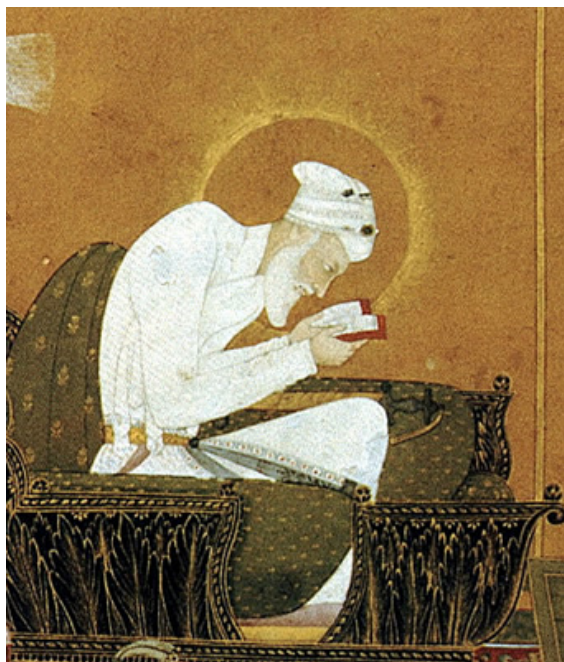


Fatawa-e-Alamgiri



The sixth Mughal Emperor Aurangzeb who commissioned the Fatawa-e-Alamgiri.^[1]

Fatawa-e-Alamgiri (also known as Fatawa-i-Hindiya and Fatawa-i Hindiyya) is a compilation of law created at the insistence of the Mughal Emperor Aurangzeb (who was also known as *Alamgir*). This compilation is based on Sunni Hanafi Islam's Sharia law, and was the >

In order to compile Fatawa-e-Alamgiri, Aurangzeb gathered 500 experts in Islamic jurisprudence (*Faqih*), 300 from the South Asia, 100 from Iraq and 100 from the Hejaz (Saudi Arabia). Their work over years, resulted in an Islamic code of law for South Asia, in late Mughal Era. It consists of legal code on personal, family, slaves, war, property, inter-religious relations, transaction, taxation, economic and other law for a range of possible situations and their juristic rulings by the Hanafi jurists of the time.

The Fatawa-e-Alamgiri is notable for several reasons:

- It spanned 30 volumes
- It served as the basis of law and doctrine imposed by Aurangzeb throughout his empire by early 18th century
- It created a legal system that treated people differently based on their religion, social class and economic status.^{[1][2]}

1 Discussion

The Fatawa-i Alamgiri (also spelled Fatawa al-Alamgiriyya) was compiled in late 17th century, by 500 Muslim scholars from Medina, Baghdad and South Asia, in Delhi (India) and Lahore (Pakistan), led by Sheikh Nizam Burhanpuri.^[3] It was a creative application of Islamic law within the Hanafi fiqh.^[1] It restricted the powers of Muslim judiciary and the Islamic jurists ability to issue discretionary fatwas.^{[3][4]}

The document stiffened the social stratification among Muslims.^[5] For the same crime, it declared that Muslim nobles such as *Sayyids* were exempt from prison, humiliation as well as physical punishments, the governors and landholders could be humiliated but not arrested nor physically punished, the middle class could be humiliated and put into prison but not physically punished, while the lowest class commoners could be arrested, humiliated and physically punished.^[1] The emperor was granted powers to issue *farmans* (legal doctrine) that overruled fatwas of Islamic jurists.^[3]

In substance similar to other Hanafi texts,^[6] the laws in Fatawa-i Alamgiri describe, among other things, the following.

1.1 Criminal and personal law

- personal law for South Asian Muslims in 18th century, their inheritance rights,^[7]
- personal law on gifts,^[8]
- apostates neither have nor leave inheritance rights after they are executed,^[9]
- the guardian of a Muslim girl may arrange and force her to marry against her will,^[10]
- a Muslim boy of understanding (who has reached puberty), required the consent of his guardian to marry.^[11]
- laws establishing the paternity of a child arising from valid or invalid Muslim marriages^[12]
- a Muslim man with four wives must treat all of them justly, equally and each must come to his bed when he so demands.^[13]
- distinction in property rights between Muslims and non-Muslims,^[14]

- **hudud** punishments for the religious crime of **zina** (pre-marital, extra-martial sex) by free Muslims and non-Muslim slaves. It declared the punishment of flogging or stoning to death (**Rajm**), depending on the status of the accused.^[15]

1.2 Pillage and slavery

- two or more Muslims, or persons subject to Muslims, who enter a non-Muslim controlled territory for the purpose of pillage, and thus seize some property of the inhabitants there, and bring it back into the Muslim territory, that property would be legally theirs.^[16]
- the right of Muslims to purchase and own slaves,^[17]
- a Muslim man's right to have sex with a captive slave girl he owns or a slave girl owned by another Muslim (with master's consent) without marrying her,^[18]
- a Muslim master's right to acknowledge or decline recognition children born to slave girls - a recognition that affected whether the slave's children would have any inheritance, the inability of infidels (non-Muslims) to inherit,^[19]
- no inheritance rights for slaves,^[20]
- the testimony of all slaves was inadmissible in a court of law^[21]
- slaves require permission of the master before they can marry,^[22]
- a unmarried Muslim may marry a slave girl he owns but a Muslim married to a Muslim woman may not marry a slave girl,^[23]
- conditions under which the slaves may be emancipated partially or fully^[24]

The Fatawa-e-Alamgiri also formalized the legal principle of *Muhtasib*, or office of censor^[25] that was already in use by previous rulers of the Mughal Empire.^[11] Any publication or information could be declared as heresy, and its transmission made a crime.^[11] Officials (*kotwal*) were created to implement the Sharia doctrine of *hisbah*.^[11] The offices and administrative structure created by Fatawa-e-Alamgiri aimed at Islamisation of South Asia.^[11]

2 Impact

Fatawa-i Alamgiri became the reference legal text to enforce Sharia in colonial south Asia in the 18th century through early 20th century.^[26] The document created a school of orthodox Islamic law specialists in India, particularly after the death of Aurangzeb. As the power

shifted from Muslim rulers in India to colonial Britain, the colonial authorities decided to retain local institutions and laws, to operate under traditional pre-colonial laws instead of introducing secular European common law system.^[26] Fatawa-i Alamgiri as the documented Islamic law book, became the foundation of legal system of India. Further, the English-speaking judges relied on Muslim law specialist elites to establish the law of the land, because the original Fatawa-i Alamgiri (*Al-Hindiya*) was written in Arabic. This created a social class of Islamic gentry that jealously guarded their expertise, legal authority and autonomy. It also led to inconsistent interpretation-driven, variegated judgments in similar legal cases, an issue that troubled British colonial officials.^{[26][27]}

The colonial assumption was that the presumed local traditional sharia-based law, as interpreted from Fatawa-i Alamgiri, could be implemented through British-style law institution with integrity.^{[26][28]} However, this assumption unravelled in the 2nd half of 19th century, because of inconsistencies and internal contradictions within Fatawa-i Alamgiri, as well as because the Aurangzeb-sponsored document was based on Hanafi Sunni sharia. Shia Muslims were in conflict with Sunni Muslims of South Asia, as were other minority sects of Islam, and they questioned the applicability of Fatawa-i Alamgiri.^[26] Further, Hindus did not accept the Hanafi sharia-based code of law in Fatawa-i Alamgiri. Thirdly, the British belief in "legal precedent" was at conflict with disregard for "legal precedent" in Anglo-Muhammadan legal system that emerged, leading colonial officials to distrust the *Maulavis* (Muslim religious scholars). The British colonial officials responded by creating a bureaucracy that created separate laws for Muslim sects, and non-Muslims such as Hindus in South Asia.^[26] This bureaucracy relied on Fatawa-i Alamgiri to formulate and enact a series of separate religious laws for Muslims and common laws for non-Muslims (Hindus, Buddhists, Jains, Sikhs), most of which were adopted in independent India after 1947.^[28]

The British tried to sponsor translations of Fatawa-i Alamgiri. In late 18th century, at the insistence of the British, the *al-Hidaya* was translated from Arabic to Persian. Charles Hamilton^[29] and William Jones translated parts of the document along with other sharia-related documents in English. These translations triggered a decline in the power and role of the *Qadis* in colonial India.^[30] Neil Baillie published another translation, relying on Fatawa-i Alamgiri among other documents, in 1865, as *A Digest of Mohummudan Law*.^{[26][31]} In 1873, Sircar published another English compilation of Muhammadan Law that included English translation of numerous sections of Fatawa-i Alamgiri.^[32] These texts became the references that shaped law and jurisprudence in colonial India in late 19th and the first half of 20th century, many of which continued in post-colonial India, Pakistan and Bangladesh.^{[26][28]}

3 Contemporary comments

Burton Stein states that the Fatawa-i-Alamgiri represented a re-establishment of Muslim *ulama* prominence in the political and administrative structure that had been previously lost by Muslim elites and people during Mughal Emperor Akbar's time. It reformulated legal principles to defend Islam and Muslim society by creating a new, expanded code of Islamic law.^[2]

Scholars^{[33][34][35]} state that the British colonial efforts to translate and implement Sharia from documents such as the Fatawa-e Alamgiri had a lasting legal legacy during and in post-colonial South Asia (Pakistan, India and Bangladesh).

Mona Siddiqui notes that while the text is called a *fatawa*, it is actually not a fatwa nor a collection of fatwas from Aurangzeb's time.^[36] It is a *mabsūts* style, *furū al-fiqh*-genre Islamic text, one that compiles many statements and refers back to earlier Hanafi sharia texts as justification. The text considers contract not as a written document between two parties, but an *oral* agreement, in some cases such as marriage, one in the presence of witnesses.^[36]

4 See also

- Fatawa-e-Razvia
- Mukhtasar al-Quduri
- Sharia
- Mughal Empire
- Delhi Sultanate
- Hudud
- Khums
- Qisas
- Radd al-Muhtar ala al-Dur al-Mukhtar
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