



Sources of Law: Medieval India

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ABSTRACT:

During the 8th-10th centuries, in the early medieval period, several small kingdoms arose in northern India among whom there were no peace of moment since they were always at clash with each other.¹ In such a situation where there is no authority in power, where there is no political unity as a result, the rulers failed to resist the attacks of the foreign invaders and welcomed Turkish invasions in India. Synchronisation with revolutionary changes in both national and international spheres assumed its place since the establishment of Mughal rule in India.² In practice, the administrative organisation was not in accordance with the jurisdiction of Quran. Even in countries such as Persia, Afghanistan etc. where the whole of population devoted to Islam, felt the need to incorporate pre-Muslim customs in the organisation of the government; making it a challenge to organise government based on the Muslim Law.³ Following the Timurid tradition, Mughal rulers introduced fundamental changes in the administrative and judicial structure in India.⁴

Keywords: Muslim Law, Quran, Hadis, Sharia, Urfi law, Islamic jurisprudence,

INTRODUCTION:

The tradition of starting the invasion towards India was 1st started by Mahmud of Ghazi (997 CE) who got reports about the fabulous wealth of India which tempted him towards such invading ideas. He made seventeen plundering raids into India between 1000-1026 CE. In the later years of 11th century, Sultan Muhammad Ghori invaded India and takes away the credit for the establishment of a Muslim state.⁵ Except the two Muslim provinces of Punjab and Sind, the whole of northern India was divided into small kingdoms due to which there were never ending dynastic conflicts due to which there was simply no sign of political institutional development.⁶ Accordingly, it can be understood that there was no scope at all for united resistance against foreign invasion or to common adversary and their internal discordance made them vulnerable to Muslim vanquishment.⁷ After the death of Ghori, in 1206 AD, Qutub-ud-din Aibak assumed sovereign power and laid the stones for foundation of the Delhi Sultanate ruling over a period of three centuries. Sultanate was divided into five ruling dynasties: (i) Ibari, Aibak or Slave dynasty (1206- 1290 CE), Khilji's (1290- 1320 CE), Tughlaqs (1320- 1414 CE), Sayyids (1414- 1451 CE), Lodi's (1451- 1526 CE).⁸ Babur invited by Lodi to invade India, took advantage of the opportunity defeated Lodi in the battle of Panipat and laid the origin of Mughal rule who ruled uninterruptedly until Sher Shah of Suri dynasty seized power. The end of Mughal rule became formal in 1858, when British undertook the control of Indian affairs from East India Company.⁹

Administrative Apparatus:

During the era of Mughal rule, the civil administration was headed by the King was known as the Sultan or emperor who enjoyed position and power similar to that of the Caliph. All the executive and judicial powers were concentrated in the hands of the Sultan.¹⁰ He was assisted by a number of officials which includes: The Naib or Deputy Sultan (post created during the reign of Bahram Shah) who enjoyed almost all the powers of the Sultan and exercised general control over all the departments and Wazir, who headed the finance department.¹¹ (*Also, there was Qazi-ul-quzat, who was the head of the judicium department and was the highest judicial officer in the state after the Sultan.*) The empire was divided into provinces known as Subahs. The number of

¹ Manjistha Bose, Essential Certificate History and Civics (Oxford University Press, 2015), 197.

² H.V.S. Murthy, History of India (Eastern Book Company, 2015), 223.

³ Murthy, History of India, 223.

⁴ Murthy, History of India, 224.

⁵ Bose, Essential Certificate History and Civics,

⁶ Bose, Essential Certificate History and Civics,

⁷ Dr. Rahul Tripathi, The Judicial System in Medieval India (Brewminate, 2018)

⁸ Manjistha Bose, Essential Certificate History and Civics (Oxford University Press, 2015),

⁹ Tripathi, The Judicial System in Medieval India.

¹⁰ Murthy, History of India, 224.

¹¹ Poonam Dalal Dahiya, Ancient and Medieval India (Mc Graw Hill Education, 2017),

subahs varied from time to time like during the reign of Akbar, there were fifteen subahs and it was twenty at the time of Aurangzeb.¹² The provinces were further divided into districts known as Sarkars which was in turn divided into Parganas composing of numerous villages.

There was a military department namely Diwan-i-arz, beside which there was a department of religious affairs known as Diwan-i-Rasalat which was headed by Sadr who also functioned as the head of judicial department, being called as Chief Qazi.¹³ Also, there were several other judges or Qazis were appointed in various parts of the empire (*Qazis were transferred every after two, three years*), especially in places where there was a sizeable Muslim population.¹⁴ With regards to civil law, *Muslim personal law* or *sharia* was followed. Criminal law was specifically based on the rules and regulations made by Sultans.¹⁵

The rule of Mughals was independent of outside authority. Like the Sultans of Delhi, the Mughal emperor, 'was the fountain of all honours' (Murthy 2014, 230). Sultan was thus the head of executive, the fountainhead of justice, the commander-in-chief of the army and the final arbiter in all fields therefore his office was of great importance in the Sultanate. He was supposed to play a central role in terms of law and justice and for the proper dispense of this responsibility, the sultan appointed judges but he himself acted as the court of appeal from them, like a direct appeal could be made to him against the highhandedness of any of his officials.¹⁶ And such disposal of justice was regarded as a very important function of any ruler. It can be strictly referred to the manner in which Balban dispensed justice, hardly sparing his relations with the high officers of state and put forward the espionage system aiming at finding truth about criminal.¹⁷ Mughal rulers focussed more in the introduction of reforms to improve the judicial machinery and Chief judge was appointed for the first time by Qutub-ud-din Aibak. Sikander Lodhi also played a part in the criminal justice system by initiating several reforms.¹⁸

Reforms in the judicial machinery by Sher Shah Suri marked a significance amid the Sultanate and Mughal periods. For him stability of the government depended on the justice and the ruler must be in no such position of violating it either by oppressing the weak or permitting the strong to infringe the laws with impunity.¹⁹ Head of village councils were recognised and were assigned with the duty of preventing theft and robberies lest forced to pay for the loss sustained by the victim (*For the first time in India, police regulations were drawn up*).

Akbar on the other hand created common citizenship and unanimous system of justice for the whole of population. in addition to this, he prohibited slavery, forcible practice of sati, and repealed the death penalty clause which was put forwarded by the Prophet Mohammad. Abolishment of the cruel and barbarous punishments and decentralisation of courts were made by Jahangir. Establishment of regular system of appeal was done by Shahjahan and Aurangzeb entrusted eminent Muslim theologians with the preparation of a comprehensive digest of Muslim criminal law.²⁰

LAW AND LEGAL INSTITUTIONS AND JUDICIAL ORGANISATION:

Both Hindus and Muslims relied and had deep faith in their sacred scriptures for the regulation of their social and political organisation.²¹ Their faith restricted them temperamentally to accept the laws framed by human agency. Revolution was first brought by Kautilya, who advocated for the supremacy of the rational law over sacred law. As centuries passed, Vedic hymns became difficult to comprehend and was not at all relatable to the current ongoing practices. Accordingly, Vedas became inadequate and complex therefore law codes composed by lawgivers and their ordinances achieved equal status to that of Vedas. The same instance was relatable to that of the development of Islamic Law.

IDEA OF LAW:

In the medieval period, the Islamic government and society was entirely based on the Sharia or Islamic Law.²² Quran contains the whole of Muslim criminal law which should be and should be not applied. It basically guides the community and its political life. But with the growth and spread of Islam, the inadequacy of Quran propelled which was in turn made up by the Muslim orthodox by including the traditions of the Prophet, his sayings and doings as a supplement to Quran which came to be known as Hadis.²³

The Sharia or Islamic Law has defined certain functions and responsibilities, which as an organised community have to observe. It enshrines the Muslim code of ethics and good life.²⁴ Principle of



¹² Murthy, History of India, 224.

¹³ Dahiya, Ancient and Medieval India.

¹⁴ Satish Chandra, History of Medieval India (orient Blackswan, 2018).

¹⁵ Dahiya, Ancient and Medieval India.

¹⁶ Chandra, History of Medieval India.

¹⁷ Tripathi, The Judicial System in Medieval India.

¹⁸ Tripathi, The Judicial System in Medieval India.

¹⁹ Tripathi, The Judicial System in Medieval India.

²⁰ Tripathi, The Judicial System in Medieval India.

²¹ Murthy, History of India, 257.

²² Murthy, History of India, 257.

²³ Murthy, History of India, 221.

²⁴ Murthy, History of India, 221.

equality was being followed by the Muslims and applicable only to the Muslims. According to them, Sharia was above everyone and every Law, even Imam or Khalifah is under the inspection of it.²⁵

Under sharia, non-Muslims did not enjoy any rights or privileges at all like the Muslims.²⁶ On top of such discrepancies, non-Muslims was not treated equal to that of Muslims and they were named as “zimmis”. (Also, they had to pay additional tax.) Muslim criminal jurisprudence treated criminal law as private law and not simply a public law making it a remarkable feature of Muslim law. Its main aim was to provide relief to the person injured rather than imposing penalty for the offence committed.²⁷

SOURCES AND CHARACTER OF MUSLIM LAW:

Medieval Indian government were mainly based on the Sharia which was the legal sovereign and all including the rulers and the ruled were subservient to it. “This was so universally organised that there are cases on records in which subjects have sued monarchs in ordinary courts of law” (Murthy 2014, 258). This simply explains the high respect and admiration which the Muslims have towards the sacred law.

In the Islamic history, law is mainly divided into: (i) *Sharia* and (ii) *Urfi*.

- (i) **Sharia:** it was based on the principles articulated by the Quran, which has three principal components viz., Quran, Hadis and Ijma.²⁸ Quran was the most important among the sources of law because of its sacredness. It had the overriding authority over all other factors. But its holiness lacked to compete with the ongoing social life practices since it was quite intricate and complex. This difficulty was resolved by incorporating Sunnah or Hadis as a source of law after Quran. (The Muslims was deeply devoted to Quran as it was revealed to them through “the best interpreter” i.e., prophet Mohammad whom they regarded as *Insan-i-Kamil* or the perfect man.)

Gradually as time passed, Muslim society faced new problems and the existing law was not adequate enough to solve the problems. Hence, two other sources were drawn upon namely Ijma and Qiyas. Ijma was the consensus of the eminent theologians of Islam and it was accepted as the right solution. It additionally implied that wherever legal opinion is unanimous regarding the interpretation of a verse of Quran, it's better not safe to differ unless judge has some strong logical reasons to differ. This notion of decision received universal endorsement. After a comparable conclusion, it can be stated that Qiyas was based on Quran, the Hadis.

Among all these sources, “the Quran and the Hadis were considered the most valuable and were described as the *Usul-ul-usul* or the ‘bases of the bases’ of Islamic jurisprudence” (Murthy 2014, 258). Interpretation, therefore played a significant role in the development of sharia and it is mainly made up of a recognisable amount of “judge-made law”. Also, this need was felt at a time when the teachings of Mohammad appeared to be less logical and more convoluted, thus forced the advocates and judges to interpret and reinterpret the existing said principles of prophet.²⁹ Matters of great importance, relating to religion, marriage, succession, inheritance came under the purview of Sharia law.³⁰



- (ii) **Urfi law:** as the Islamic jurisprudence developed, rules and regulations which were issued by different rulers from time to time, may be mentioned. These regulations were completely based on justice and fair play and were related to matters like trade, property, war, taxation etc. and eventually came to known as Urfi law. Judges still had discretion in the interpretation and application of the Urfi law but this was not the same for Sharia law as they had no discretion in the interpretation at all, on top of that they themselves had to abide strictly with the views of the approved learned jurists.³¹ But with this too, the situation did not get any better because numerous jurists held divergent opinions with regard to legal points and there were matters which were not covered by direct injunctions of the Quran or the Hadis. Therefore, as a result there grew up many “well-defined schools of law, whose commentaries on Muslim law were based on their interpretations on an exhaustive study of the Quran, the Hadis, the Ijma and the Qiyas” (Murthy, H.V.S., 2014, p.259). These schools namely (i)The Hanafi school by Abu Hanifah (699-767AD), (ii)The Maliki School by Malik Ibn Anas(713-797AD),(iii) The Hanbali School based on the teachings of Ahmad ibn Hanbal (780-855AD), (iv)The Shafi School by Muhammad ibn Idris-Ash-Shafi(767-820AD); basically evolved of the orthodox Islam, called Sunnism which was considered as the most authentic schools of law who had their own distinct characteristics, some were fundamentalists and others were rationalists of different hues.³²

²⁵ Murthy, History of India, 222.

²⁶ Tripathi, The Judicial System in Medieval India.

²⁷ Tripathi, The Judicial System in Medieval India.

²⁸ Murthy, History of India, 258.

²⁹ Colin Fluxman, The Delhi Sultanate: The History of And Legacy of The Medieval Islamic Dynasty in India (Charles Rivers Editors, 2022), 457.

³⁰ Murthy, History of India, 259.

³¹ Murthy, History of India, 259.

³² M. Rama Jois, Legal and Constitutional History of India (Universal Lexis Nexis, 2022), vol. II, 9.

The Chief Qazi:

Chief Qazi was next to the emperor, called as Qazi-ul-Qazat, who combined the office of Chief Sadr and was also the highest judicial officer of the country. Despite being a judicial officer, he performed civil, religious and clerical duties.³³ He was to be appointed by the Emperor and could only be dismissed by him. He being the storehouse of Muslim Law was to be a man of high integrity, sobriety and honesty and would in charge as long as he would be following the desired characteristics strictly. Though he was learned in Islamic theology, he was never considered authoritative enough to lay down a legal principle, elucidate an obscurity in the Quran or supplement the Quranic Law by following the line of its obvious intention in respect of cases not explicitly provided by it" (Murthy 2014, 258). Besides he had to accept the authoritative rules of law expounded by the Mufti.

Both judiciary and police were held under the Qazi. While deciding religious cases, Qazi referred to the personal laws of Muslims and executed judgements accordingly. He visited the jails and reviewed the conditions of the prisoners, had the power as well to discharge those deserving freedom. It was on chief Qazis' recommendation, the Qazis of the provinces, districts, parganas and qasbas were appointed. When it came to the disposal of cases with regard to civil disputes and criminal complaints, hierarchy of Qazis was established then.³⁴ Adalat Qazi-e-subah was empowered to try civil and criminal cases of any description and at each provincial headquarters. He also had to hear appeals from the district courts.

Courts and criminal law:

For dealing with different kinds of cases, different courts were established. Courts were located at the central, at the headquarters of a province, district and pargana. Court of Diwan-e-muzlim was the highest court of criminal appeal. Court of Diwan-e-siyasat, was constituted specially to deal with the cases of criminal prosecution of rebels and the respective charged with treason.

Several reforms were brought up by Sher Shah Suri in the court system. In parganas, separate courts were established for civil and criminal cases. Also, Shiqdars who only had powers in correspondence to those of kotwals, now were given magisterial powers additionally within the parganas, who continued to be in charge of the local police.³⁵

It was the Mughals who introduced the Muslim law of crimes for the administration Criminal Justice which was in system even during the British Raj. Aurangzeb appointed a number of learned theologians for preparing a comprehensive legal digest which assembled into a Fatwa-i-Alamgiri which in turn supplement the theoretical Muslim Law.³⁶

Salient Features of Islamic Criminal Law: Punishments

Within the purview of Islamic Jurisprudence three kinds of offences were recognised viz., offences against God including apostasy, heresy, criticising religion of Islam, offences against the state and offences against private individuals. The result of these offences was answered with death but there was no unanimity among the Muslim schools of law when it comes to women offenders. Hanafi school still prescribes imprisonment while other schools favour capital punishments to women offenders. Also, punishments for various crimes were divided into four broad categories which was specifically prescribed by the Quran or the Hadis.

Panchayats: Judicial System in Villages

The same judicial administration which played a significant role in the ancient India, continued in the medieval period during the reigns of Sultans. For each village, panchayats were created which consisted of elected men by the villagers. The head was known as Sarpanch. They had criminal jurisdiction in petty cases. Their decisions always were unanimous and they purely administered local civil and criminal cases. Their verdict of punishments contained "fines, public degradation or reprimed or ex-communication"(Murthy 2014, 258).



CONCLUSION:

Unlike ancient rulers, Mughal rulers had much less interest in the sound establishment of judicial system. With the exception of Firoz Tughlaq, Islam Shah, Akbar and Aurangzeb, no ruler thought it necessary to issue any legal code which could help in the process guidance for the judges.³⁷ Though for the medieval rulers who were quite conscious in the field of judicial administration, made strict vigilance towards the same. Like the appointment of judges were to be from amongst the eminent lawyers practicing in the court. Lapses on the part of government officers were thoroughly investigated. Also corrupted judicial officers were subjected to strict punishments and dismissal. Every possible effort was made as much as was possible to keep up

³³ Murthy, History of India, 271.

³⁴ Tripathi, The Judicial System in Medieval India.

³⁵ Tripathi, The Judicial System in Medieval India.

³⁶ John F. Richards, The Mughal Empire (Cambridge University Press, 2016), 544.

³⁷ Murthy, History of India, 276.

the high standards of the judiciary.³⁸ It was realised that criminal justice system in India during the Sultanate period have had marked a significant change to that of Hindu period. But on the contrary, the existing legal code left uncovered three-fourths of the population, i.e., the Hindus.³⁹

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³⁸ Tripathi, The Judicial System in Medieval India.

³⁹ Murthy, History of India, 276.