

## Understanding Ecology Issues and Finding their Islamic Solution

Farhat Naseem Alvi\*

Afshan Noreen\*\*

Everything in the Universe has a unique purpose and nature of work. A universe is a community of living organisms (plants, animals, and microbes) in conjunction with the nonliving components of their environment (things like air, water and mineral, soil), interacting as a system. Many components of the environment combine together to make this earth live for other organisms. Our earth is composed of four types of layers; air, water, soil and rock. Different types of gases are also the main source of organisms to live. Oxygen, nitrogen, hydrogen and carbon dioxide are also present in different proportion in air. All the things regulate in their proper and balance manner. It is important to recognize that all the living and nonliving component of an eco-system interact with each other.(1) The way in which human beings animals and plants are related to one another and to their surroundings is known as environment.(2) In the Light of Islam the word “ecology” or “environment” has been used in different meanings. In Arabic language, the root word used for ecology is “علمالتيب” which lexically mean surroundings.(3) Islam teaches us the basic and important lesson that we should be moderate in our every action. It is the man who needs to manage and understand the nature of creatures and things which are created in the world by Allah as the vicegerent of Allah and being superior to all the creatures. Allah has subjected everything to man present in the nature as it is narrated in the Quran:

﴿الْمُتَرَوِّا۟ اِنَّ اللّٰهَ سَخَّرَ لَكُم مَّا فِى السَّمٰوٰتِ وَمَا فِى الْاَرْضِ﴾ (4)

Do ye not see that Allah has subjected to your (use) all things in the heavens and on earth?

In the context of this verse, man would interrupt environment by using different technologies, but it is his duty to look after the things in the world. For this, he is required to understand the balance lying among the things. The disruption of this balance due to any negligence, and harmful activities will lead to disastrous situation. Pollution is becoming one of the basics and major problem now a day due to the continuous interruption of man's in his surroundings. Pollution can be described as any substance in the environment which has adverse effects on human health, quality of life

\* Assistant Professor, Dept. of Islamic Studies, University of Sargodha, Sargodha, Pakistan

\*\* Research Scholar, Dept. of Islamic Studies, University of Sargodha, Sargodha, Pakistan

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**The rapid Justice:**

Justice has great importance in society. Without it, society is like a jungle and war. Unfortunately, the struggle for getting justice in our country is not only costly but also very slow. People cannot get quick reward from existing system. So there is informal justice or the parallel judicial system in Pakistan. It is dire need to make this system fast, simple and easy.

**Conclusion:**

This custom is practiced nearly in every part of Pakistan. But it is mostly in pathan tribes. Its main theme is to resolve the severe disputes. The main victim of this tradition is woman. It is illegal and un-Islamic tradition. Although, the Government and Judiciary is paying full attention for the eradication of such evils, But the law so far has been widely disregarded. There is dire need to create consciousness within the society in general about this cold-blooded tradition.

equity issues. In 1979 the United Nations General Assembly adopted the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women). Pakistan's CEDAW obligations extend to the provision of an effective remedy to women victims of violence (21). It is also mentioned in constitution of Pakistan of 1973 in Article 25 that the entire citizen are equal. So it is necessary that men and women should be treated equal otherwise it is difficult to end these evils.

### **Implementation of Law:**

Although the constitution of Pakistan provides legal equality but those rules are existing only on papers and are not enjoyed in practical. Niaz A Shah truly says that constitution provides remedy against such customs and traditions but in practice the constitution is ignored and customs prevail (22). So there must be strictly implementation on the presented laws to dishearten these habitual practices, which have caused a notorious name for our society.

### **Necessary and Compulsory Education:**

In the tribal areas and villages the education is nearly zero and standard is hopeless. The condition of female education in Pakistan is the Worst. So it is necessary to educate the people to finish such evils.

### **Poverty:**

Poverty is the greatest evil. It gives birth to all the crimes. When a tribe or a family is unable to pay desired amount to the aggrieved party, they themselves, sometime, offer their girls or accept decision of handing over their girls to the aggrieved party. So the people should be given proper sources of income by different companies and departments for their financial growth as well as to create peace.

### **N.G.Os:**

NGOs can also play an effective role by creating awareness against such traditions. They should create awareness about the rights of women. They should help the women to raise their voice. The Government should help and encourage such N.G.Os.

### **The Chief System:**

Feudalism always implements its code of morality in the name of "tradition and custom". Usually, the customs are present in such areas where there is sardari Nizam (Feudalism). It is necessary to abolish sardari system.

father."(16).The above said directions undoubtedly prove that a criminal is itself answerable for his wrongdoing. Nobody either male or female relative can be punished at his place.

### **Some Examples Published in newspapers about Vani:**

- 1- In district D.I.Khan (K.P, Province of Pakistan) a girl of three years was given to a man of forty five years. This decision was headed by saif-ur-Rehman in three days. In a remote village Ghundi-Umer Khan a person name Farooq desire to marry an already married girl Noreen. At the refusal, they took the girl to the unknown area. The Jury decided in three days that three years nephew of boy named Sumaira should be given as a Vani to forty-five years uncle of the girl n-amed Mehboob (17).
- 2- In a village of Mianwali named Chah- Hathi Khelawala (Punjab Province of Pakistan) a man Abdul Rehman handed over her daughter and nephew as a Vani for peace. It was due to a murder ten years ago. The punchait (decision making assembly of male elders) consisted of Zia-ullah Khan, Muhammad khan and some honorable person imposed a fine of 5 lack or two girls of five years kiran and shazia as a Vani.So the aggressor party decided to hand over the girl(18).
- 3- In Mahmand Agency (Federally administrated tribal area of Pakistan) a girl was given as vani to remove/solve the dispute between two tribes in which three persons had been killed. According to details, the leaders of Haleemzy tribe named Malik Aurang Zaib, Malik Dilawar and Malik Zarger ordered to give the daughter of Saeed Muhammad Jan (accused party) to Malik Dukhtaristan (aggrieved party)with a fine of Rs.500,000/-. After acknowledged the judgment, both parties pardon one another (19).
- 4- Alamzeb kidnapped the daughter of his neighbor, Naseer, from the Reri Goth area in Karachi. (The sources said that both were actually in love with one another).The girl's family took the case in a jirga. The Jirga decided that the culprit's (Almzeb) six month daughter may be married off to the girl's brother (Haq Nawaz) who is 25 year old on the basis of Vani.(20).

### **Recommendations:**

Equality between male and female:

The Universal Declaration of Human Rights, adopted in 1948, states "the equal rights of men and women", and addressed both the equality and

only restricted but also noticed as mistrustful. She lives a life inferior even than a maid servant. The blameless vani has to bear what she has never committed for the rest of her life. She could never get full benefits of a matrimonial woman. She is treated as a slave who has no say in her own life. These unfortunate women sacrifice their wishes and spend the entire life for the sack of their self-centered male relatives.

### **State and Religion Rules and Vani:**

By the Criminal Law (Amendment) Act, 2005, the practice of giving females in badal-i-sulah (as exchange of peace) was declared a penal offence. The section 310A of PPC states: "Whoever gives a female in marriage or otherwise in badal-i-sulah shall be punished with rigorous imprisonment which may extend to ten years but shall not be less than three years." Recently in 2011, The Supreme Court took strong notice about an event of Vani. The court observed that how a parallel judicial system was still prevailing in the country through jirga system.

Also this is an un-Islamic practice as Islam does not allow a forced marriage. The Holy Prophet clearly directed that a woman should not be married till she is inquired for his agreement. Once a woman came to the Holy Prophet (peace be upon him) and said that her father gave her hand to someone, but she disliked that person. The Holy prophet immediately declared that marriage invalid (12). A world renowned Islamic Scholar says "The Sanctity of matrimonial bond (Nikah) solely depends upon the consent of that lady" (13). When we want to get guidance about this custom from Holy Quran, we get an indication regarding the exclusion of such custom. The Holy Quran says, "For men there is reward for what they have earned, (and likewise) for women there is reward for what they have earned (14). In another verse The Quran says, "And no bearer of burdens shall bear another's burden, and if one heavily laden calls another to (bear) his load, nothing of it will be lifted even though he is near of kin (15). Similarly, The Messenger of God clearly said that no one will be punished because of another's crime. I would like to quote only one saying of the Holy prophet (Peace be upon him) so that we may be able to make decision regarding prevention of such customs. It was narrated from Sulaiman bin 'Amr bin Ahwas that his father said: I heard the Messenger of God saying during the Farewell pilgrimage: "No criminal commits a crime but he brings (the punishment for that) upon himself. No father can bring punishment upon his son by his crime, and no son can bring punishment upon his

one lady as a swara. But in addition to that, two more swaras one from each side will be exchanged so as to make stronger the relationship between the hostile tribes (9).

Edward E. Elever pointing out a tribe of Pathans wrote "No one is equal to WAZEER tribe. Their ancestors made this law more than 300 years ago. It is applicable in the following crimes.

- 1- The Crime against a person
- 2- The crime against property
- 3- The crime against woman

There is usually a punishment of twelve women for a murder, six women for a hand, ear or nose, three women for teeth and one woman for a wound of forehead (10).

### **Grounds of Vani:**

There are different grounds due to which girl/girls becomes the victim of Vani or Swara.

### **Vani due to Murder:**

In this case the murder of two tribes is tried to settle in the form of girl/girls. When a Jirga or any judge of the informal court announces someone culprit in matter of murder, he is declared as the Killer. Usually, the decision maker ordered to killer or his tribe to give a girl or more (according to the situation of incident as well as status and prestige of the aggrieved party) to the pained party. It is called chatti (compensation).

### **Due to Sex corruption:**

The cases of rap and sex intercourses create destruction and even murder in our society. If someone receives information about sex relation of his sister/daughter/wife/mother or blood / closed relation with an illegal male, usually kills both male and female. If the guilty man saves from killing, he, with his tribe or family, submit request to the Jirga for dispute settlement. So the case is settled usually by vani.

### **Due to Financial Loss:**

Sometimes a tribe gives financial loss to the other in the form of theft or stolen. It also creates a great destruction between the two tribes. In this case land, money or girl is given as the desire of the effected family. According to Ansar Burney "Many more girls from low-income families are sold into "marriage" in exchange for monetary gain. The younger the girl the higher the price for her would be paid" (11).

### **Life of A Girl After Vani:**

When a girl becomes vani and sent to the enemy's, there is small possibility of a joyful life for her. She is given no honour at her new house. She has to face horrifying behavior there. The activities of swara are not

judgment rejection by the girls from the "Jirga"(informal court) has dreadful consequences for family members.

### **Historical Background:**

The cruel, un-Islamic and heartless ritual was started almost four hundred years ago when two "Pathan" tribes (a Muslim community) of Mianwali (a District of Punjab province in Pakistan) scuffled a bloodthirsty conflict against each other. During this bloody era round about eight hundred people were killed. At that time Ruler of TANK (A state of sub content during Mughul king dome) struggled to resolve this tension. He called the "JIRGA" (A meeting of the elders and nobles/informal court) who determined that girls must be given as compensation. They considered it the only way to resolve this quarrel. So, after the implementation of the decision, both families turned into a family. Later on this decision became a tradition which passed over generation to generation (6). Therefore, this custom is done at the time when there is quarrel or enmity between the two tribes or families due to kidnap, murder or unfair relations. It starts blood shedding between the two sides. So the member of Jirga decides blood instead of blood of fine in the form of money. In Sawara the guilty person gives his sister, daughter or nephew girl to the other family. This girl can be an infant and the person who receives her can be of seventy or seventy five years (7).

Traditionally they occurs a Nikah (matrimonial bond) without any function. Sometimes the girl gets some benefits some time the girl is left alone without Nikah in the fields, so that the opposite tribe can possess her as a lady servant (8).

### **Kinds of Vani/Swara:**

A research scholar Baba Khel indicates three kinds of Swara custom.

1. One sided Swara
2. Two-Sided Swara
3. Three Sided Swara

One sided Swara is the most commonly practiced. The aggressor party gives a woman to the distressed party. A word is given by the aggrieved party, to the Jirga that in future there will be no bloodshed. The cash money or a piece of land may be the surety bond for this decision. If there is any betrayed by the aggrieved by their word, Jirga condemned them. The arrogance and honour of the hurt party in the Jirga is no more intact and they will have no honour in future Jirga meetings. In Two-Sided Swara, Both tribes exchange swara to build up their association and to guarantee an end to enmity. The aggrieved party get some piece of land, cash etc. from the aggressor. Three Sided Swara is an exclusive type. Here similar to the previous kinds of swara, the aggressor party will handover



## A Social Custom "Vani": Introduction and Critical Analysis

Arshad Munir\*  
Ghulam Ali Khan\*\*

### Introduction:

We are living in 21st developed, cultured, educated and sophisticated century. In this world, some incidents show that we are breathing in cave age or before, especially in Pakistan, where women are being ill-treated with the name of cultural diplomacy. For several years, Pakistani women have been deprived of the most fundamental of rights, such as the rights of education and even the rights to decide issues connecting to their own marriage and divorce. Those denied these rights are also deprived of the right of equality in a male dominated society where women remain subservient to men. In a society where family and tribal customs are very strict as well as lack of education and misinterpretation of Islam have forced women into a position of obedience and horror, so most survive an existence of oppression without the most essential of rights or the ability to defend them. The Sale of women, karo kari (Honour Killing) issues, death by burning, forced marriages and the curse of a dowry reflect the real state of affairs in the country. And with the passage of time, these social evils have become more complicated. Practice of Vani is not only one of the above social problems but also an old age tradition. This Custom is also known as "Swara". According to Piggin "In a throwback to medieval time "Swara" blood price is still practiced in Pakistan. Women and girls, even babies in their cradles, are given away in marriages as compensation for crimes committed by their men folk" (1).

### Meaning of Vani:

Vani is a Pashto word derived from "VANAY" which stands for blood (2). The meaning of the Vani is to hand over the girls in marriage or exchange marriage to the aggrieved party to resolve the blood feud (3). According to Capt. Revert "Swara means a female rider, but in traditional terminology it refers to a girl given over to the aggrieved family as compensation for blood (4). Bedell says that a vani bride is a young woman who is given in payment for the crime of a male relative (5). In the majority cases, this type of "compensation" is awarded by an informal court and not determined by the relatives of the girls. Resistance by the relations or the

\* College of Agriculture, Dera Ghazi Khan 32200- Punjab, Pakistan.

\*\* Assistant Prof. Dept. of Islamic studies, University of the Punjab, Lahore, Pakistan.

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- 38 Syed Ameer Ali, *Commentaries on Mahommedan Law*. Edited by Justice S. H. A. Raza, (Allahabad: Hind Law Publishing House) at pp. xxv-xxvi.
- 39 Ibid at p. xxv.
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- 41 There are numerous editions of the book published by various publishers. Some of the well known editions are following:
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- 42 D. F. Mulla on the Code of Civil Procedure, Edited by Dr M. A. Mannan (2 Volumes) (Lahore: PLD Publishers, 1981); Mulla, *The Code of Civil Procedure*, Edited by P M Bakshi (Abridged & 13th Edition) (New Delhi: Butterworths India, 2000).
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- 25 Neil Baillie, *The Moohummadan Law of Sale*, (London: Smith, Elder and Co., 1850) at p. xv.
- 26 Koodoree is another famous book among Hanafi Muslim all over the world.
- 27 Neil Baillie, *The Moohummadan Law of Sale*, (London: Smith, Elder and Co., 1850) at pp. xv-xvi.
- 28 Some of his books on Islam and Islamic law are following:
1. Life and Teachings of the Prophet (Edinburgh, 1873).
  2. The Spirit of Islam (London, 1891).
  3. Real Status of Women in Islam (London, 1891).
  4. Muhammadan Law (Tagore Law Lectures) (Calcutta, 1884).
  5. The Personal Law of the Muhammadans (London, 1880).
  6. Ain ul-Hidaya; an Urdu translation of the famous Hanafi law book, Hedaya.
- (M. A. Rahim, *Syed Ameer Ali and Muslim Politics and Renaissance*, Islamic Studies (Islamabad) 7:2 (1968) pp. 93-112 at 107-8).
- 29 Syed Mahmood was a son of famous Muslim leader Syed Ahmad Khan (1817-1898). Syed Mahmood was the first Muslim who was appointed as a Judge to High Court at Allahabad in 1882. He wrote many famous judgments.
- 30 M. A. Rahim, *Syed Ameer Ali and Muslim Politics and Renaissance*, Islamic Studies (Islamabad) 7:2 (1968) pp. 93-112 at 93; Shahid Hussain Razzaki, *Syed Ameer Ali: Hallat aur Siyasi, Dini aur Ilmi Khidhmaat*, (Lahore: Institute of Islamic Culture) at p. 50.
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  - 8 Jafri Begam Vs Amir Muhammad Khan The Indian Law Reports 7 All. 822; Gobind Dayal Vs Inayatullah The Indian Law Reports 7 All. 775.
  - 9 The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House) at p. iii.
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  - 17 <http://archive.org/details/hedayaorguideac00hamigooq> (Last accessed on 02/09/2013).
  - 18 See The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House).
  - 19 Muhammad Sadiq Vs Mrs Sadiq Safoora PLD 1963 LHC 534; Gulbaz Khan Vs Faiz Ullah Khan 1994 SCMR 435; Malik Aslam Pervez Advocate Vs Province of Punjab 1994 MLD 1986 [Lahore]; Hina Jilani Vs Sohail Butt PLD 1995 LHC 151; Abdul Hameed Vs Muhammad Mohyuddin Siddiqui 1996 CLC 227 [LHC]; S.M. Aslam Vs Rubi Akhtar 1996 CLC I [Karachi]; Muhammad Asad Vs Humera Naz 2000 CLC 1725 [LHC]; Muhammad Akram Vs Haji Muhammad Ali 2003 CLC 301 [LHC]; Qadar Gul Vs Moember Khan 1998 SCMR 2102.
  - 20 W. H. Macnaghten, Principles and Precedents of Moohummadan Law, (Calcutta: The Church Mission Press Mirzapure, 1825). Available at <http://archive.org/details/principlesandpr00macngoog> (Last accessed on 13/09/2013).
  - 21 I could not have direct access to this book but the fact that it was the first book of Neil Baillie was established by his self projection in his second book that the same author has contributed another book earlier titled as "Moohummadan Law

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- 1 This exploratory exercise was carried out on the biggest and the most updated database of Pakistani reported cases during the last few months. The website of this database is located at this address [www.pakistanlawsonline.com](http://www.pakistanlawsonline.com).
- 2 In addition to the books analyzed in the paper, the following books have also been relied on by the courts in various decided cases:
  - a. Fatwa-i-Alamgiri in Nisar Ahmad Khan Vs Mst Ismat Jehan Begum PLD 1969 SC 194; Karim Bakhsh Vs Muhammad Nawaz 1989 CLC 807 [LHC]; Muhammad Asad Vs Humera Naz 2000 CLC 1725 [LHC]; Imtiaz Begum Vs Tariq Mahmood 1995 CLC 800 [LHC]; Allah Dad Vs Mukhtar 1992 SCMR 1273; Razia Bibi Vs District Judge, Bahawalnagar 1992 CLC 1981 [LHC].
  - b. Jawahar-ul-Hukam (Part 1,2,3) by Maulana Syed Muhammad Badar Alam in Muhammad Rafiq Vs Kaneez Fatima 2000 SCMR 1563.
  - c. Maulana Ashraf Ali Thanvi's Hela-e-Najiza in Muhammad Rafiq Vs Kaneez Fatima 2000 SCMR 1563.
  - d. Fatwa-i-Kazi Khan in Muhammad Asad Vs Humera Naz 2000 CLC 1725 [LHC]; Mumtaz Ali Vs Dr Gulnaz 2000 YLR 1258 [Karachi]; Said Mahmood Vs The State PLD 1995 FSC 1.
  - e. Kitab al Fiqh Ala Al-Mudahib Alarbaha by Abdur Rehman Al-Jazairi in Sabira Sultana Vs Maqsood Sulari 2000 CLC 1384 [LHC]; Mst Rani Vs Bilal Ahmad 2000 MLD 1967 [Lahore].
  - f. Bidaie As-Sanaie By Allama Abu Bakr Ala ud Din al-Kasmi in Sabira Sultana Vs Maqsood Sulari 2000 CLC 1384 [LHC].
  - g. A Code of Muslim Personal Law by Dr Tazil-ur-Rehman in Mst Humaira Mehmood Vs The State PLD 1999 LHC 494; Anees Ahmad Vs Uzma PLD 1998 LHC 52; Sardar Muhammad Vs Faqir Muhammad 1996 CLC 916 [LHC]; Razia Bibi Vs District Judge, Bahawalnagar 1992 CLC 1981 [LHC].
  - h. Institutes of Mussalman Law by Nawab A.M.F. Abdur Rehman in Mst Humaira Mehmood Vs The State PLD 1999 LHC 494.
  - i. Muhammadan Law by Tayyabji in Qambar Murtaza Bokhari Vs Zainab Bashir PLD 1995 LHC 187.
  - j. Raddul Mukhar by Ibn Abidin in Allah Dad Vs Mukhtar 1992 SCMR 1273.
  - k. Anglo-Muhammadan Law by Sir Roland Wilsons in Qambar Murtaza Bokhari Vs Zainab Bashir PLD 1995 LHC 187.
- 3 Scott Alan Kugle, Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia, Modern Asian Studies, Vol. 35, No. 2 (May, 2001), pp. 257-313 at p. 259.
- 4 See Article 251 of the Constitution of Pakistan; Faizullah Jan, Language Policy in Pakistan, available at <http://southasiacommunication.wordpress.com/report-1-language-policy-pakistan/> (Last accessed on 11/09/2013).
- 5 There are many versions of Hamilton's Hedaya available at [www.archive.org](http://www.archive.org). For instance, Grady's 2nd edition at <http://archive.org/details/hedayaorguideac00hamigoog> and its Pakistani reprint

accurately.(50) Though his account is an easy way to fathom certain aspects of the categories of marriage in Islam but the same does not sufficiently bring out the complexity of Islamic law in this matter.(51)

#### **6. Conclusion:**

The paper has presented a genealogical analysis of four most relied upon books on Islamic law in the Pakistani courts. All of these were written during the colonial period and regarded with deference. It is an incontrovertible fact that the most relied upon books in the Pakistani courts are in English language and overwhelming majority of which have been transcribed during the colonial era. This aspect makes it evident that the task of ascertaining Islamic law in the Pakistani courts is not carried out substantially differently from the colonial period. At the same time it is not put forward as a definitive proposition that the Pakistani courts exclusively refer to the books written in the British colonial era. There are instances in which we come across references to the original Arabic versions of authoritative books or their Urdu versions. But the persistent and uninterrupted reliance on the books put into transcription during the colonial era demonstrates how the legal cum judicial system of Pakistan is indebted to her colonial legacy. On the other hand, this fact alone is not sufficient to question the authenticity of the decisions rendered by the Pakistani courts on the issues of Islamic law. Each decision ought to be evaluated on its own merit and context. There are occasional flaws in the books written during the colonial period some of which have been highlighted in the paper while analyzing the selected books but this aspect does not overshadow the efficacious role played by such books in maintaining the Muslim identity.

aware of the pattern of enacting the legislative instruments by the colonial government of that period, he tried the same in his book. This pattern of writing Islamic law in form of sections or propositions of law was not in vogue then. Mulla's main inspiration in this regard was the monumental work titled *Digest of Anglo Muhammadan Law* by Sir Roland Wilson.(45) One of the reasons which Mulla has pointed out in the prefatory note of his book for going for this pattern is that reducing main principles of Islamic Personal law in "series of propositions arranged in consecutive sections" would make the law easily comprehensible.(46)

In the first section of the book Mulla states the real legal position of the application of Islamic law that it is not "the law of British India: it is only the law so far as the laws of India have directed it to be observed".(47) This very appraisal of the application of Islamic law in British India guided him to select only those topics for discussion in his book which had relevance to the legal cum judicial system of that period. There are twelve chapters in Mulla's original book dealing with subjects of history of Islamic law in British India, sects and sub-sects of Muslims, inheritance, will, gift, wakf, pre-emption, marriage, dower, divorce, parentage, guardianship and maintenance.(48)

Another important issue was regarding the substance of these propositions. In other words, what was the source from which Mulla took these propositions/sections? He proclaimed in the prefatory note that the substance of these propositions was from "judgments to be found in recognized reports". Where he could not find the judgments sufficiently instructive, he relied on "the Hedaya and the Fatwa Alungiri".(49) When we go through his book to verify his above contentions we are obliged to say that he was an honest academician who never maneuvered to hide his reference material.

Mulla's overwhelming reliance on judgments of the courts of British India to formulate various propositions of Islamic law in his book suggests that the Pakistani courts' reliance on his book would be indirect reference to the Islamic law developed and refined by the colonial courts. This single inference shows how important Mulla's book is because it has been a bridge between the Pakistani courts and the courts of British India so far as the Islamic Personal law is concerned. There is no inherent objection to rely on the laws developed during the colonial period, but if the law is stagnated to that period then it may lead to problematic situation.

For the most part Mulla's book is genuine reproduction of propositions of Islamic law, but there are a few areas in which his book lacks authenticity. For example, his categorization of marriages into valid, void and irregular does not put forward the stance of Islamic law on the point



mentioned above, Ameer Ali used this opportunity at Calcutta University to thoroughly expound Islamic law on these matters.(35)

These two books form part of Syed Ameer Ali's work on Muhammadan law whose numerous editions have been published by many authors/publishers in Pakistan and India.(36) This amalgamated volume is the one which is generally referred to in the courts when the reference appears to be of Ameer Ali.(37)

There are many aspects in which Syed Ameer Ali's book stands on high pedestal than earlier works on the subject. Hamilton's Hedaya primarily deals with Hanafi laws and compares its stances with other Sunni schools at the most. Ameer Ali's work has exhaustively narrated Shia principles on various matters of Muslim Personal law as well. There is another important distinction of Ameer Ali's work that it has derived rules and principles of Islamic law from numerous authoritative books of various Sunni and Shia schools.(38) On the other hand, Hamilton's Hedaya is indirect translation of one book. Ameer Ali has made an apt observation while distinguishing his work from Hamilton's Hedaya that the latter expounds the legal principles disregarding the fact how these principles are applied in practice.(39) This deficiency has sufficiently been redressed by Ameer Ali. According to Ameer Ali, Neil Baillie though brought into focus some other books of authority in his Digest but the problem with his work was that while condensing some issues he simply circumvented describing the important principles.(40)

##### **5. Principles of Mahomedan Law by D. F. Mulla:**

This book has attained the status of a classic on Islamic Personal law in the Indian Subcontinent. Numerous versions of the book have been edited and updated by many authors both in India and Pakistan.(41) It was first published in 1905 by Sir Dinshah Fardunji Mulla (1868-1934) who was a well known law author of his age. He also wrote commentaries on some enacted laws which are still held in high esteem, e.g. Civil Procedure Code,(42) Transfer of Properties Act.(43) As there was a void in scholarship on Islamic law particularly in English language, he ventured to compile a book on the subject considering the requirements of law students. In addition to be beneficial for the students, his effort captured the attention of the courts during the colonial period and his book was referred to in various decisions. Thereafter, in the post independence era, it is without any hesitation is the most relied upon book on Muslim Personal law in the courts of Pakistan.(44)

D F Mulla's interest was not restricted to Islamic law as is quite evident from his commentaries on different laws: he was sufficiently familiar with the whole range of legal developments of his age. Being well

which is often relied upon by the courts in Pakistan in deciding cases on Islamic law.(24)

There are a few noteworthy comparisons between Baillie's Digest and Hamilton's Hedaya. Both are translations from authoritative books of Muslims with a view to facilitate proper administration of justice. Both these translations were commissioned by the then colonial administration. Hamilton was assisted in his task by an intermediate translation of Persian from the original Arabic Hedaya, while the same sort of facility was not at Baillie's disposal. Hamilton was fortunate to have such a facility as he carried out his assignment while being in India. On the other hand, Baillie completed his project in London and it was hard if not impossible to procure assistance of some Muslim Scholars there. Nevertheless, Baillie has criticized Hamilton's Hedaya as "ill adapted for communicating a knowledge of the law to the beginners".(25) He even suggested in a footnote that due to resemblance between Hamilton's Hedaya and Koodoree(26) the former appeared to be the latter's translation and not of the original Hedaya.(27)

#### **4. Mahomedan Law by Syed Ameer Ali:**

Syed Ameer Ali (1849-1928) was one of the most renowned jurists of the colonial India. He wrote extensively on Islam and Islamic law.(28) He was the first Muslim to be appointed as Judge of Calcutta High Court and the second after Syed Muhammad Mahmood (1850-1903)(29) who had been appointed to such a judicial office in the colonial period.(30) Syed Ameer Ali's critical acumen and analytical approach are reflected by his writings and decisions. He was the first Muslim to serve as a member of Privy Council from any part of the world.(31)

The book which we have today and attributed to Syed Ameer Ali was progressively developed and transformed into the present shape. It was initially titled as 'The Personal Law of the Mahomedans' and published in 1880.(32) In this book, Ameer Ali had only discussed topics relating to succession, conflict of law, legitimacy and acknowledgement, marriage, divorce, custody and guardianship, and dower. In the first preface to the book, he expressed his dissatisfaction on academic development and judicial application of Islamic law in the Indian Subcontinent. In addition to pointing out the flaws in the books available on the subject in the preface, he had also disclosed the source material relied upon by him in authoring his book.(33) Thereafter, in 1884, he was invited to deliver Tagore Law Lectures on the subject of 'The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahomedans' which was subsequently independently published by the same title in 1885.(34) As subjects relating to gift, wakf and will were not covered by the first book

volume edition of Hamilton's Hedaya in 1870; he obliterated all portions pertaining to slavery from the original English translation in his edition.(17)

What we have now of Hamilton's Hedaya that is basically Grady's edition which abridged some topics from the original English translation and expunged others due to their irrelevance to the legal cum judicial system. It is this edition which is printed and reprinted by various publishing houses(18) and referenced to by the courts as Hamilton's Hedaya.(19)

### **3. Digest of Moohummudan Law by Neil Baillie:**

Another renowned author of the British India who contributed a lot in the field of Islamic law was Neil Baillie. He translated many books in English when it was hard to find out authentic material on the subject except the few famous authorities such as Hamilton's Hedaya and W.H. Macnaghten's Principles and Precedents of Moohummudan Law.(20) Baillie's major contribution to the subject has been that he translated many sections of Fatawa-i-Alamgiri in his books into English. The administration of the East India Company was well acquainted with the high esteem enjoyed by this book but could not get it translated into English. It would be worth mentioning that before assigning the task of translating Hedaya to Hamilton, it was contemplated by the Company's administration that Fatawa-i-Alamgiri could also be considered for translation and used as authentic source for determining Islamic legal principles, but the volume of that book prevented her to embark on this project. Barely five to seven decades after appearance of Hamilton's Hedaya on the scene, Nail Baillie brought to reality this unfulfilled dream by rendering many sections of Fatawa-i-Alamgiri into English in series of books.

The first book translated by Baillie on Islamic law dealt with the subject of Muhammadan law of inheritance.(21) Thereafter, he published two books within a span of three years; one was on the subject of Muhammadan law of sale(22) and another was on land tax of India.(23) His eagerness of compiling books on Islamic law did not satisfy after having prepared the above books and he ventured to transcribe another book on those subjects which had not been covered by him till then. This book appeared in two volumes and was titled as Digest of Moohummudan law. The first volume of the book is an exposition of the law of Sunnis and the second volume of Shias. Similar to his earlier books on Islamic law, the volume dealing with Sunnis is substantially derived from Fatawa-i-Alamgiri. While the second volume on Shia law is based on those books which are held in high esteem by Shia sect for example Shuraya-ul-Islam. Baillie has demonstrated in the introduction of the second volume that he was reasonably familiar with the origin and further subdivisions of Shia sect, but by and large he has kept his exposition of Shia law restricted to the main branch, i.e. *Imamia* or twelvers. It is this two volume Baillie's Digest

vernacular as well as foreign for applauding the latter.(6) The Persian version which was subsequently translated into English was not an excellent translation having many flaws. The Persian translators did not keep apart the text of the Arabic Hedaya and its commentary and blurred the both.(7) Syed Mahmood also highlighted some discrepancies in Hamilton's Hedaya while comparing it with the original Arabic version in the cases decided by him.(8)

Once the company got hold of the Persian version of Hedaya, it assigned the task of its English rendering to Charles Hamilton (1752-92). He completed his job in 1791 which was published in four volumes. Hamilton's Hedaya was dedicated to Warren Hastings.(9) The dedication by Hamilton and the praise by the Persian translators disclose unreservedly how far Warren Hastings was interested in and instrumental for restructuring the colonial legal cum judicial system.

The significance of Hedaya was no doubt due to the fact that it was the first book of Islamic law available in English at the end of 18<sup>th</sup> century. Hamilton's Hedaya was also made a text book by the Council of Legal Education in Great Britain for those who were interested to practice law in the Indian Subcontinent.(10) Thus, Hedaya was not simply a reference book of Islamic law in the second half of 19<sup>th</sup> century, it was compulsory for each law student to be well-versed in it so as to qualify for practicing law in the colonial India. Such factors contributed substantially to give an edge to Hamilton's Hedaya over other books in judicial arena in the colonial period. More or less the same status is incessantly enjoyed by Hamilton's Hedaya even after the independence of Pakistan and that is largely due to the above historical baggage carried along by it.

The range of subjects discussed in Hamilton's Hedaya was much more than other books on Islamic law published during the colonial period. On the other hand, there was one conspicuous and unexplained absence of law of inheritance.(11) The original edition expounds on the subjects of zakat, oaths and vows, slavery, partnership (shirkat), sale, substantive criminal matters such as hudood, procedural matters including procedure of courts and rules of evidence, etc.(12) The reason seems to be that when Hamilton's Hedaya was first published Islamic law was not only applicable to personal matters; it was also applied to many other areas discussed in the book, e.g. criminal law and procedural laws.(13) As pointed out by Anderson, after enactment of various substantive and procedural laws in 2<sup>nd</sup> half of 19<sup>th</sup> century(14) by the colonial government the application of Islamic law was progressively restricted to personal matters only.(15) Slavery was abolished in 1843.(16) So, there was no need to discuss issues relating to it and the same was done by Grady when he published one