THE ADMINISTRATION OF JUSTICE IN THE REIGN OF AKBAR AND AWRANGZIB: AN OVERVIEW

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THE ADMINISTRATION OF JUSTICE IN THE REIGN OF AKBAR AND AWrangzib: An Overview

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Abstract

This work focuses on the judicial system of great Mughals, especially Jalaluddin Akbar (1556-1605) and Muhiyuddin Muhammad Awrangzib (1658-1707). It also analyses some of the judicial reforms in the reign of Nuriddin Muhammad Jahangir (d.1037/1627). The main findings of this work are: judiciary under Akbar, Jahangir and Awrangzib was independent and was not under the control of Kings. Akbar has wrongly been accused by some historians of founding a new religion. Akbar by a large did not interfere in the work of his judges. Even his controversial acts have some basis in Islamic law. Awrangzib had carried out tremendous law reforms some of which have survived and are part of the legal systems of India, Pakistan and Bangladesh. The paper critically evaluates the judicial systems of Akbar and Awrangzib, especially the reforms of the latter.

1. INTRODUCTION

Muslims came to India in a great number when Sindh was brought under their rule in 712 C.E. by Muhammad b. Qasim (d. 98/717) at the time of the sixth Ummayyad Caliph, al-Walid b.
‘Abdul Malik I (d. 86/705). However, relations between some Indian principalities and the Muslim state of Madinah can be traced back to the time of the second Khalif ’Umar – the second successor of the Prophet (PBUH), when a delegation from Sarandip (India) visited him in the early days of his reign. Indian coasts attracted many Muslim businessmen to areas such as Malabar. In 15 A.H. the Muslim state sent expeditions to areas of today’s Baluchistan and Sindh. Makran was conquered by Muslims in 21 A.H. (Mubarakpuri, 1967). In the north, Mahmud b. Subaktageen of Ghazni (d. 421/1030) occupied a major portion of the Punjab, followed by Shahabuddin Muhammad Ghori (d. 602/1206) who annexed Punjab making it a part of the Caliphate (Juzjani, 2006, 41-47). Delhi fell to the Muslim Commander Shahabuddin Ghori in 1192 C.E. The Delhi Sultanate was founded by Qutbuddin Aibak (d. 607/1210-11) of the Slave Dynasty in 1206. Though initially Qutbuddin Aibak made Delhi his headquarter as the viceroy of his royal master, Shahabuddin Ghori, officially the Sultanate came into existence in 1206, when the viceroy became the first independent Sultan of Delhi after the death of his royal master in 1206. The Slave Dynasty lasted till 1290, when the second Muslim dynasty, the Khaljis, got power in India. The Khaljis were defeated by the Thughluqs, the third dynasty, in 1320, while the Thughluqs were overpowered by the Sayyids, the fourth dynasty in 1414. The Sayyids ruled until 1454 when they were beaten by the Lodhis, the fifth dynasty that lasted till 1526. The Lodhis were defeated by Zaheeruddin Babar (d. 936/1530) who laid down the foundations of the Mughal Empire and Muslim power reached its zenith in India.

Six extraordinary emperors, in a direct line of descent from Babar, ruled between 1526 and 1707 C.E. The Mughal dynasty was interrupted by the Suris from 1539 till 1555 when Nasiruddin Humayun (d. 963/1556) was restored to power (Mitchell, 2000, 3-4). Humayun was forced to flee in 1542 after his defeat and sought asylum at the Persian Court of Shah Tahmasap.
He defeated his brothers and gained control of Qandahar and Kabul in 1545. Meanwhile Sher Shah Suri (d. 1545) was killed by the Rajputs during a fight and when the Afghans were defeated by Humayun in Lahore in 1555, he was restored to the throne once again. Humayun, on his restoration, “put the idea of a suzerain Caliph to an end.” (Qureshi, 1958, 38 & Husaini, 1952, 22-30). Till that time the successive Muslim rulers considered themselves as the vassal of Khalifa.

Although the Mughal dynasty continued till 1857, it was in decay since the death of Muhiyuddin Muhammad Awrangzib in 1118/1707. For the purpose of this work we will concentrate on the judicial system of Jalaluddin Akbar (1556-1605) and Awrangzib (1658-1707) because the Empire under these two is believed to be at its climax. However, between the reigns of these two the contribution of Nuriddin Muhammad Jahangir (d.1037/1627) cannot be ignored and must be discussed to have a complete picture. Akbar and Awrangzib were very different in terms of religiosity and presented distinct and opposing political models.

Akbar tried to create a hybrid between Islam and Hinduism – in his new order (tariqat) which was believed to be a synthesis with Hinduism, providing some form of accommodation on the cultural and religious planes. The latter rejected this model outright. The former was praised by his Hindus subject while the latter by the Muslim population. The judicial system under both Akbar and Awrangzib were very much similar, as will be explained below. With the exception of Awrangzib, the Mughul governments in India were purely secular in nature. Although the Emperors were deeply religious men, they did not view themselves as monarchs who had to guard the interests of only one section of their subjects. In matters of governance they held the scales evenly balanced between all communities under their sway.
2. **JUDICIARY UNDER AKBAR**

The Mughul rulers of this epoch ruled by decrees or *firmans*. The Sultan was the chief executive, sole legislator, and the chief judge of the land. All the three powers concentrated in him. Akbar had forbidden the killing of cows by law, because that was offensive to Hindus. He had also abolished *jizyah* (poll-tax) early in his reign to please his Hindu subjects. Under the previous Muslim rulers the Hindus had acquired the status of *dhimmies*, i.e., persons who while retaining their own religion, were exempted from military service on payment of a poll tax. He had also appointed a large number of Hindus to responsible posts (Qadri, 1968, 112-115). Abul Fadl b. Mubarak (d.1011/1602) remarks, that “[F]or monarchs the worship consists in the proper discharge of their duties to their subjects” (Fadl, 1975, 163). Mulla ‘Abdul Qadir Badauni (d. 1024/1615) once remarked that Akbar insisted that the cases of Hindus be decided by Hindu judges and not Muslim *Qadhis* (Badauni, 1998-1925, II, 356). Akbar was under the influence of his secretary Abul Fadl who wrote *Akbarnama* (Fadl, 1993, iii). He is believed to be the champion of heterodoxy. He could well be called the chief architect of Akbar's new cult or order (*tariqat*) in which he deviated quite a lot from orthodoxy (Ikram, 1982, 127-131). Some historians deny that Akbar had innovated a new religion – *Din-i-Elahi*. They argue that he had innovated probably a cult or an order but not a new religion. (Ikram, 1982, 127-131 & Qureshi, 1990, 33). The success of Muslim rulers in India was gauged by their ability to tread the fine line between being an orthodox *sunni* khilifah, while at the same time mollifying a potentially aggressive, non-Muslim subject population. Akbar believed that:

Justice and Beneficence must be exercised alike for all subjects (*jami ‘ri’ayat*). The King is the shadow of God and the gift of Divine mercy is common to his subjects believers and non-believers. A king must
curtail the hand of oppressions (zulm) upon the weak because the prophet says ‘the cry of the victim of injustice even if he be a kafir is never rejected by God’. (Fadl, 1993, III, 257).

His Hindu subjects were the main beneficiary of his scheme. His greatest contribution to a country whose sole industry was agriculture was his systemization of the revenue assessment. Under the zabity system introduced by him, he levied a fixed tax which was quite fair to the peasant. Under the previous system, the price of each variety of grain had to be determined each season. He divided the whole country into 119 dasturs (assessment circles). Each piece of the land in the various dasturs had to pay a fixed amount which depended on the area and quality of the land. The system is largely unchanged in present day India and Pakistan.

Abul Fadl was responsible for the conflict between Akbar and his first Qadi-ul-Qudat (Chief Justice) – ’Abd-un-Nabi. The reason of the conflict is interesting. The qadi of Mathura had ordered the construction of a mosque. A Brahman Hindu removed the construction material out of his hostility to Islam. The qadi summoned the Brahman to his court. The arrogant Brahman not only disobeyed the order but used abusive language for the Prophet (PBUH). The local qadi informed the Chief Justice who summoned the Brahman to his court and found him guilty of blasphemy. The Brahman was sentenced to death by ’Abd-un-Nabi. Since all capital punishments had to be approved by the Emperor, the case was submitted by the Qadi al-Qudat to Akbar for confirmation and orders. Akbar refused to execute the Brahman because he was deviated from orthodoxy. In addition, influential Hindu officials working with Akbar interceded with Akbar on behalf of the Brahman. Akbar ordered a secret inquiry into the facts of the case and gave this task to the staunch opponents of ’Abd-un-Nabi. The inquiry, however, confirmed the charges. Akbar was even then reluctant to execute the Brahman and asked ’Abd-un-Nabi not to execute the man. ’Abd-un-Nabi, however, pressed for execution. When Akbar could not find a way out he did not give clear orders and left the matter to ’Abd-un-Nabi who executed the man.
Akbar did so because he was too circumspect to take upon himself the responsibility of setting aside the decision of the court (Badauni, 1998-1925, II, 80-83).

Akbar sacked all his existing Qadis and one of the conditions of appointment necessary to the highest judicial and religious post was adherence to Akbar's religious philosophy (Badauni, 1998-1925, 284). Moreover, the emoluments and grants of religiousness were cut down and gradually old recipients of grants were totally eliminated. Despite the incident noted above, the judiciary by and large functioned freely (Qureshi, 1958, 186). The heterodox 'ulama gathered around Sheikh Mubarek – Abul Fadl's father, to play a trick that would make Akbar an Emperor of the highest legal authority. Sheikh Mubarak Nagauri drew up a document to which the leading 'ulama of the court were forced to affix their signatures. Its main purpose was to establish that if the jurists differed on a point of the law, Akbar would decide what interpretation he would enforce. The document was called mahdar (Ikram, 1982, 102-104). It was basically an assembly of the leading 'ulama who supported Akbar. They got together, discussed the issue and agreed that in case of their disagreement on a question of Islamic law, Akbar would decide the issue. (Ikram, 1982, 102-104). It is important to note that different English authors have spelled 'mahdar' differently. Mitchell mentions the word 'mazhar'. (Mitchell, 2000, 12). The scheme did not succeed as such because no situation has been reported in which the 'ulama had differed to such an extent that Akbar had to intervene personally. Abul Fadl painted and propagated the image of Akbar as a ‘supreme dispenser of justice.’

The most visible manifestation of the emperor’s role in judicial affairs was the evolution of the jharoka-i darshan, which had been a Hindu institution innovated by Akbar to facilitate public appearance. According to Mitchell, “adapting a previously Hindu facility such as this was one of the many examples of Muslim Indianization common to the sixteenth and seventeenth
centuries” (Mitchell, 2000, 195). In general, Mughul Emperors were impartial and stern in delivering justice to their subjects. Abul Fadl mentions that: “His Majesty in his court makes no difference between relative and stranger and no distinction between a chief and a tangle haired beggar”, (Fadl, 1993, 387). Akbar gave death sentence to a powerful military Chief of Gujrat for the murder of one Changez Khan on the complaint of the mother of the deceased (Husaini, 1952, 209). Akbar’s judicial policies seem to be partly motivated by the humanitarian principles of *sulh-i kul* and partly to reassure the Rajput nobility serving in the Mughal court.

The second important Mughal emperor to mention in this work after Akbar and before Awrangzeeb, is Jahangir. He ascended the throne in 1605 and retained his father’s definition of a just ruler. As a king the first order he gave was “[F]or the fastening up of the Chain of Justice, so that if those engaged in the administration of justice should delay or practice hypocrisy in the matter of seeking justice, the oppressed might come to this chain and shake it so that its noise might attract attention” (Jahangir, 1625, I, 7). Following this he issued twelve ordinances, varying from the banning of river toll fees to prohibitions against facial disfigurement (Jahangir, 1625, 7-10). Whenever, he periodically shifted his royal court, one of his first orders was to have a temporary judiciary built in the new city. He did this in Ajmir and Ahmadabad. He used to hear civil and criminal cases every week (Hasan, 1936, 318).

In his letter of January 17, 1615, Sir Thomas Roe, Ambassador of English King James I from 1615 – 19 to the court of Jahangir, sums up what he observed in his initial days in the court and says that “They have no written law. The King by his owne word ruleth, and his governours of provinces by that authoritie. Once a week he sitteth in judgment patiently, and giveth sentence for crimes capitall and civill” (Foster, 1990, 89). He took equality before the law so seriously that, after hearing how the governor of Punjab, Sa’id Khan Chaghta’i, was ruthlessly extracting
revenue in his area, the Emperor sent him a message that “[M]y justice would not put up with oppression from anyone, and that in the scales of equity neither smallness nor greatness was regarded. If after this any cruelty or harshness should be observed on the part of his people, he would receive punishment without favour” (Jahangir, 1625, I, 13). Jahangir deplored murder committed by the nephew of Khan ‘Alam, Hushang, and when he was found guilty, the king said, “God forbid that in such affairs I should consider princes, and far less I should consider amirs. I hope that the grace of God may support me in this” (Jahangir, 1625, II, 211). With these words, the emperor had Hushang executed. He was very particular about guaranteeing the rights of minorities. In 1608, he issued a firman to the governor, officials and jagirdars of the province of Gujrat ordering them to safeguard the temples and dharamsalas of the Jain community. They were also ordered not to levy taxes on pilgrims visiting the Tirtha of Shatrunjaya (Mitchell, 2000, 197).

3. JUDICIARY UNDER AWrangzeb

Under Awrangzeb, courts were extremely independent and were used as a byword for independence. Manucci, who was on the personal staff of Dara Shikoh and has strong dislike of his opponents, testifies to this. He mentions that when Awrangzeb himself wanted the court to give capital punishment to an accused in a case, the court refused to accept the plea (Manucci, 1907-08, IV, 119). Alamghir had been extremely neutral otherwise. He appointed a group of eminent jurists to try Dara Shikoh, his brother who was accused of apostasy. Dara Shikoh was another Akbar in the making because he was more learned. He had translated many books on Hindu philosophy, was the leader of the heterodox, and was an opponent of orthodoxy. Alamghir
wanted to demonstrate to the world that he was neutral in the trial and that his treatment of his father, whom he jailed because he had sided with Dara Shikoh, was justified. The special tribunal held that Dara Shikoh’s religious opinions amounted to apostasy and he was executed in September 1659 (Khan, 1874, 47-48). Alamghir did not intervene in the case although it was political in nature.

Alamghir is credited for ordering the famous *Al-Fatawa al-Alamgiriyah* (hereafter *Fatawa*) – also known as *Fatawa Hindiyah* – by a Royal Commission of *Ulama* under the supervision of Sheikh Nizam (Ahmad, 1941, 42). It was translated in parts by N E Baillie as *Digest of Moohummudan Law* (Baillie, 1875). The Code was the great Corpus Juris of Aurangzeb’s reign and is more or less an exposition of the substantive law then prevailing in India. It was not only used by the *Qadis* of Alamgir but also by other Emperors till the end of the Mughal dynasty. The *Fatawa* replaced *Fiqh-e-Firoz Shahi*, which was a Code of Civil Procedure compiled at the time of Firoz Shah Tughlaq (790/1388). This book remained the basis of the judicial system under the Delhi rulers until replaced by the *Al-Fatawa al-Alamgiriyah* (Ahmad, 1941, 41-42).

### 3.1 Legal Reforms of Aurangzeb

Of all the Mughal rulers Aurangzeb introduced a series of legal reforms in the administration of justice, some of which survive to this day in both Pakistan and India.

First, he introduced the system of “Remand” of accused by the court to the police custody (Khan, 1930, 278-282). The Kotwals were ordered to obtain a written order from the Qazi to keep a man under custody for the purpose of investigation. Secondly, he took particular notice of
the delay in the disposal of cases and issued directions that all criminal cases must be tried without delay. If after the first date of hearing the case was not taken up, the next day the Kotwal was required to send the prisoners daily to the courts till matters were decided (har roz anja be ferisand ke maamlah ra be istejal faisal numayend) (Khan, 1930, 282-283). Thirdly, he issued a Firman that no one was to be taken into custody until prima facie legal evidence was available and that no prisoner was to remain in jail without a lawful charge (hech kas be hisab dar qaed na manad). It is not clear whether it is a mere coincidence or otherwise that when Aurangzeb was issuing these regulations in India in 1679, the British Parliament was enacting the Habeas Corpus Act for England. Fourthly, Aurangzeb wanted transparency in administrative as well as judicial matters and to this end he directed the keepers of State records of rights to permit the public to examine the same. Fifthly, for the first time in the reign of Aurangzeb ‘Vakils’ (lawyers) were appointed to defend suits against the State in every district. They were known as Vakil-e-Sarkar or Vakil-e-Shara’ (Ahmad, 1941, 163-4, 191, 218). They used to receive a fee of Rupee one daily (Khan, 1930, 149). These Vakils had to give free legal advice to the poor. They were appointed by the Chief Qazi of the Province or sometimes by the Qazi-ul-Quzat. Sixthly, Awrangzeb had framed written regulations (Zabath) on every subject and required strict adherence to them. This was in addition to his achieving the compilation of Al-Fatawa al-Alamgiriyah. Finally, Awrangzeb also reformed the appeal system. He issued orders that parties should get their disputes decided by the local Qazi in the first instance before bringing their cases to him (Ahmad, 1941, 266-268).

Awrangzeb issued orders for the preparation of “Mahzarnamahs” or records of judgments of higher Courts for circulation among the Qazis and Muftis (Ahmad, 1941, 188). Unfortunately, no published record of these cases is available. The only manuscript with details of cases and
judgments is *Baqiyat al-Salihat*, which contains fifty judgments during the period 1550-1850 A.D. The judgments are written in Persian and bear the seal of the Court. Basheer has found a manuscript called *Baqiyat al-Salihat* which contains 50 recorded cases from the Mughal era 1550-1850. Every case describes the facts, the reasons for the decision, and is signed and stamped (Ahmad, 1941, 37). Basheer later migrated to Pakistan, became a judge of the Erstwhile West Pakistan High Court, and published the second edition of his book in which he mentions in the preface that he has donated the manuscript (*Baqiat*) to the National Museum in Karachi (Ahmad, 1978, xiii). The present author has made his best efforts to get a copy of the book from the Museum but it is neither listed in the catalogue nor available there. Basheer does not seem to have updated the whole book for the second edition as he mentions on page 16 that he intends to publish it (Ahmad, 1978, 16).

Some authors have mentioned that the Mughul Qadis were very corrupt (Jain, 1966, 46 & Jadunath, 1972, 75). However, it is difficult to believe their assertions and ignore Manucci, a European, who has recorded his eye account. Khawfi has also praised the independence and impartiality of Muguhl’s judicial system (Khan, 1874, 216, 550).

4. **COURT ORGANISATION AND PERSONNEL**

Before giving details of court structure and personals it is necessary to mention the central government of the Mughals. The Emperor was the Commander-in-Chief of the entire army and Navy. The Emperor had a council of ministers, the most influential among them was the Wazir or Vakil-e-Mutlaq or Dastur-e-Mu‘azzam. He was like the modern day Prime Minister. Other ministers approached the Emperor through him. The revenue, finance and agricultural departments were under the Diwan-e-‘Ala who was also the final appellate court for revenue cases. Military administration, the salaries and accounts were under the Mir Bakhshi
while the administration of justice, jails, customs, baitul mal and mosques were under the Chief Justice, Qadi al-Qudat. Other notables ministers were Darogha-e-Topkhana (Master General of Ordnance); Darogha-e-Dak (Post Master General); Mir Saman (Lord High Steward of the Imperial Household); Sadrus Sudur in charge of the Ecclesiastical Department; and Mohtasib-e-Mumalik-e-Mahrusah or the Chief Mohtasib. He was the Chief Public Prosecutor in State cases and was also the Chief Censor of Morals.

4.1 Diwan-e-Mazalim

From the very beginning of the Muslim Empire, cases were categorized as civil, criminal and political. The latter two were always tried by the Khalifah himself while the former two types were decided by the Qadis. Political and administrative cases were sometimes secular in nature and were described as Nazar fi al-Mazalim by the Fuqaha (Muslim jurists). It is known as ‘siyasa shar’iya’ and can be translated as ‘the administration of justice according to the shari’ah’. Muslim jurists expounded the sphere of the Islamic legal system that was fixed and left the part that was flexible – changing with the times, according to the needs of the Muslim community, to the Imam (the head of the Islamic state). It is this function that the ruler carried out through a policy called the ‘siyasah shar’iyah’ (Nyazee, 1995, 111-2). Both Akbar and Awrangzeb devoted one day of the week to such cases and called it Diwan-i-Mazalim (Sarkar, 1972, 72). At the Imperial Capital (Darul Sultanat), the Emperor was the first judge of the realm and the 'fountainhead of Justice'. Shah Jahan and Awrangzeb used to hold this special court on Wednesdays. On that day the Emperor would come directly from the window or balcony where he used to appear before the public every morning, (The practice of appearing from the balcony was started by Akbar and was discontinued by Awrangzeb after sometime in his reign) to the
Diwan-i-Khas (or Hall of Private Audience) and would sit on the throne of Justice. The Hall was filled with the judges (Qadis), muftis ('ulama), the kotwal or prefect of the city police, the superintendent of the law court (darogha-i-adalat) and the muhtasib. Plaintiffs were presented one by one before the Emperor and narrated their grievances. The Emperor would gently ascertain the facts by asking questions consult the muftis and pronounce the judgment accordingly. As the fountainhead of justice, he tried original civil and criminal cases and also sat as the final aegis of appeal within the Empire. As an appeal court the Emperor presided over a Bench consisting of the Chief Justice and Qazis of the Chief Justice's Court and decided both questions of law and fact. (Kazim, 1864-73, 1097, 1102). As a court of first instance he generally had the assistance of a Darogha-e-Adalat, a Mufti and a Mir ‘Adl. Moreover, all capital punishments were required to be confirmed by the Emperor. All the European travelers have given their accounts of how the Mughul Emperors held courts on a special day (Foster, 1921, 72-73).

4.2 The Chief Justice or Qadi-ul-Qudat

Below Diwan-i-Mazalim, there was the court of Qadi al-Qudat or the Chief Justice (Fadl, 1975, 185). He used to administer the oath of accession to the Sovereign and to order khutbah or Friday sermon to be read in the Emperor's name in the mosques in order to give validity to his accession (Manucci, 1625, I, 381). The appointment of the Chief Justice was made by the Emperor. The Chief Justice had the power to try original civil and criminal cases, and to hear appeals from and to supervise the working of the Provincial Courts. He was assisted by one or two Qadis of eminence. Below the Qadi al-Qudat's court the Imperial capital had its own Qadi who was like the Chief Qadi of a Province (Qadri, 1974, 120). The military area in the capital had its own Qadi (Qadi-e-Askar) who moved from place to place with the troops. Sometimes the
Many officers were attached to the courts mentioned above. They were *Darogha-e-Adalat* who used to receive applications filed in each court. He was also sometimes known as *Darogha-e-Kachehri* (Ahmad, 1941, 147); *Mufti* – whose job was to give legal opinion, but not to give judgment. The Mufti attached to the Chief Justice's Court was known as *Mufti-e-Azam* or *Sadre Jahan* (Fadl, 1975, I, 185). There were *Mohtasibs* attached to the Capital who were generally the Prosecutors in Canon Law cases; *Mir 'Adl* was an administrative officer to assist the court. A very important post in the Capital was that of *Diwan-e-'Ala*, who was the final authority on Revenue and Financial matters. Appeals in these matters rarely came to him from the Provinces.

### 4.1.1 Provincial Chief Qadi

In the Provinces (Subahas) there used to be a Governor or Subahdhar. He was also called Nazim in Bengal and Gujrat and he was responsible for maintaining law and order and was also the Commander-in-Chief of the army within his Province. Initially the word *siphasalar* was the title of the provincial Governor but later on the term *subahdar* was used and sometimes even *nazim-i-subah* was used. (Khan, 1930, 149). He was also the court of appeal for revenue cases within his Province. When the Governor left the Subah for some urgent work he could appoint the Diwan to act for him during his temporary absence. (Blochman, 1927, 37). During the later Mughal period (1750 – 1857) the Governor, especially in Bengal, did a lot of judicial work and for this purpose two officers were attached to his court. However, the Governor used to appoint
an official called the *Darogh-e-Adalat-e-Aliah* to run the judicial work of the Governor and this practice was abolished in 1820. The Provincial Judicial Department was under the Chief Provincial *Qadi* called *Qadi-e-Subah* who was appointed by the Emperor and had original civil and criminal jurisdiction and was the Chief Court of Appeal in the Province hearing appeals from the District *Qadis*. Moreover, he had a permanent seat on the Bench of the Governor’s Court and administered oath of office to a new Governor. Officers attached to the court of the Chief Provincial *Qadi* were: a *Mufti*; a *Mohtasib*; *Darogha-e-Adalat-e-Subah*; *Mir’Adl*; Pandit; *Sawaneh Nawis*; and *Waqae Nigar*. Beside the court of the Chief Qadi of Subah there used to be the office of *Diwan-e-Subah* for revenue and financial cases and to assist Diwan-e Subah other staff was, *Peshkar* or a modern day Reader; *Darogha* called the superintendent of the office; *Mushrif* or the treasurer and *Tahvildar* or the cashier. His clerical staff included a *Munshi*, *Huzur* Clerk, *Subah* clerk, Clerks for crown lands and other miscellaneous work, Record-keepers, Accountants, and Heralds. Appeals usually went to the Governor but sometimes they would go to the *Diwan-e-Alah* in the Capital.

4.1.2 District Qadi

There used to be a *qadi* in each *sarkar* (district) who was under the Qadi-e-Subah. The former was in charge of civil and criminal judicial administration and heard appeals from the courts situated in other areas of the district. Beside this his other functions include enquiry of offences; visits to jails and inquiring into cases of prisoners confined therein; collection of *Zakat* and *jizyah* (under Awrangzeb who also transferred to him the control of mosques); leading Fridays/Eid prayers; attending important funerals; seeing solemnization of Muslim marriages. His staff included Peshkar (the equivalent of a modern Reader); a Katib who had to record
evidence and wrote judgements dictated to by the *Qadi*; Sahebul Majlis who used to read over depositions of witnesses in Court; Nazir who was incharge of the court buildings and the menial establishment; Daftari who looked after stationery and book-binding; Orderlies – usually four to five – were attached to the Court; Muchalkah Nawis who took bonds for attendance from the parties or witnesses. Some of these posts still exist in the modern Indo-Pak Subcontinent. The District Qadi Court had various officers attached to it. They were Darogah-e-Adalat; Mir 'Adl; Mufti; Pandit or Shastri; Mohtasib; and Vakil-e-Shara’. It is necessary here to mention that Mohtasib were appointed on the orders of Awrangzeb to enforce morality. Their departmental chief was the *Sadr*. Prosecutions in Criminal Courts were conducted by *Mohtasibs* and the Police. Whereas, suits against the State were defended by lawyers appointed full-time in every district and known as *Vakil-e-Sarkar* or *Vakil-e-Shara’*. They were attached to the court of District Qadi and received a fee of Rupee one daily. (Khan,149) They had to give free advice to the poor free of charge; to conduct suits on behalf of State; and to get State's decrees executed. Sir Thomas mentions the presence of ‘soliciter’ in his correspondence but it could be taken to mean a legal advisor and not Vakil-i-Sarkar. (Foster, 1990, 261.)

4.1.3 *Officials with some Judicial Functions*

There were some other officers related to but not direct part of the judicial department of the Mughals. The first such officer was the *Sadr* who was in charge of the Ecclesiastical Department in the district. He was appointed by the Sadrus Sudur. His duties included: checking of the 'Sanads' of Qadis, Mohtasibs, Khatibs, Imams, Muezzins and Mutawallis; issuing 'parwanahs' for the daily stipends of officials and Ulamas in the city and other towns; and
passing bills for payment to charitable endowments. His judicial functions were limited to settlement of claims relating to *madad-e-m’aash* grants or sitting on a Bench with the District Qadi to try Canon law case. There used to be a Faujdar – whose judicial functions included trying petty offences. Later on his powers were enhanced. Kotwal was another official who was subordinate to the District Qadi and had jurisdiction in minor offences. Another official was called Amalguzar who decided rent and revenue cases. To his court was attached a Darogah-e-Katcheri. Waqae Nigar or Waqae Nawis or Akhbar Nawis recorded proceedings of the courts mentioned above on daily basis and sent them on to the Emperor. These reports were scrutinized by Qadi al-Qudat or Qadi-e-Subah.

### a. *Qadi-e-Parganah*

He was the principal officer in the *parganah* (town). His jurisdiction extended over the villages included in his Parganah. His powers were similar to the District Qadi, however, the former could not hear appeals as there were no subordinate courts to him. A number of officials were attached to his court. They include a Mufti, a Mohtasib-e-Parganah, a Darogah-e-’Adalat where necessary, and a Vakil-e-Shar’a (who had a staff of three clerks and one accountant). In some Parganahs there used to be a Faujdar-e-Parganah who exercised the same powers as the District Faujdar. A few districts had Amins or Revenue officers, while in other places there were no faujdars at all and their duties were performed by Shiqdars or Kotwals (Khan, 1930, 342). Sometimes the local landlords were appointed in Parganahs to try Common Law cases. Appeals from their courts lay to the District Qadi’s Court. Karori and Amin-e-Parganah used to decide revenue cases in the Parganah.
b. **Panchayat**

Much before the advent of Muslims to India there existed a very good system for resolving small civil as well as petty criminal cases among the population in Indian villages. The early Sultans retained the same system. A village used to have a council of elders called *panchayat*. These panchayats were very active. The punishments took the forms of public humiliation, fines and ostracism. The last punishment had serious social and economic consequences, especially in a caste based society. Hence the orders of the panchayats were invariably obeyed. Serious criminal cases came under the jurisdiction of the qadi. Its main functions were the settlement of disputes. Matrimonial, communal differences, land, quarrels concerning watering fields and sharing of the produce were settled by the panchayat.

The legal relations between the non-Muslim subjects of Muslim rulers in India were regulated according to the principles of their own faith (Baillie, 1875, 174). In disputes between a Muslim and a non-Muslim, the decision was given according to Islamic law, (Husaini, 1952, 196) as already mentioned. When the case was between two Hindus it was referred to the judgment of the *pundits* (Hamilton, 1870, 14). They (Panchayat) held their sittings in public and administered justice in the village in cases involving petty civil disputes and where minor offences were concerned. The decisions of the Panchayat were binding and normally no appeal was allowed. The decrees were generally executed. The Headman or the Chaudhri was usually the head of the Panchayat and had to maintain peace and security in the village. However, the name of the head differed from region to region. In the East of the country the Chaudhri was called the Moqadam, in the West the Patel and in the South the Chetty. Under the later Mughuls,
subordinate courts were established in many of the sub-districts presided over by a Naib-i-Qadi (Hussein, 1934, 70). Jain argues that the Mughul judicial system was simple and served the needs of the people (Jain, 1966, 45). All capital cases had to be approved by the Emperor while all important civil cases were also brought to him.

The Qadi was the Chief Judge in criminal cases, and tried them according to Islamic law. Cases between Muslims, as well as cases in which one of the parties was a Muslim, were tried by him. The Qadi in each Sarkar had the power to appoint their assistants or Naib-i-Qadi in important centres. In each sarkar, the Kotwal performed many duties. He acted as a prefect of the police and a municipal officer. Secular type of criminal cases went to him. The Mufti was a learned theologian and consulted books on Islamic law regarding disputes and advised the Qadis who pronounced the sentence or decision. It appears that each and every Qadi consulted a Mufti before giving a decision. However, Hussein argues that only Qadis who were not quite sure about some legal points referred the case to a mufti and took a fatwa from him (Husaini, 1952, 203).

c. The Mir ‘Adl

There was a department for discharging the executive duties of the court. The Mughuls called the officer responsible Mir ’Adl. Abul Fadl, Akbar's secretary, has summed up in Ain-i-Akbari, the relationship between the Qadi and Mir’adl in a nutshell: “One finds out, the other puts (the finding) into effect” (Fadl, 1975, 190-191). The Mir’Adl used to draw the attention of the Qadi to a miscarriage of justice and to delay the execution of some decisions pending trial
before a higher court. Moreover, he used to make sure that parties and the witnesses attended the *Qadi* court, and that the decrees of the court were executed (Fadl, 1975, 191).

d. **Qadi ṮAskar**

Under the Mughuls there was a separate *Qadi* for the army known as *Qadi-i-Askar*. His jurisdiction was confined to military camps. In a case in which one party resided in the jurisdiction of the *qadi-i-askar* and other in that of the *qadi* of the city and the latter insisted on having the case tried in the city court, the *qadi* of the army could not try it unless he had been specially empowered to try all such cases (Husaini, 1952, 203). However, if both parties belong to the askar and wanted to take their case to the city *qadi*, they could do so, and the city *qadi* had the power to entertain it (Hassan, 1936, 312). What is clear from this is the fact that there was no difference as far as the content of law or its application was concerned. The *Qadi* of the city as well as the *qadi* of the military camp were applying the same law. There could be civil cases in which two individuals were involved and not a case involving discipline within the army or breach of army code, etc.

e. **Mohtasib**

One of the most important institution of the Mughal Empire was that of "hisba" under which mohtasibs were appointed. The Abbasid as well as the other Muslims rulers who ruled the Delhi sultanate also had the same institutions. Mawardi has given various duties of a mohtasib (Mawardi, 234, 243, 244). The mohtasib was theoretically responsible for the maintenance of the Islamic code of morals and behaviour. There was no overlapping between the duties of a *qadi*
and a mohtasib. The qadi had to adjudicate disputes that were brought before him. The mohtasib’s jurisdiction extended to disputes relating to weights and measures, adulteration or fraud in merchandize and loans that were not disputed and yet which were not paid. Moreover, his duties included the prevention of nuisance, removal of obstructions from and encroachment upon public streets. The Ain-i-Akbari does not mention the institution of mohtasib but there is no evidence that it was abolished either. It is important, however, that some of the traditional duties of mohtasib were sometimes transferred to the Kotwal (Qureshi, 1990, 206). All cities and townships had mohtasibs. All mohtasibs were under the sadr-us-sudur and were appointed by him (Khan, 1930, 250).

5. Appeals

After sifting through various sources one cannot find precise rules of appeal as they exist today. What is clear is that the decision of the lower courts was appealed to the higher court and then to the highest court. The last court of appeal was the Emperor himself. Appeal against the decision of a qadi lay to the chief qadi (sadr) in the province and from there to the court of the Sadr-us-sudur or Qadi-ul-Qudat of the Empire. This was the appeal system for all civil suits and criminal cases of a religious character.

Mirat-i-Ahmadi or History of Gujrat by Ali Muhammad Khan was completed in 1761. It is an excellent book and even the harsh critic of Mughuls, Sir Judanath Sarkar, calls it a very authentic book (Sarkar, 1972, 177). It is considered to be the most authentic description of their legal and administrative rules because it is based on State papers. It gives full copies of imperial Firmans (decrees) addressed to the officials of this province. One of the famous firmans, sent by
Awrangzeb Alamghir to the Diwan of Gujrat on 16th June 1672, gives his penal code in a nutshell (Khan, 1930, 278-283). The whole firman cannot be given here but some of the court personnel, their jurisdictions, and the appeal system are extracted below to understand the nature of judicial system in Gujrat because the same was applied in other provinces of the empire. The code mentions that all serious criminal cases like theft, highway robbery and homicide are decided by the qadi. Moreover, in case of crimes for which punishment is not fixed in Islamic law, the court has the discretion to give the punishment of ta’zir. If capital punishment was awarded by the Qadi, the person was put in prison while the case was reported to the Emperor for confirmation. Cases of revenue were disposed off by the revenue officers. When a man was brought to the chabothra of the Kotwal under arrest by the police or revenue collectors or accused by a private complaint, the Kotwal had to investigate the charge personally. He had to resort to court if there was a case against him. If there was a case of revenue department against him, the case had to be reported to the Governor (subahdar). The word subahdar and governor are used in the above firman interchangeably. In cases where the punishment was not fixed in Islamic law and the Qadi had to exercise his discretion, the opinion of the subhdar regarding conviction or execution was very important for the qadi. Moreover he was personally dealing with revenue cases (Khan, 1930, 149).

7. CONCLUSION

In summing up the discussion about the Mughal judicial system, an account of the relationship between the executive and the judiciary is necessary. Moreover, the main reasons for the disintegration of the Mughals are very relevant here. As a matter of fact both the base and the
superstructure of the Mughal state laid down by Awrangzib continued till the death of Muhammad Shah in 1748. The central authority of the state weakened thereafter. However, even in the heyday of the Empire, the administrative machinery used to change slightly from monarch to monarch.

Under the Mughals, judiciary and the executive functioned separately except that the King and his Provincial Governors exercised them together. However, when the Emperor or the Governor held trials, the proceedings in his court were purely judicial. When the Emperor heard appeals, he presided over a Bench consisting of the Chief Justice and Qazis of the Chief Justice’s Court (Kazim, 1864-73, 1079-1102). As a Court of first instance, he was assisted by a Darogha e-Adalat, a Mufti and a Mir Adl (kazim, 1077). Similarly the Qazi-e-Subah was a member of the Governor’s Bench and any decision by the Governor had to confirm to the legal opinion expressed by the Mufti. On the other hand relations between the Qazis and the executive were cordial during the reign of Awrangzib as decrees of the law Court were obeyed and the Qazis were held in great respect. Awrangzib held it to be a maxim that the complaint of a poor citizen against a highly placed individual was to be given credence (Ahmed, 1941, 276-7). Some Hindu authors, nevertheless, accuse Qazis of Awrangzib to have been corrupt (Jain, 1966). But it seems that they are biased. It is hard to find examples where a Qazi was removed by the Ruler on the ground that he gave an inconvenient decision.

Awrangzib had left a completely settled Empire at his death. Its disintegration commenced in the reign of Muhammad Shah (1719-1748). He is said to have thrown an urgent report of an important conspiracy into a barrel of wine as useless bother, and did not recover from the effects of his orgy till two days after. Chaos started on the death of Muhammad Shah in 1748. From 1750 C.E. onwards, there were five puppet Emperors, who were quite incapable of exercising the
control necessary to preserve the vast Empire left by Awrangzib. Consequently, the downfall of the Mughal Empire started when the Emperors were no longer able to uphold individual rights or to do justice between man and man, and when their subordinates became too powerful as against the decrees of the courts. As a result, in the Muslim India that remained, the judiciary became merged in the executive in a manner always discouraged by Islam and the early Caliphs. The Governors, who had assumed the powers of an Emperor in their Subhas, were now supervising corrupt judicial officials. Every judicial official was now trying every kind of case. The situation was summed up by an English official in 1772. “Abuses in the administration of Justice were to be imputed rather to the corrupt principle of the Muhammadan and Gentoo (Hindu) Judges than to any defects in the Law or in the regulations of the courts” (Range, 1772, 371). It was in this state of affairs when the East India Company was appointed Diwan of the Subah of Bengal in 1765 by a Royal Farman. In 1717, the Company had secured the right to collect revenue over 38 villages near Calcutta in 1717. Moreover, Nawab Siraj-ud-Dula captured Calcutta in 1756. However, the British took it back in the famous battle of Plassey but it did not annex the territory and installed Mir Ja’far as Nawab. In 1765, he was succeeded by his minor son Najm-ud-Dula. Mir Ja’far had ceded the Zamindari of the 24 Parganas to the Company, which now controlled an area of more than 800 square miles thus expanding its territories surrounding the presidency towns under its control. This territory was known as the ‘mofussil’. The Company provided the adalat system for the administration of justice in the mofussil. It appeared that the fate of Muslim India had changed forever.
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