

### Law in Many Courts

We only know about all these activities of the family of Mohan Das – agrarian pioneering, military entrepreneurship and so on – because members of this family were adept at legal documentation. They meticulously sought, preserved, re-created and re-validated documentary records of their offices, perquisites and obligations, often utilising the offices of the local *qāẓī* in order to do so. They also disputed their entitlements and obligations with entertaining regularity, and in doing so, once again involved the local *qāẓī*. Documents recording such disputes, and their resolution, push us firmly towards reconsidering the role of *qāẓīs* in Mughal India, and the role of the classic institutions of Islamic law in that complex polity. Furthering what Farhat Hasan has shown, *qāẓīs* in Mughal India can not simply be taken to be judges dealing in Islamic law and with Muslim subjects alone. On the other hand, as Richard Eaton suggested with relation to Bengal,<sup>1</sup> and as scholars from all over the Islamic world have pointed out,<sup>2</sup> law in Islamic empires was clearly not exhausted through its deployment in *qāẓīs*' courts. This book is an effort to build on and extend those formulations by using the concepts of Islamicate law and *dāi'ra* or circles of jurisdiction. This chapter comes to the heart of the matter by showing how *qāẓīs* and their authority coexisted and overlapped with the jurisdictions of several other powers, producing a totality that Mughal subjects like our protagonists understood to be 'law'.

In this corner of the Mughal empire, as princes and *mansabdārs* came and went, armies marched hither and thither and merchants big and small took grain and cloth along the highways, one official remained something of a constant, learning about all the deals and difficulties of Purshottam Das and his family. This was the *qāẓī* – the classical Islamic judge, whose evident imbrication in recording and, on occasion, adjudicating the rights and obligations of this family of Hindu *zamīndārs* urges us to rethink our current understanding of

<sup>1</sup> Eaton, *Rise of Islam*, pp. 180–3.

<sup>2</sup> Baldwin, *Islamic Law and Empire*; Sartori, *Visions of Justice*.

the place of Islamic law in the Indian subcontinent, which was ruled by Muslim kings for eight centuries, but whose population remained predominantly non-Muslim. It remains an implausible, although very widely shared conclusion among historians of the Mughal empire, that *sharī'a* as a system of jurisprudence (as opposed to pious reference to political and spiritual righteousness) remained unworkable under the obvious demographic conditions of India, and the pragmatic policy of tolerance generally adopted by the regime. This assumption is bolstered by a conception of Islamic law, which, despite the huge progress in research in the last two decades, remains highly *systemic* in a way that makes it impossible to conceive of it being applicable under the conditions of the Mughal empire.

Let us begin by taking stock of that systemic view of the *qāzī's* role, and proceed from there to explore the stories that the documents generated by this propertied and highly fractious family tell us.

### The *Qāzī* in Islamic Law

A systemic conception of Islamic law conceives of a fully coherent legal system, whose corner piece is the jurispudent, the *mufīī*, fully trained in Islamic jurisprudence or *fiqh* under the guidance of experts, in one or more Islamic schools of higher learning: *madrasas*. In any specific case, the officially appointed judge, the *qāzī*, directs the initial adjudication process by admitting pleas, inviting confession or denial by the accused, selecting acceptable witnesses and recording their testimony, and considering any relevant documents produced by the parties. The facts established, he then calls upon the *mufīī* to state the relevant legal doctrines and their contextually sensitive interpretation, through an anonymised question called *istiftā*.<sup>3</sup> The *mufīī*, in responding, takes into consideration a huge textual corpus, which reaches through the writings of the stalwarts of his preferred school of law, *mazhab*, back to the reported sayings and actions of the Prophet and his companions, *hadith*, and ultimately to the revealed word of God, the Quran. Since there is no system of precedents in Islamic law, this enormous intellectual exercise happens every time, at least in theory.<sup>4</sup> Because there may not be adequate guidance in the textual tradition available for consideration, or more commonly because the ancient jurists, being scholars, had recorded strident disagreements among themselves, the *mufīī* is often called upon to exercise juristic preference, *istihsān*, in order to arrive at a response that is both doctrinally defensible and socially sensible. The *mufīī's* considered response is the *fatwā*, which is no more and no less than

<sup>3</sup> To be accurate: de-specified; the generic names 'Umar and Fatima are used in *istiftas*.

<sup>4</sup> This account is based on Hallaq, *Sharī'a*; Hallaq, 'From *Fatwās* to *Furū*'; Tucker, *In the House of the Law*.

expert opinion, which the *qāzī* may follow, disregard, or seek a second or third opinion on before making his judgement. The decision would then be recorded in a register of *sijills*, which would form a corpus of public record, and a sealed copy given to the parties. Specially trained scribes, generally called *kātibs* (from the Arabic verb *kataba*, to write) or possibly even *shurūtīs* (referring to the manuals of documentation referred to in Chapter 4), would draft all documents, including depositions made by the parties.<sup>5</sup>

The weak points of this hyper-coherent vision are the points of actuation – the disputants, witnesses, the scribes and the enforcement agencies. Among other things, it leaves the king out of the story. A large number of historical studies, focussed exclusively on territories under the Ottoman empire, have shown that people often petitioned the sultan rather than the local *qāzī* – while in some cases this may simply have been a way of kick-starting the legal process rather than by-passing it, in others – and autonomous royal jurisdiction, threatening the authority of the *qāzī*, appears to have developed.<sup>6</sup> Kings did not just resolve disputes, they also had a tendency of taking policy decisions and making rules that did not necessarily align with transcendent laws, which, if properly applied, would constrain their power. Such prolific legislation by the Ottomans, known as *kanun name*, came to be eventually accommodated by the jurists working as *muftī* and *qāzī*.<sup>7</sup>

Reconciliation of the royal and juristic realm may have been achieved in several ways. In the Mediterranean regions, it appears that the concept of a separate, political sphere (*siyāsa shari‘a*) may have helped jurists to deal with such encroachments.<sup>8</sup> The Islamic political-legal doctrine, which considers

<sup>5</sup> Hallaq, ‘Model *Shurūt* Works’, pp. 109–34.

<sup>6</sup> Baldwin, ‘Petitioning the Sultan’; Baldwin’s argument is distinct from older arguments, which proposed the existence of a separate jurisdiction of ‘bureaucratic justice’ from the earliest days of Islam until (at least) the Mamluks, which was only partially explained by juristic writing from the 11<sup>th</sup> century onwards. See H. F. Amedroz, ‘The Mazalim Jurisdiction in the Ahkam Sultaniyya of Mawardi’, *Journal of the Royal Asiatic Society*, 2 (1911), 635–74; Jørgen S. Nielsen, *Secular Justice in an Islamic State: Mazālim under the Bahrī Mamlūks, 662/1264–789/1387* (Leiden: Netherlands Historisch-Archaeologisch Instituut te Istanbul, 1985); Jørgen S. Nielsen, ‘Mazalim’, in *Encyclopaedia of Islam*, 2nd edition, Brill Online, 2016, surveys the jurisprudential cognizance and rationalisation of this jurisdiction; Albrecht Fuess, ‘Zulm by Mazālim? The Political Implications of the Use of Mazālim Jurisdiction by the Mamluk Sultans’, *Mamluk Studies Review*, 13 (2009): 121–47; R. Irwin, ‘The Privatization of ‘Justice’ under the Circassian Mamluks’, *Mamluk Studies Review* 5 (2002): 63–70; Yossef Rapoport, ‘Royal Justice and Religious Law: Siyāsah and Shari‘ah under the Mamluks’, *Mamluk Studies Review* 15 (2012): 71–102.

<sup>7</sup> Gerber, *State, Society, and Law in Islam*.

<sup>8</sup> Ann K. S. Lambton, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory: The Jurists* (New York: Routledge/Curzon, 1981), pp. 138–52. For the origins, meaning, and different perceptions of the term, see F. E. Vogel, ‘Siyāsah’, in C. E. Bosworth, et al. (eds.), *The Encyclopaedia of Islam*, 2nd ed. (Leiden: Brill, 1997), Vol. 9, 693–6; and Bernard Lewis, ‘Siyasa’, in A. H. Green (ed.), *In Quest of an Islamic Humanism: Arabic and Islamic Studies in Memory of Mohamed al-Nowaihi* (Cairo: American University in Cairo Press, 1984), pp. 3–14.

the king as the fountain of justice, may also have helped,<sup>9</sup> as might have a healthy concern among the jurists for keeping their jobs and lives. Mughal emperors were famously capable of dismissing chief *qāzīs* if they did not suit their policy imperatives: Akbar dismissed Abd al-Nabi after the execution of a Brahmin for blasphemy, against his express wishes, and his great-grandson Aurangzeb did it to the *qāzī al-quzzāt* (chief *qāzī*) who refused to convict Dara Shukoh of heresy.<sup>10</sup>

However, we restrict ourselves illogically if we only look to the imperial court and its decisions in order to understand how Islamic jurisprudence may have been intertwined with other sources of justice. As we have seen, Mughal nobles/imperial officers (*mansabdārs*), as representatives of the government (*vukāla-yi sarkār*) constantly took decisions – by making land grants, revoking them, resolving disputes between various functionaries and over access to natural and revenue resources, and directing succession to lucrative positions – many of which would be common areas of litigation in British courts from the late eighteenth century. In making those decisions, however, these *mansabdārs* often associated themselves with the local *qāzī*, and more rarely, made passing references to the legal bases of their decisions, without a *mufī* in sight. In understanding Mughal law therefore, we may have to relinquish our modern-day distinction between administration and law; and understand how the *qāzī* was situated within an array of authorities capable of taking normative and effective (i.e., therefore, legal) decisions.

Things also become muddier when we turn to the disputants themselves. In terms of its jurisprudence, Islam, being the latecomer among the Abrahamic religions, possesses a heightened awareness of religious diversity *ab initio*. The need to peaceably reconcile a universal law with a heterogeneous population led two main lines of jurisprudential reasoning, the first being the designation of some categories of people as ‘People of the Book’, and the other being the consideration of yet others as *zimmīs*, or protected, provided they accepted the rule of Islam and their own subordinate status without contest.<sup>11</sup> A vast body of research, mainly related to Fatimid Egypt and the Ottoman empire, has shown that there could be considerable flexibility in the ascription of these categories to groups of people, and also that the considerate application of rules by *qāzīs* and/or the existence of multiple alternative tribunals, some specifically geared to dealing with non-Muslims, could afford substantive justice to people in the formally inferior categories.<sup>12</sup>

<sup>9</sup> For discussions of this idea with reference to India, see, Mohammad Habib and Afsar Umar Salim Khan, *Political Theory of the Delhi Sultanate: Including a Translation of Ziauddin Barani's Fatawa-i Jahandari, Circa, 1358–9 AD*. (Delhi: Kitab Ghar, 1961).

<sup>10</sup> Bhatia, *Ulama, Islamic Ethics and Courts*, pp. 161–2.

<sup>11</sup> Anver M. Emon, *Religious Pluralism and Islamic Law: 'Dhimmīs' and Others in the Empire of Law* (Oxford: Oxford University Press, 2012).

<sup>12</sup> Marina Rustow, ‘The Legal Status of Dhimmis in the Fatimid East: a View from the Palace in Cairo’, in Maribel Fierro and John Victor Tolan (eds.), *The Legal Status of Dhimmis in the Islamic West* (Turnhout, Belgium: Brepols, 2013), pp. 307–32; Mark R. Cohen, ‘A Partnership

None of this research goes far enough to tell us what happened when non-Muslim litigants were not a minority, but nearly the entire clientele of a *qāzī*'s court; it does not tell us whether referring the case to a *mufī* would still be appropriate; and if so, which jurisprudential texts and traditions the *mufī* might consider applicable. Differentials of power naturally affect the course of justice in all contexts, but the existing literature on Islamic law does not tell us, except with reference to the very different modern European contexts, how Islamic law might work when a *qāzī* is significantly less powerful and wealthy than most of the non-Muslim landlords, officials, traders and strongmen who took their disputes to his court. And indeed, it tells us nothing about why they should do so in the first place, if they were not required to, and the system was one that weighed against them.

Research using document collections comparable to this book, however, has led scholars to comment on the ubiquity of *qāzīs* and their involvement in a range of disputes, not purely 'religious' ones.<sup>13</sup> Such comments are still based on the systemic understanding of *sharī'a* that we have summarised. In this view, in order for a *qāzī* to handle disputes among Hindu *zamīndārs*, for example, *sharī'a* would have to take on a completely new meaning, derived from ethical or spiritual discussions outside the realm of jurisprudence, and basically stop being Islamic law. Farhat Hasan, in using yet another set of comparable documents and their copies, those pertaining to the port city of Surat, has noted the presence of Hindu merchant families in the court of the *qāzī* of Ahmedabad, and also pointed out that the law that such litigants sought was the very recognisable provisions of Islamic law. In explaining these observations, Hasan has suggested that '*Sharī'a* was a normative system that was shared by all sections of the local society and not just the Muslims'. Less in line with his own observations, however, he suggests that it worked by being 'flexible and ambivalent', closely integrated with 'local customary usages' and plastic enough to be fitted to local contexts by social actors.<sup>14</sup>

This chapter attempts to recreate the role of the *qāzī*, situating his status and functions in relation to other possible authorities that Purshottam Das and his associates could turn to at various times, and tries to map the manner in which they made these choices.

### The *Qāzī* and His Range of Authority

As we have seen in Chapter 4, the *qāzī*'s seal and notes appeared in documents that recorded property transactions between private parties, such as the

Gone Bad: Business Relationships and the Evolving Law of the Cairo Geniza Period', *Journal of the Economic and Social History of the Orient*, 56 (2013): 218–63; Al-Qattan, 'Dhimmis in the Muslim Court'; Appellániz, 'Judging the Franks', 350–78.

<sup>13</sup> Alam and Subrahmanyam, *The Mughal State*, pp. 31–2. <sup>14</sup> Hasan, *State and Locality*, p. 76.

contracting or repayment of debt, the making of gifts or the declaration of quittance of claims. It also appeared on copies of documents that recorded orders of high-ranking imperial officials, especially those documents that made or confirmed property-bearing grants. As such, the *qāzī* appeared to play a role similar to that of the public notary in the early modern European context, or contexts where European legal systems were effective.<sup>15</sup> In this, the role of the *qāzī* points to a clear difference between the systems based on common law or Roman law, and those based on Islamic law. As Fahad Bishara explains in his work on commercial contracts in the nineteenth-century Indian Ocean world, *katībs*, or scribes of such contracts were ‘not expected to guarantee the authenticity of a previously written contract (although they were sometimes called upon to do so) nor were they expected to preserve copies of contracts that they drafted. They were tasked with bridging between the contracting parties and the law, not with furnishing the information necessary to enforce the law’.<sup>16</sup> Comparing our collection of documents with similar, and much larger and better-known caches from several parts of the Islamic world, suggests that it was the role of the *qāzī* to provide that guarantee of authenticity.<sup>17</sup>

According to strict juristic doctrine, of course, documents, attested and sealed by no matter who, could only have secondary probative value; pride of place in the arena of evidence remained with the personal testimony of reliable and respectable witnesses. We know that this strict and impractical doctrine had been modified in many parts of the Islamic world. Of the four principal Sunni schools of law (*mazhab*, pl. *mazāhib*), the Malikis, followed in North Africa, are said to have gone furthest in accepting the probative value of documents. But the Hanafi school, prevalent in the Mughal empire, may not have been far behind.

A *farmān* of Aurangzeb, dated 20 Muharram, RY35 (1691), appointing the *qāzī* of the city (*balda*) Pattan, in the province (*sūba*) of Gujarat and neighbouring areas, may have listed what had become established practice in the Mughal empire. After reciting all aspects of the *qāzī*’s service (*khidmat*) and his right to the taxes of certain villages, conditional upon his performance of those services, a crucial final line was added: ‘The custom (*tariq*) of the inhabitants of the said city is that they consider the letters of attorney (*‘khuṭūt-i vukālāt*) . . .

<sup>15</sup> Burns, *Into the Archive*; on notaries in early-modern Europe, see Laurie Nussdorfer, *Brokers of Public Trust: Notaries in Early Modern Rome* (Baltimore, MD: Johns Hopkins University Press, 2009).

<sup>16</sup> Bishara, *A Sea of Debt*, p. 126.

<sup>17</sup> Khan, *Arabic Legal and Administrative Documents*, pp. 7–8, 29. Khan refers to the professional scribes-cum-witnesses, ‘*udul*, as ‘notaries’, but the content of the documents shows that this is another technical mistranslation; through the ‘witness clauses’ they wrote by their own hand, the ‘*udul* witnessed the transaction and attested to the accuracy of the document’s contents and the fulfilment of various conditions, such as the mental and physical capacity of the parties. These witness clauses did not, of themselves, authenticate the document, although they supported it.

and the records of court judgements (*sijillāt*), in his [the *qāzī*'s] writing and with his seal, as authentic (*mu'atabar shamaraṅd*)'.<sup>18</sup> Evidence from many parts of the Islamic world suggests that the regard of the people of Patan for deeds and legal records signed and sealed by the *qāzī* could not have been an eccentric local tradition.<sup>19</sup> Nearer home, the presence of many copies (*naqls*) of important documents in the collection of Purshottam Das's family, nearly every one of these authenticated by the local *qāzī*, suggests that people in many other parts of Mughal India considered such *qāzī*-attested documents as authentic.

Such active seeking of the *qāzī*'s seal for the authentication of documents by non-Muslims has been studied most intensively with regard to Jewish communities in various North African sultanates and the Ottoman empire.<sup>20</sup> In these cases, however, there was usually a formal procedure of 'double notarisation', first by communally and sometimes officially recognised Jewish notaries and then by Islamic *qāzīs*. The reason for such procedure was clear – documents authenticated by the *qāzī* were more likely to be upheld if disputed in state courts. While taking disputes outside the community was a clear violation of their own authority, in many cases, Jewish rabbis simply recognised reality and sometimes even explicitly recommended that people prepare for such eventuality by acquiring the *qāzī*'s seal on their documents.

Unlike the Jews, of course, Hindus were not a small minority in the Mughal empire. Even more strikingly, therefore, available records reveal no inclination of their part to acquire primary authentication in any kind of 'community court' before approaching the *qāzī*. Looking at this unusually rich archive created by our family of *qānūngō*-cum-*zamīndārs* over several generations, we are able to map the various authorities that such significant commoners in rural Mughal India were able to appeal to, and detect some patterns of correlation between the types of issues and the kinds authorities appealed to. In doing so, we discover the *qāzī* occupying a key position that complemented various others, such as the *qānūngōs* and *zamīndārs* themselves, and the imperial *mansabdār-jāgirdārs* whose temporary presence represented the awe-inspiring royal dimension that I have argued was a constant and essential element in the matrix that was imperial law. Within that matrix, the role of the *qāzī*, or indeed that of the other adjudicative authorities, was not within a strictly defined separate sphere – defined by *sharī'a*

<sup>18</sup> 'Aurangzeb's *farmān* appointing a *qāzī*', Or. 11698, British Library.

<sup>19</sup> This is particularly, but not exclusively, true of the Jewish communities of Morocco whom Marglin studies, and also of Egypt, whose records, preserved in the Cairo *genizah* or storehouse, were acquired by the Cambridge University library, and is catalogued in Khan, *Arabic Legal and Administrative Documents*. A project that has been developing since the first discovery in 2011, is the Afghan Genizah project, based on an eleventh-century collection of documents from northern Afghanistan, which includes several documents in recognisable Islamic legal forms, but with no seals.

<sup>20</sup> Marglin, 'Cooperation and Competition', pp. 111–30; also Haim Gerber, *Jews and Muslims in Ottoman Law, Economy and Society* (Istanbul, 2008).

or anything else – but functioned in a mutually reinforcing mode over a field of entitlements and obligations that encompassed tax contracts, surety and grants, as much as sale, gift, inheritance and endowment.

### The Man Who Would Be *Qāzī*

In recognisable Islamic legal systems, the *qāzī* is supposed to be the product of a specialised education as well as social system. He (until recently, a *qāzī* was inevitably a man) would almost certainly belong to a family of jurists, those who were experts in jurisprudence (*fiqh*). In training to become one of the *fuqahā* himself, he would pursue a highly personalised course of learning, in which scholarship and personal relationships would be inseparable in the making of the man. He would also work to maintain a solid reputation of respectability and combine book learning with at least some level of spiritual achievement. Eventually, he could expect to acquire a position as *qāzī*, a judge, in his native district to begin with. Only if he made an outstanding success of his career, by working on his connections and/or attracting the attention of high-ranking officials, possibly the emperor himself, would a *qāzī* move on to greater things – from district to province to the imperial capital, not necessarily following any given path of promotion.

Our documents cannot really tell us much more about the *qāzīs* who authenticated them, except their names and the years of their activity in the district of Dhar. We can also trace a small network of associates for each *qāzī*, based on other signatories on the document, or on the narrative of their actions. But by noting the kinds of business the local *qāzī* was involved in, and by comparing this with what we know of the role of the *qāzī* in other Islamic or Islamicate contexts, we have offered some idea about the place of the *qāzī* in the local administration and, by extension, local society. Now we can begin to use two different bodies of material – collective biographies (*tazkiras*) and works of jurisprudence (*fiqh*) – in order to recreate the social and mental world, if not of these specific *qāzīs*, then those of very comparable ones from around the Mughal empire.

A boy destined to become a *qāzī* in the Mughal empire would spend most of his early student life acquiring intimate knowledge of the Quran, possibly memorising it, and learning the basics of Arabic grammar and rhetoric. A higher level of study would commence with his entry into a *madrasa* (literally: school, or place of learning, in Arabic),<sup>21</sup> where he would typically study a number of disciplines, including those that are classified a *manqulāt* (based on *naql*, or copying, that is, based on revelation) and those called

<sup>21</sup> George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981).

*ma' aqulāt* (based on human intelligence, *'aqal*). *Manqulāt* disciplines would include exegesis of the Quran (*tafsīr*), theology (*kalām*), traditions (*hadis*) and how to study them (*'usul al-hadīth*), jurisprudence (*fiqh*) and its principles (*'usul al-fiqh*); and *ma' aqulāt* would include logic, but also medicine.<sup>22</sup> A man looking to make a career in law would be likely to concentrate on *hadīth*, *fiqh* and *'usul al-fiqh*, with variable combinations of the other disciplines depending on the curriculum he followed.

In India, until the late nineteenth-century, choice of the content of study as well as the process of learning would be high personalised. The 'colleges', such as they were, were inseparable from the scholars who taught in them; in fact, the seat of learning would usually be the residence of the scholar, which would be a sacral complex combining mosque, (Sufi) shrine and *madrasa*. Pupils would actively seek out teachers famous for their knowledge of particular disciplines, even particular books. The working of the teacher–student relationship would depend almost entirely on personal dynamics, and if all went well, the student would be declared by the teacher to have learnt all that was needed in the particular area, and granted permission (*ijāza*) to teach it. This was effectively a graduation, but an eminent scholar would typically acquire several such permissions/graduations in the course of his learning.<sup>23</sup>

What we know far less about is the process by which this scholar of Islamic law would acquire the knowledge of fiscal rules and procedures on the one hand, and a range of customary laws, dues and obligations on the other, in order to officiate in key moments that occurred regularly in the lives of our protagonists. It seems to have been a case of learning by doing, although high levels of competence may have been achieved thereby.

As for actually acquiring the post of a *qāzī*, especially at the district level, this appears to have been largely guided by succession, with some need to keep the emperor and his deputies happy. It might be different of course, if one were an illustrious foreign traveller and scholar, such as Ibn Batuta, in which case appearance in the emperor's court might lead to an instant appointment. There is nothing to indicate the presence of such illustrious foreign-born appointees in *pargana* Dhar; *qāzī* Mustafa, in particular, seems to have been a local man.

When this book was nearly complete, my indefatigable collaborator and correspondent, Amit Choudhary, managed to contact the gentleman who is still regarded as the *shahr* (city) *qāzī* of Dhar. The small number of Persian *parvānas* shared with me showed that the members of the family held *madad-i mā' ash* (charitable) grants from Emperor Muhammad Shah's period,

<sup>22</sup> Hallaq, *Sharī'a*, pp. 125–58.

<sup>23</sup> Metcalf, *Islamic Revival in British India*; Francis Robinson, *The 'ulama of Farangi Mahal and Islamic Culture in South Asia* (London: Hurst, 2001).

that is, the eighteenth century.<sup>24</sup> A *shajara* (family tree) claimed an older connection with the area. The connection between persons named in these documents and *Qāzī* Muhamad Qudratullah, named in the Dhar State Report of 1924–25, is difficult to establish. But Qudratullah had reported descending from a certain Abdul Fateh, who received his *sanad* from Emperor Shah Alam; he also possessed deeds of grants from Maratha times.<sup>25</sup> Changes in regimes did not necessarily uproot the *qāzīs* nor end their jurisdiction entirely.

### Village Quarrels

Let us begin, however, with the jurisdiction of our protagonists themselves. In 1653, there was a dispute over the usage of water from a pond (*tālāb*) adjoining two villages – Navgaon and Khilchipur. It appeared that villagers from the *mauza* ‘Tornod had, in recent times, taken it upon themselves to draw water from this pond for their own fields. No doubt complaints were made, although it is not clear by whom exactly. The *jāgīrdār*, who called himself a servant of Prince Murad Baksh (at that time the governor of Malwa) on his seal, issued a *parvāna* saying:

no one should, for any reason, take possession of the water of the lake other than the subjects, who had since olden times, not been [*sic*] in possession (*mutaṣarraf*) [of the lake], and should not cause obstacles to their [the subjects’] situation and should not count themselves among partners/co-owners of this pond (*khud rā sharīk va ba-ham dar ān tālāb na shamarand*) and not become the reason for chastisement and correction.<sup>26</sup>

While superficially an executive decision, the *jāgīrdār* clearly referred to a pre-existing set of rights, calibrated through notions of possession and partnership. The countryside was not a blank sheet for Mughal officials to stamp their writ on; it was crisscrossed with rights that derived from ancient (*qadīm*) custom and imperial recognition, those of peasants and those of *zamīndārs* that lived off the peasants. Moreover, such rights could clearly be encroached upon, and disputed, requiring adjudication by someone higher in the pecking order of the beneficiaries of the peasants’ work and imperial office. In making his decision, power and patronage no doubt swayed the *jāgīrdār*, but when issuing his order, he was constrained to refer to that body of rights.

At other times, there appeared to be fewer stable rights that could be referred to and/or the disputants were more equally balanced in the eyes of the power-holders. In such cases, the ‘lord’ of the area (the *jāgīrdār*) appeared to call upon *zamīndārs* in their capacity as village officials, to arbitrate. In 1658, for

<sup>24</sup> Dhar *shahr qāzī* documents, 1724 and 1725. Digital copies in my possession.

<sup>25</sup> *Report of the Administration of the Dhar State 1920–21 to 1925–26* (Dhar, 1926), Table XXXI.

<sup>26</sup> DAI, LNS MSS 235 j.

example, there was a quarrel about the boundaries between the villages of Gondri (currently East Nimar, Burhanpur district) and Bahram Kot (no longer on Google). Gondri deputed one headman, Bahram Kot sent three, Sagu, Kalu and Hassan, to the local *mansabdār-jāgīrdār*, respectfully referred to only by an elaborate title: The Abode of Governance. The noble so approached appointed Purshottam Das *chaudhrī*, Paras Ram *qānūngō*, and three other headmen as *ṣālis* (third-party, arbitrator). In what appears to be an elaborate ceremony, the disputing villagers and all those appointed to resolve the problem arrived at the borders between the villages (the document calls the place ‘*kankar*’ or ‘*kangar*’ – which may mean a pebbly boundary). The noble administered an oath to the arbitrators, who then proceeded to define the boundaries between the villages. It was then declared that if the headmen of the two villages quarrelled again about this matter, they would be held *gunahgār* (guilty) by the government.<sup>27</sup> Under the Persian text, the names of the disputing headmen were written, in two opposing columns, in the Nagri script, their names preceded by the interesting title ‘*mātang*’ – which means ‘elephant’ in Hindi. If I have read this correctly, this would indicate the circulation of an interesting range of earthy epithets beyond the formulaic Persian *alqāb*. Below the names of the headmen, the plough symbol was drawn, demonstrating, at the very least, a regional tradition shared with the Marathi-writing area next door. The document bore a Persian seal with the pious legend ‘*Aliyān rā sharf kamāl az tū* (The saints achieve perfection due to you)’, with a note underneath ‘His slave, Bhogan Chand *kārkūn*’.

In thus resolving boundary disputes between villages, Purshottam Das *chaudhrī* acted somewhat like *pāṭils* (village headmen) and *muqaddams* (village headmen in northern India) who formed part of community-based local courts – the iconic Maratha *majlis* or the *panch* ‘five elders’.<sup>28</sup> On the other hand, *zamindārs* all over the Mughal empire, and even in the neighbouring and rival polities, were expected to exercise a certain measure of adjudicative authority in their own right. Hence, when the East India Company purchased the villages that made up Calcutta at the end of the seventeenth century, they also set up a *zamindārī kacherī* (court). In the early nineteenth century, after the demise of the Maratha empire, the Bombay government even passed a specific legislation recognising such adjudicative rights for the most eminent landholders.<sup>29</sup>

<sup>27</sup> NAI 2668/3, 1658.

<sup>28</sup> For a document recording *pāṭils* forming part of a *majlis* (community court) that decided a dispute over the sharing of a *pāṭilship*, see V. T. Gune, *The Judicial System of the Marathas* (Pune: Deccan College, 1953), p. 203. Habib provides similar examples of certain *muqaddams* forming part of the iconically Indian *panch* or ‘five-elders’ system of village tribunals in *Agrarian System*, pp. 148–9.

<sup>29</sup> This was the case with the Brahmin lineage of Devs of Cincvad, who controlled a richly endowed religious household/institution near Pune. ‘A regulation for vesting certain jagheerdars, surinjameedars, enamdars with the power of deciding suits within the boundaries of their

However, in this instance, Purshottam Das did not act either as part of a stable community court (a *panchayat*) or as a *zamīndār*-judge in his own right. Moreover, his role was defined with reference to a clear Islamic legal term – the *ṣālis*. Arbitration abounded across the Islamic world, of course, but scholars locate arbitrators differently with relation to Islamic law and institutions. They also acknowledge that this might have varied significantly from polity to polity; while in the Ottoman empire arbitration by local notables may have formed a distinct domain from that of the *qāḏī*'s court, in the Central Asian *khanates* prior to Russian colonisation, arbitrators were frequently *aqsaqals* (white-beards), whose authority derived not just from social eminence but government office, especially as tax officials. Central Asian *aqsaqals* worked under orders from the central government, and in association with the *qāḏī*, to whose court appeals lay.<sup>30</sup> Such layered and braided jurisdictions sound very much like the *dai'ra* within which Purshottam Das exercised his authority. The size of the Mughal empire precluded direction from the imperial centre about every little boundary dispute between villages; the *jāgīrdār* performed that royal role, deputing local landlords, acceptable to the communities, to resolve the matter. Unfortunately, in this case, we cannot tell whether the *qāḏī* of the district may have entered the picture; he did not make an appearance in this document.

### *Zamīndārs in Court*

The picture does become clearer when there was a higher level of rights involved, for example, when the entitlements of *zamīndārs* were in dispute. We have long known, of course, of the existence of transferable and marketable rights in land, individual as well as collective, in Mughal India,<sup>31</sup> even if such rights were inevitably nested and did not correspond to a modernist imagination of absolute and exclusive ownership. Looking closely without expecting an anachronous distinction between public office and personal property, we find every single element of the 'portfolio' of resources of Purshottam Das's family open to possession, inheritance, interpersonal transfer and dispute. The notion that *zamīndārs* possessed a right that was to a great extent independent of the will of the government was not dreamt up by British physiocrats looking to introduce the wonders of private property into the Indian society and polity. In 1772, around the inception of British rule in India, when asked about the rights of succession to *zamīndārīs*, the highest-ranking Indian official in the province of Bengal, the ill-fated *nāib-nizam-cum-nāib-diwān* Muhammad Reza Khan,

respective estates', Bombay Regulation 13 of 1830, in *Parliamentary Papers* 1833, xxv, 276–7.

See Preston, *The Deys of Cinévad*, p. 200.

<sup>30</sup> Sartori, 'The Evolution of Third-Party Mediation'.

<sup>31</sup> Habib, *Agrarian System*; also Habib, 'From Arith to Radhakund', 211–24.

had said: ‘according to the laws of the Koran’ *zamīndārīs* were always inherited and could not be resumed by the government.<sup>32</sup>

Reza Khan may have been exaggerating to some extent, and his reference to the Quran may have been a generic reference to the rules of ‘Islamic’ government. What is clear from our documents, and ones comparable to them, is that the offices of *chaudhrāī*, bearing with them the right to *nānkār*, and of *qānūngōī*, bearing with it perquisites of the same name, were inheritable, partible and consequently, susceptible to disputes and adjudication. There are also some noticeable patterns to such disputes; they predictably appear at the intergenerational boundaries recorded in the papers of Purshottam Das’s family. Looking at the process of adjudication of some such disputes in detail allows us to explore what Reza Khan may indeed have implied about laws pertaining to *zamīndārīs* and discover the tribunals where those laws were enforced.

As we have seen, from 1626, Purshottam Das, referred to as *chaudhrī*, had started taking on revenue farms in the *pargana* of Dhar, and also the nearby *pargana* of Nalawada.<sup>33</sup> By 1658, he had become eminent enough to officiate as arbitrator in boundary disputes between villages. Sometimes, however, he had to beat off rival claimants from the various branches of his own extended family. In 1661, a quarrel with some distant cousins, Kanwal Das and Tilok Chand, led to the production of a *maḥẓar-nāma*, narrating the history of the family’s acquisition of rights, with exclusive focus, naturally, on the achievements and therefore entitlements of the complainant’s own direct ancestors.<sup>34</sup>

We have also seen how, in 1664, in a serious squabble between the leading men of two agnatic branches of the family – Purshottam Das and Suraj Bhan – the provincial governor had heard petitions from the parties, and sternly admonished both to behave themselves.<sup>35</sup> Which was all very well, but that admonition did not, in itself, resolve the matter of who exactly among the family members was actually entitled to the various villages and to control of their produce. On 5 Rajab 1075, that is, on 21 January 1665, *Qāẓī* Abul Fath noted that Suraj Bhan, son of Chandar Bhan, had turned up in the court of the province (*maḥkama-yi īn sūba*) in the city (*balda*) of Dhar, flourishing a *parvāna* bearing the special seal of the provincial governor Najabat Khan, probably the very *parvāna* that we just mentioned. Suraj Bhan declared that: ‘the *dastūr* of the *chaudhrāī* of *pargana* Hindola, together with the village Ajnai, which was part of the five villages currently allocated as *nānkār* to

<sup>32</sup> Extracts from the consultations respecting the administration of justice, Add MSS 29079, British Library. For a discussion of this document, see N. Chatterjee, ‘Reflections on Religious Difference’, 396–415.

<sup>33</sup> NAI 2703/2 (1626); NAI 2668/2 (1643). <sup>34</sup> NAI 2668/6 (1661–2).

<sup>35</sup> LNS MS 235 (m) 19 Muharram RY 7 (12 August 1664), Dar al-Athar Al-Islamiyya (henceforth DAI), Kuwait and NAI 2703/17 (1665).

*chaudhrī* Purshottam Das, belonged to him, by shared ownership (*ba-sharkat ta'aluq-i ū dārad*). *Qāzī* Abul Fath appeared to be able find a resolution to these tangles, and in accordance with the consent of the two parties (*muvāfiq-i razāmandī-yi janībain*), declared that it had been decided that (*muqarrar ānke*): 'After this, the plaintiff will make no claims on the defendant about the *dastūr* incidental upon the *chaudhrāī*, which he had not been in possession of from ancestral times; nor make any claims of shared ownership. He should be satisfied with what had been written as a result of the resolution'. The deal itself was in the fine print; scribbled in three sections under extended lines at the bottom of the page, it was declared: a) *Mauza* 'Ajnai in Hindola, belonged to Suraj Bhan; b) In exchange for towns with wells for Sultanpur, the tribute for *mauza* 'Chindwara was discounted; and c) The *bhaint* of *pargana* Hindola had no claim or share in the villages and towns which were the dues and customs (*lavāzim va rusūm*) of *chaudhrāī*.<sup>36</sup> All this was written up as a *maḥẓar*, under the seal of *qāzī* Abul Fath, and nearly thirty years later (1103/1692), a copy was sealed by the then-incumbent *qāzī*, Muhammad Mustafa.

It is difficult to make sense of all aspects of the deal that was recorded in this document. What is clear is that Suraj Bhan, who had once been able to work together with Purshottam Das,<sup>37</sup> was now being shaken off with token gains. While he got his little village called Ajnai, Suraj Bhan's succession claim to the rights of *chaudhrāī* were annulled under the *qāzī*'s seal. Despite his being Chandar Bhan's son, the *qāzī*'s judgement could use a formulaic phrase, saying Suraj Bhan had no hereditary claim (*dakhal*) on the perquisites of the *chaudhrāī*, although his nephew, Purshottam Das, did. Something had happened in this family that had made it exclude this otherwise very strong claimant from its circle of entitlements; in the next section, I reveal what that event might have been. It is also notable that in deciding the shares of members of this family, *Qāzī* Abul Fath made no reference to their religion, or to any entity like 'Hindu law'. Instead, the decision was based on three things: the customary dues (*lavāzim* and *rusūm*) associated with the position of *chaudhrī* of certain districts; secure possession; and succession, the last being subject to intra-familial relationships rather than abstract rules of survivorship derived from jurisprudential texts – whether *fiqh* or *dharmaśāstra*. This was the kind of decision that necessitated rich local knowledge; the *qāzī* had to be a local man in more than one sense of the term.

### Which Son? The Limits of Kinship and the Circle of Entitlements

Purshottam Das, clearly the family patriarch for more than half a century, died in 1684. Predictably, the family, with all its immediate and allied agnatic

<sup>36</sup> NAI, 2703/17 (1665). <sup>37</sup> NAI 2703/4 (1655) and NAI 2703/7 (1659); section on *qaul*.

branches, burst into vicious quarrelling to decide who would inherit the by now enormous portfolio of lands and tax-exemption grants he had built up, through inheritance, long office-holding, a sharp business sense and constant disputing before a range of authorities. These disputes made the next generation of male heirs and their mutual relationships, alliances and rivalries immediately visible. It also revealed, albeit briefly, a line of the family that had been resolutely written out of the family's archive. This line had related to the disenfranchised Suraj Bhan, and what had possibly been a youthful indiscretion on his part. The claims put forward by Suraj Bhan's son, and his conflicts with the other male claimants of the family, also explained why the line of inheritance may have skipped Suraj Bhan and passed from Chandar Bhan to his nephew, Purshottam Das. This is because Suraj Bhan's son was called Muhammad Asad.

An undated *mahẓar* was scribed soon after RY 4, which probably referred to the reign of Bahadur Shah I, and if so, it was produced in 1711. Two copies of that *mahẓar* were preserved in the family's collection (now at the National Archives, Delhi), both sealed by our friend *Qāẓī* Muhammad Mustafa.<sup>38</sup> The date on his seal is unfortunately smudged, but appears to be 1216 AH (1717 CE), and this would be well within *Qāẓī* Mustafa's years of office in *pargana* Dhar. The document recited that from the time of kings of yore until the time the document was scribed, Hamir Chand, son of Purshottam Das, son of Mohan Das, son of Jayanti Das, son of Ganesh Das, son of Gunraj, was the hereditary *chaudhrī* of *pargana* Dhar, and the *chaudhrī* as well as *qānūngō* of *pargana* Hindola, and had kept the peasants content with his good behaviour. A man called Muhammad Asad, the *pesar baṭanī* (son of the belly of)<sup>39</sup> a woman called Parwar, of the *qaum lūlī*, had declared himself the *farzand* (child) of Suraj Bhan, who was son of Chandar Bhan and nephew of Mohan Das. In Indian usage, *lūlī* indicates a courtesan; clearly Suraj Bhan had committed some serious indiscretions in his youth. However, while consorting with courtesans may not have been an unusual activity for martially oriented landlords, his alleged son claimed that Suraj Bhan had gone further and taken the name of Abd al-Islam, which means that he had converted to Islam.

Whatever was Parwar and Suraj Bhan's personal story – and we have already seen him languishing in poverty and begging local officials for a place to live – Muhammad Asad was a resourceful man. According to this *mahẓar*, he managed to secure the removal of Narsingh Das and other sons of Purshottam Das from the *chaudhrāī* of *pargana* Dhar, and made a petition to the *‘adalat al-‘aliya* of Ujjain (perhaps for the securing of his title). As a result, a horseman called Yar Khan was sent by the *nāẓim* (governor) of the province, Sher Afghan

<sup>38</sup> NAI 2668/21 and NAI 2703/46, dated by the cataloguer to 1711, based of 'style of writing'.

<sup>39</sup> This is a technical term, frequently used in Islamic legal documents, to indicate biological parentage. See *Sulḥ-nāma bayn Āqa Begam wa farzandānesh*, [www.qajarwomen.org/fa/items/15161A24.html](http://www.qajarwomen.org/fa/items/15161A24.html).

Khan,<sup>40</sup> to summon Gambhir Chand, the elder brother of Hamir Chand. Gambhir Chand had to turn up at the court, and there he created a *mahẓar* with the *gawāhī* (evidence) of the *quzzāt* (*qāẓīs*), of the nobles and the great men and the *jamhūr al-ayyam* of *pargana* Dhar and other *parganas*. The *arbāb-i ‘adālat* (people of the court, the *qāẓīs*) discussed the matter in three sittings but the claims of Muhammad Asad could not be verified.

These sittings may well have been soon after Purshottam Das’s death in 1684, when, as we have already seen, all heirs were squabbling over shares. But Muhammad Asad refused to relinquish his claim. A few years passed, and then he managed to secure a *sanad* from the court of the emperor Bahadur Shah (r. 1707–12, referred to here by his posthumous title, Khuld Manzil). This document ordered the *faujdar* of *Sarkar* Mandu, Murhamat Khan,<sup>41</sup> to secure (for Muhammad Asad) the post (of *chaudhrāī* of Dhar), and, accompanied by a *dastak* (order) to a *gurzbardār* (mace-bearer, who often accompanied orders), reached the town of Dhar on 22 *Zu al-hijja*, regnal year 4 (1710 CE). Muhammad Asad had clearly impressed the powers that be, for ominously, even the horsemen of the then-current provincial governor, Raja Jai Singh [II] turned up to intervene in the rights of Hamir Singh.

The *faujdar* could not quite order a displacement of the title-holders, but was pressured to appoint his own deputy, Abu al-Khair, to conduct an investigation. Hamir Chand was allowed to inspect the *sanad*, and he declared that Asad had no claim to inheritance. Thus Muhammad Asad was invited to establish his inheritance right, and Hamir Chand declared that the evidence of the respectable people of the area, who knew the facts about the parties, should be gathered. So Hamir Chand requested all the great and good to offer their evidence in writing, so that the truth (*ḥaq*) might become clear to the *arbāb-i ‘adālat* and *bandegān-i ḥuẓūr mu‘ala* (slaves of His Highness, i.e., the Mughal officials). Finally, all the Muslims and Hindus reported (*khabar dādand*) that Hamir Chand held the *khidmat* (service/office) of *chaudhrāī* by heredity, and Muhammad Asad was neither the child of Suraj Bhan nor had any claim to inheritance.<sup>42</sup>

This document is not a judgement or an order, so it does not quite record the end of the protracted legal dispute featuring Muhammad Asad and his claims. It was a document of testimony produced at a crucial moment in the process, but because of the support that Hamir Chand had been able to mobilise, there is good reason to conclude that this document may well have decided matters. And it was not just a matter of calling up favours with one’s peers, the neighbouring *zamīndārs*. The surviving copies recorded that the original

<sup>40</sup> This was probably Sher Afghan Quli Khan.

<sup>41</sup> Murhamat Khan is known to have been a *faujdar* of Mandu in the early eighteenth century.

<sup>42</sup> The detailed summary offered in the catalogue has some errors, including of the date 22 *Zu al-hijja*, regnal year 5.

*mahzar* had been sealed by an astonishing number of religious and non-religious functionaries; the former included Sayyid Mirza and Mir Abdullah, *qāzī* and *muhtasib* of *sarkār* Mandu, respectively; Shaikh Lutfullah Suhrawardy, *pīrzāda* and resident of *qasba* Dhar; and the *qāzīs* of *parganas* Kanpil, Dewas and Dhar (including *Hājī* Muhammad Mustafa, who then later validated the copy). Then there was also Muhammad Arif, the *mutasaddī* (officer) of Islam Khan (the *jāgīrdār*), Gangaram, *mutasaddī* of the *diwān* of the province, and a host of *chaudhrīs*, *qanūngos* and *mandlōīs* from the neighbouring districts.

This startling document, and the protracted dispute it records, offers a tantalising glimpse of the manner in which landed families in Mughal India used the law in order to guard their circle of affiliations and entitlements. It also offers a rich picture of the manner in which three distinct social/institutional circles overlapped to create the infrastructure of Mughal law: the Islamic scholars who formed the *arbāb-i 'adālat*; the royal sphere from the emperor down to the *faujdar*; and the *zamīndārs* themselves. In the various types of disputes discussed in this chapter thus far, we have seen all three circles in operation, with varying degrees of focus on each, depending on the dispute in question. Muhammad Asad's life and claim was such that it required all three circles to be activated to an unusual extent, creating an intensely illuminated dramatic episode where a Muslim man claimed the right to be the son and successor of a Hindu *zamīndār*, and failed, but not easily. And in doing so, he demonstrated the full extent of the *dā'ira* of Mughal law.

Although too capacious a matter to be duly discussed here, this incident and its records are also a reminder that what we know about imperial religious policies cannot be conflated with the substantiation of law at an everyday level. The culture at the imperial court must have changed to some extent due to emperor Aurangzeb's ostentatious adherence to a doctrinaire form of Islam, although the extent of this may be exaggerated. The emperor's professed support for conversions to Islam did affect some careers and disrupt some landed families, even in the region – Rampura most notoriously.<sup>43</sup> But when conversion consisted of an individual's non-conformism, rather than a politically astute decision, all circles of authority closed ranks to exclude the heir who did not fit. What is perhaps surprising is the extent to which a courtesan's son was able to activate legal processes such that his claims were heard over a prolonged period in court sessions that involved a range of state functionaries, including Islamic judges.

The documents do not tell us on why Muhammad Asad could not be considered a *waris*; if his factual claims about his parentage had been implausible, surely he could not have made the headway that he did at the imperial

<sup>43</sup> Ratan Singh of Rampura converted to Islam in 1698, with the support of the then provincial governor, Mukhtiyar Khan, causing disruptions in the family. Sinh, *Malwa in Transition*, p. 48.

court. Classical Islamic law on religious conversion focusses on apostasy from Islam, which is considered a heinous crime and punishable by death for men; and with imprisonment and correction for women. The implications of conversion into Islam, on the other hand, is scattered throughout the enormous body of jurisprudence, in subjects ranging from taxation to marriage, since becoming Muslim altered a person's legal subjectivity, affording them different (not necessarily always better) rights and obligations. However, the continuance or erasure of rights under Hindu law (or indeed any other non-Islamic law), which is at issue here, is naturally not the subject matter of Islamic jurisprudence. Clearly, Suraj Bhan's own conversion (assuming that Muhammad Asad was right about that, and the matter was public knowledge) had not led to his 'social death' – a *qāzī* had still been able to hand him his rights with the backing of the provincial governor. But these claims to *dastūr* and *rusūm*, did not appear to extend to Muhammad Asad; we can only speculate whether it was his religious identity or his mother's social status which decided his fate at the end of the day.

This dispute left a trickle of traces in the scattered archive – there are documents, all dated in the 1710s, in all three locations from which I reconstructed the collection. All of them refer to the anxiety of the main line of the family about this unwanted relative and his claims. The two *maḥẓar-nāmas* had already revealed a complex intertwining of authorities; the effort to appeal to political authorities continued. In the National Archives, we have another document, which is a copy of an *iltimās* (petition) in which the *vakīl* (representative) of Hamir Chand reported all that the *maḥẓar* had said, and stated that Hamir Chand had this *maḥẓar* to hand. Clearly, though, Hamir Chand was not satisfied, and his *vakīl* still hoped that the rightful would be rendered their rights and the false claimants punished.<sup>44</sup> An unsealed and poorly scribed *parvāna* still preserved in the family home in Dhar, and dated to regnal year 5, may have been a response to this petition. It declared that the brothers Hamir Chand and Gambhir Chand had appealed to the local *jāgīrdār* about Muhammad Asad referring to himself as *chaudhrī*. The *jāgīrdār* appears to have mediated or imposed an agreement, for a *rāzī-nāma* is mentioned. The reverse of the document also had the office note – *mulāhaẓa shud* (noted).<sup>45</sup>

### Conclusion

Disputes over entitlements in Mughal India were of different types, scales and levels, depending partly on the social and political status of the persons

<sup>44</sup> 1713 NAI 2733/34. (The document bears no date and is clearly scribed much later; the date is ascribed by the chain of events by the cataloguer.)

<sup>45</sup> 1711 NCD, Choudhary Family Collection, *Badā Rāolā* Dhar.

involved. In the case of our protagonists, such disputes could range from conflicts among villagers over the use-rights of water bodies or over the boundaries of villages, in which they acted as arbitrators, to the inheritance rights of *zamīndārs*, in which a braided range of authorities – kings, nobles, *qāzīs* and their own peers made crucial decisions relating to the limits of family and associated entitlements.

In looking at these disputes together with the transactions that we have discussed in Chapter 4, we find the persistent presence of the local *qāzī*. Many of the transactions recorded and validated by the *qāzī* followed in the wake of disputes, which the *qāzī* must have helped resolve. In all these processes, we see a plethora of Islamic legal terminology being used in the documents – *dā*, *ṣālis*, *wirāsa*, *pesar batānī*, and so on. We also see, in the recording and resolving of these disputes, the use of a number of documentary forms that are fully recognisable across the Islamic world, for reason of their being included in Islamic manuals for documentation.

That familiarity with Islamic vocabulary did not, however, exclude several other sources of right and authority: Purshottam Das was chided by the *jāgīrdār* for trying to cut out other legitimate heirs to the family fortune; Hamir Chand had to deal with orders from the emperor and his delegates, and had to claim his rights with reference to both his impeccable genealogy, his secure possession of his position and his reputation among his peers in order to refute claims that, in turn, referred to biological-emotional relations and royal orders. The *qāzīs* who heard these disputes appeared to be perfectly able to sift through this range of rights-producing events, artefacts and relations; nobody expected the decisions they made to be final – the royal seal could always reopen matters.

As I said in the Introduction, it does not appear that the protagonists of this story saw their experience as eclectic, comprised of conflicting jurisdictions and legal systems. Indeed, what is striking by its absence in this documentary collection is explicit reference to abstract bodies of ‘law’ or even legal doctrine related to a jurisprudential tradition which experts – such as the *qāzī* and *mufī* (or for that matter, the *pandit* or *śāstrī*) – could draw upon in order to come to doctrinally informed decisions about specific matters. In one sole document, there is reference to a *mufī* and his legal opinion – the document recording the transaction of blood-money payment to the family of the Muslim retainers of the family; the corresponding payment to the Hindu retainers makes no such reference. Even in matters such as the validity of conversion (for example of Suraj Bhan’s), on which the *Fatāwā-yi ‘Alamgīrī* contained detailed discussions,<sup>46</sup> nobody in Dhar seemed to step beyond possession and reputation in order to evaluate claims.

<sup>46</sup> Mouez Khalfaoui, ‘From Religious to Social Conversion: How Muslim Scholars conceived of the *Rites de Passage* from Hinduism to Islam in Seventeenth-Century South Asia’, *Journal of Beliefs and Values*, 32: 1 (2011), 85–93.

It is possible that this lack of abstraction may be the function of the nature of the archive. No *qāzī's dīwān* has been discovered from Mughal India; in fact, the Dhar *shahr qāzī's* family papers appear to focus on the family's own entitlements rather than the records of others' fortunes. Family papers of other Islamic scholars, collected by the National Archives of India, demonstrate a similar mix of doctrinally indifferent orders, transactions and testimonial records pertaining to their own families. Were a *qāzī's dīwān* to be discovered from *pargana* Dhar, we may discover that Muhammad Mustafa, for example, had developed highly sophisticated notions of how the family and property of Hindu landholders ought to be managed. We may have to accept, however, that such record keeping was not considered necessary in Mughal India; the *qāzīs* lacking both the resources and the motivation for doing so. In the absence of such juristically rationalised records, we have to content ourselves with assuming that nobody thought that the doctrines of negotiation needed to be abstracted from everyday practice.