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Mughal Farmān-i-Shāhī and Islamic Jurisprudence: Relevance and Irrelevance

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Abstract

Though the sources of Farmān-i-Shāhī, according to the Mughal emperors, are those have derived from the Holy Quran, Sunnah and other primary and secondary sources of Sharī'ah and apparently they are their core sources for the formation of laws as well, but there seemed to be deviation from the set rules of Sharī'ah conjunctions. It is evident that the Mughal emperors with the help of well-known Islamic Scholars had set a system in a multicultural and multi religious society that reflected the Sharī'ah in most of the injunctions of Shariah, but still there are many evidences denote that Mughal emperors took up the matters totally against the principles of Sharī'ah as particular in those challenging their governance and authority. The Study aims to analyze the Farmān-i-Shāhī with special perspective of Islamic Jurisprudence and find out to what extant Farmāns are according to the Sharī'ah and to what degree they deviated from it.

Keywords: Farmān-i-Shāhī, Mughal emperor, Islamic Jurisprudence, Critical analysis.

Introduction

Farmān-i-Shāhī is a document comprises the legal and official statements issued and preceded by the Mughal1 emperors during their reign spanning over 1526-1857 in Subcontinent. These Farmāns have vital role to establish the rule of law and order in subcontinent. Their significance

lies in another way that these documents are carried out in a multi-

cultural and multi religious2 society where minority Muslims were ruling over the majority of non-Muslims. As India or Hindustan was called then, a country having diverse communities, clans, families, tribes, nations and religions. Owing to counseling with clergy Farmāns were developed on the basis of Islamic Jurisprudence and this claim comes true while studying these farmans with exceptions. After this research study,

Literaturer Review

There are number of valuable books, articles and research works carried out in the subject matters. Keeping the space of the article in view some of most relevant to the subject of them are reviewed here to find out gaps and justification for the study. These studies are as follow:

The Central Structure of the Mughal Empire is another important book by a Pakistani researcher, Ibn Ḥasan. The author has divided this book into different chapters comprising role of different officials in the Mughal empire and their responsibilities and duties. He has highlighted the central role of the judicial system and its alignment with the Islamic jurisprudence specifically the Sunnī Ḥanafī sect. The author has also discussed different officials from Qāḍī to Muftī and then the complication of Fatāwā during the final Mughal period.

The Administration of Justice in the Reign of Akbar and Awrangzib: An Overview, is a study by Dr. Muhammad Munir. The Doctor has focused on the Mughal judicial system during the period of Akbar and Awrangzib. He has highlighted the judicial administration and reforms brought about by both the emperors and their impacts on the dispensation of justice. He has also reviewed the wrongs committed by Akbar and the role of Awrangzib in thrusting religious touch in the judicial system. This study is very important regarding the role of the emperors in reforming and changing the Islamic jurisprudence specifically with reference to crimes and punishments.

Judicature of Islamic Law in Medieval India is a paper presented by Sabah Bin Muhammed of Hamdard University, New Delhi India. The author has beautifully presented his analysis of the application of Islamic law in the Medieval India specifically during the Mughal period and their role in moulding this Islamic law into local settings through their Farmāns. He is of the view that Mughals brought new changes into the Islamic jurisprudence through their Qāḍī system that they borrowed from previous rulers and Iranian governments. He argues that the Mughal judicial system used Islamic laws and became popular for the power Qāḍīs enjoyed during the Mughal period.

Purpose of Farmāns

Moreover, for different purposes, different Farmāns were issued such as for finance, administration of justice, civil laws and constitutional and administrative Farmāns. The Mughals were very meticulous about writing of Farmāns. They arranged a full department having staff writers to write Farmāns. In the same way, different Farmāns were written in different ways and were executed in more different ways. The seals for specific Farmāns and their submission details suggest how the Mughals used to go through details of making their administration work through effective handling of Farmāns. The governance and administration also demonstrated how different Farmāns were written in a style that their linguistic impact used to smooth working of the administration.

Sources of Farmāns

As far as the sources of Farmān-i-Shāhī are concerned, the critics and historians mostly pointed out Islam which has two major sources; the Holy Qur'ān and Sunnah. Obviously, these two sources were there, but the Mughals also had the support of sources of Islamic jurisprudence, presence of the clerics and scholars and the social circumstances. Although in some cases, the presence of Islamic scholars proved rather a burden on the government and the court, for they objected to what the emperor used to think otherwise. The example of Shaykh Aḥmad Sarhindī during the period of Akbar is a case in point. Apart from these not-so-serious obstacles in the rule, Farmāns were derived from past Fatāwā and civilian customs and conventions, too.

Legal Status of Farmāns

As far as the legal status of Farmāns is concerned, there is no doubt that they used to work as legal instruments. However, there was a distinction that some Farmāns were categorized as criminal penal code type of laws, while some others were just advisory notes, and others were constitutional type of laws related to the structure of the government. Several Farmāns were categorized into administrative laws. These Farmāns were found in different records, but a serious attempt to compile them was made during the period of Aurangzēb who ordered compilation of the Fatāwā in the shape of Fatāwā-i ʻĀlamgīrī, which comprises of the religious edicts outlining later legal penal codes of Islam. A legal review of the several Farmāns show their true issuing circumstances, objectives and their further impacts on the administration of the empire.

Apart from the discussions and debates of the sources, derivations and legal position of the Farmān-i-Shāhī of the Mughal period, one thing is crystal

clear that Farmāns were a legal instrument not only to bring peace, stability and normalcy, but also to keep law and order situation under control and run the administration and government. In fact, Farmāns were those directives, which were issued from time to time for legal and governance requirement. Although literally, it means to say something, connotatively, a royal Farmān is a royal decree, which has the legitimacy and backing of the force of the state. Its text and linguistic niceties also demonstrate that a Farmān has a legal value.

Islamic law and Farmāns: Relevance and Irrelevance

A clear review of these Farmāns in the light of the Islamic law shows that they were mostly based on the Islamic concept of criminal justice of Ḥudūd, Ta'zīr and Qiṣāṣ. Most of the Farmāns related to judicial matters fall in one or the other categories, but a careful review of several Farmāns show that some Farmāns even transgress these Islamic restrictions, while some violates them clearly but it happened only during certain periods and certain circumstances and not always. The Mughals were very shrewd rulers, as they knew that the Islamic classical legal system was not evolved enough to rule such an empire as India effectively and competently without devising new ways and innovative machinations but it is true that most of the Farmāns, if reviewed from the lens of the Islamic jurisprudence, come up to the standard of the Islamic criminal laws. It is because their ultimate aim was to bring law and order under control, which is also the ultimate aim of Islam, the reason that these limits, punishments and chastisements have been suggested in the Holy Qur'ān and are said to have been ordained by God. Their suggestive nature through Farmāns provided a good legal backing to the Mughals and they made the most of it in ruling ruthlessly and effectively.

Although a review of some of the Farmāns clearly shows that this classification in the Islamic laws was followed by the Mughals in the administrative justice, yet there are evidences where they all were not followed in letter and spirit. However, it was considered proper to consult the Qur'ānic text and interpret it according to the situations required where the concept of ijtihād was applied. God has clearly put limits on these interpretations as God, in the Holy Qur'ān, says;

"تِلْكَ حُدُودُ اللّهِ فَلاَ تَعْتَدُوهَا وَمَن يَتَعَدَّ حُدُودَ اللّهِ فَأُوْلَئِكَ هُمُ الظَّالِمُون"

"These are the limits imposed by Allāh. Transgress them not. For whose transgresseth Allāh's limits: such are the wrongdoers".3

The law is promulgated to keep others safe from their own acts of omission or commission that could cause harm. In Islamic jurisprudence,

ʻAbd al-Qādir ʻAwdah, a reknown scholar, says that crime in Islam is a transgression of prohibition for which there is already a suggested punishment.4 However, Farhat J. Ziadeh in her article "Criminal Law" says that these are types of wrongs which are considered crimes in Islamic law as ordained by God, which comprises two types of punishments, limits and chastisement (Ḥadd and Taʻzīr).5 She has not stated like Hogan and Smith that it is a complicated term; rather has very simply divided into two types of wrongs, which are categorized according to the type of punishments as stipulated by God in the Qur'ān. Mark Cammack of Southwestern Law School agrees with Farhat that such punishments did not exist in "the classical Islamic legal tradition," adding that even the terms that are used in criminal law were not "understood as comprising a unified area of law in the pre-modern era."6 However, at the same time, he agrees with her saying that some terms of Islamic Criminal Law such as Ḥadd, Qiṣāṣ and Taʻzīr existed in the classical legal literature, and that their importance was duly recognized by the legal minds as well as the courts.7 Even during the classical period, these terms were duly recognized and justice was administered within the ambit of the legal system existed at that time, as has been recorded by Abdus Salām Nadvī in his book, Qaḍā' fī 'l-Islām, a well known book on Islamic jurisprudence. He says that courts used to conduct a proper trial and the Qāḍī used to administer justice, making distinction about the type of crime and after categorizing it award sentence. There were proper rules and regulations to conduct a trial and charge sheet of a criminal. The evidences were recorded according to the proceedings. Even cross-examination was allowed in various circumstances. This method of determining, a crime of a person was developed as back as during the period of fourth caliphs, while a proper judicial system was developed during the period of second caliph.8 Almost the same system, with some omission and commission, was adopted by the Mughals. According to Fatāwā, this whole process was called maḥḍar (trial) and the record of it was kept separately which was called sijil. To establish a crime, Fatāwā says, the sijil must conform to maḥḍar to charge sheet a person and award sentence likewise.9 However, it does not mean that all the Mughals used to issue Farmāns within the light of Fatāwā and that the Qāḍīs used to conduct trials according to the given Fatwā. The stories of the justice of Mughals within the ambit of Islam, or their Farmāns as Islamic and the trials of that time exactly conforming the Islamic legal codes are merely myths. There is not even iota of truth in these myths weaved by pseudo nationalists.

Whereas Farmāns are concerned, most of them were based on Fatāwā and Islamic Ḥudūd, Taʿzīr and Qiṣāṣ. For example, Aurangzēb, the staunch supporter of the Islamic government, issued a Farmān rejecting blood money for a murder and the prince, his own brother Murad Bakhsh had to pay for his life for committing a crime whose punishment in Islam was clearly capital punishment or death sentence.10 It has happened during the times of other Mughal emperors too. In other words, in the case of criminal laws, Fatāwā and legal injunctions of Islam and Islamic jurisprudence were upheld even at the very higher level. However, it is very interesting that when it comes to system of government in the central government, neither Fatāwā, nor any other Islamic injunction bars the Mughals from ruling absolutely or ruling as a monarch. Therefore, this is no surprise that sometimes Mughals entirely rejected an accepted Islamic injunction or Fatwā only because it did not suit their Farmān, or that it would have weakened their power or their government. In the same way, there were instances where entirely contradictory Farmāns were issued as Fatāwā which were duly accepted by the public without the consultation of the recognized clerics and scholars. It could be that the emperors used to exploit religion as stated earlier for their own ends. For example, Akbar used to use imperial seal having Islamic slogan of "Allāh Akbar" inscribed on it. Although nobody objected to this idea at that time, as it was an imperial Farmān having backing of the religion, a notable, Ḥājī Ibrāhīm, objected to it and he barely escaped the wrath of the emperor for infringing upon his rigths to issue a Farmān.11 On the one hand, it shows the issue of Farmāns and on the other hand, it also shows how the emperors used religions to their own ends. It also sheds light on the issue that sometimes Farmāns issued in terms of personal and individual crimes were entirely against the rules and regulations of Islam. They were contradictory to what is now called Islamic jurisprudence or Islamic criminal law and punishments, as prescribed in Islamic Holy documents. It could be reasoned that the emperors witnessed their own interests in perils when they turned to un-Islamic things or Farmāns.

However, it is no way stated that the Mughal emperors were absolute. It is because if it is said that they were entirely absolute rulers and emperors, it means that even criminal cases and trials were subject to their wishes and whims which was not the case. Farrukh B. Hakeem, M. R. Haberfeld and Arvind Verba have highlighted this fact in their book, Policing Muslim Communities: Comparative International Context, in which they have reviewed the king's absolute power, saying that "With respect to criminal justice administration, the Sharīʿah gave wide discretion to the sovereign, but

at the same time, they have rejected the presumption of the foreign travelers that the will of the king was absolute.12They argue that, in fact, those foreign travelers were entirely oblivious of the Islamic criminal legal system, for it "served as a check on emperor's capriciousness," adding that even the king "could not go against the Sharī'ah without being challenged by the orthodox clergy."13 Writing in Oxford Islamic Studies online, Mouez Khalfaoui has highlighted three periods according to the law in Mughal Empire based on the systematic implementation of Sharī'ah and the Sunnah. He argues that the first period was based on the best guidance from Islamic jurisprudence and precdents of the Sūltanāte period. The second period was based on thriving tradition of legal literature including Fatāwā and other collections of its ilk, and the third period was dependent on two sources: clergies who became supreme reference for the criminal laws and Fatāwā collections such as Fatāwā-i ʻĀlamgīrī.14This clearly shows that the early absolutism in legal authority of the Farmāns gradually gave way to the Fatāwā of Ḥanafī school of thought which not only flourished but developed into a complete criminal legal code. That is why Farrukh Hakeem and his colleagues assert that the king was not absolutely capricious in issuing Farmān violating Islamic legal system in the final period of the Mughal Empire and Aurangzēb had to issue various Farmāns, confirming the authority of the Islamic criminal law.

Major Flaws in Application of Islamic Laws during Mughal Period

A student of law and comparative legal studies immediately captures various major flaws in that Islamic law and administration of justice during the Mughal period. Perhaps, that is the very reason that the Mughal Empire collapsed sooner rather than later. The colonizers though spurned it openly, yet incorporated several of its major features in the Indian Acts they later promulgated in the administration of justice. Muhammad Munir, in his paper, "The Judicial System of the East India Company: Precursor to the Present Pakistan Legal System" has highlighted several major points that the colonizers incorporated ad verbatim, or with some modification and amendments for the administration of justice in Calcutta. Even some of the nomenclatures the company adopted for the administration of justice were Islamic such as "mufaṣṣal" and "'adālat system" etc.15 As is always the case with legal systems that they evolve into the present shape over a time after alternations, revisions and modifications, the same happened with the Islamic law cases applied during the Mughal periods through their Farmān-i-Shāhī and culminated in the shape of a collection of Fatāwā-i ʻĀlamgīrī. It means its major flaws were removed or the entire laws were abolished.

In this connection, Wahed Hussain has beautifully pointed out some major flaws in the Mughal justice administration in his tome, Administration of Justice During the Muslim Rule in India with a History of The Origin of the Islamic Legal Institutions. Citing the case of Warren Hastings, he states that he always used to look at the laws having any Islamic touch as brutal ways of torturing people and not legal codes. Wahed Hussain has pointed out the first major defect of the Mughal administration of justice as separate from legislation and judiciary. He goes on to say that uncertainty and absence of uniformity in the legal codes, non-division of civil, criminal and public laws, irrational punishments in the name of God, illogical compensations, illogical discretionary powers regarding Ta'zīr, deficiency of the law of evidence, discriminatory punishments to non-Muslims and self-concocted interpretative punishments.16 Despite these flaws, the Mughals have left their footprints in the shape of the legal codes which have been modified and re-modified to suit the situations. Studying deeply the current Indian judicial system, Wahed Hussain has pointed out that the Indian judicial system has strong footprints of the Mughal rule. Quoting Sarkār, he argues that there was time in India when this system was being witnessed in every nook and corner.17 His opinion coupled with that of the scholarly comments of J. N. Sarkār lends credence to this fact that the Mughals, indeed, established a proper judicial system which set a precedent for the British to establish a well-organized system.

Despite these defects, Wahed Hussain has pointed out several features which have become guiding lights for the legal minds and legislatures in the future to organize institutions. He says that the first good feature of the Mughal administration was to ensure that there is a stable government and extensive machinery accountable to only one central authority. The second point that he emphasizes the most and terms it elixir for a good judicial system was the renaissance of the art and literature.18 Perhaps, he means that a good linguistic capability of the officials lead to good codification of laws, for he himself was a legal mind. He further claims that diversity in the Indian Subcontinent found Mughals at the helm of the affairs who used it dexterously to contribute to reconciliation and formulation of laws.19 It is another matter that several historians rather strongly differ with him though his points seem to be valid for the legal minds as evolution takes years in the making and then legal codes do not take a day to be written and implemented.

Although several legal gurus and historians have castigated the Mughals, declaring them outright despots, dictators and brutal rulers who

used religion to further and prolong their own rule. There is no denying the fact that the rule of might is right was applied where none other works and they had vested interests.Yet,they made a contribution to the legal codes in the shape of their Farmāns amalgamated with the Islamic criminal laws.

Perhaps the necessity of sticking to the Islamic Fiqh arose from the fact that the ruler required to transform the state into an Islamic state in accordance with the Qur'ānic teachings and Sharī'ah laws. Ibn Ḥasan has argued this case stating that the exigency of the king and the Qur'ānic injunctions to transform the social structure into two sections of believers and non-believers and declare the latter dhimmīs forced the Mughals to see their stability in the Islamic criminal procedure of that time. It is, however, to be ensured that their life as well as their property of the non-Muslims subjects is guaranteed under the Islamic rule, which the Mughals ensured properly.20 It clearly shows that the Mughals not only performed their own duties but also abided by the religious injunctions, overseeing the upper hand of the state rather than only the religion. Hence, they used Islamic criminal procedure and sometimes ignored it when the situation demanded. Ibn Ḥasan further states that they were to uphold the Islamic reflection of the state through its laws.21 Whereas the stability was concerned, it was to come with justice and hence the guarantee of their life as well as property of the non-Muslim, as ensured in the Islamic law, became a necessity, rather than an exigency. 22 That is why it became imperative for the Mughals to treat both the major sections of the society on equal footing. Referring to Abū 'l-Faẓl, Dr. Munir has highlighted that the king must exercise his justice and beneficence on all the subjects in a similar way, adding that even Hindu subjects were the greatest beneficiaries. He further states that being a shadow of God on earth, the mercy of the king must be showered on both sections in equal manner. 23 U. N. Day has perhaps interpreted the same views saying that an emperor is obligated to administer justice, view that law is in accordance with the Fiqh and that it must keep in mind the actual community of Muslims.24 Perhaps these major reasons of the kings to shy away from giving the laws a proper codification makes the law to look defective. It could also be that when Aurangzēb meddled with impunity and ordered the compilation of the laws as Fatāwā in the shape of Fatāwā-i 'Ālamgīrī, he was severely castigated by the non-Muslim historians and secular legal pundits alike while revered by the staunch Muslim enthusiasts for sticking to the Islamic injunctions.

Conclusion

The study concludes that Farmān-i-Shāhī played a vital role to form a

legal system based on primary and secondary sources of Islamic jurisprudence. Consequently it led to develop a coherent environment in a very complex and diverse society of Subcontinent during the Mughal emperors. According to the study, the Mughals laid the foundation of Farmāns on Sharīʻah and they were found true in most of their Farmāns but it is noteworthy that to some extent they turned away from the Sharīʻah Priciples in the way that they modified them or changed them as particular in matters related to their own administrative or legal interests. It is pertinent to mention that uncertainty and absence of uniformity in the legal codes, non-division of civil, criminal and public laws, irrational punishments in the name of God, illogical compensations, illogical discretionary powers regarding Taʻzīr, deficiency of the law of evidence, discriminatory punishments to non-Muslims and self-concocted interpretative punishments were the major flaws of Implementation of Islamic law in Mughal era. But undoubtedly these laws provided profound and strong footprints for the Indian judicial system later.

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Etymologically, it means a specific race, as Oxford has defined it, but is associated with Muhammadanism or Islam when it entered India as stated (Sharma, *Mughal Empire in India: A Systematic Study Including Source Material*, Vol. 2, 672). the word '*Mughal*' has been often misinterpreted to mean 'Muslim,'" though it has nothing to do with it.(Odivo Nayamdavaa, *Insights into the Mongolian Crescent of India* (New Delhi: Himalaya Publishers, 1999), 59).

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