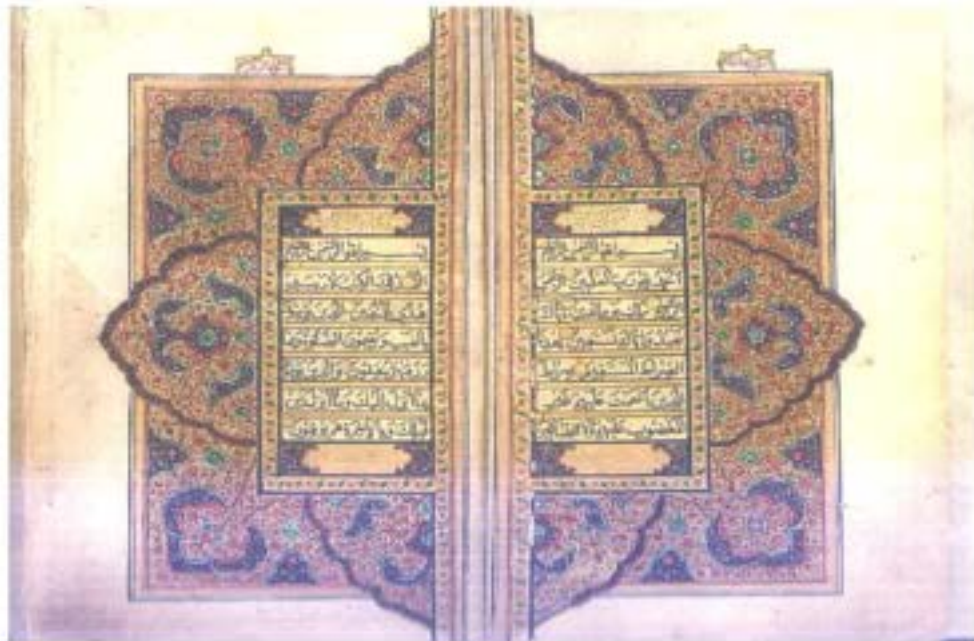


LAW AND JUSTICE UNDER MUGHALS WITH SPECIAL REFERENCE TO JAHANGIR

Thesis submitted for the Degree of
Ph.D.
in

Chhatrapati Sahu Ji Maharaj University,
Kanpur



MS 2381
Qur'an, Kashmir, 19th c.

2011

9445

Supervisor :

Dr. Subodh Saxena
Associate Professor & Head
Department of History
D.A-V. P.G. College, Kanpur

Researcher :

Arun Kumar Singh

Department of Post Graduate Studies & Research In History

D.A.V. College, Kanpur (U.P.)

(Accredited B++ by Naac)



Dr. Subodh Saxena
M.A., LL.B. Ph.D
Associate Prof. & Head

Residence : 804, Lakhapur,
Kanpur -208024
Ph. No. : 0512 - 2581300
Mobile : 9839912705

CERTIFICATE

This is certified that **Shri Arun Kumar Singh**, Research Scholar has completed his thesis entitled "*Law and Justice under Mughals with special reference to Jahangir*" under my supervision for the degree of Ph.D. from Chhatrapati Shahu Ji Maharaj University, Kanpur within a prescribed period. His thesis is under relevant rules of section-9 of the University Act. The candidate worked for his Ph.D. thesis for Two Hundred Days at the centre.

It is also certified that the present thesis is an original effort of **Shri Arun Kumar Singh**. Hence, I permit it to be presented to the C.S.J.M. University, Kanpur for evaluation.

I wish him all success.

Date: 20.08.2011

Place: Kanpur


(Dr. Subodh Saxena)

ACKNOWLEDGMENT

Acknowledgment to whom and for what! It is to my 'Guru' and for the wisdom which he instilled into me and took me to the position to begin and end the process of this thesis. I, hereby express my respect and gratefulness to my esteemed Guru, Dr. Subodh Saxena, Associate Professor, and Head, Department of History D.A-V. P.G. College, Kanpur in the words of great saint and poet Tulsi Das:

बंदुँ गुरु पद पदुम परागा । सुरुचि सुवास सरस अनुरागा ॥

अमिअ मूरिमय चूरन चारु । समन सकल भव रूज परिवारु ॥

I would also like to express my respect and gratitude to my Gurumata, Dr. (Smt.) Jyoti Saxena, Head, Department of History, Dayanand Girls P.G. College, Kanpur who always inspired and encouraged me in my day to day work and progress in the completion of this thesis with her motherly affection and valuable guidance in the journey of my this research.

I cannot forget the contribution and help of my other professors, Dr. Prashant Mishra, Dr. Samar Bahadur Singh and Sri Sarveshwar Ram Mishra who took a great interest to solve my one or the other riddle or problem came in my way. Their help and advise was much valuable for me.

I further express my respectful regards to the Hon'ble Principal of the D.A-V College, Kanpur for providing necessary facilities and support in the completion of this research work.

It is not possible for me to forget the most valuable advise and guidance given by the most famous historian, Dr. Irfan Habib, renowned Professor of History, Aligarh Muslim University, Aligarh who illuminated my path and made my whole journey of research easy and tireless.

I express my sincere thanks to the Librarians of Aligarh Muslim University, Aligarh Parshad Library, Kanpur, Government Library, Kanpur C.S.J.M. University Library, Kanpur.

I owe a great respect and honour to my elder brother Dr. Rajesh Kumar, Head of Department, History, D.S. College, Aligarh who allowed me to discuss one or the other problems came in my way of research and made my problems easy. His inspirations and valuable suggestions whereof great help to me.

Above one and all I pay me respect and reverence to my Mother Late Smt. Munni Devi without whom I would have not been what I am. Every thing in me and in my achievements was and is her loving gift in my life. Alongwith my mother, my father too has been a great inspirer and my source of strength in the completion of this work.

In the last and not the least, I also thank to my wife Smt. Arti Singh who always not only helped me in different ways but also gave me all necessary support, care and compassion during the completion of this work. I gratefully acknowledge the innocent smile of my little loving son, Ansh who always filled into me freshness and energy.

My debts are also due to Sri Surendra Kumar, Pioneer Xerox Raina Market, Kanpur for the beautiful typing of this thesis with less errors. I offer my unfeigned gratitude to everyone who has given me personal assistance, whether much or little; for, without them, the thesis could never have been written.


(Arun Kumar Singh)

CONTENT

CHAPTER		Page No.
<u>INTRODUCTION</u>		1-13
I.	Muslim Jurisprudence and Mughals: A History Backdrop	2-9
II.	Nature and Value of proposed study	7-10
III.	Law and Justice: whether root cause for prolonged stability of Mughals in India?	10-13
<u>CHAPTER-I</u>		
<u>MUSLIM LAW AND MUGHAL PRACTICE</u>		14-32
I.	Sources of Muslim Law	15-20
II.	Islamic Jurisprudence and its various schools	21-27
III.	Mughal's vision on view of Islamic jurisprudence.	28-32
<u>CHAPTER-II</u>		
<u>ADMINISTRATION OF JUSTICE UNDER MUGHALS</u>		33-56
I.	The Emperor and his court	34-39
II.	Executive officers and their roll in the administration of justice.	39-42
III.	Organization of Judiciary and its frame work : The Chief law officers.	42-51
IV.	Mughals practice regarding maintenance of law and order	51-54
V.	Procedure for trials of cases in the court.	54-56
<u>CHAPTER-III</u>		
<u>POLICE AND JAIL SYSTEM</u>		57-71
I.	Foundation and development of police system	58-60
II.	Roll of police under Mughals (Specially from Babur to Jahangir)	60-64
III.	The administration of Police.	64-67
IV.	Prisions and their administration	67-69
V.	Life in the Prisions	70
VI.	Release of accused from Jail	71

CHAPTER-IV

<u>Civil & Criminal Justice</u>	72-109
I. Nature of the civil cases and its administration.	73-76
II. Crimes as described in Muslim Jurisprudence.	76-78
III. Murder, Theft and Robbery / Highway Robbery cases	79-86
IV. Religious and Sexual crimes.	87-91
V. Offences against the safety of state.	91-108
VI. Abuse of Authority by Public servants.	109

CHAPTER-V

<u>PUNISHMENT</u>	110-138
I. Muslim theory of punishment and its execution by Mughals.	110-131
II. Crimes prevalent under Mughals and punishment there of.	119-132
III. Death punishments.	133-135
IV. Imprisonment	135-138

CHAPTER-VI

<u>LAW AND JUSTICE : WITH SPECIAL REFERENCE TO JAHANGIR</u>	139-160
I. A Review of the system of law and justice under Jahangir.	139-143
II. Concept of chain of justice and twelve ordinances.	144-148
III. Jahangir's love for justice : A critical analysis.	148-153
IV. Practical application of Justice during the reign of Jahangir.	153-160

CHAPTER-VII

<u>CONCLUSION</u>	161-172
<u>BIBLIOGRAPHY</u>	173-182



INTRODUCTION

LAW AND JUSTICE UNDER MUGHALS WITH SPECIAL REFERENCE TO JAHANGIR

INTRODUCTION

For permanent establishment of a stable dominion, an efficient administration acceptable to people at large is indispensable. Law and justice are the chief elements of the administrative organization that ensure stability of the state. The present study belongs to the period of Mughal Empire where prolonged stability is seen with social and economic harmony. Law and Justice: whether root cause for the success of Mughals in India, is the central issue of the research. Mughals in India, though accepted the Islamic source of jurisprudence but implemented it according to the necessity of the place and time.

It is significant to state that there were no written constitutional laws in the entire Muslim rule. Everything depended on the Royal will which determined all rules and regulations. Mughals also ruled the country mostly with unwritten constitution but they successfully achieved social and political integration. It is surprising that the administrative institutions of the present days have their roots in the Muslim past. Here the system of law and Justice under Mughals with special reference to Jahangir will be focused to introspect ourselves in the past.

Muslim Jurisprudence: A Historical Backdrop

Muslim jurisprudence is known by the term '*Fiqh*' that denotes 'intelligence' or 'knowledge'. The term covers all aspects of religious, political and civic life. In theory, the '*Fiqh*' is believed to be derived from the Quranic law (the sharia) and is, therefore, regarded as immutable by any human institution. When Islam spread beyond the confines of Arabia and came in contact with more advanced civilizations. It got influenced by them. The *Fiqh* is mainly drawn from two sources, the '*Quran*' and the '*Sunna*' which consists of the traditions revealed to explain the Quran. Practical needs however, compelled the recognition of other sources. It was found that '*Fiqh*' did not cover all cases. Hence the '*Fiqhis*' were compelled to apply analogous cases on such occasions. This was the origin of the third source called '*Qiyas*' (Analogy). Another source which received recognition was '*Ijma*' or universal consent.

Thus the various schools of Muslim jurisprudence developed in later times and came in the importance of the different elements of the '*Fiqh*'. The chief schools of Muslim jurisprudence are (I) Shafi-ite (II) Hanafi (III) Maliki (IV) Hanbali.

The theory of Muslim jurisprudence does not have any place for non-muslims. The Quran says that there is no government but that of God and therefore the Islam provided no sanction for the separation of religion and state. It refuses the non-muslims as a citizen of the state. In its view, the state is an organisation or instrument to subserve the ends of the creed of

Islam and consequently no non-muslims can have any place in it.

The expansion of Islam over non-muslim countries brought the practical problems of dealing with the non-muslim subjects, who could neither be converted nor exterminated. Muslim jurists declared the non-muslims '*Zimmis*' a position which denies them equal position with muslim subject but guarantees security of life and property, the continuance of their religion and religious practices under certain defined conditions.

In the entire Muslim rule in India, the rulers had to face the problem of reconciling the principles of Islam with the existence of a vast non-muslim population. They soon found that it was quite impossible to rule the country under the strict observance of the law as described in the *Fiqh* books.

It is significant to state that muslim law does not allow changes. The monarch was subservient to '*shara*', the muslim law. He had no authority to make changes in it. It was in the administration of justice that the Sultans of Delhi, maintained Islamic law, the same can be said about Mughals. Muslim Rulers always had to face the problem of disharmony between Muslim law and governance of non-muslim majority.

In the administration of justice, the Sultans and Mughal Emperors aimed at standards which are really worthy of high appreciation. With the transfer of power from Mohammad Gori to Qutubuddin Aibak in 1205 A.D., it was the beginning of Sultanate period. During the period of 1205-1526, the great

diversity is seen. The orthodox view of the emperors and extreme interference of Ulema in the administration of justice resulted in unstability and rapid downfall of the dynasties.

Qutub-ud-din found no sufficient time to establish proper administrative structure. After Aibak, Sultan Illutmish took some major initiatives to maintain law and order in the Empire. Ibn Batuta describes about two giant statues of Tigers made of marbles before the palace of Illutmish wearing a chain round their neck with a bell attached to it. The oppressed might come to this chain and shake it to appeal in the court of Emperor. He preferred the strict administration of justice to control over the crime and conspiracies in the empire. He had a high sense of justice and set a precedent for coming emperors to follow.

Balban behaved like a great orthodox ruler adopting the 'Blood and Iron' policy. His view towards the administration of justice was also biased and orthodox in nature. Having found the strict laws of Islam irrelevant, Allauddin Khilji frankly confessed that *duniyadari* should sooner or later be substituted for *dindari*.

During the Sultanate period, the administration of justice was much influenced by the Ulema community. The Sultans were guided in the matters of law and justice by the Ulema in the light of Muslim jurisprudence. Allauddin Khilji and Mohdammad Bin Tughlaq had always regarded the Ulema with suspicion and had refused to allow them to meddle in the state affairs. First Illutmish appointed *Turk-ane-Chahalgani* to curtail the power of orthodox groups of Islam and Ulema whose powers was

suppressed by the Balban in his period. Mughals easily recognized the dangerous character of this group and they kept them under strict control and thus prevented the creation of state within a state.

The fundamental weakness of the medieval state was however, the feudal character. In matter of law and justice, the officers on higher posts of out-living provinces were virtually sovereigns within their respective jurisdictions. They behaved as the actual conquerors of the districts which they governed, owing only nominal allegiance to the Sultans of Delhi. To get rid of this malpractice, Allaudin Khiliji kept them firmly under his control by vigilant centralizing efforts. The disruption of the Tughlaq empire was largely due to this evil. Under the Lodi's, owing to the tribal basis of their organization, the fissiparous tendencies were further accentuated. For the Afghans, Sultan was a merely tribal chieftain, the first among equals with many a rivals for the honour. Such was the nature of the medieval state when the Mughals entered India in the first quarter of the 16th century.

The Mughal Emperors also considered it dangerous for the state to give the administration of justice into the hands of orthodox Islamic groups. They were afraid that it could clog the wheels of government machinery. It was unsafe to make such agency the ultimate arbiters of political action in a country like India. Akbar and Jahangir were quick to recognize the soundness of the policy of Allaudin khilji and Mohammad Bin Tughalq. Mughals successfully established the supremacy of

state over all such agencies and made the administration of justice under their sway.

The Muslim law as detailed in the *Fiqh* had grown to maturity outside of India. No monarch could be blind to the peculiar features of the country. The frequent disorder in the administrative structure facilitated the establishment of Mughal empire. Babur and Humayun had been busy in battlefields on account of which they could not make the empire well governed. First Akbar took stern steps to restore the stability. He made various diplomatic efforts to weaken the influence of the upholders of orthodox Islam. He adopted the liberal policy towards the Hindus and won their favour. He established the system of law and justice that was approachable for his subject.

The contribution of Jahangir is remarkably noteworthy in the administration of justice. It is significant to state that there were no written laws in the country. First Jahangir innovated the concept of the chain of justice and introduced twelve ordinances in writing. In fact, the administration of justice under the period of Jahangir ensured prolonged stability of the Mughal empire. Shahjahan also continued the same system of law and justice during his period.

The absence of written laws was remedied to some extent by Aurangzeb, who endeavoured to embody in books form the principles of his religion on which he wished to base the government of his empire. He collected the writings of the most competent law officers who belonged to the Hanifi School of thought. His idea was to constitute a standard canon of law which might be universally adopted in the country.

As a matter of fact that the Indian Kings and the majority of the sunni Muslims regarded the Hanifi School as orthodox. It was necessary for the Indian judges to have at their elbow a digest of Islamic law compiled from the accepted Arabic writers and such digests were prepared from time to time. A syndicate of theologians was appointed by Aurangzeb to prepare such a digest in India. The result was the *Fatawa-i-Alamgiri* prepared in Arabic. It was an authoritative work on Muslim polity, law and religious usages.

Nature and Value of Proposed Study

Jurisprudence is the name given to a certain type of investigation into law and investigation of an abstract, general and theoretical nature which seeks to lay bare the essential principles of law and legal system. The word 'Jurisprudence' has meant many different things at different times. The present research work deals with the period of Mughal empire. Here concern is to focus on the nature of legal rules, meaning of legal concepts and on the salient features of legal system. It is proposed to look for the law and justice relevant to that situation during the Mughal Empire. The object is not to discover new rules but to reflect on the rules already known and practiced.

The basic features of a legal system are chiefly found in its authoritative sources. The investigation of the nature and working of legal authority naturally forms a subject of the study. Here we shall consider the value of strict system of judicial reasoning what were the common law rules applied to the concrete problems in a case is also to be studied. How the law

was concerned with different rights which one person may have against another.

Similarly it is also proposed to investigate such other legal concepts as 'Act', 'Intention', 'Negligence', 'Ownership' and 'Possession' etc. Apart from these concepts, other branches of law applied and practiced naturally fall in the ambit of the proposed research. It is in the guise of a logician, elucidating legal notions unraveling confusions and constructing synthesis of legal concepts found during the Mughals in India.

In this thesis, efforts will be to construct and elucidate organizing concept of law and justice in the Mughal period and how the law was more manageable, more rational and more capable to improve the practice of the legal system.

Researches in the Jurisprudence may well have repercussion of a whole of legal, political and social thought of any period or time. So is the relevancy of this research and study.

The good government that the Mughals gave their empire was no small a factor in winning the affection of the people. The administration was centered in the Monarch who looked into every detail himself. His person came to embody the hopes of peaceful existence, justice and prosperity. The Mughal idea of benevolence, justice and good government secured stability for the dynasty.

It can be seen in the entire history of Mughals that they prided themselves on their love for equity and regarded the administration of justice as an important duty which the

sovereign could not afford to neglect. Akbar himself says, "*The divine element of monarchy is Justice.*" It was Mughal's great love for justice that they never made it a source of profit.

The Holy Quran itself reveals that the unjust shall not prosper. An emperor who failed to do so could not stand very high in the estimation of his subject. The emperors were expected to decide all disputes without partiality. The duty of the Muslim King to perform justice in person was recognized as early as the time of early Caliphs. The Caliph was the head of the judiciary and it was the duty to grant audiences to his subject with a view to redress their grievances.

The Mughal Empire was *dejure* as well as *defacto* an independent state. The emperor was the supreme political authority and his writ could be questioned only through rebellion. As legally he was looked upon as sinful by Muslims. It was only justified when it openly transgressed the law of Islam. He was the subservient to share, the Muslim law and had no authority to amend or annul it.

The process of getting justice under the Mughals was not such a long drawn out agony as it is at present. The Mughal governments were a despotic rule. Decisions were quick. The lengthy and elaborate process through which a litigant has to pass nowadays, was discouraged by the Mughals. There were no tedious briefs of cases, no various interpretations of infinity of laws, no methodized forms and no harangues to keep the parties longer in suspense.

Bernier appreciates the administration of justice under the Mughals on the ground that it required very few lawyers and necessitated the institutions of very few law suits. He also admires the speedy decisions of cases and the absence of long and intricate legal proceedings. Even a poor man living in a distant province, if oppressed by a Governor, had certainly the right to come up to the capital and personally appeal to the Emperor. There are many instances when the high officials were punished for violation of law.

The system of law and justice under the Mughals gave the whole dynasty a strong base. The process of maintaining law and justice continued upto the period of Aurangzeb. It is definitely an influence of Mughal administration on the present institution of law and justice which are in vogue. It may be helpful to study and reinvestigate the system of law and justice under Mughals with special reference to Jahangir for us to understand the utility of the present study in today's context.

Law and Justice: Whether Root Cause for Prolonged Stability of Mughals in India

The frequent political disruption resulted in subsequent down-fall of Muslim rule prior to Mughals. The prolonged stability is seen only during the period of Mughals. What were the causes accountable for this prolonged stability with social and economical prosperity have to be investigated in the present study.

It was in fact a hard task to maintain the glory of the empire for the Mughals. For the fulfillment of this purpose, First of all Akbar turned diplomatic. He became more lenient towards the non-muslims and did not indulge in destructive activities. He introduced '*Mahzar*', the principles of Islamic law. In this way, He became the supreme authority for the interpretation of Islamic law and subverted the influence of *Ulema* and other orthodox groups.

Though politically in matters of religion and muslims were a privileged class. They could no more evade the law with impunity than the Hindu subjects. In secular matters, the law was largely the same for all. The canon of law was considered Islamic and common law was secular. The detailed investigation is proposed in the chapter – I of this study regarding sources and various schools of Muslim law. Mughal's vision in view of Islamic Jurisprudence will also be focused.

'Justice for all' is a fundamental concept which is considered to be the spine of any state. The harmony, brought in the administration of Justice, by the Mughals favored them to rule the realm for hundreds of years with stability. The second and third chapters of the present research deals with the administration of Justice under Mughals.

Local traditions and customs were generally respected in the adjudication of cases where there was no infringement of the fundamental laws of Islam. In Civil disputes, Hindus were allowed to be governed by their own laws and customs, but in criminal matters, they were subject to the same jurisdiction as

muslims. The more regarding civil and Criminal Justice under Mughals will be illuminated in the chapter – IV of the thesis.

The Mughal empire was *dejure* as well as *defacto* an independent state. The emperor was vested with the supreme political authority. He was the subservient to share, the muslim law and had no authority to amend or annul it. By their attitude, the Mughals exalted both justice and themselves.

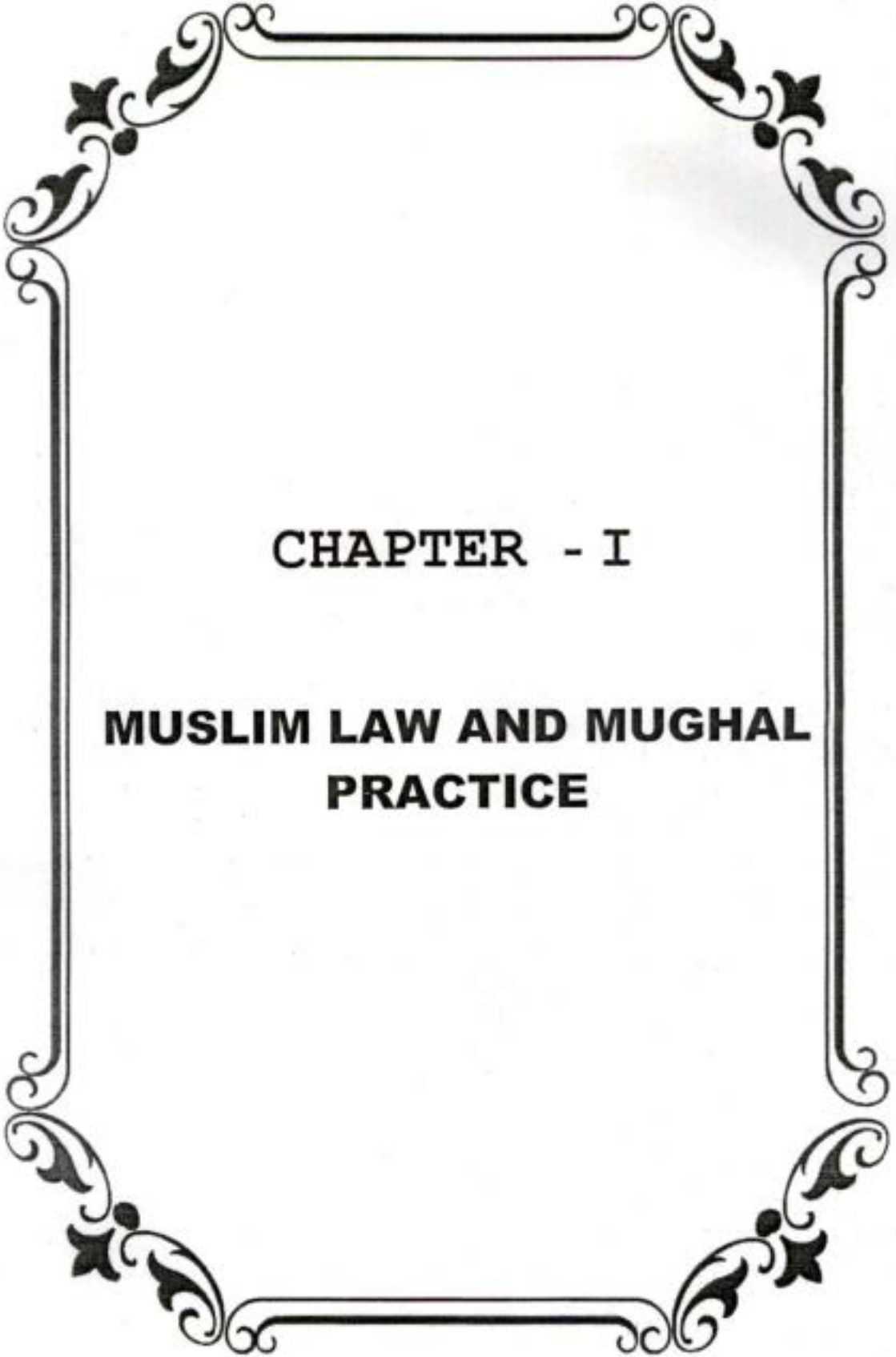
Jahangir's institution of the 'Chain of Justice' was not merely a pompous show as some critics have tried to make out. If Akbar forbade the flaying of person alive, Jahangir too interdicted the cutting of nose and ears by way of punishment, though in a fit of temper, he had ordered the eyes of his own son, Khusru to be put out. Chapter – V deals with the system of punishment under the Mughals and Chapter – VI will throw light on the system of law and justice with special reference to Jahangir that will be comprehensive to know the characteristics of the period of Jahangir.

Shahjahan has been maligned by V.A. smith who says that his justice was merely the savage, unfeeling ferocity of the ordinary Asiatic despot, exercised without respect of persons and without the slightest tincture of compassion. Here it must be remembered that law is no respecter of persons and justice consists in not administration between one individual & another. Aurangzeb also maintained the same dignity in dispensation of justice.

Mughal Emperors Akbar, Jahangir, Shahjahan and Aurangzeb together achieved an administrative success whose effects long survived them. The stability and survival of the state depends more on internal harmony and ability to sustain it. Mughals, having prospects of homogenous and well-governed state, adopted the administration under strict law and justice devoid of fanaticism of Islamic jurisprudence.

It was, in fact, influence of the great administrative set-up with preference of law and justice that the Mughals Empire remained in power even during the period of lazy and inefficient heirs. There are a lots of evidences that proves the utility of the study of Mughal Empire and their system of law and justice in context of present scenario. It is, therefore, no doubt to assume the system of law and justice as root-cause for the prolonged stability of the empire. All such elements of the administration especially law and justice have to be focused in the present study. It will certainly be useful to comprehend the system and utility in present.

* * * * *



CHAPTER - I

**MUSLIM LAW AND MUGHAL
PRACTICE**

CHAPTER-1

MUSLIM LAW AND MUGHAL PRACTICE

The basic purpose of the organization of the community of Islam has always been the facilitation of the pursuit of virtue. The determination of the rights of individuals and groups is a necessary corollary of such a purpose, because virtue implies fulfillment of social and civil obligations. Therefore, few disciples gathered around the Prophet and sought his guidance to attain spiritual and social harmony on behalf of that they laid the foundation of an embryonic government including an organ for the dispensation of justice. From these meagre beginnings, there grew up a tradition and a pattern of the administration of justice in the Muslim world which produced one of the greatest systems of law in history.¹

In an Islamic state, sovereignty belongs to God.² This does not mean in an Islamic state, all the laws are to be made by God himself or that the *Quran* provides all positive laws and the people have nothing to do in this regard. The Laws which are enacted in an Islamic state are, no doubt, to be made by the people of the state but in the light of the *Quranic* fundamentals. Thus in the Islam, the people have got partial and restricted right of law - making. They cannot make any law which runs contrary to the clear *Quranic* injunctions which are noted for universal application. In this sense, the people who make the

1. From the Introduction of '*Towards Understanding Quran*'. Translated and Edited by Zafar Ishaq Ansari, P. XXV, M.M. Islami Publishers, New Delhi.
2. Surah 39 (Al-Zumar) 65-8 (Holy Quran).

laws are not really law makers, and as such, are not above law, but they are only the executors of law and remains an ordinary citizens.

Sources of Muslim Law

The Chief sources of Islamic law are the *Quran*, *Sunna*, *Ijma* and *Qyias*.

THE QURAN – The original source from which all principles and ordinances of Islam are drawn is a holy book called *Quran*. According to the celebrated *Sunni* Imam, Abu Hanifa,³ “The *Quran* is the word of God, and his inspired word and Revelation”. “It is written in a volume, it is read in a language, it is remembered in the heart.”⁴

The *Quran* is also termed as *Al-Kitab* and contains collected revelations of Mohammad Sahab in a definitive written form. According to the belief of every Muslim these revelations came from heaven and were taken from a well – guarded tablet or a canceled book. The book is called “an admonition on noble, lofty, pure leaves through the hands of noble scribes”. The revelation which existed completely in the heavenly book were taken piecemeal to Mohammad Sahab in Arabic dress through the intermediary of the trustworthy spirit.⁵

In the early days of Islam, memory was used as a channel for the transmission of the *Quran*. During the life time of the

3. **Abu Hanifa Al-Nu-Man ibne Thabit** 150 A.H./767 C.E., was a theologian and jurist who dominated the intellectual of Iraq in the later part of his life and became the founder of a major school of law in Islam, Known after his name.

4. Kramers, J.H. and Bill, H.A.R., *Shorter Encyclopedia of Islam*, P.48 (Ithaca, New York, Cornell University Press, 1953).

5. *Ibid*, P. 148-53.

Prophet only a part of the revelation was recorded. It was the Caliph *Abu Bakr*⁶ who decided to have a written text prepared and entrusted *Zaid bin Sabit*, the favorite secretary of the Prophet, with the task. *Caliph Usman*⁷ appointed a commission to co-operate with Zaid. Their combined efforts resulted in putting together a definite *Quran* in four copies. The final recession of the *Quran* was produced by Usman twenty-five years after the death of the Prophet in 632 A.D.⁸

There are 114 chapters or '*Suras*' in the *Quran* and each Sura is divided into a varying number of verses or '*Ayat*'. Out of these there are about 100 *Suras* which can serve as a sort of preamble to a code of conduct and which simply seek to reform the existing customary law. The scholars of the Madina and Iraqi schools aimed at the elaboration of the *Sharia*, a system of law for the Muslims, based on the common stock of the *Quranic* principles.

There are two kinds of verses in the Holy *Quran*, namely decisive and allegorical the latter being those which are capable of different interpretations. The decisive verses are the basis of the books, and contain the fundamental principles of religion. Hence whatever may be the differences of interpretations over allegorical verses, the fundamentals of religion are not affected by them.⁹

6. **Abu Bakr, Abd Allah ibn Uthman**, d. 13 A.H./634 C.E. was the most trusted companion of the Prophet and the first Caliph of the Islam. Abu Bakr's wisdom well ensured the survival of Islam after the death of the Prophet.

7. **Usman ibn Affan**, D. 35 A.H./656 C.E. was a son-in-law of the Prophet and the third Caliph of Islam under whose reign vast areas were conquered and the *Quranic* present context was prepared.

8. Kramers, J.H. and Bill H.A.R., *Shorter Encyclopedia of Islam*, (Ithaca, New York: Cornell University Press, 1953) P. 148-53.

9. **Soorah al-Araaf (7) : 157** (*Quran*)

The basic of Mohammad's legislation was not legal, but ethical. He does not lay down legal formulas but indicates what is right conduct and what wrong.¹⁰

THE SUNNA – The second chief source of Islamic law is Sunna that means a "path or way; a manner of life."¹¹

In the *Quran*, the Sunna usually occurs in two connections: *Sunnat-awwalin* and *Sunnat Allah*. In *Hadis* by Sunna is commonly understood Mohammad's Sunna comprising his deeds, utterances and his unspoken approval. "Mohammad's Sunna in the sense of his words, actions and silent approval is fixed orally and in writing in the *Hadis*. In theory, the conception of Sunna and *Hadis* are different but in practice they often coincide."¹²

The Sunna is a real storehouse of material for the life of the Prophet and the Muslims institutions.¹³ During his life time the Prophet had decided many questions from case to case and his words and deeds and silent approval were reduced to writing and came to be termed as Sunna.¹⁴ These tradition of what the prophet said and did, "gradually laid the foundation of what is now called 'Islam'. It is to tradition rather to the Quran that we must refer for Mohammadan law".¹⁵

10. Quran itself says, "It commands them (Human) to do righteousness prohibits them evil, and it makes allowable to them (Human) the good things and makes forbidden all filth."

11. The Holy *Quran* (Ed. & Translated by Z.I. Ansari), P. 1327, (M.M.I. Publisher, New Delhi).

12. Abu Ameenah B. Philips, *The Evolution of fiqh* (Islamic Law & The Madh-habs), P. 66, Tawheed Publications, New Delhi

13. Hasan Ibrahim, *Islam : A Religious, Political, Social and Economic Study*, P. 561, (University of Baghdad Press, 1833-1990, Iraw)

14. Kramers, J.H. and Bill, H.A.R., *Shorter Encyclopedia of Islam*, (Cornell University Press, 1953), P. 556

15. *Ibid*, P. 560

It is now to consider to what extent can the teachings of Islam, its principles and its laws, be drawn from this source. As Holy *Quran* generally deals with the broad principles or essentials of Islam, the details are generally to be supplied by the Sunna of the Holy Prophet. Even for the two most important religious institutions of Islam, e.g. Prayer and Zakat, no details are to be found in the *Quran*. These details were only supplied by the practice of the Holy Prophet. Islam covered the whole sphere of human activities, hundreds of points had to be explained by the Holy Prophet by his examples in action and word, while on the moral side, it was his pattern which every Muslim was required to follow. The people who embraced Islam stood in need of both the Holy *Quran* and the Sunna. With this object in view, serious steps were taken by the followers of the holy Prophet to collect all the tradition with every possible care that was humanly possible.¹⁶

In judging whether a certain *Hadis* was spurious or genuine, the collectors not only made a thorough investigation but also applied other tests for its acceptance. No *Hadis* was to be accepted – if it was opposed to recognized historical facts, or if it was against reason or against the teachings of the *Quran*.¹⁷

Being the secondary source of law, *Hadis* is, however, to be judged by the *Quran*. If it agrees with the *Quran*, it should be

16. Abu Ameenah Bilal Philips, *The Evolution of Fiqh* P. 37, Tawheed Publications, New Delhi. This period marked the beginning of the evolution of *Fiqh* and it was during this period that the foundations for the science of deducting laws from the *Quran* and the *Sunnah* were laid by the Prophet.

17. *Soorah an-Najm* (53) : 3 & 4 (*Quran*). Therefore, the *Sunnah* is considered the second source of revelation based on Allah's statement in the *Quran*. As the *Quran* itself reveals- "He (Prophet) does not speak from his desires. Verify it is inspiration which has been revealed.

accepted, if it goes contrary to the spirit of a *Quranic* injunction, it should be rejected.¹⁸

IJMA – *Ijma* is the third source of Muslim law. Literally it means, “agreeing upon”. *Al-shafi-i* defines *Ijma* as the view held by the majority of the Muslims and uses it as a secondary source of elucidation on questions which cannot be decided from the *Quran* and the *Sunna* of the Prophet.¹⁹ Later on it was defined as the agreement of the *mujtahids* of the people, (i.e. those who have a right, in virtue of knowledge, to form a judgement of their own). After the death of the Prophet, in any age, on any matter of the faith. *Ijma* thus did not signify the opinion of the masses. The agreement was not arrived at by a council or a synod but was reached ‘instinctively and automatically’. As a result of the agreement the points in dispute got settled and each settled point became the essential part of the faith, and disbelief in it came to be regarded as an act of unbelief (*Kufr*).²⁰

Ijma did not remain supplementary to the *Quran* and *Sunna*, but was regarded as confirming them. Later on it received the power even of cancelling prescriptions of the *Quran* and *Sunna*. Important sections of the system of the Muslim law are based on *Ijma* alone. In this view the whole of Muslim law owes its authority to the infallible ‘*Ijma*’ alone.²¹

18. *Soorah ak-Hashr* (59) : 7 (*Quran*)

19. Kramers, J.H. and Bill H.A.R., *Shorter Encyclopedia of Islam*, P. 163, (Cornell University Press, New York, 1953)

20. *Ibid*, P. 448

21. Abu Ameenah Bilal Philips, *The Evolution of Fiqh*, P. 39, Tawheed Publication, New Delhi.

Ijma was regarded as a major source of law and helped in overcoming the difficulties arising from the disputes among Muslim jurists about the rulings and methods of interpretations. "By means of *Ijma* what was at first an innovation, and as such heretical, has been accepted and has over-ridden the earlier *Sunna*. *Ijma*, in certain cases, has not simply fixed unsettled points, but has changed earlier doctrines, of the greatest importance. It is, thus, regarded by many, within and without Islam a powerful instrument of reform.²²

AL-QIYAS – Al-Qiyas is the fourth significant source of Muslim law. It literally means "to compare" or deduction by analogy. The analogical reasoning with the learned in regard to the teaching of the *Quran*, *Hadis* and *Ijma* is known as Al-Qiyas.²³ *Al-shafi-i* says in his *rishala* that *Qiyas* is used in the cases which are not dealt within the *Quran*, *Sunna* and *Ijma*. He regards *Qiyas* of two kinds, *Qiyas-i-jali* or evident and *Qiyas-i-Khafi* or hidden.²⁴

For the commentator *Fakhr al-Din al-Razi*, *Quran* and *Sunna* have precedence over *Qiyas*. The use of *Qiyas* was permissible only when it was impossible to use these sources or "roots". If traditions require to be verified by the sacred text, *Qiyas* does still more so. *Quran* is the word of Allah, while *Qiyas* is the work of feeble intelligence.²⁵

22. *Ibid*, P. 43

23. *Ibid*, P. 60

24. Qadri, Anwar Ahmad, *Islamic Jurisprudence in the Modern world*, P. 212. (Ashraf Publication, Lahore, Pakistan)

25. Qadri, Anwar Ahmad, *Islamic Jurisprudence in the Modern world*, P. 215. (Ashraf Publication, Lahore, Pakistan)

Islamic Jurisprudence and its various schools

Islamic jurisprudence is also known as '*Fiqh*', literally denotes, 'intelligence' or 'Knowledge'.²⁶ The term covers all aspects of religious, political and civic life. It includes criminal laws regulating the administration of the state and the conduct of war.

When Islam came in contact with some other advanced civilizations, it got influenced by them. The most important influence upon the development of Islam was that of the Roman law which was adopted in a 'thorough - going' manner by the jurists of Islam.

In the older theological language *Fiqh* was considered synonymous with 'ray' or opinion which is arrived at by independent exercise of judgement of legal points. Both the term *Fiqh* and *Fuqaha* (master of the science, i.e. jurists) were originally limited to deductions not based on traditions. With the gradual recognition of the four sources of Islamic law (the *Quran*, *Sunna*, *Ijma* and *Qiyas*), as methodical principles for laying down the legal prescriptions, this limitation no longer remained valid *Fiqh* next became a science which co-ordinated and included all the branches of knowledge derived from the aforementioned four sources.²⁷

26. *Fiqh* literally means, a waterhole where animals gather daily to drink, or the straight path as in the Quranic verse - "Then we put you on a straight path (Shareeah) in your affairs, so follow it and do not follow the desires of those who have no knowledge.

27. Kramers, J.H. and Bill H.A.R., *Shorter Encyclopedia of Islam*, Vol. II, P. 451

Codification of Islamic Law

Attempts were made, sporadic during the Umayyad and systematic in the Abasid period, at a codification of law. The theologians who made the first serious efforts in Medina, Syria and Iraq to evolve a regular system of law always accepted the four sources as authoritative.

The first such attempt said to be on record to codify the Islamic law was the '*Majmua*' of Zaid bin Ali (died on 740 A.D.), founder of the 'Shi-i' sect of Zaidiya.²⁸

The '*Muwatta*' of Malik bin Anas (715-75 A.D.) is recognized as the oldest corpus juris of the '*Sunni*' branch of Islam.

This was a codification of the *fiqh* as it developed in the theological centre of Medina in *Hijaz*. In Iraq, Hammad bin Suleiman became the pioneer of another school of *Fiqh*. Imam Abu Hanifa belonged to this (Iraq) school which was placed on a firmer footing by his two great pupils, Abu Yusuf (died on 795 A.D.) and Mohammad. Bin al-Hasan al-Shaibani (died on 804 A.D.). Almost at the same time *Fiqh* was being systematically developed in Syria by Abd al- Rahman-al-Awazi (died on 774 A.D.). Sufyan at Thawri (died on 778 A.D.) was yet another important teacher belonging to the 'Iraqi school of *Fiqh*'.²⁹

28. Anwar Ahmad Qadri, *Islamic Jurisprudence in the Modern world*, P. 215. (Ashraf Pub. Lahor, Pakistan, 1963)

29. Kramere, J.H. and Bill, H.A.R., *Shorter Encyclopedia of Islam*, P. 103-04 (Cornell University Press, 1953, New York)

In the Iraqi school of *Fiqh* 'ray' had a predominant influence and in comparison with it, the *Hijaz* school made a moderate use of this source of law.³⁰ The jurists who believed in the validity of 'ray' came to be called as *Ashab al-ay* opposed to them were those who were termed as *Ashab al-Hadis*.³¹

Between these two extremes appeared a mediator in the person of Mohdammad. Bin Idris-al-Shafi-i (died on 820 A.D.). He systematized the *Fiqh* and laid down the exact limits within which each might be used.³²

Thus during the second and third centuries of Islamic era, Muslim jurisprudence had been codified by the individually developing schools of the above – mentioned founders of law. And it is to these codifications of the law that all the present (four) orthodox Sunni schools of law trace back their origin. The development of the *Fiqh* has taken place in four directions resulting in the establishment of the four schools or '*mazahib*'. These four schools prevail even today in different parts of the Islamic world and are called after the Imams on whose teachings they were founded.

Schools of Muslim Jurisprudence

The various schools of law or jurisprudence grew up in later times and they claimed importance to the different elements of the *Fiqh*, for some time there was a struggle for predominance

30. Kramere, J.H. and Bill, H.A.R., *Shorter Encyclopedia of Islam*, P. 105 (Cornell University Press, 1953, New York)

31. *Ibid*, P. 105

32. *Ibid*, P. 106

among them, out of which eventually four schools emerged successful and were recognized by the jurists of Islam.

The Hanafi School

It has been named after Imam Abu Hanifa, the patriarch of the Iraqi school. He was born in 700 A.D. at Kufa where his grand father was taken prisoner in Kabul and brought as a slave by the Muslim conquerors and he received his freedom in that town. His father, Sabit, was a silk-dealer at *Kufa*. Abu Hanifa devoted the whole of his life to the study of the sacred science. He came to be regarded as a leading *Fiqh* scholar and a great logician and oracle of Sunni jurisprudence.³³

Although the authentic writings of Abu Hanifa are not extant, his influence as an authority on legal questions led to the rise of the Iraqi school. In the Hanifi system of *Fiqh* 'ray' played a predominant part. The doctrines of Abu Hanifa and his two pupils, Imam Abu Yusuf and Imam Mohammad Bin Shaibani are followed in by far the greatest part of the Muslim world (Turkey, Central Asia and the Indian mainland). Abu Hanifa died in Baghdad at the age of seventy.³⁴

The Shafi'I School

The founder of this school or mazhab was Mohammad bin Idris - al - Shafi-i. He was a *Hashimite* belonging to the tribe of the Quraish and was thus remotely connected with the

33. Abu Ameenah Bilal Philips, *The Evolution of Fiqh*. P.64, Tawheed Publication, New Delhi.

34. *Ibid*, P. 68

Prophet.³⁵ His father, an inveterate foe of Mohammad's had fought at the battle of Badr, taken prisoner, released on ransom and was subsequently converted to Islam.

Shafi was born at *Askalon* in Ghazza (Palestine) in 767 A.D. and lost his father early. His mother brought him up in very humble circumstances in Mecca. He was endowed with an extraordinary talents. He learnt the whole of the *Quran* by heart at the age of seven, and at 10, he committed to memory the *Muwatta* of Malik and at 15 attained the rank of Mufti. His works are more voluminous than those of any Muslim doctor, although they were published between the age of 47 and 54 when he died.³⁶

At the age of twenty he went to Medina to Malik and remained there for few years. After going to Yemen, Baghdad and Mecca, he settled in Egypt in 815 A.D. and died on 820 A.D.³⁷

Shafi was an eclectic who acted as an intermediary between the independent legal investigation and traditionalism of his time. He is regarded as the founder of *Usul-al-Fiqh*. He did a great deal to advance the systematization of Islamic law.³⁸

The Shafi-I teaching is still eagerly studied in the Azhar masque. It is even now predominant in South Arabia, Bahrain, the Malay Archipelago, the former German East Africa and some parts of the Central Asia.

35. Abu Hanife Bilal Philips, *The Evolution of Fiqh*, P.80

36. *Encyclopedia of Islam*, Vol. IV, P. 252-53

37. *Shorter Encyclopedia of Islam*, P. 613-14

38. *Ibid*, P. 512

Maliki School

It has been named after Malik bin Anas. He probably born in about 710 A.D. Because of his ugliness he was not in particular admired by any one. There is no reliable information in regard to his early life and studies. At Medina where he spent most of his life, he got in trouble with the governor, received flogging at the hands of the governor, and suffered a dislocation of shoulder. He died in 795 A.D. at the age of 85 in Medina. Many details of his life are buried in fiction. His fame rests chiefly on his 'Muwatta' which received a surprising success. One of the main object in the juristic thought that appears in 'Muwatta' is the permeation of the whole legal life by religious and moral idea. This work recorded the usual consensus of opinion in Medina and became authoritative as the expression of compromise.³⁹

Malik's great achievement was to develop the Islamic legal system. *The Muwatta can be regarded as evidence of the stage reached in the general development of Muslim law of this time.*⁴⁰

The Hanbali School

Ahmad bin Mohammad bin Hanbal, the celebrated Islamic theologian, innovated the new stream of thought which later on named as Hanbali school of Islamic jurisprudence.

39. *Encyclopedia of Islam*. Vol. IV, P. 255-60

40. Dr. Satya Prakash Sangar, *Crime and Punishment in Mughal India*, P. 7, Reliance Publishing House New Delhi

Ibn Hanbal was born at Baghdad in November 780 A.D. In that city he attended the lectures of Al-Shafi-i and received instructions in the traditions from him. He attained great fame for his profound knowledge of both civil and spiritual law. He suffered corporal punishment and imprisonment at the hands of Caliph Al-Mutsum whose son and successor – Mutawakkil made amends by conferring on him honour and distinction. The Musnad, the encyclopaedia of traditions, was the great work of Abd Allah in which about 30,000 traditions are contained. Another of his work was 'Kitab al – Zuhd'.⁴¹

Ibn Hanbal was an adherent of Ahl al-Hadis and as far as possible derived every law from traditional sources and occasionally admitted very feeble traditions as the basis of his decisions.⁴²

His 'Mazhab' was much more widely spread in the countries of Islam till the 14th century A.D. The rise of the Ottoman power dealt Hanbalism a very severe blow and set in on its way to decline.

It will thus be seen that the Muslim community has the right to make any law for itself, the only condition being that such law shall not contravene any principle laid down by the Holy *Quran*. It is the restriction imposed upon the framers of law in an Islamic State which has created a world of difference between this state and all other states.

41. *Encyclopedic of Islam*, Vol. I, P. 188-89

42. *Encyclopedia of Islam*, Vol. II, P. 102-03.

Mughal's Vision In View of Islamic Jurisprudence

The Mughal Kingship was distinctly a beneficial institution for medieval India. Though the authority of the Mughals was absolute, still they did not violate the ancient rights of the inhabitants of the country.⁴³ It was undoubtedly the administrative merit of the Mughals that this magnificent structure remained intact so long.

In theory a Muslim king in a Islamic state is bound to rule in accordance with the *Quranic* law and to enforce 'Shara' in his Kingdom. But how far in practice, Mughals ruled as 'Khalifas of God' and to what extent they enforced Islamic law as Muslim Kings had been in accordance with the necessity of place and time.

Law of the Mughal empire was not what it was in other Muslim countries. The majority of the subject being uncompromising non-muslims to continue more or less the same as they found there. Law is after all social consciousness codified; the medieval Hindus were too conservative to part with social customs. If the Mughals had been the first Muslim conquerors of India, they might have introduced either the laws of the 'Shariat' or a kind of laws mixed up with native Turki customs as it was in Samarkand. But being successors to the Turko- Afghans, they had to accept the legal system of their Muslim predecessors as they found it in India further. India was

43. R.P. Khosla, *Administrative Structure of the Great Mughals*, Page. 293, Kanti Publications, A 507/12, Kartar Nagar, South Gamri Ext., Delhi 53.

not conquered at one time, and therefore a wholesale change of the laws of the country was impossible.⁴⁴

The vigorous survival of the Mughal empire was due to certain magnificent features which call for a careful examination, military might is the ultimate sanction behind all government; when that deteriorates, the political system created with its aid also crumbles. Likewise, an efficient administration is a great desideratum for moral and material progress. Both these requisites were present in the Mughal empire to a large extent. But the most striking qualities which contributed to the success of the dominion were: (I) The Indianisation of the Mughal dynasty and (II) the capacity of the earlier emperors to achieve political harmony.⁴⁵

The Mughal Emperors behaved more independent than their predecessors. They never asked the Caliph to invest them with the supreme temporal power and they also never recognized the spiritual sway of the Caliph. Even before they became the powerful monarchs of Hindustan, the Mughals never turned to any Caliph for the ratification of their authority over their subject in central Asia. Like any other powerful Mohammadan sovereign, they assumed the title of Caliph themselves as well as assumed the title of "Amir-ul-Muminin" (Commandor of the faithful) which was adopted by the ancient Caliphs. It was the most daring step taken by the Mughals that was contrary to Islamic jurisprudence

44. H.S. Bhatia, *Mughal Empire in India, The Political, legal, Social, Cultural, Religious and Military system*, P.63.

45. Raj Kumar, *Administrative, Law and Justice in Medieval India*, P. 63., Anmol Publication, Dariyaganj, New Delhi

as well as present conventions. In this way, they wanted to get rid of the futility of unwanted conventions and established their own sovereignty.

Badaoni begins the history of Akbar as: "*The Emperor of the time, the Caliph of the age, Jalal-ud-Din Mohammad Akbar Padshah (may be ever be firmly seated on the throne of the Khalifate and the seat of Clemency) with the approval of Bairam Khan began to honour and adorn the throne of the Sultanate*".⁴⁶ Akbar also introduced the famous gold coin inscribed with the words "The Great Sultan, the exalted Khalifa".⁴⁷ Only four Caliphs were held in reverence by the Mughal Emperors and their names were found on the Mughal's coins but no names of any reigning Caliphs were found inscribed on the coins.

The religious character of monarchy and the subordination of sultanate under the Holy law existed only in theory during the Mughal times. In practice, the Mughal Kings of India exercised greater authority than that claimed by any kings in the west who based their claim to sovereignty on divine rights.

The restrictions placed by Muslim jurisprudence on the authority of the king did not form a part of practical politics. During Mughals, Islam recognized no organized priesthood, and the Muslim church, in India was not an integral part of the empire. Though the Mughals could never declare themselves independent of the Muslim church, in practice they enjoyed complete sovereignty in the state. The State was not bound to comply with the orders received from the church. The Muslim

46. Badaoni, *Muntakhab-ul-Twarikh*, Translated by Ranking, Vol. II, P. P.1

47. T.W. Arnold, *The Caliphate*, P. 160.

church here occupied a subordinate position as compared with the Roman Catholic Church in medieval Europe.⁴⁸

It was quite clear for the Mughals that the position of the Monarch could be strong only if the state was secularized. Consequently for all practical purposes, they kept the state and the church separate. They did not make state offices a monopoly of the followers of their own religion. A person before being appointed to an office was not required to take oath admitting his faith in Islam. The various offices of the state were open to all without discrimination of caste and religion. The number of Hindu grandees was not negligible at any time of Mughal rule and they constituted a fairly important part of the machinery of the Mughal Government. The Mughals were the protectors and guardians of Islam, but they did not mind entrusting places of responsibility to those who did not profess that faith.⁴⁹

Though the Holy law was supreme in the State, the Ulema, who were the only authoritative exponents of that law, were not allowed to share that supremacy. They had great interference in State affairs prior to Mughals. The dangerous character of their power was recognised by the Mughals who kept them under control, and thus prevented the creation of a State within a State.⁵⁰

Undoubtedly, the Mughal state in India was not a truly Islamic State. The law which had the widest recognition was the King's will rather than the sacred law. The Mughals always

48. R.P. Khosla, *Administrative Structure of the Great Mughals*, P. 161., Kanti Pub., Delhi

49. Hasan, Ibrahim, *Islam: a Religious, Political, Social and Economics Study*, P. 184, University of Baghdad Press, 1967, Iraq

50. *Ibid*, P. 185

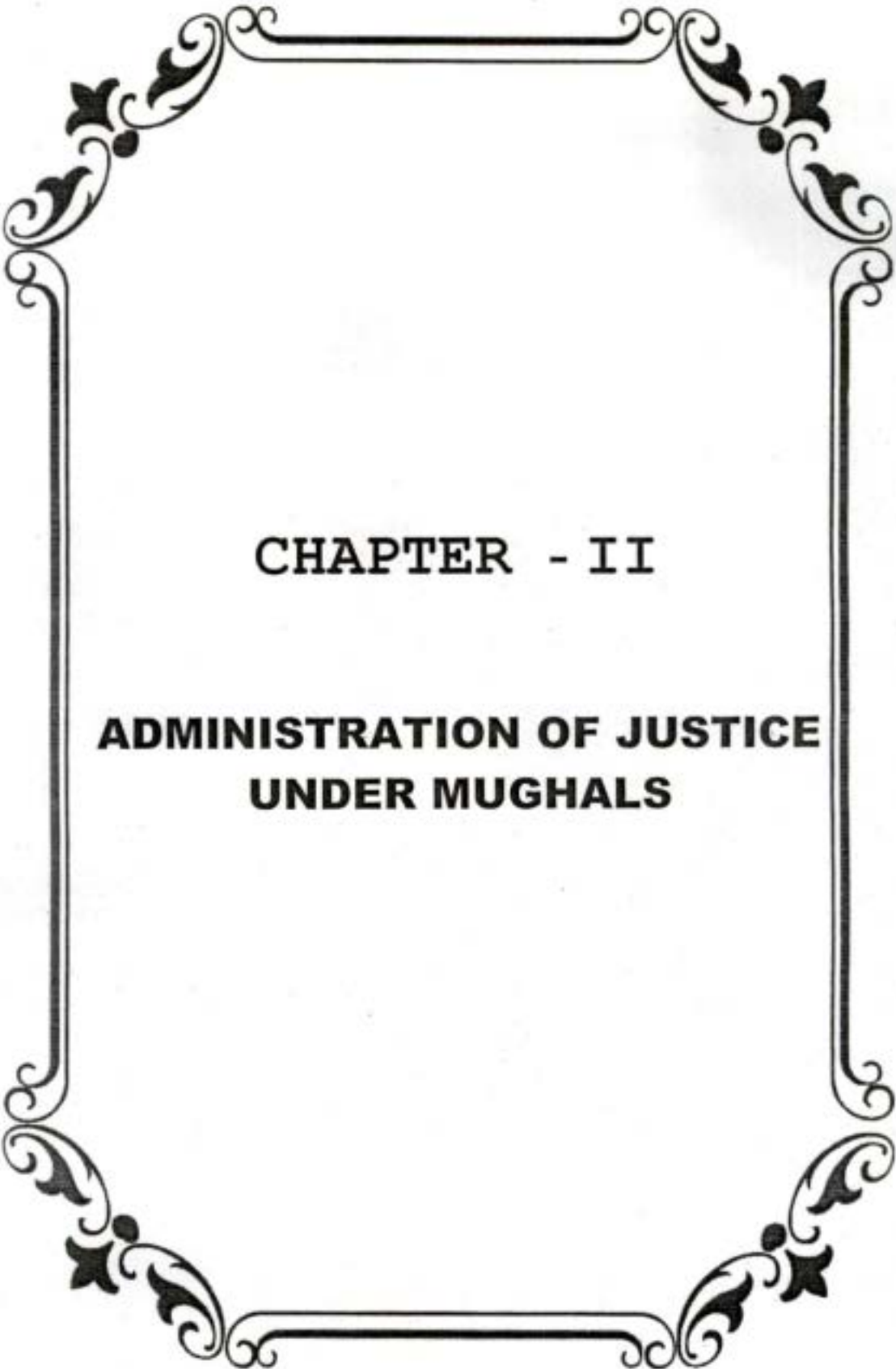
considered it dangerous for the state to give the spiritual power a free hand in political matters as that clogged the wheels of government machinery. It was obviously impractical for Mughals to govern the country under strict observance of the law as described in '*Fiqh*' books. No Monarch could be blind to the peculiar features of the country. Even the Sultan of Delhi had recognized the futility of governing the State in accordance with the Muslim jurisprudence. Aurangzeb who attempted a rigid adherence to the tenants of Islamic law did not meet with success.

As a matter of fact, the Indian kings and the majority of *Sunni* Muslims regarded the '*Hanfi*' School of orthodox. It became necessary for the Indian judges to have at their elbow a digest of Islamic law compiled from the accepted Arabic writers and such digests were prepared from time to time. Aurangzeb appointed a syndicate of theologians to prepare such a digest in India. The result was the *Fatwa-i-Alamgiri* prepared in Arabic at a cost of two lac rupees.⁵¹ It was an authoritative work on Muslim polity, law and religious usages.⁵²

* * * * *

51. J.N. Sarkar, *Mughal Administration*, P. 101

52. Sri Ram Sharma, *The Bibliography of Mughal India*, P. 130.



CHAPTER - II

**ADMINISTRATION OF JUSTICE
UNDER MUGHALS**

CHAPTER-2

ADMINISTRATION OF JUSTICE UNDER MUGHALS

The Mughal Emperors maintained the entire structure of the Islamic state as laid down by the Muslim jurists, and strictly followed Islamic law in the greater part of the sphere of the judicature, as was not done by them in any part of the political structure of their empire.¹ Secondly, the judicial department stands in a marked contrast in organization, in status, and dignity to the departments of the central government which were highly organized and equipped with efficient men.

The justice administered during the Mughal times was primarily the sacred law, as given in the *Quran* and the tradition of the Muhammad. Over all the Mughal emperors were the supreme law-giver and legislation on those few occasions when the nature of a case necessitated the creation of new legislation or the modification of the old. His pronouncement overrode everything else, provided they did not run counter to any express injunctions of the Holy law.² The decisions were based on the emperor's good sense and power of judgment rather than on any treaties of law. Everything depended on the royal will which determined all rules and regulations.

The administration of justice was regarded throughout the Mughal Empire as a subject of great importance. There were

-
1. Ibn Hasan, *The Central structure of Mughal Empire*, p.339, Radha Publication, New Delhi.
 2. P.P. Khosla, *Administrative structure of Great Mughals*, p.141, Kanti Publication, Kartar Nagar, New Delhi.

three agencies in the general charge of judicial administration. The emperor and his agents like the provincial governor, the *faujdar* in the *Sarkar* and the *Kotwal* usually administered political cases. Robbers and rebels working in organized bands would claim the attention of and receive the punishments from their secular officers.³

The *Qazi* administered *Shar'i* or sacred law. His jurisdiction was confined only to questions connected with religion. He decided disputes concerning family law and marriage, inheritance and also criminal cases.⁴

For the Hindus and the village people, there were the courts of the Brahmins Pandits and the caste elders. They administered the common (unwritten) law or codes of tribal traditions. They were not subordinate to the *Qazi*, nor had anything to do with the *Shar'i* law.⁵

The Emperor and His Court

In the entire Mughal dynasty, the emperor was the highest authority in the kingdom and was the fountain of justice. It is wrong to say, as alleged by the foreign travelers, that his will was always law in all affairs.⁶ There was the Islamic law and he dared not transgress the boundaries of the *Shariyat* without provoking misgivings in the hearts of the orthodox. It was particularly true in the case of Shahjahan and Aurangzeb who were the staunch

3. Dr. S.P. Sanger, *Crime and Punishment in Mughal India*, p.20, Reliance Publication, New Delhi.

4. *Ibid*, P. 21

5. *Ibid*, P. 21

6. *De laet, The Empire of the Great Mughals*, Translated by J.J. Hoyland, P.93

Sunni's and based their decisions as far as possible on the orthodox law. The Mughal emperors, however, were subject to no other religious authority in or outside India.

Mughal monarchs were much aware that they always kept an eye on all departments of the state including that of law and justice. The emperor himself was the highest court of appeal as well as the court of first instance. It seems, however, impossible that he had time enough to dispose of all the cases that came up before him. A large number of appeals from distant parts of the country could not be filed in his court. The innumerable inconveniences that attended long travels in the middle ages might have made the people hesitant to go to the imperial court.

The Mughal emperor used to hold their court everyday where ordinary cases were decided. Akbar held his court after prayer and administered justice there.⁷ Every Mughal emperor, however, set apart a day of the week for administration of justice. In the case of Akbar it was Thursday, for Jahangir Tuesday and for Shahjahan and Aurangzeb, Wednesday. As regards Akbar, Abul Fazal has recorded:

"In the investigation of cases of the oppressed Emperor placed no reliance on testimony or oaths. He drew his conclusions from the contradictions in the narratives, the physiognomy, and from sublime researches and nobles conjectures."⁸

Father Monserrate has praised Akbar's regard "for right and justice in the affairs of Government" He was by nature kind

7. Abul Fazal, *Akbarnama*, Translated by H. Bevridge, Vol. III, p.393, Low Price Publication, Dariya Ganj, New Delhi.

8. *Ibid*, p.257

and benevolent and was sincerely anxious that offenders should be punished."⁹

William Hawkins who visited India during Jahangir's reign (1608-13), remarked that the "*Indian kings sat in justice everyday*,"¹⁰ Nicholas Withington (1612-16) observed that Jahangir sat in his court at Agra three times in a day to do his great justice.¹¹ Edward Terry (1616-19) confirms this and adds that any complaint there could hold up his petition and was sure to receive a hearing.¹² We learn from the account of William Hawkins that "Jahangir came to the Audience Hall at 3'o clock and took his seat on the royal throne while his nobles and *Mansabdars* kept standing. For two hours he used to hear all cases in his palace."¹³ According to another eye-witness account he came to the court between 3 and 4'o clock afternoon and did not leave till the evening.¹⁴

The foreign travelers have also referred to the golden chain of justice during Jahangir's time. He had a bell hanging in his seraglio with a cord which reached out into an outer room. Any complainants who had failed to secure justice could ring the bell. The emperor sent up for him, examined the case and pronounces judgment or took any other appropriate action.¹⁵ In

9 Monserrate's *Commentary*, edited by S.N. Benajee and J.S. Hoyland, P.209-212.

10. Hawkins, *Early travels in India*, P.113, edited by W. foster.

11. Ibid, 115-116

12. Foster, *Early travels in India*, p.115, Oxford University Press, London.

13. Ibid, p.115-116

14. Ibid, p.184-85

15. Hawkins, *Early travels in India*, P.113

spite of this evidence; it cannot be believed that many people could make use of the chain of justice.

Shahjahan upheld the maxims of his father that true justice must be enforced.¹⁶

Aurangzeb was "desirous of appearing a great lover of justice. He maintained that a king should apply himself unweariedly and painstakingly to the dispensing of equal justice to everybody. He endeavored to maintain in the eyes of the world that he is zealous in the eyes of the justice."¹⁷

The Mughal emperors even when out of the capital, did not neglect the cause of justice. While embarking on the Bengal expedition, Akbar held his court in the boat and decided cases there.¹⁸ During his stay in Ahmadabad in 1618, Jahangir appeared in the Jharokha everyday for about three hours to administer justice and award punishment to guilty.¹⁹

Even while Jahangir was on March, he never failed to administer justice in a tent. It is quotable here that the kings of Hindustan seldom fail, even when in the field, to hold the assembly twice during the 24 hours, the same as when in the capital. The custom was regarded as a matter of law and duty, and the observance of it rarely neglected.²⁰

16. Manucci, *Storio Do Mogor*, translated by William Irvine, p.167

17. Ibid, p.262

18. Abul Fazal, *Akbarnama*, Translated by H. Beveridge, Vol. III, p.124, Low Price Publication, Dariya Ganj, New Delhi.

19. Jahangir, *Tuzuk-i-Jahangiri*, translated by H. Beveridge, p.13-14, Low Price Publication, Dariya Ganj, New Delhi.

20. Bernier, *Travels in the Mughal Empire*, translated by Archibald Constable, p.360

No court was held on the special day reserved for administration of justice. Straight from the *darshan* window, the emperors, followed by the officers - Qazis, Muftis, Scholars and the Kotwal, went to the private Audience Hall. From 8'o clock in the morning till noon the emperor continued deciding cases. As a court of first instance, he got the details of the complaints from the plaintiffs, tried to ascertain the facts by inquiry, consulted the lawyers about the law and pronounced judgment. Appeals were also filed in his court. This was the case when the plaintiff had either been refused a hearing in the local courts or had received an adverse judgment. Most often when it was not possible for the emperor to ascertain the facts, he would send the case back to the court of its origin. The court made full investigation and delivered justice. In certain cases the matter could again be referred to the emperor.²¹

Besides the special day reserved for the administration of justice, the Mughal emperor used to hear cases in the *Diwan-i-Am* also on almost all the days of the holding of the court. The petitions of the aggrieved concerning different matters were presented before him. The persons involved were ordered to present themselves before the emperor who heard their complaint and deliver judgment usually on the spot. In certain cases, he ordered full investigation sent for detailed reports and then gave his decision. According to Bernier, Aurangzeb devoted two hours on another day to hear in private the petitions of ten persons selected from the lower court's order. One day he fixed

21. Edward Terry, *Early travels in India*, p.326

to attend the justice chamber called 'Adalatkhana', where he was assisted by two principal Qazis.²²

As a court of first instance and as the highest court of appeal, the emperor was supposed to dispose of a large number of cases. This, however, was not possible, many plaintiffs could not reach his court for fear of the provincial or local authorities, long distances and unsafe roads. One thing is clear that trials in Mughal's India by the Kings were speedy and so the punishments.²³

EXECUTIVE OFFICERS AND THEIR ROLL IN THE ADMINISTRATION OF JUSTICE

Governor

The chief executive officer of a district was Governor who was appointed only by the emperor according to need and necessity of place. If any prince was appointed as governor anywhere, a deputy Governor was also appointed with him as his guardian called *Atalik*.

The governor like the Emperor set apart a day for administration of justice in person.²⁴ The *Qazi* and other law officers attended the court and helped the Governor in deciding cases. The procedure followed could not be different from that of the imperial court. The Governor took the law from the officers and pronounced judgments. In case, however, there were no

22. Bernier, *Travels in the Mughal Empire*, translated by Archibald Constable, p.326

23. Edward Terry, *Early travels in India*, p.326

24. Ali Mohammad Khan, *Airat-i-Ahmadi*, translated by M.F. Lokhandwala, Published by oriental institute, 1965, (Originally from University of Michigan.) p.201.

sufficient legal evidences, but the governor and the officials of the court were convinced of the offences, the accused was sentenced.²⁵ Against the organized bands of robbers and rebels, the governor used to dispatch armies. In Mughal India, it was obligatory on the part of the executive officers to ensure the safety of the people from the robbers. For all cases of thefts and robberies in their jurisdiction, the responsibility lay with the respective executive officers.²⁶

The governor was required to inquire into the cases of the captives that were sent to him by the local officers and dealt with them in accordance with law.²⁷ The governor was 'an absolute lord, in the strict sense of the term.' He was in his own person the intendant of justice, the parliament, the presidial court....²⁸

Faujdar

The *faujdar* was responsible for the maintenance of law and order in the district. He took measures to guard the roads against the activities of the robbers. It was his duty to traverse the country along with the armed guards and hunt out the culprits. Whenever a robbery took place in his jurisdiction, he was to trace the robbers to find out the lost goods or compensate the sufferer.²⁹ He sent the captives to the governor for the investigation and punishment.

25. Ali Mohammad Khan, *Airat-i-Ahmadi*, translated by M.F. Lokhandwala, Published by oriental institute, 1965, (Originally from University of Michigan.) p.201.

26. Manucci, *Storio Do Mogor*, translated by William Irvine, p.461-62.

27. Ali Mohammad Khan, *Airat-i-Ahmadi*, translated by M.F. Lokhandwala, Published by oriental institute, 1965, (Originally from University of Michigan.) p.282.

28. Bernier, *Travels in the Mughal Empire*, translated by Archibald Constable, p.268.

29. Thevenot, *Indian Travels of Thevenot*, edited by S.N. Sen, Published by Manohar publication, New Delhi

Kotwal

The kotwal was an important officer and chief of the city police. He was required to attend the court of justice held by the emperor or the governor. A *farman* issued by the Akbar makes it more clear that the Kotwal was required to perform multifarious duties.³⁰ Aurangzeb made the duties of the kotwal more responsible. Whenever his men arrested a culprit and brought him to his Chabutra, the Kotwal was personally to investigate the charge against him. If he was found innocent, he was released forthwith. If somebody had any charge against him, the Kotwal was required to direct that man to resort to the court against the alleged culprit, where a Qazi sent a culprit to him for detention, the Kotwal was to carry out the Qazi's order and keep the person concerned in prison. He was to send the detinue to the Qazi's court everyday so that his case could be decided quickly. If the Qazi had fixed the date for his trial, the prisoner was to be sent to his court.³¹ Manucci defines the Kotwal as the chief magistrate ruling over the whole city.³²

Thanedar

In the Parganas, there was the court of '*Thanedar*' at least during the reign of Aurangzeb. The *thanedar* was entitled as *Tahawar Dastgah*. The *Gumasta*, news-writer, biographer, chaudharies and Qanungos were the officials usually present at the court of the Thanedar. In the 49th year of the reign of the

30. Ali Mohammad Khan, *Airat-i-Ahmadi*, translated by M.F. Lokhandwala, Published by oriental institute, 1965, (Originally from University of Michigan.) p.168-69.

31. Ibid, P. 168-69

32. Manucci, *Storio Do Mogor*, translated by William Irvine, p.292.

Aurangzeb, *tahawar-dastgah*, Udai Singh, thanedar of Pargana Bhaurasa in the sarkar of Sarangpur, held court in the village Sahiya. The *muqaddams* of the village invited the thanedar and his soldiers to a feast. There used to be a *Naib* or assistant *dastgah*.³³ It is significant here that the Aurangzeb had ordered that the local cases should be tried by local officers in their courts.³⁴

Organization of Judiciary and Its Framework:

The Chief Law Officers

When the Khalifas assumed the position of worldly rulers possessing extensive empire it became necessary to delegate their powers of justice to competent men who were learned in law. The officers who were thus appointed to administer justice were called Qazis.³⁵

The Mughals judicial system was principally modeled on the Muslim jurisprudence. But the new administrative problems of this country dictated a readjustment of the jurisdiction and powers of the various officials which brought about considerable changes in their scope and functions.

The Muslim rulers regarded it as their personal duty to do justice personally. The Umayyad Caliphs were the first to create the post of the Qazi together with the other judicial appointments.

33. Manucci, *Storio Do Mogor*, P. 295

34. Ali Mohammad Khan, *Airat-i-Ahmadi*, translated by M.F. Lokhandwala, Published by Oriental Institute, 1965, (Originally from University of Michigan.) p.257.

35. *Qazi* comes from *Qaza* signifying jurisdiction.

The Qazi

The Qazi had an important place in every Muslim country. In the Ottoman empire, he exercised judicial functions and also a sort of general supervision over the conduct of administration.³⁶

It was necessary for the Qazi to know the *Quran*, the *Sunna*, what the community agreed upon *Ijma* and the divergent opinions held by the earlier doctors. He must have capacity to comprehend the various aspects of *Qiyas* when need arose. He must be intelligent, alert, reliable, firm and clement. He must possess reasoning power. Above all, he should be chaste, an abstainer, just, upright, truthful in speech and resourceful. It was best if he belonged to *Quraish*.³⁷ He was required to be an adult, a free man, a Muslim, sane and unconvinced of slander and a scholar of blameless life.³⁸

The Qazi was required to sit for justice in an open place in the middle of the town, one well-known to the people. It was not to be in a mosque. According to the *Fatwa-i-Alamgiri*, he could, however, sit in a mosque. He could, if he so desired, decide cases in his house. It was preferable if the house, like the mosque, was situated in the middle of the town.³⁹

36. H.A.R. Gibb & H. Bowen, *Islamic Society and the West*, Vol. 1, part-II, Oxford University press, New Delhi. P.125

37. Hurgonje, *Mohammedanism*, Vol. III

38. *Encyclopedia of Islam*, edited by Thomas patrick Hughes, published by E.J. Brill, 1936. Oxford University Press, London, p.606.

39. *Ibid*, P. 607

The *Qazi* was regarded as an arbiter setting disputes between persons who appealed to him.⁴⁰ He pronounced sentence of the law on delinquents against whom charges were brought by private persons. His business was to pass decrees merely on the opinion of the others.⁴¹ The *Qazi* could decide all cases involving civil and criminal law.⁴²

The *Qazi* was concerned not only with the settlement of disputes, but with civil contracts also.⁴³ In respect of criminal cases he had a wide field to his discretion under the King's instructions.⁴⁴ The *Qazi* and his *Naib* acted as notary public, registrar, and prosecutor, officiated at marriages of notables, and looked after the property of orphans and minors.⁴⁵ He was also concerned with the administration of religious foundations.⁴⁶

The *Qazi* was paid for his work. Although the law forbids him to accept any present, yet the acceptance of gifts by the *Qazi* was common practice.⁴⁷ Later on he was given a salary.

Usually the *Qazi* did not enjoy good reputation. In handbooks of the Law of all times '*the Qazis of our times*' are represented as unscrupulous beings whose unreliable judgments were chiefly directed by their greed.⁴⁸

40. *Muslim Institutions*, edited by Maurice Gaudetroy, published by Allen & Unwin, 1954, University of California, P.148

41. *Ibid*, Vol, II Edition, p.337

42. *Encyclopedia of Islam*, edited by Thomas patrick Hughes, Published by E.J. Brill, 1936. Oxford University Press, London, p.606.

43. *Ibid*, p.607

44. H.A.R. Gibb & H. Bowen, *Islamic Society and the West*, Vol. I, part-II, Oxford University Press, New Delhi, p.125

45. *Ibid*, p.132

46. *Encyclopedia of Islam*, edited by Thomas patrick Hughes, Published by E.J. Brill, 1936. Oxford University Press, London, p.607.

47. *Ibid*, p.606.

48. Hurgronje, *Mohammedanism*, Vol.III, P.111.

Muftis

The *Qazis* were to be assisted by the *Muftis*. The *Muftis* were those who gave the fatwah by a judicial consultation based on one or more precedents. The *Muftis* expounded the law and supplied the *Qazi* with fathwas or decisions.⁴⁹ As their usual counselors were inefficient, the *Qazi* and most Muslims with them, had recourse to a few men who enjoyed a reputation for learning, and who gave legal consultations (*Fathwah*) ... those givers of fathwah, those *Muftis*, became by princely decisions, officially interpreters of the canon law. A *Mufti* must be acquainted with the *Qura*, the *Sunna*, *Ijma* and *Qiyas*. He must be learnt in *Hadis* and in the Muslim works of law besides the *Quran*.⁵⁰ He must be a Muslim, chaste and intelligent.⁵¹

Muhtasib

The Islamic state included a *Muhtasib* also who besides his police duties of examine weights, measure and provisions and preventing gambling and drinking, performed the duties of a religious censor.

He was to see that the Muslim offered their prayers, kept fasts in the month of *Ramzan* and abstained from drinking etc. It was his duty to stop begging in the streets and to forbid a beggar from begging if he possessed means of livelihood. He was to examine the credentials of physician and to stop him from

49. *Dictionary of Islam* edited by Thomas Patrick Hughes, Published by Asian Educational Services, p.367.

50. *Dictionary of Islam* edited by Thomas Patrick Hughes. Published by Asian Educational Services, p.367.

51. *Ibid*, P. 368

practicing if he was not qualified or worthy. He was required to supervise the condition of slaves and to see that they were not harshly treated by their masters. He also looked after that the shore; boats were not loaded beyond capacity.

It was also a part of his duty to see that no building was erected on a public place, and if one was erected which obstructed the way; he should order it to be demolished even if it were a mosque.⁵²

Shar'i Vakil

Every Zamindar and mansabdar, Faujdar and commandant used to have a Vakil. These Vakils represented their cases to the Emperor. The royal princes' royal also had their own Vakils. There are constant reference to the presence and functions of these Vakils in the News-Letters of Aurangzeb.

He had, moreover, ordered the appointment Shar'i Vakils who sat with Qazi in his court. Khafi Khan had termed this as an evil which became current in the Mughal territories.⁵³

Vakils also used to appear in the Qazi's court on behalf of the parties.⁵⁴

SADR

The chief judicial officer of the supreme court of the realm, next to the king was the chief sadr who seems to have combined

52. *Dictionary of Islam* edited by Thomas Patrick Hughes. Published by Asian Educational Services, p.367.

53. Khafi Khan, *Muhtakhib-u-lubab*, vol-II, p.252. edited by Kabiruddin Ahmad, Asiatic society of Bengal, Calcutta.,

54. *Ibid*, P 253,

himself to the office of the chief *Qazi* also. Abul Fazal clearly tells that the *Sadr* was head of the provincial *Qazis* and *Mir'adl* who were appointed under his signatures worked under his orders. Then in the lists of the highest officers of the supreme government, Abul Fazal gives only the *Vakil*, the *Wazir*, the *Bakshis*, the *Sadrs*, but the *Qazi-ul-qazat* is not referred to at all.⁵⁵ When these facts are put together there remains no room for us to suspect the existence of a chief *Qazi's* office apart from that of the *Sadr*.⁵⁶

The Mir'adl

The idea of the post of *Mir' adl* and his functions was purely a creation of the Mughals. As regards the actual appointment of that officer, Abul Fazal says, it was only conditional on the *Qazi* being found unable to manage the whole work, and not a regular appointment. This is highly significant and lends further weight to the conclusion that the three offices were normally held by the same officer who was in official technique called the *Sadr*, but the chroniclers, as usual delighted in using the other titles such as *Mir'adl* or *Qazi* by which he could be characterized while all these evidence justifies the above conclusions, a statement in the *Akbarnama* creates a serious difficulty. It is said that in the 24th year of the reign, the emperor divided the empire into twelve provinces and in every province the following officers were appointed: (1) a *Sipahsalar*

55. Abul Fazal, *Ain-i-Akbari*, translated by H. Beveridge, Pub. By Low price Publication, Dariya Ganj, New Delhi., P. 363

56. *Ibid*, P. 364

(2) a Diwan (3) a Bakshi (4) a Mir'adl (5) a Sadr (6) a Kotwal (7) a Mir bahar (8) a Waqia nawis.⁵⁷

Now here there is no mention of the Qazi, which indicated clearly that that post was combined either with this of the Sadr or the Mir'adl. The regular appointment of the mir'adls, however was neither considered essential in theory nor is it shown by contemporary evidence to have existed in normal practice.

The Qazi-I-Askar

There were separate Qazis for the army also called mir' adl by some writers. In the 30th year of his reign, Akbar appointed Qazim Beg Tabrizi to the post of mir'adl of the camp.⁵⁸ Mullah Shukrullah Shirazi was mir'adl of the army under Shahjahan. These was Qazi-i-ask⁵⁹ They dealt with the cases in which government officials were involved. These were investigated and tried by special commissions.

The Sarkar And Pargana Court

There were four chief officials in charge of the different branches of administration of a sarkar: the Faujdar, the Kotwal, the *Amil* and the *Qazi*.

The Faujdar

The Faujdar was a sort of general executive, entrusted with the duty of the maintenance of law and order. He was also

57. Abul Fazal, *Akbarnama*, Translated by H. Bevridge, Vol III, Low Price Publication, Dariya Ganj, New Delhi.

58. *Ibid*, P. 477

59. *Encyclopaedia of Islam*, Vol. II, edited by Thomas patrick Hughes, Published by E.J. Brill, 1936, Oxford University Press, London, p.838.

responsible for ensuring the peace and security and assisting of government officials in the performance of their public duties, if and when they were thwarted by contumacious people. For this purpose, he was given charge of a contingent of military police. He, thus, represented the might of the sovereign to enforce his will on the people and thereby to make the working of the government smooth. But the Faujdar had no judicial powers at all.⁶⁰ He only represented in the Sarkar, the executive functions of the Sipahsalar in the Subah.

The Kotwal

The Kotwal had very wide functions. He was a magistrate.⁶¹ prefect of police and municipal officers rolled into one. As magistrate, he took cognizance of criminal cases of the whole Sarkar, while in other respect his jurisdiction was limited to the head quarters, town of the sarkar.

All capital cases, such as thefts, murders or crimes are finally disposed of by the governor if the criminals are poor and unable to pay and the sweepers drag them out to executions with little ceremony. In the case of other offences, the criminals were seldom or never executed. Ordinary questions of divorce, quarrels, fight, threats and the like are in the hands of the Kotwal and *Qazi*. Significantly the secular type of criminal suits went to the Kotwal and the religious cases, such as inheritance, marriage, divorce and civil disputes went to the *Qazi's* court.

60. *Encyclopedia of Islam*, Vol. II, edited by Thomas patrick Hughes, Published by E.J. Brill, 1936, Oxford University Press, London, p.607.

61. *Ibid*, P. 607

These two officials in the main shared almost the whole business of the justice in the Sarkar between them.⁶²

The Amil was also enjoyed the share a small part of what may be regarded as a semi-police judicial duty in as much as he was asked to help in maintaining peace and security by chastising robbers, thieves and other miscreants. Significantly, the *Amil* was to undertake only the magisterial duties of the Kotwal in which he even normally rendered some assistance. Thus there were two officials, the *Qazi* and the Kotwal who in the main, dispensed justice in the Sarkar besides the Amil who also shared the duty partly.⁶³

The Pargana Court

The pargana court was presided over by a *Qazi*, as usual who decided civil and religious cases, But here the *Shiqdar* represented the Kotwal's magisterial functions of the general executive and police functions of the Faujdar. Within his jurisdiction, the *Shiqdar's* duty was to assist the revenue officers in the realization of the revenue and to try cases of a purely secular criminal category. For rural police duties there were one or more *thanedars* in the parganas but they had no judicial powers. But the appointment of *Qazi* was not restricted only to the chief town of the pargana.

62. *Encyclopedia of Islam*, Vol. II, edited by Thomas patrick Hughes, Published by E.J. Brill, 1936, Oxford University Press, London, p.607.

63. Giriraj Shah, *Image Makers : An attitudinal study of Indian Police*, P. 28, Manohan Publication, New Delhi

Every town and even a large village had a Qazi who held office by the Sanads of the provincial Qazis (known there as *Qazi-ul-quzat* being at that time three chief Qazis in the province, one being the senior and other two junior like the present day High Courts.⁶⁴

Such was the framework of the judicial administration of a district at a time when the Mughals institutions had decayed to such an extent that they were regarded as absolute and worthy of being superseded by new institutions. The judicial system described above represents the vestige of a system which must have been fully elaborated in the heyday of the Mughal rule. It could not have been elaborated to such an extent during the period of decline.

Mughal's Practice Regarding Maintenance of Law and Order

Muslim jurists have given to the king the highest position and authority to administer justice in the kingdom. It will not be exaggeration to say that the Mughal emperors, no less than their Afghan predecessors, the brilliant Sher Shah, looked upon the providing of justice and protection of their people as the highest and most essential of their duties, and they sincerely endeavored to realize that ideal. The actual degree of success, however, that could be attained in an empire as vast as that of the Mughals would depends on many factors, individual, social and environmental. Nevertheless it must be said in fairness to them

64. Abul Fazal, *Abarnama*, Translated by H. Beveridge, Vol. III, Low Price Publication, Dariya Ganj, New Delhi. P.478.

that attained no mean success in providing protection and justice to their people.

The Mughals were actuated by the same noble and lofty ideals of justice. The king has more precise regard for right and justice in the affairs of government.⁶⁵ They regularly held court in the *Am-i-khas* or the hall of the common audience, devoting everyday a part of their routine to hear complaints and administering justice. The method of these courts was quite simple, which enabled everybody, to have free access to the emperor. The complaints and petitions were brought to the king for disposal in which the relevant orders were passed for necessary action.⁶⁶ Abul Fazal says that Akbar spent not less than 1 ½ *pahar* daily in doing justice.⁶⁷ Jahangir seems to have been, in this respect, most particular. He held the court daily and spent two hours in redressing complaints.⁶⁸ Jahangir's chain of justice was a sincere expression of his zeal to provide justice to his people.⁶⁹

The routine of judicial work under Mughals was not allowed to be interrupted even during tours, excursions or even military expeditions. The Mughal emperor took special care to avoid the least injury to the farms or any other property of the people even when they went out to hunt. Shah Jahan used to

65. Monserrate's *commentary*, edited by S.N. Benajee and J.S. Hoyland, P.201.

66. Bernier, *Travels in the Mughal Empire*, translated by Archibald Constable, p.263.

67. Abul Fazal, *Akbarnama*, Translated by H. Beveridge, Vol.III, Low Price Publication, Dariya Ganj, New Delhi. P.257.

68. Hawkins, *Early travels in India*, p.116.

69. Abul Fazal, *Akbarnama*, Translated by H. Beveridge, Vol.III, Low Price Publication, Dariya Ganj, New Delhi. P.13-14.

appoint special officers in the march of the army to guard the fields and also a tribunal to compensate those properties which were injured during expeditions.⁷⁰

The logical position of law under the Mughals was that the justice as a conditions secured by the power of the state to its citizens is not necessarily always compatible with the equality of all men, high or low, rich or poor. The law of the state may be partial, may extend privilege to one and deprive the other, it may be severe for one and milder for another; it may even be tyrannical to one and advantageous to the other. But the justice of the state will be satisfied with applying the law as it is. It is not concerned with whether the law itself is just or unjust.

According to the ethical standards, a law which refuses to recognize the fundamental equality of all men and of their rights is unjust in itself. To be just and conformity with ethical standards, the law must be the same for all without any distinction of caste and creed or station in life. The Mughal emperors, however, tried to conform to this thought with due discretion and discernment. One of the farman issued by Akbar significantly stated that "one man who must be punished for his first fault, and another who must be forgiven for a thousand. Knowing then that awarding punishment is one of the most difficult matters in the art of government that should award it with mildness and discernment."⁷¹

70. Abul Fazal, *Akbarnama*, Translated by H. Beveridge, Vol.III, Low Price Publication, Dariya Ganj, New Delhi. P.13-14..

71. Monserrate's *commentary*, edited by S.N. Benarjee and J.S. Hoyland, P.209

There are many evidences which go far to prove that the Mughals were much aware in context of justice. Father Monserrate testifies to it in these clear words: "The king's severity towards errors and misdemeanors committed by officials in the course of government business is remarkable, for he is most stern with the offenders against the public faith. Hence all are afraid of his severity and strive with all their might to do as he directs and desires. For the king has the most precise regard for right and justice in the affairs of the government."⁷²

In the latter part of Shah Jahan's reign and thereafter, considerable corruption and demoralization had gradually crept into the judicial administration. One great reason was that the post of Qazi became for all practical purpose, hereditary. The author of the *Masir-ul-umra* refers to the ignorance and corruption of the Qazis in strong words.⁷³

Procedure For Trials Of Cases In The Court

The court was held by the Qazi in an open place and preferable in a mosque.⁷⁴ So that the poor may have free access to him, but there is no harm if he holds the court at his house, provided people are freely admitted.

He should have katibs (writers) with him to record evidence in the court, and interpreters in case he does not know the language of any party or witness.

72. Monserrate's *commentary*, edited by S.N. Benarjee and J.S. Hoyland, P.69.

73. Khafi Khan, *Muhtakhib-u-lubab*. Vol-I, p.77.

74. Barni under Allaudin Khalji, the Qazis held courts in mosque, but under the Mughals, they held them in government buildings and were prohibited from holding them at their own residences.

The parties appearing in the court have equal status in the eyes of the law, hence the *Qazi* should make them sit together at the same place and make no distinction in the arrangement, even if the king be a party in a case before him.⁷⁵

When a plaintiff comes to the court without a written plaint, the *Qazi* should send him to the *Katib*, who will record his statement with necessary details in a prescribed form and summon the defendant.

When both parties and the plaint is put before the *Qazi*, he will examine it, and if it is valid and in order, he will proceed with the case; and otherwise reject it.

While the case proceeds the *Qazi* shall remain silent and listen attentively to the plaintiff. The *Qazi* or the *katib* will record the statement, in which not a word will be added to what is stated. He will then address the defendant. If the defendant denies the charges, his statement was recorded. When statements of both the parties were recorded. It was testified by the *Qazi*. If the judgments can be passed at once, he pronounced the judgments there and if the case was not proved, the plaintiff was required to produce the proofs in support of his claim.

When a witness comes to give evidence the *Qazi* did not direct him in any way. When the proceedings were over, he passed his judgment in accordance with *shara*.

If the case was decided against the defendant, he ordered him to make recompense, but not sent him to jail for non-

75. Monserrate's *commentary*, edited by S.N. Benarjee and J.S. Hoyland, P.71

payment unless so requested by the plaintiff and none was put under arrest for non-payment unless two witnesses gave evidence of his capacity to pay.

The second agency for the administration of justice was the court of the King. The Mughal emperors utilized to the utmost the sanction given by Muslim jurists to kings to try judicial cases themselves. It appears that ordinary cases were attended by the king in the open darbar everyday and important cases requiring evidences and witnesses were attended by him on the day in a week fixed for administration of justice.⁷⁶

The king tried both civil and criminal cases and he acted both as a court of first instance and a court of appeal. The nature of Hindu and Muslim civil law left little scope for civil cases reaching the court. Only intricate cases or those of unusual importance reached him for appeal or were forwarded by the Qazis themselves. On the other hand, there were no such restrictions in criminal cases, and on the whole the policy of all the Mughal emperors was not to leave wide powers in the hands of the executive officers as well as judicial officers.⁷⁷

* * * * *

76. Abul Fazal, *Akbarnama*, Translated by H. Beveridge, Vol. III, Low Price Publication, Dariya Ganj, New Delhi. P.257.

77. Ibn Hasan, *The Central structure of the Mughal Empire*, p.320, Radha Publication, Dariya Ganj, New Delhi.



CHAPTER - III

POLICE AND JAIL SYSTEM

POLICE AND JAIL SYSTEM

The Police system under Mughal Empire had both foreign and indigenous elements. The Islamic states of western Asia who professed to be purely theological states, had officers whose main duty originally was to examine the conduct of the subjects and keep them on the path of religion. This officer was called the *Muhtasib*' that is to say, an officer who took the accounts of the people. He may appropriately be translated as 'censor of public morals'. With the establishment of stable empire and consequent growth of civic obligation, the *Muhtasib's* duties gradually became very wide and include municipal and police functions in addition to his original religious functions. Although the muhtasib's duty originally restricted to the religious scrutiny only, but later on he is also found inspecting markets and performing other police duties.¹

The another concept for the rise of institution of police can be traced to the days of Prophet in whose days Sa'd Bin Abi Waqas is said to have taken upon himself the duty of night watchman. Later it seems that the Prophet appointed several persons to guard Madina at night. Abu Bakr appointed Umar as the police chief of Madina and when Umar became Caliph, he

1. Giriraj Shah, *Image Makers: An attitudinal study of Indian police*, p.28 Manohar Publication, Dariyah Ganj, New Delhi.

himself took up the duties of chief police officer.² In the earlier period, the police was called *shurtah*. He was subordinate to the Qazi because his main work was to execute the decrees of the Qazi and to bring criminals before him for trial.

Foundation and development of Police System

In the period of Sultanate of Delhi and Mughal Empire, the duties of the head of the police, the *Sahib-i-shurtah* were performed by an officer known as Kotwal. Originally the word was probably used as commandant of a fort, when he had some police duties attached to his office as well. Under the Sultans of Delhi, however, he had become a police officer.³

Policing during the Sultanate period was mostly dependent on Kotwal's efficiency and effectiveness. Qazi's rigorous dispensation of justice and an excellent spying system correctly and promptly informed the Sultans about the happenings in the capital and the provinces where Subedars or chieftains nurtured ambitious schemes. Balbun developed an efficient spy system and kept the news writers and spies independent of the governor's command. If the news writers failed in their duty, they were given severe punishments as meted out to the news writer of Badayun who failed to report the conduct of *Malik Balq* of Badayun. The news writer was hanged to death.⁴

2. Ishtiaq Husain Qureshi, *The Administration of the Mughal Empire*, p., 205, Low Prince Publication, New Delhi.

3. I.H. Qureshi, *The Administration of the Sultanate of Delhi*, p.,173 Low Prince Publication, New Delhi.

4. Giriraj Shah, *Image Makers: An attitudinal study of Indian police*, p.30

The organization of police system under the Mughals was shaped out of the vestige of the police system of Sher Shah Suri. The wonderful and unprecedented security which Sher Shah had succeeded in establishing throughout his kingdom was the unique achievement of that brilliant Pathan ruler. Indeed it was so effectively established that it became proverbial and was remembered long after his death, Sher Shah had built his police system on the basic principle of local responsibility.⁵

The leading men of a locality, the headman and *Muquaddams*, for instance, of a village were held responsible for the safety of the area within their village. The headmen were assisted by the *Amils* and *Shiqdars*. If the headmen were unable to trace the culprits, they were thrown into prisons and made to compensate for the stolen property. If a murder went untraced the headmen were hanged instead.⁶ Sher Shah's justification for this severity was that the headman and *Muquaddams* of a particular locality always knew the habitual miscreants of that place. It was believed that no crime could take place without their knowledge. It was incumbent upon the headman to find out the culprits at any rate if any occurrence took place within his area. Sher Shah was also very severe in his punishments, so that the evildoers were so terrified that none dared to do anything wrong. In the parganah, the *Shiqdar* and the *Amil* were supposed to share between them their responsibility of policing their charge. Above them in the *Sarkar*, the *Faujdar* was in

5. Jadunath sarkar, *Mughal Administration*, p.12-13

6. *Mirat-i-Ahmadi*. Edited by Syed Nawaab Ali, Translated by M.F. Lokhanwala, supplemented by Ali Mohd. Khan, p.460, published in 1928, Oriental Institute of Baroda.

charge of the police, while the chief *Amil* was mainly concerned with revenue affairs.⁷

It has been pointed out by J.C. Curry, "**Not until Mughal times do we see anything like a police organization.**" This is borne out by the fact that a clear picture of the police is seen during Mughals. Abul Fazal's *Ain-i- Akbari* provides detailed account about the police administration under the Mughals.

Roll of Police under Mughals

The foundation of a sound administration was already laid at the time of Sher Shah. In fact, the Mughals did hardly make any significant contribution, except the consolidation of the Faujdari system, and reorganization of espionage system, consisting of *Waquai - Nawises*, *Sawahih - Nigars*, *Khufi-navises* and *Harkaras* who conveyed intelligence through reports obtained orally. Justice was administered according to the Mohammedan law except for a few amendments introduced by Akbar due to his benevolent and soft corner for Hinduism.

Mughals took serious steps to maintain internal peace and security. A highly efficient police organization was established under Mughals in order to achieve internal stability. The police administration can best be surveyed under the threefold category of village, district and urban police.

7. *Mirat-i-Ahmadi*. Edited by Syed Nawaab Ali, Translated by M.F. Lokhanwala, supplemented by Ali Mohd. Khan, p. 6, published in 1928, Oriental Institute of Baroda.

Village Police

So far as the village police was concerned, the Mughal authorities paid no attention to rural arrangements for the prevention and detention of crime.⁸ At the commencements of their rule, they found existing in most parts of India a system of immemorial antiquity, under which the headman of the village and his subordinate watchman were wholly responsible for the police arrangement of their village, while the body corporate of the villages were bound to compensate any loss due to crime committed within the village limits, except in cases where they were unable to trace the offenders and recover the stolen goods, or to fix responsibility for the crime upon a neighboring village. The system remained in existence when the East India Company first assumed political power. It has been previously stated that Sher Shah vigorously maintained the system, and there was Akbar and his successors took no steps to alter or interfere with time-honored arrangements, which, though lacking perfection and liable to deteriorates rapidly under weak administration, did at the same time afford a fair modicum of security in remote rural tracts.⁹

District Police

The maintenance of law and order in the district or *Sarkar* was usually the task of the Mughal revenue authorities and in particular of the Faujdar or commandant of the district who

8. S.M. Edwards and H.L.O. Garrett, *Mughals Rule in India*, p.183, Published by Atlantic Publishers, Nai Sarak, New Delhi.

9. S.M. Edwards and H.L.O. Garrett, *Mughals Rule in India*, p.183, Published by Atlantic Publishers, Nai Sarak, New Delhi.

functioned as a deputy of the *Sipah Salar*, the provincial governor of Akbar's administration. In later times the designation of *Sipah Salar* was altered to that of *Subedar*, but the title of the Faujdar remained unchanged throughout the whole period of Mughal rule.¹⁰

Faujdar and his duties

The faujdar's primary duties were the policing of the roads, the suppression of disorder of the state dues from recalcitrant or contumacious villagers. Father Monserrate has stated that "there were constant outbreaks or disorder, even in Akbar's day, and it is very unlikely that the less competent government of his successors."¹¹

The faujdar's were expected to deal with the disturbances and to maintain the authority by means of their troops and by the infliction of swift and often cruel punishments. In the matter of highway robbery and theft, the Faujdar was bound either to recover the property or compensate the owner for its loss. Manucci, the Italian traveler, records that in the reign of Shah Jahan, the Faujdar had to pay compensation to anyone who was robbed on the roads in daylight, but if the robbery occurred at night, the traveler was held to be at fault for not having halted earlier and received no consideration or compensation at all.¹² Though no definite references to it can be traced, it is probable that the same liability was imposed on the Faujdar in the

10. Manucci, *Storia do Mogor*, edited by Irvine, Vol-II, p.381

11. Monserrate: *Commentary*, translated by J.S. Hoyland and annotated by Bannerji, p.282.

12. Manucci, *Storia do Mogor*, edited by Irvine, Vol-II, p.460

Akbar's reign, for the rule was too ancient and too widely accepted to undergo revision or cancellation.

The Kotwal

In the cities and towns of the Mughal Empire, all police duties, including the maintenance of public order and decency, were entrusted to the Kotwal. In the absence of a Kotwal, his duties were carried out by the collector of revenue. Besides the duties of maintaining law and order, he was also expected to prevent Sati system, if the woman was disinclined to sacrifice herself; to put a stop to circumcision before the age of twelve; to prevent the slaughter of oxen; buffaloes, horses and camels; and during the reign of Akbar, to enforce also the observance of Illahi calendar and of the special festivals and ritual prescribed by the emperor.¹³

The Kotwal was authorized to punish offenders with penalties which included impalement, trampling by elephant, beheading, amputation of the hand and merciless flogging.¹⁴ In the case of death penalty, it is possible that he required the previous sanction of higher authority; but in all other cases, he was practically uncontrolled. Urban police administration under the Mughal Empire was, in fact, quite as despotic as it was under Chandra Gupta Maurya. The duties and powers of the Kotwal as police head were as quite as comprehensive as those

13. Abul Fazal, *Ain-I-Akbari*, translated by H. Beveridge, Vol-II, p.381

14. W.H. Moreland, *India at the death of Akbar*, p.39

ascribed to his Hindu prototype in the famous Arthasastra of Kautilya.¹⁵

The Faujdar and Kotwal were assisted by the *Shiqdar* and *Amil* in the parganah. Wherever necessary the parganah was divided into several smaller jurisdictions each consisting of a few villages under a thanedar.¹⁶ Places which were dangerous and infested with thieves and robbers were entrusted to the care of special subordinate staff. The roads between Agra and Delhi required a special guard. Daud Khan Qurashi who was Faujdar of Mathura, Mahaban and Jalesar, was also put in charge of that road with a contingent of 2000 horses under his command.¹⁷

The Administration of Police

The administration of police during the reign of Sher Shah has been highly admired by all contemporary and later historians. His policy was to give deterrent punishments and to use a drastic remedy against every source of trouble or evil. This policy, though it looks very harsh, achieved its purpose admirably throughout his kingdom. Mughals also maintained the administration of police as it was in vogue with necessary changes according to place and time. The most proficient organization undoubtedly gave the Mughal dynasty a prolonged stability.

At the time of Akbar, province (Suba) was under a *Subedar* or *Nazumi* whose particular duty was to administer criminal

15. See Arthasastra, Chapter XXXVI, translated by Shamsastri

16. *Mirat-i-Akmadi*, p.462 (The nine sarkars were divided into parganah into thanas)

17. *Massir-ul-Umar* by Samsam-ud-din

justice and to maintain law and order. He had to provide for the safety of national highway and the establishments of treasury gurads. His suba was further sub-divided into *Sarkars* which were put under Faujdar. His functions were to guard the roads and the countryside, suppress violent crimes and small rebellion and hunt down bandits.¹⁸ Since the functions of Faujdar and Kotwal have already been discussed previously, there is no need to explain them in detail. According to Manucci, "*The Faujdar was obliged to pay compensation, if any merchant or traveler was robbed in daylight. Every Faujdari district was sub-divided into thana and chawkis and each was put under a Darogah or Thanedar. In the big cities, there were Kotwals who were chief of the city police. They were subordinate to Qazis*".¹⁹

Police administration on Highways

In times of stable government under Mughals, the general state of security in the country was quite satisfactorily maintained. The contemporary European travellers and merchants testify to the peace and prosperity of the people and abundance of all sorts of commodities, both of necessities and luxuries. The roads and highways were safe for trade and commerce. Manrique appreciated the country and serviceableness of policemen attached to the *Sarais* and contrasts them with the opposite conditions in Europe at the period.²⁰

18. Abul Fazal, *Ain-i-Akbari*, translated by H. Beveridge, Vol-II, p.383

19. Manucci, *Storia do Mogor*, edited by Irvine, Vol-II, p.587

20. Sabastian Manrique, *Travels in India* (1629-43) edited by Eckford Luard and Father H. Hoste, p.182

Police administration on markets

There was a significant roll of police to maintain the stability of the markets. Manrique says in this regard that "what struck me most were the low prices at which the things were sold...I was struck by the good order that those barbarians maintained...".²¹ The prices were fixed reasonably and reviewed from time to time. Black marketing was heinous crime and punishable offence.²² The activities of the market were under strict supervision of the officer concerned. Law and order was properly maintained that all lived safely with their property free from all cares as to the attention of the active and cunning thieves. In case, culprits were caught, they were punished in accordance with the gravity of offence. This is undeniable testimony of the general safety and protection enjoyed by the people and efficiency of the police.

Bernier paints a more favorable picture during the reign of Shahjahan, "the police system was so strict and particularly with reference to the safety of the roads, that there were never any necessity to execute a man for having committed a theft"²³

The chief police officers were made responsible to give compensation for the theft occurred within their jurisdiction. Moreland has belittled the practical value of the state insurance against theft.²⁴ While it may be admitted that to give it full effect under all circumstances would have been impossible and also

21. Sebastian Manrique, *Travels in India* (1629-43) edited by Eckford Luard and Father H. Hoste, p.184

22. *Ibid*, p.188

23. Francis Branier, *Travels in the Mughals Empire (1656-68)* edited by Archibald Constable p.228

24. W.H. Moreland, *Indian at the death of Akbar*, p .41

that many police officers would have tried to escape the responsibility of compensating the thefts, it would be far from correct to think that it had no practical value. Despite all such trifles, the police arrangements produced a certain standards of order, though the state of public security varied greatly from place to place and from time to time.²⁵

Prisons and their administration

The regular jails for confining convicts in serious crimes were of two classes, which for the sake of convenience can be classified as A and B. The 'A' class jails were meant for imprisoning men of high ranks, high government officials and princes, that is to say, they were meant for royalty and aristocracy. The 'B' class jails were meant for criminals of ordinary status. For the royalty and nobility several fortresses situated in different parts of the country were used as prisons. Occasionally, however, the same fort was used as a prison for both classes of prisoners, although there were separate apartments for them inside the fort. The fort which were used as prisons were Gwalior, Ranthambhor, Rohtas (East)²⁶, Bhakkar²⁷, Junnair²⁸ and Biana.²⁹ Probably some other forts were also used for the purpose. It seems that the central prisons of provincial capitals were also used to imprison political convicts and high government officials. For instance, when Shah Abu Mali turned treasonous and was arrested, Akbar spared his life but

25. W.H. Moreland, *Indian at the death of Akbar*, p.42

26. W. Foster, *Early travels in India containing the accounts of William Finch (1608-1611)*, p.247

27. *Ibid*, p.247

28. *Ibid*, p.248

29. *Ibid*, p.249

imprisoned him at Lahore under the custody of the chief Kotwal.³⁰

Besides the fort and central prisons of the capital towns, there were jails also at the headquarters of the *Sarkars* and *Parganah*. These public jails were called '*bandikhana*'. But it appears that besides the public jails for common criminals, some separate places were used for detaining high profiles. Manrique describe about regular *bandikhanas* in Midnapore, one was at the seat of *Sarkar* and another was at the seat of *Shiqdar*. A similar reference to these smaller jails is to be found in a communication of *Khan-i-dauran*, governor of Orissa (1660-1667) to his agent Muhammad Jan, when sending to him to some fraudulent *qanungos* and *zamindars* who had been released from prisons.³¹

The most prominent fort which was used mainly as a prison for princes³² and occasionally for nobles was that of Gwalior. Next to Gwalior, the important fort was Ranthambhor. This was likewise used for both classes of prisoners.³³ It is not unlikely that the other forts might also have served both purposes although no evidences are found to that effect.

Administration of the prisons

The length or period of imprisonment was not fixed by any definite rules. It was the discretion of the magistrate to determine the period of punishment. It appears that most of the

30. Abul fazal, *Ain-I-Akbari*, translated by H. Beveridge, Vol-II, p.29-30

31. Jada Nath Sarkar, *Studies in Mughal India*, p.216

32. Monserrate: *Commentary*, translated by J.S. Hoyland and annotated by Bannerji, p.211

33. Baduyuni, *Muntakhib-ul-tawarikh*, translated by Lowe, Vol-III, p.79.

criminals were disposed of by being punished in a various other ways which were fine, confiscation, banishment, whipping, mutilation of offending limbs etc. The penalty of imprisonment seems to have been administered to the government servants who were guilty of breach of trust, fraud, oppression or treason. The common people were consigned to custody in the jails till the judgment of their trial.³⁴

In the cases of government servants, the condition of release depended on the discretion of the Emperor or the local authorities concerned. The relatives or friends of the prisoners themselves made supplications and begged forgiveness. The request was often granted if the convict was considered to have undergone enough punishment for his crime.³⁵

The Mughal emperor themselves frequently inspected the prisoners, enquired into the condition of the convicts and released those who had suffered enough.³⁶ Similarly in the provinces and districts, it was the duty of the governors and *Qazis* regularly to inspect the prisons in order to see the condition of prisoners and to release the innocent and those who deserved to be released. Suspects of any sort of habitual crimes such as theft, murder, robbery were put under arrest to ensure public safety.³⁷

34. *Mirat-i-Ahmadi*, p.162-166 (quoted by Ibn Hasan, *Central Structure of Mughal Empire*)

35. *Ibid*, p.166

36. *Ibid*, p.166. All these points are given in full detail in the farmans of the emperor Aurangzeb to the Officials of the Ahmadabad province.

37. *Mirat-i-Ahmadi*, p.162- 166

Life in the prisons

Manrique had given a very lucid and full account of the conditions of life of prisoners in the jails. When Manrique with his party were arrested on suspicion of being the pirates of Chatgaon, he was sent to the court of Kotwal at Midnapore where certain merchants were called to identify them. Manrique requested to one of his merchant friend to have them sent to some comfortable place instead of the ordinary jail where he was afraid they might be ill treated like criminals.³⁸

First they were manacled and collared with an iron ring. But after approval of his identity by his one merchant friend, the chains and collars were removed and they were given the proper facilities.³⁹

Moserrate also gives a clear picture about the life in the jails that "ordinary criminals are kept under guard in irons but not in prisons. Princes sentenced to imprisonment are sent to the jail at Gwalior where they rot away in chains and filth. Noble offenders are handed over to other nobles for punishment.⁴⁰ One can well imagine a lot of each class of these prisoners under these arrangements, which agree with the facts of all the three reigns of Akbar, Jahangir and Shahjahan. Mirza Kaqubad, the son of Mirza Hakim (Akbar's brother), was handed over to Jagan Nath for excessive drinking.⁴¹ In brief, the genral routine in the prisons was tough and all prisoners were kept under strict control of jailer.

38. Sabastian Manrique, *Travels in India* (1629-43) edited by Eckford Luard and Father H. Hosten, Vol-I, p.424

39. Ibid p.425

40. Abul fazal, *Ain-i-Akbari*, translated by H. Beveridge, Vol-III, p.,528

41. Thomas Roe, Embassy to India (1615-19) edited by William Foster, p.246 also quoted by Giriraj Shah, *Image Makers: An attitudinal study of Indian police*, p.30

Release of accused from jail

The release of accused from jail was possible on bail in accordance with law. Manucci was accused of theft by Mohd. Amin Khan, the retiring governor of Lahore and put into jail. Nur being a favorite of Fidai Khan, the governor designate, the orders for his release had been passed, But the Kotwal told Manucci that he had to produce bail according to the law for his release.⁴² Another and more clear instance is that of Manrique and his party having been released on bail produced by a Muslim merchant of Midnapore.⁴³

The release of prisoners also depended upon the mercy of emperor. The greatest of relief of prisoners were offered by the King's tours to different parts of the empire. It is a matter of surprise that the cases of Akbar's attention to such prisoners during his sours have not been recorded by the Abul Fazal, though instances are found under both Jahangir and Shahjahan.⁴⁴ Jahangir released all those who had been confined for a long time in the forts and prisoners soon after his accession.⁴⁵ Similarly Shahjahan inspected the Gwalior fort, examined all the prisoners and released all except those whose freedom was not considered desirable or safe.⁴⁶

* * * * *

42. Manucci, *Storia do Mogor*, edited by Irvine, Vol-II, p.198 also quoted by GiriraShah, *Image Makres: An attitudinal study of Indian police*, p.32.

43. Sabastian Manrique, *Travels in India* (1629-43) edited by Eckford Luard and Father H. Hosten, Vol-I, p.424

44. Ibn Hasan, *Central Structure of Mughal Empire*, p.338

45. *Ibid*, p.338

46. *Tuzuk-i-Jahangiri*, translated by H. Beveridge, p.5.



CHAPTER - IV

CIVIL & CRIMINAL JUSTICE

CIVIL AND CRIMINAL JUSTICE

The muslim tradition has been to look upon dispensing justice as an act of worship.¹ According to *Siyasatnamha*, "Dominion can subsist in spite of misbelief, but it cannot endure with the existence of injustice."² A judicial system depends for its utility on the spirit that animates it. In the entire Muslim rule, civil and criminal law was subordinate to Holy Law. Later on, according to the need of administration, the sacred law was split up into two sections, theology and civil law, each separated from, though not exclusive of the other. The practical regulation came in existence by the name of *Fiqh*. They included both jurisprudence and positive law.

The court of justice was presided over by the *Qazi* and a *Mir-i-Adl* or lord of justice. The *Qazi* conducted the trial and stated the law. The *Mir-i-Adl* passed judgement and therefore be regarded as the superior authority. The *Qazi* could not afford to reject the suggestions of the *Mir-i-Adl*. These both officials were held in high respect by the people. Jahangir says, "*Mir-i-Adl and Qazi are the pivot of the divine law, and they should not kiss the ground (before me), which is a kind of Sijda.*"³ The Mughal empire had large number of non-muslims, hence, in accordance with

1. I.H. Qurashi, *The Administration of the Mughal Empire*, P. 198, Low Price Publication, Delhi

2. *Siyasatnamah*, P. 8 by Niazm-ul-Mulk.

3. *Tuzuk-i- Jahangiri*, Translated by A. Rogers Vol. P. 203, Low Price Publication, New Delhi

the *Shara* itself, the muslim law could be applied to the non-muslims only within certain well defined limits. The Hindu had their own personal law and the provisions of the *Shara* regarding marriage, divorce and inheritance were not applied to them. Cases between non-muslims if they belonged to a group with common customs were decided in the light of Holy law. Those cases where neither the principles of *Shara* nor *Adah* could be applied were decided on the basis of equity.⁴ A large number of cases were decided by the *Panchayats* and were never brought to the court of Qazi.

Civil and Criminal Justice

Under the Sultans, the organization of the judicial department was very much simpler than what it came to be under the Mughal Emperors; it was also more exposed to the arbitrary whims of the Sultans. In the time of Sikandar Lodi, the chief justice came to be called the *Mir-i-Adl*.⁵ Sher Shah considered that justice was the highest of religious rites for a ruler and paid great attention to its administration. He appointed a new set of civil judges called *Munsifs* who were not necessarily chosen from among the *Ulema* or *Fiqh*, where-by he considerably emphasized the secular aspect of the judicial office. Their head was *Munsif-i-Munisfan*. He issued farmans instructing his judicial and executive officers "on all points of civil administration, whether they were in agreement with religious

4. I.H. Qureshi. *The Administration of the Mughal Empire*, P. 190, Low Price Publication, Delhi

5. Raj Kumar. P. 100, *Administration of Law & Justice in Mughal Empire* pub., Delhi

law or not, so that there was no necessity to refer such matters to the *Qazi* or *Mufti*."⁶

The Chief *Qazi* was the highest judicial officer in the realm. The *Qazi* could decide both civil and criminal cases.⁷ Below the emperor was the *Sadr-us-sudur* who decided important civil cases especially of a religious character. The *Qazi-ul-Quzat* was the highest judicial officer responsible for the administration of justice. The chief *Sadr* was the head of the charities department but also acted as judge in some important civil cases of a religious character.⁸

There is no clear classification of cases which came under the authority of the *Qazi* and *Kotwal* regarding civil and criminal justice, but from the known cases, it is quite easy to comprehend that the secular type of criminal suits went to the *Kotwal* and the religious cases, such as inheritance, marriage divorce and civil disputes, went to the *Qazi's* court.⁹

A large numbers of cases were never referred to the courts instituted by the Mughal government. The villages had self government known as *panchayats* who decided most civil and criminal cases. In the towns as well as the guild and caste *panchayats* were active who were fully cognizant of happenings in their small communities and the chances of miscarriage of

6. *Fatama-i-Alamgiri* is a compilation of Muslim law written under the reign of Aurangzeb under the supervision of Shaikh Nizam (1679-80)

7. Ishwari Prasad, *Muslim Rule in India*, Vol. II. P. 442, The Indian Press, Allahabad

8. *Ibid.* P. 445

9. *The Remonstrance of Francisco Pansaerl*, Translated by Moreland as Jahangir's India, P. 57

justice were meager.¹⁰ In case of grave offences like murder and robbery, the matter was taken out of the hands of the *Panchayats* and the issues were decided by a court of law.

In civil disputes, Hindus were allowed to be governed by their own laws and customs; but in criminal cases, they were subject to the same jurisdiction as Muslims.¹¹ Local traditions and customs were generally respected in the adjudication of cases where there was no infringement of the fundamental laws of Islam. Hindus could demand trial by ordeal which was not open to Muslims, as that was not in the Islamic traditions. In theory, all were equal in view of law and the Qazi as well as king could be brought under its ordinary jurisdiction.¹²

Oath - Taking

Thevenot had found that there was oath taking prevalent in the civil cases. If a person sued another for debt or in case of any civil suit, he must either take an obligation, produce two witnesses or take an oath.¹³ A Muslim had to swear upon the Holy *Quran* and a Hindu upon a cow. The Hindus however, avoided taking the oath. Most of them chose rather to lose their case than to swear, 'because they who swear are reckoned infamous among them.'¹⁴

10. *The Remonstrance of Francisco Palsael*, translated by Moreland is *Jahangir's India*, P. 57, Idarah-i-Adabiyat- Delhi

11. *Encyclopedia of Islam*, Vol. II, P. 838

12. *Ibid*, P. 839

13. *Indian Travels of Thevenot*, P. 27, Edited by S.N. Sen,

14. *Muslim Institutions*, P. 155 by Gandfroy Demon.

Trial by Ordeal

Trial by ordeal was common in civil and criminal cases both in India during Mughal age. The common form was the ordeal by fire, but the more common was by water. Thevenot found this sort of ordeal prevalent in Cochin. The accused was required to cross the tank on a back of a crocodile. If he was truthful, the crocodile brought him back safe.¹⁵

Trial by Ordeal was recognized in early Hindu Law. The ordeal of boiling oil was used only for persons of inferior degree.¹⁶ The penal code for the Hindus appears to have been the same as for the Muslims.

Crimes as described in Muslim Jurisprudence

According to Muslim Jurisprudence, there are two categories of crime. The first includes crime of human and private nature and are subject to the law of talion and ransom. In the second category are the crimes of theft, brigandage, extra-marital sensual relations, apostasy and wine drinking.

Islamic law does not have a distinct corpus of "*criminal law*", as sharia courts do not have prosecutors, and all matters, even criminal ones, are in principle handled of as disputes between individuals. Instead of a separate corpus of criminal law, Islamic law maintains a special category of "offences against God" or "hudnd", whose punishments are fixed. It may, however, be expiated by a course of conduct *Kaffara* which no earthly

15. *Indian Travels of Thevenot*, P. 124 edited by S.N. Sen

16. *Ibid*, P. 125

authority can enforce. The Holy Quran defines four classes of crimes as follows- *Hudud*, *Qiss*, *Diya* and *Tazir*.¹⁷

Hudud

Hudud signifies boundary or limit, barrier or obstruction. In the Quran, it is always found in plural. It denotes that the limit laid down by God, i.e. the provision of the law.¹⁸ Under this category were included the crimes of *Sharb al-Khamr*¹⁹, *Sariqa*²⁰, *Qata al-tariq*²¹, *Zina*²², *Qadhf*²³ and *Irtidad* or *ridda*.²⁴

These offenses being against God, the offender could hope for his mercy. The judges were advised to give every opportunity to the criminals to clear themselves and not to press them further if they could deny the deed and refute the accusation.²⁵

Qisas

Qisas is a Islamic principle of an eye for an eye means retaliation. it was of two kinds - *Qisas-fil-nafs* or blood vengeance which is applied in cases of killing (murder). The other is called as *Qisas-fi-madum al-nafs* and applied to cases which do not prove fatal.²⁶ If a person committed a willful murder or inflicted a wound which did not prove fatal, he was liable to *Qisas* or retaliation.

17. *Encyclopedia of Islam*, Vol. II, P. 187

18. *Encyclopedia of Islam*, Vol. II, P. 187

19. Drinking Alcohol

20. Theft

21. Highway Robbery

22. Sexual Crimes

23. False acquisition of Zina

24. Apostasy

25. *Encyclopedia of Islam*, Vol. II, P. 1038.

26. *Ibid*, P. 1038

Tazir

Literally *Tazir* means to censure or repeal. It includes any crime that does not fit into Hudud or Qisas. These types of crimes range from homosexuality to perjury to treason. Criminals of this category were given the opportunity to reform themselves. In case of the divine law, the Judge could remit the *Tazir*, but not in case of crime against man.²⁷

Diya

Diya means "a sum extracted for any offence upon the person, in consideration for the claim of Qisas or retaliation, not being insisted upon".²⁸ *Diya* or *Aql* was compensation paid by one who had committed homicide or wounded another.²⁹

In case the legal conditions necessary to render the Qisas possible were not present, or when the heirs of murdered person entered into a composition with the murdered for certain sum, retaliation was remitted for *diya* or blood money.³⁰

The indemnity for the murder of a man was fixed by the sunna at a hundred she camels with certain conditions.³¹ The *diya* for a crime committed against a woman was half of that given for a man.³²

There was no *diya* for a minor or insane person, Women and children were not liable to pay *diya*.³³

27. *Encyclopedia of Islam*, Vol. IV, P. 710.

28. *Dictionary of Islam*, P. 477

29. *Encyclopedia of Islam*, Vol. I, P. 980

30. *Dictionary of Islam*, P. 153.

31. *Encyclopedia of Islam*, P. 980

32. *Ibid*,

33. *Ibid*, Vol. IV, P. 710

Murder, Theft and Robbery/Highway Robbery cases

The crime of murder or 'Qatl' was categorized in accordance with the nature and circumstances. There were five categories of murder-

1. Qatul - Amd
2. Qatl Shibu' L - Amd
3. Qatl - ul - khata
4. Qatl - Bi - Sabab.

Qatul - 'Amd-

It was a willful murder where the criminal killed a person intentionally with a weapon or something that served for a weapon, such as a club, a sharp stone, or fire. In this case, the criminal was liable to be retaliated. The muslim law admitted of no other expiation for willful murder.³⁴

CONCERNED CASES

Subhan Quli V/s. Islam Khan

Akbar's chief huntsman, Subhan Quli, made an attempt on the life of one Islam Khan, governor of Bengal. He tried to flee but was captured and awarded capital punishment.³⁵

Jujhar Khan Bakshi v/s. Changez Khan

Jujhar Khan Bakshi was a distinguished officer of Gujrat, slew changez Khan. The mother of the deceased lodged a complaint with Akbar, while on his way to Gujrat in 1573, he happened to be at Bharonch. The Emperor ordered a thorough

34. *Fatawa-I-Almgiri*, Vol. IV, P. 503

35. *Abul Fuzal Akbarnama*, Vol. II, P. 27-28, Low Price Pub. Delhi

inquiry into the matter. The charge having been proved, and the accused having confessed his guilt, he was awarded capital punishment. He was thrown under the feet of an elephant named Manmil.³⁶

In another case of Adham Khan Atka v/s. Shams-ud-din Khan Atka in which Adham Khan was guilty of killing Shams-ud-din and was awarded capital punishment by Akbar.³⁷

Qatl Shibu'L- Amd

When the perpetrator struck a man with something that was neither a weapon nor served as such, the crime was called as *Qatl - Shibu'L - Amd*. It was considered sinful and required expiation. Expiation consisted in freeing a muslim slave-girer, gire, or the fasting two months. A fine was to be paid with camels only.³⁸

Any case of this nature is not found during the Mughal age.

Qatl - ul - Khata

Qatl-ul-Khata or homicide with misadventure was of two kinds. Error in intention and error in act. Error in intention was where the mistake occurred with respect to the subject, as where a person aimed an arrow at a man supposing him to be a game; or at a Muslim supposing him to be a hostile infidel; error in the act, on the other hand, was where a person shot an arrow at a mark and it hit a man. The homicide with misadventure required

36. *Abul Fazal Akbarnama*, Beveridge, III, P. 46, Low Price of Pub. Delhi

37. *Abul Fazl's Akbarnama*, Beveridge, II, P. 269-73.

38. *Fatawa-i-Alamgiri*, IV P. 503, *Encyclopedia of Islam*, Vol. II. P. 824

expiation and *diyya*; and the slayer was excluded from inheriting the property of the slain.³⁹

In 1661 A.D., in the town of Sonpat, a group of young boys was busy at the play, "*King and Wazir*". The king ordered that the thieves be beaten. The '*Kotwal*' gave blow to the thieves so severely that they died on the spot.⁴⁰ This was categorized as *Qatl- ul-Khata*.

Qatl Qaim Maqm'L - Khata

Qatl Qaim Maqam' L Khata or homicide of a similar nature by misadventure, was where a person turning sides in sleep fell upon another so as to kill him by the fall. The same rules applied to it as to homicide by misadventure.⁴¹

Qatl-Bi-Sabab

Qatl-bi-Sabab or homicide by intermediate cause was where, for example, a man dug a well on the highway or set up a stone and another fell into the well or over the stone, and died. In this case, blood money must-be paid.⁴²

If a man caused premature birth of a still-born child by striking the belly of a pregnant woman. He had to compensate her a slave or a slave-girl or a horse worth 500 dirhams. If the woman lost her life alongwith her child, the offender was liable to pay the blood-money for the death of the woman as well. The

39. *Fatwa-i- Alamgiri*, Vol. IV, P. 503, Hughes, P. 421, *Encyclopedia*, Vol. II, P. 324

40. *Massir-i- Alamgiri*, P. 39, by Mohd. Kazim

41. *Fatwa-i- Alamgiri*, P. 504, Encase II, P. 824

42. *Ibid*, P. 421, *Encyclopedia of Islam*, II, P. 824.

offence was not regarded as a deliberate murder.⁴³ Besides these, if anyone was killed on the false evidence of another, or to destroy someone's property with the intention to kill him were under the category of *Qatl-bi-Sabab*.⁴⁴

RETALIATION AND COMPENSATION

Retaliation (QISAS)

Retaliation was incurred by willfully killing a person whose blood was under continued protection. In case of murder, a free man was to be slain for a free man and a slave for a slave, a man for a man and a woman for a woman. An infidel was to be slain for the murder of a Muslim, a *zimmi* for a *zimmi* and a Muslim for a *zimmi*. Even if a *zimmi* turned Muslim after putting a *zimmi* to death, he was to be murdered in retaliation. An adult was to be slain for an infant and a sound person for one who was infirm, blind, lame, insane or dismembered. A son was slain for the murder of a father and mother, but a father and mother were not to be slain for the murder of their child. A master was not to be slain for the murder of their child. A master was not to be slain for his slave, and retaliation was not incurred if one of the two partners in a slave killed such a slave. Retaliation was to be executed by the next of the kin with a sword or a sharp weapon like a sword.⁴⁵

43. *Fatwa-i-Alamgiri*, P. 504, Encase II, P. 556

44. *Ibid*, P. 556

45. *Dictionary of Islam*, P. 421, 481

There was no retaliation for a man guilty of strangling another person, but if the strangler was a habitual offender, he must be executed.⁴⁶ According to a *farman* of Aurangzeb, a person suspected of this crime was to be kept in prison. In case a specific charge was brought against him, he was to be tried in the court of a *qazi*.⁴⁷

If a man immersed another person into water from which escape was impossible, retaliation, according to Abu Hanifa was not incurred. His two disciples, however, maintained otherwise. Aurangzeb had ordered that a man who killed another by drowning him into water was to be chastised and imprisoned and *diya* or exculpatory fine was to be charged from him. In case of the repetition of the offence, strict *siasat* was to be done to him.⁴⁸ For striking off hand or foot or tooth of another man, retaliation was incurred.⁴⁹

Suspected Poisoning

There was no retaliation for compelling a man to take poison, but *diya* must be paid.⁵⁰ We come across a case of suspected poisoning in the *Akhbarat*. It was reported to Aurangzeb on 15th February, 1704, that Mohammad Momin *alias* Shambhunath Deshmukh of Sultanpur had died. His heirs suspected that he had been poisoned by some one and had also sued that person for murder. It was ordered that the heirs of the

46. *Dictionary of Islam*, P. 504

47. J.N. Sarkar, *Aurangzeb*, (Vol. II) P. 113, 114, The Chugh Publication, Allahabad

48. *Ibid*, P. 113, 114

49. *Dictionary of Islam*, P. 481

50. *Ibid*, P. 491

deceased should take the case against the accused to the court of law and get it decided in accordance with the Shara'.⁵¹

In case a man deceitfully killed another by poisoning, he was to be chastised and imprisoned till he repented.⁵²

Attempted Suicide

We come across a case of attempted suicide. Kamgar Khan tried to commit suicide by inflicting four wounds on his body with *jamdhar*. For this he was removed from his post.⁵³

Theft & Robbery

Muslim jurists make a distinction between theft and highway robbery. It seems, however, that in actual practice theft by single individual was less prevalent in Mughal India than by groups of individuals operating on a large scale. They often infest the roads, plunder towns, and commit robberies in the countryside. They attacked from their forts or from their hiding places in dense forests and inaccessible jungles. Eventually the Mughal Emperors had to take cognizance of theft and organized robbery. In case of their arrest, they were awarded severe punishments sometimes beyond those sanctioned by Muslim law.

Ralph Fitch who visited India from 1583 to 1591, has recorded that there were many thieves at that time. They had no certain abode, and moved from one to another place in the

51. *Akhbarat-i-Darbar-i-Mulla*, 15 Feb. 1704 (quoted by J.N. Sarkar, *Aurangzeb*, Vol. II, P. 115, Chugh Pub. Allahabad)

52. *Ibid*, P. 115

53. *Mausir-i-Alamgiri*, P. 192

country.⁵⁴ While on his way to Akbar's court, father Monserrate came across a number of thieves from Surat to Agra.⁵⁵ Abul Fazal has also recorded that in 1596, the government-treasure cannot be sent for the army in the south because of the unsafe roads.⁵⁶

William Hawkins (1608-1613) had observed that the abundance of the *out-laws* and thieves made it impossible for the people to move out without great force.⁵⁷ Frequent cases of thefts and robberies made the Mughal Emperors aware and they took stern steps to prevent such acts.

Muslim law about theft & Robbery

According to Muslim law, if a man is found guilty for theft of property worth ten *dirhams*, he incurred the penalty of amputation of hand.⁵⁸ No distinction is made between slave and freeman with regard to the punishment of theft.⁵⁹ If a group of men committed theft, the hands of all of them were to be cut off.⁶⁰

The charge of theft was established on the testimony of two witnesses or the confession of the culprit.⁶¹ The *Qazi* was to examine the witnesses as to the manner, time and place of the theft; and when he was satisfied with the answers and witnesses he was to award the punishment.⁶² A person who had been

54. Early Travels in India, P. 23 edited by Archibald Constable.

55. Monserrate Commentary, P. 13

56. Akbarnama, III, P. 712 Beveridge

57. Early Travels in India, P. 113-14.

58. The Holy Quran 37.38

59. Encyclopedia of Islam, IV, P. 173

60. Dictionary of Islam, P. 284

61. Ibid, P. 285

62. Fatwa-i-Alamgiri, Vol. II. P. 708.

robbed could not pardon the thief when sentence had been pronounced against him.⁶³

Law against Highway Robbery

Muslim law prescribes severe punishments for highway robbers. One who intended to commit highway robbery were liable to 'Tazir' and imprisonment till they repented. If they robbed and each got property equal to the value of 'Nisab' (i.e. ten dirhams), their right hands and left feet were to be cut off. In case of robbery and murder both, the magistrate had the power to sentence them to death. Their bodies were to be publicly exposed for three days on a cross. Highway robbery was established by confession or if two witnesses bore evidence.⁶⁴

Robber Tribes during Mughals

Besides the individual thieves and organized bands of robbers, there were certain notorious tribes who used to commit robberies. They were the *Ghakkars*, *Khathurs*, and *Dalzaks*, *Kolis*, *Grasis*, Rajputs and Pathans, Baluchis and Marathas.⁶⁵

Rohtas in the Punjab was the stronghold of Ghukkars. Father Monserrate during the reign of Akbar had to face them while he was in the way.⁶⁶ The Kathurs and Dalzaks lived in west Punjab. The Grasis lived in the hills of Malwa. Willium Finch mentions that the pathan infested the forests between Lahore

63. Ibid, P. 709

64. *Fatwa-i-Almagiri*, Vol. II, P. 729

65. Dr. S.P. Sangar, *Crime & Punishment in Mughal India*, P. 58

66. *Monserrate's Commentary* P. 13

and Kabul.⁶⁷ According to Nicholas Withington (1612-16), the Rajputs lived by robbing and spoiling poor passengers by the way.⁶⁸ It was also recorded by the Peter Mundy during the Shahjahan's reign; the Rajput group of robbers frequently committed robberies. They often lived in the jungles.⁶⁹

During Aurangzeb's reign, Kolis, Marathas, Rajputs etc. plundered and ruined the people in Gujrat.⁷⁰

RELIGIOUS AND SEXUAL CRIMES

Religious Crimes

In the Mughal empire, Akbar first secularized the muslim state and destroyed many of the religious crimes. Jahangir also introduced some modifications to prevent religious crimes. Shahjahan brought several changes making many acts against criminals. Aurangzeb, contrary to his predecessors, tried to govern the entire state according to the theologians and restored the muslim penal code in the religious sphere. Muslim law categorized the religious crimes as under.

Drinking and sale of Liquor

Drinking and sale of liquor is forbidden in the Quran.⁷¹ In case a Muslim takes liquor and caught drunk. He was brought

67. *Early Travels in India*, P. 198-199

68. *Ibid*, P.200

69. *Ibid*, P.201

70. John Fryer : *A New account of east India and Persia* : edited by William Crooke Vol. I, P. 301

71. *Holy Quran*

before the Qazi. The punishment was eighty lashes for a free man and forty lashes for a slave.⁷²

The Muslim law provides no penalty for the sale of wine. Aurangzeb, however, supplemented the Muslim law by providing penalty for this offence.⁷³

Despite the ban by Islamic law, drinking wine seems to have been a common feature in Mughal India.

Gambling

During the reign of Akbar, gambling was much prevalent in India. Akbar never tried to abolish the practice, but he brought it under state control.⁷⁴ On the other hand, Jahangir ordered the complete abolition of gambling in the state.⁷⁵ Aurangzeb also ordered for complete ban on gambling.

Prostitution

Badauni informs in *Muntakhib-ul-tawerikh* about prostitution in large scale in the Capital.⁷⁶ Akbar set apart separate quarters for them outside the city, called *shaitanpura*.⁷⁷ A staff of officers was also appointed by the Akbar in order to supervise prostitutes. Any one who wanted to associate with these prostitutes, had to give his name and address. According to Badauni, Prostitution could not be controlled despite many rules and regulations. Aurangzeb proclaimed an ordinance that

72. *Dictionary of Islam*, Hughes, P. 670

73. *Mirat* - I, P. 280

74. Badauni, *Muntakhib-ul-tawarikh*, translated lowe by II, P. 388

75. *Tuzuk-i-Jahangir*, P. 76, edited and translated by A Rogers and Bevridge

76. Badauni, *Muntakhib-ul-tawerikh*, P. 365

77. *Ibid*

prostitutes should either marry or leave the kingdom.⁷⁸ In 1665, he issued orders for the suppression of prostitution.⁷⁹

Fallacious Writings

It was considered a crime to indulge in any sort of fallacious writing, *Qazi Mir*, the chief minister of *Shah Alam*, and was renowned for learning, wrote a book with pro-Christian views. Aurangzeb took serious exception to it. He was imprisoned in Asirgarh fort and later on executed.⁸⁰

Blasphemy

The literal meaning of blasphemy is to hide the truth. It includes a denial of any of the essential principles of Islam. A Muslim convicted of this crime was sentenced to death in Muslim countries.⁸¹

In Mughal India, particularly in the reign of Shahjahan and Aurangzeb, the punishment was extended to non-Muslims as well.⁸²

Heresy

Heresy was also considered serious crime. Once it was reported to Jahangir that one Sheikh Ibrahim had set himself up as a religious leader in the pargana of Lahore. He was summoned by the Emperor. As he could not satisfy him, he was imprisoned in the fortress of Chunar.⁸³

78. Manucci, II, P. 9 *Storia-do-Mogor* ed. By William Irvine (4 Vol.)

79. Maasir, P. 385

80. Manucci, *Storia-do-Mogor* ed. By William Irvine (4 Vol.) IV, P. 118-19.

81. *Dictionary of Islam*, Hughes, P. 42

82. Shri Ram Sharma, *Religious policy of the Mughal Emperors*, P. 111

83. *Tuzuk-i-Jahangir*, P. 76, edited and translated by A Rogers and Bevridge, P. 77

Marriages

To prevent moral degradation of the society, Akbar promulgated orders regarding marriages as well. He fixed the marriageable age of boys and girls too. He did not permit to have more than one legal wife and widows were permitted to remarry. He ordered that if a woman was deceitful and quarreled with her husband, she was to go to the quarters of prostitutes.⁸⁴

Mughal Emperors also forbade some Hindu practices like *Sati*. Akbar issued an order against forcible *Sati* system and appointed inspectors to see that no widow was to be permitted to be burnt against her will.⁸⁵

SEXUAL CRIMES

Fornication

According to Muslim law, the word Zina includes fornication with an unmarried person by a man who possesses a wife in lawful marriage. The sin of fornication was to be established, as in the case of adultery, either by confession or by proof of four witnesses.⁸⁶ It was not easy to furnish evidence for this sort of crime.

Adultery

The term 'Zina' includes both adultery and fornication. Adultery was defined as a man having sexual intercourse with a

84. J.N. Sarkar, *Letters of Aurangzeb*, Chugh Publication, Allahabad No. Civil, P. 106-7

85. *Akbarnama*, Bev. III, P.594

86. *Encyclopedia of Islam*, P. 69

woman unlawful to him. An adulterer, as distinguished from a fornicator, was a muhsan.⁸⁷

Sodomy

In the Islamic law, sodomy is forbidden even more strictly than adultery. It was a unnatural copulation between males. Sodomy was not unknown in India. The remarks of the travelers clarifies that it was prevelant during Mughal India, because of this fear, the Muslims did not trust the tutors of their children.⁸⁸ Manrique also said, 'the unmentionable vice' was very common in India.⁸⁹ Catamites dressed as women paraded the streets soliciting other persons as dissolute as them selves.⁹⁰

Incest

There were some cases of incest, sexual relations with near kindred, found during the Mughal empire. A Brahmin of chakor village in Bengal had his daughter as mistress and had a son by her. When Akbar was reported about the matter on advice of Imams, he ordered that the means of his vice and wickedness should be cut off from the roots and roasted before his eyes.⁹¹

OFFENCES AGAINST THE SAFETY OF THE STATE

In Mughal India, the ruler was the state and offences against him were considered crime against state. Offences against the safety of the state were as under.

87. *Fatawa-i-Almagiri* P. 68-69

88. Fryer, I. P. 245

89. Sebastian Manrique, *Travels in India* (1629-43), edited by Eckford Luard and Father H. Hosten I. P. 200

90. *Ibid.* P. 201

91. Abul Fazal, *Akbarnama*, Vol. III, P. 124 edited and translated by Beveridge

Attack on the life of the Emperor

It was most serious crime for which the punishment was only to put to death. In 1564, A slave named fulad aimed at Akbar when he was returning Delhi from hunt. The arrow penetrated the right shoulder of Akbar. Akbar ordered that offender be immediately put to death.⁹²

In the year of 1606, it was discovered that some officers like Fatehullah, Nur-ud-din, Asaf Khan and Sharif Khan, had at the instigation of Khusrow, formed a conspiracy to murder Jahangir. The Emperor ordered the chief insurgents to be captured. After perhaps their guilt was established, Jahangir punished them according to the gravity of the crime. Fatehullah was imprisoned while others were executed.⁹³

In the 16th year of his reign, while Aurangzeb was riding back after the performance of the *Id-uz-zuha* sacrifice, a mad-looking person came near and struck the Emperor with a stick which fell on his knee. The man was arrested and brought before Aurangzeb by the mace-bearers. Instead of punishing him, he, however, ordered his release.⁹⁴

On another occasion Aurangzeb was returning from the *Jama masjid*, while he was getting down from the boat in order to sit on the revolving throne, a disciple of Guru Tegh Bahadur, threw two brickbats on him, one of which fell on the throne. The

92. Abul Fazal *Akbarnama*, Vol. II, P. 201, edited and translated by beveridge

93. Jahangir, *Tuzuk, i-Jahangiri* p. 112-123, edited and translated by beveridge

94. *Maasir-i-Alamgiri*, p. 127

foot-soldiers took the offender into custody and handed him over to the kotwal.⁹⁵

Rebellions

To rise in rebellion against the ruling monarch was considered a grave crime. Mostly the Mughal royal princes were in many cases lead of rebellion in different provinces.

Vast resources at their disposal enabled them to risk such undertaking. Almost all of them were pastmasters in warfare, as they had the opportunity, at one time or another, of leading armies and directing campaigns. Hindu rajas, anxious to regain their freedom, would rise up in arms against the Mughal Emperor. Their motive was not to overthrow the reigning monarch; their anxiety was to release themselves from all obligations to the Central Government. Their risings were taken by the Government with all seriousness. Full preparations seemed necessary to nip the evil in the bud. Influential imperial generals sometimes took up arms against the sovereign. Organized bands would at times fling down the gauntlet to the provincial authorities and disturb the peace of the locality by their unlawful activities. Peasants would refuse to recognize the Government and cease to pay revenue, and thus incur the wrath the Emperor.⁹⁶ Against all these, he took immediate measures, and, according to the need of the moment, sent either large armies under the command of experienced military officers, or levies under the *faujdars*. Then there were the religious heads

95. *Maasir-i-Alamgiri*, p. 127

96. Manucci, *Storia-do-Mogor* ed. By William Irvine (4 Vol.) IV, P. 223-24

whose *fatwas* against the Emperor could be a source of great nuisance. Very often such leaders deserved and receive death punishment, transportation for life or imprisonment as the following cases will show.

In 1558, Bairam Khan, the all-powerful minister of Akbar, charged Musahib Beg with the offence of rebellion and awarded death punishment on him. Musahib Beg was executed in Delhi without the knowledge of the Emperor. The other nobles raised an outcry against the arbitrary decision of Bairam Khan.⁹⁷

In the first year of Jahangir's reign, his eldest son, Khursrow, raised the standard of revolt against his father and fled towards the Punjab. Later on he was caught, and, with his hands bound and with fetters on his legs, was brought before Jahangir in Lahore. He was ordered to be put in custody.⁹⁸

In the first year of Jahangir's reign, his eldest son Khusrow, raised the standard of revolt against his father and fled towards the Punjab. Later on he was caught, and, with his hands bound and with fitters on his legs, was brought before Jahangir in Lahore. He was ordered to be put in custody.

Two of his special associates, Hussain Beg and Abdul Aziz, were ordered to be enclosed in the skins of a cow and an ass respectively face to the tail, and to be paraded through the city. As the skin of the cow dries quicker than that of the ass, Husain Beg died near the fourth watch Abdul Aziz, however, survived.⁹⁹

97. Abul Fazal *Akbarnama*, Vol. II, P. 107-108. edited and translated by beveridge

98. Jahangir, *Tuzuk, I-Jahangiri* p. 112-123. edited and translated by beveridge

99. *Ibid*, P. 115

Prior to Khusrow's defeat, five of his associates were captured and brought before Jahangir. The Emperor ordered one of them to be cast before the elephants and the others to be put in custody.

As to Khusrow's punishment there are different theories. According to Du Jarric and De Laet, he was blinded at Jahangir's orders. William Finch says, "there were two stories prevalent at that time. One makes us believe that he was blinded on the batte-filed with glass. The other has it that Jahangir merely caused a handkerchief to be tied over his eyes and that he sealed it with his own seal." Terry mentions that his eyes were sealed up for the space of three years, after which time the seal was taken away. In 1617, Thomas Roe saw Khusrow with his eyes intact.¹⁰⁰

Espionage

Spying was a serious crime and was punished as such. During the reign of Akbar, two Portugese were caught and they were sentenced to death.¹⁰¹

In 1666, the commandant of the fortress of Ghazni arrested eight persons, and, on charge of espionage, sent them to the governor of Kabul. They were sent for inquiry to the governor of Lahore, and from there to the Court. The Emperor entrusted them to I'timad Khan for investigation. One of them wounded the said Khan fatally, and, consequently, seven of them were put to death by I' timad Khan's men. The one who survived

100. Thomas Roe, *Embassy to India*, edited by William Foster P. 305

101. Monserrate, *Commentary* : Translated by J.S. Hoyland and annotated by Bannerji P. 189

was ordered to be permanently kept in confinement and the whole truth ascertained from him.¹⁰²

Correspondence with the enemy

To correspondence with the enemy was a serious crime and the offender merited grave punishment.

Shah Mansur, the *diwani-i-kul* was suspected of carrying on correspondence with Mirza Mohammad Hakim, who had revolted against Akbar. A number of letters were intercepted from which it appeared that Shah Mansur was in correspondence with Mirza Hakim. As a matter of fact some powerful nobles at the court were set upon his ruin. Near Shahabad, on his way to Kabul, in 1581, Akbar received letters written by the Mirza to Shah Mansur. Suspicion became confirmed, and, on the suggestion of the nobles, the Emperor ordered the Captain of the Guard to hang him by a tree near Shahabad. At Kabul, when the Emperor learnt that the said letter was a forgery on the part of the Amirs, he felt aggrieved.¹⁰³

Jahangir came to know in 1622 that the eunuch Muhtarim Khan, the Master of the Ceremonies, Fidai Khan, and Khalil Beg Zul-qad, had allied themselves and corresponded with the rebel Prince Shahjahan. They were imprisoned, and, after inquiry, awarded capital punishment.¹⁰⁴

102. Monserrate, *Commentary* : Translated by J.S. Hoyland and annotated by Bannerji P. 189

103. Jahangir, *Tuzuk, i-Jahangiri* p. 249. edited and translated by bevridge

104. *Ibid*, P. 249

With the illness of Shahjahan, the virtual power had passed into the hands of Dara Shikoh. Aurangzeb's supporters were over-vigilant and kept him informed of the situation. This was more than Dara could put up with. Orders for the arrest of such persons were issued and immediately carried into effect.¹⁰⁵

Aurangzeb's reign was full of battles. The latter half particularly was an unbroken spell of continued warfare. The imperial generals did not always wish a speedy end of the campaigns. They stood to gain by their prolongation. Sometimes they communicated their intentions to the enemy who made a prompt reply. Constant endeavours were made to conceal the proceedings from the Emperor.¹⁰⁶

Letters exchanged between the rebel Prince Mohammad Akbar and the royal Princess Zeb-un-nisa were intercepted and brought to the Emperor's notice in 1681. The Princess was deprived of the annual grant of 4 lac of rupees awarded to her earlier and also of her entire property and was confined in the fortress of Salimgarh.¹⁰⁷

Helping the enemy

Shah Nawaz Khan, the governor of Gujarat and the father-in-law of Aurangzeb, handed over Ahmadabad to Dara without any resistance. Aurangzeb ordered Daler Khan to inflict death punishment upon the old man. After Dara's defeat in the battle

105. Manucci, *Storia-do-Mogor* ed. By William Irvine (4 Vol.) IV, P. 255

106. Ibid, P. 270-72

107. Ibid, P. 275

of Ajmer, when Shah Nawaz was sitting on a carpet spread under the trees, a little distant from the battle-field, Daler Khan hastened his elephant's pace towards that side and killed the old man, 'impiously and cruelly by repeated arrow-shots.'¹⁰⁸

Fazil Khan, the Chief Officer of Royal Wardrobe, had begun to put into execution the plan of dispatching secretly to Prince Mohammad Akbar in Persia a sum of five lac gold coins. The Surat governor discovered the attempt and informed Aurangzeb. Learning that his secret had come to the knowledge of the Emperor, Fazil Khan swallowed poison and died. 'He thus avoided the torture which would, no doubt, have been inflicted upon him.'¹⁰⁹

Desertion or Flight

Desertion or flight from the battle - field was considered serious crime. Tardi Beg had fled from the battle field against Hemu. He was caught by Bairam Khan in 1556 and was clubbed to death in a barbarous manner.¹¹⁰

While returning from Burhanpur in 1562, the imperial general, Pir Mohammad Sherwani, was drowned in the river Narbada when crossing it. The other nobles reaching Malwa found that Baz Bahadur had reconquered the province. They fled away from Malwa and came to the court without permission. For this they were punished and committed to prison.¹¹¹

108. Manucci, *Storia-do-Mogor* etc. By William Irvine (4 Vol.) IV, P. 325

109. *Ibid*, P. 270

110. Abul Fazal *Akbarnama*, Bev. II, P. 51-52

111. *Ibid*, P. 258-59

During Akbar's campaign in 1581 against his half-brother, Mirza Hakim, in Kabul, twelve deserters to the enemy were captured in an ambush and brought before the Emperor. Some of them were ordered to be kept in custody for a more thorough investigation of their cases and others were executed. Those imprisoned were, however, released on account of the witty remarks of one of the convicts about his singing.¹¹²

In December 1590 it was reported to Akbar that Shahbaz Khan had come from Swad without orders. He was committed to prison for three years.¹¹³

Mirza Sharf-ud-din Husain had fled from Nagor. He fell into the hands of Bahar Jiv, the *Raja* of Baglana. The Raja presented the Mirza before Akbar. While the Emperor was at Ahmadabad after the conquest of Surat. He was ordered to be flogged and sent as a prisoner to the Gwalior Fort where he died.¹¹⁴

It was reported to Jahangir in 1605 that Abhay Raj, son of Akshay Raj and son of Bhagwan Das, was desirous of dispatching their wives and children to his own country without permission, and afterwards himself running away to the Rana. When nobody was prepared to furnish security for him and his two brothers, they were ordered to be handed over to Ibrahim Khan Kakar. When they tried to disarm them, they began to quarrel and fight. Jahangir ordered that they should be

112. Monserrate, *Commentary* : Translated by J.S. Hoyland and annotated by Bannerji Vol. III P. 270

113. *Abul Fazal, Akbarnama*, p. 585-86

114. Badami, *Muntakhib-ut-Tawarikh*, Vol. II, p. 151

punished 'according to their deeds'. They were killed after fighting bravely.¹¹⁵

As Sheikh Banarasi and Ghias Zain Khan and some other *mansabdars* had failed to protect Patna against the impostor Qutb, and had fled from there, Jahangir summoned them to the court in 1610 and punished them. Their hair and beards were shaved off, they were clad in women's dress and paraded round the city.¹¹⁶

Neglect of Duty

Neglect of duty was regarded as a serious crime and punished according to the nature of the offence.¹¹⁷

Shah Abul Maali who failed to attend the court on the day of Akbar's accession, was arrested and imprisoned in Lahore. Due to the negligence of the *kotwal*, Pahalwan Gulguz, he fled away. From fear of punishment, Gulguz committed suicide.¹¹⁸

In order to ensure that the attendants did not fail to do their duty in a proper manner, Akbar had laid down rules and regulations for the proper care of the horses and elephants. Those who failed to do their duty towards these animals were to be fined and a whole list of fines has been mentioned in the *Ain-i-Akbari*.¹¹⁹

115. Jahangir, *Tuzuk, i-Jahangiri* p. 29-30. edited and translated by Beveridge

116. Mutamed Khan, *Iqbalnama*, Vol. I, translated and edited by Elliot & Dowson p. 239-40

117. Abul Fazal *Ain-a-Akbari*, Blochman, P. 139

118. *Ibid*, P. 139

119. *Ibid*, P. 139

Jahangir recalled the Khan-i-Khanan from the Deccan in 1610 for his failure of duty there.¹²⁰

Husain Khan, brother of Anwar Khan, ally of Musa Khan, was captured by the imperialists and thrown into prison at Dacca. One day he gave bread and sweets mixed with *dhatura* to the guards and the custodians of the prison and after they had become unconscious, he fled after one *pahar* of the night. Reaching his country Baniachung he killed his wives and daughters and began to mobilize his fleet and artillery against the Mughals. When Islam Khan heard the news of his escape from the prison, he grew furious and ordered all the thirty-five gatekeepers and guards to be torn to pieces limb by limb. Husain Khan, however was again captured, with the help of Musa Khan, and thrown into prison.¹²¹

It was reported to Jahangir in 1618 that Jahangir Quli Khan, the governor of Bihar, was showing negligence in performing his duty. He had failed to restrain his brothers and sons-in-law from exercising oppression on the people. The Emperor issued orders dismissing Jahangir Quli Khan from the governorship of Bihar and appointing Muqarrab Khan in his place.¹²²

Disobedience to the emperor

Disobedience to the Emperor's orders was never excused and the delinquent officials were demoted or terminated from service.¹²³

120. Abul Fazal *Ain-a-Akbari*, Bloachman, P. 180

121. *Ibid.*, P. 182

122. *Ibid.*, P. 185

123. *Ibid.*, P. 202

During his march against Mirza Hakim, Akbar ordered an official to proceed upstream to particular place and find out if the Indus could be forded there by the cavalry. The official returned with incomplete information without having reached the required place. He was ordered to be seized and dragged to that particular point, bound prostrate on an inflated bag of ox-hide and launched upon the Indus. He was released after he had undergone terrible misery and agony. He was, however, 'entered in the inventories as royal property, exposed for sale in all the **bazars**, finally auctioned as a slave'. One of his friends purchased him for eighty pieces of gold. Later on, he was pardoned.¹²⁴

Mirza, Aziz Koka opposed the enforcement of the branding orders and put up an insolent behaviour. For this offence he was ordered by Akbar to be interned in his own garden.¹²⁵

Hakim Nur-ud-din of Tehran, a *mansabdar* of 500, was awarded capital punishment in 1623 for using disrespectful language towards Jahangir. He was executed in the presence of the Emperor.¹²⁶

The governor of Bengal Islam Khan defied with impunity the royal orders of dispatching to the imperial court his best musicians and placed the imperial envoy into confinement.¹²⁷

124. Monserrate, *Commentary* : Translated by J.S. Hoyland and annotated by Bannerji Vol. III P. 82-83

125. *Abul Fazal, Akbarnama*, p. 147

126. *Jahangir, Tuzuk, i-Jahangiri* p. 286-87. edited and translated by Beveridge

127. *Ibid*, P. 286

Criticism of Government by Public Servants

Criticism of Government by public servants was also regarded as crime against state and the guilty had to go for confinement.¹²⁸

Mirza Aziz Koka criticized the branding of horses and used unbecoming language. For this presumptuousness he was degraded in 1575 and was sent to Agra to be kept under surveillance in his own garden.¹²⁹

In Jahangir's time a letter was discovered which was alleged to have been written by Khan-i-Azam Mirza Aziz Koka to Raja Ali Khan, the governor of Khandesh. The letter was full of abusive language against Akbar and Jahangir. After confirming the truth, Jahangir punished him by depriving him of his *jagir*. According to De Laet, he was treated with the greatest ignominy, loaded with chains, and sent off as a prisoner to the Gwalior fort. He was released and restored to favour after two years.¹³⁰

In 1623, Abdulla, the son of Nur-ud-din, was accused of using disrespectful language against Jahangir in assemblies and companies. After the charge was confirmed in his absence, he was summoned to the Court by the Emperor and ordered to be executed.¹³¹

128. Abul Fazal *Akbarnama*, Bev. II, P. 209

129. *Ibid.*, P. 209

130. Jahangir, *Tuzuk-i-Jahangiri* p. 79-81. edited and translated by Beveridge

131. *Ibid.*, P.286-87

Leave without permission

In 1615, Qizalbash Khan, a Gujarat official, came to the court without permission of the governor. In order to set an example to others, Jahangir ordered him to be put in confinement and sent back to the governor of Gujarat. There is no mention of the treatment meted out to him by the governor.¹³²

In 1621, 'Abdulla Khan went to his father without the permission of Shahjahan, the governor of the Deccan. Jahangir ordered the Chief *Diwan* to deprive him of his *jagir*. I 'timad Rai was ordered to act as a *sazawal* and sent him back to the Deccan.¹³³

It was ordered by Jahangir that as Qasim Beg had left Bengal without imperial permission, he was to be put in chains and in that condition was to be taken to the governor of Bihar who was to send him on to the *subedar* of Bengal in the same manner. After some time Qasim Beg petitioned the Emperor for mercy. His appeal was accepted and orders for his release issued. On receipt of the orders, the governor of Bengal Qasim Khan, removed the chains of Qasim Beg, conferred the rank of 100 personnel and 50 horse and a *jagir* upon him.¹³⁴

Infringement of royal prerogatives

The wearing of umbrella was a royal privilege and none could violate it without meriting punishment.¹³⁵

132. *Jahangir, Tuzuk, i-Jahangiri* p. 289. edited and translated by Beveridge

133. *Ibid.*, P. 217

134. *Ibid.*, P. 219

135. Abul Fazal *Akbarnama*, Bev. II, P. 635

It was a Mughal regulation that no one could carry his quiver in his hand. His hunting ground was also a taboo for others. Any one entering it was made a slave.¹³⁶

It was an established convention that after a victory, the articles and the women belonging to the enemy, came in the possession of the Emperor. Some time royal commanders infringed this rule, and without the knowledge of the Emperor, kept the elephants, valuables and women to themselves. This was done by Khan Zaman, Ali Quli Khan and Bahadur Khan after their victory over Sher Khan in Jaunpur (1561), by Adham Khan after defeating Baz Bahadur in Malwa (1561) and by Asaf Khan after the Garha victory. As soon as the matter was reported to the Emperor, the generals were usually obliged to part with their prizes.¹³⁷

It was ordered by Jahangir that Mahabat Khan should return all the elephants captured in Bengal in 1624.¹³⁸

To give the Emperor uninvited advice was also regarded as an offence and was punished accordingly. A royal servant Khaksar Sultan, had the audacity of suggesting to Akbar in 1564 that he should give up expedition against 'Adbulla Khan Uzbek in Malwa. The Emperor became, furious and attacked him with a sword. Somehow Akbar overpowered his anger and spared his life.¹³⁹

136. Abul Fazal *Akbarnama*, Bev. II, P. 637

137. J.N. Sarkar, *Mughal Administration*, p. 129-31

138. Abul Fazal *Akbarnama*, Bev. II, P. 323-30

139. *Ibid*, P. 226

Hunting of lion was a special royal prerogative.¹⁴⁰

During a royal hunt in 1610, when Jahangir had got within a shot of a Neel Gai, a groom and a carrier appeared suddenly. In a fit of rage the Emperor ordered to kill the groom on the spot and to hamstring the carrier. They were to be mounted on asses and paraded through the camp, so that no one in the future might infringe the royal prerogative in this manner.¹⁴¹

In the sixth year of his reign, Jahangir issued regulations known as the *Ain-i-Jahangiri* with regard to the royal prerogatives. The border officers were ordered not to sit in *jharoka*, to see elephant fights or to confer titles. They were asked not to trouble their officers with keeping guard and saluting them. They were forbidden to inflict punishment of blinding and cutting off ears and noses of criminals. They were not to force Islam on any person. They were prohibited from ordering royal servants from doing *kornish* or *taslim*. They were asked not to force signers to remain on duty in the manner customary in the royal court. They were not to beat drum when they went out or when they gave horses or elephants to others. They were not to place reins or elephants goads on their backs and make them perform obeisance. While going in procession they were ordered to see that they did not take with them on foot in their retinue the royal attendants. When they wrote to their subordinates, they were to avoid affixing their seal.¹⁴²

140. Fransis Bernier, *travels in the Mughal Empire*, p. 115 edited by Archibald Constable.

141. Jahangir, *Tuzuk, i-Jahangiri* p. 164, edited and translated by Bevridge

142. *Ibid*, P. 205

Infringement of Royal Prerogatives was considered an offence. The charge of the commission of the crime was usually levied against the governors of the provinces who seemed anxious to play the roll of King.¹⁴³

Breach of court etiquettes

In 1560, while Akbar was on his way to the Punjab, Shah Abul Ma ali, in the pargana of Jhajar, wanted to salute him while seated on his horse. Akbar felt annoyed and handed him over to Shahab-ud-din Ahmad Khan to be kept in custody as a prisoner.¹⁴⁴

In 1581, Lashkar Khan came to the court drunk and made a disturbance. When the matter came to the knowledge of Akbar, he ordered Lashkar Khan to be tied to the tail of a horse, to be led around and then sent to the prison.¹⁴⁵

Besides these, leave without prior permission from service, fight among imperial officers and breach of court etiquettes were also categorized as serious crimes against state.

Official corruption

Bribery was very common during the Mughal rule in India. As the means of communication were not developed, it was not easy for the emperor to remain in contact with every official. This caused rise in official corruption.¹⁴⁶

143. J.N. Sarkar. *Mughal Administration for a description of Prerogatives*, p. 129-30.

144. Abul Fazal *Akbarnama*, Bev. II, P. 534

145. *Ibid*, p. 368

The governors used to present precious gifts to the Emperor to secure his continuance in office.¹⁴⁷ It was common practice at that time to present gifts to the higher officials whenever visits were paid to them. This practice was prevalent through out the country and even the emperor formed no exception. Rather it was regarded as an insult if a person went to the Emperor without a proper present. Even the princes approached their father with suitable gifts for him. Akbar issued an order that every person should bring a present when he came to visit him.¹⁴⁸

There was no normal code to guide the conduct of the government officials in those days and the general conditions of the times did not warrant such a code. Moreover, particularly because of the system of presents, it had not been possible for a strong public opinion in the reign to develop against the prevalent vice of bribery. Despite this, there are references to the corruption by governors and other officials whose complaints were lodged and were punished. Haji Ibrahim Sirhindi was accused in 1584 of accepting illegal gratifications. He was dismissed and confined in the fortress of Ranthmbor.¹⁴⁹

Embezzlement

The officials availed themselves of every opportunity to embezzle the government collections.¹⁵⁰ Manucci complains that

147. Tavernier, i, P. 17

148. Badauni, II, P. 332

149. Mirat-i- Ahmadi, edited by Syed Nawab Ali, Translated by M.F. Lokhanwala, supplemented by Ali Mohd. Khan, published in 1928, Oriental Institute of Baroda. P. 368-69.

150. Manucci, I, P. 193

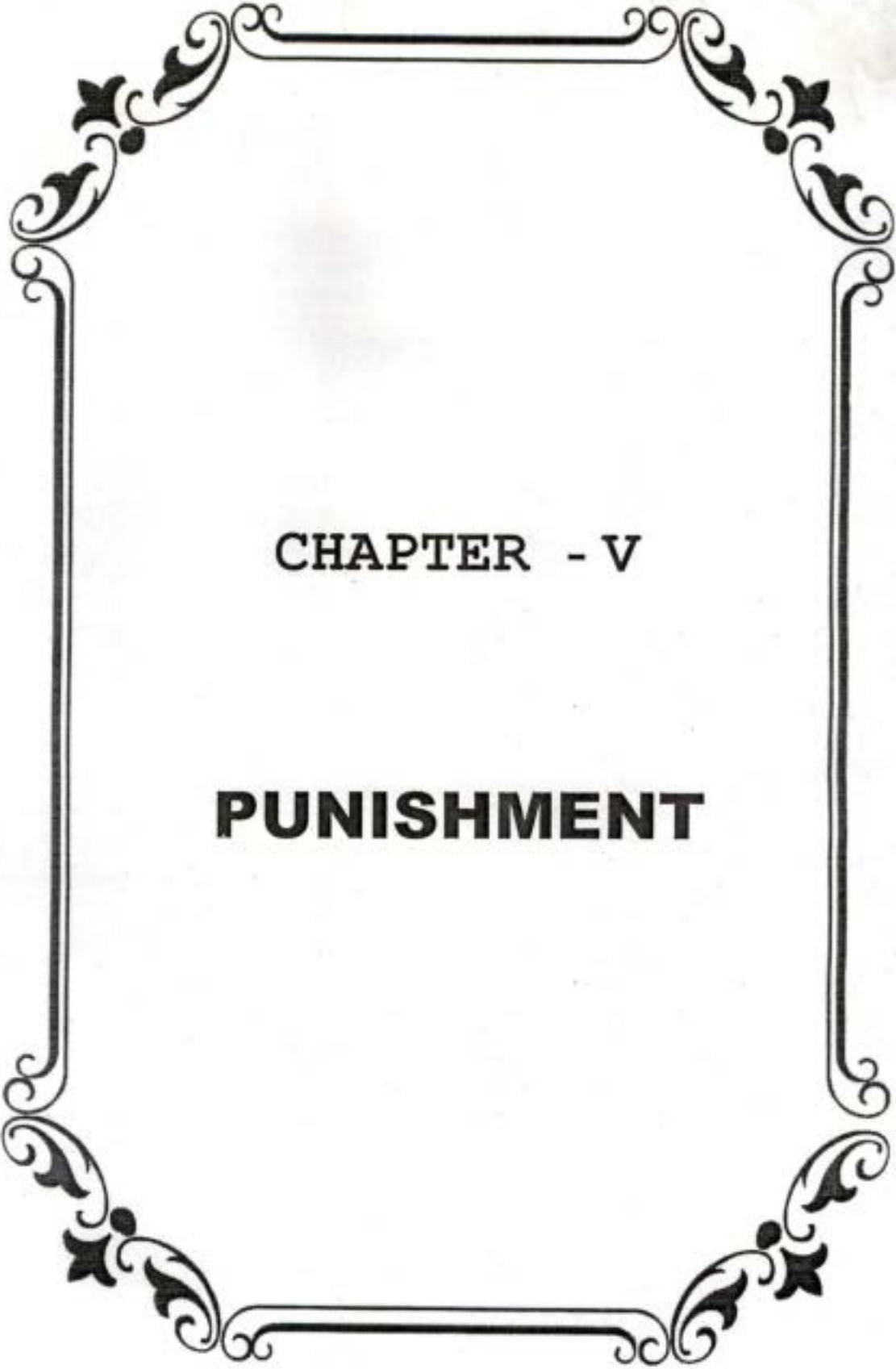
it was always their habit to keep three-fourth for themselves and pay one-fourth to the state.¹⁵¹

Abuse of authority by public servants

There are many references by the contemporary authorities to the tyranny exercised on the people by the Governors and Faujdar's, Customs and Revenue Officials. The peasants had to suffer at the hands of the greedy officials and soldiers. The former extorted money out of them and latter marched through their fields and damaged the crops. The artisans worked under hard conditions and were molested by the customs and other officers. The Mughal emperors did not usually ignore the offences of the officers, whether ministers or governors and awarded suitable punishment to the guilty in accordance with the nature of crime. The punishment varied from fine and imprisonment to dismissal and death.¹⁵²

151. *Mansabdar*, I, P. 193.

152. Dr. S.P. Sanger, *Crime and punishment in Mughal trade*, P. 134, Reliance Pub House, New Delhi.



CHAPTER - V

PUNISHMENT

CHAPTER-V

PUNISHMENT

According to Muslim perception, Islam is not only a religion but also a civilization and social order based upon revealed principles. Islam stands out distinctly among the religions of the world in that its punishment and retribution laws are applied under exclusive rules and regulations, dealing with matters related to obligations to Allah and obligations to human kind.¹

Though the Mughal judicial system had no code of criminal or civil law except Quranic precepts, the punishment was entirely discretionary with the trying officer as per intensity of the crime. Mostly little or no attention was paid to witnesses or oaths. In connection with awarding punishment in various crimes, Akbar issued instructions to his governors not to be satisfied with the witnesses or others. The suspect was required to be inquired by the study of physiognomy and the exercise of foresight.²

Muslim Theory of Punishment

In Muslim law, punishments are divided into four categories- Hadd, Qisas, Diya and Tazir.³

-
1. Dr. Iftikhar Ahmad Ayaz, *Speech on the philosophy of Punishment in Islam* 26th July, 2009 in U.K. Abul Fazal.
 2. Abul Fazal *Ain-i-Akbari*, Vol. II, P. 37-38, low Price Publication, New Delhi
 3. *Encyclopedia of Islam*, Vol. II, P. 187, 1038

Hadd

The Holy Quran defines the term '*Hadd*' as 'limits laid down by God. In other words Hadd is that punishment which has been exactly defined in the Quran or the Hadis by the prophet.⁴ This is an unalterable punishment prescribed by Canan law and is considered *haqq allah* or right to God.⁵

Under this category were included the crimes of adultery, fornication and false accusation of adultery (*Qazf*), apostacy, drinking of wine, theft and highway robbery.⁶

The Holy *Quran* defines all extra marital sexual relations to be criminal. For 'muhsans' or adulterers who had lived in legal matrimony and sodomists, lapidation was punishment. For fornication relations, the offender had to receive on hundred strokes of the whip.⁷

In practice, according to Quran, to prove the charge of *Zina* (illegal sexual intercourse) was quite difficult. Four witnesses were required to give evidence that they were present while the incidence took place and a false informer was liable to a penalty of hundred strokes of the whip.⁸

The false accusation of a married person with adultery was known as *Qazf* for which the offender was awarded eighty stripes.⁹

4. *Dictionary of Islam*, p. 153, Thomas Patrick Hughes, Genesis., Pub. Pvt. Ltd. 24-B, Ansari Road, Dariya Ganj, New Delhi

5. *Encyclopedia of Islam*, II p. 476-77

6. *Ibid*, p. 476-77

7. *Ibid*, p. 156

8. *Muslim Institutions*, p. 156

9. *Dictionary of Islam*, p. 476-77

In case of theft (*sariqah*), right hand of the offender was mutilated and for robbery (*qatu ' l - tariq*) both hands and feet were cut off and for robbery with murder, the death punishment was awarded.¹⁰

Muslim law prescribes no written punishment theory for apostasy, yet it was punished with death.¹¹ An offender could be excused if the crime was violently forced on him and he remained faithful at heart.¹²

Drinking of wine was crime-meriting punishment. According to Sunnites the offender was to receive eighty strokes of the whips and Shias prescribed forty only.¹³

These offences under the category of *Hadd* were considered serious in nature. The judges were advised to give every opportunity to the criminals to clear themselves and not to press them further if they could deny the deed and refute the accusation.¹⁴

Qisas

Qisas is a Islamic principle of 'blood for blood' means retaliation. This theory was applied in cases of killings.¹⁵

If a person committed a willful murder or inflicted a wound which did not prove fatal, he was liable to *Qisas* or retaliation. *Wali* or next-of- kin of the slain person, had the right to kill the

10. *Dictionary of Islam*, p. 478-79

11. *Muslim institutions*, p. 156

12. *Ibid* - p. 157

13. *Ibid* - p. 157

14. *Encyclopedia of Islam* Vol. II, p. 187

15. *Encyclopedia of Islam* Vol. II, p. 1038

offender under certain circumstances and under the supervision of the judge.¹⁶ Qisas took place only if the next-of-kin demanded it. In case there are more than one claimant for the blood of the offender, all must be unanimous in their demand.¹⁷

Although the punishment was fixed by the law, it could be remitted by the person offended or by the heirs of the murdered person.¹⁸

According to Abu Hanifa, the avenger of blood was allowed to behead the offender with the sword or a similar weapon. It is also otherwise advocated that the murderer should be killed in the manner in which he had killed the victim.¹⁹ Abu Hanifa authorizes the execution of a Muslim for the murder of a Zimmi (non-Muslim), although Shaifi disputes this. A free man is slain for a free man and a slave for a slave. A man is slain for a woman, an adult for an infant, and a sound person for one who is blind, infirm, lame or insane. A father is not to be slain for the murder of his child, but the child is slain for the murder of his parent. According to Abu Hanifa, retaliation occurs if a man drowns another in water, though his two disciples did not agree with him.²⁰

No retaliation was to incur if any bone excepting the tooth was broken and in offences short of life between a man and a woman, a free person and a slave, or one slave and another

16. *Encyclopedia of Islam* Vol. II, p. 1038

17. *Ibid*, p. 1038

18. *Dictionary of Islam*, p. 477

19. *Ibid*, p. 477

20. *Dictionary of Islam*, p. 477

slave.²¹ In case of realization short of life, a hand was cut off for a hand, a foot for a foot, a nose for a nose and a tooth for a tooth.²² If the murderer escaped death punishment at the hands of the avenger of blood, he had nevertheless to pay compensation or blood-money.²³

Diya

Diya is defined as 'a sum extracted for any offence upon the person, in consideration for retaliation, not being insisted upon.'²⁴

Diya or *Aql* was compensation paid by one who had committed homicide or wounded others. If the heirs of murdered person sought a certain sum, retaliation was remitted for *diya* or blood-money.²⁵

The indemnity for the murder of a man was fixed by the Sunna at a hundred she-camels. The camels were to be of definite condition and age, ranging from one to four years.²⁶ The *diya* for a crime against woman was half of that given for a man. The *diya* of a Jew or Christian was one-third of a Muslim's.²⁷ There was no *diya* for a minor or a insane person.

21. *Dictionary of Islam*, p. 478

22. *Ibid*, p. 478

23. *Encyclopedla of Islam*, Vol.-II, p. 1041

24. *Dictionary of Islam*, p.128

25. *Dictionary of Islam*, p. 153

26. *Encyclopedla of Islam*, Vol.-I, p. 980

27. *Ibid*, p. 980

A Muslim was not to be put to death for an unbeliever unless he had killed him treacherously.²⁸ Women and Children were not liable to pay diya.²⁹

There was a complete fine for the destruction of a nose, or a tongue, for tearing out the beard, for eye and lips, and for destroying the beauty of someone.³⁰

Tazir

Tazir includes any crime that does not fit into *Hudud* or *Qisas* and which therefore has no punishment specified in the Quran. This punishment, intended to reform the culprit found its way into Muslim law at a comparatively later date.³¹

The main object of this punishment was reformation and the degree of punishment varied with the social status of the accused. The nobles were merely warned while the common people were severely punished.³²

While awarding punishment for this crime, the judge exercised his own discretion. It could be anything from a public reprimand to whipping or banishment. In case of the divine law he could even remit the *Tazir*, but not in case of crime against man.³³

28. *Encyclopedia of Islam*, Vol.-I, p. 981

29. *Ibid.* p. 981

30. *Ibid.* p. 981

31. *Encyclopedia of Islam*, Vol.-IV, p. 710

32. *Ibid.* p. 711/ Guy Becher, *Between Vision and Reality: Law in the Arab World*, IDC projects Pub. House, D.K. Distributors, New Delhi

33. *Ibid.* p. 711

In case of *Tazir*, personal confession by the offender or the evidence by two witnesses could be sufficient ground for awarding the punishment. This punishment left vast discretion in the hands of the *Qazis* and provided opportunity to the offenders to win them over by bribery.³⁴

Execution of Punishment by Mughals

In the execution and application of law, however, there was no authority above the sovereign, like the modern supreme court to decide whether the law had been obeyed or transgressed even by the highest constitutional officer in the state. The Mughal rulers, like all Muslim rulers, could, therefore, conveniently transgress any law whenever they so desired. They were responsible to none but their own conscience, legally speaking. The only check on their arbitrary powers was either the voice of their ministers or the Muslim divines who were supposed to be custodians of the law. During Mughals, The Muslim law did not make any distinction. A Muslim or non-Muslim criminals were both liable to equal punishment. None could expect favour by reason of his persuasion or position.

Though the Mughal emperors, however, tried to conform the ideals principles of Muslim jurisprudence though with due discretion and discernment. First Akbar issued some farmans to his law officers- *"let them connive at men's faults, as man become more hardened sometimes by punishment, or take to flight though*

34. Ibid, p. 711/ Guy Becher, *Between Vision and Reality: Law in the Arab World*, IDC projects Pub. House, D.K. Distributors, New Delhi

fear of it, when they cannot be without fault. In short, there may be one man who must be punished for the first fault, and another who must be forgiven for a thousand. Knowing then that awarding punishment is one of the most difficult matters in the art of government they should award it with mildness and discernment."³⁵

Abul Fazal in the preface to the *Ain-i-Akbari*, discusses the general principles of punishment, in which he takes the personal character of the offender also into consideration.³⁶ He classifies men worthy of punishment into two categories, the inconsiderate man, and the vicious man. If the inconsiderate man commits some fault or crime owing to his foolishness, he should be corrected by advice and admonition or severe censure, if necessary. First he should be imprisoned; if this remedy fails he should be deprived of his dwelling; if this also does not get him reformed, he should be exiled. If this even fails to improve him, he should be deprived of his hands, eyes or nose as a last resource.³⁷

Abul Fazal further explains, "It is necessary for just kings to make themselves first acquainted with the rank and character of man, by the light of insight and penetration, and then to regulate business accordingly."³⁸ This proves that Mughals freely

35. Mirat, Part-I, p. 166 (extracted from *The Central Structure of the Mughal Empire* by Ibn Hasan)

36. Abul Fazal, *Ain-i-Akbari*, p. 6, Low price publication Deriya Ganj, New Delhi

37. Ibid

38. Ibid

exercised discretion without being mechanically tied down by any set of rules or laws.

Father Monserrate, a keen observer and an accurate writer and fond of details and precision, has recorded the execution of punishment under Mughals. He says, "Those who have committed a capital crime are either crushed by elephants or hanged to death. Seducers and adulterers are either strangled or gibbeted."³⁹

In Mughal India, provincial governors and other executive officers were not allowed to inflict capital punishment. A Farman of Akbar in 1582 forbade the provincial governors to award death punishments without his permission.⁴⁰ By an order of Jahangir no person against whom death sentence had been pronounced, was to be executed until sunset. Jahangir also had reserved to himself the authority of awarding the capital punishment.⁴¹

Thevenot who visited India in 1666 observed that no civil or criminal judge was authorized to put any offender to death. The case of a criminal deserving death was referred to the King through a special messenger and the punishment was executed only on receipt of his confirmation.⁴²

Though Mughal emperors strictly adhered to the Islamic laws of punishment. In the case of certain crimes, such as theft,

39. Monserrate, *Commentary*, translated by J.S. Hoyland and annotated by Banarjee

40. Abul Fazal, *Akbarnama*, Translated by Beveridge-III, p. 559, Low price pub. Dariya Ganj, New Delhi

41. *Tuzuk - i- Jahangiri*, Vol. -II, p. 242

42. *Indian Travels of Thevenot*, p. 27

their punishments were practically the same as prescribed by *Quran*. In other matters, they greatly departed from the *Quranic*, *Quranic* laws. The reasons for this departure were that, firstly there were many cases which did not come exactly within the ambit of the *Quranic* law. Secondary, in many cases, social and political needs and the attendant circumstances demanded a different treatment. Consequently they freely exercise discretion without being confined by any set of rules or laws.

Crimes prevalent under Mughals and punishments there of

Although Mughal emperors took stern steps to prevent crimes within their territories but various crimes in different nature have been described by the than historians which were in prevalence during the Mughal age. The first category includes crime of human and private nature. In the second category are the crimes of theft, brigandage, extra-marital sexual relations, apostacy and wine-drinking etc.

Crimes under the category 'Hadd' were:-

1. Adultery (Zina) for which the adulterer must be stoned.⁴³
2. Fornication (Zina) for which the guilty must receive one hundred stripes.⁴⁴
3. The false accusation of a married person with adultery (Kazf) for which the guilty must receive eighty stripes.⁴⁵
4. Apostacy (irtidad) was punishable with death.⁴⁶

43. *Encyclopedia of Islam*, Vol. - II, p. 187

44. *Ibid*, p. 187

45. *Ibid*, p. 187

46. *Ibid*, p. 187

5. Intoxication for which the offender must receive eighty lashes.⁴⁷
6. Theft was to be punished by cutting off the right hand.⁴⁸
7. Highway robbery, in case of robbery only, hands and feet were cut off and for robbery with murder, capital punishment was awarded.⁴⁹

Crime Under this category Qisas was committing a willful murder or inflicted wounds which did not prove fatal. Although it was applicable to the cases of murder and of wounding but it could be remitted by the person offended against or in case of a murdered person, by his heirs. *Qisas* is the Islamic principles of an eye for an eye. The punishment was either exact retribution or compensation.⁵⁰

Another category of crime was *Tazir*. It included any crime that does not fit into *Hadd* or *Qisas*. These types of crimes range from homosexuality to perjury to treason. The main object of this crime was to reform the culprit. While awarding punishment for this crime, the judge exercised his own discretion. It could be anything from a public reprimand to whipping or banishment.⁵¹

Cases of misrule or abuse of power or moral turpitude

Mughal emperors never failed to take suitable action against any officer whenever oppressions of any kind were

47. *Encyclopedia of Islam*, Vol. - II, p. 187

48. *Ibid*, p. 187

49. *Encyclopedia of Islam*, Vol.-II, p. 187

50. *Ibid*, p. 1038

51. *Ibid*, Vol.-IV, p. 710

brought to their notice.⁵² Punishments varied according to the nature of the offence. The Governors of the provinces were warned not to be negligent towards tyrannous officers. Complaints were properly inquired into and suitable punishments were awarded. We learn from the available sources that even the common man did not hesitate to approach the imperial court. The following cases are the examples of punishment given to royal authorities.

Haji Ibrahim Sirhindi, the Sadr of Gujrat

Akbar received constant complaints of the tyranny and oppression on the part of Haji Ibrahim Sirhindi, the Sadr of Gujrat. Badaoni says that he used to take brides. He was ordered to be arrested and imprisoned in the fortress of Ranthambhor where he died in 1586.⁵³

Rustam Khan, Governor of Thatta

In 1614, the people of Thatta complained against the tyranny of Rustam Khan. The emperor Jahangir set up an inquiry against him and consequently he was recalled from office.⁵⁴

Izzak Khan, Governor of Sindh

Izzak Khan, Governor of Sindh was found guilty for violating the chastity of the daughter of a rich man. He was dismissed and deprived of all ranks and pay.⁵⁵

52. Manucci, Vol. I, p. 198-99

53. Abul Fazal, *Akbarnama*, III, Bev. III, p. 670

54. *Tuzuk - I - Jahangiri*, p. 262-63

55. Manucci, II, p. 219-20

GRIEVANCES OF THE RYOTS

The shortness and uncertainty of the term of a governor forced him at times to exercise oppression on the *ryots*. He tried to exact land revenue in advance by frequent resort to force. When the wretched peasant failed to pay, their wives and children were made into slaves. Unable to put up with this kind of treatment, the villagers fled from their homes and left the villages completely ruined.⁵⁶

The agriculturist suffered hardship at the time of payment of land revenue. Whenever he failed to give ready money, he suffered disgrace and torment. A good deal of thrashing and forcible infliction of hunger and thirst made the villagers part with only paltry sums of money. It was surprising how this treatment often did not cause their death. They were bound to a tree and even whipped mercilessly. Some times the whips made 'wheels' on their bodies and 'broke their skins.'⁵⁷

Whenever the cases of tyranny came to the knowledge of the Mughal Emperor, he did not fail to take speedy action.

The contents of Muhtashim Khan's letter were read out to the Emperor in the Court of 6th September, 1681. He had complained that Saadat Khan, *zamindar* of Fatehpur, was indulging in a policy of oppression and the *ryots* were feeling distressed. His brother Abdul Danam had gone to the extent of

56. Manrique, *Travels in India (1629-43)*, P. 537-54, edited by Eckford luard and Father H. Hosten, published by Oxford University press, London.

57. *Ibid*, P. 539

killing eight employees of the qanungo of Fatehpur. The emperor was requested to issue a warning to the **zamindar** against the repetition of such offences. The Emperor decreed that orders be issued to him for the chastisement of the culprits. He further remarked that the offenders, whoever they might be, must be punished.⁵⁸

Complaints against Faujdars

When the *ryots* could not longer bear the excessive acts of oppression on the part of the *faujdars*, they rose in rebellion, and, as a result, suffered penalty.⁵⁹

Even the foreign travelers were not spared. Peter Mundy had to bribe off the *faujdar* of Banaras when all his carts were confiscated in September, 1632, under the orders of that official. The carts were required for transportation of the family and household staff of Qalij Khan, the former governor of Allahabad.⁶⁰

A Hindu merchant petitioned the Emperor on 20th January, 1667, that Mohammad Khan *faujdar* had seized from him a large amount of money. Aurangzeb ordered that mace-bearers be sent with him in order to bring the erring *faujdar* to the royal presence.⁶¹

58. *Akhbarat-i-Darbar-i-Mulla*, May 19, 1681 (quoted by J.N. Sarkar, *Aurangzeb*)

59. Manucci, *Storia do Mogor*. Edited by William Irvine, Vol. II, P. 450-51

60. Peter Mundy, *The Travels of Peter Mundy in Europe and Asia* (1608-67) edited by Sir Richard Temple. Vol. II P. 122

61. *Jaipur Akhbarat*, January 1st, 1667 (quoted by J.N. Sarkar)

Damage to Crops

Another serious complaint of the agriculturist was that irreparable damage was done to his crops during the march of imperial armies. When the soldiers passed through the villages, they plundered every thing they could. They destroyed food, supplies, grass, straw and even cattle. In order to produce fuel they would go to the extent of burning houses of the poor peasants. As if this was not enough, they imposed *begar* on and forced to carry their baggage.⁶²

The Mughal Emperors being keenly interested in the welfare of the agriculturists, took particular care against any damage to them by imperial officers. Special steps were taken to protect the crops during the march of imperial armies. Inspectors were appointed for the measurement of damaged crops and for payment of the loss sustained.

To guard against damage to standing crops in times of warfare, during the reign of Akbar, a special staff was recruited for the purpose of assessing such damage and paying the cultivators its assessed value.⁶³

The system introduced by Akbar continued throughout the Mughal period.

62. Manucci, *Storia do Mogor*. Edited by William Irvine, Vol. II, P. 451

63. Shri Ram Sharma, *Mughal Government & Administration*, p. 84, Manohar Publication, Dariya Ganj, New Delhi

Oppressions By Tax-Collectors

The Mughal Emperors never failed to issue orders for the abolition of various duties termed as **abwabs** or illegal cesses. Akbar was the first Emperor who abolished these exactions.⁶⁴

Jahangir abolished **tamgha** and **mirbahari** and other illegal cesses which the *jagirdars* used to collect forcibly from the people.⁶⁵

By a **farman** issued on 20th November 1665, Aurangzeb declared a number of duties as illegal. The Mirat has given a detailed list of such duties.

Khafi Khan is of the view that the taxes abolished by Aurangzeb by his **farman** amounted to crores of rupees.⁶⁶ He, however, feels sceptical of the efficacy of the farman. He does not conceal his feelings about Aurangzeb's orders which usually remained uncomplished. Not that this great Emperor failed in taking prompt action against the culprits. He took steps in meting out proper punishments to the guilty officers. He ordered their dismissal or diminution in their ranks. He sent mace-bearers for the punishment of the erring *zamindars*. These mace-bearers did stop the officials concerned from collecting the illegal taxes. This was only for a few days after which they were bribed off. The *jagirdars* who had been punished for these illegal taxes, usually succeeded in getting the diminution in their ranks

64. Abul Fazal, *Ain-i-Akbari*, translated & edited by A. Rogers & Beveridge p. 72-73

65. Jahangir, *Tuzuk-i-Jahangiri*, translated & edited by A. Rogers & Beveridge p. 7

66. Badaoni Muntakhib-ut-Tawarikh Vol. II P. 87-89

restored with the help of some patron at the court and the *vakils* whom they had to pay.

Khafi Khan further remarks that when the *zamindars* were convinced that they were to be answerable before none, they began to levy this tax in their own areas with greater severity than in the *khalsa* lands. The results was that the prices of articles invariably got doubled by the time they were to be answerable before none, they began to levy this tax in their own areas with greater severity than in *khalsa* land. The result was that the prices of articles invariably got doubled by the time they reached their destination. He laments that there was always trouble on the highways, in public places and on thorough-fares; the life of the people using them was at the mercy of the *zamindars* and *jagirdars*. Thousand of travellers lost their lives in the tumults and wranglings in those place. He felt so distressed at the whole situation that he seemed to have lost faith in Aurangzeb's sense of justice and good administration and pinned his hope in the justice of God. The tyranny from which people were suffering could be removed only if He sent a just and strong ruler capable of meting out condign punishments to these evil-doers.

Oppressions against artisans

It is significant to believe that an artisan laboured under severe restraints. If a noble required his services, he sent for him. The poor fellow had no alternative but to work for the 'unfeeling lord', the remuneration was paid not according to the

value of the former's work, but in accordance with the caprice of the latter.⁶⁷ It was not surprising if some time the artisan got nothing whatever in return for his labour. According to Bernier, the long and terrible whip, hanging at the door of every noble, was a source of constant terror to him. He was extremely lucky if he did not receive this in part payment. The governor's men were a sort of perpetual drain on his meager income. They exacted fees from him under the pretence of pressing him from his daily work into graining the service of their master. A craftsman saw no advantage in gaining distinction; for having acquired a little more money than his fellow workers he might be compelled to part with it.⁶⁸

In 1636, the governor of Gujrat required cloth for his servants. He asked the weavers' brokers at Baroda to sell the cloth to him at his own price. At their refusal to comply with his order, he cast them into prison. The weavers, however showed a grim resolve and left the city in a body. They did not return unless assured by the governor of a better treatment in the future.⁶⁹

67. Bernier, *Travels in the Mughal Empire*, edited by A. Constable P.257

68. John Fryer, *A new account of East India and Persia* edited by W. Crooke P. 405

69. W. Foster, *Early travels in India*, P. 290

Complaints of the merchants

Almost all the European travellers who visited India during the reign of the Mughals, are one in their condemnation of the tyrannical rule of many a provincial governor and other higher officers. Their complaints were manifold-

1. The Emperor would open their chest and boxes and keep whatever he liked for himself.
2. Their goods were seized by the governor or other high officers on the pretext of presenting them to Emperor.
3. The provincial governors demanded money from the merchants.
4. Their articles were searched at the customs houses.
5. Their articles were seized by the officers and arbitrary prices were offered to them.
6. Some time they were not allowed to leave the port without permission of the authorities.
7. Tolls were demanded from them.
8. There were some minor complaints like they were afraid of the incidents of thefts and robberies.

Some of these complaints may be true; but a close analysis of the accounts shows that the foreign merchants were also in many cases at fault. It was the usual practice for the customs-

officials to search all the boxes and packages at the port and it was the usual practice of the merchants, as at present, to avoid the payment of customs. They tried to smuggle in commodities or to pay less custom than required. A thorough search of the articles took long time and the merchants felt that their patience was taxed. The rightful measures taken by the authorities to stop the unauthorized inland trade carried on by the foreign travelers was taken by them as iniquitous. Then there was the practice of presents. It is a ridiculous statement that the Mughal Emperors or the Princes of the royal blood were anxious to take articles from the foreign merchants without making any payment. Money was never the consideration with the Mughals.

Sir Robert Shirley found the way from Thatta to Agra "much infested with thieves." Even the road from Agra to Lahore was dangerously full of them. Sir Thomas Roe, the English ambassador to Jahangir's court, refused to agree to the proposal of Prince Khurram, the governor of Gujarat, that the English should not carry arms. That way their caravans, which went from Ahmadabad and other parts of the country every year, would be exposed to the danger of thieves and robbers on the way. Things became more unsafe during Shahjahan's revolt. A letter written by the English factors at Ahmadabad in 1622 records that there was great danger on the way. It was daily on the increase and it was not possible to travel without the fear or violence at the hands of the thieves and robbers. John Willoughby at Agra wrote to the Surat Factory on 15th April,

1623, that the roads were very dangerous. Yet another letter from Ahmadabad is Surat says: "Ways are so full of robbers that no one can pass.

Cases of dereliction and neglect of public duty

Mirza Azia Koka opposed the enforcement of the branding orders and put up an insolent behaviour. For this offence he was ordered by Akbar to be interned in his own garden.⁷⁰

Khan-i-Khanan Abdur Rahim was recalled by Jahangir from the Deccan in 1610 for his delinquency in duty. He remained unemployed for a year.⁷¹

Hakim Nur-ud-din of Tehran, a manrabdar of 500, was awarded capital punishment in 1623 for using disrespectful language towards Jahangir. He was executed in the presence of the Emperor.⁷²

Sheikh Banarasi and Ghias Zain Khan and some other manasabdars had failed to protect Patna against the Qutub, and had fled from there. Jahangir summoned them to the court in 1610 and punished them. Their hair and beards were shaved off, they were clad in woman's dress and paraded round the city.⁷³

70. Abul Fazal, *Akbarnama*, p. 147, Text, Vol.III

71. *Tuzuk - i- Jahangiri*, R.B., Vol. -I, p. 10

72. *Ibid*, Vol., I, p. 286-87

73. *Ibid*, Vol., I, p. 173

In 1616, Abdullah Khan, governor of Gujrat, having gone away to his Jagir without leave from the Subedar of the Deccan, was deprived of his Jagir.⁷⁴

Abdul Wahab, son of Hakim Ali, was deprived of his rank and Jagir for brining a false suit against the Sayyids of Lahore.⁷⁵

The Sikdar under the Kotwal of Midnapur was punished for arresting and troubling Manrique and his party, thinking them to be pirates at Chatgaon. The Kotwal was persuaded to send a mild report against his inconsiderate action to the Nawab of Cuttack. In spite of this the Sikdar had to pay a fine of Rs. two hundred.⁷⁶

Banishment

Some cases were punished by banishment. The cases of this kind are as under:-

Haji Sultan of Thanesar was banished to Bhakkar on account of an accusation of cow-killing brought against him by the Hindus.⁷⁷

After the passing of branding regulation (20th illahi year) several officers were found to be defaulting in the maintenance of the obligatory number of troops. For this fraud, they were punished being sent away to distant Bengal and were deprived of their original jagirs.⁷⁸

74. *Tuzuk-i-Jahangiri*, Vol.-I, p. 330-331

75. Khafikhan, *Muntakhib-ul-lubab*, p. 683-684

76. Manrique, I, p. 425

77. Badaoni, III, p. 118

78. Abul Fazal *Akbarnama*, Vol. I, p. 148

Cases of theft, robbery, fornication etc.

William Hawkins who visited India from 1608 to 1613 observed that the abundance of the outlaws and thieves made it impossible throughout the country to move out without great force.⁷⁹

Some other foreign travelers- William Finch, Nicholas Withington has given various accounts of thefts and robberies-

Whipping, mutilation and other corporal punishments were administered in cases of theft, robberies and fornication etc.

Manrique, during the Shah Jahan's reign, and his party were traveling from Jalesar to Narayangarh in Orissa. They stayed one night under a cattle shed in a village. One of his party killed two domestic peacocks belonging to a Hindu locality. Next morning, they all were arrested. Although they escaped from mutilation of hands but had to undergo whipping.⁸⁰

Jahangir while staying at Ahmedabad ordered the thumbs of the servant of Muquarrab Khan, the governor, to be cut off as a warning to others, his fault being that he had cut down some Champa trees alongside the river.⁸¹

Hafiz Qasim was castrated by Akbar's orders for violating the chastity of a woman.⁸²

79. Early travels in India, p. 113-14

80. Manrique, II, p. 108-114

81. *Tuzak-i-Jahangiri*, p. 432, vol.I

82. Abul Fazal, *Akbarnama*, Vol. III, p. 733

Sharif Khan, son of Muhammad Abdus samad Shirin Qalam, was beaten and put into prison for being implicated in a case of adultery.⁸³

Death Punishment

Capital punishment was resorted to in cases of high misdemeanour, both of a private and public character, such as tyranny or cruelty towards the subjects, treason and sedition, adultery of a heinous type, homicide and so on.

First Akbar in 1582 forbade his provincial governors to award death punishment without his prior permission.⁸⁴ Jahangir had also reserved to himself the authority of awarding death punishment. Making of eunuchs was declared by him a capital offence.⁸⁵

Death penalty could be inflicted by hanging, beheading and impalement. Another method was to get the criminals trampled under the feet of elephants. Shahjahan kept an official with several baskets full of poisonous snakes for punishing the guilty.⁸⁶ Terry asserts that among other forms of punishments, the criminals were stung to death by snakes.⁸⁷

83. Ibid, p. 569

84. Abul Fazal, *Akbernama*, Vol. III, p. 559

85. *Tuzuk-i-Jahangiri*, Vol. V, p. 150-51

86. Manucci, I, p. 149, 197

87. A Voyage to East India, p. 354

Another method was to get the criminals torn to piece by dogs. Sometimes they were thrown in to the ditch of crocodiles round the fortress.⁸⁸

Cases of death punishment

One Jamal-ud-din, son of Mahmud Barah, had resorted to robbery and taken refuge at Pathan with his uncle, Sayyid Qasim. The Khan-i-Khanan in obedience to Akbar's farman, arrested him and was brought to Lahore. There he was hanged on a stake in the Royal market and was shot at with arrows.⁸⁹

Sir Thomas Roe describes that a gang of one hundred robbers was awarded death punishment by Jahangir. The chief was torn to pieces by dogs.⁹⁰

Manucci had recorded that Aurangzeb, right after his coronation, ordered the heads of 500 thieves to be cut off. It was done in front of the mosque, called Qadma-i-Rasul.⁹¹

In 1688, one Sayyed and twenty five Yusafzai Afghans were arrested for alleged gambling in a rented house in the capital and committing theft at night. They confessed their crime. The twenty five Afghans were awarded capital punishment by Aurangzeb.⁹²

Manucci who stayed in India for 34 years, mostly during Aurangzeb's reign, frequently traveled between Agra and Delhi.

88. Manucci, IV, p. 255

89. Badauni, Lowe, II, p. 356-67

90. *The Journal of Sir Thomas Roe*, p. 201

91. Manucci, II, p. 4

92. *Jaipur Akhbarat*, 10th year

Every time he found a number of fresh heads on the roadside and many bodies of thieves hanging from the trees as punishment for highway robbery.⁹³

Imprisonment

Imprisonment was a very usual form of punishment in Mughal India. There were no specific rules fixed for it. There used to be three noble-prisons or castles in Mughal India. One was at Gwalior, second at Ranthambor and the third at Rohtas. Criminals condemned to death punishment were usually sent to the jail of Ranthambor. They met their death within two months after they arrived there. The criminals were brought to the top of the wall and giving them a dish of milk, they were thrown down.⁹⁴

To this place, traitors were also given a great quantity of milk and thrown down from the top of the castle upon the declining side of the hill, which was full of sharp pointed craggy stones, that tore the bodies of the wretches before they reached upto the bottom.⁹⁵ Bakkar, Junnair (South) and Biana forts were also used as prisons.⁹⁶

Besides the forts and central prisons of the capital towns, there were jails also at the headquarters of the sarkars and parganas. The public prisons were called 'bandikhana'⁹⁷

-
93. Manucci, I, p. 134
94. *Early Travels in India*, p. 1456
95. *Indian Travels of Thevenot*, p. 98
96. Badaoni, II, p. 300 and 366
97. *Ibid*, p. 300

The Gwalior fort was reserved for the nobles who committed crimes. To Rohtas were sent those nobles who were condemned to perpetual imprisonment. Princes of royal blood were often sent to this place.⁹⁸

The prisoners were also transferred from one place to another according to need and necessity. On 27th October, 1692, a farman was issued through Siadat Khan to get the prisoners transferred to the fortress of Gwalior.⁹⁹

The Qazis used to visit the prisons and inquired into the conditions there. They were authorized to pass orders for release of prisoners who showed signs of repentance.¹⁰⁰ Usually this practice was neglected by the Qazis. The only redeeming feature for the prisoners was that orders for their release were issued on special occasions - On the birth of Prince Salim, Akbar Ordered that all the prisoners in the imperial dominions who were confined in the fortresses for 'great accounts' were to be released.¹⁰¹

Soon after his accession, Jahangin ordered the release of all those prisoners who had been imprisoned for a long time in the forts.¹⁰² In 1616, when he happened to pass by the fort of Ranthambor, he passed orders that some of the prisoners

98. *Early Travels in India*, p.293

99. *Akhbarat - i - Darbar-i-Mualla*, 27th October, 1692

100. Abul Fazal, *Akbarnama*, II, p. 345

101. *Ibid*, II, p. 345

102. *Tuzuk-i-Jahangin*, I, p. 6

confined there be released.¹⁰³ In 1618, Jahangir inspected the fort of Ranthambor and each prisoner was produced before him. Except the convicts of serious crime, he freed them all.¹⁰⁴

Cases of Imprisonment

In 1607 Janagir encamped at the village Amrohi in the Punjab. In this village and the neighborhood, there were about 8,000 households of Khaturs and Dalzaks, notorious for mischief and oppression and highway robbery. Jahangir passed orders for their arrest and imprisonment.¹⁰⁵

In December 1590, it was reported to Akbar that Shahbaz Khan had come from Swad without orders. He was committed to prison for three years.¹⁰⁶

It was reported to Aurangzeb at the Ghusalkhana court of Burhanpur on 13th November, 1681, that Mohammad Salih Naqshbandi holding the rank of 100 zat and 250 swar, had murdered a servant and a mace-bearer in a fit of madness. The Emperor ordered that he be deprived of office and placed in custody.¹⁰⁷

There are number of cases to which Mughal emperors gave personal attention and the result of the whole appears to have been effective. The historians to Mughal age considered that the

103. Ibid, p. 345

104. Ibid, p. 59-60

105. *Tuzuk-i-Jahangiri*, p. 100

106. *Akhbarat-i-Darbar-i-Mulls*, 13 Nov. 1681

107. Ibid, P. 210

weak and poor people should be protected against the oppression of the mighty. The monarch should be a friend and helper through justice and equality before law.¹⁰⁸ Although Mughal emperors administered justice according to Shariat but they never neglected non-Muslims and consequently won their support.

* * * * *

108. *Padshahnama*, Abdul Hamid Lahauri, P. 143



CHAPTER - VI

**LAW AND JUSTICE : WITH
SPECIAL REFERENCE TO
JAHANGIR**

LAW AND JUSTICE WITH SPECIAL REFERENCE TO JAHANGIR

The Mughal emperors were conscious of the fact that real glory could not be won with tyranny. The Mughals knew it well that their power could be sustained only through the gratitude of their subjects. They were deeply conscious that destiny had vested them with power and authority so that they could look after those who had been placed under them.¹

The Mughals established a high sense of justice. Jahangir had the wisdom and the statesmanship to adhere closely to the policy so clearly enunciated by his father, Akbar. Jahangir carried the policy to its logical conclusion, but the policy itself was the outcome of sheer necessity; it was the *Sine Qua Non* of the very existence of the government. The European travelers, who visited India during the reign of Jahangir and Shahjahan, bear eloquent testimony to the perfect religious toleration in the country as a whole.²

Review of the System of Law and Justice Under Jahangir

Jahangir formally mounted the throne in the fort of Agra on Thursday, October 24, 1605 and assumed the lofty title of Nooruddin Mohammad Jahangir Padshah Ghazi. He signaled

-
1. I.H. Qureshi, *The Administration of the Mughal Empire*, P.251, Low Price Publication, Dariya Ganj, New Delhi.
 2. Beni Prasad, *History of Jahangir*, P.81, The Indian Press, Allahabad.

his accession by an extensive issue of new coins and by release of prisoners.³ As recorded in the *Tuzuk-i- Jahangiri*, the first fifteen years of the Jahangir's reign were the best years of his life. The beginning of the sixteen year marks the beginning of his reverses, bad luck and ill health.⁴

The Mughal emperors achieved an administrative success whose effects long survived them. The nature of the mechanism they brought into existence, and the principles on which they worked was really their judicial administrative skill.

Though the Holy law was theoretically supreme in the state, the Ulema, who were the only authoritative exponents of that law, were never allowed to share that supremacy. First Akbar successfully emancipated that state from all clerical control. The Ulema almost lost their influence over dispensation of justice. It admitted the claim of the secular power to be free in theory as it was always in practice. Akbar's secular policy was followed by his son, Jahangir who steadily adhered to his liberal policy in matters of state though he never became avowed believer in the theoretical eclecticism.⁵

Jahangir had to promise before his succession that he would restore and maintain those Islamic traditions which had been discarded by his father.⁶ Shahjahan who was a deeply religious man, went further in reimposing the laws of Islam.⁷

3. Jahangir, *Tuzuk-i- Jahangiri*, Vol-I, P.3, Low Price Publication, Dariya Ganj, New Delhi.

4. Ibn Hasan, *Central structure of the Mughal Empire*, P.10, Radha Publication, New Delhi.

5. R.P. Khosla, *Administrative structure of the Great Mughals*, P.185, Kanti Publication, New Delhi.

6. *Cambridge History of India*, Vol-IV, P. 152, Oxford University Press, New Delhi.

7. *Ibid*, P.152

This shows that in spite of the growth of the power of non-muslims and the dissenting sects of Islam, it was not easy for the emperor to deviate flagrantly in the public policies from orthodox Islam, and even his personal behavior had to conform with prevailing religious opinion.⁸

It was, however, equally impossible to ignore the feelings of the non-muslims and the *Shariyat*. They held important offices and the emperors needed their cooperation. Jahangir reconciled orthodoxy, but in doing so, he did not offend others. It was well-known that the dominion partners in the empire were the orthodox muslims and the emperor himself belonged the same group. A certain amount of preference to them was, therefore, not resented, if this did not result in the withdrawal of any privilege which the others enjoyed. The non-muslim and the dissenters often made common cause and cooperated with one-another. Jahangir succeeded in maintaining a balance between the two.⁹

The Mughals ensured the security of the state with a high sense of law and justice. It has been remarked in the previous chapters that there were no written laws in the country. The justice was administered according to the Muslim law. After Akbar, Jahangir also knew that it was not possible to govern the country in strict observance of the law as described in the *fiqh* books. The law which had the widest recognition was the king's

8. *Cambridge History of India*, Vol-IV, P. 152, Oxford University Press, New Delhi.

9. L.H. Qureshi, *The Administration of the Mughal Empire*, P.35, Low Price Publication, Dariya Ganj, New Delhi.

will rather than the sacred law. Though the emperor was expected to make the precepts of the *Shariyat* in the administration of justice, but in actual practice, the wheels of justice moved according to royal will and the royal will alone.¹⁰

In the administration of justice, Jahangir aimed at standards which are really worthy of high appreciation. In the sphere of judicial administration, he tried to follow and enforced the law without fear or favour.¹¹ Though the Muslims were privileged class, the Hindu subjects were also treated equally. In secular matters, the law was largely the same for all. It can be said that the canon law was Islamic and common law was secular. The former was derived from the Quran or Islamic traditions while the other was promulgated by the monarch, supplemented by the judicial precedents. Local customs and traditions were generally respected in the adjudication of cases where there was no infringement of the fundamental laws of Islam.¹²

Jahangir also behaved as the *de facto* and *de jure* creators of law. Willium Hawkins has stated that Jahangir sat in justice everyday.¹³ The accounts of Willium Hawkins showed that Jahangir came to audience hall at 3'o clock and took his seat on the royal throne while his nobles and *mansabdars* kept standing.

10. *Cambridge History of India*, Vol-II, P.152, Oxford University Press, New Delhi.

11. *Cambridge History of India*, Vol-II, P.152, Oxford University Press, New Delhi.

12. *Ibid*, P.152

13. *Early travels in India*, P.115

For two hours he heard all cases in his palace. He remained in the court till the evening.¹⁴

There was no differentiation of the function of the legislation, the executive and the judiciary. All the functions were performed by the king. He was the supreme legislature, the head of the executive and the highest court of appeal. He needed the counsel and consent of none though he might ask for it. The twelve ordinances of Jahangir and Fatwa-i-Alamgiri were the work of the monarchs themselves and nobody had any hand in them. In his capacity as supreme judge, he was in theory accessible to everyone, high and low.¹⁵

Terry states that Jahangir sat as judge in any matter of consequence that happened near him and saw that summary justice was executed on the spot. But as there was neither written law nor fixed procedure, it was the offender rather than the offence that was punished. Willium Finch states that in the Agra fort was found the seat of chief justice presided over by *Qazi*, near this seat was the court where the king's *Vazir* seats every morning about three hours, by whose hands pass all matters of rents, grants, lands, debts etc.¹⁶ *Jahangir* had the high respect for the *Mir-i-Adl* and *Qazi*. Justice was on the whole satisfactory and the people were contented. No wonder that the

14. Ibid, P.184

15. R.P. Khosla, *Administrative structure of the great Mughals*, P.17, Kanti Publication, New Delhi.

16. Purchas, his *Pilgrims*, by S. Purchas, Vol-IV, P.72

Jahangir's anxiety to punish all kinds of evil-doers brought about general prosperity in his time.¹⁷

Concept of Chain of Justice and Twelve Ordinances

Jahangir was determined to make himself easily accessible to his subjects without mediation of his officers and servants. He was conscious of the fact that the real glory could not be won with tyranny. The power could only be sustained with the favor of all sects of people. There were no written laws except Islamic law. Jahangir tried to establish a judicial system in which all, great or small came within its influence.

In order to defeat the obstruction to the common people from the royal servants, Jahangir fastened a chain between the Agra fort and the bank of river Yamuna, which everyone could touch and to which bells were attached.¹⁸

Bernier in his description of Delhi and Agra makes a reference to the emperor's duty to do justice to those who appealed to him.¹⁹ In this regard, Jahangir started an innovation in the domain of justice. He had a chain hanging outside of his palace for the benefits of complainants of all ranks who wanted to approach him for the redress of his grievances. He did it perhaps in imitation of Caliph Anaushirwan with whom doing

17. *Cambridge History of India*, Vol-II, P.203, Oxford University Press, New Delhi.

18. Beni Prasad, *History of Jahangir*, P.102, The Indian Press, Allahabad.

19. Bernier's *travels in the Mughal empire*, translated by Archibald Constable, P.235-36.

justice was a passion who had invented a similar chain of justice.²⁰ Jahangir mentioned of this chain in his Memoirs-

The first order which I issued was for the setting up a chain of justice, that if the officers of the court of justice should fail in the investigation of the complaints of the oppressed, and in granting them redress, the injured person might come to this chain and shake it, and so give notice to their wrongs. I ordered that the chain should be made of pure gold and be thirty gaz (yards) long with sixty bells upon it. The weight of it was four Hindustani mans, equal to the thirty two mans of Iraq. One end was firmly attached to a battlement of the fort of Agra, and other to a stone-column on the bank of the river Yamuna.

William Finch also threw light on the chain of justice of Jahangir. He described, 'on the other side of this court of presence are hanged golden bells, that if any be oppressed and can get no justice by the king's officers, by ringing these bells when the king sits, he is called, and the matter discussed before the king. But let them be sure their cause be good lest he be punished for presumption to trouble the king.'²¹

Hawkins has also stated that whenever anyone shook the rope to which fastened golden bells, the noise was heard by the emperor who at once sent for the man who had shaken the rope and allowed him to present his case to him in person.²²

The chain of golden bells is an illustration of the eagerness of the Mughal emperor Jahangir to do justice to his subjects and to encourage the oppressed to approach direct to the emperor. A Persian writer contains the fictitious story of an ass that,

20. Muslim Institutions, P.201

21. Purchas, *his pilgrims*, by S. Purchas, Vol-IV, P.74.

22. *Ibid*, P.43-44

wondering on the river's bank, happened to shake the chain. An inquiry was at once instituted into his grievance, when it was found that his master, a miser, neither did nor looks after him well, he was warned for future.²³ It may be hyperbolic but it was undoubtedly Jahangir's sincere expression of his zeal to provide justice to his people.

The Twelve Ordinances

It has already been remarked that there were neither written laws nor written constitution. The twelve ordinances of Jahangir were the first instance of written laws during the entire Mughal rule. They concern important matters and make interesting reading-

1. Cesses and tolls, and other burdens which the Jagirdars of every province and district have imposed for their own profit, are forbidden.
2. Rest-houses, mosques and wells, are to be built by the jagirdars on lonely roads where robberies take place, to stimulate a resident population there.
3. Merchants' bales are not to be opened on the roads without their knowledge and permission.
4. The property of deceased, whether Muslim or Hindu is to go to his heirs without interference, in the absence of heirs, guardians are to preserve and administer the property for the public good.

23. The Persian M.S., Razul Mulk, P.20 (Quoted from "History of Jahangir by Beni Prasad)

5. Manufacture and sale of wine and all intoxicating drugs are prohibited. Jahangir himself was used to take wine from the age of eighteen. In the latter part of his life, he started drinking only to digest his food.
6. No person's house shall be seized. The government officers were strictly ordered not to take possession of anyone's property without reasonable cause.
7. No one's nose or ears shall be cut off. I vowed by the throne of God that I would not thus mutilate anybody.
8. Officials and Jagirdars shall not take the rayat's land by force and cultivate them on their own account.
9. A government collector or a Jagirdar shall not intermarry with the people of the pargana without royal permission where he resides.
10. Hospitals shall be founded and physicians be appointed for the free treatment of the poor people to be paid out of the state revenue.
11. In accordance with the regulations of my revered father, animals shall not be slaughtered from my birthday each year for a number of days equal to my age; nor on Thursday, my accession day. And Sunday, my father's birthday.
12. The offices and Jagirs of my father's servants are confirmed. I increased the allowances of all the veiled

ladies of my father's harem from 20 to 100 percent. I released all criminals who had been long confined in the forts and prisons.²⁴

Many of these ordinances read like the clauses of the Magna-Carta which was wrested by the English barons from the king John in the year 1215. But these ordinances were given out by the emperor Jahangir of his own free will without any pressure being put upon him. His act was therefore, more graceful than that of the English king. It was an act of benevolence and not the result of a successful clamor on the part of any adversaries.²⁵

The concept of justice, in its broadest sense, became an obsession with him. Though the golden chain installed in his private apartment in the fort in the beginning of his reign had gone into disguise, petitioners came to him from all over the kingdom asking for wrongs to be righted and dispensation of justice on ground of humanity. Jahangir with Noorjahan by his side, listened to their tales of grievances and meted out redress. In fact, 'the chain of justice' and 'twelve ordinances' was to constitute a standard canon of law which he expected to be implemented all over the country.²⁶

Jahangir's love for justice: A critical analysis

Jahangir was a fairly successful ruler and administrator. He had the capacity to adept himself with the need and

24. These twelve ordinances have been extracted from *Tuzuk-i- Jahangiri*, Translated by A. Rogers and edited by H.Beveridge, P.7-9, Low Price Publication, New Delhi.

25. R.P. Khosla, *Administrative structure of the great Mughals*, P.139,

26. *Cambridge History of India*, Vol-II, P.107, Oxford University Press, New Delhi.

circumstances of the age. He had the good sense to adopt such administrative system which was acceptable to people at large. Jahangir's reign is known for his great love for justice. The contemporary writers and foreign travelers have estimated Jahangir as a just and benevolent ruler who took major initiative in the domain of justice.

In the beginning of his reign, Jahangir favored Islam in order to secure himself on the throne of Delhi, but thereafter his orthodoxy waned.²⁷ He knew that it was not possible to attain a stable empire under strict Muslim law. He found the interference of Ulema dangerous for the state and curtailed their power. Father F. Catrou has described that the emperor was not frightened by the prohibitions of the Quran.²⁸ His policies made the Ulema climb down. But it was another face of Jahangir when he ordered to punish the Hindus of Rajauri who used to marry Muslim girls and convert them to Hindu. He also ordered temples to be demolished in Mewar and Kangra.²⁹

Though the administration of justice was regarded throughout the Mughal Empire as a subject of great importance.³⁰ It has been remarked that there were no written laws in the country. The issuance of twelve ordinances was the mature mindset of Jahangir to prepare a written constitution in order to win the affection of his subject.

27. Sir Thomas Roe, *Journall in Purchas IV*, P.310, edited by William Foaster, Published by Hakluyt Society.

28. Father F. Catrou's *History of the Mughal Dynasty*, English translation, P.138-39

29. Beni Prasad, *The History of Jahangir*, P.80, The Indian Press, Allahabad.

30. Bernier's *travels in the Mughal empire*, translated by Archibald Constable, P.235-36.

The well-known 'Chain of Justice' is another example of Jahangir's love of justice. Jahangir granted this valuable right to his subject so that everyone could get justice easily.³¹ The another motive of this chain was to fill the gap between the ruler and the ruled. The eminent historians as Lane poole and Sir J. Sarkar etc. are not unanimous on this point whether anybody was bold enough to pull the chain and possibly it was never used. Lane Poole further says that in absence of all evidence, it will be injustice to assume that it was never used. It may be possible that this practice might have been so common that no writer thought it necessary to mention in records.³²

Jahangir is characterized as a complexed personality in Indian history. Terry writes of him "now for the disposition of the king it ever seemed unto me to be composed of extremes: for sometimes he was cruel and at other times he would seem to be exceedingly fair and gentle."³³ Beveridge remarks: Jahangir was indeed a strange mixture, the man who could stand by and see men flayed alive... could yet be a lover of justice and could spend his Thursday evening in holding high converse...he could procure the murder of Abul Fazal and avow the fact without remorse, and also pity the royal elephants because they shivered in winter when they sprinkled themselves with cold water... one good trait in Jahangir was the hearty enjoyment of nature and his love for justice.³⁴

31. R.P. Khosla, *Administrative structure of the great Mughals*, P.134, Kanti Publication, New Delhi.

32. Lane Poole, *Medieval India*, P.289

33. Edward Terry's *Voyage of East India*.

34. Beveridge's remark in the preface of *Tuzuk-i- Jahangiri*.

As a ruler, Jahangir was proud of his even-handed justice. The princes and noblemen were also treated equally in the eyes of justice. In civil disputes, Hindus were given privilege to be governed by their own customs; but in criminal justice, Muslim jurisprudence was equal for all. Even high officials were given severe punishment.³⁵

If governors and the higher authorities were found abusing their power were promptly required to furnish explanation and were recalled, censured and severely punished. Akbar and Jahangir always took prompt measure to terminate and punish any rapacious or cruel course of conduct on the part of their officers.³⁶ Sayad Khan when appointed governor of the Punjab by Jahangir was warned that his notorious eunuchs tyrannized over the people and if any cruelty or harshness should be observed on the part of his people, he would receive punishment without favour.³⁷

For prevention of tyrannical acts of government officers, Jahangir took every necessary action. There are a number of references which estimates Jahangir a keen lover of justice. The Emperor's favorite, Muqarrab Khan, was punished with the reduction of his mansab by half for an individual act of cruelty.³⁸ Numerous similar incidents were occurred during the reign of Jahangir. Justice indeed was one of the strong points of Jahangir. He also sentenced a influential man, accused of

35. Ibn Hasan, *The Central structure of the Mughal Empire*, P.308, Radha Publication, New Delhi.

36. Beni Prasad, *History of Jahangir*, P.107, The Indian Press, Allahabad.

37. *Ibid*, P.108

38. *Ibid*, P.108

murder, to death. 'God forbid' he writes, 'that in such affairs I should consider princes and far less that I should consider Amirs'.³⁹

Francis Gladwin has also observed that "from the beginning to the end of his reign, Jahangir disposition towards his subject appears to have been invariably humane and considerate."⁴⁰ Jahangir removed some vexatious transit duties and taxes and made an attempt to prohibit traffic in eunuchs. It was a vilest practice during the reign of Jahangir that the farmers who were failed to pay land revenue, used to castrate their male children and present them to the Jagirdars for services in their Harams. Jahangir possessed strict orders to ban such practice and prescribed deterrent punishments for violators of the regulations.⁴¹

It was unfortunate with Jahangir that he had become familiar with wine at an early age and addicted to it with other sensual pleasures. Contrary to his addiction of wine, the sale of intoxicants liquor and drugs were prohibited.⁴² Customs such as *Sati* and infanticide were forbidden. Compensation was paid to damage done by the troops on the mart and when the famines took place.⁴³

Jahangir was also conscious to reform the condition of prisoners and prisons. After inspecting the fort of Ranthambhor.

39. Beni Prasad, *History of Jahangir*, P.107, The Indian Press, Allahabad., P.108

40. Francis Gladwin's remark

41. Waqiat

42. *Tuzuk-i-Jahangiri*, Twelve ordinances of Jahangir, P.8, Low Price Publication, New Delhi.

43. Beni Prasad, *History of Jahangir*, P.82, The Indian Press, Allahabad.

He ordered that all criminals be brought before him so that they may get justice. He ordered the release of all prisoners who had been imprisoned for a long time and gave them opportunity to start a respectful life again.⁴⁴

Jahangir brought some amendments in inflicting punishments. Jahangir had reserved to himself the right of awarding capital punishment. Makingasking of eunuchs was declared by him a capital offence. He abolished the punishment of cutting of nose and ears. Although he abolished the barbarous punishments, but in political crimes and rebellious criminals, he did not hesitate to inflict deterrent punishments.⁴⁵ Hawkins also mentions Jahangir's love of justice. According to him, "he was very strict in punishing those against whom complaints of injustice reached him."⁴⁶

As the Mughal emperors behaved like the father of all their subjects, irrespective of the religion they professed and race they belong to, the people whether Hindu or Muslim considered it their duty to serve him faithfully.⁴⁷ Jahangir's liberal regime conducted to the happiness of his subject, and the absence of an individual distinction between the followers of the profet and the members of an alien faith kept that regime strong and stable.

Practical application of justice during the reign of Jahangir

Abul Fazal describes the ideal character of a just monarch. According to him, "the ideal king or a just monarch is a wise,

44. Jahangir, *Tuzuk-i- Jahangiri*, Vol-1, P.6, Low Price Publication, Dariya Ganj, New Delhi

45. Hawkins, *Early travels in India*, P.115

46. Ibid, P.115

47. R.P. Khosla, *Administrative structure of the great Mughals*, P.134, Kanti Publication, New Delhi

enlightened, just and God fearing man- a lover of all people, cherisher of all sects and religions, shepherd of his subjects, iron fortress and celestial armor of the weak."⁴⁸ These words of Abul Fazal seem fit to the personality of Jahangir. After Akbar, Jahangir continued most of his policies. First Jahangir took an initiative to raise the standard of dispensation of justice and made it approachable for all sects of people.

Jahangir had the wisdom and the statesmanship to adhere closely to the policy so enunciated by his father. He issued twelve ordinances right after his accession in furtherance of his father's beneficent policy.⁴⁹ Secondly, the concept of chain of justice was result of his practical thinking to reduce the distance between monarch and his subjects. The another objective of his concept was to provide justice to his poor rayats who were oppressed by his officials. Jahangir became very strict in punishing those of his officials whom complaints of injustice reached him. There are many references of the higher officials being severely punished as the result of the complaint lodged against them by ordinary persons.

The golden chain of justice was really an innovation in the domain of justice. Jahangir had this chain hanging outside his palace for the benefit of complaints of all ranks who wanted to approach him for the redress of their grievances.⁵⁰ The famous historian Lane Poole suspects that it is on record whether

48. Abul Fazal, *Ain-i- Akbari*, P.4, edited and translated by A Rogers and Beveridge, Low Price Publication, New Delhi.

49. *Tuzuk-i-Jahangiri*, see twelve ordinances of Jahangir, P.6, Low Price Publication, New Delhi.

50. Beni Prasad, *History of Jahangir*, P.80, The Indian Press, Allahabad.

anybody was bold enough to pull the chain.⁵¹ It might be merely a diplomatic effort of Jahangir to prove himself a just ruler in the eyes of his subject. But in the absence of all records, it is not justified to assume that it was never used. The practice might have been so common that no contemporary writer thought it necessary to record it.⁵²

Jahangir's concept of chain of justice was not merely a pompous show as some critics have tried to make out. If Akbar forbade the flaying of persons alive, Jahangir too interdicted the cutting of nose and ears by way of punishment, though in a fit of temper he had ordered the eyes of his own son Khusru to be put out.⁵³

The success or failure of states does not depend upon mere mechanical or technical efficiency, or on mere military might. The stability depends more on the internal harmony they are able to create and sustain. It depends on their power of assimilation, their capacity to bridge the gulf between the ruler and ruled and the relations obtaining between various sections of the people.⁵⁴ Jahangir established the state of social equality in which he could win the favor of his non-muslim subject.

The judiciary had a distinct organization and offices of its own. Except in grave matters, the villages were generally left undisturbed, and the village and caste panchayats were

51. Lane Poole, *Medieval India*, P.158

52. *Ibid*, P.158

53. Beni Prasad, *History of Jahangir*, P.80, The Indian Press, Allahabad.

54. Lane Poole, *Medieval India*, P.158

everywhere suffered to exercise a sort of jurisdiction. But every town, generally even a very small town, had a *Qazi* and a *Mir-i-Adl* who formed a judicial bench. The former investigated the case while the latter pronounced the sentence.⁵⁵ Jahangir says in his Memoirs- "*Mir-i-Adl* and *Qazi* are the pivot of the divine law and they should not kiss the ground before me, which is a kind of *sizda*."⁵⁶ These both officials were highly respected by Jahangir. It was a high complement to both these officials by Jahangir.

Jahangir's respect for the village autonomy ensured the social and economical harmony upto the downfall of Mughals. The village panchayat continued to keep a vigilant eye on breaches of time-honored customs, to secure order and mutual co-operation, to settle petty disputes.⁵⁷ During this period when the arm of the state was not so long as it is today, when the big hereditary landlords did not exist, the village organization was a real force to maintain law and justice within villages.⁵⁸

Jahangir was very particular about his duty. We learn from his Memoirs that for the sake of administering justice, "I sat at the Jharokha for two or three sidereal hours and listened to the cries for redress, and ordered punishment on the oppressors according to their faults and crime. Even in the time of weakness I have gone to the Jharokha, though in a great pain and sorrow,

55. V.A. Smith, *Oxford History of India*, P.375, Oxford University Press, New Delhi.

56. *Tuzuk-i-Jahangiri*, Vol-1, P.203, translated and edited by A. Rogers and Beveridge, Low Price Publication, New Delhi.

57. Beni Prasad, *History of Jahangir*, P.82, The Indian Press, Allahabad.

58. *Ibid*, P.82

according to my fixed custom, and have looked on ease of body as something unlawful for me."⁵⁹ The ceremony at the first sight appears childish but it served to impart the much-needed personal touch to the Government.⁶⁰

There were no written codes of substantive law or of procedure. As Sir Thomas Roa said, "Laws they have none written."⁶¹ Civil cases were decided according to custom, though difficulties must have arisen when the parties appealed to different sets of customs.⁶² Edward Terry, who was in India from 1616 to 1619 speaks of the dispensation of justice by the Jahangir, and adds, "The governor in cities and provinces proceed in like formed of justice. I could never hear of law written amongst them; the king and his substitute's will is law."⁶³

Jahangir was more capricious than his illustrious father, and possessed a violent temper, aggravated by habitual and excessive temperance. He was capable alike of great cruelty and almost childish tenderness—a curious mixture of extremes, as Terry observed. The deliberation which characterized the infliction of punishment by Akbar was absent from the dispensation of justice of Jahangir. Trials were quick, said the same observer.⁶⁴

59. *Tuzuk-i-Jahangiri*, Vol-II, P.13-14, translated and edited by A. Rogers and Beveridge, Low Price Publication, New Delhi

60. Beni Prasad, *History of Jahangir*, P.88, The Indian Press, Allahabad

61. Thomas Roa's remark, P.320

62. Beni Prasad, *History of Jahangir*, P.88, The Indian Press, Allahabad

63. W. Foaster, *Early travels in India*, P.326

64. W. Foaster, *Early travels in India*, P.318.

In the fifteenth year of Jahangir's reign the Qazi and the Mir-i- Adl of Lahore forwarded a case in which Abdulvahab, the son of Hakim Ali, claimed Rs.80,000 from the Saiyads of Lahore and produced a bond with the seal of Qazi Nurulla. He said that his father had placed that sum in deposit with Saiyad Vali, the father of these men, who denied it. The son of the Hakim, besides proving the case was prepared to swear on oath on Quran. Jahangir told them to do whatever was right by the divine law. The matter was a complicated one. Jahangir accordingly ordered Asaf Khan to settle the case, if it could not be cleared up, I(Jahangir) would examine them in my own presence. Having heard this, the Hakim's son lost both of his hands and heart in the affair.... And proposed a withdrawal which was not accepted. He was forced to appear before Asaf Khan for examination, and confessed that the fake deed had been prepared by his servants and had misled him. He gave a written statement to this effect which was put up before Jahangir. Jahangir took away his mansab and cast him out of his presence and gave the saiyads leave to return to Lahore with all honour and respect.⁶⁵

As far as the administration of justice is concerned, the separation of the executive and the judiciary maintained in the civil cases was not adhered to. According to the Ain-i-Akbari, the governor possessed the power of inflicting even capital punishment though in practical a great check was exercised on

65. *Tuzuk-i-Jahangiri*, Vol-II, P.158, translated and edited by A. Rogers and Beveridge, Low Price Publication, New Delhi

his power. Jahangir had reserved to himself the authority of awarding of capital punishment.⁶⁶ Palsart's remark that the governor, the Diwan and the Bakshi sit together daily or four days in a week with the judges must refer to important cases only.⁶⁷

The regulations and the instructions sent to the provinces from time to time recoded in the *Mirat* show that the governors possessed the right of general supervision over the administration of criminal justice in his province. He himself sat in the court to try cases and the district *faujdar* sent him an accused arrested by him. It was his duty to inquire into the nature of the charges, to send those whose cases fell under the *Shariyat* for trial to the *Qazi*, to try political offences himself and to refer revenue cases to the Diwan. The governor was also vested with the power to inspect jails regularly and to release those whom he considered innocent.⁶⁸

There are innumerable farmans and other documents scattered all over the history of Mughals and also preserved in various collections of the world where the anxiety of the Mughals to dispense justice and look after the interest of people finds constant expression. If the Mughal government had not been benevolent, the prestige of the Mughal emperors would not have been so high as to impel the destroyers of his authority like the Marathas and the British to clothe themselves with legal authority derived from them.⁶⁹

66. *Tuzuk-i-Jahangiri*, Vol-II, P.150, translated and edited by A. Rogers and Beveridge, Low Price Publication, New Delhi

67. Dr. S.P. Sengar, *Crime and Punishment in Mughal India*, P.36, Reliance Publication House, New Delhi.

68. *Mirat-a-Ahmadi*, P.104.

69. I.H. Qureshi, *The Administration of the Mughal Empire*, P.250, Low Price Publication, Dariya Ganj, New Delhi.

In an age when media of mass publicity were not able to the government, the creation of the favorite image could only be achieved only through sustained solid efforts and the constant pursuit of benevolent and just policies.⁷⁰ There was hardly an occasion when instructions were issued to the subordinate officials that the benevolent feelings of the emperor were not reiterated.⁷¹

Jahangir possessed a high sense of responsibility towards practical application of justice. He was completely anxious and vigilant to ensure compliance with his orders. He spent a good deal of time in listening to the reports of the secret agents from far flung parts of his empire and took pains to maintain his news-service and intelligence in proper gear.⁷² Jahangir devised method of maintaining direct contact with his subject. He permitted no one to deny the poor and lowly access if they sought justice. The reporters scattered all over the empire who were enjoined to report any lapse on the part of the government officials.⁷³

The Mughal government was, therefore, firmly established in justice. The system of law and justice enforced by Jahangir was widely accepted notion of right and wrong. It was civilized, generally accepted and conducive to orderly social life.

* * * * *

70. I.H. Qureshi, *The Administration of the Mughal Empire*, P.250, Low Price Publication, Dariya Ganj, New Delhi.

71. *Ibid*, P.251

72. Dr. J.N. Sarkar, *The Mughal Administration*, P.80, The Chugh Publication, Allahabad.

73. *Ibid*, P.80



CHAPTER - VII

CONCLUSION

CHAPTER-VII

CONCLUSION

Before the advent of Mughals, the history of India is full of conflicts between monarchy and the local powers in which one or the other triumphed at different times. It was the period of social and political disorder. The elements of Islam in the country created its own problem. Muslim rulers always had to face the problem of disharmony between Muslim-law and the governance of non-Muslim majority. Mughals ruled as Khalifas of God and to the extent they enforced Islamic law as Muslim kings had been in accordance with the necessity of place and time. Mughals brought the policy of religious tolerance to attain the magnificent structure of their empire which remained intact for a long period.

The Mughal empire was not truly a Islamic state. It was not possible for the Mughals to rule India under strict Muslim jurisprudence. The theory of Islamic jurisprudence does not recognize the non-Muslim as a citizen of the state. Islamic law divides the subjects under a Muslim king into two sections, believers and non-believers, and imposes a duty upon the king to see that believers live as true Muslims and non-Muslims remain in the position allotted to them as Zimmis, a position which denies them equal status with Muslim subjects, but guarantees security to life and property and continuance of their religion and religious practices under certain defined conditions.

In the aforesaid view the state is an organization to subserve the ends of the creed of Islam and consequently no muslim can have any place in it. Mughals had to face the problem of reconciling the principles of Islam with that of Indian conditions. The position of the monarch could be strong only if the state was secularized. Though the state-religion was purely Islamic, yet for all practical purposes, Mughals kept the state and the religion separate. The Mughals were the protectors and guardians of Islam, but they did not mind entrusting places of responsibility to those who did not profess that faith.

The organization of the judicial system of the Mughals was entirely the same as laid down by Muslim Jurists and established in Northern India by the Sultans of Delhi. Though the Muslim Jurists differ as to the right of the King to administer justice personally. As the administration of justice required technical knowledge of the subject it was necessary for the king to appoint one of the best Ulema of the age. The king was also required to appoint a body of Ulema capable of giving *Fatwah* on legal point. In this way, the King was certainly the head of the Islamic State but not the highest authority on Islamic religion.

Akbar promulgated the document of Mahzar in 1579 which was followed by the adoption of the formula, "*there is no God but God and Akbar is God's representative*". Thus Akbar successfully emancipated the state from all clerical control. The Ulema lost all influence with the people. Akbar once got so disgusted with their brawls that he ordered that the Ulema who talked nonsense and

did not know how to conduct themselves with decency should be reported to him so that he might order them to leave the hall. Mughals knew that it was dangerous for the administration in a proper way to give the religious power a free hand in political matters. Mughals enjoyed complete supremacy and had control over all such authorities.

Babur and Humayun had been busy in battle fields and thus they had no time to consolidate the empire. The golden era of Mughal empire starts with the reign of Akbar. The manner in which Akbar won the favour of Hindu majority alongwith his Muslim subject and achieved success in his object is a proof of his genius for administration. He also achieved the precious support of Hindu rulers in the administration and to maintain law and justice. Humayun gave particular encouragement to the native races of warriors-the brave Rajputs, and appointed many of them to the important offices under them. He recruited them for his army and laid the foundation on which his son and successors built a magnificent edifice for the coming Mughal rulers. Subsequently the Hindus were appointed on higher posts and they were not required to take an oath admitting their faith in Islam. The non-Muslim officials constituted a fairly important part of the administration machinery of Mughals. Some of the higher posts were held by them and they never betrayed the emperor.

There were two striking features of the judicial system as noticed in the present thesis. First, Akbar and his successors maintained the entire structure of the Islamic state as laid down

by the Muslim jurists and strictly followed Islamic law in the greater part of the sphere of the judicature, as was not done by them in any other part of the political structure of their empire. The law of inheritance, marriage and divorce were so closely related to the religious beliefs and faith of Muslims that they could not be altered or amended in any form. Hence civil law admitted no scope for any change and they are still same even today in Modern India. Secondly, the judicial department stands in a marked contrast in organization, in status, and dignity to the other departments of the government which was highly organized and equipped with efficient men.

The Mughal emperors are known in Indian history for their love for justice. The administration of justice was regarded as an important duty which the sovereign could not afford to neglect. According to Akbar, "*the divine element in monarchy was justice*". The Holy Quran definitely declares that *the unjust shall not prosper*. According to the author of *Seir-i-Muthakherin*, "The splendor and delight of the garden of this world, and the vendure and fruitfulness of the fields of this earth depend upon the flow and stream of the equality and justice of kings." Justice, indeed was one of the strong points of the reign of Jahangir. Father Monserrate has praised Akbar's regard' for right and justice in the affairs of government. He was by nature kind and benevolent and was sincerely anxious that offenders should be punished.

Akbar organized the country in provinces, instead of parceling it out into military fiefs and thus established uniform systems and institutions, throughout the country under the

direct control of the capital. This guaranteed internal security against the oppression of the strong over the weak, and the principle of Abul Fazal that the 'hearts of the rulers are an iron fortress and celestial armour' for the lover of peace and 'life-slaying sword and heart-rending dagger' for the wicked was emphasized by Akbar and his successors.

Akbar was succeeded by his son Salim who assumed the title of Jahangir. Jahangir is regarded as a great lover of justice, among all Mughal emperors. The contemporary writers and foreign travelers have estimated Jahangir as a just and benevolent ruler who took major initiatives in the administration of justice. Jahangir had the multidimensional personality of Indian history. Jahangir's concept of justice has been well described in Chapter-VI of this thesis. His concepts of twelve ordinances and 'the chain of justice' were the result of his mature and progressive outlook. He completely succeeded in his motive to fill the gap between ruler and ruled. He was also inclined to protect his poor rayat who were oppressed by his higher officials.

Jahangir immediately after his accession warned Sayid Khan, the Governor of Punjab that if his notorious eunuchs tyrannized over the people, "my justice would not put up with oppression from any one, and that in the scales of equality neither smallness nor greatness was regarded. If after this any cruelty or harshness should be observed on the part of his people, he would receive punishment without favour." He always

took stern steps against the influential men for their misconduct.

The justice administered during the Mughal times was primarily the sacred law as given in the Quran and the tradition of the Mohammad. Over all the Mughal Emperors were the supreme law-giver and legislation on those few occasions when the nature of a case necessitated the creation of new legislation or the modification of the old. His pronouncement overrode everything else, provided they did not run counter to any expressed injunctions of the Holy law. The decisions were based on the emperor's good sense and power of judgement rather than on any treaties of law. Everything depended on the royal will which determined all rules and regulations.

Regarding the administration of justice, the Emperor was the highest authority in the kingdom and was the foundation of justice. It seems wrong to say, as alleged by the foreign travelers, that the king's will was always law in all affairs. There was the Islamic law and he dared not transgress the boundaries of the Shariyet without provoking misgivings in the hearts of the orthodox. It was particularly true in the case of Shahjahan and Aurongzeb who were the staunch Sunni and based their decisions as far as possible on the orthodox law. The Mughal emperors, however, were subject to no other religious authority is or outside India. Shahjahan upheld the maxims of his father that true justice must be enforced.

According to Manucci, Aurangzeb was also desirous of appearing a great lover of justice. He maintained that a king should apply himself unweariedly and painstakingly to the dispensing of equal justice to all. He endeavored to maintain in the eyes of the world that he is zealous in the eyes of the justice.

Mughal monarchs always kept an eye on all departments of the state including that of law and justice. From the clerk to the minister of a department, everyone knew his duties, his position and his daily routine. The clerk could say to the minister and the minister to the king that the rule was such and such in a particular matter. The Mughal emperors used to hold their court everyday where ordinary cases were heard and decided. The administration of justice during Mughals is well discussed in the chapter-II of the present research. It is significant to state here that the Mughals even when out of the capital, did not neglect the cause of justice. During his stay in Ahmadabad in 1618, Jahangir appeared in the Jharokha everyday for about three hours to administer justice. The chain of justice was the special treatment of Jahangir to provide justice to his subject in person.

The routine of judicial work was not allowed to be interrupted during tours, excursions, or even military expeditions. The Mughal emperors took special care to avoid the least injury to the farms or any other property of the people even when they went out to hunt. Jahangir described an incident of the fourth year of his reign, when he went out for hunting, "As the Rabi Fasal had arrived, for fear any damage should happen

to the cultivation of the ryots from the passage of the army, and notwithstanding that I had appointed a *qur-yasawal* (a head watch) with the band of Ahadis for the purpose of guarding the fields. I ordered certain men to see what damage had been done to crops from stage to stage and pay compensation to the ryots."

Bernier praises the Mughal system of justice on the ground that it required very few lawyers and necessitated the institution of very few law-suits. He also admires the speedy decision of cases and the absence of long and intricate legal proceedings. The theory of the accessibility of the emperor of the meanest of his subjects for purpose of justice was on the whole a very salutary one. It served as a definite check on the government officials.

There are many instances of high officials being severely punished as the result of a complaint lodged against them by ordinary persons. There was hardly any Mughal Emperor who was not anxious to spend a considerable amount of time in dealing out justice. This justice was based on the personal will of the emperor and not on any statute laws.

The most magnificent feature of the Mughals was that they ruled the country mostly with unwritten law. It has been remarked in the previous chapters of this thesis that except the Islamic law there were no written laws in the country. In Mughal period, the scenario was quite different. Written laws were not seen as in present days. Mughals in India from Babur to Aurangzeb, though accepted the Islamic jurisprudence but

implemented it according to the necessity of place and time. By this, they proved that they were sovereigns and none was above them. Mughals were not completely ignorant to this point. They had a vision towards preparing a written constitution. The twelve ordinances of Jahangir were the major initiative taken by him in this regard. Aurangzab also appointed a syndicate of theologians to prepare such a digest in India. The result was the *Fatwa-i-Alamgiri* prepared in Arabic.

The philosophy of Islamic jurisprudence defines Islam that 'It is not only a religion but also a civilization and social order based upon revealed principles. Islam stands out distinctly among the religions of the world in that its punishment and retribution laws are applied under exclusive rules and regulations, dealing with matters related to Allah and obligation to human kind.

The Chief features regarding law and justice under Mughals were the efforts of the monarchs to establish equality before law for all, and their stern and impartial justice. Not only was the law one for all, but the punishments awarded in recorded cases were the same for high and low. The courts were few, procedure simple, trials quick. There were neither lawyers to live upon litigation nor heavy court fees to maintain a highly organized state department of justice. Whether it was good or bad is a controversial matter which even modern experts cannot decide dogmatically. But it is certain that the system suited the age in which it existed, and the society for which it was

maintained. Although its defects continued throughout the period, but the harm resulting from them was much more limited than is generally believed.

Justice was on the whole satisfactory and the people were contented. The author of *Labbu-t-Twarikh-i-Hind* describes the fact that Shah Jahan's empire was so vast in area, so few offences were committed and so few cases were referred to his Majesty. No wonder that the emperor's anxiety to punish all kinds of oppressive evil-doers brought about general prosperity in his time. He tried his best to secure the services of honest men who could carry into effect the royal wishes. He himself reaped the benefit of his just rule as the state revenue increased and the imperial treasury was fuller than it had ever been before.

The administration of justice was regarded as a sacred thing by the Mughal rulers. The right of appeal to the emperor, though in many cases futile, was a valuable privilege which served as a standing check on judicial inequity. In several cases, it proved a real boon. The high sense of justice coupled with a tolerant religious policy made the people fairly contented. Disorders were suppressed with a strong hand. The Mughal rulers established peace and order in the land and saved the country from the evils of a weak and unstable administration.

The Mughal government was, therefore, firmly established in justice. The system of law and justice enforced by the Mughals was widely accepted notion of right and wrong. It was civilized, generally accepted and conducive to orderly social life. These all

ingredients themselves make the relevancy of the present research.

In the latter period of the Mughal empire, the over-centralization of the power and the absence of any constitution to guarantee the continuance of the present institution of justice caused down-fall of the empire. The short-sighted policies of Aurangzeb were also responsible for the same.

It was the force of the personalities of Akbar and his immediate successors and the fortunate incident of their long lives which contributes to the achievements of their dynasty and the prosperity of the country, and kept in check all the disintegrating elements in the higher and the lower ranks. When this force was gone, both Hindu and Muslim showed the same tendency. They lost their social integration. The Sikhs, Rajputs, Saiyids, Sheikhs, Afghans, Irani and Turanis, who formed the bulk of higher classes of society contributed equally to its fall.

However, Shah Jahan had the satisfaction of seeing Akbar's ideal fulfilled during his regime, and the proof of it curiously comes through Aurangzeb, who in one of his letters records it. It clearly shows the scope of state activities, the ideals of the monarchy and the people's expectations from it. It was towards the close of his rule, during Sadulla Khan's vizarat, when Shahjahan, going out in a procession, suddenly, stopped at the cry of an unknown person; 'Hail, O King! Thou owest a thanks- giving to God, The king is just. The ministers are able and the secretaries honest. The country is prosperous and the

people contented. Shahjahan raised his hands in prayer, bowed his head, offered thanksgiving to God and the nobles, and the people witnessed it.

The state of law and justice during the Mughal period, described in previous chapters, amply established how the system was more manageable, more rational, more capable, speedy and effective in the enforcement of the law of the land and a strong legal system of the state. Rulers and ruled found more acceptance of the system and ruled once found their contentment. If we compare the law and justice state of the present India with that of Mughal period, we find that enforcement of law is very weak and feeble and as no sense of here in the mind of law breakers or offenders of the law. In the present time, administration of justice is very poor. Cases are highly accumulated in the court and dispensation of justice is badly delayed. As such law and justice have failed to find its ends.

It is, therefore necessary to go into the past of Indian history and try to find out ways and means conducive to establish strong and fearful law and a system to ensure speedy and fearful legal system to avoid undesirable delay in the administration of justice.

* * * * *

A decorative rectangular border with ornate, symmetrical scrollwork and floral motifs at each corner and mid-point of the sides. The border is drawn in black ink on a light-colored, slightly aged paper.

BIBLIOGRAPHY

BIBLIOGRAPHY

Primary Sources (Translated and edited from Persian to English)

1. Shaikh Abul Fazal, *Akbarnama*, translated by Henry Beveridge, Low Price Publication, New Delhi also published by Asiatic Society of Bengal.
2. Khwaja Nizamuddin Ahmad Bakshi, *Tabaqat-i-Akbar Shahi*, also known as '*Tabaqat-i-Akbari*', published by Nemi press, Lucknow.
3. Abul Fazal, *Ain-i-Akbari*, translated and edited by A. Rogers and H. Beveridge, Low Price Publication, New Delhi.
4. Zahir-ud-din, Mohammad Babur, *Babarnama*, Translated by A.S. Beveridge, Oriental Books reprint cooperation, Manohar Lal Publication. Pvt. Ltd., New Delhi also published by Low Price Publication, Dariya Ganj, New Delhi.
5. Abdul Qadir Badauni, *Muntakhab-ut-Tawarikh*, Translated Lieut- Colonel Ranking and W.H. Lowe, Published by Asiatic society of Bengal.

6. Gulbadan Begam, *Hamayun - Nama*, Translated by Mrs. A.S. Beveridge, Low Price Publication, New Delhi, also Published. By Asiatic Society of Bengal
7. Zia-ud-din Barni, *Tarikh-i-Firoz Shahi* translated by Henry Miller Elliot, Published in 1938 by Daral - Taba-i-Jamiha Uthmaniyah, Hydrabed, Deeca.
8. Jahangir, *Tuzuk-i-Jahangiri*, translated into English and edited by A. Rogers and H. Beveridge, Low Price Publication, New Delhi.
9. Mutamed Khan, *Iqbalnama*, Vol. I, to III, Third part is known as Iqbalnama-i-Jahangiri translated by Elliot & Dowson, A sciatic Soc. of Bengal Cul.
10. Minhaj-i-Siraj, *Tabqat-i-Nasiri*, translated by H.R. Raverty, Publication In London, 1881
11. Abdul Hamid Lahori, *Badshah Nama*, edited by J.N. Sarkar published by Asiatic society of Bengal, Calcutta.
12. Shams-i-Siraj Afif. *Tawarikh-i-Firojshahi* Translated by H.M. Elliot and John Dowson, Publication. by Asiatic society of Bengal, Calcutta.

13. Abdul-Razzaq Samsan-ul-Daula, *Maasir-ul-Umra*, 3 vols., translated into English by H. Beneridge, Published by Asiatic society of Bengal, Calcutta, 1887
14. Mirza Mohm. Kazim, *Alamgirnama*, edited by Ahamd Ali. Published by Asiatic Society of Bengal, Calcutta.
16. Khafi Khan, *Muntakhib-ul-lubeb*, edited By Kabir-ud-din Ahmad, Asiatic Society of Bengal, Calcutta.

Unpublished Sources

PERSIAN MANUSCRIPTS ALIGARH MUSLIM UNIVERSITY LIBRARY

Akhbarat-I-Darbar-I-MU Alla and the Araiz-O-Faramin

Court bulletins or the Imperial gazettes (*Akhbarat*) of the Mughal *darbar* containing brief records of daily occurrences at the Mughal *darbar* and the news-letters (*Araiz-o-farmin*) from the Imperial Court dispatched by the representatives of the Princes, Rajas and governors. These volumes are copies of the original preserved in the following libraries:

1. Royal Asiatic Society of Great Britain and Ireland.
2. Jaipur State Archives, which forms a large portion of such *Akhbarat*.

3. Raghbir Library, Sitamau (M.P.)

Following Volumes of *Akhbarat* in original texts with their translation in English by Asiatic Society of Bangal, Calcutta available in the Aligarh Muslim University Library, Aligarh which are utilized in the present research work.

- Volume-I** : It consists of 427 pages and contains records of the following dates-
November, 1679; September 1680: Oct., 1681; March 168 Feb. 1695; May 1696; March 1703, July, November, December, 1704, May-Sept. 1705.
- Volume-II** : 542 Pages 1681 July- December
- Volume-III** : 146 pages, 1658 May-June.
1688 April- August-October
1689 July and November
- Volume-IV** : 162 pages, 1692 Oct.-December
1693 January-October, December
1694 March-April
- Volume-V** : 224 pages 1692 November
1693 March, April, May, October
1694 March
1695 January, February, March
1696 March, April,
- Volume-VI** : 592 Pages,
Letters and *farmans* of Aurangzeb during 48th year of his rule (1704) and letters of Prince Bedar Bakht and Farrukh Siyar to Raja Jai Singh, Bishan Singh, Gopal Singh, Thakur Shyam Singh, Mir Qasim Husain, the *diwan* of Malwa, and others

Accounts by Foreign Travellers

1. Francis Bernier, *Travels in the Mughal* empire, 1656-68, Edited by Archibald Constable. Pub. By Oxford university Press, London 1931

2. John Baptise Tavernier, ***Travels in India***, edited by V. Ball in two volumes. Published by oxford University Press, London, 1925
3. Nicolao Manucci, ***Storio do Mogor***, edited by William Irvine, 4 vol. published by Oxford University. Press, London
4. Sabastien Manrique, ***Travels in India***, (1629-43) edited by Eckford Luard and Father H. Hosten, published in London
5. Thomas Roe, ***Embassy to India*** (1615-19), edited by William Foaster
6. Fransis Palsart : ***Jahangir's India***, translated by W.H. Moreland, published in Cambridge University Press, Reprint, New Delhi, 1925
7. W. Foster, ***Early travels in India*** (1513-1619) Oxford (with contents of Hawkins, W. Fineh, T. Coryet, E. Teny) University, Press, London, 1927
8. Thevenot, ***Indian Travels of The venot***, edited by S.N. Sen., Pub. by Manohar Publication, New Delhi.
9. De Laet, ***Empire of the Great Mughals***, translated from Latin into English by Hoyland and annotated by Bannerji, published in Bombay, 1928

11. Monserrate, **Commentary**. Translated by J.S. Hoyland and annotated by Banarjee.

Works on Islamic Law

1. E.J. Brill's **Encyclopedia of Islam**, (Vol. I,II edited by by Sir H.A.R. Gibb.) Vol. IV edited by C.E. Bosworth, B. Lewis and CH. Pellat, published by International Association of Academics-1938
2. Shorter **Encyclopedia of Islam** by H.A.R. Gibb., J.H. Kramers, Published by Arian Education Society, Harj Khas, New Delhi.
3. **Dictionary of Islam**, Thomas Patrick Hughes, Asian Education Services, Hauj Khas, New Delhi
4. Snouck Hurgronje, **Mohammadnism**, Oxford University, Press, London
5. Joseph Sahacht, **Origin of Islamic jurisprudence**.
6. H.A.R. Gibb and Bowen, **Islamic Society and the West**. (A Study of the impact of Western Civilization on Muslim Culture in near east), published by Oxford University Press, London.
7. Gandgray-Demombynes, **Muslim Institutions**

Published works of Modern Historians

1. V.A. Smith, **Akbar the Great Mughal**, Oxford University Press, New Delhi
2. G.B. Malleson, Akbar, **Low Price publication**, New Delhi
Lancer publication and Distributors Sarvpriya Vihar,
New Delhi
3. A.L. Srivastav, Akbar, Vol. I, A.P.H. Publication, New Delhi
4. Beni Prasad, **The History of Jahangir**, The Indian Press,
Allahabad.
5. Banarsi Prasad Saxena, **Shahjahan**, The Indian Press,
Allahabad
6. J.N. Sarkar, **Aurangzeb** (Vol. I to V), the chugh
publication, Allahabad
7. J.N. Sarkar, **Anecdotes of Aurangzeb** (Vol. I V), The
Chugh Publication, Allahabad
8. J.N. Sarkar, Mughal Administration, **Aurangzeb** (Vol. I to
V), The chugh Publication, Allahabad
9. Sri Ram Sharma, **Religious policy of Mughal Emperors**.
Manohar publication, Dariya Ganj, New Delhi.

10. Sri Ram Sharma, ***Mughal Government and Administration***, Manohar Publication, New Delhi
11. Ibn Hasan, ***Central Structure of the Mughal Empire***, Radha Publication, Sariya Ganj, New Delhi, Reprint, 2001
12. W.H. Moreland, ***India at the death of Akbar***, Low Price publication, Dariya Ganj, New Delhi
13. M.B. Ahmad, ***The administration of justice in Medieval India***. Aligarh Historical Research Institute, Published in Allahabad in Allahabad Law Journal Press. Allahabad
14. Kalikaranjan Qanungo, Sher Shah
15. Radha Kumud Mukerjee, ***Fundamental Unity of India***. D.C. Publishers for Bhartiya Vidya Bhawan, Varanasi
16. P. Saran, ***The Provincial Government of the Mughals***, The Indian Press, Allahabad
18. Tara Chand, ***The influence of Islam on Indian Culture***, The Indian Press, Ltd. Allahabad
19. R.P. Tripathi, ***Some Aspects of Muslim Administration***, Central Book Depot, Allahabad.

20. Dr. Satya Prakash Sanger, ***Crime and Punishment in Mughal India***, Reliance publishing House, New Delhi
21. I. H. Qureshi, ***The administration of the Mughal empire***, Low Price publication, Ashok Vihar, New Delhi
22. R.P. Khosla, ***Administrative Structure of the Great Mughals***, Kanti Publication, Dariya Ganj, New Delhi
23. H.S. Bhatia, ***Mughal Empire in India***, (their social, political, legal, cultural, religious and military systems), Deep and Deep publication, Rajauri Garden, New Delhi
24. Rajkumar (edited by), ***Administration, Law and justice in Medieval India***, Anmol Publication, Dariya Ganj, New Delhi.
25. D.D. Agrawal, ***Jurisprudence through the Ages***, Kalpaz publication, New Delhi
26. J.L. Mehta, ***Advanced Studies in Medieval India***, sterling publication, New Delhi
27. S.C. Raychaudhary, ***History of Mughal India*** (a detailed study of political, economical, social and cultural aspects) 1526-1707, A.D., Surjeet publication, Kamla Nagar, New Delhi

28. S.R. Bakshi, Jahangir: ***The Great Mughal, Deep and Deep publication.*** Ltd. Dariya Ganj, New Delhi.

Miscellaneous

1. ***Salmond on Jurisprudence- P.J. Fitzgerald, Sweet and Maxwell Ltd. 0711,*** New Fetter Lane, London
2. **Dr. Jhar Khand Choube, *Ithas Darshan,***
Vishwavidyalaya Prakash, Varanshi
3. Giriraj. Shah, *Image Makers: An Attitudinal study of Indian Police,* Manohan Publication, Dariya Ganj, New Delhi
4. **The Holy Quran,** translated into English by
5. **Cambridge History of India,** Cambridge Uni. Press. Vol. I, etd. By E.J. Rapson, Cambridge, 1922 Vol. II etd. by wolseley Haig Delhi print, 1958

Dr. Subodh Saxena

(Dr. Subodh Saxena)
Associate Prof. & Head.
Dept. of History, D.A.V. College,
Kangra 182

Arjun K. Singh
Researcher