



## ORIGIN AND DEVELOPMENT OF ISLAMIC LAW IN CENTRAL ASIA

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### ABSTRACT

According to the article, Ubaydullah ibn Ziyad crossed the Amu Darya in 674 after being sent here by the Caliph Muawiyah. In the process of establishing Islamic law and Sharia norms, local conditions and realities were taken into account. He besieged Paikend and took it, and then approached Bukhara. However, one thing is clear: everything that contradicted the Quran, the Sunnah, the principle of monotheism - tawhid, was destroyed as well. As in other countries of the world, Uzbekistan has a growing desire to understand Islam's fundamental values in a spirit of universal moral ideals, in a spirit of openness to non-Muslims, and in a constructive way. In Uzbekistan, where the majority of the population professes Islam, enlightened Islam is organically woven into the fabric of society. Because of historical reasons, Islam has become more than just a religion.

**Keywords:** Kharaj, khokims, samanids, hanifites, ustad, khatib, tawhid, adat, faqihs, ibadat, muamalat, ukubat, urf, amal, kalam, qadis, umrah.

Ubaydullah ibn Ziya was the first person to cross the Amu Darya in 674, according to historical sources. After taking Paikend, he approached Bukhara, and two years later, Said ibn Osman set out on a campaign against Sogd and Bukhara. In this campaign, he captured a lot of booty and prisoners. It is, however, clear from the Arab historian Belazury of the 9th century that the freedom-loving and warlike Bukharans did not want to live in captivity. According to Narshahiy, they entered the palace of Said ibn Osman, attacked him and killed him, after which they committed suicide. Soon after, Kuteiba ibn Muslim became governor of Khorasan. However, he did not go further than Paikend in 706. The next year, he again went to Movaraunnahr and occupied one of the most ancient cities - Romitan, which is near Bukhara. Kuteiba entered Khorezm with a detachment in 712, then Samarkand. Kuteiba fought in Ferghana, Shash and even reached Kashgar. The Arabs also paid special attention to spreading Islam throughout the territory. A policy of providing new converts with a variety of benefits was used to attract the population to Islam[1].





The kharaj tax was exempt from those who converted to Islam according to Islamic law.

As Islam spread, the Arabic language also spread, becoming the language of state offices, science, and literature along with it. In conquered cities, Arab commanders gave great importance to the construction of Islamic mosques. Since the Arabs provided the trade, in particular caravans, with all the conditions for development, the merchants in Movaraunnahr accepted Islam the fastest. Inclusion of Movaraunnahr, along with the rest of Central Asia, into the Caliphate could not help but facilitate the expansion of trade operations.

Movaraunnahr was managed by the governor of the Caliph in Khorasan, while cities and settlements were governed by khokims who were appointed and removed by the governor. Arabs created a management apparatus and subdivisions for regulating order. Sharia law became the main regulator of social relations. Their main duty was to collect taxes and maintain order in the localities.

Under the Samanids (IX-X centuries), the importance of higher Muslim clergy grew. Bukhara, the capital of the Samanids, became one of the most important theological centers in Muslim history. A significant increase in the material well-being of the higher Islamic clergy paralleled the rise of their authority. Since Ismail Samaniy, mosques and other spiritual institutions have gained a significant amount of waqf property.

The Hanafi madhhab was widespread in Central Asia. Hanifites occupied all the highest spiritual positions. In Bukhara, the local clergy were headed by the "ustad" (teacher); later this title was supplanted by the "sheikh ul-Islam". In the Muslim clergy, the position of khatib was second in importance only to the ustad (sheikh ul-Islam) - an official who could deliver khutba (preaching) during Friday prayers.

The history of the peoples of Movaraunnahr began in the 8th century AD, when it was called Turana (the pre-Islamic Turkic name for the region of present-day Uzbekistan, or Turkkistan, the Russian name for the region introduced during the 19th century, or "Sogdiana" - as Alexander the Great called it, and Movaraunnahr is the Arabic name for the region in Central Asia between the Amu Darya and Syr Darya rivers). The current territory of the Republic of Uzbekistan is called Movaraunnahr (translation from Arabic - beyond the river). It is important to note that, historically, the peoples of this ancient center of world civilization developed statehood, law, religion, culture, language, and literature as a means of preserving their identity. In Movaraunnahr, the spirituality of its peoples has never stagnated nor been subjected to excessive normativity. Localism, national isolation, and the principles of traditionalism have never been dominant here.





It was the Great Silk Road that brought not only material objects to Movaraunnahr, but also new ideas and knowledge from the Near and Middle East, including Hejaz and Byzantium. Under the pretext of non-Muslim origin, they were not rejected, not denied, but rather enriched, improved by their ancestors' intellect, uniting with local culture and practice.

During the formation of Islamic law and Sharia norms, local conditions and realities were taken into account. However, one thing is clear: all those things that contradicted the Koran, the Sunnah, and the principle of monotheism - tawhid - were destroyed at the same time. It is natural that Islam did not subjugate all spheres of life equally immediately, and not all spheres were subjugated immediately. The development of Islamic law, Islamic philosophy, and other Islamic principles and requirements took place between the 7th and 12th centuries.

Islamic law of the Hanafi madhhab was used to regulate international, civil, land, family, marriage, inheritance and other legal issues in Movaraunnahr. The same rules were also used to resolve criminal cases and to conduct legal proceedings. As well, Sharia has incorporated a number of local customary laws, namely the traditional establishments of the Movaraunnahr people, known as adat[2].

In Arabic, adat (custom) is a set of rules of conduct adopted by a particular group or acting in a certain area, and is mainly observed out of habit. Movaraunnahr, as well as other East peoples, are owed a great deal to Islam, as it played a major role as a unifier of various cultures, traditions, customs, and promoted the merger and mutual enrichment of peoples, creating a new state-legal environment during that period.

We find that at the end of the 7th century the concept of "Movaraunnahr" was presented to the Arabs as lands lying along the Amu Darya by analyzing such works as "Hudud al-alam", "Kitab al-Masalik val-mamalik" and others. While initially considered part of Khorasan, Movaraunnahr appears to have become increasingly independent from the middle of the 10th century, if not as a part of Khorasan, then as an independent geographical region. The territory of Movaraunnahr already included Bukhara, Samarkand, Neseft, and other nearby regions, as well as Khorezm, Badakhshan, Merv, Uzgen, Khuttal, and others. During the 10th-12th centuries, due to a variety of factors of a political, economic, and cultural nature, Movaraunnahr gradually evolved from a geographical concept to a political and legal one.

The peoples inhabiting a vast territory which was an integral part of the Arab Caliphate made Movaraunnahr a center of political, economic, and spiritual life. In spite of this, Movaraunnahr gradually gained independence, enhancing its scientific, cultural, spiritual, and legal lives intensively.





The contribution of thinkers and faqihs of Movaraunnahr to the development of Islamic culture and Islamic law is invaluable. It was here that scientists like Al-Khorezmiy, Rudakiy, At-Termiziy, Al-Farabiy, Beruniy, Ibn Sino, Al-Marginoniy, Al-Farganiy, Marvaziy, Az-Zamakhshariy, Yassaviy, Kubraviy, Kashgariy, Ad-Dobusiy, As-Sarakhsiy and others enriched secular science, kalam and al-fiqh (jurisprudence) with fundamentally new ideas. As a commentator on the Koran, Abu-l-Kasim Mahmud ibn Umar al-Zamakhshariy deserves to be remembered for his contributions to the history of the East's scientific thought [3]. "Zamakhshariy was an imam in verbal sciences, grammar, and philology, was a talented scientist in various fields," writes the historian and geographer Yakut al-Khamoviy (1179-1229). Zamakhshariy had such great authority in the Muslim world that he was referred to both as Arab and non-Arab's teacher. In search of new knowledge and experience, Az-Zamakhshariy, Al-Farabiy, Al-Farganiy, Al-Beruniy, and other intellectuals of Movaraunnahr travelled to distant cities such as Cairo, Aleppo, Damascus, and Baghdad to study and work, to teach and research. Many outstanding scientists from Movaraunnahr were invited to the prototype of the modern Academy of Sciences at Baghdad's "Baytul-hikma" (House of Wisdom) when al-Ma'mun founded it at the beginning of the 9th century. Mamun's father, the famous Harun ar-Rashid, built the "House of Wisdom," which later became a real research center under al-Mamun. Two centuries after the Baghdad Academy of Sciences was founded under Khorezmshah Mamun, another academy was founded in Gurgench, also known as Mamunov, which was restored by a decree issued by the President of Uzbekistan. In modern Europe, "Baytul-Hikmu" or "Mamun Academy" is customarily referred to as "Baytul-Farganiy" and "Baytul-Khorezmiy", whose first leaders were al-Farganiy and al-Khorezmiy. A great contribution to the development of Islamic culture and law was made by a galaxy of religious philosophers, jurists, reformers, founders of various Sufi orders, such as: Imam al-Bukhariy (his main work, called "Sahih al-Bukhariy", is considered the second book of Sunni Muslims after the Koran), Isa at-Termiziy, Hakim at-Termiziy, Nazhmiddin an-Nasafiy, al-Maturidiy, Yusuf Hamadaniy, Abdukhalik Gijduvany, Burkhonuddin al-Marginoniy, Ahmad Yassawiy, Nazhmiddin Kubro, Suhravardy. Bahouddin Naqshbandiy and others joined this group of famous fuqahs later (XIV century) [4].

After the mass conversion of the population of Movaraunnahr to Islam, Muslims fulfilled pilgrimage obligations to holy places, mainly Mecca. This contributed to the mutual enrichment of the spiritual and legal culture, the formation and development of Islamic law schools in Movaraunnahr. As mentioned above, the Hanifite madhhab







became widespread in the Central Asian region. Its supporters adhered to the following principles:

1. Islam's Shariah (a set of legal norms) consists of cult obligations (ibadat), legal actions (muamalat), and punishments (ukubat).
2. According to the faqihs of Movaraunnahr, Sharia is a set of legal norms, rules and principles of conduct, religious worship, and legal prescriptions.

The sources of Sharia in Movaraunnahr were:

- Quran; - Sunnah; - ijma; - kiyas; - local customs adat, urf, amal.

The decisions of the *cadi* (judicial decisions) were of the following types:

- 1) *al-rai* (inference by analogy);
- 2) *al-istihsan* (in view of the exception, makes a decision);
- 3) *al-istislah* (comparison for the sake of benefit), in which the requirements were stipulated, namely: - the decision should not concern faith; - the decision should not contradict Islam; - the benefit of the decision should be visible[5].

In response to the development of *kalam* (theology) and religious and legal consciousness, a school of *al-fiqh* called "Movaraunnahr" emerged. A number of faqihs played a significant role in its formation, including Imam al-Bukhariy, Burkhonuddin al-Marginoniy, Ibn al-Bazaz, Abu Bakr Muhammad bin Alim, Abu Jafar at-Tahoviy and others.

The regulation of public relations was carried out on the basis of the "ar-rai" norm (conclusion on inner conviction), the use of which was allowed for judges (*qadis*). A feature of the Movaraunnahr school of law was a more humane attitude towards victims of crimes committed, for example, in theft; in the case of this type of crime, the punishment - in the form of cutting off a hand - did not apply to pregnant women and poor Muslims. A second characteristic of this school is the force of law in the works of the prominent faqihs of Movaraunnahr.

In the Arab Caliphate, Movaraunnahr became a major center for political, economic, and spiritual life among its residents. However, Movaraunnahr gradually began to gain more and more independence, enriching all spheres of scientific, cultural, spiritual, and legal life intensively. Movaraunnahr thinkers and faqihs have made a significant contribution to the development of Islamic law and culture. Such great scientists as al-Khorezmiy, Rudakiy, at-Termiziy, al-Farabiy, Beruniy, ibn Sino, al-Marginoniy, al-Farganiy, Marvaziy, az-Zamakhshariy, Yassawi, and Kubraviy, Kashgariy and others enriched secular science, *kalam* and *al-Fiqh* with fundamentally new ideas here[6].

The beginning of the XII century was a time of turmoil in Central Asia. Three large orders appeared - Kubrawiya (in Khorezm), a subsidiary of the Kadiriyya brotherhood





(in Ferghana), and the Turkic community of Yassawiya, formed in Turkestan (southern Kazakhstan) based on the teachings of Yusuf al-Hamadaniy Ahmad Yassawiya. It was a struggle among believers between different Sufi associations - tariqa, sometimes fierce[7].

Consequently, the ideas of enlightened Islam have become organically intertwined with social support in Uzbekistan, where the majority of the population traditionally professes Islam. As a matter of fact, Islam does not simply appear as a religion. For Muslims, it is also a way of life, a way of thinking, a political system, a law, and a civilization. In the eyes of the believers of Islam, this is a unity of thought, purpose, way of life, thinking, balance of labor and property[8]. A fair and moral code is perceived by believers as sayings of the Prophet (SAW): "There is no preference between white and black, between Arabs and non-Arabs, and between Arabs and non-Arabs," and "All people are brothers, they are slaves of one Allah".

At the current stage of Uzbekistan's social and state construction, domestic and foreign experience has been accumulated in the creation of a democratic, legal secular society based on constitutional principles. World civilization is characterized by the Constitution. As a result of the historical development and national mentality of the state, it develops humane legal relations between religion and the state based on its features. "We are the heirs of the great heritage of Islamic culture ... we talk a lot about the fight against religious ignorance, but we do not do everything for this ... in order to convey the true humanistic essence of Islam" - Sh. Mirziyoyev[9].

There is a legal provision in Uzbekistan for a decent life and a free development of a person. All citizens of the republic are equal before the law regardless of their gender, race, nationality, language, religion, social origin, beliefs, or social status, as stated in article 18. According to Article 30, in the country, all state bodies, public associations, including religious ones, are obliged to provide citizens with the opportunity to familiarize themselves with documents, decisions and other materials affecting their rights and interests. Article 31 states: "Freedom of conscience is guaranteed to all. Everyone has the right to practice any religion. The right of citizens to associate is guaranteed in Article 34. It is unacceptable to force religious views upon citizens. Different associations can be formed under this right, including religious associations, trade unions, political parties, and other public organizations. State and public life are governed by a variety of public institutions. In spite of the constitution's declaration that the mosque is separate from the state, religious organizations also participate in implementing state policy to a certain extent. In accordance with Article 56 of the constitution, public organizations include trade unions, political parties, societies of





scientists, women's organizations, veterans and youth organizations, creative unions, and other associations of citizens registered in the prescribed manner.

We outline the prospects for a deeper study of the problem of improving the relationship between the state and the Islamic religion based on the comparative textual analysis of legal acts. An analysis of how many Koranic provisions have been incorporated into the new laws of our country, not only directly through the Koran, Sunnah, hadiths, tafsirs, but also through Uzbek, Arabic, and Russian scientific legal literature, provides interesting results. Religion is an important institution of the spiritual and cultural life of society and plays a crucial role in unifying the nation. Uzbekistan declares itself as a secular state and bases its activities on the separation of religion from state. A relationship between religion and constitutional law is manifested by constitutional guarantees of freedom of conscience, as well as the separation of religion and state.

The Islamic highly moral, legal, spiritual, and cultural values, while retaining their significance, contribute significantly to the development of culture, strengthen statehood, and ensure that society's socio-economic development remains sustainable. Consequently, studying Islam as a religious system of knowledge of the foundations of Sharia - a systematic code of Islamic laws - is an important scientific and practical endeavor. It is especially relevant when considering the development of the legal system of state and social construction during the period of fundamental reforms in all spheres of republican life, the transition to market relations, and the creation of a secular society.

The Center for Islamic Culture of Uzbekistan is being built in Tashkent to deeply reveal the truly humanistic essence and content of religion, President Shavkat Mirziyoyev said. In his speech at a conference aimed at preserving the true content of Islam and ensuring social stability, the President of Uzbekistan Shavkat Mirziyoyev talked about the importance of studying the essence and content of religion, as well as instilling a healthy attitude toward it in young people. According to the head of state, dialogue with the people is not a temporary campaign, as some people think, but an ongoing priority of state policy. It is the intention of the President to establish a Center for Islamic Culture of Uzbekistan in order to study the rich historical, scientific and spiritual heritage of the Uzbek people comprehensively, to make it widely popular among the world community, and, most importantly, to reveal the true humanistic essence and content of Islam. Among the great Islamic scientists, thinkers and poets, artists and calligraphers who have contributed to the development of world culture will be comprehensive information collected by this center. As well as strengthening dialogue with young people, the head of state stressed the importance of raising their





level of knowledge, enlightenment, life, and effective examples and instilling in them a positive attitude towards religion.

In Uzbekistan, as in other parts of the world, there is a growing desire to understand the fundamental values of Islam in the spirit of universal moral ideals, in the spirit of openness of the Islamic world and constructive dialogue with non-Muslims. Therefore, we believe we have a duty to defend the idea of civilized unity and spirituality, as well as religious tolerance, the desire to overcome religious isolation and alienation, and the protection of national dignity and civil rights from persecution, discrimination, and infringement.

The policy of the Uzbek authorities towards Islam has developed more under President Shavkat Mirziyoyev. He took the following measures:

- Since 2017, azan has been allowed in some mosques (including the mosque in Tashkent);
- Minors are allowed to participate in religious ceremonies;
- In 2018, the Uzbek authorities increased the number of permits for pilgrims going on the Hajj. In 2018, 7520 people were allowed to go on Hajj. (Saudi Arabia allocated a quota three times larger). From 1992 to 2016, 5,200 people were allowed to leave Uzbekistan annually;
- Removed restrictions and lowered prices for umrah;
- Liquidation of positions of representatives of the Republican State Security Service of Uzbekistan under the Spiritual Administration of Muslims of Uzbekistan, its structural divisions, mosques;
- In December 2017, President of Uzbekistan Sh. Mirziyoyev granted amnesty to 763 prisoners “for religious reasons”;
- There was a sharp reduction in the number of people on the lists (being on the list imposed restrictions on the individual involved). In 2018, about 18 thousand people had been taken off the lists. Less than a thousand remained;
- A center for Islamic civilization and an international research center was created. As a result, under President Sh. Mirziyoyev, the number of mosques increased, while religious prisoners decreased[10]. Imam Bukhariy in Samarkand, Tashkent Islamic Academy. From 13.5 thousand to 7 thousand people were imprisoned in Uzbekistan for extremist and illegal religious activities in 2016-2017. The number of mosques increased from 2042 to 2042, the highest number since 1998[11]. In 2018, there was one imam for every 8,000 Uzbek residents, thanks to the Spiritual Administration of Muslims of Uzbekistan's online Islamic education programs.





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