

## ANALYSIS OF THE TERMINOLOGY OF SHARIA AND FIQH JUDGMENTS IN KHIVA KHANATE YARLYKS (XIX)

**Sirojiddinova Maftuna Bakhodirovna\***

\*Free Applicant,  
International Islamic Academy of Uzbekistan,  
Tashkent, UZBEKISTAN  
Email id: m.sirojiddinova@gmail.com

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### ABSTRACT

*Documents in the archive of the Khiva khanate – yarlyks, have a great importance in the comprehensive study of information about the history of the khanate. Today, the study of official documents of this type are one of the urgent tasks of researchers. Moreover, these documents belonging to the khan's chancellery not only study the political, socio-economic situation, culture and history of the country, but also help in researching their important aspects that are known in general. This presented article's aim is to provide an analysis of the terminology of sharia and fiqh judgements found in the khan's yarlyks belonging to the series of Khiva documents.*

**KEYWORDS:** *Khiva Khanate, Label Documents (Yarlyks), Legislative Act, Sharia, Fiqh, Administrative System.*

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### INTRODUCTION

The khanate of Khiva is one of the ancient lands that take an important place in the history of Uzbek statehood. Rich history and contribution to the development of the world civilization, especially the traditions of statehood, the study of the legal system through official documents is one of the current issues in the research of the history of the region today. Such large collections of historical documents related to the history of the khiva Khanate are stored in the “Archive Documents of the Khiva khanate” fund kept in the National Archives of the Republic of Uzbekistan, as well as in the Academy of Sciences of the Republic of Uzbekistan, the Institute of Oriental Studies named after Abu Raikhan Beruni, Khiva Ichankala Museum. Some of them are yarlyks, which have important academic value as unique examples of Muslim diplomacy.

Acts of this type in Central Asia, according to the research scientist O.D.Chekhovich's notes, more than 150 thousand [19, p. 75]. Khanate's documents, in particular, yarlyks, have been involved in various studies in the context of legislation, regulation of social life, and problems of state administration. In this regard, it is important to mention the works of A.L.Kun [8], P.P.Ivanov [5], Yu.E.Bregel [3], A.Shaikhova [18], W.Wood [22], O.Jalilov [4], E.E.Karimov, U.Abdurasulov [7], N.Toshev [12]. However, the sharia and fiqh judgements of the Khiva khanate yarlyks and the characteristics of the terms mentioned in them have not been studied as a special research object. In this article, we focused on studying the terminology of sharia and fiqh judgements recorded in Khiva yarlyks.

In muslim countries, human rights are based on Islamic religious rights. Citizens exercised their rights based on Islamic law, particularly the Holy Qur'an. It is worth mentioning that changes in the country's administration and political processes did not have a negative impact on the observance of the basis of Islam in the territory of the khanate, but representatives of each dynasty paid great attention to religious leaders and religious processes in the country. In this regard, according to Russian scientist I.V.Pogorelsky, "all legal relations in the khanate were formed on the basis of muslim law, Sharia"[10, p. 31]. In the form of a legal manual, the work "Al-Hidaya" created by Imam Burkhaniddin Abul Hasan Ali Ibn Abu Bakr Ibn Abduljalil Al-Fargani Al-Marginani, a famous manual of Hanafi fiqh in the Islamic world, was widely used as the main legal source after the Holy Qur'an during the Khiva khanate [11]. In particular, this work served as a program of muslim jurists and judicial offices until 1928.

People of Central Asia have been documenting some of their official activities based on the rules of Islamic law since the time when the traditions of Islam came into their lives and took a local form [2, p. 186]. At this point, in the analysis of the yarlyks, we found it necessary to give brief information about the terms and expressions given to religious bodies.

Although the khanate of Khiva is a muslim country, the state administration was not conducted under absolute religious leadership, but by Shaykhulislam in accordance with the method of implementation of sharia norms and control of their implementation. As in other countries of Central Asia, the khanate judicial system had the authority to register various civil acts of the population, consider and resolve various disputes based on Sharia, and make appropriate decisions on the complaints of the population - it was managed by judges [17, p. 60]. They were appointed by the khan with a decree (supreme decree) based on the recommendation of the Qazikalon (Supreme judge) through an examination from among highly qualified persons with deep fiqh knowledge [6, p. 54] and dismissed.

As proof of this, it is appropriate to cite the yarlyk (yorlig'-i humoyun-i aliishan) issued by Khan of Khiva Muhammad Rahim Khan II to appoint Domullo Muhammad Murad as a judge in the city of Khazorasp in 1287/1870-1871 [13]. Residents of this region are required to apply to the "court of judges" on Sharia' issues and strictly follow the decisions of the appointed judge. In this place, a number of tasks assigned to the qazi(judge) are given, and along with hearing claims, it is determined to prepare registers and documents (sukuk and sijillot), distribution of inheritance (tarika), preservation of public property and resolution of other court cases (murofa'a).

The obligations and powers of the court were clear. It was the responsibility of the population to obey the judge and refer to Sharia issues. For example, in the yarlyk given by Muhammad Rahim Khan II in 1290/1873 to the city of Tashkhovuz to appoint Domullo Ismail as a judge instead of Domullo Abdulkadir and Mulla Babajon [14], the judge told the residents "... let the people understand the commandments... let them consider it their duty to act..." ("...Amlarin amr namilarin naml anglasunlar...yorlig'I oliy mazmunig'a amal qilmoqni o'zlarig'a lozim bilsunlar...") sentences can be a proof of these ideas.

In the formalization of this yarlyk, terms related to Islamic law are found, such as: *murofa'a*, *strict sukuk and sijillot kitabati*, *tarikot*, *aytom amvoli muhafazati*... In today's language, Islamic *sijil* documents can be called documentary studies, that is, a field close to the science of diplomacy. *Sijil* (*sijillot*) – register, record book, registration, includes the documents of trade,

marriage, slavery, rent, interstate relations, endowment, and iqto properties. This source is one of the most important sources in Islamic jurisprudence.

*Sukuk* refers to a set of documents related to formalization of large-scale real estates, gifts of the Sultan, endowment lands, production facilities. The origin of *sukuk* dates back to the VII-XIII centuries of the Islamic era. In these times, *sukuk* was used for the legal formalization of documents for the exchange of money and the transfer of obligations based on a contract drawn up in accordance with Islamic sharia. Some sources have information that the first *sukuk* document was drawn up in the city of Damascus in the VII<sup>th</sup> century in the Umayyad mosque, the largest mosque in Syria [21, p. 105]. In this case, *sakk* (*sukuk*-plural form) is used to express any document, mainly meaning financial obligations arising from trade and commercial relations and understood formalizing them as a legal act [20, p. 79]. Correctness of this process is confirmed by the words of the Holy Qur'an, verse 282 of Surah Baqara from a religious point of view.

At the same time, it can be seen that the obligation to distribute the inheritance to the judges is also defined in the *yarlyks*. Inherited property in sharia rights are called “*tariqah*” in the science of inheritance, that is, what is left for the heirs. The science of inheritance is defined by scholars as follows: “*Tariqa* is the property and shariah rights left by the bequeather”. There are Quranic verses and many hadiths about the virtue of this science [1, p. 164]. Allah says: “Men have a share in what parents and relatives leave behind. Women also have a share in what is left by their parents and relatives. Let it be little, let it be much - it is a measured portion” (Sura Nisa, verse 7) [9, p. 490]. In the Khiva inscriptions, *qazis* are also tasked with religiously correct distribution of inheritance. Therefore, human rights are guaranteed by a sacred source, and *qazis* are called upon to make the right judgment in this process. The expression of this can be seen in the fact that *qazis* are given the authority to conduct arbitration proceedings.

The person who supervised the judges and courthouses in the capital of the khanate and the centers of the regions, was the supreme judge – *Qazikalon*. He was appointed by the khan and he supervised the work of all judges in the state. The chairpersons were appointed by the supreme ruler on the recommendation of the *Qazikalon* in each large city and village. In the National Archives of Uzbekistan, Khiva Khanate Chancellery section, dated 1326/1908, the *yarlyk* issued by Khiva Khan Sayyid Asfandiyor Bahadur Khan to appoint Domullo Eshon Mahsum as the *rais* (chairman) of the city of Urganch [15] among a number of obligations to the person appointed to the position of *rais* where: “...*hilofi shari qilg'onlarg'a tazir urub... shariat ahkomig'a qiyomi tamom kurguzsunlar...*” is expressed as a sentence. From the meaning of this sentence, it can be seen that the *rais* is given the authority to apply punishment measures to persons who do not obey their judgments in the performance of their duties. This phrase is expressed in the *yarlyk* by the term “*tazir*”, which is defined in sharia and is present in Islamic law. Also, it is a high *yarlyk* (*yarlig-i a'li*) issued by Khiva Khan Muhammad Rahim Khan II 1285/1868 to appoint Domullo Eshon Khoja to the position of judge and *rais* instead of Sayed Nasir-Khoja and Mulla Ma'sum Khoja, kept in the Institute of Oriental studies of Academy of Science of the Republic of Uzbekistan manuscript repository under inventory number №46 [16]. The people are instructed to refer to and obey the sharia court, knowing that this appointee is the final judge of their decisions.

*Tazir* is a type of punishment for public disorder (disobedience to authorities, hooliganism, petty fraud, petty fraud, etc.). It is administered either according to the court verdict or according to the

decision of the ruler or the head of the mirshabs – muhtasib (policemen). Depending on the severity of the crime and the identity of the guilty body, public punishment, a warning from a judge or ruler, a conversation calling for order, and others may be used as a measure of influence.

The rais performed the implementation of moral standards according to sharia. They worked in partnership with qazi. Due to the fact that the rais worked in close cooperation with the qazis, one can find terms such as “qazi-rais” and “mufti-rais” in the sources. At this point, we can see that a number of persons were appointed to the position of qazi-rais in the yarlyks of the khans of Khiva.

From the contents of the yarlyks analyzed above, it can be concluded that, firstly, the khans issued yarlyks based on the method of Islamic law and flat beliefs within their authority. Secondly, the yarlyks are the legal norms of the country’s legislation and legal system: property, inheritance rights; citizenship (raiyat) right; administrative law; criminal and penal rights; religious institution and personal belief (school, madrasa, mosque, foundation ownership, legal relations with other religious communities); served as a set of legal laws related to the military organization system.

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