CHAPTER-3

LEGAL POSITION OF INDIA DURING THE BRITISH PERIOD

After the death of Aurangzeb (d 1707) his successors did not rule well and could not conduct the state administration effectively. These rulers such as Mohammad Shah (ruled 1719-1748) and Ahmad Shah (ruled 1748-54) cared very little about the problems of the empire and administrative works. Instead, they passed and merry-making activities which resulted in the weakness of the Mughal Empire. The invasion of Nadir Shah in 1739AD further weakened the empire. In this way the internal chaos and external disturbances led to the disintegration of the empire. The internal forces like that of Jats, Sikhs on one side and the Maratha on the other side created a havoc and consequently, they brought the outer provinces under their control. This proved the way for the occupation of India by the Britishers in the second half of the eighteenth century and the establishment of their rule. In the new situation there emerged many problems of socio-economic life, and some of them were quite interesting from juridical point of view. These have obviously attracted the cotemporary ulama and jurists who examined them in their works of different nature. One of the important issues, which confronted them was legal position

of India under the British rule. Significantly enough, first of all Shah Abdul Aziz (1746-1824) responded to this issue in the form of a fatwa. He declared India to be darul harb. Giving his opinion he stated that “in this country (India), the Imam ul Muslimin (Muslim ruler) wields no authority at all, whereas the Christian leaders have become powerful enough and their orders are followed everywhere. In different spheres of the state administration Islamic laws are enforced. There are, of course, certain religious matters of Muslims such as Friday and Eid prayers, call for prayers (azan) and cow slaughter with which they did not interfere. In fact they overlooked these matters due to administrative problems. But on account of their own regulations they demolish mosques without any hesitation. Moreover, Muslims and any foreign traveller could not enter the country or its suburbs without obtaining permit from them. However, sometimes they did not interfere with the travellers and merchants goings through the country due to their own interests. The dignitries such as Shuja-ul-Mulk and Wilayat Begum also could not enter their territories without seeking permission from them. Their rule is extended from this city (Delhi) to Calcutta. But they did not exercise their authority in other important cities like Hyderabad, Lucknow and Rampur due to submissive and reconciliatory attitude of the rulers.
of these territories. The well known scholar and son of Shah Walliullah, Shah Rafiuddin followed his brother with regard to the legal status of India under British rule. He was also of the opinion that India under British rule was *darul harb.* The same view was held by Qazi Sanaullah Panipati (1731-1810) who was a famous *mufassir* and jurist of 18th century A.D. He said, “Non-Muslims got dominance over this country so all Muslims of this country are under the status of *mustamin* (protected people). Those *mustamins* who reside in *darul harb*, should not take the property of non-Muslims illegally.

Sayed Ahmad Shaheed (d. 1830) was shocked by the subjugation of India by the Britishers. He was deadly against the colonial rule in this country and gave earnest call for *jihad* against them. It was based on his firm belief that India has become *darul harb* under the British rule and it is our duty to make free this country from this oppressive rule. He stated that, it is observed that after capture of power by the foreigners the honour of former rulers (i.e. Muslims) was lost and their property was looted. The common Muslims are also not feeling safe under their rule and their life has become miserable. According to Sayed Ahmad

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2. *Fatawa-i-Shah Abdul Aziz,* (Compiled by Muhammad Abdul Ahad), Darul Mujtabai, Delhi, 1311 A.H, p.17.
3. The copy of the fatwa is in the possession of Nurul Hasan Rashid Kandhalvi cited in Faisal Ahmad Batkalvi Nadvi, *Tahrik Azadi Mein Ulama Ka Kirdar,* Majlis Tahqiqat wa Nashriyat, Delhi, 2000 p.266
Shaheed, “presently in 1233A.H(1817) major part of India has become darul harb”.

Issuing the same fatwa, Maulana Abdul Hai (d. 1243/1828) has given its rationale in these words. The imperial territories of the Christains extending from Calcutta to Delhi and other countries adjoining India (i.e. North western provinces of the East India company) are all the countries of enemy. Because un-Islamic rules and regulations are enforced everywhere and no step is taken to implement Shariat’s rules. In view of this situation the country (India) is darul harb.

It is quite evident from the historical sources that in the period following mutinous events of 1857 the attitude of Indian ulama towards the British government has become more harsh. More ulama were coming out in favour of declaring India as darul harb. It may be realized from the fact that a fatwa was issued with the signature of thirty four ulama to that effect. The ulama who signed the famous fatwa included; Noor Jamal, Muhammad Abdul Karim, Sikandar Ali, Sayed Muhammad Nazir Husain, Rahmatullah, Mufti Sadruddin, Mufti Ikramuddin, Sayed Rahmat Ali, Muhammad Ziauddin, Abdul Qadir, Ahmad Sayeed, Muhammad Munier Khan, Molvi Abdul Ghani, Molvi Muhammad

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6 Haflz Malik, Muslim Nationalism in India and Pakistan, Public Affairs Press, Washington, 1963, pp. 164-165
Ali, Fariduddin, Muhammad Sarfaraz Ali, Sayed Mahboob Ali Jafari, Abu Ahmad Muhammad Hamiduddin, Sayed Ahmad Ali, Ilahi Baksh, Muhammad Karimullah, Molvi Sayeeduddin, Muhammad Mustafa Khan, Muhammad Ansar Ali, Hafeezullah Khan, Muhammad Nurul Haq, Muhammad Hashim, Hyder Ali, Saifur Rahman, Sayed Muhammad, Muhammad Imdad Ali, Sayed Abdul Hamid, Mufti Muhammad Rahmat Ali Khan, Muhammad Ali Husain. They were of the view that, it is obligatory upon the Muslims of this city of Delhi to wage Jihad against the enemy who have encircled the city with the motive of massacre.\(^7\)

In the same period Maulana Qasim Nanutavi (1832-1880) the distinguished theologian and the founder of Dar-ul-Ulum (Deoband) also supported the view that India is darul harb, and that jihad is obligatory against the Britishers. But it appears that later he changed his attitude as in the last part of the same work, he stated that in view of the situation prevailing in this country, it could be considered darul Islam but not darul harb. Moreover, he sarcastically remarked about those ulama who considered India darul harb for some reasons and called it darul Islam for other. He said. “They are very strange people when they are told that India is darul harb and they have to migrate from this country, then they quickly call it darul Islam and when told usury transaction is

unlawful in this country, they at once declare India to be *darul harb*.\(^8\)

In view of Maulana Rashid Ahmad Gangohi (1832-1905) also “whole India under the British rule is *darul harb* and non-Muslim women are *harbi*.\(^9\) But it appears from his another *fatwa* issued earlier that he had no definite opinion about the issue. He is reported to have said that the matter was controversial among the *ulama* and he himself had not thoroughly examined the issue till now.\(^10\)

Taking a very clear-cut stand about British India, Maulana Mahmud Ahmad Gangohi (1851-1920) says, that all those places which are ruled by non-Muslims are *darul harb*. The same legal position of India was already defined by Shah Adbul Aziz and there is no change in the previous situation. So in present time India remains as *darul harb*.\(^11\)

Mufti Abdur Rahim (b. 1855) did not issue any formal *fatwa* relating to legal position of India. But in response to a legal query about punishment for adultery he pointed out “it is impossible to implement penal laws of Islam regarding adultery in India, because such punishment are given or implemented in *darul Islam*

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9 Rashid Ahmad Gangohi, *Fatava-i-Rashidia*, Muhammad Sayeed and Sons, Tajiran Kutub Karachi, (n d ), p. 493
10 Ibid, p 430
11 *Fatava Mahmudia*, (compiled by Muhammad Farooq), Maktaba Mahmudia, Meerut, 1986 1/112,313.
only. In *darul harb* the Islamic rules couldn’t be enforced therefore in India which is *darul harb*, Islamic penal law couldn’t be put into practice".\(^{12}\)

The eminent scholar and famous *muhaddis* of the Deoband school of thought Maulana Anwar Shah Kashmiri (1875-1933) thought that India was *darul harb* and *ushr* (tithe) would not be levied on land of Indian Muslims. He was of the view that the *darul harb* actually means the land wherein infidels exercise supreme authority and all the matters are under their control. According to him *darul harb* does not mean only restriction on performing religious duties like daily prayers and fasting (*saum*). The scholars who think so are not right in their standpoint.\(^{13}\) Maulana Anwar Shah further explained this point in a speech which he delivered in 1927 in a programme of Jamiat-ul-Ulama-i-Hind held in Peshawer. He stated that in no way India would be considered *darul Islam*, because the implementation of Islamic law in this country is not feasible. However it may be considered *darul amn* which is also a part of *darul harb*.\(^{14}\)

In view of Maulana Abu Mahasin Muhammad Sajjad, the issue is controversial among the *ulama* of the period, but most of the Hanafi *ulama* considered India of the British period as *darul

\(^{12}\) Abdul Rahim, *Fatwa-i-Rahimia*, Kohmnr Press, Delhi, (n.d.), 6/321

\(^{13}\) Anwar Shah Kashmiri, *al-Urif al-Shawi Shah Jami al-Tirmizi*, Matba Qasmi, Deoband, 1342

This statement shows that Maulana Abdul Mahasin Muhammad Sajjad agreed with this point of view.\(^{15}\)

Maulana Mufti Muhammad Kifayat-ullah (1875-1952), the noted jurist thought that India was basically *darul harb*, though it may appear *darul Islam* in some matters like Friday and *Eid* prayers. But it does not change its actual position. Accordingly in 1939 he clearly declared India to be *darul harb* and also stated that contemporary *ulama* were unanimous on this issue.\(^{16}\)

Maulana Husain Ahmad Madni (1879-1957) is of the opinion that, “India is *darul harb* and would remain *darul harb* till the domination of infidels here. The laws relating to *darul harb* wholly prevailed here and there is no possibility of change in this situation”.\(^{17}\) Maulana Saduddin Kashmiri and Maulana Amanullah Kashmiri were also of the opinion that India under British rule was *darul harb*.\(^{18}\)

With reference to the view of Shah Abdul Aziz, Sayed Muhammad Mian (1903-1975) clearly stated that India under the British rule was *darul harb*. Giving rationale for such opinion, he pointed out that the Britishers were dominant everywhere. Sometimes, Muslims are prevented by an ordinary collector from

\(^{15}\) *Fatawa Imarat Shariat* (compiled by Mujahid ul Islam Qasmi), *Imarat Shara*, Bihar, (n d ), pp 233-234

\(^{16}\) *Fatawa Kifayat ul Mufti* (compiled by Hafiz ur Rahman), Kohinur Press, Delhi, 1971,1/16-18

\(^{17}\) Husam Ahmad Madni, *Fatawa shaikh ul Islam*, Maktaba Dinia, Deoband, 1996, p 141-142

offering prayer in mosque, Muslims have became so much powerless, that they freely could not offer congregational prayer. The infields are in such a dominant position that no other darul harb may be found like this. Islamic customs and traditions may be observed only after getting permission from the British government. So certainly India has become darul harb. It is interesting to note that distinguished poet Maulana Iqbal Ahmad Suhail a scholar of oriental studies declared India darul harb, but opposed migration (hijrat) from India. In his own words, “any country which is not governed in accordance with the Sharia is darul harb irrespective of the fact that its ruler is Muslim or non-Muslim. In his view India as a darul harb has peculiar position, because life of Muslims is no longer in danger and they are permitted to act on different provisions of Islamic law such as marriage, divorce, inheritance and hiba (gift). Moreover, the situation is not so much disturbing or distressing that migration would become obligatory for them. Undoubtedly the government enforce such laws which are against the Islamic business system and most of the commercial matters in this country are based on interest and that is collected forcibly from the Muslims. The proprietary rights of the original owners were annulled after illegal possession for about twelve years by the new occupants.

Wine drinking and adultery have legal sanction. Keeping in view all these situations, Maulana Iqbal Ahmad Suhail considered India as *darul harb*. He also agreed with the view that all those conditions which were laid down by Abu Hanifah for a country being *darul harb* existed in India. It is governed by non-Muslim rulers. Its borders touch non-Muslim countries. After the end of Muslim rule Muslims and *zimmis* are not enjoying peace and calm as they had got earlier.\(^2^0\) Mufti Azizur Rahman (1858-1928) the famous Mufti of Dar-ul-Ulum Deoband was of the view that India was *darul Islam* during Muslim rule but later when it was occupied by Britishers it became *darul harb*. He has actually based his opinion on the *fatwa* of Shah Abdul Aziz, Haji Imdadullah, Muhajir Makki and Maulana Muneer Nanautawi (b.1831). The same *fatwa* was also issued by many other *ulama* of Deoband.\(^2^1\) Maulana Gulam Murshid Lahori, Maulana Ahmad Ali Lahori and Maulana Noor ul Haque Lahori also declared British India as *Darul harb*, thinking that any country being *darul harb* means dominance of non-Muslims and that is very much found in case of India.\(^2^2\)

Mufti Tajuddin Lahori and Maulana Muhammad Yonus Loyalpuri of *Darul Ifta* Numania supported the view of *ulama* of

\(^{20}\) Iqbal Ahmad Suhail, *Haqiqat al Riha*, Nizami Press, Badaun, 1936, pp 172-174

\(^{21}\) *Fatawa Dar ul Uloom Deoband*, (compiled by Mohammad Zafruddin), Jamia Islamia, Darul Ulum, Deoband, 1983, 12/271-272

\(^{22}\) Mushtaq Ahmad, *Masalah sīd An dār ul harb*, Deoband, 1935, p 30-31
the Deoband and considered India *darul harb*, because Islamic law was not enforced here. and even the *zimmis* are deprived of peace which they enjoyed under the Muslim rule.\textsuperscript{23}

Many other *ulama* including Muhammad Inshallah took clear-cut stand that all the three major conditions which had been laid by Abu Hanifah for a country being *darul harb* are certainly found in India. First, British laws are enforced openly and publicly. Secondly, India’s borders touch many non-Muslim countries like Bhutan, Nepal, Burma, China and Russia. Though one may consider India adjoining a Muslim state like Afghanistan, but it is very far away and high mountains are standing between them in such a way that no assistance could reach India within a short time. Thirdly. Muslims and *zimmis* are not residing in peaceful condition as they enjoyed complete peace under the Muslim rule. Moreover the Britishers have abolished major part of Islamic laws and there is no scope for implementation of the *Shariat’s* rule in the present situation. In short, British laws prevailed everywhere in this country, thus it is obvious that India is *darul harb*.\textsuperscript{24}

The eminent scholar Maulana Manazir Ahsan Gilani (1892-1956) defines the legal position of India in term of *darul kufr*.

\textsuperscript{23} Ibid. p.31-31.
Explaining the point stated that the country was ruled by non-Muslims and instead of Shariat it was governed under the British law. The law based on Quran and Sunnah was not implemented here. But laws made by non-Muslims were enforced in this country. So the first condition laid by Abu Hanifah for darul harb (the prevalence of non-Muslim rules) exists here. He also stated that most of the Indian borders were adjoining with non-Muslim countries in such a way no Islamic country exists between them. Moreover non-Muslim forces have dominance over seas, no one can sail his ship without their permission. Penal laws of Islam were not implemented and Muslims were put to death without any consideration of Islamic laws. Many of them were punished with imprisonment, exile and fine on flimsy grounds. Moreover in many cases properties were handed over to others through court orders. Under the government sanction, usury is permitted everywhere. Business of crores rupees under usury is done daily. Above all, Muslims did not have mental peace. So all these situations lead to conclude that the British India fulfilled all those conditions which are required for a country being treated as darul harb.  

Haji Shariatullah (1781-1840) an eminent theologian of Bengal and founder of Faraidi movement was deadly against the Britishers and worked hard for the end of their rule. He clearly

25. Abu Ala Maududi, sîd, Markazi Maktaba Islami, Delhi, 1994, pp. 212-215. s
stated that Bengal under British rule was harmful for Muslims from religious point of view. In the absence of their own ruler, Muslims were not able to hold congregational prayers of Friday and Eid prayers. In this situation he declared Bengal to be *darul harb* and said; “our country is not *darul Islam*, rather a *darul harb* because, the Muslims of this country cannot observe their religious duties under the British rule. They can not perform the Jum’ah and Eid prayers in accordance with the Islamic law”.  

It is also noteworthy that a section of ulama of Sind in the same period issued a *fatwa* in which they defined the legal status of a particular region or province of this country, such as Sind. With regard to it Maulana Ibrahim al Tattawi and other ulama of the place declared that sind was *darul harb*. They adopted the usual line of argument that non Muslims were dominant in the whole region and that nowhere Islamic law is in operation. Secondly, Sind is not adjoining any Islamic state, which could help it at the period of necessity. Moreover, neither Muslims nor *zimmis* feel themselves secure therein.  

The same view was also held by Mohammad Tattawi while expressing his opinion he quoted treatise of Makhdoom

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26 Munuddin Ahmad Khan, *Muslim Struggle for Freedom in Bengal*, Islamic Foundation, Dacca, 1960, pp 19-20
Muhammad Tattawi pointed out that Muslims of Sind were actually residing in *darul harb*. Though they have no restriction from the Britishers in their day to day life and they are free to offer their congregational prayers. But the fact is that the followers of different religions wish that their religion should dominate and their society should prosper. At present, the laws of infidels prevail here and they have upper hand over these cities. Their religion has got more influence. On the other hand, Muslims are living in deplorable condition and their laws are not given due respect. In such a situation India under the British rule is surely to be considered as *darul harb*. The same view was also expressed by Abdul Rasul Chatari and consider Sind *darul harb*. Another Sindhi theologian Maulana Abdur Rahman Tattawi came to the conclusion after analysing the views of Indian *ulama* that no one can consider Sind as *darul Islam*.

In the same period there was another section of *ulama* who contrary to the above point of view. thought that India under the British rule was *darul Islam*. Among these scholars Maulana Karamat Ali (1800-1873) was more well known. He was quite impressed by the thinking of Shah waliullah but he did not share his political ideas. He was associated with those *ulama* who had accepted British services. He publicly debated with those *ulama*

who were against the British rule, especially the supporters of the Faraidi and Mujahidin movements.\textsuperscript{32} In a lecture held on 23 Nov. 1870 under the auspices of Muhammadan Literary Society of Culcutta, he publicly declared that British India was \textit{darul Islam}. Opposing the standpoint of other ulama, he thought that three conditions laid down for \textit{darul harb} are not found here. He further stated that many of provisions of Islamic law like that of marriage, divorce, inheritance, endowment etc. are enforced with regard to Muslims under the British rule. Muslims enjoyed every kind of freedom and also the countries bordering the northwest of India are ruled by Muslims.\textsuperscript{33} The same view was held by Ahmad Raza Khan (1856-1921) the eminent theologian and one of the greatest leaders of Barailvi sect. In his own words, “In India the Muslims are free to observe the festivals of \textit{Eid ul fitr} and \textit{Eid ul azha} and to perform weekly congregational prayers (\textit{salat ul Jumah}). There is also no restriction on \textit{azan} and \textit{Iqamat} in daily prayers. In the same way, they also observe other religious obligations and solemnize \textit{nikah} in accordance with Islamic law. Moreover, in many other matters they act according to the verdict (\textit{fatwa}) of the contemporary ulama.\textsuperscript{34} Responding to the query about the legal status of the British India, eminent scholar of Firangi Mahal and

\textsuperscript{32} Nisar Ahmad, \textit{Origin of Muslim Consciousness in India}, Greenwood, New York, 1991, pp 69-70
\textsuperscript{33} Peter Hardy, \textit{Muslims of British India}, Cambridge University Press, London, 1972, p 111
\textsuperscript{34} Ahmad Raza Khan, \textit{ Alam al-Alaam-Bi-anma Hindustan darul Islam}, Husaini Press, Bareilly, 1988, p 2
the distinguished jurist, Maulana Abdul Hai Lucknowi (1848-86) stated that the present days India is *darul Islam*. Referring to the opinion of Imam Abu Hanifah about *darul harb*, he emphasized that the conditions stipulated for such category of land are not found in British India. Elaborating the point, he observed that the British government did not interfere with Islamic laws nor they prevented Muslims from acting upon their own law inspite of the fact that the Judges in the Judicial courts are infidels.\(^{35}\)

Many other *ulama* of the period including Maulana Amjad Ali\(^{36}\) and Mufti Muhammad Abdul Qadir, fully supported this point of view and opined that the term *darul harb* could not be applied to India in present situation, nor it would be right to say that offering friday prayer is non-obligatory under the British rule.\(^{37}\)

Maulana Nazir Ahmad Dehlvi (d.1902) the noted *muhaddis* is among those scholars who think that enforcement of some rules of *Shariat* (like holding friday and *Eid* prayers) is enough to transform *darul harb* into *darul Islam*, so it would be wrong to consider India or Bengal as *darul harb*, because friday and *Eid* prayers are performed openly and there is no restriction on


\(^{37}\) *Fatawa Firangi Mahal*, (also known as *Fatawa Qadira*) compiled by Muhammad Raza, Lucknow, 1965, pp. 175-176.
propagation of Islamic teachings and inviting others to the religion.  

In his standpoint, Maulana Nazir Ahmad was supported by many *Ahl-i-Hadith ulama* including Khawaja Ziauddin Ahmad, Muhammad Qutbuddin, Sayed Muhammad Hashim, Muhammad Naqashbandi, Hafizullah and Muhammad Yusuf.  

Mufti Nizamuddin Azmi also considered India *darul Islam*. But he argued in a different way. He stated that if in any country laws of Muslims and non-Muslims prevail at the same time it would not be considered *darul harb* and it is well-known that Muslims in British India freely observed their religious duties. They can do business transactions in their own way and their cases are decided according to the *Shariat's* rules. So keeping these things in mind, India under British rule may be rightly called as *darul Islam* and in no way it can be designated as *darul harb*.

On the issue under discussion Maulana Salamatullah is more categorical when he says that in the present situation India deserved to be called *darul Islam*. He thought that all those countries which were under Muslim rule and later these were occupied by non-Muslims. But some parts of Islamic law continued to be in operation and the rulers did not interfere in the

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39 Ibid, pp. 40-41
religious matters of Muslims. As a matter of fact such countries did not lose their position and under this category may be placed, India, Afghanistan, Iran, Egypt and Palestine.\footnote{41} With regard to the legal position of the British India the same line of thinking was adopted by Maulana Mohammad Abdur Shakoor the famous theologian and Jurists of Lucknow.\footnote{42} The eminent hanafi jurist and the well known reformer Maulana Mohammad Ashraf Ali Thanvi (d.1942) also declared India as \textit{darul Islam} and discussed this issue in detail a separate work known as \textit{Tahzir-ul-Ikhwan-un al-Riba fi-al-Hindustan}. His arguments are similar to that of Maulana Abdul Shakur and Maulana Salamatullah and that is inspite of the British rule, different provisions of Islamic law are put into practice. Congregational prayers of \textit{Jumah} and \textit{Eid} are held publicly and the Muslims by and large lived in peaceful condition. So there is no legal hindrance in treating India as \textit{darul Islam}.\footnote{43} He further explained that, no doubt, it became \textit{darul harb} for sometimes, but later situation changed and a number of provisions of Islamic law came to be enforced. The Britishers did not enforce their laws except in political and administrative affairs. As regard religious affairs they do not interfere with them. Moreover, Muslims are free to establish their educational institutions and

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42. & Muhammad Abdul Shakur, \textit{Ilm al-Fiqh}, Maktaba Islamia, Lucknow, (n.d.), 2/147. \\
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impert religious knowledge to their wards. All these went against the conditions laid down by Abu Hanifah and his disciples for a country being darul harb. So India may be juridically called darul Islam.\textsuperscript{44} In view of the modern jurist Abdur Rahim also India under the British rule deserves to be designated as darul Islam, because it is an established fact that friday and Eid prayers were regularly held all over India. The Muslims were guaranteed protection of their life and property and they had right of establishment of their religious institutions.\textsuperscript{45}

It is important to note here that when the question about legal status of India was put to the theologians of Makkah it was responded by Mufti Shaikh Jamal bin Abdullah, Omer al-Hanafi and Ahmad Ibn Zaini Dahlan a jurist of Shafii school in these words, “All praise to Almighty Allah the lord of creation. As long as some of the peculiar observances of Islam prevail in India it is darul Islam.”\textsuperscript{46} Another Makkan theologian of Maliki school, Husain bin Ibrahim observed that an Islamic country does not becomes darul harb as soon as it passes into hands of infidels but only when all or most of the injunctions of Islamic Shariat disappear\textsuperscript{47} so he was also in favour of India being darul Islam.

\textsuperscript{44} Ibid, pp 57-62
\textsuperscript{45} Abdur Rahim, Principles of Mohammedan Jurisprudence, All Pakistan Legal Decision Lahore, 1958, p 397
\textsuperscript{47} Ibid, p 209
There were some ulama of North India who did not clearly declare India of the British period to be darul Islam. But it may be assumed in the light of their some writings that they held the same opinion, for example some ulama including Maulana Ali Mohammad, Maulana Abdul Ali, Maulana Fazlullah, Mohammad Naim and Maulana Rahmatullah of Lucknow. They issued a fatwa in July 1870 to the effect that the Indian Muslims are protected by Christian rulers and there is no need to wage jihad against them in this country. Besides if there be no chance of victory of Muslims jihad is unlawful. In support of this view fatawa-i-Alamgiri and some other works were quoted. The other ulama Qutbuddin of Delhi and Maulana Lutfullah of Rampur were also quoted.48

Mualana Shibi Naumani a great scholar of modern age and stunch supporter of Sir Sayed’s modern education policy, is of the view, when Tatars occupied the Iran and Iraq but did not prohibit Muslims from offering daily prayers and keeping fasting the jurists considered these countries darul Islam. Christian’s rule over India who were scriptures instead of them Tatars who were idol worshippers and had no resemblance with Muslims. Moreover Christian rulers did not interfere in religious duties too, the Muslims criticize their religion openly. He also said that there would be no doubt that status of British rulers would be like that

of Akbar & Jahangir period. So the opinions of jurists in such conditions should be followed. By so he supported the view that India under British rule was *darul Islam*. Later on in March 1912 A.D. he reverted from his above statement and said India is neither *darul Islam* nor *darul harb* but *darul amn*. So *Jihad* and migration from *darul amn* is not permissible.

There is another section of ulama and scholars who neither considered British India *darul Islam* nor *darul harb* or *darul kufr*. They interpreted its legal position in term of *darul amn*. There are some ulama/Scholars who clearly did not declare India *darul amn*, but it is apparent from some statements of these Scholars that India is *darul amn*. Among these Sir Sayed Ahmad Khan did not clearly declared India as *darul amn*. But he is of the view, that waging *Jihad* against infidels is not lawful in a country where Muslims left their families and property under the protection of non-Muslims so he is in support to consider British India as *darul amn*. This is also not allowed legally in a country where Muslims are living in peace and security and where Muslims have no chance of success in war against non-Muslims. In such a situation if any country invaded India Muslims would be sinners if they assisted the invader because they live in with peace and comfort

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and enjoy different kind of facilities within this country. They have religious freedom, including giving *azan* publicly. They even can write openly against the propaganda of the Christian Missionaries. He concluded that India was neither *darul Islam* nor *darul harb* but something between both the situations.\(^5\) This leads to the assumption that he considered India of the British period *darul amn*. A close associative of Amir Ali’s thought Maulana Chirag Ali (1844-95) viewed that “India for the Muslims of India is neither *darul harb* nor *darul Islam*, nor a country under a Muslim ruler. It is simply British India and as the Mohammadans are subjects and protected by the British Indian government, a subtle casuist may call it a *darul amn* or *darul zimmah*\(^5\).\(^3\)

Some of the Ahl al-Hadith *ulama* particularly Husain Ahmad Batalvi clearly stated that if India cannot be considered *darul Islam* in exact sense it may be atleast treated *darul silm* or *darul amn*. He argued that if any Muslim country like India was subjugated by non-Muslim, but Muslims continued to have religious freedom and they performed their religious duties without any hindrance, that country would remain *darul Islam* or atleast it should be considered *darul silm* or *darul amn*\(^\)\(^4\)

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52. Maktubat Sir Syed (edited by Shaikh Ismail Panipati), Majlis Taraqqi-Adab, Lahore, 1959, p.188.
Maulana Sanaullah Amritsari another Ahl-i-Hadith theologian, when asked about the legal position of India he replied that India was neither darul Islam nor darul harb but darul amn. In support of his view he simply quoted the fatwa of Husain Ahmad Batalvi.\textsuperscript{55} Munshi Gulam Jeelani was also in favour of treating India as darul amn. But he considered it a part of darul harb. He argued that though in some matters like penal laws un-Islamic laws prevailed but Muslims are free to offer prayers and perform their other religious duties. Their life and property is safe. In such a situation it would be more correct to treat India as darul amn.\textsuperscript{56}

In view of the above discussion the ulama who had expressed their opinion regarding the legal status of India under British rule, may be divided into three different categories. The first category was of the view that India under the British rule is darul harb, the second category was of the ulama who considered India of that period darul Islam. The ulama and scholars of the third category interpreted the legal position of British India in term of darul amn. The main argument of the ulama of first category was that Muslims had no authority or political power at that time. Their life and property was quite unsafe. They were terrorized and hanged their property was confiscated. Muslim

\textsuperscript{55} Fatawa Sanaiyah, (compiled by Mohammad Daud Raza, Idarah Tarjaman ul Sunnah, Lahore, 1972, p.360.

\textsuperscript{56} Munshi Gulam Jeelani, Hillat wa Hurmat , süd Ki Bahas Aur Istilahi dar ul harb Ki Taheqiq, Faiz ul Amm, Loyalpur, (n.d.), pp: 142-143.
dignitaries were given no respect. In many cases mosques were razed to ground. This view was held by majority of the ulama. The upholders of the second view emphasized that the Muslims had protection of their life and property and had also freedom to observe their religious duties. The Britishers did not interfere in their religious matters and personal law. The Muslims are also permitted to make settlement of their cases by their own qazis. These ulama were not in favour of migration from this country nor that of waging jihad against the Britishers. Those ulama and scholars who treated India darul amn put forward almost the same argument given above (i.e. protection of life and property of Muslims under the British government and its non-interference in their religious matters. It is very strange that the ulama of the first category claimed that the conditions laid down by Imam Abu Hanifah for darul harb did exist in that period and the ulama of the second category denied it in toto. It is difficult to say that whether it was due to the difference in the assessment of the situation of the period or to that of interpretent of the statement of Abu Hanifah about the conditions of darul harb. In my view Muslims face highest kind of atrocities and the Britishers perpetuate every kind of oppressive activities against Muslims. So, India of the British period was darul harb and there is no reason to call it darul Islam.