

Glimpses of Court System of Salateen and Mughals in Pakistani Court System

Malik Muhammad Imran*

ABSTRACT

Judicial system of any state is one of the basic pillars of administrative system. Since the rule of Salateen-e Delhi and the Mughals prevailed in the Subcontinent over the centuries, historians and social scientists consider their judicial system as one of the primary sources to continue the rule of Sultans and Mughals for generations. The state system adopted by the Sultans and Mughals provided basis for the governance system of this very region. So it is important to trace similarities and differences among the previous systems of this region and that of the presently prevailing system. The present paper focuses on the court systems of Salateen of Delhi and of Mughals in general. An effort has been made to show what sort of court systems was prevailing during the reigns of both of them? The paper shows in particular as to what was the court structure and hierarchy in those times? It also describes as to what parallels still exist in the court system of today's Pakistan? This would be done by showing the court structure and attached officials/officers during the period of Salateen and of Mughals and their comparison with Pakistani counterparts by focusing on legal reforms and legal provisions and orders

* Civil Judge cum-Judicial Magistrate, Islamabad.

etc., with their glimpses as they exist today in the current Pakistani court system.

Introduction

The relation between the Subcontinent and the Muslim state of Madina can be traced to the time of Caliph Umer (R.A). Formally, the Muslim rule started taking its roots in this region by the arrival of Muhammad Bin Qasim,¹ although they took a long period to establish their rule up to Delhi which comes under the possession of Muslim rulers in 1192 C.E. However, the Delhi Sultanate was founded by Qutbuddin Aibak (d.607/1210-11) who was a slave of Muslim Commander Shahabuddin Ghori. The Slave Dynasty lasted till 1290. Then the Khiljis' era started who ruled till 1320 and was succeeded by Tughluq Dynasty which lasted till 1414. The Syed Dynasty remained in power till 1454. The fifth Dynasty was that of the Lodhis, which ruled till 1526.² The Lodhis were defeated by Zahiruddin Babar (d.936/1530) who established the Mughal rule in the subcontinent which lasted till 1857 when the British took over the region.³

Sultan Qutubuddin Aibek and Sultan Shamsuddin Altutmish took major steps to strengthen the legal system of this particular region. The traits of legal system of Salateen of Delhi, in general, included strict obedience, faithfulness and following the Shariah, strict implementation and respect of law. The judiciary was independent and it was under the influence of Abbasid institutions. Some historians like V. D. Mahajan have criticized that the department of justice was the most ill-organized department of the Sultans of Delhi.⁴ However, this view seems bigoted because he himself

1 Q. Athar Mubarakpuri, *Hindustan mae Arabun ki Hakomataen* [Urdu: Arabs' Governments in India] (Karachi: Maktab-i-Aarifeen, 1967).

2 I. H. Qureshi, *The Administration of the Sultanat of Delhi* (Karachi: Pakistan Historical Society, 1958).

3 C. Paul Mitchell, *Sir Thomas Roe and the Mughal Empire* (Karachi: Mehran Printers, 2000), 3-4.

4 V. D. Mahajan, *The Muslim Rule in India* (Delhi: S. Chand & Co., 1962), 212.

admits that Sultans, during the Sultanate period, were not above the law. He further quoted that Sultan Muhammad Tughluq appeared before Qazi and satisfied the complaint against him (Sultan) by paying the debt.⁵ This shows that judiciary was independent.

Since the Mughals ruled in the Subcontinent for more than three centuries, it is therefore difficult to focus on the reign of every ruler of that particular dynasty. Secondly, the scope of the present paper is limited that is why it focuses only the court system during the period of Akbar and Aurangzeb because Mughal Empire was at its peak during their times and the judicial system was at its best. For example, Aurangzeb did not intervene in the trial of his brother Dara Shikoh despite the fact that the same was political.⁶

Court Structure under Salateen of Delhi

During the period of Salateen, the Sultanate was divided into provinces which were further divided into Districts and then Parganahs on the basis of regional depth. Similarly, the judicial system was divided according to the administrative distribution of the Sultanate.

Court Structure at Central Level

The judicial system was divided into multiple layers at centre i.e.

1. **King's Court** at the centre was the Superior Court. Sultan was the presiding officer who used to hear all the cases at this court as the sole authority.
2. **Chief Justice Court** at centre was presided over by Qazi-ul-Quzat.
3. **Diwan-e-Mazalim** was superior court in criminal matters, and also was the highest court of appeal in criminal affairs headed by Sadar-e-Jahan.
4. **Diwan-e-Risalat** was superior court in civil matters, headed by Sadar-e-Jahan. It was the highest forum of

5 Mahajan, *The Muslim Rule in India*, 213.

6 Muhammad Munir, "The Administration of Justice in the Reign of Akbar and Awrangzeb: An Overview," *Journal of Social Sciences*, Vol.5, no.1 (2012).

Civil Appeals. Sadar-e-Jahan was also known as Sadr-e-Kul and also as Sadr us Sadur (during Mughal period).⁷ This important post was introduced by sultan Nasir-ud-Din in 1248. He used to appoint Qazis of all courts and issue letters/recommendations to subordinate officers.

The Supreme Court of Pakistan can be compared with Diwan-e-Mazalim and Diwan-e-Risalat as well as with the Chief Justice Court of Salateen of Delhi. The difference is that the Sadar-e-Jahan was presiding over the Mazalim and the Risalat whereas the Chief Justice Court was headed by the Qaziul Qazat (Chief Justice). In Pakistan, all the powers and functions of Diwan-e-Mazalim and Diwan-e-Risalat as well as thereof the Chief Justice Court of Salateen of Delhi are exercised and performed respectively by the Chief Justice of Pakistan(CJP) under Article 184 read with Article 199 of the Constitution of *Islamic Republic of Pakistan*, 1973.⁸ Moreover, the CJP has the biggest role to perform when it comes to the appointment of judges of other courts of Pakistan.⁹ The letters and directions and recommendations are issued by the Supreme Court of Pakistan for the Subordinate Courts. The National Judicial Policy¹⁰ of 2009 and that of 2019 can be quoted as an example in this regard.

The Chief Justice of Sultanate period used to give recommendations as and when laws were made by Sultan. Nowadays, parliament, and not a sole ruler like Sultan, is the legislative authority. The Supreme Court of Pakistan, under advisory jurisdiction vested in it under the Constitution of *Islamic Republic of Pakistan*, 1973,¹¹ can give

7 S. M. Aziz Ud Din, *The First Version of Barani's Tarik-i-Firoz Shahi* (Rampur Raza Library, 2013).

8 *The Constitution of Islamic Republic of Pakistan*, 1973.

9 Article 182, 193 of the *Constitution of Islamic Republic of Pakistan*, 1973.

10 National Judicial Policy is devised by National Judicial Policy Making Committee constituted under Ordinance (LXXI) of 2002 with Chief Justice of Pakistan as Chairman of the Committee and Chief Justice of Federal Shariat Court (FSC) and the Chief Justices of Provincial High Courts as its members.

11 Article 184, the *Constitution of Islamic Republic of Pakistan*, 1973.

recommendation(s). The Chief Justice of Sultanate period was also responsible regarding educational institutions.¹² The Supreme Court of Pakistan can also interfere in the matters of education and educational institutions. Recently, it gave judgment regarding capping fees charged by private Schools.

The staff of Chief Justice included Mufti, Mohtasib, Pundit, Dadbak and Qazi. In today's Pakistan, Muftis and Pundits have been replaced by Attorney General, Additional Attorney General, Advocate General, Additional Advocate General, Assistant Advocate General, Prosecutor General, Additional and Deputy Prosecutor General etc. Muftis and Pundits used to be counsels in cases of Muslims and Hindus respectively and they provided assistance to the Qazis. Today, the lawyers, attorneys and officers of Advocate General Office as well as Prosecutor General Office use to appear in the court on behalf of state to provide assistance to the concerned courts. It is worth mentioning that as the court of first instance, the (Mughal) Emperor used to receive assistance of a Mufti, Pundit, Mohtasib, Vakil-e-Shara and a Mir' Adil.¹³ Regarding the assistance provided to the court as adjudicator of disputes, the functions of staffs of the Chief Justice seem to be the same. However, with the passage of time, certain variations have occurred. For example, Qazi-Urdu of old days has transformed into Military Court or Cantonment Court, both of which are functioning independently. However, the opinion of any lawyer, attorney, pleader or Vakil is also not binding on contemporary courts. Similarly, the opinion of any Mufti, Pundit or any other assisting officer was not binding on Sultan or Qazi concerned.¹⁴

12 Sardar M. A. Waqar Khan Arif, "The Legal System of Sultans of Delhi: An Overview," *International Journal of Development and Sustainability*, Vol. 6, no.12, (2017): 1984-1997, 1990.

13 William Finch, "1608-1611" in *Early Travels in India: 1583-1619* (ed.), W. Foster (London: Oxford University Press, 1921), 122-87.

14 H. Beveridge, *Comprehensive History of India*, Vol. 1 & 2 (London: Cambridge University Library, Publish by Blackie & Son, 1867), 102.

Then there was the Sadar-e-Jahan Court at the central level which specifically dealt with ecclesiastical matters. To some extent, it can be compared with the Federal Shariat Court (FSC) in Pakistan.¹⁵ The Diwan-e-Siyasat was another court at central level. It was a temporary court sanctioning criminal prosecutions. But it was created during the time of Muhammad Tughluq (1324-1351) who himself was the chief judicial officer presiding over this court.¹⁶ The Sadar-e-Jahan also appointed Qazis of all the courts and one of his duties included checking of the *Sanads* (degrees) of the Qazis.¹⁷ One of the important duties of Qazi-ulQuza comprised of setting an examination paper with his seal for the candidates to the office of Qazi of the town with the object of testing their knowledge and capacity to hold the office.¹⁸ Similarly, High Courts in Pakistan, while under the Chief Justice of High Court (Provincial Chief Qazi), conduct exam for inducting Civil Judges cum Judicial Magistrates and Additional District and Session Judges. It would be interesting to note that the High Court of Balochistan at Quetta even conducts the exam for direct recruitment to the post of District and Session Judges. It appears that the Sadar-e-Jahan Court not only dealt with ecclesiastical matters (pertaining to Imams, Khatibs, Moazans and Mutawallis)¹⁹ but being the head of Diwan-e-Mazalim also took up criminal matters.²⁰ Moreover, while heading the Diwan-e-Risalat, it also functioned as the Superior Civil Court²¹ with additional duty of induction of Qazis in the lower grades.

15 Federal Shariat Court (FSC), Article 203 C to Article 203 J of the *Constitution of Islamic Republic of Pakistan: 1973* deal with FSC.

16 Aziz Ud Din, *The First Version of Barani's Tarik-i-Firoz Shahi*.

17 Ali Muhammad Khan, *Mirat-i-Ahmedi: A Persian History of Gujarat Vol. 1 & 2* (ed.) Syed Nawab Ali, (Barada: Oriental Institute, 1927).

18 Zameeruddin Siddiqi, "The Institution of the Qazi under the Mughals", in *Muslim in India: A Miscellany*, vol. I, (eds.), Irfan Habib and K.A. Nizami, (Lahore: Book Traders), 244.

19 Khan, *Mirat-i-Ahmedi*.

20 Aziz Ud Din, *The First Version of Barani's Tarik-i-Firoz Shahi*.

21 Aziz Ud Din, *The First Version of Barani's Tarik-i-Firoz Shahi*.

Court Structure at Provincial Level

There were five different courts at provincial level in Sultanate era:

1. **Adalat Nizam Subah** was headed by governor who was the sole authority in revenue matters.
2. **Adalat Qazi Subah** specifically dealt with common law cases and was presided over by the Chief Qazi who was appointed by governor. He was the Chief Provincial Qazi who tried civil and criminal cases but he did not resolve revenue matters.²² He used to head tribunals dealing with religious matters and also supervised all other Qazis.
3. **Governor's Bench** was the highest appellate forum in the province and had also original jurisdiction to try all cases.
4. **Diwan-e-Subah** dealt with all revenue matters of the province and had original and appellate jurisdiction to try all cases related to finance and revenue.
5. **Sadar-e-Subah** laid hands upon ecclesiastical matters pertaining to Sharia/religion at the provincial level. In this court sometimes a special bench was constituted by the Sultan.

If we compare contemporary judicial system of Pakistan with that of the above mentioned structure of the judicial system Sultanate period, it is evident that the Qazi-Subah, Diwan-e-Subah and Sadar-e-Subah have merged into the Chief Justice(s) of Provincial High Court(s) of Pakistan. Presently, all the courts in the province are under the administrative control of the concerned High Court and the Chief Justice of High Court concerned is the appointing authority who has supervisory power and role regarding District Courts as well.²³ The attached officers of Qazi Subah were Mufti,

22 High courts in Pakistan enjoy original civil and appellate jurisdiction but regarding revenue matters there is independent hierarchy up to the Board of Revenue at Provincial level. Though the high courts in Pakistan are the highest courts of appeal at provincial level, this brings to our mind S.172 of the Land Revenue Act 1967, where under civil courts cannot entertain a matter which falls within jurisdiction of revenue officer/court.

23 See Article 203 of the *Constitution of Islamic Republic of Pakistan*, 1973. Also see, S.14 of (West Pakistan) Civil Court Ordinance (II) of 1962 which

Pundit, Mohtasib and Dadbek. The latter used to see persons who came in the court when summoned and can be compared with Readers of Pakistani courts today. Dadbek during the Sultanate period was the administration officer of court²⁴ whose responsibilities can be compared to certain extent with the Clerk of Court (CoC) or Superintendent²⁵ of the contemporary District Courts in Pakistan.

Court Structure at District Level

At District level there were six tiers of Judicial System to provide justice to the inhabitants of the state during the Saltanate era.

Qazi Courts used to listen to all the civil and criminal cases and also heard appeals from the parganas, kotwals and fujdars. It was the highest court of appeal at district level. In Pakistan, Qazis are also appointed along with Civil Judges in Balochistan by the concerned High Court even today. Qazi Court was headed by District Qazi who was Chief Judicial officer in the District during the time of Salateen. He focused on all questions of law and fact. He could also take opinion of Mufti and dealt with cases of minors, lunatics, missing persons, intestate property, waqf and trust cases.²⁶ The District and Session Courts of today can be compared with Qazi Court. The District and Sessions Judge use to deal with the same matters which were dealt with by the district qazi of Sultanate period.²⁷

also speaks about superintendence and control of high court of the province over all the district courts in respective provinces of Pakistan.

24 Irfan Habib, "Barani's Theory of the History of the Delhi Sultanate," *The Indian Historical Review*, no. 1-2: 99-115.

25 COC is the clerk of courts who look after administrative affairs regarding courts of civil judges cum judicial magistrates and is attached to the court of senior civil judge (admin). Superintendent performs the same functions regarding all the courts at district level and is attached with the office of district and sessions judge.

26 Aziz Ud Din, *The First Version of Barani's Tarik-i-Firoz Shahi*.

27 Under Juvenile Justice System Ordinance 2000 and Juvenile Justice System Act 2018, district and sessions judge (DSJ) is the Juvenile court in all the session divisions pertaining to requisite sessions' trials. Regarding missing persons S.491 CrPC 1898 empowers sessions Judge to order for

Other courts at provincial level during the Sultanate period included those of faujdar, sadar, amil, and kotwals. The Faujdar dealt with petty natured Criminal cases. Sadar was concerned, especially with land and registration cases. Amils, on the other hand, entertained land revenue matters at district level. Kotwals were dealing with petty criminal cases and police cases also lay in their jurisdiction. Another important court was that of dadbak/mir-adil. This court was created by Sikandar Lodhi (1489-1517).²⁸ Its jurisdiction was mainly civil petty matters. These courts continued during the reign of Lodhi dynasty and survived through Mughal period.²⁹

The Officers attached to district qazicourt during Sultanate Period included katib who was the evidence writer and which reminds us writing of evidence by commission.³⁰ There were Faqih (Fatwah/precedent writers). Nazir used to administer establishment.³¹ Subordinate Clerk was there for official

restoration of custody of illegally and unlawfully confined person; whereas S.552 of the same code gives the same power when the detenu is the female. Ch. XXXIV comprising SS.464 to 475 of CrPC 1898 empowers the DSJ concerned to entertained criminal proceedings when the accused is a lunatic. Part-A, Part-B and Part-C of Chapter I, Vol. IV of Lahore High Court Rules and Orders give superintending and controlling power to district and sessions judge over all the subordinate courts of district judiciary.

28 Qureshi, *The Administration of the Sultanate of Delhi*.

29 Sheikh Abul Fadl mentions in his book *A'in-i-Akbari*, vol. I, (trans.), H. Blochmann, (ed.), D. C. Phillott (Calcutta: Asiatic Society, 1927), reprinted Qausain, Lahore, at 190-91 the relationship between Qazi and Mir Adil as: "one find out, the other puts (the finding) into effect." See also, Khan, Mirat-i-Ahmedi, 278-83.

30 S.75 of Code of Civil Procedure of 1908 (CPC) read with order XXVI of the same code (CPC) speaks about writing of evidence through Commission.

31 Part-A, Ch. 6, Vol. IV of *Lahore High Court Rules and Orders* speak about duties and functions of Nazir who is regarded as ministerial head of process serving establishment. The office of Nazir still continues in Pakistan court system particularly in district courts. Naib Nazir look after the affairs of process serving agency at district and sub-division level and also manages the accounts. He is under the control and superintendence of Nazir.

work.³² Burqandaz managed security in the court³³ whereas akhbar-nawees were also part of the court.³⁴

Officers at Paraganah Level

A group of villages was called Parganah. A five-member village assembly/punchayet looked into its affairs; both executive and judicial. The head of assembly was chairman who was also known as *sirpanch*.³⁵ He used to be appointed by Faujdar or Nazim during Sultanate period. All local natured civil and criminal matters were dealt with by this punchayet. It is interesting to note that Parganah comprising of Mouzas still finds mentioning in Revenue Records/Documents.³⁶ Even there is concept of punchayet continuing still today and the decisions of punchayet are referred in court cases.

The officers of Parganah included, Qazi Parganah who was the lowest court to try civil, criminal and canon law cases. Kotwal, on the other hand, dealt with petty criminal matters.³⁷ Another official in judicial system was Shiqdar who used to take care of regional judicial matters in the absence of

32 In Pakistani court system there are LDC (Lower Division Clerk) and UDC (Upper Division Clerk) who perform official work. The former is also known as Ahlmad who is incharge of court files.

33 In today's Pakistani court system, security of courts is managed and handled by police, rangers and anti-terrorism squad (ATS).

34 Aziz Ud Din, *The First Version of Barani's Tarik-i-Firoz Shahi*. See also, Mubarakpuri, Q. Athar, (1967), *Hindustan mae Arabun ki Hakomataen*, (Urdu) Maktab-i-Aarifeen, Karachi.

35 Sirpanch and Lumberdar are still there in certain Sub Divisions and Rural Areas of Pakistan. Lumberdar/Head man falls within definition of Village Officer as per S. 4(28) of West Pakistan Land Revenue Act 1967.

36 Aziz Ud Din, *The First Version of Barani's Tarik-i-Firoz Shahi*. See also, Mubarakpuri, *Hindustan mae Arabun ki Hakomataen*. The author of this paper (during performance of judicial functions as civil judge under Lahore High Court and also under Islamabad High Court, Islamabad) has seen certain *Fard* and revenue documents which still mention the word "Parganah".

37 The word Kotwal though is not used as such, *strict sense*, but it is equivalent to police station. In districts Lahore and Gujarawala of the Punjab province of Pakistan, Thana Kotwali still exists. This shows that this word has travelled to Pakistan from Salateen of Delhi era.

Kotwal. The Kotwal also had some magisterial powers in towns and also required preventing commission of crime. In Pakistani judicial system the preventive powers have been given to (Special) Judicial Magistrates for keeping peace and security. The Police officers have also been given powers to exercise preventive action under such powers.³⁸ The Qazi-e-Urdu was another pillar of judicial system during the Sultanate era which used to perform its duties just like cantonment courts of present day Pakistan which deal with matters falling within the precincts of cantonment area(s).

There were special courts for Proclaimed Offenders (PO's), which were created by Muhammad Tughluq. Later, these were abolished by Feroz Shah Tughluq (1351-1388). However, in Pakistan there are no separate courts for PO's and all the concerned trial courts are empowered to proceed against the PO's U/SS 87,88 of the Code.³⁹

Court Structure under Mughals

Like Sultans of Delhi, Mughal dynasty also established a comprehensive judicial system for the empire. In this system, Emperor at the top was the sole authority in Legislative, Executive, and Judicial Matters. He was the foundation of Justice and as such enjoyed civil and criminal jurisdiction. As a court of appeal, he sat with the Chief Justice and Qazis of the other courts and used to decide both questions of law and fact. As a court of first instance, the Emperor got the assistance of a Darogha-e-Adalat, mufti and a mir'adl. A day of the week was specified by both Akber and Aurangzeb to hear cases and it was called Diwan-e-Mazalam.⁴⁰ Moreover, all capital punishments were required to be confirmed by the Emperor.⁴¹ This designation of Darogha-e-Adalat has transformed in Pakistani court system into superintendent

38 SS.107/151 of Code of Criminal Procedure (CrPC), 1898 gives powers to magistrate and police respectively for exercising preventive action.

39 Code of Criminal Procedure (CrPC) 1898.

40 Jadunath Sarkar, *Mughal Administration* (Calcuta: Orient Longman, 1972), 72.

41 Munir, "The Administration of Justice in the Reign of Akbar and Aurangzeb.

whereas Muftis are nowadays' lawyers, attorneys and pleaders. The phenomenon of confirmation of capital punishment is still being exercised in Pakistani court system. The code requires sending of reference to high court by trial court of sessions or additional Session judge or any other court equivalent there to e.g. ATC⁴² for confirmation of death sentence.⁴³ It is worth mentioning that in Pakistan there is no equivalent to the emperor and that the emperor's authority in legislative and executive affairs is divided between different branches of government.

The Chief Justice (Qaziul Quza)

This court was under Diwan-e-Mazalim. The Chief Justice used to administer the oath of accession to the sovereign and to order *khutbah* [Urdu: Sermon]. This brings to our mind administering of oath by the most senior Muslim Judge in the British India namely, Sir Abdul Rasheed, to Qaid-e-Azam Muhammad Ali Jinnah as Governor General of Pakistan on August 15, 1947. This practice still continues and has rather a constitutional mandate.⁴⁴

Like the Chief Qazi of the province, the Mughal capital had its own qazi who was under Qazi-ul-Quza's court.⁴⁵ This special phenomenon brings to our mind the establishment of Islamabad High Court which was established at the Federal Capital in Pakistan. Besides Darogah-e-Adalat, Mufti was also attached to Chief Justice's Court and was known as Mufti-e-Azam or Sadar-e-Jahan. This Mufti-e-Azam in Pakistan can be found in the designation of the Attorney General of Pakistan. Diwan-e-Ala being final authority on revenue and financial matters was much important office in

42 Anti-Terrorism Court, in Pakistan this court is presided over by session judge.

43 Ch. XXVII, SS.374 to 379 of CrPC and High Court Rules and Orders deal with this concept.

44 Article 42 of *Constitution of Islamic Republic of Pakistan*, 1973 requires that before entering upon office, the President shall make before the Chief Justice of Pakistan Oath in the form set out in Third Schedule.

45 Anwar Ahmad Qadri, *Justice in Historical Islam* (Lahore: 1974), 120.

the capital.⁴⁶ In Pakistan, Federal Board of Revenue (FBR) is the authority in revenue and financial matters that has also its appellate tribunals in the federal capital as well as in the provinces.

Provincial Chief Qazi

At the provincial level, the Governor or Nazim-e-Subah was the court of appeal in revenue cases. It is mentioned that during later Mughal period (1750-1857) the Governor, especially in Bengal, did a lot of judicial work.⁴⁷ However, the provincial Mehkama Quza was under the provincial Chief Qazi who was also known as qazi subah [Head of the provincial court system] and had original civil and criminal jurisdiction. He was also court of appeal for cases referred by the district qazis. This qazi subah is today's high court in Pakistan as it also hears appeals from district and session courts of the province.

At provincial level there was also Diwan-e-Subah for revenue and financial cases. In the present Pakistan, provincial board of revenue is there with some judicial functions regarding revenue matters and it is also the highest forum of appeal at provincial level against orders and judgments of revenue officers/courts.

District Qazi

He was called Qazi Sarkar and was under Qazi Subah. He exercised civil and criminal jurisdiction and heard appeals from other courts of the districts. He conducted inquiries into offences and also used to make visits to Jails for inquiring about prisoners' cases. District and sessions judges in Pakistan use to perform the same functions.⁴⁸ The staff of district qazi included peshkar. Katib was there to record court evidence and judgments dictated by qazi. Nazir

46 Qadri, *Justice in Historical Islam* (Lahore: np, 1974), 120.

47 Qureshi, *The Administration of the Sultanate of Delhi*.

48 S.202 CrPC 1898 empowers the criminal courts to either inquire itself or direct and inquiry for the purpose of ascertaining the truth or falsehood of complaint before it.

happened to be the incharge of court buildings.⁴⁹ In today's Pakistani court system, peshkar is the modern day reader, katibis the equivalent of modern day stenographer, Orderly is the modern day naib-qasid whereas the office of Nazir still continues with same name and style. It is interesting to note that vakeel Sarkar or vakeel sharah of Mughal period still exist. The Assistant District Attorney(ADA), Deputy District Attorney (DDA) and District Attorney(DA) are still there to file suit for or defend the one against the state while working on full time pay that is drawn from the public exchequer.

There were some other officials like Qazi Parganah, Qazi Askar (equivalent to Qazi Urdu of Salateen period), Faujhdar, Kotwal, and Amalguzar who performed almost the same functions as were performed by their counterparts during period of Salateen of Delhi. The punchyat system was also almost on the same lines. In the present Pakistan, the functions of Amalguzar regarding deciding of rent/revenue matters are performed by tehsildar or assistant collector concerned.

Procedural Provisions and their Counterparts in Judicial System of Pakistan

Third Mughal Emperor Jalal Uddin Mohammad Akbar (1556-1605) established quite an active administration to run the system of his empire. For collection of revenue, collectors were appointed whose performance used to be administered by the ministers like Todar Mal. Furthermore, there was less room for corruption for revenue collectors because of strict methods of audit.⁵⁰ The concept of assessment and designation of collector still continues in Land Revenue Act, 1967 as applicable in Pakistan. However, among the Mughal rulers, Aurangzeb introduced a series of legal and procedural reforms in administration of justice some of which are part of judicial system of⁵¹ both Pakistan and India. They

49 Qureshi, *The Administration of the Sultanate of Delhi*.

50 W. H. Moreland, *The Agrarian System of Moslem India*, First Published, 1929, reprint, 1988 (Delhi: North Moujpur, 1988), 107.

51 Khan, *Mirat-i-Ahmedi*, 280-83.

are discussed as under in comparison with existing counterparts in today's court system of Pakistan.

Firstly, he introduced the system of 'Remand' of accused by the court to the police custody.⁵² The kotwals (police) were ordered to have an order in written form from the qazi to keep an accused under custody for the purpose of further investigation. The Code of Criminal Procedure 1898 (CrPC) also speaks about this concept. It requires the production of accused before magistrate after having been arrested by police.⁵³ Again the same code requires written order from concerned (area) magistrate beyond (initial) duration of 24 hours when the investigation is not completed within said time and the Investigating Officer (IO) needs time for further investigation and recovery.⁵⁴ The requirements in this regard are not only from the code but other laws also speak on the same lines. For example, police rules⁵⁵ and (Lahore) High Court Rules and Orders⁵⁶ also give similar directions.

Secondly, the delay in the disposal of cases was not appreciated and there were clear directions of the emperor that; if after the first date of hearing the case was not taken up, the kotwal was required to send the prisoner(s) daily to the court till matter was decided.⁵⁷ In today's court system of Pakistan, there are clear directions to courts, especially those of district judiciary, to expeditiously dispose of cases. Moreover, (Lahore) High Court Rules and Orders⁵⁸ give

52 Khan, Mirat-i-Ahmedi.

53 S. 61, Code Of Criminal Procedure 1898 (CrPC).

54 S.167, Code Of Criminal Procedure 1898 (CrPC).

55 Police Rules, 1934.

56 See Part B, Chapter 11, Volume III, (Lahore) High Court Rules and Orders. Rule 8 in this regard speaks about principles that must be followed by Remand granting Magistrate. Rule 2 of the same also differentiates between Police Remand and Judicial Remand. In the Code 1898, s. 167 deals with the former whereas the latter is dealt with under s. 344 of the Code 1898.

57 Khan, Mirat-i-Ahmedi, 283.

58 These Rules and Orders are also applicable in Islamabad. No independent rules and orders have been made/ framed for Islamabad. It is because before 2010 Islamabad was part of territorial jurisdiction of Lahore High

directions to concerned judicial magistrates for the disposal of criminal cases expeditiously. They have been further directed to fix the cases on day to day basis.⁵⁹ If the criminal cases are not disposed of at the earliest according to the law, the judiciary is answerable to the concerned high court.⁶⁰ Recently, criminal model courts have been established in Pakistan under scheme of Expeditious Justice Initiative (EJI).⁶¹ In second phase civil appellate model courts and criminal model magisterial courts have also been established.⁶²

Thirdly, a *Firman* [Order] was issued that no one was to be taken into custody until *prima facie* legal evidence was available and that no prisoner was to remain in judicial custody in absence of a lawful charge.⁶³ The Code⁶⁴ also speaks almost on similar lines.⁶⁵ According to the legal reforms of Aurangzeb no one could be kept in detention without lawful charges. Similar laws are there in the contemporary judicial system of Pakistan.⁶⁶ A provision of habeas corpus was also there during his period. Regarding

Court and members of district judiciary were under administrative control of Lahore High Court, Lahore.

59 R. 3, Part A, Chapter 1, Volume III.

60 R. 10, Part A, Chapter 1, Volume III.

61 Expeditious Justice Initiative (EJI) has been established after decision reached at meeting of National Judicial Policy Making Committee (NJPMC). Mr. Sohail Nasir, district and sessions judge Islamabad West has been made DG of EJI which has been established at Federal Judicial Academy (FJA). The EJI is meant for expeditious disposal of cases through criminal model courts.

62 Letter No.156/EJI dated 26.06.2019

63 Muhammad Basheer Ahmad, *The Administration of Justice in Medieval India* (Aligarh: The Aligarh Historical Research Institute, Aligarh University, 1941), 163-64.

64 Code of Criminal Procedure, 1898.

65 S.54 CrPC empowers police officer to arrest an accused who has committed cognizable offence and against whom *prima facie* evidence in this regard.

66 Code of Criminal Procedure, 1898, S.63 R. W. S. 169 of the CrPC (Code) empowers the concerned area magistrate to discharge an accused against whom no sufficient incriminating material has been collected by the investigating agency/police to connect him with commission of offence.

habeas corpus, the Code⁶⁷ also gives mandate to the concerned courts to issue direction/order to produce the detainee who has been kept in illegal custody.

Aurangzeb generally emphasized transparency in administrative as well as judicial matters for which all the public records had open access for common people.⁶⁸ The Qanoon-e-Shahadat Order 1984 also requires the holder of public records to allow inspection/examination of public records by those so entitled and after fulfilling conditions of payment of fees etc. for examination or/and for obtaining copy of the same.⁶⁹ The High Court Rules and Orders treat inspection/examination as urgent.⁷⁰

It is stated that for the first time in the reign of Aurangzeb, lawyers were appointed to defend suits against the state in every district. They were known as Vakil-e-Sarkar or Vakil-e-Shara. They used to get a fee of one rupee per day and were advised to give free legal advice to the poor. The Chief Qazi of the province was the appointing authority and sometimes this power was exercised by the Qazi-ul-Quzat as well.⁷¹ The Attorney General, Additional Attorney General, Advocate General, Additional Advocate General, Assistant

67 Code of Criminal Procedure, 1898.71S.491 CrPC empowers Session Judge of the concerned session division to issue directions, by way appointing a bailiff to have produced the detainee since confined in illegal or unlawful custody of police or someone else. Article 199 of the constitution of Islamic Republic of Pakistan also gives the same power to constitutional courts i.e. High Courts or Supreme Court of Pakistan. Darshan Masih case cited as (PLD 1990 SC 513) on habeas issue in Pakistan is the celebrated judgment whereby detainees confined by brick kiln owners on the pretext of having received advance amount for work on brick kiln were recovered. Also S. 552 CrPC empowers concerned session judge to make an order for production/restoration of an illegally and unlawfully confined female. Also S.100 CrPC empowers judicial magistrate to make an order for production of illegally and unlawfully confined minor.

68 Ahmad, *The Administration of Justice in Medieval India*, 191.

69 Article 87 QSO, 1984.

70 R. 2(b) read with R. 2(d), Part A (General), Chapter 1, Volume III in this regard goes as: "Application put in by counsel for inspection of records may be presented to the Magistrate personally."

71 Khan, *Mirat-i-Ahmedi*, 149.

Advocate General, Prosecutor General, Additional and Deputy Prosecutor General, District Public Prosecutor, Deputy District Public Prosecutor, Assistant District Public Prosecutor, District Attorney, Deputy District Attorney, Assistant District Attorney are appointed in Pakistan Court System to represent the state in variety of civil and criminal cases. They are also paid from the state exchequer and plead and defend the cases for or against the state, provinces and districts of the country.

Aurangzeb framed a system of written regulations which was called 'Zabateh' on diverse variety of subjects and he ensured strict implementation of the same. This was in addition to his achieving the compilation of much renowned *Al-Fatawa al-Alamgiri*. In the legal system of Pakistan, there are so many laws pertaining to different fields of life e.g. CrPC 1898, CPC 1908, QSO 1984, PPC 1860, Contract Act 1872, Transfer of Property Act and many more are there to regulate the proceedings qua the pending cases in courts.

It is also mentioned that Aurangzeb reformed the appeal system. He issued orders that parties should get the disputes resolved by the local qazi before bringing their cases to him.⁷² The appeal system in Pakistani courts is also still continuing. The Sections 404 to 431 CrPC⁷³ on criminal side and Sections 96 to 109 CPC⁷⁴ on civil side deal with concept of appeal. The High Court Rules and Orders⁷⁵ also speak about the same and give directions and instructions to be followed by the concerned courts.

Ahmad⁷⁶ argues that Aurangzeb issued orders for the preparations of *Mahzarnamahs* or records of judgments of the higher courts for circulation among the qazis of lower courts. But it has been narrated by Dr. Muhammad Munir

72 Ahmad, *The Administration of Justice in Medieval India*, 191.

73 Code of Criminal Procedure, 1898.

74 Code of Civil Procedure, 1908. Order XLI to Order XLIII of the same code also pertain to appeal against orders and decrees.

75 Part -A, Part-B of chapter 11, volume 1 of High Court Rules and Orders.

76 Ahmad, *The Administration of Justice in Medieval India*, 188.

with reference to Said Ahmed that unfortunately no published record of these cases is available.⁷⁷ The only manuscript with details of cases and judgments called *Baqiyat al Salihat* containing fifty (50) judgments of period during 1550-1850 A. D. was found.⁷⁸ These judgments are written in Persian language and bear the court's seal as well.⁷⁹ In Pakistani legal system, judgments, rulings, authorities and decisions of the constitutional courts are referred to by the lawyers to judges as they are contained and published in different law journals.⁸⁰

Other Officials, Officers and their Counterparts in Contemporary Pakistan

The officials and officers attached with the courts during period of Salateen of Delhi were Muftis (to assist in matters pertaining to Muslims) and Pundits (to assist in matters pertaining to Hindus). There were fujdars, sadars, amils and amalguzar, kotwals and shiqdars. There used to be Qazi Paraganah and Qazi Urdu. Many of these officials and officers were also part of court system as it prevailed during Mughal era in the Subcontinent. The other officials and officers, especially during the latter period included darogha adalat, mir'adl, mohtasib, aiwan-e-ala, peshkar, tehvildar (modern day cashier), mushrif (modern day treasurer) orderly (modern day naib qasid), nazir daftari, katib, waqaenigar or waqaenawis. It is clear that some of them are still existing with the same name and style in Pakistani court system e.g. nazir, whereas others are still continuing and are part of Pakistani courts with changed name and style which is quite natural.

77 Munir, "The Administration of Justice in the Reign of Akbar and Aurangzeb.

78 Munir, "The Administration of Justice in the Reign of Akbar and Aurangzeb.

79 Munir, "The Administration of Justice in the Reign of Akbar and Aurangzeb.

80 All Pakistan Legal Decisions (PLD), Yearly Law Reports (YLR), Pakistan Criminal Law Journal (PCr.LJ), Annual Law Digest (ALD), Pakistan Law Journal (PLJ) are some of the compilations/publications that carry judgments/authorities of the constitutional courts.

Independence of Judiciary under Salateen and Mughals

Admittedly, not a single legal system is there which can claim to be complete in all respects. There might be some examples of mismanagements of justice but no one can deny that, generally, judiciary was independent during the period of Salateen of Delhi as well as during Mughal era. Badauni mentioned incident of conflict between Akbar and his Chief Justice Abdul Nabi which erupted on the issue of construction of mosque. A Hindu removed the material for construction of mosque and, on being summoned, disobeyed the court order. The accused Hindu was granted capital punishment for using derogatory language against the Holy Prophet (Peace Be Upon Him). Akbar, being confirming authority in matters of capital punishment, was reluctant to execute the said Hindu. However, the Chief Justice did execute him.⁸¹ Even writers like Mahajan have admitted that Qazi was not allowed to get up when sultan entered his court.⁸² Sultan Ghyasud Din Balban inflicted extreme penalty on a governor who was guilty of murder when he was drunk.⁸³ Sultan Muhammad Tughluq appeared as defendant in the court of qazi and when the case was proved against him, he insisted on the penalty.⁸⁴ The discharge of their duties and dispensation of justice was considered rather a sacred duty by the rulers.⁸⁵ Similar kind of examples is available about the Mughal era as well. Akbar is stated to have declared that: "If I were guilty of an unjust act, I would rise in judgment against myself."⁸⁶ All the emperors were zealous and watchful in matters pertaining to administration of justice. For example, illustration can be

81 Abdul Qadir Badauni, *Muntakhab al-Tavarikh*, vol. II (trans. & ed.), G. Ranking (Calcutta: Bibliotika Indica 1898, reprint 1925), 80-83. See also, Sheikh Abul Fadl, *Akbarnama* (trans. & ed.), H. Beveridge, 3 Vols, (Calcutta: Bibliotika Indica, n. d., reprinted New Delhi, 257.

82 Mahajan, *The Muslim Rule in India*, 213.

83 Mahajan, *The Muslim Rule in India*, 213.

84 Mahajan, *The Muslim Rule in India*, 213.

85 Beveridge, *Comprehensive History of India*.

86 Mahajan, *The Muslim Rule in India*, 206

given of chain of Justice of Jahangir for the benefit of common people.⁸⁷ This also brings to our mind Sultan Shamsuddin Iltutmish who had adopted this practice of hanging of chain.

Conclusion

It was the ardent desire of the Salateen of Delhi to deliver justice at the earliest. They put every effort to timely decide the cases and for that purpose personally looked into the affairs of state functionaries to ensure satisfactory administration of justice. Similarly, the Mughals played very important role to devise a comprehensive judicial system in the subcontinent and brought certain changes in the given system which brought an overall positive impact on the judicial system in India.

In Pakistan, steps are being taken to dispose of cases of litigants on time. The Supreme Court and the High Courts of Pakistan are making efforts to achieve the goal of expeditious disposal of backlog of cases. Most often directions are given generally for disposal of certain category of cases e.g. juvenile, women, overseas Pakistanis etc. at the earliest. Equally there are case-specific and time-bound directions for members of district judicial service to conclude certain civil, criminal, family, rent, guardian, murder and rape cases. All the steps are meant to ensure that general public keeps on reposing the confidence in the judicial system of the country. Quite recently, a programme has been started in this regard under the nomenclature of EJI (Expeditious Justice Initiative) by establishing the same in Federal Judicial Academy Islamabad.

87 Mahajan, *The Muslim Rule in India*, 206.