

Genealogical Analysis of Islamic Law Books Relied on in the Courts of Pakistan

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1. Introduction:

The legal cum judicial system in Pakistan is characterized by two outstanding features vis a vis Islamic law: firstly, the courts of the country implement the law laid down by the legislature, and secondly, if there is no law enacted on any point particularly with respect to personal matters the courts derive the rules of Islamic law from works of authority and put them into operation. The reason for such a mixture is embedded in the colonial period where the legal cum judicial system was structured as such. After the independence, Pakistan has retained that system on the same pattern albeit some cosmetic changes here and there. It must be admitted at the outset that the changes brought about by some legislative instruments are not mere cosmetic as they have reshaped the entire jurisprudence in that particular area, e.g. hudood laws. As a whole the above assertion with respect to dual characteristics of Pakistani legal cum judicial system is beyond any reproach.

When someone is apprised of the above mentioned dual characteristic of the Pakistani legal cum judicial system, then it is natural to inquire what sort of source material is relied upon by the courts to find out an authentic view point of Islamic law on a particular issue. It is this important but unexplored question which has been made subject of analysis in this paper. For the purposes of exploring the frequently relied upon books of Islamic law by the courts, the author has carried out an inquisitive and careful analysis of the reported decisions of the superior judiciary in Pakistan.(1) After having found the frequently relied upon Islamic law books on the basis of their recurrent referencing in the reported cases, the paper has selected some of them for analysis in this paper. This selection is informed by the consideration of space for analysis available in a paper as well as relative frequency of referencing of such books. The paper discusses the origin of the selected books. It attempts to comprehend the background in which these books were written as their background individually as well as collectively is instrumental for elevating the status of these books in Pakistan's legal cum judicial system. By and large, the paper is a genealogical analysis of the books written in a particular socio-political

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context which is part of our legal history but due to recurrent referencing of these books by the courts in Pakistan the same legal history resurrects repeatedly in our present.

On the basis of the exploratory analysis of the reported cases, the following books are found to be relied upon more frequently by the courts to derive what is an authentic point of Islamic law on a particular issue:

1. Hedaya translated by Charles Hamilton:
2. Digest of Moohummudan Law by Neil Baillie
3. Mahommedan Law by Syed Ameer Ali
4. Principles of Mahomedan Law by D. F. Mulla

There is one important common link among the above books that these were written in English or translated into English from some other languages. There was no scarcity of material on Islamic law when these books were first transcribed but the problem was that the most of that material was either in Arabic or Persian. Even now there are plenty of books in many languages including Arabic, Urdu and local dealing with issues of Islamic law available in Pakistan. When information on Islamic law can be accessed in several sources and multiple languages, then why do the courts refer to a few selected English books more frequently than the books written in other languages? By framing the question in this manner the author does not want to suggest that the courts in Pakistan do not refer to the books written in any other language than English. The courts put reliance on other books as well but their frequent referencing to the above mentioned English books is far more than those books.(2)

There might be many reasons for attaining an elevated status by the aforementioned books but for me the most important are two: the first is ingrained in our legal history and the second is linked to the language in which these books were written. As pointed out earlier that these books were written in English or translated into it from some other languages. This task was accomplished during the colonial period either under the supervision of the then government or individual inspiration of their authors considering the significance of Islamic law to the colonial judicial system and scarcity of source material thereto. The colonial government had to facilitate this task as it was obliged to apply Islamic law to secure legitimacy and disguise her self behind something which was more familiar to the native Muslims.³ Moreover, the situation was conducive to the books written in English in the colonial period as the courts were either presided over Englishmen themselves or the natives who were trained by them. This colonial baggage has been kept intact after emergence of Pakistan on the world's map by the judges sitting in courts thanks to their familiarity to

English language and emboldened by the successive constitutions of Pakistan by declaring English as its official language.⁴

After having explained the common features among the books, let us now discuss each of the above books one by one. For discussing one book in each section, the paper is divided into four sections in addition to this introduction and the conclusion at the end. There were two alternatives to determine the sequence of the paper. The one was to start discussing that book first which is more frequently referred to than others and in this manner the last book dealt with would have been the least relied upon book. Another alternative was to start discussing that book which was written first irrespective of the fact whether that was not the most relied upon among the selected books in the courts. I have followed the latter alternative in this paper as it would save us from repetitive allusions to the books put into transcription earlier.

2. Hedaya Translated by Charles Hamilton:

Hedaya is one of the most famous books on fiqh among Hanafi school of thought. It was written by a distinguished jurist Burhan al-Din al-Marghinani (1135-97) in 12th century. The original book was written in Arabic. The book had been regarded with high esteem in those jurisdictions where Hanafi Muslims were in majority. Taking this fact into account the East India Company in 2nd half of 18th century decided to get this book translated into English. The administration of the company was interested to have a resource book on Islamic law to be applied by their judges to their Muslim subjects. The judges' inability to comprehend Arabic on the one hand and amenity of the Muslims with the dictums of Hedaya on the other had been the main reasons for its English rendering.

Warren Hastings plan of mixing the personal laws of natives along with English legal system was the foundation stone for translation of this Magnus Opus. It is interesting to note that Hedaya was first translated into Persian by a team of experts and thereafter the same was rendered into English. It is difficult to assume that Persian version of Hedaya was not available then; probably the company's administration was not satisfied with probity and accuracy of such a version had there been one. Gholam Yehee was burdened with the responsibility of translating Arabic version of Hedaya into Persian with a team of three other scholars namely Molla Taj-Addeen, Meer Mohammed Hossein and Molla Sharreet Oolla.⁵ The Persian renderers of Hedaya in their introductory address to the book praised the efforts of Warren Hastings in establishing the public administration and judicial system on firm foundations. There is another noteworthy aspect of the above referred address that the translators used the phrase 'Nawab Governor-General' for Warren Hastings mixing both terminologies

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 18th 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 19th 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 2nd half of 19th 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

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

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. Mahommedan 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 Mahommedans' 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 Mahommedans' 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

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

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 Alumgiri".⁽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

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.

References

- 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.
- 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. For instance, Grady's 2nd edition at <http://archive.org/details/hedayaorguideac00hamigoog> and its Pakistani reprint

- at <http://archive.org/details/hedayaorguide029357mbp>. The latter version has been relied upon by me because of it is more clearly printed than others. The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House) at p. x.
- 6 Ibid.
 - 7 Sir Roland Wilson, Anglo Muhammadan Law A Digest, Edited by A. Yusuf Ali (Calcutta: W. Thacker & Co., 1930) at p. 41.
 - 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.
 - 10 Ibid at p. vi.
 - 11 Sir Roland Wilson, Anglo Muhammadan Law A Digest, Edited by A. Yusuf Ali (Calcutta: W. Thacker & Co., 1930) at p. 41.
 - 12 The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House) at pp. v to ix.
 - 13 Bijay Kisor Acharyya, Codification in British India (Tagore Law Lecturers 1912) (Calcutta: S & K Banerji & Sons Book Sellers & Publishers, 1914). Available at <http://archive.org/details/codificationinbr00achaiala> (Last accessed on 02/09/2013).
 - 14 Act V of 1843; Code of Civil Procedure (Act VIII of 1859), Indian Penal Code (Act XLV of 1860); Criminal Procedure Code (Act XXV of 1861); Indian Evidence Act (Act 1 of 1872).
 - 15 Michael R. Anderson, Islamic Law and the Colonial Encounter in British India, WLUML Occasional Paper No. 7 (June 1996) p. 8. Available at <http://www.wluml.org/node/5627> (Last accessed on 02/09/2013).
 - 16 Ibid.
 - 17 <http://archive.org/details/hedayaorguideac00hamigoog> (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 1 [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 Moohummudan 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 “Moohummudan Law

- of Inheritance”. Neil Baillie, *The Moohummadan Law of Sale*, (London: Smith, Elder and Co., 1850).
- 22 Neil Baillie, *The Moohummadan Law of Sale*, (London: Smith, Elder and Co., 1850). Available at <http://archive.org/details/moohummudanlaws00bailgoog> (Last accessed on 13/09/2013).
 - 23 Neil Baillie, *The Land Tax of India*, (London: Smith, Elder and Co., (2nd Edition) 1873). It's 1st edition was published in 1853. Available at <http://archive.org/details/landtaxofindiaac00bailrich> (Last accessed on 13/09/2013).
 - 24 Muhammad Akram Vs Haji Muhammad Ali 2003 CLC 301 [LHC]; Khurshid Ali Vs Abi Ali 2000 YLR 1787 [Karachi]; Anila Vs Muhammad Munir PLD 1996 LHC 65; S.M. Aslam Vs Rubi Akhtar 1996 CLC 1 [Karachi]; Qambar Murtaza Bokhari Vs Zainab Bashir PLD 1995 LHC 187; Malik Aslam Pervez Advocate Vs Province of Punjab 1994 MLD 1986 [Lahore]; Hina Jilani Vs Sohail Butt PLD 1995 LHC 151; Mir Zaman Khan Vs Ajaib Sultan 1994 CLC 991 [LHC].
 - 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: Hallaat aur Siyasi, Dini aur Ilmi Khidhmaat, (Lahore: Institute of Islamic Culture) at p. 50.
 - 31 M. A. Rahim, Syed Ameer Ali and Muslim Politics and Renaissance, *Islamic Studies* (Islamabad) 7:2 (1968) pp. 93-112 at 93.
 - 32 Available at <http://archive.org/details/personallawofmah00alisuoft> (Last accessed on 02/09/2013).
 - 33 Syed Ameer Ali, *The Personal Law of the Mahommedans*, (London: W. H. Allen & Co., 1880) at pp. v-x.

- 34 Available at <http://archive.org/details/lawrelatingtogi00aligoog> (Last accessed on 02/09/2013).
- 35 Syed Ameer Ali, *The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans*, (Calcutta: Thacker Spink & Co.) at pp. vii-xii.
- 36 Syed Ameer Ali, *Commentaries on Mahommedan Law*, Edited by Justice S. H. A. Raza, (Allahabad: Hind Law Publishing House); Syed Ameer Ali, *Mahommedan Law*, Edited by Raja Said Akbar Khan (2 Volumes), (Lahore: PLD Publishers, 1976).
- 37 Mst. Zaitoon Begum & Another Vs The Central Exchange Bank Ltd., Lahore PLD 1961 LHC 888; Abdul Ghani & Others Vs Mst. Taleh Bibi PLD 1962 LHC 531; Muhammad Riaz Vs Noor-ul-Islam 1998 CLC 1038 [LHC]; Muhammad Asad Vs Humera Naz 2000 CLC 1725 [LHC]; Sardar Muhammad Vs Faqir Muhammad 1996 CLC 916 [LHC]; Abdul Hameed Vs Muhammad Mohyuddin Siddiqui 1996 CLC 227 [LHC]; Anila Vs Muhammad Munir PLD 1996 LHC 65; S.M. Aslam Vs Rubi Akhtar 1996 CLC 1 [Karachi]; Zahid Farooq Vs Anjman Jamia Masjid 1995 SCMR 1584; Hina Jilani Vs Sohail Butt PLD 1995 LHC 151; Barkat Ali Vs Aftab Ahmad 1992 CLC 1490 [LHC].
- 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.
- 40 Ibid at p. xviii.
- 41 There are numerous editions of the book published by various publishers. Some of the well known editions are following:
 1. Mulla's *Principles of Mohammedan Law*, Edited by M. Hidayatullah & Arshad Hidayatullah (Bombay N. M. Tripathi Private Ltd., 1990).
 2. Mulla's *Principles of Mahomedan Law*, Edited by M. Hidayatullah, Pakistani Edition by Mian Khurshid Ahmed, (Lahore: Mansoor Book House, 2012).
 3. D. F. Mulla's *Principles of Mohammadan Law*, Edited by Syed Ali Hassan, (Lahore: Civil & Criminal Law Publications, 2010).
 4. D. F. Mulla's *Principles of Mahomedan Law*, Edited by Dr M. A. Mannan, (Lahore: PLD Publishers, 1995).
- 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).
- 43 D. F. Mulla, *The Transfer of Property Act*, Edited by G C Bharuka (10th Edition) (New Delhi: LexisNexis Butterworths, 2005).
- 44 Mst. Zaitoon Begum & Another Vs The Central Exchange Book Ltd. Lahore PLD 1961 LHC 888; Mushtaq Ahmad Vs Mirza Muhammad Amin & Another PLD 1962 Karachi 442; Abdul Ghani & Others Vs Mst. Taleh Bibi PLD 1962 LHC 531; Muhammad Sadiq Vs Mrs Sadiq Safoora PLD 1963 LHC 534; Pathana Vs Wasai PLD 1965 SC 134; Ghulam Qadir Vs Ghulam Hussain PLD 1965 LHC 200; Razia Bibi Vs District Judge, Bahawalnagar 1992 CLC 1981 [LHC]; Barkat Ali Vs Aftab Ahmad 1992 CLC 1490 [LHC]; Sher Muhammad Vs Mahmood Bakhsh 2000 SCMR 672; Muhammad Alam Vs Zarina Bibi 2000

YLR 1449 [LHC]; Jaffar Hussain Vs Main Muhammad Hanif 2001 CLC 628 [LHC]; Mst Raj Bibi Vs Mst Shahzadi & Others PLD 2003 QHC 53; Balqees Bibi Vs Khan Begum 2003 MLD 185 [Lahore]; Muhammad Suleman Vs Public At Large 2013 CLC 395 [LHC].

- 45 D. F. Mulla, Principles of Mahomedan Law (Bombay Thacker & Company, 1905) at pp. iii-iv. Available at <http://archive.org/details/principlesofmahom00mulluoft> (Last accessed on 02/09/2013).
- 46 Ibid at p. iii.
- 47 Ibid at p. 1.
- 48 Ibid at p. v.
- 49 Ibid at p. iii.
- 50 D. F. Mulla's Principles of Mahomedan Law Edited by Dr M. A. Mannan (Lahore: PLD Publishers, 1995) at pp. 391-402.
- 51 Dr Tanzil-ur-Rehman, A Code of Muslim Personal Laws (Karachi: Hamdard Publications).