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Muhammad Ahmad

The *Fatwā*s of ʿAbd al-Ḥayy of Farangī Maḥall and the Formation of Sunnī Identity in British India

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Abstract

In the second half of the nineteenth century in British India, a rapidly-evolving political and cultural landscape drove Muslims to re-evaluate their relationships with other groups in the Subcontinent. Questions regarding proper clothing, inter-sect marriages, the status of the legal system, and even requirements of eating beef were posed to scholars in an attempt to define the contours of Sunnī identity. This article investigates the questions and answers provided to these and other questions in the *fatwā* collection of Muḥammad ʿAbd al-Ḥayy (1848-1886), the preeminent scholar of the Farangī Maḥall seminary in Lucknow, British India. It focuses on the *fatwā*s issued regarding the interaction with the three largest non-Sunnī Muslim groups in the Subcontinent during this period: Shīʿa Muslims, the Hindus, and the British government. By analyzing the questions posed to ʿAbd al-Ḥayy and his answers, the article argues that he applied a methodology of negotiated adherence to the Ḥanafī School in order to emphasize the differences between the Subcontinent's diverse communities, while simultaneously encouraging communal cohesion. Through his *fatwā*s ʿAbd al-Ḥayy both moderated and catalyzed the shaping of Sunnī identity, giving religious legitimacy to those who emphasized Muslim difference while at the same time left room for cooperation with other communities. These *fatwā*s would form the backdrop for Muslim political involvement in the Indian independence movement and eventually form the foundations of both India's unique religious-secular national fabric and calls for Muslim independence as British colonialism came to an end in the twentieth century.

Keywords: ʿAbd al-Ḥayy, *Fatwā,* Islamic law, British India, Sunnī identity, communalism

Introduction

In the March of 1880, a concerned Muslim wrote to the family-run religious school of Farangī Maḥall in Lucknow, British India. "What is your opinion," the man asked, "on whether it is permissible to perform obligatory prayers (*namāz-i farḍ wa wājib*) or the

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optional dawn prayer (*sunnat-i fajr*) while riding a train, as it has become such a popular means of transport?"[1] The person who furnished the answer to this question was Farangī Maḥall's preeminent jurist, Abū 'l-Ḥasanāt Muḥammad ʿAbd al-Ḥayy (1848-1886). Although he was only 32 years old, ʿAbd al-Ḥayy was one of the most important Sunnī scholars in the Indian Subcontinent, providing religious responses (*fatwā*s) to the questioners from around the world. "There is no doubt," he wrote in response to the question, "that any type of prayer, obligatory or otherwise, can be performed on a moving or stationary train."[2]

Receiving a question about the validity of prayer on trains reflected the rapid degree to which life in the Indian Subcontinent was changing during the second half of the nineteenth century and the concerns Muslims had regarding these changes. Particularly following the consolidation of the British rule after the failed 1857 Uprising, the Sunnī Muslims found themselves in a rapidly evolving cultural landscape that influenced a period of "self-reflection" to "negotiate the new situation through a variety of forms and institutional patterns."[3] Additionally, in her survey of the Muslim identity formation during this period, Ayesha Jalal remarked that "The loss of spiritual meanings and perceived threats to sacred space after the imposition of colonial rule meant that cultural values had to be considerably redefined."[4]

On the one hand, there were the British, non-Muslims who had taken over complete management of the Subcontinent from the Mughals, Marathas, and their city-state vassals like the Shīʿa Nawabs in Lucknow. New legal codes, secular schools, and modern railways were coming in their wake that reshaped the countryside. On the other hand, the Hindu communities across the northern half of the Subcontinent were developing a united religious identity. Groups such as the Arya Samaj in the 1870s exemplified the importance of "Hinduness" through the prism of an "Aryan Golden Age" that imagined a common heritage and narrative upon which to make claims for reform and eventual nationhood.[5] Demands for the recognition and definition of what it meant to be Hindu – and not Muslim – simultaneously drove the Muslims to question clothing, food, and interactions with people they had shared space with for centuries.

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[1]Abū al-Ḥasanāt Muḥammad ʿAbd al-Ḥayy Lucknawī, *Majmūʿat Al-Fatāwā*, vol. 1 ([Kānpūr]: al-Maṭbaʿ al-ʿAlawī Muḥammad Bakhsh Khān Lucknawī, 1305AH), 42.

[2]Ibid., 1:44.

[3]Jamal Malik, *Islam in South Asia: A Short History* (Leiden: Brill, 2008), 291.

[4]Ayesha Jalal, *Self and Sovereignty: Individual and community in South Asian Islam since 1850* (London: Routledge, 2000), 45.

[5]John Zavos, "The Ārya Samāj and the Antecedents of Hindu Nationalism," *International Journal of Hindu Studies* 3, no. 1 (April 1, 1999): 76, doi:10.1007/s11407-999-0008-x; Susan Bayly, "Hindu Modernisers and the 'Public' Arena: Indigenous Critiques of Caste in Colonial India," in *Swami Vivekananda and the Modernization of Hinduism*, ed. William Radice (Delhi, 1998), 95, http://hdl.handle.net/2027/mdp.39015040908256.

At the same time, the Muslim intellectuals were on their own path of identity formation. Beginning in the eighteenth century with the Delhi School led by Shāh Walī Allāh (1703-62), the Muslims were called to re-examine their tradition through an opening of the gates of *ijtihād*. Through a "reinvigoration of [Muslim] political power," Walī Allāh envisioned a future where a Sunnī Muslim government would successfully push back against the onslaught of the non-Muslim forces, native and foreign alike.[6] Following the events of 1857, the *madrasa* at Deoband, the university at Aligarh, and popular movements such as the Ahl-i Ḥadīth and the Barelvīs presented alternative visions of Islamic practice and the role of the Muslim individuals in adapting to the changes brought about by the colonialism and the formation of religious identity.

This article, therefore, explores the *fatwā* collection of ʿAbd al-Ḥayy Lucknawī with regards to interaction with the Subcontinent's three largest non-Sunnī groups: the Shīʿa Muslims, the Hindus, and the British. Through his *fatwā*s, ʿAbd al-Ḥayy worked to achieve two goals. He first emphasized differences between the Subcontinent's communities and worked to carve out a distinct Sunnī identity. For example, participating in chest-beating or other Shīʿa practices during the month of Muḥarram to commemorate the martyrdom of Ḥusayn b. ʿAlī was forbidden and should be avoided, even though the Sunnī and the Shīʿa Muslims participated in these ceremonies together for centuries. Likewise, it was not acceptable to accept gifts or sweets from the Hindus on festival days. Once these core Sunnī differences were established, however, the second goal of ʿAbd al-Ḥayy was to maintain a sense of cohesion and avoid communal conflict wherever possible. In practical terms, this would mean encouraging the Muslims to pay attention to the growing Hindu sensitivities about cow slaughter and accepting the validity of marriages in mixed Sunnī-Shīʿa relationships.

These two goals were applied when ʿAbd al-Ḥayy dealt with questions about the British. While the Muslims were welcome to work at every level in the colonial government, they should not compromise their Islamic identity by supporting or enforcing "non-Muslim laws." The key to working with the British was to focus on the British regulations' substance and not their form. For example, although he was critical of specific British court judgments, British India was not considered outside of the realm of Islam (*dār al-ḥarb*) merely because of the non-Muslim leadership.[7] In his view, the foundations of Islam were still applicable, and the Muslims could continue to practice their faith without fear of oppression. ʿAbd al-Ḥayy was also not overly concerned with the idea of imitation (*tashabbuh*) of the non-believers, and the Muslims could learn English for non-religious purposes and approach British courts.

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[6]Muhammad Qasim Zaman, "Political Power, Religious Authority, and the Caliphate in Eighteenth-Century Indian Islamic Thought," *Journal of the Royal Asiatic Society* 30, no. 2 (April 2020): 338, doi:10.1017/S135618632000022X.

[7]Abū al-Ḥasanāt Muḥammad ʿAbd al-Ḥayy Lucknawī, *Majmūʿat Al-Fatāwā*, vol. 2 (Lucknow: Maṭbaʿ Anwār-i Muḥammadī, 1305AH), 287-88.

As a result, an analysis of the questions posed to ʿAbd al-Ḥayy and his responses provide a unique insight into the shaping of the Indian Muslim identity during this period. By developing a unique space for Sunnīs, ʿAbd al-Ḥayy's rulings contributed to the formation of nationalist and religious movements that would appear in the twentieth century.

The article begins by briefly introducing the school at Farangī Maḥall, placing it in the context of Islam in the Indian Subcontinent. This is followed by a biographical sketch of ʿAbd al-Ḥayy and his general approach to Islamic jurisprudence. Finally, the article examines specific *fatwā*s of ʿAbd al-Ḥayy regarding relations with Shīʿa Muslims, Hindus, and the British, showing how his methodology was applied to the Muslims' questions across the Subcontinent.

2. Farangī Maḥall and Its Position in Indian Islam

Of all the early modern Muslim institutions in the Indian Subcontinent, the family-based school at Farangī Maḥall is probably the most well-known and, according to contemporary observers like Francis Robinson, the center of a "form of Islamic enlightenment" in the eighteenth and early nineteenth centuries.[8] Currently based in Lucknow, the Farangī Maḥallīs trace their descent through the eleventh-century mystic ʿAbd Allāh Anṣārī of Herāt (d. 1088), and their ancestors migrated to India during the early years of the Delhi Sultanate. Shaykh ʿAbd Allāh Anṣārī is a reported descendant of Abū Ayyūb Anṣārī, the host of the Prophet in Medina at the time of his migration from Mecca.[9]

One branch of the Farangī Maḥallīs moved to the region of Pānīpat, close to Delhi. One member of the family named ʿAlāʾ al-Dīn brought the family to Awadh (now Uttar Pradesh), settling in Sihālī in the fourteenth century. The Mughal Emperor Akbar, in one of his proclamations (*farmān*) in 1559, gave a revenue-free grant to ʿAlāʾ al-Dīn's descendant, Mullā Ḥāfiẓ, showing the family's importance in the Empire.[10] Later in 1692, Mullā Ḥāfiẓ's great-great-grandson, Quṭbuddīn Sihālwī, was murdered during an altercation over land in which he had no part. Consequently, Emperor Aurangzeb punished his murderers and generously compensated his sons, bringing two of them on his campaign to the Deccan. Aurangzeb's award included land (*jāgīr*) in the Baraich district of Awadh, as well as an area of Lucknow where a French merchant had built a mansion known as

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[8]Francis Robinson, *The ʿUlama of Farangi Mahall and Islamic Culture in South Asia* (London: C. Hurst, 2001), 2.

[9]Muḥammad Ināyatullāh Anṣārī, *Tadhkara-i ʿUlamāʾ-i Farangī Maḥall* (Lucknow: Ishāʿat al-ʿUlūm Barqī Press, 1930), 5-6; Alṭāf al-Raḥmān, *Aḥwāl ʿUlamāʾ-i Farangī Maḥall* (Awadh, n.d.), 6.

[10]Mufti Rada Ansari, "A very Early Farman of Akbar," Centre of Advanced Study, Aligarh Muslim University, quoted from Robinson, *The ʿUlama of Farangi Mahall and Islamic Culture in South Asia*, 1.

Farangī Maḥall – literally, the foreigner's home. The family occupied this building in 1695 and took the affiliation "Farangī Maḥallī."[11]

The third son of Quṭbuddīn Sihālwī, Mullā Niẓāmuddīn Sihālwī, turned the home into a seat of learning in the early eighteenth century. Mullā Niẓāmuddīn modified the traditional Sunnī educational curriculum initially created by Niẓām al-Mulk (d. 1092). Niẓāmuddīn's version of the Dars-i Niẓāmī placed exponentially more emphasis on the study of the rational sciences (*maʿqūlāt*) as opposed to textual study (*manqūlāt*). For example, students of the Dars-i Niẓāmī covered 12 texts in grammar, 11 in logic, and three in principles of jurisprudence (*uṣūl al-fiqh*), compared to just two in each subject in the curriculum's counterpart in Delhi, known as the Raḥīmiyya. The only area where students in Delhi would be more well-versed than their Lucknow counterparts was in mysticism, with Delhi covering five texts to Lucknow's one.[12]

Throughout the eighteenth and early nineteenth centuries, the rationalist tradition espoused by the Farangī Maḥall spread, and the Dars-i Niẓāmī became the de facto standard syllabus of religious education.[13] The wide acceptance of the Niẓāmī syllabus since its inception was due to two factors: first, that it enabled the students to gain employment, especially in the government; and second, that members of the Farangī Maḥall families traveled throughout India "from court to court, from patron to patron, in search of teaching opportunities" and devoted themselves to teaching. This increased the number of students exponentially.[14]

It was into this educational environment that ʿAbd al-Ḥayy arrived. As will be seen in the following sections that discuss the events of his life, methodology, and *fatwā*s, he applied Farangī Maḥall's balance between rationality and tradition to meet the needs of the Indian Muslims in the second half of the nineteenth century.

3. ʿAbd al-Ḥayy

ʿAbd al-Ḥayy was born in the village of Banda in the United Provinces in 1264/1847, where his father ʿAbd al-Ḥalīm was teaching at the local Islamic school. He spent most of his childhood moving around Northern India with his parents, taking up residence wherever his father was appointed as a religious teacher. He memorized the holy Qurʾān at the age of 10 and completed studying the entire Dars-i-Niẓāmī syllabus by the time he was 17, all at the hands of his father. As he finished each work in the curriculum, ʿAbd al-Ḥayy would switch to teaching it to local students. His first full-time teaching job was when his father had brought the family to Hyderabad in 1860. ʿAbd al-Ḥayy's potential as a scholar caught

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[11]Barbara Daly Metcalf, *Islamic Revival in British India: Deoband, 1860-1900* (Princeton, N.J.: Princeton University Press, 1982), 30.

[12]Robinson, *The ʿUlama of Farangi Mahall and Islamic Culture in South Asia*, 214.

[13]Ali Riaz, *Faithful Education: Madrassahs in South Asia* (New Brunswick, N.J.: Rutgers University Press, 2008), 64-65, http://site.ebrary.com/id/10251798.

[14]Ibid., 65.

the eye of the Prime Minister Salar Jung I, and he appointed the then 15-year-old as a teacher.

After his father died in 1862, Salar Jung I offered ʿAbd al-Ḥayy a judicial appointment, but he refused and expressed a desire to return to his homeland. The Hyderabad government chose to continue their patronage of ʿAbd al-Ḥayy, granting him a handsome salary of 250 rupees. ʿAbd al-Ḥayy then returned to Lucknow in 1862, where he remained working as a teacher and writing until his death in 1304/1886 at the age of 39, most likely from tuberculosis. His funeral prayers had to be conducted three times due to the number of people who wanted to pay their respects.[15]

ʿAbd al-Ḥayy authored more than 100 works in three different languages: Arabic, Persian, and Urdu. In his assessment, these fell into six categories: jurisprudence and *ḥadīth* (*fiqh-o-ḥadīth*), logic and wisdom (*manṭiq-o-ḥikmat*), history (*tārīkh*), morphology (*ṣarf*), syntax (*naḥw*), and argumentation (*munāẓara*).[16] The jurist ʿAbd al-Fattāḥ Abū Ghudda, who published contemporary editions of ʿAbd al-Ḥayy's Arabic works, stated that in any work of ʿAbd al-Ḥayy, "it seems as if he spent all his life researching every minute detail of his subject."[17] Likewise, the historian and scholar Sayyid Sulaymān Nadwī considered him "the innovator of new methodology in research and writing" because ʿAbd al-Ḥayy's books "systematically contain an introduction (*muqaddima*), comprising the biography of the commentator and the author of the original work. Moreover, he provides a literature review and compares different manuscripts of the work before finalizing his own copy."[18]

The overwhelming majority of ʿAbd al-Ḥayy's contributions to the Islamic sciences were in *fiqh* and *ḥadīth*, with a total of 50 books written on *fiqh* alone. Some of these were commentaries on classical compilations, such as a commentary on the Ḥanafī encyclopedias *al-Hidāya* and *al-Wiqāya*. Other books cover only one subject, such as the *Imām al-Kalām fī mā Yataʿallaq bi al-Qirāʾa Khalf al Imām* that deals with the individual reading of the Opening Chapter of the holy Qurʾān while in congregational prayer. Additionally, *al-Inṣāf fī Ḥukm al-Iʿtikāf* discusses the rulings of seclusion (*iʿtikāf*) during the month of Ramaḍān.

In a survey of his legal works, ʿAbd al-Ḥayy can best be described as adopting a negotiated adherence to the Ḥanafī school. He was raised within the Ḥanafī tradition, which was common for most scholars of the northern half of the Indian Subcontinent and applied in the curriculum of Farangī Maḥall. However, he was also concerned with following rules

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[15]Ghulām Mursalīn, *Mawlānā ʿAbd Al-Ḥayy Farangī Maḥallī: Ḥayāt Awr Khidmāt* (Aligarh: Markaz Dirāsāt Ayshiyā-i Gharbī, 1985), 27–28.

[16]ʿAbd al-Ḥayy Lucknawī, *Al-Saʿāya Fī Kashf Mā Fī Sharḥ al-Wiqāya* (Kanpur: Maṭbaʿ Muṣṭafāʾī, 1989), 41–42.

[17]ʿAbd al-Fattāḥ Abū Ghudda, *Al-Taʿlīqāt al-Ḥāfila ʿalā al-Ajwiba al-Fāḍila* (Aleppo: Maktab al-Maṭbūʿāt al-Islmāmiyya, 1984), 16.

[18]Sulaymān Nadwī, "Hindūstān Men ʿIlm-i Ḥadīth," in *Maqālāt Sulaymān*, vol. 2 (Azamgarh: Maṭbaʿ Maʿārif, 1387AH), 62-63.

based on sound reports within the *ḥadīth*. He explained his methodology in his own words as "There is a special blessing of Allah Almighty upon me that He guides me in the fields of *ḥadīth* and *fiqh-i ḥadīth*. I do not rely on any opinion until I find its origin in the holy Qurʾān or *ḥadīth*." He further states, "If I find an opinion clearly against a sound (*ṣaḥīḥ*) *ḥadīth* I reject it and consider the *mujtahid* as excused (*maʿdhūr*) for his error and rewarded. I do not confuse people; instead, I speak to them according to their intellectual ability."[19] Indeed, ʿAbd al-Ḥayy argued that the very notion of adherence to the Ḥanafī tradition (*ʿayn al-taqlīd*) was to abandon the school's position if an explicit text presents itself, as Abū Ḥanīfa himself always encouraged his students to do so.[20]

Also, he gave special attention to the ranks (*ṭabaqāt*) of jurists and made it a condition for a *muftī* to know a jurist's level and the status of his works on law within the hierarchy of the school (*madhhab*). He argued that if a *muftī* did not know the jurists' position, he mig"ht err by relying on a lesser-ranked jurist's opinion. He wrote that,

> Several scholars of our time and earlier times didn't know about the jurists' ranks and consequently gave preference to a lower-ranked jurist's opinions and disregarded the views of a higher-ranked jurist. Many scholars of prior eras and even our own rely on legal texts that contain authentic and unauthentic (*raṭb-o yābis*) material and weak narrations [without distinction].[21]

For this very reason, he authored several biographical dictionaries, including *Muqaddimat al-Saʿāya*, *Muqaddima ʿUmdat al-Riʿāya*, *al-Nāfiʿ al-Kabīr,* and *al-Fawāʾid al-Bahiyya*. This was also because he wanted to rely upon the opinions of jurists of the highest degree only.

Therefore, ʿAbd al-Ḥayy's approach was based on an acceptance of the Ḥanafī foundations and methodology, criticized and modified by an analysis of the *ḥadīth*. For example, in his commentary of *al-Hidāya*, a major encyclopedia of Ḥanafī jurisprudence by ʿAlī b. Abī Bakr al-Marghīnānī (d. 593/1197) and a core text of the Dars-i Niẓāmī, ʿAbd al-Ḥayy intervened in the opening discussion on the basic rules of sales. The standard approach of the Ḥanafī school was that sales could be done at the moment (*ḥāl*) or delayed (*muʾajjal*), but the period for that delay must be explicitly mentioned. This was based on a general Qurʾānic verse permitting sales and an incident from the Prophet's life when he leased a shield from a Jewish man. ʿAbd al-Ḥayy departed from this ruling, stating that the Ḥanafīs inferred a time limit in these texts (*raʾy*) and that "it is not permissible to abrogate an explicit text with one's interpretation."[22]

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[19]Mawlānā ʿAbd al-Ḥayy Lucknawī, *Al-Nāfiʿ al-Kabīr Li Man Yuṭāliʿ al-Jāmiʿ al-Ṣaghīr* (Lucknow: Maṭbaʿ Yūsufī, 1347AH), 145.

[20]ʿAbd al-Ḥayy Lucknawī, *Al-Fawāʾid al-Bahiyya Fī Tarājim al-Ḥanafiyya* (Cairo: Maṭbaʿa al-Saʿāda, 1906), 116.

[21]Lucknawī, *Al-Nāfiʿ al-Kabīr Li Man Yuṭāliʿ al-Jāmiʿ al-Ṣaghīr*, 83.

[22]ʿAbd al-Ḥayy's commentary on ʿAlī b. Abī Bakr al-Marghīnānī, *Al-Hidāya*, vol. 3 (Lahore: Maktaba Raḥmāniyya, n.d.), 21.

This paper will now turn to the content of ʿAbd al-Ḥayy's *fatwā*s, showing how his methodology was applied to answer questions related to Shīʿa Muslims.

4. The Position of the Shīʿa

Mixed communities of Sunnī and Shīʿa Muslims have existed in the Indian Subcontinent from the moment Islam entered the region in the eighth century. While there have been moments of political conflict and scholars who rejected Shīʿa beliefs, most notably Shāh Walī Allāh in the 18th century, the picture of Sunnī and Shīʿa before the modern period was primarily one of coexistence.[23] For example, many of the most revered Sufi saints in the Subcontinent, such as Muʿīn al-Dīn Chishtī and Niẓāmuddīn Awliyāʾ, are recognized by both communities.[24]

In the nineteenth century, this attitude changed, with lay Sunnī Muslims starting to distinguish themselves from their Shīʿa counterparts in both faith and practice. The growth in these perceived differences eventually led to conflict, with the first significant event occurring in Lucknow in 1906 during the month of Muharram.[25] The roots of this sense of difference between the Muslim sects at the popular level appear through the *fatwā*s of ʿAbd al-Ḥayy, where there are a total of sixteen *fatwā*s that deal specifically with the Shīʿa. The longest of these was in response to whether Shīʿa were Muslims at all. "The Prophet said," the questioner wrote,

> After me, there will come 73 sects. One will succeed and reach Heaven, while all the others will go to Hell.'[26] Who are these others, unbelievers (*kuffār*) or disobedient Muslims (*musulmān fāsiqān*)?... Some scholars claim that the Shīʿa (*rāfidī*) who insult the first two Rightly-Guided Caliphs (*shaykhayn*) are unbelievers. Some even say that all those who follow their desires (*ahl-i hawāʾ*) are also unbelievers…Finally, others state that the repentance of the *Shīʿa* is not accepted and they should be killed. Please inform us of what the *Sharīʿa* has written in this matter?[27]

ʿAbd al-Ḥayy began his response to this question by stating, with a general reference to "works of theology (*ʿaqāʾid*) and jurisprudence (*fiqh*)," that the sects that will go to Hell are not unbelievers. In the view of ʿAbd al-Ḥayy, any individual who declares faith (*shahāda*) is considered a Muslim, regardless of whether or not they follow their desires in religious matters. This was the opinion of Abū Ḥanīfa, the founder of the Ḥanafī School which ʿAbd al-Ḥayy followed. One of Abū Ḥanīfa's students, Muḥammad al-Shaybānī, ruled that praying behind an innovator (*mubtadiʿ*) was permissible, albeit disliked

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[23]Saiyid Athar Abbas Rizvi, *Shāh Walī-Allāh and His Times: A Study of Eighteenth Century Islām, Politics and Society in India* (Canberra: Ma'rifat Publishing House, 1980), 249.

[24]Malik, *Islam in South Asia: A Short History*, 80-84.

[25]Mushirul Hasan, "Traditional Rites and Contested Meanings: Sectarian Strife in Colonial Lucknow," *Economic and Political Weekly* 31, no. 9 (1996): 545.

[26]This *ḥadīth* is cited in Muḥammad b. ʿĪsā al-Tirmidhī, *Al-Jāmiʿ al-Kabīr*, vol. 3 (Cairo: Dār Taʾṣīl, 2016), 527, *ḥadīth* no. 2845.

[27]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 1:122-23.

(*makrūh*). This was because the innovator was given the benefit of the doubt in the sincerity of his practice, believing it to be the truth (*ḥaqq*). It was also because al-Shaybānī's interpretation (*taʾwīl*) acts as a valid precedent. As a result, innovators are not to be considered unbelievers.

In the question, Shīʿa Muslims had engaged in innovative practices by cursing the first two Rightly-Guided Caliphs, a practice known as disassociation (*tabarraʾ*). However, applying the interpretation of al-Shaybānī, ʿAbd al-Ḥayy ruled that they were not considered innovators. Likewise, they are not unbelievers because they cursed the Rightly-Guided Caliphs but were only considered corrupt (*fāsiq*), based on a hadith narrated by the Companion Thābit b. Qays that says, "He who curses a Muslim is corrupt (*fāsiq*)." According to Sunnī tradition, even killing another Muslim would not render someone outside the faith.[28]

ʿAbd al-Ḥayy relied on the same style of careful adaptation of an earlier opinion to avoid conflict with the Shīʿa community when, in another *fatwā*, he was asked about one of the most common Shīʿa innovations: the remembrance of the massacre (*dhikr-i shahādat*) of the Third Imām Ḥusayn b. ʿAlī at Karbalā in 61/680. The questioner wondered whether some of the more popular practices, such as reciting mourning poems (*nauḥa*) and chest-beating (*sīna zanī*). He quoted the Shāfiʿī scholar Abū Ḥāmid al-Ghazālī (d. 1111), who declared that even mentioning the events of Karbalā were forbidden because they cause hatred towards the Prophet's (*SAW*) Companions.

In his response, ʿAbd al-Ḥayy used al-Ghazālī's ruling to state that *only* the narration of false facts and immoral practices, such as tearing clothes and self-flagellation (*mātam*) are forbidden. However, discussing events of that day and the travesty that befell all the Muslims due to the conflict between the supporters of Ḥusayn and the Umayyads was permissible. This is, like the *fatwā* above, due to a *ḥadīth* reported in the works of Aḥmad b. Ḥanbal and Ibn Māja on the authority of Ḥusayn's daughter, Fāṭima, as well as Ḥusayn himself. In it, the Prophet stated, "God will reward any Muslim who recalls a calamity to the same degree as he suffered that day."[29]

In a final question on Shīʿa beliefs, an anonymous questioner wrote, "A Twelver once argued with me that the holy Qurʾān and the *Ḥadīth* mention the twelve Imāms and that the practice of Sunnīs is actually against the holy Qurʾān and the *Ḥadīth*. Are there twelve Imāms in Sunnism? If so, why only twelve, and why aren't the other children of the Prophet Muḥammad considered Imāms as well?" ʿAbd al-Ḥayy responded, "There is no sign (*nishān*) of the twelve Imāms in the holy Qurʾān and *Sunna*. However, it is proven from the *ḥadīth* that there will be twelve successors (*khulafāʾ*) from the tribe of Quraysh, not specifically from the Prophet's family (*Ahl al-Bayt*). It is prophesized that the most Muslims will agree on their legitimacy."

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[28]Ibid., 1:123-24.
[29]Ibid., 1:168-72.

With these *fatwā*s, ʿAbd al-Ḥayy encouraged coexistence with the Shīʿa community. He never accepted the validity of the Shīʿa creed, maintaining, for example, that there was no such thing as the Imāms. Likewise, their more extreme practices and displays of emotion during Muḥarram are abhorrent. Their cursing of the Rightly-Guided Caliphs Abū Bakr and ʿUmar is not accepted under any circumstances. However, because they have declared themselves as Muslims, they should be respected as such. Labeling them as unbelievers (*kuffār*) was incorrect religiously and detrimental to the community's safe interaction.

These *fatwā*s also show that ʿAbd al-Ḥayy was willing to stretch classical Ḥanafī texts to their limits in the name of preserving communal harmony with the Shīʿa. Even those who openly cursed the Rightly-Guided Caliphs were not cast out of the religion altogether. However, he was not so generous with those inside his own Sunnī circles he perceived had adopted corrupt practices. For example, in one *fatwā*, a questioner asked about the status of a person who "thinks that the friends of God (*awliyāʾ*) possess the ability to hear, understand, and respond to the calls of their followers no matter where they are." ʿAbd al-Ḥayy responded that their faith was corrupt (*fāsid al-ʿaqīda*) and that it was feared that they might have left Islam (*yakhshā ʿalayhi al-kufr*), confirming his ruling with the Ḥanafī compendium *al-Fatāwā al-Bazzāziyya*.[30]

Refusing to extend the unbeliever classification (*kāfir*) to most Shīʿa entirely also had more consequences that affected social interaction. One of the most important of these was marriage. In 1296/1878, a man named Sayyid Tafaḍḍal Ḥusayn from Agra asked if it was permissible for Sunnīs to marry their son or daughters to the Shīʿa (*ahl-i tashayyuʿ*), "because their statement of faith (*kalima*) and prayer is different from ours." Noticing the sensitivity that often came along with marrying between religious groups, ʿAbd al-Ḥayy used this opportunity to state that "there are some categories of Shīʿa that are unbelievers (*kāfir*)." You cannot marry them, appoint them representatives to carry out the marriage contract, or even sit with them (*mujālasat*). These are the Shīʿa who believe that ʿAlī is god, that the Angel Gabriel erred in delivering the message to Muḥammed and should have given it to ʿAlī, or that the Prophet's wife ʿĀʾisha was guilty of adultery (*zinā*) in the Event of *Ifk*. All other Shīʿa, including those who curse the Companions, are only corrupt, and it is permissible, albeit disliked, to marry them.

ʿAbd al-Ḥayy's acceptance of the validity of marriages to the Shīʿī appeared in another *fatwā* in 1297/1879. A Sunnī Muslim girl from the village of Rānāpūr had fallen in love with a Shīʿa man. They completed the official marriage ceremony and lived together for several months. Their love eventually faded, with the couple separating and the girl returning to her parent's home. However, they never officially divorced. When the girl learned of her husband's death a few years later, she immediately married another (Sunnī) man. She believed that her initial marriage had not been validly conducted, as she neither accepted him "with her heart or her tongue." Additionally, her husband being Shīʿa and an unbeliever, it was unnecessary for her to complete the waiting period (*ʿiddat*) of four

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[30]Ibid., 1:502.

months and ten days. A member of the community familiar with the case named Mawlavī ʿAbd al-Ṣamad (perhaps the local *imām*), wrote to ʿAbd al-Ḥayy asking for his clarification on the validity of both these unions and the requirement, or lack thereof, of the waiting period.

ʿAbd al-Ḥayy's answer closely followed standard Ḥanafī doctrine: the first marriage was valid. There is no legal requirement for the bride to voice her acceptance of the marriage contract and her silence or surrender to the consummation of the marriage is enough to infer her approval. Therefore, when her Shīʿa husband died, she was required to complete the waiting period. As she did not, her second marriage to the Sunnī was corrupt (*fāsid*). As other events have transpired since this waiting period was required, there is no need to complete it. However, the couple must be separated. She must complete her waiting period for the dissolution of this marriage (3 months) so that she may be allowed to marry this person again with a new contract lawfully.

In a final instance, a concerned Sunnī from Murshidabad in Bengal asked ʿAbd al-Ḥayy about the sanctity of shared prayer space. The town's central prayer grounds (*ʿīdgāh*) had been used for the *ʿīd* prayer by both the local Sunnī and Shīʿa communities, even though there was plenty of room in their respective mosques. The Shīʿa had completed their prayers first, and the questioner wondered whether that of the Sunnīs would be accepted. ʿAbd al-Ḥayy responded that performing multiple *ʿīd* prayers is always permissible, no matter who does them.

The questions whether the Sunnīs can even pray in a space previously utilized by the Shīʿa, implying that it had become impure (*najis*), reflect the degree to which division had grown between the two sects. The *fatwā*s of ʿAbd al-Ḥayy outlined these differences and worked to define the limits where certain Shīʿa beliefs would be considered outside the fold of Islam. However, most of the Shīʿa, no matter how divergent their practices might seem from the standard Sunnī approach, were at the most suffering from reparable corruption and should not be used as a conflict source. As will be seen in the next section, this understanding would also be applied to the largest group of non-Muslims in the Subcontinent: the Hindus.

5. Hindu-Muslim Relationships

For ʿAbd al-Ḥayy, the Hindu majority of the Northern India were equal, yet decidedly separate, partners to the Muslims in daily life. For example, the Hindus were not physically impure (*nijāsat ẓāhirī*), but only corrupt in their faith (*ṣirf iʿtiqādī*).[31] As a result, it was permissible to consume (vegetarian) food and drinks made by the Hindus, eat with them, and wear clothes washed by the Hindu cleaners (*dhobī*).[32] If a Muslim had a Hindu

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[31]Ibid., 1:242.
[32]Ibid., 1:119, 296.

employer, as long as their business and assets were lawfully gained (*ḥalāl*), there was no religious doubt about the permissibility of their salary.[33]

Cooperation with the Hindus was also essential, as it was necessary to seek the permission of the Hindus in the local community before any expansion or new construction of mosques was to take place. In one instance, ʿAbd al-Ḥayy was asked about a group of the Muslims who jointly owned a plot of farmland with a group of the Hindus. The Muslims gathered funds and built a mosque on one part of the land without asking their Hindu co-owners. As the Muslim and the Hindu sections of the plot were not demarcated, ʿAbd al-Ḥayy ruled that the resulting structure was "not a mosque, and the reward for praying in a mosque would not be obtained [by praying there]." Rather, it was preferable that no prayers be held in that structure at all as, quoting the Ḥanafī jurist al-Ṣadr al-Shahīd (d. 536 / 1141), "agricultural land is the right of the general population (*ḥaqq al-ʿāmma*), and should not be specifically dedicated to God. Doing so was like building a mosque on usurped land (*arḍ al-ghaṣb*)."[34]

At the same time, however, the Muslims were not to use the Hindu donations to construct mosques. Even if that money was given freely by the Hindu community members to help build an almost complete mosque through the Muslim contributions, it was not permissible.[35] The Muslims were also discouraged from accepting gifts from the Hindus during either the Hindu or the Muslim religious festivals. Although it was generally acceptable (*jāʾiz ast*), ʿAbd al-Ḥayy argued that "it was better on those days not to accept their [Hindu] gifts, to avoid falling into doubt (*shubha*) [of participating in a non-Muslim religious festival]."[36]

Another issue in the *fatwā*s of ʿAbd al-Ḥayy is related to the question of imitation of non-believers (*tashabbuh*), prohibited by the *Ḥadīth* which states "Whoever imitates a nation belongs to it."[37] Although ʿAbd al-Ḥayy was concerned about the Indian Muslims imitating the British, which will be seen later, he was more relaxed when it came to the Hindus. When asked whether it was permissible for the Muslims to wear clothes made from "yellow, golden, or saffron-colored cloth," – colors common to the Hindu clergy – ʿAbd al-Ḥayy ruled that these colors were "appropriate (*durust hai*). Both the holy Prophet and his Companions have been reported to have worn yellow."[38] However, ʿAbd al-Ḥayy warns that other scholars – namely his father ʿAbd al-Ḥalīm – disagreed and ruled that if yellow cloth had too much red or gold coloring and looked closer to orange, it was forbidden for the Muslims to wear. That range of colors was too close to that worn by the

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[33]Ibid., 1:292.

[34]Ibid., 1:378–79.

[35]Ibid., 1:478.

[36]Ibid., 1:114–15.

[37]This *ḥadīth* is mentioned in Abū Dāwūd Sulaymān b. al-Ashʿath, *Sunan Abī Dāwūd*, vol. 4 (Beirut: al-Maktaba al-ʿAṣriyya, n.d.), 44, *ḥadīth* no. 4031.

[38]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 2:122.

Hindu clergy and entered the realm of imitation. ʿAbd al-Ḥalīm composed an entire treatise on the religious permissibility of particular colors, fabrics, and types of clothes, written with the explicit purpose of avoiding the imitation of the non-believers.[39]

ʿAbd al-Ḥayy's broader interpretation of the limits of imitation also extended to funerary practices. In one *fatwā*, he was asked whether it was permissible to prepare a special meal to be eaten at a gravesite on the death anniversary of a relative.[40] This is closely related to the Hindu practice of "commemorative rites (*śrāddha*) for one's dead," which regularly involves preparing food and other prayer offerings during the same time and is preferably done precisely one year after the relative has passed away.[41] ʿAbd al-Ḥayy would have been keenly aware of this practice as it was regularly carried out in Lucknow, yet saw no problem if a Muslim did something similar, albeit not the actual ceremony as performed by the Hindus.

Contrasted to the approach of ʿAbd al-Ḥayy was that of the Delhi School. The leading scholar of this tradition, Shāh Walī Allāh (d. 1762), believed that all the non-Muslims in India – and indeed the world - were subjugated under the supremacy of the Islamic laws. According to Saiyid Athar Abbas Rizvi,

> [T]here were people, said the Shāh who indulged in their lower natures by following their ancestral religion, ignoring the advice and commands of the Prophet Muhammad. If one chose to explain Islām to such people like this it was to do them a disservice. Force, said the Shāh, was the much better course – Islām should be forced down their throats like bitter medicine to a child. This, however, was only possible if the leaders of the non-Muslim communities who failed to accept Islām were killed.[42]

Speaking about imitation (*tashabbuh*), Shāh Walī Allāh's son, ʿAbd al-ʿAzīz Dihlawī (d. 1824), ruled that "things which are specific to the non-Muslims and taken up by the Muslims, whether in clothing, food, or drink, are considered imitation and prohibited."[43] Therefore, ʿAbd al-ʿAzīz's prohibition was much broader than that of ʿAbd al-Ḥayy and reflected a much more cautious approach to interaction with the non-Muslims.

5.1. The Prophet Eating Beef and the Hindu National Identity

The most common issue raised in ʿAbd al-Ḥayy's *fatwā* collection regarding the relationship with the Hindus was about cows and the permissibility (or even requirement) of eating beef. There were a total of six different *fatwā*s directly related to the issue. In one instance, ʿAbd al-Ḥayy was asked whether the holy Prophet had ever eaten beef. He responded that, although there was no specific evidence from the *ḥadīth* collections that he

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[39]Ibid.

[40]Ibid., 2:449.

[41]Julius Lipner, *Hindus: Their Religious Beliefs and Practices* (Florence, UK: Taylor & Francis, 2010), 267, http://ebookcentral.proquest.com/lib/mcgill/detail.action?docID=1039332.

[42]Rizvi, *Shāh Walī-Allāh and His Times*, 285.

[43]Shāh ʿAbd al-ʿAzīz Dihlawī, *Fatāwā ʿAzīzī* (Karachi: H. M. Saʿīd Company, 1987), 417.

had eaten beef, the holy Prophet had slaughtered cows on multiple occasions. Citing the work of Shāh Walī Allāh, ʿAbd al-Ḥayy argued that it was logical to assume that the Prophet ate the meat from those animals following their slaughter.[44]

The reason, so many questions in ʿAbd al-Ḥayy's *fatwā* collection dealt with cows and beef, is that the protection of cows from slaughter by the Muslims (and other non-Hindus) was a theme emphasized by the Hindu nationalists.[45] The Cow Protection Movement, initially started in the Punjab, allowed for unity amongst diverse Hindu groups. The protection of cows was also an important tool to emphasize differences between the Hindus and the Muslims. The "Cow protectors filed suits against the butchers who were typically the Muslim," states Barbara Metcalf, "and tried to intercept cattle *en route* to cattle fairs, butchers shops, or destined for sacrifice in the annual Muslim ʿIdu'l-Azha celebration."[46]

Although the peak of this movement, the Hindu-Muslim Cow Protection Riots, occurred seven years after the death of ʿAbd al-Ḥayy in 1893, the question of cow slaughter and its relationship to the community identity and cohesion were prominent in the minds of the North Indian Muslims. One questioner asked, clearly influenced by the move to elevate the position of cattle in the society, whether the holy Qurʾān preferred cows to other beasts. ʿAbd al-Ḥayy responded, "The *Sharīʿa* does not confirm the greatness of the cow in relation to other beasts. Rather, there are indications [in the *ḥadīth*] that cows are a symbol of dishonor (*dhillat*)."[47] He then cites two *ḥadīth*s in which the Prophet stated that the Muslims who abandon *jihād* and live as peasants are "dishonored by God until they return to their religion."[48]

When asked specifically about the tribulation (*fitna*) caused by cow slaughter and whether the Muslims should abandon it altogether to appease the growing Hindu movement against it, ʿAbd al-Ḥayy responded that the slaughter of cows is an "ancient act established in the *Sharīʿa* (*amr sharʿī maʾthūr qadīm se*)" that was practiced by "the holy Prophet, his Followers, and the majority of the previous generations (*salaf ṣāliḥīn*)." Its permissibility (*ibāḥat*) is universally agreed to in all the parts of the world and shouldn't change because of new circumstances. If the Hindus wish to ban cow slaughter to work against the Muslims, it becomes an existential matter of protecting the *Sharīʿa* (*ibqā-i sharīʿat*), and the Muslims are obligated to slaughter cows. That should be carried out carefully, however, as "it would be undesirable for a Muslim to intentionally take a cow

[44]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 1:456-57.

[45]Sandria Freitag, "Sacred Symbol as Mobilizing Ideology: The North Indian Search for a 'Hindu' Community," *Comparative Studies in Society and History* 22, no. 4 (October 1980): 597-625; Gyanendra Pandey, "Mobilizing the Hindu Community," in *The Construction of Communalism in Colonial North India, 157-200* (England: Oxford University Press, 2006).

[46]Barbara Daly Metcalf and Thomas R Metcalf, *A Concise History of Modern India* (Cambridge: Cambridge University Press, 2006), 153.

[47]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 2:112–13.

[48]Muḥammad b. Mūsā al-Damīrī, *Ḥayāt Al-Ḥaywān al-Kubrā*, vol. 1 (Beirut: Dār al-Kutub al-ʿIlmiyya, 2015), 214.

on ʿĪd al-Aḍḥā close to a Hindu place [temple] and slaughter it, due to the tribulation this act would cause. In this case, it would be preferable to avoid (*tark awlā*)."[49]

The fact ʿAbd al-Ḥayy would take an issue like eating beef that was merely permissible (*mubāḥ*) and transform it into an "ancient" Muslim practice, unchangeable by shifting geographical and temporal circumstances, shows how aware he was of the connection between cow slaughter and the Hindu nationalist movement. Typically, whether a Muslim (or even the Prophet himself) ate beef would be an issue of minor importance. Imbued with a new religious identity, however, the protection of cows became a central issue that needed to be addressed, and the scholars such as ʿAbd al-Ḥayy believed that the very existence of the Muslims in the Subcontinent was potentially at stake.

In conclusion, the Hindus were understood as co-inhabitants of the same area, working together with the Muslims in farming and business ventures. The Muslims did not need to worry about the implications of dressing like Hindus, eating with them, or even holding similar religious festivals if, of course, they weren't performed with the intent to worship gods other than Allah.

6. The Relationship with the British

ʿAbd al-Ḥayy's interaction with the British was set against the aftermath of the 1857 Uprising and the introduction of Crown Rule in 1858. He was nine years old when the Uprising occurred and was still in the middle of his education in Jaunpur.[50] ʿAbd al-Ḥayy rarely encountered the British government directly, as he spent most of his adult life in Hyderabad and Lucknow, with two trips to the Ḥajj in Mecca in 1862 and 1875. The only reported instance of his dealing with the British government was on a journey to Darbhanga, Bihar, where the local colonial administrators reportedly welcomed him as a scholar.[51]

However, this does not mean that ʿAbd al-Ḥayy was ignorant of the destruction caused by the Uprising and the impact that direct British control would have on the Muslim community. Several of his *fatwās* dealt with interaction with the British, the validity of their courts and laws, and the increasing presence and influence of the Christian missionaries.

For example, ʿAbd al-Ḥayy placed strict conditions on working with the colonial authorities. The Muslims could accept government positions and salaries, even judgeships.[52] However, they were not to work towards the implementation of "non-Sharīʿa" rules. If they did so, they would not become non-Muslims themselves but corrupt

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[49]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 2:149–50.

[50]Walī al-Dīn Nadwī, *ʿAllāma ʿAbd Al-Ḥayy Lucknawī Farangī Maḥallī: Ḥayāt Aur Khidmāt* (Azamgarh: Markaz al-Shaykh Abī 'l-Ḥasan al-Nadwī, 2012), 88.

[51]Ibid., 94.

[52]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 1:379.

(*fāsiq*).[53] The Muslims were also not given any leeway in their prayers while working for the government, and one could not combine or make up one or more of the obligatory prayers because they were on the job.[54]

Additionally, the Muslims should be cautious about studying English and foreign subjects due to the potential risk of imitating non-believers (*tashabbuh*). Learning the English language was not in itself an issue of imitation, justified by ʿAbd al-Ḥayy because it is not the "language of the Torah and the Gospels."[55] However, if they intended to learn the language for religious purposes, it would be forbidden.[56] This was primarily to stem the work of the Christian missionaries who, on one occasion in Saharanpur, came to "teach Muslim boys and girls of six, eight, ten, and even twenty years old their religious books…They pass out boxes of sweets and recite poems about the Messiah, and sing [songs] about God and His Son."[57] These actions were rejected, and all the Muslims who sent their children to these events would be considered to have left the faith.

ʿAbd al-Ḥayy also spoke of lesser issues regarding imitation, taking a much more conservative approach than that towards the Hindus. For example, smoking tobacco in a hookah was heavily disliked (*makrūh taḥrīmī*), but in a pipe or cigarette "like the Christians" was even "more disliked (*ziyādatar karāhat*)" because of imitation.[58] British-made cookies and tea biscuits were also not allowed, as they could have been made with alcohol.[59]

6.1. British Authority vs. Islamic Law

The most significant issue faced by ʿAbd al-Ḥayy was the influence of the British administration and laws. Chief among these issues was whether India, after the introduction of Crown Rule, was still part of the classically-defined Islamic World (*Dār al-Islām*) or had transferred to the world of non-believers (*Dār al-Ḥarb*). Most of these questions were in response to the position of other scholars, most notably ʿAbd al-ʿAzīz Dihlawī, who ruled that India had now become part of *Dār al-Ḥarb*. "In this city [Delhi]," ʿAbd al-ʿAzīz wrote,

> The rule of a Muslim ruler (*Imām*) is not implemented, and the laws of Christian rulers are without a doubt the norm, meaning that the foundations of Islamic government, the management of the laity, the collection of taxes, and the conduct of commerce follow their [non-Muslim] rulings. Gangsters, thieves, and other public interactions and punishments are handled by non-Muslim rules. Even though some Islamic practices like the Friday

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[53]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 2:198.

[54]Ibid., 2:368.

[55]Ibid., 2:437.

[56]Ibid., 2:291.

[57]Ibid., 2:431-32.

[58]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 1:110.

[59]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 2:279.

prayers, *ʿĪd* celebrations, the call to prayer, and cow slaughter are not opposed by the non-believers, they are almost without benefit, as they casually destroy mosques.[60]

While ʿAbd al-ʿAzīz stopped short of calling for an open declaration of war (*jihād*) against the British, others continued to advocate for the forced removal of all British influence in the Subcontinent.[61]

For ʿAbd al-Ḥayy, the destruction of Delhi following the Uprising and the reduced status of the Muslims in the Subcontinent at the hands of the British did not remove India from the realm of Islam, rejecting the question in eight separate *fatwā*s throughout his collection. Citing the *Khazzānat al-Muftīn* of Ḥusayn b. Muḥammad al-Samanqānī (d. 746/1345), ʿAbd al-Ḥayy ruled that a nation may only become part of *Dār al-Ḥarb* if the rules of the *Sharīʿa* are abandoned, it is geographically connected to the rest of the non-Muslim world, and that the Muslim and the non-Muslim subjects alike no longer enjoy personal or financial safety. Each condition must be fulfilled for the transfer in status to take effect, and a nation remains in *Dār al-Islām* if one part of the law continues to be governed by the *Sharīʿa*. Quoting another prominent Ḥanafī jurist, Muḥammad b. Muḥammad al-Bazzāzī (d. 827 / 1424), "The nations currently in the hands of non-Muslims are no doubt nations under Islam. The rules of the non-Muslims have not appeared, and indeed the judges are the Muslims. The people in the nations with a non-Muslim governor may conduct Friday prayers, Eid celebrations, appoint judges, and [officiate the] marriage of orphans."[62]

Dealing with the call for *jihād*, ʿAbd al-Ḥayy sided with ʿAbd al-ʿAzīz, arguing that the time was not suitable for an uprising, stating,

> Taking up arms is done to elevate the word of God, bring honor to Islam, and remove the practices of disbelief, not for the hate of religion or the dishonor of Islam and believers. Jurists have therefore placed four conditions on declaring war: (1) the Muslims have gathered a necessary level of cooperation and force, (2) the essential material support is available, (3) safety and security from the evil of non-believers can be provided to the civilians, and (4) the Muslims are assured of victory. In this situation [India, because the conditions are not fulfilled], war is not an obligatory action.[63]

ʿAbd al-Ḥayy's position regarding the legal status of the British India can be understood as an attempt to preserve the rulings of the Islamic law. According to traditional Ḥanafī jurisprudence, Islamic rules are not applied and do not carry consequences in *Dār al-Ḥarb*. For example, a Muslim can forego Friday prayers, engage in usurious financial transactions (*ribā*), and deal with their slaves without fear of immediate religious or legal

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[60]Dihlawī, *Fatāwā ʿAzīzī*, 454–55.

[61]See for example Faiṣal Aḥmad Nadwī Bhatkalī, *Taḥrīk-i Āzādī Maiṉ ʿUlamāʾ Kā Kirdār* (Lucknow: Majlis-i Taḥqīqāt-o Nashriyāt-i Islām, 2018), 235.

[62]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 2:287-88.

[63]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 1:67-68.

reprisal, only subject to the punishment in the Afterlife.[64] Therefore, if the British India were to fall in *Dār al-Ḥarb*, it would allow the Muslims considerable leeway to engage in these otherwise forbidden practices.

Indeed, many of the questions related to *Dār al-Ḥarb* in ʿAbd al-Ḥayy's *fatwā* collection related specifically to these issues. Three dealt with usury (*ribā*), with questioners framing their statements as "Is taking a loan from the Hindus or the Christians in *Dār al-Ḥarb* permissible?" Each question also provided backing from other traditional Ḥanafī jurists, as if to preempt ʿAbd al-Ḥayy's response.[65] Assuming that they were referring to the British India, ʿAbd al-Ḥayy rebuked the notion that British India was part of *Dār al-Ḥarb*, stating in one instance, "But the nations of India, which are in the hands of the Christians, are not part of *Dār al-Ḥarb*. Therefore, taking a [usurious] loan from a non-Muslim is not permissible."[66] ʿAbd al-Ḥayy provided the same answer with regards to the holding of Friday prayers and keeping slaves. In his response to the former, he stated,

> It is apparent that the nations of India, which are in the hands of the Christians, are *Dār al-Islām*, and the conditions for making it [India] *Dār al-Ḥarb* are not present. The rules of the non-Muslims are applied; however, the foundations and principles of Islamic law are still present, and the Non-Muslims rely upon [the judgment] of the Muslim scholars in some areas.[67]

It is the last sentence of this *fatwā*, that the "foundations (*uṣūl*) and principles (*arkān*)" of Islamic law are still practiced in India, that reveals one of the most interesting points about ʿAbd al-Ḥayy's legal position. While others such as ʿAbd al-ʿAzīz had written off the Indian legal system as entirely in the hands of the non-Muslim British colonial officials, ʿAbd al-Ḥayy saw the situation as nuanced. Many of the laws and court practices of the British, even following the massive changes that took place in the second half of the 19th century, were still in his mind based on an Islamic core.

ʿAbd al-Ḥayy further elaborates on this approach when asked about the role of the political authority in criminal law. The questioner asked, "How is the term *siyāsa* (political authority) understood by the jurists (*fuqahāʾ*)? Is an execution carried out by political authority (*qatl siyāsatan*) limited to cases of [murderers who are convicted of] strangling [their victims] multiple times, or generally applied?" "*Siyāsa*," ruled ʿAbd al-Ḥayy,

> Is an action carried out by a ruler (*ḥākim*) for the public good (*maṣlaḥa*), even if there is no specific textual evidence [from the holy Qurʾān and Sunna] to support it. It is a form of discretionary punishment (*taʿzīr*), applied to severe penalties like execution, extended

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[64]Muhammad Mushtaq Ahmad, "The Notions of Dār Al-Ḥarb and Dār al-Islām in Islamic Jurisprudence with Special Reference to the Ḥanafī School," *Islamic Studies* 47, no. 1 (2008): 8-9.

[65]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 1:44.

[66]Ibid., 1:301.

[67]Ibid., 1:361.

imprisonment, and exile. Execution by political authority is not limited to instances of strangulation, but general.[68]

Could this ruler or his representative – a judge in this case – be a non-Muslim? According to ʿAbd al-Ḥayy: yes. When asked whether it was permissible in Islamic law to seek out the rulings of "contemporary judges" (*ʿuhda-i qaḍāʾ*), a veiled reference to British courts, he responded by stating:

> Taking [the judgment] of contemporary judges [appointed] by a Sultan, whether just or unjust, Muslim or non-Muslim, is religiously permissible. However, if that Sultan prohibits the judge from applying what is right (*bi ḥaqq mamānaʿat sāzad*), in this situation it is forbidden.[69]

In support of his ruling, he cites two classical sources of law, the *Radd al-Muḥtār* by the early nineteenth century Ḥanafī Syrian scholar Ibn ʿĀbidīn (d. 1252/1836) and the collection of *fatwā*s composed and compiled for the Mughal emperor Aurangzeb (d. 1118/1707), known as the *Fatāwā ʿĀlamgīriyya* or *Fatāwā Hindiyya*. Both sources mention the permissibility of seeking a court judgment from a judge appointed by an unjust ruler (*sulṭān jāʾir*). However, ʿAbd al-Ḥayy expands upon this previous opinion to include even judges appointed by the non-Muslims, an innovation that clearly intended to cover cases adjudicated by the British.

The workings of the British courts were, however, not to be accepted without question. In one instance, ʿAbd al-Ḥayy received a question about mandatory court costs paid by litigants. An individual named "Zayd" had lent his friend, "Bakr," a sum of 100 rupees and had never been paid back.[70] To force Bakr to return the money, Zayd filed a case with the British court. The judge ruled in his favor, but in the process, Zayd ended up paying stamp taxes, lawyer fees, and court costs of 25 rupees. Was it permissible for him to demand that Bakr pay for the original amount as well as the court costs (125 rupees)? ʿAbd al-Ḥayy responded in the negative, and that Zayd was only due the original loan amount of 100 rupees, and that whatever additional costs he incurred were his own.[71] In another case with similar circumstances, ʿAbd al-Ḥayy ruled,

> Demanding [extra] expenses from a defendant is forbidden (*ḥarām*). Court costs taken from the plaintiff are a form of injustice (*ẓulm*) and bribery (*rishwat*) on the judge's part. The defendant is indeed the direct cause of these [additional] costs, but [additional costs] are only available in certain limited circumstances, and the question presented here is not included [in them]…One dealt with unjustly should not be unjust to another.[72]

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[68]Ibid., 1:158–59.

[69]Muḥammad ʿAbd al-Ḥayy Lucknawī, *Khulāṣat Al-Fatāwā*, vol. 4 (Lucknow: Munshī Nawal Kishor, n.d.), 3.

[70]It is typical in *fatwā*s that the actual names of litigants are removed and replaced with generic terms such as "Zayd, ʿUmar, Bakr, and Hinda."

[71]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 1:462.

[72]Lucknawī, *Majmūʿat Al-Fatāwā*, 1305AH, 2:422.

The opinion that court costs were forbidden even though they were caused directly by the debtor's inaction caused a stir in the scholarly community. A few months later, ʿAbd al-Ḥayy received a long question asking why an individual who loans money should bear the full brunt of the costs of getting their money back? Citing a range of prominent Ḥanafī legal texts and *fatwā* collections that court costs were to be born by the defendant and punitive measures could be placed upon a debtor who refused to pay, the anonymous questioner stated, "As the plaintiff is forced to approach the court, it is our opinion that the defendant should definitely [be forced to pay additional] costs, as a deterrent punishment (*zajr^(an)*)."[73]

The question also addressed more prominent issues of the functioning of the justice system. For example, in some Islamic texts, judges and courts were supposed to operate solely from the state budget (*bayt al-māl*). However, there is significant evidence in *fatwā* collections and more recent juristic texts, such as those of Ibn ʿĀbidīn mentioned above, stated that other sources of income could be found by charging the litigating parties. Particularly "in our current situation (*mā naḥnu fīhi*)," new ways needed to be discovered and the current view would threaten the application of justice by discouraging creditors from approaching the courts out of fear of having to pay more than what they were owed to force a debtor to pay.

ʿAbd al-Ḥayy answered the question by stating that, "Court costs ordered by the government are not [spent on] the salaries of judges. Decision-makers are not collecting [these costs] for the right of issuing [court] rulings. Rather, it is [solely] the [arbitrary] desire of the government." He accepts that there are legitimate costs, such as attorney fees, that a plaintiff can incur when taking a case to court. These costs, however, should only be borne by the plaintiff and not transferred to the defendant. Refusing to pay a debt when one can do so is a sin, not a cause for worldly punishment (*tāwān*). This is not, ʿAbd al-Ḥayy concluded, "an analogous situation to [legal change because of] 'our current situation.'"[74]

ʿAbd al-Ḥayy's stance against court costs and his other *fatwā*s related to the British legal interventions reveal much about his methodology and explain how he could accept the British colonialism while others, such as ʿAbd al-ʿAzīz and the Delhi School, rejected it and called for violence to uproot it. In ʿAbd al-Ḥayy's view, the British government was severely altering the Indian legal system. However, the *Sharīʿa* validity of these laws was not to be judged by who was making them – non-Muslim colonial officers – but by virtue of their content. The core of the Indian legal system, inasmuch as one existed during the second half of the 19th century, was still grounded by the fundamentals of Islam. So long as the British continued to recognize the ability of the Muslims to practice their faith and live in peace, the laws they made were assumed by ʿAbd al-Ḥayy to carry the legitimacy of the *Sharīʿa*. Only parts of the law and individual judgments issued by the British courts – like the case in punitive court costs – could be labeled "against the *Sharīʿa*." This was

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[73]Ibid., 2:424.
[74]Ibid., 2:426.

not because the British government made them or without the consultation of the *ʿulamāʾ*, but because they were "unjust."

Likewise, ʿAbd al-Ḥayy held court judgments issued by the Muslim courts to the same standard. In one response to a question he received from the Muslim city-state of Rampur in 1878, he chastised a Muslim judge for convicting in a murder case when the witnesses had not testified in the proper form.[75] He also spoke out against another judge from the same city when he ruled improperly in a matter of an individual who had lost jewelry given to him for safekeeping.[76] In each of these cases, the invalidity of the judgment's content, not the question of who made it, determined whether it was valid according to the *Sharīʿa*.

Judging the validity of a legal system by its content and not the actors who created it stands in stark contrast to other scholars such as ʿAbd al-ʿAzīz Dihlawī. They believed that a Muslim political authority was a requirement for the laws to be Islamic. The British, simply because they were a non-Muslim political authority and not a Muslim *Imām*, could only create laws against the *Sharīʿa*, regardless of their content or intent. Until the Muslim rule could be re-established across all the Subcontinent, the lay Muslims would continue to languish in *Dār al-Ḥarb*.

7. Conclusion

The *fatwā*s of ʿAbd al-Hayy Lucknawī are an essential source for the study of Sunnī Muslim identity in the nineteenth-century British India. In particular, the questions posed to ʿAbd al-Ḥayy exemplify the concerns of the Muslims in the Subcontinent who were coming to terms with changes brought about by both the British and local reform movements. Like their Hindu counterparts, the Muslims were developing the contours of a new identity that would unify diverse understandings of Islam and distinguish them from other groups.

The idea that the Muslims, particularly Sunnīs, were "different" in their faith and practice from the Shīʿas, the Hindus, and the British would have far-reaching consequences in the political history of Islam in British India. For example, in the first decades of the twentieth century, these newly formed identities of the Hindu and the Muslim clashed through flare-ups in communal tensions such as the Cow Protection Riots of 1893 and the Sunnī-Shīʿa riots of 1906. At the political level, the belief that the Muslims could only be legitimately represented by an Islamic political authority would lead to the Khilāfat Movement in the 1920s and ultimately to the idea of Pakistan and Partition, one of the most deadly series of events in the twentieth century.

Through his *fatwā*s, ʿAbd al-Ḥayy acted as both a moderator and catalyst of these changes. When emphasizing that some Shīʿa practices should be shunned as against the religion or that cow slaughter was an "ancient" Islamic practice that has its roots in the

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[75]Ibid., 2:67-68.
[76]Ibid., 2:341-42.

Prophetic Sunna, he gave religious legitimacy to those who emphasized the Muslim differences. At the same time, however, his rejection of a broader interpretation of imitation (*tashabbuh*), his acceptance of inter-sect marriages, as well as his insistence that the British India was still part of *Dār al-Islām* and that Islamic law was still applied in the colonial context meant that there was still room for cooperation. This view would help pave the way for the Muslim involvement in the Indian independence movement and eventually form the foundations of India's unique religious-secular fabric.

Finally, ʿAbd al-Ḥayy's methodology of adherence to classical Ḥanafī legal opinions, viewed in the light of the Prophetic Sunna, and adaptation to current circumstances is vital for the study of Islamic law in the modern period. Standing at the intersection between calls for a return to the foundational texts of Islam and the onslaught of European influence, ʿAbd al-Ḥayy's traditionalism charted an intellectual middle path that remains relevant for the Muslims today: that one can confidently coexist and cooperate with changing circumstances without compromising the beliefs that they hold most dear.

Bibliography

Abū Ghudda, ʿAbd al-Fattāḥ. *Al-Taʿlīqāt al-Ḥāfila ʿalā al-Ajwiba al-Fāḍila*. Aleppo: Maktab al-Maṭbūʿāt al-Islmāmiyya, 1984.

Ahmad, Muhammad Mushtaq. "The Notions of Dār Al-Ḥarb and Dār al-Islām in Islamic Jurisprudence with Special Reference to the Ḥanafī School." *Islamic Studies* 47, no. 1 (2008): 5-37.

Anṣārī, Muḥammad Ināyatullāh. *Tadhkara-i ʿUlamāʾ-i Farangī Maḥall*. Lucknow: Ishāʿat al-ʿUlūm Barqī Press, 1930.

Ashʿath, Abū Dāwūd Sulaymān b. al-. *Sunan Abī Dāwūd*. Vol. 4. Beirut: al-Maktaba al-ʿAṣriyya, n.d.

Bayly, Susan. "Hindu Modernisers and the 'Public' Arena: Indigenous Critiques of Caste in Colonial India." In *Swami Vivekananda and the Modernization of Hinduism*, edited by William Radice. Delhi, 1998. http://hdl.handle.net/2027/mdp.39015040908256.

Bhatkalī, Faiṣal Aḥmad Nadwī. *Taḥrīk-i Āzādī Maiṅ ʿUlamāʾ Kā Kirdār*. Lucknow: Majlis-i Taḥqīqāt-o Nashriyāt-i Islām, 2018.

Damīrī, Muḥammad b. Mūsā al-. *Ḥayāt Al-Ḥaywān al-Kubrā*. Vol. 1. Beirut: Dār al-Kutub al-ʿIlmiyya, 2015.

Dihlawī, Shāh ʿAbd al-ʿAzīz. *Fatāwā ʿAzīzī*. Karachi: H. M. Saʿīd Company, 1987.

Freitag, Sandria. "Sacred Symbol as Mobilizing Ideology: The North Indian Search for a 'Hindu' Community." *Comparative Studies in Society and History* 22, no. 4 (October 1980): 597-625.

Hasan, Mushirul. "Traditional Rites and Contested Meanings: Sectarian Strife in Colonial Lucknow." *Economic and Political Weekly* 31, no. 9 (1996): 543-50.

Lipner, Julius. *Hindus: Their Religious Beliefs and Practices*. Florence, UK: Taylor & Francis,   2010. http://ebookcentral.proquest.com/lib/mcgill/detail.action?docID=1039332.

Lucknawī, Abū al-Ḥasanāt Muḥammad ʿAbd al-Ḥayy. *Majmūʿat Al-Fatāwā*. Vol. 1. [Kānpūr]: al-Maṭbaʿ al-ʿAlawī Muḥammad Bakhsh Khān Lucknawī, 1305AH.

—. *Majmūʿat Al-Fatāwā*. Vol. 2. Lucknow: Maṭbaʿ Anwār-i Muḥammadī, 1305AH.

Lucknawī, Mawlānā ʿAbd al-Ḥayy. *Al-Nāfiʿ al-Kabīr Li Man Yuṭāliʿ al-Jāmiʿ al-Ṣaghīr*. Lucknow: Maṭbaʿ Yūsufī, 1347AH.

Lucknawī, Muḥammad ʿAbd al-Ḥayy. *Khulāṣat Al-Fatāwā*. Vol. 4. Lucknow: Munshī Nawal Kishor, n.d.

Lucknawī, ʿAbd al-Ḥayy. *Al-Fawāʾid al-Bahiyya Fī Tarājim al-Ḥanafiyya*. Cairo: Maṭbaʿa al-Saʿāda, 1906.

—. *Al-Saʿāya Fī Kashf Mā Fī Sharḥ al-Wiqāya*. Kanpur: Maṭbaʿ Muṣṭafāʾī, 1989.

Malik, Jamal. *Islam in South Asia: A Short History*. Leiden: Brill, 2008.

Marghīnānī, ʿAlī b. Abī Bakr al-. *Al-Hidāya*. Vol. 3. Lahore: Maktaba Raḥmāniyya, n.d.

Metcalf, Barbara Daly. *Islamic Revival in British India: Deoband, 1860-1900*. Princeton, N.J.: Princeton University Press, 1982.

Metcalf, Barbara Daly, and Thomas R Metcalf. *A Concise History of Modern India*. Cambridge: Cambridge University Press, 2006.

Mursalīn, Ghulām. *Mawlānā ʿAbd Al-Ḥayy Farangī Maḥallī: Ḥayāt Awr Khidmāt*. Aligarh: Markaz Dirāsāt Ayshiyā-i Gharbī, 1985.

Nadwī, Sulaymān. "Hindūstān Men ʿIlm-i Ḥadīth." In *Maqālāt Sulaymān*, Vol. 2. Azamgarh: Maṭbaʿ Maʿārif, 1387AH.

Nadwī, Walī al-Dīn. *ʿAllāma ʿAbd Al-Ḥayy Lucknawī Farangī Maḥallī: Ḥayāt Aur Khidmāt*. Azamgarh: Markaz al-Shaykh Abī 'l-Ḥasan al-Nadwī, 2012.

Pandey, Gyanendra. "Mobilizing the Hindu Community." In *The Construction of Communalism in Colonial North India, 157–200*. England: Oxford University Press, 2006.

Raḥmān, Alṭāf al-. *Aḥwāl ʿUlamāʾ-i Farangī Maḥall*. Awadh, n.d.

Riaz, Ali. *Faithful Education: Madrassahs in South Asia*. 1 online resource (xii, 289 pages) : map vols. New Brunswick, N.J.: Rutgers University Press, 2008. http://site.ebrary.com/id/10251798.

Rizvi, Saiyid Athar Abbas. *Shāh Walī-Allāh and His Times: A Study of Eighteenth Century Islām, Politics and Society in India*. Canberra: Ma'rifat Publishing House, 1980.

Robinson, Francis. *The ʿUlama of Farangi Mahall and Islamic Culture in South Asia*. London: C. Hurst, 2001.

Tirmidhī, Muḥammad b. ʿĪsā al-. *Al-Jāmiʿ al-Kabīr*. Vol. 3. Cairo: Dār Taʾṣīl, 2016.

Zaman, Muhammad Qasim. "Political Power, Religious Authority, and the Caliphate in Eighteenth-Century Indian Islamic Thought." *Journal of the Royal Asiatic Society* 30, no. 2 (April 2020): 313-40. doi:10.1017/S135618632000022X.

Zavos, John. "The Ārya Samāj and the Antecedents of Hindu Nationalism." *International Journal of Hindu Studies* 3, no. 1 (April 1, 1999): 57-81. doi:10.1007/s11407-999-0008-x.