HANAFI LEGAL DOCUMENTS IN TRANSOXIANA

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Abstract: The article is based on most recent accomplishments, conclusions and methods in World Islamic and historical sciences. The historical-comparative method was applied to study the sources including various manuscripts of “Hanafi Law” and many other sources written in Arabic that are available in the Fund of Manuscripts of the Institute of Oriental Studies under Academy of Sciences of the Republic of Uzbekistan. It relies on recommendations, conclusions of research works and the conceptions related to the history of civilization of the Central Asia that were stated by leading scientists of our country and foreign countries such as Schacht Joseph, Monika Gronke, Ulrich Rebstock, Chehata Chafik, Emile Tyan, Chalmeta P; Carriente F, Riberta J., Asin, Jeanette A. Wakin, Michael Thung, Wael Hallaq, Carl Brockelmann. The aim of the article is to illuminate the role of literature on juridical documents in the development of divinity science in Transoxiana in X-XIII centuries. Moreover, to illuminate the importance of such works in regulating the social relations of the cultural life of our society. To highlight the historical-juridical forms, theoretical and practical foundation of juridical documents functioning in the world of Islam and Transoxiana in X-XIII centuries that was the important part of the social life.

Keywords: Abbasids, waqf, fiqh, faqih, shurūt, mahdar, sijill, qādī, fatāwa, Transoxiana, Hanafi, madhhab.

The scholars of Hanafi madhhab in such big cities of Central Asia as Bukhara and Samarkand were actively involved into social-political life during 10th-13th centuries. And the introduction of Hanafi madhhab into this area and the way of its development was studied by many Western scholars (Gronke, 1982). It is known that faqih (Islam lawyers) were the main executors of social and political government of a society in Transoxiana during the 10th-13th centuries. The specific feature of that period was that, Sultan appointed both rais (who was occupied with religious affairs) and amīr (the representative of the government) in one city. Rais made policy to strengthen Sunnism in the territory of the occupied countries. Here faqih family members as Āli Burhān(I) family assisted them. They also paid much attention to weaken their political enemies, especially shi’a groups who were near the capital of the country Khurāsān. In order to accomplish these tasks they used Hanafi scholars of Khurāsān and Transoxiana. Those scholars made a lot of afford to strengthen Hanafi madhhab in Central Asian countries and decrease shi’as status. The ruling dynasties as Samanids, Karahanids, Gaznavids and Saljukids Sultans in order to obey the people made benefit of Islam faqihs’ participation in it.

The period which the article will cover is considered as the second part of development of Islamic History in Central Asia. That is mutual impact and assimilation of Islamic cultures. The article will also deal the activities of qādī and qādī courts which were as means between Sultan and his people in social life of Transoxiana during 10th-13th centuries.

Judicial-legal problems in Islam were always connected with the level of statehood development, the complexity or simplicity of relations in society. That is why qādī’s activity was developed in specific level in every period.

And beginning from the 10th-13th century in the territory occupied by Arabs, qādī courts become an important body in state governing system.

Because of this reason, the order of courts in medieval Transoxiana was the same as qādī courts of Abbasids period (132-656/750-1258). At that time Hanafi madhhab was ruling and all qādīs were working based on the teachings of Hanafi madhhab which was formed in Iraq (1995).

Books on shurūt and hiyal were two important subdivisions within this category of practical literature. Another group of works were the mahādir and sijillāt, formularies containing model documents for use of the
qādī and his clerks acting in the capacity of notaries. More exactly, the mahādir were the written records of the proceedings before the qādī, the minutes of the court, and the sijillāt were the written judgment containing the qādī’s decisions.

One of the ways by which the jurists, particularly the scholars of the Hanafi School, tried to accommodate practice was to create certain forms of literature that had as their immediate purpose the smooth operation of law and legal procedures in everyday life (1952; 1982). This literature consists of a variety of practical works, intended not to discover or even explain the law, but to help the qādī and other concerned persons in the law’s application.

The works on shurūt are an outstanding example of this literature. These handbooks, or formularies, were designed especially for the professional notary, and contained model contracts, legally correct in every detail, for all possible needs. The notary had only to select the model that suited the particular need of his client, fill in the “blank spaces” (that is, their equivalents, hāzā and fulān, “such-and-such” and “so-and-so”), and add the signatures of the witnesses. If the paradox in the official rejection and widespread use of written contracts epitomizes the conflict between theory and practice, the very existence of these shurūt works shows us how the scholars tried to make that conflict less sharply felt.

It is observed that in the 10th-13th century, contracts of various social aspects formed by qādī courts were registered according to Islam shari’at. According to various sources the rules of forming such agreements were called as shurūt.

I’ve began my research with studying the sources containing legal documents such as shurūt, mahdar and sijill documents which were used in the activity of qādī court. And the way of registering of the other documents in qādī court. I tried to analyse them from a new point of view.

The rules of drawing up the contracts in Islamic law are delineated in shurūt chapter of fiqh literature. The scholars from Western Europe are leading the researches on general problems of shurūt science.

Ch.Chehata is a scholar who studied the rules of creating the contracts in Islamic law. According to him shurūt in Islamic law includes all the types of contracts as: trade, crime, had punishment – fixed punishment in Islam and other privileged contracts.

So according to Ch. Chehata’s explanation various agreements, covenants, wathiqā – (judge document), waqf (property at the disposal of religious organization) and other official qādī documents given in furu’ al-fiqh, concern shurūt science.

Professor W. Hallaq claims that the science of shurūt is the process of legalizing and registering the documents of sharīah sentence concerning social relations of furu’ al-fiqh. The shurūt science is a collection of rules for legally registering the contracts. That rules were drawn up by qādī or were in the framework of constant regulations (Satoe, 2001). According to the late scholar E.Tyan, who studied qādī documents in Islam, the science studying the qādī contracts of medieval Islam is called shurūt (condition, rule, regulations), wathiqā (judge document, trust, document), sakk (deed, document, receipt), mahdar (meeting, sitting, deed, record, entry) and (list, registr, a list notebook, archive) (Chafik, 1936).

The first shurūt work which reached us are al-Jami’ al-kabīr fi-l-shurūt and al-Jami’ al-sagīr fi-l- shurūt written by Abū Ga’far al-Tahawī (d. 321/933).

There are a lot of manuscript copies of Al- Jamī’ al-kabīr fi-l- shurūt of al-Tahawī. They were studied by many Western scholars (1952). Abū Ga’far al-Tahawī’s another work on this theme al-Jami’ al-sagīr fi-l-shurūt was published in Bagdad as complete two volumes (Tyan, 1945).

Hanafi scholar’s works, which lived after 13th century compiled works that, were dedicated to shurūt sciences. And it can be observed that while creating these works they used Abū Hanifa’s, Muhammad al-Shaybānī, Abū Yusuf, Ibn Sama’a and Hassaf, Abū Ga’far at-Tahawī’s manuals as the initial source (1995; 1999).

Aside from the mahādir, sijillāt, and sukūk – all of which are copied in one qimatr – Samarqandi divides the remaining material of the dīwān into ten categories, each of which should be copied, for a particular year, on a separate jarīda.

All records of a certain type (e.g., mahādir, sijillāt) appear to have been compiled separately and filed in a weekly or monthly dossier (idārā), depending, apparently, on the number and size of the records that accumulated in the court. The initial researches showed that, shurūt is a complex of rules which teach the conditions of drawing up the contracts and is of valuable importance (The Islamic Glossary).
The work *al-Muhīt al-burhānī* of the 13th century consisted of sample contracts concerning marriage issues in *shurūt* chapter. The work “*al-Muhīt al-burhānī*” of the 13th century consisted of sample contracts concerning marriage issues in *shurūt* chapter. The following is father’s agreement about the marriage of his full age daughter:

"This (document) is about someone’s marriage to some woman. The women’s *valī* (a person responsible for her) basing on her permission, agree and order for some quantity of *mahr* (the property given to the bride by the bridegroom) married her with *sahih* (true) and *jai’z* (as *shari’at* orders) *nikāh* (marriage) to him. There were a group of honest witnesses during the process of *nikāh*. Her the very husband is *kufu’* (equal) in *hasab* (social status) and others and capable to give her *mahr* and compensation.

There is no reason to dissolve or cancel a marriage between them. The confirmed *mahr* (*mahri musamma*) in the contract is *mahri misliy*

She is his wife because of this narrated *nikāh*.

*This mahr is her husband’s responsibility *wājib haq* (obligatory fee) and compulsory debt.*

*All of this happened on ____ day (Confirmed by qādi’s stamp)“*

There are widely spread contracts concerning buying and selling in Islam. That’s why *shurūt* works dealt with this problem widely. For instance, the work *al-Muhīt al-burhānī* deals with the rules of making the contract *sakk* which was used in central cities of Transoxiana. The following are the main features of it (Būrhān ad-dīn Mahmūd al-Bukhari):

1. The sides;
2. Property and its components;
3. The right of property ownership;
4. The address and the form of property;
5. The amount of money given for property;
6. The evidence of the fact of the absence of another people’s right for property;
7. The fact of acceptance the property by purchaser;
8. The fact of willingly signed contract by sides, without any interference by other people;
9. The date.

In *shurūt* works much space was given to the contracts on property rights and contracts on marital relations. In *Shurūt* works have another third category of contracts which are about slavery issues. This issue can also be referred to both categories as well. From one side, slavery issues could be considered as a part of marital rights because slaves were regarded as close people to the family. From another side, slavery was a type of commerce in Medieval East. Slaves were sold and bought. From this point of view, it can be referred to both categories. General information is given about the principles of writing *shurūt*, *mahdar* and *sijill*, and samples of documents where had been recorded marital, economic and criminal court cases are provided. Besides, guidelines and examples of claiming against some claims are presented in this chapter. Moreover, samples of official letters, and *qādi’s* appeal *hukmī kitab* (كتاب حكми) to another city’s *qādi* where the defendant is living/traveling (such instances take place in case if the plaintiff is present, but the defendant is absent in court case as he lives/travels in another city, and consequently, the *qādi*, whom the plaintiff had addressed with requirement of bringing an action, requests another city’s *qādi* where the defendant lives) are given. Furthermore, *Qādi’s* decisions on appointing a trustee and granting an allowance are presented. Then, samples of letters addressed to the officials *muzakkī* who were responsible for examining the witnesses are given. Finally, conclusions about rejected official documents are provided.

Now, whatever the reasons for the seeming failure of the Islamic administration *dīwāns* to survive, we should in no way use this failure to argue that such an institution was not maintained in a formal and systematic manner. Nor is there any justification for the claim that the keeping of the *dīwān* was less than systematic, and that it was kept up in a haphazard manner until the ascension of the Islamic administration.
Not only does the evidence show the contrary, but the claim itself makes no sense: the Muslim qādīs either kept a dīwān or they did not. If there was good reason to keep a dīwān for, say, a few years or even a few months, then the reason must stand for all time. And since, as we have seen, there was, indeed, a convincing reason to keep a dīwān, we are compelled to conclude that in reality the institution was maintained systematically.

References