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JUDICIAL AND LEGAL SYSTEMS IV. JUDICIAL SYSTEM FROM THE ADVENT OF ISLAM THROUGH THE 19TH CENTURY

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iv. Judicial System from the Advent of Islam Through the 19th Century

This sub-entry is divided into the following periods:

(1) Medieval Period.

(2) Safavid-Afsharid-Zand Period.

(3) Qajar Period.

(1) Medieval Period

From the beginning of Islamic rule in Persia, both a secular and a religious judiciary co-existed: the *ʿorfi* court applying the common law, the tribunal of religious judge (*qāẓi*) applying the sacred law (*šariʿa*). This division followed a pre-Islamic model of Sasanian kings. Although the distinction between the jurisdictions of the two systems was sometimes blurred, the *ʿorfi* court

increasingly became the dominant tribunal in the course of time (see i-iii, above; Lambton, 1991, p. 11; Tyan, I, pp. 49-50).

In urban areas, the practice was that (1) misdemeanors were adjudicated by local institutions, such as chiefs of the extended families, of the city quarters, and of the guilds, applying customary law; (2) felony cases were generally dealt with by secular authorities such as the police (*šeḥna*, *dārugā*), the market inspector (*moḥtaseb*), and the governor, applying customary law; (3) torts were either dealt with by the secular or the religious judiciary, although it was the latter in particular if it concerned matters of family law; and (4) civil disputes were mostly dealt with by the religious judiciary. While there were exceptions to these categorizations, in general they held true (Lambton, 1988, pp. 81-82; Floor 1971, 1977, 1983a, 1983b, and 1985a).

In rural and tribal areas, where some 80 percent of the population lived, village heads and tribal khans, as well as landowners, applied mostly customary law. Islamic law was applied in cases involving marriage and divorce, but often inheritance rules followed customary law in rural areas, a situation that persisted in some areas into the 20th century (Barth, p. 20; de Bode, I, p. 282, II, p. 88; Bird, II, pp. 101-2; Alberts, II, pp. 828-48).

Until the Mongol Period (651-1220)

Secular judiciary. According to al-Māwardi, the Ommayad caliph ʿAbd-al-Malek (r. 685-705) was the first to initiate the secular courts by assigning a certain day for deliberation of wrongs, “reviewing complaints without holding a specific mandate for this purpose.” However, the first caliph who instituted and assumed an office for the consideration of wrongs was ʿOmar b. ʿAbd-al-Aziz (r. 717-20). The practice was continued by the Abbasids, beginning with al-Mahdi (r. 775-85), and finally al-Mohtadi (r. 869-70; al-Māwardi, p. 88). This did not occur only at Baghdad, for when al-Maʾmun (r. 813-33) came to Khorasan he sat in the Friday Mosque every day to hear complaints (Gar-dizi, p. 134). The Samanid, Taherid, Ghaznavid, and Saljuq rulers also followed the model of Sasanian kingship, that is, they usually administered justice twice per week, time and interest permitting. The Samanid rulers themselves presided over the *maẓālem* (“grievance”) court (Neẓām-al-Molk, pp. 18-29), or at least a member of the royal family did so (Barthold, *Turkestan*, p. 232). Masʿud of Ḡazna (r. 1031-41) presided over the maẓālem court twice a week, and anybody could come and make a statement (Bayhaqi, pp. 39, 159, 645). In the early period, the rulers in particular sat in judgement at Nowruz and

Mehregān (Spuler, 1952, pp. 370-71; Horst, p. 91; Neẓām-al-Molk, pp. 56-62). The ruler usually held court in his palace. The maẓālem court also convened in a special tent, the Friday mosque, or wherever the judge happened to be (Spuler, 1952, p. 37; Horst, p. 93; Lambton, 1988, p. 93).

Under the Saljuqs (1038-1231) an innovation was introduced in that the maẓālem court was placed under a high official, referred to as *dādbeyg* or as *amir-e yuluq*. The central māẓālem or yuluq (Turkish) court served as the highest court of appeal after the ruler himself, and it mostly dealt with felonies. It had an administrative and an executive staff. The provincial governor (*vāli*, *ḥākem*) and the vizier of the royal court were the highest judges after the ruler, each presiding over his own jurisdiction, and they enjoyed the assistance of experienced advisers. They had to apply religious law in cases of *qeṣās* and *diyāt* judgements. However, they referred all religious matters to the religious court (*majles-e qażā*). The governor supervised the provincial maẓālem court, which was operated by agents sent by the *yuluq al-solṭān*. District chiefs or *raʾis* were a lower level judiciary, who also oversaw the *qāżi*s. The *raʾis* heard cases assisted by *qāżi*s, imams, and notables. Fief holders (*eqṭāʿdār*s) and landlords (*moluk*) were judges (*ḥokkām*) in their area, applying customary law (Horst, pp. 16, 92-93; Bosworth, pp. 137, 267; Neẓām-al-Molk, pp. 18-29).

Religious judiciary. The rudiments of a Muslim religious judiciary came into existence when the first caliphs assumed the prophet's judicial role as per Qurʾānic attribution (4: 65, 105; 5: 42, 48-49; 24: 48, 51), when they personally sat in judgement in Medina. The rapid expansion of Islamic government over greater and greater areas of land required the appointment of an ever-increasing number of judges to adjudicate disputes and conflicts in the freshly conquered regions. Initially, many of the judges were not even formally appointed, but rather acted as the *ḥakam* or traditional pre-Islamic arbiters for their own Arab tribes. To formalize this situation, local governors in Iraq started to appoint *qāżi*s about the end of the 7th century. The appointment of judges for the Arab armies (*qāżi-al-ʿaskar*; *qażi-e laškar*; *ḥakam-e laškar*) is first mentioned in the first century and was modeled after the Sasanian function of army judge or *spāh-dādvar* (see ii, above; Tyan, II, pp. 289-304; Bayḥaqi, pp. 183, 185, 352). With regard to the major non-Muslim communities in Iran, the mobed, rabbi, or bishop continued to act as religious judge for their respective communities.

The Abbasid period. The early *qāżi*s enjoyed great respect in society, and some

even vied with the provincial rulers for first place in the civil hierarchy (Mez, p. 208). However, by the 9th century their role was limited to civil matters such as taking care of the interests of orphans, women without male kin, inheritances, notary public, and the management of endowments (Mez, p. 214; Horst, pp. 88-91; Māwardi, pp. 79-82). Nevertheless, it was a very important office, and thus people competed for the post. From the very beginning there was a tendency for the function to become hereditary in certain families (Bulliet, pp. 256-59; Drechsler, p. 315). The *qāżi* usually held court in the main mosque or at his house (Mez, p. 215). To have better control over the judiciary, the Abbasids appointed a chief judge (*qāżi-al-qożāt*) between 786 and 798, a development influenced by an Iranian model. This is reflected in the use of the synonyms of the new functionary by contemporary sources, which used Persian terms such as *herbed*, *mobed*, and *mobed-mobedān* to refer to the *qāżi* and *qāżi-al-qożāt*. This, and the fact that *qāżi*s wore special dress under the Abbasids, that the State paid them and their staff, and that the State had established the *divān al-qażā'* indicates just to what extent the judgeship had become bureaucratized by the 9th century. From the very beginning the judicial system was plagued by corruption of both *qāżi*s and the official witnesses (*ʿodul*; Mez, pp. 217-18; Horst, pp. 88-91, 191; Klausner, p. 26).

Provincial dynasts like the Samanids followed the example of the caliph in appointing judges. Naṣr b. Aḥmad (r. 914-43) built a judicial court (*divān al-qażā'*) in Bukhara at the gate of his court (Naršaḵi, p. 26]. However, under the Ghaznavids and Saljuqs, the judicial court was not part of the royal complex anymore, but was outside of it. *Qāżi*s continued to be appointed by the ruler or his governors. The chief judge was the *qāżi-al-qożāt* (Bayḥaqi, pp. 198, 173, 210). The role of the *qāżi* mostly was limited to cases of civil and religious import. The limited scope of the jurisdiction of religious judges emphasizes the importance of the maẓālem court (Horst, pp. 46, 59).

Mongol-Il-ḵānid-Timurid Period (1220-1500)

Under the Mongols and the Ilḵāns, there was one judiciary for Mongols/Turks and another one for Persians. The main Mongol court, which was attached to the royal court, was called *divān-e yarḡu*, later also as *divān-e moḡul[ān]*. The *yarḡu* court dealt with issues concerning Mongol officials and tribes, and the conflicts between them and non-Mongol officials (conspiracies, complaints, etc.); later, conflicts with subject princes and rulers were also dealt with by the *yarḡu* court. Its judges were known as *yarḡuči*, and were initially selected from among Mongol princes and nobles; later, Persian bureaucrats were also

appointed to this function. This court applied Mongol customary law (*yāsā* and/or *törü*), a set of rules laid down in a so-called *qānun-e rāsti* or *yarḡu-nāma* which, under the Il-khanids, were equated with the *šariʿa*. In particular, their decisions needed to be based on the *qutatḡu bilik* of Chengiz Khan, on the decrees of the Great Khan (*Qāʾān*), or on the *qānun-e yarḡu*. The emir presiding over the *yarḡu* court had to give the winning side a *yarḡu-nāma* or the court minutes to be used in case the same matter was raised again, for which he had to pay the emir and clerk a court fee. The provincial *šeḥna* (chief of police) was charged with the task of processing and executing cases that fell under *yarḡu* law. He probably dealt with minor cases, just as the *esfahsālār-e mamālek* (chief of the gendarmerie) also had a role to play. In particular, when the people for whatever reason had to resort to the Mongol court, he had to mediate and settle the case in accordance with justice, and not to in any way allow injustice to take place This suggests that he tried to find a solution in order to prevent the case from going to the yarḡu court (Naḵjevāni, II, pp. 30-39, 155-57; Ayalon, pp. 33-34; Spuler, *Mongols*, pp. 312-20). The maẓālem court gradually absorbed the yarḡu institution, which became obsolete (Spuler, 1985, pp. 310-11; Lambton, 1988, pp. 80 f.), and by 1500 it had become an integral part of the Islamicized judiciary (Isogai, pp. 91-103).

The divān-e maẓālem also existed at the time of Ḡāzān Khan (r. 1295-1304), when he ordered that in cases involving Mongols and Muslims, and for difficult cases, a court was to convene twice a month in the Friday mosque to render legal judgements. Shaikhs, betikchis, *qāżi*s, sayyeds, and scholars had to hear the cases and render judgement based on the *šariʿa* (Rašid-al-Din, pp. 218, 221-22). Similarly, under the Jalayerids (1330-early 15th century), the divān-e maẓālem considered cases submitted by Mongols/Turks and Persians (Naḵjevāni II, pp. 15-16, 19, 84, 259, 326). During Timur's reign (r. 1370-1405), the maẓālem court continued to operate and was still more important than Islamic courts (Clavijo, pp. 294-95). Under Timur's successors, there continued to be an administration for Turks/Mongols (*divān-e bozorg* or *divān-e tovāji*) under the *divān-beygi* or *amir-e divān* and one for Persians (*divān-e ʿāli*) under a vizier, applying customary Mongol (törü) and Persian law (*ʿorf*) as well as Muslim religious law. Under the Aq-Qoyunlus, customary law and Islamic law continued to be applied. Uzun Ḥasan (d. 1473) introduced an innovation that allowed needy, indigent plaintiffs to bring their suits through a public official (*parvānči-e ʿajazah wa masākin*) who acted as their advocate and intermediary (Roemer, pp. 169-70; Khandamir, iv, pp. 395, 431; Woods, p. 11).

Religious judiciary. An important change took place when in 1294 Oljeytu and many Mongols became Muslims. In fact, the 1295 revolt against Gayḵātu was because "he had abandoned the yāsā" (Spuler, p. 311). When Ḡāzān Khan (r. 1295-1304) became ruler, he applied Muslim law and even tried to make it into a code (*dastur*), although this apparently had not been completed when he died; at least no trace remains of it. There was also a Muslim chief judge as of 1295, while Ḡāzān Khan ordered *qāżi*s to be appointed widely, to whom other officials were subordinate. Despite this, the Il-khanid rulers continued to state that the yāsā was their basic law (Spuler, *Mongolen*, pp. 312-20). The post-Il-khanid states all had a religious court (*divān-e qaẓā'*), which was under the *qāżi-al-qożāt (-e mamālek*; Naḵjevāni, I, pp. 30-31, 46, 51, 210-11, 327; II, pp. 177-202, 183, 191, 240). People also submitted their conflicts to Sufi shaikhs such as Ṣafi-al-Din Ardabili (Ebn Bazzāz, p. 755). Until the end of the 14th century, the *qāżi* remained at the top of the religious bureaucratic hierarchy (Naḵjevāni, II, p. 186). He was still responsible for the management of endowments and the supervision of clerical officials, functions that were taken over by the new head of the religious institution or ṣadr in the 15th century. The *qāżi*, like other *šarʿi* authorities, henceforth served under the ṣadr and worked at his directives. The *qāżi-al-qożāt* remained an important judicial official, as evidenced by the fact that he continued to be appointed by the ruler. It was not uncommon for more than one judge to be appointed to a jurisdiction, one for each judicial school; in the case of Herat, a Ḥanafi judge and a Shafiʿite one (Roemer, pp. 44-49, 147-48). There was also still an army judge (*qāżi-e laškar*), who stood in high repute at Uzun Ḥasan's court, for example (Barbaro, pt. 1, pp. 99, 127-28).

(2) Safavid-Afsharid-Zand Period

With the establishment of the Safavid state in 1501, Shiʿism became the official religion of Iran and, for the first time, a Shiʿite state had to face the reality of governance and the issues concerning the application of Shiʿite jurisprudence (although there had been local Shiʿite dynasties before the Safavids). When Shah Esmāʿil I (r. 1501-24) declared Shiʿism to be the religion of his state, neither he nor his advisors even had access to any Shiʿite law books, and it took some time before an incomplete text could be found in Tabriz (Rumlu, pp. 85-86). In the course of time Imami Shiʿism superseded the Sunnite schools of jurisprudence and the Shiʿite scholars replaced their Sunnite counterparts who were in charge of *šariʿa* courts.

The development of a new religious hierarchy in this period led to the further

domination of maẓālem courts in the judicial system, and encroachment on the judge's function first by the *ṣadr,* who was the official head of the religious institution and later by the *šayḵ-al-eslām*, the official head of judges, who was appointed by the shah. Meanwhile *mojtaheds*, the independent learned jurists, exercised considerable influence over the religious courts. It should be noted that there were no well-defined boundaries to the authority of the *mojtaheds*. Another important aspect that led believers to prefer the secular (*ʿorfī*) courts over the religious courts was the fact that their binding decisions were usually taken within a reasonable time frame, in contrast to the *šariʿa* courts, which did not recognize the judicial principle of *res judicata* (*qāʿeda-ye farāḡ* in modern Persian law, known in Sunnite jurisprudence as *koll mojtahed moṣib*). According to this principle, a matter finally decided by a court having competent jurisdiction is not subject to litigation again between the same parties. The rejection of *res judicata* in Shiʿite jurisprudence often meant that the decisions of the *šariʿa* courts became the subject of reviews and reversals (*nāseḵ o mansuḵ*) by other judges. Moreover, there was no coordination between judges and no organized process for appeal.

Under the Safavids, the head of the secular judiciary (*divān-e ʿadālat*) was the *divān-beygi*. Under Shah Esmāʿil I there still existed a *yarḡu* court to judge wayward governors, and the term was still used in Georgia for the secular judiciary until the end of the 16th century. Although not known as a maẓālem court, the practice still existed, for the Safavid kings personally sat in judgement on certain occasions (Membré, p. 35). Shah Ṭahmāsp's *Āyin* provided guidelines for secular judges to ensure that they discharged their duties with kindness and justice, and that they protected the oppressed and the poor. These same directives are also mentioned in the appointment decrees of governors and their deputies (Röhrborn, p. 63, n. 380; Qarāḵāni, doc. 7). Shah Esmāʿil II (r. 1576-78) established a new court of law which was similar to the one that had been set up by Uzun Ḥasan a century earlier. To provide people with better access to justice, he appointed a judicial secretary for the poor and the oppressed (*parvānači-e ʿajaza wa masākin*). Shah ʿAbbās I (r. 1588-1629) used to mete out justice while standing at the gates of his palace, as did the provincial governors and the grand vizier. Like the shah, the grand vizier and provincial governors also set aside a particular day to sit or stand in judgement (Waḥid Qazvini, pp. 148, 174-75, 183, 190, 216; Floor, 2000a, pp. 13-18, 28). Shah ʿAbbās took a proactive role and often asked the people to come forward with complaints, but after 1683 the Safavid shahs were no longer accessible to the people (VOC 1373, fol. 862v; Floor, 2000a, p. 18).

In Isfahan in the 17th century, the *divān-beygi* had to sit in court on four days of the week with the two *ṣadr*, although the latter were often not present. In some cases there was a special building, while a pavilion in a garden was also used. The *divān-beygi* sat at the main gates of the royal palace, the ʿĀli Qāpu in Isfahan, but also twice per week in his own house (Mirzā Rafiʿā, pp. 87-88, tr., pp. 118-19; Floor, 2000a, pp. 12-16, 21-28). Complaints against officials could be filed with him for submission to the shah. The *divān-beygi* did not deal with cases involving members of the army (*ʿasāker*) or religious officials, whose cases he respectively referred to the chief of each army corps and the *ṣadr*. Although there still was an army judge (*qāżi-e askar*), he served little, if any, practical function (Floor, 2000a, pp. 19-28).

In addition there were a number of urban local officials who would take care of the bulk of transgressions. These included the mayor of the town (*raʾis*, *kalāntar*), the prefect of the police (*dāruḡa*), the overseer of public morality and the proper conduct of commercial affairs (*moḥtaseb*), the chief of the city quarter (*kadḵodā*), as well as the guild chiefs (*bozorg*, *kadḵodā*), and the chief of the merchants (*malek-al-tojjār*). The *naqib-al-ašrāf* was the chief of the *sayyed*s (descendants of the prophet). In each town there was such an official whose only authority was administering justice among the *sayyed*s (see CITIES iii; see also Floor, 1977; idem, 1983b; idem, 1985a; idem, 2000a, pp. 49-50; for a general survey of these offices, see Mirzā Rafiʿā).

In Safavid Iran, court proceedings were not very different from those prevailing in contemporary Europe. Both oral and written arguments were used in court, and the sentence was usually given immediately. Only the shah could impose capital punishment, in which case usually the *ṣadr* or another high-ranking religious authority was consulted to authorize this. Apart from the death penalty, which could be dispensed by a variety of cruel means, sentences could include torture, mutilation, flogging, and fines. Imprisonment was seldom used, and then usually only for high-ranking persons. Debtors, and those accused of a crime, excluding murderers, could seek sanctuary (*bast*) in locations considered sacred, such as the royal palace, shrines, mosques, houses of famous ulema, and the royal stables. A venue's sanctity, however, was not always respected, as evidenced by a case mentioned in the records of the Dutch East India Company, when the *divān-beygi* sent troops to arrest the fugitive (Floor, 2000a, pp. 29, 43-44).

Under the Zand rulers the maẓālem court was maintained, for they continued to hear complaints (Perry, p. 235). In rural areas, fief holders (*moqṭaʿ*,

soyurḡāldār, *teyuldār*) and landlords were responsible for the administration of justice in their jurisdiction. Simple matters would be taken care of by the village chiefs and heads of extended families (Gmelin, pp. 353-54; Perry, pp. 233-34; Floor, 2007, pp. 49, 257, 305).

The official, state-appointed, religious judiciary declined in significance after the fall of the Safavid dynasty in 1722. The Afghans that replaced the Safavids and ruled Iran for eight years were Sunnites, and Nāder Shah Afšār, who ousted the Afghans, was indifferent to Shiʿism. Nāder Shah's reign (r. 1736-47) was followed by years of civil war and turmoil, except for a brief period under Karim Khan Zand (r. 1751-79), until the final victory of the Qajars over the Zands. During the years of instability, people addressed themselves in civil matters increasingly before local influential jurists, a trend that continued under the Qajars.

(3) Qajar Period

In Qajar Iran there continued to be secular (*ʿorfī*) and religious (*šarʿī*) courts, under secular and religious officials, respectively. Both types of judges were appointed by the shah. The religious courts, which dealt with civil cases were, in large towns, under a *šayḵ-al-eslām* who was assisted by one or more judges subordinate to him. Small towns had only one judge, while in large villages the judgement was rendered by the local religious leader (*mullah*; Curzon, I, pp. 452-53; Lambton, 1991, pp. 18-19). In some cases, *mojtaheds* (religious leaders with the acknowledged aptitude to pass personal judgements on questions concerning the *šariʿa*) also agreed to adjudicate disputes, assisted by their students and witnesses (*ʿodul*). Under Fatḥ-ʿAli Shah (r. 1797-1834), there still was a *ṣadr-e divān-ḵāna*, who was in charge of the entire judiciary, and this was the final era in which the head of the judiciary was referred to as *ṣadr* (Mostawfi, I, p. 92). Oath-taking and the use of witnesses were important elements of religious courts, but documentary evidence was not. Since the opposing parties could choose between religious judges, there was rivalry among judges with an eye towards increasing their 'market share.' A downside was that if one party did not accept the verdict, he could submit his case to a religious judge of higher standing, a situation that was conducive to corruptive practices rather than the timely and efficient dispensation of justice (Malcolm, II, p. 444). Judges accepted gifts and took bribes, although their services were in theory free of charge. The execution of the verdict of the religious court was in the hands of the secular authorities, who received a fee for doing so. A locally powerful *mojtahed* would sometimes have his verdicts executed by

bands of his armed followers (urban thugs, seminary students), such as in the case of Mir Sayyed Moḥammad-Bāqer Šafti in Isfahan (Floor, 1983a, pp. 113-14, 118).

The secular courts, which dealt with all criminal cases and torts, were in charge of the governors. Documentary evidence played a major role in these courts, as did confessions, whether voluntarily or coercively obtained. Less serious cases were dealt with by the *kalāntar*, *dārugā*, and *kadḵodā*. Standard punishment was the administration of the bastinado for minor crimes, while mutilation (robbery, theft), as well as various forms of capital punishment, were administered for the most serious crimes (e.g., murder, treason). In cases where the *lex talionis* (*qeṣāṣ*) applied, the relatives could claim the murderer and kill him, rather than accepting the bloodwit. In villages and tribal areas, local authorities took care of the law by applying local and tribal customary law. There was the possibility of appeal from a lower to a higher judicial official, the highest being the shah (Mostawfi, I, p. 100; Curzon, I, pp. 456-58; Floor 1983a, pp. 115-17).

Given the fact that judicial authorities were arbitrary in their behavior and costly to get to know, people in general tried to avoid them, if possible, and took care of many problems themselves. The chief of the extended family, the elders of a guild, the leader of the mercantile community, all took care of most problems without involving the authorities (Mostawfi, I, pp. 99-100; Floor 1983a, p. 117).

Judiciary reforms. There were various attempts by reforming Qajar statesmen to centralize the administration of justice by enforcing the power of *divān-ḵāna* and extending the domain of *ʿorfi* jurisdiction while regulating its procedure. “The first was resisted by provincial governors and the second by the ʿulamāʾ” (Lambton, 1991, p. 20). After ʿAbbās Mirzā had tried to improve the performance of the religious courts in his jurisdiction, Azarbaijan, Moʿtamed-al-Dawla Manučehr Khan Gorji created a central court of justice in Isfahan in the 1830s. It was composed of both secular and religious judges, roughly resembling the historical maẓālem court. It was, however, discontinued due to the opposition of those who found its abolishment to be in their personal interest. A court of justice (*divān-e ʿadālat*) was established in 1835 by Abu’l-Qāsem Qāʾem-maqām Farāhāni, the reforming grand vizier of Moḥammad Shah Qajar (r. 1834-48), and was run by a ranking official called *amir-e divān-ḵāna*. Qāʾem-maqām was killed in 1835 by order of Moḥammad Shah. The *divān* he had created survived his death and performed well for five

years, before steadily declining in significance. It had lost all its practical uses toward the end of Moḥammad Shah's reign, although it still existed in name (Floor, 1983a, pp. 118-19). A major change was that, as a result of the 1828 Treaty of Torkamānčāy (commercial section, Arts. vii-viii), any disputes between Russian and Iranian subjects were no longer under the jurisdiction of the religious courts, but under the authority of secular courts (Hurewitz, ed., I, p. 237). This led to the creation of a *divān-ḵāna* in Tehran, whose function was later on assumed by the Ministry of Foreign Affairs. In the provinces, the cases were brought before the agent of the Ministry of Foreign Affairs, called *kārgozār* (Lambton, 1991, pp. 19-20). The same rights were given to British subjects in 1844, and were later extended to all foreign subjects whose states had relations with Iran.

The reformer grand vizier Mirzā Taqi Khan Amir(-e) Kabir tried to bring about structural reforms by claiming state control over all courts. He revitalized the moribund *divān-e ʿadālat*, now called *divān-ḵāna-ye bozorg-e pādešāhi*. Amir(-e) Kabir abolished the so-called abrogation (*nāseḵ*) judgements (reversing earlier practice, which was often abused for financial gains), as a result of the differentiation (*eḵtelāf*) concept, while he also restricted the right to sanctuary, something that had already been decreed under Moḥammad Shah. He also abolished the use of torture to obtain confessions, and transferred all cases between minorities and Muslims to the *divān-e ʿadālat* rather than the religious courts. His predecessor under Moḥammad Shah, Ḥāji Mirzā Āqāsi, had also issued a directive in 1846 for the abolishment of torture, but his order had been mostly ignored (Ādamiyat, 1975, p. 313, n. 17; Algar, pp. 132-33). In 1851, Nāṣer-al-Din Shah (r. 1848-96) decreed that disputes between members of *ḏemmi*s (non-Muslim followers of revealed religions) and recent converts from those communities had to be submitted to the *divān-e ʿadālat* (*Waqāyeʿ-e ettefāqiya*, Ṣafar 1268/December 1851; Ādamiyat, 1975, pp. 307-17). After Amir(-e) Kabir's fall from power and death in 1851, many of his judicial reforms were not abolished, although some were turned back. The new grand vizier, Mirzā Āqā Khan Nuri, issued an order in 1854 that any dispute between the *ḏemmi*s and the Shiʿites of Isfahan over land or trade should be referred to the *emām-e Jomʿa* of the city (*Waqāyeʿ-e ettefāqiya*, Ḏu'l-ḥejja 1270/September 1854), while in 1863 new rules were published regulating such cases (*Ruz-nāma-ye dawlat-e ʿaliya-ye Irān*, 17 Rajab 1279/8 January 1863). In 1855 the abolition of the *eḵtelāf* of opinions was once again pressed, while in 1853 the authority of the *divān-e ʿadālat* was even delegated to provincial *divān-beygi*s. Because of strong opposition by governors and the ulema, the shah issued a

decree threatening heavy penalties for those refusing to appear before the court (*Waqāyeʿ-e ettefāqiya*, 4 Jomādā I, 1270/2 February 1854). However, due to sustained and strong opposition, the courts were abolished.

In 1858, the shah restored the *divān-e ʿadālat* and its provincial counterparts, but its implementation was rendered ineffective, and thus nothing changed (*Waqāyeʿ-e ettefāqiya*, 11 Rabiʿ II, 1275/17 November 1858; Eʿtemād-al-Salṭana, II, p. 284, III, p. 5; Mostawfi, I, p. 99; Greenfield, pp. 962-64; Bakhash, pp. 84-95). An attempt to revive the abortive reform in 1863 failed (*Waqāyeʿ-e ettefāqiya*, 17 Rajab 1279/8 January 1863; Lambton, 1970, pp. 159-60; Ādamiyat, 1961, pp. 72 ff.).

In 1860, Nāṣer-al-Din Shah revived the maẓālem courts by decreeing that everybody with a complaint about government officials could lodge his complaint in person. The shah made each Sunday available for this purpose, although after some time he discontinued the practice (Mostawfi, I, pp. 92-93; Eʿtemād-al-Salṭana, IV, pp. 18, 34, 226; Greenfield, p. 965; Schneider, 2006, pp. 34-35; *Waqāyeʿ-e ettefāqiya*, 28 Moḥarram 1277/16 August 1860). He then, in 1864, ordered the establishment of the so-called "justice boxes" (*ṣanduq-e ʿadālat*), once a month in larger towns, where people could drop their complaints. However, this measure was discontinued and failed to have a beneficial structural effect on the quality of justice (Ettehadieh; Schneider, 2006, p. 35). In March 1871, Mirzā Ḥosayn Khan Sepahsālār, who had been appointed minister of justice, created six departments in his ministry: a court of appeals (*majles-e taḥqiq-e daʿāwi*), probably a continuation of the maẓālem court; a department of criminal affairs (*majles-e ḵiānāt*); an executive department (*majles-e ejrāʾ*), and a legislative department (*majles-e tanẓim-e qānun*). Later, he added two other departments for commercial and real estate affairs. Although the decree acknowledged the existence of the religious courts, these had to submit their verdicts to the ministry for approval. In July 1871, additional regulations were issued dealing, *inter alia*, with the use of torture and violence, while in 1873 a new edict established provincial courts as foreseen in the edict of 1862. The same order was repeated in 1874, indicating how little impact the new reforms had outside of Tehran (Floor, 1983a, pp. 122-23).

In February 1874, the shah issued a decree establishing the erection of "justice boxes" in front of the royal palace in Tehran and elsewhere; for instance, such a box was also placed in Bušehr in that year (Persian Gulf Political Residency, p. 5). The box was emptied on Mondays and Fridays; and the petitions, which

had to deal only with complaints against oppression by government officials, were submitted to the shah unopened. The shah then wrote his decision in the margin, and an official was appointed to head the staff processing the petitions. No cases of fifteen years and older were allowed. Submitting false petitions was punishable by death. The analysis of the 2,006 surviving petitions, as well as other information, shows that they were given serious attention. The system of "justice boxes" remained operational at least until 1883, and there are indications that it may have lasted until the Constitutional Revolution. Analysis of these complaints show that people from all over Iran and from all classes of society made use of the boxes. In addition to the "justice boxes," there were also other forms of maẓālem justice, including courts operating in the provinces (Schneider, 2006, pp. 36-38).

Although Mirzā Ḥosayn Khan's reforms did not survive his dismissal in 1876, the shah had not lost interest. In 1877, he established by decree a committee of ulema and government officials to codify the *šariʿa*, which produced no tangible results. In 1880, Nāṣer-al-Din Shah issued a decree to revive the *divān-e ʿadālat* and emphasized its supreme authority in judicial matters. In 1882, a forcefully phrased edict reiterated the same, indicating that the previous edict had been abortive. However, this one did not make an impact either. By 1880, there was a maẓālem court, an investigative court, and a number of specialized courts. However, the re-introduction of the office of grand vizier reduced the role of the minister of justice essentially to that of a sinecure (Floor, 1983a, p. 124). In March 1888, Nāṣer-al-Din Shah issued a decree guaranteeing the security of life and property of all his subjects. Because there was no follow-up, this decree also remained a dead letter. In 1889 Nāṣer-al-Din Shah created a committee to draw up a law book based on a European model and appointed his brother, ʿAbbās Mirzā Molkārā, as its chairman. However, due to strong opposition by, *inter alia*, the grand vizier Mirzā ʿAli-Aṣḡar Khan Amin-al-Solṭān, the recommendations of the committee were rejected by the shah. In 1892, the shah asked for proposals to improve the judicial system, and Mirzā Yaḥyā Khan Mošir-al-Dawla, the minister of justice and trade was ordered to establish an *ʿadālat-ḵāna* (Amin-al-Dawla, p. 164; Floor 1983a, p. 125). However, this also proved to be a non-starter, and thus by the time of his death Nāṣer-al-Din Shah had accomplished very little in terms of substantive changes in the operation of the judicial apparatus. In the years leading up to the Constitutional Revolution, further attempts at judicial reforms, proposals to establish a code of laws, and demands for an *ʿadālat-ḵāna*, all led to nothing. A proposal to improve the functionality of the mixed courts through a code of

laws, which dealt with cases between Persian subjects and foreigners, was opposed by the ulema, who considered such a code not to be in accordance with the *šariʿa*. It was also opposed by Russia, because it was contrary to the Treaty of Torkamānčāy (FO 416/26, 23/12/1905).

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