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Topic Administration of Justice Under the Muslims

Administration of Justice under the Muslims

Introduction

Towards the end of 11th Century began the downfall of the Hindu rule. Local Hindu rulers were attacked and defeated by foreign invaders of Turkish race. Gradually, old Hindu kingdoms began to disintegrate. The numerous Hindu states, which took shape from time to time, varying continually in number, extent, and in their relations with each other, seldom were at peace. The never-ending dynastic wars and revolutions did not bring about any development of political institutions. No republics were formed, no free towns were established. An atmosphere of great mutual distrust was created amongst the contending States which prevented their political unity against the common enemy.The real weakness in Indian administration lay in the influence of the great feudatory families whose power and ambition constituted a perpetual threat to the stability of the Central Government. Hindu kingdoms also suffered from the prevailing caste divisions. The numerous raids of Mahmud Ghazni during A.D. 1000 to 1026 had revealed that India was vulnerable and fabulously rich.[1] After successive invasions by Ghazni, Mohammad Ghori attacked India, defeated Prithvi Raj, a Rajput King, in the year 1192 and occupied Delhi.

Muslim Rule

After the conquest of various parts of India, Ghori returned to Khurasan leaving the Indian campaign in the hands of his slave Qutub-ud-din-Aibak. After the death of Ghori in 1206, Qutub-ud-din-Aibak established the Slave dynasty and became the first Muslim King to rule from Delhi. Subsequently, the Khiljis (A.D. 1290-1320); the Tughluqs (A.D. 1320-1414); the Syeds (A.D. 1414-50); the Lodhis (A.D. 1451- 1526) ruled India as Sultans of the Delhi Sultanate. Babur defeated Ibrahim Lodhi in the famous First Battle of Panipat in A.D. 1526 and established the Mughal empire. The Mughal Emperors ruled India effectively up to A.D. 1707 except the period A.D. 1540-55 when the Suri dynasty established by Sher Shah Suri was in power. After the death of Aurangzeb in 1707 the Mughal empire started declining. Bahadurshah II was the last Muslim ruler. The Muslim rule in India came to an end formally in 1858 when the British took over the control of Indian affairs from the East India Company.

The civil administration during the Muslim rule was headed by the King who was known as Sultan or Emperor. He was assisted by his Minister (Wazir). The kingdom was divided into provinces (subahs). Each province was composed of districts (sarkars). Each district was further divided into parganahs. A group of villages constituted a parganah.

The Muslim rulers emphasized the importance of administration of criminal justice and introduced reforms to improve the judicial machinery. For the first time in the country, the Chief Judge was appointed by Qutub-ud-din-Aibak. Balban introduced the system of espionage to find the truth about the criminals. Sikandar Lodhi initiated several reforms in criminal justice system.

The judicial reforms of Sher Shah Suri formed a bridge between the Sultanate period and the Mughal period. He reformed the judicial machinery. Sher Shah Suri was of the opinion that stability of the government depended on the justice and that it would be his greatest care not to violate it either by oppressing the weak or permitting the strong to infringe the laws with impunity. Heads of the Village Councils were recognized. They were ordered to prevent theft and robberies. In case of robberies, they were made to pay for the loss sustained by the victim. However, he did not disturb the village autonomy.

Police regulations were drawn up for the first time in India. The judicial officers below the Chief Provincial Qazi were transferred after every two or three years During the Mughal period, Akbar introduced many reforms in the administration of justice. He created common citizenship and a unanimous system of justice for all. Besides, he prohibited slavery, repealed the death penalty clause for criticizing Islam or Prophet Mohammad, and prohibited the forcible practice of sati. Jahangir abolished the cruel and barbarous punishments and decentralized the power of the courts. Shahjahan established the regular system of appeal Aurangzeb entrusted the preparation of a comprehensive digest of Muslim criminal law to eminent Muslim theologians.

The digest so prepared was entitled Fatwa-i-Alamgiri. When the Sultans ruled most of the parts of India from Delhi, a few Hindu kingdoms also existed in some parts of the country. Among these, the Vijyanagar empire, from A.D. 1336 to 1646, was the most famous. Krishnadevaraya was the greatest of the rulers of this dynasty. He reigned from 1509 to 1529.The example of Vijyanagar and their system of adjudication of the criminal justice indicates the functioning of full-fledged judicial system. But during the medieval period of Indian history the criminal justice system of India was highly influenced by the Muslim rulers and therefore, the period is generally known as the Muslim period.

Salient features of the Muslim polity and evolution of criminal justice system during the Muslim rule in India are discussed below.

Concept of Law

During the Muslim rule in India, Islamic law or Shara was followed by all the Sultans and Mughal Emperors. Muslim criminal law as applied in India, was supposed to have been defined once for all in the Quran as revealed to the Arabian Prophet and his traditional sayings (hadis).

The Muslims followed the principle of equality for men and they had no faith in the graded or sanctified inequality of caste system. Muslim religion places every man on

an equal footing before God, overriding distinctions of class, nationality, race and colour. However, this concept of equality was applicable only to the Muslims. Under the Muslim law, non-Muslims did not enjoy all the rights and privileges which the Muslims did. They were not treated as equal to Muslims in law and were called “zimmis”. Their evidence was inadmissible in the courts against the Muslims. They had to pay an additional tax called „jizya‟ and as regards other normal taxes also they had to pay at double the rate than what a Muslim paid.

Special feature of the Muslim law was that the Muslim criminal jurisprudence treated criminal law as a branch of private law rather than of public law. The principle governing the law was more in the nature of providing relief to the person injured in civil matters rather than to impose Penalty for the offence committed. It was for the private persons to move the State machinery against such offences and the State would not suo-moto take cognizance of the same.

Sources of Law

The main source of Muslim law, i.e. Shara is Quran and Sunnah or hadis, which means the practices and traditions of the Prophet who, is considered to be the best interpreter of Quran. On all matters on which Quran was silent, Sunnah or hadis was regarded as paramount authority. In addition to these the other two sources which developed inevitably in order to meet the needs of expanding Muslim society were: Ijma—consensus of opinion of the learned in Quran; and Qiyas—analogical reasoning having due regard to the teachings of Mohammad. As the society progressed, in view of the divergent views taken on various provisions of Quran by eminent Muslim jurists, four well-defined branches or schools of Muslim law came to be recognized by different sections of the Muslim society. They are the Hanafi School, the Maliki School, the Shafi School, and the Hanbali School.

King

The administration of justice was one of the primary functions of the King. The monarch was the head of the judicial organization. According to Islamic jurisprudence, as was the position under the Hindu jurisprudence, the ruler constituted the highest court of justice. To maintain and enforce the criminal code was one of the important functions of the King. Being head of the state, he was the supreme authority to administer justice in his kingdom.

Courts

Different courts were established to deal with different kinds of cases. Courts were constituted at central capital and at the headquarters of a province, district and parganah. During the Sultanate period the Court of Diwan-e-mulzim was the highest court of criminal appeal. To deal with the cases of criminal prosecutions of rebels and those charged with high treason, a separate court Diwan-e-siyasat was constituted. The judiciary and police were placed under the Chief Sadr and Chief Qazi, both offices

being held usually by the same person. In due course a hierarchy of Qazis was established to dispose of cases of civil disputes and criminal complaints. At each provincial headquarters, Adalat Qazi-e-subah was empowered to try civil and criminal cases of any description and to hear appeals from the district courts. Similarly, there were courts at the district and parganah headquarters. Appeals were filed before the district court from the judgements of the Parganah Qazis, Kotwals and village Panchayats. Petty criminal cases were filed before the Kotwal who was the principal executive officer in towns.

Sher Shah Suri introduced many reforms in the court system. In the parganahs, separate courts of first instance were established for civil and criminal cases. The Shiqahdars who had uptil now powers corresponding to those of Kotwals (of cities) were given magisterial powers within the parganahs. They continued to be in charge of the local police.

During the Mughal rule a separate department of justice (mahukma-eadalat) was created to regulate and see that justice was administered properly. Justice was administered by means of a hierarchy of courts rising from the Village Council (Panchayat) to the parganah, sarkar and provincial courts and finally to the Chief Sadr-cum-Qazi and the Emperor himself. The Emperor‟s Court had jurisdiction to hear original and criminal cases. In criminal cases the Mohtasib-e-Mumalik or the Chief Mohtasib, like the Attorney General of India today, assisted the Emperor. In order to hear an appeal, the Emperor presided over a Bench consisting of the Chief Justice and Qazis of the Chief Justice‟s Court. The public was allowed to make representations and appeals to the Emperor‟s Court in order to obtain his impartial judgement. The second important court of the empire was the court of the Chief Justice (Qazi-ul-qazat). This had original civil and criminal jurisdiction and also heard appeals. It was required to supervise the working of the provincial courts at each provincial headquarters, the Provincial Chief Appellate Court, presided over by the Qazi-e-subah; besides hearing appeals had also the original civil and criminal jurisdiction. In each district, chief civil and criminal court of the district was presided over by the Qazi-e-sarkar, who was the principal judicial officer of the district. Qazi-e-parganah presided over the Adalat-e-parganah that had to deal with all civil and criminal cases arising within the jurisdiction of the parganah, including the village.

Judicial System in Villages

During the Muslim rule in India village continued to be the smallest administrative unit of the government. Each paragnah consisted of a group of villages. For each group of villages there was a village Panchayat, a body of five leading men, elected by the villagers. The head of Panchayat was known as Sarpanch. From ancient times the Village Councils (Panchayats) were authorized to administer justice in all petty civil and criminal matters the institution of Panchayat as it existed during the Hindu period remained untouched during the Muslim rule in India. The authority of Panchayat was recognized and it continued to decide both civil and criminal cases of purely local character during the Muslim period. Village Panchayats were mostly governed by their customary law. Though the decisions given by Panchayats were based on local customs and were not strictly according to the law of the kingdom, yet there was no

interference in the working of Panchayats. As a general rule, the decision of Panchayat was binding upon the parties and no appeal was allowed from its decision. Mostly these Panchayats decided cases as between Hindus who formed the bulk of the population. Consequently, administration of justice under Muslim rulers did not cover about three-fourths of their subjects.

Police

Policing of the cities and towns was entrusted to Kotwals and of the countryside to Faujdars. Judiciary and Police were placed under the Chief Sadr and Chief Qazi both offices being held usually by the same person. Mughals had established the kotwali system in the cities and the chowkidari system in the villages. The Court of Fauzdar tried petty criminal cases concerning security and suspected criminals. Kotwals were also authorized to decide petty criminal cases.

Jails

Prisoners awaiting trial were detained in prisons in the Muslim period of India. The duties of the Kotwal were to check the number of the persons in the prison and ascertain their answers to the charges against them. Imprisonment as punishment was not expressly provided for under the Islamic criminal law and thus there was, generally no need of prisons as penal instruments. But due to the provision of diya in that law, many prisoners, after conviction, had to spend their days for their inability to pay compensation. Again the discretion left to the Qazi to impose tazir, that is in offences not categorized under hadd, qisa and diya, enabled him to award imprisonment, if he so wished.

Crimes and Criminal Procedure

Contrary to the practice under Hindu law, all crimes were not considered injuries to the State under the Islamic penal law. The offences were classified under three heads, namely, (i) crimes against God, (ii) crimes against the State, and (iii) crimes against private individuals.

Crimes against God and the State were treated as offences against public morals. Other crimes were treated as offences against the individuals; it was for the private persons to move the State machinery against such offences and the State would not suo-moto take cognizance of the same. While an offence like murder, which under modern law is treated as the most heinous crime, was considered as an offence against individual but drinking wine was considered a very serious offence against society.

In criminal cases, a complaint was presented before the court either personally or through a representative. To every criminal was attached a public prosecutor known as Mohtasib. He instituted the prosecutions against the accused before the court. The court was empowered to call the accused at once and to begin hearing of the cases.

The criminal process required a valid accusation made in the presence of the defendant who could confront his accusers and had the right to interrogate him, cross-examine him as also ask him to take the oath. The burden of proving the charge was always on the accusers and an accusation itself was no proof. A criminal trial was not a process designed to put the state against the accused. The victim-accuser was directly involved in the process.

Ordinarily, the judgement was given in open court. In exceptional cases, where either the public trial was against the interest of the state or the accused was dangerously influential, the judgement was not pronounced in the open court.

Evidence was classified by the Hanafi law into three categories: (a) tawatur, i.e. full corroboration; (b) ehad, i.e. testimony of a single individual; and (c) iqrar, i.e. admission including confession. The law of evidence prescribed for proving the offence was highly technical. Some of the rules of evidence followed under Muslim criminal law were as follows:

- No capital sentence could be inflicted on a Muslim on the evidence of a non-Muslim.
- In other cases, evidence of one Muslim was considered as equivalent to two non-Muslims.
- Evidence of two women was considered equivalent to that of one man.
- Evidence should be direct, viz. that of eye witnesses only and not circumstantial and further specified number of witnesses was a must to secure conviction. For instance, for proving offence of rape not only eye witnesses were necessary but also four such witnesses were insisted upon.
- Evidence of women was inadmissible to prove a charge of murder and in all cases of hadd or kisa.

Punishments

The punishments for various offences were classified into four broad categories, viz (a) kisa, i.e. retaliation which meant in principle, life for life and limb for limb; (b) diya meant bloodmoney being awarded to the victim or his heirs; (c) hadd inflicted on persons who committed offences against God; (d) tazeer, i.e. punishment for the cases not falling under hadd and kisa. The punishment which fell in this category consisted of imprisonment, corporal punishments and exile or any other humiliating treatment.

The type and quantum of penalty to be imposed was entirely within the discretion of the Judge. In criminal cases, a great deal of discretion was allowed to them and they took a variety of factors into account in awarding punishment. Punishments prescribed were very cruel. Mutilation of the body was one of the type of punishment which resulted in great suffering and gradual death.

A special feature of the punishments was that of diya i.e. bloodmoney. This applied to cases of certain offences including those falling under kisa. Bloodmoney was awarded to the victim or the heirs of the victim in a fixed scale. In the cases falling under kisa also the person entitled to inflict injury on the wrong doer could forego his right by accepting diya. If one of the heirs accepted kisa and gave pardon, the other heirs had no other alternative than to accept their share of bloodmoney. According to a fatwa delivered in march 1791, one man named Mongol Das murdered his wife and one of

her heirs gave pardon and therefore no death sentence could be inflicted at the instance of other heirs and they had no alternative but to receive diya. Another special feature of the Muslim criminal law was that the death sentence was required to be executed by the heirs of the deceased.

Institution of Lawyers

Litigants were represented before the courts by professional legal experts. They were known as Vakils. The legal profession flourished during the Muslim period. The lawyers played a prominent role in the administration of justice. Two Muslim Indian Codes, namely, Fiqh-e-Firoz Shahi and Fatwa-e-Alamgiri, clearly state the duties of a Vakil. Ibn Batuta, who was a Judge during the reign of Mohmmad Tughluq mentions about Vakils in his book. Sometimes they were appointed to assist poor litigants by giving them free legal advice. A Vakil had a right of audience in the court. It was expected that the Vakil should maintain high standard of legal learning and behaviour.

Conclusion

It is also to mention that the Chief Justice and other judges of higher rank were appointed by the Emperor. Sometimes the Chief Justice and other judges were appointed from amongst the eminent lawyers. Similarly, provincial and district Qazis were appointed from lawyers. The selection of a Qazi as a rule was made from amongst the lawyers practising in the courts. Lapses on the part of government officers were thoroughly investigated, if necessary, through commissions of inquiry. Corrupt judicial officers were punished and dismissed. Every possible effort was made to keep up the high standard of the judiciary. From the foregoing, it is seen that during the Muslim rule in India the criminal justice system marked a significant change from that of the Hindu period. Special emphasis was given on constitution and working of different courts.