



## ISLAMIC LEGISLATION ON THE SOCIAL ESSENCE OF TAXES

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### ABSTRACT

In the article, it is revealed that the Sharia tax system summarizes Islamic legislation regarding forms, methods, and amounts of tax collection from both Muslims and non-Muslims. The study of the problems of the Muslim legal system, one of the independent world legal systems, is relevant and timely, both from a scientific and theoretical perspective and from a practical perspective.

**Keywords:** Faqihs, khums, al-fitra, sadaka, sayyid, orphan sayyid, seyid, mukhtasibs, shari'ah, jiziya, ushr, al-Fiqh, mahr, waqf, kharaj.

From the moment Uzbekistan gained independence and embarked on an independent path of economic reforms, the government of the republic faced a difficult task - to create an essentially new tax system, since the budgeting mechanism inherited from the Soviet administrative-command method of managing the economy did not correspond to the requirements of socio-economic transformations, and simply did not meet the interests of the country[1].

Currently, there is a deep reassessment of the history of law in the Republic of Uzbekistan in connection with the formation of an independent democratic state and the formation of civil society.

Islamic faqihs consider the tax system as a measure of a fair settlement, as a way of distributing material wealth among members of the Muslim community. The main Muslim taxes - khums, zakat, zakat al-fitra, sadaka - are interpreted by them as alms levied from the wealthy in favor of the poor.

Khums - property taxation (1/5 of income). Collected from Muslims and non-Muslims, this tax is divided into two parts according to Sharia law. One part is intended for transfer to poor sayyids, orphan sayyids and seyids who are in need during the journey.

The other part of the hums is for the clergy.

As a rule, part of the khums is given to the poor seid - the descendants of the daughters of the Prophet. However, khums can also be given to a wealthy seid who is experiencing financial difficulties in a foreign city. Meanwhile, the Shia do not give



khums to a sayid unless he is a sayyid[2]. The Sunnis act in the same way with respect to the Seyids - non-Sunnis.

If a woman - a seida is married, she is not entitled to alms khums. At the same time, if she needs funds to cover the costs of charitable deeds and is not able to do this at the expense of her budget, Sharia allows her alms. Muslim legislation allows the transfer of khums - alms to a non-seid, if the latter contains a seid.

The same Sharia law has created favorable conditions for the seid dervishes, many of whom live in the cities of the countries of the Near and Middle East. They can be found in market squares and mosques, in cemeteries and on the streets collecting alms. Meanwhile, in the early Middle Ages, overseers of Sharia courts - mukhtasibs noted that often dervishes - charlatans pretend to be seids in order to receive alms "khums". That is why Muslim law requires two pious Muslims to confirm that the person who takes alms "khums" is indeed a seid. Obviously, this task is very difficult, especially in the current conditions. However, the Shari'ah allows the giving of alms "khums" to a person who is called a seid for piety.

After collecting the khums tax, a situation often arises when in the area where the khums tax is collected, there are no seids who have the right to receive alms. In such cases, Sharia judges allow the collected tax to be taken to another city where there are seids. To this end, Sharia judges appoint a special person - a guarantor, as a rule, from among the clergy. And in case of loss of this hums, it is not compensated by anyone. Imam Abu Yusuf in his book "Kitab al-Kharaj" writes: "The first of the jurists of Abu Khalifa used to say: "One share (of the booty) for a man and one share for a horse; I don't favor animals over a Muslim man."[3].

At the same time, he refers to what he reminded us of from the words of Zakarya ben al-Hadith, from the words of al-Mundhir ben Abi Khamisa al-Hamdani, namely, that one of the tax collectors, Umar bin al-Khattab, in one of the areas of Sirii (when dividing the booty) gave one share to the horse and one share to the man, this decision was appealed to Umar, but Umar approved this and recognized it as lawful. So Imam Abu Khalifa adhered to this hadith and gave one share to a horse and one share to a man.

I must say that not every tax in the amount of  $1/5$  was considered khums. So, the Taglibid Christians had the privilege of paying not the humiliating jiziya, but the ushr, but in a double amount, and this tax was called not "khums", but a double tithe.

It is interesting to note that during the lifetime of the Prophet, the purpose of khums was completely different. The well-known Arabic history of the socio-economic problems of the early Caliphate, Yahya ibn Adam, in the book "Kitab al-Kharaj" wrote that "during the life of the Messenger of Allah ... khums was divided into five parts:



one share for Allah and his messenger, one share for relatives, three shares - to the poor, orphans, travelers ".

After the departure of the messenger of the Almighty and his closest relatives to the world, a different tax, "khums", was considered to be divided between the last three categories: the poor, orphans, travelers. In view of the fact that the legislation of Islam was systematized only two centuries after the emergence of Islam, the share of the Messenger of Allah and his relatives does not appear in Sharia.

Caliphs Abu Bakr, Umar and Uthman divided one fifth of the booty into three shares, so that the shares of the Messenger of Allah and his relatives disappeared, and it was divided among the other three categories, and Ali bin Abu Talib began to divide it in the same order as Abu Bakr, Umar and Usman.

Muchira ben Mixam ad-Dabbi (a blind transmitter of hadith (died in 754 AD) said that Ibrahim is an expert in hadith and al-Fiqh (the forerunner of Imam Abu Hanif regarding the words of Allah Almighty: "Allah owns a fifth of captured in the war for the faith" (Koran, Surah "Prey", verse 42), said: "All things belong to Allah in general, and here this word serves simply as the introductory word of the sentence." [4].

Abu Hanifa and most of the faqihs believed that the caliph should distribute (a fifth of the spoils) in the same way as Abu Bakr, Umar, Usman and Ali did. So, as indicated, the spoils of war are distributed, that is, everything that the Muslims take away from the infidel troops, those belongings, weapons and horses, etc., that they take with them.

In subsequent times - during the heyday of the Caliphate - the "khums" tax already appears in the following form:

- share of booty (ghanima) deducted at the disposal of the caliph or heads of state;
- tax from the extracted products of the sea (pearls. Ambergris, precious stones);
- deduction of a share of the found treasure;
- duty to the state when a Muslim sells land to a non-Muslim.

Khums is not subject to inherited property and mahr (dowry). However, Sharia makes exceptions here. The heir must pay khums if he is a distant relative of the testator (of course, provided that the inheritance exceeds the annual expense of the heir).

The heirs are obliged to pay khums even if the former owner of the property did not have time to do this. In the case of the transfer of ownership (horticultural or agricultural holdings, the income from which exceeds the annual expense of the heir) to a certain person or organization as a waqf, for example, or for rent, or to their children, khums is also paid.



If a poor Muslim receives property in the form of alms, he does not pay the hums tax, even if the wealth he receives greatly exceeds his annual expenditure. But if this poor man realizes the alms he has received and from this he receives additional income, from the latter he must pay khums.

As a rule, local Shariah judges are well aware of the degree of wealth of people in their settlements and city blocks. And they try to ensure that their subjects - both Muslims and dhimmis - do not evade paying taxes[5].

Basically, Sharia and judges hope that Muslims themselves will not evade the khums tax. If there is a suspicion that someone is hiding their income in order not to pay khums, the Sharia judge is authorized to check this. For example, if khums is not paid from a certain amount of money, and some property is purchased with it, a Muslim judge withholds 1/5 of the purchased items. If he forbids such a transaction between the buyer and the seller, he also receives hums from the funds intended for the purchase.

If the hums tax is not paid on the donated property, one fifth of it is not the property of the person who received the gift. From the property received by a Muslim from an infidel or from a person whom he does not trust in matters of hums, this tax is not obligatory to pay.

Sharia judges are watching carefully so that no one evades the payment of the khums tax. Merchants, artisans, specialists of various professions - all engaged in any business, if their income exceeds the annual expense, they pay hums. The hums tax is also levied on property acquired by accident.

Islamic law provides for cases where property and income are not subject to the hums tax:

1. If a Muslim spends or transfers part of his funds to another person as a reward (mufaqtat) in fulfillment of a religious vow or expiated guilt, and these actions do not pursue selfish goals, then he can include these funds in his annual expenditure and not pay tit from this amount of hums.
2. If from the middle of the year there is a need for additional expenses (for food, clothes, an apartment, for property for marriage, for the acquisition of a dowry for a daughter, for pilgrimage, etc.) and if these expenses are not related to waste, tax on income hums is not charged.
3. The hums tax, as stated above, is not levied on funds earmarked for a daughter's dowry. This is the case if a person gradually buys a dowry for his daughter. But if he includes the costs associated with the acquisition of a dowry against the expenses of the next year, then he is obliged to pay khums.
4. Khums funds intended for the pilgrimage to Mecca are not subject to taxation.



5. If a Muslim has made a purchase of food for the whole year, and at the end of the year there is a surplus of food, he is obliged to pay hums for it in kind or in money. This takes into account the value of the products at the time the tax was paid. As an exception, Islamic law allows the purchase of household utensils and women's jewelry with funds or profits on which the hums tax has not been paid.

However, it does not allow covering the losses of the current year at the expense of the profits of the next year. But if at the beginning of the year there were no incomes and savings were used up, and at the end of the year incomes appeared, Sharia allows them to cover losses, i.e. the amount spent from savings without paying hums.

6. Lime, alabaster, clay, red ocher, etc. according to Sharia are not considered as mine minerals and are not subject to taxation.

7. According to Sharia law, children are not taxpayers, but if they are divers or extract jewelry from mines, or find a treasure, then Sharia requires that their parents and guardians pay the hums tax.

8. According to Sharia law, if the capital that makes a profit belongs to a minor, no tax is levied on him until he reaches the age of majority.

It should be noted in particular the fact that not every tax in the amount of one-fifth was considered khums. Thus, Taglibite Christians had the privilege of paying not jizya, but ushr, but in double size, and this tax was called not khums, but double tithe[6].

Jizya (jizya) - a poll tax from the Gentiles in Muslim states, was considered by jurists as a ransom and preservation of life during the conquest. Jizya was subject to all men who had reached maturity, except for decrepit old men, invalids and slaves; before the beginning of the 8th century. monks were also exempted from it.

The term jizya is found in the Qur'an:

"Fight those who do not believe in Allah and the Last Day, who do not forbid what Allah and His Messenger forbade, and who do not obey the religion of truth - from those to whom the scripture was sent down, until they give ransom with their own hand being humiliated" (Quran, sura "Repentance", verse 29).

In the information about jizya dating back to the 7th century, jizya is constantly mixed with kharaj, since the entire tax from the conquered region was considered as a ransom for the Gentiles, moreover, at this stage, tax collection in most cases was carried out by the local administration using su existing pre-Muslim fiscal practice, and she had no reason to allocate jizya as a separate tax.

However, it is possible that in some areas (for example, in Iraq), where the poll tax existed before, jizya began to be levied from the first years after the conquest[7].

Apparently, the allocation of jizya as a special tax with individual responsibility ended in the first quarter of the 8th century and was accompanied by a deterioration in the



situation of the taxable population, i.e. the total amount of taxes in taxable districts increased and the help of mutual responsibility disappeared. One of the measures against tax evasion was the use of lead tax receipt tags worn around the neck.

In relation to the "people of the book" - dhimmis, Islamic law allows religious tolerance, but only if they obey, recognize themselves as subjects of a Muslim state and undertake to pay taxes for non-believers - jizya.

The Prophet Muhammad forbade his followers to oppress the dhimmis, in particular, to force them to pay land tax (kharaj) and poll tax (jizya), if it was beyond their strength.

Moreover, he announced that on the Day of Judgment he will be an enemy to those Muslims who inflict injustice on a non-believer who has concluded a treaty of protection with Muslims. Righteous caliphs and subsequent just rulers followed the Prophet's course of action towards the dhimmis.

The duty of the Islamic State in relation to them was to ensure their safety, to give them the right to perform religious rites. As if in return for the security provided to them within the state and their protection from external enemies, they had to pay the jizya tax, and only those of them who were able to do this.

Abu Yusuf points out that the poll tax (jizya) must be paid by all the dhimmis who live in Swad and in other places, such as the population of Hira and other cities, namely: Jews, Christians, Zoroastrians (Majus), Sabeans (small ethno-confessional communities that have survived in Iraq and Syria since antiquity and the Babylonian kingdom) and the Samaritans (descendants of immigrants from Babylon to Samaria, one of the regions of Palestine, who converted to Judaism), but the Christians from the Banu Taghlib and population of Najran.

The poll tax is charged only from a man, but it is not charged from women and children, and from wealthy people it is charged at a rate of 48 dirhams, from people of average income at a rate of 24 dirhams, and from a poor land cop who feeds on the work of his own hands at a rate of 12 dirhams.

The poll tax is collected from them annually and it is also accepted from them in the form of movables other than money, such as beasts of burden, utensils, and the like, and these objects are accepted from them at x value, but are not taken into account, give crushed water, pigs and wine.

Caliph Ali ibn Abu Talib - the fourth of the righteous caliphs - accepted needles (large needles for sewing leather and furs) from the dhimmis in payment of the poll tax and counted it to them at the expense of the poll tax.

But they did not collect a poll tax either from a beggar living on alms, or from a blind man, or having a craft or work, or from a chronically ill living on alms, or from a



paralytic. However, if the paralytic and the chronically ill, as well as the blind, have material wealth, then a soul tax is charged from them.

In the same way, a poll tax is collected from hermits in cells, if they have the means and prosperity, even if they transfer their property to another person, so that he spends it on supporting the monasteries and the monks living in them and other guests.

In this case, the payment of the poll tax for them is assigned to the abbot of the monastery. But if the abbot of the monastery, in whose hands this property should be, begins to refuse and swear by Allah and something else than people like him from his fellow believers swear that he has nothing of this property, then they leave him alone and nothing he is not charged.

A poll tax is not charged from a Muslim, unless he converted to Islam after the expiration of the tax year, for if he converted to Islam after the expiration of the tax year, the payment of the poll tax is obligatory for him, since it has already become an integral part of that kharaj, which is the property of all musulman, and she is charged from him.

But if a person converted to Islam a day or two days, a month or two months, or more or less before the expiration of the tax year, then no poll tax is charged from him, since he converted to Islam before the expiration of the year.

If he is obliged to pay the poll tax, but dies before it is taken from him, or after part of it has already been paid, and part is still his, then his heirs cannot be required to pay it and cannot be withheld from the property left after the deceased, for this is not a debt obligation lying on him.

Similarly, if a person converts to Islam without paying part of the poll tax due from him, this unpaid balance is not collected from him. The poll tax is not collected from an elderly old man who cannot work and does not have any means, and likewise it is not collected from an insane person.

Zakat is not charged on Dhimmi cattle, camels, Dhimmi cattle, or sheep, and this applies equally to men and women.

None of the dhimmis may be beaten in order to compel him to pay the poll tax, they may not be forced to stand in the sun for this purpose, nor subjected to other tortures, and no objects of disgust should be hung on them. On the contrary, they should be treated with indulgence, but they can be put in prison until they pay what is due to them. In addition, they cannot be released from the dungeon until the poll tax due from them has been received in full.



It should be emphasized that those who are entrusted with collecting the poll tax do not have the right to exempt any of the Christians, Jews, Mafiuses, Sabeans Samaritans from it. He must make no allowances for any of them in respect of any of her shares. In the same way, he has no right to exempt one person from the poll tax, and collect it from another. This, of course, is unacceptable, because the inviolability of their lives and property is due precisely to the payment of poll tax, which is equivalent to kharaj. As for the collection of taxes in large cities, in them the imam entrusts this matter to a decent person, on whose faith and honesty one can rely. The imam gives assistants to this person, who collect taxes from Jews, Christians, Majus, Sabeans and Samaritans according to the following categories:

- 1) 48 dirhams from an independent person - from a money changer, a merchant in materials, from an estate owner, a merchant, an attending physician;
- 2) if any of them has a trade or trade, then the representatives of each trade and trade are charged in accordance with its profitability 48 dirhams from a wealthy person and 24 dirhams from a person of average income: whose trade withstands a taxation of 40 dirhams, With  
48 shall be levied on him, whose trade can withstand a taxation of only 24 dirhams, 24 shall be levied on him;
- 3) 12 dirhams is charged for those who work with their own hands, such as a tailor, dyer, carpenter, chebotary and the like.

When these taxes are collected in the hands of those who are appointed to collect them, they transfer them to the state treasury.

Authorized persons must strictly monitor the number of people in the settlement. The elder of the village may say that there are 500 people living in the area, and there are actually 1000 people living there, as a result there is a large leak of the poll tax.

Of course, this is unacceptable, given the damage it entails to the Kharaj. In addition, when the headman begins to collect tax from those dhimmi that are in his possession, someone may have less than 12 dirhams of tax, and by law the tax cannot be less than this amount.

Moreover, among such taxed persons there may be wealthy people from whom it is necessary to charge 48 dirhams.

Abu Yusuf in his book Al-Kharaj reports that Khalid ibn Al-Walid made a face agreement with the people of Hira in Iraq after he defeated them. This treaty, among other things, stated that if any old man from among them became so weak that he could not work, or some disaster befell him, or he became poor, being previously rich, and his fellow believers began to give him alms, then the obligation to pay jizya is removed from him and he is allocated funds from the treasury of Muslims sufficient



for the maintenance of himself and his children living both in the land of Islam and beyond its borders [8].

In conclusion, we can say that the Sharia tax system summarizes the Islamic legislation on the forms, methods and amounts of tax collection from both Muslims and non-Muslims.

In modern conditions, the study of the problems of the Muslim legal system, one of the independent world legal systems, is relevant and timely both from the point of view of scientific and theoretical, and from the point of view of its practical significance [9].

The study is also necessary in order to understand the tax system of individual Muslim countries at the present stage (where Sharia is the basis of legislation). The most important manifestation of the processes of economic modernization taking place at the end of the 20th - beginning of the 21st centuries is globalization, i.e. objective growth of interdependence in the modern world. The movement or even redistribution of all information, financial flows, new infrastructure systems (for example, oil and gas pipelines, etc.), management mechanisms - does not recognize national borders, and these borders, or rather, the state of national economies, only affect the speed of this movement.

Most of the world's countries have moved to market relations using recipes and actually being under the supervision of international financial institutions (such as the IMF and the World Bank, controlled by the United States). The most striking manifestation of the ideas and processes of globalization were economic processes and the conduct of economic policy in the world in 1997-2005. The "Economic Forum" in Davos in 1999 was held under the slogan "Managing Globalization".

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