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Evolution and Current State of Islamic Law Studies

Radjabova Mavjuda Abdullaevna

Professor of the Department of Criminal Law of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, Doctor of Law, Professor

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ANNOTATION

The article deals with the issues of historical and legal aspects of the evolution of Islamic law and its essence, as well as studies of unique sources on Islamic law in Uzbekistan, in particular the book by Burkhoniddin Marginoni “Al-Hidayah”.

KEYWORDS: Globalization, information technology, East, West, religion, civilization, mankind, Allah, Islamic State, Islamic religion, Sharia, Islamic law (fiqh), society, Kalam, tafsir, tasawwuf, Islamic civilization, Islamic doctrine, Mecca, Medina, prophet, Muhammad, hadith, morality, generation, ancestors, responsibility, justice, equality, Romano-Germanic, Anglo-Saxon law, classification of law, Constitution, religious, legal, moral ideas, rules, Koran, Sunnah, caliphs (Abu Bakr, Umar, Usman, Ali) legal madhhabs (schools), (Abu Hanifa, Hanafi, Shafi'i, Maliki, Hanbali). Caliphates (Umayyad, Abbasid, Ottoman-Turkish), punishment, retribution, norms, principles, Burhaniddin Marghinani, Hidayah, trend, destructive groups.

The first quarter of the 21st century, along with the further development of globalization and information technologies in the world, is characterized by an ever greater desire of scientists from East and West to study the unique sources of Islamic law (fiqh), which have made an invaluable contribution to the civilization of historical progress. Today, in the context of a tough ideological struggle between various power centers of the world, one of the most urgent tasks in taking measures to prevent the spread of destructive ideas in society is to explain to the public the true humanistic and peace-loving essence of the Islamic religion, its contribution to the civilization of mankind. After all, both in the past and at the present time, Islamic teaching, in other words, Islamic law, “calls us to goodness and peace, the preservation of the true human principle”¹.

The announcement by the Organization of Islamic Cooperation of the city of Bukhara as the “capital of Islamic culture” in 2020, the organization of schools of hadith, fiqh, kalam, tafsir and tasavvuf in the regions of Uzbekistan and the Center for Islamic Civilization of Uzbekistan and the International Islamic Academy of

¹ Radjabova, MA

1) Islamic law (fiqh) and tarikat Khojagan-Nakshbandiya (the path of spiritual perfection) interconnection and harmony

Uzbekistan in Tashkent suggest conducting deeper research in the field of Islamic teachings and its integral part - the science of Islamic law (fiqh)².

It is known that according to Islamic teachings, the acquisition of knowledge is not only a right, but also a duty, a responsibility of every person. Gaining knowledge is one of the activities that need to be done. One of the sages of the past said: "The trunk of the tree of Islam stands in Mecca, but its harvest ripens in the center of Central Asia - in the glorious Bukhara." This judgment needs no comment. It is this opinion that forms the basis of scientific research and research carried out at the present time by scientists in our country. For as a result of each study, we learn detailed and very valuable information about the scientific heritage of scientists and thinkers of the past, who considered education a great pride for themselves. This legacy has not lost its significance for centuries, it serves to ensure peace and tranquility in society. And now, in the depths of the soul of any scientist who has decided to learn the historical and legal aspects of our national statehood, there is a good idea - "to be a worthy successor to the great ancestors." The hadith constantly sounds in our ears: "Scholars are the heirs of the Prophet." Both during several centuries of historical and legal development of our statehood, and at present, Islamic law is the basis of our beliefs, worldview and thinking, helps to ensure that a person feeds from the purest spring of the sacred religion of Islam, in order to gain knowledge to achieve good goals - to establish an atmosphere of peace and harmony in society, social justice, high morality, and the education of a harmoniously developed generation. It encourages us to live with a sense of responsibility to ensure that young people also study the rich scientific heritage³.

Evaluating from the point of view of the modern period, the legal systems of the states existing in the world (more than 200) are divided into certain groups or families of law. The most common and main of them are two groups. The first group is called "Romano-Germanic or European continental law", and the second - "common law or Anglo-Saxon legal system". In addition, the following legal systems are also classified as important.

These include:

- a) post-socialist law;
- b) Muslim law or Islamic law;
- c) Indian law;
- d) Chinese and Japanese law;
- e) the legal systems of Africa and Madakascar.

It is important to note that Muslim law or Islamic law still retains its importance as a source of legislation in some countries, which indicates the need for research into Islamic law. The formation and development of Islamic law (fiqh) has its own characteristics, it is the legal basis of the Islamic state that emerged 14 centuries ago in Arabia. We must not forget that, speaking of the category of law, it is recognized that it is closely connected with the state. With that being said, the state and law are two sides of the same coin.

It should be noted here that Islamic law is the root of the history of statehood, the legal basis of the current state of Uzbekistan. In the preamble of the current Constitution of the Republic of Uzbekistan the words are

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underlined: “ *based on the historical experience of the development of the Uzbek statehood*”⁴. It is no secret that valuable, unique writings of thinkers of the past are still kept in the libraries of Uzbekistan and are waiting for their researchers, who are legal heirs.

In the Republic of Uzbekistan, whose population is predominantly Muslim, modern statehood is based on secular laws adopted in accordance with the Constitution. The country's Basic Law states that freedom of conscience is guaranteed to all. This testifies to religious tolerance. The legal basis for ensuring this right is the Law on Freedom of Conscience and Religious Organizations of 2021.

Islamic law is the core of the Islamic state based on the teachings of Islam. If we look at the period of the emergence of Islam, then the socio-economic, political and spiritual changes that took place in the Arabian Peninsula at the end of the sixth and the first half of the seventh century were based on Islam. During that period, the society, consisting of Arab tribes and clans, collapsed, and an opportunity arose to introduce a new political institution. The formation of a centrolifed Islamic state took place under the direct leadership of the Messenger of Allah Muhammad (peace be upon him).

Religious, legal, moral ideas and rules in the Koran, which are considered the program and the divine source of the sacred religion of Islam, were put into practice by the Prophet gradually, over a period of twenty-three years. And in this way, the enrichment of the spirituality of the population with Islamic ideas and legal norms was achieved, and the state mechanism was also formed. If we give a legal assessment, then the signs of the state are evidenced by such measures as: the introduction by the Prophet Muhammad of the tax system in Medina, the formation of the state budget (baytul-mal or treasury) at the expense of zakat, charity, mining, the creation of an army to protect against external and internal enemies , the establishment of the post of commander, the use of the white flag as a state symbol and the justification of the Arab nation⁵. It is the Koran and the Sunnah of the Prophet (peace and blessings of Allah be upon him) that constitute the legal basis and legislation of the Islamic State. From the collections of hadiths and tafsirs (comments on the Koran) it is known that the religious, legal and moral norms in the Koran were directly related to changes in public life of that period and to various events in which the Prophet (peace and blessings be upon him) took part. From a legal point of view, in the first Islamic state, the norms relating to social relations in society were formed gradually in the course of public life, that is, they developed and improved during the time of the four caliphs who chose the right path after the Prophet Muhammad (Abu Bakr, Umar, Usman and Ali) .

If we analyze from the point of view of the traditional development and periodicity of Islamic law (fiqh), then it is a long period - even after fourteen centuries, it does not remain outside the field of view of scientists around the world as an object of study. This legal system was studied by dividing it into the following stages:

- 1) Laying the foundation, that is, the stage of emergence and formation. This coincides with the time when the Prophet (p.b.u.h) lived and the Koran was sent down (610-632);
- 2) The stage of approval or formation. The period of the four Caliphs (Khulafoi Roshidin), who were the first to follow the right path (632-661);
- 3) Construction phase. The period when the Umayyad dynasty took the throne and led the caliphate in Damascus (661-750);
- 4) The heyday stage. The reign of the Abbasid caliphs of Iraq (750 - 1258);

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- 5) Stage of concentration. Egyptian Abbasid Caliphate (1258-1517);
- 6) The period of stagnation and collapse. Period of the Ottoman-Turkish Caliphate (1517-1924).

It should be noted that Islamic law (fiqh) can be studied by dividing it in terms of structure into approximately three parts.

First, there are matters pertaining to worship, that is, the rules governing the relationship between God and His servants; secondly, questions of communication, that is, relations between people, between the state and citizens, mutual relations with the population of another faith, as well as with other states; thirdly, punishment or retribution, namely questions of punishment for a crime. In a word, the resolution of conflict relations arising from the violation of rules or regulations related to worship and behavior. This means following the principle of "al-qasas-u minal haq" or "punishment is inevitable" in Islamic law⁶.

The main difference between Islamic law (fiqh) and other legal systems, for example, from Anglo-Saxon (British and American) or continental law (Germany, France, etc.) is that in Islamic law, legal norms, principles or rules are common and developed as an integral complex, i.e., they have a universal character. In Islamic law, legal norms are considered as closely interconnected in structure and are not divided into branches. It must be said that Islamic law (fiqh) or Sharia in Uzbekistan is considered the core of the history of the law of our national statehood, since it was used in the practice of state power structures, including the judiciary, until the twenty-fifth year of the last century. It should be especially noted that at present the norms of Islamic law on worship occupy an incomparable place and role in the development of national values and spirituality in society.

Another important aspect of Islamic law is that it is reflected in the schools of jurisprudence. The doctrine, which includes the views of the Sunnis (ahl as-sunna wal-jamaa), combines the rules of the four legal madhhabs (schools) - Hanafi, Shafi'i, Maliki and Hanbali. Each of them is engaged in the search for answers to legal questions in the life of society, based on the rules developed by their founders. The analysis of historical sources was formed and reached perfection one after another for more than a century (717-860). The law school, started by mentors, was supplemented by successor students. For example, the Hanafi school was perfected by the most talented students after Abu Hanifa, whose number was close to forty. The rules of this madhhab are easy, taking into account local customs. Others differ in that they rely only on the first two sources Koran and the Sunnah. At present, in Uzbekistan, issues related to belief are being resolved precisely on the basis of the Hanafi madhhab.

In Islamic law, the Koran and the Sunnah of our Prophet Muhammad (peace and blessings be upon him) are the two main sources of sharia. In these sources, legal norms improved over time or when changing places. When forming legal schools, one also has to take into account the changing nature of social relations in society. Especially after the death of our Prophet Muhammad (peace and blessings be upon him), it became necessary to take steps to ensure that there was no mistake in finding a legal solution to the new relationship, which could not be regulated by the two main sources. As the "Islamic State" gradually expanded in territory and reached as far as Mowaroonnahr. Naturally, the unification of several societies into one state required finding a legal solution to the pressing problems of public life, which differed from each other. Therefore, the attention of the founders of the madhhab was focused on the development of new legal norms, using after the Koran and the Sunnah as the main sources also "ijma" and "qiyas", as well as a number of additional rules of

fiqh. If analyzed from a legal point of view, the rules in the teachings of the madhhabs do not differ fundamentally from each other. But there are peculiar features in giving a legal definition or classification of a concept.

It is gratifying that during the period of independence, especially in recent years, much attention has been paid to reforming the foundations of statehood in the new Uzbekistan and building a "humane democratic state of law." In order to ensure the full value of this process, and so that future generations are worthy of their ancestors, a detailed study of sources on Islamic law is considered a topical issue on the agenda. We hope that better and more effective results will be achieved in this direction. To achieve success in legal and spiritual reforms, a number of legal documents play a key role. This is confirmed by the research centers established in recent years that specialize in the study of Islamic teachings, including Islamic law (fiqh), as well as the defense of dissertations on Islamic law by researchers in higher educational institutions of this direction.

It is gratifying that many works on Islamic law have been translated from Arabic into Uzbek. Using this research, I would like to express my views on the ongoing translation into Uzbek of the work "Al-Hidayah"⁷, which left an indelible mark on the development of Islamic law. More precisely, I would like to say about the translation culture of translators. If we remember, in the 90s of the last century, when the Republic of Uzbekistan gained independence, propaganda work under the motto "national self-awareness" repeatedly mentioned that the well-known work of our ancestor Burhaniddin Marghinani "Al-Hidayah" is a meaningful source of Islamic law. Short messages about questions concerning the history of law were circulated. In fact, one volume of the translation of this work from English into Russian was published in Uzbek. It is gratifying that years later, or rather, since 2020, "Al-Hidayah" again began to appear in full, translated from Arabic into Uzbek. The main thing is that this work is carried out by masters of their craft - a team of talented translators, including Azamkhon Kambarov, Akmaljon Ikromjonov and Ilhomjon Bekmirzaev.

We are confident that over time, scientists and specialists who have read the work will confirm that the translators are masters in using modern terms, words and phrases of the Uzbek language. The cover of the book says "Uzbek commented-academic translation". Apparently, the translators believe that the legal norms in the book, which were directly applied in the practice of that period, were of interest only to researchers. However, in our opinion, this translation will not leave indifferent any person with high spirituality, as well as everyone who is interested in the history of Islamic law.

Three volumes of the work have been published so far. Many more are being prepared for publication. The great thinker Burhaniddin Marghinani wrote this work in 13 years. The essence of the work lies in the fact that it contains a deep comparative analysis of the legal norms not only of the Hanafi school, but also of other schools of law, as well as the legal views, opinions and conclusions of the author on all issues of Islamic law. This testifies to how important a place was then occupied by legal principles and orders in the life of society. For example, the fact that one cannot cut off a hand for a single theft or the need to identify more than 30 signs to qualify a crime - all this speaks of the perfection of the rules of fiqh and the priority of the principle of humanity.

What is the significance of this work or similar legal sources for the modern legal system of Uzbekistan, based on the principles of modern secularism? In search of an answer to this question, I would like to note the following. **Firstly**, Islamic law (following Roman law) promotes the idea that the principle of social justice and equality should prevail in the regulation of all social relations, therefore these principles are still being

deeply studied by scientists of the West and East. **Secondly**, when developing legal norms in Islamic law, the goal is noted - to give norms that are very carefully worked out, that is, to analyze in detail the essence of legal norms and compare them with two main sources (Koran and Sunnah). **Thirdly**, it is very important that priority rules are being introduced today, according to which scholars and experts giving clarifications, interpretations or fatwas on legal norms, as well as any specialists conducting Sharia-based judicial practice, must have in-depth knowledge and experience. **Fourthly**, in the past, the role of scientists and thinkers in society was so high that the sources of law written by them always had a positive impact on law enforcement practice and served to affirm the principle of social justice. It is also noteworthy that their work was promptly encouraged with regular support from the authorities.

With regard to the contemporary influence of Islamic law, its provisions on family, marriage or inheritance law are found in the legal systems of countries with mixed legal systems - such as Afghanistan, Jordan, Iraq, Malaysia, Morocco, the Arab Republic of Egypt, Pakistan, Syria, Yemen and other. It should be noted that in the world only the legal system of the Kingdom of Saudi Arabia⁸ is based on Islamic law.

It should be noted that hadiths of the prophet Muhammad (p.b.u.h), all the narrations cited by his companions, as well as conclusions, recommendations, opinions of prominent scientists (mujtahids) related to the legal relationship of the state, according to Islamic law, do not correspond to reality in the modern state of the present time and some of them are considered to have lost their significance. For example, today slavery has been abolished all over the world. Slave labor, its place in society, the punishment imposed on them, and a number of other norms do not currently exist. It is inappropriate to talk about the type of tax collected from the believers other than muslims. However, in Islamic law there is a rule according to which "in case of doubt about the crime committed, one cannot apply punishment in the form of hadd or qisas (cut hands or strike with a whip (darra) or the death penalty), but it is better to switch to milder punishments at the discretion of the qadi (judges) ... that is, in the types of ta'zir "

Finally; the following conclusions can be drawn from the above described:

Firstly , in order to raise scientific research to a qualitatively new level based on rare sources of Islamic law, it is necessary to organize targeted research by representatives of the legal sphere. In our opinion, it is advisable to organize an in-depth study by researchers on the role and significance of works on the history of law in the development of our statehood, a meaningful enrichment of modern trends or branches of Islamic law (jurisprudence), especially those aspects of Islamic law that are associated with civil or criminal, penitentiary law and to continue research on the contribution of our rich legal heritage to world civilization.

Secondly , it is important to return to Uzbekistan rare, unique and scarce sources on Islamic law written by our ancestors, which are stored in libraries of foreign countries to conduct research on them.

Thirdly , it is useful not only to translate meaningful sources on Islamic law written in other languages, including Arabic, Turkish or Persian, but also to conduct joint research of linguists and lawyers.

Fourthly , a more in-depth study of our scientific heritage regarding Islamic law, along with educating the younger generation in the spirit of patriotism, especially to prevent it from falling under the influence of various currents and destructive criminal groups on the Internet, will ultimately ensure the implementation of the principle of "Enlightenment against ignorance" .

Footnotes and analysis of sources used

1. For more details see: Radjabova, MA
2. *Islamic law (fiqh) and tarikat Khojagan-Nakshbandiya (the path of spiritual perfection) interconnection and harmony. ISJ Theoretical & Applied Science USA 01(81) 2020 , pp. 45-49*
(Islamic law (fiqh) and the Khojagan-Nakshbandiya tariqa (the path of spiritual perfection): interconnection and harmony). (45-49)
This article was published in a journal published in the USA.
3. *Great legal encyclopedia; Prepared by a team of authors, 2nd edition, revised and supplemented, EKSMO Moscow, 2010, 655 b.*
4. The Constitution of the Republic of Uzbekistan, NMIU "Uzbekistan", 2017, 75 B. (The Constitution of the Republic of Uzbekistan consists of the Preamble, six sections, twenty-six chapters, 128 articles.)
5. Mavjuda Radjabova, "Islom huquqi: Jinoyat va jhazo. O'quv qo'llanma" (Islamic Law: Crime and Punishment. *Manual*), *O'XIYA nashriyoti - matbaa birlashmasi; Tashkent-2021, 281 b. prepared with the conclusion of the Committee for Religious Affairs under the Cabinet of Ministers of the Republic of Uzbekistan.*
6. The manual consists of an introduction, six chapters and 28 paragraphs. The first chapter deals with the essence of studying the course of crime and punishment in Islamic law (fiqh) (Hanafi madhhab); interrelation and harmony in this science with Sufism (tarikat); the genesis of statehood and power structures in Islamic law; forms of government caliphate; the difference between Sunnis and Shi'ites in government; the role of the institution of qadi (judge) of state power and the stages of improvement of this state body; On ethics, specialization and the formation of judicial systems in the work of Burhaniddin Marghinani "Al-Hidayah"; Issues of crime and punishment in the main sources of Islamic law (Koran, Sunnah, ijma and qiyas); The essence of the work of Abu Yusuf "Khiraj", in particular, related to the crime of punishment; analysis of the concept of crime and punishment in the doctrine of Islamic law.
7. Burhaniddin Marghinani, Hidaya (Sharkh bidayatil muftadi) (Uzbek explanatory-academic translation) in three volumes; HILOL - NASHR publishing house. (Translators: Azamkhan Kambarov, Akmaljon Ikromzhonov and Ilhomjon Bermirzaev. One of the translators, Ilhomjon Bekmirzaev, Doctor of Historical Sciences, Islamic scholar, author of several monographs on the development of the judicial institution in Islamic law, possessing deep thinking and a talented scientist.
8. Since 2020, the publication of translations has begun, one of the sources of medieval Islamic law "Al-Hidayah" in the Uzbek language. The first volume is devoted to prayers (ablution, prayer, zakat, fasting, hajj). The second volume was published in 2020 (590 pages). The book will contain sections on marriage, divorce, etc. (parts of muomalat), and the third volume will be in 2021, (607 pages). From the table of contents it can be seen that the book is dedicated to vows, covenants, theft, siyar, an abandoned child, a find, a slave's escape, a missing person, partnership and donation.
9. Jahon mamlakatlarining huquqiy tizimlari. Qomusiy lug'at. (O'zbek tilida): Tashkent.; "IHBO'RMM" nashriyoti, 2006, 718 B. The book "Legal systems of the countries of the world". Encyclopedic reference book. (Managing editor - Doctor of Law, Professor A.Ya. Sukharev), publishing house Norma Moscow-2003, which served as the basis for compiling this encyclopedic dictionary in the Uzbek language. This dictionary contains information about the authorities and legal systems in a total of 103 countries of the world, including a number of Muslim countries with a mixed legal system based on Islamic law.