

OBSERVATIONS
ON THE
LAW AND CONSTITUTION
OF
INDIA,
ON THE
NATURE OF LANDED TENURES,
AND ON THE
SYSTEM OF REVENUE AND FINANCE,
AS ESTABLISHED BY THE
MOOHUMMUDUM LAW AND MOGHUL GOVERNMENT;
WITH
An Inquiry
INTO THE
REVENUE AND JUDICIAL ADMINISTRATION,
AND
REGULATIONS OF POLICE
AT PRESENT EXISTING
IN BENGAL.

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OBSERVATIONS,

§c. §c.

CHAP. I.

On the Law and Constitution of India.

THE British Legislature has declared that “the Indian subjects of Britain shall be protected in their rights according to the *laws and constitution of India.*” But what “laws and constitution” are here meant, it has been doubted whether the lawgivers themselves knew. It is assumed, indeed, that laws and a constitution do exist; but that a matter so important should remain ambiguous—that the “laws and the constitution,” by which the rights of so large a portion of the human race are here commanded to be protected, should not be known, is truly marvellous.

After so many years of British government of India, one might expect, at least, that there had been no want of endeavour, on the part of its rulers, to discover what “laws and constitution” did exist in India, and to expound the law, for the guidance of their subjects in obeying, and of their judges in administering it; and we accordingly find that some of its greatest governors have been most anxious in the attempt. But, whether the means adopted were insufficient I know not: certain it is, they have failed; for when we turn for information to

what has been written on the subject, we are forced to lay down the unsatisfactory volumes in profound mortification.

Almost any kind of regular government, following the distracted and tyrannical misrule which pervaded India during the decline and fall of the Moghul empire, could not fail to be hailed as a blessing by the inhabitants of that kingdom; and to this it is, probably, we owe the acquiescence of our Indian subjects in our judicial system, more than to any real excellence of its own. Assuredly, however, it is unworthy of the high character justly maintained by the Indian government in other departments, to rest satisfied, in this, with the mere acquiescence of their people: a people, too, but little skilled in the affairs of government (or, if informed, only taught in the school of anarchy and corruption), and to suffer them to be governed by laws, and by "regulations and laws," such as those now prevalent in India; enacted, doubtless, with the very best intention, but being founded on no system, have been made to partake of all, and are now become a compound of legislation to which no parallel is to be found.

So long ago as the year 1807, a "Digest of the Regulations and Laws enacted by the Governor-General in Council for the Civil Government of the Territories under the Bengal Presidency," was published by Sir J. E. Colebrooke. This "Digest" consists of no less than three ponderous folio volumes. We may conjecture the enormous mass whence so copious a digest was produced.

But the reader will be still more surprised, when he is told that this immense body of "rule and regulation,"
instead

instead of *defining rights*, is principally taken up with settling forms of procedure and judicial formula; and that it contains not one word, or scarcely one, of the law of India; and which, indeed, the British Government, in these Regulations, professes to administer to its native Indian subjects: so that, after wading through this waste of legislative wisdom, the student of law, supposing him previously qualified in Arabic and in Sanskrit, has to commence his legal studies of Moohummudan and Hindoo jurisprudence; a field not less extensive, nor perhaps less studded with thorns, than that which he has passed through.

In short, the rules which are to govern so many millions of the natives of India, with our well-known maxim of *ignorantia juris* staring them in the face, are, if not incomprehensible, certainly unknown. They may be said to be, as laws, totally unintelligible. Existing partly in English, partly in Arabic, partly in Sanskrit, they seem as if enacted to be concealed rather than promulgated; the former language being unintelligible to the governed; and the two latter to the governors. And to increase this chaotic confusion, the codes of Menu and of Moohummud are to be expounded by *native expounders*, who profess, indeed, but do not understand them; and to be administered by *European judges*, who do not even profess to understand either.

This, as a judicial system, can be approved by no intelligent being. So far, indeed, as separating the *expounding* and *administering* functions, I think I can see in it a humble copy of the Moohummudan establishment of a Kazeer or judge, with a Mooftee to assist him: the projector forgetting, however, that under the prototypi-

cal system the Kazee was himself a Mooftee, and equally eminent, or more so, than his coadjutor, for his knowledge of the law.

Were the fact unknown, it would appear incredible, that the laws which are administered under the British Government in India should, at this day, remain a mystery, even to the judges who preside over their administration; that there is no establishment under Government, either in India or in England, in which the laws and constitution of India are taught to their servants, destined to sit as judges of the law: nay, that there is no book, treatise, or other work, from which a competent knowledge of the law may be acquired, as yet rendered into our vernacular language.

It is, consequently, not much to be wondered at, if the information of the general reader, relative to the "law and constitution of India," be extremely limited. Particular pursuits have led me to consider the subject; and although I do not hope to be able to satisfy all my readers, yet I am confident that, whatever my success may be, an endeavour to shew what "law and constitution" formed the law and constitution of conquered India, at the period of the statute in question, and was consequently alluded to in it, will be favourably received.

Let it not be imagined from what I have said, that my design, in the following pages, is only to criticise or condemn. No one can be more fully sensible than I am, how much necessity has been the parent of many existing defects, nor of the difficulty, perhaps impracticability, of remedying them. But as I most confidently believe that there is no individual connected with the Indian Government,

ment,

ment, either at home or abroad, who does not make the welfare of that country, and the prosperity of the British Government over it, the most anxious wish of his heart, I am confident those worthy and patriotic individuals will not deny me the same benevolent motives, but will ascribe my strong, plain, perhaps occasionally unmeasured, style and manner of expression, to the anxiety I feel to cooperate with them, as far as my humble talents will go, in the same most worthy cause, by endeavouring to point out to those in power where and how to improve the system of administration as adopted for India. To discover defects is the first step towards improvement: and an important one it is, when, as in this case, those who have the power have also the will to improve.

My first object of inquiry, then, is—What is the “law and constitution of India?” There are, I apprehend, only two sources whence a satisfactory answer to this fundamental question is to be obtained; namely, the *law of the conquerors*, and the *history of the country*. From these I purpose to draw such information as the compass of an essay, like this, may enable me to submit.

I am then to inquire into the nature of *tenures*, with reference to the question so often agitated, “In whom vests the property of the soil under the British government in India; whether in the *Sovereign*, in the *Zumeendar*, or in the *Cultivator*?” In doing which I shall, first, shew the law applicable to the question; and secondly, note such historical records as may serve to shew what *de facto*, was the nature of such tenures under our predecessor Moslem government of India.

I shall notice, also, the different kinds of tenure recognized by the law : whence it will be seen what are *heritable*, what are *resumable*, how far the antient tenures in existence at the Moohummudan conquest are good, and what parts and portions of the soil could, at that period, have been matter of *transfer* or *settlement* ; or to which a proprietary right could otherwise be *legally* acquired.

I shall then advert to the tenures recognized by the British Government, their *origin* and *nature* ; whether *permanent* or *limited*, *free*, or evince *liability to be assessed* for the revenues of the state.

I shall afterwards shew the *nature* of *taxation* and *extent* thereof, as recognized by law under a Moohummudan government ; what was levied by the Moslems in other conquered countries, as in Syria, Iraak, &c. and held by law as precedents in case of future conquest ; what by law was leviabie in India ; and what *de facto* they did levy.

To these will be added observations on the *permanent settlement*, and on the present *revenue* and *judicial administration*, and *system of police*, as established under the British Government in Bengal.

What is the “ law and constitution of India ” to which the Legislature refers, as above ; by which it declares that “ the rights of the natives shall be protected ? ” There are two codes of law or constitutions known to *us* in India, the Hindoo and the Moohummudan ; totally distinct, however, in themselves : so that, as they never could have been, and certainly never were, *combined*, either the one or the other must be distinctly pointed at.

Is it the Hindoo "law and constitution," then, or the Moohummudan "law and constitution," that is meant by the Legislature as the law, &c. of India?

I must, however, pause here, and observe, that when we speak of a "Hindoo law of India," we assume the previous existence of a paramount Hindoo government; a fact which ought first to be established. I ask for records, to shew that there ever was a regular Hindoo government established over India. We know that a number of petty states, or Rajahships, existed at a late period, and even now exist. These have been magnified into kingdoms and independent principalities. Independent, indeed, they may have been who held them, as in a rude state of society every head of a family is independent and absolute; but we have no authentic account of a Hindoo paramount monarchy: whilst, on the contrary, Mr. Ward notices the names of "fifty-three separate kingdoms" in India. (vol.iii.) *Arrian* tells us, "according to Megasthenes, India was divided into one hundred and twenty-two several nations:" and we are told that, so long ago as 1450 years before Christ, India was conquered by the Persians; and, as Dow states, "paid tribute, and was ever after in some measure dependent on Persia."

Ferishta declares, that the Hindoos have no written history better than the heroic romance of the Mahabarut. It is, indeed, contrary to the analogy of history to believe, if there had been a regular government over India, that in the course of two thousand years, no one prince should have appeared to rescue his country from the Persian yoke; for that is the period between the eras of the Persian and Moohummudan conquest of India by Mahmood.

But supposing that their Persian conquerers suffered the Indians to rule themselves by their own laws, to which of the fifty-three separate kingdoms, according to Mr. Ward, or one hundred and twenty-two several nations as Megasthenes has it, are we to go for the "constitution of India?"

Whether we look to the laws of the Hindoos (I mean those which have been given to us as such) for more than we reasonably ought to do, I shall not say; but their real value, many are of opinion, is not great. Even their *antiquity* has been questioned; perhaps justly. It must be admitted, however, by their most strenuous advocates, that judging of what may be yet to unfold of the Hindoo law by that which has been translated, no high opinion can be entertained. I will not speak irreverently of their code, as a late historian does, who says, the laws of the Hindoos are "puerile, and worse than puerile, stained with brutality." (*Mill.*) But I am constrained to think that the law of the Hindoos, as given to us, is neither so antient nor so valuable, "and certainly not so familiar to the people, as to merit attention."

There is a propensity in man to magnify the value of whatever is rare or unknown that happens to be discovered by himself. Sir William Jones was unquestionably an eminent man, but he was greatly addicted to the above-mentioned propensity. Many of his followers, too, have been somewhat enthusiastic; and there is little doubt that the fame of the Hindoo law and literature has been augmented thereby. The propensity I advert to runs strongly towards antiquity; and, accordingly, we find that Sir William takes some trouble to raise the value of his Hindoo code in this respect.

"Of

“Of the Law of Menu,” (or, as it is also written, Mun-
noo), Sir William Jones tells us, “we have some evidence,
“partly extrinsic and partly internal, that it is really one
“of the oldest compositions existing.” Then he states
his *evidence* (which, however, amounts to little more than
mere conjecture), that the “original of this book must
“have received its present form about 880 years before
“Christ:” and then, in a very significant manner, he adds,
“whether Menu, or *Menus* in the nominative, *Menos* in
“the oblique case, be the same person with *Minos*, let
“others determine.” But why did Sir William rest satis-
fied with this? for it would have been just as easy to
prove, by etymology, a much higher antiquity to the Laws
of *Munpo*, thus aptly enough: *mun* or *min*, “from,” and
Noo, “Noah;” that is, *Minnoo*, or *Min-noo*, from Noah;
meaning that the work was, really, the production of the
second father of the human race, whom the Asiatics call
Noo, but subsequently converted into a proper name, as
is not very unusual. Thus, “the law *Men-noo*” may be
translated, “the Law of *Menu*,” or the Law *from*, or *of*,
Noah. A lawyer ought not to have been satisfied with
such *evidence*.

All that Sir William asks, however, though granted,
would be very little satisfactory; when, at best, he would
only establish the origin of the Hindoo law to be *posterior*
to the period when India ceased to be an independent
state, and became “tributary to Persia,” on the authority
of the Mahabarut and of the historian above mentioned;
that event taking place 1450, instead of 880 years before
Christ, the date assigned by Sir William to the code of
Menu.

But according to Ælian (Var. Hist. lib. 4 chap. 1.) and
Alex.

Alex. ab. Alex. (lib. 4. chap. 17. quoted by Purchas) "the laws of the Indians are *not written*." Another difficulty in the way.

But for the sake of avoiding the discussion of a question of difficult solution and of little consequence to my investigation, and supposing the Hindoos to be in possession of an authentic body of law, the point to be ascertained would still remain: Is it the *Hindoo* "law and constitution," or the *Moohumudan* "law and constitution," which is the "law and constitution of India?"

That it is not the former I have undertaken to prove. All must deem this, at least, *probable*, who advert to the mere fact, that six to eight centuries have elapsed since the country has been ruled by the triumphant and intolerant Moslems. We cannot believe, indeed, that a Moslem, who had the *power*, even the legal power, to exterminate the Hindoos as idolaters, would have the *will to adopt* and to *administer* their law and constitution, *and to subject his Moslem conquerors to it*. It is impossible to suppose that a Moslem, by exercising, would contribute to the permanence of the laws and constitution of an idolatrous and conquered people. The Mohummudan prince who should have attempted this, would, by the sacred law of *his* saviour, have subjected himself to the pains of apostacy; and by the ordinary laws of the human mind, to the contempt and execration of those in whom alone he was powerful.

During the whole period of the Moohumudan history in India, though we have seen that Hindoos were employed even at the head of other departments, we have never heard of a *Hindoo judge*; and assuredly no Moohumudan

hummudan Kazeer could ever have been found to administer the laws of Menu.

The public law (I mean that publicly administered, as well as that to which the sovereign could be a party, that between the sovereign and the people) I conclude, therefore, was indisputably Moohummudan; and that is the only law with which, in a question of this nature, we have any thing to do. The more tolerant princes may have sanctioned indulgences in cases of private succession, where the interests of the Hindoos alone were the subject of discussion; but, *in foro judice*, a question of private right, even of inheritance among Hindoos, could not have been decided except by the Moohummudan law, which accordingly provides for such questions, and declares that "they are to be determined as between Moslems," with certain limitations, however, which are applicable alike to *all* non-Moslem subjects. Even on the delicate point of inheritance, the Moohummudan law says, "a non-Moslem subject shall not *take* (inherit) in virtue of a marriage which by *our law* is illegal." *Zeylaaee, Súraáj, Moheet, &c.** It would, indeed, be absurd to suppose, that questions of property in lands, of revenue, finance, police, where the rights, interests, or regulations of the sovereign were involved, could ever have been remitted to the decision of any tribunal but that of Islaam.

This much for the *probability* of the case. Let us see what the *law* of the conquerors is.

By the Moohummudan law, the Daur-ool-Hurb, as a
foreign

* These are celebrated commentaries on the Moohummudan law, as well as the Jaumeaa-oor-rumooz and Zauhedec, mentioned in the following paragraph.

foreign province, becomes the Daur-ool-Islaum; that is, becomes annexed to the Moohummudan dominions “ by “ the *mere act of conquest*, and the exercise of *even a part* “ of the law of Islaum in it.” “ That country is the Daur-ool-Islaum,” says the *Jaumeea-oor Rumooz*, “ in which “ the laws of the Moslemeen prevail;” and, adds the same writer, “ it is stated by *Zauhedee*, that according to the “ unanimous opinion of the learned, the Daur-ool-Hurb “ becomes the Daur-ool-Islaum, by the exercise of even “ *some of the laws of Islaum in it.*”* Profession of the Moohummudan faith on the part of the inhabitants is not a condition. Therefore, by the Moohummudan law, India undoubtedly was the Daur-ool-Islaum: nay, is held by law to be so now; for it is not a necessary condition that the sovereign be a Moslem.

If, then, by law, the empire of India, by virtue of the Moohummudan conquest, become the Daur-ool-Islaum, that is a part of the Moohummudan dominions, it would have been absolutely contrary to law, even an heresy, in its most formidable shape, to have suffered any law or constitution to exist in India but that of Islaum. Every law, even private right and interest, which existed in the country prior to the conquest, by that act alone perished; and so strong is the Moohummudan law on this point, that supposing even a Moohummudan subject to have previously taken up his abode, and to have acquired lands or houses in India, by the mere act of subsequent conquest by the Moslems, the lands of their domiciled brother would fall to the conquerors, along with those of the conquered infidel, although his personal property would be secure to him.

“ Nay

* *Jaumeea-oor Rumooz*, voce “ *Seeur*,” or the military and political law.

“ Nay even (says the learned Zeylaee and others) if a
 “ Moslem subject went into a foreign country (the Daur-
 “ ool-Hurb), and therein purchased lands, and that
 “ country were subsequently conquered by a Moslem
 “ army, such lands would be held as conquest, like those
 “ of the other subjects who are infidels.”

• “ Nay, if a *Hurbee* (an alien unbeliever) enter the
 “ Moohummudan dominions under a passport, leaving a
 “ wife and children, old or young, and property in trust
 “ in his own country, whether in the hands of a *Hurbee*
 “ or of a Moslem therein, and were he to embrace the faith
 “ in the Moohummudan dominions, should a Moslem
 “ army conquer his country, all these (his wife, children,
 “ and property) are prize to the conquerors.”*

Here, then, we have not only the destruction of all public law, but of all private rights, by the mere act of conquest of an infidel country by a Moslem army. How then can it be imagined, that the Hindoo law can have survived the Moohummudan conquest of India?

The Moohummudan law of conquest is explicit; and the first act of the conqueror is required to be to carry the law into effect, either by partitioning the spoil and lands among the conquerors, or by fixing the *khurauj*, or public revenue on the lands, and the capitation tax on the heads of the conquered. The inhabitants are first called to embrace the faith. If they become converts, they enjoy all the privileges of Moslems; if they refuse, they are then called upon to pay the capitation tax; for if they consent to this and to pay the *khurauj*, it is not lawful to put them to death.

* Surauj

كُلْ اَرْضٍ فَتَحْتُمْ عَنْوَةً وَتَرَكْتُمْ عَلَيَّ اَيْدِي اَهْلِهَا فَالْاِمَامُ اِنَّهُ يَضَعُ
 عَلَيَّ اَعْنَاقَهُمُ الْجِزْيَةَ اِذَا لَمْ يَسْلَمُوْا وَعَلَيَّ اَرْضِيْهِمُ الْخَرَاجَ اَسْلَمُوْا
 اَوْ لَمْ يَسْلَمُوْا .

“ All land conquered by force of arms and suffered to
 “ remain in the hands of the people, the Imam shall fix the
 “ capitation tax upon the inhabitants (*lit.* on their necks),
 “ if they do not embrace the faith ; and on their lands the
 “ khuraúj, whether they embrace the faith or do not.”

This is the Moohummudan law of conquest ; and it is mandatory, and not optional, to establish the law of Islaum within the Moohummudan dominions. Even questions of inheritance among non-Moslem subjects, as I have before stated, are not left to the decision of any other than a Moslem tribunal, but must be decided according to the Moohummudan law, and by Moslem judges ; for every judge must be a Moslem, as is stated by all writers on the law.

And it is of importance to note that in the “ *Futava-ool Aalungeeree*,” a celebrated work on the Moohummudan law, compiled in India under the patronage of Aurungzebe, expressly for the government of his Indian subjects, the chapter of the Law of Inheritance, entitled “ of inheritance among non-Moslem subjects,” is preserved entire, as compiled from the original law of Arabia. “ They
 “ shall *take*,” says this work, “ among themselves, by *blood*
 “ and by *compact*, as Moslems *take* among themselves.
 “ The *progeny* of a marriage which is legal by *their sacred*
 “ *books*, though illegal by *our* law, shall not be debarred
 “ from inheriting ; but the parties to a marriage which is
 “ illegal

“ illegal by *our* law, shall not take in virtue of such “ marriage.” And the test of an illegal marriage, as we find in the *Surauj*, is, “ were the parties to become Moslems would the marriage be legal ?” Here, then, the Moohummudan law on the most delicate point is maintained, and an exemplary liberality at the same time shown to the innocent progeny. The same is found in the other works on the Moohummudan law ; but I mention this work in particular, on account of the peculiarity of its origin.

This is the written “ law and constitution of India,” as published under the sanction of the Emperor himself, little more than fifty years before the English power became paramount in Bengal.

We now come to the historical part of this branch of the subject ; and I trust that I shall be able to corroborate, from history, my position, that the “ law and constitution of India ” is Moohummudan.

From the time of the conquest of that country by Mahmood the First, or about the year of our Lord 1000, the Moslem power prevailed in India ; and we are told by Ferishta, that this said Mahmood “ was a virtuous prince, “ and reflected glory upon the faith of Islaum.” And in the year 1008, after he had destroyed the idols of Nagracote, his answer to Annundpal of Lahore, when he begged him to spare Tannesir, is well known. “ I have “ resolved,” said he, “ by divine aid, to root out idolatry “ from India, and why should I spare Tannesir ?” So also may I refer to the congratulatory letter from the Khalif of Baghdad, who was then the Moohummudan Pontiff, to this same prince, on his success against the

infidels, in which he confers on Mahmood the title of "Guardian of the faith of Islaum." It is not likely that such a conqueror would hesitate to establish his laws:

Batin, in 1265, as Dow tells us, "observed the Moohummudan law, and ordered the Soobahdar of Badown, Malik, to be put to death, in retaliation for the murder of a poor woman's son." Here is the Moohummudan law observed to the strict letter in the most severe and exemplary manner; the governor of a province suffering the punishment of the law for the murder of the poorest individual. Is it possible that the sovereign, who had firmness to do this, would want either inclination or nerve to enforce obedience to laws?

It was about this time (*i. e.* about A.D. 1260) that the Moghul Emperor of the neighbouring kingdom of Persia, Ghazan Khan, having a diet or assembly of the most eminent sages and principal military commanders, assisted by the learned professors, theologians, Kazies, and superiors of the several religious orders in his empire, ordered them to prepare a code of regulations for his dominions, prefacing his orders with a magnanimous address, which proved alike the liberality of the individual prince and the regard of Moslem potentates to their established faith in those times. See Kirkpatrick's Institutes of Ghazan Khan, published in the New Asiatic Miscellany, page 171.

Feroze II., again, in the case of the celebrated Seyud Mullah, prohibited among his subjects the ordeal by fire, "because it was contrary to the Mohummudan law." (Dow). This was about 1290.

Allah I. was a tyrant; and Ferishta tells us “ he broke through all the laws and customs which were by the Moohummudan law left to the decision of the courts of justice: he, however, studied the law himself, under the tutelage of a Cazee.” This was in the year 1300. So we are told that *Moohummud III.* was strict with respect to public and private worship, and ordered the five daily prayers to be read in the mosques. “ He sent an embassy to Mecca to procure the confirmation of his title to the empire from the Khalif.” Reigned from 1324 to 1351.

Timour I. invaded India in 1327. The Soobadars of the provinces had rendered themselves independant during the previous troubles. Timour confirmed all those who submitted to him and determined to hold possession of the empire.

It is to be observed, that at this time the Soobadars were all Moslems.

Of Guzaret the Soobadar was Azim.

Malwa..... Dilawer.

Kenouj,	} Khaja Jehaun, who called himself King of the East.
Oude,.....	
Khurrah,	
Juanpore.....	

Lahore,.....	} Khezzar.
Debalpore,.....	
Moultan	

Samana Ghaleel.

Biana..... Shums.

Mohabah Moohummud.

Mewat..... Mobarik and Buhadoor.

And it is stated by Timour himself in his Institutes,

“ that he established his kingdom on the religion and
 “ law of Islaum; that the first of his regulations was to
 “ promulgate the religion and law of Moohummud in every
 “ town, city, and province; and that he regulated his
 “ empire by the Moohummudan religion and law.”*

“

“ I appointed,” says he, “one of the descendants of
 “ Aalee, a man of talent, to the office of Suddarut (equi-
 “ valent to our Lord Chancellor), to take charge of ap-
 “ propriations by wukf, and to appoint incumbents to
 “ those benefices, and to nominate to every city and pro-
 “ vince Kauzees and Mooftees, and police officers, and to
 “ assign *sey-oor-ghaul* (public funds), and maintenance
 “ to the descendants of the Prophet, to the learned, the
 “ holy men, and those to whom the law gives a claim for
 “ public maintenance.”

In 1291 the Deccan was conquered by Allah, and Moo-
 hummud III. made Dowlutabad the capital of his em-
 pire.

“ In the reign of Secundus I. a Moohummudan had a
 “ dispute with a Brahmin on the subject of his idolatry,
 “ in which the Brahmin said he believed the same God to
 “ be the object of worship of both, and that the Moohum-
 “ mudan and Hindoo religions were equally good. The
 “ Moohummudan summoned the Brahmin before the
 “ Kazee. The case made a great noise in the country,
 “ and the Emperor called together all the Moohummudan
 “ doctors of fame in the empire to decide the question.
 “ The decision was that the Brahmin should be allowed
 “ the option of the faith or the sword. He chose the
 “ latter and was put to death, A.D. 1499.”†

Baber,

* Page 176.

† Dow.

Baber, who settled in India A.D. 1525, assumed the title of *Ghazee*, which signifies fighter for the faith.

Akbar, in 1556, succeeded his father Hoomayoon, the son of Baber. This prince, celebrated for his wise government, framed his "Institutes" almost literally after those of his renowned ancestor, Timour; and both institutes, as well as the code of Ghaznan Khan the Moghul Emperor of Persia in A.D. 1260, are in all essential points strictly conformable to the Moohummudan law. The whole establishment of a Moohummudan government is clearly seen in those Institutes, combined, however, with other regulations suitable to the times and to the mixed population of the empire: a power which the Moohummudan law expressly recognizes and vests in the sovereign.

The capitation tax on the Hindoos, the most ignominious lawful impost of Islaum, existed as late as the fortieth of the reign of Akbar, who was the most liberal, if not enlightened prince of his time. It was remitted by that most tolerant monarch, though contrary to his religion and law, probably at the intercession of his celebrated financial minister Rajah Tudur Mull. It was revived, however, again by Aurungzebe. Akbar died in 1605; and his son, Selim, afterwards Juhaungeer, succeeded him by consent of the nobles, "after having taken the oath to maintain the law of Mahomet."*

Bewteen *Akbar* and *Aurungzebe*, two princes in lineal descent intervene, *Jehangeer* and *Shah Jehan*. *Aurungzebe* deposed his father, Shah Jehan, in 1658, and ascended the throne. He reigned about fifty years: and Orme states "that he may be esteemed one of the ablest "princes who have reigned in any age or country." His

* Methwold

devoted attachment to the religion and law of his fathers has procured him from some the appellation of a bigot; which opprobrious epithet, however, in its common acceptation, implies a degree of weakness altogether at variance with the character of so great a prince.

The affecting story of his brother, Prince Darashekah, is well known, and furnishes us with a strong proof of the scrupulous attention paid in those days to the forms of law. In his flight to escape from Aurungzebe this prince took refuge, by particular invitation, with Malek Juwan (or as the translator of the *Seir-ool Mootuakhereen* has it, *Malec Djeven*,) a Zemeendar on the western confines of India, who had been condemned to die, but was pardoned by Shah Jehan, at the intercession of the young prince, now his guest in distress. The wretched Afghan delivered Darashekah, with his infant child, into the hands of his brother and persecutor, Aurungzebe; for which most perfidious act he rewarded him with the title of Bukhtear Khan, and the rank of commander of a thousand horse. This man made his appearance at court amid the execrations of all. He had the temerity to pass through the streets of Dehli in the day; but having been discovered by the populace, he was pelted with dirt and stones, and an affray took place in which some lives were lost. It might be expected that the Emperor would himself have punished the ringleaders of this riot. No, "so scrupulously was he attached to the forms of law," says this writer, "that he did not, but delivered them over to the law. They were condemned by the Mooftees and other law officers, and executed with all the forms of law." "Nor did he put to death the prince without a legal sentence passed upon him, and attested by the signatures and seals of all the doctors." "Darashekah
" was

“ was condemned and executed for apostasy.” This happened about the year 1658.

This prince (Aurangzebe), as well as his great progenitors, Akbar and Timoor, gave his subjects a code of laws. Those of the former were imperfect. Aurungzebe collected the most learned lawyers from all parts of India; and employed them for years in preparing a code of law for the use of his judicial and revenue officers, and of his subjects; on which he is said to have expended £500,000. This celebrated work, after his own name, was called the “ *Futavah-ool Aalumgeeree* ;” the greatest, and certainly the most lasting monument of his reign. This is perhaps the most valuable work on the Moohunmudan law extant. It is a collection of decisions on supposed cases of the highest authority in India, and not less so throughout the Turkish dominions, where it is better known by the name of “ *Futavah-ool Hind*,” or “ Indian (collection of) decisions.”

The “ *Futavah-ool Aalumgeeree*” is the last work on the law of India promulgated by royal authority; and ought, therefore, to be considered as part of the written law and constitution of that empire.

• Aurungzebe died in 1707 : only fifty-eight years before the provinces of Bengal, Behar, Orissa, and Benares, were ceded to the Company.

So great was the influence of the law officers under the government of Aurungzebe, that even the governors of the provinces in which they were placed were obliged to court and even to succumb to them; a remarkable instance of this is mentioned in the *Seir-ool*

Mootuakhereen, in the case of the governor of Boorhanpoor, an illustrious nobleman, and allied both to the Emperors of Iraun and Hindoostan. "The governor charged two witnesses, on the evidence of whom the Kazee had previously decided a suit, with perjury, which they confessed; on which the governor said, 'these are the men on whose evidence you have deprived a poor man of his house.' The Kazee, in a rage, charged the governor with personal enmity and a desire to make him appear ridiculous; but, added he, 'I inform you that you have rendered the law itself ridiculous, and have consequently fallen under its lash, and merit its punishment. The credit of these witnesses is not yet affected; so far from it, that if those very men were now to stand up in court and give evidence that you drank wine yesterday, I should sentence you immediately to the punishment which the law awards for that offence.' The Kazee, however, resigned in disgust; but so strong was this kind of influence at court, that the governor of the province thought it expedient to visit the Kazee, and to beg of him to resume his office, which he did with as much overbearance as before."

Ferukhsere continued the capitation tax; and we are told that, "at the supplication of Adjeet Sing and Ruttunchund, his successor, Ruffec-ood-durjaat, relieved the Hindoos all over the empire from the opprobrium of the capitation tax." This was about the year 1720.

And this said Ruttunchund is stated by *Ferishtah*, "in the reign of Moohummud Shah, to have so usurped the powers of every office, that he nominated the Moohumudan Cazees of the provinces," 1720.

The

The capitation tax seems afterwards to have been levied, as it is stated to have been again repealed at the intercession of Maharaja Jay Sing, "much to the satisfaction of the Hindoos," by Moohummud Shah, after Ruttunchund was put to death; and Moohummud Shah was the last emperor of Hindoostan who possessed any real authority. He was succeeded, in 1748, by Ahmud Shah, who in 1753 was succeeded by Aalumgeer II., who was in 1760 succeeded by the late emperor Shah Alum.

Thus, I have endeavoured to corroborate the written law, by a chain of historical facts and events, through a period of nearly eight hundred years, from which it is obvious that no other law but the Moohummudan had any existence within the Moghul dominions in India. No Moohummudan lawyer can read the history of India without conviction on this point; which, had our English historians of India possessed any knowledge of the law, could not now have required any proof. But the fact is, that they were all totally ignorant of the Moohummudan law and constitution, and could therefore not discriminate what usages arose out of it from what did not. They could give no distinct account of them, nor explain in intelligible language the nature of the office under government, of the taxes levied, or tenures by which the lands were held: yet they have not hesitated to give their opinions; and Mr. Mill, even at this day, on the authority of Orme, gravely tells us that "after the Moohummudan conquest, the Hindoos continued to be governed by their own laws and institutions."* Dow again says, "the Hindoos are governed by the laws of the Koran or by the arbitrary will of the prince."†

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But

* Vol. i. p. 437.

† Preface, p. 36.

But if the Moohummudan law and constitution did not exist in India when the government of that country fell into the hands of the English, let me ask what law and constitution did exist? Was it the law of the Maharattas; for they were, during the decline and fall of the Moghul empire under the successors of Aurungzebe, the most powerful state in India. But their origin is scarcely so early as our own in India.

The first time they were recognized as a power was in the reign of Buhadoor Shah, A. D. 1701, A. H. 1121; who made an agreement with Simbajee and his sons, Ram Rajah and Rao Rajah, that they should have a tenth or tithe of the husbandman's share of the crop over the provinces south of the Soobah of the Dukun (*viz.* Poonah, the Conkan, &c.). This they called the *Dus Mukhee*, or tenth handful.*

Or if the Hindoo law is to be maintained, is it to the provincial school of Bengal, as Mr. Colebrooke calls it, or to that of Benares, we are to go for Hindu law?

The Edinburgh Reviewers say, and on that point we are agreed, "the Act of Parliament which enjoined that the natives should be protected in their rights according to the laws and constitution of India, meant unquestionably such rights as existed when the India Company obtained possession. It certainly never entered into the imagination of any one, at home or abroad, (but it certainly did,) that it was necessary to revert to laws, institutions, and rights, (meaning Hindoo laws,) which a lapse of six centuries had obliterated from the minds of the natives,"† meaning six centuries since the Moohummudan

* *Secur-ool Mootuakhereen.*

† Vol. xviii., p. 359.

hummadan conquest. And again, “ that the civil and
 “ military institutions, the judicial and financial arrange-
 “ ments of these courts (of the princes of the Deccan), were
 “ formed on the model of those adopted by the Maho-
 “ medan emperors of Dehli. Nearly six centuries have
 “ elapsed since the Hindoos have been accustomed to
 “ those institutions and arrangements of the Moohummu-
 “ dans, which have not only superseded but condemned
 “ to oblivion the system of justice and taxation congenial
 “ with the ancient habits and prevalent superstition of
 “ the natives.”* And again: “ It is sufficient to observe,
 “ that for many centuries all knowledge of those laws
 “ (Hindoo laws) has been effaced from the memories of
 “ the natives.”

Finally, in the firmaun, or deed, executed by the late king, Shah Alum, dated the 29th October 1764, conveying to the English Company the province of Ghazeepore and the rest of the zumeendarry of Rajah Bulwaut Sing (Benares), it is expressly stipulated by his majesty, “ that
 “ the Company must use their best endeavours to pro-
 “ hibit the use of things of an intoxicating nature, *such*
 “ *as are forbidden by the law of God*, in driving out
 “ enemies, *in deciding causes* and settling matters *agreea-*
 “ *bly to the rules of Moohummud and the law of the*
 “ *empire;*” meaning clearly, agreeably to the law of Moohummud, which is the law of the empire. I have only to add, that universal tradition confirms what I maintain. There is not one native of India, that knows the difference between one law and another, who is not as perfectly aware that the Moohummudan law was the law of India, as that the king of India was a Moohummudan sovereign.

* Vol. xviii., Review of Wilks's Mysore.