

# A NOTE ON LAWYERS IN MUSLIM INDIA

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RELATIVELY LITTLE IS KNOWN about the operation of legal systems in India during the period of Muslim political dominance, primarily because most disputes were settled outside of the courts that were maintained by the ruling powers. Even during the Mughal period, when the government was more highly centralized than at any other time before the British conquest, Mughal law enforcement seldom reached the village level. Only in cases where there had been a very considerable breach of the peace, or where the revenue of the village had not been paid, were villagers likely to come into contact with Mughal law enforcement officials. One reason why the Mughal legal system was relatively undeveloped in the rural areas was that the Mughals possessed neither the manpower nor the means of communications that would enable them to staff and operate such a system of courts extensive enough to provide convenient access to the villagers.

A much more important factor, however, was that there was little need for the Mughals to establish such a system, since more localized and largely customary structures for settling disputes and keeping the peace existed almost everywhere, and operated independently of the Mughals. Intravillage disputes and infractions of local rules would be settled within the village, and disputes among members of the same caste might be settled by the caste *panchayat* or by a member of the ruling group of the area, who also might be called upon to settle inter-village disputes. In northern India, political control often was exercised at the subdistrict level by lineages, and members of these ruling lineages would be called upon to settle intervillage and other disputes that could

not be worked out at the village level.<sup>1</sup> In Bengal, a similar function was performed by the *zamindars*, whose courts continued to provide a major outlet for settling disputes with the *zamindaris* even during the 19th century.

It appears, then, that at least at the *pargana* level and below, Mughal justice was much less significant than the customary law and methods of dispute-settling of a particular area. As far as we know, lawyers were not employed in these local and often informal courts, so the question of the role of lawyers during the Sultanate and Mughal periods is relevant primarily for the administration of justice within the relatively circumscribed upper levels of a complex system.

Specifically, Mughal courts appear to have dealt largely with cases involving townspeople because the courts were located in towns and traveling to them often was a difficult undertaking, and because the towns did not have as fully developed systems for settling disputes outside of the courts. Perhaps another factor was that the proportion of Muslims was much larger in the towns than in rural areas throughout most of India, and so the decisions that emanated from courts that were dominated by Muslims may have been acceptable to a larger portion of the urban population. Those cases that were brought before the Mughal courts that did not involve townspeople usually involved men of considerable status, and could not be settled at the local level.

Even when we confine our inquiry to the system of Mughal courts, there is some question as to whether lawyers played an important role. In fact, a very good historian once maintained that there was no group of professional lawyers during the Mughal period, and that plaintiffs and defendants had to plead their own causes in the Mughal courts.<sup>2</sup> More recent investigations have indicated, however, that there were people who performed some of the functions of modern lawyers, although the activities of these legal representatives were not as well defined or as widespread during the Mughal and pre-Mughal periods as they were to become during the period of British rule.

These men, who sometimes acted as lawyers, were known as *wakils*, but the term did not have the precise legal definition that it acquired during the British period. H. H. Wilson defined a *wakil* as, "A person invested with authority to act for another, an ambassador, a representa-

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1. See Bernard S. Cohn, *Some Notes on Law and Change in North India*, in *LAW AND WARFARE* 139-42 (Paul Bohannan ed. 1967).

2. W. H. MORELAND, *INDIA AT THE DEATH OF AKBAR* 33 (1962).

tive, an agent, an attorney.”<sup>3</sup> It is in this very general sense that the word was current in pre-British times; only on rare occasions do we find the term *wakil* used to describe someone who pleaded a case in a court of law.

A *wakil* was, then, a representative, although not necessarily a legal representative. In general, his job was to negotiate with equals or superiors of his employer, in order to obtain a desired goal, such as trading privileges, a reduction of the revenue demand, a military alliance, or a favorable decision in a civil or criminal court of law. In many cases a *wakil* was also a gatherer of information. Thus, most important nobles, landholders, and foreign trading companies employed *wakils* whose job was to attend the court of the governor of the province in which they were situated (or perhaps even the emperor's court) in order to collect information that might be useful, as well as to represent the interests of their employers when disputes between nobles arose, or when a favor from the governor was needed.

For example, the British East India Company employed a *wakil* at Murshidabad during the first half of the 18th century whose principal function was to negotiate for trading privileges in Bengal. He appears to have devoted most of his time to bargaining over the amount of tribute that the East India Company would have to pay to the Mughal government, and to determining the value of the presents that the Company would have to give to various Mughal officials in order to continue to trade unmolested. At the same time, however, the *wakil* was expected to come to the aid of a representative of the Company who got into trouble with the authorities at Murshidabad, usually by pleading his case before the governor or one of his subordinates.

Most of the *wakils* described in historical accounts, then, were specialists in the arts of bargaining, negotiation, and pleading cases; but usually they did not work in law courts, and often they were not even concerned with legal matters. However, there were some *wakils* who were courtroom lawyers, although not as many as there were in contemporary Europe. Describing mid-17th century India, the French traveler, Francois Bernier, remarked that, “They have fewer lawyers, and fewer lawsuits, and those few are more speedily decided.”<sup>4</sup>

Although Bernier was attracted by the relative simplicity of the system of Mughal courts and the speed with which decisions were made,

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3. H. H. Wilson, in *A GLOSSARY OF JUDICIAL AND REVENUE TERMS* 384 (A. C. Ganguly & N. D. Basu eds. 1940).

4. Francois Bernier, in *TRAVELS IN THE MOGUL EMPIRE* 236 (A. Constable ed. 1968).

he said that justice seldom prevailed, partly because there were fewer laws, lawyers, and legal procedures. Consequently, bribery of both judges and witnesses was common. Only the poor might obtain just decisions based upon true evidence: "In Asia, if justice be ever administered, it is among the lower classes, among persons who, being equally poor, have no means of corrupting the judges, and of buying false witnesses."<sup>5</sup>

Although Bernier probably exaggerated, we might surmise that to the extent that bribery was the best means of obtaining a favorable decision in a court of law, the job of a *wakil* who presented a case may have been as much to purchase the services of witnesses as to argue the case before the judge. The legal arguments of the *wakil* also must have been important, however, particularly in cases that involved the state, or in cases where both parties possessed the power and resources to obtain any witnesses they might need.

During the reign of Aurangzeb, it was decided that the government should employ *wakils* to represent its own interests. According to Khafi Khan, "A *wakil-i-shar'ai* for the emperor 'Alamgir was appointed in every city and *subah*, and in other areas, so that he might sit together with the Qazi in the court of justice."<sup>6</sup> We have evidence from mid-18th-century documents that the practice of appointing government *wakils* was continued.<sup>7</sup> Their duties appear to have been to conduct suits on behalf of the government, to facilitate the execution of decrees obtained by the state, and to act as legal advisers to the poor.<sup>8</sup> The last duty mentioned suggests that the Mughals were aware of the difficulties that a poor man might encounter in the courts, especially if he were to become involved in legal difficulties with a richer and more powerful man.

In summary, it would appear that there were some very specialized legal practitioners in Mughal India, but that most *wakils* operated within a wider framework as representatives and bargainers for their clients.

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5. *Id.* at 237.

6. Khafi Khan, in *MUNTAKHAB AL-LUBAB* 252 (Maulawi Kabir al-Din Ahmad ed. 1874).

7. 'Ali Muhammad Khan, *MIRAT-I-AHMADI* 149 (Syed Nawab 'Ali ed. 1928); and M. B. AHMAD, *THE ADMINISTRATION OF JUSTICE IN MEDIEVAL INDIA* 165 (1941).

8. AHMAD, *supra* note 7, at 165-66.