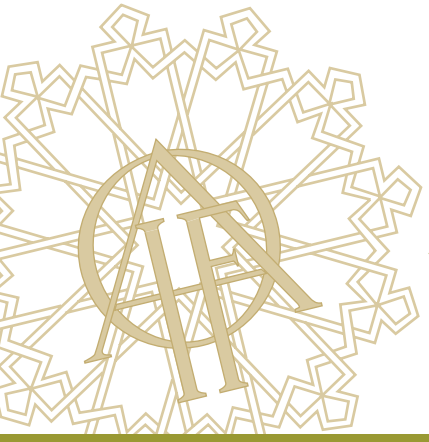

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AnIsl 27 (1994), p. 55-75

Muḥammad Ḫālid Masʿūd

The Definition of the Bidʿa in the South Asian Fatāwā literature.

Muhammad Khalid Masud

THE DEFINITION OF *BIDʿA* IN THE SOUTH ASIAN *FATĀWĀ* LITERATURE

1. THE PROBLEM

This paper studies the interrelationship between juridical norm and social practice with reference to Islamic law as interpreted in the *fatāwā* literature in South Asia. The basic questions considered here are: How do social practice and juridical norm exercise pressure on each other ? Do they modify, mould, or restrict each other, or does one set the other aside ?

For a meaningful discussion we propose to analyse the interrelationship between *bidʿa* and *sunna*. Usually questions about the juridical normativeness of a social practice are raised in the *fatāwā* literature with reference to these two terms. Before we proceed further a brief review of the recent scholarship on the concept of *bidʿa* is given.

In Islamic law *sunna* is the practice that sets the juridical norm. Originally in early Islam the term was applied to customs and practices in general. Later, however, with the development of Islamic jurisprudence, the meaning of the term came to fixed as the practice of the Prophet which was recorded in the Ḥadīth literature. "*Bidʿa*" was therefore defined as such practices that are not accepted as juridical norms.

The origin of the doctrine of *bidʿa* is traced to some *aḥādīth* declaring all new and additional things as *bidʿa*, deviation, leadi to Hell. The early exposition of the doctrine of *bidʿa* seems to have been made by the scholars of *ḥadīth*. They not only refined and defined the concept of *bidʿa* but also identified social practices which answered the definition and condemned them.

Unlike the doctrine of *sunna*, *bidʿa* has not been studied properly. Generally, western scholars hold that the concept of *bidʿa* has caused Muslim societies to reject every new thing, including such articles of daily use as knives, forks and tables. (Hurgronje *vide* Goldziher 1961, 23; and Robson 1960). Some scholars like Bernard Lewis suggested that the concept of *bidʿa* was very close to heresy (Lewis 1953, 53). Ignaz Goldziher rationalized this rejection with reference to the conservatism of Muslims. Later studies refined these observations. Mohamed Talbi (1960) clarified that *bidʿa* was not always a new thing. He described the phenomenon of *bidʿa* as a psychological manifestation of early Arab conservatism.

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Masʿūd
The Definition of the Bidʿa in the South Asian Fatāwā literature.

Subhi Labīb (1964) studied a fourteenth century manuscript on *bidʿa* and argued that all *bidʿa* mentioned there were not ' new ' practices; they were customary practices of the Turks before they accepted Islam. They were not condemned as heresy, but as sins. James Robson questioned the association of *bidʿa* with heresy (Robson 1960). Marilyn Waldman noted that such observations do not truly reflect the pragmatic bent of Muslim society. The muslim mind is concerned with consequences more than with contents. He suggests that historically the doctrine first appeared as a negative critique of the Marwānī caliphs but later it was used by the rulers to maintain the status quo (Waldman 1987).

We have argued elsewhere that the concept of *bidʿa* did not become a legal category until the 16th century (Masud 1969, 177) like the prohibited and the reprehensible. The term finds its place in *fiqh* books, though never as an independent subject.

The concept of *bidʿa* is expounded extensively in the *fatāwā* literature, more so than in *fiqh* compendia. We find *muftī*s comparing a social practice with a *Sunna*. Social practices are rejected because they do not conform to *Sunna*. We can study then how and why they were rejected. We can also see changes in the scope and definitions of *bidʿa* as well as *Sunna*.

The above explanation should justify our choice of *fatāwā* literature for this study. Further, *fatāwā* literature is more comprehensive, contemporary and contextualised than *fiqh* literature which does not cover, for instance, subjects such as questions about creed, social practices, exegesis of the Quranic and *ḥadīth* injunctions.

2. SOURCES OF STUDY

For this paper the following *fatāwā* collections have been studied :

1 *Rashīdiya* by Mawlānā Rashīd Aḥmad Gangōgī (d. 1905), a well known scholar and *muftī* of Dār al-ʿUlūm, Deoband (established in 1867). It consists of 1173 *fatāwā* issued during 1880-1905, before the official establishment of *Dār al-Iftā*, at Deoband. Unlike other collections, these *fatāwā* were not initially published in periodicals. Mostly *fatāwā* are brief, giving no details of arguments or authorities. Although the questions are recorded, the names of the inquirers and dates are not mentioned.

2. *Imdād al-Fatāwā* by Mawlānā Ashraf ʿAlī Thānawī (d. 1943). Three different editions of these *fatāwā* have appeared; the first edition appearing in 1927 in four volumes and the third in six volumes in 1975 have been used here. The 1975 edition is well arranged. Although never appointed an official mufti at Deoband, Mawlānā Thānawī was an important figure of that school. He later established a *khānqah* and a periodical *al-Nūr* where most of these *fatāwā* first appeared. The total number of *fatāwā* in these collections is 3448 which were issued during 1878-1943. The *fatāwā* are often long, giving detailed arguments and citing authorities. The names of inquirers and dates are also given.

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Masʿūd
The Definition of the Bidʿa in the South Asian Fatāwā literature.

3. *ʿAzīz al-Fatāwā* by Muftī ʿAzīz al-Raḥmān (d. 1927), the first official *muftī* of Deoband. It contains 1475 *fatāwā* issued during 1911-1917, it was edited by Muftī Muḥammad Shafīʿ. A more comprehensive collection of his *fatāwā* is being published in Deoband. The *fatāwā* are often very concise but contain details of the arguments.

4. *Imdād al-Muftiyīn* by Muftī Muḥammad Shafīʿ (d. 1976), an official *muftī* of Deoband. This edition contains 968 *fatāwā* issued during 1930-1943. A large number of these *fatāwā* were initially published in *al-Muftī*, a periodical appearing in Deoband. The *fatāwā* are very long, often constituting treatises.

5. *Kifāyat al-Muftī* by Muftī Kifāyatullāh (d. 1952), the official *muftī* of the Madrasa Amīniyya and Jamʿiyyat ʿUlamā'i Hind, a political organization of the *ʿulamā'* who supported the Indian National Congress. This seven volume edition, containing 4502 *fatāwā* issued during 1898-1952, is a well-edited collection giving names of the inquirers, dates and sources from where the *fatāwā* were collected. It also gives a glossary of the technical terms.

6. *Al-ʿAṭāyā al-Nabawiyya fi'l-Fatāwā al-Raḍawiyya* by Mawlānā Aḥmad Raḍā Khān (d. 1921), the reputed muftī of the Ahl al-Sunnat wa'l-Jamāʿat, popularly known as Barēlawīs. His *fatāwā* have been published intermittently during the last fifty years in 12 volumes. Only the first volume is available to us; it contains 114 *fatāwā*. We have filled the gap by using two studies of Mawlānā Raḍā's treatment of *bidʿa* (Miṣbāḥī 1985, and Qādirī 1981).

7. *Fatāwā ʿUlamā'i Ḥadīth*, a nine volume collection of *fatāwā* written during 1838-1978, was edited by Mawlānā Abu'l-Ḥasanāt ʿAlī Muḥammad Saʿīdī. Volume 8 is not available to us. The total number of *fatāwā* studied here is 1552.

   This edition has collected *fatāwā* from several sources : periodicals, pamphlets, books and other *fatāwā* collections. Each volume lists the sources; the maximum is 24 in volume 5, and the minimum 13 in volume 7. Most of these *fatāwā* were first published in different periodicals by a large number of *muftī*s who are listed in each volume. The maximum number of *muftī*s mentioned in volume 9 is 136, which includes names like Nawwāb Ṣiddīq Ḥasan Khān (d. 1890), Sayyid Nadhīr Ḥusayn (d. 1902) and Thanā' Allāh Amritsarī (d. 1948). The Ahl Ḥadīth refuse to adhere to any school of law, yet the *fatāwā* in the early nineteenth century often heavily rely on the Ḥanafī texts.

   In addition to the above collections which are used for the database, we have also studied *al-Fatāwā al-Islāmiyya* issued from Al-Azhar and *Fatāwā ʿAzīzī* by Shāh ʿAbd al-ʿAzīz (d. 1824) in order to study specific cases of *bidʿa*.

   The above selection of *fatāwā* literature is also representative of the various schools of *fatāwā* in South Asia. The first five collections are by the Muftīs of the Deoband school of *Fatwā*. This school follows Ḥanafī schools of law but it also takes a reformist stance against many religious and social practices which it considers *bidʿa* (Metcalf 1982).

The sixth collection, *Al-ʿAṭāyā...*, belongs to the school of *fatāwā* which, though strictly following the Ḥanafī school of law, differs with the Deoband school in that the latter declares several religious and social practices as *bidʿa*.

The seventh collection belongs to a school of *fatāwā* which prefers to restrict its sources of law to the Qur'ān and *ḥadīth*. It disproves of adherence to any school of law. The school prefers to call its method of law " fiqh al-ḥadīth ", the law of *ḥadīth*.

No published Shīʿī *fatāwā* are available to the present writer.

3. METHOD OF STUDY

This paper presents a study of the *fatāwā* from three perspectives. Firstly, we have developed a database consisting of 416 records after a thorough analysis of 13,232 *fatāwā*. It has taken almost six months to prepare this database. The database consists of the following 7 fields : (1) Name of the Fatāwā collection, (2) Period of the collection, (3) Total number of *fatāwā* in the collection, (4) Name of the *bidʿa*, (5) *Fatāwā* number in the volume, (6) Page number, (7) Chapter (*kitāb*) in which the *fatwā* has been classified by the editor. For this database we have counted only those *fatāwā* where the term *bidʿa* has been actually used. Technological innovations, new social practices, or obviously new issues which are usually considered *bidʿa*, have not been so counted if the *fatwā* has not termed them *bidʿa*. This criterion was strictly followed in order to avoid arbitrariness and to reflect the careful use of the term by the *muftīs*.

Secondly, we have analyzed the definitions of *bidʿa* given in these *fatāwā*. Thirdly, we have further studied four specific cases which reflect new practices in different senses, and would be ordinarily considered as *bidʿa*. Study of these specific cases, therefore, not only complements the general analysis but also provides sharper focus on the problem. These specific cases are about *tījā*, *kafā'at*, English dress and the loudspeaker. These issues represent four different categories. The first concerns faith and ritual, the second family laws, the third social life and the fourth a scientific invention. The analysis shows that these issues were approached differently and consequently both *Sunna* and *bidʿa* were defined differently.

4. HISTORICAL CONTEXT

To appreciate the process of the development of *Sunna* meaning juridical norm and *bidʿa* as its antonym, a brief note on the historical context of *fatāwā* literature is well in order. Several recent studies have stressed that movements of renewal and reform stressing *ḥadīth*, *Sunna* and *Sharīʿa* appeared in the 18th century India among the Muslims (Gaborieau 1989, Sanyal 1990). This was a revival of conservatism which

grew continually and reflected Muslim feeling of minority status against the Hindu majority. This feeling created a polarization between Sufīs and jurists in general. The Sufīs were more liberal to Hindus and folkways. They were sometimes also blamed for syncretism. There were reform movements within Sufism which stressed *sharīʿa* (Sanyal 1990, 23 ff.).

The institution of *Dār al-Iftā* issued *fatāwā*, responses to incoming questions from their 'disciples' and subscribers. The *'ulamā'* used *fatāwā* for the purpose of reform and distant education. *Fatwā*, however, played yet another role. Under the British, the application of *Sharīʿa* came to be restricted to personal laws only. The Muslims felt the need of some institution to settle their disputes from the Islamic legal point of view. Sometimes even British courts sought the opinion of *muftī*s in complicated cases (Masud 1990).

Religiously speaking, the 19th century was a critical period for Muslims in India. They were living under non-Muslim rule. Missionary activities by Christians and Hindus had increased. New ideas, social changes and technological inventions were posing threats. It was in this context that questions about the definition of *Sunna* and *bidʿa* were frequently debated in the *fatāwā* literature.

5. GENERAL ANALYSIS OF THE DATABASE

A general analysis of the database shows that out of the total 13,232 *fatāwā* only 301 mention the word *bidʿa*. The number of social practices termed *bidʿa* are 136. A list of *bidʿa* is attached at the end of this paper.

In order to find out which areas contain *bidʿa* we have relied upon the classification of *fatāwā* adopted by the editors of the collections. There are however some difficulties. Firstly, although usually they have consistently followed the classification of *fiqh* books, there are several additional subjects in the *fatāwā*. Classification of these subjects varies from one collection to the other. We have followed their chapter classification, and included all of them, with only one exception. In order to save space, a group of chapters relating various types of contracts, classified separately in the collections, have been subsumed under one title "Sales and Contracts". Since these chapters do not contain *bidʿa* their separate counting seemed unnecessary.

The second difficulty is the editors' discretion about classification of *fatwā*. For instance, *fatāwā* about *tījā* have been classified under the chapters of "*Bidʿa*", "Education", and "Funerals". Since these varying chapters can be subsumed under the general category of faith and rituals, and since the term "bidʿa" has been applied mostly to this category, this difference does not affect our general conclusions.

According to the database there is a total number of 30 chapters under which *fatāwā* are classified; they include the various legal and religious subject matters. Of these, 12 chapters include *fatāwā* where the word *bidʿa* is mentioned. These chapters are listed below in descending order.

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Masʿūd
The Definition of the Bidʿa in the South Asian Fatāwā literature.

S. No.	Title of the Chapter	Contents of the Chapter	Fatāwā
1	Bidʿat	Social and religious practices, innovations of science and technology	83
2	Funerals	burial rituals and practices, funeral prayers, mourning rites	64
3	Ṣalāt	prayers, mosques, leaders of the prayer, Friday, superoragatory prayers	56
4	Education	Knowledge, teaching, schools, students, learned men	51
5	Miscellaneous	All other subjects	26
6	Faith	Theological questions about creeds	22
7	Ṣawm	Fasting in Ramaḍān and on other occasions	
8	Dhikr	Litanies, formula prayers	3
9	Sacrifice	Animal sacrifice on Ḥājj, *ʿaqīya* and other occasions	2
10	Trust	Waqf and trust property	2
11	Mysticism	Mystical interpretations and practices	1
12	Sīra	Biography of Prophet Muḥammad	1

It may be noted that the *fatāwā* cover subjects which are not generally considered legal subjects. For example, with the exception of *Fatāwā ʿUlamā'i Ḥadīth*, all the *fatāwā* collections contain chapters on *bidʿāt*, yet *fiqh* books do not. The reason probably is that *fiqh* books deal with legal doctrines which are acceptable to the school of law to which that particular *fiqh* text belongs. On the other hand *fatāwā* are answers to questions on which a consensus of the school might not have yet developed. Since the *fatāwā* deal mostly with new problems, a discussion of *bidʿāt* would naturally be the subject of *fatāwā* rather than that of *fiqh* texts.

As one can see, all the questions dealt with by these categories relate to *ʿibādāt* which are, strictly speaking, religious practices. Even within these, the number decreases in categories which border on non-religious matters. It is worth noting that the existing variation has also been caused by the editors' differences on the classification of *fatāwā*. For instance the *fatwā* relating belief in a miracle, presently classified in " *Sīra* " and " *Fātiḥa* ", have common subject matters. The *fatwā* about " *samāʿ* ", listening to music mentioned here under " Mysticism ", has been classified by others under " *Bidʿāt* " or " Funerals ". Thus the categories of " *Sīra* ", " Education " and " Mysticism " could be subsumed under " Faith ", thereby raising the number of *fatāwā* in the category of " Faith " to 75.

On further analysis we find that, whereas *Fatāwā Rashīdiyya* classifies *fatāwā* dealing with *bidʿa* mostly under " Education ", *Fatāwā ʿUlamā'i Ḥadīth* under " *Ṣalāt* " and " Funeral " categories, *Imdād al-Fatāwā* classifies them under " *Bidʿāt* ". For a better

analysis it is essential that all these *bidʿa* practices are reclassified systematically. It would certainly improve our argument, but the present state also confirms our point.

We also find that the term "*bidʿa*" appears under chapters dealing with strictly religious and ritual subject matters, e.g. "faith", "ṣalāt", "ṣawm", "sacrifices", etc. It does not appear in the chapters dealing with such subjects as "sales and "contracts", "crime and torts", etc. This fact denotes very clearly a distinction between religious and non-religious subject matters as far as the classification of *bidʿa* is concerned.

It is therefore necessary to point out that Islamic law does not reject every new thing as *bidʿa*. This is particularly true with regard to technological innovations, contrary to what some scholars have remarked.

6. DEFINITION OF BIDʿA IN THE FATĀWĀ LITERATURE

Let us now turn to the question of whether social practice molds or modifies juridical norm. Answer could be found by analyzing the definitions of *bidʿa* in the the *fatāwā* literature and their application to social practices. *Sunna* and *bidʿa* are not so much opposite terms as inversely related terms. Restriction of the scope of one extends the scope of the other. A social practice is *bidʿa* as far as it does not conform to *Sunna*. The question to be explored is whether a social practice becomes *Sunna* if and when it is not rejected as *bidʿa*.

The earliest definition of *bidʿa* cited in the *fatāwā* belongs to Ibn Ḥajr (d. 1567): "Any belief contrary to common knowledge of the Prophet('s practice), held abominably, not inimically" (Thānawī 1975, 1:26). This definition focuses on belief and the Prophet's *Sunna*. Ibn ʿAbidīn (d. 1836), while quoting this definition, further extended its scope as far as subject matter is concerned, but limited it temporally to the Prophet's *Sunna*. He also stressed in its definition the elements of innovation and the belief that it was a part of religion (Thānawī 1975, 1:26).

The *fatāwā* literature, however, does not appear always to adhere strictly to this definition. Abū Isḥāq al-Shāṭibī's (d. 1388) definition seems to have prevailed. Shāṭibī defines it as "a way of innovation in religion that resembles the way of *Sharīʿa* and which is intended to be followed in order to strive in the utmost toward obedience to Allah" (Masud 1977, 300-301).

Shāṭibī limits the scope of *bidʿa* to matters related with religion and rituals, innovated with the pious intention of obedience to God. This definition was adopted later in *Taqwiyat al-Imām, Barāhīn, Ḥifẓ al-Imān* and *Masāʾil Arabaʿīn* (Shafīʿ 1977, 149). The Deobandi *muftīs* particularly adhered to this definition (Gangōhī N.d., 127-128; Raḥmān 1976, 127; Thānawī 1975, 5:285; Shafīʿ 1977, 149; Kifāyatullāh N.d. 1:157). The significance of the definition is that it excludes non-religious and non-ritual matters

from the scope of *bidʿa*. Secondly, as we shall see shortly, it does not limit *Sunna* to the period of Prophet Muḥammad. According to this definition there are no good and bad *bidʿa* as some scholars maintained. The good *bidʿa* is in fact a *sunna*. A *bidʿa* can never be good (Gangōhī N.d. 127).

Mawlānā Aḥmad Raḍā Khān disagreed with this view. Following several scholars like ʿAbd al-Ḥaqq Muḥaddīth and Ibn ʿAbidīn in the past, Aḥmad Raḍā held that *bidʿa* can be good or bad. In fact he subscribed to the five tier division of *bidʿa* on the pattern of five legal values. Only reprehensible and forbidden *bidʿa* were bad and condemnable. For instance learning linguistics and grammar was an obligatory *bidʿa*, building of inns and schools a commendable *bidʿa*, the use of sieve a permissible *bidʿa*, and new beliefs prohibited *bidʿa* (Qādirī 1981, 38).

The definitions in the *fatāwā* literature could be further analyzed on the following contrastive points:

1. As mentioned above, the Barēlawī school usually divides *bidʿa* into good and bad, while others do not. Other schools consider every *bidʿa* to be condemnable. This point needs further investigation. Presently it may be suggested that the other schools, *i.e.* Deoband and Ahl Ḥadīth, are reformists. They were critical for the religious tradition to which the Barēlawīs adhered. According to the reformists this tradition had accommodated several local religious practices. The reformists termed such practices as *bidʿa*, not conforming to the juridical norm of *Sunna*.

2. Almost all the collections divide subject matters of *fatāwā* into religious and worldly. They maintain that the definition of *bidʿa* does not relate worldly matters. Modern inventions are not a religious matter to begin with. Their use can never be termed *bidʿa* (Saʿīdī 1979, 4:78).

3. Invariably, *bidʿa* is defined as something 'new'. How is the term 'new' to be defined ? Three different approaches are adopted.

a) Most of the *fatāwā* define new in temporal terms. They stress that the social practices emerging after the period of successors (*tābiʿīn*) are *bidʿa*. It implies that the term *sunna* applies to practices prevailing in the *qurūn mashhūd lahā bi'l-khayr*, the days of Prophet Muḥammad, his Companions and their successors (Thānawī 1975, 5:285; Shafīʿ 1977, 778; Kifāyatullāh, N.d. 1, 157).

b) *Imdād al-Fatāwā* extends it further to the consensus of the *ʿulamā'* (*Sunnatu ʿulama'inā*); any social practices deviating from this consensus would be *bidʿa* (Thānawī 1975, 4:568). This definition differs from others. It seems to define the term in institutional terms, which may perhaps be understood as orthopraxy. The reason probably is that by this time the Deoband had been transformed from an institution of learning into a school of thought with a large number of its own graduates as *ʿulamā'*.

c) While Aḥmad Raḍā Khān agrees with the above temporal view of *Sunna* generally, in one of his *fatāwā* he excluded the period of the third caliph and limited the *Sunna*

temporally to the end of the second caliph's period (Sanyal 1990, 234). In another *fatāwā* he declared a certain practice originating in 1379 H. as a good *bidʿa*, not to be condemned (Sanyal 1990, 232). This is understandable because to him *bidʿa*, even though not conforming to *Sunna*, is not always condemnable.

It is true that some *muftīs* advised not to say obligatory prayers when a *bidʿatī*, a person who practices *bidʿa*, was leading the prayers. Such prayer discharges the obligation, but it is reprehensible (Raḥmān 1976, 212). Yet *bidʿa* was not condemnable as heresy or infidelity.

It may be noted that gradually the appellation of "*bidʿatī*" came to be applied by Deobandis and Ahl Ḥadīth generally to the Barēlawis.

4. As to the legal evaluation of *bidʿa*, it is mostly considered reprehensible and a sin. It does not usually amount to disbelief (Thanāwī 1975, 1:437). However in *bidʿa* concerning creeds, the condemnation is severe (Gangōhī N.d. 128).

5. Some definitions take into consideration finer jurisprudential details. Three examples illustrate the point.

I) Kifāyatullāh explains that to change the order of categories of legal values also amounts to *bidʿa*. For instance, a practice defined as permissible or commendable becomes *bidʿa* when it is elevated to be considered obligatory (Kifāyatullāh N.d., 3:286).

II) Extending the scope of *Sunna*, ʿAzīz al-Raḥmān and Kifāyatullāh explain that a *bidʿa* is a practice where exact precedent on analogous principles is not found in the early centuries (Kifāyatullāh N.d. 1:157, Raḥmān 1976, 127). This means that if a practice analogous to a present one is proven to exist in the early period, the present practice is considered implicitly a *sunna*.

III) The *Fatāwā ʿulamā'i Ḥadīth* makes the scope still wider by defining *bidʿa* as any practice which cannot be justified by *Sharīʿa* (Saʿīdī 1979, 4:105).

To summarise this section, we can say that *Sunna* and *bidʿa* are inversely related to each other. The *Sunna* is a juridical norm defined to exist historically in the early century of Islam, but institutionally it is extendible. Yet *Sunna* and *bidʿa* apply only to religious matters including beliefs and rituals. They do not directly apply to mundane matters. *Bidʿa* by itself is not heresy or disbelief, but it is condemned as *fisq*, a category closer to 'forbidden' on the scale of five values.

7. CASE STUDIES

To supplement the above theoretical analysis let us now study four specific cases.

(I) Tijā

Literally *tījā* means the third. It is a ritual practice celebrated on the third day after the burial of the dead. The relatives and friends of the deceased are invited to a meal.

With the offering of food, some chapters from the Qur'ān are recited, including the opening (*Fātiḥa*) and chapter 112 (*Ikhlāṣ*) along with compliments to the Prophet and some other litanies. The ritual is concluded with a prayer that reward for the recitation and the food may be credited to the deceased (Raḥmān 1976, 108). This practice is also called *Fātiḥa, Fātiḥa Khāwnī*, or *Qul* referring to the chapter of the Qur'ān or the opening words recited on the occasion. This ritual also relates to *ʿurs*, the ceremonies on the death anniversaries of Muslim saints, but in that case it is called "*nadhar*" or "*niyāz*" (Qādirī 1981, 232).

The *fatāwā* generally agree that this practice is *bidʿa* (Miṣbāhī 1985, 533; Gangōhī N.d. 131, 133, 137, 146; ʿAbd al-ʿAzīz 1895, 122, 206; Thānawī 1975, 5:260; Raḥmān 1976, 108; Shafīʿ 1979, 157, 160, 162, 167; Saʿīdī 1979, 5:291; Dihlawī 1971, 1:278-279; Kifāyatullāh N.d. 1:177, 217). The *muftī*s differ only in the following details.

Regarding the question as to whether reward of this ritual is creditable to the deceased after death, there is no disagreement. Similarly eating the food offering is generally allowed. Thānawī (1975,5:260) stipulates that the offering must be in the name of God, or it becomes forbidden and the practice would amount to idolatry. Aḥmad Raḍā Khān stipulates that food is not permitted for the rich; it must be distributed among the poor (Miṣbāḥī 1985, 533-535).

The *fatāwā*, however, differ on two points: the fixing of the day and specifying the chapters of the Qur'ān for recitation. Only Aḥmad Raḍā Khān does not consider reciting *fātiḥa* or fixing the day, in this case the third day after the burial (it also applies to the tenth and fortieth day, or anniversary), a *bidʿa*. Shaykh ʿAbd al-Quddūs Gangōhī, Shāh Isḥāq Muḥammad are also reported as having no objections to it (Shafīʿ 1977, 110). They allow it for the sake of convenience. The Deobandi *muftī*s argue that fixing a date elevates the category from commendable to obligatory. This amounts to declaring it an *ʿibāda*, an obligatory ritual.

As to the question of logic of reasoning, Aḥmad Raḍā Khān and Kifāyatullāh maintain that if the expenses for this feast were met from the estate of the deceased, it would deprive his or her heirs of their lawful shares. It is also an economic burden. A general reason given by all the *muftī*s, including Aḥmad Raḍā Khān (Misbāḥī 1985), is that this practice was not known in earlier periods. The *muftī*s dismissed as fabricated the claim by some inquirers that the practice was a *sunna* of the Prophet (Gangōhī N.d. 131; Kifāyatullāh N.d. 1:177). Most of the *muftī*s argue that this practice was originally a survival of Hinduism. Aḥmad Raḍā Khān rejects this view, but he also condemns it as a *bidʿa* on account of several other objectionable practices associated with it. He particularly repudiates the festivity, economic waste, extension of hospitality beyond one day and the mourning by women on this occasion.

We could not find a reference to such practice in *al-Fatāwā al-Islāmiyya* of Al-Azhar. It indicates that this practice is peculiar to South Asia, and confirms the view that it might be a survival of Hindu practices. The various other practices associated with *tījā* also reflect a peculiarly Indian world view.

The strong reaction to this practice by almost all the *muftīs* also indicates their fear of assimilating Hindu religious practices into Islam. This sensitivity was heightened because the practice was directly related to the subject matter of faith. The large number and frequency of inquiries about it reflect the fact that it was a common practice.

It is very instructive to study how this local social practice was transformed into a juridical norm, a religio-legal obligation. One of its manifestations is the fact that the inquirers in the *fatāwā* literature argue that *tījā* was a *Sunna*. Not only do they trace it historically to the Prophet's period, but they also stress its religious virtues. This interpretation was not accepted entirely by the *muftīs*.

However, those who rejected it as *bidʿa* would allow it if certain details of this practice were not considered obligatory. The main thrust against the rejection of this practice is on its treatment as *ʿibāda,* a religious obligation.

It may be concluded that excepting those who classify *bidʿa* as good or bad, the *muftīs* generally divide juridical norms into two categories: *ʿIbādāt*, religio-juridical obligations, and *ʿĀdāt*, non-religious practices. A social practice is transformed into a *sunna* if it is supported by a precedent from the early period of Islam, or by an analogy to that precedent. If it cannot be justified in this manner it is termed *bidʿa*.

A social practice is accepted as a non-religious juridical norm largely on the basis of general acceptance and common practice. The following practice is an example of such a transformation of a social practice into a juridical norm.

(II) Kafā'at

Kafā'at means social equality. Normally, Islamic law does not recognize any superiority or discrimination on the basis of color, race, genealogy or profession. Respect in society depends on piety and knowledge. Genealogy is accepted as a biological fact but not as grounds for privilege. This is why the *fatāwā* forbid discrimination in sharing food, entering a mosque or participating in any ritual (Gangōhī N.d. 225, 522, 554; Miṣbāḥī 1985, 464; Raḥmān 1976, 211). Also there is no restriction on the learned person of lower descent to lead prayers. This bias nevertheless becomes apparent in the *fatāwā* when the choice is between two persons who are of equal academic standing and piety, but are unequal in social status. The *fatāwā* prefer the person of higher genealogy to lead prayers (Gangōhī N.d. 334). There is no doubt that these biases might have existed in Muslim society, yet they were not legally recognized in the early period of Islamic history. Social custom, however, exerted pressure for their recognition.

In the early twentieth century a controversy arose over the question of social equality and condemnation of certain professions on the basis of *aḥādīth*. Mawlānā Thānawī, Muftī Muḥammad Shafīʿ and others wrote treatises on this subject. It particularly angered

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Masʿūd
The Definition of the Bidʿa in the South Asian Fatāwā literature.

the weavers in India who called themselves Anṣārīs. The press became a battleground for both parties. Muftī Kifāyatullāh argued for social equality and severely criticized the views of his adversaries (Masud 1989; Kifāyatullāh N.d. 7:365, 374).

Nevertheless, the fact that questions were asked as to whether a sweeper can enter a mosque, share food with other Muslims and offer contributions to a mosque, is by itself a reflection of South Asian Muslim societies' obsession with castes.

The custom seems certainly to have prevailed in marriage laws. In Ḥanafī laws the guardian of the bride has the right to intervene, withhold consent, or apply to the court for the dissolution of marriage, if his ward contracts a marriage with a person of lower social status. The lower social status is defined both by genealogy and profession. The *fatāwā* further explain that while genealogy determines social status among Muslims of Arab descent, non-Arabs are stratified according to professions. Arabs are generally superior to non-Arabs (Thānawī 1975, 2:359; Raḥmān 1976, 420-421; Shafīʿ 1977, 549).

The question of social equality and stratification among non-Arabs is decided by custom (Thānawī 1975, 2:356, 4:643). There are a number of cases reported where one of the parties claimed higher social status but afterwards the claim was found to have no basis. According to all the *fatāwā* the aggrieved party or the guardian had the right to dissolve the contract. The explanation for the grounds for dissolution vary. Kifāyatullāh (N.d. 5:184), mentions fraud as the grounds for dissolution, other *muftī*s refer to social custom. Some *fatāwā* specify that since social inequality brings shame to the family of the guardians, they have a right to prevent such marriage contracts (Gangōhī N.d. 468; Azhar 1982, 1:160).

On further analysis we find that social equality is stipulated as a condition for the formation of the contract of marriage, not for the validity of the contract. Kifāyatullāh differs with the others in maintaining that it is neither a condition for the validity nor for the formation of the contract (Kifāyatullāh N.d. 5:207, 213). Shaykh Muḥammad ʿAbduh, in a *fatwā* issued in 1903, explained that according to Abū Ḥanīfa the marriage contract was valid even if a woman married a person of unequal status without the guardian's consent. The guardian, however, had the right to object it. Abū Ḥanīfa's disciple Ḥasan Shaybānī reported Abū Ḥanīfa's lesser known view that the marriage contract was not formed in this case. Ḥasan's construction prevailed. Ḥanafī jurist Ṣadr al-Shahīd clarified that such a marriage contract was valid in principle. The question of validity could arise only if the guardian raised any objection (Azhar 1982, 160).

It is significant to note that the various schools of *fatāwā* agree on regarding this social practice as a juridical norm. To conclude, it is clear that in this case a social practice, although not a juridical norm in the early days of the school, became so under the pressure of social custom. Although it was ' new ', and a deviation from the early *Sunna*, it was never called a *bidʿa*, probably because it did not belong to the category of *ʿibādāt*. It was incorporated as a juridical norm because it was a common practice and was justified on social grounds.

(III) English Dress

During the British period some Muslims, especially employees in the British government, began wearing English dress, *i.e.* hat, jacket and trousers. This practice was strongly resented by Muslim society and those wearing this dress were called Christians. The *fatāwā* literature also unanimously condemns wearing English dress.

All *muftī*s disallow it on the basis of *tashabbuh*, resemblance with non-believers. It is interesting to note that the Ahl-i Ḥadīth allowed trousers with the exception of hat and jacket (Sa'īdī 1979, 4:281). The argument of *tashabbuh* was also extended to shoes and slippers. The women were not allowed to wear high heel shoes because that was the custom of men (Gangōhī N.d. 580, Thānawī 1975, 4:125).

Defining the *sunna* with respect to dress, some *muftī*s explained that there was no precise *sunna* on this point (Shafī' 1977, 977; Sa'īdī 1979, 4:78). The general considerations for the dress were hygiene, modesty and abiding by the prohibition of not wearing silk for men.

Anything that was symbolic of other religions was not allowed for Muslims. The identification of religious symbol was decided by social practice. With reference to English dress, all the *fatāwā* explained that English dress by itself was not prohibited. There was no objection to the wearing of it by Muslims in Europe. Since it was identified with non-Muslims in South Asia it should not be allowed there (Gangōhī N.d. 184; Thānawī 1975, 4:268). *Muftī*s had no objections against certain dress items like wooden slippers, Turkish caps, *angrakhā* shirts, etc. when they were no longer identified as symbol of non-Muslims (Gangōhī N.d. 572-575).

As to the legal evaluation of this practice, there is no unanimity. None of the *fatāwā* terms it a *bid'a*. Aḥmad Raḍā Khān called it *ḥarām*, prohibited (Miṣbāḥī 1985, 564). Kifāyatullāh called it reprehensible (N.d. 9:1477, while Mawlānā Gangōhī (N.d. 184) and Mawlānā Thānawī (1975, 6:159) declared it sinful to wear this dress. Answering the question about the validity of prayers said wearing this dress, all *muftī*s consider prayers to be valid except Aḥmad Raḍā Khān who maintained that such prayers were void and must be repeated (Miṣbāḥī 1985, 564).

To conclude, this social practice, though ' new ' was not termed *bid'a*. It was condemned because the *muftī*s identified it as a symbol of Christianity. However, they clarified that such social practices become acceptable when they are spread so widely that they lose their symbolic significance. This argument again reinforces the point that a social practice may become an acceptable norm if it is not added to the category of *'ibāda*, and it earns general acceptance by common practice.

(IV) The loud speaker

This technological invention began to be used for the amplification of the voice of the *imām* during prayers. The *muftī*s disallowed its use initially, but later on it became widely accepted. The question of the use of loudspeaker was debated on

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Mas'ūd
The Definition of the Bid'a in the South Asian Fatāwā literature.

technical grounds. The essential question was whether this invention conveyed the voice of the *imām* himself or it reproduced an echo of his voice. The technical information was not available to the *muftīs*. They consulted science teachers, engineers and technicians. The debate has not yet been settled and hence its use in rituals is allowed cautiously.

It is to be noted that none of the *fatāwā* calls the invention itself a *bidʿa*. It is the practice of using it for religious purposes that has been called by some *muftīs* a *bidʿa*. All *fatāwā* allow its use for call to prayers, in sermons and speeches. Opinions differ about its use in matters relating to the prayer itself. While others allowed its use for the Friday sermon, Mawlānā Thānawī insisted that it was *bidʿa* and should not be allowed (Thānawī 1975, 1:604). Among other reasons he argued that the communication of the content of the sermon was not obligatory and hence the use of this instrument was unnecessary (*ibid.* 582, 590). As to its use during prayer, Mawlānā Thānawī did not allow it while others had no objection. Thānawī argued that it made the prayer void, while other *muftīs* disagreed with him (Shafīʿ 1979).

As to the question of using it for the recitation of the Holy Qur'ān, Muftī Kifāyatullāh disallowed it because if the electric current were disrupted, it might distort the words of the Qur'ān.

It may also be noted that the use of this instrument was rarely questioned by Ahl-i Ḥadīth and Al-Azhar. The question came up for discussion before the Islamic Law Committee of the World Muslim League at Makkah in 1985. It was unanimously allowed. It should not surprise us to discover that this question was sent by the Muslim scholars in South Asia (Islāmī 1985).

To conclude, this technological innovation by itself was not rejected as *bidʿa*. It was its use for religious purposes that was questioned. The difference of opinion was also caused because *muftīs* lacked technical information, and feared that it would become part of the religious ritual of *ṣalāt*. Some believed that it interfered with this religious ritual. Later, however, when it became a common practice and most scholars became convinced that it did not form part of the religio-juridical norms, this innovation was accepted.

SUMMARY AND CONCLUSION

This paper is based on a study of 13,232 *fatāwā* recorded in 25 volumes. By analyzing these *fatāwā*, a database of 416 records was built up. It was found that only 319 *fatāwā* use the term *bidʿa*. Only such social practices which belonged to or were associated with the area of rituals and strictly religious matters are termed *bidʿa* if they deviate from *sunna*. Every new thing is not necessarily *bidʿa*. The definition of *bidʿa* has inversely redefined *sunna*. The term *sunna* in this context is not limited to the period of the Prophet. It extends to the next two generations. The precedent of *sunna* can be established by analogy or even by the consensus of the *ʿulamā'*.

It is not therefore only the 'newness' of a social practice that renders it a *bidʿa*; it is its non-conformity with *Sunna*. Contrary to many modern scholars remarks, scientific and technological inventions are not rejected *prima facia* as *bidʿa*. By themselves they are in the permissible category. Their use is resisted when they disrupt, intervene or obstruct *Sunna* in strictly religious matters. Even then they are not usually termed *bidʿa*. They are so termed by some *muftī*s only when their use is regarded a religious obligation.

This paper has also studied four specific cases of *tījā* (a social practice related to rituals about death), *Kafā'at* (stipulation of social equality in marriage laws), English dress (use of this British style of dress instead of traditional dress), and the loudspeaker (its use in prayers and sermons). It was found that although all four were new practices, only the first was declared *bidʿa*. The practice of *kafā't* was not rejected but was rather assimilated into law to such an extent that it acquired the same force as it had in customary law. It is justified not on the basis of *Sunna* but with reference to custom. This is particularly significant in the South Asian social context where social stratification was strongly stressed. It is also an evidence of a social constraint on juridical norm.

Comparing *fatāwā* about *tījā* and *kafā'at* it is significant to note that, while there are references about *tījā* being a Hindu practice, no such reference is made about *kafā'at*. The apparent conclusion is that there was a demarcation between social and religious identities and while social identity was compromised, religious identity was not. It further means that social identity exerted a stronger constraint on juridical norm. The case of English dress also supports this conclusion. This aspect, however, needs to be studied further.

The example of the loudspeaker illustrates the case of technological innovation. Apparently the efforts by the early *muftī*s to stretch arguments to resist the use of this invention implies their conservatism. It was, however, not rejected on the basis of "newness". Eventually its common use prevailed in Muslim society and it has become juridically normal.

To conclude, a social practice transforms into a juridical norm if it earns general acceptance. Regarding its justification as a juridical norm, distinction is made between religious and non-religious juridical norms. The former are closely associated with the category of *ʿibādāt* and must be justified on the basis of *Sunna* or analogy, or they should be rejected as *bidʿa*.

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APPENDIX

LIST OF BID'A

S. No.	*Name of Bid'a*	*Occurrence*
1	Adāb 'arz in place of salam	1
2	Adding Kalima in adhan and takbir	1
3	Adhan after burial	10
4	Adhan against cholera	1
5	Adhan against plague	2
6	Adhan and takbir in id prayer	1
7	Adhan at midnight	1
8	Adhan at the time of storm	1
9	Adhan on tape recorder	1
10	Adhan for Friday prayers twice	1
11	Alam, Char yari Jhanda	1
12	Aqiqa : leg of sacrificed animal for wet nurse	1
13	Arafa prayers at place other than Arafat	1
14	Belief in Prophet's abnormal birth	1
15	Bismillah writting on the forehead of the dead	1
16	Building graves	2
17	Burying bones of aqiqa sacrifice	1
18	Chehlum	5
19	Claiming knowledge of the unseen	1
20	Condolence feast	1
21	Congregational prayers after sunan	1
22	Congregational tasbih, takbir on Id day	1
23	Congregational nafl prayer	1
24	Daily Qunut after fajr	1
25	Dalya ceremony	1
26	Darud after burial	3
27	Darud before iqama	1
28	Darud Taj	2
29	Denial of Shaqq Sadar	1
30	Dhikr gathering on Thursday	1
31	Dhikr on grains in mosques	1
32	Dhikr shahadat Husayn	4

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Mas'ūd
The Definition of the Bid'a in the South Asian Fatāwā literature.

S. No.	*Name of Bid'a*	*Occurrence*
33	Embracing on id day	2
34	Excessive lightings on Shab Barat	1
35	Fatiha	13
36	Fatiha after sunan	1
37	Fatiha chibl Abdal	1
38	Feast on childbirth	1
39	Feast on circumcision	1
40	Finger kissing on Prophet's name	2
41	Finger kissing during adhan	2
42	Fixing date for food offering	1
43	Fixing green branch on grave	1
44	Forbidding business before Friday prayers	1
45	Ghilaf Ka'ba piece in coffin	1
46	Giyarhwin	9
47	Grams distribution before fajr	1
48	Grave circumambulation	1
49	Grave, seating of the ulama after burial	1
50	Graveful grain charity distribution	1
51	Graves, offerings on	1
52	Graves, sprinkling water on Muharram	1
53	Graves, placing wreath of flowers on	2
54	Hadirat	55
56	Halwa	1
57	Handshake after fajr	2
58	handshake after prayers	4
59	handshake on id	4
60	Haziri, Phul	2
61	Ihtiyat al-zuhr	3
62	Isal thawab by reading the Qur'an	6
63	Isal thawab by reading the Qur'an and food offerings	1
64	Isqat	7
65	Istimdad	4
66	Jawabnama, writing on the shroud	1
67	Jhanda	1
68	Kalima, reading aloud after prayers	1
69	Kalima on ijab and qubul	1
70	Kalima written brick, placing in grave	1

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Mas'ūd
The Definition of the Bid'a in the South Asian Fatāwā literature.

S. No.	*Name of Bid'a*	*Occurrence*
71	Khatm Qur'an	1
72	Khatm Qur'an by the bride	1
73	Khatm Qur'an on grave	2
74	Khatm Qur'an on payment	2
75	Khatm Qur'an lightings	1
76	Khichra	3
77	Khutba, Ramadan farewell	3
78	Khutba, Urdu poetry	4
79	Khutba, delivery standing betwixt audience	1
80	Khutba in Urdu/Persian	3
81	Khutba, twice for Friday prayer	1
82	Kissing na'l mubarak of the Prophet	2
83	Kunda	5
84	Loud dhikr in funeral procession	1
85	Loud Fatiha after burial	1
86	Loudspeaker for khutba	2
87	Madaris, method of teaching	1
88	Mawlid	23
89	Mihrab in the mosque	1
90	Mosque decorations	1
91	Naming the murshid in khutba	1
92	Nazar niyaz	2
93	New adkhar in place of traditional dhikr	1
94	Niyya declaration for prayer	3
95	Plague protection, spell	1
96	Prayer carpet from the shroud	2
97	Prayer after burial	4
98	Prayer timings scientifically calculated	1
99	Praying three times after congregational prayer	2
100	Prophet's knowledge in Barzakh	1
101	Qadai umri	1
102	Qul	1
103	Qul writing on clod for coffin	1
104	Qur'an punctuation marks	1
105	Qur'an, gatherings for reading	1
106	Rajabi	3
107	Rot Nabi sahib	1

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Mas'ūd
The Definition of the Bid'a in the South Asian Fatāwā literature.

S. No.	*Name of Bid'a*	*Occurrence*
108	Sabz chowki	1
109	Sacrifice to cure illness	2
110	Sahnak	3
111	Salat al-Ragha'ib	1
112	Salat, performing wearing spectacles	1
113	Sama' with musical instruments	1
114	Saying Ali wali Allah in adhan	1
115	Shab barat, fasting on	1
116	Shab barat gathering	1
117	Shab barat halwa	1
118	Shab Qadr gathering	1
119	Sihra	1
120	Ta'am-i mayyit	2
121	Tabarak	3
122	Talqin after burial/ in coffin	1
123	Taqlid	1
124	Tardi in Friday sermon	1
125	Tarif	1
126	Tarqiya in Friday sermon	1
127	Tathwib	5
128	Ta'ziya	6
129	Ta'ziya, duldul, alam, matam	1
130	Tija	28
131	Tosha	5
132	Trust for Ramadan offering	1
133	Turban on the head of the dead body	1
134	Umbrella on the dead body	1
135	'Urs	14
136	Visiting relics of elders	1

AnIsl 27 (1994), p. 55-75 Muḥammad Ḫālid Mas'ūd
The Definition of the Bid'a in the South Asian Fatāwā literature.