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THE FORMATION AND DEVELOPMENT OF THE JUDICIAL SYSTEM IN THE TURKESTAN REGION: A HISTORICAL AND LEGAL ANALYSIS

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Abstract
This article provides a historical and legal analysis of the formation and development of the judicial system in the Turkestan Region. It examines the judicial policy of the Russian Empire, the 1886 Statute on the Administration of Turkestan, qadi and biy courts, imperial judicial institutions, and mechanisms of administrative control. Based on national and foreign scholarship, the article analyzes legal dualism, the preservation of local legal traditions, and their transformation under colonial governance.

Keywords: Turkestan Region, judicial system, qadi courts, biy courts, people's court, Russian Empire, legal dualism, sharia, adat, colonial administration.

Introduction

The issue of the formation and development of the judicial system in the Turkestan Region is of particular importance in the study of the legal history of Uzbekistan, the history of statehood, and legal relations of the colonial period. This is because the judicial system is not merely an institution for the application of law in any system of state governance, but also an important criterion that

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reflects the relationship between authority and society, the legal status of the individual, and the essence of the existing political order.

After the Turkestan Region was incorporated into the Russian Empire, two different legal environments emerged in this territory. On the one hand, judicial institutions based on imperial legislation were introduced step by step; on the other hand, traditional qadi and biy courts were preserved for the local population. In this respect, the judicial system of Turkestan appears not as the result of an ordinary judicial and legal reform, but as a complex historical and legal process in which colonial administration, local legal traditions, and imperial administrative policy intersected.

The relevance of the topic also lies in the fact that two main approaches can be observed in scholarly debates concerning the judicial system of Turkestan. According to the first approach, the Russian Empire pursued a policy of "caution" and "flexibility" by preserving local legal institutions. The second approach emphasizes that such preservation was only external in appearance, while in practice qadi and biy courts were placed under administrative control. This article does not limit itself to opposing these two approaches, but analyzes the Turkestan judicial system as a legal model in which the processes of "preservation" and "subordination" occurred simultaneously.

The purpose of the study is to analyze the formation and development of the judicial system in the Turkestan Region from a historical and legal point of view, and to reveal its legal foundations, institutional structure, and the relations between local courts and imperial courts.

The article uses historical-legal, comparative-legal, institutional, and source-study methods of analysis. Through the historical-legal method, the gradual formation of the Turkestan judicial system was studied. The comparative approach made it possible to compare the legal status of imperial courts, qadi courts, and biy courts. Institutional analysis served to reveal the place of judicial bodies in the system of colonial administration.

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The source base of the study consists of the 1886 "Statute on the Administration of the Turkestan Region," the studies of national scholars N. A. Abdurakhimova, F. Ergashev, N. Mirzaev, Sh. A. Ishanova, N. S. Zaynobiddinov, I. I. Bekmirzaev, and U. A. Sultonov, as well as the works of foreign scholars D. Brower, A. Morrison, P. Sartori, A. Khalid, J. Sahadeo, and R. Garipova.

In studies concerning the judicial system of the Turkestan Region, scholarly approaches differ by period. During the Soviet period, this issue was covered mainly on the basis of a class-based approach, that is, from the point of view of the opposition between tsarist colonialism and local feudal relations. After the years of independence, a more objective approach took shape in studies based on legal sources, archival documents, and qadi documents.

In national historiography, N. Abdurakhimova and F. Ergashev assess the courts, police, and administrative bodies in Turkestan as punitive and supervisory instruments of colonial power. According to them, in the late nineteenth and early twentieth centuries, along with the system of administrative and state institutions in Turkestan, the judicial system also underwent serious changes, and this process was directly connected with the 1886 Statute.[1]

In N. Mirzaev's studies, the activity of qadi courts in Turkestan is examined not only as a result of colonial policy, but also from the point of view of the continuity of local legal traditions. Doctor of Philosophy (PhD) in Historical Sciences Qahramon Karimov indicated the history of the activity of people's judges, that is, qadis, and the legalization of legal norms in Turkestan in the late nineteenth and early twentieth centuries as a separate research objective.[2] This approach shows that qadi courts should be viewed not only as an auxiliary link of the colonial administration, but also as an institution that responded to the internal legal needs of society.

[1] Abdurakhimova N. A., Ergashev F. The Tsarist Colonial System in Turkestan. – Tashkent: Akademiya, 2002. The work analyzes the serious changes that occurred in administrative and state institutions, including the judicial system, in Turkestan in the late nineteenth and early twentieth centuries in connection with the 1886 Statute.

[2] Karimov Q. S. From the History of the Activity of People's Judges (Qadis) and the Realization of Legal Norms in Turkestan (late nineteenth – early twentieth centuries): abstract of dissertation for the degree of Doctor of Philosophy (PhD) in Historical Sciences. – Fergana, 2022.

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Researchers such as Sh. A. Ishanova, N. S. Zaynobiddinov, I. I. Bekmirzaev, and U. A. Sultonov have analyzed qadi courts, sharia norms, qadi documents, and waqf relations. In particular, when studying the development of the judicial system in Turkestan in the late nineteenth and early twentieth centuries, N. S. Zaynobiddinov connects the purpose of reforming traditional qadi offices with the interests of the colonial administration.[3] Thus, in the debate among national scholars, two aspects appear at the same time: the colonial nature of the judicial system and the stability of local legal traditions.

In foreign historiography, D. Brower connects Russian rule in Turkestan with authoritarian administration, Russian national interests, and the ideas of "civil reform" influenced by the reforms of Alexander II.[4]

A. Morrison, in turn, evaluates the Russian administration not as an absolutely powerful force, but as an administrative system with limited capabilities due to a lack of personnel, financial resources, and local knowledge.[5] This approach helps to understand the judicial system of Turkestan not only as imperial policy imposed from above, but also as an administrative practice compelled to adapt to local conditions.

P. Sartori is one of the scholars who brought about an important turn in the study of Islamic courts and qadi activity in Turkestan. In his view, the Russian Empire did not completely abolish qadi courts, but redefined their jurisdiction, procedure, and legal status in a form consistent with state control.[6] A. Khalid, for his part, emphasizes that the colonial period in Turkestan brought the local Muslim society into a field of new intellectual, legal, and cultural debates.[7] R. Garipova, in turn, shows that approaches in recent historiography based on such binaries as "rupture

[3] Analytical information on the works of Tillaboev S. B., Ishanova Sh. A., Zaynobiddinov N. S., Sultonov U. A., and Bekmirzaev I. I.: abstract materials of the International Islamic Academy of Uzbekistan.

[4] Brower D. Turkestan and the Fate of the Russian Empire. – London; New York: Routledge, 2003. The author assesses Russian rule in Turkestan as a combination of authoritarian administration, Russian national interests, and ideas of civil reform.

[5] Morrison A. S. Russian Rule in Samarkand 1868–1910: A Comparison with British India. – Oxford: Oxford University Press, 2008. The author emphasizes that the Russian administration in Turkestan had limited capabilities due to a lack of personnel, finances, and local knowledge.

[6] Sartori P. An Overview of Tsarist Policy on Islamic Courts in Turkestan: Its Genealogy and its Effects // Cahiers d'Asie Centrale. – 2009. – No. 17/18. – P. 477–507; Sartori P. Visions of Justice: Shariʿa and Cultural Change in Russian Central Asia. – Leiden; Boston: Brill, 2016.

[7] Khalid A. The Politics of Muslim Cultural Reform: Jadidism in Central Asia. – Berkeley: University of California Press, 1998/1999.

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or continuity" and "cooperation or isolation" cannot fully reveal the complexity of Turkestan's legal history.[8]

On this basis, it may be said that the main issue in debates concerning the judicial system of Turkestan is to assess this system not as a "preserved tradition" or an "introduced imperial court," but as a hybrid legal model that arose through the interaction of both factors.

Speaking of the legal foundations and institutional formation of the judicial system, after the establishment of the Turkestan Governor-Generalship, the administrative system in the region acquired a military-administrative character. Initially the Syrdarya and Semirechye regions, and later the Zeravshan District, the Amu Darya Division, and the Fergana Region, also determined the territorial foundations of the judicial system.[9]

In the legal regulation of the judicial system in Turkestan, the 1886 "Statute on the Administration of the Turkestan Region" played an important role. This Statute defined the general judicial institutions of the region, local people's courts, their powers, and their mutual relations. Later versions of the 1886 Statute indicated that judicial institutions in Turkestan operated on the basis of the judicial statutes of Alexander II, while people's courts operated for the native population on the basis of special rules.[10]

This situation shows that a two-layered judicial system was formed in Turkestan. The first layer consisted of general courts operating on the basis of imperial legislation. They mainly heard cases involving the Russian population, the Russian administration, imperial interests, as well as certain criminal and civil cases specified in the Statute. The second layer consisted of people's courts preserved for the local population, which operated in the form of qadi courts for the sedentary population and biy courts for the nomadic population.

[8] Garipova R. Islamic Law and Legal Authority in Inner Asia Under Russian Imperial Rule: A Historiographical Survey // Religions. – 2026. – Vol. 17(1). – Article 58.
[9] Abdurakhimova N. A., Ergashev F. The Tsarist Colonial System in Turkestan. – Tashkent: Akademiya, 2002. – P. 40–42.
[10] Statute on the Administration of the Turkestan Region. – St. Petersburg, 1886. // URL: https://www.prlib.ru/item/438081

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The Statute provided that sedentary natives and nomads would have separate people's courts, and that these courts would resolve cases on the basis of customs existing among their respective population groups.[11] The important point here is that the imperial administration did not completely abolish sharia and customary law. However, it preserved them not as an independent legal system, but as institutions limited and controlled within the framework of imperial administration.

Qadi and biy courts: between traditionalism and administrative control In the judicial system of Turkestan, qadi and biy courts occupied a central place. Qadi courts operated mainly in cities and villages inhabited by the sedentary Muslim population, while biy courts operated among the nomadic population. Qadis resolved disputes on the basis of sharia norms, whereas biys relied mainly on norms of customary law.

At first glance, these courts appear as a continuation of local legal traditions. However, after the 1886 Statute, their legal status changed. Although it was provided that people's judges would be elected by the population, their confirmation was included within the authority of the governor. The Statute provided that people's judges would be elected for a term of three years, that two candidates would be nominated for each position, and that the confirmation of one of them as judge and the other as candidate would be at the discretion of the governor.[12] This procedure preserved the form of local election while subordinating its result to administrative control.

From this point of view, qadi and biy courts operated not as an independent judicial authority, but as local judicial bodies dependent on administrative confirmation and control. This situation can be assessed not as "elective independence," but as "legitimacy under control." That is, the right of the local

[11] Complete Collection of Laws of the Russian Empire, 1886 June 12 (3814), Statute on the Administration of the Turkestan Region. Articles 210–211. // URL: https://e-samarkand.narod.ru/Polojenie1886.htm

[12] Complete Collection of Laws of the Russian Empire, 1886 June 12 (3814), Statute on the Administration of the Turkestan Region. Articles 221–225. // URL: https://e-samarkand.narod.ru/Polojenie1886.htm

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population to choose a judge was preserved externally, but the legal entry into force of that choice depended on the will of the imperial administration.

In his studies of qadi courts, P. Sartori draws attention precisely to this aspect: rather than eliminating Islamic courts, the imperial administration sought to reshape them in terms of procedure, elections, accountability, and jurisdiction.[13] This conclusion reveals the most important feature of the Turkestan judicial system: local courts were not abolished, but their independent legal nature was weakened.

Jurisdiction of courts and the nature of legal dualism According to the 1886 Statute, people's courts had the authority to hear certain criminal and civil cases among the native population. However, the range of crimes assigned to the jurisdiction of the general courts under the Statute was defined quite broadly. For example, crimes against the state, acts against the order of administration, crimes against treasury property, certain cases involving Russians, and disputes between natives belonging to different people's courts were to be heard by the general courts.[14]

This shows that legal dualism in Turkestan was not based on absolute equality. That is, although imperial courts and people's courts existed side by side, the relationship between them was not horizontal, but vertical in character. The general courts expressed the supremacy of imperial legislation, while people's courts remained bodies with limited jurisdiction aimed at resolving everyday disputes in the life of the local population.

The same situation was observed in civil cases as well. If a dispute arose only between natives belonging to one people's court, it was heard in the people's court. However, if the case concerned documents formalized with the participation of the Russian administration, the Russian population, or persons belonging to

[13] Sartori P. Judicial Elections as a Colonial Reform: The Qadis and Biys in Tashkent, 1868–1883 // Cahiers du Monde Russe. – 2008. – Vol. 49. – No. 1. – P. 79–100.

[14] Complete Collection of Laws of the Russian Empire, 1886 June 12 (3814), Statute on the Administration of the Turkestan Region. Articles 141–144 // URL: https://e-samarkand.narod.ru/Polojenie1886.htm

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different judicial jurisdictions, jurisdiction passed to the general courts.[15] Such a system allowed local legal traditions to operate to a certain degree, but ensured the supremacy of imperial courts in important economic, political, and administrative matters.

This situation may be called "legal dualism," but this dualism appeared not as legal equality, but as a form of legal hierarchy. Sharia and customary law continued to exist in Turkestan, but they could not go beyond the framework defined by imperial legislation.

5. The problem of the boundary between the judicial system and administrative authority

One of the most important features of the Turkestan judicial system was the absence of a clear separation between judicial and administrative authority. While judicial reforms in the central provinces of the Russian Empire envisaged judicial independence, openness, and procedural guarantees, these principles were applied in Turkestan in a limited form.

Under the 1886 Statute, military governors, district chiefs, and police officials were granted powers to impose punishment on the native population by administrative procedure. In particular, district chiefs in certain cases had the right to subject natives to short-term detention or a monetary fine.[16] This situation shows that a certain part of the functions of judicial power remained in the hands of administrative bodies.

In addition, the decisions of people's courts were not fully independent either. If a people's court exceeded its jurisdiction or adopted a decision in a case that did not fall within its competence, such a decision could be reviewed through the prosecutor and the district court without being directed for execution [17]. Thus,

[15] Complete Collection of Laws of the Russian Empire, 1886 June 12 (3814), Statute on the Administration of the Turkestan Region. Article 218. // URL: https://e-samarkand.narod.ru/Polojenie1886.htm

[16] Complete Collection of Laws of the Russian Empire, 1886 June 12 (3814), Statute on the Administration of the Turkestan Region. Articles 44, 59–64. // URL: https://e-samarkand.narod.ru/Polojenie1886.htm

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people's courts were connected not only to local legal traditions, but also to imperial administrative and judicial supervision.

This situation shows that in Turkestan the judicial system was formed not as an independent institution of justice, but as a component of administrative governance. Along with resolving disputes in society, judicial bodies also performed the task of stabilizing the colonial order.

The Turkestan judicial system directly affected the legal status of the local population. The preservation of separate courts for the native population appeared, on the one hand, to take account of their religious-legal and customary traditions. On the other hand, such separateness did not place them in the all-imperial civil and legal field as fully equal subjects.

According to A. Khalid, as a result of the Russian conquest, Central Asian society encountered a new cultural and legal environment; the Jadids sought to preserve local Islamic culture while adapting it to the requirements of the modern state.[17] This conclusion also applies to the judicial system. This is because qadi courts were not only religious institutions, but also legal mechanisms that regulated everyday social relations such as marriage, divorce, inheritance, guardianship, property disputes, and waqf relations.

In N. Mirzaev's studies, the importance of studying family, property, and social relations through the documents of Tashkent qadi offices is emphasized. According to his analyses, although the colonial administration sought to restrict the activity of qadis, qadis preserved the traditional legal order in certain areas [19]. This shows that local legal consciousness did not disappear completely in the Turkestan judicial system, but retained a certain viability even under conditions of administrative pressure.

Analyzing recent historiography, R. Garipova emphasizes that it is incorrect to understand the relationship between Islamic law and imperial law only as “erosion” or “continuity.” According to her, in this process ulama, qadis, biys,

[17] Khalid A. The Politics of Muslim Cultural Reform: Jadidism in Central Asia. – Berkeley: University of California Press, 1998/1999.

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and ordinary Muslims also participated in preserving, adapting, and reinterpreting legal practice.[18] The same conclusion may be drawn in the case of Turkestan: the local population was not a passive object of the judicial system, but a subject that sought to protect its interests by using available legal opportunities and by sometimes turning to people's courts and sometimes to imperial courts.

7. Stages of development of the Turkestan judicial system

The development of the judicial system in the Turkestan Region may conditionally be divided into three stages.

The first stage covers 1867–1886. During this period, the judicial system was formed in close connection with military-administrative governance. Although local courts were preserved, their activity remained under the cautious supervision of the imperial administration. At this stage, the main goal was to pacify the territory, stabilize administration, and establish relations with the local elite.

The second stage covers 1886–1898. During this period, on the basis of the 1886 Statute, the legal form of the judicial system was defined more clearly. The status of people's courts, qadis, and biys, their election, powers, and relations with general courts were regulated normatively. At the same time, mechanisms of administrative control were also strengthened.

The third stage covers 1898–1917. During this period, the adaptation of all-imperial judicial statutes to the conditions of Turkestan, district courts, justices of the peace, prosecutorial supervision, and elements of administrative adjudication became stronger. After 1898, the jurisdiction of general courts expanded, and supervision over people's courts became further institutionalized.[19] At this stage, the judicial system was consolidated as a “legalized” control mechanism of imperial administration.

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[18] Garipova R. Islamic Law and Legal Authority in Inner Asia Under Russian Imperial Rule: A Historiographical Survey // Religions. – 2026. – Vol. 17(1). – Article 58.

[19] Complete Collection of Laws of the Russian Empire, 1886 June 12 (3814), Statute on the Administration of the Turkestan Region. Article 117. // URL: https://e-samarkand.narod.ru/Polojenie1886.htm

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At the same time, it would also be one-sided to assess the development of the judicial system solely as a history of administrative pressure. As A. Morrison notes, the Russian administration in Turkestan was not always able to fully achieve its objectives; local elites, merchants, village and urban communities used imperial institutions in pursuit of their own interests.[20] Thus, the judicial system of Turkestan was shaped not by the absolute will of central power, but as a result of complex relations among the center, local administration, qadis, biys, and the population.

In conclusion, it may be said that the formation and development of the judicial system in the Turkestan Region make it possible to put forward several important conclusions.

First, the judicial system in Turkestan was not the result of the direct transplantation of Russian imperial legislation, but was formed as a result of a complex process of adaptation among local legal traditions, sharia, customary law, and imperial administrative policy.

Second, although qadi and biy courts were preserved, their legal status was not independent. Their election, confirmation, jurisdiction, and the execution of their decisions were dependent on administrative control. For this reason, it is insufficient to assess these courts as either fully traditional or fully colonial institutions; they appeared as hybrid legal institutions.

Third, legal dualism in Turkestan was not cooperation between equal legal systems, but the limited preservation of local legal traditions under the supremacy of imperial legislation. Within this dualism, the general courts retained control over cases that were politically, administratively, and economically important.

Fourth, the judicial system was an important instrument of colonial administration. The unclear boundary between the courts, police, and administrative authority limited the independence of justice and turned the judiciary into a component of the administrative apparatus.

[20] Morrison A. S. Russian Rule in Samarkand 1868–1910: A Comparison with British India. – Oxford: Oxford University Press, 2008.

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Fifth, nevertheless, the local population, qadis, biys, and ulama actively participated in legal processes. They used existing legal opportunities and sought to preserve, adapt, and reinterpret their legal traditions. In this sense, the judicial system of Turkestan is not only a history of colonial control, but also a history of the viability and adaptability of local legal culture.

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13. Sartori P. Judicial Elections as a Colonial Reform: The Qadis and Biys in Tashkent, 1868–1883 // Cahiers du Monde Russe. – 2008. – Vol. 49. – No. 1. – P. 79–100.
14. Sartori P. Visions of Justice: Shariʿa and Cultural Change in Russian Central Asia. – Leiden; Boston: Brill, 2016.
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