

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the Name of Allāh, the Most Gracious, the Most Merciful

## Abstract

This is a brief treatise regarding the Islamic legal ruling of conducting interest-based financial transactions in *Darul Harb* (the region/domain of war) and the modern implication of *Darul Harb* and *Darul Islam* as concepts in the contemporary era. The matter will primarily be examined from the perspective of the Hanafi school of thought. Every school of thought is like an ocean. Each would require a professional scuba diver to extract its precious pearls and present them in separate detailed dissertations. The Hanafi school of thought is the primary focus here because it is the only school of thought of the four schools with an opinion that allows interest in *Darul Harb*. Some scholars today substantiate the legality of interest in *Darul Harb* based on the Hanafi school, which necessitates more in-depth research on the issue. The famous and oft-repeated question to Muftis and scholars regarding the legal ruling of buying a home with an interest-based loan from a conventional bank is enough to illustrate this topic's importance. This humble work is an effort to present both contemporary and classical scholars' varying opinions and to clarify the Hanafi stance with proofs from the Quran, Sunnah, and Fiqh books.

# **The Islamic Legal Ruling Regarding Interest-Based Transactions in Darul Harb**

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## Section 1: Introduction

Many Muslims living in non-Muslim countries desire to become homeowners but face the dilemma of Islamic permissibility, leading them to search for solutions and alternatives by consulting scholars both at home and abroad. Increasingly, we find Muftis issuing fatwas of permissibility based on different reasons such as, 'owning a home is a necessity of life' or 'non-Muslim countries are considered *Darul Harb*.' The reasoning of "necessity" has gained popularity in recent times, and people have acted upon it. This study will define and explain the opinion of non-Muslim countries as a *Darul Harb*, a concept not very well known to many Muslims across the globe. It will also discuss the implications of usury and the position and proofs from the Hanafi school of thought.

Understandably, Muslims seek out scholars for alternatives and their opinions due to severe warnings and punishments of dealing with interest mentioned in the Quran and Hadith, which has made them less inclined to buy homes with interest-based loans. The rise in Muslims seeking options and their hesitation to not fall into the grave sin of buying with Riba has forced scholars to revisit the Hanafi opinion of interest in *Darul Harb*. As a result, some scholars have started issuing fatwas of the permissibility of purchasing homes with interest based on the concept of *Darul Harb*. This rise in requests and production of fatwas demands an in-depth review of the official Hanafi position and how to apply it in the West so that we may best safeguard ourselves from Allah's ﷻ wrath and punishment.

## **Section 2: The Importance of Understanding the Concept of *Darul Harb* and *Darul Islam***

The purpose of discussing different *diyaar* (domains of the world) is to recognize the various rulings which apply to their respective *dar*, e.g., financial transactions, marriage, emigration, etc. Mufti Shafi Usmani  emphasizes the importance of this topic, saying, "It is not hidden to those who are connected to Islamic Law and issuing Islamic verdicts that in approximately all the chapters of *Fiqh* (Islamic Law), e.g., prayer, fasting, Hajj, Zakat, marriage, divorce, and especially financial transactions, hundreds of Islamic rulings differ based on the location of *Darul Islam* and *Darul Harb*. Hence, if it is said that a great portion of Islamic legal rulings is based upon the location of one's *Dar* (region), and those intending to act upon any ruling must first ascertain the status of the area they live in, whether it is *Darul Islam* or *Darul Harb*, then such a statement is accurate and correct. For this reason, for quite some time, the scholars of India have discussed this issue..."<sup>1</sup>

From the definition given by Mufti Shafi Usmani , it is essential to recognize that the concept of *Darul Harb* and *Darul Islam* differs and depends entirely on the region's status. It is not a simple and straightforward analysis and therefore has been part of long debates in areas like India. Further requiring care and understanding of historical and present stance on the issue when presenting permissibility, labeling a region, and issuing fatwas solely on the concept of *Darul Harb* and *Darul Islam*.

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<sup>1</sup> Jawahirul Fiqh: v. 5, p. 205-206 (Maktaba Darul Uloom Karachi)

### Section 3: What is considered Darul Islam and Darul Harb, according to Hanafi Scholars?

The classical scholars of Fiqh have divided the world into two regions-- *Darul Islam* and *Darul Harb*. The opinion of there being a third independent *dar* or more, e.g., *Darul Aman*, is the opinion of latter-day scholars.

Nevertheless, according to classical scholars, whenever there was mention of another *dar* besides *Darul Harb* or *Darul Islam*, this was a subcategory of *Darul Islam* or *Darul Harb*, not an independent *dar* as contemporary scholars opine, which will be discussed later in more detail. The great Hanafi scholar of Syria, Ibn Abideen, رحمہ اللہ defines the lexical meaning of *Dar* in his book

*Raddul Muhtar*:

المراد بالدار: الإقليم المختص بقهر ملك إسلام أو كفر، لا ما يشمل دار السكنى حتى يرد أنه غير مانع، فافهم.

Translation: "The intended meaning of the word *dar* is any region which is exclusively under the control of a Muslim or non-Muslim ruler..."<sup>2</sup>

Similarly, Mufti Shafi Usmani رحمہ اللہ narrates the fatwa of Moulana Rasheed

Ahmad Gangohi رحمہ اللہ wherein he describes the meaning of *Darul Harb* and *Darul Islam*:

پہلے یہ بات سمجھ لینا چاہئے کہ کسی ملک اور کسی شہر کے دار الاسلام یا دار الحرب ہونے کا مدار اس پر ہے کہ اس پر غلبہ اہل اسلام کا ہے یا کفار کا۔ بناء علیہ جو شہر مسلمانوں کے زیر حکومت ہے وہ دارالاسلام :- کہلائے گا جیسا کہ جامع الرموز میں ہے

دار الإسلام ما یجری فیہ حکم إمام المسلمین وکانوا فیہ أمنین ودار الحرب ما خافوا فیہ من الکافرین۔ انتھی

Translation: "First, one should understand that a country or city being classified as *Darul Islam* or *Darul Harb* **depends on the dominance of the Muslims or non-Muslims. Thus, that city which is ruled by Muslims will be called Darul Islam...**"<sup>3</sup>

According to the classical definition, if a non-Muslim leader rules a country in which he implements non-Islamic law, and Muslims never conquered that country, then that country will be considered *Darul Harb* by

<sup>2</sup> Raddul Muhtar: v. 6, p. 275 (Maktaba Imdadia)

<sup>3</sup> Jawahirul Fiqh: v. 5, p. 208 (Maktaba Darul Uloom Karachi)

default. It makes no difference whether Muslims living therein have religious freedom or not. It is mentioned in *Fatawa Deenia*: "Darul Harb is that land of the non-Muslims with whom we do not have any treaty of peace, therefore in whichever land exists a non-Muslim ruler and dominance (of the non-Muslim government), non-Islamic laws are apparent, **and until today Muslims have not gained control or rule over this land, then it will be called Darul Harb.**"<sup>4</sup> The definition and fatwa further emphasizes that in order to consider a region to be Darul Islam then there must be Muslim rule present and for a region to be considered Darul Harb there will be rule of Non-Muslims irrespective of whether Muslims are given rights, religious freedom or not.

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<sup>4</sup> Fatawa Deeniya: v. 4, p. 119 (Jami'ah Hussainia Rander, Zila Surat, Gujarat, India)

## Section 4: When does Darul Harb become Darul Islam and vice versa?

It is mentioned in *Fatawa Hindiya*:

إعلم أن دار الحرب تصير دار الإسلام بشرط واحد وهو إظهار حكم الإسلام فيها، قال محمد رحمه الله تعالى في الزيادات : إنما تصير دار الإسلام دار الحرب عند أبي حنيفة رحمه الله تعالى بشروط ثلاثة أحدها: إجراء أحكام الكفار على سبيل الاشتهار و أن لا يحكم فيها بحكم الإسلام والثاني: أن تكون متصلة بدار الحرب لا يتخلل بينهما بلد من بلاد الإسلام، والثالث: أن لا يبقى فيها مؤمن ولا ذمي أمنا بأمانه الأول الذي كان ثابتا قبل استيلاء الكفار للمسلم بإسلامه وللذمي بعقد الذمة وصورة المسألة على ثلاثة أوجه: إما أن يغلب أهل الحرب على دار من دورنا أو ارتد أهل مصر وغلبوا وأجروا أحكام الكفر أو نقض أهل الذمة العهد وتغلبوا على دارهم ففي كل من هذه الصور لا تصير دار حرب إلا بثلاثة شروط و قال أبو يوسف ومحمد رحمهما الله تعالى: بشرط واحد لا غير وهو إظهار أحكام الكفر وهو القياس

Translation: "Know that Darul Harb becomes Darul Islam with one condition--making apparent the laws of Islam. Imam Muhammad ﷺ mentioned in his book *Al-Ziyadaat*, 'Darul Islam only becomes Darul Harb according to Abu Hanifah ؓ when **three conditions are found**:

1. Public implementation of non-Islamic law. Islamic law is no longer implemented.
2. The specific region is connected to another Darul Harb in such a way that no Muslim country intervenes between the two.
3. Neither a believer nor a zimmi (non-Muslim who lives in Darul Islam and pays jizyah [specific tax paid to the Muslim government]) is secure with the initial security that was given to them before the conquest of the disbelievers; the Muslim had security due to his Islam, and the Zimmi had security due to the agreement which was made between him and the Muslim government.

The scenario mentioned above of this ruling will manifest itself in the following: a) the people of Harb (war) take control over one of our (Muslim) lands b) a people of a town renegade from Islam, become dominant, and enforce un-Islamic laws c) The zimmi (non-Muslims who pay jizya to an

Islamic government) break their covenant with the Islamic government and become dominant over their land. On the basis thereof, in each of these scenarios, Darul Islam will not become Darul Harb except with the conditions mentioned above. Abu Yusuf رحمته الله and Muhammad رحمته الله say that Darul Islam will become Darul Harb with only one condition, nothing else, and that is **un-Islamic laws becoming apparent**; this is according to analogy.”<sup>5</sup>

Regarding Darul Harb becoming Darul Islam, it is mentioned in *Badai Al-Sanai*:

لا خلاف بين أصحابنا في أن دار الكفر تصير دار إسلام بظهور أحكام الإسلام فيها

“There is no difference of opinion between our scholars with regards to Darul Kufr becoming Darul Islam with **Islamic Laws becoming apparent therein**.”<sup>6</sup>

Certain conditions in a region are necessary to render it either Darul Harb or Darul Islam. These conditions have been outlined by our scholars and have clear standards. Therefore, it is with these premises that one must examine a particular region or land as being the type of *Dar*.

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<sup>5</sup> Al-Fatawa Al-Hindiya: v. 2, p. 256 (DKI)

<sup>6</sup> Badai Al-Sanai: v. 9, p. 428 (Dar Al-Nashr)

## **Section 5: What is the Wisdom in Calling a Land Darul Harb or Darul Islam?**

Mufti Khalid Sayfullah Rahmani, in his book *Qamoosul Fiqh*, explained the wisdom behind a country being classified as *Darul Harb* or *Darul Islam*, "If a person were to glance into the vast treasure of Fiqh (jurisprudence), generally they will find only two daars; among those two, one is called Darul Islam, and the other is referred to as Darul Kufr in some places, and in some places, it is referred to as Darul Harb. There is a difference between the meaning of the words "kufr" and "harb." The word "kufr" is general; however, when it is coupled with a war campaign and combat with the Muslims, then it would be considered "harb." Nevertheless, the jurists have chosen for every "Darul Kufr" the expression "Darul Harb." Most likely, there is an indication of this reality that the Muslims never feel content and safe from the people of disbelief, and they do not consider the Muslim countries' present borders' ending point to be final (i.e., Islamic rule must expand). On Earth, the Muslims must step forward in enforcing the laws of their Creator. The believers must consider themselves in a perpetual war with disbelief. Thus, every Darul Kufr, in essence, concerning the Muslims would be "Darul Harb."<sup>7</sup>

This wisdom in further defining Darul Harb as being, in essence, Darul Kufr should caution scholars in determining the permissibility of purchasing homes in the lands of Non-Muslims. It should also motivate the Muslims to continuously evaluate their situations and make Darul Islam's lands exemplary in the world. The clarity in defining these concepts will serve Muslims, scholars, and Non-Muslims.

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<sup>7</sup> Qamoos Ul Fiqh: v. 3, p. 397 (Zamzam)

## Section 6: Clarifying Misunderstandings regarding Definition of Darul Harb

According to Imam Abu Hanifa رحمه الله, *Darul Islam* can only become *Darul Harb* with three conditions. Out of these three conditions, one requirement is much misunderstood, i.e., neither a believer nor a zimmi (non-Muslim who lives in Darul Islam and pays jizyah [specific tax paid to the Muslim government]) **feels secure with the initial security** that was given to them before the conquest of the disbelievers. Based on this one condition, some contemporary scholars suggest if a Muslim enjoys religious freedom and is not persecuted in a specific region, then that land cannot be classified as *Darul Harb*. However, this argument is incorrect due to the following:

1. When the classical jurists mention the three conditions of Imam Abu Hanifa رحمه الله, they use the sentence لا تصير which means “*Darul Islam* does not **become** *Darul Harb* except...” When defining *Darul Harb* according to Imam Abu Hanifa’s رحمه الله conditions, the jurists are referring to the “transformation” (صيورة) of *Darul Islam* into *Darul Harb*, not the land which was never conquered by Muslims and always remained under the non-Muslim rule because such land is considered *Darul Harb* from the outset regardless of safety and security.
2. According to one of the conditions for *Darul Islam* to become *Darul Harb*, there is “no security” for the Muslims and Zimmis; however, when security is mentioned, it is described as الأمان الأول, i.e., **initial** protection which was afforded to the Muslims and Zimmis **from the Muslim ruler**. If a Muslim is granted safety from the non-Muslim government, this does not prevent that land from being or becoming *Darul Harb* since that safety can be taken away. For example, today's peace and safety granted to Muslims in non-Muslim countries are not due to *amaan awwal* (initial security given by a Muslim ruler). As for the Muslim

countries that exist today, the Muslims therein live peacefully due to the “initial security” acquired from Muslims when conquering that land.<sup>8</sup>

Hence, security granted by non-Muslims is not the intended meaning when *amaan awwal* is mentioned in the classical books of Fiqh.<sup>9</sup> Therefore, if Imam Abu Hanifa’s ﷺ conditions of *Darul Harb* are found along with the condition of security; however, the protection is granted by non-Muslims, that land would be considered *Darul Harb*.<sup>10</sup>

Another misunderstanding concerning *Darul Harb*’s definition is that only that land can be classified as *Darul Harb*, which is at war (*harb*) with the Muslims. If one reads through the classical Hanafi fiqh manuals, nowhere will they find that active *harb* (war) is a condition to categorize a land as *Darul Harb*. Furthermore, the other misconception is that we cannot call such a non-Muslim country *Darul Harb*, which allows us to practice our religion and grants us equal rights, e.g., building masjids and Islamic institutes, wearing Islamic attire, and slaughtering according to Islamic law.

Hence, a country that gives Muslims religious freedom is neither classified as *Darul Islam* nor *Darul Harb*. Instead, it will be categorized as a third *dar*, which would be called *Darul Aman* or *Darul Ahd*. The evidence for this is when the Sahaba ﷺ migrated to Abbisiniya and had religious freedom. The Sahaba’s ﷺ experience resembles current situations of Muslims living in non-Muslim countries today in terms of there being no hostility between Muslims and non-Muslims and the existence of religious freedom. Additionally, in today’s era, governments are at peace with one another through the United Nations. In response to the first objection, for a country or city to be classified as *Darul Islam* or *Darul Harb*, it depends on the

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<sup>8</sup> Aathaarul Harb fi Al-Fiqh Al-Islami: p. 174 (Darul Fikr)

<sup>9</sup> Jawahirul Fiqh: v. 5, p. 213-214 (Maktaba Darul Uloom Karachi)

<sup>10</sup> Ikhtilaf Al-Daarayn wa Aathaaruhi fi Ahkam Al-Shariah Al-Islamia: v. 1, p. 279 (Al-Mamlaka Al-Arabia Al-Su’oodia Wizara Al-Taleem Al-Aalami Al-Jamia Al-Islamia Al-Madina Al-Munawwara ‘Imada Al-Bahth Al-Ilmi)

dominance of the Muslims or non-Muslims. When the Hanafi jurists mentioned one of Darul Islam's conditions is *ijraaul ahkam* (enforcing Islamic law), e.g., Jumuah and Eid prayers, they meant laws being implemented with power and authority, **not with the permission of the non-Muslims** as is the case today. This critical point is clarified in Jawahirul Fiqh:

محض اس بنا پر کہ اس ملک میں مسلمان آباد ہیں یا وہ کفار کی اجازت سے شعائر اسلامیہ کو ادا کر سکتے ہیں اس ملک کو دار الاسلام نہیں کہہ سکتے۔ کیونکہ کسی ملک میں محض مسلمانوں کے آباد ہونے اور باذن کفار شعائر اسلامیہ کو ادا کر سکنے کا کوئی اعتبار نہیں۔ اسی طرح کسی ملک میں کفار کا آباد ہونا یا شعائر کفر کا مسلمانوں کی اجازت یا ان کی غفلت سے وہاں ظاہر کرنا اس ملک کے دارالاسلام ہونے میں کوئی فرق پیدا نہیں کرتا۔ اس لئے کہ ان دونوں صورتوں میں غلبہ ان لوگوں کا نہیں پایا جاتا اور مدار حکم غلبہ ہی ہے محض وجود یا ظہور پر نہیں۔

Translation: "On the mere basis of land being populated by Muslims or Muslims implementing salient features of Islam therein with the **permission of the disbelievers**, one cannot call that land Darul Islam... Likewise, based on disbelievers populating a land or making apparent salient features of disbelief with the Muslims' permission or while the Muslims are unaware, this would not make a difference in that country's status being Darul Islam. This is because in both scenarios, **dominance is not found** from either party, and the ruling will be based upon dominance, not on mere existence (of inhabitants adhering to a particular religion) or apparentness (of a particular religion's symbols)."<sup>11</sup>

On the basis thereof, if a Muslim were to travel to *Darul Harb* then make apparent symbols of his religion, e.g., the Jumuah or Eid prayer, with permission of the non-Muslims, this would not affect the country's status in terms of removing it from the category of being *Darul Harb*. For example, when the Prophet ﷺ and his companions ﷺ traveled to Makkah before its conquest and while it was still *Darul Harb*, to make up the previous year's Umrah, they publicly demonstrated the salient features of Islam, e.g., Salah, Umrah, etc. There was such a large group of Muslims that if they wanted, they could have overpowered the disbelievers of Makkah; nevertheless, the

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<sup>11</sup> Jawahirul Fiqh: v. 5, p. 208 (Maktaba Darul Uloom Karachi)

Muslims were within the boundaries of Makkah (which was under the control of the non-Muslims), and they were demonstrating the symbols of Islam only with permission of the disbelievers (based on the Treaty of Hudaib). Thus, Makkah was not understood to be *Darul Islam* during these three days. Instead, it remained *Darul Harb* because the Muslims performed these religious acts within Makkah based on the disbelievers' permission, **not based on possessing dominance and authority**. No scholar of Islam has stated if a Muslim resides in a non-Muslim country with permission and consent, and as a Muslim makes apparent the symbols of Islam, then that country becomes *Darul Islam*. If this were the case, countries such as Russia, China, and their likes would all be *Darul Islam*, and there would be no *Darul Harb* left on the face of this Earth!<sup>12</sup> Furthermore, there is no such thing as a third independent *dar* in Hanafi fiqh, but rather, *Darul Aman* is a subcategory of *Darul Harb*. To substantiate this argument, Abyssinia is still referred to as *Darul Harb* in *Al-Mabsoot li Al-Sarakhsi* despite the Sahaba ﷺ being safe there:

وإذا كان قوم من المسلمين مستأمنين في دار الحرب فأغار على تلك الدار قوم من أهل الحرب لم يحل لهؤلاء المسلمين أن يقاتلوه؛ لأن في القتال تعريض النفس فلا يحل ذلك إلا على، وجه إعلاء كلمة الله عز وجل واعزاز الدين، وذلك لا يوجد ههنا؛ لأن أحكام أهل الشرك غالبية فيهم فلا يستطيع المسلمون أن يحكموا بأحكام أهل الإسلام فكان قتالهم في الصورة لإعلاء كلمة الشرك، وذلك لا يحل إلا أن يخافوا على أنفسهم من أولئك فحينئذ لا بأس بأن يقاتلوهم للدفع عن أنفسهم لا لإعلاء كلمة الشرك، والأصل فيه حديث جعفر - رضي الله عنه -، فإنه قاتل بالحبشة مع العدو الذي كان قصد النجاشي، وإنما فعل ذلك؛ لأنه لما كان مع المسلمين يومئذ أماناً عند النجاشي فكان يخاف على نفسه وعلى المسلمين من غيره، فعرفنا أنه لا بأس بذلك عند الخوف.

Translation: "And when a group of Muslims who received security are in Darul Harb...The proof for this is the Hadith of J'afar ﷺ; certainly, he fought in **Abyssinia** against the enemy who intended to attack Najashi..."<sup>13</sup>

When the term *dar* is attributed to a word other than *Harb* or *Islam*, it does not entail a third *dar*; instead, it refers to a subcategory of *Darul Harb* or *Darul Islam*. Some contemporary and recent scholars have misinterpreted

<sup>12</sup> Ibid: p. 209-210 & 219

<sup>13</sup> Al-Mabsoot li Al-Sarakhsi: v. 10, p. 97-98 (Darul Ma'rifah-Beirut)

Hanafi texts and have used them to substantiate the existence of a third independent *dar* according to Hanafi scholars. Another term that can be found in Hanafi Fiqh books apart from *amn*, which contemporary scholars have used as evidence to establish another *dar* besides the two well-known *daars*, is *muwaad'ah*. However, *Darul Muwaada'ah* is also a subcategory of *Darul Harb*. To support this, it is mentioned in *Sharh Al-Siyar Al-Kabeer*:

وإذا كانت دار من دور أهل الحرب قد وادع المسلمون أهلها على أن يؤدوا إلى المسلمين شيئاً معلوماً في كل سنة على ألا يجري عليهم المسلمون أحكامهم فهذه دار الحرب

Translation: "When there exists a *dar* (land) from the lands of the people of *harb* (war), and the Muslims did *muwaada'ah* (made peace) with its people on the condition that they give a specific portion of wealth to the Muslims every year, and the Muslims would not enforce their laws upon them, **then this land will be considered Darul Harb.**"<sup>14</sup> *Darul Amaan* is referred to as a subcategory of *Darul Harb* in Fatawa Darul Uloom Deoband:

اسی وجہ سے شیخ الاسلام مولانا مدنی نے آزادی کے بعد بھی اس ملک کو اس کے حالات کی وجہ سے دار الحرب ہی کہا۔ اور بعضوں نے دار الحرب کی ایک قسم دار الامان قرار دیا

Translation: "For this reason, Shaykhul Islam Moulana Madani ﷺ also called this country (India) Darul Harb, after independence, on account of its conditions. Some called it a Darul Amaan, which is a **subcategory** of Darul Harb."<sup>15</sup> It is mentioned in *Ilaa'us Sunan* regarding those non-Muslims with whom the Muslims made peace with:

لأنهم بهذه المودة لا يلتزمون أحكام الإسلام ولا يخرجون من أن يكونوا أهل حرب

Translation: "...And they do not exit the category of being the people of *harb* (war)."<sup>16</sup>

A notable opinion among contemporary scholars is that *Darul Harb* is a country that declares war on Muslims. However, previous jurists have not added such a condition when defining *Darul Harb*. It makes no difference

<sup>14</sup> Sharh Kitab Al-Siyar Al-Kabeer: v. 5, p. 305 (DKI)

<sup>15</sup> Fatawa Darul Uloom Deoband: v. 12, p. 163 (Darul Ishaat)

<sup>16</sup> 'Ilaa'us Sunan: v. 14, p. 361 (Idaratul Quran wal Uloom Al-Islamiyah)

whether a government announces that they are at war with Muslims or not. If such a criterion in determining *Darul Harb* is accepted, most countries in the world that have not declared war against Muslims would not be considered *Darul Harb* even if there is no peace treaty between them. Often, a country that has not openly declared war on Muslims can cause more harm to Muslims than those who have declared war. For example, countries that have not made pacts with Muslims or have not declared war can catch Muslims off guard and attack them. However, Muslims can prepare for attacks against those countries that have already declared war against them.<sup>17</sup>

Some contemporary scholars also opine that non-Muslim countries united with Muslim countries by a peace agreement through the United Nations cannot be categorized as *Darul Harb* due to this peace agreement; instead, they would be classified as *Darul Ahd*. Doctor Ismaeel Lutfi Fattani refutes this claim by saying, "Verily, the term "Darul Ahd" which they use here is not free from two possibilities: Either it is intended by it "Dar Ahl Al-Sulh" or "Dar Muwaada'ah." Suppose they intend by it (i.e., the term "Darul Ahd") "Dar Ahl Al-Sulh," then making a deal of "sulh" (i.e., peace) or "zimmah" (responsibility) has specific conditions which are not found in their agreement with the United Nations. Additionally, authority and power in a deal of "zimmah" belong to the Muslims, not to the people of "zimmah." However, this is not the case regarding the agreement made with the United Nations, where the authority belongs to the non-Muslims. If they intend thereby "Dar Muwaada'ah," then Darul Harb's condition does not change with the agreement of "muwaada'ah. Thus, it will not come out of the status of Darul Harb. Furthermore, the agreement of "muwaada'ah" or "hudna" (truce) is an agreement that is not binding, nor is it everlasting. A Muslim leader may terminate such a deal when he deems it beneficial for the Muslims. In that case, on what basis do the people of this opinion (i.e., all countries

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<sup>17</sup> Ikhtilaf Al-Daarayn wa Aathaaruhu fi Ahkam Al-Shariah Al-Islamia: v. 1, p. 245-246

connected via the United Nations are Darul Ahd) base that these countries are *Darul Ahd*?! Secondly, Shaykh Abu Zahra's argument and those who follow him negate Darul Harb's existence in the entire world. This is such a matter that would contradict Allah's ﷻ law upon a land. Similarly, it would suspend Allah's ﷻ law in terms of Jihad, etc. This is a dangerous matter and a great sin. And there is no power nor might except from Allah ﷻ."18

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<sup>18</sup> Ikhtilaaf Al-Daarayn wa Atharuhu fi Ahkaam Al-Munaakahaat wa Al-Mu'amalat: p. 56-57 (Darus Salam)

## Section 7: The Dispute Regarding India's Status and Position of Scholars who Considered it Darul Harb

After the British invasion of India, there was a lot of debate between the Indian Subcontinent scholars regarding whether India had transformed from *Darul Islam* to *Darul Harb* or not. This discussion is critical and relevant because it shows us how our elders dealt with a situation like what we are facing in the West. Nevertheless, one must keep in mind that there is a significant difference between post-British India and many Western countries, e.g., America, in that Muslims previously ruled India. In contrast, Muslims never conquered or ruled, for example, America.

Most Indian Subcontinent scholars considered India to be *Darul Harb*, while some suggest that it is not *Darul Harb*.<sup>19</sup> The first scholar to declare India to be *Darul Harb* in the form of a fatwa was Shah Abdul Aziz رحمۃ اللہ علیہ. The original fatwa was written in Farsi, which can be found in Fatawa Azizi; however, it has also been translated into the Urdu language:

دار الاسلام سے مراد وہ ملک ہے جس میں مسلمانوں کے امام کا حکم جاری ہو اور وہ اس کے تسلط میں ہو اور دار الحرب سے وہ ملک مراد ہے، جس میں اس کے بڑے کا حکم جاری ہو، اور وہ اس کے تسلط میں ہو، اس شہر میں مسلمانوں کے امام کا حکم بالکل جاری نہیں، اور روسا نصاریٰ کا حکم بے کھٹکے جاری ہے، احکام کفر کے جاری ہونے کا مطلب یہ ہے کہ ملک داری اور رعایات کے بندوبست کے مقدمہ ٹیکس اور مال تجارت سے عشر وصول کرنے چور اور ڈاکوؤں کے انتظام، لڑائی جھگڑوں کے فیصلہ کرنے اور جرائم کی سزا دینے میں کفار خود حاکم ہوں اگرچہ بعض احکام اسلام مثلاً جمعہ، عیدین، اذان اور گائے کے ذبح کے ساتھ تعرض نہ کرتے ہوں، لیکن اصل بات یہ ہے کہ یہ چیز ان کے نزدیک بدر کے درجہ میں ہیں، اس لئے کہ مساجد کو بے تکلف منہدم کراتے ہیں، اور کوئی مسلمان اور ذمی بغیر ان سے امن لئے اس شہر میں اور اس کے گرد و نواح میں نہیں آ سکتا، اپنے فائدہ کی خاطر آنے والوں سے مسافروں سے اور تاجروں سے مخالفت نہیں کرتے، دوسرے بڑے حضرات مثلاً شجاع الملک اور ولایتی بیگم بغیر ان کے حکم کے اس شہر میں داخل نہیں ہو سکتے، اور اس شہر سے کلکتہ تک نصاریٰ کا عمل دخل پھیلا ہوا ہے، مگر دائیں بائیں، مثلاً حیدر آباد لکھنؤ اور رام پور میں اپنی مصلحت اور اس طرف کے مالکوں کے فرمانبردار ہونے کی وجہ سے اپنے احکام انہوں نے جاری نہیں کئے ہیں

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<sup>19</sup> Fatawa Mahmudia: v. 24, p. 371 (Darul Isha'at)

Translation: "Darul Islam refers to that land wherein the Muslim leader's law is enforced, and the land is under his authority. On the other hand, Darul Harb refers to that land wherein the non-Muslim leader's rule is executed, and the land is under his jurisdiction. In this country (India), the Muslim leader's law is not enforced, whereas Christian leaders' law is enforced without hesitation. The meaning of unislamic law being implemented is that with regards to the matter of governance, the management of the people's affairs, taxes, taking ushr from the wealth that is used for trade, dealing with highway robbers and thieves, settling disputes, and issuing punishments for crimes committed, the non-Muslims are themselves the authority even though they do not interfere with some laws of Islam, e.g., Jumua, both Eid prayers, Adhan, and the slaughtering of cows. However, in essence, these matters (Islamic laws) are not important to them because they demolish Masjids without reluctance. No Muslim nor Zimmi may enter this country or its suburbs without acquiring a permit (from the non-Muslim leader). They (the non-Muslim leaders) do not oppose visitors, travelers, and traders for their benefit. Dignitaries such as Shuja Ul Mulk and Wilayati Begum cannot enter this country without their permission. The Christians' rule extended from this city until Calcutta; however, they did not enforce their laws in provinces such as Hyderabad, Lucknow, and Rampur based on personal interest and the submissiveness of those leaders' regions.<sup>20</sup>

Mufti Kifayatullah رحمۃ اللہ علیہ believed India became *Darul Harb*. It is mentioned in his book *Kifayatul Mufti*, which is a collection of his fatwas:

ہندوستان دارالحرہ ہے

Translation: "India is *Darul Harb*."<sup>21</sup>

When the Grand Mufti of Darul Uloom Deoband, Mufti Azizur Rahman رحمۃ اللہ علیہ, was asked about India's status, he replied similarly and said it was *Darul Harb*.<sup>22</sup> Mufti Shafi Usmani رحمۃ اللہ علیہ translated Mufti Rasheed Ahmad Gangohi's رحمۃ اللہ علیہ

<sup>20</sup> Fatawa Mahmudia: v. 24, p. 372-373 with reference to Fatawa Azizi (Darul Isha'at)

<sup>21</sup> Kifayatul Mufti: v. 8, p. 70 (Darul Isha'at)

<sup>22</sup> Fatawa Darul Uloom Deoband: v. 12, p. 162 (Darul Isha'at)

original fatwa that was written in Farsi regarding the status of post-British India into the Urdu language: "And when this masala (Fiqhi matter) has been thoroughly researched, then you should ponder yourselves over the status of India that with how much strength and force are the laws of the disbelieving Christians being implemented in this place (India). If even a collector with the lowest status were to order the Muslims not to pray in the Masjids with the congregation, then no rich nor poor person would have the ability to pray with the congregation in the Masjids. As for the Jumuah/Eid prayers and implementation of some of Sharia's principles, these actions are merely carried out based on their (the British) law. They (the British) have passed such a rule that every individual is free to practice his religion, and no one has the right to trouble him on account of his faith. Now, no trace remains of the security granted by the Kings of Islam to those who live here. Can an intelligent person claim that because of the protection given to us by Shah' Aalam, today we are sitting safely due to that granted security? Instead, new protection has been obtained from the disbelievers. Employing the protection granted by the Christians, all the people are living in India (safely)... Anyhow, the control the disbelievers have over India is at such a level that at any time, no disbelievers had more control over a Darul Harb than this. Islam's salient features that Muslims implement here are only based on their (the British) permission. There is no group of people more incapable than the Muslims; the Hindus also, to a degree, have an establishment in the government, whereas the Muslims do not even possess that..."<sup>23</sup>

## **Section 8: Position of Scholars Who Do Not Consider India to Be Darul Harb**

Apart from scholars who considered India to be *Darul Harb*, many scholars thought it remained *Darul Islam*.<sup>24</sup> Among those great scholars were

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<sup>23</sup> Jawahirul Fiqh: v. 5, p. 219-220 (Maktaba Darul Uloom Karachi)

<sup>24</sup> Imdadul Fatawa: v. 3, p. 158 (Maktaba Darul Uloom Karachi)

Moulana Ashraf Ali Thanwi ﷺ and Moulana Abdul Hai Laknawi ﷺ. In *Fatawa Mahmudia*, it is mentioned that Moulana Abdul Hai ﷺ replied to someone's question and stated that India is not *Darul Harb*; instead, it is *Darul Islam*. Moulana Abdul Hai ﷺ supports his claim with classical fiqh texts: "In the book *Siyar Al-Asl* of Abu Al-Yusr, Darul Islam does not become Darul Harb as long as all of the conditions through which it became Darul Islam is not invalidated because when a ruling is established due to some reason, then as long as something remains from that reason, the ruling will completely remain. It is mentioned in *Manthoor*, Darul Islam is that country wherein Islamic laws are enforced. Hence, if something remains of Islam, preference will be given to categorizing it as Darul Islam." It is mentioned in *Bazaazia*: "The lands that are in possession of the disbelievers today, there is no doubt that they are the lands of Islam after they became connected to the lands of harb (war), and the laws of disbelief have not become apparent, rather the judges are Muslims. The lands that have a (Muslim) governor appointed by them are permitted to establish the Jumuah and Eid prayers, take the land tax, appoint judges, and marry off spouseless women. As for the lands that have non-Muslim governors appointed over them, it is also permitted to establish Jumuah and Eid prayers. The judge will be appointed with the mutual consent of the Muslims. It has become established that a ruling will remain with the remnant of something from the *ilat* (reason), and we had passed the ruling that before the dominance of the Tatars, these lands were the lands of Islam. After their dominance, openly performing the Jumuah and congressional prayers, passing rulings according to Islamic Law, issuing Islamic edicts, and teaching was common without reproach from their rulers. Therefore, to pass a verdict that it is from Darul Harb has no basis taking into consideration studies and knowledge. The public sale of alcohol, taking of taxes, and ruling according to the Tatars' laws is like Banu Quraiza (a Jewish tribe) openly seeking a legal decision from *Taghut* (other than Islamic Law). Despite that, the land (Madinah) was considered an Islamic land without any doubt. And Halwani ﷺ mentioned, 'A land will only become Darul

Harb with the enforcement of non-Islamic laws, no Islamic law is implemented therein, the land is connected to a Darul Harb, and not a Muslim nor Zimmi remains secure with the initial security (granted by the Muslims). Thus, if all the (aforementioned) conditions are found, it will become Darul Harb. When the proofs and conditions contradict each other, it (i.e., the land) will remain as it was, or preference will be given to it being classified as Darul Islam based on caution; the apparent meaning of this is that when Islamic laws and non-Islamic laws are both enforced, it would not be Darul Harb..."<sup>25</sup>

The ruling mentioned above entails India as Darul Islam. However, a different group of scholars considered India to be of another *dar* (domain) aside from *Darul Harb* or *Darul Islam*. They identified it to be a third independent *dar* by the name of *Darul Aman* or *Darul Jamhooria*.

Mufti Khalid Saifullah Rahmani elaborated on *Darul Aman* in his book *Qamoosul Fiqh*: "The political situation of Abyssinia, at that time, abundantly resembles today's republican countries, and this type of situation can be labeled as "Darul Aman" ... Darul Aman is a country under the control of the non-Muslims; however, Muslims are secure. The Muslims can fulfill the obligation of propagating the religion, and they can act upon those Islamic laws that do not require authority for its implementation. (Majority of present-day non-Muslim countries) In today's era, most non-Muslim countries are republics whose leadership does not have an official religion, and people of different faiths participate in the government based on the rule of co-existence. Or the administration has a particular religion; however, other minorities are free to act per their faiths, e.g., America, Britain, and the new, free Nepal. In those countries with governments, despite incarceration, a person has freedom of religion (i.e., people can even practice religion in prison). The protection of all civilians' lives and wealth is guaranteed by law. All these governments are categorized as Darul Aman.

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<sup>25</sup> Fatawa Mahmudia: v. 24, p. 373-374 (Darul Isha'at) with reference to Fatawa Abdul Hai and Fatawa Bazaazia

The Communist bloc is close to collapsing, and from among those that remain, despite present-day changes, perhaps there are only two or three countries that can be validly called Darul Harb. Based on the present-day situation of Yugoslavia and Israel, indeed, they will be Darul Harb. The Muslims of India are protected according to the constitution. Apart from the freedom of practicing one's religion, they have the right to propagate and spread their faith. In all facets of life, their existence is acknowledged. Keeping this in mind, there is no doubt in it (India) being *Darul Aman*. As for the occasional transgressions that are committed by prejudiced mischief-makers, just as mentioned earlier, such actions cannot be the government's actions. Today, those countries that are called Muslim countries are not free from such incidents.<sup>26</sup>

It is mentioned in *Kitabun Nawazil*: "In Shariat, the laws differ in Darul Islam and Darul Harb. Regarding them (Darul Harb and Darul Islam), the jurists have also stipulated different conditions (i.e., which conditions determine Darul Islam and Darul Harb). During previous times, it was generally easy to ascertain these conditions for a particular *Dar*. Hence, it was not too difficult to categorize a place as Darul Islam or Darul Harb. However, today, the new international system's specification of borders for different countries, pacts between citizens of a country, and the constitution have become such that to label these places Darul Harb or Darul Islam with certainty is a challenge because in such places, neither do the Muslims possess absolute or supreme authority nor is there any legal interference with their religious freedom. Our country, India, is also included in the category of "such places." In India, even though Islamic law is not enforced on a governmental level, however, on the other hand, taking into consideration the constitution, the Muslims also have the same citizen's rights that non-Muslims have. Based on this constitution, Muslims continue to demand their rights. Also, the country's courts hear their valid complaints

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<sup>26</sup> Qamoosul Fiqh: v. 3, p. 398-399 (Zamzam)

and endeavor to resolve their issues. On the basis thereof, to label India as Darul Harb and to attempt to derive benefit from those concessions that the jurists gave to those residing in Darul Harb is contrary to religion and justice.

For this reason, the elder Muftis have classified India as *Darul Aman* or *Darul Jamhooia*. Furthermore, permission is given to establish the Jumua and Eid prayers here (in India) and, without complete authority, permission is given to establish Islamic courts. Permission is also given to establish organizations for resolving people's issues. Moreover, in financial transactions, the same restrictions apply that apply to Muslims living in Darul Islam. It has thus become evident that this is the cautious view, and it cannot be overlooked.<sup>27</sup>

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<sup>27</sup> Kitabun Nawazil: v. 11, p. 246-247 (Darul Isha'at)

## **Section 9: Division of the World into Two Domains considering the Quran, Hadith, and Ijma (Consensus of the Scholars)**

Some contemporary scholars opine that the previous jurists' division of the world into two domains was a division based on the circumstances of that time in terms of the Muslims' relationship with the non-Muslims, not an Islamic legal division based on evidence from the Quran or Sunnah. Instead, the reality of the matter is that the world, in essence, is one domain. Such a division was because the Muslims were at war with the non-Muslims, so it was a temporary division due to war. Hence, this sort of division will cease with the ceasing of the cause, i.e., war.<sup>28</sup>

However, in-depth research of the scholars' consensus and analysis of the Quran and Sunnah indicates that the world is divided into two domains: *Darul Islam* and *Darul Kufr*.

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<sup>28</sup> Ikhtilaf Al-Darayn wa Atharuhu fi Ahkam Al-Shariah Al-Islamia: v. 1, p. 321 (Al-Mamlaka Al-Arabia Al-Saudia Wizarah Al-Taleem Al-'Aali Al-Jamiah Al-Islamia bi Al-Madinah Al-Munawwarah 'Imadah Al-Bahth Al-'Ilmi)

## Section 10: Proofs from the Quran of the Division of the World

Multiple verses indicate the division of the world; however, I will mention a few. Allah ﷻ says:

قَالَ الْمَلَأُ الَّذِينَ اسْتَكْبَرُوا مِن قَوْمِهِ لَنُخْرِجَنَّكَ يَا شُعَيْبُ وَالَّذِينَ آمَنُوا مَعَكَ مِن قَرْيَتِنَا أَوْ لَنَعُودَنَّ فِي مِلَّتِنَا قَالَ أَوَلَوْ كُنَّا كَارِهِينَ

Translation: The arrogant chiefs from his people said, "We will surely expel you, O Shuaib, and those who believe with you from **our town**, or you must return to our religion." He said, "Even if we hate it?" (Surah Al-'Araaf: verse 88)

Allah ﷻ says:

وَقَالَ الَّذِينَ كَفَرُوا لِرُسُلِهِمْ لَنُخْرِجَنَّكُمْ مِّنْ أَرْضِنَا أَوْ لَنَعُودَنَّ فِي مِلَّتِنَا فَأَوْحَى إِلَيْهِمْ رَبُّهُمْ لَنُهْلِكَنَّ الظَّالِمِينَ

Translation: And the disbelievers said to their messengers, "We will certainly expel you from **our land** unless you return to our religion." So, their Lord revealed to them, "Surely, we shall destroy the wrong-doers." (Surah Ibrahim: verse 13)

These verses indicate that land under the control of the disbelievers who threaten the Muslims to either reject the religion of Islam or face the consequence of getting expelled from their land confirms that such lands cannot be called Darul Islam but rather Darul Kufr.

In another verse, Allah ﷻ says:

سَأُرِيكُمْ دَارَ الْفَاسِقِينَ

Translation: I shall show you the **abode** of the sinners. (Surah Al-'Araaf: verse 145)

Allah ﷻ explicitly mentions that there is such an abode beside the believers' abode, which is the sinners' abode. The place wherein disobedience, cheating, and corruption are rampant cannot be classified as Darul Islam.<sup>29</sup>

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<sup>29</sup> Ikhtilaf Al-Darayn wa Atharuhu fi Ahkam Al-Shariah Al-Islamia: v. 1, p. 305-306 (Al-Mamlaka Al-Arabia Al-Saudia Wizarah Al-Taleem Al-'Aali Al-Jamiah Al-Islamia bi Al-Madinah Al-Munawwarah 'Imadah Al-Bahth Al-'Ilmi)

## Section 11: Proofs of the Division of the World from the Sunnah

The prophetic traditions indicate to the world being divided into two domains. One example is Makkah and Madinah and the command of migration from Makkah to Madinah. Makkah was considered *Darul Kufr* before the conquest and after the migration. Besides, there was hostility between the people of Makkah (polytheists) and the Muslims. Madinah became *Darul Islam*; thus, the believers migrated there from Makkah, which was *Darul Kufr* before the conquest. There are clear, authentic Hadiths regarding migration from *Darul Kufr* to *Darul Islam*:

حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُوسَى الرَّازِيُّ، أَخْبَرَنَا عَيْسَى، عَنْ حَرِيْزِ بْنِ عُثْمَانَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي عَوْفٍ، عَنْ أَبِي هِنْدٍ، عَنْ مُعَاوِيَةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا تَنْقَطِعُ الْهَجْرَةُ حَتَّى تَنْقَطِعَ التَّوْبَةُ، وَلَا تَنْقَطِعَ التَّوْبَةُ حَتَّى تَطْلُعَ الشَّمْسُ مِنْ مَغْرِبِهَا»

أخرجه أبو داود (٢٤٧٩)، والنسائي في «السنن الكبرى» (٨٧١١)، وأحمد (١٦٩٠٦) واللفظ له

Translation: Muawiyah رضي الله عنه narrated: I heard the Messenger of Allah ﷺ say, migration will never cease until (the acceptance of) *tawba* (repentance) ceases. And *tawba* will never stop until the sun rises from the West." This Hadith indicates that the world is divided into *Darul Islam* and *Darul Kufr* because migration from *Darul Kufr* to *Darul Islam* remains and will not cease. Another Hadith that shows the division of the world into two domains is the Hadith of Sulayman Ibn Buraida رضي الله عنه, which he narrates from his father:

[عن بريدة بن الحصيب الأسلمي:] كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا أَمَرَ أَمِيرًا عَلَى جَيْشٍ، أَوْ سَرِيَّةٍ، أَوْ صَاهٍ فِي خَاصَّتِهِ بِتَقْوَى اللَّهِ، وَمَنْ مَعَهُ مِنَ الْمُسْلِمِينَ خَيْرًا، ثُمَّ قَالَ: اغْرُزُوا بِاسْمِ اللَّهِ فِي سَبِيلِ اللَّهِ، فَأَتَلُوا مَنْ كَفَرَ بِاللَّهِ، اغْرُزُوا وَلَا تَغْلُوا، وَلَا تُغْدِرُوا، وَلَا تَمْتَلُوا، وَلَا تَقْتُلُوا وَلِيْدًا، وَإِذَا لَقِيتَ عَدُوَّكَ مِنَ الْمُشْرِكِينَ، فَادْعُهُمْ إِلَى ثَلَاثِ خِصَالٍ، أَوْ جَلَالٍ، فَأَيُّهُنَّ مَا أَجَابُوكَ فَأَقْبِلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى الْإِسْلَامِ، فَإِنْ أَجَابُوكَ، فَأَقْبِلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى التَّحَوُّلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ... الحديث

صحيح مسلم ١٧٣١

Translation: Whenever the Messenger of Allah ﷺ would appoint a leader over an army or detachment, he would advise him specifically to fear Allah and to treat those Muslims that were with him well. Then he would say, "Attack in the name of Allah, in the path of Allah! Fight those who disbelieve in Allah! Attack, however, do not embezzle the spoils of war, act treacherously, mutilate bodies, nor kill a child. When you meet your enemy from the polytheists, call them toward three things. Whichever of them they respond to, accept it from them and refrain from fighting them. Then, call them toward Islam. If they respond to you, then accept from them and refrain from fighting them. Then, call them toward **moving from their land (land of disbelief) to the land of the emigrants (Darul Islam).**

This second Hadith indicates that the world is two domains; *Darul Islam* and *Darul Kufr*, because the statement of the Prophet ﷺ "then call them toward moving from their land (*Darul Kufr*) to the land of emigrants (*Darul Islam*)" indicates that there is a domain other than the domain of Islam, and that is *Darul Kufr*.<sup>30</sup>

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<sup>30</sup> Ikhtilaf Al-Darayn wa Atharuhu fi Ahkam Al-Shariah Al-Islamia: v. 1, p. 307-311 (Al-Mamlaka Al-Arabia Al-Saudia Wizarah Al-Taleem Al-'Aali Al-Jamiah Al-Islamia bi Al-Madinah Al-Munawwarah 'Imadah Al-Bahth Al-'Ilmi)

## **Section 12: Proof from the Statements of the Sahaba ﷺ of the Division of the World**

It has been narrated in some narrations of the Sahaba ﷺ that Makkah was *Darul Kufr* after the emigration, and Madinah became *Darul Islam*. Khalid Ibn Waleed ﷺ mentioned in one of his letters, that has been narrated in *Kitabul Kharaj* of Imam Abu Yusuf ﷺ, the following, "I have stipulated for them -- the *Zimmis* -- that any old man who is incapable of working due to weakness, a calamity afflicting him, or he was rich then became poor, and the people of his faith started to give alms to him, that I have waived the *jizya* (that is due upon him), and he and his family will be supported from the *baitul maal* (treasury) of the Muslims **as long as they reside in *Darul Hijrah* and *Darul Islam*. If they leave to any place apart from *Darul Hijrah* and *Darul Islam*, then the Muslims are not responsible for their family's financial maintenance.**<sup>31</sup>

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<sup>31</sup> Ikhtilaf Al-Darayn wa Atharuhu fi Ahkam Al-Shariah Al-Islamia: v. 1, p. 312 (Al-Mamlaka Al-Arabia Al-Saudia Wizarah Al-Taleem Al-'Aali Al-Jamiah Al-Islamia bi Al-Madinah Al-Munawwarah 'Imadah Al-Bahth Al-'Ilmi)

## **Section 13: Division of the World in the light of *Ijma* (Consensus of the Scholars)**

There is a consensus of the scholars, from among them are the four Imams of the four schools of thought, that the world is divided into two domains: *Darul Islam* and *Darul Kufr*.<sup>32</sup> For more details, one can refer to the books of Fiqh of each respective school of thought.

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<sup>32</sup> Ikhtilaf Al-Darayn wa Atharuhu fi Ahkam Al-Shariah Al-Islamia: v. 1, p. 312 (Al-Mamlaka Al-Arabia Al-Saudia Wizarah Al-Taleem Al-'Aali Al-Jamiah Al-Islamia bi Al-Madinah Al-Munawwarah 'Imadah Al-Bahth Al-'Ilmi)

## **Section 14: Modern Implications**

In light of the historical context of labeling a region as Darul Islam vs. Darul Harb, the consensus of the Imams and evidence from Quran and Sunnah; we see that today, non-Muslim countries, e.g., the US, UK, Russia, etc., apparently seem to fit Darul Harb/Kufr's description outlined by the Hanafi school of thought. We are witnessing in these lands that any security and religious freedom enjoyed by Muslims are granted by the non-Muslim government. Religious rituals, e.g., Jumuah/Eid prayer, building Masjids/Islamic institutes, etc., are executed with the non-Muslim government's permission, not with the authority of the Muslims.

To further emphasize this, Muslims never conquered many of these countries, i.e., non-Muslims always ruled them. In a land where Muslims do not have a sovereign ruling, those lands cannot be considered Darul Islam.

## Section 15: Usury

Usury was prohibited in those scriptures that Allah ﷻ revealed before the Prophet's ﷺ prophethood. Therefore, it is essential to know the ruling of usury according to the *Ahlul Kitab* (People of the Book). Learning the verdict of usury according to the *Ahlul Kitab* is an introduction to what their religious ideology of the subject of usury later developed into, which eventually produced the term "interest." The summary of this is as follows:

1. The taking of usury was such an action that was prohibited in Judaism; however, its prohibition was restricted to the Jews taking it from one another, but it was permissible for them to take it from non-Jews. Allah ﷻ says, "That is because they said the unlettered ones have no way of blaming us." (Surah Al-Imran, v. 75) Nevertheless, the restriction of the prohibition of dealing with usury among themselves was not free from exclusion (i.e., some of them also dealt with it among themselves despite them being Jews).
2. As for the ruling of usury, according to the Christians, it was severely prohibited before the era of renewal. The usury concept was very vast (i.e., many things came under the category of usury). Some examples of their strictness are as follows:
  - a. Receiving profit, which exceeded the principal amount, for loaning money, was prohibited even if it was a gift.
  - b. Any profit which was received from a financial transaction that was based upon buying a commodity then selling it with profit (i.e., selling it for a higher price) and remains in its original state without being processed, manufactured, or any extra work on it would fall under the category of usury. Every financial transaction that comprises exploitation by increasing the prices would fall under the usury category even though it may be a business transaction or *ijara* (renting out or employment).

- c. The profit received for transacting a deal that involves gain is like usury in terms of its ruling because both do not possess a counterpart (i.e., something given in exchange) apart from time; excess money demanded due to extra time is usury. On account of the severe difficulty incurred when dealing with one another with this vast usury concept, they could not exercise patience (upon this vast concept). Thus, exclusion occurred regarding some of the usury scenarios, e.g., compensating the creditor for withholding his wealth.
3. After the era of renewal, the ruling of usury submitted to reexamination and explanation in an unprecedented manner in Christianity. The results of that are as follows:
  - a. The permissibility of a financial transaction that involves a fair profit without any exploitation therein.
  - b. The appearance of the term "interest" and that it is not considered usury. However, "interest" is that which establishes a shared benefit, and there is no exploitation therein; this type of interest is permissible. The first person who made this distinction apparent was the religious reformer, John Calvin (1509-1564).
  - c. The distinguishing factor between interest and usury, according to them, is that which the law stipulates.
  - d. Then, this distinction is that which the western economists adopted afterward until today.<sup>33</sup>

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<sup>33</sup> Al-Iqtisad Al-Islami: p. 38-39 (Abdullah Ibn Yusuf Al-Judai)

## **Section 16: Islamic Perspective on Usury**

Allah ﷻ says regarding usury, "And Allah has made trade permissible and prohibited usury." (Surah Al-Baqarah: verse 275). Also, Jabir Ibn Abdullah ﷺ narrated about usury, "The Messenger of Allah ﷺ cursed the consumer of usury, the one who gives it, the one who writes it, and the two people who witness it, and he said (regarding all of them), 'They are all equal.'" (Sahih Muslim: Hadith 1598)

The Quran and Sunnah are clear and straightforward on the prohibition of usury. The impermissibility of usury is evident for Muslims. Furthermore, the Islamic stance does not allow for exceptions or exclusions when it comes to usury, as was the Jewish and Christian case whose traditions eventually became dependent on what they legislated or state law rather than religious rulings.

## Section 17: Taking Usury in Darul Harb According to The Jurists

According to all jurists, it is prohibited to give or take usury in *Darul Islam*. However, according to Imam Abu Hanifah رحمه الله and his student Imam Muhammad رحمه الله, it is permissible to take usury in *Darul Harb* from *Harbis* (non-Muslim residents residing in *Darul Harb*). According to Imam Shafiee رحمه الله, Imam Ahmad Ibn Hanbal رحمه الله, Imam Malik رحمه الله, and Imam Abu Yusuf رحمه الله, giving and taking interest is prohibited in *Darul Harb* and *Darul Islam*.<sup>34</sup> It is mentioned in *Al-Binayah fi Sharhil Hidayah*:

(قال) أي القدوري - رحمه الله - (ولا بين المسلم والحربي في دار الحرب) أي ولا ربا أيضا بين المسلم الذي دخل دار الحرب بأمان وباع درهما بدرهمين وكذا إذا باع خمرا أو خنزيرا أو ميتة أو قامرهم وأخذ المال كل ذلك يحل له إذا كان في دار الحرب عند أبي حنيفة ومحمد رحمهما الله تعالى (خلافا لأبي يوسف والشافعي رحمهما الله تعالى) ومالك وأحمد رحمهما الله تعالى

Translation: [Quduri said], "nor between a Muslim and a Harbi in Darul Harb," [i.e., there is no usury between a Muslim that enters Darul Harb with a visa and sells one dirham for two dirhams. Likewise, if he sells wine, pig, carrion, or gambles, then takes the money; all of this will be permissible for him when he is in Darul Harb, according to Abu Hanifa رحمه الله and Muhammad رحمه الله. Imam Quduri continues], "contrary to Abu Yusuf رحمه الله and Shafiee رحمه الله," [and Malik رحمه الله and Ahmad رحمه الله].<sup>35</sup>

<sup>34</sup> Qamoosul Fiqh: v. 3, p. 401 (Zamzam)

<sup>35</sup> Al-Binayah fi Sharhil Hidayah: v. 10, p. 446 (Al-Maktaba Al-Haqqania)

## Section 18: Proofs of Imam Abu Hanifah رحمته الله

عن مكحول، أن رسول الله صلى الله عليه و سلم قال: (لا ربا بين أهل الحرب)، وأظنه قال (وبين أهل الإسلام) أخرجه البيهقي من طريق عن أبي يوسف، عن بعض المشيخة عن مكحول (دراية ١٨٧)، هذا حديث مرسل، والمرسل حجة عندنا، وجهالة بعض المشيخة غير مضر، لأن تلك الجهالة بالنسبة إلينا لا بالنسبة إلى المجتهد

Translation: Makhool narrates that the Messenger of Allah ﷺ said, "There is no usury between the people of Harb," And I think he said, "and the people of Islam". Bayhaqi has narrated this Hadith with a chain reaching Abu Yusuf رحمته الله, then some scholars, and then Makhool (Diraya 187). This Hadith is Mursal, and Mursal is a proof according to us (i.e., the Hanafis). Not knowing some of the scholars in this chain (after Abu Yusuf رحمته الله) is not harmful (i.e., it is not an issue), because it is us who do not have that knowledge, not the Mujtahid.

Despite this Hadith being a Mursal Hadith (i.e., the Sahabi's name is not mentioned), Makhool رحمته الله is a scholar of Fiqh and reliable. A Mursal Hadith from his likes is acceptable; thus, this Hadith is proof for Imam Abu Hanifah رحمته الله and Imam Muhammad رحمته الله regarding a Muslim, for example, selling one dirham for two dirhams to a *harbi* in Darul Harb.<sup>36</sup>

وَرَبَا الْجَاهِلِيَّةِ مَوْضُوعٌ، وَأَوَّلُ رَبًّا أَضْعَ رَبَانَا رَبَا عَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ، فَإِنَّهُ مَوْضُوعٌ كُلُّهُ

Translation: "The usury of the Days of Ignorance has been abolished. And the first of our usury that I cancel is the Usury of Abbas Ibn Abdil Muttalib رحمته الله. Verily, all of it has been abolished. (Sahih Muslim: Hadith 1218)

Imam Tahawi رحمته الله says, "In it (this Hadith), there is an indication that Abbas رحمته الله was dealing with usury until the Messenger of Allah ﷺ abolished it because he would not abolish except that which was taking place, not that which had fallen off before he could abolish it."<sup>37</sup>

<sup>36</sup> Ilas Sunan: v. 14, p. 345 (Idaratul Quran wal Uloom Al-Islamia)

<sup>37</sup> Sharhu Mushkil Al-Aathar: v. 8, p. 247 (Muasasa Ar-Risala At-Tab'a Al-Ula)

After Abbas ؓ accepted Islam, he returned to Makkah, dealing with interest. This action of his was not hidden from the Prophet ﷺ. Thus, because the Prophet ﷺ did not prohibit him from dealing with interest, this indicates that it was permissible (in Darul Harb). Abbas' ؓ interest being abolished refers to that excess amount of interest owed to him from the people of Makkah after it was conquered (because it became Darul Islam). This does not refer to the interest being abolished with relation to all the polytheists that he dealt in interest with who were from Taif or other lands conquered after Makkah.<sup>38</sup>

It is mentioned in *Al-Binayah fi Sharhil Hidayah*:

(و لأن مالهم) أي مال أهل الحرب (مباح في دارهم) لأنه غير معصوم بل هو على أصل الإباحة (فبأي طريق أخذه المسلم أخذ مالا مباحا إذا لم يكن فيه) أي في أخذه (غدر) لأن الغدر حرام (بخلاف المستأمن منهم) هذا جواب عن قياس أبي يوسف والشافعي رحمهما الله تعالى تقريره ما قاله بقوله (لأن ماله) أي مال المستأمن (صار محظورا) أي ممنوعا أخذه (بعقد الأمان)  
 Translation: [And because their wealth], i.e., the wealth of the people of Harb, [is permissible (to take) in their land.] This is due to their wealth being unprotected. Instead, it is in the default state of permissibility. [Hence, whichever way a Muslim takes it, then he has taken permissible wealth on the condition that there was no betrayal in taking it] because treachery is prohibited. [This is contrary to a *harbi* who comes to Darul Islam on a visa] This is a response to the analogy of Imam Abu Yusuf ؒ and Imam Shafiee ؒ; its explanation is what he mentioned with his statement [because his wealth], i.e., the wealth of the *harbi* who comes with a visa [becomes prohibited], i.e., it becomes forbidden to take [due to the agreement of security.]

<sup>38</sup> Ilaas Sunan: v. 14, p. 346 (Idaratul Quran wal Uloom Al-Islamia)

It can be deduced from the above passage that according to Imam Muhammad ﷺ and Imam Abu Hanifah ر.ه.ا, a *harbi's* wealth is permissible to take in its essence. Nevertheless, a Muslim in Darul Harb cannot take a *harbi's* wealth forcefully without their consent because this would entail treason, which is impermissible. In other words, the Muslims have promised not to go against the terms of the contract of security, e.g., by taking their wealth, killing them, etc. Thus, they must abide by the terms. However, taking their wealth with their consent does not entail treachery. Therefore, if a *harbi* willingly hands over their wealth by giving extra, the Muslim will become the wealth owner. This is taking possession of lawful wealth that is not owned by anyone. The Muslim will become the owner by taking control of such wealth, like taking possession of firewood or grass. Thus, in essence, this is not usury even though it externally seems to be. In conclusion, there is no harm if it apparently appears to be usury on the condition that it is not actual usury<sup>39</sup>

[عن عبدالله بن عباس:] في قول الله تعالى الم غُلِبَتِ الرُّومُ فِي أَدْنَى الْأَرْضِ قَالَ غُلِبَتْ وَغَلَبَتْ كَانَ الْمُشْرِكُونَ يُجِبُونَ أَنْ يَظْهَرَ أَهْلُ فَارِسَ عَلَى الرُّومِ لِأَنَّهُمْ أَهْلُ الْكِتَابِ فَذَكَرُوهُ لِأَبِي بَكْرٍ فَذَكَرَهُ أَبُو بَكْرٍ لِرَسُولِ اللَّهِ ﷺ فَقَالَ أَمَا إِنَّهُمْ سَيَعْلُبُونَ فَذَكَرَهُ أَبُو بَكْرٍ لَهُمْ فَقَالُوا اجْعَلْ بَيْنَنَا وَبَيْنَكَ أَجَلًا فَإِنْ ظَهَرْنَا كَانَ لَنَا كَذَا وَكَذَا وَإِنْ ظَهَرْتُمْ كَانَ لَكُمْ كَذَا وَكَذَا فَجَعَلَ أَجَلًا حَمْسَ سِنِينَ فَلَمْ يَظْهَرُوا فَذَكَرُوا ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ أَلَا جَعَلْتُهُ إِلَى دُونَ قَالَ أَرَأَيْتَ الْعَشْرَ قَالَ قَالَ سَعِيدٌ وَالْبِضْعُ مَا دُونَ الْعَشْرِ قَالَ ثُمَّ ظَهَرَتِ الرُّومُ بَعْدُ قَالَ فَذَلِكَ قَوْلُهُ تَعَالَى الم غُلِبَتِ الرُّومُ إِلَى قَوْلِهِ وَيَوْمَئِذٍ يَفْرَحُ الْمُؤْمِنُونَ بِنَصْرِ اللَّهِ قَالَ سَفِيَانُ سَمِعْتُ أَنَّهُمْ ظَهَرُوا عَلَيْهِمْ يَوْمَ بَدْرٍ (سنن الترمذي ٣١٩٣)

<sup>39</sup> Ilaas Sunan: v. 14, p. 351-352 & 358 (Idaratul Quran wal Uloom Al-Islamia)

Translation: Abdullah Ibn Abbas ؓ says regarding the statement of Allah ﷻ 'Alif Laam Meem. Room has been defeated in the nearest land.' Ibn Abbas ؓ says, "they were defeated (by the Persians initially). However, they (the Romans) shall defeat them (eventually). The idolaters (of Makkah) preferred that the Persians defeat the Romans because both were idol worshippers. However, the Muslims preferred that the Romans become victorious against the Persians because they (the Romans) were the People of the Book. They (the idolaters of Makkah) made mention of it (i.e., that Kisra [the emperor of Persia] sent an army to Qaisar, the emperor of *Room*, and Persia defeated *Room*. They indicated that if the Muslims were to ever face them in a battle like how the Romans and Persians faced each other, they would be defeated just as the Romans were at the Persians' hands (Ad-Durar As-Sunniyah). So, Abu Bakr ؓ mentioned it to the Prophet ﷺ, and the Prophet ﷺ said, 'Alas! Verily, they (the Romans) shall be victorious. Thus, Abu Bakr ؓ mentioned it (i.e., the Romans' future victory) to them (the idolaters of Makkah). They said, 'appoint a stipulated time (i.e., when the Romans will become victorious) between us. Suppose we become dominant (i.e., by the Persians prevailing), we shall receive such and such amount of money. However, if you become dominant (i.e., by the Romans prevailing), you shall receive such and such amount of money. Hence, Abu Bakr ؓ made the deadline (of the Romans' victory) five years. However, the Romans did not prevail (within that time frame). So, they mentioned it to the Prophet ﷺ. The Prophet ﷺ said (to Abu Bakr ؓ), "If only you made it less-- He (one of the narrators) said, 'I think he said (less than) ten.'" He said: Saeed said, "Bid' is that which is less than ten... (Bid' in the Arabic language is a number between three and ten. Allah ﷻ mentioned that the Romans would be defeated in a "Bid'" number of years. So, the Prophet ﷺ encouraged Abu Bakr ؓ to extend the deadline)

Explanation and Imam Abu Hanifa's ؓ corroboration:

Before the migration of Abu Bakr ؓ to Medina when Allah ﷻ revealed, "Alif Laam Meem. Room has been defeated in the nearest land," the idolaters of Makkah told him, "Do you think that Room will defeat Persia?" He replied, "Yes." They said, "Would you make a bet with us; if Room is victorious, you will take our wager, and if Persia is victorious, we will take your wager?" So, Abu Bakr ؓ made a bet with them. Then, he went to the Prophet ﷺ and informed him. The Prophet ﷺ told him to return to them and increase the wager and extend the deadline, so Abu Bakr ؓ did so, and Room defeated Persia. Thus, Abu Bakr ؓ was summoned to collect his wager, so he went and collected it. He came to the Prophet ﷺ, and the Prophet ﷺ commanded him to make use of it (i.e., he allowed him to benefit from the wager).

This sort of gambling is not permitted between Muslims. However, the Prophet ﷺ allowed it between Abu Bakr ؓ and the idolaters of Quraish because Abu Bakr ؓ was in Makkah, the polytheism domain at that time, where Muslims' laws are not applied therein. Another proof for Imam Abu Hanifa ؒ is when the Prophet ﷺ met Rukanah at the upper side of Makkah. Rukanah told him, "Would you wrestle me for one-third of my sheep? The Prophet ﷺ said, "Yes." So, he wrestled him and defeated him. Thus, he took the sheep from him, then returned it to him out of kindness. This Hadith is evidence for the permissibility of such transactions in Darul Harb between a Muslim and a *harbi*.<sup>40</sup>

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<sup>40</sup> Ilas Sunan: v. 14, p. 370 (Idaratul Quran wal Uloom Al-Islamia)

It is mentioned in *Ilas us Sunan*: "In summary, the opinion of Abu Hanifah ؒ and Muhammad Ibn Al-Hasan ؒ, in this chapter, is the strongest in terms of narration and knowledge. Its basis is not only the *Mursal* Hadith of Makhool, just as most scholars and authors assume. Instead, in addition to that (the Hadith of Makhool), it has many strong proofs that clearly indicate the correctness of what he (Imam Abu Hanifah ؒ) said. Before him (Imam Abu Hanifah ؒ), Ibrahim Al-Nakhai ؒ also opined on Riba's permissibility in Darul Harb. Also, Ibn Abbas ؓ considered Riba between the slave and master to be permissible. Also, Sufyan Ath-Thawri ؒ concurred with him in all of this. If this were not established via narrations and the Sahaba and Tabieen statements ؓ, he would never agree with him in such an opinion.

Nevertheless, there is no doubt that refraining from Riba, even if it may be with a *harbi* in Darul Harb, is best, more cautious, purer, and most suitable for avoiding falling into a difference of opinion. This is the opinion our Shaykh, Hakeemul Ummah, ؒ has sympathized with and issued a verdict in accordance with. He has chosen (this opinion) by way of giving *tarjeeh* (preference) to the view of Abu Yusuf ؒ and most scholars."<sup>41</sup>

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<sup>41</sup> *Ilas Sunan*: v. 14, p. 372 (Idaratul Quran wal Uloom Al-Islamia)

## Section 19: Giving or Taking Interest?

We have arrived at one of the most crucial parts of this discussion; according to Imam Abu Hanifa رحمه الله and Imam Muhammad رحمه الله, when they said it was permissible to deal in interest in Darul Harb, did they refer to both giving and taking or only taking? The importance of this matter can be understood through some contemporary scholars issuing the fatwa of the permissibility of purchasing a house with an interest-based loan for those who live in non-Muslim countries, e.g., the US, based on the opinion of Imam Abu Hanifah رحمه الله and Imam Muhammad رحمه الله. However, we must ask ourselves: what did these two great Imams intend when they said it was permissible to deal with interest in Darul Harb? Is it correct to issue such a fatwa using their opinion as evidence? In summary, if one conducts in-depth research of the Hanafi jurists' classical texts, they will conclude that the purport and intended meaning of interest being permissible in Darul Harb refers to when a Muslim acquires the excess money from the Harbi and not vice versa. This was also the opinion and understanding of most Deobandi Hanafi scholars.

Thus, Imam Abu Hanifah رحمه الله and Imam Muhammad's fatwa رحمه الله is of no avail for those who justify purchasing homes with interest. To substantiate this argument, texts from classical authoritative Hanafi books and fatwas from the Deobandi Hanafi scholars will be quoted. Ibn Abideen رحمه الله states in his book *Raddul Muhtar*<sup>42</sup> which is one of the most authoritative and relied-upon sources in Hanafi Fiqh and essential for every Mufti:

قوله: (لأن ماله ثمة مباح) قال في فتح القدير: لا يخفى أن هذا التعليل إنما يقتضي حل مباشرة العقد إذا كانت الزيادة ينالها المسلم، والربا أعم من ذلك، إذ يشمل ما إذا كان الدرهمان: أي في بيع درهم بدرهمين من جهة المسلم ومن جهة الكافر. وجواب المسألة بالحل عام في الوجهين، وكذا القمار قد يفضي إلى أن يكون مال الخطر للكافر بأن يكون الغلب له، فالظاهر أن الإباحة بقيد نيل المسلم الزيادة، وقد ألزم الأصحاب في الدرس أن مرادهم من حل الربا والقمار ما إذا حصلت الزيادة للمسلم نظرا إلى العلة وإن كان إطلاق الجواب خلافه، والله سبحانه وتعالى أعلم بالصواب اهـ.

قلت: ويدل على ذلك ما في السير الكبير وشرحه حيث قال: وإذا دخل المسلم دار الحرب بأمان، فلا بأس بأن يأخذ منهم أموالهم بطيب أنفسهم بأي وجه كان، لأنه إنما أخذ المباح على وجه عري عن الغدر فيكون ذلك طيبا له، والأسير والمستأمن سواء، حتى لو باعهم درهما بدرهمين أو باعهم ميتة بدرهم أو أخذ مالا منهم بطريق القمار فذلك كله طيب له اهـ ملخصا.

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<sup>42</sup> Raddul Muhtar: v. 7, p. 423 (Maktaba Imdadia)

فانظر كيف جعل موضوع المسألة الأخذ من أموالهم برضاهم، فعلم أن المراد من الربا والقمار في كلامهم ما كان على هذا الوجه وإن كان اللفظ عاما، لأن الحكم يدور مع علته غالبا.

Translation: "His statement [Because his wealth over there is permissible]. He (Ibnul Humam رحمه الله) says in (his book, which is a commentary of *A/-Hidayah*) *Fathul Qadeer*, 'It is not hidden that this reasoning (i.e., THEIR wealth being permissible in Darul Harb) entails the permissibility of such a transaction (of interest) when the excess wealth is obtained by the Muslim (i.e., the Muslim TAKES the interest and does not give it). (The term) Riba (usury) is more general than that (i.e., than merely taking) because (Riba) comprises the situation of when the two dirhams, i.e., in the exchange of one dirham for two, are given by the Muslim or by the non-Muslim. The answer to this legal matter (*masala*) in terms of the permissibility (of Riba) is general regarding both perspectives (i.e., there is no restriction of only taking and not giving). Similar is the case regarding gambling; sometimes, the wager is acquired by the disbeliever by him winning. However, that which is apparent is that the permissibility (of Riba in Darul Harb) is conditional on the Muslim acquiring the excess. The Hanafi jurists (*Ashaab*) have maintained in their lessons that their intended meaning of Riba and gambling being permissible (in Darul Harb) is when the excess wealth is acquired by the Muslim, taking into consideration the reason (i.e., it is allowed for a Muslim to take the interest in Darul Harb because that money is permissible in its essence. Thus, he can take it on the condition that there is no betrayal), even though the generality of the answer (i.e., there being no restriction of only taking) is contrary to this (i.e., the ruling of the permissibility of only taking and not giving). And Allah-- Subhanahu wa Ta'ala -- knows best regarding that which is correct.'

I (Ibn Abideen) say: That which is mentioned in *As-Siyar Al- Kabir* (one of the six books of *Zahir al Riwayah*) and its commentary indicate to that (i.e., only taking is permissible, not giving), 'When the Muslim enters Darul Harb with a visa, then there is no issue if he TAKES from them their wealth with their consent in any manner because he has only taken that which is permissible in such a way that is free from treachery, thus that would be pure for him. And the prisoner and the one who comes on a visa are equal. Thus, if he were to exchange with them one dirham for two, sell them carrion (*maitah*) for dirhams, or take wealth from them by way of gambling, then all of that (wealth acquired in such a manner) is pure for him.' [Summarized] Look how he (Imam Muhammad ﷺ) has made the subject of this legal matter (*masala*) TAKING from their wealth with their consent. Hence, it has become known that the intended meaning of (the permissibility) of Riba and gambling (in Darul Harb) in their statements is that which is done in this manner (i.e., the excess wealth is obtained by the Muslim) even though the word (Riba) is general because the ruling (*hukm*) is generally based on the reasoning (*ilat*) (i.e., in this legal matter, the *ilat* of Riba being permissible in Darul Harb is that the wealth of a *harbi* is lawful in essence. However, this *ilat* is not found in a Muslim's wealth, i.e., his wealth is not legal for the *harbi*. Thus, the ruling of permissibility would not apply)."

More examples of the Muslim taking the excess amount, not giving it, are also mentioned in other famous Hanafi Fiqh books:

*Badai As-Sanai:*

وعلى هذا الأصل يخرج ما إذا دخل مسلم دار الحرب تاجرا فباع حربيا درهما بدرهمين، أو غير ذلك من سائر البيوع الفاسدة في حكم الإسلام أنه يجوز عند أبي حنيفة ومحمد، وعند أبي يوسف لا يجوز<sup>43</sup>

### *Al-Bahr Ar-Raiq:*

قوله: (ولا بين الحربي والمسلم ثمة) أي لا ربا بينهما في دار الحرب عندهما خلافا لأبي يوسف. وفي البناية: وكذا إذا باع خمرا أو خنزيرا أو ميتة أو قامرهم، وأخذ المال كل ذلك يحل له. ولهما الحديث «لا ربا بين المسلم والحربي في دار الحرب»، ولأن مالهم مباح، وبعقد الأمان منهم لم يصير معصوما إلا أنه التزم أن لا يتعرض لهم بغدر، ولا لما في أيديهم بدون رضاهم فإذا أخذ برضاهم أخذ مالا مباحا بلا غدر فيملكه بحكم الإباحة السابقة إلا أنه لا يخفى أنه إنما اقتضى حل مباشرة العقد إذا كان **الزيادة بنالها المسلم**، والربا أعم من ذلك إذ يشمل ما إذا كان الدرهمان من جهة المسلم أو من جهة الكافر، وجواب المسألة بالحل عام في الوجهين، كذا في فتح القدير<sup>44</sup>

### *Fatawa Hindiya:*

والصحيح قولهما ورأيت في بعض الكتب أن هذا الاختلاف فيما إذا اشترى منهم درهمين بدرهم أما إذا اشترى منهم درهما بدرهمين فلا يجوز بالاتفاق كذا في المحيط<sup>45</sup>

It can be deduced from the text mentioned above that for a Muslim to give the *harbi* interest is not permissible according to the jurists' consensus.

### *Tabyeenul Haqiq:*

(قوله وكذلك إذا تبايعا بيعا فاسدا) المسلم الذي دخل دار الحرب بأمان إذا باع درهما بدرهمين أو باع خمرا أو خنزيرا أو ميتة أو قامرهم وأخذ المال يحل عند أبي حنيفة ومحمد خلافا لأبي يوسف. اهـ. غاية (قوله ولأن مالهم مباح) أي أهل الحرب. اهـ<sup>46</sup>

### *Al-Muheetul Burhani:*

ورأيت في بعض الكتب أن هذا الاختلاف فيما إذا اشترى منهم درهمين بدرهم، أما إذا اشترى منهم درهما بدرهمين، لا يجوز بالاتفاق؛ لأن فيه إعانة لهم بقدر الدرهم الزائد وميزه في حقهم بذلك القدر<sup>47</sup>

<sup>44</sup> Al-Bahr Ar-Raiq: v. 6, p. 226 (Maktaba Rasheedia)

<sup>45</sup> Fatawa Hindiya: v. 3, p. 244 (DKI)

<sup>46</sup> Tabyeenul Haqiq: v. 4, p. 97 (Al-Matba'ah Al-Kubra Al-Ameeria)

<sup>47</sup> Al-Muheetul Burhani: v. 10, p. 489 (Idaaratul Quran wal Uloom Al-Islamia)

It is understood from the passage mentioned above that it is not permissible to give interest according to the jurists' consensus because when a Muslim provides a *harbi* with that extra dirham, he is assisting him and distinguishing him through this act of kindness. On the basis thereof, those who are justifying giving interest in non-Muslim countries are helping the 'Darul Harb' and 'Harbis,' which defeats the whole purpose of this legal ruling.

#### *Al-Mabsooth lis Sarakhsi:*

قال: «لا ربا بين المسلمين، وبين أهل دار الحرب في دار الحرب»، وهذا الحديث، وإن كان مرسلًا فمكحول فقيه ثقة، والمرسل من مثله مقبول، وهو دليل لأبي حنيفة ومحمد - رحمهما الله - في جواز بيع المسلم الدرهم بالدرهمين من الحربي في دار الحرب،<sup>48</sup>

#### Urdu Fatawa-- *Fatawa Mahmudia:*

سودی کاروبار کا مفہوم عام ہے جو سود لینے اور دینے پر دو کو شامل ہے، اس لئے اس کے جواز کا فتویٰ دینا مطلقاً کسی کے قول پر بھی درست نہیں، کیونکہ سودینا کسی کے نزدیک بھی جائز نہیں<sup>49</sup>

Mufti Mahmood Hasan Gangohi رحمہ اللہ, the Grand Mufti of Darul Uloom Deoband, explicitly mentioned in his famous book of Fatawa, *Fatawa Mahmudia*, that **giving interest is not permissible according to anyone.**

#### *Kifayatul Mufti:*

ہندوستان دار الحرب ہے مگر مسلمانوں کو سود دینا تو دار الحرب میں بھی جائز نہیں<sup>50</sup>  
Mufti Kifyatullah رحمہ اللہ, former Grand Mufti of India, states that giving interest is not permissible in Darul Harb. An interesting point to note here is that some scholars believe that the intended meaning of the permissibility of taking interest in Darul Harb refers to the *Mustamin* only, i.e., the Muslim who comes on a visa to Darul Harb, not the Muslim resident of the Darul Harb because the books of Fiqh mention this concession for the *mustamin*, not a Muslim resident of Darul Harb. Thus, based on this opinion, this concession would not apply to Muslims living as citizens in non-Muslim countries.

<sup>48</sup> Al-Mabsoot lis Sarakhsi: v. 14, p. 56 (Darul M'arifah)

<sup>49</sup> Fatawa Mahmudia: v. 24, p. 379 (Darul Isha'at)

<sup>50</sup> Kifayatul Mufti: v. 8, p. 78 (Darul Isha'at)

الامام الکبیر حضرت مولانا محمد قاسم صاحب نانوتوی کی رائے: حضرت نانوتوی کی رائے یہی ہے کہ دار الحرب میں وہاں کے مسلمانوں کے لئے حربوں سے سود لینا جائز نہیں ہے مگر دوسرے ممالک سے عہد و پیمان کی رعایت کے ساتھ جو مسلمان دار الحرب میں آکر ان کی تراضی سے ان سے سود حاصل کرتا ہے ، تو طرفین کی رائے کے مطابق جائز ہے ، اس موضوع پر حضرت نانوتوی نے حضرت مولانا احمد حسن صاحب محدث امرہوی کے نام ۳۵ / صفحات پر مشتمل ایک مبسوط مکتوب تحریر فرمایا ہے اور یہ مکتوب پورا فارسی میں ہے۔ اینکہ در دار الحرب مال کفار مباح است چنانچہ فرمودہ اندان مالہ ثمہ مباح اگر مراد از یں سخن این است کہ بعد عہد و پیمان و امان و استیمنان نیز مباح است تعرض اموال اوشان چرا حرام است . از مکتوب ہشتم اور اس مکتوب کا حاصل حضرت شیخ الاسلام مولانا حسین احمد صاحب مدنی نور اللہ مرقدہ نے مکتوبات شیخ الاسلام ۱/۱۶۰ میں عربی میں لکھا ہے

لا شك أن الهند دار حرب بيد أن حضرة مولانا النانوتوي قدس الله سره العزيز، كان يرى أن من كان من سكان الديار الإسلامية يباح له أن يدخل الهند ويأخذ من الحربين الأموال بالربوا، والقمار، وإمكان ذلك فيه التراضي بغير نقض عهد وأما القاطنون بالهند فليس لهم ذلك ويرى أن النص الفقهي معناه كذلك الخ مکتوبات<sup>51</sup>

<sup>51</sup> Fatawa Qasimiya: v. 20, p. 241-242 (Maktaba Ashrafia, Deoband, Al-Hind)

## Section 20: Proofs of Majority Scholars and Why We Give Preference to Their Opinion

According to most scholars, it is prohibited to execute an interest-based transaction irrespective of whether one is in Darul Harb or not. Most latter-day Hanafi scholars have given *tarjeeh* (preference)<sup>52</sup> to the opinion of majority scholars based on multiple reasons:

1. There are many differences of opinion among scholars regarding the definition of Darul Harb and its criteria. Thus, one cannot decisively call a particular land Darul Harb.
2. According to most scholars, it is not permissible to deal with interest even in Darul Harb. Based on this, there arises a doubt, and regarding the matter of Riba, the suspicion of Riba should also be avoided.
3. The texts unconditionally prohibit dealing with interest, e.g., *وأحل الله البيع وحرم الربا* (Surah Baqara: verse 275). This verse is decisive regarding the prohibition of interest. Apart from this, there are more verses and Hadiths regarding the severity of interest. After hearing, an individual would not have the courage to even indulge in something that could be Riba.
4. The opinion of most scholars is based on precaution.
5. When one acts upon most scholars' opinion, he saves himself from the difference of the scholars.

As a response to proofs of Imam Abu Hanifah رحمته الله and Imam Muhammad رحمته الله regarding the incident of Abu Bakr رضي الله عنه betting the polytheists of Makkah that *Room* will win; after Abu Bakr رضي الله عنه obtained the wager, the Prophet صلى الله عليه وسلم commanded him to give that wealth in *sadaqah*, showing that it was not permissible for him to keep such wealth despite him carrying out such a transaction in Darul Harb. Similarly, regarding the Prophet صلى الله عليه وسلم wrestling Rukana, after the Prophet صلى الله عليه وسلم defeated Rukana in wrestling and won the sheep, he returned the sheep to him. If keeping such wealth was okay in Darul Harb, the Prophet صلى الله عليه وسلم would have kept it; however, he returned it.

Finally, regarding Abbas' ﷺ incident taking interest in Makkah, one interpretation is that he was given exclusive permission, i.e., the consent was not general for all Muslims.<sup>53</sup>

The proofs of Imam Abu Hanifah ﷺ and Imam Muhammad ﷺ are *zanni* (indecisive), whereas the proofs of *Jamhoor* (majority scholars) are *qati* (decisive). Also, regarding the Hadith: "There is no (لا ربا) Riba between a Muslim and a *harbi*, Moulana Thanwi ﷺ says that this 'Laa' could imply *nahy* (prohibition), i.e., Riba is also prohibited between these two.<sup>54</sup> There are many more refutations and proofs that can be referenced in the books of Fiqh and Fatwas.

To give fatwa of the permissibility of taking interest, selling wine and pig, etc., would be very harmful to the Muslims by desensitizing them towards sin and gradually taking the prohibition and aversion for these sins out of their hearts. This is such a great evil that it is enough to consider it prohibited. Therefore, it is only appropriate to give fatwa according to *Jamhoor's* (majority scholars) view both logically and in terms of the strength of proof.<sup>55</sup> Muslims read clearly in the Quran and see in the narrations of Hadiths the strong impermissibility of Riba. It is upon scholars to join in unison on the majority view and provide clear and consistent fatwas to avoid confusion among the ummah.

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<sup>53</sup> Fatawa Darul Uloom Zakariya: v. 5, p. 352-353 & 357-358 & 360 (Zamzam)

<sup>54</sup> Fatawa Bayyinat: v. 4, p. 97-98 (Maktaba Bayyinat)

<sup>55</sup> Jadeed Fiqhi Masaail: v. 4, p. 39 (Zamzam)

## Section 21: Conclusion

If a person considers the country they live in as Darul Harb, the goal they are trying to achieve (buying things with interest) is not in line with Imam Abu Hanifa's ﷺ opinion because he only allows taking it in Darul Harb, not giving it. Also, those who consider non-Muslim countries to be Darul Harb, then the questions posed to them are why they are not consistent with their opinion and applying Darul Harb's rulings across all matters outlined in the books of Fiqh and why only single out dealing with Riba?

Many Muslims or their children have lost their faith by moving to non-Muslim countries. If we live in Darul Harb, shouldn't we encourage Muslims to migrate to a Muslim country as was done in the Prophet's ﷺ time? If the response is 'it is okay to live in Darul Harb if you call others towards Islam,' then a counterargument would be that most Muslims living in non-Muslim countries are not practicing their religion as it should be practiced, let alone calling others towards Islam. Is it fair to claim Darul Harb when it comes to interest but Darul Islam/Aman when it comes to residing here (i.e., it is okay for us to stay)? These questions of justifications must be analyzed under what has been presented. We must avoid the doubtful and follow the majority of scholars' rulings to not fall victim to our desires of obtaining worldly possessions.

All praise is for Allah ﷻ through whose favor good deeds are completed. May Allah ﷻ guide us all to the truth and save us from His displeasure. Whatever that is correct in this short work is from Allah ﷻ, and whatever that is incorrect is from myself and Shaytan. I ask Allah ﷻ to accept this small effort from me and make it a means of benefit for all and reward those who assisted in any way in completing it. Aameen Yaa Rabb!

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