

Functional Prerequisites in Islamic and Western Sociological Perspectives (A comparative Study)

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This Research Paper deals with the Functional Prerequisites in Islamic and Western Sociological Perspectives. Functional prerequisites means: "the basic needs ; food, shelter and dress, etc. that an every individual requires to live his life. Functional prerequisites may also refer to the factors that allow a society to maintain social order." In Islamic context Allah is the creature of the earth and heavens and every thing which is found between them. He produces every Functional and Spiritual prerequisites of human kind. He creates the man for Him and every thing of the Universe for man. Almighty Allah says: "So eat of the sustenance which Allah has provided for you, lawful and good; and be grateful for the favors of Allah". (Quran 16:14) Functional Prerequisites are basic human needs, without them human cannot remain alive. Islamic sources discuss the basic needs of human in detail because Islam focuses on social issues keenly. The Shari'ah (Islamic Law) considers the saving of life in his basic objectives. In this research the Functional prerequisites from Islamic and western sociological perspectives are analytically compared

Key Words: Introduction to the Functional Prerequisites, Importance of the Functional Prerequisites, Definition of Functional Prerequisites, Divisions of Functional Prerequisites, Functional Prerequisites in Islamic and Western Perspectives, Comparison & Conclusion.

I. INTRODUCTION:

Every human society has some basic needs or requirements, which must be fulfilled for its survival. These basic needs or necessities for existence of a society are known as functional prerequisites of the society. Islamic and Western sociologists are different to some extent in its identifications, divisions and provisions but united in its significance. It means Islamic and western sociology are same in the existing of functional prerequisites. Islamic and Western sociology has different point of view about functional prerequisites. So there is no unanimous definition of functional prerequisites. Even in western sociology there is a lot of difference in definition because every sociologist tries to define it according to its theory and mentality. This paper attempts the Islamic and western concepts of functional

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⁵⁴ Original version of the book can be accessed at <http://makhtota.ksu.edu.sa/manuscript/6305/1#.Uply8tLLrTx> (Accessed on 30/11/2013).

⁵⁵ Fatawa-i-Kazee Khan Translated & Edited by Mahomed Yusoof Khan & Wilayat Hussain (2 Volumes) (Law Publishing Company, Lahore, 1977).

- ³³ London Gazette. Issue 28161 published on 24 July 1908 at p. 5420. Available at <http://www.london-gazette.co.uk/issues/28161/pages/5420> (Accessed on 21/11/2013).
- ³⁴ Salahuddin Ahmed, Bangladesh Past and Present (APH Publishing, 2004), p. 86.
- ³⁵ Ibid.
- ³⁶ London Gazette. Issue 31587 published on 7 October 1919 at p 12419. Available at <http://www.london-gazette.co.uk/issues/31587/pages/12419> (Accessed on 21/11/2013).
- ³⁷ The original version of the book is available at <https://archive.org/details/principlesofmuha031574mbp> (Accessed on 20/11/2013).
- ³⁸ For instance, Abdur Rahim, The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools (Allahabad Law Agency, Allahabad, India); Abdur Rahim, The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools (PLD Publishers, Lahore, Pakistan).
- ³⁹ See The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady. (Lahore: Premicr Book House); M H Macnagthen Principles and Precedents of Moohummudan Law Edited by William Sloan (Law Bookseller and Publisher, J Higginbotham Road, Madras 1864); Neil Baillie Digest of Moohummudan Law (London: Smith Elder & Co., 1875), Syed Ameer Ali, The Personal Law of the Mahommedans, (London: W. H. Allen & Co., 1880).
- ⁴⁰ See Shama Churun Sircar, The Muhammadan Law: Being a Digest of the Law Applicable Especially to the Sunnis of India (Thacker Spink & Co. Calcutta 1873); Syed Ameer Ali, Mahommedan Law, Edited by Raja Said Akbar Khan (2 Volumes), (Lahore: PLD Publishers, 1976).
- ⁴¹ Abdur Rahim, The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools (Allahabad Law Agency, Allahabad, India) at pp. 45-74.
- ⁴² Ibid, at pp. 74-111.
- ⁴³ Ibid, at pp. 111-126.
- ⁴⁴ Ibid, chapter 1 at pp. 01-10
- ⁴⁵ Ibid, chapter 2 at pp. 32-44.
- ⁴⁶ Ibid, chapter 4 at pp. 127-142.
- ⁴⁷ Ibid, chapter 5 at pp. 143-171.
- ⁴⁸ Ibid, chapter 6 at pp. 172-184.
- ⁴⁹ Ibid, chapter 7 at pp. 185-215.
- ⁵⁰ Ibid, chapter 9 at 233-241.
- ⁵¹ Ibid, chapter 10242-254.
- ⁵² John W. Salmond Jurisprudence (Stevens and Haynes, London 1913 First Published in 1902). Available at <https://openlibrary.org/books/OL13494467M/Jurisprudence> (Accessed on 21/11/2013).
- ⁵³ Salahuddin Ahmed, Bangladesh Past and Present (APH Publishing, 2004), p. 86.

- ¹⁴ Syed Ameer Ali, *The Personal Law of the Mahommedans* (W. H. Allen & Co. London 1880) at p. ix.
- ¹⁵ *Ibid*, pp. xi-xiv.
- ¹⁶ Michael R. Anderson, *Islamic Law and the Colonial Encounter in British India*, WLUMI Occasional Article No. 7 (June 1996) p. 8. Available at <http://www.wluml.org/node/5627> (Accessed on 23/11/2013).
- ¹⁷ Some of his books on Islam and Islamic law are following:
1. *Life and Teachings of the Prophet* (Edinburgh, 1873).
 2. *The Spirit of Islam* (London, 1891).
 3. *Real Status of Women in Islam* (London, 1891).
 4. *Muhammadan Law* (Tagore Law Lectures) (Calcutta, 1884).
 5. *The Personal Law of the Muhammadans* (London, 1880).
 6. *Ain ul-Hidaya*; an Urdu translation of the famous Hanafi law book, Hedaya. (M. A. Rahim, Syed Ameer Ali and Muslim Politics and Renaissance, *Islamic Studies* (Islamabad) 7:2 (1968) pp. 93-112 at 107-8).
- ¹⁸ Shahid Hussain Razzaki, Syed Ameer Ali: Hallaat aur Siyasi, Dini aur Ilmi Khidhmaat, (Lahore: Institute of Islamic Culture) at p. 50.
- ¹⁹ M. A. Rahim, Syed Ameer Ali and Muslim Politics and Renaissance, *Islamic Studies* (Islamabad) 7:2 (1968) pp. 93-112 at 93.
- ²⁰ Available at <http://archive.org/details/personallawofmah00alisuoft> (Last accessed on 17/11/2013).
- ²¹ Syed Ameer Ali, *The Personal Law of the Mahommedans*, (London: W. H. Allen & Co., 1880) at pp. v-x.
- ²² Available at <http://archive.org/details/lawrelatingtogi00aligoog> (Last accessed on 17/11/2013).
- ²³ Syed Ameer Ali, *The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans*, (Calcutta: Thacker Spink & Co.).
- ²⁴ Syed Ameer Ali, *Commentaries on Mahommedan Law*, Edited by Justice S. H. A. Raza, (Allahabad: Hind Law Publishing House); Syed Ameer Ali, *Mahommedan Law*, Edited by Raja Said Akbar Khan (2 Volumes), (Lahore: PLD Publishers, 1976).
- ²⁵ *The Hedaya* Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House).
- ²⁶ Syed Ameer Ali, *Commentaries on Mahommedan Law*, Edited by Justice S. H. A. Raza, (Allahabad: Hind Law Publishing House) at pp. xxv-xxvi.
- ²⁷ *Ibid* at p. xxv.
- ²⁸ Neil Baillie *Digest of Moohummudan Law* (London: Smith Elder & Co., 1875). Also available at <https://archive.org/stream/digestmoohummud00bailgoog#page/n7/mode/2up> (Last accessed on 17/11/2013)
- ²⁹ Syed Ameer Ali, *Commentaries on Mahommedan Law* at p. xviii.
- ³⁰ Syed Ameer Ali, *The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans*, (Calcutta: Thacker Spink & Co.) p. v.
- ³¹ Salahuddin Ahmed, *Bangladesh Past and Present* (APH Publishing, 2004), p. 86.
- ³² *Ibid*.

mean that scholars from other parts of the Indian Subcontinent were not invited or they did not come. Many such scholars had also participated in the series, but it was a sheer chance that the contributors to Islamic legal scholarship in the lecture series came from the same geographical region.

Though the article does not claim to have done justice with its proclaimed objective, it has made a significant contribution to hitherto ignored field of our legal history. There is need to do a lot more in this field so as to fathom Tagore Law Lectures' fullest contribution to development of Islamic legal scholarship. Nevertheless, the present article by analyzing some important books from the lecture series has laid the foundation for further advancement into the field.

NOTES & REFERENCES

- ¹ Please see my article entitled "Genealogical Analysis of the Islamic Law Books Relied on in the Courts of Pakistan" awaiting publication.
- ² A cursory look at the catalogue of library of University of Wisconsin would help us appreciate the contribution made by Tagore Law Lectures to legal scholarship.
http://search.library.wisc.edu/catalog?q=%22Tagore+law+lectures+%3B%22&search_field=title (Accessed on 23/11/2013).
- ³ His book on Hindu Law is available on the following link:
<https://archive.org/details/vyavasthchandri00unkngoog> (Accessed on 22/11/2013).
- ⁴ This book can be accessed by this link:
<http://catalog.hathitrust.org/Record/008235552> (Accessed on 22/11/2013).
- ⁵ W. H. Macnaghten, Principles and Precedents of Moohumudan Law, (Calcutta: The Church Mission Press Mirzapure, 1825).
- ⁶ The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House).
- ⁷ <https://archive.org/details/alsirajiyahorm00rumsgoog> (Accessed on 22/11/2013).
- ⁸ Neil Baillie, The Moohumudan Law of Sale, (London: Smith, Elder and Co., 1850); Neil Baillie, The Land Tax of India, (London: Smith, Elder and Co., (2nd Edition) 1873); Neil Baillie, Digest of Moohumudan Law (London: Smith Elder & Co., (2nd Edition) 1875) its first edition was published in 1865.
- ⁹ Shama Churun Sircar, The Muhammadan Law: Being a Digest of the Law Applicable Especially to the Sunnis of India (Thacker Spink & Co. Calcutta 1873) chapter I at pp. 56-72.
- ¹⁰ Ibid, p. 69.
- ¹¹ Ibid, pp. 71-72.
- ¹² Ibid, p. 62.
- ¹³ Ibid, pp. 59-60.

ritual purity and ibadaat along with other matters pertinent to Islamic law, while the translated version swiftly skipped them. There might be many reasons: firstly, these were personal matters and had nothing to do with enforcement through the judicial system during the colonial era. And secondly, the books already translated into English from Arabic and Persian did not include such matters within their folds. Another significant difference with the original manuscript is that the book emerged through Tagore Law Lectures incorporated within it the verses of the Quran and the Sunnah of the Holy Prophet having legal implications. There are five hundred verses of the Quran and two hundred and ninety saying of the Holy Prophet reproduced by the authors before translating the relevant portions of Fatawa-i-Kazee Khan.⁵⁵

Conclusion:

Tagore Law Lectures was an important series of lectures on various topics of law during the British colonial era. This series of lectures were generously funded by Tagore family of Calcutta and organized under the auspices of Calcutta University, India. During the colonial period, some important contributions were made through this lecture series to scholarship on Islamic law. In the present article, I have endeavored to introduce and analyze some such contributions.

The lecture series provided opportunity to scholars to present in a systematic manner the books regarded as magna opus by Muslims but were not accessible to English speaking people of the country. It also made available to scholars a platform where they could expound Islamic law in a manner relevant to the prevalent legal system. The latter being the reason we find extensive discussions on matters pertinent to personal laws while there is nothing in those books on subjects of ritual purity and ibadaat despite the fact that these subjects had been part of traditional books on fiqh. In addition to the relevance of these books to the colonial era, they are still held in high esteem by legal fraternity.

There is another noteworthy aspect of the books analyzed in the article that all of them were written or translated by those who were originally from the province of Bengal as it was during the colonial period. As the lecture series were held in Calcutta University and it was relatively easy to persuade some indigenous scholars to spare time for delivering lectures there. It does not

jurisprudence as such. They are sciences of law, law and classification of law,⁴⁵ acts, rights and obligations,⁴⁶ legal capacity,⁴⁷ ownership and possession,⁴⁸ acquisition of ownership,⁴⁹ torts and crimes,⁵⁰ procedure and evidence.⁵¹ One may be surprised to notice the similarities between these issues and those selected by Salmond in his magna opus for elucidation of English jurisprudence.⁵² This similarity was not accidental: Abdur Rahim was trained as legal professional in England and had grasp of general subject of jurisprudence or science of law as understood in common law tradition.⁵³ Having used his legal acumen and training, he elaborated and compared notions of Islamic jurisprudence to that of English jurisprudence. The original beneficiaries of this comparative analysis were the audience sitting in the Calcutta University giving careful hearing to his series of Tagore Law Lectures.

Fatawa-i-Kazee Khan: Relating to Mahomedan Law of Marriage, Dower, Divorce, Legitimacy, and Guardianship of Minors, According to the Soonnees Translated & Edited by Maulvi Muhammad Yusuf Khan Bahadur & Maulvi Wilayat Hussain:

The above-mentioned book is another outcome of Tagore Law Lectures. Fatawa-i-Kazee Khan is one of the most important books according to Hanafi Muslims after Hedaya and Fatawa-i-Alimghiri. These last mentioned books were available in English during the second half of the nineteenth century though not in a comprehensive manner. Hedaya was translated at the end of eighteenth century, while some important portions of Fatawa-i-Alimghiri were rendered into English by Neil Baillie. In such a situation, it was a great initiative to have English version of Fatawa-i-Kazee Khan.

Fatawa-i-Kazee Khan was written by Imam Fakhruddin Hassan Bin Mansur.⁵⁴ He was a renowned Hanafi jurist and mufti during medieval period. Though he contributed some other academic material but his fame has largely been due to compilation of fatawa known by his name. The book was translated and edited by Maulvi Muhammad Yusuf Khan and Maulvi Wilayat Hussain during their Tagore Law Lectures as mentioned on its title page.

The translated version is different from its original version in some respects. The original manuscript expounded upon the subject of

Madras High Court was confirmed in 1908.³³ In the last mentioned court, he also served as a Chief Justice.³⁴ He was not only an eminent personality in his profession; he was also active in politics and welfare of the Muslim community.³⁵ Taking into account his services, he was knighted in 1919.³⁶

Abdur Rahim was invited to deliver lectures in Tagore Law Lectures in 1907 which were later published in a book format in 1911.³⁷ According to the preface of his book, the author regretfully states that the lectures delivered in the Calcutta University are being published as a book without any addition or subtraction in 1911. The same book is still printed and reprinted by various publishing houses in India and Pakistan.³⁸ His book is one of the best books for students and practitioners alike of Islamic jurisprudence ever appeared in English language. In fact it was the first book written in English on the subject by any jurist from the Indian Subcontinent. Earlier books on Islamic law had more to do with Muslim personal laws and such other Islamic rules as were applicable in the colonial legal system.³⁹ These books if discussed the subject of Islamic jurisprudence that treatment was either introductory or insufficient to meet the requirement of anyone interested to appreciate the subject.⁴⁰

Abdur Rahim has extensively discussed the sources of Islamic law. He has not only allocated a reasonable space to the primary sources of Islamic law such as the Quran, the Sunnah of the Prophet Muhammad;⁴¹ he has also expounded upon the secondary sources like Ijma, Qiyas, Istihsan, Public good, Isitidlal.⁴² Taking into account the element of growth within the Islamic law, he has pondered upon the methodology of Ijtihad and its counterpart mechanism of Taqlid.⁴³ Another important aspect of his book is the discussion about customs and usages, and how these were incorporated within Islamic law during its formative years.⁴⁴ To make his point forward of relevancy and significance of customs to the development of Islamic law, he has presented a detailed analysis of pre-Arabian customs in the first chapter of his book. It is the sophistication of his analysis on the subject of Islamic jurisprudence which has prompted many to applaud his contribution.

In addition to the above, Abdur Rahim has explained a number of other theoretical issues which have bearing on the subject of

Syed Ameer Ali's amalgamated book including his Tagore Law Lectures is distinguished from many earlier works on the subject which were available in the market then particularly in English language. Hamilton's *Hedaya*²⁵ has only expounded opinions of various Sunni schools of thought whereas Ameer Ali's work has exhaustively narrated Shia principles on a range of matters of personal law. Moreover, Ameer Ali's book has derived rules and principles of Islamic law from numerous authoritative books of various Sunni and Shia schools.²⁶ On the other hand, Hamilton's *Hedaya* is indirect translation of one book only. Ameer Ali has made an apt observation about Hamilton's *Hedaya* that it expounds the legal principles disregarding the fact how these principles are applied in practice.²⁷ This deficiency has sufficiently been redressed by Ameer Ali. According to him, Neil Baillie's *Digest*²⁸ though brought into focus some other books of authority but the problem with the last mentioned work was that while condensing some issues it simply circumvented describing the important principles.²⁹

Ameer Ali's Tagore Law Lectures were confined to gifts, waqfs and wills and other forms of proprietary dispositions carried out by Muslims were not dealt with therein. Taking this shortcoming into mind, he expressed his hope in the preface of his lecture series that he would find an opportunity to prepare a treatise on Sale, Mortgage, and Bailment.³⁰ Ameer Ali did not do it. There might be many reasons for this but we cannot prefer one over another. His over indulgence in legal profession might have prevented him to write a book on these dispositions. Meanwhile, the colonial government enacted laws on these proprietary dispositions and they were not left to be regulated by uncodified Islamic law. In such a situation, Ameer Ali might have thought there would not have been any pressing need to elucidate upon them.

The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools by Sir Abdur Rahim 1907:

Sir Abdur Rahim (1867-1952) was another well known Muslim jurist during the British era in the Indian Subcontinent. After completion of his education, he started his legal profession in Calcutta.³¹ According to Salahuddin, he served as a judge to Calcutta High Court.³² Later on, his appointment as a judge to the

fact this part is more than one third of the book. It is an important part of Islamic law but allocating it such a major portion of the book brings down the importance of other issues discussed therein.

The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans by Syed Ameer Ali 1884:

Syed Ameer Ali (1849-1928) was an eminent Muslim scholar of the Indian Subcontinent during British colonial era. He wrote extensively on issues pertaining to Islam and Islamic law.¹⁷ His contribution to Islamic legal scholarship is unprecedented. He dealt with Islamic law on theoretical level as well as delivered valuable judgments while serving as a judge on the Calcutta High Court.¹⁸ He was also appointed as a member of the Judicial Committee of Privy Council. He was the first Muslim jurist to serve on the Judicial Committee of Privy Council for nearly two decades from 1909 till his death in 1928.¹⁹

Syed Ameer Ali's book on Muhammadan law was progressively developed and transformed into the present shape. The first volume of the present book was initially titled as 'The Personal Law of the Mahommedans' and was published in 1880.²⁰ In this volume of the book, Ameer Ali had only discussed topics relating to succession, conflict of law, legitimacy and acknowledgement, marriage, divorce, custody and guardianship, and dower. He was not satisfied with the state of affair of legal scholarship on Islamic law and its judicial application in the Indian Subcontinent. He has expressed his dissatisfaction in the first preface of the book.²¹

In 1884, Ameer Ali was invited to deliver Tagore Law Lectures. He utilized that very series of lectures to complete his unfinished task of writing a comprehensive book on Islamic law which had relevance to the Muslim population of the Subcontinent. He selected the subject of 'The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans' for his lecture series.²² These lectures were independently published by the same title in 1885.²³ Subsequently, these lectures were published as second volume of his book on Muhammadan law. Numerous editions have been published by many editors/publishers in Pakistan and India of Syed Ameer Ali's Muhammadan law.²⁴

Mr Sircar has added a new flavor to the Islamic legal scholarship in many respects. The author has made a noteworthy effort not to confuse principles with their explanations. He has distinguished the principles by using a relatively bigger font and kept the explanations, illustrations and annotations to a smaller font. Moreover, he draws a line in middle of the page to keep the principles apart from their explanations. The books available then were not free from such problems. Hamilton's Hedaya does not differentiate properly the principles from their explanations and we often come across the latter mixing with the former.¹²

Another noteworthy aspect of Sircar's book is that he has been conscientious in referencing the material used by him during his lectures. He does not hesitate to acknowledge his academic debt to available resources on Islamic law and specifically states what has been derived and what has been added by him during the lectures. For instance, while discussing Sir William Jones's book on inheritance, he identifies its flaws but at the same time confirms that he has merely reprinted it without even rectifying its inaccuracies in translation except that he has presented that book in a better arrangement so that it may become easily intelligible.¹³

Mr Sircar has relied extensively on Neil Baillie's Digest and referred to it very frequently. There has been one deficiency in Baillie's Digest that it did not mention the sources relied upon by it. Syed Ameer Ali appreciates Mr Sircar's book for supplying this omission by accurately referring to the source material in his lectures.¹⁴

Mr Sircar has explained in his book the topics which are generally expected to be part of any book on Islamic law excluding typical issues of *ibadaat*.¹⁵ For example, marriage, dower, divorce, maintenance, will, inheritance, guardianship. The author has also discussed the matters relating to sale and pre-emption. The last mentioned matters are not regarded as part of personal law particularly sale. The reason for their inclusion was that till then these matters were dealt with by Islamic law. Anderson has aptly pointed out that Islamic law was progressive confined to personal laws by the British government.¹⁶

There are a few issues with the book. Firstly, it has confined its analysis to Sunni law and Shia law has not been treated. Secondly, the substantial portion of the book deals with law of inheritance. In

- c. The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools by Sir Abdur Rahim (Tagore Law Lectures 1907).
- d. Fatawa-i-Kazee Khan: Relating to Mahomedan Law of Marriage, Dower, Divorce, Legitimacy, and Guardianship of Minors, According to the Soonnees Translated & Edited by Maulvi Muhammad Yusuf Khan Bahadur & Maulvi Wilayat Husain.

The Muhammadan law: Being a Digest of the Law Applicable Especially to the Sunnis of India by Shama Churun Sircar (1873):

The abovementioned title was the first ever series of lecture about Islamic law organized in 1873. Mr Shama Churun Sircar was honored to deliver the lectures on this important subject of law. Inviting him for this occasion was commensurate with his academic stature. He was a renowned author of his time and wrote some other books: one of them was on Hindu Law³ and another on Bengali language for those who were conversant with English.⁴

There was a paucity of books on Islamic law in English in the initial days of the Raj. Few books were rendered into English till the time of Mr Sircar's Tagore Law Lectures. William Hay Macnaghten's Principles and Precedents of Muhammadan Law⁵ was originally written in English, while there were some other translations from Persian and Arabic texts. For instance, Charles Hamilton's Hedaya,⁶ Sir William Jones's book on law of inheritance⁷ and Neil Baillie's various books principally derived from Fatawa-i-Alamghiri.⁸ Moreover, the institution of mufti (native law officers) to provide assistance to the courts was abolished. Thus, it was an appropriate occasion to present a comprehensive as well systematic code on Islamic law and the opportunity for this was anchored by Tagore Law Lectures.

Mr Sircar in the very first lecture he delivered at Calcutta University under the Tagore series evaluated the then state of affair of literature on Islamic law in British India.⁹ According to him, Macnaghten's Principles and Precedents is the easiest book on Islamic law ever written though the same does not elaborate the subject as it ought to be.¹⁰ On the other hand, the subject has been thoroughly expounded upon by Neil Baillie in his Digest.¹¹

half of nineteenth century and the courts were left to have recourse to the standard texts only.

Many books on Islamic law were transcribed during the colonial period taking into account the insufficient guidance available on the subject particularly in English language. Such books are still held in high esteem by the courts in Pakistan and frequently referred to for determining the issues of personal laws.¹ During the colonial period, numerous initiatives were taken by indigenous as well as foreigners to facilitate fostering academic scholarship on various legal matters. One such initiative was Tagore Law Lectures. This lecture series has contributed a great deal on various issues of law.² It was an initiative of a renowned family of Tagore from Calcutta. The first lecture of the series was organized in 1870. Parsanna Coomar Tagore (1801-1868) made donation to the Calcutta University, India, which was utilized by the latter for commencement and continuation of the lecture series.

The present article explores the contribution of the lecture series to Islamic law during the British colonial period. Analyzing the available resources online and offline, the author will bring to light some significant contributions of Tagore Law Lectures and evaluate their relevance to the then legal system. As it may not be feasible to analyze all aspects of the lecture series' contribution to Islamic law, the author has selected some important lectures series subsequently published into books and attained unprecedented distinction. During the course of analysis, in addition to evaluating the books in their context, the author will reflect on their relevance to our present legal system. The analysis carried out in the article is exploratory and analytical intended to foster our appreciation of our past which resurrects in our present.

The article is divided into various sections. Each lecture series will be analyzed in an independent section. The following books have been selected for analysis in the article:

- a. The Muhammadan law: Being a Digest of the Law Applicable Especially to the Sunnis of India by Shama Churun Sircar (Tagore Law Lectures 1873).
- b. The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans by Syed Ameer Ali (Tagore Law Lectures 1884).

Tagore Law Lecturer's Contribution to Islamic Legal Scholarship in British India

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This article aims to analyze the contribution made by Tagore Law Lecture series to Islamic legal scholarship in British India. These lectures were sponsored by an influential family of Tagore from Calcutta, India. They were organized under the auspices of the Calcutta University and eminent scholars were invited to deliver lectures on various themes of law. In the lecture series, many scholars also delivered lectures on different topics of Islamic law. These delivered lectures were subsequently published as books which attracted admiration during the colonial period and are still viewed with respect in legal fraternity. Considering the fact that it would not be possible to encompass all facets of the lecture series' contribution to Islamic legal scholarship, the author has selected some books emerged through this process and analyzed them in this article. The article is an attempt to bring forth an important phase of our legal history hitherto unnoticed which has a nexus with our present legal cum judicial system.

Keywords:

Islamic Legal Scholarship; Legal History; British India; Tagore Law Lecture.

Introduction:

We cannot analyze any legal system without having a proper grasp of its historical foundations. The legal system we have in Pakistan was substantially structured by the British colonial government of the Indian Subcontinent. Our government has been unable to get rid of many facets of that erstwhile system. One particular example of this unabated influence can be visualized in the field of personal laws. The division of laws into personal and public was a novel step taken by the British colonial government to extend its effective control on the latter. The former laws were to a major extent excluded from legislative exercise. In such a situation, the courts had two different alternatives to determine the issues relating to personal laws: the first was through the institution of mufti (native law officers) appointed in the courts and another was to have guidance from standard books translated into or originally written in English. The second mode of seeking guidance on the issues of personal laws was proved more efficient and long lasting. This was so as the institution of mufti was abolished in the second

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- Ibn Hajar, 'Ali b Sultan, (1325a) **Tahdhib Al Tahdhib** Vol:1, Hydarabad Dakan, dairah Ma'arif
- Ibn Hajar, 'Ali b Sultan, (1325g) **Tahdhib Al Tahdhib** Vol:7, Hydarabad Dakan, dairah Ma'arif
- Jazri, Muhammad b Muhammad (1932a) **Ghayah Al Niahyah Fi tabaqat Al Qurra**, Vol:1 Bairut Darul Kutub Al 'Ilmiah
- Ibn Khalikan, (1297b) **Wafyat Al A'yan Fi Anba Abna Al Zaman** Vol:2, Bairut dara Sadir
