Judicial Activity in Turkestan under the Colonial Regime (Late Nineteenth to Early Twentieth Centuries)

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Abstract: The article describes the changes, limitations and consequences of the judiciary in the colonial conditions of Turkestan in the late nineteenth and early twentieth centuries. The example of the national press of the period also shows the attitude of the official administration to the policies of the judiciary.

Keywords: Turkestan, Judicial Courts, Judges, Judicial Congresses, Elections, Official Administration, Statute.

INTRODUCTION

After the Russian Empire's invasion of Central Asia, the judicial system was maintained, but its traditional oversight mechanism was abolished and handed over to the colonial government. The hierarchy in the judicial system was eliminated and the position of all judges was equalised. Sheikh-ul-Islam, Khojai-kalon, qaziul-kuzzot, qazi-kalon, qazi-ulmutlaq, which operated during the Kokand Khanate [6; 19] were the main religious positions in the end of the colonial era. This, in turn, influenced socio-religious, legal and spiritual life, which led to a decline in the relative control over religious life.

MAIN BODY

The imperial government decided to weaken the judicial system, which had gained the trust of the people, in order to establish its own legal system in Turkestan. To this end, certain changes and restrictions were introduced. In particular, the judiciary was deprived of the right to deal with most legal matters. In addition, citizens dissatisfied with the verdict of the judges were granted the right to appeal to the imperial courts [7; 107]. The "Provisional Regulation on the Administration of Turkestan Provinces" of 6 August 1865 [10; 28] was elected to the position of judge, approved by the military governor. The colonial government sought to support a candidate who was safe, obedient, and not because of the candidates' piety, prestige, scientific potential, or knowledge. Officials said that the election of judges was "a great opportunity for the local population" and that the locals had the right to elect their own judges [10; 21] “and sought to present themselves as the protector of local rights”. This led to a break with the centuries-old tradition of appointing judges. Prior to this, in Turkestan during the khanate the judge was appointed by the ruler, i.e. the khans or beks. Students graduating from madrassa applied to the khan or bek for the post of judge or other suitable position. The khan or bek would arrange an academic discussion to test the knowledge and abilities of the candidates. A panel of scholars, comprising a judge, a mufti, a mudarris and others, held the examination in the form of a real debate in the palace of the khan or bek or in the mosques. Educated and pious people who passed the test for competent religious positions, passed the majority examination and were recommended by the majority of scribes. According to the requirements of the Islamic jurisprudence, a candidate for the post of judge was free, healthy, mature, a practitioner of Islam and had not done anything wrong in the past (e.g. was not accused of slander, libel) [8; 46], had been educated in madrasa, was fluent in Arabic and Persian as well as in law and other religious knowledge and had gained a reputation among people for his morality and piety. He was also
considered perfect if he possessed five qualities: to study the practices of his predecessors and teachers, to abstain from tasting and be fair to parties, to follow the Imams of the Hanafi school and to consult with scholars [17; 46].

According to the Statute, a person who has won the trust of the people, has reached the age of 25 and has not been convicted has the right to be elected judge. Each judge had the right to judge only the inhabitants of the territory to which he was attached, and according to Article 185 of the Statute the plaintiff had the right to appeal to the judge in his area of residence [4; 14]. However, during the Khanate period, the plaintiff had the right to appeal to any judge he deemed trustworthy, regardless of his place of residence, regardless of where his treasury was located. This, in turn, caused a number of protests among the local population.

Thus, candidate judges began to be elected without examinations, but the lack of clear guidance as to a judge's academic capacity caused many problems. The enlightened scholar Sattorkhon Abdulgafforov was able to illustrate the negative consequences of such changes. S. Abdulgafforov had worked as a judge in Shymkent and Kokand and was fluent in Russian as well as religious and secular sciences. S. Abdulgafforov focused on the electoral process in articles published in periodicals. Appointment of incapacitated people to a number of empirical positions in the empire was indicated on an 'electoral basis'. S. Abdulgafforov explained: ‘This did not produce the expected results for the local population. On the contrary, it created socio-economic problems with dire consequences. Uneducated and inexperienced people who did not deserve the posts of chief, elders, judges and magistrates were elected. They used various tricks and achieved their goals through their relatives and acquaintances, even as they bribed people in their elected areas. Such processes were treated with indifference. In fact, in the electoral process, the aforementioned cases became commonplace and were ignored. Elected persons had to comply with the orders of the official government, among other just decisions’ [1].

By the time Turkestan became governor-general, local residents had asked the district head, military governor and head of state to send one of the government officials to court to have their complaints heard by a local judge. Sattorkhon Abdulgafforov criticised this situation, noting that this had previously been done quickly and easily. In other words, for every decision, the plaintiff would go to the bek or khan to have the case heard, and the palace official would ask the yasuvul to participate in the trial. The yasuvul observed the process, which ensured its fairness and oversight. S. Abdulgafforov criticized the policy of the colonial government, saying that the control over the judges should be strengthened by abolishing the posts of kazikalon, sheikhur-rai, which were the main supervisory bodies during the empire [14; 14].

Indeed, the policy pursued by the official administration in the local judiciary, as well as the negative consequences of bribery and corruption resulting from the election of judges with insufficient religious knowledge and skills, caused a number of problems. This caused resentment among the local population. It reinforced the population's relatively negative attitude towards the traditional judicial system. National intellectuals published critical articles and satirical poems in the local press against the unjust and lawless judges. In particular, Jadid Mahmudhoja Behbudi, a representative of the national intelligentsia, stated in a press release that religious officials: judges and several other high-ranking officials had been elected by corrupt and unworthy people, leaving talented clerics aside [5].

It should be noted that during this period there were many judges with profound knowledge, fairness, great authority and prestige. They were also regarded by the people as custodians of Shariah for their zeal in performing their duties, as well as for their piety and knowledge of jurisprudence. In particular, studying the archival documents of judges of this period, we see in them legal documents of the activities of thoughtful, literate and qualified judges [21].

Later, the new Statute on the Administration of Turkestan Province, issued in 1886, introduced a number of innovations in the work of judges [11; 112]. Judges and magistrates became known as "people's courts" and judges became "people's judges". This is why Sharia judges, who are religious figures, are often referred to as "people's judges".
It should be noted that during this period the status of Pentecostals was elevated and even judges were elected by the Pentecostals and the nominees were approved by the military governor of the region. The aim was to subordinate the judges to the policies of the colonial government. Only a judge approved by the military governor went to work. If the military governor did not approve the candidate by a majority vote, a re-election was held. To complicate matters further, the nomination and election processes were based on direct interference and selection by the official government, and the public was given a voice as if it were the will, will and will of the people. Even if the official government officials (pristufs, politymasters) had seen the unfairness, injustice and corruption in the elections, they would not have seen it. The official government was well aware that such changes in the judiciary would affect the socio-religious, legal and economic life of the country, believing that the gradual disappearance of Islam and the traditional judicial system in the country could be achieved. This is why the imperial government has equalised the rights of the imperial courts with those of the sharia courts.

According to the established procedure, there were three types of people's courts: individual judges elected for a period of three years [20], a congress of judges formed on their basis, and a congress of extraordinary judges.

The court of appeal was a congress of judges, for example the Congress of People's Judges of Tashkent city, which was attended by four judges from four dakhs [10; 28]. Traditionally jury trials were considered with a complaint only against the bek or khan, whereas under the new procedure judges and judges could complain to a congress of jurors and, by decision of the congress, to an extraordinary congress of jurors. In the congress of judges, at least two judges out of three had to participate. The congresses dealt with civil cases not exceeding 1,000 sums, which was slightly more than the single judge's court. And the congress of judges, which built extraordinary cases, appointed a military governor to consider matters between citizens of different administrative units (counties, volosts) and followed the rules established for the congress of judges [3; 3].

In 1912 a regulation of the government of the city of Tashkent on congresses of judges was published in the Turkestan press. They consist of 14 paragraphs [22], which set out the rules for convening congresses, the composition of congress judges, organisational matters, witnesses, the rights and opportunities of plaintiffs, and the participation of witnesses. Specifically, it says: “Babylon one. The congress of judges will consist of the judges of the four districts, Judge Shaykhovanditohur, Judge Beshoyogocha, Judge Kokchi and Judge Sebzor” [22].

One of the new rules established in the judiciary was the creation of notebooks in which the work done in the judiciary was constantly recorded. The contents of the case files were recorded in the notebooks of these judges. As a rule, the judge's notebooks were in the court book (book of deeds), in which the purchase and sale of real estate, lease, recognition, division of inheritance, representation, appointment of guardians, as well as the book of court decisions (book of decisions) with details of the incident [21] divided by a special instruction was developed to ensure the correctness of the judge's notebooks, dividing pages of notebooks into special tables, showing how to complete them in Russian and in Uzbek in the Arabic alphabet [3; 4]. Interestingly, these court records contained separate charts and stamp forms, as they do today, to present the content of the executed judicial and notarial act.

In addition to restrictions and changes to the judiciary, the official administration intended to study and monitor the sources of Islamic jurisprudence used in them. In particular, a pamphlet on jurisprudence, based on the replies of judges and scholars of the three provinces to questions by Senator Count Palen, was published in 1910 by order of the government. It is in two languages: Russian and Uzbek, and on the cover it is written: “On questions of Mr. Palen, the Shariah was summarised by judges of Tashkent, scientists and scholars, and a Russian translation was given” [19; 2]. In it, issues related to Shariah are quoted from Muslim law which judges and scholars have found to be legitimate. Among them "marriage", "divorce", "lineage", "inheritance", "will", "property", "trade" and other matters are interpreted in accordance with Sharia law. The title of
the work "Hidoya" is often found at the end of articles found in accordance with Shariah law. Hidoyah is also widely used in Islamic fatwas on issues such as child rights, adoption, forbidden marriages and inheritance. In addition, at the time of writing this treatise, the Shariah “Muin al-Hukam”, Sharh ul-Mukhtar, “Dor ul-Mukhtar”, “Radd ul-Mukhtar”, “Takhtawi”, “Majma al-Anhar”, “Hasab al-Mufti”, “Ahkam al-Shargiya”, “Olamgiriya”, “Kuniyya”, “Jami al-Ruzuz”, “Qazikhан”, "Saroji", "Hamidiyya", "Hayriya", "Komiliya", "Ankarawi", "Fusuli Amodi" [19; 20] have been used in the sources of Islamic jurisprudence and fatwas. At the end of the brochure, the articles prepared by scholars and judges in Turkestan on 294 issues of Islamic law were declared to be in accordance with Shariah, and it was stated that not all the courts in Turkestan differ from the fatwas of the judge. The government published a pamphlet with the intention of using it as a guide to Turkestan's mines.

In addition, given the practical importance of "Hidaya" in Turkestan mines, the Governor of Syr Darya region N. Grodekov translated it into Russian: “Hidoya” (commentary on the Muslim law) was fully published in Tashkent in 1893 in four editions. Volume. The Russian translation was not from Arabic, but from English, and N. Grodekov translated it into separate chapters. The Russian translation of Hidoyah was published in four thick volumes of 400 copies each (18 copies).

It should be noted that Sattorkhon Abdulgafforov, an enlightened local scholar, helped to translate Hiday into Russian [14; 23].

From the above it is clear that the work of "Hidoya", along with other legal sources, did not lose its importance in the work of judges in the late nineteenth and early twentieth centuries and also in the Middle Ages. That is why it was translated into Russian by government officials, Orientalists and historians to study the religious situation in the country, including the local judicial system, in order to keep it under control.

CONCLUSION

By the end of the nineteenth century, the judiciary in Turkestan, the changes and restrictions in its activities, and its negative consequences led to the formation of a negative attitude towards the activities of judges in the minds of the local population. Such negative attitudes have not lost their relevance in subsequent centuries. However, the local population's need for judges, conventions and justices, who are the people's courts, has not diminished. The imperial court, proclaimed a "fair court", was in the hands of the Russians, who did not know the local language and religion, did not know its customs and way of life, and whose judicial proceedings were conducted in Russian, which made it difficult for the Muslims. They did not even understand how the trial was taking place, and only after the verdict was read out did it become clear that they had been sentenced to death, exile or imprisonment. The locals were therefore sceptical of the imperial courts. For the peoples of Turkestan, the judiciary and conventions were not only a legal entity but were also closely linked to their social, religious and spiritual life.

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