

## Chapter-4<sup>th</sup>

### Judicial system in Mughal India

=The Mughals played a very significant role in the judiciary system in India. They brought new changes in judiciary system and gave a great impact on judiciary system in India.<sup>1</sup> Wahed Husain points out that judicial system of Mughal India has full influence in the present judiciary system in India with some changes. He quotes J.N Sarkar by referring that “Thus the Mughal System at one time spread over practically all the civilized and organized parts of India.”<sup>2</sup> He further evaluates and points out the general features of the Mughal Administration which is following;

First, a strong and well –organized Government contributing to peace and order,

Secondly, a highly centralized form of government with an extensive administrative machinery,

Thirdly, an age of Renaissance in Art and literature,

Fourthly, An empire of unity in which different racial elements were more or less reconciled and contributed their skill, ability and wisdom to make the government prosperous.<sup>3</sup> However Wahed Husain’s characterization of the Mughal period can be

contested .<sup>4</sup>

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<sup>1</sup> Husain, Wahed, B.L., Administration of Justice during the Muslim rule in India with a History of the origin of the Islamic Legal Institutions, published by Idarahi-i-adabiyat-i-Delhi, first print 1934, second reprint 1977, Delhi, pp-103-106.

<sup>2</sup> Ibid, p, 106.

<sup>3</sup> Ibid, p, 30.

<sup>4</sup> Wahed Husain four points are not convince the current historians .His first point is that Mughal government is committed for “the peace and unity” is questionable due long fight within the family as well out side the territory .There was never unity in the caste structure and women position is very weak in the society .There was no unity at the social label .Even politically India was not united at the various places. His second point is that “government was highly centralized and with an extensive administrative machinery” which is also questionable by recent historians like Mudhu kahanna, Muzaffar Alam. They argue that government was not highly centralized because of the several kind of revolts by the nobles and regional subedars. His third points is more or less valid .His fourth points is “Empire of unity in which different racial elements were more or less reconciled and contributed their skill ,ability and wisdom to make the government prosperous.” Questionable due to many new notions. The nobles see their own benefit and see their own prosperous. This is highlighted by many historians like Irfan Habib in “Agrarian system of Mughal India” where he discuss that the economic exploitative structure of the Mughal India which led several revolts like Jat Revolt, Satnami revolt and others revolts. Muzaffar alam also points out that Madd- masa grant led a great revolt in the North India Awadh and Punjab.

Ibn Hasan or ,a noted historian of Mughal India ,points out that the duties of a Muslim King<sup>5</sup> in an Islamic State<sup>6</sup> require him to rule in accordance with the Quranic law and to enforce Shariah in his kingdom .He says that under Muslim king the subjects were divided into two sections,belivers and non believers, and was imposed a duty upon the King to see that believers lived as true Muslims and non believers remained in the position allotted to them as Zimmis, a position which denied them equal status with Muslim subjects but guarantees security of life and property and the continuance of their religion and religious practices under certain defined conditions.<sup>7</sup> Therefore a Muslim king besides performing the ordinary duties connected with his office,had also to uphold the dignity of his religion through defined channels and to rule according to Islamic law.<sup>8</sup> The second aspect of the Islamic system which guarantees peace and security of life and prosperity to non-believers includes impartial justice, and this aspect of kingship was emphasized byu Balban as well as by Bughra khan.<sup>9</sup> It was emphasized by Muslim jurist ,and in matters of justice they treated both sections of subjects as equal in the law's eye . "Justice and Beneficence must be exercised alike for all subjects .The king is the shadow of God and gift of divine mercy is common to both believers and non-believers .A king must curtail the hand of oppressor upon the weak because the prophet says , 'the cry of a victim of injustice even if he be a kafir is never rejected by God'<sup>10</sup>

U.N. Day , a noted historian on Mughal government viewed the exposition of the muslim jurists involved three aspects:

First, that the primary duty of the monarch was to administer justice;

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<sup>5</sup> 'Muslim King' is a contested word particularly in India because if you want to call a king by seeing his religion that means the other king belonging to other religion like Hindu or Christian ,then you have to call Hindu king .For instance in Ancient India we call Harsavasdhan king ,Ashok .If one go through the argument of ibn Hasan then all the ancient or south Indian kings are the kings of hindu king. Therefore word muslim king is a word of prejudice.this is a big prejudice.

<sup>6</sup> The "Islamic State" is a also conteste in India particularly.This is a recent debate that mughal state was an Islamic or not.The conventional Historians like JN Sarkar,R.P.Tripathi ,KS.lal atands on the points that Mughal state was an Islamic or theocratic state.The recent Historians points out that Mughal state was ntot an theocratic state by referring many unislamic incidents.Harbans Mukhia points out that Jahangir was habitual to take pork in the month of ramzan.Many ruler does not follow the Quranic verses.Wine is also fprbited in the islam but all Mughal ruler have take wine.Thse all facts shows that Mughal state was not an Islamic state.

<sup>7</sup> Hasan,Ibn,The central Structure of the Mughal Empire and its practical Working up to the year 1657,Munshiram Manoharlal,New Delhi,New Delhi,first published in 1936,reprinted in 1970,p,306.

<sup>8</sup> Ibid,p,306.

<sup>9</sup> Ibid,p,307.

<sup>10</sup> Ibid,p,308.

Second, that the law that was to be administered was to be based on the Shariat that is the Islamic law ;

Third, that the judicial system could comprehend only the believers as the people or subjects with which the state was concerned. <sup>11</sup>

### **Judicial Organisations in Mughal India.**

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.<sup>12</sup> Many institutions were same as it was in the Delhi Sultanate. For instance the sultan was the fountain pen of judiciary system. He was all in all in the state .He was responsible for any kind of error in the state. The second agency of judiciary was the Qazi. Qazi had a bigger role in the judiciary system in the state and he held the court and gave justice. The officials of the judiciary system were the same but the time and territory and nature of the Emperor were changed. Emperor like Akbar has come who changed many things in the system of the judiciary in his reign.

### **Emperor: Supreme agency of judicial Administration**

However, in Mughal India, **the King** was the supreme in providing the justice in the state. Though the Muslim Jurists differ as to the right of the king to administer justice without a Qazi, they agreed that a king had a right to administer justice personally. But as the administration of justice according to the law required a technical Knowledge of the subjects, it was his duty to appoint one of the best Ulema of the age to this post. The office thus becoming unavoidable, they also suggest that there should be a body of Ulema capable of giving fatwa on legal points, and the most capable of them should be selected for the office of the chief quiz.<sup>13</sup>

It is by no means to be admitted that the king was above the Holy Law. The king, though by no mean, is below God and His Law as revealed to the Prophert. Every Mughal king regarded himself as the viccgerent of God and pretended to carry out the

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<sup>11</sup> Day ,U.N, The Mughal Government,A.D.1556-1707,Munshiram Manoharlal,New Delhi,first published,1970,p,203.

<sup>12</sup> Hasan,Ibn,The central Structure of the Mughal Empire and its practical Working up to the year 1657,Munshiram Manoharlal,New Delhi,New Delhi,first published in 1936,reprinted in 1970,p310.

<sup>13</sup> Ibid,p,311.

Divine Law. Obedience was demanded as his due by God's ordinance, and all resistance was treated as sinful. Though in practice his power was incapable of legal limitation, in theory he was expected to observe the limits set by the Holy Law. "State" Law was a command of the sovereign and was binding on all. Consequently very few digests or codes of laws existed in Mughal India. The place of laws taken by these regulations was proclaimed only by the Emperor's orders. The Twelve Ordinances of Jahangir and the Fata-i-Alamgiri were the work of the monarchs themselves. The jurisdiction of the Emperor which was all-embracing rendered his position still stronger. According to the Sacred Law, God has delegated the right of Legislation and rule to human beings. The Sacred law recognized no power of positive legislation vested in the head of the state, since God, through the Prophet had legislated once for all; still whenever in practical politics the necessity for enacting new ordinances was felt, the king had the fullest power to make laws. But there was no standard code which might be universally adopted in the country. Aurangzeb tried to remedy this defect by ordering Fatawa-i-Alamgiri to be compiled.

The king should appoint the one with whom he was personally acquainted and who in his opinion, was the best available person for the office .If the candidate was not personally known to him ,his knowledge and learning should be tested by a body of the learned ,and his conduct inquired from his neighbors.<sup>14</sup>

The king offered the post. The king has right to depose a qazi, because the one who had a right to appoint him possesses also the power to depose him. A certain group of Muslim Jurists favors the appointment of a qazi for limited period only, and some appeared to regard one year at a time as sufficient for him so that he might not neglect his studies of the subject.<sup>15</sup>

The King had right to appoint a separate qazi for the army (qazi-i-askar), but his jurisdiction was limited to the area defined for him. The king had right to appoint more than one qazi in a city, but in that case their work must be defined.<sup>16</sup>

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<sup>14</sup> Ibid,p,311.

<sup>15</sup> Ibid,p,311.

<sup>16</sup> Ibid,p,312.

The king was also expected to have practical knowledge of law. Because being a monarch his word is enough to provide justice to particular individual or group people. He can take life or give life. His decision may cause great harm or benefit to the empire. His justice may give a long benefit to the empire. There is no check on his decision .He might apologise but cannot return the life.

It has been mentioned earlier that there were no written laws in the country. The Emperor was the foundation of justice and his system of government was extremely personal. He exercised rigid control over every department of administration. The sovereign's will was absolute. So long as the laws of the sharia remained inviolated, his will could not be resisted. But any attempt to defy the laws of the shariah resulted in discontent. The King had full powers to issue ordinances and the Islamic Law entrusted to him the function of administration and justice.<sup>17</sup>

Abu- Fazal Allami, a famous noted historian in the court of Akbar,wrote in A-in-i -akbari about the idea of Akbar of justice and what a king should do for justice.

“There are three causes of aberrant Judgment,viz--.,incapacity of mind; the society of enemies in the guise of friends; the duplicity of friends that seek their own interest”<sup>18</sup>

“If I were guilty of an unjust act, I would rise in judgment against myself. What shall I say, then, of my sons, my kindred and others?”<sup>19</sup>

“The authority to kill should be his who can give life, and he who performs this duty at the command of right judgment, does so with reference to God. When an inheritance passes, while a daughter is alive, to the brother's child, it having been transmitted to the deceased from his father, there is justification, otherwise how can it be equitable?”<sup>20</sup>

“A monarch is a pre-eminent cause of good. Upon his conduct depends the efficiency of any cause of action His gratitude to his lord, therefore, should be shown in just government and due recognition of merit; that of his people, in obedience and praise.”<sup>21</sup>

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<sup>17</sup> Mughal kingship and Nobility by R.P. Khosla pp. 22-24.,

<sup>18</sup> Allami,Abu Fazal,the A-in-I Akbari ,vol II-III, ,translated by Colonel H.S.Jarrett,first published 1927 and reprinted in LPP 1989,1994,1997,2001,2006, Low price publications,2006,New Delhi,p,433.

<sup>19</sup> Ibid,p,434.

<sup>20</sup> Ibid,p,443.

<sup>21</sup> Ibid,p,449-450.

“The very sight of kings has been held to be a part of divine worship. They have been styled conventionally the shadow of God, and indeed to behold them is a means of calling to mind the creator, and suggests the protection of the Almighty”<sup>22</sup>

“What is said of monarchs ,that their coming brings security and peace, has the stamp of truth>When minerals and vegetables have their peculiar virtues, what wonder if the actions of a specially chosen man should operate for the security of his fellows.”<sup>23</sup>

“In the reciprocity of rule and obedience, the sanctions of hope and fear are necessary to the well-ordering of temporal government and the illumination of the interior recesses of the spirit; nevertheless a masterful will, never suffering the loss of self control under the dominance of passion ,should weight well and wisely the measure and occasion of each.”<sup>24</sup>

“Whoever walks in the way of fear and hope, his temporal and spiritual affairs will prosper. Neglect of them will result in misfortune.”<sup>25</sup>

“Tyranny is unlawful in everyone, especially in a sovereign who is the guardian of the world”<sup>26</sup>

“Divine Worship in monarchs consists in their justice and good administration: the adoration of the elect is expressed in their mortification of body and spirit. All strife is caused by this, that men neglecting the necessities of their state occupy themselves with extraneous concerns.”<sup>27</sup>

“A king should abstain from four things: excessive devotion to hunting; incessant play; inebriety night and day; and constant intercourse with women”<sup>28</sup>

“Falsehood is improper in all men, and most unseemly in monarchs .This order is termed the shadow of God, and a shadow should throw straight.”<sup>29</sup>

“Superintendents should be watchful to see that no one from covetousness abandons his own profession”<sup>30</sup>

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<sup>22</sup> Ibid,p,450.

<sup>23</sup> Ibid,p,450.

<sup>24</sup> Ibid,p,450.

<sup>25</sup> Ibid,p451.

<sup>26</sup> Ibid,451.

<sup>27</sup> Ibid,451.

<sup>28</sup> Ibid,p,451.

<sup>29</sup> Ibid,p,451.

<sup>30</sup> Ibid,p,451.

“A king should not be familiar in mirth and amusement with his courtiers.”<sup>31</sup>

“A monarch should be ever intent on conquest; otherwise his neighbors rise in arms against him. The army should be exercised in warfare, lest from want of training they might become self-indulgent.”<sup>32</sup>

“A king should make a distinction in his watch over the goods, the lives, the honour and the religion of his subjects. If those who are led away by greed and passion will not be reclaimed by admonition, they must be chastised.”<sup>33</sup>

“He who does not speak of monarchs for their virtues will assuredly fall to reproof or scandal in their regard.”<sup>34</sup>

“The words of kings resemble peals. They are not fit pendants to every ear.”<sup>35</sup>

### **Qazi: Second agency of the judicial administration.**

The second agency of the judicial administration of Mughal India was “Qazi”.

A Qazi is the term for a Muslim judge who issued definitive rulings in cases brought by disputants for resolution. The word Qazi is derived from the root word Q-D-y ,meaning “to resolve,” “to settle,” “to decide.”<sup>36</sup>

Judicial practice was seen as an extension of the function of the ruler and was thus indirectly linked to orderly governance Muslim political theory advocates the appointment of an executive ruler (khalipha/Imam) as a moral obligation premised on religious authority .The appointment of judges was thus in keeping with the fulfillment of an obligation according to the classical Sunni Legal authorities. Early Shiite authorities argued that the implementation of the rules of the reveled law was an obligation not subject to rational scrutiny and could only be fulfilled by the designated hereditary religious leader (Imam) or his delegated appointee. Only those Judges appointed by the legitimate political leader could be deemed to have worthy credentials as appointees to the office of Judgeship.<sup>37</sup>

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<sup>31</sup> Ibid,p,451.

<sup>32</sup> Ibid,p,451.

<sup>33</sup> Ibid,p451.

<sup>34</sup> Ibid,p,451.

<sup>35</sup> Ibid,p,451.

<sup>36</sup> Martin,C,Richard,Encyclopedia of Islam and the Muslim World,vol 2,Thomson and Gale,America,2004,p,557.

<sup>37</sup> Ibid,p,558.

Abul Fazl has given detail about the Qazi and Mir-i -adl role, power, duties and section.

Abul Fazl wrote in the Ain – Akbari which is following;

“Although the supreme authority and the redress of grievances rest with sovereign monarchs, yet the capacity of a single person is inadequate to the superintendence of the entire administration. It is therefore necessary that he should appoint one of his discreet and unbiased servants as his judiciary delegate. This person must not be content with witnesses and oaths, but hold diligent investigation of the first importance, for the inquirer is uninformed and the two litigants are cognizant of the facts. Without full inquiry, and just insight, it is difficult to acquire requisite certitude. From the excessive depravity of human nature and its covetousness, no dependence can be placed on a witness or his oath. By impartiality and knowledge of character, he should distinguish the oppressed from the oppressor and boldly and equitably take action on his conclusions. He must begin with a thorough interrogation and learn the circumstances of the case; and should keep in view what is fitting in each particular and take the question in detail, and in this manner set down separately the evidence of each witness. When he has accomplished his task with intelligence, deliberation and perspicacity, he should for a time, turn to other business and keep his counsel from others. He should then take up the case and reinvestigate and inquire into it anew, and with discrimination and singleness of view search it to its core. If capacity and vigour are not to be found united, he should appoint two persons, one to investigate whom they call a Qazi,<sup>38</sup> the other the Mir A’dl to carry out his finding.”<sup>39</sup>

### **Qualification of Qazi**

The following rules were made for appointing the Qazi;

1. Adult Male: According to Hanfi Law a woman could be appointed as a Qazi ,but the Mughal emperors confined the jurisdiction of woman Qazis to the Harem only.
2. Intelligent and sound man who can deliver justice without discrimination.
3. A free man.

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<sup>38</sup> Qazi in Sarkar’s Mughal Administration, Ch. II, S.

<sup>39</sup> Allami, Abu Fazal, the A-in-I Akbari ,vol II-III, ,translated by Colonel H.S.Jarrett, first published 1927 and reprinted in LPP 1989,1994,1997,2001,2006, Low price publications,2006,New Delhi,p,42-43.

4. A Muslim; Non Muslims could not be appointed Qazis .For a Qazi strict adherence to Islamic Law even in private life was deemed necessary for the acceptance of office entailed upon the incumbents a detailed study of religious laws and sometimes of the duty of leading the Friday prayers is necessary.He must according to law be a Muslim scholar of blameless life.
5. He must be capable of being a trustworthy witness.Special heed was to be paid to qazi's character and a high standard of conduct was expected of him.
6. He must be of sound hearing and sight, because no judgement of a Qazi was regarded as valid if it was given at a time when his understanding was not clear.<sup>40</sup>

### **Powers of Qazi**

The powers and functions of Qazis were wide and their responsibilities grave. The order of the Qazis court had to be obeyed. Theoretically it was asserted that even the King had no right to interfere in the judicial powers of the Qazi. If the King ordered him not to proceed to take evidence in a particular case, or asked him to postpone a case till he returned to the capital from his journey, the order was considered as neither valid nor binding upon the Qazi. Similarly if a case had been tried and the judgment passed by the Qazi in accordance with the law and it was just and the King ordered him to open the case again the order was not deemed as valid.

However such a theoretical position certainly could not have worked under the Mughal emperors when the appointment, promotion, and removal of the Qazi rested with the Emperor. We know that Abdul Wahhb was made Qazi-ul-Quzat by Aurangzeb because he was the only one who declared that Aurangzeb's occupation of the throne was perfectly in accordance with the Shariat because Shah Jahan then was physically unfit.<sup>41</sup>

### **DUTIES OF A QAZI**

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<sup>40</sup> Day ,U.N,the Mughal government ,A.D.1556-1707,Munshi ram monohar lal,New Delhi,p213-214.

<sup>41</sup> Ibid,p,214.

A Qazi on his appointment, is enjoined to take possession of all the records, etc., appertaining to his office and to demand the 'diwan' (the bag containing the records and other papers) of the former Qazi. He should take over charge of all these papers through his amins, and the latter should ask the retiring Qazi for separate files of different subjects, such as property, orphans, marriage, and inheritance. The new Qazi must also enquire into the state of the prisoners confined on any legal claim..... And reinvestigate the cases and act accordingly.

The Qazi must hold his court in the mosque or in his own house. Save from relations, he should not accept any presents or feasts. He should behave with equal courtesy towards both parties in a case and never show more regard for either, even by smiling. Nor should he help the witnesses. Before going to the court he should prepare himself so as to maintain a calm and dispassionate attitude during business.

The Qazi's office included the following functions :- (1) To try and decide cases, (2) to execute judgments, (3) to appoint guardians for those incapable of dealing with their property, e.g., lunatics, minors, (a sort of court of wards), (4) supervise and manage waqf property, (5) execution of wills, (6) charge of the remarriage of widows, (7) execution of punishments prescribed by religious laws, (8) the supervision of streets and buildings, so that no one might disfigure the streets and open spaces by erecting projecting roofs or unauthorized buildings .

(9) supervision of law officers, such a notary (Shuhud) secretaries and the sub-judges whom he could appoint as well as remove, (10) where no collector of poor-tax (sdaqah ) was appointed it fell to the lot of the Qazi to collect this tax also .

### *Mufti*

Mufti was not a regular official. "He was a sort of unofficial legal referee recognized by the public opinion... In reality the mufti was a sort of unofficial legal remembrancer of canon law... Anyone who has by common agreement ranked among the learned, recognized to be an authority on religious law was called a mufti. His assistance was

sought in all cases coming within the pale of religion, on which the law was not clear to the judges of the court, and the muftis were called upon to give a fatwa, that is to say, a decree in accordance with the law, on all questions of social and religious life of the Muslims and even of the non-Muslims if they behaved in manner prejudicial to the Law, as expounded by the great jurists..we can quote a number of instances muftis were clearly non- official jurisconsults. ”<sup>1</sup>

However, Bashir Ahmad, on the basis of collection of Farmans holds that Mufti wa appointed by a Royal Sanad, and that sometimes the Mufti of a parganah wa also appointed Mohtasib in addition to his own duties. He as a lawyer attached to the court in order to expound the law, but not to give judgement. The Mufti were enjoined to copy out precedents to read and to place them before the Qazis. The Qazi, had the authority to give the judgement which the Mufti did not possess, but the opinion given by the Mufti on a law point could not be ignored by the Qazi and in case of difference of opinion reference to a higher court was necessary.

#### Mir Adl

It is commonly accepted that the structure of judiciary as it developed under the Caliphs was adopted by the Sultans in India and continued under the Mughals. But here and there we come across with officials which are not to be found under the Caliphate. The office of Mir Adl is one such case. We hear of this office for the first time in the reign of Sikandar Lodi, and are informed that Sikandar Lodi raised the status of dadbak by granting them powers to try common law cases and called them Mir Adl. Under Sher Shah too we find Qazis and Mir Adls presiding over courts. Under the Mughals, Abul Fazl speaking of the Qazi and Mir Adl says he should appoint tow, one to investigate whom they call qazi the other Mir Adl to carry out his findings”<sup>42</sup>. Dr. Beni Prasad says that “every town, generally even a very small town, had a Qazi and a Mir Adl who formed a judicial bench. The former investigated the case while the latter pronounced the sentence. Sometimes the tow offices were combined in the same person. ”<sup>43</sup> Dr. Saksena

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<sup>42</sup> Ain-I akbari, vol,2,p,43.

<sup>43</sup> Beni Prasad,Jahangir,p,96.

opines that in the reign of Shahjahan “the tow posts of Qazi and Mir Adl were ordinarily combined.”<sup>44</sup>

Mr. Bashir Ahmad opines that ‘Mir Adl possessed no judicial powers such as those of a Qazi, His duties were analogous to those of a Mufti who gave his opinion on a point of law and Mir Adl submitted report on the fact and the case was made over to him by the Qazi, after the judgement was delivered for superintendence of proceedings in execution. He was in fact a superior clerk of the Court.’<sup>4</sup> The position seems to have continued even during the reign of Aurangzeb and there is no clear evidence to indicate that Mir Adl exercised judicial powers as independent court.

The office of Mir Adl, however, was not common in all the provinces, at least Bengal and Gujarat had no Mir Adl in their judicial set up.

## Muhtasib

The office of Muhtasib was instituted by Caliph’al Mahdi (775-785) to see that the religious and moral precepts of Islam were obeyed and that the offenders were detected and punished. Once the office was instituted it became an integral were part of the administrative set up. Essentially the duties of the muhtasib related to the safeguarding of public moral and the prevention of commercial dishonesty. However an offence had to be committed in the public before the Muhtasib could take cognizance of it.

According to A1 Marwadi the duties of the Muhtasib included prevention of nuisance, removal of obstructions and encroachment upon public streets, prevention of burying people in the lands owned by others, prevention of cruelty to servants and animals, encouraging regular attendance at the mosque, preventing public eating in the month of Ramzan, enforcement of the period of waiting (‘iddat) on widows and divorced women, encouragement of the marriage of unmarried girls, chastising anyone found in a state of drunkenness, etc. In his capacity as the superintendent of markets the Muhtasib went through the city daily accompanied by a detachment of subordinates, inspected

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<sup>44</sup> B,P,Saksena,Shahjahan of Delhi,p,281.

provisions to see if they were adulterated and tested weights and measures. However, the power of the Muhtasib in awarding punishment was limited inasmuch as he could only try cases when the truth was not in doubt. If a case required sifting of evidence and administering of oaths it had to go to the Qazi.

The Muhtasibs with all the duties as noted above existed in the Mughal administration and were to be found in the capital, as well as at the headquarters of the provinces and their sub divisions. The power of the Muhtasib to award punishment or to try cases however did not exist under the Mughals.

Besides performing the duties enumerated above, under Aurangzeb he was also required to report case of apostasy, blasphemy, heresy and non-conformity and thus became an important officer.

The Muhtasib in Mughal administration was generally a prosecutor of canon law and instituted prosecution on behalf of the government.

#### Vakil-i-Sharai or Vakil-Sarkar

The Mughal Emperors fully recognised the principle of representation through lawyers and these lawyers were called Emperors, because Mawadi speaks of this profession and considers expert knowledge of the law necessary both for the practice of law and for acting as Qazi.<sup>1</sup> The statement of Moreland that “there were doubtless learned students of both Moslem and Hindu text, but there were no advocates or pleaders practising in the courts”<sup>2</sup> is not correct as has been pointed out by Bashir Ahmad who has not only given ample references of the presence of the Vakil but has also cited nine cases where the Vakils argued the cases.

During the reigns of Shahjahan and Aurangzeb lawyers were appointed / engaged permanently to defend civil suits against the state and to assist poor litigants with free legal advice. The Vakils were appointed as whole time employees by the state in all the Sarkars and were called Vakil-i-Sarkar or Vakil-i-Sharai<sup>45</sup>.

A remuneration at the rate of rupee one per day was paid by the state to the Vakil-i-Sarkar, but it is difficult to say what fee was charged by the Vakils from their clients, however it is certain that the Vakils charged some fee from their clients because

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<sup>45</sup> Khafi Khan, vol,2,p,249-252.

Aurangzeb had to issue orders directing the state Vakils to give free advice to paupers. The Vakils had to file the vakalat-nama (power of attorney) in the court for every individual case, and a client always retained the right cancelling the vakalat-nama at any stage of the case. Though the Vakil could tender a confession on behalf of his client, but such a confession was not admissible and was not binding on his client.

### **Justice based on Emperor, not on the Islamic law.**

As we have seen in Pre –Mughal Period that justice was based on the Zawabit that is state law. In the same way, the Mughal's justice system was based on the Emperor. He was the head of the all kind of justice. We say that being a muslim and coming from the outside the land they brought new system of judiciary which based more or less on Persian culture. They did follow sometimes Islamic law for getting legitimacy. One may say there basic can be Islamic but punishment and crime was certainly not Islamic. Our first three chapters discussed very deeply about the Islamic law. If one goes through these Islamic law, one may find that all the Islamic laws, were capable of implemented. For instance, Drinking wine is sin in the Islamic law but all the emperors took wine very badly. Eating pork is anti Islamic but Jahangir has taken pork during the month of Ramazan which is a holy month of the Muslims. We can see them in practising of justice. All the emperors, even Aurangzeb also were not very strict to Islamic laws. Aurangzeb order was also not implemented in all over the empire. Although he followed some Islamic law but he was more branded as orthodox ruler. He also advised the Hindus to become a good hindu. One reference I have gone through which says that one day one Hindu person went to Aurangzeb and told that he wanted to convert to Islam. Aurangzeb asked why? He was silent. He told that if you think that I will provide any reward then you are wrong. You should follow the Hindu religion. He follow the Muslim religion but why not you people. Being orthodox for your religion, this does not mean that you are wrong. People should not get affected with religious activities. This is important. This is what Aurangzeb wanted to mean.

Of course, all the emperor made Mosque and worships and followed somewhere Islamic laws but it was not regular. Being Emperor, they were not able to look the whole India

well ,therefore they appointed Qazi,parangana Qazi and many more officials to look the justice system.

Since the government was also based on the Monarchy which followed the autocratic rules and being Muslim and to get legitimacy they followed some where Islamic law.

### **Various Courts under the Mughal Government**

The organization and location of the law courts (adalat)under the Mugals was moulded on the administrative pattern of the Empire consisting of villages , Pargnas, Sarkars, Subahs and the center or the Capital.Each of these divisions had to be provided with courts where justice could be administered. The village, which technically formed the lowest unit of administration, however, was left uninterfered by the Mughal government and was allowed to continue the age-old tradition. Thus for the purpose of organisation of law courts set up by the administration, we may start with the Pargana.<sup>46</sup>

### **PARGANA ADALAT**

Each Pargana was provided with an Adalat (court) which was placed under a Qazi who was responsible for the administration of justice within the territory of the pargana. Thus the adalat of the Qazi was the lowest court in

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<sup>46</sup> U,N,day,p,204.

the Mughal administration. The Pargana Qazi was appointed through /by a Royal Sanad and exercised jurisdiction over the villages included in the pargana. The Pargana Adalat, though lowest was provided with a number of officers and certain paraphernalia to give it the dignity of a court and the ability to enforce its judgement. The Pargana Qazi's adalat had a Mufti, a Muhtasib and a Darogha-i-Adalat attached to it. In some of the parganas the same person was appointed both as Mufti and as Muhtasib which however did not imply merging of the offices but only meant that in such cases the mufti was called upon to perform the extra duty besides his own. Darogha-i-Adalat was generally a petty mansabdar and was posted to maintain order and prevent any kind of disturbance during the proceeding of the court.<sup>47</sup>

### JUDICIARY IN THE SARKAR

The Sarkar in the Mughal administration was the subdivision of a Subah and had within it a large number of Parganas. The government of the Sarkar in its functioning had not only to Supervise the work of the parganas but also to look after aspects which were not concerned with the pargana. For the purpose of administration of justice, the Sarkar had different types of courts. The chief civil and criminal court was under the Qazi-i-Sarkar, where cases involving civil, canon and criminal law were heard, and appeals from the Pargana Qazi's courts were filed here. The executive head of the Sarkar (mostly the Faujdar ) also exercised judicial authority and in his court cases concerned with disturbances and security etc. were heard and decided . The Kotwals in the Sarkar and in the various towns also decided petty cases involving infringement of laws which today may come under municipal laws. The Amil of the Sarkar also had his court where Revenue cases were decided, and appeals from the Pargana amils court came up for hearing. Thus we find that the Sarkar had three types of court (i) the Qazi's court (2) The Amil's courts and (3) the Kotwali. Of these the

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<sup>47</sup> Ibid,p,204.

Qazi's court was the main organ of the judiciary in the true sense.

According to Dr. P.Saran, "the Faujdar had no judicial powers at all".

However, towards the close of the 18<sup>th</sup> century the Faujdar had come to have judicial authority over all cases other than capital offences. He further holds the view that the Kotwal and Qazi shared the whole business of justice in the Sarkar between them. The Kotwal "was a magistrate, prefect of police and municipal officer rolled into one. As magistrate he took cognizance of criminal cases of the whole sarkar, prefect while in other respects his jurisdiction was limited to the headquarter towns of the sarkar. There is no clear classification of cases which came under authority of the Qazi and the Kotwal, 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 ones, such as inheritance, marriage, divorce, and civil disputes went to the Qazi's court."<sup>48</sup>

The Sarkar Qazi, who normally held his court at the Sarkar headquarters, was provided with a staff and was assisted by a number of officers who were attached to his court. Qazi's staff consisted of Peshkar, Katib, Amin, Nazir, Deftari Muchalka Nawis and orderlies. The Sarkar Qazi was responsible for judicial administration (both civil and criminal) of the Sarkar, and also heard appeals from the Pargana courts. "He also became the official visitor of jails within his jurisdiction and was given power to inquire into cases of prisoners confined therein. He could review proceedings in the cases of convicted prisoners and to release on bail persons under trial."<sup>49</sup>

The Sarkar Qazi had to perform multifarious duties which were not directly connected with the administration of justice; hence they have been discussed elsewhere. The Qazi was appointed by a Royal Sanad which was issued by the Sadrus Sudur. This however did not make the Qazi a

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<sup>48</sup> P, Saran, provincial government, p,353, as quoted by u\U,N, Day ,p,205.

<sup>49</sup> Mirat-i-Ahmadi, by Ali Muhammad Khan, in 2 vol, published by Gaekwar Oriental Series, Baroda, 1965, p,282-83.

subordinate Sadr Department was a mere matter of routine. The Mughal Emperor Akbar had separated the judicial department from the jurisdiction of the Sadr and the actual superior of the Sarkar Qazi was the Qazi-i-Subah. Some officers were also attached to the court to assist him in proper discharge of his duties. Of these, Darogha-i-Adalat , Mir Adl, Mufti, Pandit Mohtasib-i-Baladiah and Wakil-i-Sharai deserve special mention. Regarding the post Wakil-i-Sharai it is difficult to say when it actually came into existence, but we find from Khafi Khan that in the reign of Aurangzeb suits against the state were defended by lawyers appointed whole time in every Sarkar with the designation of Wakil-i-Sharai , Wakil-i-Sarkar etc. They were attached to the court of the Sarkar Qazi and their daily fee was fixed at Rupee one. "These Wakils were further directed to give legal advice to the poor free of charge. The appointment was made by the Chief Qazi of the province or sometimes by the Qazi-ul Quzat and their duties according to a letter of appointment given in the *Faramaen* were:

1. To conduct suits on behalf of State.
2. To get decrees obtained by the State executed.
3. To acts as legal advisors for the proerties held in Trust by the Qazis."<sup>50</sup>

## COURTS AT THE SUBAH LEVEL

The Subah or the province was the highest administrative division of empire and was comprised of a large number of Sarkars and a still larger number of Parganas. Thus the executive head and other officers at the Subah level had to perform, besides normal duties, supervisory duties over entire extent of the province. For administration of justice at the provincial

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<sup>50</sup> M.B. Ahmad-Administration of Justice etc. pp. 163-64; Faramaen here refers to Faramaen us Salatin by S. Bashiruddin. It is a collection of Farmans issued by Mughal Emperors and was published from Delhi. It contains copies of original Farmans which give the duties attached to each office as quoted by u,n, day ,p,207.

level we find four categories of law courts. They are (1) the Nazim's court, (2) the Qazi-i-Subah's court, (3) Diwan-i-Subah's court and (4) Sadr-i-Subah's court. Of all these four categories' except for the Nazim's court, the jurisdiction of each category was more or less defined.<sup>51</sup>

#### The Nazim's Court

One of the most important functions of a provincial governor was to look after proper Administration of justice within the jurisdiction of his province. In connection with the administration of justice he was enjoined to observe the utmost expedition and not to afflict the people by dilatoriness. In trying cases he was not to rely on witnesses and oaths but to investigate the truth personally and to treat the parties with courtesy. The Nazim's court was both an original and Appellate court, and being the representative of the emperor he received appeals from all the courts situated within the province including even those from the court of Qazi-i-subah. In Original cases, the Nazim usually sat as a single judge, and appeals from his judgment went to the Appellate Courts at the centre. When he heard appeals he sat on a Bench of which the Qazi-i-Subah was invariably a member, unless the appeal was from the court of Qazi-i-Subah. Even Appeals of land revenue cases could be filed with him, though normally this was the work of the court of Diwan-i-Subah. Mufti and Darogha-i-Adalat were two important officers attached to his court who were to assist him in proper discharge of his judicial duties.<sup>52</sup>

#### Qazi-i-Subah

Judiciary proper or the Department of judicial administration in the province was placed under the charge of the Qazi-i-Subah or the Chief provincial Qazi. Though some writers have expressed the view that Qazi-i-

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<sup>51</sup> Ibid,p,207.

<sup>52</sup> Ibid,p,207-208.

Subah was appointed by the Qazi-ul Quzat or the Sar-i-Jahan, in reality the final appointing authority was the Emperor himself, and these were no more than recommending agencies or better still accepted as experts for selecting a person for the post, and not the final appointing authority.

The Qazi-i-Subah had original, civil and criminal jurisdiction and the Chief Court of Appeal in the Provinces. His judicial powers were co-extensive with those of the Governor and he had a permanent seat on the Bench of the Governor's court. Appeals come to him from the District Qazis within the Subah and he was consulted by the Governor in cases where the use of the Sovereign's prerogative came into question. The work of the Qazi-i-Subah was fairly heavy and also very delicate, because a little oversight of any aspect of law might result in a miscarriage of justice.

It was to

assist him in proper discharge of his duties that besides the office staff as mentioned under the Qazi-i-Sarkar's Court, the following officers were attached to his court:- Mufti, Mohtasib, Darogha-i-Adalat, Mir Adl, Pandit, Sawaneh Nawis, and Waqai-Nigar.<sup>53</sup>

#### Diwan-i-Subah's Court

The Provincial Diwan's court was only to look after the revenue cases. The appeals against the Amils, orders or decision were filed in the court and appeals from his court lay with the Diwan-i-Ala, of course the Emperor or the Nazim as his representative, exercised jurisdiction over the entire administration and therefore could entertain appeals from the diwan-i-Subah's court.<sup>54</sup>

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<sup>53</sup> Ibid,p,208.

<sup>54</sup> Ibid,p,208.

## LAW COURTS AT THE CENTRE OR THE CAPITAL

### The Emperor's Court

The Emperor's Court was the highest court in the empire, and he tried both civil and criminal cases and also sat as the final court of appeal within the empire. When he heard appeals he presided over a bench consisting of the Qazi-ul-Quzat, and other Qazis of his court and decided questions both of law and fact. 1 As a court of first instance he generally had the assistance of a Mufti or a Mir Adl. Petitions were presented to him by the Darogha-i-Adalat. If he required any authoritative interpretation of law he referred the matter to a bench for the purpose.

The Emperor's Court was popular and the public made representations and appeals without any fear or hesitation and obtained redress from his impartiality.

The Emperor was assisted by Mufti, Mir Adl, Darogha-i-Adalat, Mohtasib etc.

### Chief Court of the Empire

This court was presided over by the Qazi-ul-Quzat who was the Chief justice of the realm and in importance was only next to the Emperor. As Qazi-ul-Quzat he used to administer the oath of accession to the sovereign and to order "Khutbah" to be read in the Emperor's name in the mosques in order to give validity to his accession.<sup>2</sup> The appointment of Qazi-ul-Quzat or the Chief Justice was made by the Emperor and for its selection persons with reputation for scholarship and sanctity of character were taken into consideration. He could be appointed directly, though Provincial Qazis were also sometimes promoted to this post.

The Qazi-ul-Quzat had power to try original civil and criminal cases, to hear appeals from and to supervise the working of the Provincial courts. He had always one or two Qazis to assist him in his work.<sup>55</sup>

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<sup>55</sup> Ibid,p,209.

1. Leading the Friday and the Id prayers at the Capital.
2. Attending state and other important funerals.
3. Conducting marriage ceremonies of the Royal Family.
4. Supervision of the enforcement of the shara.
5. In the matter of fresh taxation the opinion of the Chief Justice was invariably taken.

The Imperial capital had its own Qazi who enjoyed the status of a Qazi-i-Subah and in temporary vacancies sometimes officiated for the Qazi-ul-Quzat.

#### QAZI-I-ASKAR

The army was provided with a separate Qazi called Qazi-i-Askar or Qazi-i-Urdu. Qazi-i-Askar moved from place to place with the troops, but his jurisdiction was limited to the area defined for him. In a case in which one party resided in the jurisdiction of the Qazi-i-Askar and the other in that of the Qazi of the city and the latter insisted on having the case tried in the city court the Qazi-i-Askar could not try it unless he had been especially empowered to try all such cases in which one party belonged to his area of jurisdiction. On the other hand if both the parties belonged to the army or askar area but wanted to take their case to the city court they could do so and the Qazi of the city had the power to entertain such cases.

Darogha-i-Adalat, Mufti, Mohtasib adn Mir Adl, as already noticed earlier, were other officer attached to the court of the Qazis.<sup>56</sup>

#### The Chief Revenue Court

Diwan-i-Ala who presided over the Chief Revenue Court exercised authority over the Revenue and the Financial matters of the Empires . Though appeals could be made from the provinces in Revenue matters, but in actual practice ,he was mainly occupied with matters of financial policy in the state and judicial work from the provinces in the from of appeals seldom came to him and only in rare cases was any petition made<sup>4</sup> against the Emperor. <sup>57</sup>

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<sup>56</sup> Ibid,p,210.

<sup>57</sup> Ibid,p,210.

## LAW COURTS OF THE ADMINISTRATIVE DIVISION<sup>58</sup>

From the lowest to the highest

### VILLAGE

Trial Court	Powers	Presiding Officer
The Panchayat	Petty village Disputes	The village Headman
Appeals, if any to Qazi-i-Sarkar		

### PARGANAH

A. Adalat Pargana (Original Civil and Criminal Court)	All common and civil law cases. had also poweres to try Canon Law cases, but none seems to have been tried by a Pargana Qazi.	Qazi-i-Parganah
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Appeals to Qazi-i-Sarkar

B. Kachahri	Revenue cases Amin or Amil Korori.	
Appeals to Sarkar Amalguzar		
Kotwali	petty Municipal offences.	Kotwali-i-Pargana

Appeal to Qazi-i-Sarkar

### SARKAR

A. The Adalat	All civil, Canon	Qazi-i-Sarkar.
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<sup>58</sup> Ibid,pp,21213.

Sarkar (Chief and criminal Law  
Civil and Crimi- cases .  
Nal Court of the Appeals  
Disrict)

Appeals lay to Qazi-i-Subah

B. Faujdari Riot and security The Faujdar.  
Adalat cases .

Appeals lay to the Governer's Court

C.Kotwali Petty Police Kotwal-i-Sarkar.  
Cases

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Appeals to Qazi-i-Sarkar

D. Kachahri Revenue Cases. Amalguzar  
Amalguzari. Appeals from  
Pargana Amils.

Appeals to Diwan -i- Subah

SUBAH

	Trial Court	Powers	Presiding Officer
A.	(i) Nazim's own Court.	Original	Nazim-i-Subah
	(ii) Adalat-i-Nazim-i-Subah.	Original Appellate Revisional	Nazim-i-Subah.
	(Governor's Bench)		

Appeals lay to (A) Emperor's Court, (B) Chief Justice's Court by way of petition

B. The Chief Original, Qazi-i-Subah

Appellate Court      Appellate

Canon law Cases.

Appeals to (A) Governor's Bench (B) Chief Court of  
the Empire

C. Chief Revenue      Appellate      Diwan-i-Subah  
Court                  Original

Appeals law to the Diwan-i-Ala (Imperial Diwan)

#### IMPERIAL CAPITAL

A. Emperor's Court      Original (with      Emperor  
   Mufits)  
   Appellate.

B. The Supreme      Original      Emperor  
Court                  Appellate

(i) Emperor's      Revisional  
Bench

#### NO APPEAL LAY

(ii) The Chief      Original,      Qazi-ul-Quzat  
Court of the      Appellate  
Empire              Revisional  
                            Canon Law

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No appeal lay but petition in Revision could be moved in the  
Emperor's Court or his inherent powers could be invoked.

1. The Chief Revenue Appellate      Diwan-i-Ala.  
Court.

## NO APPEAL LAY

In Revisional matters application could be moved in the Emperor's Court or the Emperor could take action at his own initiative.