

Journal of Law and Human Rights

Volume 6, Issues No. 1, 2026

P-ISSN: 1998-4278, E-ISSN: 3106-9665

Delegated Sovereignty and the Limits of Provincial Authority: Mir Jafar, Mughal Constitutional Law, and Islamic Jurisprudence in the June 1757 Agreement

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ABSTRACT

The political background to the Battle of Plassey is generally narrated as the Agreement of 1757, which was secretly negotiated between English East India Company and Bakshi of Bengal Mir Jafar Ali Khan. This article, on the other hand, poses the issue as a constitutional affair; it seeks to answer whether Mir Jafar had legitimate authority under the Mughal administration and according to the Hanafi law to conclude such an agreement that would fix the succession of the Nawab of Bengal? Based on the Mughal theory of delegated authority for the provinces and classical Islamic principles of *wilāyah* (lawful authority), *amānah* (public trust) and *maṣlaḥah* (public interests), the article notes that Mir Jafar's position as Bakshi granted him military and administrative powers, but not the sovereign competencies to restructure the government of Bengal. For both legal traditions, the result is the same: the Agreement was a political turning point and had an original constitutional defect, and its success was due not to legal precedent, but to military triumph and the co-operation of the elites. The article makes a comparative doctrinal analysis that has not been used before to examine the constitutional role of a named historical figure in the events of 1757 in the light of Mughal administrative law and Hanafi jurisprudence.

Keywords: Mughal constitutional law; Hanafi jurisprudence; *wilāyah*; *amānah*; *maṣlaḥah*; Mir Jafar; Treaty of 1757; delegated authority; Bengal; legal history

1. Introduction

The forces of the Nawab of Bengal, Siraj ud-Daulah, were defeated at Plassey on 23 June 1757 by a comparatively small army led by Robert Clive, who, with the help of Mir Jafar Ali Khan (Bakshi of Bengal), whose troops refused to participate at the crucial moment, secured victory. This had been arranged several months before in June, 1757, by a secret compact, commonly called the Treaty or Agreement of June, 1757, by which Mir Jafar agreed to aid in the discharge of Siraj, in return for the recognition of his Nawabship, and for certain financial and commercial concessions from the EIC and its allies.¹

“This episode has been studied in great detail by historians as a case of political intrigue, military strategy and imperial expansion.”² Little focus has been placed on a previous and seemingly required inquiry, namely, whether Mir Jafar, when he signed himself to the Agreement, held valid powers under the constitutional system into which he stepped to remove a reigning monarch and commit the future government of a whole province to his

¹S. C. Hill, ed., *Bengal in 1756–1757: A Selection of Public and Private Papers Dealing with the Affairs of the British in Bengal during the Reign of Siraj-ud-Daulah*, 3 vols. (London: John Murray, 1905), vol. 2.

²P. J. Marshall, *Bengal: The British Bridgehead: Eastern India, 1740–1828* (Cambridge: Cambridge University Press, 1987), 63.

policies? This article directly tackles that question, focusing on Mir Jafar's constitutional status as defined by two different, but overlapping, normative frameworks: Mughal administrative law and Hanafi Islamic jurisprudence, both of which formed concepts of legitimate governmental authority in eighteenth-century Bengal.

The point here is that the office of Bakshi, or Commander-in-Chief, delegated a lot of responsibility to Mir Jafar in the organisation, discipline and remuneration of the armed forces of the Nawab, but not the sovereign or quasi-sovereign authority that might provide him with the power to settle the succession rights to the masnad, let alone to make binding commitments about the future political and commercial administration of the province. This is true in both legal traditions that have been discussed, and the fact that the two legal traditions arrive at the same finding of constitutional incompetence is, it will be proposed, of analytical interest: Two systems of norms with very different theological, philosophical and institutional foundations reach the same opinion on the constitutional incompetence of Mir Jafar.

The rest of the article is divided into five additional sections. Part 2 provides the historical context to put Mir Jafar's actions into the context of the constitutional crisis of 1756-1757. In Part 3, the historiography of the subject is examined and the gap filled by this article is outlined. In Part 4, the constitutional organisation of the Mughal Empire and the status of the provincial and sub-provincial officers in it are discussed on the basis of which the status of Mir Jafar's office is examined. The focus of Part 5 is on Hanafi jurisprudence which is examined in the light of the concepts of *wilāyah*, *amānah*, and *maṣlahah*. Part 6 explores the importance of the coming together of the two traditions, and Part 7 ends.

2. Historical Background: Bengal's Constitutional Order and the Rise of Mir Jafar

Bengal was at the crossroads in the mid-eighteenth century in terms of its constitutional status in the broader Mughal polity. After Aurangzeb's death in 1707, the imperial control of the provinces became quite loose and the Nawabs, Murshid Quli Khan, Shuja-ud-Din Muhammad Khan, and Alivardi Khan, enjoyed increased autonomy in revenue, military and domestic affairs.³ But this de facto independence did not involve a formal abdication of Mughal rule. Thus, the Nawabs persisted in requesting the emperor's formalization of their authority, continued to use Mughal titles, and followed Mughal models in the administration of the province, indicating that it remained constitutionally, if not operationally, dependent on Delhi.⁴

Siraj ud-Daulah was the successor of Alivardi Khan as Nawab in April 1756. His accession was welcomed by the ruling establishment in Bengal, but opposed by a much wider coalition of interests than is usually found: senior military commanders who were jealous of his youth and temperament, revenue administrators troubled by his fiscal policies, the enormous Jagat Seth banking house alarmed by his enmity towards them, and the English East India Company whose fortifications in Calcutta he had ordered demolished and whose garrison he had expelled after the capture of the settlement in June 1756.⁵

Mir Jafar Ali Khan was the Bakshi or the highest-ranking military officer who oversaw the organisation, pay and discipline of the Nawab's army. He had distinguished himself under

³Sushil Chaudhury, *From Prosperity to Decline: Eighteenth Century Bengal* (New Delhi: Manohar, 1995), 17.

⁴C. A. Bayly, *Indian Society and the Making of the British Empire* (Cambridge: Cambridge University Press, 1988), 9.

⁵Kalikinkar Datta, *Sirajuddaullah and His Times*, rev. ed. (Calcutta: World Press, 1971), 83.

Alivardi Khan, but after 1756 he had fallen out of favour with Siraj ud-Daulah who suspected him of being a traitor and sought to limit his powers.⁶ This enmity thrust Mir Jafar into the center of the group of discontented interests now coalescing around Robert Clive and William Watts, the Company's representatives who were engaged in secret negotiations. Mir Jafar was the most plausible alternative to Siraj ud-Daulah for the conspirators because of his military position, his blood relationship to the previous Nawab and his ability to ensure the Company's commercial and financial obligations.⁷

The commitments made in June 1757 in the Agreement that Mir Jafar would make when he became Nawab included significant monetary payments to the Company and to individual officers and negotiators, assurances of the Company's commercial rights, cession of more land in the immediate vicinity of Calcutta and of continued military support.⁸ These were no small or personal pledges but matters of public finances, land and military forces of the Bakshi, who at the time of taking the oaths functioned as Bakshi, but not as Nawab. There were several other provincial leaders who were involved in the anti-Siraj alliance.

Apart from Mir Jafar, a few other provincial leaders played a role in the anti-Siraj alliance. Senior revenue official Rai Durlabh and a member of Bengal aristocracy not as prominent as Mir Jafar, Yar Lutuf Khan, both lent their administrative and social status to the conspiracy, while the Jagat Seth banking house provided invaluable financial support.⁹ All of these figures, like Mir Jafar, had authority given to them as part of the Mughal constitutional system and not as individuals having any independent power of their own, which is very significant because it shows that this constitutional weakness was not unique to Mir Jafar, but was common to the coalition as a whole.

The merchant Omichand (Amin Chand), tells the other story. Omichand was a mere private commercial intermediary between the conspirators and the Company, unlike Mir Jafar, Rai Durlabh, and Yar Lutuf Khan who were public officials, and who had no delegated authority at all. His famous and ultimately infamous participation in the negotiations, plus the fact that the Company used a fake second instrument to make it harder to meet his demand for a big commission demonstrates that the negotiations involved public officers with no authority to act as officers of the public and private business people with no public authority whatsoever.¹⁰

The negotiations themselves, which took place between January and June 1757, were solely through a series of informal meetings between William Watts, the Company's resident at Murshidabad, and the Nawabi administration, with the actions coordinated with Robert Clive at Calcutta, were outside any institutional framework recognised by the Nawabi administration. There was no constitutional procedure or constitutional convention that could be seen to have authorised the discussions, but rather it was discussions between office-holders who had exercised power delegated for administrative and military purposes, with a foreign chartered corporation, about the future government of the province.¹¹ This is the constitutional context in which it is necessary to examine Mir Jafar's particular legal situation in detail.

⁶ Athar Ali, *The Mughal Nobility under Aurangzeb*, 115.

⁷ Marshall, *Bengal: The British Bridgehead*, 63.

⁸ Treaty between Admiral Charles Watson, Colonel Robert Clive, and Mir Jafar Ali Khan, June 1757, reproduced in Charles Umpherston Aitchison, ed., *A Collection of Treaties, Engagements and Sanads Relating to India and Neighbouring Countries* (Calcutta: Government of India, 1862).

⁹ Muzaffar Alam, *The Crisis of Empire in Mughal North India*, 82.

¹⁰ Sushil Chaudhury, *The Prelude to Empire: Plassey Revolution of 1757* (New Delhi: Manohar, 2000), 171.

¹¹ Alam, *The Crisis of Empire in Mughal North India*, 82.

3. Literature Review: The Constitutional Gap in the Historiography

There is abundant scholarship on the events of 1757, but it has taken four general tracks, none of which has confronted Mir Jafar's constitutional competence with the law of his own times.

3.1 Colonial Historiography

Former Company servants and imperial historians of the nineteenth century described Plassey as proof of the superiority of the British military and administrative forces, and did not consider it a constitutional issue that needed a legal examination. Some of the most important contemporary sources for the study of the Agreement are those that Robert Orme assembled, in the form of a narrative of the Company's military engagements, which was made with much reliance on official documents.¹² The conception of pre-colonial Indian government as essentially despotic, as expounded by James Mill, extended this also, seeing British expansion as an inevitable improvement which never had to be questioned, and leaving the complex delegation of power within the Mughal system largely unengaged.¹³ Later colonial writing, such as Macaulay's famous essay on Clive, added to this narrative, by focusing on the leadership of individual British actors rather than the legal actions of the Bengali actors.¹⁴ The one thing that is common to all this historiography is that it does not distinguish between political success and legal authority: the inevitability of British expansion leaves the question of whether Mir Jafar had the legal authority with which to conclude the Agreement unraised.

3.2 Nationalist Historiography

In the late 19th century and thereafter, nationalist historians denounced the colonial narrative, laying stress on the validity of pre-colonial institutions and framing 1757 as a betrayal and not a diplomatic negotiation. The careful reconstruction of the intrigues of the court by Jadunath Sarkar revealed that the success of the Company was much dependent on the disunity of the Nawabi elite, including Mir Jafar's distance from Siraj ud-Daulah.¹⁵ R. C. Majumdar and Kalikinkar Datta continued with this revision, the latter challenging the British image of Siraj ud-Daulah as incompetent with the help of Persian sources.¹⁶ They restored agency and legitimacy to Bengal's political actors; however, the key issue in these accounts was moral and political responsibility, not a comprehensive legal analysis of the extent to which Mir Jafar had the authority to act as he claimed to have.

3.3 Marxist and Economic Historiography

A third group of scholarship, linked to the economic and Marxist historians, places the events of 1757 in the context of the spread of commercial capitalism and Bengal's political economy. Romesh Chunder Dutt's initial writings on the results of Company rule highlighted the systematic looting of Bengal's resources after Plassey.¹⁷ Sushil Chaudhury has shown that trading activities and commercial economy in the eighteenth century Bengal was quite flourishing and sophisticated, even before the British came in, and that the success of the Company was built on the efforts of the indigenous banking elites like the Jagat Seths.¹⁸ It is

¹²Robert Orme, *A History of the Military Transactions of the British Nation in Indostan*, 3 vols. (London: J. Nourse, 1763–1778).

¹³James Mill, *The History of British India*, vol. 3 (London: Baldwin, Cradock, and Joy, 1817).

¹⁴Thomas Babington Macaulay, 'Lord Clive,' in *Critical and Historical Essays* (London: Longman, 1843).

¹⁵Jadunath Sarkar, *The History of Bengal*, vol. 2, Muslim Period, 1200–1757 (Dacca: University of Dacca, 1948).

¹⁶R. C. Majumdar, *British Paramountcy and Indian Renaissance*, Part 1 (Bombay: Bharatiya Vidya Bhavan, 1963).

¹⁷Romesh Chunder Dutt, *The Economic History of India under Early British Rule* (London: Kegan Paul, 1902).

¹⁸Chaudhury, *From Prosperity to Decline*, 17.

through this literature that the material incentives that drove the Agreement can be seen; and, by focusing on the dynamics of the economy, the specifically constitutional issue of treaty making competence is understated.

3.4 Revisionist Historiography

There have been recent moves by revisionist writers, such as C. A. Bayly, P. J. Marshall, and Robert Travers, to cast the history of the Company beyond the colonial and nationalist lenses, focusing on the negotiation, continuity and gradualist nature of the Company's expansion.¹⁹ In particular, Marshall has disagreed with the interpretation of Plassey as a sudden revolutionary break, arguing that it should be understood as a part of a longer trajectory of accommodation between Company elite and Indian elites.²⁰ The use of Mughal political terminology has been demonstrated by Travers to be a means of re-establishing legitimacy of authority by Company officials after the event.²¹ The productiveness of this scholarship productively complicates any simple story of conquest, but it generally provides an explanation of the growth of Company authority and does not challenge whether the original instrument that made that possible, the Agreement itself, was constitutionally competent at the time it was signed.

3.5 The Mughal-Islamic legal scholarship and the concept of corporate sovereignty.

Philip Stern's history of the Company-state and the institutional history by H. V. Bowen are more recent works which treat the Company as a hybrid, corporate-political entity, not just corporate.²² This scholarship is useful in elucidating the institutional development of the Company in the future but like the revisionist scholarship does not question the particular constitutional role of Mir Jafar. In the meantime, Muzaffar Alam and M. Athar Ali have both explained the delegated and non-sovereign nature of Mughal provincial and military offices, while linguists of the Hanafi jurisprudence like Wael Hallaq and Mohammad Hashim Kamali have laid out the wailing, *amānah*, and *maṣlahah* doctrines in general jurisprudential terms.²³ The two literatures have never been used together, and in particular to Mir Jafar's actions in June 1757. This article fills in that gap.

3.6 Methodological Note

The approach that is used in this analysis is a doctrinal legal-historical one, using primary and secondary sources related to Mughal administrative practice and Hanafi jurisprudential doctrine respectively and reading them against the backdrop of the Agreement itself and the negotiations that led to it.²⁴ The two frameworks are kept analytically distinct, and the final convergence of the two is given an interpretive boost that a single framework cannot provide.

4. Mughal Constitutional Law and the Limits of Delegated Authority

4.1 The Mughal constitutional order and the concept of sovereignty and delegation.

The Mughal Empire had no written constitution in the modern sense, but it had a constitutional logic that was more or less coherent as the authority of the emperor was ultimate and that of the provincial and military functionaries was delegated, limited and

¹⁹Bayly, *Indian Society and the Making of the British Empire*, 36.

²⁰Marshall, *Bengal: The British Bridgehead*, 63.

²¹Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal* (Cambridge: Cambridge University Press, 2007), 146.

²²Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011), 39–82.

²³Alam, *The Crisis of Empire in Mughal North India*, 22; Athar Ali, *The Mughal Nobility under Aurangzeb*, 15.

²⁴Cf. Robert K. Yin, *Case Study Research and Applications: Design and Methods*, 6th ed. (Thousand Oaks: SAGE, 2018).

revocable.²⁵ Governors, revenue officials and military commanders held authority as an appendage of the imperial authority and recognition and not as a consequence of any independent or inherent sovereignty. The idea of constitutional logic continued even when effective central control was compromised after 1707, when the Nawabs of Bengal continued to seek approval from imperial Delhi, to use imperial titles and to rule following Mughal patterns, which meant that administrative autonomy did not come with a transfer of constitutional authority.²⁶

The fact that it is de facto autonomous rather than de jure sovereign is key to any legal examination of the June 1757 Agreement. The decentralization of power of the imperial government afforded opportunities to more ambitious provincial and sub-provincial actors, but it did not, by itself, undermine the constitutional principle that government power was delegated, not personally owned.²⁷

4.2 The Constitutional Position of the Bakshi

In this hierarchy, Bakshi had a very subordinate post. The Bakshi's job was limited to managing the military affairs, such as the organization, salary and discipline within the army of the Nawab. It had real institutional authority and gave its bearer considerable political clout, but it was not absolute authority, or recognised expertise in determining succession, or in altering the boundaries of the province or in spending the province's funds on outside bodies.²⁸

This is the constitutional benchmark with which position of Mir Jafar must be evaluated. As a soldier, as a married man with the Nawabi family, as a person in the higher echelons of Bengal's elite, he had the capacity to act, but not the legal right to act. None of the surviving farmāns, administrative instruments, or acknowledged rules of Mughaiyāt administration suggest that the Bakshi's office was expanded to encompass skills with regard to succession or the disposition of the resources in the province.²⁹ The pledges Mir Jafar made in June 1757, the payment of money from the public treasury, the transfer of territory, and commercial concessions, all were promises made that were dependent on the change of office, and that office had yet to be.

4.3 Political Discontent and Constitutional Incapacity

It may be argued that the fact that many elites were not happy with Siraj ud-Daulah enabled the opposition to hold the government in check in a positive manner. This is not borne out by the Mughal constitutional system. A Nawab's power was based on succession and imperial or quasi-imperial recognition, and even if the people were against a Nawab, this did not automatically mean that the legal rights were transferred to their own claimants and supporters.³⁰ But the office of Nawab was not a personal right to which the discontented subjects and an outside commercial company could make an informal deal for its transfer to another.

4.4 The Agreement under Mughal Administrative Law

On the basis of this, the Agreement of June 1757 cannot be considered as a constitutionally valid act of power when it was signed. It is correct to regard Mir Jafar's involvement as a political move, enabled by military force and factional clout, and not as the use of a

²⁵ Athar Ali, *The Mughal Nobility under Aurangzeb*, 40.

²⁶ Bayly, *Indian Society and the Making of the British Empire*, 9.

²⁷ Marshall, *Bengal: The British Bridgehead*, 47.

²⁸ Athar Ali, *The Mughal Nobility under Aurangzeb*, 115.

²⁹ Alam, *The Crisis of Empire in Mughal North India*, 90.

³⁰ Datta, *Sirajuddaulah and His Times*, 83.

constitutional authority.³¹ The fact that his authority was later established by his subsequent appointment to Nawab after the Battle of Plassey does not complete the picture of the powers he lacks at the time of the commitment, because the constitution of the Mughals is typical of delegated authority, which is judged by the power he has when he enters the act, not when he comes out of it.

5. Hanafi Jurisprudence and the Doctrines of *Wilāyah*, *Amānah*, and *Maṣlaḥah*

5.1 Authority as Delegated Trust: *Wilāyah*

The Mughal constitutional system borrowed from Persian imperial tradition as well as from Islamic legal theory, but the classical Hanafi doctrines on legitimate government continued to have normative influence on the notions of political authority of the empire's Muslim administrative elite.³² The concept of *Wilāyah*, lawful authority by delegation is central to these. According to classical Hanafi theory, exercise of governmental power is limited to a delegated power; there is no self-generating or delegating power by the office-holder to the power's scope, beyond what is delegated.³³

When applied to Mir Jafar, this doctrine makes the same finding arrived at through the work of Mughal administrative law. Though an impartial reader would have thought that Mir Jafar, a Bakshi, was entitled to have the military powers vested in his office under his control, he was not entitled to the Nawabship, let alone the revenue and territory of the province. According to Hanafi jurisprudence, an act that is done outside of the delegated *wilāyah* of the individual, does not necessarily bind the community, as long as the person carrying it out has the influence and military strength to make it happen.³⁴

5.2 Governmental Power as Public Trust: *Amānah*

The principle of *amānah* supports this. In Hanafi jurisprudence, political office is not considered to be private property, but rather a trust to be exercised for the benefit of the governed community; the officer is responsible for its use in terms of justice and public interest and not in terms of personal and factional interest.³⁵ Commitments in the June 1757 Agreement, payments from the public treasury, cession of territory, and long-term commercial concessions, were all issues of public trust in this manner. They were not individual enterprises which could be separately settled by an office-holder whose delegated powers did not reach them.³⁶

5.3 Public Interest and Its Limits: *Maṣlaḥah*

A more challenging question arises in Islamic jurisprudence under the doctrine of *maṣlaḥah*, or public interest, which it acknowledges as a valid factor to consider in evaluating the government action, especially when there is political unrest. Perhaps it could be said that the ousting of an unpopular and hot-tempered Nawab was good for the political well-being of the people of Bengal as a whole, and that this was a public benefit that gave the Agreement retroactive legitimacy.³⁷

³¹ Athar Ali, *The Mughal Nobility under Aurangzeb*, 143.

³² Hallaq, *Sharī'a: Theory, Practice, Transformations*, 315.

³³ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003), 255.

³⁴ Kamali, *Principles of Islamic Jurisprudence*, 255.

³⁵ Abū al-Ḥasan al-Māwardī, *The Ordinances of Government (Al-Aḥkām al-Sultāniyyah)*, trans. Wafaa H. Wahba (Reading: Garnet, 1996), 3.

³⁶ Chaudhury, *From Prosperity to Decline*, 107.

³⁷ Mohammad Hashim Kamali, *Maqasid al-Shariah Made Simple* (London: International Institute of Islamic Thought, 2008), 22.

There are, however, no instances in Hanafi jurisprudence of the *maṣlaḥah* being used as a blanket justification of any sort, much less a justification that can cure the lack of authority. Public interests do not replace the competence of the law, but rather exist alongside it; a result of politics preferred by powerful groups is not necessarily a legitimate exercise of government authority.³⁸ Classical Islamic political thought did, of course, acknowledge that the “effective authority” acquired by force was a practical one and that the best way to handle such political reality was to “accommodate” it; however, this accommodation was not a tacit endorsement of the legitimacy of the original assumption of authority but an attempt to deal with reality after it had been acquired.³⁹ When it comes to the story of the Agreement, the argument from *maṣlaḥah* helps to explain how the Agreement was tolerated and eventually consolidated, but not that Mir Jafar had the *wilāyah* to do so in June 1757.

5.4 Assessment in Hanafi Jurisprudence

These three doctrines combine to make the Constitution of the Agreement of June 1757 somewhat problematic under Hanafi law, with the problems essentially similar but not identical to those found in Mughal administrative law. His *wilāyah* as Bakshi was not extended to succession, nor to the disposal of public resources; the matters which he claimed to settle were not part of his *amānah*; and the doctrine of *maṣlaḥah*, although relevant to the subsequent acceptance of the Agreement, does not retroactively provide the authority missing at the time of its formation.⁴⁰

6.1 Discussion: Convergence, Divergence, and Constitutional Competence

It is important because of the substantive conclusion as well as the process of reaching the conclusion. Both Mughal administrative law, which was based on a developing imperial administrative practice that was both Persian and Islamic in nature, and hanafi jurisprudence, which was founded in a systemised body of classical jurisprudence, arrived at the same conclusion: that Mir Jafar’s office gave him real political and military power but not constitutional or jurisprudential authority to negotiate the removal of a reigning Nawab or bind the future government of Bengal.

This convergence stands in contrast to the “normative positionality” of each conclusion that could be made, as the one legal tradition would not have been able to arrive at either. The more frequently the two independent systems of authority, different but both operating in the same historical context, reach the same result of incapacity, the more meaningful the result of the incapacity is.

The study also helps to explain the major contrast in the general history of 1757: that of the political effectiveness versus constitutional legitimacy. The involvement of Mir Jafar in the Agreement was unquestionably a significant political fact and had a significant impact on the events of Plassey. Whether, at the end of the day, the Agreement was based on a constitutionally and jurisprudentially legitimate authority, however, is a different question to the one that is the subject matter of this article. The subsequent recognition of Mir Jafar as Nawab or the rise of administrative authority in the hands of the East India Company does not answer that previous question, it merely points to the possibility of winning the political and military game at the cost of a lack of constitutional ability.⁴¹

³⁸Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 7.

³⁹Patricia Crone, *God’s Rule: Government and Islam* (New York: Columbia University Press, 2004), 218.

⁴⁰Kamali, *Principles of Islamic Jurisprudence*, 395.

⁴¹Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 197.

6.2 The significance of this for the wider study of contested authority

The case of Mir Jafar is not an antiquarian one! It provides a well-documented and unambiguous historical example of a delegation of public authority by an institution much weaker than the very institution it is delegating, which was used to serve a purpose beyond that of the law, and which, as subsequent scholarship on the constitutionality of the Company's authority demonstrates, was itself subject to similarly shaky constitutional authority.⁴² The combined application of Mughal administrative law and Arabic Hanafi jurisprudence that emerged here offers a template for the application of law in other cases of overlapping delegated authority in early modern and colonial settings where two or more sets of legal rules applied to the same people in the same time at the same place.

7. Conclusion

The question of the constitutional position of Mir Jafar Ali Khan within Mughal administrative law and Hanfi jurisprudence with regard to the Agreement of June 1757 has been discussed. From both these it appears that his office of Bakshi was very large as far as military and administrative powers were concerned, but not as far as the succession to the Nawabship or as far as his power over the land and revenue of the provinces was concerned. Although the Agreement was later to have significant and enduring political impacts, it was constitutionally deficient from its inception, under both legal traditions that ordered authority during the eighteenth century in Bengal.

Methodological as well as historical implications are wider. The analysis of the events at Plassey as a constitutional issue, rather than just a political story, enables historians and legal scholars to delineate more precisely the ability of an actor to influence political outcomes and the lawful authority of an actor to do so, a distinction that has clear relevance beyond the case of Bengal to the study of contested authority, delegated power and irregular transfers of sovereignty more generally.

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⁴²Stern, *The Company-State*, 83.

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