THE POLITICAL HISTORY OF THE MUGHALS AND THEIR ADMINISTRATIVE AND QUASI-RELIGIOUS INSTITUTIONS HAVE ATTRACTED THE ATTENTION OF EMINENT SCHOLARS AND WORKS OF GREAT MERIT HAVE COME OUT ON THE SUBJECT. BUT COMPARATIVELY LITTLE ATTENTION HAS BEEN PAID TO THE CONCEPT OF STATE AND LAW THAT PREVAILED DURING THE MUGHAL PERIOD. THE MUGHALS, WHO RULED INDIA FOR MORE THAN THREE HUNDRED YEARS, DEFINITELY HAD THEIR OWN IDEALS OF GOVERNMENT AND THEY WERE SAGACIOUS AND COMPETENT ENOUGH TO EVOLVE A STATE MACHINERY WHICH COULD GIVE EFFECT TO THEIR IDEALS. A DYNASTY WHICH COULD STAY IN COMMAND FOR SUCH A LONG PERIOD COULD NOT GOVERN WITHOUT LAWS TO GUIDE ITS VARIOUS ACTIVITIES. IN THE PRESENT WORK AN ATTEMPT HAS BEEN MADE TO STUDY THE MUGHAL CONCEPT OF STATE AND LAW AND TO SHOW THAT DESPITE THE OBSERVATIONS OF THE FOREIGN TRAVELLERS TO THE CONTRARY, THE MUGHALS HAD DEVELOPED A CONSIDERABLE MASS OF LEGAL POSTULATES TO GOVERN VARIOUS BRANCHES OF STATE ACTIONS.

BEING MUSLIMS, THE MUGHALS WERE EXPECTED TO ADOPT THE POLITICAL SYSTEM OF ISLAM, TO FOLLOW THE ISLAMIC LAW AND TO ACT UPON IT IN ADMINISTRATIVE MATTERS. BUT IN THE FORMATION OF THE MUGHAL STATE SEVERAL FACTORS PLAYED CONTRIBUTORY ROLE WITH VARYING DEGREES. THESE FACTORS COMPRISED RELIGIOUS INCLINATION OF ITS FOUNDERS, THEIR ORIGIN AND BACKGROUND AND THE PREVALENT POLITICAL SYSTEM OF THE COUNTRY OF THEIR ADAPTATION. THEIR OWN POLITICAL HERITAGE WAS RICH AND AS BEING
descendants of Chagatai Khan and Timur, the Mughals could not
sever relations from their past completely. Then they had to
face the peculiar Indian situation where majority of the
population was composed of non-Muslims with their own political,
social and economic institutions.

The Islamic concept of a state signified a political
organization established for the purpose of enabling the Muslim
community to live in accordance with Islamic ideals in all
spheres of life. The ruler under such political set-up constitu-
ted the highest executive who was inter alia the commander of
the faithful and the fountain of justice. But law-making did
not fall within the purview of his prerogatives. He was only a
supplement to the law; he could neither repudiate nor modify it.¹
He was authorised to exercise his discretion in controversial
matters and to choose any one of the various interpretations
given by the jurists on any point of difference.²

1. Abul Hasan Ali Mawardi, al-Ahkam-us Sultania,
Cairo, 1909, p. 3; Ibn Khaldun, Muqaddasa, Cairo,
1348 A.H., p. 159; Fazl bin Rusbahen, Suluk-ul
Muluk, Photograph No. 46 (MS, British Museum Cr.
253), Research Library, Department of History
(AMU, Aligarh), ff. 19a-20b.

2. According to the authoritative view of the jurists,
to be entitled to exercise discretionary rights or
to give an independent reasoning (Ijtihad) a ruler
should be endowed with ability to judge the merits
of different interpretations and should possess
sufficient knowledge and legal acumen to arrive at
a sound decision. (Abu Ishaq Shatibi, Al-Fawafiqat
fi usul-il Shariat, Cairo, Vol. IV, pp. 105-7; Shah
Waliullah, Hujat-ul-Ilk Baligha, Cairo, 1286, Pt.
III, pp. 1026-27 (article on Ijtihad by D.B. Macdonald).
The Mughal emperors have apparently accepted the supremacy of the shariat law over the state, at least in theory. They did not consider themselves above the law, nor did they claim to have the power of legislation. Even the mahzar issued at the instance of Akbar did not give him right to change the law. It only emphasised the discretionary rights which a Muslim ruler was entitled to use in controversial matters. But in Mughal India the law seems to have been divided for all practical purposes in two categories - religious and political. What happened actually was that the emperors placed the matters relating to religious obligations, marriage, divorce, inheritance, pious endowment, etc., under the jurisdiction of religious authorities (gazis, muftis or sadras) and paid due regard to their opinion and decisions in these matters. But in political affairs they considered themselves as sole interpreter


2. Ali Muhammad Khan, Mirat-i Ahmed, Calcutta, 1925, I, p. 257. This division of law also existed during the Delhi Sultanate. Alaeddin Khalji is reported to have declared that the polity and government were one thing and the rules and decrees of law another. The rules of government were to be administered by the kings and the shariat's rules by the gazis and muftis. Muhammad bin Tughlaq has expressed his inability to observe the limits of the shariat in giving punishment for political offences and resolved to take decision on his own in such matters according to the exigencies of time. (Alauddin Barani, Tarikh-i-Firuz Shahi, Calcutta, 1862, pp. 289, 510-11).
of law and did not brook interference from the ulama and jurists. In this sphere the judgements of the qasim and jurists were not only set aside by the emperors, they were sometimes also relieved of their job assignments if they did not conform to the political policies of the rulers so as to serve their interest to their full satisfaction and to flatter their vanity. To deal with the administrative problems, they now and then promulgated new regulations paying little regard to the consistency of their edicts with the ideals of Islam or sanction from the shariat. Thus the limitations imposed by the shariat to the exercise of their authority were not fully observed.

The Mughals did not exclusively base their administrative regulations and legal canons on the postulates and the edicts of the shariat. An enunciation of the source material and the set of rules, criteria and administrative manuals makes

1. After the suppression of Khan-Zaman's rebellion during the reign of Akbar, Qasi Tawaisi had declared that it would be against the shariat to kill the men of the rebel's party and to confiscate their property after the battle was over. As the decision was not acceptable to the Emperor, Qasi Tawaisi was replaced by Qasi Yaqub (Badauni, II, pp. 100-101, III, p. 79). Aurangzeb is reported to have ignored the advice of Qasi-ul-Lugat, Shaikh-ul-Islam and Qasi Abdullah that fighting with the Sultans of Bijapur and Golkunda was illegal as they were believers. Muhammad Hashim Khafi Khan, Muntakhab-ul Lubab, Calcutta, 1874, II, p. 439; Qasim-i Himat Khan 'Ali, Nawal Kishore, 1873, pp. 22-24.
it abundantly clear that there existed four kinds of legal
codes and set of regulations to serve as guides in the legal
framework of the empire.

(a) Canon Law

It was purely personal law of Islam and was exclusively
applied to the Muslims in such matters as inheritance,
succession, marital rights, guardianship, etc.

(b) Law of the land or Common Law

It signified the law that governed the system of
taxation, commercial transaction and regulated customs,
transit duties, barter, exchange, sale and contract.
The common law also dealt with the offences involving
maintenance of internal peace and order or with the
criminal acts recognised by age-old human society, such
as adultery, murder, theft, robbery, etc. The law of the
land was common to all subjects of the state.

(c) State Law (jumubit or nawanin-i Shahi)

This consisted of regulations enacted by the state and
of executive decrees issued by the emperors from time to
time for conduct of the state affairs and governance of
the country. The sphere of the state law was naturally
wide enough comprehending all those aspects for which
no legal precedent was available or the existing law was
not effective to cope with the new administrative problems.

(d) **Customary Law** (genun-i urf or adat).

The fourth set of the Mughal law comprised the local customs, traditions and the prevalent practices. The customs sanctioned by traditions have been commonly recognised as an important source of law. The Mughals as well as their counterparts in other Muslim countries have given due weightage ranging from tacit forbearance to actual acceptance and sanction to customs and local traditions to add to the dimensions of the legal framework in operation in the empire. The customary law, in fact, served as an expedient instrument for the Muslim rulers in tackling the administrative problems. It also provided them with a legal ground for justifying their enactments in temporal matters.¹

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¹ The Hanafite and Malikite both schools recognise within limits the validity of the customary law, while the Shafiites do not accept it as a source of law. However, the commonly accepted opinion of the jurists is that a custom is not valid if it contravenes the explicit text of the Qur'an or Hadis. It can overrule a givai, but cannot abrogate the rulings of the Qur'an or Hadis (Al-Sarkhali, Sharh-us Suyar-ii Kabir, Hyderabad, 1336, AH. I, pp. 194, 195, II, p. 296; IV, p. 16).
The Mughal emperors took into account the local customs and practices and retained them in several spheres of state administration. Apart from the significance given to the local customs in the disposal of cases by the village panchayats, they were also applied to the matters relating to revenue, duties on merchandise, commercial transactions, contract, etc. The local traditions were so firmly rooted in certain parts of the country that sometime new converts to Islam carried them into the Muslim society though many such practices were contrary to the Islamic values and recognised certain un-Islamic laws such as the exclusion of daughters from inheritance. But evidence are not lacking to suggest that whenever any specific case of violating the Islamic law was brought to the notice of the emperor he took steps to put an end to the illegal practice.¹

The impact of the local customs and traditions on the working of the Mughal government apart, the significance of the Mongol customs and traditions cannot be overlooked. In this reference the Tura-i Chashmi which was considered an important

constitutional code by the Mughals is noteworthy. Regarding the Tura Babur observes, "My forefathers and family had always sacredly observed the rules of Chinggis. In their parties, their courts, their festivals, and their entertainments, in their sitting down and rising up, they never acted contrary to the Tura-i Chingesi. The Tura-i Chingesi certainly possessed no divine authority, so that any one should be obliged to conform to them; every man who has a good rule of conduct ought to observe it. If the father has done what is wrong, the son ought to change it for what is right."\(^1\) Several other references in the contemporary sources to the observance of and respect for the Tura in the royal court, administrative procedure and social etiquettes testify the fact the fact that the impact of the Mongol traditions and law was indelible on the Mughal Empire.\(^2\)

The Mughal emperors not only incorporated the local customs and traditions into the Muslim administrative system, they also introduced changes and modifications in the Islamic law

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Itself. The changes and modifications are greatly in evidence in the laws concerning secular matters such as the administration of land revenue, imposition of taxes and duties on merchandise. Sometimes modifications were also made in the canon law on the pretence of social and political requirements. The laws relating to religious beliefs, marriage, divorce and inheritance were not altered. But the penal law underwent substantial changes and it seems that even Aurangzeb, generally known as an orthodox Emperor, introduced many modifications in it. A striking illustration of such modifications is to be found in a firman of Aurangzeb (issued to the diwan of Gujarat in 1672 A.D.) dealing with various aspects of the penal code. The proclamation of this firman by Aurangzeb, when many works on the Islamic law including the Fatawa-i Amuli, compiled at his own instance, contained elaborate discussion on the penal law, may be explained by the fact that the Emperor considered modification in the existing law necessary in view of the new problems of state administration.

The Mughal emperors like other Muslim rulers of medieval India were Hanafites (the followers of the school of jurisprudence founded by Abu Hanifa). But it is interesting to

1. The prevalence of the Hanafite doctrines in medieval India owes to the influx of a large number of learned scholars (ulama) from Nishapur, Samarqand, Ghaznavi, Kashan, Balkh, Sajistan, Khwarizm and Tabres which were stronghold of the Hanafite School of Jurisprudence.

(Footnote Continued on Next Page)
note that the Mughals never felt themselves bound by any particular school of jurisprudence. If Hanafite interpretation suited their political ideology they accepted it, otherwise they asked qazis and jurists to find out legal verdicts from the other three schools which would serve their purpose. It appears that they rejected the Hanafite point of view expressed by the qazis or jurists on a particular problem if that did not suit their political requirements. Their acceptance or rejection

(Previous footnote continued)

These Hanafite scholars marked so great effect on the academic climate in India specially in judicial sphere that the Hanafite School of Jurisprudence was officially accepted by the Muslim rulers and this became foundation-structure of the judicial system operating in the law courts in India (Barani, p. 153; al-algashandi, Subh-ul Asma (Eng. tr. O. Sphies) Aligarh, (undated) p. 29; Badauni, Muntakhab-ut Tavarikh, III, pp. 82, 150; Lahori, 7, p. 137; Muhammad Kazim, AlamgirNama, Calcutta 1868, II, p. 1071; Mustaid Khan, Masir-Al Alamgir, Calcutta, 1871, p. 525.

1. According to the Muslim jurists a Muslim ruler is permitted to adopt one of four schools of jurisprudence. Even after formal acceptance of one school of law he has option to decide the case according to the view of any school other than his own. (Fatavat-Alamgir, Matba'-i Majidi, Kanpur, 1350 AH, II, p. 159).

2. Akbar is reported to have dismissed Qazi Yaqub who had expressed his view according to the Hanafite school of law that only four wives were allowed in Islam and that mutah marriage was illegal. The new incumbent, Qazi Husain Arab, declared the validity of mutah marriage in accordance with the view of Imam Malik and this was accepted by the emperor (Badauni, II, pp. 208-10). Aurangzeb did not accept the Hanafite point of view about illegality of execution of the Muslim prisoners of war caught in fighting with the imperial forces near the fort of Satara and chose to follow the opinion of other school of law which permitted their execution in view of the security of the state. (Hamiduddin Khan, Akbar-i Alamgir, Calcutta, 1928, pp. 81-82. ...
of one's view was based on the fact whether it proved to be politically favourable to them or not. Thus they practically regarded themselves entitled to choose the opinion of any jurists from amongst the four schools.

In regard to the application of the kind of law to the non-Muslims (i.e. Hindus) under the Mughals it is evident from the contemporary sources that they were not bound to observe the religious laws of Islam; nor they were subject to those portions of the civil law which related to the purely personal law of the Muslims such as inheritance, succession, marriage, will, etc. But the secular portion of the civil law relating to trade, exchange, sale and contract was applicable to them. They were also bound by those portions of the penal which related to the security of life and property of the common people or tranquility of the state such as theft, murder, robbery, rebellion, etc. Their cases were mostly settled by the village panchayats according to their own laws and local customs. When the cases relating to their personal law were brought to the Mughal court they were used to be decided in consultation with their own doctors of law.1 The cases arising between a Muslim

and a non-Muslim were generally disposed of on the basis of the principle of equity. There are ample evidence to show that the non-Muslims were given right of claiming retaliation in murder cases and that the Muslims were actually punished for committing offence against person or property of the non-Muslims. According to the Islamic law a non-believer was not entitled to give evidence against a believer, but the cases of acceptance of the evidence of the Hindus against the Muslims are recorded in the sources. The observance of the Hanafite doctrines in India also marked a great impact on the attitude of the Muslim rulers towards the non-Muslims as the Hanafite school was more catholic than others in its treatment of the non-Muslims.


3. *Fatwa-i Alamgiri*, compiled from the Hanafite point of view (II, pp. 277-78) lays down the principle that non-Muslim subject of a Muslim state are not subject to the laws of Islam. Their legal relations are to be regulated according to the precepts of their own faith.
It is true that no manual of law or statute-book of the modern times existed during the Mughal period, but it cannot be denied that under the Mughals certain rules and norms were at work for the punishment of offenders and criminals, to regulate the inland and the foreign trade, to govern the agrarian relations, to determine the proprietary rights and to guide the international relations. Besides, the Mughals had also taken practical measures in dealing with the different political and administrative problems. Out of these rules and practices the laws can be sorted out and placed under different categories in accordance with the subject. So on the basis of the legal formulations of the Mughals and their actual practices, I have ventured to make an attempt in the following chapters to work out the Mughal penal law, property law, commercial law, international law and agrarian law.

In dealing with the manifold aspect of government, administration and law making in a country or dynasty, it is essential to know the conception of the state and its evolution. So I have discussed in the first chapter the theory of state as presented by the well-known Muslim political theorists, scholars and historians from Nawardi to Abul Fasi. I have critically examined their concept of state, functions of the government, duties of a ruler and obligations of the subjects, and have made an assessment of the contemporary political set up to find out the relation between their theory and the prevalent political system.
The chapter on the penal law has been discussed on the pattern found in the works on Islamic jurisprudence where the punishment have been divided under *hudud*, *zina* and *fsir*. A brief account of the Islamic penal law has been also given to determine the extent to which it had been followed or neglected by the Mughals. The study of the Mughal penal law is mostly based on the analysis of the cases and the punishments awarded for various offences.

It has been a popular conception that the idea of private property did not exist in Mughal India, at least in case of the state officials. The argument put forward for this notion was that their assets were escheated after their death. In the chapter on the property law the system of escheat has been thoroughly discussed and examined critically to appreciate the merits and demerits of the above conception. On the basis of the analysis of the actual cases of escheat it has been shown that the property of the deceased officials was escheated by the state not because the state was the proprietor of the assets left by them. The problem of the proprietary rights of the people in general in movable and immovable property has been also taken up in the light of cases of inheritance. In this regard a study has been also done of those documents which showed transfer of ownership in movable and immovable property and grant of compensation to these persons whose property was acquired by the government.
In reference to the landed property, I have discussed here only question of proprietary rights in habitable lands as ownership in cultivable lands is the main theme of the chapter on the agrarian law.

India had trading and commercial relations with the countries of east and west from times immemorial. The Mughals maintained the commercial traditions of their predecessors. The foreign merchants were granted freedom of trade and all sorts of facilities were provided to them. The Indian traders also travelled far and near to display and sell their goods of all varieties. To encourage the trade, the Mughal rulers formulated rules and regulations for the personal security of the traders. They also made provision for compensation in case of loss of the merchant's goods and property. They fixed rates of custom and transit duties and ferry charges and regularised mode of their assessment and method of collection. They also established certain norms for state monopoly and market control in some special items of trade. The rules laid down by the Mughals in connection with the above matters have been discussed in the chapter on the commercial law. Such rules may be deduced from various agreements concluded between the Mughal government and the trading companies. The farmans, gaskas and pervanea issued to the Indian and foreign merchants, and the disputed cases of the merchants brought to the court of the emperor or governor for disposal also provide useful information about this aspect.
The terms international law and international relations are of recent origin and works and digests of international law came to be prepared late in the 19th century and onward. But as a European writer has said: "It (the international law) is a system of jurisprudence which for the most part, has evolved out of the experiences and the necessities of situations, that have arisen from time to time. It has developed with the progress of civilization and with the increasing realisation by nations that their relations if not their existence, must be governed by and depend upon rules of law fairly certain and generally reasonable." ¹ In fact the concept of the international law is not a boon of the modern civilization and it existed in the Islamic polity from the very beginning and voluminous works on rules guiding the international relations had been compiled by the Muslim jurists as early as in the second century of the Hijra era. The Mughals who had established one of the greatest empires of their time had set up diplomatic, commercial and cultural relations with central Asian and European nations. It was but natural that there should be some norms and principles guiding their relations. The treatment meted out to the envoys and ambassadors, arrangement for their hospitality, provisions for

their and other foreigners' security, dispensation of cases of alien subjects, treatment towards prisoners of war were matters about which every state has to legislate and make rules and Mughal government was no exception. So on the basis of the rules formulated to deal with these problems and the prevalent practices and conventions followed in this regard, I have attempted in the chapter on the international law to give an idea about and draw the basic rules of the international law which was in operation during the Mughal rule.

It may be clarified regarding the chapter on the agrarian law that it is based on a critical study of the view of two contemporary scholars (Shaikh Jalaluddin Thanesari and Fazi Muhammad A'la Thanwi) about proprietary rights in land and some other matters relating to landed property. Taking into account the prevailing agrarian conditions, they have expressed their views in their treatises, Risala dar bei Arasi and Abkam-ul Arasi respectively. Written under the legal framework, both the treatises are of great importance for considering the question of land ownership in Mughal India. They also provide interesting and useful information about

1. As a part of my M.Phil requirements, I had translated the selected portions of these two works with annotation.
nature of the rights held by ruler, zamindars and peasants in the land.

The present study covers the whole period of the Mughal empire, but concentration has been given to the reigns of the Great Mughals (i.e. 1556-1707) as the bulk of the available material about the subject relates to their times.

In writing the Arabic and the Persian words and putting diacritical marks on them, I have mainly followed the Arabic-English Dictionary and the Persian English Dictionary of P. Steingass.