

Thavingesis Of The Moral, Ethical, And Legal Foundations Of The Judiciary

Mamanov Ismatulla
Candidate of Legal Sciences

ANNOTATION

This scientific article analyzes the genesis of the moral, ethical, and legal foundations of the judiciary institution that was formed in the ancient periods within the territory of present-day Uzbekistan. Scientific conclusions regarding the moral, ethical, and legal foundations of the judiciary have been developed.

Keywords: Zoroastrian teachings, the Holy Qur'an, Sharia, Islamic doctrine, judiciary, moral, ethical, and legal foundations.

In the ancient territories of Movarounnahr, the peoples living there had a long-standing aspiration to establish a fair judiciary based on justice and the rule of law, protecting human rights and freedoms. Therefore, the history of the emergence of moral, ethical, and legal teachings related to fair justice dates back to millennia before the Common Era.

Today, in many scholarly legal and historical sources, there are diverse views regarding the genesis of the moral, ethical, and legal foundations of fair justice. At the same time, there is still no unified approach to the moral, ethical, and legal foundations of the judiciary institution that took shape in the ancient periods within the territory of present-day Uzbekistan. Based on this, the purpose of this article is to conduct a scientific and theoretical study of the genesis of the moral, ethical, and legal foundations of the judiciary institution.

It is advisable to study the stages (genesis) of the formation and development of the moral, ethical, and legal doctrines related to the judiciary institution that emerged in the ancient periods within the territory of present-day Uzbekistan, by conditionally dividing them into four historical periods.

The first period — from the 9th–8th centuries BCE to the 7th–8th centuries CE, when Islam began to spread. During this period, the moral, ethical, and legal doctrines related to the judiciary institution were mainly shaped under the influence of early legal concepts in human thought, initial religious beliefs, and mythological narratives, including myths, fairy tales, and legends associated with “gods” or “deities.” In this era, the holy book of Zoroastrianism, the Avesta, emerged. It reflected legal concepts that regulated relations related to the judicial institution (Ordeal), crime and punishment, civil matters, family and marriage, property, and land and water ownership. Over time, legal doctrines gradually evolved from the initial religious-mythological understanding of the world to a rational, logical, and philosophical form developed by humans.¹

It should be emphasized that the Avesta, which made an enormous contribution to the development of universal statehood and legislation, served as the foundation for the emergence of a new legal doctrine. According to this doctrine, truth and justice were achieved through the process of adjudication. For example, when a person who had taken an oath failed to fulfill or violated it, procedural norms such as ordeal (trial by test or punishment) were applied to prove the truth.² In the Avesta, the Ordeal served as a form of judicial procedure and had its own distinctive features in the process of adjudication. According to the legal scholar Z. Muqimov, “In the Zoroastrian doctrine (Avesta), there were 33 types of judicial methods of conducting an ordeal to ensure fair justice. If the matter concerned an oath, the trial was conducted by water; if it was related to a contract, the trial was conducted by fire. In this way, the accused or the suspect was given the opportunity to prove their innocence.”³

¹ Ф.А.Муҳиддинова. Ўзбекистон сиёсий ва ҳуқуқий таълимотлари тарихи (дарслик) – Т.: Ўзбекистон Республикаси Адлия вазирлиги ТДЮИ. 2009. – 208б. 7-бет.

² Ҳ.Бобоев., “Ўзбек давлатчилиги тарихи”, I китоб., Тошкент., Ўзбекистон Республикаси Фанлар академияси “Фан” нашриёти., 2004., 58-бет.

³ Муқимов З., “Ўзбекистон давлати ва ҳуқуқи тарихи (Энг қадимги даврдан XX асргача). Самарқанд: “Зарафшон”, 1998., 39-бет.

From this, it becomes clear that under this doctrine, a legal concept was formed according to which truth and justice were established through the judicial institution and the judge. According to this legal view, the Ordeal (court) was entrusted with judging the eternal struggle between good and evil, righteousness and wickedness, honesty and dishonesty.

The second period — from the 7th–8th centuries CE, when Islam spread, to the 13th century. During this era, the moral, ethical, and legal doctrines related to fair justice were formed based on the spirit of the Holy Qur'an, regarded as the word of Allah. According to these doctrines, Islamic laws possess a divine nature and therefore can never be altered.⁴ It was concluded that Islamic laws, being of divine origin, are immutable. At the same time, it can be observed that the legal concepts of this period were nourished not only by religious knowledge but also by worldly sciences. In other words, the legal views of that era were shaped not only by faith and belief, but also as the product of knowledge and rational thought. Indeed, in Islamic teaching, legal principles were first understood, observed, and reflected upon, and only then were they established as definite rules of Sharia. The Holy Qur'an, which is the sacred book of Islam, serves as a symbol of truth and justice, and as emphasized in it: > “So do not follow your desires, lest you swerve from justice. If you distort or refuse to give testimony, indeed, Allah is All-Aware of what you do.” (Qur'an, Surah An-Nisa, 4:135)⁵. According to the legal doctrine of Islam, in the 7th century, a person who administered fair justice based on Sharia law was called a “qazi” (judge). In the Muslim community, the qazi served as a judge, and the word “qazi” itself means “one who decides” or “one who passes judgment.”⁶. In that period, special attention was given to the moral and ethical qualities of judges (qazis), and a future qazi had to meet certain requirements. For example, as noted in Nizam al-Mulk's “Siyasatnama”, particular importance was attached to the individuals appointed to perform judicial duties. The work emphasizes: > “It is necessary to be fully informed about the condition of the judges of the country and to appoint those who are scholars and ascetics, poor but ungreedy, and to guide and work with such individuals. If this is not the case, they should be dismissed and replaced with other suitable persons. This task is extremely delicate, for judges pass judgment over the good and bad deeds of Muslims. Such a responsibility must not be entrusted to ignorant and impure people — it should only be given to righteous and virtuous scholars.”⁷. Similarly, in Alisher Navoi's work “Mahbub-ul Qulub”, there is a special chapter titled “On Judges” dedicated to qazis and judicial affairs. In it, Navoi states: > “The qazi is the pillar of the edifice of Islam and the authoritative arbiter over the good and evil of Muslims.”⁸. The points mentioned above indicate that, according to Islamic teaching, individuals appointed to the position of qazi (judge) were selected based on high moral and ethical standards. These criteria included the following:

- *Profound knowledge of the Holy Qur'an and Sharia laws and principles;*
- *Possession of sound intellect and noble human virtues;*

⁴ А. Саидов., А. Жузжоний. Шарқ ва инсон ҳуқуқлари: тарихий-ҳуқуқий лавҳалар. – Тошкент: Ижтимоий фикр, 1998. – 142. 34-бет.

⁵ Куръони карим. Нисо сураси. 135-оят. (Таржима ва изоҳлар муаллифи Алоуддин Мансур). - Т.: “Чўлпон”, 1992. 544 б. 68-бет.

⁶ Юридик энциклопедия /Юридик фанлар доктори, профессор У.Таджихановнинг умумий таҳририда. – Т.: “Шарқ”, 2001. – 656 б. 380-бет.

⁷ Низомулмулк., “Сиёсатнома (Сияр ул-мулк)”, Тошкент.. “Янги аср авлоди”, 2008., 45-бет.

⁸ Алишер Навоий., Мукаммал асарлар тўплами. XIV том. Махбуб ул-қулуб. Ўзбекистон Республикаси Фанлар академияси “Фан” нашриёти. Тошкент – 1998. 21-бет.

- *Being honest, pure, and God-fearing;*
- *Having a high level of awareness of worldly sciences;*
- *Being physically healthy and spiritually balanced.*

The third period — from the early 13th century (1219–1220), beginning with the Mongol Empire’s invasion, up to the 1370s of the 14th century. During this era, the moral, ethical, and legal doctrines related to fair justice were based on strict military rules and regulations and incorporated relatively harsh punitive measures. These doctrines laid the foundation for a nomadic type of state governance and were based on the “Yassa Laws” (Yasa) adopted by Genghis Khan. The term “Yasak” (from the Mongolian “dzasakh”) means law or punishment, and it served as the main legal source of the medieval Mongol state law.⁹ According to the order established in the Mongol Empire, those who violated or disobeyed the existing laws and regulations were subjected to severe punishments. Historical sources indicate that under the “Yassa Laws”, the majority of offenders brought to justice were executed. It is important to note that in the Mongols’ legal doctrine, religious views played a dominant role in the application of criminal punishments. This was because, in the Buddhist legal ideology to which the Mongols adhered, giving false testimony, polluting water, fire (pastures), or spilling milk (considered a sacred drink) on the ground were regarded as grave offenses, punishable even by death. Furthermore, alongside the “Yassa Laws”, during the period of Mongol rule in the territory of present-day Uzbekistan, Islamic law and local customary practices also remained in force among the sedentary population.¹⁰

The fourth period — the era of the Amir Temur (Tamerlane) state (1370–1405).

During this period, it is evident that strict adherence to the principles of justice was maintained in the administration of state affairs, particularly in the implementation of fair judicial practices. In his famous work “Tuzuklar” (The Code of Temur), Amir Temur stated that:¹¹ He emphasized: > “With justice and fairness, I sought to earn the satisfaction of God’s creations. I passed judgments based on truth and compassion, both for the guilty and the innocent.” In the Amir Temur state, judicial affairs were regarded as one of the most important, highly responsible, and at the same time honorable duties of the state. In many cases, Amir Temur himself personally presided over judicial proceedings. During such trials, the accused were interrogated, detained, and severely punished, regardless of their rank, wealth, or kinship ties with the royal court — demonstrating that justice and equality before the law were paramount principles in Temur’s governance.¹²

In the Temurid state, the activities of judges (qazis) were specialized according to different spheres. The first type, known as the “military qazi” (lashkar qozi), dealt exclusively with criminal cases related to military personnel and their activities. The second type, the “Sharia qazi”, handled cases and disputes related to Sharia law. The third, referred to as the “civil qazi” or “secular court”, reviewed civil and state-related disputes, including cases of theft, fraud, economic offenses, and administrative violations.

In the Amir Temur state, the fairness of judicial proceedings and the rulings issued by the qazis were placed under the direct supervision of the ruler himself. This strict oversight ensured the emergence of highly qualified, honest, and conscientious judges, who administered impartial and just justice, thereby strengthening the moral and legal foundations of governance.

In the Amir Temur state, individuals appointed to the position of qazi (judge) were selected based on high moral and ethical standards.

Firstly, they were required to possess profound knowledge of both religious and secular sciences.

Secondly, they had to be honest, pure, and conscientious individuals.

Thirdly, according to their specialization, judges were divided into Qazi Ahdos, Sharia Qazis, and Military Qazis, who respectively oversaw civil courts, Sharia courts, and military courts.

⁹ <https://qomus.info/encyclopedia/cat-ya/yasoq-uz/>.

¹⁰ Б.Қодиров, Х.Матёкубов.. Ясо қонунлари ғўплами. Ўзбекистон тарихидан мавзулар бўйича илмий изоҳли луғат. -Т.: 2008. –Б.84.

¹¹ Темур тузуклари / Таҳрир ҳайъати: Б.Абдиҳалимов ва бошқа; Форсча матндан А.Соғуний ва Ҳ.Кароматов тарж. – Тошкент: Ўзбекистон, 2011. – 184 б. 75-бет.

¹² Л. Керен. Амир Темур салтанати / Француз тилидан таржима ва изоҳлар муаллифи: Б.Эрматов; Махсус муҳаррир: Х.Султон; Сўзбоши Луи Базен/. – Т.: “Ўзбекистон” НМИУ 2018. 248-бет. 155-бет.

Fourthly, the qazis were not limited to resolving disputes among citizens — they also had the authority to issue various fatwas (legal-religious rulings) concerning important issues in the social and public life of the population.

Conclusion

In conclusion, the moral, ethical, and legal foundations of the institution of qozilik (judiciary) formed in the ancient periods on the territory of present-day Uzbekistan represented a well-structured and comprehensive system. The main sources of this system can be identified as follows:

- The religious and legal concepts expressed in the sacred book of Zoroastrianism — “Avesta”;
- The Holy Qur’an and the laws and principles of Sharia;
- The high moral purity, human virtues, and commitment to justice of the qozi (judge);
- The qozi’s honesty, pure conscience, and strong faith and belief;
- The qozi’s broad knowledge of secular sciences and deep understanding of both legal and religious studies;
- The qozi’s physical health, mental stability, and sincere dedication to serving the interests of the people.
- Thus, the institution of qozilik functioned not only as a mechanism for ensuring justice but also as an important social institution that strengthened moral integrity and fairness within society.