

**THE LAND TAX OF INDIA, ACCORDING
TO THE MOOHUMMUDAN LAW:
TRANSLATED FROM THE FUTAWA
ALUMGEEREE, WITH EXPLANATORY
NOTES**

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The Land Tax of India, According to the Moohummudan Law: Translated from the Futawa Alungeeree, with Explanatory Notes by Neil B. E. Baillie

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NEIL B. E. BAILLIE

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THE
LAND TAX OF INDIA,
ACCORDING TO THE MOOHUMMUDAN LAW:

WITH AN

Introductory Essay.



UNIV. OF
CALIFORNIA

THE

LAND TAX OF INDIA,

ACCORDING TO THE MOOHUMMUDAN LAW:

TRANSLATED

FROM THE FUTAWA ALUMGEEREE,

With Explanatory Notes.

SECOND EDITION,

WITH AN INTRODUCTORY ESSAY

ON THE LEADING PRINCIPLES OF THE TAX, ITS APPLICATION TO THE
BRITISH PROVINCES, AND ITS EFFECT ON THE TENURE OF LAND.

BY

NEIL B. E. BAILLIE,

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1873.

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P R E F A C E
TO THE
F I R S T E D I T I O N .

THE most important of the rights acquired by the East India Company, by cession or conquest, from its predecessors in the Government of India, is the *Khiraj* or Land Tax, which has existed in that country from early times, and was probably imposed upon it soon after its conquest by the Mohammedans. In Bengal, the right to this tax was conferred on the Company by an express grant from the Mogul Emperor, Shah Alum, under a Firman bearing date the 12th of August, 1765; and neither in that Presidency, nor in any other part of India, have the East India Company, or their local governors, ever pretended to any greater rights in respect of this particular tax, than belonged to the preceding governments, under the acknowledged law of the country. It has, therefore, always been considered a matter of importance to ascertain as correctly as possible the nature and limits of that tax, according to the Moolhummudan Law, which was not only the general law of the country, but was more especially that which determined the rights of the Government and the people to each other. Enquirers on this subject have usually directed their investigations to the opinions prevailing among the people, and the practices of subordinate governors, rather than to the written records of

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the law. This may perhaps be accounted for by the fact, that the authorities of the Moolhummudan Law are still in a great measure shut up in the Arabic language. The only original authority on the Law of the *Khiraj*, hitherto accessible to the mere English reader, is the rather confused account of it which is contained in Mr. Hamilton's translation of the *Hidayah*. Unless perused with care, and some previous knowledge of the subject, that account may in some respects mislead the reader, and it is scarcely intelligible without the aid of commentaries on the work, that are still to be found only in the Arabic language. For this reason, in continuing my extracts from the Futawa Alumgeeree, I have selected this part of the law as not only of great importance in itself, but also as that which, after Sale, is perhaps involved in the greatest obscurity, and most requires elucidation.

The following pages contain all that I have been able to find in the six volumes of the Futawa Alumgeeree, having a direct bearing on the *Khiraj* or Land Tax. Their extent bears no proportion to the amount of labour which has been expended in compiling them, or in acquiring the knowledge necessary to their proper explanation. The explanation is contained partly in an Introduction, and partly in the Notes. In the former I have endeavoured to deduce the leading principles of the Law, and to apply them to the present system of Land Revenue. The latter have been derived from other parts of the Futawa Alumgeeree, and from the *Hidayah* and two of its Commentaries, the *Kifayah* and *Inayah*. In the Introductory Essay, the *Shuraya-ool-Islam*, a Treatise on the Sheea doctrines, is also occasionally referred to.¹ All these works, which are in Arabic, have been printed at Calcutta, under the authority of the Committee of Public Instruction. The *Hidayah* and *Kifayah* are printed together, and the combined work is referred to under the double or

¹ Omitted in the present Essay.

single name, as the reference is to both text and comment, or to one or the other of them. When the *Hidayah* is cited, the Translation by Mr. Hamilton is usually referred to at the same time, the latter as the *Hedaya*, the word being so spelled in the title of the Translation, while the original is cited as the *Hidayah*, according to the spelling in the English title-page of the printed edition. For an account of the original compilation of the *Futawa Alungeeree*, and the authorities of the *Mochummudan Law*, I beg leave to refer the reader to the Preliminary Remarks and Introduction to my book on the *Mochummudan Law of Sale*.

It is now necessary to say a few words of the contents of this very brief volume. The *Khiraaj* is closely connected in origin with another tax or impost on the produce of land, called the *Ooshr* or tithe, and they are commonly treated of under one head, by the writers on the *Mochummudan Law*. The *Ooshr*, however, is a branch of a more general impost, called the *Zukat*, which is applicable to charitable purposes. The first chapter of the following selections treats of the *Ooshr* and *Khiraaj* conjointly. In the second, the *Ooshr* is considered with reference to its nature as the *Zukat* on fruits and crops. The third contains some extracts relating to the original imposition of the *Ooshr* and *Khiraaj* upon different lands. These two imposts are taxes on the productive energies of the soil; but some things below its surface are liable to the deduction of a fifth. Accordingly, the fourth chapter treats of the *Khooms*, or fifth on metals and buried treasures. It is the proprietor of the land who is liable for the *Ooshr* and *Khiraaj*, and in most cases for the *Khooms*. The question of proprietorship in the land is thus of great collateral importance. The fifth chapter shows how the proprietorship of waste land is acquired by bringing it into cultivation. But a proprietor is not always in possession of his own land, and the possessor of it may sometimes be confounded with him. The last chapter, therefore, treats

of a peculiar contract called *Moosáráit*, by which the relations of proprietor and possessor, or landlord and tenant as they would be called by us, have been commonly regulated in Mohammedan countries.

An Appendix is added, containing some documents which are referred to in the Introductory Essay. One of these is worthy of more particular notice. It is a copy of the translation of a Firman, addressed by the Emperor Aurungzebe, apparently by way of circular, to the Dewans of his different provinces; and is of value, not only as showing the state of the *Khírúj*, at a time when the Mohammedan power was in its strength, but also as demonstrating that the Digest of the Law, which was prepared by this Emperor's command, was practically carried into effect, in one important department, by his own express authority. This document is considered to be of so much importance in the last point of view, that notes have been added to it, referring to the corresponding parts in the text.

It is proper to add, that this work, like its predecessor, on the Moohummudan Law of Sale, is published at the expense of the East India Company. This is no pledge for its accuracy, nor any sanction for the opinions expressed in the Introductory Essay. For these, the writer alone is responsible. But he hopes that he may refer to this renewed instance of the liberality of the Court of Directors, as an earnest of the value which it continues to attach to expositions of the Moohummudan Law. He takes this opportunity of repeating his acknowledgments to all the members of the Court, and begs leave, as a mark of his respect, to inscribe a work on which their patronage has bestowed some importance, to their present enlightened Chairman, Sir JAMES WALKER HOGG, Baronet.

GLOUCESTER TERRACE, HYDE PARK,
31st March, 1853.

ADVERTISEMENT

TO THE
SECOND EDITION.

IN the former edition of the Introductory Essay, I adopted the theory of the Bengal Regulations with respect to the relative rights of the Zemindars and Ryots. A further examination of the authorities led me to doubt the correctness of that theory; and my doubts have been confirmed by the light incidentally cast upon the subject by the late Sir Henry Elliott's valuable collection of the Native Historians of India. Much of the Essay that had been adapted to views that I am now satisfied are erroneous has thus become superfluous; and I have thought that by recasting the whole and omitting everything that was merely speculative, the work might be made practically more useful. What is now presented to the reader is in some respects rather a new essay than a second edition of the old one. It is divided into four parts. The first contains an account of the history and nature of the *Khiraj* or Mohammedan Land Tax; the second, its application to British India, including its effect on the tenure of land; the third, the changes that have taken place in these tenures since the transfer of the Dewany or Civil Government of Bengal, Behar, and Orissa to the East India Company; and the fourth, the *Lakhiraj* tenures, or such as are exempt from the *Khiraj*.

The following abbreviations are used in the references to authorities:—

Fut. Al. for Futawa Alungceere.

Maverdy for the Utkam Sultaneesh of that author.

Ay. Akb. for the Ayeen Akbery. Mr. Gladwin's Translation. Qth edition.

Elliott for the History of India as told by its own Historians, by the late Sir H. Elliott.

Ap. F. R. for the Appendix to the Fifth Report from the Select Committee on the affairs of the East India Company.

Digest for Digest of Moohummudan Law. N. B. E. Baillie.

For mode of referring to the Hidayah see Preface, p. iii.

By Regulations those of the Government of Bengal are meant where not otherwise specified.

The references within parentheses in the text are to the body of the work, which is the same as in the first edition.