Journal of Policy Research, 9(1), 38-43.
https://jprpk.com
https://doi.org/10.5281/zenodo.7726279

# Anglicization of Legal Regime in Sub-Continent: A Historical Perspective

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**Abstract**
This article is related to the justice system of the sub-continent. It has been discussed in detail that justice is one of the basic rights of mankind. In the sub-continent, some of the rulers have their fame to provide justice to everyone on their doorstep. It not only examines the evolution of the codification of Islamic laws in the sub-continent during colonial rule but also how this codification influences the legal regime of the sub-continent and partially influences Islamic Law.
***Keywords*:** The legal system of the Salateen, the Mughals, the English East Inia Company, the evolution of codification, criminal law, and civil law

## 1. Introduction

This work is an attempt for understanding the impact of English law which has been exercised on the legal regime of the sub-continent. Undertaking this task, it has become significant to understand the legal legacy which has been started from the legal system of Muslims, firstly the legal system of Salateen of Dehli and then the Mughals who ruled India for almost 800 years and from early 1700 till 1857, the legal system of East India Company prevailed and it is vital to explain the legal system under the Crown which took over in 1857. Aurangzeb Alamgir brought tremendous legal reforms some of whose legal reforms were adopted by the Company as well as the Crown and Pakistan also inherited after independence and also prevail in our legal system. This work scrutinizes briefly the legal system of the Mughals in India and most particularly the tremendous legal reforms of Aurangzeb Alamgir which are also now part of the Pakistani and Indian legal system. It is also necessary to know the process of anglicization of the legal regime of the sub-continent under the legal system of the English East India Company which initially came to the subcontinent for commercial aims i.e. trade but later on the Company in disguise of Commercial activities occupied the vast areas of Mughal empire, eventually defeated local rulers colonizing in the sub-continent. How the Company crept into the administration of justice of the Mughals and how the anglicization's process of the laws was laid which were also inherited by India, Pakistan, and Bangladesh. What flaws were there in the anglicization process by the Company for the administration of justice in the subcontinent?

## 2. Early Legal history of the Sub-continent

The beginning of Muslim rule started in the sub-continent when the Muslims conquered Sindh in 712 C.E. First Islamic state was established by the Salateen in 1206 and ruled the sub-continent for 320 years (1206-1526) and the Mughals empire was established in 1526 and ruled the sub-continent for 331 years (1526-1857). Islamic law had been the law of the land during the reign of the Salateen and the Mughlas and the Muslim rulers followed the Hanafi school of thought in the judicial system. During the reign of Firoz Shah Tughlaq (790-1388), *Fiqh-e-Firoz Shahi* was compiled which was a Civil Procedure and was used by judges in the judicial dispensation. The compilation of *Fiqh-e-Firoz Shahi* was based on the material which was collected by Yaqub Muzzafar Kirami.[4] The foundation of the judicial system in the sub-continent was based on this book during the reign of the Salateen and even under the Mughals until substituted with the "*Al-Fatawa al- Alamgiriyah".* The judicial dispensation by the Mughal rulers had been used by the issuance of decrees and *Firmans.* The three extraordinary Mughal rulers like Akbar, Jehangir, and Aurangzeb were remembered in the legal history of the sub-continent for their legal reforms. Here, we discuss only Aurangzeb Alamgir's legal reforms some of whose legal reforms were adopted by the Company as well as the Crown and Pakistan also inherited after independence and also prevail in our legal system till day. It is necessary to mention here that having all three powers as the sole legislator, the chief judge and the chief executive of the land was concentrated by the Sultan at the same time.

### 2.1. Prominent legal reforms of Aurangzeb Alamghir

The compilation of *Fatawa al-Alamgiriyah* by Aurangzeb Alamghir which was also known as *Fatawa Hindiyah*[5] was a great contribution to the legal reforms in the sub-continent. It was compiled by "a Royal Commission of *'Ulama* under the supervision of Sheikh Nizam" of Lahore. This legal code reformulated the legal principles and prevailed in the sub-continent as a substantive law during the reign of Aurangzeb Alamghir and later by other Mughal emperors till the end of the Mughal rule.[6] N.E. Baillie translated the some of selected chapters of the *Fatawa* as *Digest of Moohummudan Law*[7]. During the Crown period, the *digest of Muhammdan law* was usually applied by Anglo-

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[4]Fukazawa, Hiroshi. "A Study Of The Local Administration Of Ādilshāhī Sultanate (AD 1489—1686)." *Hitotsubashi Journal of Economics* 3, no. 2 (1963): 37-67.
[5] See, "*Al-Fatawa al-Alamgiriyah*, 6 vols. Bulaq", 1310.
[6] Ahmad, Muhammad Basheer. *The Administration of Justice in Medieval India: A Study in Outline of the Judicial System Under the Sultans and the Badshahs of Delhi Based Mainly Upon Cases Decided by Medieval Courts in India Between 1206-1750 AD*. No. 1. Aligarh Historical Research Institute for Aligarh University, 1941, p. 41-42.
[7] Translated in part in 'N. E. Baillie's *Digest of Moohummudan Law on the Subjects to which it is Usually Applied in British Courts of Justice in India,* 2nd ed. Vol. 1, London, 1875. Also translated in part in N. E. Baillie, *Mohammadan Laws on Land Tax According to the Moohummudan Law: Translated from the Fatawa*

Muhammadan Judges in the sub-continent. However, Aurangzeb had done major legal reforms in the legal regime of the subcontinent. Initially, he started the system of "Remand" of the accused by the court to police custody.[8] The Kotwals (police) were ordered to attain a written order from the Qazi to hold a suspect under custody for investigation. Secondly, he directed that all criminal cases must be tried without interruption and any delay in the disposal of these cases cannot be tolerated. The kotwals were ordered to send the prisoners for hearing in the courts daily if after the first date of hearing the case was not taken up.[9] Thirdly, he issued a *Firman* (decree) that no one was to be taken into custody until *prima facie* legal evidence was available and that no prisoner was to remain in jail without a lawful charge.[10] Fourthly, he issued *Firman* (decree) that the public could also examine the record of the judicial matters and State record of rights to show transparency in administrative as well as judicial matters. Fifthly, *Vakil-e-Sarkar* (prosecutors) or *Vakil-e-Shara'* was appointed in the reign of Aurangzeb to defend suits against the State in every district[11] and these *Vakils* also had to give free legal advice to the poor. The appointment of *Vakil-e-Sarkar* was made by the Chief Qazi of the Province or sometimes by the "*Qazi-ul- Quzat"* (Chief Justice). Sixthly, written regulations ("*Zabath"*) on every subject were framed by Aurangzeb who ordered strict adherence to these regulations. These written regulations were in addition to his achieving the compilation of "*Al-Fatawa al-Alamgiriyah"*. Seventhly, the appeal system was also improved and reformed by Aurangzeb and he issued *Firman* that the parties should present their dispute before the local Qazi at the first instance and then filed the appeal before him against that decision.[12] Preparations of "Mahzarnamahs (records of judgments of higher Courts for circulation among the *Qazis* and *Muftis"*) was also one of great achievement in the reign of Aurangzeb[13] but unfortunately, no published record of these cases is available. Muhammad Basheer Ahmad has mentioned a manuscript, *Baqiatus Salehat*, which contains fifty judgments in the Persian language from 1550 to 1850.[14] It is interesting to note that most of the reforms of Aurangzeb were retained by the English when they codified laws in India in 1857. In addition, most of these reforms are now part of the legal systems of Pakistan, India, and Bangladesh.

This work will precisely try to scrutinize the structure of Courts during the Salateens and the Mughals period. There were lower and higher Courts for all types of cases. Death penalties pronounced by Courts had to be confirmed by the emperor himself who had to spare one day for judicial work. Every Court was empowered to decide both criminal as well as civil cases as per the dictates of Islamic law. Besides the mainstream Courts, there were special Courts and judges for specific cases such as the Qazi-e 'Askar or Military Judge and *Diwan-e Mazalim*. The *Fuqaha* (Muslim jurist) described the political and administrative cases as *Nazar fi al-Mazalim* which were sometimes secular. Furthermore, *Muhtasibs* or Ombudsmen were also appointed during the reign of the Salateen and the Mughals which were known as the institution of '*hisbah'*. Akbar and Aurangzeb presided over the court (*Diwan-i-Mazalim*) for one day of the week and hold this special court on Wednesdays in which petitions were received, complaints against officials were heard, and to which appeals could be made from other courts. Both used to sit in the *Diwan-i-Khas* which was filled with the judges "(*Qadis*), *muftis* (*'ulama*), the *kotwal"* or prefect of the city police, the superintendent of the law court ("*darogha-i-adalat"*) and the "*muhtasib"*. Confirmation of the emperor was necessary for all capital punishments. The administration of justice in the reign of Akbar and Aurangzeb Alamgir and holding the courts on a special day are highly appreciated by all European travelers.[15] The Mughals had *Qazis* or judges at every administrative unit of their state. There was the Chief Justice at the imperial capital, a provincial Chief *Qazi* or *Qazi-e Subha* in every province. A *Qazi-e* Sarkar (district) and *Qazi-e Perghana* (town). Other officers were appointed for the assistance of the "Chief Provincial *Qadi"* as a *Mufti*, a *Mohtasib*, *Darogha-e-Adalat-e-Subah*, *Mir'Adl*, Pandit[16] *Sawaneh Nawis*, and *Waqae Nigar*." Office of *Diwan-e-Subah* was also established which conducted the revenue and financial cases beside the court of the Chief Qazi of Subah (Chief Justice of the Province). Appeals usually went to the Governor but sometimes they would go to the "*Diwan-e-Alah"* in the Capital.

The Mughal Empire began to break apart when things went poorly administered and the potential role of the emperors to uphold individual rights or to do justice between subjects was weakened and their subordinates became too powerful against the decrees of the courts. The emperor was considered the "fountain of justice" and that's why the judiciary became merged with the emperor this judicial system was always discouraged by Islam and the early Caliphs. The stability of the Mughal rule in the sub-continent was to build up an efficient administrative system in their provinces through Governors who were also supervising corrupt judicial officials. This situation had become worse when every judicial official started to try every kind of case.[17] In 1772, the English official also mentioned this drastic situation, "Abuses in the administration of Justice were to be imputed rather to the corrupt principle of the

*Alumgeeree*, Lahore" 1979.

[8]Khan, *Mir'at I*, p. 278-282.

[9] Ibid, p. 282-283.

[10] It is not clear "whether it is a mere coincidence or otherwise that when Aurangzeb was issuing these regulations in India in 1679, the British Parliament was enacting the Habeas Corpus Act for England".

[11] Ahmad, *The Administration*, pp. 163-4, 191, 218. "They used to receive a fee of Rupee one daily". See, Khan, *Mir'at Supplement*, p. 149.

[12] For more details see, Ahmad, *The Administration*, p. 266-268.

[13] Ibid, p. 188.

[14] Ibid., p. 37.

[15] Foster, William, ed. *Early travels in India, 1583-1619*. H. Milford, Oxford university press, 1921, p. 72-73.

[16] Report of the "Committee of the House of Commons, 1772-1773, vol. IV, p. 326".

[17] Husain, Afzal. "Provincial Governors under Akbar (1580-1605)." In *Proceedings of the Indian History Congress*, vol. 32, pp. 269-277. Indian History Congress, 1970.

Muhammadan and Gentoo (Hindu) Judges than to any defects in the Law or the regulations of the courts."[18] Under this situation, a Royal Farman was issued and the English East India Company was appointed Diwan of the Subah of Bengal in 1765 and the fate of Muslim India had changed forever.

### 2.2. Anglicizing the Legal System of the sub-continent by the English East India Company[19]

The English East India Company (EEIC) had obtained from Queen Elizabeth a charter of exclusive rights to trade in the Eastern seas in 1600 and came to Bengal in 1604.[20] The foundations of the early English legal system were laid down in Mofussil and later half of the 17th century in the three "Presidency towns of Madras, Bombay, and Calcutta". The Company secured the "*Zemindari* of these three villages" Calcutta, Sutanati, and Govindpur for an annual revenue of 1195 rupees, from "Prince Azimushan, Grandson of Aurangzeb, Subahadar (governor) of Bengal". The three villages became the city of Calcutta in 1690 (now Kolkata since 2001). The company succeeded to acquire a legal and constitutional status within the framework of the Mughal administrative machinery through the *Zamindari* rights. The company entrusted the responsibilities of revenue collection and other judicial functions in criminal and civil cases to an English officer who was also known as a "Collector".[21] In other words, the official of the EEIC was now deciding civil and criminal cases of Indian litigants living in his jurisdiction but confirmation by the Nawab in Capital nature cases and appeals in civil cases had to lay to him and this system of administration of justice prevailed till 1726.

In 1765, the company was transformed from a commercial body into the Indian subcontinent territorial power when the Mughal emperor Shah Alam granted the Diwani or right to collect revenue of "Bengal, Bihar, and Orissa for an amount of 26 lacs of rupees per annum".[22] Even though, the company had acquired the right to collect revenue directly from the people but had not acquired sovereign powers yet and was trying to show that its administration was within the Mughal Law. As Diwan, the Company also controlled and collected customs.[23] Although native officials were exercising functions in administration, they were supervised by the Company officials. The Company assumed full responsibility for collecting revenue itself in 1771. In 1772, when Warren Hasting took over the Diwani functions from the Nawab of Bengal, he improvised a judicial system in the provinces of "Bengal, Bihar, and Orissa" and divided them into various districts with district Adalats and Sadar Diwani and Nizamat Adalat at the apex. Furthermore, the main aim under the 1772 plan, an English was appointed as head/collector in each district as a judge for the Mofussil Diwani Adalat. The civil matter cases would solve in accordance with the native laws. The cases would solve separately according to the laws of Muslims and Hindus and follow the Qur'an in the case of Muslims and Shaster for Hindus. For criminal cases, a *Mofussil Faujdari Adalat* was headed by the collector in each district with the help of Qazi and two Molvies who had knowledge of Islamic law. In case of the death sentence, the case would be solved in Sadar Nizamat Adalat after consultation with Nawab.[24]

The existing pattern of administration of justice was soon modified as "the Regulations of 1793 referred to 'Hindu Law' and 'Mohammedan Laws".[25] Under the regulations, the natives in the case of Muslims, The Collector was to be advised by *Qazi* and in the case of Hindus, by a *Pundit*. Small Causes Adalats headed by the head farmer was also established in each *pargana* (town) to decide matters up to ten rupees. Calcutta was a colonial city developed by the English East India Company, King George III issued a Charter upon the Supreme Courts were established in 'Madras in 1801 and in Bombay in 1824". The company secured the Nizamat (the right of administration and criminal justice) from the shadowy authority of the Nawab. The transfer of power from the Nawab in the criminal justice system into the company's hands was thus made it complete and final.[26] Meanwhile, the Company was supervising the *Faujdari Adalat* (criminal courts). On December 3, 1790, the administration of the criminal justice system was taken from "the Muslim *Qazis*, *Muftis* and *Maulavis"* and was given in the hands of the Company's English servants.[27] The company also took civil administration justice system in 1772. The courts of magistrates established in every district above them were "the courts of the circuit and the ultimate court was the "*Sadar Nizamat Adalat*" under the new criminal justice system. Under the regulating Act of 1773, the Governor General and the Council were to sit as judge of "*Sadar Nizamat Adalat"* and native Muslim Law officers were appointed to advise the above courts. The Supreme court in Calcutta had been authorized under the 1773 Regulations to appoint to "approve, admit and enroll such and so many advocates and attorneys at law". However, these were only English, Irish, and Scottish attorneys and solicitors. The Supreme Courts of "Bombay and Madras" had been also authorized to enroll attorneys but no native Indian Lawyer had a right to appear before the courts.[28] Under the Cornwallis Code of 1793, enrollment of 'pleaders or *vakeels*, both

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[18] Range A, *Report of the Committee of Circuit 1772*, Vol. 19, p. 371.

[19] Munir, Muhammad. "The Judicial System of the East India Company: Precursor to the Present Pakistani Legal System." *Annual Journal of International Islamic University, Islamabad* 13 (2011): 53-68.

[20] Wheeler, James Talboys. *India Under British Rule: From the Foundation of the East India Company*. Macmillan and Company, 1886, p, 1.

[21] Samiuddin, Saba. "The Study Of The Calcutta Zamindari Of East India Company In Bengal In Its Early Phase." In Proceedings of the Indian History Congress, vol. 42, pp. 344-354.Indian History Congress, 1981.

[22] Lees, James. "Retrenchment, reform and the practice of military-fiscalism in the early East India Company state." *The political economy of empire in the early modern world* (2013): 173-191.

[23] Archbold, *Outline*, p. 47.

[24] Parikh, Madhuri. "Tortious Libility for Environmental Harm: A Tale of Judicial Craftmanship." *Nirma ULJ* 2 (2012): 75.

[25] Rankin, George. "Custom and the Muslim law in British India." *Transactions Grotius Soc'y* 25 (1939): 89.

[26] Aggarwala, Rama Nand. *National Movement and Constitutional Development of India*. Metropolitan Book Company, 1959, p, 37,38.

[27] http://southasiajournal.net/judicial-system-of-mughal-and-british-india/ (last visited on 27-05-2022)

[28] V. D. Kulshreshta, *Landmarks in Indian Legal and Consistitutional History*, B. M. Gandhi ed., Estern Book Co., Lucknow, 2005, p. 475. (Hereafter Kulshreshta, *Landmarks*).

Hindus and Muslims", for all Company's courts had made it a regular profession and also authorized the *Sadar Diwani Adalat* for that appointments.

In 1687, it was decided that in all cases the judge of the Mayor's Court in Madras does act according to "justice, 'equity and good conscience". These principles of English law were also part of the Charter of 1726 and later Charters.[29],[30] In 1833 the Privy Council was established and in 1858, the Company was replaced by the Crown. The Privy Council held in 1886 that the formulas "justice, equity, and good conscience' or 'justice and right" implied the application of English law. In 1861, High Courts were created in "Calcutta, Madras, and Bombay". In 1937 a Federal Court was created. The EEIC was replaced by the Crown in 1857 and the codification of laws started in 1858. The bulk of statutory laws that is in operation in Pakistan, India, and Bangladesh that is, the Code of Civil Procedure (CPC), the Code of Criminal Procedure Cr.P.C. 1898, the Contract Act, etc. are originally from that era. These statutes were based on English law.

The introduction of precedent was the most vital indicator to shape the foundations of law in India and Pakistan. Dorin, a judge of the EEIC, advocated in 1831 that in India statutory force should be given to the English doctrine of precedent. "Section 212 of the Government of India Act, 1935" gave statutory force to the Precedent. It laid down that the decision of the "Privy Council and the Federal Court" would be binding upon the courts in India. Thomas Babington Macaulay (d. 1859) asserted that the British aimed to foster a group of educated men, "Indian in blood and color, English in taste, in opinions, in morals and intellect."[31] It would in no way be an exaggeration to say that with the substitution of "Muslim" for "Indian", and "Modern" for "English", the statement was and remains prophetically accurate. *"Muslim in blood and color, Modern in taste, in opinions, in morals and intellect".* Law was Anglo-Indian and Islamic law was Anglo-Muhammadan law. The precedent deprived the Indian *Mufti* of playing any role in the judicial process. Once the "Anglo-Muhammadan law" was enshrined in the doctrine of precedent the sources of legal authority were transformed. The Anglo-Muhammadan lawyer now looked at the decisions of the higher courts, that is, the Federal Court and the Privy Council, instead of juristic authorities and classical sources. The precedent brought in the structural and permanent transformation to the shaping of the Indo-Pak legal system as decisions of higher courts were binding. This was never the practice of courts in the Salatin and the Mughal era.

Early law reporting in India under the Company's Courts was done by private individuals. Various judges, mostly retired ones, used to compile selected judgments and published them as law reports. The Indian Law Reports Act, 1875 started the era of authentic law reporting. There are two main indispensable requirements are attached to the doctrine of precedent, the hierarchy of courts, and the emergence of authentic law reporting was fulfilled in 1875. A series of "Indian Law Reports (I.L.R.)" of each High Court started. "Bombay, Madras, and Allahabad" started in 1876. The "Privy Council" had earlier declared in *Mata Prasad v Nageshwar Sahai*[32] that "it is not open to the courts in India to question any principle enunciated by this Board, although they have a right of examining the facts of any case before them to see whether and how far the principle on which stress is laid applied to the facts of the particular case. Nor is it open to them, whether on account of 'Judicial dignity' or otherwise, to question its decision on any particular issue of fact." The High Courts in then India held in several cases that subordinate courts were bound by the decisions of the High Courts even if the lower courts did not agree with the correctness of a particular decision.[33]

Asif Ali Fyzee has mentioned many cases decided by the Privy Council then the highest court of appeal for India, where Islamic law was apparently abrogated by custom.[34] He argues that "it is well established in India that custom if proved according to law, may vary a definite rule of Shariat. Such for example are the custom of the Punjab, under the *riwaj-i-am* (Persian, common custom of the realm)."[35] That the test for a custom to be binding in India was different than the one applied in England as is seen in the speech of M. R. Jayakar in *Mussamat Subhani v Nawab.*[36] He argued that "what is necessary to be proved is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule of the particular district."[37] Another case involving custom is *Mian Saleh Mohammad Shah v Syed Zawar Hussain Shah*[38] in which it was held that by the customary law as declared by the "*riwaj-i-am"* of the Jang district of the Punjab, applicable to Sayyads, an unmarried sister, who had two married sisters and whose succession was traced from her only brother, in the absence of collaterals succeeded to the property "till marriage", and until she married she was only a limited owner; her interest did not extend beyond her life, and she had no general right to alienate and no absolute or heritable interest in any part of the property. Similarly, in *Roshan Ali Khan v Chaudhry Asghar Ali*[39]

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[29] Minattur, Joseph. "Legal Systems in British Indian Settlements." *Journal of the Indian Law Institute* 15, no. 4 (1973): 582-593.

[30] Bibi, C., Ashfaq, Q. U. A., & Ayesha, G. (2022). The Binding Force of Precedent under the Shadow of the Legal Reasoning of the WTO Dispute Settlement Understanding (DSU) Mechanism. *Journal of Policy Research (JPR)*, *8*(4), 344-349.

[31] See, Macaulay's Act "Minute upon Indian Education" (1835) and the short term impacts it had on the education system in India – History and Travel (wordpress.com) (last visited:25 May2022).

[32] AIR 1925 PC 272, 279: 52 I.A. 398, 417.

[33] *Ramaswamy v Chandra Kotayya*, A.I.R. 1925, Mad. 261; *Dhondo v Mishri*, A.I.R. 1936 Bom, 59; *Vinayak v Moreshwar*, A.I.R. 1944 Nag. 44-49; *Bankelal v Batra*, AIR 1953 All 747.

[34] Asaf Ali Fyzee, "The Impact of English Law on the Shariat in India", *Egyptian Review of International Law*, vol. 18(1962), 1-27.

[35] Ibid., at 17-18.

[36] (1940) 68 In. Ap. 1.

[37] Ibid., p. 14.

[38] (1943) 71 In. Ap. 14.

[39] (1929) 47 In. Ap. 29.

the Privy Council held that the custom alleged by the plaintiff was sufficiently established. This is a clear case of custom being allowed to overrule Muhammadan law.

As mentioned above the Company acquired one way or the other the revenue, Diwani, legal system, as well as the sovereignty over many areas of Indian land. Although the Company had introduced a Court system for all the people it ruled but the Company and its officials were mostly taking care of their interests over the interest of the locals. By the time the Company acquired land and had to administer justice, many influential English officials of the Company were advising the British Parliament on what type of legal system would be better for the colony. Some were of the view that English law shall be made applicable whereas others preferred Hindu law as better suited. Sir Archibald Galloway (d. 1850), who has been a Major General and a Director in the Company, had completely dismissed these two ideas as unsuitable for India.[40] Sir Galloway asserted that two sources are available for his study, the Indian History and the law of conquerors who ruled over this region for almost eight centuries. As for the history of the country, he found out that Hindus have never had any central rule right from 300 BC till to date; that they remained subjects of 'Moohummudan rule' and the Persian empire; and that during the rule of later one they used to live under independent kingdoms as each nation was allowed to follow their customs and laws as per the code of Manu. He denies the existence of laws delivered by Manu and opines that even a single word therein is not written by Menu himself, therefore, he concludes that the code is missing divine nature as well as its "antiquity rendered very doubtful".[41] Thus, he concluded that a suspicious document should never be considered a suitable source for reliable study. Sir Galloway proves the nonexistence of a central Hindu government, in addition to the absence of an authentic and agreed upon code of law of Hindus, therefore, he looks at the law of conquerors to inspect the existence of any possibility for the survival of Hindu laws and cultural norms throughout eight centuries of Muslim rule! Sir Galloway reasons that it is from impossible to very difficult for Hindu law to continue during the rule of Muslims in the subcontinent on the one hand and on the other hand, there are huge differences and contradictory customs in various Indian tribes, most of them are not known to even Hindus or are forgotten or are not applicable because these are brutal and irrational. Nonetheless, if Hindu law is accepted, Sir Galloway asked, which Hindu law does the Parliament mean: Hindu law of Bengal or Behar? It is for this reason that Sir Galloway strongly recommended that the British Parliament shall officially recognize only 'Moohummudan law' which had existed and was used in India for 800 years as the Indian law and legislation. He asserted that 'Moohummudan law' shall be the only public written law of India; that it shall never be abolished by the Company but rather be recognized. In his view, Hindu law had neither any legal value even to Hindus nor it had been 'uniformly administrated' by any government throughout India. Sir Galloway argued that the language of Islamic Law, i.e., Arabic, has more potential in defining a legal term more accurately and can be described in a 'more perfect and better fitted for grammatical and logical reasoning', which according to him indicates the superiority of 'Moohummudan law' over the English and Roman laws; that the corpus of Islamic jurisprudence "has no equal" in any other law; that further clarifies that this discipline, elaborates logical and analogical reasoning by showing 'similitude of things', as well as displaying the distinctions between what appears similar but still 'human mind is capable of perceiving' it. In his view, English law is 'far behind' to reach this level of accuracy and preciseness.

## 3. Conclusion

The process of Anglicization of Islamic law through codification, translation, and legislation under the English legal system shows that Islamic law under the English judicial system was significantly changed. The outcome of the interaction between substantive Islamic law and procedural English law was a hybrid legal system Anglo-Muhammadan law. It was later renamed as Muslim Personal Law. This process of Anglicization was based on processes of legislation, translation, adjudication, codification, and legal commentaries. The whole process of Englicising of Islamic law in British India was based on interaction, cooperation, and negotiation between the colonial administrators and native Muslims, especially in the case of translations of Islamic texts. However, the translation of Islamic legal texts abolished the role of 'ulamā' over time and eventually they were replaced by lawyers trained under the British education system and became free to apply their laws without hesitation.

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*Bankelal v Batra*, AIR 1953 All 747

[40] Galloway, Archibald. "observations on the law and constitution: and present government of India, on the nature of landed tenures and financial resources, as recognized by the Moohummudan law and Moghul government, and with an inquiry into the administration of justice, revenue, and police, at present existing in Bengal". Parbury, Allen & Company, 1832.

[41] Ibid., p. 11.

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*Dhondo v Mishri*, A.I.R. 1936 Bom, 59;

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