ECONOMICS OF ZAKAT AND ITS ADMINISTRATION
(STUDY OF PERAK STATE)

by
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Similarly, I wish to express my warmest thanks to the officials in the State Religious Affairs Department for their assistance in providing me data and information as essential for this exercise.
CHAPTER I

ACKNOWLEDGEMENT

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Similarly, I wish to express my warmest thanks to the officials of the Perak Religious Affairs Department for their cooperation in providing me data and information so essential for this exercise.

A. Background to the Development of Zakat Institution in Malaya

To govern the distribution of Zakat, the 'Ulama' were considered the 'legitimate' recipients. This legitimacy was based on the ground that they were the groups responsible for the propagation of the Islamic religion to the people under their jurisdictions. Hence, they were identified as those who tried to implement the 'way of God', which automatically entitled them to the Zakat share. Moreover, they did not only receive one-eighth of the Zakat share as required in the Quran, instead they obtained almost all the amount paid to them by the Zakat payers.

Such a practice was neither in accordance with religion nor was it morally justified. In fact such a practice tended to defeat the fundamental purpose of Zakat. This is in view of the fact that the fundamental purpose of Zakat is "To take wealth from the rich and to return it to the poor" (Bukhari 25:2).

Hence, the question to be posed here: Are these 'Ulama' and religious teachers more economically inferior than the other groups in the society? Even if they did, would it be contrary to the spirit of Islam if they took almost the whole bulk of the Zakat share? If it did, what were some of the measures undertaken to remedy the situation?

Actually some remedial measures were already undertaken as far back as the year 1949. These measures were introduced as a result of


2. State of Perak Anacton- vii- 1. case in 1949 which deals with Islamic religious and Malay customs.
CHAPTER I

INTRODUCTION

A. Background to the Development of Zakat Institution in Malaya

The collection of Zakat in Malaya dated back to 1930's. But then the collection was unofficial. Payment was made on the basis of individual submission rather than due to any State rules or regulations. Since the State was not involved the appointment of Zakat collectors (Amils) was not necessitated.

Similarly, there was no enactment or legislation to govern the definition, interpretation, assessment, collection and distribution of Zakat. Consequently, therefore, there was arbitrariness in matters pertaining to the above respects. In matters of distribution, for instance, in most cases the 'Ulamas', and the religious teachers became the 'legitimate' recipients. This legitimacy was based on the ground that they were the groups responsible for the propagation of the Islamic religion to the people under their jurisdictions. Hence, they were identified as those who trod unto the 'Way of God', which automatically entitled them to the Zakat share. Moreover, they did not only receive one-eighth of the Zakat share as required in the Quran, instead they obtained almost all the amount paid to them by the Zakat payers.

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2State of Perak Enactment No. 1, came in 1949 which deals with Islamic religion and Malay customs.
an outgrowth of consciousness among the Muslim scholars in this country. This consciousness in turn resulted from the realization over the various discrepancies prevalent amidst the institution of Zakat. At the same time, there was also a growing consciousness over the possibility of devising Zakat as an effective socio-economic power to uplift the living standard of the Muslims.

With respect to the State of Perak, the initial measure was in sight when the "State of Perak Enactment No. 1 of 1949", was passed, whereby the provision to establish the Council of Religion and Malay Custom (or the Majlis Ugama Islam dan 'Adat Nelayu) was provided for. With this Enactment the State's power over the Islamic religion was therefore officially recognised. Nevertheless, it was only with the Enactment No. 7 of 1951 that matters relating to Zakat were for the first time dealt with. The Enactment recognises the State right over the collection, management, control, and distribution of the Zakat. Henceforth, it becomes illegal for unauthorised persons to collect Zakat, let alone managing or distributing it.

However, it was not until the year 1953 that the collection of Zakat was really enforced by the Majlis. In fact, the year 1953 was very significant for three reasons:

1. It established the official collection of Zakat into reality;
2. Zakat was collected throughout the State;
3. Zakat fund was for the first time distributed to the recipients provided for in the Quran.

Given these Enactments it does not mean that the provisions accorded are already adequate, meaning that no scope of improvement is necessitated. In fact, a cursory look into all the Enactments is enough to tell that they are dogmatic and orthodox in nature and do not incorporate the true spirit of the institution of Zakat as provided in the Quran and the Sunnah.

These tendencies are reflected in a number of cases. For instance, in so far as the produce of the earth is concerned, the collection of Zakat is confined to padi only. The Muslim scholars - whom the writer interviewed - expressed doubt over the legitimacy of imposing Zakat on other produce of the earth, such as rubber and sugar-canes, etc. The logic of their doubt lies on the argument that such items are not mentioned in the Quran and Hadith. This sort of argument is indeed very discouraging. This is because they tend to limit to the wordings and even to the extent of ignoring the real spirit of

\[3\] In this exercise the term Majlis refers to the Majlis Ugama Islam dan 'Adat Nelayu, Perak, unless it is otherwise stated.
those words. They do not give much weight to Ijtihad (or individual independent judgement) and the formulation of a consensus of opinion (called Ijma) by Islamic scholars expert in the field.

To cite one more case of conservatism one needs to mention to the distributional aspect of the Zakat funds. A brief and immediate examination of the distribution of Zakat will indicate that it is confined to cash benefits only. So when the writer asked as to why the Zakat funds were not utilised economically as to include buying shares, the answer was equally distressing. They argued that Zakat funds are people’s money as such the Majlis could not use them for investment, as it may involve losses. They said that this is not allowed by Islam because when losses are incurred then the recipients would be denied dividends of their shares out of the Zakat funds. This is logical enough, but one is yet to enquire on one basic point. Of course, God does specify the beneficiaries of Zakat funds but there is no injunction denying Islam the use of such funds for the growth of that fund which is for the benefit of the beneficiaries.

With respect to the general belief that after the four Imams no doctrine or doctrine as well as the Hadith. This is because God allows man to exercise his intellect and hence make use of his discretion to arrive at a consensus of opinion and to make analogous deductions whenever generality is established in the two texts mentioned above. These two approaches do to to Islam are very fundamental in that they could be used to bluntly refute any charge which says that Islam is a static religion. Contrary to this, in fact, Islam is a dynamic religion for it provides allowances for man to continue on and on re-interpreting the Quran and Hadith in the light of environmental and conditional changes and adaptations. In most cases the Quran is a book of fundamental principles valid for all time to come. Hence, no regulatory details can be expected, otherwise it becomes absolutely rigid and cannot claim itself to be valid for all times to come.

The environmental changes and adaptations are necessitated in view of climatic differences between one country and another. These climatic differences accounted for the differential plant outgrowth in each country. For example, dates and grapes are available in abundance in Middle-eastern countries, and they are subject to Zakat. Since climate does not permit the abundant growth of those plants here, how if we substitute those which are available here for dates and grapes, and hence subjecting them to Zakat too. For instance, rubber for Malaysia, jute for Pakistan, and cotton for Sudan.4

4This idea has in fact been forwarded during the International Islamic Conference. For further detail see IIIC/69/CR5(a), Preliminary Report International Islamic Conference, K.Lumpur, Malaysia, 21st to 27th, April 1969, pp. 12-14.
As far as conditional changes are concerned Zakat has to be kept in tune with the socio-politico-economic set-up of the country. In countries like Jordan and Kuwait, for example, the Zakat institution has become part and parcel of the political system of the countries. In Malaysia, since religion is a State matter Zakat institution has to be fitted into the policies of the State.

Given the conditions for change why is it that such tendencies as conservatism and dogmatism still prevail in this country? These tendencies may perhaps be attributed to the general belief that the major theological debate as to the meaning and the re-interpretation of the Quran ended with the four Imams. Thus, does this mean that Islam today is incapable of adapting itself to changed conditions of different regions of the world? With regard to this, therefore, new interpretations to include addition to knowledge are necessary. Nevertheless such interpretations should not be contrary to the fundamental principles of Islam as enunciated in the Quran and the Sunnah.

With respect to the general belief that after the four Imams no doctor would be sufficiently qualified to interpret the laws of the God and the Prophet is totally untrue. This is because the exercise of individual judgement (Ijtihād) is very important in Islam. In fact, Muhammad Ali pointed out that even the founders of the four orthodox schools of law did not lay down the restriction of Ijtihād. He went on to say that decisions based upon reasoning in one generation may be rejected in the next. And he concluded that Muslim communities may not only make laws for themselves but they must apply their own judgement to changed conditions.

On this basis, therefore, it is evident that Islam is not a static religion. Instead it is a dynamic religion, hence capable of adaptation to changed circumstances and time. What is needed today in so far as Malaysia is concerned, is not merely a new interpretation, but to widen the scope of interpretation so as not to exclude any new developments from the scope of Islam and the application of the principles of Islam.

Therefore, while it might not be altogether correct to say that religion must keep with the changing times since fundamental religious principles could not change if their truths were to be admitted, it is nevertheless felt that a truth would become greater in its application if applied with an up-to-date knowledge of facts and developments. In

5The four Imams refer to Hanafi, Shafei, Hanbali and Maliki.
6In this exercise the term Prophet refers to Mohammad, unless it is otherwise stated.
8Ibid., p. 104.
9Ibid., p. 105.
fact, "Allah never meant to stand still. Otherwise, he would have limited man's intellectual capability and capacity to seek knowledge." 10

B. Objective of Study

The objective of this academic exercise is to highlight the importance of Zakat as a socio-economic institution contrived by Islam. But however, this study is not intended to be exhaustive. Because this would involve a thorough knowledge, if not a complete mastery, of the various aspects of the Islamic religion. This could not be done in view of the writer's handicap in religious knowledge and the time factor involved. Instead, the writer chooses to make this exercise as illustrative as possible. That is by concentrating on some of the economic aspects of the Zakat theory.

In Chapter II, the fundamental theory of the Zakat is established, not because of its importance as such, but because all other argument would have to proceed from there. An attempt is made in Chapter III, to evaluate the position Zakat occupies in the light of modern theories of taxation, and hence to highlight its feasibility as a theory in view of the present socio-economic complexities. Both these chapters are, of course, highly theoretical.

Chapter IV deals with the practical implementation of Zakat in the State of Perak. Hereby an analysis on the divergence between the theoretical basis and the practical implementation is made. Consequent to this divergence, some suggestions are made in Chapter V, with the anticipation that they can be made use of to counteract the prevailing discrepancies.

C. Scope and Limitations

The scope of this exercise only covers the economic implications of the Zakat, firstly, in term of its theoretical basis and secondly, in term of its practical application. The Zakat referred in this exercise does not include Zakat Fitrah, but only refers to the Zakat of property and wealth.

With respect to the theoretical basis, the main sources of reference are Ahmide's The Mohamadan Theories of Finance, Nawawi's Minhaj-et-Talibin and Siddig's Public Finance in Islam. As for the practical parts some literatures relevant to the State of Perak have been consulted.

In the discussion it is intended to follow closely the Shafei School of thought. But however, most of the books available adopted the Hanafi school. Thus, the writer has no alternative but to quote it here. This is attributed to the fact that the writer only understands English and Malay. This is worsened in that most of the literatures that are within the easy reach of the writer did not provide detailed version and interpretation of the Shafei school. In fact, the only English translated book on the Shafei school available to the writer is Minhaj-e-Talibin. Some opinions of the Shafei are also available in the Hadith.

The main problem in the case study of the Perak State is the sorting out of the data. In some cases even sorting out is impossible. This is due to the fact that the Zakat figures are mixed with figures of the fitrah and other sources of income belonging to the Majlis. But, however, as far as possible the writer has made an attempt to break out these figures so that the exclusive figures on Zakat can be obtained, and hence analysed.

However, the Zakat is basically an "Ordinance of God and the Sunna of the Prophet ...". As such it would certainly mean more than just being a System of Finances. For surely it must embody the traces of religion and hence its divine objective. In view of this, i.e., considering its spiritual essence — we can thus review this word in a more meaningful perspective.

Actually the word Zakat is a generic term meaning growth and also purity. But it is the second sense which predominates and furthermore, the Quran mentions in many verses which shows that the derivatives of this word are used in the sense of purity and purification. For instance, in one such example, the Quran says:

"But those who purify themselves."

The other sense which deals with 'growth' and 'increase' is reflected in the phrase which reads, "Zaka al-Zar" which means the 'crop grew'. To this Mohammed Ali remarks: "The word Zaka is derived from Zaka, which means it (a plant) grew." This interpretation implies the secular importance of Zaka.

Nevertheless, the interpretation outlined above is by no means comprehensive. This is because the word Zaka also implies 'growth', 'blessing', and 'praise', all of which are used in the Quran and the Hadith in all the senses.

2. (Termini 11, 9(b)).
As mentioned earlier the derivatives of the word Zakat appear in many of the verses of the Quran. One of them is the word 'Sadqah'. Such a derivative presents a certain peculiarity of interpretation of Zakat more acutely. As a result a controversy arises especially with respect to interpreting this two terms.

CHAPTER II

THE THEORETICAL BASIS OF ZAKAT

For instance, one school of thought adhered by Al-Khowadhi and others, maintain that both the words Zakat and Sadqah are one and A. The Meaning of Zakat

1. Definition

The word Zakat is of an Arabic origin. In its modern sense it can be interpreted to mean 'an obligatory form of charity'. It is more or less equated as a form of taxation.

However, the Zakat is basically an "Ordinance of God and the Sunna of the Prophet ...". As such it would certainly mean more than just being a System of Finance. For surely it must embody the traces of religion and hence its divine objective. In view of this, i.e., considering its spiritual essence - we can thus review this word in a more meaningful perspective.

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"But those will prosper who purify themselves." 3

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Sometimes it is also spelt as Sadqah.

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2. Termizi II, 9(b).


a) Zakat and Sadaqat

As mentioned earlier the derivatives of the word Zakat appear in many of the verses of the Quran. One of them is the word 'Sadaqah'. Such a derivative presents the interpretation of Zakat more complex. As a result a controversy arises especially with respect to interpreting this two terms.

For instance, one school of thought adhered by Al-Mawardi\(^5\) and others, maintain that both the words Zakat and Sadaqah are one and the same thing, and therefore confound them under one common meaning. The opponents of this school of thought however, maintain that there is an essential difference between them. Basically, the difference lies in the definition itself.

Conceptually the term Sadaqah is used in reference to an optional charity,\(^6\) which signifies the voluntary contribution of individuals. It is therefore, treated under the heading of gifts. In short, Sadaqah simply means a charitable deed.

Zakat, on the other hand, is that part of alms which is obligatory. Thus it is safe to infer that, every Zakat is Sadaqah; and only Sadaqah which is obligatory is Zakat. Sadaqah is taken as an extra levy on the rich to relieve indigence and distitution. In fact, the Quran mentions that apart from Zakat, Sadaqah is important as a supplementary and complementary measure against social misery in the Muslim society.

Besides the difference in the meaning, the procedure of distribution also differs in each case. As for Sadaqah it may either be given individually by the donor himself or collectively through the Muslim State. But as far as Zakat is concerned it has been "universally recognised as the right of the State."\(^7\) In other words, the State has to collect and pool the funds into the Beitul Mal or the Public Treasury, from which they can then be redistributed to the recipients decreed in the Quran.

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\(^{\text{5}}\) Sometimes it is also spelt as Sadaqah.

\(^{\text{6}}\) Quoted by M. M. Hussain, the source of which is not available.


b). Zakat and Its Importance

In so far as the importance of Zakat is concerned it should be viewed from three aspects. One, in terms of its frequent mention in the Quran. Two, the position it occupies among the five pillars of Islam, and finally, its importance as an Ordinance of God with its spiritual intent and its significant implication as a secular device aimed at securing an egalitarian society within a Muslim State.

As for the first case, the word Zakat - together with its implied derivatives - appears in the Quran in no less than twenty different places. Such stress is by no mean an exaggeration or elaboration. Instead it is meant to emphasise the importance of the Zakat institution. For example, it appears in the following chapters of the Quran:

1. Al-Kaf, sentence 81;
2. Mariam, sentence 13;
3. Al-Ma’ida, sentence 43, 49, 110 and 277;
4. Al-Baqarah, sentence 60; Socialistic. In fact, this is what Islam preaches. The socialistic aim of Zakat the Prophet said that the object of the Zakat word is infused in all these chapters. Such a repeated emphasis is to highlight the importance of the institution and its acclaimed importance as recognised by Islam.

The importance of Zakat is further introduced by the fact that in the Quran wherever prayers (Salat) is enjoined, the commandment to pay Zakat occurs simultaneously. Such a commandment appears in no less than thirty times. This implies that the two are of equal importance from the pietistical point of view. In fact, the Prophet emphasised that, "without Zakat neither faith nor prayer is acceptable to Allah." Moreover, the consensus of opinion among Muslim jurists is that Zakat occupies a place second in importance to prayers only. Together they constitute a potent force especially in man's strive for spiritual and secular advancement.

Considering this social-economic aspects of Zakat, Mahabadi

8For the example see below.

9"There are 52 sentences of the Quranic verse that enjoined the word Zakat with it." Refer: Sayed Sabak, Fiqh al-Sunnah and Zakat Sumber Kekuatan Kewangan Islam (Zakat Information Division, Kedah) p. 4.


10Quoted by Hussein, op. cit., p. 144.
esteemed highly. In the first place the Prophet said, "Your Islam finds perfection only in the giving of Zakat." This obviously implies the importance of Zakat taken as a faith. Besides, the payment of Zakat is believed to involve purification of one's property, accelerating its growth and augmenting its efficiency, which consequently would lead to both spiritual and secular benefits.

Apart from its religious relevance, the payment of Zakat involves an indirect service committed by the payers. This is because by way of the distribution of Zakat the right of the beggars, the needy and the indigence are rightly restored.* In this perspective, therefore, as a system of taxation zakat has a prominent role to play. In the sense that by its very intention, Zakat is a device responsible for the maintenance of the socio-economic values of the Muslim society. It is particularly aimed at preventing the accumulation of wealth in few hands and instead to diffuse it for the common benefit of the nation as a whole. This is to avoid any split in the society into warring camps. Thus dampening the possibility of any class struggle.

This, of course, sounds very socialistic. In fact, this is what Islam preaches and advocates. For instance, in implying the socialistic aim of Zakat the Prophet said that the object of the institution is, "To take wealth from the rich and to return it to the poor." (Bukhari 25:1).12

Comparable to other modern devices, Zakat is thus viewed as a means by which the distribution of wealth can be spread out to all members of the society. Thereby subscribing to the upliftment of the socio-economic position of the unfortunate and the under-privileged such as widows, orphans, and beggars. On the same argument Zakat can also be referred to as a Scheme of Social Insurance.** That is by virtue of its objective, it assures the populace some equal right, such as opportunity in education, unemployment benefits, old age pensions and many other social security benefits that are the right of the poor.

Considering this socio-economic aspects of Zakat, Muhammad Ali speaks of Zakat as a "levelling influence", and as a mean to force the circulation of wealth.13 Therefore, in conformity to other forms

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11Ibid., p. 143.

*The discussion on this will be taken up again in the following Chapters.

**The case on this will be taken up in the section dealing with Social Security measures.

12Sharif, R., Loc cit., p. 111.

of taxation, Zakat if rightly enforced is capable of being a potent force to help shape an egalitarian society much dreamed of by any socialist.

The taxable minumum constitutes an integral part of the Zakat levy. The Howdah. However, in the light of this analysis one can thus project the combined objectives contained within the principle of Zakat. Firstly, as an article of faith it has a significant content in terms of spiritualism, and secondly, it may very well be regarded as one leading to public policies with social objectives, as such falling within the purview of social science like economics. None is not enough. For at the same time the Howdah must be productive. It should be productive in the economic sense and not considered a cause of Zakat unless it contributes to the equanimity of the owner.

ii. When is Zakat Obligatory

Zakat is obligatory on all Muslims who are 'free', sane, adult, and in possession in full propriety of a productive—Misabation (taxable minumum), and that he must be in possession of the same for the space of one complete year which is referred as the Howdah. This means there are conditions that must be fulfilled before an individual is subject to Zakat. These conditions may be outlined as follows:

1. Reason and maturity (sane and adult);
2. Faith in Islam;
3. Freedom of a person;
4. Possession of a productive Misab for a period of one complete year.

In other words, however, is given due emphasis in the course of one's life, and within the space of one complete year. The logic of the first condition is that it is only a sane and mature person that knows and understands what he is doing and hence responsible for it. Therefore, sanity of intellect and maturity of age are important prerequisites for the payment of Zakat. Nevertheless, the Shafiite and the Malikite feel that Zakat is still leviable on minors and insane, in that it is an obligation connected with property irrespective of ownership.

Islamic faith is the next important prerequisite. The explanation to this is that Zakat is an act of piety, as such it cannot be performed by the non-believer of Islam. As it is only a true believer that can perform it in the real sense and spirit of it.

However, Islamic faith alone does not suffice as Zakat is only leviable on 'free' Muslims. The reason for freedom is essential especially in guaranteeing the complete possession of a property. It is under-
standable that a slave or captive is not expected to own any property that is taxable.

The taxable minimum constitutes an integral part of the Zakat levy. The level of this taxable capacity is in fact prescribed. However, the Nisab or the taxable minimum is calculated differently for a different kind of property. It is calculated according to its genus. Such a Nisab is pertinent so as to avoid any inconveniences and confusion that may possibly occur when no such prescription is made. However, it is important to note that Nisab alone is not enough. For at the same time the Nisab must be productive. It should be productive in the sense that property alone is not considered a cause of Zakat unless it contributes to the wealthiness of the owner.

As for 'the time period' or the Hawl, it is made a condition because of twofold reasons. Firstly, the lapse of a period of twelve months is essential because time is indispensable for productivity to materialise. This view is based on the following Hadith:

"No Zakat is due on property before there elapses over it a year."\(^{14}\)

In other words, the concept of time-lag is given due emphasis in the course of one's payment of Zakat. Secondly, it is expected that within such space of time the proprietor is able to obtain an increase\(^ {15}\) from his productive Nisab, and hence, its benefit could have already been enjoyed.

When all these prerequisites are met, it is then obligatory (wajib) on the part of the person concerned to pay the Zakat. Otherwise he would be considered a sinner against God and the society as a whole. The trespasser should therefore be persecuted accordingly. In fact Caliph Abu Bakar considered the non-payment of Zakat as an unpardonable defiance of the basic social law of Islam. So, following the death of the Prophet when certain Arab tribes refused to pay Zakat to the Public Treasury, Abu Bakar quickly reacted by prosecuting the offenders. Moreover, he even declared that it is lawful to wage a holy war against those members of the Muslim community who withhold Zakat (Bukhari).\(^{16}\) This is attributable to the fact that Zakat constitutes the main pillar in the financial structure of the State. Besides, Zakat is the right of the community in the wealth acquired by the individuals.


\(^{15}\) By 'increase' is here understood that which is obtained by breeding, where the Nisab consists of cattle, or by profit, where it consists of merchandise.

\(^{16}\) See Zakat Sumber Kekuatan Kewangan Islam, p. 7. Also refer Fazlul Karim, op. cit., p. 46.
Fundamentally, therefore, non-payment of Zakat involves the violation of its dual purpose: a service to God and a service to the community as a whole. In such a case, it is only logical if the law, i.e., the Sharia Law, is enforced.

iii. Exemptions

Given the conditions for which Zakat is made a 'Wajib', it is believed that the impost of Zakat is not designed to inflict heavy and unnecessary burden upon the believers of Islam. This is because certain exemptions are still allowed. The following are exempt from Zakat:

1. The slave or Mukatab;
2. The property belonging to minors and the insane Muslims;17
3. Uncertain property;
4. Insolvent debtors;
5. The necessaries of life.18

There are of course underlying reasons as to why the above-mentioned are exempt from Zakat.

As for the 'Mukatab', Zakat is not leviable on him because he is still a slave. Thus he is not completely and independently possessed of any property. Even though he may engage in trade and can dispose of his goods, yet he does not completely own them. Moreover, he may be trying to make use of the proceeds for the purpose of emancipating himself. Though the Shafiites believe that Zakat is not due from a slave undergoing gradual enfranchisement, still they consider Zakat is due from "a slave partially enfranchised; provided in the latter case that what belongs to him as a free man is not below the Misab or the taxable minimum."19

Similarly, the Shafiites argued that the properties of the minor and insane are liable to Zakat. But this is rejected by the followers of the Hanafi's school of thought on the ground that neither minor nor insane could understand what he is doing. As such he should not be allowed to perform a religious duty, the purpose of which he himself does not know. Moreover, in any payment of Zakat it should be accompanied by the 'intention to pay'. It is doubted that the minor

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17 This is according to the Hanafi faith but not that of the Shafiites and the Malikites.\(^{(a)}\)

18 This is the most crucial factor in the Zakat impost, yet it is often overlooked. Further discussion on this will be taken up again in Chapter IV.

19 Nawawi, S. E., Minhaj Et-Talibin, Translated by E. C. Howard (London: W. Thacker, 1914) p. 91.
and insane could perform it in a genuinely solemn manner. On this ground, therefore, this category of people is exempt from Zakat.

Uncertain property or sometimes referred as Zimar property is also exempt. Zimar property is that property that has slipped of one's ownership with which recovery is unpredictable. It is exempted on the ground that productivity for such property is absent. However, Imam Shafei maintained that Zimar property is subject to Zakat as the cause of obligation to pay Zakat (to wit possession of a Nisab) is established, even though the property is not in the immediate possession of the proprietor. But this is refuted by most jurists on two grounds. Firstly, the Caliph Ali declared that no Zakat is due upon Zimar property, and secondly, the cause of obligation to pay Zakat is the possession of property in a state of increase, which cannot be in this case since the proprietor has no management over such a property.

Zakat is also not obligated upon the insolvent debtors. This is particularly true with respect to debts equal to, or exceeding the amount of their whole properties. The Shafiites as usual allege that Zakat is still incumbent upon them because the cause of the obligation, that is, possession of an increasing Nisab, is established. But the reply to this is that, "such a Nisab is not possessed by him clear of incumbrance, and this therefore held to be non-existent, the same as water, which when provided for the sole purpose of drink is held to be non-existent with respect to the performance of Tameem ... But if his property exceeds his debts, Zakat is due upon the excess, provided the same amount to what is sufficient to constitute a Nisab, and that it be free from incumbrance."

Goods and articles which are classified as the prime necessities are also exempted from Zakat. Such articles include:

1. Dwelling houses;
2. Wearing apparel;
3. Household utensils;
4. Slaves employed as servants;
5. Riding animals;
6. Arms for use;
7. Food used by oneself and family;

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20 Ali bin Abu Bakar, op. cit., p. 2.
21 As in the caravans, where water is provided and carried for drink, but not for purpose of purification, which in that or similar situations is permitted to be performed with sand.
22 Ali bin Abu Bakar, op. cit., p. 2.
23 See Siddigi, op. cit., p. 31.
24 This constitutes the most important part of Zakat in so far as Malaya is concerned. This is because in most cases this provision is not considered at all when Zakat is collected from padi farmers. The discrepancies on this issue will be examined in Chapter IV.
All these articles are exempt from Zakat provided they are not intended for trade. If they are intended for trade then Zakat is liable on them. They are then classified under the item of the article of trades, to be discussed in subsequent section.

B. The Levy of Zakat

i. The Taxable Minimum

Like any modern theory of taxation the consideration of minimum taxable capacity forms the fundamental principle of Zakat. This minimum taxable capacity is termed the Miskab in Arabic. The Miskab is different with different kinds of property. But where the property falls under the same genus the Miskab is all the same.

Since the Miskab is already determined, no Zakat is obligatory when the level of taxable minimum is not reached. Even if it is reached, there is still a need that the Miskab be both productive and in the full propriety of the owner. On this basis therefore, Zakat is only obligatory when an individual is in possession of 'full ownership' of a 'productive' Miskab of a property. This is because, "property as such is not a cause of Zakat unless it contributes to the wealthiness of the owner ..." What is important in this case is the fact that the Miskab must be owned in full ownership. In fact, "there must exist both ownership as well as possession since both possession without ownership or ownership without possession cannot lead to taxation productivity."27

But this is not the case in so far as the Shafites and the Malikiites are concerned. They maintain that Zakat is an obligation connected with property regardless of ownership. Hence, to them full ownership and possession need not be the twin prerequisites for which Zakat is to be imposed. That is to say, when a person is in possession of a property that has reached the Miskab then he is liable to pay the Zakat.

Assuming that the Shafites view is accepted, still there is a need to consider the following verse of the Quran:

26 Hossain, op. cit., p. 129.
27 Siddiqi, op. cit., p. 29.
28 This is evident in the case of Malaysia.

This will be evident when the section on the collection of Zakat in the State of Perak is examined.
"And they shall ask you what they shall bestow in alms; say, the superfluous." 29 Thus, it is evident that Zakat is a contribution that is made from the surplus property. By 'superfluous' it means that which is 'over' and 'above' what is necessary for the satisfaction of the primary necessities of life. Moreover in connection to this the Prophet said that, "tell them that God has prescribed for them Sadakah to be taken from the 'rich' among them in order to be given to the 'poor'." 30

Now if the condition argued by Shafei - Zakat is an obligation connected with property irrespective of ownership - were acceptable, still there is a need to consider the words, 'rich', 'poor', 'over', and 'above' whenever application of the Zakat principle is put into effect. These words should be defined clearly so as to avoid any discrepancy whenever Zakat is collected. This is particularly true in reference to this country. 32 Thus, it is time that the procedure and the improper methods of the collection of Zakat be remedied right now. Failing which it will involve a serious breach of the words of God and the Prophet himself.

ii. Time Period

It is important to note that Zakat is levied on a yearly basis. The lapse of this twelve months period is referred as the Hawl. The time period is designed to conform to the ordinary business or governmental practices of the present society. A duration of twelve months is not considered too long a time so as to create hardship among the poor and the needy who are in need of financial assistance. Neither, is it too short so as to make the payment of Zakat a frequent repetition after every few months.

29 Siddiqi, op. cit., p. 28.
31 The terms 'rich' and 'poor' are relative. One is rich or poor depending on whether one is living above or below the 'poverty line' assessed on account of the prevalent standard of living of the country. Charles Gamba states that, "To live above the poverty line, a person and his family must have accommodation recognised to be normal under national or international standards. He must be able to have a choice of foods to supply him and his family with the normal calorie requirements for the area in which he lives. He must have money sufficient to educate the family, to give it a certain amount of relaxation and save for the future days." - Problems of the Malayan Economy, Edited by Lim Tay Bo, p. 75. Hence, throughout this exercise the term rich and poor is based on whether one is living above or below the poverty line as outlined in the above definition.
32 This will be evident when the section on the Collection of Zakat in the State of Perak is examined.
Another consideration is to allow all produce to be reduced to their finished forms so that evaluation is much more simplified. Consequently therefore, the true picture of one's financial position can be ascertained with some degree of perfection.

In relation to this time period, the dissolution of the Nisab during the course of the year poses another problem. That is, should the Zakat impost be obligated after such dissolution of the Nisab? Does such dissolution necessitate the calculation of a new Nisab, and hence a new Hawl too? If so when would the new Nisab and the Hawl be calculated from?

The following table gives the value of Zakat on the various number of animals recognized by the different schools.

<table>
<thead>
<tr>
<th>Animals</th>
<th>Zakat Value (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Camels</td>
<td>5</td>
</tr>
<tr>
<td>Cows</td>
<td>4</td>
</tr>
<tr>
<td>Goats</td>
<td>3</td>
</tr>
<tr>
<td>Sheep</td>
<td>2</td>
</tr>
<tr>
<td>Buffalo</td>
<td>1</td>
</tr>
</tbody>
</table>

The popular opinion is to treat Zakat as being no more liable should something happen to dissolve the Nisab during the one year period. What is necessary is just to calculate a new Hawl commencing from the date of the dissolution of the old Nisab. For example, if a man sells his herds and flocks before the lapse of one year and obtains in return cash or kinds (of the same genus) the Nisab will be dissolved on the date of the sale and a fresh year must elapse before the amount realised becomes subject to Zakat.

According to the Shafiites, however, the year is not dissolved whether the sale is against cash or kind on the ground that the wealth of the owner has not been affected by the transaction since it is like the exchange of trade articles which does not dissolve the Nisab. But the Malikites are of the view that exchange does not dissolve the year if made with the purpose of escaping the Zakat. For instance, if made within a month from the completion of the year.

Modern Muslim jurists, however, feel that it is obviously necessary that the Nisab should not disappear altogether during the course of the year as in that event it will constitute a break, and when a break is encountered the levy of Zakat is not appropriate. Otherwise it would be contrary to the principle of the Hawl which states that, 'the possession of the same for the space of one complete year.' In other words the dissolution of the Nisab before the Hawl ends requires the calculation of a new Nisab as well as a new time period.

iii. Zakat of Flocks and Herds

The Zakat of flocks and herds is also referred as the Zakat of the Sawaim. By definition 'Sawaim' may imply the following animals:

1. Camels;
2. Oxen (and buffaloes);
3. Goats (and sheep);
4. and other animals which subsist for the greater part of the year upon pasture.

These are the sawaim animals indicated in the Sunna, and Zakat is leviable upon them. However, for any animal to be classified as the sawaim it must
have been pastured for at least more than half a year.

As for the horned cattle the taxable minimum is 30; and its various widths.

For simplification this section is designed as such that it is divided into the following headings:

a) The Zakat of Camels

In the case of camel the lowest Nisab is 5. That is, no Zakat is due on the amount which is less than 5 camels.

The following table gives the rates of Zakat on the various number of camels as recommended by the Shafei school.

<table>
<thead>
<tr>
<th>Number of animals</th>
<th>Rate of Zakat</th>
<th>Its age (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 4</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>5 - 9</td>
<td>1 goat</td>
<td>1 to 2</td>
</tr>
<tr>
<td>10 - 14</td>
<td>2 &quot;</td>
<td></td>
</tr>
<tr>
<td>15 - 19</td>
<td>3 &quot;</td>
<td></td>
</tr>
<tr>
<td>20 - 24</td>
<td>4 &quot;</td>
<td></td>
</tr>
<tr>
<td>25 - 35</td>
<td>1 she-camel</td>
<td>1</td>
</tr>
<tr>
<td>36 - 45</td>
<td>1 &quot;</td>
<td>2</td>
</tr>
<tr>
<td>46 - 60</td>
<td>2 &quot;</td>
<td>3</td>
</tr>
<tr>
<td>61 - 75</td>
<td>3 &quot;</td>
<td>4</td>
</tr>
<tr>
<td>76 - 90</td>
<td>2 &quot;</td>
<td>2</td>
</tr>
<tr>
<td>91 - 120</td>
<td>2 &quot;</td>
<td>3</td>
</tr>
<tr>
<td>121 -</td>
<td>3 &quot;</td>
<td>2</td>
</tr>
<tr>
<td>After this each 40 head</td>
<td>1 &quot;</td>
<td>2</td>
</tr>
<tr>
<td>And on each 50 heads</td>
<td>1 &quot;</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: Ibn 'Akil, Bekalan Pelajaran, p. 110

It is to be observed that in the payment of Zakat, only she-camels are allowed as payment. This is in accordance with what is recorded in the Quran which regards the females alone are lawful while the males are only lawful with respect to their value. That is to say the price of a male is held to be lawful in Zakat but not the animal as such.33

33Ali bin Abu Bakar, op. cit., p. 5.
b) The Zakat of Cattle

As for the horned cattle the taxable minimum is 30; and its various Misab is shown in the following table:

<table>
<thead>
<tr>
<th>Number of animals</th>
<th>Rate of Zakat</th>
<th>Its age (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 - 39</td>
<td>1 calf</td>
<td>1</td>
</tr>
<tr>
<td>40 - 59</td>
<td>1 calf</td>
<td>2</td>
</tr>
<tr>
<td>60 - 69</td>
<td>2 &quot;</td>
<td>1 to 2</td>
</tr>
<tr>
<td>70 - 79</td>
<td>2 &quot;</td>
<td>1 to 2</td>
</tr>
<tr>
<td>80 -</td>
<td>2 &quot;</td>
<td></td>
</tr>
</tbody>
</table>

Source: Ibn 'Akil, op. cit., p. 111

(The above also applies for buffaloes)

Being a sawaim animal, cattle are only taxable when they have lived more than half of the year in pastures. However, Imam Shafiei sort, further considers that cattle is also not to be taxed if:

1. It is turned out to graze separately;
2. it is, though grazing, fed with hay, etc., or
3. it is used to plough or irrigate the land.

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c) The Zakat of Goats (and Sheep)

In the case of goats the taxable minimum is 40 goats. And the following table will serve to illustrate it.

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34Husawiei, S.E., op. cit., p. 63.
### TABLE 3

<table>
<thead>
<tr>
<th>Number of animals</th>
<th>Rate of Zakat</th>
<th>Its age (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 - 120</td>
<td>1 goat</td>
<td></td>
</tr>
<tr>
<td>121 - 200</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>201 - 399</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>400 - 499</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Beyond 400</td>
<td>1 goat</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for every 100 (Bukhari)</td>
<td>1 to 2</td>
</tr>
</tbody>
</table>

Source: Ibn 'Akil, op. cit., p. 111

In all the above cases the payment of Zakat with a sick animal, or one which is defective is not permissible. It is only permissible - even to the Shafiites - when there is none except animals of those sort. Similarly, male animal is not acceptable except in the two following cases:

1. If, as already mentioned in the preceding section, law insists upon its acceptance;
2. if there is none but males.

As a conclusion to the discussion on the sawa'im animals, it is important to note that Shafei, Bukhari and Abu Yusof, all exempted horses from the levy of Zakat. This view is based on the following Hadith: 'Here is to cover all items that are not covered in the previous section of the Zakat requirements. For example, in the previous case it is stated "There is no Sadaqah on the Muslim for his slave and his horse and slave." On this ground, therefore, horses are free from the Zakat tax.'

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35 Mawardi, S.E. op. cit., p. 82.
iv. Zakat of Gold, Silver and Articles of Trade

In the previous section it is seen that the sawai'm animals are taxed by virtue of their physical identity. But this is not the case as applied to gold, silver and the articles of trade. The tax on them is based on their commercial value rather than on their physical identity. However, since the value of any property is still distinguishable by its physical nature, as such the Zakat which falls due on that piece of property somehow or other still attaches to its physical identity too.

In the case of gold, its Nisab is 20 mithqals which is equivalent to about 3 ounces.37 On the other hand, the Nisab of silver is 200 dirhams, which amounts to about 14 tahils.38 The rate of Zakat for both gold and silver is one-fortieth of the Nisab. In their case the rate is uniform, that is, 2½% of the accumulated wealth. Nevertheless, the metals must be pure for Shafei said that debased gold and silver are not taxable, unless the quantity of pure metals amounts to the Nisab.39 This is due to the fact that Zakat is only leviable on gold and silver bullion which is called Tabbur. On this count therefore, Shafei gave allowance for gold and silver ornaments worn by women, which according to him should only be worn at minimum.40

Regarding the Nisab of gold and silver, it is calculable on their weight and not their value or number. For instance, a vase of gold may be worth many times its value in weight, but the Zakat is still levied on the weight and not on its value.

In addition to the above prerequisites, is the consideration on the time period. This means that one year possession is necessary before the Zakat is levied on them. Hence, the concept of Hawa still applies in this case.

Next is the consideration on the articles of trade. The word articles of trade referred in this context is used in a very broad sense. It embraces all business activities undertaken by any Muslim. What is intended here is to cover all items that are not covered in the previous section of the Zakat requirements. For example, in the previous case it is stated that a dwelling house and precious metal such as diamond are not taxable. But this is only when the house is used for dwelling. If it is rented then Zakat is definitely due upon it. The same applies to diamond. During the Prophet’s days diamond was not common and was beyond

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37 Ibn ‘Abil, op. cit., p. 113.
38 Ibid., op. cit., p. 49.
39 Nawawi, S.E., op. cit., p. 85.
40 Ibid., p. 86. Orang2 Ilela Dangri Perak Berkembang Dengan Zakat Yang Dapat Beriada Fadi dan Fitrah, issued by Religious Department, Perak, p. 6.
the interest of anybody in the society. But now things have changed. Diamond has become prestigious goods and is traded in the market. Therefore, since diamond fetches a good price now, it has to be taxed not on account of its physical identity but on its value. All in all, every articles or goods are taxed if they become articles of trade.

Still falling under the item of the article of trade is the issue on claims and property and profits of the joint stock company. With respect to claims the Shafiites maintain that all claims - be it in the form of loans, or such as the price of marriage or divorce - are alike and hence subject to Zakat which is payable when the year has elapsed. 41 The tax still holds even if the claims have not been collected.

As for the joint stock company the important person is the "sleeping partner which is personally responsible for the tax both on the joint capital and on the profits, especially where it is agreed that the acting partner does not become legally entitled to his profit share in the profits by the mere fact of drawing up the balance sheet, but only on distribution. This, however, does not prevent the entire assessment being always based on the total profit, and not on the capital. If, on the other hand, it is agreed that the managing partner becomes legally entitled to his share of the profits by the mere fact of having drawn up the balance sheet, a sleeping partner is responsible only for the assessment on the joint capital and on his part of the profit; while it is the managing partner who, according to the Shafei school, is responsible for his own share." 42

In all the above cases, the rate of assessment in only one-fortieth or 2 1/2% of the total value. And when goods are bought for money the price constitutes the real value. But where goods are exchanged they must be valued in the money of the place the exchange is taking place. In Malaysia, for instance, the minimum taxable value of the merchandise is $25.75 cents, 43 out of which one-fortieth is payable as the tax.

5. Zakat of the Produce of the Earth

The produce of the earth is also liable to Zakat. But the Zakat of the land produce is called Ushr or tithes. The question whether Ushr is Zakat in its real sense or levy other than Zakat or Zakat only in metaphorical sense is still indeterminate. Nevertheless, the consensus of opinion (Ijma) is in favour of regarding it as identical with and an integral part of Zakat. This is because conditions inherent in Zakat

41 Siddiqi, op. cit., p. 49.
42 Nawawi, S.E., op. cit., p. 89.
43 Seruan Kapada Orang2 Islam Negeri Perak Berkemana Dengan Zakat Yanglain Daripada Fadi dan Fitrah, issued by Religious Department, Perak, p. 6.
tax also seem to prevail in the Uahr. For instance, the conditions of Nisab and the lapse of one year is still required. Moreover, the manner in which it is disbursed is similar to that of the Zakat tax.

Generally, the tax is limited only to plants fit for food such as among fruit, dates and grapes; among grains and vegetables, sorghum, barley, rice, lentils and other such commonly eaten products. Similarly, the calculation of the Nisab also differs between fruits and grains. The taxable minimum for fruits, such as dates and grapes, is about 200 Malaysian gantangs. On the other hand, the taxable minimum for grains which still remain enveloped when measured - such as padi - runs to about 400 Malaysian gantangs. However, it is important to note that when dates or raisins are intended to be dried, the weight is not estimated until after they have been so dried. Otherwise, like the grain species, their weight is ascertained immediately after plucking seasons. However, according to some jurists the total amount of the fruit of a whole year is not necessary where some only begin to grow in the last month of harvest.

As for the rate of the tithe, it all depends on the amount of labour expended and cost incurred in irrigating the land. For example, if the land rely solely on water supplied by rainfall or running water, then the assessment on the produce amounts to only one-tenth or 10% of the Nisab allowed. But if the land is irrigated in such a way as to involve physical efforts or rather irrigated with water that has been paid for, the rate of the tithe is only one-twentieth or 5% of the Nisab. Such a prescription is in fact explicitly stated in the Hadith which reads: "In the case of lands irrigated by rainfall, streams or rivers, one-tenth will be taken by way of Uahr (Tithe) and in what has been watered with buckets or water-wheels one-half of one-tenth." (Bukhari)

However, another important consideration is that, if the irrigation is half natural and half artificial the assessment is three-fourth of the tenth, i.e. 7/8%.

The rationale of such differences in the rate is based on the consideration that if irrigation charges have been incurred by the owner, or in that much labour effort have been expended in bringing water to the land, the charge should be lower than when no money or labour effort have been expended. In other words, the concept of cost

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The phrase 'plants fit for food' is very loosely and generally termed. As such it can be extended to all cash crops, fruits and vegetables such as sugar cane, sugar-beets, sweet potatoes, cotton, etc. this is because most of them are of great commercial value now.

Ibm 'Akil, op. cit., p. 112. I be taken up in Chapter IV, when the taxation on the collection of Zakat in the state of Perak is discussed.

Ibid.

See Hussain, op. cit., p. 135.
of production is also recognized in so far as Zakat is concerned. On the contrary, if little or no charges have been incurred, then it would only be fair if the rate is raised comparatively higher to that of the former.

Another condition that needs to be pointed out is the personal consumption of the produce. That is, if a reasonable portion of the produce has been consumed by the owner, no tithe is leviable on the amount. This point is very important in the sense that in most cases when the Zakat principle is enforced, the provision for personal and one's family consumption is often overlooked.

The problem highlighted by double-cropping is also worth pondering here. In cases of this nature, "the fruit and other taxable produce of the same year must always be totalled, even if the harvest is in different seasons. However, according to some jurists the totalling of the fruit of a whole year is not necessary where some only begin to grow after the gathering of others; but even these authorities agree that the 'rest of the produce' of a single year must in all cases be combined."

In all the cases related to the produce of the earth, the Zakat is leviable on the sign of maturity. However, it has been argued that assessment at such a stage can be most difficult and most inaccurate too. As such the most popular procedure is to tax them when the whole harvest is completed. This is to avoid inconveniences, while at the same time the assessment could be derived with some degree of perfectness. This is especially the case when the whole produce of each harvest has already been measured and piled up.

However, the existence of such classification does not at all hamper the right of the state to collect Zakat on all types of goods, provided if she chooses to do so. This means the jurisdiction of the State Tax collector over these two types of property still remains, although some preferences may also be observed. Such preferences may vary from country to country. For instance, some countries may enforce it under the state, while others may prefer to leave it to the individuals themselves.

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48 Refer to the previous section on Exemptions, i.e. number 5.

49 Further argument on this will be taken up in Chapter IV, when the section on the collection of Zakat in the state of Perak is discussed.

50 Nawawi, S.E., op. cit., p. 84.
C. The Distribution of Zakat

i. Preliminary considerations

Before discussing the distribution of the Zakat proper, it is essential that some preliminary points be clarified first. Actually, all these preliminary considerations ought to be appropriately dealt with in the preceding section. But since its essence is of the admixture of both the collection and distribution of Zakat, it is therefore dealt in this section. And it is only in the succeeding section that the distribution of Zakat will be looked into.

a) Visible and hidden property - Zahir dan Bathin

In so far as Zakat is concerned it is due from both "visible", and "hidden" property. Included in the former are the sawaiin animals and the produce of the earth, while the latter consists of the remaining taxable goods namely gold, silver and merchandise. The classification into this nature is based on the fact that both the sawaiin animals and land produce are easily seen and distinguishable as such. So much so that detail enquiry and probing into one's personal belonging is not necessary.

As for the 'hidden' property their physical existence is very difficult to realise. Therefore, even if the Zakat collector is empowered to collect Zakat on all forms of goods, he would find it almost impossible to know one's possession of precious metals and merchandise unless the owner himself voluntarily declares to the collector. This is because the goods concerned are not immediately and easily discernable, hence rendering assessment very difficult. This sort of wealth is referred as 'Bathin', since the ability to collect Zakat upon it is dependent on the reliability of the information given by the property owner himself. But a declaration of such property is further dependent on the sincerity and the faith one has toward his religion.

However, the existence of such classification does not at all hamper the right of the state to collect Zakat on all types of goods, provided she chooses to do so. This means the jurisdiction of the State Tax collector over those two types of property still remains, although some preferences may also be observed. Such preferences may vary from country to country. For instance, some countries may enforce it under the state, while others may prefer to leave it to the individuals themselves.

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52 Nasawi, T.K., p. 93.

53 Ibid., pp. 92-93.
The Shafiites, though approving the latter procedure of action, they nevertheless, do not overlook the importance of such Zakat if it is collected by the state. As such the Shafiites are of the view that the state should preferably collect the Zakat irrespective of whether the property is invisible or not.52

In passing it is interesting to note that the distinction between 'visible' and 'hidden' property was only made during the time of caliph Uthman.53 As such the rule is only discretionary rather than mandatory. On this basis therefore, the State still has the right to collect over all properties, be they visible or not.

b) Intention in Zakat

Intention in the payment of Zakat is very important and in fact necessary. This is explainable by the fact that Zakat is an act of worship. On this basis, therefore, its payment has to be accompanied by the intention to discharge the Zakat rather than some other obligation. Otherwise the payment of Zakat as an act of worship is not valid unless it is intended to be as such.

The intention of performing one's duty towards God must be expressed by saying: "Here is the portion of my substance which I owe as assessment, or, as legal alms."54 It is unnecessary, however, to specify the property on which one is paying the assessment, but if one does so, the gift counts as assessment on that particular property only.

Furthermore, the expression of intention is obligatory on the guardian of a minor and the lunatic. On the other hand, in the course of distribution, if it is effected through the government, the only expression of intention by law is from the tax-payer. And if this is omitted the act has no value even if an intention is expressed by the distributing official. It is only when the assessment is recovered from a resistant tax-payer that expression of an intention is unnecessary on his part and is replaced by the ruler or his officer.55

ii. The Beneficiaries

When Zakat is collected, the proceeds are then pooled to the Public Treasury or the Baithul Mal. These funds are eventually utilised especially for the benefits of those beneficiaries decreed in the Quran. This means that the objects of expenditure under which this public fund shall be spent have already been specified in the Quran, which reads:

The Quran: Surah Taubah, verse 6.

52Ibid., p. 15.
53Ibid., p. 9.
54Nawawi, S.E., p. 92. should be adjusted in accordance to the prevailing standard of living within each country concerned.
55Ibid., pp. 92-93. The discussion on this will be taken up again in Chapter IV.
"Verily the Sadaqat are for the poor and the needy and those who collect them and those whose hearts are to be reconciled, and to free the captives and the debtors and in the cause of Allah and (for) the wayfarers, a duty imposed by Allah..." 56

Altogether there are eight beneficiaries, and each of them is outlined below.

a) The poor (or the Fiqir)

The poor* tops the list among the beneficiaries outlined in the Quran. By the word poor is understood to mean persons who have no property whatsoever. But, property alone does not justify a person to be referred as poor, for Muhammad Ali fits in the definition of Fiqir or poor as those who cannot earn by reason of some physical disability. This is more akin to the view of the Shafiites who subscribe that, "one is rich not only by possessing wealth, but also by being able-bodied and the latter are not to be given any assistance unless they need it in order to make a living." 57

Hence, the term more or less includes the poor, the old, and the incapacitated individual who are deprived of their opportunity and ability in earning a livelihood. All these people deserve to be helped and hence entitled to one-eighth of the Zakat share.

b) The indigents (or the Miskeen)

The indigents refer to those who possess property, the total of which, however, amounts to somewhat less than what is needed for a subsistence living. 58 In other words, they do not have enough to meet their primary needs, even though they do not go to the extent of begging.

The collectors are those persons appointed by the Imam for the purpose of collecting the Zakat. As to their share, the Imam is to allow the officer employed in the collection of Zakat as much as one-eighth of the total Zakat collected. This is to be in line to what is accorded in the Holy Text. This amount allotted to the collector can be regarded as the cost of collection of the Zakat tax. 59

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56 The Quran, Surah Taubah, verse 9.
* Refer the definition by Charles Gamba in page 16.
57 Siddiqi, op. cit., p. 155.
58 The subsistent level should be adjusted in accordance to the prevailing standard of living within each country concerned.
59 The discussion on this will be taken up again in Chapter IV.
of the Zakat and to offset the exploitation of the poor and the weak by the rich and the powerful. This is done in the interest of mitigating all slaves. This is in view of the fact that every individual, by his own means, free a slave, the duty and right of every individual. Thus the poor, those who have been cut-off from their possessions and wealth, are entitled to Zakat money.

The Shi'ites, however, hold that debtors who may be helped are those who incur debts for lawful personal reasons and when the repayment is beyond their means. They also agree that the term covers those men who incur debts in the public interest by becoming surety or by setting down feuds and differences.

e) The new converts (or the Mu'allaf)

When a non-Muslim embraces Islam he may not actually understand what Islamic teaching is all about. As such he needs to be taught deeper understanding of Islam. However, to enable him pursue his objective he ought to be given financial assistance. This is to help him finance his education. Therefore, one-eighth of the Zakat share is reserved for such purpose.

It is likely too that when a man gives up his religion and embraces Islam, he may possibly face both social and economic boycott from the group who profess his former religion. As a consequence he would suddenly find himself deprived of all means of livelihood. This change-over may ruin his business and hence his life. In such a case, a help from the Zakat funds is justifiable so as to enable him to maintain his status quo. But in cases where the new converts do not experience any financial difficulty, it is still considered desirable to render them financial assistance. The reason is to reconcile their heart to the new faith and save them from backsliding.

Although some parts of the Zakat funds can be disbursed for the benefits of the new converts, the Shi'ites emphasised that, it is not allowable to disburse the Zakat money to an unbeliever merely because to induce him to embrace Islam. In fact, the consideration to be taken care of is only the new converts.

f) The Slaves (or the Fīr-rīqāb)

The particular parts of the Zakat allotted for the slave is very important as it may be used by him to secure his own emancipation. Such emancipation is encouraged in Islam as Islam does not permit any form of slavery to exist - be it political, economic or social.

On this ground, therefore, Islam allocates an appreciable part

60"Lawful" here refers to the Sharia Law or the Islamic Law.
of the Zakat taxes for the purpose of emancipating all slaves. This is in view of the fact that everyone cannot, by his own means, free a slave, the duty was thus entrusted collectively to the state.

If, on the other hand, they have not received their sufficiency, the balance is made up for their needs. The surplus is disbursed to the beneficiaries of the project of the month.

This expression implies such strangers who are stranded in the course of their journey, and by extension all persons who have been cut-off from their possessions. The fact that such a person is wealthy in his own native place does not disentitle him from help just to enable him to tide over his unexpected misfortune and to allow him to complete his journey. But it is preferable that such person should borrow money if they can. It is only when they cannot obtain the any loan that they become entitled to help from the Zakat money.

**h) The Way of God (or Fi-sabilillah)**

The word 'Fi-Sabilillah' is a very wide term. But, generally speaking, it may be interpreted to mean any action that may be performed with the fine objective of improving the human welfare.

Next is the question of how much should be paid to each individual beneficiary. And jurists have taken the words 'the way of God' to mean the religious wars. This limitation does not appear to be correct. In the Quranic verse to (alms are for the poor, who are straitened for the cause of Allah', the phrase 'the cause of Allah' does not mean religious wars only but every act of piety and every religious act.

Therefore, as the Malikiites said any act which conduces to 'the maintainence of the prestige and power of Islam may well be recognised as an act in 'the way of God'.'

Thus by definition those pilgrims who, on account of their poverty, cannot complete their pilgrimage, poor students who are in need of financial help, etc., may also receive a share under this heading.

**iii. Procedure of Distribution**

In the preceding section, the various beneficiaries of the Zakat revenue have been dealt with. In this section the problems about the procedure of the distribution of Zakat to the beneficiaries are to be examined.

Firstly, the method of distribution of the Zakat among the various beneficiaries is important. As summarised by Al-Mawardi the method of direct or indirect should not result in a direct or indirect benefit to the giver. As a result of these two sets of criteria.

This is not so applicable these days, because travellers who are stranded may now seek help from the ambassadors that represent their countries. Moreover, accommodation such as hotels and other facilities, such as the communication system are all well organised now. As such the problem of the wayfarers is partly solved by such facilities.

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61 Referred to Siddiqi, op. cit., p. 163.

62 See Hussain, op. cit., p. 140.
Shafiites procedure is as follows, "When the proceeds have been divided among the eight classes and each has received its sufficiency, they cease to be beneficiaries of Zakat and may no longer claim a share. If, on the other hand, they have not received their sufficiencies, the balance is made up from future proceeds. If the share of all classes are more than sufficient for their needs, the surplus is disbursed to the beneficiaries of the nearest city. If the share of some classes is insufficient and others is more than sufficient, the surplus of the latter is disbursed to make up the shortage of the former classes. If all the eight classes are not present, then the entire Zakat is distributed among those present, even if it be one single class, and the shares of the absent are not carried to them except in the case of the share of 'the way of God' which belongs to the fighters who normally reside away from their homes in the frontier 'cities'." 64

In the comparison the Hanafites practice, however, recognises that the Zakat may be disbursed to all classes together (excepting the new converts whose claims have lapsed), or to any one of them exclusively even if it consists in one single person.

Next is the question of how much should be paid to each individual beneficiary. The Shafiites are of the opinion that the poor and the indigent should be given enough for their probable lives, and the amount given applied for the purchase of free estate, and its income to be used by the poor.

Nevertheless, it is proper to pay only enough to relieve a man from the necessity of begging. This is because the object of Zakat itself is to remove the need for begging. Therefore, only the deserving cases should be given. In order that the Zakat money should be devoted only to the deserving cases the Prophet encouraged his people to work hard and abstain from seeking help. As such "whenever any needy person came to him he would survey him from head to foot and politely advise him to desist from asking for Zakat, if he could meet his needs by self-efforts." 65 This is done so as to discourage the spread of indolence and laziness among his followers. In fact, he did not condone the habit of begging for alms and he seemed to teach self-reliance by saying, "an upper hand or giving hand is better than a lower hand or a receiving hand ... Thus avoid begging as much as you can. Do not get tired of earning your own living." 66

Thirdly, the giving of Zakat must bring about a transfer of ownership. Similarly, the giving of Zakat should not result in a direct or indirect benefits to the giver. As a result of these two sets of

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64 Siddiqi, op. cit., pp. 166-167.
65 Hussain, op. cit., p. 141.
66 Ibid.
principle, it is thus not lawful to give the Zakat shares to one's ancestors and descendants in direct line, or to one's wife or husband. This is not permissible because the payment of Zakat does not result in a complete transfer of ownership.

Finally, members of the Prophet family or the Hashim's family are not entitled to any Zakat. This is based on the following Hadith:

"Verily the Sadaqah does not become the family of Muhammad because it is the right of the other people."67

In connection to this the Sirat-ul-Nabi mentions that "when a financial impost is laid on his followers by the founder of the religion there may be a presumptive suspicion that he wants to create a perpetual source of income for his descendants ... But the Prophet closed the door of such suspicions forever by declaring the receiving of the Zakat by members of his family unlawful till the Doomsday."68

In the final analysis it is important to note that while the prophet laid great stress on the spiritual merit of the payment of Zakat, he was also very particular that only the really deserving cases should benefit by it. For, it is by so doing that the Zakat money could bring about a healthy diffusion of wealth in the society. In fact, this is the ideal nature of the financial structure of Islam contained in the institution of Zakat.

In an attempt to humanize the warring groups of the society was not done vigorously. As a result the capitalists continued to exploit the working class. This ended in a show of force - by the latter - culminating in the introduction of Communism, whereby the affairs of the people were taken over by the State. But in a state where communism did not breed well, it does not mean that 'pure capitalism' successfully thrived the test of time. Instead it gave way to what is called Democratic Socialism. This system allows free enterprises to operate besides ushering the bulk of the responsibility in maintaining the public affairs unto the state. In other words, it becomes the responsibility of the state to provide the social wants of the people. This is, as J.B. Millet said, not because private individuals cannot effectively perform it but because they will not.

However, providing social wants required substantial financial resources. The state had to seek various sources from which she could obtain her income. Hence the question of Public Finance, i.e., taxation came to the forefront to guarantee the revenue that the state needed to meet her expenditure. Thus, it is within the context of this historical development that the writer intends to trace the evolution of the system of taxation of the Western World and its possible effects. And finally, in the light of such historical perspective a comparison of the institution of Zakat can be made with the taxation system in a Capitalistic...

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67Quoted by Siddiqi, op. cit., p. 168.
68Ibid.
whether to allow the state to undertake any economic activities for its people or not. If it were permissible then what would be the extent of the state intervention in the economic activities of the people?

CHAPTER III

ZAKAT AS A TAX

A. Historical Development of the Tax System - A Comparative Study

To the Western world, the enforcement of the tax system was a recent development. It had and has been evolving alongside the evolution of the political system. In so far as its existence is concerned, it implies state intervention in the economic affairs of the nation. Therefore, the concept of Laissez-faire prevalent in capitalistic society was thus infringed. This infringement apparently indicates the ineffectiveness of Capitalism, especially in guaranteeing the socio-economic wellbeing of the masses. A redress to the system was thus envisaged, hence involving the introduction of the tax system. The aim of which was to restore an equitable distribution of income and wealth.

But at the outset, the attempt to humanise the warring groups of the society was not done vigorously. As a result the capitalists continued to exploit the working class. This ended in a show of force - by the latter - culminating to the introduction of Communism, whereby the affairs of the people were taken over by the State. But in a state where communism did not breed well, it does not mean that 'pure capitalism' successfully thrived the test of time. Instead it gave way to what is called Democratic Socialism. This system allows free enterprise to operate besides ushering the bulk of the responsibility in maintaining the public affairs unto the state. In other words, it becomes the responsibility of the state to provide the social wants of the people. This is, as J.S. Mills said, not because private individuals cannot effectively perform it but because they will not.

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1. In A Capitalistic State

The problem that confronted the early political thinkers was
whether to allow the state to undertake any economic activities for its people or not. If it were permissible then what would be the extent of the state intervention in the economic activities of its people?

This problem was partially solved when Herbert Spencer likened the function of the state to that of a "passive policeman", whose main duty was to maintain law and order against both internal as well as external threats. In return for the services rendered she was to obtain what is called "royal wage" from the citizens. The proceeds of this royal wage was therefore used towards the maintenance of the police and the army in keeping security, law and order to ensure the citizens against murder and personal injury, robbery and theft, fraud and blackmail. Only later on did the state extend her services by providing such facilities as transport, postal services, maintenance of schools and prisons and the maintenance of justice and administration.

It is noticeable that up to this stage, tax was used more for political purposes rather than for economic matters. That is, public finance was largely the concern of political scientists rather than that of the political economists.

But as a society advanced, the functions of the state expanded and the scope and range of taxation also became wider and larger. Meanwhile in the capitalist era of the economic history, the state found itself face to face with two conflicting groups. One, the capitalist group who wanted their status quo preserved and the perpetuation of the system of laissez-faire. On the other extreme was the working class, who was very much upon the mercy of the former.

By then the state was unable to do much to come to their aid, for at that time even the 'father' of political economy, Adam Smith, still advocated limited functions of the state. For instance, in his Wealth of Nations he restricted the activities of Government to three things. First, the duty of protecting the society from violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and certain public institutions.

But it was argued that the prescription did not do much to improve the welfare of the working class. Hence, class struggle went on. Strikes and labour unrest became predominant. Thus there was a fear that it might bring about economic disaster for the country as a whole. Realising such eventualities, the political scientists were then forced to reconsider the functions of the state.

They felt that the root of the problem had to be tackled first. Therefore, there was a need to narrow the gap between the rich and the poor by a rational control. The initial move was to reform the mode of production which was responsible for the economic inequalities.
another was the belief that the state could act as a regulator to reduce the inequalities in wealth and income.

But in order to have it accomplished the state had to use taxation as the device to redress the prevailing economic distress. Therefore, for the first time, the social and economic aspects of public finance received a considerable emphasis. Taxes began to be viewed more as socio-economic levellers and not merely a matter of political interest. This is so in the sense that the proceeds of the tax funds were used to finance, state expenditure in her attempt to provide primary amenities for the poor. The social-ills such as poverty, indigence and indebtedness were to be done away with. Moreover, there was a need to extend the opportunity of education to all people alike. Adequate provision for the Old Age, Widow's and Orphan's Pensions, Unemployment Insurance, Health Insurance and Housing Schemes were all introduced to cover up the citizen who were less fortunate.

But, however, the question to be posed at this juncture is: Are such taxes able to successfully and effectively rectify the socio-economic disparities? These taxes seem to be successful in so far as their objectives are concerned. For instance, roads, schools and welfare homes are built. But as a social device it is far from effective since the society still continues to be divided into numerous classes whose interests constantly clash one another. In fact what Harold Laski has to say is true: "The democratic political state has so far been curiously unable to alter the inequalities of the social fabric ... What is held out to other classes for admiration is not elevation of mind, dignity of character or beauty of life, but position, show, luxury or any other mark by which riches can be displayed ..."1

Furthermore, nobody can deny that very little of the tax proceeds are used for the sole good of the poor and needy. The tax-payers themselves being the creditors of the state, get back what they pay in the form of taxes and levies. Therefore, wealth circulates only between the state and the capitalists. This somehow or other reflects the ineffec-
tiveness of the modern tax system. On this account, therefore, the taxes more or less fail to solve the social-ills inherent in the capitalistic society.

ii. In A 'Communist' State

Now that capitalism failed to effectively bridge the gap between the rich and the poor, the discontented citizens sought salvation in communism instead. This is because communism promised equality for all, which implies that there should not be any more class distinction. In so doing it does away with the question of taxes by installing the state as the employer and reducing the people to wage-earners.

It seems that there is a look of equality in social affairs as

1Quoted by Hassain, op. cit., p. 123.
compared to that of the capitalist society. In so far as the aim of communism is concerned it does successfully and effectively enforce the healthy distribution of wealth. But, however, it has been refuted that it attains its ends in a very inhuman manner. For instance, it reduces the oppressed class to no more than mere brutes with their brutal instinct slaughtering the capitalists at the slightest chance.

As such a fact Zaidat is based on the divine philosophy embodied in the Holy Quran. At the same time it has been argued that, more often than not the poor have to pay the cost for the installation of communism, for as Dr. Reinhold Niebuhr pointed out, "A Marxian is wrong in assuming that a faulty social mechanism is the sole cause of injustice, and that the elimination of capitalism will completely destroy both the will and the power of men to exploit their fellowmen. Marxians hope for an ideal social order in which not only social conflicts, but every form of national conflict will disappear. They have, in other words, a basically romantic conception of human nature, in spite of their provisional realism.

They do not realise that social judgements will be determined by interest in a society in which interests are basically more equal than in the present society. With this romantic conception of human nature they give themselves to the illusory hope of an anarchistic millennium in which the state will 'wither away'. This illusion allows them to escape the whole problem of the relation of power to justice. They do not see that even if a society succeeds, in equalising economic power, political power will be required to perform the task, that this power may be and will be disproportionately held and that such disproportions will be a new occasions for injustice." 2 Such there is less certainty in the case of the latter.

Such an injustice coupled with stiff and rigid regimentation of the communist administrative machinery often stifle sentiments of charity and paralyse all initiative for spontaneous social usefulness. This means, communism only succeeded in staging a 'revolution without' but 'no change within'. This is because its doctrine lacks both ethical and spiritual insight.

iii. **In An Islamic State**

To begin with the doctrines of Socialism are more akin to Islam. On this basis therefore, Islam does not favour social division to flourish. Unlike capitalism and communism, however, the solution that Islam offers to this social division involves two fundamental elements. That is moral as well as economic. This involves the development of a new ethical code and the development of economic principles on the basis of this ethical code. In this sense, therefore, the tax that Islam devised is able to surpass most of the theories that modern tax system seems to display.

In solving the economic inequalities, Islam does not resort to the use of force as communism advocates, nor does it believe in a widely publicised charity of the capitalist class. Instead it preaches and fosters free and restrained initiative as a potent force for establishing social justice and equality. It accomplishes all these by effecting a

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2 Ibid, p. 125.
revolution within the heart and soul of man. Its most effective weapon against unjust distribution of wealth is its system of finance. For instance, it has devised the Zakat tax and rendered it most acceptable by investing them with a supreme spiritual merit. There is no attempt to dodge or evade them as is the case with the imposts levied by the secular states. This extreme acceptability is attributed to the fact that Zakat is based on the divine philosophy embodied in the Holy Quran. As such any transgressor will be referred to as a sinner, not only against the Almighty but also against man.

From the above point, it is evident that fourteen centuries ago, before the Western world had any idea about politics and economics in the modern sense, Islam had already laid down a system of taxation that had a particular economic importance. For example, Zakat has the fundamental objective of eradicating maldistribution of income. This is evidently shown by the fact that Zakat is to be redistributed to those beneficiaries already identified. This gives an added advantage as it may check the possible deviation especially in the utilization of the Zakat funds. This means that Zakat's capacity to create and maintain social equilibrium is far greater than any mundane taxes.

Besides its extreme acceptability Zakat Tax is also unalterable. These characteristics constitute an important feature that Zakat has over the other taxes. The mundane taxes in fact have no certainty with regard to their life span as they may be changed to suit and meet the demand of the people. As such there is less certainty in the case of the latter.

Moreover, it is to be remembered that the act of Zakat is an act of piety. By virtue of this fact, there is a sincere motive in the payment of Zakat. More precisely the payment of Zakat does not involve a feeling of ill-will, malice and vindictiveness which vitiate that of the man-devised tax. In the case of the modern taxes they are forced upon the rich with the explanation that there is no other way of ensuring the continuance of the rights of private property. Their action is therefore seldom accompanied by sincere motive. This is apparent in the sense that resentment is constantly expressed, and when they are dissatisfied with the way the government handles its tax system, they will then fight their way out to embarrass, if not to topple the government responsible for it. This however, does not occur to the tax devised by Islam, merely because its imposition is not aimed at any particular class but rather to those who have a duty to perform in obedience to the rule of Islam. In this sense, therefore, the tax that Islam devised is able to surpass most of the theories that modern tax system seems to display. Moreover, for many services the poor will have to bear the same per capita burden as the rich even though the poor person has less means.

In other words, the exclusion principle inherent in the Benefit approach, renders the theory contrary to the whole philosophy of public welfare activities which is designed to increase the economic wellbeing of those in the low-income groups. As such, this theory was superseded.
R. Zakat in the Light of the Modern Theories of Taxation

i. The Modern Theories of Taxation

The institution of Zakat is comparable to the present system of taxation contrived by Western scholars. The only difference is that the present tax system does not embody any religious significance. Meanwhile, Zakat is a system of taxation cum-worship. As such it is quite difficult to compare it with the purely materialistic theories of taxation.

Moreover, unlike the Benefit approach, the proper contribution to the public purse was determined by the "ability-to-pay" of the taxpayer. However, the question of 'perfection', even the justification for the imposition of tax is still questioned.

a) The Benefit Theory

Regarding the theories of taxation, one of the earliest was the Benefit Theory. The essence of which is to equate the government as a business entity, whereby her relationship with the taxpayers is based on mutuality of exchange; or as J.S. Mill puts it, in a quid pro quo terms.

By its very nature, this approach fails to be a good theory of taxation. Firstly, the fundamental notion of the individuals' relationship to the state underlying the benefit principle is untenable in modern times. This is because, as argued by Dalton, a tax is a compulsory payment in return for which no direct and specific quid pro quo is rendered to the payer. This is particularly true as the activities of present day governments are commonly in the general interests rather than individual welfare. Since the services rendered to individuals by the Government cannot be determined, it follows that the precise benefits each individual derived from such services is difficult to determine too.

Next is the vital question of just how benefits are to be determined. Should the tax be equated to the total real benefit, proportional to the total benefit or assessed on marginal benefit? However, even if this pure benefit approach was practicable it would produce absurd results since it would affect the poor more than the rich. For instance, for many services the poor will have to bear the same per capita burden as the rich even though the poor person has less means.

In other words, the exclusion principle inherent in the Benefit approach, renders the theory contrary to the whole philosophy of public welfare activities which is designed to increase the economic wellbeing of those in the low-income groups. As such, this theory was superseded
by the Ability-to-pay theory. The state should adapt its expenditure and tax policies to curing the evils associated with this condition. Besides, he recommended that the reward for labour should be given preferential treatment. Similarly, he believed that the Ability Theory of taxation is based upon the broad assumption that those who possess income or wealth should contribute to the support of public functions in accord with their relative abilities. This implies that it takes into consideration the economic status of the individual.

Moreover, unlike the Benefit approach, the proper contribution to the public services is treated as an independent problem and not on a quid pro quo term as in the Benefit approach. Hence, the exclusion principle does not apply in this case.

This principle of taxation appears, on the face of it, somewhat more practicable. But, however, the Ability-to-pay approach does not tell us just how the tax burden is to be distributed. Or rather, how is 'ability-to-pay' to be measured? Even if it could be measured would it justify an equality in taxation and hence equity of sacrifice? Furthermore, how would this equity of sacrifice be defined? The solution offered by Cohen-Stuart and Edgeworth was to define it either in terms of 'equi-absolute sacrifice', 'equi-proportional sacrifice', or 'equi-marginal sacrifice'.

As mentioned above the theory of taxation that appears nearest, however, assuming that such measure is possible, it does not actually solve the problem. This is because whichever concept of equal sacrifice is chosen, the actual distribution of tax payments or rate structure required to implement it still depends on income-utility or marginal-utility of income. But the latter concept is highly subjective since it deals with human behaviour. Thus it does not suffice to give it a 'pseudo-scientific' analysis alone. Hence, the purportedly objective theory has become a subjective one. This is true since without the assumption of interpersonal utility comparisons the entire discussion on the Ability-to-pay theory will break down.

c) The Socio-Political Theory

According to this theory, taxation is regarded as an economic or social instrument in addition to its being a source of revenue. The advocate of this theory, particularly Adolph Wagner, severely criticised the unequal distribution of wealth under the capitalistic system. Wagner

3It is referred as pseudo-scientific because such subjective terms as sacrifices and utilities cannot be analysed on a 'pure-scientific' basis.


Like the ability-to-pay theory the Zakat tax is also based on the economic status of the individuals. That is, payment of the tax
therefore, proposed that the state should adapt its expenditure and tax policies to curing the evils associated with this condition. Besides, he recommended that the poor should be exempt from all taxation and that the reward for labour be given preferential treatment. Similarly, he believed that the rich should be subjected to sharply progressive taxation. He also suggested that property and inheritance were not rights of individual but rather privileges extended by the state which should, therefore, be controlled in the interests of the masses.

These ideas exerted an important influence on tax policy in Germany, besides providing an impetus to tax reform movements in England and the United States. For example, the recent development of tax policy has been in the direction of the socio-political theory than in any other. Income tax and death duties are but a reflection of the socio-political theory.

This theory, as rightly pointed out by Siddiqi, has the nearest approach to the Islamic conception of taxation propounded more than thirteen to fourteen centuries ago. In other words, of all the theories mentioned above, the socio-political theory is more akin to the principles established in Zakat tax.

ii. The Zakat Theory

As mentioned above the theory of taxation that approaches nearest to the principles underlying Zakat tax is the socio-political theory. Nevertheless, the essence of the other two theories are also to be found in the Zakat tax.

In the first place the Zakat tax is not a device formulated by man. It is an Ordinance of God. As such, no one, i.e. the Muslims, ever dares to alter the principles underlying the Zakat tax. But as far as the mundane taxes are concerned they may likely be changed when new set of theories are found.

Moreover, the payment of Zakat is a religious obligation. Hence, it is the duty of all 'true Muslims' to pay Zakat even without the slightest expectation of material benefit in return. This implies that the question of exchange and quid pro quo terms inherent in the Benefit Theory does not apply to the Zakat tax.

In addition to being a religious obligation, Zakat is also the obligation of the rich to the poor, needy, incapacitated, aged and orphan and so on. This is important in the sense that Zakat tax is particularly aimed to directly benefit these people. Again one sees that the specification of the Zakat beneficiaries makes the exclusion principle inherent in the Benefit Theory inapplicable in so far as Zakat tax is concerned. This is attributed to the fact that the principles underlying the Zakat tax make due emphasis on the welfare of the poor rather than on anybody else.

Like the ability-to-pay theory the Zakat tax is also based on the economic status of the individuals. That is, payment of the tax
is on the relative abilities of the individual proportionate to the return that he enjoys. The term 'return' referred here is not in term of recreational facilities, such as playground, swimming pool, gambling centres and golf courses etc. But the Islamic conception of 'return' is interpreted in term of freedom, liberty, justice, and security that he enjoys under the protection of the state. Hence, the payment of Zakat is made not upon the anticipation of materialistic returns but rather on a more meaningful criteria mentioned above.

This lack of materialistic anticipation renders the theory less complex than that of the Ability-to-pay theory. Because the terms 'ability' and 'returns' are differently interpreted in Islam so that the question of ability index such as the 'equi-sacrifices' and 'interpersonal comparison of utility' do not arise at all. This is due to the fact that payment is a religious duty in which all good Muslims are expected to willingly submit and abide. Moreover, the Islamic religion does not tolerate any particular groups to live in complete affluence, while leaving the others in a state of pauperism. Therefore, the rich is duty-bound religiously and socially to help uplift the socio-economic plight of the latter group.

The question of sacrifices and marginal utilities do not constitute a significant factor in Islam and hence in its system of finance. In fact what is important is the faith that one has towards one's religion. Once, the faith is already established it over-rides value or social judgements or even 'pseudo-scientific' analysis of the modern theories of taxation. As the payment of Zakat is based on the conception of an Islamic faith, it is generally accepted that the payment is not accompanied with disgust or resentment. Similarly, the problem of tax shifting is absent in the case of Zakat.

The argument that Zakat has a positive correlation with the socio-political theory is also seen in the sense that Zakat is basically an economic and social instrument, besides a source of revenue to the Treasury. For instance, if Wagner criticised the unequal distribution of wealth, Islam resents it. An apparent indication to this resentment is reflected in the aim of Zakat. That is, to cure social and economic evils of the society. To have done this the rich is taxed while the poor, especially those who have not attained the minimum taxable capacity, is exempt from Zakat. It is for this reason that Zakat is viewed as an economic-stabilizer, harmonizing the society's advancement towards greater progress socially and economically.

This idea underlying the Zakat tax reveals a marked similarity with the Socio-Political Theory. The only basic difference is that the former is a tax-cum-worship, while the latter is purely a theory on taxation that does not embody any pietistical importance at all. In other words, the former concept embraces both the secular as well as the religious aspects, while the Socio-political Theory embraces the secular aspect only. In fact, this is what Zakat has and what the other taxes fail to achieve.
C. Zakat versus Social Security Deductions

The present governments in capitalist regimes are getting more and more aware of the social needs of the public. The phenomenon such as social division that bred social anarchy had begun to be felt by the government. At the same time, the government had to reckon the democratic pressure from the electorate which has come to include all men and women aged twenty-one and over. This is particularly so when the society is undergoing a process of change in social attitudes, which now rest more on a clearer view of social causes.

Nowadays personal defects are seen much more as the effects of bad heredity or bad upbringing in the early formative years. There is less inclination to blame the individual without inquiring what lies at the back of his shortcomings. The traditional view to attribute poverty to the individual as his personal fault due to intemperance, or improvidence, or laziness, has been discarded. This is the sort of veritable revolution of feeling within individual that has spread the world over. Nevertheless, it is the intention of this exercise to confine the discussion on the spread of this social awakening or consciousness to Great Britain alone. That is, Great Britain is used as a model in this particular case of social consciousness.

1. British Social Services

Generally speaking, it was only half a century ago that Britain’s comprehensive and organised social service came into operation (i.e. with the publication of the Beveridge Report in 1942). But however, it is important to note that some forms of social services did exist prior to this report. For instance, the Poor Law Act came into being as early as 1601; the Forster and Fisher Act in 1870 and 1918 respectively; the Workmen Compensation Act in 1896; the Unemployed Workmen Act in 1905; and Lloyd George National Insurance Act in 1911. But then the existence and the operation of these social services were not organised and not co-ordinated. In fact each existed separately as an independent entity.

It was not until 1941 that Sir (Lord then) William Beveridge was appointed to undertake a survey of existing schemes of social insurance and allied services, including Workmen’s compensation, and to make recommendations. The recommendations in the report amounted to a comprehensive plan for a unified system of social insurance and social assistance on a national basis, worked out under the principle that plans for the future should be guided, but not fettered, by the past. The recommendations were based on three assumptions: “That poverty due to size of family would be avoided by a system of family allowances, that mass unemployment would be avoided, if necessary by government action, and that there would be comprehensive health and rehabilitation services available to all members of the community.”

Lord Beveridge’s plan was designed to overcome the deficiencies he found in existing arrangements.

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The deficiencies which Lord Beveridge called them the "Five Giants" were, Want, Disease, Ignorance, Squalor and Idleness (this Idleness referred to an involuntary unemployment). Therefore, Lord Beveridge Report was designed to combat these "Five Giants".

Besides, instead of the multiplicity of authorities concerned Beveridge recommended that there should be one authority, a Ministry of Social Security. Similarly, instead of the various rates of benefits for different contingencies all causing the same result, namely loss of income, and some providing for family responsibilities and some not, there should be one rate of benefit for all adults, with additions for dependents, and the amount should be sufficient without further resources to provide the minimum needed for subsistence in all normal cases. "The contingencies to be insured against should be all those causing interpretation of earnings, that is sickness, unemployment, retirement from regular work, and widowhood where the widow was handicapped from earning herself (Lord Beveridge argued that it was wasteful to pay pensions to elderly people still at work and to young fit widows without children). There should also be cash grants for occasions causing special expenses; death (against which many people were insured with Burial Societies, often at excessive cost to themselves), marriage and a birth." 6

It is evident that what has been achieved actually constitutes a silent and peaceful social revolution in the conditions of living of the British people. The acceptance of an all-round public responsibility for Social Security was the political response to the Beveridge Report of 1942. Britain therefore stood fully committed to carry out the above percepts of Social Security.

That which has been done since 1942 - and mainly since 1945 is the swift culmination of a process that has been going on for nearly half a century. The Beveridge Report is a comprehensive attempt aimed at the unification of the separate forms of social provision into a system so as to ascertain reasonable completeness that embodies a new conception of social expediency as well as social justice.

Hence, so much has been done by the state out of public funds. This implies that the British Government has taken over the responsibility of the affairs of the unfortunate citizens. To finance these welfare measures the British Government has taken all efforts to widen the scope of her tax system. Therefore, the Social Security Services so much enforced by Britain were mostly (and still are) paid out of the money derived from the tax revenue. These are deduction made to cater for the need of the social security measures.

ii. Zakat as a Scheme of Social Security Insurance

Comparable to the social security services adopted by the British Government following the Beveridge Report is the institution derived by Islam. But the Zakat, though containing the similar essence of social

6Ibid., pp. 6-7.
welfare schemes were already ahead of the wellfamed Beveridge Report. Moreover, the Zakat was introduced without any historical precedence at all. That is, its introduction was not due to any consequence of historical evolution that typified the Report of 1942. Furthermore, there was no parliamentary processes in so far as the introduction of the Zakat is concerned. It was handed down by the Almighty as the sacred constituent of the Islamic faith. Thereby reflecting the highest authority from which Zakat was originated. This is what is often referred to as the 'Divine' origin of Zakat.

At the same time however, the important thing is not just to know the 'how' but also to know the 'why'. That is, the important thing is not just to know the historical development of the institution of Zakat but also to know why it was introduced. This is particularly important for us at present due to the fluctuation in prices and cost of living. The Zakat, which gives to the needy and the debtors, is today in need of greater emphasis than ever before in order to meet the needs of the greater population, who are suffering from the economic hardships and the rising cost of living.

This development is to take into account the changing circumstances and the possible reinterpretation of the Quran and the Hadith. This involves what is called deductions that are sanctioned by Muslim experts on Islamic philosophy and jurisprudence. These deductions are necessary so that the Zakat institution can withstand the challenges of the so-called modern socio-economic complexities.

The proceeds from the Zakat collection are usually pooled into the Public Treasury or the Baitul Mal which are eventually used as a spring of social services in various ways to produce the effects of an all-round equality of incomes. Under Zakat this objective should be achievable since the expenditure of Zakat are particularly devoted to benefit the poor and the less fortunate. And the heads of expenditure under which this public funds shall be spent have been outlined in the Quran, and as a matter of review they are briefly mentioned as follows:

1. To relieve the distress of the poor whose incomes are less than their necessary expenditure;
2. To help the needy who possess no property;
3. To meet the cost of collection of Zakat;
4. To help new converts;
5. To help debtors settle their debts;
6. To free slaves;
7. To help travellers when in difficulty;
8. To spend in the 'Way of God'.

Given these beneficiaries one can therefore ask: Would not Zakat renders a comprehensive scheme of social security? Of course, the above classification of the beneficiaries does not elaborate on each of the points. But it is up to modern Muslim thinkers to give new interpretations and additional dimensions. For as we can notice it, the words here are loosely termed. This is to avoid rigidity and to permit flexibility so that adaptation to the changing circumstances can be facilitated. For instance, the phrase 'to free captives or to free slaves' is normally interpreted to mean political captives or slavery.
This interpretation is well suited during the Prophet's era as political captive was very common those days. But now things have changed. Political salvery is almost negligible. Hence, would it not be appropriate if the phrase is given a wider interpretation - for example to 'free slaves' should be interpreted in term of economic salvery. Is it not a form of salvery too? After all it is a reality and has become a common feature today. As such would not Islam detest all forms of salvery? On this basis, therefore, would this deduction be contrary to the basis of the Islamic principles laid down in the Quran?

At the same time, however, the important thing is not just to know the various beneficiaries of the Zakat only. What is to be examined are the various ways and means by which Zakat funds ought to be spent so that the beneficiaries would benefit greatly from the distribution. For example, should the distributive method of the Zakat funds be confined to the traditional cash benefits only? Of course this was all right during the Prophet's days or during the Caliphate days. But at present this system of distribution is no more adequate. This is particularly due to the fact that society has become more complex today. As such the widening of the scope by which the Zakat funds ought to be utilised should be given serious thought. It should be extended to cover many more social security measures.

For instance, the term to help the poor, the needy and the debtors can be interpreted in a very wide sense. The poor can be assisted in the form of family allowance, unemployment benefits and educational facilities. Regarding the aged, Old Age Pension or House for the aged should be extended to them. Protection for the homeless children and the maintenance of widows and their dependents are of equal importance that should be taken care of by the Zakat institution. Provided, of course, if the institution were to be made into an effective social security scheme. This is justified on the ground of social expediency and social justice.

In fact, the erection of poor-houses, workmen's compensation, old age pensions, unemployment insurance, etc., are only a few of the numerous measures of the Islamic scheme of things recently adopted by some modern countries in order to neutralize the instabilities of the Capitalistic framework. Britain is, of course, one of such example. This is particularly evident in so far as her social security services are concerned. They are more or less similar to the social security services provided for in Islam by way of the institution of Zakat. In fact long ago, "apart from the abstract institutionalism, Zakat in the Muslim constitution of the Caliphate days was so comprehensive and broad-based that it not only promoted socialistic redistribution of wealth but also tended to create a healthy non-capitalist frame of mind and a collective spirit."7

In the present day phraseology, therefore, the Islamic society, to quote Hussain, may be termed a Functional Society. It is functional

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7Sharif, R., op. cit., p. 112.
in the sense that it has functions to perform. The most important of which is the performance of social services. In the course of accomplishing its functions, Zakat constitutes the most effective insurance measure against social and economic misery. It prevents the spread of beggary because the indigents, the defectives, the incapacitated, the orphans and widows, and all other categories who are the less fortunate, are duly provided for and saved from the practice of begging for alms. It is the state that must bear the responsibility for their maintenance. But it can only discharge this social obligation when there is adequate supply of money coming from the people in the form of Zakat.

It is for this reason that Islam has made a rational division of Zakat into four classes:

1. Zakat leviable on such property as is capable of growth and increase. This includes pasturing animals, agricultural produce and articles of trade.

2. Zakat collected from those people who are rich in the eyes of Sharia (Divine Code). Such people as are liable to this impost are referred to in the Quranic verse thus:

In fact, "People possessing gold and silver."

3. Zakat on such goods as have been obtained without any labour or exertions as treasure-trove or a chance discovery of diamonds.

4. Zakat realised from the earnings of the professional and artisan classes.

The very fact that the Muslim State levies and collects Zakat tax for the upliftment of the poor indicates the imperative need of a conscious and comprehensive social measure to uproot poverty. At least Islam has provided the tool necessary for the economic amelioration of the society through a comprehensive programme of Zakat. Therefore, it is evident that the enshrined aim of Zakat is the assurance of social security and social services for the masses.

The Zakat scheme is best fitted to meet the sort of economic problems prevalent in modern countries among other things the 'five Giants' mentioned by Lord Beveridge. To perform these social welfare measures the Muslim state has to utilise the Zakat funds in the most productive manner so that the objectives intended in the Zakat impost can really be achieved. Given these objectives, in fact there is "a

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8 See Hussain, op. cit., p. 152.

9 What is meant here as 'capable of growth' is capital. In other words capital is productive. This definition is solely from the capitalistic viewpoint and against that of Marx which states that it is labour and not capital that is productive.

10 Gold and silver were considered as a store of wealth during the days of the Prophet, as such they were tax. Thus today everything that acts as a store of wealth should in fact be taxed too.
consensus of opinion on the point that under the Muslim State there is to be no indigence, no misery and no poverty."

Nearly two centuries ago when the issue on taxation was still disputed in this perspective, therefore, it is obvious that the objectives contained in the Lord Beveridge Report of 1942 is not new in concept but new in its method of implementation. In so far as its concept is concerned its similarity with what is established in Islam is very significant indeed. Basically both infringed upon the concept of laissez-faire, hence inducing the state to give up its long indifference to the pressing socio-economic problems, thus performing the duty of 'care-taker' for the unfortunate.

But, however, the fact still remains that Zakat unlike any modern social security scheme has embodied both the spiritual and the socio-economic elements. As an institution that has a spiritual and secular benefits, Zakat reflects the symbolic inner unity of metaphysical and material aspects of life persistent in the Islamic society. In economic terms the payment is viewed upon as a social and economic obligation, while from religion's point of view the payer with a charitable frame of mind does not scorn such pietistical obligation.

In fact, it was this all-pervading social harmony that led H.G. Wells to remark, "Islam has created a society more free from widespread cruelty and social oppression than any had ever been in the world before."

11 As nearly as possible in proportion to what they have enjoyed out of the protection and amenities provided by the State. This suggest a progression in the tax impost, so that the rich have to bear the sacrifices more than the poor. This is compatible with the idea underlying the Zakat impost, mainly because Zakat is leviable on accumulated wealth. Therefore, those who have the bigger capacity to accumulate their income and other forms of wealth will be taxed more than those who have a low propensity to save. In fact, Zakat is not levied upon those who are not able to save at all. So when the year's saving rate is high, the rate of Zakat is automatically high too. On the other hand, if the 2½% Zakat is imposed on the basis of annual income it would turn out to be a proportionate taxation, whereby the incidence would be borne more by the poor whose marginal utility of income is greater than the rich.

Furthermore, in most cases the Zakat tax is levied on ostensible assets, thereby inflicting less injury to the lower income groups, since their chance of owning such assets is to be doubted. Here again, the incidence of Zakat falls more on the rich than on the poor. Moreover, with the identification of its beneficiaries, Zakat benefits the poor

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12H.G. Wells, The Outline of History, p. 352. those who do not save it does not mean that Islam encourages extravagance. Instead luxurious and conspicuous consumption habits are not approved by Islam.
D. Zakat in the Light of Adam Smith's Canon of Taxation

Nearly two centuries ago when the issue on taxation was still disputed in the West, Adam Smith attempted a general statement on the principle of taxation, known as Smith's Canon of Taxation. He suggested four fundamental maxims: 13

1. that the subjects of the State contribute to its support on the basis of their ability as reflected by income;
2. that the tax to be paid and the conditions of payment be certain rather than arbitrary;
3. that the time and manner of payments should be convenient to the taxpayer;
4. that the cost of collection should be kept at a low level in order to minimize the total burden on the taxpayer.

This canon constitutes the basis of sound tax system. As such, it is interesting to see how far they are true when compared with the underlying ideas of Zakat. However, as a matter of convenience the above maxims can be summarised under the headings of: Equity, Certainty, Convenience, and Economy respectively.

The first canon implies that every citizen ought to contribute towards the state as nearly as possible in proportion to what they have enjoyed out of the protection and amenities provided by the state. This suggest a progression in the tax impost, so that the rich have to bear the sacrifice more than the poor. This is compatible with the ideas underlying the Zakat impost, mainly because Zakat is leviable on accumulated wealth. Therefore, those who have the bigger capacity to accumulate their income and other forms of wealth will be taxed more than those who have a low propensity to save. In fact, Zakat is not levied upon those who are not able to save at all. 14 So when the year's saving rate is high, the rate of Zakat is automatically high too. On the other hand, if the 2½% Zakat is imposable on the basis of annual income it would turn out to be a proportionate taxation, whereby the incidence would be borne more by the poor whose marginal utility of income is greater than the rich.

Furthermore, in most cases the Zakat tax is levied on ostensible assets, thereby inflicting less injury to the lower income groups, since their chance of owning such assets is to be doubted. Here again, the incidence of Zakat falls more on the rich than on the poor. Moreover, with the identification of its beneficiaries, Zakat benefits the poor.


14 When it is said that Zakat is not levied on those who do not save it does not mean that Islam encourages extravagance. Instead luxurious and conspicuous consumption habits are not approved by Islam.
more than those who are already living in affluence. This is the concept of equality manifested in the Zakat tax.

The second canon requires that the tax which each individual is about to pay ought to be certain and not arbitrary. For example, the rate to be paid, the period of payment, and the manner by which Zakat is to be made are clear and plain.

In so far as the rate of Zakat is concerned, it is fixed. Thus, there is no doubt about its very certainty. In fact, ever since the birth of Islam and throughout its history no attempt has ever been made to alter the rate of Zakat that is ordained by God. Not even the most despotic of Muslim ruler had dared to go against it. Because it is the work of God and not that of man. This is what is believed by any good Muslim - the faith in one's religion. On the same account, even the object for which Zakat funds are to be expended has never been diverted. And these are some of the cases reflecting the certainty that is inherent in the Zakat tax.

Besides, the time of payment and the manner by which Zakat tax is to be paid are specifically laid-down. In case of the former it is after the lapse of one whole year and as for the latter it can be paid either in the form of cash or kind, depending on the taxpayer's conveniences. Nevertheless, this allowance for choice does not imply uncertainty in the manner of payment. As such the Zakat authority is already certain as to the amount that it ought to receive.15

Regarding the third canon, it specifies that every tax ought to be levied at the same time or manner in which it is most likely to be convenient for the contributor to pay. The element of convenience is already mentioned when the choice to pay either in cash or kind is cited. Another evident to prove this is the fact that Zakat is leviable in the case of land produce only after the harvest. It is naturally convenient for the taxpayer to pay one-tenth of the produce as soon as he is in a position to pay. In other cases, the practice is to take into account the transactions of a year before arriving the net result of one's activities and the actual financial position at the end of the year.

The rule of convenience in taxation also applies to the state. This is apparent with respect to its regular periods of large out-payments and the desirability of sufficient amounts of revenue being available at the appropriate times. The realisations made at the end of each harvest, while others spread over the whole year (provided the minimum taxable capacity and time period has been reached) facilitate an all-round disbursement to the exchequer.

The final canons stipulates that every tax ought to cost as

15But this certainty is absent in the actual collection of Zakat in the State we are looking into in Chapter IV. This is not because of defect in theory but ineffective implementation which can be improved upon.
little as possible to collect so that it would be economical. In other words, as little as possible should be spent on administration and collection. The cost of Zakat collection is only 12% of the total amount collected. In the case of Zakat, the voluntariness in payment of Zakat makes it possible to avoid the necessity of maintaining an elaborate machinery to investigate into the taxable assets. This is obviously contrary to what is normally done in the case of income-tax.

After all this analysis, it appears that the elements of a sound tax system are present in the Zakat as they are present in some mundane taxes. But what is ideal about the Zakat tax is that its principles are observed uniformly throughout the Muslim world. This proves that Zakat can withstand the test of varied modern scientific analysis. Unlike most of the secular taxes that keep on changing as circumstances changes or when the people voiced for a change.

Under the Federal Constitution, the Sultans are referred to as the Head of the Muslim Religion in their particular States. This provision is accorded in Part I Section 2, subsection (2) of the Constitution, which states that, "in every State other than States not having a Ruler the position of the Ruler as the Head of the Muslim Religion in his State is one of that religion, and, subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired;"

To this effect, therefore, the Sultan of Perak is automatically the Head of the Islamic religion in his State. As the Head of the Islamic religion, the Sultan, with the advice and consent of the Council of State, assented to the Enactment No. 1 of 1949, which provided for the establishment of a Najilis Umma, i.e. 'Adat Keluarga' to be called in English the Council of Religion and Malay Custom. The membership of the Najilis is headed by a president and other members numbering not less than ten. In reference to its functions, the Najilis is to aid and advise the Sultan in all matters relating to the Islamic religion and Malay Custom in the State. Hence, it becomes the chief authority in the State with respect to all matters stated above.

Following the first enactment, there were many more. But, however it was the Enactment No. 7 that was important in so far as the question in question is concerned. That is, with this Enactment matters concerning Zakat are for the first time put into proper. That is, with the enactment of the cost of collection as established in the theory of Zakat. But this is not the cost of collection in the real sense. The point on this will be further elaborated in Chapter IV. Minster the

16 This is based on the argument that nobody is certain as to whether the rate, the kind or the scope of mundane taxes will be increased or decreased each time Parliament begins its session.
Zakat affairs was thus set up. And for the purpose of administration, the enactment defined Zakat as, "The tithe of certain property payable by any Muslim according to Muslim Law."

CHAPTER IV

ZAKAT IN THE STATE OF PERAK

A. Administration of the Zakat Affairs

1. The Laws

Under the Federal Constitution, the Sultans are referred to as the Head of the Muslim Religion in their particular States. This provision is accorded in Part I Section 2, sub-section (2) of the Constitution, which states that, "In every State other than States not having a Ruler the position of the Ruler as the Head of the Muslim Religion in his State in the manner and to the extent acknowledged and declared by the Constitution of the State, and, subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired;..."

To this effect, therefore, the Sultan of Perak is automatically the Head of the Islamic religion in his State. As the Head of the Islamic religion, the Sultan, with the advice and consent of the Council of State, assented to the Enactment No. 1 of 1949, which provided for the establishment of a Majlis Ugama dan 'Adat Melaju' to be called in English the Council of Religion and Malay Custom. The membership of the Majlis is headed by a president and other members numbering not less than ten. In reference to its functions, the Majlis is to aid and advice the Sultan in all matters relating to the Islamic religion and Malay Custom in the State. Hence, it becomes the chief authority in the State with respect to all matters stated above.

Following the first Enactment, there were many more. But, however it was the Enactment No. 7 that was important in so far as the question on Zakat is concerned. That is, with this Enactment matters concerning Zakat were for the first time put into papers. Thus, with the Baitul Mal, Zakat and Fitrah Enactment of 1951, the provisions for the management, control and distribution of the funds collected from Zakat (and Fitrah) were provided for. The machinery to administer the

1. The Federal Constitution, incorporate all amendments made up to the 1st. March 1964.

2. The term Majlis refers to the Majlis Ugama dan 'Adat Melaju' of Perek, unless it is otherwise stated.

Zakat affairs was thus set up. And for the purpose of administration, the Enactment defined Zakat as, "The title of certain property payable by any Muslim according to Muslim Law."\(^3\)

Given the administrative machinery and the definition of Zakat, the collection and distribution of Zakat becomes the responsibility of the Majlis. The Majlis is to collect Zakat from all persons in the State liable under the Muslim Law, especially with respect to property within the State. The administration of Zakat becomes a managed affair controlled by a centralised body, whereby unauthorised persons are not permitted even to collect the Zakat. Such a stringent measure is good as it ensures a more organised collection, so that the benefits of Zakat will not go to the pockets of the collectors themselves, instead distributed to the other beneficiaries as well. It was through this institutional set-up that the Zakat funds could be properly utilized to provide a greater, meaningful and effective service to those who deserve to be aided.

Under the Zakat and Fitrah Rules, 1952,\(^4\) the assessment and payment of Zakat was thus stipulated, "any person professing the Muslim religion and liable to pay Zakat in the State by the laws of Islam, who cultivates a bendang or ladang\(^5\) from which in any one season not less than 400 cattas of 'clean' padi harvested, shall pay to the Amil of the area in which such bendang or ladang is situated Zakat at the rate prescribed by Muslim law;,..."\(^6\) The payment is to be made not later than the end of the month following the completion of the harvest.

In reference to the above Article, one notices that the term 'clean' is incorporated before the word padi. The word, however, has not been given any legal definition. As such there are problems with regard to the interpretation of the word, and sometimes one wonders what the word 'clean' actually stands for. Does it mean the total gross harvest? Or does it mean total harvest less consumption? Or is it total harvest less consumption, rent, cost of fertilisers, labour cost, water charges and the like? But from the information gathered none of these items - consumption, rent, labour cost etc. - are taken into consideration when Zakat is collected from a farmer. In such a case, therefore, the first question posed above best described the interpretation of 'clean' padi in the practical sense.

If this is the case, then the law is definitely against the

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\(^3\) Administration of Muslim Law Enactment, 1965, p. 4.

\(^4\) Supplement to Federation of Malaya Government Gazette Perak July 15, 1952, p. 2

\(^5\) Bendang or ladang means a cultivable plot of land.

\(^6\) Zakat and Fitrah Rules, 1952, p. 2.
spirit of the law of Zakat as provided in Islam. This is because no consideration in this statement is given as to the expenses of cultivation or about the ownership or non-ownership of land. That is, it does not make a distinction between a tenant who pays rent to landlord and one where the cultivator is himself the owner of the land. In law, therefore, the burden is on the cultivator, while in Islam the burden is on the owner. The latter is true, as full ownership and full possession is emphasised. Thus, it is evident that the practice of collecting Zakat is contrary to what would otherwise have been preached in Islam.

In connection with the disbursment of Zakat, an enactment called the "Rules for the Distribution of Zakat and Fitrah, 1955," was passed and put into effect on the 1st., February 1955. This enactment provided for the purposes for which Zakat (and Fitrah) is collected. That is, to improve the socio-economic welfare of the Muslims whose claims over the Zakat funds are valid according to the Sharia Laws.

As far as the beneficiaries of Zakat are concerned, the Majlis accords similar categories of people as outlined in the Theoretical Basis of the Zakat. Except for Fir-riqab or the freeing of the slaves other beneficiaries are identifiable in so far as the Perak State is concerned. According to the officials of the Majlis, Fir-riqab does not exist because there is no institution of slavery in Malaysia. In this case one can therefore deduce the fact that what they wanted to imply was political captives sold in the market, as was prevalent in the Middle-east centuries ago. They took precedence from there, and therefore, concluded that Fir-riqab does not prevail in Perak anymore. Hence, the exclusion of Fir-riqab.

But such a conception of slavery is a very restrictive one. In fact, it can also be interpreted in terms of other forms of slavery - economic slavery for instance. This is to take consideration of the fact that more than half of the farmers (both padi and rubber) in Malaya do not own their own land. They either Pajak (lease), Pawah (crop-sharing) or Sewa (fixed rent) an average plot of land whose size is small, rent high and yield poor. Farmers are usually in debt as their incomes are small ranging from $50/- to $100/- per month. Their small incomes was because of the work of middlemen, landlords and money-lenders. One therefore, would ask: is not this a form of slavery? In fact an economic slavery is far worse than political slavery - though it is also not to be preferred - because in case of the latter, the victims are fed and clothed quite compatible with the amount of labour effort they put in. But in the case of padi farmers, the rent that they have to pay is as high as one-third to one-half of what they got from the land. This shows that

\[\text{Refer U.A. Aziz, Renchana2 Ekonomi Dan Kemakmuran, Pustaka Melayu, Singapore, 1963, p. 4.}\]

\[\text{Ibid.}\]

\[\text{Ibid.}\]
they only earn one-half of what they have worked for. This is very unfair
indeed.

Of course, it is understandable that the problems on rent,
middlemen, landlordism, etc., are of national concern, but at least the
Zakat funds could be used to provide social security measures to these
people. For instance, to help them rid off their debts, extend family
allowances and scholarships, and other social welfare measures such as
free milk for the infants and so on. This is not impossible, provided
the enforcement of Zakat collection is effectively carried out. At the
same time those deserving the aid are properly screened especially as
regard their economic status, employment, income, dependents, so that
only the truly deserving cases are provided for. If this is done there
will be only a restricted few who should fall under the category of people
deserving the welfare aid. Therefore, it is upon these people that
funds ought to be spent.

Though it has been said that the definition of the various
beneficiaries accorded in the 1955 Enactment, are more or less similar
to those laid-down in the principles of Zakat, it is interesting to
examine the interpretation of the terms Fakir, Miskin and fi-Sabilillah
as applied to the State of Perak.

The definitive criterion for the term 'fakir' are those Muslims
who do not possess any assets and are incapacitated. But this does not
include a person who has relatives able and liable by law to maintain
such person nor does it include a married woman whose husband is able
to maintain her. Thus, it is clearly defined that fakirs are those inca-
cipated without asset and non-dependent.

Besides, however, there are three other categories of people
classified under fakir - though this classification is not appropriate.
They are:

1. any person with either assets or ability to work and
not dependent on anybody, but whose income falls short
half of his requirement for necessary expenses according

2. Any person who has both assets and the ability to
work, but the income derived from both is unable to meet
even half of his requirements for necessary expenses
according to Hukum Shara for him and his dependents;
3. Any students of theology who are capable of progress
but not financially assisted by anyone.

The category of people under (1) and (2) should not be put under Fakir.
Instead they should be identified as Miskins. In fact this has been
stated by the Enactment itself: "Miskins" are those Muslims, who whilst
not coming within the definition of a 'Fakir' in that they are able and

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10 See Rule s for the Distribution of Zakat and Fitrah, 1955,
p. 2.
do in fact earn a living, such living is not, in the opinion of the Zakat and Fitrah Committee, sufficient for their own maintenance." Thus, there is no difference between this definition and those mentioned under (1) and (2) in the definition of the Fakir.

As for the third category, it is redundant as it is also named under the heading of Fi-sabilillah. The term Fi-sabilillah has been given wide interpretation so as to include all activities relating to the 'Way of God', as indicated below.\[11\]

1. to give financial assistance to deserving religious schools which the Majlis deems it necessary;
2. to provide religious education to residents in any locality not able to organise on their own including the teachers' maintenance;
3. to train Muslims in their respective fields to help them succeed in their pursuit of their livelihood;
4. to give financial assistance to deserving students;
5. to seek and provide places for purpose of extending religious education and helped to maintain them;
6. to finance any propaganda on Islam;
7. to manage the burial of deceased Muslim whose body is not claimed;
8. to undertake any social welfare measures which the Majlis thinks will benefit public interest from time to time.

The items included under Fi-sabilillah are enough to guarantee a good social security scheme comparable to that advocated by Lord Beveridge. For instance, the eight item is very significant in the sense that the Majlis can undertake various forms of social welfare measures that will benefit the Muslim communities. This will probably include Old Age Pension, Family Allowances, Unemployment Allowances etc. If this is fully observed and enforced, then one has the basis to believe that under Muslim State there will be no misery and no poverty.

Those enactment highlighted the establishment of the Zakat Administrative machinery. The object of which is to look after the affairs of Zakat. With such an established machinery, the Majlis makes it a point that payment of Zakat to the State is a necessity. Therefore, non-payment is an offence, punishable by the law outlined in the "Zakat and Fitrah Rules, 1952," and the "Administration of Muslim Law Enactment, 1965."

Any person found guilty for refusing or failing to pay Zakat in full is liable to pay a fine of not more than $100/= or an imprisonment not exceeding one month or both the fine and imprisonment at the same time. As for those who prevent or induce others, from paying the Zakat, the terms of fine and imprisonment is identical with the offence committed by those unauthorised persons receiving the Zakat. That is a fine not

\[11\] Rules for the Distribution of Zakat and Fitrah, 1955, pp. 3 - 4.
exceeding $250/- or imprisonment of not more than three months or may be both.

In the 1965 Enactment, a ruling was made against those who fail to furnish statement of income especially with the intention of evading or giving any false statement or assessment, is liable to an imprisonment and a fine not exceeding six months and $500/- respectively. And in the case of refusal to pay Zakat the Court\textsuperscript{12} has the power to order the recovery of the taxable property in the form of cash.

In addition, there is a ruling against offences committed by the Amils. If an Amil is found guilty of not handing the Zakat collected to the Majlis, he will be imprisoned for a term not exceeding six months or with a fine of not more than $500/- or both. Furthermore, the Court may order that the collection and accounts be handed up to the President of the Majlis or his representative.

However, when enquiries are made it is found that the laws referring to these offences have never been enforced. More simply, thus far no person has ever been convicted in connection with refusal or non-payment of Zakat. Though this problems will be probed into in the subsequent section, it will suffice to give a brief outline as to why such a phenomenon prevails, especially in the State of Perak.

The main and fundamental reason is the negligible flow of information upward in the hierarchy, and this will seriously impede effective management. This negligible flow of information upward can be attributed to a number of factors. Firstly the Amil's work is not a paid job, secondly the Amil too, needs to work to earn a living, thirdly, the work of Amil is not given enough supervision, fourthly, they lack technical training and lastly, the Zakat payers are their own people whereby they are related somehow or other. As a result of these factors the Amil's work is done rather indifferently. Hence, cases of refusal and non-payment never reach the knowledge of the higher authority. As such no prosecution has ever been made. In fact this situation still prevails ever since the Majlis was first established in 1953.

\textsuperscript{12}The term 'Court' here refers to Courts of Kathi or Kathi Besar or Appeal Committee under sections of 44 and 46 of the 1965 Enactment.
ii. The Organisational Framework

Besides being an advisory body the Majlis is also a self-functioning body. It serves as an advisory body in matters related to the Islamic religion. But it is self-functioning in the sense that it has to manage its own affairs without any financial assistance (this is in reference to the Religious Affairs Department) from the State Government. That is, nearly all of her financial sources is derived from the Zakat and Fitrah collected throughout the State.

As far as the Majlis is concerned the organisational framework that caters for the maintenance of the Zakat affairs is diagrammatically shown below:

DIAGRAM 1

THE ORGANISATIONAL FRAMEWORK OF THE ZAKAT MACHINERY

Meanwhile, as the head of the legislative the President has to preside all meetings of the Majlis. At the same time he is duty-bound to keep the following books under his control:

1. A cash book to record collections of Zakat and Fitrah received and made
2. A register to record the sums of Zakat received from each local
3. A record to show the advances made out of the fund and payments
4. A record to show the amounts collected for or as a result of the sale of Zakat and Fitrah collections

However, within two weeks after the conclusion of Zakat and Fitrah is completed, the President has to prepare an account showing the details and the disbursed advances. This account will then be submitted to the Majlis for approval. Upon approval it will be forwarded to His Majesty the Ruler through the Secretary Besar in the matter, mainly for purposes of information.

All information is submitted by the President to the Majlis. As a fact, has the right to investigate any accounts of Zakat or Fitrah or check any book, accounts or papers held, issued or received by any Amin or Kathi in connection with the collection of Zakat or Fitrah. He also has the right to receive, collect or dispose of any money received as Zakat or Fitrah due to the Majlis. With the approval of the Majlis he may appoint a Committee or Committees - not necessarily comprising Amins - for the collection of Zakat or Fitrah. He may also appoint a Committee or Committees for advice him on the collection of Zakat or Fitrah.
It is evident that the organisation of offices follows the principle of hierarchy, that is, each lower office is under the control and supervision of a higher one. Hence, every official in this administrative hierarchy would therefore be accountable to his superior for his subordinates' decisions and actions as well as his own. This is, of course, a replica of the bureaucratic system.

On the highest echelon is the Sultan, who is the Head of the Islamic Religion in the State. Under him is the Majlis Ugama which acts as an advisory body to the Sultan. The Majlis is in turn headed by a President. The President of the Majlis is appointed by the Sultan on the advice of the Ruler in Council. On appointment he also becomes the Head of the Religious Affairs Department. This means that the President is the Head of the Legislative (the Majlis) and the Executive (the Religious Affairs Department) at the same time. This shows that there is no separation of powers in so far as the Majlis is concerned. This tendency would tend to limit the procedure of check and balance between the legislative and the executive. From the administration point of view such a practice is not at all conducive, as such it has to be stopped so that the principle of the separation of powers can be strictly observed again.

Meanwhile, as the Head of the legislative the President has to preside all meetings of the Majlis. At the same time he is duty-bound to keep the following books of account under his control:

1. A Cash Book showing collections of Zakat and Fitrah received and disbursement made;
2. A record of the estimates of Zakat and Fitrah received from each Amil;
3. A record of any loans or advances made out of the fund and payments thereof;
4. A record of any monies held in the fund of the Majlis being the balance of sums collected for or as a result of the sale of Zakat and Fitrah collection.

However, within two months after the collection of Zakat and Fitrah is completed, the President has to prepare an account showing the amounts received district by district and the disbursement made. This account will then be submitted to the Majlis for approval. Upon approval it will be forwarded to His Highness the Ruler through the Menteri Besar of the State, mainly for purpose of information.

With respect to the power of the President, he, in fact, has the right to investigate any payment of Zakat or Fitrah or check any book, accounts or papers held, issued or received by any Amil or Kathi in connection with any collection of Zakat or Fitrah. He also has the right to receive, collect or demand from any person any money received as Zakat or Fitrah due to the Majlis. Finally, with the approval of the Majlis he may appoint a Committee or Committees - not necessarily comprising members of the Majlis - to assist and advise him on the collection of Zakat and Fitrah.
The Secretary of the Majlis is not directly in touch with the Zakat affairs. Instead he is responsible for the administration and management of the Majlis as a whole. While the Zakat affairs only constitute a part of the whole administrative machinery. Hence, it would suffice to mention that the Secretary is the Head of the Administrative Branch. But, however, like the President, the Secretary of the Majlis is also appointed by the Sultan.

In the next hierarchical line-up is the Supervisor or the Penyelia of the Baitul-Mal. As the Supervisor of the Baitul-Mal, he, therefore, has a direct responsibility towards the Zakat affairs. For instance, when the Majlis formulates and issues policies on matters related to Zakat, the Supervisor is responsible for its enforcement. This enforcement takes the normal procedure of delegating powers to theordinates till it reaches the Amils.

But, however, because of the lack of literature indicating the duty and the power of the Supervisor it is quite difficult to outline his responsibility in greater details. However, from the information gathered, unlike the President, the Secretary and the Kathis, the Supervisor’s salary is not paid by the State Government. Instead his salary is derived from revenue collected out of the Zakat and Fitrah tax. As a non-government servant he may not be able to enjoy those benefits that the three may have enjoyed. And what impact this has on his incentive to work is less clear, and hence not accounted for in this exercise.

At the district level the subordinates of the Supervisor, comprised of the fifteen Kathis stationed in each of the Kathi Districts.13 The duty of the Kathi with respect to matters related to Zakat, is to help implement policies at the district level. To have this done he has the right to order the Amils to collect Zakat. Moreover, the Kathi also possesses the right to demand from any such Amil the duplicate of any receipt issued by such Amil or the original of any receipt received by such Amil for payments made. For cases of double-checking, the Kathi keeps a cash book containing a record of payments received from each Amil with details of person or persons from whom the Amil has received Zakat (and Fitrah) together with the amount, the date on which the collections were received by the Kathi, and the date and method of disposal of such sum by the Kathi.

When any Amil submitted the Zakat money to the Kathi, the latter, within seven days of receipt, has to deposit it in a Bank nominated by the President. The deposit is credited in the name of the Majlis.

Finally, when the Kathi has received the complete duplicate of all receipts issued by the Amils, he will within a period of one month,

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13 The State of Perak is divided up into fifteen Kathi Districts, and in each District there is one Kathi in charge of the locality. See Penyata Kutipan Zakat, Fitrah, Baitul-Mal Dan Kawalan Waqf, Negeri Perak.
submit them, together with the Cash Book kept by him and all receipts of money, to the President for auditing purposes.

As pointed out earlier, the State of Perak is divided into fifteen Kathi Districts. Each of these Kathi Districts is in turn sub-divided into various Kariah Masjid. In each Kariah Masjid, an officer of the Mosque will be appointed, whereby he is responsible for holding elections. The purpose of which is to select the members of the local Zakat and Fitrah Committee from among the members of the mosque. Members of this committee are not to exceed nine persons.

The elected Committee of any area has the power to nominate persons for appointment as Amils, supervise and control the Amils in the performance of their duties within the Kariah Masjid. The Committee can also scrutinise the census reports by Amils in respect of those liable to pay Zakat and those persons entitled as Fakirs, Miskin or Mualafs. Moreover, the Committee has to certify payments to Fakirs, Miskins or Mualafs in accordance with Muslim law and general directions of the Majlis. Besides, it can receive complaints and also forwarding them together with its recommendations through the Kathi to the President.

In the last hierarchial line-up are the Amils, or the Zakat collectors. They are one of the most important in the sense that they have the closest contact with the Zakat payers. They are responsible for the collection and partly for the disbursement of Zakat.

The Amils are appointed annually by the President on the recommendation of the local Zakat and Fitrah Committee. The appointed Amil has to carry out census on all bendangs or ladangs so as to determine those persons liable to pay Zakat. This census is conducted during the padi season. The report from this census has to be submitted to the President, through the local Zakat and Fitrah Committee and the Kathi. Such submission has to be done one month before the harvesting season.

In addition to the census mentioned, the Amil has to carry out census of persons entitled to receive support from Zakat (and Fitrah) funds. That is to say, it is a census on Fakirs and Miskin. For purposes of both these censuses the Amils have the right to enter any land or premises especially in reference to such purpose of estimation. The forms used for purposes of the census are shown in Appendix (I) and (II).

Judging from this organisational framework it is evident that there is specialization in each particular position, and therefore, everyone of them is responsible for the effective performance of his duties. Following closely the bureaucratic set-up it is thus expected

14Kariah Masjid means 'area of any mosque as prescribed by the local inhabitants of the area,' - Administration of Muslim Law, Enactment, 1965, p. 2.
that the administrative machinery of Zakat must be working efficiently.
But whether this expectation is actually the case or not will be seen
in the subsequent section.

In the State of Perak padi falls specifically within the orbit
of Zakat. The 1951 Enactment provides legal collection of such Zakat by
the Najlis. However, the effective enforcement was only made in 1955.
Up to this day, it is a long time since. As such the Najlis should have
had established its firm base by now. And given such span of time, the
experience over the collection of Zakat must have been very enormous.

However, as far as the Perak State is concerned, the collection
of Zakat, does not fulfill the principles established in the theory of
Zakat. That is, the collection is restricted to padi only, and not on
other accumulated capital such as gold, cash, cattle, buffaloes, etc.
What is meant by 'restricted' in this context is that collection on
such accumulated capital is not made compulsory as it should be. But
this is not the case in so far as padi is concerned. This is because
there, are enactments concerning its collection, distribution and also
Enactment for cases of non-payment.

Confining the collection of Zakat to padi alone is improper
both from the religious and economic standpoints. This is because more
often than not it is the landless peasant who are compelled to pay the
Zakat, while the landlord, upper class and the middle class escape paying
Zakat merely because they do not plant padi to earn a living! Therefore,
despite their economic status - as landlord, upper class and middle
class - they are free from the Zakat levy by virtue of the fact that the
Zakat officials recognize that their earnings are 'invisible' and hence
difficult to account for, as against that of padi. Let us put aside
this naive reason for the moment. What is more relevant and important
is the above mentioned economic and religious justification.

From the economic standpoint it is unfair to tax the poor
while leaving the rich free. This is against even the most modern theories
of taxation, and more so from the standpoint of Islam. Mainly because
it works against the intention of Zakat, for as mentioned earlier, 'Zakat
is the wealth which is taken from the rich and returned to the poor'.
But, however, the question to be posed now is: Does the padi farmers
from whom Zakat is collected are really poor? The answer to this quest-
ion will be apparent when the section 'From whom Zakat is collected,'
is looked into.

11. From whom Zakat is collected

The 'ready-made' answer to this is the padi cultivators. It
is 'ready-made' in the sense that the Enactment stated so. Moreover,
the precedence for the collection of padi has already been set for the
past seventeen years. As such, there is no doubt that it will continue
to go on for all the years to come.
B. Collection of Zakat

i. Zakat of Padi

It is pointed out earlier that it is the padi cultivators who have to pay the Zakat. These padi cultivators need not necessarily be the owners of the land. This is exemplified by Article 2, section 2, sub-section 3, of the 1951 Enactment.

In the State of Perak, padi falls specifically within the orbit of Zakat. The 1951 Enactment provides legal collection of such Zakat by the Majlis. However, the effective enforcement was only made in 1951. Up to this day, it is a long time since. As such, the Majlis should have established its firm base by now. And given such span of time, the experience over the collection of Zakat must have been very enormous. Because it would not only impose a great burden upon those who are least able and possibly free from the tax burden.

However, as far as the Perak State is concerned, the collection of Zakat does not fulfill the principles established in the theory of Zakat. That is, the collection is restricted to padi only, and not on other accumulated capital such as gold, cash, cattle, buffaloes, etc. What is meant by 'restricted' in this context is that collection on such accumulated capital is not made compulsory as it should be. But this is not the case in so far as padi is concerned. This is because there are enactments concerning its collection, distribution and also enactment for cases of non-payment.

Confining the collection of Zakat to padi alone is improper both from the religious and economic standpoints. This is because more often than not it is the landless peasant who are compelled to pay the Zakat, while the landlord, upper class and the middle class escape paying Zakat merely because they do not plant padi to earn a living! Therefore, since the economic status - as landlord, upper class and middle class - they are free from the Zakat levy by virtue of the fact that the Zakat officials recognize that their earnings are 'invisible' and hence difficult to account for, as against that of padi. Let us put aside this naive reason for the moment. What is more relevant and important is the aforementioned economics and religious justification.

From the economic standpoint it is unfair to tax the poor while leaving the rich free. This is against even the most modern theories of taxation, and more so from the standpoint of Islam. Mainly because it works against the intention of Zakat, for as mentioned earlier, 'Zakat is the wealth which is taken from the rich and returned to the poor'.

But, however, the question to be posed now is: Does the padi farmers from whom Zakat is collected are really poor? The answer to this question will be apparent when the section 'From whom Zakat is collected,' is looked into.

ii. From Whom Zakat is collected

The 'ready-made' answer to this is the padi cultivators. It is 'ready-made' in the sense that the Enactment stated so. Moreover, the precedence for the collection of padi has already been set for the past seventeen years. As such, there is no doubt that it will continue to go on for all the years to come.

According to the Federal Land Development Authority (FLDA), the standard (economic) size is 10 acres per family.
It has been pointed out earlier that it is the padi cultivators who have to pay the Zakat. These padi cultivators need not necessarily be the landowners. But the Enactment specifies the cultivator rather than the owner of the land. This is exemplified by Article 8, section 2, sub-section (a) of the ‘Zakat and Fitrah Rules, 1952’, which states that, “Every Amil shall, during the padi season, inspect all bendangs and/or ladang and the cultivators of which would in his opinion be liable to pay Zakat...”

To specifically identify the cultivators alone is unfair. Because it would not only impose a great burden upon those who are least able and possibly not liable, but at the same time it provides an opportunity for those most able or most liable to escape paying the Zakat.

But let us now look into the land problem and the economic relationships between landlord and cultivator most prominent in West Malaysia to justify as to whether padi farmers are poor or not. These relationships had long been discussed by both local and external economists. In West Malaysia about 50% of the Malay population depends on padi. The land these farmers work on is often too small for their labour capacity. For example, Fisk mentioned that about 59% of all rural farms are less than 4 acres, and about 46% are less than 3 acres. To be more specific T.B. Wilson conducted a survey of the Krian Irrigation area in 1954. His survey revealed that the average plot operated as a holding in this major padi area was 3.07 acres. This production units are on the average very much smaller than the type of unit with which Western agriculture is familiar. Let alone this international comparison, in fact even in absolute term such plot of land is too small to be considered of economic size.

Lim Tay Boh, on the other hand, said that farming in Malaya is substantially subsistence in nature. At the same time such production is a family affair and peasant households are relatively large. Therefore, when land holdings are small, the ratio of people to the average under cultivation tends to be high. The result is that the peasant population is under-employed. Basically, therefore, the problem that faces the padi farmers is that there is a relatively high ratio of people per acre of cultivated land.

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15 The Baitul-Mal, Zakat and Fitrah Enactment, 1951, p. 4.
18 Wilson, T.B., The Economics of Padi Production in North Malaya Part I, Table 63, p. 92.
19 According to the Federal Land Development Authority (FLDA), the standard (economic) size is 10 acres per family.
20 Lim Tay Boh, Problems of the Malayan Economy, p. 2.
These farmers continue to stick on such a small plot of land not because they are contented with what they have or less hardworking. Actually it is because there is little or no alternative employment available for them. As such these poor farmers feel psychologically secure even on that small plot of land merely because the land offers an employment relief to them.

What actually the writer wants to drive at is to seek explanation whether these padi cultivators upon whom Zakat is levied, are really 'rich' or 'poor'. Because as stated earlier, the Hadith requires that the Zakat be a tax of the rich to be given to the poor. So by analysing the size of land of these padi cultivators - and other factors to be followed - one can arrive at a conclusion as to whether the impost of Zakat upon them is justifiable or not, from the viewpoint of both the economic and the Islamic principles.

Besides, the small acreage of land per person - hence under-employment and disguised employment - the economic relationship between landlord and cultivator can be used as an index to show the economic wellbeing of the cultivators.

It is important to note that about one-half of the farm land in Malaya is worked by farmer who do not own their own land. But, however, this is the overall picture for the whole West of Malaysia. Nevertheless, the trend does not differ so much with respect to Perak State. This is evident in the case of Perak in that T.B. Wilson's survey indicated that about one-half of padi land in North Malaya is owned by the farmers who cultivate it. To give a better perspective, the statistics regarding Land Tenure in Krian, worked out by T.B. Wilson is shown in the Table below:

**TABLE 4: LAND TENURE**

<table>
<thead>
<tr>
<th>District</th>
<th>Owner-Farmer</th>
<th>Fixed Rental Padi</th>
<th>Cash</th>
<th>Lease</th>
<th>Crop-Sharing</th>
<th>Loan</th>
<th>Mortgage</th>
<th>Total Padi Land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Krian</td>
<td>41,198</td>
<td>25,380</td>
<td>3,925</td>
<td>1,066</td>
<td>728</td>
<td>272</td>
<td>44</td>
<td>72,813</td>
</tr>
</tbody>
</table>

**PERCENTAGE**

<p>| | | | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>56.7</td>
<td>34.9</td>
<td>5.4</td>
<td>1.5</td>
<td>1.0</td>
<td>0.4</td>
<td>0.1</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

Source: T.B. Wilson, op. cit., Table 3, p. 11.
From the statistics shown, it is evident that in Krian District alone, tenant farmers constitute about 43.3% of the total padi cultivators in the district. A slightly more than half makes up those who owned their own land. But, however, it has been shown that those who owned their own lands are not necessarily well-off as their average farm size is far below the economic size.

In the case of the tenants they have to pay rents to the landlords for permission to cultivate the latter's land. Wilson, further found that these rents are levied at much higher levels in proportion to either gross padi crops or net profit than would be considered economically justifiable or politically tolerable in Europe. Percentage wise the rent runs as high as 30 to 50 per cent. In term of gantangs and dollars, the average rent per acre is 108 and 86 respectively. This is a fairly high rent considering the gross turnover of padi at each harvesting season. As the average yield for all Malayan wet padi, whether properly irrigated or not was 400 gantangs per acre for the main season crop in the 1955-60 season. Taking this 400 gantangs as the average yield per acre and its rent at 108 gantangs, the rental rate in term of per cent in the Krian District is 27%.

One thing is noticeable from the above analysis, that is, these cultivators are subject to exploitation by the landlords. The cultivators only get back about 70 per cent of what they have worked in term of labour effort. Therefore, their net yield would be around 283 gantangs (the gross yield less 108 gantangs of rent). With this net yield, one definitely cannot at all justify that they are rich, hence subjecting them to pay Zakat. One therefore tends to ask: Are these padi cultivators rich in the real sense (material sense) of the word? If they are not why is Zakat collected from them? Is this not contradictory to the genuine intention of Islam?

Definitely it is against the very intention of Islam. But, nevertheless, it is in accordance with the 'Islamic Law' as enacted in the State of Perak. But to enact such a law which seems to be against the true spirit of Zakat as enunciated in Islam and then to call it Islamic is nothing less than a mockery of Islam.

Besides the two factors mentioned - the size of land and economic relationship between tenants and landlords - there are other factors which could be used to exemplify the economic status of these padi cultivators. One such factors is the technique of production. Very often these farmers do not have modern efficient tools that would make their labour effective, i.e., tools that would get them better results from

---

21. This figure is for Malaya as a whole, Refer J.S. Aziz, op. cit., p. 9.

22. Wilson, T.B., op. cit., Table 24 and 40.


This answer was given by one of the Perak Zakat officials.
less effort. As a result of this the padi farmers of this country obtained only a relatively low yield per acre and per labour effort.

The low yield helps to augment the pathetic state of the padi farmers. This is because low yield will earn them low income. A research by U.A. Aziz indicated that the income of most padi farmers ranges from $50/- per month. But according to the Household Budget Survey of the Federation for the year 1957 - 58, the income of the rural Malay is given as $120.896 per month. This figure may be inflated by the presence of a few 'well-developed' rural area which therefore pulled up the average up. However, even if this figure represents a true picture of the rural Malay income, what is this amount after all compared to the per capita income of West Malaysia which is more than eight times greater than this?

In a community where liquid assets are chronically short, and where crises such as death, birth, marriage, sickness, accident and sudden loss are predominant, debt is a very common feature of the society. This is because a farmer may have no prospects of other substantial cash income until his next crop is due six or twelve months later. Again, a debt to these people is an extra burden, as normally a high interest rate is charged upon them.

All these analysis finally drives us to one basic conclusion. That is, one is faced with the problem of rural poverty which has become the inherent feature of the peasant economy. In fact, U.A. Aziz is of the opinion that, "one of the fundamental causes of rural poverty was the fact that many farmers depend on padi farming as their main source of livelihood." Thus all this while the attempt to prove that padi farmers in Malaysia in general and in Perak in particular are poor becomes self-evident when an analysis of their socio-economic conditions is made. This has become an established fact. And one stands to question as to why the State Religious Affairs Department is so naive enough as to ignore this fact, hence imposing Zakat upon those least able to pay. Once they are least able to pay, they are automatically not liable according to Islam itself.

Now that it is fully known that Zakat is collected from these padi cultivators, one seems to content with what the Religious Affairs Department means by the term 'rich'. The implication is that: the rich are those who have 400 gantang of padi harvested at each season. However, in relation to the collection of Zakat, one may ask a further question. Does the Religious Department gives allowances for consumption rate, rents, labour effort, cost of fertilisers and water charges, (allowed in Islam as the cost incurred) whenever Zakat is collected?

The answer given to the writer was a big 'NO'! And why no? The answer was that the minimum taxable capacity has been

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25This answer was given by one of the Perak Zakat officials.
reached! Giving this answer is a great mistake indeed. Because in so doing they outrightly ignore the Quranic verse which says, "And they shall ask you what they shall bestow in alms; say, the Superfluous." \[26\] In this context the term superfluous can be interpreted to mean what must be 'over' and 'above' what is necessary for the satisfaction of the primary necessities of life.

Therefore, to conform to this interpretation, one has to consider the rate of consumption, rents, labour effort, etc. Let us consider the Krian District figures. Here the average plot of land per family is 3.07 acres. For each, the average yield is 400 gantang. Therefore, the total gross yields are about 1228 gantang. Out of this 1228 gantang 27% or 455 gantang go as rents. As for the average consumption of a low income Malay rural family, plus a cash income of about M\[21\] per month, an average 500 gantang per year is needed.\[27\] Hence, to meet both rent and consumption each farmer has to have 1255 gantang of padi. This requirement is in fact 27 gantang more than the actual harvest. Since the farmer's yield is far from 'over' and 'above' - in fact deficient - what is necessary for the satisfaction of the primary necessities of life, how is that Zakat is collected from them? Is not this an irony, when the persons who are supposed to have a good knowledge on Islamic law are themselves unaware of what they are actually doing?

Now let us see what happens if Zakat is levied without giving prior consideration to the consumption rate. As above the gross yield is 1228 gantang. From this one-tenth is payable for Zakat. This amounts to 122.8 gantang. Meanwhile the 27% of the landlord's rent is not calculated on the basis of gross yield less Zakat, for in such a case the total burden of Zakat will be borne by the landlord. But this is not the case, so the landlord's share is calculated from the gross yield figure. This rent will amount to about 455 gantang. So the total amount deducted from the gross yield is 577.8 gantang. This leaves the farmer with 650.2 gantang for consumption. Meanwhile the minimum requirement per year is 800 gantang. Hence the farmer has a shortage of 149.8 gantang before he could achieve the MINIMUM requirement for his ( & his family) annual consumption.

Thus, how is that Zakat is levied on these farmers whose primary necessities of life are far from being met? In fact these people are living below the subsistence level. Are not the religious officials aware of these things?


\[27\] The average rice consumption of a low-income Malay rural family is about 75 katis per month. Per year it amounts to about 340 gantang of padi. In addition, each rural family needs a minimum cash income M\[21\]. A year requirement is equivalent to 460 gantang of padi. The total requirement needed per family is therefore, 800 gantang per year. See Table 13, Household Budget Survey of the Federation of Malaya, Report for the year 1957-58, and E.K. Fisk, op. cit., p. 70.
If further analysis on labour cost, fertiliser's expenses and water charges are made, more baffling questions relating to the imposition of Zakat are definitely to arise.

The Amounts, the Payers & the Zakat Collectors

Such expenses as labour cost and water charges have to be taken into account so as to take precedence to what is accorded in the Quran. For instance the Zakat rate ranges from 10% to 20% of and finally 5% depending on the extent of labour input and cost. In case of Perak in particular and West Malaysia as a whole, to cultivate and plant an acre of padi a Malay farmer uses 30 times more effort than American farmer.28 This is by virtue of the fact that the farmer uses old and traditional methods of production. Therefore, he has to work very much harder even to get a meagre yield.

As for the water charges, T.B. Wilson's survey on the padi farm in Sungai Manik undertaken in 1958, indicated that water charges were made on the basis of the fertility of the soil. He found out that the water charges for the class I soil was 3/=, class II was 2/= and class III was 1=/.29 However, on enquiry this provision was not accounted for by the Perak Zakat officials. The explanation given to the writer was that, these charges were too minimal as to merit due consideration. Obviously this is not a very satisfactory answer, but nevertheless, it was the easiest and quickest way for them to get away from the question asked.

All these factors may appear insignificant to these officials. But they are of crucial importance to the Zakat payers in that they may have a decisive influence on the level of subsistence of these people. As such when Zakat is levied evaluation should not be based on the convenience of the officials themselves, but rather on the ability of these people to pay. Otherwise, the practice of collecting Zakat will be contradictory to what is preached by Islam.

iii. The Amount Collected

The controversy with respect to the imposition of Zakat upon the padi cultivators has been raised in the preceding section. However, whatever it may be we still have to accept the fact that Zakat is collected from padi. As such we have to recognise this reality and hence review some figures related to the amount of padi collected, the number of payers, and the number of Amils involved. From here we can then deduce the trend of Zakat collection, efficiency of collection, defects and so on.

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29 These rates have been raised since the war. Refer T.B. Wilson, Sungai Manik Padi Farm Survey, Malayan Agricultural Journal, Vol. 40, 1957.
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<table>
<thead>
<tr>
<th>Year</th>
<th>The Number of Payers</th>
<th>Zakat of Padi in Gantangs</th>
<th>Zakat in terms of Dollars</th>
<th>The number of Amils</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>6701</td>
<td>296,383*</td>
<td>$212,210.15</td>
<td>434</td>
</tr>
<tr>
<td>1954</td>
<td>6430</td>
<td>252,596*</td>
<td>141,892.52</td>
<td>554</td>
</tr>
<tr>
<td>1955</td>
<td>3989</td>
<td>170,690*</td>
<td>90,248.81</td>
<td>413</td>
</tr>
<tr>
<td>1956</td>
<td>3359</td>
<td>152,415</td>
<td>74,115.17</td>
<td>430</td>
</tr>
<tr>
<td>1957</td>
<td>4363</td>
<td>182,906*</td>
<td>87,206.88</td>
<td>390</td>
</tr>
<tr>
<td>1958</td>
<td>3128</td>
<td>138,353*</td>
<td>72,843.41</td>
<td>364</td>
</tr>
<tr>
<td>1959</td>
<td>3956</td>
<td>176,384</td>
<td>91,865.65</td>
<td>537</td>
</tr>
<tr>
<td>1960</td>
<td>5212</td>
<td>194,038*</td>
<td>100,519.03</td>
<td>331</td>
</tr>
</tbody>
</table>

* These figures are rounded up for convenience.

Source: PENYATA KUTIPAN ZAKAT, FITRAH, BAITUL-MAL DAN KAWALAN WAQF2 BAGI MASA SETAHUN (NEGERI PERAK).

In the first place, let us review the annual collection of Zakat. But, however, the trend of Zakat receipt can best be shown in the form of graph. In the following graph the monetary value of padi is taken as the Zakat revenue rather the padi itself. This is because whatever padi that is collected will be converted into cash so as to facilitate distribution.
THE GRAPH OF ZAKAT COLLECTED IN PERAK FROM 1953 - 1960
The graph indicates that there was a sharp decline in the Zakat receipt from 1953 to 1956, then it slightly increased in 1957 and fell to the level in 1956 again in 1958. From 1958 it continued to increase, though it did not reach the 1955 level even by 1960. The reasons for this fluctuation, as admitted by the Zakat officials themselves, are:

1. Inefficiency of collection;
2. Refusal to pay;
3. Fluctuation in padi harvest;
4. Price of padi.

With respect to the inefficiency of collection, it indirectly implies that the Zakat administrative machinery is not functioning very well. Some of the officials blamed the Amils for this inefficiency. But if they really know that the Amils are inefficient why do they not take any effective action against them? Why not prosecute or sack the Amils? Since this is not done it directly implies that the officials higher up are not dedicated and sincere in carrying their jobs either. So why blame the Amils after all?

No doubt the Amils do contribute to this inefficiency, still one cannot blame the Amils outright without first considering the conditions under which the Amils have to work.

The Amils, for instance, have to work without pay. Since these Amils are themselves ordinary village men who need to work, to earn a steady income for themselves and their families, the work of collecting Zakat without any pay does not give them the incentive at all. Of course, one may argue: after all the Amils are entitled to one-eighth of the Zakat share. This is true, but one has to consider the time-lag between earning and receiving this share. An Amil may earn his share whenever he goes to collect the Zakat, but the receipt on such share will only be due to him, say, in about one or two months time. So what has the Amil and his family to consume while the interval between earning and receiving lasts? On this account, therefore, the Amil will normally perform his duty of collecting the Zakat whenever he has the time to do it. Hence, such uncertainty of work will definitely give rise to an uncertainty in the collection of Zakat. Therefore, accounting for the fluctuation of Zakat receipt as depicted in Graph I.

Moreover these Amils are not given proper training, especially with respect to handling their jobs. For instance, they have to conduct surveys to find out those liable to pay Zakat. Since they may be ignorant of the statistical or mathematical formulas they are then not able to arrive at a correct assessment. This is especially the case when this assessment is based on the Amils opinion alone. It is because of this lack of training that led to the discrepancy in the imposition and collection of the Zakat.

Furthermore, supervision over the collection (and distribution) of Zakat is negligible if at all it exists. No doubt the local Zakat and Fitrah committee is there as the watchdog, but in most cases, the
Amils are chosen from those people who are considered relatively better-off in their religious knowledge. But this is not necessarily the case with respect to the members of the local Zakat and Fitrah Committee. As such the latter may not want to interfere with the works of the Amils who are thought of as having greater knowledge and authority in Islam than they are. This lack of supervision resulted in the poor show of Amils' work. Therefore giving rise to this fluctuations.

As the Amil, in the course of his inspection of ladangs or bendungan, it is the veracity, the refusal to pay in the part of Zakat payers also contributed to this fluctuation. But the contention is that if they know that so and so are liable to pay Zakat under the Islamic as well as the State Religious Law, are they not backed by the law to persecute those non-payers? After all is not the census meant to register those who are liable to pay the Zakat? So having the names of the various Zakat payers in their files, is it, as easy to detect the non-payers and hence drag them to the Shariah Court? Since this has never been done who is to blame when the would be Zakat payer refuses to pay? In other words, the reason that they gave i.e., refusal to pay, indirectly helped to further reveal the weaknesses of the Zakat machinery itself.

Regarding the reason on the fall of the productivity of padi harvest over the years, is difficult to account it here. Because, in order to know the legitimacy of this reason one has to know the output of padi during each harvest. But this is not done by the writer, as such a review on this can hardly be done in this exercise.

The claim that the fluctuation in the Zakat receipt is caused by a sharp fall in padi price is not very true. For instance it is specifically printed out that the fall of the 1955 Zakat receipt compared to that of 1954 was due to a sharp fall in price. However, when some calculations are done, the result shows that it is not so much a fall in the price of padi but rather a fall in the collection of padi in term of gantang itself. That is the fall in padi price from 1954 to 1955 was just 5% as against 53% fall in the collection of padi in term of gantang for that same years. As such one does not see the relevance of the reason given in this report. So what does a fall in collection means? Again one is forced to say inefficiency of collection of course. Therefore, one can safely conclude that the fluctuation of Zakat revenue is basically caused by the inefficient Zakat administrative machinery itself. While the others are only attributed by this basic factor. So now why not overhaul the whole machinery, so that it will once again work as efficiently as it is expected.

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30. See Penyata Keterangan Zakat Fitrah, Baitul-Mal dan Kawalan Waqf bagi masa setahun berakhir pada 31 Desember 1955, p. 3.
iv. The Number of Zakat Payers and the Amils

It is also evident that the number of Zakat payers varies from year to year. It ranges from the maximum of 6,701 people in 1953 to the minimum of 3,128 in 1956. This is a sad case indeed, because despite the census taken by the Amils on people liable to pay the Zakat, still this variation occurred. So what purpose does this census serve?

As the Amil, in the course of his inspection of ladangs or bendangs, recorded down the names of those would-be-payers, so is not it possible to have a constant (if not increasing) number of people to pay the Zakat throughout the years? In case the number of payers fall short to those number recorded, an enquiry must be carried out to ascertain whether so and so refuses to pay, or is it because the yield of the present harvest has not reached the minimum taxable capacity and so on.

Thus, if the names of the existing Zakat payers are already kept in the files, why does the Majlis allow this variation to persist? Moreover, what are the underlying factors that are causing this variation? And why is it that when the number of payers fell to 3128 in 1956 from 6,901 in 1953 practically nothing has been done to get these non-payers to the Sharia Courts? Finally, are they not going to put this to a stop after all?

From Table 5, it is also evident that the number of Amils also varies accordingly with the variation in the number of payers and the Zakat receipt. This is strange in the sense that normally the Amils are appointed one or two months before the harvesting season. As such it is difficult to imagine the correlation between the number of Amils and the Zakat payers or with the amount of Zakat collected.

The Amils can best be to as having specific functions to perform. Therefore, they are functionally specialised. However, the work of the Amils can also be referred as to embrace what is termed 'place specialization'. That is an Amil of a particular Karjah Masjid can only collect Zakat within a defined locality of that Karjah Masjid. This means place specialization does apply in this case.

But however, the place that each Amil covers is very restricted. This is self evident when the ratio of the Amils to the Zakat payers is calculated. That is the ratio is one Amil for every eleven Zakat payers. This is a very small ratio hence implying the place coverage of each Amil is not very wide. This ratio should be increased so that the number of Amil could be reduced, and at the same time the cost of collection can be brought to a minimum.

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32 As told to the writer by one of officials of the Perlis State Religious Affairs Department.

33 PERATAN MAJLIS No. (1952), p. 4.
v. **Methods of Collection**

The possible collection of Zakat is based on three fundamental methods:

1. voluntary confession;
2. rough estimate;
3. census.

The method of voluntary confession is based on the assumption that Muslims are truthful. So, it is up to every individual to perform his religious duty when it is due upon him. Possibly it is because of this that fluctuation in the Zakat collection is prominent.

However, the practice of this method is already a diversion from what is actually preached in the State Enactment. This is because no such provision i.e., voluntary confession is accorded in it.

Regarding the method of rough estimate, it is legitimate in the eyes of the Perak State Zakat Law. Evidence to this can be found in Article 6 Section 2, sub-section (a) which states that, "...he (the Amil) shall estimate the probable yield of the harvest." Once the Enactment has provided for such a provision, it is no wonder that this is the most usual method employed.

The outcome of this estimate can best be inferred from the following table.

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31 As told to the writer by one of officials of the Perak State Religious Affairs Department.

32 PERAK ENACTMENT No. 7 of 1951, p. 4.
### Table 6

**Estimate of Padi and the Actual Amount of Padi Collected**

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimate of padi to be collected (in gantangs)</th>
<th>Actual amount of padi collected (in gantangs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>157,251</td>
<td>296,383</td>
</tr>
<tr>
<td>1954</td>
<td>308,317</td>
<td>252,596</td>
</tr>
<tr>
<td>1955</td>
<td>637,860</td>
<td>170,690</td>
</tr>
<tr>
<td>1956</td>
<td>199,259(i)</td>
<td>152,415</td>
</tr>
<tr>
<td>1957</td>
<td>251,145(ii)</td>
<td>182,906</td>
</tr>
<tr>
<td>1958</td>
<td>223,618(iii)</td>
<td>136,353</td>
</tr>
<tr>
<td>1959</td>
<td>191,694(iv)</td>
<td>176,384</td>
</tr>
<tr>
<td>1960</td>
<td>262,593(v)</td>
<td>194,058</td>
</tr>
</tbody>
</table>

Source: Penyata Kutipan Zakat, Fitrah, Daithal-Mal dan Kawalan Waqf bagi masa setahun (Negeri Perak).

Except for 1953, all the estimated figures far exceeded the actual amount of padi collected. This exaggeration may be due to the arbitrary nature of the estimate. And what impact do these differences have upon the whole Zakat machinery is not clear.

The final method is the census, which is the official procedure recognised by the Religious Department. But this method is not as widely practised as it should be. As admitted by some of the officials themselves the census which involved the registration of names of the would be Zakat payers was not properly carried out. In most cases little or no census was undertaken. In its place the procedure involving estimation has become widespread.

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1. This is an estimate of 7 Kathi Districts only. In the other 3 no estimate is made.

2. Estimate of 9 Kathi Districts only

3. "  8 "

4. "  11 "

5. "  9 "

(In all there are 15 Kathi Districts).
vi. Problems Encountered

When the section on 'The Amount Collected' is discussed, it is evident that most of the problems encountered in the course of collecting Zakat have been touched though only implicitly.

Among the most prominent problems are:

1. refusal to pay or evasion;
2. giving incorrect information on the yield of padi;
3. inefficiency of collection.

Evasion is a common phenomenon in any collection of taxes, and Zakat is no exception. But, however, the extent of evasion is very difficult to determine. This is due to the fact that no official record on the extent of evasion is made by the Perak Religious Affairs Department.

Therefore, the extent of evasion could not be specifically shown. Nevertheless a rough guide using the Majlis estimate of the amount of padi to be collected each year as against the actual amount collected, one can foresee the extent of evasion. However, it is admitted that such a calculation is not at all good. But since there is no other known way of calculating the extent of evasion, perhaps this is the best way by which one can calculate the rate of evasion.

The percentage of evasion is as shown below:

<table>
<thead>
<tr>
<th>Year</th>
<th>The Rate of Zakat Evasion (in per cent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>11</td>
</tr>
<tr>
<td>1954</td>
<td>18</td>
</tr>
<tr>
<td>1955</td>
<td>73</td>
</tr>
<tr>
<td>1956</td>
<td>24</td>
</tr>
<tr>
<td>1957</td>
<td>27</td>
</tr>
<tr>
<td>1958</td>
<td>38</td>
</tr>
<tr>
<td>1960</td>
<td>26</td>
</tr>
</tbody>
</table>

The average is about 31%.

On the whole, the rate of evasion is very high averaging to about 31% every year. So what does this signify?

It is possible to infer that this Zakat is leviable on those
people who are least able to pay. So when voluntary method has become the accepted practice in cases of Zakat payment, few people would voluntarily confess. This may be due to the fact that they have nothing left to enable them to pay the Zakat. For instance, after giving away nearly half of his gross harvest to the landlords a farmer may find that he has not enough padi for his own consumption till his next harvest is due. This seems logical, as there is no point paying Zakat when one's own primary necessities of life are not met.

Evasion, on the other hand, may also signify the ineffectiveness of the Zakat machinery itself. That is to say, the Zakat officials are not carrying out their duties efficiently and effectively.

The inefficiency in Zakat collection is the second problem encountered. But, however, inefficiency and evasion are not separate. As such, discussion of one will automatically involve the consideration of the other.

As regard the inefficiency of collection, much has been said in the previous section. Thus, it would suffice to be brief here. But, however, the problem to be discussed here will involve the Amils more than the Zakat payers.

In the first place, the Amils are only given briefings on matters of census, collection and the distribution of the Zakat funds. They are not given sufficient training especially in the technicalities of their jobs. Moreover, the index by which the Amils could identify the Zakat payers is not explicitly defined by the Majlis. Therefore, the Amils, in most cases, have to use their value judgements rather than an objective index. Hence, the lack of an objective index, gives rise to the prevailing inefficiency in so far as the collection of Zakat is concerned.

The problem that the Majlis faces is, therefore, to supervise and inspect the work of the Amils. In 1953, suggestion was made regarding the creation of two more posts for Zakat inspectors. But so far no trace of its implementation is seen. The purpose of having the Zakat inspectors was to see that the Amils did their works properly and efficiently.

However, unless the Amils are given monetary rewards, any measures undertaken by the Majlis will not create favourable response from the Amils themselves. Thus to minimise this indifference on the part of the Amils the Majlis has to ponder over this suggestion.

Nevertheless, all the problems hereby mentioned are not difficult to overcome. Given the right type of legislation — i.e. in accordance with the spirit of Islam - proper administration, management, control and implementation can be set right and administration can be geared. Provided, of course, the officials have the dedication, devotion and sincerity to do their jobs.
C. Distribution of Zakat

i. Methods of Distribution

The distribution of Zakat is undertaken by both the Majlis as well as the Amils.

In the first place when the entire Zakat has been collected by the Amils, the Amils are given the power to distribute three-eighth of the shares direct without submitting these Zakat to the Majlis. This three-eighth makes up the shares of the Fakir, Miskin and the Amils themselves. When three-eighth of the total Zakat has been deducted, then the remainder - five-eighth - will be submitted to the district Kathi. The district Kathi will in turn submit it to the Majlis in the form of cash. And from here the five-eighth will then be distributed to the various beneficiaries by the Majlis itself.

Regarding the three-eighth, controversies had arisen with respect to the wisdom of such ruling. Of course, the Amils could identify the Fakirs and the Miskins because to some extent sense on this category of people had been undertaken before hand. As such distribution to them is not a problem. But the problem which arises is: will the Amil genuinely and really distribute the two-eighth of the share to these people? In fact, it is admitted by the Majlis that in distribution fraud is not an exception. This is because nobody knows whether the Amil will distribute in full amount or not. This sort of practices occur because the Amils are backed by the State Law – giving them the right to distribute the Zakat directly to the Fakir and Miskin and themselves.

When the Amils want to deduct three-eighth from the total Zakat, they could not but to deduct properly as all payment of Zakat is recorded in a receipt books. And the duplicate of this receipt is sent to the Majlis. But when coming to the distribution of the three-eighth, they can misappropriate the funds by not handing them to the Fakirs or Miskins. Even if they handed them down to these beneficiaries, they may not be in the full amount. Complaints of misappropriation in distribution have been received by the Majlis.

After the first year of collection and disbursement of Zakat suggestions were voiced to check this evil practices. One of the suggestions is to set up posts of Zakat inspectors whose duty is to inspect both collection as well as the disposal of Zakat. But however, despite this suggestion the post has never come into being, hence permitting the Amils to enjoy the Zakat share more than what is actually specified in the Quran as well as the State Law. In the end, it is the Fakir and the


34. Recommendation to the Zakat disposal will be taken up in the next Chapter.
Miskin who suffers.

Once, three-eighths of the total Zakat has been deducted the balance is submitted to the local Kahi who is in charge of the area. This submission may already be done in the form of cash. The Kahi will then have to deposit this cash in a bank specified by the Majlis. The deposit is credited in the account of the Majlis, meaning that the cash has been indirectly submitted to the Majlis.

After the receipt, the Central Zakat Committee will meet to discuss the disbursement of the Zakat funds. Besides, the allocation for the four standing beneficiaries, various other costs, such as administrative costs, management costs, other costs and office expenditure are all met by this Zakat funds. In view of this, most of the Zakat money is spent on various costs rather than on those who really need the benefit out of such Zakat.

The four beneficiaries that are dealt directly by the Majlis are:

1. New converts;
2. The debtors;
3. Wayfarers;
4. The way of God.

Except for the last one, the rest are not considered as significant by the Majlis. This is based on the amount allocated for the first three is not so much compared to the amount allotted for the last one. The latter is given due emphasis by the Majlis in view of its religious significance.

ii. Utilization of Funds

Where utilization of Zakat funds is concerned, strict observance of the Islamic Law is maintained. That is to say, the Zakat funds are utilized for the benefits of the beneficiaries laid-down in the Quran. However, Fir-riqab or slaves are excluded because according to the interpretation of the Zakat officials such category of people do not exist in the State of Perak. This leaves the Religious Affairs Department with seven beneficiaries to look after.

In the State of Perak, the number of Fakir and Miskin receiving benefits from the Zakat funds is shown below:

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35 1957 Population Census
TABLE 8
THE NUMBER OF FAHKIR AND MISKIN AND THE AMOUNT OF ZAKAT RECEIVED

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Fakir and Miskin</th>
<th>Total Amount of Zakat Money Given to them (in $)</th>
<th>Amount per person (in $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>23,407</td>
<td>127,334.08</td>
<td>5.44</td>
</tr>
<tr>
<td>1954</td>
<td>17,980</td>
<td>100,455.55</td>
<td>5.59</td>
</tr>
<tr>
<td>1955</td>
<td>19,609</td>
<td>84,808.09</td>
<td>4.33</td>
</tr>
<tr>
<td>1956</td>
<td>18,810</td>
<td>82,423.50</td>
<td>4.43</td>
</tr>
<tr>
<td>1957</td>
<td>19,862</td>
<td>92,437.72</td>
<td>4.66</td>
</tr>
<tr>
<td>1958</td>
<td>19,862</td>
<td>87,907.15</td>
<td>4.43</td>
</tr>
<tr>
<td>1959</td>
<td>15,069</td>
<td>95,832.87</td>
<td>6.36</td>
</tr>
<tr>
<td>1960</td>
<td>17,901</td>
<td>97,361.84</td>
<td>5.44</td>
</tr>
</tbody>
</table>

Average per year per person is about $5.09

From the average, it is found that there are about 19,063 people (i.e., in terms of individuals) classified as Fakir and Miskin, in each year in the whole of Perak. Considering the total Muslim population in the State is about 484,560, therefore, these Fakir and Miskin will only constitute about 3.9% of the total Muslim population. This figure is small, as such it should be within the easy reach of the State as well as the Religious Affairs Department to uplift their living standard.

However, the distributive policy of the Zakat has no long-term aim. As a result, the major concentration is in terms of cash benefits alone. Out of this cash benefits, each Fakir and Miskin receives a nominal sum averaging $5.09 per year. This is a small sum indeed. This amount, even in the short-run has no far reaching economic effects upon the receiver.

In fact, this method of distribution has been going on all along ever since the inception of the Zakat machinery. No further change was introduced for fear that they (the Zakat officials) may transgress the Islamic law, if ever they want to change it. Consequently, this procedure drags up to the present day.

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351957 Population Census.
Nevertheless, some attempts have been made by the Religious Affairs Department to aid people in difficulty. For instance, by advancing them loan in term of sewing machines. But still, the number is negligible.

Attempts were also made to give padi farmers financial loan, so as to enable them to buy better seeds, fertilisers and other requirements needed. But, however, the loan offered was too small compared to the number of people that were given the loan. For example, in 1954 an amount of $82,650/= interest-free loan was extended to 1,485 padi farmers,\(^\text{36}\) giving each farmer a small sum of about $55.75=. Definitely, this sum is barely enough to cover the cost of renting a buffalo alone.\(^\text{37}\)

However, by 1955 the loan to the padi farmers was terminated because of the difficulty of collecting the loan back. At the end of 1955, out of the total loan given, only about 3.3% were paid back. This low repayment led to the termination of such loan.

Among the aids that still appear on the list are: to help fire victims, the sick and the poor family of the deceased. In the case of fire victims aids are given to enable them erect new houses. As for the sick, medical fees and fare charges are provided for those who are really in need of help.

Sometimes, financial aid is extended to a family whose breadwinner has just deceased. But, however, such aid is not perpetuated or at least maintained for a long time. Instead it is given at the time of the incidence and then no more. This sort of assistance naturally fails to reduce the financial problem of the family because the help cannot be continued for lack of sufficient funds.

Assistance is also given to trishaw-pullers. The aid given is in the form of renewing their time and age-beaten trishaws. At least this type of help, though small, enables the receiver to continue on earning his own living. There is, therefore a 'chain-effect' to this kind of aid.

The next beneficiary are the Amils – the Zakat collectors. These Zakat collectors are entitled to one-eighth of the Zakat shares. Normally these shares are given in term of cash except for Amils in Grik, Lenggong and Sungei Manik, who receive their shares in the form of padi.

Besides working as collectors, the Amils also become the distributive agents. Being the collector and the distributor of Zakat an Amil is paid for the services done by them. As such, whatever share

\(^{36}\) Penyata Kuitipan Zakat, Negeri Perak, p. 12. Amil has to rent from someone, to be used in ploughing up the padi land. And usually the rent is also high.

\(^{37}\) Normally a farmer who has no buffalo of his own has to rent from someone, to be used in ploughing up the padi land. And usually the rent is also high.
they obtained from the Zakat, it can be considered as constituting the
cost of collecting and distributing the Zakat.

But this is not the only cost, for there are others called
the administration, management and 'other' costs involved. And these
total costs in term of percentage is shown in the following table.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total cost (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>32</td>
</tr>
<tr>
<td>1954</td>
<td>33</td>
</tr>
<tr>
<td>1955</td>
<td>44</td>
</tr>
<tr>
<td>1956</td>
<td>46</td>
</tr>
<tr>
<td>1957</td>
<td>43</td>
</tr>
<tr>
<td>1958</td>
<td>41</td>
</tr>
<tr>
<td>1959</td>
<td>45</td>
</tr>
<tr>
<td>1960</td>
<td>47</td>
</tr>
</tbody>
</table>

The average cost per year runs to about 41%. As a consequence
there would not be any economy of collection in so far as Zakat in the
State of Perek is concerned.

When the substantial parts of the Zakat funds are used to
meet cost, then the distributive effects intended lose their impact.
And the benefits derived from it will not be felt. This is one of the
reason why after seventeen years nothing really substantial has been
done out of this Zakat funds.

The next beneficiary who receives the bulk of the share is
Fi-sabilillah. The share in term of percentage can be shown below:

All mosques in the State of Perak also received maintenance
aid from the Zakat funds. That is, In places where there is no elec-
tricity, the aid is used to buy kerosene oil to light the mosques,
especially during the fasting month.

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This cost is calculated in term of all the revenue received
by the Majlis. To calculate this in term of the Zakat revenue alone is
impossible because there is no break-up of the figures.
This type of payment is not good because the Zakat money can be used to finance more meaningful projects. When matters connected with mosques are left in the hands of the residents themselves, who should bear the burden? After all, expenses have to be incurred for maintaining the infrastructure. It is important to implant a feeling of public spirit among people. For it is by so doing that the feeling of 'Fi-sabillah' among the members of the mosque will be developed. (in per cent)

<table>
<thead>
<tr>
<th>Year</th>
<th>The share of the mosque in</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>1954</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>1956</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>1957</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>52</td>
<td></td>
</tr>
<tr>
<td>1959</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>1960</td>
<td>41</td>
<td></td>
</tr>
</tbody>
</table>

It is seen that the yearly average for the Fi-sabillah’s share is 33%, as against 14% when the sum is equally divided into seven heads. In other words, Fi-sabillah takes more than twice the normal share of the Zakat revenue. This amount is taxed from the share of the converts, debtors and the wayfarers whose number is not so large. Hence, a lesser share can be offered to them.

Among those falling under the category of Fi-sabillah, the Religious schools take up most of the share. For instance, in 1960 alone 61 religious schools were given aid. The aid is in the form of cash. The amount of the aid is dependent on the number of the students. For example, for a primary school, each head is given 50% per month. The amount is doubled on reaching the secondary level.

The purpose of this aid is to assist the operation of religious schools where the local residents are not able to maintain on their own. This has a good purpose in the sense that it helps to promote and propagate the teachings of Islam.

All mosques in the State of Perak also received maintenance aid from the Zakat funds. That is, in places where there is no electricity, the aid is used to buy kerosene oil to light the mosques, especially during the fasting months.

The percentage is calculated in term of the amount of money issued for the seven beneficiaries in existence in the State of Perak. The aid to the sick, that is by paying the medical fees and other insignificant amenities, does not manifest any substantial economic
This type of payment is not good because the Zakat money can be used to finance more meaningful projects. When matters connected with mosques are concerned, make sure that it is the residents themselves who should bear the burden. After all expenses to be incurred for maintaining a single mosque is not too taxing. It is important to implant a feeling of public spiritedness among these people. For, it is by so doing that the feeling of esprit de corps among the members of the mosque will be developed and eventually intensified.

The loan given for buying sewing machines and new triswades are little, but The imprisoned Muslims are taught Islamic religion. Religious teachers are specially engaged to teach these people. The aid is rendered in the form of religious books such as the Quran and other essentials. In addition, during the festivals these people are provided with clothing and food. These people can be educated, and the chance be given to others. If this voluntary assistance of the Fakirs and Miskins can be done in this way.

The other important contribution is made in the form of scholarships. Scholarships are given to students of all schools. Scholarships are also offered to students who are studying overseas, for instance, to countries like Arabia, Pakistan, India and Indonesia. In cases where students are studying within Malaysia, preference is given to those who joined the Muslim College in Petaling Jaya.

In some way this is a good form of investment. For when these students graduate from their respective studies, they can in turn render their services towards the fulfillment of the State's desire to install a modern conception of Islam among the orthodox Muslims prevalent in the State.

With respect to the amount allocated for Fakirs and Miskins, those given for scholarship has a greater socio-economic effects than the annual assistance, a student can become an educated individual and able to get a better employment other than becoming manual labor. Given the distributive policy mentioned above, an appraisal for its socio-economic effects can be arrived at.

Actually, however, the socio-economic effects are not very significant. For example, the cash benefits extended to the Fakirs and Miskins can hardly be said as very significant enough as to embody any socio-economic effect at all. At the most it serves only as a palliative. But, however, giving aid without envisaging long-term benefits cannot be expected to be good from economic point of view.

Funds should be utilized in more meaningful ways, so that the Fakir and Miskin are able to derive the benefits all the year round. This can be done when the money is used to buy rubber or coconuts estates where the Fakir and Miskin can be employed. Hence, earning their own living soon after that. In this way, the multiplier effects of the investment will be greater. Thus, giving rise to far-reaching socio-economic effects. Therefore, distributing Zakat in the form of cash should be stopped. In its place more meaningful ways need to be devised.

The aid to the sick, that is by paying the medical fees and other insignificant amenities, does not manifest any substantial economic
significance. For it only satisfies the immediate needs of the person concerned. But it does not help to uplift the living standard of these people. A good alternative is the Unemployment Allowances, and other allowances purposely aimed for the direct benefits of those who are unemployed as a result of their sicknesses. Does not this ensure and guarantee the earning power of these people? Is not this a good measure to affect the socio-economic wellbeing of these people?

The loan given for buying sewing machines and new trishaws are little, but good examples. This is because once such aid is given to those who are really in need, then they are no more dependent upon the Zakat funds. Once sewing machines and trishaws are loaned to them, these people are then free to seek their own livelihood. So in the next year's share the names of these people can be deleted, and the chance be given to others. If this deletion of names of the Fakir and Misikin can be done in this manner year by year, it is sure that by the end of say, ten years all the people formerly called Fakir and Misikin will cease to depend upon the Zakat funds.

The attempt to give financial loan to padi farmers is also a good sign, provided the amount can be substantially increased. With this loan, the padi farmers can make use of the money to buy new and better equipments, better seeds and fertilisers, whereby in the end the farmer's padi turnover will be enhanced. As it is now, the undertaking is not done on a large scale. As such, the socio-economic effects of the loans have not been felt yet.

With respect to the amount allocated for Fi-sabilillah, those given for scholarship has a greater socio-economic effects than the others. Since given the financial assistance, a student can become an educated individual and able to get a better employment other than becoming a farmer. As such, he will help evolve a new society that is far better than the society where his parents and fore-fathers were in.

By trimming the expenditure on unnecessary items, less money will be wasted. In its place a more beneficial methods of spending the Zakat funds should be formulated so that one day the Islamic society in the State of Perak will come to a stage of prosperity. If this is achieved, then the intention of Zakat as established in Islam will become a reality.
A. Suggestions for the Administration of Zakat

The Zakat administrative machinery of the Perak State has been given in Chapter IV. The discussion was focused on the extent of its efficiency. It is found that the machinery is not working efficiently.

It is therefore, the intention of this chapter to forward some constructive suggestions. The aim of which is to provide some remedial measures which may be enforced to counteract the present state of inefficiency.

First is the aspect on administration:

Being a Muslim state, the Federal Government should seriously consider establishing a Central Body especially to look after the Zakat affairs. So that it can be really used as a potent socio-economic power to uplift the living standard of the Muslim community in this country. If this objective is to be successfully implemented, a better alternative such as a Central Ministry should also be considered essential for a unified law for the whole of Malaysian Muslim community.

Following this suggestion, the organisational framework can thus be diagrammatically shown as follows:

- Information flowing upward.
- Information going downward.

At the highest echelon of the hierarchy is a Central Ministry. This ministry is essential especially in incorporating the Islamic system into the whole system - political, social, economic - of the nation. This is important in the sense that a system - be it political, social or economic - cannot stand on its own unless it is supplemented and complemented by the other constituents of the whole system.

Moreover, given this Central Ministerialship, the traditional division of Zakat legislation and interpretation into distinct individual state can now be dispensed with. Policies can thus emanate from the centre. This means that there is homogenity in interpretation, assessment, collection and distribution of Zakat. This will ensure a neat coordination in organisation and work. Nevertheless, with respect
A SUGGESTED ORGANISATIONAL FRAMEWORK OF THE ZAKAT MACHINERY

In the existing organisational framework, it is seen that the President of the Majlis is also the Head of the Religious Affairs Department. It is to say he is the Head of the legislative and executive branch. This is not sound from the administrative standpoint. It is, therefore, suggested that this office should be held by two different persons.

Moreover, the present system of the central council of the Zakat machinery does not allow the Zakat collectors to air their view with respect to matters related to the collection and distribution of Zakat. Their complaints should be heard with respect to collection and distribution of Zakat. This is to ensure a ‘two-way traffic’ from the centre maintained a closer relationship between the central council and the Zakat collectors.

To ensure efficiency the Zakat personnel should also be trained both in the theoretical understanding of the Zakat principles and for various sources of income that flow into the Baitul Mal. In view of this, this Central Ministerialship, the traditional division of Zakat legislation and interpretation into distinct individual state can now be dispensed with. Policies can thus emanate from the centre. This means that there is homogeneity in interpretation, assessment, collection and distribution of Zakat. This will ensure a neat coordination in organisation and work. Nevertheless, with respect...
a need for this arbitrariness to be stopped and henceforth make sure
to administration, decentralisation of powers should remain with indi-
vidual states. Hence, given the guidance from the centre, efficiency
can be worked out easily this way than as it is at present.

In the existing organisational framework, it is seen that the
President of the Majlis is also the Head of the Religious Affair Depart-
ment. That is to say he is the Head of the legislative and executive
at the same time. This is not good from the administration standpoint.
As such, it is, therefore, suggested that this offices should be held
by two different persons.

Below the administrative and executive branches, the powers
and functions of the subsequent officials should be maintained as they
are in the former organisational framework. Nevertheless, some of the
powers of the Amils have to be revised. For instance, the Amils are at
present given the full power to redistribute three-eighth of the total
amount of the Zakat collected direct to the beneficiaries without first
submitting them to the Majlis Ugama. It is feared that such procedure
of redistribution unaccompanied by close supervision may lead to serious
malpractices.

To check the possibility of such malpractices the Amils should
be stripped of such right. Instead, the total amount of the Zakat col-
lected, should all be submitted to the Majlis. When the amount allotted
to each beneficiary has been specified, then one-eighth of the share
can be handed down to the Amils themselves.

Furthermore, the present machinery does not allow the Zakat
payers to air their view with respect to matters related to the collect-
ion and the distribution of Zakat. The suggestion here is to allow
them to take part especially in giving informations and suggestions on
issues related to Zakat. Their complaints should be heard with respect
to collection and distribution of Zakat. This is to ensure a 'two-way
traffic' flow of information, hence maintaining a closer relationship
between the higher officials and the Zakat payers.

To ensure efficiency the Zakat personnel should also be
trained both in terms of the theoretical understanding of the Zakat
principles; assessment, methodology and in matters related to book-
keeping etc. This is to ensure that the accounts of the Department
are properly compiled. As it is, this is not done, as a result break-
down of figures are not precisely made. Hence, if one wishes to get
data related to the Zakat one has to go through almost the whole account
of the Baithul-Mal. This is because no separate accounts are maintained
for various sources of income that flow into the Baithul Mal. In view
of this, therefore, it would be difficult to analyse properly the avail-
able data.

With reference to the number of Amils it is seen that they are
arbitrary. That is ranging from 554 in 1954 to 331 in 1960.1 There is

1 Refer Chapter IV.
a need for this arbitrariness to be stopped and henceforth make sure that the number of Amils are fixed. Similarly, the number of Amils are at present determined area-wise. In no way does this have a qualitative effect in so far as the collection of Zakat is concerned. That it does, in fact, is to restrict the ratio between the Amils and the Zakat payers. That is, the ratio is about one Amil to every eleven Zakat payers.\(^2\) There is a need to increase this ratio in view of the high cost of collection involved. But, however, this increment should be discontinued if it affects the efficiency of the Amil's work. If the payers are 'rich' or not, thereby giving rise to the discrepancies in collection.

These malpractices should be stopped, and one of the best way to have it done is to define the term 'rich' or 'poor'. All along this exercise the definition whether one is 'rich' or 'poor', depends on whether one is living above or below the "poverty line". In other words, in the modern world, one has to determine Zakat from the income level only after allowances for a reasonable standard of living for himself and his family are provided for. Then if he has a balance, he has to pay Zakat.

Given the above definition, however, one still needs to give a numerical index that can be used as a yardstick to ascertain as to whether a person can be categorized as rich or not. For instance, would it be $120/-, $150/- or $180/-?\(^3\) If such an objective index is laid down it will facilitate the assessment and consequently the collection of Zakat. At the same time the levy of Zakat will not be restricted to a particular section of the padi cultivators alone.

Such an index will therefore, make the Zakat tax all embracing. That is, covering those who live above the poverty line, irrespective of whether their earnings are 'visible' or not. In fact, the collection of Zakat over both the 'visible' and 'invisible' is sanctioned by a section of the ulama scholars. Nevertheless, the constant complaints voiced over the collection of Zakat on 'invisible' wealth is that it is difficult to collect. This is by virtue of the fact that it is invisible. But if the Central Ministry puts up such an argument, one would be in excellent situation to reply - there is a remedy if one would insist on the continued forcible collection of Zakat.

To this Shirle Gordon remarks:

"In Kelantan those responsible for the collection of Zakat did take a tentative step in this direction by sending out income questionnaires to Muslims within the state. However, the majority of the questionnaires were never returned and the argument then was that you could not force living below the 'poverty line'."

\(^2\)Refer Chapter IV.

\(^3\)Even though the taxable minimum is $25.75/-, the above figures is a provision to ensure that the Amil Morale in any Zakat tax able living below the 'poverty line'.

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B. Suggestions for the Collection of Zakat

The discussion involving the collection of Zakat highlighted the various contradictions that are pertinent. These contradictions arise due to the fact that the term 'rich' and 'poor' are not specifically defined by the religious authority. The latter only considers "the taxable minimum" as the only relevant prerequisite for the levy of the Zakat, irrespective as to whether the would be payers are 'rich' or not. Thereby giving rise to the discrepancies in collection.

These malpractices should be stopped, and one of the best way to have it done is to define the term 'rich' or 'poor'. All along this exercise the definition whether one is 'rich' or 'poor' depends on whether one is living above or below the "poverty line". In other words, in the modern world one has to determine Zakat from the income level only after allowances for a reasonable standard of living for himself and his family are provided for. Then if he has a Nisab he has to pay Zakat.

Given the above definition, however, one still needs to give a numerical index that can be used as a yardstick to ascertain as to whether a person can be categorized as rich or not. For instance, would it be $120/=, $150/= or $180/=? If such an objective index is laid down it will facilitate the assessment and consequently the collection of Zakat. At the same time the levy of Zakat will not be restricted to a particular section of the padi cultivators alone.

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To this Shirle Gordon remarks:

"In Kelantan those responsible for the collection of Zakat did take a tentative step in this direction by sending out income questionnaires to Muslims within the state. However, the majority of the questionnaires were never returned and the argument then was that you could not force

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3 Even though the taxable minimum is $25.75, the above figures is a provision to ensure that the person liable to pay Zakat is not living below the "poverty line".

5 Intisari, op. cit., p. 36.
principles. The reply to this is simple - if you do not fill in the forms sent to you by the Income Tax Department you are fined for not doing so. If you do not fill in questionnaires sent by the Government's Department of Statistics there are penalties. So legislate, make compulsory the filling in of the questionnaire and assess the Zakat to be levied on that basis, and in the future bring landlords, civil servants and entrepreneurs before the Courts and sentence them to prison - if prison you must - and relieve the landless tenants, the small peasant from this additional and iniquitous burden."

The above argument implies that Zakat should be levied on all Muslims who are living above certain objective index specified. It cuts across padi planter, rubber or coconut workers, landlords and all persons considered to fall under the category of upper and middle class. This is only fair in the sense that it is not only padi cultivators that are liable to pay Zakat.

It is therefore hoped that with this clarification the enforcement of Zakat would not be ironical anymore. This is especially so when the Zakat payers are properly screened. Once, they are screened and their names are kept in the files, then they are in no way able to evade or escape paying Zakat. However, even if there are evasion of Zakat the rate can at least be regarded as minimal and hence normal, which will in turn enable to seek better employment opportunity and hence better material gains.

C. Suggestions for the Distribution of Zakat

Generally it is evident that Zakat could be developed into a powerful system. However, its utilisation that overlooks the economic principles reduces its power to the extent that it may result in an unnecessary wastage. If through the organised system of collection this wealth could be harnessed, it also applies that wise and objective expenditure should be adopted in order that this wealth could be utilised for realistic purpose. Of course this does not necessarily imply a deviation from the principles of the eight recipients as decreed in the Quran.

The question before us is, having realised that Zakat is an important socio-economic factor, how should it be disposed of so that without transgressing the rules, Zakat will continue to be an economic asset to the community. The fact that Zakat is an economic asset, therefore, it means that Zakat has to be utilized according to the economic

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4 This is as explained to Shirle Gordon in 1960 by the Secretary of the Majlis Ugama Islam, Kota Bahru, Kelantan. For further details refer Intisari Vol. I No. 2, 1962, p. 36.

5 Intisari, op. cit., p. 36.
principles. That is, Zakat funds should be applied for productive purposes. Since the possible recipients are groups of individuals that form part of the community, one of the best ways of utilizing that Zakat capital resources is on the human elements. Thus, for the recipients Zakat resources ought to be more appropriately utilized as follows:

Firstly the expenditure should be made to benefit a group of the poor, needy, debtors, enslaved and the converts.

The practical consideration for these people is based on the fact that under modern circumstances people are poor, indigent, indebted and economically enslaved because they have no opportunity to choose the types of employment that most educated people have. This is because they lack skill or professional qualification. Therefore, they have to content themselves with the type of employment that earned them meagre returns. They are in no way able to bargain for a better pay since they are not united. The absence of such bargaining power, makes it easier for the employers to manipulate their salaries.

Therefore, the point that should be realised is not one of individual but rather the elimination of reduction of the number of the poor in a community. In view of this, material gifts are not necessarily the best means of implementing the objective of Zakat dispersal. Instead what is more important (and more needed) is to provide the various means to enable them to obtain skills and experience which will in turn enable them to seek better employment opportunity and hence better material gains.

The acquiring of training and skill can be done through education. Nevertheless, education does not mean the present emphasis on Religious education alone. It should be extended to cover Trades, Technical, Agricultural and Commercial schools. And where the need arises scholarships should be extended to those who are in financial difficulties.

Furthermore, in so far as education is concerned, there is a need to set up Kindergarten schools that would cater for the need of the Muslim society. This is to provide alternative for Muslim parents who intend to send their children to the Kindergarten. As it is now, Kindergarten are set up by Christian Missionaries. In view of this, it is therefore, possible that these youngsters are constantly instilled with Christian ethics, if not Christianity itself. This is very dangerous in the sense that at such an age, the child's receptivity towards what

is taught is very high. This may have the effect of alienating these infants and youngsters from the teaching of Islam. Hence depriving them of the most essential value of Islam. This essential value is called 'Faith' or 'Iman'.

Therefore, what should be done to counteract this impending danger is to establish kindergarten schools of our own. Thereby Islamic values can be taught to these youngsters. In this way they are brought nearer to Islam more than any other religions.

Talks and discussions as well as lectures could be held where guests of all races are invited along with the students. Other form of assistance can be made in the form of loans. This is most beneficial to those poor and needy who are unable to earn a reasonable level of livelihood because of the lack of certain tools and implements. Besides, there may be special occasion where material assistance which takes the form of tractors and mechanical implements could be extended to rural farmers to help them cultivate their land.

In so far as our modern economic system is concerned, material assistance could be interpreted as employment opportunities. Such employment opportunities that could be used to assist the poor and/or to win over the non-Muslims into our fold could only be offered should there exist factories or commercial or industrial undertaking. Therefore, what is desirable is the establishment of industrial and commercial undertaking where employment opportunities could be extended to these groups of people.

They very fact that Zakat is collected, it can create employment opportunity especially to those responsible for its collection. But such an employment is meaningless if they are not provided with an appropriate scheme of service. That is they should be adequately paid in salaries and allowances such that their profession is comparable to those holding similar responsibility. Further, these officers should be provided with the means of conveyance, the appropriate office accommodation as well as the necessary facilities required.

As for the wayfarers within Malaysia the problem is no more difficult to solve as there are various hotels and communication systems that can well look after their welfare and needs. Thus the focus of attention should be towards Muslim students studying overseas. This is because Muslim students leaving their surrounding to spend their time overseas in an entirely new foreign as well as alien surroundings may find it difficult to adjust themselves and furthermore, they are exposed to various temptations. One result that we often see today is that those Muslims are difficult to be reconciled to Islamic rules and law on their return rendering them a waste asset to the Muslim community as a whole.

In such a case, Zakat could play an important role to assist these wayfarers. Such assistance, however, should not be in the form of cash grant but in the form of facilities especially of accommodation. Thus for our Muslim wayfarers, hostels should be built in big cities of the world such as London, Sydney, New York, etc. Such a hostel will give priority to Muslim students though at the same time services could also
be extended to non-Muslim students. By this arrangement we reduce the inconveniences faced by our Muslim students, protect them from alien influence and at the same time we can bring others (non-Muslims) closer to us.

In addition, such hostels located in the centre of non-Muslim community could be used to serve as an information centre for disseminating Islamic knowledge to the non-Muslims. At such hostels, Islamic Library should be maintained and opened to all. Talks and discussions as well as lectures could be held where guests of all creed are invited along with Muslims. Thus in this way we bring Islam closer to the non-Muslims. This is something that is desirable these days.

Under the present circumstances, at least as far as those pertaining to Perak, or Malaya for that matter, such views as are expressed above are not fully appreciated. In practice the allocation from Zakat funds is limited to building or repairing of mosque, maintaining religious schools, providing financial assistance to the individuals who are poor, and also in a small way accommodating Muslim converts.

It may be argued that it could not be the responsibility of Zakat because all that have been suggested earlier for the expenditure of Zakat funds strictly come under the broad responsibilities of the Government. This is so, but it should always be remembered that government efforts are usually spread out to cover all citizens, and materially its coverage is on the ground that is theirs. It is vital if we Muslims desire to protect our community that we should use the Zakat resources to supplement what is already provided by the Government.

In this way the Muslims are fortunate to possess Zakat for it can be used as a socio-economic power to uplift Muslim communities. But if Muslim communities today are far from advancement or progress and are constantly under the danger of being overcome by more economically powerful communities, the fault lies with the Muslims themselves in not utilizing the force or power at their disposal.

In conclusion, "it may be reminded that the spheres of expenditure that are suggested in the section above and considered to be within the limits decreed, are being carried out by the Christian Missionaries of all denominations. The Muslims who have been enjoined to carry out these activities have yet to learn how to use their best the system of Zakat which has been given to them. If we are to learn it has to be quickly done, as we are now being very hardly pressed."7

7Mohamad bin Jamil, op. cit., p. 77.
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