



ISSUES RELATED TO THE ETHICS OF JUDGES IN FAKHURDIN UZGANDI'S WORK "FATAWA QAZI KHAN"

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Article history:	Abstract:
<p>Received: 14th June 2024 Accepted: 6th July 2024</p>	<p>In this article, the author covered issues such as the judges who performed judicial activities in the history of our statehood, their rights and obligations based on Fakhruddin Uzgandi's work "Fatavoi Qazikhan". The work covers all areas of Islamic law according to its content. The article provides information about the rights and obligations of a judge, aspects that he should pay attention to when conducting his activities</p>
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The spread of Islam in Central Asia and its gradual development inevitably led to the interaction and connection of Islamic beliefs, local traditions and customs. It should be noted that the role of Islamic legal norms in the history of statehood of our country is incomparable. The reason is that these norms, which have been in force for about 14 centuries, have directly affected the state system, its activities and society.¹

In the history of statehood of Uzbekistan, the most developed period of Islamic law corresponds to the period of the Karakhanids. During the period of this ruling dynasty, works on fiqh were written which later gained great fame, and they became the leading source of fiqh fields in their place. The jurists of this period were the first to separate the local customs and legal criteria from the requirements of the Hanafi sect and reflect them in their fatwas and works. In particular, in this period, Shamsulaimma Halwai, Shamsulaimma Sarakhsi (d. 490/1097), Fakhruislam Bazdavi (400/1010-482/1090), Iftikhoriddin Bukhari (d. 569/1174), Burhoniddin Marginani, jurists such as Fakhruddin Qazi Khan (d. 592/1196) carried out their activities. Later, the works written by them gained great popularity. The decisions and judgments of these jurists reflecting the legal life in Mowarounnahr in the

5th/11th-6th/12th centuries are included in more than sixty books on furu' al-fiqh (fields of law).²

Islamic law imposes certain conditions on the judge conducting the trial, witnesses, evidence and in some cases even the accused. In particular, there have been works written in the genre of "Etiquette of the Judge" - "Adabul Qadhi"³ in Islamic law. We can compare it to the professional ethics of judges today.

Fakhruddin Uzgandi, a mature judge of his time, a jurist of the Karakhanids, a contemporary of Burhoniddin Marginani, based on his work as a judge, systematized his thoughts on this issue in the work "Fatavoi Qazikhan". In the "Claim and Arguments" part of "Fatavoi Qazi Khan" he touched upon the issues of the judge's ethics, knowing those who are qualified to act as a judge, getting into it, and being careful when performing the act of judgement. Below we will focus on the manners of the judge mentioned in the work and some issues related to his work.

According to the work "Fatavoi Qazikhan", it is allowed to act as a judge if a person can testify. This is because, depending on the type of case being heard in the judicial court, there are different differences in the issue of testimony. For example, a woman's testimony was not accepted in matters such as *qasas*⁴, and *diyā*⁵.

¹ Bekmirzaev I., Mirzaev N. Judicial courts in Islam. - T.: "Qanus Media", 2019. B.6

² 5. Rahmonov A. Rahmonov A. Islom huquqi: Oliy o'quv yurtlari uchun darslik. – "TDYu" nashriyoti, 2007 (Rahmanov A. Rahmanov A. Islamic Law: Textbook for Higher Education Institutions. - "TSUL" publishing house, 2007. - B. 212)

³ Mirzaev N. Qozi lavozimi va uning odobi haqida yozilgan asarlar tahlili.//INFOLIB axborot-kutubxona jurnali: №2. -

Toshkent, 2019. – B.66.(Mirzaev N. Analysis of works written about the position of a judge and his manners.//INFOLIB information-library magazine: #2. - Tashkent, 2019. - B.66.)

⁴ To kill the murderer in the same manner as the one who killed him

⁵ Food allowance. Penalty for manslaughter due to negligence



Therefore, he was not allowed to judge these cases. In matters of tazeer and citizenship, since a woman's testimony is accepted, she is also allowed to act as a judge in these cases.

Also, an outsider cannot be a judge. The person being appointed to the post of judge must not have been punished for the commission of *qazf*⁶ and *hudud*⁷ crimes before. Other scholars add that one should not be corrupt or corrupt. According to them, if a judge commits immorality and bribery, he will be removed from his work by the governors who are in charge of that area.⁸

According to Qazi Khan, it is not possible for a judge to engage in trade, because people may show favors to him because of his status as a judge. Also, taking bribes by a judge is strongly condemned, if a judge accepts a bribe, his sentence in that case will be annulled and he will be removed from his duties.⁹

Also, the judge should be full and not thirsty during the court proceedings. It is emphasized that the judge should not be hungry, thirsty, angry, full of food, wanting to go to the toilet, drowsy, drowsy, hate one of the suitors, or take one close to him, and not laugh.¹⁰

Islamic jurists have used words such as "*riswa*", "*fasad*", "*suht*" to express bribery. Each of them has a special meaning, and they are as follows:

"*Rishwa*" – something that is given to make the truth false or false to appear true¹¹. That is, it is synonymous with the bribe that we use today. Another definition states that it is "that which is given by a person, by a judge, or to others, in order to render a judgment in his favor or to bring about what he desires." In the Encyclopedia of Fiqh, there are concepts related to the word *rishwa-pora*: sarcasm for bribery, general bribery practices.

According to Abu Hanifa, a governor who accepts a bribe is immediately removed from office, unless he is removed, all his sentences after taking the bribe are canceled.¹²

It should be noted that the situation related to bribery in private society has been encountered in various spheres of society. Therefore, scholars of our country paid special attention to this issue. In particular,

this issue is also mentioned in the work "Fatavoi Qazikhan". In the "Claim and Evidence" section of the work, the author focuses on bribery and divides it into four types according to its origin:

There are 4 types of bribes, the first of which, if a person obtains a qazi position with a bribe, he does not become a qazi. It is forbidden to take bribes and other things. Second, if a Qazi is bribed to decide a case in his favor, it is considered haraam for both parties. The judge's verdict is rejected regardless of whether it is right or wrong. The third is that if the briber is afraid of danger to himself or his property, it is considered haram for the receiver and halal for the giver. (A person who keeps a person's property, if he enjoys the property of the owner) and the owner of the property gives a part of it, it is in this ruling. Fourthly, if a person gives a bribe in order to correct his case in front of the sultan, he is honest to the giver and not honest to the recipient. That is, in the last case, most of our scholars say: "Only a person who cannot get what he deserves or who wants to ward off oppression or harm can give a bribe. In such a case, the sin falls on the bribe taker."

Just as it is not possible to bribe a judge, it is also not possible to receive gifts from a person who has not received any gifts before the work of the judge, especially if the case of the person who gave the gift is being heard in the court of the judge. Borrowing and renting something is the same.¹³

In the part of the work entitled "Difference between Qazi and Imam (Imam, Leadership, Emirship)", the author states that a judge can appoint a deputy only if the emir allows him. If he orders his deputy to hear the case and the testimony in a case, the deputy hears the witnesses and claims, but does not pass judgment. He writes down everything that is said. The deputy will not have the right to judge, he can only do what the judge ordered. If the case goes to the judge, the judge will not issue a verdict based on that testimony and confession. Summarizes the information provided by the plaintiff and the defendant.¹⁴

Also, in Fatavoi Qazikhan, the following procedures was established in the *Qadi* court:

⁶ Qazf - to slander that he committed the crime of adultery

⁷ According to the Qur'an and Sunnah, *adab* is a type of punishment for serious crimes against morality and public order. These types of crimes include: fornication, assault, consumption of alcohol, accusing a clean person of adultery. In other jurisprudential literature, their number is further expanded

⁸ Fakhruddin Abulmakhfir Hasan ibn Mansur Uzgandi. "فتاوى القديخان" (Fatwas of Qazi Khan), volume 2. Lebanon: "Darul Kutub", 2009. - P. 286

⁹ Ibid, P. 289

¹⁰ Ibid

¹¹ Mawsuatul fihiya al-Kuwaitiya (Encyclopedia of Kuwaiti jurisprudence). Kuwait, 1983. Volume 22, P.220

¹² Fakhruddin Abulmakhfir Hasan ibn Mansur Uzgandi. "فتاوى القديخان" (Fatwas of Qazi Khan), volume 2. Lebanon: "Darul Kutub", 2009. - P. 286

¹³ Ibid, P. 287

¹⁴ Ibid, P. 289



- plaintiffs entering the judge's court are not allowed to salute the judge, even if they salute, the judge is forbidden to take alika. As long as the judge receives the greeting, he should not say more than "va alaykum";
- If one of the claimants is a king and one is a commoner, and the king comes to sit next to the judge and a commoner sits on the floor, then the judge may vacate his seat and seat a commoner there. The reason is that even when sitting, it is not permissible for one of the suitors to be in a higher position than the lower one;
- If a judge's child, secretary, or one of his assistants takes a bribe to settle a person's claim in favor of the judge, and the judge, unaware of it, actually decides in favor of that person, his sentence will be executed. And the bribe giver will have to take back what he gave. If the judge finds out, his sentence will be rejected.¹⁵

In his work, the author touches upon the procedure of the judges of our country at that time and says: "According to our (Movarounnahr) custom, the plaintiff comes to the secretary of the judge, tells him about his claim, describes his claim. The secretary writes them down. The claimant goes to the judge together with the person who complained and makes a claim against him. If the accused person confesses his guilt, the judge will confirm his confession in writing and ask him to pay his dues. If he denies, he is required to provide some evidence. If the defendant brings witnesses and the testimony is given before him in order, the judge writes down the statements of all the witnesses, their names, the names of their father and grandfather, and leaves 2 lines open for their testimony.¹⁶" If the language of one of the plaintiffs is different from the language spoken by the judge, an interpreter is hired for him.¹⁷

In general, in the history of Movarounnahr, judicial courts functioned more widely than today's judicial courts. In the 10th-13th centuries, in addition to procedural court cases, he had the authority of shurtlik (mirshablik), hisba and muhtajjit; the state also controlled judicial affairs and notarial actions.¹⁸ Also, illuminating the legal system of the Karakhanid period, the German scholar of Islamic studies, Monika Groenke, concludes that: in the Karakhanid period, official judicial

work was carried out by two different positions: the judge and the governor. the appointed governor was also engaged in judicial work. But in the cities of Movarounnahr, mayors have a more political character, and the position of judges in solving social issues remains superior to that of the governor¹⁹. According to the researchers I. Bekmirzaev and N. Mirzaev, Monika Gronke saw that officials under the names of judge and governor in the texts perform the same tasks and divided them into official and unofficial judges. But the mayor here can also be evaluated as a judge who arbitrates.

In short, the procedures of judicial courts, which had a special place in the history of our statehood, were mentioned separately in books on jurisprudence. They mainly cover issues such as persons with the right to act as judges, their rights and obligations, issues such as removal of a judge from his activity, issues such as appeals against a judge's sentence, annulment of his sentence, issues of witnesses, etc. When we study the medieval sources about the history of judicial institutions and the powers of the judiciary, we can see how wide-ranging it is. Therefore, it is the duty of researchers conducting research in the field to comprehensively research our national legal heritage, which is being forgotten in the era of globalization, and to make it available to the general public. By studying the works of our country's scholars on this topic, we will first get more detailed information about the history of our statehood.

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¹⁵ Fakhruddin Abulmakhafir Hasan ibn Mansur Uzgandi. "فتاوى القديخان" (Fatwas of Qazi Khan), volume 2. Lebanon: "Darul Kutub", 2009. - P. 294

¹⁶ Ibid, P. 290

¹⁷ Ibid, P.294

¹⁸ Bekmirzaev I., Mirzaev N. Islomda qozilik mahkamalari. –T.: "Qaqnus media", 2019. B.83 (Bekmirzaev I., Mirzaev N. Judicial courts in Islam. -T.: "Qaqnus Media", 2019. P.83)

¹⁹ Ibid



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