

CHARLES HAMILTON'S TRANSLATION OF *AL-HIDAYAH*: A CRITICAL ASSESSMENT IN SOCIO-LEGAL CONTEXT

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ABSTRACT

*The canonical works compiled in the field of Islamic Jurisprudence are the basic source for the development of Islamic legal studies. These works recognized the caliber of the Muslim intellectuals and affirmed their contribution to the development of knowledge, culture and an advanced civilization. The content and style of these books shaped the outlook of the Muslim societies and remained under focal point for centuries together. Primarily, it was the process of translation that enabled the non-Arab world to understand and assess this valuable content. Translation is a prolific approach that enables to ascertain and discover the efficacy of a literary work. This process is a comprehensive literary tool for socio-cultural understanding and knowledge exposition. The translation, as such, is an offshoot of the literary process enhancing the provisions of understanding a culture and its intellectual advancement. It explores a wide range of discourses and exposes an intellectual culture through artistic and civilizational aspect. In the realm of Islamic Studies translation played a crucial role for dissemination of knowledge across the civilizations. This process exposed Muslim mind and expertise in almost all the areas of the literary, physical and natural sciences. The Muslim intellectuals translated scores of works to Arabic and Persian languages since 9th Century A.D. Consequently, the European scholars also took a lead to translate the works of the Muslim intellectuals from 12th Century A.D in various European languages. This venture involved the studies pertaining to the religious legacies, philosophy, logic, grammar, medicine, history and law. Although, the translation process of the Oriental legacies had already started in Europe, the British Orientalists took it as the strategy to utilize these canonical works for the administrative purposes throughout the Asiatic territories. The persistent need for the translation was felt by the British Empire during its colonial rule in India during the 17th century A.D. Consequently, with the establishment of the Fort William College at Calcutta (10 July 1800 A.D), the British commissioned the translation process for the Oriental Studies in a much-organized manner. This attempt opened a fresh chapter of intellectual discourse besides serving the colonial aspirations. The Islamic classical tradition, including the works on jurisprudence and law, were explored by the British experts to gain pursuit of excellence by way of translation and exposition, which, indeed, is substantiated by Charles Hamilton's involvement and absorption in the translation of *al-Hidayah*.*

KEYWORDS: *Fatwa, Jurist, Shari'ah, Orientalist, Muslim Personal Law, Anglo-Muhammadan Legacy, Socio-Legal Content*

INTRODUCTION

Prologue

Charles Hamilton (1753-1792 A.D), a reputed British Orientalist translated Burhan al-Din Ali bin Abi Bakr al-Farghani al-Marghinani's (d.593AH/1197CE), renowned work *al-Hidayah* in English.¹ This was indeed for the first time that a treatise on Muslim Personal law was being selected for facilitating the administrative and legal aid for colonial purposes. This attempt served both, on the strategic as well as on the academic front. Burhan al-Din Ali bin Abi Bakr al-Farghani al-Marghinani is among the significant legal experts in the world of Islam who concentrated for the elucidation of the socio-legal material rooted in the Islamic legal tradition.² The treatise, *Al-Hidayah* is a concise commentary on al-Marghinani's own compendium *al-Bidayat al-Mubtadi*, which was in turn based on the style and idea of *al-Mukhtasar* by Imam al-Quduri (d.423A.H) and Imam al-Shaybani's (d.189A.H) *al-Jami' al-Saghir*.³ The significance of *al-Hidayah* in Islamic Juristic literature lay not in its lucidity, rational approach and intrinsic virtues, but in its role as an authoritative and convenient basis for further commentaries and legal deductions as an emerging methodology.⁴ *Al-Hidayah*, constituted not a statement of the law in itself, but rather an interpretative framework for elaboration of Jurisprudence in different times and exigencies. The authority of *al-Hidayah* is undisputed. During the British colonial rule in South Asia, *al-Hidayah* has been utilized to play a central role in the development of the *Anglo-Muhammadan law*, a discourse emerging in the backdrop of the interaction between the British rulers and the Muslim subjects.⁵ Since, the Hanafi school is predominant in the Indian sub-continent, the book was influential there as a substrate for commentaries, and also supplemented by professorial exposition as a textbook for teaching and learning law (*Fiqh*) in Madrasahs and the colleges.

In the given context, it was during the late 18th century that Sir William Jones (1746 –1794 A.D), an Anglo-Welsh philologist, being among the founding members of the Royal Asiatic Society Bengal, commissioned *al-Hidayah* for translation into Persian. As a result of this venture, the Persian translation of *al-Hidayah* was produced which, later on, was used by Charles Hamilton to produce an English translation of *al-Hidayah*.⁶ The translation enabled British colonial judges to adjudicate in the name of *Shari'ah*, which amounted to an unprecedented codification of the Hanafi law from its Arabic-language interpretative tradition. This translation served to accomplish two goals, which had been long pursued by the British in India: firstly, it limited the judicial discretion of the Qazis and the influence of Muftis in the *Shari'ah* system, reducing their earlier role as religious authority and replaced the interpretative mechanisms of *fiqh* by those of English law and, secondly, it was an attempt to train the British officials to understand the Oriental legacy especially the Islamic judicial structure which may help to maintain a link with its Muslim subjects living in the subcontinent. Charles Hamilton (1753-1792 A.D), translated *al-Hidayah* from Persian into English around 1786-1791 A.D having all these objectives and inferences in mind.⁷

Structure and Competence of *Al-Hidayah*

The splendid classical masterpiece on Islamic jurisprudence, “الهداية في شرح بداية المبتدي” popularly known as *al-Hidayah* (The Guidance) which is the authoritative work of the grand jurist Sheikh al-Islam Burhan al-Din 'Ali bin Abi Bakr al-Marghinani (530-593 A.H/1135-1197 A.D)⁸ was compiled in 13 years extending between 573-586 A.H.⁹ This juristic work consists of 57 Sections/Books (*Kitab*) established on almost all the religious, social, commercial, constitutional, economic, criminal and judicial aspects of the human life.¹⁰ Since its compilation, *al-Hidayah* has become part of the curriculum in almost all the religious seminaries of the Muslim World. The first two volumes of *al-Hidayah* are

called 'Awalain' and the remaining part, which also consists of two gigantic volumes, is called 'Aakharain' (The *Hedaya*, Indian Edition, 1870, Delhi, Mujtabai, 1923 / Navalkishore Press, 1326 A.H).¹¹ The work already appeared in four quarto volumes, in 1791 A.D. The Second Edition of the *Hedaya* (translated) published by Standish Grove Grady (1815-1891), appeared in 1870.¹² *Al-Hidayah* is among the most reliable references in Personal Law Ordinances and it has maintained its standard till present times. Due to its socio-legal stature and compatibility Charles Hamilton (1753-1792 A.D), affirms:

*"I might be allowed to express a hope upon the subject, it is that, it's (al-Hidayah's translation) has future beneficial effects, in facilitating, the administration of justice throughout our Asiatic territories and uniting us still more with our Mussalman subjects".*¹³

The Colonial Insights

Islamic legal studies have always remained a matter of concern for centuries together. Indeed, as it is stated, the British encounter with Islamic law in Bengal (India) was necessarily a very specific one. The local law was not a generic Islamic law, nor was it Islamic law in its classical form, but a system of law that had been in place in the sub-continent from Sultanate period (1206-1526 A.D) and over crafted by the Mughal Empire (1526-1857 A.D) with Perso-Central Asian modifications.¹⁴ As such, the Mughal Empire itself had been a successor to several centuries of Islamic rule in India as a whole.¹⁵ Having this context in mind, the socio-legal situation in Bengal following British control after the Battle of Plessey in 1757 A.D was somewhat fluid. The British East India Company attempted to promote increasing British control of commerce while acting in concert with the Mughal system of administration. Consequently, As Harington observed, 'previous to the year 1793, the territorial possessions of the East India Company were without a general code of British Laws and regulations'.¹⁶ Whilst many regulations had been adopted, no settled system has been created. This unsatisfactory situation needed to be remedied, as Harington argued, because it was 'a primary and essential duty of every government towards its subjects, that of publishing and enforcing an equitable system of law, adapted to their actual condition and circumstances and calculated to protect them in the secure enjoyment of their rights, natural and acquired'.¹⁷ Again, he recorded that 'the inhabitants, 'Mohammadans' as well as 'Hindus', were in possession of their respective written laws; under which they had acquired property, by descent, purchase, gift and other modes of acquisition; and which, from their religious tenets and prejudices they had been educated and habituated to regard and venerate as sacred'.¹⁸ It was against this background that Warren Hastings (In office 1775-77 A.D) as Governor General began to place the law in a more systematic order that would be able to accommodate both British laws and regulations and the legal systems of Muslims and Hindus. As part of this project, he initiated the translation of a series of legal works of scholars of those systems particularly the Muslim classics.¹⁹

The translation project had been very much cohesive as well as consistent. It was to provide colonial administrators and judges with independent knowledge of both so that they would no longer be dependent on Muftis and Pandits to interpret them alone.²⁰ In addition, the translations would provide the colonial administration with an overview of the legal orders of the conquered; in a sense, a juridical map that would facilitate their incorporation into the imperial order, much as cartographical maps had facilitated physical occupation.²¹ The work on *al-Hidayah* was well known before its publication. In 1786 Francis Gladwin published his "*Epitome of Mohammedan Law*," a translation from the Persian work *Mirat al Muffayil*. In the preface Francis Gladwin (1745-1812) explains the purpose of his book:

“(The book) conveys a general idea of Mohammedan law, of which we are at present but little informed, it may prove acceptable to the public, till such time as they shall be favoured with that noble work the *Hedayah*, which has been translated into English by Mr. James Anderson and Captain Hamilton, under the immediate patronage of Mr. Hastings”.²²

An Assessment of the Charles Hamilton’s Approach

In translating *al-Hidayah*, the approach of Hamilton has been of an administrative official as well as of a legal expert. Being a skilled translator; he has been prolific and accurate an explanation of the juristic substance and style. Charles Hamilton and his associate James Anderson consulted the available Persian translation of *al-Hidayah*, done by Mulla Tajudin and Mulla Shariyatullah.²³ In this context, the choice of the *al-Hidayah* as the key reference for Islamic Law was not accidental and was on the advice of the Muslim legal experts. Charles Hamilton, who completed the translation of selected portions of *al-Hidayah* from the Persian, not the original Arabic text, had some limitations as well as some administrative obstacles, however, explains this in his introduction to the text:

“Some learned Mohammedans who were consulted on this occasion, thought it, moreover, unfair that the British rulers should receive their first impression of the Mussulman legislation from a bare recital of examples, such as composed *Fattawee Allumgheeree*”.²⁴

The authoritative juristic treatise, *Fatawa Alamgiri* was compiled by the scholars of the Subcontinent. The compilation was in consultation with the scholars from Arabia, Iraq and Central Asia ascertained by the Mughal Emperor Aurangzeb Aalamgir (d.1707A.D). As opined by the British experts on the law it could not be utilized for judicial purposes as being ‘inadequate’ for the colonial administration. Charles Hamilton was fully convinced that *al-Hidayah* has the potential to be utilized for judicial matters as being a well documented and systematic work on jurisprudence. The latter i.e. *Fatawa Alamgiri* is somewhat misleadingly named as the text; it is actually an attempt to create a systematic account of Islamic legal principles that underpinned Fatawas during the Mughal period in the subcontinent (1537-1848 A.D). Accordingly; it is a distillation/refinement of principles (*Usul*) rather than just a series of Fatawas.²⁵ As such, this reflects, rather a different manner in which the Mughal legal system used Fatawas less in their classical role as the purely independent opinion of the jurist on a particular circumstance and more as an instrument of general use in a process of conversion.²⁶ This collection then was an interesting early Islamic legal project, which has some features similar to codification. However, as Hamilton and the British learned from their native informers, the publication constituted merely evidence of legal norms and would not explain the method of articulating legal principles.²⁷ The Islamic scholars advised

“previous to any further step, a translation should be executed of some work which, by comprehending, on the same page, the dictum and the principles, might serve at once as an exemplary and an instructor; and for this purpose they recommended *al-Hidayah*, because of its being regarded (particularly throughout Hindostan) as of canonical authority, and uniting, in an eminent degree, all the qualities required.”²⁸

As to the translation itself, Hamilton is open about his approach to the task, explaining the purpose:

“When the English translator came to examine his text, and compare it with the original Arabic, he found that, except for a number of elucidatory interpolations, and much unavoidable amplification of style, it in general exhibited a faithful copy, deviating from the sense in but a few instances, in some of which the difference may perhaps be justly attributed to the inaccuracy of the transcribers; and in one particular it is avowed and justified by the Molavees, because

of an alleged error of the author. Many of the interpolations are indeed superfluous, and they sometimes exceed, both in length and frequency, what could be wished".²⁹

The mentioned comment by Charles Hamilton perhaps reflects the first signs of some frustration that *al-Hidayah* is not a codified legal text and also accepts the difficulties of dealing with a text over which experts have argued the accuracy of some of its passages over centuries.³⁰ However, he seems not to have quite grasped the full reason why Muslim scholars had recommended the text in the first place, which was not its exposition of norms but rather that it contained Islamic legal reasoning.³¹ The book is accurately described by its title as it provides a 'guide' through the complexities of Islamic legal issues.³² It offers not legislation but rather a series of arguments (*al-Dalail*) and interpretations (*Tashrih*) of the sources of Islamic law by eminent scholars who sometimes reach different conclusions on the same point due to various possibilities of exercising the analogy (*Qiyas*).³³ It leaves the final choice of interpretation and application to the intended reader, the judge or the official who is assumed to be an expert in Islamic jurisprudence. None the less, at another level Hamilton does understand the character of the text.³⁴ In his account, the rich sources of Islamic law need to be seen historically. As a result, he is keen that the reader will be introduced to the critical moments in the development of Islamic law.³⁵ By introducing *al-Hidayah*, he sets the context of Islamic law through a narrative of the Qur'an, the Prophet (S.A.W), the post-Prophetic period and the development of the schools of law:

*"It is an extract from a number of the most approved works of the early writers on jurisprudence, digested into something like the form of a regular treatise... it possesses the singular advantage of combining, with the authorities, the different opinions and explications of the principle commentators on all disputed points."*³⁶

Subsequently, as an expert on Oriental legal tradition, Charles Hamilton was fully aware that *al-Hidayah*, the leading handbook within the Hanafi School of law, had been written for scholars ('*Ulama*) learned in Islamic law and that it required an explanation (*Tashrih*) that will explore its futuristic socio-legal benefits.³⁷ His introduction, he thought, would also play a role in helping British judges understand the key selections of the text and the context in which they were written.³⁸ Hamilton accurately provided the chain of authority that ultimately produced the work, earlier digests and commentaries in Hanafi jurisprudence.³⁹ Beyond Abu Hanifa (d.150 A.H) and the founders of the other Sunni schools, Hamilton is keen to introduce the reader to three other scholars, Imam Abu Yusuf (187A.H), Imam Mohammed bin Hassan al-Shayyibani (189A.H) and Imam Zufar (192 A.H), because he understands that it is difficult to make sense of the book unless the reader understands the sources of Islamic law and the status of those authorities interpreting it and their place within the sphere of the Islamic legal history.⁴⁰

Charles Hamilton explains the administrative and colonial reasons for the selection of the *al-Hidayah*. The brief that had been given to colonial officials was to provide 'some authentic guide for aiding them to administer and superintend over the native judicature.'⁴¹ However, 'they discovered a system *copious* without precision, indecisive as a criterion (because each author differed from or contradicted another), and too voluminous for the attainment of ordinary study.' He rejects one method of making colonial sense of this:

*"From these a compendium might indeed have been abstracted but, being a mere compilation, it would have been considered rather as a new code than as a revision of the old, and would not, in the idea of those upon whom it was intended to operate, have borne the authority of an original work."*⁴²

These and the same other assumptions of the translator amplified the scope for understanding the legal discourses and their futuristic legal tendency.

Socio-legal tendencies

As Charles Hamilton's argues, the selection of the *al-Hidayah* was an attempt to ensure that there was an authoritative text that held a genuinely significant position in Islamic law and as such, its judicial explanations will result in better administration in India.⁴³ A feature of Hamilton's preliminary discourse is his history of the Hanafi School of jurisprudence and his desire to place the authority of the *al-Hidayah* within it.⁴⁴ This determination to make the case for its authority is striking and underlines the sensitivity of the colonial administration to prove not merely to the colonized elites but also to the colonial officials that it was in command of the legal field.⁴⁵ His exposition of the history of the Hanafi School is thus not merely a display of scholarship but indeed an attempt to assess the judicial power of the text.⁴⁶ Moreover, it aims to give the colonial administrator and judge the confidence that the imperial power has special access to local knowledge and the Eastern legacy.⁴⁷ It also illustrates the way in which colonial knowledge claims to be universal knowledge.⁴⁸ However, Hamilton's history of the Hanafi School, although accurate in identifying some of its main jurists, has none of the drama that characterizes his early passages that outline the early phases of Islam, the Prophet's (S.A.W) mission, the divisions (*Ikhtilaf*) after his passing away and the battles for legitimacy of the Caliphate and the event of Karbala.⁴⁹ Nevertheless, in order to place his translation in context, it is necessary to reflect that the emergence and development of the Hanafi School, as with all Islamic law, is intimately bound up with empire.⁵⁰

Having this socio-political background and magnitude of the Muslim culture in mind, Charles Hamilton translated the selected portions including family, socio-economic laws, Ordinances concerning laws of inheritance, torts, and wills so that a ready reference is available to the judges. The laws concerning the revenue, land, and stock have also been related in major sections of *al-Hidayah* by the translator.⁵¹ These was to serve the purpose of administration in the subcontinent as well as to grip over the religio- cultural ethos. But, still, this indeed is considered to be the preliminary effort that signifies the magnitude of *al-Hidayah* for socio-legal and administrative purposes.⁵² Strategically, this was an excellent politico-judicial attempt to gratify as well as to control the local aspirations in the subcontinent.⁵³ In addition to the translation of *al-Hidayah*, Charles Hamilton served as the counselee of the first Governor General of India, Warren Hastings from 1773-1777 A.D. But it is an established fact that Charles Hamilton acquired his fame as the first translator of *al-Hidayah* in English language and, indeed, this work made him be identified as an undisputed expert of the oriental legacy.⁵⁴

The legal stature of *al-Hidayah* is prolific and well established in all the schools of Islamic jurisprudence.⁵⁵ Charles Hamilton translated this treatise into English and added explanatory notes to make an illustrious explanation of its socio-legal content with administrative potential.⁵⁶ Charles Hamilton's translation appeared in British India in about 1870 A.D.⁵⁷ Prior to this translation, a good number of Arabic and Persian explanations followed by Urdu translations and commentaries were added to it in major parts of the Muslim world including Arabia, Egypt and Syria.⁵⁸ Muslim legal experts, since its compilation wrote extensive connotations and subtexts for socio-legal and administrative purposes.⁵⁹ The Persian and Urdu translations (*Tarajim*) and commentaries (*Shuruh*) of *al-Hidayah* which appeared in Indo-Pak subcontinent since 13th Century A.D, added glamour to its authority.⁶⁰ Charles Hamilton's translation of *al-Hidayah* eased the judiciaries to explore and interpret Muslim Personal Law in the modern times.⁶¹

CONCLUSIONS

Al-Hidayah is the crown of *Fiqh* literature maintaining its authority in every age. This prolific masterpiece carried forward a superb legacy and represented a coherent socio-legal approach in the field of Islamic jurisprudence. Charles Hamilton, while translating and composing the explanatory notes exposed the incredible socio-legal content of *al-Hidayah*. This translation, besides serving the colonial aspirations in Asiatic territories, highlighted the Muslim expertise in understanding, composition, and interpretation of the legal theory in exigent circumstances. Imam Marghinani's methodology of dealing with the legal deductions has been very much cognitive, selective and coherent. While compiling *al-Hidayah*, Imam Marghinani maintained standards and the maxims of *Usul al-Fiqh* (Principles of Islamic Jurisprudence) and narrated every preference with solid legal reasoning. He believed that the essence of the Islamic jurisprudence is revealed, having its origin in the primary sources of the Law, The Quran, and the Sunnah. Keeping all the above juristic and socio-legal implications in mind, the book *al-Hidayah* has been compiled to ascertain both aspects of the *Shari'ah*; firstly, appropriate interpretation of a *Fiqh*/ legal deduction and secondly, its possibility of application in the exigent circumstances. In addition to the performance of *'Ibadah* (Rules and ethics of the Rituals), *al-Hidayah* covers the varied aspects of the socio-economic, theological and marital jurisprudence required for an efficient social governance. Imam Marghinani, the author of *al-Hidayah*, had a deep insight of almost all the juristic works compiled before as well as the ability to envision the future discourses of the Islamic legal theory. Imam Marghinani's approach while dealing with the explanation of the principles of *Tarjih* (Juristic Preference), analysis and systematic argumentation, denotes his competence in the field of law which is endorsed by Charles Hamilton throughout the translation and exposition of the text.

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