

THE ROLE OF THE MUHTASIB IN THE ENFORCEMENT OF HUMAN RIGHTS IN THE MIDDLE AGES

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Abstract

The article is devoted to the history of the emergence and development of the muhtasib institute, which played an important role in ensuring human rights in the Middle Ages. The formation of this institution, its historical development, and the expansion of its powers in different dynasties are illustrated by various examples based on the appeals of citizens. In the Middle Ages, it was mentioned that the muhtasib institute was one of the important positions in ensuring human rights.

Keywords: muhtasib, human rights, appeal, Sharia law, supervision.

Аннотация

Мазкур мақола ўрта асрларда инсон ҳуқуқларини таъминлашда муҳим аҳамият касб этган мухтасиб институтининг пайдо бўлиш ва ривожланиш тарихига бағишланган. Ушбу институтнинг шаклланиши, тарихий ривожланиб бориши, турли сулолалар даврида ваколатларининг кенгайиб бориши фуқароларнинг мурожаатлари асосида турли мисоллар билан ёритиб берилган. Ўрта асрларда мухтасиб институтининг инсон ҳуқуқларини таъминлашда муҳим лавозимлардан бири бўлганлиги келтириб ўтилган.

Калит сўзлар: мухтасиб, инсон ҳуқуқлари, мурожаат, шариат нормалари, назорат.

Аннотация

Статья посвящена истории возникновения и развития института мухтасиба, сыгравшего важную роль в обеспечении прав человека в средние века. Становление этого института, его историческое развитие, расширение его полномочий в разных династиях иллюстрируется различными примерами, основанными на обращениях граждан. В средние века упоминалось, что институт мухтасиба был одной из важных позиций в обеспечении прав человека.

Ключевые слова: мухтасиб, права человека, обращение, нормы шариата, надзор.

The emergence of the institution of muhtasib is associated with the Islamic religion. In particular, professor G.R.Malikova¹ and academician I.B.Buriev² emphasized that this institution arose due to an event that occurred during the time of the Prophet Muhammad (peace be upon him). Another group of scholars³ cited the emergence of this institution during the time of Caliph Umar (may Allah be pleased with him).

During the caliphs who ruled after the Prophet Muhammad (peace be upon him), the powers of muhtasib expanded. In particular, during the time of Caliph Umar (may Allah be pleased with him), muhtasib had the authority to protect human rights and freedoms, regulate property, family and marriage rights, receive complaints and resolve disputes⁴. The main task of the Muhtasib was to receive citizens' complaints, to solve the issues of the disputing parties fairly, and to encourage good and prevent evil.

This institution was named “hisba” or “muhtasib” during the time of the Abbasid caliphs. The second Abbasid caliph, Abu Jafar Mansur, the founder of the city of Baghdad, built many markets in the city of Baghdad and appointed “muhtasibs” to maintain order in these markets⁵. During this period, maintaining order and control in the markets was considered one of the most important tasks of accountants.

In the history of Central Asia, and Uzbekistan in particular, in the 9th-12th centuries, special attention should be paid to the period of a number of dynasties that succeeded in building a strong centralized state in this region, namely the Samanids and Ghaznavids. Because in these dynasties, the development of the institution of the muhtasib, the expansion of his powers, and attention to the complaints of the population were of particular importance and were distinguished by their unique characteristics.

The Samanides created a centralized state and introduced the post of accountant, who played an important role in the management of society. During the Samanid period, the authority of the muhtasib expanded, and he began to exercise traditional control over the methods of product preparation and their quality and prices. Due to this, the requirements for the accountant have increased. That is, it was required to be a person of high virtue and honesty, acting in accordance with his moral and religious duty⁶.

A number of scholars who have studied the institution of muhtasib, including A.Kholikov⁷ and I.Petrushevsky⁸, have noted that in the Samanid state, persons holding the position of muhtasib were appointed in all regions and cities of the state, and that persons holding this position were tasked with deterring people from doing prohibited things, conducting inspections in the

¹ Маликова Г.Р. Генезис прокуратуры Республики Узбекистан: «Восток — дело тонкое» // Журнал зарубежного законодательства и сравнительного правоведения. 2020. № 4. С. 80. DOI: 10.12737/jflcl.2020.033

² Буриев И.Б. Контроль за должным поведением и институт мухтасиба в средневековой государственности таджиков // Труды Института государства и права Российской академии наук. 2009. № 4. С. 141.

³ Раджабов К., Кандов Б. Жаҳон тарихидаги сулола ва давлатлар. Ташкент, 2015. С. 102.

⁴ О.М. Мадалиев. Прокурор назорати. Дарслик. Умумий қисм. -Т.: ТДЮИ нашриёти, 2009. – Б.68

⁵ Сокит М. Н. Институты правосудия в исламе. Тегеран, 1825 г. – С.302

⁶ Грюнебаум Г.Э. Классический ислам. Очерк истории (600–1258) / Пер. с англ. И.М. Дижур. М., 1986. С. 95

⁷ Холиков А. Правовой справочник Саманидской эпохи. Душанбе, 1998. С. 13

⁸ Петрушевский И.П. Ислам в Иране в VII –XV веках. Л., 1966. С. 196.

markets, and, in particular, monitoring the correct use of weights and scales so that merchants did not deceive people when selling their goods.

Muhtasibs gained great importance during the Ghaznavid period. During their rule, muhtasibs were appointed to all cities and large villages. Abul Fazl Bayhaqi, in his chronicle “The History of Mas’ud”, states that “Because the muhtasibs performed their duties with zeal and courage, some sultans even advised their guests not to go out in a drunken state. The reason is that if they encounter a muhtasib who acts in accordance with the Sharia, any person will be powerless to do anything against him”⁹.

Mahmoud Ghaznavi gave wide powers to muhtasibs who supervise compliance with Sharia norms. In particular, it is recorded in the sources that Mahmud Ghaznavi gave the muhtasib the right to punish the commander of his army if he did not follow Sharia norms, when there was a complaint about the commander’s unjust orders¹⁰.

It can be seen that at that time, the function of supervision over the resolution of citizens’ complaints in accordance with legal and Shariah norms was carried out by muhtasib.

Historical literature contains information that the muhtasib was usually appointed by the head of state (ruler) or the head of local government. Over the centuries, the requirements for individuals to hold the position of muhtasib have been developed:

first of all, to be a muslim;

secondly, to be of legal age;

thirdly, to have the opportunity to fulfill the duties of this position after taking it;

fourthly, to be fair;

fifthly, to have a good knowledge of Sharia and jurisprudence.

After 150 years of Mongol rule, Amir Temur officially came to power in 1370 and established a traditional system of government.

Academician B.Akhmedov¹¹ notes that in the state of Amir Temur, the position of muhtasib (supervisors) was introduced, and those who held this position had a special position, they supervised religious ceremonies, customs, and the implementation of Sharia laws (fair resolution of citizens’ appeals based on Sharia norms). SH.Oljaeva, one of our national scholars, mentioned that during the era of Sahibqiran, muhtasib controlled the implementation of Sharia laws, the correctness of prices and stone scales in the market, and that they had the authority to punish offenders who did not follow these norms¹².

Taking into account the opinions of scholars, it can be said that such a situation exists even today, and the task performed by the prosecutor, namely, to monitor the precise and uniform implementation of laws, is similar to that of the prosecutor. The position of the accountant during the time of Amir Temur can be compared to the prosecutor in that it embodies the supervision function performed by prosecutors today.

⁹ Абул Фазл Байҳақи. «История Масъуда». Перевод Персидского. Издание 2е (дополненное). “Наука”. Москва. 1969. – Б.107.

¹⁰ Абул Фазл Байҳақи. «История Масъуда». Перевод Персидского. Издание 2е (дополненное). “Наука”. Москва. 1969. – Б.117.

¹¹ Ахмедов Б. Амир Темур дарслари: Умумий таълим ва махсус тарих мактаблари ўқитувчилари ва ўқувчилари учун қўлланма. — Т.: «Шарк», 2001. – Б.53

¹² Ўлжаева Ш. Салтанатнинг хос тузуги. Ҳуқуқ ва бурч, № 4, 2014, 26-б.

The fact that the President of the Republic of Uzbekistan, Shavkat Mirziyoyev, at a meeting dedicated to discussing urgent issues related to ensuring the stability of the national economy¹³, instructed the Prosecutor General to ensure the stability of prices in the markets and food safety is also proof of our opinion that the task performed by the accountant in the Middle Ages is now being performed by the prosecutor.

The scope of authority of the accountants expanded, and they could interfere in all state officials and state affairs. If we compare their activities with the activities of modern state bodies, it becomes clear that the muhtasibs had wide powers.

From this it can be seen that the muhtasib was distinguished by the high level of performance of his work and was a position with wide powers.

Analyzing the powers of the muhtasib, studying the opinions of medieval and modern scholars, it was concluded that the institution of the muhtasib was the basis of state power in the states that had great power in Islamic history.

The following conclusions can be drawn from the above considerations:

Firstly, the muhtasib was considered a supervisory body in the Middle Ages that established justice in society;

Secondly, in the Middle Ages, high requirements were imposed on individuals to occupy the position of muhtasib;

Thirdly, the muhtasib, in comparison with the present day, corresponds to the function performed by the prosecutor. That is, the position of the muhtasib in the Middle Ages is the prototype of the prosecutor.

In short, each topic has its own history. During the study of the topic, it will be possible to fully understand the essence of the topic being studied by studying the history of its origin. Because of this, every research scientist is advised to know the genesis of the subject he is studying.

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