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# LAW AND ORDER IN THE MUGHAL EMPIRE: INSIGHTS INTO JUSTICE ADMINISTRATION

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## ABSTRACT

The legacy of the Mughal Empire goes beyond its magnificent architecture. The emperors were revered as the "Fountain of Justice" with an independent department of Justice known as Mahakma-e-Adalat.

This paper looks critically at the claims that the discipline of administration of justice reached its pinnacle during the rule of the Mughals. It explores whether the Mughal government was meant to uphold the welfare of the populace and do away with justice, or if it was only a copy of the police state, which exercised sovereignty in a despotic fashion. Central to this exploration is an analysis of the legal framework underpinning Mughal justice administration.

As the structure stands, firstly, the paper tries to explore the contribution made by Mughals through administrative and judicial changes, such as creation of courts, the selection of judges, and the creation of laws, by integrating sources from history and academic research. It further explores the functions of key officials such as muftis and qazis, in resolving conflicts and preserving justice along with punishments and drawbacks. Secondly, the "pre-history" of India's colonial personal laws, which link religious identity to legal status, is examined in this paper. It examines the ways in which modifications brought about by emperors such as Akbar to merge Islamic law with pre-existing Hindu traditions, and consolidate the legal system which is a prime example of widespread "permissive inclusion" under sharia, in non-criminal cases reflecting pluralistic nature and quest for justice tailored to societal norms whereas in criminal matters, same law was applicable for everyone. Lastly, the paper sheds light on the enduring legacy of Mughal administration on British governance of justice which in turn are still applied in contemporary Indian subcontinent.

**Keywords:** Mughal administration, justice, shariah, qazi

## Introduction

The operation of the justice system in British India and its emergence to independent India is an enthralling experience that shows the intricate confluence of historical, cultural, and legal forces. Before digging into the shift, it is critical to grasp the legal context of the pre-British period.

Muslims flocked to the Indian subcontinent after Muhammad Bin Qasim attacked Sindh in 712 AD. Subsequently, Qutbuddin Aibak founded the Sultanate of Delhi which ruled from from 1206 to 1526, until Ibrahim Lodhi was destroyed by Zahiruddin Babar, who established the first Muslim Dominion in Indian Subcontinent. From 1526 to 1761, the Mughal Empire dominated India before colonization. The Mughals controlled India until 1706, when it was eventually taken over by the British. The British legally took over India in 1857, following the local defeat in the War of Independence.

Substantially, Muslim power reached its zenith during the reign of the Great Mughals, ushering in a golden age characterized by profound, people-oriented changes across different fields of governance. Given the diversity of Indian civilization, which includes Muslims, Hindus, and Buddhists, fair administration of justice was critical to ensuring a stable government. Unlike his predecessors, Babur and Humayun, who were primarily concerned with consolidating the newly founded kingdom, Akbar stood out for his remarkable administrative abilities<sup>1</sup>.

Their approach to justice was moulded by Central Asian and Persian traditions, which were carefully interwoven with local customs. They also adopted some administrative elements from the previous Sultanate period into their new structure. Despite these developments, the Hindu legal system remained in effect in the pre-existing Hindu states. As a result, the Mughal administrative system was highly appreciated and replicated by modern Rajas of both vassal and autonomous Hindu states. The British later adapted and preserved several parts of this method<sup>2</sup>.

The paper used qualitative research methods to analyze how the Mughals constructed and managed the Indian subcontinent's governmental framework, as well as how their dynasty

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<sup>1</sup> Athar Ali, *Mughal India: Studies in Polity, Ideas, Society, and Culture* (Oxford University Press, India, 1st edn., 2008)

<sup>2</sup> Jadunath Sarkar, *Fall Of The Mughal Empire*, (Orient Black Swan Publisher, India 1st edn., 2007 )

maintained its influence for more than two centuries. This endeavor also showed the competence of the Mughal emperors, who oversaw the empire's administrative structure for a span of seven generations. For procedural framework, the research is broken into the following segments 7 segments: first segments deals with what actually is administration of justice, main administration of justice, applicable laws, second deals with nature and structure of state and courts roles of various officers, third deals with procedural aspects and punishments accordance with guilt of the person, forth deals with sovereignty of the king and fifth deals with drawbacks, sixth deals with traces of Mughal in contemporary world and last segment concludes the entire paper.

### **I: Concept of administration of Justice**

The administration of justice entails providing fair and equitable treatment to the common civilians. Positivists see it as the state using physical force to defend political and civic liberties. The naturalist concept of justice holds that justice stems from a set of universal moral principles inherent in human nature and the natural world. It asserts that objective moral truths apply to all humans, regardless of cultural or legal distinctions. Individuals embody these realities because of their humanity. These rights are inherent in human beings rather than conferred by governments or laws. With the introduction of the modern welfare state model, the administration of justice is viewed as the state's principal obligation in protecting the populace's basic rights. The concept of justice administration stretches back to the caveman age, when early human endeavors to construct a society were reliant on stewardship. Ancient societies valued leadership as a source of direction in a variety of areas, delivered by knowledgeable and skilled individuals.

There is no substantial evidence to establish the actual genesis of these artifacts in terms of precise chronology. However, it is believed that the concept of a police state developed during this time, when the management was mainly responsible for ministerial tasks<sup>3</sup>. To a certain degree, the Mughal Empire resembled a dictatorship in which absolute power resided in one hand, namely the ruler, who eventually attained autocratic dominion. The concepts of justice administration were primarily foreign and partially Indian, with Persio-Arabic influences interwoven with indigenous traditions including governance principles, revenue, church

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<sup>3</sup> Muhammad Munir, *The Administration of Justice in the Reign of Akbar and Aurangzeb: An Overview.* 5, *Journal of Social Sciences* 5, 1-3, (2012)

doctrine, bureaucratic organization, and designated titles. To fulfill native needs, the foreign system was adapted and transformed over time<sup>4</sup>.

As per modern western concept, Administration means management and justice means to right and equitable implication. By the administration of justice is meant the maintenance of right and order based society in a political community by means of the physical force of the state. For proper and effective administration of justice, physical force of the state is basic requirement.

The concepts of justice administration were primarily foreign and partially Indian, with Persio-Arabic influences interwoven with indigenous traditions including governance principles, revenue, church doctrine, bureaucratic organization, and designated titles. To fulfill native needs, the foreign system was adapted and transformed over time<sup>5</sup>. Furthermore, the administration was basically military in origin, with every officer in the kingdom required to be on the army list.

Given the challenges of controlling a varied society amidst internal and foreign crises, the government realized the importance of regulating daily life and addressing popular concerns. Although they incorporated foreign traditions into their own system to address local demands, the legislative, executive, and judicial organizations were ultimately founded on the King's kindness, giving him complete authority over any circumstance. To further grasp these topics, the Mughals' administrative processes will be discussed. The following chapter will look at the major figures in the Mughal government.

Stanley Lane-Poole wrote, "*He tumbled through life, and tumbled out of it*".<sup>6</sup>

It was under Humayun's successor, Akbar, that the Mughal administrative system was firmly established. However, many of Akbar's reforms were influenced by the setup developed by Sher Shah Suri, who is considered a precursor to Akbar's greatness<sup>7</sup>.

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<sup>4</sup> Athar Ali, *Mughal India: Studies in Polity, Ideas, Society, and Culture* (Oxford University Press, India, 1st edn., 2008)

<sup>5</sup> Athar Ali, *Mughal India: Studies in Polity, Ideas, Society, and Culture* (Oxford University Press, India, 1st edn., 2008)

<sup>6</sup> Stanley Lane-Poole, *Aurangzib, And The Decay Of The Mughal*, 273 (Kessinger Publishing Company, Indian, 1st edn., 2007)

<sup>7</sup> Athar Ali, *Mughal India: Studies in Polity, Ideas, Society, and Culture* (Oxford University Press, India, 1st edn., 2008)

During the Mughal era, the Quran was the primary source of law, with Sunna traditions second only to the Quran in terms of sanctity. The judges relied on Imam Abu Hanifa: Qiyas codes, as well as Istihsan', which closely resembled equity principles<sup>8</sup>.

Judges used secular considerations to form their decisions. Judges freely applied various emperors' "Qanuns" while resolving cases. The Mughals relied heavily on ancient norms in their legal system, recognizing the value of traditional practices. In addition, judges also apply the principles of equity, good conscience, and justice to determine what was right and wrong. Judges used their discretion and good conscience to make decisions on matters without written authority<sup>9</sup>. The emperor drafted the state laws in the form of Shahi Farmans.

## II: Nature of State

### Structure of court

The Mughal era's judicial system was notable for its court hierarchy and independence. By the time of Aurangzeb's reign, the courts had achieved unprecedented independence, surpassing any other institution in the empire. The courts were so autonomous that they even turned down Aurangzeb's personal request to execute a convict who had previously been sentenced to death by the court<sup>10</sup>. According to British ambassador Thomas Roe, the Emperor was the ultimate authority and source of justice in the Mughal Empire. But foreign travelers incorrectly claim that his will was binding in all matters<sup>11</sup>. In the past, Emperors Shah Jahan and Aurangzeb made decisions that adhered to conservative law<sup>12</sup>. There were daily court sessions, with officials and the king deciding on common cases. Akbar reserved Thursdays<sup>13</sup> for justice administration in his court, followed by Emperor Jahangir on Tuesdays and Shah Jaan and Aurangzeb on Wednesdays. During the time of Jahangir (1608-13), William Hawkins observed that the Indian Emperor sat "*Daily in Justice every Day.*" According to Nicholas Withington, Emperor Jahangir performed 'Great Justice' in his Purchas by sitting in his Darbar

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<sup>8</sup> Bangladesh v. Bangladesh Legal Aid and Services Trust 2016 SCC OnLine Bang SC (App) 6

<sup>9</sup> *Ibid*

<sup>10</sup> Muhammad Munir, "The Administration of Justice in the Reign of Akbar and Aurangzeb: An Overview." 5, *Journal of Social Sciences* 5, 1-3, (2012).

<sup>11</sup> William Foster, *The English Factories in India, 1618-1621: A Calendar of Documents in the India Office, British Museum and Public Record Office*, 14-15, (Legare Street Press, United Kingdom, 1<sup>st</sup> edn., 2022).

<sup>12</sup> R.C. Majumdar, *The Mughal Empire*, 537-554, (Bharatiya Vidya Bhavan, Bombay, 1<sup>st</sup> edn., 1974).

<sup>13</sup> Antonio Monserrate, S.N. Banerjee, *The commentary of Father Monserrate, S. J., on his journey to the court of Akbar*, (Oxford university press, London, 1922).

at Agra three times every day<sup>14</sup>. William Hawkins, a trader and sea captain, alluded to the golden chain of justice. Any complaint who had failed to obtain justice could ring the bell. Shah Jahan upheld his father's principles of enforcing true justice. According to Nicolo Manucci, "strongly believing that upholding the ideal of justice was a fundamental part of his emperorship, Aurangzeb dedicated his life to it". Even though he did not view justice according to modern norms, modern narratives present him as fixated on enforcing justice in an equitable and fair manner.<sup>15</sup>

Three guiding ideals guided Aurangzeb's reign: he was a just ruler, a devoted Muslim, and he protected Mughal traditions and culture. According to him, "the stability of the foundation of sovereignty depends upon justice." His ideas were influenced by Persian and Greek philosophy.

Francis Bernier stated that emperors used to hear cases in the Diwan - E- Aam on specific days set apart for administering justice. The aggrieved presented their requests, and those implicated were ordered to appear before the emperor. Judgments were frequently rendered on the scene after consulting with the Muftis in the case of Muslim conflicts, or after consulting with the Pundit if the dispute was between Hindus except where extensive investigations was ordered before rendering judgment. Similarly, if there was a conflict between a Muslim and a Hindu, both, Mufti and Pundit were consulted. According to Bernier, the Mughal Emperors had a justice chamber known as Adaalat Khaana, where they were supported by two Qaazis<sup>16</sup>.

The Emperor presided over a number of cases, acting as both a court of first instance and the highest-level appeals court. It is improbable that attending court once a week to address the concerns of people across the wide subcontinent was enough to protect their safety and administer justice quickly. Nonetheless, the Mughal kings were often regarded as unbiased and capable of delivering justice equitably. They were intended to be able to act towards everyone fairly, whether they were family or outsiders, officials or civilians<sup>17</sup>.

### **There were three apex courts they were as follows:**

- The Emperor's Court - The Emperor presided over this Court, which was considered

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<sup>14</sup> R.C. Majumdar, *The Mughal Empire*, 537-554, Bharatiya Vidya Bhavan, Bombay, 1<sup>st</sup> edn., (1974)

<sup>15</sup> Satya Prakash Sangar, *Crime and Punishment in Mughal India*, 12, (Sterling Publishers Pvt. Ltd. Delhi, 1967)

<sup>16</sup> Archibald Constable, *Travels in the Mughal Empire, 1656-68 by Bernier Francois* 263, (Oxford University Press, London, 1<sup>st</sup> edn., 1916)

<sup>17</sup> C Jinarajadasa, *Abul Fazl and Akbar* (Kessinger Publishing, India 1<sup>st</sup> edn., 2010)

the highest of all.

- The Chief Court - It was the second most important court, after the Emperor's, and it had its major seat in Delhi. The Chief Justice (Qazi-ul-Qazat), an expert in religious law, presided over the proceedings. The court has original jurisdiction in civil and criminal cases, as well as appellate jurisdiction over provincial courts. Mufti and Mir Adil were to assist both of the above courts: the earlier was to explain the law based on the Qazi's decision, while the latter was tasked with summoning both sides to court and enforcing the verdicts. Also, the King would be assisted by a Qadis, Mufti, Pundit, Kotwal, Darogha-i-Adalat, and Mohtasib.
- The Chief Revenue Court - This was Delhi's third significant court that only heard revenue cases. It was the top court of appeals for tax cases presided over by Diwan-e-Ala.
- The Court of Qazi –e-Askar - This was a unique court for military cases having portable court elements. It moved from place to place as the military group traveled which resembles to the current system of Court Martial.

**Each province had three courts,**

- Adalat-e-Nazim-e-Subah---The Governor (Nazim-e Subah) presided over all original jurisdiction matters in the province.
- Adalat-e-Qazi-Subah-- Qazi-e-Subah headed over this appellate court having both original civil and criminal jurisdiction.
- Adalat-e-Diwan-e-Subah ---The court have original and appellate authority over tax cases.

**Each district has four courts:**

- Chief Civil and Criminal Court - The Chief Civil and Criminal Court handled civil, criminal, and religious disputes with original and appellate authority presided over by Qazi-e- Sarkar. He was the district's main judicial officer, known as Shariyat Panah. Any hearings from this court were referred to Qazi-e-Subah.

- Faujdari Adalat- Faujdari Adalat, led by Faujdar, held authority over all criminal offenses pertaining to riots and state security. Governor's court was next in the hierarchy.
- Kotwali - The Kotwal-e-Shahar, or city magistrate, presided over matters at the local level. From the Kotwal's court, cases may be appealed to the District Qazi (judge). The Kotwal's court heard cases in accordance with the laws and rules in effect at the time, which were comparable to contemporary police practices. The Kotwal was in charge of upholding peace and order in the city, looking into crimes, and prosecuting those who committed them.
- Amalguzari Kachehri - It reviewed revenue matters ruled over by the Amalguzar (revenue collector) and appeals made to the provincial Diwan.

Amin and Qanungo were additional judicial functionaries. The term "Amin" refers to an intermediary between the state and those who pay taxes. He was essentially a town officer, and his responsibilities included the resolution of revenue problems. The Qanungo served as the Registrar of Public Records. He handled minor land and revenue-related issues.

Every municipality had a municipality Court presided over by a Qazi (Qazi-e-Parganah). In lower-tier villages, the Mughals used the traditional practice of settling minor disputes through local Panchayats.

In order to provide justice to the populace more quickly, the Mughals held public audiences on a regular basis. In order to make public appearances easier, Akbar would meet at Jharoka and offer his subjects Darshan. Akbar was a pioneer in the Hindu institution. Aurangzeb, however, stopped this practice and conducted a complete Darbar in Diwan-i-Khas-o'Am, where appointments and grants were issued. The Darbar was the emperor's court or office held for all formal discussions about state's affairs. To address the general complaints, the princesses and other female Haram members also convened in public. Empress Noor Jahan was considered as an asylum for all victims and defenseless girls, and she had a strong sense of justice<sup>18</sup>.

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<sup>18</sup> Kausar Ali, *A new history of Indo-Pakistan*. 100, (Aziz Book Depot, Lahore, 25<sup>th</sup> edn, 2008).



## Enforcement Officer and Administration of justice

The governor, like the king, designated a day to administer justice in person.<sup>19</sup> The governor was assisted by the qazi and other legal personnel in overseeing and adjudicating a range of legal disputes during the court proceedings. The approach and methods of the courts were similar to those of the royal court system. The governor followed the law when dealing cases of prisoners sent to him by local officials<sup>20</sup>. Governors were responsible for addressing thefts and robberies within their jurisdiction<sup>21</sup>. He was supported by a number of ministers with duties related to the portfolios in the ministries of the central administration<sup>22</sup>.

The Subas were further separated for revenue purposes into Sarkars and Paraganas, led by Naib Subidars and Amirs or Shiqdars, respectively which were equivalent to districts and sub-districts in today's time. In terms of military administration, Subas were divided into Faujdaris, which were then divided into Thanas led by Thanidars. The faujdar was responsible for maintaining harmony and security in the district. He guarded the highways against robbers<sup>23</sup>. He also sent report to the Governor regarding the probe and penalty. During Aurangzeb's rule, the pargana had a court of the thanedar. He was known as Tahawar Sahar. Aurangzeb mandated that regional matters be handled by regional officials in their institutions itself<sup>24</sup>.

The major towns and cities had their own administrative organization under the Kotwals, who had the authority to try minor criminal matters such as those penalized by the current Municipal Acts. According to Abul Fazal, the Kotwal was given authority to engage citizens in a commitment of mutual help. According to Thevenot, the Kotwal was the person allocated the functions of the Criminal Judge. Finally, according to modern historian Badayuni, the Kotwal was also the Chief Officer of the Police, and his duties included taking cognizance of things pertaining to the city's streets and residences, as well as detecting thieves and lawbreakers.

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<sup>19</sup> Ali Mohammad Khan, *Mirat-i-Ahmadia A Persian History of Gujarat*, 275 (Oriental Publisher, India 1<sup>st</sup> edn., 1965 )

<sup>20</sup> Ali Mohammad Khan, *Mirat-i-Ahmadia A Persian History of Gujarat*, 278 (Oriental Publisher, India 1<sup>st</sup> edn., 1965 )

<sup>21</sup> William Irvine, *Mogul India 1653-1708 by Nicolao Manucci*, Vol. II, 461-62 ( John Murray Publisher, London, 1<sup>st</sup> edn., 1907)

<sup>22</sup> Athar Ali, *Mughal India: Studies in Polity, Ideas, Society, and Culture* (Oxford University Press, India, 1<sup>st</sup> edn., 2008)

<sup>23</sup> Ali Mohammad Khan, *Mirat-i-Ahmadia A Persian History of Gujarat*, 282 (Oriental Publisher, India 1<sup>st</sup> edn., 1965 )

<sup>24</sup> Charles Hamilton, *The Hedaya, Or Guide; A Commentary on the Mussulman Laws*, 337, T. (Bensley, London, 1<sup>st</sup> edn.,1971)

During the reigns of Akbar and Aurangzeb, Kotwal was in charge of prisons, punishments, and investigations under Qazi and the governor<sup>25</sup>.

The Qazi had an essential role in justifying cases at the district level. Qazis were expected to be well-versed in the Quran, Sunna, and Shariat. Fatawa I Alamgiri states that Qazi might be seated in a mosque or another location in the town center. The Muftis were responsible for assisting the Qazis in the Mughal Empire. According to Satya Prakash Sangar, the Muftis issued the fatwa through legal deliberation based on past judgements. Muftis provided fatwas or verdicts to the Qazi, as well as explaining the law<sup>26</sup>. Special magistrates can administer justice to non-Muslims. A Shia or a non-Muslim could not determine the case of a muslim. Generally, qazis have an excellent image. However, 'Bad qazis' were also infamous for their corruption and ignorance. Aurabgzeb's first Chief Qazi, Abdul Wahab Borah, was known for his unscrupulous tactics. Sheikh-ul-Islam, Abdul Wahab's son and successor, was, nevertheless, completely free of corruption.

The provincial government performed admirably in managing its own issues. Nonetheless, there was no clear border that differentiated absolute judicial from total executive powers.

The Office of the Muhtasib, also known as the Ombudsman in modern justice, was tasked with a variety of tasks during the Mughal era: in state proceedings, he served as a top public prosecutor and censor of morality. To some extent, the position of the Muhtasib was also entrusted with religious issues, regulation of Hindu and Muslim laws, including the duty to denounce apostasy and blasphemy in order to achieve punishment for the guilty. The office's primary goal was to ensure the general wellbeing of the common people and manage governmental affairs in order to promote efficient government for functioning of justice. The authority of a modern Ombudsman is restricted in comparison to that of Mohtasib in the Mughal era as they exercise several functions.

### **III: Procedural Regulations and Punishments**

Islamic procedural laws were employed to administer justice. Two important codes regulated

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<sup>25</sup> William Irvine, *Mogul India 1653-1708 by Nicolao Manucci*, Vol. I, 292 ( John Murray Publisher, London, 1<sup>st</sup> edn., 1907)

<sup>26</sup> Hughes, Patrick, *A Dictionary of Islam*, 397, (Laurier Books, Ltd. India, 1997)

the procedural rules : “Fiqi-e-Firoz-Shahi” AND “ Fatawa-i-Alamgiri”.

**The civil court procedures during the Mughal era can be stated as follows:**

1. Plaintiff or their authorized agent would file the plaint (complaint) in a court of competent jurisdiction.
2. The defendant identified in the complaint would be summoned to provide their side of the matter.
3. If the defendant did not accept the claim, the court would file proceedings against them.
4. The plaintiff has the burden of establishing the charges through proof.
5. The defendant was also given an equal opportunity to dispute the charges filed against them.
6. Witnesses could be examined and cross-examined during the proceedings.
7. Finally, after weighing the evidence offered by both sides, the judge or presiding authority would issue the decision in open court.

**Criminal Procedure during Mughal era can be stated as follows:**

- 1) Complaints were given in person or through an agent in court.
- 2) The public prosecutor (Mohtasib) initiated criminal proceedings.
- 3) The court had all the authority to summon witnesses, call for testimony, evidence.
- 4) The suspect could be summoned prior to or following the hearing.
- 5) The judgment will be delivered in open court after examining both sides' evidence. However, in exceptional instances where the security of the State or the accused is at risk, the judgment may not be delivered in a public forum.

According to the Hanafi school of Islamic jurisprudence, the rules for admissible evidence in the Mughal court system were as follows:

Tawatur: This was the most desirable type of evidence, requiring complete confirmation from numerous credible sources.

Ihad: Single individual witness, which was regarded a weaker kind of proof than Tawatur.

Iqrar refers to the accused's admission or confession.

Unless shown contrary, believers in God were regarded as credible witnesses. Women's testimonies were also allowed, but they were given half the weight of men's statements.

The Mughal judicial system also recognized the principles of estoppel and res judicata, which barred previously settled cases from being litigated again.

During the medieval Muslim period on the Indian subcontinent, the legal profession began to grow. Legal professionals, known as Vakils, were encouraged to represent clients in court. These Vakils performed an important role in delivering justice<sup>27</sup>.

This systematic approach to evidence, the acknowledgment of women's testimonies, and the formation of a professional class of legal representatives all point to a highly sophisticated judicial system in the Mughal era, based on Islamic jurisprudence principles.

To ensure the people's personal liberty, Aurangzeb issued a Farman stating that no one would be taken into custody until there was prima facie legal evidence. Jahangir had also promulgated twelve ordinances that were known as Dasturul-am'l, or the Rule of Conduct<sup>28</sup>.

Aurangzeb introduced the notion of Remand of the Accused, which obliged Kotwals to acquire written authorization from the Qazi before arresting an accused in jail for inquiry. In addition to Al Fatawa al-Alamgiriya, Aurangzeb issued Zabtah, a rule of conduct on all subjects, and commanded rigorous observance of the same.

## **Punishments**

'Shara' regulated crimes and punishments under the entire reign. The punishment and criminal doctrines were religious, based on the 'Koran'. According to Islam, the state belongs to God,

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<sup>27</sup> Vijayalakshmi Suresh, "Administration Of Justice During The Mughal Period", 2, *International Journal Of legal Research and Studies*, 222, 2017.

<sup>28</sup> Supra note 104 at 18.

making it the primary duty of every Muslim ruler to govern and punish offenders. The other category contains regulations originated from religious sources or formed by partially autonomous rulers, who had total authority over regional government and punishment.

Under Sharia law, the idea of "Hadd" offered specific punishments for certain offenses such as theft, robbery, adultery (zina), apostasy (irtidad), slander (qadhf), and drunkenness (shurb), and it applied to both Muslims and non-Muslims.

The term "Tazir" referred to all punishments that did not fall under the Hadd category. Tazir transgressions included gambling, forging currency, injuring others, and committing minor larceny. Here, the courts had complete leeway in imposing punishments, and they may even devise new types of punishment, like tongue cutting.

In murder cases, the "Qisas" principle was applied, which allowed the perpetrator to avoid capital punishment by paying blood money (diyat) to the victim's relatives with the consent of the other party.

The most heinous offense was 'ghadr' or treason against the state and religion, which was penalized only by death. However, the king had the discretion to consider mercy petitions and mitigate the penalty.

Contempt of court was another significant misdemeanor that was severely punished under Mughal law. This emphasizes the crucial importance of preserving the dignity and authority of the judiciary.

A culprit sentenced to death was submitted to the monarch through a special messenger and executed only after his confirmation<sup>29</sup>. The capital punishment might be imposed by hanging, beheading, or crushing.

Shahjahan maintained an envoy with buckets of poisonous snakes to inflict punishment.<sup>30</sup> According to Manucci, Shahjahan banned a soldier for unlawfully usurping the

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<sup>29</sup> H.G. Rawlinson, *A Voyage to Surat, in the year 1689 by John Ovington*, 138-139, (Oxford University Press, London, 1929)

<sup>30</sup> William Irvine, *Mogul India 1653-1708 by Nicolao Manucci*, Vol. I, 149 ( John Murray Publisher, London, 1<sup>st</sup> edn., 1907)

spouse of a Hindu clerk<sup>31</sup>. Tavernier noted that theft was uncommon during Emperor Shahjahan's reign<sup>32</sup>. According to Manucci, during the Mughal Empire's Wars of Succession, thieves enjoyed complete freedom. The author observed that “locals and bandits were ravaging the highways, causing trouble for travelers by stealing and killing them”<sup>33</sup>. As highlighted by Prakash Sangar, several ethnic groups, including “Ghakkars, Kathurs, Dalzaks, Kolis, Grasiyas, Rajputs, Pathans, Baluchis”, and “Marathas”, are notorious for their criminal activities besides these individual.<sup>34</sup> Fryer stated that under Aurangzeb's rule, “Kolis, Marathas, Rajputs”, and others robbed and ruined the Gujarati people.<sup>35</sup>

Exile to Mecca was very common. In most cases, there was no set rule or time limit for imprisonment. That was difficult for the bulk of the convicts. There were three 'noble-prisons or castles' in Mughal India. The first was in Gwalior, the second at Ranthambore, and the third at Rohtas. The Gwalior fort was intended for 'nobles that offend.' Nobles condemned to lifelong captivity were transferred to Rohtas, and only a few went home. For temporary incarceration, cities had lock-ups called “Chabutra of the Kotwal”<sup>36</sup>.

The only benefit for the inmates was receiving special release orders. Upon the birth of Prince Salim, Akbar ordered the release of all prisoners imprisoned in imperial castles due to "great accounts." <sup>37</sup>After his accession, Jahangir released people imprisoned in forts for extended periods of time.<sup>38</sup> In 1638, Shahjahan pardoned convicts to celebrate Begum Sahib's recovery from sickness<sup>39</sup>. Aurangzeb in 1703, ordered Mohammad Masood to release all inmates detained, leaving apart faqir.

According to Keshav Das, a scholar from the Bundela kingdom, crimes and punishments were assessed using the stipulations outlined in the Vedas and Puranas. The Purohit (head priest)

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<sup>31</sup> William Irvine, *Mogul India 1653-1708 by Nicolao Manucci*, Vol. I, 233 ( John Murray Publisher, London, 1<sup>st</sup> edn., 1907)

<sup>32</sup> Tavernier Jean Baptiste, *Travels In India* Vol. I, 325, Oxford University Press, London, 1925

<sup>33</sup> William Irvine, *Mogul India 1653-1708 by Nicolao Manucci*, Vol. I, 325 ( John Murray Publisher, London, 1<sup>st</sup> edn., 1907)

<sup>34</sup> Antonio Monserrate, S.N. Banerjee, *The commentary of Father Monserrate, S. J., on his journey to the court of Akbar*, 13 (Oxford university press, London, 1922).

<sup>35</sup> William Crooke, *A New Account of East India and Persia by Fryer John*, Vol I, p. 301 (Asian Educational Sevices, New Delhi, 1909).

<sup>36</sup> William Foster, *Early travels in India, 1583-1619*, 1 (London University Press, London, 1921).

<sup>37</sup> H. Beveridge, *The Akbarnama Of Abul Fazl*, (The Asiatic Society, Kolkata, 1939)

<sup>38</sup> H. Beveridge, *The Akbarnama Of Abul Fazl*, Vol. II, 5, (The Asiatic Society, Kolkata, 1939)

<sup>39</sup> Amir Ahmad, “Dispensing Justice and Punishment in the Mughal Empire: A Regional Approach”, 5, *International Journal of Research and Analytical Reviews*, 435, (2018)

and Brahmins who were well-versed in religious writings dealing with crime and punishment were appointed to judicial roles. Between 1586 and 1592, Madhukar Shah committed offense by refusing royal commands. As retaliation, the royal army stormed and pillaged Orchha<sup>40</sup>. Jujhar Singh, the Raja of Orchha, was pardoned for illegal exaction of riches after paying 15 lakh rupees, 1000 Mihr, and 40 elephants.<sup>41</sup> In 1689, Rao Dalpat was appointed Faujdar and Quiledar of Adoni in Madras. With few resources, he struggled to effectively confront the Marathas so, he quit from his position without prior approval. As penalty, the Emperor lowered his mansab from 2500 to 500<sup>42</sup>.

No other contemporary source in Bundelkhand provides information on various types of crimes and their punishment. During the Bundela period, penalties were based on religious writings such as the Vedas and Puranas<sup>43</sup>. It appears that the punitive legislation for Hindus was the same. In villages, caste elders formed Panchayat courts to resolve common law matters<sup>44</sup>.

In 1618, Prince Khurram, the Mughal Governor of Gujarat, and Sir Thomas Roe, the English Ambassador at Jahangir's court, agreed that the East India Company could resolve disputes among the English themselves<sup>45</sup>.

#### **IV: Royal Sovereignty**

To avoid exploitation of authority, the king exercised absolute authority over all foreign and internal matters of the realm. The Mughal king denied other rulers' sovereignty both within and beyond the empire. The King consolidated all legislative, executive, and judicial powers. There was no clear cut separation of the three wings. Until the conclusion of Akbar's reign, even princes were not permitted to sit on the throne. Because of his unlimited authority, the king's decisions were regarded as timely and impartial. There was no way to limit the king's authority.

Nonetheless, at the king's private conference, or Diwan-i-Khas, officials were permitted to attend the emperor's court and provide advice<sup>46</sup>. During Mughal reign, Shariah was considered

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<sup>40</sup> H. Beveridge, *The Akbarnama Of Abul Fazl*, Vol. III, 324, (The Asiatic Society, Kolkata, 1939)

<sup>41</sup> Amir Ahmad, "Dispensing Justice and Punishment in the Mughal Empire: A Regional Approach", 5, *International Journal of Research and Analytical Reviews*, 437, (2018)

<sup>42</sup> *Ibid*

<sup>43</sup> *Ibid* at 437

<sup>44</sup> *Ibid*

<sup>45</sup> Willian Foster, *The Embassy Of Sir Thomas Roe To India (1615-19)*, 473, (Oxford University Press, London 1926)

<sup>46</sup> *Supra* note 2

the highest law of the kingdom. Later, Akbar assumed the role of supreme arbiter<sup>47</sup>, but Aurangzeb reversed this by sanctifying Shariah rules. Unlike criminal laws, which treated Muslims and Hindus equally, Islamic laws were only applied to Muslims in civil cases. With some exceptions, the Mughals were benevolent despots who took different steps to provide expeditious dispensation to the public, which was the fundamental goal of the state.

In the Mughals' administrative structure, the emperor entrusted little authority to state administrators, who were rarely allowed to exercise discretion. They were given limited ministerial responsibility and were forced to rely on the emperor's judgment rather than their own. During the Mughals' rule, the judiciary was not depicted as an autonomous governmental unit, despite the fact that the modern judicial hierarchy is similar to the one created by the Mughal. The king was not only regarded as the source of justice, but he also enjoyed complete protection from all forms of investigation. There was no safeguard for judges' term or dismissal. The judges were subject to the king's will. Due to a lack of impartiality, the courts' decisions may have been influenced by the king and must have represented the king's wishes, raising concerns about biased decisions. But the king was well versed with the facts that people needs need to be fulfilled. For good and efficient governance, people confidence needs to be taken into consideration and common civilian needs to have faith in Sovereign King.

### **V: Shortcomings under Mughal Regime**

There were numerous flaws in the Muslim administration of justice in medieval India, particularly in criminal law. The British, who progressively took over the administration of justice here, constantly kept an owl's eye on criminal rules and regulations during Mughal regime.

There was no system to monitor or advise the King's despotic functions. In a comparable manner history shows no precedence for the king being impeached by ministers or tried in a court of law. Also, it was flawed in the perception that there was no clear division of the executive wing and judiciary.

The law made no demarcation between public and private law. Criminal law was viewed as a subset of private law. It had not evolved the understanding that crime was an offense not only

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<sup>47</sup> Supra note 1



against the aggrieved person but also against the entire community.

In many circumstances, criminal law was not clear and consistent. In actuality, it was determined that the laws outlined in Hidayat and Fatwa-e-Alamgiri were sometimes contradictory. There were variations of opinion among Muslim jurists of discretion in interpreting the law and applying it to a specific event. Thus, in each situation, the Qazi determined the construction of the law. Also Qazis sometimes lacked good reputation, some were greedy, accepting gifts and bribes without hesitation. Some of them worked just two or three days a week and had the courts in their homes. All of this had a severe effect on the legal system. The Ulemas had the majority in the Department of Justice, and their limited perspective frequently influenced the decisions.

The law of evidence under Muslim law was exceedingly flawed, inadequate, and primitive, making it difficult to convict offenders. For example, no Muslim could be sentenced to death based on evidence of infidelity. In other circumstances, evidence from one Muslim was considered equivalent to that of two Hindus. The evidence of two women was considered equal to that of one man. To convict a man of rape four witnesses must declare that they saw the suspect actually involved in the offence.

Diya was the faulty provision in Muslim criminal law. In many cases, the murderer escaped by providing money to the victim's dependents. It resulted in the emergence of numerous bad behaviors. Stoning, mutilation, and other forms of punishment were so harsh and inhumane that no human being could ever consider them in a civilized society.

The centralized form of the courts, with the Emperor serving as the last arbiter, made it impossible for ordinary people to seek redress, particularly those residing far from the imperial capital. This hindered the masses' access to justice.

## **VI: Mughal influence on Contemporary Justice Administration**

To maintain the efficient operation of the state, certain English laws were incorporated into the judicial and administrative systems during British control. On the other hand, the English system was unable to avoid the Mughal administration's impact, and as a result, it adopted the latter's workable rules into its own administrative framework. All of the Mughal laws' workable concepts were included into the new framework by the British.

By issuing direct decrees known as Shahi Farmans, or royal edicts, the Mughal emperors were able to exercise their legislative authority. This was not the case in contemporary democracies, when laws are passed by a legislature that is representative, such as Parliament.

Shahi Farmans, however, can be compared to the executive orders that modern heads of state issue, granting the executive branch the authority to enact laws and policies.

Therefore, although the Mughal system did not have the legislative and deliberative components of modern legislation, the emperors' Farmans performed a similar role in setting enforceable policies and rules to current executive orders.

The Mughals' achievements include judicial hierarchy, appellate jurisdiction, and daily hearing of cases. Aurangzeb's contributions to judicial reform cannot be underestimated, as some of the changes are still in effect and implemented in both India and Pakistan.

*‘The last of the so-called “Grand Mughals,” Aurungzeb, tried to put back the clock, and in this attempt stopped it and broke it up.’*

- Jawaharlal Nehru

Aurangzeb established the Right to Information and required the government to allow the common people to examine the records of rights. Aurangzeb directed the production of Mahzarnamahs, or Records of Judgments, by higher courts in order to provide guidance to Qadis and Muftis in settling public disputes which in current time corresponds to article 41 of Indian Constitution which refers to binding decision of Supreme Court on all lower courts within Indian boundaries. The Station House Officer is carrying out the tasks that the Kotwal used to do, and the Thanas are still present. The Chief Justice's office is comparable to the Qazi-ul-Quzat's during the Mughal era.

Aurangzeb gave instructions for the compilation of Mahzarnamahs, or records of higher court rulings, to give Qadis and Muftis guidance while adjudicating public complaints which resembles to current practise of Supreme court as court of record under article 129 of the Constitution. All of these rulings have been lost to time, with the exception of Baqiat al-Salihah, which is a collection of fifty rulings from the years 1550 to 1850 AD.

73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment act, 1993 and 1994 which develop the local self government resembles to Village Panchayat prevalent during the Mughal regime.

The notion of remand, according to which Kotwals needed the Qazi's formal consent before holding an accused person for the duration of an investigation. The reform's intention to prevent wrongful custody is one of the important aspects of the present criminal justice system and article 21 of Indian Constitution which provide the Right to Life.

The notions of criminal procedure, presentation of the detained individual before a Magistrate, prosecution by Public Prosecutors, Habeas Corpus under article 32 of the Constitution, and other features of the modern legal system were widely established and implemented in the Mughal Empire under Aurangzeb Alamgir. The Mughal court system was not as time-consuming as it is today. Cases were decided quickly. The procedure was somewhat adversarial, involving pleadings, evidence presentation, and judgment. The court received assistance from a Mufti who was knowledgeable on both ecclesiastical and lay law. In many ways, he prefigured the modern Attorney General. The Mughal administrative and legal reforms laid the groundwork for modern administrative and judicial systems, which were eventually adopted by the British and spread to the United Kingdom, India, and Pakistan. Thus, the Mughal Empire's long-term and incremental reforms are responsible for the formation of today's legal system.

## **VII: Conclusion**

Although the founders of the Mughal kingdom were too preoccupied with integrating the newly developed Empire to devote the necessary, history credits Akbar with establishing a true administrative system, inspired by Sher Shah Suri. According to historians, the leadership in terms of public reforms and welfare peaked during the Mughal reign. To ensure that the masses received prompt justice, reforms were implemented in the court system as well. Civil and criminal laws were a combination of Muslim rules and regulations, traditions, and royal pronouncements. Personal rules for Hindus and Muslims were applied in specific domain which is a prime example of widespread "permissive inclusion" under the Mughal rule cases reflecting pluralistic nature and quest for justice tailored according to societal norms.

Despite their harsh rule, shortcomings and loopholes, they implemented measures to improve the welfare of the people and speed up the administration of justice. These notions have been

incorporated into modern legal principles and procedures in the subcontinent as well as Western countries. Thus, while they may be autocratic, they can be legitimately described as beneficent despots, governing with an iron hand but keeping common benefits of the general masses and ambitions in mind implying that it was not a copy of the totalitarian state, which exercised predominance in a despotic fashion but rather a blend of positivist and naturalist notion of “justice”.