

THE JUDICIAL SYSTEM IN KATTAKURGAN UYEZD

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Annotatsiya

Mazkur maqolada Kattaqo'rg'on uyezdida XIX asrning ikkinchi yarmi – XX asr boshlarida shakllangan sud tizimi tahlil qilinadi. Tadqiqotda Rossiya imperiyasi mustamlakachilik siyosati sharoitida sud-huquq tizimining qayta tashkil etilishi, 1868 yilgi "Muvaqqat qoidalar" asosida joriy etilgan harbiy, dunyoviy (mirovoy) va xalq (qozi) sudlarining vakolatlari hamda o'zaro nisbatlari yoritiladi. Shuningdek, an'anaviy qozilik institutining saqlanib qolishi bilan birga uning ma'muriy nazorat ostiga o'tkazilgani, sud hokimiyatining mustaqilligi cheklangani va mahalliy aholi huquqiy hayotida yuz bergan o'zgarishlar ilmiy asosda tahlil etiladi.

Kalit so'zlar

Kattaqo'rg'on uyezdi, sud tizimi, qozilik instituti, harbiy sud, mirovoy sud, xalq sudi, shariat, mustamlakachilik siyosati, 1868 yilgi Muvaqqat qoidalar, Zarafshon okrugi.

Abstract

This article analyzes the judicial system that was formed in the Kattakurgan district in the second half of the 19th century - the beginning of the 20th century. The study covers the reorganization of the judicial system in the context of the colonial policy of the Russian Empire, the powers and interrelations of the military, secular (mirovoy) and people's (qazi) courts introduced on the basis of the "Temporary Regulations" of 1868. It also analyzes the preservation of the traditional qazi institution, its transfer to administrative control, the limitation of the independence of the judiciary, and the changes that occurred in the legal life of the local population on a scientific basis.

Keywords

Kattakurgan district, judicial system, qazi institution, military court, world court, people's court, Sharia, colonial policy, Temporary Regulations of 1868, Zarafshan district.

The territory of Kattakurgan uyezd was an integral part of the socio-legal space of Turkestan until the second half of the 19th century, where judicial proceedings were carried out on the basis of the traditional qazi institution. Before the invasion of the Russian Empire, the only judicial form in the region was the qazi court, which operated based on the norms of Islamic law.

As in other Muslim states in the Middle Ages, the judicial system in the Bukhara Emirate was formed on the basis of Sharia. Qazis functioned not only as a judicial body, but also as an important link in the institution of administrative and spiritual-legal control. All aspects of social life - land and water relations, marriage and family issues, inheritance, trade, the tax system and other social relations - were regulated by the rules of Sharia. Sharia was not only a set of religious norms, but also served as a practical legal system.

Starting from the 60s and 70s of the 19th century, with the conquest of Turkestan by the Russian Empire, fundamental changes began in the judicial system. Along with the introduction of the administrative management system, the empire also formed a unique dual system in the

judicial and legal sphere. On the one hand, the qazi and biylik courts were preserved for the local population, on the other hand, cases affecting the interests of the Russian population and the state were transferred to the jurisdiction of military and civil courts operating on the basis of imperial legislation.

This system was also introduced in the Kattakurgan uyezd, and the judicial bodies were closely linked to the administrative and territorial administration. The head of the uyezd had the opportunity to indirectly influence judicial proceedings and in some cases exercised control over the activities of the qazis. As a result, the independence of the traditional judicial system was limited. Although the qazis were officially elected, in practice they were approved by the imperial administration.

These changes in the judicial system in Turkestan are reflected in the correspondence and observations of officials such as I.I. Geyer, G.A. Arandarenko, as well as in the audit reports conducted by Girs and Palen. Modern researchers — F. Bakirov, N.S. Zaynabidinov, A. Morrison and others — have analyzed some aspects of this process in their scientific works. However, there are not enough special studies devoted to a comprehensive and consistent study of the changes that occurred in the judicial system of the Samarkand region, and in particular, of the Kattakurgan district. In general, the evolution of the judicial system in the Kattakurgan district is manifested as a process of transition from a traditional Islamic legal model to a mixed system, combined with imperial legislation, but in practice serving the interests of colonialism. This situation had a significant impact not only on the content of legal relations, but also on the social structure of society and management mechanisms.

During the Bukhara Emirate, the qazi was completely subordinate to the supreme authority - the emir. The chief qazi was appointed directly by the emir, and other qazis were appointed to office on the recommendation of the chief qazi. Thus, although the institution of qazi had a religious and legal content, it was politically under the control of the central government.

The qazis issued court decisions based on Sharia law and had broad powers in considering criminal and civil cases. They resolved issues such as marriage and dissolution, distribution of inheritance, confirmation of commercial transactions, and appointment of guardianship. Sentences for serious crimes, including the death penalty or corporal punishment (amputation of arms and legs), were also issued by the qazi, but such sentences were actually carried out with the consent of the bek or emir. Each court decision was certified by the qazi's personal seal.

The judicial system also had an appeal procedure: the parties could appeal against the qadi's ruling to a higher qadi, and if they were dissatisfied with it, they could appeal to the emir. This indicates that the qadi system had a certain hierarchical structure.

Theoretically, the qadi was supposed to be an independent judge. However, in practice, he was assisted by scholars and muftis. Scholars and muftis found appropriate fatwas and legal grounds from the sources of Sharia and strengthened the evidentiary foundation of the qadi's ruling. The parties who appealed to the court also had the right to obtain a fatwa from a scholar or mufti to substantiate their claims.

Since the views of different schools and imams in Sharia could conflict with each other, deep knowledge, experience, and legal thinking were required of scholars. Therefore, there were few individuals who achieved the rank of ulema and were highly respected in society. In public meetings, they occupied the second place after the qadi.

The state did not set a permanent salary for judges, scholars, and muftis. Their income was paid on the basis of a tariff set by the government or by agreement with the parties. Sharia law established clear ethical and professional requirements for the activities of the judge, requiring him to be impartial, fair, and pious.

The judicial system introduced in the Zarafshan district in accordance with the “Temporary Regulations” of June 29, 1868, became the legal basis of colonial rule. This system consisted of three main links, each of which performed a separate political and legal function.

The military court served to protect the military-political interests of the Russian Empire rather than to satisfy the legal needs of the local population. According to the “Temporary Regulations,” the issue of transferring a case to a military court was left to the discretion of the district head.

If the crime was recognized as “politically harmful” or was considered a threat to the imperial system, then the case was considered by a military court. This shows that the powers of the military court were extremely broad. The head of the district had the opportunity to refer crimes committed by representatives of the local population to a military court, in his opinion, and impose severe punishments on the guilty. As a result, the military court served as a repressive mechanism.

Secular courts operated on the basis of the legislation of the Russian Empire and consisted of judges appointed by the Russian administration. These courts were administratively subordinate to the regional administration and the People's Congress.

Their jurisdiction included:

- civil cases with a claim amount exceeding 100 rubles;
- administrative disputes;
- certain types of criminal cases;
- any offenses affecting the interests of the empire.

Trials were officially conducted in Russian, which significantly limited the participation of the local population. According to the “Temporary Regulations”, all complaints and accusations considered under Russian law were initially submitted to the heads of departments. They conducted a preliminary investigation and sent the case to the district judge. In the Zarafshan district, the lowest level of the secular judicial system was the uezd courts.

People's courts were the most important type of court in the life of the local population, and they operated on the basis of the traditional qazi institution. As in the times of the Bukhara Emirate, these courts were based on the norms of Islamic law - Sharia.

Judges were appointed from among representatives of local Muslim communities and considered the following issues:

- civil cases;
- marriage and family issues;
- inheritance and wills;
- local religious and legal disputes.

If the decision of the judge was not appealed, it was considered final. However, in some cases, the administration of the district or district, and even the governor-general, had the right to intervene in the judicial process. This indicates that, despite the formal preservation of the people's courts, they were in practice under the control of the colonial administration.

During the conquest of Turkestan by the Russian Empire, the issue of the people's court (judge's court) was first legally enshrined in the "Temporary Regulation on the Administration of the Turkestan Region", adopted on August 8, 1865. This document stipulated the preservation of the position of judge in the Syrdarya region and its constituent cities. However, it was stipulated that the sentences issued by the judge were subject to the approval of the military governor. This indicates that, despite the formal preservation of the traditional judicial system, its independence was significantly limited.

After the conquest of the Middle Zarafshan oasis by Russia, the judicial system of the emirate period was temporarily preserved in the Zarafshan district in 1868–1873. This situation is also recorded in official administrative documents, which indicates that the imperial administration initially refrained from making drastic changes to local structures. However, this temporary policy of compromise did not last long.

In Zarafshan district, the position of district judge was established, subordinate to the Syrdarya regional administration, to consider cases based on Russian law. The district judge had equal rights and obligations with the district judges in the region. The district court consisted of a chairman and two members, and it mainly considered cases outside the jurisdiction of the people's courts and appeals against their decisions.

However, during the reign of Konstantin von Kaufman, a significant part of these powers passed into the hands of the regional administrative council. Military governors were given the right to review cases in cassation proceedings, to cancel or change decisions of lower instances. This indicates that the judiciary was not independent of the administrative administration.

A "Military Judicial Commission" was also established, consisting mainly of officers dismissed from military service. This commission passed judgment on serious criminal cases. The military governor also performed the function of a prosecutor. As a result, the practice of punishing the guilty on the basis of the "administrative procedure" became widespread in Turkestan.

In the Samarkand and Kattakurgan departments, as well as in the administration of mountainous districts, the positions of secular (mirovoy) judges and court investigators were introduced. While secular courts mainly protected the interests of the Russian administration, people's courts were accepted as a standard of justice among the local population. Therefore, qazi courts retained a leading place in social life.

In accordance with the "Temporary Regulations", the number and territorial boundaries of qazi districts were left as they were during the Bukhara Emirate. Qazis considered cases based on Sharia and local customs. Although the document provided for the election of qazis by methods considered acceptable by the people, in practice they had to be approved by the heads of departments. This meant that the qazi institution was also taken under the control of the imperial administration.

According to researcher Alexander Morrison, many scholars in the Zarafshan district, including qazis, fled to Bukhara during the invasion, and some were dismissed from their posts. Before the introduction of the electoral system in 1871, they were replaced by persons appointed by the Russian administration. Although Russian officials continued to conduct trials and pronounce judgments through local qazis, relying on the norms of Sharia, real control was in the hands of the empire.

In Turkestan, including the Zarafshan district and the Samarkand and Kattakurgan regions, the judicial system, although outwardly it retained its traditional appearance, was subordinated to the interests of the colonial administration in content. Through military and secular courts, the empire ensured political control, while the people's courts functioned as a means of maintaining the trust of the local population. As a result, the judiciary became not an independent institution, but a component of the colonial administration system.

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