

**THE**  
**Administration of Justice by the Mughals**

by



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## FOREWORD

Students and teachers of the Mughal period Indian history have long felt the need of a comprehensive study of the administration of justice by the Mughal Emperors. The present work is a laudable attempt to meet this need. The author has tried to consult all available sources of information and has spared no pains to utilize any material that was accessible to him, as will be evident from the numerous foot-notes. The work is based mostly on primary authorities ; but the writings of modern scholars have not been ignored. The author has thrown new light upon many an important problem, and has supplied fresh information which has hitherto been inaccessible to the general reader. He has taken care to base his conclusions on sound evidence ; and in judging men, he has attempted to relate facts to circumstances, before apportioning praise or blame.

Mr. Muhammad Akbar has had a brilliant career as a student at the Islamia College, Lahore. He is a young man of unusual ability who is capable of making a valuable contribution to the study of India's past by his researches ; and it gives me great pleasure to write a foreword to his first publication and to introduce to the literary world a young scholar of great promise.

The present study is the result of careful and extensive research ; the author's style is simple, forceful and precise, and his outlook, as will be

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clear to every reader of the book, is absolutely free from bias. He has stated and interpreted facts as he found them, without allowing any kind of prejudice to influence the discussion of the theme. I, therefore, hope and trust that his book will be widely appreciated.

SH. INAYATULLAH

Government College,

Lahore.

The 1st August, 1948.

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## P R E F A C E

Anyone who has attempted the task of writing a thesis will judge leniently at least some of the many defects of this essay. Of its defects—more particularly its sins of omission—no one can be so conscious as the author. But one thing I would crave permission to say. This is not a long thesis, still less can it pretend to be a great thesis, but it is at least the fruit of long labour. The insurmountable difficulty that I confronted was the scarcity of necessary books in the Lahore libraries. The books on the Mughal Period, especially English translations of Persian chronicles, were required by many students for their theses, so I could not rely on the same book for all my references. At times I had to consult translation of the same work by a different author. This has naturally led to some confusion, for which I may be held excused. The whole of this work is based on original material and a bibliography has been given at the end of the thesis. Of secondary authorities also I have made use, and I wish to acknowledge a special debt to Sir J. N. Sirkar and to the brilliant scholar, the late Ibn-i-Hasan. I sincerely believe that no writer of this period can afford to neglect their works.

I hope that I have not failed to acknowledge any specific debts. For any unacknowledged borrowings, either of thought or expression, I ask pardon.

In dealing with a subject so enormous and so complex, my main problems have naturally been those of structure, proportion and arrangement. I have thought far more of this than of felicity of phrase. I have striven after a simple style, hoping

to make the facts eloquent by putting them in their right places.

Although a vast deal has been written about almost every aspect of the Mughal administration, yet, so far as I am aware, there is no book in which an attempt has been made to draw together, in their just relations, all the points which have seemed to me to be essential parts of my theme, *viz*; the administration of justice by the Mughal Emperors *in person*.

Among those whose valued help I have to acknowledge, I must mention the name of my teacher, Syed Abdul Qadir, M.A., Professor of History, Islamia College, Lahore, whose unfailing courtesy, expert advice and encouragement fired my enthusiasm for the study of the Muslim period of Indian History.

Nor can I ignore the advice and help which I received from my elder, friend and colleague Mirza Muhammad Rashid, M.A., P.E.S., now Principal, Government College, Campbellpur. He has not only read all the chapters with meticulous care and saved me from many errors, but has also given me valuable suggestions and the benefits of his wise criticism. He most cheerfully and at a great cost of time and comfort underwent the tedium of reading the manuscript. To my friends Dr. Pir Muhammad Hassan, M.A., Ph.D., P.E.S., and Professor Syed Ala-ud-Din, M.A., I am equally indebted for advice and suggestions.

I must also record my gratitude to Dr. Sh. Inayatullah, M.A., Ph.D. (London), Head of the Department of Arabic and Professor of Islamic History, Government College, Lahore, for contributing a Foreword to my book.

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MUHAMMAD AKBAR

## CHAPTER I

### INTRODUCTORY

According to the Muslim jurists, the object of kingship is to protect the subjects and the *shariat*. The Muslim king is expected not only to be a true Muslim himself but also to see that all his Muslim subjects are true Muslims. He must also see that the dignity of Islam and the Islamic Law is upheld in his dominions.<sup>1</sup> The protection of *shariat* means the enforcement of Islamic Law in the State and the regulation of all affairs and policy on its basis. The king exists to carry out that law and all his orders must conform to it. The king who lives up to this standard is called Hakim-i-Adil, and it is this position alone which entitles him to the obedience of his Muslim subjects.<sup>2</sup>

The Islamic Law divides the subjects under a Muslim king into two sections, *viz.*, believers and non-believers. It imposes a duty upon the king to see that the believers live as true Muslims and the non-believers remain in the position allotted to them as *Zimmis*, a position which denies them equal status with the Muslim subjects. But it guarantees to the non-believers security of life and property. It also allows them to follow their religious beliefs and practices under certain defined conditions.<sup>3</sup>

1. *Al-Mawardi* as quoted by Ibn-i-Hasan in his *Central Structure of the Mughal Empire*, p. 256.
2. *Ibn-i-Khaldun* as quoted by Ibn-i-Hasan, p. 256.
3. *Suluk-ul-Muluk* as quoted by Ibn-i-Hasan, p. 306.



Thus we find that a Muslim king has two separate functions to perform. He has to perform the ordinary duties connected with his office ; he has also to uphold the dignity of his religion and to rule according to the Islamic Law.

But a glance at past history will convince us that it was impossible to rule over India on these lines. This difficulty was felt as early as the thirteenth century. Balban, Ala-ud-Din and Mohammad Tughlak clearly confessed it.

The second aspect of the Islamic system which guarantees peace and security of life and property to non-believers includes impartial justice. This aspect is also emphasised by Muslim jurists. In matters of justice, they treat both sections of the subjects as equal in the eye of law. "Justice and benevolence must be exercised alike for all subjects. The king is the Shadow of God and the gift of divine mercy is common to both believers and non-believers."<sup>1</sup> Abul-Fazl also remarks that a king must curtail the hand of oppression upon the weak, because the Prophet says, 'The cry of a victim of injustice, even if he is a *kafir*, is never rejected by God.'<sup>2</sup>

The Sultans of Delhi maintained Islamic Law in the administration of justice. The same can be said about the Mughals. There might have been cases in which Islamic Law was set aside by Akbar, but such occurrences were few and far between. The laws of inheritance, marriage and divorce, so closely intermingled with religious beliefs, could admit of no scope for amendment. Hence Civil Law

1. *Adab-i-Saltanat* as quoted by Ibn-i-Hasan, p. 308.

2. *Akbar Nama*, vol. III, p. 257.



remained unchanged, just as it is today. The Islamic Law applied to Muslims in all civil cases. Criminal Law was the same for both Hindus and Muslims.

The Mughals did not make any attempt to disturb the corporate life of the villages or encroach upon their ancient institutions or to bring them into line with other centralising agencies.

The organisation of the judicial system of the Mughals was entirely the same as laid down by Muslim jurists and established in Northern India by the Sultans of Delhi.

Though the Muslim jurists differ as to the right of the king to administer justice without a Qazi, they agree that the king has a right to administer justice personally. The Mughal Emperors utilised to the utmost the sanction given by Muslim jurists to kings to try judicial cases themselves. The access which they gave to their subjects and the extent to which that access existed will be noted in the subsequent pages.

In ancient times the sovereign was considered to be the fountain of justice, and it was his duty to try cases personally in open court. The Mughal Emperors acted up to this ideal and the contemporary evidence that we possess goes to show that they never failed in their duty to dispense justice.<sup>1</sup>

Sarkar thus discusses the conception of Islamic Law :

“ The only law recognised by the Emperor and his judges was the Quranic Law which had origina-

1. *Mughal Administration* by J. N. Sarkar, p. 106.



ted and grown to maturity outside India. It was supposed to have been defined once for all within the pages of the Quran as revealed to the Arabian Prophet. But there was a wide latitude in the interpretation of the words of the Quran. And for this purpose the Indian judges turned to the known decisions of the pious Muslim kings and eminent Muslim jurists of the past in the chief centres of Islamic thought and civilisation outside India. Thus, Muslim Law in India did not originate in legislation but in revelation. It had two other sources, *viz.*, precedents or case-law and the opinion of the jurists, though both of these latter merely professed to make the meaning of the Quran explicit and not to add any new principle or rule to what is written in the Book of God."

All the three sources of the Indo-Muhammadian Law were trans-Indian. No Indian Emperor's or Qazi's decision was ever considered authoritative enough to lay down a legal principle, elucidate any obscurity in the Quran, or supplement the Quranic Law by following the line of its obvious intention in respect of cases not explicitly provided for by it.

Hence it became necessary for Indian Qazis to have at their elbow a digest of Islamic Law and precedent compiled from the accepted Arabic writers. Such digests were prepared from time to time and their character varied with the sovereign's choice among the four schools of Islamic Law, *viz.*, the Hanafi, the Malaki, the Shafi'i and the Hanbali. The Hanafi school was considered orthodox in India. The last law digest prepared in India was the *Fatawa-i-Alamgiri* which was compiled by a syndicate of theologians under



orders of Emperor Aurangzeb at a cost of two lakhs of rupees. Muslim Law in India was, therefore, incapable of growth and change except so far as it reflected changes of juristic thought in Arabia or Egypt.

As is well known to students of mediæval history, the Civil State under Muslim rule is merged in and subordinated to Canon Law and theologians are the only jurists.

In the Marathi records we have much information about the Hindu caste courts and arbitration boards which administered justice according to Common Law. But they refer to the Deccan only, where society was differently constituted from Northern India. A few Sanskrit judgments have survived giving us a glimpse of the Brahmanic courts sanctioned by Emperor Akbar, which followed Manu and other text writers on the "Gentoo Code," as Nathaniel B. Halhed called the loose mass of Hindu legal rules and pious injunctions, which were appealed to by Hindu litigants at the end of the Mughal period.<sup>1</sup>

It is by no means to be admitted that the king was above the Holy Law. The king, though below no man, is below God and His Law as revealed to the Prophet. Every Mughal king regarded himself as the vicegerent of God and pretended to carry out the Divine Law. Obedience was demanded as his due by God's ordinance, and all resistance was treated as sinful. Though in practice his power was incapable of legal limitation, in theory he was expected to observe the limits set by the Holy Law. "State" Law was a command

1. *Mughal Administration* by J. N. Sarkar, p. 108.



of the sovereign and was binding on all. Consequently very few digests or codes of laws existed in Mughal India. The place of laws was taken by regulations based on religion and custom, and these regulations were proclaimed only by the Emperor's orders. The Twelve Ordinances of Jahangir and the *Fatawa-i-Alamgiri* were the work of the monarchs themselves. The jurisdiction of the Emperor which was all-embracing rendered his position still stronger. According to the Sacred Law, God has delegated the right of legislation and rule to human beings. The Sacred Law recognised no power of positive legislation vested in the head of the state, since God, through the Prophet, had legislated once for all; still whenever in practical politics the necessity for enacting new ordinances was felt, the king had the fullest powers to make laws. But there was no standard code which might be universally adopted in the country. Aurangzeb tried to remedy this defect by ordering *Fatawa-i-Alamgiri* to be compiled.

## CHAPTER II

### BABAR AND HUMAYUN

When Babar entered India as a conqueror, he followed in every sphere of administration the practices established by the Pathan kings whom he supplanted on the throne of Delhi. During his short reign of about five years, he did not have a chance to devise any new system of government. Most of his time was spent in fighting his foes. He governed the land by means of large camps each commanded by a general devoted to the monarch. The king as well as his generals dealt with the few cases that were brought before them in a summary fashion. No regular system was in vogue; no administrative practice or convention was established.

Indeed the time between the first battle of Panipat and the death of Babar was too short to allow him to think of affairs other than the consolidation of his conquests.

Gulbadan Begum has, however, cited in her narrative a few instances which show Babar's clement way of administering justice :

1. The forces of Khusro Shah were encamping between Kandez and Badakshan. In spite of the bad treatment which he had meted out to the two cousins of Babar, he never wished to wreak vengeance upon him and ordered that whatever he desired should be bestowed upon him.<sup>1</sup>

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*Humayun Nama* by Gulbadan Begum, p. 5 (Urdu translation).



2. Mirza Khan and Mirza Mohd. Hussain had rebelled and besieged Kabul. Babar soon conquered the fort. Mirza Khan concealed himself in his mother's home who was the king's aunt. Mohd. Hussain also hid himself in his wife's house who was also related to the king. The king pardoned both of them.<sup>1</sup>

What Babar left undone could not be accomplished by his son Humayun. The fact that the old system of government still prevailed in India is proved by the ease with which Humayun was supplanted by Sher Shah whose chief merit was his abler generalship and superior military tactics. Sher Shah was, like his predecessors, content to govern by camps located in the districts he had conquered, though<sup>2</sup> he made some attempt at organisation of civil administration, including the administration of justice. After his death, the edifice reared by him collapsed. Humayun again made a bid for the throne and before his death drew up a system for the government of his reconquered realm. He divided the affairs of Government into four departments so that the business of state might be conducted efficiently. For these departments he appointed four ministers.<sup>2</sup>

The country was to be covered with a number of separate camps at fixed places. The Emperor as well as the various generals dealt with the few cases that arose in a summary fashion like Babar. The system was quite incapable of welding the

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1. *Humayun Nama* by Gulbadan Begum, p. 8 (Urdu translation).

2. *Humayun Nama* by Khondamir as given in *Elliot*, vol. V, p. 12.

conquerors and the conquered into one harmonious whole.

A few cases have been recorded in the *Humayun Nama* which were personally decided by the king :

1. He heard that Mohd. Zaman Mirza had murdered Haji Mohammad Khan Koki's father and that he was plotting rebellion. He sent a man to call him ; he arrested him and imprisoned him at Biana and entrusted him to Yadgar Taghai. In the meantime, Yadgar Taghai's men effected the escape of Mohammad Zaman. The king ordered that the eyes of Sultan Mohd. Mirza and Nekhub Sultan Mirza be put out ; so they were blinded.<sup>1</sup>
2. When the king was in Persia, Khwaja Ghazi and Roushan Koka became the cause of ill-will between him and the Shah of Persia. The King of Persia regretted that these two men had caused misunderstanding between them. Both of them were condemned and the king ordered them to be imprisoned.<sup>2</sup>
3. When he fought against Mirza Kamran, his soldiers defeated Kamran's men and arrested some of them. He ordered the Mughals to "cut them to pieces." The king executed some of them and others were imprisoned.<sup>3</sup>

1. *Humayun Nama* by Gulbadan Begum, p. 26. (Urdu translation).

2. *Ibid*, p. 68.

3. *Ibid*, p. 75.



In spite of repeated provocations from Kamran, he did not at all trouble him. But at last he was constrained to take severe action against him and when he reached the neighbourhood of Rohtas, he ordered Sayed Mohammad to blind Kamran. The order was promptly carried out.<sup>1</sup>

So we find that during the time of the first two Emperors, no regular administration of justice was organised. The few cases noted above were mostly cases of rebellion. The general body of the people never enjoyed the benefit of the Emperor's acts of justice. They never utilised the state machinery for dispensing justice. In fact there was none. What we find in the pages of contemporary chroniclers are only occasional references to a few cases decided by the kings or some royal firmans to the provincial viceroys.

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*Humayun Nama*, by Gulbadan Begum p. 89. (Urdu translation).

## CHAPTER III

### AKBAR

Of the many famous sovereigns of the East few are comparable with Akbar, and to him indisputably belongs the first place amongst the rulers of India. Not only was he equally great as a man, a warrior, and a statesman, but his reign fell at a time fitted to afford the freest play to his eminent qualities. The Mughal Emperors of India prided themselves on their love of equity, and regarded the administration of justice as an important duty which the sovereign could not afford to neglect. According to Akbar, the divine element in monarchy was justice.<sup>1</sup>

‘If I were guilty of an unjust act,’ Akbar said, ‘I would rise in judgment against myself. What shall I say, then, of my sons, my kindred and others?’<sup>2</sup> This saying was not merely a copy-book maxim. He honestly tried to do justice according to his lights in the summary fashion of his age and country.

Father Monserrate’s observations concerning the Emperor’s administration of justice are worth quoting :

“In accordance with Musalman practice, cases are decided by a double process before two Judges. However by the King’s direction all capital cases, and all really

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1. Abul-Fazl’s *Ain-i-Akbari*, translated by H. Blochman, vol. III, p. 399.

2. Jarrett’s *Ain*, vol. III, p. 387—“Happy Sayings.”



important civil cases also, are conducted before himself. He is sincerely anxious that guilty should be punished without malice indeed, but at the same time without undue leniency. Hence in the cases in which he himself acts as a Judge, the guilty are, by his own directions, not punished until he has given orders for the third time that this shall be done. During a campaign, twelve deserters to the enemy were captured in an ambush and brought before the king. He pronounced judgment upon them ; some were to be kept in custody in order that their case might be more thoroughly investigated whilst some were convicted of treachery and desertions, and handed over for execution. One of these latter, as he was being carried off by the executioners, begged for a chance to say something. ' O king,' he said, ' order me not to the gibbet, for nature has bestowed upon me marvellous power in a certain direction.' ' Well,' said the king, ' in what direction do you thus excel, O miserable wretch ? ' ' I can sing beautifully.' ' Then sing.' The wretched fellow began to sing in a voice so discordant and absurd that every one began to laugh and murmur and the king himself could scarcely control his smiles. When the guilty man perceived this, he put in, ' Pardon me this poor performance, O King ; for these guards of yours dragged me along so roughly and cruelly on a hot and dusty road and pummelled me so brutally with their fists, that my throat

is full of dust and my voice so husky that I cannot do myself justice in singing.' The king rewarded this witty saying with such signal grace that for the sake of one man he pardoned both, the fellow himself and his companions.

"The following are the ways in which the guilty are punished. Those who have committed a capital crime are either crushed by elephants, impaled or hanged. Seducers and adulterers are either strangled or gibbeted. The king has such a hatred of debauchery and adultery that neither influence nor entreaties nor the great ransom which was offered would induce him to pardon his chief trade commissioner, who, although he was already married, had violently debauched a well-born Brahman girl. The wretch was, by the king's order, remorselessly strangled.

"Judgment is delivered only verbally and is not recorded in writing. Ordinary criminals are kept under guard in irons but not in prisons. Princes sentenced to imprisonment are sent to the jail at Gwalior, where they rot away in chains and filth. Noble offenders are handed over to other nobles for punishment, but the baseborn either to the captain of the despatch runners, or to the chief executioner. This latter official is equipped even in the palace and before the king with many instruments of punishment, such as leather thongs, whips, bow strings fitted with sharp spikes of copper,



a smooth block of wood used for pounding the criminal's sides or crushing to pieces his skull, and scourges in which are tied a number of small balls studded with sharp bronze nails. However, no one is actually punished with these instruments, which seem to be intended rather to inspire terror than for actual use. For the same reasons, various kinds of chain manacles, handcuffs and other irons are hung up on one of the palace gateways, which is guarded by the aforementioned chief executioner."<sup>1</sup>

From the above, we need not run away with the idea that the Emperor used to inflict two kinds of punishment, *viz.*, of death and mutilation of some limb. But the following instructions meant for the guidance of those who were to deputise for the king in the task of administering justice may be held to describe Akbar's own methods as well :

“ He should strive to reclaim the disobedient by good advice. If that fails, let him be punished with reprimands, threats, imprisonment, stripes or even amputation of limbs, but he shall not take away life till after the most mature deliberation. Those who apply for justice, let them not be inflicted with delay and expectation. Let him shut his eyes against offences and accept the excuse of the penitent. Let him object to no one on account of his religion or sect.”<sup>2</sup>

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1. Commentary of Father Monserrate pp. 209-10.

2. *Ain-i-Akbari*, vol. II, translated by Jarret, pp. 37-38. Also Gladwin, p. 254.

Further :

“ . . . in judicial investigations, he should not be satisfied with witnesses and oaths, but pursue them by manifold inquiries, by the study of physiognomy and the exercise of foresight ; nor laying the burden of it on others, live absolved from solicitude.”<sup>1</sup>

Abul-Fazl justifies the appointment of law-officers in this manner :

“ Although it be the immediate duty of a monarch to receive complaints and administer justice; yet seeing that it is not possible for one person to do everything, it necessarily follows that he must delegate his power to another.”<sup>2</sup>

Abul-Fazl's remarks might be taken to embody Akbar's own code of justice and signify his own notions about justice. Abul-Fazl continues :

“ This delegate must not be satisfied with witnesses and oaths but make diligent investigation because it is very difficult to come at truth without painful search and minute enquiry. Considering the depravity of human nature, he ought not to place much reliance on deposition. Divesting himself of partiality and avarice, let him distinguish the oppressed from the oppressor ; and when he has discovered the truth, act accordingly. He

1. *Ain-i-Akbari*, *Ain* I, Vol. II, p. 37.

2. *Ain-i-Akbari*, translated by Gladwin p. 300. cf. *Ain* Vol. II, *Ain* III, p. 41, translated by Jarrett.



shall begin with asking the circumstances of the case and then try it in all its parts. He must examine each witness separately upon the same point and write down their respective evidences. Since these objects can only be effectually obtained by deliberateness, intelligence and deep reflection, they will sometimes require that the cause should be tried again from the beginning and from the similarity or disagreement, he may be enabled to arrive at the truth."<sup>1</sup>

A letter of instructions to the Governor of Gujrat, preserved in the *Mirat-i-Ahmadi*, restricts his punishments to putting in irons, whipping and death, enjoining him to be sparing in capital punishments, and, except in cases of dangerous sedition, to inflict none until he has sent the proceedings to court and received the Emperor's confirmation.<sup>2</sup> The *Mirat*, however, lays down that capital punishment is not to be accompanied with mutilation or other cruelty.<sup>3</sup>

The manner in which the Emperor spent his daily time is thus described in the *Ain* :

“ He is ever sparing of the lives of the offenders, wishing to bestow happiness upon all subjects.<sup>4</sup> . . . . He also frequently appears at a window which opens into the Daulat Khana and from thence he receives petitions without the

1. *Ain* translated by Gladwin p. 300, cf. *Ain* Vol. II, *Ain* III p. 41, translated by Jarrett.

2. *Mirat-i-Ahmadi*, p. 174.

3. *Ibid.* p. 174.

4. *Ain-i-Akbari* translated by Gladwin, p. 160.

intervention of any person and tries and decides upon them. His Majesty is visible to everybody twice in the course of twenty-four hours; first after the performance of morning devotion, he is seen from the Jharoka by people of all ranks without any molestation from the mace-bearers. It frequently happens that petitions are submitted to him at this time . . . . He considers an equal distribution of justice and the happiness of his subjects as essential to his own felicity and never suffers his temper to be ruffled, whilst he is hearing cases. Whenever His Majesty orders a court to be held, they beat a large kettle-drum, to apprise everyone thereof . . . . The officers of justice also present their reports in the open darbar."<sup>1</sup>

Akbar encouraged the use of trial by ordeal in the Hindu fashion. He possessed an intellect so acute and a knowledge of human nature so profound that when he undertook judicial duties in person, his efforts to do substantial justice in a summary fashion probably met with considerable success.<sup>2</sup>

The reason why Akbar endeared himself to his people was that he administered even-handed justice to all, irrespective of caste and creed. He was the fountain of justice. His court was not merely the highest appellate court, it was also the court of first instance. The Emperor took great pleasure and pride in impartially deciding cases that came

1. *Ain-i-Akbari*, translated by Gladwin, p. 165.

2. *Akbar, The Great Mughal*, by Vincent Smith p. 345.

before him. It was the ambition of the King to serve the people and in serving them serve God before Whose Throne the King and the ryots must meet as equals. In his court the Eastern ideal of justice came very near being realized. This Eastern ideal fostered a feeling of goodwill and complete confidence between the rulers and the ruled.

Akbar's unremitting spirit of inquiry, his grandiose plans, and a temperament which was calm only in appearance, must have exposed him to the sway of moods. He had a naturally quick temper which carried him away in a gust of passion. Such outbreaks of wrath at times caused him to execute substantial although irregular acts of summary justice, as when he punished his uncle Muazzam and his foster-brother Adham Khan for cruel murders. On one recorded occasion a sudden fit of anger caused him to commit a shocking act, when he caused the negligent lamp-lighter to be hurled down from the battlements of the palace and dashed to pieces as a punishment for a small fault.

The following is the full account of the incidents as translated in Elliot's history.

1. Adham Khan, the youngest son of Maham Anga, was very envious of Atka Khan. The Khan-i-Khanan Munim Khan was also under the influence of the same feeling and exhibited it constantly in ways that no one of lower dignity could have done. He irritated and excited Adham Khan until at last, on the 12th Ramzan, a great outrage was committed. Munim Khan, Atka Khan, Shahab-



ud-Din Ahmad Khan and other nobles were sitting in the royal audience-chamber engaged in business of state. Adham Khan came violently in with a party of ruffians more violent than himself. He cast an angry look upon Khusham Uzbek and other wretches who had joined him. Khusham Uzbek then drew his dagger and inflicted a terrible wound in the bosom of the Minister. Atka fell dead in the courtyard of the palace. The murderer now directed his steps to the private apartments where His Majesty was sleeping. The noise awoke him and when he realized the actual state of affairs his anger blazed forth. He perceived the ungrateful culprit. He ordered Farhat Khan and Sangram Hoshnak to blind the mad-brained fellow. He then gave his just command for them to cast him down headlong from the parapet. These stupid men showed tenderness where want of tenderness would have been a thousand time better, and did not hurl him down as they ought to have done, and he was only half-killed. They were then ordered to bring him up and hurl him down again. So they dragged him back by the hair and throwing him down more carefully, his neck was broken and his brain knocked out. So that the criminal received the just reward for his deed.<sup>1</sup>

2. The Emperor used to retire for a long in-

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1. *Elliot*, vol. VI, p. 26.

terval after evening prayers, during which time the servants and courtiers used to disperse, assembling again when they expected His Majesty to reappear. That evening, he happened to come out sooner than usual to hear the news from the Deccan, and at first found none of the servants in the palace. When he came near the throne and couch, he saw a luckless lamp-lighter coiled up like a snake in a careless death-like sleep close to the royal couch. Enraged at the sight, he ordered him to be thrown from the tower and he was dashed into a thousand pieces.<sup>1</sup>

He would commit barbarous acts in such fits of passion. There are some other cases on record which go to prove his cruelty. The tongue of Hamzaban was cut off for rude behaviour.<sup>2</sup> The tongue of Khavja Bhul was also cut off for the same offence.<sup>3</sup> One Qasim was castrated for violating a chaste woman.<sup>4</sup>

There are various events collected by me from the pages of the contemporary chronicles which will serve as instances of the daily increasing dispensation of justice by the Emperor.

1. "When Akbar heard of the murder of Abul Fazal, he was very much grieved. An army had been sent under Ray-i-Rayan to chastise Nar Singh. A despatch was sent to the Emperor in

1. Elliot, vol. VI, p. 164 (Halat-i-Asad Beg or Wikaya).

2. Akbar Nama, vol. III, p. 29.

3. Ibid., p. 577.

4. Ibid., p. 733.

which the escape of Nar Singh was mentioned. The Emperor thirsted for the blood of that wretch and deputed Sheikh Farid to investigate the cause of his flight. The Sheikh represented that Shaikh Abul Khair was very clever in investigation. At last the writer went to hold an enquiry.”<sup>1</sup>

This shows that Akbar did not proceed hurriedly with the matters of state but appointed commissions of enquiry to go into the matters thoroughly.

2. “Once he pacified the people of a district by punishing a leopard-keeper. One of the Chitabans forcibly took off a man’s pair of shoes and appropriated them. The owner was lamenting and accidentally the cries came to His Majesty’s ear and the truth was discovered. The redresser of injustice, as soon as he heard of the tyranny, ordered that the Chitaban should be seized and brought to him. An order was issued for cutting off his feet.”<sup>2</sup>

3. “Abul-Maali had rebelled many a time. He was arrested but Akbar did not wish that in the beginning of his reign anything should happen that had the appearance of tyranny. So, he simply ordered that he should be imprisoned.”<sup>3</sup>

4. “Bairam Khan who had rebelled against the Emperor had to submit soon when he heard of the approach of the Imperialists; he placed the head of justice in the collar of shame and repentance. He sent Jamal Khan, a trusted servant,

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1. *Elliot*, vol. VI, p. 160 (Halat-i-Asad Beg or Wikaya)-

2. *Akbar Nama*, vol. II, p. 242. translated by Beveridge

3. *Ibid.*, p. 30.



with a request for pardon for his offences and made excuses. Jamal Khan delivered the petition to the Emperor. 'His Majesty the Shahinshah, on account of his general benevolence and special kindness, listened to his unheard-of excuses and because his noble nature relishes forgiveness, he, with an open brow and an expanding heart, drew the line of pardon over all his offences'.<sup>1</sup>

5. "Lashkar Khan, who held the offices of Mir Bakhshi and Mir Arz, came drunk to the court and created disturbance. The Emperor caused him to be led round for the sake of instruction to him and warning to others, tied to a horse's tail. He then sent him to prison."<sup>2</sup>

6. "Baba Khan Qashal Turk was rude and behaved presumptuously, when Shahbaz Khan, the Amir Tuzak, was engaged in arranging a procession. When the matter was reported to the Emperor, he ordered him to be severely punished as a lesson to himself and as a means of mending other transgressors."<sup>3</sup>

Smith has brought a very serious charge against the Emperor. He says that the Emperor on many occasions got rid of people whom he considered dangerous by means of assassination, or secret execution, to use a milder expression. In some cases, the issue of orders by the Emperor is only suspected, but the instances in which no reasonable doubt can be entertained are sufficiently numerous to justify the assertion that Akbar felt no scruples about removing his enemies by assassina-

1. *Akbar Nama*, vol. II, p. 178, translated by Beveridge.

2. *Ibid.*, p. 529.

3. *Ibid.*, p. 529.

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tion, whenever a public condemnation would have been inconvenient.”<sup>1</sup>

Smith supports his assertion by quoting the following cases of “suspected murders” from the *Ain* and from *Badaoni* :

- (1) Secret execution of Akbar’s cousin, the son of Kamran, in 1565, at Gwalior.
- (2) The highly suspicious deaths of Makh-dum-ul-Mulk and Shaikh Abdun-Nabi after their return from Mecca. *The Iqbalnama* expressly states that the latter was put to death by Abul-Fazal in pursuance of Akbar’s orders.<sup>2</sup> (*Akbar Nama*, vol. III, p. 406, note by Beveridge).
- (3) The equally suspicious death of Masum Farankhudi. (Blochmann in *Ain*, vol. I, p. 344).
- (4) Execution of Mir Muizzul-Mulk and another by their boat ‘foundering.’ (*Ibid.*, p. 382).
- (5) ‘One by one, he sent all the Mullahs against whom he had any suspicions of dissatisfaction to the abode of annihilation.’ (*Badaoni*, vol. II, p. 285).
- (6) Mysterious death of Haji Ibrahim in the fortress of Ranthambor. (*Ibid.*, vol. pp. 286, 322 ).

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1. *Akbar, the Great Moghul*, by Vincent Smith p. 343.

2. Cf. *Iqbal Nama-i-Jahangiri*, vol. II, by Mutamid Khan, (P.U L.)

“These cases,” says Smith, “amply support the proposition that Akbar got rid of ‘dangerous’ people by means of secret execution.”<sup>1</sup> But there is contemporary evidence pointing the other way. The author of the *Ain* writes that Akbar deliberately rejected the advice to remove his brother by assassination. Abul-Fazal writes :

“Some bold spirits asked permission to lie in ambush and put an end to that rebel. I could not consent, thinking it remote from what was fitting in this regard. Thus both that distinguished memorial of His Majesty (of Humayun) escaped from Harem, and my devoted friends were shielded from peril.”<sup>2</sup>

The author of the *Khazanatul Anbiya* asserts that Akbar caused Makhdumul-Mulk to be poisoned but Blochmann disbelieves the assertion because Badaoni, a friend of the deceased, is silent on the subject.<sup>3</sup>

In the face of this contemporary evidence the observations of Smith appear to be quite untenable. In the first place, he himself says that they were cases of ‘suspected murders.’ Secondly, we have no proof whatsoever to lay the blame on the Emperor’s shoulders, or to hold him in any way responsible for such acts. Badaoni’s evidence is worth little, for he was against the religious policy of the Emperor and he usually gives a partial opinion about the Emperor’s deeds. If Smith is constrained to believe in these acts, we must remind

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1. *Akbar, the Great Mughal*, p. 344.

2. *Ain-i-Akbari*, vol. III, p. 313 (Happy Sayings).

3. *Ibid.*, vol. I, Biography of Abul-Fazal.



him of the so-called 'judicial murders' in England, where an act of attainder is sufficient to send an unfortunate person to his fate. During British rule in India, people were sometimes thrown into jail without trial or legal proof establishing their guilt. If Akbar resorted to that method, it can be justified on the grounds of expediency.

On the contrary, Akbar can fairly claim to be impartial in justice. In the twenty-fourth year of his reign, a case was brought against the King's favourite governor and boyhood playmate, Khan-i-Azam Mirza Aziz Koka, who, during his governorship of Gujrat, had arrested an Amil, Alaud-Din, for embezzlement, and handed him over to one of his servants. The servant had a grudge against the Amil and he had him beaten to death. Khan-i-Azam punished his servant with death for his offence and Abul Fazal says, 'This act of justice he performed not at the request of anybody but from piety of God.' Thus the man who was guilty of the murder was brought to justice but the matter did not end there. When the father of the Amil came from Persia to seek redress, the case was reopened and the King ordered it to be tried by the ordinary court of justice. The responsibility lay on Khan-i-Azam to prove himself innocent in the matter. In the end he succeeded in settling the matter by paying a large sum as fine (*Khunbaha*) according to *Shara* to the father of the murdered Amil. Hence Abul Fazal feels justified in remarking upon the occasion:

"His Majesty . . . in his court makes no difference between a relative and a stranger, and no distinction between a chief of chiefs and a tangle-haired beggar."<sup>1</sup>

1. *Akbar Nama*, twenty-fourth year, p. 66; Beveridge, p. 387.

Similarly, Akbar created a surprise in Gujrat by punishing with death Jujhar Khan, one of the most powerful military chiefs of the late kingdom of Gujrat for the murder of one Changez Khan. The case was brought by the mother of the murdered man during Akbar's stay there. Inquiry was made, the accused was found guilty, and sentenced to death. It may be observed that it was done in the eighteenth year of the reign, when the conquered province was not even properly subjugated.

“The old and deserted woman never imagined that so powerful a man would be punished for misdeeds and was astonished on beholding such justice. General public received enlightenment from this just sentence.”<sup>1</sup>

Plutarch tells us that in spite of his faults, Greece bore great love to Philopoemen as the child of her age, and her last national hero. Like Philopoemen, Akbar had faults and, like him, he is worthy of love, for he was India's last truly great sovereign.<sup>2</sup>

1. *Akbar Nama*, eighteenth year, p. 3; Beveridge. p. 46.

2. *The Emperor Akbar* by Noer, vol. I, Preface, p. lii.

## CHAPTER IV

### JAHANGIR

Jahangir was a great lover of justice and he took a keen interest in its administration. He did not want that any of his courtiers should hinder the oppressed in their approach to him and so installed a golden chain of justice. "It was," Jahangir writes, "a chain of pure gold, thirty *gaz* in length, and containing sixty bells. If the officers of the courts of justice should fail in the investigation of the complaints of the oppressed and in granting them redress, the injured persons might come to this chain and shake it, and so give notice of their wrongs. One end of it they made fast to the battlements of the Shah Burj of the fort at Agra, and the other to a stone-post fixed on the bank of the river."<sup>1</sup>

This institution made great impression on the people. Khafi Khan praises this innovation of Jahangir very much. He writes that Jahangir made a proclamation that anyone who was oppressed might, through the bells, bring his complaint to King's ears.<sup>2</sup> A Persian manuscript, the *Razul Maluk*, contains the fictitious story of an ass, who, wandering on the river bank, happened to shake the chain. An inquiry was at once made into the 'grievance,' when it was found that his owner, a miser, did not look after him well.

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1. *Memoirs*, translated by Rogers and Beveridge, vol. I, p. 7.

2. *History* by Khafi Khan, as quoted by Beni Parshad, p. 111.



The man was warned.<sup>1</sup>

But at times he would go into fits of passion and committed barbarous acts. Thus he writes :

“On the 22nd, when I got within shot of a nilgaw, suddenly a groom and two kahars appeared, and the nilgaw escaped. In a great rage, I ordered them to kill the groom on the spot, and to hamstring the kahars and mount them on asses and parade them through the camp, so that no one should again have the boldness to do such a thing.”<sup>2</sup>

He delighted to see men executed and torn into pieces by elephants.<sup>3</sup> For his pleasure, the King would, at times, tame lions and order men to fight with the beasts. Many people lost their lives in this manner.<sup>4</sup>

Such incidents gave to the European travellers a very bad impression about the Emperor. Terry, for example, regards him as a man of ‘extremes, cruel as well as mild, given to excessive drinking himself but punishing that fault in others.’<sup>5</sup> Terry further remarks that the Emperor styles himself the King of justice and he judges for the most part ‘*secundum allegata et probata*.’<sup>6</sup> He also observes that the trials concluded speedily. The execution

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1. *History of Jahangir* as quoted by Beni Parshad, p. 111.

2. *Memoirs*, translated by Rogers and Beveridge, vol. I, p. 164.

3. Hawkins in *Purcha's Pilgrims*, vol. III, p. 38

4. *Ibid.*, p. 41.

5. *Early Travellers in India* by Foster, p. 331.

6. *Ibid.*, pp. 225-26.

of sentences took place quickly and the culprits were usually executed in the market place.<sup>1</sup> He further remarks that there were no written laws in the country.<sup>2</sup> He writes :

“I could never hear of laws written among them: the King and his substitute's will is law. The governors in cities and provinces proceed in like-form of justice.”<sup>3</sup>

Sir Thomas Roe supports Terry in this assertion and mentions the absence of written laws.<sup>4</sup>

Jahangir was very particular about dispensing justice. He had especially reserved one day in the week for that duty. De Laet's evidence is worth quoting :

“Once a week on Tuesday, he takes his seat on the tribunal, and hears patiently all cases that are brought before him, both civil and criminal, and pronounces judgment on each, which is final. Capital punishment is generally inflicted before his eyes and with great cruelty, whether in capital city or wherever he is holding his court. Those found guilty are punished with severity, being either beheaded, hung, impaled or thrown before elephants and other wild beasts, according to the nature of the crime.”<sup>5</sup>

1. *Early Travellers in India* by Foster, p. 326.

2. *Ibid.*, p. 326.

3. *Ibid.*, p. 326.

4. *Embassy of Sir Thomas Roe*, p. 120.

5. *The Empire of the Great Moghul* by De Laet translated by J. S. Hoyland and S. N. Bannerji, p. 93.

It appears from here and elsewhere that the provincial governors could not inflict capital punishment unless specifically authorized by the Emperor. Thevenot writes in connection with Surat: "The King reserves that power to himself; and therefore when any man deserves death, a courier is despatched to know his pleasure, and they fail not to put his orders in execution so soon as the courier comes back."<sup>1</sup> There were some other ways by which the guilty were put to death. Terry mentions that dogs and snakes were also used for the purpose.<sup>2</sup>

It appears that ordinary cases were attended to by the King in the open darbar every day and important cases requiring the evidence of witnesses were attended to by him on the day of the week fixed exclusively for the administration of justice, i.e., on Tuesday. Hawkins says about Jahangir that the King heard all cases in the open darbar for about two hours every day.<sup>3</sup> It is very significant that Jahangir followed this practice even during his expeditions and pleasure-trips and above all, even when he was indisposed. He would sit for two or three hours at the Jharoka and redress the grievances of the oppressed, and punish the oppressors. Even when in pain or sorrow, he observed his fixed custom.<sup>4</sup> At Ahmadabad he selected an open place for administering justice to the "weak-hearted and wretched" people of that place.<sup>5</sup>

1. *Travels in the Levant* by Thevenot, vol. III, p. 19.

2. *Early Travellers in India* by Foster, p. 326.

3. Hawkins in *Purcha's Pilgrims*, vol. III, p. 46.

4. *Memoirs*, translated by Rogers and Reveridge, vol. II, pp. 1.

5. *Ibid.*, p. 14.



Jahangir was easily accessible to his subjects. A gardener of the royal gardens once approached him and complained against the servant of the governor who had taken away some plants under his charge. After investigating the matter, he found that the complaint was true, so he ordered that both the thumbs of the accused be chopped off.<sup>1</sup>

William Finch, while making mention of the golden chain of justice, also remarks that if the cases of the aggrieved people were not proved genuine, they were punished for unnecessarily troubling the King.<sup>2</sup> Another European traveller, Hawkins, praises his methods very much. According to him the rayats' complaints were heard and prompt action was taken against oppressive officials. He would at once summon the person shaking the chain of justice and allow him to present his case in person.<sup>3</sup>

That Jahangir's love of justice was high is shown by many cases on record. Jahangir came to know that Hoshang, who was the nephew of a great noble, Khan Alam, had committed a murder. The guilt was proved, so he ordered his execution and declared :

“God forbid that in such affairs, I should consider princes and far less that I should consider Amirs.”<sup>4</sup>

He was also very anxious about the fate of

1. *Memoirs*, translated by Rogers and Beveridge, vol. II, p. 14.

2. Finch in *Purcha's Pilgrims*, vol IV, p. 74.

3. Hawkins in *Purcha's Pilgrims*, vol. III, pp. 43-44.

4. *Memoirs*, translated by Rogers and Beveridge vol. II, p. 211.

prisoners. He visited the Ranthambor fort and examined the cases of all prisoners and issued final orders about them.<sup>1</sup> Even the great nobles could not escape him. The eunuchs of Said Khan Chagtai troubled the poor; Jahangir sent him a message to the effect that he could not tolerate oppression and that great or small had no meaning for him. He warned him that he would receive due punishment if the blunder was again repeated.<sup>2</sup>

Manucci has given an interesting account of the Emperor. He records that if his officials went wrong in any matter of justice, he would throw them to the lions which were present in the Hall of Audience.<sup>3</sup> He has given many interesting stories about the Emperor which are summarized here. One day in the river a pot was found containing a dead body cut into pieces. The officers of justice were ordered to trace the murderer. At last they found the potter who had made that pot and through him, the culprit was caught.<sup>4</sup>

A woman who had falsely accused a Rajput was severely punished, as the King discovered that her allegations were absolutely false. The officers of justice were about to hang the Rajput as he was alleged to have forced a Muhammadan woman. But the Emperor discovered the truth, punished the woman and fined the law-officers for negligence.<sup>5</sup>

Jahangir forbade the cutting of noses and ears

1. *Memoirs*, translated by Rogers and Beveridge, Vol. II, p. 59.
2. *Memoirs*, translated by A. Rogers, vol. I, p. 13.
3. *Storia Do Mogor*, by Manucci, Vol. I, p. 174.
4. *Ibid.*, pp. 174-75.
5. *Ibid.*, p. 175.

of the prisoners.<sup>1</sup> He set free all the prisoners confined in the prisons for long periods. In 1611, Jahangir issued orders to the Amirs forbidding them to punish any person by ordering him to be blinded. He also instructed them not to impose Muslim burdens on any one. These were some of the rules which were promulgated under the title of *Ain-i-Jahangiri*.<sup>2</sup> In 1618, he further issued orders that criminals sentenced to death should not be executed till sunset, and if up to that time no reprieve was issued, the punishment should be inflicted.<sup>3</sup> This order was issued after an unpleasant incident. Jahangir had issued order for the execution of a prisoner. The order was carried out. After a little while, at the intercession of some courtier, the Emperor cancelled the death sentence. But now the man was no more. So he issued the order "that henceforth criminals sentenced to death should not be executed till sunset, and if until then no reprieve was issued, the punishment should be inflicted."

These various cases show Jahangir's great passion for justice, and that he can justly claim to be impartial in dispensing justice. A very interesting case is cited by Beni Parshad in his *History of Jahangir*. He writes, "A respected Muslim Pir whose family migrated from Afghanistan to Sindh, refused to prostrate himself before the Emperor Jahangir. He was thrown into prison, but the Emperor soon repented of his harshness, released the Pir and begged his pardon. The lineal descen-

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1. *Elliot*, vol. VI, p. 285, Institute No. 5.

2. *Ibid.*, p. 325.

3. *Ibid.*, p. 361.



dants of the Pir still count among their followers from ten to twelve lakhs of persons.”<sup>1</sup>

By setting up the ‘Chain of Justice,’ Jahangir became an innovator in the domain of justice. He did it perhaps in imitation of Anaushirwan with whom doing justice to his subjects was a passion and who had invented a similar ‘Chain of Justice.’ This chain is an illustration of the eagerness of the Mughal Emperors to do justice to their subjects. Lane-Poole remarks that it is not on record whether anybody was bold enough to pull the chain, but in the absence of any evidence we are not justified in assuming that it was never used. The practice might have been so common that no writer thought it worth mentioning. It cannot be denied that the Mughal Emperor was accessible to all his subjects who could appeal to him whenever they suffered at the hands of any of the royal officials.

Rogers has formed a remarkable opinion about Jahangir. In his introduction to *Jahangir's Memoirs*, he writes :

“It is a remark of Hallam's that the best attribute of Mohammadan princes is a rigorous justice in chastising the offences of others. Of this quality Jahangir, in spite of all his weaknesses, had a large share and even to this day, he is spoken of with respect by Mohammadans on account of his love of justice.”

1. See the report of the trial of Pir Mujadad held in the Sessions Court, Karachi, on October 29, 1921. The incident is quoted from Beni Parshad's *History of Jahangir*, p. 440.

## CHAPTER V

### SHAH JAHAN

The reign of Shah Jahan is notable for peace and prosperity. He was most particular in the matter of dispensing justice. He was always kind to the good, but severely punished those who were found guilty of any crime. Whenever any of his officials committed an oppressive act, he inflicted upon him an exemplary punishment. He kept officials at his court with baskets full of poisonous snakes<sup>1</sup>; and the officials guilty of oppression were bitten by these snakes.<sup>2</sup> They were not removed from his presence till they had breathed their last.<sup>3</sup> This impartiality of the Emperor had a salutary effect upon men of high position and thus his subjects became free from the tyranny of oppressive officials. It acted as a deterrent for the future and served to keep the others straight.<sup>4</sup>

The Emperor established a regular system of appeals. From the court of first instance, an appeal could be filed in the court of the Governor, or in the court of the Qazi of the Subah. If the parties were not satisfied even with these decisions, they appealed to the Chief Diwan or to the Chief Qazi on matters of law.<sup>5</sup>

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1. *Storia*, vol. I, p. 197.

2. *Ibid.*, p. 197.

3. *Ibid.*, p. 197.

4. *Ibid.*, p. 197.

5. *Elliot*, vol. VII, pp. 170-73.

There are some interesting cases decided by the Emperor which go to show his keen interest in the administration of justice.

A soldier took wrongfully the slave-girl of a Hindu clerk. The soldier claimed that the girl was his and the girl endorsed this. The case went to the Emperor. He kept the girl in his palace and, as she could prepare ink very cleverly, he concluded that the girl belonged to the scribe. The soldier was banished and the girl restored to the owner.<sup>1</sup>

Another interesting case is that of four merchants who kept a cat at their shop. They had entered into an agreement that each of them would attend the shop in turn for one day and provide oil for the lamp and food for the cat. The cat broke one of its legs and one of the merchants in whose presence the cat was injured was compelled to treat it. In the meantime the cat caught fire and to save herself ran beneath the bags. The whole shop caught fire and everything was destroyed. The three merchants sued the one who was doctoring the cat for damages. The lower court decided in their favour. The case went to the King who reversed the judgment and decreed that the three merchants should pay the one who was responsible for the cure of the cat. He said that the broken leg could not walk and that the three legs belonging to the other three traders were responsible for fire.<sup>2</sup>

Shah Jahan was also very severe towards the thieves. If they committed heinous crimes they

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1. *Storia*, vol. I, p. 203.

2. *Ibid.*, p. 203.

were hanged, or transported to the other side of the Indus.<sup>1</sup> If the thieves escaped, the officials were required to compensate for the loss.<sup>2</sup> In 1645, when the Dutch factory at Surat was looted, the governor did not pay heed to the complaints of the Dutch for reparations. When Shah Jahan learnt of this, he ordered the governor to make good the loss from his treasury.<sup>3</sup>

Manucci has recorded many other interesting cases decided by the Emperor. The governor of Gujrat, Nasir Khan, oppressed the people very much, but the reports of his tyranny could not reach the court, as he had bribed the secret-writers. The merchants of that region secretly bribed some actors to represent their grievances before the Emperor by means of a play. The actors played a piece which showed the misgovernment existing in Gujrat. The King was astonished and asked if there was a man who committed such actions. The merchants who were present disguised among the players prostrated themselves before the King and related their grievances. The King made enquiries, and having found out the truth, confiscated the property of Nasir Khan and sent him to the fortress of Rohtasgarh.<sup>4</sup>

Shah Jahan inflicted terrible penalties on two forgers in the year 1656-57. A youth brought a claim against a woman that he had spent all his wealth on her on her promise to marry him. He claimed

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1. *Storia*, vol. I, p. 203.

2. *Ibid.*, p. 203.

3. *Ibid.*, p. 203.

4. *Ibid.*, pp. 198-99.



that the woman bore certain marks on the body and this evidence, he said, was sufficient to prove his familiarity with her. The woman denied the engagement, but the judge decided in favour of the youth granting her a few months' respite before marriage. After a month the woman caught the same youth and took him to the judge accusing him of theft. The young man swore that he did not know the woman. The woman then requested the Qazi to reverse his previous judgment in favour of the youth, for as he did not know her, he could not marry her. The case went before the King who inquired how the young man had learnt of the marks on the chaste woman's body. He said that it was through an old woman who worked as a servant in the chaste woman's house. The Emperor ordered that the young man and the old woman be buried in the ground up to the waist, after which they were to be shot to death by arrows.<sup>1</sup>

Another case occurred in the Kingdom of Kabul. A rich woman, Daryae Khatun, would tempt the merchants of the Ozbek race to marry her. After a little time, she would sever the muscles of the man near the heel to disable him and sold him to her acquaintances as a slave. She sold nineteen such 'husbands.' The Governor of Kabul, thinking the case to be extraordinary, sent it to the King who ordered that the woman be torn to pieces by dogs.<sup>2</sup>

Shah Jahan wouldn't even spare his nobles guilty of any crime. A noble's servant complain-

1. *Storia, Do Mogor*, vol. I, p. 193.

2. *Ibid.*, p. 200.

ed to the Emperor that his master had not given him his salary for a long time. The noble was summoned. His servant was mounted on a horse and the master was ordered to run after him. He ran and ran till he fell down exhausted. Shah Jahan reprimanded him to be just towards his servants.<sup>1</sup>

A slave, Sa'adat Khan, was very much loved by the Emperor, but he was not spared when he disobeyed orders. The Emperor had ordered him to stop distributing betels to any one; but the slave went on doing the thing secretly. When the Emperor learnt of it, he ordered him to be beaten to death in his own presence.<sup>2</sup>

Shah Jahan devoted some time every day to the administration of justice. When he went to the Jharoka-i-Darshan in the morning, he would at times let down a string from the window and the people tied their petitions to it. The attendants submitted them immediately to the Emperor. The people outside in the plain could easily make their complaints to the Emperor without any obstruction from the officials.<sup>3</sup> In the Ghusal Khana as well he would dispense justice personally according to the principles of Shara.<sup>4</sup>

The observations of Rai Bhara Mal in his *Lub-but-i-Twarikh-i-Hind* regarding the paucity of litigation during the reign of Shah Jahan is worth quoting :

“Notwithstanding the great area of the

1. *Storia*, vol. I, p. 201.

2. *Ibid.*, p. 201.

3. *Badshah Nama*, vol. I, p. 145. (Asiatic Society of Bengal), by Abdul Hamid Lahori.

4. *Ibid.*, p. 145.

country, complaints were so few that only one day in the week, viz., Wednesday, was fixed upon for administration of justice, and it was rarely even then that twenty plaintiffs could be found to prefer suits, the number generally being much less. The writer of this historical sketch on more than one occasion, when honoured with an audience of the King, heard His Majesty chide the Darogha of the Court that, although so many confidential persons had been appointed to invite plaintiffs, and a day of the week was set apart exclusively with the view of dispensing justice, yet even the small number of twenty plaintiffs could but very seldom be brought into the court. The Darogha replied that if he failed to produce only one plaintiff, he would be worthy of punishment. If the offenders were discovered, the local authorities used generally to try them on the spot, where the offences had been committed, according to law and in concurrence with the law-officers."<sup>1</sup>

The author of *Badshah Nama* also writes that Shah Jahan devoted the whole of Wednesday for dispensing justice. No public Durbar was held on that day. In the morning he occupied the throne of justice and sat till noon deciding cases.<sup>2</sup> In the Diwan-i-Khas of the fort at Delhi, Shah Jahan got a Meezan-i-Adl (Balance of Justice) painted on

1. Elliot, vol. VII, pp. 172-73, (Rai Bhara Mal's *Lubbut-i-Twarikh-i-Hind*).

2. *Badshah Nama*, vol. I., p. 150

the wall and he daily saw it before going to occupy the throne of justice, so that he might be fair and impartial in his decisions. This balance served as a source of inspiration to him, as it reminded him of his duty to dispense justice on equal and fair terms to all his subjects as ordained by the Holy Quran. Shah Jahan kept this picture perpetually in his mind when he sat to dispense justice.<sup>1</sup> The Muftis, Qazis, the Ulema, and a few nobles were present on that day.<sup>2</sup> The petitioners were presented before the Emperor and he heard their grievances. He thoroughly satisfied himself and, after consultations with the Ulema, he would deliver his judgment. Many people had come from distant places to seek justice. Their complaints were sent back with orders to the governors to investigate the matter fully and, after complete satisfaction, deliver judgment, or to return the matter again to the Emperor for his personal decision.<sup>3</sup>

Shah Jahan was very careful about prisoners. He inspected the fort of Gwalior and examined the cases of all prisoners and released most of them excepting a few whose release threatened the security of the state.<sup>4</sup> When he again passed by that fort after five years, there were eleven prisoners in that fort who had suffered imprisonment for long terms. He ordered the release of all of them.<sup>5</sup>

The Emperor had made it a rule to examine the

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1. From the writer's personal observations in the Red Fort, Delhi.
  2. *Badshah Nama*, vol. I, p. 150.
  3. *Ibid.*, p. 150.
  4. *Ibid.*, p. 245.
  5. *Ibid.*, p. 246.



cases of all the prisoners in the forts by which he happened to pass, and he had fixed regulations that the warders must bring to his notice all the cases of the prisoners under their charge.<sup>1</sup>

When 'Begum Sahib,' his favourite daughter, recovered from an illness in the seventeenth year of his reign, Shah Jahan celebrated a feast to commemorate the occasion. He released persons imprisoned for long-standing debts as a special favour, and all their debts were paid from the royal treasury.<sup>2</sup>

In short, it may be said that Shah Jahan's love of justice was proverbial, and every writer of the period specially emphasizes this aspect of his administration.

1. *Badshah Nama*, vol. I, pp. 245-46.

2. *Ibid.*, vol. II, p. 363. (Asiatic Society of Bengal).

## CHAPTER VI

### AURANGZEBE

Aurangzebe was very keen about dispensing justice. He sat in audience two or three times a day to hear complaints. The oppressed people could come without any obstruction and obtained redress. He was very impartial. In his vast Empire no body could do anything contrary to the law and escape punishment enjoined by Muhammadan Law.<sup>1</sup> The Emperor was fully acquainted with the books of eminent jurists. He studied the law, commentaries and traditions, and works of Imam Ghazali, Sheikh Sharaf Yahya Muniri and others for acquiring sound information about the principles of law, which he applied to cases brought before him for decision.<sup>2</sup>

Aurangzebe's manner of doing justice is thus described by Bernier, an eye-witness :

“.... All the petitions held up in the crowd assembled in the Am-Khas are brought to the King and read to his hearing; and the persons concerned being ordered to approach are examined by the monarch himself, who often redresses on the spot the wrongs of the aggrieved party. On another day of the week, he devotes two hours to hear, in private, the petitions of

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1. *Elliot*, vol. VII, pp. 158-60. (*Mirat-i-Alam* by Bakhtawar Khan).

2. *Ibid.*, p. 161.

ten persons selected from the lower orders, and presented to the King by a good and rich old man. Nor does he fail to attend the justice chamber, called Adalat Khana, on another day of the week, attended by two principal Qazis or chief justices. It is evident, therefore, that barbarous as we are apt to consider the sovereigns of Asia, they are not always unmindful of the justice that is due to their subjects."<sup>1</sup>

Manucci thus describes the scene of the royal dispensation of justice :

"The King holds public audience in the Am-Khas and there it is usual for aggrieved persons to appear and make complaints. Some men demand punishment for murderers, others complain of injustice and violence or other such-like wrongful acts. ...The King ordains with arrogance, and in a few words, that the thieves be beheaded, that the governors and Faujdars compensate the plundered travellers. In some cases he announces that there is no pardon for the transgressor, in others, he orders the facts to be investigated and report made to him."<sup>2</sup>

Like his father, Aurangzebe followed a fixed routine every day. After the morning prayers he went to his 'Khalwat Gah' and decided cases.<sup>3</sup>

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1. *Bernier*, p. 268.

2. *Storia*, vol. II, p. 462.

3. *Alamgir Nama*, p. 1098.

All the persons who had any complaints were brought before him. Many people had come from far off places to bring their complaints to the notice of the Emperor.<sup>1</sup> He examined them personally and pronounced judgments upon cases that violated the 'Shara' (Canon Law) in accordance with the injunctions of the 'Shara.'<sup>2</sup> Aurangzebe was very anxious to dispense justice according to the Quranic Law.<sup>3</sup> So the result was that the influence of the Qazis increased and they acquired large powers. All the trials were held according to the Quranic Law and no consideration was given to the customs of the country. But there were some other cases as well which were tried according to the customary procedure. Such were usually the cases which broke some rules or regulations of the Empire. The Emperor decided such cases himself and was not bound by any precedent.<sup>4</sup>

Those plaintiffs who required help were given money from the public treasury.<sup>5</sup> The petitions of the aggrieved parties could be submitted to the Emperor even when he retired to his Private Chamber near the Ghusal Khana after the Zuhar prayers, provided the parties had influence with some favourite courtier, who presented the petitions to the Emperor through the Darogha-i-Adalat.<sup>6</sup> Again in the *harem*, he heard petitions of women, widows and orphans and redressed their

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1. *Alamgir Nama*, p. 1097.

2. *Ibid.*, p. 1098.

3. *Ahkam-i-Alamgiri*, by Hamid-ud-Din, Hukam 34, as translated by Sarkar in his *Mughal Administration*, p. 112.

4. *Alamgir Nama*, p. 1098.

5. *Ibid.*, p. 1098.

6. *Ibid.*, p. 1102.



wrongs.<sup>1</sup>

He had also reserved one day of the week for administering justice. On Wednesday,<sup>2</sup> he held no Durbar and personally judged cases till noon in the Diwan-i-Khas, in the presence of Qazis, Muftis, Ulema, and Kotwal.<sup>3</sup>

The Emperor was very anxious to safeguard the royal prerogative. He would not allow even great nobles to inflict capital punishment on their own authority. On learning that Feroze Jang had executed a man, he ordered Asad Khan to warn Feroze Jang in very severe language. He wrote :

“You have undertaken an execution, *i.e.*, the destruction of what God had built, without proof, according to Canon Law. Alas! for the day when the heirs of the slain will arrive and refuse to accept the price of his blood. How can this humble being (Aurangzebe) help giving the order of retaliation on you, as mercy in the exercise of penal laws is contrary to the authority of the Word of God (*i.e.* the Quran)? And kindness should not overpower you in matters concerning the religion of God.”<sup>4</sup>

This shows that Aurangzebe was even more zealous in meting out justice to his subjects than any of his predecessors. Any one, without distinction of rank or position, was freely admitted to his

1. *Alamgir Nama*, p. 1103.

2. *Ibid.*, p. 1102.

3. *Ibid* , p. 1102. (Summary of chapter last, vol. II, of *Alamgir Nama* pp. 1096-1107).

4. *Ahkam-i-Alamgiri*, Ilukam 34, translated by Sarkar, p. 112.

daily audiences. The judgment he pronounced was to be executed on the spot. In fact, all the Mughals made it a rule that the punishment of all offences should be carried out immediately after conviction. Aurangzebe decided, to the satisfaction of the parties concerned, many cases which arose out of the disputes of succession. Sarkar in his *History of Aurangzebe* has cited many such cases.

Aurangzebe's ideal can be visualized from the contents of his numerous letters. In one of those, addressed to his captive father, he says:

“Almighty God bestows his trust upon him who discharges the duty of cherishing and protecting his subjects.... A wolf cannot be a fit shepherd.... A sovereign is the guardian of the people....”<sup>1</sup>

Again he says:

“.... He is the truly great king who makes it the chief business of his life to govern his subjects with equity.”<sup>2</sup>

Ovington's testimony throws some light upon the methods of justice of Aurangzebe. He did not come into contact with the Emperor personally, but got his information from the English merchants at Bombay and Surat. He calls the great Mughal as the ‘main ocean of justice.’<sup>3</sup>

He further remarks that the Emperor decides cases with ‘equity.’ No one can influence the Emperor by virtue of his rank, and even the most ordinary man can find access to him as compared with the rich nobles.<sup>4</sup>

1. Khafi Khan in *Elliot*, vol. VII, p. 253.

2. *Bernier*, p. 168.

3. *Voyage to Surat* by Ovington, p. 193.

4. *Ibid.*, p. 198.

The Italian traveller Careri also speaks well of the Emperor. According to him, the Emperor, supported with a staff and surrounded by nobles, received petitions, read them carefully, and personally endorsed them.<sup>1</sup>

About 1671 A.D., Aurangzebe learnt that the judges of Gujrat observed three holidays in a week, and sat in the 'Mahkama-i-Adalat' for only two days. The Emperor reprimanded them that they must follow the practice of the Imperial Court. The Diwan, Khawaja Muhammad Hashim, was ordered to compel them to sit for five days. The judges must begin their work in the morning about an hour after sunrise till midday, and they should only go to their houses at the time of the Zuhar prayers.<sup>2</sup> This Farman of the Emperor shows his keen anxiety to see that justice was properly done in his dominions by his subordinates.

In 1702 A.D. (1114 A.H.), the Emperor made a change in the names of the courts held by him. He now designated the Diwan-i-Adalat as the Diwan-i-Muzalim,<sup>3</sup> i.e., a court in which oppressed people could get their wrongs redressed. This shows Aurangzebe's anxiety to dispense even-handed justice to all his subjects without any consideration of birth or rank.

Manucci's evidence corroborates this remark. He writes :

“This prince (i.e. Aurangzebe) does his utmost to maintain in the eyes of the world

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1. *Voyage round the World* by Gamelli Careri, vol. IV, pp. 222-23. (Churchill Collections).

2. *Mirat-i-Ahmadi*, p. 291.

3. *Ma'asir-i-Alamgiri* by Saqi, p. 460.

the prevailing opinion that he is zealous in the cause of justice.”<sup>1</sup>

Each day he would hold the Darbar twice, where every one could gain admission. There he heard the complaints and pronounced his judgment. The sentence was executed on the spot.<sup>2</sup> “But in spite of his exertions,” he adds, “the country is full of false witnesses and forgers, who can even deceive the Emperor.” False documents could be fabricated as a person did who had stood surety for a friend who died. The person to whom the money was due instituted a suit but was helpless even before the Emperor to prove his case, as the guarantor had forged documents by the assistance of the forgers. The result was that his suit was dismissed.<sup>3</sup>

At another time, he learnt of the fraud of a Fakir who buried his horse and worshipped the tomb as if it was of a saint. The ‘Fakir’ in reality was a soldier whose horse had died and who could not buy another. He posed as a Fakir and pretended devoutness and collected offerings. Aurangzebe passed by the tomb, asked the name of the saint buried there and doubted his existence. He ordered him to open the tomb, when the bones of a horse were found. The Fakir was flogged and banished.<sup>4</sup>

Manucci again writes that the Emperor once said that it was ‘the bounden duty of Kings to apply themselves unweariedly and painstakingly

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1. *Storia*, vol. III, p. 262.

2. *Ibid.*, p. 262.

3. *Ibid.*, p. 262.

4. *Ibid.*, vol. II, p. 15.



to the dispensing of equal justice to everybody.' Manuccie's comment is significant, "In spite of all this" he says, "that this monarch may assert, it is to be controverted that everyday there are committed in Hindustan the most monstrous crimes in the world."<sup>2</sup>

This commentary of Manucci is of much significance. It shows that even the most watchful of Emperors could be, at times, deceived by some clever cheats. But we must not accept the evidence of these foreign travellers as gospel-truth. It may be true that there were loopholes in the system of justice; it may also be accepted that some of the judges were corrupt; but relying on such a meagre and untrustworthy evidence, we cannot blame the Emperor for slackness in administering justice. On the contrary, the native chroniclers have praised the administration of justice by Aurangzebe. According to the author of *Muntakhab-ul-Lubab*:

"Of all the sovereigns of the House of Taimur. nay of all the sovereigns of Delhi, no one, since Sikandar Lodhi, has ever been apparently so distinguished for devotion, austerity and justice as Aurangzebe."<sup>3</sup>

We can very safely conclude that Aurangzebe was very watchful in administering justice to his subjects. He took great pains in ascertaining the truth. After prolonged investigation, he pronoun-

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1. *Storia*, vol. III, p, 260.

2. *Ibid.*, p. 260.

3. Khafi Khan in *Elliot*, vol. VII. p, 386

ed his judgments. To him, justice meant justice in accordance with the Quran, without being modified by any considerations or custom or peculiar circumstances of the country. All we know of his methods of government, however, goes to prove that his fine sentiments were really the ruling principles of his life. No act of injustice, according to the laws of Islam, has been proved against him. Even his letters are replete with instructions to his officials for the better administration of justice.<sup>1</sup>

In short, we may conclude by saying that, except in his religious policy, Aurangzebe was incomparably his father's superior . . . a wiser man, a juster King and a more clement ruler. Even his greatest calumniator, Manucci, admits that his heart was really kind; yet all his self-restraint, his sense of duty, his equity and laborious care of his people, counted for nothing in their hearts against his cold reserve.<sup>2</sup>

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1. *Ruka'at-i-Almagir* (Munshi Nawal Kishore, Ed. 1924). Ref. to letters No. 20, 40, 57, 68, 71, 175.

2. *Aurangzebe* by Lane-Poole, p. 86.

## CHAPTER VII

### THE MUGHAL PENAL CODE

It has been mentioned earlier that there were no written laws in the country.<sup>1</sup> The Emperor was the fountain of justice and his system of government was extremely personal. He exercised rigid control over every department of administration. The sovereign's will was absolute. So long as the laws of the shara remained inviolate, his will could not be resisted. But any attempt to defy the laws of the shara resulted in discontent. The King had full powers to issue ordinances and the Islamic law entrusted to him the function of administration and justice.<sup>2</sup>

But the absence of written laws was remedied by Aurangzebe. He collected in a book the principles of Islam and he based his government upon those principles. His idea was to constitute a standard canon of law. He collected trustworthy works of all competent scholars and Sheikh Nizam, a renowned scholar was entrusted with the task of preparing the *Fatawa-i-Alamgiri*. The work was taken in hand in 1561 A. D. In these days no book is so constantly referred to or so highly esteemed as the *Fatawa-i-Alamgiri*.<sup>3</sup>

In the beginning, no such guide existed. Babar

1. Foster, p. 326 ; Roe, p.120.

2. *Mughal Kingship and Nobility* by R. P. Khosla pp. 22-24.

3. Elliot, Vol. VII, p. 159-60.

found but few opportunities to devise any system. Humanyun was not fortunate enough to think of administrative matters. It was Akbar who founded some institutions. Even he did not have a code. Here and there in his 'Firmans,' we come across scattered instructions to the Subedars for the administration of justice.

It was Jahangir who liked to have written laws for the guidance of his officials. His institutes, in this respect, make interesting reading. A summary of his institutes is given below :—

1. He forbade the levy of duties under the names of Tamgha and Mir-Bahari together with taxes of all descriptions which the Jagirdars of every Subah and Sarkar had been in the habit of exacting for their own benefit.

2. The Jagirdars of the neighbourhood were to build roads, sarais, and mosques on those roads which were open to the attack of robbers.

3. No one was to open the packages of merchants on the roads without their consent. The property of a deceased person without any heir was to go to the state and was to be expended in building mosques and sarais, repairing bridges, and digging tanks and wells.

4. Wine and every sort of intoxicants were forbidden. They could neither be manufactured nor sold.

5. No one was to dwell in the house of another, and the noses or ears of criminals were not to be cut off.

6. The officers of the Khalsa lands and the Jagirdars were not to usurp the lands of the rayats



by force and cultivate them on their own account. The collectors of the Khalsa lands could not, without permission, form connections with the people in their districts.

8. He prohibited the slaughter of animals on Thursdays and Sundays and on some other specific dates of the year.

12. All prisoners who had been long confined in forts or shut up in prisons were set free.<sup>1</sup>

But there was no such thing as a civil or criminal code. There was also no procedure code as such. Everything depended on the royal will. Yet we find that Jahangir and Aurangzebe codified for their own convenience some of the general principles concerning the administration of justice. In 1672 A. D. Aurangzebe issued a Firman to the governor of Gujrat. It may be regarded as Aurangzebe's Penal Code. To prevent imprisonment without any cause the following rules were laid down :-

1. When theft has been proved against any man by legal evidence before the Qazi, or the accused by his confession satisfies the condition necessary for the imposition of 'hadd,' the Qazi should inflict the punishment in his own presence and keep him in prison till he manifests signs of penitence for his crime.

2. When theft is rife in the town and a thief is captured, do not even after proof behead him nor impale him, as it may be his first offence.

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1. *Elliot*, vol. VII, pp. 284-87.

2. Sarkar writes 'Hidd' which seems to be incorrect. From the *Mirat* we can clearly read it as 'hadd.'

3. If a man has committed theft only once either less than or only upto the amount of the '*nisab*, i. e., in such a way that punishment (hadd) is not legally due, then chastise (tazir) him. But if he repeats the offence, then, after tazir, keep him in prison till he repents. If he is not cured by tazir and imprisonment and commits theft again, then sentence him to long term imprisonment (siasat) and execution, and restore the stolen property to the owner, after legal proof of ownership, if he be present. Otherwise, deposit the property in trust (amanat) in the Bait-ul-mal.

4. If a man has committed theft twice and hadd has been awarded on both these occasions, and then he commits theft again and it is legally proved against him and this crime is habitually committed by him then after tazir keep him in prison, till he repents. But if even this does not reform him and he commits the offence again, give him prolonged imprisonment.

5. If a man is arrested for exhuming a corpse, reprimand and release him, But if he takes to it as a profession, then banish him or cut off his hands by way of siasat.

6. If a man is convicted of highway robbery before the Qazi, or confesses to the offence with the details required as a condition for the imposition of punishment ; the Qazi should carry out the appropriate punishment in his presence. But if his offence does not deserve death or some other punishment, and the opinion of the governors of

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1. According to Quranic commentators, if the value of the things stolen is less than four dinars or 40 shillings, mutilations should not be inflicted.

the Subah and the officers of the Adalat is for his execution, then do him siasat.

7. If an arrested thief speaks of his booty as lodged with another man, and if it is discovered there, and the man is on investigation proved to be an accomplice of the thief, then, in the case of this being the first offence of the accomplice, tazir him; but if it be habitual with him, then after tazir imprison him till he reforms. But if these do not reform him, and he commits the offence again, keep him permanently in prison. Stolen property to be restored as in rule 3. Innocent purchasers of stolen property were not to be punished, but it should be delivered to its original owner on proof, or deposited in the Bait-ul-Mal.

8. For habitual malefactors who commit dacoity in the houses of others and do injury to their life and property, the sentence is siasat.

9. In the case of the zamindars who are habitual robbers and usurpers, and whose death is required in the public interest, after proof, inflict siasat.

10. A suspected stranglar (*i.e.* thug) whose act of strangulation has (*not*) been legally proved, should be chastised and confined till he repents. But if he is habituated to the work and the fact is proved by legal evidence, or if he is well-known to the people and the governor of the province for such deeds, or traces of the strangulation and the property of the murdered man are found on him, and the Subedar and the officers of the Adalat feel strong probability that he is the doer of such deeds, then execute him.

11. If a man suspected of theft, highway

robbery, strangulation, or the felonious killing of people, is arrested and from indications the Subedar and the officers of the Adalat consider it most probable that he has often been guilty of the deed, then imprison him that he may repent. If any one charges him with any of the above offences, resort to the Qazi for trial.

12. Wicked men, who, having set fire to the house of other people take advantage of the gathering of a crowd to rob the property, or who administer dhotura, bhang, the nut of the nux vomica and such other narcotics to people in order to render them insensible and rob their effects, should, after proof, be severely chastised and confined, so that they may repent. If they repeat the offence after having shown penitence and been released, do them siasat. If any one claims any property found with such men, refer the matter to the Qazi, who will cause it to be restored to the rightful owner on proof and pay compensation for the property burnt (out of the malefactor's own property).

13. If a body of men rebel, collect materials for war, and prepare for it, though they have not yet taken up a position for resistance, seize and confine them till they repent. If they have occupied a position for fight, attack and extirpate them, slay the wounded and the defeated among them so long as they do not disperse. But after their dispersion, do not attack or kill them. If any one among them is captured, slay or imprison him so long as their party organization is not broken up; whatever property of the party is seized, restore to them after they have repented and if you are reassured about their future conduct.



14. A counterfeit coiner for the first time should be released after tazir and reprimand (tahdid) ; but if it be his profession, then tazir and imprison him till he repents. But if he does not give up the practice, detain him in long captivity.

15. If a man buys false coins from a counterfeiter and utters them as good money, same punishment as in 14, except long term imprisonment.

16. Innocent possessors of false coins are not to be punished, but the coins are to be destroyed.

17. If a man pretends to be an alchemist and thus takes away other people's property, tazir and confine him till he repents. The penalty as in 3.

18. If a man deceitfully takes away another's wife, son or daughter, then after proof imprison him till he restores the wife to the husband, or the child to the parent, or till he dies in prison. If the wife or child has died (in the meantime), do the offender severe tazir and release him, or make tashir and banish him. Go-betweens to be chastised and imprisoned.

19. If a man deceitfully administers poison to another, with fatal effect, tazir and imprison him till he repents.

20. For gambling with dice, tazir and confinement are the punishment ; for repetition, long term imprisonment. Property won to be restored to owner or kept in trust.

21. For selling wine in a city of Islam or a village, the offender should be chastised with severe blows. For repetition of the offence, imprisonment till reform.

22. If a man takes a distiller into his service

and sells the spirit distilled, then chastise him with blows and confinement, if he is not a person having entry to the Emperor (rushinas). But if he is, then report the fact of the case to the Emperor and severely beat and reprimand the distiller.

23. The vendors of bhang, buza and similar intoxicants should be chastised, and if habitual offenders, kept in prison till they repent.

24. If a man kills another by drowning him in water, throwing him into a well, or hurling him down from a hilltop or roof, chastise and imprison him and cause to be given (to the heirs of murdered man) the diya or exculpatory fine which the Canon Law lays down. If he repeats the offence, do him strict siasat.

25. If an adulterer enters another man's house for committing the offence, severely chastise and confine him till your mind is composed about his future conduct.

26. If a man falsely accuses another before the governor and thus causes waste of property, he should, on proof, be subjected to siasat if it be his profession ; otherwise, he should be chastised and confined till he repents. He should pay compensation to those whose property he has wasted.

27. If a Zimmi (male or female) takes a Musalman (male or female) as his or her slave, or a Zimmi takes a Muslim woman or a Musalman a Zimmi woman other than "the people of the Book," (*i.e.* Jews and Christians), place the offender before the Qazi to act according to the Canon Law.

28. When courtesans, adulterers, sodomites, drinkers of distilled spirits and other intoxicants,

whisperers (*i.e.*, seducers), apostates, rebels against the Qazi's orders, and female servants and slaves escaped from their masters, take refuge with the Mahajans (merchants) and appeal to the diwan officers in the name of Holy Law, you should act according to the order of the Qazi.

26. When murder has been proved against any man according to the Holy Law or is close to certainty, keep the offender in prison and report the facts to the Emperor.

30. If anybody castrates another's son, chastise and imprison him till he repents.

31. If any leader (rais) of Schismatics instigates others to innovations in religion (*bidat*), and there is strong probability of the spread of *bidat* (heresy) through his instigation, do him *siasat*.

32. As for the captives that the *faujdars* and the others send to the Subedar, immediately on their arrival, inquire with all diligence into their cases, and if the cases relate to the revenue of the Crown-lands, deliver them to the revenue officers, urging them to dispose of the cases promptly. Otherwise apply to them any of the above sections that may be appropriate to their respective cases. Once every month, inquire into the cases of the prisoners in the *Kachari* and police *Chabutra*; release the innocent and urge the quick trial of the others. When a man is more brought to the *chabutra* of the *Kotwal* (perfect of the city police) under arrest by the *Kotwal's* man or revenue collectors or on accusation by a private complaint, the *Kotwal* should personally investigate the charge against him. If he is found innocent, release him immediately. If anybody has a suit against him, tell the former to resort to a court. If there is any case of the

Crown-land revenue department against him, report the fact to the Subedar, take a sanad as suggested by the Subedar and act accordingly. If the Qazi sends a man for detention, take the Qazi's signed order for your authority and keep the man in prison. If the Qazi fixes a date for his trial, send the prisoner to the Adalat on that date; otherwise send him there everyday so that his case may be quickly decided.<sup>1</sup>

In punishments, the Mughals followed the Islamic Law. It formed the basis for the judgments of the Qazis. Punishments were of four kinds :

1. Qisas, *i.e.*, retaliation applied in cases of killing.
2. Diya or compensation paid by one who has committed homicide.
3. Hadd, *i.e.*, the fixed punishment prescribed by the Canon law, *e.g.*,
  - (a) stoning for illicit intercourse.
  - (b) cutting of hands for theft, etc.
4. Tazir : the punishment inflicted by a Qazi according to his estimation.<sup>2</sup>

Akbar and his successors took special care to restrict the powers of the Qazis and the provincial

1. This Firman is given in *Mirat-i-Ahmadi* (pp. 293-99). But I have reproduced it from Sarkar's *Mughal Administration* (pp. 122-30), as he has very vividly translated the Firman from the original Text which is confusing at some places. It gives a good picture of the social manners and judicial ideas of the age. There are many gaps in it and some passages yield no sense.

2. *Ilm-i-Hasan*, pp. 328-29.



governors in inflicting capital punishment.<sup>1</sup> He made a regulation that the Emperor's sanction must be taken before infliction of capital punishment. When he himself acted as the judge, the guilty were not punished until he gave orders for the third time.<sup>2</sup>

Jahangir inflicted capital punishment before his eyes.<sup>3</sup> The guilty were either beheaded, hung, impaled, or thrown before elephants and other wild beasts, according to the nature of the crime.<sup>4</sup> He usually sent a courier to know the pleasure of the person under orders of death-sentence and the person could not be executed till the return of the courier.<sup>5</sup>

Even during the reign of Shah Jahan, provincial governors were not free to inflict capital punishment. In every such case, they had to seek the permission of the Emperor.<sup>6</sup>

Father Monserrate describes two trials as follows :

“ The King ordered the officers of his body guard and those of the Corps of executioners and a few prominent generals together with Xamansurus (Mansur) to halt at Badaun. He then told Abdulfosilius (Abul-Fazal) to recite in the presence of these witnesses all the benefits which the king had conferred on (Mansur) from his boyhood. After this he was confronted with the proofs of his

1. Already given in chapter on Akbar.

2. *Monserrate*, p. 209.

3. *De Laet*, p. 93.

4. *Ibid.*, p. 93.

5. *Thevenot*, vol. III, p. 19.

6. Already given in the chapter on Shah Jahan.

ingratitude and treason. The criminal was convicted and condemned to be hanged."<sup>1</sup> This is a case where the man was accused of high treason. Here another official was accused of adultery. "The king has such a hatred of debauchery and adultery that neither influence nor ransom could induce him to release a big official accused of adultery."<sup>2</sup>

Aurangzebe was a very strict man. Soon after his accession, he beheaded five hundred robbers as a warning to all lawless men.<sup>3</sup> But according to the Islamic law, such an independent act of the Emperor was quite illegal. He, therefore, regulated his conduct in conformity with the law. He warned one of his generals not to put any person to death without the decision of the Qazi.<sup>4</sup>

Aurangzebe was a strict Hanafi and well-read in the Canon Law. In 1679 he issued orders to the Diwan of Gujrat to the effect that, as the realization of fines was illegal according to the shariat, so every guilty Amil or Zamindar may either be imprisoned, or dismissed or banished but not punished with fine.<sup>5</sup>

So we find that justice was on the whole satisfactory, and judgments were delivered according to the provisions of the code, which was systematized by Aurangzebe.

1. *Monserate* p. 99.

2. *Ibid* .,p. 210.

3. *Storia*, Vol. II, p. 4.

4. *Mughal Administration* by Sarkar, Ahkam, 34, p. 112.

5. *Mirat-i-Ahmadi*, p. 310.

## CONCLUSION

So far as the administration of justice by the Emperors in person is concerned, its chief features have been noticed. There is no excuse for accepting the ridiculous assertion of Terry that there were no written laws or the irresponsible remark of Bernier that the cane of the governor or the caprice of the monarch ruled the million.<sup>1</sup> The law bound the Qazi and the King alike. The scope for a King's caprice was limited to the method of punishment. Written complaints were presented, written documents submitted, witnesses produced and cross-examined. Evidence was always taken in accordance with the Islamic Law of evidence. The King never sat to administer justice without a mufti. The greatest weakness of the system, which is conspicuous throughout and is emphasized by European travellers consisted in the corruption of the Qazis. But the accounts of Pelsaert and Bernier about their corruption are much exaggerated. The facility with which a case could be taken direct to the King is remarkable. All the Mughal Emperors endeavoured to establish equality in law for all and dispense stern and impartial justice. There were neither lawyers to live upon litigation nor heavy court-fees to maintain a highly organized state department of justice<sup>2</sup>.

Bernier's comment is significant :

1. *Bernier*, p. 236.

2. *Ibid.*, p. 236.

“Even admitting that there existed a disposition to listen to a complaint, how is a poor peasant or a ruined artisan to defray the expenses of a journey to the capital and seek justice at one hundred and fifty or two hundred leagues from home? He would be waylaid and murdered, as frequently happens, or sooner or later fall into the governor’s hand and be at his mercy. Should he chance to reach the royal residence, he would find the friends of his oppressor busy in distorting the truth and misrepresenting the whole affair to the king. In short, the governor is absolute lord, in strictest sense of the word.”<sup>1</sup>

But Bernier’s strictures are not justified. The Emperor was accessible to the meanest of his subjects in theory as well as in practice. Thus the fear of appeal to the Emperor served to curtail the arbitrary powers of the governors. Many cases have been quoted where high officials were punished by the Emperor as the result of complaints lodged against them by ordinary persons. Every Mughal Emperor spent a considerable amount of time dispensing justice. There were no written laws as such but the Emperor’s will was law. Except the Islamic law there was no written law. A written law would have placed limits on the absolute authority of the Emperor.

Bernier praises the Mughal system of justice on the ground that it required very few lawyers and necessitated the institution of very few law-suits. He notes with surprise the speedy decision of cases

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1. *Bernier*, pp. 235-36.



and the absence of long and intricate legal proceedings. Thus we find that the Emperors were very anxious about dispensing equal justice to their subjects.

The supremacy of law was successfully maintained, even though law in most cases meant the Emperor's will. The very facts that the people quietly submitted to the form of government that then obtained shows that it was in harmony with their political way of thinking. It will, therefore, not be wrong to conclude that the Great Mughal, though a great despot, was also a great statesman.



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