
TRACES OF MUGHAL ADMINISTRATION OF JUSTICE IN MODERN DEMOCRACIES: A CASE STUDY OF INDIA AND PAKISTAN

*Bakht Munir**

*Dr. Naveed Ahmad**

*Ali Nawaz Khan**

In order to govern the Indian subcontinent, the Mughals introduced a series of administrative and judicial reforms, which are still intact in India and Pakistan. In light of qualitative research methodology, this research article aimed to investigate, inter alia, the nature of state and the concept of sovereignty prevalent in the Mughal era, place of Shariah laws, and various means whereby public grievances were used to be addressed. This research also explicated that how the Mughal administration of justice influenced the English administration of justice and examined traces of the various principles of the Mughal administration of justice followed in modern democracies. The research has been concluded with the findings that though the Mughals were benevolent despots, who ruled with an iron hand, but were well abreast of the public welfare that led to the foundation of certain reforms, which were public oriented and effectively placed itself in modern democracies.

Keywords: Mughals, administration, subcontinent, principles, traces, Pakistan, India, justice

1. Introduction

With the advent of *Muhammad Bin Qasim* at *Sindh* in 712AD, the Muslim paved its ways to rule the Indian subcontinent in form of *Sultanates* through five different dynasties from 1206 to 1526: the *Slaves*, the *Khiljis*, the *Tughalqs*, the *Sayyids* and the *Lodis*. Afterwards, first ever Muslim empire was founded by *Zahiruddin Babar*. Until 1706, the Indian subcontinent was ruled by the Mughals and thereafter gradually descended into the hands of the *British* who formally took over it in 1857.¹In order to govern the subjects, the Mughals introduced various principles of administration of justice, which were the blend of foreign and indigenous elements, influenced by Persio-Arabic elements intermingled with the native trends. The vitality of Mughals' justice system is weighed in light of its reflections over the system introduced by the British as well as the one currently in practice in Pakistan and India. The main objectives of this research paper were to examine the Mughal administrative and judicial fabric

* Lecturer, Institute of Language and Linguistics, Punjab University, LHR.

* Assistant Professor, University Law College, Punjab University, LHR.

* Assistant Professor, University Law College, Punjab University, LHR.

along with its magnified features and to critically evaluate the assertion made regarding division of state powers and welfare of the people. Further, this article investigated bureaucratic and judicial fabric of the Mughal administration, examined the influence of the king over the state's affairs, and explored the legal reforms brought forth by Aurangzeb, which are still intact. This work also examined how the British introduced their own system of administration and replaced the Mughals' one. At the end, this paper identified modern aspects of the administration of justice and elaborated on how those principles related back to the Mughal regimes.

With the qualitative research methodology, operational framework of the research has been categorized in the following segments: in first segment an overview of how the Muslims thronged to the Indian subcontinent and reforms in the administration of justice were explicated. In second segment, common features of the Mughal administration of justice have been examined, which included status of the king, nature of the state, place of Shariah, public appearances and accessibility for addressing public grievances. In third segment, influence of the Mughal administration of justice on the English administration has been given. In fourth segment, traces of the Mughal administration of justice in modern dispensation of justice have been given. In last segment, the research has been concluded with findings that the Mughals were administrative genius and their legacy of administrative reforms is still practiced in modern democracies.

2. tatus of the King

The Mughal King enjoyed absolute authority in all internal and external affairs of the state, and therefore could be called an absolute monarchy, the shadow of God, also known as *Badshahs or Shahenshah*. All legislative, judicial and executive powers were vested in the emperor, which is corresponded with the concept of totalitarian state. Sitting on the throne was the exclusive privilege of the emperor and this rule was strictly observed at least up to the end of Akbar's epoch. Nonetheless, in the latter period some exceptional changes occurred whereby the princes also used to sit on the throne.² Pursuit of this practice would have probably led to a power struggle among the princes of the deceased king. However, it is noteworthy that the Mughal emperor enjoyed sovereign powers in all spheres of life. He was the head of administration – both civil and military, the commander of the state forces, the fountain of justice, and the chief legislator. His decisions were considered expeditious and genuinely

impartial so his position placed him beyond the limits of fear and favour.³

The Mughal emperor had no regular council of ministers to which he ought to be answerable and there was no check on the emperor's actions. The king was considered above the law, as there was no rule of conduct or loyalty to the constitution, which needed to be observed during the course of his kingship. Below the emperor, the *Wazir* or *Diwan* was the highest official who was authorized to decide important matters without consulting other ministers. However, other officers of higher hierarchy such the *chief Qazi*, the chief Paymaster, the High Steward and the Commander-in-chief used to attend the emperor's court during private consultation or *Diwan-i-khas*. The rest of ministers, due to the nature of their functions conferred on them, could be termed as secretaries. It is noteworthy that neither the *Wazir* nor rest of the ministers could control the royal will. Being a one-man rule, they could advise but could not vote against or give a dissenting opinion even though the emperor was taking a wrong course.⁴ Such absolute ministerial control in its modern manifestation is inconsistent with the constitution and the rule of law in a democratic system.

By the dictates of reasons based on different threats to the life and the territory of the emperor, he could not opt for a modern welfare administration in the era of Mughals. The principles of succession to the throne, being undefined, led to a great amount of uncertainty in the minds and hearts of the emperors. Rebellions were potential threat for consolidation of the kingdom. Similarly, unquestioned loyalty could breed personal greed among the closest to the emperor. In contrast, the democracy discourages power in the hand of one authority; it supports the devolution of powers at the root level so that an individual can easily access their representatives at a domestic level.

3. The Nature of the State

Up to the times of the *Sultans*, the throne of *Delhi* was designated as a *Sultanate* wherein the *Sultan* was the head of the state. The *Sultans* represented themselves as the representatives of the Muslim *Caliphate*. The Mughals founded an independent empire designated as a kingdom having internal and external sovereignty. The state laws were framed by the emperor himself in form of *Shahi Farmans*. The Mughal rulers would not recognize any other ruler anywhere in the subcontinent and they even denied the sovereignty of the rulers outside the Mughal frontiers.⁵ The Mughals' state legislation

in the form of *Shahi Farman* is different than the present day democratic practices of legislation in which a representative and deliberative body (Parliament) enact laws. Nevertheless, legislation in the form of *Shahi Farmans* can be rightly associated with the executive orders of the modern day in which developed as well as developing countries permit the head of government, particularly the president to issue an executive order. The head of state in a modern democratic system can promulgate laws in the form of ordinances for a limited period.

In the United States, the President issues executive orders unilaterally. Trump's travel ban is the most recent precedent of the executive order. In some cases, the power to do so is delegated by statute; in others the president may assert an independent constitutional authority, which is limited to few specific areas. Usually, an executive order stands until one of two things happens: either it is overturned by the president or it is declared unconstitutional by a court. In the case of Pakistan, an executive order lasts for 120 days and may be repealed or extended by the National Assembly for a further period of 120 days.⁶ In modern democracies, the state functions are divided into three main pillars: legislature enacts the laws, judiciary interprets the laws, and executive implements the laws. Unlike the concept of *Shahi Farman* of the emperor, a proper constitutional scheme has to be followed in order to formulate, supersede or abolish a law.

4. Place of Shariah

The Mughals arrived in India from Central Asia, a seat of religious learning at that time. Almost all the Mughal Kings enforced *Shariah* Laws in Indian subcontinent. The *Chief Qadi* (judge), who exercised extraordinary powers, legalized *Akbar's* accession by reading a proclamation during a Friday prayer.⁷ It was in the time of *Akbar* that the *Shariah* was declared as supreme law of the land. Nevertheless, in 1579, *Akbar* intended to be recognized as the supreme judge, by the *Ulemasin* religious matters, and a just ruler, *Imam-i-Adil*, so he issued an *Infallibility Decree*.⁸ Further, in the case of any conflict regarding the interpretation of Muslim Law, *Akbar* assumed the power of supreme arbiter.⁹ *Akbar*, however, was not allowed to act as an Islamic judge so he appointed his own nominees to the highest religious and legal offices.¹⁰ Though his descendants alleged him to be an apostate and infidel for compromising Islam, but there is no cogent evidence to justify that he denounced Islam.

Nevertheless, those practices were rolled back during the era of *Aurangzeb Alamgir* who elevated the throne with the support of *Ulimas*. *Aurangzeb Alamgir* gave sanctity to the *Shariah* Laws and ensured strict adherence to those laws. Nonetheless, moving from theory to the practice, on a close look at the memoirs of *Emperor Jahangir* it appears that the propagation of Islam and the implementation of the *Shariah* were not the primary aims of his government. It was only in the judicial department of the entire central structure of the Mughal administration where the Mughal rulers including *Jahangir* followed the Islamic laws. For both Muslims and Hindus, criminal law was the same. But in civil cases, Islamic law was confined to Muslims only.¹¹

5. Public Appearances and Accessibility

All the Mughals, except *Aurangzeb Alamgir*, were benevolent despots who cared for the betterment of the masses and took steps to ensure that justice be dispensed without official hindrances. There are many illustrations showing that the Mughal emperors ensured accessibility to the general public and attached such importance to the royal dispensation of justice that it was considered to be the foremost objective of the government.¹² Emperor *Jahangir*, after his accession, instituted a chain of justice (*zinjir-i-adl*) for redressing aggrieved persons' grievances. An individual who was denied justice could have recourse to the chain that would cause the emperor to become aware of the grievance¹³ He issued 12 Ordinances popularly known as *Dastur-ul-am'l (Rule of Conduct)*.¹⁴ Furthermore, the Mughals realized that attending to the welfare of the people was inevitable and as a result brought about some public-oriented reforms. To address the grievances of the people and expedite dispensation of justice to the masses, the Mughals initiated frequent public audiences. To facilitate public appearances, Akbar used to appear at *Jharoka* and give *Darshan* to his subjects. This was a Hindu institution innovated by *Akbar*.

However, *Aurangzeb* discontinued this practice and held a full *Darbar*, which was the emperor's court or office held for all formal discussions about state's affairs, in *Diwan-i-Khas-o'Am* where the appointments and grants were made. The same practice of holding a full *Darbar* was continued into the reign of the later Mughals.¹⁵ Besides the Mughal emperors, the empresses, the princesses and other female members of the *Haram* also held public gathering to redress the general grievances of the people. The Empress *Noor Jahan* possessed a great sense of justice and was regarded as an asylum for the all

sufferers and helpless girls.¹⁶ The Mughals' practice of public appearances may be criticized as a public stunt to gather political capital, but their contribution to the alleviation of public sufferings cannot be discounted. The characterization of these appearances as a public stunt, moreover, reflects modern political conditions, in which politicians use such appearances to gain an advantage over their opposition parties. However, the Mughals did not need this sort of political advantage, because no opposition to the king existed at that time. Moreover, these public appearances ensured that the means of access to the kings was available to the common man.

6. Influence of the Mughal Administration on the English Administration

Demographically, the subcontinent was heterogeneous in nature where blends of foreign and indigenous practicable norms were in place. During the British rule, some English laws were introduced in the administrative and judicial systems to ensure smooth functioning of state. Conversely, the English system could not remain isolated from the influence of the Mughal administration and so the former introduced the practicable norms of the latter in their own system of administration.

The immense wealth of India attracted the Europeans, who voyaged by sea to the Subcontinent. With the passage of time, the newcomers turned from trade partners into the rulers of the land.¹⁷ The Portuguese discovered the sea-route to the Subcontinent and *Vasco da Gama* was the first person to reach the port of Calicut on the 27th May, 1498. In the tussle for control over the East, the British emerged victorious against all other European nations, i.e., the Portuguese, the Danish, the Dutch and the French. The British gained control of India after the Battle of Plassey 1757, the Battle of Buxar 1764, the Anglo-Mysore War 1767-1799 and the War of Independence 1857 respectively. After establishing its direct rule, the British Parliament embarked upon a journey of codification of laws in India. They incorporated the Western principles of civil and criminal law into the native judicial system. The Mughals' empire could be considered as predecessor to the British Raj, which followed most of the Mughals' practices by different means. The British adopted all the practicable principles of the Mughal laws into the new system. Moreover, the British laws were incorporated into the legal administrative fabric of the region because those laws met the needs of the people. Next segment of the research investigated the reforms introduced by the

Mughals in the arena of administration of justice which are still practiced in India and Pakistan.

7. The Mughal Traces in Modern Administration of Justice

This segment identified modern aspects of the administration of justice and explained how such principles relate back to the Mughal regimes. Taking a close look at the present day of administrative and judicial system, one can trace many principles of Mughal laws in the new dispensation of justice prevalent in India and Pakistan: the Mughal King used to be the supreme legislator of the land and the same is found in the new legislative setup of India and Pakistan where the President is the final authority to approve the laws enacted by the legislature. The office of the Chief Justice is akin to the office of the *Qazi-ul-Quzat* in Mughal era. In Pakistan, the office of the Ombudsman is similar to the office of the *Muhtasib* in Mughal administration. The *Thanas* are still there and the SHO is performing the duties which were previously being performed by the *Kotwal*. In India and Pakistan, the state is divided into provinces (*Subas/ Risats*) whereas provinces are further divided into Districts (*Sarkars/ Zilla*) and the Districts are divided into *Tahsils (Parganas/ Ta'alukas)*. The functions of Chief Minister, with slight modifications, are same as of the *Subidars*. In Pakistan, there is Federal Shariat Court to check conformity of laws with the Islamic injunctions and give verdicts where there is a conflict with the Islamic laws, which was the function of the *Ulemas* in the times of the Mughals.

In the Mughals' administration of justice, *Aurangzeb* initiated a number of legal reforms some of which are still intact: firstly, in the area of investigation, *Aurangzeb* introduced the concept of remand of the accused whereby *Kotwals* were required to obtain a written permission from the *Qazi* for keeping an accused in the custody for investigation purposes. This reform was meant to avoid unlawful custody and facilitate the administration of justice. Secondly, *Aurangzeb* was eager to bring about reforms in the criminal justice system and was committed to expediting the dispensation of justice, so he directed the courts for adjudication upon criminal cases without any delay. Where a case was not taken up after first hearing, the *Kotwal* was required to present the accused to the court on daily basis until the matter was decided. Thirdly, *Aurangzeb* issued a *Farman* that without *prima facie* legal evidence no one was to be taken into custody in order to secure the personal liberty of the people. Fourthly, in order to bring about administrative as well as judicial reforms, *Aurangzeb* granted the

right to information and thereby bound the authorities to allow the public to examine the records of rights. Fifthly, during the reign of *Aurangzeb*, it was decided that the government should employ *wakils* to represent its own interests.¹⁸ So, for the first time in history of the subcontinent, the concept of Public Prosecutors (*Vakil-e-Sarkar* or *Vakil-e-Shara*) came to fore. At provincial levels, public prosecutors were appointed by *Chief Qazi* of the Province or *Qazi-ul-Quzat*. The underlying objective of this reform was twofold: to represent and defend the state in suits against the state at the domestic level and to provide legal aid to the poor who could not afford private counsel. Sixthly, in addition to *Al Fatawa al-Alamgiriya*, *Aurangzeb* promulgated *Zabta*, a code of conduct, on every subject and directed its strict adherence. Seventhly, to ensure the sanctity of the courts and to bring about reforms in the appeal system, *Aurangzeb* contributed reforms in order to approach the highest forum for dispensation of justice. After the implementation of this reform, the litigants were required to obtain a decision for their matter from the local authority upon their first request so that they may be certain about their legal standing before approaching to the emperor.¹⁹ Last but not least, *Aurangzeb* contributed to reform for bringing uniformity to the dispensation of justice at domestic fronts and preservation as well as advancement of the legal jurisprudence. *Aurangzeb* issued directions for the preparation of *Mahzarnamahs*, records of judgments, of the higher courts in order to provide guidelines to *Qadis* and *Muftis* while deciding public grievances. However, no published record of these judgments has survived to the present day except *Baqiat al-Salihat*, which contains fifty judgments from the period of 1550-1850 AD.²⁰

The modern-day concepts of criminal procedure, presentation of the arrested person before the magistrate, prosecution by public prosecutors, Habeas Corpus, etc, were well established and practiced in the days of *Aurangzeb Alamgir*. The Administrative fabric and legal reforms brought about by the Mughal emperors to foster public welfare and the expeditious dispensation of justice served as the foundation on which the present day administrative hierarchy and judicial setup, with slight modifications to meet the needs of the day, is established. Furthermore, it is noteworthy that during the English rule in the subcontinent, the British took advantage of this place as a breeding ground for their legal and administrative experiments and, if it complied with the needs of the people without creating hindrance, local practice were extended and implemented into the legal system of

the UK. So the contemporary advancement in the legal arena of the UK, India and Pakistan is deeply associated with the sustainable and gradual development of the subcontinent, especially, in the reign of the Great Mughals.

8. Conclusion

Although the Mughals derived their legal system primarily from the *Quran* and the *Sunnah* and designed their kingdom on the touchstone of *Shariah* laws and *Ulemas'* findings regarding Islamic laws, the emperor enjoyed absolute sovereignty in both civil and military spheres and was not answerable to any internal or external force. The offences and punishments thereof were categorized into different heads. Nevertheless, the ultimate authority to interpret and expound the law was the emperor himself. To regulate the state affairs and ensure dispensation of speedy justice to the masses, emperors had taken various initiatives to have personal contact with the aggrieved persons for redressing their grievances and thereby several drastic legal reforms were introduced, which were in line with the present day legal and administrative machinery. Correspondingly, the King's authority was considered absolute in the formulation of laws as *Shahi Farman*. Further, there was no system for legislation as practiced in the modern days. The Mughals gave sanctity to the *Shariah* laws and ensured strict adherence to those laws. The Mughal practice of public appearances was considered as a political stunt, in order to keep public confidence.

From the nature of Mughal rule, the tyrannical behavior of the rulers is evident, yet the welfare of the people in a monarchical state had to be part and parcel of the administration of the state so as to keep the loyalty of the people. The Mughals introduced, for the first time, a series of reforms in the administrative as well as judicial fabric to foster welfare of the people and expedite the administration of justice. In conceptualizing the welfare of people, reforms brought about by *Sher Shah Suri*, *Akbar*, and *Aurangzeb* are unavoidable, for most of those are still in place. The British adopted the practical norms of the Mughals into their own system and used them to facilitate their administration in the subcontinent, introduced a parallel system for governance. The British gradually replaced the Mughals' system of administration with their own system, which has descended to both India and Pakistan. Additionally, the British had used the subcontinent as a breeding ground to test their novel laws to be incorporated in their own system of administration in the UK, if those proved to be practicable.

To speak precisely, in the annals of history, the Mughals are regarded as autocrats and despots who ruled the Indian subcontinent with the utmost internal and external sovereignty. The popular democratic principles such as separation of powers, checks and balances, etc. were not to be found in their system of government. So far as compliance of laws with the *Shariah* principles was concerned, the king had the *Ulemas* at his call that would have distorted the *Shariah* laws to meet the needs of the Mughal despots. Moreover, it can be argued that the system of revenue collection was consistently upgraded to fill up the treasury. Notwithstanding all these factors, historians also regard them as benevolent despots; the despots who ruled with an iron hand but were not utterly oblivious to popular benefits and aspirations. The introduction of a refined system for administering justice in the realm is the manifestation of their will to uphold the popular principles of justice and fair play. The age in which the Mughals started their rule in the Indian subcontinent was also the start of age of reason and of revolutions in the West. The Mughals were ingenious enough not to ignore changing global trends. So they introduced a system of administration of justice which consolidated their position not only on the throne, but also in the hearts of their subjects. As far as the vitality and durability of their applied principles are concerned, they can be seen to have been replicated in modern day principles and procedures of law, as being practiced in the subcontinent as well as in the western democracies.

REFERENCES & NOTES

- ¹ Munir, Muhammad. "The Administration of Justice in the Reign of Akbar and Awrangzeb: An Overview." *Journal of Social Sciences* 5, no. 1 (2012): 1-03.
- ² Abudl Aziz, *The Mughal Court and its Institutions*, Vol II, Al-Faisal Publishers, Lahore, Chapter 1 (2002):.1.
- ³ Ahmad, M. B. *The Administration of Justice in Medieval India*. Alighar: Historical Research Institute for Alighar University (1941).
- ⁴ Sir Jadunath Sarkar, *Mughal Administration*, 3rd Edition, M.C. Sarkar & Sons, Ltd. Calcutta (1935): 17, 18.
- ⁵ Abraham Eraly, *The Mughal World India's Tainted Paradise*. Edition, Orion Ltd. Orion House UK (2008): 235.

-
- ⁶ Article 89 of the Constitution of Pakistan, 1973.
- ⁷ Davies, C. Colin. "Akbar" in *the Encyclopedia of Islam*, vol. 1. Leiden: E. J. Brill, new ed. (1960): 316.
- ⁸ Qureshi, Ishtiaq Husain. "India under the Mughals." *The Cambridge History of Islam* 2 (1970): 62.
- ⁹ Ali, Kausar. *A new history of Indo-Pakistan*. 25th Revised Edition. Aziz Book Depot, Lahore (2008): 86.
- ¹⁰ Davies, C. Colin. "Akbar" in *the Encyclopedia of Islam*, vol. 1. Leiden: E. J. Brill, new ed. (1960): 62.
- ¹¹ Alvi, Sajida S. "Religion and State during the Reign of Mughal Emperor Jahāngīr (1605-27): Nonjuristical Perspectives." *Studia islamica* (1989): 95-119.
- ¹² Lefèvre, Corinne. "Recovering a Missing Voice from Mughal India: The Imperial Discourse of Jahāngīr (r. 1605-1627) in his Memoirs." *Journal of the Economic and Social History of the Orient* 50, no. 4 (2007): 452-489.
- ¹³ Beveridge, Henry, ed. *Tuzuk-i-Jahangiri: or Memoirs of Jahangir*. Prabhat Prakashan, (1978).
- ¹⁴ Ali, Kausar. *A new history of Indo-Pakistan*. 25th Revised Edition. Aziz Book Depot, Lahore (2008): 100.
- ¹⁵ Ibid. p. 202
- ¹⁶ Ibid. p. 104.
- ¹⁷ Ibid. 229
- ¹⁸ Calkins, Philip B. "A Note on Lawyers in Muslim India." *Law and Society Review* (1968): 403-406.
- ¹⁹ Munir, Muhammad. "The Administration of Justice in the Reign of Akbar and Awrangzeb: An Overview." *Journal of Social Sciences* 5, no. 1 (2012):
- ²⁰ Ahmad, Muhammad Basheer. *The Administration of Justice in Medieval India: a Study in Outline of the Judicial System Under the Sultans and the Badshahs of Delhi Based Mainly Upon Cases Decided by Medieval Courts in India Between 1206-1750 AD*. No. 1. Aligarh Historical Research Institute for Aligarh University, (1941).