannot be considered as belonging to the same legal genus as silver and gold. Consequently, as dictated by the Law of Zakât whenever different genera are concerned, when estimating whether wealth kept in the shape of pearls and precious stones is, by its value, taxable for Zakât, the sum total thereof belonging to one and the same individual and existing within the territory or territories under the jurisdiction of a same government, and bearing a same computation of a year's term, must be taken into consideration *separately,* i.e., without adding their value to that of the silver and/or gold and/or currency notes that the person in question may likewise possess.

3) Gems mounted in silver or gold are to be taxed separately, according to their value, and the silver or gold setting is to be taxed according to its content of pure precious metal.

4) As it would rarely be possible to pay the Zakât of pearls and precious stones out of the wealth in question, (as also happens in the case of silver and gold ornaments, etc.), the payment thereof should preferably be made in silver or gold to the exact value of

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(1) See Modern Nisâb for Silver and Gold p. 76.

the required Zakât. But should this not be possible, payment may be made in the local currency.

Should the wealth under taxation comprise a large number of very valuable gems, the legitimate owner should have the option to pay the Zakât thereof out of the wealth in question, i.e., to give one or more of the gems, the value of which would be equal to the Zakât due, in payment thereof. Should this be done, and the value of the gem given in payment of Zakât be slightly more than what is due, the difference in value must be refunded to the Zakât-payer, preferably in gold or silver. If, on the contrary, the value of the gem in question be slightly less than what is due as Zakât, the Zakât-payer must make up the difference in silver, gold, or the local currency.

5) Whenever pearls or precious stones are exchanged for (i.e., given or received in payment of) wealth that is also taxable under the Law of Zakât, the transaction is subject to the rules governing the exchange of taxable wealth.

6) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of pearls and/or precious stones of taxable value, it being his/her personal responsibility to keep a correct account of the value involved and the Zakât due thereon.

7) Should all, or part, of the wealth constituted by pearls or precious stones of a taxable value be disposed of in exchange for *non-taxable* articles of personal use (i.e., non-taxable articles not intended for trade), given as a gift, stolen, or accidentally lost *after* the Zakât thereof has fallen due and before its payment has been made, the obligation to pay the Zakât in question stands and is not annulled by the fact that the said wealth is no longer in the possession of the person concerned. All the conditions and rules warranting taxation being fulfilled, including the completion of the year's term of possession, Zakât *must* be paid.

8) Should any such exchange or loss of taxable gems as described in Rule 7, occur before the completion of the year's term of possession, be it a single day, the obligation of Zakât decreases, or ceases, by the fact of the partial, or total, non-possession of the said wealth for a full period of one year.

9) But should it be proven that the gems in question have been, with malicious intent, temporarily exchanged for non-taxable wealth, or loss thereof simulated, in order to evade the payment of Zakât dues, the guilty person is liable to punishment and, in any case, to forcible discharge of his/her dues.

The Zakât of the Produce of Silver and Gold Mines.

In conformity with Islam's recognition of the individual's right to private ownership, Islamic Law, in principle, equally allows the private, communal and State exploitation of mines. This circumstance is entirely justified by the fact that, in Islam, wealth, whether of the individual, the community or the State, constitutes a trust confided by God to the human being's care as a test of his/her wisdom and capacity to fulfil his/her responsibilities, and for him/her to manage and spend in a way most beneficial to him/herself and to his/her fellow beings.

آمِنُوا بِاللهِ وَرَسُولِهِ وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلَفِينَ فِيهِ ، فَالَّذِينَ آمَنُوا مِنْكُمْ وَأَنْفَقُوا لَهُمْ أَجْرٌ كَبِيرٌ • (٥٧:٧)

« Believe in Allah and His Messenger, and spend of that whereof He hath made you trustees; and such of you as believe and spend (aright), theirs will be a great reward. » (LVII : 7).

انَّ اللهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنَّ لَهُمُ الْجَنَّةَ ••• (٩ : ١١١)

« Allah hath bought from the believers their lives and their wealth because the Garden will be theirs . . .». (IX : 111).

It is precisely in view of the obligation that Islam lays upon the Muslim to dedicate his/her wealth to the Cause of Allah, i.e., to the welfare of the Muslim nation, that, in a truly Islamic set up, the immense source of wealth provided by mines may safely be left in the control of private enterprise. For, in the presence of a correct Muslim mentality, which implies a deep-rooted sense of discipline and altruistic endeavour, and thus allows no ground for the play of selfish motives or irresponsible undertakings, the private ownership of any amount of wealth will never give rise to the hoarding or squandering of the Nation's assets.

Unfortunately, the conditions prevailing at the present time are such as to render the exploitation of the natural resources of a country by private enterprise extremely unwise in so far as the national interests are concerned. Bitter experience has already led a number of modern countries to place the exploitation of their mineral resources under State control. Such a measure, far from being inconsistent with Islamic principles, is actually substantiated by the following Quranic verse which, in special reference to the spoils of war, ordains :

مَا أفَاءَ اللهُ عَلى رَسُولِهِ مِنْ أهْلِ القُرَى فَلِلّهِ وَلِلرَّسُولِ وَلِذِي القُرْبَى وَاليَتَامَى والمَسَاكِينِ وَابْنِ السَّبِيلِ ، كَيْ لاَ يَكُونَ دُولَةً بَيْنَ الأغْنِيَاءِ مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا ، واتَّقُوا اللهَ انَّ اللهَ شَدِيدُ العِقَابِ • (٥٩ : ٧)

« That which Allah giveth as spoils to His Messenger from the people of the townships, it is for Allah and His Messenger (i.e., for the State) and for the near of kin (1) and the orphans and the needy and the wayfarer, *that it become not a commodity between the rich among you.* And whatsoever the Messenger giveth you, take it. And whatsoever he forbiddeth, abstain (from it). And keep your duty to Allah. Lo ! Allah is Stern in reprisal. » (LIX : 7).

The above-quoted verse stresses two important points : a) that wealth acquired from the spoils of war is not to become a commodity to the sole benefit of the rich and powerful citizens; b) that the apportioning of the spoils of war was to be entirely at the Prophet's (in our day, the Government's) discretion.

In fact, the twofold aim of the socio-economic structure of Islam (as clearly exemplified by the laws governing Zakât, debts, prohibition of interest, inheritance, etc.), is precisely to prevent the accumulation of vast amounts of wealth in the hands of a favoured few and, moreover, to compel the constant circulation of wealth,

(1) See part III, Rule 101.

thus ensuring a fair distribution thereof among all members of the community. Hence there is no place in Islam for the purely materialistic and selfish outlook which as yet characterizes modern business enterprises, nor for the predatory methods to which such a lucre-worshipping mentality invariably gives rise.

Basically, the Law of Zakât considers the produce of mines as spoils of the earth and, for this reason, applies the same rate of Zakât to the taxable produce of mines having the character of spoils, as to the spoils of war. Likewise, the right with which the Qurân invests the Prophet (ص) and through him the Muslim State, to either distribute the spoils among the deserving Muslims, or to refrain from so doing whenever circumstances warrant placing the wealth in question under State control, must by analogy be understood to apply to all that which is of vital interest to the Nation, especially in times of national emergency, and «inter alia» to the spoils of the earth, and must thus be understood to fully justify the nationalization of mines within a Muslim State.

A detailed study of the nationalization of mines would be outside the scope of the present work. Suffice it to say that in order to better serve the Nation's interests, and until such a time as the mentality of those who profess Islam has been sufficiently reformed to guarantee to the Nation the unswerving loyalty, selfless devotion and unity of purpose of all its members, the nationalization of mines is often a necessity.

In view of the fact that Islamic principles allow as well of the nationalization of mines as of the community and the private exploitation thereof, the Law of Zakât must make provision for the three eventualities, since the obligation of Zakât does not lapse in respect of taxable produce derived from mines under State control. For this reason, besides the rules which normally govern the Zakât of the taxable produce of mines when the conditions prevailing within the Nation conform entirely to the norm of Islamic nationhood, a few special rules are required by which to regulate the Zakât of the taxable produce of mines under exclusive State control.

It should be pointed out that the imposition of Zakât on taxable produce derived from nationalized mines does not imply that other wealth belonging to the Muslim State — as, for instance, the

State funds, including the capital held by State-owned establishments such as educational institutions, hospitals, hotels, railways, farms, factories, etc. — may be subject to taxation for Zakât. Even when State-owned establishments have the character of business concerns, the State funds actually constitute wealth belonging to the people and destined to meet the requirements of and benefit the Nation as a whole, and for this very reason they are naturally excluded from the category of taxable wealth. Moreover, the State funds represent for the most part wealth contributed by the people themselves in the form of Government taxes. Whereas the taxable produce of nationalized mines represents wealth derived from its very source and which has as yet not come to constitute the property of any private citizen.

Thus, the same principle that requires a portion of the spoils of war, i.e., of wealth accidentally acquired by the Muslims in the course of a lawful armed struggle, to be dedicated to the welfare of the Nation's deserving members must, by analogy and for the same purpose, be applied to the taxable produce of nationalized mines; accordingly, a portion thereof, in conformity with the established rules, must be paid by the State into the Zakât fund.

The imposition of Zakât on the produce of mines is based on a ruling of the Prophet (ص) quoted by the *H*anafite School of Law which prescribes : « وفي الرِكاز الخُمس And from buried wealth, one fifth part thereof is to be given (as Zakât) ».

With regard to mines, the Arabic term «rikâz» (ركاز)[1] occurring in this «*H*adîth», is understood by such an authority as Imâm Ghazzâlî as exclusively referring to the produce of silver and gold mines discovered by a Muslim either within the boundaries of Muslim territory or in recently conquered enemy territory. But the *H*anafite School of Law construes this term to include as well the produce of copper, iron, lead and mercury mines.

The Arabic term «rikâz» literally means «a buried treasure». Hence the same term applies to treasure troves. It is also used to designate silver and gold veins [2]. This word derives from the root «rakaza» (ركز) i.e., to bury or fix (for instance a lance) in the

(1) ركاز pl. of ركزة or ركيزة

(2) Imâm Mâlik considers the term «rikâz» as referring exclusively to buried treasures of non-Muslim origin.

earth, and so «to create (God) silver and gold mines». It therefore seems perfectly correct and fully in keeping with the spirit of the Law of Zakât, to interpret the term «rikâz» as referring to silver and gold mines as well as to treasure troves. In fact, the very wording of the «*H*adîth» in question implies that the reference contained therein is to buried wealth, which is *by nature* taxable for Zakât. Where the produce of mines is concerned, such taxable wealth can only be silver or gold.

This view also finds support in the following « *H*adîth » reported by Imâm al-Baîhaqî (1) and related on the authority of Abû Huraîra :

روي عن أبي يوسف عن عبد الله بن سعيد عن أبيه عن جدّه عن أبي هريرة ، قال : قال رسول الله صلّى الله عليه وسلّم : في الركاز الخمس • قيل : وما الركاز يا رسول الله ، قال : الذهب الذي خلقه الله تعالى في الأرض يوم خُلقت • (رواه البيهقي)

« It is related on the authority of Abû Yûsuf, (who said) on the authority of 'Abd Allah ibn Sa'îd, (who said) on the authority of his father, (who said) on the authority of his grandfather, (who said) on the authority of Abû Huraîra, who said : The Messenger of Allah (ص) said : 'From buried wealth, one fifth thereof is to be given (as Zakât)' (1). (Someone) asked : And what constitutes buried wealth, O Messenger of Allah ? He said : 'The gold that Almighty Allah created in the earth on the day of its creation'. (Imâm al-Baîhaqî).

On the other hand, the Mâlikite School of Law, which likewise considers taxability for Zakât to apply to the produce of silver and gold mines only, quotes the following «*H*adîth» that establishes the imposition of the $2\frac{1}{2}\%$ Zakât on the produce of mines.

عن يحيى عن مالكٍ عن ربيعة بن أبي عبد الرحمان عن غير واحدٍ أنّ رسول الله صلّى الله عليه وسلّم قطع لبلال ابن الحارث المُزني معادن القبليّة ، وهي من ناحية الفرع ، فتلك المعادن لا يُؤخذ منها الى اليوم الاّ الزكاة •

(1) « Al-Ma'ârfat », by Imâm al-Baîhaqî.

« (It is related) on the authority of Ya*h*yâ, (who related) on the authority of Mâlik, (who related) on the authority of Abî 'Abd ur-Ra*h*mân, (who related) on the authority of Rabî'a ben *H*ârith al-Mozanî the southern (gold) mines which are (situated) in the sub-district. And till this day only the (ordinary, i.e., $2\frac{1}{2}\%$) Zakât is taken from (the produce of) those mines.»

From these «A*h*adîth» it appears that the Law of Zakât must take into consideration and make provision for two categories of taxable produce derived from mines :

First category : a) The produce of silver and gold mines discovered by a Muslim either within the boundaries of Muslim territories or in recently conquered enemy territory; i.e., mines not constituting, at the time, the rightful (personal or private) property of a known Muslim individual or company, nor constituting national property under State control. b) The produce of silver and gold mines constituting the common property of the Muslim inhabitants of a country; i.e., mines which may be freely exploited by the Muslim inhabitants of a country, without special authorization or concession.

The produce derived from this first category of mines, by the very fact that it represents wealth of lasting value accrued to the finder either from a source accidentally discovered (in which case it takes on the character of a treasure trove), or from a source constituting a common field of exploitation, or constituting former enemy property (in which case it takes on the character of spoils), is considered in the same light as spoils of war and is, for this reason, subject to a Zakât of one fifth (20%) upon extraction from the mine, in conformity with the following Quranic verse :

وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ
وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ ... (٨:٤١)

« And know that whatever you take as spoils of war, a fifth thereof is for Allah and for the Messenger and for the kinsman (who hath need) and the orphan and the needy and the wayfarer... » (VIII:41).

. . . as well as in conformity with the Prophet's ruling :

وفي الرِكاز الخُمس

« And from buried wealth, one fifth part thereof is to be given (as Zakât) ».

Second Category : The produce of silver and gold mines constituting either national property under State control or the rightful (personal or private) property of a Muslim individual or company, acquired by concession, purchase, or inheritance; i.e., mines which have taken on the character of regular business concerns and which have thereby ceased to represent wealth of the nature of spoils and treasure troves.

Imâm Mâlik is of the opinion that the produce of this second category of mines should be subject to a $2\frac{1}{2}$ % Zakât at its source, after allowing for a basic tax-free extraction of the precious metal to an amount equal to the Nisâb established for silver and gold.(1) Thus Imâm Mâlik considers the produce of this second category of mines in the same light as produce of the land, i.e., non-perishable agricultural produce.

As regards the levying of a $2\frac{1}{2}$ % Zakât on the produce of silver and gold mines of the second category, the view of Imâm Mâlik is perfectly sound and should be adhered to in our day. For undoubtedly a reduction of the Zakât from 20% to $2\frac{1}{2}$ % when the produce of a silver or gold mine has ceased to represent wealth having the character of spoils or treasure trove, is quite justified, considering that the mine in question is then under systematic exploitation which necessarily involves not only an initial but also a subsequent constant expenditure on the part of the owner or concessionary of the mine.

On the other hand, the allowance that Imâm Mâlik makes for a basic Zakât-free extraction of the precious metal in conformity with the Nisâb established for the ordinary Zakât of silver and gold, seems unjustified under the circumstances.

In fact, although the exact value of the wealth represented by a mine under systematic exploitation remains an unknown factor, it is safe to surmise that the silver or gold existing in the mine is

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(1) This same view is held by the Shâfiite School of Law, which likewise considers the produce of silver and gold mines as liable to an initial Zakât of $2\frac{1}{2}$% after allowing for a basic Zakât-free amount equal to the Nisâb established for these two precious metals.

many times more than the Nisâb established for these two precious metals. It is precisely because the exact value of the precious metal existing in the mine is unknown, that the mine itself is not subject to taxation for Zakât. Nevertheless, this circumstance does not change the fact that the silver or gold existing in the mine either rightfully belongs to the owner or is the lawful prerogative of the concessionary thereof, and so already constitutes, in the full sense of the term, a basic Zakât-free provision. This being the case, the consideration of a Nisâb completely loses its significance where the Zakât of the produce of a mine is concerned.

For this reason, the Zakât of the produce derived from silver and gold mines of the second category, should be fixed at $2\frac{1}{2}$ % of whatever amount of the precious metal is extracted from the mine, without regard to a Nisâb.

With the exception of gems which, as shown above (p. 97), are subject both to the Zakât of trade and, in view of the preciousness ascribed to them, to the Zakât of personal property of lasting value, the produce of all other types of mines (1) does not fulfil the conditions warranting the imposition of Zakât, neither at its source nor as personal property. Only as an article of trade does such produce automatically become subject to the Zakât of trade, the same as any other commodity.

The Law of Zakât naturally implies that whatever does not constitute surplus wealth of lasting value, i.e., whatever is essential to satisfy the yearly necessities of the human being, or is of daily utility in the domestic, public and industrial spheres, is by nature Zakât-free. In view of which, the *H*anafite opinion cannot be accepted that copper, lead, mercury and iron be classified in the same category of wealth as silver and gold and regarded as produce taxable for Zakât at its source, there being no legal justification for doing so.

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(1) For instance, copper, iron, lead, tin, nickel, chrome, platinum, aluminium, marble, quartz, onyx, jade, alabaster, lapis lazuli; granite, limestone, mica, slate, cobalt, magnesium, potassium, coal, gypsum, arsenic, borax, salt, petrol, mercury, etc., are all, basically considered, non-precious substances and thus are, by nature, Zakât-free.

Like Imâm Abû Hanîfa, Imâm Muhammad is of the opinion that mercury should be subject to the initial 20% Zakât. Imâm Abû Yûsuf, however, disagrees with this view and maintains that the 20% Zakât should not be imposed on mercury.

But the non-taxability for Zakât of the produce of mines other than silver and gold, most certainly does not mean that no tax of any kind should be imposed on such produce. It simply means that such produce does not fulfil the conditions warranting *taxation for Zakât*. Should a Muslim Government consider it necessary to levy any other tax on such produce, it would be perfectly lawful for it to do so. However, such a tax would be a *regular government tax;* it would not be Zakât.

Although the term « rikâz » equally refers to treasure troves, for the sake of clearness, the rules relating thereto have been placed under a separate heading.

Rates of Zakât for the Produce of Silver and Gold Mines :

As stated above, the Law of Zakât divides silver and gold mines into two categories. (See pp. 106, 107).

As the exact total value of the silver or gold existing in a mine is necessarily an unknown factor, taxation for Zakât is not imposed on the mine itself, but only on the precious metal extracted therefrom.

The produce of silver and gold mines comprised in the first category is subject to a 20% Zakât, to be levied on whatever amount of silver or gold is extracted from the mine, whether it be in a native or a combined state.

Likewise, gold and silver derived from the sands of rivers is subject to a 20% Zakât of whatever amount extracted.

The produce of silver and gold mines comprised in the second category is subject to a $2\frac{1}{2}$ % Zakât, to be levied on whatever amount of silver or gold is extracted from the mine, whether it be in a native or combined state.

Rules governing the Payment of the Zakât of the Produce of Silver and Gold Mines. (The same apply to the payment of the Zakât of gold derived from the sands of rivers) :

1) The Zakât of the produce of silver and gold mines is, in actual fact, an initial Zakât of these two precious metals at their source, and so neither involves consideration of a Nisâb nor of a

year's term of possession of the wealth in question as a condition warranting taxation for Zakât.

2) The initial Zakât of 20%, or $2\frac{1}{2}$ %, is leviable on the produce of silver and gold mines, whether the precious metal extracted be in a native or combined state.

3) The levying of the Zakât of silver and gold at their source should preferably be effectuated on a monthly basis. That is, the actual payment of the initial Zakât of native or combined silver and/or gold should be made at the end of each month, when the total quantity of precious metal mined during that period is known. The payment may be made either out of the produce itself or, for the sake of convenience, in silver or gold coins to the exact value of the amount due, or in its equivalent in currency notes.

4) After extraction from the mine and discharge of the initial Zakât, native gold or silver remaining in the possession of the finder (in the case of the produce of mines comprised in the first category) or of the owner or concessionary of the mine (in the case of the produce of mines comprised in the second category) for a period of one full year, is subject to the regular yearly Zakât of $2\frac{1}{2}$ % in conformity with the rules governing the Zakât of silver and gold.

5) As a consequence of Rule 3, the computation of a year's term of possession for a given amount of native silver or gold remaining with the original owner, will begin as from the day following the date marking the falling due of the initial Zakât on the said amount.

6) Silver and gold extracted from the mine in a combined state will, after the discharge of the initial Zakât, not be subject to the regular yearly Zakât of $2\frac{1}{2}$ % until refining has taken place.

Once refined, the pure silver or pure gold remaining in the possession of the finder (in the case of the produce of mines of the first category) or of the owner or the concessionary of the mine (in the case of the produce of mines of the second category) for a period of one full year, is subject to the regular yearly Zakât of $2\frac{1}{2}$ % in conformity with the rules governing the Zakât of silver and gold.

7) As a consequence of Rule 6, when the precious metal has

been extracted from the mine in a combined state, the computation of a year's term of possession for a given amount of refined silver or gold remaining with the original owner, will begin as from the day following the date marking the end of a month's refining, when the total quantity of precious metal refined is known.

8) When silver or gold extracted from the mine in a combined state, is not refined by the original owner but is sold to another individual or company for the purpose of refining, or in fact for any other purpose, the transaction both as regards the purchaser and the seller, is subject to the rules governing the exchange of taxable wealth.

9) In conformity with Rule 3 of those governing the exchange of taxable wealth, when the produce of silver and gold mines, or part thereof, is disposed of before the Zakât thereof has been discharged, the amount due as Zakât (i.e., 20% or $2\frac{1}{2}$% according to the category to which the mine in question belongs) must be set aside for payment *before* the completion of the transaction.

10) Mines found by a Muslim, within Muslim territory, on land constituting common property, or in a recently conquered enemy territory, (i.e., mines comprised in the first category), may not be claimed by the finder as his/her personal property. In such a case, the mine itself becomes common Muslim property and may be freely worked, as well by the finder of the mine as by other Muslims, so long as a concession has not been obtained for its systematic exploitation. And the 20% Zakât of the produce must be paid individually by each person (i.e., exploiter) from whatever amount of the precious metal he/she has mined.

11) In all cases where Rule 10 applies, the Muslim finder has the right of first option to obtain from the Government a concession on the mine he/she has found, for the purpose of bringing it under systematic exploitation.

According to the dictates of national interests, the Government may, at their discretion, grant or not grant such a concession.

Should the Government grant such a concession, the common property holders' right to share in the profits must be safeguarded. Responsibility for the payment of Zakât rests in this case with the concessionary.

Should the finder not avail him/herself of the right of first option, the Government may, at their discretion, grant a concession on the mine in question to another Muslim (individual or company), or place it under State control, always safeguarding the right of the common property holders to their share of the profits.

A concession to exploit a mine of the first category (see Rule 10) may not be granted to a non-Muslim except with the full consent of the Muslim common property holders, and safeguarding their rights and interests, and the Government's taking into consideration of the national interests. The concessionary should in this case preferably be a national of the country concerned. In this case, the obligation of Zakât lapses for the duration of the concession.

12) Once a silver or gold mine has come to constitute a government concession, it automatically ceases to represent wealth of the nature of spoils or treasure trove and is, thereafter, included in the second category of mines, the produce of which is subject to a $2\frac{1}{2}$ % Zakât.

13) Royalties to be paid to the common property holders and/or to the Government by the concessionary of a silver or gold mine must not be confused with the $2\frac{1}{2}$ % Zakât, which is to be given out of the *total amount* of precious metal extracted from the mine; i.e., *before* payment of any royalties.

14) When the exploitation of a silver or gold mine comprised in the first category is taken over by the Government (in the absence of legislation requiring the nationalization of mines), the mine in question automatically ceases to represent wealth of the nature of spoils or treasure trove and is included, from the moment of its nationalization, in the second category of mines, the produce of which is subject to a $2\frac{1}{2}$ % Zakât. Due compensation is to be paid to the common property holders, if any.

As the taxable produce of mines under State control represents wealth derived from its very source and which has, as yet, not come to constitute the property of any private citizen, the Zakât due must be paid in the normal manner by the Government to the Zakât fund.

15) When the exploitation of a silver or gold mine found by a private individual is taken over by the Government, due compensation must be given to the finder.

16) Silver and gold mines found by a Muslim on land constituting his/her personal property, rightfully belong to him/her as legitimate owner of the land in question (in the absence of legislation requiring the nationalization of mines) and are comprised in the first category of mines, the produce of which is subject to an initial 20% Zakât (1).

This same rule applies to mines found (i.e., not as a result of prospecting) on State-owned land (i.e., not common land) : such mines rightfully belong to the State as legitimate owner of the said land and are likewise comprised in the first category of mines, the produce of which is subject to a 20% Zakât.

In either case, when the finder is a person other than the owner of the land, he/she is entitled to a reasonable reward from the latter to be agreed between them, but may not claim ownership of, or prior right to exploit, the mine.

17) When, upon the death of the original owner, privately owned silver and gold mines of the first category come to constitute inherited wealth, they automatically cease to represent, in respect of the owner or owners (i.e., the heirs), wealth of the nature of spoils or treasure trove and thenceforth are included in the second category of mines the produce of which is subject to a $2\frac{1}{2}$% Zakât.

18) Silver and gold mines found as a result of private (by an individual or company) or Government prospecting, are included in the second category of mines, the produce thereof being subject to the $2\frac{1}{2}$ % Zakât as, in this case, the exploitation of the mine has,

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(1) Both Imâms Abû Hanîfa and Ahmad ben Hanbal are of the opinion that if a person finds a mine within the premises of his own house, the mine's produce should not be subject to the initial 20% Zakât. It is, however, difficult to understand what difference there is between a mine found within the premises of a person's house and one found within the boundaries of the same person's land. As both cases concern legitimately owned private property, there seems to be no valid reason for exempting the produce of the one mine and imposing Zakât on the produce of the other.

Among the prominent jurists who maintain that the produce of mines found within the premises of a person's house is not exempt from the initial Zakât, are Imâms Abû Yûsuf, Muhammad, Mâlik and Shâf'î. However, the first two subject such produce to the 20% Zakât as spoils of the earth, while the latter two subject it to the $2\frac{1}{2}$% Zakât, after allowing for a basic Zakât-free amount equal to the Nisâb established for silver and gold.

from its inception, the character of a business enterprise.

19) In the absence of legislation requiring the nationalization thereof, silver and gold mines found by a non-Muslim subject on land constituting his/her personal property, rightfully belong to him/her as legitimate owner of the land in question and, in conformity with Islamic Law, are *not subject* to the payment of Zakât.

Any Government tax or taxes to which such mines are subject, should not be confused with Zakât.

Should the finder of a silver or gold mine situated on the property of a non-Muslim be a person other than the owner, he/she is entitled to a reasonable reward from the latter, but may not claim ownership of, or prior right to exploit, the mine.

20) Should the non-Muslim owner of a silver or gold mine lease or concede to the Government or to a private Muslim individual or company the right to exploit the mine, the obligation of Zakât (being $2\frac{1}{2}\%$ of the produce) is incumbent on the Muslim lessee or concessionary, as the produce then becomes Muslim property and as such is automatically subject to taxation for Zakât. In this case, any special Government tax levied on the produce of mines owned by non-Muslims will remain suspended for the duration of the lease or concession.

21) Should the Government or the private Muslim owner of a silver or gold mine (a mine that is State property or private property, not common Muslim property) lease or concede it to a non-Muslim individual or company for exploitation, the obligation of Zakât lapses for the duration of the lease or concession.

22) Silver and gold mines found by a non-Muslim within Muslim territory on land constituting common property or in former enemy territory recently conquered by the Muslims, may not be conceded to the non-Muslim finder for exploitation except with the full consent of the Muslim common property holders and after due consideration by the Government of the Nation's interests. Should the non-Muslim finder request and not be granted such a concession, he/she should be fairly rewarded by the Government for his/her find.

23) The sale of a silver or gold mine constituting private

property, be it comprised in the first or the second category, is not subject to the rules governing the exchange of taxable wealth, as the mine itself is not taxable for Zakât.

If prior to the transaction the mine in question was comprised in the first category, by the fact of its sale it automatically ceases to represent wealth of the nature of spoils or treasure trove and is thereafter included in the second category of mines, the produce of which is subject to a $2\frac{1}{2}\%$ Zakât.

24) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner, lessee or concessionary of a silver or gold mine, who is personally responsible for keeping a correct account of the amount of precious metal mined and of the Zakât due thereon.

25) Should the produce of silver or gold mines, or part thereof, be stolen or accidentally lost *before* the time when the Zakât thereof falls due (i.e., *before* the end of the month), the obligation of Zakât ceases in respect of the amount lost or stolen.

26) Should the legitimate owner of the wealth in question be guilty of negligence or default in the prompt discharge of his/her Zakât dues, and should it so happen that the taxable wealth, or part thereof, be lost or stolen *after* the Zakât has fallen due, the obligation to effectuate payment of the said Zakât stands and is not annulled by the fact that the wealth in question is no longer in the possession of the legitimate owner.

27) Should it be proven that all, or part, of the produce (silver or gold) of a mine has been maliciously disposed of or exchanged for non-taxable wealth, or loss thereof simulated, in order to evade the payment of Zakât dues, the guilty person is liable to punishment and to forcible discharge of his/her dues.

Supplementary Rules governing the Payment of the Zakât of the Produce of Nationalized Silver and Gold Mines.

1) When a Muslim State's legislation requires the nationalization of mines, all silver and gold mines situated on land constituting private property must be ceded to the State for exploitation, and full compensation for the land involved must be paid by the State to the owner, whether he/she be Muslim or non-Muslim. If

the mine be newly found, it is incumbent on the State to reward the finder.

2) Likewise, silver and gold mines situated on land constituting common property must be ceded to the State for exploitation, and compensation for the land paid by the State to the common property holders. The finder of a mine newly found on common or on State property (i.e., not as a result of Government prospecting) should be duly rewarded by the State.

3) Responsibility for the payment of the Zakât of the produce of nationalized silver and gold mines rests primarily with the Head of the State and in second place with the Government Department directly in charge of the management of the mines in question.

4) As is the case for silver and gold mines constituting common or private property, nationalized silver and gold mines are divided into two categories :

a) Silver and gold mines found by chance (i.e., not as a result of prospecting) within Muslim territory on land constituting common or State property, or within recently conquered enemy territory, the produce of which (whether in a native or combined state), being of the nature of spoils or treasure trove, is subject to the 20% Zakât upon extraction from the mine.

b) Silver and gold mines found within Muslim territory, on land constituting private property, or as a result of Government prospecting on land constituting common or State property. As the produce of such mines is not, in so far as the State is concerned, of the nature of spoils or treasure trove, it should naturally be subject to the $2\frac{1}{2}$% Zakât upon extraction from the mine.

5) The Zakât of the produce of nationalized silver and gold mines should preferably be levied on a monthly basis, in accordance with the final monthly computation of the output. That is, the actual transfer of Zakât dues to the Zakât fund should be made at the end of each month, when the total quantity of precious metal extracted during that period is known.

6) The Zakât of the produce of nationalized silver and gold mines may, for the sake of convenience, be paid into the Zakât fund in silver and/or gold coin, or in local currency, to the exact value of the amount due.

7) The produce of nationalized silver and gold mines constitutes wealth belonging to, and destined to meet the requirements of, the nation as a whole. Therefore, mined silver and gold remaining in the possession of the State after the discharge of the initial 20% or 2½% Zakât, is naturally exempt from the 2½% yearly Zakât unless and until it comes to constitute reserve or surplus wealth belonging to companies or private individuals.

The Zakât of Treasure Troves.

The Zakât of treasure troves, like that of the produce of silver and gold mines, is based on the ruling of the Prophet (ص) :

وفي ألركاز الخمس

« And from buried wealth, one fifth part thereof (is to be given as Zakât) ».

Although the old texts generally designate treasure troves as « rikâz », the *H*anafite School of Law, in particular reference thereto as apart from mines, uses the term « kanz » (كنز) which literally means « hoard », and hence « hidden treasure ».

As stated earlier, the Law of Zakât views treasure troves in the same light as spoils of war and therefore requires the initial 20% Zakât to be given from such wealth upon discovery.

Like silver and gold mines, treasure troves are considered as of several kinds. These are :

a) Treasures that are clearly of Muslim origin, as for instance those consisting of silver and gold coins bearing the stamp of the « Shahâdat » (لا اله الا الله محمد رسول ألله) , or of an Islamic Government.

b) Treasures bearing no clear sign of their origin.

c) Treasures that are clearly of non-Muslim origin, i.e., those bearing the sign of a non-Muslim Government or of an idolatrous religion.

According to the old Law of Zakât, treasures that are clearly of Muslim origin are not subject to the initial 20% Zakât, on the grounds that such wealth, by the very fact of its Muslim origin, is not of the nature of spoils and is consequently exempt from the

Zakât of spoils. This first kind of treasure has therefore been classified as «Muslim property that has been lost and found (لقطة)».

« Prima facie », this exemption seems quite justified so long as the nature of spoils is deemed essential to warrant the imposition of Zakât on treasure troves. For, undoubtedly, hidden wealth that was once the property of a Muslim cannot be regarded as spoils taken from the enemy. But if we inquire as to *why* the spoils of war are subject to Zakât, the argument for exemption in this case loses its aspect of finality and must be reconsidered.

Indeed, the reason for levying a 20% Zakât on the spoils of war is that the wealth it represents is *accidentally acquired* in the course of lawful fighting (i.e., war of defence) against the enemies of Islam. Thus the fact of accidental acquisition (of lawful wealth) lends to spoils of war the character of *surplus wealth* and so warrants the imposition of Zakât or, in other words, the sharing thereof with the needy Muslims. It is not, therefore, the acquisition of the spoils from the non-Muslim enemy but the manner in which they are acquired that warrants their taxation for Zakât. The Muslim may not wage war for the sake of booty. He may only engage lawfully in defensive warfare. Should wealth of the nature of spoils be acquired as a result of unlawful fighting (i.e., aggressive warfare), the question of Zakât would not lawfully arise, as the very possession of such wealth would be unlawful, being tantamount to larceny and hence « impure ».

It therefore appears that the fact that the substance of a treasure trove was once the property of a Muslim, is not sufficient to warrant exempting the finder from the obligation of giving the fifth part thereof as Zakât.

The fact of *accidental acquisition* being the legal reason warranting the imposition of Zakât in this case, it is the consideration of this fact which must prevail, regardless of the origin of the wealth in question. The Law of Zakât must adhere to this fundamental principle on which is based the Zakât of spoils and provide that it be the decisive factor in establishing that all treasure troves, even though bearing a clear sign of a Muslim origin, are taxable for the initial 20% Zakât whenever their substance is of a taxable nature.

The old jurists, taking for granted the non-Muslim origin of

the second and third kinds of treasure troves mentioned above, hold the view that they are, in any case, subject to the 20% Zakât.

While admitting the taxability of such treasure troves, it is interesting to point out that the absence of a sign denoting the Muslim origin of an object is not an absolute proof that the object in question is of non-Muslim origin. Nor does a clear sign of non-Muslim origin necessarily imply that at the time of concealment the object was the property of a non-Muslim. Especially where coins are concerned, there can be no definite proof that they were not actually the property of a Muslim, acquired in a perfectly lawful manner as, for instance, by trading with the inhabitants of a non-Muslim country (1) .

Therefore, if the taxability for treasure troves is to be based on a sound principle, it may not depend on the presumed faith of its original owner. The fact that a treasure trove be legally recognized as such and that it constitute wealth accidentally acquired, suffices to warrant its taxability for Zakât.

Another point of law no longer justified today, relates to the right of ownership over the wealth constituting a treasure trove.

Whereas Imâm Abû Yûsuf maintains that a treasure found on a private property naturally belongs to the owner of the property, Imâms Abû *H*anîfa and Mu*h*ammad are of the opinion that a treasure found on land belonging to a private person, does not necessarily become that person's property, but must be considered primarily as the rightful property of the person to whom the land was given at the time of the Muslim conquest; and after him, as the rightful property of his heirs if they be known. Should both the original Muslim owner of the land and his heirs be unknown, Imâm Mu*h*ammad and others of the *H*anafite School opine that the wealth in question should be considered as the rightful property of the earliest known owner of the land on which it was found. They argue that whereas the original owner of the land and his descendants own both the surface and the subsoil, when the right of ownership passes from any of these to another person only ownership of the surface is transferred, while the subsoil and its contents remain the inheritable property of the original owner and his heirs.

(1) This same argument applies to coins of Muslim origin in the possession of non-Muslims.

This connotes that the subsoil is forever legally claimable by the latter, notwithstanding the fact that a legal transfer of the ownership of the land in question has taken place perhaps centuries before!

Where the concession or leasing of land is concerned, such an argument is certainly admissible; but the position is quite different in the matter of the sale of land, where its application is bound to give rise to absurd situations and to a good deal of litigation. In view of which, the opinion of Imâm Abû Yûsuf that treasures found on privately owned land normally belong to the person in lawful possession of the land at the time of discovery, is perfectly sound. It implies that the right of ownership over unsuspected wealth concealed within the boundaries of a private property is only *potential* and not factual. This potential right subsists so long as the property in question remains in the possession of a given owner or his/her heirs, but expires with the legal transfer (through sale or otherwise) of the property to another person. Only if the wealth is recovered within a reasonable period of time after the transfer, on the initiative and with the help of the person by whom the treasure was concealed or of his/her heirs, can any claim thereto be recognized as valid. And even then, the claimant would be in justice bound to share the treasure with the person in legal possession of the property at the time.

Likewise, even if the original owner of a treasure found concealed in a place other than property privately owned at the time, is known, the right of ownership must be considered as expired in respect of his/her descendants, unless the discovery of the said wealth be made on the initiative and with the help of the descendants themselves.

Needless to say that when the validity of their claim is proved beyond doubt, wealth recovered by its original owner or by his/her heirs does not constitute a treasure trove in the legal sense of the term, and is therefore not subject to the 20% Zakât.

With regard to the original owner, such treasure constitutes wealth the accessibility to and disposibility of which have been temporarily impaired and, consequently, any regular Zakât due retrospectively must be paid. As regards the heirs of the original owner, such treasure constitutes inherited wealth and so is subject to normal taxation for Zakât once it has remained in their possession for a period of one full year.

Islamic Law lays down that treasure troves discovered by the non-Muslim subjects of a Muslim State are equally liable to a 20% tax, payable to the State. But it must be clearly understood that this tax is a Government or State tax and *is not Zakât*. Nor is the wealth that it represents claimable for the Zakât fund.

In view of the afore-going considerations, the following rules govern the Zakât of treasure troves :

1) Legally, a treasure trove implies any amount of wealth normally taxable under the Law of Zakât, which is of unknown or expired ownership and which is discovered either buried in the earth, concealed within the walls, flooring, etc., of a house (private habitation or public building) or in a piece of furniture, or which is cast up or recovered from the sea (1), from a lake or river, or from a wrecked ship, etc.

2) Thus taxability for Zakât applies only to treasure troves consisting of such things as : silver and gold coins, ornaments, vessels, etc.; pearls; precious stones; currency notes and coins (other than silver or gold) of a high denomination that are still legal tender at the time of discovery.

3) All treasures of unknown or expired ownership found by a Muslim within Muslim territory or within recently conquered territory, are subject to a 20% Zakât upon discovery without consideration of a Nisâb and without regard to their origin.

4) Taxable wealth that has been lost (i.e., not purposefully concealed) and subsequently found, does not constitute a treasure trove and so is not subject to the 20% Zakât upon recovery. Such wealth must be returned to its legitimate owner. Should the wealth

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(1) Imâms Abû Hanîfa, Muhammad and Mâlik are of the opinion that, like ambergris, gold, silver and pearls thrown up by, derived or retrieved from sea are not to be subject to any initial Zakât, but are to remain en property of the finder.

On the other hand, Imâm Abû Yûsuf maintains that all w the sea, including gold, silver, pearls, coral and amberg the 20% Zakât.

In the opinion of Imâm Shâf'î, of wealth de only silver and gold are to bear an initial Za found on land, in the wilderness or in the r he deems liable to the initial 20% Zakât.

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in question be found after the demise of the legitimate owner, it must, on condition that their claim thereto has been effectively maintained and, when possible, their efforts to recover it sustained, be returned to the legitimate owner's lawful heirs, as in that case it constitutes part of their inheritance. Otherwise, the latter must be considered as having foregone their right of ownership and the wealth in question will, if and when found by another person, constitute a treasure trove.

5) Likewise, taxable wealth that has been purposefully concealed (be it within the boundaries of a private property or not) and subsequently recovered either personally by, or with the help of, the legitimate owner thereof, does not constitute a treasure trove and is consequently not subject to the 20% Zakât upon recovery. On the other hand, such wealth is subject to retrospective taxation for Zakât for the full period of concealment, and any share thereof given as a reward to persons having assisted in effectuating the recovery, is to be deducted after reckoning the Zakât due retrospectively on the whole.

If the wealth is recovered by the original owner's heirs, after his demise, retrospective or, more rather, posthumous taxation for Zakât should not be levied in view of the unusual circumstances.

6) Treasures of unknown or expired ownership found within the boundaries of a private property, belong to the person who is, at the time, the legitimate owner of the property (land, house, etc.) where the treasure is found. If the said property is jointly owned by two or more persons, they will equally share the right of ownership over the treasure trove, regardless of which one of them was the actual finder. They will likewise be jointly responsible for the payment of the 20% Zakât which must be made before the sharing of the treasure.

7) Treasures of unknown or expired ownership found on land constituting common property, belong collectively to the common property holders, who are collectively responsible for the payment of the 20% Zakât thereof.

8) If the finder be a person other than the legitimate owner or owners of the property on which the treasure is found, he/she is entitled to a share of the wealth constituting the treasure, which share must be handed over after payment of the 20% Zakât.

9) Treasures of unknown or expired ownership found in the wilderness, cast up or recovered from the sea, from a lake, a river, or a wrecked ship, etc., i.e., wheresoever the factor of ownership over the place where the treasure is found does not arise, belong to the finder who is responsible for the payment of the 20% Zakât.

If the treasure is recovered by the combined efforts of two or more persons, they will jointly share the right of ownership over the wealth it represents. They will likewise be jointly responsible for the payment of the 20% Zakât, which must be discharged before the sharing of the treasure.

10) Treasures of unknown or expired ownership found within the boundaries of State-owned property (lands or buildings) belong to the State, on whom devolves the obligation of paying the 20% Zakât thereof into the Zakât fund.

In this case, the actual finder of the treasure is entitled to a reward from the State, which, if given out of the treasure itself, must be handed over after deduction of the 20% Zakât.

11) Treasures found by Muslims within the boundaries of a non-Muslim country with which the Islamic Nation is at peace, must be dealt with according to the laws of the non-Muslim country.

When the finder is allowed to keep a part of the treasure, the obligation of giving 20% thereof (i.e., of what remains in the possession of the finder) as Zakât, stands only if and when there exists a Muslim community in the non-Muslim country in question.

12) The 20% Zakât is to be paid immediately upon the discovery of a treasure trove and should be made out of the very wealth constituting it.

The Zakât of silver and gold, in whatever form, is to be reckoned at 20% of their weight, and the Zakât of pearls and precious stones at 20% of their value. Likewise the Zakât of currency notes and coins (other than silver and gold) of high denomination that are still legal tender at the time of discovery, is to be reckoned at 20% of their face value.

13) As stated earlier, the 20% Zakât is an initial Zakât imposed on taxable wealth accidentally acquired. Thus the $^4/_5$ of the treasure remaining in the possession of its legitimate owner

thereafter subject to all the rules established for the kind or kinds involved. Should a taxable amount of the wealth in question remain in the possession of the legitimate owner for a period of one full year, the 2½% Zakât will normally fall due. The computation of a year's term of possession begins as from the date marking the discovery of the treasure trove.

14) If a Muslim finds on the territory of a non-Muslim country with which the Islamic Nation is at peace, a treasure that the local law assigns to an inhabitant of the country, it is his/her duty to hand it over «in toto» to its legitimate owner. Should he/she knowingly appropriate the treasure without right, he/she would be guilty of an act of larceny and so liable to punishment as dictated by the law of the land. Under no circumstance is Zakât acceptable from such unlawfully acquired wealth should the guilty person succeed in remaining in possession thereof.

15) Treasures of unknown or expired ownership found by non-Muslim subjects under the same conditions as detailed in Rules 1 to 11, are, upon discovery, liable to a 20% Government tax payable to the State, and not to be confused with Zakât.

16) Treasures of unknown or expired ownership found within Muslim territory by non-Muslim foreigners, must be dealt with on a reciprocal basis; i.e., such treasures should be either taxed or appropriated by the State in conformity with the existing laws applied by the country of which the finder is a national, to treasures found by foreigners (especially by Muslims) within their territory.

17) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of a treasure trove, who is personally responsible for correctly estimating the value of the wealth in question and the Zakât due thereon.

18) Should the legitimate owner of a treasure trove wish to dispose of all, or part, of the wealth in question, he/she may only do so *after* discharging the 20% Zakât due (1).

19) Should all, or a part, of the wealth constituting a treasure trove be stolen or accidentally lost immediately after the legitimate

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(1) See also the rules governing the exchange of taxable wealth.

owner has taken possession of it and before the Zakât has been paid, the legitimate owner is free from the responsibility of Zakât in so far as the stolen or lost wealth is concerned, unless and until it is recovered. Whereupon the Zakât thereof must be paid forthwith.

20) On the other hand, should all, or a part, of the wealth constituting a treasure trove be stolen or accidentally lost before the Zakât thereof has been paid, but after the legitimate owner has had sufficient time and opportunity to effectuate the payment, he/she, having been guilty of negligence in the prompt discharge thereof, must be held responsible for the amount that would have been due as Zakât.

21) Should it be proven that all, or part, of the wealth constituting a treasure trove has been disposed of in any way, maliciously concealed, or loss thereof simulated, in order to evade the payment of the 20% Zakât, the guilty person is liable to punishment and to forcible discharge of his/her Zakât dues.

The Zakât of the Spoils of War.

In the past, the laws governing the spoils of war have been dealt with as separate from the Law of Zakât. Nevertheless, it is clear from the wording of the verses relating thereto, that the Quranic Injunction requiring that one fifth of the spoils of war be devoted to the relief of the needy Muslims, effectively constitutes a case of Zakât.

واعْلَمُوا أنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأنَّ لِلهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي القُرْبَى وَاليَتَامَى وَالمَسَاكِينِ وَابْنِ السَّبِيلِ انْ كُنْتُمْ آمَنْتُمْ بِاللهِ وَمَا أنْزَلْنَا عَلَى عَبْدِنَا يَوْمَ الفُرْقَانِ يَوْمَ التَقَى الجَمْعَانِ ، وَاللهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ" • (٨ : ٤١)

« And know that whatever you take as spoils of war, *a fifth thereof is for Allah,* and for the Messenger and for the kinsman (in need) and the orphans and the needy and the wayfarer, if you believe in Allah and in that which We revealed unto Our servant on the Day

of Discrimination (i.e., the battle of Badr), the day when the two armies met. And Allah is Able to do all things ». (VIII : 41).

It is therefore not only natural, but imperative, that the spoils of war be included in the category of taxable wealth and, as such, be placed within the scope of the Law of Zakât, with the clearly specified reservation that the foremost beneficiaries of the «fifth» are the actual war sufferers, who are the direct victims of the enemy's aggression and who have sacrificed their worldly possessions for the cause of Islam.

In the view of the Law of Zakât, the spoils of war constitute wealth accidentally acquired in the course of lawful fighting against the enemies of Islam, i.e., while performing an act of «Jehâd». (See p. 118). It is precisely this fact of accidental acquisition that lends to the spoils of war the character of *surplus wealth* and so warrants the compulsory sharing thereof with those needy Muslims who, by virtue of their being at the time non-combatants, would otherwise have no direct claim to a share of the spoils.

In the light of Islamic Law, wealth seizable as spoils in time of war and distributable among the army is confined to chattels (1), i.e., to movable property as defined in Rule 1 (see below).

Immovable property (land and buildings) and, in our day, movable property such as heavy war material, machinery, heavy transport vehicles (i.e., heavy trucks, trains, aircraft, ships and other seacraft), scientific equipment, etc., by their very nature, rightfully belong to the State (i.e., to the Nation as a whole), on whom devolves the sole responsibility for the administration and disposal of such wealth, which therefore may not be appropriated as spoils by the individual members of the Muslim army.

Quranic Law does not allow of wealth being taken by force from non-Muslims with whom the Muslim Nation is at peace. It views such wealth not as « spoils of war » but as stolen property; and never and in no case is Zakât acceptable from it, should it remain in the possession of the guilty person. The latter, needless to say, would be liable to punishment as prescribed by the Law, if and when apprehended.

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(1) Quranic Law does not allow the inclusion of human beings in the category of «chattels».

Rate of Zakât for the Spoils of War.

Wealth taken as spoils of war is subject to a Zakât of one fifth (20%) of the total amount involved, without regard to a Nisâb.

Rules governing the Payment of the Zakât of the Spoils of War :

1) Wealth liable to be seized and appropriated by a Muslim army as spoils of war includes such chattels as : light arms and ammunition; light transport vehicles not essential to the war effort; surplus foodstuffs; surplus clothes and other articles of common use; domestic animals (except those which are essential to the civilian population of conquered territories as food or as beasts of burden, or which are indispensable to cultivate the lands left in the possession of the defeated enemy) ; art objects and other objects of value.

2) In conformity with Islamic Law, wealth taken as spoils of war does not become the exclusive property of the person who actually lays hold of it, but is to be shared among all those who participate in a given engagement with the enemy and who thus contribute their united effort to the successful outcome of their common struggle against the non-Muslim adversary.

Hence, for its fair distribution among the individual members of the army, wealth taken as spoils of war must be handed over « in toto » to the responsible authorities, on whom likewise devolves the responsibility of discharging the 20% Zakât (i.e., one fifth of the total spoils).

3) Should an individual lay hold of wealth lawfully constituting spoils of war and not hand it over to the responsible authorities, but appropriate it for himself, he would be sinful and liable to punishment both under Islamic Military Law and under the Law of Zakât.

4) Zakât due from wealth constituting spoils of war must be paid by the responsible authorities before any part thereof is disposed of in any way whatsoever.

In an emergency as would warrant withholding the bulk of the spoils for still more urgent needs of national import, the fifth thereof to be given as Zakât may be dedicated instead to the all-out war effort in conformity with the two first headings of the

Quranic rules governing the distribution of the Zakât of spoils (i.e., : ... لله خمسه وللرسول « The fifth (of what you take as spoils of war) is *for Allah, and for the Messenger...*»). (Qurân: VIII, 41).

5) Both the discharge of the Zakât of the spoils of war and the distribution thereof among the lawful beneficiaries, must take place at the earliest possible opportunity following the event of seizure. But in view of such unforeseeable circumstances as naturally arise in time of war, no precise term can be fixed for the discharge of dues (1).

6) Wealth derived from the spoils of war and which is by nature taxable for Zakât (i.e., gold, silver, currency notes, gems, domestic animals, articles subsequently used for trade) is subject to all the rules applying to the kind in question, once it has come to constitute the property of a private individual.

7) Whenever all or part of the wealth constituting the spoils of war is lost or destroyed owing to the vicissitudes of war and before the authorities responsible for the control thereof have had the opportunity of discharging the Zakât due, the said authorities are free from all responsibility or obligation in so far as the amount lost or destroyed is concerned.

8) But, whenever the responsible authorities fail in their duty by delaying without cause the discharge of the 20% Zakât of the spoils of war, or by unlawfully appropriating all or a part thereof (i.e., of the spoils) for their own benefit (which act is tantamount to theft), or by distributing or disposing of all or a part thereof in any way (except in an emergency for an all-out war effort) before discharge of the Zakât, they are liable to punishment and must be held responsible for the full value of whatever wealth they have appropriated without right, as well as for the amount in full due as Zakât.

The Zakât of Trade.

The all-important part that trade plays in the life of an organized people is fully recognized by Islam. The Qurân not only

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(1) Spoils taken in the battle of Uhud (3 H.) were distributed one month after seizure.

encourages trade : it goes further, laying special emphasis on trade as a valuable means to civilization :

... إِيلَافِهِمْ رِحْلَةَ الشِّتَاءِ وَالصَّيْفِ • (١٠٦ : ٢)

« For their civilizing (1) (We cause) the trade caravans to set forth in winter and summer. » (CVI : 2).

Indeed, the material benefits derived from honest trade are concomitant with the profoundly humanizing influence that friendly intercourse between peoples is ever bound to bring about. For by compelling peoples and nations of diverse cultures to meet on a plane where peace and harmony, honesty and courteous behaviour are essential factors to ensure the successful outcome of their pursuit and furtherance of their economic interests, trade offers an exceedingly fertile ground for the promotion of good fellowship and healthful social relations.

Trade encourages travelling, as a consequence of which honest traders of distant countries and climes not only learn to know and respect each other but, what is more, to have a care for their common welfare and security as the most effective long-term method of safeguarding their own trade interests. For experience has taught one of the basic axioms of business, namely, that dishonest dealing is a self-defeating policy, if only because of the protective measures naturally taken by his fellow traders against the dishonest dealer. If indulged in on a national scale, the least of its harmful effects is the inevitable decline and gradual paralysis of the nation's trade.

The prosperity to which a flourishing trade gives rise calls for a people's deepest gratitude to God for His Favour in protecting their commercial activities and guiding their trade policy to a fruitful outcome.

فَلْيَعْبُدُوا رَبَّ هَذَا الْبَيْتِ الَّذِي أَطْعَمَهُم مِّن جُوعٍ وَآمَنَهُم مِّنْ خَوْفٍ • (١٠٦ : ٣ ــ ٥)

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(1) The Arabic term «ilâf» (ايلاف) derives from the root «alifa» (الفَ : to become tame, to become sociable, to accustom oneself to society, to civilize oneself) and signifies «the state of association and dealing with others in a civil way ».

This term is also used figuratively in the sense of «treaty» or «alliance».

« So let them worship the Lord of this House (the Ka'aba), Who has fed them against hunger, and has made them safe from fear. »
(CVI : 3 - 5).

But Islam does not admit that worldly increase be the foremost consideration in the human being's plan of life. The whole of the Quranic teaching aims at arousing the human being to a correct and healthy appreciation of life values and at curbing in him/her any inordinate desire for material gain.

Islam requires of the Muslim to live his/her life on a sane and rational plane and, in fulfilling the responsibilities of his/her worldly existence, to know how to discriminate between what really matters and what is of secondary import, how to value what is of lasting worth above what is only transitory and superficial.

Thus the Zakât of trade, besides being legally justified, serves as a subtle but very effective controlling factor on the conduct and methods of Muslim tradespeople. As an Article of the Islamic Faith that every Muslim must unfailingly observe, the Zakât serves as a constant reminder to the trader of his duty to God, to his fellow Muslims and to himself. The obligation of Zakât compels the Muslim trader to be very heedful of honesty in his dealings, for unless he transacts his business with absolute integrity he will, in so far as his own personal salvation (growth of soul) is concerned, not only neutralize the merit of his Zakât but further incur the sin of offering to the Muslim community a share of an unlawful prize. And so, by deterring the Muslim trader from dishonesty, the Zakât of trade acts as a health-giving element in the Nation's economic life.

... يَهْدِي اللهُ لِنُورِهِ مَنْ يَشاءُ وَيَضْرِبُ اللهُ الأَمْثَالَ لِلناسِ واللهُ بِكُلِّ شَيْءٍ عَلِيمٌ • فِي بُيُوتٍ أَذِنَ اللهُ أَنْ تُرْفَعَ وَيُذْكَرَ فِيهَا اسْمُهُ ، يُسَبِّحُ لَهُ فِيهَا بِالغُدُوِّ والآصَالِ • رِجالٌ لا تُلْهِيهِمْ تِجَارَةٌ وَلا بَيْعٌ عَنْ ذِكْرِ اللهِ وَاقَامِ الصَّلاةِ وَايتَاءِ الزَّكاةِ ، يَخَافُونَ يَوْماً تَتَقَلَّبُ فِيهِ القُلُوبُ وَالأَبْصَارُ ؛ لِيَجْزِيَهُمُ اللهُ أَحْسَنَ مَا عَمِلُوا وَيَزِيدَهُمْ مِنْ فَضْلِهِ ، وَاللهُ يَرْزُقُ مَنْ يَشَاءُ بِغَيْرِ حِسابٍ • (٢٤ : ٣٥ ــ ٣٨)

« Allah guides unto His Light whom He will. And Allah coins similitudes for humankind, for Allah is Knower of all things. (His Light is found) in houses which Allah has allowed to be exalted and wherein His name is ever remembered. And wherein the dwellers offer praise to Him at morn and evening. Such (of His servants) whom neither merchandise nor sale beguiles from remembrance of Allah and constancy in prayer and *paying the Zakât;* who fear a Day when hearts and eyeballs will be overturned. That Allah may reward them with the best of what they did, and increase reward for them of His Bounty. Allah gives provision without stint to whom He wills.» (XXIV : 35 - 38).

The Zakât of trade is naturally related to that of silver, silver being the standard medium of exchange in the Medina System. Thus the Law of Zakât lays down that the same essential conditions which determine the taxability of silver, equally apply to wealth invested in trade, i.e., to the combined value of reserve and working capital, both cash and stock. These conditions are : a) possession of the wealth in question for a full period of one year prior to taxation; and : b) that the value thereof be not less than the Nisâb established for silver.

As has already been explained (see p. 11), the rule requiring the possession of wealth for a period of one full year as an *essential* condition warranting taxation for Zakât, is the very one that distinguishes the Zakât-tax as being leviable in the shape of *surplus wealth only.*

Yet, despite the very special emphasis that the Prophet (ص) laid on this all-important rule, the clear purpose of which is to establish beyond doubt that a given amount of wealth is indeed surplus to the lawful needs of an individual and his/her dependents, a serious deviation therefrom has found its way into the old versions of the Law of the Zakât of trade.

The various Schools of Islamic Law unanimously recognize that the year's term of possession is a *fundamental principle* of the Law of Zakât. It is, therefore, all the more difficult to understand what unfortunate confusion of issues led the early expounders of the Law to consider as taxable for Zakât not only the capital and stock of a trader but his profit as well. The most, not to say the only, plausible explanation of this disregard of principle is an unjustifiable reluctance on the part of the jurists of old to squarely

face the problem of plural computations.

Whatever the cause that gave rise thereto, it is a fact beyond dispute that this view transgresses both the spirit and the letter of the Law by robbing the Zakât-tax of its most characteristic feature. Moreover, by displacing the very source from which it is meant to derive, the levying of Zakât on profit gives it the character of an income-tax. This circumstance, sanctioned as it is by the prominent 'ulemâ, has encouraged some would-be interpreters of the Law to suggest that the Zakât of trade be imposed exclusively on profit, thus exempting both capital and stock from taxation.

It cannot be repeated too often that the Zakât *is not* an income-tax. Nor can the Zakât be construed into an income-tax by any stretch of interpretation of the principles on which the Law is based. The following Quranic verse clearly prescribes that the wealth spendable for the welfare of others must be from « that which is superfluous », i.e., from what is over and above the lawful necessities of an individual and his/her dependents.

... وَيَسأَلُونَكَ مَاذَا يُنْفِقُونَ ، قُلِ العَفْوَ ... (٢ : ٢١٩)

« . . . And they ask thee what they should spend (for others). Say : That which is superfluous . . . ». (II : 219).

The principle embodied in this Quranic verse happens to be the cornerstone of the Institution of Zakât. In other words, the principle that Zakât is leviable in the shape of *surplus wealth only*, forms « par excellence » an unalterable and unabrogable part of the Law, and so must be fully adhered to in each and every case. No deviation therefrom, however slight, can be made without distorting the entire nature and structure of the Law itself.

The fundamental rules of the Law of Zakât recognize three factors as establishing the superfluity of wealth and hence its taxability for Zakât : a) Possession of the wealth for a period of one full year before it can be taxed for Zakât. b) That the value of the wealth be over and above that of a full year's provision of preservable agricultural produce. c) As an alternative to a), that the wealth be accidentally acquired (spoils of war or treasure trove).

The ruling of the Prophet (ص) : لا زكاة في مالٍ حتى يحول عليه الحول

(« No Zakât is to be imposed on wealth until it has possession of its owner for a period of one full year») conformity with the Injunction contained in the Q quoted above (II : 219). This precise ruling refers in particular silver and its dependents, i.e., gold, articles of trade, etc., and to domestic animals. As stated above, the application of this rule means to certify that a given value is effectively surplus to the lawful necessities of its legitimate owner. Because unless it is surplus to those necessities, it cannot lawfully be levied as Zakât.

Now, it is quite obvious and definite that no part of a trader's profit or, in fact, of income in any shape, can be classified as «surplus» upon receipt. As a rule, in all countries and in all ages, a person's income is and has always been destined precisely to satisfy all the requirements of his/her existence.

Islam lays no restrictions on a Muslim's lawful spending. Much to the contrary, Islam encourages lawful spending as a means of ensuring the constant circulation of wealth in constructive channels and thereby a healthy economy.

الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ بِاللَّيْلِ وَالنَّهَارِ سِرًّا وَعَلَانِيَةً فَلَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ • (٢ : ٢٧٤)

« Those who spend their wealth by night and day, by stealth and openly, verily their reward is with their Lord, and no fear shall come upon them neither shall they grieve.» (II : 274).

As a matter of fact, what is well spent serves the Nation's interests even more effectively than does the relief afforded by the Zakât. For, the more the means of honest livelihood available to would-be earners, the thinner the ranks of those in need of having recourse to the emergency funds provided by the Institution of Zakât.

On the other hand, there is no Law in Islam which either forbids or compels the taxation of income. Such action remains entirely at the discretion of those at the helm of the Muslim State, to be carried out according to national requirements and always in

the spirit of Islamic Justice. But the very nature of the Institution of Zakât and the very principles on which this Institution is based, unequivocally rule that income *is not and can never be* a lawful source of Zakât funds.

As regards the Zakât of trade, the obvious rule dictated by the principles of the Law is that Zakât is to be imposed only on the *value which remains unchanged* in a trader's possession for a period of one full year. The value in question comprises the sum total of the trader's standing capital, that is, his reserve and working capital, both cash and stock (i.e., silver, gold, currency notes, articles of trade). This is made possible by the fact that according to the rules governing the exchange of taxable wealth, the computation of the year's term of possession is in no way affected by such transactions involving taxable amounts. If, for instance, the sum total of a trader's capital is Rs. 10.000/-, half of which constitutes his reserve capital and the other half his working capital, he would be liable to pay the corresponding yearly Zakât on Rs. 10,000/- (i.e., on his reserve cum working capital) regardless of whether all or only a part of his working capital were invested in articles of trade. Should his capital show a decrease in value at the end of the year's term, the trader would be obliged to pay Zakât only on the value present at the time of its falling due. On the other hand, his profit remains *Zakât-free* unless and until it comes to constitute wealth surplus to his lawful expenses. Once this is the case, if the sum involved is itself equal to or above the Nisâb, a separate computation of a year's term of possession will begin. Then if the said sum is also invested in trade, it will start a new cycle of exchange which, *profit apart,* will not affect the computation of the year's term of possession relating thereto.

When based on a monthly reckoning as laid down in Rule 3f of those governing plural computations (see p. 24), the seemingly complex aspect of the system proves to be no more intricate than any other form of financial reckoning.

Another important point requiring careful reconsideration is the opinion advanced by the Mâlikite School of Law, according to which articles of trade remaining unsold in the possession of a trader for a period of two or more years, should be subject to one year's Zakât only.

In this connection it is interesting that Imâm Mâlik himself admits that the exchange of taxable amounts of wealth does not affect the computation of the year's term of possession begun for the wealth disposed of, the computation in question being at once automatically applied to the wealth newly acquired. Thus, if a person invests in articles of trade a given sum of money, the Zakât of which has been duly paid, the computation of the year's term of possession begun for the money in question following the last payment of Zakât, must continue and be applied to the articles of trade. Then if the said articles of trade are sold before the year's term is up, the same computation must again continue and be applied to the money representing the proceeds of the sale (1).

Since the exchange of taxable amounts of wealth does not affect the computation of the year's term of possession, it is clear that the exchange is one of taxable value for taxable value, and hence there is no valid reason why the value received should not continue to bear normal liability to taxation should it remain in the possession of its legitimate owner for a period of several years.

It is true that very often articles of trade are only taxable for Zakât as such (i.e., because of their being articles of trade) and are not at all taxable by their nature. Nevertheless, the very fact that the Law lays down that whatever comes to constitute an article of trade automatically becomes subject to taxation for Zakât, requires that such taxation must stand so long as the thing in question is expressly qualified as an article of trade. In other words, once a thing has been intended for trade, it is and remains an article of trade, and hence remains taxable for Zakât, for as long a period as the legitimate owner thereof persists in his/her intention to trade in it.

In view of which, one is compelled to disagree with the Mâlikite stand on this issue, and to maintain that the Zakât of trade must be based on a more exact application of the fundamental principles of the Law than heretofore. Strict adherence to these fundamental principles is essential in each and every case if the Islamic

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(1) Note that Imâm Mâlik applies the current computation of the year's term not only to the original amount (or value), but to the profit as well, thus subjecting the profit to taxation for Zakât before it would have, in turn, completed a year's term in the possession of its legitimate owner.

Institution of Zakât is to fully and permanently fulfil the purpose for which it is intended.

From the standpoint of the Law of Zakât, the term «trader» is always used in its broadest sense and designates all those persons whose means of earning involve the sale of given articles acquired either through purchase or by other lawful means, and either in the shape in which they are sold or in the shape of raw materials.

Thus the term «trader» naturally comprises both wholesale and retail dealers, i. e., merchants; manufacturers; artisans; shop-keepers; hawkers; exploiters of forests, oil fields and mines of every description; etc.

Taxable Limits and Rate of Zakât for Wealth invested in Trade.

The Zakât of Trade, being related to the Zakât of pure silver as the standard medium of exchange in the Medina System, must admit the same rate and taxable limits as those applying to silver and follow the same basic rules.

Original Nisâb :

In conformity with the Nisâb for pure silver, the Nisâb for wealth invested in trade was established by the Prophet (ص) at 200 dirhems (weight of pure silver) worth of standing capital; any value or amount falling short of this Nisâb was not taxable for Zakât.

Thus, wealth invested in trade to the amount or value of 200 dirhems of pure silver, was subject to a Zakât of 5 dirhems (i.e., $2\frac{1}{2}\%$), or the equivalent thereof in gold or in kind.

Thereafter, on every increase in value equal to 40 dirhems of pure silver, 1 dirhem of pure silver, or its equivalent in gold or in kind, was to be paid as Zakât.

Modern Nisâb :

The same principle which, in the case of silver, warrants the re-establishing of the Nisâb in consideration of the proportionate value of the year's provision of staple food in relation to the wealth under taxation, as dictated by the prevailing market price, must

likewise be applied to wealth invested in trade. Hence, the modern Nisâb for wealth invested in trade must be determined by the official market price of 5 camel-loads (i.e., 1680 seers or about 1568 kgs.) of whichever cereal normally constitutes the staple food of the country's inhabitants.

Thus, whenever the combined value of a trader's standing capital, i.e., his reserve and working capital, both cash and stock, is at least equal to the official market price of 5 camel-loads of whichever cereal constitutes the country's staple food (which sum represents the Nisâb), the wealth in question is subject to a 2½% Zakât.

Thereafter, a 2½% Zakât must be paid on every increase in value equal to the fifth part of the sum representing the Nisâb. Any amount or value falling short thereof remains free from taxation, Zakât being paid only on the preceding figure warranting taxation(1).

Rules governing the Zakât of Trade :

With the exception of the two rules establishing the non-taxability of profit and the standing taxability of articles of trade, the following rules governing the Zakât of trade are generally the same as set forth in the old versions of the Law, albeit amplified to meet present day conditions.

1) Whenever the official price of the cereal which constitutes the staple food of the country's inhabitants has varied during the year, the average price is to be taken as the standard by which to establish the Nisâb for wealth invested in trade.

2) All wealth invested in trade including reserve and working capital, both cash and stock (silver, gold, currency notes, articles of trade), the total value of which is equal to or above the Nisâb, is subject to taxation for Zakât once it has remained in the possession of its legitimate owner for a period of one full year.

When estimating the taxability of wealth invested in trade, the sum total thereof belonging to one and the same legitimate owner and existing within the territory or territories under the

(1) See modern Nisâb for silver and gold, p. 76.

jurisdiction of a same country, and bearing a same computation of a year's term, must be taken into consideration.

3) All kinds of wealth which come to constitute articles of trade, become automatically taxable for Zakât, and remain taxable so long as they are expressly qualified as articles of trade.

a) Thus, wealth which as personal property is not by nature taxable for Zakât, automatically acquires taxability when it comes to constitute a regular article of trade.

b) Conversely, wealth which bears taxability for Zakât only by virtue of its being an article of trade, automatically becomes Zakât-free when it comes to constitute personal property.

4) When subjecting articles of trade to taxation for Zakât, it is not the kind involved that is considered, *but the value thereof*. The same may be estimated in silver, gold, or the local currency.

5) When wealth by nature taxable for the yearly Zakât (as, for instance, silver, gold, gems, domestic animals), comes to constitute an article of trade, it is subject to the Zakât of trade only, until it becomes once more personal property. Whereupon it will be subject only to the Zakât of its kind.

For instance, as personal property, pastured domestic animals (sheep, oxen, etc.) are subject to a Zakât of so many heads, according to the kind involved and the size of the herd under taxation. Likewise, the Nisâb and taxable limits vary for each taxable kind. But, as articles of trade, domestic animals, be they pastured or not and regardless of their kind, are subject to a Zakât of $2\frac{1}{2}\%$ of their value and admit the same Nisâb and taxable limits as established for silver.

6) When constituting articles of trade, wrought silver and wrought gold (artistic objects, etc.) are subject to taxation for Zakât in consideration of their value as such, i.e., of the combined value of the precious metal and of the artistic work involved, and not in consideration of the quantity or value of the precious metal only, as is the case for wrought silver and gold constituting personal property.

7) All wealth which has been lawfully acquired, lawfully becomes an article of trade if and when the legitimate owner thereof

intends it as such.

The following means of acquisition are laid down as lawful by Islamic Law : purchase; inheritance; gifts; legacies; agriculture; apiculture; sericulture, etc.; animal and poultry breeding, etc.; manufacture; construction, etc.; alms; the marriage portion (المهر) ; compensation for divorce, alimony; blood money and other indemnities; treasure troves and other finds of unknown ownership; the exploitation of mines, forests, and the like.

8) A thing becomes an article of trade as soon as the *intention* to trade in it exists. This may happen : a) at the time of acquisition; b) at any time after the actual event of acquisition.

Thus, if the legitimate owner of a given thing does not have, at the time of acquiring it, the intention to trade in it, the thing in question is considered as of personal use.

On the other hand, if a thing is acquired for the purpose of trading, it is, and remains, an article of trade even if it be used for personal purposes before its sale.

9) An article of trade ceases to be such in respect of its legitimate owner only when it has been either disposed of or definitely put to his/her personal use.

If, in the latter case, the legitimate owner of the thing in question should again desire to trade in it, it would automatically become, once more, an article of trade.

10) Articles of trade which constitute inherited wealth, continue to be subject to the Zakât of trade if the new legitimate owner expressly intends them for trade.

11) Articles of trade which constitute inherited wealth and which are not further intended for trade by the new legitimate owner, become subject to the Zakât of their kind as personal property, if they are by nature taxable. If they are not so by nature, they naturally cease to be taxable for Zakât.

12) Trade is defined as an exchange of commodities for money or for other commodities. In other words, trade always implies an act of sale on the one hand, and an act of purchase on the other.

Therefore, in order to constitute, at all, an article of trade,

a thing must be, at least, the potential object of an act of sale. This condition naturally depends on whether or not the legitimate owner of the thing in question positively intends it as such. Consequently, when the intention to trade in a given thing is lacking, which circumstance excludes the occurrence of an exchange of one commodity for money or for another commodity, the thing in question does not constitute an article of trade.

Hence, as the act of renting does not result in an exchange of wealth and so in no way affects the right of ownership, but merely implies the granting of the use of a given thing on payment, wealth that is let for rent, there being no intention on the part of the legitimate owner thereof to also trade in it, does not become an article of trade and so, if not by nature taxable for Zakât, remains Zakât-free.

If, for instance, a person owns a house which he lets for rent but does not intend for sale, he will have no Zakât to pay nor on the value of the house nor on the sums he receives as rent (the rent being a form of income is, in any case, Zakât-free). He will only be liable to pay Zakât on whatever part of the said sums represents a taxable value and remains in his possession for a period of one full year.

If, on the other hand, a person's business is the buying and selling of houses, in which case the said houses are actually articles of trade, he will be liable to pay the Zakât of trade on their value, even if he lets them on rent pending their sale.

13) Articles of trade of whatever description, which are let for rent pending sale, do not cease to be articles of trade and so remain taxable for the Zakât of trade.

14) An article received in exchange for an article of trade, does not necessarily become an article of trade. If the article received is not itself intended for trade, it *is not* an article of trade.

15) All commercial transactions, whether wholesale or retail, are subject to the rules governing the exchange of taxable wealth (see p. 249).

In conformity with these rules, when the total value of a trader's capital (i.e., cash and stock) bearing one computation of a

year's term of possession is equal to or above the Nisâb, the said computation is not affected by the exchange of money for articles of trade and vice-versa, or of articles of trade for other articles of trade, whether the individual exchanges be of taxable or non-taxable amounts. Thus the wealth (i.e., the money or the value of the articles of trade) received in payment or purchased (profit excluded) automatically takes up the computation of the year's term of possession relating to the capital of which the wealth sold or given in payment formed an integrant part and of which it (the wealth received in payment or purchased) now forms an integrant part.

16) When the legitimate owner of an article of trade by nature taxable for Zakât, definitely converts it to his/her personal use, the Zakât of trade lapses and the said article becomes subject to the rules governing the Zakât of personal property. If according to these rules the converted article remains taxable, being equal to or above the Nisâb established for its kind, the computation of a year's term of possession relating thereto as an article of trade is not broken by the conversion and continues in relation thereto as personal property.

If, for example, a flock of 40 sheep, worth Rs. 2000/-, is purchased for the purpose of trade and is subsequently converted into pastured animals as personal property, the computation of the year's term relating to the animals as articles of trade will continue to be borne by them as personal property, the size of the flock being equal to the Nisâb established for sheep (1).

On the other hand, if the flock were to consist of 30 sheep and be worth, say, Rs. 1500/- (a sum taxable for Zakât), upon its conversion into personal property the flock's taxability would be dissolved (30 head being less than the Nisâb for sheep as personal property) and the computation of the year's term of possession would likewise cease.

17) Sheep, goats, cattle, camels, horses and poultry destined for sale and slaughter, constitute articles of trade. This same rule

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(1) Some jurists of the Hanafite School of Law hold the view that a new computation should begin as from the date of conversion. But considering that the wealth in question would have remained intact in the possession of its legitimate owner, there seems no valid reason why there should be any break in the computation of the year's term of possession.

applies to animals bred for the sake of trading in their fur.

18) Sheep, goats, cattle, camels, horses, poultry, bees, silk-worms, etc., kept for their wool, young, milk, etc., eggs, honey, silk, etc., are not articles of trade so long as they (the livestock) are not intended for sale.

19) Raw materials constitute articles of trade only in respect of the actual dealers therein. They do not constitute articles of trade in respect of the artisan or manufacturer who purchases them to convert them into finished products.

Once the raw materials have been converted into a finished product, the said product will constitute an article of trade in respect of the artisan or manufacturer and will be normally subject to the Zakât of trade.

This rule applies to all industrial products, whether hand-made or machine-made.

20) In view of the foregoing rule, taxability for Zakât applies to the combined value of artisans' and manufacturers' reserve and working capital held in *cash money* (silver, gold, currency notes) and of their *finished products* intended as articles of trade.

All raw materials not by nature taxable for Zakât (i.e., excepting silver, gold and gems, which are permanently taxable for Zakât) intended for conversion into finished products and not directly for sale, remain Zakât-free.

21) Business enterprises, such as the exploitation of mines, forests, etc.; agriculture; apiculture; sericulture; pearl culture; animal and poultry breeding, etc., that sell things obtained at their source, pay Zakât on the combined value of reserve and working capital held in *cash money* (silver, gold, currency notes) and of produce intended for trade (i.e., minerals, woods, etc.; agricultural produce; honey; raw silk; cultured pearls; animals; poultry, etc.).

22) Machinery employed in mining and industry, and implements employed by artisans are not taxable for Zakât. Such articles have effectively ceased to be articles of trade and, moreover, do not, by any conception of the term, constitute surplus wealth of lasting value.

Likewise, the value of buildings used as factories and workshops is not taxable for Zakât.

23) When estimating the value of industrial products in the possession of an artisan or manufacturer at the time of his/her Zakât falling due, it is the *cost value* (i.e., value less profit) which must be considered, and never the sale price (i.e., value plus profit).

This same rule applies when estimating the value of the articles of trade in the possession of wholesale or retail merchants or shopkeepers at the time of their Zakât falling due, as well as the value of the produce in the possession of exploiters of mines, forests, etc., agriculturists, apiculturists, sericulturists, pearl culturists, animals and poultry breeders, etc., (i.e., minerals, wood, agricultural produce, honey, raw silk, cultured pearls, animals, poultry, etc), at the time of their Zakât falling due.

24) As the value of articles of trade constantly varies under the influence of fluctuating market prices, whenever the value of an article of trade is less at the time of its Zakât falling due than at the time of its acquisition, the Zakât must be reckoned in consideration of the decrease in value.

But if the value of an article of trade is more at the time of its Zakât falling due than at the time of its acquisition, the Zakât must be reckoned on the cost price prevailing at the time of its acquisition and not on the cost price prevailing at the time of the Zakât falling due. The latter value would actually represent the trader's investment in the said article *plus an increase in profit*. In other words, the difference between the original cost price and the new cost price forms part of the trader's profit and, therefore, cannot lawfully be included in the value subject to taxation for Zakât.

25) Should the combined value of a trader's reserve capital, working capital and stock bearing a single computation show a decrease in value at the end of the year's term of possession, the obligation of Zakât stands only in regard to the value existing at the time of the Zakât falling due.

Should the decrease in value have reduced the amount in question to below the Nisâb, taxability is dissolved and the obligation of Zakât lapses until such a time as an increase in value again restores taxability.

26) When a sum of money (silver, gold, currency notes), the value of which is equal to or above the Nisâb, is invested in trade, the current computation of the year's term of possession relating to the money is not broken but is applied to the same as trade capital.

27) In conformity with Rule 2 of those governing the exchange of taxable wealth invested in trade (see p. 258), when articles of trade, the value of which is equal to or above the Nisâb, are acquired : a) in exchange for non-taxable wealth not previously intended for trade, b) in exchange for taxable wealth not previously intended for trade and which is not subject to the rule requiring a year's term of possession as an essential condition warranting taxation for Zakât (such as agricultural, apicultural and sericultural produce), or c) in exchange for taxable wealth which is subject to this rule but which falls short of the Nisâb established for its kind or genus, the computation of the year's term of possession is to begin as from the date of acquisition.

Following the sale of such articles, the current computation of a year's term of possession will be applied to the *cost value* thereof (i.e., excluding the profit realized) whether the same be in the shape of cash or taxable kind.

28) In conformity with Rule 3 of those governing the exchange of taxable wealth invested in trade (see p. 259), when articles of trade, the value of which is equal to or above the Nisâb, are acquired in exchange for taxable wealth in kind or cash money (silver, gold, currency notes) not previously intended for trade but the value of which is equal to or above the Nisâb established for their kind or genus, the computation of the year's term of possession relating to the wealth in question is not broken and must be applied to the newly acquired articles of trade.

29) In order to correctly determine the Zakât of wealth invested in trade, the rules governing plural computations must be strictly adhered to. (See p. 17). In conformity with these rules :

a) The net profit, or surplus (i.e., what remains of the profit after satisfying all personal and business expenses) should be ascertained at the end of each month, as laid down by Rule 3f of those governing plural computations. If it is found to be of a taxable

amount (i.e., equal to or above the Nisâb), a separate computation of a year's term of possession must begin in relation thereto. Then if it is invested in trade, it will start a new cycle of exchange which, *profit apart,* will not affect the computation of the year's term of possession relating thereto.

b) If the surplus be of a non-taxable amount (i.e., less than the Nisâb), it will remain Zakât-free until a taxable amount is constituted. In this case, the computation of the year's term of possession will begin as from the date on which taxability is attained.

c) In case it has not attained taxability before the Zakât falls due on the trader's standing capital, the non-taxable surplus will be added to the value of the standing capital (cash and stock) on the day following the completion of the year's term of possession relating to the standing capital, and a new computation will begin for the sum thus constituted.

d) If there be more than one computation of a year's term of possession relating to the trade capital (cash and stock), the non-taxable surplus must be added to the remainder of the first amount completing a year's term in the possession of the legitimate owner thereof, after the discharge of Zakât dues. Whereupon a new computation will begin for the sum thus constituted.

e) In conformity with Rule 3g of those governing plural computations, (see p. 25), and as laid down by Rule 4 of those governing the exchange of taxable wealth invested in trade (see p. 259), when articles of trade are acquired in exchange for money or other articles of trade taken from two or more amounts constituting trade capital and bearing as many computations of a year's term of possession, the respective computations relating to the said amounts (i.e., of the wealth disposed of) are to be applied proportionately (in value) to the newly acquired articles of trade.

f) Conversely, in conformity with Rule 5 of those governing the exchange of taxable wealth invested in trade, when articles of trade taken from two or more amounts constituting trade capital bearing as many computations of a year's term of possession, are disposed of at one time in exchange for money, that part of the amount received which represents the cost value of the said articles (i.e., excluding the profit realized) must be added proportionately

to the respective amounts of trade capital of which they formed integrant parts and bear, together therewith, the current computations of a year's term of possession relating thereto.

In other words, the respective computations are not broken by the transactions described in 29e and 29f, whether the values exchanged be in cash or in kind.

30) When a trader possesses, besides trade capital, home savings in silver and/or gold in any shape or form, and/or currency notes, the same are considered as forming part of his/her reserve capital and the Zakât due must be reckoned on the latter's sum total (i.e., trade capital cum home savings) bearing one computation of a year's term of possession. Thus, if either or both amounts (trade capital and home savings) are below the Nisâb but their combined value is equal to or above the Nisâb, the corresponding Zakât must be paid.

Only when the home savings and the trade capital bear different computations, will they be subject to separate taxation for Zakât. If, in this case, either the home savings or the trade capital be less than the Nisâb, it remains Zakât-free until it becomes at least equal in quantity or value to the Nisâb. Should the sum in question not acquire taxability before the Zakât falls due on the other amount, its value will be added (for the purpose of Zakât) to the latter (after deducting Zakât dues) on the day following the completion of the year's term of possession relating thereto. Whereupon a single computation of a year's term of possession will begin for the sum thus constituted.

31) When estimating the value (i.e., the cost price) of articles of trade imported from foreign countries, due consideration must be given to the monetary exchange rates prevailing at the time of the transaction; Zakât being calculated on the sum actually invested or on the cost price at the time of the Zakât falling due, whichever one is lower.

32) In conformity with the rules governing amenable wealth (see p. 26), whenever a trader is in debt, only that part of his/her capital (i.e., cash and/or stock) which is amenable for the amount of the debt remains exempt from taxation for Zakât so long as the debt subsists.

Once the debt, or part thereof, is discharged, the amenability

of the wealth will cease or decrease in proportion to the amount paid and a new computation of a year's term of possession will begin for the wealth thus freed, which will thereafter be normally subject to taxation for Zakât.

33) If trade is engaged in with capital the value of which is less than the Nisâb (i.e., Zakât-free) but subsequently increases to a taxable amount, the computation of a year's term of possession will begin (there being no home savings or reserve wealth to constitute therewith a Nisâb) as from the date on which the wealth in question attains a value at least equal to the Nisâb.

34) If trade is engaged in with borrowed capital, the same, as regards the creditor, is subject to the rules governing taxable wealth under loan (see p. 31) and, as regards the debtor (i.e., the trader), to the rules governing amenable wealth (see p. 26).

Thus any other taxable wealth of which the debtor is the legitimate owner will become amenable to the amount of the borrowed capital and to that extent temporarily exempt from taxation for Zakât.

As borrowed capital does not become the property of the debtor, even if it be of a taxable amount, in no case can the debtor be required to pay the Zakât thereof. Actually, the wealth in question remains the rightful property of the creditor, with whom rests the responsibility of paying the Zakât due retrospectively upon recovery of the amount loaned.

In the opinion of Imâm Ghazzâlî, when trade is engaged in with borrowed capital, the responsibility of Zakât devolves upon the trader (i.e., the debtor). But this view contradicts the fundamental rule of the Law of Zakât which lays down that *legitimate ownership* of taxable wealth is *essential* to warrant the obligation of Zakât.

Although the use of borrowed capital cannot be deemed objectionable so long as the Islamic Principle of the prohibiton of interest is strictly observed, it is preferable that, in the absence of legitimately owned capital, a regular partnership, involving the sharing of profit and loss, be established between the person providing the capital and the would-be trader.

35) The Zakât of trade may be paid in cash or in kind (i.e.,

in silver, gold, local currency, or articles of trade) to the exact value of the amount due.

When paid in kind, articles of average good quality must be given. But in no case may the legitimate owner of the articles in question be required to give the best of them as Zakât.

On the other hand, in conformity with the Injunction contained in the following Quranic verse, articles of bad quality are not acceptable in payment of Zakât dues.

يَا أيُّهَا الَّذِينَ آمَنُوا أنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أخْرَجْنَا لَكُم مِنَ الأرْضِ وَلا تَيَمَّمُوا الخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ الاَّ أنْ تُغْمِضُوا فِيهِ واعْلَمُوا أنَّ اللهَ غَنِيٌّ حَمِيدٌ" • (٢ : ٢٦٧)

« O you who believe ! Spend of the good things which you have earned, and of that which We bring forth from the earth for you, and seek not the bad (with intent) to spend thereof (in charity) when you would not take it for yourselves save with disdain; and know that Allah is Absolute, Owner of Praise.» (II : 267).

36) Alcoholic drinks; narcotics (except those destined for «bona fide» use in medicine); swine and swine flesh (porc); blood poured forth (blood sausage, etc.); carrion, unslaughtered flesh and flesh slaughtered in the name of another than God; gambling equipment; pornographic reading matter, pictures and films; the use of which things are forbidden by Islamic Law by reason of their constituting very real sources of disease and corruption in the fold of human society, cannot lawfully constitute articles of trade for the Muslim. Nor is Zakât acceptable from them.

In fact, the Muslim's possession of such items is severely condemned by, and his trading in them penalized under, Islamic Law.

37) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of taxable wealth invested in trade, who is personally responsible for keeping a correct account of the amount or value

involved and the Zakât due thereon.

38) Should wealth invested in trade be disposed of to purchase non-taxable articles for personal use, given as a gift, accidentally lost or stolen, *after* the Zakât thereof falls due but *before* it has been paid, the obligation to make the payment stands and is not annulled by the fact that the wealth in question is no longer in the possession of the person concerned. All the conditions and rules warranting taxation being fulfilled, including the completion of the year's term of possession, Zakât *must* be paid.

But should any such disposal or loss of taxable wealth occur *before* the completion of the year's term of possession, be it a single day, the obligation of Zakât ceases.

39) Should it be proven that the wealth in question has been maliciously disposed of, or loss thereof simulated, in order to evade the payment of Zakât dues, the guilty person is liable to punishment and to forcible discharge of his/her dues.

The Zakât of Domestic Animals.

It is a noteworthy feature of the Law of Zakât that only those kinds of domestic animals are subject to taxation, which are of *total use* to the human being, namely : camels, oxen, sheep, goats, and horses (1).

According to the following Quranic verses, «total use» implies that the animal in question, in its live state, provide the human being with its young, its milk, wool and hair, etc., and its labour. And once slaughtered, with lawful flesh for food, and with hide (leather), horn, bone, etc.

وَالأنعَامَ خَلَقَهَا لَكُمْ فِيهَا دِفْءٌ وَمَنَافِعُ وَمِنْهَا تَأكُلُونَ ۝ وَلَكُمْ فِيهَا جَمَالٌ حِينَ تُرِيحُونَ وَحِينَ تَسْرَحُونَ ۝ وَتَحْمِلُ أثْقَالَكُمْ الَى بَلَدٍ لَمْ تَكُونُوا بَالِغِيهِ الاَّ بِشِقِّ الأنفُسِ انَّ رَبَّكُمْ لَرَؤُوفٌ رَحِيمٌ ۝ (١٦ : ٥ ــ ٧)

(1) The rules governing the Zakât of pasturing horses have been purposely put under a separate heading.

« And the cattle hath He created, whence you have warm clothing and uses, and whereof you eat; and wherein is beauty for you when you bring them home and when you take them out to pasture. And they bear your loads for you unto a land you could not reach save with great trouble to yourselves. Truly, your Lord is full of Pity, Merciful. » (XVI : 5 - 7).

...وَجَعَلَ لَكُمْ مِنْ جُلُودِ الأنْعَامِ بُيُوتاً ، تَسْتَخِفُّونَهَا يَوْمَ ظَعْنِكُمْ وَيَوْمَ اقَامَتِكُمْ ، وَمِنْ أصْوَافِهَا وَأوْبَارِهَا وَأشْعَارِهَا أثَاثاً وَمَتَاعاً الَى حِينٍ • (١٦ : ٨٠)

« . . . and (Allah) hath given you, of the hides of cattle, houses which you find light (to carry) on the day of migration and on the day of pitching camp; and of their wool and their fur and their hair, caparison and comfort for a while. » (XVI : 80).

Domestic animals, such as asses, mules, elephants, dogs, etc., which do not fulfil the condition of total use, are not by their nature taxable for Zakât. Such animals acquire taxability only when they become articles of trade.

Wealth represented by taxable domestic animals is subject to the rule requiring possession thereof for a period of one full year as an essential condition warranting taxation for Zakât.

Furthermore, the Law of Zakât lays down that only those animals are subject to taxation *which are pastured for a minimum period of six months of the year*, i. e., which are maintained at little or no cost to their owner. Animals kept to satisfy their owner's personal requirements in milk, etc., or used for riding, draught, ploughing, drawing water, carrying loads, and that are stall-fed for more than six months of the year, remain Zakât-free regardless of their number, in view of the expense that stall-feeding naturally entails.

The Mâlikite School of Law holds the view that the kinds of animals liable to taxation for Zakât being by nature pasturing animals, do not cease to be so merely because they are prevented from going to pasture, and thus remain taxable even if they be used

for ploughing, drawing water, etc. But considering that the Zakât is leviable in the shape of surplus wealth only, and that surplus wealth is defined as whatever is over and above the human being's lawful necessities, the *H*anafite opinion in this matter is perfectly sound. Indeed, stall-fed animals used for riding, etc., or kept for the sake of their milk, etc., most certainly do not represent wealth surplus to the needs of their legitimate owner. Much to the contrary, and especially in rural communities, such animals are indispensable and, therefore, may not lawfully be subject to taxation for Zakât.

For the purpose of taxation, the Law of Zakât considers taxable animals by genera and establishes for each genus its own special rate, Nisâb and taxable limits. The principal sources from which these derive are : a) the Prophet's instructions to Mu'âdh ben Jabal when he appointed him governor of Yemen; b) the Prophet's instructions to 'Amr ben *H*azm; c) the first Caliph Abû Bakr as-Siddîq's instructions to Anas ben Mâlik when he sent him to Bahrain (related by Imâm Bukhârî on the authority of Umâma, on the authority of Anas ben Mâlik) ; d) the «A*h*adîth» related on the authority of 'Abû Sa'îd al-Khudrî and Jâbir ben 'Abd Allah, quoted above in connection with the significance the Law of Zakât attaches to the Nisâbs and taxable limits.

Unfortunately, contrary to what is the case where the Nisâb for agricultural produce or silver is concerned, there is no evidence at hand that explains the exact reason and purpose of the different Nisâbs established for camels, oxen, sheep and goats respectively. It may be that, in the Prophet's time, these Nisâbs represented a proportionate value, but this is not known for certain. However, as these existing rates, Nisâbs and taxable limits (1) have been generally recognized as authentic by the various Schools of Islamic Law, it would be inadvisable to alter them in the slightest degree.

Regarding the general rules governing the Zakât of domestic animals as laid down in the old versions of the Law, there is one important point which must be brought into line with the fundamental principles of the Law of Zakât : the old versions of the Law consider the increase in a herd or flock as taxable for Zakât *before* it has remained in the possession of its legitimate owner for a period

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(1) Imâms Muhammad and Zafar disregard the scale of taxable limits for domestic animals. See p. 62.

of one full year. This view is, of course, merely another aspect of the misunderstanding which caused the most prominent jurists to lose sight of one of the most important principles of the Law and led them to apply taxability for Zakât not only to the definite surplus but to income as well.

Hence, when examining the arguments advanced by the various Schools, one must bear in mind that the clear purpose of the rule requiring possession of a given kind of wealth for a period of one full year as an essential condition warranting taxation for Zakât, is to definitely establish that the wealth in question *is surplus* to the lawful necessities of its legitimate owner. In other words, from the standpoint of the Law of Zakât, it is the fact of *superfluity* which determines the taxability of wealth. This fact is entirely overlooked by the *H*anafite School of Law, which opines that the only purpose of the year's term of possession is «to allow for the increase (of the herd or flock) », and so feels quite justified in taxing the increase for Zakât *before* it has been for a full year's term in the possession of its legitimate owner.

Further arguing that it would be very difficult to reckon a year's term of possession for every increase, the *H*anafite School lays down that if a person possesses animals in number equal to or above the Nisâb established for their kind and, during the year's term of possession relating thereto, acquires other animals of the same kind, these must be included in the count when the Zakât falls due on the original wealth, regardless of the period of time that they would have effectively remained in the possession of the said person. The period in question could thus turn out to be anything from one day to one year less a day.

Moreover the *H*anafite School opines that so long as there are full-grown animals in a herd or flock, all the young should be included in the count when estimating the size thereof in order to determine the Zakât due. This even if there is only one single full-grown animal among the young (1).

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(1) Imâm Abû Yûsuf, admitting the imposition of Zakât on young animals under one year of age, established a Nisâb of 40 for lambs, 30 for calves, and 25 for camel foals. In each case he laid down that one of the young animals was to be given in payment of Zakât.

Imâm Shâf'î likewise agrees that one of the young should be given as Zakât.

According to this method, even new-born animals can constitute a decisive factor in determining the taxability of a herd or flock. Besides being incompatible with the fundamental principles of the Law, this circumstance is manifestly unfair to the Zakât-payer and so is doubly out of stride with the spirit of Islamic Justice.

Another argument advanced by the *H*anafite School in favour of considering the young as equally taxable along with the full-grown animals, is that this case is like that of defective animals the value and usefulness of which are not totally impaired and which are therefore counted when estimating the taxability of a herd or flock. In reply to this argument it must be said that there is hardly any comparison between a young animal under one year of age and a full-grown animal which is still of value and use to its legitimate owner in spite of some physical defect. For one must not lose sight of the fact that the real point at issue is to devise a method which will allow the levying of Zakât in full conformity with the principles of the Law. And by no stretch of interpretation of these principles can Zakât be lawfully levied on wealth belonging to the category subject to the rule requiring a year's term of possession prior to taxation, *before the said term is complete.*

It is interesting that whereas the *H*anafite School of Law considers both animals that are purchased, received as a gift, or inherited and the young born of a herd or flock in the same light as it considers the profit realized in trading, Imâms Shâf'î and A*h*mad ben *H*anbal differ with this view. In their opinion, when the increase is represented, not by animals born of the herd or flock, but by animals that have been purchased, received as a gift or inherited, a separate computation of a year's term of possession should be reckoned for the animals newly acquired (1).

On the other hand, Imâm Mâlik agrees with the *H*anafite view that when a person possesses animals which are in number equal to or above the Nisâb established for their kind, and then, during the year's term of possession relating thereto, acquires by purchase, gift or inheritance other animals of the same kind, the newly acquired animals must be included in the count when the Zakât falls due on the original wealth «even if the year's term is

(1) Here Imâms Shâf'î and Hanbal recognize the principle of plural computations.

not complete in relation to the increase».

It is clear from the arguments quoted above that the early expounders of the Law of Zakât did not appreciate the real significance of the year's term of possession of taxable wealth. This fact, coupled with their reluctance to face the problem of plural computations, caused them to opt for an easy way out, albeit at the price of sacrificing both the spirit and principle of the Law. For there can be no doubt that regarding domestic animals, the obvious rule, dictated by the principle requiring á full year's term of possession of the wealth in question prior to taxation for Zakât, is that taxability cannot lawfully apply to animals under one year of age.

As stated above, the increase in a herd or flock may be represented by the young born of the herd or flock itself or by animals that are purchased, inherited or received as a gift.

As regards the young born of the herd or flock itself, the Law of Zakât must take into account that the natural incidence of birth and death is never under the absolute control of the human being. Nor are all the young ever born on one and the same day, neither can there be any absolute guarantee that those born will, one and all, remain alive in the possession of their legitimate owner till they reach the age of one year. Therefore, a method of taxation must be devised which will, on the one hand, fully conform to the principles of the Law and, on the other, duly safeguard the interests of the Zakât-payer. It must be a method that will, moreover, provide the Zakât-payer with the maximum facility for the accurate discharge of his/her obligation.

The *H*anafite School rightly objects that it would be very difficult to reckon a separate computation of a year's term of possession for every increase. But the very principles of the Law forbid the imposition of Zakât on animals under one year of age and so cannot allow the existing method of taxation to stand.

The most reasonable and satisfactory manner of overcoming the difficulty would be to establish the Zakât of domestic animals on a regular trimestrial basis. Such à method would ensure that a given herd or flock would, in no case, bear more than four computations of a year's term of possession and allow, in every case, a three month leeway in which to ascertain : a) the actual taxable increase, i.e., the number of animals that have actually completed

a year's term in the possession of their legitimate owner, and b) the apparent increase, i.e., the number of animals acquired during the three month period and for which a computation of a year's term of possession is to begin.

Each computation should begin once a period of three months is complete and the apparent increase known, Zakât falling due on the last day of the corresponding period of the following year. For instance, all animals acquired during the period elapsing between January 1st and March 31st, will bear a computation of a year's term of possession running from April 1st to March 31st of the following year, when the Zakât will fall due. Thus, at the time of the Zakât falling due, taxation will be imposed only on animals that have, either as from the last payment of Zakât or as from the time of their acquisition, effectively been in the possession of their legitimate owner for a period ranging from not less than one full year to not more than one year and three months. Those animals which at the beginning of the computation were either recently born and, as yet, under three months of age or which, having been purchased, inherited, or received as a gift, have come to share the computation in question, will automatically be included in the count at the completion of the term. Then, if the sum total of the animals belonging to one genus and sharing the same computation prove to be, in number, equal to or above the Nisâb established for their kind, the corresponding Zakât will be paid.

In order to ensure the correct and easy identification of each group under a separate computation, all the animals forming part thereof (including those recently born, etc.) must bear a distinctive mark, recognized by the Institution of Zakât as a standard indication of the three month period of the year to which they belong.

Established on a trimestrial basis, the method of taxation described above both solves the *H*anafite objection that «it is difficult to reckon a separate computation of a year's term of possession for every increase» and adequately safeguards the interests of the Zakât-payer by imposing Zakât exclusively on wealth that has been duly certified as surplus, in conformity with the principles of the Law.

Taxable Limits and Rates of Zakât for Pasturing Camels.

The following taxable limits and rates of Zakât apply to all

pasturing camels, without distinction of species or breed. These include the various types of Arabian, Bactrian and American (i.e., the guanaco or domesticated llama of Peru, and the alpaca) camels. Thus the fact that a herd may consist of camels belonging to more than one species or breed has no bearing on the Zakât. Likewise, the particular species or breed of camel to be given in payment of Zakât dues remains entirely at the discretion of the Zakât-payer, so long as the required conditions of sex and age are fulfilled.

The Nisâb established by the Prophet (ص) for pasturing camels is five camels, less than five being Zakât-free.

5 pasturing camels remaining in the possession of their legitimate owner for a period of one full year are subject to a Zakât of 1 sheep or 1 goat (1) not less than one year old (male or female).

The detailed scale of taxable limits and the corresponding rates of Zakât are as follows : (2).

Number of Camels				Rates of Zakât
Taxable limits.	Zakât-free intervals.			
—	1 to	4	inclusive	Zakât-free.
5	6 «	9	«	1 sheep or 1 goat, not less than one year old (male or female) (شاة).
10	11 «	14	«	2 sheep or 2 goats, not less than one year old (male or female).
15	16 «	19	«	3 sheep or 3 goats, not less than one year old (male or female).
20	21 «	24	«	4 sheep or 4 goats, not less than one year old (male or female).
25	26 «	35	«	1 female camel in her second year (بنت مخاض).
36	37 «	45	«	1 female camel in her third year (بنت لبون).
46	47 «	60	«	1 female camel in her fourth year (حقّة).
61	62 «	75	«	1 female camel in her fifth year (جذعة).

(1) The word «Shât» (شاة) occurring in the Arabic versions of the Law of Zakât, is a generic term which includes sheep and goats, both male and female.

(2) The tables given here conform to those adhered to by the Hanafite School of Law.

Number of Camels (cont.)		Rates of Zakât
Taxable limits.	Zakât-free intervals.	
76	77 to 90 incl.	2 female camels in their third year.
91	92 « 124 (1) «	2 female camels in their fourth year.
125	126 « 129 «	2 female camels in their fourth year plus 1 sheep or 1 goat not less than one year old (male or female).
130	131 « 134 «	2 female camels in their fourth year plus 2 sheep or 2 goats not less than one year old (male or female).
135	136 « 139 «	2 female camels in their fourth year plus 3 sheep or 3 goats not less than one year old (male or female).
140	141 « 144 «	2 female camels in their fourth year plus 4 sheep or 4 goats not less than one year old (male or female).

(1) Both Imâms Mâlik and Shâf'î differ with the Hanafite School as to the taxable limits and rates of Zakât for camels exceeding 120 in number. According to Imâm Mâlik, as from 121 camels the general count is by 40 and by 50 camels, thus allowing a Zakât-free interval of 9 camels between each taxable limit. Every 40 camels would carry a Zakât of 1 female camel in her third year, and every 50 camels would carry a Zakât of 1 female camel in her fourth year.

According to Imâm Shâf'î, 121 - 129 camels are to carry a Zakât of 3 female camels in their third year. 130 camels are to carry a Zakât of 1 female camel in her fourth year plus 2 female camels in their third year. After which the general count is by 40 and by 50 camels, allowing a Zakât-free interval of 9 camels between each taxable limit, the rate of Zakât being the same as adhered to by Imâm Mâlik.

According to this method of reckoning, 140 - 149 camels incl. would carry a Zakât of 2 female camels in their fourth year plus 1 female camel in her third year, as compared to the Hanafite reckoning of 140 - 144 camels incl. carrying a Zakât of 2 female camels in their fourth year plus 4 sheep or 4 goats, followed by 145 - 149 camels incl. carrying a Zakât of 2 female camels in their fourth year plus 1 female camel in her second year.

Although Imâm Mâlik's method of reckoning is supposed to be based on written instructions of the second Caliph 'Umar ibn ul-Khattâb concerning the Zakât of domestic animals, actually it appears that both the Shâfiite and Mâlikite methods are based on an earlier ruling of the Prophet (ص), while the Hanafite method conforms to the definite order of the Prophet (ص) written at a later date to 'Amr ben Hazm.

Number of Camels (cont.)			Rates of Zakât
Taxable limits	Zakât-free intervals.		
145	146 to 149 incl.		2 female camels in their fourth year plus 1 female camel in her second year.
150	151 « 154	«	3 female camels in their fourth year.
155	156 « 159	«	3 female camels in their fourth year plus 1 sheep or 1 goat not less than one year old (male or female).
160	161 « 164	«	3 female camels in their fourth year plus 2 sheep or 2 goats not less than one year old (male or female).
165	166 « 169	«	3 female camels in their fourth year plus 3 sheep or 3 goats not less than one year old (male or female).
170	171 « 174	«	3 female camels in their fourth year plus 4 sheep or 4 goats not less than one year old (male or female).
175	176 « 185	«	3 female camels in their fourth year plus 1 female camel in her second year.
186	187 « 195	«	3 female camels in their fourth year plus 1 female camel in her third year.
196	197 « 204	«	4 female camels in their fourth year or 5 female camels in their third year.
205	206 « 209	«	4 female camels in their fourth year plus 1 sheep or 1 goat not less than 1 year old (male or female).
210	211 « 214	«	4 female camels in their fourth year plus 2 sheep or 2 goats not less than one year old (male or female).
215	216 « 219	«	4 female camels in their fourth year plus 3 sheep or 3 goats not less than one year old (male or female).
220	221 « 224	«	4 female camels in their fourth year plus 4 sheep or 4 goats not less than one year old (male or female).

Number of Camels (cont.)		Rates of Zakât
Taxable limits.	Zakât-free intervals.	
225	226 to 235 incl.	4 female camels in their fourth year plus 1 female camel in her second year.
236	237 « 245 «	4 female camels in their fourth year plus 1 female camel in her third year.
246	247 « 254 «	5 female camels in their fourth year.

The detailed count for every additional 50 camels as from 255 camels is given in the following table. The same scale of taxable limits and rates are to be applied counting as follows : from 255 - 259 camels to 296 - 300, from 305 - 309 to 346 - 350, from 355 - 359 to 396 - 400, etc.

Number of Camels		Rates of Zakât
Taxable limits	Zakât-free intervals.	
5	6 to 9 inclusive	1 sheep or 1 goat not less than one year old (male or female).
10	11 « 14 «	2 sheep or 2 goats not less than one year old (male or female).
15	16 « 19 «	3 sheep or 3 goats not less than one year old (male or female).
20	21 « 24 «	4 sheep or 4 goats not less than one year old (male or female).
25	26 « 35 «	1 female camel in her second year.
36	37 « 45 «	1 female camel in her third year.
46	47 « 50 «	1 female camel in her fourth year.

Thus, 596 - 600 camels incl. would carry a Zakât of 12 female camels in their fourth year.

710 - 714 camels incl. would carry a Zakât of 14 female camels in their fourth year plus 2 sheep or 2 goats not less than one year old (male or female).

736 - 745 camels incl. would carry a Zakât of 14 female camels in their fourth year plus 1 female camel in her third year; etc.

Taxable Limits and Rates of Zakât for Pasturing Sheep and Goats.

Sheep and goats are generally designated by the Arabic term « Ghanam » (غنم) .Hence the Law of Zakât applies the same taxable limits and rates of Zakât indiscriminately to all pasturing sheep and goats, without distinction of species or breed.

Moreover, when both sheep and goats are owned by one and the same person and share one computation of a year's term of possession, the two kinds are combined when estimating the taxability of the flock and Zakât is levied in proportion with the total number of taxable heads.

The fact that a flock may consist of sheep and/or goats belonging to more than one species or breed has no bearing on the Zakât. Likewise, the particular species or breed of sheep or goat to be given in payment of Zakât dues remains entirely at the discretion of the Zakât-payer, so long as the required condition of age is fulfilled.

There is a doubtful «*H*adîth» according to which the Prophet (ص) would have said concerning the Zakât of sheep and goats : « انّما حقّنا الجذعة والثنى » and which has been understood by some 'ulemâ, among whom Mu*h*ammad ibn ul-*H*asan, as justifying the taking of animals under one year of age in payment of Zakât dues. Those 'ulemâ who accept the authenticity of this «*H*adîth», take the term « jadha'a » (جذعة) as here designating «a young sheep or goat between six months and one year of age». Actually this term is also used to designate a female camel in her fifth year. Hence most jurists hold that if the «*H*adîth» in question is at all correct, the word «jadha'a» must be understood to mean «a female camel in her fifth year and not a young sheep or goat under one year of age». The «*H*adîth» would thus refer to the extremes of age allowed for animals to be given in payment of Zakât dues and would read as follows : «Verily our right is only from the five year old to the yearling», and not «Verily our right is only the one over six months of age and the yearling».

An argument advanced in favour of the latter meaning is that

sheep and goats under one year of age are acceptable for sacrifice and in payment of vows and should, therefore, be accepted in payment of Zakât dues. But if one considers that the Law of Zakât is based on very definite principles which require, in respect of the kind of wealth in question, possession thereof for a period of one full year prior to taxation for Zakât and, as a general rule, that Zakât dues be given out of the very wealth under taxation, it becomes obvious that animals under one year of age are not acceptable in payment of Zakât dues for the simple reason that in themselves they do not as yet fulfil the essential conditions warranting taxation for Zakât.

The Nisâb established by the Prophet (ص) for pasturing sheep and goats is of 40 head, less than 40 being Zakât-free.

The detailed scale of taxable limits and the corresponding rates of Zakât are as follows (1) :

Number of Sheep and/or Goats			Rates of Zakât
Taxable limits.	Zakât-free intervals.		
—	1 to 39 inclusive		Zakât-free.
40	41 « 120	«	1 sheep or one goat not less than one year old (male or female).
121	122 « 200	«	2 sheep or 2 goats not less than one year old (male or female).
201	202 « 300(2)	«	3 sheep or 3 goats not less than one year old (male or female).
301	302 « 400	«	4 sheep or 4 goats not less than one year old (male or female).

The count continues in like manner at the rate of 1 sheep or goat not less than one year old (male or female) for every additional 100 head. Thus, 701 - 800 sheep and/or goats incl. would carry a

(1) The table given here conforms to that adhered to by the Mâlikite School of Law.

(2) According to the Hanafite School of Law, after 200 sheep and/or goats an interval of 199 head is allowed to remain Zakât-free, the count being 201 - 399, carrying a Zakât of 3 sheep or 3 goats. Thereafter, every additional 100

Zakât of 8 sheep or 8 goats not less than one year old (male or female). 1001 - 1100 sheep and/or goats incl. would carry a Zakât of 11 sheep or goats not less than one year old (male or female), etc.

Taxable Limits and Rates of Zakât for Pasturing Oxen.

The Arabic term «Baqar» (بقر) is used to designate all bovine animals. These include the various types of oxen common in the Near East and Europe as well as the various types of African, Oceanean (i.e., the carabao) and Asian oxen (i.e., buffalos, zebus, yaks). Hence the Law of Zakât applies the same taxable limits and rates of Zakât to all pasturing oxen, without distinction of species or breed.

The fact that a herd may consist of oxen belonging to more than one species or breed has no bearing on the Zakât. Likewise, the particular species or breed of oxen to be given in payment of Zakât dues remains entirely at the discretion of the Zakât-payer, so long as the required conditions of sex and age are fulfilled.

The Nisâb established by the Prophet (ص) for pasturing oxen is of 30 head, less than 30 being Zakât-free.

30 pasturing oxen remaining in the possession of their legitimate owner for a period of one full year are subject to a Zakât of 1 uncastrated bull or 1 cow in its second year.

The scale of taxable limits and the corresponding rates of Zakât are detailed in the following table. Special notice should be taken of the fact that, throughout, the general count is by 30 and by 40. Every 30 oxen carry a Zakât of 1 uncastrated bull or 1 cow in its second year, and every 40 oxen carry a Zakât of 1 uncastrated bull or 1 cow in its third year (1).

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head are subject to a Zakât of 1 sheep or 1 goat : 400 - 499, etc.

This astonishing Zakât-free interval of 199 head would seem to be a serious and hardly justifiable irregularity in the method of reckoning and is undoubtedly the result of a genuine mistake in some of the early reports. As a matter of fact, the instructions as to the taxable limits and rates of Zakât for domestic animals, written by the first Caliph Abû Bakr as-Siddîq (رض) to Anas ben Mâlik, when he sent him to Bahrain, clearly specify that 201 - 300 sheep and/or goats are subject to a Zakât of 3 sheep or 3 goats, and that, thereafter, for every 100 sheep and/or goats, 1 is to be given as Zakât.

(1) The table given here conforms to the one adhered to by the Hanafite and Mâlikite Schools of Law.

Number of Oxen			Rates of Zakât
Taxable limits.	Zakât-free intervals.		
—	1 to 29	inclusive	Zakât-free.
30	31 « 39	«	1 uncastrated bull or 1 cow in its second year. (تبيع او تبيعة)
40	41 « 59	«	1 uncastrated bull or 1 cow in its third year. (مسنّ او مسنّة)
60	61 « 69	«	2 uncastrated bulls or 2 cows in their second year.
70	71 « 79	«	1 uncastrated bull in its second year plus 1 cow in its third year.
80	81 « 89	«	2 cows in their third year.
90	91 « 99	«	3 uncastrated bulls or 3 cows in their second year.
100	101 « 109	«	2 uncastrated bulls in their second year plus 1 cow in its third year.
110	111 « 119	«	1 uncastrated bull in its second year plus 2 cows in their third year.
120	121 « 129	«	4 uncastrated bulls or 4 cows in their second year. Or 3 uncastrated bulls or 3 cows in their third year.
130	131 « 139	«	3 uncastrated bulls or 3 cows in their second year plus 1 uncastrated bull or 1 cow in its third year.
140	141 « 149	«	2 uncastrated bulls or 2 cows in their second year plus 2 uncastrated bulls or 2 cows in their third year.
150	151 « 159	«	3 uncastrated bulls or 3 cows in their third year plus 1 uncastrated bull or 1 cow in its second year. Or 5 uncastrated bulls or 5 cows in their second year.

Number of Oxen (cont.)		Rates of Zakât
Taxable limits.	Zakât-free intervals.	
160	161 to 169 incl.	4 uncastrated bulls or 4 cows in their second year plus 1 uncastrated bull or 1 cow in its third year. Or 4 uncastrated bulls or 4 cows in their third year.
170	171 « 179 «	3 uncastrated bulls or 3 cows in their second year plus 2 uncastrated bulls or 2 cows in their third year.
180	181 « 189 «	6 uncastrated bulls or 6 cows in their second year. Or 3 uncastrated bulls or 3 cows in their third year plus 2 uncastrated bulls or 2 cows in their second year.
190	191 « 199 «	4 uncastrated bulls or 4 cows in their third year plus 1 uncastrated bull or 1 cow in its second year. Or 5 uncastrated bulls or 5 cows in their second year plus 1 uncastrated bull or 1 cow in its third year.
200	201 « 209 «	5 uncastrated bulls or 5 cows in their third year. Or 4 uncastrated bulls or 4 cows in their second year plus 2 uncastrated bulls or 2 cows in their third year.

After 200 - 209 incl., the count continues in like manner at the rate of 1 uncastrated bull or 1 cow in its second year for every 30 head, and of 1 uncastrated bull or 1 cow in its third year for every 40 head. Thus, 400 - 409 oxen incl. would carry a Zakât of 10 uncastrated bulls or 10 cows in their third year. 530 - 539 oxen incl. would carry a Zakât of 11 uncastrated bulls or 11 cows in their third year plus 3 uncastrated bulls or 3 cows in their second year; etc. (1).

(1) Were the Nordic tribes to convert to Islam, their pasturing herds of domestic reindeer kept for their milk, flesh and hide, and used for drawing sledges, would bear the same rates of Zakât and taxable limits as apply to pasturing oxen.

Rules Governing the Zakât of Pasturing Domestic Animals (established on a trimestrial basis) :

1) Domestic animals, such as camels, oxen, sheep and goats, that are pastured for a minimum period of six months of the year, are subject to taxation for Zakât when they are at least equal in number to the Nisâb established for their respective kind and once they have completed a full year's term in the possession of their legitimate owner.

When estimating the taxability of pasturing domestic animals, the total number thereof belonging to one and the same person and existing within the territory or territories under the jurisdiction of a same country must be taken into consideration.

2) Domestic animals, such as camels, oxen, sheep and goats, that are kept to satisfy the personal requirements of their legitimate owner in milk, etc., or that are used for riding, draught, ploughing, drawing water (i.e., عوامل) and carrying loads (i.e., حوامل) and that are stall-fed for a period of more than six months of the year (i.e., علوفة) , remain Zakât-free regardless of their number , in view of the expense that stall-feeding naturally entails.

3) Domestic animals, such as camels, oxen, sheep and goats, that are intended as articles of trade, cease to be subject to the Zakât of their kind and become subject to the Zakât of trade only, even if they be pastured for a period of six or more months of the year.

4) The Zakât of taxable domestic animals should be established on a regular trimestrial basis in the following manner :

a) For the purpose of determining the taxability of herds and flocks of domestic animals, the calendar year should be divided into four periods of three months :

First Period : January 1st to March 31st incl.

Second Period : April 1st to June 30th incl.

Third Period : July 1st to September 30th incl.

Fourth Period : October 1st to December 31st incl.

b) The computation of a year's term of possession corresponding to each period of three months should begin once the period is complete and the apparent increase of the herd or flock is known.

Thus, the year's term of possession corresponding to the first period will run from April 1st to March 31st of the following year, on which date the Zakât will fall due.

That corresponding to the second period will run from July 1st to June 30th of the following year, on which date the Zakât will fall due.

That corresponding to the third period will run from October 1st to September 30th of the following year, on which date the Zakât will fall due.

And that corresponding to the fourth period will run from January 1st to December 31st, on which date the Zakât will fall due.

c) All animals of a kind, newly acquired during any given period of three months — i.e., born of the herd or flock itself (1), inherited, received as a gift, received in compensation of value (when animals of more value or of a more valuable breed have been exchanged for animals of less value or of a less valuable breed), purchased with non-taxable wealth, purchased with an amount of wealth which being taxable by its nature falls short of the Nisâb established for its kind (2), or purchased with an amount of taxable wealth which (itself being equal to or above the Nisâb established for its kind) is exchanged for a number of animals that falls short of the Nisâb established for their particular kind (3) — represent collectively the apparent increase and are to bear the computation of a year's term of possession corresponding to the period involved together with what remains (after the discharge of the Zakât dues) of the group already belonging to the same period. Once the said year's term of possession is complete, the animals belonging to the new

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(1) The period to which the young will belong depends exclusively on the date of their birth and has nothing to do with the period to which their mothers belong.

(2) See Rule 2 of those governing the exchange of taxable wealth.

(3) See Rule 1 of those governing the exchange of taxable wealth.

group thus constituted will form a taxable whole and will, accordingly, be subject to taxation for Zakât.

Example : If the group belonging, say, to the first period be of 40 head of oxen and the apparent increase be of 10 head, on March 31st (upon completion of the year's term), a Zakât of 1 uncastrated bull or 1 cow in its third year would fall due, the payment of which would reduce the group in question to 39 head. Then on April 1st, a new computation of a year's term of possession would begin for the 39 head plus the 10 head representing the apparent increase, and on March 31st of the following year, the new group thus constituted (i.e., 39+10=49 head of oxen) would be subject to taxation, carrying a Zakât of 1 uncastrated bull or 1 cow in its third year (the taxable limit being, in this case, 40 head, 9 head falling within a tax-free interval). Whereupon a new computation of a year's term of possession would begin for the remainder of the group (i.e., 48 head) plus the new apparent increase, if any, etc.

d) In conformity with the rules governing the exchange of taxable wealth, animals of a kind, in number equal to or above the Nisâb, that are acquired in exchange for taxable wealth (i.e., silver, gold, currency notes, domestic animals belonging to a different genus, articles of trade, etc.) already under a computation of a year's term of possession, are to be considered as belonging to the three month period within which the Zakât of the wealth disposed of would normally have fallen due, regardless of the actual date of the transaction (1).

If there be other animals of the same kind belonging to the same three month period, the newly acquired animals will be added thereto and the new group thus constituted will, as a whole, be subject to taxation for Zakât at the time of its falling due.

Example : Were the transaction to take place on July 15th 1950, and were the Zakât of the wealth disposed of (given in exchange for the animals) to have normally fallen due on December 1st, 1950, the animals acquired would be considered as belonging to the fourth period of 1949 and would be subject to taxation for Zakât on December 31st, 1950, along with any other animals belonging to the same three month period.

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(1) See Rule 4 of those governing the exchange of taxable wealth.

Had the transaction taken place on any other date prior to December 1st, 1950 — for instance, on December 3rd, 1949 — the position would be the same as explained above, i.e., the animals acquired would take up and complete the computation of a year's term of possession relating to the wealth disposed of and be considered as belonging to the fourth period of 1949, the Zakât of which would normally fall due on December 31st, 1950.

Similarly, were the Zakât of the wealth disposed of to have normally fallen due on any date between January 1st and March 31st, 1950 incl., the animals acquired would be considered as belonging to the first period of 1949 and would be subject to taxation for Zakât on March 31st, 1950, along with any other animals of the same kind belonging to this same period.

It could also happen that there be an exact coincidence of dates in that the Zakât of the wealth disposed of would have normally fallen due on March 31st, June 30th, September 30th, or December 31st, i.e., on precisely the same date on which the Zakât corresponding to one of the three month periods would also normally fall due.

Whatever the case may be, the actual date of the transaction has no bearing on the Zakât. Even were the transaction to take place a single day before the Zakât of the wealth disposed of would normally have fallen due, the animals acquired in exchange therefor would be included in the group belonging to whichever period may be involved and for which the Zakât would likewise be about to fall due.

e) In conformity with Rule 3g of those governing plural computations (see p. 25) and Rules 4 and 6 of those governing the exchange of taxable wealth (see pp. 250 & 257), animals of a kind that are in number equal to or above the Nisâb and that are acquired in exchange for taxable wealth constituted by two or more sums involving as many computations of a year's term of possession, are to be considered as belonging proportionately to the periods corresponding to the two or more terms at the end of which the Zakât of the respective sums would normally have fallen due.

f) In conformity with Rules 5f and 6 of those governing the exchange of taxable wealth (see pp. 255, foll.), when domestic animals

belonging to one and the same genus are exchanged, the animals disposed of being taken from two or more groups involving as many computations of a year's term of possession, if the newly acquired animals are *equal to* or *less* in number than the animals disposed of, they are to be considered as belonging proportionately to the two or more respective periods at the end of which the Zakât of the groups constituted by the animals disposed of would normally have fallen due.

But if the animals newly acquired are more in number than those disposed of, those of the newly acquired animals that are in excess of the number of animals disposed of, if they be, by themselves, in number equal to or above the Nisâb established for their kind, will begin a new computation of a year's term of possession, and if they fall short thereof, will remain Zakât-free until added, as part of the apparent increase, to the first group to complete its year's term of possession, after payment of the said group's Zakât dues. (See Rule 5f of those governing the exchange of taxable wealth, p. 255, and Rules 2 and 3 of those governing plural computations, pp. 17, 18).

If the exchange of animals reduces the number of animals of any given group to below the Nisâb, the computation of the year's term of possession relating to that group is effectively broken and the obligation of Zakât lapses until taxability is once more acquired as shown above. (See Rule 5d of those governing the exchange of taxable wealth, p. 254).

g) Except as articles of trade, young animals under one full year of age may not lawfully be subject to taxation for Zakât. Hence, when young animals under one full year of age are acquired in exchange for taxable wealth already under a computation of a year's term of possession, the said computation is effectively broken. The young animals in question, regardless of their number, will consequently come to form part of the apparent increase acquired during the period within which the transaction takes place.

h) When a person possesses or acquires—there being no other animals of the kind involved previously owned — domestic animals which, in number, fall short of the Nisâb established for their kind, the same remain Zakât-free until such a time as taxability is attained through natural increase or the further acquisition of animals of the same kind.

In this case, if taxability is attained through the addition of animals born of the herd or flock itself, inherited, received as a gift, purchased with non-taxable wealth, purchased with an amount of wealth which, being taxable by its nature, falls short of the Nisâb established for its kind, or purchased with an amount of wealth which (itself being equal to or above the Nisâb established for its kind) is exchanged for a number of animals that falls short of the Nisâb established for their particular kind, the sum total of the animals involved will constitute a group belonging to the three month period at the end of which taxability is attained.

i) When a person possesses or acquires — there being no other animals of the kind involved previously owned — domestic animals which, in number, fall short of the Nisâb established for their kind, and subsequently acquires, at one time, animals that are, in number, equal to or above the Nisâb established for their particular kind and that are acquired in exchange for taxable wealth already under a computation of a year's term of possession, the original animals will temporarily continue to remain Zakât-free. Whereas the newly acquired animals will be considered as belonging to the three month period corresponding to the year's term of possession at the end of which the Zakât of the wealth disposed of would normally have fallen due and will be subject to taxation at the completion of the said term. Then after the discharge of Zakât dues, a new computation of a year's term of possession will begin for the remainder of the newly acquired animals plus the original group and plus again the apparent increase, if any.

j) Whenever wealth represented by pasturing domestic animals is, at the time of its being acquired, less than the Nisâb — there being no other animals of the kind involved belonging to the period within which the acquisition takes place — or, for any reason, falls below the Nisâb during the year's term of possession relating thereto, it will, together with the apparent increase, if any, at once be added to the remainder, after the discharge of Zakât dues, of the first group by order of dates to complete a year's term in the possession of its legitimate owner.

This same rule applies when, for any reason, a taxable number of animals falls below the Nisâb during the period to which they belong, i.e., before the date when the Zakât would otherwise have

fallen due, and the addition thereto of the apparent increase, if any, fails to restore the group in question to a number of heads at least equal to the Nisâb.

k) In order to ensure the correct and easy identification of each of the four groups under a separate computation of a year's term of possession, all the animals forming part thereof (including the young born within the corresponding period) must bear a distinctive mark, officially recognized and approved of by the Institution of Zakât, as a standard indication of the three month period of the year to which they belong. As, in changing hands, animals are ever liable to form part of a group belonging to a different period than that to which they originally belonged, the marks in question must be *easily interchangeable.*

5) Should the herd or flock under taxation prove to be less in number when the Zakât falls due than at the beginning of the year's term of possession, the Zakât will be reckoned only on the number of heads existing at the time, i.e., on those that have effectively completed a year's term in the possession of their legitimate owner.

6) When the herd or flock under taxation includes animals belonging to more than one species or breed and only one animal is due in payment of Zakât, the same should be given from among the species or breed which is the most numerous.

If the number of heads belonging to each species or breed is equal, the choice of the animal to be given in payment of Zakât remains entirely at the discretion of the Zakât-payer.

On the other hand, if the size of the herd or flock warrants several animals being given in payment of Zakât dues, they should preferably, and always with the Zakât-payer's consent, be taken proportionately from among each species or breed, providing that the prescribed conditions of sex and age are fulfilled.

Thus, for instance, if a flock is comprised of both sheep and goats, the latter being more numerous than the former, and a Zakât of 3 sheep or 3 goats is due, the same should preferably be paid in the shape of 1 sheep and 2 goats. If the flock be comprised of an equal number of sheep and goats, the Zakât may be paid either in the shape of 2 sheep and 1 goat or of 2 goats and 1 sheep, according to the wish of the Zakât-payer.

This same rule applies to herds of oxen comprising, for instance, both zebus and buffalos, etc.

7) When an animal of a given sex and/or age is required to be given in payment of Zakât dues and the same is not available from among those under taxation, an older or younger animal of the same or of the other sex may be given (1). In such a case, if the animal in question is of more value than the one required, the difference in value must be refunded to the Zakât-payer. If, on the contrary, the animal in question is of less value than the one required, the Zakât-payer must make up the difference of value in silver, gold, the local currency, or in such kind as is acceptable to the Institution of Zakât (i.e., grain or other preservable foodstuffs). Alternatively, the *full value,* according to the prevailing market price, of the animal required may be paid in silver, gold, the local currency, or in such kind as is acceptable to the Institution of Zakât.

The following «*H*adîth» contains the Prophet's (ص) instructions in this connection :

حدّثنا محمّد بن عبد الله قال : حدّثني أبي قال : حدّثني ثمامة أنّ أنساً رضي الله عنه حدّثه : أنّ أبا بكرٍ رضي الله عنه كتب له فريضة الصدقة التي أمر الله رسوله صلّى الله عليه وسلّم : مَن بلغت عنده من الابل صدقة الجذعة، وليست عنده جذعة وعنده حقّة ، فانّها تقبل منه الحقّة ويجعل معها شاتين ان استيسرتا له أو عشرين درهماً • ومَن بلغت عنده صدقة الحقّة ، وليست عنده الحقّة وعنده الجذعة ، فانّها تقبل منه الجذعة ويُعطيه المصدّق عشرين درهماً أو شاتين • ومَن بلغت عنده صدقة الحقّة وليست عنده الا بنت لبونٍ ، فانها تقبل منه بنت لبونٍ ويعطى شاتين او عشرين درهماً • ومن بلغت صدقته بنت لبونٍ وليست عنده وعنده حقّة ، فانّها تقبل منه الحقّة ويعطيه المصدّق

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(1) Although, in the case of camels, males are as a rule not acceptable in payment of Zakât dues, whenever a female camel in its second year (بنت مخاض) is required to be given in payment of Zakât and is not available in the herd, a male camel in its third year(ابن لبون) is considered as being equal to the said female camel in value.

عشرين درهماً أو شاتين • ومن بلغت صدقته بنت لبونٍ ، وليست عنـــده ، وعنده بنت مخاضٍ ، فانّها تقبل منه بنت مخاضٍ ويعطى معها عشرين درهماً أو شاتين • (بخاري)

« Mu*h*ammad ben 'Abd Allah has related unto us, saying : My father related unto me, saying : Thumâma has related unto me that Anas (رض) related unto him that Abû Bakr (رض) wrote to him the (following) rules governing the Zakât, which Allah commanded His Messenger (ص) to observe: !If a person is liable to pay as Zakât of his camels 1 female camel in her fifth year, and no such a one be available in his herd, but there be in his possession a female camel in her fourth year, let the female camel in her fourth year be accepted from him and let him give along with her (the remaining value in the shape of) 2 sheep or 2 goats of not less than one year, if there be any in his possession, or 20 dirhems of silver. And if a person is liable to pay (as Zakât of his camels) 1 female camel in her fourth year, and no such a one be available in his herd, but there be in his possession a female camel in her fifth year, let the female camel in her fifth year be accepted from him, and let the Zakât-collector refund to him (the extra value in the shape of) 20 dirhems or 2 sheep or 2 goats of not less than one year (i.e., the difference in value between the female camel in her fourth year and the female camel in her fifth year). And if a person is liable to pay (as Zakât of his camels) 1 female camel in her fourth year, and has only available in his herd a female camel in her third year, let the female camel in her third year be accepted from him and let him give along with her (the remaining value in the shape of) 2 sheep or 2 goats of not less than one year, or 20 dirhems. And if a person is liable to pay (as Zakât of his camels) 1 female camel in her third year, and possesses only a female camel in her fourth year, let the female camel in her fourth year be accepted from him, and let the Zakât-collector refund to him (the extra value in the shape of) 20 dirhems or 2 sheep or 2 goats of not less than one year. And if a person is liable to pay (as Zakât of his camels) 1 female camel in her third year and no such a one be available in his herd, but there be in his possession a female camel in her second year, let the female camel in her second year be accepted from him, and let him give along with her (the remaining value in the shape of) 20 dirhems or 2 sheep or 2 goats of not less than one year' .» (Imâm Bukhârî).

8) When estimating the taxability of a herd or flock, old animals and animals which though suffering from physical defects such as blindness, lameness, curable sicknesses or curable injuries, are still of value and use to their legitimate owner, are to be included in the count.

On the other hand, such animals are not acceptable in payment of Zakât dues.

9) Pregnant females and females with young are naturally to be included in the count, but may not be taken in payment of Zakât dues.

10) When estimating the taxability of a herd or flock, young animals under one year of age are not to be included in the count.

11) Only domestic animals are liable to taxation for Zakât.

Hence, animals belonging to a wild species of any of the taxable kinds are not to be counted as forming part of the herd or flock under taxation.

On the other hand, animals born of a cross between a female belonging to a domestic species and a male belonging to a wild species are considered as being themselves domestic.

12) The Law of Zakât lays down that healthy, useful animals of average value must be given in payment of Zakât dues. In conformity with the Prophet's ruling :

لا تأخذوا من حرزات اموال الناس وخذوا من حواشي اموالهم

(«Take not the choice of the people's wealth, take of their wealth that which is of average value»), the best specimens of a herd or flock may not be forcibly levied in payment of Zakât dues.

13) In conformity with the Injunction contained in the following Quranic verse, the poorest specimens of a herd or flock are not acceptable in payment of Zakât dues :

يَا أيُّهَا الَّذِينَ آمَنُوا أنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ ،
ومِمَّا أخْرَجْنَا لَكُمْ مِن الاَرْضِ ، ولاَ تَيَمَّمُوا الخَبِيثَ مِنْهُ

تُنْفِقُونَ وَلَسْتُمْ بِأٰخِذِيهِ اِلاَّ أَنْ تُغْمِضُوا فِيهِ ، وَاعْلَمُوا انَّ اللهَ غَنِيٌّ حَمِيدٌ" • (٢ : ٢٦٧)

«O you who believe! Spend of the good things which you have earned, and that which We bring forth from the earth for you, and seek not the bad (with intent) to spend thereof (in charity) when you would not take it for yourselves save with disdain; and know that Allah is Absolute, Owner of Praise.» (II : 267).

14) In conformity with Rule 17 of those governing the Zakât of trade (see p. 141), domestic animals such as camels, oxen, sheep and goats, destined for sale and slaughter, constitute articles of trade and are subject to the Zakât of trade only.

15) In conformity with Rule 16 of those governing the Zakât of trade, domestic animals such as camels, oxen, sheep and goats, primarily intended as articles of trade and subsequently converted to the personal use of the legitimate owner, automatically cease to be subject to the Zakât of trade and become subject to the rules governing the Zakât of their kind only.

If, according to these rules, the converted animals remain taxable, being in number equal to or above the Nisâb established for their kind, the computation of the year's term of possession relating thereto as articles of trade is not broken by the conversion and continues in relation thereto as personal property.

16) The collective ownership of herds and flocks of taxable domestic animals is subject to the rules governing the Zakât of collectively-owned taxable wealth. (See p. 264).

17) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of taxable domestic animals, who is personally responsible for keeping a correct account of the animals in his/her possession and of the Zakât due thereon.

18) If all or part of a taxable herd or flock is disposed of in exchange for non-taxable wealth of personal use (i.e., not intended for trade), given as a gift, slaughtered for food, stolen or accidentally lost *after* the Zakât falls due and *before payment* has been

made, the obligation of Zakât stands and is not annulled by the fact that the animals in question, or a number thereof, are no longer in the possession of the person concerned. All conditions and rules warranting taxation being fulfilled, including the completion of the year's term of possession, Zakât *must* be paid.

19) If any such disposal or loss as described in Rule 18 occurs *before* the completion of the year's term of possession, be it a single day, the taxability of the herd or flock in question and, consequently, the obligation of Zakât will either decrease proportionately or totally cease by the very fact of partial or total non-possession for a full period of one year.

20) Should it be proven that all or part of a taxable herd or flock has been maliciously disposed of, or loss thereof simulated, in order to evade the payment of Zakât dues, the guilty person is liable to punishment and to forcible discharge of his/her dues.

The Zakât of Pasturing Horses.

The contradictory nature of early reports has given rise to two distinct views regarding the inclusion of horses in the category of taxable wealth.

Thus it is that of all the Schools of Islamic Law, the *H*anafite School alone admits the taxability of horses and recognizes a definite rate of Zakât as applying thereto (1).

On the other hand, such eminent jurists as Imâms Mâlik, Shâf'î, *H*anbal, Al-'Aynî and Ghazzâli have maintained that, except as articles of trade, horses are totally exempt from taxation for Zakât.

The argument for exemption finds support in a number of «A*h*adîth» of which the following one is related on the authority of Abû Huraîra :

حدّثنا يحي بن يحي التميميّ قال : قرأت على مالكٍ عن عبد الله بن دينارٍ عن سليمان بن يسارٍ عن عراك بنْ مالكٍ عن أبي هريرة أنّ رسول الله صلّى الله عليه وسلّم قال : ليس على المسلم في عبدهٖ ولا فرسه صدقة • (مسلم)

(1) Imâms Zafar and Abû Bakr ar-Râzî also admit the taxability of pasturing horses.

« Ya*h*yâ ben Ya*h*yâ At-Tamîmî has related unto us (saying) : I read (a report of) Mâlik (who said) on the authority of 'Abd Allah ben Dînâr, (who related) on the authority of Sulaymân ben Yasâr, (who related) on the authority of 'Irâk ben Mâlik, (who related) on the authority of Abû Huraîra, that the Messenger of Allah (ص) said : 'The Muslim has no Zakât to pay on his/her servant or on his/her horse' .» (Imâm Muslim).

The argument of those who advocate the Zakât of horses is based mainly on the testimony of Abû Saîd Zaid ben Thâbet, Companion of the Prophet (ص), and further on the well-established fact that the Second Caliph, 'Umar ibn ul-Kha*tt*âb, actually did levy Zakât on horses.

Concerning 'Umar's practice of levying Zakât on horses, Imâm Al-'Aynî, in his Commentary of the *Sa*h*îh* al-Bukhârî, quotes the following report from Imâm Mâlik : «Ibn Shahâb has related on the authority of Sulaymân ben Yasâr, (who related) that the people of Damascus approached Abû 'Ubaîda ibn ul-Jarrâh requesting him to levy Zakât on their horses and slaves. Abû 'Ubaîda refused to do so and wrote (about the matter) to the Caliph, 'Umar ibn ul-Kha*tt*âb, who likewise refused (to consider the request of the people of Damascus).

« Once more the people formulated their request. Whereupon Abû 'Ubaîda again wrote to 'Umar, who (appreciating the pious intention of the petitioners) replied : 'If they so desire, then take it (the Zakât of their horses) from them and return it unto them by bestowing it upon their slaves' .»

As already stated, the testimony of Abû Sa'îd Zaid ben Thâbet furnishes the main argument in favour of the imposition of Zakât on horses. In his book «Al-Asrâr», Abû Zaid ad-Dabbûsî relates in this connection that the Ummayade Caliph, Marwân, consulted the Prophet's Companions, present among whom were Abû Huraîra and Abû Sa'îd Zaid ben Thâbet, concerning the taxability of horses for Zakât.

On that occasion, Abû Huraîra cited the Prophet's saying :

ليس على المسلم في عبده ولا فرسه صدقة .

«The Muslim has no Zakât to pay on his servant or on his horse.»

Then the Caliph asked Abû Sa'îd Zaid ben Thâbet : «What hast thou to say, O Abû Sa'îd ? » Whereupon the latter declared :

قد صدق رسول الله صلّى الله عليه وسلّم ، ولكنّه أراد فرس الغازي •
وامّا ما طلب نسلها و رسلها ففيها الزكاة ، في كلّ فرس دينار او عشرة دراهم •
(العيني)

« Verily the Messenger of Allah (ص) spoke the truth; but indeed he was referring only to the battle horse. As for those who are kept for the sake of their young or for the sake of their milk, they are subject to taxation for Zakât at the rate of 1 dînâr or 10 dirhems per horse.» (Al-'Aynî).

Further evidence in favour of the imposition of Zakât on horses is provided by the following «*H*adîth» reported by Ad-Dârqutunî and related on the authority of Jâbar ben 'Abd Allah :

روى أبو يوسف عن أبي عبد الله غورك الخضرم السعدي عن جعفر بن محمّد عن أبيه عن جابر بن عبد الله ، قال : قال رسول الله (ص) : في الخيل ، في كلّ فرس دينار • (صحيح البخاري)

« Abû Yûsuf has related on the authority of Abû 'Abd Allah Ghôrak ul-Kha*d*ram as-Sa'adî, (who related) on the authority of Ja'afar ben Mo*h*ammad, (who related) on the authority of his father, (who related) on the authority of Jâbar ben 'Abd Allah, who said : 'The Messenger of Allah (ص) said : (The rate of Zakât) for horses is 1 dînâr per horse' .» (*Sahih* Bukhârî).

Now it would appear from the historical data contained in the narration of Sulaymân ben Yasâr quoted above that no Zakât was actually levied on horses in the Prophet's lifetime; although there is no absolute proof of this. But, as Imâm Al-'Aynî logically opines, the very fact that Abû 'Ubaîda and 'Umar refused at first to levy Zakât on the horses of the people of Damascus would seem to indicate that no such taxation had been laid down as compulsory by the Prophet (ص) . For had such Zakât been compulsory in the Prophet's time, Abû 'Ubaîda and especially 'Umar, who had been one of the Prophet's closest Companions, would most certainly «not

have refrained from taking what Allah had enjoined upon them to take for the benefit of His people.»

However, there is also the testimony of Abû Sa'îd Zaid ben Thâbet that the exemption from Zakât applied only to the battle horses, i.e., to those horses actually put to the service of their master, and that of Jâbar ben 'Abd Allah that the Prophet (ص) did establish a rate of Zakât for the pasturing horse. If this is correct, 'Umar must have been thoroughly aware of it.

Hence, if one accepts the testimony of these two Companions of the Prophet (ص), which incidentally is not at all inconsistent with the «*H*adîth» related on the authority of Abû Huraîra, it must be assumed that either the case of the people of Damascus has been erroneously reported, or that *the horses concerned were not pasturing animals.*

Furthermore, the fact must not be overlooked that owing to the particular circumstances prevailing during the first decade following the «Hijrah» and arising from the newly-founded Islamic State's valiant struggle for existence which characterized that epoch, there was in all probability no occasion warranting the levying of Zakât on pasturing horses, all those available being, at the time, dedicated to active service. Such a circumstance would by no means exclude the possibility of a definite rate of Zakât having been fixed by the Prophet (ص) for pasturing horses. That there actually was a shortage of horses for the Muslim army in the Prophet's time is fully substantiated by the following Quranic verse :

لَيْسَ عَلَى الضُّعَفَاءِ وَلاَ عَلَى المَرْضَى وَلاَ عَلَى الَّذِينَ لاَ يَجِدُونَ مَا يُنْفِقُونَ حَرَجٌ اذَا نَصَحُوا لِلّٰهِ وَرَسُولِهِ ، مَا عَلَى المُحْسِنِينَ مِنْ سَبِيلٍ ، وَاللّٰهُ غَفُورٌ رَحِيمٌ • وَلاَ عَلَى الَّذِينَ اذَا أَتَوْكَ لِتَحْمِلَهُمْ ، قُلْتَ لاَ أَجِدُ مَا أَحْمِلُكُمْ عَلَيْهِ ، تَوَلَّوْا وأَعْيُنُهُمْ تَفِيضُ مِنَ الدَّمْعِ حَزَنًا أَلاَّ يَجِدُوا مَا يُنْفِقُونَ • (٩ : ٩١ ــ ٩٢)

« Not unto the weak nor unto the sick nor unto those who can find

naught to spend is any fault (to be imputed though they remain behind) if they are true to Allah and His Messenger. Not unto the good is there any road (of blame). Allah is Forgiving, Merciful. Nor unto those whom, when they came to thee (asking) thee to provide them with mounts, thou didst tell : *I cannot find whereon to mount you.* They turned back with eyes flowing with tears, for sorrow that they could not find the means to spend.» (IX : 91-92).

To come to a satisfactory solution of the problem requires a careful analysis, on its own merits, of the point at issue.

Leaving aside the discrepant data at our disposal and the various conjectures they suggest, we shall base our argument on the principle of the Law, which requires that the Zakât attach exclusively to domestic animals that are of *total use,* i.e., of total value to their owners. The condition of total use or value being the determining factor warranting taxation for Zakât, we must consider whether or not the horse, as a domestic animal, fulfils by its nature this fundamental condition.

The various uses to which horses may be put are well known and need hardly be enumerated here. However, it may be argumentatively mentioned that horses are commonly used for riding, draught, ploughing, drawing water, and carrying loads. Moreover, horse hair and hide also serve a number of useful purposes. Therefore, the only factor that could possibly disqualify the horse as a taxable domestic animal would be to regard its flesh and milk as non-edible.

As a matter of fact, the edibility of horse flesh has been a subject of disagreement among the 'ulemâ and jurists of Islam. Although there are many jurists, prominent among whom is Imâm Shâf'î, who opine that horse flesh and milk are perfectly lawful articles of food according to Islamic standards, other eminent jurists, like Imâms Abû *H*anîfa and Mâlik, do not share this view.

It is particularly interesting to observe that Imâm Abû *H*anîfa, one of the few jurists to admit the taxability of pasturing horses, does not admit the edibility of horse flesh. His objection is based not on any consideration of the nature of the flesh itself, but rather on the fact that whereas verse 5 of Surah XVI expressly mentions the «An'âm» (الانعام) , i.e., camels, oxen, sheep and goats,

as being a lawful source of human food, such is not the case in verse 8 of the same Surah, which contains a special reference to horses, mules and asses :

وَالخَيْلَ وَالبِغَالَ وَالحَمِيرَ لِتَرْكَبُوهَا وَزِينَةً ، وَيَخْلُقُ مَا لاَ تَعْلَمُونَ • (١٦ : ٨)

« And horses and mules and asses (hath He created) that you may ride them, and for ornament. And He createth that which you know not.» (XVI : 8).

It is true that this Quranic verse does not specify the edibility of horse flesh. Nor does it state that horse flesh is, by its nature, forbidden to the Muslim. On the other hand, the Qurân leaves no doubt as to what flesh, being by its nature unclean, is unfit for human consumption :

قُلْ لاَ أَجِدُ فِي مَا أُوحِيَ اَلَيَّ مُحَرَّماً عَلَى طَاعِمٍ يَطْعَمُهُ اِلاَّ أَنْ يَكُونَ مَيْتَةً أَوْ دَماً مَسْفُوحاً أَوْ لَحْمَ خِنْزِيرٍ ، فَاَنَّهُ رِجْسٌ ، أَوْ فِسْقاً اُهِلَّ لِغَيْرِ اللهِ بِهِ ، فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلاَ عَادٍ فَاَنَّ رَبَّكَ غَفُورٌ رَحِيمٌ • (٦ : ١٤٦)

« Say : I find not in that which is revealed unto me aught prohibited to an eater that he eat thereof, except it be carrion, or blood poured forth, or swine flesh — for that verily is foul — or the abomination immolated to the name of other than Allah. But for whoso is compelled (thereto), neither craving nor transgressing, your Lord is Forgiving, Merciful.» (VI : 146).

حُرِّمَتْ عَلَيْكُمُ المَيْتَةُ وَالدَمُ وَلَحْمُ الخِنْزِيرِ وَمَا اُهِلَّ لِغَيْرِ اللهِ بِهِ وَالمُنْخَنِقَةُ وَالمَوْقُوذَةُ وَالمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ اِلاَّ مَا ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى النُّصُبِ ••• ذَلِكُمْ فِسْقٌ ••• (٥ : ٣)

« Forbidden unto you (for food) are carrion and blood and swine flesh, and that which has been dedicated to any other than Allah, and the strangled, and the dead through beating, and the dead through falling from a height, and that which has been killed by (the goring of) horns, and the devoured of wild beasts, save that which you make lawful (by the death stroke), and that which has been immolated unto idols . . . This is an abomination . . . » (V : 3).

The above-quoted Quranic verses lay down several all-important factors as disqualifying flesh as a lawful food for the human being. These factors are :

a) Once it comes to constitute carrion (الميتة) , i.e., once the «rigor mortis» (1) has set in, all flesh, regardless of its kind and regardless of the fact that it has been slaughtered in conformity with the Law of Islam, becomes unfit for human consumption and consequently unlawful.

b) Blood, regardless of the kind involved, is absolutely forbidden to the Muslim as food. This forbiddance is based on the scientific fact that the blood stream carries, as well as the nutritive elements, all the impurities present in, and poisons discharged by, the cell-tissue of the animal organism, and thus, by its very nature, it is unwholesome for human consumption.

c) The eating of swine flesh (pork) and, by analogy, the eating of the flesh of all unclean eaters (scavengers and carrion eaters) is forbidden to the Muslim. The category of unclean eaters includes swine, dogs, cats, domestic asses, rats, mice, hyenas, vultures, crows, such fish as the dolphin, the shark, etc.

The flesh of all carnivorous animals and of all birds of prey is classified as loathsome (مكروه) .

d) Flesh which, by its nature, is lawful for food, becomes unfit for human consumption if the animal in question has been killed in a manner not conforming to the Law of Islam, as for instance by strangulation, beating, by other natural or accidental

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(1) The «rigor mortis» is the stiffening of the body which sets in roughly within 12 hours after death. Modern science recognizes that **dead** meat is not wholesome as food.

causes, or if it has died as a result of sickness. This forbiddance is based on the scientific fact that when the animal is slaughtered or killed in a manner which does not allow the free outflow of blood, the flesh becomes congested with the arrested blood and impregnated with its impurities previously discharged into the bloodstream and which it is a function of the blood to destroy and eliminate. Modern science recognizes the flesh of diseased animals as unwholesome because of its being infected or contaminated by the disease.

e) The flesh of animals that have been slaughtered without being dedicated to God, or in the name of any other than God, or that have been sacrificed to idols, is forbidden to the Muslim as food, even if the animal in question be, by its nature, lawful according to Islamic standards. This is because Islam views the taking of animal life, except in self-defence, as an awesome act which may not lawfully be indulged in save by permission of the Creator and only for the express purpose of satisfying the human being's hunger.

From the above, it is clear that the circumstance which *basically* disqualifies flesh as food for the human being is that the animal in question be an *unclean eater* or scavenger. The decision of the point at issue must therefore depend on whether the horse, as a domestic animal, is or is not *a clean eater*. This fact alone must determine the inclusion or non-inclusion of the horse in the category of taxable wealth, all other conditions being fulfilled.

Perversion of taste and habits resulting, among other things, in the eating of unclean food, can occur in any given creature and not least in the human being himself. An example of perverted taste in normally clean animals is that of the cows in India which are allowed to roam freely — and often hungry — about the streets of villages and cities, eating refuse. Both the milk and the flesh of such cows is unquestionably unfit for human consumption, notwithstanding the fact that the cow is, by nature, a perfectly lawful source of food for the human being.

As regards horses, it is well-known that they are pre-eminently clean eaters. One might even say that the horse is without exaggeration one of the noblest and cleanest animals in creation. There is consequently no valid reason, neither from the hygienic nor from the aesthetic point of view, why horse flesh and milk should be considered as loathsome, let alone unlawful.

Moreover, it is related in a number of « A*h*adîth » that the Prophet (ص) himself allowed the Muslims to eat horse flesh, whereas he expressly forbade them to eat the flesh of domestic asses, the latter being prone to eat unclean food.

حدّثنا يحيى بن يحيى وأبو الربيع العتكيّ وقتيبة ابن سعيدٍ (واللفظ ليحيى) ، قال يحيى : أخبرنا ، وقال الآخران حدّثنا حمّاد بن زيدٍ عن عمرو ابن دينارٍ عن محمّدَ بن عليٍّ عن جابر بن عبد الله أنّ رسول الله صلّى الله عليه وسلّم نهى يوم خيبر عن لحوم الحمر الاهليّة وأذن في لحوم الخيل • (مسلم)

« Ya*h*yâ ben Ya*h*yâ and Abû ar-Rabî'a al-'Atakî and Qutaîba ibn Sa'îd have related unto us (the following «*H*adîth», and the wording is of Ya*h*yâ) : Ya*h*yâ said : *H*ammâd ben Zaid has informed us (and the other two said «he related unto us») on the authority of 'Amr ben Dînâr, (who said) on the authority of Mu*h*ammad ben 'Alî, (who said) on the authority of Jâbar ben 'Abd Allah, that on the day of (the battle of) Khaybar the Messenger of Allah (ص) forbade us (to eat) the flesh of domestic asses and allowed us (to eat) horse flesh.» (Imâm Muslim).

حدّثنا محمّد بن حاتمٍ ، حدّثنا محمّد بن بكرٍ ، أخبرنا ابـن جريجٍ أخبرني أبو الزّبير أنّه سمع جابر بن عبد الله يقول: أكلنا زمن خيبر الخيل وحمر الوحش ونهانا النبيّ صلّى الله عليه وسلّم عن الحمار الاهليّ • (مسلم)

«Mu*h*ammad ben *H*âtem has related unto us (saying) : Mu*h*ammad ben Bakr has related unto us (saying) : Ibn Juraîh has informed us (saying) : Abû az-Zubaîr has informed me that he heard Jâbar ben 'Abd Allah say : 'At the time of (the battle of) Khaybar, *we ate horseflesh and* (the flesh of) *wild asses.* But the Prophet (ص) forbade us (to eat the flesh of) domestic asses' .» (Imâm Muslim).

حدّثنا محمّد بن عبد الله بن نُمير حدّثنا أبي وحفص بن غياثٍ و وكيع عن هشام عن فاطمة عن أسماء قالت : نحرنا فرساً على عهد رسول الله صلّى الله عليه وسلّم فأكلناه • (مسلم)

« Mu*h*ammad ben 'Abd Allah ben Numaîr has related unto us (saying) : My father and *H*afs ben Ghyâth and Wakî'a have related unto us on the authority of Hishâm (who said) on the authority of Fâtima (who said) on the authority of Asmâ (who said) : 'In the time of the Messenger of Allah (ص) we slaughtered a horse and ate its flesh' .» (Imâm Muslim).

It is true that the eating of horseflesh and milk, a common practice among Muslim Turcoman peoples, is not usually indulged in by the Muslims of other parts. Nevertheless, there is no justification for prohibiting the same. Indeed the eating of horseflesh and milk should remain a matter of personal taste and circumstance.

فَكُلُوا مِمَّا رَزَقَكُمُ اللهُ حَلاَلاً طَيِّباً وَاشْكُرُوا نِعْمَةَ اللهِ
انْ كُنْتُمْ ايَّاهُ تَعْبُدُونَ • انَّمَا حَرَّمَ عَلَيْكُمُ المَيْتَةَ وَالدَّمَ
وَلَحْمَ الخِنْزِيرِ وَمَا اُهِلَّ لِغَيْرِ اللهِ بِهِ فَمَنِ اضْطُرَّ غَيْرَ
بَاغٍ وَلاَ عَادٍ فَانَّ اللهَ غَفُورٌ رَحِيمٌ • وَلاَ تَقُولُوا لِمَا تَصِفُ
أَلْسِنَتُكُمُ الكَذِبَ ، هَذَا حَلاَلٌ وَهَذَا حَرَامٌ ، لِتَفْتَرُوا
عَلَى اللهِ الكَذِبَ انَّ الَّذِينَ يَفْتَرُونَ عَلَى اللهِ الكَذِبَ
لاَ يُفْلِحُونَ • (١٦ : ١١٤ — ١١٦)

« So eat of the lawful and good food which Allah hath provided for you, and give thanks for the bounty of your Lord if it is Him you serve.

« He has forbidden for you only carrion and blood and swineflesh and that which has been immolated in the name of any other than Allah; but he who is driven thereto (by hunger), neither craving nor transgressing, (for him) Allah is Forgiving, Merciful.

« And speak not concerning that which your own tongues qualify (as clean or unclean) the falsehood : «This is lawful, and this is forbidden»; so that you invent a lie against Allah. Those who invent a lie against Allah will not succeed.» (XVI : 114 - 116).

By its nature, the horse most certainly fulfils the condition of total use. Consequently, when horses are pastured for the sake of their young and/or their milk, i.e., on a similar basis as other taxable domestic animals, they are definitely liable to taxation for Zakât.

Taxable Limits and Rate of Zakât for Pasturing Horses.

As regards the rate of Zakât to be imposed on pasturing horses, both the «A*h*adîth» and the reports relating to 'Umar ibn ul-Kha*tt*âb mention the rate of 1 dînâr or 10 dirhems per horse. If this rate is accepted as being the original one established for pasturing horses, it must be assumed that it represented, at the time, a fair proportion of the value of a horse of average quality. The same proportion can hardly be said to exist today. In fact, there is good reason to believe that it had already ceased to exist at a very early date. In his book «Al-Athâr», Mu*h*ammad ibn ul-*H*asan reports on the authority of Imâms Abû *H*anîfa and *H*ammâd ibn Abî Sulaymân, that the rate of Zakât for pasturing horses advocated by Imâm Ibrâhîm an-Nakha'î was either a yearly Zakât of 1 dînâr or 10 dirhems per horse (male or female) or, if the Zakât-payer preferred, 5 dirhems for every 200 dirhems of value (i.e., $2\frac{1}{2}\%$), in conformity with the rate, Nisâb and taxable limits established for silver. These alternative rates are accepted and adhered to by the *H*anafite School of Law.

The same considerations which prevailed upon the early doctors of the Law to alternatively establish the Zakât of pasturing horses in agreement with the rate, Nisâb, and taxable limits relating to silver, require that a further adjustment be made in order to bring the same into line with the original significance embodied therein.

Thus the same principle which, in the case of silver and gold, warrants the establishing of the Nisâb in consideration of the proportionate value of the year's provision of staple food in relation

to the wealth under taxation, as dictated by the prevailing market price, should likewise apply to the Zakât of pasturing horses.

Accordingly, the Nisâb for pasturing horses should be determined by the official market price of 5 camel-loads (1680 seers or 1568 kgs) of whichever cereal normally constitutes the staple food of the country's inhabitants.

Thus, a person who possesses for a period of one full year one or more pasturing horses the value, or combined value, of which is at least equal to the official market price of 5 camel-loads of whichever cereal constitutes the country's staple food, must pay a $2\frac{1}{2}\%$ Zakât on the sum involved, which sum represents the Nisâb.

Thereafter, every increase in value equal to the fifth part of the sum representing the Nisâb carries a $2\frac{1}{2}\%$ Zakât. Any value falling short thereof remains Zakât-free, Zakât being paid on the preceding figure warranting taxation (1).

Rules governing the Zakât of Pasturing Horses (as laid down by the *H*anafite School of Law and adapted to the trimestrial method of taxation) :

1) Whenever the official price of the cereal which constitutes the staple food of the country's inhabitants has varied during the year, the average price is to be taken as the standard by which to establish the Nisâb for pasturing horses.

2) Regardless of the breed or number of heads involved, domestic horses (i.e., mares, or mares and stallions) kept for the sake of their young or their milk and pastured for a minimum period of six months of the year, are subject to taxation for Zakât when their *value* is at least equal to the Nisâb established for their kind and once they have completed a full year's term in the possession of their legitimate owner.

When estimating the taxability of pasturing horses, the total number belonging to one and the same legitimate owner and existing within the territory or territories under the jurisdiction of a same government must be taken into consideration.

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(1) See modern Nisâb for silver and gold, p. 76.

3) Horses used for riding, draught, ploughing, drawing water, carrying loads, or for the purpose of breeding, and stall-fed for more than six months of the year, remain Zakât-free regardless of their value, in view of the expense that stall-feeding naturally entails.

4) Gelded horses are not liable to taxation for Zakât. Likewise, when only stallions are owned (there being no mares in the owner's possession), the same remain Zakât-free even if they be pastured for a minimum period of six months of the year. In both cases, the condition of lasting value is lacking as the animals in question are, by themselves, unable to breed.

5) In conformity with Rule 17 of those governing the Zakât of trade, horses destined for sale constitute articles of trade and so are subject to the Zakât of trade only, regardless of whether they be pastured or stall-fed.

6) In conformity with Rule 16 of those governing the Zakât of trade, horses primarily intended as articles of trade but subsequently pastured for the purpose of breeding, automatically cease to be subject to the Zakât of trade and become subject to the Zakât of their kind only.

If the horse, or horses, converted from articles of trade to personal property (pasturing horses) remain taxable, being in value equal to or above the Nisâb established for their kind, the computation of the year's term of possession relating thereto as articles of trade is not broken by the conversion and continues in relation thereto as pasturing horses.

7) Should, for any reason, the value represented by taxable horses prove to be less at the time of the Zakât falling due than at the beginning of the year's term of possession, the Zakât will be reckoned only on the *value* that has effectively completed a year's term in the possession of the legitimate owner.

8) Pasturing horses which, though suffering from physical defects such as blindness, lameness, curable sicknesses or curable injuries, are still of value and use to their legitimate owner, remain subject to taxation for Zakât.

9) Except as articles of trade, foals under one year of age may not lawfully be subject to taxation for Zakât. (See below, Rule 12g).

10) Collectively-owned taxable horses are subject to the rules governing the Zakât of collectively-owned wealth. (See p. 264).

11) Whenever taxable horses are exchanged for wealth taxable under the Law of Zakât, the transaction is subject to the rules governing the exchange of taxable wealth. (See below, Rule 12d, and also p. 249).

12) When only one or a few taxable horses are owned, the year's term of possession may, if the Zakât-payer so prefers, be reckoned separately for each horse or group of horses acquired on a same date.

But when a herd of horses is involved, the trimestrial method of reckoning should be applied as for other taxable domestic animals, with the only difference that where horses are concerned it is the *value* of the animals under taxation and not the number of heads that must be taken into consideration.

Thus, the Zakât of taxable horses, established on a trimestrial basis, should be levied in the following manner :

a) For the purpose of determining the taxability of pasturing horses, the calendar year is to be divided into four periods of three months each, the first period beginning on January 1st; etc. (See Rule 4a of those governing the Zakât of pasturing domestic animals, p. 165).

b) In the same way as for other taxable domestic animals, the computation of the year's term of possession corresponding to each period of three months is to begin once the period is complete and the apparent increase, if any, in the herd is known. (See Rule 4b of those governing the Zakât of pasturing domestic animals, p. 166). The Zakât of the horses belonging to each three month period will fall due upon the completion of the year's term of possession calculated as from the end of the said period.

c) All horses newly acquired during any given period of three months, i.e., born of the herd itself, inherited, received as a gift, purchased with non-taxable wealth, purchased with an amount of wealth which, being taxable by its nature, falls short of the Nisâb established for its kind (1), or, being foals (under one year of

(1) See Rule 2 of those governing the exchange of taxable wealth p. 249.

age), are received in exchange for one or more horses belonging to the herd, represent collectively the *apparent increase* and, following the completion of the current year's term of possession relating to the group already belonging to the same period, are to be added thereto and bear together therewith the new computation of a year's term of possession.

d) In conformity with the rules governing the exchange of taxable wealth (see above, Rule 11, and also p. 249), horses the value of which is equal to or above the Nisâb, and that are acquired in exchange for taxable wealth (i.e., silver, gold, currency notes, taxable domestic animals, articles of trade, pearls or precious stones) already under a computation of a year's term of possession, are to be considered as belonging to the three month period within which the Zakât of the wealth disposed of would normally have fallen due, regardless of the actual date of the transaction.

If there be other horses belonging to the same three month period, the newly acquired horses will be added thereto and the new group thus constituted will, as a whole, be subject to taxation for Zakât at the time of its falling due.

Example : Were the transaction to take place on July 15th, 1958, and were the Zakât of the wealth disposed of to have normally fallen due on December 1st, 1958, the newly acquired horses would take up and complete the computation of the year's term of possession relating to the wealth disposed of and be considered as belonging to the fourth period of 1957, and would be subject to taxation for Zakât on December 31st, 1958, along with any other horses belonging to the same three month period.

Had the transaction taken place on any other date prior to December 1st, 1958, for instance on December 3rd, 1957, March 4th, 1958, or even November 30th, 1958, the position would be exactly the same as explained above, i.e., the newly acquired horses would be considered as belonging to the fourth period of 1957, the Zakât of which would normally fall due on December 31st, 1958.

Similarly, were the Zakât of the wealth disposed of to have normally fallen due on any date between January 1st and March 31st, 1958 incl., the newly acquired horses would be considered as belonging to the first period of 1957 and would be subject to taxation for

Zakât on March 31st, 1958, along with any other horses belonging to this same period.

It could also happen that there be an exact coincidence of dates in that the Zakât of the wealth disposed of were to normally fall due on March 31st, June 30th, September 30th, or December 31st, i.e., on precisely the same date on which the Zakât corresponding to the three month period concerned would also normally fall due.

Whatever the case may be, the actual date of the transaction has no bearing at all on the Zakât. Even if the transaction were to take place a single day before the Zakât of the wealth disposed of would normally have fallen due, the horses acquired in exchange therefor would be included in the group belonging to the corresponding three month period for which the Zakât would likewise be about to fall due.

e) In conformity with Rule 3g of those governing plural computations (see p. 25) and Rules 4 and 6 of those governing the exchange of taxable wealth (see pp. 250 & 257), horses the value of which is equal to or above the Nisâb and that are acquired in exchange for taxable wealth constituted by two or more amounts involving as many computations of a year's term of possession, are to be considered as belonging proportionately to the periods corresponding to the two or more terms at the end of which the Zakât of the respective amounts would normally have fallen due.

f) In conformity with Rules 5f and 6 of those governing the exchange of taxable wealth (see pp. 255, foll.), when one or more pasturing horses are exchanged for other horses representing a value equal to or less (but still taxable) than the value of those disposed of, the latter being taken from two or more groups involving as many computations of a year's term of possession, the newly acquired horses are to be considered as belonging proportionately to the two or more respective periods at the end of which the Zakât of the horses disposed of would normally have fallen due.

Should the exchange imply the acquisition of horses the value of which is over and above the value of those disposed of, the extra value must be dealt with as laid down in Rule 5f of those governing the exchange of taxable wealth and, according to the circumstances, in conformity with Rule 2 or Rule 3 of those governing plural computations (see pp. 17, foll.).

g) When foals under one year of age are acquired in exchange for taxable wealth already under a computation of a year's term of possession, the said computation is effectively broken. Regardless of their value, the foals in question will form part of the apparent increase acquired during the period within which the transaction takes place. (See above, Rule 12c).

h) When a person possesses or acquires (i.e., there being no other pasturing horses previously owned) one or more pasturing horses the value or combined value of which falls short of the Nisâb established for their kind, the same will remain Zakât-free until such a time as taxability is attained through the further acquisition of animals of the same kind; as from which date the computation of a year's term of possession will begin, the sum total of the horses involved constituting a group belonging to the three month period within which taxability is attained.

i) When a person possesses or acquires (i.e., there being no other pasturing horses previously owned) one or more horses the value, or combined value, of which falls short of the Nisâb established for their kind, and subsequently acquires, at one time, one or more horses the value, or combined value, of which is equal to or above the Nisâb and that are acquired in exchange for taxable wealth already under a computation of a year's term of possession, the original horses will temporarily remain Zakât-free. Whereas the newly acquired horses will be considered as belonging to the three month period within which the Zakât of the wealth disposed of would normally have fallen due and will be subject to taxation at the completion of the year's term of possession corresponding thereto, when Zakât will be paid on their value. Whereupon, the original horse or horses will be added to the taxable group along with any apparent increase and a new computation of a year's term of possession will begin for the same.

j) Whenever the value of wealth represented by pasturing horses is less than the Nisâb at the time of its being acquired (there being no other horses belonging to the period within which the acquisition takes place), or for any reason falls below the Nisâb during the year's term of possession relating thereto, it will at once be added to the first group, by order of dates, to complete a year's term in the possession of the legitimate owner thereof.

This same rule applies when, for any reason, the value of wealth represented by pasturing horses falls below the Nisâb during the period to which the horses belong (i.e., before the date when the Zakât would otherwise have fallen due) and the addition thereto of the apparent increase, if any, fails to restore the value of the group in question to at least the Nisâb.

k) In order to ensure the correct and easy identification of each of the four groups under a separate computation of a year's term of possession, all the animals forming part thereof (including the foals born within the corresponding period) must bear a distinctive mark, officially recognized and approved of by the Institution of Zakât, as a standard indication of the three month period of the year to which they belong.

As in changing hands the animals are liable to come to form part of a group belonging to a different period than that to which they originally belonged, the marks in question must be easily interchangeable.

13) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of taxable horses, who is personally responsible for keeping a correct account of the horses in his/her possession and of the Zakât due thereon.

14) If all, or part, of a herd of taxable horses is disposed of in exchange for non-taxable wealth of personal use (i.e., articles not intended for trade), given as a gift, slaughtered for food, stolen, or accidentally lost *after* the Zakât falls due and *before* it has been paid, the obligation to make the payment stands and is not annulled by the fact that the horses in question, or a number thereof, are no longer in the possession of the person concerned. All the conditions and rules warranting taxation being fulfilled, including the completion of the year's term of possession, Zakât must be paid.

15) On the other hand, if any such disposal or loss as described in Rule 14 occurs *before* the completion of the year's term of possession, be it a single day, the taxability of the horses in question and, consequently, the obligation of Zakât will, according to the circumstances, either decrease proportionately or totally cease by the fact of partial or total non-possession for a full period of one year.

16) Should it be proven that all, or part, of a herd of taxable horses has been maliciously disposed of, or loss thereof simulated, in order to evade the payment of Zakât dues, the guilty person is liable to punishment and to forcible discharge of his/her dues.

The Zakât of Agricultural Produce.

وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ ... (٦ : ١٤٢)

« . . . And pay the due thereof upon the harvest day . . .» (VI : 142).

A careful study of the Law of Zakât reveals the all-important fact that the Zakât of agricultural produce is actually the most essential feature of the system.

Indeed, agricultural produce, embodying as it does the very source of human subsistence, provides the natural basis on which to evolve the principal rules of the Law.

Thus, two main items of human diet, namely : foodgrains and dates (the latter being an essential article of food among the desert-dwellers of Arabia and North Africa), were taken by the Prophet (ص) as the standard for the Zakât of agricultural produce; and the Nisâb established for them was so reckoned as to represent generally, and permanently, a year's provision of essential food, reasonably sufficient to satisfy the requirements of an average family.

The Nisâb in question is of 5 camel-loads, i.e., approximately 1568 kgs. or 1680 seers according to the Medina System of Weights and Measures, which amount, after the deduction of Zakât dues, allows for a daily rate of consumption of 3 Kgs. 865, or $4\,^{1}/_{7}$ seers per family.

This Nisâb of 5 camel-loads likewise sets the standard by which to determine the Nisâb of silver and all its dependents (i.e., gold, articles of trade, etc.).

It is well established that in the Prophet's time the market price per camel-load of dates or grain was 40 dirhems of silver (200 dirhems per 5 camel-loads). Hence, the Nisâb established for silver was also of 200 dirhems, which sum was obviously meant to represent a potential year's provision of essential foodstuffs.

However, notwithstanding its very special and unmistakable significance, the foremost doctors of Islamic Law have not unanimously recognized the validity of a Nisâb for agricultural produce. Although the great majority of the Muslim jurists, among whom Imâms Mâlik, Abû Yûsuf, Mu*h*ammad, Shâf'î, An-Nawî and Ghazzâlî, adhere to the Nisâb made known in the « A*h*adîth », Imâm Abû *H*anîfa and before him Imâms Ibrâhîm an-Nakha'î and *H*ammâd ben Abî Sulaymân, never admitted that a Nisâb be established for agricultural produce as such .

Imâm Abû *H*anîfa's argument is based on the following two Quranic verses :

يَا أيُّهَا الَّذِينَ آمَنُوا أنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أخْرَجْنَا لَكُم مِنَ الأرْضِ وَلاَ تَيَمَّمُوا الخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِأخِذِيهِ الاَّ أنْ تُغْمِضُوا فِيهِ وَأعْلَمُوا أنَّ اللهَ غَنِيٌّ حَمِيدٌ" • (٢ : ٢٦٧)

« O you who believe ! Spend of the good things which you have earned, and of that which We bring forth from the earth for you, and seek not the bad (with intent) to spend thereof (in charity) when you would not take it for yourselves save with disdain; and know that Allah is Absolute, Owner of Praise.» (II : 267).

وَهُوَ الَّذِي أنْشَأَ جَنَّاتٍ مَعْرُوشَاتٍ وَغَيْرَ مَعْرُوشَاتٍ وَالنَّخْلَ وَالزَّرْعَ مُخْتَلِفاً أُكُلُهُ وَالزَّيْتُونَ والرُّمَّانَ مُتَشَابِهاً وَغَيْرَ مُتَشابِهٍ كُلُوا مِنْ ثَمَرِهِ اذَا أثْمَرَ وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ وَلاَ تُسْرِفُوا انَّهُ لاَ يُحِبُّ المُسْرِفِينَ • (٦ : ١٤٢)

« He it is Who produceth gardens trellised and untrellised, and the date-palm, and crops of divers flavour, and the olive and the pomegranate, like and unlike. Eat of the fruit thereof when it fruiteth, and pay the due thereof upon the harvest day, and be not prodigal. Allah loveth not the prodigals.» (VI : 142).

Now, obviously, the first of these two Quranic verses does not refer solely to the payment of Zakât but rather to charity in a general sense. Nor does the second definitely lay down that the payment of Zakât is obligatory regardless of the amount harvested. Yet these two Quranic verses have been understood by Imâm Abû *H*anîfa, as well as by his predecessors Ibrâhîm an-Nakha'î and *H*ammâd ben Abî Sulaymân and later by Imâms Mu*h*y ud-Dîn ibn ul-'Arabî and Al-'Aynî, as referring more especially to the Zakât and, moreover, as applying without reserve to all kinds (perishable or non-perishable), and to any amount, of produce harvested. (1).

The importance and purpose of the Nisâb has already been explained elsewhere (see p. 11). Nevertheless, it is well to mention once again that the very nature and purpose of the Zakât requires the establishing of a Nisâb for all taxable wealth not accidentally acquired. The Zakât is the legal right of all needy Muslims. It is therefore not only natural, but absolutely necessary, if the very purpose of the Zakât is not to be defeated, that the Law provide for the protection of those Muslims whose less abundant provision suffices only for their own needs, by allowing a basic Zakât-free provision.

Furthermore it must be realized, and this point cannot be too often repeated, that the Quranic Principle (2) on which the Law is based, requires that the Zakât be levied *in the shape of surplus wealth only*.

The practical application of this principle requires, as a natural and indispensable corollary, that the wealth under taxation be preservable *by its nature* or, in other words, of lasting value. For only in the presence of this quality is it possible to determine whether a given kind of wealth is of such an amount as to constitute a surplus to the needs of its legitimate owner.

Especially as regards agricultural produce, the quality of natural preservability cannot be overlooked. As a matter of fact, the golden formula of the Prophet (ص): لا زكاة في مال حتى يحول عليه الحول؛

(1) Imâm az-Zuhrî also admits the taxability of perishable produce. Only, in his opinion, fresh fruits and vegetables should be subject to taxation for Zakât when their value is equal to 200 dirhems of silver.

(2) Qurân : Surah II, verse 219. See above, pp. 58, foll.

« No Zakât is to be imposed on wealth until it has been in the possession of its owner for a period of one full year », which formula fully reflects the principle set forth in verse 219, Surah II of the Qurân, is quite sufficient to rule that Zakât may not lawfully be imposed on agricultural produce except in the presence of a preservable surplus. Moreover, as the said formula implies, the produce under taxation must be, by its nature, preservable in good condition for a minimum period of one year.

It is for this reason that all perishablè produce (such as most fresh fruits and vegetables) is automatically not qualified as taxable for Zakât (1).

The fundamental rules of the Law of Zakât, as we have seen, recognize three separate factors as establishing the superfluity of wealth and, hence, its leviability as Zakât :

a) Possession of the wealth from which the Zakât is to derive, for a period of one full year prior to taxation.

b) That the wealth from which the Zakât is to derive be over and above a full year's provision of preservable agricultural produce.

c) That the wealth from which the Zakât is to derive represent a value accidentally acquired, i.e., *unearned.*

The reference to agricultural produce contained in the «A*h*adîth» (see above, pp. 59, foll. and below, pp. 208, foll.) has been interpreted by Imâms Ibrâhîm an-Nakha'î, *H*ammâd ben Abî Sulaymân, Abû *H*anîfa, and their followers, as relating to the same only when it constitutes an article of trade. For this reason these eminent jurists hold a contrary view to what has been explained above and consider that the Nisâb of 5 camel-loads is based on the Nisâb of 200 dirhems relating to silver, rather than the opposite way round. Needless to say that this view totally disregards the underlying principle of the Law as set forth in verse 219 of Surah II of the Qurân, requiring the Zakât to be levied *in the shape of surplus wealth only.*

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(1) If a person wishes to give a part of his/her non-taxable produce (i.e., fresh fruits, fresh vegetables, etc.) in free charity or even to the Zakât officers for distributing among the needy Muslims, he/she is perfectly at liberty to do so. But in no case may such produce be **compulsorily** subject to taxation for Zakât.

The appraisal of crops.

Besides the two points of controversy examined above, a third, relating to the appraisal (خرص) of certain kinds of produce before the harvesting, has divided the opinion of the leading jurists of Islam.

This practice, applied especially to dates and grapes, consists in officially appraising the crop when the fruit begins to ripen and its sale becomes lawful according to Islamic Law; whereupon the estimated amount of fruit (fresh dates or grapes) is taken as the basis on which to reckon the Zakât due.

The reason and object of the appraisal, as explained by those who consider it a necessary and even compulsory part of the Law of Zakât, is to ease the position of the Zakât-payer by allowing him/her, after the official appraisal, to eat and dispose freely of the fresh dates (رطب) and grapes (عنب) ; the Zakât being subsequently paid in the shape of dried dates (تمر) and raisins (زبيب) , in conformity with the amount dictated by the appraisal.

Prominent among those who uphold the practice are Imâms Mâlik, Shâf'î, A*h*mad ben *H*anbal, Az-Zuhrî, Al-*H*asan, Abû Thor, and Dâ'ûd. Of these eminent jurists some, like Imâm Mâlik, make due allowance, should the crop under taxation be damaged or totally destroyed after the appraisal and before the harvest, for relieving the legitimate owner from the obligation of Zakât in proportion to the loss suffered. Others, like Imâm Shâf'î, insist that the Zakât due as dictated by the appraisal be guaranteed by the Zakât-payer and discharged regardless of losses suffered through no fault of his/her own.

On the other hand, Imâms Abû Hanîfa, Sufyân Thaurî, Mu*h*ammad, Ibn ul-'Arabî, A*t-Ta*hâwî, and their followers deem the practice absolutely unlawful. This stand finds support in a «*H*adîth» reported by A*t-Ta*hâwî :

عن جابر أنّ رسول الله (ص) نهى عن الخرص وقال : أرأيتم ان هلك التمر
أيحبّ أحدكم أن يأكل مال أخيه بالباطل • (رواه الطحاوي)

« (It is related) on the authority of Jâbar that the Messenger of Allah (ص) forbade the appraisal of crops and said : 'Have you considered whether any one of you would care to eat the wealth of his brother in vain should the dates be destroyed ?' » (Imâm at-*Ta*hâwî).

Furthermore, the appraisal of crops in view of determining the Zakât thereof has been condemned as being akin to usury, implying as it does that the amount to be paid as Zakât be stipulated in proportion with *a supposed amount of fresh fruit* and paid at a later date in the shape of *dried fruit* with only conjectural consideration being given to the natural decrease in volume and weight of the fruit when dried. Accordingly, a much greater quantity of dried fruit is required to make up the measure or weight to be given in payment of Zakât.

Strictly speaking, such a method of taxation is absolutely incompatible with both the moral and the economic principles set forth in the Qurân. Not only does it definitely fall within the scope of usury, but it places the Zakât of the kinds involved on a purely conjectural basis and, in the words of the Qurân :

انَّ الظَّنَّ لا يُغْني مِنَ الحَقِّ شَيْئاً • (٥٣ : ٢٨)

« Assuredly conjecture can never take the place of truth.» (LIII:28).

As stated above, the excuse advanced to justify this practice is that the legitimate owner of the crop in question is thereafter free to eat of the fresh dates and grapes at will. But in view of the rule that perishable produce may not be subject to taxation for Zakât, and considering that both fresh dates and grapes are perishable (which is not the case with dried dates and raisins), there seems no valid reason why the legitimate owner of a date grove or a vineyard should be under any sort of restriction as regards his right to dispose of his fresh or, in other words, perishable produce. As a matter of fact, the Quranic verse already quoted enjoins upon the Muslim :

كُلُوا مِنْ ثَمَرِهِ اذَا أثْمَرَ وآتُوا حَقَّهُ يَوْمَ حَصَادِهِ •
(٦ : ١٤٢)

« Eat of the fruit thereof when it fruiteth, and pay the due thereof upon the harvest day.» (VI : 142).

The very wording of the verse substantiates the view that the fresh fruit may be disposed of freely by the legitimate owner thereof without any obligation of Zakât, the payment of which only becomes compulsory «upon the harvest day» — on condition that the produce harvested is *preservable* for at least one full year as required by the basic principle of the Law of Zakât.

It is a well known fact that when the fruit of the date palm first ripens it is good for food but not as yet preservable. As a rule, dates are left to dry on the tree. The Zakât of this kind of produce is, therefore, to be discharged «upon the harvest day» when the dates, having dried and become preservable (i.e., تمر) , are picked.

In other words, the Zakât normally attaches to the produce when, in conformity with the principles of the Law, it has acquired naturally (i.e., without the intervention of artificial means) the quality of «lasting value», or preservability, which alone warrants its being subject to taxation for Zakât.

As regards grapes, the process of drying is effectuated after picking, and therefore the Zakât is normally due once the grapes have been dried, i.e., once they have been made into raisins and thus acquired the quality of preservability (1).

In either case, only dried dates and raisins constitute taxable produce, and then only when they are of an amount at least equal to the Nisâb. There is consequently no point at all in sacrificing the principles of Islamic Law by devising a method of taxation that imposes Zakât on a conjectured amount of produce, part of which does not even fulfil the necessary conditions warranting taxation.

The only real benefit that could possibly be derived from the official appraisal of standing crops is to ascertain beforehand which crops are liable to yield a taxable amount of produce. Indeed, the practice may be justifiable merely as a matter of convenience for

(1) Imâm Muhammad agrees that grapes not converted into raisins do not constitute taxable produce.

the Zakât-officials. But it is most definitely a very un-Islamic procedure if carried out in view of actually determining the Zakât due.

Tithe and Kharâj lands.

A last point of Law requiring special attention is the anomalous system of taxation adhered to by the *H*anafite School which, under given circumstances, admits a) of a Muslim landowner being subject to the payment of a double tithe, i.e., to a 20% Zakât of his produce, and b) of a Muslim landowner being exempted from the payment of the Zakât of agricultural produce and instead subject to the payment of «Kharâj» or tribute to the Muslim State.

These astonishing irregularities are born of the fact that the *H*anafite School considers certain factors as unalterably fixing the impost, be it the tithe (عشر) or the «Kharâj» (خراج) , *to the land*, thus displacing the object of the tithe (i.e., the Zakât) from the landowner's profession of Islam to the legal nature attributed to the land in question.

It would be quite irrelevant to our subject to give here in full detail the rules governing the payment of the «Kharâj» tax. Nevertheless, for a clear understanding of the point at issue it is necessary to explain the fundamental difference between tithe lands (الارض العشرية) and tributary or «Kharâj» lands (الارض الخراجية) as well as the general rules relating thereto as laid down by the *H*anafite School of Law.

From the strictly Islamic point of view, all lands legitimately owned by Muslims constitute tithe lands if and when they are dedicated to the cultivation of produce taxable under the Law of Zakât.

The tithe or, more exactly, the Zakât of agricultural produce attaches to the produce by reason of the legitimate owner's profession of Islam. Thus, in the first epoch of Islam, nearly the whole of the Arabian Peninsula came to constitute tithe land *by reason of the inhabitants' mass profession of Islam*. Only those few tribes which, having come under Muslim rule, did not convert were subject to the payment of «Kharâj» to the Muslim State.

The Muslim jurists have further defined the tithe lands as follows :

a) All lands conquered by force of arms and subsequently divided among the Muslims, become tithe lands by virtue of their constituting legitimately owned Muslim property.

b) Residential gardens of Muslims converted by their legitimate owners to purposes of cultivation of taxable produce, come to constitute tithe lands.

c) Waste lands cleared, developed and cultivated by Muslims with the sanction of the Muslim State, and which thereby become the legitimately recognized property of the said Muslim cultivators, come to constitute tithe lands.

In its exact sense, the «Kharâj(1) » or tribute is, according to Islamic Law, a tax imposed by the Muslim State on its *non-Muslim* subjects by reason of their non-Islam, and *attaching to the productivity of the land* (i.e., levied on arable land). It is the tribute paid by the non-Muslim subject to the Muslim Government in gage for keeping the peace and for protection against enemy attack.

Tributary or «Kharâj» lands are described as follows :

a) All lands left to their non-Muslim owners following their conquest by the Muslims, become «Kharâj» lands by virtue of their constituting legitimately recognized property of non-Muslims.

This rule applies both to the non-Muslim conquered subject or « Taghallubî » (التغلّبيّ) , i.e., the non-Muslim who has been defeated by force of arms and brought under Muslim rule, and to the non-Muslim protected subject or « Dhimmî » (الذمّيّ) , the non-Muslim who has entered into a compact with the Muslim State whereby he voluntarily acknowledges himself as its subject and, in exchange, is granted security of life, protection of his property, civil rights and freedom of worship. The status of «Dhimmî» may be acquired by conquered subjects and by non-Muslim peoples who have, of their own free will, sought protection and right of residence within Muslim territory.

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(1) The «Kharâj» or tribute was not introduced by the Muslims, but was merely retained by them from their non-Muslim predecessors. To mention only later times, it was a common enough form of State revenue in Imperial Rome, the States of classical Greece, Christian Byzantium, Sassanian Iran, Medieval Europe before and after the introduction of Christianity, etc.

b) Waste lands cleared, developed and cultivated by «Dhimmîs» with the sanction of the Muslim State and over which they have been granted proprietary rights, come to constitute «Kharâj» lands.

c) Lands conquered by the Muslim armies and subsequently granted to «Dhimmîs» by the Muslim State in recognition of services rendered by them in time of war, likewise come to constitute «Kharâj» lands.

d) Residential gardens owned by «Dhimmîs» and converted by them to purposes of cultivation, come to constitute « Kharâj » lands.

e) Certain lands in Iraq, Egypt and Syria, which came under Muslim domination in the first epoch of Islam, have been considered by Muslim jurists as essentially «Kharâj» lands, because the second Caliph 'Umar ibn ul-Kha*tt*âb imposed «Kharâj» on them.

This view is debatable as it fails to take into account that the reason why the Caliph 'Umar imposed «Kharâj» on the lands in question was because they were allowed to remain in the possession of their original non-Muslim owners.

Besides these general rules, it was decided by common agreement of the Prophet's Companions that if a conquered subject (التغلبي) purchase a tithe land from a Muslim, he must pay to the Muslim State a «double tithe» (being the equivalent of the 20% «Kharâj» tax). This view is adhered to by Imâm Abû *H*anîfa. But Imâm Mu*h*ammad opines that in such a case the non-Muslim should only be subject to the tithe, i.e., to 10% of his produce, payable to the Muslim State (not to the Zakât fund), as he considers that the rate of impost must not be changed with the change of ownership.

On the other hand, Imâm Abû *H*anîfa holds that if a Christian «Dhimmî» purchases a tithe land from a Muslim, he must pay the «Kharâj» tax to the Muslim State, the «Kharâj» being incumbent on him by virtue of his non-Islam. Imâm Abû Yûsuf disagrees with this view and holds that in such a case the Christian landowner should pay a «double tithe» to the State, as such an arrangement is more convenient than changing the type of impost from tithe to «Kharâj». Here again Imâm Mu*h*ammad maintains that the land

in question must remain a tithe land and the rate of impost unchanged, i.e., at 10% of the produce !

Then, according to Imâm Abû *H*anîfa, if a Muslim purchases such a land from its Christian owner by right of priority, or if the original sale is, for any reason, declared invalid and the land restored to its original Muslim owner, the same is once more classified as a regular tithe land. In the first case, i.e., when the Muslim has purchased the land from its Christian owner, the sale is considered as though it had taken place between two Muslims in view of the fact that the original owner was himself a Muslim. In the second case, the sale having been declared invalid and the land restored to its original Muslim owner, his right of ownership is considered as having never ceased and consequently the question of «Kharâj» or «double tithe» does not arise.

Imâm Abû *H*anîfa further lays down that if a « Dhimmî » purchases a «double tithe» land from a conquered subject, he is likewise liable to pay a «double tithe», i.e., 20% of the produce. And in the opinion of Imâm Abû *H*anîfa, this same rule must hold good regardless of the interested person's profession of Islam, if a Muslim purchases a «double tithe» land from a «Dhimmî» or if a non-Muslim conquered subject or a «Dhimmî» converts to Islam. Because, he argues, the «double tithe» has become *attached to the land* and must therefore be imposed on the Muslim owner thereof, in the same way as the «Kharâj» becomes *attached to the land* and is consequently imposed on any Muslim acquiring the right of ownership over the land in question ! (1) The only difference being that in the case of a «double tithe» land, the «double tithe» is payable by the Muslim owner to the Zakât fund. And in the case of a «Kharâj» land, the «Kharâj» is payable to the State, the Muslim owner of the land in question being exempted from the obligation of paying the tithe or, in other words, *from the obligation of giving the Zakât of his taxable agricultural produce !*

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(1) This view of Abû Hanîfa conflicts with his view, stated above, that the «Kharâj» is incumbent on the «Dhimmî» **by virtue of his non-Islam.**

In respect of «double tithe» lands, Imâm Abû Yûsuf considers that if a Muslim purchases such a land from its non-Muslim owner, the same becomes once more a regular tithe land, the reason warranting a «double tithe» (i.e., the non-Islam of the former owner) having ceased to be.

As stated above, the «Kharâj» is not an ordinary land-tax, but a special tax imposed on the landed property *of non-Muslim subjects by reason of their non-Islam.* It obviously ensues that whenever the reason warranting its imposition lapses, the «Kharâj» must necessarily lapse. In other words, when the owner of a «Kharâj» land converts to Islam or when the «Kharâj» land legally comes to constitute the property of a Muslim, the condition warranting the «Kharâj» ceases to exist and, as a natural and logical result, the land in question ceases to be a «Kharâj» land and automatically becomes a tithe land by reason of its legitimate owner's profession of Islam.

Conversely, when a Muslim sells his land to a non-Muslim, it automatically and necessarily ceases to be a tithe land and becomes subject to the «Kharâj».

As regards the Zakât, it is still more difficult to understand how Muslim jurists came to consider it as attaching to the land. For it is a fact beyond dispute that *the Zakât attaches to the produce* and this only *by reason of its legitimate owner's profession of Islam.*

In fact, the fundamental principles of the Law of Zakât do not require the legitimate owner of the produce — on whom naturally and compulsorily devolves the responsibility of the Zakât thereof — to be necessarily the legitimate owner of the land he cultivates so long as he be in lawful possession thereof. Even should a Muslim rent land from a non-Muslim, he would still be liable to satisfy the Zakât of all taxable produce derived therefrom by him and of which he would unquestionably be the legitimate owner. The fact that the land itself were the legitimate property of a non-Muslim would have no bearing at all on the obligation of Zakât incumbent on the Muslim lessee by reason of his profession of Islam and by virtue of his legitimate ownership of the taxable produce. The cause of the Zakât being the taxable produce, legitimate ownership of the same suffices to warrant the responsibility of satisfying the Zakât due.

Moreover the Zakât, being an Article of the Islamic Faith, is forever binding on the Muslim whenever the conditions warranting its payment are fulfilled. Unlike the «Kharâj» which may be altered and even abrogated by the Muslim State and replaced by some other form of land-tax at the latter's discretion, never and in no case can

the Zakât be forgiven, abrogated or substituted by any decision born of human reasoning.

Contrary to the *H*anafite School of Law, which lays down that the «Kharâj» and the tithe may not be imposed on one and the same individual, both the Mâlikite and Shâfiite Schools allow such a combination under given circumstances. It need hardly be pointed out that payment of the «Kharâj» and the tithe by the same person is, from a strictly Islamic point of view, paradoxical. It is, in fact, tantamount to suggesting that, under certain circumstances, a person can at one and the same time be and not be a Muslim, and must equally carry out the essential duties incumbent on him by reason of his Islam and discharge the obligations binding on non-Muslims by reason of their non-Islam.

Of course there can be no objection to the State imposing a regular land-tax on all productive land whenever the national interests so require. However, such a tax by no means exempts the Muslim landowner from the obligation of giving the Zakât of his taxable produce and must, in each and every case, be satisfied besides and in spite of the Zakât due. But a regular land-tax imposed by the State is not and cannot be construed as being «Kharâj», i,e., *tribute*.

A last aspect of the anomalous views held by the *H*anafite School is the ruling which classifies all rivers, lakes, springs and wells existing or originating within the boundaries of «Kharâj» lands as «Kharâj» water (1). According to this ruling, if a Muslim possesses within territory conquered by the Muslim armies a habitation alloted to him by the Muslim State (دار خطة) and subsequently converts the land in question into a cultivated field, the same if watered with tithe water is treated as a tithe land, and if watered with «Kharâj» water is treated as a «Kharâj» land. The reason advanced for this oddity is that, in such circumstances, the impost must depend on the kind of water irrigating the land !

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(1) Imâm Muhammad considered the waters of the rivers Jehûn (Oxùs), Sihûn (Yaxartes), Euphrates and Tigris as being tithe waters because these rivers were not, at the time, under the protection of any particular government. Imâm Abû Yûsuf deemed the same «Kharâj» waters on the plea that the boats navigating on their waters were under the protection of some non-Muslim government or other.

Likewise, the *H*anafite School rules that if a non-Muslim converts his habitation into a cultivated field, he must pay «Kharâj» if he waters it with «Kharâj» water and the tithe if he waters it with tithe water.

According to Imâm Mu*h*ammad if the land in question is irrigated with tithe water, the non-Muslim should pay a regular tithe, i.e., 10% of the produce to the State. But in the opinion of Imâm Abû Yûsuf, in such a case the non-Muslim must pay a «double tithe», i.e., 20% of the produce.

Now it is a fact beyond dispute that to shift the cause, be it of the Zakât or of the «Kharâj», to «the kind of water irrigating the land» is clearly to deprive both imposts of their true significance and is, from every point of view, absolutely inconsistent with the principles and conditions which alone justify the existence and application of these two very different imposts.

Thus, leaving aside the «Kharâj» with which we are here not directly concerned, the fact must once again be stressed that the Zakât is a sacred obligation binding on the Muslim by reason of his/her Islam and, therefore, admits of no alteration neither as regards its character nor as regards its application (1).

Categories of taxable agricultural produce.

The old versions of the Law of Zakât recognize two categories of taxable agricultural produce : the produce of lands watered

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(1) It is interesting to note that modern non-Muslim critics consider the imposition of a 20% «Kharâj» tax on non-Muslim landowners as unfair to them since the Zakât of agricultural produce is only 10%. This objection disregards the fact that Muslim landowners, besides the Zakât of their produce, also pay Government taxes on their land.

On the other hand, modern Muslim critics view the imposition of the Zakât of agricultural produce on Muslim-owned land, over and above the Government taxes, as unfair to them. This criticism disregards the nature and purpose of the Zakât. Although there is no doubt that under modern Muslim Governments, the Muslim landowner does find himself at a certain disadvantage in respect of the non-Muslim landowner in that, besides the land-taxes, he is in duty bound to give the Zakât of his agricultural produce. Modern Muslim Governments must take this into consideration and, in a true spirit of Islamic Justice, revise the land-taxes in such a way as to ensure that the burden of taxation is fairly shared by all and does not go beyond the capacity of the individual landowner.

by natural means and the produce of irrigated lands.

However, considering that nowadays agriculture has, in many cases, become a purely business enterprise in which the agriculturist does not depend directly on his produce for his own livelihood but intends his produce to be exclusively a saleable commodity, i.e., an article of trade, the Law of Zakât must make provision for a third category of taxable produce which will include the produce of all plantations, orchards, commercial farms, etc., whether belonging to private cultivators or to regular business enterprises and which will be subject to the rules governing the Zakât of trade only. Thus cash crops must pay the Zakât of trade instead of that of agricultural produce.

The rules governing the Zakât of trade require that the Zakât be reckoned on the combined value of the trader's (in this case, the agriculturist's) reserve and working capital and stock (his agricultural produce) and so naturally imply that *all kinds* of agricultural produce (both preservable and perishable) cultivated on a purely business basis, automatically acquire taxability for Zakât *by virtue of their constituting regular articles of trade.*

The following rules must be understood, therefore, as applying to the produce of private agriculturists, i.e., to agricultural produce cultivated primarily for personal use, albeit without prejudice to the legitimate owner's right to dispose of the surplus in any way he/she may desire, and not to agricultural produce cultivated expressly and exclusively as an article of trade.

Nisâb and Rates of Zakât for Agricultural Produce.

The Nisâb and rates of Zakât established by the Prophet (ص) for taxable agricultural produce are set forth in the following «A*h*adîth» :

عن أبي سعيد الخدريّ قال : قال رسول الله صلّى الله عليه وسلّم : ليس فيما دون خمسة اوساقٍ من تمرٍ ولا حبٍّ صدقة • (مسلم)

« (It is related) on the authority of Abû Sa'îd al-Khudrî, who said : The Messenger of Allah (ص) said : 'No alms are to be taken from less than 5 camel-loads of dates or grain'.» (Imâm Muslim).

عن محمّد بن عبدالله ابن جحش ، اخرجه الدارقطني من رواية أبي كثير مولى ابن جحش عن رسول الله صلّى الله عليه وسلّم أنّه أمر معاذ بن جبل رضي الله تعالى عنه حين بعثه الى اليمن ، أن يأخذ من كلّ اربعين دينارٍ دينار ، ومن كلّ مائتي درهمٍ خمسة دراهم ، وليس فيما دون خمسة اوسق صدقة ، ولا فيما دون خمس ذود صدقة ، وليس لهم في الخضروات صدقة • (الدارقطني)

« (It is reported) by Ad-Dârqutunî, on the authority of Abû Kathîr, client of Ibn Ja*h*sh (Mu*h*ammad ben 'Abd Allah ben Ja*h*sh), on the authority of the latter, that when the Messenger of Allah (ص) sent Mu'âdh ben Jabal (رض) to Yemen, he commanded him to levy (as Zakât) 1 dînâr on every 40 dînârs and 5 dirhems on every 200 dirhems. And no alms (i.e., Zakât) were to be taken from less than 5 camel-loads (of agricultural produce) nor from (a herd of) less than 5 camels. And they (the Muslims) were not to pay Zakât on fresh vegetables.» (Imâm ad-Dârqutunî).

حدّثنا سعيد بن أبي مريم قال : حدّثنا عبدالله بن وهبٍ قال : أخبرني يونس بن يزيد عن الزهريّ عن سالم بن عبد الله عن أبيه رضي الله عنه عن النبيّ صلّى الله عليه وسلّم ، قال : فيما سقت السماء والعيون أو كان عثرياً العشر ، وما سُقي بالنضح نصف العشر • (بخاري)

« Sa'îd ben Abî Maryam has related unto us, saying : 'Abd Allah ben Wahb has related unto us, saying : Yûnus ben Yazîd has informed me, on the authority of Az-Zuhrî, (who said) on the authority of Sâlim ben 'Abd Allah, (who related) on the authority of his father (رض) , who said on the authority of the Prophet (ص) (who declared) : 'The Zakât of agricultural produce watered by rainfall or springs, or that does not stand in need of irrigation (عثريا) (such as date palms the roots of which seek underground water), is 10%. And the Zakât of agricultural produce watered by means of a beast of burden (used to lift well or river water) or by hand, is 5% '.»
(Imâm Bukhârî).

رواية مسلم عن جابر رضي الله تعالى عنه ، ولفظه أنّه سمع النبي صلّى الله عليه وسلّم قال : فيما سقت الانهار والغيم العشر وفيما سُقي بالسانية نصف العشر • (العيني)

« Muslim has related on the authority of Jâbar (رض) that he heard the Prophet (ص) say : 'The Zakât of agricultural produce watered by rivers and clouds (i.e., rainfall) is 10%. And the Zakât of agricultural produce watered by means of irrigation wheels, is 5%' .» (Al-'Aynî).

Thus, in conformity with the ruling contained in the above-quoted «A*h*adîth», the Nisâb established for taxable agricultural produce is of 5 camel-loads of produce belonging to one genus, which amount is equal to approximately 1568 kgs. or 1680 seers (42 maunds). Less than 5 camel-loads of taxable agricultural produce are Zakât-free.

A requisite amendment to this ruling, advocated by Imâm Abû Yûsuf, lays down that agricultural produce which is not usually measured by camel-loads as, for instance, cotton, is to be subject to taxation for Zakât whenever the amount harvested is *in value* equal to the *value* of 5 camel-loads (1680 seers) of cereal. In the opinion of Imâm Abû Yûsuf, the value to be considered should be that of the most inferior cereal subject to taxation for Zakât, such as maize (1). But it would seem more in keeping with the spirit of the Law to consider the prevailing value of whichever cereal constitutes the staple food of the country's inhabitants.

It is necessary to point out here that the various «A*h*adîth» relating to the Nisâb established for agricultural produce, make

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(1) Differing with this view, Imâm Muhammad opines that each produce should be subject to taxation for Zakât when it is at least equal to five times the largest measure or weight usually applying to its kind. But such a method, implying as it does the recognition of any number of Nisâbs of varying values, utterly fails to maintain the significance of the original Nisâb.

Imâm Dâ'ûd opines that whatever is measured by camel-loads should bear the Nisâb of 5 camel-loads. And whatever is not measured by camel-loads, should bear no Nisâb at all, the Zakât being reckoned on whatever amount harvested.

mention of only those kinds (i.e., cereals, dates, raisins) which used to be measured by camel-loads. Yet verse 42, Surah VI of the Qurân does not specify that taxable agricultural produce is limited to what is edible. Imâm Abû Yûsuf's amendment is thus quite justified and offers a perfectly logical and practical way of maintaining the true significance of the Nisâb for non-edible produce.

The two categories of produce subject to the Zakât of agricultural produce, each bearing its own rate of taxation, are :

a) The taxable produce of lands watered exclusively, or for the greater part of the year, by natural means — i.e., rain, rivers, streams and springs — which is subject to a Zakât of 10% whenever it is of an amount at least equal to the Nisâb or to the prevailing value represented by the Nisâb when applied to whichever cereal constitutes the staple food of the country's inhabitants.

b) The taxable produce of lands watered exclusively, or for the greater part of the year, with well or river water lifted by means of irrigation wheels necessitating the use of a beast of burden or of a pump, watered by hand, or watered with canal water involving a special charge for its use, which, in view of the extra labour and expense entailed, is subject to a Zakât of 5% whenever it is of an amount at least equal to the Nisâb or to the prevailing value represented by the Nisâb when applied to whichever cereal constitutes the staple food of the country's inhabitants.

As has already been explained, in the case of agricultural produce the Law of Zakât establishes no taxable limits besides the Nisâb. Hence any amount of produce that is over and above the minimum taxable limit of 5 camel-loads, or over and above the value represented by the Nisâb when applied to whichever cereal constitutes the staple food of the country's inhabitants, is subject to either a net 10% or a net 5% of the amount or value involved.

Rules Governing the Zakât of Agricultural Produce :

1) All edible agricultural produce by its nature preservable in good condition for a minimum period of one full year without the intervention of artificial means (1), is subject to taxation for

(1) i.e., preserved by cooking, pickling, canning, candying, confectioning, or other such processes.

Zakât whenever it is of an amount at least equal to the Nisâb (5 camel-loads, 1680 seers, or approximately 1568 kgs.).

2) All non-edible agricultural produce which may be preserved in good condition for a minimum period of one full year without the intervention of artificial means, is subject to taxation for Zakât whenever it is *in value* equal to the prevailing value of 5 camel-loads (1680 seers or 1568 kgs.) of whichever cereal constitutes the staple food of the country's inhabitants.

3) All agricultural produce (edible and non-edible) which is uncultivated or, being cultivated, is of use in medicine only or is a non-essential (such as spices), or, due to its perishable nature, may not be preserved in good condition except by artificial means, is exempt from taxation for Zakât, save when constituting articles of trade.

Such non-taxable produce comprises : fresh fruit (1) (including dates (رطب) and grapes (عنب) , etc.) and vegetables; trees; herbs; flowers (including saffron, i.e., the stigmas of the crocus sativus (2), etc.); henna leaves (3); mulberry leaves; palm leaves (raffia fibre, etc.) and branches; tobacco; firewood; gums and resins (natural rubber, i.e., caoutchouc, jelutong or pontianok, guayule rubber, gutta siak, gutta percha, gutta balata, and mastic, balsam, copaiba, copal, gum arabic, gum dragon or tragacanthe, gum senegal, amber, etc.); reeds and grasses (including sugar cane, jute, bamboo, papyrus, etc.); straw and hay; tea (4) (Camilla Thea) and maté

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(1) Imâm Ghazzâli considers grapes and fresh dates as not taxable for Zakât except when a calamity befalls the vines or trees and it becomes necessary to pick the fruit while yet unripe. In such a case, he deems the Zakât due to be a net 10% of whatever amount gathered.

(2) Contrary to the view held by some prominent jurists, both Imâm Abû Yûsuf and Imâm Muhammad, conforming to the opinion of the Hanafite School, consider saffron as taxable for the Zakât of agricultural produce. However, except when constituting an article of trade, saffron, used primarily for medicinal purposes and also as a condiment, belongs by its nature to the category of Zakât-free produce.

(3) As regards henna, likewise primarily useful for its medicinal qualities, these two eminent jurists differ as to its taxability for Zakât : Imâm Abû Yûsuf deems it a taxable produce, while Imâm Muhammad considers it Zakât-free.

(4) The fact that tea leaves require special processing immediately after harvesting, classifies tea as not qualified to bear the Zakât of agricultural produce. Tea is subject to Zakât only when constituting a regular article of trade.

leaves; all wild fruits (including berries, nuts, etc. (1)); spices and condiments (including cloves, pepper, capsicum (cayenne pepper and chillies), pimenta (allspice), paprika, mace, nutmeg, coriander (2), cumin seeds (3), mustard seeds, aniseed, cardamom, turmeric, ginger, etc.); tonga beans; celery seeds; caraway seeds; cassia and cassia vera; vanilla; cinnamon; all non-edible oleaginous produce, such as oil palm fruit, linseed, cotton seed, etc.; melon seeds; cucumber seeds; and all seed expressly kept for sowing.

4) The Law of Zakât divides taxable agricultural produce into legal genera. Accordingly, all produce obtained in one harvest and belonging to one legal genus as, for instance, cereals (wheat, barley, maize, etc.), pulse (lentils, beans, gram, etc.), or dried fruit (dates, raisins, prunes, etc.), is combined and considered as a whole when determining the taxability thereof.

Thus, an agriculturist harvesting a crop of wheat and one of barley, must combine the two amounts and, if the sum total thereof proves to be at least equal to the Nisâb, must pay the corresponding Zakât. In such a case, i.e., when two or more kinds of produce belonging to one legal genus are harvested, the Zakât due is, as a rule, to be taken proportionately from each kind harvested (4).

For example, should an agriculturist harvest a taxable amount of produce watered by natural means and consisting of 2 camel-loads of wheat and 3 camel-loads of barley, i.e., a total of 1680 seers (1568 kgs.), the 10% Zakât due thereon (168 seers or 156.8 kgs.) would be paid in the shape of 2 parts of wheat ($67^{1}/_{5}$ seers or 62.7 kgs.) and 3 parts of barley ($100\ ^{4}/_{5}$ seers or 94.1 kgs.).

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(1) As regards wild produce, the essential condition of legitimate ownership is lacking and therefore it may not be lawfully subject to taxation for Zakât. Moreover, wild produce being free for everyone, the needy Muslim and non-Muslim citizens alike are at liberty to take thereof as much as they like and even to sell it for their own benefit if they care to take the trouble.

(2) Imâms Mâlik and Ahmad ben Hanbal consider coriander as taxable for Zakât. There are other jurists who do not hold this view.

(3) Some jurists, including Imâm Ahmad ben Hanbal, consider cumin and mustard seeds as taxable produce.

(4) Imâm Ghazzâlî rightly lays down that the Zakât of wheat may not be paid with barley, barley being cheaper than wheat. On the other hand, he does admit that one kind of barley be given in payment of the Zakât of another kind of barley.

On the other hand, should the said agriculturist's harvest consist of, for instance, 2 camel-loads of wheat watered by natural means and 3 camel-loads of barley irrigated with well water or with canal water involving a special charge for its use, the two kinds, as belonging to one genus, would be combined to form a taxable whole. But the Zakât due would be paid in the shape of 10% of the 2 camel-loads of wheat (=67 1/5 seers or 62.7 kgs. of wheat) and 5% of the 3 camel-loads of barley (=50 2/5 seers or 47 kgs. of barley).

Should the Zakât-payer prefer, for his/her convenience or out of piety, to pay the Zakât due entirely in the shape of wheat (the more valuable grain) or to give a greater proportion of wheat than required to make up the amount due, he/she may do so. But, when two or more kinds belonging to one legal genus are concerned, never and in no case may the Zakât due be paid entirely in the shape of the less valuable kind, nor may a greater proportion of the less valuable kind be given to make up the amount due.

5) Taxable agricultural produce comprises :

Cereals : All varieties of wheat, barley, maize, millet, rye, oats and rice. Taxability for Zakât is to be ascertained and reckoned on grain only, once harvesting and threshing are completed, and the Zakât due is to be paid in the shape of clean grain (i.e., free from impurities).

Pulse : All varieties of lentils, beans, peas, and chick-peas (gram). Taxability for Zakât is to be ascertained and reckoned on the seed only, once harvesting, drying and threshing are completed, and the Zakât due is to be paid in the shape of clean seed (i.e., free from impurities).

Fruit (naturally preservable without drying) : Pomegranates (1), sarda melons of Kabul (2). Taxability for Zakât is to be ascertained

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(1) Pomegranates are not unanimously considered as taxable produce by those jurists who admit that taxability for Zakât is limited to preservable agricultural produce. Imâms Mâlik and Shâf'î classify pomegranates as fresh fruit and so exempt them from Zakât, notwithstanding the fact that verse 142, Surah VI of the Qurân especially mentions the pomegranate as being subject thereto. Indeed, contrary to other fresh fruits, pomegranates are not essentially perishable and may, as a rule, be preserved naturally over long periods.

(2) The sarda melons of Kabul (Afghanistan) are famous for their natural preservability which, as a rule, lasts for a period of fully one year. This natural quality of the sarda melon suffices to justify its being subject to the Zakât of agricultural produce.

and reckoned once harvesting is completed, and Zakât is to be paid in the shape of the same produce.

Dried Fruit : All varieties of dates (تمر) , raisins (زبيب) , prunes, dried figs, dried apricots, etc. Taxability for Zakât is to be ascertained and reckoned once harvesting and drying are completed, and the Zakât due is to be paid in the shape of clean dried fruit.

Cultivated Nuts : Walnuts, filberts (cultivated hazelnuts), cultivated pistachios, almonds, coconuts, peanuts and ground nuts, etc. Taxability for Zakât is to be ascertained and reckoned once harvesting is completed, and the Zakât due is to be paid in the shape of clean unshelled nuts.

Farinaceous Foods : Such as cassava roots, crude arrowroot, crude sago. Taxability for Zakât is to be ascertained and reckoned once harvesting is completed, and the Zakât due is to be paid in the shape of the same produce.

Tree Seeds : All varieties of coffee beans, cocoa beans. Taxability for Zakât is to be ascertained once harvesting is completed, and the Zakât due is to be paid in the shape of raw (i.e., green) coffee, and raw cocoa beans.

Edible Oil-yielding Produce (1) **:** All varieties of olives, sesame (2), castor beans, earth nuts (arachis), taramira, sarson. Taxability for Zakât is to be ascertained and reckoned once harvesting is completed and, when pressing is not carried out by the agriculturist him/herself, the Zakât due is to be paid in the shape of unpressed olives, unpressed castor beans, unpressed sesame seeds, etc. However, when pressing is done by the agriculturist him/herself, once it is ascertained that the produce is of a taxable amount, the Zakât due should be paid in the shape of the required percentage (10% or 5%) of the total amount of oil obtained.

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(1) Coconuts, peanuts, etc., although oil-yielding, are included under Cultivated Nuts, being edible and preservable in their natural state.

(2) Sesame, though by itself preservable and edible, is included here because it is not directly valuable as a regular food, but rather for its medicinal qualities and as a condiment. On the other hand, sesame oil is commonly used in cooking. Imâms Mâlik and Ahmad ben Hanbal include sesame in the category of taxable produce; Imâm Shâf'î does not.

Textile Fibres : All varieties of cotton (1).. Cotton is subject to taxation for Zakât whenever the total amount of raw fibre harvested is *in value* at least equal to the prevailing value represented by the Nisâb when applied to whichever cereal constitutes the staple food of the country's inhabitants. Taxability is to be ascertained and reckoned once harvesting is completed, and the Zakât due is to be paid either in the shape of the required percentage (10% or 5%) of raw fibre, or in the shape of cash money to the *exact value* of the amount due.

6) Never and in no case may the taxability of a crop be estimated *before* harvesting is completed.

7) Taxable agricultural produce obtained in one harvest, but belonging to different legal genera (as, for instance, wheat and chick-peas, dried fruit and cotton, etc.), may not be combined to form a taxable whole. Each single legal genus must be considered separately and separately bear taxation for Zakât only in so far as warranted by the amount or value of agricultural produce belonging thereto.

Thus, should an agriculturist harvest 5 camel-loads of wheat and 3 camel-loads of chick-peas, he would be liable to give the Zakât due on 5 camel-loads of wheat only, and would have no Zakât to pay on his 3 camel-load crop of chick-peas, as it falls short of the Nisâb.

8) Seed expressly kept for sowing may be deducted from the net amount or value of taxable agricultural produce *before* reckoning the Zakât due.

But in no case may any other expenses incurred by the agriculturist be deducted from the amount or value under taxation nor may any part thereof be disposed of in any way, except under the circumstances foreseen by Rule 24, before the Zakât due has been reckoned *and discharged.*

9) The Zakât of agricultural produce should, in the case of edible produce, be paid in kind. The Zakât of non-edible produce may be paid in kind or in cash money to the *exact value* of the amount due.

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(1) As a cash crop, cotton pays the Zakât of trade only.

10) When the Zakât is paid in kind, agricultural produce of average good quality must be given. But, in conformity with the Prophet's (ص) ruling :

لا تأخذوا من حرزات أمـوال الناس و خذوا من حواشي أموالهم

(«Take not the choice of the people's wealth, take of their wealth that which is of average value»), in no case may the legitimate owner of the produce in question be required to give the very best of his/her produce in payment of Zakât dues.

On the other hand, in conformity with the Injunction contained in verse 267, Surah II of the Qurân (see above, p. 148), agricultural produce of bad quality *is not acceptable* in payment of Zakât dues.

11) Islamic Law forbids the sale of unripe standing crops of whatever kind.

On the other hand, Islamic Law allows the sale of standing crops that are fully ripe and no longer in need of irrigation of any kind, i.e., directly before the harvest.

As regards taxable produce, the Law of Zakât lays down that when the legitimate owner of a fully ripe standing crop of taxable produce not originally intended for sale, sells the same, the obligation of the Zakât of agricultural produce remains incumbent on him/her unless, by mutual agreement between him/her and the buyer, the responsibility of Zakât is made to devolve upon the latter.

When no such agreement exists, the original owner of the crop (i.e., the seller), having in actual fact received the full value of his/her produce, just as though he/she would have actually harvested it, must bear the responsibility of discharging the Zakât due which, in this case, is to be paid in the shape of the required percentage of the value received in payment of the uncut crop.

12) As implied in Rule 11, when a person purchases a fully ripe standing crop of taxable produce for his/her personal use, he/she bears no obligation of Zakât upon harvesting the crop in question (1), unless previous agreement to the contrary has been made with the seller thereof, prior to the sale.

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(1) See Rule 1 of those governing the exchange of taxable wealth, p. 249.

But if the produce in question has been expressly purchased for purposes of trade, it automatically becomes subject to the rules governing the Zakât of trade and comes to form an integral part of the new legitimate owner's trade capital.

13) Both preservable and perishable agricultural produce cultivated expressly and exclusively on a business basis, i.e., as *articles of trade,* are subject to the rules governing the Zakât of trade only.

14) Taxable agricultural produce, the Zakât of which has been duly paid by the legitimate owner thereof (i.e., the agriculturist) and which, having remained in the possession of the same legitimate owner, is subsequently converted by him/her into an article of trade, becomes subject to the rules governing the Zakât of trade (1).

15) When, after discharging the Zakât due on his/her taxable agricultural produce cultivated primarily for personal use and not expressly intended as an article of trade, the legitimate owner thereof disposes of whatever is surplus to his/her own personal requirements in exchange for taxable wealth subject to the rule requiring possession thereof for a period of one full year as an essential condition warranting taxation for Zakât (i.e., gold, silver, currency notes, articles of trade, etc.), the transaction is subject to Rule 3 of those governing the exchange of taxable wealth (see p. 249).

16) Taxable agricultural produce cultivated primarily for personal use and not expressly intended for trade, is subject to the Zakât of agricultural produce *once only,* i.e., after harvesting, etc., is completed.

Thereafter, even should the produce in question remain for one or more years in the possession of its legitimate owner (the agriculturist), it is not subject to further taxation for Zakât unless it comes to constitute an article of trade.

17) Taxable agricultural produce acquired for personal use, whether from the agriculturist him/herself or from a regular trader, remains Zakât-free regardless of the period of time that it remains in the possession of its new legitimate owner, unless and until it comes to constitute an article of trade.

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(1) See Rule 8 of those governing the Zakât of trade, p. 139.

18) If a person sells his/her cultivated land (cultivated fields, orchards, gardens) at the time when the same is under a taxable crop as yet unripe but included in the sale, the obligation of Zakât devolves entirely upon the new legitimate owner (i.e., the buyer) when the harvesting of the crop in question is completed.

It should be noted that Rule 12 deals exclusively with the sale of standing crops *apart from the land*. Whereas in this case the sale is primarily *of the land*, the sale of the unripe crop being incidental to the transaction.

19) The collective ownership of agricultural produce is subject to the rules governing the collective ownership of taxable wealth. (See p. 264).

However, in view of the system of land tenure and cultivation that still prevails in many parts of the Muslim world, it is necessary to lay down a few rules applying to the special type of partnership existing between landowners and tenants :

a) Both the landowner and the tenant, being the legitimate owners of their respective share or shares of the produce, bear individually the responsibility of Zakât whenever their respective shares of taxable produce belonging to one legal genus are at least equal to the Nisâb or, where taxable non-edible produce is concerned, whenever their respective shares belonging to one genus are *in value* equal to the prevailing value represented by the Nisâb when applied to whichever cereal constitutes the staple food of the country's inhabitants, and they are to discharge separately their respective Zakât dues.

b) In conformity with Rule 8, with the exception of seed expressly kept for sowing, expenses incurred in cultivation are not to be deducted before the taxability of the crop has been ascertained and the Zakât due *reckoned and discharged.*

c) When by mutual agreement between the tenant and the landowner, the latter takes his/her share of the taxable produce in cash instead of in kind, the obligation of Zakât still remains incumbent on him/her (the landowner) with regard to the value of his/her respective share or shares, the act in question being tantamount to a sale of taxable produce to the tenant and analogous to the sale of

a standing crop. (See above, Rule 11, p. 217). (1).

Alternatively, the Zakât due may first be deducted from the total amount of the taxable produce belonging to each separate legal genus and constituting the landowner's share or shares and only the value of the remainder paid by the tenant to the landowner.

In either case, the tenant's obligation of Zakât stands only in relation to his/her own share or shares of the taxable produce.

20) If a person owns or holds (i.e., as a tenant or lessee) arable land in different places within the territory or territories under the jurisdiction of a same country, and from which he/she derives produce taxable under the Law of Zakât, the various amounts must be added together by legal genera, each genus forming a taxable whole, and Zakât paid on their respective sums total whenever these prove to be individually at least equal to the Nisâb or, where non-edible produce is concerned, at least equal *in value* to the prevailing value represented by the Nisâb when applied to whichever cereal constitutes the staple food of the country's inhabitants.

In this case, the Zakât due should be paid in each locality proportionately to the amount of taxable produce harvested therein, whether or not the various amounts forming the taxable whole be individually at least equal to the Nisâb or, where non-edible produce is concerned, at least equal *in value* to the prevailing value represented by the Nisâb when applied to whichever cereal constitutes the staple food of the country's inhabitants.

21) In conformity with Rule 1 of those governing the posthumous discharge of Zakât dues (see p. 45), when the death of the legitimate owner of a crop of taxable agricultural produce occurs before the harvest or during the harvest, the obligation of Zakât devolves normally on the lawful heir or heirs (i.e., the new legitimate owner or owners) and is to be discharged once harvesting, etc., is completed, when the Zakât falls due in respect of them as legitimate owner or owners.

When the inheritance in question is to be divided between

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(1) It must be borne in mind that, in conformity with Rule 8, the Zakât of the amounts of taxable produce belonging to each legal genus are to be reckoned separately.

two or more lawful heirs, these are individually responsible for discharging the Zakât due from their respective shares — should these be equal to or above the Nisâb — once harvesting, etc., is completed.

22) In conformity with Rule 2 of those governing the posthumous discharge of Zakât dues, when the death of the legitimate owner of a crop of taxable agricultural produce occurs immediately after the harvest but before the Zakât due has been paid, as the said Zakât has actually fallen due *before* the death of the person involved, the discharge thereof *in full* is incumbent on the lawful heir or heirs (i.e., the new legitimate owner or owners) *before the sharing of the inheritance* takes place.

23) Contrary to what is the case where the relation between landowner and tenant is concerned (see Rule 19), the leasing of land whereby the land is conveyed to the lessee in consideration of a specified rental to be paid, as a rule, in cash money, does not imply the setting up of a partnership between the landowner and the lessee. Hence, in conformity with the fundamental principle of the Law requiring *legitimate ownership* of taxable wealth as one of the essential conditions determining the taxability of wealth, the Zakât of taxable agricultural produce derived from rented lands devolves entirely on the lessee, who is unquestionably the legitimate owner of the produce.

The landowner having no claim whatever to a share in the produce, which remains the exclusive property of the lessee, bears no obligation of Zakât in respect of the sum received as rental which, being actually a form of income, is as such Zakât-free (1). Only that part of the rental remaining in the landowner's possession for

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(1) It is interesting to observe that Imâm Abû Hanîfa, opining that the Zakât attaches to the land, lays down that in the case of rented lands, the obligation of Zakât devolves on the landowner (i.e., the lessor) and not on the lessee. This in spite of the obvious and irrefutable fact that the lessee and not the lessor is the legitimate owner of the produce under taxation. Imâm Abû Hanîfa views the Zakât of agricultural produce as a charge for the use of the land, which he considers even in this case as appertaining to the landowner in view of the fact that the rental he receives is the price charged for granting the use of the land to another person (i.e., to the lessee). Hence, he argues, the latter having paid the required rent, should not equally bear the obligation of Zakât.

On the other hand, Imâms Abû Yûsuf and Muhammad ibn ul-Hasan rightly

a period of one full year, i.e., that part which comes to constitute a taxable amount of *surplus wealth,* will normally become subject to the 2½% Zakât.

This same rule holds good as regards taxable agricultural produce derived from borrowed lands, the use of which involves no compensation of any kind to the landowner, i.e, the obligation of Zakât devolves entirely on the beneficiary of the borrowed land, who is unquestionably the legitimate owner of the produce.

Indeed, so long as the land under cultivation is lawfully held, the fundamental principles of the Law of Zakât do not require the legitimate owner of the produce, on whom naturally and compulsorily devolves the responsibility of the Zakât thereof, to be necessarily the legitimate owner of the land he cultivates.

24) The Law of Zakât lays down that any kind of taxable wealth may become amenable for a debt and thus temporarily exempt from taxation for Zakât (1).

Hence, as laid down in Rule 11 of those governing amenable wealth, should a debtor who is the legitimate owner of taxable agricultural produce wish to apply his/her debt against his/her taxable agricultural produce, in order to partially or totally discharge his/her debt, he/she must be allowed to first dispose of whatever amount thereof may be necessary for the purpose, and then be required to only pay Zakât on the remainder if it be still of a taxable amount.

25) Unless definite proof exists that he/she is guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of taxable agricultural produce, who is personally responsible for keeping a correct account of the amount or, when produce belonging to different genera is cultivated, of the various amounts harvested and of the Zakât due thereon.

26) Should all, or part, of a crop of taxable agricultural produce be lost, stolen or accidentally destroyed *before* harvesting,

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opine that as the Zakât attaches to the produce and not to the land, the Zakât due must be paid by the lessee, who is the legitimate owner of the produce.

(1) See Rule 4 of those governing amenable wealth, p. 27.

etc., is completed, i.e., before the Zakât thereof actually falls due, the obligation of Zakât ceases in respect of the amount lost, stolen or destroyed.

27) Should the legitimate owner of taxable agricultural produce be guilty of negligence or default in the prompt discharge of his/her Zakât dues, and should it so happen that the produce in question, or a part thereof, be lost, stolen or destroyed after harvesting, etc., is completed, i.e., after the Zakât thereof has actually fallen due, the obligation to pay the amount or value due stands and is not annulled by the fact that the wealth in question is no longer in the possession of the person concerned.

28) Should it be proven that all, or part, of the taxable produce has been maliciously disposed of, or loss thereof simulated, in order to evade the payment of Zakât dues, the guilty person is liable to punishment and to forcible discharge of his/her dues.

The Zakât of Honey and Silk.

Though radically different in nature and use, honey and silk present, from the point of view of the Law of Zakât, parallel types of wealth. Indeed, both honey and silk are the natural produce of an insect (the bee, and the silkworm), the culture of which is known as apiculture and sericulture respectively.

The various Schools of Islamic Law have not agreed unanimously on the taxability of honey. As for silk, it has been totally disregarded as a taxable produce. Yet both honey and silk definitely fulfil the required conditions warranting taxation for Zakât.

As expounded in the old versions of the Law and reconsidered in the light of the fundamental principles on which the Law is based, the arguments for and against the imposition of Zakât on these two kinds of natural produce are as follows :

a) The inclusion of honey in the category of wealth taxable for Zakât finds support in a number of « A*h*adîth » of which the principal one, related on the authority of 'Abd Allah ben 'Umar ibn ul-Kha*tt*âb, has been reported by Imâm at-Tirmadhî and quoted by Imâm al-'Aynî, the eminent commentator of the *Sahîh* al-Bukhârî.

حدّثنا محمّد بن يحيى النيشابوري ، حدّثنا عمرو بن أبي سلمة التنيسي عن صدقة بن عبدالله عن موسى ابن يسار عن نافع عن ابن عمر قال : قال رسول الله صلّى الله عليه وسلّم : في العسل في كلّ عشرة أزق زق •
(رواه الترمذي)

« Mu*h*ammad ben Ya*h*yâ an-Nishapurî had related unto us (saying) : 'Amr ben Abî Salma at-Tunîsî has related unto us on the authority of *S*adaqa ben 'Abd Allah, (who said) on the authority of Mûsa ben Yasâr, (who said) on the authority of Nâfi'a, (who said) on the authority of Ibn 'Umar, (who said) : The Messenger of Allah (ص) said : '(The rate of Zakât) for honey is one skinful for every ten skinsful' .» (Imâm at-Tirmadhî).

Another «*H*adîth» reported by Al-Qurtubî and accepted as authentic by Imâm al-'Aynî, is as follows :

عن عمرو بن شعيب عن أبيه عن جدّه أنّ رسول الله صلّى الله عليه وسلّم كان يأخذ في زمانه من قرب العسل من كلّ عشر قرب قربة من اوسطهـا •
(رواه القرطبي)

« (It is related) on the authority of 'Amr ben Shu'ayb, (who said) on the authority of his father, (who said) on the authority of his grandfather, that the Messenger of Allah (ص) used to levy (as Zakât) one full jar of honey on every ten full jars of honey of average size.» (Imâm al-Qurtubî).

It is furthermore well established that the second Caliph, 'Umar ibn ul-Kha*tt*âb, used to levy a 10% Zakât on honey. Among those whose assertion in this connection is accepted by Imâm al-'Aynî, figures 'Abd ur-Ra*h*mân ben Abî Dhaâb, who reported the matter on the authority of his father, Abû Dhaâb.

However, many prominent jurists, including Imâms Mâlik, Shâf'î, Bukhârî, Dâ'ûd, Sufyân Thaurî, Ghazzâlî, Mu*h*ammad ben 'Abd ur-Ra*h*mân ben Abî Layl and Al-*H*asan ben *S*âli*h* ben *H*ayy (1),

(1) It is likewise reported that the Umayyade Caliph, 'Umar ben 'Abd ul-'Azîz, did not levy Zakât on honey. Definite instructions excluding honey from

calling into question the authenticity of the «A*h*adîth» relating to the Zakât of honey, maintain that, except as an article of trade, honey is not taxable for Zakât because, being the produce not of the land but of an insect, it cannot be included in the category of natural produce referred to in the Prophet's (ص) ruling, which specifies as subject to taxation for Zakât only the produce of the land, i.e., that which is watered by rainfall, etc.

Conversely, the argument of those who favour the Zakât of honey (the jurists of the *H*anafite and the *H*anbalite Schools of Law) is that as bees feed on the produce of the land which is watered by rainfall, etc., and is subject to the tithe (i.e., the 10% Zakât), their produce (honey) is naturally taxable for Zakât. Needless to say that, in itself, this argument is not very sound. As a rule, bees feed on and collect mainly the nectar of flowers, and flowers, except as articles of trade, are not taxable for the Zakât of agricultural produce.

If honey is considered not in the light of an agricultural produce, which, strictly speaking, it is not, but on its own merits, the imposition of Zakât thereon appears to be quite justified. Honey is a valuable natural food, naturally preservable and, hence, it fulfils the prescribed conditions warranting the imposition of Zakât on preservable natural foods.

As regards the rate of Zakât applying to honey, the *H*anafite School of Law adheres to the one of 10% made known in the «A*h*adîth».

Furthermore, the *H*anafite School of Law lays down that only honey collected from the produce of tithe lands is to be subject to Zakât, not so honey collected from the produce of «Kharâj» lands.

On the other hand, the same differences which divide the opinions of Imâm Abû *H*anîfa and his two disciples, Imâms Abû Yûsuf and Mu*h*ammad ibn ul-*H*asan, in the matter of a Nisâb for agricultural produce, exist as regards a Nisâb for honey. Imâm Abû *H*anîfa rules that a net 10% Zakât be levied on whatever amount of honey is produced, without regard to a Nisâb. Whereas both Imâms Abû Yûsuf and Mu*h*ammad admit a Nisâb for honey as for other kinds of taxable wealth.

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the category of taxable wealth are said to have been written by him in a letter to the father of 'Abd Allah ben Abî Bakr ben 'Amr ben Hazm.

Imâm Mu*h*ammad subjects honey to taxation for Zakât whenever the amount collected is at least equal to 5 «Afrâq» (336 seers or 313.5 kgs.), the «Farâq» (67 $^{1}/_{5}$ seers or 62.7 kgs.) being a Medina measure equal to 36 Medina ro*t*les and the largest measure used for honey in his day. And Imâm Abû Yûsuf subjects honey to taxation for Zakât either in conformity with the Nisâb made known in the second of the two «A*h*adîth» quoted above, i.e., 10 full jars of average size or, alternatively, whenever the value of the honey under taxation is at least equal to the value of 5 camel-loads of grain.

This alternative ruling of Imâm Abû Yûsuf leads one to believe that there existed in his day a proportionate value between the Nisâb of 10 full average size jars of honey mentioned in the «*H*adîth» and the Nisâb of 5 camel-loads established for agricultural produce. In other words, as is the case for other kinds of taxable wealth, the Nisâb of honey undoubtedly purports to allow for a basic Zakât-free provision equal in value to or, to be more precise, potentially representing a year's provision of essential foodstuffs.

Hence, if the validity of this all-important point is admitted, in order to maintain the true significance of the Nisâb it should be accepted that honey be subject to taxation for Zakât whenever the amount produced is *in value* at least equal to the prevailing value represented by the Nisâb of agricultural produce (i.e., 5 camel-loads, 1680 seers, or 1568 kgs.) when applied to whichever cereal constitutes the staple food of the country's inhabitants. Needless to say that the 10% rate of Zakât should stand.

b) As regards silk, no «*H*adîth» connected with the Law of Zakât makes mention of it as included in the category of taxable wealth (1). Nor have the great Schools of Islamic Law deemed it a taxable produce.

The argument advanced in this respect is that silk is the produce of an insect and not of the land. Even the jurists of the *H*anafite School of Law, who classify honey as subject to taxation

(1) The omission of silk from the various kinds of taxable wealth mentioned in the «Ahadîth» may be due to the fact that in the Prophet's time no Muslim was actually engaged in sericulture. Unfortunately there is no evidence at hand to elucidate this point.

for Zakât albeit it be the produce of an insect, argue that the reason why silk is not likewise subject thereto is because unlike bees «which feed on the taxable produce of the land» (1), silkworms feed on mulberry leaves, and leaves are not taxable for Zakât. Yet, notwithstanding the fact that it is the produce of an insect and not of the land, silk fulfils as well as cotton the prescribed conditions warranting taxation for Zakât. Moreover, there is no valid reason why the non-taxability of the natural food of the silkworm should necessarily entail the non-taxability of its produce.

As a matter of fact, silk is a valuable natural textile fibre, naturally preservable, and thus it conforms by its very nature to the conditions laid down by the Law as establishing the taxability of wealth. This fact alone is quite sufficient to justify the Zakât of silk.

Similarly to what is the case for agricultural produce, the Law of Zakât must make provision for two categories of taxable honey and silk :

a) Honey and silk produced through private apiculture and private sericulture, and intended primarily for the personal consumption and use of the legitimate owner thereof.

b) Honey and silk produced through apiculture and sericulture undertaken as regular businesses, and intended exclusively as saleable commodities, i.e., as articles of trade and, hence, subject to the rules governing the Zakât of trade only.

The following rules must, therefore, be understood as applying to honey and silk produced by private apiculturists and sericulturists, and intended primarily for personal consumption and use, albeit without prejudice to the legitimate owner's right to dispose of the surplus in any way he/she may desire, and not to honey and silk produced expressly and exclusively for trade.

Honey and silk being, from the point of view of the Law of Zakât, parallel types of wealth, are automatically bound to bear the same Nisâb and rate of Zakât and to be governed by the same general rules.

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(1) The argument is weak, as the flowers bees actually feed on are no more taxable for Zakât than are mulberry leaves.

Nisâb and Rate of Zakât for Honey and Raw Silk.

Honey in the comb or unclarified, and raw silk are to be subject to a Zakât of 10% whenever the amount produced in a season is *in value* at least equal to the prevailing value represented by the Nisâb of 5 camel-loads (1680 seers or 1568 kgs.) established for agricultural produce, when applied to whichever cereal constitutes the staple food of the country's inhabitants.

Thereafter, any amount of honey or of raw silk that is *in value* over and above the said Nisâb is to be subject to a net 10% of the amount or value involved.

Rules Governing the Zakât of Honey and Raw Silk :

The rules governing the Zakât of honey and of raw silk must naturally be based on those governing the Zakât of agricultural produce and are detailed as follows :

1) The taxability of honey and of raw silk is to be ascertained and reckoned in consideration of *the value* thereof, once the total amount produced in a season by one and the same individual and within the territory or territories under the jurisdiction of a same country is known, and the Zakât due is to be paid either in the shape of the required amount of honey (in the comb or unclarified) or of raw silk (i.e., 10%) respectively, or in the shape of cash money to the *exact value* of the amount due.

When two or more apicultural or sericultural farms are owned by the same person in different places within a same jurisdiction, after assessment of the total amount of Zakât due, payment of Zakât should be made in each locality according to the amount of honey or raw silk collected in that locality, whether the various amounts forming the taxable whole be individually equal to the Nisâb or not.

2) Although, from the point of view of the Law of Zakât, they constitute parallel types of wealth by reason of their being derived from similar sources, as honey is a food and silk a textile fibre, they do not and cannot form a legal genus and so, except when constituting articles of trade, may never be combined, neither in quantity nor in value, to form a taxable whole.

Thus, should a person engage in both private apiculture and

private sericulture, the honey and silk produced would separately bear taxation for Zakât as warranted by the value of the amount of each kind respectively.

3) Honey expressly kept as food for the bees and silkworm cocoons expressly kept for purposes of breeding are to remain Zakât-free.

But no other expenses incurred by the apiculturist or by the sericulturist may be deducted from the value under taxation nor may any part thereof be disposed of, except under the circumstances foreseen by Rule 17, before the Zakât due has been reckoned *and discharged.*

4) When the Zakât of honey and of raw silk is paid in kind, honey and raw silk of average good quality must be given respectively. In no case may the legitimate owner be required to give the very best of his/her produce in payment of Zakât dues. Nor is produce of bad quality acceptable in payment of Zakât dues.

5) Wild honey is not subject to taxation for Zakât, as the essential condition of legitimate ownership is lacking (1).

Indeed, wild honey, like wild agricultural produce, is free for everyone and so the needy Muslim and non-Muslim citizens alike are at liberty to take thereof as much as they like and even sell it for their own benefit if they so desire. Therefore, only if and when wild honey comes to constitute an article of trade does it automatically become subject to the rules governing the Zakât of trade.

6) Should the legitimate owner of a private apicultural or of a private sericultural farm sell the same before the end of a given season, i.e., before the Zakât of the honey or of the raw silk produced during the season in question has been reckoned and discharged, the taxability of the amount produced during the said season up to the actual date of the transaction should be determined and, if the said amount proves to be of a taxable *value,* the Zakât due must be discharged by the seller (the original legitimate owner); unless, the honey or raw silk in question being included in the sale,

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(1) Imâm Abû Hanîfa opines that wild honey should be subject to taxation for Zakât. Imâm Abû Yûsuf disagrees with this view and rightly argues that as the reason warranting the imposition of Zakât is lacking, wild honey naturally must remain Zakât-free, except when constituting an article of trade.

the responsibility for the Zakât is made to devolve upon the buyer by mutual agreement between him/herself and the seller.

If no such agreement exists, the buyer (the new legitimate owner) bears no obligation of Zakât, except in relation to the honey or to the raw silk produced as from the date of the transaction.

7) Honey and raw silk produced expressly and exclusively on a business basis, i.e., as articles of trade, are subject to the rules governing the Zakât of trade only.

8) Honey and raw silk, the Zakât of which has been duly paid by the respective legitimate owners thereof (the apiculturist and the sericulturist) and which, having remained in the possession of the same respective legitimate owners, are subsequently converted by the latter into articles of trade, likewise become subject to the rules governing the Zakât of trade.

9) When, after the Zakât thereon has been duly discharged, the legitimate owner of honey or of raw silk produced primarily for personal consumption or use and not intended expressly as articles of trade, disposes of whatever is surplus to his/her own personal requirements in exchange for taxable wealth subject to the rule requiring possession thereof for a period of one full year as an essential condition warranting taxation for Zakât (i.e., silver, gold, currency notes, articles of trade, etc.), the transaction is subject to Rule 3 of those governing the exchange of taxable wealth (see p. 249).

10) Honey and raw silk produced primarily for personal consumption and use and not expressly intended as articles of trade, are subject to the 10% Zakât *once only*, at the completion of the season.

Thereafter, even should the produce in question remain for one or more years in the possession of its legitimate owner (the apiculturist or the sericulturist), it is not subject to further taxation for Zakât unless and until it comes to constitute an article of trade.

11) Honey and raw silk acquired for personal consumption or use, be it from the apiculturist or the sericulturist or from a regular trader, remain Zakât-free regardless of the period of time that they may remain in the possession of their new legitimate owner, unless and until they come to constitute articles of trade.

12) The collective ownership of produce derived from apicultural and sericultural farms, is subject to the rules governing the collective ownership of taxable wealth (see p. 264).

13) In conformity with Rule 1 of those governing the posthumous discharge of Zakât dues, when the death of the legitimate owner of an apicultural or a sericultural farm occurs before the end of a given season, i.e., before the Zakât of the honey or of the raw silk produced during the said season has actually fallen due, the obligation of Zakât devolves at the end of the season on the lawful heir or heirs (i.e., the new legitimate owner or owners), when the sum total of the season's produce of honey or of raw silk is known.

When the inheritance in question is to be divided between two or more lawful heirs, the same are individually responsible for discharging the Zakât due from their respective shares, if these be of a taxable value, at the end of the season.

14) In conformity with Rule 2 of those governing the posthumous discharge of Zakât dues, when the death of the legitimate owner of an apicultural or a sericultural farm occurs immediately after the end of a given season, but before the payment of the Zakât due has been made, as the Zakât has actually fallen due *before* the death of the person involved, the discharge thereof *in full* is incumbent on the lawful heir or heirs (i.e., the new legitimate owner or owners) *before* the sharing of the inheritance takes place.

15) The Law of Zakât lays down that any kind of taxable wealth may become amenable for a debt and thus temporarily exempt from taxation for Zakât (1).

Hence, as laid down in Rule 11 of those governing amenable wealth, should a debtor who is the legitimate owner of an apicultural or a sericultural farm wish to apply his/her debt against his/her taxable honey or raw silk in order to partially or totally discharge the said debt, he/she must be allowed to first dispose of whatever amount thereof may be necessary for the purpose, and then required to pay Zakât only on the remainder if it be still of a taxable amount.

16) Unless definite proof exists that the person involved is

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(1) See Rule 4 of those governing amenable wealth, p. 27.

guilty of dishonest conduct, full trust is to rest in the loyalty of every legitimate owner of apicultural and of sericultural produce, who is personally responsible for keeping a correct account of the amount of honey and/or raw silk produced and of the Zakât due thereon.

17) Should all or part of the taxable honey or raw silk produced during a given season be lost, stolen or accidentally destroyed *before* the season in question is ended, i.e., before the Zakât thereof actually falls due, the obligation of Zakât ceases in respect of the amount lost, stolen or destroyed.

18) Should the legitimate owner of an apicultural or a sericultural farm be guilty of negligence or default in the prompt discharge of his/her Zakât dues, and should it so happen that all, or a part, of the honey or raw silk produced within a season be lost, stolen or destroyed after the end of the said season, i.e., after the Zakât thereof has actually fallen due, the obligation to effectuate the payment of the Zakât due stands and is not annulled by the fact that the wealth in question is no longer in the possession of the person concerned.

19) Should it be definitely proven that all, or a part, of the taxable produce (the honey or raw silk) has been maliciously disposed of, or loss thereof simulated, in order to evade the payment of Zakât dues, the guilty person is liable to punishment and to forcible discharge of his/her dues.

The Zakât of the 'Id ul-Fi*t*r.

The underlying principle of social solidarity which characterizes the Institution of Zakât finds its most delicate expression in the Zakât of the 'Id ul-Fi*t*r. This particular form of Zakât, which, in the terminology of the Law, is referred to as the «Fi*t*rat» (الفطرة) was enjoined on all Muslims of means by the Prophet (ص) . It differs from the regular Zakât in that it is not a contribution warranted by and reckoned on a given amount of surplus wealth conforming to specified conditions, but rather a contribution derived from the everyday provision of the well-to-do Muslim, the object of which is to ensure that every Muslim of straitened means, man, woman, and child, be free from want on the auspicious day that marks the successful completion of the sacred fast of Rama*d*ân, and thus be

enabled to share in all fairness in the legitimate rejoicings so dear to the heart of every true believer.

Similarly to what is the case for the regular Zakât, the Zakât of the 'Id ul-Fi*t*r is unanimously recognized by all Schools of Islamic Law as a pious duty of every Muslim man and woman, obligatory in deed for all Muslims whose means of living allow them to comply therewith without causing embarrassment to themselves or to their dependents.

The Zakât of the 'Id ul-Fi*t*r is detailed in a number of «A*h*adîth», the most important of which are related on the authority of 'Abd Allah ben 'Umar ibn ul-Kha*tt*âb and of Abû Sa'îd al-Khudrî. Of these, the following one establishes the fundamental rules applying thereto :

حدّثنا يحي بن محمّد ابن السكن ، قال : حدّثنا محمّد بن جهضمٍ ، قال: حدّثنا اسماعيل بن جعفرٍ عن عمر بن نافع عن أبيه عن ابن عمر رضي الله عنهما ، قال : فرض رسول الله صلّى الله عليه وسلّم زكاة الفطر صاعاً من تمرٍ او صاعاً من شعيرٍ على العبد (١) والحرّ والذكر والانثى والصغير والكبير من المسلمين ، وأمر بها أن تؤدّى قبل خروج الناس الى الصلاة . (رواه البخاري)

« Ya*h*yâ ben Mu*h*ammad ibn as-Sakan has related unto us, saying : Mu*h*ammad ben Jah*d*am related unto us, saying : Ismâ'îl ben Ja'far has related unto us on the authority of 'Umar ben Nâfi'a, (who related) on the authority of his father, (who related) on the authority of Ibn 'Umar (may Allah be pleased with them both), who said : 'The Messenger of Allah (ص) enjoined the Zakât of the 'Id ul-Fi*t*r on *all Muslims*, 1 *s*a'a (5 $^{3}/_{5}$ seers or 5 kgs. 225) of dates or 1 *s*a'a of barley, to be paid for (each Muslim) : the (unsalaried) servant and the (person of) independent (means), the male and the female, the child and the adult. And he commanded that it be satisfied before the people go forth to the ('Id) prayer'.» (Imâm Bukhârî).

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(1) In a similar «Hadîth» related on the authority of Abû Sa'îd al-Khudrî and quoted below, the term «Mamlûk» (مملوك) is used instead of « 'Abd »(عبد) . (See p. 237).

Thus the Law lays down that payment of the « Fi*t*rat » is incumbent on every Muslim, man or woman, possessing means of his/her own over and above the indispensable daily requirements of food, shelter, clothes, etc., for him/herself and his/her dependents.

This ruling implies that the potential obligation of the dependent who, because of his/her insufficient means, is unable to give the «Fi*t*rat» on his/her own account, of necessity devolves on the person responsible for providing his/her living expenses. In other words, the Muslim of means must satisfy the «Fi*t*rat» both on his/her own behalf and on behalf of as many of his/her minor or adult Muslim kinsfolk, friends and/or unsalaried servants as are totally dependent on him/her for their livelihood.

The term «'Abd» (عبد = one who serves) in the above «*H*adîth» and that of Mamlûk (مملوك = one under control) which occurs in the «*H*adîth» related on the authority of Abû Sa'îd al-Khudrî and quoted below, must be understood in the context of the Law as designating a *Muslim* servant who is a dependent member of the household, i.e., a servant who, instead of receiving a salary for his/her services, receives his/her full livelihood from his/her employer. For this reason, both these terms have been translated here as *unsalaried servant;* and the term «*H*urr» (حرّ) has been translated not as «free man» as opposed to «slave» or «chattel» — this latter status being legally inapplicable to a Muslim — but as «a person of independent means».

Although in the Quranic text the term « 'Abd » usually designates the human being in his capacity of *servant of God,* and only once is the word used, in combination with the word «Mamlûk» (Surah XVI, verse 75) and with the emphasis on «Mamlûk», to designate a human being in bondage to another human being — the common Quranic term to designate a «slave» or «human chattel» being «Raqabat» (رقبة = neck, a person bound by the neck, and so «a slave») — the interpretations of the old versions of the Law, and even certain modern books on the subject, have understood the term « 'Abd » to mean «slave», a meaning quite incompatible with the context of the Law.

There is a well-defined difference between the status of a slave and that of an unsalaried servant. A slave is the legal property of his/her master or mistress to whom he/she owes absolute

obedience, whether for right or for wrong, and at whose discretion he/she may be sold or otherwise disposed of. A slave enjoys no civil rights and bears *no* civil responsibilities.

In Islam, an unsalaried servant, man or woman, is no less a citizen of the Nation than his master or mistress, with whom he has freely entered into an agreement for service and to whom he owes obedience only within the limits of the Law. He enjoys the same civil rights and bears the same civil responsibilities as his master or employer. He is not the legal property of his master but his brother in religion, albeit his dependent. His civil liberty is in no way curtailed. He is under no compulsion whatever and is free to leave his master's service if and when he so desires provided he has fulfilled the terms of their contract. In fact, the only difference between a salaried servant and an unsalaried servant is that the former receives the reward of his services in the shape of fixed wages, paid in cash money or in kind, and the latter receives the reward of his services in the shape of his full livelihood as a regular member of the household. All his living expenses are the responsibility of his master. Food, lodging, clothes, and all other requirements must be provided for him in conformity with Islamic standards of decency. And, lastly, by reason of his dependence and of his possessing insufficient or no actual wealth of his own, it is incumbent on his master to satisfy the «Fi*t*rat» on his behalf.

The status of unsalaried servant may be acquired by an affranchised slave, converted to Islam or not, who chooses to remain in the service of his/her master or mistress as such; by an individual who voluntarily enters or who, having been born in the household, voluntarily remains in the service of another individual on such terms; or by a prisoner of war who, during the period of his/her captivity, is employed on such terms by his/her captors. Needless to say that if the unsalaried servant in question is not a Muslim, the obligation of satisfying the «Fi*t*rat» on his/her behalf does not arise.

Furthermore, the obligation to satisfy the «Fi*t*rat» lapses in respect of every economically independent Muslim whose straitened means are either just sufficient for or fall short of his/her lawful daily necessities. These latter, on the contrary, are the deserving beneficiaries of the «Fi*t*rat».

As regards the «Fi*t*rat» itself, there has been some disagreement among the 'ulemâ as to exactly what kinds of food may lawfully be given in payment thereof. Imâm Dâûd and his followers maintain that the «Fi*t*rat» must be paid exclusively in the shape of dates and barley. This view is based on the fact that only these two kinds are mentioned in the above-quoted «*H*adîth» related on the authority of Ibn 'Umar. Hence, contrary to other prominent jurists, Imâm Dâûd does not consider wheat, wheat flour, barley flour, bread, raisins, or any other kind of food as lawful «Fi*t*rat». Yet another «*H*adîth», also related on the authority of Ibn 'Umar, substantiates the fact that in the Prophet's time other kinds of food, such as wheat and raisins, besides barley and dates, were accepted in payment of the «Fi*t*rat».

حدّثنا الهيثم بن خالد الجهني ، حدّثنا حسين بن علي الجعفي عن زائدة ، حدّثنا عبد العزيز بن أبي داود عن نافع عن عبد الله بن عمر ، قال : كان الناس يخرجون صدقة الفطر على عهد رسول الله صلّى الله عليه وسلّم صاعاً من شعير أو تمر أو سلت أو زبيب • قال عبدالله : فلمّا كان عمر رضي الله تعالى عنه وكثرت الحنطة جعل عمر نصف صاع حنطة مكان صاع من تلك الاشياء •
(رواه أبو داود)

« Al-Haytham ben Khâlid al-Jahnî has related unto us (saying) : *H*usain ben 'Alî al-Ja'afî has related unto us on the authority of Zâida (who said) : 'Abd ul-Azîz ben Abî Dâûd has related unto us on the authority of Nâfi'a (who related) on the authority of 'Abd Allah ben 'Umar, who said : In the time of the Messenger of Allah (ص) , the people used to give in payment of the Zakât of the 'Id ul-Fi*t*r 1 *s*a'a of barley or of dates or of «sult» (a kind of barley) or of raisins. 'Abd Allah said : And when in the time of 'Umar (may Allah be pleased with him) wheat became more plentiful, he ruled that one half *s*a'a of wheat was equal to one *s*a'a of the things (mentioned above). (Related by Abû Dâûd).

Useful data is also provided by the following «*H*adîth» related on the authority of Abû Sa'îd al-Khudrî :

حدّثنا عبد الله بن مسلمة بن قعنبٍ ، حدّثنا داود يعني ابن قيسٍ عن عياض بن عبد الله عن أبي سعيدٍ الخدريّ ، قال : كنّا نخرج اذ كان فينا رسول الله صلّى الله عليه وسلّم زكاة الفطر عن كلّ صغيرٍ وكبيرٍ حرّ أو مملوك ، صاعاً من طعامٍ أو صاعاً من اقطٍ أو صاعاً من شعيرٍ أو صاعاً من تمرٍ أو صاعاً من زبيبٍ ، فلم نزل نخرجه حتى قدم علينا معاوية بن أبي سفيان حاجّاً أو معتمراً ، فكلّم الناس على المنبر • فكان فيما كلّم به الناس أن قال : انّي أرى أنّ مدّين من سمراء الشام تعدل صاعاً من تمرٍ • فأخذ الناس بذلك • قال أبو سعيدٍ : فامّا أنا فلا ازال اخرجه كما كنت اخرجه ابداً ما عشت • (مسلم)

«'Abd Allah ben Maslama ben Qa'anab has related unto us (saying) : Dâûd, that is to say Ibn Qays, has related unto us on the authority of 'Iyâd ben 'Abd Allah (who said) on the authority of Abû Sa'îd al-Khudrî who said : When the Messenger of Allah (ص) was among us, we used to give as Zakât of the 'Id ul-Fitr for every child and adult, (person of) independent (means) or (unsalaried) servant, 1 sa'a of food, or 1 sa'a of cheese, or 1 sa'a of barley, or 1 sa'a of dates, or 1 sa'a of raisins. And we did not cease doing thus until Mu'âwiya came to us as a pilgrim or visitor and spoke to the people from the pulpit. And among other things he told the people : 'I am of the opinion that 2 Hejâzî «mudds» (i.e., ½ sa'a) of Syrian wheat are equal to 1 sa'a of dates'. So the people adhered to that (decision). «Then Abû Sa'îd said : As for myself, throughout my life I have never ceased giving it (the «Fitrat») in the same way as I used to do (in the Prophet's time) ». (Imâm Muslim).

It is clear from the «Ahadîth» as well as from other historical accounts that, in the Prophet's time, wheat was not commonly given in payment of the «Fitrat». This was obviously because in those days wheat was scarce in Medina and the surrounding Muslim-held territory. Hence, as wheat did not constitute at the time the staple food of the Muslim population, which then consisted mainly of barley and dates, it was not specified as one of the various kinds of food to be given as «Fitrat». At a later date, when the spread of Islam had brought the greater part of the Arabian Peninsula under

Muslim rule, including the vast wheat-growing districts of Syria and Iraq, and wheat had become easily available for all, it very naturally was comprised among the lawful foods to offer as «Fi*t*rat».

But, as related in the «A*h*adîth», the fact that wheat was a more valuable grain than barley gave rise to the view that a lesser amount thereof should be required to be given. Thus, although the decision was not unanimously accepted, it was laid down that ½ *s*a'a (2 4/5 seers or 2 kgs. 612) of wheat given as «Fi*t*rat» was equal to 1 *s*a'a of barley or dates. We have it on the authority of Abû Sa'îd al-Khudrî that this decision was taken by the Umayyade Caliph Mu'âwiya ben Abî Sufyân. But according to the jurists of the *H*anafite School of Law who adhere thereto, it had already been enforced by the second Caliph 'Umar ibn ul-Kha*tt*âb and was subsequently upheld by the Caliphs 'Uthmân ben 'Affân, 'Alî ben Abî Tâlib, Mu'âwiya and 'Umar ben 'Abd al-'Azîz. Imâm A*t*-*T*a*h*âwî, however, claims that the practice of giving the «Fi*t*rat» in the form of ½ *s*a'a of wheat instead of 1 *s*a'a of barley, etc., was sanctioned afore-time by the first Caliph Abû Bakr as-*S*iddîq (1).

Al-Khudrî's refusal to admit the proportionate value of ½ *s*a'a of wheat to 1 *s*a'a of barley, of dates, or of raisins, is understood by Imâm Al-'Aynî as having been due to the fact that wheat was not originally included in the category of foods which were specified as lawful to be given as «Fi*t*rat» and, for this reason, Al-Khudrî must have considered that it should remain excluded from the same. However, a more logical explanation of Al-Khudrî's attitude would be that he objected not to the wheat itself but rather to the halving of the amount due.

Indeed, as regards the «Fi*t*rat», it would seem more in keeping with the spirit of the occasion to give foremost consideration to the standard quantity and not to the proportionate value of the various kinds of food involved. Actually the jurists of the Mâlikite, Shâfiite and *H*anbalite Schools of Law, who admit the «*H*adîth» and stand taken by Al-Khudrî, quite correctly regard the term «*T*a'âm» (طعام) i.e., *food*, occurring in the «*H*adîth» in question as

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(1) Al-'Aynî's Commentary. Other prominent personalities said to have adhered to the decision are Ibn 'Abbâs, Asmâ bint Abî Bakr, An-Nakha'î, Abû Hanîfa, Abû Yûsuf, Muhammad and Sufyân Thaurî.

comprising wheat as well as other kinds of comestibles, and rule that whenever wheat is offered in payment of the «Fi*t*rat», one full *s*a'a thereof must be given. As a matter of fact, the inclusive nature of the term طعام (food) allows of a wide application with, of course, the one and obviously necessary condition that food given as «Fi*t*rat» be reasonably preservable by nature.

In this matter Imâm Ghazzâlî offers a sound solution by laying down that each individual should preferably give the «Fi*t*rat» in the shape of whatever kind constitutes his/her own staple food.

This ruling of Imâm Ghazzâlî appears all the more justified if we consider that the Precepts of Islam are binding on the Muslim peoples throughout the world and must, therefore, make due allowance for the natural conditions of climate prevailing in the different parts of the Muslim world. For it would be absolutely contrary to the spirit and letter of Islamic Justice if, for instance, a Muslim of Burma were expected, nay compelled, to satisfy his «Fi*t*rat» in the shape of barley instead of rice, or a Muslim of Mexico were refused the convenience of satisfying his «Fi*t*rat» in the shape of maize, his own staple food. Nor is it conceivable that the Prophet (ص) would have prescribed any hard and fast rule which could only be faithfully adhered to in certain regions of God's earth, to the exclusion of others where the required kinds and, hence, conditions to fulfil this sacred duty simply do not exist ! Thus we see that the rigidity of Imâm Dâûd's view in the matter is definitely out of stride with reality.

The evident principle set forth in the «A*h*adîth» leaves little room for doubt or dispute. This is that the standard quantity of 1 *s*a'a of food to be given by or on behalf of each individual was so fixed by the Prophet (ص) in order to provide each needy Muslim with sufficient relief to last throughout the 'Id celebrations.

Although, as suggested by the «A*h*adîth», the staple food (cereal) of the country, or of the «Fi*t*rat»-giver, should preferably be offered, such preservable foods as raisins and cheese may also be given. And there is no valid reason why flour (of the kind used by the «Fi*t*rat»-giver), pulse, potatoes, dried fruit, and even sugar, oil, or ghi («saman» or clarified butter), etc., should not likewise be included in the category of lawful «Fi*t*rat», on condition that the standard quantity of 1 *s*a'a be adhered to in each and every case.

On the other hand, the value of the kind given must naturally depend on the means of each individual «Fi*t*rat»-giver.

Likewise, whenever the «Fi*t*rat» is satisfied in cash money instead of in kind, as most of the 'ulemâ agree may lawfully be done, the sum in question must represent the exact prevailing value of one full *s*a'a of whichever kind would otherwise have been given.

The proper time to effectuate the payment of the «Fi*t*rat» has also been the subject of some disagreement among the jurists of Islam, notwithstanding the fact that most of them do agree that the lawful limit is before the prayer of the 'Id ul-Fi*t*r, as enjoined by the Prophet (ص) . This time limit is made known in the «*H*adîth» of Ibn 'Umar quoted above and in another «*H*adîth», also related on his authority :

حدّثنا آدم (يعني ابن أبي اياس) قال : حدّثنا حفص بن ميسرة ، قال : حدّثنا موسى ابن عُقبة عن نافع عن ابن عمر رضي الله عنهما أنّ النبيّ صلّى الله عليه وسلّم أمر بزكاة الفطر قبل خروج الناس الى الصلاة • (رواه البخاري)

« Adam (i.e., Ibn Abî Ayâs) has related unto us, saying : *H*afs ben Maysara has related unto us, saying : Mûsâ ben 'Uqba has related unto us on the authority of Nâfi'a, (who related) on the authority of Ibn 'Umar (may Allah be pleased with them both), (who said) that the Prophet (ص) commanded that the Zakât of the 'Id ul-Fi*t*r be paid before the people go forth to the ('Id) prayer.» (Imâm Bukhârî).

The Prophet's exhortation to his followers to satisfy the Zakât of the 'Id ul-Fi*t*r at the latest before the 'Id prayer, is another patent instance of the deep concern for the welfare and sentiments of its needy members that must ever pervade a truly Muslim society. The object of this prudent decree is obviously to allow the Zakât-officials sufficient time to arrange for the fair distribution of the «Fi*t*rat» among the deserving Muslims of their respective «Ma*h*allas» or quarters. Indeed, if the aim of the «Fi*t*rat» is to be fulfilled, the actual distribution thereof should not be delayed beyond the morning of the 'Id day, that is, directly after the 'Id prayer, and should preferably take place — especially when the 'Id falls during the short days of winter — on the last day of the month of Rama*d*ân.

Imâms Shâf'î, A*h*mad ben *H*anbal, Is*h*âq and Al-Auzâ'î set the time limit for payment at sunset of the last day of Rama*d*ân. Imâms Abû *H*anîfa and Mâlik, on the other hand, deem the proper time limit to be the sunrise of the 'Id day, as suggested by the «*H*adîth». Imâm Al-Laîth ben Sa'ad also adheres to this view. However, it is reported on the authority of Nâfi'a that 'Abd Allah ben 'Umar used to send his «Fi*t*rat» one or two days before the 'Id to the officers in charge of collecting it. And, for all practical purposes, this is the example that every responsible Muslim should endeavour to emulate.

Under certain circumstances, the Law allows the discharge of the Zakât, including that of the 'Id ul-Fi*t*r, before the time when it actually falls due. Imâm Abû *H*anîfa holds that Zakât dues, including the «Fi*t*rat», may even be paid lawfully two years in advance, whenever this suits the convenience of the Zakât-payer. Other jurists opine that the «Fi*t*rat» may lawfully be paid at any time during the month of Rama*d*ân, which would seem the ideal rule to adopt. For, undoubtedly, an early discharge of the «Fi*t*rat», be it in cash money or preservable kind, can only be to the advantage of all concerned, «Fi*t*rat»-givers, Zakât-officials and beneficiaries alike, by giving ample time and opportunity to estimate the quantity and kinds of «Fi*t*rat» available and to arrange the distribution thereof as fairly and equitably as possible.

Rules Governing the Zakât of the 'Id ul-Fi*t*r :

1) The Zakât of the 'Id ul-Fi*t*r is incumbent on every Muslim, man or woman, possessing means of his/her own over and above the indispensable daily requirements of food, lodging, clothing, etc., for him/herself and his/her dependents (1).

2) The Zakât of the 'Id ul-Fi*t*r must be satisfied by the person directly liable thereto, on his/her own behalf and on behalf of his/her dependents, i.e., of as many of his/her Muslim kinsfolk (including new born infants, i.e., born as late as on the night of

(1) Imâm Shâf'î holds the view that payment of the «Fitrat» is incumbent on all persons possessing one day's food for themselves and their family. But this view cannot be upheld; because it would cause undue stress on the poor whose means suffice only for their own immediate needs.

the 'Id ul-Fi*t*r [1], and minor children), Muslim friends and/or Muslim unsalaried servants [2], as are totally dependent on him/her for their livelihood.

3) The Zakât of the 'Id ul-Fi*t*r becomes compulsory on or, if they be dependents, on behalf of all Muslims newly converted to the Faith (including all those who have converted to Islam, at the latest, on the night of the 'Id) [1].

4) Responsibility for satisfying the Zakât of the 'Id ul-Fi*t*r on behalf of minor children devolves on the father [3].

5) The Zakât of the 'Id ul-Fi*t*r of orphaned children possessing no wealth of their own, is to be satisfied on their behalf by the person (man or woman) on whom they depend for their livelihood [4].

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(1) This is the Hanafite view to which Imâm Shâf'î does not agree. The latter opines that no Zakât is due for the 'Id ul-Fitr on behalf of new born infants or of new converts.

As the date of the 'Id ul-Fitr depends on the lunar calendar, the night of the 'Id is the period between sunset of the last day of the month of Ramadân and the dawn of the first day of the month of Shawwâl.

(2) Legally, no «Fitrat» is due on behalf of salaried servants by the very fact that, as salaried persons, they are masters of their own means of subsistence and are therefore responsible for their own «Fitrat».

(3) Imâms Abû Hanîfa and Abû Yûsuf lay down that if a child owns wealth in its own right, be it an orphan or not, the «Fitrat» should be paid out of the same. Yet, considering that the material subsistence of the child is the absolute responsibility of the father so long as it is a minor, there is no reason why the father should be exempted from satisfying the «Fitrat» on his child's behalf, even if the child in question is the legitimate owner of wealth inherited, for instance, from its mother.

Where the regular Zakât is concerned, the position is entirely different, as the regular Zakât attaches to the taxable wealth by virtue of the legitimate owner's profession of Islam, while the Zakât of the 'Id ul-Fitr attaches to the person him/herself also by virtue of his/her profession of Islam.

On the other hand, the father bears no responsibility of satisfying the «Fitrat» on behalf of his adult children, except if they, being resourceless, are dependent on him for their livelihood.

(4) The majority of the 'ulemâ, including Imâm Mâlik, agree that the «Fitrat» must be given on behalf of orphans as well as of other children. Imâms Muhammad and Zafar, however, maintain that, whether they be poor or wealthy, the «Fitrat» need not be paid on behalf of orphans.

6) The Zakât of the 'Id ul-Fi*t*r of orphaned children possessing wealth of their own, is to be satisfied out of the said wealth by the person responsible for the administration thereof.

7) Women possessing wealth in their own right, be they married or unmarried, are personally responsible for satisfying the Zakât of the 'Id ul-Fitr on their own behalf and on behalf of their dependents (1).

8) Should a married woman possess no wealth of her own, the Zakât of the 'Id ul-Fi*t*r must be satisfied on her behalf by her husband as, under the circumstances, she would be totally dependent on him.

9) Should an unmarried woman possess no wealth of her own, the Zakât of the 'Id ul-Fi*t*r must be satisfied on her behalf by her father (i.e., the person primarily responsible for her livelihood) on condition that he be a person of sufficient means to himself be liable to pay the Zakât of the 'Id ul-Fi*t*r. Should her father be dead, the person on whom she is dependent must satisfy the Zakât of the 'Id ul-Fi*t*r on her behalf. (See Rule 2).

10) Satisfaction of the Zakât of the 'Id ul-Fi*t*r on behalf of dependent insane persons is not compulsory.

11) The Zakât of the 'Id ul-Fi*t*r of insane persons possessing wealth of their own is to be satisfied out of the said wealth by the person responsible for the administration thereof.

12) The obligation to satisfy the Zakât of the 'Id ul-Fi*t*r lapses in respect of every economically independent Muslim whose straitened means are just sufficient for his/her lawful daily necessities and those of his/her dependents.

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(1) Imâms Shâf'î, Mâlik and Ghazzâlî are of the opinion that the «Fitrat» of a married woman must be paid by her husband, who is legally responsible for all her expenses. Imâm Ghazzâlî holds that even if she possesses wealth in her own right, and, of her own accord, gives her «Fitrat» out of the same, her husband must nevertheless also satisfy it on her behalf out of their common wealth, she being one of his dependents. On the other hand, Imâm Abû Hanîfa considers the dependence of the wife as **imperfect** and, therefore, does not deem the husband responsible for her «Fitrat», his responsibility being limited to providing the general necessities of the household so long as the marriage bond subsists.

13) The obligation to satisfy the Zakât of the 'Id ul-Fi*t*r lapses in respect of all Muslims liable thereto, whose death occurs before the expiry of the established time limit for payment, i.e., before sunrise of the 'Id day (1).

14) The obligation to satisfy the Zakât of the 'Id ul-Fi*t*r is incumbent on, or on behalf of, Muslims only. Hence the Zakât of the 'Id ul-Fi*t*r is not to be paid on behalf of non-Muslim kinsfolk, non-Muslim protected persons, or non-Muslim unsalaried servants, even though they be dependents of a Muslim liable thereto (2).

15) In no case is the Zakât of the 'Id ul-Fi*t*r due on behalf of unborn children (3).

16) As a rule, the Zakât of the 'Id ul-Fi*t*r should be satisfied

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(1) This is the Hanafite view. But, in the opinion of Imâm Shâf'î, as the 'Id ul-Fitr would have already begun (as from sunset of the last day of Ramadân, the obligation to satisfy the «Fitrat» must stand even in the event of the death of the person concerned before the sunrise of the 'Id day. However, as the time limit for the payment is at sunrise on the 'Id day, the Hanafite view that when death occurs prior thereto the obligation of the «Fitrat» lapses, is in conformity with the principles of the Law of Zakât.

(2) Imâms Mâlik, Shâf'î, Ahmad ben Hanbal, Ghazzâlî and Abû Thor agree that no «Fitrat» is due on behalf of non-Muslim dependents. On the other hand, Imâms An-Nakha'î, Abû Hanîfa and their followers maintain that if the non-Muslims are dependents of a Muslim, the «Fi*t*rat» must compulsorily be paid on their behalf, the same as on behalf of Muslim dependents. 'Umar ben 'Abd ul-Azîz, the Umayyade Caliph, is said to have adhered to this view, which finds support only in certain unreliable «Ahadîth» attributed to Abû Huraîra and to Ibn Abbâs, and according to which the Prophet (ص) would have commanded the Muslims to pay the «Fitrat» on behalf of Christian, Jewish and Magian slaves. Needless to say that such a ruling is inconsistent with the fundamental principles of the Law of Islam and cannot be admitted as having been laid down by the Prophet (ص).

(3) The majority of the 'ulemâ are agreed on this point. Yet some jurists, on the plea that the Caliph 'Uthmân used to give the «Fitrat» on behalf of unborn children, have advanced the following argument in favour of so doing, namely that if the foetus is at least 120 days old by sunrise of the 'Id day, payment of the «Fitrat» on its behalf is incumbent on the prospective parent.

Besides having no legal basis, this view betrays ignorance of the physiological functions involved. It is a scientific fact that no expectant mother can know for certain the exact age, in days, of her unborn child, for the excellent reason that the **exact** moment of conception is a secret known to God alone. Secondly, as regards the fixing of a minimum existence of 120 days, a foetus of 119 days can hardly be said to be less alive than one of 121 days.

in the shape of food reasonably preservable by its nature, and preferably of whatever kind constitutes the staple food of the country's inhabitants or of the person involved. The particular kind to be offered as «Fi*t*rat» must necessarily depend on the means of each individual «Fi*t*rat»-giver.

فَاتَّقُوا اللهَ مَا اسْتَطَعْتُمْ وَاسْمَعُوا وَأَطِيعُوا وَأَنْفِقُوا خَيْرًا لِأَنْفُسِكُمْ وَمَنْ يُوقَ شُحَّ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ • (٦٤ : ١٧)

« So keep your duty to Allah as best you can, and listen, and obey, and spend; that is better for your souls. And whoso is saved from his own greed, such are the successful.» (LXIV : 17).

17) The various kinds of food acceptable in payment of the Zakât of the 'Id ul-Fi*t*r include (1) : cereals in grain or flour (i.e., any variety of wheat, barley, maize, millet, rye, oats, rice, etc.); pulse (i.e., any variety of lentils, beans, chick-peas (gram), etc.); dried fruit (i.e., any variety of dates, raisins, prunes, dried apricots, dried figs, etc.); fresh bread (i.e., baked not earlier than the late afternoon of the last day of the month of Rama*d*ân); farinaceous foods (i.e., any variety of potatoes, cassava root (tapioca), sago, etc.); nuts (i.e., any variety of walnuts, filberts (cultivated hazelnuts), pistachios, almonds, coconuts, peanuts, pecan nuts, etc.); sugar; edible oil (olive, sesame, castor, arachis, sarson, etc.); cheese (2); ghi (3) (i.e., «saman» or clarified butter).

18) When the Zakât of the 'Id ul-Fi*t*r is paid in kind, foodstuffs of average good quality must be given.

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(1) Imâm Mâlik considers nine different kinds of food as lawful «Fitrat», namely : wheat, barley, «sult» (a kind of barley), maize, millet, rice, dates, raisins, and cheese.

(2) Some jurists maintain that cheese should not be accepted in payment of the «Fitrat» as it does not belong to the category of food taxable for the regular Zakât. However this objection does not apply because, where the «Fitrat» is concerned, it is not the food that is being subject to Zakât, but the person of the «Fitrat»-giver. Moreover, cheese, a highly nourishing and reasonably preservable food, is one of the kinds that Abû Sa'îd al-Khudrî mentions as having been accepted as lawful «Fitrat» in the Prophet's lifetime.

(3) Ghi («saman» or clarified butter) being one of the essential articles of food, there should be no objection to its being offered as «Fitrat».

In conformity with the Injunction contained in the following Quranic verse, never and in no case may foodstuffs of bad quality be offered in payment of the Zakât of the 'Id ul-Fi*t*r.

يَا أيُّهَا الَّذِينَ آمَنُوا أنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أخْرَجْنَا لَكُمْ مِنَ الأرْضِ وَلاَ تَيَمَّمُوا الخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إلاَّ أنْ تُغْمِضُوا فِيهِ واعْلَمُوا أنَّ اللهَ غَنِيٌّ حَمِيدٌ • (٢ : ٢٦٧)

«O you who believe ! Spend of the good things which you have earned and of what We bring forth from the earth for you, and seek not the bad (with intent) to spend thereof (in charity) when you would not take it for yourselves save with disdain; and know that Allah is Absolute, Owner of Praise.» (II : 267).

19) The standard quantity of foodstuffs to be given by and on behalf of each person liable thereto, in payment of the Zakât of the 'Id ul-Fi*t*r, is one full *sa'a* (5 $^{3}/_{5}$ seers or 5 kgs. 225) of whichever kind is offered.

20) It is generally agreed that under certain circumstances as, for instance, where city people are concerned, the payment of the Zakât of the 'Id ul-Fi*t*r in cash money instead of in kind may prove to be more convenient both for the «Fi*t*rat»-giver and the beneficiaries thereof (1).

Accordingly, whenever the prevailing circumstances, or the personal circumstances of the individual involved, are such as to justify the Zakât of the 'Id ul-Fi*t*r being satisfied in cash (i.e., local currency) instead of in kind, the sum in question must represent the *exact prevailing value* of whichever kind and whatever quantity thereof would otherwise have been offered (i.e., one full *sa'a* per person liable thereto).

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(1) Imâm Abû Yûsuf even prefers that the «Fitrat» be paid in cash money or in the shape of flour, in order that it be available for immediate use by the beneficiaries. Undoubtedly, for city people, who naturally do not have the same facilities as do rural people for milling grain, this mode of payment is more convenient.

21) If the lawful means of a person liable to satisfy the Zakât of the 'Id ul-Fi*t*r are such as to render it difficult for him/her to do so on behalf of each and every one of his/her dependents, the same must be satisfied compulsorily only on behalf of as many of them as the available means will comfortably allow without causing embarrassment to the «Fi*t*rat»-giver, and without interfering with the lawful daily requirements of any member of the household.

Imâm Ghazzâlî, the eminent propounder of this rule, suggests that in such a case lots may be drawn to decide on whose behalf the «Fi*t*rat« will be given; but always in the following sequence :

Firstly, on behalf of the minor children of the «Fi*t*rat»-giver; secondly, if the available means are still sufficient, the «Fi*t*rat» must be given on behalf of the «Fi*t*rat»-giver's wife if she possesses no wealth in her own right; thirdly, if the available means still suffice, lots may be drawn on behalf of unsalaried servants; thereafter, if there still be means available, lots may be drawn on behalf of other dependents (kinsfolk and/or friends).

22) As laid down by the Prophet (ص) , the Zakât of the 'Id ul-Fi*t*r must be satisfied, at the latest, by sunrise of the 'Id day, before the people go forth to the 'Id prayer.

But in order to allow the Zakât-officials ample time and opportunity for estimating the quantity and kinds available and for arranging the distribution thereof fairly and equitably among the beneficiaries,-the Zakât of the 'Id ul-Fi*t*r should be handed over to the officials in charge of collecting it reasonably ahead of the established time limit. Thus, at the convenience of the person involved, the «Fi*t*rat» may be lawfully discharged at any time during the month of Rama*d*ân.

23) Should, for any justifiable reason, the payment of the Zakât of the 'Id ul-Fi*t*r be delayed beyond the established time limit of sunrise on the 'Id day, the obligation to effectuate the discharge thereof stands and must be fulfilled as early as possible.

24) In order that the aim of the «Fi*t*rat» be satisfactorily and adequately fulfilled, the actual distribution thereof should not be delayed beyond the morning of the 'Id day, that is, directly after the 'Id prayer.

In fact, whenever circumstances so require, as for instance when the 'Id ul-Fi*t*r falls during the short days of winter, the distribution of the «Fi*t*rat» may conveniently take place on the last day of the month of Rama*d*ân.

25) Unless definite proof exists that a person liable to satisfy the Zakât of the 'Id ul-Fi*t*r is guilty of dishonest conduct, full trust is to rest in his/her loyalty in the fulfilment of this duty to society.

26) Should a person liable to satisfy the Zakât of the 'Id ul-Fi*t*r openly refuse to do so, or should it be definitely proven that the person in question has maliciously failed to pay the full amount required on his/her own behalf and/or on behalf of his/her dependents, the guilty person is liable to forcible discharge of his/her due.

The Exchange of Taxable Wealth.

The very object of the Law of Zakât requires that should taxable wealth belonging to one legal genus be exchanged for or, in other words, given in payment of taxable wealth belonging to the same or to another genus, the computation of the year's term of possession will be, according to the amount and the nature of the genera exchanged, either begun or broken by the transaction, or will continue and be applied to the newly acquired wealth. This principle, the purpose of which is both to regulate the bartering of taxable wealth and to discourage any dishonest breaking of the computation of the year's term of possession in order to evade the payment of Zakât dues, is duly recognized by the Mâlikite and the Shâfiite Schools of Law (1).

The rules governing the exchange of taxable wealth must make provision for transactions involving wealth constituting personal property and for transactions involving wealth invested in trade.

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(1) The Hanafite School, however, maintains that an exchange of taxable wealth effectively dissolves the Nisâb of the wealth disposed of and breaks the computation of the year's term of possession relating thereto, and so a new computation of a year's term of possession must be reckoned for the wealth newly acquired, which will be subject to Zakât one year after the date of the transaction, if it be still in the possession of its legitimate owner.

Rules Governing the Exchange of Taxable Wealth Constituting Personal Property (i.e., of wealth not originally intended for trade):

1) When an amount of taxable wealth equal to or above the Nisâb established for its kind and subject to the rule requiring possession thereof for a period of one full year as a condition warranting taxation for Zakât, is exchanged for taxable wealth belonging to another genus that is not subject to this rule (for instance, 40 or more sheep exchanged for agricultural produce), or that, being subject thereto, falls short of the Nisâb established for its kind (for instance, 40 or more sheep exchanged for 4 camels, or Rs. 1000/- exchanged for 5 cows), the computation of the year's term of possession relating to the wealth disposed of is effectively broken if the exchange has taken place at any time *before* the completion thereof. But if the exchange has taken place *at the time of* or *after* the falling due of Zakât, and before its discharge, the obligation to pay the Zakât due is not affected by the fact of the exchange and must be fulfilled.

2) When, at any time, an amount of taxable wealth that falls short of the Nisâb established for its kind, whether or not it be subject to the rule requiring a year's term of possession, is exchanged for taxable wealth belonging to another genus that is subject to this rule and that is equal to or above the Nisâb established for its kind (for instance, 4 camels, or 4 camel-loads of agricultural produce, exchanged for 40 or more sheep or for a taxable amount of silver, gold, currency notes or articles of trade, etc., or again, 5 oxen exchanged for Rs. 1000/-), a computation of a year's term of possession must begin for the newly acquired wealth as from the date on which the exchange takes place.

Then if, following the exchange, the newly acquired wealth remains in the possession of its legitimate owner for a period of one full year, the Zakât thereof will fall due at the completion of the term and, thereafter, at the completion of each subsequent term of ownership.

3) If a person wishes to exchange taxable agricultural produce (not expressly intended as an article of trade) in a quantity equal to or above the Nisâb, for taxable wealth that is subject to the rule requiring a year's term of possession as a condition warranting taxation for Zakât (for instance, agricultural produce ex-

changed for a taxable number of domestic animals or for a taxable amount of silver, gold, currency notes or articles of trade, etc.), he/she may only do so *after* discharging the 10% or 5% Zakât of the produce in question.

This rule likewise holds good for : a) wealth constituting a treasure trove, which may only be disposed of *after* the 20% Zakât due has been paid; and b) the produce of silver and gold mines, which likewise may only be disposed of *after* the initial 20% or $2\frac{1}{2}$% of whatever amount of precious metal is extracted from the mine has been discharged or set aside for payment (1).

Once the exchange has taken place, a computation of a year's term of possession must begin for the newly acquired wealth, Zakât falling due at the completion of the term and, thereafter, at the completion of each subsequent term of ownership.

4) When, *before* the Zakât thereof falls due, an amount of taxable wealth equal to or above the Nisâb established for its kind and subject to the rule requiring a year's term of possession as a condition warranting taxation for Zakât, is exchanged for taxable wealth likewise subject to this rule and likewise equal to or above the Nisâb established for its kind (for instance, Rs. 6000/- exchanged for 30 oxen), the computation of the year's term of possession relating to the wealth disposed of *is not broken* and must be applied to the newly acquired wealth which will be subject to taxation for Zakât at the completion of the said term, in conformity with the rate of payment, taxable limits and general rules established for its kind. (For instance, a taxable number of sheep or oxen exchanged for a taxable number of camels or for a taxable amount of silver, naturally implies that the Zakât is to be paid in conformity with the rates of payment, taxable limits and general rules established for camels or for silver).

In such a case, the exchange is considered as one of taxable *value* for taxable *value* and so the newly acquired taxable wealth, having been received in exchange for taxable wealth for which a computation of a year's term of possession would already have begun, is considered in the same light as though it had actually

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(1) See Rule 9 of those governing the Zakât of the produce of silver and gold mines, p. 111.

remained in the possession of its new owner for the full period of one year (1).

Therefore, should the person effectuating the exchange possess other wealth belonging to the same genus as the wealth newly acquired and bearing a computation of a year's term of possession which begins and ends on the same dates as the computation relating to the wealth disposed of, the newly acquired wealth must be added thereto to form a taxable whole.

But should the person effectuating the exchange possess other wealth belonging to the same genus as the wealth newly acquired but bearing a computation of a year's term of possession which begins and ends on different dates than the computation relating to the wealth disposed of, the same will remain separate and the newly acquired wealth will take up and complete the computation of a year's term of possession relating to the wealth for which it was actually received in exchange.

5) When the wealth exchanged is of one and the same kind or genus, according to whether the exchange is of equal numbers, quantities or values, or entails an increase or decrease in numbers, quantities or values, certain peculiarities will arise. For example :

a) When the wealth exchanged consists of an exact taxable number of domestic animals belonging to one and the same genus (as, for instance, 40 oxen of one breed exchanged for 40 oxen of a different breed), or of a taxable amount of silver or gold in one form exchanged for the exact weight thereof in another form (as, for instance, silver or gold ingots exchanged for silver or gold foil) or for its exact value in currency notes, the computation of the year's term of possession relating to the wealth disposed of *is not broken* and the transaction is subject to Rule 4 as explained above.

b) When a taxable number of domestic animals of one breed (there being no other animals belonging to the same genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the animals disposed of) are exchanged for a taxable number of a *more valuable breed,* which naturally implies giving a greater number

(1) See Rule 4d of those governing the Zakât of taxable domestic animals, p. 167.

of the former breed in exchange for a lesser number of the latter breed (as, for instance, 40 oxen of a less valuable breed exchanged for 30 oxen of a more valuable breed), the computation of a year's term of possession relating to the animals disposed of *is not broken* and, as according to the Law of Zakât it is the number of heads that is taken into consideration and not the value of the animals under taxation, the Zakât, when due, must of course be reckoned in consideration of the smaller number of newly acquired animals (in this case, of the 30 oxen).

Likewise, when the exchange is of a taxable quantity of unwrought silver and/or gold (in ingots or in coin, etc.) and/or of a taxable value in currency notes (1) (there being no other wealth belonging to the same legal genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the wealth disposed of) for artistic objects of silver or of gold containing a taxable amount of precious metal which, in view of the fact that the value of the newly acquired wealth would include the price of the artistic work, naturally implies giving a larger quantity of silver and/or gold and/or currency notes in exchange for a smaller quantity of precious metal contained in the said objects, the computation of the year's term of possession relating to the wealth disposed of *is not broken* and the Zakât when due must, of course, be reckoned in consideration of the smaller quantity of silver or gold represented by the newly acquired wealth.

c) When, on the contrary, a taxable number of domestic animals of one breed (there being no other animals belonging to the same genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the animals disposed of) is exchanged for a taxable number of a *less valuable* breed, which implies that a lesser number of the former breed be given in exchange for a greater number of the latter breed (as, for instance, 30 oxen of a more valuable breed exchanged for 40 oxen of a less valuable breed), the computation of the year's term of possession relating to the number of animals disposed of *is not broken* and, consequently, the Zakât,

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(1) See Rule 8 of those governing the Zakât of silver and gold, p. 86, and Rule 2 of those governing the Zakât of currency notes, p. 93.

when due, must be reckoned only in consideration of that number of newly acquired animals which is equal to the number of animals disposed of.

In conformity with Rule 2 of those governing plural computations, if the extra animals newly acquired are by themselves of a non-taxable number, they will, according to the circumstances, either remain Zakât-free until such a time as taxability is attained through the further acquisition of animals belonging to the same genus or, as laid down in Rule 4i of those governing the Zakât of domestic animals, be added to the remainder (after the discharge of Zakât dues and the addition of any other animals representing the apparent increase) of the first group, by order of dates, to complete a year's term in the possession of the legitimate owner thereof.

On the other hand, in conformity with Rule 3 of those governing plural computations and as implied by the trimestrial method of taxation, if the extra animals newly acquired are by themselves of a taxable number, they will directly bear a computation of a year's term of possession starting as from the three month period within which the transaction takes place.

Likewise when — there being no other wealth belonging to the same legal genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the wealth disposed of — artistic objects of wrought silver and/or gold containing a taxable quantity of precious metal are exchanged for a taxable quantity of unwrought silver and/or gold (in coin, bars, etc.), which naturally implies exchanging a smaller quantity of (wrought) precious metal for a larger quantity of (unwrought) precious metal, and/or for a taxable value in currency notes (which implies giving a smaller quantity of precious metal in exchange for a larger taxable value that includes the price of the artistic work), the computation of the year's term of possession relating to the wealth disposed of *is not broken* and the Zakât, when due, must be reckoned only in consideration of that quantity of precious metal and/or value in currency notes newly acquired which is equal to the quantity or value of the precious metal disposed of.

In conformity with Rule 2 of those governing plural computations, if the extra quantity of precious metal and/or value in

currency notes is by itself of a non-taxable amount, it will, according to the circumstances, either remain Zakât-free until such a time as taxability is attained through the further acquisition of wealth belonging to the same genus or be added to the remainder (after the discharge of Zakât dues) of the first amount, by order of dates, to complete a year's term in the possession of the legitimate owner thereof.

If the extra quantity of precious metal and/or value in currency notes is by itself of a taxable amount, it will, in conformity with Rule 3 of those governing plural computations, directly bear a computation of a year's term of possession beginning as from the date of the transaction.

d) When a taxable number of domestic animals of one breed (there being no other animals belonging to the same genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the animals disposed of) are exchanged for a number of heads of a more valuable breed that *falls short* of the Nisâb established for the kind involved (as, for instance, 30 oxen of a less valuable breed exchanged for 20 oxen of a more valuable bréed), the computation of the year's term of possession relating to the animals disposed of is *effectively broken* and, consequently, the obligation of Zakât lapses.

Similarly, when a taxable quantity of unwrought silver and/or gold, and/or a taxable value in currency notes (there being no other wealth belonging to the same legal genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the wealth disposed of) is exchanged for artistic objects of wrought silver and/or gold containing a quantity of precious metal (i.e., the value of the artistic work excluded) that falls short of the Nisâb established therefor, the computation of the year's term of possession relating to the wealth disposed of is *effectively broken* and, consequently, the obligation of Zakât lapses.

e) When a non-taxable number of domestic animals of one breed (there being no other animals belonging to the same genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the animals disposed of) are exchanged for animals of a *less*

valuable breed that are in number equal to or above the Nisâb established for their kind (as, for instance, 20 oxen of a more valuable breed exchanged for 30 oxen of a less valuable breed), a computation of a year's term of possession must begin for the newly acquired animals as from the three month period within which the transaction takes place.

Similarly, when wrought silver or gold (artistic objects, etc.) containing a non-taxable quantity of precious metal (there being no other wealth belonging to the same legal genus in the possession of the person who effectuates the exchange and sharing the same computation of a year's term of possession relating to the wealth disposed of) is exchanged for a taxable quantity of unwrought silver and/or gold, and/or for a taxable value in currency notes, a computation of a year's term of possession must begin for the newly acquired wealth as from the date of the transaction.

f) Contrary to what is the case with regard to the exchange of taxable wealth belonging to different genera, when the exchange of taxable wealth belonging to one and the same genus is partial, i.e., when the wealth disposed of is taken from a taxable whole already under a computation of a year's term of possession, the computation *is not broken* and must continue in relation to that amount of newly acquired wealth which is *equal to* or *less in number* (1), *quantity, or value* (2) than the wealth disposed of, regardless of whether the amounts exchanged are by themselves individually equal to or above the Nisâb established for the kind involved or whether they fall short thereof.

For instance, if 40 sheep are taken from a flock of, say, 300 head bearing one computation of a year's term of possession, and given in exchange for 30 sheep of a more valuable breed, the latter, although not by themselves of a taxable number, will be included in the flock which will, as a result of the exchange, be reduced to 290 sheep and subject to taxation for Zakât accordingly.

Or if Rs. 300/- are taken from a taxable sum of Rs. 1000/- bearing one computation of a year's term of possession, and given

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(1) See also Rule 4f of those governing the Zakât of domestic animals, p. 168.

(2) See also Rule 12f of those governing the Zakât of pasturing horses, p. 191.

in exchange for a quantity of wrought silver or gold worth, say, Rs. 250/- (i.e., value of the artistic work excluded), the latter value will form a taxable whole together with the remaining Rs. 700/-, and the total value thereof (Rs. 950/-) will be subject to taxation for Zakât accordingly.

When the exchange of parts of amounts of taxable wealth belonging to one and the same genus is effectuated, in which a smaller amount of wealth is given in exchange for a larger amount, the same principle as laid down in Rule 5c must be applied. In other words, in conformity with Rule 2 of those governing plural computations, if the extra wealth newly acquired is by itself of a non-taxable amount, it will, according to the circumstances, either remain Zakât-free until such a time as taxability is attained through the further acquisition of wealth belonging to the kind or legal genus involved, or be added to the remainder (after the discharge of Zakât dues) of the first amount, by order of dates, to complete a year's term in the possession of the legitimate owner thereof.

On the other hand, in conformity with Rule 3 of those governing plural computations, if the extra wealth newly acquired is by itself of a taxable amount, it will directly bear a computation of a year's term of possession beginning as from the date of the transaction or, where domestic animals are concerned, as from the three month period within which the transaction takes place.

For instance, if 20 oxen are taken from a herd of, say, 100 head bearing one computation of a year's term of possession, and given in exchange for 25 oxen of a less valuable breed, only 20 head of the latter will be included in the herd, the taxability of which will thus remain unchanged, and the extra 5 head will temporarily remain Zakât-free and be added to the first group, by order of dates, to complete a year's term in the possession of the legitimate owner thereof.

Or if, for instance, wrought silver or gold representing a content of precious metal worth Rs. 5000/- is taken from a taxable whole of, say, Rs. 10,000/- bearing one computation of a year's term of possession, and is given in exchange for Rs. 7000/- in currency notes, which sum would include the price of the artistic work, only Rs. 5000/- of the latter value will be included in the taxable whole, the taxability of which will thus remain unchanged, and a separate

computation of a year's term of possession will begin for the extra Rs. 2000/-, as from the date of the transaction.

6) (1) In conformity with Rule 3g of those governing plural computations, taxable wealth that is equal to or above the Nisâb established for its kind and that is acquired in exchange for taxable wealth belonging to the same or to a different genus and is constituted by two or more amounts involving as many computations of a year's term of possession, must take up proportionately and complete the respective computations of a year's term of possession relating to the said amounts (i.e., of the wealth disposed of). The said amounts must be drawn by order of dates, starting with the amount for which a year's term of possession has most recently begun. (See p. 25).

7) When an exchange of taxable wealth reduces the amount remaining in the possession of the legitimate owner thereof to within a Zakât-free interval, the Zakât due must be reckoned on the lower taxable limit as established for the genus involved.

For instance, should a flock of 121 sheep be reduced to, say, 105 sheep as a result of an exchange (i.e., to within the Zakât-free interval between 40 and 120 inclusive), the Zakât would be reckoned on the lower taxable limit of 40 sheep.

8) When the wealth exchanged is taken exclusively from that part of a taxable whole which falls within a Zakât-free interval and, where an exchange of taxable wealth belonging to one and the same genus is concerned, this does not result in the remaining wealth being reduced to below the taxable limit standing at the time, as the taxability of the said wealth is not directly affected by the exchange, the amount to be paid as Zakât will naturally remain unchanged.

9) When an exchange of taxable wealth reduces the amount remaining in the possession of the legitimate owner thereof to below the Nisâb established for the genus involved, the obligation of Zakât lapses.

10) Should it be proved that an exchange of taxable wealth

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(1) See Rule 4e of those governing the Zakât of domestic animals, p. 168, and Rule 12e of those governing the Zakât of pasturing horses, p. 191.

has been effectuated with malicious intent, i.e., in such a manner as to cause the Zakât to lapse so as to evade the payment of dues, which event may be suspected when the said exchange has taken place less than one month before the end of the computation of the year's term of possession relating to the wealth in question, the guilty person is liable to punishment and, in any case, Zakât will be forcibly levied in proportion with what would have fallen due had the year's term of possession been normally completed.

Rules governing the Exchange of Taxable Wealth invested in Trade :

1) [1] When the total value of a trader's capital (cash and stock) bearing one computation of a year's term of possession is equal to or above the Nisâb, the said computation is in no way affected by the exchange of money for articles of trade and vice-versa, or of articles of trade for other articles of trade, whether the individual exchanges be of taxable or of non-taxable amounts. Thus, the wealth (i.e., the money or the value of the articles of trade) purchased or received in payment (profit excluded) automatically takes up the computation of the year's term of possession relating to the capital of which the wealth sold or given in payment formed an integrant part.

2) [2] When articles of trade, the value of which is equal to or above the Nisâb, are acquired a) in exchange for non-taxable wealth not previously intended for trade, b) in exchange for taxable wealth not previously intended for trade, which is not subject to the rule requiring a year's term of possession as an essential condition warranting taxation for Zakât (such as agricultural, apicultural and sericultural produce), or c) in exchange for taxable wealth which is subject to this rule, but which falls short of the Nisâb established for the kind or genus involved, a computation of a year's term of possession is to begin as from the date of acquisition.

Following the sale of such articles, the current computation of a year's term of possession will be applied to the *cost value* thereof (excluding the profit realized) whether it be in cash or in taxable kind.

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(1) See Rule 15 of those governing the Zakât of trade, p. 140.

(2) See Rule 27 of those governing the Zakât of trade, p. 144.

3) When articles of trade, the value of which is equal to or above the Nisâb, are acquired in exchange for taxable wealth in kind or cash money (silver, gold, or currency notes, etc.) not previously intended for trade, but the value of which is equal to or above the Nisâb established for the kind or genus involved, the computation of the year's term of possession relating to the wealth in question *is not broken* and must be applied to the newly acquired articles of trade.

4) In conformity with, and as a consequence of, Rule 3g of those governing plural computations, when articles of trade are acquired in exchange for money or for other articles of trade taken from two or more amounts constituting trade capital and bearing as many computations of a year's term of possession, the said computations are to be applied proportionately to the newly acquired articles of trade. Then, following the sale of the said articles, the current computations of a year's term of possession relating thereto will be applied proportionately to that part of the amount received in payment thereof — whether in cash or in taxable kind — which represents their *cost value* (excluding the profit realized).

5) Similarly, when articles of trade are taken from two or more amounts constituting trade capital bearing as many computations of a year's term of possession, and are disposed of at one time in exchange for money, that part of the amount received which represents the *cost value* of the articles in question (excluding the profit realized) must be added proportionately to the respective amounts of trade capital of which the articles disposed of formed integrant parts and bear, together therewith, the current computations of a year's term of possession relating thereto.

The Zakât of Collectively-owned Wealth (Partnerships).

In the light of the fundamental principles of the Law of Zakât, the fact of collective ownership or, in other words, of partnership has in itself no direct bearing on the method of taxation or on the actual taxability of each individual's share of taxable wealth.

Indeed, shared privilege and responsibility born of partnership by no means curtail the right of legitimate ownership enjoyed by each individual partner, nor does shared responsibility born of

partnership exempt or even lessen, in any way, the individual's responsibility for the right handling of his/her affairs. The fact of partnership implies rather a double responsibility for the parties thereto, each partner being in duty bound to audit both his/her own conduct and that of his/her associates in all matters relating to the protection of their common interests and to compel, if need be, the fulfilment of all the obligations that Quranic Law imposes on the Muslim in the sphere of social and economic activity. Thus, strictly speaking, the bearing that the Law of Zakât has on partnerships is moral rather than material.

As set forth in the Qurân, one of the first axioms for the harmonious functioning of organized human society is *consultation in all matters of common concern.*

فَمَا اُوتِيتُم مِنْ شَيْءٍ فَمَتَاعُ الحَيَاةِ الدُّنيَا وَمَا عِندَ اللهِ خَيْرٌ" وأبْقَى لِلَّذِينَ آمَنُوا وَعَلَى رَبِّهِمْ يَتَوَكَّلُونَ ••• ••• وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأقَامُوا الصَّلاةَ وَأمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ • (٤٢ : ٣٦ و ٣٨)

«Whatever you have been given is but a passing comfort of the life of the world, and that which Allah hath is better and more lasting for those who believe and put their trust in their Lord . . . And those who answer the call of their Lord and establish prayer, *and whose affairs are a matter of counsel,* and who spend of what We have bestowed on them.» (XLII : 36, 38).

Similarly, though the scope of action is naturally more limited than where society as a whole is concerned, one of the foremost, nay, indispensable requisites for the successful operation of a partnership is ready consultation between partners as to the proper management and furtherance of their common enterprise.

The simple rule laid down by the Prophet (ص) to govern legitimately owned collective wealth is in absolute conformity with the Quranic Principle and applies to each and every aspect of collective dealing and obligation, including that of Zakât.

حدّثنا محمّد بن عبد الله قال : حدّثني أبي قال : حدّثني ثمامة أنّ أنساً حدّثه أنّ أبا بكرٍ رضي الله عنه كتب له الّتي فرض رسول الله صلّى الله عليه وسلّم ، وما كان من خليطين ، فانّهما يتراجعان بينهما بالسوية • (بخاري)

« Muhammad ben 'Abd Allah has related unto us, saying : My father related unto me, saying : Thumâma related unto me that Anas told him that Abû Bakr (may Allah be pleased with him) wrote him concerning what the Prophet (ص) had laid down in regard to wealth belonging to two partners, declaring that the management thereof is a matter for them to settle between themselves in equity.»
(Imâm Bukhârî).

As generally understood by the jurists of the *H*anafite and Mâlikite Schools of Law, this rule implies that the taxability for Zakât of an amount of collectively-owned wealth must depend on the actual taxability of each partner's share thereof. That is to say that, on the one hand, to warrant at all taxation for Zakât each single share must, by itself, represent an amount of taxable wealth at least equal to the Nisâb established for the kind or genus involved; and that, on the other hand, each partner must bear the obligation of Zakât as warranted by that portion of the wealth in question of which he/she is the legitimate owner. Hence, should the share of any one partner fall short of the Nisâb, the same naturally remains Zakât-free, even though the collectively-owned wealth, as a whole, represents an amount or value far above the said Nisâb.

Contrary to this view which fully conforms to the fundamental principles of the Law of Zakât, such eminent jurists as Imâms Muhammad, Shâf'î, Ahmad ben *H*anbal, Ishâq, Ghazzâlî, Al-Laîth and Ibn *H*azm maintain that in the matter of collectively-owned wealth the share of one partner completes that of the other partner or partners and therefore the wealth in question must be considered as a single taxable whole, implying that *one* Nisâb entails the common obligation of *all* the partners. That, in ordinary partnerships, such a method of taxation is not only exaggerated but in fact incompatible with both the spirit and the letter of the Law of Zakât, will be better appreciated from the following examples given by the very jurists who uphold it :

a) According to Imâm Mu*h*ammad, if 5 people collectively own 5 camels, each one must pay a Zakât equal to the value of $^1/_5$ of a sheep. And if 10 people own 5 camels, each one must pay a Zakât equal to the value of $^1/_{10}$ of a sheep.

b) In the opinion of Imâm Shâf'î, if a flock of 40 sheep be owned collectively by 40 people, 1 sheep must be paid as Zakât. In other words, though each person would be the legitimate owner of 1 sheep only, he would nevertheless have to pay a Zakât equal to the value of $^1/_{40}$ of a sheep.

c) Imâm Ghazzâlî lays down that when, for instance, the total amount of collectively-owned agricultural produce belonging to a given kind is at least equal to the Nisâb of 5 camel-loads, Zakât must be paid even though the respective shares of the various partners be individually of an amount that falls short thereof.

d) Imâm Ibn *H*azm gives as an example that if 200 people collectively own a sum of 200 dirhems, each one being the legitimate owner of 1 single dirhem, they must pay a collective Zakât of 5 dirhems.

Another oddity resulting from this method of taxation is that the Zakât of a given amount of collectively-owned wealth could be either more or less than what would normally be due. For instance, if two partners were to own together a flock of 202 sheep, each one being the legitimate owner of 101 head, each would have to pay a Zakât of $1\frac{1}{2}$ sheep, the Zakât warranted by 202 sheep being 3 head. Whereas individually the share of each partner (101 sheep) would normally carry a Zakât of 1 sheep only.

On the other hand, if a flock of 120 sheep were collectively owned by 2, or 3, persons, each one would have to pay a Zakât equal to the value of $^1/_2$, or $^1/_3$, of a sheep, the Zakât warranted by 120 sheep being 1 head. Whereas if individually considered, the share of each partner, being of at least 40 sheep (i.e., equal to the Nisâb), would warrant a Zakât of 1 full sheep, the total Zakât due on the collectively-owned flock of 120 head amounting to 3 head.

Now, as correctly argued by the *H*anafite School of Law, the fact that the various Nisâbs have been established *per legitimate owner* forbids the imposition of Zakât on whatever falls short thereof. Moreover, the fact that in ordinary partnerships the one partner

has no *legal right* over the share of the other partner or partners, clearly proves that each individual share does not and cannot form an *integrant part* of the collectively-owned wealth and so the latter may not lawfully be subject to Zakât as a whole. Indeed, the very significance of the Nisâb compels the method of individual taxation.

To be exact, an ordinary partnership between two or more persons is necessarily of a limited nature, implying from the material and legal points of view a limited relationship between the partners in question. Only from the moral point of view, i.e., as regards *responsibility,* does their relationship become absolute.

The sole exception to this rule is afforded by the economic partnership constituted by the Islamic marriage bond, which implies that, at the time of marriage, both the husband's existing wealth and his subsequent earnings become the shared or common property of the two spouses and, thus, the *shared responsibility* of them both. Even more than in the case of ordinary partnerships, it is the duty of the two partners (the husband and the wife) to audit both their own conduct and that of each other in all matters relating to the protection of their common interests and the fulfilment of their sacred obligations. But the very unifying nature of the relationship established between the two spouses makes that, contrary to what is the case in ordinary partnerships, the economic partnership constituted by the Islamic marriage bond is and remains *absolute* so long as the marriage bond itself subsists actively, i.e., so long as it has not been dissolved by divorce or ceased to exist actively by the event of death.

Moreover, it must be borne in mind that although, from the purely legal point of view, the commonly-owned wealth in marriage partnerships is entirely contributed by the husband, the wife enjoys a clearly defined legal right over the same, contrary to what is the case in ordinary partnerships. On the other hand, whatever wealth the wife may possess in her own right remains entirely apart from the common wealth and is hers to manage and spend freely as she pleases, always of course within the limits of Quranic Law. For this very reason, when considering the taxability for Zakât of any part of the common wealth which, by its nature, is liable thereto, the same must be considered as a *single taxable whole,* one Nisâb entailing the joint obligation of both spouses.

Both in partnerships constituted by the marriage bond and

in ordinary partnerships, the Law of Zakât, in recognition of the moral responsibility incurred by the fusion of interests, allows that the payment of dues be effectuated by one partner on behalf of both or of all concerned. But with this difference that, in ordinary partnerships, the Zakât due from the collectively-owned wealth be reckoned in consideration of the amount or value represented by each partner's share, each partner being morally and legally bound to reimburse a value in cash or in kind, equal to the Zakât warranted by his/her own share, to the one having paid the full amount due.

Ordinary partnerships include a) partnerships resulting from inheritances, gifts, or business associations (including share-issuing companies) (خلطة الشيوع) ; and b) partnerships of convenience or «neighbourly» partnerships (خلطة الجوار) , in which the partners share, for instance, a common pasture, a common herdsman or shepherd, a common corral, pen, or stable, and/or a common watering place, or in which the partners share a common land, a common plough, a common ploughman, a common means of irrigation, etc.

The following rules governing the Zakât of collectively-owned wealth conform, where ordinary partnerships are concerned, to the individual method of taxation and, where partnerships constituted by the marriage bond are concerned, to the ordinary method of taxation.

Rules Governing the Zakât of Collectively-owned Wealth :

1) In conformity with the fundamental principles of the Law of Zakât, the combined taxability of collectively-owned wealth — such as silver, gold, currency notes, articles of trade, taxable domestic animals, taxable agricultural produce, apicultural and sericultural produce, etc. — is to be ascertained in consideration of the actual taxability of each partner's share thereof.

Thus, in order to warrant at all taxation for Zakât, each share must, by itself, represent an amount of taxable wealth at least equal to the Nisâb established for the kind or genus involved; and each partner must separately bear the obligation of Zakât as warranted by that portion of the wealth under taxation of which he/she is the legitimate owner. For example :

a) Should a flock of 40 sheep be collectively owned by two

or more persons, none of them would bear the obligation of Zakât as the share of each partner would fall short of the Nisâb established for sheep.

b) Should a flock of, say, 120 sheep be collectively owned by two persons, one of them being the legitimate owner of 39 head and the other the legitimate owner of 81 head, the first partner would bear no obligation of Zakât as his share would fall short of the Nisâb while the second partner's share would carry a Zakât of 1 sheep.

c) Should a flock of, say, 230 sheep be collectively owned by four persons, the first partner being the legitimate owner of 40 head, the second partner being the legitimate owner of 121 head, the third partner being the legitimate owner of 45 head and the fourth partner being the legitimate owner of only 24 head, the first partner would have to pay a Zakât of 1 sheep, the second partner would have to pay a Zakât of 2 sheep, the third partner would have to pay a Zakât of 1 sheep, and the fourth partner would not be liable to Zakât as his share would fall short of the Nisâb.

Thus, in this case, the collectively-owned flock of 230 sheep would carry a Zakât of 4 sheep.

Whereas a flock of 230 sheep belonging to one single person or constituting the common property of a married couple, would carry a Zakât of 2 sheep only.

d) Should a flock of 120 sheep be collectively owned by two persons, each partner being the legitimate owner of 60 head, each one's share would warrant a Zakât of 1 sheep, the total Zakât of the flock in question being thus of 2 sheep.

Were the same flock to be collectively owned by three persons, each partner being the legitimate owner of 40 head, each one's share would likewise warrant a Zakât of 1 sheep, thus bringing the Zakât of the flock in question to 3 sheep.

If the same flock were collectively owned by four persons, each partner being the legitimate owner of 30 head, none of them would bear the obligation of Zakât as each one's share would fall short of the Nisâb.

Whereas a flock of 120 sheep belonging to one single person or constituting the common property of a married couple, would

carry a Zakât of 1 sheep only.

e) Should a flock of 202 sheep be collectively owned by two persons, each partner being the legitimate owner of 101 head, each one's share would warrant a Zakât of 1 sheep, the total Zakât of the flock in question being thus 2 sheep.

Were the same flock collectively owned by three persons, each partner being the legitimate owner of not less than 40 head and not more than 120 head, each one's share would likewise warrant a Zakât of 1 sheep, thus bringing the Zakât of the flock in question to 3 sheep.

If the same flock were collectively owned by three persons, the first and second partners being each one the legitimate owner of 40 head, and the third partner being the legitimate owner of 122 head, the first and second partners would each have to pay a Zakât of 1 sheep, while the third partner would have to pay a Zakât of 2 sheep, the total Zakât of the flock in question being thus 4 sheep.

Whereas a flock of 202 sheep belonging to one person or constituting the common property of a married couple, would carry a Zakât of 3 sheep.

f) Should less than 10 camel-loads of agricultural produce belonging to one genus be collectively owned by two or more persons, each partner being the legitimate owner of half or less of the amount in question, none would bear the obligation of Zakât as each one's share would fall short of the Nisâb of 5 camel-loads.

Were the same amount of agricultural produce collectively owned by two or more persons, the first partner being the legitimate owner of at least 5 camel-loads thereof, and the other partner or partners the legitimate owner or owners of the remainder, only the first partner would bear the obligation of Zakât, as the share of the other partner or partners would fall short of the Nisâb.

Whereas the same amount of agricultural produce belonging to one person or constituting the common property of a married couple would as a whole be subject to Zakât as being over and above the Nisâb.

g) Should 10 camel-loads of agricultural produce belonging to one genus be collectively owned by two persons, each partner

being the legitimate owner of half of the amount (5 camel-loads), both would bear the obligation of Zakât on their respective shares.

h) If we take the average price of 5 camel-loads (1680 seers or 1568 kgs.) of wheat prevailing at the time to be Rs. 525/- — which sum would represent the Nisâb for silver, gold, currency notes, articles of trade, etc., and imply a taxable increase of every 105 rupees — the Zakât of a business firm with a standing capital of Rs. 6000/- and constituted by five partners whose respective shares are Rs. 400/-, Rs. 500/-, Rs. 1000/-, Rs. 2000/-, and Rs. 2100/-, would be as follows :

The first and second partners' shares (Rs. 400/- and Rs. 500/- respectively) would remain Zakât-free as both fall short of the Nisâb.

The third partner's share (Rs. 1000/-) would carry a Zakât of Rs. 23/10/- (reckoned on Rs. 945/-, the remaining Rs. 55/- falling within the Zakât-free interval between Rs. 945/- and Rs. 1050/-).

The fourth partner's share (Rs. 2000/-) would carry a Zakât of Rs. 49/14/- (reckoned on Rs. 1995/-, the remaining Rs. 5/- falling within the Zakât-free interval between Rs. 1995/- and Rs. 2100/-).

The fifth partner's share (Rs. 2100/-) would carry a Zakât of Rs. 52/8/- (reckoned on the same figure, no part thereof falling within a Zakât-free interval).

Thus, in the above-mentioned case, the total Zakât of the collectively-owned capital of Rs. 6000/- would be Rs. 126/-.

Whereas were the same amount to belong to one person or constitute the common wealth of a married couple and bear one computation of a year's term of possession, it would carry a Zakât of Rs. 149/10/- (reckoned on Rs. 5985/-, the remaining Rs. 15/- falling within the Zakât-free interval between Rs. 5985/- and Rs. 6090/-).

2) Partnerships resulting from inheritances or gifts automatically place both, or all, the partners' shares of the collectively-owned wealth under the same computation of a year's term of possession.

But, as a consequence of the rules governing the computation of the year's term of possession and of those governing the exchange

of taxable wealth, « neighbourly » partnerships and partnerships resulting from business associations or share-issuing companies more often than not imply that the individual amounts of wealth contributed by the various partners or shareholders are from the very start under different computations of a year's term of possession. In such a case, each partner's share of the collectively-owned wealth must continue to bear the computation of a year's term of possession already relating thereto, and the corresponding Zakât must be discharged on whichever date it normally falls due.

On the other hand, in conformity with Rule 3f of those governing plural computations, Rule 29 of those governing the Zakât of trade, Rule 4c of those governing the Zakât of domestic animals and Rule 12c of those governing the Zakât of pasturing horses, taxable wealth derived at one time, or within one period, from the shared profit realized through the partnership and subsequently invested in or, where domestic animals are concerned, added to the collectively-owned wealth, will automatically imply a same computation of a year's term of possession (i.e., beginning and ending on identical dates) for each partner's share thereof.

3) In ordinary partnerships, the actual discharge of Zakât dues may legally be effectuated either individually, by each partner or shareholder on his/her own behalf (1); collectively, whenever the various shares of the wealth in question are under computations of a year's term of possession beginning and ending on identical dates; or, by common agreement, or should any of the partners be absent or guilty of default, by one partner on his/her own behalf and on that of the other or others. In the latter case, each partner is morally and legally bound to reimburse his/her share of the Zakât due to the partner who has effectuated the payment thereof.

The method of payment adopted remains entirely at the discretion of the persons involved, with the one necessary condition that, as laid down in Rule 1, the total Zakât due from the collectively-owned wealth must be reckoned in consideration of the number, quantity, or value represented by each partner's share thereof.

4) As a consequence of the absolute character of the economic partnership established by the Islamic marriage bond, any kind

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(1) This method is essential in the case of company shareholders.

of taxable wealth which constitutes the common property of the two spouses and which is in number, quantity, or value at least equal to the Nisâb established for the genus involved, is to be normally and undividedly subject to taxation for Zakât.

5) In partnerships constituted by the Islamic marriage bond, the discharge of Zakât dues may be legally effectuated either by the husband or, if he be absent or guilty of default, by the wife.

6) Never and in no case may an absentee husband or partner or one who is guilty of default object to Zakât dues being, or refuse to accept that they be, discharged on his/her behalf, so long as the amount paid is what is lawfully due. And as laid down in Rule 3, in ordinary partnerships the person involved remains morally and legally bound to reimburse the amount or value paid to the person having made the payment on his/her behalf.

7) In the same way as the rules governing the reckoning of Zakât dues, so the rules governing thé Zakât of the various kinds of taxable wealth, the computation of the year's term of possession, plural computations, the exchange of taxable wealth, the Zakât of wealth under loan, taxable wealth amenable for debts, the retrospective payment of Zakât dues, and the posthumous discharge of Zakât dues, apply to collectively-owned taxable wealth on an individual basis, that is to say that each partner's share will, whenever the circumstances arise, be individually and proportionately affected thereby according to its number, quantity or value.

For the sake of accuracy, it is to be recommended that one person, preferably one of the partners themselves, be especially appointed to keep a proper account of the collectively-owned wealth and of the Zakât warranted by each partner's share thereof.

Moreover, it is of utmost importance that, in any kind of partnership, each partner be acquainted with the exact dates marking the beginning and the ending of the computations of a year's term of possession relating to both his/her own share of the collectively-owned wealth and to the share or shares of his/her partner or partners.

8) When, for the purpose of sharing the profits, an ordinary partnership involving any kind of taxable wealth is formed between two or more persons, one or more contributing their taxable wealth

as the standing capital of the partnership in question and the other or others contributing their work or labour, the obligation of Zakât, in so far as the original capital is concerned, rests exclusively with the former, i.e., with the contributors thereof as legitimate owners of the taxable wealth.

However, should any one of the partners contributing their work or labour subsequently invest in the partnership taxable wealth (whether derived from the shared profits realized through the partnership or not) of which he/she is the legitimate owner, he/she would thereby become a co-owner of the standing capital and would consequently bear the obligation of Zakât according to rules, as warranted by the number, quantity or value of the wealth contributed by him/her.

9) When a partner or shareholder in any kind of taxable wealth possesses besides his/her share thereof other taxable wealth belonging to the same kind or genus and bearing a computation of a year's term of possession beginning and ending on the same dates as the one relating to his/her share of the collectively-owned wealth in question, he/she must, whenever the combined number, quantity or value thereof is at least equal to the Nisâb established for the kind or genus involved, consider the two amounts as one taxable whole and reckon the Zakât due on the sum total thereof (1).

However, should the partner or shareholder possess other wealth belonging to the same kind or genus as his/her share of the collectively-owned wealth, but which has been acquired on a different date than the latter and which falls short of the Nisâb, the same will remain Zakât-free until it attains taxability. But if it does not acquire taxability before the Zakât falls due on the amount constituting the said partner's share, its sum must be added (for the purpose of calculating the Zakât) to that of the latter, after deducting Zakât dues, on the day following the completion of the year's term of possession relating thereto. Whereupon a single computation of a year's term of possession will begin for the taxable whole thus constituted.

This rule applies to all kinds of ordinary partnerships (i.e.,

(1) See also Rule 30 of those governing the Zakât of trade, p. 146.

partnerships resulting from inheritances, gifts or business associations, including share-issuing companies) (1) and to «neighbourly» partnerships.

10) In ordinary partnerships involving both Muslim and non-Muslim partners or shareholders, only that part of the collectively-owned wealth which is by nature taxable for Zakât and which constitutes the legitimately owned share (1) of the Muslim partner or partners, is to be subject to taxation for Zakât according to the afore-going rules.

That part of the collectively-owned wealth which constitutes the legitimately owned share of the non-Muslim partner or partners remains Zakât-free regardless of its nature, by the very fact of its legitimate owner's non-Islam.

Zakât-free Wealth.

The principles of the Law of Zakât naturally imply that *unproductive wealth,* i.e., whatever does not constitute surplus wealth of lasting value — or, to be exact, a) whatever is essential to satisfy the lawful yearly necessities of the human being, in keeping with a decent standard of living and the sphere of activity of each individual; b) whatever is of daily utility in the domestic, public and industrial spheres; and c) whatever deteriorates by use or by the passage of time and so entails on the legitimate owner thereof a regular and necessary expense for its upkeep and preservation — constitutes, by its very nature, Zakât-free wealth, except if and when expressly intended for trade.

The category of Zakât-free wealth comprises :

1) Wealth which, though by nature taxable for Zakât, is

(1) When calculating the Zakât due on company shares, the fraction of the investment represented by the shareholder's share of the Zakât-free portion of the Company's wealth (buildings, machinery, land, etc.) must be deducted by each individual shareholder from his/her capital investment and Zakât paid only on his/her share of the Company's reserve and working capital (i.e., cash and articles of trade). (See below : Zakât-free wealth, and Rules 20 and 22 of the Zakât of trade. Also : Rules governing wealth amenable for debt, p. 26, foll., and Rules governing the Zakât of wealth under loan, p. 31, foll.).

The Zakât-free fraction of a shareholder's investment may vary from year to year as shown by the Audited Balance Sheet of the Company.

either spent within one year of its acquisition or which in number, quantity or value, falls short of the Nisâb established for the kind or genus involved.

2) All coins of small denominations, of non-precious metal. (Coins of high denominations, such as the present-day Pakistani rupee, that have no silver or gold content, must, as laid down in Rule 3 of those governing the Zakât of currency notes, be considered as «currency notes printed on metal instead of paper» and be subject to taxation for Zakât as such.)

3) All foodstuffs expressly purchased for personal use (i.e., not intended for trade).

4) All household furniture and utensils. (Except if made of or combined or ornamented with silver, gold, pearls and/or precious stones, in which case the taxable material is subject to taxation for Zakât according to rules.)

5) All clothing and household linen. (Except if made of silver or gold cloth or ornamented with silver, gold, pearls and/or precious stones, in which case the taxable material is subject to Zakât according to rules.)

6) Paper; books; printed matter of any kind; manuscripts; all art objects not made of precious metal or precious stones; porcelain; etc.

7) All buildings, i.e., private dwellings and public buildings of every description, warehouses, stores, mills, factories, stables, etc.

8) All domestic animals that do not fulfil the condition of *total use* to the human being. As, for instance, asses (1), mules (2), elephants, dogs, cats, castrated horses and oxen, etc.

9) All domestic fowl and birds. (Such as chickens, ducks, geese, turkeys, pigeons, peacocks, etc.)

10) All non-pastured camels, oxen, sheep and goats, and

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(1) Domestic asses being prone to eat unclean food, their flesh is considered loathsome and, hence, is forbidden to the Muslims.

(2) Mules are automatically excluded from the category of wealth taxable for Zakât, as they are incapable of breeding and so cannot fulfil the condition of lasting value.

horses, i.e., that are stall-fed for more than 6 months of the year.

11) Land, arable and non-arable.

12) Water, i.e., privately-owned wells, springs, etc.

13) All agricultural produce (edible and non-edible) which, being by its nature perishable, may not be preserved in good condition for at least one full year except by artificial means.

14) Trees; wood; firewood; corozo or ivory nut (vegetable ivory); all gums and resins (including rubber, etc., and amber); all leaves (including tea and tabacco), canes and fibres (except cotton); herbs; flowers (including saffron); grasses, straw, and hay; all spices and condiments; all non-edible oleaginous produce, such as oil palm fruit, linseed, cotton seed, etc.; melon seeds, cucumber seeds. (See list on p. 212).

15) All seed expressly kept for sowing. (See list on p. 212).

16) All wild produce (uncultivated reeds and grasses, such as bamboo, papyrus, etc., wild fruits, berries, nuts, etc.).

17) All game (animals, birds and reptiles hunted for their flesh, fur, feathers, skin, etc.); sea fish and fresh water fish [1].

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(1) In his book entitled «Revival of Zakât», Sh. Ata Ullah, M.A. suggests that the catch of fishermen be subject to Zakât. Such a measure would, however, be quite incompatible with both the spirit and letter of the Law of Zakât, which requires legitimate ownership of taxable wealth as a fundamental and essential condition warranting the obligation of Zakât. Indeed, where game and fish are concerned, the condition of legitimate ownership is basically lacking and so, even if caught and kept alive, the same cannot be included in the category of wealth taxable for Zakât, unless and until they come to constitute regular articles of trade; whereupon they are subject to Zakât in conformity with the rules governing the Zakât of trade.

Secondly, flesh of any kind being highly perishable, unless preserved by artificial means, it is automatically excluded from the category of taxable wealth.

Moreover, the same as the wild produce of the land, game and fish are free for everyone, the needy Muslim and non-Muslim citizens alike, who are at liberty to catch thereof as much as they please and even to sell it for their own benefit if they care to take the trouble.

There is, of course, no objection to hunters or fishermen donating a portion of their prize to the poor of the community. But as commendable as a such a practice would be, for the reasons explained above it cannot be made obligatory in the name of Zakât.

18) Perishable animal and poultry products and by-products (flesh, milk and its derivatives, i. e., curds, butter, cheese, ghi («saman» or clarified butter), etc.; eggs).

19) Animal products, such as wool, hair, hides (leather), skins, fur, bone, horn, ivory, etc.

It is interesting to observe that when these items are obtained from animals by nature taxable for Zakât, to impose Zakât on them would be tantamount to a double taxation and thus against the spirit of the Law. Moreover, hides, skins and furs require special treatment in order to acquire a measure of usable durability. Thus, only when such items come to constitute regular articles of trade, do they automatically become taxable for Zakât in conformity with the rules governing the Zakât of trade.

20) Odoriferous substances, such as musk and ambergris, which, though deemed precious, are mainly of use in medecine and perfumery (1).

21) The produce of oil-wells and of all mines other than silver and gold mines.

22) Coral (2), mother of pearl, tortoise shell, and the like.

23) Machinery (industrial and otherwise), tools, and instruments of every description.

24) Vehicles, watercraft, and aircraft of every description.

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(1) Most jurists, including Imâms Abû Hanîfa, Mâlik and Muhammad, do not consider musk and ambergris as taxable for Zakât. On the other hand, Imâm Abû Yûsuf opines that these two substances should be subject to a 20% Zakât at the time of their being collected. Although it is said that the second Caliph, 'Umar ibn ul-Khattâb, used to levy a 20% tax on musk and ambergris, there is no reason to believe that the said tax was intended as Zakât. If one considers that, for all their preciousness, musk and ambergris do not fulfil the essential conditions warranting the imposition of Zakât either at their source or as personal property, it appears more than probable that the 20% tax imposed by 'Umar was either a regular government tax or, as suggested by Imâm Al-'Aynî, a Zakât of the spoils of war levied on ambergris collected by the Muslim army on the shores of enemy territories.

Only when constituting regular articles of trade, do these substances automatically acquire taxability for Zakât.

(2) Imâm Abû Yûsuf considers coral as taxable for the 20% Zakât.

25) Arms and weapons of every description (including fire-arms and ammunition).

When a weapon is ornamented with silver, gold, pearls or precious stones, the taxable material is liable to taxation for Zakât according to rules.

26) Wealth that has been purposefully set aside to cover the expenses of a *first* pilgrimage to the Holy Ka'aba at Mecca is exempt from taxation for Zakât, regardless of the period of time that it remains in the possession of its legitimate owner. According to Islamic Law, one pilgrimage to the Holy Ka'aba is obligatory in the lifetime of every Muslim, man or woman, who is physically and materially able to fulfil this essential duty.

وَلِلّٰهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلاً ...
(٣ : ٩٨)

« ... And pilgrimage to the House is a duty unto Allah for mankind, for those who can find a way thither ... ». (III : 98).

Subsequent pilgrimages being purely optional, wealth set aside to cover their expenses is considered as savings or surplus wealth and, therefore, is normally subject to taxation for Zakât whenever it is, in quantity or value, equal to or above the Nisâb.

وَلَيَنْصُرَنَّ اللَّهُ مَنْ يَنْصُرُهُ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ
الَّذِينَ إِنْ مَكَّنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلٰوةَ وَآتَوُا الزَّكٰوةَ
وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ وَلِلَّهِ عَاقِبَةُ الْأُمُورِ

(٢٢ : ٤٠-٤١)

THE ADMINISTRATION OF ZAKAT

The establishing of the Institution of Zakât as an organized body has not been unanimously regarded as necessary by the various Schools of Islamic Law. In fact, concerning the actual functioning of the Institution of Zakât, several views have prevailed among the leading Muslim jurists.

According to the *H*anafite School of Law, wealth taxable for Zakât is of two kinds : a) Non-apparent wealth, comprising silver, gold and articles of trade held in stock and that have not become «apparent» by passing through an octroi or a customs post. And b) Apparent wealth, comprising pasturing domestic animals, agricultural produce, and articles of trade that have become «apparent» by passing through an octroi or customs post.

The *H*anafite School lays down that the discharge of the Zakât of non-apparent wealth may be effectuated without the intermediation of the State, i.e., that Zakât dues may be given directly and at discretion by the Zakât-payer to the lawful beneficiaries.

In this matter, the *H*anafite School has followed the lead of the third Caliph, 'Uthmân ben 'Affân, who, in order to spare the prospective Zakât-payers any annoyance at the hands of corrupt collectors in respect of their non-apparent wealth, exempted them from the obligation of discharging the Zakât thereof through the State.

On the other hand, the *H*anafite School assigns to the State the right to levy and distribute the Zakât of apparent wealth, and holds that where such wealth is concerned, the Zakât-payer may not take upon him/herself the direct settlement of Zakât dues.

The jurists of the Shâfiite School of Law hold that in every case the settlement of Zakât dues may be effectuated directly, without the intermediation of the State.

Conversely, the Mâlikite School of Law deems the levying and distribution of Zakât funds, whether derived from non-apparent or apparent wealth, to be entirely incumbent upon the State, *when the State is just,* or, in other words, when from the Islamic point of view the State is fit to undertake the sacred and supremely important socio-economic responsibility that the honest and efficient administration of the Zakât funds implies.

Actually, the Mâlikite view conforms to the original character given to the Institution of Zakât in the Prophet's lifetime and preserved throughout the reigns of the first two Caliphs. Indeed, both the Quranic Injunctions relating thereto and the data provided by the early history of Islam, plainly show that the Institution of Zakât is meant to function in an organized manner, implying the necessary intermediation of the State as a supervisory agent. The very magnitude of the aim and purpose of the Institution of Zakât requires that such be the case.

In this connection, the following Quranic verse is quite clear :

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ ۝ (٩ : ١٠٣)

«Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow, and pray for them. Thy prayer is an assuagement for them. Allah is Hearer, Knower (of what is in your hearts). » (IX : 103).

Likewise, the Prophet's detailed instructions, made known in the «A*h*adîth», leave no doubt as to the organized character of the Institution of Zakât. The following «*H*adîth» is related on the authority of Ibn 'Abbâs :

حدّثنا اُميّة بن بسطامٍ قال : حدّثنا يزيد بن زُرَيعٍ قال : حدّثنا روح ابن القاسم عن اسماعيل بن اُميّة عن يحيى بن عبد الله بن صيفي عن أبي معبدٍ عن ابن عبّاسٍ رضي الله عنهما أنّ رسول الله صلّى الله عليه وسلّم لمّا بعث معاذاً رضي الله عنه على اليمن قال : انّك تقدم على قومٍ أهل كتابٍ ، فلْيكنْ أوّل ما تدعوهم اليه عبادة الله ، فاذا عرفوا الله فأخبرهم أنّ الله قد فرض عليهم خمس صلوات في يومهم وليلتهم • فاذا فعلوا فأخبرهم أنّ الله فرض عليهم زكاةً ، تؤخذ من أموالهم وتردّ على فقرائهم ، فاذا أطاعوا بها فخذْ منهم ، وتوقّ كرائم أموال الناس • (بخاري)

«Umayya ben Bistâm has related unto us, saying : Yazîd ben Zuraî'a has related unto us, saying : Raûh ibn ul-Qâsim has related unto us, on the authority of Ismâ'îl ben Umayya, (who said) on the authority of Ya*h*yâ ben 'Abd Allah ben Saîfî, (who said) on the authority of Abî Ma'abad, (who said) on the authority of Ibn 'Abbâs (may Allah be pleased with them both) that when the Messenger of Allah (ص) sent Mu'âdh (may Allah be pleased with him) to Yemen, he said to him : 'Thou art going unto a people who possess a Scripture. So let the first thing unto which thou callest them be the worship of Allah. Then, when they have acknowledged Allah, inform them that Allah has made obligatory for them five daily prayers. Then, when they have complied, inform them that Allah has made obligatory for them (the giving of) Zakât, which is to be taken from their wealth and bestowed *upon the needy among them*. Then, when they have obeyed the command, levy (the Zakât of their wealth), but beware of taking (as Zakât) the choisest of the people's wealth' .» (Imâm Bukhârî).

Thus, the functioning of the Institution of Zakât presents two phases, namely : the collection of dues and the custody and distribution of funds, implying the right and the responsibility of the State, represented by the authorized Zakât-officials (العاملون على الصدقة) , to levy and to administer the Zakât funds.

The fact of State intermediation in the levying of Zakât has, in recent times, given rise to the very mistaken notion that the Zakât is to be paid *to* the State. It is therefore imperative to stress that by no interpretation of the Law can the Zakât be construed as

a tax paid *to* the State. The very nature of Zakât, as well as the principles and rules that govern it, define the Zakât as a tax paid *through* the State *to* the lawful beneficiaries thereof. For this very reason, Zakât funds may never be used by the State for any purpose not specified in the following Quranic verse :

اِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِيْنِ وَالْعَامِلِيْنَ عَلَيْهَا
وَالْمُؤَلَّفَةِ قُلُوْبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِيْنَ وَفِيْ سَبِيْلِ اللهِ
وَابْنِ السَّبِيْلِ فَرِيْضَةً مِنَ اللهِ وَاللهُ عَلِيْمٌ حَكِيْمٌ ۝ (٩ : ٦٠)

«The alms are *only* for the needy and the destitute, and those who collect them, and those whose hearts are reconciled (to Islam), and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarer; a duty imposed by Allah. Allah is Knower, Wise.» (IX : 60).

The Zakât funds, though collected by the State, *have nothing to do with the State revenue*, and must be kept entirely apart from the latter. The above-quoted Quranic verse sets forth in detail the various uses to which Zakât funds may be dedicated. The same being a Quranic Precept, the State has no right to extend or limit the scope of Zakât expenditure. The State is bound to abide by the rules that govern the Institution of Zakât and is only authorized to modify these rules in matters of detail, *without sacrifice of principle,* and always within the spirit of the Quranic Precepts relating thereto. Hence, the State has no right to increase or modify the Zakât-tax, the taxable limits and rates of payment being those laid down by the Prophet (ص) himself. Nor has the State the right to suspend the imposition of Zakât or to abrogate it altogether. Both the cause and the object of the act of Zakât must in each and every case be maintained and respected by the State. The State is responsible for the accurate collecting of Zakât dues and for the honest custody of Zakât funds. Likewise, the State bears the responsibility of seeing to it that Zakât funds are correctly used and distributed, and that the necessary assistance is duly conveyed to the deserving Muslims, as directed by the above-quoted Quranic verse. The State is answerable to the Muslim citizens for the manner in which the administration of Zakât is carried out and for the righteous handling of funds. Accordingly, the State must be required to give the

Muslim public a periodic account of the Zakât revenue and expenditure. Any act of transgression or misappropriation of Zakât funds, be it on the part of the State as such or on the part of the Zakât-officials, must entail *very severe* censure and sanctions against the culpable person or persons, such disloyal action being tantamount to the betrayal of a fundamental religious and socio-economic obligation and of the Muslim Nation's trust.

On the other hand, the right of supervising the smooth functioning of the Institution of Zakât, of collecting the Zakât dues, and of distributing the Zakât funds unquestionably vests in the Muslim State. As directed by the following Quranic verse, it is both the right and the responsibility of the State to enforce the observance of Quranic Law :

وَالَّذِينَ يُمَسِّكُونَ بِالْكِتَابِ وَأَقَامُوا الصَّلَاةَ إِنَّا لَا نُضِيعُ أَجْرَ الْمُصْلِحِينَ ۝ (٧ : ١٧٠)

«As for those who make (others) keep the Scripture, and establish prayer, lo ! We squander not the wages of reformers.» (VII : 170).

Hence, the State is fully authorized to compel the payment of and forcibly levy Zakât dues whenever a person known to possess taxable wealth refuses voluntary compliance with this religious and socio-economic duty. Persons intentionally guilty of default or of maliciously evading the obligation of Zakât are liable to punishment as being culpable of disloyalty to the Muslim Nation and of wilfully disregarding an essential Article of the Faith.

The rights and obligations of the Zakât-payers have already been explained in detail in Parts I and II of the present work. It therefore remains for us to elucidate the rights and moral obligations of the beneficiaries of Zakât.

When considering the status of the beneficiaries of Zakât, the first point that must be thoroughly understood is that the Zakât, as expounded in the Qurân, is an obligation incumbent upon Muslims only and designed exclusively to benefit Muslims. It is an act of concrete assistance *from* Muslim *to* Muslim (1). As the Law of

(1) See the «Ahadîth» related on the authority of Ibn 'Abbâs, pp. 57 and 281.

Zakât does not apply to those outside the fold of Islam, neither may Zakât funds be levied from non-Muslims nor may they be used to benefit the non-Muslim citizens of a Muslim State.

This fact does not imply that the loyal non-Muslim citizens of a Muslim State are not entitled to adequate protection and, when need be, to effective assistance from the State. On the contrary, it is the duty of the State to provide adequate protection and to see for the welfare of *all* its citizens, Muslim and non-Muslim alike. But the very nature of the act of Zakât, being as it is «*an act of Islamic worship, dedicated to Allah*» and pre-eminently the «*right of Allah*», discountenances the Zakât being diverted to those who do not adhere to the Islamic Faith. Should a non-Muslim citizen in distress require State assistance, the same may be afforded him out of State funds, i.e., from the Public Exchequer (بيت المال الحكومة) or through social insurance, the non-Muslim having no claim to Zakât funds. On the other hand, there is no reason why the non-Muslim communities within a Muslim State should not of their own accord organize charity among themselves in such a manner as to guarantee ready assistance to all of their members who may stand in need of it. Such a commendable scheme would be sure to receive the approval of all right thinking people. Actually, organized charity does constitute to a certain extent an act of faith among some non-Muslim communities, namely the followers of the Mosaic, Zoroastrian and Evangelical teachings, albeit in practice it has unfortunately only too often remained an unheeded ideal.

Primarily, the Zakât is intended for the relief of the Muslim in distress. The Arabic terms used in the Quranic text to express the condition of poverty are two, namely : «Faqr» (فـقـر) and «Maskanat » (مسكنة) . The first of these two terms derives from the root «Faqara» (فَقَرَ) , meaning «to overcome a person» (as, for instance, a misfortune, penury, etc.). Hence, the verb « Faqura » (فَقُرَ) , meaning «to be in need», the noun «Faqr»(فـقـر) , meaning «poverty, need», and the adjective «Faqîr, pl. Fuqarâ» (فقير ج فقراء) meaning «needy».

The second of these two terms derives from the root «Sakana» (سَكَنَ) meaning «to become calm, motionless» and, in a figurative sense, «to be poor». Hence, the noun «Maskanat» (مسكنة) , meaning «poverty, destitution», and the adjective « Miskîn, pl. Masâkîn »

(مسكين ج مساكين) , meaning «in dire need, destitute».

As defined by Imâm Abû *H*anîfa, the term «Faqîr» designates «He who lacks something necessary, i.e., who is in straitened circumstances» (من له أدنى شيء) , and the term «Miskîn» designates «He who possesses nothing, i.e., who is destitute» (من لا شيء له) .

Although some jurists have also defined these terms the opposite way round, the correctness of Imâm Abû *H*anîfa's definition is substantiated both by the exact grammatical meaning of the two terms and by the sense in which they occur in the Quranic text, as shown in the following Quranic verses :

a) «Faqîr».

فَسَقَى لَهُمَا ثُمَّ تَوَلَّى الَى الظِلِّ فَقَالَ رَبِّ انِّي لِمَا أَنْزَلْتَ اِلَيَّ مِنْ خَيْرٍ فَقِيرٌ" • (٢٨ : ٢٤)

«So he (Moses) watered (their flock) for them. Then he turned aside into the shade and said : My Lord ! I am needy (فقير) of whatever good Thou sendest down for me.» (XXVIII : 24).

يَا أَيُّهَا النَّاسُ أَنْتُمُ الفُقَرَاءُ الَى اللهِ واللهُ هُوَ الغَنِيُّ الحَمِيدُ • (٣٥ : ١٥)

«O humankind ! It is you who are in need of Allah (الفقراء الى الله). And Allah: He is the Absolute, the Owner of Praise.» (XXXV:15) (1).

لِلفُقَرَاءِ الَّذِينَ اُحْصِرُوا فِي سَبِيلِ اللهِ لاَ يَسْتَطِيعُونَ ضَرْباً فِي الأَرْضِ يَحْسَبَهُمُ الجَاهِلُ أَغْنِيَاءَ مِنَ التَّعَفُّفِ تَعْرِفُهُمْ بِسِيمَاهُمْ لاَ يَسْأَلُونَ النَّاسَ الْحَافاً وَمَاتُنْفِقُوا مِنْ خَيْرٍ فانَّ اللهَ بِهِ عَلِيمٌ" • (٢ : ٢٧٣)

« (Alms are) for the poor (للفقراء) who are straitened for the cause

(1) See also Qurân, LXXIV : 38.

of Allah, who cannot go forth in the land (for trade). The unthinking account them wealthy because of their restraint. Thou shalt know them by their mark : they do not beg of men with importunity. And whatever good thing you spend, Allah knoweth it.» (II : 273).

لِلفُقَرَاءِ المُهَاجِرِينَ الَّذِينَ اُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلاً مِنَ اللهِ وَرِضْوَاناً وَيَنْصُرُونَ اللهَ وَرَسُولَهُ اُولَئِكَ هُمُ الصَّادِقُونَ • (٥٩ : ٨)

«And it (the spoils of war) is for the poor fugitives (للفقراء المهاجرين) who have been driven out of their homes and their belongings, who seek bounty from Allah and help Allah and His Messenger. They are the loyal.» (LIX : 8).

b) «Miskîn».

وَمَا أَدْرَاكَ مَا العَقَبَةُ • فَكُّ رَقَبَةٍ • أَوْ اطْعَامٌ فِي يَوْمٍ ذِي مَسْغَبَةٍ • يَتِيماً ذَا مَقْرَبَةٍ • أَوْ مِسْكِيناً ذَا مَتْرَبَةٍ •
(٩٠ : ١٢ — ١٦)

«And what will convey unto thee what the Ascent is ! It is to free a slave, and to feed on the day of hunger, an orphan near of kin, or some poor destitute person (مسكيناً ذا متربة) .» (XC : 12 - 16).

وَضُرِبَتْ عَلَيْهِمُ الذِلَّةُ وَالمَسْكَنَةُ وَبَآؤُ بِغَضَبٍ مِنَ اللهِ ••• (٢ : ٦١)

« . . . And humiliation and destitution (المسكنة) were stamped upon them and they were visited with wrath from Allah . . . » (II : 61).

وَيُطْعِمُونَ الطَّعَامَ عَلَى حُبِّهِ مِسْكِيناً وَيَتِيماً وَأَسِيراً •
(٧٦ : ٨)

«And (the servants of Allah) feed the poor destitute (مسكيناً) , the orphan and the prisoner, for love of Him.» (LXXVI : 8).

أيّاماً مَعْدُودَاتٍ فَمَنْ كَانَ مِنكُم مَرِيضاً أوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أيّامٍ أُخَرَ وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ ... (٢ : ١٨٤)

« (Fast) a certain number of days; and (for) him who is sick among you, or on a journey, (the same) number of other days; and for those who can afford it there is a ransom : the feeding of a destitute person» (مسكين) [1]. (II : 184).

Thus, Islam takes into consideration two degrees of poverty, both of which are deserving of relief through the agency of Zakât : «Faqr» indicates the condition of those whose means are *insufficient to adequately provide the basic lawful material necessities* of life. «Maskanat» indicates the condition of those whose means are either *totally lacking* or are *so deficient as to deny the basic lawful material necessities* of life.

According to Islamic Law, the basic lawful material necessities of life are : sufficiency in food, clothing, and shelter, basic education and medical care. This is the minimum standard of material well-being recognized by Islam.

Sufficiency in food, clothing and shelter constitutes the first stage of what, in Islamic terminology, is called «Ghinâ»(الغنى), i.e., the state in which one can dispense with the material help of others. The state of «Ghinâ» excludes a person from the category of beneficiary of Zakât and forbids any lawful claim to the Zakât funds. Moreover, when the state of «Ghinâ» reaches the stage of legitimate ownership of wealth taxable for Zakât, the person in question automatically acquires the status of Zakât-payer.

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(1) See also verses 89 and 95 of Surah V and verse 4 of Surah LVIII. It is particularly interesting to note that whenever Quranic Law prescribes the feeding or the clothing of a poor person as a penalty or atonement, the word used is «Miskîn», i.e., a destitute person, and not «Faqîr», i.e., a person in straitened circumstances. Thus, Quranic Law lays down that the relief of extreme poverty or, in other words, of destitution is necessary in order to buy back a sinful deed, and not that of lesser poverty, where the poor person in question is not actually devoid of all means of livelihood.

In a broader sense, as in the following «*H*adîth», the term «Ghinâ» also indicates the state of self-sufficiency that proceeds from a satisfied attitude of mind and the enjoyment of physical fitness.

حدّثنا زهير بن حربٍ وابن نُميرٍ قالا : حدّثنا سفيان بن عُيينة عن أبي الزناد عن الأعرج عن أبي هريرة قال : قال رسول الله صلّى الله عليه وسلّم : ليس الغنى عن كثرة العرض ولكنّ الغنى غنى النفس • (مسلم)

«Zuhair ben *H*arb and Ibn Numaîr have related unto us, saying : Sufyân ben 'Uyayna has related unto us, on the authority of Abû Az-Zinâd, (who said) on the authority of Al-A'araj, (who said) on the authority of Abû Huraîra who said : The Messenger of Allah (ص) said : 'Sufficiency does not depend on an abundance of worldly possessions. Sufficiency means the self-sufficiency of the (satisfied and capable) soul' .» (Imâm Muslim).

The lawful beneficiaries of Zakât designated in verse 60, Surah IX of the Qurân are :

1 — **The Poor of Straitened Means** (الفقراء) (1). These include all Muslims whose means are, in spite of their best efforts or due to some physical disability, insufficient to adequately provide for the basic lawful material necessities of life.

2 — **The Poor Destitute** (المساكين) (1). These include all Muslims whose means are, in spite of their best efforts or due to some physical disability, either totally lacking or are so deficient as to deny them the basic lawful material necessities of life. (See «A*h*adîth, pp. 370, foll.).

3 — **The Zakât-Officials** (العاملون على الصدقة). As a principle, all authorized Zakât-officials, i.e., all Muslims who regularly serve as members of the various Zakât-staffs, are entitled to receive remune-

(1) Imâm Abû Hanîfa considers the «Fuqarâ» and the «Masâkîn» as constituting two distinct classes of beneficiaries. Imâm Abû Yûsuf, however, considers both as grouped into one class of beneficiaries: the poor. Strictly speaking, as the Qurân makes separate mention of the «Fuqarâ» and of the «Masâkîn» as beneficiaries of Zakât, it is quite correct to consider them as two distinct classes, as does Imâm Abû Hanîfa.

ration payable out of the Zakât funds. It is generally accepted that such persons comprise :

a) The collectors (المصدّقون), whose duty it is to collect the Zakât dues and deposit them in the authorized Zakât-centres.

b) The distributors (القسّامون), whose duty it is to apportion the Zakât funds.

c) The custodians (الحافظون), whose duty it is to keep safe and disburse the Zakât funds to the lawful beneficiaries.

The custodians include : the treasurers; the caretakers of the Zakât granaries and Zakât storehouses; and the caretakers of the domestic animals levied as Zakât (shepherds, herdsmen, waterers, etc.).

d) The measurers (الكيّالون), whose duty it is to measure, or weigh, the cereals and other kinds of agricultural produce levied as Zakât.

e) The scribes or clerks (الكاتبون), whose duty it is to keep the Zakât files and records.

f) The accountants (الحاسبون), whose duty it is to keep account of the Zakât revenue and expenditure.

g) The informers (العارفون), whose duty it is to seek out those persons who are deserving of receiving Zakât assistance and to inform the Zakât-officials of their condition and whereabouts.

h) The assemblers (الحاشرون), whose duty it is to assemble the Zakât-payers, or the beneficiaries of Zakât, when required.

i) The officers in charge (رؤساء العاملين), whose duty it is to direct and manage the various Zakât-centres, and who are directly responsible to the State and to the public for the proper functioning of their respective centres.

Although it is incumbent on the State to supervise the smooth functioning of the Institution of Zakât, the regular State officials (governors, judges, etc.) are not entitled to receive a salary from the Zakât funds, such persons not being actually engaged in regular service as members of the Zakât-staffs.

The actual emolument to be paid to the Zakât-officials in reward of their services has been a subject of some disagreement among the Muslim jurists. According to the *H*anafite School of Law, the salary of the Zakât-officials is to be fixed by the Imâm in proportion with what is required to afford them a fair livelihood, i.e., without any set limit. On the other hand, the *H*anafite School correctly maintains that Zakât may not be given to a person of means.

The Shâfiite and Mâlikite Schools of Law hold that the Zakât-officials may take a salary from the Zakât funds even if they be wealthy !

Now, the very spirit of the Law of Zakât suggests the view that, albeit on principle it is their right, only those Zakât-officials have a lawful claim to Zakât funds who are themselves *in need* of the same for their livelihood. Should a Zakât-official have sufficient means of subsistence apart from any remuneration afforded by the Zakât, it is undoubtedly his duty as a Muslim *to abstain* from accepting, let alone demanding, such remuneration.

It must be fully realized that the position of the Zakât-officials is not one of ordinary import. The purpose to be served by the Institution of Zakât is of such far-reaching consequences as to place the Zakât-officials among the highest ranking servants of the Muslim Nation. The following «*H*adîth», reported by Imâms Abû Dâûd and At-Tirmadhî, testifies to the special stress that the Prophet himself laid on the exalted status of those who devote their services to the furtherance of the cause of Zakât :

عن رافع بن خديج قال : قال رسول الله صلّى الله عليه وسلّم : العامل على الصدقة بالحقّ كالغازي في سبيل الله حتّى يرجع الى بيتــه • (رواه أبو داود والترمذي)

« (It is related) on the authority of Râfi'a ben Khadîj, who said : The Messenger of Allah (ص) said : 'In truth, the Zakât-official is like unto him who fights in the Way of Allah, until he returns to his own home' .» (Imâms Abû Dâûd and At-Tirmadhî).

The Prophet's comparison of the Zakât-officials to «those who fight in the Way of Allah» confirms the view that they are to be entirely *devoted and selfless* agents of the Institution : agents who do not seek worldly increase, but Divine Favour and Grace as the reward of their effort. To serve the cause of Zakât must never be considered in the light of a lucrative career. Such service is, in itself, a pious act and must be performed with a spirit and in a manner befitting the nature of the task.

It has been generally conceded that the total amount to be paid out as salaries to the Zakât-officials should not exceed one half of the available Zakât funds although some jurists have considered that as much as three fourths of the available Zakât funds may lawfully be used for the purpose. Yet there can be no doubt that such an exhorbitant allowance comes near to defeating the very aim and purpose of the Institution of Zakât. Therefore, if such an unfortunate circumstance is to be avoided, the principle must prevail that in no case may Zakât be given to persons who have at their disposal other means of subsistence. Recognition of this principle will, by common consent, exclude well-to-do Zakât-officials from the category of lawful beneficiaries, thus allowing the Zakât funds to be used «*in toto*» for the relief and control of want and distress.

Moreover, in view of the pious nature of the services rendered by the Zakât-officials, it should be universally accepted, and above all by the Zakât-officials themselves, that the maximum remuneration of those of them *who are in need thereof,* may not exceed a living wage allowing of a decent, *but modest,* standard of life. Such was the right on the Public Exchequer conceded to the Muslim Caliphs in the early days of Islam. Indeed it was in perfect harmony with the spirit and the letter of verse 6, Surah IV of the Qurân that the second Caliph, 'Umar ibn ul-Khat*tâ*b, declared to the people upon assuming office :

انّما أنا ومالكم كولي اليتيـــم ، ان استغنت استعففت وان افتقرت أكلت بالمعروف • (العيني)

«Verily my right on your wealth is only that of the guardian of an

orphan. If I am well-to-do, I shall abstain; and if I am in straitened circumstances, I shall take therefrom what is lawful (i.e., a living wage). »

In the words of the Qurân :

•• وَمَنْ كَانَ غَنِيّاً فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيراً فَلْيَأْكُلْ بِالْمَعْرُوفِ ••• (٤ : ٦)

« . . . Whoso (of the guardians of the orphans) is well-to-do, let him abstain generously (from taking of the orphans' property); and whoso is poor, let him take thereof what is lawful (i.e., a living wage as remuneration for his guardianship) . . . » (IV : 6).

Accordingly, it is the duty of those pious Muslims who are in a position to do so, to make voluntary offer of their services to the authorized Zakât-centres as honorary officials (without remuneration), for the sake of God and the Nation.

4 — **«Those whose Hearts are Reconciled (to Islam)** » (المؤلفة قلوبهم). Following the conquest of Mecca in the year 8 H., and the Prophet's proclamation of a general amnesty forgiving the pagan inhabitants of the city for their former hostility and persecution of the Muslims, the whole population, in response to this act of generosity, swore allegiance to the Prophet (ص) and entered the fold of Islam.

It was these new converts to the Faith, designated in the Qurân as «those whose hearts are reconciled», who were allotted a share of the Zakât funds as a measure of rehabilitation and as an assuagement for the losses and hardships suffered during the long struggle between pagan Quraysh and Islam.

That the years of war were as painful for the enemies of Islam as for the Muslims themselves, is borne out by the Qurân itself :

وَلاَ تَهِنُوا فِي ابْتِغَاءِ الْقَوْمِ إِنْ تَكُونُوا تَأْلَمُونَ فَإِنَّهُمْ يَأْلَمُونَ كَمَا تَأْلَمُونَ وَتَرْجُونَ مِنَ اللهِ مَا لاَ يَرْجُونَ وَكَانَ اللهُ عَلِيماً حَكِيماً • (٤ : ١٠٤)

«Relent not in pursuit of the (enemy) people. If you are suffering, lo ! they suffer even as you suffer, and you hope from Allah that for which they (as disbelievers in Allah and His Divine Law) cannot hope. Allah is ever Knower, Wise. (IV : 104).

Thus it stands to reason that if the Qurân included the new converts in the category of lawful beneficiaries of Zakât, it was because, at the time, *their impoverished condition justified such provision*, and not at all as a boon for having embraced the Islamic Faith. With Zakât assistance to rehabilitate them, no doubt could remain in their hearts that any of their past acts might alienate them from the benefits of Islamic Law and the kindly solicitude of Islamic brotherhood. Nor could any fear exist in their minds that any rancour was held against them or that they were not securely rooted in the fold of Islam.

Furthermore, it is related that on the occasion of the battle of *H*unayn, when the Prophet (ص) , at the head of an army of some ten thousand «Ansâr» and newly converted members of the tribe of Quraysh, won a signal victory over certain hostile tribes, among whom that of Thaqîf, who aimed to retake possession of the Ka'aba, he divided the spoils among those of Quraysh whose hearts had only recently become «reconciled», in preference to the «Ansâr» who were his constant and faithful companions. When the Prophet realized the disappointment of the «Ansâr» who felt that it was their right to share in the spoils, he summoned them and said : «O company of the «Ansâr» ! Are you not pleased that the people should return to their homes with worldly possessions while you return to your homes in the company of Mu*h*ammad ? » The «Ansâr» replied : «Yes indeed, O Messenger of Allah, we are well pleased».

The fact that the Quranic locution «those whose hearts are reconciled» designated, at the time of revelation, the then inhabitants of Mecca newly converted to Islam, has led the majority of the Muslim jurists, including the adherents of the *H*anafite and Mâlikite Schools of Law, to consider the share of this class of beneficiaries as having lapsed. However, in view of the indisputable fact that no human being has the authority to abrogate any part of the Qurân, the absolute validity of the Injunction contained in verse 60, Surah IX, must be maintained and carried out whenever identical circumstances arise, i.e., whenever the conquest of non-Muslim

territory is followed by the mass-conversion to Islam of the local inhabitants, and these are in need of rehabilitation.

وَتَمَّتْ كَلِمَةُ رَبِّكَ صِدْقاً وَعَدْلاً لاَ مُبَدِّلَ لِكَلِمَاتِهِ وَهُوَ السَّمِيعُ العَلِيمُ ۰ (٦ : ١١٦)

«Perfected is the Word of thy Lord in Truth and Justice. There is none to alter His Words. He is the Hearer, the Knower.» (VI : 116).

The very spirit of the Law of Zakât requires that «those whose hearts are reconciled» receive such assistance from the Zakât funds as will enable them to begin, within the fold of Islam, a new life in accordance with the standard of decency prescribed by the Qurân.

5 — **The Slaves and Captives** (الرقاب) . One of the paramount principles set forth in the Qurân is that the Muslim, the «servant of Allah», may never live in bondage to any created power. Thus, the possibility of a Muslim remaining or becoming the legal property of another human being is not only abhorrent to, but definitely not tolerated by Quranic Islam. Indeed, the Quranic Precept which dedicates a portion of the Zakât funds to the emancipation of slaves, faithfully reflects this principle.

As already stated, the Zakât is intended as a concrete assistance from Muslim to Muslim. Hence, the term «slaves» (الرقاب), which in verse 60 of Surah IX designates a class of lawful beneficiaries of Zakât, applies to those slaves who convert to Islam while still constituting the legal property of non-Muslims. It is such Muslims that Zakât funds are to be used to free from the legal shackles that bind them to their non-Muslim masters.

With the exception of those of the *H*anafite School of Law, most Muslim jurists agree that the Zakât funds may be used to buy slave converts to Islam from their non-Muslim masters in order to set them free and enable them to live their lives in conformity with the tenets of the Qurân.

According to the *H*anafite jurists, Zakât funds may be used to help those slaves who have already acquired the status of «Mukâtab» (مكاتب : a slave under manumission) to pay off the price

of their manumission. But the *H*anafite jurists do not admit that Zakât funds be used to actually buy slaves in order to free them. This stand is based on the *H*anafite School's opinion that the act of Zakât *must* imply a transfer of ownership from one person (the Zakât-payer) to another (the beneficiary). When a slave is bought and set free, the *H*anafites argue, such a transfer of ownership does not take place and, therefore, the act of Zakât is not valid.

Now, in the first place, there is no justification in the Qurân for the *H*anafite ruling that the act of Zakât must always and in every case imply *a direct transfer of ownership*. Whereas in the case of the poor, the Zakât-officials, « those whose hearts are reconciled» and the wayfarers, a direct transfer of ownership actually does take place, in the case of debtors a direct transfer of ownership, as the *H*anafites understand it, does not and cannot take place. When a debtor is relieved from the burden of his debt through the agency of Zakât, the person actually receiving the funds is the creditor, for whom the funds in question represent either the total value or part of the value owed to him and which is his own lawful property. Notwithstanding this fact, and although he does not actually receive the Zakât funds for the sake of spending them at his own discretion as is the case where, for instance, the poor are concerned, still the party who directly benefits from the assistance afforded by Zakât *is the debtor*. The same circumstance arises when Zakât funds are used to buy slaves in order to set them free. The parties benefiting from the assistance afforded by Zakât *are the slaves,* their non-Muslim masters being paid out of Zakât funds a given sum which for them represents the value of their released property.

That Zakât funds be used in whatever manner necessary to bestow the gift of freedom, that most valuable and sacred possession, upon a deserving Muslim, undoubtedly fulfils the purport of the Quranic Precept which itself designates the victims of slavery as lawful beneficiaries of Zakât.

Most of the Muslim jurists, including Imâms Ibrâhîm an-Nakha'î, Abû *H*anîfa, Ath-Thaurî, Shâf'î and Al-Laîth, agree that Zakât funds may be used to assist newly enfranchised slaves, whose former masters were either non-Muslims or Muslims not possessing sufficient wealth to fulfil the Quranic Command of bestowing upon their former slave and new brother in Islam the necessary means

for the setting up of an independent life within the fold of Muslim society :

... وَالَّذِينَ يَبْتَغُونَ الكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ انْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللهِ الَّذِي آتَاكُمْ ... (٢٤ : ٣٣)

« . . . And such of your slaves as seek a writing (of emancipation), write it for them if you are aware of aught of good in them, and bestow upon them of the wealth of Allah which He hath bestowed upon you . . . » (XXIV : 33).

The term «Riqâb» (slaves, or captives) has further been interpreted as applying to those Muslims who have fallen prisoner into the hands of the enemy. Hence, it is generally agreed that, whenever such action is possible, Zakât funds may be used to ransom Muslim prisoners of war.

6 — **The Debtors** (الغارمون) . All debtors who find themselves unable to repay their debts without suffering undue distress or destitution, or who are absolutely unable to do so being devoid of all means of subsistence, may lawfully seek relief from their burden through the agency of Zakât.

As laid down by the Law, the circumstances which entitle a debtor to avail him/herself of Zakât funds are :

a) The debt in question must be one incurred for a perfectly lawful purpose, whether the purpose served be purely personal or altruistic. Thus even if a person stands security in the lawful interest of another person, and subsequently circumstances arise which, on the one hand, burden him/her with the full responsibility of the debt and, on the other hand, straiten his/her own means so as to render the discharge of the debt a cause of distress or destitution, Zakât funds may lawfully be availed of for the purpose. Similarly, as laid down by Imâm Shâf'î, Muslims who have incurred debts in order to reconcile, and make peace between, contending Muslim individuals or tribes, and whose straitened circumstances do not allow of repaying the debts in question without suffering

undue distress or destitution, may lawfully be indemnified out of Zakât funds.

On the other hand, debts incurred as a result or for the sake of an unlawful purpose, such as gambling, the use of intoxicants, habitual squandering, and other such immoral activities, may never be discharged through the agency of Zakât.

b) The debt in question must be owed to a Muslim who is him/herself at the moment in dire necessity and is therefor *unable to await the debtor's time of convenience*. The importance of this condition cannot be over-emphasized.

Indeed, Quranic Law forbids that a Muslim creditor ever claim the repayment of a debt so long as such action would inevitably imply distress or destitution for the debtor, or even result in undue embarrassment for him/her :

وَاِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ اِلَى مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَكُمْ اِنْ كُنْتُمْ تَعْلَمُونَ ۝ (٢ : ٢٨٠)

«And if the debtor is in straitened circumstances, then (let there be) postponement to (the time of) ease; and that you remit the debt as alms-giving would be better for you if you did but know.»
(II: 280).

Thus in conformity with the above-quoted Quranic verse, if the value of the debt does not represent for the creditor wealth of which he/she is in urgent need, the creditor *must obligatorily* await the debtor's time of convenience (1). This Quranic Precept excludes the possibility of Zakât funds being used to discharge debts owed to persons in comfortable circumstances.

c) Before availing him/herself of Zakât funds, the debtor must make every possible effort to discharge the debt by his/her own lawful means.

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(1) The Mâlikite School of Law lays down that only debts for the non-payment of which a person is liable to imprisonment may be paid out of Zakât funds. This view, however, does not conform to the Quranic Precept (verse 280 of Surah II). Nor does it conform to the spirit of the Law of Zakât.

Any wealth legitimately owned by the debtor and which is by nature taxable for Zakât, must first be disposed of to pay off the debt. If, however, the debtor does not own any taxable wealth, or if the value of his/her existing taxable wealth does not suffice to cover the debt, he/she must endeavour to raise the necessary funds through the disposal of whatever other wealth he/she may possess that is surplus to his/her basic needs, and must effectuate every possible economy in the course of his/her daily life in order to collect the means of discharging his/her obligation.

Thereafter, if the best efforts of the debtor do not enable him/her to repay the debt without suffering undue distress or destitution, Zakât funds may be availed of to cover the debt either totally or partially according to the circumstances. (See below, Rule 62c/iv, p. 353).

7 — For the Cause of Allah (1) (في سبيل الله). The Quranic locution «Fî sabîl Illah», i.e., «in the Way of, or for the Cause of, Allah», has been variously interpreted by the Muslim jurists of old.

Both Imâms Abû *H*anîfa and Abû Yûsuf understand the «Way or Cause of Allah» as specifically meaning «Al-Ghizâ»(الغزاة) , i.e., lawful warfare for the defence of Islam and of the Muslim peoples and territories. Hence, these two eminent jurists hold that Zakât may be given to a fighter (غازٍ) , but only on condition that he be poor.

Other jurists, who interpret the term «Ghanî» (غنيٌ) , as it occurs in the following «*H*adîth», in the sense of materially well-to-do, maintain that Zakât may be given to a fighter even if he be wealthy !

روى عبد الرزّاق عن معمر عن زيد بن أسلم عن عطاء بن يسار عن أبي سعيد الخدري ، قال : قال رسول الله صلّى الله عليه وسلّم : لا تحلّ الصدقة لغنيٍّ الاّ لخمسة ، لعامل عليها أو لغاز في سبيل الله أو غنيّ اشتراها بماله او فقيرٍ تُصدّق عليه فأهدى لغنيٍّ أو غارم • (أبو داود)

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(1) Textually : «In the Way of Allah».

« 'Abd ur-Razzâq has related on the authority of Ma'amar, (who said) on the authority of Zabd ben Aslam, (who said) on the authority of 'Atâ ben Yasâr, (who said) on the authority of Abû Sa'îd al-Khudrî, who said : The Messenger of Allah (ص) said : 'The Zakât is unlawful for one who is self-sufficient, except in five cases : if a person be a Zakât-official or a fighter in the Way of Allah; or if a person who is self-sufficient purchase it with his wealth; or if a poor deserving beneficiary give thereof as a personal gift to a person who is self-sufficient; or in the case of a debtor' .»

(Imâm Abû Dâûd.)

Actually, as explained earlier, the term «Ghinâ» and its adjective «Ghanî» may be understood both in the limited sense of material sufficiency and in the broader sense of self-sufficiency as a satisfied mind and the enjoyment of physical fitness.

Thus, according to Imâm Al-'Aynî who adheres to the *H*anafite view, the term «Ghanî» in the above-quoted «*H*adîth» means «one who being bodily fit is perfectly capable of earning his living», and not necessarily «one who is materially self-sufficient». In the light of this interpretation, even a person who is poor but otherwise capable of earning his own living, *and has the possibility of doing so,* is not entitled to receive Zakât unless, as stated in the «*H*adîth», he be serving as a Zakât-official or fighting for the Cause of Allah; unless he purchase it with his wealth or receive it as a personal gift from a poor deserving beneficiary; or unless he be indebted to a needy creditor. This interpretation is in absolute conformity with the spirit of the Law of Zakât.

Imâm Mu*h*ammad understands the Quranic locution «Fî sabîl Illah» as referring to the pilgrimage to the Holy Ka'aba at Mecca and, therefore, holds the view that the class of beneficiaries here designated are the poor would-be pilgrims, who are to be enabled to perform their sacred duty through the agency of Zakât.

Imâm Mu*h*ammad's interpretation is based on a certain report according to which the Prophet (ص) ordered that a camel that had been donated by a man «fî sabîl Illah» be given to a pilgrim so that he might ride it. But the fact that the Prophet allowed a pilgrim to ride a camel donated «for the Cause of Allah» does not warrant restricting the scope of «Allah's Cause» exclusively to the pilgrimage to the Holy Ka'aba at Mecca. Moreover, the pilgrimage is a sacred

duty incumbent only on those Muslims who have the necessary means of their own to comply therewith. In this respect, the Quranic Injunction is quite definite :

... وَلِلّٰهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلاً ... (٣ : ٩٧)

« . . . And the pilgrimage to the House is a duty unto Allah for mankind, for him who has the means of undertaking the journey thither . . . » (III : 97).

It is therefore not admissible that the lawful use of Zakât funds include the actual financing of pilgrimages for poor Muslims. It is quite another thing that Zakât be given to a pilgrim already on his/her way and who through fortuitous circumstances has become deserving thereof. In such a case, the pilgrim's legitimate right to Zakât is by reason of his being, at the time, a wayfarer (ابن السبيل) in distress and not at all by reason of his being a pilgrim.

More in keeping with the true spirit of Islam is the widely accepted view that «the Way or Cause of Allah» includes all unselfish and disinterested activities undertaken solely for the service of Islam and that accrue to the greater glory and benefit of the Muslim peoples. In other words, it comprehends what in Quranic terminology is referred to as قرضاً حسناً, i.e., «the lending to Allah of a goodly loan» .

Considered in the light of this last interpretation, Zakât funds may, under the heading of «Fî sabîl Illah», be used as follows :

a) To provide a living wage for all Muslims who are prevented from engaging in any of the activities normally necessary to earn a regular living, by the fact that their life effort is entirely dedicated to the service of Islam, *and who possess no other means of subsistence*. Such persons include :

i) Poor Muslims entirely dedicated to a life of study, research (scientific, literary or otherwise), or teaching, in the interest of the Muslim peoples in particular and of humanity in general, and with a view to consolidate and propagate the Islamic Faith.

ii) Poor Muslim physicians, nurses and social workers, and all

regular members of the staffs of hospitals and dispensaries who, themselves being poor, are dedicated to the service of the poor Muslims, of orphanages, and of special institutes for the education and rehabilitation of poor disabled, blind, deaf and dumb, Muslim children and adults.

iii) Poor Muslim voluntary fighters and workers (not members of the regular standing Army, Navy, or Air Force) who, in time of war, contribute their services for the defence of Islam and of the Muslim peoples and territories.

iv) Poor honorary members of the Islamic Judiciary who receive no remuneration from the State (1).

b) To afford immediate relief to Muslims who are the victims of floods, earthquakes, volcanic eruptions, droughts, cyclones, etc., tidal waves, fires, famines, epidemics, and other such land, air and sea disasters occurring within the jurisdiction of Muslim governments (2).

c) To rehabilitate those Muslim victims of land, air or sea disasters who have, as a consequence thereof, suffered either total loss of their worldly possessions or a loss so severe as to cause them extreme distress and misery.

d) To provide shrouds (أكفان) for those Muslim dead whose means at the time of death are insufficient to cover the expense involved, and whose near relatives are likewise in straitened circumstances and therefore also unable to bear the expense in question without suffering undue embarrassment.

It is interesting to remark here that the *H*anafite contention that the act of Zakât must necessarily imply a transfer of ownership from one person to another, has led the jurists of that School of Law to consider the use of Zakât funds to provide shrouds for the poor dead as unlawful. However, as already pointed out, this ruling of the *H*anafite School is not substantiated by any of the Quranic Precepts relating to the Law of Zakât (3). Nor can the

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(1) The salaries of all regular Government servants are incumbent on the Public Exchequer and are not payable out of Zakât funds.

(2) See below, p. 352.

(3) Also see below, p. 352, footnote.

Prophet's instructions to Mu'âdh be said to justify the *H*anafite stand in this matter :

... فأعلمهم أنّ الله افترض عليهم صدقة في أموالهم تؤخذ من أغنيائهم وتردّ على فقرائهم ...

« . . . Inform them that Allah has imposed upon them the duty of giving alms from their wealth, which will be taken from the rich among them and bestowed upon (or: used to benefit) the poor among them . . . » .

These instructions clearly indicate the purpose of the Zakât. For the Arabic verb «radda 'alâ» (ردّ على) means «to bestow upon, to give a return to, to benefit a person (as, for instance, a business deal, etc.)». In other words, the lawful beneficiaries are to benefit from the use of Zakât funds according to their needs. There is no indication whatever that an actual transfer of the ownership of the thing given as Zakât is necessary in each and every case for the act of Zakât to be lawful. Moreover, it cannot be denied that, for rich and poor alike, the shroud *is* the very last of all worldly possessions; and, accordingly, there can be no objection whatsoever to the use of Zakât funds in a manner which unquestionably constitutes a last act of charity to those Muslims who have died in poverty.

e) To build, or rent, premises and equip hospitals and dispensaries entirely dedicated to the welfare of the Muslim poor, and to build, or rent, premises and equip orphanages and special institutes for the education and rehabilitation of poor disabled, blind, deaf and dumb, Muslim children and adults.

f) To build, or rent, premises and equip schools in poor districts, for the education of poor Muslim children *and poor Muslim illiterate adults.*

g) In time of war, when circumstances of extreme emergency arise, and an all-out effort on the part of each and every citizen is essential to defend the Muslim Nation and territories, Zakât funds may be availed of for the purpose, and used in whatever manner required by the situation prevailing at the time. For instance, to build fortifications, to provide armaments, provisions and medical aid to the fighting forces, for the immediate relief of Muslim war refu-

gees, etc., and for all such purposes as are essential for the successful pursuance of the Nation's struggle.

انّ اللهَ اشْتَرَى مِنَ المُؤمِنِينَ أنْفُسَهُمْ وَأمْوَالَهُمْ بِأنّ لَهُمُ الجَنّةَ يُقاتِلُونَ فِي سَبِيلِ اللهِ فَيَقْتُلُونَ وَيُقْتَلُونَ وَعْداً عَلَيْهِ حَقّاً فِي التّوْرَاةِ وَالانْجِيلِ وَالقُرْآنِ وَمَنْ أوْفَى بِعَهْدِهِ مِنَ اللهِ فَاسْتَبْشِرُوا بِبَيْعِكُمُ الّذِي بَايَعْتُمْ بِهِ وَذَلِكَ هُوَ الفَوْزُ العَظِيمُ • (٩ : ١١٣)

«Allah hath bought from the believers their lives and their wealth because the Garden will be theirs : they shall fight in the Way of Allah and shall slay and be slain. It is a promise which is binding on Him in the Torah and in the Gospel and in the Qurân. Who fulfilleth His Covenant better than Allah ? Rejoice then in your bargain that you have made for that is the supreme triumph.»
(IX : 113).

8 — **The Wayfarer** (ابن السبيل). A most interesting feature of the Qurân is the emphasis that it lays on the value of travel both as an effective means of acquiring knowledge and of promoting, through personal and peaceful contact, the Islamic ideal of human brotherhood — thus weaving in a most practical way the solidarity of the Muslim peoples — and contributing to world peace through personal relations with other peoples in a healthy and constructive atmosphere.

Islam has little use for mere theoretical knowledge and impractical ideologies. It seeks to establish on the firmest basis a permanently prosperous social order in justice, set deep in the hearts of its adherents; and lasting values can only thrive in an atmosphere created by a true knowledge of reality and a correct assessment of facts.

Thus, time and again, the Qurân exhorts its followers to «travel in the land», not merely as an invitation but as a veritable command to all who would observe the «Ways of Allah» (سنّة الله) and learn practical wisdom from the vast wealth of experience that travel alone affords.

As a necessary corollary to this Command, and in order to encourage the Muslims to leave their homes and get to personally and practically know the world they live in, Quranic Law makes special provision for the protection and welfare of the Muslim traveller.

On the one hand, Muslims are exhorted to individually perform the meritorious deed of assisting the traveller :

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلْوَالِدَيْنِ وَالْأَقْرَبِينَ وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ" • (٢ : ٢١٦)

«They ask thee (O Muhammad) what they should spend (in charity). Say : That which you spend for good (must go) to parents and near kindred and orphans and the destitute and the wayfarer. And whatever good you do, lo ! Allah is Aware of it.» (II : 216).

On the other hand, in recognition of the fact that travellers, be they rich or poor in their own homeland, are always at least potentially in need, verse 60, Surah IX of the Qurân concedes to travellers a definite right to share in the benefits of Zakât whenever want and distress overtake them in their journeying and they find themselves cut off from their own means of subsistence. Accordingly, regardless of their position or wealth enjoyed at home, travellers who, through no fault of their own, come to grief while on a journey far from their own home (having lost their money, or it having been stolen from them, or again finding themselves in a helpless situation due, for instance, to the sudden outbreak of a war and the consequent interruption of communications) and are, for any reason, unable to secure their own means or a private loan which would allow them to tide over their difficulty, may lawfully claim the assistance they need from the local Zakât funds.

The Law of Zakât lays down two conditions on which depends the lawfulness of the traveller's claim :

a) That the traveller's journey be undertaken for a perfectly lawful purpose, such as the service of Islam, the pilgrimage to the Holy Ka'aba at Mecca, study, tourism, family, health or social con-

siderations, business.

b) That before seeking Zakât assistance, the would-be beneficiary first make every effort to help him/herself by such lawful means as, for instance, securing a private loan which would enable him/her to tide over his/her difficult situation. Should such efforts fail, the necessary means to satisfy the traveller's immediate wants and to enable him/her to either complete his/her journey or to return home must be afforded him/her out of the Zakât funds available at the local Zakât-centre.

As is the case for all other classes of beneficiaries, Zakât assistance afforded to travellers is absolutely free and implies no obligation whatsoever on their part to either refund the amount received to the Zakât treasury or to bestow the same as alms when they find themselves once again in comfortable circumstances. Zakât is the *God-given right* of all lawful beneficiaries and, hence, there is no question of Zakât ever being given in the shape of a loan, as some modern writers have suggested.

In order to further ensure the welfare of travellers, it is generally admitted that Zakât funds may be used to build and maintain inns, rest-houses, or places of shelter (مسافر خانه) both on the roadside and in villages, towns and cities, where free shelter and food are to be held at the disposal of *needy* Muslim travellers.

The caretakers and other Muslim servants of such inns and rest-houses are naturally entitled to receive a living wage, payable out of Zakât funds. Unless, having other independent means of subsistence, they make voluntary and free offer of their services for the sake of God.

The building and repair of roads and bridges may also be included among the uses to which Zakât funds may lawfully be dedicated under this heading. Yet, while it is true that the comfort and welfare of travellers largely depend on the existence and good condition of roads and bridges, it would seem that the responsibility of providing the public with these facilities rests primarily with the municipalities and the State itself, and that the expense involved is incumbent on the Public Exchequer. Strictly speaking, the use of Zakât funds for this purpose should be limited to those localities where the building or repair of a road and/or a bridge is an urgent

necessity for the public safety and well-being, and where an insufficiency of public funds prevents the required work being duly carried out and private contributions do not cover the amount needed.

The eight classes of lawful beneficiaries described above must, for administrative purposes, be divided into two groups, namely :

a) Beneficiaries whose special circumstances entitle them to receive a regular Zakât pension or living wage. These include : helpless incurable, sick and disabled Muslims; poor helpless widows and orphaned children; all such Muslims as described under the heading «For the Cause of Allah», whose life effort is entirely dedicated to the service of Islam; the deserving Zakât-officials; the caretakers and other regular servants of inns and rest-houses maintained for the benefit of needy Muslim travellers.

b) Beneficiaries requiring casual or temporary Zakât assistance, such as : Muslims in straitened circumstances and destitute Muslims, who are to be rehabilitated through the agency of Zakât; the victims of land, sea and air disasters; debtors; slaves and captives (Muslim prisoners of war); «those whose hearts are reconciled»; travellers.

According to the jurists of the *H*anafite School of Law, available Zakât funds must be equally distributed among all the various classes of beneficiaries designated in verse 60, Surah IX of the Qurân, with the exception of «those whose hearts are reconciled», whose share they consider as having lapsed.

Other jurists opine that Zakât funds may be dedicated in their entirety to the welfare of one class of beneficiaries only, if the others are not present.

However, the most satisfactory course would seem to lie between these two views. Indeed, it is only logical that the apportioning of Zakât funds must be determined primarily by the number and class of beneficiaries actually present. But there is no definite indication in verse 60, Surah IX of the Qurân that the Zakât must necessarily be divided into a given number of equal shares, regardless of whether all the eight classes of beneficiaries are present or not, and regardless of the actual requirements of each individual beneficiary. Should, for example, there be no deserving Zakât-officials,

debtors or slaves present in a given locality, there is no valid reason why available funds should not be dedicated more fully, *although not necessarily wholly,* to the welfare of the classes of beneficiaries actually existing in that locality.

On the other hand, verse 60, Surah IX of the Qurân does clearly imply that, in normal circumstances, a certain portion of the Zakât funds must always be kept in reserve for the use of eventual beneficiaries, to whichever class or group they may belong.

The nature and extent of the assistance afforded to each individual beneficiary must naturally depend on his/her special circumstances and requirements. For instance, a needy Muslim residing in a rural district may preferably be given Zakât in the shape of domestic animals, foodgrains or other agricultural produce, which kinds are, moreover, more likely to be available at rural Zakât-centres. Whereas a city dweller would preferably receive Zakât in the shape of cash money, which is more likely to be available at city Zakât-centres. Travellers mostly require Zakât assistance in the shape of food and cash money. Debtors also usually require Zakât assistance in cash money.

As a rule, Muslim jurists have considered it an odious practice to give to a single casual or temporary beneficiary at one time an amount which in itself warrants the paying of Zakât.

On the other hand, regular beneficiaries should be granted a yearly provision allowing of a decent, *but modest,* standard of living.

Lastly, the amount of Zakât funds assigned to other purposes which may be considered as lawful, such as the building, or renting, and equipping of hospitals, dispensaries, schools, etc., for the poor and deserving Muslims, must always depend on the urgency of the case in relation to that of other individual claims, and on the prevailing price of labour, materials, and/or rentals.

The deserving Muslim's right to Zakât is undeniable and unabrogable. For this very reason, and because the Qurân deems it so essential to provide effective safeguards against poverty becoming an endemic evil in the folds of Muslim society, every Muslim bears the moral obligation of righteously availing him/herself of Zakât whenever truly deserving the benefits it confers. It is the duty of

all would-be beneficiaries to themselves judge, according to the strictest dictates of their own conscience, whether their condition justifies accepting or claiming Zakât. And even when deserving thereof, the beneficiaries of Zakât are ineluctably responsible to God and to their fellow-Muslims for the proper use of the wealth of which they are the recipients. They must be fully conscious of the fact that any abuse of their position or misuse of Zakât funds allotted to them is as sinful an act, and as deserving of punishment, as is default on the part of the Zakât-payer.

The following « *H*adîth » attests to how emphatically the Prophet (ص) warned his followers against soliciting wealth without having a right thereto, in order to increase their own worldly assets:

حدّثنا أبو كُريْب وواصل بن عبد الأعلى ، قالا : حدّثنا ابن فُضيْل عن عُمارة ابن القعقاع عن أبي زُرْعة عن أبي هريرة قال : قال رسول الله صلّى الله عليه وسلّم : من سأل الناس أموالهم تكثّراً فانّما يسأل جمراً فلْيستقلّ أو ليستكثرْ . (مسلم)

« Abû Kuraib and Wâsil ben 'Abd ul-A'alâ have related unto us, saying : Ibn Fu*d*ail has related unto us, on the authority of 'Umâra ibn ul-Qa'aqâa, (who said) on the authority of Abû Zur'a, (who said) on the authority of Abû Huraîra, who said : The Messenger of Allah (ص) said : 'Verily he who solicits the people's wealth in order to increase (his own wealth) is merely begging for an ember (which shall consume him to his utter destruction), whether he desire much or a little thereof' .» (Imâm Muslim).

However, when a Muslim knows fully well that he/she is deserving thereof, it is his/her Islamic duty to claim Zakât and obtain thereby the relief of which he/she stands in need.

Likewise, when the distressful condition of a needy Muslim comes to the knowledge of the responsible Zakât-officials before the person in question has claimed Zakât, he/she may not, out of false pride, refuse the assistance conveyed to him/her.

To claim or accept Zakât implies no loss of human dignity or prestige. Zakât is a bounty ordained by God and bestowed by His

Command. Hence, to abstain therefrom out of false pride implies no virtue whatsoever. Indeed, the complete success of the Institution of Zakât as an effective instrument for the relief, control and elimination of want and distress within the fold of Muslim society, depends on a correct attitude and behaviour as much on the part of the deserving Muslims as on the part of the Zakât-payers and of the Zakât-officials.

Trends of corruption that have only too often prevailed in the past in the various branches of Government service, have created a feeling of distrust and misgiving among the Muslim public, making them apprehensive of any plan to reorganize the collection and distribution of Zakât under State supervision. This well-founded sentiment must be taken into account when reshaping the administrative system of the Institution of Zakât, and every effort made to eliminate from it, as completely as humanly possible, any opportunity for corrupt practices of whatever kind by the responsible Zakât-officials.

As is the case for all other aspects of the Law, the rules governing the simple and efficient administrative system devised by the Prophet (ص) must remain the substance of the administrative system of the reorganized Institution of Zakât in our time. Amplification thereof as required by present-day conditions, must maintain the original simplicity and efficiency of the Institution, and must tend, as far as humanly possible, to vouchsafe the Institution of Zakât absolute freedom from corruption and abuse.

It is with this aim in view that are set forth below the original rules laid down by Islam, amplified in an effort to satisfactorily meet the exigencies of our modern age.

Rules governing the Administration of Zakât :

1) In conformity with verse 103, Surah IX of the Qurân, and with the Prophet's instructions made known in the reliable «A*h*adîth», the Islamic Institution of Zakât is to be established in the fold of Muslim society in an organized manner and under the responsible supervision of the various Muslim Governments, or of a special international Muslim supervisory body appointed by the said Governments.

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ ۔ (٩ : ١٠٣)

«Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow, and pray for them. Lo ! Thy prayer is an assuagement for them. Allah is Hearer, Knower.» (IX : 103).

2) For the purpose of collecting Zakât dues and distributing Zakât funds, Zakât-centres are to be established in all villages, towns and cities within Muslim territory.

3) It is well established that in the Prophet's lifetime, the administration of Zakât was carried out from the Mosque. The soundness of this practice will be better appreciated if it is considered that the Mosque is pre-eminently a natural landmark for all Muslims, both local and foreign. Accordingly, the various Zakât-centres should be situated as follows :

a) The head Zakât-centre for all Muslim countries, with supervisory jurisdiction over all Zakât-centres situated within all the territories under the jurisdiction of Muslim Governments, should be directly attached to the Jâmi'a (main) Mosque at a place unanimously agreed upon, preferably a centre common to all Muslims, such as Medina (المدينة المنوّرة).

b) The main Zakât-centre of each Muslim country, with supervisory jurisdiction over all Zakât-centres within the territory under the jurisdiction of the local Muslim Government, should be directly attached to the Jâmi'a Mosque of the capital thereof.

c) Provincial Zakât-centres with supervisory jurisdiction over all Zakât-centres situated within the territory under the jurisdiction of the provincial administrative authorities, should be directly attached to the Jâmi'a Mosque of the capital of each province.

d) District Zakât-centres. with supervisory jurisdiction over all Zakât-centres situated within the territory under the jurisdiction of the district authorities, should be directly attached to the Jâmi'a Mosque of the district capital.

e) The Zakât-centre of every city, town or village, with supervisory jurisdiction over the branch Zakât-centres situated with-

in the \municipal area under the jurisdiction of the local municipal authorities, should be directly attached to the Jâmi'a Mosque of the place involved.

f) Branch Zakât-centres, with supervisory jurisdiction over the «Ma*h*alla» area, should be directly attached to the Mosque of each «Ma*h*alla» or quarter in every city, town and village as required.

4) The various Zakât-centres, from the head centre to the branch centres, are to be placed in charge of authorized officials (رؤساء العاملين) who are to be directly responsible to the State and to the Muslim public for the proper functioning of their respective centres.

5) The members of the Zakât-staffs, including the officials in charge, should preferably be chosen or appointed from among the local inhabitants, and *must*, in each and every case, be Muslims *well known to the Muslim community for their piety and integrity.*

6) The levying of Zakât dues is to be performed by the various branch Zakât-centres within the «Ma*h*alla» under their respective jurisdictions.

7) The practical functioning of the Institution of Zakât must be kept on the highest plane of integrity, courtesy, and loyalty to the Muslim Nation.

It is the duty of the Zakât-payer to faithfully, graciously and willingly discharge his/her sacred obligation in conformity with the Injunction set forth in the following Quranic verses :

الَّذِينَ يُنفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللهِ ثُمَّ لَا يُتْبِعُونَ مَا أَنفَقُوا مَنًّا وَلَا أَذًى لَّهُمْ أَجْرُهُمْ عِندَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ • قَوْلٌ مَّعْرُوفٌ وَمَغْفِرَةٌ خَيْرٌ مِّن صَدَقَةٍ يَتْبَعُهَا أَذًى وَاللهُ غَنِيٌّ حَلِيمٌ • يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتِكُم بِالْمَنِّ وَالْأَذَى كَالَّذِي يُنفِقُ مَالَهُ رِئَاءَ النَّاسِ وَلَا يُؤْمِنُ بِاللهِ وَالْيَوْمِ الْآخِرِ فَمَثَلُهُ كَمَثَلِ صَفْوَانٍ عَلَيْهِ تُرَابٌ فَأَصَابَهُ وَابِلٌ فَتَرَكَهُ صَلْدًا

لا يَقْدِرُونَ عَلَى شَيْءٍ مِمَّا كَسَبُوا وَاللهُ لا يَهْدِي القَوْمَ الكَافِرِينَ • وَمَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ ابْتِغَاءَ مَرْضَاتِ اللهِ وَتَثْبِيتاً مِنْ أَنْفُسِهِمْ كَمَثَلِ جَنَّةٍ بِرَبْوَةٍ أَصَابَهَا وَابِلٌ فَآتَتْ أُكُلَهَا ضِعْفَيْنِ فَإِنْ لَمْ يُصِبْهَا وَابِلٌ فَطَلٌّ وَاللهُ بِمَا تَعْمَلُونَ بَصِيرٌ • (٢ : ٢٦٢ ــ ٢٦٥)

«Those who spend their wealth for the Cause of Allah and afterward make not reproach and injury to follow that which they have spent : their reward is with their Lord, and no fear shall come upon them neither shall they grieve.

«A kind word with forgiveness is better than alms-giving followed by injury. Allah is Absolute, Clement.

«O you who believe ! Render not your alms-giving vain through reproach and injury, like him who spends his wealth only to be seen of men and believes not in Allah and the Last Day. His likeness is as the likeness of a rock whereon is dust of earth; if a rainstorm smites it, it leaves it smooth and bare. They have no control of aught of that which they have gained. Allah guides not the disbelieving folk.

«And the likeness of those who spend their wealth in search of Allah's pleasure, and for the strengthening of their souls, is as the likeness of a garden on a height. When the rainstorm smites it, it brings forth its fruit twofold. And if the rainstorm smite it not, then the shower. Allah is Seer of what you do.» (II : 262 - 265).

A further example of the integrity and courtesy required of the Zakât-payer is given in the following «A*h*adîth» :

حدّثنا يحي بن يحي ، أخبرنا هشيم ؛ وحدّثنا أبو بكر بن أبي شيبة ، حدّثنا حفص بن غياث وأبو خالد الاحمر ؛ وحدّثنا محمّد ابن المثنّى ، حدّثنا عبد الوهاب وابن أبي عديٍّ وعبد الاعلى كلّهم عن داود ؛ وحدّثني زهير بن حربٍ واللفظ له قال : حدّثنا اسماعيل بن ابراهيم ، أخبرنا داود عن الشعبيّ عن جرير بن عبد الله قال : قال رسول الله صلّى الله عليه وسلّم : اذا أتاكم المصدّق فليصدر عنكم وهو عنكم راضٍ • (مسلم)

«Ya*h*yâ ben Ya*h*yâ, on the authority of Hushaîm, and Abû Bakr ben Abî Shayba, on the authority of *H*afs ben Ghyâth and Abû Khâlid al-A*h*mar, and Mu*h*ammad ibn ul-Muthannâ, on the authority of 'Abd ul-Wahhâb, Ibn Abî 'Adî and 'Abd ul-A'alâ, have all related unto us on the authority of Dâûd, and Zuhair ben *H*arb (also) related unto me — the wording being his — saying : Ismâ'îl ben Ibrâhîm has related unto us, and Dâûd has informed us, on the authority of Ash-Sha'abî (who said) on the authority of Jarîr ben 'Abd Allah, who said : The Messenger of Allah (ص) said : 'When the Zakât-collector comes to you, let him part from you being pleased with you (i.e., with the manner in which you discharge your sacred obligation of Zakât).» (Imâm Muslim).

حدّثنا أبو كاملٍ فضيل بن حسينٍ الجحدري ، حدّثنا عبد الواحد بن زيادٍ ، حدّثنا محمّد أبي اسماعيل ، حدّثنا عبد الرحمان بن هلال العبسي عن جرير بن عبد الله قال : جاء ناس من الاعراب الى رسول الله صلّى الله عليه وسلّم فقالوا : انّ ناساً من المصدّقين يأتوننا فيظلموننا • قال : فقال رسول الله صلّى الله عليه وسلّم : أرضوا مصدّقيكم • قال جرير : ما صدر عنيّ مصدّق منذ سمعت هذا من رسول الله صلّى الله عليه وسلّم الاّ وهو غنيّ راضٍ • (مسلم)

«Abû Kâmel Fu*d*ail ben *H*usain al-Ja*h*darî has related unto us (saying) : 'Abd ul-Wâ*h*id ben Ziyâd has related unto us (saying) : Mu*h*ammad Abî Ismâ'îl has related unto us (saying) : 'Abd ur-Ra*h*mân ben Hilâl al-'Absî has related unto us, on the authority of Jarîr ben 'Abd Allah, who said : Certain people from among the Arabs came to the Messenger of Allah (ص) and said : Verily when certain Zakât-collectors come to us, they oppress us. (Jarîr ben 'Abd Allah) said : Then the Messenger of Allah (ص) said : 'Satisfy your Zakât-collectors (by paying your Zakât dues accurately and graciously)'. Jarîr said : Since I heard these words from the lips of the Messenger of Allah (ص) , no Zakât-collector has ever taken leave of me without having been duly satisfied by me.»
(Imâm Muslim).

Likewise, utmost integrity and courtesy are required of the

Zakât-officials in their dealings with the Zakât-payers. The Zakât-collector must, in conformity with the Quranic Injunction :

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلاَتَكَ سَكَنٌ لَهُمْ وَاللهُ سَمِيعٌ عَلِيمٌ • (٩ : ١٠٣)

(«Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow, and pray for them, for thy prayer is an assuagement for them. Allah is Hearer, Knower.» (IX: 103)), and the noble example of the Prophet (ص), acknowledge the receipt of Zakât dues with a word of blessing and a prayer to God for the Zakât-payer, such as : «O Allah ! Bless him (her) and his (her) wealth» (اللهمَّ بارك فيه (فيها) وفي ماله (مالها)) , or « O Allah ! Forgive him (her), and accept it (i.e., the Zakât due) from him (her) », (اللهمَّ اغفر له (لها) وتقبَّل منه (منها)), or «O Allah! Bless those who follow the example of such a one » (اللهمَّ صلِّ عليه (عليها) وعلى آله (آلها)) .

The «A*h*adîth» quoted below give further examples of the Prophet's «Sunnah» or practice when receiving Zakât dues from the hands of his followers :

حدَّثنا حفص بن عمر قال : حدَّثنا شُعبة عن عمرو عن عبد الله بن أبي أوفى قال : كان النبيُّ (ص) اذا أتاه قوم بصدقتهم قال اللهمَّ صلِّ على آل فلانٍ • فأتاه أبي بصدقته فقال : الهمَّ صلِّ على آل أبي أوفى • (بخاري)

«*Hafs* ben 'Umar has related unto us, saying : Shu'ba has related unto us on the authority of 'Amr, (who said) on the authority of 'Abd Allah ben Abî Aufâ, (who said) : When people used to bring the Prophet (ص) their Zakât dues, he used to say : 'O Allah ! Bless those who follow the example of so and so.! Thus my father brought him his Zakât due, and he (the Prophet) said : 'O Allah ! Bless those who follow the example of Abî Aufâ' .» (Imâm Bukhârî).

حدَّثنا يحيى بن يحيى وأبو بكر بن أبي شيبة وعمرو الناقد واسحاق بن ابرَاهيم ، قال يحيى : أخبرنا وكيع عن شعبة عن عمرو بن مرَّة ، قال : سمعت

عبد الله بن أبي أوفى، حدّثنا عبيد الله بن معاذٍ ، واللفظ له، حدّثنا أبي عن شعبة عن عمرو وهو ابن مرّة ، حدّثنا عبد الله بن أبي اوفي ، قال : كان رسول الله صلّى الله عليه وسلّم اذا أتاه قوم بصدقتهم قال : اللهمّ صلّ عليهم . فأتاه أبي أبو أوفى بصدقته ، فقال : اللهمّ صلّ على آل أبي أوفى . (مسلم)

«Yaḥyâ ben Yaḥyâ, Abû Bakr ben Abî Shayba, 'Amr an-Nâqid and Isḥâq ben Ibrâhîm related unto us, (saying) — the wording is Yaḥyâ's : Wakî'a has informed us, on the authority of Shu'ba, who said) on the authority of 'Amr ben Murra, who said : I heard from 'Abd Allah ben Abî Aufâ; and 'Ubaîd Allah ben Mu'âdh has (also) related unto us — and the wording is his — saying : My father has related unto us, on the authority of Shu'ba, (who said) on the authority of 'Amr, son of Murra, (who said) : 'Abd Allah ben Abî Aufâ said : When people used to bring their Zakât dues to the Messenger of Allah (ص) , he used to say : 'O Allah! Bless them' . Thus my father, Abû Aufâ, brought him his Zakât due, and he said : 'O Allah ! Bless those who follow the example of Abû Aufâ' .»
(Imâm Muslim).

عن وائل بن حجر أنّه ص قال في رجل بعث بناقة حسنة في الزكاة : اللهمّ بارك فيه وفي ابله . (رواه النسائي)

« (It is related) on the authority of Wâil ben Hajar that the Prophet (ص) said, concerning a man who had sent (him) a handsome she camel in payment of his Zakât due : 'O Allah ! Bless him and his camels' .» (An-Nasâî).

Lastly, the beneficiaries of Zakât must themselves observe all the rules of Islamic decorum when claiming or receiving Zakât from the Zakât-officials.

The beneficiaries should acknowledge the receipt of their due with a word of thanks to Almighty God and a prayer of blessing for the Zakât-payers and the Zakât-officials. A befitting formula would be as follows :

أشكر الله الرحمان الرحيم • اللهمّ بارك على اصحاب الزكاة وبارك على العاملين عليها •

« I give thanks to Allah, the Beneficent, the Merciful. O Allah ! Bless those who give Zakât and bless the Zakât-officials.»

However, though Islam expects of every Muslim, man or woman, poor or rich, to acquire and maintain the highest possible standard of social refinement, ill-manners or uncouth behaviour on the part of a would-be beneficiary may never be taken as a pretext for refusing him/her the right of Zakât.

The Prophet's example when dealing with an, as yet, uncultured convert, must be the norm to follow in every such case :

حدّثني عمرو الناقد حدّثنا اسحاق بن سليمان الرازي ، قال : سمعت مالكاً ، وحدّثني يونس بن عبد الاعلى ، واللفظ له ، أخبرنا عبد الله بن وهبٍ ، حدّثني مالك بن انسٍ عن اسحاق بن عبد الله بن أبي طلحة عن أنس بن مالكٍ قال : كنت أمشي مع رسول الله صلّى الله عليه وسلّم وعليه رداء نجرانيّ غليظ الحاشية ، فادركه اعرابي فجبذه بردائه جبذة شديدة نظرت الى صفحة عنق رسول الله صلّى الله عليه وسلّم ، وقد أثرت بها حاشية الرداء من شدة جبذته ، ثم قال : يا محمّد مُرْ لي من مـال الله الذي عندك • فالتفت اليـه رسول الله صلّى الله عليه وسلّم فضحك ، ثم أمر له بعطاء • (مسلم)

« 'Amr an-Nâqid has related unto me, (saying) : Is*h*âq ben Sulaymân ar-Râzî has related unto us, saying : I heard from Mâlik, and Yûnus ben 'Abd ul-A'alâ (also) related unto me — and the wording is his — saying : 'Abd Allah ben Wahb has informed us, saying : Mâlik ben Anas has related unto me, on the authority of Is*h*âq ben 'Abd Allah ben Abî *T*al*h*a, (who said) on the authority of Anas ben Mâlik, (who said) : I was walking with the Messenger of Allah (ص) who was wearing a thickly hemmed Najrânî cloak, when an uncouth bedouin came up to him and jerked him violently by his cloak. I looked at the side of the Messenger of Allah's neck and, verily, the man's jerk had been so violent that the hem of the cloak

had left its mark upon it. Then the man said : O Mu*h*ammad ! Give me something of the wealth of Allah that is in thy custody. So the Messenger of Allah (ص) turned towards him and laughed. Then he ordered that the man be given a boon (from the Zakât funds).»

8) As a necessary consequence of the fundamental principle of the Law of Zakât requiring the possession of wealth for a period of one full year as an essential condition warranting taxation for Zakât, and in order to ensure a continuous inflow of funds to each individual Zakât-centre, the collecting of Zakât dues by the authorized Zakât-collectors must be performed as a regular routine throughout the year.

For this purpose, and in order to facilitate the task of the Zakât-collectors, the precise kind of taxable wealth (i.e., silver, gold, currency notes, gems, trade capital, agricultural produce, domestic animals, etc.) owned by each individual Zakât-payer resident within any given «Ma*h*alla» should be made known by the Zakât-payers themselves to the officials of the local branch Zakât-centre, whose responsibility it is to levy the Zakât thereof.

9) According to the size of the Muslim population residing within its jurisdiction, the round of each «Ma*h*alla», by sections or in its entirety, should be made weekly, fortnightly, or monthly, in such a manner as to ensure that, as implied by Rule 3f, para. 4, of those governing plural computations, a Zakât-collector will call at the home or at the business premises of each individual Zakât-payer *at least once a month.*

10) The levying of Zakât dues on the various kinds of taxable wealth should be effectuated as follows :

a) As a consequence of Rule 3f, para. 4, of those governing plural computations, a round for the levy of the Zakât of such wealth as : silver, gold, gems (pearls and precious stones), currency notes (including coins of high denomination having no silver or gold content and which must be considered as currency notes printed on metal instead of paper (1)) kept as savings, invested money, and trade capital in cash and articles of trade, should be made at least once a month.

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(1) See Rule 3 of those governing the Zakât of currency notes, p. 94.

b) In conformity with, and as a consequence of, the rules governing the Zakât of pasturing domestic animals established on a regular trimestrial basis, a levy of the Zakât of pasturing domestic animals (including that of pasturing horses) should be carried out four times a year, *immediately following the completion of each three month period.*

c) In conformity with the Quranic verse :

... وَآتُوا حَقَّهُ يَومَ حَصَادِهِ ... (٦ : ١٤٢)

« . . . And pay the due thereof *upon the harvest day* . . . » (VI : 142), and the « Sunnah » or practice of the Prophet (ص), the Zakât of each kind of taxable agricultural produce must be levied immediately the harvesting, threshing, pressing and/or drying thereof is completed.

d) A levy of the Zakât of honey and of raw silk should be carried out twice a year, when the total amount produced within a season is known.

e) The Zakât of treasure troves is to be levied immediately following the discovery thereof.

f) The Zakât of the spoils of war must be levied at the earliest possible opportunity following the event of seizure.

g) The levying of the Zakât of the 'Id ul-Fi*t*r may lawfully be carried out at any time during the month of Rama*d*ân. But, as laid down by the Prophet (ص) , this task must be completed by sunrise of the 'Id day, before the people go forth to the 'Id prayer.

11) In the course of the levying of Zakât dues, both the Zakât-payers and the Zakât-officials are in duty bound to fully respect and adhere to the taxable limits, rates of payment, and general rules governing the Zakât of each of the various kinds of taxable wealth.

Should a Zakât-payer or a Zakât-official refuse to comply with this all-important rule, he/she should, in the first place, be severely admonished by the senior Zakât-officials and/or by other pious members of the Muslim community.

The point of difference or controversy being one of fundamental importance involving deviation from the very principles on which the Islamic Law of Zakât is based — i.e., from either the Quranic

Precepts relating thereto or the rulings laid down by the Prophet (ص) himself, should such admonishment prove of no avail, adequate sanctions must be taken against the guilty party, whether Zakât-payer or Zakât-official.

12) The obligation of Zakât being one of the essential duties imposed by the Qurân, it is incumbent on every Muslim, man or woman, rich or poor, to possess, at the least, a correct knowledge of the fundamental principles of the Law of Zakât, i.e., of the Quranic Precepts relating thereto and of the rulings laid down by the Prophet (ص).

Such knowledge of the fundamental principles of the Law of Zakât must be imparted to all Muslims *as an integrant part of their education* and so must be included as *a compulsory subject* in the educational programme of all Muslim countries.

13) All Zakât-officials *must necessarily* possess a thorough knowledge of the Law of Zakât *in all its details,* as approved and established unanimously by the respective legislative bodies of the various Muslim countries.

14) It is the duty of the Zakât-officials to patiently, kindly and honestly advise and assist the Zakât-payers in all matters referring to the technicalities of the Law and to the accurate discharge of their Zakât dues.

Such advice and assistance may be required, for instance, regarding the taxability of wealth, the computation of the year's term of possession, the reckoning of Zakât dues, the measuring or the weighing of the Zakât of agricultural produce, the exchange of taxable wealth, the collective ownership of taxable wealth, etc.

Should a Zakât-official refuse such advice or assistance to a Zakât-payer, he/she must be severely admonished by the senior Zakât-officials and/or by other pious members of the Muslim community. Following which, further non-observance of the required standard of discipline must entail for the guilty party immediate dismissal from the Zakât-staff.

15) The Zakât-officials are to receive all information given them by the Zakât-payers concerning the taxable wealth owned by the latter, as a privileged communication, with the thorough understanding that, especially as regards non-apparent wealth, utmost

secrecy in the matter is required of them, and that they will be held fully responsible and will be severely punished for any violation of secrecy or misuse of the information confided to them.

16) In order to exclude any possibility of a Zakât-payer refusing to discharge his/her dues on the plea of having already handed over the same to some other collector; of the Zakât-officials exacting the payment of dues more than once on such wealth as agricultural produce, honey, raw silk, treasure troves and the produce of silver and gold mines (the initial 20% Zakât), and the spoils of war, and more than once a year on those kinds of wealth subject to the rule requiring possession thereof for a full period of one year prior to taxation for Zakât; and lastly, of the Zakât-officials misappropriating the Zakât funds entrusted to their custody, the collecting of Zakât dues by the authorized officials must be carried out on the basis of an official duplicate receipt, the original for the Zakât-payer and one copy to be kept on file at the local branch Zakât-centre. The duplicate receipt must specify :

a) The date of payment of the dues;

b) the names of both the Zakât-payer and of the Zakât-collector;

c) the names of the country, of the village, town or city, and of the exact locality or «Ma*h*alla» in which the payment is made;

d) the exact nature of the wealth under taxation for Zakât (i.e., the kind or genus of pasturing animals; the kind or genus of agricultural produce; or if the wealth under taxation is silver, gold, and/or currency notes kept as savings, trade capital (cash and articles of trade), gems, treasure trove, etc.);

e) the exact number, quantity or value of the wealth under taxation for Zakât and the exact amount of Zakât paid;

f) whether the Zakât of such wealth as agricultural produce, pasturing domestic animals, articles of trade, etc., is paid in cash or in kind.

g) The duplicate receipt must bear the official seal of the Institution of Zakât and the signatures of both the Zakât-payer and the Zakât-collector.

The duplicate receipt will afford an easy and practical means of establishing a strict control on the Zakât revenue by both the public and the Zakât-officials.

17) A duplicate receipt should be made out separately for each genus of taxable wealth. For instance, whereas the Zakât of buffalos and zebus (both being oxen), or of sheep and goats, bearing one computation of a year's term of possession may be acknowledged in one duplicate receipt, the Zakât of sheep and oxen and/or camels bearing a same computation of a year's term of possession must be acknowledged in two, or three, separate duplicate receipts.

Similarly, the Zakât of silver, gold, currency notes and articles of trade bearing one computation of a year's term of possession should be acknowledged in one duplicate receipt. But the Zakât of, for instance, cereals and of pulse harvested during a same season must be acknowledged in two separate duplicate receipts.

18) As a measure of protection for the Zakât-collectors, the branch Zakât-centre to which they turn over the Zakât collected by them, must give them an official receipt therefor.

19) When estimating whether the number, quantity or value of any given kind or genus of taxable wealth belonging to one and the same legitimate owner is taxable for Zakât, the sum total thereof produced or existing within the territory or territories under the jurisdiction of a same country and, where wealth subject to the rule requiring possession thereof for a full period of one year prior to taxation for Zakât is concerned, bearing a same computation of a year's term of possession, must be taken into consideration.

The Zakât due from such wealth must be paid in each locality proportionately to the amount of wealth in question produced or existing therein, whether or not the various amounts forming the taxable whole be individually at least equal in number, quantity or value to the Nisâb established for the kind or genus involved.

In such a case, responsibility for the accuracy of the payments rests exclusively with the Zakât-payer, i.e., with the legitimate owner of the wealth in question, who is best aware of the various amounts and localities involved.

However, it is the duty of the Zakât-payer to inform the Zakât-officials of each locality concerned of the fact, when the wealth

produced or owned by him/her in the said locality is part of a taxable whole and not the only wealth of its kind or genus he/she possesses.

20) In normal circumstances, the Zakât-officials have absolutely no right to forcibly investigate the non-apparent wealth of the Muslim people.

Thus, unless a Zakât-payer especially requests the Zakât-officials to assist him/her in estimating the taxability and reckoning the Zakât of non-apparent wealth, the Zakât-collectors are bound to trust the loyalty and integrity of the Zakât-payers and accept as correct whatever amount is handed over to them in payment of Zakât dues.

On the other hand, should it be *definitely proven* that a person is maliciously concealing taxable wealth in order to evade the payment of Zakât dues, the guilty person is liable to submit to the investigation of his/her wealth by especially authorized Zakât-officials and to the forcible discharge of his/her dues, and, if the case so warrant, to punishment.

21) In normal circumstances, apparent wealth may be investigated by the Zakât-officials. But such investigation, the main purpose of which is to estimate the probable Zakât revenue to be realized from such wealth as agricultural produce, pasturing domestic animals, trade capital (cash money and articles of trade), and the produce of mines, must always be carried out with perfect courtesy and without causing annoyance to the legitimate owner of the wealth in question.

As is the case for non-apparent wealth, should it be *definitely proven* that a person is maliciously concealing taxable wealth in order to evade the payment of Zakât dues, the guilty person is liable to submit to the investigation of his/her apparent wealth by especially authorized Zakât-officials and to the forcible discharge of his/her dues, and, if the case so warrant, to punishment.

22) Should a person professing to be a Muslim openly refuse to comply with the obligation of Zakât, he/she must be severely admonished by the Zakât-officials and the other pious members of the Muslim community.

Should such admonishment prove of no avail, the defiant person is liable to submit to the investigation of his/her wealth by especially authorized Zakât-officials, to the forcible discharge of any Zakât due, and, if the case so warrant, to punishment.

If the defiant person still persists in his/her attitude of non-compliance with the Quranic Law of Zakât, he/she should be made to appear before a special committee constituted by eminent authorities on Islamic Law whose duty it will be to discover the psychological motive determining the attitude of the defiant person. If the investigation proves the defiant person to be of sound mind, yet purposefully adamant in defying the Law, he/she must be declared an apostate from the Islamic Faith and thereafter, as the case may require, either bear the status of a non-Muslim subject of the Muslim State, or suffer expulsion from the territories under Muslim jurisdiction, unless and until he/she returns to the Faith *and to the proper and voluntary observance of its Precepts.*

كَيْفَ يَهْدِي اللهُ قَوْماً كَفَرُوا بَعْدَ ايمَانِهِمْ وَشَهِدُوا أنَّ الرَّسُولَ حَقٌّ وَجَاءَهُمُ البَيِّنَاتُ واللهُ لاَ يَهْدِي القَوْمَ الظَّالِمِينَ • أولَئِكَ جَزَاؤُهُمْ أنَّ عَلَيْهِمْ لَعْنَةَ اللهِ والمَلاَئِكَةِ وَالنَّاسِ أجْمَعِينَ • خَالِدِينَ فِيهَا لاَ يُخَفَّفُ عَنْهُمُ العَذَابُ وَلاَ هُمْ يُنْظَرُونَ • الاَّ الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأصْلَحُوا فَانَّ اللهَ غَفُورٌ رَحِيمٌ • انَّ الَّذِينَ كَفَرُوا بَعْدَ ايمَانِهِمْ ثُمَّ ازْدَادُوا كُفْراً لَنْ تُقْبَلَ تَوْبَتُهُمْ وَأولَئِكَ هُمُ الضَّالُّونَ • انَّ الَّذِينَ كَفَرُوا وَمَاتُوا وَهُمْ كُفَّارٌ فَلَنْ تُقْبَلَ مِنْ أحَدِهِمْ مِلْءُ الأرْضِ ذَهَباً وَلَوْ افْتَدَى بِهِ أولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ وَمَا لَهُمْ مِنْ نَاصِرِينَ • (٣ : ٨٦ ــ ٩١)

«How should Allah guide a people who disbelieved after their belief and (after) they bore witness that the Messenger is true and after clear proofs (of Allah's Sovereignty) had come unto them. And Allah guideth not wrongdoing folk. As for such, their guerdon is that on them rests the curse of Allah and of the angels and of men

combined. They will abide therein. Their doom will not be lightened, neither will they be reprieved; *save those who afterward repent and do right*. Lo ! Allah is Forgiving, Merciful.

«Those who disbelieve after their (profession of) belief, and afterward grow violent in disbelief : their repentance will not be accepted. Such are those who are astray.

«Those who disbelieve, and die in disbelief , the (whole) earth full of gold would not be accepted from such a one if it were offered as a ransom (for his soul). Theirs will be a painful doom, and they will have no helpers.» (III : 86 - 91).

Should the defiant person prove to be irresponsible or of unsound mind, his/her wealth must be placed, in conformity with the following Quranic verse, under legal guardianship and a responsible person appointed to administer it and to effectuate the regular discharge of Zakât dues :

وَلاَ تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللهُ لَكُمْ قِيَاماً وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلاً مَعْرُوفاً ٠(٤:٥)

«Give not unto the foolish (what is in) your (1) (keeping of their) wealth which Allah hath given you to maintain; but feed and clothe them from it, and speak unto them in conformity with the Law.» (2) (IV : 5).

The «*H*adîth» quoted below has been reported by Imâm Bukhârî in support of the forcible levying of Zakât on the taxable wealth of defiant persons.

حدّثنا أبو اليمان ، قال : أخبرنا شعيب عن الزهريّ ، وقال الليث : حدّثنا عبد الرحمان بن خالد عن ابن شهابٍ عن عُبيد الله بن عبد الله بن عُتبة

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(1) The Arabic text states literally «your wealth» (اموالكم), thus emphasizing the responsibility that every Muslim bears for the proper use and safeguarding of whatever wealth has been bestowed upon him/her, or entrusted to his/her care as, for instance, the wealth of orphans or of persons of irresponsible or unsound mind.

(2) « قولا معروفا », literally «a known word», is often translated as «a kindly word ».

بن مسعودٍ أنّ أبا هريرة رضي الله عنه قال : قال أبو بكر رضي الله عنه : لو منعوني عِناقاً كانوا يؤدّونها الى رسول الله صلّى الله عليه وسلّم لقاتلتهم على منعها • قال عمر رضي الله عنه : فما هو الاّ أن رأيت أنّ الله شرح صدر أبي بكرٍ رضي الله عنه بالقتال فعرفت أنّه الحقّ • (بخاري)

«Abûl-Yamân has related unto us, saying : Shu'ayb has informed us, on the authority of Az-Zuhrî, and Al-Laîth (also) said : 'Abd ur-Ra*h*mân ben Khâlid has related unto us, on the authority of Ibn Shihâb, (who said) on the authority of 'Ubaîd Allah ben 'Abd Allah ben 'Utba ben Mas'ûd, that Abû Huraîra (may Allah be pleased with him) said : Abû Bakr (may Allah be pleased with him) said : 'Were they (the rebellious tribes) to refuse me even a four month old kid, had they been wont to pay it to the Messenger of Allah (ص) (as Zakât), I would fight them because of their refusal.' (Concerning these words of Abû Bakr), 'Umar (may Allah be pleased with him) said : 'Verily I declare that Allah hath expanded the bosom of Abû Bakr (may Allah be pleased with him) to fight (for His Cause), and I recognize that this (his stand) is the Truth' .» (Imâm Bukhârî).

It should be mentioned that Abû Bakr's reference, according to this «*H*adîth», to an «'inâq», i.e., a four month old kid that has been weaned, as the extreme minimum of Zakât withheld for which he would fight the rebels, has been understood by some jurists as justifying the levying of young animals of less than one year of age in payment of Zakât dues. However, the very fact that the fundamental principles of the Law of Zakât do not allow such a practice, excludes any interpretation of Abû Bakr's words in this sense. Abû Bakr's vehement declaration must rather be understood as a hyperbole, expressly used by him to emphasize his determination to take the Zakât by force if necessary, and not as implying any rule for the payment and levying of Zakât dues.

23) As a rule, the payment of Zakât dues is to be made either out of, or in the same kind as, the wealth under taxation.

However, in conformity with the Prophet's instructions as made known in the «A*h*adîth», and as laid down in Rule 7, para. 3 of those governing the Zakât of silver and gold; Rule 4 of those governing the Zakât of pearls and precious stones; Rule 35 of those

governing the Zakât of trade; Rule 7 of those governing the Zakât of pasturing domestic animals; Rule 9 of those governing the Zakât of agricultural produce; and Rule 1 of those governing the Zakât of honey and raw silk, under certain specified circumstances Zakât dues may be paid either partly or entirely in cash money (i.e., in silver, gold, or the local currency) to the amount of the exact value due.

As implied by the above-mentioned rules, the payment of Zakât dues in cash or in kind must, in each case, depend on the convenience of the Zakât-payer, the Zakât-collector having no right to refuse a payment in cash or to compel a payment in kind so long as the above-mentioned rules are adhered to by the Zakât-payer.

24) In conformity with the Prophet's ruling :

لا تأخذوا من حرزات أموال الناس ، وخذوا من حواشي أموالهم •

(«Take not the choice of the people's wealth, take of their wealth that which is of average quality»), and as laid down in Rule 35 of those governing the Zakât of trade, Rules 12 and 13 of those governing the Zakât of pasturing domestic animals, and Rule 10 of those governing the Zakât of agricultural produce, when Zakât dues are paid in kind, wealth (i.e, articles of trade, domestic animals, agricultural produce, etc.) of average good quality must be given. In no case may the legitimate owner of the wealth under taxation be required or compelled by the Zakât-officials to give the best of his/her wealth in payment of Zakât dues.

The wealth to be given as Zakât should always be selected by the Zakât-payer him/herself, the Zakât-officials being bound to accept the same so long as it conforms in quality, and/or age (where domestic animals are concerned), to the set standard of the Law of Zakât.

On the other hand, in conformity with the Injunction contained in verse 267, Surah II of the Qurân, and as laid down in Rule 35 of those governing the Zakât of trade, Rule 13 of those governing the Zakât of pasturing domestic animals, and Rule 10 of those governing agricultural produce, wealth of bad quality is not acceptable in payment of Zakât dues and is always to be rejected by the Zakât-collector.

25) Should a legitimate owner of such taxable wealth as pasturing domestic animals and/or agricultural produce be absent at the time of his/her Zakât falling due, without having appointed a person to effectuate the discharge thereof on his/her behalf, the Zakât-officials have the right to assess the amount of agricultural produce and/or number of heads of domestic animals due as Zakât and to exact the payment thereof upon the return of the legitimate owner of the wealth in question.

26) Should it happen that for any reason the Zakât-collector fails to call on a Zakât-payer at the time of his/her Zakât falling due, it is the duty of the Zakât-payer to keep a correct account of the amount to be paid, as well as of the date of its falling due, and, according to the circumstances and the kind of wealth involved, to either inform the Zakât-officials to collect the dues in question or to personally discharge the same at the local branch Zakât-centre, against a regular duplicate receipt.

27) In our times, the Zakât of trade should be kept totally separated from the octroi and customs imposts and should, the same as the Zakât of all other taxable wealth, be regularly collected from the persons liable thereto at their own premises.

In the early days of the spread of the Islamic Empire, the Zakât of trade used to be levied by special officials posted at the municipal octrois and customs posts. Merchants passing through these posts with their articles of trade would declare under oath whether the wealth in question was recently acquired, amenable for debt, liable to Zakât, or whether the Zakât thereof had already been paid.

In those territories where the *H*anafite or Mâlikite Schools of Law prevailed, the rule was that the Zakât of apparent wealth must be paid through the State. If a merchant claimed that he had already given his Zakât directly to the poor, his statement was not accepted and he was compelled to discharge his dues forthwith.

The system of collecting the Zakât of trade at octrois and customs posts is no longer of real practical value. Moreover, the legal reason for doing so given by the *H*anafite jurists is absolutely irrelevant to the true nature of the Zakât-tax. According to the *H*anafite jurists, the right of the octroi or

customs officials to collect the Zakât is based on the fact that when a person takes his property outside the municipal limits into the open country, the risk of loss by theft naturally increases and so greater State protection is required.

Although this argument correctly applies where government taxes are concerned, as regards the Zakât it is quite out of place. To be exact, a government tax represents the citizen's contribution towards the national expenditure incurred for the common benefit of the Nation as a whole. Thus the payment of a government tax ultimately accrues to the benefit of the tax-payer. Quite to the contrary, the very special nature of Zakât forbids that the giving thereof should ever accrue to the material benefit of the Zakât-payer. Thus, there can be no question of a merchant securing State protection for his merchandise through the paying of Zakât. Whatever tax may be imposed on a merchant, or on any other citizen, for the purpose of State protection is of the nature of a government tax and must not be confused in any way with the nature and purpose of Zakât.

28) In conformity with the Prophet's injunction contained in the «*H*adîth» quoted below, it is forbidden for a Zakât-payer to buy back, for his/her own use or benefit, a thing that he/she has given in payment of Zakât (1), be it from the Zakât-officials or from the beneficiaries thereof.

حدّثنا عبد الله بن يوسف ، قال : أخبرنا مالك بن أنسٍ عن زيد بن أسلم عن أبيه : قال : سمعت عمر ابن الخطاب رضي الله عنه يقول : حملت على فرسٍ في سبيل الله فأضاعه الّذي كان عنده فأردْت أن أشتريه ، وظننت أنّه يبيعه برخصٍ ، فسألت النبيّ صلّى الله عليه وسلّم ، فقال : لا تشتر ولا تعدْ في صدقتك وان أعطاكه بدرهمٍ ، فانّ العائد في صدقته كالعائد في قيئه • (بخاري)

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(1) Most Muslim jurists, including Imâms Mâlik and Shâf'î, hold the view that a Zakât-payer may not buy back a thing given in payment of Zakât, nor even a thing given as voluntary alms.

« 'Abd Allah ben Yûsuf has related unto us, saying : Mâlik ben Anas has informed us, on the authority of Zaid ben Aslam, (who said) on the authority of his father, who said : I heard 'Umar ibn ul-Khaṭṭâb (may Allah be pleased with him) say (as follows) : I donated a horse for the Cause of Allah and, subsequently, the person in whose possession it was wished to dispose of it. I (for my part) wished to purchase it and I thought that he would sell it at a low price. So I asked the Prophet (ص) (concerning the matter) and he said : 'Do not purchase it. Never take back that which thou hast given as alms, even if he (the person in whose possession it be) give it to thee for a single dirhem. For, verily, he who takes back that which he has given as alms is like unto him who returns to his own vomit[1].»
(Imâm Bukhârî).

Nevertheless, as implied by the following «*H*adîth», one exception may be made to this rule : Should it so happen that a beneficiary of Zakât find him/herself *in need* of selling a thing received by him/her from the Zakât funds, the original owner of the thing in question (i.e., the Zakât-payer) may not purchase the same except if it be with the set purpose of giving it forthwith in charity to another poor person, and there be, at the time, no other person in a position, or willing, to purchase it. In such a case, the act of the original owner becomes one of twofold charity implying for him/her a twofold merit : on the one hand, to the beneficiary in need and, on the other hand, to the needy person benefiting from the second donation of the thing in question.

حدّثنا يحيى بن بُكيرٍ ، قال : حدّثنا الليث عن عقيل عن ابن شهابٍ عن سالم أنّ عبد الله بن عمر رضي الله عنهما كان يحدِّث أنّ عمر ابن الخطّاب تصدّق بفرسٍ في سبيل الله فوجده يُباع فأراد أن يشتريه ، ثم أتى النبيّ صلّى الله عليه وسلّم فاستأمره ، فقال : لا تعد في صدقتك . فبذلك كان ابن عمر رضي الله عنهما لايترك أن يبتاع شيئاً تصدّق به الا جعله صدقةً . (بخاري)

«Ya*h*yâ ben Bukair has related unto us, saying: Al-Laîth has related unto us, on the authority of 'Uqail, (who said) on the authority of Ibn Shihâb, (who said) on the authority of Sâlim, that 'Abd Allah ben 'Umar (may Allah be pleased with them both) used to relate

that 'Umar ibn ul-Khaṭṭâb donated a horse for the Cause of Allah and, subsequently, found it put on sale by the beneficiary. Wishing to purchase it, he went and consulted the Prophet (ص) in the matter. (The Prophet) said : 'Do not take back thy alms' . For this reason, whenever Ibn 'Umar (may Allah be pleased with them both) purchased a thing (as a kindness) after having given it as alms, he never failed to give it in charity (to another needy person).»

(Imâm Bukhârî).

29) Once a thing proceeding from the Zakât funds has passed in a lawful manner from the ownership of the beneficiary thereof to that of another person (other than the original owner), the thing in question ceases to be of the nature of Zakât and may, if the occasion arise, be freely purchased by its original owner (1).

30) It is generally agreed by the Doctors of Islamic Law that a Zakât-payer may lawfully inherit, either from a beneficiary or from any other person who may have obtained it in a lawful manner from a beneficiary, a thing originally given by him/her in payment of Zakât or as voluntary alms.

31) The Law of Zakât allows the advance payment of dues only in respect of wealth *in actual existence and in the possession of the Zakât-payer at the time* and for which a computation of a year's term of possession has already begun. Such wealth includes : silver, gold, currency notes, pearls and precious stones, pasturing domestic animals, trade capital (cash money and articles of trade).

The Zakât of agricultural produce, honey, raw silk, and of the produce of silver and gold mines *may never be discharged before time,* as such action would be tantamount to a conjectural reckoning of the Zakât of, as yet, non-existent wealth, or of an unknown quantity thereof, and, hence, the payment in question would be absolutely invalid.

The advance payment of Zakât dues must always depend on the convenience and free will of the Zakât-payer, *and may never be compelled by the Zakât-officials.* Moreover, the fact of advance payment must be duly acknowledged in the duplicate receipt issued therefor.

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(1) This rule conforms to the practice of the second Caliph, 'Umar ibn ul-Khattâb.

Strictly speaking, the advance payment of Zakât dues should only be made when special circumstances as, for instance, an intended prolonged absence of the Zakât-payer, justify such a course of action.

A preferable course of action is for the Zakât-payer to appoint a responsible person legally authorized to effectuate the payment in question on his/her behalf at the exact time of his/her Zakât falling due.

32) When for any reason a Zakât-payer is unable to personally discharge his/her Zakât at the time of its falling due, and has likewise been unable or has failed to arrange for the payment thereof to be made on his/her behalf, he/she must be prepared to effectuate the payment in question retrospectively for the full period of non-payment.

The retrospective payment of Zakât dues may be compelled by the Zakât-officials, except if and when the legitimate owner of the taxable wealth has, through no fault of his/her own, spent the period of non-payment under duress and has on that account suffered severe loss of wealth.

33) In conformity with the Prophet's command set forth in the following «*H*adîth», wealth legitimately belonging to two or more individual owners may never be combined in order to evade, decrease or increase the amount due in payment of Zakât.

حدّثنا محمّد بن عبد الله الأنصاري ، قال : حدّثني أبي قال : حدّثني ثُمامة أنّ أنساً رضي الله عنه حدّثه أنّ أبا بكرٍ رضي الله عنه كتب له الّتي فرض رسول الله صلّى الله عليه وسلّم ، ولا يُجمع بين متفرّقٍ ، ولا يفرّق بين مجتمعٍ خشية الصدقة . (بخاري)

«Mu*h*ammad ben 'Abd Allah al-Ansârî has related unto us, saying : My father has related unto me, saying : Thumâma has related unto me that Anas (may Allah be pleased with him) related unto him that Abû Bakr (may Allah be pleased with him) wrote him the instructions prescribed by the Messenger of Allah (ص) and (among them the following ruling) : 'That which is divided is not to be

joined together, and that which is joined together is not to be divided, through fear of (paying) the Zakât (thereof)'.»

(Imâm Bukhârî).

As understood by Imâm Shâf'î, this ruling of the Prophet (ص) refers to the Zakât-collectors, who are commanded not to combine unlawfully the wealth of two or more persons so as to levy a higher Zakât than would normally be due. A more exact view, which finds support in the wording «through fear of (paying) the Zakât (thereof)», is that the said ruling refers in particular to the Zakât-payers, who are commanded not to resort to tricks and artifices in order to lessen or evade the obligation of Zakât.

However, in the opinion of Imâm Abû *H*anîfa, the principle set forth in the above «*H*adîth» applies equally to the Zakât-payers and to the Zakât-collectors. Indeed, when estimating the taxability of wealth, the sense of honesty and integrity of both the Zakât-payers and the Zakât-collectors is put to the test and both are expected to fulfil their obligations and duties in a manner befitting their status of Muslims and their dedication to the principles of the Qurân.

The Muslim jurists have given the following examples as illustrating the kind of tricks referred to in the above-quoted «*H*adîth» :

a) Three individuals owning 40 sheep each and who, in order to pay only one head as Zakât between the three of them instead of one head each as would normally be due, combine their wealth to form one flock of 120 sheep and pretend that the same belongs wholly to one of them. (Imâm Mâlik).

b) An individual owning 80 sheep and who, in order to evade the obligation of Zakât, pretends that the flock belongs to himself and to, for instance, his three brothers, each owning only 20 sheep.

Or two brothers owning 40 sheep each and who, in order to pay only 1 head as Zakât instead of 2 head normally due, combine their wealth to form one flock of 80 sheep and pretend that the same belongs wholly to one of them. (Imâm Abû Yûsuf).

c) Two individuals owning 40 sheep between the two of them and whose flock is considered by the Zakât-collector as belonging wholly to one of them and, hence, as warranting a Zakât of 1 head, instead of as two separate flocks, each falling short of the established Nisâb.

Or an individual owning a flock of 120 sheep, normally warranting a Zakât of 1 head, and whose wealth is divided by the Zakât-collector into three flocks of 40 sheep, the ownership thereof being wrongfully attributed to three individuals so as to warrant levying 3 head as Zakât. (Imâm Abû *H*anîfa).

34) All wealth belonging to privately owned or endowed establishments that are totally devoted to charitable purposes (i.e., free hospitals; orphanages; homes for the poor, disabled and old people; etc.); or to the service of humanity (i.e., scientific research institutes, free educational institutes, etc.) is to remain Zakât-free in view of the fact that, in themselves, such establishments fulfil the purpose to which the Zakât funds may be dedicated.

35) In order to ensure the safe keeping of Zakât funds, proper arrangements must be made by each Zakât-centre in accordance with the particular requirements of each individual locality. Such arrangements comprise :

a) Special treasuries (1) for the custody of Zakât levied in the shape of silver, gold, currency notes, pearls and precious stones.

b) Special storehouses for the custody of Zakât levied in the shape of articles of trade (other than domestic animals), honey, raw silk, and agricultural produce (other than cereals).

c) Special granaries for the custody of Zakât levied in the shape of cereals.

d) Special stables, corrals or pounds, and grazing grounds for the custody and care of domestic animals levied as Zakât.

In order to facilitate prompt distribution to the lawful beneficiaries, the Zakât treasuries should preferably be located in the Zakât-centres themselves, and the Zakât storehouses, granaries, stables, etc., in the immediate vicinity of or as near as possible to the Zakât-centre to which they respectively belong.

36) All expenses incurred for the building (or renting) and upkeep of Zakât premises of every description may lawfully be satis-

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(1) The Zakât treasuries (بيت المال الزكاة) must never be confused with the municipal and Government treasuries, or Public Exchequer (بيت المال الحكومة) The Zakât treasuries and the municipal and Government treasuries are separate departments with separate functions to perform.

fied out of Zakât funds or supplied by public subscription or donations.

37) In conformity with the Prophet's «Sunnah» and in order to ensure a strict control on the Zakât revenue, upon completing each day's round, the Zakât-collectors (المصدّقون) must be required *forthwith* to give a detailed account of the Zakât funds levied by them to the Zakât-accountants (الحاسبون) and to hand over the funds in question to the Zakât-custodians (الحافظون), whose duty it is to keep safe and disburse the same to the lawful beneficiaries as directed by the officials responsible for the apportioning thereof, i.e., the distributors (القسّامون).

The Zakât-collectors must also be required *forthwith* to deposit one copy of each duplicate receipt issued in acknowledgement of the payment of Zakât dues with the Zakât-clerks (الكاتبون), whose duty it is to place the same on record.

In this connection, the «Sunnah» of the Prophet (ص) is made known in the following «*H*adîth» :

حدّثنا يوسف بن موسى ، قال: حدّثنا أبو أسامة ، قال : أخبرنا هشام بن عُرْوَة عن أبيه عن أبي حُميدٍ الساعديّ رضي الله عنه ، قال : استعمل رسول الله صلّى الله عليه وسلّم رجلاً من الاسْدِ على صدقات بني سُلَيْمٍ يدعى ابن اللتبيّة ، فلمّا جاء حاسبه • (بُخاري)

«Yûsuf ben Mûsâ related unto us, saying : Abû Usâma has related unto us, saying : Hishâm ben 'Urwa has informed us, on the authority of his father, (who said) on the authority of Abî *H*umaid as-Sâ'idî (may Allah pleased with him), who said : The Messenger of Allah (ص) appointed a man called Ibn ul-Lutbîya of (the tribe of) al-Asd to collect the Zakât of Benî Sulaim, and, when he returned, he (the Prophet) took account from him.» (Imâm Bukhârî).

38) In order to facilitate identification in case of loss or theft, Zakât funds other than cash money (i.e., silver and gold coins and currency notes), and more especially domestic animals and articles of trade levied as Zakât, should at once be stamped with the official seal of the Institution of Zakât. The seal in question must be distinctive and exclusive of the Institution of Zakât, easily recog-

nizable by all, and should, as suggested by the leading 'ulemâ of old, bear either the word « زكاة » or « صدقة ». Like all official seals, imitation or reproduction thereof must be considered a serious offense and punished accordingly.

As advocated by the jurists of the Shâfiite School of Law, Zakât sheep should be branded on the ear and Zakât camels and oxen on the thigh. An acceptable alternative method of marking them would be tattooing, or with some indelible colouring matter.

In this connection, it should be noted that although most of the Muslim jurists admit the branding of animals when the purpose served is perfectly lawful, as is the case where the marking of animals for the sake of identification is concerned, some jurists of the *H*anafite School of Law are averse to the practice on the grounds that the act in question is akin to torture and, therefore, unlawful. However, the general opinion is that, when necessary for a useful purpose, it is permissible to cause pain to an animal.

That the Prophet (ص) himself used to brand Zakât animals is substantiated by the following «*H*adîth» related on the authority of Anas ben Mâlik :

حدّثنا ابراهيم ابن المنذر ، قال : حدّثنا الوليد ، قال : حدّثنا أبو عمرو الأوزاعي ، قال : حدّثني اسحاق بن عبد الله بن أبي طلحـة ، قال : حدّثني أنس بن مالكٍ رضي الله عنه ، قال : غدوت الى رسول الله صلّى الله عليـه وسلّم بعبد الله بن أبي طلحة ليحنّكه ، فوافيته في يده الميسم يسم ابل الصدقة . (بخاري)

«Ibrâhîm ibn ul-Mundhir has related unto us, saying : Al-Walîd has related unto us, saying : Abû 'Amr al-Auzâ'î has related unto us, saying : Is*h*âq ben 'Abd Allah ben Abî *T*al*h*a has related unto me, saying : Anas ben Mâlik (may Allah be pleased with him) has related unto me, saying : One morning I went with 'Abd Allah ben Abî *T*al*h*a to see the Messenger of Allah (ص) in order that he might instruct him ('Abd Allah ben Abî *T*al*h*a), and when I came up to him I found him with a brand in his hand, in the act of branding camels that had been levied as Zakât.» (Imâm Bukhârî).

39) A periodic and accurate account of the Zakât revenue and expenditure within its jurisdiction must be officially published by each Zakât-centre for the benefit and information of the Muslim community.

Official publication of the Zakât accounts should preferably be made monthly or, at the least, trimestrially.

40) At all times, both the State as such and the pious and responsible members of the Muslim community are entitled to audit the performance of the various Zakât-centres and, should any irregularity occur in the functioning thereof, to demand and compel a thorough investigation into the affairs of any given Zakât-centre.

The responsibility that every Muslim of sound mind and judgement bears for the faithful and unswerving adherence of the Muslim peoples as a whole to Quranic Law is clearly set forth in the following Quranic verse :

وَجَاهِدُوا فِي اللهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ مِلَّةَ أَبِيكُمْ ابْرَاهِيمَ هُوَ سَمَّاكُمُ الْمُسْلِمِينَ مِنْ قَبْلُ وَفِي هَذَا لِيَكُونَ الرَّسُولُ شَهِيداً عَلَيْكُمْ وَتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ فَأَقِيمُوا الصَّلاةَ وَآتُوا الزَّكَاةَ وَاعْتَصِمُوا بِاللهِ هُوَ مَوْلاَكُمْ فَنِعْمَ الْمَوْلَى وَنِعْمَ النَّصِيرُ ۝
(٢٢ : ٧٨)

«And strive for Allah with the endeavour which is His Right. He hath chosen you and hath not laid upon you in religion any hardship; the Faith of your father Abraham (is yours). He hath named you Muslims (1) of old time and in this (Scripture), that the Messenger may be a witness against you, *and that you may be witnesses against mankind.* So establish worship, pay the Zakât, and hold fast to Allah. He is your Protecting Friend. A Blessed Patron and a Blessed Helper.» (XXII : 78).

(1) The term «Muslim» means « one who has surrendered to Allah ».

41) As a rule, Zakât funds derived from any given «Ma*h*alla» must primarily be dedicated to the welfare of those types of beneficiaries actually existing in the said locality.

At the same time, as implied by verse 60, Surah IX of the Qurân, under normal circumstances a reasonable portion of the Zakât funds must always be kept in reserve at each branch Zakât-centre for the use of eventual beneficiaries to whichever class or group (i.e., casual, temporary, or regular beneficiaries) they may belong. The exact nature and the amount of the reserve Zakât funds must naturally depend on the particular circumstances prevailing in each individual «Ma*h*alla», and are to be decided by the local Zakât-officials, whose responsibility it is to apportion the Zakât-funds in such a manner as to be, at all times, in a position to adequately satisfy each and every lawful claim.

42) To ensure the aim and purpose of Zakât, the Law must allow the transfer to deficiency areas (1) of Zakât funds from other areas, on condition that these be *definitely surplus* to both the regular and the casual requirements (i.e., those served by the reserve fund) of the «Ma*h*alla» whence they derive. But in no case should all of the surplus Zakât funds available at any given branch Zakât-centre be unnecessarily sent elsewhere as, in the case of an unforeseen emergency, such action would result either in the funds in question having to be returned to their place of origin, or in other funds having to be sent to replace them, and thus would involve useless labour, expense, and loss of valuable time (2).

In order to ensure prompt action when the need arises, it would be expedient that a certain portion (the exact amount to be decided by the local Zakât-officials in due consideration of prevailing circumstances) of the surplus funds available at the various branch Zakât-centres should be handed over to the Zakât-centre of each village, town or city and there held ready to be transferred at a moment's notice to any given deficiency area.

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(1) By deficiency areas is meant here those areas in which the Zakât revenue is insufficient to satisfy the requirements of the local deserving persons and/or insufficient to allow of keeping funds in reserve for the use of eventual beneficiaries.

(2) Some modern writers have suggested that all Zakât funds should be sent to one general centre. The impracticability of such a method is self-evident.

The transfer of Zakât funds from one place to another has been a subject of some disagreement among the jurists of Islam. Thus the jurists of the Mâlikite and the Shâfiite Schools of Law are averse to the transfer of Zakât funds, and allow it only when there is a lack of deserving poor persons in the locality whence the funds derive. A similar view is held by Imâm Ghazzâlî.

As laid down by the *H*anafite School of Law, Zakât funds may lawfully be transferred to deficiency areas in order to afford relief and assistance to the needy Muslims of those areas. This stand fully conforms to the spirit of Islamic unity. However, the rule must prevail that, except if and when *extreme national emergency* compels the total mobilization thereof, Zakât funds may never be transferred from any given locality to another leaving the lawful requirements of the local deserving persons unsatisfied, or leaving the local branch Zakât-centre without sufficient reserve funds to satisfy the claims of eventual beneficiaries.

43) In order to avoid useless labour, expense and loss of time, surplus Zakât funds should always be transferred to deficiency areas *from the surplus area or areas nearest thereto.*

44) In order to co-ordinate the functioning of the various Zakât-centres, from the branch Zakât-centres to the head Zakât-centre, and ensure that the Institution of Zakât be ever ready to satisfactorily cope with any and every emergency that might arise within Muslim lands, detailed reports as to the availability of surplus funds at each individual branch Zakât-centre must be regularly submitted (preferably once a month) to the Zakât-centre of the village, town or city in which they are located and under the supervisory jurisdiction of which they are placed.

The aggregate information afforded by these reports must be kept on record at the said village, town or city Zakât-centres, each of which must in turn, and without delay, submit a detailed report, based thereon, as to the availability of surplus Zakât funds existing within their respective jurisdiction, to the district Zakât-centres under the supervisory jurisdiction of which they are placed.

These in turn must keep on record the said information, and each one must at once submit a detailed report, based thereon, as to the availability of surplus Zakât funds existing within their respective jurisdictions, to their respective provincial Zakât-centres.

The latter will likewise keep on record the information received and each one will immediately submit a detailed report, based thereon, as to the availability of surplus Zakât funds existing within their respective jurisdictions, to the main Zakât-centre of the country involved.

The reports of the provincial Zakât-centres must be kept on record at the main Zakât-centres of the various Muslim countries, each of which must forthwith send a detailed report, based thereon, as to the total amount of surplus Zakât funds available at the moment within their respective jurisdictions, to the head Zakât-centre, where the aggregate information afforded by these reports must be kept on record.

All reports relating to the availability of surplus funds, from those of the branch Zakât-centres to those of the main Zakât-centre of each Muslim country, must specify both the nature and the exact number, quantity, and/or value of the funds existing at the time each individual report is made.

The procedure described above will ensure that detailed up-to-date information as to the availability of surplus Zakât funds within the territory under their respective jurisdictions — and, where the head Zakât-centre is concerned, detailed up-to-date information as to the availability of surplus Zakât funds throughout the whole Muslim world — is constantly on hand at each and every Zakât-centre and will, in case of necessity or emergency, allow of the prompt transferring of surplus Zakât funds from any given surplus area to any given deficiency area.

45) In case of necessity or emergency, surplus Zakât funds may be transferred a) by order of the village, town, or city Zakât-centres, from any «Ma*h*alla» where surplus Zakât funds are available to any other «Ma*h*alla» where Zakât funds are deficient; b) by direct order of a district Zakât-centre, from any given surplus area to any given deficiency area within the territory under its jurisdiction; c) by direct order of a provincial Zakât-centre, from any given surplus area to any given deficiency area within the territory under its jurisdiction; d) by direct order of the main Zakât-centre of each Muslim country, from any given surplus area to any given deficiency area within the territory of the said Muslim country; e) by direct order of the head Zakât-centre, from any given

surplus area to any given deficiency area in the Muslim world.

46) Whenever any given «Ma*h*alla» becomes a deficiency area, either because of a Zakât revenue insufficient to adequately satisfy the local requirements or because available Zakât funds prove insufficient to adequately cope with any emergency that might arise, a request for the transfer of surplus funds to the area in question must at once be made by the local branch Zakât-centre to the Zakât-centre of the village, town or city under the jurisdiction of which it is placed.

Should the required funds be available at the village, town or city Zakât-centre, or at any other branch Zakât-centre under its jurisdiction, the officer in charge must directly order the transfer thereof to the branch Zakât-centre of the needy «Ma*h*alla».

If the required funds are not available at the village, town or city Zakât-center, or at any other branch Zakât-centre under its jurisdiction, the officer in charge must at once, as dictated by the circumstances and urgency of the case, either request the same from the district Zakât-centre, or directly from the provincial, or the main, Zakât-centre, any one of which may, as laid down in Rule 45, issue a direct order for the immediate transfer of surplus funds to the deficiency area in question.

Should no surplus funds be available at the moment at any Zakât-centre within the Muslim country concerned, its main Zakât-centre must immediately request the same from the head Zakât-centre, which must, with a minimum of delay, arrange for the transfer of the required funds to the deficiency area from the nearest Zakât-centre where they are available.

47) The transfer of surplus Zakât funds must always be recorded immediately, both at the Zakât-centre of origin and at the Zakât-centre to which they are sent, due mention being made of the exact date of the transfer, of the exact nature of the funds transferred, and of the exact number, quantity, and/or value thereof.

48) As laid down by the Prophet (ص), the custodians of the Zakât funds must be especially and carefully chosen from among those pious members of the Muslim community who are known to all for their unquestionable trustworthiness. Indeed, the great responsibility that rests on those officials in whose care the Zakât

funds are actually placed cannot be over-emphasized, their position being one which naturally offers every temptation for the weak and the covetous.

The Prophet's description of the Zakât-treasurer in the following «*H*adîth», requiring faithful execution of orders received, together with a joyful heart and perfect accuracy in the discharge of his duty, must stand as norm for all who undertake the weighty task of custodian of the Zakât funds.

أبو بكرٍ بن أبي شيبة وأبو عامرٍ الاشعري وابن نُميرٍ وأبو كُريبٍ ، كلّهم عن أبي أسامة ، قال أبو عامرٍ : حدّثنا أبو أسامة ، حدّثنا بُريد عن جدّه أبي بُردة عن أبي موسى عن النبيّ صلّى الله عليه وسلّم ، قال : انّ الخازن المسلم الأمين الّذي يُنفذ (وربما قال يعطي) ما أمر به فيعطيه كاملاً موفّراً طيّبةً به نفسه فيدفعه الى الّذي أمر له به أحد المتصدّقين . (مسلم)

«Abu Bakr ben Abî Shayba, Abû 'Amir al-Ash'arî, Ibn Numaîr, and Abû Kuraib have all related (the following «*H*adîth») on the authority of Abû Usâma. Abû 'Amir said : Abû Usâma has related unto us, (saying) : Buraid has related unto us, on the authority of his grandfather, Abû Burda, (who said) on the authority of Abû Mûsâ, (who said) on the authority of the Prophet (ص), who said : 'The trustworthy Muslim treasurer (is he) who (faithfully) executes the orders he receives (and he might have said : gives what he is commanded (to give)), disbursing with a joyful heart and perfect accuracy (whatever he is ordered to pay out of the Zakât funds to the lawful beneficiaries), and who gives (of the Zakât funds) to whomever either one of the two parties (1) responsible for the discharging of Zakât may order him to give '.»

(Imâm Muslim).

(1) The term متصدّقين, dual of متصدّق , i.e., «alms-giver», here refers to the Zakât-payer and the Zakât-official responsible for apportioning the Zakât funds, implying that a Zakât-payer may, at any time, recommend a deserving person to the Zakât-officials, who are in duty bound to heed this claim and grant the deserving person in question the necessary assistance out of the available Zakât funds.

49) The spirit of the Law of Zakât, its aim and purpose, require that, once levied, Zakât funds remain idle at the various Zakât-centres *for a minimum period of time*. In this connection, the lead given by the Prophet (ص) himself affords the best possible rule of action :

حدّثنا أبو عاصمٍ عن عمر بن سعيدٍ عن ابن أبي مليكة أنّ عقبة ابن الحارث رضي الله عنه حدّثه : صلّى بنا النبيّ صلّى الله عليه وسلّم العصر فأسرع ، ثمّ دخل البيت فلم يلبث أن خرج ، فقلت أو قيل له ، فقال : كنت خلّفت في البيت تبراً من الصدقة فكرهت أن أبيّته فقسمته • (بخاري)

«Abû 'Asim has related unto us, on the authority of 'Umar ben Sa'îd, (who said) on the authority of Ibn Abî Mulaika that 'Uqba ibn ul-*H*ârith (may Allah be pleased with him) related unto him, saying : The Prophet (ص) said the « 'Asr » prayer with us and then hurried (away) and entered the house and did not delay in coming out again. Whereupon I or someone asked him (the reason for this). He replied: 'I had left in the house some (silver/gold) ingots belonging to the Zakât funds and, as I loathed to keep them throughout the night, I distributed them (to deserving persons)' .» (Imâm Bukhârî).

Zakât being one of the six Quranic Precepts on which is based the Islamic policy of free, unobstructed and constant circulation of wealth, it is incumbent on all Zakât-officials to conform to the Prophet's «Sunnah» and always maintain the highest standard of dynamism in the performance of their administrative duties.

Zakât funds must actively be put to the lawful uses for which they are intended, so that at all times the standard of social well-being aimed at by Islam may be translated into a living reality.

50) Never and in no case may Zakât funds be withheld by the Zakât-officials in the presence of deserving persons.

The behaviour of the Zakât-officials towards would-be beneficiaries must always be a faithful reflection of the Divine Mercy that Almighty God has prescribed for Himself (1). Thus, the Quranic

(1) Qurân, Surah VI, verse 12.

verses quoted below forbid the followers of Islam, and not least of all the Zakât-officials, to ever reject the just claim of a needy person, so long as the means of satisfying that claim are available.

وَلَسَوْفَ يُعْطِيكَ رَبُّكَ فَتَرْضَى ، أَلَمْ يَجِدْكَ يَتِيمًا فَآوَى ، وَوَجَدَكَ ضَالًّا فَهَدَى ، وَوَجَدَكَ عَائِلًا فَأَغْنَى ، فَأَمَّا الْيَتِيمَ فَلَا تَقْهَرْ ، وَأَمَّا السَّائِلَ فَلَا تَنْهَرْ ، وَأَمَّا بِنِعْمَةِ رَبِّكَ فَحَدِّثْ ۝ (٩٣ : ٥ ــ ١١)

«And verily thy Lord will give unto thee so that thou wilt be content:
«Did He not find thee an orphan and protect (thee) ?
«Did He not find thee wandering and direct (thee) ?
«Did He not find thee destitute and enrich (thee) ?
«Therefor the orphan oppress not,
«Therefor *those who beseech (thee) for aid drive not away.*
«Therefor of the bounty of thy Lord be thy discourse. »
(XCIII : 5 - 11).

51) It is the bounden duty of the responsible Zakât-officials to be, at all times, fully aware of prevailing conditions and to be constantly and thoroughly well informed both as to the number of persons within the «Ma*h*alla» under their jurisdiction, who are deserving of receiving Zakât assistance, and as to the class and group of beneficiaries to which they belong.

This essential information is to be supplied to the branch Zakât-centre of each «Ma*h*alla» by the Zakât-informers (العارفون), whose special duty it is to *discreetly* seek out all those persons who are deserving of receiving Zakât assistance and to forthwith inform the Zakât-officials of their condition and whereabouts.

52) The exact amount of Zakât given to each beneficiary, regardless of the class and group to which he/she may belong, must immediately be placed on record by the Zakât-clerks (الكاتبون). This rule equally holds good as regards the use of Zakât funds for other lawful purposes, such as the building and equipping of Zakât premises (hospitals, etc., dedicated to the welfare of the poor;

storehouses; granaries; etc.), or the building and/or repair of roads and/or bridges in localities where the same is an urgent necessity for the public well-being and where an insufficiency of public funds prevents the required work being duly carried out.

53) The distribution of Zakât funds must be carried out on the basis of two official duplicate receipts: one signed by the Zakât-distributor, acknowledging receipt of the Zakât funds handed over to him for distribution by the Zakât-custodian (treasurer, caretaker of the Zakât storehouse or granary, caretaker of the Zakât herd or flock, etc.), the original remaining with the Zakât-custodian and a copy, countersigned by the custodian, to be kept on record at the branch Zakât-centre; the other receipt, signed by the beneficiary and acknowledging receipt of the Zakât funds allotted to him/her, the original, countersigned by the Zakât-distributor, to be kept on record at the branch Zakât-centre, and a copy to remain with the distributor.

These receipts must specify :

a) The date of issue of the funds in question.

b) On the custodian's receipt, the names of the distributor and of the custodian issuing the Zakât funds.

On the receipt signed by the beneficiary, the names of the beneficiary, the distributor and the custodian issuing the Zakât funds.

Where the building, renting, equipping, or repair of Zakât premises, or the building or repair of roads and/or bridges is concerned, receipt of Zakât funds is to be acknowledged by the responsible person in charge of the undertaking.

c) The name of the country and of the village, town or city, as well as the name of the «Maḥalla» in which the Zakât funds are issued.

d) The exact nature of the funds issued, i.e., the kind or genus of domestic animals; the kind or genus of agricultural produce; the kind of articles; or if the funds are issued in the shape of silver, gold and/or currency notes (in the local currency).

e) The exact number, quantity, or value of the funds issued.

f) The class (i.e., poor of straitened means, poor destitute, Zakât-

official, debtor, wayfarer, etc.) and group (i.e., regular, casual or temporary beneficiary) to which the beneficiary belongs.

g) Both duplicate receipts must bear the official seal of the Institution of Zakât.

The purpose of the two duplicate receipts acknowledging the handing over of Zakât funds by the custodian to the distributor and the receipt by the beneficiary of the Zakât funds allotted to him/her, is to afford the means of establishing a strict control on the Zakât expenditure by the public, on the one hand, and by the Zakât-officials on the other.

As is the case for the receipts acknowledging the payment of Zakât dues, a separate duplicate receipt should be made out for each genus of wealth issued out of the Zakât funds to any given beneficiary.

54) All lawful claims to Zakât assistance must be satisfied *promptly* and, in the case of both regular and temporary beneficiaries, *punctually*.

In order to give better effect to this rule, a list, kept up to date, of all local residents deserving of a regular Zakât pension or living wage, or of temporary Zakât assistance, must be kept on hand at the branch Zakât-centre of each «Ma*h*alla».

The administrative set-up of the Institution of Zakât does not, and cannot, admit of the interference of any kind of bureaucracy or red tape in the performance of its mission. Indeed, such functional handicaps, by the very fact that they offer officialdom every opportunity for corruption and abuse, are flagrantly incompatible not only with the spirit and letter of the Law of Zakât but, in fact, with that of any and every other branch of Islamic social organization and government.

If the Institution of Zakât is to function as an efficacious instrument for the control of want and distress within the fold of Muslim society, the two indispensable attributes displayed by the Prophet (ص) and his companions, namely, *absolute honesty* and *promptitude* in the discharge of their duties (1),

(1) See above, «Hadîth», p. 341, and also p. 342.

must be the abiding principle to which all Zakât-officials must conform. They must always bear in mind that they are the servants of God, dedicated to the service of the Muslim peoples. Nor may the Zakât-officials ever harbour the delusion that it is they who bestow the blessings of Zakât on the poor unfortunate. They must always keep in mind that the wealth of which they are the administrators and custodians is not their property, nor the property of the State, but is, Quranically speaking, the *absolute property of God* and *the legal property* of the lawful beneficiaries.

The Prophet's instructions to Mu'âdh ben Jabal stand forever as the norm to be followed by all those who undertake the responsibility of the administration of Zakât :

حدّثنا محمّد قال : اخبرنا عبد الله قال : أخبرنا زكريّاء بن اسحاق عن يحيى بن عبد الله ابن صيفي عن أبي معبدٍ مولى ابن عبّاسٍ عن ابن عبّاسٍ رضي الله عنهما قال : قال رسول الله (ص) لمعاذ بن جبلٍ حين بعثه الى اليمن : انّك ستأتي قوماً أهل كتابٍ ، فاذا جئتهم فادعهم الى أنْ يشهدوا أنّ لا اله الاّ الله وأنّ محمّداً رسول الله ، فان أطاعوا لك بذلك فأخبرهم أنّ الله قد فرض عليهم خمس صلوات في كلّ يومٍ وليلةٍ • فان أطاعوا لك بذلك فأخبرهم أنّ الله قد فرض عليهم صدقةً تؤخذ من أغنيائهم فترّدّ على فقرائهم ، فان أطاعوا لك بذلك فايّاك وكرائم أموالهم ، واتّق دعوة المظلوم ، فانّ ليس بينه وبين الله حجاب • (بخاري) •

«Mu*h*ammad has related unto us, saying : 'Abd Allah has informed us, saying : Zakarîyâ ben Is*h*âq has informed us, on the authority of Ya*h*yâ ben 'Abd Allah ben Saifî, (who said) on the authority of Abî Ma'abad, the client of Ibn 'Abbâs, (who said) on the authority of Ibn 'Abbâs (may Allah be pleased with them both) who said : When the Messenger of Allah (ص) sent Mu'âdh ben Jabal to Yemen, he said to him : 'Verily thou art going unto a people who possess a Scripture. So when thou comest unto them, call upon them to bear witness that there is no God but Allah and that Mu*h*ammad is the Messenger of Allah. Then, if they obey thee, inform them that Allah hath

enjoined on them five daily prayers. Then, if they obey thee, inform them that Allah hath enjoined on them the giving of alms (i.e., the Zakât) which shall be taken from the rich among them and bestowed upon the poor among them. Then if they obey thee, beware of levying the choisest part of their wealth (as Zakât). *And heed the request of the oppressed, for verily between him and Allah there is no veil!*.» (Imâm Bukhârî).

Thus, so long as the claim thereto is lawful and the required funds are available locally or from any surplus area, Zakât assistance can neither be delayed nor held back by the Zakât-officials.

Only if and when extraordinary circumstances arise (i.e., a national disaster, total war of defence, etc.), requiring the general mobilization of Zakât assets, may the possibility of any justifiable delay occur in the distribution of Zakât funds to less urgent cases, or the amount allotted to each beneficiary be temporarily curtailed.

55) In order to substantiate the lawfulness of any given claim to Zakât assistance, an official inquiry into the actual circumstances of the claimant may be made by the responsible Zakât-officials, (the Zakât-informers : العارفون) . This especially when the claim is for regular or temporary assistance or in the case of debtors.

However, directly upon request and pending the result of the said inquiry, which must be made *immediately, expeditiously,* and *honestly,* sufficient means must be granted out of the Zakât funds to adequately provide the claimant with, as the case may be, food, clothing, medical aid, and/or shelter, *even should the Zakât-officials have reason to suspect that the claimant is not deserving.*

56) Should, as the result of an official inquiry into his/her actual circumstances, a claimant prove to be, at the time(1), undeserving of receiving Zakât assistance, *but not guilty of malice,* a written notice of the rejection of his/her claim must be given to the claimant under the signature of the informer appointed to carry out the inquiry in question and of the officer in charge of the local branch Zakât-centre, in which a satisfactory reason for the adverse decision must be stated in the light of the established rules of the Law of Zakât.

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(1) Should the same person subsequently become deserving of Zakât, it must then be granted to him/her.

In such a case, the person involved should not be taken to account for whatever he/she may have received out of the Zakât funds during the period of the inquiry. However, the very spirit of Islam requires that, having received Zakât without a definite right thereto, the person involved realize the debt owed to God and ask forgiveness of Him for having misjudged his/her right to Zakât assistance and availed of the lawful due of a truly deserving person.

Once it has been definitely proved that a person's claim to Zakât assistance is unjustified, the rejection thereof by the responsible Zakât-officials must be accepted graciously and without rancour, for to harbour such a sentiment would be unworthy of the lofty standard of justice preconized by Islam. The following Quranic verse condemns any sentiment of rancour on the part of a disappointed claimant and clearly sets forth the correct attitude to be adopted under such circumstances :

وَمِنْهُمْ مَنْ يَلْمِزُكَ فِي الصَّدَقَاتِ فَاِنْ أُعْطُوا مِنْهَا رَضُوا وَاِنْ لَمْ يُعْطَوْا مِنْهَا اِذَا هُمْ يَسْخَطُونَ • وَلَوْ أَنَّهُمْ رَضُوا مَا آتَاهُمُ اللهُ وَرَسُولُهُ وَقَالُوا حَسْبُنَا اللهُ سَيُؤْتِينَا اللهُ مِنْ فَضْلِهِ وَرَسُولُهُ اِنَّا اِلَى اللهِ رَاغِبُونَ • (٩ : ٥٨ ــ ٥٩)

«And of them is he who defameth thee in the matter of the alms. If they are given thereof they are content, and if they are not given thereof, behold ! they are enraged.

« (How much more seemly) had they been content with that which Allah and His Messenger had given them and had said : Allah sufficeth us. Allah will give us of His Bounty, and (also) His Messenger. Unto Allah we are suppliants.» (IX : 58 - 59).

57) Should, as the result of an official inquiry into his/her actual circumstances, a claimant prove to be unworthy and guilty of maliciously seeking to avail him/herself of Zakât funds, he/she must be held responsible for whatever he/she has knowingly received without right and, besides being compelled to totally refund the same, must be liable to punishment.

58) All casual claims to Zakât assistance which do not extend beyond the claimant's immediate requirements in food, clothing,

medical aid, and/or shelter, must always be satisfied at once and need not be investigated, except if the claimant is a person well known in the «Ma*h*alla» to be in comfortable circumstances (1), in which case an official inquiry should be made as laid down in Rule 55.

59) In conformity with the Prophet's instructions, a Zakât-payer may at any time recommend a deserving person (2) to the Zakât-officials, who are in duty bound to heed the claim and grant the deserving person in question the necessary assistance out of the available Zakât funds.

Any investigation of the claim by the responsible Zakât-officials must be carried out as laid down in Rule 55.

60) Whenever the responsible Zakât-officials come to know of a Muslim in need before any claim to Zakât has been put forward, it is the duty of the said officials to at once allot a share of the Zakât funds to the needy person in question.

In such a case, the needy person may not, out of false pride, refuse the assistance conveyed to him/her. It is the Islamic duty of each and every Muslim to claim or accept Zakât *whenever truly deserving thereof.*

61) Any State or social assistance required by needy non-Muslim citizens of a Muslim State must be afforded them out of State funds — i.e., by the Public Exchequer — or through social insurance other than Zakât, and not out of Zakât funds, which are intended exclusively for the use and benefit of needy Muslims.

Nevertheless, humaneness and the very spirit of Islamic charity require that whenever an extreme emergency arises (i.e., accidents, disasters, sudden and dangerous illnesses, wayfarers in distress), *and no other assistance is immediately at hand,* food, clothing, shelter and/or medical aid should be afforded non-Muslims promptly. However, *the equivalent of such expenditure must always be expeditiously refunded to the Zakât treasury,* either by the Public Exchequer or by the non-Muslim beneficiary him/herself if he/she be a person of means.

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(1) A person known to be in comfortable circumstances may suddenly suffer a reverse of fortune and find him/herself in a position to lawfully claim Zakât assistance.

(2) See footnote to Rule 48, p. 341.

62) The generally accepted rule for the apportioning and distributing of the Zakât funds, is as follows :

Regular beneficiaries, i.e., those deserving of a regular Zakât pension or living wage, must be given a yearly provision allowing of a decent, *but modest,* standard of life. Casual and temporary beneficiaries, with the exception of slaves and captives, whose price of manumission or ransom may involve a greater expenditure, may not be given at one time an amount of wealth equal to or over and above the Nisâb established for the kind involved, i.e., an amount which in itself warrants the paying of Zakât.

Thus, 5 camel-loads of foodgrains or an amount in cash equal to the prevailing price thereof (200 dirhems of silver in the Prophet's time) may not be given at one time to any one person in need of casual or temporary assistance. Nor may a beneficiary be given at one time 40 sheep, 30 oxen, or 5 camels, which numbers represent respectively the Nisâbs of their kind.

In a country where it is the staple food of the inhabitants, were the average price of wheat to be, for instance, Rs. 10/- per maund, i.e., Rs. 420/- per 5 camel-loads (= 42 maunds, 1680 seers, or 1568 kgs.), Rs. 419/- would be the lawful limit of Zakât assistance allowable at one time in cash money to any casual or temporary beneficiary.

Within the limits of this rule, the abiding principle determining the exact amount to be given in any particular case is that the aim of Zakât is *to rehabilitate* (1) the beneficiary and not merely to maintain his/her existence within the confines of poverty. Accordingly, the nature and extent of Zakât assistance must always, and necessarily, depend both on the prevailing cost of living and on the special circumstances and requirements *of each individual beneficiary*. Even in the case of deserving persons with family dependents for whose livelihood they are legally or morally responsible, each person — man, woman and/or child — must be considered *individually* as a lawful beneficiary of Zakât.

A classification of the lawful beneficiaries of Zakât and a general scheme for the distribution of Zakât funds is given below :

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(1) See «Hadîth», p. 371, foll.

a) **Regular beneficiaries.** These include :

i) Helpless, incurable, sick and disabled persons (minors or adults, males or females) who are destitute (مساكين) , and who are to receive *individually* a regular life Zakât pension in whatever form may be convenient (cash money, foodstuffs, clothing, shelter, etc.) plus whatever special medical care or treatment may be necessitated by their physical or mental condition.

ii) Needy widows, needy mothers of orphaned children (orphaned of father) for whose care and upbringing they are responsible, and needy orphaned children (orphaned of father and mother), who are to receive *individually* a regular Zakât pension in whatever form may be convenient, *plus* whatever medical aid may be required by them in time of sickness, until such a time as, where boys are concerned, the orphaned children become legally of age and, in the case of girls, they marry or are able to honourably earn their own living. Special allowance is, moreover, to be made for the education and training of needy orphaned children.

iii) Deserving Zakât-officials (العاملون الفقراء) ; persons such as those described under the heading «For the Cause of Allah» (في سبيل الله) whose life effort is entirely dedicated to the service of Islam; and the caretakers and other regular servants of inns and rest-houses maintained for the benefit of needy wayfarers, all of whom are to receive *individually* a regular Zakât pension or living wage in whatever form may be convenient, *plus* whatever medical aid may be required by them in time of sickness, *so long as they actively maintain their status.*

iv) Zakât hospitals, dispensaries, orphanages, schools, and Zakât institutes for the education and rehabilitation of poor disabled, blind, deaf, and dumb Muslim children and adults, (all of which are to be *individually* assigned a regular subsidy out of Zakât funds, sufficient for their proper upkeep and equipment and, when necessary, for the regular payment of rentals.

b) **Temporary beneficiaries.** These include :

i) The poor of straitened means (الفقراء) ; the poor destitute (المساكين) ; «those whose hearts are reconciled» (المؤلفة قلوبهم) ;

enfranchised slaves (في الرقاب) ; ex-prisoners of war (في الرقاب) and the victims of land, sea and air disasters occurring within the jurisdiction of Muslim countries (1), who have suffered a total loss of their worldly possessions or a loss so severe as to signify extreme distress and misery, all of whom are to be rehabilitated through the agency of Zakât (في سبيل الله) and are to receive their requirements in cash money, food, clothing, medical aid, and/or shelter until such a time as they are in a position to adequately earn their own living.

ii) All purposes as are essential in time of extreme emergency for the successful pursuance of lawful warfare (i.e., war in defence of the Muslim peoples and territories (في سبيل الله) , such as : the building of fortifications; the providing of armaments, food-provisions, and medical aid to the fighting forces; the immediate relief of Muslim war refugees; etc.

c) **Casual beneficiaries.** These include :

i) All poor of straitened means (الفقراء), the poor destitute (المساكين) and «those whose hearts are reconciled» (المؤلّفة قلوبهم) , whose rehabilitation can be effectuated directly, without prolonged Zakât assistance.

ii) Slaves and captives (Muslim prisoners of war) (في الرقاب) whose price of manumission or ransom is to be paid out of Zakât funds, even if and when the same represents an amount exceeding the Nisâb established for the kind of wealth involved.

iii) The victims of land, sea or air disasters occurring within the jurisdiction of Muslim countries, who, regardless of whether they have or have not suffered a total or severe loss of their worldly possessions, are to receive through the agency of Zakât (في سبيل الله) immediate relief in whatever form may be required (cash money, food, clothing, medical aid, and/or shelter).

iv) Deserving debtors (الغارمون) , whose debts, according to the

(1) Muslims who are victims of such disasters outside the jurisdiction of Muslim countries, have a technical right to Zakât assistance which should be afforded them by the head Zakât-centre if facilities for so doing exist between any Muslim country and the non-Muslim country where the said Muslim in distress happens to be.

circumstances, may be discharged either totally or partially through the agency of Zakât, *on condition that the interested creditors themselves be in dire necessity and therefor unable to await the debtor's time of convenience.*

Should the debt be of a small amount, (less than the Nisâb of the kind involved), it may be totally covered by Zakât funds if these be plentiful, or partially covered thereby if they be insufficient.

But should the debt involve a large sum, or should the immediate necessity of the creditor be less than the amount of the debt, the creditor may only receive from the Zakât funds what is required to meet his/her immediate wants (in cash money, food, clothing, medical aid, and/or shelter).

When the debt has been partially covered by Zakât funds, the balance of the debt remains the responsibility of the debtor, to be discharged by him/her at his/her earliest convenience.

v) Wayfarers (ابن السبيل) in distress, who are to receive their immediate requirements in food, clothing, medical aid, and/or shelter, and/or the necessary means (transportation facilities, or cash money not exceeding a value immediately below the established Nisâb) to either complete their journey or to return to their own homes.

vi) Muslims who have died in poverty and for whom shrouds may be provided out of Zakât funds.

vii) The building, equipping and/or repair of Zakât premises (في سبيل الله), i.e., hospitals; dispensaries; orphanages; special institutes for the education and rehabilitation of the poor disabled, etc.; schools; inns and rest-houses; storehouses; granaries; stables; etc., and when Government funds are insufficient, the building and repair of roads and bridges in poor localities where the same is an urgent necessity for the public well-being. (See above, p. 305).

The amount of Zakât funds assigned for these lawful purposes must always depend on the urgency of the need in relation to that of other individual claims and on the prevailing price of labour, materials, etc.

63) All Zakât pensions and living wages should be paid to the lawful beneficiaries thereof preferably on a regular monthly basis.

64) It is the moral obligation of all beneficiaries of Zakât not to abuse of the assistance afforded them. While, on the one hand, it is their Islamic duty to accept or claim Zakât whenever and so long as they are truly deserving thereof, it is likewise their Islamic duty to voluntarily desist from availing of Zakât assistance once they no longer stand in need of it.

Thus beneficiaries who subsequently come into comfortable circumtances and who consequently cease to have a right to Zakât, should of their own accord inform the local Zakât-officials that they find themselves satisfactorily rehabilitated and require no further Zakât assistance.

Rehabilitated persons who fail to give such information to the Zakât-officials and who continue to draw upon the Zakât funds knowingly without right, are sinful and liable to punishment if and when found out.

65) Whenever non-Muslim citizens of a Muslim State are involved together with Muslims in a land, sea or air disaster within Muslim territory, Zakât funds assigned for the relief of the Muslim victims must be proportionately supplemented with funds provided by the Public Exchequer and/or donated by private citizens, both Muslim and non-Muslim.

Should a disaster involve exclusively non-Muslims, the necessary relief is entirely incumbent on the Public Exchequer and may be supplemented by donations of private citizens, both Muslim and non-Muslim (1).

66) Once a given share of the Zakât funds, whether in cash or in kind, has been allotted by the responsible Zakât-officials (the distributors) to any given beneficiary, the same may not be given by the Zakât-custodians to any person other than the beneficiary for whom it is intended.

Should such a breach of trust occur, the factor of malice being

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(1) See above, Rule 61.

evident and proven, the guilty custodian would be liable to punishment and immediate dismissal from the Zakât-staff.

The trustworthiness and accuracy of the Zakât-custodians in executing all orders issued to them by the officer in charge of the Zakât-centre must be at all times absolute and beyond question. The Zakât-custodians have no authority to dispose of the Zakât funds without such an order, nor have they any authority to make of their own accord any changes whatsoever in the said order.

67) Deserving persons lacking the means of acquiring tools essential for earning their livelihood and/or necessary materials with which to start work, may be afforded the same or the price thereof out of the Zakât funds, within the limits laid down in Rule 62b.

Similarly, when convenient and opportune, there should be no objection to Zakât funds being allotted, always within the limits laid down in Rule 62b, to deserving persons belonging to rural districts, for the purpose of acquiring arable land as a means of livelihood.

In accordance with Rule 62 (para. 4), whenever a family is to be rehabilitated through the acquisition of land, the maximum value of the land allotted to the said family may be equal to, but may not exceed, a value immediately below the Nisâb established for cash value (i.e., silver, gold and currency notes), multiplied by the number of deserving persons involved.

68) In conformity with the «Sunnah» of the Prophet (ص) made known in the «A*h*adîth» quoted below, once Zakât has been given to a lawful beneficiary, the wealth it represents ceases to be considered as Zakât and becomes the legitimate property of the said beneficiary who may, if the necessity arises, sell the same to any person other than the original owner thereof (1), or, if he/she so desires, give a portion thereof to any person of his/her choice. In the latter case, the thing in question, having lost its character of Zakât as stated above, is considered only as constituting a personal gift from friend to friend.

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(1) See above, Rules 28 and 29.

حدّثنا زهير بن حربٍ ، حدّثنا اسماعيل بن ابراهيم عن خالدٍ عن حفصة عن أمّ عطيّة (الانصاريّة) قالت : بعث الىّ رسول الله صلّى الله عليه وسلّم بشاةٍ من الصدقة ، فبعثت الى عائشة منها بشيءٍ ، فلمّا جاء رسول الله صلّى الله عليه وسلّم الى عائشة قال : هل عندكم شيء ، قالت : لا الاّ أنّ نسيبة بعثت الينا من الشاة الّتي بعثتم بها اليها ، قال : انّها قد بلغت محلّها . (مسلم)

«Zuhair ben *H*arb has related unto us, (saying) : Ismâ'îl ben Ibrâhîm has related unto us, on the authority of Khâlid, (who said) on the authority of *H*afsa, (who said) on the authority of Umm 'A*t*iya (al-Ansâriya), who said : The Messenger of Allah (ص) sent me a sheep from the Zakât funds, and I sent a portion of it to 'Ayesha. And when the Messenger of Allah (ص) came to 'Ayesha, he asked : 'Do you have anything (to eat) ?' She replied : 'No; except for a portion of the sheep that you sent to Nusaiba (Umm 'A*t*iya) and which she has sent to us.' He said : 'Verily it has become lawful (for us)' .» (Imâm Muslim).

عن عائشة : واُتي النبيّ صلّى الله عليه وسلّم بلحم بقرٍ فقيل : هذا ما تصدّق به على بريرة ، فقال : هو لها صدقة ولنا هديّة . (مسلم)

«It is related on the authority of 'Ayesha that some beefmeat was brought to the Prophet (ص) and it was said to him : This is of what has been given to Barîrah (1) as Zakât. And he replied : 'As for her, it is Zakât; but in respect of us, it is a gift' .» (Imâm Muslim).

69) It is generally conceded by the Muslim jurists that a casual beneficiary may receive Zakât assistance twice and even thrice in succession. (See above, Rules 55, 56 and 57).

70) As regards the legitimate owner of taxable wealth, Zakât dues constitute a sacred and irrevocable debt to the Muslim Nation.

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(1) A former slave woman, enfranchised by, and client of, Umm ul-Mominîn 'Ayesha.

But where the lawful beneficiaries of Zakât are concerned, Zakât assistance, in whatever form it may be afforded them, entails no debt to be repaid. It is forever absolutely free and gratuitous, and implies no obligation whatever on the part of the lawful beneficiaries to either refund the Zakât received, or to bestow an amount of wealth equal thereto as alms when they find themselves once again in comfortable circumstances. It must be fully realized that Zakât is *the God-given right* of all lawful beneficiaries and, hence, there can be no question of Zakât ever being given in the shape of a loan, as some modern writers have suggested.

A loan necessarily implies only momentary relief from the spectre of want and necessarily places a further burden upon the shoulders of the needy person. For this reason, the inauspicious conception of Zakât as loanable wealth, which finds no support whatsoever in any of the Quranic Principles relating to the Law of Zakât or in any of the Prophet's rulings, would constitute a very serious impediment in the way of the rehabilitation of needy Muslims and would merely serve to defeat the noble and supremely important aim and purpose of the Institution of Zakât.

71) It is incumbent on all would-be beneficiaries of Zakât to be very conscientious whenever putting forward their claims to Zakât assistance. Zakât is the *last recourse* for the Muslim in need, to be resorted to when no other alternative remains, i.e., when despite their best efforts or because of some physical disability or other handicap beyond their control (as, for instance, distress due to a natural disaster or to war), they are unable to adequately secure for themselves the basic lawful material necessities of life : sufficiency in food, clothing, shelter, and/or medical aid.

A slight reverse of fortune does not entitle the Muslim to at once avail of Zakât funds as an easy way to redress an unpleasant situation. Islam expects of all its followers to face every adversity and hardship with dynamic courage, patience and perseverance, and to seek the remedy of their difficulties and God's bounty directly through their own efforts rather than through the intervention of outside factors.

لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ

وَلَكِنَّ البِرَّ مَنْ آمَنَ بِاللهِ وَاليَوْمِ الآخِرِ وَالمَلائِكَةِ وَالكِتَابِ وَالنَّبِيِّينَ وَآتَى المَالَ عَلَى حُبِّهِ ذَوِي القُرْبَى وَاليَتَامَى وَالمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلاةَ وَآتَى الزَّكَاةَ ، وَالمُوفُونَ بِعَهْدِهِمْ اذَا عَاهَدُوا وَالصَّابِرِينَ فِي البَأْسَاءِ وَالضَّرَّاءِ وَحِينَ البَأْسِ أُولَئِكَ الَّذِينَ صَدَقُوا وَأُولَئِكَ هُمُ المُتَّقُونَ • (٢ : ١٧٧)

«It is not righteousness that you turn your faces to the East and the West; but righteous is he who believes in Allah and the Last Day and the Angels and the Scripture and the Prophets; and gives his wealth for the love of Him, to kinsfolk and to orphans and the needy and the wayfarer and to those who ask, and to set slaves free; and observes proper worship and pays the Zakât. And those who keep their treaty when they make one; and the patient in tribulation, and adversity, and time of stress. Such are they who are sincere. Such are the God-fearing. (II : 177).

يَا أَيُّهَا الَّذِينَ آمَنُوا اسْتَعِينُوا بِالصَّبْرِ وَالصَّلاةِ انَّ اللهَ مَعَ الصَّابِرِينَ • (٢ : ١٥٣)

«O you who believe ! Seek help in stedfastness and prayer, for Allah is with the stedfast.» (II : 153).

The following « *H*adîth » further emphasizes the value of patience and perseverance in face of adversity :

حدّثنا عبد الله بن يوسف ، قال : أخبرنا مالك عن ابن شهابٍ عن عطاء بن يزيد الليثيِّ عن أبي سعيد الخدريِّ رضي الله عنه ، أنّ ناساً من الانصار سألوا رسول الله صلّى الله عليه وسلّم فأعطاهم ، ثمّ سألوه فأعطاهم حتى نفِد ما عنده فقال : ما يكون عندي من خيرٍ فلن أدّخره عنكم ومن يستعفف يُعفّه الله ومن يستغنِ يُغنِه الله ومن يتصبَّرْ يُصبِّره الله ، وما أعطى أحد" عطاءً خيراً وأوسع من الصبر • (بخاري)

« 'Abd Allah ben Yûsuf has related unto us, saying : Mâlik has informed us, on the authority of Ibn Shihâb, (who said) on the authority of 'Atâ ben Yazîd al-Laythî, (who said) on the authority of Abû Sa'îd al-Khudrî (may Allah be pleased with him), that certain people of the Ansâr beseeched the Messenger of Allah (ص) (for alms), so he gave unto them. Then again they beseeched him (for alms) and he gave unto them, exhausting the funds he had at hand, and he said : 'I will never withhold from you whatever I may have of good. And he who abstains (from asking of others), Allah will increase him in virtue. And he who prays for sufficiency, Allah will satisfy him. And he who gives proof of patience and perseverance, Allah will increase him in patience and perseverance. And no better and greater gift than patience and perseverance has ever been vouchsafed to anyone[1] .» (Imâm Bukhârî).

72) In order to further the rehabilitation of able-bodied needy Muslims, all Zakât-centres should be prepared to act as free employment agencies. To this effect, each Zakât-centre should remain in close contact with all prospective employers within its jurisdiction, the main Zakât-centre acting as an inter-agent co-ordinating the supply and demand of employment throughout the country.

73) Whenever there is a deficiency of Zakât funds, implying the impossibility of adequately satisfying all the claims to Zakât assistance, available funds must always be apportioned by order of urgency. Under such circumstances, a destitute claimant in need of, for instance, food or medical aid as an immediate measure of relief, has priority over a claimant whose material resources though insufficient still afford him/her some means of subsistence. In every case, needy women have prior right to Zakât assistance.

74) Zakât funds levied in kind should, as a rule, be distributed in kind. However, when the necessity arises, Zakât funds levied in kind (articles of trade, domestic animals, agricultural produce, honey, raw silk, etc.), or derived from domestic animals levied as Zakât (milk, wool, hides, flesh, etc.), may be sold at the prevailing market prices by any given Zakât-centre, so as to obtain cash money to distribute directly to the lawful beneficiaries, to purchase items such as hospital equipment, medicines, or any other item required by them and not existing at the time among the funds available at

the local Zakât-centre, and/or to cover the expenses of Zakât hospitals, orphanages, etc.

The sale of Zakât funds levied in kind must always be effectuated with a special written authorization and on the responsibility of the officer in charge of the interested Zakât-centre, and must be immediately recorded in full detail by the Zakât-clerks, the Zakât-custodians and the Zakât-accountants, and the cash money obtained therefrom deposited at the Zakât-centre until used.

75) Milk, wool, flesh, hides, etc., derived from domestic animals levied as Zakât, should either be distributed among, or used for the benefit of, the lawful beneficiaries, preference being given to Zakât hospitals, orphanages and other Zakât institutes, and to Zakât inns and rest-houses.

76) Zakât funds may never be invested in any sort of business enterprise.

This prohibition is entirely justified by the fact that investment necessarily involves risk and, at the very least, the temporary unavailability of funds for immediate use. Thus, by jeopardizing both the safe custody of Zakât funds and the legitimate interests of the lawful beneficiaries, the investment of Zakât funds in business enterprises would unquestionably violate the very principles on which the Law of Zakât is based.

The Law of Zakât requires that the safe custody of Zakât funds be *absolute* and that the same be, at all times, ready for *immediate use*, in conformity with the dictates of the Qurân and the «Sunnah» of the Prophet (ص) .

77) The act of Zakât must not result in a benefit directly or indirectly serving the personal interests of the Zakât-payer. This is one of the important rules on which the validity of the act of Zakât depends. In conformity with this rule, the Law of Zakât lays down that :

a) A Zakât-payer may neither give his/her Zakât dues, nor recommend that the same be given, to those of his/her own kinsfolk and/or relatives by marriage on whom he/she has either an

actual or potential right of inheritance(1). These include : the Zakât-payer's wife or husband, children, father and mother, grandparents and other direct ascendants, grandchildren and other direct descendants, brothers and sisters, half-brothers and half-sisters, aunts and uncles, nieces and nephews, and more distant relatives by blood to whose worldly possessions the Zakât-payer could eventually have a lawful claim of inheritance.

However, on the authority of a «*H*adîth» related by Abû Sa'îd al-Khudrî and quoted below, certain prominent jurists, including Imâm Shâf'î, hold that a woman may lawfully give her Zakât dues to her husband :

حدّثنا ابن أبي مريم ، قال : أخبرنا محمّد بن جعفر ، قال : أخبرني زيد عن عِياض بن عبد الله عن أبي سعيدٍ الخدريّ رضي الله عنه ، خرج رسول الله صلّى الله عليه وسلّم في أضحى أو فطرٍ الى المصلّى ، ثمّ انصرف فوعظ الناس وأمرهم بالصدقة فقال : أيُّها الناس تصدّقوا • فمرّ على النساء فقال : يامعشر النساء تصدّقن فانّي رأيتكنّ أكثر أهل النار • فقلن : وبمـا ذلك يا رسول الله ، قال : تكثرن اللعن وتكفرن العشير ، ما رأيت من ناقصات عقلٍ ودينٍ أذهب للُبّ الرجل الحازم من احداكنّ يا معشر النساء • ثمّ انصرف ، فلمّا صار الى منزله جاءت زينب امرأة ابن مسعودٍ تستأذن عليه ، فقيـل : يا رسول الله هـذه زينب • فقـال أيُّ الزيانب فقيل : امرأة ابن مسعودٍ • قال : نعم ائذنوا لها • فأُذن لها • قالت : يانبيّ الله انّك أمرت اليوم بالصدقة، وكان عندي حليّ لي فأردت أن أتصدّق به ، فزعم ابن مسعودٍ أنّه وولده أحقُّ من تصدّقت به عليهم • فقال النبيُّ صلّى الله عليه وسلّم : صدق ابن مسعودٍ زوجك وولدك أحقُّ من تصدّقت به عليهم • (بخاري)

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(1) The Hanafite School of Law further argues that because of the Zakât-payer's actual or potential right of inheritance, the giving of Zakât dues to kinsfolk and/or relatives by marriage does not result in a complete transfer of ownership and is, therefore, not valid.

«Ibn Abî Maryam has related unto us, saying : Muhammad ben Ja'afar has informed us, saying : Zaid has informed me, on the authority of 'Iyâd ben 'Abd Allah, (who said) on the authority of Abû Sa'îd al-Khudrî (may Allah be pleased with him), (who said) : (One 'Id day), either on the 'Id ul-Adhâ or the 'Id ul-Fitr, the Messenger of Allah (ص) went forth to the place of prayer. When he returned, he exhorted the people, commanding them to give charity. He said : 'O people! Give charity.' Then he went over to the women and addressed them, saying : 'O company of women ! Give charity. For verily I see that most of you will be among the Owners of Hell-fire.' They asked : And why is this, O Messenger of Allah ? He said : 'You exaggerate in cursing and you betray (your trust) in respect of your husbands. I have not seen aught more destructive of the heart of the man of solid character than those from among you who are lacking in understanding (due to lack of education) and religious sense, O company of women !'

«Then he withdrew; and when he arrived at his house, Zaînab, the wife of Ibn Mas'ûd, came and asked for permission to see him. He was informed : O Messenger of Allah ! Here is Zaînab. He asked : 'Which of the two Zaînabs ?' He was told : The wife of Ibn Mas'ûd. He said : 'Yes, allow her (to come in)'. So they gave her permission to enter, and she said : O Prophet of Allah ! Verily today thou didst enjoin charity on us and as I had with me an (gold or silver) ornament of mine, I wanted to give it in charity. But Ibn Mas'ûd was of the opinion that he and his child had more right to my charity (than others). The Prophet (ص) replied : 'Ibn Mas'ûd spoke the truth. Thy husband and thy child are the most worthy persons to whom thou couldst give charity'.» (Imâm Bukhârî).

As understood by the *H*anafite jurists, and as is clear from the text of this «*H*adîth», the Prophet's exhortation on the 'Id day was in reference to charity in general and not in special reference to the paying of Zakât. Hence, the case of Zaînab, wife of Ibn Mas'ûd, was unquestionably one of voluntary charity (صدقة التطوع) and cannot be construed as justifying the giving of one's Zakât dues to one's husband, wife, or kinsfolk.

The moral of the above-quoted «*H*adîth» is the old maxim : Charity begins at home. When Zaînab asked the Prophet (ص) if her husband, Ibn Mas'ûd, who was a very poor man, was indeed more

deserving of her charity, the Prophet readily approved of her bestowing her voluntary alms on him and their child, in preference to other worthy persons.

In fact, charity to one's needy kinsfolk and other relatives is a Quranic Precept, which must be fulfilled *apart from the obligation of Zakât.*

انَّ اللهَ يَأْمُرُ بِالعَدْلِ وَالاحْسَانِ وَايتَاءِ ذِي القُرْبَىوَيَنْهَى عَنِ الفَحْشَاءِ وَالمُنْكَرِ وَالبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ • (١٦ : ٩٠)

«Allah enjoineth justice and kindness, *and giving to kinsfolk,* and forbiddeth lewdness and abomination and wickedness. He exhorteth you in order that you may take heed.» (XVI : 90).

أوَلَمْ يَرَوْا أنَّ اللهَ يَبْسُطُ الرِّزْقَ لِمَنْ يَشَاءُ وَيَقْدِرُ انَّ فِي ذَلِكَ لآيَاتٍ لِقَوْمٍ يُؤْمِنُونَ • فَآتِ ذَا القُرْبَى حَقَّهُ وَالمِسْكِينَ وَابْنَ السَّبِيلِ ذَلِكَ خَيْرٌ لِلَّذِينَ يُرِيدُونَ وَجْهَ اللهِ وَأُولَئِكَ هُمُ المُفْلِحُونَ • (٣٠ : ٣٧ ــ ٣٨)

«See they not that Allah enlargeth the provision for whom He will and straiteneth (it for whom He will) ? Herein indeed are portents for folk who believe. So give to the kinsman his due, and to the destitute, and to the wayfarer. That is best for those who seek Allah's Countenance. And such are they who are successful.»
(XXX : 37 - 38).

لَيْسَ البِرَّ أنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ المَشْرِقِ وَالمَغْرِبِ وَلَكِنَّ البِرَّ مَنْ آمَنَ بِاللهِ وَاليَوْمِ الآخِرِ وَالمَلائِكَةِ وَالكِتَابِ وَالنَبِيِّينَ وَآتَى المَالَ عَلَى حُبِّهِ ذَوِي القُرْبَى وَاليَتَامَى وَالمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ

وَأَقَامَ الصَّلاةَ وَآتَى الزَّكَاةَ ... أُولَئِكَ الَّذِينَ صَدَقُوا وأُولَئِكَ هُمُ المُتَّقُونَ • (٢ : ١٧٧)

«It is not righteousness that you turn your faces to the East and the West; but verily he is righteous who believes in Allah and the Last Day and the angels and the Scripture and the Prophets; and gives his wealth for the love of Him *to kinsfolk (in need)* and to orphans and the destitute and the wayfarer, and to those who beseech for aid, and to set slaves free; and who observes proper worship *and pays the Zakât* . . . Such are they who are sincere. Such are the God-fearing.» (II : 177).

Islam, when emphasizing the importance of voluntary charity in the make-up of Muslim society, especially exhorts the Muslims to be fully alive to the needs of those of their own kinsfolk and relatives by marriage who find themselves in straitened circumstances. For the relief and, when possible, the extirpation of poverty from the midst of each family group by the members of the group itself, is one of the surest means to social well-being and stability. This fact is eloquently stressed in the following «*H*adîth» :

حدَّثنا أبو بكرٍ بن أبي شيبة وزُهير بن حربٍ وأبو كُريبٍ واللفظ لأبي كُريبٍ ، قال : حدَّثنا وكيع عنْ سفيان عن مزاحم بن زُفر عن مجاهد عن أبي هريرة ، قال : قال رسول الله صلَّى الله عليه وسلَّم : دينار انفقته في سبيل الله ودينار انفقته في رقبة ودينار تصدَّقت به على مسكينٍ ودينار أنفقته على أهلك أعظمها أجراً الَّذي أنفقته على أهلك • (مسلم)

«Abû Bakr ben Abî Shayba, Zuhair ben *H*arb, and Abû Kuraib (and the wording is of Abû Kuraib) have related unto us, saying: Wakî'a has related unto us, on the authority of Sufyân, (who said) on the authority of Muzâ*h*im ben Zufar, (who said) on the authority of Mujâḥid, who said on the authority of Abû Huraîra, who said : The Messenger of Allah (ص) said : [1](Between) a dînâr that thou hast spent in the Way of Allah, and a dînâr that thou hast spent for the sake of a slave, and a

dînâr that thou hast given in charity to a destitute person, and a dînâr that thou hast spent for the needs of thine own family, the one most worthy of reward is the one that thou hast spent for the needs of thine own family[1].» (Imâm Muslim).

The same as any other form of voluntary charity, charity to kinsfolk can only affect the obligation of Zakât in so far as the amount spent for the purpose reduces existing taxable wealth to a lesser degree of taxability or to below the Nisâb established for the kind of wealth involved.

Thus, should a legitimate owner of wealth taxable for Zakât have a poor relative, it is his/her Islamic duty to give the person in need every possible help, regardless of how this help may affect the taxability for Zakât of his/her wealth : to refrain from helping a poor person on the plea that the Zakât of one's taxable wealth has been, must be, or is about to be paid, is to deny one of the principal acts by which the spirit of Islamic brotherhood may endure as a living reality.

Should the giving of voluntary charity not affect a person's taxable wealth, or should such charity only reduce the same to a lesser degree of taxability, the obligation of Zakât in respect of the said wealth does not lapse and the corresponding dues must be satisfied in conformity with the rules governing the kind or genus involved.

On the other hand, should the giving of voluntary charity actually reduce the number, quantity, or value of a person's taxable wealth to below the Nisâb established for the kind involved, the obligation of Zakât naturally lapses.

b) A Zakât-payer may neither give his/her Zakât dues, nor recommend that they be given, to his/her own unsalaried servant, he/she being morally and legally responsible for all the living expenses of the servant in question.

c) A Zakât-payer may neither give his/her Zakât dues, nor recommend that they be given, to his/her affranchised slave, it being his/her moral and legal obligation, as enjoined in the following Quranic verse, to bestow upon the affranchised slave in question a portion of his/her own wealth in order to enable the new Muslim

citizen to begin his/her independent life free from want and distress (1).

... وَالَّذِينَ يَبْتَغُونَ الكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ انْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللهِ الَّذِي آتَاكُمْ ... (٢٤ : ٣٤)

« . . . And such of your slaves as seek a writing (of emancipation), write it for them if you are aware of aught of good in them, *and bestow upon them of the wealth of Allah which He hath bestowed upon you* . . . ». (XXIV : 34).

78) The Law of Zakât requires that the use of Zakât funds *be strictly limited to and that they directly serve* the interests of the lawful beneficiaries designated in verse 60, Surah IX of the Qurân.

As a consequence of this fundamentally important rule, the purpose of which is to ensure that the act of Zakât will always result in the effective control of want and distress within the fold of Muslim society, never and in no case may Zakât funds be used for any purpose that *directly benefits* those members of the Muslim community whose means of livelihood are such as to automatically exclude them from the category of lawful beneficiaries of Zakât, or that is not deemed urgent and essential for the common welfare of a poor Muslim community. Thus the Law of Zakât prohibits :

(a) The use of Zakât funds to finance the building of mosques, and of other public premises and works not exclusively connected with the Institution of Zakât.)

The jurists of the *H*anafite School of Law hold that the use of Zakât funds to finance the building of mosques is unlawful because the same does not imply a complete transfer of ownership from Zakât-payer to beneficiary. However, as this ruling of the *H*anafite School does not and cannot apply in each and

(1) Based on a «Hadîth» of the Prophet (ص) (see p. 374), the Law of Zakât lays down that a Zakât-payer has no right to claim as his/her client an affranchised slave whose price of manumission has been paid with his/her own Zakât dues, nor one whose price of manumission has, on his/her recommendation, been paid out of Zakât funds.

every case to the definite purposes detailed in verse 60, Surah IX of the Qurân, for which Zakât funds may lawfully be used (viz., in the case of slaves and debtors) [1], it does not constitute in itself a valid argument against the use of Zakât funds to finance the building of mosques.

This prohibition is better justified by the fact that the Mosque is not indispensable, but rather a convenience, for the observance of the congregational prayer for all Muslims alike, both rich and poor, and hence, as is the case where other public buildings not exclusively connected with the Institution of Zakât are concerned, all expenses connected with the building and upkeep of mosques are the responsibility of the Muslim community as a whole and must be satisfied either out of public funds (municipal or State funds) or by private or public donations.

The fact that Zakât-centres should be located for convenience's sake within the premises of the mosques, does not change the fact that mosques are not intended for the exclusive use and benefit of the lawful beneficiaries of Zakât.

(b) On the authority of a «*H*adîth» related by Ibn Mas'ûd and quoted below, the Law of Zakât prohibits the granting of Zakât assistance to any person (local resident) having in his/her actual possession wealth free from debt, which is by nature taxable for Zakât, and the value of which is equal to, or exceeds, the value represented by one fourth of the Nisâb established for silver (i.e., equal to, or exceeding, the value represented by the prevailing market price of one fourth of 5 camel-loads — 420 seers or 391 kgs 91 — of whichever cereal constitutes the staple food of the country's inhabitants).

عن ابن مسعود رضي الله تعالى عنه ، قال : قال رسولُ الله صلّى الله عليه وسلّم : من سأل وله ما يُغنيه جاء يوم القيامة ومسألته في وجهه خموش أو خدوش أو كدوح • قيل : يا رسول الله وما يغنيه ، قال : خمسون درهماً أو قيمتها من الذهب • (رواه الترمذي)

(1) See above, p. 295.

« (It is related) on the authority of Ibn Mas'ûd (may Almighty Allah be pleased with him), who said : The Messenger of Allah (ص) said : 'He who asks (for material assistance) when he is (materially) self-sufficient, will come on the Day of Resurrection with his request on his face in the shape of a disfigurement or abrasions or scratches' . (One of those present) asked : And what makes him (materially) self-sufficient, O Messenger of Allah ? He replied : 'Fifty dirhems (1), or their value in gold' .» (Imâm at-Tirmadhî).

c) On the authority of a «*H*adîth» related by 'Abd Allah ben 'Umar and quoted below, the Law of Zakât prohibits the granting of Zakât assistance to any local resident having in his/her actual possession wealth free from debt, which is by nature not taxable for Zakât, in such quantity as is sufficient to satisfy his/her immediate requirements and those of his/her dependents, if any, in food, clothing, shelter and medical aid, or to a local resident who is perfectly fit, both mentally and physically, to earn his/her own livelihood and who can find the means of doing so honourably.

عن عبد الله بن عمرو عن النبيِّ صلّى الله عليه وسلّم ، قال : لا تحلُّ االصدقة لغنيٍّ ولا لذي مِرَّة سَوِيٍّ • (رواه الترمذي وأبو داود)

« (It is related) on the authority of 'Abd Allah ben 'Umar, (who said) on the authority of the Prophet (ص), who said : 'Alms are unlawful (both) for him who is (materially) self-sufficient and for him who is mentally and physically fit (and able to find work)' .»
(Imâms at-Tirmadhî and Abû Dâûd).

d) The Law of Zakât prohibits the granting of Zakât assistance to the minor children of materially self-sufficient persons, it being the moral and legal obligation and responsibility of the father to provide all the material necessities and living expenses of his minor children.)

On the other hand, once legally of age, should the son or daughter of a materially self-sufficient person find him/herself in

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(1) The original Nisâb for silver being 200 dirhems, i.e., the price of 5 camel-loads of foodgrains in the Prophet's time, 50 dirhems represent one fourth of the said value.

straitened circumstances or destitute of all means of livelihood and, for any reason, be unable to obtain material aid from his/her own parents, family relations, or any other lawful source, he/she must be considered in his/her individual capacity and Zakât assistance granted him/her in conformity with the established rules.

(e) In conformity with the following Quranic verse, the Law of Zakât prohibits the granting of Zakât assistance to any person known to be a habitual or professional beggar.

...لِلْفُقَرَاءِ الَّذِينَ أُحْصِرُوا فِي سَبِيلِ اللهِ لَا يَسْتَطِيعُونَ ضَرْبًا فِي الْأَرْضِ يَحْسَبُهُمُ الْجَاهِلُ أَغْنِيَاءَ مِنَ التَّعَفُّفِ تَعْرِفُهُمْ بِسِيمَاهُمْ لَا يَسْأَلُونَ النَّاسَ إِلْحَافًا وَمَا تُنْفِقُوا مِنْ خَيْرٍ فَإِنَّ اللهَ بِهِ عَلِيمٌ" • (٢ : ٢٧٣)

« (Alms are) for the poor who are straitened for the Cause of Allah, who cannot go forth in the land (for trade). The unthinking person accounts them wealthy because of their restraint. Thou shalt know them by their marks : they do not beg of the people with importunity. And whatever good thing you spend, Allah knoweth it.»
(II : 273).

Indeed, Islam condemns habitual and professional begging as incompatible with the standard of human dignity required of every Muslim, man or woman, and exhorts its followers to make every effort to earn an honest and lawful living, and give thereof in charity to their less fortunate brethren, rather than degrade themselves by begging their living from others.

حدّثنا عمر بن حفص بن غياثٍ ، قال : حدّثنا أبي ، قال : حدّثنا الأعمش ، قال : حدّثنا أبو صالحٍ عن أبي هريرة عن النبيّ صلّى الله عليه وسلّم قال : لأن يأخذ أحدكم حبله ثمّ يغد ، وأحسبه قال الى الجبل ، فيحتطب فيبيع فيأكل ويتصدّق خير له من أن يسأل الناس • (بخاري)

«'Umar ben *Hafs* ben Ghiyâth has related unto us, saying : My father has related unto us, saying : Al-A'amash has related unto us, saying : Abû *Sâliḥ* has related unto us, on the authority of Abû Huraîra, (who said) on the authority of the Prophet (ص) , who said: 'Verily it is better for one to take his rope and go forth in the morning — and I think he said : 'to the mountain' — and gather firewood, and sell it, (and purchase food with its price) and eat thereof, and give thereof in charity, rather than to go about begging from the people' .» (Imâm Bukhârî).

حدّثني هنّاد ابن السريّ ، حدّثنا أبو الأحوص عن بيانٍ أبي بشرٍ عن قيس بن أبي حازم عن أبي هريرة ، قال : سمعت رسول الله صلّى الله عليه وسلّم يقول : لأن يغدو أحدكم فيحطب على ظهره فيتصدّق به ويستغني به من الناس خير له من أن يسأل رجلاً أعطاه أو منعه ، ذلك بأنّ اليد العليا أفضل من اليد السفلى وأبدأ بمن يعول • (مسلم)

«Hannâd ibn as-Sarî has related unto me (saying) : Abû al-A*ḥ*was has related unto us, according to an account of Abû Bashr, (who said) on the authority of Qays ben Abî *Hâzim*, (who said) on the authority of Abû Huraîra, who said : I heard the Messenger of Allah (ص) say (as follows) : 'Verily it is better that one should go forth in the morning and gather firewood (and load it) on one's back, and give thereof in charity, and thereby become independent of the people, rather than that one should beg (one's livelihood) of a man, whether he give or refuse him (1). For, in truth, the upper hand (that giveth) is superior to the nether hand (that taketh), and (the hand that earneth honestly is) preferable to the one that transgresseth' .» (Imâm Muslim).

The Prophet's own definition of the worthy poor leaves no doubt as to whom the benefits and blessings of Zakât are destined :

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(1) i.e., if the request is granted, it entails an obligation of gratitude towards the benefactor. And if the request is refused, it places the would-be donee in a disgraceful position.

حدّثنا حجّاج بن منهالٍ قال : حدّثنا شُعبة قال : أخبرني محمّد بن زيادٍ قال : سمعت أبا هريرة رضي الله عنه عن النبيّ صلّى الله عليه وسلّم قال : ليس المسكين الّذي تردّه الأُكلة والأُكلتان ولكن المسكين الّذي ليس له غنىً ويستحي ولا يسأل الحافاً • (بخاري)

«*H*ajjâj ben Minhâl has related unto us, saying : Shu'ba has related unto us, saying : Mu*h*ammad ben Ziyâd has informed me, saying : I heard Abû Huraîra (may Allah be pleased with him) say on the authority of the Prophet (ص), who said : 'He is not destitute who fails to obtain one or two morsels of food; but he is destitute who, having no sufficiency of his lawful necessities, is ashamed to beg of the people with importunity' .» (Imâm Bukhârî).

حدّثنا قتيبة بن سعيدٍ ، حدّثنا المغيرة يعني الحزاميّ عن أبي الزناد عن الاعرج عن أبي هريرة أنّ رسول الله صلّى الله عليه وسلّم قال : ليس المسكين بهذا الطوّاف الّذي يطوف على الناس فترده اللقمة واللقمتان والتمرة والتمرتان • قالوا : فما المسكين يا رسول الله ، قال : الّذي لا يجد غنىً يغنيه ولا يفطن له فيتصدّق عليه ولا يسأل الناس شيئاً • (مسلم)

« Qutaiba ben Sa'îd has related unto us, (saying) : Al-Mughîra (Al-*H*izâmî) has related unto us, on the authority of Abû az-Zinâd, (who said) on the authority of Al-A'araj, (who said) on the authority of Abû Huraîra, that the Messenger of Allah (ص) said : 'He is not destitute who (as a habit) makes a round of the people and fails to obtain a morcel or two of bread or a date or two' . (Those present) asked : What then is a destitute person, O Messenger of Allah ? He replied : 'He who can find no means of becoming self-sufficient and, (whose need) not being realized (by the people), receives no charity, and who (nevertheless) asks nothing of the people' .»
(Imâm Muslim)

حدّثنا يحيى بن يحيى وقتيبة بن سعيدٍ كلاهما عن حمّاد بن زيدٍ ، قال

يحيى : أخبرنا حمّاد بن زيدٍ عن هرون بن رياب ، حدّثني كنانة بن نُعيم العدويّ عن قبيصة بن مخارق الهِلاليّ قال : تحمّلت حمالةً فأتيت رسول الله صلّى الله عليه وسلّم أسأله فيها فقال : أقِمْ حتّى تأتينا الصدقة فنأمر لك بها • قال : ثمّ قال : ياقبيصة انّ المسألة لاتحلّ الاّ لأحد ثلاثة : رجل تحمّل حمالةً فحلّت له المسألة حتّى يصيبها ثمّ يُمسك ، ورجل أصابته جائحة اجتاحت ماله فحلّت له المسألة حتّى يصيب قواماً من عيشٍ ، أو قال سداداً من عيشٍ ، ورجل أصابته فاقة حتّى يقوم ثلاثة من ذوي الحجا من قومه لقد أصابت فلاناً فاقة فحلّت له المسألة حتّى يصيب قواماً من عيشٍ ، أو قال سداداً من عيشٍ ،"فما سواهنّ من المسألة يا قبيصة سُحتاً يأكلها صاحبها سُحتاً • (مسلم)

«Ya*h*yâ ben Ya*h*yâ and Qutaiba ben Sa'îd have related (the following «*H*adîth») to us, on the authority of *H*ammâd ben Zaid. Ya*h*yâ said : *H*ammâd ben Zaid has informed us, on the authority of Harûn ben Riyâb (who said) : Kinâna ben Nu'aim al-'Adawî has related unto me, on the authority of Qabîsa ben Mukhâriq al-Hilâlî, who said : I had stood surety (for someone), (and on that account became in dire need). So I went to the Messenger of Allah (ص) in order to consult him about the matter, and he said : 'Wait here until the Zakât funds are brought in to us, so that we may order that thou be given thereof'. (Qabîsa) said : Then he (the Prophet) said : 'O Qabîsa ! To request assistance is lawful only in three cases : when a person has stood surety for someone else (and has himself become needy), it is lawful for him to ask for assistance until such a time as he has recovered (the wealth pledged) ; and when a calamity has destroyed a person's wealth, it is lawful for him to ask for assistance *until he has once more secured a normal means of livelihood* (1) (or he may have said 'means of existence') ; and when misery befalls a person and three well-to-do individuals of his own people testify that 'misery has indeed befallen so-and-so', it is lawful for him to

(1) See Rule 62, para 5.

ask for assistance *until he has once more secured a normal means of livelihood* (or he may have said 'means of existence'). And any request for (material) assistance other than these (three) instances, O Qabîsa, is an illicit traffic, the proceeds of which are illicitly devoured by the person who indulges in it'.» (Imâm Muslim).

(79) In no case may Zakât funds be used for the outright discharge of debts left by Muslims who have died in poverty.

The responsibility of an unpaid debt automatically devolves on the lawful heir or heirs of the deceased person and, consequently, any claim to Zakât assistance with regard to the discharge of such debts must always be made in conformity with Rule 62c/iv.

80) As laid down by the Prophet (ص) in the following «A*h*adîth», the benefits of Zakât (excepting the fifth of the spoils of war) were unlawful for himself, his family and their clients (1).

حدّثنا عبيد الله بن معاذٍ العنبريّ ، حدّثنا أبي ، حدّثنا شُعبة عن محمّد وهو ابن زيادٍ سمع أبا هريرة يقول : أخذ الحسن بن عليّ تمرة من تمر الصدقة فجعلها في فيه ، قال رسول الله صلّى الله عليه وسلّم : كخ ! كخ ! ارْم بها ! أما علمت أنّ لا نأكل الصدقة • (مسلم)

« 'Ubaîd Allah ben Mu'âdh al-'Anbarî has related unto us, saying : My father has related unto us, saying : Shu'ba has related unto us, on the authority of Mu*h*ammad, the son of Ziyâd, who heard Abû Huraîra say : Al-*H*asan ben 'Alî took a date from those that had been levied as Zakât and put it in his mouth. And the Messenger of Allah (ص) said : 'Fie! Fie! Throw it away. Dost thou not know that we may not eat of the alms (i.e., of the Zakât funds) ? '.»
(Imâm Muslim).

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(1) The family of the Prophet (ص) is generally considered as comprising the Benû Hâshim, i.e., the descendants of Hâshim ben 'Abd ul-Manâf, and more especially 'Abbâs ben 'Abd ul-Muttalib, Al-Hârith ben 'Abd ul-Muttalib, 'Alî ben Abî Tâlib, Ja'afar ben Abî Tâlib, 'Aqîl ben Abî Tâlib and their descendants and clients.

Some 'ulemâ hold the exaggerated view that the Prophet's family includes the whole of the tribe of Quraysh.

حدّثنا عبد الرحمان بن سلاّمٍ الجمحيّ ، حدّثنا الربيع يعني ابن مسلم عن محمّد وهو ابن زيادٍ عن أبي هريرة أنّ النبيّ صلّى الله عليه وسلّم كان اذا أتى بطعامٍ سأل عنه ، فان قيل هديّة أكل منها ، وان قيل صدقة لم يأكلْ منها • (مسلم)

« 'Abd ur-Ra*h*mân ben Sallâm al-Juma*h*î has related unto us, (saying) : Ar-Rabî'a, that is to say, Ibn Muslim, has related unto us, on the authority of Mu*h*ammad, the son of Ziyâd, (who said) on the authority of Abû Huraîra, that whenever food used to be brought to the Prophet (ص) he would ask concerning it; and if he was told that it was a gift, he would eat thereof, and if he was told that it was of the alms (i.e., of the Zakât funds), he would refrain from eating thereof.» (Imâm Muslim).

The disallowance of the use and benefit of Zakât for the clients of the Benû Hâshim is based on the «Sunnah» of the Prophet (ص) who, when his client Abû Râfi'a asked him : 'Is Zakât lawful for me ?', replied : 'No, for thou art our client'. (Imâm Al-'Aynî).

This rule has been understood by the Muslim jurists as being valid for all time and, thus, as applying to all the descendants of both the Benû Hâshim and of their clients (1).

Such a view, however, is not substantiated by the actual wording of the above-quoted «A*h*adîth». In none of these is it definitely stated that the disallowance of the use and benefits

(1) The Muslim jurists are not all agreed as to whether the use and benefit of alms derived from both voluntary charity and from the Zakât are forbidden for the Benû Hâshim. In the opinion of the Hanafite School of Law, the Benû Hâshim are debarred only from the use and benefit of Zakât funds, and so may lawfully receive voluntary charity if and when they find themselves in straitened circumstances.

Some Hanafite jurists opine that Zakât-funds derived from the Benû Hâshim may lawfully be distributed among the members of their own clan. This view is, however, incompatible with Rule 77 which lays down that the act of Zakât must not result in a benefit directly or indirectly serving the material interests of the Zakât-payer.

of Zakât for the Benû Hâshim and their clients was to apply beyond the lifetime of the Prophet's contemporaries. Nor is any such prohibition to be found in the Qurân.

That the protagonist of the Islamic Institution of Zakât should have forbidden not only himself, but the members of his family and their clients as well, to avail of the Zakât funds for their own use and benefit, is undoubtedly one of the most praiseworthy acts of his noble career. Indeed, no greater proof of sincerity and selfless devotion to the cause of social welfare could have been given by the man who was both the supreme leader of the movement and the chief custodian of the Zakât funds. Moreover, this prohibition eliminated once and for all time any ground for his enemies to accuse the Prophet (ص) of maliciously commanding his followers to give of their wealth in charity only to thereby enrich his own kinsfolk.

But whereas this forbiddance had its «raison d'être» in the Prophet's time, after the first epoch of Islam such a cautious policy was no longer necessary. The very spirit of Islamic justice and brotherhood of all Muslims on an equal footing before the Law, disproves the view that a needy Muslim should nowadays be denied Zakât assistance because of his/her relationship by blood or otherwise to the Benû Hâshim and be obliged to beg or to die in misery should he/she become destitute.

Dispassionately considered, *after* the Prophet's time — and all the more so today — the poor from among the descendants of the Benû Hâshim and their clients should be entitled to enjoy, as Muslims, the same rights as all other Muslims to relief and rehabilitation through the agency of Zakât, *with the all-important provision that, under no circumstances may a Hâshimite or a Hâshimite client claim any right of privilege or priority whatsoever by reason of blood* (1) *when receiving Zakât assistance.*

81) In conformity with Rule 22 of those governing the Zakât of the 'Id ul-Fi*t*r, every year, throughout the month of Rama*d*ân, special arrangements must be made by the officials of each branch Zakât-centre for the collecting of «Fi*t*rat» dues and the apportioning

(1) See Rule 101, para. 5, foll.

thereof, fairly and equitably, among all deserving persons, including all regular, temporary and casual beneficiaries of Zakât, present in their respective «Ma*h*allas».

As laid down by the Prophet (ص) , the collecting of «Fi*t*rat» dues must be completed *at the latest* by sunrise of the 'Id day, before the people go forth to the 'Id prayer.

حدّثنا آدم (يعني ابن أبي أياس) قال : حدّثنا حفص بن ميسرة ، قال : حدّثنا موسى بن عُقبة عن نافعٍ عن ابن عمر رضي الله عنهما أنّ النبيّ صلّى الله عليه وسلّم أمر بزكاة الفطر قبل خروج الناس الى الصلاة • (بخاري)

«Adam (i.e., Ibn Abî Ayâs) has related unto us, saying : *H*afs ben Maysara has related unto us, saying : Mûsâ ben 'Uqba has related unto us on the authority of Nâfi'a, (who said) on the authority of Ibn 'Umar (may Allah be pleased with both of them), (who said) that the Prophet (ص) commanded that the Zakât of the 'Id ul-Fi*t*r be paid before the people go forth to the ('Id) prayer.»

(Imâm Bukhârî).

82) The collecting of «Fi*t*rat» dues by the authorized officials must be carried out in the same manner as that of the regular Zakât dues on the basis of an official duplicate receipt made out as laid down in Rule 16.

83) As a rule, the distribution of the Zakât of the 'Id ul-Fi*t*r is to be effectuated directly from the local branch Zakât-centre of each «Ma*h*alla» to the lawful beneficiaries gathered at the spot.

However, in the case of sick and invalid persons, and of the inmates and members of the staffs of the Zakât hospitals, orphanages, etc., who are unable to attend the general distribution of the «Fi*t*rat» funds, the same must always be handed over to them at their domicile by the responsible Zakât-officials.

84) The distribution of the Zakât of the 'Id ul-Fi*t*r must be carried out in the same manner as that of the regular Zakât funds, on the basis of two official duplicate receipts made out as laid down in Rule 53, acknowledging the handing over of the «Fi*t*rat»

funds to the distributor by the custodian, and the receipt by the beneficiary of the «Fi*t*rat» funds allotted to him/her.

85) All «Fi*t*rat» funds are to be kept entirely separate from the regular Zakât funds and are to be totally distributed on the occasion of the 'Id ul-Fi*t*r among the lawful beneficiaries thereof.

86) In conformity with Rule 24 of those governing the Zakât of the 'Id ul-Fi*t*r, in order that the aim of the «Fi*t*rat» be satisfactorily and adequately fulfilled, the actual distribution thereof should not be delayed beyond the morning of the 'Id day, i.e., directly after the 'Id prayer.

In fact, whenever circumstances so warrant, as, for instance, when the 'Id ul-Fi*t*r falls during the short days of winter, the distribution of the «Fi*t*rat» may conveniently take place on the last day of the month of Rama*d*ân.

87) In conformity with Rule 78e, never and in no case may the Zakât of the 'Id ul-Fi*t*r be given to any person known to be a habitual or professional beggar.

88) The same as the regular Zakât, the Zakât of the 'Id ul-Fi*t*r is an act of worship dedicated to God and pre-eminently the right of God. Its object is to ensure that all those Muslims who find themselves in straitened circumstances be free from want on the auspicious day that marks the successful completion of the sacred fast of Rama*d*ân and thus be enabled to share in all fairness in the legitimate rejoicings so dear to the heart of every true Muslim.

Hence, in conformity with Rule 61, the Zakât of the 'Id ul-Fi*t*r may never be given to non-Muslims, such having no concern whatsoever with the sacred fast of Rama*d*ân nor with the Islamic Institution of Zakât.

89) In time of war, special arrangements are to be made by the main Zakât-centre of the country involved for taking charge of funds constituted by the 20% Zakât of the spoils of war (خمس الغنيمة) and for conveying the same to war-affected areas.

To this effect, special Zakât-staffs appointed by and responsible to the main Zakât-centre are to be attached to the fighting forces and are to carry out their duties in conformity with the general rules governing the administration of Zakât.

90) As laid down in Rule 2 of those governing the Zakât of the spoils of war, the responsibility of effectuating the discharge of the 20% Zakât devolves on the authorities responsible for the control of the spoils in question.

91) In order to ensure a proper control of funds constituted by the 20% Zakât of the spoils of war, these must be handed over to the responsible Zakât-officials in the same manner as the regular Zakât dues, i.e., on the basis of an official duplicate receipt made out as laid down in Rule 16, the original for the authority responsible for discharging the 20% Zakât and one copy to be kept on record at the main Zakât-centre.

92) Each responsible Zakât-staff attached to the fighting forces may, according to the urgency of local requirements, distribute funds constituted by the 20% Zakât of the spoils of war either partially or totally among the lawful beneficiaries present on the spot.

However, should there be no lawful beneficiaries present on the spot, available funds from the Zakât of the spoils of war should be transferred in their entirety to other war-affected areas.

93) In order to ensure that Zakât relief will reach the lawful beneficiaries within a minimum possible delay, detailed reports as to the availability of funds constituted by the 20% Zakât of the spoils of war must be submitted regularly to the main Zakât-centre by the responsible Zakât-staffs attached to the fighting forces.

94) Funds constituted by the 20% Zakât of the spoils of war not required for local distribution, are to be transferred to the nearest Zakât-centre within the war-affected area.

In conformity with Rule 43, when required, such surplus funds should always be re-transferred to other war-affected areas firstly from the Zakât-centre nearest thereto.

95) In conformity with Rule 47, the transfer of funds constituted by the 20% Zakât of the spoils of war must always be immediately recorded both by the responsible Zakât-officials at the place of origin and at the Zakât-centre to which they are sent, due mention being made of the exact date of the transfer, of the exact nature of the funds transferred, and of the exact number, quantity, and/or value thereof.

96) The distribution of funds constituted by the 20% Zakât of the spoils of war may be effectuated by the Zakât-centres of the villages, towns, and/or cities situated within war-affected areas either directly to the lawful beneficiaries or through the local branch Zakât-centres.

97) In every case, the distribution of funds constituted by the 20% Zakât of the spoils of war must take place at the earliest possible opportunity following the event of seizure.

98) As is the case where «Fitrat» funds are concerned, all funds constituted by the 20% Zakât of the spoils of war are to be kept entirely separate from the regular Zakât funds.

99) The distribution of funds constituted by the 20% Zakât of the spoils of war must be carried out in the same manner as that of the regular Zakât-funds, on the basis of two official duplicate receipts made out as laid down in Rule 53, acknowledging the handing over of the funds by the custodian to the distributor, and the receipt by the beneficiary of the funds allotted to him/her.

100) The apportioning of funds constituted by the 20% Zakât of the spoils of war, the same as that of the regular Zakât funds, must be determined by the number and class of beneficiaries actually present.

Indeed, verse 41, Surah VIII of the Qurân does not specifically lay down that the fifth of the spoils of war must necessarily be divided into five *equal* shares (1), regardless of whether all of the five classes of beneficiaries are present or not and regardless of the actual requirements of each individual beneficiary. Thus should one or more of the five classes of beneficiaries designated in the above-mentioned verses not be present, there is no valid reason why available funds should not be dedicated in their entirety to the welfare of the class or classes of beneficiaries actually present (2).

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(1) Imâm Shâf'î maintains that the fifth of the spoils of war must be divided into five equal parts.

(2) As laid down in Rule 41, a reasonable portion of the regular Zakât funds must always be kept in reserve for the use of eventual beneficiaries to whichever class or group they may belong. But the 20% Zakât of the spoils of war may, when necessary, be disposed of at once and in its entirety.

101) Funds constituted by the 20% Zakât of the spoils of war must be destined primarily for the use and benefit of the actual war sufferers, i.e., of the non-combatants who have lost or sacrificed all their worldly possessions for the cause, and in defence, of Islam.

وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلّٰهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ إِنْ كُنْتُمْ آمَنْتُمْ بِاللّٰهِ وَمَا أَنْزَلْنَا عَلَى عَبْدِنَا يَوْمَ الْفُرْقَانِ يَوْمَ الْتَقَى الْجَمْعَانِ وَاللّٰهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ • (٨ : ٤١)

«And know that whatever you take as spoils of war, a fifth thereof is for Allah and for the Messenger and for the kinsman (who is in need) and for the orphans and the destitute and the wayfarer, if you believe in Allah and in that which We revealed unto Our servant on the Day of Discrimination (1), the day when the two armies met. And Allah is Able to do all things.» (VIII : 41).

Like the regular Zakât, the Zakât of the spoils of war is an act of worship dedicated to God and is pre-eminently the right of God. The purpose of the Zakât of the spoils of war is to afford the non-combatant victims of the enemy's aggression an extra measure of relief from their sorry plight, over and above that already vouchsafed them under the heading «Fi sabîl Illah» («For the Cause of Allah»), and that constituted by the spoils of war taken from the enemy without combat (الفيء)(2) which, in conformity with the following Quranic verses, are to be totally dedicated to purposes of national welfare, and more especially to war relief, and are to be used entirely at the discretion of the Muslim State (3).

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(1) i.e., the battle of Badr.

(2) The term «Fay» (الفيء) has been used by certain authors to designate what are commonly referred to as «secular taxes», i.e., all Government taxes in general. In view of the nature and particular purposes to which the Qurân dedicates «that which Allah giveth as spoils unto His Messenger (ما أفاء الله على رسوله), this use of the term is obviously incorrect and extremely misleading.

(3) See footnote below, p. 386.

... وَمَا أفَاءَ اللهُ عَلَى رَسُولِهِ مِنهُمْ فَمَا أوْجَفْتُمْ عَلَيْهِ مِن خَيْلٍ وَلاَ رِكَابٍ وَلَكِنَّ اللهَ يُسَلِّطُ رُسُلَهُ عَلَى مَنْ يَشَاءُ وَاللهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ • مَا أفَاءَ اللهُ عَلَى رَسُولِهِ مِنْ أهْلِ القُرَى فَلِلّهِ وَلِلرَّسُولِ وَلِذِي القُرْبَى وَاليَتَامَى وَالمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لاَ يَكُونَ دُولَةً بَيْنَ الأغْنِيَاءِ مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللهَ انَّ اللهَ شَدِيدُ العِقَابِ • لِلفُقَرَاءِ المُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأمْوَالِهِمْ يَبْتَغُونَ فَضْلاً مِنَ اللهِ وَرِضْوَاناً وَيَنْصُرُونَ اللهَ وَرَسُولَهُ أُولَئِكَ هُمُ الصَّادِقُونَ •

(٥٩ : ٥ ــ ٨)

«And that which Allah gave unto His Messenger as spoils from them (the enemy), you urged not any horse or riding-camel for the sake thereof, but Allah giveth His Messengers lordship over whom He will, for Allah is Able to do all things.

«That which Allah giveth as spoils unto His Messenger from the people of the townships, it is for Allah and His Messenger (1), and for the near of kin and the orphans and the needy and the wayfarer, that it become not a commodity between the rich among you. And whatsoever the Messenger giveth you, take it. And whatsoever he forbiddeth, abstain (from it). And keep your duty to Allah. Lo ! Allah is Stern in reprisal.

« (It is) for the poor fugitives who have been driven out from their homes and their belongings, who seek bounty from Allah and help Allah and His Messenger. They are the loyal.» (LIX : 5 - 8).

In the Prophet's lifetime, funds constituted by the 20% Zakât of the spoils of war were divided into five shares : One

(1) i.e., for the Muslim State. See footnote p. 386.

share for the Prophet (ص) himself, one share for the needy kinsfolk, one share for the orphans, one share for the destitute, and one share for the wayfarers. Following the Prophet's death, Abû Bakr, 'Umar, and even their successors, divided the fifth of the spoils of war into three shares only, i.e., one for the orphans, one for the destitute, and one for the wayfarers. This practice has been adhered to by the jurists of the *H*anafite School of Law, who maintain that the Prophet's right to a share of the fifth of the spoils of war was his by virtue of his Prophethood and so consider the same as having lapsed on his death. Moreover, the *H*anafite jurists consider that, as a natural consequence of the Prophet's death, his kinsfolk are thenceforth only entitled to share in the fifth of the spoils of war in so far as they belong to one of the remaining three classes of lawful beneficiaries, in which case, however, they are considered as having right of precedence (1).

Lastly, the *H*anafite jurists argue that the right of the Prophet's kinsfolk to share in the fifth of the spoils of war was by virtue of the sacrifices they had made for the Cause, and of the assistance they rendered the Prophet (ص) in defending and furthering the Cause of Islam (قرب النصرة), and not by virtue of their blood relationship with the Prophet (ص) (قرب القرابة) (2).

Contrary to the *H*anafite view, the jurists of the Shâfiite School of Law hold that as from the time of his death, the right of the Prophet (ص) to share in the fifth of the spoils of war devolved to the State. On the other hand, the Shâfiite jurists consider the right of the Prophet's kinsfolk to share in the fifth of the spoils of war as theirs for all time (3).

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(1) Although the Law of Zakât only recognizes the right of precedence of a beneficiary in relation to the urgency of his/her need for immediate relief.

(2) Abû Bakr ar-Razî also maintains that the Prophet's kinsfolk were not entitled to a share of the fifth of the spoils of war by virtue of any blood relationship, but only by virtue of the assistance they rendered him in defending and furthering the Cause of Islam.

(3) 'Abd Allah ben 'Abbâs advocated that the share of the kinsfolk who had helped the Prophet (ص) should be maintained during their lifetime.

Thus the Shâfiite jurists maintain that the fifth of the spoils of war must still be divided into five shares, the Prophet's share to be used by the State for the general benefit of the nation and especially to build fortifications, and the share of the Prophet's kinsfolk to be distributed equally among their rich and their poor, children and adults, in accordance with the Law of Inheritance, i.e., each male to receive the share of two females. In fact, the Shâfiite jurists go to the extreme of advocating that the Prophet's kinsfolk be «gathered from the four corners of the earth» in order to receive their share of the spoils.

As regards the Prophet's share, the Shâfiite view seems more in accordance with the «Sunnah» of the Prophet (ص) himself who, it is well established, never spent his share of the fifth of the spoils of war for his own person, but used to dedicate it exclusively to the welfare of the poor and of orphaned children, and to provide gifts for the delegations and deputations that used to wait upon him. This noble example of the Prophet (ص) , who in his lifetime was in fact the personification of the newly-born Muslim State, undoubtedly gives a correct lead as to the manner in which his share should be disposed of after him and justifies the Shâfiite view that the Prophet's share must devolve to the State and be used for the general benefit of the Muslim Nation.

On the other hand, the Shâfiite view that the share of the Prophet's kinsfolk is theirs by right and for all time and should be distributed, in accordance with the Law of Inheritance, equally among their rich and their poor «gathered from the four corners of the earth», is not only exaggerated and unrealistic, but is beyond the realm of practicability. This view is based rather on sentimentality than on a sober consideration of the issues involved. The *H*anafite argument that the right of the Prophet's kinsfolk to a separate share of the fifth of the spoils of war was theirs by virtue of the assistance they rendered him and that this right lapsed on his death (1), is definitely more in conformity with the spirit of Islamic Justice and Equality.

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(1) or, more correctly, on **their** death.

Indeed, history tells us that the Prophet (ص) did not use to give of the fifth of the spoils of war indiscriminately to all his relatives (1). Nor did he use to give thereof equally to the rich and poor among them in accordance with the Law of Inheritance. As a matter of fact, nowhere in the Quranic text is it inferred that any part of the spoils of war, let alone the «fifth», or the fifth of the «fifth», is to be divided in accordance with the Law of Inheritance.

Only the descendants of Hâshim ben 'Abdu Manâf and of 'Abd ul-Mu*tt*alib were allotted a share of the «fifth», not so those of Naufal and of 'Abd ush-Shams. Moreover, history tells us that the Prophet (ص) distributed the share in question at his own discretion, *according to the actual necessity of each beneficiary,* debtors being assisted to discharge their debts, poor bachelors receiving a reasonable grant enabling them to marry, etc.

That, in the absence of any detailed Quranic instructions relating thereto, both the spirit and the letter of the Prophet's «Sunnah» must provide the rule governing the distribution of the fifth of the spoils of war, is only natural and must be universally accepted by all Muslim jurists.

Another point deserving the special consideration of the Muslim jurists, is the exact definition and application of the Quranic locution «lî dhîl-qurbâ» (لذى القربى) as it occurs in verse 41, Surah VIII, and verse 7, Surah LIX of the Qurân. This locution has usually been interpreted as referring exclusively to the Prophet's kinsfolk. Yet the exact meaning thereof is «for *the* kinsman» (literally : for the owner of proximity) and not specifically «for *his* (the Prophet's) kinsman». It would therefore be quite in keeping with the strict grammatical meaning of this locution to interpret it in a wider sense as including all those non-combatant Muslims (whether related by blood to the Prophet (ص) or not) who actively help the fighting forces and who, on that account, suffer material and physical loss due to the inevitable vicissitudes of war. For these

(1) In spite of his blood relationship with the Prophet (ص) , Abû Lahab ben 'Abd ul-Muttalib and his family were definitely excluded from benefiting of the «fifth».

are in the truest sense « owners of proximity » (قرب النصرة) to the «Jehâd» (1) for the Cause of Allah.

Accepting the *H*anafite argument, in the light of the Quranic Principle of the equality of all Muslims before the Law, that the descendants of the Prophet's family no longer have a right, as such, to a special share of the fifth of the spoils of war, and recognizing, as we must, that no part of the Qurân may be abrogated, this interpretation would be the only one that fulfils both these conditions, conforming to the fact that none of the five classes of beneficiaries designated in verse 41, Surah VIII of the Qurân, can have lapsed.

Indeed, the opinion held by some 'ulemâ and jurists that certain parts of the Quranic text have ceased to be legally binding through lapsing or abrogation (2), is refuted by the Qurân itself in the following verse :

وَتَمَّتْ كَلِمَةُ رَبِّكَ صِدْقًا وَعَدْلًا لَا مُبَدِّلَ لِكَلِمَاتِهِ وَهُوَ السَّمِيعُ الْعَلِيمُ ۝ (٦ : ١١٦)

«Perfected is the Word of thy Lord in truth and justice. There is none to alter His Words. He is the Hearer, the Knower.» (VI : 116).

In the light of the above considerations, the lawful beneficiaries of the 20% Zakât of the spoils of war may be detailed as follows (3) :

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(1) «Jehâd» literally means «striving».

(2) Actually the reference to «Naskh» (نسخ) contained in verse 106, Surah II, relates to the abrogation by Almighty God of the details of law in all previous Scriptures, which the Law revealed in the Qurân has come to replace in terms «better or the like thereof» (see also VII : 157), the purpose of such abrogation being to set forth once and for all time the Laws of Nature governing organized human existence and to exclude forever any possibility of contention in relation thereto. Each and every Quranic Injunction is forever valid and must be maintained and carried out whenever circumstances arise warranting its application.

(3) The jurists of the Hanafite, Mâlikite and Hanbalite Schools of Law hold that the funds constituted by the 20% Zakât of treasure troves should be

a) **The Prophet** (ص) , whose share legally devolves to the *Muslim State* (1) and is to be used at the latter's discretion for furthering the war effort, in the same manner as the regular Zakât funds, under the heading «For the Cause of Allah» (في سبيل الله) , i.e., to build fortifications; to provide arms, provisions, and medical aid to the fighting forces; for the immediate relief of Muslim war refugees, etc.; and for all such purposes as are essential for the successful pursuance of the struggle.

b) **The kinsfolk** or **«owners of proximity»** (to the «Jehâd» for the Cause of Allah), including all non-combatant Muslims who actively help the fighting forces and who, on that account, suffer material and/or physical loss due to the vicissitudes of war.

c) **The orphans.** Priority is to be given to actual war-orphans in need of immediate help.

The right of orphans to a share of the 20% Zakât of the spoils of war endures, in the case of boys, until their legal coming of age, and in that of girls, until such a time as they marry or are able to nobly and honourably earn their own living.

d) **The destitute.** Priority is to be given to actual war sufferers, i.e., to those non-combatants who have lost their worldly possessions in the course of war for the cause and defence of Islam.

e) **The wayfarers.** Priority is to be given to war-refugees and displaced persons, i.e., to those non-combatants in distress who, as a consequence of the war, have been compelled to flee from their homes and seek refuge away from the war zone.

The right of these five classes of beneficiaries to share in the 20% Zakât of the spoils of war, does not invalidate in any way their right to regular Zakât assistance.

Persons related by blood to the Prophet (ص) share in the 20% Zakât of the spoils of war, *in so far as they belong to any one*

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used in the same manner as those constituted by the 20% Zakât of the spoils of war. The Shâfiite jurists, however, opine that Zakât funds derived from treasure troves are to be included in and dedicated to the same purpose as the regular Zakât funds.

(1) The «Muslim State» is to be legally understood today as the lawfully constituted Muslim Government of each Muslim country.

of the five classes of lawful beneficiaries designated in verse 41, Surah VIII of the Qurân and detailed above.

102) As is the case where the regular Zakât funds are concerned, the nature and extent of the assistance afforded the lawful beneficiaries out of funds constituted by the 20% Zakât of the spoils of war must, as laid down in Rule 62, always and necessarily depend on the prevailing cost of living and on the special circumstances and requirements of each individual beneficiary.

In the case of deserving persons with family dependents for whose livelihood they are legally or morally responsible, each person, man, woman, and/or child, must be considered *individually* as a lawful beneficiary of the fifth of the spoils of war.

103) Zakât-officials serving on the special staffs attached to the fighting forces, who are deserving of a regular Zakât living wage, should receive the same *out of the regular Zakât funds* and not out of funds constituted by the 20% Zakât of the spoils of war.

104) Never and in no case may the fighters who actually lay hold of the spoils of war (الغانمون) claim a share of the «fifth» or, in other words, of the 20% Zakât of the said spoils. The right of the fighters is to share in the four fifths of the spoils, on condition that these are not required by the State for more urgent needs of national import.

CONCLUDING REMARKS

The afore-going pages present the Institution of Zakât in a systematically organized manner. Obviously, such organization is only possible within the jurisdiction of a Muslim State. The question therefore arises as to what rules should govern the administration of the Zakât of Muslims residing in non-Muslim countries. And what of the administration of the Zakât in those independent Muslim countries where, as yet, no responsible organization has been set up for the systematic collecting of Zakât dues and the honest custody and equitable distribution of Zakât funds ?

In reply to these questions, it must be emphasized that the underlying maxim of Islamic life is *organization*. Islam lays special stress on the value and importance of organization, and insists that

the life of every Muslim dynamically reflect, in every sphere of activity, the spirit of discipline and co-operation that organization necessarily implies. Thus, for the Muslim, organization represents an essential factor which cannot be divorced from his life-programme without entailing the disintegration of Islam as an effectual body politic. In other words, in the absence of organization the Islamic norm of life becomes an impossibility.

(The place that Zakât occupies in the socio-economic set-up of Islam is of such transcendental importance as to compel utmost circumspection when planning the reconstruction of this Islamic Institution and the moulding thereof into an efficacious instrument for the control of want and distress. If it is allowed to function in an unorganized manner, the aim and purpose of the Institution of Zakât can never be completely and successfully achieved.) This fact has already been more than proved by the conditions of unredeemed poverty conspicuous in so many Muslim countries today. For, while it is true that, being an Article of the Islamic Faith, the obligation of Zakât must be discharged even in the absence of an organized administrative set-up, it is no less true that as sincere and well-intentioned as he or she may be, the individual Zakât-payer cannot possibly be so well informed of the actual circumstances of each and every member of the community as to effectuate unerringly a just and impartial distribution of his/her Zakât dues. Incomplete information concerning deserving persons, combined with a natural sentimentality evinced towards those among them who are personally known to the Zakât-payer and whom he/she chooses as beneficiaries of his/her Zakât, only too often results in less deserving persons enjoying the benefits of Zakât to the detriment of other persons in more urgent need thereof.

Moreover, it cannot be denied that since the break-down of the Institution of Zakât as an organized body, a careless attitude, especially on the part of potential Zakât-payers, has gradually spread among the Muslim peoples and is becoming more and more patent as time goes by. (Unorganized, the Institution of Zakât is bound to fail in its mission and is liable eventually to become a mere byword among those who profess to be Muslims.)

For this very reason, wherever there exists a Muslim group, it is the Islamic duty of its members, be they few or many, to

organize themselves, in such a manner as to guarantee within the group in question the maintenance and practice of the Quranic Precepts *in their entirety* and, hence, achieve the integration of the Islamic norm of life.

SUPPLEMENTARY NOTE

Concerning Zakât assistance to poor Muslim debtors (1), the following point deserves the attention of our Muslim jurists :

The use of Zakât funds to discharge, either partially or totally, debts owed to non-Muslim creditors may be considered lawful on condition that, as in the case of debts owed to Muslim creditors, a) the debt in question be one incurred for a perfectly lawful purpose; b) the non-Muslim creditor be proved to be him/herself in straitened circumstances; c) all the rules governing the discharge of debts through the agency of Zakât be adhered to; d) either the debt be *interest-free,* or Zakât funds be availed of *only to cover the substance of the debt or a part thereof.* Zakât funds may never be used to pay off interest.

The use of Zakât funds to discharge debts owed by poor Muslims to non-Muslim creditors is, indeed, analogous to the use thereof to ransom Muslim prisoners of war or to free Muslim slaves who are still the legal property of non-Muslims (2), i.e., the party benefiting from the assistance afforded by Zakât *is the Muslim debtor,* the non-Muslim creditor being paid out of Zakât funds a given sum which represents for him/her *the refund* of a value which is, in fact, his/her own lawful property.

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(1) See pp. 296, foll. Also seé p. 352, Rule 62 c/iv of those governing the administration of Zakât.

(2) See pp. 294, foll.

APPENDIX

Translation of the Quranic verses at the head of each Part :

Translation of Iqbal's Persian verse on the dedicatory page :

«Zakât destroys the greed for wealth.

«Zakât creates consciousness of social equality (through mutual sympathy).

«It makes the heart strong in the conviction that the circulation of wealth must be maintained (in order that the community may prosper).

«It increases gold while lessening the yearning for gold.

« All these are causes of the consolidation of thy strength, (O Muslim).

«Thou verily hast attained to full maturity if such is the intensity of thy Islam.»

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(The Islamic Social Welfare System)

by

Farishta G. de Zayas

Volume I

With an Introduction by

Dr. Omar A. Farrukh, Ph. D.

Member of the Arab Academy, Damascus,
Member of the Islamic Research Association, Bombay.

and a Foreword by

H. E. Al-Syed Abdul Hameed al-Khateeb

ex-Ambassador of Saudi-Arabia to Pakistan,
Lecturer in the Holy Mosque at Mecca.

Edited by A. Z. Abbasi