

Farmān-e-Shāhī's Role in Islamic Legislation During Mughal Rule

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Abstract

This research intends to focus on the role of *Fārmān-e-Shāhī* issued by the Mughal rulers from Bābar to Aurangzaib in Islamic legislation. Not only had *Fārmān-e-Shāhī* played a robust constitutional role, but also executed its role in legislating and implementing civil as well as Islamic criminal and procedural codes. Tracing the evolutionary process of the legislation of *Fārmān-e-Shāhī*, the article finds the *Farmāns* instrumental in legislating Islamic jurisprudence and codification. In fact, pre-Mughal evolution of Islamic law into a criminal and procedural code had its own significance and legal value for the religious backing during the Mughal period. Hence, *Fārmān-e-Shāhī* has become instrumental for innovation and codification vis-a-viz Islamic injunctions already codified. The existing study reviews the legislation regarding Islamic laws and *Farmāns*' role in the Islamic legislation during Mughal India, their bearings on further legislation and the progression of state legislation regarding Islamic laws. It also highlights the role it has in the evolution of Islamic jurisprudence in British India as well as regional states in India.

Keywords: *Fārmān-e-Shāhī*, Mughal State Legislation, Mughal Islamic Laws

Introduction:

The implication of *Mughal's Fārmān* is crucial to the understanding the *Mughal* state legislation, for it was considered a prime legal instrument issued by the central government. Literally, it means an edict, command or fiat issued by the central authority of the king for the promulgation¹. However, in terms of Islamic jurisprudence, a sanguine thought is considered essential for issuing such a *Fārmān*, for Islamic jurisprudence has the integral backing of sacred text of the *Qur'ān* and the *Sunnah* of the holy Prophet (Peace Be Upon Him). Therefore, *Farmāns* have little value in the face of such powerful legal supports. The *Mughal* emperors, being all powerful, knew the authority of the religious conventions, traditions and figures and ways of their manipulation. Either they mold religion to suit their *Farmāns* or manipulated their edicts to appropriate to the Islamic jurisprudence, making it easy for state legislation to amend, change or further evolve into Islamic laws and move forward to the evolution of holistic Islamic jurisprudence. The review in this connection comprises understanding of legislation, evolutionary development, value of *Fārmān* in the ambit of Islamic jurisprudence, role of religion in its legitimization and progression of Islamic jurisprudence through legislation. However, the evolution of Islamic state legislation in the light of Islamic jurisprudence is limited to Indian perspective of the *Mughal* period only.

Literature Review:

Before discussing *Fārmān's* role in the state legislation from the perspective of Islamic jurisprudence, it seems logical to have a review of the state legislation, its procedural matters and its significance in the Islamic jurisprudence. *Marriam-Webster*

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¹Sirajul Islam, "Farman" *BANGLADESHIA: Nati zonal Encyclopedia of Bangladesh*, <http://en.banglapedia.org/index.php?title=Farman> (accessed March 20, 2019).

online dictionary defines legislation as the action of legislation by the state with three definitions; each one related to legislature with its powers of “enactment” or “a matter of business” or “the exercise of the power and function of making rules.”² It clarifies that state legislation means the legislation by the state’s legislative body that has three main functions to do. It can be easily deduced from these modern semantic approaches that state legislation means legislation, or formulation, or codification, repeal, amendment, or change of a body of laws and rules to promulgate in the state, or the country³. Generally, this is done by the legislature whether it is a bicameral or a unicameral as is the case in some countries.⁴ Legislation is, therefore, a “lawmaking process” which includes not only evaluation but also amendment as well as passing and enforcement of laws including their values and purposes.⁵ However, it is pertinent to mention that legislation is done under a constitution whether it is written such as the United State, or other countries have, or unwritten such as of the United Kingdom. Even then there is a public representative body that does the work of legislation on the behalf of the state and passes a law for the executive to promulgate, or the judiciary to make decision, as is the norm in the modern states. In other words, state legislation is an act of the state legislature that involves a procedure for creating, making, amending, abrogating or holding in abeyance laws, enactments or any other rules and regulations necessary for running the state machinery. It is, however, another thing that there may be constitutional limits, or public limits, or federal limits in a federal government where states or provinces have separate legislatures.⁶ Although governments provide the legislatures with constitutional powers, sometimes these powers are just limitations on them such as in the United Kingdom where legislature does not legislate against the set precedents, or traditions, or even sometimes members create legislative hurdles, while at other times these could be created by the courts during judicial reviews.⁷ However, the state legislation during the *Mughal* period did not comprise any parliamentary or a house legislation. It was entirely rested with the emperor to keep in view the case of Islamic state legislation though none of the Islamic empires ever applied or adopted democratic or quasi-democratic systems. Although modern theoretical perspective is a vast, defined and crystallized in legal studies, Islamic state legislation revolves around theoretical foundations of *Shar’iah* where the source of law is only God, “the fountain of right and justice”⁸ with little left for men to do, but the Prophet Muhammad (Peace Be Upon Him) did legislation through guidance from the Divine Legislator, a benefit

² “Legislation.” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/legislation>. (accessed March 20, 2019).

³ Gary Slapper and David Kelly, *The English Legal System* (Oregon, USA: Cavendish Publishing, 7th Ed. 2004), 192.

⁴ Philip Norton, *Legislatures*, (London: Oxford University Press, 1990), 127-128.

⁵ “Legislation: An Overview.” Legal Information Institution, Cornell Law School. <https://www.law.cornell.edu/wex/legislation>. (accessed March 20, 2019).

⁶ Thomas, M. Cooley, *A Treatise on the Constitutional Limitations Which Rests Upon the Legislative Power of the States of the American Union* (New Jersey, USA: The Lawbook Exchange, 1999), 173.

⁷ Thomas H. Little and David B. Ogle, *The Legislative Branch of State Government: People, Process and Politics* (California, USA: ABC CLIO, 2009), 62.

⁸ Majid Kadduri, “International Law,” in *Origin and Development of Islamic Law* edited by Majid Khadduri and Herbert J. Liebesny, Richmond, (Clark, New Jersey, USA: The Lawbook Exchange Ltd, 2008), 353.

that the later caliphs did not enjoy.⁹ Therefore, the Muslim jurists undertook the task of developing Islamic jurisprudence, or *Fiqh* to develop a system and formulated various schools of thoughts.¹⁰ *Fiqh* places limitations on Islamic state legislation too, for not only there are various schools of thoughts in Islamic *Fiqh* but also those schools of thoughts have further limitations of the Holy book and the *Sunnah* of the Holy Prophet (Peace be upon Him). Defining it as a policy, Dr. Farhadullah and Dr. Fazle Omar¹¹ have argued that the Muslim jurists have defined certain rules and laws in the ambit of which the state was allowed and is still allowed to legislate. He states these as *Ijtihad*, *Qiyas*, *Ihtishan* and *Istislah*.¹² Encompassing the entire *Abbaside* period in their research, they state that the rulers can issue certain orders for running administrative issues yet the pure legislation was done under the confinement, or restrictions of the *Shari'ah* guidance.¹³ Relating a *Hadith* by Ibn-e-Umar, he argues that “the head of state is advised to bind himself to the principles of *Shariah* while legislating and issuing administrative orders in the state.”¹⁴ However, as it pertains to legislation by the state, therefore, state organs, such as the parliament is authorized to legislate. However, even in this case, “the parliament cannot produce legislation or regulation that contradicts the *Shariah*.”¹⁵ Even the *Qur'an* and the *Hadith* of the Prophet (Peace be upon Him) have not defined this contradiction and the ways to tackle this issue.¹⁶ In the modern Islamic state, however, there is a much controversy about the legislation and the nature of law. There are several examples of various Arabic countries where it is a now social importance that “legislation...should be performed by social bodies” which he argues should be “parliament[s] or *Shura* Council.”¹⁷ This short review of the evolution of legislation clarifies that though the modern state has specific institutions in the shape of unicameral or bicameral bodies, there are certain social restrictions on state legislation, while in the Islamic state, there are even stricter divine and religious restrictions. Therefore, the use of *Farmāns* during the *Mughal* period for the purpose of state legislation must have fulfilled the administrative, legislative and other purposes, but their use was not monarchic and dictatorial as is often understood in terms of regal authorities of the kings and emperors. Anwarullah, a Pakistani scholar of Islamic criminal law, has argued the case of the limitations on the *Mughal Farmāns* saying that the Islamic divine sources such as the *Qur'an*, the *Sunnah* and other factors of Islamic jurisprudence were considered before issuing a *Farmān*.¹⁸ He also has highlighted some other social and tribal traditions which bound the hands of the *Mughals* from issuing *Farmāns* which were not in consonance with the existing social fabric such as Hindu

⁹ Dr. Farhadullah and Dr. Fazle Omar, “Scope of State in Legislation from Islamic Perspective,” *Journal of Islamic and Religious Studies* 2, no. 2 (2017): 73.

¹⁰ *Ibid.*, 353.

¹¹ Dr. Farhadullah is working as an assistant professor in Kohat University of Science and Technology, Kohat, Pakistan while Dr. Fazle Omar is working as a lecturer in Kohat Institute of Medical Sciences, Kohat, Pakistan.

¹² Dr. Farhadullah and Dr. Fazle Omar, “Scope of State in Legislation from Islamic Perspective” 77.

¹³ *Ibid.*, 77.

¹⁴ *Ibid.*, 78.

¹⁵ E. Ann Black, Hossein Esmaeili, and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Northampton, USA: Edward Elgar Publishing, 2013), 44.

¹⁶ *Ibid.*, 44.

¹⁷ Dr. Ibrahim S. Alharbi, *Democracy in Islamic and International Law*, (USA: AuthorHouse, 2011), 284.

¹⁸ Anwarullah, *The Criminal Law of Islam* (Islamabad: Sharī'ah Academy, IIUI, 2005), viii.

personal laws.¹⁹ A further analysis is required on the basis of this review how *Fārmān* has been treated as an instrument of legislation during the *Mughal* period in India, how it played its role in the evolution of Islamic law and how it impacted the *Mughal* Islamic legislation. The analysis also highlights its inclusive role in the evolution of Islamic jurisprudence during the *Mughal* period in the united India.

Analysis

***Fārmān-e-Shāhī* as an Instrument of Legislation:**

The role of *Fārmān-e-Shāhī* in legislation in the *Mughal* India has been significant. As a command and order from the emperor, it carried weight of the foundation of law. Despite limitations, it has been a basic working instrument for legislation, administration, enactment and jurisprudence. The *Mughals* considered *Fārmān* as their constitutional and judicial commands having the same legislative authority and legitimacy as other laws developed prior to them.²⁰ This instrumentalization of the *Fārmān* in legislation made it an important tool used with specific monarchical sign, an imperial seal²¹ whose preservation was of utmost importance that even the king himself safeguarded it as Francis Bernier²² highlights when referring to the last Emperor Aurangzeb.²³ Emperor's words, once sealed, were laws though oral orders did not have much significance, but they, too, were considered laws for a limited timeframe.²⁴ Although there were religious authorities, the *Mughals* issued *Fārmāns* keeping the religious interpretation in mind, or sometimes through manipulation of the religious figures.²⁵ Though Akbar and Jahangir are stated to have followed former rulers to bypass the clerics, they used to manipulate the divine political authority for the stability of their state.²⁶ Perhaps 'Alā' ud-Dīn Khiljī²⁷ found the way out from this religious limitations by using *Qāḍīs* and *Muftī* as his conduits as Ziya al-Din Barani²⁸ says, "Organizations and government is one thing, and the rules and orders of law are another. Royal commands belong to the king, legal orders rest upon the judgement of *Qāḍīs* and *Muftīs*."²⁹ Finding this limitation of the religious scholars an obstacle, *Bābar* even ordered arrest of various clerics from Lahore through his

¹⁹ Ibid., viii-ix.

²⁰ Anwarullah, *The Criminal Law of Islam*, viii.

²¹ Ibid., viii.

²² François Bernier (September 25, 1620 to September 22, 1688) was a famous French traveler and herbalist. He visited the *Mughāl* Empire and stayed with Aurangzīb for more than 12 years to record his governance. Also see Nicholas Dew, *Orientalism in Louis XIV France* (Oxford: Oxford University Press, 2009), 1-10.

²³ Francis Bernier, *Travels in the Mughāl Empire*, Tran. by Archibald Constable (London: Oxford University Press, 1916), 125.

²⁴ John Briggs, *History of the Rise of the Mahomedan Power, Original Persian of Mahomed Kasim Ferishta*, Vol. 2 (Calcutta: Oriental Booksellers and Publishers, 1908), 198.

²⁵ Ram Prasad Khosla, *Mughāl Kingship and Nobility*, (Allahabad: The Indian Press, Ltd, 1934), 162.

²⁶ Ibid., 164.

²⁷ 'Alā' ud-Dīn Khiljī was born in 1296 and died in 1316. He was the second ruler of the Khalji dynasty that ruled India. He was also son in law of his predecessor, Jalaluddin. Khaliq Ahmad Nizāmi, *A Comprehensive History of India* (New Delhi: People's Publishing House, 2009), 182-183.

²⁸ Ziauddin Barani was born in 1285 and died in 1357. He was a political thinker during Muḥammad bin Tughlaq. He also composed *Tārīkh-i-Firuz Shāhī*. Also see, V. D. Mahajan, *History of Medieval India*, Part I, (New Delhi: S. Chand and Company), 174-17.

²⁹ Ziyā al-Dīn Barani, *Tārīkh-i-Feroz Shāhī*, Trans. by Sir Henry Miers Elliot and John Dowson (Lahore: Sang-e-Meel Publications, 2006), 183.

Fārmān.³⁰ This was the use of *Fārmān-e-Shāhī* for administrative purpose. To win public legitimacy, *Mughals* even used clerics during religious politics as Foster has stated in his memoirs.³¹ This was another use of *Fārmān-e-Shāhī*. Foster writes in his own words about this instrumentalization of *Fārmān* for legislation by the emperor and his subordinates that "The governors in cities and provinces proceed in like form of justice. I could never hear of laws written amongst them; the King and his substitutes will is law."³² These words by Foster constitutes that the use of *Fārmān* was for legislative purpose though under the social, religious and other limitations and for the constitutional, administrative and enforcement purposes. Even machinations of the *Mughals* to use *Fārmān* a legislative instrument comprises manipulating and coercing the clerics such as *Bābar* did with Sheikh Mubarak who turned to making the king above Islamic limitations on Islamic jurisprudence.³³ However, the king became cautious of this flattery of the cleric.³⁴ Foster is of the view that the emperor used to give due regard to the clerics to get authority for issuing and legitimizing *Farmāns*.³⁵ What it means is that *Fārmān* needs to have legitimacy regarding limitations on legislation before it is issued. Therefore, the case of *Mughal Fārmān-e-Shāhī* is clearly a case of instrument used for general and specific legislation during the *Mughal* period in India. For example, Akbar once issued a *Fārmān* to his *Fawjdar* to collect revenues for the crown with full power for reprimanding, chastising or punishing the rebels.³⁶ This clearly is an example of an administrative type of legislation where limitations have been ignored, or put aside in the common interest of stability and legitimacy. The second example is of *Āurangzeb* who issued a *Fārmān* in 1672 to the local officers to stop delaying burglary cases stressing upon the enforcement of *Hadd* with immediate effect.³⁷ This is an example of legislation for the formulation of Islamic penal codes and its enforcement. Therefore, the role of *Fārmān* is quite significant in this simple legislation process.

Fārmān-e-Shāhī's Rule in the Ambit of Islamic Law:

The role of *Fārmān-e-Shāhī* regarding the Islamic law is not less significance because of the limitations in legislation in the Islamic perspective. Sarkar³⁸ is of the view that the codified Islamic laws have public as well as institutionalized backing since the times of Mongols.³⁹ The emperor personally used to take care of the legislation process with a full department at his backing to see the type of the *Fārmān*, its legal value and its enforcement.⁴⁰ In fact, *Farmāns* were issued with complete

³⁰ Zahir'd-din Muḥammad Bābūr, *Memoirs of Bābūr*, Trans. by Annettee Susannah Beveridge. Vol.3 (London: Luzac, 1922), 687-8.

³¹ Sir William Foster, *Early Travelers in India, 1583-1619*, (London: Oxford University Press, 1921), 326.

³² Ibid., 326.

³³ Som Prakash Vermba, *The Illustrated Bābūr Nāmāh*, (New York: Routledge, 2016), 31-32.

³⁴ Ibid., 32.

³⁵ Sir William Foster, *Early Travelers in India*, (London: Oxford University Press, 1921), 326.

³⁶ Abūl Faḍl, *A'īn-i-Akbarī*, Trans. by H. Balochman, (Lāhore: Sāng-e-Meel Publications, 1927), 572.

³⁷ S. A. Q. Hussaini, *Administration Under the Mughuls*, (Dacca: The Paradise Library, 1952), 5-6.

³⁸ Jagdaish Narayan Sarkar is an Indian educationalist, historian and teacher, who has served in Jadavpur University for ten years. He is also a Fellow of Asiatic Society and won Jadunath Sarkar Gold Medal. He has served as a director of the Institute of Islamic Culture and Civilization.

³⁹ Jagdaish Narayan Sarkar, *Mughāl Polity* (Delhi, India: Idara-i-Adabiyat- Delli, 1984), 173.

⁴⁰ Ibid., 173.

“social legislation,” keeping in view the Islamic perspective.⁴¹ Moreover, Islamic jurisprudence provided the *Mughals* with a supportive theoretical foundation with the holy *Qura’n* and the *Sunnah* to back up.⁴² For example, Akbar issued a *Fārmān* to his *Qādis* not to inflict heavy Islamic punishments on petty thieves and burglars, and that *Mughals* did not follow strict Islamic punishments.⁴³ This could be an attempt for public legitimacy, for the public was resentful against such punishments which were also not falling under the ambit of Islamic jurisprudence. In other words, it also means that *Farmāns* were used to administer justice using Islamic cover. Similarly, Āurangzeb also issued a *Fārmān* rejecting *Qādi*’s decision about blood money against a killing by a prince. The sentence was carried out without any hindrance, setting the stage for the equality before law or rule of law.⁴⁴ This is an example of streamlining Islamic jurisprudence. Even in criminal procedural code, Āurangzeb took care of the Hindu minorities as happened in the case of ‘Widow of Mani vs. Sundar,’ a case of a widow against Sundar whose punishment was not exonerated, for the widow in case was Hindu who did not accept *diyat*.⁴⁵ This happened in the case of administering justice or amending previous codes or issuing new instruments for amendments in a code or legal injunction. The same happened regarding codification.

Codification of laws on Roman tradition perhaps proved difficult for them, the reason that the *Mughal Fārmān* mostly tilted toward Islamic texts and legal traditions, or jurisprudence. Āurangzeb’s efforts in this direction brought “the *Fatawa-i Ālamgīrī*”⁴⁶, a great compendium of *Hanafi* laws.⁴⁷ It is one of the greatest codifications of the Islamic laws during the *Mughal* period which was done on the *Fārmān* of

⁴¹ S. R. Sharma, *Mughāl Empire in India: A Systematic Study Including Source Material*, Vol. 3 (New Delhi, India: Atlantic Publishers, 1999), 882.

⁴² Raj Kumar, ed. *Essays on Legal System in India* (New Delhi, India: Discovery Publishing House, 2003), 43.

⁴³ Faḍl, *A’in*, 106.

⁴⁴ S. A. Q. Hussaini, *Administration Under the Mughuls* (Dacca: The Paradise Library, 1952), 5-6

⁴⁵ *Ibid.*, 197.

⁴⁶ *Fatāwa-i Ālamgīrī*, Aurangzeb Ālamgīr got compiled a vast and reliable book in order to decide the cases and other disputes in the light of the Islamic *Sharī’ah* during the early period of his rule. This became popular in India as *Fatāwa-e Ālamgīr*. He appointed a group of Islamic scholars to work on this book and appointed Sheikh Nizām as the head. The work was started through a *Fārmān* in the fourth year of his rule in 1073 *Hijra* [1663] and completed after eight years in 1081 *Hijra* [1670]. Following Hidayah, this book is considered the most trusted and reliable source in *Fiqh* Hanafī. This book has been compiled scientifically with a great care. It has also been published from Caïro and is popular with the name of *Fatāwa-e Hindī* in the Middle East. The original Arabic book of this *Fatāwas* comprises of six huge volumes. See for details: Muḥammad Sāqī Ma’asir Ālamgīr, Tran. Muḥammad Fida Ali Talib, 424. Sheikh Nizām, *Fatāwa-i ālamgīrī, Muqudma Vol.1* Trans. Syed Ameer Ali (Lakhnaw: Matbāh Nalūkhshwer, 1932) 208. Muḥammad Akram Sheikh, *Rood-i-Kāusār* (Lāhore: Feroze Sons, 1958), 440-441. Mīan Muḥammad Saeed. *Ulmā-e-Hīnd Kā Shāndār Mādī* (Lāhore: Kutūb Khānā Rashīdiā, 1942), 556. Muḥammad Kāzīm, *Ālamgīr Nāmāh Vol. 2* (Bengal: calcuttas Asiatic Societic, 1868), 1086-1087. Mujeeb-ul-āllāh Nadvī, *Fatāwa Ālamgīrī Ke Mohalifeen* (Lāhore: Markāz Diy’āhl Singh Trust Library, n.d), 22-23, 28-136. Muḥammad Ishāq Bhattī, *Bar-e-Sāgīr Pāk-wā-Hīnd Maīn Ilm-e-Fīqh* (Lāhore: Idāra Saqāfat-e-Islāmiā, 1973), 261. Āl Basūr, “Ālamgīr Number” (Chinyut: Islāmīa College, May, 1962), Vol. 4, no. 1, 129-130.

⁴⁷ M. A. Khān, *Islamic Jihād: A Legacy of Forced Conversion, Imperialism, and Slavery* (I Universe, 2009), 153.

Āurangzeb about *Ḥanafī Fiqh*.⁴⁸ In the ambit of Islamic jurisprudence, this codified collection presents a model of civil legal injunctions, criminal injunctions and constitutional praxis. Even religious clerics of modern times praise the *Mughals* for this religious codification of laws despite having it the backing of the *Fārmān*.⁴⁹ Despite being a *Ḥanafī* collection, it has opinions of other jurists from other Islamic school of thoughts.⁵⁰ Praising this codification of Islamic jurisprudence through *Farmāns*, Sir Roland Knyvet Wilson⁵¹ says that Āurangzeb found justice through the application of Islamic laws.⁵² He terms it an authentic document of the *Mughal* period which has provided a basis for the Muslim family laws of modern times.⁵³ This collection was later used by the British in Bengal Regulations.⁵⁴ In fact, *Fatāwa* collection and *Farmāns* were intertwined in that whenever the emperor found any difficulty in issuing a *Fārmān* that could go against the Islamic jurisprudence, he had had the convenience of the *Fatāwa*. The building of the organizational structure, the constitutional foundations or development and development of the *Fārmān* toward Islamic laws owe much to this *Fatāwa* collection.

Fārmān-e-Shāhī and Mughal Islamic Legislation:

Despite having Caliphate as the first symbol of Islamic democratic dispensation⁵⁵, Islamic legislation was far from tied to a government system. On the other hand, the *Mughal* dispensation was entirely monarchic in that that it was familial and hereditary and simultaneously had had the public backing and support for legal legitimacy.⁵⁶ The *Mughal* rule's leanings toward Islam were based on pragmatic politics, monarchic rule and Indian religious plurality.⁵⁷ However, the *Mughals* faced the heat of the Islamic legislation and proliferation of the jurisprudence on account of the emergence of various Islamic empires of that time such as Ottoman and Safavids despite having fundamental sectarian differences.⁵⁸ The interest of the *Mughals* was rather toward the consolidation of power⁵⁹ instead of spreading Islam and taking cues from Islamic legislation for issuing *Fārmān*. *Bābar's* full attention is a case in point that he only strived for creating legitimacy through either means instead of issuing just

⁴⁸ Firas Alkhateeb, *Lost Islamic History: Reclaiming Muslim Civilizations from the Past*, (Oxford: Oxford University Press, 2014), 170.

⁴⁹ Muḥammad Taqī Usmani, *Taqīd Ki Shari Haythiyyat* (Karachi: Maktaba Darul Ulum, 1396 H), 14.

⁵⁰ Sabah Bin Muḥammad, "Judicature of Islamic Law in Medieval India" (Kuala Lumpur: ICASIC2016, Malaysia), 10.

⁵¹ Sir Roland Knyvet Wilson was born on August 27, 1840 and died on October 29, 1919. He was a British academic, Baronet and former journalist. He has written various books on Anglo Indian Muslims and Indian history.

⁵² Sir Roland Knyvet Wilson, *Introduction to the Study of Anglo-Muhammadan Law*, (London: W. Thacker, 1894), 86.

⁵³ Ibid., 86.

⁵⁴ Sir George Clause Rankin, *Background to Indian Law*, (Cambridge: Cambridge University Press, 2016), 168.

⁵⁵ Muḥammad Husayn Haykal, *The Life of Muhammad*. Trans. by Isma'il al-Faruqi, (Washington: American Trust Publications, 1976), 472.

⁵⁶ Ram Parsad Khosla, *Administrative Structure of the Great Mughāls*, (Delhi: Kanti Publications, 1991), 3-4.

⁵⁷ Ibid., 46.

⁵⁸ Major Waller Ashe, *Personal Records of the Kandahar Campaign*, (London: David Bogue, St Martin's Place, 1881), xxviii.

⁵⁹ Arnold J. Toynbee, *Civilization on Trial*, (New York: Oxford University Press, 1948), 65.

Farmāns to further Islamic legislation.⁶⁰ Although Islam proved a pillar for them for the consolidation of power; they used power first and religion later.⁶¹ It is later that *Fārmān-e-Shāhī*’s role comes in furthering Islamic legislation, for Islam provided a “durable structure,” as its presence was “emphatic” in every function of the state.⁶² Therefore, the *Mughals* used *Farmāns* profusely to dispense justice, though some *Farmāns* may fall under the category of pure legislation as they were issued from awarding death sentence to obstruction of royal hunting and selling dog meats.⁶³ Sometimes the *Mughals* used to tease a *Hadd* or other Islamic laws during rebellions or treason cases. Gulbadan Begum narrates Humayun’s punishment to Khawaja Ghazi after his arrival from Persia. Such a *Fārmān* ordered beheading of Mirza Kamran’s soldiers during failed rebellion.⁶⁴ Certainly, such *Farmāns* did not correspond with the Islamic legislation, yet they contributed toward the amendments in Islamic legislation for certain punishments and became instrumentals for addition in Islamic codification of criminal laws. In fact, the *Mughals* borrowed former collections of the Islamic legislation such as *Fīqh-e Firūz Shāhī* which led to *Fatāwa -i- Bābarī*⁶⁵ and that most of the *Fārmān* were guidelines for *Qāḍīs* and *Muftis* for the dispensation and administration of justice⁶⁶, playing an indirect role in Islamic legislation. The role of *Qāḍīs* and *Mir Adl* were thus outlined through *Farmāns* regarding administration of justice.⁶⁷ Such *Farmāns* also provided the methods of selection, ways of appointments, job descriptions, duties and responsibilities, ways of administering justice, inquiry procedure and final dispensation of justice.⁶⁸ Sir Roland Knyvet Wilson is of the view that the collections of *Fatāwa* compiled and edited during the *Mughal* periods up to the final *Fatāwa-ī Alāmgīrī*, are the views the judicial “*Mujtāhids* of the best period” adding that even Akbar and Āurangzeb have found refuge for justice in Islamic laws.⁶⁹ He is of the view that the incumbent family laws hinged on those, specifically, last *Fatāwa* collection⁷⁰ which points to the progress in Islamic legislation through *Farmāns*, for *Farmāns* were issued for the collection of *Fatāwa*, too. Even the Bengal Regulations have some foundations in the *Fatāwa* collection, as George Clause Rankin⁷¹ argues adding the British found it very interesting and relevant to the

⁶⁰ Ibid., xxviii.

⁶¹ Dr. Khalid Basheer, “Conquest of India by Bābūr”, Scholarly Research Journal for Interdisciplinary Studies, 3, no. 22 (2016): 1352.

⁶² Harbans Mukhia, *The Mughāls of India*, (New Delhi, India: Blackwell Publishing, 2004), 15-16.

⁶³ Ibn Ḥasan, *The Central Structure of the Mughāl Empire*, 332.

⁶⁴ Gulbadan, Begūm, *Humāyūn Namā*. Trans. by Annette S. Beveridge, M. R. A. S. (London: Royal Asiatic Society, 1902), 26-68.

⁶⁵ Zafarūl Islām, *Fatāwa Literature of the Sultānate Period*, (New Delhi: Kanishka Publishers, 2005), 24-26. See Mālik, *Islām in South Asia*, 109-110.

⁶⁶ Hussain, *Administration of Justice*, 34-35.

⁶⁷ Faḍl, *A’in*, vol. II. 434-450.

⁶⁸ Ibid., 42-43. See Sarkār, *Mughāl Polity*, 40, 215. Also see U. N. Day, *The Mughal Government*, A.D. 1556–1707 (New Delhi, India: Munshiram Manoharlal, 1970), 85-88.

⁶⁹ Sir Roland Knyvet Wilson, *Introduction to the Study of Anglo-Muhammadan Law*, (London: W. Thacker, 1894), 85-86.

⁷⁰ Ibid., 86.

⁷¹ Sir George Clause Rankin was born on August 12, 1877 and died on April 8, 1946. He was a British judge, who served at the High Court of Calcutta and was also a major in the Indian Defence Force. He wrote a book about Indian laws.

traditions and societies of the region and helpful in pacifying the Muslim public.⁷² The *Mughal Farmāns* used for legislation led to the spread and increase in “Islamic legal scholarship” despite the military decline of the *Mughal* empire.⁷³ In fact, the derivatives of some *Farmāns* were these *Fatāwa* collections as Āurangzeb used to consult the collection before issuing a *Fārmān* lest it may be contradictory to the Islamic injunctions. For example, one of his *Farmāns* about his own brother Murad Bakhsh's crime and rejection of blood money was in consonance with the Islamic punishment but not with the indemnity that if accepted by the heirs becomes a legal precedent.⁷⁴ However, the rejection of this blood money through a *Fārmān* issued by Āurangzeb is a testimony that sometimes *Farmāns* override or re-legislate some already legislated or accepted procedural code of Islamic jurisprudence. The role of *Farmāns* in this connection seems instrumental in Islamic legislation. Mouez Khalfaoui⁷⁵ has stated that the Islamic legislation has evolved during this period in India in three phases. The first period comprises of the Sultanate period when the implementation of the ancient *Sharī'ah* system was systematic. The second period comprises of *Fatāwa* collections and traditions, and third period comprises *Fatāwa-ī Alāmgīrī*.⁷⁶ In other words, *Farmāns* did play a significant role in the evolution of Islamic legislation, and also became instrumental in the implementation of the *Sharī'ah* and compilation of Islamic criminal and procedural codes.

Fārmān-e-Shāhī's Inclusive Role in the Light of Islamic Jurisprudence in Legislation:

In the background of empire and its legislation, the instrumental role of *Fārmān-e-Shāhī*, specifically in the light of Islamic jurisprudence during legislation, is of critical importance. A cursory look as given by Ram Parsad Khosla⁷⁷ at the judicial establishment of the *Mughals* headed by *Sadr* seems to point to the fact how *Fārmān-e-Shāhī's* role had been holistic and inclusive if reviewed under the lens of Islamic jurisprudence.⁷⁸ Although the *Mughals*, sometime, avoided following the *Sharī'ah* in letter and spirit, they never left Islam. Expediency of circumstances, social conditions and Indian multireligious culture forced them to turn away from Islam, or turn toward it after they fail to find a solution.⁷⁹ In fact, sometimes the *Mughals* were quick in awarding punishments, or decreasing, or amending Islamic criminal codes for sentencing criminals. Such *Farmāns* were often against the Islamic jurisprudence but they were a type of judicial legislation due to the reason of the non-definite nature of the offenses in Islamic criminal procedural codes.⁸⁰ This could be stated as a legislation in the evolution of Islamic jurisprudence which continued up to the last *Mughal*

⁷² Sir George Clause Rankin, *Background to Indian Law*, (Cambridge: Cambridge University Press, 2016), 168.

⁷³ Iza, R. Hussain, *The Politics of Islamic Law: Local, Elites, Colonial Authority, and the Making of the Muslim State*, (Chicago: Chicago Press University, 2016), 173.

⁷⁴ Hussaini, *Administration under the Mughals*, 5-6.

⁷⁵ Dr Mouez Khalfaoui is working as a Dean of Studies at Center of Islamic Theology, University of Tübingen in Germany.

⁷⁶ Mouez Khalfaoui, “Mughal Empire and Law.” Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t349/e0066>. (accessed May 20, 2019).

⁷⁷ R. P. Khosla has been an officer of the Indian Civil Service and a noted historian on the *Mughāl* period. He served the government of India on many important positions.

⁷⁸ Ram Parsad Khosla, *Administrative Structure of the Great Mughāls*, (Delhi, India: Kanti Publications, 1991), 17-18.

⁷⁹ Ibid., 18.

⁸⁰ S. A. Q. Hussaini, *Administration under the Mughāls*, (Dhaka: Paradise Library, 1952), 205.

emperor. For example, a *Fārmān* was issued in the case of Akbar Khusham Uzbek who was killed by Sangram Hoshnak and his accomplice. The emperor ordered punish him by hanging on the wall of a fort after he himself failed to knock him down as Eliot⁸¹ writes;⁸²

“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 times 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 cast him down again. So they dragged him back by the hair, and throwing him down more carefully, his neck was broken and his brains knocked out. So that criminal received the just reward of his deed.”⁸³

The implementation of this *Fārmān* shows how the emperor himself executed the implementation of his *Fārmān*, and how far he went to implement it in letter and spirit despite the fact that it was against the Islamic procedural code. Its execution with immediate effect shows that the emperor's *Fārmān* had the power of legislation even in Islamic criminal procedural code. Another such legislation points to the same fact. The circumstantial evidences show that the issuing of this *Fārmān* and its implementation intended to bring stability through instilling fear in the hearts of such rebels. However, the revocation of such procedures of implementation later clarifies that such immediate and swift legislation stopped there, and that it was preventive and retributive in nature. The emperor ensured later the execution of *Fārmān* to be completed in the presence of judicial staff including *Kotwal*.⁸⁴ It is also that sometimes the *Mughals* used to issue more *Farmāns* for capital punishment for certain crimes which were not counted in the Islamic criminal code,⁸⁵ which was also a type of legislation in Islamic codified laws through addition or amendment. There are two other examples of Islamic or un-Islamic legislation in Islamic jurisprudence regarding remission of taxes. There was an old custom to get taxes from the pilgrims called *karmi* which was remitted despite costing a heavy amount of money to the royal treasure.⁸⁶ This could be Islamic, as it was from the government for its own expenditures. However, in case of *Jizya*, it could be un-Islamic, for the *Sharī'ah* has declared *Jizya* a purely Islamic tax for non-Muslims. It happens that the emperor Akbar remitted the *Jizya* which Elliott states “in a country so extensive as Hindustan, amounted to an immense sum.”⁸⁷ Such types of remissions, though un-Islamic, appears to pacify the non-Muslim public to bring stability in the empire. This is a minor legislative tinkering with the Islamic jurisprudence in the settled matters where emperor had had the power to amend, or re-amend, or re-codify an already existing law through a new *Fārmān*. Theoretically, the king stopped himself short of crossing the *Sharī'ah* boundaries even when the question of justice arises

⁸¹ Sir Henry Miers Elliot was born on March 1, 1808 and died on December 30, 1853. He was an East Indian Company servant as well as a historian. He has written *The History of India* and translated events *Waki'at-I Jahangiri*.

⁸² Sir H. M. Elliot, *History of India*, Vol. 6 (London, UK: Turbner An Co. 1877), 26.

⁸³ *Ibid.*, 26-27.

⁸⁴ Ibn Hasan, *The Central Structure of the Mughāl Empire*, (New Delhi, India: Munshiram Manoharlal, 1970), 331-332.

⁸⁵ *Ibid.*, 332.

⁸⁶ Elliot, *History of India*, Vol. 6. 26.

⁸⁷ *Ibid.*, 30.

against infidels.⁸⁸ The continuation of the Islamic jurisprudence and occasional legislation for reamendment and change got executed through such *Farmāns*.⁸⁹ Akbar also rejected some provisions about basic Islamic sentences falling under *Hādd*, *Tā'zir* or *Siyāsah*.⁹⁰ In most cases where non-Muslims were involved, Islamic jurisprudence was set aside and *Farmāns* were issued regarding laws to deal with such cases.⁹¹ The idea of the emperor as a viceroy or a shadow of God seems mirroring such *Farmāns* when dealing with legislation in Islamic jurisprudence, or tinkering with such cases. The public submission, therefore, was due to the king on account of his status of being a viceroy and close to God and hence a custodian of the holy laws. It is also not far from the truth that he was considered a source of law himself, the reason that no significant and exhaustive *Fatawa* collection was codified before *Fatawa-i Ālamgīrī*. However, later, it was deduced that *Ijtihad* was brought in by the clerics during the period of Āurangzeb during his Islamization efforts.⁹² Despite this fact, the legal authority of *Farmāns* stayed a valid and potent force to bring stability and legitimacy in the *Mughal* empire. The emperors were politically shrewd and pragmatic to use Sultanate *Fatāwa* collections to further their rule as well as legislation of Islamic jurisprudence. This legislation was not only extended to judicial decisions and judicial administration but also to constitutional matters, administrative issues and state affairs in general where it won praises on account of its speed and effectiveness as compared to the sluggishness of the English system at that time.⁹³ Almost all the professionals were satisfied with the *Mughal* justice system which demonstrates now that it was not as oppressive and dictatorial as it was made out.⁹⁴ Briefly putting it, the rule of *Fārmān-e-Shāhī* was critical as well as integral in the state legislation regarding the Islamic jurisprudence whether it was procedural, codal, amending, re-amending or a reissuing of a legal point. Some of the historical incidents, legal events, state issues and administrative problems reviewed earlier demonstrate that *Fārmān-e-Shāhī* has played its role in the evolution of Islamic laws in India which, though, culminated to *Fatawa-i Ālamgīrī*, yet continued to impact the British legislation in the colonized India, and also still continues to impact the subcontinental states in their legislations on account of the Islamic social fabric.

⁸⁸ Abūl Faḍl Ibn Mubarak, *Akbar Nama*, Vol. 3 (Calcutta: The Asiatic Society, 1907), 257.

⁸⁹ M. J. Akbar, *The Administration of Justice by the Mughāls* (Lāhore: Muḥammad Ashraf Publisher, 1948), 2-3.

⁹⁰ Muhammad Basheer Aḥmad, *The Administration of Justice in Medieval India*, (Aligarh, India: The Aligarh Historical Institute, 1941), 42.

⁹¹ Arthur Vincent Smith, *Akbar the Great Mughāl 1542-1605*, (London, UK: Oxford University Press, 1917), 34.

⁹² M. J. Akbar, *The Administration of Justice by the Mughāls*, (New Delhi, India: Ashraf Publishers, 1948), 5-6.

⁹³ Sydney J. Owen, *The Fall of the Mughāl Empire*, (London, UK: John Murray, Albemarle Street, 1912), 1-4.

⁹⁴ Luke Scrafton, *Reflections on the government of Indostan, with a short sketch of the history of Bengal, from MDCCXXXVIII to MDCCLVI; and an account of the English affairs to 1758* (London: Strahan Ivn. 1770), 18-20.

Conclusion:

Stating the argument of the instrumental role of *Fārmān-e-Shāhī* in legislation, in the evolution of Islamic procedural codes, in furthering Islamic legal evolution and Islamic jurisprudence after careful historical and legal review of some of the regal commandments demonstrate that *Fārmān-e-Shāhī* did have a legal as well as constitutional import in the context of the united India of the *Mughal* era. The matter of the fact is that even this brief legal evaluation of *Farmāns* is enough to show that Islamic criminal law and procedural codes, too, witnessed a considerable evolution and progress. This evaluation also gives a good understanding of the nature, content and effectiveness of *Fārmān-e-Shāhī*. Specific state and public administration and state stability hinges on using *Fārmān-e-Shāhī*, withdrawing, reissuing and sometimes orally issuing it at the spot in accordance with the situation and the nature of the circumstances. It also shows that three major aspects of *Fārmān-e-Shāhī* and its enforcement comes to light; the first is legal administration, the second is judicial administration and the third is state administration. However, all three are intertwined legally as well as administratively, for judicial administration falls in the categorization of legal as well as judicial aspects of the statecraft. However, as far as constitutional aspects and constitutionality of *Fārmān-e-Shāhī* is concerned, it needs a separate research, for constitutional and holistic state administration and its working depends on the persona and familial or regal tribal relations and regal team constituted to run the state and other departments of that time.