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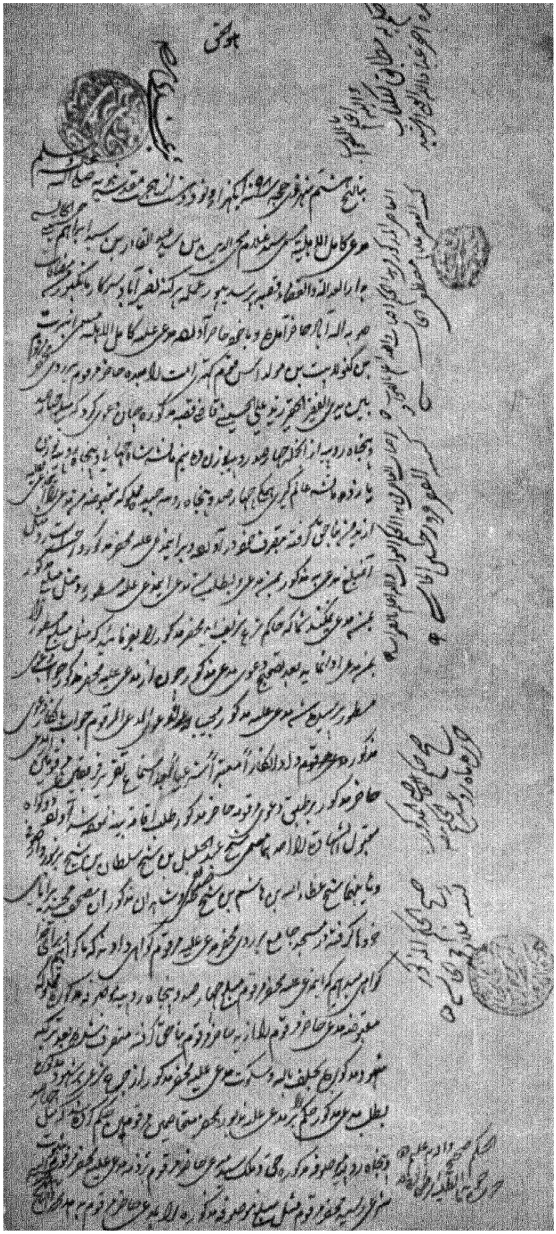
MAULANA SAIYAD SULAIMAN NADVI SAHIB, AZAMGARH.

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Copy of judgment in Saiyad Ghulam Mohi Uddin *vs.* Anbart, 1686 A.D. Baqiyat us Salehat, page 9.

Aligarh University Studies in History

The Administration of Justice in Medieval India

A STUDY IN OUTLINE OF THE JUDICIAL SYSTEM UNDER THE SULTANS AND THE BADSHAHS OF DELHI BASED MAINLY UPON CASES DECIDED BY MEDIEVAL COURTS IN INDIA BETWEEN 1206-1750 A.D.

By

MUHAMMAD BASHEER AHMAD

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CONTENTS

	PAGE
PREFACE	7
LIST OF ABBREVIATIONS	11
NOTE ON SPELLING	15
TABLE OF CASES	17
PART I—INTRODUCTORY	
Section I—The subject-matter	25
Section II—The sources of information ..	36
PART II—THE TEXT	
Ch. I—Conditions in Medieval India ..	57
Ch. II Conception of Justice in Muslim States	65
Ch. III—Judicial system under the Sultans	96
Ch. IV—Judicial system under the Mughals	133
Ch. V—Procedure in Courts	176
Ch. VI—Rules of evidence	212
Ch. VII—Tendencies in criminal administration	223
Ch. VIII—Prevention of crimes	232
Ch. IX—The working of the Judicial machinery	250
Ch. X—Summary and conclusions ..	272
APPENDICES	
The Sultans and the Badshahs of Delhi	286

PAGE

Bibliography 289
Criminal regulations of Aurangzeb .. ١
Letters of appointment ٩
List of Qazis of Parganah Jais (1565-1882) ٢٣
General Index 301

ILLUSTRATIONS

1. Copy of Judgment in Saiyad Ghulam Mohi Uddin *vs.* Anbart, 1686, A.D. Baqiat us Salehat p. 9 .. .. *Frontispiece*
2. Executions 233
3. Prison scene 247

PREFACE

This book is based on original sources some of which have not so far been utilised by any other author. The title owes its origin to a suggestion by the late Sir Thomas Arnold with whom the author was associated in this undertaking. The conclusions arrived at depend mainly for their support on the cases decided by the Muslim courts and either noted specifically by historians or discovered in the original. These judgments were collected by me from various sources during a period of research extending over several years.

The book has been divided into two parts. Part I deals with the scope and the sources. Part II contains the main theme. Chapter I gives the general condition in Medieval India when the Muslim administration was first established. Chapter II surveys the conception of justice among the Rulers as interpreted by their own Law Courts or themselves. The Judicial systems of the Sultans and the Badshahs (Mughals) are given separately as there were alterations during the Mughal rule. In some cases the posts remained more or less the same but their duties had undergone changes. Anxiety not to omit reference to any of the various scraps of evidence which I have been able to gather, must be my excuse for what might be thought the disproportionate length of Chapters III and IV.

The description of these two systems is followed by a discussion of the Law of Evidence and Procedure, tendencies in criminal administration, prevention of crimes which includes the Police organisation and lastly of the working of the entire judicial machinery.

This work in the words of Professor Dicey is neither of a critic nor of an eulogist nor of an apologist but simply of an expounder and is intended to introduce a subject hitherto neglected for further study and research. As the material on the subject-matter of this book is still scanty, a detailed critical examination of the system is neither within the scope of this book nor seems necessary at the present stage.

I take this opportunity to express my gratefulness to the Hon'ble Sir S. M. Sulaiman, Kt., LL.D., Judge of His Majesty's Federal Court and Vice-Chancellor of the Aligarh University, who took so much interest in the preparation and the publication of this book.

Mr. A. Campbell, a distinguished member of the I.C.S. and formerly Judge, Punjab High Court, took considerable pains in going through the several chapters of this book and offered valuable suggestions.

Sir Hari Singh Gour, D.C.L., LL.D., D.Litt. and Mr. A. Yusuf Ali, C.B.E., M.A., LL.M., I.C.S. (Retd.) revised this book and very kindly offered suggestions at various stages.

Nawab Mirza Yar Jang Bahadur, Chief Justice, Hyderabad High Court (now President, Judicial Committee of H.E.H. the Nizam's Government) very kindly permitted me to inspect the High Court record

room and to obtain copies of valuable records for reference. He also placed at my disposal his whole library of valuable books and MSS. My thanks are also due to Mr. Khurshed Ali, Director, Diwani Office, Hyderabad for giving me an opportunity to examine the State archives and sending me copies of useful documents.

To Saiyad Kalbe Abbas, M.L.C. of Rae Bareli I am indebted for assisting me in collecting the judgments in Baqiatus Salehat.

Maulana Sulaiman Nadvi, President, Shibli Academy, Azamgarh has placed me under a deep debt of gratitude by allowing me to utilize all the Persian and Arabic MSS. in the Academy at various intervals. Among other scholars I shall particularly wish to mention the name of Professor Habib of Aligarh who took great pains in revising the MS. and correcting a few errors.

Mr. Abdur Rashid, M.A., LL.B., Secretary, Editorial Board, Aligarh Historical Research Institute, Mr. Abdus Salam, M.A., LL.B., Lecturer, Law Department, Aligarh University, Mr. V. D. Chaturvedi, M.A., LL.B. and Mr. Girja Prasad Mathur, Assistant Master, Government High School, Aligarh, helped me a great deal in correcting the proofs.

Judge's House, Aligarh M. B. AHMAD
January 1, 1941

LIST OF ABBREVIATIONS

Al Beruni	Tarikhul Hind, 2 Vols., Tr. by Sachau
Ain-e-Akbari	Persian Text. Bib. Ind., Vol. I. Translation by Blochman. Vol. II. Translation by Jarrett
Akbar Namah	Persian Text by Abul Fazl, Bib. Ind.
Badaoni	Muntakhab ut Tawarikh, Bib. Ind. by Badaoni
Baillie	Digest of Moohummudan Law by Baillie
Baqiat	Baqiat us Salehat
Barni	Tarikh e Firoz Shahi by Zia Ud-din Barni, Bib. Indica.
Beveridge	History of India, 2 Vols., C.U.L. by Beveridge
Bib. Ind.	Bibliotheca Indica Series
Briggs	Rise of the Mahomedan Power in India, 4 Vols. by W. Briggs
Br. Mus. MS.	British Museum Manuscript
Collections	Collections of Diaries and Judgments in the Diwani Office, Hyderabad, Deccan
C.U.L.	Cambridge University Library
Dow	History of Hindustan, 3 Vols. by Lt.-Col. A Dow, C.U.L.

Elliot	History of India, As told by its own Historians 8 Vols. by Sir Henry Elliot and Dowson
Farameen	Farameen us Salatin by S. Bashir Uddin, Delhi
Fatawa	Fatawa e Alamgiri
Fiqh	Fiqh e Firoz Shahi MS., I.O.L.
Fryer	Travels by T. Fryer, 2 Vols. C.U.L.
Hamilton (Capt.)	A New Account of the East Indies 2 Vols. I.O.L. by Capt. Hamilton
Hidayah	'Hedaya' Translation by Hamilton, published by Grady
I.O.L.	India Office Library
I.O.L.MS.	India Office Library Manuscript
I.O.L.Rec.	India Office Library Records
K.C.C.L.	King's College Cambridge Library
Kennedy	History of the Great Moghuls by Pringle Kennedy, 2 Vols. I.O.L.
Khafi Khan	Muntakhab ul Lubab by Khafi Khan, 2 Vols., Bib. Ind.
Kitabul Ikhtyar	Islami Qanun e Faujdari, Azamgarh
Manu	Manu Samhita. Tr. by Sir W. Jones
Manrique	Travels. 2 Vols. Hakluyt. C.U.L.
Mirat	Mirat e Ahmadi. 2 Vols. Supplement, Baroda
Monserrate	Commentary. Edited by Hoyland and Banerji

R.A.S.	Royal Asiatic Society, London
Roe	Embassy of Sir Thomas Roe by Foster
Sarkar	Mughal Administration by Sir Jadunath Sarkar
Sarkar I, II, III	Vols. I, II and III. History of Aurangzeb by Sir Jadunath Sarkar
Stewart	History of Bengal by Stewart
Storia	Storia du Mogor by N. Manucci. 4 Vols.
Tuzuk	Tuzuk e Jahangiri by Saiyad Ahmad. Aligarh
Waqae	Waqae Alamgir by Ch. Nabi Ahmad. Allahabad

N.B.—In many of the MSS. for example MS. 370 l.f. I.O.L. and 'Collections', neither the pages nor the folios are properly numbered. Effort has, therefore, been made to quote other authorities as well where available.

NOTE ON SPELLING

In spelling foreign words in English I have tried to adhere to the exact word phonetically and have refrained from adopting the spellings used in some of the standard works wherein such questions do not seem to have been raised. For example,[1] the word Syed has been written as Saiyad, Hedaya as Hidayah, Mohammad or Mahomed as Muhammad, Qoran as Quran, Mogul as Mughal.

The 'Izafat' in Persian which means 'of' has been shown by adding the letter 'e' at the proper place instead of the usual 'i' as in my opinion the sound of 'e' expresses the connection more correctly as in Qanun e Shahi; Qazi-e-Subah, Mirat e Ahmadi.

The letter ق is written as Q as in Qazi, Tughlaq in preference to K. The last 'h' (ö) of Arabic and Persian words, where necessary, has not been omitted as the omission sometimes gives a different meaning, e.g., Hidaya and Hidayah.

The word Shiqahdar has been spelt by some writers as Shiqdar. Barni writes it without 'ah' but the 'tashdid' on 'q' conveys a different sound from Shiqdar. The Mughals definitely used the word Shiqahdar. The spelling of words like Firoz, Saiyad etc., given in various histories of India is erroneous.

[1] I have retained Delhi instead of Dehli as there are a few small towns in India with this spelling and practically the whole English knowing world has accepted Delhi.

TABLE OF CASES

A

Akbar Khan (suit against) Governor of Delhi
Ali Raza and Afzal Ali *v.* Mir Wali. Baqiat, p. 18
Ata Husain *v.* Ashiq Husain. Baqiat, p. 22
Ausaf Ali's case, Baqiat, p. 28
Azmat Ullah *v.* Ghulam Muhammad. Baqiat, p. 5

B

Babar *v.* Ali Muhammad. Baqiat, p. 12
Bawahir *v.* Havildar Kalupur. Mirat II, p. 5

C

Case of Two men of Puran Varan (Collections)

D

Dara (complaint of) against Diwan-e-Ala (MS. 370 I. f. I.O. L.)
Deshmit *v.* Faujdar (Collections)
Dunia Murai *v.* Shahamat Ali. Baqiat p. 25

E

E. I. Co. (claim of) against State. Captain Hamilton I, p. 232
E. I. Co. *v.* State. Islamic culture, 1928, p. 134

G

Gada Husain *v.* Fateh Alam. Baqiat p. 20
Ghanshyam *v.* Mughal Noble. Sarkar, Aurangzeb IV p. 109

Ghulam Murtaza *v.* Waris. Baqiat, p. 15

H

Haji Zahid and Pirji *v.* Prince Murad. Khafi Khan II p. 251
Haji Zahid and Pirji *v.* State. Khafi Khan II, p. 251
Hamid Uddin *v.* Prince Kambux. Khafi Khan II, p. 437
Hamira Bibi *v.* Zubaida Bibi. L. R. 43 I. A. P. 301, 302
Hamiyat Ali *v.* Gauri Shanker. Baqiat p. 32
Hindu Clerk *v.* Mughal Soldier. Storia I. p. 203

K

Kartalab Khan (Complaint against). Storia II. p. 259
Karva *v.* Sundar (Collections)
Kashmiryan (Case of). Baqiat. Br. Mus. MS., 26, 239 f. 16
Khwaji Ahmad *v.* Ali Muhammad. Baqiat p. 10

M

Manucci *v.* Portuguese. Storia III. pp. 128-129
Master *v.* Servant. Storia I. p. 201
Matrimonial Case in the Court of Governor Parenda (Collections)
Mir Wali *v.* Mushrif. Baqiat p. 22
Mirza Beg *v.* State. Khafi Khan II p. 257
Muhammad Mohi Uddin *v.* Anbart. Baqiat p. 9
Muhammad Tughlaq *v.* Shaikh Zada Jami. Badaoni I p. 239 (Bib. Ind.)
Muhammad Wali *v.* M. Shahid. Baqiat p. 23
Mohi Uddin *v.* Pir Ali. Baqiat p. 7
Mohi Uddin *v.* Qazi Mansur. Baqiat p. 2
Mst. Bibi Zadi *v.* Mir Wali. Baqiat p. 16

Mst. Feeta *v.* Miran. Baqiat p. 1
Muslim Woman *v.* Hindu Rajput. Storia p. 174

N

Nurullah *v.* M. Ullah. Baqiat p. 4.
Nusrat Ali and others *v.* Qaim Ali. Baqiat p. 21

O

Old Woman *v.* Muqarrab Khan. Tuzuk p. 83

P

Pan Seller Woman *v.* Prince Adil Shah. Erskine II, p. 445

Q

Qazi Imdad Uddin (Case of) Elliot II, p. 349
Qazi Khair Uddin (Case of) Baqiat p. 30
Qazi Sadrul Mulk (Case of) Shams Siraj Afif, p. 473

R

Rajava Slave Girl's case. Storia III, p. 205
Ram Rai *v.* Har Kishan. Sarkar III, p. 353
Raziah's Murder Case. Elliot III, p. 593

S

Sadiq *v.* Shakur. Sarkar, Aurangzeb V, pp. 421-22
Salabat Ali *v.* Wasit Ali. Baqiat p. 26
Saiyad Bakar *v.* Mst. Batul. Baqiat p. 11
Saiyad *v.* Mian Malik. Elliot IV, p. 454, Kennedy I p. 110
Sher Muhammad *v.* State. Collections
State *v.* Armenian. Fryer I, p. 244
State *v.* Babaji (Collections)
„ *v.* Babaji Deshmukh (Collections)
„ *v.* Bindraban. Stewart, p. 410

State *v.* Brahman. Elliot V, p. 543
„ *v.* Budhan Brahman. Elliot VI, p. 187, Beveridge I, pp. 101, 102
„ *v.* Chabila Ram. Sarkar, Aurangzeb I, p. 174
„ *v.* Chand Baksaryan (Collections)
„ *v.* Daryai Khatun. Storia I, pp. 200-201
„ *v.* Durga (Theft case) (Collections)
„ *v.* Empress Nurjahan. Tuzuk-e-Jahangiri by Shibli, pp. 30-31
„ *v.* Genoese. Storia I, p. 265
„ *v.* Gujrati woman. Briggs II, p. 352
„ *v.* Haibat Khan. Briggs I, p. 253
„ *v.* Hushang. Tuzuk S. A. 16th year, p. 333
„ *v.* Ibn Baqa Billa. Tazkiratul Ulema, p. 53
„ *v.* Islam Khan. Elliot IV, p. 26
„ *v.* Jankar Khan. A. N. III, p. 32 (Akbar Namah)
„ *v.* Kalyan. Elliot VI, p. 314
„ *v.* Khorasani. Shams Siraj Afif, pp. 496-7
„ *v.* Khusro and others. Tuzuk (S. A.), p. 28
„ *v.* Khwajah Ahmad. Shams Siraj Afif, p. 508
„ *v.* Kotwal Said. Storia I, p. 197
„ *v.* Lakshman Banjara (Collections)
„ *v.* Madari Faqir (Collections)
„ *v.* Malik Faiz. Briggs I, p. 253
„ *v.* Manrique and Muslims. Manrique V, pp. 109-112
„ *v.* Manrique and others. Manrique II, pp. 137-8
„ *v.* Manucci. Storia II, pp. 197, 198, 199
„ *v.* M. Aqil. Waqae Alamgir, pp. 80-81
„ *v.* Muhammad Said Kotwal. Storia I, p. 197
„ *v.* Muhammad Tughlaq's son and others. Ibn Batuta. See p. 128. Dow I, p. 309

State *v.* Mir Murtaza. Khafi Khan II, p. 564
„ *v.* Mirza Beg Kotwal. Khafi Khan, p. 257 Vol. II
„ *v.* Muqaddam. Mirat I, p. 49
„ *v.* Mst. Balai (Collections)
„ *v.* Mughal Soldier. Storia I, p. 203
„ *v.* Muslims of Khandesh. Manrique II, p. 112
„ *v.* Muslim Trade Commissioner. Monserrate, p. 210
„ *v.* Nawal. Elliot VI, p. 346
„ *v.* Noble Woman. Roe, pp. 190-191
„ *v.* Police Official. Safir-e-Oudh, pp. 90-91
„ *v.* Potter. Storia I, p. 174
„ *v.* Prince. Mirat I, p. 49
„ *v.* Prince Adil Khan. Erskine II, p. 445
„ *v.* Prince of Gujrat I, p. 49
„ *v.* Qazi Jalal-uddin and another. Badaoni I, p. 171
„ *v.* Qazi Mir. Storia IV, pp. 118-119
„ *v.* Qutub Uddin Bohra. Sarkar, Aurangzeb III, p. 113
„ *v.* Rae Rae Singh. Tuzuk (S. A.) p. 62
„ *v.* Rukn Mahdi. Br. Mus. Ms. Or. 2309 f, 301
„ *v.* Sarmad. Sarkar, Aurangzeb III, p. 113
„ *v.* Sidi Maula. Barni, p. 211
„ *v.* Sidi Maula. Beveridge I, p. 75
„ *v.* Sidi Maula and others. Badaoni I, p. 171 Elphinstone, p. 381, Beveridge, pp. 75-76, Barni, p. 211
„ *v.* Seif Ala. Dow III, pp. 105-107
„ *v.* Shah Mansur. Monserrate, pp. 98-99
„ *v.* Shakur. Sarkar, Aurangzeb VI, pp. 421, 422

State *v.* Sh. Alai. Briggs II, p. 141
„ *v.* Sh. Haidri and others. Ibn Batuta, p. 146
„ *v.* Shiqahdar. Manrique I, pp. 424-425
„ *v.* Son of Babaji (Collections)
„ *v.* Sulaiman and others (Collections)
„ *v.* Tahir. Sarkar, Aurangzeb III, p. 113
„ *v.* Two thieves (Collections)
„ *v.* Uddav and others. Sarkar, Aurangzeb III, p. 330
„ *v.* Vizir. Elphinstone (1857), p. 356
„ *v.* Woman of Gujrat. Briggs II, p. 352
„ *v.* Yaqub and Naim. Briggs IV, p. 519
„ *v.* Youth. Fryer, Travels I, p. 245
„ *v.* Yusuf. Briggs IV, p. 517
Subedar Deshmit *v.* Faujdar (Collections)

T

Tarbiat Khan (Complaint of). Dow III, p. 173
Theft case. Storia III, p. 128

W

Wahab *v.* Saiyad and others. Tuzuk S. A., p. 306.
Wahab's Case. Tuzuk-e-Jahangiri, p. 306
Wali *v.* Mushrif. Baqiat, p. 22
Wazir's Case, Ibn Batuta, p. 147
Widow *v.* Faujdar. Khafi Khan II, p. 550
„ *v.* King Ghyas. Stewart, pp. 90-91
„ *v.* Muqarrab Khan. Tuzuk (S. A.) p. 83
Woman's Complaint. Storia III, p. 123
Woman *v.* Prince Adil. Erskine, p. 445
Woman *v.* Youth, Storia II, pp. 419-20

PART I

INTRODUCTORY

SECTION I

THE SUBJECT MATTER

Imad Uddin—Muhammad bin Qasim, a seventeen year old general,[1] was the first Muslim who made any conquest in India. Although his victory over the local ruler of Sindh in 712 A.D. established a Muslim Indian dominion and the invasions of Mahmud of Ghazna and Muhammad of Ghor in the 11th and the 12th centuries A.D. brought the Muslims into closer contact with the inhabitants of India, yet as they left the government of the country to the people who professed a different religion the Muslim institutions did not get any foothold in India properly until 1206 A.D.

It was in this year that Qutub Uddin Aibek, a slave of Muhammad Ghori, King of Ghor, consolidated his conquest of the whole of Northern India and laid there the foundation of the Muslim administrative system.

This important year also marks the introduction of Islamic Law in India and of its judicial machinery on a permanent footing[2] as the conquerors for the first time intended to establish permanent institutions.

The early Muslim Kings who with the exception

[1] Compare Cambridge History of India III. pp. 2-10. Also Cambridge History of India III. pp. 4, 10, 11.

[2] Compare Islam by Sir D. Ross, p. 60.

of the Saiyads,[1] were either Turks, Afghans or Pathans, took the title of Sultan. Their administration is known as the "Sultanate". They came to India from Turkistan and the North West where the seeds of Islamic Culture had recently been sown. The administrative structure built by them continued, with occasional modifications and improvements, to exist during the successive Muslim dynasties up to the year 1857 A.D., and as I propose to show elsewhere, bore strong resemblance to the institutions developed by the Abbaside rulers of Baghdad, usually known as the "Caliphs".

As Sir Denison Ross has pointed out[2] Islamic traditions of sovereignty had sufficiently crystallised by the time the Turks established themselves on Indian soil. Students of legal research had for their guidance Al Mawardi's "Ahkam us Saltanyah",[3] an epoch making work on constitutional Law and practice and "Tarikhud Dawal" written by Saif Uddin Ibn Tiqtaqa in the 11th century A.D. To the rulers of Central Asia, the ancestors of the Mughals, the pages of Nizamul Mulk's "Syasat Namah" were familiar.[4]

The history of the judicial administration in Medieval India, therefore, necessarily entails a study of the origin and the development of Islam, the religion founded in the early days of the 7th Century A.D., by

[1] Saiyads (1414-1450 A.D.). The word 'saiyad' literally means leader. The followers of the Prophet Muhammad who claim descent from him through his daughter Fatima, generally style themselves 'Saiyads'.

[2] Islam, pp. 46-47.

[3] (Arabic)—Printed in Paris 1901-1906. Al Mawardi was an Arab.

[4] Nizamul Mulk wrote this book in about 1168 A.D.

Muhammad, the Prophet of Arabia (570-632 A.D.) and noticed during the caliphate (632-1258 A.D.).

The subject-matter of this book, however, is limited to a study of the system employed by the Muslims to administer justice in India and, incidentally, of the principles of the adjective Law in force in medieval India. This is not intended by any means to be an exhaustive treatise on the Law of Procedure adopted by medieval Indian Courts. I have given a brief description of it in order to illustrate the working of the judicial system, and discussion has been confined to those points only on which authorities exist either in the form of decided cases, or where reference to them has been given in the precedents quoted in such authoritative works on the Muslim Law as the Hidayah, the Fiqh e Firoz Shahi or the Fatawa e Alamgiri which regulated procedure of courts in medieval India. This particular aspect of Muslim Law and, incidentally, of the medieval history of India, has, it seems, remained unexplored, while the substantive Law of the Muslims has received adequate attention at the hands of eminent authors such as Baillie, Ameer Ali, Wilson, Tyabji and Mulla. It is, therefore, hoped that this book may lay the foundation for further research both in Muslim Law and its practical working, and in medieval Indian history.

In discussing, however, the judicial system in vogue in any Muslim country, it is necessary to bear in mind that one of the principal articles of faith among the Muslims has been a steadfast reliance on the Quran, the Book of Revelation, as the Word of God which is meant for all times to give Law to

the people. The Muslim rulers in India, like their co-religionists elsewhere,[1] accepted the Quranic Law as divine and hesitated in making any attempt to "improve" upon what was ordained. There was not much scope for fresh legislation on the subjects provided for in the Quran, nor for repeal of the "Sacred" Laws nor for the development of what is nowadays called Judge-made Law. In fact there seemed to be no need for it. If precedents were sought in Muslim Courts, they were either from the Quran or from the practice of the Prophet—Ahadith (Traditions) collectively termed "Usul ul usul". Sometimes resort was had to the consensus of opinion among the Ulema—Ijma,[2] but in no case was any essential provision of the Law altered. In cases where the Quran, the Ahadith and the Ijma could not give any direction the Judge was to use his discretion, but his Judgment was not necessarily binding on others.[3] This was perhaps a reason why no encouragement was given to Case Law in practically all Muslim States

[1] The Muslims, after the death of the Prophet in 623 A.D. had divided themselves into Sunnis and Shiahs. The former thought that a successor (The Caliph) to the Prophet could be elected while the latter insisted that the succession should be confined to the family of the Prophet. The Sunnis had an overwhelming majority and won the fight. The Shiahs had no other difference on the essentials. The Sunnis themselves were divided into four principal schools of thought, the Hanafis, the Shafa'is, the Malikis and the Hambalis, but again there was no divergence of opinion so far as the chief tenets of the religion were concerned.

[2] 'Ijma' means gathering: refers to consensus of opinion. See 1. Hujjat ul Balighah by Sh. Waliullah (Chapter on Mujtahid). 2. McDonald. pp. 57-58.

[3] Al Mawardi, compare J. R. A. S., 1910, p. 765; Fitzgerald p. 7; also letter of Caliph Omar I to Qazi Shorai and Shibli—Sirat un Nabi II, p. 245.

throughout the world.

It may be for this reason that one finds that the sources of information about the history of judicial administration in Medieval India, which covers a large portion of Indian History from 1200 to 1857 A.D., are limited.[1] There have been Chronicles of various Courts, memoirs of Kings and historical anecdotes given by foreign travellers—they are all excellent accounts of the period as a whole—but in most of them there has been no systematic discussion of the judicial system and Laws that were in force in medieval India, except casual references. The attention of these writers seems to have been occupied mostly with battles and political changes. The Ain e Akbari[4] and the Akbar Namah[2] give an account of the general conditions of administration while the Fatawa e Alamgiri,[3] the great Corpus Juris of Aurangzeb's reign is more or less an exposition[4] of the substantive Law then prevailing. Both were compiled under two of the greatest sovereigns but neither describes in any detail the machinery employed by the medieval rulers in carrying out their judicial administration.

The study of this subject has, therefore, involved extensive reading and a good deal of travelling in the interior of the country. It appears to me that lack

[1] Compare Amedroz remarks (J. R. A. S., 1910, p. 761) "of Muslim legal procedure we know but little, the nearest approach to Law reports being the notices of judicial Proceedings in works dealing with the lives of Judges. Such a work is the History of the Kazis of Egypt by Al Kindi".

[2] See Bibliography.

[3] See Section II.

[4] Compare (1) Baillie—Digest, p. XII. (2) Hidayah, p. XXXII says "bare recital of examples". Maasir e Alamgiri, pp. 529-30.

of information and the compilation of the Fatawa e Alamgiri so late as 1670, are responsible for the fact that a systematic description of the Muslim judicial system is generally found missing in the many works on Indian History sometimes even by writers whose books are commonly read in India. For example, from a perusal of the Oxford History of India,[1] the "Mughal Rule in India",[2] "Akbar to Aurangzeb",[3] the "Mughal Administration",[4] and of other[5] books, an impression is conveyed that in spite of an elaborate machinery of government there was practically no system for the working of the Law Courts in Muslim India. "The main defect" says a modern writer[6] "of the department of Law and Justice was that there was no system, no organisation of the Law Courts, in a regular gradation from the highest to the lowest, nor any proper distribution of courts in proportion to the area to be served by them".

On the other hand we possess the following comment from an eminent English scholar in 1850[7]:—

"Much of the procedure in the Company's (East India Company) Courts of Justice has been derived from it (Muslim Law); and through this means, and also through the subordinate officers and pleaders of the Courts—who, with a very few exceptions,

[1] p. 311, 371 (V. A. Smith).
[2] p. 189 (Edwardes and Garrett).
[3] pp. 233-4 (W. H. Moreland). See also his 'India at the death of Akbar', pp. 34-35.
[4] p. 19 (1920) (Sir Jadunath Sarkar). See also III Aurangzeb, pp. 82-85.
[5] p. 89, Roe's Embassy by Foster.
[6] p. 108, Mughal Administration by Sarkar (1935).
[7] Moohummudan Law of Sale by Baillie, p. XV.

are Moohummudans or Hindoos trained to the same methods and have derived any knowledge or jurisprudence they possess from that source—it exercises a powerful though unseen influence on the administration of justice even by English Judges".

According to McDonald[1] the Muslims regarded the administration of justice as a duty, and with their "armies everywhere went Law and Justice such as it was. Jurists accompanied each army and were settled in the great camp cities which were built to hold the conquered land".

"Many centuries", says Hamilton[2] in 1780 "have elapsed since the Mussulman conquerors of India established in it, together with their religion and general maxims of government, the practice of their Courts of Justice. From that period the Mussulman code has been the standard of judicial administration throughout the countries of India which were subjugated by the Mohammedan princes, and have since remained under their dominion. In one particular indeed, the conduct of the Conquerors materially differed from what has been generally considered in Europe (how unjustly will appear from many passages in this work) as an invariable principle of all Mussulman governments; namely, a rigid and undeviating adherence to their own Law, not only with respect to themselves but also with respect to all who were subject to their dominion".

In a remarkable passage in his report[3] on Judicial

[1] Muslim Theology, p. 83.
[2] Hidayah, p. XIV.
[3] Dow III, pp. XXIX-X.

reforms submitted in 1772 to Warren Hastings, Lt.-Col. Alexander Dow, a distinguished Civil Servant of the East India Company, says "The Courts of Justice ran through the same gradations which the general reason of mankind seems to have established in all countries subject to regular governments. The Provinces were divided into districts, in each of which a Judge appointed by the Emperor decided in Criminal as well as Civil affairs.....In disputes concerning property there lay an appeal to the Supreme Court in which the Viceroy presided in person.....There arose a chain of appeals from the lowest to the highest".[1] We have again the testimony of a French traveller of note wherein he says[2] "Barbarous as we are apt to consider the Sovereigns of Asia, they are not always unmindful of the justice that is done to the subject".

It would thus appear that there was undoubtedly a judicial administrative system in those days, though opinions regarding its utility at the present stage of India's material progress may not be the same.

Indeed there is, as I intend to show elsewhere, considerable evidence to support the fact that there existed a workable system in medieval India suitable to ideas of those days. That it was picked up more or less in its original form[3] and allowed[4] to

[1] Dow III, p. lvi.

[2] Bernier's Travels, p. 263. Compare Marshall's remarks on p. 391—Diary edited by Khan.

[3] Compare Hidayah, pp. XIV-XV.

[4] Compare Wilson's "Anglo Muhammadan Law" by A. Yusuf Ali, p. 26. In his reply to John Buller enquiring about the execution of certain punishment awarded to dacoits, Warren Hastings said on 12.10. 1781:—

".....As the natives are not to be tried according to

work[1] in the East India Company's Courts by such an experienced administrator as Warren Hastings, is an undoubted testimony of its usefulness in those times.

Apart from the prominence given to the Muşlim system of Law and Justice by Warren Hastings (1774-1784), we find that the contemporary Persian authorities, as well as foreign travellers, have distinctly referred[2] to Courts of Justice and the Qazis[3]—Judges

> our notions of justice, but by the established Law of the Country, excepting in very extraordinary cases where it has been usual for Government to interpose, I must request that you will permit the officers appointed for that purpose to carry the enclosed warrant into immediate execution".

[1] Sir William Markby in his "Hindu and Mahommedan Law" pp. 7, 8, thinks that no other way was legally possible, as the Mughal Emperor who had granted the Diwani to Clive by a Farman was in existence at Delhi and would not permit any other law to be promulgated. This argument, however, supports the theory that it was for this reason that the government of England could only consider itself morally responsible for the good administration of the land over which the East India Company had secured certain administrative rights. If they interfered at all, it was for the sake of efficient government and nothing more than advice in the shape of 'regulations' could be given. Kaye in his Administration of the East India Company (p. 93) points out that the British government in England objected to the use of the word "Laws" by Cornwallis as they could only be promulgated by the Mughal Emperor to whom the Company was legally responsible.

[2] *Persian*—(1) Travels of Ibn Batuta—Lee. (2) Tarikh e Firoz Shahi. (3) Ain e Akbari. (4) Maasir e Jahangiri. (5) Maasir e Alamgiri. (6) Khafi Khan. (7) Badaoni. (8) Ruqaat e Alamgiri. (9) Arzdasht. (10) Mirat e Ahmadi.

Foreign Travellers—(1) Marshall, p. 391. (2) Manucci I, pp. 198-204. II, pp. 210, 419. III, p. 263. (3) Travernier I, p. 325. (4) Bernier, pp. 212, 263. (5) Manrique II, pp. 112, 149, 159. (6) Roe, p. 260.

[3] Captain Hamilton, Vol. I, p. 121 "seek Justice at the Cadjee's Court".

of those times, and to the system of appeals[1] and punishment, and also to the exercise of the Royal prerogative by the medieval Rulers. A number of important law books[2] were written during the Muslim period by persons who were Law Officers or Judges of repute. There was indeed no reporting of cases as we use the phrase in our own times, but Aurangzeb is said to have issued[3] orders regarding the preservation of Court records (Collections) and the circulation of important judicial decisions among the Qazis.[3]

There have been instances in which appeals were preferred on interlocutory points (vide Storia III, pp. 263-264) to higher Courts even before Aurangzeb's times, and this also suggests in a way that some record of cases must have existed. Whether the records were kept exactly as they are preserved now in British India, is not clear. I came across an order of Aurangzeb's Court among the state papers in the Diwani Office of the Nizam's government, directing a particular file to be kept in the office safely. Perhaps for this reason the equivalent of the word "Record Room" in British India is usually

[1] Badaoni (Ranking) p. 311; Dow III, pp. XXIX-X; Moreland, India at the death of Akbar, p. 36; Owen "Fall of the Mogul Empire", p. 4.

[2] The best known are Fiqh e Firoz Shahi, Sharh e Waqayah Kitabul Ikhtyar and Fatawa e Alamgiri.

[3] Compare Sarkar (1935) "The Mufti is urged to spend his days and nights in reading books on jurisprudence and the reports of cases from which one can learn precedents. When he finds the judgment proposed in a case by the Qazi under whom he serves, to be opposed to all precedents, he should tell him politely—'Sir, in a similar case reported in such and such book the judgment is given thus. It would be better if you pronounce your judgment after reading that book'", p. 28. Compare Baillie, pp. 763-769.

Mohafiz Khanah—literally a strong room. But no Record Room registers have so far been recovered in any place in India. I visited libraries such as the Rampur State Library, the Oriental Library, Bankipur, the Imperial Library, Calcutta, the Asafiah Library, Hyderabad in addition to the British Museum, the India office and the Bodleian libraries, but no such papers were available. From a reference given in the India office records, Home Miscellaneous 529 (pp. 311-315) it appears that the Qazis who decided cases used to send their records to the Chief Court (Suder Kutchehri) of the Province along with a monthly return, but no such returns have yet been discovered.

Either there were no record registers, or they disappeared during the gradual process of decay of the Mughal Empire from 1750 to 1857. The documents which have so far assisted me were probably obtained by or made over to litigants and they were collected by me during an extensive tour in the country. These have been preserved carefully enough by their owners, while the official records, perhaps, have been first neglected and then destroyed in a period of constant turmoil and upheaval.

SECTION II

THE SOURCES OF INFORMATION

The books and documents that were found useful in the preparation of this work may be classified into two categories—(1) Original authorities and (2) Later compilations. They do not contain any systematic accounts of the medieval judicial system but a substantial amount of information can be gathered by piecing together references.

The original authorities consist of books or papers written mostly in Persian by contemporary writers and official records. They can be divided into four groups:—

I. Original Judgments and diaries of News-writers.
II. Commentaries on the art of government by Muslim jurists.
III. Regulations issued by the King.
IV. Works of Contemporary writers.
    (1) Records kept under official patronage.
    (2) Persian authorities.
    (3) Foreign travellers.

The later compilations consist of modern published books. I have given a select Bibliography in the Appendix. The more important of these authorities are noticed here.

1. ORIGINAL AUTHORITIES

I. Original Judgments and diaries

1. Baqiatus Salehat.

This is a collection of fifty judgments and orders in original delivered by Courts during the period 1550-1850 A.D. They were obtained by me from various persons and I intend to publish them separately. The judgments are written in Persian and bear the seal of the Court and give first hand information.

2. Collections.

Some diaries kept by Waqae Nigars or News-writers attached to various Courts and Judgments have recently been discovered in Hyderabad Daccan and preserved in separate Files in the Diwani office of H.E.H. the Nizam's Dominions. I have given the name 'Collections' as the easiest method of reference.

The above MSS. hitherto not utilised by any other writer, have simplified my task, as it is through the judgments and orders contained therein that the allegations made by various historians referred to above can be tested.

Another useful publication is Farameenus Salateen, a collection of Farmans issued by the Mughal Emperors, by M. Bashir Uddin, a retired Collector of a district in India and printed in Delhi. It contains copies of the original Farmans which give the duties attached to each office. A few Farmans copied from this book are given in the appendix.

II. Commentaries by Muslim Jurists

1. Ahkamus Sultanyah by Al Mawardi. Paris 1901-1905.

A well known treatise on Muslim political law written in Arabic by Al Mawardi. Other writers on this subject draw their references mainly from this book.

The Qazi's appointment and office are dealt with exclusively in a separate chapter.

2. Sulukul Saltanath by Ghazali. Br. Mus. MS. Or. 254.

The author of this book is a well known philosopher of Islam, and his comments on the art of government contained in the above MS. merit attention.

3. 'Sayasat Namah' by Nizamul Mulk Tusi. Br. Mus. MS. Add. 23, 516.

Nizamul Mulk was a famous Persian Minister for over a quarter of a century. He wrote this book containing fifty chapters in order to offer practical guidance to people engaged in the task of administration. The date is somewhere between 480 and 498 A.H. i.e., 1082 A.D. and 1098 A.D.

4. Sulukul Muluk by Fazal bin Rozbahan Isfahani. Br. Mus. MS. Or. 253.

The book refers mainly to the Turkish rulers of Central Asia from whom a number of pre-Mughal dynasties sprang. It consists of 15 Chapters. Chapter I deals with the maintenance of Law, II with the appointment of Qazis (Fol. 31) and Mohtasibs (Fol. 54a), X Repression of Mutinies, XIII Laws of Treason

and XIV with Zimmis.

5. Muqaddamah Tarikh e Ibn Khaldun.

Ibn Khaldun is the greatest historian produced by the Arabs. His discussion of the principles of administration in various Muslim countries bears testimony to his scholarship and erudition. It has been translated into French and Urdu. The latter translation was done by Abdur Rahman and printed in 1904 at Lahore.

6. Zakhiratul Muluk by Ali Shahab Hamdani (1) Br. Mus. MS. Add. 7, 618. (2) MS. King's College, Cambridge.

This book was written in about 782 A.H. i.e., 14th century A.D., and deals with the rights of the people and the obligations of the rulers. It is a treatise on political ethics and good government and was a favourite book with scholars during the early Turkish regime. The author was a celebrated "Sufi" reputed for his piety and character.

7. Adabul Harb, by Fakhr Uddin Mudabbir Br. Mus. MS. Add. 16853.

The MS. appears to be the same as Adabul Muluk No. 2767 of the India Office Library. It is a dissertation on government and war and gives contemporary thoughts on statecraft. The author is Sharif Muhammad and he has dedicated this book to Iltutmish.

8. Fatawa e Jahandari by Zia Uddin Barni, MS. 1149, or 2563 (I.O.L.).

Another book on government, written in Persian during the Sultanate.

9. Kitabul Kharaj by Imam Abu Yusuf.

Abu Yusuf was the first Qazi to be appointed Qazi ul Quzat or the Qazi of the Qazis under the Abbaside Caliphate. He was noted for his learning, piety and scholarship. The book is authoritative so far as the interpretation of Law in relation to the State administration is concerned. His other treatise Kitab Adabul Qazi deals exclusively with the judicial system and the duties of Qazis.

10. Hidayah by Burham Uddin Ali bin Ali B. Marghinani A.H. 593 (1197 A.D.) Br. Mus. MS. Add. 5543.

This is a well known commentary on Muslim Law and was adopted in the Courts in Medieval India for guidance till it was replaced by Fatawa-e-Alamgiri in about 1670 A.D. Copious references to cases decided by medieval Courts are given, but details of the Courts and the exact places of trial are omitted. In 1772 A.D. Warren Hastings got this book translated from Arabic into Persian through a commission consisting of Ghulam Yahya, Taj Uddin, Mir Muhammad Husain and Mulla Shariatullah. The English translation was done by Hamilton and the only edition available is that published by Grady in 1870. Book XX deals exclusively with the duties of Qazis. The book has been printed at Lucknow and Calcutta.

III. Regulations Issued by the King

1. Fiqh e Firoz Shahi. MS. I.O.L. 2,987 by Yaqub Muzaffer Kirani.

A Civil Procedure Code compiled in the time of Firoz Shah Tughlaq. The book gives details of the procedure and law on civil matters. It is in Arabic

but was translated into Persian by the order of Firoz Shah and seems to have escaped the attention of practically every historian of the period. It is an important book as it remained the basis of the judicial system under the Delhi rulers until replaced by the Fatawa e Alamgiri.

2. Aine Akbari—Bib. Indica. Abul-Fazl.

This book has been utilised by many students of Mughal history. It gives the duties of Qazis and Mir Adls and instructions about the recording of evidence. The English translation by Blochman and Jarrett is fairly accurate.

3. Tuzuk e Jahangiri—Edited by Saiyad Ahmad Khan, Aligarh.

It gives the institutes of Jahangir and a few instances of his will to do justice among his subjects. The edition published by Saiyad Ahmad appears to be the only realiable copy of the original. The Bodleian Library, Oxford has a Farman of Jahangir in original which defines the status of Aliens and seems to have been left out in this publication.

4. Dasturul Amal Alamgiri. Br. Mus. MS. Add. 6,598.

These sets of regulations give the structure of the Mughal provincial administration.

5. Fatawa e Alamgiri by Shaikh Nizamuddin and others. 1670 A.D.

According to the author of Alamgir Namah, who is supported by Khafi Khan, Aurangzeb did not favour[1] poets and Court Chroniclers in his court,

[1] Compare Aurangzeb I (Sarkar) p. 6; Dow III, 396.

as he thought that they "told lies" in their flattery and served no useful purpose.[1] He had also occasion to criticise[2] a few judgments of inferior Courts. He felt that not only the people but the Law Courts as well did not possess sufficient knowledge of the law.[3] In about 1663 A.D. he, accordingly, appointed a commission under the chairmanship of Shaikh Nizam, a celebrated lawyer of Lahore. The latter was assisted by six more lawyers. The names of four only, viz., Muhammad Jamil, Zia Uddin, Jalal Uddin Husain and Muhammad Husain only are traceable.[4]

The commission examined a number of men learned in Law and completed their report after seven years.[5] The expenses of the commission amounted to two lakhs of rupees.[6] The report written in Arabic contained an exhaustive code of laws to replace the Fiqh e Firoz Shahi and other regulations, and Fatwa e Alamgiri was the name given to it by the commission themselves after its "illustrious projector". The Fatawa is based on the Quran, and the most favoured traditions (Ahadith) and references are given to de-

[1] Compare Baillie, Law of Sale, p. VI; Br. Mus. MS. Add. 26, 239 f. 66; Alamgir Namah, p. 1072.

[2] See (1) order MS. Raqaem e Keram K. C. C. f. 15. (2) order pp. 72, 80 Waqae Alamgir. (3) Br. Mus. MS. Add. 26, 239, f. 16.

[3] Maasir e Alamgiri, p. 529—also Storia II, p. 31. Aurangzeb's conversation with his tutor Mulla Saleh: Alamgir Namah, p. 1086.

[4] Vide Tajalli e Nur (Hyderabad) pp. 77-89, 98-99, 119-120. 122.

[5] Khafi Khan, p. 251, Vol. II.

[6] Maasir e Alamgiri (Hyderabad No. 218) p. 529. Two lakhs of those days amount to about ¾ million rupees of the present day.

cided cases though exact details, viz., the names of parties, court and date are lacking. Another commission was appointed a few years later under Chulpi Abdullah to translate the work into Persian. (Elliot VII, p. 160).

So far as the interpretation of Muslim Law in India is concerned the book can be thoroughly relied upon. Baillie, who translated portions from it in his Digest, observes[1] in 1850 A.D.

> "In Fatawa cases are so well arranged and so judicially interspersed with the more abstract parts of the work as in general to carry their own reasons to the mind....."
>
> "It is sufficient to notice in this place that the Fatawa e Alamgiri is a collection of the most authoritative Fatawa or expositions of Law, on all points that had been decided up to the time of its preparation".

Several editions of this work have been printed. The one published at Cairo is named Fatawa e Hindyah and gives some introductory remarks[2] in the preface borrowed mainly from Maasir e Alamgiri (pp. 529-530). The translation in Urdu was done by Sh. Amir Ali and printed at Lucknow. Sh. Amir Ali has given a lengthy introduction but has entirely ignored the historical part of it.

6. Br. Mus. MS. Add. 6,580.

This is a MS. of Mirat e Ahmadi, containing Aurangzeb's Farman on penal regulations; Chapter VI

[1] pp. VII and VIII, Moohummudan Law of Sale.
[2] p. 2, Egyptian edition.

of Sir Jadunath Sarkar's "Mughal Administration" (1935) is mostly a reproduction of this Farman, which is printed on pp. 278-283 (Part I. Mirat e Ahmadi. Baroda).

7. Dasturul Amal Alamgir. Br. Mus. MS. Add. 6,599.

This is a Manual containing directions regarding weights, measurements and cognate matters. Fol. 186-b-201-b give forms of appointment of Shiqahdars and other officials.

8. Dastur. Br. Mus. MS. Or. 1779.

Gives the Revenue tables of Provinces and districts of the reigns of Shahjahan and Aurangzeb with forms of appointment to various offices and also their duties.

9. Dasturul Amal Shahenshahi. Br. Mus. MS. Add. 22,831. (Muhammad Shah's reign).

Prepared in 1230 A.H. (1818) gives account of regulations in the time of Muhammad Shah (1719-1748).

10. Dasturul Amal Adalatha e Talluqah. MS. 2907. I.O.L.

A civil and criminal procedure code in Persian prepared in 1793 for the East India Company's districts in South India.

IV. Works of Contemporary Authors

I. *A. Records kept under official patronage*

1. Tajul Maasir by Hasan Nizami. MS. 200 King's College, Cambridge.

This MS. gives the history of the early Sultanate period.

2. Tabaqat e Nasiri—Br. Mus. Or. 1886 by Minhajuddin Siraj (Qazi) Or. 1887 is the life of the author compiled for Sir Henry Elliot by Zia Uddin Ahmad Nayyar, a descendant of Qazi Minhaj Siraj 1849 A.D.

3. Badshah Namah—Abdul Hamid Lahori. Bib. Ind.

Like Akbar Namah this was an official record of the reign of Shahjahan for 20 years. Shahjahan took an interest in deciding cases to which occasional references are given in this book.

4. Amal e Saleh by Saleh Kamboh. Or. 2157. Br. Mus. MS. Add. 26,221.

Written on the lines mentioned above; this book has in part been published by the Royal Asiatic Society of Bengal. Another edition has been printed in Hyderabad.

5. Alamgir Namah (by M. Kazim. Bib. Ind.)

Written on the lines of Lahori's Badshah Namah gives the history of Aurangzeb's first ten years of reign and occasional reference to his legal reforms.

B. Letters of Officials

1. Ruqaat e Alamgir. Oxford, I.O.L.; Azamgarh, Lahore, Lucknow.

Aurangzeb's orders and letters written officially have been collected at various places. They contain valuable information regarding his administration. One set of 'letters' is contained in Waqa e Alamgir, published with notes by Chaudhri Nabi Ahmad, a Police Officer of U.P., India.

The Shibli Academy, Azamgarh has also printed

some private letters of Aurangzeb under the same title.

The British Museum Collection is Add. 18,881, Add. 26,239, and the India Office MS. 1,344 and 3301. See also Raqaem-e-Keram Ousley MS. 168—Oxford and MS. K.C.C.

2. Kalimat-ut-Tayyebat. Br. Mus. MS. Add. 26,238.

This is a collection of official orders of Aurangzeb regarding various subjects including Court work by his favourite secretary Enayetullah Khan. They are referred to in part in Ruqaat-e-Alamgir, Lucknow 1260 A.H. and Ruqaat-e-Alamgiri Lahore 1281 A.H. and also in Elliot VII, p. 203. The reference given by me in the book is mostly to Waqae Alamgir whose contents tally with those of the MSS. in the British Museum, Bodleian and the India Office Libraries.

3. Fuyuz ul Qawanin—Lucknow.

This is a collection of Aurangzeb's orders and regulations giving duties of various officers in the form of letters. The MS. is in the possession of a relation of H.H. the Ruler of Bhopal State and has been referred to by Sir Jadunath Sarkar in his preface to History of Aurangzeb.

4. Insha. Br. Mus. MS. Add. 7,689.

5. Do. Br. Mus. MS. Add. 9,697.

These two collections contain forms of civil contract, duties of various officers, and different kinds of drafts used in offices.

6. Arzdasht. Collection of letters of Muzaffar Khan by his News-writer. Br. Mus. MS. Add. 16,859.

The author was attached to an old nobleman of

Shahjahan's reign. In the middle of the book reference is given to letters of a Mir Adl which give information regarding judicial matters.

II. *Persian Authorities*

1. Travels of Ibn Batuta. (Arabic)
   (1) Translated by Lee.
   (2) Edited by Gibb—London.

Ibn Batuta was a well known Arab traveller who visited India in the time of Muhammad Tughlaq. He was appointed Qazi of Delhi. He gives occasional references to the work of his court and his relations with the King.

2. Tarikh-e-Firoz Shahi by Zia Uddin Barni. Bib. Indica—(Elliot III, pp. 97-268).

This is a history of the Delhi rulers from 662 A.H. to 758 A.H. "designed as a continuation of Tabaqat e Nasiri". It is an indispensable book for the study of the Sultanate administration. The author held for some time the position of a judge and possesses fair and independent judgment. His comments on the duties and qualifications of the Kings and of the Qazis are of great importance.

3. Tarikh-e-Sher Shahi by Abbas Khan. Tuhfa-e-Akbar Shahi. (1) MS. King's College, Cambridge. (2) Br. Mus. MS. Or. 164, 1,782. (3) MS. 222 Oxford.

This gives a general survey of the administration in the time of Sher Shah—Translated in Elliot IV, pp. 300-433.

4. Tabaqat e Akbari by Nizam Uddin.

Deals with the history of Muslim Kings of Delhi and chiefly with the general aspect of Akbar's reign.

5. Muntakhab ut Tawarikh by Abdul Qadir Badaoni. (1) Bib. Indica Series. (2) Translation by Ranking.

The author was an orthodox Muslim and disliked Akbar's religious policy. He has several criticisms to make in respect of Akbar's disregard of the letter of the Law. The first volume which deals with the rulers who existed before Akbar is only a summary of events.

6. Chahar Chaman. Br. Mus. MS. Or. 1892. MS. Add. 16863; by Chanderbhan Brahman. MS. Add. 26141.

The author was a distinguished Persian scholar of the time of Shahjahan. He deals mostly with the duties of a Chief Minister and gives a general account of the administration under the Mughals. He writes with enthusiasm about the splendour of the Court of Shahjahan. The work has been fully utilised by Dr. Ibn Hasan in his "Central Structure of the Mughal Empire".

7. Muntakhab-ul-Lubab by Khafi Khan. Bib. Indica, 2 Vols.

This book has been utilised by several historians. The first volume deals with Taimur and his descendants up to Shahjahan. The second contains an account of the reign of Aurangzeb and at some places, criticism of his policy, especially in regard to his hesitating to inflict the adequate penalty after conviction in each case. Kennedy (Vol. II, pp. 84-86) thinks that Khafi Khan's work is a most reliable authority on

contemporary Mughal period.

8. Mirat-e-Ahmadi. Br. Mus. MS. Add. 6,580 (460 Folios).

A history of the Province of Gujrat by Ali Muhammad Khan. The book has recently been published in Baroda in 3 volumes by Professor Nawab Ali of Neotani and Mr. Seddon, I.C.S. (retired). The first two volumes give the original and the third is a translation supplement. The author was once Diwan of Gujrat and has given comprehensive notes on the administration of the Province and his is a most useful book for the study of the judicial administration under the Mughals.

9. Maasir e Alamgiri by Saqi Mustaid Khan. (2) Bib. Ind. printed Calcutta 1870-1871—referred to in Elliot, Vol. VII, pp. 181-197.

The author was a Waqae Nawis and was requested by Enayetullah, the famous Secretary of Aurangzeb to write the history of Alamgir after the 10th year of his accession. The book gives a short account of the Fatawa-e-Alamgiri and deals generally with the political conditions of Aurangzeb's reign. James Bird has also translated portions of this book in his Political and Statistical History of Gujrat.

10. Tarikh-e-Ferishtah—Translation of 2 Vols. by Dow—by Briggs 4 Vols.

No systematic account of the judicial system is given but occasional instances of methods employed in meting out justice are mentioned.

11. Seirul Mutakhirin by Ghulam Husain from 1707 onwards.

Dedicated to Warren Hastings, gives an account

of the later Mughals.

12. Mirat-e-Sikandari—History of the Kings of Gujrat. Br. Mus. MS. Add. 26,277.

From 620 A.D. to 1600 A.D. gives a general account of Gujrat States.

13. Maasir-ul-Umra—Br. Mus. MS. Add. 6565-6566 or Bib. Indica series by Samsam ud Daulah. 1782 A.D.

Gives lives of the Mughal Amirs (Barons). It is incidentally an extremely interesting account of the government of those days.

III. *Foreign Travellers*

Students of this particular aspect of Muslim administration in India must feel grateful to the foreign scholars like Al Beruni, Hamilton, Bernier, Manucci, Monserrate and Manrique for having given us a number of cases decided by the Judges during the period they were in India.

1. Al Beruni.

Abu Raihan Muhammad, son of Ahmad Al Beruni 973-1048 A.D. visited India in the early 11th century A.D. and wrote an account of its people. He has an international reputation as a mathematician and an astrologer and his observations on the learning and culture of the people in the 11th century A.D. India are valuable. The book Tarikh ul Hind has been translated into English by Dr. Sachau.

2. Monserrate—1580-1582.

Father Monserrate was a Christian Missionary at the Court of Akbar. His Commentary translated by J. S. Hoyland (Oxford) mentions a few cases

decided by Courts in Akbar's reign.

3. Sir Thomas Roe. Embassy of Sir Thomas Roe edited by Sir William Foster—Oxford.

Sir Thomas Roe was the Ambassador (1615-1617) of King James of England to the Court of Jahangir. He was a cultured man and the account given by him in his "Journall" is both reliable and illuminating. He has made occasional reference to cases decided by Qazi's Courts.

4. Terry—Edward. "Voyage to East India". London 1655. This book is a supplement to Roe's "Journall'.

Terry is a critical observer of the customs and the institutions that existed in Muslim India.

5. Manrique, S.—Travels, 2 Vols. (1629-1643) published in Latin in 1649. Translation by Hakluyt Society.

He seems to be biassed against Muslims whom he calls "Barbarians", II, p. 144 and their Quran "obscene" but was "astonished and surprised to see so much polite usage and good order in practice amongst such barbarians", p. 218, Vol. II. The account given by him, however, is both interesting and useful.

6. Bernier. "Travels in the Mughal Empire". 1656-68. Edited by Foster.

7. Manucci—Storia du Mogor, 4 Vols. Edited by W. Irvine. R.A.S. London.

These two works give a general impression of the country and the people, and have particularly referred to some trials of cases. Bernier seems to compare every custom of France with that of India and labours to prove the superiority of the former.

While Manucci was on the staff of Prince Dara Shukoh and has a strong dislike of his opponents, his description of Court proceedings does not show any special bias even though he was himself the accused in one case. The author wrote that he was making an effort to give a "correct description" of cases, (Vol. III, p. 265), but appears to possess a tendency to rely upon hearsay evidence. All his references should therefore be accepted with caution.

8. John Marshall—Diary Edited by Professor Sir Shafaat Ahmad Khan—Oxford.

Marshall was an English traveller in the 17th century A.D. He has given a general impression of Mughal India and has referred to Courts as well.

9. Captain Hamilton—A Voyage to East Indies, 2 Vols. I.O.L.

Hamilton, an Englishman, visited India in the reign of Aurangzeb and has at several places commented upon the laws and the customs of the people. The work has not been utilised by historians so far. Sir William Foster has recently edited the book with notes.

Later Compilations

The most useful work in this connection is Kitabul Ikhtyar written in Persian in 1212-1217 A.H. i.e., 1798-1803 A.D. by Hazaqat Khan who was connected with the criminal courts in Muhammadabad, Hyderabad State. His aim was to compile a work which might facilitate decision of criminal cases. The book has been published with comprehensive notes in Urdu by Ahmad Sharif at Azamgarh. Reference has been given by the author to cases decided

by various Muslim Courts, but without details of places or the parties. No conclusions regarding the judicial system of the period can be drawn from a perusal of this book although the tendency of Courts in deciding criminal cases can be ascertained. This book has not been utilised by any author so far. The MS. in the British Museum is Add. 22,714. The book has been printed in Calcutta.

Alexander Dow, History of Hindustan, 3 Vols. Calcutta 1772 A.D.

Lt.-Colonel Alexander Dow was an Orientalist and a civil servant under the East India Company. He translated the history written by Ferishtah in the first 2 Volumes and prepared a third along with his report on the judicial reforms and submitted them in 1772 A.D. to Warren Hastings. The first two chapters in Volume III show how anxious Colonel Dow was to improve the judicial machinery as it existed then in Bengal. His comments on historical anecdotes have been discredited by Sir Jadunath Sarkar and Professor Beni Prasad; but the inquiry of a trained civil servant into the usefulness of the judicial machinery, as it was, cannot be brushed aside as unreliable.

Ibn Hasan—Central Structure of the Mughal Empire—Oxford.

This is a valuable book for the study of the Mughal administrative system at the centre. In the end the author has given a brief outline of the central judiciary. He has utilised nearly all the original authorities of the period which deal with the general aspect of the Mughal administration.

PART II

THE TEXT

CHAPTER I

CONDITIONS IN MEDIEVAL INDIA

India in 1206

When Qutub Uddin Aibek, the founder of the Turkish Slave dynasty, established his government at Delhi in 1206 the whole of the Indian peninsula was not under him. The Turks had so far annexed Multan (1175-1176), the Punjab (1187), Ajmer, Delhi, Qannauj (1191-1193), Benares, Bihar, Bengal and Bundelkhand (1197-1203). The Chalukyas of Cutch, and Kalingas of Orissa, the Kakatyas, the Yadavas and the Cholas of South India were still unsubdued.

With the exception of the western Punjab and western Rajputana the people living in the country were mainly Hindus. Hindu society as described by the writers of the period consisted of four castes and a number of non-caste groups, the Brahmans or the priests, the Kshattryas or the warriors, the Vaishas or the businessmen and the Sudras or the slaves.[1] Birth alone settled the classification in each case. The rules of distinction were so strictly observed that if a Brahman ate "in the house of a Sudra for sundry

[1] The Vedas are four, Rig Veda, Atharwa Veda, Yajur Veda, Sam Veda and are the chief sacred books of the Hindus. Manu in his commentary has described in detail this division of society.

days he was expelled from his caste and could never regain it".[1]

The first three castes were admitted into one pale, but the members of the last one, namely the Sudra, were no better than slaves (Manu, Ch. VI. Jones Tr.). They could not marry a woman of a better caste. The classes did not eat their meals together and a Brahman was prohibited from eating food cooked by a member of any other caste.

The Hindu Administration

The administrative structure of Hindu society was founded on the principles enunciated by their Law-giver, Manu, about the time of the death of Jesus Christ,[2] and described by commentators like Yajnavalkya, Kautilya and others. The government was vested in an absolute ruler whose title was considered divine.[3] He was expected to conduct his administration through civil officers. The kingdom was divided into provinces, divisions, districts and groups of villages. The last named formed the first unit of administration possessing a certain amount of local self-government working under the supervision of Royal officers.

The King was also the chief justiciary of the State. He was, like the other judges, entitled to five

[1] Al Beruni II, p. 163.

[2] Jayaswal says 1st century B.C. (pp. 20-21). Max Muller thinks 4th century A.D. Elphinstone's estimate of 9th century B.C. seems to me too wide. Buhler is of opinion that the date is 2nd century A.D.

[3] Manu, Ch. VII, pp. 1-13. Reference is to English Translation by Sir William Jones.

per cent on all debts admitted by the defendant on trial and to ten per cent on all denied and proved. (Manu, Ch. VIII, p. 139). He was expected to warn the parties beforehand of the seriousness of the offence of perjury and of the punishment which the perjurer would undergo in a future state.

Trials of Cases

There were eight constitutional parts of a judicial proceeding, namely King, Judge, Assessors, Law Books, Accountant, Scribe, Gold and Fire ordeal and Water. According to Al Beruni[1] the witnesses in each case were not to be less than four unless the fact was one clearly established and oaths varied according to the nature of the object claimed. In a criminal case if the article stolen was not important, the accused was allowed to swear before five learned Brahmans. Persons having a pecuniary interest in the cause, infamous villains, servants and friends attached to the party were not allowed to give evidence.

Trials by ordeal were frequently resorted to.[2] In some cases the accused was made to take a caustic drink (Bish). It was believed that if he spoke the truth the drink would do no harm to him. Similarly an accused person was often thrown into water. If he was innocent, he would not drown.

There was a still more drastic form of ordeal. An accused was required to hold in his hand a red hot iron wrapped in a leaf in order to establish his defence.

[1] Al Beruni's India II, pp. 160-163.

[2] Compare Jayaswal, pp. 134-139. Al Beruni II, pp. 159-160. Elliot I, p. 329. Marshall, p. 374.

The trial of cases was entrusted to local assemblies in the first instance. The punishments awarded by courts were severe. Sometimes the criminals were outcasted or imprisoned for life. In cases of theft, punishment depended upon the value of the stolen object. Even Brahmans were not exempt from heavy penalties. Expiation was recognised as a form of punishment.

There were appeals too on payment of fee.

The King, as the final Court of Appeal, was enjoined to check falsehood and strive after truth and justice, since it was from these that happiness sprang.

The Brahmans

The Brahmans as a class monopolised legal learning and the judicial posts, and ruled as an oligarchy. They arrogated to themselves special privileges.[1] "If the murderer was a Brahman", says Al Beruni, "and the murdered person a member of another caste, he was only bound to do expiation consisting of fasting, prayers and almsgiving". This Brahman conception of a functionary society and birth predilection gave rise to acute caste ramifications and class hatred.[2] It prevented, more than anything else, the unification of all the followers of the Vedic religion into one nation. The administration of the Sultans and of the Mughals that followed that of the Brahmans was a little different in character. It did not favour class distinctions and was in a sense more patriarchal

[1] Compare Grady, Institutes of Hindu Law, p. 193.

[2] Compare Dutt, India Past and Present, London 1890, pp. 73, 124-125.

and, of necessity, arbitrary.[1] It had replaced governments which were carried on by the followers of an entirely different religion who formed the bulk of the population. The new administration had thus to keep the idea of its own self-preservation above everything else.

Despotic character of Medieval State

The medieval Indian state remained autocratic in character throughout, and represented in India the western ideal of l'etat c'est moi of the French monarchs. The domain of legislation, as was the case in medieval Europe, did not belong to the people, and in India there were many different sets of people. They all looked upon the king as the fountain of justice and were content to be thankful if he was strong enough to maintain an efficient administration.[2]

Sultanate an alien institution

The Turkish administration in India was an alien rule to begin with. The ideas and intellectual background of the rulers were not indigenous and the foreign element was re-inforced constantly by new invaders and their followers. Yet since these latter tended to settle down on the soil and to make India their home, they became in turn imbued by the per-

[1] Compare: 1. Ala Uddin's address, Barni, pp. 290-1. 2. Beveridge I, p. 82. 3. Md. Tughlaq's conversation, Barni, pp. 510-22. 4. Mirat I, p. 341.

[2] Compare Briggs II, p. 326; Elphinstone—"The will of a wise Prince was better than the opinions of variable bodies of men."

vading spirit; so that judicial as well as revenue and military administration bore the particular local stamp. Thus, notwithstanding a strong family likeness to those of western Asiatic countries, the distinctive Indian character of public institutions was discernible throughout.

Influence of Village Assemblies

The village assemblies or Panchayets as they are still called, which had been managing local affairs, executive and judicial for several centuries[1] and had grown into powerful bodies, obtained due recognition in all medieval states. Their functioning was not interfered with, although the decrees given by them were sometimes not quite in conformity with the law of the kingdom, and were based on local customs.[2] No attempt seems to have been made by the administrators to modify by legislation local traditions so as to bring them into strict accordance with the rules of the State Law. They merely let them exist as they were. As pointed out by Sir H. S. Maine the law of the Panchayets was their own. The people had fewer disputes, and in many cases settled them locally without calling in the aid of the law courts. The decision of a Panchayet was binding on the parties and was as a rule non-appealable. The decrees were obeyed on pain of excommunication.

The Panchayet system of settling disputes in the

[1] Compare Report of the Select Committee of the House of Commons, 1832, Vol. III and the note of Sir Charles Metcalfe.

[2] Compare (1) the customs of the Nairs in Malabar. (2) Customary Law of the Punjab by Wilson, p. 59.

villages continued long after the medieval empires had broken up and even today we find a partial recognition of it by the legislatures of the different provinces in India. In the United Provinces, the Panchayets are regulated in matters of civil disputes by the U.P. Village Panchayet Act VI of 1920 and attempts are now being made to restore to them some of their former powers.

Hindu and Muslim Systems

The Hindu legal system so far resembled that of the Muslims, which succeeded it in the larger part of India and which will be discussed hereafter, that both were founded on books believed by their respective followers to be divinely inspired, namely the Vedas and the Quran. The Law derived from the former was expounded by Manu in his Manu Samhita,[1] and the rules of conduct prescribed in the latter found amplification in well-known commentaries like Sahih Muslim, Kitabus Sunnan by Abu Daood Sijistani, Muwatta, Minhajut-Talebin, Jame-us-Saghir etc. Both systems laid emphasis on the trial of cases by the Ruler himself[2] and on his duty to select good men to act as Judges.

In neither was any importance attached to Judge-made law. There was no regular method of recording and transmitting points of law established during the day to day administration of justice, but local tradi-

[1] Other commentaries of importance are of Yajnavalkya, Narada and Birahaspati.

[2] Compare (1) Manu, Ch. VIII, p. 152. (2) Quran. Inni Jaalna Khalifah. Yahkama Bainan Nas Bil Haq.

tions—where they could secure a niche in some chance commentary—tended to perpetuate them in a Judge's memory.

It may be for this reason that the gradual replacement of the Hindu judicial system by Muslim institutions in practically the whole of India as the Sultanate and the Mughal Empires were extended, passed without much notice by the masses.

CHAPTER II

CONCEPTION OF JUSTICE IN MUSLIM STATES

Meaning of Sovereignty

Muhammad's message as the Prophet of Islam was an emphatic appeal to the people to obey God—the Omnipotent Being Who alone possessed the attributes of Sovereignty. The Prophet claimed for himself no better status than that of an ordinary human being.[1] The ruler of the Islamic state was only God's servant (Abd) on earth who was responsible for seeing that His Laws were duly obeyed.[2] (Az saltanat wa badshahi wa khilafat o geti panahi pevastae ijrae ahkame ilahi maqsud wa manzur ast). Zia Uddin Barni, the author of Tarikh-e-Firoz Shahi felt proud in India of Sultan Firoz Tughlaq (1351-1385) as during his reign the commandments of the Quran were faithfully carried out.[3] About two centuries later Sher Shah (1540-1545) while pronouncing an order[4] is said to have declared that "crime and violence prevent the development of prosperity.....It behoves Kings to be grateful for the favour that the Lord has

[1] See Quran: qul ana basharun mislokum.

[2] Alamgir Namah, p. 391. (1) Compare Waqae Alamgir pp. 125-126. (2) Zakhiratul Muluk. I.O.L., p. 89. (3) Mirat Vol. I, p. 251.

[3] Barni, p. 578.

[4] Compare Elliot IV, p. 410. Compare Aurangzeb's remarks, Storia III, p. 261.

made His people subject to them and, therefore, not to disobey the Commandment of God."

The ruler in Islam was not the people's master, but only held an office in trust[1] for the Supreme Being. In 1661 while refusing to allow possession of crown jewels to Shahjahan, Aurangzeb wrote that he was holding them as God's chosen custodian and that he was a trustee of God's money for the benefit of His people.

The sovereignty in a Muslim state essentially belonged to God.[2] The Muslim Kings in India in general regarded themselves as God's humble servants (Nyazmand-e-dargah-e-Ilahi).[3] The ruler was His delegate duly elected by His people to perform certain functions and he could be deposed[4] by them if he acted against the Divine Law promulgated in the Quran (Khalase badshahan az mabashirat maamlat e mazkur ke dar an razae khuda nest..nest). Ala Uddin Khilji (1295-1315), Muhammad Tughlaq (1325-1351) and Akbar (1556-1605) who were by no means monarchs of orthodox tastes were careful to exhibit in public their reverence for religion. The

[1] Compare Anecdotes (Sarkar) p. 110; Aurangzeb's letter to Aqil Khan. Mirat I, p. 258: bedae wadae Afridgar.

[2] (1) Kitabul Kharaj, pp. 3-5. (2) Arnold, Legacy of Islam, p. 286. (3) Fitzgerald, p. 26. (4) Kennedy II, p. 7. Akbar's reply to his advisers: "The decree is God's decree and of Him alone is Sovereignty".

[3] Compare Tuzuk, p. 24.

[4] Compare (1) the frequent dynastic changes in Muslim India. Appendix A. (2) Sarkar (1935) pp. 16-17. (3) Briggs I, pp. 225-227. (4) Sujan Rae, p. 135. The Qazi of Jaunpur in 1569 declared certain regulations of Akbar as illegal and an attempt was made to depose him. Darbar e Akbari, p. 64. Cal. 1914.

author of Ain e Akbari says[1] that Akbar "passed every moment of his life in self-examination or in adoration of God". Father Monserrate writes[2] that Akbar was most stern in dealing with offences against faith.

Responsibility to God

It would thus appear that in Islam the whole community had by implication a responsibility[3] to see that God's commands were obeyed though it was, for practical purposes, always delegated to the ruler. The administration of justice was an essential[4] act for the fulfilment of that responsibility. Sher Shah considered justice as the most excellent of religious rites.[5]

"Jahangir regarded the daily administration of justice in public as one of his most sacred duties".[6]

Shahjahan once remarked in court that "justice was the mainstay of his government" (Ritq o fitq e mulk o mal munhasir bar fahem o insafast)[7] and according to Aurangzeb the "garden of administration was watered by the rain of Justice" (gulistan e saltanat ba sahab e adl). The command in the Quran was to do justice[8] between man and man and had to be obeyed.

The King as the chosen representative of the people was expected to exercise this authority either

[1] Ain I, Bloch, p. 154.
[2] pp. 209-210.
[3] Compare Minhaj, p. 500.
[4] Quran. Bil adl qamatis samawat o wal arz. Compare Mirat I, p. 268. Barni, pp. 39-43.
[5] Elliot IV, p. 411.
[6] C.H. of India, IV, p. 182.
[7] MS. 370. I.O.L.
[8] Quran "Innallah ya murukum bil adl wal ehsan."

personally as Imam e Adil (just leader) or through officers appointed for the purpose.[1] The ruler and his selected officers were to do what was "just and right" in the sight of God to Whom alone they were answerable.[2] A Muslim Qazi giving an order or holding views in contravention of the Divine Law was a 'Kafir' apostate[3] and liable to a sentence of death[4] and to eternal degradation. Aurangzeb, in reviewing an order of Khan e Jahan reprimanded him for forgetting his responsibility to God.[5] This emphasis on the individual responsibility of the officers has been the keynote of judicial interpretation of law in Muslim Indian States as well as in other Islamic countries.

Rulers and Law Courts

The Muslim sovereigns in India even at the zenith of their power and influence seldom, if at all, attempted to tamper with the day to day administration of justice. Historical research has not so far established any such instance. On the contrary, there have been cases in which they have bowed to the authority of the Law Courts sometimes against their will.[6] In State

[1] Ain II, Jarrett, p. 41, Vol. I, Text, p. 283.

[2] Compare (1) Zakhiratul Muluk p. 89. (2) Baillie—Law of Sale, p. LX. (3) Widow vs. King Ghyas, pp. 90-91, Stewart. (4) In writing judgments the Qazis generally chose the title "Khadim ush Shara"—servant of the Shara' for themselves (Baqiat).

[3] Quran. Wa man lam yahkam bema anzalallaho fa olaekahumul kafiroon. Al qaza fil Islam, p. 5.

[4] State vs. Qazi Mir, Storia IV, 118-119.

[5] Waqae, p. 72. Compare (1) Ruqaat. Br. Mus. MS. Add. 26, 239, f34. (2) Anecdotes, p. 91.

[6] Vide State vs. Sidi Maula. Badaoni I, pp. 170-171. State vs. Nurjahan. Tuzuk. Shibli, p. 30. Widow vs. King Ghyas.

versus Qazi Mir (Storia IV, p. 119), a Canon Law case the court refused to award the sentence of death for which Aurangzeb had directed the Public Prosecutor to press. Similarly in contempt of court cases the maximum penalty was allowed to be given against government officials.[1] It was perhaps to the Kings' own benefit as it kept up the prestige of their own Law Courts which under the Shara' it was their duty to protect.

It was true that there were rulers like Muhammad Tughlaq who filed a libel suit in the Qazi's Court and on losing it put the defendant under arrest on some other excuse,[2] but this attitude was resented by the community[3] and was not common. There were Qazis like Mir Saiyad Muhammad, Miaji or Shaikhul Islam Abdullah who held themselves subordinate to none but God in giving judgments,[4] and yet they commanded respect from sovereigns who were some times not noted for their strict adherence to Shara'. It is said of Qazi Sadr Uddin Sharif, Chief Justice of Bahmani Kingdom, that he refused to join his post after having gone on leave, until the King (Muhammad Shah) undertook to permit Judges to execute the law

Stewart, pp. 90-91. Compare report of the learned men of Lahore to Aurangzeb saying "never had it been heard of in Hindustan that anyone had ventured to put forth a hand upon the sacred person of a Qazi"—Storia II, p. 254.

[1] Hamid Uddin vs. Kam Bux, Khafi Khan, pp. 436-437. II. Qazi Yusuf vs. Governor in Sadiq vs. Shakur. Sarkar, Aurangzeb V, pp. 421-422. State vs. Yaqub and Naim. Briggs IV, p. 519.

[2] Badaoni I, p. 239.

[3] Ibid. Also compare Briggs I, p. 225.

[4] Darbar e Akbari, Cal. Ed. 1914, p. 67. Mirat Supp., pp. 45-46. Compare Barni, p. 290.

against the guilty.[1]

Ameer Ali has pointed out[2] that the early Caliphs of Islam could not alter or act contrary to the judgments of the constituted courts.

It may be assumed, therefore, that the law courts had freedom to record judgments in their own way. The only limitation lay in the law itself which they were appointed to administer. If it was according to Shara', the order of a Qazi had the same force as the Shara' itself and obedience to it was a duty.

The Hanafi Law

The majority of the Indian Muslims had accepted the Hanafi[3] Law, which was developed by Abu Hanifah, the great jurist of Arabia and amplified by his disciples, Abu Yusuf,[4] Chief Justice of Baghdad, and Imam Muhammad.[5] There were non-Hanafi States in the South[6] and one later in Oudh, but there was no difference[7] in their respective systems of administration of justice, since questions of personal law affected in no way the constitution or the working of the law courts.

As noticed in the 'Hidayah' and the Fatawa e Alamgiri the courts in Muslim India were to be guided by the following authorities[8] in deciding cases:—

[1] Briggs IV, pp. 323-325.
[2] Spirit of Islam, p. 280.
[3] Compare Fatawa (Baillie) p. XXVIII. Mirat I, p. 268. Maasir e Alamgiri, p. 529.
[4] Author of Kitabul Kharaj.
[5] Author of Jame us Saghir.
[6] Bijapur and Golconda.
[7] See the trial of cases. Safir e Oudh, p. 6. Compare Wilson, p. 23.
[8] Hidayah, pp. XXV-XXVI.

1. The Quran.

2. The Sunan, practice of the Prophet or the traditions as they were called. The Quran and the Sunan are the Usul-ul-Usul or as Dr. Vesey-Fitzgerald (p. 5) has said "the bases of the bases".

3. Concurrent opinion of the Prophet's companions (Sahabah).

4. Concensus of opinion (Ijmaa'ul ummat)[1] among the most learned of the Prophet's followers. The most popular work containing such opinions was Al Hidayah. It was generally accepted as the leading authority in the Turkish courts and in practically the whole of Muslim India, until replaced by the Fatawa-e Alamgiri.

5. Their own individual judgment. According to Abu Hanifah the Qazis could act on the principles of Istihsan (public good) Istislah (public policy) or Istishab (concordance).

Classification of Laws

The laws that were prescribed or promulgated were not codified in the modern sense but could be classified under several heads, and notably three, the Canon Law, the Common Law and the Regulations known as Tashriyah (religious) and Ghair Tashriyah (Secular).

The Canon Law

The Canon Law (Ahkam e Shariyah) was the personal law of the Muslims and was applied exclusively in religious matters such as apostasy, and other

[1] Ameer Ali, M. Law, II, p. 7.

offences against God. It also formed the basis of the Muslim Adjective Law. A court of Canon Law had no executive authority and had nothing to do with the advancement of the Muslim religion. It was merely a Court which tried offenders. Non-Muslims were excluded[1] from the penal provisions of the Canon Law.

The Common Law

The Common Law consisted of the Islamic Law of Crimes, Tort, Nuisance, etc., and applied to all the subjects of the state irrespective of religion though in the matter of sentence the Muslims were, in offences like adultery[2] and drunkenness,[3] subjected to more severe penalties. The distinction between the Muslims and the non-Muslims was, however, not allowed to work to the disadvantage of the non-Muslims.[4] Sometimes perhaps on grounds of public policy they were granted a reprieve in full.[5]

Qanun e Shahi

The third set of laws were the regulations issued from time to time by the monarchs in the form of proclamations, known as Farmans and Dasturul

[1] Compare: (1) Baillie, p. 174. (2) Rahim, p. 59. (3) Jahangir's Farman. Fraser MS. 228 Oxford. (4) Offences such as selling of pig's meat, could not be committed by a Hindu. Compare Fatawa, p. 174 (Baillie).

[2] Compare Kitabul Ikhtyar, pp. 28, 122.

[3] Kitabul Ikhtyar, p. 138; Sharhe Waqayah.

[4] See (1) Aurangzeb's order on the complaint of Amin, son of Bahar Uddin. Waqae, p. 59. (2) Mirat I, pp. 277-283.

[5] Vide State versus Rae Rae Singh mentioned in Tuzuk S.A., p. 62.

Amals.[1] They were called Qanun e Shahi.[2] They may be compared with the edicts of the Roman Emperors or the Orders in Council issued by the British King or the Qanun of the Turkish Sultans. Such regulations are contained in collections like Ain e Akbari, Zawabit e Alamgiri.

The sphere of Qanun e Shahi was naturally large. The ruler could make and unmake regulations, for on many matters of detail the Quran could not provide a solution, revealed as it had been in a very different state of society.

Qanun e Urf

A fourth set of Laws which had their origin neither in the Quran nor in the Farmans, consisted of local customs—Qanun e Urf.

In the absence of codes, customary Law naturally played an important part.[3] The customs and practices of the inhabitants of India were too deep rooted for interference so that a large number of Muslim converts carried with them into the Muslim fold traditions that ran counter to the tenets of Islam. For instance in the greater part of the Punjab females were and are excluded from inheritance in the villages in spite of the specific provisions of the Shara' to the

[1] Dastur literally means Convention. The term was first applied to the Rules and Regulations issued by the Caliphs of Islam.

[2] Also called (1) Laws of the Empire. See Shah Alam's farman granting Diwani to Clive in 1765. (2) Qawanin o Zawabit. Mirat I. p. 258.

[3] Compare Maine "In India the Legislator derives his sanction from the custom of the people".

contrary.[1] In Mian Khan versus Bibijan (5 B. L. R. p. 500) the High Court of Calcutta found proof that for a considerable time before the establishment of British administration loans on interest by Muslims had been recognised in spite of their prohibition by the sacred law.

Such conventions or un-written laws of local custom and practice have, in Muslim legal phraseology become known as Urf, i.e., what is accepted by the community. History tells us that there have not been lacking attempts to regard "Urf" as one of the roots of the Fiqh or Muslim Jurisprudence and thus to reconcile the rigidity of law with local requirements.[2] Whether this giving to local customs, which were sometimes contrary to Islamic tenets, a recognised position in the legal system was voluntary or whether it was forced by circumstances, it proved to be an expedient useful to the Muslim Kings and helped to augment their power. It resulted to a certain extent in the intermingling of the two peoples; the Hindus taking to Muslim methods and the Mussulmans adopting customs or the converts retaining habits which were fundamentally opposed to the strict principles of the Islamic faith.[3]

[1] Compare Punjab Customary Law by Wilson, p. 59. Compare Moplah practices of Hindu rituals Malabar Gazetteer, p. 196.

[2] Compare Ameer Ali, Islamic Culture 1927. p. 94.

[3] See Tupper II. p. 131. In the Sialkot district in certain villages only the Hindus adopted the Muslim Law of giving inheritance to females; similarly the transfer of property by gift to women was accepted by the Hindus. Vol. II, pp. 70-75. See also II, pp. 88-89, 157-259.

Precedents

Fifthly the Law Courts were permitted to look to precedents established by other courts. There were 'Muftis' or Jurists attached to the Law Courts who used "to spend night and day in search of precedents",[1] for the guidance of the courts, but, as Mawardi has pointed[2] out, the Qazi had to use his own legal faculties and was not bound to follow decisions given by other courts even though they might be those of his own superior court—a striking contrast with the practice prevailing in the British Indian Courts today. If the question involved was open to an expert's opinion, that opinion was considered relevant, and could be accepted[3] if it was not rebutted in any other case. The general practice, however, seems to have been to invest courts with discretion in all such circumstances.[4]

Equity and good Conscience

Lastly, the courts were enjoined to act, when there was no clear law, on the principles of equity and good conscience.[5] Lord Parker of Waddington in Hamira Bibi versus Zubaida Bibi observes[6] that the chapters on the duties of Qazis in the principal works on Muhammadan Law clearly show that the

[1] Sarkar (1920), p. 37.
[2] Compare J. R. A. S. 1910, p. 765. Rahim, pp. 179-181.
[3] Compare Al Faruq by Shibli, p. 60—See Aga Mohd. vs. Kulsum Bibi, 25 Cal. p. 9. (P.C.).
[4] Kitabul Ikhtyar, p. 23.
[5] See Fatawa III. pp. 383-386. (Kitab Abdul Qazi). Compare Siratun Nabi II. p. 245.
[6] L. R. 43 (1916) I. A. pp. 301-302.

rules of Equity and equitable considerations commonly recognised in the courts of Chancery in England were in fact often referred to and invoked in the adjudication of cases. The collection of select Jurists' opinion in the Fatawa e Alamgiri was primarily meant to guide judicial discretion on the lines of Equity.

Laws notified

In the absence of codes (the nearest approach to which was Aurangzeb's Fatawa e Alamgiri) the written law was contained in official manuals[1] and in the edicts issued by the monarchs, copies[2] of which were circulated among the people.[3] Sir Thomas Roe's remark[4] in 1615-16 that "laws they have none written," but understood by all supports this conclusion. Rulers like Aurangzeb took particular care to get the law carefully drafted[5] and properly notified[6] (dar har shaher wa dar har parganah wa qasbah dae wa shae sazand).

For the observance of Shara' rules among the Muslims and of the general rules of morality in accordance with the Law of Islam among all, special officers (Mohtasibs) were appointed and they had a separate

[1] For instance Dasturul Amal MS. 162 K. C. C.

[2] Ali Muhammad Khan refers to "Naql" in Mirat I. p. 268. Mirat I. p. 283.

[3] See Mirat I, p. 259.
,, pp. 251, 283.
,, p. 171. Tuzuk S. A. p. 4. Compare Dow III. p. XXXIII.

[4] Compare Roe, p. 89, p. 104.

[5] Compare Ibn Hasan—Chapter on Farmans, pp. 92-106.

[6] Mirat I, pp. 251, 258, 268; Dow III, p. XXXIII. "edicts were transmitted to every district; they were publicly read".

department[1] of their own during the Sultanate and Mughal periods.

The application to non-Muslims of these sets of laws, as would appear from the Fatawa e Alamgiri,[2] was regulated by the proclamations[3] and the edicts that were issued from time to time. Where nothing was mentioned about non-Muslims only such portions of the laws were made applicable to them as were not specifically identified with the tenets of the Islamic faith.[4] For example they could not be prosecuted for eating pig or for denying the Prophet Muhammad's position as the messenger of God, for which the Muslims alone could be punished. The Law of Shara' as derived from the Usul ul Usul was in fact intended for the 'believers' in the Faith. The 'non-believers' were to be "let alone".[5]

The King's officers in medieval India like the Roman Praetors had thus to supplement that law for the Hindus and others for whom it did not provide.[6]

This principle of differentiating Muslims from non-Muslims in the matter of crimes and punishments or in the cognisance of cases in general by the Canon Law Courts did not lead to any difficulty in the trial

[1] Prof. Sarkar suggests in 'Mughal Administration' (1920), pp. 29-32 that Aurangzeb introduced 'Mohtasibs' but it seems that they existed already and were employed by the Sultans as well. See Barni, p. 441.

[2] Vol. II, pp. 347-357. Calc. Ed.

[3] Mirat I, p. 250, and Farameen "Jamhur mutawattine Atraf.....bedanand".

[4] Fatawa II, p. 357. Sharh e Waqayah III. Chapter on Qaza.

[5] Quran—'Lakum denukum waliya Din'. Compare Fatawa (Baillie), p. 174.

[6] Compare Field, p. 134.

of cases. Like the Judges[1] of the Anglo-Saxon period the Qazis possessed jurisdiction both in Common Law and Canon Law cases. The latter dealt mainly with offences against religion, but charges that could not be brought against non-Muslims were dropped and sentences that did not apply to them were not awarded in their cases.[2]

If questions of Constitutional Law were ever raised as occurred once in the Court of Mulla Muhammad Yazdi Qazi of Jaunpur, where an application to get certain orders passed by Akbar, declared illegal[3] was successfully made, no special Bench was created. The Qazi of the place was regarded as having inherent jurisdiction to try such cases.

King's position

The task of providing for by legislation subjects left out in the Quran and the Traditions was that of the monarch. By virtue of his office he was the legislator, the defender of the Laws[4] as well as the dispenser of Justice. The Prophet himself had decided cases[5] and the Caliphs too heard original suits.[6]

[1] Compare History of English Law by Pollock and Maitland. The Bishop sat in the County Courts, the Church claimed for him a large share in the direction of even secular justice and the claim was fully allowed by Princes who could not be charged with weakness", p. 40.

[2] For instance a less severe sentence was given to them for drinking intoxicating liquor.

[3] Vide Darbar e Akbari. Cal. 1914. p. 64. Eng. Tr.

[4] Compare Islamic faith by Sir T. Arnold.

[5] Compare (1) Sahih Muslim—Hadis reported by Ibn Abbas and Ibn Daood (2) Encyclopædia of Islam, p. 606. II. (3) Al Qaza Fil Islam, p. 77.

[6] Risael-e-Shibli, p. 62—Al Qaza Fil Islam, p. 87.

The ruler of a Muslim State was de facto its Chief Judge[1]—Mauqaf e Dado Adl.[2] As the chief executive officer of the realm it was necessary and, indeed, advantageous for him to respect[3] the Law and the decrees of the courts that functioned under his own ægis. He could not destroy or weaken an institution of which he was himself the Chief.

As an individual he had no privileged position though the combination of judicial and executive functions in one person "as God's Shadow on earth" inclined some of the Sultans to consider themselves above the Law.[4] There is, however, no evidence that it was the general practice. The Shara' did not recognise the theory that the ruler could do no wrong. A monarch could be sued[5] in Court and could also sue.[6] Dr. Vesey-Fitzgerald refers[7] to cases in Arabia where the Caliphs Omar and Rashid submitted to decrees passed against them.

Prerogative

The Muslim ruler possessed the power of com-

[1] See Quran. "We appointed a Caliph on earth and he should do justice".

[2] Alamgir Namah, p. 1097.

[3] Compare Dow III, p. LII. "The Muhammadans carried into their conquests a Code of Laws which circumscribed the will of the Prince. The principles and precepts of the Coran with the commentaries upon that book form an example of body of Laws which the house of Timur always observed."

[4] Compare (1) Ala Uddin's conversation with Qazi Mughis—Barni, pp. 289-294; (2) Muhammad Tughlaq's address to his Judge—Badaoni I, p. 239; Barni, pp. 510-515; and (3) The constant use of the pedantic in the Farmans issued by them.

[5] See Stewart, pp. 90-91. Widow vs. King Ghyas.

[6] Vide Md. Tughlaq vs. Shikhzada Jami. Badaoni I, p. 239.

[7] Muhammadan Law, pp. 11, 32—compare Rahim, p. 21.

muting sentences or what is nowadays called the prerogative of mercy. It was not used by the first four Caliphs of Islam, but according to Ameer Ali[1] was introduced in the 8th Century A.D. by the Caliph Al Moa'vyah. It was exercised in India during the Sultanate and the Mughal rule in practically every kind of case ranging from theft to murder and dacoity with murder. It enhanced the personal prestige of the sovereign, and this fact may have influenced the Mughal Emperors in their policy of insisting upon death sentences being submitted to them for confirmation in order that they might have opportunities of commuting them in suitable cases.[2]

Jahangir pardoned Rae Rae Singh after he had been found guilty of treason.[3] Shahjahan in the course of an order justified[4] his exercise of the prerogative on the basis of the sanction given by the Law of Qisas (compensation) in the Shara'. Aurangzeb granted a pardon[5] to Jaswant Singh twice and constantly used[6] his powers in favour of the accused person.

The ruler also exercised original jurisdiction. In medieval India it was essential for the kings to try cases personally, for there were powerful nobles who sometimes would submit only to the decrees of the King's Court. If the ruler was conscientious and sat

[1] Spirit of Islam, p. 280.

[2] Compare (1) Monserrate, p. 210; (2) Storia II, p. 419; (3) A Voyage to Surat. Oxford 1929, p. 138.

[3] Reference in Tuzuk S. A. p. 62.

[4] MS. 370 I.O.L.

[5] Khafi Khan II, p. 64.

[6] Compare Khafi Khan II, p. 550. Captain Hamilton I, p. 121.

punctually his court was often sought[1] by the people as his decisions were "quick" and "genuinely impartial", his situation having placed him beyond the limits of fear or of favour.

As the Chief Judge it was the duty of the Sultan to supervise the administration of justice and to appoint judicial officers—Qazis—to assist him in the disposal of cases. Like the King of England[2], he alone[3] had the right to set up courts of judicature. According to Muslim jurists the responsibility of selecting suitable men as Qazis was very grave[4] (Nijat e Padshah na bashad).

Barni relates[5] the story of the appointment by the Sultan Qutb Uddin of an incompetent man—Qazi Zia Uddin, to the office of Chief Justice which incited the people to revolt and murder not only the Qazi but the King himself. Akbar (1556-1605) approved of the selection of well-informed men (Agahdilan) of the realm to the judicial offices.[6] Aurangzeb used to spend more time in the selection of Qazis than in making appointments to any other post in the Empire,[7] although according to Ali Muhammad Khan[8] the authority of appointing inferior Qazis (mansoob

[1] Storia I, pp. 201-203.
[2] Compare (1) Blackstone's Commentaries I, p. 266.
[3] Compare Hidayah XX, p. 335.
[4] Compare (1) Mawardi J. R. A. S. 1910, p. 767. Barni, p. 352. (2) Barni, p. 351. Ala Uddin could select only four persons during his reign who could act as Qazis. Other candidates fell short of his standard. (3) Mihnaj ut Talebin, p. 501. (4) Tabaqat e Nasiri, p. 207.
[5] pp. 406-408, Bib. Indica.
[6] Ain I, p. 283 (Text) Bib. Indica.
[7] Compare (1) Dow III, p. 396. (2) Waqae Alamgir, p. 40.
[8] Mirat. Supplement, p. 149.

namoodan e Arbab e Adalat) was sometimes delegated[1] by the Mughal Emperors to the Sadrus Sudur who issued their sanads or to the Chief Justice (Qazi ul Quzat) (Fatawa III, p. 388 Cal. Ed.) (Khafi Khan II, p. 606). The King was also expected himself to have a practical knowledge of Law as in theory he alone could "remove the Qazis from their posts" (Al Mawardi) and they held office during the King's pleasure.[2] It is interesting to recall that at the time these notions of constitutional practice were in vogue in India, the British Parliament by the Declaration of Rights Bill in 1689 insisted that the Judges should hold office not during the King's pleasure but during good behaviour.

Qualifications of Qazis

The Qazis who were thus selected were in most cases men of learning and scholarship.[3] In order that their appointment might conform to the requirements of Law the following points were considered:—[4]

A Qazi had to be:—

(1) Adult male: According to Abu Hanifah a woman could be a Qazi and Muslim Queens like Raziah have tried cases—Elphinstone, p. 368. (1905).

[1] Compare Minhaj, p. 502. Sarkar, p. 35. (1920).

[2] Fatawa e Alamgiri III, p. 393—Syasat Namah, p. 38.

[3] Compare Appointment of Qazi Nizam Uddin. Mirat Supp., p. 53.

[4] Compare (1) Mawardi. Ahkam us Saltanyah, pp. 123-128. (2) J.R.A.S. 1910, pp. 762-763. (3) Fiqh e Firoz Shahi. (4) Fatawa e Alamgiri—Adabul Qazi. (5) Kitabul Kharaj Adabul Qazi. (6) Caliph Omar's letter to Governor Musa Al Ashari—referred to in J.R.A.S. 1910. (7) Hidayah BK.XX. pp. 334-352.

(2) Intelligent and possessing sound discriminating judgment and independence.[1]

(3) A free man: Slaves in Islam were not expected to act independently. The Kings of the Slave dynasty were no longer slaves when they ascended the throne. Sultan Iltutmish (1210-36) had to satisfy the Qazis with regard to his manumission before he could be accepted.[2]

(4) A Muslim: Non-Muslims were not as a rule appointed Qazis. According to Hidayah strict adherence to the Sacred Law even in private life was insisted upon.[3] The acceptance of office entailed upon the incumbents a detailed study of religious laws and sometimes of the duty of leading the Friday prayers. Non-Muslims were ineligible because they did not usually study[4] Muslim Law, but in other departments they were freely employed.[5] Al Zaylai has recommended the appointment of non-Muslims as Magistrates and Judges to decide their own disputes.[6]

[1] Compare—Waqae Alamgir, p. 40. Ruqaat.

[2] Ibn Batuta. Elliot III. p. 591.

[3] According to Darbar e Akbari, Cal. 1914, p. 67, Qazi Mir Saiyad who was selected as a Qazi was a well-informed lawyer who practised what he preached.

[4] Compare Briggs II, p. 292. "Before whose (Ala Uddin Husain 1350 A.D.) time the Brahmans (Hindus) never engaged in public affairs but passed their lives in the duties of religion and in the study of the Vedas—indifferent to fortune, conceiving the service to Prince to be destructive of virtue". The Brahmans alone among the Hindus used to study Law in pre-Muslim days.

[5] Compare (1) Maasirul Umara I, p. 101 (Order re. appointment of Rajah Todar Mal). (2) Briggs II, pp. 284-92. (3) Beveridge I, p. 141. (4) Waqae Alamgir Part Two, pp. 48-98, I.O.L. (5) Captain Hamilton II, p. 24.

[6] Durrul Mukhtar Calc. Ed. p. 521.

(5) An Adal i.e., capable of being a trustworthy witness. Special heed was paid to a Qazi's character and a high standard of conduct was expected[1] of him. According to Zia Uddin Barni purity of character was essential to a judicial office. (Lazim e sharte Qaza taqwast, p. 352). In the time of Ala Uddin Khilji (1296-1316) a Qazi who had started drinking liquor was prosecuted and sentenced to death.[2]

(6) Of sound sight and hearing: As pointed out in Hidayah[3] no judgment of a Qazi was regarded as valid if it was given at a time when his understanding was not clear. As a rule no age of retirement was fixed.

(7) Perfect in the knowledge of the Law: According to Barni the post of a Qazi is one of responsibility and only those persons who are well versed in Law and are of good birth should be appointed. (p. 352).

During the Sultanate and the Mughal period selection for the post of Qazi was often made from among the Professors of Law.[4] The Qazis were further expected not to entertain parties or to accept any gifts from strangers.[5] There were other similar restrictions and there was also the risk of in-

[1] Compare (1) Encyclopædia of Islam, Vol. II, 606. "He must according to Law be a Muslim scholar of blameless life". (2) Barni, p. 298.

[2] Badaoni I, p. 187.

[3] Hidayah XX. p. 338.

[4] Compare Elphinstone (1857), pp. 420-421. Tazkira e Ulema e Hind, p. 54: Hadiequl Hanifiah, p. 434.

[5] Compare (1) J.R.A.S. 1910, p. 772. (2) Hidayah BK. XX. p. 337.

curring the Ruler's displeasure. It was no wonder that the office of Qazi was accepted with fear and reluctance,[1] in the early days of Islam when strict obedience to both the letter and the spirit of law was generally enforced. Even in the time of Aurangzeb (1659-1707) public opinion was that the post should be offered by the King and not applied for.[2]—Sazawar nest kasai ki talabe Qaza kunad.

Appointment to be announced

The appointment and the jurisdiction of the Qazis were to be made known[3] by the King so that people should submit to their orders.[4] Temporary appointments and special tribunals also could be created[3] and were similarly "gazetted".

General Functions of Qazis

The powers and functions of the Qazis were wide and their responsibilities grave.[5] The order of a Qazi's Court had to be obeyed.[6] In civil cases each Qazi had the powers of the Judges of the English King's Bench Division and in criminal cases they tried all cases that ordinarily come before the Dis-

[1] Compare Al Qaza fil Islam, p. 5.
[2] Hidayah XX. p. 335.
[3] See Farman Baqiat; p. 6.
[4] Compare (1) Mawardi J.R.A.S. 1910, p. 768. (2) Khafi Khan II, p. 255.
[5] (1) Amre khatir tar az qaza nest—Aurangzeb in f34, Br. Mus. Add. 26, 239. (2) M. Said, a Magistrate was executed by Shahjahan for giving a dishonest judgment. Storia I. p. 197.
[6] The phrase Qazae mabram "inevitable death" originated from the fact that an order of a Qazi's Court could not be avoided as was the case with death. See Kalimatut Tayyebat Oxford (MS.) Compare (1) Raqaem e Keram MS. F. 15. (Arju ba hukmil Qazi). (2) Saracens by Ameer Ali, p. 62.

trict Magistrates and the Sessions Judges in British India and could also pass a sentence of death.[1] Like the Judges of the Supreme Court of the United States of America, they could declare[2] a Sovereign's order illegal. They could call upon governors to resign office if they exceeded their powers.[3] The people and the King alike turned to the Chief Justice in times of trouble.[4] They possessed powers "under the Habeas Corpus Act"[5] like the judges under the old system of Gaol Delivery in England. In criminal matters they exercised the full jurisdiction conferred on the District Magistrate under the Indian Criminal Procedure Code, and also all powers corresponding with those conferred on the modern District Judge by the Guardian and Wards, Lunacy, Trust and Insolvency Acts of today. They possessed in fact all the Common Law and Equity powers that could be given to a court of original jurisdiction. The Qazis in deciding cases were enjoined to think of God alone[6] and, as they were nearer to Him because of their knowledge of the Sacred Law and of their practice of it, their influence was enormous.[7]

The Chief Justice of the Empire and the Chief Qazis of the Provinces had, like the modern Indian

[1] bandegane O Jall e shanahu ba qaulo tasdiq e Qazi asir o qatil mi shawand—Waqae, p. 40 I.O.L. The Mughal Emperor Akbar started the practice of confirming the death sentences himself. Compare Monserrate, pp. 209-210.

[2] Darbar e Akbari. Cal. Tr. 1914. p. 64.

[3] Compare Mawardi J.R.A.S. 1911, p. 637. Sarkar (1935), pp. 16, 17.

[4] Compare Briggs I, p. 227.

[5] Hidayah, p. 336. Mirat I, pp. 278-283.

[6] Compare Widow vs. King Ghyas. Stewart, pp. 90-91.

[7] Compare Sarkar (1935) pp. 27, 111.

High Courts, the additional functions of supervising the work of the inferior courts and of recommending candidates for appointment as Qazis.[1]

Rigour of the Law

The Law of Shara' applied equally to all, and the officers of the state were treated[2] like ordinary citizens for personal disputes. Their position as such officers gave them no immunity from the rigour of the Law. Omar, the second Caliph of Islam, allowed his officers no privileges.[3] The Sultans and the Mughal rulers in India followed the same course. If their officers acted under the immediate command of the Sovereign, they were probably not liable, but such a defence had to be proved strictly.[4] The Muslim Criminal Law did not favour any distinction between a ruler and his subject.

[1] (1) Compare Mirat I. p. 319. (2) Khafi Khan II. p. 606. (3) Compare Mahmud of Ghazna, p. 149. (4) Fatawa III. p. 388 Calc. (5) Al Qaza fil Islam, p. 9.

[2] See (1) State vs. Malik Faiz—Briggs I. p. 253. (2) State vs. Prince Adil—Erskine II, p. 445. (3) State vs. Yaqub and another—Briggs IV. p. 517. (4) State vs. Moqarrab Khan Tuzuk S.A. p. 83. (5) State vs. Nurjahan. Tuzuk e Jahangiri, Shibli, p. 3, pp. 30-32. (6) State vs. Murad—Sarkar III. p. 437. (7) State vs. Faujdar—Khafi Khan II 550. (8) State vs. Mirza Beg (Kotwal) Khafi Khan, II, p. 257. (9) State vs. Kam Bux—Khafi Khan II, p. 436. (10) State vs. Qazi Mir—Storia IV, pp. 118, 119.

[3] Compare (1) Ameer Ali, Spirit of Islam, p. 279, (2) J.R.A.S. 1911, p. 664.

[4] Compare State vs. Shiqahdar, Manrique I. p. 424. State vs. (Kotwal) Mirza Beg, Khafi Khan II, p. 257.

State versus the Subject

The State could be sued[1] in the same manner as an ordinary citizen. There was no Droit Administratif to govern suits between the subject and the State and jurisdiction was vested in the ordinary State Courts to try such cases. Elphinstone thinks[2] that the courts into which the State came as the plaintiff or the defendant were separately constituted. No case has, however, come to my notice which suggests any such procedure. According to Khafi Khan[3] even grave political cases were tried by the ordinary courts and no special tribunals were created. When a subject sought redress for an act done by an officer under colour of his office, the fine or compensation, if exacted, was paid either by the State or the officer concerned, and the accused officer was also liable to a sentence of imprisonment. In State versus Shiqahdar (Manrique I, p. 424) it was held that a Police Officer was personally responsible for the wrongful arrest of a citizen and was liable to pay him compensation. In another case[4] due to a wrong order passed by a governor, Khan Jahan, in a murder trial, the State had to pay damages to the heirs of the deceased. In Jahangir's time (1605-1628) a Police Kotwal, in order to prosecute an intrigue with a subordinate's wife, compelled the policeman to absent himself from his house

[1] Vide Cases (1) Haji Zahid and Pirji vs. State. Khafi Khan, p. 251 II. (2) Sher Md. vs. State (Collections). (3) Claim of the E. I. Co., for compensation (Capt. Hamilton I. p. 232). (4) Case. Waqae Alamgir, p. 72 I.O.L.

[2] (1857) p. 420.

[3] Khafi Khan II, p. 728.

[4] Waqae Alamgir, Part I, p. 72, I.O.L.

on a pretext of duty. The policeman's mother came to the palace and shook Jahangir's chain of justice,[1] which resulted in the Kotwal being sent to prison.[2] In another case a favourite governor of Balban killed a man while drunk. He was tried and executed in public.[3] Khafi Khan gives[4] details of an interesting case when Mirza Beg, Kotwal of Lahore, went to arrest a Qazi who had been accused of an offence. The Qazi barricaded himself in his house. A fight ensued in which the Qazi was killed. His heirs brought a case against the Kotwal who was found guilty of murder and an order was passed to hand him over to the heirs of the Qazi in blood fine (Qisas). The Kotwal died during the pendency of appeal.

In another case in the time of Aurangzeb, a woman made a complaint[5] againt a Faujdar, the result of which was that he was transferred to another locality.

Akbar was severe in punishing oppression and encouraged just complaints against the servants of the Crown by various proclamations.[6]

Shahjahan pursued the same policy[7] and Aurangzeb on one occasion publicly reprimanded a subordinate Qazi and dismissed him from office for showing partiality in one of his decisions.[8] The son-in-law of

[1] Ref. Rahbar e Daccan 1931. p. 19; Tuzuk e Jahangiri, p. 3 (S.A.)
[2] See Rahbar e Daccan 1931. p. 19.
[3] Briggs I. p. 253—State vs. Malik Faiz.
[4] p. 257 II.
[5] Khafi Khan II. p. 550.
[6] Compare Dow III, p. XXV.
[7] Complaint against Tarbiet Khan. Dow III, p. 173.
[8] Compare Dow III, pp. 334-335. Compare Aurangzeb by Lanepoole, p. 113.

Ahmad Shah, King of Gujrat, committed murder and the Qazi's order of compensation (Qisas) was revised by the King and the sentence was enhanced to one of death.[1]

Rights of non-Muslims

Non-Muslims were of two classes—1. Zimmis who had accepted the overlordship of the ruler and 2. Musta'mins, who were given a guarantee of security by the State, for a particular period and possessed all the rights of an Alien in a modern State.[2] The Shara' made no change[3] in the enjoyment by the non-Muslim inhabitants of their own religion, laws and ancient customs. The Prophet himself, by granting a charter[4] of liberties to non-Muslims, had set the example of recognising their personal laws, and history affords numerous instances when the assurances given by the Prophet were repeated by his successors,[5] and on one occasion as Dr. Vesey-Fitzgerald relates a non-Muslim was granted[6] a decree against the Caliph of Baghdad by his own court of Law.

Non-believers in the Faith were, in theory, under specific disabilities in regard to giving evidence in court against a 'believer' but in practice these were seldom adhered to. The Hanafi school which had

[1] Mirat I. p. 49.
[2] Compare Spirit of Islam by Ameer Ali, pp. 268-279.
[3] Compare Ameer Ali Muh. Law II. p. 33.
[4] See Kitabul Kharaj, p. 299; Futuhul Baldan, p. 65.
[5] Compare (1) Maqrizi, pp. 492-499. (2) Kitabul Kharaj, pp. 86-7. (3) Futuhul Baldan, p. 125. (4) Risael e Shibli, p. 62. (5) Ameer Ali. Spirit of Islam, p. 274. (6) Orient under the Caliphs by S. Khuda Bux, p. 225.
[6] p. 11. Muhammadan Law. Compare Rahim, p. 383.

obtained predominance in India was more Catholic than others in its treatment of non-Muslims. It was one of Abu Hanifah's maxims that judicial discretion on important matters was justified on grounds of Istislah (public policy) and thus courts could refrain from applying the Quranic Law to non-Muslim in individual cases[1] vide State versus Islam Khan and other cases given in Elliot IV, pp. 26-27. Manrique (1629-1643) records[2] a trial where, contrary to judicial practice, evidence of non-Muslims was accepted against a large number of Muslim accused. The admission of one of the accused was under the Law not considered sufficient. In the course of the judgment the court observed—"The Emperor who had conquered these lands from the Heathens, had given his word that he and his successors would let them live under their own laws and customs" and he, therefore, allowed no breach of them.[3] The non-Muslims were given the right of claiming compensation (Qisas) in murder cases[4] and in practice they were subject to the Qanun e Shahi and the Adjective Law only. In civil disputes between themselves their personal law was recognised but their disputes were usually referred to their own theologians (Pandits)[5]

[1] (1) Jahangir excused non-Muslims from a number of taxes. Fraser MS. 228 Oxford. (2) Aurangzeb abolished many taxes on them. Sarkar (1920) pp. 122-130. (3) In many Treason cases death sentence was remitted. Tuzuk S. A., p. 62.

[2] Travels II, p. 112. The Muslims were prosecuted for killing a peacock in a village inhabited by Hindus alone.

[3] Compare Hamilton's remarks in Hidayah, p. XIV.

[4] Compare (1) Kitabul Ikhtyar, Art. 544. (2) Spirit of Islam, pp. 274-275. (3) Fiqh-e-Firoz Shahi I.O.L.

[5] Compare (1) History of India by James Mill, III, p. 369. (2) Cambridge History of India III, p. 45.

Ahmad Shah, King of Gujrat, committed murder and the Qazi's order of compensation (Qisas) was revised by the King and the sentence was enhanced to one of death.[1]

Rights of non-Muslims

Non-Muslims were of two classes—1. Zimmis who had accepted the overlordship of the ruler and 2. Musta'mins, who were given a guarantee of security by the State, for a particular period and possessed all the rights of an Alien in a modern State.[2] The Shara' made no change[3] in the enjoyment by the non-Muslim inhabitants of their own religion, laws and ancient customs. The Prophet himself, by granting a charter[4] of liberties to non-Muslims, had set the example of recognising their personal laws, and history affords numerous instances when the assurances given by the Prophet were repeated by his successors,[5] and on one occasion as Dr. Vesey-Fitzgerald relates a non-Muslim was granted[6] a decree against the Caliph of Baghdad by his own court of Law.

Non-believers in the Faith were, in theory, under specific disabilities in regard to giving evidence in court against a 'believer' but in practice these were seldom adhered to. The Hanafi school which had

[1] Mirat I. p. 49.

[2] Compare Spirit of Islam by Ameer Ali, pp. 268-279.

[3] Compare Ameer Ali Muh. Law II. p. 33.

[4] See Kitabul Kharaj, p. 299; Futuhul Baldan, p. 65.

[5] Compare (1) Maqrizi, pp. 492-499. (2) Kitabul Kharaj, pp. 86-7. (3) Futuhul Baldan, p. 125. (4) Risael e Shibli, p. 62. (5) Ameer Ali. Spirit of Islam, p. 274. (6) Orient under the Caliphs by S. Khuda Bux, p. 225.

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or Assemblies[1] (Panchayets) or Jurors, as was the procedure adopted by the Caliphs of Baghdad.[2] Disputes among powerful non-Muslim nobles were sometimes heard by the Emperor himself and non-Muslims always had the option of getting their cases tried by a Law Court assisted by a Brahman Pandit. This is explained in the following passage from the report of the Committee of Secrecy appointed by the House of Commons (Vol. IV, p. 324) (1772-1773) which recommended the same system in Bengal:—

> "And your Committee finds that the Gentoo (non-Muslim) subjects enjoyed a similar privilege with respect to all cases of a religious nature in which persons of that persuasion were parties; for that in every such Case it was necessary that the temporal Judge should be assisted by a Brahman of that caste, particularly when that cause was of such a nature as might be attended with the consequence of forfeiture of caste".

The Sultans preferred to follow the letter of the Law which, while granting complete toleration (Lakum dinakum-Quran) to non-Muslims, drew distinctions between 'believers' and 'non-believers'. Nevertheless, it was in their time that Hindu Kayasths began to monopolise Secretarial and other posts in the Government offices. During the Mughal period (1526-1857) Hindus were appointed Governors and Faujdars (Mirat II, p. 460) and were generally in charge of the Revenue Department and thus became an im-

[1] Kennedy, Vol. I, p. 308.
[2] Ameer Ali—History of the Saracens, p. 422.

portant influence in state administration,[1] (Ferishtah).

Akbar's attitude towards non-Muslims may be gathered from the following proclamation issued by him:—[2]

> "No man should be interfered with on account of his religion and every one should be allowed to change his religion if he liked. If a Hindu woman fell in love with a Muhammadan and changed her religion she should be taken from him by force and be given back to her family. People should not be molested if they wished to build churches and prayer rooms or idol temples or fire temples".

Apparently this attitude was adopted by His Majesty after he had taken a Hindu Rajput princess in marriage. Aurangzeb (1659-1707) took a more orthodox though a correct view of the Law (Jamee Umur saltanat wa maamlat mulki ra dar qalib e shariyah) by enforcing the Zakat tax on the Muslims[3] and the Jazyah[4] on the rest. His predecessors had exempted their subjects from both these taxes on grounds of public policy. In general, however, no interference was shown[5] and the non-Muslims

[1] Briggs II, p. 292. MS. 370 I. F. (I.O.L.). Compare Capt. Hamilton, II, p. 24.

[2] Ain I. Blochman, p. 207. Tr.

[3] See Mirat I. p. 298.

[4] This is not the place to give any detail of the tax but from an order issued by Aurangzeb and preserved in original in the Collections and from a perusal of Mirat e Ahmadi I. p. 297 it appears that the 'Jazyah' had a sliding scale. Exemption was given to minors, women, blind, lunatics, paupers and the crippled and its incidence was much less than that of the Zakat.

[5] Compare (1) Capt. Hamilton II, p. 24. (2) Beveridge I, p. 141. (3) I. O. L. Records. Home Misc. No. 529, pp. 585, 612.

continued to "fill public offices and posts of trust" as Aurangzeb thought that matters of state were separate from religion (Umure dunya ra az mazhab che nisbat).[1]

The position of Women

Under the Hanafi Law the position of women was almost on a par with that of men.[2] A woman could act as a Qazi (Kitabul Ikhtyar, p. 10). In pre-Sultanate period they had been debarred from studying the religious books or performing sacrifices to the deities and had practically no legal status. Soon after the establishment of the Slave dynasty, India had the privilege of a sovereign Queen and a woman Judge in the person of Sultan Raziah (1236-1240). According to Elphinstone[3] she decided suits of importance and evinced all the qualities of a just and able sovereign. During her time a number of women came to the fore-front in public life.[4] Later on as the practice of secluding women borrowed from the Hindus became prevalent among the Muslim nobility, women seem to have fallen into the back-ground.

Although there were many women eminent in literature and the arts during the Mughal period, yet women held no judicial posts except that of Judges[5] in cases concerning Harem women, where all the proceedings were conducted by women only.

[1] Waqae Alamgir, p. 59. Letter of Aurangzeb.
[2] See Quran "Hunna libasekum". Hidayah (Hamilton) p. 341.
[3] (1905), p. 368.
[4] Tabaqat e Nasiri (Text), p. 186.
[5] Roe, p. 85.

There were no legal disabilities attached to women, except that in the reign of Akbar they were not allowed to ride on horseback in the city.[1] Indeed in one respect a woman was placed on the same level as a man in a way in which she is not placed in modern India. If found guilty of the offence of adultery, a woman was made to suffer as severe a punishment as was given to the male co-accused.[2] In India today no woman is punishable for adultery, although a man is.

[1] Ain II 42 (Jarrett).
[2] Roe, pp. 190-191, State vs. Noble woman.

CHAPTER III

JUDICIAL SYSTEM UNDER THE SULTANS

The dynasty founded by Qutub Uddin Aibek in 1206 was extinguished in 1290. After that several dynasties reigned in India before the Mughal advent in different parts till 1526 and some till 1680 A.D. They dominated the Northern, Central, Eastern and the Southern wings of the country. The sovereigns of Delhi possessed the largest extent of territory. The Kings of Bengal in the East and the Sultans in the Deccan also occupied important positions. With the exception of the two states of Bijapur and Golconda in the south where the Kings were Shiahs, the rulers in the rest of the country were Muslims of the Sunni persuasion, and, as I have said elsewhere, followers of the Hanafi school. But, as the judgments in the Baqiat and the Collections which relate to North and South India respectively show, there was no difference between the Sunni and the Shiah systems of the administration of justice. The points on which the two schools differ relate to other matters, mainly the leadership of Islam and the authority of the first three Caliphs. Historians tell us that the judicial institutions of the Delhi Sultans were found in other Indian States and there seems no doubt that what the Kings introduced in Delhi was copied elsewhere. The offices of Qazi and Mufti were universal and, to quote concrete instances, the personnel of the Courts

which dealt with the following cases and their procedure make it clear that there was a judicial system common to all Muslim India.

1. State versus Sidi Maula, Barni, p. 211, North India.

2. State versus Babaji (Collections). South India.

3. Widow versus King Ghyas. Stewart, pp. 90-91. East India.

4. State versus Yusuf. Briggs IV, p. 517. North-west India.

5. State versus Prince. Mirat I, p. 49. West India.

Even the practice started by Iltutmish, Sultan of Delhi, of being installed by a Chief Justice was adopted. (Stewart, p. 101). Ferishtah tells us[1] that Mahmud Shah, the Bahmani ruler of Gujrat, was a 'strict promoter of the Law of Quran, permitting no neglect on the smallest point which occasioned the Qazis (Judges) to take cognizance of all deviations in points of morality'. Yusuf Adil Shah of Bijapur was deeply read in the Shara' law and 'always warned his ministers to act with justice and integrity',[2] while another Yusuf Shah, King of Bengal (1474), was well informed in Law and frequently solved questions that perplexed the most experienced Qazis and the Muftis.[3]

Since the popular conception[4] of a King's duties

[1] See Briggs II, pp. 346-348.
[2] See Briggs III, pp. 30-31.
[3] Stewart, p. 101.
[4] Compare (1) Tabaqate Nasiri, MS. 1886, Br. Mus. (2) Barni, pp. 39-43. (3) Quran, 'Iza Hakamtum Bainan Nas Tahkumu bil Adl.'

in the Muslim world was to maintain justice and fair play between man and man and emphasis was laid on strict impartiality and enforcement of the Shara' Law, the States in this particular aspect preferred to work on a system which had already received the sanction of the Caliphs or leaders of Islam for years.

Adherence to Shara'

The Sultans of Delhi were, generally speaking, strict adherents to the Law. In many cases they had won their thrones by a military coup. The ties of allegiance were personal and the Sultans, whether under the stress of circumstances or of their own free will, endeavoured to live up to the standard demanded of them by Islam in order not only to keep the army pleased but by redressing wrongs to retain popular support outside the army (Sujan Rae, p. 135). Among them Qutub Uddin Aibek (1206-1211) left a "permanent reputation"[1] and "his kingdom was governed by the best laws".[2] Iltutmish (1211-1236) started the practices of hanging a chain of justice outside his palace and of going about incognito in order to see if justice was administered satisfactorily.[3] He issued orders that any person who suffered a wrong should wear coloured dress.[3] The reign of Iltutmish was noted for jurists well versed in the law and practice of Shara' (Barni, p. 111). His successors Raziah,[4] Nasir Uddin

[1] Elphinstone (1905), p. 363.

[2] Briggs I, p. 199.

[3] Ibn Batuta, p. 112 (Lee). Compare Elliot III, p. 591.

[4] Tabaqat e Nasiri, p. 185. MS. 1886. Br. Mus. Compare Elphinstone (1905), p. 368. Elliot II, p. 330.

Mahmud[1] (1246-1266), Balban[2] (1266-1286), Tughlaq Shah[3] (1320-1325), Firoz Tughlaq[4] (1351-1388), Bahlol Lodi[5] (1451-1489) and Sikander Lodi[6] (1489-1517) maintained a "high level" of judicial administration, and as a result of their close observance of the rules of Shara', considered the dispensation of justice a religious duty—Lazim e din e Haq dad dehi wa insaf sitani ast.[7]

Ala Uddin Khilji's interview[8] with his Chief Justice in which he declared that government was meant for Kings and religion[9] for the Qazis and Muftis, and Muhammad Tughlaq's address[10] to one of his Judges suggest an attitude of attempting to introduce new elements into the law on the part of some rulers, but they did not violate any of its essential requirements and probably public opinion did not assist them in establishing traditions repugnant to the basic principles of the Shara'.[11] A little later in the time of Firoz Tughlaq (1351-1388) we find a code being

[1] Ibn Batuta, p. 114 (Lee).
[2] Barni, pp. 39-46. Compare Briggs I, pp. 250-266.
[3] Barni, p. 441.
[4] Barni, pp. 575-578. Briggs I, p. 461.
[5] Kennedy, I, p. 103.
[6] Kennedy, I, p. 108. Badaoni I, p. 313.
[7] Compare Tarikh e Sher Shahi I, K. C. C., p. 79. "No amount of worship can equal acts of Justice". Sher Shah.
[8] Barni, pp. 289-290. Nuzhatil Khwatir, pp. 166-169, Hyderabad.
[9] Mulkdari wa Jahanbani ilaheda karest wa ahkame Shariyat ilaheda. Barni, p. 289.
[10] Badaoni, I, p. 239. Elliot III, p. 263. Compare Barni, pp. 510-514.
[11] The attempt on the part of King Qutub Uddin, 1315-48, to appoint an incompetent man as Chief Justice was a dismal failure. Barni, p. 406.

prepared in order to acquaint people with the correct law, "so that there should be no violation of it".

Respect for Law

During the Sultanate[1] 'Muftis' and Mujtahids—learned men in Law—of acknowledged repute and learning—were employed in Courts to keep the Rulers informed of the correct rules of conduct. According to Barni[1] the salvation of Kings lay in their strict observance of the Shara'. "All breaches of the Holy Law were forbidden".[2] Paintings and pictures which savoured of idolatry could not be brought within the precincts of the Royal Court.[3] Zia Uddin Barni in describing the prevailing sense in the community in the reign of Ala Uddin Khilji says:[4] "During the last ten years of his reign, the heads of Muslims in general were inclined to rectitude, truth, honesty, justice and temperance" (p. 341).

Influence of Abbaside Institutions

The Sultans, in fact, had little respite from the tasks of suppressing rebellions and extending conquests in which they could evolve, like the Mughals, a definite administrative programme. It may have been for this reason that they found it convenient or perhaps it was due to their reverence for the tenets of Islam that they elected to recognise the Caliph of Islam in Egypt or Turkey as their spiritual over-

[1] Compare (1) Barni—Address of Iltutmish, pp. 39-42, also p. 352.
[2] Compare Elliot III, p. 363; Barni, pp. 41-45.
[3] Compare Elliot III, p. 363.
[4] Elliot III, p. 207.

lord[1] and to adopt judicial institutions such as Diwan e Mazalim, Ihtisab, and grades of courts that existed under the Abbaside Caliphs. The ex-Minister of Istanbul, Azam Tara, who had served the Turkish Sultans was invited to become Wazir at Delhi[2] and the designation and the functions of the Law Courts also were modelled on Abbaside lines. Firoz Tughlaq (1351-1388) alone of the long line of the Sultans tackled judicial reforms seriously. This fact has induced a certain class of historians to say that the Muslim Sovereigns of Delhi governed India with 'ready made'[3] institutions. But it is incorrect to suggest that the Sultans of Delhi applied the Shara' rigidly in India to Muslims and Hindus alike. Indeed we are told by the Shara' itself that the whole body of Islamic Law is not applicable to non-Muslims. "The non-Muslim subjects, that is the Zimmis, are not subject to the Laws of Islam; their affairs should be regulated according to the principle of their own religion". This is stated in the Fatawa e Alamgiri. The Islamic Civil Code, which governed questions of inheritance, marriage and other matters of a similar nature, was applicable only to Muslims. The Hindus in this particular had their own special Law. Certainly the Islamic Criminal Code, that is the Law which guaranteed security of life and property, was applied equally to Muslims and Hindus everywhere. But the Hindu villages in general enjoyed true self-government in the

[1] Compare Briggs I, p. 210; Elphinstone (1905) p. 367. Barni, p. 497. Elliot III, pp. 249-250. Badaoni I, p. 232. Shams Siraj Afif, 273-274.

[2] Barni, p. 579.

[3] Sarkar—Mughal Administration (1935), p. 6.

administration of local affairs. The Sultans only interfered with previous judicial arrangements in the towns and subdivisions of districts, that is to say, in important administrative units.

General Administration

The Sultan was elected by the leading men at the Capital, as was the case when the early Caliphs of Islam were selected. Some powerful rulers were able to get their sons nominated as their successors.

The installation[1] of a Sultan was usually done in the presence of the Chief Justice who was known as Qaziul Quzat and other officers. The Sultan was assisted by a Council of Ministers responsible to him for such departments as Finance, Army, Accounts, General Administration, Ecclesiastical, Law and Justice. The Chief Ministers (Wazirs) of the Sultans were in some cases invested with judicial powers in addition to their executive duties, vide State versus Sh. Haidari, Ibn Batuta (Lee) page 146 and State versus Khwajah Ahmad, Shams Siraj Afif, page 508.

The Empire was divided into Provinces (Subahs). The Provinces in turn were composed of Districts (Sarkars) which were subdivided into Parganahs or groups of villages.

The Sultan was represented in each Province by a Governor (Nazim) who had under him a number of "departmental heads". The Revenue administration, for example, was in the hands of the Diwan or the Provincial Finance Minister whose subordinates in

[1] Elliot III, p. 591; Stewart, p. 101. Ibn Batuta, Travels.

the Sarkars were called Amils or Collectors of Revenue.

The maintenance of Law and Order was in the personal charge of the Governor. For this purpose his principal agents were the Faujdars of whom there was one in charge of every district as principal executive officer and commander of the local troops. The Police organisation in the districts was under the Faujdar although there was an immediate commanding officer, the Kotwal, in the cities and the "Shiqahdar" in the Parganahs. (Barni).

The Governor as representative of the sovereign was also the Chief Judicial officer in the Province but there was a regular department of Justice—Mahekmae Qaza[1] working in each province under the Chief Provincial Qazi (Qazi-e-Subah) and each district and town had a Qazi, as was the practice among the Abbaside Caliphs.[2]

The Ecclesiastical department or Mahekmae Shariyah had its separate Chief in the Sadre Jahan at the Imperial Capital. Like the Chief Ecclesiastical officers of the Anglo-Saxon period he had an important share in the administration of justice. He was, in the absence[3] of the Sultan, the presiding Judge in the Courts of Criminal (Mazalim)[4] and Civil Appeal (Risalat).[5] The inferior Qazis were selected from

[1] Badaoni, I, p. 318, (Ranking).

[2] Compare Ameer Ali: History of Saracens, p. 422; Islamic Culture, 1927, p. 336; Holden: Mogul Emperors, p. 38.

[3] According to Badaoni Muhammad Tughlaq himself presided.

[4] Tabaqat e Nasiri: Islamic Culture, 1927, p. 333.

[5] Barni, pp. 153, 374, Br. Mus. MS. Or. 1887.

among the "graduates in Law and Divinity" (Elphinstone—1857, p. 421).

I—*The Department of Justice*—Mahekmae Qaza.

I. Centre

A. COURTS

Courts	*Functions*	*Presiding officer*
1. Diwan e Mazalim (MS. Or. 1886)	Highest Court of Criminal Appeal.[1]	Sadre Jahan
2. Diwan e Risalat (Barni, p. 374)	Highest Court of Civil Appeal	Sadre Jahan
3. King's Court (Singly)	All kinds of Cases	Sultan
4. Chief Justice's Court	All kinds of Cases	Qazi ul Quzat
5. Sadre Jahan's Court	Ecclesiastical cases.	Sadre Jahan
6. Diwan e Syasat (Barni, p. 497) (New Series)	Temporary for sanctioning criminal prosecutions. (1345-1351)	Muhammad Tughlaq

B. OFFICERS

1. *The Sultan*

The Sultan presided nominally over Courts 1 and 2 but seldom sat in them. In the King's Court he could try cases singly both as an original and as an Appellate Judge. His Court was the highest Court

[1] Compare J.R.A.S. 1911, p. 655.

of appeal in the realm.[1] Sitting singly he was assisted by two Muftis of acknowledged legal reputation in applying the Law.

2. *Sadre Jahan or Sadre Kul*

The Chief Justice or the Qaziul Quzat was the titular head of the Empire judiciary from 1206-1248. In about 1248 A.D. Sultan Nasir Uddin created the superior post of Sadre Jahan and appointed Qazi Minhaj Siraj Chief Justice to it. He was also appointed President of the Diwan e Mazalim (Court of Criminal Appeal) of the Empire which was also established by Sultan Nasir Uddin. Since then the Sadre Jahan became the de jure head of the Empire judiciary.[2] He was also made Chief of the "Ecclesiastical Department" which had remained under the Chief Justice till 1248 A.D. On the judicial side his duties may be compared with those of the Lord Chancellor of England. He sat on the King's Bench occasionally, tried original cases[3] and recommended candidates for appointment as Qazis. His own (Sadr) Department issued letters of appointment to those who were selected. According to the Institutes[4] of Taimur the 'Sadr' in Muslim Turkistan was an officer of "illustrious dignity appointed to watch over the conduct of the faithful and had no judicial duties". When Qazi Minhaj Siraj was elevated to this office in 1248 the Chief Justice was Qazi Zia Uddin who did most

[1] Compare Beveridge I, p. 102.
[2] Barni, p. 580.
[3] Badaoni I, p. 239. Muhammad Tughlaq vs. Jami.
[4] Compare Holden: Mogul Emperors, p. 38.

of the judicial work.[1] The intention seems to have been to keep these two offices separate[2] but Ala Uddin amalgamated them into one in the person of Qazi Sadr Uddin Arif.[3] Perhaps as Barni thinks (pages 351-352) he was too particular in his selections. Sultan Firoz Tughlaq again separated them[4] for some time.

The office was for life.

The main duties of a Sadre Jahan as given in the letter of appointment copied in Tabaqate Nasiri (page 175) were:—

1. Qaza—Decision of Cases.
2. Khitabat—Grant of titles.
3. Imamat—Leadership in Prayers.
4. Ihtisab e Kulle Umur Sharai—Censorship of morals and supervision over affairs connected with religion.

According to Barni (page 580) the Sadre Jahan exercised supervision over Educational establishments and Law officers.

The Sadr department also had charge of the grant of stipends to learned men and of land to the poor. All claims connected with these grants came up for hearing before the Sadr. Badaoni speaks of such cases as civil suits. The Sadre Jahan was represented in the Provinces by the Sadre Subah and in districts by Sadre Sarkar.

The Sadre Jahan and his department had no direct concern with the Diwan-e-Syasat, the Court of Prose-

[1] Br. Mus. Or. 1887.
[2] Compare Barni, p. 428; Elliot II, p. 327.
[3] Barni, p. 247; Compare Elliot II, p. 261 also Barni, p. 352.
[4] Barni, pp. 579-580.

cutions, temporarily created by Muhammad Tughlaq and abolished by his successor.

Chief Justice

Most of the actual duties of the head of the Judiciary were carried out by the Chief Justice—Aqzal Quzat[1] or Qazi ul Quzat.[2]

According to Ibn Batuta sometimes one or two eminent Qazis were appointed to his Court as Puisne Judges. The Sadre Jahan had other duties to perform and was not always present in Court. The Chief Justice and his Puisne Judges accordingly disposed[3] of all the appeals that came up before the Diwan e Mazalim or the Diwan e Risalat from the Courts of the Chief Provincial Qazis or the Governors on the appellate side and also tried all cases that were filed before these Courts on the original side. A Qaziul Quzat was quite distinct from the Shaikhul Islam who had no office (Barni, pp. 341-343).

Selection

The appointment of the Chief Justice was usually made by the Sultan from "among the most virtuous (muttaqi tareen) of the learned men in his Kingdom" (allamae rozgar. Barni, p. 580). Ibn Batuta gives reference to Qazis and their disciples in his Travels (pp. 56, 71) and this suggests that the Qazis were occasionally teachers of law[4] who had the "ability

[1] Tajul Maasir MS. K. C. L. C.

[2] Ibn Batuta. Elliot III. p. 591.

[3] Compare the duties of the Lord Chief Justice of England in relation to the Lord Chancellor.

[4] Compare (1) Selection of Qazi Minhaj as Chief Justice (Or. 1887. Br. Mus.). (2) Barni, pp. 43, 353.

to give correct judgment" (mustahiq jawab dadane fatwa). Sometimes the selection was unpopular and public resentment was shown as in the case of Qazi Hamid Uddin Multani by Ala Uddin Khilji[1] and of Qazi Zia Uddin by Qutub Uddin.[2] The King's letter of appointment was like the modern "Letters Patent" of the British Sovereign elaborately written out. The incumbent was given a special audience[3] to receive it. Muhammad Tughlaq in appointing Ibn Batuta as Judge of the Chief Justice's Bench said:"Do not suppose that your office of Judge of Delhi will cost you little trouble. On the contrary it requires the greatest attention". (Travels (Lee) p. 148.) The incumbent of the office of Qaziul Quzat held it for life and there was no age limit.

Removal

A Chief Justice could be dismissed or degraded as a Qazi of lower rank by the Sultan at his pleasure[4] vide case of Qazi Jalal Uddin, Badaoni (Ranking) I, p. 234. Tabaqat e Nasiri, p. 194.

Qazi Imad Uddin Shakurkhani's character was doubted and he was removed in 1248 A.D. (Elliot II, p. 349). King Moiz Uddin Bahram executed Qazi Shams Uddin for treason without trial, and paid the penalty for so doing by losing his own life in a rebellion which the execution provoked. (Briggs I, p.

[1] Barni, p. 352.
[2] Barni, pp. 406, 408.
[3] Compare J. R. A. S. 1910, p. 767.
[4] Compare Syasat Namah, p. 77.

227). Qazi Shams Uddin Mehr was removed as the result of a successful appeal by the convicted person (Elliot II, p. 340). The removal of a Chief Justice from office, if not due to his partiality, did not disqualify him for re-appointment (Br. Mus. Or. 1887; Tabaqat e Nasiri Or. 1886).

Other Functions

According to Ibn Batuta a Chief Justice under the Sultanate was required to administer[1] the oath of office to the Sultan and also to be present at his installation.[2] He was himself installed by the Sultan and had to swear an oath of allegiance to him.[3] The Chief Justice and other Judges at the Capital occasionally entertained the King.[4] Ibn Batuta complains that his huge salary was sometimes consumed in this manner. The Chief Justice was consulted when rules and regulations for the Empire were framed (Abbas Khan I, MS. p. 83, K. C. C.). He was sometimes employed on diplomatic missions[5] (Tabaqat e Nasiri, p. 223). Some of the Chief Justices were also given charge of educational institutions.

His Influence

The Chief Justice and the Puisne Judges of the Supreme Court were men of ability (Afazil e

[1] Ibn Batuta vide Elliot III, p. 591.
[2] Stewart, p. 101.
[3] Barni, pp. 246-247. Elliot III, p. 591.
[4] The Chief Justice and the Judges of the Allahabad High Court, U. P., India even today entertain the King's representative—the Governor when he visits Allahabad.
[5] Compare Br. Mus. MS. Or. 1887; Tarikh e Sher Shahi, Vol. I, p. 83, K. C. C.

Rozgar)[1] and were held in high esteem. Speaking of Qazi Sadr Uddin Arif who was both Chief Justice and Sadre Jahan[2] Barni writes, "His information was so wide and his judgment of men so remarkable that no one dared to put false pretence in his Court", (p. 351.)

Several of the Chief Justices of the Sultanate period were noted for their independence of character. In State versus Sidi Maula and others (Beveridge I, page 75; Badaoni, p. 171; Barni, pp. 210-211) Sultan Jalal Uddin wanted a sentence of death passed on Qazi Jalal Uddin who was accused of sedition but the Chief Justice refused even to convict him. Muhammad Tughlaq on one occasion withdrew a suit of his own in the Chief Justice's Court when he found that the Court refused to favour him (Badaoni I, page 239). Such incidents enhanced the prestige of the Chief Justice and his colleagues.

On the other hand, incompetent Qazis were ridiculed[3] and even murdered,[4] perhaps on the principle that the whole community was responsible for the proper administration of justice.[5] Yet cases of incompetence were few and the Chief Qazis, as Elphinstone observes[6] were held in great respect and exercised considerable influence.[7] In State versus

[1] One of the most learned men of the times—Akhbarul Akhyar—MS. 18 K. C. C.—Br. Mus. Or. 1887.
[2] See p. 60.
[3] Barni, p. 352.
[4] Barni, p. 406.
[5] Compare Minhaj, p. 500.
[6] (1857) p. 297.
[7] Compare Tabaqat e Nasiri, p. 223.

Qazi Jalal Kashani "a Qazi of some repute" was prosecuted for treason (Elliot III, pages 144-145) but no one would give evidence against him and he was acquitted. On another occasion Qazi Shams Uddin Mehr sentenced a Darwesh (Holy mendicant) to imprisonment, but he was acquitted in appeal and the King then forced the Qazi to resign.[1] The result was a popular demonstration against the Royal Order.

At another time when Balban had ordered the execution of a number of rebels, only the Judges of Delhi could venture to approach him for a reprieve[2] and they succeeded.

Salary

In the order of precedence the Chief Justice held the first place[3] next to the Sovereign and the Sadre Jahan (if any). A passage in the Syasat Namah[4] suggests that the Qazis ought to be paid generous salaries. In the pre-Sultanate period Judges had received[5] a portion of the fees deposited by the litigants in Court. The practice of paying Judges in Muslim countries had been started by Zaid Ibn Thabit[6] in the time of the Caliph Omar and seems to have been adopted by the Sultans. There is no definite information available about exact figures. Ibn Batuta tells us that his salary as a Judge of the Chief

[1] Elliot II, p. 340.
[2] Elphinstone, p. 373 (1905).
[3] Tabaqat e Nasiri, p. 177. Compare Smith—History of India, p. 245.
[4] p. 40.
[5] See Chapter I.
[6] Compare Ameer Ali. History of the Saracens, p. 62.

Justice's Bench was 12,000 Dinars a year[1] which would be equivalent to £12,000 a year today. A 'Jagir'[2] was also provided for him which yielded an equal amount and he was allotted a state residence free of charge. Presumably the Chief Justice received considerably more. I give below extracts from a MS., containing the life history of Qazi Minhaj us Siraj Jurjani,[3] a Chief Justice in the 13th century, which illustrate the points discussed above.

Birth 589 *A.H.*

Parents came of a family of learned men. On the father's side he was related to Sultan Ibrahim ibn Masud of Ghazna. Parents died when he was a child. He was brought up by a Ghor Queen Mahe Malik who died in 607 A.H. At the age of 18 in 607 A.H. *i.e.*., 1208 A.D. he was sent by the King of Ghor as a political attache, to the Court of Malik Nasir Uddin Abu Bakr and then stayed in Khorasan till 624 A.H. (*i.e.*, 1225 A.D.).

Returned to India in 625 A.H. *i.e.*, 1226 A.D. and joined the army of Iltutmish—Sultan of Delhi 1212-1236. Interviewed Iltutmish 16 Safar 625 A.H. *i.e.*, 1226 A.D. Appointed Khatib 629 A.H. *i.e.*, 1230 A.D. and then Qazi at Gwalior holding charge[4] of

1. Qaza—Trial of cases.
2. Khitabut—Preaching.

[1] Travels (Lee) p. 148.
[2] Ibid.
[3] See Br. Mus. Or. 1887.
[4] Compare duties of Sadre Jahan, p. 60.

3. Imamat—Leadership in prayers.
4. Ihtisab—Censorship of morals.

Remained in this post for six years.

635 *A.H. i.e.*, 1236 *A.D.*

Iltutmish died. Minhaj came to Delhi to the Court of his successor Sultan Raziah who appointed him Principal of one of the State Colleges, Madarsae Nasiryah in addition to his other duties.

639 *A.H. i.e.*, 1239-1240 *A.D.*

Raziah died. As Qazi of an important province (Gwalior) he approved of the succession of Behram Shah to the throne. The latter appointed him the Chief Preacher of the State and later created him Chief Justice of the Empire. At this time the Chief Justice was also the Qazi of the Capital.

1240 *A.D.*

An attempt was made by the people to assassinate Behram and the Qazi. The former was killed, but the latter escaped and resigned his office. 1241 A.D.

Joined the Court of Tugha Khan, Governor of Oudh, 641-643 A.H. *i.e.*, 1243-1245 A.D. and held diplomatic appointments.

Returned to Delhi in 643 A.H. *i.e.*, 1245 A.D. and was re-appointed Qazi of Gwalior and Principal of the Madarsae Nasiryah and effected a reconciliation between Sultan Mahmud and Balban. Honoured by Mahmud in 644 A. H. *i.e.*, 1246 A.D. and started writing his "Tabaqat e Nasiri".

Appointed Chief Justice again in 649 A.H. *i.e.*,

1151 A.D. by Mahmud but removed from office in 651 A.H. *i.e.*, 1253 A.D. mainly, it is said, owing to an intrigue on the part of Imad Uddin Raihan, a powerful noble.

Became a recluse. (Khana Nashin).

Nasir Uddin created him Sadre Jahan on Rabi I 20. 652-653 A.H. *i.e.*, 1254-1255 A.D. and he was for the third time appointed Chief Justice at the end of 653 A.H. *i.e.* 1255 A.D.

Died about 698 A.H. *i.e.*, 1300 A.D.

The Chief Justices of the Sultans of Delhi, in chronological order, were:—

Qazi Wajih Uddin Al Kashani.
Qazi Nasir Uddin.
Qazi Ikhtyar Uddin.
Qazi Malik Zia Uddin Muhammad Junaidi.
Qazi Jalal Uddin Kashani—(First appointment).
Qazi Shams Uddin Mehr.
Qazi Minhajus Siraj—(First appointment).
Qazi Imad Uddin Shakurkhani.
Qazi Jalal Uddin Kashani–(Second appointment).
Qazi Minhajus Siraj—(Second appointment).
Qazi Shams Uddin Bahraichi.
Qazi Minhaj us Siraj—(Third appointment).
Qazi Malik Nizam Uddin.
Qazi Moghees Uddin of Bayana.
Qazi Hamid Uddin Multani.
Qazi Zia Uddin "Qazi Khan'.
Qazi Sadr Uddin.
Qazi Kamal Uddin.
Qazi Jalal Uddin Karmini.

Qazi Zia Uddin.
Qazi Sama Uddin.
Qazi Mian Bhua.

Staff attached to the Chief Justice's Court

1. *Mufti.* (*Barni, page* 441)

He was a lawyer attached to the Court in order to expound the Law. His position was like that of a 'legal' assessor. The Muftis of the Chief Justice's Court were lawyers of eminence. They were in theory appointed by the Sultan, but candidates for this office were selected by the Chief Justice.

The Judge had to accept the view of the Law given by him and in case of difference, reference was made to the higher Court, that is of the King.

2. *Pandit.*

In civil cases, arising out of the Personal Law of the non-Muslims which came before the Court, the Law was explained by a Brahman Lawyer, usually known as a Pandit. The status of a Pandit was the same as that of a Mufti. The practice of employing Pandits was a modification of the system of the Abbaside Caliphs who left the decision of cases relating to civil rights among non-Muslims to their own communal heads.[1]

3. *Mohtasib.* (*Barni, page* 441).

The censor of Morals or the Mohtasib was in charge of prosecutions under the Canon Law on the

[1] Compare Ameer Ali. Islamic Culture, 1927, p. 333.

original side. In appeals he answered for the prosecution.

The Caliphs of Baghdad had a department of 'Al Hisbah' which watched over the private moral conduct of the citizens lest it might affect adversely the administration of Laws.

The appointment seems to have been made first in the reign of Iltutmish (1211-1236).

4. *Dadbak.* (*Barni, page* 441).

See under Provinces.

2. *Qazi-e-Urdu* (*Badaoni I, page* 170).

Was the Qazi in the Cantonment area.

II. Provinces (Subah) (Iqta)

Provincial Headquarters.

A. Courts

1. Adalat Nazim Subah. Governor's Court—Original and Appellate.

2. Adalat Qazi-e-Subah (Chief Provincial Qazi) Canon Law and Common Law Court. Original and Appellate.

3. Governor's Bench—Highest Appellate Court in the Province. Original Jurisdiction.

4. Diwan-e-Subah—Revenue Court. Original and Appellate.

5. Sadre Subah—Ecclesiastical Court. Special Benches could be constituted by the Sultan to try any case.

B. Officers

1. *The Governor (Nazim-e-Subah).*

He represented the Sultan in the Provinces and had, like him, original and appellate jurisdiction.

In original cases he usually sat as a single Judge. Appeals from his judgments could be filed in the central appellate courts.

When he heard appeals he sat on a Bench of which one member was certainly the Qazi-e-Subah. Whether there were others is not quite clear. The appeals came from all the courts in the Province and they could also be filed from the Court of the Qazi-e-Subah. Presumably the latter did not sit to hear his own appeals as the Law prohibited this.[1]

Appeals against the decision of this Bench could be taken to the courts at the centre, perhaps on the principle that the Sultan's Court possessed inherent jurisdiction to hear them.[2]

Land Revenue cases were heard by the Governor or by his Finance Minister, the Diwan. The Qazis had no jurisdiction to hear them. This distinction between Revenue and Civil Courts is still preserved in modern India, and certain cases involving questions of Land Revenue Law are even today outside the jurisdiction of the ordinary Civil Courts. It is unlikely that his other duties permitted the Governor to do much judicial work himself, and the main

[1] Hidayah Book XX, p. 338, as he may be biassed.

[2] Vide appeals heard by Sikander Lodi. Beveridge I, p. 102. Compare J.R.A.S. 1911, p. 655. Practice of the Abbaside Caliphs.

burden seems to have fallen on the Qazi-e-Subah judging from such records as have survived.

2. *Qazi-e-Subah*

The Chief Provincial Qazi was known as the Qazi-e-Subah. According to Baihaqi[1] he was sometimes designated Qazi-ul-Quzat, though this seems to have been a courtesy title reserved, according to other historians, for the Chief Justice of the Empire. The Qazi-e-Subah had power to try civil and criminal cases of any description and to hear appeals from the Courts of District Qazis. Revenue cases, as already stated, were excluded from his jurisdiction which was specified in his letter of appointment. The Court of the Qazi-e-Subah represented the present chartered High Courts of the Presidency towns in British India, except that it was a Court of one Judge only. The Qazi-e-Subah held rank in the Province next to the Nazim and was entirely independent of him except that appeals against his decisions could be preferred to the Nazim, who represented the Sultan in the Provinces. He was President of the Tribunals which were constituted to hear important cases involving offences against religion.

He was also expected to supervise the administration of justice within his Province and to see that the Qazis in the outlying places carried out their duties in a proper manner.[2]

[1] p. 246.

[2] Compare Sultan Mahmud of Ghazna by Dr. Nazim, p. 149.

He was selected by the Chief Justice of the Empire or by the Sadre Jahan and appointed by the King. Reputation for learning and scholarship and a high character (*Qaza ilm-e-mujarrad nest*) were considered necessary qualifications.[1] He could be transferred to other post, removed or degraded by the Sultan.[2] Sher Shah appointed as Governor of Bengal Qazi Fazilat Qazi-e-Subah of the Province of Bihar.[3]

His other duties included those of paying an official call on the Governor when appointed, and recommending candidates for appointment as District Qazis, as was the practice in the Abbaside Empire.[4]

A Qazi-e-Subah could be promoted as Qaziul Quzat. (Tabaqat e Nasiri. Raverty, pp. 686, 694).

Attached Officers

(1) Mufti, (2) Mohtasib, (3) Pandit. (4) Dadbak. (Tabaqat e Nasiri. Raverty, pp. 788-790).

Dadbak

One of the officers attached to the Court of the Qazi-e-Subah was the Dadbak.[5] According to Barni, he was an administrative officer whose duty was to see that "all persons high or low came to Court when summoned" and probably to regulate filing of plaints and appeals (Raverty T. N. p. 790). He

[1] Tazkiratul Ulema, p. 15. Badaoni I, p. 324.
[2] Case of (1) Qazi Taj Uddin Barni, p. 348. (2) Qazi Jalal-Kashani. Elliot III, p. 145.
[3] Badaoni I, p. 365.
[4] Compare History of Saracens. Ameer Ali, p. 188.
[5] Compare Elliot III, p. 126; Barni, p. 441.

was thus a Registrar or Clerk of the Court. Ibn Batuta thinks that this post was one of honour. The author of Tabaqat e Nasiri also speaks of the Chief Dadbak attached to the Chief Justice's court in high terms (Raverty, p. 790).

3. *Diwan-e-Subah*

A Diwan was the Revenue and Finance Minister of the Province. He was the final authority in the Province in Land Revenue cases. Appeals from his orders lay to the Governor or the Sultan.

4. *Sadr-e-Subah*

He may be called the chief Ecclesiastical officer in the Province. Strictly speaking, he was not a judicial officer, although in Canon Law cases he sat on a Bench with the Qazi-e-Subah. He represented the Sadre Jahan in the Province in matters connected with the grant of stipends, land etc. for education and religious purposes, and decided claims in respect of these items which were excluded from the jurisdiction of the Qazis.[1]

III. District Headquarters (Sarkars)

A. Courts

Jurisdiction

1. Qazi .. .. (1) All civil and criminal cases.
   (2) Appeals from (*a*) Parganah Qazis. (*b*) Kotwals. (*c*) Village Panchayets.

[1] Compare Elphinstone (1857), p. 421.

2.	Dadbaks or Mir Adls (under Lodis only)	Civil cases of a petty nature. Appeals lay to Qazi-e-Subah.
3.	Faujdars ..	Petty criminal cases. (Barni, p. 479). Appeal lay to Nazim-e-Subah.
4.	Sadr	Grant of Land and Registration cases. Appeals to Sadre Subah.
5.	Amils ..	Land Revenue Cases. (Barni, pp. 450-500). Appeals to Diwan-e-Subah.
6.	Kotwals ..	Petty Criminal Cases. Police Cases. No record of Appeal exists.

B. Officers

1. *The Qazi.*

The District Qazi was appointed on the recommendation of the Qazi-e-Subah or independently by the Sadre Jahan. The person selected was usually one possessing a good knowledge of Law.[1]

He tried civil and criminal cases of every class and had jurisdiction to decide all questions of fact and law.[2] On questions of Law he was required to obtain the opinion of the Mufti. In criminal cases he could pass a sentence of death.[3] Civil cases

[1] Elphinstone, p. 421 (1857).
[2] Compare Syasat Namah, p. 40.
[3] Compare Ibn Batuta, p. 146.

between the State and a subject could be filed in his Court.[1]

Among his duties the following are mentioned specifically. (Hidayah. Book XI. Fiqh-e-Firoz Shahi.

1. To register marriages.
2. To try Waqf and Trust Cases.
3. To try cases relating to
   (1) Intestate property.
   (2) Minors.
   (3) Missing persons.
   (4) Lunatics.

He was also required to supervise Jails.

The district Qazi's position was one of independent trust and responsibility. His seal or signature on documents was considered a sufficient guarantee of genuineness.[2] In one case the Kings of Delhi and Jaunpur agreed to consider each other's obligations in regard to the return of War prisoners, fulfilled if the Qazi of the district concerned certified that it was done. (Stewart, page 98).

Among the officers attached to the District Qazi's Court were the Mufti, the Pandit, the Mohtasib and the Dadbak.

Court Staff

The following minor officials[3] worked in a District Qazi's Court:—

1. Katib—Writer of evidence and statements.

[1] Ameer Ali, Islamic Culture, 1927, p. 335.
[2] Stewart, p. 98.
[3] 1, 2, 4, 5 were employed by the Abbasides as well J.R.A.S., 1911, p. 637.

2. Faqih—Writer of Fatwas or Precedents.
3. Nazir—In charge of the Establishment.
4. Subordinate Clerks.
5. Barqandaz-Guards.

Newswriters or Akhbar Nawis were attached to all the district Courts from the time of Ala Uddin Khilji to record the daily proceedings of the Courts for the inspection of superior officers (Barni, page 284).

2. *Faujdar*

He was appointed by the Governor. He had jurisdiction to try what are called in modern India "Security" cases, i.e. the binding over of potential or suspected criminals. His duties were mainly executive and he commanded the local troops[1] as the words Fauj and dar indicate. (Barni, page 479).

3. *Kotwal*

He had power to try petty criminal cases such as those punishable under the present day Municipal Acts.

IV. Parganah Headquarters

A. Courts

1. Qazi-e-Parganah	(1)	All civil and criminal cases.
	(2)	Canon Law cases if any.
2. Kotwal	..	Petty criminal cases.

[1] Stewart, p. 382.

B. Officers

1. *Qazi-e-Parganah.*

During the Abbaside rule at Baghdad, every city and large town had a Qazi.[1] The Ghaznavides had adopted this arrangement,[2] and the Sultans followed the same practice. The Qazi-e-Parganah had all the powers of a District Qazi except to hear appeals.

He had also a staff attached to his Court similar to that of the District Qazi.

2. *Kotwal*

There was no Faujdar in towns. The Kotwal was the principal Executive officer and he also tried minor criminal cases.

3. *Shiqahdar.* (*Barni, page* 479)

In some towns there was neither Faujdar nor Kotwal, but merely a Shiqahdar who had petty magisterial powers. He was mainly a Revenue officer (Barni, pp. 498-499), but was also required to assist in the prevention of crime.[3]

V. Villages. (Dehāt)

Court—The Panchayet.

The Parganahs were subdivided into groups of villages. For each group there was a local tribunal usually called the Panchayet or body of five leading

[1] Ameer Ali. Islamic Culture, 1927, p. 333.
[2] Mahmud of Ghazna, pp. 147-149.
[3] Compare some aspects of Muslim Administration by Tripathi, p. 307.

men. The Sarpanch or chairman was appointed by the Nazim or the Faujdar. The Panchayet heard civil and criminal cases of a purely local character, and was held responsible for Law and Order (Briggs III, page 420).

VI. Army

COURT. Qazi-e-Urdu or Qazi e Askar.

Every cantonment or military area had a Qazi of its own who was known as the Qazi-e-Askar. His jurisdiction was limited by the boundaries within which the troops were stationed. His powers were the same as those of a Parganah Qazi.

In the constitution and jurisdiction of the Sultanate Courts, points that may be emphasised are these:—

1. All Courts possessed original jurisdiction.

2. In practice Courts which also had appellate powers did not as a rule try cases in the first instance. As Courts of Appeal they had inherent powers to interfere in the proceedings of Lower Courts at any stage (Hidayah).

In State versus Khwajah Ahmad and others,[1] a murder case, the Appellate Court (Sultan) directed the Lower Court not to accept 'blood fine'.

3. A litigant could take his case to the Qazi-e-Parganah or to the District Qazi or to the Qazi-e-Subah or to the Governor or to the Chief Justice or even to the Sultan in the first instance.

[1] Shams Siraj Afif, p. 508. Compare J.R.A.S., 1911, pp. 655-6.

4. The Qazi's powers in respect of the value of suits and of the character of alleged criminal offences were unlimited and from this point of view all the Qazis were on an equal footing. But the judgment of a Qazi stationed at a place which was a lower unit of administration, could be taken in appeal to the Qazi of a higher unit.[1] There were, so far as can be ascertained, no detailed rules limiting the right of appeals to any particular class of cases.[2] No judgment delivered by a Qazi-e-Subah in appeal has come to my notice but from the practice prevailing in the Mughal period and from the nature of his appointment as the Chief Qazi of the Subah (MS. Or. 1886) I am of the opinion that a Qazi-e-Subah could hear appeals from the District Qazi's judgments.

Chief features of the Sultanate

The judicial administration of the Sultans of India had the following chief features:—

1. Their institutions bore a strong resemblance to those of the Abbaside Caliphs.

2. The Shara' Law and the decrees of the Courts were in general respected by the Rulers as was the practice during the Abbaside rule in Baghdad.[3]

3. Special officers (Mohtasibs) were appointed to prosecute people who were living an immoral

[1] Compare procedure adopted in Appeals. Beveridge I, p. 102. Re. practice during the Mughal period. See Elliot VII, p. 173.

[2] For details see Chapter on Procedure in Courts.

[3] Compare Ameer Ali. Saracens, p. 62.

and thus, according to Shara', an illegal mode of life.

4. The village Panchayets were not disturbed.

5. Muhammad Tughlaq established the Diwan-e-Syasat or Court of Correction for "hardened criminals".[1] This institution, however, was abolished by his successor Firoz Tughlaq. (Barni, pages 572-573).

6. Firoz Tughlaq modified[2] the Ta'zir punishments prescribed by the Shara' and introduced the rudiments of a Code of Law.

7. Sikander Lodi (1489-1517) created a new post of the Judge of Common Law—the Mir Adl. He did not possess all the powers of a Qazi, but, it seems, had jurisdiction to try civil cases, vide case of the Court of Mian Bhua, Mir Adl. (Kennedy I, p. 110.)

8. The King of Bengal (Yusuf Shah) started a system of calling for weekly reports from the subordinate judiciary about their work (Stewart, p. 101).

9. Newswriters (Munhyan) were asked to send regular news about the daily work done by the officers to the Sultan (Barni, p. 284. Beveridge I, p. 81).

10. The system of employing Pandits to expound the Law in civil cases between Hindus was introduced by Iltutmish on the Abbaside model.[3]

11. A number of corrupt judges were dismissed by Firoz Tughlaq (Briggs I, p. 464).

[1] Compare Camb. History of India III, p. 162. Barni, p. 497.

[2] Barni, p. 573. Compare Briggs I, p. 462.

[3] Compare Ameer Ali. Saracens, pp. 188, 422.

12. Wazirs or Prime Ministers could be empowered to try special cases, vide State versus Khwajah Ahmad and others, Shams Siraj Afif, p. 508 and State versus Shah Haidari and others, Ibn Batuta (Lee) p. 146. This was also the practice during the Abbaside rule.[1]

Sher Shah and His Reforms

I have treated Sher Shah separately as his entry into the Indian political world as founder of the Sur Dynasty in 1540 A. D. did not take place until the Mughal Empire had been established and temporarily dislodged, and he seems to me quite distinct from the other Sultans. His name is associated with a great many reforms in the administration of the country. It was said by him that the "stability of Government depended on justice" (Stewart, page 128) "and that it would be his greatest care not to violate it, either by oppressing the weak or permitting the strong to infringe the Laws with impunity."

According to Briggs,[2] "Sher Shah was not more remarkable for his good sense and talents than for his justice towards his subjects. He left behind him many monuments of his magnificence and public justice prevailed in his Kingdom."[3] His reforms touched upon everything—sometimes not quite, according to Abbas Khan, in conformity with the letter of the Law. They may be summarised as follows:—

[1] Compare J. R. A. S. 1911, pp. 635, 656, 657.
[2] Vol. II, p. 124.
[3] Stewart, p. 144; Compare Elliot IV, p. 411.

1. He introduced the system of having in the Parganahs separate Courts of first instance for civil and criminal cases. At each Parganah town he stationed a civil Judge called a Munsif, a title which survives to this day, to hear civil disputes and to "watch the conduct of the Amils and the Moqaddams,"[1] officers connected with revenue collection.

The Shiqahdars who had had up till now powers corresponding to those of Kotwals, were given Magisterial powers within the parganahs. They continued to be in charge of the local Police.[2]

2. 'Moqaddams' or heads of the village councils were recognised and were ordered to prevent theft and robberies.[3] In cases of robberies, they were made to pay for the loss sustained by the victim.[4] Police regulations were now drawn up for the first time in India.[5]

3. We are told at least that when a Shiqahdar or a Munsif was appointed, his duties were enumerated.

4. The judicial officers below the Chief Provincial Qazi were transferred after every two or three years.[6] The practice still prevails in British India.

5. The duties of Governors and their deputies regarding the preservation of law and order were emphasised.[7]

[1] Elliot IV, p. 414.
[2] Erskine II, p. 443.
[3] (1) Zabdatut Tawarikh, p. 189. (2) Tarikh e Sher Shah I, p. 85, K. C. C.
[4] Ibid.
[5] Tarikh e Sher Shahi, MS., K. C. C.
[6] MS. Abbas Khan, Vol. I, p. 82, K. C. C.
[7] Elliot IV, p. 420.

6. The Chief Qazi of the Province or the Qaziul Quzat was in some cases authorised to report directly to the Emperor on the conduct of the governor,[1] especially if the latter made any attempt to override the law.

7. The Sultans had divided the Empire into Subahs (Iqtas), Sarkars and Parganahs. Sher Shah subdivided the Parganahs into Mahals or groups of villages for Revenue purposes. This arrangement, however, had no effect upon judicial administration. The Panchayets continued to work as before.

The above reforms introduced by Sher Shah slightly altered the gradation of Courts in the districts as the table given below will show:—

1. *Villages*

The Panchayets were not disturbed. The head man, Moqaddam, was officially recognised and given Police powers in the locality.

2. *Parganahs*

1. Munsif—Tried Revenue cases, including those between "Zemindar" and tenant.
2. Shiqahdar—He was now empowered to try petty criminal cases and was required as before to maintain order in the Parganah as well.
3. Amil.—His Court decided cases regarding the assessment of rent due to the Government and such cognate matters more or less of a departmental nature. (Elliot IV, pp. 413-414).

[1] Stewart, p. 143.

3. *Sarkars*

1. Shiqahdar-e-Shiqahdaran. (MS. Abbas K.C.C.).

He was the Chief Magistrate of the District, and seems to have in this respect replaced the Faujdar in the time of Sher Shah. As mentioned in Elliot IV (page 414) he possessed powers presumably as a magistrate 'to inflict heavy and exemplary punishment on the lawless'. It is not quite clear how he stood with regard to the Qazi, for actual offences were to be brought[1] for trial to the Qazi's Court. Probably the punishment alluded to was in the form of taking 'security' or other measures for the prevention of crime.

2. Munsif-e-Munsifan.

His main duty was "to watch over the conduct of the Parganah officials so that they might not "injure the people or embezzle the King's revenue" (Elliot IV, p. 414), and to settle all boundary disputes.

The other arrangements remained as they were except that Kotwals were not appointed in unimportant places. The author of "Sher Shah"[2] thinks that there were probably no Qazis and Mir Adls during his time. This seems unlikely. At any rate the statement is not supported by other evidence. Sher Shah was a strict follower of the Shara' who did not miss even the optional prayers,[3] and contemporary writers make no mention of his having

[1] MS. 154. Abbas Khan, K. C. C., p. 85. "Moafiq Shara' Shareef".

[2] Qanungo, p. 399.

[3] Elliot IV, p. 410.

limited or modified the jurisdiction of Qazis. Abbas Khan, who is generally accepted as an authority for Sher Shah's reign, writes that persons accused of theft and robbery in villages were to be apprehended by Moqaddams and delivered over for trial according to law (Muafiq Shara' Sharif). This can have no other meaning except that they were to be tried by Qazis (MS. 154, Vol. I, pp. 85-86, K. C. C.).

CHAPTER IV

JUDICIAL SYSTEM UNDER THE MUGHALS

The Mughal Government was established in India in 1526 A. D. by Zahir Uddin Babar who defeated the last Lodi Sultan of Dehli and brought the Sultanate to an end. His son, Humayun, was turned out of the country by Sher Shah Sur in 1540, but he regained his kingdom in 1555 and from that date the Mughals ruled India effectively until 1750 A. D. and nominally up to 1857, when the last Mughal Emperor was succeeded by Queen Victoria as Empress of India.

Administrative System

The political divisions[1] of the Mughal Empire (Saltanat e Mughaliah) were practically the same as in the time of Sher Shah. The Emperor,[2] like the Sultans of Delhi, was the head of the judicial and the executive departments and the centre of all civil and military authority ruling as an absolute monarch, the Shadow of God[3] (Ma ke sayae Khuda aim). All State offi-

[1] Compare Br. Mus. MS. Or. 1779 and MS. Abbas Khan K. C. C. Mirat Supp., p. 214.

[2] The Mughal rulers did not adopt the title of 'Sultan' and preferred to be known as 'Badshahs' or sometimes 'Shahenshahs'.

[3] Compare Akbar Namah III, p. 2, Mirat II, p. 376, Tuzuk (Price) p. 15.

cials were appointed by him. The gradation of officers and their duties was uniform[1] throughout the provinces of the Empire (Jamee mumalik e mahroosah) and officials were transferred[2] occasionally from one province to another. According to Monserrate[3] the selection generally was based on efficiency and capability and there was gradual promotion also. The salary of the officers was paid monthly.[4] It appears from the case of Mulla Muhammad Ghaus mentioned in Safir-e-Oudh (page 2) that the same system was adhered to even during the declining days of the Empire. The officers of the State other than those employed in the judicial department as a rule had military rank (mansab) based on numbers under their command, ranging from a platoon of ten to an army of ten thousand and in the cases of the Princes of the Royal family, to still larger forces.[5] The officers were expected to provide a number of mounted men and to maintain them themselves. In certain areas Government entered into "treaties" with local landlords (Zemindars) such as those of Kathiawar, Rajpipla etc. who were not recognised as "rulers" but were allowed to pay a tribute (peshkash) and to be responsible to the central government for the maintenance of law and order[6] within their respective territories.

[1] Compare Sarkar (1935) p. 239, Mirat I, p. 268; Farman for the whole of India.

[2] Compare Mirat I, p. 331; Collections; Or. MS. 2011.

[3] Compare Commentary, p. 206.

[4] Br. Mus MS. 6, 599, f. 147.

[5] MS. Or. 1779. Br. Mus. MS. Or. 1906-1907 Br. Mus.

[6] Mirat Supp., pp. 190, 215.

The Central Government kept a department of Newswriters (Waqae Nigars)[1] who collected information locally and sent regular reports through special messengers[2] (Harkaras). Those attached to Courts of Judicature recorded the daily proceedings of those Courts (Collections).

Secret reporters (Sawaneh Nigars MS. 6580 f. 425) were further employed to send a consolidated report to the Emperor of all the officers in the place where they themselves were posted, by which process the news sent by the Waqae Nigars could be authenticated.

The Central Government

The Emperor had a council of ministers who were independently responsible to him for their respective departments, but the most influential[3] among them was the Wazir or Vakil-e-Mutlaq (Sujan Rae) or Dastur-e-Muazzam (Ruqaat-e-Alamgir). He was like the modern Prime Minister, usually in constant touch[4] with the head of the State. Except the judicial department, he had a controlling hand in all other spheres of administration, and the other ministers approached the Emperor through him[4] in the normal course of business.

The Revenue, Finance and Agricultural depart-

[1] Mirat Supp., p. 150.

[2] Mirat Supp., pp. 150-152; Storia II, pp. 331. 'Harkaras' are still employed in British India to carry official letters to officers in Camp.

[3] Compare Monserrate, pp. 208-209. "The Secretariat was presided over by a Chieftain of great authority and ability."

[4] Compare Ibn Hasan, pp. 130-136.

ments were under the Diwan-e-Ala (MS. Add. 26,239 f. 41). He was also the final court of Justice for Revenue cases. Sometimes the Diwan-e-Ala was also the Prime Minister in addition to his own duties. Military administration and the pay and accounts were under the Mir bakhshi and the administration of justice, jails, customs, baitul mal and mosques was entrusted to the Chief Justice, Qaziul Quzat or Aqzal Quzat (Alamgir Namah, page 232). The other ministers were:

1. Darogha-e-Topkhanah or the Master General of Ordnance.
2. Darogha-e-Dak (Post Master General).
3. Mir Saman (Lord High Steward of the Imperial Household). Storia II, p. 419. He may be compared with the chief of the "Royal Cabinet" of Egypt.
4. Sadrus Sudur in charge of the Ecclesiastical Department. (Ain I, Blochman, p. 185).
5. Mohtasib-e-Mumalik-e-Mahrusah or the Chief Mohtasib.

The Mohtasib, like the Attorney General of England, was the Chief Public Prosecutor in State cases. He was also the chief Censor of Morals and kept a watch on drinking of intoxicating liquor, prostitution and public morality. He was provided with a staff of Officers (Mansabdars) and footmen (Ahadis). Mulla Ewaz Wajih, a Chief Mohtasib of Aurangzeb's period, drew a salary of Rs. 15,000 a year (Alamgir Namah, p. 392).

The Emperor was the Commander-in-Chief of

the whole army and Navy (Sultan-ul-Bahrain) (Amir-ul Bahrain).

The most important change in the structure of the central government introduced by the Mughals, which has a bearing on the administration of justice, was in the position of the Sadr. Under the Sultans his authority to select Qazis and to grant land to learned men (madad-e-maash), gave him immense prestige and influence. Akbar issued orders that in the matter of the grant of land the Sadr was always to consult the Diwan, and he reduced his powers further by giving the control of the judiciary to the Qaziul Quzat. The position of the Sadr under the Mughals has been very clearly explained by Dr. Ibn Hasan in the Central Structure of the Mughal Empire. Briefly speaking the Sadr under the Mughals still held an important position. All prosecutions under the Canon Law required his sanction and the letters of appointment for the posts of:

1. Qazi-e-Subah and Qazi-e-Sarkar.
2. Mohtasibs.
3. Imam—Leaders of prayers.
4. Mutawallis or Superintendents of Trusts,

and 'parwanas' for the stipends and bills for charitable endowments, were issued by him or on his authority, (Mirat Supp., p. 149), and the Emperor gave him more latitude than to others in the matter of selecting his own departmental officers.

Under the Sultans, the departments of Qaza (Justice) and Ihtisab (Censorship of morals) were under the Sadr (MS. OR. 1887 f. 4 Br. Mus.) but Akbar (1558-1605) who was not in favour of so

much authority being held by one person separated Justice from the Sadr.[1] The position of the Sadrus Sudur under the Mughals can be said to be substantially the same as it is now in the government of H. E. H. the Nizam of Hyderabad, Deccan, where the office of Sadrus Sudur is still retained.

Another significant change effected by the Mughals was to give up the Abbaside practice of investing the Prime Minister with judicial powers[2] which had been adopted by the Sultans.[3] The duties of the Prime Minister under the Mughal Emperors were confined to executive matters as were those of the Chief Justice to judicial.

Provinces (Subahs)

The following were the Provincial "heads":—

1. Subahdar (Mirat I, p. 133) or the Governor.
2. Qazi-e-Subah (Mirat I, p. 321) or the Chief Qazi.
3. Diwan-e-Subah or the Chief Revenue Officer.
4. Sadr-e-Subah (Mirat I, pp. 321, 335). He represented the Sadrus Sudur in the Province (Ain I, Blochman, page 270) and supervised the work of the District Sadars and Mohtasibs in the Province.
5. Bakhshi-e-Subah in charge of Pay and Accounts. (Mirat Supp., 150).

[1] The posts of Sadr and Qaziul Quzat are shown separately in Ain I, Bloch, page 185.

[2] See Chapter III.

[3] Ibn Batuta (Lee) p. 146. Shams Siraj Afif, p. 508.

The Diwan was the Finance Minister of the Province and all miscellaneous departments such as Building (Taamir), Survey (Paimana Kash), Irrigation (Darogha-e-Ju-e-Ab), worked under him. (Br. Mus. MS. Or. 1779).

Districts (Sarkars)

The chief officers working in the Sarkars were:

1. Qazi, in charge of administration of Justice.
2. Faujdar, maintained Law and Order. (Mirat Supp., 145).
3. Amalguzar (Ain II, Jarrett, pp. 43, 45) or Amils in the Deccan (Collections) settled Revenue.
4. Bitikchi, Assistant to Amalguzar. (Ain II, Jarrett, page 47).
5. Fotedar or Khazanadar (Treasurer). (Ain II, page 49, Jarrett).
6. Sadr, Ecclesiastical Department (Mirat Supp. 149).
7. Sadr Amin. Land Revenue Cases (I. O. L. MS. 3301).
8. Karkun or Karori, Collection of Revenue (Ain II, pages 43-47. Mirat I, page 307).
9. Kotwal, Police (Ain II, Jarrett, 41, 43. Mirat I, page 168).

Parganahs

The staff of officers in a Parganah consisted of:

1. Qazi-e-Parganah. In charge of Justice. (Mirat I, page 327; Farameen; Baqiat).
2. Amil-e-Parganah (Mirat I, pages 327, 342).

The collection of Land Revenue was made under his supervision.

3. Qanungoe (Ain II, page 66), (MS. 6599) "was the refuge of the husbandmen" and assisted the Amil.
4. Amin, Munsif and Karori (MS. Or. 2011 Br. Mus.) (Farameen) (MS. 2907 I. O. L.). Decided Land Revenue and rent cases.
5. Karkun
   Land Revenue Department. (MS. Or. 2011).
6. Wazan Kash. (MS. 6,599).
7. Faujdar or Shiqahdar. In charge of law and order in the Parganah (Br. Mus. MS. 6,599).
8. Kotwal represented the Faujdar in the Parganah in case no Shiqahdar was appointed.

Villages

1. *Panchayet.* Assembly of usually five men, in charge of Justice.
2. *Headman.* President of the Panchayet, known as Moqaddam (Mirat I, page 49) or Chaudhri (Alamgir Namah, 595) (Dow III, page LVIII) and in charge of 'Law and Order' (Farameen).
3. *Patwari.* Representative of the Revenue Department and Recorder of rights (Ain II, p. 45. Jarrett).
4. *Village guard or Chaukidar or Rahdar.* In charge of traffic and of Saraes where travellers lodged for the night. (Storia I, p. 68).

Seaports

The administrative machinery in the seaports was different though it worked under the Governors. The chief officer in a port was known as Mutasaddi (Mirat I, p. 335) who had "agents" working for him in its subdivisions—Baras (Mirat Supp., p. 188). There were Qazis, Mohtasibs and Sadrs but they were appointed by the Central Government. According to Mirat-e-Ahmadi[1] there were 27 ports and 45 baras in the province of Ahmedabad only. The admirals (Mir Bahr) and other naval officers (Darogha) or Nakhudae Jahazat were, as appears from a Manual prepared during the reign of Shahjahan, appointed directly by the Central Government (Br. Mus. Ms. Or. 1779). Civil officers of the Executive department, who held rank below that of a Faujdar, had to sign an agreement or 'Zamni-Namah' more or less on the lines of the covenants executed by officers of the Indian Civil Service in British India. Forms containing letters of appointment and of 'Zamni-Namah' are given in Ms. 6,599 Dasturul Amal and OR. 2011 British Museum.

The pay of the officers and their establishments was distributed monthly. (Ms. 6599. Br. Mus. 147). The Central Government kept a department of Newswriters (Waqae Nigars) (Mirat Supp., p. 150) who collected information locally and sent regular reports through special messengers (Harkaras)[2] (Mirat Supp. pp. 150-2; Storia II, p. 331). Those attached to courts

[1] See supplement, p. 201.

[2] A term still applied to messengers who carry official letters to officers in camp in British India.

of Judicature recorded the daily proceedings of Revenue Courts (Collections).

Officers functioning as Courts

(Arbab-e-Adalat. Khafi Khan II, p. 607).

The Department of Law and Justice was known as the Mahekmae Qaza during the Sultanate. The word Qaza was, as it appears from Khafi Khan, replaced by 'Adalat' under the Mughals and the word 'Mahekmae Adalat' was generally adopted for the Department of Justice as distinct from Mahekmae Shariyah used for the Ecclesiastical Department.[1]

The Qazi, Mir Adl, Mufti and Darogha-e-Adalat belonged to the Mahekmae Adalat, but there were also officers of the Revenue and other departments who had power to try cases such as the Diwan, Faujdar, Kotwal and Amalguzar. I accordingly propose to discuss the functions of all such officers under one heading.

I. *At the Imperial Capital.* (Darul Saltanat).

1. *The Emperor.* Like the English King of the early Norman and the Anglo-Saxon period, the Emperor was the first Judge of the realm and the "fountain of Justice". He tried original civil and criminal cases and also sat as the final aegis of appeal within the Empire. When the Emperor heard appeals he presided over a Bench consisting of the Chief Justice and Qazis of the Chief Justice's Court and decided questions both of Law and fact (Alamgir Namah, pp. 1097, 1102). As a court of first instance,

[1] MS. 217 f. 77. I. O. L.

he generally had the assistance of a Darogha e-Adalat, a Mufti and a Mir Adl (Alamgir Namah, p. 1077).

Petitions were presented to him by the Darogha. If he required any authoritative interpretation of law he referred the matter to a Bench of the Chief Justice's court for opinion[1] or he constituted a special Bench for the purpose.[1]

The Emperor's Court, when it could be held, was popular and the public "made representations and appeals without any fear or hesitation and obtained redress from his impartiality."[2]

The officers attached to his Court were:

1. Mufti.
2. Darogha-e-Adalat.
3. Mir Adl. (Alamgir Namah, p. 1077, Bib. Ind.)
4. Mohtasib.

Their functions are described later in the chapter.

2. *The Qaziul Quzat or the Chief Justice.* (Mirat I, p. 340. Ain I, p. 185 Blochman). Next in importance to the Emperor was the Qaziul Quzat. He used to administer the oath of accession to the Sovereign and to order "Khutbah" to be read in the Emperor's name in the mosques in order to give validity to his accession. (Storia I, p. 381). (Mirat I, pp. 240, 248). Some Chief Justices have been referred to as Shaikhul Islam in Tuzuk-e-Taimuri, p. 67, Vol. I; Tazkiratul Ulema, p. 43, but this was not their official title. It was a name used as a mark

[1] Compare Dow III, p. xxx. Alamgir Namah, p. 1102.

[2] Compare Elliot VII, p. 158; Kennedy II, pp. 74-77; Storia III, p. 262. Anecdotes, p. 178.

of respect and is so used even today among Indian Muslims for the most learned man among them.

The appointment of the Chief Justice was made by the Emperor (Fatawa III, p. 387). According to Sir J. Sarkar[1] "men of high scholarship and reputed sanctity of character wherever available were chosen."

The Chief Justice had power to try original civil and criminal cases, to hear appeals from and to supervise the working of the Provincial Courts.[2] He was assisted by one or two Qazis of eminence who were attached to his Court as "Puisne Judges."[3]

His duties included:—

1. Leading the Friday and the Id prayers at the Capital.
2. Attending state and other important funerals.[4]
3. Conducting marriage ceremonies of the Royal Family (Alamgir Namah, p. 644) (MS. 217 ff. 128-129 I. O. L.).
4. Supervision of the enforcement of the Law, Ijra-e-Ahkam e Shariyah (Khafi Khan II 606).

In the matter of fresh taxation the opinion of the Chief Justice was invariably taken. The people in Gujrat once protested and withheld payment of dues on landed property until those taxes were sanctioned by Qazi Muhammad Akram, Chief Justice

[1] Sarkar (1935) p. 29.
[2] Compare Elliot VII, pp. 172-173; Mirat I, p. 319.
[3] Compare Dow III, p. xxx.
[4] Compare Aurangzeb III, pp. 161-163.

(Mirat I, p. 339). Similar was the practice in other Muslim states in India which did or did not acknowledge the Mughal supremacy.[1] The Chief Justice was usually a man of reputation and influence. He or his 'Puisne' Judges were sometimes sent on important political missions[2] and one Chief Justice was appointed Governor of Bhakkar (Darbar-e-Akbari p. 67).

Once when the Central Diwan delayed payment of money for the repairs of Court buildings, the Chief Justice approached the Emperor direct and obtained the necessary grant (Mirat I, p. 330).

The Chief Justices were sometimes appointed directly from among eminent lawyers and sometimes a Chief Provincial Qazi, as was in the case of Qazi Khan, was promoted to that office (Tazkira-e-Ulema-e-Hind, p. 54—Lucknow). The author of Maasirul Umara gives the following brief note about the career of one of the famous Chief Justices of the Mughal period.

Abdul Wahab—Vol. I, p. 235; Khafi Khan II, pp. 216-217, 438, 439.

Grandson of M. Tahir Bohra of Patan (Gujrat). Born in Gujrat. His grandfather, who was a learned man, gave him special training in Theology, Jurisprudence and Law. He finished his education early and held discussions with noted lawyers of the time until he built up a unique reputation for scholarship and

[1] Compare Farameen, p. 221.

[2] Vide Cases of (1) Qazis Abul Fazl and Abu Said. Qazwini, pp. 255-256, 367. (2) Qazi Azeez (Hadiqat us Salatin, p. 258). (3) Qazi Sadr Uddin—Briggs IV, p. 522.

piety (Dar wara' wa taqwa wa fan-e-Hadith yaganae rozgar gardeed). Started teaching Law and reforming his own community. Attracted the attention of Mirza Aziz Kokah, Governor of Gujrat who helped him. His reputation as a lawyer of sound judgment spread all over the country. In 1658 he was appointed Qazi-e-Askar by Aurangzeb and shortly afterwards was created Chief Justice of the Empire.

Went on leave in about 1676 on medical grounds. Resumed duty for a short period and died.

The Chief Justices who served the Great Mughals from 1560-1712 A. D. were:—

Qazi Mir Saiyad Muhammad.
Qazi Jalal Uddin.
Qazi Nurullah.
Qazi Hidayetullah.
Qazi Muhammad Said.
Qazi Muhammad Aslam.
Qazi Abdur Rahman.
Qazi Abdul Wahab.
Qazi Ali Akbar (Temp.).
Qazi Shaikhul Islam Abdullah.
Qazi Saiyad Abu Said.
Qazi Khan Abdullah.
Qazi Muhammad Akram.
Qazi Mulla Haider (Qazi Khan).

3. *Qazi of Delhi.* The Imperial capital had its own Qazi who enjoyed the status of a Chief Qazi of a Province. In temporary vacancies he was some-

times appointed to act as a Qaziul Quzat.[1]

4. *Qazi-e-Askar.* The military area in the Capital had its own Qazi (Qazi-e-Askar) who moved from place to place with the troops (Alamgir Namah, p. 1102). Sometimes the officer was styled Qazi e Urdu.

Officers attached to Courts noted above

1. *Darogha-e-Adalat.* Applications filed in each Court were received by an officer named Darogha-e-Adalat.[2] He was sometimes called Darogha-e-Kachehri.[3] Aurangzeb conferred the title of "Fazail Khan" on one of his Daroghas.[4]

2. *Mufti.* One Mufti was posted in each Court to give legal opinions, but not to give any judgment. The Mufti attached to the Chief Justice's Court was known as Mufti-e-Azam or Sadre Jahan.[5] Manucci says[6] that there were two Muftis, but also says that 'they acted as Judges.' He does not explain whether they were members of a Bench along with the Qaziul Quzat or whether they possessed independent jurisdiction. In my opinion he is referring to the Qazis who acted as "Puisne Judges" of the Chief Justice's Court. His statement, however, does not alter the position of the Mufti.

3. *Mohtasibs.* The Mohtasibs attached to the

[1] Maasir-e-Alamgiri, Calc.; Tazkira-e-Ulema-e-Hind, p. 54; Alamgir Namah, pp. 933-934.

[2] Br. Mus. MS. Addl. 26, 239 f. 42.

[3] Br. Mus. MS. Addl. 6, 599 and Or. 1779 f. 232.

[4] I. O. L. MS. 217 f. 116.

[5] Ain I, Bloch, p. 185. The office is still retained in Hyderabad State as Mufti-e-Azam.

[6] Vol. II, p. 419, Storia.

Capital were generally the Prosecutors in Canon Law Cases.

4. *Mir Adl.* He was an administrative officer like a Darogha attached to Courts. For details see under 'Sarkar'.

Diwan-e-Ala (*Add. MS.* 26239, *f.* 41).

The duties and functions of this high official have been discussed in detail by Dr. Ibn Hasan.[1] He was the final authority on Revenue and Financial matters, and only in rare cases was any petition made against him to the Emperor (MS. 370 I. O. L; Waqae Alamgir, p. 67). He was mainly occupied with matters of financial policy in the state and judicial work from the Provinces in form of appeals seldom came to him.

Raja Raghunath, the Diwan of Aurangzeb had the following titles:—[2]

> "Wazarat Panah, Kifayet Dastgah, Shaista Anwaa marahim wa Tafaqqudat Sazawar Sanuf. Awatif wa talattufat."

II. *Provinces.* (Subahs).

(1) *Governor* (*Subahdar*). (Mirat I, p. 208). He was called Nazim[3] in Bengal and Gujrat. His main duty was to maintain law and order. In appointing

[1] See Central Structure of the Mughal Empire, pp. 170-209.
[2] MS. 370 I. O. L.
[3] (1) Ain II, p. 37; Report of the Committee (1772-73) of the House of Commons, IV, pp. 324-346. (2) Mirat I, p. 321, Supp., p. 145.

Said Khan as Subahdar of the Punjab, Jahangir laid stress on his duty to see that justice was properly administered in his charge.[1] The Subahdar was also the Commander-in-Chief of the army within the Province. In matters of revenue and landed property—maamla-e-mali khalisah sharifah[2]—his work as a Court of Justice was particularly emphasized. He possessed all the judicial powers exercised by a Governor under the Sultans.[3] Shaistah Khan, the Governor of Bengal was fond of regular judicial work[4] and the example set up by him was kept up by his successors in the days of the East India Company,[5] and Sunday was usually the Court day—Roz-e-adalat. According to Alexander Dow, appeals from the Court of a Governor lay to the Emperor's Court by way of petition,[6] but it appears that there was no hindrance to their being filed in the Court of the Qaziul Quzat. The salary of the Governors was high. The Subahdar of Gujrat, for example, received Rs. 2,40,000 a year and the figure was raised still higher in the time of Aurangzeb.[7]

When the Governor left the Subah for urgent reasons he could appoint the Diwan to act for him during his temporary absence (Mirat I, p. 375).

[1] Tuzuk, p. 6.
[2] Mirat I, p. 282.
[3] Compare Dow III (p. LIII), Storia III, pp. 263-264.
[4] Edwardes and Garrett, p. 190. Sarkar. Aurangzeb IV, p. 367.
[5] Letter dated 21-8-1772, pp. 371-372, I. O. L. Range A. Vol. 19.
[6] Compare Lanepoole's Aurangzeb, p. 113.
[7] Compare Mirat, Supp., p. 145. The Governors of the four major Provinces in British India do not get more than Rs. 1,50,000 a year including entertainment allowance.

Attached Officers. 1. Mufti. 2. Darogha-e-Adalat.

During the later Mughal period (1750-1857) the Darogha of the Governor's Court did a substantial amount of judicial work and in Bengal became superior to the Qazi-e-Subah (Report of the Committee of the House of Commons 1772-1773. Vol. IV, p. 324). He was empowered by the Governors, who had become in effect independent rulers, to try cases and to hear appeals presumably because the Governor's other duties did not give him time to attend to them. He tried serious criminal cases and took cognisance of riots and affrays and suits relating to landed property except claims to inheritance. His official title was Darogha-e-Adalatul Aliah (MS. Add. 9697). The change advanced enormously the prestige of the Daroghah till his post was abolished in 1820 A. D.

(2) *Qazi-e-Subah.* (MS. 6580 Mirat f. 425). Mirat I, p. 334.

The Provincial Judicial Department was under the Chief Provincial Qazi or Qazi-e-Subah. He was appointed by the Emperor.[1] He had original civil and criminal jurisdiction and was the Chief Court of Appeal in the Provinces. His judicial powers were co-extensive with those of the Governor (Elliot, VII, p. 172) and he had a permanent seat on the Bench of the Governor's Court (Mirat I, p. 275). Appeals came to him from the District Qazis

[1] Sir J. Sarkar thinks by the Chief Justice. The practice does not seem to be as Professor Sarkar says. The appointment as a rule could be made by the Emperor.

(Safir-e-Oudh, p. 91) and he was consulted by the Governor in cases where the use of the Sovereign's prerogative came into question.

He was required to administer the oath of office to a new Governor, to pay a formal call on him and to attend the receptions given to him (Mirat, II, p. 2) though it was not necessary for the Qazi-e-Subah to seek interviews from or attend[1] the Governor. Similar functions have still to be performed in British India by the Chief Justices of Provinces.

Attached Officers

1. Mufti. 2. Mohtasib. 3. Darogha-e-Adalat-e-Subah. (MS. 370. I. O. L.) 4. Mir Adl. 5. Pandit.[2] (MS. 2907 I. O. L. f. 40). 6. Sawaneh Nawis (MS. 6580 f. 425). 7. Waqae Nigar (MS. 6580 f. 425).

(3) *Diwan-e-Subah*

His judicial duties were the same as were under the Delhi Sultans. He was appointed by Royal Farman[3] either directly or promoted from among the District Revenue officers.[4]

Appeals against his orders were usually taken to the Diwan-e-Ala at the Imperial Capital but they could be filed before the Governor as well.

[1] Compare Essays on Islam. Khuda Bux, p. 12. Mirat I, p. 275.

[2] Compare Mill, History of India; III, p. 369. (2) Report of the Committee of the House of Commons, 1772-1773, IV, p. 326.

[3] Mirat Supp., p. 148, also see I, pp. 208, 334.

[4] Case of Saiyad Mohsin, Mirat I, p. 334.

Officials attached to a Diwan's Court

1. Peshkar (Secretary) Mirat Supp., p. 148. He was a "Mansabdar" appointed by the Emperor.

2. Daroghah or the Superintendent of the office. This official like the Darogha-e-Adalat of the Governor's Court was invested with jurisdiction to try Revenue and Civil cases during the later Mughal period.

3. Mushrif or the Treasurer.

4. Tahvildar or the Cashier. The clerical staff included a Munshi (Head Clerk), Huzur Clerk, Subah Clerk, Clerks for crown lands and other miscellaneous work, Record-keeper, Accountants, and Heralds.

III. *Districts.* (Sarkars).

Qazi (Shariyat Panah. Farameen, p. 228; Baqiat).

The principal judicial officer in the district, as was the case under the Sultans, was the Qazi. He was appointed by a Royal Sanad which was issued[1] by the Sadrus Sudur. Ranking in his translation of Badaoni says[2] that the Qazi was under the Sadr and refers to Ain I (Bloch) pp. 268, 270. He seems to think that the issuing of a 'Sanad' made a Qazi subordinate to the Sadr. This was no doubt the practice under the Sultans but the Mughals separated the Sadr and the Judicial departments. The actual superior of the Qazi was the Qazi-e-Subah and the issue of Sanads by the Sadr Department was a mere matter of routine.

[1] Compare Mirat Supp., p. 149.
[2] Vol. I, p. 610.

The main duties of a district Qazi were unchanged during the Mughal period. He remained in charge of the civil and criminal (judicial) administration[1] and heard appeals from the Courts situated in the country (Dow III, p. LVII). The Mughals transferred the "Baitulmal" (fund for religious purposes) and the department of clothing the poor in the districts to his charge.[2] He and the Sadr formed a joint Board to control these funds. The State Treasury in the seaports was also placed under his superintendence.[3] Even payments of 'madad-e-maash' sanctioned by the Sadrus Sudur required the Qazi's concurrence.[4]

These measures were the result of the Mughals' policy of reducing the authority and influence hitherto enjoyed by the Sadrus Sudur.[5] The reforms introduced by Akbar and Aurangzeb resulted in the following additional functions for the District Qazis:—

1. In the matter of taking cognisance of offences his right to order enquiry with a view to prosecution was acknowledged as co-extensive with that of the Police or the Mohtasibs; vide case mentioned in Storia, III, pp. 122-123.

2. The Qazi became the official visitor of the Jails within his jurisdiction and was given power to inquire into cases of prisoners confined therein, to revise proceedings in the cases of convicted prisoners

[1] Compare Fatawa Kitab Adabul Qazi, Vol. III, pp. 250-375.
[2] Mirat I, p. 338.
[3] Roe, p. 142.
[4] Mirat I, p. 335.
[5] Compare Ibn Hasan, pp. 255-288.

and to release on bail persons under trial (Mirat I, pp. 282-283). The successor of the District Qazi, the Sessions Judge in British India, still performs similar duties.

3. Aurangzeb placed the District Qazi in charge of the collection of the Zakat and Jazyah taxes and he was given a separate staff for this purpose (Mirat, I, pp. 339, 295-299). (Khafi Khan, II, p. 606.)

The public mosques in the districts were also transferred to his control.[1]

4. He was required to lead the Friday and Id prayers in the central mosque of the town (Collections and Farameen) and to attend important funerals.[2]

5. The marriages of Muslims were solemnized before him.[3] Fryer, an English traveller in the time of Aurangzeb, makes an interesting suggestion that the practice of marrying before a Justice of the Peace in Europe may have been borrowed from the Muslims. In British India, Muslim marriages are still performed before the present day Qazi who retains the title though none of the official functions of the Qazis of Mughal days.

6. The Qazis at a seaport were given the additional work of supervising the collection of customs (Storia, I, p. 71; Collections).

The selection of a District Qazi was, as a rule, made from among the lawyers and sometimes from

[1] The Qaziul Quzat was the person in charge (Khafi Khan II, p. 606) and the District Qazi acted for him in the district.
[2] Compare Mirat I, p. 330.
[3] Fryer I, p. 237.

among those practising in the districts (vide appointment of Qazi Qaim Ali, Baqiat, p. 22). He could be promoted to Qazi-e-Subah or even to Chief Mohtasib of the Province (MS. 217. I. O. L. f. 57). His salary was a grant of 'madad-e-maash' land and a daily cash allowance in addition.[1] (Yaumyah naqdi wa arazi mashroot khidmat). A Qazi could continue in service as long as his health permitted him to do so or he could resign and start practice in the same place where he had acted as Qazi. (Dunia Murai vs. Qaim Ali, Baqiat, p. 25).

Aurangzeb's order of appointment usually contained the following instructions:—

> "Be just, be honest, be impartial. Hold the trials in the presence of the parties and at the Court house and the seat of Government. Do not accept presents from the people of the place where you serve, nor attend entertainments given by anybody and everybody..... Know poverty (Faqr) to be your glory (Fakhr)."

It may be interesting to recall here the advice given by the Hon'ble Sir John Thom, Chief Justice of the Allahabad High Court, in 1938 to the Judicial Officers in the United Provinces. In the course of his address, Sir John said:

> "In this connection I would say it is well to discourage the blandishments, the courtesies

[1] Compare Br. Mus. MS. Add. 6,580, f. 425; Compare Mirat I, Supp., p. 149. The Farmans in the Appendix show that a Qazi was entitled to a fee of Re. one from the parties for every marriage that he performed within his jurisdiction.

[2] Translation adopted from Sarkar (1935) pp. 27-28.

> and the attentions of executive officers and prospective litigants and to remember that the highest officer of the State, the most senior police officer, the wealthiest citizen in the land, are entitled to no greater consideration in your court than the humblest peasant. Indeed, if any distinction can be justified at all, it must be in favour of the latter."

The official title of the District Qazi was "Shariyat Panah" (Farameen, Mirat, I, p. 406; Baqiat) and within the district he held the first place (kalaantar)[1] in the Warrant of Precedence. He was expected to be present to receive the Emperor or the Governor when they came to his district. When Maharajah Ajit Singh, Governor of Bahadur Shah, visited one of his districts in Gujrat, Qazi Khairullah led the reception.[2]

Office Staff

A District Qazi could be removed by the Emperor.[3]

The District Qazi had a staff of ministerial officers as given below:—[4]

1. *Peshkar.* (Collections).

This post had duties analogous to those of a modern Reader or Sarrishtahdar in some places. It was held sometimes by a Hindu Kayasth[5] and sometimes by a Muslim and curiously enough the

[1] Akbar Namah.
[2] Compare Mirat II, p. 2.
[3] Compare Dow III, pp. 334-335.
[4] Compare Dow III, p. LVII.
[5] Collections.

Reader in a Court in the United Provinces is usually either a Kayasth or a Muslim to this day.

2. *Katib*

The modern Reader's duty of recording evidence was then performed by the Katib who also wrote the judgment dictated by the Qazi.

3. *Sahebul Majlis.* (Baillie, p. 766).

He was employed to read over their depositions of witnesses in Court. Presumably a person other than the one who wrote the statements was required to read them over.

4. *Amin.* (Ruqaat MS. Oxford; Hidayah XX p. 336).

He acted as Commissioner in cases (MS. 370 I. O. L.).

5. *Nazir*

He was in charge of the court buildings and the menial establishment.

6. *Daftari*

He looked after stationery and book-binding.

7. *Orderlies*

The Qazi had usually four to five orderlies attached to his Court.[1] The District Judges in British India are also given three to five orderlies.

In the time of Aurangzeb some Courts in Gujrat allowed candidates on the "waiting list" to work without payment. The result was that they started taking bribes. The matter came to the notice of the Chief Justice with the result that they were removed. (Mirat, I, p. 319).

[1] Farameen, p. 228.

8. *Mirdahas* or Process Servers (Br. Mus. MS. 1779).

9. *Muchalkah Nawis.* He took bonds for attendance from the parties or witnesses (Collections).

Numbers 4, 5, 6, 8 and 9 are still employed in District Courts in British India in the same capacity.

Officers attached to Qazi's Court

1. *Darogha-e-Adalat.* (MS. Add. 6,599 f. 38; Alamgir Namah, p. 1077).

As superintendent of the Court he may be said to be the predecessor of the present Munsarim employed in the Courts in the United Provinces. The office was not of much attraction. Mulla Ghalib, in the time of Aurangzeb, was offered this post but he declined to accept it saying that it was a job for the idle (Kare bekaran ast) Mirat I, p. 371. The District Qazi had the assistance of Mir Adls and in fact did not require any more officers. The existence of Daroghahs in the districts, however, continued (Farameen, p. 149; Mirat Supp., 154) although in the eastern districts the office was abolished by Aurangzeb (Ms. Add. 26239 f. 42).

A Daroghah was a Mansabdar and it was not necessary in his case that he should be a lawyer (Farameen, p. 149).

2. *Mir Adl.* This position of this officer, as Moreland has pointed out[1], has not been clearly defined by historians. Under the Mughals we hear of him first from an order of Akbar recorded in Ain

[1] India at the Death of Akbar, p. 34.

I, p. 283 (Text) about rules for judicial enquiries in which the appointments of Qazi and Mir Adl are announced. "Yakay dar pae adalat anra Qazi namand Wa deegray ba kar nishanad oora Mir Adl."[1] Jarrett has translated[2] this ".....(he should appoint two) one to investigate whom they call Qazi, the other Mir Adl to carry out his finding." Wilson in his glossary (p. 342) says:—

"Mir Adl was an officer of Justice, a superintendent of the courts who revised the decision of the Qazi and Judges, passed sentence and ordered punishment."

Edwardes and Garrett consider[3] him merely a Justiciary appointed by the Executive authority, as occasion arose, to carry out the Qazi's finding.

Dr. Beni Prasad in 'Jahangir' (p. 110) suggests that "a Qazi investigated and a Mir Adl pronounced the sentence". According to the author of 'Shahjahan'[4] the offices of "Mir Adl" and Qazi were combined into one during Shahjahan's reign. Among contemporary writers Monserrate says[5] that Mir Adls took part in the decision of cases. Muhammad Kazim thinks[6] that the Mir Adl's position was like that of a Darogha-e-Adalat when he presented petitions to Court.

[1] I have incorporated the correction given in the Bib. Indica publication in the footnote.

[2] Vol. II, Ain, p. 41.

[3] Mughal Rule, p. 191.

[4] p. 281.

[5] p. 209, "Cases are decided by a double process before two Judges."

[6] Alamgir Namah, p. 1077.

"Mir Adl wa Darogha-e-Adalat taayyun namuda ke mustagheesan wa dad khwahanra.....ba arz wala mirasanand." (He has appointed Mir Adl and Darogha-e-Adalat to present to him people who come to his Court to seek redress).

I am of opinion that a Mir Adl possessed no judicial powers such as those of a Qazi. His duties were analogous to those of a Mufti. The Mufti gave his opinion on a point of law and the Mir Adl submitted report on fact and the case was made over to him by the Qazi, after the judgment was delivered for superintendence of proceedings in execution. He was in fact a sort of superior Clerk of the Court.

During the Sultanate there was, as we have seen, an officer called Dadbak or Amirdad attached to the Court of the Qazi whose duty it was to see that all men summoned by the Court were present, irrespective of rank, at the hearing. Sikander Lodi (1489-1517) raised the status of these officers and gave them powers to try Common Law cases with the title of Mir Adl. Akbar retained them in Courts but confined their duties to administrative matters which, as Edwardes and Garrett observe[1] included the execution of the Qazis' decrees.

The Mir Adl does not appear in Parganahs nor was he to be found at all in some of the Provinces viz. Bengal and Gujrat where the Daroghahs probably carried out the duties performed elsewhere by the Mir Adl. The reports of the Committee of the House of Commons (1772-1773) make no mention

[1] Mughal Rule, p. 191.

of Mir Adls and in Mirat-e-Ahmadi also we do not find any reference to their powers of deciding cases. They are mentioned in the Zawabit-e-Alamgiri and the Dasturs Br. Mus. MSS. Add. 6598 and 6599. Sir Jadunath Sarkar's description[1] of Mir Adls as Judges of Common Law during the reign of Aurangzeb as distinct from Qazis does not seem to be quite accurate for there is no clear evidence of their exercising judicial powers as independent Courts. They certainly had no Staff or establishment of their own, and they were themselves officials definitely attached to the Qazis' Courts. The Qazis, too, were trying Common Law Cases during that period. No official manual exists which gives details of the Mir Adl's duties. But an executive order issued by Aurangzeb and mentioned in Br. Mus. MS. Addl. 6,599 f. 38 has the following reference:—

> "Mir Adl anche dafatir berasad ba waqei tahqeeq agar khud qata' numaind behtar wa illa arz rasanand ba huzur mushakhkhas shawad. Qazi ke maamlat ba huzure o berasad bar adl amal namuda hukum bekunad." (Whatever reaches the offices must be thoroughly enquired into by Mir Adls and it would be better if they settled the matter themselves or they may submit a report to the Court. The Qazi on getting the Report must decide in accordance with justice).

The power of "settling" the "matter" refers to questions of office routine and not to the decision of

[1] Anecdotes, p. 175.

cases for which Aurangzeb generally used the word "Fasle Qazaya" (MS. Raqaem-e-Keram K. C. C.). Another order of Aurangzeb refers to the Mir Adl as an assistant to the Qazi on the same footing as a Mufti.

> "ba ittifaq-e-Qazi wa Mufti wa Mir Adl bar wafq millat shariyat gharra ba qata' wa fasl rasanad." (Mirat, I, p. 257). (The case should be decided with the help of the Qazi, the Mufti and the Mir Adl in accordance with Law).

Mir Adls were not required to be "lawyers of reputation" like the Qazis and were men of practical ability entrusted with the duty of carrying out the findings of the Qazi (Ain II, Jarrett, p. 41). Shaikh Ahmad of Lahore who was only a Superintendent in Emperor Jahangir's household was selected as Mir Adl in 1608 A. D. (Tuzuk, p. 28).

One Mir Adl in Arzdasht (MS. Add. 16,859 Br. Mus.) refers to a civil suit between three Hindus which was sent to him for enquiry by the Emperor Shahjahan and he prepared his report and sent it to the Emperor.

> "Le haza tarfaen ra dar Huzur rawana kar daneedah yaqin ke dar Adalat ul Aliah ruju shudah moamlah khud faisal khwahand dad". f.42 (a) and (b). (The parties have been directed to proceed to the Royal Court. As the original suit was filed there it is hoped that His Majesty will decide it himself).

There is no mention of a Mir Adl having judicial authority either in any of the earlier treatises on Muslim Law or in any account of the Abbaside ad-

ministration. All mention of Mir Adls ceases during the reigns of Bahadur Shah (1707-1712) and his successors. (1712-1857). Nyamat Khan Aali, the historian, of the period, does not refer to them and apparently their position was taken by the Daroghahs. (Bahadur Shah Namah MS. K.C.C.).

3. *Mufti.* Appointed by a Royal Sanad (Farameen, p. 93).

4. *Pandit or Shastri.* (MS. 2907. I. O. L.).

5. *Mohtasib-e-Baldah.* (Farameen, p. 155)(MS. 6580 f. 425).

Mohtasibs were appointed in all districts by the order of Aurangzeb, to enforce morality (Mirat I, pp. 249-250; supp., p. 149). Their 'departmental chief' was the Sadr.

6. *Vakil-e-Sharai.* (MS. 6580 f. 425).

For the first time in the reign of Aurangzeb suits against the State were defended by Lawyers appointed wholetime in every district and known as Vakil-e-Sarkar, Vakil-e-Shara' (Khafi Khan II, pp. 249-252). They were attached to the Court of the District Qazis and received a fee of Rupee one daily. (Mirat Supp., p. 149).

These Vakils were further directed to give legal advice to the poor free of charge. The appointment was made by the Chief Qazi of the Province or sometimes by the Qaziul Quzat and their duties according to a letter of appointment given in Farameen, p. 152 were:—

1. To conduct suits on behalf of State.

2. To get decrees obtained by the State executed.

3. To act as legal advisers for the properties held in Trust by the Qazis.

Prosecutions in Criminal Courts were conducted by Mohtasibs and the Police.

Officers not belonging to judicial Department

1. *Sadr.* The Ecclesiastical Department in the district was in the charge of a Sadr appointed by the Sadrus Sudur. Seddon in Mirat-e-Ahmadi Supplement (p. 149) translates Sadr as District Judge and enumerates his duties as given below:—

1. Checking the 'Sanads' of Qazis, Mohtasibs, Khatibs, Imams, Muezzins and Mutawallis.
2. Issuing "parwanahs" for the stipends and daily allowances of officials and members of Ulema in the City and other towns.
3. Passing bills for payment to charitable endowments.

Since he had no jurisdiction to try ordinary civil or criminal cases, the word District Judge hardly applies to him. His judicial duties were limited to the settlement of claims relating to madad-e-maash grants or to sitting on a Bench with the District Qazi to try a Canon Law case. The post was not well paid and sometimes a Sadr of one district was made Sadr of another perhaps as a measure of economy (Farameen, p. 51).

2. *Faujdar.* (Br. Mus. MS. Or. 1779; Ain II, Jarrett, pp. 40-41; Storia, II, pp. 450-451. Mirat Supp., p. 145).

His judicial functions, for example trying petty offences and taking "security" proceedings, were the

same as those of a Faujdar under the Sultans (MS. 6580 f. 111 b). In the early Mughal period he was frequently transferred from one district to another and was sometimes sent away from his charge to conduct military operations (Khafi Khan I, p. 505). Under the later Mughals his judicial powers in criminal matters were enhanced[1] and like the Magistrates empowered under Section 30, Criminal Procedure Code in British India he could try all offences not punishable with death.

3. *Kotwal.* (Storia I, pp. 197-198, II, pp. 420-421).

Manrique[2] and other European travellers have described a Kotwal as a 'City Magistrate'. It is not clear what exactly his judicial powers were. Wherever he was stationed a Qazi was invariably posted. It follows, therefore, that cases of a serious nature could not be filed in a Kotwal's Court. From the proceedings in State vs. Kotwal Said, Storia I, p. 197, it appears that a Kotwal had powers to try cases. In State vs. Manrique and others[3] (Kotwal's Court) two of the accused were convicted of a breach of customs regulations and were sentenced to whipping and in addition were awarded imprisonment for one month in each case. This shows that the Kotwal had jurisdiction to try minor offences. Manucci, a contemporary European traveller who had personal experience of Kotwals in those days says[4] that he was subordinate to the District Qazi and Colonel Dow in his Enquiry sug-

[1] Letter dated 21-8-1772, Vol. 19, I. O. L. Range A, pp. 371-372.
[2] Vol. I, p. 418.
[3] Vol. II, pp. 137-138.
[4] Vol. II, p. 421.

gests[1] that a judicial order passed by a Kotwal was appealable to a District Qazi.

4. *Amalguzar.* Ain II, Jarrett, p. 43; Collections.

He was the Amil of the Sultanate period and decided rent and revenue cases in which capacity he was the predecessor of the present day Collectors in British India. A Darogha-e-Kachehri was attached to his Court (Or. 1779).

5. *Waqae Nigar* (Ms. Add. 6580 f. 425).

Waqae Nigars, Waqae Nawis or Akhbar Nawis recorded proceedings of the above Courts daily and sent them on to the Emperor (Collections; Mirat Supp., p. 150; Storia II, p. 421). The latter was in this manner able to supervise the work done by his officers. These reports were scrutinised by the Qaziul Quzat or the Qazi-e-Subah.

Subdivisions. (Parganahs).

Qazi-e-Parganah. (Mirat I, p. 327; Farameen pp. 157, 253).

The Qazi-e-Parganah was the principal officer in the Parganah. He was appointed by a Royal Sanad and his jurisdiction extended over the villages included in his Parganah. He had all the powers of a District Qazi except that he could not hear appeals as there was no Court inferior to his. Canon Law Cases were, as a rule, not taken before the Parganah Qazi but before the higher Courts.

The salary of a Qazi-e-Parganah was not high.

[1] Vol. III, p. LVII.

He received madad-e-maash land from the Sadrus Sudur and some small allowance (Mirat Supp., p. 149). Ali Muhammad Khan says that Qazi Muhammad Shafi of Parganah Meerut was given a special allowance as he was unable to support his family on what he had received before. (Mirat I, p. 327).

Officers attached to Qazi's Court

1. *Mufti*

2. *Mohtasib-e-Parganah* (Mirat I, p. 329, 249-250. Farameen), p. 155, who had a staff of a few Mansabdars and also infantry men.

Sometimes the Mufti of a Parganah was appointed Mohtasib as well in addition to his own duties (Baqiat).

3. *Darogha-e-Adalat*

The Parganah Courts had a Darogha where necessary (Farameen, p. 148 and Appendix D. 2).

4. *Vakil-e-Shara'* (Khafi Khan II, p. 249) who had a staff of 3 clerks and one accountant (Mirat p. 149 supp). Sometimes the Vakils were appointed Qazis (Farameen. Appointment of Razaullah).

Other Courts

1. *Faujdar-e-Parganah.* (Br. Mus. MS. Or. 1779).

Faujdars were sometimes posted to a Parganah or group of Parganahs and exercised the same powers as those of the district Faujdar. In a few districts Amins or Revenue officers were appointed Faujdars (Or. 1779) in addition, while in some places there were no Faujdars at all and their duties were perform-

ed by Shiqahdars or Kotwals. (Mirat I, p. 342), or Zamindars (Farman, Appendix D. 4).

2. *Honorary Courts*

The local landlords were sometimes appointed in the Parganahs to try Common Law Cases (Baqiat p. 6, Farman). Such appointments were notified to the Public. Appeals from their Courts were taken to the District Qazi's court. (Dow III, p. LVII).

3. (1) *Karori.*

(2) *Amin-e-Parganah.*

Revenue cases in the Parganah were decided by Karori and Amin whose powers may be compared with those of Assistant Collectors, or Assistant Commissioners under the Land Revenue Act in modern Indian districts. The exact distinction in their jurisdictions is not known.

All the officers mentioned above except the Qazis were required (MS. Or. 1779) to sign a covenant for the proper discharge of duties more or less on the lines of the covenants executed by the candidates selected for the Indian Civil Service before their appointment.

Villages

(D'ehat—a word still in use in British India).

1. *The Panchayet*

The administration of justice in the villages was, as was the tradition from ancient times, left in the hands of village councils (Panchayet).[1] Their

[1] Compare Sir Charles Metcalfe in the Report of the Select Committee of the House of Commons, Vol. III, App. 84, p. 331.

"The village communities are little republics having nearly

powers in all matters civil and criminal were the result of old customs and administration went along these lines.

The Panchayet held its sittings in a public place and administered justice in the village so far as punishing small offences and deciding petty civil disputes were concerned. The decision of the Panchayet was binding and in most cases no appeal was filed. The decrees were generally executed.[1]

2. *The Headman*

The headman or the Chaudhri was usually the President of the Panchayet and as Dow says a "unit of judicial administration" (Vol. III, p. LVIII)—head of the lowest tribunal recognised by Law.

The Farman[2] dated Shaban 29. 1117 A. H. declares that he was to maintain peace and tranquillity in the village and thus he occupied a position similar to that of a Justice of the Peace in England.

In the East the Chaudhri was called the Moqaddam, in the West the Patel and in the South the Chetty.

3. *Zamindar.* (Farameen) Or. MS. 2011.

In some places influential landlords were appointed to maintain order in local areas.[3] During the later Mughal period they were invested with powers to try civil and criminal cases of petty nature.

everything they want within themselves and almost independent of any foreign relations. They seem to last where nothing lasts. Dynasty after dynasty tumbles down; revolution succeeds revolution."

[1] Compare Maine, Village Communities, pp. 121-123.

[2] Farameen.

[3] See Appendix.

4. *Grades of Courts*

From the above analysis of the duties and functions of the various officers of the department of Justice (Mahakma-e-Adalat) it seems that the powers of the Courts varied distinctly during the later Mughal period. It is, therefore, convenient to divide the Mughal period into two parts namely

(1) 1526-1750.
(2) 1751-1857.

In the first period the following gradation of Courts existed throughout[1] the Mughal Empire:—

I. *Villages.* (De'hat).

Trial Court	*Powers*	*Presiding Officer*
The Panchayet	Petty Criminal	The Headman usually the Chaudhri. (Vide Farman Appendix). (Compare Dow III p. LVIII).

Appeals, if any, to the District Qazi. (Dow)

II. *Town.* (Parganah).

1. Original, Civil and Criminal Court. (Adalate-Parganah).	All Common and Civil Law Cases.[2]	Qazi-e-Parganah. (Dow III, p. LVII).

Appeals to the District Qazi.

[1] Compare Sarkar. "All the 20 Indian (Provinces) of the Mughal Empire were governed by means of exactly the same administrative machinery with exactly the same procedure and official titles."—Mughal Administration (1935) p. 239.

[2] He had powers to try Canon Law cases but none seems to have been tried by a Parganah Qazi. The Mohtasib had liberty to prosecute the accused in any Court within the District.

Trial Court	*Powers*	*Presiding Officer*
2. Kotwali.	Modern Police Act Cases.	Kotwal-e-Parganah.

Appeals to the District Qazi.

3. Kachehri, Amin Karkuns (Dow III p. LV. Ain II p. 46.) Later on Qanungoe.	Revenue Cases.	Amin.

Appeals to the District Amalguzar.

Karoris were Revenue Officers posted in Mahals (Or. 1779).

III. *District.* (Sarkar).

1. The Chief Civil and Criminal Court of the District.	All Civil, Canon and Criminal Law cases. Appeals (Dow III, p. LVII).	Qazi-e-Sarkar.

Appeals lay to Qazi-e-Subah. (Elliot VII, pp. 172-173.

2. Riot, Security Cases. (Faujdari Adalat).	Cases corresponding with those under Sections 107, 109 and 110 Indian Cr. P. C. Affray and Police Act Cases.	The Faujdar.

Appeal lay to the Governor's Court.

3. Kotwali.	Modern Police Act Cases.	Kotwal-e-Shaher.

Appeals to the District Qazi. (Mirat I, p. 283; Dow III, p. LVII).

4. Amalguzari Kachehri.	Revenue Cases. Appeals from Town Karoris.	Amalguzar.

Appeals to the Provincial Diwan.

IV. *The Provinces* (Subahs).

Trial Court	*Powers*	*Presiding Officer*
1. (*a*) The Governor's Bench. Adalat-e-Nazim-e-Subah.	Original Appellate. Revisional.	The Governor. (Nazim-e-Subah).
(*b*) The Governor's own Court.	Original.	The Governor. (Nazim-e-Subah).

Appeals lay to the (1) Emperor's Court (2) Chief Justice's Court (Elliot VII, p. 173) by way of petition as is done in Appeals to the Privy Council (Compare Dow III, p. XXXIII).

2. The Chief Appellate Court.	Original Appellate Canon Law Cases.	Qazi-e-Subah.

Appeals lay to (1) the Governor's Bench (2) Qaziul Quzat.

3. The Chief Revenue Court.	Appellate Original.	The Diwan.

Appeals lay to the Imperial Diwan.

V. *The Imperial Capital.*

1. Emperor's Court.	Original with Muftis. Appellate.	Emperor.
2. The Supreme Court.		
(*a*) Emperor's Bench. (Diwan-e-Mazalim of Aurangzeb's reign).	Original.	Emperor.
	Appellate.	
(Compare, Abbaside Diwanun Nazar fil Mazalim, Ameer Ali, Saracen, p. 422.	Revisional.	
	No. Appeal lay.	
(*b*) The Chief Court of the Empire.	Original Appellate Revisional Canon Law.	Qaziul Quzat.

No appeal lay but petition in Revision could be moved in the Emperor's Court or his inherent powers could be invoked.

Trial Court	*Powers*	*Presiding Officer*
3. The Chief Revenue Court.	Appellate. No Appeal lay.	Diwan-e-Ala.

In Revisional matters application could be moved in the Emperor's Court or the Emperor could take action, suo motu, vide case reported in MS. 370 I. O. L.

Later Mughals (1750-1857).

The Provinces assumed independence and the Executive officers started trying the cases themselves. The following grades of Courts worked in Bihar and Bengal. (Letter dated 21-8-1772. Range A. Vol. 19. Home Misc. 529 I. O. L.).

1. District

A. Criminal Courts

1. Faujdar:	tried Criminal and Common Law Cases.	Appeal to Nazim-e-Subah.
2. Zemindar:	tried Criminal and Common Law Cases. (Mostly petty cases in a 'summary' manner).	Appeal to Nazim-e-Subah.
3. Qazi:	enquired into Murder Cases only and submitted report to Nazim-e-Subah.	Appeal to Nazim-e-Subah.
4. Kotwal:	Petty Criminal Cases.	

B. Civil Courts

1. Qazi:	heard claims of inheritance and transfer of property cases.	Appeal to Nazim.
2. Zemindar:	All Civil and Common pleas except those mentioned above B. (1).	Appeal to Nazim.
3. Qanungoe:	Revenue Cases.	

2. PROVINCIAL HEAD QUARTERS

A. Nazim-e-Subah.
   (1) Murder Cases.
   (2) Appeals from District Courts.
   (3) Applications in Revision. No Appeal lay.
   (4) References from District Courts viz. difference of opinion between Qazi and Mufti.

B. Darogha-e-Adalat Diwani.
   Heard all civil suits and appeals including those relating to Real Property and Land.

C. Diwan.
   Inherent power to hear all Revenue Cases.

D. Darogha-e-Adalat Aliah.
   Disposed of all Revenue work on behalf of the Diwan.

No cases went to the Emperor as the Governor (Nazim) became, in practice, the final authority.

As noticed in the seventh report of the Committee of Secrecy of the House of Commons, 1773 p. 324, the Common Law Courts in Bengal during the later Mughal period did not try offences involving capital punishment, but their jurisdiction extended to criminal cases of other kinds. The presiding officers of those Courts were the Faujdars and the Zemindars who were also the executive officers within their respective areas. The Qazis were left to try murder offences and the civil suits. In criminal cases their orders could not be carried out without the sanction of the Nazim.

Murder Cases were sent direct to the Court of the Qazis by the Police, or if started on a private complaint, the hearing commenced without the case being "committed for trial" by a subordinate Court.

CHAPTER V

PROCEDURE IN COURTS

Jurisdiction. (*Kitabul Qaza Fiqh*; *Adabul Qazi*, *Fatawa*, *Vol. III*)

Qazis, to whatever offices appointed, were enjoined to be watchful of their jurisdiction and were not to exceed it (Fiqh-e-Firoz Shahi). They could try only those classes of cases which were specified in their letter of appointment (Fatawa Vol. III. Adabul Qazi). The King, the Qaziul Quzat, the Subahdar within the Subah and the Qazi-e-Subah within his charge alone had inherent jurisdiction in civil and criminal cases corresponding to the powers vested in the modern Indian High Courts (U. S. 561 Cr. P. C. and S. 115 C. P. C.)

The Qazis could not decide suits in which they were personally interested[1] (Fatawa) but they could be appointed in their home districts,[2] vide letters of appointment in the Appendix. Emphasis was laid on the trial of cases on the spot if possible.[3] So strong has been this tradition that to this day we often find an Indian litigant pressing the Court to inspect the spot or to hold the trial in his village. A Qazi was not debarred from trying a criminal case

[1] Compare S. 556, Cr. P. C. in Br. India.
[2] Compare Ain. Text I, p. 283. "Az hal o Ja agah".
[3] Compare Elliot VII, p. 172.

because he was himself an eye witness, but the Fatawa-e-Alamgiri states that if a Qazi was proved to have taken a bribe and thus become an interested party, his judgment was null and void as an illegality. If a Plaintiff resided in the cantonment area and the Defendant in the civil, a Qazi-e-Askar had to be empowered to try that case, or the Qazi of the civil area could settle the dispute without being so empowered (zira ke vilayet o am ast).[1]

The powers of the Appellate Courts and their jurisdiction in Revisional matters were not defined. The principle underlying the system as followed by the Sultans and adopted by the Mughal Emperors was that a decision of a lower Court could be challenged in a higher court and the political divisions of the State determined the status of the Courts. From the nature of their office the King and the Qaziul Quzat possessed jurisdiction to try cases all over the Empire, vide State vs. Faiz Sherwani, (Briggs I, p. 253, State vs. Seif Ala, Dow III, p. 105, State vs. Haibat Khan, Briggs I, p. 253.) Also refer to Elliot VII, p. 173 and Kennedy II, p. 39.

Constitution of Courts

In the normal course of business there was only one presiding officer in a regularly constituted Law Court. The letters of appointment issued to the Qazis show their duty of deciding cases (Fasl-e-Qazaya) without sharing it with anyone (bila shirkat-e-ghairay). The announcement made was that people

[1] Compare Ibn Hasan, p. 312.

should consider him the 'sole Judge' of their disputes (degray ra sahim o sharik-e-o na danand)[1]. The Muftis, Mir Adls or the Dadbaks, as I have shown above, did not possess Qazis' powers, although the opinion given by the Mufti on a law point could not be ignored by the Qazi and in a case of difference, reference to a higher Court was necessary.[2]

Canon Law cases, however, were tried by Benches. (Elliot V, p. 543; Stewart, p. 410; Mirat-Supp. pp. 45-46, Sarkar, Aurangzeb III, p. 113; Elliot IV, p. 464. State vs. Chabila Ram, Aurangzeb I, p. 174 (Sarkar); State vs. Sidi Maula, Badaoni I, p. 171. At the Provincial and the Imperial capitals[3] appeals were sometimes heard by Benches vide Safir-e-Oudh, p. 5 and State vs. Budhan, Beveridge I, pp. 101-102. There was no illegality[4] in the appointment of two judges, as happened in State vs. Yusuf, Briggs IV, p. 518, to hold a trial, but regular cases in the first instance including murder offences[5] were tried by a single Judge only. In Canon Law cases the Sadr of the place was usually the other member of the Bench.[6] The tradition of the early Caliphs of Islam was to refer intricate questions of law or of fact arising in

[1] See the letters of appointment issued to (1) Qazi Razaullah (Appendix), (2) Qazi Niamatullah (Baqiat), (3) Qazi Nasir Uddin (Baqiat).

[2] Compare Case. Safir-e-Oudh, pp. 5-6. E. I. Co. Letter dated 15-8-1772 and the Report of the Committee of the House of Commons. Records I. O. L. Vol. IV. pp. 324-346.

[3] Compare Order of Aurangzeb, Mirat I, p. 275.

[4] Compare Mawardi J. R. A. S. 1910, p. 771.

[5] Khafi Khan II, pp. 257-258. State vs. Mirza Beg; State vs. Prince, Mirat I, p. 49. State vs. Haibat Khan, Briggs I, p. 253.

[6] Vide Cases mentioned above.

any case to the Ulema (Lawyers) and decide those points in accordance with the opinion of the majority. The Sultanate and the Mughal Courts adhered to the essentials of this practice and sometimes referred issues ad hoc to the Ulema for opinion, vide State vs. Sidi Maula, Barni, p. 211; State vs. Yusuf, Briggs IV, p. 517; Ausaf Ali's case, Baqiat, p. 28. State vs. Laudhan, Elliot IV, p. 464. No precise rules regarding Benches were framed (Al Qaza fil Islam, p. 87) as is now the practice in modern Indian High Courts.

In matters concerning possession of land, however, where a breach of the peace was apprehended, jurisdiction seems to have been conferred both on the Qazi and on the chief executive officer of the place to determine the claim. The case, Ali Raza and Afzal Ali vs. Mir Muhammad Wali relating to dispossession from land (Baqiat, p. 18) was tried by a Faujdar and a Qazi. Similarly Muhammad Wali's claim to possession of a jungle (Dhak) against Muhammad Shahid, (Baqiat, p. 23), was heard by a Qazi and a Daroghah and the suit for dispossession from a grove between Bahar and Abi Muhammad (Baqiat, p. 12) was decided by the Qazi and the Thanadar of the Qasbah. It is not clear to which Court the Appeals from these orders were taken, but at all events such orders came under the inherent powers of the Governor or the Qazi-e-Subah.

It may be interesting to note here that the procedure adopted in such cases in Modern India is to split such disputes into two parts. The sub-divisional or Parganah Magistrate sitting singly decides

U. S. 145 Cr. P. C. which party is in immediate possession and then the other party, if not satisfied with the Magistrate's decision, may file a suit in the Civil Court to establish his claim to ownership.

Transfer of Cases

The power of transferring cases from one Court to another appears to have been vested in the King and the Governor only. Akbar used to withdraw original civil suits from the Qazis[1] and Shahjahan transferred the case of a Hindu clerk to his own Court (Storia I, p. 203). The Governor of Carnatic transferred the case Manucci vs. The Portuguese, to an English Magistrate in the East India Settlement (Storia III, p. 128). A matrimonial case on the file of the Qazi of Parenda was transferred to that of a neighbouring Qazi by the Governor of Parenda (Collections). It is not clear if the Qazi of a Sarkar, like the modern District Judge in India, had power to transfer cases from the Court of one Qasbah to that of another within his own territorial jurisdiction.

Any case could be withdrawn from any Court by the Plaintiff or Complainant and taken to the highest tribunal more or less on the grounds that are now pressed when applications for transfer are moved. Aurangzeb transferred a civil suit to his own Court suo motu (Waqae, pp. 32-35).

The Qazis of Qasbahs and Parganahs were subordinate to the District Qazis only in so far as Appeals

[1] Compare Smith. Akbar, p. 345. Edwardes and Garrett, p. 191.

against their judgments lay to the latter more or less like the Magistrates of the first class in British India being subordinate to the Sessions Judge. They had, like the present Civil Courts, administrative power over their Staff, but the Qazi-e-Subah was empowered to issue orders to them on judicial and administrative matters.

Procedure in Civil Cases

(Kitab ud da'va, Fiqh-e-Firoz Shahi).

The following procedure as prescribed in Fatawa-e-Alamgiri was observed:—

The Plaintiff had to file his claim at the sitting of the Judge (Vol. IV, p. 1). An agent duly authorised could file it. If the case was in order and not palpably absurd (IV, p. 87) the opposite party or whomsoever the Court thought interested in the suit, was summoned. The Defendant was then required to admit or deny the claim (IV, pp. 84-87).

If the Defendant denied the Plaintiff's claim, issues were framed and the Plaintiff was required to produce his evidence. If the Plaintiff pressed that the Defendant should take an oath and the latter declined, the Plaintiff could get a decree or the refusal by the Plaintiff to take the oath when required by the Defendant could result in the summary dismissal of the claim, vide Nusrat Ali vs. Qaim Ali (Baqiat, p. 21.)

If the Plaintiff produced evidence, the Defendant was given an opportunity to bring evidence in rebuttal. New issues could be framed and fresh evid-

ence admitted if the Court thought it necessary.[1]

Judgment was to be delivered after the whole evidence had been properly weighed.

Absence of Defendant

According to Hidayah a decree could not be passed against an absentee Defendant unless his representative was present. Imam Nawawi[2] thinks that the Court could send the record and evidence to the Qazi where the Defendant resided for his statement, and on getting the record back decide the issues.

Abatement of Suit

If the Plaintiff died, the suit abated, vide Harkishen vs. Ram Rai—Aurangzeb's Court (Sarkar, Aurangzeb III, p. 353).

Proceedings in Criminal Cases

The procedure in criminal cases was simpler. There was no system of 'commitment for trial' and the Criminal Courts followed a uniform practice. The complaint was to be presented to Court personally, or through a representative. Government prosecutions were instituted by Mohtasibs (Badaoni I, p. 187) or Kotwals. The Court had power to call the accused at once or it could insist upon hearing the Complainant's evidence before summoning him, vide Complaints of Sir Thomas Roe against Zulfiqar

[1] Vide (1) Beveridge I, p. 102. (2) Storia III, p. 264. (3) Storia I, pp. 199-200.

[2] Minhaj, p. 509.

Khan (Roe, pp. 141-142) and Asaf Khan (Roe, pp. 424-425).

In petty cases no record was kept except a note in a Register (Musajjilat). The sentence was pronounced in open court.

Absence of Parties

Evidence could be heard[1] in the absence of an absconding accused, but prosecution witnesses were to be recalled when he was arrested and his trial commenced. (Kitabul Ikhtyar MS. Add. 22714 f. 35). (Kitabul Mafqud, Fiqh-e-Firoz Shahi).

If the complainant was absent the accused was to be released. In State vs. Sulaiman and Others (Collections) a murder case, the heirs of the deceased did not appear to prosecute the case and the accused were discharged. This can only happen in British India if the alleged offence is punishable with not more than six months' imprisonment. No judgment could be pronounced in the absence of both the parties or their Counsel[2] (Vakil).

Prosecution

In offences against religion Mohtasibs or the Censors of morals were the Prosecutors[3] (Badaoni I, p. 187). In other State prosecutions the Kotwal had this duty or the Faujdar in places where there was a Faujdar but no Kotwal. Shiqahdars also could

[1] Compare S. 512, Cr. P. C.
[2] Fatawa III. Kitab Adabul Qazi, Luck. Ed. pp. 519-520.
[3] Sarkar (1935) p. 30.

report to the Qazis for cognisance of cases in Parganahs (Collections).

Personal Enquiry by Court

Courts were not debarred from making extra-judicial enquiries whether direct or through an agent-Muzakki. Such enquiries were encouraged by some Kings[1], vide Saiyad vs. Mian Malik, (Elliot IV, p. 454; Ain II, pp. 37, 41; Waqae, p. 88.

Jahangir, when trying the case of Moqarrab Khan, postponed the trial in order to make a "personal" enquiry.[2]

Alexander Dow, in his Enquiry, writes as follows about methods employed by Jahangir to get information:—

"Jehangir boasted of his humanity as well as of his justice...Though he was often furious and distant among his domestics he was fond of throwing off the character of the Emperor, of enjoying freely the conversation of his Subjects. "He often disappeared in the evening from the Palace and dived into obscure punch-houses, to pass some hours in drinking and talking with the lower sort. He had no enemies, and he was under no apprehensions concerning the safety of his person."

He was able to get first-hand information in making up his mind, "the people loved his familiar openness and did not by rudeness abuse the trust reposed in them by their Prince." (Vol. III, p. 102).

The practice seems to have been started by the

[1] Ain I, p. LIII (Blochman).
[2] Tuzuk, p. 83.

Abbaside Caliphs (J. R. A. S. 1910, p. 794) and was followed by the Sultans and the Mughal Rulers.

In some cases enquiries were made through others (See 1. Collections. 2. Tuzuk, Wahab's Case, p. 306).

Judgment

The final judgment of the Court was recorded in a book of judgments—Kitabul Hakam.[1] So far as I have been able to discover no copy of such book is now extant. A Judgment was not signed by the presiding officer, though an impression of his seal was put on the top.[2]

The seals of the Mughal Emperors were kept in their Harems[3] usually with the most trusted lady. The finding on an Inquest had to have the Qazi's seal and his certificate that there was no "foul play".[4]

Judgment was pronounced in open Court[5] unless the delinquent, in a criminal proceeding, was considered so dangerously influential that a public trial was against the interest of the State.[6] The Courts were enjoined to write their judgments "carefully so that the learned men might not pick holes in them" and "bring the Courts into shame".[7] Monserrate in his Commentary (pp. 210-211) says that judgments were delivered "only verbally" and "not

[1] Ibn Hasan, p. 312.
[2] Vide judgments in Baqiat.
[3] Compare Monserrat', p. 209. Ibn Hasan, p. 101.
[4] Compare Ameer Ali Islamic Culture 1927, p. 348. Elliot IV, p. 18.
[5] Compare Manrique II, p. 189.
[6] Compare Dow III, pp. xxx and xxxi.
[7] Compare Sarkar, 1935, p. 28.

recorded". He is presumably speaking of Akbar's reign, but it seems that since the Ain-e-Akbari itself required the Courts to maintain a careful record and sentences of death were to be submitted to King for confirmation there must have been some record of judgments kept. Decrees in civil disputes were prepared in accordance with the judgments on a prescribed form.[1]

Sentence

The Qazis, like the present District and Sessions Judge in India, could try any suit and pass any sentence in a criminal case. If the sentence was of death it was under the Mughal Emperors to be submitted for confirmation to the King or the Governor.[2] In British India the law still requires a Sessions Judge's death sentence to be confirmed by the High Court.

Records of Cases. (*Fatawa, Vol. VI, pp.* 249-371)

Records of cases were not to be destroyed and they were to be available if requisitions were made by other Courts, vide order of Aurangzeb in Azmat Ullah vs. Ghulam Muhammad (Baqiat, p. 5, also p. 4. See also Safir-e-Oudh, p. 6.) Aurangzeb, in remanding a case for further enquiry, not only gave directions to the Court but pointed out rules of procedure which had not been observed (Collections). In

[1] Compare Fatawa (Baillie), pp. 763-769. For fuller discussion see later.

[2] Vide Storia III, p. 264, II, p. 419. Thevenot III, Ch. X, p. 19; Compare Khafi Khan II, p. 550. Dow III, p. LVIII.

another bail appeal Aurangzeb found the reasoning of the lower Court defective "bewajeh Sharai" (See Kalimat ut Tayyebat, MS. K. C. C.) Manrique in his Travels, Vol. II, p. 160 gives the following note:—

> "Facing the Tribunal stands a fine palace in which the Principal Nabobo resides. He promulgates all favours, decrees and privileges made by that Majesty, their copies being kept in the archives at this place."

Apart from these instances there are other indications that there was a Law of Procedure which required the whole proceedings, including a repetition of the plaint Mahzar, to be recorded in a 'Sijil'.[1] It also appears from Hidayah (p. 336) that the Qazi was required to keep his records and papers carefully and hand them over to his successor. Aurangzeb, after reviewing a judgment, issued a circular (Collections) that all decrees, sale deeds, mortgage bonds and other legal documents should be carefully written and quoted.

Copies

Evidence is to be found of the issue to parties of copies of decrees and of papers on the record.[2]

[1] See Fatawa VI, pp. 249-371. There is a whole chapter on the Records. Compare Fatawa, Baillie, p. 763.

[2] Compare Shahjahan of Dihli, p. 127. "Every detail was recorded with scrupulous care and minuteness not at one place but at several places. It will not be too much to suppose that those records which passed through many hands were fairly accurate and supplied the want of written Law". Compare also Ibn Hasan, chapter on Farmans. See Mirat Supp. p. 149 where reference is made to Record Keepers of the Court of Diwan.

In most cases they bore the signatures or seals of the witnesses and a certificate of their correctness (Mutabiq asl) was given by the Qazi (Baqiat, pp. 1, 2, 5, 9, 10) under his seal.

Reports

Judgments were not regarded as binding precedents on the points with which they dealt. The Courts were to decide according to what God had revealed (bima anzalallah) and not according to what man had decided and might have decided wrongly. We do not, therefore, find Law reports in the medieval period corresponding with those of Modern India.[1]

Aurangzeb (1657-1707) issued orders[2] in 1672 for the preparation of "Mahzarnamahs" or records of judgments of higher Courts for circulation among the Qazis and Muftis.[3] They were not published and it is not clear if the public had any access to them. The Hidayah (p. XXVIII) mentions a Digest of Cases (Mabsut) prepared by Abul Hasan bin Ali bin Muhammad. But neither the Mahzarnamah nor the Mabsut contains the details which are found in modern Law reports.

During the Mughal period the Muftis were enjoined to copy out precedents to read and to place them before the Qazis.[4]

[1] Compare J. R. A. S. 1910, p. 761.

[2] Compare Sarkar (1935), p. 234. My friend, Professor Habib, tells me that, according to Shams Siraj Afif, one Tatar Khan compiled several volumes of judgments of the Qazi of Dehli in the reign of Firoz Shah Tughlaq.

[3] Compare Mirat-e-Ahmadi I, p. 258.

[4] Sarkar (1935), p. 28.

Manucci does not regret the absence of Case law as it "discouraged venal lawyers and brought swifter justice." This statement is true, in spite of the collection of cases in the Fatawa, in the sense that cases referred to in the Hidayah or in the Fatawa could not be authoritative in the same way as modern rulings. They were not cited in the manner done now. No mention of the Court was made nor of the date of the decision. It was perhaps this fact which led Sir William Macnaghten to compile his 'Precedents' with dates and other necessary details in 1829.

Representation through Lawyers

(Fiqh, Kitabul Vakalat. Fatawa, vol. III. Kitabul Vakalat). (MS. Add. 22714 f. 8). Vakils.

Their duties are mentioned in the two Muslim Indian Codes, Fiqh-e-Firoz Shahi and Fatawa-e-Alamgiri. They were known as Vakils, a term which still applies to them. Mawardi speaks of the profession and considers expert knowledge of the law necessary both for the practice of Law and for the acting as Qazi (J. R. A. S. 1910, p. 764). Moreland thinks[1] that the profession did not exist but contemporary authorities have referred to Vakils.[2] Ibn Batuta who was himself a Judge in the time of Muhammad Tughlaq (1315-1351) speaks of them (p. 194, Travels. Lee). Badaoni refers to Rae Arzani, a Hindu Vakil of Khan Zaman (p. 97, vol. II and p. 76, vol. II).

[1] India at the death of Akbar, p. 35.

[2] See (1) MS. Kalematut Tayyebat K. C. C. "Lawyers who were employed by litigants." (2) Br. Mus. MS. Addl. 26,239 (Ruqaat) f. 20. "Hawala-e-vakil bayad kard een mard azan jamaat nest ki hameshah ba yak taur saluk dashta bashand."

Sir Thomas Roe refers to his 'Solicitor' who perused his plaint (Roe's Embassy. Foster, p. 260). The petition of the East India Company was presented by Lawyers on the original side of the Emperor's Court.[1] The following cases were argued by Lawyers.

1. Amin Khan vs. Manucci, Theft Case, Storia II, p. 198.
2. East India Company vs. State, Civil Case, Ram Chander acted as Vakil, p. 134, Islamic Culture 1928.
3. State vs. Mirza Beg Kotwal, Murder, Qawam Uddin argued the Case, pp. 257-258, Khafi Khan II.
4. Haji Zahid and Pirji vs. State, Civil Suit, Muhammad Mohsin acted as Vakil, pp. 250-251, Khafi Khan II.
5. Mst. Feeta vs. Miran, Civil Suit, p. 1, Baqiat.
6. Azmatullah vs. Ghulam Muhammad, p. 5, Baqiat.
7. Khwajah Ahmad vs. Abi Muhammad, p.12, Baqiat.
8. Nusrat Ali vs. Qaim Ali, p. 21, Baqiat.
9. Ata Husain vs. Ashiq Husan, p. 34, Baqiat.

A high standard was expected of Vakils—"The practice of the Law" said Omar, the second Caliph of Islam, "was to be in good faith and pursued in sincerity as a calling."

Vakils had a right of audience in Courts and were attached to the Staff of every King and his sons.[2]

[1] Compare reference in Stewart, p. 541.
[2] p. 874, Alamgir Namah.

One Vakil was given the title of "Vakalat Khan" in the time of Bahadur Shah (1707-1712) (vide Bahadur Shah Namah MS. K. C. C.) for his successful advocacy.

(*Vakil-e-Sarkar*) *MS.* 315 *I. O. L.*

A client could withdraw[1] the powers of his Vakil.

During the reigns of Shahjahan and Aurangzeb, lawyers were appointed to defend civil suits against the State and to assist poor litigants with free legal advice. They were, as I have mentioned, in the previous chapter, known as Vakil-e-Sharai (Khafi Khan, II, p. 249). The Vakils had to file their 'powers of attorney' (Vakalat Namah) in all cases (see Br. Mus. Or. 2011) and even today the form in which the power is filed in Court is more or less the same.

Remuneration

Remuneration was paid by the State to the Vakil-e-Sharai at the rate of Re. one a day (Mirat Supp. p. 149) but it is not clear what fees were charged by other Vakils from their clients. The order of Aurangzeb directing the State Vakils to give free advice to paupers suggests that the practice of accepting 'Mahentanah' was in vogue. No receipts of payments have come to my notice, and the decrees in Baqiat do not mention the fees of the Vakils.

Bar Associations

There were no Bar Associations as the medieval

[1] See Firoz Shahi 'In surat Umar tawanad ke Zaid ra az vakalat ma 'zul kunad' f. 229.

Government was not based on modern democratic ideas, and there was no demand for such public organisations.

Elevation to Bench

As recorded elsewhere, Vakils could be appointed Qazis in the districts where they were practising. A perusal of judgments in Baqiat shows that Qazi Qaim Ali was a local lawyer and officiated as Qazi for some time (p. 22). After he left the Bench he again appeared as a lawyer in Dunia Murai vs. Mir Shahamat (Ali Baqiat, p. 25) for the Defendant.

Vakil in other Departments

It should, however, be borne in mind that the word 'Vakil' was also a general term applied in those days to Agents (I. O. L. MS. 370) Shahjahan's 'diplomatic' representative at the Court of Aurangzeb was referred to as 'Vakil-e-An Hazrat', 'Waqea'at-e-Alamgir MS. 1640 (Br. Mus. f. 39). At another place Sujan Rae in his Khulasat ut Tawarikh[1] has used the word Vakil us Saltanat or Vakil-e-Mutalaq[2] for the Prime Minister.

Pauper Suits

There is no record of any indulgence being granted to pauper litigants, before the time of Aurangzeb. In his reign the Vakils Sharai were required to give advice free to the needy and the miserable and according to Sarkar the Court fees, if any,

[1] pp. 136, 292.
[2] Compare MS. 11633 f. 31 Br. Mus.

were paid by the State.[1] As regards Court fees, this matter is discussed below.

Suits against State

Suits against the State are encouraged by the Shara' in order to keep the ruler within limits. Sultan Firoz Tughlaq in Futuhat-e-Firoz Shahi speaks of claims against the State which were to be filed in Law Courts. Sher Shah's proclamation declared that the State was not above Law and that no partiality was to be shown to it in the dispensation of Justice (Elliot IV, p. 410).

In suits against the State, there was no distinction in the method of approaching a Court. The Qazis gave judgment in the ordinary course of business[2]. (Khafi Khan II, p. 249).

In the following cases decrees were passed against the State:—

1. Haji Zahid and Pirji vs. State. (Khafi Khan II, p. 251.)
2. Sher Muhammad vs. State. (Collections).
3. The State paid compensation due to a wrong order passed by Khan-e-Jahan as Governor (Waqae, p. 72).

The claim of the East India Company for compensation against the State for loss of property in the port of Surat was referred for regular trial to a Law Court by Aurangzeb (Capt. Hamilton I, pp. 227-232).

[1] Compare Sarkar. Anecdotes, p. 178.
[2] Compare Ameer Ali, Islamic Culture, 1927, p. 355.

Inquests

According to Zia Barni, if a traveller died by chance, a public enquiry was held into his death in the presence of the Qazi by a Kotwal or the Faujdar in the capacity of a Magistrate and the Qazi had to sign a declaration or put his seal to it[1] that the death was not due to foul play, but to natural causes. In case of suspected foul play the Police were ordered to continue the investigation.[2]

Trial by Ordeal

Trial by Ordeal was prohibited under Muslim Law.

It was a Hindu institution as noticed in Chapter I. Neither the Sultans nor the Mughal Rulers favoured it, although they did not interfere with its use in the non-Muslim States under their protection. Captain Hamilton who visited India in the reign of Aurangzeb (1658-1707) has recorded a trial in South India where the accused person was required to put his hand in a pan of boiling oil. (Vol. I, p. 315).

The earliest attempt to introduce such form of trial was made by Sultan Jalal Uddin Khilji (1290-1296) when Sidi Maula was prosecuted for sedition and the Court declined to convict him on the statement of one prosecution witness. Sultan Jalal Uddin then wanted Sidi Maula to be thrown into a fire in order to test his truthfulness, but the Sadre Jahan

[1] Vide Tarikh e Mubarak Shahi, p. 18, Elliot IV.

[2] Compare Ameer Ali's remarks in Islamic Culture, 1927, p. 348.

and the other Judges refused to allow it.[1]

Akbar, in 1560, again tried to encourage the system of trial by ordeal probably in order to please the Rajputs, but the lawyers opposed the project and it was abandoned.[2]

Law of Limitation

The Shara' fixes no limitation for anything. The author of Ikhtyar (MS. Add. 22714) mentions at several places that in criminal cases evidence was to be produced without delay (f. 11).

For summoning the evidence one month from the date of the presentation of the suit was recommended in Hidayah.[3] In the old Turkish Empire definite periods were prescribed within which evidence, oral and documentary, had to be produced. This was not prohibited by any express rule of the Shara' and, therefore, the Ulema agreed to it.

There are no records to show if any regulations were issued in Medieval India limiting the time within which suits or appeals were to be filed. The Dasturul Amal MS. 2907 (I. O. L.) prepared in 1793 A. D. by the East India Company for its Courts in South India fixed a limitation period, but it did not show whether the regulation was borrowed from the system previously in force.

Arbitration. (*Tahkim*)

If two parties agreed to refer their dispute to arbitration the Umpire or the Referee (Salis) could

[1] Barni, p. 211; Badaoni I, p. 171.
[2] Compare Smith (Akbar), p. 345.
[3] Vide Br. Mus. Add. 22714 f. 11.

give a valid decree. The arbitrator was chosen by the parties out of Court, and his decision was binding on them. A Qazi could review the award of an arbitrator on a point of Law. (Kitabul Ikhtyar, p. 59) (Hidayah, pp. 338, 343).

Misdemeanours, i.e. offences of man vs. man were not subject to arbitration which was allowed mostly in cases of Debt, Trade, Accounts, Commerce and petty quarrels. (Hidayah, p. 329).

The Civil cases filed by the people in the local Panchayets were often decided by arbitration. In parts of India today, a readiness to accept arbitration by a local man is still noticeable among the peasantry.

Compounding Offences

In private complaints, which were not prosecuted by the State, composition was generally allowed (p. 59, Kitabul Ikhtyar). In other cases the permission of the court was necessary. The present Criminal Procedure Code in India has laid down that in certain petty criminal cases (S. 345 (1)) the parties can compromise without the sanction of the court while in a few more serious offences (S. 345 (2)) either they can not do so or can do so only with the permission of the court, but the Qazis went so far as to allow a murderer to expiate his offence by payment of 'Qisas' (blood fine) vide State vs. Nurjahan, Tuzuk (Shibli) p. 30 and Ata Husain vs. Ashiq Husain and others (1853) (Baqiat, p. 34), an obvious impossibility today.

According to the Fiqh-e-Firoz Shahi (f. 284) the parties to a criminal case could compromise only if the accused was in the custody of the Court lest a

compromise should be exacted from him under pressure—As sulh jaiz fil habsel Qazi wa la fil habsel Wali. For the same reason no weight was given to confessions made to the police.[1]

Compromise

(Kitabus Sulha, Fiqh-e-Firoz Shahi).

The Shara' on the whole preferred[2] compromise. In Civil cases no obstacle was put in the way of compromise by agreement of parties (ba iqrar-e-fareeqaen. Baqiat, p. 17) and the decree was ordered to be prepared in terms of such compromise vide Gada Husain vs. Fateh Alam and others, (Baqiat, p. 20). In British India even today, many Honorary and other Magistrates of the "old type" actually encourage the parties by exhortation to settle a criminal prosecution by compromise.[3]

Court fee and Stamps (*Rusum*)

It was the practice of Courts in the pre-Muslim period to charge fees for the adjudication of disputes proportionate to the value of the subject matter. According to Dr. Mukerjea the fees levied were 'Chauth, Dassatra and Pachatra.' The Muslim codes that were followed in India are silent on the point. The chapter Kitab-e-Adabul Qazi in the Fatawa-e-

[1] Vide Aurangzeb's order mentioned in the Chapter on Evidence. This tradition of the Law Courts in Muslim India is still retained in S. 24 of the present Indian Evidence Act.

[2] Compare Sahih Muslim Kitabul Aqziah: Al Qaza fil Islam, p. 20.

[3] The author has actually seen posted on the Court Notice Board a verse from some well-known philosopher praising compromise of disputes.

Alamgiri makes it discretionary for the Qazi to charge the price of paper and ink from the Plaintiff. The author of Tabaqat e Nasiri who was himself a Chief Justice under Sultan Nasir Uddin Mahmud writes that the Dadbak attached to his Court had the duty of levying fees ranging between 10 and 15% of the subject matter but this was abolished by Malik Saif Uddin who was appointed Dadbak during his term of office[1] as such fees were considered illegal.[2]

In his Enquiry into the Mughal System, (Col. Dow,[1] Vol. III, p. LVII) says that "legal fees were one-fourth of the matter in dispute, equally levied upon the Plaintiff and the Defendant", and that this regulation "was intended to prevent vexatious Law Suits as well as to bring to the people speedy justice."

Stewart in his History of Bengal says that fees in the Courts of Judicature were ascertained with accuracy and precision.

The judgments in Baqiat us Salehat and those in the Diwani office at Hyderabad bear no stamps and no mention of Court fee is made. Like Bentham,[3] Muhammadan Jurists have always considered the imposition of a court fee to be against public policy.

It, however, appears to me that in Medieval times litigation was the exception and not the rule,[4] and that the Muslim Rulers in the beginning did not favour the idea of charging fees from litigants. Later

[1] Tabaqat e Nasiri Br. Mus. MS. Or. 1886; (Raverty), p. 788.
[2] Tabaqat e Nasiri (Raverty), p. 790.
[3] "Justice should be administered gratis"—Bentham.
[4] Vide observations of Bhara Mal in Lubbut Tawarikh-e-Hind. Bernier, p. 236. Elliot VII, p. 172.

on as a measure to restrict the increase of litigation a scale of payments was fixed for the expenses of execution. Aurangzeb's Order mentioned in I. O. L. MS. 370 (Dastur) seems to prohibit the levying of any fee from a Plaintiff (Dar-tashkhees-e-Qazaya az muddai). The East India Company in 1774 "on the advice of Muslim jurists", considered the question of abolishing certain dues which the Plaintiffs had to pay on their plaints, but decided to retain them as "litigation was increasing".[1]

Costs

The Courts had discretionary power to award costs in civil and criminal cases. In Ali Raza and others vs. Muhammad Wali and others, Baqiat, p. 18, the Court found the claim to be false (Mahez kizb) and yet awarded no costs to the defendant.

Execution of Decrees

Civil Cases

According to Hidayah the execution of decrees was to be left to the Courts themselves[2] (p. 342). The rule was that "the Qazi ought to enforce the decree of his own or of another Court once it is passed. He cannot refuse execution even if it is repugnant to his own ideas". Execution cases were to be expedited, any unnecessary delay "subjected the Judge to the risk of compensating the aggrieved party."[3] A decree passed against the State was in no

[1] I. O. L. Records. 7th Report of the East India Company, p. 329, (Committee of Secrecy, 1772-1773).
[2] Vide Elliot V, p. 543. Mirat Supp. p 45.
[3] Compare Dow III, p. 334.

way different in this respect from those granted against individuals, vide Haji Zahid and Pirji vs. State, (Khafi Khan II, pp. 250-251.)

A decree could be transferred to a subordinate Court or officer for execution, and an executing officer could recommend amendment of the decree to the Court passing it (Br. Mus. MS. Add. 16,859 f. 42a and 42b). Deposit of money in Court was allowed (Baqiat, p. 9). Imprisonment in default of payment was permissible (Hidayah, p. 338) and was given (Storia III, p. 263) but the debtor could be released on producing sureties (Storia III, p. 262). Compounding was allowed with creditors by the debtors.[1]

The Civil Courts in some cases sent their decrees for execution to the Amin or the Revenue officer of the Parganah where the judgment debtor resided—Mohi Uddin vs. Qazi Pir Ali, Baqiat, p. 7. The Amin had the assistance of a number of Mirdahas (process servers)—a term still applied to them in the United Provinces. The position of Amin in other matters is not the same today, but in Execution proceedings he is still the Chief Official who executes the Court's order.

In cases where resistance was feared, the Courts could call upon the Kotwals to their aid or even the Faujdar and his subordinates (Ain II (Jarrett) p. 42).

Moreland thinks[2] that the execution processes were "drastic". The debtor's goods were sometimes sold, including "his house property and among Mus-

[1] Compare Ishwari Prasad. Medieval India, p. 160.
[2] India at the death of Akbar, p. 37.

lims even the family of the debtor". The Shara' permits the enslavement of the debtor himself and in cases of Qisas it seems to have been actually ordered.[1] The present Law of Execution of civil decrees (S. 60, C. P. C.) in British India leaves the judgment debtor a reasonable amount of his property for his sustenance and exempts from sale the house and implements of an agriculturist.

Criminal Cases

A convict sentenced to imprisonment was handed over to the custody of the 'Kotwal'[2] who was responsible for seeing that the sentence was carried out in the Jail of which he was in charge.[2] Fines[3] imposed in Ta'zir[4] cases were also realised by the Police under the command of the Kotwal or the Shiqahdar.

In the matter of the execution of death sentences, "Executioners" or "Jallads" were appointed by the State during the Sultanate regime to behead condemned prisoners or to flay them alive as was ordered sometimes in the time of Muhammad Tughlaq.

Under the Mughals death sentences had to be confirmed by the Emperor or the Governor, and in practice during the reigns of Akbar and Jahangir many of the executions were carried out in the presence of the Emperor himself. Shahjahan caused a condemned man to be bitten by a snake. But in Aurangzeb's time capital sentences were in most

[1] Briggs I, p. 253.

[2] Compare Ain II Jarrett, p. 42; Mirat I, p. 283. Afif, p. 494.

[3] Mirat I, pp. 282, 283, 293.

[4] See Chapter VII. In Ta'zir cases no sentence was fixed by the Shara'.

cases commuted to imprisonment[1] and the Kotwals were ordered to see that no criminal deserving of death was impaled.[2] Terry says that executions were carried out after sunset[3] (Tuzuk, p. 24) and Governors alone were authorised to sign the death warrant.[4]

Commutation and Enhancement of Sentence

As noticed above the King and the Governors within their respective provinces had power to commute or remit sentences, vide Storia III, p. 264 and Manrique II, p. 115. A woman in Gujrat was accused of adultery and was sentenced to be stoned to death. The Governor remitted her sentence.[5]

In another case a noble woman convicted of adultery was stoned for three days but survived and her sentence was remitted.[6]

As regards enhancement, it appears from decided cases that the Ruler alone possessed power to enhance sentence. In State vs. Prince of Gujrat, Mirat I, 49, the King enhanced the sentence without being moved to do so.

There is no case extant of a Governor enhancing a sentence although within the Province he represented the King. In State vs. Daryai Khatun, (Storia I, p. 201), the accused woman was prosecuted for adultery and for having sold her 19 paramours into slavery and the Governor probably, considering

[1] Compare Khafi Khan II, p. 550; Dow III, p. 397.
[2] Compare Mirat I, pp. 278-280; Dow III, pp. LVII and 397.
[3] Compare C. H. of India, IV, p. 182.
[4] Compare Ain II, p. 37; Terry, pp. 354-356.
[5] Mirat-e-Sikandari. Ref. in Briggs II, p. 352.
[6] Kerr's Collection of Voyages and Travels, IX, p. 278.

the sentence of 'sangsari' (stoning), which the Qazi might have ordinarily proposed, to be inadequate submitted the case to the King who ordered her to be torn to pieces by dogs. In a similar case, State vs. Laudhan (Elliot IV, p. 464), the Governor forwarded the papers to the Sultan Sikander Lodi.

Appeals, Murafeah : Fiqh

Appeals could be preferred both on facts and on Law and there is plenty of evidence that they were preferred.[1] Sir Jadunath Sarkar's observation[2] that there was "no provincial Court of Appeal" is probably based on an unsupported statement in the Encyclopædia of Islam, II, p. 606 that no appeal could be filed against a Qazi's judgment. Kennedy in his "History of the Great Moghals" says[3] "there was always a final appeal to the Law officers at headquarters" (of the Province or Districts) "If parties were not satisfied with those decisions (District Courts or Chief Provincial Qazi) they appealed to the Chief Qazi (Qazi-ul-Quzat) on matters of Law.[4]

The appellate Courts were known as Adalatul Aliah (Br. Mus. MS. Add. 26,239 f. 4), but there does not seem to be any specific term regularly used for Appeal. Sometimes Lawyers have written Tajwiz sani (MS. 2907 I. O. L.) or Murafeah (Fiqh-e-Firoz Shahi)

[1] Compare (1) Moreland. India at the death of Akbar, p. 36. "We read of cases where such appeals were successfully made." (2) Al Qaza fil Islam, p. 24. (3) Dow III, pp. xxxiii, lvi, xxx.

[2] (1935) p. 110.

[3] Vol. I, p. 308.

[4] Vol. II, p. 39. Quotation from Rae Bhara Mal, a contemporary writer.

Mirat I, p. 283 and Aurangzeb in one of his judgments merely says "Istighasah" (Br. Mus. MS. Add. 26,239 f. 4). There is no word for appeal in modern Hindustani, except the word Appeal itself borrowed from the English.

The system of obtaining redress from a higher Court, however, existed[1] and, according to Sir Henry Elliot[2], if any individual dissatisfied with the decision (of the District Qazis) passed in his case appealed to the Governor or the Qazi of the Subah (Province), the matter was reviewed and judgment awarded with great care and discrimination, "lest it should be mentioned in the presence of the King that justice had not been done."

In the following cases appeals were heard and judgment given against the trial court:—

1. Sikander Lodi's Court.	Trial Court's Judgment reversed.	p. 102, Bev. I.
2. Governor of Agra's Court.	Trial Court's Judgment reversed.	Storia III, p. 264.
3. Aurangzeb's Court.	Trial Court's Judgment reversed.	MS. Kalematut Tayyebat K. C. C.
4. Jahangir's Court.	Trial Court's Judgment reversed.	Storia I, pp. 174, 175.
5. Shahjahan's Court.	Trial Court's Judgment reversed.	Storia I, pp. 199-200.
6. Aurangzeb's Court.	Trial Court's Judgment reversed. Case remanded.	Waqae Alamgir, p. 72.

[1] Dow III, p. LVI.
[2] Vol. VII, pp. 172-173.

The King's Bench was the final Court of Appeal. In the Province the Governor's Bench was the final Court for the Province. It heard appeals from the Provincial Qazis' Court and from the decision of the District Qazis. Appeals from the Governor's Bench lay to the Emperor's Bench or to the Chief Justice's Court by way of petition, vide Ausaf Ali's case Baqiat, p. 28 and also Dow III, p. XXXIII.

Powers of Appellate Court

The Appellate Court could prosecute witnesses for perjury.[1] Jahangir, finding the story of the complainant in Muslim woman vs. Rajput, Storia I, pp. 174-175 to be false, ordered her prosecution. Such power was discretionary as it is today. A Court in appeal could grant bail,[2] take additional evidence,[3] try a case afresh,[4] order a remand[5] or could decide any issue raised during the trial in the lower Court (Storia III, p. 264). It could either confirm or modify the order of trial court or reverse it (Fiqh; Fatawa; Storia I, pp. 204, 174-175).

A Court of Appeal could make a reference on any point of Law to the Chief Justice's (Qaziul Quzat's) Bench.[6]

[1] Compare Armenian's Case. Storia III, p. 263, also Beveridge I, p. 102.

[2] MS. (Kalimatut Tayyebat) K. C. C. p.

[3] Storia I, pp. 199-200. Beveridge I, p. 102.

[4] Ibid.

[5] Waqae, p. 78; Br. Mus. 26, 239 Add. Appeal of Horse Dealers.

[6] Compare Dow III, p. xxx 4.

Second Appeal

Muslim jurists have written about second appeal, Murafa e-saniah (Br. Mus. MS. 22714 Add.) (MS. 2907 I. O. L.) and it seems[1] that such appeals were admitted on a point of Law, vide Baqiat, p. 28; Elliot VII, pp. 172-3; Kennedy II, p. 39 and Lubbut Tawarikh-e-Hind by Rae Bhara Mal. For example, an order passed by a District Qazi could be challenged in second appeal either in the Court of the Subahdar (Governor) or the Qaziul Quzat (Chief Justice).

Rules

No definite regulations existed about the procedure for filing appeals by aggrieved persons, and the Appellate Courts seem to have accepted jurisdiction in every dispute that was taken to them. Perhaps the only check on the number of original cases and appeals was the rigour with which complainants in false cases were prosecuted[2] and the risk which they ran of being sentenced to death, vide Muslim woman vs. Rajput. (Storia I, pp. 174-175.) Aurangzeb in 1681 is said to have issued certain regulations barring civil appeals below a particular sum.[3] What they were exactly is not clear.

There was no form prescribed for the memorandum of Appeal, which usually was contained in a petition addressed to a higher Court[4] filed by the party aggrieved or the 'next friend'. In Aurangzeb's

[1] Compare Dow III, p. 334.
[2] Compare Dow III, p. 334.
[3] Compare Dow III, p. xxvii.
[4] Compare Dow III, p. xxxiii.

court once an appeal was filed by two brothers of a convicted person. Sarkar I, p. 174.

The Appeal abated if the appellant died, vide Kotwal Mirza Beg vs. State, Khafi Khan II, p. 257.

Copies of the decisions of Appellate Courts were sent to subordinate Courts, vide Aurangzeb's order in horse dealer's appeal (Waqae, p. 72 and MS. 370 I. O. L.). There is no record extant of the Sultanate period. Presumably the practice must have existed then as well.

Revision

Courts established at a higher unit of administration could call for the record of a case from the file of a Court of inferior grade for inspection and pass proper orders suo motu or on application. Jahangir, of his own accord, interfered in a case where a Rajput, convicted of rape, was being carried by the side of his palace walls to a place of execution (Storia I, p. 175).

Aurangzeb's restrictions on right of appeal in certain civil cases in which the order of the Trial Court became final, as referred to above, may have encouraged the defeated party to challenge the decision of the Trial Court on legal grounds as occurred in Ausaf Ali's case, Baqiat, p. 28, when the matter was referred to a "Bench."

Reference (Rujoo')[1] could always be made by Courts to their Courts of Appeal and they could accept it or reject it (An havalah batil kunad. Fiqh-

[1] Compare MS. 2907 I. O. L.

e-Firoz Shahi). According to another Muslim jurist a Qazi could ask the opinion of learned men in a case (Al qaza fil Islam, p. 9) and the advantage of this rule seems to have been taken by several Courts[1] in Muslim India.

Review of judgment: (Tajwiz Sani)

In theory a Qazi had unlimited powers to review his order. If it was against the Sacred Law, it was invalid in any case (Fatawa). According to Hidayah (p. 342) a judgment could be reviewed only when there was a patent illegality and it was against the Quran.

A Qazi could review his predecessor's judgment.

Both civil and criminal judgments could be reviewed and the modern distinction[2] of curtailing a Criminal Court's power in this respect did not exist.

Arrest, Custody and Bail: (Kitabul Kifalat. Fiqh-e-Firoz Shahi; Fatawa).

Arrest (Hirasat) of an accused in "cognisable" cases which were termed Hadd and Ta'zir, was necessary on the production of prima facie evidence (MS. Add. 22714) and bail or security (Zamanat—a word still in use) was discouraged.[3] In theory, since the whole Muslim community was responsible for the administration of justice, every Muslim could arrest a person who committed a "cognisable" crime,

[1] State vs. Laudhan, Elliot IV, p. 464; State vs. Sidi Maula, Barni, p. 211; State vs. Qazi Hammad, Mirat Supp. 45.

[2] See Ss. 367-369. Cr. P. C.

[3] Br. Mus. Add. 22714 f. 6

in his sight. The arrest of Sultan Raziah's murderer by a Hindu indicates that other subjects of the State were in the same position.

All Criminal Courts had power to order arrest within their jurisdiction, of people committing "cognisable" offences (Waqae, p. 40).

The Kotwal, who was generally in charge of arrests, had to report cases of arrest to the Qazi and to obtain his order whether the arrested person was to be prosecuted or released (Mirat I, p. 283).

The Faujdar had power to arrest persons but he had to submit a report to the Governor for orders as to further proceedings (Mirat I, p. 282).

Bail

The prisoner could, in every case, ask for bail. In a theft case against an accused a Hindu offered himself as surety and it was accepted (Storia II, p. 199). In another case bail was refused by the Qazi but was allowed in Appeal by the Emperor (MS. Kalemat Tayyebat K. C. C.). In the following cases bail was also granted:—

1. Murder Case.	State vs. Deshmukh.	(Collections)
2. Theft Case.	State vs. townmen.	(Collections)
3. Assault Case.	State vs. Baqabillah.	(Tazkiratul Ulema, p. 53).

It was refused in State vs. Lakshman Banjara (Collections) and State vs. Madari Faqir (Collections). Aurangzeb laid emphasis on prima facie evidence before arrest (Mirat I, p. 278) and warned Courts against keeping a man under trial for a term longer

than was strictly necessary. A Shiqahdar (Police Officer) was once convicted of the offence of wrongful confinement and sentenced to a fine of two hundred rupees (Manrique I, p. 425). The Qazi of the place, like the present Sessions Judge, was empowered to hear petitions for release from prisoners confined "upon any legal claim" (Mirat I, pp. 278-282).

Appeal could be filed to the Qazi-e-Subah, if bail was refused by an inferior Qazi (MS. E. 380 I. O. L.) or to the Emperor (MS. 370 I. O. L.). In "Cognisable" cases bail as a rule was not allowed[1] (la yujavvizul kifalat fil Qisas, Hidayah).

Security for presence in Court

A security offered for presence in Court was accepted if reliable (mo'tabar) vide State vs. Genoese. Storia I, p. 265; State vs. Manucci, Storia II, p. 199.

Civil Imprisonment

Arrest for non-payment of debts depended mostly on the exercise of private rights. It was not obligatory[2] for the Qazi to send the debtor to prison for non-payment of debt, unless he defaulted in making payment within the time fixed by the Court or in producing satisfactory surety, vide Storia III, p. 263.

By the strict letter of the Law a debtor could be sold into slavery.

[1] MS. Add. 22714 f. 6.
[2] Compare Hidayah, p. 338.

Investigation and search

Police officers in general were required to investigate crimes (State vs. Khwajah Ahmad Afif, p. 506). Enquiry into offences relating to religion and morality were conducted by Mohtasibs either by themselves or in accordance with instructions issued by Courts or the Sadr.

The Police had power to search the house or person of a suspect in the same way as a Police officer proceeds US. 96-103 of the Criminal Procedure Code in British India. A Qazi could himself search the house of an accused vide Storia III, p. 123. The person who obstructed a house search had to prove justification to avoid punishment. If he succeeded in proving his bona fide resistance the Police officer was liable for the wrong done to him vide Khafi Khan II, p. 257.

A Police Officer could enter a house by force for purposes of search or arrest provided he had reasonable grounds for suspicion.[1] (Manrique II, pp. 110, 137).

[1] Compare Al Qaza fil Islam; pp. 27-28.

CHAPTER VI

RULES OF EVIDENCE

(Kitab ush Shahadat: Fiqh-e-Firoz Shahi).

Principles of Evidence

The Muslim Law of evidence is given in Fiqh-e-Firoz Shahi and Fatawa-e-Alamgiri, the codes that regulated procedure in Indian Courts. Baillie has, in his Digest (pp. 759-762) translated portions of the Fatawa-e-Alamgiri and I give below the main principles as interpreted by Muslim Judges in medieval India.

The Hanafi Law classifies evidence in the following order of merit:—

1. Tawatur—full corroboration.
2. Ehad—testimony of a single individual.
3. Iqrar—admission, including confession.

The Muslim jurists have unanimously preferred Tawatur to any other kind of evidence. The insistence on corroboration is probably based on an injunction in the Quran "Ya ayyuhallazin amanu koonu qawwameen shuhdae lil qist". (O Believers shirk not the duty of giving evidence that is true for the sake of justice. Ch. 4. 135).

As pointed out by the author of Hujjatul Baligh it is incumbent on a claimant to bring evidence in his support.[1]

[1] Compare Al Qaza fil Islam, p. 31.

Competency of Witnesses

According to Law all those who believe in God and respect the Book of Revelation, namely the Quran, could be competent witnesses—"Udul".[1] A Qazi was, in theory, expected to keep himself informed about truthful persons within his jurisdiction.

The 'believers' could not be rejected as untruthful unless proved to be so. The phrase "Mussulman ho kar jhut bolte ho" (Do you, the Mussulman that you are, speak falsely), so commonly used in India finds its origin in the Quran which insists upon Muslims speaking the truth in every case[2] as 'liars are doomed'—Laanat Ullah alal kazebin. It seems to follow that in a Muslim Court evidence of a Muslim could be preferred[3] to that of a non-Muslim who "does not respect the Book of Revelation."[4] But in State vs. Islam Khan, a Treason case, vide Tabaqat e Akbari and Elliot IV. pp. 26-27, the rule was not observed and the solitary statement of a non-Muslim was accepted as sufficient for the conviction of the Muslim accused. The evidence of 'non-believers' again was relied upon by the Judges against 'believers' in the case of wounding the religious feelings of Hindus mentioned in Manrique II, pp. 112-115.[5]

[1] Compare J. R. A. S. 1910, p. 794.

[2] Compare (1) Hidayah, p. 353; (2) Baillie (L).

[3] Hidayah, p. 362. Baillie, p. (L)
The testimony of a non-Muslim was not altogether to be rejected.

[4] Compare Hidayah, p. 360.

[5] The admission of one of the accused could not under the law be the sole basis of conviction, (see p. 218) but it was in this case corroborated by one non-Muslim witness.

In Sultan Raziah's murder case referred to in Elliot III, p. 593 an extra-judicial confession made by the Muslim accused in the hearing of a Hindu shopkeeper was accepted as admissible.

Women could be competent witnesses but two women at least were required to corroborate a fact for which the testimony of one man was sufficient.[1]

In cases where women possessed special knowledge, the testimony of one woman was relevant.[2] The father, wife, grandfather and son of a man were not competent witnesses in his favour (Fatawa-e-Alamgiri, Vol. III. Kitab ush Shahadat; Hidayah p. 360), but in cases where relationship was to be proved their statements were accepted (vide Breach of promise case of Shahjahan's Court, p. 21, Rahbar-e-Daccan, 1341 F.).

Opinions of experts were admissible (Al-Qaza fil Islam, pp. 54-55). Convicted persons, gamblers, habitual liars or those previously discredited as witnesses were assumed to be unreliable.[3]

Direct Evidence

Direct evidence was preferable to hearsay[4] which, however, was not altogether excluded. It was admitted somewhat freely in cases before the Faujdar where the accused persons' previous records and their likelihood to disturb the peace were in question. The Court could take judicial notice of

[1] Compare Baillie, p. (L).
[2] Compare Hidayah, p. 354.
[3] Al Qaza fil Islam, pp. 46-52.
[4] Baillie, p. XLIX.

facts too well known to require proof. For a conviction of theft the evidence had to be specially convincing.[1] This was probably due to the fact that the punishment for theft was cutting off the offender's hand.

Circumstantial Evidence

'Qarinah' or circumstantial evidence could be accepted, if it was of a conclusive (Qate) nature.[2] In State vs. Madari Faqir (Collections) the accused was acquitted of the offence of theft as his merely running out of the house at night when the inmates were away, was not considered sufficient to prove his guilt. Indirect evidence could be tendered of offences like adultery, (MS. Add. 22714 f. 63) as was held in State vs. Muslim Trade Commissioner referred to in Monserrate, p. 210. In a case mentioned in Storia I, p. 203, a Hindu scribe sued a Mughal soldier for enticing away his wife. The wife denied that the complainant was her husband, but the Court (Shahjahan) not satisfied with her statement, suddenly ordered her to fill the Court inkpot with ink. The woman did the work most dexterously and the Court concluded that she was the wife of the Hindu scribe and granted him a decree and the Mughal soldier was expelled from service. In another civil suit by four merchants of Delhi Shahjahan in giving his judgment in appeal relied mainly on circumstantial

[1] Compare Marshall's remarks in his Diary, p. 391.

[2] Compare Al Qaza fil Islam, p. 75; Judgment of Sikander, Beveridge I, p. 102.

evidence to arrive at the conclusion.[1]

Oral and Documentary Evidence

Documents duly executed and books kept in the ordinary course of business were accepted in evidence.[2] But oral evidence was preferred[3] to documentary. If deeds alone were produced the Courts were to insist upon examining the party which produced them. In the case mentioned in Storia III, p. 263, oral evidence was accepted as a good proof of a debt and documents, if any, were not called for. Nowadays the Indian Civil Judge adopts the precisely contrary process of regarding parole evidence with distrust, unless it is supported by documentary evidence.

Legally, however, documentary evidence was perfectly relevant (Fatawa Vol. III, pp. 534-535) and there is an instance of a written affidavit being accepted in Manucci vs. Portuguese, Storia III, p. 128. A statement made in a criminal case was admitted in a civil suit against the person who made it, vide Storia I, p. 200.

Admissions

(Iqrar. Fatawa Vol. IV. Kitabul Iqrar).

Decrees could be given on admission (Iqrar) provided it was unconditional. Dr. Vesey-Fitzge-

[1] Storia I, p. 204. Also compare State vs. Khwajah Ahmad Afif, p. 507.

[2] Compare Fatawa III, p. 534. Compare Ss. 32, 34, 35 Indian Evidence Act.

[3] Compare Al Qaza fil Islam, p. 80. Such was the practice of the Early Caliphs.

rald, author of Muhammadan Law, suggests that acknowledgment fills a large place in the (Muslim) Law of evidence and even makes in-roads on the substantive law (p. 28). He has based his statement on the opinion expressed by the Turkish Shaikhul Islam. The importance of admission is undoubtedly great in cases of declarations about dower (mehr) paternity and was so generally in civil cases in India. In criminal cases a confession was admissible in evidence (State vs. Khwajah Ahmad. Afif, p. 508). In State vs. Mian Malik the accused made a confession and it was relied on[1] (Elliot IV, p. 454). In State vs. Moqarrab Khan (Tuzuk, p. 83) it was also accepted. In another case of Treason confessions made by two out of four accused and implicating both the makers and their co-accused were accepted by Jahangir (Tuzuk, p. 28) against the makers only. These two men were executed and the cases of the other two were remanded for further enquiry.

This shows that the confession of one co-accused was not conclusive against the other co-accused, though it might be admissible.[2]

It seems, however, that the courts were not bound to accept confessions, and, indeed, that they were enjoined to look for further evidence. A confession made under threat or inducement was inadmissible (MS. Add. 22714 f. 33). Aurangzeb in remanding[3] a complaint case said:

[1] Compare Kennedy I, p. 110.
[2] See State vs. Khwajah Ahmad Afif, p. 507.
[3] Waqae, p. 88 (I. O. L.)

"Qazi wa Amin tahqeeqat mudaqqaq o muta'sseb bayad kard ke bayak Iqrar o Inkar kar tamam na kunad".

(MS. Raqaem e Keram K. C. C.) (MS. Add. 26,239 Br. Mus. f. 16).

(The Qazi and the Amin should make thorough enquiries and not decide the case on a mere admission or denial).

The ruling apparently applies both to civil and criminal cases. In cases of theft and change of religion a confession alone was not to be acted upon (Kitabul Ikhtyar MS. Add. 22714 ff. 32, 33). This presumably was laid down judicially at some time or other. A confession made by a Vakil (Lawyer) on behalf of his client was not admissible on the ground of Istehsan, though it could be tendered (MS. Add. 22714 f. 8). If an accused confessed his guilt and then retracted and the case was proved, the sentence was to be less severe (Kitabul Ikhtyar Add. MS. 22714 ff. 32, 33, 112, 113). No other authority has been discovered to support this curious statement.

The value attached to admission (Iqrar) seems to survive in the tendency of assessors in an Indian Sessions Court to pronounce an accused person guilty, whenever a hint of a confession appears from the evidence or from gossip outside the Court, however, inadmissible legally such confession may be.

The tendency to rely implicitly on admissions was noticed in the Fatawa-e-Alamgiri[1] and was deprecated especially in cases of theft.

[1] Cal. Vol. IV. pp. 213-312. Luck. III, p. 410.

Estoppel and Res judicata

The principle of estoppel was recognised. A party could prove conduct by his adversary which precluded him from raising any particular claim or defence. In Azmatullah and M. Muqim vs. Ghulam Muhammad and others, Baqiat, p. 5 the Court held that the claim had already been decided by a competent court and that since the decision had not been appealed against no further suit on the same issues could be brought by the plaintiff.

Method of Recording Evidence

The party producing a witness examined him first (Izhar)[1] and then the other side could cross-examine him (Jirah). The statements of witnesses were reduced to writing (Muzhir. Baillie, p. 764) by the 'Katibs' of the Court. The presiding officer was at liberty to ask any question he pleased (Kitabul Ikhtyar MS. f. 65) and as laid down in Ain I (Text) p. 283 he was required himself to make thorough enquiries by examination and cross-examination of each witness separately (juda juda. Ain Text I, p. 283). The depositions were read over to the witnesses by another official Sahebul Majalis.[2]

It is suggested in Ikhtyar (MS. Add. 22714 f. 11) that in criminal cases witnesses must be produced within one month of the filing of the complaint. Long adjournments were not favoured.

[1] The word 'Izhar' is still used in Indian Courts. Compare Fatawa, Kitab Adabul Qazi.

[2] Fatawa. Baillie, p. 766.

The Court had to give its decision on the evidence which had been put before it and not wait indefinitely for further evidence, vide case mentioned in Storia III, p. 264.

Courts had to see that the identification of property and of the accused by witnesses, was exact and explicit. Where witnesses differed the accused was entitled to the benefit of the doubt (Hidayah Book XXI Ch. III and Kitabul Ikhtyar MS. Add. 22714 f. 8). In allowing an appeal against a conviction for rape Jahangir dwelt on the fact that the identification of the accused should not be ignored in proper cases (Storia I, p. 174).

Evidence on Commission

Evidence could be taken on commission if the Qazi of that place could certify that the evidence was taken in his presence (Hidayah, pp. 3404-31) (Fiqh-e-Firoz Shahi f. 210). If it was not taken in his presence, it was not admissible (Fiqh f. 225)[1]. In Bibi Zadi vs. Mir Wali, Baqiat, p. 16, the Qazi recording such evidence obtained the signatures of all the persons interested in the case at the bottom of the statement itself.

Number of witnesses

No number was fixed, but four witnesses were required generally in cases of adultery[2] because of the impossibility of securing genuine eye witnesses,

[1] Compare Ss. 503, 507, 508, Cr. P. C. in Br. India.
[2] Compare Hidayah, p. 353. (MS. Add. 22714 ff. 60, 61).

and three for a claim to be adjudged insolvent.[1] On an average two "Adil" or truthful witnesses were necessary to support a suit.[2] The matter seems to have been discretionary with the Courts, and the Quran has not prescribed any limit.[3] In State vs. 'Vizir' Elphinstone (1857), p. 356 the statement of one Hindu witness was relied upon for a conviction of Treason. In a case of attempt to murder referred to in Briggs IV, p. 517, the evidence of one witness alone was accepted as sufficient, while in State vs. Sidi Maula (referred to in Barni, p. 211, Badaoni I, p. 171) it was rejected.

Oath (*Saugānd*).

Oaths were administered to witnesses (Ain Vol. II, pp. 37, 41). The Muslims said 'by God'[4] (Baillie 748), the Hindus swore on the cow, and the Christians on the Bible.[5] Ovington, an English traveller, who attended several courts in Muslim India says, "In controversies and decisions of right oaths are administered and made use of here as well as in Christendom."[6]

In Nusrat Ali and others vs. Qaim Ali, Baqiat, p. 21, the plaintiffs refused to take an oath and their suit was dismissed.

[1] Al Qaza fil Islam, p. 60.

[2] Compare Abu Daud Sajistani. Kitabul Aqziah; Quran: "Shahidaen."

[3] Compare Al Qaza fil Islam, p. 61.

[4] Storia I, p. 107.

[5] Compare Storia III, p. 128. "To swear upon the Holy Evangelists".

[6] A Voyage to Surat 1689. p. 138.

In another case, Mohi Uddin vs. Anbart—Baqiat, p. 9 the parties were allowed to go to a mosque where the plaintiff was to take the oath. Anbart, defendant, was a Hindu, but he agreed to this procedure.

CHAPTER VII

TENDENCIES IN CRIMINAL ADMINISTRATION

Main principles

Mawardi defines[1] Criminal Law as compelling those who would do each other wrong, to "mutual justice and restraining litigants from repudiating claim by inspiring fear and awe in them." The author of Fathul Qadeer[2] further classifies offences as those which are against God or public rights (Huquq-ullah) and those that violate private rights (Huququl Ibad). The ruler owes a duty first towards God to purge this world from sin, and then to his subject who suffers in consequence of the act complained of, but whose suffering is of secondary importance compared with the injury done to God's authority. In Islam the State belongs to God, and, therefore, a violation of public rights is an offence against God, while infringement of a private right is an offence mainly against the individual concerned.

Three kinds of Punishment

Every violation of a public or a private right is punishable in three ways. The first is 'Hadd'

[1] Compare J. R. A. S. 1911, p. 635.
[2] Compare Kitabul Ikhtyar, p. 5. (Azamgarh).

wherein the punishment (uqubat) is fixed[1] by the Shara'. It is applicable in the following cases:—

1. Theft (Sarqah) or robbery (Qata utturq).
2. Whoredom. (Zina).
3. Apostasy. (Irtidad).
4. Drunkenness. (Shurb).
5. Defamation. (Itteham-e-Zina).

The object of 'Hadd' is to clean the world of sinful men. It is applicable to Muslims and non-Muslims alike. The earlier Muslim jurists were of the opinion that in every case the fixed punishment must be inflicted. For instance the cutting off of the offender's hand ordered by a trial court in a theft case was changed by an Appellate court to imprisonment, but the decision was not approved of in the Fiqh-e-Firoz Shahi, although during the reign of Firoz Tughlaq (1351-1388) the mutilating of criminals was expressly forbidden (Briggs I, p. 462). Aurangzeb at a later date (1672) definitely declared in his Farman[2] that the sentence of cutting off a hand need not be awarded in the first instance, if the circumstances permitted, and at any rate it was not to be inflicted upon lunatics, infirm persons, and minors.[3]

It was the duty of the State to prosecute all cases punishable by 'Hadd' (ijrae hadd-e-sharai har che lazim ayad). The proceedings usually started at the instance of the Police,[4] though private persons too had a right to institute them by complaint, vide a

[1] Compare MS. Add. 22714 ff. 3, 4.
[2] Br. Mus. MS. Add. 6580. Mirat I, p. 278.
[3] Compare Br. Mus. MS. Add. 22714 ff. 3, 4.
[4] Mirat I, pp. 282, 283.

Kashmiri Alim vs. Mir Murtaza, Khafi Khan II, p. 565; Muhammad Amin Khan vs. Manucci, Storia II, p. 197.

The second form of punishment is Ta'zir which literally means prohibition. According to Nihayah it applied to cases not covered by 'Hadd.'[1]

In Hadd the sentence was fixed and unalterable, while in Ta'zir the courts could regulate it in any suitable manner, and were free to invent new punishments such as cutting out the tongue, impalement, etc. The matter was discretionary or one which could be regulated by the Sovereign. Aurangzeb accordingly issued a comprehensive Farman[2] defining such cases.[3]

Under Ta'zir came counterfeiting coins, hurt, gambling, minor theft cases, etc. The administration of Ta'zir placed a special responsibility on the Ruler and the Judge. During the medieval period no effort was made to standardise punishment for such offences. No limit was fixed[4] for imprisonment. Aurangzeb finding that in certain cases convicts were kept too long in prison, issued[5] orders that the Qazis and the Governors were to visit[6] the jails regularly and hold "jail deliveries." Some courts preferred to impose fines. This practice was discouraged by Aurangzeb[7]

[1] Compare MS. Addl. 22714 f. 4.

[2] Mirat I, pp. 277-282.

[3] It may be interesting to notice that the title given to the Hindustani translation of the Indian Penal Code is Ta'zirat-e-Hind.

[4] Compare Ibn Hasan, p. 336.

[5] Mirat I, pp. 277-282.

[6] MS. Add. 6580 f. 104b. The duty of inspecting the jail in British India is still imposed upon Magistrates and Judges.

[7] Mirat I, p. 293.

(Chun Ta'zir bilmal Shara'n jaiz nest), although fine in the form of 'Dyath'—compensation—was allowed (Hidayah, p. 660).

The third form of sentence covered homicide cases. It was called Qisas or blood fine and may be compared with the Weregild of the contemporary English period. Qisas was payable by the man who killed another, unless that other were himself under sentence of Law to die.[1] In State vs. Empress Nurjahan Tuzuk-e-Jahangiri Shibli, p. 30 the complainant accepted compensation, but in State vs. Prince of Gujrat, Mirat I, p. 49 the King's Court in Revision disapproved of the award of mere compensation and enhanced the sentence to death. Both these cases were prosecuted on a private complaint. It would thus appear that the courts had a discretion to allow homicide cases to be compounded[2] and that the State did not consider it part of its duty to prosecute them. Murder and homicide seem to have been considered essentially private grievances.[3] It was held by Jurists that in Qisas "the right of God's creatures prevailed" and the State came in only, if desired to do so by a complaint of the aggrieved party.

In 'Hadd' offences the aggrieved party could not be awarded compensation. In both Hadd and Qisas cases the accused person was kept in custody during trial and was not allowed bail.

[1] MS. Add. 22714 f. 5.
[2] See State vs. Khwajah Ahmad. Afif, p. 508.
[3] (Dar qisas haqqul abd ghalibast). MS. Add. 22714 f. 5.

Treason

Treason (ghadr) was looked upon as an offence against God and religion. For this reason prosecutions for treason were in most cases launched in the "Canon Law" courts, vide State vs. Islam Khan, Elliot IV, p. 27, State vs. Sidi Maula, Beveridge I, pp. 75-76. In the majority of these cases the punishment inflicted was death,[1] unless the ruler chose to exercise his prerogative of mercy.[2] No distinction was made between Muslims and non-Muslims[3] in awarding sentence or between highly placed persons and ordinary subjects.[4] In State vs. Qazi Jalal Uddin Afghani and others (Ibn Batuta, p. 146), one of the persons accused of treason was Shah Haidari, a holy man of some reputation. The only evidence against him was that he had given the principal accused Qazi Jalal Uddin a cap to wear as a Talisman. He was nevertheless convicted of abetment and put to death.

Emergency Powers

As always happens in any State, special measures were sometimes necessary to deal with revolts or internal disturbances. The orders issued for this purpose to the Military by Indian Muslim rulers were referred by the Lawyers to the doctrine of Darul Harb which meant a temporary suspension of the guarantees enjoyed by the subjects in a State for as

[1] Compare Ibn Batuta, pp. 146-147, 149.
[2] Compare Dow III, p. LVIII; State vs. Rae Rae Singh.
[3] Compare Briggs III, p. 96; Anecdotes by Sarkar, p. 141.
[4] Compare Briggs III, pp. 96, 265; Anecdotes (Sarkar), p. 141. Ibn Batuta, pp. 146-148.

long as the conditions in the land required. The doctrine according to Muslim jurists[1] was to be applied usually against an alien State or people for the protection of religion, when a 'Jehad' or Holy War could be declared. In stating the Law on the subject to Muhammad Tughlaq (1325-1351) Qazi Zia Uddin said[2] that such a step could be taken firstly against those who were alleged to be in revolt or from whom the King feared a revolt and there was proof of their intentions (ghadar-e- O tahqiq shawad); secondly against those who were openly in rebellion or those who were leading it (sarghana-e-bagha shawad) or helping it (madad wa maavinat kunad); and thirdly against those who disobeyed the just orders of the Sultan which meant that they were disobeying God,[3] but proof of damage to the State was necessary (Zyan-e-mulk shart ast).

It appears that most rulers treated all kinds of rebels as aliens, and held[4] that any organised opposition from the people was sufficient to justify their assumption of emergency powers. They regarded disobedience to an order issued by them as disobedience to God (Irtikabe khilaf an ke dar haqiqat khilaf-e-hukme khudast)[5] and damage to the State (Zyane

[1] Compare Fatawa. Baillie, p. 173.

[2] Barni, pp. 510-512.

[3] Barni, p. 510.

[4] Compare Muhammad Tughlaq's reply to Zia Uddin Barni. Barni, p. 511. Compare prosecution of Khan Muhammad. Briggs II, p. 346.

[5] Compare Mirat-e-Ahmadi I, p. 251.

Muhammad Tughlaq's token currency has the following superscription من أطاع السلطان فقد أطاع الرحمن man ata' us Sultan Faqad ata' ur Rahman.

mulk) was accordingly presumed. Some Sultans went further like Meeran Husain of Ahmadnagar who fearing an intrigue put fifteen Princes of his family to death in one day (Briggs III, pp. 270-271) or like another King who ordered the body of the Prime Minister to be hewn into pieces on a mere suspicion (Briggs III, p. 274).

Firoz Tughlaq (1351-1388), however, was more cautious[1] than others and Aurangzeb in an order[2] issued to one of his governors seems to have restricted the use of such extraordinary powers to cases of active rebellion or riots (fasad).

Persons who were imprisoned for offences of rioting by Governors could not be released by the Qazis as a result of their jail inspections.[3]

Prosecution in general by State

The Shara' allowed the Ruler authority to punish grave offences for the ends of justice, although the injured party might "waive his private claim to compensation or redress."[4] In offences of riots, homicide, theft, and adultery the Qazis had power to order a Police investigation or to make enquiries themselves,[5] vide Storia III, p. 123. The State was regarded as responsible for taking proceedings against the offender, when the alleged offence was contrary to

[1] Barni, p. 573.

[2] Mirat I, p. 336. Compare Alamgir Namah, p. 1079; Khafi Khan II, p. 550; Dow III, p. LVIII.

[3] MS. 6580 f. 111b.

[4] See Mst. Sebha vs. Moynoola. Administration of Justice of Muslim Law by Dr. M. U. S. Jung, p. 102.

[5] Compare Dow III, p. LVII.

morality as understood by the Law of Islam (ahkame shara' bar anha jari sazand).

Contempt of Court Proceedings

Interference with the disposal of judicial work was a serious offence, punishable with much greater severity than the present Law in India would permit. The Qazi of Agra once sentenced a man to death for abusing the Court. The accused was saved from the gallows by the Governor who refused to confirm the sentence (Storia III, p. 264).

In Sadiq vs. Shakur a governor was dismissed for delaying to send an accused summoned by the Qazi-e-Subah (Aurangzeb V, pp. 421-422).

Prince Dara was severely censured by the Emperor, Shahjahan, for taking an accused forcibly out of court (Storia I, p. 265).

Prince Kam Bux, a favourite son of Aurangzeb, was sent to prison for assaulting an officer of the court (Khafi Khan II, p. 437).

In State vs. Yaqub and Naim, Briggs IV. p. 519 the accused, who were powerful nobles of the Empire, one of them an ambassador at a foreign court, had procured the murder of a Qazi, because he had given a judgment unfavourable to them. They were executed in public with great brutality by the order of Akbar.

The Court, where 'contempt' was committed, could either take action itself and punish the offender under Ta'zir (Storia III, p. 264) or report the matter to the Governor or the Emperor, vide Sadiq vs. Shakur (Aurangzeb V, pp. 421-422).

Similarly assaults on public servants were punished with severity, vide State vs. Yusuf, Briggs IV, p. 517; also Wazir's case Ibn Batuta, pp. 146-147 and State vs. Khorasani, Shams Siraj Afif, pp. 496, 497.

CHAPTER VIII

PREVENTION OF CRIMES

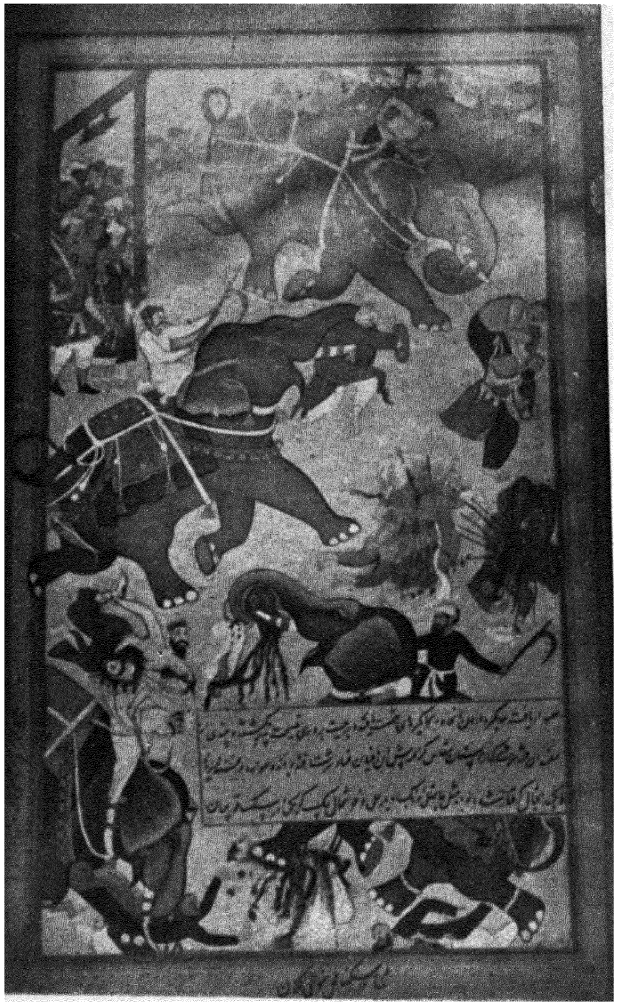
Punishment in general

The severity of punishment (syasat) for criminal offences was a companion feature to medieval administration. Sporadic outbreaks of crime such as robbery and murder and the consequent discontent among the subjects tended to increase the uneasiness of medieval rulers and to induce them in many cases to inflict penalties wholly opposed to the spirit, if not the letter, of the Shara'.[1] Monserrate who claims personal experience of executions writes that the death sentence was usually passed in offences of murder, treason, theft from Royal Treasury, adultery by a married person and oppression of Ryots by officials[2]. According to the author of Tarikh-e-Firoz Shahi the prevailing notion among some of the Sultans was that a ruler could not enforce his authority without executing 'rebellious' persons.[3] It is said of Muhammad Tughlaq (1325-1351) that he enquired of Zia Uddin Barni in what cases capital punishment could be awarded, and that the latter

[1] See Quran. "Allah ya murukum bil adl wal ehsan." Any injury done to the family of the accused was distinctly against the Shara', Badaoni I, p. 239; Compare Khafi Khan II, p. 550 "az anke bar pas ryaet-e-Shara' syasat ra kar nami farmudand."

[2] Commentary, pp. 85-87, 209-210. Fryer I, p. 244.

[3] Barni, pp. 550-551.



Executions

said,[1] "In three cases only according to Quran. Firstly apostasy, secondly shedding of innocent blood and thirdly adultery." Muhammad Tughlaq replied, "All this may be very true, but mankind has become much worse since those laws were made." It was Muhammad Tughlaq again who flayed alive a man convicted of Treason and exhibited his corpse in public while the Executioner was ordered to proclaim, "Thus shall all traitors to their King perish."[2] At another place Sultan Balban ordered a Governor convicted of manslaughter to be given over as a slave to the complainant (State vs. Haibat Khan, Briggs I, p. 253). In the more advanced times of the Mughal Emperor, Akbar, (1558-1605) we hear of an officer of the rank of Chief Trade Commissioner being strangled to death and gibbetted for adultery (Akbar Namah III, pp. 390-391). Akbar himself threw Adham Khan, who had committed a murder, down the battlements of his Fort.[3] Jahangir took interest in seeing condemned prisoners torn to pieces by elephants.[4] It was also in the reign of Jahangir that limb after limb of a dacoit, with seven previous convictions, was torn till he died. Shahjahan felt satisfaction in administering poison to a corrupt kotwal and in seeing him breathing his last in open court. (Storia I, p. 197).

In some cases when the rulers felt they had

[1] Briggs I, p. 436.
[2] Beveridge I, p. 90.
[3] Hawkins and Purcha's Pilgrims, Vol. I, p. 220; also painting from Akbar Namah Indian Section of Albert and Victoria Museum, South Kensington.
[4] Elliot III, p. 618; Compare Elliot VI, pp. 503-504.

enough of "Syasat," they prohibited[1] mutilation of hands and resorted to wholesale banishment. In one of his regulations forbidding the mutilation of limbs, Firoz Tughlaq proclaimed (Briggs I, pp. 463-464).

> "I will on all occasions cause to be banished from the realm persons convicted of the following crimes:—
>
> 1. Those who profess atheism.
> 2. Who maintain schools of vice.
> 3. All public servants convicted of corruption or of receiving bribes."

No distinction was made between Hindus and Muslims in the matter of punishment. Even in Canon Law cases or offences against religion the same severity was shown to the Muslims as to any other non-Muslim, vide State vs. Sarmad, State vs. Portuguese Friar, (Sarkar III, p. 113) and State vs. Bindrabund, Stewart, p. 410. Ali Muhammad Khan mentions[2] a case where Qazi Hammad, a man celebrated for his piety and a Qazi-e-Subah, was sentenced to death for arrogating to himself attributes of Divinity. One of the Judges on the Bench was Qazi Mianji, the teacher and a close friend of the accused.

Extenuating Circumstances

Aurangzeb who made a special study of the Law[3], however, showed distinct reluctance[4] in con-

[1] Firoz Tughlaq. Briggs I, p. 462.
[2] Supp. pp. 45-46.
[3] Alamgir Namah, pp. 1074, 1085-1092. Ovington, p. 138.
[4] (1) Khafi Khan II, p. 550. (2) Alamgir Namah, p. 1080. (3) Dow III, p. 397.

firming death sentence or awarding severe penalties, and in cases other than murder encouraged pardoning first offenders.[1] During the reign of an earlier Sultan (1397 A. D.) a woman in Gujrat was convicted of adultery for which the normal penalty was death, but the Qazi found that there were extenuating circumstances and allowed her to go after admonition. (Briggs II, p. 352).

The right of self-defence was recognised. A lad of 15 on whom an attempt at sodomy was made and who stabbed and killed his assailant, was acquitted and his action commended. (Fryer I, p. 245). Similarly a "Moor merchant" killed his wife and child because he had seen the wife with her paramour and he was sentenced to "a pecuniary mulct" only.[2]

Public overawed

Executions were carried out in public[3] for the ostensible purpose of deterring future criminals, and sometimes the convicted person was taken on a donkey round the streets of the city (State vs. Armenian, Theft Case, Fryer I, p. 244). Treason provided the ruler with novel ideas for overawing the people. In State vs. Shah Haidari and others, Ibn Batuta, p. 146, a Treason Case, Muhammad Tughlaq felt no scruples in slaying a holy man in public and in State vs. Shaikh Had,[4] another man of well-known

[1] Farman. Mirat I, pp. 278-283.
[2] Fryer I, p. 245.
[3] Terry, p. 354.
[4] Compare Ibn Batuta, p. 146.

piety, Ibn Batuta tells us that the flesh of the accused who was convicted of Treason was roasted with rice and thrown to the elephants to be devoured, but they refused to touch it. In some cases persons convicted of Treason were ordered "to be thrown to the elephants which had been taught to cut their victims to pieces". Their feet were cased in sharp iron instruments and the extremity of these were like knives. When a man was thrown to them, "they would wrap the trunk about him and toss him up, then take him with the teeth and throw him between their forefeet upon the breast". "If the order was to cut him to pieces the elephant would do so with his irons and then throw the pieces among the assembled multitude."[1] Thieves and robbers were dealt with with great severity. "If indeed" writes Jahangir in his Tuzuk, "in contemplation of future contingencies I have been sometimes led to deal with thieves and robbers with indiscriminate severity, whether during my minority or since my accession to the throne, never have I been actuated by motives of private interest or general ambition.[2]

A thief with a previous conviction was in the time of the Mughals liable to be executed.[3] Punishment for his first offence was either a long term of imprisonment till repentance, or cutting off one hand (Qata-e-yad).[4] Manrique, a European traveller

[1] Ibn Batuta, p. 147.

[2] Compare Price, Tuzuk-e-Jehangiri, p. 96; Compare Manucci's remarks about Shahjahan. Storia I, 204.

[3] Mirat I, pp. 278-280; Storia I, p. 204.

[4] Mirat I, p. 278.

in the seventeenth century refers[1] to "columns of stone and lime in which the skulls of malefactors were enclosed as a warning of what was done in the name of justice and what was to be done in future."

Hamilton, another contemporary traveller, speaks[2] of the criminals "who flee for fear of condign punishment due to their crimes."

Liability of Executive Officers

The State not only punished the criminal, but also, in cases of robbery and theft, made the officers in charge of Law and Order, including the Governor, pay compensation to the complainant, (Storia II, pp. 461-62) (Briggs IV, p. 234), or in some cases paid it itself. A robbery was committed at the Dutch settlement and the complainants were indemnified by the State Treasury (Storia I, 204) the amount having been realised from the Governor himself. A Hindu merchant was plundered during the night in Mando. He proved his allegations in the Qazi's court and was paid compensation out of the fine realised by Government from the Police officer in charge (Briggs IV, p. 234). It is said of Sher Shah that in cases of theft or robbery and murder he made the head man of every village responsible for either bringing the culprit to courts or for paying compensation (MS. K. C. C. Vol. I ff. 85-87, 154. Elliot IV, p. 420)

This combination of severe punishments of the culprit and exaction of compensation from the local responsible officials was so effective during the palmy

[1] Vol. II, p. 149.
[2] Vol. I, p. 132.

days of Sultanate and Mughal Empires that, as Beveridge points out,[1] "robbery and theft formerly common were almost unknown, and the travellers slept securely on the highway, and the merchant carried his commodities in safety from the Sea of Bengal to the mountains of Kabul and from Telingana to Cashmere." Manrique, a contemporary European traveller (1629-1643), writes about the reign of Shahjahan "It (i.e. good order) was seen not only in the abundance of the provisions but in the order and cleanliness of the streets and markets and in the peace and quiet maintained in them and also in the great justice and rectitude they observed whereby all lived safely with their property free from all cares as to the attentions of active and cunning thieves." Vol. II, p. 188. The same could be said about some of the rulers of other Muslim States also. Nevertheless there were times during the reign of Muhammad Tughlaq that journeys from one town to another could not be undertaken by people without proper guards, and robbers invariably infested[2] roads in spite of the ferocity with which Muhammad Tughlaq enforced the death penalty.

Preventive Measures

Disturbers of public tranquillity were evicted by courts from the locality, vide State vs. Mir Mur-

[1] Vol. I, p. 81 quoting Ferishtah. Compare Terry, p. 354. "And this round and quick justice keeps the people there in such order and awe as that there are not many executions." Bernier does not give such a favourable account as Terry or Manrique at pp. 188-189, Vol. II.

[2] Compare Travels of Ibn Batuta, pp. 108, 156.

taza Waiz, Khafi Khan II, pp. 564-565. Shaikh Alai, a religious reformer, was banished by the King's court for preaching "Mahdism" (Briggs II, pp. 140-141). In one riot case the convicted persons were kept in prison till they showed signs of repentance (Ta zahur-e-asar-e-tobah)[1] (Lahori II, p. 22). Where a breach of public peace was apprehended orders corresponding to those passed nowadays U. S. 144 Cr. P. C. could be passed, vide Ashraf vs. Shaikhs of Ghoryana, Baqiat, p. 29 or sometimes "dangerous" persons were called upon to execute "Bonds" (Muchalkas) to keep the peace (Mirat I, p. 352, Baqiat, p. 39) or they were sent to prison (Mirat I, p. 321).

If at the time of the Muharram or Holi festivals clashes occurred between Sunnis and Shiahs[2] or between Muslims and Hindus[3] "executive" orders were passed which in a way excluded the jurisdiction of the Qazis. In the reign of Emperor Bahadur-Shah I, a suit was brought in the court of Qazi Khairullah, Bawahir vs. Havildar of Kalupur (Mirat II, p. 5) on the alleged cause of action that the Defendant had stopped the Plaintiffs from sacrificing a cow at the Idul Zuha. The Qazi refrained from dealing with the suit himself and referred it for disposal to the Governor, although the latter (Ajit Singh) was a Hindu.

Police

The main agency employed for the prevention

[1] Compare Mirat I, p. 348.
[2] Baqiat, pp. 29, 38, 39, 40.
[3] Mirat II, p. 5.

of crimes was a force of Barqandazes[1] (armed Police) and Sipahis (Manrique II, p. 110) working under the command of the local Faujdars, Kotwals and Shiqahdars. There was no Provincial head of Police or Provincial Police department. The Faujdar whose main duty,[2] as I have said elsewhere, was to maintain peace within his Sarkar, was provided with troops (Ahadis) in addition to the Barqandazes, and he was required to apprehend offenders and to assist the people in their fight against robbers and dacoits and to suppress riots (Lahori II, p. 21). All the Police stations (Thanas) in the Sarkar were under his control. In case of necessity he could requisition help from the Faujdar of a neighbouring Sarkar in preserving order.[3]

Faujdars, as mentioned in a previous chapter, were sometimes stationed in Parganahs also (Br. Mus. MS. Or. 1779). They were called upon at the time of appointment to sign a covenant (Qubuliat) agreeing to compensate the people within their charges in case of robberies.[4]

In the cities and large towns the work of the Faujdar was done by the Kotwal (De Laet II, p. 270) (Ain II. Jarrett, p. 41 (Br. Mus. MS. 1779). The relation between a Kotwal and a Faujdar may be compared with that existing between the Commissioner of Police, Bombay, and the Inspector General of Police for the Province of Bombay or between the Kotwal of Hyderabad Daccan with the Inspector

[1] Lahori II, p. 21; Collections; Zawabit-e-Alamgiri f. 23.
[2] Ain II Jarrett, p. 40.
[3] Bahadur Shah Namah MS. K. C. C.
[4] Br. Mus. MS. Or. 1779; Compare Storia II, 461-462.

General of Police Forces in H. E. H. the Nizam's Dominions. The Kotwal was officially subordinate to the Faujdar. Manucci says[1] that he was "subordinate to the Qazi" and received "orders from him" but it seems that the Qazi's control was only that of a modern Magistrate over a Police officer or perhaps because the Kotwal's judicial orders were appealable to the District Qazi. Dr. Nassau Lees in J. R. A. S., 1867, pp. 443-5 has referred to Abdul Malik, Kotwal of Delhi, as Governor of Delhi. This seems erroneous, though undoubtedly the Kotwal of the Capital who used to attend on the King regularly must have been a man of influence. We are told that during the Sultanate period once a Commander in Chief of the Army was selected for this post, (Zia Uddin Barni). Another Kotwal of Delhi was made the Chief noble of the Empire, Malikul Umera (Elliot III, p. 126). His duties may be enumerated as follows:

1. To keep an eye on bad characters and to maintain peace and order. Storia II, p. 421.
2. To arrest thieves and robbers. Storia II, p. 421. Fryer I, p. 246.
3. To supervise the watchmen (Rahdars) of Saraes.
4. To ride through the cities at night (Ovington, p. 137; Fryer I, p. 246).
5. To guard public roads. (Mirat I, p. 326).
6. To supervise transport arrangements within his area. (Ain-e-Akbari).
7. To clear cities of brothels. (Fryer I, p. 246).

[1] Storia II, p. 421.

8. To extinguish fire. (Fryer I, p. 246).
9. To stop distillation of liquor (Storia II, p. 421).
10. To look after the customs at the seaports. (Manrique II, p. 137). In this respect a Kotwal must have been subordinate to a Qazi. He was also required to regulate market prices (Collections).
11. To investigate the reports of offences to which 'Hadd'[1] and Ta'zir[1] applied (Khafi Khan II, p. 436).
12. To watch movements of people and to investigate cases, if ordered by a Qazi. (Storia II, p. 421). (Collections).
13. To prevent dishonest persons from cheating people. To settle idle men to work. (Collections).
14. To enforce curfew orders. (Collections).
15. To maintain a register of local inhabitants. (Ain II, p. 42).
16. To arrange for the burial of "la waris" (unclaimed) corpses (Collections). To make an inventory of the property left by missing persons. (Ain II, p. 42).
17. To examine weights and currency. (Roe). During the Sultanate period the Mohtasib usually examined weights, but according to Sir Thomas Roe the Mughals gave this work to the Kotwal.

[1] See Chapter VII. Tendencies in Criminal Administration.

18. To prevent slaughter of cattle in public. (Roe).
19. To keep guard over the Treasury.
20. To hold charge of the local lock-up (Fryer I, p. 245). The Kotwal of Delhi acted as Master of Etiquette at the Royal Court (Roe, p. 70). His appointment was made by the Emperor himself, but the inferior Kotwals were selected by the Subahdar or Nazim[1] (Mirat Supp. p. 153). Their letters of appointment were issued by the Master of Ordnance (Mir Saman). Mirat Supp. p. 153. A Kotwal of a town during the Mughal period received a monthly salary of Rs. 213 equivalent to about Rs. 650 of the present day.

Staff

Kotwals were generally supplied with a force of Sawars[2] mounted Police and foot constables[3] and armed men[4] (Barqandazes). The city or town was divided into wards, in each of which there was a 'Chauki' (outpost) containing one horseman and twenty to twenty-five footmen to maintain peace (Storia II, p. 421). The Kotwals were assisted by Naibs or deputies who had no magisterial duties (MS. Fraser 157. Oxford).

[1] Mirat Supp. p. 153.
[2] Storia II, p. 421.
[3] Lahori II, p. 21; Manrique II, p. 137.
Pyadah—Mirat I, p. 334. Fryer calls him 'Lashkari'. I, p. 249.
[4] Zawabit-e-Alamgiri f. 23; Collections.

Shiqahdars. (*Barni, p.* 337) (*Br. Mus. MS.* 6,599)

Shiqahdars' main duty under Mughals was to help the collection of revenue and to "keep the ryots and the public contented" (Br. Mus. MS. 6,599). (Br. Mus. MS. Add. 22,831 f. 186). A Shiqahdar was an inferior officer compared with a Kotwal (Manrique I, p. 425).

Thanadars. (*Br. Mus. MS. Or.* 1779).

The Parganahs were divided into Police Stations each comprising of a number of villages and known as Thanahs, each under a Thanadar who had a force of infantry (Pyadahs) with him. The Thanadar seems to have been in every way the predecessor of the modern Sub-inspector of Police who is still called the Thanadar. The 'Police' force stationed in the 'Chaukis' and 'Thanahs' was inspected by the King, the Governor, and the Faujdar, whenever they toured in the interior of the country.

Nothing in the shape of Police Rules or Regulations for those days can be traced. The efficiency of the Force in all likelihood must have depended upon the personality of its officers.

In the villages the head men Moqaddams or Patels or Chaudhris were required[1] to make one list of residents and another of new-comers whose movements were also to be ascertained more or less on the lines of modern lists A and B of the Indian Police. Abbas Khan thinks[2] that these head men

[1] MS. 154 Vol. I. K. C. C., pp. 85-86.
[2] Ibid.

were careful to maintain order and prevent crimes within their territorial limits.

Each village or group of villages had a watchman, (Chaukidar) who represented the Police in his area, while the head man, who "enjoyed honour and respect" among the people, may be said to have represented the Faujdar. Like the Sheriffs of England, who were "responsible for the good government of the Boroughs under them",[1] the larger Landlords or Zamindars were required to help the officers of the State in maintaining peace and collecting Revenue (MS. 370. I. O. L.). The Governor could give them grants of land, on condition of military service,[2] subject to the approval of the Emperor. These landlords or Zamindars were also known as Watandars (Farameen, p. 161) and were to be found in every Parganah.

Watch and Ward

The duties of the Police Officers in the cities and towns included patrolling the inhabited areas three times at night.[3] They were to arrest persons committing or about to commit offences.[4]

People harbouring proclaimed offenders were prosecuted[5] and Newswriters or Waqayah Nawis were enjoined to announce widely the presence of alleged offenders in a locality. Preparation for dacoi-

[1] Compare Holdsworth History of English Law, I, p. 7.
[2] Tracts relating to the affairs of the East India Co. 1772-1773, pp. 3-4 (I. O. L. Records). Lanepoole, Aurangzeb, p. 112.
[3] Ovington, p. 137; Fryer I, p. 246.
[4] Compare S. 109, Cr. P. C. in British India.
[5] Compare Aurangzeb V, p. 421.

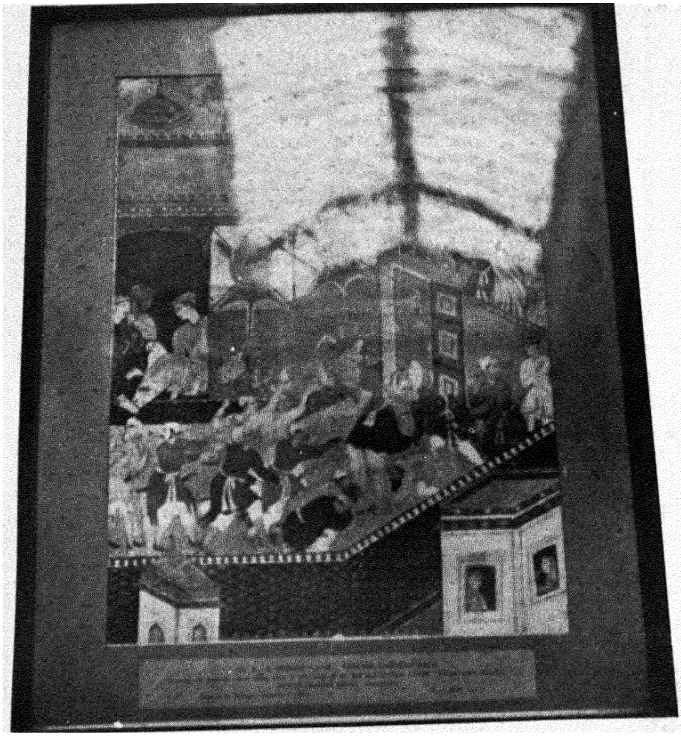
ty was liable to severe punishment, and sometimes people convicted of this offence were kept in prison, till they offered satisfactory assurance of future good conduct[1] (Habs bad at Ta'zir). In the time of Firoz Tughlaq[2] (1351-1387) stringent measures were taken to guard roads, and Sher Shah built[3] 'Saraes' or shelter houses at the outskirts of every town for travellers to stay at night and 'Rahdars' or watchmen were posted in each Sarae to guard the luggage and to watch the coming in or going out of strangers. The system was continued by the Mughals (Manrique II, p. 100). (Storia I, p. 68).

The Sultans and the Mughal Emperors frequently toured[4] the Kingdom to acquaint themselves with the general conditions of their subjects and of the conduct of their officers as well as the activities of lawless people. Balban tried two cases of oppression by Governors on the spot, and sentenced one to death and the other to enslavement (vide State vs. Malik Faiz and State vs. Haibat Khan. Briggs I, p. 253).

Surveillance

There was no regular system of 'surveillance', until Aurangzeb issued his Farman[5] in 1672-1673 A. D. directing that a person convicted of theft was to be kept in prison, till he showed signs of repent-

[1] Compare S. 110, Cr. P. C. and S. 565, Cr. P. C. in British India.
[2] Barni, pp. 578-582.
[3] Elliot IV, p. 420.
[4] Compare Price. Tuzuk-e-Jehangiri, p. 117. (Tr.).
[5] See Mirat I, pp. 278-283.



A Prison Scene

ance (Ta asar e tobah zahir shawad) or that, if the accusation was not proved and there still remained suspicion against the accused, the Kotwal should keep an eye on him (o ra nigah darand)[1]. Rioters were also dealt with in the same way.[2]

In the reign of Jahangir (1605-1628) a dacoit with previous convictions who had been condemned[3] to be trampled to death by an elephant resisted the elephant's attack and was granted a pardon, but was kept under surveillance. He then escaped from the place where he was ordered to live and was caught and executed.

The Kotwal was required (Ain II, p. 41, Jarrett) to maintain a register of suspected persons and to keep a watch on their movements through spies. In State vs. Qazi Jalal Kashani and others when an accusation of Treason was not substantiated in court, Sultan Jalal Uddin Khilji kept the accused persons under observation and later on banished[4] some of them from the country (Jila watan).

Prison System

There were jails (Bundi Khanahs)[5] in every important place for persons sentenced to imprisonment. In other places there were 'lock-ups'[6]. Prisoners, who were considered specially dangerous,

[1] Mirat I, p. 283.
[2] Mirat I, p. 348.
[3] Elliot VI, pp. 346, 504.
[4] Compare Elliot III, p. 145.
[5] Compare Manrique I, p. 421, II, pp. 113, 326, Shams Siraj Afif, p. 509. Badaoni I, p. 223. See Mundy Travels, p. 285. Vol. I. Indian Record Series. "Jail houses".
[6] Compare Mirat, I, pp. 282, 283; Manrique I, p. 422.

were concentrated in forts like Gawalior,[1] Rohtas, Bharatpur, etc. under the direct control of the Central Government.

There was no Provincial jail organisation or service. The control and supervision of Jails was vested in the Qazis and Kotwals. Where there were no Kotwals, the Thanadars were in charge. The Qazi was like the present District Magistrate in India, the regular official visitor (Hidayah, p. 336. Mirat I, pp. 278-283), but the superintendent was the Kotwal of the town (Fryer I, p. 245). Under-trial prisoners were placed in the custody of the Kotwal and he was responsible for their reaching Courts in time[2].

According to the author of Badshah Namah[3] regular inspections of jails were made by the Kings and the Governors. A Governor was expected to visit the jails in his Province once a month. (MS. Add. 6580 f. 104a). We are not told whether he succeeded in doing so. The size of most of the Provinces would render this unlikely.

In the reign of Aurangzeb (1658-1707) emphasis was laid on the Qazis' inspection of jails.[4]

The jails were in the immediate charge of a chief jailor[5] (Daroghah).

The food to both civil and crimina! prisoners

[1] Monserrate, p. 211. Storia I, p. 69.
[2] Compare Fryer I, p. 246. Terry, p. 366.
[3] Lahori I, p. 245. Compare Shams Siraj Afif, p. 509.
[4] Fatawa. Kitabul Qazi. Compare Hidayah, p. 336.
[5] Monserrate, p. 206. Compare Mahmud of Ghaznah, p. 150. Manrique I, p. 422. He was known as Amir ul Haras in Ghaznin.

was supplied by the State (MS. 370 I. O. L.) and there is no record of decree-holders being charged with the cost of feeding their debtors.

CHAPTER IX

THE WORKING OF THE JUDICIAL MACHINERY

Court House

The immediate successors of the Prophet held[1] court in mosques where every person could approach them without hindrance. The Abbaside Caliphs erected separate buildings for their Qazis. The earlier Emperors of Delhi and the Mughal rulers did the same.[2] The Court buildings in the time of the Sultans were known as Darul Qaza (Barni, p. 580) or Darul Adl. The Mughals called them Adalat Khanah[3] or Kachehri[4] and erected them practically in every city and town.[5] These buildings were generally spacious and could accommodate the crowds[6] who sometimes gathered to hear sensational trials. Many of the old "Kachehri" buildings which still survive in the United Provinces (India) have got mosques attached to them.

The dais on which the Qazi took his seat was known as Majlis-e-Qazi (Fiqh). The Qazi sat on a carpetted floor with a large pillow (Gao takyah) at

[1] Compare Hidayah, p. 337.
[2] Compare (1) Ibn Batuta, p. 114; (2) Manrique II, pp. 159, 189.
[3] Bernier (Oxford), p. 263.
[4] Mirat I, p. 282. The word is still in use in India.
[5] Holden. Mogul Emperors, p. 39 and Dow III, p. 411.
[6] Compare Khafi Khan. Vol. II, p. 258.

his back.[1] His actual seat was called 'Masnad-e-Qazi". The whole platform where the Qazi sat was raised and generally prominent. The Emperors had their Court building specially erected in one of the entrances to the Palace (Manrique II, p. 159). Shahjahan, when holding trials, declined to sit on his costly peacock throne and preferred to sit on its simpler and unornamented substitute (Takht-e-Firozi). The paintings in the Bodleian Library, Oxford, of the court of Shahjahan show that a scale of equity (Mizan-e-adl) was prominently displayed. The Kotwal's court building was known as 'Chabutra.'[2]

Court Hours

Court hours were generally announced by the Presiding officers themselves (Collections). They were not fixed[3] by the Emperor till about 1672, when Aurangzeb learnt[4] from the report of Waqae Nigars that the Courts in the province of Ahmadabad sat only on two days. He issued directions that the presiding officers should sit regularly on Saturdays, Sundays, Mondays, Tuesdays and Thursdays. On Wednesdays the Qazi-e-Subah was to sit with the Governor on his Bench,[2] and Friday could be enjoyed as a holiday.

No definite information is available about the Turkish rulers but both European travellers and Persian historians have noted the punctuality with

[1] Compare picture of the court of Qazi Abdul Wahab. Storia III, p. 210.
[2] Mirat I, p. 282.
[3] See Diaries in Hyderabad Collections.
[4] Mirat I, p. 275.

which the first seven Mughal Emperors sat in court. Colonel Dow, in his Enquiry, says[1] "Time had established into an almost indispensable duty that the Emperor with his assessors, the principal Judges, was to sit for two hours every day in the hall of justice to hear and decide cases. Shahjahan who took great delight in promoting justice frequently exceeded the usual time."

The court hours fixed by Aurangzeb[2] were from two 'gharis' (hours) after sunrise to a little after midday. These hours seem to have been maintained both in the hot and cold weathers. Presumably this was also the time during the Sultanate period. Manrique records in 1640[3] that his own case was taken up by "the Judge" at "one o'clock in the morning". This seems to have been either a special arrangement or a mistake in the text or the translation, as no other writer has referred to such odd hours. The practice of some of the Mughal Emperors was to sit in the Court at 7-30 a. m.[4] According to Monserrate "everything that goes on" in Court was regulated clocklike.[5]

Court Vacation

As Rae Bhara Mal has pointed out[6] there were not many cases for disposal in courts, and we hear nothing of regular court vacations. Bernier says

[1] Vol. III, p. 395.
[2] Mirat I, p. 275.
[3] Vol. II, p. 111.
[4] Alamgir Namah, p. 1079.
[5] Commentary, p. 211.
[6] Elliot VII, p. 172. Compare Bernier, p. 236.

that the "Kings of Hindusthan" seldom failed, even when in the field, to hold trials "the same as when in the capital," and the custom was regarded as a matter of Law and duty and the observance of it rarely neglected[1].

Court Dress

No dress seems to have been prescribed for the Qazis, but from the picture in Storia III, p. 210 it appears that the Qazis had an "aba" (gown) while sitting in court and a "top" like the modern wig was worn on the head. Since the dispensation of justice was considered a religious duty it seems likely that the Qazis must have adopted the Arabian dress which to this day[2] is worn in India by religious leaders on solemn occasions.

Disposal of Business

The disposal of judicial work by the Qazis or the Emperors may be estimated by a description of the trials given below:—

Civil Appeal 1500 A. D. Beveridge I, p. 102.

Court—Sultan Sikander Lodi, (1489-1517).

"Two brothers, private soldiers, had, among other booty obtained during a siege, become possessed of two large rubies of different shapes. One of the brothers, having determined to quit the service and return to his family at Dehli, the other entrusted him with his share of the plunder including one of the rubies, and told him to deliver it to his

[1] Travels, pp. 263, 360. Compare C.H. of India, Vol. IV, p. 182.

[2] The gown and the wig worn by Judges in British India are not much different from what the Qazis wore in those days.

wife. The soldier who had continued to serve on returning after the war was ended, asked his wife for the ruby and was told that she had never seen it. The brother on the contrary declared that he had delivered it, and when the case was brought before the court, produced a number of witnesses who swore that they had seen him deliver it. The Judge, acting on this testimony, decided against the woman telling her to go home and give the ruby to her husband. Her home was thus rendered so uncomfortable that as a last resource she laid complaint before the King. He listened patiently to her statement and then summoned all the parties before him. The witnesses repeated their evidence and in order to strengthen it affirmed that they perfectly recollected the size and shape of the ruby which they had seen given. On this the witnesses were separated and a piece of wax being given to each of them as well as to each of the soldiers, they were told to mould it into the form of a gem. On examination the models of the soldiers agreed, but that of all the others differed. The King drew the inference that the soldiers alone had seen the ruby and the witnesses had been suborned to perjure themselves."

The appeal was allowed.

Widow vs. King Ghyas. Stewart, pp. 90-91.

Court: Qazi Siraj Uddin Qazi-e-Subah. Bengal. (About 1490 A. D.)

"One day, while the King was amusing himself in the practice of archery, one of his arrows by chance wounded a boy, the son of a widow. The woman immediately repaired to the tribunal of the Qazy,

Siraj-e-addeen, and demanded justice. The judge was confounded, and said to himself 'If I summon the King to my court, I shall run the risk of being disobeyed; and if I pass over his transgression, I shall be one day summoned before the court of God, to answer for my neglect to duty.' After much reflection, he ordered one of the officers to go and summon the King, to answer the complaint of the woman. The officer, dreading to enter abruptly the palace with such an order, considered on some means to get introduced into the presence of the King. At length he ascended the minaret of the mosque adjoining the palace, and at an improper hour called the people to prayers. The King hearing his voice, ordered some of his guards to bring before him the man who thus made a mockery of religion.

When the officer was introduced into the royal presence, he related the circumstance of his call to pray for the King and also concluded by summoning His Majesty to the Qazy's tribunal. The King instantly arose, and, concealing a short sword under his garment, went before the Qazy; who, far from paying him any mark of respect, said to him with a tone of authority, 'You have wounded the son of this poor widow; you must, therefore, immediately make her an adequate compensation, or suffer the sentence of the Law.' The King made a bow, and, turning to the woman, gave her such a sum of money as satisfied her: After which he said, 'Worthy Judge, the complainant has forgiven me.' The Qazy asked the woman if such was the fact and if she was satisfied, to which the woman having assented, was dismissed.

The Qazy then came down from his tribunal, and made his obeisance to the King: who, drawing the sword from beneath his garment, said, 'Qazy, in obedience to your commands, as the expounder of the Sacred Law, I came instantly to your tribunal, but if I had found that you deviated in the smallest degree from its ordinances I swear that with this sword I would have taken off your head! I return thanks to God that matters have thus happily terminated, and that I have in my dominions a Judge who acknowledges no authority superior to the Law'. The Judge taking up the scourge said, 'I also swear, by the Almighty God, that if you had not complied with the injunctions of the Law, this scourge should have made your back black and blue! It has been a day of trial for us both.'"

The King was much pleased and handsomely rewarded the upright Judge.

Civil Appeal. Storia I, pp. 199-200.

Court—Emperor Shahjahan, 1628-1658.

"A youth wanted to marry a woman. The latter refused. He filed a suit in the court of the 'Qazi of Agrah' alleging that he had illicit connection with the woman who had promised to marry him. The Defendant denied the allegations. The Plaintiff on being examined by the Qazi described her body accurately having learnt details from an old woman. The Qazi got the woman examined and found the description correct. The Plaintiff's suit was decreed. Proceedings started on the Execution side, but the woman prayed for time and her request was granted. After a month she went to the house

of the youth (Plaintiff) and catching hold of his throat accused him of stealing her things while he was with her in her house. She took a complaint against him to the Qazi's court. The Plaintiff accused denied the charge and said, "I have never seen this woman before."

While the proceedings in this case were going on the woman took a copy of this statement and preferred an appeal to the court of Shahjahan. The Emperor admitted this statement made by the Respondent in a Criminal Court and allowed her appeal.

The Qazi's decree was set aside and, on learning that the youth had obtained details about the appellant from an old woman, the Emperor ordered his prosecution for bringing a false case."

Bail Appeal. MS. 370 I. O. L., MS. Raqaem-e-Keram K. C. C. f. 15.

Court—Emperor Aurangzeb.

The appellant was sent to the lockup on some charge details of which could not be ascertained. The following judgment was delivered:

"The order sending the appellant to jail is illegal. He should be released forthwith. The case is transferred to the Court of the Chief Justice for decision in accordance with Law so that justice should be done to everybody. By God's grace the Qazi is honest, pious and decides the disputes impartially." "An order of the Qazi must be obeyed."

Miscellaneous Appeal against an order of a Governor, Waqae Alamgir, p. 72. Ruqaat MS. 1344 I. O. L.

Court—Emperor Aurangzeb.

Judgment—"This is an appeal against the order of

Khan Jahan Bahadur by the merchants whose horses have been confiscated. He (Khan Jahan) has forgotten the day of judgment and his own death which shall approach him soon. It seems he does not even fear the wrath of God and the disapproval of the Sovereign".....

Civil Appeal.

Court—Emperor Aurangzeb.

Judgment—"The judgment in this case between the Kashmiris and Ibrahim Khan has not been properly written by Hafizullah Khan. He has not considered the consequences and has blundered badly. There is no meaning in getting the matter enquired through Dilawar Khan alone. This is why it has been said that the Qazi and Amin must make thorough and impartial investigation and should not decide the case on a mere admission or denial. They should not be guided by their personal whims. Such people have existed in the past and it seems the Devil is again overpowering their sense of discretion."

Case remanded for retrial.

MS. Raqaem-e-Keram K. C. C. f. 15. Br. Mus.

Debt Case.

Manucci vs. Portuguese. Storia III, pp. 128-129.

Court—Shafi Khan. Governor Karnatic.

Manucci filed a plaint claiming recovery of debts. The court summoned the Defendant. The Parties stated their cases in court. The Defendant denied the claim on oath. The Plaintiff was called upon to produce evidence. Plaintiff filed documents and an

affidavit. The court did not know the language of the documents and sent the papers to the English Governor of Madras for translation. When the translation was received the court went through the documents and ordered that the case be made over to the English Governor of Madras for decision. The parties agreed.

The Governor of Madras heard the arguments in a Bench consisting of himself and his Staff and, on the evidence that had already been produced, decreed the Plaintiff's suit.

Murder Case. (Collections). State vs. Sulaiman Beg.

Complaint of Nirman and widow of deceased.

Court—Saadat Khan. Qazi-e-Subah. Jaunpur, 1680 A. D.

Judgment—"The complainants alleged that the accused killed Bishnath when he was sleeping in his threshing floor. The parties were summoned. The complainants are absent and there is no one to prosecute this case. The accused denies the allegation. The complainants were directed to produce evidence today, but there is none to support their complaint. The accused is, therefore, discharged, let a copy of the order be given to him."

Theft Case. (Collections). State vs. Madari Faqir.

Court—Qazi of the District Parenda, South India, 1670.

Judgment—"It is alleged that Madari Faqir entered the house of a widow at night. When she discovered his presence, she raised a cry for help. The police

came up and arrested the accused, who was prosecuted for committing burglary. The accused denies the allegation and says that he had gone out to pass water when the widow shouted out and he himself went to her help when the police arrested him. As nothing was found on the person of the accused I consider his case doubtful and acquit him. He should be released forthwith."

Civil Suit. 1687 A. D. Baqiat, p. 11.

Court—Qazi Ghulam Muhammad. Parganah Jais.

Plaintiff: Saiyad D. Bahar.

Defendant: Mst. Butul.

Claim re-possession of 15 bighas of muafi land and injunction.

Judgment—"On Ziqad 12. 1099 A. H. (1687 A.D.) Saiyad Dan ibn Bahar ibn Ala Uddin presented a claim to the court of this humble servant of Shara' Qazi Ghulam Muhammad of Parganah Jais that the land in dispute was his madad-e-ma'ash and that the Defendant was obstructing him from using it. The Defendant on being questioned denied the Plaintiff's title to the land in dispute and alleged that it belonged to Saiyads of Saydanah.

I accordingly order that as the Defendant has no justification in preventing the Plaintiff from enjoying his profits, she should refrain from interfering with the Plaintiff's rights."

Delay in Proceedings

During the Mughal period instructions were

occasionally issued[1] by the Emperors to Judges to expedite trials. "Those who apply for justice" states one of Akbar's Ains "let them not be inflicted with delay and expectation. Let him object to no one on account of his religion or sect."

Bernier, a contemporary traveller in the 17th century India, thinks that the suits were "speedily decided."[2] According to Terry, a European missionary attached to the Staff of Sir Thomas Roe, the trials were "conducted quickly". Manucci says that the Emperor "causes the judgment he pronounces to be executed on the spot."[3] But, it seems, special emphasis was laid on the speedy decision of criminal cases.[4] In civil cases sometimes the proceedings took considerably more time. Abdul Wahab's civil suit was referred twice within the space of one year by the Qazi-e-Subah to Jahangir for orders on preliminary issues only, as the Defendant was a high personage of the Imperial Court (Tuzuk. 306 S. A.). The Governor of Kara disapproved of the delay in Hamiyat Ali vs. Gauri Shankar (Baqiat, p. 32), and Sikander Lodi is said to have taken to task his Chief Mir Adl for prolonging proceedings for two months in a suit which he could finish in one day. Elliot IV, p. 454, Kennedy I, p. 110. The delay in civil suits may have been due to the emphasis laid in the Shara' on compromise (As sulh khairun). According to Khafi Khan, Chief Justice Abdullah

[1] Compare Ain II. Jarrett, p. 38; Mirat I, pp. 282-283.
[2] p. 236. Travels. Compare Manrique II, p. 189.
[3] III, p. 262.
[4] Compare Mirat I, p. 278.

(1678-1690) was an over-scrupulous Judge and usually tried to get the parties to compromise[1] (Vol. II, p. 439). Bernier thinks[2] that compromise (Musaliha Baba) was often effected where the parties were poor. The Law, however, did not suggest any delaying of proceedings in order to get a compromise. Only the principle was stated. Individual rulers,[3] as Sir Henry Elliot observes, in most cases "never showed any delay" (Vol. p. 411). Fryer who visited India in the reign of Aurangzeb speaks of law suits being soon ended.[4]

Integrity of Judge

In the decision of claims and disputes the Law expected of Qazis a high integrity. (Hidayah Book XX). In the following cases bribery was proved and the offenders were punished severely.

1. State vs. Kotwal Said (Shahjahan's Court). Storia I, p. 197. The accused was executed in public.
2. Deshmit vs. Faujdar (Alamgir's Court). MS. Dadkhota. Collections.
3. Case. Dow III, pp. 334-335.
4. Case of Qazi Khair Uddin. Baqiat, p. 30.

Sir William Foster in "India Office Records, 1600-1640, p. 99" mentions a case where an English sailor purchased his release from the lockup by paying

[1] Compare Aurangzeb III, p. 85.
[2] p. 237.
[3] Compare Dow III, p. 334 "delay in the execution of justice (under the Mughals) subjected the Judge to the risk of compensating the aggrieved party for the loss".
[4] Edwardes and Garrett, p. 191.

money to the Kotwal.

Manucci says that in one case the Qazi was suspected by him of having accepted a bribe (Storia, Vol. I, p. 198).

We are also told by historians[1] that during the reign of Firoz Tughlaq a "clean up of the judiciary" was made. One Qazi-e-Subah who had been found guilty of corruption was executed in open court (Afif, p. 473). Sir Thomas Roe made a complaint in 1615 to the Governor (Prince Khurram) against the "Judge of Alfandica" (Customs House).

While it seems that some of the inferior Qazis or other judicial officers were not free from this vice, it can not be said that the whole judiciary was corrupt.[2] Sir Thomas Roe who was himself not satisfied in one case had no hesitation in representing to the Governor that "all controversies between Englishmen and the Officials of the town" should be laid before the Qazis of the place for speedy justice (pp. 476-477).

Supervision by higher Courts

The strict supervision over the officers maintained by some of the Turkish[3] Sultans and the Mughals[4] through news reporters (Waqae Nigars) and spies (Dow III, p. 397), or Barids or Khufyah Nigars

[1] Briggs I, p. 464.

[2] The remarks of Sir Jadunath Sarkar (Mughal Admn. 1935, p. 27) that all the Qazis of the Mughal period with a few honourable exceptions were notorious for taking bribes, are not based on any examination of bribery cases.

[3] Compare Barni, 284; Ameer Ali. Islamic Culture 1927, p. 8.

[4] Collections, p. 344.

(Storia II, p. 421) kept the Rulers well informed[1] about the conduct of their officials. If the news sent by these reporters showed any delinquency on the part of the officials, enquiry was made without delay.[2] By holding courts regularly the Rulers were able to examine in appeals judgments of the inferior Qazis, and Emperors like Aurangzeb used their pen freely in comments.[3] Dereliction from duty or corruption, whenever it came to the notice of the Rulers, was promptly punished.[4] Those found guilty were often punished with death. Manrique, a European traveller in 1632, observes "For unjust and corrupt Judges who do not comply with the demands of justice, they erect still loftier and more costly columns whereon they describe on bronze plates the name of the Judge and the fault for which his skull is confined here". Vol. II, p. 149.

Taimur's maxim that a ruler must supervise the administration of Justice and keep himself well informed[5] (khabardari wa agahi) was scrupulously acted upon by the Sultans of the Slave dynasty,[6] Ala Uddin Khilji, Firoz Tughlaq, Sikander Lodi[6] and the first seven Mughal Emperors and European travellers and Persian historians give copious references to

[1] See Collections; Mirat Supp. p. 152; p. 218. Storia II, p. 331; Compare Mirat I, p. 336.

[2] Mirat I, p. 275; Anecdotes, p. 94. Br. Mus. MS. Add. 26, 26,238 f. 14.

[3] Waqa-e-Alamgir, pp. 72, 80.

[4] State vs. Kotwal Said. Storia I, p. 197; Elliot IV, p. 411; Dow III, pp. 334-335.

[5] Tuzuk-e-Taimuri K. C. C. p. 64.

[6] See Chapter III.

their vigilance in this respect.[1]

Rae Bhara Mal, writing about the Qazis of Shahjahan's reign, says that in general they endeavoured to work up to the standard demanded of them, lest it should be mentioned before the Emperor that justice had not been done. (Elliot VII, p. 172).

A specimen report of a Waqae Nigar is given below:—

"Roznamchah Waqae Sarkar Ramgir Shawwal 3." 5th year of accession (Aurangzeb).

Khwajah Beg Faujdar, Qazi Muhammad Fazil and Laal Chand Diwan came to office at two hours after sunrise and took their seats in their respective Courts. The Faujdar announced that he would hold court on Sundays, Mondays and Wednesdays during the next two weeks.....

The officers sat for two hours and closing their courts went home"—Collections (1663 A. D.) Some of these 'diaries' bear the following remarks of the Emperors.

"Ba arz-e-ali raseed" (seen by our Exalted self).

The following is an extract from an order passed by Aurangzeb in another case in which enquiries were started on the report of a Sawaneh Nigar (Br. Mus. MS. Add. 26,238 f. 14).

"A perusal of the report of Amanullah, Mir Imarat (Engineer, Building Dept.), regarding the

[1] Compare Monserrate, p. 209; Tuzuk, p. 3; Rahbar-e-Daccan 1931, pp. 3, 19; Storia I, p. 203; Dow III, pp. XXV-VI, 334-5; Kennedy II, p. 38; Lanepoole, p. 15; Khafi Khan II, p. 550; Barni, pp. 578-580, 39-43; Dr. Careri, pp. 222-223.

property, groves and buildings and the wealth of the Qazi of Dehli showed that the allegations against the Qazi were correct. He has accordingly been dismissed and copy of the order has already been issued.....Qazi Haider is to be appointed in the vacancy".

Aurangzeb's Legal Reforms

Among the long list of medieval rulers Aurangzeb's name stands out prominently for introducing a series of reforms in the judicial administration some of which survive to this day.

Firstly he started the system of "Remand" by the court to Police custody (Mirat I, pp. 278-282). The Kotwals were ordered to obtain a written order from the Qazi to keep a man under custody (Dast-khat-e-Qazi bare-e-dastawez khud giraftah mahbus sazand).

Secondly Aurangzeb took particular notice of the delay which he marked in the disposal of work in some courts, and issued directions that all criminal cases must be tried without delay.[1] In this connection he issued a detailed Farman[2] that prisoners were not to be taken into custody until prima facie 'legal evidence' (Subut-e-sharai) was available and that no prisoner was to remain in Jail without a lawful charge (hech kas be hisab dar qaed na manad). By a curious coincidence when Aurangzeb was issuing these regulations in India in 1679, the British Parliament was enacting the Habeas Corpus Act for England. Aurangzeb disliked long adjournments. If after the

[1] Mirat I, pp. 278, 338, 275.
[2] Br. Mus. MS. Add. 6580.

first date of hearing the case was not taken up, next day the Kotwal was required to send the undertrial prisoners daily to the courts till matters were decided (har roz anja be ferisand ke maamlah ra ba istejal faisal numayend) Mirat I, pp. 282-283. He himself set the example by sitting in his court daily.[1]

Thirdly the keepers of State records of rights were directed to permit the public to examine them.[2]

Fourthly government "Vakils" were appointed in every district[3] as mentioned previously.

Fifthly Aurangzeb, in addition to his notable achievement of compiling the Fatawa-e-Alamgiri, framed written regulations (Zabtah) on every conceivable subject and required strict adherence[4] to every detail of them.

Sixthly, according to Colonel Dow,[5] Aurangzeb reformed the system of Appeals. Since the time of Akbar the Emperors had tried cases personally and their interest in giving 'impartial' decisions used to attract litigants from far off corners of the Empire. Aurangzeb realising the expense and trouble to which such litigants were put in coming to the Capital, issued orders that parties should get their disputes decided by the local Qazi in the first instance,[6] and that the Laws of the Empire should be widely pro-

[1] Alamgir Namah, pp. 1076-1077; Mirat I, p. 257.

[2] Collections. Compare Dow III, p. XXVI "the Registers of the rents to be left open for the inspection of all that the people might distinguish extortion from the just demands of the Crown."

[3] See Chapter V, Lawyers.

[4] Storia III, p. 260; Waqae, pp. 31, 79, 108. Anecdotes, p. 132.

[5] Vol. III, p. XXXIII, p. 334.

[6] Mirat I, pp. 257-258.

claimed[1] by the various State officials so that intending litigants should understand their position before starting on a journey to the Capital. Civil Appeals were only admitted "beyond a certain sum",[2] and in criminal matters appeal against a Governor's Bench could lie by way of petition only.[3]

Aurangzeb appointed a court 'Diwan-e-Mazalim'[4] on the model of the Abbaside rulers[5] "to redress wrongs." It resembled the Court of Crown Cases reserved in medieval England. Its function was to admit petitions of Appeal. Sir Jadunath Sarkar thinks that the Diwan-e-Mazalim was the name of the court held by Aurangzeb on Wednesday.[6]

Aurangzeb took special care to see that his orders in appeal were conveyed to inferior courts without the least possible delay. The postal system was improved, and Captain Hamilton writes that one could send a letter from the Deccan to Delhi within eight days, Vol. I, p. 150.

Leniency

Aurangzeb's keenness as a lawyer led him to the side of caution. As a Judge he translated the law of Shara, in the spirit it was meant (pp. 286-287, Mirat I) (Lanepoole, pp. 98-113). He became lenient in his sentences. He had started his reign by confirming the death sentences of his elder brothers on the one

[1] Mirat I, p. 258.
[2] Dow III, p. XXVII.
[3] Compare Dow III, p. XXXIII.
[4] Sarkar (1935) p. 106. Compare Dow III, p. XXXIII.
[5] Compare Ameer Ali; Saracens, p. 422; J. R. A. S. 1911 pp. 635-674.
[6] Sarkar (1935), p. 106.

hand and forgiving[1] all those who had fought against him in the war of succession on the other. He also issued orders that the first offender was to be treated leniently. If he committed the offence a second time he was to be put in jail.

"Habs nigah darand ta asar toba zahir shawad." He would himself not inflict any sentence unless forced to do so[2]. Khafi Khan[3] also thought that in spite of his unrivalled abilities it was essential for him to pass sufficiently severe punishments.

Manucci draws a gruelling picture of the state of law abiding spirit among his officers (Vol. III, p. 260), when he says:—

"The people revere him and hold him in the greatest respect. Yet in spite of his being himself imbued with this idea he assumes always great humility in his attitude. For instance, if he sends orders to an officer at a distance in regard to any complaint that has been made of his conduct and then learns that the said order has passed unheeded and submission in it has been refused, he betrays no wrath at such insubordination. All he says is (and that in the softest voice) that he is only a miserable sinner that there is no reason for astonishment if his orders are disregarded since every day those of God Himself are neglected and repudiated. He does not forget, however, to repeat his orders and adopt every exact means of getting them executed." While such attitude of humility would give credit to any

[1] Maharaja Jaswant was pardoned twice for his treachery.
[2] Alamgir Namah, p. 1078.
[3] p. 550, Vol. II.

judicial temperament, I doubt if it had much to commend itself for its adaptability when the chief judicial officer of the realm was also the de facto supreme Executive head of the Government, and on him alone depended the maintenance of the State at a time when ideals of self-government were not known. Aurangzeb's leniency may have been due to his over realisation of the responsibilities which a ruler in an Islamic State bears on his shoulders (Alamgir Namah, pages 1076-1077). It must be said, however, to the credit of Aurangzeb that he showed an extreme concern for the enforcement of a regime of law. With the efficiency of a modern secretariat head and with an unlimited capacity to work he was able to keep the machinery of law in perfect order within an empire which any single individual has hardly controlled so remarkably in the world for a complete half century. Aurangzeb's mastery of the details of administration and his super-human ability (Dow, Vol. III, p. XXVI) made the whole organisation a personal triumph for him.

Conditions deteriorated in the time of Aurangzeb's successors who were much inferior to him both in ability and industry. They ceased to administer justice in person, and people, who had been accustomed to flock to the Emperor's court to get redress, turned to other quarters. The result was that the Provincial Governors commenced to arrogate to themselves powers which were not theirs legitimately and to interfere in the administration of justice by trying cases which should have been left to the Qazis. As Alexander Dow observes, "the Courts of

Justice which the wisdom of the House of Taimur had established in the cities and various subdivisions of the Provinces were either annihilated or they lost their power under the summary despotism of the revolted Nabobs."—III, p. CVII.

CHAPTER X

SUMMARY AND CONCLUSIONS

The superstructure of the Mughal administration built by Aurangzeb continued, more or less in its original form, to exist till the death of Muhammad Shah in 1748. There were after him frequent changes in the Government which resulted in the weakening of the whole administrative machine. The people who, since 1526, had been used to a succession of strong and able rulers were left to find their own feet in a whirlpool of rebellious Governors, recalcitrant Chieftains and the marauding armies of rival claimants to power.

The medieval State in India as elsewhere throughout its existence had all the disadvantages of an autocracy—everything was temporary, personal and had no basic strength. The personal factor in the administration had become so pronounced that a slight deviation of the head from the path of duty, produced concomitant variations in the whole 'trunk'. If the King was drunk "his Magistrates were seen drunk in public".[1]

The vices of the Ruler became fashionable at court, from whence the whole body of the people was soon infected.[2] Barni deplores[3] the decline of

[1] Briggs I, p. 274.
[2] Compare Briggs I, pp. 388, 467.
[3] pp. 382-383.

the institutions built up by Sultan Ala Uddin Khilji in the reign of his immediate successor, Sultan Qutub Uddin, who spent most of his time in wine and women.

In fact, the whole history of medieval India shows that the administrative machinery functioning in the reign of one monarch was not necessarily the same in the reign of the others.

The democratic ideal of government inculcated in the teachings of Islam was obscured in India. The very simplicity of despotism, its obvious impartiality, "its prompt justice, its immediate severity against crimes, dazzled the eyes of the superficial and raised in the minds of the subjects a veneration little short of idolatry" which might have turned into real idolatry in the case of the Mughal Sovereigns if the practice of the Emperor sitting in his "Jharokah" for "Darshan" early in the morning had not been stopped by Aurangzeb.

Despotism appeared in its most engaging form under the Imperial house of Babar. According to Colonel Dow "the uncommon abilities of most of the Princes with the mild and humane character of all, rendered Hindustan the most flourishing Empire in the world during two complete centuries."—Vol. III, p. XXIII. The succession of brilliant, efficient, and able rulers from 1526-1713, which had established "domestic tranquillity" in the country, resulted, however, in the people resigning their power of initiative to some single individual amongst them and always looking up to that single individual for guidance. When that guidance was not forthcoming there was

a collapse. The Mughal Emperors after 1750 could neither lead their people nor support their Judges, and the system so elaborately planned by Akbar and Aurangzeb broke down completely.

Separation of Judicial and Executive functions

Hitherto the judicial and the executive functions in the Muslim Indian State had been separate except that the King or his representative in the Province, the Governor, combined them in his person. The lower ranks, that is the Qazis and the executive officers functioned independently of each other. The Qazis had no "executive" duties, and, as far as was possible, the executive officers were not invested with judicial powers. No titles were conferred on the Qazis. The same was the practice of the Caliphs of Islam. "Omar was the first ruler in Islam" says Ameer Ali "to fix salaries for his Judges and to make their offices distinct from those of executive officers. The title of Hakim i.e. ruler was reserved for the Kazis," and according to Von Hammer "the Islamite administration even in its infancy" proclaimed "in word and in deed the necessary separation between judicial and executive power".[1] In the dominions of H. E. H. the Nizam, where certain Mughal traditions still survive, the separation of judicial and executive functions seems to be exactly on the model adopted by the Mughal Emperors[2] except that neither the Subahdar nor H. E. H. hears appeals or tries cases.

Under the Sultans the Qazis were independent

[1] Vide Ameer Ali, Saracens, p. 62.
[2] Compare Dow, III, p. LVIII.

of the Government and were considered to hold office under the Shara', with which no one, not even the Sultan, could interfere. Rulers like Muhammad Tughlaq and Firoz Tughlaq sometimes circumvented the Judges by investing their Wazirs with powers to try important cases,[1] but this was not the rule. When Sultan Mahmud Shah Bahmani (1500) proposed to indulge in the same practice, Qazi Sadr Uddin Sharif, his Chief Justice, went "on leave" outside the Kingdom and refused to resume duties, unless the Sultan gave him an undertaking that the powers of the Qazis would not be taken away in future (Briggs II, pp. 322-325).

By the time of Akbar (1560) the separation was in full force. When the Emperor or the Governor held trials the proceedings in his court were purely judicial. The Qazi-e-Subah was a member of the Governor's Bench, and any decision by the Governor either as a single Judge exercising original jurisdiction or as an appellate court, had to conform to the legal opinion expressed by the Mufti.

Relations between the Qazis and the 'Executive'.

The relations between the Qazis and the officers serving in the executive side were on the whole cordial. Much depended upon the personality of the ruler. In the reigns of Emperors like Firoz Tughlaq and Aurangzeb the decrees of the Law Court were obeyed and the Qazis were held in great respect. Mirza Kochak, Governor of Lahore, had

[1] Ibn Batuta, p. 146, State vs. Khwajah Ahmad Afif, p. 508.

ordered a search to be made in the house of Qazi Ali Akbar of Lahore, who was suspected of murdering two slave girls. He preferred to commit suicide rather than to obey a summons by Aurangzeb to explain the killing of the Qazi by the Police in his attempt to prevent the search (Storia II, p. 254).

No grounds are known for accusing the Qazis of subservience to the Governors, although instances have been recorded when they made efforts to please the Sovereign. Mir Faizullah Anjoo, Chief Justice of Bahmani Shah Mahmud, who was known to enjoy public confidence and a high reputation for honesty composed an ode in praise of the Sultan and was handsomely awarded. Similarly Qazi Abdul Wahab's acceptance of rewards[1] from Aurangzeb has led some modern writers[2] to think that the Chief Justice possessed no conscience, accepted bribes and managed to remain in office merely by pleasing the Emperor. This seems unlikely in view of the other evidence of the standard of efficiency required by Aurangzeb in every department of the administration.[3] It appears from his Ruqaat[4] (letters) that Aurangzeb held it to be a maxim that the complaint of a poor citizen against a highly placed individual was to be given credence[5] (bara-e-shahzada saza adam tahqiq ast. Waqae, p. 32).

[1] Alamgir Namah, p. 844.

[2] Sarkar (1935) p. 112.

[3] Compare (1) Dow III, pp. XXVI-XXVII (2) Anecdotes by Sarkar, p. 97.

[4] Waqae, pp. 32, 34, 70, 72, 80.

[5] Compare Dow III, p. XXXIII. "Their petitions whenever they found access to the throne were heard with the attention which a jealous prince pays to his own power, and there

None the less Qazi Abdul Wahab's own son who became Chief Justice refused to touch such rewards.[1]

Ali Muhammad Khan quotes a case State vs. Prince of Gujrat, Mirat I, p. 49, where the son-in-law of the King was accused of murder and the Qazi who tried the case, after allowing Qisas, himself took his judgment to the Sultan for announcement or approval.

Manucci tells us of a Kotwal who arrested him on a charge of theft and would not accept bail because of the hostility of the outgoing Governor (Amin Khan), but became anxious to set him free when news arrived that Amin Khan's successor Fidae Khan was his friend (Storia II, p. 198). Similarly the chief Mir Adl of Sultan Sikander Lodi (1489-1517) kept an ordinary case hanging on in his Court for two months and on a reprimand from the Sultan disposed of it the same day. (Kennedy I, p. 110).

Qazis and the Ruler

There are more instances than to the contrary proving that the subordination of the Qazis to the King as Chief Judge of the realm did not impair their independent position in the State, vide Widow vs. King Ghyas, Stewart, pp. 90-91; Qazi-e-Subah vs. Governor in Sadiq vs. Shakur, Sarkar V, p. 421; State

are many instances in which the Governors of Provinces have been severely punished for an act of injustice to a poor peasant. Never to forgive oppressions against the helpless and low was an established maxim among all the Princes of the house of Timur."

[1] Compare Sarkar (1935) p. 112.

vs. Brahman, Stewart, p. 410; State vs. Yaqub and Naim, Briggs IV, p. 519; Hamid Uddin vs. Prince Kam Bux, Khan II, pp. 436-437[1].

The order issued by the Emperor Aurangzeb and referred to by Sarkar directing the Qazis of Ahmadabad to be present in the Court of the Governor on Wednesdays was for their sitting on his Bench as Judges and not for attending him[2] as the executive head of the Province. No instance has come to my notice where the Ruler removed any Qazi on the ground that he gave an inconvenient decision. No harm was done to the Qazi who declined to favour Sultan Muhammad Tughlaq in his libel suit against Shaikhzada Jami, although later on the Sultan executed the defendant without a trial (Badaoni I, p. 240). Conversely the removal of Qazi Shamsuddin Mehr, as mentioned before, was the result of a successful appeal against his judgment. It seems to me that religious sentiment was a most potent influence on public opinion in medieval India and that every ruler who strove to live up to its standards (impartial justice being one of the essentials) was supported by the people.[4] The tribunal of Justice was a popular forum of appeal to the people to accept the sovereignty of a particular aspirant[5] to the throne.

It seems inconceivable that the despotic rulers

[1] Also compare Briggs II, pp. 322-325; Barni, p. 580; Mirat I, p. 248; Al Qaza fil Islam, p. 22.

[2] Mirat I, p. 275.

[3] Elliot II, pp. 339-340.

[4] See State vs. Qazi Jalal Kashani. Elliot III, pp. 144-145. Compare remarks by Barni, pp. 39-43; pp. 578-580; Shams Siraj Afif, pp. 505-510.

[5] Compare Elliot IV, p. 116.

could have ever deliberately perpetrated acts of injustice upon their subjects by punishing or slighting upright Judges, if they were at all anxious to maintain their position intact. In fact, 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.

Disintegration of the Mughal Empire

Aurangzeb had, in the words of that distinguished British civil servant, Colonel Dow, left a completely settled Empire at his death. Its disintegration commenced in the reign of Muhammad Shah (1719-1748), who is said to have once thrown an urgent report of an important conspiracy into a barrel of wine (in dafter-e-be mani gharq-e-ma-e-nab ula) as useless bother, and did not recover from the effects of his orgy till two days after.

The scramble for power that set in in India after the death of Muhammad Shah in 1748 resulted in chaos. The regular course of Justice was everywhere suspended, and every man exercised the functions of a Judge who had the power of compelling others to submit to his decisions.[1] From 1750 A. D. onwards there were five 'puppet' Emperors, who were quite incapable of exercising the control necessary to preserve the vast Empire left by Aurangzeb.

[1] Compare I. O. L. Records H. Misc. 352, p. 37.

In the Muslim India which remained, the judiciary became merged in the executive in a manner always discouraged by Islam and the early Caliphs. The Faujdar and the Zemindar, whose judicial functions had been limited to what are at present called 'security' cases, were authorised by the Governors (who had themselves assumed the powers of an Emperor in their Subahs) to try practically every kind of case.[1] The seventh report of the Committee of Secrecy appointed by the House of Commons shows[2] how corrupt these officers functioning as Courts became. They invented a variety of new Exactions from the litigants and established a mode of compromise for practically all criminal offences. The Chief Qazi of the Province of Bengal was relegated to an inferior position[3] and in effect ranked no higher than a dignified Mufti in the court of the Governor's Daroghah.[4] The result in Bengal was a deterioration of the whole system. "Abuses" wrote an English official in 1772 "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"[5]....."The Qazi's

[1] The universal practice in Northern India of referring to every kind of Criminal Court procedure as 'faujdari' evidently dates from those days.

[2] Compare Holwell's letter I. O. L. Rec. 529, pp. 297, 301, 340.

[3] Compare I. O. L. H. Misc. 352, pp. 34, 38.

[4] Compare I. O. L. Records. Range A. Vol. 19. Report of the Committee of Circuit 1772, pp. 371-372.

[5] Compare I. O. L. Records. Range A. Vol. 19. Report of the Committee of Circuit 1772, pp. 371-373.

courts seemed to be formed on wiser maxims and even on more enlarged ideas of justice."[1]

East India Company as Diwan

Such was the state of affairs when the East India Company was appointed Diwan of the Subah of Bengal in 1765 by a Royal Farman. Clive, the first administrator under the Company, met with little success in his efforts to restore the "old prestige of Government". His successor, Warren Hastings, realising the limitations imposed by the Farman on the Company, felt disinclined to foist "English ideas on a people who were not used to them." In his dispatch to the Court of Directors dated 3. XI. 1772 (Home Misc. Records 529, p. 320) he wrote:

"We have endeavoured to adapt our Regulations to the manners and understandings of the people and the exigencies of the Country, adhering, as closely as we are able, to their ancient usages and institutions."

There was no other way possible, as the de jure Sovereign was still the Mughal Emperor, and the people owed allegiance to him, while the East India Company had limited administrative rights only.[2]

The continued corruption of the lower ranks of judicial officials and the consequent injustices prevailed upon Lord Cornwallis to take upon himself the responsibility of separating[3] the judicial from the executive functions in 1793, so far as the territories

[1] Compare I. O. L. Records. Range A. Vol. 19. Report of the Committee of Circuit 1772, pp. 371-373.

[2] Compare Anglo-Muhammadan Law by Wilson, pp. 25-26. Letter of Warren Hastings.

[3] Smith, Oxford History of India, pp. 570-571.

under the management of the East India Company were concerned. But it seems that the class of officers recruited for the ideal form of judicial administration did not bring any particular credit[1] to the system. There were other financial difficulties and the old arrangements were revived in 1835.

Since the assumption of direct responsibility by the British Crown drastic measures have been taken to deal with any defect of the judicial system which has appeared from time to time to hinder the dispensation of justice. No popular grievance whatsoever has been voiced so far as the administration of justice in modern India is concerned. The "popular" cabinets themselves, with the exception of the U. P., have not shown any inclination to introduce any changes into the present day organisation of the magistracy and the judiciary. What the modern system has achieved in India can be fairly estimated from the following speech delivered by the late Sir Austen Chamberlain while proposing the toast of the English Bench and Bar:

"The longer I live, the more profoundly grateful I am that I was born a citizen of this free country. We are free people, we govern ourselves. We can think our own thoughts—if we maintain decency and courtesy we can express them freely. Our liberties remain and grow stronger as they perish or wither away elsewhere, and of all the British institutions to which we owe our liberties there is none to which

[1] Compare Smith. Oxford History of India, p. 571.

we have a greater debt—not even to Parliament itself—than British justice and the British Courts of Law."

(*The Times*—1-2-1937).

APPENDICES

A. The Sultans and the Badshahs of Delhi.

B. Bibliography.

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C. Criminal Regulations of Aurangzeb (Br. Mus. MS. Add. 6580).

D. Letters of Appointment.

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2. Farman of Muhammad Shah (1742) appointing Saiyad Abrarullah Qazi of Parganah Deoband, Sarkar Saharanpur.

3. Farman of Ahmad Shah (1st year of accession) confirming Qazi Razaullah in his appointment of Qazi of Parganah Kunwar, Sarkar Shahjahanabad.

4. Farman of Muhammad Adil Shah of Bijapur 1659 A. D. (approx.) appointing Muhammad Ghulam Husain Qazi of Parganah Rewar-Kandah.

2. *Darogha-e-Adalat*

Farman of Muhammad Shah (1722) appointing Saiyad Muhammad Murad Daroghah-e-Adalat Parganah Haveli, Sarkar Sambhal.

3. *Vakil*

Vakalat Namah in favour of Saiyad Murad bin Saiyad Yar Muhammad 1735 A. D.

4. *Zemindar*

Farman of Ahmad Shah (7th year of accession) appointing Bahadur Khan as combined Faujdar and Zemindar of Parganah Tharao, Sarkar Patan.

5. *Head Man*

Farman of Aurangzeb (1706) appointing Muhammad Turab Chaudhri of Parganah Manoi, Sarkar Lucknow.

6. *Mohtasib*

Farman of Muhammad Shah (1746) appointing Razaullah Khan Mohtasib of Parganah Soinpat, Sarkar Shahjahanabad.

E. List of Qazis of Parganah Jais Sarkar Manakpur. (1565-1883).

APPENDIX A

Slaves

The Sultans	*Year of Accession*
Qutub Uddin Aibek	1206
Aram Shah	1210
Shams Uddin Iltutmish	1211
Rukn Uddin Firoz	1236
Sultan Raziah	1236
Muiz Uddin Bahram	1240
Ala Uddin Masud	1242
Nasir Uddin Mahmud	1246
Ghyas Uddin Balban	1266
Muiz Uddin Kaiqubad	1287

Khiljis

Jalal Uddin Firoz	1290
Rukn Uddin Ibrahim	1296
Ala Uddin Muhammad	1296
Shihab Uddin Umar	1316
Qutb Uddin Mubarak	1316
Nasir Uddin Khusro	1320

Tughlaqs

Ghyas Uddin Tughlaq	1320
Muhammad bin Tughlaq	1325
Firoz Shah	1351
Ghyas Uddin Tughlaq II	1388

Abu Bakr Tughlaq	1389
Nasir Uddin Muhammad	1390
Sikander	1394
Mahmud Tughlaq	1394
Nusrat Shah	1396
Mahmud Tughlaq	1399

Lodis

Daulat Khan Lodi	1414

Saiyads

Khizr Khan	1414
Muiz Uddin Mubarak	1421
Muhammad	1434
Ala Uddin Alam Shah	1444

Lodis

Bahlol Lodi	1451
Sikander Lodi	1489
Ibrahim Lodi	1517

Surs

Sher Shah	1540
Islam Shah	1545

The Badshahs

Babar	1526
Humayun	1530
Humayun	1555
Akbar	1556
Jahangir	1605

Shahjahan	1627
Aurangzeb	1658
Bahadur Shah	1707
Jahandar Shah	1712
Farrukh Siyar	1713
Rafiud Darajat	1719
Muhammad Shah	1719
Ahmad Shah	1748
Alamgir II	1754
Shah Alam II	1759
Akbar II	1806
Bahadur Shah II	1837-1857

APPENDIX B

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"The Tenor of a Qazi's Firman."

"The order that issues forth like fate.

"As in the number of our auspicious designs it is proper that the people of God should be conducted from the dark and narrow paths of error into the direct road of truth and reason, which intention can only be accomplished, when an upright and devout Judge vested with his powers shall be established in every city and country to unfold the door of virtue and justice before the faces of wicked and designing men.

"The laudable qualifications being found in the dispositions of the learned in the laws, the extensive in knowledge, Eas-ul-Dien Mohommed, we have on that account, favoured him with the high and respectable office of Qazi of the city of Cabul, commanding him. To give the necessary applications on that duty—To observe the established course of the noble law in his enquiries—To pass judgment in all disputes, and arbitrations according to the same noble law, nor permit the smallest differences in the case to pass unobserved—To regulate his proceedings in such a clear and distinct manner, as if to-morrow were the day of examination on which every action must answer for itself.

"Be it known to all rulers, and officers, and people, public and private, that the aforesaid learned in the law is confirmed Qazi of the above mentioned

city of Cabul; that they shall pay him all due respect and revere his decisions totally and particularly, paying all due obedience to his orders, by such officers as he shall appoint for executing the law; receiving such of his words as are agreeable to the noble law into the ears of their understanding. In this business proceed according to order, and let none oppose it."

Dow III, pp. 411-412.

"TENOR OF A CUTWAL'S FIRMAN."

"As a particular account of the capacity, experience and bravery of Mohommed Bakar hath reached our high and sacred presence, we have of our royal favour confirmed and appointed him Cotwal of the city of Dowlatabad. He is commanded to make the practice of fidelity and truth his study, that he may be able to execute the duties of his office with propriety. He is to take care that the guards and watches of that city be strictly kept, that the inhabitants may be secured and protected in their persons and property, that they may bless our happy reign and pray for its duration.

"He is to use his utmost endeavours that no thieves, gamblers, or other miscreants shall make their appearance, and that no nuisances shall be permitted to remain in the streets or before the door of any person. That no insidious old women, pimps or jugglers, who lead the wives and daughters of honest men into the ways of evil be tolerated, but have their hands shortened from such iniquitous practices. That he will as much as possible prevent

forestalling of grain, provisions, and other things, that the markets may be kept low, nor the people suffer from any combinations amongst the Bunias. What events may arise of a particular nature, he is to send a true and faithful account of them to the presence.

"Be it known to all Mutasaddies and officers, and all men public and private of the above mentioned city, that the aforesaid Mohommed Bakar is confirmed and appointed Cotwal and, that all quarrels and vexatious disputes which may arise in that city shall be referred to his decision, and that they shall submit to his arbitration according to the established customs of the empire. Let this business be proceeded on according to order, and let none oppose it."

Dow III, pp. 412-413.

محتسب و مفتیان شرع متین (انکا تذکرہ پاربتہ جایں)

مفتیان عہد اکبری و جہانگیری = الکریم - محمد اسلاف ۔ محمد رشید السنہ
افضل الہی ۔ قاضی صدیقی وغیرہ ۴۰ نفر ۔ مفتیان عہد عالمگیری ۴۵ نفر
مفتی ماہرو ۔ مفتی عمر بن سید قاسم بن سید پیارہ حسین ۔

نمبر شمار	سنہ عیسوی	سنہ ہجری	بادشاہ وقت	شاہ اودھ	اسم قاضی	کیفیت
۲	۱۷۴۸ء	۱۱۶۰ھ	محمد شاہ	.	محمد علیم اللہ مفتی	۱۱۹۱ھ کے کاغذ پر بھی مہر ہے
۳	۱۷۵۲ء	۱۱۶۴ھ	احمد شاہ	.	محمد اشرف مفتی	.
۴	۱۷۹۵ء	۱۲۰۸ھ	شاہ عالم	آصف الدولہ	مفتی غلام احمد مفتی الملک	.
۵	″	″	″	″	مفتی شاہ علی	۱۲۱۱ھ کے کاغذ پر بھی مہر ہے
۶	۱۸۱۲ء	۱۲۲۵ھ	اکبر ثانی	سعادت علی خاں	مفتی سید قادر حسین	فرمان ملا تا سنہ ۱۲۶۰ھ
۷	۱۸۸۰ء	۱۲۵۴ھ	انگلش		مفتی سید راحت حسین مفتی غلام حیدر کنچانہ خورد	

نوٹ:-

۱۷۹۵ء ۱۲۰۸ھ شاہ عالم آصف الدولہ قاضی سید عطا حسین قاضی رائے بریلی ۔

(ماخوذ از سراج التواریخ مرتبہ سید آل محمد مہ جائسی بی اے ۱۲۵۴ھ)

نمبر شمار	سنہ عیسوی	سنہ ہجری	شاہ دہلی	شاہ اودھ	اسم قاضی	کیفیت
۶۲	۱۷۶۱ ع	۱۱۷۴ ھ	عالمگیر ثانی	.	مولوی سید عصمت اللہ قاضی قصبہ	تذکرہ
۶۳	۱۷۶۵ ع	۱۱۷۸ ھ	.	.	قاضی قطب اللہ	تذکرہ
۶۴	۱۷۸۱ ع	۱۱۹۴ ھ	.	.	قاضی محمد مرید	تذکرہ
۶۵	۱۷۸۱ ع	۱۱۹۴ ھ	شاہ عالم	آصف الدولہ	قاضی محمد طاہ ابن قاضی محمد مرید	.
۶۶	۱۷۸۴ ع	۱۱۹۶ ھ	〃	〃	قاضی سید عادل حسین	وفات ۱۸۸۱ء ۱۲۹۸ھ
۶۷	۱۷۹۰ ع	۱۲۰۳ ھ	〃	〃	قاضی سید خیر الدین حسین	از فرمان جناب عالیہ وفات ۱۲۰۳ھ ۱۷۹۰ء
۶۸	۱۸۰۴ ع	۱۲۱۷ ھ	اکبر ثانی	سعادت علی خاں	قاضی سید نصیر الدین حسین	فرمان قضا مہری وراب علی خاں وفات ۱۲۵۵ھ
۶۹	۱۸۰۵ ع	۱۲۱۸ ھ	〃	〃	مولوی قاضی سید اسد علی رضوی	.
۷۰	۱۸۱۲ ع	۱۲۲۵ ھ	〃	〃	قاضی سید امام الدین نصیر آبادی	قاضی نصیر الدین نصیر آبادی بھی تھے
۷۱	۱۸۲۱ ع	۱۲۲۴ ھ	〃	〃	قاضی سید عادل حسین قاضی بشیر الدین حسین	(پروانہ قضا۔ تجدید)
۷۲	۱۸۲۴ ع	۱۲۴۷ ھ	اکبر ثانی	نصیر الدین حیدر شاہ	قاضی خواجہ کرم اشرف قاضی پرگنہ امیٹھی	.
۷۳	۱۸۲۸ ع	۱۲۵۱ ھ	بہادر ثانی	〃	قاضی عبد الکریم	.
۷۴	۱۸۴۸ ع	۱۲۶۱ ھ	.	〃	خواجہ قاضی فضل حسین	پروانہ ملا
۷۵	۱۸۸۳ ع	۱۲۹۷ ھ	انگلش		قاضی مولوی خیریت علی	.

نمبر شمار	سنہ عیسوی	سنہ ہجری	بادشاہ دہلی	شاہ اودھ	اسم قاضی	کیفیت
۴۴	۱۷۱۹ ع	۱۱۳۳ ھ	فرخ سیر	.	قاضی عبدالرحیم	.
۴۵	〃	〃	محمد شاہ	.	قاضی محمود	.
۴۶	〃	〃	〃	.	قاضی محمد صدیق	قاضی پرگنہ جالیس
۴۷	〃	〃	〃	.	قاضی عبدالرسول	.
۴۸ و ۴۹	۱۷۱۸ ع	۱۱۳۹ ھ	〃	.	قاضی ابوالخیر۔ قاضی جمال	.
۵۰	۱۷۲۶ ع	۱۱۴۰ ھ	〃	.	قاضی حاجی عبدالستار	.
۵۱	۱۷۳۳ ع	۱۱۴۷ ھ	〃	.	قاضی علی ضابرہان الملکی	.
۵۲	۱۷۳۴ ع	۱۱۴۸ ھ	〃	.	قاضی ابوالمنصور	.
۵۳	〃	〃	〃	.	قاضی سمیع اللہ قاضی سید اوصاف علی	فرمان ملا ۱۱۳۹ھ
۵۴	۱۷۴۴ ع	۱۱۵۷ ھ	محمد شاہ	.	قاضی سید نعمت اللہ	عہد مہرانہ۔ وفات ۱۱۳۶ھ
۵۵	۱۷۴۹ ع	۱۱۶۱ ھ	احمد شاہ	.	قاضی ابوالفضل	پروانہ قضا ملا
۵۶	۱۷۵۱ ع	۱۱۶۳ ھ	〃	.	قاضی مجیب اللہ	.
۵۷	〃	〃	〃	.	قاضی قائم علی	مہر تا ۱۱۶۲ھ (عہد مہرانہ)
۵۸	۱۷۵۳ ع	۱۱۶۴ ھ	〃	.	قاضی محمد سمیع	.
۵۹	۱۷۵۳ ع	۱۱۶۵ ھ	〃	.	قاضی سید رحم علی	فرمان قضا ملا
۶۰	۱۷۵۴ ع	۱۱۶۶ ھ	عالمگیر ثانی	.	قاضی سید خیرالدین حسین	فرمان قضا ملا
۶۱	۱۷۵۶ ع	۱۱۶۸ ھ	〃	.	قاضی سید قطب الدین حسین	پروانہ قضا ملا

نمبر شمار	سنہ عیسوی	سنہ ہجری	بادشاہ وقت	نمبر شمار	اسم قاضی	کیفیت
۲۸	۱۶۸۶ء	۱۰۹۶ھ	عالمگیر	۰	قاضی قطب الدین قضیانہ	۰
۲۹	//	//	//	۰	قاضی عبد الغفور امیر معلی	۰
۳۰	//	//	//	۰	قاضی غلام محمد امیر معلی	۱۰۹۹ھ تک
۳۱	//	//	//	۰	قاضی جمال خواجگان	۰
۳۲	۱۶۸۸ء	۱۰۹۹ھ	//	۰	قاضی شیخ غلام محمد	قاضی عدالت عالیہ منصب جالیس تا ۱۱۰۲ھ
۳۳	۱۶۸۹ء	۱۱۰۰ھ	//	۰	قاضی بہاء الدین	(تذکرہ)
۳۴	//	//	//	۰	قاضی شیخ عبد المجد بن قاضی بہاء الدین	//
۳۵	۱۶۹۲ء	۱۱۰۳ھ	//	۰	قاضی محمد ماہ	۱۱۳۳ھ تک عہدہ پائی جاتی ہے
۳۶	//	//	//	۰	قاضی مرتضیٰ قلی	۱۱۱۵ھ تک
۳۷	۱۶۹۰ء	۱۱۰۰ھ	//	۰	قاضی محمد بن عبد الواحد	فرمان ملا
۳۸	۱۷۰۱ء	۱۱۱۲ھ	//	۰	قاضی خان	پروانہ قضاء مہر آصف الدولہ وزیر ۱۱۱۵ھ تک عہدہ پائی جاتی ہے
۳۹	۱۷۰۴ء	۱۱۱۶ھ	//	۰	قاضی عبد الواحد	۰
۴۰	۱۷۰۸ء	۱۱۲۱ھ	بہادر شاہ	۰	قاضی سید محمد امین	اول قاضی از سادات نجیبہ (عہدہ فرمان ملا)
۴۱	//	//	//	۰	قاضی غلام محمد ابن عبد الواحد	۰
۴۲	۱۷۱۰ء	۱۱۲۴ھ	//	۰	قاضی قائم	۱۱۲۶ھ متقدس صلی اللہ علیہ وسلم
۴۳	۱۷۱۲ء	۱۱۲۵ھ	جہاندار شاہ	۰	قاضی علی رضا برہان الملکی	فرمان ملا (تا ۱۱۳۵ھ)

نمبر شمار	سنہ عیسوی	سنہ ہجری	بادشاہ	نمبر شمار	اسم قاضی	کیفیت
۱۲	۱۶۱۷ء	۱۰۲۷ھ	جہانگیر	۰	قاضی عبد الجلیل	۱۰۳۷ھ ۰
۱۳	۱۶۲۳ء	۱۰۳۳ھ	〃	۰	قاضی حسین	۱۰۷۶ھ ۰
۱۴	〃	〃	〃	۰	قاضی خانجہان	۰
۱۵	〃	〃	〃	۰	قاضی محمد بن قاضی خانجہان	۰
۱۶	〃	〃	〃	۰	قاضی جلال مذکور	۰
۱۷	〃	〃	〃	۰	قاضی محمود	۰
۱۸	۱۶۲۵ء	۱۰۳۵ھ	〃	۰	قاضی بدر کبیر صدیقی	۰
۱۹	〃	〃	〃	۰	قاضی سکندر جمال	۰
۲۰	〃	〃	〃	۰	قاضی حمید ولد قاضی سکندر جمال	۰
۲۱	〃	〃	〃	۰	قاضی پیران	۰
۲۲	〃	〃	〃	۰	قاضی احمد بن قاضی پیران	۰
۲۳	〃	〃	〃	۰	قاضی ابو الخیر	۱۰۳۳ھ میں بھی دستخط ہیں
۲۴	۱۶۶۱ء	۱۰۷۲ھ	عالمگیر	۰	قاضی محمد رشید	پروانہ قضا ملا
۲۵	۱۶۶۵ء	۱۰۷۵ھ	〃	۰	قاضی جمال الدین غلام حضرت پیران	۰
۲۶	۱۶۶۶ء	۱۰۷۶ھ	〃	۰	قاضی جعفر محمد	۰
۲۷	۱۶۸۶ء	۱۰۹۶ھ	〃	۰	قاضی حبیب اللہ قضیانوی	۰

APPENDIX E.

یا مالک الملک

۷۸۶

فہرست خادمانِ شریعت مطہرہ یعنی قاضیان قصبہ جالیس (از کاغذات)

نمبر شمار	سنہ عیسوی	سنہ ہجری	بادشاہ وقت	اسم قاضی	کیفیت
		۹۰۰ھ		قاضی سید بڑے	سنہ ۹۳۵ھ
۱	۱۵۶۲ء	۹۶۸ھ	اکبر	قاضی ابوالفتح محمودی	(پرگنہ نصیر آباد سرکار رنتھنبور حوالہ آباد)
۲	〃	〃	〃	قاضی جمال	(اسی زمانہ میں قاضی مولا بھی تھے)
۳	〃	〃	〃	قاضی درویش	.
۴	۱۵۷۶ء	۹۸۳ھ	〃	قاضی ذکریا	.
۵	۱۵۹۰ء	۹۹۷ھ	〃	قاضی الہ داد	سنہ ۹۹۹ھ کے کاغذ پر بھی دستخط ہیں
۶	۱۵۹۵ء	۱۰۰۲ھ	〃	قاضی عبدالحی	.
۷	۱۵۹۶ء	۱۰۰۴ھ	〃	قاضی سکندر بن قاضی جمال	سنہ ۱۰۰۴ھ کے کاغذ پر بھی دستخط ہیں
۸	〃	〃	〃	قاضی یوسف	.
۹	۱۵۹۰ء	۱۰۰۵ھ	〃	قاضی احمد ابن قاضی یوسف	.
۱۰	〃	〃	〃	قاضی منجھلے	سنہ ۱۰۳۵ھ کے کاغذ پر بھی دستخط ہیں
		۱۰۲۶ھ		قاضی جلال بن سید حسین قاضی ابوالفتح	
۱۱	۱۶۱۷ء	۱۰۲۷ھ	جہانگیر	قاضی جان	.

APPENDIX D.6.

نقل فرمان محمد شاہی

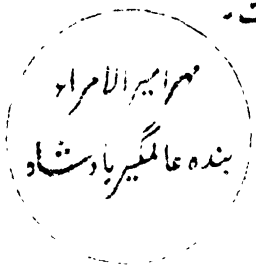
بنام قاضی رضاء اللہ خان شاہ آبادی



گماشتہائے جاگیرداران وکروریان وجمہور سکنہ پرگنہ سونی پت وغیرہ سرکار وصوبہ دارالخلافہ شاہجہان آباد را اعلام آنکہ حسب الحکم جہان مطاع آفتاب شعاع گردون ارتفاع منصب احتساب وغیرہ پرگنہ مسطورہ از تغیر محمد رؤف وغیرہ بہ رضاء اللہ ولد ناصر الزمان حسب الضمن مقرر ومفوض گشتہ باید کہ کما ینبغی بلوازم مناصب مذکور قیام نمودہ در تادیب اوقات مسکرات وزجر اصحاب مسکرات وتعدیل اوزان ودراع وبگسال ومایکون من ہذا المثل مساعی موفورہ بتقدیم رسانیدہ ودقیقہ از دقائق واحتیاط غیر مرعی نگذارد وخطابت را از قرار واقع بجا آرد باید کہ بر طبق حکم فیض شیم عمل نمودہ مشارالیہ را محتسب وغیرہ دانستہ دست اندازی مومی الیہ را امور متعلقہ الخدمت مستقل دانند ودیگرے را سہیم وشریک اوندانند درین باب قدغن دانستہ حسب المسطور بعمل آرند۔

بتاریخ غرہ شہر صفر المظفر سنہ ۲۹ جلوس والا قلمی شد۔

وسوائے رسوم مقرری چیزے ازماں سرکار متصرف نشود و ازکسے طمع و توقع نکند و مثل قانون گویان و زمینداران و مقدمان و مزارعان رعایا وغیرہ آن محال آنکہ سخن حسابی و صلاح و صواب دید او بیرون نروند۔ چہار دہم شہر رجب سال چہل و نہم از جلوس والا واشرف تحریر یافت۔



تاریخ بست و نہم شہر شعبان سنہ ۴۹ جلوس
موافق سنہ ۱۱۱۷ ہجری داخل دفتر نمایند۔

APPENDIX D.5.

نقل فرمان بادشاہ اورنگ زیب عالمگیر بنام محمد تراب ولد جلال الدین



مہر میں معمولی نام سلاطین سابق کے ہیں جو کئی فرمانوں میں لکھے جا چکے ہیں۔

درین وقت میمنت عنوان فرمان واالاشان واجب الاذعان صادر شد کہ خدمت چودریگنہ منوی سرکار لکھنؤ مضاف بصوبہ اودھ بہ محمد تراب ولد جلال الدین کہ ازا باعن جد خدمت مذکور سرانجام می نماید برطبق پیشکش من ابتدائے فصل خریف تحاقوی لیل حسب الضمن مقرر گشتہ باید کہ او را چودری در بست پرگنہ مذبور سرگرم کار گردانند و دست تصدی بشارالیہ و امور مضافہ این خدمت قومی مطلق شناسند کہ کما ینبغی بلوازم و مراسم آن خدمت قیام و اقدام نمودہ در دولت خواہی و آباد انکاری و استمالت رعایا و افزودنی زراعت مساعی جمیلہ بکار برد و دقیقہ از دقائق آن نامرعی نگذارد و محال را موافق تشخیص این فبولیت رعایا فصل بفصل سال بسال پیباق ساختہ بہ گماشتہ جاگیرداران و کروریان وغیرہ حکام پرگنہ مذکور رجوع بودہ بدعتے احداث نماید و رعایا و برایا دیگرے را از حسن سلوک راضی داشتہ پیرامون تغلب و تعدی نگردد

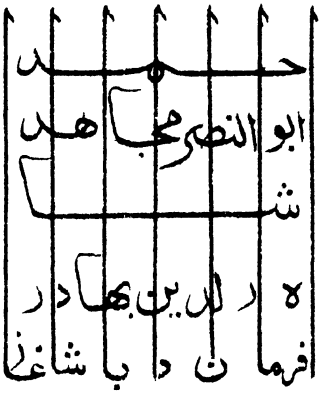
زمینداری وطن داری پرگنہ مسطور بنام بہادر خان مرحمت فرمودیم باید کہ متصدیان حال واستقبال وکروریان وجاگیرداران وچودھریان وقانونگویان ومقدمان ورعایا وساکنان آنجا خان مشارالیہ را زمیندار ووطن دار پرگنہ مزبور مستقل دانستہ درلوازم لواحق آن بکوشند کہ مفسدان وکوبیان وقطاع الطریق ورہزنان را اخراج نمایند کہ مردمان مسافرین بخاطر جمع طمانیت باطن آمد ورفت می نمودہ باشند درین باب تاکید اکید دانند وہر سال سند مجدد نہ طلبند۔

تحریر پانزدہم شہر جمادی الثانی ہفتم جلوس والا قلمی شد۔

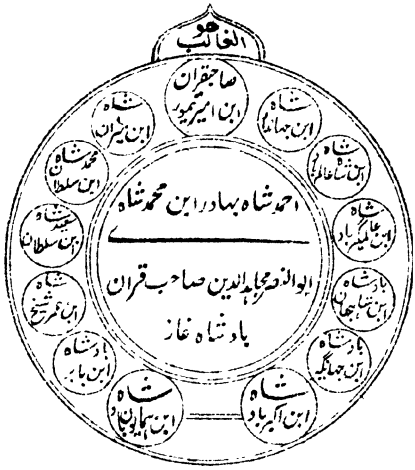
APPENDIX D.4.

نقل فرمان احمد شاه بن محمد شاه بادشاه

باسمه سبحانه وتعالی شانه



باسمه سبحانه وتعالی شانه



درین وقت میمنت اقتران فرمان والاشان واجب الاذعان صادر شد عرض گزارنده امارت وایالت مرتبت احمد خان بهادر بنگش بنظر اقدس اعلی گزشت که بهادر خان ولد فیروز خان لهانی جالورے مرد سپاهی نفس وکار آمدنی پرگنه تهراد سرکار پتن مضاف صوبه احمد آباد که متصل زمینداری پرگنه پالن پور که از قدیم ارث خان موصوف است واقعه مفسدان کولیان شده قطاع الطریقان در هر تان جمیع شهر و مسافرین را تخت وتاراج می نمایند امیدوار است که فوجه اری وزمینداری ووطن داری پرگنه تهراو بنام خان مزبور مرحمت نمود بنابران فرمان جهان مطاع عالم مطیع شرف صدور می یابد که ازراه فضل وکرم بادشاهانه

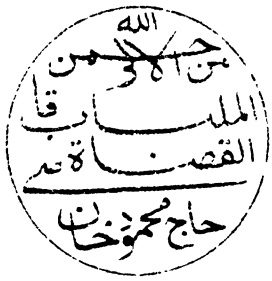
APPENDIX D.3.

وکالت نامہ مہری

حاجی محمود خان قاضی القضاۃ موسومہ سید محمد مراد

بعہد محمد شاہ بادشاہ ۱۱۴۸ھ / ۱۷۳۵ء

ابوالفتح ناصر الدین محمد شاہ بادشاہ غازی خلد اللہ ملکہ و سلطانہ



مظہر کرم اعم منبع فیض انعم مشید قواعد اسلام مؤید شرائع و احکام، محی السنۃ ماحی البدعۃ بادشاہ دین پناہ حضرت انسنت ہ انور اظہر ارفع اعلی ... فضیلت پناہ سید محمد مراد بن سید یار محمد بن ہ سید عبد الرسول را برائے دعوی وجواب دعوی وقبول کفالہ وقبض حق ہ اموال وبیت مال لاوارث سرکار سنبھل صوبہ دار الخلافہ شاہجہان آباد ہ از طرف خود وکیل و مجاز بتوکیل من یشاء فرمودہ وکان ذالک فی تاریخ ہفتم شہ شوال المکرم شہ جلوس مبارک مطابق ۱۱۴۸ سنہ ہجری مقدسہ سرہ

پشت فرمان ضمن تعویذ

مرورا ضمن باسم سید محمد مراد ولد سید یار محمد منصب داروغگی
عدالت پرگنہ حویلی وغیرہ سرکار سنبھل مضاف × صوبہ دار الخلافہ
شاہجہان آباد از تغیر امان اللہ ضمیمہ خدمات سابق

سے محال

... مذکور ملـــــــــــــ ملـــــــــــــ

محال امرو ہہ محالا

ملـــــــــــــ مصد

یکیہ محال

تاریخ یکم رمضان المبارک سنہ جلوس ۵
داخل سیاہہ حضور است لہا

APPENDIX D.2.

نقل فرمان محمد شاه بادشاه

مشعر عطائے خدمت داروغگی عدالت بنام سید محمد مراد سنہ ۱۱۳۵ھ ۱۷۲۲ع

محمد شاہ بادشاہ غازی
ترخان خانہ زاد
جنگ
الملک بہادر مظفر احمد
مقتدیر جلد معظم خان خانخانان

طغرائے عن الدیوان الصدارۃ العالیۃ العلیۃ
گماشتہا جاگیرداران وکروریان وجمہور سکنہ وغیرہ سرکار
سنبھل مضاف صوبہ دارالخلافہ شاہجہان آباد را اعلام آنکہ
حسب الحکم جہان مطاع آفتاب شعاع گردون ارتفاع منصب داروغگی
عدالت پرگنہ مذکور وغیرہ از تغیر امان اللہ بہ سید محمد مراد و سید
یار محمد ضمیمہ خدمات سابق حسب الضمن مقرر و مفوض گشتہ کہ
کما ینبغی بلوازم منصب مسطور قیام نمودہ در تحقیق معاملات و
خصومات موافق شرع شریف جہد بلیغ بکار بردہ دقیقہ از دقائق
حزم و احتیاط نامرعی نگذارد باید کہ بطبق حکم فیض شیم عمل نمودہ
مشار الیہ را داروغہ عدالت آنجا دانستہ دست تصدی مومی الیہ
در امور متعلقہ آن خدمت مستقل دانند و دیگر اہیم وشریک او ندانند
طریق جمہور سکنہ وعموم متوطنین پرگنہ مسطور وغیرہ آنکہ مومی الیہ را داروغہ عدالت
آنجا شناختہ از سخن صلاح وصوابدید او برون نروند درین باب قدغن دانستہ
حسب المسطور بعمل آید۔ تاریخ بست ویکم شہر رمضان سنہ ۵ قلمی شد مص

موافق فہرست ثبت ... صحیح

داروغہ عدالت

بتاریخ بست ویکم شہر رمضان سنہ ۵ جلوس
نقل دفتر دیوان الصدارۃ العالیہ پرستید
محمد کریم بیگ

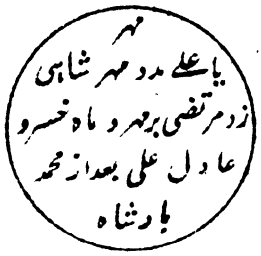
اُنچہ وقصہ ومعاملہ شرعیہ بودہ باشد باورجوع کردہ انعام زمین مذکور ویومیہ معمول عیدین وپھکی وہلکے وتیل وکل باب کل وجوہات ونبالہ نمایند وبعضے صلاح اورآے نمودہ باشند ومیراث وقضاءت بحسب قاعدہ ازوروان دارند بہ ہیچ وجہ مزاحم و معارض نشوند ومیراث بعد مشارالیہ باولاد وباحفاد او جاری دارند عذر فرمان مجدد ہرسالہ نکردہ سال بسال ہمیں فرمان عنایت روان سازند تعلیق نوشتہ فرمان بازدہند تادانند وبرحکم فرمان اشرف روند تحریر فی التاریخ غرہ ذی حجہ ۱۰۶۵ھ۔

پروانگی حضور خورشید ظہور اشرف اقدس ہمایون اعلیٰ

APPENDIX D.I. (4)

نقل فرمان محمد عادل شاہ

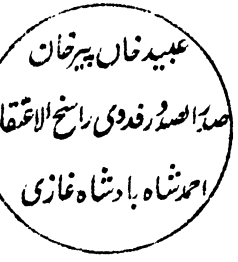
الملک للہ



فرمان ہمایون نفرت صدور یافت بجانب عاملان و استقبال و نازگوڑان و
دیسایان پرگنۂ ریور کندہ آن کہ از شہور سنہ ثمان خمسین والف - درین ولا فضیلت
مآب عبدالنبی بن شیخ مخدوم قاضی پرگنۂ مذکور بدرگاہ علی التماس نمود - از اسناد سابق
عہدۂ قضاءت و خطابت پرگنہ مذکور انعام اراضی شش کروڑ زمین و یومیہ چہار آنہ
و معمول عیدین وغیرہ وسال آیاد بھگوٹہ جاری دارند و نظر عنایت فرمودہ قضاءت
بنام فرزند غلام حسین مرحمت فرمایند بنابران التماس او بخاطر مبارک اعلیٰ آوردہ
غلام حسین بن عبدالنبی را عہدہ قضاءۃ و خطابت پرگنہ مذکور انعام شش کروڑ زمین
وغیرہ حقوق بہ مطابق فرد سابق بموجب تفصیل ذیل مرحمت فرمودہ دہانیدہ شدہ
است و در سواد پرگنۂ مذکور زمین چہار کروڑ و یگڑ بہ موضع سوملاپور و ایک کروڑ
بہ موضع ملکاپور و یک کڑو بہ معمول عیدین دہ روپیہ یومیہ چہار آنہ و تیل چراغ عید
روز زینہ پاوپیکے و ہلکے وغیرہ می باید کہ مشارالیہ را قاضی و خطیب آنجا مستقل دانستہ

APPENDIX D.I. (3)

نقل فرمان احمد شاہی بنام قاضی رضاء اللہ خاں



گماشتہائے جاگیرداران وکروریان وجمہور سکنہ پرگنہ کنور سرکار دوصوبہ دارالخلافۃ شاہجہان آباد را اعلام آنکہ

وکیل رضاء اللہ خان ولد ناصر الزمان التماس نمودہ کہ موکل بمنصب قضای و خطابت پرگنہ مسطور سرفرازی دارد امیدوار ہست پروانہ مطابق میشود از آنجا کہ از روے سرشتہ دفتر بظہور پیوست کہ بموجب پروانہ حضرت مرقوم ششم شہر ذی الحجہ سنہ ۳۰ منصب مزبورہ بمشارالیہ مقرر است لہذا حسب الحکم الاعلیٰ قلمی میگردد کہ مشارالیہ را بدستور سابق بحال داشتہ دست اندازی مومی الیہ در امور متعلقہ الخدمت مستقل دانند و دیگرے را سہیم وشریک او ندانند درین باب قدغن دانستہ حسب المسطور بعمل آرند۔ بتاریخ پنجم شہر ذیقعدہ سنہ ۱۰ جلوس والا قلمی شد۔

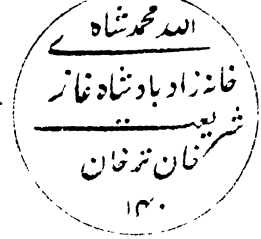
پشت

بتاریخ .... ذی الحجہ ۲۳ جلوس والا
داخل سیاہہ شد

بتاریخ غرہ شہر ذی الحجہ ۲۳ جلوس والا
نقل بدفتر دیوان الصدارت رسید
معہ خرچہ دلیل

APPENDIX D.I. (2)

نقل سند قضاءت محمد شاہ باشاہ مہری خان ترخان



عن الدیوان الصدارۃ العالیۃ العلیۃ

گماشتہائے جاگیرداران وکروریان وجہور سکنہ پرگنہ دیوبند سرکار سہارنپور.....

صوبہ دارالخلافہ شاہجہان آباد را اعلام آنکہ

حسب الحکم جہانمطاع آفتاب شعاع گردون ارتفاع منصب قضاے پرگنہ مسطور مع سواد قصبہ و دہات متعلقہ است × از مغز سید ابرار اللہ بحمایت اللہ وفضل اللہ مقرر و مفوض گشتہ فرمانوالاشان درست میشود باید کہ برطبق حکم فیض شیم.... مشار الیہ را قاضی آنجا دانستہ دست تصدی موی الیہ در امور متعلقہ آن خدمت مستقل دانند و دیگرے را سہیم و شریک او ندانند و.... کہ نمہراو.... شمارند کہ کمایینبغی بلوازم منصب مزبور قیام نمودہ در فصل قضایا و خصومات و اجراے حدود و تعزیرات و اقامت جمعہ و..... تجاویز.... فیصلہ..... والنکاح من لا ولی لہ × و قسمت تبرکات و حفظ اموال غیب و اہتمام و تعیین اوصاد نصب قوام مساعی موفورہ..... ودرین باب مرعی داشتہ حسب المسطور × بعمل آرند بتاریخ غرہ شہر ذی الحجہ سنہ ۲۳ جلوس والا قلمی شد سہ

APPENDIX D.I. (1)

نقل سند مطلا و مهری محمد شاه بادشاه بخط شفیعه

مشعر سرفرازی بر عهده قضاست پرگنه جلیسر صوبه اکبرآباد بنام شیخ محمد رضا

سنه جلوس (۱)

علیین آشیان

گماشتهای جاگیرداران و کروریان و جمهور سکنه پرگنه جلیسر وغیره سرکار و صوبه اکبرآباد را اعلام آنکه × وکیل شیخ محمد رضا ولد شیخ محمد عوض التماس نمود که موکل بموجب پروانه عهده مرقوم بست هفت رجب سنه الیه × منصب قضای پرگنه مذکور وغیره سرفرازی دارد امیدوار است که پروانه مطابق عهد مرحمت شود حسب الحکم اعلی قلمی میگردد که مشار الیه را بدستور سابق حسب الضمن دانسته دست تعدی موی الیه در امور متعلقه آن خدمت مستقل دانند × و دیگر را سهیم و شریک او ندانند درین باب قدغن دانسته حسب المسطور بعمل آید - پنجم شهر ربیع الثانی سنه ۳

۳۱ تعزیر بدعت — سی و یکم۔ رئیس بلندعان کہ داعی مردم بسوئے بدعت باشد و از دعوت او خلق انتشار بدعت یابند و بعد از ثبوت سیاست بکنند۔

۳۲ فرائض وبیدار نسبت بمحبوسان — سی و دوم۔ محبوسان کہ فوجداران وغیرہم نزد وصوبیدار بفرستند۔ صوبیدار بمجرد وصول آنہا بلاتقید تمام بر احوال ہر یکے مطلع شدہ اگر معاملت مالی خالصہ شریعہ باشد آنہا را بمتصدیان ابواب المال سپردہ تاکید بلیغ نماید کہ معاملہ را بزودی منقطع نمایند والا ہر دفعہ از دفعات مرقومہ کہ داخل باشد مطابق آن بعمل آرد و در ہر ماہ یک مرتبہ بحقیقت محبوسان کچہریہا و پنجوترہ کوتوال وغیرہم رسیدہ ہر کرا بے تقصیر داند سر دہد والا متصدیان را تاکید و تدغن نماید معاملہ را بسرعت قطع نمایند۔

۳۳ فرائض کوتوال — سی و سوم۔ شخصے را کہ متصدیان پنجوترہ کوتوال بفرستند یا مدعی بیارد و یا مردم کوتوال گرفتہ بیارند کوتوال بالمواجہ از گناہ آن تفتیش نماید اگر بے تقصیر است در پنجوترہ نگاہ دارند سر دہد و اگر کسے را باوے مرافعۂ شرعی باشد بگوید کہ بعدالت رجوع نماید و اگر باو معاملہ مالی خالصہ شریعہ باشد یا داخل دفعات سابقہ باشد بصوبیدار ظاہر ساختہ موافق تجویز مومی الیہ سند گرفتہ بعمل آرد و اگر قاضی کسے را بفرستد و بخط قاضی برائے دستاویز خود گرفتہ محبوس سازد و اگر قاضی مدتے معین نمودہ باشد بعد انقضاء آن پیش متصدیان عدالت بفرستند کہ بگذارند والا ہر روز آنجا بفرستند کہ معاملہ را باستعجال فیصل نمایند۔

انتہی۔ پوشیدہ نماند کہ در نقل فرمان بنابر کہنگی و کرم زدگی اکثر عبارت نابود گشتہ و در کتابت تصحیف واقع شدہ بقدر مقدور تصحیح کردہ مندرج ساخت۔

بست وچهارم - اگر شخصے کسے را در آب غرق کرده یا در چاه افگنده یا از بالائے بام انداخته کشته باشد وثبوت شرعی برسد - او را تعزیر نموده محبوس سازند ودیت معمول که شرعا لازم آید بدهانند واگر این فعل زیاده بریکبار از و بوقوع آمده باشد سیاست کنند -

۲۴ تعزیر قتل کردن در آب یا در چاه افگندن یا از بام انداختن

بست وپنجم - فاسقے که در خانه مردم بجهت فساد در آید بر تقدیر ثبوت وتعزیر بلیغ نموده محبوس سازند تا خاطر جمع شود که باز مرتکب این امر نخواهد شد -

۲۵ تعزیر فسق

بست وششم - شخصے که پیش حاکم سعایت مردم بناحق نموده اتلاف اموال نماید بر تقدیر ثبوت اگر آن فعل پیشه او باشد او را سیاست کنند والا تعزیر نموده در حبس دارند تا اثر توبه ظاهر شود ومال کسے که تلف نموده باشد بر تقدیر ثبوت شرعی تاوان آن را باو بدهانند -

۲۶ تعزیر شکایت مردم بناحق پیش حاکم

بست وهفتم - ذمی یا ذمیه اگر مسلم یا مسلمه را بندگی بگیرد یا ذمی مسلمه را یا مسلم ذمیه غیر کتابیه را بزوجیت نگاه دارد پیش قاضی راجع سازند که موافق شریعت غرّه بعمل آرند -

۲۷ تعزیر آزاد کردن میان ذمی ومسلم

بست وهشتم - اغلامیان وزانیان ولوطیان وشاربان خمر وسایر مسکرات مرتدان وسرتابان از حکم واده وغلام که از خانه خاوند برآمده باشد ومدیونان ومهاجنان بشریعت غرّا جمع نموده مطابق حکم قاضی بعمل آرند -

۲۸ تعزیر اغلامیان وزانیان وشاربان مسکرات وسرتابان از حکم ومدیونان ومهاجنان وغلامان فراری

بست ونهم - قاتلانے که قتل آنها بثبوت شرعی برسد وعرفا نزدیک بنص باشد محبوس ساخته حقیقت را بدرگاه معلی معروض دارند -

۲۹ تعزیر قتل

سی - اگر شخصے طفل کسے را خواجه سرا بکند بعد ثبوت او را تعزیر نموده محبوس سازند تا حصول توبه وانابت او ظاهر گردد اگر دریں صورت ولی طفل دعوی داشته باشد بقاضی راجع سازند -

۳۰ تعزیر خواجه سرا ساختن

او را تعزیر نموده محبوس سازند تا اثر توبه ظاهر شود۔

تعزیر اغوا ۱۹ نوزدہم ۔ شخصے کہ زن یا صبی یا صبیہ کسے را بخداع و فریب برد بعد ثبوت او را محبوس سازند تا مدتے کہ زن شوہر او و طفل ولی تسلیم نماید در حبس بمیرد و اگر معلوم شود کہ آن زن یا صبی یا صبیہ مردہ است او را اشد تعزیر نمودہ خلاص نمایند تشہیر و اخراج کنند و نیز دلالہ کہ زن و دختر کسے را بدراہ ساختہ برائے فعل قبیح بخانہ مردم می برد بر تقدیر ثبوت او را تعزیر نمایند و محبوس سازند تا اثر توبہ ظاہر شود۔

تعزیر قمار بازی ۲۰ بستم ۔ قمار باز را بعد از تفتیش و ثبوت تعزیر نمایند و اگر این فعل را پیشہ گرفتہ باشد تعزیر نمودہ محبوس سازند تا اثر توبہ ظاہر گردد و اگر باز مرتکب آن فعل شود حبس مؤبد نمایند و مالے را کہ بہ قمار بازی گرفتہ باشد بعد ثبوت شرعی بمالکش بدہانند اگر حاضر باشد والا در بیت المال نگاہ دارند۔

تعزیر خمر فروشی در بلاد اسلام ۲۱ بست و یکم ۔ کسے کہ در شہر اسلام یا در قریہ یک مرتبہ مرتکب خمر فروشی شود بر تقدیر ثبوت بضرب شدید تعزیر نمایند و اگر مکرر مرتکب این فعل شود و ازاں ممتنع نگردد تعزیر نمودہ در حبس نگہدارند تا اثر توبہ ظاہر گردد۔

تعزیر خمر فروشی ۲۲ بست و دوم ۔ کسے کہ خمر کش را نوکر گرفتہ خمر کشیدہ می فروختہ باشد بر تقدیر ثبوت تعزیر بضرب و حبس نمودہ تادیب سازند و اگر روشناس نباشد والا حقیقت آنرا بدرگاہ والا بنویسند و خمر کش را تنبیہ و تادیب بالغ نمایند۔

تعزیر مکابات فروشی ۲۳ بست و سوم ۔ بائع بنگ و بوزہ و امثال آنرا بر تقدیر ثبوت تعزیر نمایند و اگر آن فعل پیشہ ساختہ باشد تعزیر نمودہ محبوس سازند تا اثر توبہ ظاہر شود۔

آنها بقیه آید اگر جماعت آنها متفرق نشده باشد بگیرند یا محبوس سازند و هرچه
از اموال و امتعه آنها بدست آید بعد از ندامت آنها از این فعل و جمعیت خاطر
بآنها پس دهند۔

تعزیر سکه سازی ۱۴ چهاردهم۔ کسیکه زر قلب سازد و بعد ثبوت دو مرتبه نخستین تعزیر
و تهدید نموده خلاص نمایند و اگر قلب سازی پیشه او باشد بعد ثبوت شرعی
او را تعزیر نموده حبس کنند تا اثر توبه ظاهر شود و اگر باز مرتکب این کار گردد و باز
نیامد حبس موبد نمایند۔

تعزیر فروختن زر قلب ۱۵ پانزدهم۔ شخصیکه زر قلب از قلب سازان خریده بجای زر سرخ می فروخته
باشد بر تقدیر ثبوت تعزیر نمایند و اگر به تعزیر باز نیامد حبس کنند تا اثر توبه
ظاهر گردد۔

تعزیر قلب سازی ۱۶ شانزدهم۔ شخصیکه زر قلب پیش او ظاهر شود بعد از تفتیش احوال بظهور
پیوندد که نه قلب ساز است و نه قلب فروش زر قلب شکنه او را رها کنند و اگر
بعد از تحقیق ظن غالب شود که مرتکب قلب سازی یا قلب فروشی میگردد او را
تعزیر نموده خلاص نمایند۔

تعزیر مال گرفتن بتلبیس کیمیا گری ۱۷ هفدهم۔ شخصیکه بتلبیس کیمیا گری مال مردم می گرفته باشد بعد ثبوت
او را تعزیر نموده تا زمانی در قید دارند که اثر توبه ظاهر شود و مال کسیکه بتلبیس
مزبور گرفته باشد بعد ثبوت شرعی بمالکش بدهانند اگر حاضر باشد و اگر حاضر
نباشد در بیت المال نگاه دارند۔

تعزیر زهر خورانی ۱۸ هشتدهم۔ اگر شخصی کسی را بفریب زهر بخوراند و او بمیرد بعد ثبوت

شرعی برسد و یا مشهور میان مردم و معلوم ناظر صوبه باشد و یا آثار خناق و متاع مردم نزد او ظاهر گردد و ناظم صوبه و متصدیان عدالت را ظن غالب بصدور این فعل از وے حاصل شود او را سیاست کنند۔

تعزیر سارق و راہزن و خناق و قاتل عادی

۱۱ یازدہم۔ شخصے کہ متہم بسرقہ یا قطع طریق یا خنق یا قتل یا ضرر مردم باشد و گرفتار آید و بہ آثار و علامات ظن غالب ناظم صوبہ و متصدیان عدالت شود کہ او اکثر اوقات مرتکب این فعل می شود حبس نمایند تا اثر توبہ ظاہر گردد و اگر شخصے باو دعوی سرقہ و مانند آں داشتہ بقاضی رجوع نمایند۔

تعزیر آتش زنی و مشتبات غوغائی

۱۲ دوازدہم۔ مفسد اینکہ بخانہائے مردم آتش زدہ اثر و حام عوام فرصت یافتہ مال میگیرند یا دھتورہ یا بنگ یا جوز بوا یا مانند آں بخوردہ مردم دادہ بیہوش ساختہ مال آنہا می برند بعد از ثبوت آنہا را شدید تعزیر نمودہ محبوس سازند تا اثر توبہ ظاہر گردد و اگر دو و سہ مرتبہ بسبب این فعل گرفتار آمدہ و بعد ظہور علامت توبہ خلاص یافتہ باز مرتکب این افعال شوند آنہا را سیاست بکنند و در این باب اموال اگر کسے مدعی باشد تقاضی را رجوع سازند و بعد از ثبوت شرعی تاوان مال محرق و مال ماخوذ را بارباب حقوق بدہانند۔

تعزیر بغاوت

۱۳ سیزدہم۔ اگر گروہے باغی شدہ در تہیہ اسباب جنگ و استعداد آن باشند و ہنوز جائے گرفتہ مستعد جنگ نشدہ باشند آنہا را گرفتہ تا ظہور اثر توبہ محبوس سازند۔ و اگر جائے گرفتہ مستعد جنگ شدہ باشند یا آنہا مقابلہ نمودہ متشاغل سازند و مجروح و منہزم آنہا را بکشتند مادام کہ در آنہا تفرق راہ نیافتہ و بعد از تفرق دست از ضریع و منہزم آنہا باز دارند و کسے کہ از

حکم شرع شریف بود بعمل آرد۔

تعزیر بزنی ششم۔ شخصے کہ قطع طریق پیش قاضی بثبوت شرعی برسد باقرار یا ببینہ بشرائط اقامت حد قاضی در حضور خود اجرای حد نماید بہر قسم حدیرا کہ گناہ اورا اقتضا کند واگر گناہ او موجب قتل یا حد دیگر نباشد ورای ناظر صوبہ و متصدیان عدالت افتضائے قتل او نکنند اورا سیاسب بہ کنند۔

تعزیر برآوردگی مال مسروقہ ہفتم۔ اگر دزدے گرفتار آید و مال دزدی نزد کسے نشاں دہد وآں مال پیش او ظاہر شود و بعد تحقیق ثبوت برسد کہ او دزد افشار است اگر دراین فعل رایک مرتبہ کردہ باشد تعزیر نمایند واگر فعل او دست تعزیر نمودہ در حبس کند تا اثر توبہ ظاہر شود واگر تعزیر و توبہ و حبس مزجر نگردد و باز مرتکب آن فعل شود او را حبس موبد نمایند۔ و مال را بعد از ثبوت شرعی بمالکش بدہانند اگر حاضر باشد والا در بیت المال نگاہ دارند و در صورتیکہ دانند آں مال نادانستہ از دزد خریدہ باشد اورا اخلاص نمایند واگر مدعی آں مال را ثابت کند بوے بدہند والا آں مال رمی السند واگذارند۔

تعزیر بزنان جرائم پیشہ ہشتم۔ مفسدان مقرری کہ بطریق ڈاکہ بر خانہائے مردم آمدند و ضرر مالی و جانی بمردم میرسانند بعد از ثبوت آنہا را سیاست رسانند۔

تعزیر زمینداران سرکش نہم۔ گراسیہ ہا و زمینداران کہ نفسد و متمرد و مقرر است باشند و در کشتن چنیں مفسدان نفع عام باشد بر تقدیر ثبوت آنہا را سیاست کنند۔

تعزیر خناقی دہم۔ خناقی کہ خنق او بہ ثبوت برسد او را تعزیر نمودہ در حبس دارند تا اثر توبہ ظاہر گردد واگر معتاد باین فعل باشد و این معنی بہ ثبوت

تعزیر سرقہ ۱ اوّل شخصے کہ بر او سرقہ نزد قاضی بہ ثبوت شرعی برسد۔ بہ اقرار یا بہ بیت بشرائط اقامت حد نمودہ محبوس سازد تا اثر توبہ دزدی ظاہر شود۔

تخفیف تعزیر سرقہ ۲ دویم۔ اگر دزدے در شہر انتشار یابد و در آنوقت دزدی بدست آید بعد از ثبوت او را نکشند و بردار نکنند شاید کہ یک مرتبہ دزدی کردہ باشد۔

ازدیاد تعزیر سرقہ ۳ سوم۔ اگر شخصے یک مرتبہ کم از نصاب یا بقدر نصاب بوجہے کہ حد لازم نیاید دزدی کند و بہ ثبوت شرعی برسد او را تعزیر نمایند و اگر مکرر این فعل از وے وقوع آید بعد از تعزیر در حبس نگاہ دارند تا اثر توبہ ظاہر شود و اگر بہ تعزیر و حبس منزجر نگردد و باز مرتکب این فعل شود حبس موبد نمایند یا سیاست بقتل رسانند و مال را بعد از ثبوت شرعی بہ مالکش بدہند اگر حاضر باشد والا در بیت المال نگاہ دارند۔

ازدیاد تعزیر سرقہ بابت دزدہ سزا یافتہ ۴ چہارم۔ اگر شخصے دو مرتبہ دزدی کردہ و اجرای حد در این ہر دو مرتبہ شدہ باشد و باز دزدی بکند و بہ ثبوت شرعی برسد و او جگہ بودہ باشد و مکرر آن فعل از وے بوقوع آید تعزیر در حبس نگاہ دارند تا اثر توبہ از وے ظاہر شود اگر از این ہم منزجر نگردد و مرتکب این امر شود حبس موبد نمایند۔

تعزیر نباشی ۵ پنجم۔ نباشے کہ قبر کسے را نبش کردہ باشد و گرفتار آید بعد از ثبوت نمودہ خلاص سازند و اگر این را پیشہ گرفتہ باشد اخراج یا بقطع یا سیاست نمایند بہر چہ غالب رای ناظم صوبہ تقاضا کند باتفاق متصدیان عدالت بعمل آرند و اگر مرتبہ ثانی بدین فعل اقدام نمودہ گرفتار آید اشد تعزیر نمایند و اگر باز مرتکب آن فعل شود بعد ثبوت حبس موبد کنند و مال پیش قاضی بفرستند کہ مطابق

APPENDIX C (Br. Mus. Ms Add. 6580)

نقل فرمان عدالت عنوان مشتمل بر سی و سه فصل

از قرار بتاریخ بست و نهم شهر صفر ختم الله تعالی بالخیر و الظفر سنه پانزده جلوس اقبال مانوس سمت تحریر یافت آنکه متصدیان مهمات صوبه احمد آباد بعنایت بادشاهی امیدوار بوده بدانند که درین ولا معروض بارگاه یافتگان محفل فیض منزل گردید که در صوبه مذکور جمیعے که بتقریبات بتقیید درمی آیند - آنها در تحقیق معاملات آنجماعت تاخیر می نمایند و آنرا بقطع و فصل نمی رسانند تا بیگناه از قید نجات یابد و مجرم بسزا برسد - از آنجا که همگی همت حق شناس و تمامی نیت عدالت اساس مصروف بر آنست که جمهور خلائق که بدایع ودایع ملک العلام اند بر احدے سبیل وحیفے نرود هیچ کس بے حساب در قید نماند حکم جهان عالم مطاع بشرف صدور می پیوندد که درباره جماعت مسطوره بموجب دفعاتیکه در ضمن این فرمان عالیشان رقم پذیر گشته بعمل آورده باشند تا هیچ یکے بے موجب در قید نباشد و هر احدے ستم و تعدی واقع نشود و دراین باب تاکید دانند و در عهده شناسند و خلاف آنرا باز خواست و باز پرس عظیم تصور کنند -

GENERAL INDEX

A

Aba, 253
Abbaside, influence of institutions, 100.
Abbaside, Caliphs, 185.
Adabul Harb, 39.
Adalat Khanah, 250.
Adalatul Aliah, 203.
Administration, general, 102-104
Admissions, 216, 217, 218.
Adultery, prosecution in, 229, 232, 233, 235.
Adjournments, 219.
Ahadith, 28.
Ahkamus Sultanyah, 38.
Ain-e-Akbari, 41.
Akbar, 160, 180, 186, 195, 201.
Akbar Namah, 45.
Akhbar Nawis, 166.
Al Mawardi, 38.
Alamgir Namah, 41, 45.
Alberuni, 50.
Alexander Dow, 32, 53.
Ali Shahab Hamdani, 39.
Amal-e-Saleh, 45.
Amalguzar, 166, 171.
Amils, 121, 130.
Amins, 157, 167, 218.
Amin Karkuns, 171.
Amin-e-Parganah, 168.
Amirdad, 160.
Appeals, 203, 204, 205, 207.
  abatement of, 207.
  on interlocutory points, 34.
  powers of courts in, 205.
  procedure in, 200.
  second Appeals, 206.
Appellate court, powers of, 205.
Appointment of Qazis, 81.
  „ —announcement of, 85.
Arbitration, 195-196.
Arzdasht, 46.
Aurangzeb, 34, 43, 44.
  „ Legal Reforms of, 266-268.
Authority in deciding cases, 70-71.

B

Bahadur Shah Namah, 163, 191.
Bail, 208, 209, 210.
Baillie, 43.
Baqiatus Salehat, 37.
Bar Associations, 191, 192.
Barids, 263.
Barqandaz, 243.
Bernier, 50, 51.
Bonds, 239.
Brahman or Shastri, 60, 61.
Bribes, 243, 263.
Burhanuddin Ali bin Ali B. Marghinani, 40.

C

Canon Law, 227, 234.
Cases, Civil Procedure, 181, 182, 199.
  cost of, 199, 200.
  compounding, 196, 197.
  criminal, 201.
  records of, 186.
  reports of, 188-189.
  transfer of, 180-181.
Chaudhri, 244.
Chaukidar, 245.
Chauth, 243, 244.

Chief Justice, 107-116, 143-146.
„ influence of 109-111.
„ of Sultan of Delhi, 114, 115.
„ other functions of, 109.
„ removal of, 111, 112.
„ salary of, 111, 112.
„ selection of, 107, 108.
„ staff attached to the court of, 115, 116.
Commentaries by Muslim Jurists, 38.
Compounding offences, 196-197.
Conditions in Medieval India, 57
Confession, 217, 218.
Courts, at the Centre (during the Sultanate), 104-116.
Court, contempt of, 230.
„ at the district headquarters, 120-121.
„ dress, 253.
„ fee, 197, 198, 199.
„ holiday, 252.
„ hours, 251, 252.
„ house, 250.
„ at Parganah head-quarters, 123-124, 167, 170.
„ personal enquiry, 184.
„ at Provincial head-quarters, 116-120.
Courts supervision over, 263.
„ vacation, 252.
„ in army, 125-126.
„ in villages, 124-125.
Courts at the Centre (under the Mughals), 135-138.
Courts at the district headquarters, 139, 152, 166.
Courts at the Parganah headquarters, 139-140.
Courts at the Provincial headquarters, 116 138-139, 148, 152.
Courts in the Villages, 140.
Courts, grades of, 170-175.
Courts, Honorary, 168.
Cow sacrifices, 239.
Custody, 208.

D

Dad-bak, 116, 119, 120, 121, 160, 178, 198.
Daftari, 157.
Daroghae Adalat, 120, 151, 152, 159, 167.
„ Adalatul Aliah, 174.
„ Adalat Diwani, 174.
Darshan, 273.
Darul Adl, 250.
Darul Harb, 227.
Darul Qaza, 250.
Dastur, 44.
Dasturul Amal, 195.
Dasturul Amal Adalathae Ta'lluqah, 44.
Dasturul Amal Alamgiri, 41, 44.
Dasturul Amal Shahenshi, 44.
Decrees, execution of, 199, 200.
Department of Justice, 104.
Disposal of business by Courts, 253-262.
Diwan, 171, 172, 174.
Diwan e Ala, 148.
Diwan e Mazalim, 268.
Diwan e Subah, 116, 120, 151, 152.
Dyath, 226.

E

East India Company, 193, 195, 199.
Ehad, 212.
Emergency powers, 227.
Emperor's Court, 142, 143.
„ „ Officers attached, 143.
Enayetullah, 49.
Equity, 75.
Estoppel, 219.
Evidence, circumstantial, 215.
on Commission, 220.
direct, 214, 215.
documentary, 216.
hearsay, 214.
oral, 216.

recording of, 219.
rules of, 212, 222.
Executive Officers, Liability of, 237.
Extenuating circumstances, 234, 235.

F

Fakhruddin Mudabbir, 39.
Farameenus Salateen, 37.
Farmans, 72, 73.
Fatawa e Alamgiri
„ completion of, 41, 42.
„ Jahandari, 39-40.
Faujdars, 121, 123, 164-165, 167, 171, 173, 174, 179, 183, 194, 200, 209, 214, 245.
Faujdar-e-Parganah, 167.
Fazl bin Rozbahan Isfahani, 38.
Fiqh e Firoz Shahi, 40, 42.
Foreign travellers, 50.
Fuyuzul Qawanin, 46.

G

Gao Takyah, 250.
Governors, 117, 118.
Grady, 40.
Ghulam Husain, 49.

H

Hanafi Law, preponderance of, 70, 71.
Hazaqat Khan, 52.
Headman,, 169.
various names of, 169, 170.
Hidayah, 40.
Hindu and Muslim systems compared, 63.
Hindu Judicial administration, 58-59.
Hirasat, see Arrest, 208.
Huquq Ullah, 223, 226.

I

Ibn Batuta, 47.
Ibn Khaldun, 39.
Identification, 220.
Ijma, 28.
Imad Uddin Muhd. bin Qasim, 25.
Imprisonment, Civil, 210.
Independence of Law Courts, 68-70.
Influence of Abbaside institutions, 100-102.
Investigation, 211.
Inquests, 194.
Insha, 46.
Integrity, of Judge, 262.
Interlocutory points, Appeals on, 34, 205.
Iqrar, 212.
See Admission also
Irtedad, 224.
Islamic Law, its introduction in India, 25.
Itteham-e Zina, 224.
Izhar, 219.

J

Jails, 225, 229, 247, 248.
Jallads, 201.
Jahangir, 184, 201, 207, 217.
Jam e-us Saghir, 63.
Jehad, 228.
Jirah (Cross-Examination), 219.
John Marshall, 52.
Judge-made Law, 28.
Judicial and Executive, separation of, 247.
Judicial administration in Medieval India, its study, 26.
Judicial administration, similarity in Hindu and Muslim systems, 63, 64.
Judicial administration, system under the Sultans, 86, 132.
Judicial administration, its features, 126-128.

Judicial administration, system under the Mughals, 133-175.
Justice, conception of, in Muslim states, 65.
Justice, responsibility to God in, 67, 68.

K

Kalimat ut Tayyebat, 46.
Karori, 168, 171.
Katibs, 157, 219.
Kitabul Hakam, 185.
King's original Jurisdiction, 80.
King's position, 78.
Kitab e Adabul Qazi, 40.
Kitabul Ikhtyar, 52.
Kitabul Khiraj, 39.
Kitab us Sunan, 63.
Kotwals, 121, 123, 124.
judicial function of, 165.
Kotwals, Mannucci on, 165.
,, Dow on, 165, 166, 168, 173, 182, 194, 200, 201, 202, 209, 241, 247, 248, 263, 267.
Kotwals, duties of, 241, 242, 243.
Kotwal e Parganah, 171.
Kotwal e Shaher, 171.
Khufyah Nigars, 263.

L

Law, classification of, 71.
,, canon, 71.
,, common, 72.
,, customary, 74.
,, courts, their independence in Muslim States, 68-70.
Law, Judge-made, 28.
,, notification of, 76.
,, Quranic, 28.
,, rigour of, 87.
Law, respect for, 100.
,, sacred, 28.
Legal learning, monopoly of Brahmans, 60, 61.
Legal reforms of Aurangzeb, 266.
Limitation—Law of, 195.

M

Maasir Alamgiri, 43-48.
,, Ul Um'ra, 50.
Majlis e Qazi, 250.
Mahekmae Qazi, 104.
Manucci, 50, 51, 52.
Manrique, 50, 52.
Manu, 63.
Manu Samhita, 63.
Masnad e Qazi, 251.
Medieval India, conditions in, 57.
Medieval State, its character, 61.
Minhajut-Talebin, 63.
Mir Imarat, 265.
Mir Adl, 41, 148, 158, 162, 251.
Mirat e Ahmadi, 43, 44, 49.
Mirdahas, 158.
Mohafiz Khanah, 35.
Mohtasib, 76, 115-116, 119, 147, 148, 163, 170, 182, 183, 211.
Mohtasib e Baldah, 163.
Mohtasib e Parganah, 167.
Monserrate, 50.
Moqaddams, 244.
Muchalka, 239.
Muchalka Nawis, 158.
Mughals, judicial system under the, 132-175.
Mufti, 115, 119, 147, 163, 167, 172, 174, 178, 188, 280.
,, appointment of, 163, 167.
Munsif e Munsifan, 131.
Murafeah, 203.
Murafeah e Saniah, 206.
(See Appeals)
Muslim Law, 27, 28.
Muslim constitutional law, writers on, 26.

Muslim institutions. Its introduction in India, 25.
Muzakki, 184.
Muwatta, 63.

N

Naibs, 243.
Nazim e Subah, 172, 174.
Nazir, 157.
Nizam Ul Mulk Tusi, 38.
Nizam, Shaikh, 4, 42.
Non-believers, 90.
Non-Muslims, rights of, 90-94.

O

Ordeal, trial by, 194.
Orderlies, 157.
Original authorities, 37.
Original jurisdiction of King, 80.

P

Panchayets, 62, 63, 125, 130, 168, 169, 170.
Metcalfe on, 168.
Pandits (Shastri), 163.
Pauper suits, 192.
Parganah, 244.
Peshkars, 156, 157.
Police, 289, 243, 244.
Position of women, 94.
Precedents, 75.
Prerogative of mercy, 79-80.
Procedure in courts, 176-211.
,, in Company's Courts, 30.
Procedure, in prosecution in general by State, 229.
Preventive measures, 238-239.
Prison system, 247.
Punishment, for violation of right in general, 223.

Q

Qanun e Urf, 73, 74.
Qanun e Shahi, 72, 73.
Qarinah (evidence), 215.
Qanungoe, 171, 173.
Qataut turq, 234.
Qazi, 41, 120, 121, 122, 173-176, 178, 180, 184, 188, 192-198, 203, 207, 210, 211, 218, 220.
Qazi e Askar, 125, 126, 147.
Office, 87, 116, 125-126.
,, e Parganah, 123-124, 166.
,, e Sarkar, 121, 152, 156, 171-176-178.
Qazi, e Subah, 118-119, 150-151.
Qazi, distinguished from Mir Adl, 160-161.
Qazi, general functions of, 85-87.
Qazi, qualifications of, 82-84.
Qazi Minhaj Us Siraj Jurjani, 112, 114.
Qaziul Quzat, 109-113, 143, 146, 172, 176, 177, 203, 205.
Qaziul Quzat, power of appointment of,
Qaziul Quzat, Judicial Officers, 82, 163.
Qisas, 196, 201, 226.
Qutub Uddin Aibak, founder of Muslim administration, 25.

R

Rahdars, 245.
Raziah Sultan, 209, 214.
Rebels, 228.
Record Room, Register, 34-35.
Reference, Revision, 205, 207.
Reforms of Sher Shah, 128-132.
Remand of cases, 205.
Remand, to custody, 266.
Res Judicata, 219.
Respect for law, 100.
Responsibility to God, 67.
Revision, 207.
Review, 208.
Rioting, prosecution for, 229, 239.

Rights of non-believers, 70.
Rigour of the law, 87.
Rulers and Law Courts, 68.

S

Sadr, duties of, 164.
„ e Jahan, 105.
„ e Kul, 105.
„ e Subah, 120.
Sadrus Sudur, 164, 167, 178, 211.
Sahibul Majlis, 217, 157.
Sahih Muslim, 63.
Saqi Mustaid Khan, 48.
Saraes, 246.
Sawars, 243.
Sawaneh Nigar, 265.
Seaports, 141.
Search, 211.
Security (*See Bail*), 208, 210.
Seir Ul Mutakhirin, 49.
Sentence of death, 202, 233.
„ commutation of, 202.
„ enhancement to, 202, 203.
Separation of Judicial and Executive functions, (*See Judiciary and Executive*)
Shahjahan, justice of, 44, 48, 162, 180, 191, 192, 201, 214, 215.
Shaikh, Nizam, (*See Nizam*), 4, 42.
Shara' adherence to, 98-100.
Sher Shah's reforms, 128, 132.
„ conception of justice, 65, 67, 193.
Shiqahdars, 44, 124, 168, 244.
Sijil, 187.
Sikander Lodi, justice of, 160.
Sir Thomas Roe, 51.
Slaughter of cattle, 240.
Slave dynasty, founder of, 57.
Slavery, 210.
Sources of information, 36.
Sovereignty, meaning of, 65.
Spelling, note on, 16.
State, suit against, 193.
State versus the subject, 88-89.
Subahdar, 176.
Subut e Sharai, 266.
Sultan, 21, 101.
Sultanate, chief features of, 126-127.
Sulukul Muluk, 38.
Sulukul Saltanath, 38.
Supervision, by higher courts, 263-265.
Surveillance, 246.
Syasat, 234.

T

Tabqat e Akbari, 47.
Tabqat e Nasiri, 45, 47.
Taimur, 48.
Tajul Maasir, 44.
Tajwiz e Sani, 203.
Tarikh e Ferishtah, 49.
„ e Firoz Shahi, 47.
„ ul Hind, 50.
Terry Edward, 51.
Thana, 244.
Thanadar, 244, 248.
Theft, 227, 229, 235, 238.
Trial of cases by Hindus, 59-60.
Treason, 233, 235, 236, 247.
Tuhfae Akbar Shahi, 47.
Turkish Empire, allegiance to, 100, 195.
Tuzuk e Jahangiri, 41.

U

Ulama, functions of, 179, 195.
Usul Ul Usul, 77.

V

Vakil, 183, 189-192, 267.
Vakil e-Sarkar
„ appointment of, 163.
„ duties of, 163, 164, 218.
„ fee of, 163, 191.
„ e-Sharai, (*See Vakil e*

Sarkar), 163, 164.
Vakil e Mutlaq, 192.
,, us Saltanat, 192.
Village assembly (*See Panchayets*), 62, 63.

W

Waqa e Nigars, 166, 251, 263.
Waqa e Alamgir, 45, 46.
Waqa e Nawis, or Akhbar Nawis, 166, 245.
Warren Hastings, 32, 40.
Watandars, 245.
Watch & ward, 245.
Witness, competency of, 213, 214, 220.
Witness, women as, 214.
Women, position of, 94.

Y

Yaqub Muzaffar Kirani, 40.

Z

Zabtah, 267.
Zamanat (*See Bail*), 208.
Zamindar, 169, 173, 174.
Zia Uddin Barni, 39, 47.
Zakhiratul Muluk, 39.