

## Introduction: Law in Many Forms

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In the late 1620s, Prince Khurram was serving his punishment posting as governor of Deccan, while his sons were held hostage at the imperial court by his own father, Emperor Jahangir. Prince Khurram, who would eventually assume the imperial Mughal throne as Shah Jahan in 1628, was being punished for armed rebellion, which had also seen him attempting to build a military and political base in the *sūba* (province) of Malwa, until he was chased across the country by the imperial army and eventually defeated.<sup>1</sup> While embroiled in imperial high politics, Prince Khurram found the time to issue a *nishān* (a princely order) confirming the appointment of a man called Mohan Das to the post of *qānūngō* (local official maintaining tax records) of the *pargana* (district) Dhar.

The document revealed that the grantee Mohan Das had been going through upheavals of his own. Although once the *qānūngō* of Dhar, he had, for reasons unstated in the document, been transferred to Asirgarh, a significant hill fort marking the boundary between Hindustan and Dakhin. Asirgarh happened to be an important base of activity for Khurram in his period of rebellion; perhaps Mohan Das managed to catch the prince's eye at that place.<sup>2</sup> In any case, the document recited that since Mohan Das had proved his loyalty, he was glorified (*sarfarāz*) by being granted the office of *qānūngō* of the district in accordance with ancient custom (*ba-dastūr-i sābiq*). A certain village (*mauza*, in the terminology of revenue administration) was granted as '*inām*,<sup>3</sup> as emolument or by way of reward for the unstated special services, or both. Several decades down the line, a descendant of Mohan Das, having lost this vital document, had a copy made, and endorsed by the local *qāzī* (Islamic judge), Muhammad Mustafa, who notarised the document with his seal bearing the date 1103 AH

<sup>1</sup> John F. Richards, *The Mughal Empire* (Cambridge: Cambridge University Press, 1993), pp. 114–15.

<sup>2</sup> *Ibid.*, p. 115.

<sup>3</sup> This Arabic-origin word literally means reward. In Mughal and post-Mughal usage, it is generally translated as a grant of 'tax-free' or 'rent-free' or 'revenue-free' lands. See H. H. Wilson, *A Glossary of Revenue and Judicial Terms*, ed. Ganguli and Basu (Calcutta: Eastern Law House, 1940), pp. 338–40. This entitlement, which, at its most general, included the right to take a share of the peasant's produce, and could be combined with a range of conditions, is typical of the kind of nested and relational rights that this book is concerned with.

2 Introduction: Law in Many Forms

(1690 CE), and inscribed on it: *muṭābiq ba-aṣal ast*, ‘It is in line with the original’.<sup>4</sup>

In the National Archives of India, there are eighty-four (principally) Persian-language documents, spanning just over a hundred years, and pertaining to four generations of a single family of village-level landholders, who doubled as petty state officials based in the central Indian Mughal province of Malwa. There are also forty-three complementary documents, pertaining to the same family and clearly derived from the same family’s dispersed collection, in the museum Dar al-Athar al-Islamiyyah, Kuwait. Finally, there are around sixty-one documents, and other materials, still in the possession of descendants of the family, housed in their ancestral homestead in the city of Dhar, in the central Indian state of Madhya Pradesh. The majority of these documents are from the Mughal period – that is, the seventeenth and early eighteenth centuries – with a slim but narrow tail running through the era of Maratha imperialism and then into British indirect rule. These documents are all, broadly speaking, legal documents – whether they be official orders creating property rights, copies of such title-deeds notarised by court officials, contractual documents involving rent, debt, repayment and guarantee or judgements following disputes over property and inheritance. As in the document just summarised, each one of these documents offers a glimpse of the interweaving of imperial politics, military manoeuvres, taxation, co-option of local powerholders into the state structure and the contours of agrarian economy – all of which have been themes of classic works on Mughal history.<sup>5</sup>

While being informed by that scholarship, this book will approach such material in a different way, aiming to discover how petty rural grandees and minor stakeholders, such as members of Mohan Das’s family, attempted to negotiate the local power dynamics as well as the structures of governance in order to further their individual and family interests. In tracing the nature and methods of those efforts, we will take note of the protagonists’ in-between status, being both of the state and subject to it. Thus, this book is inspired by Farhat Hasan’s characterisation of the Mughal state as both shaping local societies and being shaped and sustained by them.<sup>6</sup> Indeed, the protagonists

<sup>4</sup> Persian manuscript 2703/31 (dated by cataloguer in ‘Jahangir’s period’, which refers to the date of the original document, rather than this copy), National Archives of India (NAI), New Delhi.

<sup>5</sup> For a survey of the literature, see ‘Introduction’ in Muzaffar Alam and Sanjay Subrahmanyam, *The Mughal State, 1526–1750* (Oxford: Oxford University Press, 1998); some classics are Irfan Habib, *The Agrarian System of Mughal India 1556–1707* (3rd edition, New Delhi: Oxford University Press, 2014); Jos Gommans, *Mughal Warfare: Indian Frontiers and Highroads to Empire, 1500–1700* (London: Routledge, 2002).

<sup>6</sup> Farhat Hasan, *State and Locality in Mughal India: Power Relations in Western India, c. 1572–1730* (Cambridge: Cambridge University Press, 2006). This itself related to an older debate about the extent of centralisation and bureaucratisation of the Mughal state, especially in relation to

of this story are very similar, if somewhat less grand and cosmopolitan, than the Mughal officials, businessmen and their families studied by Hasan in connection with the great Indian Ocean port cities of Surat and Cambay. Quite like the port officials, the limited eminence of men (and women) of Mohan Das's family was based on their local connections and landed power, but they could not thereby afford to rest on their laurels: the continuity and growth in their fortunes required them to access the state for offices, rewards and recognition, but also to inhabit it, thus turning the state apparatus into family property.

Unlike Hasan, however, the purpose of this book is less to evaluate the nature of the Mughal state (or the polities that succeeded it), and more to uncover the motivations, ideas and approaches of such little people who manned it, but who have remained woefully ignored in Mughal historiography, which is still predominantly concerned with either macro-historical structures and processes – the state, the economy, the military market – or grand individuals such as members of the royal family, great nobles, administrators and venerable saints. In particular, it is an effort to trace the ideas and activities of some not very eminent people through archives created in – broadly speaking – legal settings. While it may appear as such, I do not see this book as an effort to recover and represent an isolated fragment of history poised against normalising meta-structures.<sup>7</sup> It is a micro-history, and as such, it is premised on the assumption that looked at up close, we always discover variations from what appear to be the overarching patterns, but we also discover conformity. The crucial point, however, is that we get close enough to the workings to be able to explain both deviation and conformity, and as such, use the part to explain the whole by illustrating their mutual relationship.<sup>8</sup>

Unlike the majority of micro-histories, however, this is not a study of a highly evocative single episode in time. The availability of a substantial and continuous series of documents, covering nearly four hundred years, pertaining to a single landed and locally powerful family who rode out three

corporate groups – of caste, kin and so on. M. Athar Ali, 'The Mughal Polity: A Critique of "Revisionist" Approaches', in his *Mughal India: Studies in Polity, Ideas, Society and Culture* (New Delhi: Oxford University Press, 2006), pp. 82–93.

<sup>7</sup> The classic formulation in Partha Chatterjee, *The Nation and its Fragments: Colonial and Postcolonial Histories* (Princeton: Princeton University Press, 1993), p. 13.

<sup>8</sup> Giovanni Levi, 'On Microhistory', in Peter Burke (ed.) *New Perspectives on Historical Writing* (Cambridge: Polity, 1991), pp. 93–113. Within the broad parameters, the best known examples of micro-historical writing demonstrate distinct analytical aims; Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, MA: Harvard University Press, 1983); Carlo Ginzburg, *The Cheese and the Worms: the Cosmos of a Sixteenth-Century Miller* (translated by John and Anne Tedeschi) (London: Routledge, 1980 [1981]); Richard Darnton, *The Great Cat Massacre: and Other Episodes in French Cultural History* (London: Allen Lane, 1994). Very few micro-histories have been produced for South Asian history – biographies being a distinct genre: one of those few is Partha Chatterjee, *A Princely Impostor? The Strange and Universal History of the Kumar of Bhawal* (Princeton: Princeton University Press, 2002).

4 Introduction: Law in Many Forms

regimes, presents us with opportunities for discerning patterns and connections as well as transformations. We have the opportunity to trace the networks of kinship, association, affection and disaffection, to study strategies of personal and collective advancement, to uncover structures of authority and notions of rights and righteousness, and see how all this evolved as the Mughal empire gave way to other regimes in the region.<sup>9</sup>

This is a book about entitlements, and the efforts of some people in Mughal India and afterwards, for asserting and securing them. As such, this is a book about law, which is not conflatable with institutions or rules/norms.<sup>10</sup> This book's conception of law does indeed encompass all the above, but also sees 'law' as a specialised language used by common people, with the help of low-brow specialists, to record, assert and dispute claims, to articulate popular expectations of the state, of peers and of betters, and (most usefully for a micro-historical study), to make striking statements of self-description. I also see law as an arena of contests, in which power is sublimated through normatively stated disputes, sometimes with the norms themselves in conflict. As this book argues, law is not just a code for power and an instrument for its application; it is also a site for the legitimisation of power, so, therefore, also for challenging it.<sup>11</sup>

### **Empires, Islam and Islamic Law**

By writing the history of a part of the Mughal empire through law and legal records, and commenting on the Maratha and British empires in the same book, I am inspired both by the growing literature on the legal geographies of entangled early modern Eurasian and Atlantic empires,<sup>12</sup> and the only very partially connected literature on Islamic cultures of legal documentation, in the Middle East and North Africa, Iran and Central Asia.<sup>13</sup> Like many others

<sup>9</sup> For an effort in this direction in connection with law in the British empire, see Nandini Chatterjee, 'Muslim or Christian? Family Quarrels and Religious Diagnosis in a Colonial Court', *American Historical Review*, 117: 4 (2012), 1101–22.

<sup>10</sup> Which was Subrahmanyam and Alams's concern in their introduction to *The Mughal State*, p. 6.

<sup>11</sup> E. P. Thompson, *Whigs and Hunters: the Origin of the Black Act* (London: Allen Lane, 1975), pp. 258–69.

<sup>12</sup> Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2009); Eliga Gould, 'Entangled Histories, Entangled Worlds: the English-Speaking Atlantic as a Spanish Periphery', *American Historical Review*, 112: 3 (2007), 764–86.

<sup>13</sup> Maike van Berkel, Leon Buskens and Petra M. Sijpesteijn (eds.), *Legal Documents as Sources for the History of Muslim Societies* (Leiden: Brill, 2017); Paolo Sartori, *Visions of Justice: ai'a and Cultural Change in Russian Central Asia* (Leiden: Brill, 2017); Paolo Sartori, 'Colonial Legislation Meets Sharī'a: Muslims' Land Rights in Russian Turkestan', *Central Asian Survey*, 29: 1 (2010), 43–60; Christoph Werner, 'Formal Aspects of Qajar Deeds of Sale', in Kondo Nobuaki (ed.) *Persian Documents: Social History of Iran and Turan in the Fifteenth to Nineteenth Centuries* (London: Curzon, 2003), pp. 13–50.

working on the history of empires, I have been struck by the bold imaginary provided by Lauren Benton – the idea of ‘lumpy landscapes’ of law as it spread unevenly along oceans, waterways and other difficult terrain, sometimes on the invitation of indigenous populations, sometimes despite their resistance. However, I am also cautioned by Paolo Sartori’s insistence on the need to pay attention to the particularities of legal pluralism in empires, rather than rushing to generalise about uneven terrains and jurisdictional jockeying.<sup>14</sup> Now, Mughal India was an empire too, and since Benton’s own passing reflections on the nature of legal layering therein are tantalising rather than explanatory, we are left with the necessity of conceiving how law in the Mughal empire may have been arranged and negotiated, so that we have more than a pleasantly hazy idea of what law in precolonial India may have looked like.<sup>15</sup>

The banal but oft-ignored fact that the Mughals and their predecessors ruled over the only persistently and predominantly non-Muslim population in the Islamic world should give us pause, and encourage us to reflect upon the variant forms and dispensations of Islamic law in the early modern world. And in this connection, I believe it is worth retrieving Marshall Hodgson’s under-utilised concept of ‘Islamicate law’, because it allows us to conceptually grapple with several overlapping processes of cultural, institutional and political imbrication. This included the syncretic self-legitimation efforts of Mughal dynasts; the ubiquitous presence of the classical Islamic judge (*qāzī*) in and alongside multiple loci of dispute resolution; the work of scribes who recorded, or coded happenings in Indian villages and cities in broadly Islamic legal language; and the many villagers, townsmen, soldiers and officials, Muslim and not, who showed themselves to be not only aware of these forms of law and procedure, but also articulate in the relevant jargon and adept at negotiating the necessary processes. In coining the term Islamicate to refer to the broader cultural and social complexes associated with Islam and not limited to Muslims, Hodgson himself specifically contemplated ‘Islamicate law’ as a more capacious and effective way of thinking about law in the world of Islam, including *sharī‘a* but extending beyond it;<sup>16</sup> it is time now to take up that suggestion.<sup>17</sup>

In this connection, it is important to acknowledge Shahab Ahmed’s rejection of the term ‘Islamicate’ for its tendency to reify its obverse: an artificially reduced notion of Islam-as-religion, falsely separated from all its cultural instantiations, including the Persianate ‘Balkan-to-Bengal’ complex that

<sup>14</sup> Paolo Sartori, ‘Constructing Colonial Legality in Russian Central Asia: On Guardianship’, *Comparative Studies in Society and History*, 56: 2 (2014), 419–47.

<sup>15</sup> Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), at p. 80.

<sup>16</sup> Marshall Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, Vol. I (Chicago: University of Chicago Press 1974), pp. 57–60, at 57.

<sup>17</sup> Shahab Ahmed, *What Is Islam?: the Importance of Being Islamic* (Princeton: Princeton University Press, 2016), especially pp. 113–29; 157–75.

produced the classics of Sufi religious poetry, replete with anti-doctrinaire motifs of wine drinking and pederasty. Ahmed's argument, for a capacious vision of Islam, encompassing all its historical forms, is powerful and attractive as a hermeneutic for studying Islam. But as a conceptual matrix designed specifically in opposition to law, by which Ahmed meant a doctrinaire version of *sharī'a*, it does not provide the necessary tools for understanding the precise relational matrix – of authorities, institutions, laws and languages – within which the legal documents of this book were produced. And more specifically, it does not offer sufficient tools for understanding the mental and social worlds of the Hindu landlords who form the principal protagonists of this book.

A large volume of exciting new research has now suitably put to rest the notion of Islamic law being a system of rigid rules, derived from unquestionable sources, with no internal capacity for evolution with the times. It has been argued forcefully, and convincingly, that in fact *sharī'a*, or more accurately, *fiqh*, was an elaborate body of jurisprudence, systematically developed by legal scholars, *fuqahā'*, through a doctrinally systematic but also situationally responsive procedure. The core of this procedure involved the issuing of responses (*fatwā*, pl. *Fatāwā*) by qualified scholars (*mufīīs*) to queries (*iftā'*) related to concrete legal problems. In framing their responses, *mufīīs* drew on a hierarchically organised body of textual material – from collections of previous responses, to texts summarising the principles therein, back to recorded Prophetic tradition (*hadīth*) and ultimately the Quran. And while *mufīīs* were not bound by precedent, they were constrained by a range of rules in their choice of authority – among other things the need to remain within 'schools' (*māzhabs*) that worked with the opinions of certain eminent scholars and not others.<sup>18</sup>

No *fatwā* was binding on the judge (*qāzī*), who could decide to rely on one *fatwā* among several, or ignore them all, but in practice *fatāwā* definitely guided adjudication, and fed back, through compilations and summarisation, into the legal tradition.<sup>19</sup> And while clearly one's experience of the system could vary hugely between contexts, scholars have shown that in early modern Islamic empires, such as that of the Ottomans, it could offer substantive possibilities of justice to women as well as non-Muslim minorities.<sup>20</sup> This

<sup>18</sup> Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden: Brill, 1997)

<sup>19</sup> Wael Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009); Wael Hallaq, 'Was the Gate of Ijtihad Closed?', *International Journal of Middle East Studies*, 16: 1 (1984): 3–41; Wael Hallaq, 'From *Fatwās* to *Furū'*: Growth and Change in Islamic Substantive Law', *Islamic Law and Society*, 1: 1 (1994): 17–56; David Powers, *Law, Society and Culture in Maghrib, 1300–1500* (Cambridge: Cambridge University Press, 2002); Muhammad Khalid Masud, Brinkley Messick and David S. Powers (eds.) *Islamic Legal Interpretation: Muftis and Their Fatwas* (Cambridge, MA: Harvard University Press, 1996).

<sup>20</sup> Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998); Najwa Al-Qattan, 'Dhimmis in

was because of the clear, if not equal, rights accorded to such groups in Islamic law, which were often substantively superior to those afforded by community norms; also in part because of the possibility of systematic juristic discretion built into the system as a whole.<sup>21</sup>

Despite general agreement on the bare bones of this picture, approaches vary widely even among scholars studying the Muslim-majority parts of the world. It is my opinion that this variation arises from the nature of source material used. Those asserting the systematic proximity of academic jurisprudence and adjudicative practice have naturally focussed on material produced by those jurists themselves. They have used the prolific genre of *fatāwā* collections and higher-level *‘uṣūl al-fiqh* (principles of jurisprudence) texts, arguing that these simultaneously offer evidence for the progress of legal thought as well as practice, since such *fatāwā* were not only in conversation with other, and higher, jurisprudential texts, but also written as if in response to specific disputes, including descriptions of court procedures that featured *qāzīs*.<sup>22</sup> Within such an analytical and evidentiary mode, scholars are then able to demonstrate both the principled and systematic nature of Islamic law, and the centrality of jurists, but also their flexibility in choosing from a range of acceptable authorities and their situational intelligence in interpreting them.

On the other hand, those historians who have worked from different categories of material, such as registers of the imperially sponsored courts preserved in various Ottoman archives, have revealed a more blurred image of Islamic law with multiple co-situated, competing or even unclear legal jurisdictions, with the king (and his representative) playing as important a role as jurists. The Ottomans, for example, appear to have institutionalised the *mufīṭ-qāzī* arrangement, but very much under the thumb of the emperor, their jurisdictions defined, and increasingly restricted by imperial authority, whether through the accepting of petitions,<sup>23</sup> or through outright legislation. Petitions to emperors and governors also abounded in the Safavid empire in Iran, and many people in the Ottoman empire<sup>24</sup> as well as the Central Asian kingdoms<sup>25</sup> preferred (or were pushed towards) arbitration by local notables over, or

the Muslim Court: Legal Autonomy and Religious Discrimination’, *International Journal of Middle Eastern Studies*, 31: 3 (August, 1999), 429–44.

<sup>21</sup> J. Makdisi, ‘Legal Logic and Equity in Islamic Law’, *The American Journal of Comparative Law* 33: 1 (1985), 63–92.

<sup>22</sup> David Powers, *The Development of Islamic Law and Society in the Maghrib: Qadis, Muftis and Family Law* (Burlington: Ashgate, 2011); Tucker, *In the House of the Law*.

<sup>23</sup> James Baldwin, ‘Petitioning the Sultan in Ottoman Egypt’, *Bulletin of the School of Oriental and African Studies*, 75: 3 (2012), 499–524.

<sup>24</sup> Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003).

<sup>25</sup> Paolo Sartori, ‘The Evolution of Third-Party Mediation in Shari’a Courts in 19th- and early 20th-century Central Asia’, *Journal of the Economic and Social History of the Orient*, 54: 3 (2011), 311–52.

alongside adjudication by the *qāzī*. There is debate as to whether and how such processes of arbitration were aligned with the formal *mufī-qāzī* structure; those wishing to align them have pointed to the doctrinal preference for peaceful resolution (*sulh*) in Islamic law,<sup>26</sup> the availability of documentary rubrics for recording such resolutions, and (in some cases) the official interrelations between the king, judge and arbitrator. Thus when the historical record reveals the working of law in Islamicate societies as tantalisingly Islamic in language, terminology and ethos, but not quite in line with the procedures outlined in the jurisprudential texts, scholars have attempted to see deviations as mere additions,<sup>27</sup> or point to generic pious statements within the intellectual tradition, or to discover hidden principles at work which aligned classical political theory (if not quite jurisprudence) with the observed practice.<sup>28</sup>

This urge to prove the intellectual and procedural systematicness of Islamic law is of course a prolonged reaction to Weber's sweeping characterisation of Islamic law as an exemplar of *kadijustiz* – personalised arbitration rather than impersonal and formally rational jurisprudence and adjudication.<sup>29</sup> However, given that we now have sufficient scholarship available to attest to the sophistication of Islamic jurisprudence, it may be productive to think about 'the multi-layered nature of Islamic law 'sources',<sup>30</sup> and indeed of the legal traditions in practice, whether in the Middle East or elsewhere that there have been Islamic empires, such as South Asia.

Not doing so leaves the history of law in the Mughal empire in a strikingly underdeveloped state, and denies the study of Islamic law data from a very important and large Muslim and Islamicate context. Current geopolitical dynamics have obscured the fact that the early modern Islamic world had very different centres from the ones we know now. It was dominated by three great Turko-Persianate empires – the Mughals, the Safavids and the Ottomans. If we wish to know how Islamic law really worked in the day of its glory, it is to these empires and their workings that we should turn.

<sup>26</sup> Boğaç A. Ergene, 'Why Did Ümmü Gülsüm Go to Court? Ottoman Legal Practice between History and Anthropology', *Islamic Law and Society*, 17: 2 (2010), 210–44; Aida Othman, "'And Amicable Settlement Is Best": Sulh and Dispute Resolution in Islamic Law', *Arab Law Quarterly*, 21 (2007), 64–90.

<sup>27</sup> Haim Gerber, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994).

<sup>28</sup> Irene Schneider, *The Petitioning System in Iran: State, Society and Power Relations in the Late 19th Century* (Wiesbaden: Harrassowitz, 2006).

<sup>29</sup> David S. Powers, 'Kadijustiz or Qāḍī-Justice? A Paternity Dispute from Fourteenth-Century Morocco', *Islamic Law and Society*, 1: 3 (1994), 332–66; Gerber, *State, Society and Law*, esp. chapter 1; James Baldwin, *Islamic Law and Empire in Ottoman Cairo* (Edinburgh: Edinburgh University Press, 2017), p. 15.

<sup>30</sup> Chibli Mallat, 'From Islamic to Middle Eastern Law: a Restatement of the Field (Part II)', *The American Journal of Comparative Law*, 52: 1 (2004), 209–86. Mallat also offers a magisterial survey of the themes and sources used for the study of what he calls 'Middle Eastern law'.



On the other hand, as far as the discrete historiography of the Mughal empire is concerned, despite some excellent efforts,<sup>31</sup> a persistent Indo-centrism has allowed it to continue not only at a disconnect from that of the other Persianised empires, but also with little systematic attention to Islamic law. Despite continuing and frequently politicised interest in the ‘religious policy’ of the Mughal emperors, research on the location of Islam under this Persianised Turko-Indian dynasty has remained limited to the periodic influence of certain sectarian Sufi *silsilas*<sup>32</sup> and the uneven relationship of the *‘ulāma* with individual Mughal emperors. Traditionally, historians of Mughal India have tended to say little about matters such as dispute resolution and adjudication (the stuff of a huge volume of Ottoman historiography). This is not because of the absence of comparable judicial and legal structures. Based on the ubiquitous Persian manuals and chronicles, historians of Mughal India have duly noted the existence of the office of the *qāzī*, but taken it to be a minor and relatively uninteresting part of the imperial administrative structure, and associated with other sectarian offices, such as that of the *sadr* who managed grants to the Muslim religious scholars, and the *muhtasib*, a kind of public censor who was meant to control drinking, gambling and the selling of sex.<sup>33</sup> Since Mughal policy was taken to have moved away from confessional Islam, and given that most people in Mughal-ruled India were not Muslims, these offices are taken to be of minor significance, except in times of sectarian oppression. Alternatively, some scholars have attempted to explain the prolific documents bearing the *qāzī*’s seal by placing these randomly within an archaic notion of ‘Islamic law’, generally derived from eclectically selected classical *fiqh* texts from very different periods and places. Such scholars also noted, without comment, the judicial activity of the emperors and other officials. Anachronistic efforts to align the Mughal system with that of the hybrid ‘Anglo-Muhammadan’ law produced during colonial rule led to misapplication of English legal terms, such as precedent, which is alien to Islamic law; and a widespread but poorly evidenced belief, that apart from ‘criminal’ matters, most non-Muslims in the Mughal empire would have been left to resolve their own disputes or take

<sup>31</sup> For example, Lila Balabanlilar, *Imperial Identity in the Mughal Empire: Memory and Dynastic Politics in Early Modern South and Central Asia* (London: I.B. Tauris, 2011); Stephen Dale, ‘The Legacy of the Timurids’, *Journal of the Royal Asiatic Society*, 3: 8 (1998), 43–58; Stephen Dale, *The Garden of the Eight Paradises: Bābur and the Culture of Empire in Central Asia, Afghanistan and India (1483–1530)* (Leiden, Boston: Brill, 2004).

<sup>32</sup> Yohanan Friedmann, *Shaykh Ahmad Sirhindi: an Outline of His Thought and a Study of His Image in the Eyes of Posterity* (New Delhi: Oxford University Press, 2000); Yohanan Friedmann, ‘The Naqshbandis and Awrangzeb’, in Marc Gaborieu, Alexandre Popovic and Thierry Zarcone (eds.) *Naqshbandis: Cheminements et Situations Actuelle d’un Ordre Mystique Musulman* (Istanbul, Paris: IFEA, 1990), pp. 209–20.

<sup>33</sup> Jadunath Sarkar, *Mughal Administration* (Patna, 1920), pp. 35–41.

them to Brahmin councils.<sup>34</sup> This final belief has proved the most durable, and, being embraced by scholars of Islamic law with little knowledge of Mughal administrative and documentary sources, it has acquired the status of truth merely by repetition, rather than research.<sup>35</sup>

While there are still occasional works produced on law in the Mughal empire,<sup>36</sup> the study of Islamic law in India has proceeded at a strange disconnect from Mughal history. The most fruitful work on the precolonial period has been about the proliferation of the non-juristic elaborations of a broader sense of the ‘right path’, or about the many other sources of norms that appear to have displaced *sharī‘a*-as-law almost entirely in the Indian subcontinent.<sup>37</sup> Predominantly, however, Islamic law in India tends to be studied from a post-diluvian point of view: its resurgence and reformulation following the damaging and destructive effects of the imposition of British colonial rule.<sup>38</sup> And while scholars recognise the novelty of the proliferating projects of pedagogy and pastoral care from the late nineteenth century, aimed at training a body of religious scholars capable of guiding an inward-looking community of pious Muslim individuals, they rarely explore whether Islamic law ever had a wider jurisdiction.<sup>39</sup> Also, notwithstanding the very long history of Islamic *imperial* law, scholars tend to study Islamic law *and* empires. This suggests that, despite denunciations of older Orientalist works, scholars implicitly hold the outlines

<sup>34</sup> Muhammad Bashir Ahmad, *The Administration of Justice in Medieval India* (Aligarh: Aligarh Muslim University, 1941), which also included a table of cases in a modern adversarial format, pp. 17–22; S. M. Ikram, *Muslim Civilization in India* (ed. Ainslee T. Embree) (New York: Columbia University Press, 1964), pp. 221–2.

<sup>35</sup> For examples, see Mouez Khalfaoui, ‘Mughal Empire and Law’, in *The [Oxford] Encyclopedia of Islam and Law. Oxford Islamic Studies Online*, www.oxfordislamicstudies.com/article/opr/t349/e0066, last accessed 04-Aug-2016; Scott Alan Kugle, ‘Framed, Blamed and Renamed: the Recasting of Islamic Jurisprudence in Colonial South Asia’, *Modern Asian Studies* 35: 2 (2001), 257–313, at 263; Ayesha Jalal, *Self and Sovereignty: Individual and Community in South Asian Islam since 1850* (London: Routledge, 2001), 139–52.

<sup>36</sup> S. P. Sangar, *The Nature of the Law in Mughal India and the Administration of Criminal Justice* (New Delhi: Sangar, 1998); M. P. Bhatia, *The Ulama, Islamic Ethics and Courts under the Mughals* (New Delhi: Manak, 2006). Bhatia is among the very few scholars after Muzaffar Alam to have made substantial use of Persian legal documents in Indian archives; he offers some very useful insights, including that of the mediating role of the *sadr* between the emperor and the *‘ulāma*.

<sup>37</sup> Muzaffar Alam, *Languages of Political Islam: India 1200–1800* (London: Hurst, 2004); Katherine Ewing, *Sharī‘at and Ambiguity in South Asian Islam* (Berkeley: University of California Press, 1988).

<sup>38</sup> Hallaq, *Sharī‘a*, pp. 371–88; Kugle, ‘Framed’; Rudolph Peters, *Crime and Punishment in Islamic law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), pp. 103–41, esp. 109–19 on India.

<sup>39</sup> Barbara Metcalf, *Islamic Revival in British India, Deoband, 1860–1900* (Princeton: Princeton University Press, 1982); Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of change* (Princeton, 2002); Justin Jones, ‘“Signs of Churning”: Muslim Personal Law and Public Contestation in Twenty-First Century India’, *Modern Asian Studies*, 44: 1 (2010), 175–200.