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# *Al-Fatāwā al-'Ālamgīriyyah*: Ḥanafī Legal Code of the Mughal Empire

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## Abstract

Al-Fatāwā al-'Ālamgīriyyah *is a significant contribution of Indian Muslim jurists to the corpus of the Ḥanafī school. It was a compendium of the Ḥanafī authoritative rulings. At the behest of the Mughal Emperor, Aurangzēb 'Ālamgīr, a board of jurists from various parts of India worked jointly to produce this compendium of Ḥanafī* fiqh*. It closely followed the Ḥanafī legal tradition by adopting the scheme of chapters of the famous Ḥanafī treatise, the* Hidāyah *and contributed to the legal literature by including various chapters on legal practice and procedural law. The analysis of the contents of* al-Fatāwā al-'Ālamgīriyyah *and contemporary historical evidence suggests that it performed the functions of a legal code in the historical context in which it was compiled though it was not the exclusive source of legal norms in the administrative structure of the Mughal Empire.*

## Keywords

Aurangzēb 'Ālamgīr, Ḥanafī school, legal code, codification, legal practice, procedural law.

## Introduction

Unlike his predecessors, the name of the Mughal Emperor, Muḥyī 'l-Dīn Muḥammad Aurangzēb 'Ālamgīr (r. 1658–1707), is not associated with

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such historical monument as the Tāj Maḥall which was built by his father, Shāh Jahān (r. 1628–1658) in the loving memory of his wife, Mumtāz Maḥall (d. 1631).[1] Rather, ʻĀlamgīr is famous for commissioning the compilation of the authoritative rulings of the Ḥanafī school in the form of *al-Fatāwā al-ʻĀlamgīriyyah* or the *Fatāvā-i ʻĀlamgīrī* (hereinafter *FA*).[2] A contemporary historian, Bakhtāvar Khān, stated that Emperor ʻĀlamgīr wanted that Muslims should follow the Ḥanafī school and for this purpose he commissioned learned scholars to "compose a book which might form a standard canon of law."[3] Bakhtāvar Khān described the main objective of this book in the following words: "When the work, with God's pleasure, is completed, it will be for all the world the standard exposition of the law and render every one independent of Muhammadan doctors."[4]

The above account is resonated in the writings of a contemporary chronicler, Sāqī Mustaʻidd Khān. He described the rationale behind the compilation of the *FA* by stating that the Emperor had resolved that all the Muslims in India should follow the Ḥanafī school. This, however, was not possible because Ḥanafī legal doctrines were scattered in several books. Therefore, the *FA* was compiled and it "rendered the world independent of all other books on jurisprudence."[5]

From the statements of the above historians, it is clear that the *FA* was intended to render everyone independent of *ʻulamāʼ* and *fiqh* books, a function that is similar to that of a standard modern legal code. Modern scholars, however, do not regard the *FA* as a "legal code" despite acknowledging its contribution as a compendium of the authoritative rulings of the Ḥanafī school. Alan Guenther concludes his article about

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[1] This does not mean that ʻĀlamgīr did not sponsor the construction of monuments at all. He sponsored the construction of the monumental Badshahi Masjid in Lahore in mid 1670s. It was the largest mosque in the world at the time of its construction. Audrey Truschke, *Aurangzeb: The Life and Legacy of India's Most Controversial King* (Stanford: Stanford University Press, 2017), 46.

[2] In the Arab world, the *FA* is known as *al-Fatāwā al-Hindiyyah*. The *FA* was the most comprehensive Ḥanafī work of its time. Owing to its scholarly significance, many leading publishers of *fiqh* books in the Middle East published the *FA* during the late nineteenth and the early twentieth century. Such publishers included al-Maṭbaʻah al-Kubrā al-Amīriyyah, Cairo; Dār Iḥyāʼ al-Turāth al-ʻArābī, Beirut; Dār al-Kutub al-ʻIlmiyyah, Beirut; Dār al-Fikr, Beirut; and Dār al-Nawādir, Beirut.

[3] H. M. Elliot et al., "Mir-át-i ʼÁlam, Mir-át-i Jahán-numá of Bakhtáwar Khán," in *The History of India as Told by Its Own Historians*, ed. John Dowson (London: Trübner and Co., 1877), 7:160.

[4] Ibid.

[5] Sāqi Mustʻad Khan, *Maāsir-i-ʻĀlamgiri: A History of the Emperor Aurgangzib ʻĀlamgir*, trans. Jadunath Sarkar (Calcutta: Royal Asiatic Society of Bengal, 1947), 316.

the *FA* by stating that it was not "a code of law promulgated by Aurangzeb."[6] According to him, it was a "comprehensive review of Hanafi fiqh produced to aid qazis and muftis in their work of making legal rulings according to the sharī'a."[7] Despite arguing that the *FA* was not a "code of law," Guenther appreciates its legal contribution by stating, "While not comprising a law code for the empire, the influence of the *Fatāwá-i 'Ālamgīrī* on the formation of laws, however, cannot be denied. It assisted the 'ulamā in their work of advising the emperor and subordinate rulers as to the dictates of Islamic law. . . ."[8] Khalid Masud agrees with Guenther and argues that the *FA* "was a text for the help of the Hanafi *mufti*s and *qaḍi*s, but they were not obliged to follow it strictly,"[9] because the *FA* was not the only source of judicial decisions. Emperor 'Ālamgīr himself used the *FA* as a guide for his imperial decrees but not without, in Richard Eaton's words, "tailoring his interpretations of the text to fit particular circumstances."[10] Masud regards the *FA* as a precursor of the codification of Islamic law during the British colonial period in India.[11] Similarly, Reza Pirbhai presents the *FA* as an example of the pre-colonial jurisprudential trend, which informed the colonial legal developments.[12]

While disregarding the *FA* as a "legal code," both Guenther and Masud acknowledge its legal significance as a compendium of the authoritative rulings of the Ḥanafī school. For these scholars, the *FA* could not be conceptualized as a legal code because a sovereign state did not promulgate it as a complete and definitive legal code. In fact,

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[6] Alan. M. Guenther, "Hanafi *Fiqh* in Mughal India: The *Fatāwá-i 'Ālamgīrī*," in *India's Islamic Traditions, 711-1750*, ed. Richard M. Eaton (New Delhi: Oxford University Press, 2003), 225.

[7] Ibid.

[8] Ibid.

[9] Muhammad Khalid Masud, "Religion and State in Late Mughal India: The Official Status of the *Fatawa Alamgiri*," *LUMS Law Journal* 3, no. 1 (2016): 40. When scholars of South Asia refer to the "codification of Islamic law" during the colonial period, they do not mean "codification" in its strict sense because the colonial state did not "codify" Islamic law, which continued to be based on uncodified *fiqh*. Roland Knyvet Wilson, "Should the Personal Laws of the Natives of India be Codified?" *Asiatic Quarterly Review* 6 (1898): 225; Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, no. 2 (2001): 257–313.

[10] Richard M. Eaton, ed., *India's Islamic Traditions, 711-1750* (New Delhi: Oxford University Press, 2003), 168.

[11] Muhammad Khalid Masud, "Fatāwā 'Alamgīrī: Mughal Patronage of Islamic Law," paper presented at the conference on "Patronage in Indo-Persian Culture" in Paris in 2001.

[12] M. Reza Pirbhai, "British Legal Reform and Pre-Colonial Trends in Islamic Jurisprudence," *Journal of Asian History* 42, no. 1 (2008): 36–63.

according to the Orientalist historians of Islamic law, *sharīʿah/fiqh* is not codifiable without "distortion"[13] or "secularization,"[14] because codification is a symbol of modernity which occurred only in the West. In this way, the characterization of the *FA* as a legal compendium but not a legal code conforms to narrative of the dominant historiography of Islamic law which is based on twin dichotomies of *sharīʿah/siyāsah* and tradition/modernity.[15]

If the binaries of *sharīʿah/siyāsah* and tradition/modernity in the historiography of Islamic law are disregarded, it becomes clear that in the late Mughal Empire the *FA* performed the functions that are similar to that of a legal code. Contemporary historical evidence suggests that the *FA* was intended to be the "standard legal exposition of the law,"[16] though it was not the exclusive source of legal norms. Imperial edicts (*ḍawābiṭ*) and local customary practices were part of the legal and administrative complex in the late Mughal India.[17] One of the explicitly stated objectives behind the compilation of the *FA* was ensuring the uniformity of Ḥanafī legal doctrines in order to minimize the agency of *'ulamā'* and judges (*qāḍīs*).[18] Therefore, the *FA* was intended to perform the functions that were similar to that of a modern legal code in the historical context in which it was compiled.

Before proceeding further, it is important to explore the meanings of two related terms, "legal codes" and "codification." Legal historians have observed a wide range of applications of these terms for diverse "code-like phenomena" from ancient legal documents such as the Code of Hammurabi (r. ca. 1792 BCE–1750 BCE) to the modern codification e.g.,

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[13] Schacht argued that "traditional Islamic law, being a doctrine and a method rather than a code . . . is by its nature incompatible with being codified, and every codification must subtly distort it." Joseph Schacht, "Problems of Modern Islamic Legislation," *Studia Islamica* 12 (1960): 108.

[14] Aharon Layish, "The Transformation of the Sharia from Jurists' Law to Statutory Law in the Contemporary Muslim World," *Die Welt des Islams* 44, no. 1 (2004): 85.

[15] Amr A. Shalakany, "Islamic Legal Histories," *Berkeley Journal of Middle Eastern and Islamic Law* 1 (2008): 1.

[16] Elliot et al., "Mir-át-i 'Álam," 7:160.

[17] 'Ālamgīr utilized several sources of law which also included the imperial edits (*żavābiṭ-i 'Ālamgīrī*) and customary rules (*qānūn-i 'urfī* or *'ādat*). M. L. Bhatia, *Administrative History of Medieval India: A Study of Muslim Jurisprudence under Aurangzeb* (New Delhi: Radha Publications, 1992), vii. Rafat M. Bilgrami, *Religious and Quasi-Religious Departments of the Mughal Period (1556–1707 AD)* (New Delhi: Munshiram Manoharlal Publishers, 1984), 170. Zafarul Islam, "Concept of State and Law in the Mughal Empire" (PhD diss., Aligarh University, India, 1981), v–xi.

[18] Al-Shaykh Niẓām, *al-Fatāwā al-'Ālamgīriyyah,* ed. 'Abd al-Laṭīf Ḥasan 'Abd al-Raḥmān (Karachi: Qadīmī Kutub Khānah, n.d.), 1:4.

the French Civil Code 1804.[19] Some scholars have argued that modern codification should be distinguished from the ancient one.[20] Modern codes are characterized as complete, comprehensive, systematic, and simple, and they are promulgated by the authority of the state.[21] Other scholars have suggested that codification should be conceptualized in a broad sense by taking into account its objectives and functions. Therefore, they describe codification as "a method of the formulation of written law"[22] or as a "practice of imposing or creating order."[23] In this sense, codification is "the process of collecting and restating the law of a particular jurisdiction in certain areas" to formulate a legal code.[24] In this article, I refer to the main features and functions of modern legal codes while examining the contents, historical context, and judicial application of the *FA*.

## Salient Feature of the *FA*

The *FA* has many features that distinguish it from other *fiqh* books and bear close resemblance to a modern legal code. In his short essay on the title of the *FA*, Schacht describes the "two extraordinary" features of the *FA*, "that a prince should appear officially as the sponsor of a work of Islamic law in its title and that, being in reality a collection of extracts from authoritative works, it should be called Fatāwā."[25] For Schacht, it is "an extraordinary feature" of the *FA* that it bears the name of the Emperor because in his earlier work Schacht characterized *sharīʿah*/*fiqh* as "jurists' law."[26] But Schacht admits that it was not the unique feature

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[19] Gunther A. Weiss, "The Enchantment of Codification in the Common-Law World," *Yale Journal of International Law* 25, no. 2 (2000): 435, 451.
[20] Ibid.; Reinhard Zimmermann, "Codification: History and Present Significance of an Idea: À Propos the Recodification of Private Law in the Czech Republic," *European Review of Private Law* 3, no. 1 (1995): 95, 98.
[21] Zimmermann, "Codification: History and Present Significance of an Idea," 98.
[22] Ferdinand Fairfax Stone, "A Primer on Codification," *Tulane Law Review* 29 (1954–1955): 303.
[23] Lindsay Farmer, "Codification" in *The Oxford Handbook of Criminal Law*, ed. Markus D. Dubber and Tatjana Hörnle (Oxford: Oxford University Press, 2014), 380–97.
[24] Bryan A. Garner, ed., *Black's Law Dictionary*, 7th ed. (Saint Paul, MN: West Group, 1999), 252.
[25] Joseph Schacht, "On the Title of the *Fatāwā al-'Ālamgīriyya,*" in *Iran and Islam: A Volume in Memory of the Late Vladimir Minorsky,* ed. Clifford E. Bosworth (Edinburgh: Edinburgh University Press, 1971), 475.
[26] Schacht characterized Islamic law as "an extreme case of a 'jurists' law'" because "private specialists" i.e., Muslim jurists rather than the state created and developed it. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford Clarendon Press, 1982 [1964]), 5.

of the *FA* because there were two "precedents for the Fatāwā al-'Ālamgīriyya" for bearing the name of the ruler: i) *al-Fatāwā al-Tātārkhāniyyah* named after a court nobleman of Sultan Muḥammad b. Tughlaq (r. 1325–1351 CE) and ii) the *Fiqh-i Fīrūzshāhī* a work published at the command of Sultan Fīrūz Shāh Tughlaq (r. 1351–1388 CE).[27]

In the historical context of India, however, neither the name of the *FA* nor its compilation under the patronage of the ruler was "extraordinary." Prior to the compilation of the *FA*, a number of Ḥanafī jurists had prepared *fatāwā* collections of the Ḥanafī school and had dedicated them to their contemporary kings and noblemen.[28] In fact, the tradition of compiling the works of jurists in one compendium and naming it after the ruler goes back to the thirteenth century CE when *al-Fatāwā al-Ghiyāthiyyah* was compiled by Dāwūd b. Yūsuf al-Khatīb at the behest of Sultan Ghiyāth al-Dīn Balban (r. 1266–1286 CE).[29]

For Schacht, the second "extraordinary" feature of the *FA* was that it was called *Fatāwā*. Noel Coulson's *A History of Islamic Law* described the *FA* as a collection of *fatāwā* (*responsa*).[30] Schacht corrects Coulson by stating that the *FA* is "an enormous compilation not of *fatwā*s but of extracts from the authoritative works of the [Ḥanafī] school."[31] Indeed, the *FA* is a compendium of authoritative rulings of the Ḥanafī school based on various *fiqh* books. It is an addition to a distinct genre of the legal texts of the Ḥanafī school, which are classified into the following three categories:

(1) The *uṣūl al-madhhab*, or *ẓāhir al-riwāyah*, the primary texts, contain original authoritative doctrines by Abū Ḥanīfah (d. 767 CE) and his disciples. Muḥammad al-Shaybānī (d. ca. 804 CE) compiled them in six books: *al-Mabsūṭ, al-Jāmi' al-Kabīr, al-Jāmi' al-Ṣaghīr, al-Siyar al-Kabīr, al-Siyar al-Ṣaghīr*, and *al-Ziyādāt*. Ḥākim's *al-Kāfī* is a digest of these books; and al-Sarakhsī's (d. 1090 CE) *al-Mabsūṭ* is a commentary on *al-Kāfī*.

(2) *Masā'il al-madhhab* or *ghayr ẓāhir al-riwāyah* or *nawādir*. These texts included other than the authoritative doctrines of the Ḥanafī school.

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[27] Schacht, "On the Title of the *Fatāwā al-'Ālamgīriyya,*" 478.

[28] Isḥāq Bhaṭṭī provides details of eleven major *fatāwā* collections which were compiled in India. Muḥammad Isḥāq Bhaṭṭī, *Barr-i Ṣaghīr Pāk-o Hind mēṇ 'Ilm-i Fiqh* (Lahore: Kitāb Sarā'ē, 2009 [1973]), 50.

[29] Zafarul Islam, "Origin and Development of *Fatāwā* Compilation in Medieval India," *Studies in History* 12, no. 2 (1996): 224–25.

[30] "Perhaps the most famous and most comprehensive of these collections is that made in India the seventeenth century and known as the *Fatāwā 'Alamgīriyya*." Noel Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 143.

[31] Schacht, *Introduction to Islamic Law,* 94.

(3) *Fatāwā*, *wāqi'āt*, or *nawāzil*, the doctrines developed by later Ḥanafī jurists on new issues that were not discussed by the earlier jurists.[32]

The *FA* falls under the third category and it is a continuation of a distinct genre of Ḥanafī *fiqh* treatises such as *al-Fatāwā al-Khāniyyah* of Qāḍī Khān (d. 1196 CE) and *al-Fatāwā al-Bazzāziyyah* of Muḥammad al-Bazzāzī al-Kurdī (d. 1424 CE).[33] These treatises serve as secondary *fatāwā* which are based on the edited and abridged primary *fatāwā* to constitute "a work of *fiqh*."[34] This shows that the *FA* was a continuation in the Ḥanafī tradition. In its preface, the compilers of the *FA* state that they closely followed the classification of topics in the *Hidāyah*. A comparison of the classification of chapters of the *FA* with that of the *Hidāyah* confirms this statement. The *FA*, however, is much more voluminous than the *Hidāyah*, approximately four times than that of the latter.[35] Unlike the *Hidāyah*, the *FA* is an encyclopedic compendium of the Ḥanafī *fiqh*, containing references to around 124 books,[36] which included the earliest and the later textbooks of the Ḥanafī school.[37] An analysis of the chapter of the *FA* on Judicial Registration and Records (*al-maḥāḍir wa al-sijillāt*) reveals that it is based on a combination of the earlier works and later practices. This chapter refers to the works containing authoritative

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[32] See Sayyid Amīr 'Alī, preface to *Fatāvā-i 'Ālamgīrī*, trans. Sayyid Amīr 'Alī (Karachi: Dār al-Ishā'at, 2011), 1:125–26.

[33] In 1888, one publisher in Cairo, al-Matba'ah al-Kubrā al-Amīriyyah printed *al-Fatātwā al-Khāniyyah* and *al-Fatāwā al-Bazzāziyyah* in the margins of the *FA*.

[34] Wael B. Hallaq, "From *Fatwās* to *Furū'*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, no. 1 (1994): 29, 43–44.

[35] See Appendix two for comparison of contents of the chapter on *waqf*.

[36] Mujīb Allāh Nadvī, *Fatāvā-i 'Ālamgīrī kē Mu'allifīn* (Lahore: Markaz-i Taḥqīq, Diyāl Singh Library, 1988), 14–17.

[37] For instance, in the chapter on *waqf* in the *FA*, fifty-five different sources have been mentioned which include the third/ninth-century works of Aḥmad b. 'Amr al-Khaṣṣāf (d. 874 CE) and Hilāl b. Yaḥyā al-Ra'y (d. 859 CE) as well as the later works of Muḥammad b. Aḥmad al-Sarakhsī (d. 1090 CE), Muḥammad b. 'Abd al-Wāḥid Ibn al-Humām (d. 1457 CE), al-Ḥasan b. Manṣūr Qāḍī Khān (d. 1196 CE), and other jurists. Syed Khalid Rashid, "Analyzing the Level of Maturity Attained by the Law of Waqf in Mughal India as Shown in the *Fatāwā al-'Alamgiriyah*," *Journal of Objective Studies* 19–20 (2008): 1. Other sources of the *FA* include the *Hidāyah* and its several commentaries e.g., *al-Bināyah Sharḥ al-Hidāyah* by Maḥmūd b. Aḥmad al-'Aynī, *al-'Ināyah Sharḥ al-Hidāyah* by Muḥammad b. Maḥmūd al-Bābartī, and *al-Ghāyah Sharḥ al-Hidāyah* by Muḥammad Ibrāhīm al-Sarūjī. It also includes many authoritative Ḥanafī books, which were written subsequent to the *Hidāyah*. Such books also include the ones written by Indian jurists such as the thirteenth-century *al-Fatāwā al-Ghiyāthiyyah* and *al-Fatāwā al-Qarākhāniyyah*, the fourteenth-century *al-Fatāwā al-Tātārkhāniyyah*, and the *Fatāvā-i Burhāniyyah*. Guenther, "Hanafi *Fiqh* in Mughal India," 215.

doctrines of the founding fathers of the Ḥanafī school along with the later *fatwā* collections.[38]

Although the *FA* was based on the earlier authoritative texts of the Ḥanafī school, its compilers made deliberate choices to conform the rulings of the Ḥanafī school to the social circumstances of the late Mughal India. Two examples are helpful to explain this point. First, the *FA* preferred the views of the Ḥanafī jurists of Iraq to those of the Ḥanafī jurists of Central Asia in according non-Muslims the right to reside and practice their religion under Muslim rule.[39] Second, the *FA* endorsed a status-based construction of the society by dividing *ta'zīr* punishments into four categories in accordance with the social status of the offender. First, *'ulamā'* and *'alawī*s (*ashraf al-ashrāf*) were exempt from humiliation and physical punishments. Second, *umarā'* and landholders (*ashrāf*) could be subjected to humiliation but not to physical punishments or imprisonment. Third, the middle class (*awsāṭ*) could be humiliated and imprisoned but not punished physically. Fourth, lower classes (*akhissah*) could be humiliated, physically punished, and imprisoned.[40]

The *FA* contributed to the substantive law (*fiqh*) of the Ḥanafī school by adding chapters on practical aspects of the law. The following three chapters are an important contribution of the *FA* to the format of legal compendia:

1. Book on Judicial Registration and Records (*al-maḥāḍir wa 'l-sijillāt*)
2. Book on Stipulations/Formularies (*al-shurūṭ*) and
3. Book on Stratagems/Legal Devices (*al-ḥiyal*)

Further, the *FA* deals with the issue of adjudication in detail. In total, its six chapters cover various stages of adjudication, from the appointment of judges to the filing of claims and the recording of evidence.

1. Book on Guidance of Judges/Judgeship (*adab al-qāḍī*)
2. Book on Claim (*al-da'wā*)
3. Book on Admission (*al-iqrār*)
4. Book on Settlement (*al-ṣulḥ*)

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[38] Wael B. Hallaq, "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice," *Islamic Law and Society* 2, no. 2 (1995): 109, 122.

[39] Mouez Khalfaoui, "Together but Separate: How Muslim Scholars Conceived of Religious Plurality in South Asia in the Seventeenth century," *Bulletin of the School of Oriental and African Studies* 74, no. 1 (2011): 87–96.

[40] Sayyid Amīr 'Alī, trans., *Fatāvā-i 'Ālamgīrī* (Karachi: Dār al-Ishā'at, 2011), 3:353.

5. Book on Evidence (*al-shahādah*) and
6. Book on Retraction of Evidence (*al-rujū' 'an al-shahādah*)

This section has shown that although the *FA* followed the established Ḥanafī tradition, it also made significant contributions to the legal literature by adapting the rulings of the Ḥanafī school in the context of late Mughal India. An important contribution of the *FA* was its compilation by a board of jurists. There was, however, already a precedent. *Al-Fatāwā al-Tātārkhāniyyah* was compiled by 'Ālim b. al-'Alā' al-Ḥanafī (d. 1397 CE) with the aid of a board of eminent religious scholars.[41] This shows that the *FA* represents the continuity of the Ḥanafī legal tradition while making significant contributions to it both substantively and methodologically.

## Rationale and Historical Context of the Compilation of the *FA*

The compilers of the *FA* describe the rationale behind its compilation in its preface. They state that the diversity of views found in *fiqh* books makes them inaccessible to non-experts. Therefore, the Emperor 'Ālamgīr assigned the task of the compilation of an authoritative book to a board of scholars who compiled the *FA*. They state that they provide the most commonly agreed views of jurists on various issues without quoting their arguments and authorities except when it is necessary to do so for the elaboration of the issue or when one issue is linked to the other.[42] They clarified that they did not refer to novel views except when they did not find an answer in the well-known authorities of the Ḥanafī school (*ẓāhir al-riwāyah*).[43] In such cases, they name the scholar who expressed those novel views, with proper reference, without changing the original text. Further, they state that they have included only those novel views that have been accepted by scholars.[44]

Historical evidence suggests that the patronage of *fiqh* through the compilation of the *FA* was part of 'Ālamgīr's policy to consolidate his political power. The role of the Emperor in the legal system was subjected to heated debates during the Mughal era in India. The Mughal

[41] Other legal compilations with the collective effort of scholars under state patronage included *Fatāvā-i Fīrūzshāhī*, *Fatāvā-i Ibrāhīmshāhī*, *al-Fatāwā al-'Alawiyyah*, *Fatāvā-i Amīniyyah*, *Fatāvā-i Barahnah*, *al-Fatāwā al-Ḥammādiyyah*, *al-Fatāwā al-Naqshbandiyyah*, and *Fatāvā-i Majma' al-Barakāt*. Zafarul Islam, *Fatāwā Literature of the Sultanate Period* (New Delhi: Kanishka Publishers, 2005), 20–28.
[42] Niẓām, *al-Fatāwā al-'Ālamgīriyyah*, 1:4.
[43] Ibid.
[44] Ibid.

Emperor Akbar had consolidated his authority by weakening the power of *umarā'* (lords) and *manṣabdār*s (bureaucrats). This created fear amongst *'ulamā'* who felt that their authority was also in danger. Therefore, they proposed that the authority of the Emperor should be limited within the confines of the *sharī'ah*. They signed a document, called *maḥḍar* to impose limits on the authority of the Emperor who could interfere in canon law only in cases where there was a difference of opinion among jurists. Emperor Akbar, however, viewed this document as an assignment of the authority to him to perform *ijtihād* (independent reasoning).[45]

Unlike Emperor Akbar, 'Ālamgīr did not claim for himself the right to perform *ijtihād*. He wanted to purify *fiqh* from inaccurate doctrines through the *FA*.[46] The purification of *fiqh*, however, was not the only motive which prompted 'Ālamgīr to commission the compilation of the *FA*. Apart from his adherence to the Ḥanafī school, 'Ālamgīr had political motivations for the royal patronage of the *FA*. This project was aimed at winning the support of Sunnī *'ulamā'* who were rivals of the Rajput and Irani elites (*umarā'*) and had sided with 'Ālamgīr's opponents in his war for succession of the throne. A number of *'ulamā'* had resisted 'Ālamgīr's ascension to the throne on the ground that he forcibly seized power by putting his father—Shāh Jahān (r. 1628–1658)—in prison, and by executing his elder brother, Dārā Shikōh (d. 1659). This resistance reached the highest level when the Chief *Qāḍī* refused to recite the sermon (*khuṭbah*) in 'Ālamgīr's name.[47] In order to gain the trust of these *'ulamā'*, 'Ālamgīr included as the compilers of the *FA* a number of *'ulamā'* who had previously served at prominent positions during the reign of his father, Shāh Jahān.[48] The compilation of the *FA* served two important purposes. First, it helped 'Ālamgīr to co-opt *'ulamā'* into the state bureaucracy. Second, it enhanced his authority because, in the absence of a legal code, he was dependent on *'ulamā'* for discovering the law that was scattered in numerous books.[49] Historical evidence suggests that

[45] Aziz Ahmad, "The Role of Ulema in Indo-Muslim History," *Studia Islamica* 31 (1970): 2, 7.
[46] Muhammad Khalid Masud, "Official *Madhhab* of the Mughal Empire under Awrangzeb Alamgir," *Studies on Islam* 3, no. 1 (2006): 1–23.
[47] 'Ālamgīr sought the help of another religious scholar, Shaikh 'Abd al-Wahhāb (d. 1675) to convince the Chief *Qāḍī* about the legitimacy of his rule. Rafat Bilgrami, "Shaykh 'Abd al-Wahhab and his Family under 'Alamgīr," *Journal of the Pakistan Historical Society* 31, no. 2 (1983): 100–14.
[48] Guenther, "Hanafi *Fiqh* in Mughal India," 209, 218.
[49] Ahmad, "Role of Ulema in Indo-Muslim History," 2.

'Ālamgīr relied upon the *FA* to make judges render suitable decisions for him.[50]

The strategic importance of the *FA* is evident from the fact that the Emperor began this project after gaining power in 1659 which preceded a long war of succession with his brothers. In 1663, while still engaged in the process of stabilizing his rule, he began administrative reforms.[51] During the war of succession and continued revolts, the law and order situation worsened. The Emperor felt the need to centralize political power, a process in which judicial reforms played a key role. In order to control the judicial system, it was necessary to clarify the laws. In this context, the compilation of the *FA* as a unified code of Islamic law was part of a broader imperial policy for better governance and effective political control.

Against this backdrop, 'Ālamgīr appointed a team of scholars for the compilation of a collection of authoritative rulings based on the Ḥanafī school. The work was divided into four parts under an editor who headed a group of scholars. Each editor directly reported to the chief editor, Shaikh Niẓām al-Dīn (d. 1680) who selected twenty-five *'ulamā'* from different cities in India. Most of these *'ulamā'* were closely connected with the imperial court. Shaikh Niẓām al-Dīn himself was a state official. Several scholars among the compilers were *qāḍī*s and *muftī*s.[52]

It appears that the target audience of the *FA* was jurists and judges rather than the general public, a feature that distinguishes it from modern legal codes that make the law accessible to general public. The *FA* was compiled in Arabic even though it was not the language of the court. But Arabic was the language of *fiqh* and symbolized authenticity of this work. As the official language of Mughals was Persian, the *FA* was translated into Persian.[53] In this way, it was made available to a wider audience beyond *qāḍī*s and *muftī*s.

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[50] Jadunath Sarkar, trans., *Anecdotes of Aurangzeb and Historical Essays* (Calcutta: M. C. Sarkar & Sons, 1912), 141–42. See below for further details.

[51] Some historians describe the period of the compilation of the *FA* as the tenth year of 'Ālamgīr's reign. Bhaṭṭī, *Barr-i Ṣaghīr Pāk-o Hind mēṇ 'Ilm-i Fiqh*, 266–67.

[52] Historians have described the identities of at least five *qāḍī*s. They included Qāḍī Muḥammad Ḥusain Jaunpūrī, Qāḍī 'Alī Akbar Ilāhābādī, Qāḍī 'Abad al-Ṣamad Jaunpūrī, Qāḍī Muḥammad Daulat Fatihpūrī, and Qāḍī Sayyid 'Ināyat Allāh Mōngīrī. Amongst the *muftī*s included Muftī Wajīh al-Dīn Gōpāmwī, Mufī Abū 'l-Barakāt Dihlavī, Muftī Muḥammad Akram Lāhōrī. Ibid., 284–351.

[53] The copies of this translation did not survive. Another Persian translation of the *FA* was undertaken by Najm al-Dīn Thāqib Kākūrī upon the instructions of the Calcutta College Council around 1813. A few handwritten chapters of this translation on *ḥudūd*

## Structure of the *FA*

One of the chief features of modern legal codes is their systematic structure that is logical and rational.[54] The *FA* partially fulfils this criterion. It is divided into sixty-two chapters. Each chapter (*kitāb*, literally book) is subdivided into sections (*abwāb*) that are further divided into sub-sections (*fuṣūl*). Unlike other *fiqh* compendia, sub-sections (*fuṣūl*) are not further divided into issues (*masā'il*). The *FA* begins with the classification of topics that is generally followed in the Ḥanafī *fiqh* textbooks: the first five chapters cover the rituals regarding purity, prayers, *zakāh*, fasting, and pilgrimage; three chapters regarding family issues such as marriage, fostering, and divorce follow the first five chapters; the ninth chapter deals with manumission; and the tenth with oaths. The following two chapters deal with criminal law by providing rules regarding *ḥudūd* offences, while other aspects of criminal law such as consumption of alcohol and bodily harms are dealt with much later in chapters fifty-one and fifty-five. Laws of war or international law (*siyar*) are discussed in chapter thirteen. Other aspects such as sacrifice (*al-uḍḥiyah*), slaughtering of animals (*al-dhabā'iḥ*), and hunting (*al-ṣayd*) are discussed in later chapters. A specific chapter deals with permissible and prohibited drinks (*al-ashribah*). Likewise, a chapter describes the things and acts that are detestable (*al-makrūh*). An independent chapter, "book on assumption (*al-taḥarrī*)," deals with issues and situations where a person is unsure about certain acts and tries to find a correct option; for instance, a traveler may not know the direction towards the *Ka'bah* for prayers and may offer prayers to a certain direction based on his/her assumption.

The compilers of the *FA* did not follow any logical scheme for organizing various chapters. For example, general partnerships are dealt with in chapter eighteen, while commenda, which is also a type of partnership (specifically of labour and capital), is discussed in chapter thirty-one. Similarly, there is no separate chapter on general contracts; rather, contractual relationships are dealt with separately in various chapters. Starting with sales (chapter twenty), the *FA* covers agency (chapter twenty-seven on *al-wakālah*), deposit/bailment (chapter thirty-two on *al-wadī'ah*), lease (chapter thirty-five on *al-ijārah*), and sharecropping (chapter forty-four on *al-muzāra'ah*). Chapter forty-five on transaction (*al-mu'āmalah*) deals with a contract in which payment is

have survived. Bazmi Ansari, "Fatāvā-i 'Ālamgīrī," in *Urdū Dā'irah-i Ma'ārif-i Islāmiyyah*, ed. Sayyid Muḥammad 'Abd Allāh et al. (Lahore: Dānishgāh-i Panjāb, 1975), 15:147.

[54] Weiss, "Enchantment of Codification," 435, 454.

given in kind for the labour. Temporary borrowing and security for debts (pledge) are dealt with under chapters thirty-three and fifty-four respectively. Insolvency is covered under chapter thirty-nine. The law on slavery is discussed in various chapters such as chapter nine (manumission [*al-'itāq*]), chapter sixteen (fugitive slaves [*al-ibāq*]), chapter thirty-six (contracted slaves [*al-mukātab*]), chapter thirty-seven (*al-wilā'*), and chapter forty (permitted slave [*al-ma'dhūn*]). Land law is covered under chapter forty-two (pre-emption [*al-shuf'ah*]) and chapter fifty (cultivation of waste land [*iḥyā' al-mawāt*]). Wills are covered under chapter fifty-six while inheritance law is discussed in chapter sixty-one. The endowment (*al-waqf*) is discussed in chapter nineteen and the gift in chapter thirty-four. The issues of duress (*al-ikrāh*), confiscation, and distribution of property are dealt with in chapters thirty-eight, forty-two, and forty-three respectively. However, market transactions such as currency exchange (*al-ṣarf*), guarantee (*al-kafālah*), and bill of transfer (*al-ḥawālah*) are dealt with in three consecutive chapters twenty-one, twenty-two, and twenty-three. Similarly, lost property, foundlings, and missing persons are dealt with in chapters fourteen, fifteen, and seventeen respectively.

The other main feature of modern legal codes is their comprehensiveness.[55] The *FA* is comprehensive for the topics covered in it. However, it does not cover administrative law. The absence of administrative law can be explained by the fact that the administrative sphere of the Mughal Empire was governed through imperial edits. The Emperor was the central authority in the Mughal political system. Being the supreme leader of the Empire, the Emperor embodied within his title and person the roles of the chief military commander, the executive head of the state, and the final dispenser of justice.[56]

Sufficient historical evidence exists and confirms the actual application of the *FA* in courts during the reign of Emperor 'Ālamgīr, British colonial period, and post-colonial period. The following section describe the judicial application of the *FA* during the Mughal, the British colonial, and post-colonial periods.

## Judicial Application of the *FA*

Historical evidence suggests that during the reign of 'Ālamgīr judges relied upon the *FA* to administer justice. One anecdote suggests that

[55] Ibid.

[56] Muhammad Bashir Ahmad, *The Administration of Justice in Medieval India* (Aligarh: Aligarh Historical Research Institute, 1949), 61.

during the siege of a fort some Muslims and Hindus were taken as prisoners.[57] The Emperor ordered the *qāḍī* to investigate the legal question with the help of *muftī*s regarding the punishment of these prisoners. After consulting canon law, the *qāḍī* reported to the Emperor that Muslims should be imprisoned for three years and Hindus should be released if they embrace Islam. The Emperor returned the sheet upon which this legal opinion was written with the note, "This decision [is] according to the Ḥanafī school; decide the case in some other way, that control over the kingdom may not be lost. Ours is not the rigid Shiah creed, that there should be only one tree in an entire village. Praise be God! there are four schools based on truth, according to its age and time."[58] Upon this, the *qāḍī* revised the ruling, which stated, "From the *Fatāwā-i ʻĀlamgīrī* we derive the sentence that the Hindu and Muslim [prisoners of war] should be executed as a deterrent."[59] The Emperor approved this sentence, which was implemented.[60]

In practice, interactions between the text of the *FA* and imperial policy were much complex. A comparison of penal rules laid down in the *FA* and an Imperial edict (*farmān*) dated June 16, 1672 shows the complementary and sometimes contradictory relationship between these two types of legal authorities.[61] While the *FA* provides amputation of hand as a punishment for theft,[62] the *farmān* does not provide the punishment of amputation for theft and robbery; rather, it provides varying degrees of punishments based on the frequency of the offence. At the first instance, imprisonment until repentance is provided. If this does not stop the offender from committing theft, the punishment of flogging is provided for repeated theft. A habitual thief can be put to death if imprisonment and flogging do not deter him from committing this offence.[63] The *farmān* also provides punishments and procedures for the prosecution of such offences that are not covered in the *FA*. Such offences include grave-digging, robbery and abetting robbery, larceny, mischief, rebellion, counterfeit of gold, sale of alloyed gold as unalloyed gold, extortion of money, enticement of women, gambling, sale and

[57] Sarkar, *Anecdotes of Aurangzeb and Historical Essays*, 141.
[58] Ibid.
[59] Ibid., 142.
[60] Ibid.
[61] Copy of the *farmān* issued on June 16, 1672 is reproduced in Bhatia, *Administrative History of Medieval India*, 243–49. The original copy of the *farmān* in Persian is reproduced in Ali Muhammad Khan, *Mirat-i-Ahmadi: A History of Gujrat in Persian*, ed. Syed Nawab Ali (Baroda: Oriental Institute, 1928), 277–83.
[62] ʻAlī, *Fatāvā-i ʻĀlamgīrī*, 3:365.
[63] Bhatia, *Administrative History of Medieval India*, 243–49.

distillation of wine and other intoxicants, entering of other people's houses for mischief, slander, enslavement of a Muslim by *dhimmī* (non-Muslim citizen), adultery, sodomy, apostasy, castration of a son of another person, innovation in religion and inviting other people to it, the imprisonment of murderers, and the reporting of their cases to His Majesty.[64]

Despite apparent contradiction between the punishments provided in the *farmān* and the ones mentioned in the *FA*, the *farmān* states that certain cases have to be decided according to the religious law or according to the law. Likewise, an earlier *farmān,* dated December 6, 1660, specified guidelines for succession to *madad-i ma'āsh* (land grant). Though this *farmān* was issued before the compilation of the *FA* had started, it did not follow the Islamic law of inheritance. This *farmān* gives an orphaned grandchild the right of representation in the inheritance of his grandfather (under the Ḥanafī law of inheritance, such child does not receive any share in the estate of his/her grandfather). Married daughters are not given any share in land in the presence of sons (under the Ḥanafī law of inheritance, daughters receive inheritance that is one-half of sons). If there are no sons, all property is given to daughters, and agnatic relations do not inherit (they inherit under the Ḥanafī law of inheritance). A widow inherits the whole landed property for life in the absence of children (under the Ḥanafī law of inheritance, a widow receives one-fourth estate if there are no children). If a man leaves behind a mother or grandmother and other female relatives, the property is to be divided according to the *sharī'ah* (*muṭābiq-i shar'-i sharīf*).[65] Similar eclectic treatment is given to the rulings of the *FA* in a *farmān* of 'Ālamgīr on land tax.[66]

The English translator of the *FA*, Neil B. E. Baillie (d. 1883), considered it a pity that instead of the *FA*, the *Hidāyah* was translated into English first.[67] According to Baillie, the *FA* could have served as a standard authority for the judges of the courts established by the East India Company because it was compiled in India by the authority of an Indian Muslim ruler. However, according to him, it was perhaps

[64] Ibid.
[65] Ibid., 250–52.
[66] Zafarul Islam, *Socio Economic Dimension of Fiqh Literature in Medieval India* (Lahore: Research Cell, Diyal Singh Trust Library, 1990), 69–78.
[67] Charles Hamilton published the English translation of the *Hidāyah* in 1791. See Charles Hamilton, trans., *The Hedaya, or Guide; A Commentary on the Mussulman Laws*, 4 vols. (London: T. Bensley, 1791).

considered a bit "too voluminous for translation."[68] Unlike the *Hidāyah*, the *FA* does not explain the legal principles in detail. Further, the latter does not provide all contrasting views on a particular point. Rather, it limits the diversity of opinions, which is why it could serve as an effective legal code. For educative and informative purposes, however, the *Hidāyah* was better because of its simple language and relatively smaller size. Charles Hamilton, the English translator of the *Hidāyah*, stated that the primary aim of his translation was not simply to use it as a legal code, but to empower the officers of the East India Company, as well as merchants, to understand the native law.[69]

According to the leading commentator of Islamic law in British India, William Hay Macnaghten, who also served as a judge in Calcutta, Hamilton's translation of the *Hidāyah* is of "little utility as a work of reference to indicate the law on any particular point which may be submitted to the judicial decision."[70] These remarks are important because Macnaghten was one of the few British administrators and judges who were fluent not only in Persian and Sanskrit, but also in Arabic.[71] Despite the higher status attributed to Hamilton's translation of the *Hidāyah* in the colonial Indian courts, judges frequently relied upon Baillie's translations of the various parts of the *FA* for the elaboration of various principles of Muslim personal law. The legal importance of the *FA* is highlighted in the controversy surrounding the validity of Muslim family endowments (*awqāf*, sing. *waqf*) in British India. This was one of the most important legal controversies, which was subjected to heated debates at the judicial and legislative forums for more than half a century. Baillie's translation clearly provided that Muslim law allowed such settlement in favour of oneself and one's family. However, a footnote in Hamilton's translation of the *Hidāyah* described the *waqf* as "a pious or charitable nature."[72] In his translation, Baillie clarified that Hamilton unnecessarily restricted the legal meaning of *waqf* to "pious

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[68] Neil B. E. Baillie, *A Digest of Moohummudan Law* (London: Smith, Elder, & Co, 1865), viii.
[69] See Charles Hamilton, "Preliminary Discourse," in *The Hedaya, or Guide; A Commentary on the Mussulman Laws*, trans. Charles Hamilton, 4 vols. (London: T. Bensley, 1791), 1:lxxxvii.
[70] Baillie, *Digest of Moohummudan Law*, x.
[71] He was born in Calcutta and served as a magistrate and registrar of the *Sudder Dewanny Adawlut* (Court of Appeal for Native Indians). He was also the author of the first textbook on Muhammadan Law, which was published in 1825. William H. Macnaghten, *Principles and Precedents of Moohummudan Law*, 3rd ed. (Madras: J. Higginbotham, 1864 [1825]).
[72] Charles Hamilton, trans., *The Hedaya, or Guide*, ed. Standish Grove Grady, 2nd ed. (London: Wm. H. Allen & Co., 1870), 231.

and charitable nature" and the same was followed by William Macnaghten in his legal commentary. Baillie suggested that the term was more comprehensive and included "settlements on a person's self and children."[73]

The first reported judgement, in which the validity of Muslim family endowments was expressly disputed, was published in the Bombay High Court Reports in 1873.[74] In this judgement, Justice Melvill observed the conflict of opinions amongst the Ḥanafī jurists regarding the rules of *waqf* law and concluded, "To constitute a valid wakf, there must be a dedication of the property *solely* to the worship of God, or to religious and charitable purposes."[75] In another case, the Subordinate Judge relied upon Baillie's *A Digest of Moohummudan Law* to reach the conclusion that if a person makes a settlement of his land in favour of his descendants, the poor are excluded and the property becomes vested in the descendants of the appropriator.[76] On appeal, Justice Morris described it as a misinterpretation of Muhammadan law and held that the actual meaning of the passage in Baillie's translation was that only so long as the descendants survive shall the poor be excluded from the benefit of the appropriation. He also noted a conflict of authority between Baillie on the one hand and Macnaghten and Hamilton on the other.[77] Justice Morris regarded the *Hidāyah* as the "principal authority" and quoted Hamilton's translation of the *Hidāyah*, in which Abū Ḥanīfah requires that the *waqf* must be for some "charitable" purpose.[78] In *Abul Fata v. Rasamaya Dhur*, Justice Tottenham and Justice Trevelyan referred to Baillie's translation of the *FA*, but relied upon the *Hidāyah* to declare the Muslim family endowments as invalid.[79] Finally, in 1894 the Judicial Committee of the Privy Council, the highest court of appeal in the British Empire, declared the Muslim family endowments as illusory and invalid, since their primary objective was that of family aggrandizement, and

[73] Baillie, *Digest of Moohummudan Law*, 549.
[74] Abdul Ganne Kasam v. Hussen Miya, 10 BHC 7 (1873).
[75] Ibid., 13; emphasis added.
[76] Mahomed Hamidulla Khan v. Lotful Huq, 744 ILR 6 Cal (1881) 8 CLR 164.
[77] Macnaghten described *waqf* as an endowment to "the service of God," but he did not assert that an endowment could not be established in favour of children. Rather his treatise clearly envisaged a *waqf* in favour of unborn children. Macnaghten, *Principles and Precedents of Moohummudan Law*, 69.
[78] It was a misreading of the text. After translating the *waqf* as appropriation, Hamilton inserted a footnote: "Meaning always *of a pious or charitable nature*." In his preliminary discourse of the *Hedaya*, he translated the heading *waqf* as "Of (pious or charitable) Appropriations." Hamilton, *Hedaya, or Guide*, lxxiii.
[79] Abul Fata Mahomed Ishak v. Rasamaya Dhur Chowdhuri, 399 ILR 18 Cal (1891).

because the possibility of the poor benefiting from it was minimal. In his judgement, Lord Hobhouse did not refer to Baillie's translation of the *FA*.[80] Indian Muslims, especially the landed elites were adversely affected by this judgement because they had created family endowments in favour of their families. Therefore, they agitated for its reversal. The British government yielded to the political pressure and enacted the Mussalman Wakf Validating Act 1913 to validate Muslim family endowments.[81]

The above episode regarding the validity of Muslim endowments in colonial India shows that the judges regarded the *FA* as an important authority along with the *Hidāyah*. Although on this particular point they opted to follow the latter, it was the viewpoint expressed in the former that ultimately prevailed when the government promulgated the Mussalman Wakf Validating Act 1913.

A cursory glance over the reported judgements in Pakistan shows that the judges rely upon the *FA* while adjudicating family law cases, but they sparingly refer to it in criminal law cases.[82] For instance, in *Nasir Ahmad Khan v. Ismat Jehan Begum*, the Supreme Court of Pakistan relied upon the *FA* to hold that under Islamic legal principle of *al-sum'ah*, a higher amount of dower can be declared in public while actually paying a lower amount in private.[83] The Lahore High Court relied upon the *FA* in elaborating the principles of pre-emption (*shuf'ah*) in *Karim Bakhsh v. Muhammad Nawaz*.[84] The Sindh High Court referred to the *FA* to decide the issue of contingent divorce in *Bilqees Begum v. Manzoor Ahmed*.[85] In Islamic criminal law cases, however, the judges sparingly rely upon the *FA*. In a case regarding unlawful sexual intercourse under the Offence of Zina (Enforcement of Hudood) Ordinance 1979, Justice Muhammad Taqi

[80] Abul Fata v. Russomoy Dhur (Bengal), UKPC 64, 22 IA 76 (1894).
[81] Gregory Kozlowski, *Muslim Endowments and Society in British India* (Cambridge: Cambridge University Press, 1985), 156–91.
[82] The *FA* did not receive any state patronage in Pakistan. Despite the availability of Sayyid Amīr 'Alī's Urdu translation, published in 1931 by Munshi Nawal Kishawr Press, the updated Urdu version of the *FA* was published only in September 2011 by Dār al-Ishā'at, Karachi without any support from the state. Maulānā Muḥammad 'Ābid of Dār al-'Ulūm, Karachi updated this edition. Justice (r) Muhammad Taqi Usmani wrote its preface. This is in contrast with the colonial patronage of the English translation of the *FA*. Baillie translated various chapters of the *FA* into English in the form of *The Moohummudan Law of Sale* (1850), *The Land Tax of India* (1853), and *A Digest of Moohummudan law* (1865). The Court of Directors of the East India Company authorized these translations, and they were published at the public expense.
[83] Nasir Ahmad Khan v. Ismat Jehan Begum, PLD 194 (SC 1969).
[84] Karim Bakhsh v. Muhammad Nawaz, CLC 807 (1989).
[85] Bilqees Begum v. Manzoor Ahmed, PLD 491 (WP) Karachi (1962).

Usmani cited the *FA* regarding the dissolution of marriage of a woman who converted to Islam. He acquitted the appellant woman who married after her conversion to Islam from Christianity without completing the waiting period (*'iddat*). The trial court and the Federal Shariat Court had convicted her to imprisonment for illicit sex (*zinā*).[86] This judgement is exceptional for its reliance on the *FA* because in most of the cases decided by Federal Shariat Court, the *FA* is not cited.[87]

## Conclusion

It might be anachronistic to regard the *FA* as a "legal code" especially when the modern usage of the terms "legal code" and "codification" started during the nineteenth century.[88] Furthermore, these terms are associated with the legal developments in Western Europe which produced the unique political institution in the form of the modern nation state.[89] Therefore, despite its significant contribution to the legal literature of the Ḥanafī school, modern scholars do not regard the *FA* as a legal code.

In this article, I have argued that the *FA* performed functions, which are similar to that of a legal code in its particular historical context. The historical context of its compilation shows that the *FA* was the part of Emperor 'Ālamgīr's policy to simultaneously co-opt *'ulamā'* into the state bureaucracy as its compilers and strengthen his political authority by relying on a legal code instead of the opinions of jurists based on

[86] Nazeeran v. Sarkar, PLD 713, 717 (SC 1988).

[87] In his analysis of the chapter of *ḥudūd* in the *FA*, Robert Gleave argues that the emphasis of the legal rulings is not upon imposition of punishment. Robert Gleave, "Crimes against God and Violent Punishment in *al-Fatāwā al-'Ālamgīriyya,*" in *Religion and Violence in South Asia: Theory and Practice*, ed. John R Hinnells and Richard King (Abingdon: Routledge, 2007), 83–106. However, the focus of the Hudood laws in Pakistan has been on the imposition of punishments. Martin Lau, "Twenty-Five Years of Hudood Ordinances—A Review," *Washington and Lee Law Review* 64 (2007): 1291–1314. Julie Dror Chardbourne, "Never Wear Your Shoes after Midnight: Legal Trends under the Pakistan Zina Ordinance," *Wisconsin International Law Journal* 17 (1999): 180. Asifa Quraishi-Landes, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Women-Sensitive Perspective," *Michigan Journal of International Law* 18 (1997): 287.

[88] Weiss, "Enchantment of Codification," 435, 454–66.

[89] Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 23. Anver Emon points out that this narrative overemphasizes the distinguishing features of the modern state with the objective to provide a critique of the authoritarian state. In doing so, it overdetermines the conception of the state while adopting a narrowed view of Islamic law. Anver M. Emon, "Codification and Islamic Law: The Ideology Behind a Tragic Narrative," *Middle East Law and Governance* 8 (2016): 275, 280.

dispersed sources of *fiqh*. The contents of the *FA* exhibit that not only it makes legal rulings uniform but it also lays down detailed provisions on the procedural aspects of the law. Therefore, it became an important source of legal rulings of the Ḥanafī school during the late Mughal period, British colonial period, and post-colonial period in South Asia and beyond. It remains an authoritative reference book for the Ḥanafī jurists all over the world and is matched by the majestic *Radd al-Muḥtār* of Ibn ʻĀbidīn (d. 1836), written during the early nineteenth century.[90]

The most significant contribution of the *FA* is that it lays down the methodology of the compilation of a legal treatise by a board of *ʻulamā'* under the state patronage. This methodology was replicated two centuries later in the Ottoman Empire when the *Majallat al-Aḥkām al-ʻAdliyyah* (the Civil Code) was formulated in the third quarter of the nineteenth century.[91] In this way, the *FA* contributed to the Ḥanafī *fiqh* not only substantively by making existing legal rulings uniform and adding new legal rules, but also methodologically by laying down a precedent for the collaboration of jurists to produce an updated and comprehensive legal compendium to cater to the needs of the time.

## Appendix 1

### Comparative Table of Contents

| | ***Al-Hidāyah*** | ***Al-Fatāwā al-ʻĀlamgīriyyah*** | ***Radd al-Muḥtār*** |
|---|---|---|---|
| 1 | Purity (*Ṭahārah*) | Purity | Purity |
| 2 | Prayers (*Ṣalāh*) | Payers | Prayers |
| 3 | Almsgiving (*Zakāh*) | Almsgiving | Almsgiving |
| 4 | Fasting (*Ṣawm*) | Fasting | Fasting |
| 5 | Pilgrimage (*Ḥajj*) | Pilgrimage | Pilgrimage |
| 6 | Marriage (*Nikāḥ*) | Marriage | Marriage |

[90] The *FA* is referred 241 times in Ibn ʻĀbidīn's *Radd al-Muḥtār*. This number is based on search in *al-Maktabah al-Shāmilah*.

[91] S. S. Onar, "The Majalla," in *Law in the Middle East*, ed. M. Khadduri and Herbert J Liebsney (Washington: Middle East Institute, 1955), 292. The *FA* is one of the important sources of the *Majallah*. Samy A. Ayoub *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence* (New York: Oxford University Press, 2020), 143.

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| 7 | Fosterage (*Riḍāʿ*) | Fosterage | Fosterage |
| 8 | Divorce (*Ṭalāq*) | Divorce | Divorce |
| 9 | Manumission (*ʿItāq*) | Manumission | Manumission |
| 10 | Oaths (*Aymān*) | Oaths | Oaths |
| 11 | Fixed Punishments (*Ḥudūd*) | Fixed Punishments | Fixed Punishments |
| 12 | Theft (*Sariqah*) | Theft | Theft |
| 13 | International Law (*Siyar*) | International Law | *Jihād* |
| 14 | Found Property (*Luqṭah*) | Found Property | Found Property |
| 15 | Foundling (*Laqīṭ*) | Foundling | Foundling |
| 16 | Fugitive Slaves (*Ibāq*) | Fugitive Slaves | Fugitive Slaves |
| 17 | Missing Person (*Mafqūd*) | Missing Person | Missing Person |
| 18 | Partnership (*Shirkah*) | Partnership | Partnership |
| 19 | Religious Endowment (*Waqf*) | Religious Endowment | Religious Endowment |
| 20 | Sale (*Bayʿ*) | Sale | Sale |
| 21 | Money Exchange (*Ṣarf*) | Money Exchange | Money Exchange (This chapter is part of the Chapter on sale) |
| 22 | Guaranty (*Kafālah*) | Guaranty | Guaranty |
| 23 | Transfer (*Ḥawālah*) | Transfer | Transfer |
| 24 | Judgeship (*Adab al-Qāḍī*) | Judgeship | Judgeship |
| 25 | Testimony (*Shahādah*) | Testimony | Testimony |
| 26 | Retraction of Testimony (*Rujūʿ ʿan al-Shahādah*) | Retraction of testimony | Retraction of testimony |
| 27 | Agency (*Wakālah*) | Agency | Agency |
| 28 | Claim (*Daʿwā*) | Claim | Claim |

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| 29 | Acknowledgement (*Iqrār*) | Acknowledgment | Acknowledgement |
| 30 | Settlement (*Ṣulḥ*) | Settlement | Settlement |
| 31 | Commenda (*Muḍārabah*) | Commenda | Commenda |
| 32 | Bailment (*Wadīʿah*) | Bailment | Bailment |
| 33 | Temporary Borrowing/Loan (*ʿĀriyah*) | Temporary Borrowing/Loan | Temporary Borrowing/Loan |
| 34 | Gift (*Hibah*) | Gift | Gift |
| 35 | Rent/Hire (*Ijārah*) | Rent/Hire | Rent/Hire |
| 36 | Manumission for Payment (*Mukātab*) | Manumission for Payment | Manumission for Payment |
| 37 | Clientele (*Wilā'*) | Clientele | Clientele |
| 38 | Duress (*Ikrāh*) | Duress | Duress |
| 39 | Insolvency (*Ḥajr*) | Insolvency | Insolvency |
| 40 | Permitted Salve (*ʿAbd Ma'dhūn*) | Permitted Slave | Permitted Salve |
| 41 | Unlawful Appropriation (*Ghaṣb*) | Unlawful Appropriation | Unlawful Appropriation |
| 42 | Pre-emption (*Shufʿah*) | Pre-emption | Pre-emption |
| 43 | Division of Property (*Qismah*) | Division of Property | Division of Property |
| 44 | Sharecropping (*Muzāraʿah*) | Sharecropping | Sharecropping |
| 45 | Agricultural Lease (*Musāqāh*) | Civil Transactions (*Muʿāmalah*) | Agricultural Lease (*Musāqāh*) |
| 46 | Slaughtering of Animals (*Dhabā'iḥ*) | Slaughtering of Animals | Slaughtering of Animals |
| 47 | Sacrifice (*Uḍḥiyah*) | Sacrifice | Sacrifice |
| 48 | Reprehensible (*Makrūh*) | Reprehensible | Reprehensible and Permissible |

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| 49 | Cultivation of Waste Land (*Iḥyā' al-Mawāt*) | Assumption (*Taḥarrī*) | Cultivation of Waste Land |
| 50 | Drinks (*Ashribah*) | Cultivation of Waste Land | Drinks (*Ashribah*) |
| 51 | Hunting (*Ṣayd*) | Irrigation (*Shirb*) | Hunting |
| 52 | Pledge/Security (*Rahn*) | Drinks (*Ashribah*) | Pledge/Security (*Rahn*) |
| 53 | Offences/Torts (*Jināyāt*) | Hunting (*Ṣayd*) | Offences/Torts (*Jināyāt*) |
| 54 | Blood Money (*Diyāt*) | Pledge (*Rahn*) | Blood Money (*diyāt*) |
| 55 | Measurements (*Ma'āqil*) | Offences/Torts (*Jināyāt*) | Measurements |
| 56 | Wills (*Waṣāyā*) | Wills | Wills |
| 57 | Hermaphrodite (*Khunthā*) | Judicial Registration and Records (*al-Maḥāḍir wa 'l-Sijillāt*) | Hermaphrodite |
| 58 | | Stipulations/Formularies (*Shurūṭ*) | Inheritance (*Farā'iḍ*) |
| 59 | | Legal Devices (*Ḥiyal*) | |
| 60 | | Hermaphrodite (*Khunthā*) | |
| 61 | | Inheritance (*Farā'iḍ*) | |
| 62 | | Miscellaneous | |

# Appendix 2

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*Waqf* of *mushā'* (jointly owned property)
*Waqf* of immovables

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Construction of underground and upper floors in a mosque
Construction of caravanserai etc

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Chapter 8: Acknowledgment of the *waqf*

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