

The Issue of *Pagdi* ♦

In order to avoid the harmful effects of untoward occupancy by the tenant, who either not pay the due rent in time or do not vacate the rented house, shop or premises as per the mutual agreement between the landlord and tenant, even having some court judgements strengthening this wrong practice, led to the charging of security money at the time of beginning of tenancy, commonly called as *Pagdi*. This entails the issue of rights of the owner, first tenant and the subsequent tenants. Different views had been expressed in the First Fiqh Seminar held in April 1989 on the issue of *Pagdi*. In the light of those opinions a questionnaire with five questions was formulated and was sent to various renowned '*Ulemā* and *Muftis* of India for eliciting their views. Recorded below is the consensus, which emerged from replies, received in the Second Fiqh Seminar.

- 10.1 As for the amount, which the owner of a house receives from the tenant by way of security deposit, it is desirable that the owner of the house keeps that amount with him, as it is. However, in case he makes use of the amount, it would be his responsibility to repay the amount to the tenant forthwith on the termination of tenancy.
- 10.2 When a house or shop is rented out and the landlord extracts some amount in cash by way of *Pagdi* (security), as it is known these days, over and above and in addition to the stipulated monthly rent, it could be deemed that the amount so received is in lieu of his relinquishing his right to reclaim possession of his house from the tenant and it would thus be Islamically permissible for him as being in lieu of his right to reclaim possession of the house at will. In that case when the landlord wishes to take back the premises in his possession, it would be permissible for the tenant to demand and obtain some mutually agreed amount from the landlord in lieu of his vacating the premises and further, it would also be permissible for him to obtain some mutually agreed amount from another prospective tenant in lieu of transferring to him his right to possession which he had earlier acquired against the landlord by paying some amount to him for this purpose.
- 10.3 In case the owner has leased out the premises without securing *Pagdi* and without specifying the period of lease, the landlord shall have the right to reclaim possession of the premises whenever so desired. However, the landlord should give prior notice to the tenant and allow him suitable time commensurate with the interest and convenience of both, to vacate the premises and the tenant should vacate it within that time limit.

♦ First Fiqhi Seminar (New Delhi) 1-3 April 1989.

- 10.4 It will not be permissible for the tenant to demand any amount by way of *Pagdi* from the landlord for vacating the premises in case the premises had been rented out to him without obtaining any amount from him by way of *Pagdi*.
- 10.5 The Muslims are called upon to observe the injunctions of Shariah in all matters. Shariah enjoins that all terms governing a contract must be explicitly and unambiguously settled between the contracting parties so as to leave no room for any difference or dispute in future and both parties are safe from any harm visiting them. The Seminar particularly emphasises that the tenure of lease should be clearly fixed and in case the landlord wishes to relinquish his right to reclaim possession of the leased premises, the parties should specifically agree to it and to the terms thereof.