THE SHARIAH AND COPYRIGHTS, PATENCY RIGHTS AND JAAHILIYYAH RIGHTS

By

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INTRODUCTION
AND A WARNING TO THE FIQH ACADEMY MOLWIS

Inspite of the *mas'alah* of copyright being quite simple and straightforward, the liberal Molwis have kicked up considerable dust around it. With their plethora of interpretations and personal opinions, they have made this question appear to be of an intricate kind. In fact, their argumentation has made it appear to be intractable.

The simplicity of the question can be gauged from the quick and brief disposal of it by the Akaabir Ulama such as Hadhrat Maulana Rashid Ahmad Gangohi, Hakimul Ummat Maulana Ashraf Ali Thaanvi, Hadhrat Mufti Muhammad Shafi (rahmatullahu alayhim) and others.

The seminar Molwis have written among themselves a couple of hundred pages of rigmarole *dalaail* (arguments and proofs) to substantiate their view of copyright being a valid tradable commodity In fact, one Molwi Saheb wrote about a dozen pages on the intricacy of the meaning and definition of the word *'thing' (shay')* which renders the whole exercise amusing.

The entire effort of the liberal Molwis in regard to the copyright question is directed to proving three claims:

(1)That copyright and similar other kuffaar created 'rights' are *maal* (just like tangible or physical commodity), hence trading in these 'rights' (i.e. buying and selling these rights) is lawful terms of the Shariah.

(2)That the registration of copyright and reservation of all rights of printing and publication for the author or his agent or to the purchaser of his copyright, are to prevent harm to the author. Such prevention is termed in the Shariah *dafa' dharar.*

(3)That the overriding determinant is *urf* (norm and custom) of the people. If in the prevailing custom, copyrights are *maal* then according to the Shariah it will also be *maal.*

To prove the first claim, they descended to ridiculous levels of interpretation, introducing in the process a confusion of examples and definitions from all Math-habs to substantiate their concoctions. This style of argument displays the lack of valid basis for the fabrication of copyright.

In the following pages of this book, it has been, Alhamdulillah, shown that copyright is not *maal*; it is not even a valid right, and to prevent anyone from printing a book is to prevent him from the lawful right the Shariah grants him. Since copyright is neither tradable commodity nor a valid right recognized by the Shariah, all transactions associated with it are *haraam.* Buying, selling, registering and reserving copyrights and preventing others from printing a book which they have acquired lawfully are all unlawful and *haraam.*

In addition to the aforementioned sinful acts related to copyright, it interferes with the mission of *Risaalat*. It hinders *Da'wat and Tableegh.* In this way the 'owners' of the imaginary copyrights are actively involved in an endeavour to block the vital avenue of the Deeni, viz., *Da'wat and Tableegh,* be it unintentionally, and not by deliberate design.

It is not hidden from any person of even a little understanding that the only motive for the desire to confer legality to copyright, is pecuniary greed, nothing else. But it is unlawful to satisfy the dictates of this despicable attribute when its pursuit involves infringement of the rights of others and interference with the goals of *Ilm,* which are *Da'wat and Tableegh.*

The desperate attempt of the liberal Molwis is to abrogate the Shar'i conception of *maal* so as to bring the imaginary kuffaar-spawned copyright within the scope of the new definition of 'maal'. Only in this way will all the unjust and *baatil* acts associated with copyright attain legal status in the Shariah. This exercise has constrained the liberal Molwis to organise expensive 'seminars' at huge costs to discuss and issue *fatwas* on a simple issue which the Akaabireen disposed of within their huts, on the basis of solid Shar'i *dalaail* unlike the incongruous volume of interpretations acquired after fishing in a variety of domains of the different Math-habs. Yet they profess to be followers of the Hanafi Math-hab.

They have miserably failed to present convincing arguments for their claim of copyright being *maal* because the meaning of *maal* is too well known and entrenched in the Shariah. According to the Qur'aan, the Ahaadith and the fourteen century *Urf, maal* is only tangible commodities, not rights and benefits, let alone imaginary rights such as kuffaar-conceived copyrights.

They have laboured in vain to prove that the fourteen-century Shar'i concept of *maal* stands abrogated by an *urf* (prevalent practice) spawned by the kuffaar on the basis of western economic concepts. In this dastardly attempt they have elevated 'prevalent custom' above even the Qur'aan and Sunnah. As a consequence of the infinite latitude they have aberrated into the Shar'i concept of *Urf,* the advocates of liberalism, who most unfortunately are all Molwis, have brought many established *Usool* (Principles of Islamic Law) under their hammer of mutilation.

In their exercises of reinterpretation of Shar'i principles, they have elevated themselves above the lofty and sacred pedestal which the illustrious Aimmah-e-Mujtahideen and the noble Fuqaha-e-Mutaqaddimeen occupy in the firmament of *Ilm-e-Deen* and in the hearts of the Mu'mineen. They have most despicably pitted themselves against the mighty Towers of Uloom and have arrogated to themselves the right to strike down the concepts of the Fuqaha on the basis of a contemptible 'urf' of greed and lust which is the natural consequence and necessary corollary of the godless cult we term westernism with its monopolistic economic system called capitalism.

Inspite of their skulduggery and technical gymnastics with words, principles and definitions, they have miserably failed in the attempt to skittle the immutable principles of the Shariah evolved by the illustrious Aimmah and Fuqaha on the basis of the Qur'aan and Hadith. Their whole case in favour of copyright and other *Jahiliyyah* rights being tradable commodities falls flat. They have no basis other than their whimsical opinions inspired by their awe for the illusionary glitter of westernism with its material and technological progress. The superficial facade of success of the economic system of capitalism with its banking structure gripping the throat of mankind by having grabbed all the natural resources which Allah Ta'ala has placed at the free disposal of *Insaan* –resources for which man does not have to pay money—has intoxicated the liberal Molwis of India and Pakistan who have therefore resolved to

bestow sacred and Shar'i recognition to just every *haraam and baatil practice of riba* spawned by the concepts of kuffaar.

To achieve this pernicious objective, they have unearthed, redesigned and reinterpreted the Shar'i principle of *Urf*, opening for it such a wide portal through which all kuffaar trade concepts and riba practices could be admitted to find accommodation under the Canopy of the Shariah.

Insha'Allah, a separate treatise shall be prepared in rebuttal of the concept of 'urf' conjectured by the liberal Molwis of India and Pakistan who have established vehicles of operation such as 'fiqh academies' and similar other 'institutes of studies' to give respectability to, and gain the Ummah's recognition for their liberal 'fatwas'. These institutes of liberalism must, Insha'Allah, fall by the wayside to become flotsam in Islam's voyage on the ocean of history.

In their self-induced confusion in which they became entrapped, they aver that copyright belongs to that category of Shar'i rights which has come into existence by the command of the Shariah for the purpose of protecting a person from harm. These rights ward off probable harm. This is termed *dafa' dharar.*

Similarly, they claim that copyright is necessary to prevent *dharar.* And, the ruling regarding the rights of this first category, the votaries of copyright acknowledge, is impermissibility to buy and sell any such right. Inspite of themselves having assigned copyright to this category of rights, they illogically deny the *hukm* of prohibition which the common *illat* dictates. This irrational attitude clearly reveals the ulterior nafsaani agenda of the votaries of copyright. All their mental and intellectual flouncing in the endeavour to prove the validity of their list of *Jahiliyyah Huqooq (Rights of Ignorance)*, has failed to produce the necessary substantiation for according Shar'i validity and acceptability to these rights based on kuffaar concepts and kuffaar 'urf'. In plain and simple terms: their case falls flat, devoid of Shar'i substance and bereft of any moral and spiritual goodness whatsoever. Any concept, practice or 'fatwa' lacking a moral and spiritual base is outside the fold of this sacred Shariah – even beyond its Fiqhi dimension – since the thrust of this Immutable Shariah is the cultivation of *Taqwa* for the acquisition of Divine Pleasure and immediate *Najaat (Salvation)* with the advent of Qiyaamah. This goal of *Insaan's* existence on this transitory earthly abode cannot be achieved by fixing this *dunya* with its allurements and kuffaar cults and practices – kuffaar urf – as the *maqsad* of life.

The *Maqsad* of the Mu'min's life is the Aakhirah. This Goal cannot be attained without devotion to the Shariah and without sacrifices which are imperative requirements for progress along *Siraatul Mustaqeem.* Part of the sacrifice to gain Allah's *Muhabbat*, is to divert the focus of the heart from the financial strides and financial empires of the capitalist kuffaar. Commanding this diversion of focus, the Qur'aan Majeed orders: "*Do not stretch your eyes (gaze) towards the (worldly bounties) which We have (temporarily) bestowed to the different groups (of kuffaar) nor grieve over them. (On the contrary) lower your wing for the Mu'mineen." (Surah Al-Hijr, aayat 88)*

The wretched endeavour to scrounge for *dalaail* in the sacred preserves of the *Warathatul Ambiyaa* – the Fuqaha – for accommodating all the riba practices excreted

by the kuffaar concepts and theories of western capitalism, is in diametric conflict and negation of the command and spirit of this Qur'aanic aayat.

A practice which has come into vogue among Muslims, has to be incumbently addressed on the Shar'i principles of Islam which are not confined to barren juridical (fiqhi) precepts and principles. These Principles of Islam consist of a combination of *Fiqhi, Akhlaaqi and Roohaani* precepts all tuned for directing the mind and heart of the Mu'mineen to the *Maqsad of Aakhirah.*

The intention of the Fuqaha in the evolvement of Fiqhi principles was never to open up avenues and portals for the admission of the norms, ideas, practices and concepts of the slut cults and cultures of kufr, shirk and crass materialism which have as their goal nothing but the defective comforts and lustful pleasures of this perishable world. All morality and humanity are sacrificed and thrown overboard by these cults in the struggle to achieve these nafsaani goals.

The liberal academy and seminar Molwis of India and Pakistan are operating in the hallo of the deceptive light cast by the capitalist cult, hence the insane stampede to offer respectable accommodation within the Edifice of the Shariah to all the riba practices and transactions which are now flourishing in Muslim societies which have recklessly abandoned the restrictions of the Shariah on the basis of a distorted perception of the *Mas'alah of Urf.* Insha'Allah, in a future treatise we shall show that viable and valid *Urf* has no relationship with the 'urf' of the kuffaar – an urf which requires abandonment of the sacred Shariah and Sunnah of Islam.

The 'fiqh academy' Molwis of India and Pakistan have initiated a pernicious effort which portends a massive re-interpretation of Islam to tear the sacred Shariah from its divine moorings and latch it to the vicissitudes of the glittering capitalist world. These Molwis have to be warned of the mistaken route they are plodding. They should realise that their true Office requires them to discharge the incumbent duty of *Amr Bil Ma'roof Nahy anil Munkar*. Their function is to guard the sacred Shariah and block every avenue for any incursion into the domains of this Deen by the alien forces of kufr and *ilhaad*. They are conducting themselves most despicably by posing as agents of capitalism to ensure admission for the concepts of westernism into the fabric of Muslim society.

Not a single Muslim's *Rizq* is tied to copyright, patency right, leasing right and the host of *Jaahiliyya 'rights'*. The worldly provisions and sustenance of Muslims and of the kuffaar as well, are the Responsibility of the Being Who has created the mouth and the stomach. The *Mashaaikh* have taught us:

"*On us is the obligation to worship Him as He has commanded, and on Him is the obligation to feed us as He has promised.*"

In His glorious Qur'aan, Allah Ta'ala declares: ***"Innumerable are the creatures (of Allah) who do not carry their rizq on their backs. We (Alone) feed them and (We feed) you (O mankind!)."***

This Ummah is not in need of riba practices to sustain its members in this earthly sojourn. The Shariah is adequate for Muslims. The Molwis only need to acquit themselves honourably by disseminating the unadulterated *Haqq*. They have no licence whatsoever to present kuffaar concepts and practices to the Ummah on a platter painted with Shar'i hues, but bereft of Shar'i substance.

The franchise names of MacDonald's, Kentucky and Nandos, the patency rights of the atheist inventors of the products of technology and the copyrights of the vile and slut literature of the western world can never be extended to Islamic trade and commerce under the fictitious guise of this immoral 'urf' being acceptable Shar'i Urf. The Ummah is not in need of the spiritual and moral muck of the western world, for which the liberal Molwis of India and Pakistan have opened up a gateway.

The liberal Molwis of India and Pakistan with their leanings, infact covert embrace of *Admut Taqleed,* constitute a danger for the Ummah. Instead of involvement in the moral and spiritual development of the Ummah, they further solidify the spiritual diseases which have ruined Muslims by giving impetus to riba practices with their corruptive *fatwas of jawaaz.* It is indeed the conflagration of moral diseases which has impaired the intellect of the Molwis who squander their time, energy and other resources of Muslims in the destructive exercise to find *dalaail* for the 'validity' of kuffaar concepts to entrench in Muslim society the capitalist economic system with its riba malpractices. On the basis of such corrupt 'fatwas', kuffaar 'urf' is introduced into Muslim society. The dividing line between Islamic practice and kufr practice then becomes so blurred and inconspicuous that Muslims begin to believe that the adopted alien 'urf' is *a valid urf* which is acceptable to the Shariah.

In this 'enlightened' era of technological advancement, the fortuitous and lamentable juxtaposition of the liberal Molwis of India and Pakistan alongside the *mulhid* modernist reinterpreters of the Shariah, constitutes the single greatest menace for the Ummah and the Deen. They have become birds of the feather peddling the same mission of subverting the Immutable Shariah of Islam. It is for this reason that the liberal Molwis pipe the very same theme which the modernist *juhhaal (ignoramuses)* have fixed as the basis for the reinterpretation of Islam, viz., the Shariah is not immutable and its principles are the product of man's reasoning –the *ijtihaad and qiyaas* of the Fuqaha. This is their common base for the reinterpretation of the Shariah. Islam today, therefore, faces this grave twin-threat – the menace of the liberal Molwis and the menace of the modernist *mulhideen.* Of the two, the menace of the liberalism of the Molwis by far outweighs the threat of the modernist mulhideen because they operate from within the fold.

The liberal Salafi cult of *Admut Taqleed* has seriously tarnished many Molwis of Pakistan and India. It is this disease which bestowed the audacity to a puny Molwi Saheb of this era to say without thinking: *"On reflection, it will be realised that there is no weight in this istidlaal of Shaami."*

Again it is only the disease of *Admut Taqleed* which can constrain a puny Molwi to declare with audacity –without the slightest degree of inhibition: *"On account of not accepting Manaafi' (benefits) to be maal, the Ahnaaf have been constrained to proclaim many transactions to be 'khilaaf-e-qiyaas'(in conflict with reason). It is obvious that to proclaim a Hukm of the Shariah to be khilaaf-e-qiyaas is in conflict with Asl (the actual principle underlying a hukm). This is acceptable only in the degree of majburi (dire need)."*

This poor Molwi has abdicated with the idea that he possesses such a lofty rank of *Ijtihaad fil Math-hab* which puts him on par with the Aimmah-e-Mujtahideen. Hence,

he feels confident to sweepingly strike down a fourteen-century Ruling of the Ahnaaf – a ruling which has been upheld by countless Fuqaha of the highest rank.

It is only the spiritually debilitating disease of *Admut Taqleed* which induces a non-entity to make the wild allegation: *"Those Fuqaha (of the Hanafi Math-hab) who were harsh in the definition of maal were compelled by urf to adopt the path of relaxation (in their harshness). They had no option other than to proclaim lawful i'tiyaaz (monetary exchange) for some rights……."*

The Fiqh Academy Molwis of India and Pakistan should take note of their own insignificance. In relation to the Aimmah-e-Mujtahideen – no, in relation to the Fuqaha-e-Mutaqaddimeen – no, in relation to the Fuqaha-e-Mutakh-khireen – no, in relation to our illustrious Akaabireen of recent years such as Hakimul Ummat Maulana Ashraf Ali Thaanvi and his immediate Asaatizah and others of this rank, the whole conglomerate of Fiqh Academy Molwis, holds no rank. They are mere *Atfaal-e-Maktab* (infants of a nursery school) when viewed against the glittering Backdrop of the Golden *Silsilah* of Fuqaha who constituted the first and foremost Links in the *Roohaani, Akhlaaqi and Ilmi* Chain protruding from the Mubaarak Breast *of Rasulullah (sallallahu alayhi wasallam).* Anyone who dares attribute nonsense to the Fuqaha needs his tongue ripped out. Anyone who claims that in his *raai* (opinion) the *Usool* evolved by the *Aimmah-e-Mujtahideen* are bereft of divine immutability displays signs of mental and intellectual derangement which are the initial stage of divine punishment for wagging the tongue unabashedly and audaciously against the highest category of Auliya of Allah Ta'ala, namely, the Fuqaha who were the illustrious *Warathatul Ambiyaa* (Heirs of the Ambiyaa), immediately after the Sahaabah.

These humble and sinful servants standing up in defence of the sacred Shariah whose sacred Edifice was established by these Fuqaha, lay no claims to piety or knowledge. We are what one *Buzrug said:*

> *"I love the Saaliheen although I am not one of them. Perhaps Allah will bestow reformation to me by virtue of this love."*

The paucity of even the textual knowledge of the Fiqh Academy Molwis added to their spiritual barrenness is conspicuously manifest when studying their book, *Jadeed Fiqhi Mabaahith*, prepared by the founder of their Academy, viz. Maulana Mujaahidul Islam Qaasimi (rahmatullah alayh) who had regretfully opened up the avenue of *Admut Taqleed* for his followers.

His leanings towards *Admut Taqleed* are conspicuous from his opening address to the Fiqh Academy seminar on the question of the sale of rights such as 'copyright' for which the seminar was organised in particular. The tenor and trend of the talk and argumentation of the liberal Molwis associated with the Fiqh Academy display their hidden agenda. Although it is not a simple task in the environment in which they flourish, to outrightly shrug off their overt *Taqleed* of the Hanafi Math-hab in which they were born, bred, nourished and educated, they subtly and slowly open up to reveal their true colours of *Admut Taqleed*.

Even a cursory perusal of what Maulana Mujaahidul Islam (rahmatullah alayh) has written in the Fiqh Academy's book, *Jadeed Fiqhi Mabaahith*, leads one to conclude that he had set himself up as a Mujtahid. The other Academy Molwis, in emulation of their leader, display the same symptoms of *Admut Taqleed*, in their articles on the

question of *Jaahiliyyah* rights created by kuffaar concepts and given Shar'i 'urf' status by the proponents of copyright.

In their endeavour to assign into oblivion the fourteen-century verdicts of the Fuqaha-e-Ahnaaf, based on Qur'aanic and Hadith principles, or to dent the credibility of the immutable principles of the Shariah formulated by the Aimmah-e-Mujtahideen, the Fiqh Academy Molwis have succeeded in only demonstrating the shallowness of their understanding of the issues they have brought up for discussion, as well as their shallowness of comprehending the transcendental value and permancy of the *Usool of Fiqh* formulated by a noble Species of *Warathatul Ambiyaa*, created by Allah Ta'ala for the exclusive edification of the Qur'aanic declaration: ***"This Day have I (Allah) perfected for you your Deen...."***

This *Aayat-e-Kareemah* effectively and everlastingly closed the door of any stupid 'ijtihaad' which brings into question any of the *Usool of the Math-hab* which the Students of the Sahaabah had evolved on the authority of Rasulullah (sallallahu alayhi wasallam) transmitted to them by their august *Asaatizah.* That sacred Door has been sealed shut and will remain shut until Qiyaamah, not admitting the slightest mutation in the immutable Principles of the Math-hab evolved by those Fuqaha who were the authorities in the Field of *Ijtihaad fil Math-hab.* By Allah! A perusal of the methodology of the Fiqh Academy liberals will convince the Aalim of understanding that these Molwis lack the ability of even *ijtihaad* in the constantly developing new *furoo-aat.* This is a sphere in which the Ulama-e-Haqq have no option other than to operate in the quest of finding true Shar'i answers and solutions for day to day new developments which have to be incumbently disposed off on only the basis of the immutable principles handed to us fourteen centuries ago by the Aimmah, and which are divinely attested to for authenticity by the Qur'aan Majeed itself.

No Aalim in this age has the right to conduct himself stupidly by submitting the very foundational principles on which the *Furoo-aat* of the Deen are based, to his shallow opinion, and then arrogantly proclaim: "*In my raai…*" It is only a man who suffers from oblique intellectual and spiritual vision and perception who will dare demonstrate his *jahaalat* by putting up the very *Usool* for auction at an academy whose very existence was inspired by the devious concept of *Admut Taqleed.*

Instead of weighing the confounded kuffaar concept of *baatil* rights inimical to the teachings and spirit of Islam, on the criteria of the accepted Principles of the Shariah, the liberal Molwis examined, dissected and reinterpreted these very sacred *Usool* with their shallow *raai* (opinion), injecting into these principles unacceptable latitude – and for what? Purely for accommodating with *jawaaz* (permissibility) the waste matter let off by the brains of kufr.

After the golden age of the Aimmah-e-Mujtahideen, the Ummah was never in need of the puny 'mujtahideen' who every now and again pop up in the annals of Islam only to be swept aside by the eternal *Haqq* with which Allah Azza Wa Jal safeguards His Immutable Shariah from those who crave to carve a niche of recognition for themselves.

In the ludicrous endeavour to promote the kuffaar concept of stupid *baatil* rights in the interest of the monetary cravings of a tiny group of Muslim capitalists, the Fiqh Academy Molwis have attempted to rock the Ship of Islam to shed off the

'encumbrance' of the Divine Fiqah which places severe constraints on the manoeuvrability of brains which seek to be unshackled from the Prison of the Shariah.

However, unlike the professed Salafis who flagrantly display their insolence towards the Aimmah-e-Mujtahideen, the Fiqh Academy Molwis, proceed about their *Admut Taqleed* plot, quietly and subtly, citing copiously from the works of the illustrious Fuqaha – indispensable Works from which no one can ever declare independence until the Day of Qiyaamah. But, their nefarious aims are discernable to those who cannot be duped by any type of subterfuge, Alhamdulillaah!

These Molwis who flaunt high-sounding *Ilmi* titles, prowl within the sphere of the Hanafi Math-hab to unearth obscure and discarded statements and views of some Fuqaha in their dastardly attempts to scuttle the Fiqah of the Ahnaaf, and to skittle the very Qur'aanic concept of the immutability of the Shariah. If they are allowed to succeed in this despicable exercise, they will facilitate the task of kufr re-interpretation of the Deen – a conspiracy in which the *juhhaal* western-educated modernists are perennially involved.

In our humble bid in the execution of our obligation of *Amr Bil Ma'roof Nahy Anil Munkar,* we deem it imperative to issue a detailed refutation of the *khuraafaat* (utter drivel and arrant nonsense) which the Fiqh Academy Molwis have written in the book, *Jadeed Fiqhi Mabaahith.* If Allah Ta'ala wills and He grants these worthless servants of His Deen the taufeeq and the required ability, we shall, Insha'Allah, not fail to stand up in defence of the Aimmah-e-Mujtahideen and the Fuqaha-e-Ahnaaf in particular, to whom the Fiqh Academy Molwis have subtly attributed the existence of the Divine Shariah in the futile and reprehensible exercise to raise a new 'shariah' based on their shallow 'ijtihaad' structured on the 'urfi' practices and customs spawned by the concepts, ideals and cults of the western kuffaar in particular.

This treatise which we present to the Ummah deals in brief with the concept of *Jaahiliyyah* rights which the Fiqh Academy Molwis have elevated to the pedestal of Shar'i rights. This treatise is a discussion on a narrow scale of the issues churned up by the *Admut Taqleed* Molwis of the Fiqh Academy. The need is to respond in detail to every item of confusion and dubiosity which the Fiqh Academy Molwis have related to the corpus of Hanafi Fiqah. The responsibility of safeguarding Islam is Allah's. It does not rest on our shoulders nor on the shoulders of any group of Ulama or individual Aalim of the Haqq. Allah Ta'ala guards His Deen with its immutable Shariah in His own Beautiful and efficient manner. If we are unable to thoroughly trounce the flouncing nonsense on which the *Admut Taqleed* league of Molwis have embarked, Allah Ta'ala has better Men in the field, and He will create nobler Souls, to uphold His Shariah. It is essential that all concerned in this issue, both the Fiqh Academy Molwis and the silent Ulama-e-Haqq who shy away from their duty lest feathers are ruffled, refreshen their memories with Rasulullah's (sallallahu alayhi wasallam) proclamation:

> ***"There will ever remain a Taa-ifah of my Ummah, who will fight on the Haqq until there comes the Command of Allah (Qiyaamah). Those who oppose them or refrain from assisting them (the Ulama-e-Haqq) will not be able to harm them……."***

May Allah Ta'ala show us all the Straight Path of Guidance and save us from the evils lurking in the nafs and from the snares of Haitian. And Allah knows best what our respective missions in life are.

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COPYRIGHT AND THE SHARIAH

Copyright is a kuffaar concept of 'property' belonging to a kuffaar-originated class of 'property' which they term 'Intellectual Property'. It is firstly a '*right'* spawned by the legal systems of the kuffaar. This legal right has then been elevated to what they term 'intellectual property' which is a figment of the imagination of the kaafir's mind. Initially it is a right – an abstract right to control or benefit monetarily from the work a man has authored. In simple terms it is a right which the kuffaar legal system confers to a person who writes a book or an article. This intangible, abstract, *untouchable* – not physical – idea in the mind of a man is defined in the queer and unnatural concept of intellectual property as an entity which has the status of material or tangible or physical property, like bread and butter. As such, this imagined right undergoes a mental metamorphosis in the imagination of those who had spawned this concept.

In this mental metamorphosis, the right undergoes a transformation and becomes just like tangible property. This mental figment is then termed copyright which in this western capitalist concept of greed is the subject of trade – buying and selling – in exactly the same way as a loaf of bread is traded in

In simpler terms, the concept of copyright is a legal right which kuffaar give to a man who writes a book. It is purely a pecuniary right or a right to make money by preventing others from exercising their lawful Shar'i right. The author of a book legally registers his right –copyright. This right now allows him to sell his *right* to others. He has the right to prevent others from selling books which they have printed with their own effort, enterprise and capital. Copyright prevents others from reprinting and disseminating a book which belongs to them. They purchased the book. The book is their property exclusively. Yet the copyright law prevents them from publishing the book on the basis of it having been authored by someone else who has registered the right of preventing others from dissemination of Kitaabul Imaan, Kitaabut Tahaarat, Kitaabus Salaat, Kitaabus Saum, Kitaabuz Zakaat, Kitaabul Hajj and the countless other kitaabs comprising the *Masaa-il* which Hadhrat Jibraeel (alayhis salaam) delivered from Allah Azza Wa Jal to Muhammadur Rasulullah (sallallahu alayhi wasallam) within the Divine Capsule called the Qur'aan revealed for the guidance of Allah's Makhlooq (Creation).

A man writes a book called Kitaabus Salaat, for example. He gleans and cribs all the information from the illustrious Works of the Aimmah-e-Mujtahideen who never copyrighted their wonderful Books of Knowledge. He puts this divine information in the English language. Then he goes to the kuffaar authorities to register his 'legal' right to prevent other Muballigheen and traders from disseminating Kitaabus Salaat to the Ummah to whom Allah Ta'ala had sent Rasulullah (sallallahu alayhi wasallam) to deliver the *Ahkaam of Salaat.* This *Harees* (Glutton –slave of money) impelled by his inordinate pecuniary craving constitutes an effective impediment in the dissemination of that *Ilm* which the Ambiyaa (alayhimus salaam) came to deliver free for the salvation of Allah's creatures.

A man purchases a book. It belongs to him. He reads it and finds it beneficial for the Imaan of Muslims. He wishes to print it and distribute it free or at low cost if he is a

philanthropist, or for making money if he is a trader only, or at a nominal price to Allah's servants for their everlasting Deeni benefit and success if he has the Deen at heart. But, the author being a servant of dollars enlists the aid of the kuffaar court to prevent the printing and dissemination of the book consisting of Allah's *Ahkaam*. In this dastardly action he is motivated solely by pecuniary lust. There is absolutely no other motivation for this *haraam* action which forms a barrier between Allah's Deen and His servants.

The issue of copyright in the light of the Shariah is extremely straightforward and simple. It is a miserable kuffaar concept which has absolutely no validity in the Shariah. It is not *maal* (tangible or physical commodity) which could be tradable in terms of the laws of Islam. Dealing in this imagined 'right' is *baatil*—null, void and haraam. The Shariah does not recognize this concept. In fact, it is not a right in terms of the Shariah.

Just as it is haraam to prevent a man from reading a book which he has bought, so is it haraam to prevent him from copying the book by whatever means he chooses. Just as it is haraam to prevent a man from selling a book which he has bought, so too is it haraam to prevent him from printing the book which belongs to him regardless of who the author is.

Although this issue is simple, not requiring any academic discussion to dispose of its baatil, some modern-day scholars who have embraced liberalism, which is the product of abandonment of the sacred *Waajib* law of *Taqleed*, have introduced unnecessary complications of deception by their presentation of arguments with a Shar'i hue, but devoid of Shar'i substance. Their fallacious interpretations and citation of certain *ahkaam* out of context to accord validity to copyright –that it is a Shar'i right which is a valid subject of trade- have resulted in creating confusion in the minds of people not well-versed with the intricacies of the principles and rules of the Shariah. There has, therefore, developed the need for this refutation to dispel the haze of deception which the liberalists have created with their spurious arguments.

We shall now, Insha'Allah, examine their arguments in the light of the Shariah.

DON'T SELL ALLAH'S LAWS

"They have sold the laws of Allah for a miserable price, thereby preventing (others) from His Path. Indeed, vile is what they are perpetrating."

(Surah Taubah, aayat 9)

THE ARGUMENTS OF THE LIBERALS

THEIR FIRST ARGUMENT

(1) In the present age, the dissemination of a kitaab (book) is not exclusively for the purpose of the dissemination of knowledge. The publication of a book is related to trade and commerce. The aim of the Muslim author from the very inception, along with the intention of disseminating knowledge, is pecuniary gain for his effort. In the absence of copyright, the author suffers monetary loss. On the other hand, the person who desires to publish a book without the permission of its author is primarily motivated by the desire for acquisition of material gain. His intention of benefiting knowledge is secondary

It is unjust that the author who had made the effort be deprived of gain while someone else acquires millions (in monetary terms) on the basis of the author's effort and enterprise. According to the Shariah, if *Maslihat* (expediency) does not conflict with *Nass* (an explicit law of the Shariah), then it will be adopted.

THE RESPONSE

Several claims have been presented in this argument. These are:

(a) In this age the publication of a book is not exclusively for the purpose of dissemination of knowledge.

This is an arbitrary claim without substantiation in regard to the publication of books of the Deen, which innumerable Muslim individuals and organisations publish purely for the sake of gaining the Pleasure of Allah Ta'ala. Millions of Islamic books are published and distributed even free in the process of *Da'wat and Tableegh.* This arbitrary averment is sweeping and baseless in relation to books of the Deen. The claimant has not advanced a shred of evidence for his assertion.

Innumerable members of the Muslim community all the over the world contribute substantial sums of money for the printing and dissemination of Islamic books so that they may derive perpetual reward *(Thawaab-e-Jaariyah).* Thousands of books are thus printed and distributed for the benefit and Deeni guidance of Muslims, all in the furtherance of the aims of *Da'wat* and *Tableegh.* Those individuals and organisations who are involved in this type of Deeni activity can speak with greater authority on this subject than the Molwi Saheb whose aim is only to provide Shar'i sanction for the concept of copyright.

It was never contended by the Ulama who claim that copyright is haraam that in this age books are printed exclusively for Deeni purposes. This is another arbitrary claim devoid of substance.

Furthermore, regardless of whether Deeni books are published in this age for altruistic Deeni aims or for monetary gain, this is no grounds for claiming Shar'i validity and permissibility for the concept of copyright. On the assumption that all Deeni books in this age are published for only monetary gain and for no other altruistic aim, then too, this is not a Shar'i basis for the validity of copyright and to trade in it. The Shariah categorically prohibits selling of even valid rights which it recognizes. This issue will, Insha'Allah, be discussed at a later stage in this book. So, whether books are printed and published for Deeni reasons or pecuniary gain or whether exclusively for pecuniary

gain without even the intention of thawaab, then too, this does not constitute Shar'i grounds for validity of copyright and for permissibility to trade in such imagined right.

The claimant implies by this argument that copyright is valid and trading in it is permissible because *in this age books are not published exclusively for the dissemination of the Knowledge of the Deen.* The logical conclusion stemming from this argument is that copyright would not be permissible if Deeni books are published purely for the sake of the Deen. Even this averment is baseless inspite of the altruism. While this is the logical conclusion the presenter of this argument does not make any distinction in the validity of the copyright concept and in the permissibility to prevent others from printing and selling the book As far as the votaries of copyright are concerned, copyright in general is valid and trading in this 'right' is lawful without any restriction.

This entire argument is totally untenable in the Shariah. It is not a Shar'i ground for recognizing the copyright concept and for permissibility to sell and buy this imaginary right If it is, evidence is required. Besides tendering a claim based on personal opinion and preference, there is no Shar'i substantian for this argument. It is utterly baseless.

(b) The publication of a book is related to trade and commerce.

Relationship with trade and commerce is not a Shar'i *daleel* (proof) for the validity of a concept which has no substantiation in the Shariah. Riba, gambling, insurance and many other transactions are also related to trade and commerce. But such a relationship does not constitute grounds in the Shariah for permissibility. Thus, the publication of a book being related to trade and commerce is not a Shar'i ground for the claim of validity of copyright and for trading in it.

This argument also implies that if a book is not related to trade and commerce then copyright will not be permissible. Although this conclusion stems from this argument, the votaries of copyright do not make any distinction in their ruling on copyright. In their opinion copyright is permissible regardless of any relationship with trade or not. The validity of copyright according to them is applicable to even such publishers who print and disseminate books purely for Deeni purposes, without any pecuniary designs.

(c) In the absence of copyright the author suffers monetary loss.

This argument is downright silly. It unworthy of a man of Knowledge to present such an utterly fallacious argument, the fallacy of which is discernable to even those without knowledge. When someone other than the author prints and publishes a book, the money of the author is not usurped. Money which the author has acquired is not taken from him. The publisher of the book employs his own capital and the risk of losing money is exclusive with the publisher. There is no relationship with the author. He does not lose any money when someone prints and distributes the book which he had authored. The question of monetary loss, therefore, does not arise.

The claimant has here confused loss of money with possible loss of future earnings. Loss of future earnings as a consequence of any lawful act of another person is not regarded in the Shariah as monetary loss since already acquired money is not lost. The 'loss' is related to possible future earnings. Should the author earn less in view of competition by a publisher, such less earnings acquired by the author are not termed

monetary loss by the Shariah because the author has not lost anything which he already owned.

There are a variety of factors which can lead to decrease or loss of future earnings. This situation is normal and accepted as fair trade practice. A person who lawfully constitutes a factor for another person's decrease or loss of future earnings is not sinning nor can he be penalized for setting himself up as such a factor. For example, a trader enjoys a lucrative trade in a locality where he has been trading without competition. Some others seeing an opportunity for making money, open shops in close proximity to the trader. They trade in the same commodities and cut their prices. The keen competition they offer results in a substantial decrease n the sales of the first trader. His profit falls considerably. Such decrease in profit is never termed monetary loss since he has not lost money which he had already acquired.

A man earns a high salary. Someone else with the same qualifications and expertise is employed by the same company. The company pays him a substantially lower salary. This leads to the retrenchment of the higher paid worker. His dismissal leads to loss of future earnings. Such loss is not regarded as monetary loss by the Shariah because this person does not lose money which he has already earned. The loss is related to future unearned money. The man who was responsible for the dismissal as a result of agreeing to work for half the salary is not committing a crime by taking up employment which leads to the dismissal of another person.

In these instances, inspite of sustaining future loss of income or decrease in income, it will be in conflict with the Shariah to enact a law prohibiting people from trading in the same commodities in proximity to the already existing and established business. Should the kuffaar introduce such a law and confer to the first trader the right to legally prevent others from trading alongside him, and to sell that right to them, this will not be permissible. The argument of sustaining loss or decrease of future earnings is not a valid basis in Islam for debarring any person from utilizing his lawful Shar'i right *(Haqq-e-Mubah)* to earn. If the vigorous competition he offers the existing trader leads to loss or decrease of future income for the latter, the Shariah tolerates this and does not interpret it as being 'monetary loss' for the simple reason that the affected person has not lost any of his money by the action of the newcomer into the field.

Inspite of the competitor being the ostensible cause or factor for loss of sales leading to loss or decrease of future profit, such competition is allowed and is in actual fact in the public interest. Preventing such competition is tantamount to haraam monopoly. It is haraam to claim the right of debarring competition and to sell such an imaginary right to allow someone to trade in the vicinity. Even if such a practice becomes a norm *(urf)* it will remain invalid –a haraam *urf* (customary practice).

The terms *'ostensible cause'* are mentioned here to show that the true cause for the decrease of income or profit is not the material or worldly factor, but is the Decree of Allah Ta'ala. When Allah Ta'ala decides to restrict, curtail or totally halt the *Rizq* of a person in a specific avenue, He introduces a cause or a worldly factor to which the loss of future earnings is attributed in exactly the same way as death is attributed to a sickness, an accident, a murder, etc. while in reality it is the Decree of Allah Ta'ala.

The Shariah prohibits some acts which can lead to loss of future earnings, and it also allows some acts. An act which is allowed by the Shariah cannot be proscribed on the

basis of any concept of the kuffaar. Thus competition is allowed regardless of any future loss which will be sustained by the competitors. It is the Shar'i right *(haqq-e-mubah)* of a man to compete in trade with another trader. The Shariah recognizes this right. Nevertheless, it is haraam for anyone to sell his right of competition, and it is haraam for anyone to purchase such a right to ensure that he holds the monopoly in that particular area of trade. Even if such buying and selling have become the norm, it will be rejected as haraam by the Shariah.

In exactly the same way, is it haraam to prevent others from publishing a book which they have lawfully acquired. It is haraam to fabricate such a right, then sell it. Similarly is it haraam to purchase this imagined copyright. When a person purchases a book, he becomes its owner. All lawful rights associated with the book belong to him. It is his lawful right to read the book. But inspite of it being his lawful right to read the book, he cannot sell this right nor can he hire out the book and collect a fee from others for reading the book as kuffaar libraries do in this age. Inspite it having become the *urf (norm and practice)* to give books on rental, this is haraam in the Shariah. The book may be sold, not the rights independently.

In fact, while 'competition right' has Shar'i validity, copyright has no such validity. Despite the validity of competition right, trading in such rights remains haraam. A man cannot barter with a competitor and purchase his right of competition to ensure that he refrains from entering into the particular sphere of business. To a greater degree will the prohibition be applicable to an imagined right – a right fabricated by a kuffaar concept. It simply is not a right despite it having become the norm in the present age.

'*Future loss of imaginary or expected earnings'* is not recognized by the Shariah. In kuffaar law this concept is recognized and has validity in their legal system. Thus, a man may sue and claim damages for 'lost' future earnings caused by the action of a person. But the Shariah rejects this concept. Future 'loss' in fact is no loss. At most, it is deprivation from an expected benefit. But this is not a real monetary loss. Monetary loss in the Shariah refers to a loss of real tangible money or *maal* (tangible or physical commodity) which is already in one's possession. It is for this reason that Islam does not order the usurper (*ghaasib)* of a property to pay compensation *(occupational rent)* for a premises which he forcibly occupied without the owner's consent or in defiance of the owner's consent. The kuffaar system recognizes future loss of earnings to be a real loss while Islam does not, hence occupational rent cannot be charged.

The *ghaasib* (usurper) causes real suffering to the owner, for he has occupied the property without consent and in defiance of the wishes of the owner. Inspite of having usurped the right (a real Shar'i right) of the owner of the property, the Shariah does not allow the owner to claim monetary compensation.

Similarly, or to a greater degree will this prohibition of monetary compensation apply to an imaginary 'right' fabricated by the kuffaar system. Unlike the numerous other rights conferred to people by the Shariah, 'copyright' never was such a right, nor was it ever a product of any *Urf (*Custom*)* of any Muslim community at any time in the history of Islam. Therefore, it cannot even be argued on the basis of the fundamental principle which governs rights, namely, *"Buying and selling of rights are not permissible."*

Another example is the theft of a taxi vehicle which is used to generate income. As a consequence of the theft, the owner is deprived of future earnings. The thief utilizes the vehicle to earn money for himself. After apprehension of the thief and recovery of the vehicle, while the owner can claim for any physical damage caused to his vehicle, he has no right of claiming compensation for the loss of earnings. Consider this: the thief has earned a substantial amount of money by operating the vehicle as a taxi, yet the owner has no right according to the Shariah to claim such earnings of which he has been deprived by the action of the thief who had gained monetarily from the taxi.

The Shariah simply does not regard deprivation of future benefit as a monetary loss as the kuffaar legal system recognizes. In the Shariah a true loss will be the loss of tangible commodity (money or material commodities) which is already in one's possession.

Refuting the claim that total or partial deprivation from future benefit is an actual loss, Hadhrat Mufti Muhammad Shafi (rahmatullah alayh) writes in *Jawaahirul Fiqh:*

"This is not dharar (a harm or actual loss). It is the non-existence of a benefit, in fact a decrease in benefit. The difference between dharar and adm-e-nafa' (non-existence of benefit) is quite apparent……..If because of our activity there results a decrease in the profit of someone, then there is permission (for such activity). If in the marketplace there are a number of shops trading in the same commodities, and this results in the decrease of any trader's profit or in the total deprivation of profit, it will not be said that the other traders are responsible for causing him loss. Hence there is neither Shar'i nor rational grounds for preventing the traders from trading (in that area)."

From the aforegoing discussion it should be clear that the averment of monetary loss is devoid of substance and refuted by the Shariah.

(d) "It is unjust that the author who made the effort be deprived of making a profit while someone else makes a fortune on the basis of the author's efforts."

This claim is palpably baseless. When someone else publishes the book, the author is not deprived of making his fortune. The other person acts independently. He is not an impediment in the path of the author who wishes to print and sell his book. The author is in no way whatever precluded from printing and publishing his book. A variety of publishers of the same book leads to healthy competition which is always in the public interest. Innumerable people benefit from such competition whiles the kuffaar concept of copyright stifles and prohibits this competition for the sake of enriching only one man.

While the claim of depriving the author is made, the claimant fails to explain in which way the author is debarred from making his fortune. If someone else who has lawfully acquired the book is able to make a fortune by publishing it, what prevents the author from printing and selling his book? If he is unable to print his book, it is no fault of the others who print it. If he lacks capital for this venture, it is not grounds for preventing others with capital from embarking on the endeavour to make a fortune.

Initially, only the author has possession of his manuscript. He is free to sell it at any price he wishes. The reward of his effort is either the price he acquired for his manuscript or the profit he will make if he himself embarks on the venture of printing

and publishing. But he has absolutely no right of preventing others from making their fortune on the basis of the book which they have purchased or acquired in any lawful way. It is only inordinate greed and selfishness which constrain the author to institute measures to prevent others from earning a halaal rizq. At the end of the day everyone will obtain only his share of rizq which Allah Ta'ala has predetermined.

A man who intends to reprint a book, uses his own capital. He harnesses in a lawful manner all the agents and tools of reprinting the book. It is his effort and enterprise. In this process he does not harm the author in any way whatever. He only offers competition which the Shariah allows. He assists in the prevention of monopolisation which is detrimental to the public interest. His competition benefits thousands of Muslims while the greed and selfishness of the author manifested by way of copyright harm thousands of Muslims. Exorbitant prices and restriction of circulation of the book are most certainly not designed for the benefit of the Ummah.

The attitude of the author is spiritually harmful for himself and for Muslims at large. He allows his inordinate pecuniary greed to restrict circulation of a Deeni book which is of immense spiritual value to the masses. Commenting on this evil attitude of the author, Hadhrat Mufti Muhammad Shafi (rahmatullah alayh) writes in *Jawaahirul Fiqh:*

"The desire of the author or inventor to prevent others from printing the book (or manufacturing the new invention) is merely to enable himself to acquire an exorbitant profit which is far in excess of what the traders in general would make; or his desire is to restrict all the profit for himself alone, thereby depriving others from this lawful way of earning This attitude in itself is harmful for the masses. Instead of debarring others, he (the author because of his selfishness) should be debarred. The Shariah does not condone such profit for an individual which leads to harm for the masses."

The issue of the prohibition of an individual's action which is detrimental for the masses is discussed further in Hadhrat Mufti Shafi's article and *fatwa* on copyright at the end of this book.

It is quite clear that others who print the book are not depriving the author of profit or of any of his rights. The allegation of injustice is thus arrant nonsense.

(e) "According to the Shariah if Maslihat does not conflict with Nass, then its adoption is permissible."

In this averment the votaries of copyright are saying that since the expediency of this measure does not conflict with *Nass* (an explicit law of the Shariah), it is permissible. According to them copyright is not in conflict with any law of the Shariah, hence it is permissible. This claim is likewise baseless.

In the aforegoing discussion it has been shown that:

- Copyright infringes on the natural and lawful right *(Haqq-e-Mubah)* of others besides the author—their right to utilize their own property to earn lawful profit.
- Copyright prevents the free and mass distribution of beneficial Deeni kitaabs.
- Copyright is exploitation since it fosters haraam monopolies and it allows the author to fix exorbitant prices.
- Copyright allows the greed of an individual to cause detriment to the masses.

- Copyright allows monetary dealing in an entity which is not *maal* (tangible or physical commodity). This is haraam. The prohibition of selling rights applies to a greater degree to an imaginary right – a right which does not exist in the Shariah. *(This issue will be elaborated on later in this book, Insha'Allah)*.

All these acts are in conflict with *Nass*. The conspicuity of the conflict with *Nass* does not require the production of evidence. The conflict is obvious, nevertheless, it will be discussed further, Insha'Allah.

THEIR SECOND ARGUMENT

"This matter is not restricted to printed books. It extends to computer programmes and other inventions for which the inventors had to expend great mental effort as well as material wealth. It therefore does not at all seem permissible that after putting in all effort and capital the original inventor is merely given the satisfaction that his invention is benefiting the whole world while others who copy the invention make a fortune."

THE RESPONSE

It is indeed surprising for Ulama to argue in this emotional and superficial manner. The reason for this emotional line of reasoning is the palpable lack of Shar'i evidence for the claim of validity of copyright and patency rights.

The extension of the issue to computer programmes does not alter the ruling of the Shariah. In which way does the ruling require a reappraisal when it is extended to computer programmes? Just as the copyright issue is argued on the basis of the principles and rules of the Shariah, so too should the question of computer programmes be submitted to the Shariah. An ignoramus can argue that the prohibition of copyright will have far reaching ramifications in view of the colossal trade in computer programmes. Hence, for the purpose of legalizing the right to debar others from reproducing computer programmes and from manufacturing new inventions, copyright should be upheld as a legal right subject to trade and commerce.

This type of argument is unworthy for an Aalim of the Deen since it is devoid of Shar'i substance. It is based on pure emotional opinion-- the peculiar emotional motivation being pecuniary greed. The votaries of copyright in presenting this weird argument have not furnished any basis of the Shar'i. The extension of the copyright issue to computer programmes is not a Shar'i *daleel.*

The votaries of copyright have made the fallacious averment that when someone else reproduces a computer programme or manufactures a newly-invented item, the original author and inventor are debarred from making their fortune and have to content themselves with congratulations and praises – all abstract issues which cannot satisfy pecuniary demands and tastes. This is a sweeping and a baseless assumption. The inventor is not debarred from making a fortune from his invented product or programme.

It does not follow from the reproduction of the computer programmes by others that the original author/inventor is prevented from marketing his invention. The profit of the inventor is made when he originally sells his invention. He is allowed to charge any amount for his product. If an entrepreneur discerns profit and fortune in the product, he

will pay the desired price. The inventor may also market his product himself without selling the imagined right to others.

There is no valid Shar'i grounds for begrudging others who reproduce the invented item and make a fortune by trading in it. Why should this not be permissible? The votaries of copyright say: *"It appears not to be permissible"*. They themselves are in a quandary, hence they are unable to issue an emphatic ruling which categorically prohibits others from deriving benefit from an item they had lawfully acquired. They are therefore constrained to say: *It appears not permissible…"* Since there is no basis in the Shariah for preventing others from making a fortune in this manner, the claim that it should not be permissible is utterly baseless.

When others coin a fortune, they are not infringing on the rights of the inventor nor are they usurping any of his wealth nor are they acting in any way which the Shariah prohibits. This argument too is bereft of validity and Shar'i substance.

THEIR THIRD ARGUMENT

"The Shari prohibition of buying and selling *Huqooq-e-Mujarradah* (pure or abstract rights) is not general in that the Shariah does allow buying and selling of certain types of rights. Hence, copyright can also be included in the scope of such rights which the Shariah allows to be bought or sold. In pursuance of this argument, its votaries present the following discussion:

(*a*) *Huqooq* (abstract rights) and *Manaafi'* (Benefits) are terminologies of Fiqh. The Fuqaha have ruled that it is permissible to buy and sell some kinds of these rights and benefits. Examples of this given by the votaries of copyright are the right of thoroughfare or walking on a pathway which is not part of the land of a house bought; the right to drink water from a well; the vacant space on top of a building known as *haqq-e-ilw*; and the right of inheritance.

According to the votaries of copyright, since it is permissible to accept monetary compensation for the abovementioned rights, copyright too comes within the scope of this permissibility.

THE RESPONSE

The votaries of copyright while conceding the prohibition of buying and selling of rights, present certain '*exceptions'*, and on the basis of these exceptions, it is inferred that copyright is permissible. Firstly, the fundamental principle of the impermissibility of trading in rights cannot be denied. It has a real application. It pertains to valid and true rights recognized by the Shariah and which are enforceable by the coercive power of the Islamic state. These are not imaginary rights such as copyrights.

Secondly, on the assumption of the existence of these exceptions and the validity of trading in them, they do not constitute grounds for the claim that buying and selling the imaginary entity of copyright is permissible. If we have to assume that copyright is a valid right, then the fundamental principle governing trading in *Huqooq-e-Mujarradah* (Abstract Rights) will apply, viz., buying and selling of rights are haraam, hence trading in copyrights is likewise haraam.

It is illogic and an arbitrary figment of personal opinion to bring copyright within the purview of exceptions without valid Shar'i basis. The votaries of copyright have not

provided any valid basis for inclusion of copyright in the list of exceptions. The exceptions are basically exceptions exempted from the general law of prohibition for some specific reason. It devolves on the votary of copyright to state the Shar'i *daleel* for including copyright in the list of exceptions for application of the *fatwa* of permissibility. An arbitrary inclusion without Shar'i basis is untenable. The rule of permissibility applicable to the exceptions cannot be transferred to a fabricated and imaginary right spawned by a kuffaar system, without valid Shar'i *daleel.*

If the rule of exceptions be arbitrarily applied to just any right created by norm and custom, the logical consequence will be the displacement or abrogation of the fundamental law which in this case is: *Buying and selling of rights are not permissible.*

Thus, even if we should momentarily assume that copyright is a valid right recognized by the Shariah (but which in reality is not the case), it will be included within the scope of the prohibition of buying and selling rights which is the actual law of the Shariah applicable to rights. It is illogic and baseless to claim its permissibility on the grounds of the existence of exceptions to the general rule. The determination of exceptions for exclusion from the actual *Hukm* (Law) is dependent on a special circumstance or reason *(illat).* It devolves on the votaries of copyright to explain the basis of the exceptions and thereafter to prove with evidence that such basis is to be found in copyright as well. Then only will there be justification for exclusion from the prohibition

The fallacy of the argument presented by the proponents of copyright will be better understood from the following analogy. The meat of lions, dogs, wolves and pigs is haraam. Someone says that the meat of a bear is haraam. A man claiming that bear meat is halaal argues that not all meat is haraam. To justify his argument he cites that the meat of rabbits is permissible. He avers that the Fuqaha have ruled that the meat of wild buck and rabbit is halaal, hence the meat of a bear should also be halaal. He basis his conclusion on the fact that rabbit and buck meat is excluded from the prohibition. Therefore, it is permissible to exclude bear meat also from the prohibition. Everyone will understand that this preposterous reasoning is the product of ignorance. The same applies to the reasoning of those who claim that copyright is permissible because the Fuqaha regard the buying and selling of certain rights to be permissible.

Let us now examine some of the exceptions mentioned by the votaries of copyright.

(i) "When purchasing or selling a house, it is permissible to purchase or to sell the right to walk on the adjacent land which is not included in the land of the house."

The argument in this example is that a right is being traded in. The right to walk in the pathway leading to and from the house is purchased or sold, and this is permissible, hence buying and selling copyright are also permissible.

The votaries of copyright who have presented this argument are guilty of half a truth. They have intentionally cited this example out of its context in such a manner as to mislead the unwary and the ignorant. The unwary reader is led to believe that the buying and selling of the right of thoroughfare are permissible and that this right is bought and sold in the same way as *maal* (tangible commodity). Regarding the sale of the right of thoroughfare, the Fuqaha say:

"In the narration of Az-Ziyaadaat it is said: "It (the right of thoroughfare) is not permissible. Faqih Abu Laith has authenticitated it in view of it being a right from

among the Huqooq (Rights), and the sale of Huqooq independently is not permissible. And similarly is the sale of shirb. In other words it is permissible (like the right of thoroughfare) subservient to the land by Ijma' (Consensus of the Fuqaha)."

(Shaami, Vol. 4, page 118)

There prevails some confusion regarding a minority view from which appears that the sale of the right of thoroughfare is permissible independently. After presenting a detailed discussion on this difference, *Shaami* summarizes it is as follows:

"It is apparent from their statement, viz. the sale of the pathway (i.e. the right to pass through) is not permissible, that the sale (of this right) independently is not at all permissible, and that it is only permissible in subservience (to the sale of the land) in that he sells the house with its pathway." (Shaami, page 118, Vol.4)

On page 117, Vol. 4, Shaami states:

"The meaning (of permissibility) refers to the actual land, not to the right of thoroughfare."

The example of the right of passage given by the Fuqaha is a house or room within a house. Entry to the inner house/room is only by passing through a passageway which belongs to another person. At the time of purchasing the inner house/room, if the passageway is also sold, then the right of thoroughfare being permissible is quite obvious. In his instance the very ground- the tangible passage- is sold to the buyer of the inner house/room. Hence, the *right of passing* here refers to the actual passageway which is a tangible or physical asset within the purview of the definition of *maal* (tangible commodity).

If the actual and tangible passageway is not sold, then the right to pass through the passage to reach the house/room is sold in accompaniment of the sale of the house/room. It is not sold as an independent right to anyone who does not purchase the house/room. The buyer of the inner house/room cannot in turn sell this right of thoroughfare independently to another person. None of the Fuqaha condones the sale of such a right, not even the minority who has averred permissibility of selling it independently to the buyer of the house, on the basis of the interpretation that it is not a mere right, but a share of a tangible asset.

This example of the sale of the 'right' of passage or thoroughfare is totally different from copyright which according to its votaries is such a 'right' which can net one tens of millions of rands and dollars. Whereas the former sale of the supposed 'right' of passage is permissible due to an essential need, the imaginary right of copyright has been fabricated by the inherent greed of the kuffaar and acquired likewise by the motivation of greed.

The attempt to legalize the imaginary copyright on the basis of the analogy with the sale of the right of thoroughfare is indeed a degeneration from the sublime to the ridiculous – from the sublime pedestal of Ilm-e-Deen to the ridiculous level of Jahaalat (ignorance). It is most unworthy of learned men to resort to such ridiculous arguments to bolster their opinions.

(ii) The Right of Shirb

The response to the claim that it is permissible to sell the right of *shirb* (drinking from a dam, etc.) is stated in *Shaami* as follows:

"With regard to (the right of) drinking (from a dam, for example), verily, its sale independently is not permissible, for example he sells the right of drinking for a day or more, because it (shirb—drinking) means the right of drinking and irrigating. Huqooq (Rights) are not the subject of buying and selling by themselves.

If he sells land with the (right) of shirb (drinking/irrigating), then this is permissible as it (this right) is subservient to the land. It is permissible to make something subservient to something else even though it may not by itself be made the objective such as the parts of an animal.

Shirb (the right of drinking)) will not be included in the sale of the land except by express declaration.

It is not permissible to lease the (right of) shirb by itself because Huqooq (rights) are not the subject of leasing by themselves just as they are not the subject of sale." (Badaaius Sanaa', page 179, Vol. 6)

The sale of the right of drinking *(shirb)* is permissible in the unanimous opinion of the Fuqaha *only* if such right accompanies the sale of the land, not the right sold by itself independent of the land.

"The sale of shirb: This is permissible subservient to the land by Ijma'."

(Shaami, page 118 Vol.4)

According to one narration which is not the *Zaahirur Riwaayat*, the sale of *shirb* is permissible independently because it is a share of the water, i.e. a share of a tangible commodity (water). But this is a minority view which is in conflict with the ruling of the *Jamhur*. Even in this obscure view of permissibility, the rationale is that such a sale independently is permissible because a share of the water is a tangible product which constitutes a valid subject of sale. This interpretation excludes *shirb* from the domain of *rights*, hence even in terms of this minority obscure view, there is no substantiation for the votaries of copyright. The *Mashaaikh of Balkh* who are the proponents of the minority view will also refute copyright on the basis of the following factors:

- Copyright is not *maal*.
- Copyright is not even a right in terms of the Shariah.

There is, therefore, no substantiation for the copyright proponents in either the Majority or the Minority view.

Furthermore, the Fuqaha who hold the minority view are unanimous with all the Fuqaha of all the lands of Islam in the fundamental principle: *The sale of Huqooq-e-Mujarradah (abstract rights) is not permissible.* There is absolutely no difference among the Fuqaha on this issue. The presentation of exceptions in no way overrides this fundamental decree of the Shariah.

The summary of the response is:

- The sale of the right of thoroughfare and the right of drinking is conditional. It is a sale which accompanies the sale of the land or the house. Its sale is not permissible independently
- The Fuqaha who have made the exception of an independent sale, do so on the basis on an interpretation that it is a share of a tangible asset.

- All the Fuqaha unanimously agree that the sale of rights is not permissible.
- Exceptions do not abrogate the original law, viz. prohibition of selling rights.
- Copyright is not a valid Shar'i right nor does it qualify as an exception even on the assumption that it is a valid right.

(iii) Haqq-e-Ilw

The third example tendered by the votaries of copyright is *Haqq-e-Ilw* – the right of the space above the roof of a building. The manner it which this example has been presented conveys to unwary persons that the sale of this right is unconditionally permissible. Regarding *haqq-e-ilw*, the following appears in Hidaayah:

"When the ground floor belongs to a person and the upper floor to another person and both floors collapse or only the upper floor collapses, and the owner of the upper floor sells his (right) of the upper floor, then this is not permissible because haqqut ta-alli (or ilw) is not maal."

Commenting on this, Aini states: *"Because the right of the upper floor is related to air (space), and this is not maal."*

In Badaaius Sanaai, Vol. 5, page 166, it appears as follows:

"It is permissible to sell the house on the upper floor without selling the ground floor when there is a building on the upper floor. If there is no building on top, then this sale is not permissible because it is a sale of airspace, and the sale of airspace independently is not permissible."

Allaamah Aini states in Al-Binaayah, page 226, Vol. 7:

"The sale of haqqut ta-alli (haqq-e-ilw) is not permissible by consensus of all narrations."

It is abundantly clear from the aforegoing statements of the Fuqaha that this right of space above a building cannot be sold or bought as the votaries of copyright claim. If it be assumed that it is permissible to sell *haqq-e-ilw*, it will not constitute a basis for claiming permissibility of selling copyright because there is no resemblance between the two – the right of the upper space and the imaginary copyright.

Whatever factor permitted the exclusion of *haqq-e-ilw* (in our assumption) from the general rule of impermissibility of buying and selling pure rights (*Huqooq-e-Mujarradah)*, is not found in copyright to allow its exclusion from the basic law of prohibition of selling rights.

If the votaries of copyright desire permissibility for their imaginary right on the basis of an exception, then it devolves on them to present the common *illat* (cause, reason, circumstance) which occasioned the exception of their basis from the general law of prohibition of trading in rights. It is unintelligent to claim that the meat of a wolf is halaal on the basis of buck meat being halaal. To prove the claim that wolf meat is halaal, there is the imperative need to furnish the *daleel* (proof).

Pork is haraam. However, on account of circumstances its consumption becomes lawful. That circumstance is starvation leading to death in the absence of halaal food. If this *illat* exists and there is only wolf meat available, then due to the common circumstance, wolf meat will become halaal. In the absence of the *illat* it is unintelligent and ridiculous to argue that wolf meat is halaal because not all meat is

haraam. Then to bolster this claim the example of the permissibility of consuming pork is cited.

This is precisely the line of argument of the votaries of copyright. They seek to legalize this imaginary and corrupt 'right' for the express purpose of coining a pecuniary fortune, and in the process infringe on the rights of countless people as well as constituting an impediment in the path of *Da'wat and Tableegh.* This aspect will be discussed further, Insha'Allah.

(b) The Fuqaha have held permissible payment of money to a government official in lieu of him stepping down from his post. A payment may be made to an officer to induce him to quit his post.

What is the resemblance between copyright and the payment of a sum of money to induce a government officer to abdicate his post in favour of another person? The votaries of copyright have truly displayed the low ebb of their 'rational' reasoning in the endeavour to have Shar'i legality conferred to copyright and its buying and selling.

The payment of money for the inducement to abdicate is totally in conflict with the *Qiyaas* (Reasoning) of the Shariah. It is such an exceptional ruling with which the Fuqaha themselves found great difficulty to explain. Commenting on this, Allaamah Aini said:

"The abdication is devoid of substance. However, the Ulama and the Rulers (of the Islamic states) have upheld it because of dhuroorah (necessity)." (Shaami, Vol. 4, page 14)

The conflict with the principles of the Shariah in this ruling has constrained some Fuqaha to say: *"Verily, the money which the abdicator accepts is rishwat (bribe) which is categorically haraam, and Urf (custom/norm) in opposition to Nass (Qur'aan and Hadith) is invalid." (Shaami, Vol. 4, page 15)*

Although Shaami presents an interpretation to rationalise this payment for abdication, the irrationality of it is inescapable. This example cited by the votaries of copyright totally lacks the ability for the constitution of a valid *Maqees Alayh* (Basis for Deduction of a ruling). It is in conflict with *Qiyaas.* The principle governing the validity of *Qiyaas* is that the *Maqees Alayh* itself should not be a ruling which is in conflict with *Qiyaas.*

The payment for abdication is not an act of trade and commerce. It belongs to the category of *Sulh* (Settlement by Compromise). The Shariah allows monetary payment to settle disputes as well as for abdicating rights. It is ludicrous to argue the buying and selling of the imaginary copyright on the basis of an irrational practice which has been excluded from the general rule, viz., *The sale of Huqooq-e-Mujarradah is not permissible.*

It is totally unworthy to present this example for the endeavour to legalize the sale of copyright and the act of prohibiting Muslims from publishing books of the Deen which have been authored by persons other than the publishers. In refutation of even the exception of *abdication from an official post,* Allaamah Shaami presents the opposite view of the Fuqaha in this regard. The discussion in *Raddul Muhtaar, Volume 3, page 386* is as follows:

"It is permissible for the Mafroogh Lahu to reclaim the Maal-e-Faraagh:
(Mafroogh Lahu is the abdicator—the official who stepped down from his post. *Maal-e-Faraagh* is the money paid to him for having abdicated his post). Commenting on this *mas'alah of Ad-Durrul Mukhtaar,* Allaamah Ibn Aabideen states:
"He (the Author of Fataawa Khayriyyah) issued the fatwa in Al-Khairiyyah also that if he (an official) stepped down from his post in lieu of maal (money), then it is permissible for the Mafroogh Lahu (the new official who paid the money to secure the abdication) to reclaim the money because, it (the payment of money) is an act of payment in lieu of a haqq-e-mujarrad (a pure abstract right), and this is not permissible. All the Fuaqaha have explicitly ruled this (prohibition). Whoever has issued a fatwa in conflict with this, has indeed issued a fatwa in conflict with the (Hanafi) Math-hab on the basis of him having taken into consideration Urf-e-Khaas (a special norm restricted to a particular society). And, this is in opposition to the Math-hab. This Mas'alah (of prohibition of trading in Rights) is well-known."
The aforementioned Ruling is the actual, original, most authoritative and rational *Mas'alah* of the Shariah prohibiting the practice of trading in *Huqooq-e-Mujarradah.* It negates even the exception and declares the right of the *Mafroogh Lahu* to reclaim his money from the abdicator. It *is* the Law of the Shariah as stated by *all* the illustrious Authorities of the Shariah. Allaamah Ibn Aabideen's *fatwa* of permissibility does not have greater force, validity and authority than the actual Ruling of the Shariah stated above.

While the *Actual Ruling* is based on an Immutable Principle of the Shariah and is the Fatwa of the Aimmah-e-Mujtahideen, the view of Allaamah Ibn Aabideen is his opinion based on examples which are exceptions to the rule. In addition it is an opinion which comes more than a thousand years after the epoch of *Khairul Quroon* (the Three Noblest Ages of Islam). The view stated in Fataawa Khairiyyah is fully in consonance with the Principles and Teachings of the Shariah. On the other hand, Ibn Aabideen's opinion is at variance with these principles and in conflict with the explicit rulings of the Fuqaha, hence it does not enjoy greater force than the *Actual and Original Ruling* as stated in Fataawa Khairiyyah.

Those who adhere to the explicit ruling of all the Fuqaha, of all the lands and ages of Islam, as mentioned by Allaamah Ibn Aabideen himself, have greater authority and force than those who peddle the cart of imaginary rights on the basis of exceptions which themselves are dubious and riddled with conflicting views.

Furthermore, sight should not be lost of the fact that Allaamah Ibn Aabiden's fatwa of permissibility applies to a real right recognized by the Shariah, not to any imaginary, kuffaar-conjectured 'right' called copyright. Also, the view of permissibility does not allow the *Faarigh* (Abdicator) to sell his right to all and sundry who will put up the post for sale. The votaries of copyright, therefore, have absolutely no grounds for presenting this view in justification of copyright.

(c) "Some Fuqaha have, on the basis of Urf-e-Khaas, even permitted taking goodwill for shops and Waqf property, which is totally unlawful."

The mentality of these votaries of copyright is truly corrupt and weird. They admit that practice of charging goodwill is *'totally unlawful'*, yet they audaciously advance it

as a basis for the endeavour to legalize copyright. If "some Fuqaha" have legalized "goodwill" in view of certain peculiar and special circumstances, it does not follow that this unlawful practice has become permanently lawful and the original ruling of prohibition has become permanently abrogated. Furthermore, it is absolutely ludicrous to present a haraam practice for a basis of deduction. There is absolutely no validity in this argument. In fact, to entertain this type of unprincipled reasoning is an insult to knowledge and intelligence.

The insipidity of the palpable drivel of presenting as a basis of deduction an isolated haraam practice, legalized by some Fuqaha on account of some specific circumstance in a restricted sphere of a particular community –the community of Cairo in this instance—should be quite apparent to those who have a proper understanding of the operation of the principles of the Shariah.

(d) All the statements of the Fuqaha pertaining to Huqooq-e-Mujarradah (Rights) and Manaafi' (Benefits) are not based on any explicit aayat of the Qur'aan or Hadith. All such statements are the opinions of Ijtihaad and Qiyaas, hence there is scope for further examination (with the intent of producing change)."

This miserable averment of the votaries of copyright, who happen to be Molwis, exposes their hidden preference for *admut taqleed* or abandonment of Taqleed. For the sake of legalizing the imaginary copyright, this sweeping claim has been made. In fact, the very basis of the Shariah is rocked by this utterly fallacious assertion. The very same tune of re-interpretation of the Shariah sung by the modernist *mulhideen* is being piped by the liberal molwis who have resolved to confer Shar'i legality to every haraam commercial practice of the capitalist kuffaar.

In view of the gravity of this claim, it is an incumbent duty on these votaries of copyright to dissect all the statements and principles of the Shariah pertaining to *Huqooq-e-Mujarradah and Manaafi'*, and to show exactly which of these juridical principles and details are the mere products of opinion of the Fuqaha, which today stand in need of re-interpretation.

These molwis have failed to understand that the *Usool* (Principles) of the Shariah are immutable being based on Qur'aanic and Hadith *Nusoos.* Thus the specific *ahkaam* structured on these immutable principles are likewise in the category of immutability until such time that evidence is forthcoming to prove an error in the process of deduction.

It devolves on the votaries of copyright to categorically state if the fundamental principle, viz., *The Sale of Huqooq-e-Mujarradah is not permissible,* is in need of re-interpretation. The Fuqaha did not suck such principles out of their thumbs. Their rulings based on the immutable principles of the Shariah are not the figments of imagination as is the copyright issue which is purely and plainly a kuffaar concept which has no validity in the Shariah.

It is necessary for them to state which ruling or principle has to be re-interpreted to gain legality for copyright and to trade therein. It also devolves on them to study the basis from which the Fuqaha have evolved the principles.

(e) Copyright is maal (tradable commodity). Tangibility or being of a physical nature is not a requirement for something to be maal. The definition of maal has been fixed by Urf (Prevailing Custom), hence can change with variation in Urf. In future too, the criterion for the determination of what actually is 'maal' will be customary norm. In fact according to the Shaafi Math-hab 'maal' is every such thing from which benefit is acquired whether it be a tangible object or an abstract benefit. The same is also understood from the versions of the Maaliki and Hambali Math-habs. These Math-habs fix 'manfa-at' (benefit) as the basis of 'maaliyyat' (being maal), be the entity tangible or intangible."

This type of unprincipled reasoning reveals that the liberal Molwi who has tendered this argument is experimenting with *Admut Taqleed*. While overtly he and his colleague liberal Molwis are followers of the Hanafi Math-hab, they covertly betray the tendencies of the 'holy' cows and bills of India, which roam around aimlessly, eating from this one's basket and that one's basket, and in the process being the recipients of a whacking administered to them by some irate owners of the baskets into which they burrow their mouths.

The liberal Molwi who presents this type of incongruous and warped argument should firstly state whether he is a Hanafi, Shaafi, Maaliki or Hambali. The Deen is not an object to trifle with. The immutable Shariah of Islam is grounded in an Imaan of eternal values and transcendental facts, the declaration of which is made in several Qur'aanic aayat and Ahaadith of Rasulullah (sallallahu alayhi wasallam). Thus, the Qur'aan declares:

"Then We have established you on a Shariah. Therefore follow it, and do not follow the base desires of those who lack knowledge."

(Surah Jaathiya, Aayat 18)

"This Day have I perfected for you your Deen, and (this Day) I have completed for you My Favour, and I have chosen Islam for you as your Deen." (Surah Maa'idah, Aayat 3)

The Shariah of Allah Ta'ala is not an ambiguous concept which submits to a process of metamorphosis and transformation with the vicissitudes of the fluctuating whimsical desires of man. The Shariah is a constant, divine entity which had acquired its pinnacle of perfection in the very age of *Risaalat.* The obligation and function of the Aimmah-e-Mujtahideen such as Imaam Abu Hanifah, Imaam Maalik, etc. were merely to evolve the principles of the Shariah and codify and systematise the entire edifice of this sacred immutable Shariah which is structured on the Final Word of Allah Azza Wa Jal, viz., *Wahi Matlu' (the Qur'aanic Revelation) and Wahi Ghair Matlu' (the Ahaadith of Rasulullah—sallallahu alayhi wasallam).*

The claim of the liberal Molwis, portraying themselves overtly as Hanafis, that these immutable Shar'i principles are the opinions of the Aimmah-e-Mujtahideen, hence subject to re-interpretation, is religiously scandalous since this notoriety is uttered by men of learning who are professed followers of the Hanafi Math-hab.

They have absolutely no grounds and no justification to attempt a defence of copyright by sampling from the different Math-habs thereby churning up a hotchpotch concept which has no validity in any Math-hab. Such *Talfeeq* (fallacious admixture) of Math-habs is reprehensible according to all Math-habs. None of the Math-habs condone

this type of freelancing in which the liberal extracts issues which appeal to his whimsical fancies in the sphere of Deeni *masaail.*

If the liberal Molwis have abandoned their allegiance to the Math-hab they profess to be adherents of in favour of donning the mantle of *Admut Taqleed,* they should boldly make their proclamation, and desist from the elusive exercise of flitting from Math-hab to Math-hab in search of arguments when they realise that their argumentation is devoid of substance in terms of the principles of their professed Math-hab. If we are debating with a ghair muqallid, then we shall know what direction to take in the exercise to neutralise his arguments.

Citing this Math-hab and that Math-hab for support upon the display of bankruptcy of *dalaail,* conveys the distinct impression of a drowning man clutching at every floating straw. These Molwis who propound the concepts of liberalism of the western world are confusing ordinary Muslims with their misleading arguments presented in academic hues. But the vision of men of Knowledge penetrates the haze to discern the incongruency and diabolism of the proponents of modernism who come squarely within the ambit of the following fear stated by Rasulullah (sallallahu alayhi wasallam): *"Verily, I fear for my Ummah the Aimmh-e-Mudhilleen."* That is, such learned men – Imaams, Molwis and Sheikhs – who will mislead the Ummah with sanctimonious arguments motivated by the twin ailments of *hubbe-e-jah (love of name/fame) and hubb-e-maal (love of wealth).*

To prove their point – which they can never do on the basis of the Shariah – there is the imperative need for the liberal Molwis to state with exactitude:

- What do they believe copyright is? Is it classified among *Huqooq-e-Mujarradah* or is it *Maal?* Whatever it is in their opinion, they should state it without ambiguity.
- For the claim they make, it is necessary that they cite their Shar'i *dalaail* and basis of deduction. Concealing in ambiguity by the presentation of a concoction of postulates, principles, exceptions and suggestions drawn from a variety of Math-habs is not a principled argument. It is devoid of Shar'i substance and rational value.
- If they aver that copyright is a valid right, then in addition to proving this claim with Shar'i *daleel,* they are obliged to categorise it and assign it to a class of *Huqooq*. Upon this classification, they must provide the *daleel* for their choice.
- If they exclude this imaginary right from the category of *Huqooq* to which the prohibition of sale is applicable, it will not suffice to tender as proof a couple of exceptions. It devolves on them to present the *common illat* on the basis of which the exception from the prohibition is justified.

THE DIFFERENCES OF THE MATH-HABS

Seeking refuge behind the extremely thin veneer of Math-hab differences does not avail the cause of the liberal Molwis. Inspite of the existence of differences among the Math-habs, the validity of copyright cannot be substantiated on the basis of any of the Four Math-habs.

The sale of a right in accordance with any Math-hab is not a basis for proclaiming the validity of copyright because no Math-hab recognizes this imaginary right which militates against the teachings and spirit of Islam.

Furthermore, recourse to a teaching of another Math-hab is permissible only in cases of dire need. On the assumption that copyright is a valid right, then too, it is not permissible to extract a ruling of permissibility from another Math-hab to permit trading in this 'right' in view of the fact that there exists absolutely no need for this extreme measure. The masses of the Ummah are not at all affected adversely if a couple of authors are not allowed to sell publishing rights to amass fortunes for themselves. On the contrary, the masses will benefit if such a right is not granted to the authors.

Besides presenting some ambiguous statements regarding the definition of *maal* and rights in the other Math-habs, no attempt has been made to show precisely the grounds on which copyright and preventing others from publishing a book are permissible in terms of the Maaliki, Shaafi and Hambali Math-habs.

The vagueness and hollowness of the arguments of the votaries of copyright are conspicuous from their very endeavour of seeking refuge in the folds of other Math-habs. This in itself is an admission of the untenability of copyright in terms of the Hanafi Math-hab. Hence the need has arisen for scouring elsewhere for 'proofs' to ratify the imaginary right. If the liberal 'Hanafi' Molwis peddling the case of copyright were able to conclusively prove the validity of copyright on the basis of the principles of the Shariah in terms of the Hanafi Math-hab, they would not have ventured into the pastures of the other Math-habs.

THEIR FOURTH ARGUMENT

They say: According to the Hanafi Fuqaha there are two types of rights. (1) Such rights which the Shariah has ordained to save people from harm, e.g. *haqq-e-shufa', haqq-e-qisam, haqq-e-khiyaar-e-buoogh, etc.* These rights protect people against possible harm which could befall them in the absence of these rights. A person may give up his right, but may not accept payment or sell this right (of this category). If he is prepared to forgo this right, he implies that the possible harm for which the Shariah has ordained this right does not exist in relation to him. Hence, he is not allowed to sell this right. The votaries of copyright acknowledge this and assert their acceptance of this position.

(2) The second category consists of such rights which the Shariah initially grants people. These are fundamental rights given by the Shariah to man and are not occasioned by the need to ward off possible harm, e.g. the right of qisaas and the right of the husband to sustain the nikah as long as he desires. It is permissible to accept money in lieu of abdicating such rights. Thus, the heirs of a murdered man may accept money from the murderer in lieu of their right of qisaas (i.e. to have him executed). Similarly, a husband may accept payment from his wife to release her from the marriage bond. This is termed Khula'.

In the same way copyright belongs to this category of rights. It is a right which stems from the author's effort from the very beginning, hence it is permissible for him to sell and transfer this right to another person. In addition he may protect his right as well by registering the copyright.

THE RESPONSE

In the presentation of this classification of rights, the votaries of copyright have only succeeded in entrapping themselves in a situation which confirms that it is unlawful to sell this 'right' even if it be accepted to be a valid right. In the first category of *Huqooq* the reason for such rights is stated to be *dafa' dharar*, i.e. to ward off harm or to save one from possible harm. Thus *Haqq-e-Shufa'* (the preamptive right of buying an adjacent property) is to save one from the harm and distress which an evil neighbour can cause. The Shariah therefore grants man this preamptive right of buying the property next to his home to avoid the mischief of evil persons who may become his neighbours.

Similarly, a wife has the right of spending the night with her husband. If he has more than one wife, each wife has her fixed number of nights. This right is to save her from injustice which the husband may cause to her by spending more nights with his other wife.

These are such rights which may be abandoned, but may not be sold or exchanged for monetary gain. The stated rationale for this category of *Huqooq*, accepted by the votaries of copyright, is *dafa' dharar*. They have conceded that if the basis of a right is *dafa' dharar*, then it is not permissible to sell it or accept payment for it.

In the arguments which the votaries of copyright present to justify trading in this 'right', the very first and fundamental argument tendered is *dafa' dharar*. They vociferously claim that when others have the right to publish, the author suffers monetary harm/loss. In fact, this is the prime objective of their entire exercise. The fulcrum on which hinges the desire to legalize copyright and to prevent others from publishing the book is to allow the author the monopoly of publishing or selling the 'right' of publishing for an exorbitant sum which he would not otherwise have gained if everyone in the street is allowed to print, publish and sell cheaply.

There is absolutely no other reason for registering copyright. Now since the declared motive is *dafa' dharar* to ensure maximum monetary gain for the author, this imagined 'right' of copyright should be logically assigned to the first category of *Huqooq* in terms of the claim advanced by the votaries of this 'right', who have conceded that the rights belonging to this category are not tradable, hence the prohibition applies to copyright as well.

In this entire debate, it is of vital importance to understand that after the votaries of copyright have exhausted their entire stock of proofs, they have unambiguously stated that the prime aim of copyright is *dafa' dharar or to protect the author from loss/harm which other publishers can cause by publication of the book.* Everyone understands that this is the prime, in fact, the only motive for copyright. Thus, they have effectively assigned copyright to the first category of rights which according to their own acknowledgement are not tradable entitities. This ruling is therefore confirmed for copyright even if we have to assume this to be a valid Shar'i right, which of course it is not.

THEIR FIFTH ARGUMENT

They say: The claim that printing and publication of books are *Mubaahul Asl* (i.e. initially or naturally lawful) does not mean that there are no restrictions. If a buyer and seller are arranging between themselves the price of the commodity of sale, it is not permissible for a third person to butt in and offer more. He has to wait until finalisation of the discussion between the two, and then offer a price if the first buyer had opted out. The Hadith categorically prohibits such interference inspite of the fact that it is *mubaahul asl* for the seller to present his product to the buyer for whom it is likewise *mubaahul asl* to offer a price and buy. Nevertheless, the Shariah places the restriction of preventing interference by a third person until termination of the negotiation.

Notwithstanding *Mubaahul Asl* neither another seller of products nor a buyer may interfere. They have to incumbently wait for the outcome of the negotiation between the first seller and prospective buyer.

In exactly the same way does the Hadith prohibit a man from sending a proposal of marriage to a girl who is in the process of deciding to accept or reject a proposal already received. Notwithstanding that it is *Mubaahul Asl* for any man to make a proposal, the Shariah prohibits him and orders him to wait until a decision has been made regarding the first proposal already received by the girl.

Copyright should be reasoned on the same aforegoing basis. The prohibition in the aforementioned examples is due to causing *dharar* (harm) to others. Similarly, to save the author and the inventor from loss/harm (*dharar)*, they should be given the right of protection, viz. copyright and patency right to compel publishers to desist from causing *dharar* to the author.

THE RESPONSE

It is this type of unprincipled argumentation which confuses the unwary ones. It is a reasoning which is the consequence of shallowness in understanding. Those who argue against the validity of copyright, namely, Hakimul Ummat Maulana Ashraf Ali Thaanvi, Hadhrat Maulana Rashid Ahmad Gangohi, Hadhrat Mufti Muhammad Shafi, Hadhrat Mufti Mahmood Gangohi, Hadhrat Mufi Rashid Ahmad (Author of Ahsanul Fataawa) and countless other senior Ulama, never contended that *Mubaahul Asl* is a principle without restrictions. We can assure Muslims that these illustrious Ulama-e-Haqq, who are our Akaabireen, understood the principle of *Mubaahul Asl* better than the understanding of the liberal Molwis of this age.

It is well understood that some acts which are *Mubaahul Asl* have restrictions regulating them from the very inception while others acts are governed by conditions which come into force subsequent to a person acquiring the *haqq*. This is not the occasion to elaborate on this issue. It will suffice to say here that the Akaabir Ulama were well aware of the restrictions and their ways of application to the different categories of *Mubaahul Asl* acts.

In the two examples presented above by the votaries of copyright, the restrictions came into force at such a stage when the subject was no longer *Mubaahul Asl*. When two persons are in the process of negotiating the price for the commodity of sale, the

rule of *Mubaahul Asl* falls away in relation to a third person who intends to enter the arena. As long as the negotiation is in progress, it is not *mubaahul asl* for a third person to interfere and influence either the buyer or the seller. When the process has terminated and no sale was effected, the rule of *Mubaahul Asl* becomes again applicable. Now the third person may avail himself of this right.

The same explanation applies to a marriage proposal under consideration. The initial *Mubaahul Asl* right is extinguished in relation to another prospective proposer as long as the first proposal is under consideration. If the first proposal is rejected, the *Mubaahul Asl* rule is rekindled.

The proponents of copyright concede that publishing a book or reprinting a book from a lawfully acquired copy, is *Mubaahul Asl* for the owner of the book. They, however, seek to restrict this inceptional right with copyright. To achieve this aim they have cited the two examples mentioned above. Just as the right of publishing is *Mubaahul Asl* for the author, so too is it *Mubaahul Asl* for the one who has lawfully acquired the book. While the effort of the author grants him a preference over others in accordance with the kuffaar-spawned concept, he enjoys no such preference in terms of the Shariah.

The *Mubaahul Asl* right of a person cannot be cancelled or restricted merely by the desire of the author for greater pecuniary gain. Such a desire is not a *Murajjih* (Determinant) between two equal entities in terms of the Shariah. Both enjoy the same degree of *Mubaahul Asl* rights. The author's *Mubaahul Asl* right cannot be given preference without a valid Shar'i determinant.

This inceptional right allows the author to print and sell his book. In the same way does it allow another person to print and sell the book. The other person does not deny the author's right to publish his book. He does not interfere with any of the rights of the author. He only offers lawful competition in trade. This is allowed by the Shariah.

Copyright in actual fact interferes with the *Mubaahul Asl* right which the Shariah has given to the person who desires to print the book. This right is not dependent on being an author. It is a right unencumbered with conditions initially.

The analogy with the interference of a third person in the price arranging process in progress, and with the marriage proposal under consideration is palpably false.

A man opens a shop in a place where there are no shops. He struggles and makes much effort to establish the business. After he has put in considerable effort to make the business a lucrative one, another person seeing the scope for making money, opens a shop right next to the existing shop and he stocks his shop with the same merchandise. As a consequence of his action the sales of the existing shop decreases by 50%, and so does his profit. According to the copyright rationale, the first shopkeeper should be protected by a shopright to prevent others from encroaching on his trading domain. Such a right will be on the same basis of *dafa'dharar* which constitutes the motivation for copyright. But hitherto such a concept (of shopright) has not yet been conjured up by the kuffaar system. If in future such a right is given effect, then our liberal Molwis will argue its permissibility on the same grounds they are now presenting the case for copyright.

The Hadith proscribing the submission of a price offer during a price negotiation in progress and a proposal on a proposal does not curtail anyone's *Mubaahul Asl* right as the votaries of copyright have attempted to convey. Rather, the Hadith prevents others

from interfering with the *Mubaahul Asl* right of those who have already implemented it and are in the process of an engagement in consequence of having invoked their *Mubaahul Asl right.*

Thus, the one who occupies a place first in a Musjid or any other public venue, has a prior claim over that place to the exclusion of all others. Before he had occupied the place, it was *Mubaahul Asl* for everyone. After his occupation, this right is extinguished for others as long as his retains his occupation. After abandoning occupation, the *Mubaahul Asl* right for others returns. It is therefore baseless and misleading to cite this Hadith in support of copyright which in fact constitutes an interference and an impediment for the *Mubaahul Asl* right of other publishers

The Shariah does not give anyone the right to interfere with the *Mubaahul Asl rights* of others if they do not adversely affect the rights of others. Let alone the publisher interfering with the *Mubaahul Asl* right of the author, it is the latter who interferes and restricts the publisher's inceptional right by invoking the kuffaar system of copyright.

THEIR SIXTH ARGUMENT

They say: *The better basis for analogising authorship of a book is the legality of accepting wages for teaching the Qur'aan, for Imaamate and for giving Athaan. For the purpose of the propagation and protection of the Deen, the perpetuation of writing and distributing books is not of lesser importance. On the basis of this need the Fuqaha have ruled it permissible to accept wages. In the same manner should it be permissible to accept monetary gain for the right of publishing books.*

THE RESPONSE

This analogy is laughable. It does not behove *Ahle Ilm* (People of Knowledge) to argue with such puerility. It is conceded that in our age the dissemination of Deeni books is of vital importance for the propagation and preservation of the Deen in a similar way as the teaching of the Qur'aan is. At least we and the votaries of copyright are united in this view.

Now what course of action will serve this laudable aim of propagating and guarding the Deen better? Restricting the publication of the Deeni book by preventing others from printing and disseminating the books intensively and extensively, and allowing only one publisher to print and sell the book at a high price thereby severely curtailing the distribution, or to permit all and sundry to print and distribute the Deeni books free or at low prices? The greater the number of publishers and the cheaper the book is sold, the wider the circulation, and the more people will be reading the book.

The purpose of dissemination of the teachings of the Deen and its protection are thus better served in the absence of the confounded kuffaar concept of copyright.

The votaries of copyright aver: *"The Fuqaha have proclaimed wages permissible for teaching the Qur'aan, etc. for the sake of protecting and disseminating the Deen."* Hence, the same permissibility should be extended to the author of a book since he too is involved in the process of protecting and disseminating the Deen by the publication of his book.

This argument is ludicrous and devoid of substance. If the author is involved in this activity, then the several other publishers of the book are fulfilling this incumbent need in a better way by the mass and cheap distribution of the books.

For the acquisition of monetary gain for the author, there is no need to argue the case on the ruling of permissibility of wages for those who teach the Qur'aan and perform duties of Imaamate, a permissibility which the expediency of necessity had dictated. As far as the author of a book is concerned, it is his right to print, publish and sell his books. There is no need to invoke any principle of the Shariah for this because unlike wages for teaching the Qur'aan Majeed, monetary gain for selling books never was unlawful at any stage. There is simply no sense in this argument of the votaries of copyright. The author can make his money without the encumbrance of the haraam imaginary copyright. This analogy simply has no validity.

NARRATING HADITH AND REMUNERATION

Among the arguments presented by those who are opposed to copyright is the fact of the Muhadditheen having prohibited acceptance of remuneration for narrating Ahadith. The printing and dissemination of Deeni books belong to this category of prohibition.

While we confess that we do not quite comprehend the relationship between acceptance of monetary remuneration for narrating Hadith and printing and selling of books, we shall nevertheless, respond to the counter argument. In their argument presented in refutation of this claim, the votaries of copyright say:

"Undoubtedly, the majority of the Salf-e-Saaliheen (Pious predecessors of the early epoch of Islam) have prohibited taking remuneration for narrating and teaching Hadith. Hasan Basri, Hammaad Bin Salmah, Salmah Bin Shabeeb, Sulaiman Bin Harb, Abu Haatim Raazi, Shu'bah and Imaam Ahmad Bin Hambal—all of them have narrated this prohibition. Not only this, they in fact would refuse to accept the narrations of those who accept remuneration for narrating Hadith. However, some very senior authorities of the Deen such as Abu Nuaim, Ali Bin Abdul Aziz, Taaus and Mujaahid would accept remuneration without hesitation for narrating Hadith."

This response is not valid. A refutation should be based on Shar'i principles and teachings, not the practices of individual Ulama. If the personal practice of an Aalim, be he of the highest class, appears to be in conflict with the ruling of the Shariah, his personal act does not constitute *a daleel* to be presented as a basis, especially when his act appears to be in conflict with the teaching of the Shariah. Since the authority happens to be an accredited person and an accepted Aalim of the Deen, his peculiar deed will be set aside or a suitable interpretation will be applied. Never will his action become a basis for the deduction of Shar'i masaail.

Some very peculiar deeds and opinions are attributed to many senior Ulama, which are in conflict with the clear teachings of the Shariah or with the *Jamhoor* ruling. Such peculiarities will necessarily be set aside.

With regard to publication of books, this argument is irrelevant because it is permissible to sell books. Printing books involves money. Printing and distribution costs are high. Books are tangible commodities *(maal)*, the buying and selling of which are perfectly permissible. Selling books cannot be argued on the basis of acceptance of remuneration for verbal narration of Hadith.

THEIR SEVENTH ARGUMENT

They say: "*Every person has the right to sell his wares at whatever price he wishes. In fact, Rasulullah (sallallahu alayhi wasallam) has prohibited interference with this right of the traders. Notwithstanding this prohibition, if someone misuses this permissibility by excessively increasing prices, then the Fuqaha have made provision for the government to control and fix the prices. In this regard, it appears in Fathul Qadeer: 'If the owners of food charge exorbitant prices and the Qaadhi becomes helpless in his duty of protecting the rights of Muslims except by means of price-control measures, then there is nothing wrong in this if this is done in conjunction with the people of experience and knowledge.*"

Copyright should also be based on this. Inspite of whimsical prices being Mubaah (permissible), it has been prohibited (by the Fuqaha)."

THE RESPONSE

This is another example of the legless type of arguments which the votaries of copyright tender. In the example of price-control by the authorities cited by the proponents of copyright, the Fuqaha have not abrogated the Shar'i *hukm* pertaining to *Mubaahul Asl*. They do not prohibit what is *Mubaahul Asl*. The prohibition is of exploitation which brings hardship to the masses. Such exploitation is not *Mubaahul Asl*. It is haraam from the very inception.

Furthermore, the Fuqaha explicitly mention that the price-control is related to essential foodstuff or to the staple food of people. It does not relate to items of comfort and luxury, nor to foodstuff which is available in the open market from numerous business outlets. The ruling of the Fuqaha mentions with clarity that such price-control can be enacted when the rights of the Muslim public are violated and cannot be protected without action by the rulers.

What resemblance does copyright have with this situation? What rights of the Muslim public will be exploited if copyright is assigned to the trash? How will the Muslimeen suffer if some selfish authors inspired by pecuniary cravings are not allowed to monopolise the publication of books? On the contrary the Muslim masses will vastly benefit if there does not exist copyright to thwart the mass publication of books. In addition to cheaper books, a greater number of people will read the books.

The prohibition stated in the passage from Fathul Qadeer regarding price-control applies to the author who seeks to establish a monopoly for himself. It does not apply to those who act in the public interest by reducing prices and better serving their Deeni need for books of the Deen.

THEIR EIGHTH ARGUMENT

They say: "*Nowadays trade marks and name brands are also registered. If others also utilize these trade marks, then from the business point of view it will be tantamount to great uncertainty and deception. Customers will be deceived. An important principle of the Shariah is that there should be no deception (or fraud) committed. Therefore, the registration and reservation of a trademark and its right, are in total compliance with the Shariah.*"

THE RESPONSE

Registration of a trademark or of a book for the purpose of preventing deception, fraud and misleading the public, has never been contested. The issue of contention is the buying and selling of an imaginary right, and if it is assumed to be a real right, then too, its buying and selling are not lawful.

Misleading people, deception and fraud are undoubtedly haraam. The argument against copyright is not directed against these evil practices. The prime aim of copyright is to prevent others from printing the book and selling it cheaply. As far as copyright is related to preventing distortion and mutilation of the text of the book, 'copyright' is in support of the Shariah's prohibition of falsehood and deception. There is no need to prove any right of the author on the basis of the kuffaar concept for ensuring the prohibition of deception.

THEIR NINTH ARGUMENT

The votaries of copyright cite the following Fatwa of Hakimul Ummat, Hadhrat Maulana Ashraf Ali Thanvi (rahmatullah alayh):

"*Every person has the right to keep a name for his business. But if a man has named his business 'Ittarstan' (for example), or 'Gulshan-e-Adab", and his business interests are related to this name, then others do not have the right to keep the same name. Since acquisition of wealth in the future and business interests are related to a specific name, it is permissible to take compensation of goodwill (for the name).*"

(Hawaadithul Fatawa, Vol. 4 –Extracted from Nizaamul Fatwa)

Commenting on this Fatwa, the votaries of copyright say: *In this regard the Fatwa of Hadhrat Maulana Ashraf Ali Thanvi is an eye-opener."*

THE RESPONSE

What about the Fatwa of Hadhrat Maulana Ashraf Ali Thanvi (rahmatullah alayh) on copyright itself? Is that Fatwa not an eye-opener on this issue? Hadhrat Maulana Ashraf Ali Thanvi (rahmatullah alayh) has explicitly prohibited copyright and refuted the claim of it being a valid right. Those who have cited his abovementioned fatwa are ignoring the fact that notwithstanding this fatwa, Hadhrat Thanvi (rahmatullah alayh) prohibited copyright.

On the question of trademark, Hadhrat Thanvi also states in *Imdaadul Fataawa, Vol.4, page 152,* in response to the following question:

"Zaid has fixed a trademark, e.g. Shamseer or Miqraadh, for certain of his products, and he has registered it with the intention of protecting his trademark to prevent others from adopting it. If Bakr also adopts the same trademark, will it be permissible or not?"

ANSWER

"According to the Shariah there is no violation of Zaid's right in this. However, because of confusion, this is not permissible because people will be deceived."

We have not seen the kitaab, *Hawaadithul Fatwa* nor do we have *Nizaamul Fatwa* to check the question and the context of the Fatwa. At this point while writing this book we have not been able to acquire these Fataawa kitaabs, hence we cannot comment in detail on Hadhrat Thanvi's Fatwa pertaining to monetary compensation for a trade

name. We do not know at this stage what Hadhrat Thanvi (rahmatullah alayh) had understood by the term 'goodwill' which the questioner had mentioned. Hadhrat uses the very same English term. The possibility of confusion, misunderstanding and inadequate information provided by the questioner are factors to be considered. Anyhow, Hadhrat Thanvi's ruling on the prohibition of copyright is abundantly clear. His fatwa on this issue appears at the end of this book.

Hadhrat Thanvi's views on the reality of 'trademark' is also stated in his fatwa mentioned above, in which he says that none of the rights of the person whose trademark it is, is violated by another person's adoption of it.

Since the adoption of the trademark by another person does not prevent the first person from utilizing it, none of his Shar'i rights is violated. However, in view of the deception and confusion this may cause, it is not permissible for anyone to adopt another person's trademark. This prohibition is not based on any notion of *dharar* since the Shariah does not accept decrease in sales or future profit as *dharar* (loss/harm).

From the two abovementioned fatwas of Hadhrat Thaanvi (rahmatullah alayh), the conflict is conspicuous. The fatwa of permissibility has to be set aside since it is in conflict with Hadhrat Thanvi's own views on this issue. It is also in conflict with the *Jamhur*. It cannot be accepted as a basis for the permissibility of copyright, moreover when Hadhrat Thanvi himself has declared copyright to be *baatil* and *haraam.*

THEIR TENTH ARGUMENT

The votaries of copyright contend that this imaginary right comes within the Shariah's definition of maal (tradable commodity). They have made a big issue of this argument by resorting to interpretation of different definitions given by the Fuqaha of the various Math-habs. They contend that 'maal' is not confined to tangible objects. Even certain rights are within the scope of the definition of maal. Copyright on this basis is also maal, hence trading with it is permissible.

THE RESPONSE

Inspite of differently worded definitions for *maal* given by different Fuqaha, there is no explicit mention in any of the definitions nor discernable in any of the examples that *maal* is anything other than tangible assets. Such rights which are saleable subject to certain conditions, are referred to as *Huqooq* by the Fuqaha, not as *maal.* Similarly, *benefits* which have monetary yield are called *Manaafi'.*

The votaries themselves have conceded that such rights which are saleable belong to a particular class of *Huqooq* (Rights) which the Fuqaha do not regard as *maal* notwithstanding the permissibility of accepting monetary compensation in lieu.

Let us momentarily assume that copyright is *'maal'*. The consequence of this conclusion, at most, will be the permissibility for the author to sell this *'maal'* (which in reality is 'maal' in his imagination). Such a sale does not give rise to another right, viz., the right of preventing others from employing and diposing of their own *maal* as they deem fit.

The book which another publisher has lawfully acquired is his *maal.* He cannot be prevented from *tasarruf* (operating) in his *maal* on the basis of someone else having similar or identical *maal. Tasarruf* in one's *maal* is an inherent right which the owner

of the *maal* enjoys. His inalienable right to utilize his property cannot be alienated on the basis of the argument that the author of the book will suffer loss of future monetary gain. In view of this reality, copyright becomes a useless device for the author who has an ulterior motive for having secured this imaginary right.

If copyright is *'maal'* as the votaries of it claim, they should then be treated as *'maal'* and apply to it all the rules of the Shariah pertaining to *maal.* When *maal* is legally transferred into the ownership of a person, he is allowed to trade with this *maal* as he deems proper. His ownership of the *maal* does not entitle him to interfere with the rights of others and prevent them from selling identical *maal* which they possess.

The action of others in selling their identical *maal* does not interfere with the author's action of selling his '*maal'*. Thus, copyright even if accepted to be 'maal' does not benefit the author in anyway since he is not allowed by the Shariah to impede the rights of others.

HUQOOQ ARE NOT MAAL

It is essential to understand that the votaries of copyright by giving their own personal interpretations to the several definitions of *maal* presented by the Fuqaha, endeavour to create the impression that *maal* is not necessarily tangible assets according to the Fuqaha. This impression is baseless. According to all the Fuqaha of the Hanafi Math-hab, *maal is tangible asset.* The liberal Molwis of this age have felt the need to interpret rights in a way to bring these within the scope of the definition of *maal* to enable them to gain the sanction of the Hanafi Math-hab for copyright. It is abundantly clear that according to the Hanafi Math-hab, the validity of sale depends on the items of sale being tangible commodities, i.e. *maal.*

There is absolutely no pressing need for recourse to other Math-habs. A ruling of another Math-hab may not be incorporated into the Hanafi Math-hab merely to satisfy the pecuniary greed of some people. Only in a matter of urgency and true need shall a ruling of another Math-hab be acceptable.

Besides this, copyright cannot be rendered valid on the basis of the principles of the other Math-habs as well. No Math-hab will recognize a 'right' which prevents the *Mubaahul Asl* right of others.

In the definition of *maal* stated in Shaami, Vol. 4, page 100, the following appears: "*We have earlier stated in the beginning of Kitaabul Buyoo' the definition of Maal: It is that to which the nature (of man) inclines and its preservation for times of need is possible. With the factor of 'iddikhaar' (preservation), manfa'at (benefit) is excluded (from the definition of maal), for it (manfa'at) is mielk (something owned). It is not maal…… The best is that which is stated in Ad-Durr, namely, 'Maal is present. The nature (of man) inclines to it……Verily, in consequence of the term maujood (being present), manfa'at is excluded (from the definition of maal). Understand this well."*

Commenting on the issue of *thaman* (the price in a sale), Ibn Aabideen states: *"Thaman is not the objective. It is the medium for the acquisition of the objective which is the derivation of benefit from a'yaan (tangible items)." (Shaami, Vol.4, page 100)*

From this explanation it is clearly understood that *maal* is tangible asset. It does not refer to abstract things such as *manfa'at* (benefit). The act of *iddikhaar* (preservation or

storage) is clearly related to only tangible objects, hence the Fuqaha say that *manfa'at* (benefit) is excluded from the definition of *maal.* Likewise the Fuqaha exclude abstract benefits from the definition of *maal* with the term *maujood* which literary refers to the presence of tangible items, hence they say that the word *'maujood'* in the definition excludes abstract benefits from the definition of *maal.*

On page 3, Vol. 4, Shaami states: *"Manfa'at is mielk. It is not Maal."*

In the language of the Shariah, in terms of the Hanafi Math-hab, *maal* refers to only physical objects which have monetary value according to the Shariah. Benefits and rights are NOT classified as *maal.* All the desperate interpretations of the definitions have not succeeded in proving that abstract entities such as rights and benefits are *maal.*

In *Sharhus Ziyaadaat of Imaam Muhammad Bin Hasan Shaibaani, Vol. 2, page 730 it is mentioned: "Regarding Haqqut Ta-alli (the right to build on the upper floor), verily, its sale is not permissible. Similarly, the sale of the upper surface (is not permissible) because the upper surface is the roof of the lower floor, and the sale of this surface is not permissible. Similarly, if he sells the upper surface of the upper floor while there is no building on it, it is not permissible."*

In Fathul Qadeer, Vol.6, page 64, it appears as follows:

This mas'ala (i.e. the prohibition of selling Haqq-e-Ta-alli) is because Haqq-e-Ta-alli is not maal."

It is abundantly clear from these citations as well as from all the *kutub* of the Ahnaaf that *only tangible/physical* items are *maal.* Rights and benefits are not *maal.*

THEIR ELEVENTH ARGUMENT

They say: *A person can become the owner of a currency coin (minted by the government). Inspite of becoming the owner of the coin he may not manufacture such coins. This shows that one does not have unrestricted freedom to use one's property as one feels. Similarly, one may not print a book without the consent of the author, inspite of one being the owner of the book.*

THE RESPONSE

The analogy is baseless. A book cannot be argued on the basis of coins minted by the government. The supposed validity of copyright cannot be argued on the basis of the prohibition to manufacture coins like the coins minted by the government. If, it is not permissible according to the Shariah to manufacture identical coins, the impermissibility has to be based on grounds recognized by the Shariah. The Shar'i principles and reasons which render the manufacturing of such coins unlawful should be stated. If there exist valid Shar'i grounds for prohibiting such manufacturing of coins, the prohibition will apply to the act of manufacturing coins, not to prohibiting others from publishing books.

For the validity of the contended prohibition, the prohibition should be independently proved on the basis of Shar'i principles, not on the basis of an example which itself stands in need of a Shar'i *hukm.* If the basis for the prohibition of manufacturing government-minted coins is found to exist in the publication of books by others besides

the author, then such grounds should be stated. It is incorrect to merely cite an example of an act which itself stands in need of Shar'i *daleel* to prove the claim of prohibition.

Furthermore the purposes of the two acts are vastly divergent. While the manufacturing of identical coins will lead to great confusion and fraud, publication of Deeni books serves the Deeni needs of the masses and facilitates the Islamic process of *Da'wat and Tableegh.* On the other hand, manufacturing identical coins will lead to deception and fraud. The masses will be the ultimate losers.

It is permissible for anyone to manufacture coins, but it is not permissible to adopt any measures of falsehood, deception and fraud. This then separates the two actions. The prohibition of manufacturing government-minted coins, only prevents manufacturers from using government signs, emblems and symbols. This is perfectly in order. It does not prevent others from manufacturing coins of their own design and desire. The analogy is thus false.

Assuming that in the manufacturing of identical coins there is no deception and fraud, and no one will be misled to suffer any loss, then such manufacturing of coins will be one's *Mubaahul Asl* right irrespective of any law prohibiting such manufacturing.

The simple answer for this 'proof' is that it in itself is in need of a Shar'i *hukm*. It lacks the ability to serve as a *Maqees Alahy* (Basis of Deduction) for another act requiring a Shar'i *hukm.*

THEIR TWELFTH ARGUMENT

They say: *"In Abu Daawood is a Hadith which has the status of being a principle or basis for the permissibility of buying and selling copyright, the right to print and patency right. The Hadith is:*

> *"Any Muslim who is the first to acquire something, becomes his property."*

Hence, copyright automatically becomes the property of any Muslim who is able to first set his hands on it."

THE RESPONSE

Of all their arguments, this is most probably the most weird. In fact it is downright drivel, totally unexpected of even a low-grade Molwi who has no real bond with *Ilm-e-Deen.* They have indeed sunk to new levels of mental imbecility by positing absolute nonsense as *daleel* for the haraam imaginary rights of a kaafir concept spawned by people who have been driven to insanity by the touch of shaitaan as a consequence of their insane indulgence in riba. Let us now examine the Hadith and see what exactly its meaning is.

(1) *"Asmar Bin Mudharris said: 'I came to Nabi (sallallahu alayhi wasallam) and pledged allegiance to him. Then, he (sallallahu alayhi wasallam) said: 'Whoever first reaches a water which has not been reached by a Muslim, it (the water) belongs to him."*

(Abu Daawood, Kitaabul Kharaaj)

(2) In another version of the very same Hadith, the word *(maa)* instead of (*maa-in) appears. Maa* means 'whatever', and *maa-in* means 'water'. The Molwi Saheb who

presented this most weird argument chose the obscure version in which appears *maa (whatever)* for the obvious reason of eking out a drop of substantiation for the imaginary copyright.

(3) As far as the *sanad* of the Hadith is concerned, Hadhrat Shaikh Khalil Ahmad states in *Bazlul Majhood, Vol. 14, page 25* about the three female narrators in the chain *"Their condition is unknown."*

(4) According to Baghawi this Hadith is of the *Ghareeb* category. In its *sanad* are three consecutive females, the one narrating from the other. The attribute of *gharaabat* (obscurity) in the context of this particular narration is a *ta'n (criticism)* in view of the fact that the three female narrators in the Chain are unknown. This Hadith does not constitute a valid basis for the formulation of a *hukm* of halaal or *haraam.*

(5) The Molwi Saheb who presented this narration in substantiation of copyright, mistranslated it. His erroneous translation has been mentioned above. The correct translation is stated in No.1, above. The full translation is as follows:

"Asmar Bin Mudharris said: 'I came to the Nabi (sallallahu alayhi wasallam) and took the pledge of allegiance with him. Then he (sallallahu alayhi wasallam) said: "Whoever first reaches a water which has not been reached by any Muslim, it belongs to him'. Then the people (who were present) left hastily, running and setting up markers (to stake their claim)."

(6) The context of the Hadith: Rasulullah (sallallahu alayhi wasallam) was clearly referring to waterholes, water-fountains, etc. in the wilds on land which belonged to no one. The Shariah's ruling is that whoever takes possession first of an area of land in the wilds, he becomes its owner. It is his *Mubaahul Asl* right. Such land becomes the property of a person on a first come first served basis. As a result of Nabi (sallallahu alayhi wasallam)'s ruling, those Sahaabah who were present rushed out and spread out all over the show to stake their claim on whatever waterhole they could locate or on whatever land they wished to take into their possession.

The Hadith states with the greatest clarity that the people rushed out to stake their claims. They did so by marking off the land or the water source. No one understood Rasulullah's ruling to mean just anything anywhere in the world.

(7) The Hadith does not say: *"Any Muslim who takes the initiative to first acquire anything, it is his property."* This is the distorted translation of the Molwi Saheb. Even if the term *'maa'* is accepted, then too, in the context of the Hadith the reference is undoubtedly to wild/barren lands belonging to no one. All authorities of the Shariah have understood it in this way. Besides the copyright Molwi, no one has ventured such a corrupt interpretation for this Hadith

It is utterly ludicrous to accept that whatever a Muslim can lay his hands on, it becomes his property as long as another Muslim has not yet staked his claim to that object. If the stupid and weird interpretation of the Molwi Saheb is to be accepted, someone can adopt the same line of reasoning and claim on the basis of this Hadith that whatever property belongs to non-Muslims becomes the property of the first Muslim who stakes his claim on it.

(8) The Hadith pertains to tangible water/land in the boondus, not to imaginary or real rights in contracts and dealings. The Hadith has absolutely no relevance with matters of trade and commerce.

(9) Let us now assume that the meaning of the Hadith is as suggested by the copyright Molwi. On the basis of his reasoning, the one who lays his hands first on a book, has acquired all the rights connected with that book. While the rights of the author will be restricted to his manuscript by virtue of his prior acquisition, the rights of the owner of the book are related to his copy. In terms of the distorted translation and crooked interpretation of the copyright Molwi, 'acquisition' of the 'property' whether tangible or abstract, comes into one's ownership as a consequence of first possession, i.e. laying your hands first on it and staking your claim. The Hadith in this regards allowed the people to stake their claim without payment of money. It was a free for all rush to stake claim of land available free of charge.

Now since the one who has acquired the book, there is no doubt in it being his property. Just as the Hadith cited and interpreted by the copyright Molwi, allows unfettered utilization by the stakers of their procurements, so too will this very same Hadith on the basis of the crooked logic allow any person who has acquired the book to print, and publish. The author will only have to subdue and neutralize his inordinate pecuniary greed to ungrudgingly permit the acquirer of the book to avail himself of his lawful Shar'i right of acting in his property as he deems fit.

This argument is truly a glaring example of a drowning man clutching at just every passing straw. They are in entirety bereft of any constructive Shar'i argument to substantiate their assumed validity of imaginary copyright.

THEIR THIRTEENTH ARGUMENT

The copyright Molwi says: *"In my opinion if goodwill is accepted to be a sale of 'manfa-aha muabbadah' (perpetual benefit) on the basis of the Shaafi and Hambali Math-habs, and accepted as being maal, then many juridical doubts and interpretations could be avoided."*

THE RESPONSE

This is another prototype of the system of weird reasoning. Goodwill is undoubtedly haraam. Even the copyright Molwi has conceded this fact with emphasis. The presentation of a haraam act to formulate a Shar'i *hukm* for another act which has all the paraphernalia of *hurmat* (unlawfulness/being haraam) is a conspicuous display of denudation of intelligence which is a consequence of the exercise and endeavour to accord Shar'i sanction to just every concept and practice spawned by the kuffaar.

We have already made reference to the goodwill issue earlier on in this book. Here it will suffice to say that the opinion of the copyright Molwi in this regard, viz., interpreting goodwill to be *manfa-at-e-muabbadah* in terms of the Shaafi and Hambali Math-habs is fallacious.

The fallacy of this contention is borne out by the fact that the issue of goodwill being permissible is itself flawed. It suffers of damage and flaws. It is a haraam practice which lacks the strength for being a basis of deduction even if in the Shaafi Math-hab there appears a ruling of doubtful permissibility for a special type of goodwill which had existed in the community in Cairo during that time.

Permissibility for a concept or practice should be evolved on solid Shar'i grounds extracted from the Sources of the Shariah, not dubious, isolated and decrepit examples

of exception which have been excluded from the general rules on account of some expediency.

The copyright Molwi suggests that goodwill should be legalized on the basis of it being the benefit or reward of *Ijaarah* (leasing). For this suggestion he expects Hanafis to resort to principles of the Shaafi and Maaliki Math-habs. Firstly he has not managed to even substantiate whether his suggestion has validity even in terms of these two Math-habs. Secondly, should validity in accordance of the Shaafi and Hambali Math-habs be proven, then too, it will remain unlawful for Hanafis to adopt it since only dire need/urgency/emergency is a valid ground for recourse to another Math-hab.

Let alone dire need, the copyright Molwi and the liberals consider only the interests of the wealthy and extremely wealthy capitalists. The attempt to gain latitude from other Math-habs for corrupt practices which are the effects of pecuniary greed, serves only to give further impetus to the misdeeds of exploitation of the capitalists.

There is no basis for this interpretation other than the 'opinion' of the copyright Molwi.

THEIR FOURTEENTH ARGUMENT

They say: There are three kinds of *Huqooq (Rights)* as follows:

(1) *Huqooq-e-Dhurooriyyah*
(2) *Huqooq-e-Asliyyah qaabil-e-Intiqaal*
(3) *Huqooq-e-Asliyyah naqabil-e-Intiqaal*

Since the copyright Molwi has assigned copyright and several other haraam imaginary rights to the second category (mentioned above), we shall submit it for discussion.

Huqooq-e-Asliyyah qaabil-e-Intiqaal are such rights which the Shariah awards initially. They are natural and fundamental and inalienable rights in terms of the Shariah. These rights, according to the copyright Molwi, are tradable entities, hence he has coined the designation: *Qaabil-e-Intiqaal* or fit for transference. That is, ownership of these rights can be transferred to another person and again re-transferred to a third person and so on to successive persons, whether by sale or gift.

Earlier in this discussion it was mentioned that the votaries of copyright have effectively assigned copyright and similar other imaginary haraam rights to that class of rights which are not tradable entities. This assignment was executed by the copyright Molwi himself. In so doing he had overlooked his admission and agreement that the rights of the first category are not tradable.

In the abovementioned classification of three types, the non-tradable rights belong to the first class, viz., *Huqooq-e-Dhurooriyyah.* With regard to this class of *Huqooq*, the copyright Molwi says: *"It is not permissible to buy or sell such huqooq nor accept any other kind of exchange."*

THE RESPONSE

While having made this acknowledgement, the Molwi entirely forgot that he had based his case in favour of permissibility for copyright on the common *illat* (reason) of *dafa' dharar* (to stave off harm/loss) which by his own admission is the rationale underpinning the rights of this category. In having assigned copyright to this first class,

he had walked into a logical trap from which extrication is extremely awkward. He had painted himself into a corner.

Due to his short-sightedness, the Molwi Saheb has now approached the subject from another angle. He has created a second category of rights which he has designated, *Huqooq-e-Asliyyah Qaabil-e-Intiqaal*. In formulating this category, he avers: *"These rights whose sale is permissible are in the category of maal."*

Although he has created this imaginary class of rights, he has failed o cite even one example of such a right which is tradable like *maal* in the Shariah, i.e. unrestricted buying and selling with transference of ownership from one person to another by sale or gift, etc. Being confronted by this insoluble dilemma, he seeks to writhe and slither out of the trap by subtly saying: *"The second kind of rights are such huqooq which are fundamentally established for a person on the basis of a Shar'i Hukm or on the basis of such Urf (norm and custom) which conforms with the general objectives of the Shariah."*

He simply flounders in ambiguity. He has failed to furnish a single example of such a right in terms of the Shariah. Since there is no such second category of rights in the Shariah, he has made an attempt to introduce these examples via the window-gap of *'urf'* left open by him. Hence he has been able to produce only a list of haraam imaginary rights and corrupt commercial practices of the kuffaar.

In his fabricated second class of rights, he lists goodwill (which is pure riba and exploitation), patency right, copyright, trademark right, the right of selling names, the right of selling vacant space in the air, and the right to derive monetary benefit from business licences and permits such as export/import permits.

He has failed to present any such right recognized by the Fuqaha. He has only tendered practices which are all haraam and on which exists intense controversy to this day. Each one of the listed corrupt practices has to be independently validated on a basis drawn from the Sources of the Shariah. But this, the copyright Molwi has miserably failed to do.

While initially, he had placed copyright in the first category of untradeable rights, he has now assigned it to a self-fabricated second category which is non-existent in the Shariah. On the basis of far-fetched interpretation which is untenable in the Shariah on account of the impermissibility of trading in *Huqooq* independently, the Molwi has conferred the ruling of permissibility of buying and selling the imaginary rights of his self-fabricated second category of rights which in his mind are saleable entities.

THE FATWA OF HADHRAT MUFTI SAYYID LAAJPURI

It is indeed surprising that a senior Mufti of the calibre of Hadhrat Mufti Sayyid Laajpuri (rahmatullah alayh) had failed to discern the incorrectness of buying and selling the imaginary copyright which is the product of the kuffaar system. The following interesting question and his surprising fatwa appear in *Fataawa Rahimiyyah, Vo. 3, page 242:*

QUESTION: *What do the Ulama of the Deen say about the following ma'alah: Zaid is a very great Aalim of the Deen He authored an elementary Deeni kitaab in which children are taught by way of question and answer the basic, necessary masaail pertaining to aqaaid (beliefs) and a'maal (deeds). This kitaab gained such popularity that numerous Madrassahs included it in their syllabus. Many people among the Ulama and traders printed the book and widely distributed it. Zaid never objected to this (publication and distribution of his kitaab by others).*

Sometime after Zaid's demise, Umar printed this kitaab with the intention of disseminating the Deen and also for trade purposes. The heirs of Zaid now claim that the publication by Umar has affected their trade. Since the kitaab was printed without the permission of Zaid's heirs, they are demanding compensation of many thousands of rupees. They have threatened to institute legal proceedings if Umar fails to pay the compensation they are demanding. The questions in this regard are: (1) Would it have been permissible for Zaid (the author) to have registered a copyright on his kitaab which deals with basic, necessary Deeni masaail thereby preventing others from printing and distributing it? (2) Is it permissible for the heirs of Zaid o resort to this action after his death? Can they prevent us from printing the kitaab? (3) Was it permissible for Zaid or is it permissible for his heirs to sell all rights of printing to a publisher or trader? Is such a sale permissible according to the Shariah?

ANSWER: *I speak with the taufeeq of Allah. This is a mas'alah pertaining to ijtihaad and qiyaas. In the first era (of Islam) the printing press did not exist nor did there exist the concept of monetary gain with printing. Hence, no explicit ruling on this issue has been narrated. Nevertheless, even if the right of printing is accepted to be an entity without monetary value and mubaahul asl, then too, it is not permissible for all and sundry to print without the permission of the author his book to which is related his monetary and business interests. Some acts are mubaahul asl (i.e. initially permissible). However, if adoption of these acts lead to violation of another's right or the possibility of harm (monetary loss), then the permissibility is negated. It then becomes a Shar'i prohibition, e.g. It is permissible for every Muslim man to submit a proposal to a woman of the same social class. But, it is prohibited to send a proposal on another proposal (which is still under consideration). Until such time that the woman has not rejected the first proposal the permissible act of submitting a proposal is not permissible for another Muslim.*

While a man is busy negotiating a price, it is not permissible for a third person to make an offer. Every person has the right to climb on top of his roof to enjoy the fresh

air. However, if the purdah of the inmates of the adjoining houses is violated, then this permissible act no longer remains permissible.

It is mubah (permissible) for any musalli to sit anywhere in the Musjid. No place is exclusive for any particular person. However, if someone arrives and occupies a place, and he leaves his cloth, etc. in that place, if he temporarily leaves it (to indicate that he will be returning), then it is prohibited for others to sit in his place.

Allamah Shaami (rahmatullah alayh) has explained in detail that when a person's right is related to a mubah act, then that act does not remain permissible for others. The first right of printing a book belongs to the author who had applied his strenuous efforts night and day to prepare the book. Along with disseminating Ilm, the aim is also monetary gain for the author. Hence, as long as the right of the author is connected to the book, the right of others will not apply to it. Book sellers who print the book without the permission of the author, inspite of a considerable quantity having been already printed on behalf of the author, do so for the sake of monetary profit on the basis of the popularity the book has acquired. Their excuse of desiring the dissemination of knowledge is unacceptable. If they truly had in their hearts esteem for Ilm, they would have purchased the book in large quantities from the author and distribute it free to the poor. Thereby gaining thawaab.

Now remains the question of whether it is permissible or not for the author to accept monetary compensation for the right of printing? Among the Huqooq-e-Mujarradah are such huqooq in which there is no monetary benefit or they cannot be made a medium for the acquisition of wealth. These rights were awarded only for warding off harm (dafa' dharar), e.g. haqq-e-shufa' (the preamptive right of buying a property) has been granted for the sake of safety from an evil neighbour. Undoubtedly, it is not permissible to accept monetary compensation for such rights.

However, there are some such rights to which is related the monetary gain of the person concerned, either in the present or the future, e.g. haqq-e-wazaaif (the right of occupying a governmental position). It is permissible to accept monetary compensation in lieu of abdicating this right. Hadhrat Hasan (radhiyallahu anhu) had compromised his right to the khilaafat and had abdicated in favour of Hadhrat Muaawiyah (radhiyallahu anhu). He had accepted monetary compensation in lieu of giving up his right to the khilaafat. ……..

Similarly is the right of printing a book when it is related to the monetary benefit of the author, whether presently or in the future. This right is established for him from the very inception. Hence it is permissible for him to accept monetary compensation (i.e. sell his right) and transfer it to another person (who pays him for this right). In the present age, in view of the abundance of means of dissemination, printing and publication, and the ways of patronage for authors, as well as the lack of sufficient capital (for an author), it is not an act of ilmi bukhl (to be miserly with knowledge) to have copyrights reserved for the author. In fact, this is in the interests of the preservation and progress of good literature.

In this case (stated in the question) the loss is a loss of a benefit and that too is not fixed and is unknown, hence it does not occasion liability." (Translated from the Urdu.)

Apart from the *Fiqhi (Juridical) Ruling* and the technicalities of the Shariah's law pertaining to this question, Hadhrat Mufti Abdur Raheem Laajpuri Saheb (rahmatullah alayh) has inexplicably overlooked some vital issues stated in the question. These are:

- The author of the book, who was a great Aalim and a man of Taqwa had written the book for the Deeni benefit of the Ummah.
- He had not reserved any copyright for himself nor did he sell any such rights to anyone.
- During his lifetime many people, Deeni personnel (such as organisations and Ulama, as well as traders) had printed, published and disseminated the book.
- The Honourable Aalim never prevented anyone from printing and distributing the book, whether free or by selling.
- The book was introduced into the syllabus of many Madaaris. Most probably tens of thousands of Muslim children derived substantial Deeni benefit from this book. In addition, innumerable Muslims benefited from the book.

Indeed, we can safely say that this great Aalim had built up a great and wonderful capital for his Aakhirah.

Now even if it has to be assumed that copyright is a valid Shar'i right (but which it is not), then it is confirmed beyond every shadow of doubt that during his very lifetime, the Aalim had allowed all and sundry to assist him in piling up his capital for the Aakhirah. He had allowed everyone to print and publish his book. By the wholesale permission he had given all and sundry to print and distribute the book, he had effectively *transferred* his right (on the assumption that it is indeed a right) to others.

Taking advantage of this transferred right, which is *Mubaahul Asl* for all those who desire to print and sell the book because the author had allowed them to do so, Umar had printed and distributed the book in fulfilment of the conspicuous desire of the author. After Umar had made use of his *Mubaahul Asl* right, the Aalim's heirs, having no feeling for the deceased, unconcerned with the aspect of *Thawaab-e-Jaariyyah* for the marhoom author, and concerned with only fulfilment of the dictates of their pecuniary craving, threaten to institute legal proceedings in a kaafir court against Umar who in actual fact is a benefactor of the deceased Aalim.

Every Muslim understands or should understand that according to the Hadith, the dead man's deeds come to an end, except for acts of perpetual reward *(Thawaab-e-Jaariyyah)* which he had left behind in this dunya.). In pursuance of this lofty and beneficial goal of the Aakhirah, the Aalim Saheb who most certainly was adorned with *Noor-e-Fahm*, had written the simple Deeni book for the Ummah at large, not for the pecuniary gratification of his selfish, heartless heirs who are so miserably unconcerned with the Aalim's benefits of the Aakhirah. They are concerned with only self-gratification by satisfying their own pecuniary lust to the detriment of the one in *Aalam-e-Barzakh* whose wonderful avenue of *Thawaab* they have effectively blocked by means of their *hirs* (greed).

True benefit is the benefit of the Aakhirah, not the material crumbs which people lick up despicably from their pecuniary plates regardless of whether such crumbs come their way in halaal or haraam ways. Instead of being the sympathisers of their deceased

relative (the Aalim), they have turned into his enemies by plundering and pillaging his wealth of the Aakhirah which Umar was engaged in dispatching ahead regardless of his intention.

It staggers our imagination to observe that Hadhrat Mufti Abdur Rahim Saheb, has overlooked all these salient facts and truths. Instead of offering naseehat to the gluttonous heirs intoxicated by their lust for money, he summarily in haste without pausing goes to the defence of those who are depriving the author who had transferred his right or simply allowed all and sundry to disseminate his book which he had intended for the Ummah and for his success and salvation in the Aakhirah.

Hadhrat Mufti Abdur Rahim Laajpuri Saheb, undoubtedly was a great Aalim. But the errors of the Ulama are not *daleel* in the Shariah. Their errors should be overlooked, not cited as proof. Let us now revert to the *Fiqhi* discussion and address some of the other comments which are unrelated to the *Fiqhi* dimension of this issue.

(1) Hadhrat Mufti Saheb says that on the assumption that the right of printing is *Mubaahul Asl*, i.e. permissible for all and sundry to print a book authored by a person, then too it is not permissible for anyone to print it without the author's consent in view of the fact that the monetary benefit or trade benefit of the author is related to the book. When such benefits are related to the book, then inspite of the *Mubaahul Asl rule,* no one is allowed to print it without the consent of the author.

The rationale for this is that inspite of something being *Mubaahul Asl,* the permissibility is negated if it leads to violation of another person's right and the possibility of *dharar (loss/harm).*The *Mubaahul Asl* act then becomes prohibited for others.

In response to this, we say: In his answer, Hadhrat Mufti Saheb has acknowledged that rights which exist for the purpose of *dafa' dharar* cannot be bought or sold nor may monetary compensation be taken for it. Yet, he avers that the author may sell this right. The conflict is conspicuous. Since this imaginary copyright has been assigned to the *dafa'dharar* category of *Huqooq* by the votaries of copyright themselves, as well as by Hadhrat Laajpuri (rahmatullah alayh), and since they do concede the ruling of prohibition applicable to rights in this category of *Huqooq*, it is illogic for them to arbitrarily insist that copyright may be traded in and money accepted in lieu. There is, therefore, no substance in this argument of Hadhrat Mufti Laajpuri (rahmatullah alayh).

(2) The relationship of monetary benefit for the author is restricted to the manuscript which he has prepared. The author's monetary benefit is not related to the book which is owned by someone else who had lawfully acquired it for the simple reason that this other book is not the author's property. It is the property of the one who has lawfully acquired it. Since *tasarruf* (operation and use) in one's own property is permissible, the owner of the book is not violating any of the rights of the author who is free to act in his own property as he deems appropriate. On the contrary, the copyright which the author reserves for himself is an interference in the rights of the owner of the book. The author by virtue of this right is preventing the owner of the book from executing what is lawful for him – what is *Mubaahul Asl* for him. Instead of the other person violating the right of the author, the opposite is true.

There is absolutely no Shar'i basis for the claim that the monetary benefit of the author is related to the book which happens to be the property of another person. His monetary agenda is related to his own manuscript or book which is his property. He has to utilize his *Mubaahul Asl* right in relation to his own manuscript. He has no Shar'i basis for the extension of his right of monetary benefit to the property of others.

Similarly, there is no Shar'i basis for claiming that the *Mubaahul Asl* right of others to act in their own property is cancelled simply because the author was the first person who had written the book. This claim is simply an opinion minus a Shar'i basis.

Hadhrat Mufti Laajpuri (rahmatullah alayh), like others, have sought to justify this opinion with examples such as a place in the Musjid occupied by a person. The occupation of one person cancels the *Mubaahul Asl* right of another person to occupy the same spot. The analogy is baseless because in the *Maqees Alayh (Basis of Deduction)* the right pertains to only ONE specific spot which has been occupied. This *one specific* spot which is occupied may not be usurped by another person while the first occupier is still occupying it.

But in the case of printing a book, the printer who is not the author, is utilizing his own property—that what is in his possession. Hence, he is like the person who is already in occupation of a *specific spot* in the Musjid while the author who seeks to restrain him from printing the book is in the category of the second person who enters the Musjid after the first person has staked his occupation of the *specific spot.* This is ample for dispelling the haze which has been spread around *Mubaahul Asl* with the aspect of *relationship of monetary benefit.* The monetary benefit relationship applies to only the book/manuscript which is in the ownership of the author. The other publishers are not in any way whatsoever interfering with the author's right to print and distribute his book.

(3) Hadhrat Mufti Laajpuri (rahmatullah alayh) avers that the author who has expended so much effort, has the first right to print his book. This is conceded. It never was contended by opponents of copyright, that the author enjoys no such right. The only thing which the Ulama who are against copyright, are saying is that the author has no right of preventing them from taking advantage of their *Mubaahul Asl* right to print the book from their own property—from the book which they had lawfully acquired.

The author is the only one who has possession of the work he has written. No one prevents him from proceeding with printing his book. He is free to enter into any commercial arrangement or agreement with anyone to print and sell his book. If he is by the means, he may print it himself. Others will acquire copies of the book only after the author has arranged to have it printed. Thus, he always remains the first person to print his book. The averment of Hadhrat Mufti Saheb is therefore devoid of substance because the author is always the first one to print it. The other printers follow subsequently, after having acquired a copy of the already printed book.

(4) Castigating the publishers, Hadhrat Mufti Laajpuri (rahmatullah alayh) says in his fatwa that the motive of these publishers who print without the consent of the author, inspite of the author having substantial stocks of the book, is only monetary gain Their 'excuse' of the desire to disseminate Ilm is unacceptable because if they were genuine,

they would have purchased the books directly from the author and distribute free to the poor.

This criticism is unrelated to the *Fiqhi* issue. It has totally no relationship with the permissibility or impermissibility of copyright and the right of others to publish the book. Hadhrat Mufti Saheb made an inexplicable criticism of the publisher while refraining from even offering *naseehat* to the heirs motivated by pecuniary craving. They threatened to commit the haraam act of instituting legal action in the kuffaar court against Umar (the publisher) who had acted in fulfilment of the desire of the deceased author. Hadhrat Mufti Saheb has unjustifiably assailed the intention of the publisher in this case. His niyyat is known to only Allah Ta'ala. Anyhow, even if his intention in printing the book was only monetary gain, he did not violate the Shariah in embarking on the printing of the book for monetary gain. Just as all traders engage in halaal trade for a halaal earning, so too is it the publisher's right to print the book and acquire halaal income. The criticism of Hadhrat Mufti Saheb is both unjust and incorrect, and perhaps totally unfounded because the state of a man's heart is known to only Allah Ta'ala.

Furthermore, the *Mubaahul Asl* right which the deceased possessed, is not transferred to his heirs. With his demise, he has taken his right with him into his grave. The heirs have absolutely no right to claim anything from the publisher who was operating in his own *mielk* (property). He was not violating any of their rights. For some inexplicable reason the heirs escaped criticism by Hadhrat Mufti Laajpuri (rahmatullah alayh).

Regarding purchasing the books from the author who has reserved all rights of printing and publication, there is a valid reason to deter prospective bulk buyers from buying from the author or a publisher who has sole rights over the book. Since the author or his agent is the sole publisher, the price is fixed very high. He holds the monopoly. The excessively high price which sole publishers charge deters many bulk-buyers.

Since Hadhrat Mufti Saheb appears to have lacked expertise and experience in this field, he unhesitatingly criticized the publisher and misunderstood the reason for not purchasing from the author or his agent. We are well-experienced in the field of publishing and distributing books. Over the past few decades we have by Allah's *fadhl and karam* distributed free of charge millions of rands of Deeni books. Fortunately we do our own writing, printing, publishing and distributing. If we had been reliant on other authors who have reserved their copyrights, it would have cost ten times more than what has already been invested in the books. Ten times less people would have received the book.

In our experience over the past few decades we have learnt that there are many Muslims who contribute large sums of money for printing and for free distribution of Deeni books with the niyyat of *Thawaab* for themselves and their deceased. There are also many Muslim organisations who distribute books free. Why should we pay R20 for a book when we can print it ourselves for R5? Why pay the author or his agent R50 for a book when we are able to print the same book for R10 and distribute it free to the Ummah? Tens of thousands of Muslims who would not have received the book if it had to be purchased at the high prices fixed by the monopolising authors and their sole agents, obtain the book when the organisation of the Deeni-conscious man prints the books for the Pleasure of Allah Ta'ala.

The blanket attack against the niyyat of everyone who prints Deeni books without the consent of the author is totally unjustified. It is a futile attempt to acquire the books at a very low price from those who have a monopoly. We print and distribute books, the bulk free, throughout the world. We are, therefore, in a better position to comment on this issue. While the motivation of the Muslim organisations and numerous Muslim individuals in their desire to print books and distribute as widely as possible, is Deeni and altruistic, the authors and sole publishers are generally driven along by pecuniary greed, hence their vehement objection against anyone printing the book. The stated reason for their annoyance and their desire to resort to kuffaar courts to acquire haraam 'relief' in the form of monetary gain usurped from Muslims with the aid of the legal system, is decrease in their sales and profits as a consequence of the competition by other publishers. But the Shariah rejects the basis of their annoyance and does not accept decrease in sales and profit a valid reason for preventing others from taking advantage of their *Mubaahul Asl* right.

(5) In justification of buying and selling copyright, Hadhrat Mufti Laajpuri (rahmatullah alayh) presented in his fatwa the example of a governmental post. The officer in this post can accept monetary compensation in lieu of stepping down or abdicating in favour of another person. In substantiation of this permissibility, he cited the act of Hadhrat Hasan (radhiyallahu anhu) who had abandoned his claim to the Khilaafat in lieu of monetary payment to him by Hadhrat Muaawiyyah (radhiyallahu anhu) who had henceforth become the undisputed Khalifah of the Islamic Empire

The analogy is untenable. It is extremely far-fetched. What resemblance is there between a government officer stepping down from his post in lieu of monetary compensation, and trading with copyright as if it is material commodity? The Shar'i institution of *Sulh (Compromise settlement)* is well-known in the Shariah. In disputes, a compromise between the parties in lieu of money is valid in the Shariah. Such payment is not by virtue of a sale transaction.

When a compromise is effected regarding rights, the one of the right abandons his *haqq.* The Shariah does not assign this type of agreement into the category of sales. It is termed *Sulh* (Settlement by Compromise). This is an independent institution of the Shariah apart from sales—buying and selling. The proponents of copyright regard this imaginary right to be a valid, tradable asset in exactly the same way as a loaf of bread is tradable. Yet they attempt to justify it with examples drawn from the department of *Sulh.* There is a total lack of precedents in *Kitaabul Buyoo' (The Book of Sales)* for a basis to justify and validate the imaginary right fabricated by the kuffaar legal and commercial systems.

In view of the absence of any basis for the sale of rights in the Shariah's Department of *Buyoo',* the votaries of copyright turn to the Department of *Sulh.* This is their fundamental error in the quest for a Shar'i basis to justify and validate the buying and selling of the imaginary copyright which is totally foreign to Islamic teaching, and it violently militates against the spirit of Islam which has come to secure man's salvation in the Aakhirah. It is an obstacle in the Path of *Da'wat and Tableegh.*

The only examples which have been presented from *Kitaabul Buyoo'* to justify copyright are *haqqul muroor (*the right of thoroughfare), *haqq-e-shirb* (the right of

drinking water from a dam, etc.) and one or two other similar examples. But, these rights accompany the fixed property with which they go. They are not tradable entities independent of the fixed property. They are subservient to the property. On the contrary, the Fuqaha have categorically ruled that the sale of rights is prohibited. The plethora of interpretations, far-fetched and baseless, at times make the whole exercise of the votaries of copyright amusing and laughable. They have descended to ludicrous levels of interpretation in their desperation for producing a valid basis to justify the buying and selling of copyright, and for the injustice of preventing others from the utilization of their *Mubaahul Asl* right.

(6) The example of the compromise settlement between Hadhrat Hasan (radhiyallahu anhu) and Hadhrat Muaawiyyah (radhiyallahu anhu) in which the former abandoned his claim to the *Khilaafat* in favour of the latter, has also been tendered to justify buying and selling of the imaginary copyright. The analogy is truly ridiculous. What resemblance is there between copyright and the Institution of Khilaafate?

The two armies of Islam were marching on a course of head-on collision. A life and death struggle was in the making between the two Camps of Islam, threatening the very existence of the Islamic Empire. The Christian world was looking on with high hopes of reclaiming the lands it had lost to Islam. A grave conflict developed in the ranks of the Islamic Empire. There were two adversaries laying claim to the Khilaafate. The two armies of the adversaries were marching against each other to decide their respective fates on the battlefield. In this scenario, a compromise settlement was reached in which Hadhrat Hasan (radhiyallahu anhu) abandoned his claim to the Khilaafate.

There were two claimants to the *same* right of *Khilaafate*. The impending battle between the two armies was averted by the *Sulh* (Compromise Settlement). Among the terms was that the revenue of an entire region would be handed to Hadhrat Hasan (radhiyallahu anhu). Obviously, this revenue was not claimed for his personal self. He had his charitable projects to attend to. Whatever the case was, this episode can never constitute a basis for the lousy copyright concept introduced by the kuffaar and accorded the status of wealth or saleable commodity.

The example of accepting monetary benefit for stepping down from an official post is itself flawed and in conflict with *qiyaas*. It cannot constitute a basis for formulating a ruling for the imaginary copyright concept of the kuffaar. Earlier, in this book, there is a discussion on this issue. See page 35.

The votaries of copyright have assigned undue emphasis and preference for the exception of accepting monetary compensation for abdicating an official post. In fact, they are according this peculiar and irrational exception the status of a principle, and on the basis of this baseless ‘principle’ the actual Principle of the Shariah is being abrogated. Instead of viewing copyright in the light of the Shariah’s Principle of *Trading in Rights*, and seeking an answer on its basis, they argue its (copyright’s) permissibility on the basis of the irrational and untenable exception of *abdication in lieu of monetary compensation.*

THE BASIS OF SULH

Sulh or a Compromise Settlement, is an independent system which is permissible in the Shariah. It has been ordained by the Shariah to settle and terminate mutual disputes. In *Sulh*, the settlement may be effected in exchange for *maal* (wealth which is confined to tangible assets to which the Shariah gives monetary value), or in exchange for *manaafi'* (usufruct/ benefits).

If the *Sulh* is *maal* for *maal*, then the rules of *Bay'* (Sale) will apply And the agreement will be assigned to the category of a sale inspite of it not being a sale. However, in view of the existence of the ingredients for a valid sale, the compromise in this instance (*maal for maal)* is given the status of a *bay' (sale).* If the Compromise is related to *maal* in exchange for *manaafi'* (benefits), then the rules of *Ijaarah* (Leasing) will become applicable to the agreement.

If the basis of the dispute is a *Haqq* (Right), it should be a right which is established and which is in the *mielkiyyat* (ownership) of the claimant of the right. A person cannot claim compensation for a right if he does not own the *mahal* (substratum) such as *Haqq-e-Shuf'ah* (the preamptive right of buying the adjacent property). In this case, he has no *mielkiyyat* (ownership) in the article of sale, viz. the building. On the otherhand, *Sulh* can be effected in a right if related to a *mahal* in which he has *mielkiyyat,* such as *Qisaas* (taking the life of a murderer) for example. In this case the heirs of the murdered person possess the *mielkiyyat* (ownership) of executing *Qisaas* in the life of the murderer. These are subtle technical *Aqli Dalaail* (rational arguments/proofs) of the Fuqaha which may be difficult to grasp for most people.

The purpose of citing this argument here is to convey that even in valid *huqooq* (rights) ordained by the Shariah itself, even the institution of *Sulh (Compromise Settlement)* with its characteristic of wide latitude and scope, does not admit permissibility of monetary compensation for certain rights. To a greater degree will the prohibition apply to imagined rights such as copyright which is a pure legal figment of the kuffaar economic system, the cornerstone of which is the institution of Riba.

When even the institution of *Sulh* with its wide scope refuses to tolerate certain lawful Shar'i rights, then it is utterly ridiculous to seek justification with examples of *Sulh* for the *Bay'* (Sale) of an imaginary right – a kaafir-spawned 'right' which never existed in the Shariah and for which there are no Shar'i grounds.

Those who have presented the *Sulh* episode of Hadhrat Hasan (radhiyallahu anhu) with Hadhrat Muaawiyyah (radhiyallahu anhu) have overlooked or have failed to understand that the *Haqq of Khilaafate* was established for both claimants in their respective understandings. This Right is a real right ordained by the Shariah, hence the *Sulh* in which *maal* (wealth/money/tangible assets) was involved is valid.

But this *Sulh* was not a sale agreement which could be cited as justification for buying and selling copyright even if we have to assume that this kuffaar right is a real right. Even in the Shar'i conception of *Sulh,* the compromise between Hadhrat Hasan (radhiyallahu anhu) and Hadhrat Muaawiyyah (radhiyallahu anhu) is not presented as a sale agreement to which the rules of *Bay'* (Sale) are applicable because the definition of *Bay'* in the Shariah is *"The exchange of maal for maal",* which is absent in this episode.

In terms of the concept of *Sulh* a mutual compromise agreement will be placed in the category of a sale, only for the purpose of the invocation of all the rules *(masaail)* applicable to *Bay'.* Since the *Sulh* of the two noble senior Sahaabah was not an exchange of *maal for maal,* it is beyond the purview of the applicability of the rules of a Sale. If the liberal Molwis who are espousing the cause of copyright

and all the other 'rights' of *Jaahiliyyah* introduced by the western economic system, can understand this, their confusion on the issue of rights will be dispelled, Insha'Allah.

There is absolutely no resemblance between the *Sulh* of Hadhrat Hasan (radhiyallahu anhu) and the copyright issue. The former is a pure case of compromise settlement, not of the *Bay'* (Sale) category, while the latter has been assigned the status of a fully-fledged *bay'* (trade) by its proponents, viz. the liberal Molwis.

Furthermore, as mentioned earlier, elsewhere in this treatise, the circumstances, aims, objectives and conceptions of *Khilaafate* and copyright are widely divergent and vastly different. It is ludicrous to argue the one on the basis of the other.

SOME MORE SPURIOUS ARGUMENTS

(1) One of the liberal 'seminar' Molwis presented the following argument at the seminar which was organised for tackling the 'intractable' concept of copyright, patency right, trademark right, and *jaahiliyya* rights of a variety of kinds:

"Since there prevails Umoom Balwa in this mas'alah (of copyright), it is expedient to issue a fatwa of permissibility. There is scope for permissibility in an issue of Umoom Balwa when it is not in conflict with some Nass (Explicit law of the Shariah)."

Umoom Balwa is a public state of almost total prevalence of a practice in which the entire populace is involved, and from which extrication is virtually impossible. In such instances of extensive and intensive prevalence, the Shariah allows latitude for permissibility. Consider a situation where all the water in a place is contaminated. No *taahir* (pure/clean) water whatsoever is available anywhere except the contaminated water pumped into the water pipes from the supplying dam. If the *fatwa* of prohibition is issued, then besides the futility of the *fatwa* it will be in conflict with the principles of the Shariah which allow for concessions and permissibility in such dire cases of need.

Some people who lack respect for the Deen sarcastically remark that if *a fatwa of prohibition* is issued, people will perish because without water they will die. This sarcastic stupidity has no relevance to reality because no one will ever perish nor suffer in the least bit even if a *fatwa* of prohibition is issued when a state of *Umoom Balwa* exists. People, especially the masses with terrible deficiencies of Imaan in the present day, will simply laugh off the *fatwa* and continue enjoying the polluted sewerage water 'purified' by the system of purification of the kuffaar.

When Muslims are no longer prepared to refrain from consuming haraam or mushtabah expensive luxuries which even the kuffaar experts have proved to be at least injurious to the physical health, and which are not at all necessary for sustaining any dimension of physical or spiritual life, then it is superfluous to make the comment of people perishing. It is for this reason that we have said that the issuance of a *fatwa of prohibition* is futile when there is a true state of *Balwa* which can be likened to a state of emergency.

Consider another example: Almost every medicine available nowadays contains some alcohol. Total abstention for people of weak Imaan is not possible. In view of *Umoom Balwa*, the *fatwa of permissibility* will be given even though in this age Muslims no longer require any *Fatwas of the Shariah* to conduct their day to day affairs. *Fatwas of the Shariah* applied to the 'age of orthodoxy' of the Sahaabah and their kind, not to the

present *'enlightened'* age of technology and science when Qur'aanic verses and Ahaadith are cited in substantiation of the permissibility of sodomy, lesbianism, abortion, female exhibition and many other evils. Let us revert from this small digression to the topic of our discussion.

Umoom Balwa is a state in which indulgence in haraam or najaasat is so intensive and prevalent that abstention is either impossible or will cause real hardship which is beyond the endurance of people of weak Imaan and deficient in Taqwa. In a situation of such prevalence, there is no alternative way for the acquisition of halaal.

If it is not a situation of life and death or real hardship, the *mas'alah of Umoom Balwa* will not apply, e.g. today interest is practised widely – intensively and extensively. Riba will not be made lawful on account of such widespread prevalence. It is not permissible to cite *Umoom Balwa* for abrogating the prohibition of riba. Similarly, it is incorrect to cite *Umoom Balwa* to proclaim as halaal the massive volume of haraam, diseased and physically and spiritually contaminated chickens processed commercially. The argument that almost all Muslims devour with relish this kind of diseased carrion has absolutely no substance in the Shariah because no one's life is depended on devouring carrion and diseased meat. This is quickly vindicated if there is merely a scare sent up about a destructive disease raging through the chicken plants. The government will order millions of chickens to be destroyed. And, no one will perish or suffer even a tinge of hardship by abstaining from eating the diseased carrions.

Similarly, inspite of meat having become almost the 'staple' food in affluent communities whose the members are addicted to consuming meat like carnivorous animals, and inspite of *umoom balwa* existing in the literal (not Shar'i) sense, each and every member of such societies will abandon the consumption of meat if a 'mad-cow' disease rumour is rife. Immediately, the entire population will abstain from devouring such meat. And, no one will perish because there are another thousand other bounties of food provided by Allah Ta'ala, which are always available.

Having understood the meaning of *Umoom Balwa*, the intelligent, unbiased reader will readily comprehend that the claim of *Umoom Balwa* in relation to copyright and patency right is truly ridiculous. Will the Muslim masses suffer undue hardship if copyright is abolished? Will anyone perish? On the contrary, abolition of copyright serves the interests of the masses in a better way.

The liberal Molwi Sahib ridiculously presents the principle of *Umoom Balwa* in vindication of a handful of authors who are a tiny-very tiny- minority in relation to the billions of souls inhabiting this earthly globe, and who are out to earn fortunes by exploiting the masses with the stratagem of monopoly legalized by the kuffaar and labelled 'copyright and patency right'. While everyone can understand that heaven and earth have long ago been separated by the command of Allah Ta'ala, the liberal Molwi has achieved the feat of the reunification of gigantic differences. He has managed to base the imaginary right of copyright pertaining to a handful of capitalist-inclined authors on the foundation of *Umoom Balwa* whose invocation is allowed by the Shariah when there is no water available for survival. This argument of *Umoom Balwa* for justifying copyright is a real insult to intelligence and *Ilm-e-Deen.*

The liberal Molwi committed another error in the presentation of his argument in favour of copyright. He said: *"Any act becomes permissible if Umoom Balwa prevails*

and there is no Nass which conflicts with it." The condition of *a conflicting Nass (explicit Shari' law)* is superfluous. It has no validity in this context because a *fatwa of permissibility* in a state of *Umoom Balwa* is required to proclaim lawful what the *Nass of the Shariah* has made unlawful as has been explained in the example of contaminated water and alcoholic medicine. If there is no conflicting *Nass* there will be no need for a *fatwa of permissibility* even if there is no prevalence of *Umoom Balwa.*

(2) Another argument presented by the liberal Molwi is not only spurious, but is downright stupid. He avers:

"Furthermore, generally there is no means of earning a livelihood for those who are involved in writing books other than printing and selling their works. Therefore, copyright should be made permissible in the same way as the later Fuqaha, seeing the state of affairs, had made permissible acceptance of monetary remuneration (wages) for teaching the Qur'aan, Hadith, Fiqh, etc. If it is not made permissible, the avenue of writing books will become extremely narrow and constricted, leading to the possible closure of this avenue."

One does not require high intelligence to understand the fallacy of this argument. Let us examine each claim in this argument.

(a) *Authors have no other means of livelihood other than their occupation of writing books.*

This arbitrary claim is devoid of substance. The rare cases of people being entirely dependent on writing books for a living, can never be a valid reason for declaring permissible what is unlawful in the Shariah. Even if we have to assume that there are some persons who are dependent on writing books for their livelihood, then too, this is not a Shar'i basis for arguing the permissibility of the imaginary copyright.

Most of the authors who wrote Deeni books were pious Ulama who never reserved any book rights for themselves or for their agents. They authored their books—many books during their lifetime—while they were actively involved in other Deeni pursuits such as teaching, etc. They never were dependent on their books for a living. In fact, they did not even become involved in printing and selling the books they had authored. Others would execute these tasks and earn money while at the same time serving the Deen.

Those who printed and sold the books authored by the Ulama, also were not dependent on these books for their living. They had other avenues of earning. Even those who deal exclusively in books and stationery are no dependent on printing books for their earnings.

Should there be some persons who truly are dependent on their writings for a livelihood, they are not debarred from printing and selling their books. In consequence of any competition, they may earn less. But what they will earn is the rizq predetermined for them by Allah Ta'ala. They will obtain only what Allah Ta'ala has ordained for them.

There are also a variety of means of earnings open for the authors of book other than earning by way of haraam copyright. There is, therefore, absolutely no Shar'i grounds for legalizing this imaginary right to debar others from doing what is lawful for them.

It really embarrasses us to respond to this stupid argument in which an unlawful act should be made lawful for no valid reason whatsoever.

(b) *Copyright should be made lawful in the same way as the later Fuqaha had made lawful wages for teaching the Qur'aan, Hadith and Fiqh.*

The *Fuqaha-e-Mutakh-khireeen* (the later Fuqaha, viz. those who flourished from the third century onwards) had ruled the permissibility of remuneration for Deeni services for a real need which had developed. They did not make such remuneration permissible to enrich a handful of authors with capitalist ideas of coining fortunes. The *fatwa* of the later Fuqaha was not occasioned by the need to open up avenues of earning and livelihood. Their *fatwa* was the effect of a state of emergency which had overtaken the Ummah.

The number of Men of true Ilm and Taqwa was dwindling. People who had devoted their lives purely for the Sake of Allah Ta'ala, teaching the Deen without remuneration for only the Pleasure of Allah Ta'ala, became an extinct species of humankind. The *Fatwa* of the later Fuqaha was motivated by the preservation of the Deen.

Even in the present age, almost all Molwis, Sheikhs, Imaams, Muath-thins, etc. are mercenaries. No one is prepared to teach in a Madrasah or be the Imaam of a Musjid if high salaries are not paid. Those Deeni Ustaadhs who are sincere, they too, are deficient in *Tawaakul and Taqwa*, hence they will rather abandon their Deeni posts and take up some mundane employment or become involved in business. Without the *fatwa* of the later Fuqaha, the entire Structure of the Deen will crumble.

Therefore, basing copyright on the *Fatwa* of the later Fuqaha is utterly baseless. While the Molwi Saheb calls for the permissibility of copyright to enable the enrichment of a handful of authors, the *Fatwa* of the later Fuqaha is for the preservation of the Deen. The difference should be glaringly apparent.

(3) *The author or the inventor sells a haqq (right) which he has brought into existence. A publisher who has acquired possession of the manuscript or a manufacturer who has acquired the invented item by virtue of having acquired permission from the author/inventor has acquired this right.*

By acquisition of the right from the author/inventor is meant the exclusive 'right' of printing/manufacturing as well as the 'right' to debar the whole world from venturing into the sphere of printing the book or manufacturing the item. But this supposition is palpably fallacious since the acquirer's rights in terms of the Shariah are related to only the acquired copy/product which is his property..

The writer of a book or the inventor of a product brings into existence a book and a new product respectively. These are tangible assets, not rights. There is no general right which they bring into existence as has been claimed. Any right that comes into existence is related solely to the written manuscript and to the actual tangible item invented. And, whatever rights they enjoy in even their own properties is on account of the concession of the Shariah which restricts these *Mubaahul Asl* rights to the property within the domain of their ownership.

The teachings, principles and spirit of the Divine Shariah never condone the commission of injustice and oppression which the kuffaar concept of copyright and its

associate rights entails. The proponents of copyright, patency right and *Jaahiliyyah* rights in general can crow and blow their horn until Doomsday, but they will miserably fail to adduce any Shar'i basis for the whimsical figments of their imagination—in fact, the imagination of the capitalist kuffaar who have grabbed all the natural sources, means and ways of earning which Islam has made *waqf* for all the inhabitants of the earth—for them to acquire free of charge, without payment of money, all such public assets set aside for free and productive utilization by all the inhabitants of the earth.

Explicit Shar'i *daleel* is imperative to prove the postulation of the extension of the author's right to every book which belongs to others. The furthest this postulation may be extended is to the actual manuscript or book which is the property of the author. If he sells the manuscript or the printed books to others, there is no Shar'i evidence for claiming that the author has brought into existence such an all-pervading, omnipotent right which extends to the thousands of books lawfully acquired by others and which are the *mielk* of others over which the author has absolutely no jurisdiction and say regardless of the concepts and legal systems of the kuffaar.

Greed, injustice and avarice are inherent branches of *kufr*. The proponents of copyright are in reality pandering to these vile designs which are salient characteristics of *every* concept spawned by the adherents of kufr. The liberal Molwis have infact become the covert ministers of the *kufr* economic system to administer to the Ummah, by doses, every evil economic concept which capitalism and the western cult of life give birth to in their perennial and insatiable desire for more wealth at any cost. The theme of *'confound the masses'* permeates all economic systems generated by capitalism as well as godless socialism.

The only 'daleel' the votaries of copyright have for this fallacious and oppressive extension of 'right' and *haraam* encroachment into the domain of the other millions of people, is the kuffaar legal system. The claim they have tendered is an arbitrary postulate devoid of any Shar'i basis.

An imaginary 'right' or a 'right' spawned by the concepts of the kuffaar is not automatically transformed into a Shar'i right simply on account of its wide prevalence which they whimsically misinterpret as acceptable Shar'i *Urf.* There is an imperative need for a *daleel* of the Shariah. But the proponents of copyright have hopelessly failed to produce any acceptable *daleel.* They have only managed to add confusion to confusion with their wildly vacillitating interpretations of the technical definitions of the Fuqaha. Flitting from one ambiguous, in fact fallacious, postulate to another, they advance preposterous claims as if such vagaries are actual *masaa-il* of the Shariah. Hence, they audaciously advance claims such as *'the author has brought into existence a right', 'this haqq (copyright) is maal or in the category of maal', the author will suffer monetary loss in the absence of copyright', 'the right which the author has created for himself extends to the million books which are owned by others', etc.*

These claims form a chain of negations of the principles of the Shariah. In the endeavour to sustain the kuffaar-conceived 'rights', the votaries of copyright display an unacceptable propensity for flexibility and compromise with kuffaar concepts to the degree of fettering the Shariah to prevalent cults and customs which they erroneously classify as *Urf* sustainable by the Shariah.

Abandoning the *Taqleed* of the Hanafi Math-hab into which they were born, bred and nurtured, spiritually, academically, morally and educationally, they exceed all bounds of intellectual toleration in their insane bid to accommodate the economic concepts of westernism within the sacred Folds of Islam in the hope of conferring divine sanctity to such evil notions of trade and commerce in which the agents of kufr specialize.

In fact, in this endeavour they are akin to the *mushrikeen* of Arabia who proclaimed in justification of Riba: *"Verily, bay' (trade) is like riba."* Stemming from this postulate is the conclusion that *riba is halaal because trade is halaal.* The liberal Molwis are arguing in precise fashion. Who are they emulating? They should engage in some soul-searching and desist from posing as doctors of the Ummah with their ridiculous seminars which are tantamount to glorified picnicking. There is no goodness for the Ummah in these academies and seminars. The cardinal theme of these western-style seminars and academies is to accommodate westernism under the Umbrella of the Shariah. They, therefore, invariably look at western kufr economic concepts through glasses painted with the hues of westernism. Hence, the emphasis of their seminars is to forge Shar'i acceptance for the economic concepts of the western kuffaar.

In order to succeed in their mission, they have to necessarily prove on the basis of the principles of the Shariah that copyright is in fact a Shar'i right; that this imagined right brought into existence by an author automatically brings within its purview of constraint all the books already printed, purchased and owned by others thereby effectively abrogating all the *Mubaahul Asl* rights which the Shariah allows owners of property in terms of its principle of *Haqq-e-Tasarruf* (the right to operate in one's own property).

Without conclusively proving that copyright is a *haqq* which the Shariah recognizes, all views and claims structured on the postulate that it is a right, are futile exercises in redundancy. They endeavour to elude and divert from their baseless claim of copyright being a valid right, by embarking on deceptive and elusive discussions on the definition of *maal.* They have not as yet overcome their very first and fundamental hurdle in their entire exercise, namely, to prove that copyright is a valid Shar'i right.

The maximum they have ventured in this regard is to put forward the arbitrary and unsubstantiated averment that *copyright is a valid right because it is related to the pecuniary interests of the author.* This is a ridiculous argument. It is grossly inadequate for proving the claim of copyright being a valid right recognized by the Shariah. The claim that it is related to the pecuniary interests of the author is highly erroneous because they have not as yet proven that *it* –this figment of kufr imagination- is a valid Shar'i right.

Only if they are able to prove the validity of copyright on the basis of the principles of the Shariah, will it be acceptable to move to the next step in the argument, namely, *rights are also maal.* This second step is futile as long as the first claim remains unrecognised by the Shariah. To detract from the first and main attack against their claim, the proponents of copyright attempt the diversion of the labyrinthal discussion on the Shar'i concept of *maal.* Apart from being diversionary, it is superfluous since the second wrung in this ladder of argument can be mounted only after having successfully climbed the first wrung. They first have to satisfactorily substantiate on the basis of Shar'i principles in terms of the **Hanafi Math-hab,** that *copyright* is a tenable Shar'i

right. We take the liberty to further claim that they will not be able to prove that this *kufr-spawned 'right' is a Shar'i right in terms of even the other three Math-habs.*

Sight should not be lost of the prime constituent of the controversy. The very first contention of the Akaabir Ulama is that copyright is not a right. It is a claim without Shar'i basis. Every argument falls flat as long as the first claim remains unproven. And, without operating within the restrictive confines of the principles of the Shariah, their claims are merely personal opinions devoid of Shar'i substance.

A multiplicity of ambiguous, unfinished and unprincipled arguments presented in isolation of Shar'i principles of the Math-hab they profess to follow, has succeeded in only blurring their ideology and blunting the thrust of their so-called *dalaail* in vindication of copyright and the litany of other haraam western-spawned 'rights'—riba and extortion rights.

(4) They claim: *Whoever prints a book without having acquired the right from its author is in reality the 'ghaasib' (usurper) of a 'haqq-e-maali' (a right which has the status of wealth—tangible assets). Since in this case, it is not easy to prevent the 'ghaasib' from his usurping operation, it is permissible to hold the 'ghaasib' liable for paying compensation for the right he has usurped. Besides the Fuqaha of the other Math-habs, even the Fuqaha of the Hanafi Math-hab hold the view that in 'such circumstances' it is valid to hold the ghaasib liable to pay compensation for the usufruct (having derived benefit) of the misappropriated item such as the wealth of orphans and the wealth of Auqaaf (Trust Property).*

The "such circumstances" in the context of copyright and the law of *ghasab* have not been explained.

This supposition is a whimsical hypothesis – a groundless assumption. No evidence other than misinterpretation of certain facts has been tendered as the starting point of this argument. Let us briefly look at these groundless assertions presented as the basis of the argument.

(a) *Copyright is a valid haqq.* In the whole volume of 'proofs' on this subject the claim that copyright is a valid Shar'i right has not been proved.

(b) *This right is in the hukm (legal category) of maal.* This is another fiction – a fiction based on the first fiction. This second claim is likewise a groundless supposition because it is structured on the first hypothesis. As long as the contention that copyright is a valid Shar'i right has not been conclusively proved, all other effects raised on this premises are *baatil* (utterly baseless and misleading).

Assuming that the first contention is vindicated (which is impossible), then too, the second supposition will remain a groundless supposition in terms of the Hanafi Math-hab. The seminar Molwis have absolutely no entitlement to dig into the other Math-habs for latitude to accommodate the inordinate pecuniary cravings of a handful of authors and inventors.

(c) *Whoever prints from a book which is his mielk (property) is an usurper (ghaasib) of a haqq-e-maali (a right pertaining to maal tangible-wealth).*

The incongruity of the seminar Molwis is truly amazing. They are at pains in their laborious exercises of 'proving' that *huqooq* (abstract rights) are *maal*. They have exhausted their brains in their search for verification in the fields of the other three Math-habs. They have degenerated to extremely low levels of corrupt interpretation in their process of mutilating the Hanafi definitions in the bid to convey the fallacious idea that even the Ahnaaf believe that *huqooq* are *maal*. They have tediously struggled to present a variety of exceptional cases, which are all exceptions to the general rule and governing principle of the Math-hab, to act as basis for their imaginary copyright. Inspite of all this effort, they still find themselves in an uncomfortable and awkward position, hence they flabbily acquiesce that their much-vaunted copyright which they are flaunting as *maal* is a *haqq-e-maali.* Not *maal, but haqq-e-maali.*

When a couple of dozen pages have been darkened with the 'evidence' to prove that rights are *maal*, why now condescend to a lower level, viz., *haqq-e-maali?* It behoves the votaries of copyright to be constant in their argumentation. In their imagination they had furnished adequate volumes of 'proof' to bolster their claim of copyright being *'maal'*. They should now have no reason for vacillation, swinging from one supposition to the other –from *maal to haqq-e-maal.* But the truth is always unnerving to opportunists who do realise the deficiencies in their case, hence this dithering and infirmness.

Assuming that the printer of the book whose *tasarruf* is in his own *mielk,* is a *ghaasib of a haqq-e-maali*, then it is incumbent to apply the rules of *Ghasab (Usurpation)* to him. In his unprincipled argument, the seminar Molwi assigns the printer of the book into *Kitaabul Ghasab*, and brands him a *ghaasib*. He them makes a detour and refrains from applying the *hukm (effect/law)* which is applicable to one who usurps a right, a benefit or an abstract entity such as a quality/attribute.

Since, the Molwi is aware that the *hukm of ghasab* is in diametric conflict with his postulate, he bypasses it and cites two obscure examples which are exceptions to the general rule underlying *ghasab.* If copyright is truly a *haqq-e-maali* which has been usurped by the printer who derived monetary benefit from the book (which by the way is his own property), the Shariah does not hold him legally liable for the benefit he had derived from the "misappropriated" item. A usurper will pay dearly in the Hereafter for the ill-gotten benefit, but in terms of the Shariah there is no monetary compensation which could be demanded from him for the *manaafi'* (usufruct/benefits) he had unlawfully enjoyed from the usurped item.

Regardless of the rationale underpinning this law of the Shariah in terms of the Hanafi Math-hab, the seminar Molwis have no right to tamper with it in the attempt to produce a hybrid ruling, which is untenable in the Math-hab.

If the votaries of copyright could substantiate the first premiss of their postulate, viz., copyright is a valid *haqq*, the effect of liability on the *ghaasib* of usufruct would be valid according to the Shaafi Math-hab. But, they have not proved their very primary premiss of their hypothesis even in terms of the other Math-habs. While the other Math-habs have a wider interpretation for *maal,* and *ghasab* brings in its purview liability for even usurped benefits, no grounds have been presented to vindicate the claim of copyright being a valid *haqq* according to the other Math-habs.

Let us assume that this feat can be achieved. Then too, it is unlawful for Hanafi Molwis to fish in the domains of other Math-habs when there is absolutely no dire need for issuing a ruling on the basis of the principles of the other Math-habs. The Deen is sacrosanct and may not be tampered with to satisfy the whimsical and pecuniary cravings of men out to coin fortunes, and in the process trample on the rights Allah Ta'ala has bestowed to the public at large.

The seminar Molwi has opened up the *ghasab* dimension in this argument, but then he veers sharply away from the effect of *ghasab* when he realised that the *hukm* is in diametric conflict with his postulate. However, in order to present a semblance of cohesion in the argument, he produces the examples of misappropriation of Auqaaf property and the property of orphans which the Fuqaha have excluded from the general law governing the *ghasab* of usufruct *(manaafi')* as well as attributes *(sifaat)* of the misappropriated item. This is an example of unprincipled argumentation.

It behoves the Molwi to examine the rationale for the exclusion of the two aforementioned examples. Should he discern a common ground between his copyright and the two examples, then he will have some superficial justification for having introduced the dimension of *ghasab*. But there is no commonality of reason *(illat)* between imaginary unproven copyright and Auqaaf and Orphans' properties. There is no resemblance, hence it is erroneous and misleading to present the analogy of the two examples. The issue should be argued on the basis of the governing principle of *ghasab* as it applies to *manaafi' and sifaat.*

The seminar Molwi's conclusion that the printer who prints the book without the consent of the author should be held liable for monetary compensation, is thus baseless.

Unprincipled reasoning leads to self-contradiction. The seminar Molwi, in his attempt to seek legality for copyright, has introduced the dimension of *ghasab*, making the allegation that the printer who prints from a copy of a book which is his *mielk,* is a *ghaasib* (usurper) since he embarked on the printing without the consent of the author. Now, if this utterly baseless supposition has to be entertained for an argument, the Molwi Saheb will find himself sinking further into the quagmire of confusion and incongruity which he has created for himself with his patchwork of *'dalaail'*.

Since he has opted for *ghasab,* it is only logical to apply the rules of *ghasab.* The votaries of copyright had embarked on an extremely tedious task to 'prove' that copyright is *maal* whose buying and selling are perfectly in order even in terms of the Hanafi Math-hab. Now if it be accepted that the printer has usurped the *maal* of the author and with this *maghsoob (usurped) maal* he derived monetary gain/benefit, the rule applicable is that monetary compensation cannot be demanded from the *ghaasib* in lieu of the gain he had acquired from the *maghsoob maal.*

The same rule will apply if it be accepted that the printer without consent had usurped a valid right and derived benefit there from. If a *ghaasib* usurps someone's house and derives monetary gain from it by leasing it out, the owner can only reclaim his house, not the monetary gain the usurper had acquired.

Since the seminar Molwi found himself in this quagmire, he sought aid from the Shaafi Math-hab to extricate him from the mental mess and confusion in which he became stuck.

When the Shariah in terms of the Hanafi Math-hab does not allow monetary compensation to be taken from the usurper for even a real tangible, physical asset such as a vehicle or building from which he had derived substantial ill-gotten profit, how is it conceivable that it will permit monetary compensation for an imaginary abstract right which does not even relate exclusively to the book which belongs to the printer? The right to print the book relates to all the copies sold by the author, which is within the purview of the owner's *tasarruf* in his *mielk.*

Another severe obstacle the Hanafi votaries of copyright are confronted with is that the sale of rights independently, i.e. apart from the physical asset to which the rights are related, is *baatil.* A right cannot be usurped without its material commodity to which it is attached, e.g. the usufruct (benefit) of a house cannot be acquired without talking possession of the actual building; the benefit of a vehicle cannot be gained without *ghasab* (usurping) of the vehicle itself. *Huqooq and Manaafi'* cannot be subjected to *ghasab* independently since these are abstract entities. In which way is the printer a *ghaasib of a haqq-e-maali* when he did not usurp any tangible property of the author? The book he has in his possession is his own property. The absurdity of the *ghasab* argument is thus self-evident.

Another incongruity which will be intractable for the seminar Molwis is that the sale of a product vacillitates between *faasid* and *baatil*, depending on the Math-hab, if a corrupt condition is stipulated when selling it. Since the seminar Molwis are prone to have recourse to the Shaafi and other Math-habs, we shall state the Shaafi ruling for their information: In *Sharhul Muslim, Imaam Nawawi (rahmatullah alayh)* says: *"The Ulama said: 'Conditions in Bay' (Sale) and its like are of several kinds…….Among them are conditions such as excluding manfa-at (benefit/usufruct from the sale) or that the buyer sells to him (the seller) something else or leases to him a house, etc. This type of condition is baatil. It renders the transaction baatil (null and void). So have the Jamhur ruled. And, Imaam Ahmad said that two (such) conditions will render the transaction baatil. And, Allah knows best."*

In *Raudhatut Taalibeen, Vol. 3, page 404*, Imaam Nawawi (rahmatullah alayh) says: *"….A condition such as the buyer shall not take possession of what he has purchased or he shall not act in it (the item he has bought) with bay' (i.e. he shall not sell it, etc.), or a condition like stipulating another sale (as well), or giving a loan…..These conditions and their like are faasid. They render the sale faasid."*

Faasid in the Shaafi Math-hab is like *Baatil* in the Hanafi Math-hab in the context of *Buyoo' (Sales).* The sale is rendered null and void by such corrupt stipulations which are repulsive to the Shar'i concept of *Bay'.*

The position of the Hanafi Math-hab regarding corruptive *shuroot* (conditions) attached to sales is too well-known to the seminar Molwis, hence it will be an exercise in superfluity to repeat the unpalatable truths at this juncture. Suffice to say that in the unanimous ruling of the *Jamhur* Fuqaha of all Math-habs, a sale encumbered with corrupt stipulations is corrupt and null.

Even laymen will now easily grasp from the aforegoing explanation that the author who has managed to sell 10,000 books of the first edition he had printed, is guilty of 10,000 *haraam* acts. The stipulation, *'All Rights Reserved,'* which is related to the property (book) being sold has been excluded from the sale. The right to reprint the

book and sell it is a *manfa-at* which automatically accompanies the book which is being sold. The exclusion of this *manfa-at* is a *Shart-e-Faasid* which renders the sale *faasid and baatil* in the Hanafi Math-hab and the other three Math-habs, respectively.

When a product is sold, all rights and benefits (Huqooq and Manaafi') associated with the product have to incumbently accompany it. It is haraam to sell someone a book with the stipulation that he may not lend it to his brother to read, or he may not memorize any passages of it, or he may not photocopy any pages from it, or he may not reprint and sell it. All such corrupt conditions are negatory to the Islamic concept of *Bay'*.

The *'barkat'* of copyright has bestowed to the author the bounty of 10,000 *baatil* sales which are in fact 10,000 haraam acts or sins for the author. An added dilemma for the author and copyright Molwis is that according to the Shaafi Math-hab whose aid they repeatedly and monotonously summon when the Hanafi Math-hab blocks their avenues of technical and academic gymnastics, is that the 10,000 books sold in the *baatil* transactions have to be compulsorily returned to the author irrespective of the author having digested the funds. The clarity of the Shaafi Math-hab on this issue does not augur well for the seminar Molwis with their pejorative *taqleed* overtones, the Hanafi Math-hab in particular.

Stating the position of the Shaafi Math-hab on the issue of null and void sale transactions, Imaam Nawawi (rahmatullah alayh), in *Raudhatut Taalibeen, Vol. 3, page 407*, writes:

"When a person purchases an item in a faasid sale either on account of a faasid shart or because of some other factor, and he took possession of the item, he does not become the owner of it by possession. His tasarruf (operation/acting/dealing/wheeling) in it is not valid. It is incumbent on him to return it (to the seller). He (the buyer) is responsible for the expense incurred in returning it just as (the usurper is liable for) the usurped item. It is not permissible for him to retain the item for the purpose of gaining the refund of the price (he had paid)……(Furthermore), he is liable (to the seller) for the market-rental for the period he had held the product irrespective of whether he had derived the benefit (of the item or not), or whether the item was destroyed by him……If it was destroyed by him, he is responsible for its value which is the highest amount from the day of possession to the day of destruction, just like the Maghsoob (usurped item). This is so because the Shariah commands him every moment (that the item is in his possession) to return it to its owner."

The stipulation that only the author can print the book, creates *fasaad* (corruption) in the sale from another angle as well. Allaamah Kaasaani states in *Badaaius Sanaa'* , *Vol. 5, page 169:*

"(Of the conditions of corruption) is (the stipulation) of a manfa-at (benefit) for either the seller or the buyer…….. (The fasaad is) because the added benefit is made conditional in the sale, and this is riba, because it is an excess which does not have anything in its exchange in the sale transaction, or it resembles riba. Verily it corrupts (renders faasid) the sale just as actual riba does."

The sale of the 10,000 books by the author is *faasid* since he has stipulated a *manfa-at* (benefit) for himself. That *manfa-at* is that only he may print the book, not the buyers and owners of the 10,000 books. The sale of all the 10,000 books is thus invalid.

Preventing the owner of the book from *tasarruf* (operating) in the book, is in conflict with the Shar'i consequences of *Bay'* (Sale). Allaamah Kaasaani states in *Badaaius Sanaa', Vol. 5, page 169:*

"Verily, the (sale) transaction demands mielk (ownership), and mielk in turn demands unrestricted tasarruf (operation) in the mamlook (the purchased item which came into ownership of the buyer),"

Copyright is thus untenable and *haraam.* It places restrictions on the unfettered right of *Tasarruf fil Mielk* (i.e. to use one's property in whatever lawful manner one desires).

The Fuqaha have explicitly mentioned that the condition of debarring the buyer from selling the purchased item renders the sale *faasid*.

"If a garment is sold on condition that he (the buyer) shall not sell it (the bay' is faasid)." Badaaius Sanaai', Vol.5, Page 170

The author sells his printed books with the condition that the buyers may not reprint and sell it. This creates *fasaad* in the sale. Such a sale is in the category of *riba.*

The dilemma of perplexing incongruities of the seminar Molwis arises from the deviant *Talfeeq* echo which is discernible behind the liberal voice of the votaries of copyright. *(Talfeeq is the unlawful admixture of Math-habs. The unprincipled selection of masaail from different Math-habs for the preparation of a concocted potion to satisfy the demands of liberalism – nafsaaniyat – is Talfeeq which is berated by all Math-habs).*

(5) In his inordinate desire to promote the case of copyright, the seminar Molwi says: "*But, if we reflect then it will be realized that the istidlaal (analogical deduction) of Shaami is bereft of weight. Just as haqq-e-muroor (the right of thoroughfare) is related to the surface of the earth, so too is haqq-e-ta-alli (the right of the vacant space above the upper floor) related to the built house (below). Even the surface of the ground is full of air and so is the upper surface of the building (on which there is no other building). Hence, Qiyaas demands that there should be permission for the sale of Ilw (the vacant space on top of a building)."*

In his audacity, the Molwi has summarily dismissed as invalid the fourteen century *Fatwa* of countless thousands of Ahnaaf Fuqaha and Ulama on the question of the sale of vacant space on top of the roof of a building. For 14 centuries the Hanafi *fatwa* has prohibited the sale of what is termed *haqq-e-ta-alli.* In this belated age, there have sprouted up some seminar Molwis who have arrogated to themselves the right of dismissing the fourteen century old Rulings of the Math-hab.

This seminar Molwi Saheb is no where near to the six authoritative *Tabqaat* (Categories) of Ulama which the Fuqaha have categorized.

From his audacity and arrogant dismissal of Allaamah Ibn Aabideen's *istidlaal* as being bereft of substance, the hues of *Admut Taqleed* are conspicuously visible. Great Fuqaha and the Aimmah-e-Mujtahideen also erred. The approbrium against the seminar Molwis is not because errors of illustrious Ulama are pointed out. Allaamah Ibn Aabideen inspite of his *ilmi* grandeur and lofty status in the firmament of the Ulama, is not free of error. Nevertheless, non-entities like the seminar Molwis should restrain their tongues and curb the *ujub* of their egos. They have absolutely no entitlement to blabber that Shaami's *istidlaal* is bereft of substance even if the error may be glaring.

When addressing the errors of senior Ulama, decorum and dignity, honour and reverence are to be observed. After having said this, it is necessary to understand that by his contemptible dismissal of Allaamah Ibn Aabideen's *istidlaal*, the seminar Molwi had dismissed the *fatwa* of the Math-hab upheld by a huge multitude of Fuqaha down the passage of Islam's 14 century history. Allaamah Ibn Aabideen had endeavoured to vindicate with his *istidlaal* the 14 century ruling of the Hanafi Fuqaha, right from Imaam Abu Hanifah (rahmatullah alayh) down to the Akaabir Ulama of this century.

If the seminar Molwi lacks the intellectual ability to fathom the rationale presented by Allaamah Ibn Aabideen in vindication of the prohibition of selling *haqq-e-ta-alli*, or even if there appears to be a rational deficiency in the deduction, the seminar Molwi should at least not have displayed such a disturbing lack of perceptive when he chose to comment on the *istidlaal* of Allaamah Ibn Aabideen. He should have understood that, after all, Allaamah Ibn Aabideen's *istidlaal* was in vindication of the opinion of Imaam Abu Hanifah whose rationale would most assuredly have been more articulate and perhaps more comprehensible to Molwis of shallow comprehension.

If Allaamah Ibn Abideen's view or the view of any among the Akaabir Ulama is in conflict with the explicit *fatwa* that has been transmitted down the centuries from the Aimmah-e-Mujtahideen and their Ashaab, there will then be a valid reason to differ. But the difference or refutation will be stated with academic decorum and dignity. In such instances of non-conformity with a view expressed by a senior Aalim, it will be a bigoted person who will emotionally respond by saying that the junior is pitting himself against the senior Aalim. In this case the junior will simply be stating the view of the universally acknowledged senior Ulama, Fuqaha and Aimmah of the past fourteen centuries.

In response to the argument presented by the seminar Molwi with regard to Allaamah Ibn Aabideen, it will suffice to dismiss it with the contempt it deserves. There is no substance in his argument. Irrespective of him having failed to comprehend the *istidlaal* of Allaamah Ibn Aabideen, and irrespective of any deficiency or conflict in the *istidlaal* of Allaamah Ibn Aabideen, the incontrovertible truth is that all the Hanafi Fuqahaa have proclaimed a sale of *haqq-e-ta-alli* baseless and not permissible. This is the incontrovertible and immutable law of the Shariah which tolerates no transformation regardless of urban residential congestion in the cities.

The hardships caused to the population crowded into apartments in cramped cities are not due to the Shariah's prohibition of selling vacant space on top of a building nor is the sale of vacant space on top of building the solution for the problems of residence mentioned by the seminar Molwi. These hardships are the consequences of rabidly diseased rulers and capitalists having grabbed public property which Allah Ta'ala has made freely available, without payment of money, for all people all over the world. All the lands outside the city precincts which are not owned, the mountains and whatever they bring forth, the oceans with their vast treasures, the forests, the jungles, the deserts, the mines, the oil wells, etc., etc., are all for the free utilization of people. No one and no government have any right to debar people from taking free land for residential and cultivation or farming purposes. The Shariah does not recognize government and municipal ownership of land which Allah Ta'ala has declared Waqf for the use and ownership of whoever is prepared to take the land in his/her possession.

The seminar Molwis are displaying stark ignorance of the causes of mankind's hardships. They are mutely accepting the norms and practices of westernism, believing that the kuffaar concepts of generating money are the solution. Hence, the insane endeavour to offer Shar'i sanction to just every western economic concept.

(6) One of the copyright Molwis contends:

"Copyright is such a right with which benefit is derived in this age, and according to the Shariah it is permissible to derive benefit with it. Furthermore, in this age people buy and sell these rights considering them to be maal (tradable commodity) Hence, the definition of maal is applicable to it, and its sale is permissible."

The seminar Molwis who have blithely resolved to legalize every riba transaction and every new-fangled economic practice of the western capitalists regardless of the conflict with the Shariah, have overlooked one peculiar by-product of their inordinate desire to forge an applicability of the definition of *maal (tangible asset)* to copyrights, patency rights, permit right, trademark rights and just every kind of imaginary right spawned by the concepts of the Jaahiliyyah of this age.

In having defined copyrights and its kind of imaginary rights as *maal*, and that too tradable *maal,* they have effectively assigned it to the category of stock-in-trade which is a subject for Zakaat. In terms of their definition, Zakaat has to be paid on the value of the copyright, etc.

In order to sustain their argument, should they concede the incumbency of paying Zakaat on the value of copyright, a tumultuous turmoil will be created in the law of Zakaat. Does the Shariah ordain Zakaat on intangible 'assets' which have been assigned to the *maal* category? Is Zakaat payable on *huqooq and manaafi'?* The dissertation of the proponents of *Jaahiliyyah* 'rights' on this topic will be interesting.

Inspite of all the interpretations and misinterpretations on the definition of *maal* and their elaboration on *Urf,* the copyright Molwis have not succeeded in proving a single one of their claims. The argument which has been presented above is a hypothesis—a groundless assumption, the starting point of which is a fiction. The conclusions based on this fiction are likewise fallacies, unsubstantiated by Shar'i proofs.

The ludicrous argument here comprises the following contentions:

(a) Copyright is permissible. This is a claim without basis and has not been sustained by Shar'i proof, other than the fictitious claim of rights being *maal* (tradable commodities).

(b) Copyright is a right from which monetary gain is derived in this age. On this basis it is permissible.

(c) According to the Shariah, to derive profit from it is permissible. Again a claim without Shar'i basis.

(d) People in this age consider copyright to be *maal*, hence it is maal according to the Shariah as well.

This hypothesis posits that the Shar'i definition of *maal* is applicable to copyright and jaahiliyyah rights in general because the people of this age regard it to be *maal.* The implied proposal is that the definitions of the Shariah and its concepts should be re-

assessed and re-interpreted to bring within their scope copyright and every kind of jaahiliyyah right spawned by the western capitalist economic system.

The re-assessment and re-interpretation of the entire Shariah, without restriction to copyrights and jaahiliyyah rights, have been advocated in the unacceptable concept of *urf* (custom) which the proponents of copyright have propounded. They have given *urf* such a wide latitude which allows for abrogation of Shar'i *ahkaam* which have been in force for the past fourteen centuries.

It is argued that rulings have to change simply because people have become accustomed to a practice. Hence, the claim of copyright being tradable commodity and a valid right from which benefit is derived, is based primarily on the urf of the kuffaar which has originated these so-called rights.

The arguments pertaining to *maal, huqooq and manaafi'* are mere diversions introduced to mislead the unwary masses of Muslims. The deciding factor for the copyright liberal Molwis is the *urf of the kuffaar.* This 'urf' has elevated copyright to the status of tradable commodity, hence it is 'logical' for it to be *maal* in the Shariah. This is the line of reasoning adopted by the copyright Molwis.

In fact, in their comprehension of *urf* they have subverted the entire Shariah and have made every *Mansoos Hukm* subservient to the urf of the kuffaar and juhala. In their understanding, Shar'i rulings should necessarily change with the vicissitudes and vagaries of the public, be it a kuffaar public. Jettisoning the Shar'i concept of *Urf* out of the parameters of the Shariah, and bringing it within the parameters of kuffaar urf, is the plot of the seminar, copyright Molwis. The Qur'aan and the Ahaadith are made subordinate to the newly interpreted concept of 'urf' of the copyright Molwis

The diabolism of this innovated concept of urf is fraught with exceptionally grave implications and consequences for the Deen. The liberal Molwis are in fact executing par excellence the plot of subverting the Shariah, which the modernist mulhids and zindeeqs have initiated. The modernist call for the transformation of the Shariah by the stratagem of reinterpretation, while the liberal Molwis peddle the same cause under the guise of urf to make Islam a pliable instrument of constant change to accommodate the vagaries of the wildly fluctuating dictates of the *nafs.*

In view of the gravity of the *baatil* concept of urf of the liberals, a special treatise has to be prepared in refutation of it. If by the Will of Allah Ta'ala, life and circumstances offer companionship, a separate rebuttal of the highly erroneous concept of *urf* defined by the liberal Molwis will be forthcoming, Insha'Allah.

It will suffice here to say that the Islamic concept of *Urf (Norm/Custom)* is subservient to the Shariah. It cannot abrogate *Nass*. Its scope is limited to details. It cannot annul the immutable principles of the Shariah. And by *Urf* is meant lawful custom of the Muslimeen. The haraam practices of the kuffaar do not come within the ambit of Shar'i *Urf,* regardless of the widespread prevalence of the norm.

(8) *Their argument of Haqq-e-Qisaas, Khula', etc.* In this argument the votaries of copyright contend that the Shariah allows monetary compensation for rights, e.g. *Qisaas, Khula', etc.*

THE SALE OF TRADE MARKS, TRADE NAMES AND THE FRANCHISE SALES

Trade Marks

In their attempt to legalize the sale of trade marks and trade names, the liberal Molwis contend: *"In the present age, among the questions pertaining to commerce, the most important issue is the buying and selling of trade names and trade marks. These kinds of trade marks are registered by the government. These trade marks have become valuable things to traders. They buy and sell these trade marks and trade names. Is this buying and selling permissible?"*

Answering his question, the copyright Molwi says: *"Since a trade name or trade mark is not a tangible object, but is a haqq-e-mujarrad (an abstract right), it is beyond the definition of maal (tangible assets) which has been presented by Allaamah Shaami and others, hence its sale is not permissible. But, in the discussion on maal, I have preferred the definition of the Author of Badaai', and besides the Ahnaaf, of the other Jamhur Fuqaha. Their definition takes precedence.*

In terms of this definition (of Badaai' and the other Fuqaha of the other Math-habs), the definition of maal will also apply to trade marks because in reality benefit is derived from this right (trade mark). And, this is also permissible according to the Shariah. Furthermore, in the urf (prevalent practice and custom) it is considered to be maal (tradable commodity) hence it is being sold and bought. Thus, its sale is permissible."

The contention that wheeling and dealing in trade names are today the most important commercial issue among all the issues of trade and commerce, is to say the least, amusing. Anyone who is cognizant of the commercial scenario, will know that the claim made by the Molwi Saheb is grossly exaggerated. The issue of trade name is not the most important of all commercial issues.

In this averment, the Molwi Saheb has in entirety set aside or discarded the Hanafi standpoint which Allaamah Shaami and the other Hanafi Fuqaha have spelt out very clearly and which the copyright Molwi concedes. The clarity of the Hanafi view on the sale of even valid *huqooq*, has driven the copyright Molwi to concede that according to the Hanafi Math-hab, trade mark is not a tradable commodity in view of the fact that it is not a tangible item. He has been constrained to cite the Hanafi viewpoint as stated by Allaamah Shaami.

However, since the Molwi Saheb had mentioned in the beginning of his paper which he had submitted to the Fiqh Academy, that he shall confine his discussion within the parameters of the Hanafi Math-hab, he had no alternative but to sustain this impression inspite of him having transgressed the bounds of the Math-hab which he purports to be a muqallid of. From the innumerable kutub of the Ahnaaf Fuqaha, he could manage only to cite from one kitaab, viz. *Badaai-us-Sanaai',* in his endeavour to prove that trade mark is tradable commodity *(maal)* even according to the Hanafi Math-hab.

Badaai-us Sanaai' is one of the most authoritative Books of the Hanafi Math-hab. Its author is the illustrious Allaamah Kaasaani (rahmatullah alayh). In his mind, the copyright Molwi believes that Allaamah Kaasaani has also upheld the notion of abstract entities being *maal.* But this notion is utterly baseless. *Badaai-us Sanaai'* makes in

abundantly clear that the definition of *maal* and the views of Allaamah Kaasaani on this issue are in perfect consonance with the concept and rulings of the Hanafi Fuqaha, right from Imaam Abu Hanafi (rahmatullah alayh).

The copyright Molwi has distorted and misinterpreted the definition of *maal* given by Allaamah Kaasaani in *Badaai-us Sanaai'*. He quotes the following extract from *Badaai-us Sanaai':*

"And our proof (for the permissibility of selling dogs) is that a dog is maal, hence it is a substratum for sale such as a falcon and a hawk. The daleel for it being maal is that benefit can actually be derived from it-- such benefit which is permissible according to the Shariah. Hence it is maal. The proof that deriving benefit from it according to the Shariah is permissible, is that it is used for guarding property and hunting."

Commenting on this, the copyright Molwi says: *"In Badaaius Sanaai', Allaamah Kaasaani narrated a number of examples from which it is clear that if something is beneficial according to the Shariah, then it is maal, and its sale is permissible. And, if according to the Shariah, deriving benefit from it is not permissible, then it is not maal."*

From Allaamah Kaasaani's definition of *Bay' (Sale)*, the copyright Molwi has concluded that *maal* is anything in which there is lawful benefit, be it tangible or intangible—physical or an abstract entity such as a right. The manner in which he presents Allaamah Kaasaani's definition, conveys the impression that according to the illustrious author of *Badaaius Sanaai'* even abstract rights and benefits (intangible things) are *maal.* But this conclusion is baseless. Allaamah Kaasaani no where even alludes to this idea.

The copyright Molwi has extracted the term *intifaa'* (to derive benefit) from the definition, and fixed it as the determinant or criterion for *maal.* Hence, anything in which there is benefit is *maal.* On the basis of this conclusion, the *manfa-at* (benefit) of occupying a building is *maal.* The benefit of riding in a vehicle, the benefit of a hired machine, the benefit derived from a permit and many similar rights are all *maal.* Since there is monetary benefit for the author in copyright, hence it is automatically *maal* (tradable commodity) in the opinion of the copyright Molwi.

In formulating this theory on the basis of *intifaa' (deriving benefit)*, he has contradicted Allaamah Kaasaani who does not define *maal* as just anything, be it an abstract right, merely on account of the attribute of *intifaa'*. In *Kitaabul Buyoo' of Badaaius Sanaai'*, Allaamah Kaasaani gives many examples of a variety of sales. Abstract rights do not form the subject of sale in even one of the numerous examples the Allaamah presented. Every example is a sale in which a physical item is being sold. Not a single sale of the numerous examples mentioned by Alaamah Kaasaani pertains to *manfa'at* (benefit).

Allaamah Kaasaani is in harmony with all the Fuqaha of the Hanafi Math-hab in the definition of *maal.* On page 140 of *Badaaius Sanaai', Vol.5, he states:* (A condition for the validity of bay'—sale) *is that the subject of the bay' should be maal because, Bay' is the exchange of maal with maal."* All the Hanafi Fuqaha define *maal as* physical objects, not abstract rights and benefits.

The condition of *intifaa'* which Allaamah Kaasaani as well as the other Fuqaha-e-Ahnaaf stipulate pertains to benefit of tangible objects. The condition is not mentioned

in the context of *manaafi' or huqooq. Allaamah Kaasaani and all the Hanafi Fuqaha make a very clear distinction between manfa-at and maal.* Inspite of a house having the benefit of living therein, the Fuqaha, including Allaamah Kaasaani, do not assign this *intifaa'* to the category of *Bay'*. They clearly define it as *Ijaarah (Leasing)* in which the subject on which the agreement is transacted is called *manfa-at*, not *maal.*

No where in the *kutub* of the Ahnaaf, including *Badaaius Sanaai'* will it be found that *huqooq and manaafi'* (rights and benefits) have been described as *maal.* The Hanafi Fuqaha unanimously describe *maal* as tangible commodity – material or physical things which can be stored for future use. Along with the attribute of *Intifaa'* (derivation of benefit), the Hanafi Fuqaha, including Allaamah Kaasaani, stipulate *Id-dikhaar* (storing for future need) as an imperative condition for *maal.* No one, not even the copyright Molwis, can deny the irrefutable reality of *maal* being material commodities according to the Hanafi Math-hab, hence, the Molwi Saheb, begrudgingly concedes:

"Hadhrat Allaamah Shaami, citing from Al-Bahr, defines maal as 'something to which the natural disposition inclines and it can be stored for a time of need. After presenting this definition, Hadhrat Allaamah Shaami, citing Talweeh, excludes manfa-at from maal. Hence he wrote: 'Manfa-at (benefit) is mielk (i.e. being a person's property- in one's ownership). It is not maal."

Commenting on this definition on which there is consensus of the Hanafi Fuqaha, the copyright Molwi, once again grudgingly concedes: *"On the basis of this definition, many things are excluded from maal whereas people consider these things maal and trade in them, e.g. vegetables are maal (but in terms of this definition it is not maal). During the era of the Fuqaha, vegetables were commodities in which people traded. No one has ever claimed that buying and selling vegetables are not permissible, inspite of the fact that vegetables cannot be stored for a time of need (as the definition demands), even though in this age of technological progress, vegetables can be preserved temporarily in cold storages for a few days. But in the olden days its preservation was not possible.*

Similarly, bitter medicine is something to which the natural disposition does not incline, inspite of it being accepted as maal. In the same way, while many things are not maal, they are included in the definition of maal, e.g. liquor. The natural disposition inclines to it and it can be preserved for later use. But inspite of this, it is not termed maal. For this reason the aforementioned definition of maal (given by the Fuqaha of the Hanafi Math-hab) is not correct according to me."

Before we proceed to demolish this ludicrous trash which the copyright Molwi has gorged out, it is necessary to say that if this Molwi Saheb is downright stupid, the Fuqaha were not. His arrogance and puffed up pride on account of his smattering of 'knowledge'—book knowledge—is akin to the knowledge which shaitaan possessed and which he used to impart to even the Malaaikah in bygone times when he was dwelling in the lofty heavenly realms.

This Molwi Saheb is here shamelessly claiming that all the Hanafi Fuqahaa from Imaam Abu Hanifah (rahmatullah alayh) right down to the present century, among whom were innumerable illustrious Stars of Islamic Uloom, the likes of whom the world will never again see, have adhered to an incorrect definition of *maal* while he has stumbled on the correct concept and definition of *maal.* For 14 centuries, all the Hanafi

Fuqaha and Ulama were dwelling in the darkness of error while this Molwi in this belated age with his superficial outward veneer of textual glimpses has discovered the fourteen century-old Hanafi error and has now accomplished the feat of correcting an error which all the Hanafi Fuqaha and Ulama of the past centuries, including Imaam Abu Hanifah (rahmatullah alayh), were blissfully unaware of. *May Allah Ta'ala save us from such Talbees-e-Iblees* (confusion and deception of Iblees). Let us set aside this emotional digression and return to a factual demolition of the stupidities uttered by the copyright Molwi.

First stupidity

Vegetables are *maal* inspite of the inapplicability of the Hanafi definition of *maal* to it. His assertion is that technically it is not *maal* because it does not satisfy the condition of *id-dikhaar* (preservation/storing) for a time of need.

While vegetables can be stored for a 'few days' in freezers and cold storages due to technology in the present age, it was impossible to preserve vegetables in the olden days. It truly embarrasses us to descend to this low ebb to answer and refute a contention which any layman who is bereft of Shar'i Uloom is able to accomplish.

Vegetables, fruit, meat, etc. can today be preserved for years by a variety of processes. One need simply look at the expiry dates printed on labels of canned and frozen foods. Where did the Molwi gain the idea of the limit of a 'few days' in this age, is a mystery which only he can unravel.

His claim that preservation of vegetables in the olden days was 'impossible', is plain bunkum which is not expected of a man of Ilm. Vegetables, meat, fish, etc. were preserved for months and even years in even the olden days, also by different processes, e.g. drying, salting, sweetening, addition of certain substances. We are sure that the Molwi Saheb is aware of homemade pickles and the like which his mother and grandmother preserved for more than a year in jars without the aid of modern technology.

In the event of the Molwi Saheb being unaware of the preservation techniques adopted by his grandmother, we are constrained to refer him to the 'fatwas' of the western capitalists for whose views he displays an inordinate penchant. Encyclopaedia International, Vol. 7, page 246, discussing food preservation states:

"Early man was bound to his food supply and had to move with it according to the seasons. He had little independence from the supply because without it he starved. Until he learned to preserve certain items from time of plenty through time of need, he was unable to move in localities that could not satisfy all his food needs. He learned to sun and air dry grains to preserve them against molding and insect damage. An outstanding example of this was long-term storage of grains in ancient Egypt. Primitive man learned to sun-dry fruits and vegetables and to dry and smoke meat over a fire. He learned to preserve fruit products by fermenting them into wines and vinegars; he fermented milk into curds and cheeses and preserved certain vegetables by lactic acid and fermentations. Gradually, over centuries, these food preservation methods were perfected through trial and error until they became standardized procedures."

There is much more information which the copyright Molwi can glean from the books of the western capitalists whose causes and concepts he so ardently espouses, even to the extent of refuting the viability and correctness of the arguments, principles, definitions and spirit of the fourteen century Shariah so beautifully structured by the Hanafi Fuqaha on the foundations of the Qur'aan and Ahaadith. And, all this leaning over backwards to the degree of tilting over, is in the pursuit of finding Shar'i sanction

for the reprehensible, selfish, monopolistic, unjust and unfair economic riba practices of a people in whose minds their destiny's limitation is this ephemeral existence, and nothing beyond its confines.

This is indeed too silly an argument to rebut intelligently. An emotional dismissal of this stupidity is more than adequate. Encyclopaedia dissertations and ingenuity are not necessary requirements to understand the meaning of the condition of *id-dikhaar (to preserve)* which the Fuqaha have stipulated in the definition of *maal*. The act of 'preservation' or being able to store for need, is not conditioned with any time limit. Every item of *maal* has its own life of preservation. The *id-dikhaar* attributes of the vast multitude of physical objects described as *maal*, have their own points, degrees and limits of *id-dikhaar,* just as different liquids have their own respective boiling and freezing points.

Even the different kinds of vegetables have different life spans. While a tomato will remain in good state for weeks from the time it is picked, a potato lasts for months. If the life span of vegetables is shorter than the lifespan of rice and grain in general which can last for years without any chemical treatment, and if grain has a shorter lifespan than timber, it does not follow that 'preservation' of vegetables, etc. was 'not possible' in the olden days. Whether a tangible object has a lifespan of an hour, a day, a week, a month, a year or decades, they all enjoy in common the attribute of *id-dikhaar* which is a relative characteristic with regard to the vast number of objects in Allah's creation.

A person buys a loaf of bread and its attribute of *id-dikhaar* enables him to utilize it in his time of need (when he is hungry), for which purpose he has acquired it. The same explanation applies to all other things he procures for his sojourn here on earth. Allah Ta'ala has given each item of *maal* its own property of *id-dikhaar* which differs in time limit and degree from that of other items and products. It is, therefore, plain stupidity to deny the glaringly obvious truth that vegetables in the olden days, besides having their own natural property of *id-dikhaar, which varies from days to months,* could be and were in actual fact preserved for years by artificial methods of preservation. Thus, this ridiculous argument of the copyright Molwi is devoid of any sensible substance, leave alone Shar'i substance.

Since *id-dikhaar* for the imagined 'many things' without id-dikhaar, do exist in all these products, they come fully within the purview of the definition which the illustrious Fuqaha, including Allaamah Kaasaani, have coined for *maal*.

The Second Stupidity

In the attempt to negate the Hanafi definition of *maal*, the supposedly Hanafi copyright Molwi claims that bitter medicine, inspite of being acknowledged as *maal*, the natural disposition *(tabiyat)* of man does not incline to it. Hence, the definition of *maal* is not applicable to it although it is *maal*. His exercise is a despicable attempt to illustrate the 'flaw' of the Hanafi definition of *maal*. One of the attributes of *maal* according to the Hanafi Math-hab is that the *tabiyat* should incline to it.

What the Molwi is trying to convey is that since the *tabiyat* does not incline to bitter medicine, the Hanafi definition is neutralized because bitter medicine is regarded as *maal* without any difference of opinion.

It is quite apparent that the Molwi Saheb has not understood the meaning of *inclination of tabiyat (disposition).* If a person is not inclined to bitter medicine, what constrains him to take it? Inclination in the context of the technical definition of maal does not necessarily mean lustful or instinctive desire. The *inclination* in this context refers to both *aqli* (intellectual) and *tab'i* (natural) dictates. *Insaan* (the human being) is not a beast of the jungle which operates purely by instinct. *Insaan* is distinguished with *Aql* (an intelligent mind).

The Mu'min insaan's inclination is regulated by his intelligence as well as by the Shariah and by his instincts. Whether he inclines to something by virtue of his natural instinct, natural intellect or the demand of the Shariah, it will be entirely correct to say that he has *inclined* to the thing. The Hanafi definition of *maal* does not restrict *inclination* to man's instinct.

The fact that he pays considerable money for the bitter medicine and that he takes it voluntarily and with satisfaction, testifies for the presence of *mailaan* (inclination) even if the *inclination is not instinctive.* Bitterness, sourness and saltlessness do not negate *inclination.* The attribute of *inclination* differs considerably in different people. For some people cheese is a delicious food item, while to others it tastes like soap. Some people simply cannot eat bitter *karelah*. For others it is a delicious dish. Some people have a natural aversion for intensely sweet things such as honey, while others relish in it. Some people incline to chicken while others again abhor chicken flesh. The list of different and divergent *inclinations* is formidable. But the fact remains that every item of *maal* has its pull of *inclination* which it exercises on different people.

It is plain common sense to understand that every member of the human race does not have the same inclination as the rest of mankind. This attribute too applies in different ways to different people. It suffices for some people to incline to a tangible object for it to be termed *maal* provided there is no restriction imposed by the Shariah on the utilization of that particular object. The Hanafi definition of *maal* does not require the *inclination* of every member of the human race for something to be termed *maal.*

This definition for its validity, also does not require everyone of *inclination* to display the same category of *inclination.* Some incline to some things by natural disposition while others incline intellectually. Others again incline in consideration of the teachings and spirit of the Shariah. Regardless of the category of *inclination,* the presence of this attribute in every Muslim relative to the millions of good things Allah Ta'ala has created for man's use and nourishment, adequately confirms the veracity of the Hanafi definition of *maal,* irrespective of the chagrin of the copyright Molwis.

The definition of *maal* never purported that for a tangible object to be *maal* according to the Shariah, the inclination of every one of the one and half billion Muslims inhabiting this earthly globe be directed to that particular item. Such an expectation is ridiculous.

The Third Stupidity

The copyright Molwi alleges that many things which are not *maal* in terms of the Shariah, come within the scope of the Hanafi definition of *maal,* e.g. liquor. Inspite of the *tabiyat* of man inclining to it and inspite of the ability to preserve and store it, it is not considered *maal.* This is another fallacious attempt to negate the Hanafi definition.

In his imagination, the copyright Molwi has assumed that the two requisites of *maal* are found in liquor. In reality both ingredients which are stated in the Hanafi definition are non-existent in liquor. It has already been explained that there are different categories of *inclination* such as *Aqli, Tab'i and Shar'i.* None of these types of *inclination* exists in the true Mu'mineen in relation to liquor. Intellectually and by natural disposition, every Mu'min abhors liquor. A deranged disposition, corrupted and diseased by transgression and immorality is of no significance. Such diseased *inclination* has no validity and no bearing in the determination of *inclination* for the application of the definition of *maal.*

The very stench of liquor sickens a Mu'min, physically and spiritually. It is truly surprising for the Molwi Saheb to have attempted to neutralise the Hanafi definition by insinuating that the Mu'mineen have a natural or an intellectual *inclination* for the consumption of liquor. It is re-iterated that deranged attitudes and dispositions are of no significance in the definition of *maal.*

As for the condition of *id-dikhaar (preservation),* the Hanafi definition does not envisage the inclusion of just every tangible object which is preservable, within its scope. The copyright Molwi has conveniently overlooked that along with the two conditions he has mentioned, there is a third stipulation called *intifaa'* (derivation of benefit). This condition too is not unrestricted. The *intifaa'* has to be lawful according to the Shariah. The term is not applied in its literal sense. The Fuqaha state this condition with clarity, viz., *Al-Intifaa' Shar-un* or the derivation of benefit which is lawful in the Shariah. This excludes such items which is *maal* for the Nasaara for example. Hence, pork and liquor are excluded from the Shar'i definition of *maal* notwithstanding the existence of *id-dikhaar* and the baselessly assumed condition of *mailaan (inclination).* Even if we assume that there are many Muslims who naturally incline to the consumption of liquor, the *Al-Intifaa' Shar-un* requisite is lacking. The Hanafi definition, therefore remains valid and has not been dented by the stupidities advanced by the copyright Molwi.

His arrogant and audacious claim: *"To me the definition (of the Hanafi Math-hab) is incorrect",* is dismissed as arrant nonsense uttered by a non-entity who has failed to understand the lofty rank of the Hanafi Fuqaha.

Intifaa'

In his summing up of the different wordings presented by various Hanafi Fuqaha for the very same concept of *maal* acknowledged by the consensus of the Math-hab, the copyright Molwi avers:

"In Badaaius Sanaai, Allaamah Kaasaani has narrated a number of examples from which it is clear that if intifaa' (benefit) in something is permissible according to the Shariah, then in view of it being maal, its sale is permissible."

He has submitted this hypothesis – groundless assumption – as proof for the contention that a trade name is *maal* because there is benefit in it, hence its sale is permissible. But he has not been able to sustain the contention of a trade name being *maal* according to the Hanafi Math-hab. The definition of Allaamah Kaasaani relates to only material/physical objects in which exists the condition of *id-dikhaar, mailaan and intifaa-shar-un.* In substantiation of his claim, he presents Allaamah Kaasaani's *fatwa*

on the permissibility of selling dogs because of the derivation of lawful benefit from them, e.g. guarding and hunting. But this example is ridiculous because a dog is a tangible object. It is not a figment in anyone's imagination nor is it an abstract right such as the trade name right.

The Shariah has made *intifaa'* from dogs lawful although the Shaafi Math-hab does not accept this permissibility. While the copyright Molwi is quick to extract support for his cause from the Shaafi definition of *maal*, he conveniently bypasses the Shaafi negation of *maal* in relation to a dog. For his patchwork *'daleel'* the Molwi Saheb is constrained to weave his fabric from bits and pieces of cloth which he cadges from the various Math-habs.

All Hanafi Fuqaha accept the ruling in *Badaaius Sanaai.* It is not exclusive with Allaamah Kaasaani. However, it is utterly fallacious to extend the *fatwa* pertaining to dogs to the intangible entity called trade mark. While the former is *maal*, the latter is not.

Intifaa' alone does not make something *maal* even if the *intifaa'* is lawful. There are numerous benefits *(manaafi)* for children in their parents and vice versa; the same applies to husband and wife; there is great *intifaa'* for a farmer in the water in a well or dam on his farm; there is *intifaa'* for a property owner in the vacant space on top of his building; there is *intifaa'* in the shade which his wall casts on a hot day, and similarly there is *intifaa'* in other things, tangible and intangible. However, the quality of *intifaa'* does not make these things *maal.* Trade is not permissible with these things notwithstanding their *intifaa'.*

Not one of the many examples in *Badaaius Sanaai* (some of which have been cited by the copyright Molwi) concerns a sale of rights or benefits or intangible (non-physical) things. The examples are of dogs, elephants, wild animals, insects, etc.

A trade name is something permissible. But it is not *maal.* A popular trade mark has its benefits for the trader. The benefits do not assign it to the category of *maal. Not a single Hanafi Faqeeh* has ever issued a ruling to classify abstract entities – rights and benefits – as *maal* notwithstanding their benefits and inspite of the permissibility of monetary compensation being permissible for certain Shar'i rights such as *Qisaas, Diyat, Khula', etc.* The benefit and even the permissibility of monetary compensation in exchange for such abstract rights did not constrain the Fuqaha to bring such entitities within the purview of *maal.*

There is therefore absolutely no validity in the claim of the copyright Molwi. It is haraam to sell a trade name. Franchise selling comes within the scope of this prohibition. And Allah knows best.

MUFTI TAQI UTHMAANI'S VIEW

Among the senior Ulama of this age is Hadhrat Mufti Taqi Uthmaani Saheb, the son of the illustrious Hadhrat Mufti Muhammad Shafi (rahmatullah alayh), who was also a very senior Khalifah of Hakimul Ummat Hadhrat Maulana Ashraf Ali Thaanvi (rahmatullah alayh). Hadhrat Mufti Taqi Saheb has propounded a view in favour of the legalizers of haraam copyright. In so doing he has come out in open refutation of the **Fataawa** of his illustrious father, Mufti Muhammad Shafi, and of all he senior Ulama of the recent generation preceding him.

In his summary of the copyright subject, Mufti Taqi Saheb, throwing in his lot with the liberals, comments:

"I have analysed the arguments of both sides in my Arabic treatise 'Bay-ul-Huqooq' and have preferred the second view over the first, meaning thereby that a book can be registered under the Copyright Act and the right of its publication can also be transferred to some other person for a monetary consideration."

The arguments which Mufti Taqi Saheb presents are similar to those of the Fiqh Academy Molwis. In this treatise, we have already answered these arguments which are also flimsy products of personal opinion lacking in entirety in any Qur'aanic or Hadith *Nusoos.* In fact, their arguments are all tailored and tuned by breaking down the *Nusoos* and the immutable principles of the Fuqaha-e-Mutaqaddimeen who have structured these principles on the sacred *Nusoos.*

We have not seen Hadhrat Mufti Taqi's *Bay-ul-Huqooq.* When a copy becomes available we shall, Insha'Allah, subject it to scrutiny. If any 'new' arguments other than what the Fiqh Academy Molwis have presented, surface in his book, we shall respond thereto, Insha'Allah.

Adding to his view, Hadhrat Mufti Taqi Saheb comments:

"Coming to the question of restrictions imposed by the law, I would like to add that if the law of copyright in a country prevents its citizens from publishing a book without the permission of the copyright holder, all the citizens must abide by this legal restriction. The reasons are manifold: Firstly, it violates the right of the copyright-holder which is affirmed by the Shariah principles also according to the preferable view, as mentioned earlier."

RESPONSE

The Shariah's law pertaining to copyright and observance of the law of a country are two separate issues. Our discussion of copyright is in refutation of the opinion of the liberal Molwis. It has no bearing on observance or non-observance of the laws of the secular kaafir or faasiq Muslim state. In today's age there are only two categories of government: Kaafir state and Faasiq state. There is no third classification.

Obeying the laws of such anti-Divine states of kufr and fisq is governed by different laws and principles of the Shariah, which are designed to save Muslims from the tyranny and oppression of the Dajjaals which rule these countries. Consider for example the oppressive haraam taxes which secular governments levy nowadays. They confiscate 75% or more of the earnings of people in the form of a host of direct taxes, a

myriad of indirect hidden taxes and an avalanche of extortions described as levies of a variety of kinds.

Are these taxes permissible in Islam? Obviously, no Mufti who has an understanding of his profession can aver permissibility. The issue of taxation being haraam is one matter, while paying these taxes is entirely a different issue. When the Ulama advise Muslims to pay their taxes to avoid the imposition of greater tyranny and oppression of the secular authorities, such advice never means that these taxes are permissible in the Shariah. The advice and even the *fatwa* to pay the Islamically unlawful taxes are issued in the interests and safety of Muslims—to prevent them from going to jail, being humiliated and subjected to confiscation of their halaal assets. This *fatwa to pay the taxes* is thus dictated by circumstances, and it does not purport that taxes are halaal.

Furthermore, if a Muslim refuses to abide by this advice and he escapes payment of taxes, he will not be committing a sin nor be held liable in Qiyaamah.

The arguments which we have presented in refutation of the baseless view of the liberal Molwis on copyright, present the law of the Shariah on this question. It has no relationship with observance or non-observance of the laws in secular states pertaining to the "restrictions imposed by the law". If Hadhrat Mufti Taqi Saheb had desired to present his fatwa on this specific aspect, it was a simple issue which does not require first an exercise to prove the legality in the Shariah of copyright. Even on the basis of the impermissibility of copyright, he can still issue his fatwa of observance of the law. As mentioned earlier, that is an entirely separate question totally unrelated to permissibility or impermissibility of the deed.

In propounding his fatwa to observe the restrictions of the law on copyright, the first of the 'manifold' reasons tendered by Mufti Taqi Saheb is: *"It violates the right of the copyright-holder which is affirmed by the Shariah principles also according to the preferable view."*

We have already shown in this treatise that publishing a book without the consent of the author in no way whatsoever violates any of his rights. We have shown that copyright is in fact not a right. It is a *baatil* concept which is tantamount to the usurpation of the rights of others and an idea crafted to fulfil the pecuniary cravings of heartless men who find the capitalist system to be conducive for expression and realisation of such despicable cravings.

The claim that this *'right is affirmed by the Shariah principles'* has been averred without Shar'i substantiation. It is purely the product of opinion influenced by liberalism to satisfy western concepts. Far from this *baatil* 'right' being affirmed by Shariah principles, the latter are distorted and misinterpreted to produce a basis for legalizing this capitalist concept. Not a single principle of the Shariah upholds this concept as we have shown in this treatise.

The statement about *"the preferred view"* is highly misleading. This "preferred view" is actually Hadhrat Mufti Taqi's personal opinion and preference. He has 'analysed' the view of the senior Ulama headed by Hadhrat Maulana Ashraf Ali Thanvi on the one side, and the view of the juniors of this age headed by Qadhi Mujaahidul Islam. Setting aside the fatwa of categoric impermissibility of our and his illustrious Akaabireen, at Mufti Taqi Saheb preferred the view of the contemporary Molwis.

Presenting his second reason for his preference, Hadhrat Mufti Taqi Saheb comments: *"I have mentioned that the views of the contemporary scholars are different on the concept of 'intellectual property' and none of them is in clear contravention of the injunctions of Islam as laid down in the Holy Qur'aan and the Sunnah. In such situations, an Islamic state can prefer one view over the other, and if it does so by a specific legislation, its decision is binding even on those scholars who have an opposite view."*

We hold a diametric opposite view which we claim is based on the principles of the Qur'aan and Sunnah while the opposite view is utterly baseless having absolutely no basis on any principle of the Qur'aan and the Sunnah.

Hadhrat Mufti Saheb has opened up the superfluous and futile dimension of an Islamic state. What relationship does this western concept of copyright have with an Islamic state? In this age an 'Islamic state' is utopia. There exists not a single Islamic state anywhere in the world. All Muslim countries are in the grip of either murtadd or fussaaq rulers. These states have a host of kufr laws which they impose on Muslims. In relation to the present scenario, it is most despicable for Hadhrat Mufti Saheb to bring up the topic of an Islamic state and issue a fatwa that it is binding on Muslims to follow all the haraam scrap laws of these dajjaals.

Muslim countries, almost without exception, have cancelled the Qur'aanic laws of Talaaq, to mention just one. Three Talaaqs issues, whether in one or three different sessions are not valid if executed without secular court intervention in some countries. Such kufr cannot be binding on Muslims in general, leave alone the Ulama-e-Haqq. Really, this is a truly superfluous argument. A separate book has to be written to refute what Hadhrat Mufti Taqi Saheb has averred in regard to the binding nature of haraam and kufr laws imposed by Muslim states, erroneously dubbed 'Islamic' states.

Imaam Ahmad Bin Hambal (rahmatullah alayh) preferred to be flogged mercilessly by the executioner of the Islamic state, rather than submit to the *baatil* legislation of the state. If the Islamic state enacts legislation to the effect that meat which is *Matrookut Tasmiah Aamidan,* i.e. the Tasmiah has been intentionally deleted when slaughtering animals, is *halaal*, it will NEVER be binding on even the Hanafi masses to accept such a law even though this law has validity according to the Shaafi Math-hab. The Ulama-e-Haqq will continue to proclaim the Haqq and say that such meat is haraam. These are merely two examples which we mention in passing.

The third reason advanced by Mufti Taqi Saheb for submission to the impositions of a secular state is as follows: "*Thirdly, even if the government is not a pure Islamic government, every citizen enters into an express or tacit agreement with it to the effect that he will abide by its laws insofar as they do not compel him to anything which is not permissible in Shariah. Therefore if the law requires a citizen to refrain from an act which was otherwise permissible (no mandatory) in Shariah he must refrain from it."*

In the first place, there is no such express or tacit agreement with the secular state. The only tacit agreement is that Muslims living in dajjaal states will submit to the laws of the country. The only option available to concerned Muslims is to circumvent discriminatory and oppressive laws by working around these very laws, and exploring loopholes in these laws and in the constitution of the country. In this way, the Muslim is forced to conduct his life in both kaafir and faasiq states.

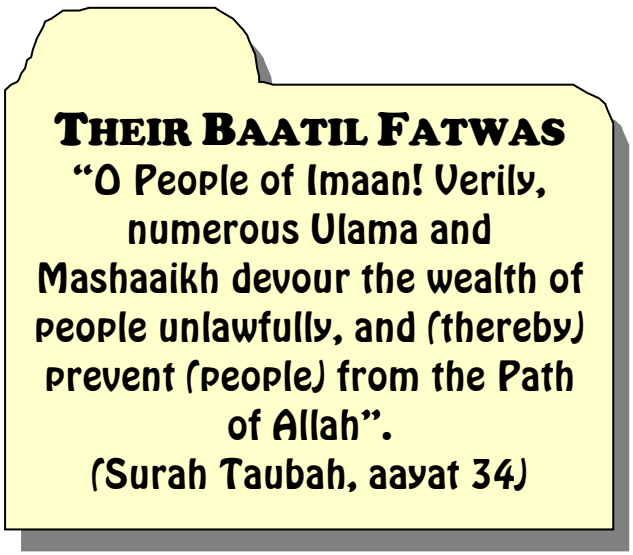
This argument too is unrelated to the actual *mas'alah* of the permissibility or impermissibility of copyright. In passing we have to say that this argument has its flaws, and can be refuted thoroughly. Hadhrat Mufti Saheb conditions obedience to the secular government with *"insofar as they do not compel him to anything which is not permissible in Sharih."*

But, this condition is practically neither observed by Muslims nor accepted by any secular government. There are many acts which are not permissible in the Shariah, but which are imposed on the Muslim citizens of the faasiq/kaafir state. Pictures of people are haraam. However, all Muslims are compelled to observe this haraam act, and all Muftis condone and accept the permissibility of Muslim submission to this impermissibility.

Post-mortems are haraam. But this haraam act is imposed on all Muslims who submit, and all Muftis decree that such submission to the kaafir/faasiq state is permissible.

The Hijaab of Muslim ladies is totally violated when they have to deal with males in governmental offices. All Muftis rule that such violation of Purdah which is haraam, is permissible in the secular state. Similarly, there are other incidents of impermissibilities which are compulsorily imposed on Muslim citizens of the secular states. Thus, the averment of Mufti Taqi Saheb is bereft of substance.

With regard to permissibilities – acts which are not mandatory in the Shariah – it goes without saying that Muslims should not contravene the laws of the land unnecessarily and invite criminal charges and problems for themselves. But this issue is not contested and does not form part of the discussion pertaining to permissibility or impermissibility of copyright.



FATAAWA OF THE AKAABIREEN

The *Fataawa* of some *Akaabireen (Senior Ulama)* are presented to confirm the invalidity and impermissibility of copyright and whatever is associated with it.

(1) Hadhrat Mufti Mahmood Hasan Gangohi (rahmatullah alayh) states:
"Haqq-e-Tasneef (copyright) is not maal (tradable commodity) which could be made a gift or sold, hence selling and gifting it are baatil."
(Fataawa Mahmudiyyah, Vol. 15, page 370)

(2) Hadhrat Maulana Rashid Ahmad Gangohi (rahmatullah alayh) states: *"Copyright is not maal which could be sold or given as a gift, hence its sale and hibah (making a gift of it) are baatil."*
(Fataawa Rashidiyyah, page 427)

(3) Hadhrat Mufti Rashid Ahmad, author of *Ahsanul Fataawa*, states:
"Copyright which is in vogue is not permissible because there is no specific right of the author. Only the manuscript is his property which he may sell." (Ahsanul Fataawa, Vol.6, page 528)

(4) Hadhrat Maulana Muhammad Yusuf Ludhyaanwi (rahmatullah alayh) states: *"According to our Akaabir it is not permissible to have a copyright registered." (Aap Ke Masaail. Vol.6, page 199)*

THE SHAR'I STATUS OF COPYRIGHTS AND PATENCY RIGHTS

By

(Hadhrat Mufti Muhammad Shafi)

– Rahmatullah alayh –

It is not permissible for an author or an inventor to register any book or invention respectively thereby preventing others from publishing the book and manufacturing the invented item. A person may be prevented from a permissible activity because of two reasons:

(1) The activity is carried out in the property of another person without his consent.
(2) The activity is harmful for others.

In the question under discussion both these factors are not to be found. With regard to the first factor, the publisher or the manufacturer does not operate in the property of the author or the inventor. On the contrary, he arranges all the ways and means for the publication of the book or for the manufacture of the invented item. The book which he prints has also been acquired lawfully

Haqq-e-Tasneef (Copyright) is neither *maal* (tradable commodity) nor does it have the capability of *mielkiyyat* (becoming someone's property). However, in the present age, the government has awarded it the status of *a right* just as it has decreed many other baseless things to be *rights.*

The second factor (mentioned above) is also non-existent because the publisher of the book does not prevent the author or anyone else from printing and distributing the book. The issue of *dharar* (harm) is not applicable. On the contrary, the publication by others closes the avenue for exorbitant prices charged by the author and the inventor. When others also publish the book or manufacture the product, the masses are not constrained to buy at the exorbitant prices fixed by the whim and fancy of the author and inventor.

Thus, firstly, this (printing of the book by others) is not *dharar.* It is *admun nafa'* (non-acquisition of profit). In fact it is *taqleeun nafa'* or decrease in profit. The difference between *dharar* and *admun nafa'* is quite obvious.

In *Mabsoot of Shamsul Aimmah* it is mentioned with clarity that it is not permissible to become a cause for *dharar* (harm) for others. However, if one's (lawful) activity leads to a decrease in the profit of others, then one's activity remains lawful. If a particular shopkeeper's profit decreases or he makes no profit as a result of several shops selling the same wares opening up in the vicinity of his shop, it will not be said that the other shops have caused him *dharar.* There is therefore, no Shar'i nor rational reason for debarring others

The only reason why an author is averse to others printing the book is to enable him to sell at a high price which he cannot do in the face of competition by others, or his desire is that he alone should derive the benefit of the trade while others are deprived of this lawful gain. This is in fact harm caused to the masses. Hence, instead of debarring others, the author/inventor should be debarred because the Shariah does not permit benefit of an individual at the expense of the masses.

There are many such examples in the authentic Ahaadith. In Bukhaari and Muslim is the narration of Hadhrat Abdullah Ibn Abbaas (radhiyallahu anhu): *"Rasulullah (sallallahu alayhi wasallam) forbade that the caravans (of grain) be intercepted, and that the urbanite sells for the village-dweller."*

Here Rasulullah (sallallahu alayhi wasallam) prohibited people of the town (traders and agents) from going to the outskirts to buy grain, etc. which farmers bring to the city. They should not be intercepted on the way and all their produce bought. They should be allowed to enter the city and sell directly to the public. Simarly, agents from the city should not sell the produce of the farmers. To avoid monopoly which will enable the agent or the handful of agents to fix high prices, Rasulullah (sallallahu alayhi wasallam) instituted this measure. The cheap prices at which the farmers will themselves sell their produce directly to the public will be eliminated by the monopoly of the agents. This will be harmful for the masses.

Similarly, the Hadith prohibits hoarding of grain and essential foodstuff. In this practice the grain is hoarded in anticipation of higher prices. When the prices rise, the grain is then sold. This prohibition is also to save the masses from difficulty and hardship.

A salient fact in these examples is that these acts are *tasarruf* (operation) in one's own *mielk* (property). Inspite of this, the Shariah has not given people the right to act in a way which will cause distress to the masses. Now what should be the ruling pertaining to something which is not even related to one's *mielkiyyat* (ownership), and which constitutes a cause for distress to the public at large?

A person intends to operate in his own *mielk*, wanting to print the book or manufacture a product, then the author or inventor becomes an obstacle preventing him from this *tasarruf* in his own *mielk.* How can this be tolerable?

The noble Fuqaha have formulated a special principle on the basis of the Qur'aan and Hadith for eliminating *dharar*, and they have narrated many examples of this in *Ashbaah wa Nazaair* under the heading, *Adhararu Yuthaalu.* In brief, sometimes the Shariah tolerates *shakhsi dharar* for the sake of eliminating *dharar aammah.* (Shakhasi dharar is harm for an individual. Dharar Aammah is harm suffered by the public or the masses.). On the basis of this principle the ruler has the right to fix prices of necessities when there develops a need for this.

It is inconceivable that the Shariah would accept a *dharar aammah* whose elimination does not harm anyone. In fact, this cause of *dharar aammah* is not even *admun nafa' (not making any profit).* It is only an imaginary decrease in profit (which has yet to be acquired). *(Hadhrat Mufti Shafi – rahmatullah alayh – here is saying that the Shariah does not tolerate the public-harm which is caused by the author's monopoly. In safeguarding the interests of the public at large in relation to printing and publication, harm and loss are not caused to the author. If there is any such harm, it exists in only the imagination of the author – Mujlisul Ulama)*

Let us ponder on the scenario universally prevalent in the present age. Neither the poor nor the wealthy, nor the high and the low, feel safe in the state of the all-pervading unrest of the world. Innumerable lawful and unlawful ways for the acquisition of wealth have been introduced and are being fabricated. One of the prime causes for the universal state of strife and unrest is that the capitalist governments, their collaborators

and helpers have either captured for themselves or transformed into market commodities the ways of earning which the Shariah of Islam has ordained as public property in which all people have a common right. However, those who pay taxes become the owners of such means and ways. *(Or governments have by legislation claimed all public land and the ways and means of earning which the Shariah has set aside for free public use and to be acquired as private property by any individual who desires to own such land or public assets.—Mujlisul Ulama)* This was the starting point of the conflict between the capitalists and the workers—a conflict which spawned the unnatural insane system of socialism. Different types of calamities followed in the wake of this system.

With certitude it can be said that as long as the straight, clear and just social system of Islam is not accepted the present state of unrest will not end, and public safety will not be achieved.

In terms of this (Islamic) system, whatever Allah Ta'ala has made *waqf* for the masses (i.e. ordained as public property in which everyone has a share) should be released from the grip and domination of individuals (the capitalists who have grabbed all such means). Similarly, whatever is lawfully the property of individuals, others should not be allowed to even cast their gaze on it.

Examples of public property made *waqf* for the entire population are the oceans and whatever they yield, the mountains and whatever they yield, the forests, natural fountains, springs, dams, etc., and their yield. All these should be freed and restored for public use. Similary, the unjust 'right' of authorship (copyright) should be eliminated and every entrepreneur should be given the opportunity to derive profit from his enterprise and labour.

It is only this (Islamic) system of justice and moderation which can guarantee public safety and peace. The summary of this discussion is: In reality copyright and patency right are not things which can become the property of individuals. To prevent a person from applying his effort and capital in the process of printing a book and manufacturing a product which he has seen, is in fact to prevent him from something which is lawful for him and to which he is entitled. It is obvious that such prevention is *zulm* (oppression) which is not permissible.

Some people present the argument that a benefit of registering copyright is to prevent publishers from printing mutilated and erroneous versions of the books. They do so merely for the sake of gaining more profit. Thus, the true aim of the author is not realised. The response: In such cases the author has the Shar'i right to institute legal proceedings against the publisher because he has attributed to the author a version which is false. In this manner the publisher could be restrained or compelled to rectify the wrong. But there is no Shar'i permission for imposing a general ban on publications.

When it is now understood that the author and the inventor have no right whatsoever of exclusively printing and manufacturing their book and product respectively, then it will be understood that according to the Shariah it is not permissible to trade in these 'rights'. *Maal* (tangible asset) is a condition for the validity of buying and selling while *haqq-e-mujarrad* (an abstract right) is not *maal* even if it is a means for the acquisition of wealth.

And Allah Subhaanahu Wa Ta'ala knows best.
(Jawaahirul Fiqh, Vol. 2, page 329)

The penultimate ruling stated by Hadhrat Mufti Shafi (rahmatullah alayh) applies when the right is a true *haqq* recognized by the Shariah. Notwithstanding the validity of a true right, the Shariah prohibits its buying and selling because it is not a tradable asset. In so far as the imaginary copyright, patency right and similar other kuffaar-concocted 'rights' are concerned, the prohibition will have greater emphasis.

REGISTRATION OF COPYRIGHT

By

Hakimul Ummat Hadhrat Maulana Ashraf Ali Thaanvi
(Rahmatullah alayh)

Among the evil practices prevalent in this age is the practice of some authors (in fact nowadays of most authors – *Mujlisul Ulama)* to sell or buy and register copyright. In the Shariah, a right is not property (or an asset which could be owned). This is apparent for the experts of Hadith and Fiqh. Therefore, acting with it as if it is one's property and to prevent others from deriving benefit from it are all *haraam* and sinful acts. Allah Ta'ala says: *"Do not devour the wealth of one another in baatil (unlawful) ways."*

(Islaahur Rusoom, page 109)

Hakimul Ummat, Hadhrat Thaanvi (rahmatullah alayh) declares with emphasis and with the greatest conviction that copyright, its registration, buying and selling are all *baatil, haraam and ma'siyat* (sinful). It is, therefore, unreasonable and misleading for the liberal Molwis to cite Hadhrat Thaanvi's *fatwa* on monetary compensation for a trade-name as a basis for their quest for legality of copyright. The *fatwa* pertaining to a trade-name should be given a suitable interpretation to accord it reconciliation with Hadhrat Thaanvi's view on the issue of the sale of rights which he very explicitly declares *haraam* with emphasis.

He leaves not a vestige of ambiguity regarding the Shariah's prohibition of buying and selling copyright. If the votaries of copyright cannot produce a reconciliation between the apparently conflicting trade-name *fatwa,* let them simply set it aside and accept Hadhrat Hakimul Ummat's categoric *fatwa* on the refutation of copyright.

The *fataawa* (Shari rulings) of these Paragons of *Ilm and Taqwa* – of these illustrious Akaabir Ulama, Hadhrat Maulana Ashraf Ali Thaanvi, Hadhrat Mufti Muhammad Shafi, Hadhrat Maulana Rashid Ahmad Gangohi and others, who were also among the *Aarifeen,* sink into the hearts of the Mu'mineen just as water sinks into a sponge. Their clear and simple arguments based on the principles and spirit of the Shariah are readily comprehensible to all and sundry and are unlike the laborious, labyrinthal, confusing and conspicuously deviant argumentation with its plethora of far-fetched and baseless interpretations of technical terms which the Fuqaha had coined for the practical guidance of the Ummah, not for giving impetus to and in substantiation of kuffaar systems and concepts which are heavily tainted with the riba hues of western capitalism.

It will be easily discerned and understood that the while the *fataawa* of the Akaabir Ulama have in view the moral and spiritual interests of the Ummah and the goals of the Aakhirah, the shallow rulings of the liberal Molwis sitting in the luxury of westernized 'academies' and flitting in jets to take up seats in western-style conference rooms as if they are the delegates of their countries at some UN session, are designed to pander and pamper the inordinate pecuniary greed of the *nafs* and to strike an acceptable chord of cordiality and reconcilability with the concepts of kuffaar capitalism which dominate all systems of life in Muslim societies of the age.

Instead of fulfilling their roles as guides and teachers of the Ummah, the liberal Molwis with their strong inclination, in fact embrace of western ideals and systems,

have betrayed Islam—they have betrayed Allah, the Rasool and the Ummah. Instead of acting as the Guardians of the Shariah, they have joined by their attitude and baseless rulings the league of westernized Muslims whose goal on earth it has become to subvert the Shariah, refute its immutability, re-interpret its sacred principles which were perfected in the very age of the Qur'aanic revelation and codified into a systematic Order by the Aimmah-e-Mujtahideen of the first era of Islam.

Their attitude of liberalism which has been spawned by their love for western modernism with its worldly comforts and pleasures, is increasingly alienating them from the Shariah and the Ummah. They are inexorably engaging in wild interpretations of technical terms to make way for the accommodation of Islam within the folds of western modernism. Every *baatil* western practice of their economic system, glaringly tainted with riba and haraam, is accorded Shar'i sanctity by the liberal Molwis. The twin diseases of *Hubb-e-Jah* (love for name and fame) and *Hubb-e-Maal (love for material wealth)* are the motivating force for all the corruption which the acquiescing Molwis have created in the ranks of the Ummah with their liberalism.

Although most of these Molwis are driven to pursue their mundane and nafsaani goals by base and ulterior motives, there is a tiny minority of sincere Ulama in their ranks, who have committed grave *Ilmi* errors in the formulation of their *fataawa* on issues such as copyright. We do not associate these sincere Ulama with the liberals and our criticism is not directed towards them. Even great Ulama who are men of profound *Ilm and Taqwa* also err. The retractions issued by sincere Ulama testify to the truth we are saying here.

The gravest threat for the Shariah and the Ummah in this age is not the deviant modernists –the *mulhideen.* The danger is the liberal molwi whose goal in life is this dunya, not the Aakhirah. About them, Rasulullah (sallallahu alayhi wasallam) said:

"Verily, I fear for my Ummah the Aimmah-e-Mudhilleen."

That is, those 'scholars', 'sheikhs', imams and 'molwis' who will lead the Ummah astray with their concocted views of the Shariah. Today, there is a mass production of such *mudhilleen.* A salient sign by which they may be detected is their leaning of *admut taqleed.* Their endeavour is to legalize *baatil* with a patchwork of *dalaail* woven from principles, teachings, exceptions and obscurities drawn from all Math-habs. The conspiracy is to structure a new 'shariah' which is so spacious that every norm, concept and cult of kuffaar, especially western society, can be accommodated.

However, they are doomed to failure because Allah Ta'ala, Himself has undertaken the responsibility of safeguarding His Immutable Shariah:

"Verily, We have revealed the Thikr and verily We are its Protectors." ***(Qur'aan)***

SOME OTHER JAAHILIYYA RIGHTS

Trade Licence

Among the baatil 'rights' which the liberal Molwis have legalized and claimed to be valid commodities of sale is a trading licence granted by the kuffaar or fussaaq authorities. Their argument is that a trading licence is a right acquired from the governmental/municipal authorities. This 'right' is registered by the government, and the licence allows a person to trade. Frequently the licensee sells his licence to another person.

The liberal Molwis argue that since there is benefit in this licence, hence its selling and buying are permissible. The same stupid argument they have put up for the sale of a trade name is presented for the erroneous opinion of the permissibility of selling a trade licence. Another 'daleel' for this 'permissibility' is 'urf' or the general practice of the people. The question of Urf will, Insha'Allah be dealt with in a separate treatise. The liberal Molwis have created considerable confusion on this issue. In fact, they have effectively made *Urf* the abrogator of any law of the Shariah. The need is for a detailed refutation which will be issued if Allah Ta'ala grants us the taufeeq and the means.

The same explanation pertaining to *intifaa'* on the question of trade name applies here. *Intifaa'* (gaining benefit) does not transform an abstract thing into *maal* (tangible, tradable commodity).

There is a fundamental difference between a trade name and a licence to trade, which makes the latter reprehensible and haraam. A trade name and a trade mark are *Mubaahul Asl,* i.e. permissible. Everyone has the right to adopt any permissible name for his business. He does not have to pay anything for availing himself of this inherent right, and no one and no authority have the right to debar him from this right. While it is his right to adopt a trade name/mark, he has no right of selling it. This has already been explained.

In contrast, a licence to 'allow' people to trade, is a device of *zulm* (oppression). It is every person's inherent right to set up shop and trade in all lawful products and in any place of his desire provided, of course, that no *dharar* (harm) is caused to anyone, i.e. real harm e.g. trading on a plot of ground without the consent of its owner or setting up a stall in a public thoroughfare, thereby hampering the movement of people.

The Shariah has given every person the right to trade. He does not require permission from the government or municipality to trade. Prohibiting a person from trading because he has no 'licence' is *zulm* and *haraam.* A licence is a worthless scrap of paper which is an instrument of *oppression and injustice.*

To sell this scrap of *zulm* paper is *haraam.* It is firstly, not even a right. Secondly, it is an instrument of *zulm.* Thirdly, it is not *maal.* Its sale is more repugnant than selling a trade name. Fourthly, the *intifaa'* or gaining monetary benefit by selling the licence, is also *haraam.* Even this baseless 'right' of *zulm* has been legalized by the liberal Molwis.

Import/Export Permits

The liberal Mowis have also legalized this instrument of *zulm.* It is the *Mubaahul Asl* right of every person to import and export goods in the pursuance of his *rizq* and wealth. A government has no authority to debar anyone from this lawful inalienable

right granted to people by the Shariah. These permits are *haraam* instruments and scraps of paper which are not *maal* in Islam.

As far as the contention of *intifaa'* (deriving benefit) with these instruments of oppression is concerned, such 'intifaa' is haraam, i.e. the gain derived from selling the instrument of *zulm.* It is not permissible to earn money by perpetuating injustice and oppression. If one has no use for the permit, have it cancelled, or if another Muslim could be assisted without creating problems for oneself, aid him with the permit for the pleasure of Allah Ta'ala and for the wonderful *manfa-at* of *Thawaab* in the Aakhirah. Money may not be charged for this device of *zulm.*

The aforementioned ruling of *hurmat* (prohibition/being haraam) applies to all similar imaginary rights, benefits and permits which are the products of the western system of economics.

Goodwill

Goodwill is termed *Haqq-e-Ijaarah* by the liberal Molwi who so ardently espouses the cause of copyright and all the other *baatil* 'rights' in vogue in this age. *Haqq-e-Ijaarah* means 'the right of leasing' which according to the liberal Molwi Saheb is the right which the occupying tenant or the owner of the building has. A person who wishes to occupy the premises may pay the existing tenant a sum of money to vacate. Or the owner of the building may charge a sum of money, apart from the monthly rental, for granting occupancy.

These forms of goodwill have also been legalized by the liberals on the basis of prevalent custom *(urf)* an isolated example in Shaami, and juggling with some principles of the Shaafi and Hambali Math-habs. We have already made reference earlier to this baseless and *haraam riba* charge.

According to the Shariah, the existing tenant has absolutely no right to charge any money for vacating. He occupies another person's property for which he pays rents. If he no longer has use for the premises, or his lease has expired and he has no intention of renewing it, he has to vacate. The 'goodwill' he charges to vacate comes fully within the purview of the definition of riba:

"Riba is every excess which does not have an iwaz (material commodity) as its equivalent."

This is the Shar'i definition of riba which fully applies to the *baatil* so-called *Haqq-e-Ijaarah.* The liberal Molwi has painstakingly laboured and meandered through a mire of technicalities, sampling every Math-hab, to conjure up his 'fatwa' of permissibility for this haraam riba levy.

Similarly, the 'goodwill' charged by the owner of the property, is also riba, plain and simple. The reward or lawful gain of the owner is the rent the tenant pays. It is haraam to encumber the tenant with the haraam riba charge baselessly designated *Haqq-e-Ijaarah.*

A GRAVE MISUNDERSTANDING

With their meandering and laborious arguments centring on the definitions of the Fuqaha and by flitting selectively from one Math-hab to the other the liberal Molwis have distorted the true meanings of the principles which the illustrious Fuqaha had evolved on the basis of the Qur'aan and Hadith.

Stemming from the confusion of their devious meanderings, is the grave misunderstanding that according to the Shaafi, Maaliki and Hambali Math-habs, the sale of copyrights, patency rights, trade names, import/export permits, trade licences and the like of *zulm* and *jahiliyyah* 'rights' and 'benefits' are permissible.

This misunderstanding is structured on the premiss of the definition of *maal* in terms of the other three Math-habs. In this definition, non-physical things can also come within the scope of tradable commodity, e.g. valid rights.

However, it is necessary to understand that inspite of this definition of *maal,* the aforementioned list of imaginary and *zulm* rights and benefits is not *maal* even according to the other three Math-habs. The liberal Molwis should first prove that copyrights, patency rights, licences, permits and similar other haraam instruments of oppression are valid and lawful *huqooq and, manaafi'* according to the other Math-habs. It is insufficient for their contention to merely present the definition of *maal* according to the three Math-habs and arbitrarily justify their hypothesis which is a pure groundless argument.

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