

T. Imammadi , **K. Yerzhan*** , **M. Makhmet** 

Egyptian University of Islamic Culture Nur-Mubarak, Kazakhstan, Almaty
*e-mail: kalmakhanyerzhan@gmail.com

RELATIONSHIP BETWEEN RELIGION AND CUSTOMS LAW IN TRADITIONAL KAZAKH SOCIETY

The article deals with the relationship and features of the laws of religion and custom in the traditional Kazakh society. The authors emphasize the place and importance of oratory in the court of Kazakh biys (judges). The legal system of the Kazakh steppe, the level of execution of Sharia and its impact on the judicial system are considered. A comparative analysis is carried out between the Court of biys and the Court of Islamic law. The ways of truce, conversion, ways of satisfaction in Kazakh nation and qada'i, rizai, sulh and taqim in Sharia and their usage in daily life and solving issues are compared. The election of the Khan and his abdication from the throne of the period of the Kazakh Khanate and the appointment of the Caliph and his ghazal are compared as well as the relationship between religious power and political power. Examples of religious or ethical rules are considered comparing, in particular hospitality, crime and punishment. The laws of customs and norms of Sharia in this traditional Kazakh society are studied in a comparable way. In conclusion, despite the immense space of the territory in the Kazakh steppe, some traditionally legal norms and rules (including even minor rules) in Kazakh society are the same in all regions of the Kazakh steppe.

Key words: Tradition, Customs, Sharia, Court of Judges, Caliph.

Т. Имамәди, Қ. Ержан*, М. Махмет

Нұр-Мұбарак Египет ислам мәдениеті университеті, Қазақстан, Алматы қ.
*e-mail: kalmakhanyerzhan@gmail.com

Дәстүрлі қазақ қоғамындағы дін мен әдет-ғұрып заңдарының байланысы

Мақалада дәстүрлі қазақ қоғамындағы дін мен әдет-ғұрып заңдарының қарым-қатынасы және өзіндік ерекшеліктері сипатталады. Авторлар шешендік өнердің қазақ билер сотындағы орны мен маңыздылығына тоқталады. Қазақ даласындағы құқықтық жүйе, шариғаттың орындалу деңгейі мен сот жүйесіндегі ықпалы қарастырылады. Билер соты мен мұсылмандық құқықтағы қазылықты салыстыра талдау жасалады. Қазақ халқының бітім, жүгініс, қанағат жолдары мен шариғат заңдарындағы қадаи, ризаи, сулх, тахким секілді қолданыстардың іс жүргізу мен мәселені шешудегі жұмыс істеу тәртібі мен ережелері салыстырылады. Қазақ хандығы кезеңіндегі хан сайлау және оны тақтан тайдырып ханталау жасау мен халифаның тағайындалуы және оның ғазлі туралы үкімдер салыстырылып, діни билік пен саяси биліктің қарым-қатынасы талқыланады. Діни немесе әдет-ғұрып ережелерінің қонақасы, қылмыс пен оның жазасы секілді кейбір түрлеріне мысал беріледі. Аталған дәстүрлі қазақ қоғамындағы әдет-ғұрып заңдары мен шариғат нормалары салыстырыла зерттеледі. Қазақ даласындағы жер аумағының қашықтығына және ғасырлар өтуіне қарамастан заң шығару мен атқаруға қатысты кейбір дәстүрлі қазақ қоғамындағы құқықтық күші бар нормалар мен ережелер қазақ даласының барлық аймағында ұсақ-түйек қағидаларына дейін бірдей болуы осыны көрсетеді.

Түйін сөздер: дәстүр, әдет-ғұрып, шариғат, билер соты, халифа.

Т. Имамәди, Қ. Ержан*, М. Махмет

Египетский университет исламской культуры Нур-Мубарак, Казахстан, г. Алматы
*e-mail: kalmakhanyerzhan@gmail.com

Связь законов религий и обычаев в традиционном казахском обществе

В статье рассматривается взаимосвязь и особенности законов религии и обычаев в традиционном казахском обществе. Авторы подчеркивают место и значение ораторского искусства в суде казахских биев. Рассматривается правовая система казахской степи, уровень исполнения шариата и его влияние на судебную систему. Проведен сравнительный анализ суда биев и суда

по мусульманскому праву. Сравниваются пути перемирия, обращения, пути удовлетворения казахского народа и даи, ризаи, сульх, тажким в шариатском законодательстве, в делопроизводстве и решении вопросов. Сравниваются выборы хана и его отречение от престола в период Казахского ханства и назначение Халифа, и приговоры о его газели, обсуждаются отношения между религиозной властью и политической властью. Рассмотрены примеры религиозных или этических правил, в частности гостеприимство, преступление и наказание в сравнении с законами шариата. Сопоставимо исследуются законы обычаев и нормы шариата в данном традиционном казахском обществе. В заключение делается вывод, что, несмотря на отдаленность территории казахской степи, некоторые традиционно правовые нормы и правила (включая даже мелкие правила) в казахском обществе, касающиеся законотворчества и исполнения, одинаковы во всех регионах казахской степи.

Ключевые слова: традиция, обычай, шариат, суд биев, халифа.

Introduction

Customs and traditions are formed in the course of many years of culture, production, life experience of the people, culture passed down from generation to generation. At the same time, customs are the main tool for determining the moral norms of society. This concept is used in our language in the form of customs and traditions.

The traditions of the Kazakh people are rooted in the history of the nation's development, including Islamic values, which are inseparable from the essence of the nation. After the Battle of Atlakh, Islam spread peacefully in the Kazakh steppes and became not only a religious faith of the Kazakh people, but also a way of life. This, in turn, paved the way for the formation of Kazakh customs.

Although the study of customs began much later than in other nations, several years of in-depth research of Kazakh custom by scholars have yielded encouraging results. This led to a systematic study of the influence of religion on the ancient customs of our people in the field of theology, folklore, ethnography, cultural studies and anthropology. In our research article, we also aimed to study the close connection between Kazakh traditions and Islamic Sharia by comparing the relationship between religion and customary law in traditional Kazakh society.

Justification of the choice of articles and goals and objectives

Such studies, which reveals that the Kazakh legal system has its own peculiarities, are fundamental for the history and culture of the nation. There is also a lack of research that provides links, similarities and differences with the Muslim legal system. Eventually we will study Kazakh legal system from the very outset, customary law, the insti-

tution of judicial proceedings and biy, and compare it with its application in the practice of classical Muslim law.

Scientific research methodology

Scientific methodology of the article is based on scientific methods. In revealing the essence of the laws of religion and custom, the methods of comparative analysis, historical analysis were used in the presentation of definitions, mutual comparisons.

Main part

Traditional Kazakh law, through universal rules for its society, has a strong influence on social classes and groups and is completely independent of political power. Customs and traditions change depending on whether the problem is solved. That's why the principle "Not all habit is a custom, but a good habit is a custom" was formed.

As for the level of implementation of Sharia law in the Kazakh steppes, the system of Kazakh law, as in Muslim law, promotes a satisfactory way to avoid going to court, and is based on such a system. This system can be clearly understood from the following principles and laws: "The Kazakh way is satisfactory, it does not go astray, the Shari'a is a treaty, and no one disputes it". These words belong to Anet baba, the great teachers of the three famous Kazakh judges (Kazakh word - bi), Tole bi, Kazbek bi, Aiteke bi. The road is one of the main sources of Kazakh law and has its own category. This principle is the main concept of the Kazakh legal system. Any issue in this regard is resolved by the first judges. Failure to do so will result in a sentence in accordance with Sharia law. The famous Bukhar Zhyrau warned Abylai khan of his time: "Don't be angry, Ablai, if you are angry, I will lift you up, and you will be sent to the court" (Azbanbayev, 2009: 98). This means that if he does

not submit to his authority, he will be taken to the judge as a supreme judge.

Kazbek bi, one of the three most famous Kazakh bis, said in one of his speeches: The Judge should speak when he sees the justice, if black and white quarrel, God will decide in a narrow place (Zimanov, 2006: 100) – it means when the speaker could not find a solution, God's judgment will solve it. No matter how many speeches a speaker makes, he will be a speaker only if he is fair. If the verdict of the bi was the final decision, it would be incomprehensible for Bukhar Zhyrau to say "I will send you to the court (kaz)". From the point of view of the independence of the judiciary from political power, although the political power is in the hands of the khans, the assembly of judges, which elects the khans, are those who unite khans and the people. Although the khans are in political power, we see that the military power, along with the executive power, belongs to the tribal chiefs, heroes (batyrs) and bis. Given that the khan had no personal wealth or property, it can be said that it is a unique example of a system of judicial power as a whole, independent of political power.

The fact that disputes between small tribes or between villages are resolved by the elders, or by the judges between the tribes, as well as in inter-tribal misunderstandings and charge disputes, the fact that sub-tribes settle pre-murder issues through ransom shows that they are settled by mutual consent. In the case of homicides and injuries, compensation was often paid as a path of contentment. Even if he was to be put to death, he followed the Shari'a's path of "peace" and the principle that "a sword does not cut a bent head" and "if someone confess frankly, you must forgive even if it is a heavy sin." It is well-known that in the matter of punishment he used more honor punishment than corporal punishment. The main task of the judges, in addition to serving as judges, was to educate members of a non-judicial, sensible society. While the laws of the steppe required justice, truthfulness, honesty, and integrity, the main mechanism for saving and enforcing the rule of law was the concept of "honor". The main principle: "The livestock is the redemption for my soul, my soul is the cost of my honor." It is confirmed by another statement "A man is worth a hundred horses, a honor is worth a thousand horses" (Zimanov, 2005: 29). The types of punishment are more punitive than the corporal punishment, such as an example, expulsion from the country, smearing black soot on the face, hanging felt around his neck,

penalties such as riding a black donkey backwards. In the old way of Esimkhan:

Let there be a khan, let there be a law worthy of a khan!

Let there be an abyz (mullah), be the abyss of choice!

Let there be a bi, let him come!

Let there be a hero, let him be lucky! (Zimanov, 2005: 150) meant that there should be a house for a bi where a well-educated family lives, with good knowledge of the customs of the people.

In general law, normativeness and publicity are important. Due to the fact that Kazakh law is based on a problematic system, it consists of natural rules, which are not alien to human nature and nature, but inclined. From a legal point of view, the researchers confirm that the first priority a system based on natural law and natural judgment is the moral aspect of the case. The Kazakh judiciary is based on the ideology of non-judiciary (Kenzhealiev, 2009:179).

Regarding the Kazakh legal system the famous orientalist Grigoriev V., who served in the Kazakh steppes., says: "Usually many people (Europeans) consider nomads to be far from economic and intellectual development ... It is obvious that developed nations are surprised and jealous when they see how Kazakhs, who are engaged in animal husbandry, look at and resolve disputes" (Aldibekov, 2009: 415).

In Muslim law, the main way is to resolve any disputes and norms not as a rule (judicial), but as a ridai (mutual agreement), that is a principle. Muslim law is based on people's conscience and morals. For example, the principles of witnessing, swearing, confession have deep meanings. We see that many examples, such as the problem of propaganda or coming back multiple times regardless of recognition of the provisions of the adultery, require to build a conscious society. "Peace" and "Tahkim" are institutes in resolving cases related to the rights of citizens before the convict's decision. Non-judgment is aimed at building a society based on the upbringing of the Prophet (Shen, 2012: 118). Reconciliation between the parties is a matter of legal co-operation and peace. A society of peace and compromise has a great role to play in resolving disputes before the courts.

The word "Sulh" means reconciliation, and does not refer to rebellion or disorder. In the Muslim legal literature, a compromise between the aggrieved and the offender parties or the accusing parties is a contract between the parties to settle the dispute amicably. The main definition of sulh is ending the

conflict between the parties. The Kitab al-Sulh section is included in the Baba ad-Dawa section of the classical jurisprudence books, as well as in the book al-Shaha, at the end of the confession sections. In international Islamic law, the subject of peace is considered in the Siyar section, family relations in the marriage section, mostly in the al-Qadi section, and the matters of payment in the criminal and revenge sections, property relations in the special section of peace, and inheritance in the taharuj and taqsim ar-ridai sections (Al-Kasani, 2010: II /180-191; III /151). It is clear that the Ishans and Khoja dynasties, who received higher education in the madrasas of the Kazakh steppes, in the performance of their duties as judges, when asked about the Shari'a solution to a problem, gave a fatwa based on these books of jurisprudence.

Tahkim is another institution in Muslim law that seeks to reach a compromise and agreement. Takhkim refers to the contradictions and mutual accusations in the literature of Muslim law with the consent of both parties to a third person or a group of representatives of the rebels (halukam). The way of tahkim, which existed before Islam, is still recognized as legitimate after Islam. Islamic jurists say that all the conditions for a kazy are the same for a judge. The subject of tahkim is considered in the sections of classical Muslim legal literature, such as nikah, talaq, adabul-qadi, bayg, akila (Al-Kasani, 2010: IV / 92; T / 32). Tahkim is a form of sulh, an important way to put an end to issues of public concern, such as hunger, hatred, revenge, social conflict and injustice, and to promote social cooperation. Takhkim in Muslim law serves in the same way as in Kazakh customary law, such concepts as "seeking justice" and "appealing to the authorities." We will talk more about this in the section on judges and the court of judges.

The Kazakh legal system imposes restrictions on liberty, imprisonment, money laundering, and other penalties. According to popular belief, these punishments were more severe than death. This is because the notion that "shame is much more important than death" is well established. Penalties for property liability include fines (different types of fines). If there was very heavy property fines, it was obliged to pay as a dynasty or tribal village (Oseruly, 2009: 25). Such large-scale accusations oblige them to correct and educate the bullies and villains, who, in due course, also strengthen self-government and control. As an example of the fact that legal responsibility is based on the tribal system and various payments and charges are imposed

on the tribes, one of the historical literatures states: "village Kyr-Shekty with 9,000 houses has to pay 6,000 sheep, it is not big as not a single sheep comes to each house" (Shukirov, 2006: 404). This means that the whole tribe is burdened with the fines or other penalties that a man must pay.

The content of the laws of the "four bis" adopted for the Kazakhs of East Turkestan in 1836, when the ancient Kazakh customs were applied until the most recent and recent history, was as follows: 1) Land dispute, 2) Widow dispute, 3) Charge dispute, 4) Theft, 5) Inheritance, 6) Road (Mynzhan, 2004: 485). We see that the topics and sections are inconsistent, as they are somewhat involuntary and forced to be classified and divided into sections according to the system of Islamic law or the sections of the Western legal system. Since the whole legal system is based on the mind and human nature, it is necessary to eliminate some similar articles and regulations. However, they may not be compatible with each other as a whole. For example, in the study of the methodology of Muslim law, the division of slave wages into the wages of God seems to be a correspondence between the division of the Romano-German system into two major branches: public law and private law.

Although the rule of the state was in the hands of the khans, there was a council of rubas and judges who elected and installed the khans. It depended not only on the system of government, but also on the welfare of the country and the field of military defense, the khans depended on the bis and rubas. The khan did not have his own army and property.

According to the rules of making a khan and khan talau (robbery of a khan), all Kazakh khans are descended from the "Tore" clan, came from the descendants of Genghis and it must be so. The establishment of this khanate system in the Kazakh people is so stable that it does not accept from other people and tribal leaders. The most striking historical example of this is the Abak Kerey tribe of Kazakhs in the Altai and Tarbagatai regions, an ancient settlement that was liberated from the Dzungars in the 1770s. Later, when the Kazakh Khanate began to disintegrate due to external attacks, neighboring China, Mongolia and others did not consider the Kazakh people as equals: "You came later. Your political leaders have no kings. There is a khan of our country. The khan does not come to terms with ordinary people". In many cases, they claim their rights because no one recognizes their sovereignty and country. Then the people of Abak Kerey elected 17 people, led by Tauasar bi, to elect a khan from their leader. Abylpeiz Tore sent

his son Kogedai with his mother Mrs. Tumar to Abak Kerey. He is said to have been only 12 or 14 years old when he arrived in Abak Kerey. Despite his young age, he ruled the country on an equal footing with other nations. By 1836, the Great Council was held in order to reform and modernize the system of governance. Four senior bis will be elected from that council. He revised the customary law and passed a bill called the "Four bi tore." These updated laws were officially in force among the Kazakhs for 113 years from 1836 to 1949. Different opinions are expressed in the election of the four bis. It is said that there were four assistants, four great angels, four caliphs, four books, and four imams in the religion, and that Abylai Khan's advisers were four bis (Babi Toktar, 2009: 483-485). Even before the last Kazakh khans and sultans, the Kazakh people had a well-established notion that political power should be in the hands of judges, and even today there are those who believe that the descendants of tore should rule.

In order to elevate the khan, first of all, the leading bis and aksakals of all the tribes came to the meeting and decided who would be the khan. Then often on Friday they gather as many people as possible and the future khan looks at the qibla on a white felt mat on a high place, rather than in a palace or khanorda. A man from the Khoja dynasty or imam recites the Koran and one of the elders blesses. Then the khan on the felt is raised above the head on all four sides. The Kazakh people call it "raising a khan on a white felt". Then the outer garments are taken off, torn, and distributed to the good people and dignitaries who attended the meeting. This is called "telim" or "khan sarkyty". After that, they put on a khan's hat and a robe and boots (Nusipokasuly, 2011: 127-129). Here you can see that the khan's ascension on Friday, the khan's sitting on the qibla, reciting the Koran, receiving blessings from the khan's clothes are religious principles and values.

In traditional Kazakh society, the notion of a khan and the head of state in Islamic law is somewhat similar. There are also Islamic notions that it should come from a certain political elite. It can even be seen that the above-mentioned khantalau is similar to the notion of the removal of the caliph from the throne, known as the Ghazl al-Khalifa. Although the literature of classical jurisprudence does not have a special section or topic on the election and appointment of caliphs, it is considered on topics such as "imam", "caliph", "imara". It is even mentioned in the topic of imamship in prayer, and the imamship in prayer is called "imam as-sugra"

and the head of state or sultan is called "imam al-kubra". It is also mentioned among the sections of theology. At the end of the work of the Aqeedah, this topic of management is also considered.

The position of the head of state in a Muslim country is considered to be a function of the Prophet's mission as a coordinator of religious and civic relations outside the service of tabligh (transmission of religion). In order to become a caliph, imam or emir al-mu'minin, there are a number of conditions, such as being a Muslim, being a man, being mentally and physically healthy, having a sufficient level of education, being just, and being a member of the Quraysh tribe (Cetin, 2013: 110). Basically, the election and appointment of a caliph or imam takes place in four different ways:

1. Bigat's way is to gather the leading elites and the general population in the society and accept the leadership.
2. In consultation with his predecessor, he accepted power at the national level
3. Through the Council of the Shura - the formation of the population by nominating and selecting candidates as a result of consultations of representatives of certain groups formed from the people.
4. By conquest, a person worthy of the caliphate seizes power by force. Although this path does not conform to the appointment of a caliph in Islam and the principle of biqat in the electoral system, it is permissible to prevent mass unrest, anarchy and civil war. Sometimes the heir to the throne of the monarchy or the next representative of the dynasty came to power by choosing this path (Ibn Abidin, 1992: I / 547-549; Karaman, 2011: I / 187).

At the same time, although there are various topics related to governing the state, there are many conclusions that the absence of ayat-hadiths (nas) on how to be elected is left to the will of the later mujtahids and the common decision of the ummah. It is obvious that the issue of forming a general system of government based on the actions of just caliphs is a matter of free will, provided that the general principles and states are observed, a worthy person can seize power by force (Turcan, 2001: 217). This is because neither the Prophet nor his Companions set a pattern of appointment based on a specific criterion or system. In this regard, it should be noted that the decision should be made at a meeting of the council among certain elite groups, in accordance with the will of the people and the current situation.

In fact, in most systems of government, the right to rule for a certain period of time or for a lifetime, but on Islamic principles, neither. On the contrary,

its term and rights are determined by its suitability and performance of its duties (From this point of view, in the traditional Kazakh society, in the event that the khan does not deserve his status, the plundering of the khan or the removal of the throne by force is similar to the principle of decency in the caliphate). The caliph's removal from the throne by the ummah is also mentioned in the literature of jurisprudence. There are two reasons for this: the first is when he has been misled into believing or morally believing, and the second is when he has been accused of immorality by openly committing forbidden acts. For the second reason, the situation is considered, if he does not voluntarily vacate the throne, he will be forced to surrender. If such a possibility is not seen, if the assumption of its usefulness prevails, he will be forcibly removed from the throne (Karaman, 2011: 189-190).

There is a clear similarity between the election of a khan in the period of the Kazakh Khanate and the overthrow of the khanate and the appointment of a caliph and his rulings on ghazals. While the election of a khan from the nobility reflects his level of political elite, the rise of a khan in the council of judges is the same as the acceptance of his power by the notion of bigat. And in case of non-fulfillment of his duties, the practice of khan talau is in accordance with the principle of "gazl al-khalifa".

Laws and norms that occur in everyday life in traditional Kazakh society are considered in the laws of custom. For example, if the "guest meal" is not performed or if the "guest meal" is not served properly in case of appealing to the bi of that tribe he is required to pay fines. Therefore, although many of these rules are similar to moral and ethical rules, it can be seen that they are norms that require high and strict observance of legal responsibility. Sometimes, in this case, depending on the problem, according to the principle "the scarf is not a coat, but opens the way". The rite of allegiance is simplified. But he will have to plead guilty. Such acts have the force of law. Such rules are like proverbs, they are used among the people with similar words. A clear example of the rules that have legal force in everyday life is the guest meal. Even simple incidents do not go unnoticed. For example, in a note left by Berem: "The guest first gives the meat to the host and then other people in the house with his own hands. The guest should not serve more than three pieces of meat. If more than a third is given and a person suffocates and dies, the guest pays 100 horses. And if he gives less than three pieces and suffocates, it is not paid for", - writes with surprise (Berem, 2006: 79).

It is known that failure to provide food to a guest or failure to pay a proper reward under customary law is punishable. Some etiquette is punishable by a fine in connection with an unlawful act, as well as in violation of values that are revered or significant in steppe culture. For example, it is still said that if a person rides a horse towards the house or outside the house, gets off the horse right next to the house, and gives a guest a piece of meat with pancreas, the horseman will be fined (Imammadi, 2019: 49). The precautionary acts and values of that time are still preserved in the country. For example, when the bone marrow is not involved, the adult side is resentful, and each bone has its own meaning depending on the people involved.

In Islamic law, imams of madhhabs respect the guest and discuss the issue of food and water. The essence of this problem seems to be in the hadith, "Take your wages for not eating" (Abu Dawud, 2019: 342). In this regard, Imam Aqzam, Imam Malik and many scholars have said that hospitality is important but not obligatory. According to a narration from a mujahid, it is obligatory to wait for a guest.

Words used in Kazakh in the legal sense, such as "Esim khan's old way", "Kasym khan's old way", "Kazakh way ..." are used in the sense of conduct, status, discipline, law, tolerance. In everyday life, the words "way" is also used for rituals and customs that should be given importance (Dautaliev, 2009: 149). For example, according to the notion of "his way is big" does not relate only to the age, but also it means he could have a high status according to the genealogy, the offspring of a father, a half-brother. The greatness of the way is clearly reflected in special ceremonies and gifts, respect, contribution to the value and hostage, and responsibility in it.

Rituals are often given in the form of proverbs or sayings that are easy to memorize. Many of these words have been preserved in the literature and historical data, in the memory of the people, but in the form of special articles or issues. As they have been out of use for a long time, it is clear that many of these rules have been forgotten. How many have lost their original meaning. For example, the word "golden scales" in the phrase "just power, golden scales" used to persist in justice, to measure the case delicately as measuring gold. The phrase "No one is born in the right way, no one is born in the wrong way" means impartiality, and the phrase "Inadequate power leads to seven thefts" means that if the sentence and punishment do not play a retaliatory role, the crime will increase. There was always a way to

sue, to demand justice, to complain. To express freedom and liberty, he concluded, "Even if they want to cut your head, they don't want to cut your tongue." Concerning the proof of the crime, the trail, the suspicion there are also rules.

Regarding revenge and punishment, "blood for blood, soul for soul", "ear for ear, hoof for hoof", "blood for revenge, accidental charge", "The value of the land is two times fifty" (100) are some of the rules that have become the rule. According to the principle: "The rope saves the horse, the horse saves the man, the man saves the country" it is required to pay charges. Regarding the property and treasure found, "the one who finds it rejoices, the one who recognizes it takes it". When it comes to violent acts, it is said that "it is difficult to come to terms with a sword", but to show forgiveness, to be close to compromise it is said "the sword does not cut curved head (someone who confessed his sins)", "If someone is confessing, forgive him even it's too hard", "There is no infallible jaw, no infallible hooves", "Do not take someone's life to not be a stranger", "There is no guilt in going astray, after finding the herd again". There are countless examples of such rules (Dautaliev, 2009: 148).

In case of non-compliance with the rules of Kazakh law due to inappropriate abuse, in case of non-agreement one side takes revenge by taking away a group of cattle from the pasture - it is called "barymta". The chiefs of the tribe were informed both during and after the barymta. This was the meaning of the phrase "if you say that you are doing barymta you are not guilty" (Alimzhan, 2010: 24). The barymta is not a violation of the law, on the contrary, a demand, a requirement of charges. If it is committed without letting know the tribal leaders, it is considered a robbery, not barymta. Even some provisions of the normative customary law state that no compensation is paid to those who were wounded in the hostage-taking and died of beatings (Dulatbekov, 2006: 103). In this regard, we see that it is recognized as legal.

As a general principle, the protection of the Muslim law is called "darurat al-hamsa", such as the

protection of religion, soul, intellect, property, while the Kazakh people took the principle "The livestock is the redemption for my soul, my soul is the cost of my honor." According to this rule, the protection of religion and honor is the most important, then the issue of the soul is considered, after that only one of property.

Results and discussion

Religion constitutes a spiritual part of society. It is impossible without society and the same is true for society. One of the vital functions of religion is distribution of religion culturally. Islam, which spread to the Kazakh steppe in the 8th century, changed and clashed some of the ancient religious beliefs of the Kazakh people. It taught to consider the world, the creation of the universe, and problematic issues in society within the framework of Islamic Sharia. This led to formation of the laws of Customs in traditional Kazakh society. As can be seen from the research, the norms of religion and traditions have been integrated into each other in terms of spiritual harmony and transformed into a single body. The paper was based on a comparative method.

Conclusion

In the result, it can be concluded that Islamic values, which started its diffusion in the Kazakh steppe several decade centuries ago, have been intertwined with the lifestyle and traditions of the Kazakh people. A distinctive Kazakh worldview was formed in the result of this process, and as such, the norms of Customs in traditional Kazakh society were closely intertwined with Islamic Sharia and turned into a single concept. All citations, proverbs and sayings of the Kazakh people were in a harmony with Quran and hadiths and were aimed at instilling humanity, morality and patriotism among next generation. Therefore, the laws of religion and Customs in traditional Kazakh society complement and improve each other.

References

- Abu Davud Suleyman b. el-Es'as b. İshâk es-Sicistânî. (2019) Suneni Abi Davud, thk: Yasir Hasan, III. Beyrut, Muassasat er-Risale. – 367.
- Al-Kasani, Alauddin Abu Bekr b. Masud b. Ahmad. (2010) Badai es-Sanai fi Tartib aş-Şerai, Beyrut: Dar ak-Fikr. II. -340. III. -249. IV. – 224.
- Cetin M. Maturidiligin (Hilafet/Imamet) anlayisi. Erzurum. 2013. – 236.
- Ibn Abidin Amin ibn Ahmed ibn Abdulaziz. (1992) Raddu'l-Muhtar, I, Beyrut. – 663.
- Imammadi T. (2019) «Geleneksel Kazak toplumundaki örfi kuralların İslam hukuku açısından değerlendirilmesi». (Жарияланбаған диссертация), Marmara Universitesi, İstanbul. – 224.
- Karaman H. (2010) Anahatlarıyla İslam Hukuku. Istanbul: Ensar. C. I. – 340.
- Şen Y. (2012) İslâm Hukukunda Arabuluculuk. Hitit Üniversitesi İlahiyat Fakültesi Dergisi, C. XI, Sayı: 22. -135.
- Türçan T. (2001) Devletin Egemenlik Unsuru ve Egemenlikten Kaynaklanan Yetkileri, Ankara. Ankara Okulu Yayınları. – 271.
- Азбанбаев М.А. (2009) «Би Терминінің қайдан шыққаны туралы сөз», С. Зиманов (ред.), Қазақтың ата заңдары, ішінде (97-100). – Алматы: Жеті жарғы, Т. X. – 589 б.
- Әлдібеков Ж.С. (2009) «Билер сотының әлемдік маңызы», Зиманов С. (ред.), Қазақтың ата заңдары, ішінде (411-417), Алматы: Жеті жарғы. Т. X. – 589 б.
- Әлімжан Қ. (2010) Қазақтың кәдуілгі құқық ережелерінің көркем әдебиетте, фольклорда және музыкада көрініс табуы. – Алматы: Интерлигал. – 50 б.
- Берем А. (2006) «Қазақтардың тұрмыстық және отбасылық өмірі», С. Әжіғали (ред.), Қазақтың дәстүрлері мен әдет-ғұрыптары, ішінде (72-87). – Алматы: Арыс, Том 2. – 328 б.
- Бәби Токтар. (2009) «Абақ Керейдің заң-ережелері туралы», С. Зиманов (ред.), Қазақтың ата заңдары, ішінде (482-494), Т. X. – Алматы: Жеті жарғы. – 589 б.
- Дәуітәлиев Қ.Н. (2009) «Қазақ құқығының ерекшеліктері», Зиманов С. (ред.), Қазақтың ата заңдары. – Алматы: Жеті жарғы. Т. X. – 589 б.
- Дулатбеков Н. (2006) Қазақтың әдет-ғұрып заңдары, Әділет. – Астана. – 236 б.
- Зиманов С. (2005) «Қазақтың жарғы заңдары – әлемдік маңызы бар Құқықтық жүйе», Зиманов (ред.), Қазақтың ата заңдары, ішінде (23-34). – Алматы: Жеті жарғы. Т.V. – 539 б.
- Зиманов С. (2006) «Қазыбек би», Зиманов С. (ред.), Қазақтың ата заңдары, ішінде (97-102). – Алматы: Жеті жарғы. Т. VIII. – 600 б.
- Кенжеалиев З.Ж. (2009) «Дәстүрлі қазақ қоғамындағы соттық билік қатынастарының ерекшеліктері». С. Зиманов (ред.), Қазақтың ата заңдары, ішінде (178-182). – Алматы: Жеті жарғы, Т. X. – 589 б.
- Мыңжан Н. (2004) «Қазақ хандығының заңдары», Қазақтың ата заңдары, Т. II. ішінде (399-402), Алматы: Жеті жарғы. – 666 б.
- Нүсіпқасұлы А., Жапарұлы А. (2011) Ағаш Бесіктен жер бесікке дейін. – Алматы: Өнер, Т. I. – 146 б.
- Өсерұлы Н. (2009) «Дәстүрлі билер соты», Зиманов С. (ред.), Қазақтың ата заңдары. – Алматы: Жеті жарғы. Т. X. – 589 б.
- Шүкіров З. (2006) «Рахманқұлдың құны», Зиманов С. (ред.), Қазақтың ата заңдары, (402-409). – Алматы: Жеті жарғы. Т. VII. – 600 б.

References

- Abu Dawud Sulayman b. al-As'as b. Ishaq al-Sijistani. (2007) Sunan Abi Dawud, ed.: Yasir Hassan, III. Beirut, Muassasat al-Risale. - 367. (in Arabic)
- Aldibekov Zh.S. (2009) Biler sotinin alemdik manizi. Zimanov S. Qazaqtin ata zandari ishinde. Almati. Jeti jargi. [The world significance of the judiciary, Zimanov S. (ed.), Kazakh ancestral laws, including] (411-417), Almaty: Seven Charters, 2009. Vol. X. - 589. (in Kazakh)
- Alimzhan K. (2010) Qazaqtin kaduilgi quqiq erezhelerinin kormem adebiyette, folklorda zhane muzikada korinis tabui. Almati. Interligal. [The rules of ordinary Kazakh law in fiction, folklore and music.] Almaty. Interligal. – 50. (in Kazakh)
- Al-Kasani, Alauddin Abu Bakr b. Masood b. Ahmad. (2010) Badai es-Sanai fi Tartib al-Sharai, Beirut: Dar al-Fikr. Vol. 2. - 340. Vol. 3. – 249. Vol. – 224 (in Arabic)
- Azbanbayev M.A. (2009) Bi termininin qaydan shiqqani turali soz. S. Zimanov (red.), Qazaqtin ata zandari ishinde. Almati: Jeti jargi [A word about the origin of the term dance. S. Zimanov (ed.), Kazakh ancestral laws, including] (97-100), Almaty: Seven Charters, Vol. 10. – 589. (in Kazakh)
- Babi Toktar. (2009) Abaq Kereydin zan-erezheleri turali. S. Zimanov (red.), Qazaqtin ata zandari. Ishinde. Almati: Jeti jargi [On the laws and regulations of Abak Kepei. S. Zimanov (ed.), Kazakh ancestral laws, including] (482-494), Vol. 10. Almaty: Seven Charters. - 589. (in Kazakh)
- Berem A. (2006) Qazaqtardin turmistiqt jane otbasilik omiri. S. Azhigali (red.), Qazaqtin dasturleri men adet guruptari. ishinde, Almati: Aris [Domestic and family life of Kazakhs. S. Azhigali (ed.), Kazakh traditions and customs, including] (72-87), Almaty: Arys, Vol. 2. – 328. (in Kazakh)
- Cetin M. Maturidiligin (Hilafet/Imamet) anlayisi. [Politics (The caliphate/Imamate) thought of Maturidism]. Erzurum. 2013. – 236. (in Turkish)
- Dautaliev K.N. (2009) Qazaq quqiginin erekshelekteri. S. Zimanov (red.), Qazaqtin qta zandari. Almati: Jeti jargi. [Features of Kazakh law. Zimanov S. (ed.), Kazakh ancestral laws]. Almaty: Seven charters, Vol. 2. X. – 589 (in Kazakh)

- Dulatbekov N. (2006) Qazaqtin adet-gurip zandari. Adile. Astana. [Kazakh customary laws, Justice]. Astana. – 236. (in Kazakh)
- Ibn Abidin Amin ibn Ahmad ibn Abdulaziz. (1992) Raddu'l-Mukhtar, Vol. I, Beirut. - 663. (in Arabic)
- Imamumadi T. (2019) Geleneksel Kazak Toplumundaki orfi kuralların İslam Hukuku Açısından Degerlendirilmesi. Zhariyalanbagan dissertatsiya. [Assessment of the norm of ordinary law in the traditional Kazakh society from the point of view of Islamic law]. (Unpublished dissertation), Marmara University, Istanbul. – 224. (in Turkish)
- Karaman H. (2010) Anahatlarıyla İslam Hukuku [Islamic law in general]. İstanbul: Ensar. Vol 1. - 340. (in Turkish)
- Kenzhealiev Z.Zh. (2009) Dasturli qazaq qogamindagi sottiq bilik qatinastarinin erekshelikleri. S. Zimanov (red), Qazaqtin ata zandari, ishinde, Almati: Jeti jargi [Features of judicial relations in traditional Kazakh society. S. Zimanov (ed.), Kazakh ancestral laws, including] (178-182), Almaty: Seven Charters, Vol. 10. – 589. (in Kazakh)
- Mynzhan N. (2004) Qazaq qandiginin zandari. Qazaqtin ata zandari. ishinde, Almati: Jeti jargi [Laws of the Kazakh Khanate. Kazakh ancestral laws]. Vol. 2. in (399-402), Almaty: Seven Charters. - 666. (in Kazakh)
- Nusipokasuly A., Zhaparovich A. (2011) Agash besikten jer besikke deyin. [From the Wooden Cradle to the Earth Cradle]. Almaty: Art, Vol. 1. - 146 (in Kazakh)
- Oseruly N. (2009) Dasturli biler soti. S. Zimanov (red), Qazaqtin ata zandari [Court of traditional judges. Zimanov S. (ed.), Kazakh ancestral laws] -Almaty: Seven Charters, 2009, Vol. 10 – 589 (in Kazakh)
- Shen Y. (2012) İslâm Hukukunda Arabuluculuk [Mediation in Islamic Law]. Journal of the Theological Faculty of the University of Hittite, Vol. 11. Issue: 22, - -135. (in Turkish)
- Shukirov Z. (2006) Rahmanquldin quni. S. Zimanov (red), Qazaqtin ata zandari [The cost of Rakhmankul. Zimanov S. (ed.), Kazakh ancestral laws]. - Almaty: Seven Charters, Vol. 2. – 600 (in Kazakh)
- Turcan T. (2001) Devletin Egemenlik Unsuru ve Egemenlikten Kaynaklanan Yetkileri [Element of Sovereignty of the State and Its Powers Driving from Sovereignty]. - Ankara. Publications School Ankara. - 271 (in Turkish)
- Zimanov S. (2005) Qazaqtin jargi zandari – alemdik manizi bar Quqitq juye. S. Zimanov (red), Qazaqtin ata zandari. ishinde [Kazakh charter laws - the legal system of world importance. S. Zimanov (ed.), Kazakh patriarch]. Vol. 5. - 539. (in Kazakh)
- Zimanov S. (2006) Qazibek bi. S. Zimanov (red), Qazaqtin ata zandari, ishinde [Kazybek bi, Zimanov S. (ed.), Kazakh ancestral laws, including] (97-102), Vol. 8. - Almaty: Seven Charters. – 600. (in Kazakh)