

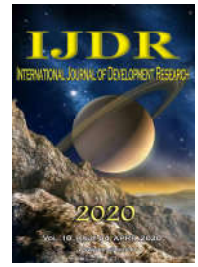


ISSN: 2230-9926

Available online at <http://www.journalijdr.com>

IJDR

International Journal of Development Research
Vol. 10, Issue, 04, pp. 35118-35121, April, 2020



RESEARCH ARTICLE

OPEN ACCESS

MUSLIM ORPHANS IN COLONIAL TASHKENT IN THE LATE XIX – EARLY XX CENTURIES BASED ON COURT RECORDS

*Nasriddin Mirzaev

PhD student in the International Islamic Academy of Uzbekistan

ARTICLE INFO

Article History:

Received 07th January, 2020

Received in revised form

03rd February, 2020

Accepted 11th March, 2020

Published online 29th April, 2020

Key Words:

Saghīr (orphan), *wasī* (guardian), archival funds, *qāḍī* registers (*daftars*), Islamic law (*sharī'a*), late-19th century Tashkent.

*Corresponding author: Nasriddin Mirzaev

ABSTRACT

According to Islamic law, an orphan is an under-aged child (*saghīr*) before the age of puberty whose father or both his/her parents have died. In late-nineteenth century Tashkent after Russians' penetrating into the region, *qāḍīs* (Muslim judges) continued to register cases but in different forms. The main argument of this paper is that traditional *madrasas* and *maktabs* (schools) maintained practices in Tashkent, despite Russian colonialism affecting Muslims *qāḍīs*' court practices. It is this issue that I attempt to answer through analysis of the nineteenth-century archival sources. These materials illuminate the social and economic circumstances of *saghīrs* in Muslim society in Tashkent. Despite their importance, these sources have been neglected by scholars almost entirely.

Copyright © 2020, Nasriddin Mirzaev et al. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: Nasriddin Mirzaev. 2020. "Muslim orphans in colonial tashkent in the late xix – early xx centuries based on court records", *International Journal of Development Research*, 10, (04), 35118-35121.

INTRODUCTION

In this paper, I focus on the Tashkent *qāḍī* court records, with special attention to four registers (*daftars*) written in Sibzar in 1888, Beshaghach in 1888, Kukcha in 1899, and in 1890 in the Shaykhantaur districts of Tashkent's old city. Before the Russian conquest, Central Asian rulers played a central role in the dispensation of justice according to *sharī'a*. This phenomenon has long been overlooked, because studies of dispute resolution in the Islamic world, especially in Central Asia, tend to assign greater importance to the legalists than to the state – that is, the Muslim ruler and his representatives in court. Students of Islamic law usually hold that the settlement of disputes in Muslim-majority areas depend on *qāḍīs* and *hakīms* who, respectively, adjudicate and arbitrate cases independently or facilitate reconciliation by means of mediation, either judicial or extrajudicial (Sartori, 2016). Beyond the solving of social-economic issues by Tashkent *qāḍīs*, there was another important responsibility and that was to take control over orphans' issues. Childhood, child care, and guardianship of orphans in Islam, as with any religious tradition, are generally seen as opportunities for education and training, allowing for the socialization of future adults. The child is seen as the crucial generational link in both the

religious community and the family unit, the key to its continuation, the living person that ties the present to the past. The idea of childhood, the place of the child, and the duties of the child, are basic issues and have been since the beginning of Islam (Yazbak, 2001; Kamp, 2017). At odds with other religious traditions, socialization of orphans in Islam takes place primarily within the family unit, because there were no orphanages in Islamic cities, and it was ideally in the home that the father and mother were ultimately responsible for their offspring. However, appointing of guardians for orphans lead by *qāḍīs*, usually choosing grandparents, aunts, uncles, cousins, and other relatives, or unrelated people, could also be expected to participate in an orphans' rearing and they often did in the Central-Asian Muslim world.

Regarding this issue, Maḥmūd Khwāja Bihbūdī had drawn a very clear picture about *saghīrs*' life in the old cities of Russian Turkestan. According to *sharī'a* law, the *qāḍīs* are obligatory to follow *saghīrs*' issues:

If on orphan's father had appointed a guardian before his death (NAUz, f. I-363, op. 1, d. 29. p. 68.), *qāḍīs* have no right to change his decision, until it becomes known of a guardian's disloyalty. If a father did not appoint any guardian, then it will

be up to the *qādīs* to choose anyone. After appointing a guardian a *qādī* should order him to take care of the *saghīr*'s matters, such as rearing, and financial support. The guardian must participate as a guarantor and underwriter to offer compensation in the event that he damages the orphan's property. A *qādī* could appoint two or three *saghīrs* for each guardian. It was better to choose a guardian from available relatives. Another good rule for *qādīs* to prefer was to appoint *saghīrs*' older brothers or mother for the roles of guardian, trustee, and observer over orphans than others (Bihbūdī, 1915). These abovementioned rules were employed in Turkestan, as it is stated in Maḥmūd Khwāja Bihbūdī's article. Depending on this we can say that traditional guardianship over orphans in Islam, as theorized and practiced by the *qādīs* in Central Asia, especially in Russian Turkestan after its conquest, was still not an easily adjudicated issue, even after reforms to *qādī* practices in the Turkestan region later in the nineteenth century (Bihbūdī, 1915).

Specificity of Tashkent *qādī* court Records

It is known that in 1865 the Military Governor M. Chernyaev received a special order from the Military Minister D. Milyutin to develop measures to reduce the influence and status of local *qādī* and *bīy* courts (Sartori, 2008). On the basis of the Provisional Regulations on the Administration of Turkestan Region adopted on August 6 of the same year, the right to appoint *qādīs* was transferred to the Office of the Military Governor, in addition, *qādīs* could only consider civil cases on their own, and criminal cases were subject to approval by the Military Governor. Also, the post of *qādī kalān* was abolished, and the position of *qādīs* and *bīys* was set as a three-year appointment with defined functions. In 1867, after the adoption of the Regulations on the Administration of Turkestan Region, the order of selection and functioning of *qādīs* and *bīys* was introduced. According to the provision, the courts serving the population were divided into 1) individual *qādī* and *bīy* courts; 2) the Assembly of people's (*qādī* and *bīy*) judges; 3) an extraordinary Congress of people's judges, which considered disagreements between the population of various districts and countries. The latter was the appellate court for decisions of the individual judges to be queried if needed. Despite the fact that according to the Regulations on the Administration of Turkestan Region, *qādī* and *bīy* courts were officially renamed the "People's Courts". The study of seals on documents stored in the *Qādī* Archival Funds of the National Archive of Uzbekistan (hereafter - NAUz) shows that *qādīs* in their documents continued to indicate their old position of *qādī*. This once again confirms the fact that, contrary to the established new procedures, *qādī* courts continued to function in the same ways as before.

Later, in the Regulations for the Administration of Turkestan Region, adopted in 1886, the structure and the system of record management of the People's Judges (*narodnyi sudya*) were theoretically preserved. In particular, in Article 227 of the Regulation, it was noted that it is necessary to maintain special books to register decisions and acts by *qādīs*. The form of these books was developed and approved by the regional government at the expense of People's Judges (Regulations, 1886). Also, the People's (*qādī*) Courts were granted the right to demand a certified copy of the decision on the demand of the litigating strata and approve various treaties and acts drawn up between the local populations. As evidence of their receiving a copy of the decision, parties should have signed

their names in the book. Decrees issued to the population with the participation of two witnesses (or in the event of one party being illiterate, their authorized representatives would participate) were obligatorily assured by the parties. These receipts were to be registered under a special registration number in the registration book that was combined with the certified signature and seal of a *qādī* who formalized the process. These register books, as mentioned above, were drawn up in accordance with the forms established by the imperial authorities. These were books comprised of different parts, made to order in the printing house. To facilitate the recording of the books, separate columns were marked out with headings in Russian and local languages. In the "Registration Book of Decisions", documents relating to the trial process, allocated in accordance with the established procedure for decisions on the cases-examinations and claims, were concentrated. In general, according to the form, the presentation of such decisions was similar to each other; however the content of the issues discussed reflects the procedure for resolving the various social problems of the indigenous population according to *sharī'a* law. The structure of the "Book of Decisions" of the *qādīs* had the following form: the serial number, the date (day, month, year), the content of the plaintiff's claim and the defendant's justification, the decision of *qādī*, the signatures of the parties and *qādī*, and a certification endorsing receipt of the copy of the decision (NAUz, f. I-363, op. 1, d. 13.). In the Registration Book of Acts, all notarial activities carried out by *qādī*, i.e. the confirmation of contracts for sale and purchase, receipts for the extradition and receipt of a debt, transfer of property on bail, etc., were made (NAUz, f. I-363, op. 1, d. 139.). The documents of the Assembly of *qādīs* are of special interest in this respect. The study of the Regulations on the Administration of Turkestan Region and documents of the Assembly of *qādī* courts show that the order of the work of Congress, the timing of its sessions, and the number of participants, were all determined by the Military Governor and head of the county who were responsible for convening the Congress. *Qādīs*, from among those who participated in the Congress, elected the Chairman (Regulations, 1886).

Here it is appropriate to cite the report of the Assembly of *Qādīs* of Tashkent, sent in 1894 to the named Head of Tashkent. The report indicates that at the Congress, which took place in January 1894, a *qādī* of Sibzār, Raḥīm Khwāja Īshon son 'Alī Khwāja Īshon, was elected as chairman (NAUz, f. I-364, op. 1, d. 34, p. 1.). The report was approved by the seal of *qādīs* of Sheykhantahūr, Kūkcha and Beshaghach districts of Tashkent. Also, the Congress made decisions on the work of the individual *qādīs*. In particular, on January 02, 1894, a special work schedule was approved according to which, from 8.00 to 15.00, five days, except Wednesday and Sunday, were declared working days for *qādīs*. The record management of the congress was determined by official instructions for people's judges, approved in 1892 by the Turkestan Governor-General A.B. Vrevskiy. According to point 12 in the document, the Congress, in order to formalize its decisions and approve acts, like the individual *qādīs*, had to record decisions in books (NAUz, f. I-364, op. 1, d. 42, p. 1-3.). Nevertheless, in the design of the Book of Decisions of the Assembly of *Qādīs*, there are some discrepancies. For example, in the Book of Assembly Decisions, it was stated that the revision of the decision of the individual *qādī* was carried out in accordance with the Decree of Head of Tashkent. After a comprehensive study of the issue, an opinion was written about the correctness

or inaccuracy of the decisions of the individual *qāḍī*, which was certified by the seal of the Chairman and participants of the Congress (NAUz, f. I-362, op. 1, d. 19.). There was a peculiar procedure for appealing against the decisions of the individual *qāḍī*. Dissatisfied with the decision of a *qāḍī*, the party had no right to appeal directly to the Congress. They had to present their complaint through the head of the county, the district Police Officer, or Head of the district. The complaint was indicated in the column "content of statements" of the Book of Decisions of the Assembly of *Qāḍīs*. If the application came through the designation of the Hakim of Tashkent, the decision specified the exact date and number of the incoming document. In addition, unlike the standardized books of the individual *qāḍīs*' decisions, detailed descriptions related to the study of the circumstances were not given, but only the conclusion of the Congress concerning the case was inscribed.

Along with this, the "Registration Books of Acts" of the Assembly of *qāḍīs* also have significant differences with regard to the books of individual *qāḍīs*, and from our point of view at the level of the sources, they contain the most complete information on the facts examined. When studying these books of the Congress, it can be seen that each case was considered according to the decision of the Head of Tashkent, when reviewing the contracts for the purchase and sale (*wathīqa*) of property, receipts for the issuance and receipt of debts, and agreements on property delineation describing the exact boundaries and area of the territory. In addition, it was indicated which witnesses participated, and this contract or agreement was drawn up which included the amount of the fee and approval of the document (NAUz, f. I-362, op. 1, d. 18.). Until the early twentieth century, there are no orphanages in Central Asian regions, including the city of Tashkent. When we start to compare archival sources and the secondary literature related to this issue, we come across pronouncements by *qāḍīs* and other people who played a very important role in rearing Muslim orphans. In Muslim morality and traditional customs they can never fathom giving up orphans to an 'orphanage' place. From the following event we can further deduce this mentality:

In 1902, after the December earthquake in Andijān region and other settlements suffered disasters, there remained many orphans. From the charity of those who were authorized by the Red Cross and Crescent Societies to help the victims of the earthquake, the chamberlain Alexandrovskiy established a temporary orphanage in Andijān and gathered more than seven thousand rubles (from the Kokand community's donations). Despite the establishment of the orphanage and existing financial support, all orphans were adopted by their fellow villagers. This was in spring of 1903, that is after three months of establishing an orphanage in Andijān. The military Governor General Arendarenko wrote on March 15, 1903 to Ivanov that: "I plan to move this orphanage to New Marghilan and make it an orphanage for the whole region, which will be extremely urgent now, since we have to send orphans to an orphanage in Tashkent and even to shelters in southern Russia. On August 5, 1903, the Governor General agreed to close the Andijan orphanage, and approved the idea of Governor Mayor Arendarenko about the regional orphanage, with the transfer of its properties and all the funds of the first shelter (Turkestanskiy sbornik, 1907). According to this formal correspondence, we can say that the people of Central Asia and their traditions remained despite Russian colonial influence into the social life. In the example of Kūkcha Qāḍī's

registration book of orphans (*saghīrlār daftarī*), issued by *qāḍī* Mullā 'Ādil son of Ishaq Bāy in 1899-1900, 202 cases were registered, of which in 1899 - 104 cases, and in 1900 - 98 cases. The registration book of underage orphans was created by *qāḍī* Mullā 'Ādil as a reporting document for the Imperial Authority on the regulation of the property of orphans (NAUz, f. I-364, op. 1, d. 50, p. 54.). The entries in the book have a peculiar order and specifics of design. Unlike other books and documents of a *qāḍī*, it contains orderly information about guardianship and management of the property of orphans. Entries are written in the old Uzbek (*Chaghatai*) language. If you pay attention to the order of entering the records, you can see that along with the main information, some margins of the book's pages give some clarifications.

In the presentation of each of the issues examined, a *qāḍī* strictly observed the established form. In particular, the address of orphans, the name of the neighborhood (*maḥalla*), name, age, sex, the name of the father and guardian were initially recorded. The exact name, amount of orphans' inheritance (money, real estate, utensils, etc.), as well as its distribution between heirs, was all indicated. Especially when describing real estate (house, land, garden, etc.), detailed geographic and metrological data were provided. At the same time, information on the affairs of orphans had always been under the control of the *qāḍī*. Periodically, to clarify the circumstances, a *qāḍī* invited the guardian to come and take a report on the work done by him. After that, a *qāḍī* made the appropriate entries in the book, wrote his opinion on the issue under consideration, and gave new instructions to the guardian on receipt. When registering the information, the facts and names of the witnesses who participated in the discussion were indicated. At the end of each document, *qāḍī* Mullā 'Ādil put his seal. When researching this source, one can trace the introduction of new terms and relations in the social life of the population. In a significant part of the documents, it is possible to encounter for the first time the term "*Banki pādshāhi*" (Imperial Bank), which indicates the investments of the capital of orphans in the bank, and the *qāḍī* in his decisions calls on the population to use these services.

Also in the book, special attention is paid to family issues and the upbringing of children. For example, the book gives the following case:

In Ābinazīr *maḥalla* under the guardianship of uncle Mullā Fulādjan Mullā Jān Bāy, there are Yūldash Jān (18 years old), Usmon Jān (15 years old) and Jamīlya Bībī (16 years old), who are Kāmil Jān Bāy *mutawaffā's* (deceased) children. The guardian manages the funds of orphans in the amount of thirteen thousand eight hundred and forty-four *soms*. There is a yard in the *maḥalla*, as well as a piece of land in Āqtīpa of Kukcha part, belonging to the orphans. There is no profit from them (by renting). Due to the fact that Yūldash Jān has reached the age of puberty, he wants to take his share from the guardian and wants to engage in trade. After examining the issue, *qāḍī* comes to the conclusion that Yūldash Jān's appearance and sanity allows him to be allowed to independently engage in trade. Of this money, Yūldash Jān's share was five thousand five hundred thirty-six thousand *soms*, and the guardian gave this part on his own behalf on number 332 of the *wathīqa* (deed, *qāḍī's* legal document), and the remaining part – eight thousand seven hundred and nineteen *soms* – belonged to 'Uthmān Jān and Jamīla Bībī. At the same time, taking into account Yūldash Jān's youth and

inexperience, *qādī* obliges the guardian not to leave him without supervision and always supervise and help him in the promotion of his business. In another case, Bībī Rābi'a from Chighatai *mahalla* is under the guardianship of her mother Bībī Khadīcha daughter of Ūsto Salīmsāq. The inheritance of the orphan is one hundred and seven *soms*. When inviting Bībī Khadīcha to come, the *qādī*, after learning about the state of affairs, makes a decision to transfer the inheritance money of the orphan to a trusted person, and use the profits to raise a daughter. At the same time, both the guardian mother and the trustee, who used her property, had to report to the *qādī* about the work that was done (NAUz, f. I-364, op. 1, d. 50, p. 21-22.).

Conclusion

In 1886, after the approval of the Regulation on the Administration of Turkestan Region, *qādī* activities were amended. *Qādīs* were renamed the “Popular Judges”. According to article 227 of the Statute, the situation of the judges had established a procedure to register all their decisions in a special book. The Central State Archive of Uzbekistan holds a significant number of documents containing these *qādī* notebooks from regions and districts of Turkestan. However, based on a survey of documents from the sources containing *qādī* documents from Kūkcha (I-364), Shaykhantaur (I-366) and Beshaghach (I-363) districts in Tashkent, it can be concluded that the maintenance of books of registration decisions of the *qādīs* was established after 1867. Related to the *qādī* activities, there are many critiques that were prepared by local and some Russian officials for the Administration. Among other cases of orphans' properties and their management by guardians, their monetary resources were very important to the people of the community and the *qādīs*. Mahmūd Khwāja Bihbudī himself criticizes *qādīs*' excessive interest in the orphans' property. He considers some *qādīs* as being disloyal to the position. Unfortunately, we could not find any concrete facts that indicates these issues in the four register books examined. In this research paper the activities of the Tashkent *Qādī* Congress (I-362) were considered. For this objective, we chose two types of registration books: 1) The book of *qādī* rulings (*Kniga dlya zapisi resheniya kaziev*), and 2) acts and decisions of the *qādī* congress (*Kniga dlya zapisi aktov*). Historiographical analyses on the history of the judiciary in Turkestan during the colonial period has shown that these types of books have so far not been considered by researchers to analyze social life. The earliest documents related to the *qādī* congresses begin in 1895.

A detailed analysis of the content of the register books revealed a variety of interesting information: 1) the order and the principle of registration decisions; 2) the type and prices of orphans' properties; 3) the establishment of landowners' social strata, the size and the price of land in different years; 4) ZHJS procedure for pre-approval land rights; 5) interconnection and subordination of the Congress of *Qādīs* to imperial institutions; 6) changes in the conduct of registration books' making by *qādīs*; 7) differences between the register of deeds (*akt daftar*—books without legal decrees) and those books carrying the final registered legal outcomes (*hukm daftar*); 8) colonial policies establishing control and limiting the independence of *qādī* courts. In general, the information recorded in these booklets allows us to evaluate them not only as a set of *sharī'ah* instructions on managing the property of minor orphans, but they are also valuable sources for uncovering the social history of the region.

REFERENCES

- Anon., 1907. ‘Novo-Marghilanskiyoblastnoydetskiypriyut’, (Orphanage of New Marghilan region), Turkestanskiysbornik, 433 v. 176-178.
- Kamp Marianne, 2017. Kinship and Orphans. The family in Central Asia: new research perspectives Berlin: Klaus Schwarz Verlag, pp. 243-268.
- Mahmūd Khwāja Bihbudī, (15) 1915. “*Şaghīrlār Haqında*”. Samarkand, Āyina: 402-407.
- Regulations on the Administration of Turkestan Region. 1886. Volume 2, part 2. - St. Petersburg. - P. 29. Articles 237, 239.
- Sartori, Paolo, 2016. *Visions of Justice: Sharī'a and Cultural Change in Russian Central Asia*. Leiden: Brill: 40-41 p.
- Sartori Paolo. 2008. Judicial Elections as a Colonial Reform: The Qadis and Biys in Tashkent, 1868–1886. CMR 49/1: 79-100.
- Yazbak, M. (1) 2001. “Muslim orphans and shari'a in Ottoman Palestine according to sijill records.” Journal of the Economic and Social History of the Orient, vol. 44, pp. 123-140.
- NAUz, f. I-362, op. 1, d. 18.
- NAUz, f. I-362, op. 1, d. 19.
- NAUz, f. I-363, op. 1, d. 13.
- NAUz, f. I-363, op. 1, d. 139.
- NAUz, f. I-363, op. 1, d. 29. l. 68.
- NAUz, f. I-364, op. 1, d. 34, p. 1.
- NAUz, f. I-364, op. 1, d. 42, p. 1-3.
- NAUz, f. I-364, op. 1, d. 50, p. 21-22.
- NAUz, f. I-364, op. 1, d. 50, p. 54.
