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The problem of the legal status of the muslim women in turkestan in the material of the reports of senatorial auditing of K.K. Palen in 1908-1909

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ABSTRACT

The article discusses the role and place of a Muslim woman in Turkestan based on the audit of Senator K.K.Palen, conducted in 1908-1909. She studied and did not collect the Muslim congress to discuss the code of Muslim laws, namely: representatives of the local Muslim clergy, theologians and jurists.

The article discusses the relationship to the family, to the woman and a comparison of the Muslim and European family from the point of view of the European KK.Palen and other representatives of the European intelligentsia. It is noted that Senator KK.Palen was the first Tsarist official who decided to hold a Muslim congress and as a result prepared a special report entitled "Sharia articles translated into Russian about the legal relations of the Muslim population of the Turkestan Territory, extracted from the indigenous, Arabic presentation, on issues proposed by Senator Count KK.Palen to discuss the commission of scientists natives convened from three regions of the region in Tashkent".

Based on the results of the KK.Palen audit reports, an analysis of Islamic law - Sharia and Adat (rules of nomadic population) was carried out. Considered the rights of Muslim women under Muslim law - Sharia.

Key words: Koran, Sharia, Adat, auditing, senator K.K. Palen, Turkestan, marriage, family, rights of the women, duties of wife and husband.

1. INTRODUCTION

The role of the women in society, either as men is great and wide. The great function on its value is entrusted on the woman according to the will the God – like preservation of the human being. Naturally the upbringing of children is also the most important duty of the mother. The role of the woman in Islam is very great. The woman – is mother, sister, daughter, and wife. Poems, songs, victories and awards are devoted to the women. One poet said: "Mother – is a school that prepares noble population to the life" [3.15].

2. LITERATURE REVIEW.

The woman is of special respect and high authority. The image of woman-Moslem attracted the attention of Russian and foreign poets and writers. "Imitations to Koran" of A.S.Pushkin, including poetry, devoted to the wives of the Prophet "Oh, pure wives of the Prophet" are well-known [6.115–124]. The poet Rostislav Podunov described the image of the woman-Moslem in his poem "Moslem" very well (1970). European scientists and statesmen were interested in the question of the woman. At the end of XIX – the beginning of XX century there was much distorted idea about woman of the Moslem East and many inconsistent opinions about closed lifestyle of the women of Turkestan. For instance, in the article of the Russian official N.A. Maev "Asian Tashkent" the author illuminates the questions on "a view to Moslem women and their rights", where he noted that European got accustomed to consider "Middle Asian women as a victim of despotism and concubine of her husband" [1.298] however nobody did not consider women of the Europe or Russia as the victims of despotism.

3. MAIN PART.

The same situation, either as in Central Asia was observed while the review of life of the women of Europe and Russia, where men was to make frequent or long-lasting absences for the decision of business, material problems. "People felt sorry about native women that they were bound with work and that husband looked at them as on workers. It is true that all duties of the house lies on Asian women, but the wives of those who are not Asian sit fold hands? Is not it true that the whole house works and often absolutely the work that must do the men lies on them?" [1.299].

It is not correct to think that Moslem women are "creatures without any rights", because according to Moslem rule; Sharia, woman, either as man, beginning from VII century was vested by certain rights: this is the protection of life, honor, property and dignity. The Islam nearly fifteen centuries ago openly proclaimed the full financial

independence of the women and provided with essential rights to spend their own valuables independently, have their own business and sign financial documents required for it themselves. However in Russian Turkestan not knowing the local languages in necessary level by majority of the Russian researchers prevented deep and broad investigation of Moslem legislation and these served for formation of the distorted opinion about the position of women – Moslem that have no rights. It prepared the ground to the auditor of Turkestan, senator K.K. Palen in 1909 to write in his report that “the condition of Islam and the general picture of its development in the area is as it was before remains little investigated” [5.61].

But it is necessary to note that exactly the official from Petersburg, senator K.K. Palen made a contribution in expansion of the knowledge of Russian scientists about legal relations of the scolded population of Turkestan and position of the women in the most unexpected way. As it is known, tsarist government preserved the legal relations of scolded populations of the area based on the law of Sharia. Auditing of K.K. Palen trying to check activity of public court judges (Qozi) faced with the following fact that their decisions on the events of the same type were not only several, but on the contrary, most often contradicted each other. It brought investigators to the conclusion “that the reason of such position lies not only on procedural imperfection of court themselves, but in the character of used and protected by our law under authoritative name “custom” of material right, muddled and inaccessible understanding of both population and local administrative and judicial powers and judges” [7.5].

“Native customs” of scolded populations having settled lifestyle were completely subjugated to the rule of the Moslem right – Sharia. The absence of the translation of the full systematized code of the laws of Sharia in the Russian language obstructed the familiarization of the members of the auditing with these norms controlling the life of sedentary population. And it was strange that nobody from leaders of the colonial administration during the 40 years of existence of Turkestan general governorship did nothing in order to get this extremely necessary legal document. It is possible to say that senator K.K.Palen made the scientific feat in the short period of time (during the year) having prepared and having published in the Russian language code laws of the legal norms of the scolded population of the area on the questions of household, hereditary and material rights i.e. laws of Sharia.

The members of the commission realized auditing of the area under the direction of senator K.K.Palen did colossal work for it. In order to collect full and reliable code of the legal norms of the scolded population of Turkestan it was decided to question most broad circle of persons knowing them. “Herewith it was spoken in the report of the auditing called “Legal life (lifestyle) of native population” that it was not in mind to reconstruct Sharia in its purity in the way of the theoretical scientific formations, but only to get exact and determined information about that how according to Sharia, in that type which is understood and interpreted in Turkestan were solved the main questions of the native civil-legal life (lifestyle)” [7.10].

K.K.Palen took “Collection, acting in India, of Moslem right of Hanafi school” published in English as a base of the future code of the legal norms of the Moslem population of the area. It was formed by Roland Wilson professor of the department of the Indian right of Cambridge university. The collection consisted of “Norms of household, hereditary and material rights” received in India and attentively compared with their Moslem source. According to the instruction of K.K. Palen this work was translated into Russian language and was presented as the first variant of the future code of the laws of Sharia. The examination papers were formed based on their main positions and sent to the connoisseurs of the local Moslem right – theologians, judges, teachers of Madrasah with the request to express their opinion about it. All received adjustments were contributed in the First variant of the code and thereby was formed “Project of the code of the legal norms of Muslims of Turkestan on the questions of civil legal life (lifestyle)”.

Senator K.K.Palen for the discussion and statement of it convened special convention of connoisseur of Moslem right in Tashkent from three scolded areas of the edge, where 15 representatives from local administration, 8 from judicial department, 4 from scholastic department and 29 from scientist, Judges and teachers of Madrasah took part. All contributed adjustments to the convention “Collection of the Moslem right” which was prepared by R. Wilson were checked once again. K.K. Palen with purely German pedantry demanded from presenting at convention Moslem scientist jurists to write conclusions separately on each article of the offered code of the legal norms and having left thereby “argumentation material, which could serve as a reference for the further development of the question by way of judicial practice and scientific researches” [7.11].

All articles given in the discussed code of the legal norms were accepted by the participants of the convention as acting amongst sedentary Moslem population of Turkestan and corresponding to Sharia [7.12]. The Code of legal norms approved on convention (its text is given completely in his report of the auditing called “Legal life (lifestyle) of native population”), consisted of 11 chapters (chapter I – “About marriage”; chapter II – “About divorce, about divorces according to the court (tafriq)”; chapter III – “About parent and children, about their duties”; chapter IV – “About trusteeship”; chapter V – “About support of relatives”; chapter VI – “About inheritance”; chapter VII – “About order of the inheritance according to the law”; chapter VIII – “Testament and grant on the mortal bed”; chapter IX – “About presenting (granting)”; chapter X – “About the right of primary purchase (shifaat)”; chapter XI – “About property and about agreements”, containing 275 articles [7.12–118].

The first chapter deals with problems of the marriage according to Sharia and the information about the rights and duties of both women and men is given that interested us. The given chapter informs about that what is in general understood under the notion of “marriage agreement” though “limiting marriage age is not determined” and it was also determined that if person going to marry reached the age of majority “the marriage agreement is concluded on the agreement (desire) of both sides without interference of the parents or their deputies (vali) and in the same way to

demand the terminations of the marriage that is concluded without their agreement”. The woman is forbidden to have “simultaneously two or more husbands” [7.15 (Chapter I. The Article 14)], but man has the right “to have simultaneously not more than four wives, he can marry the fifth after the divorce with one or on deaths of one of them”. But in section of “duties of the spouses” it is said if the husband has more than one wife, “he is obliged to give each separate apartments, having its separate output in courtyard, divide his property equally and address with them equally in the other relations; in the event of refusal of the husband from marriage cohabitation the wife has the right to address to the public judge” [7.22 (Chapter I. Article 38)].

The Man is forbidden to marry to relative “on ascendant and top-down lines” and in the same way he can carry material and moral duty if he “accepted concubine into the house” [7.22 (Chapter I. Article 39)], or if he “abused power, deprived the liberties, beat” [7. 23 (Chapter I. Article 40)] i.e., wife has the right to address for the protection of the court and refuse to live with him and require material support to live. The wife according to Sharia has the right to require from her husband in the manner of remunerations for marrying him the amount of money or some property. According to Adat – rules of the nomadic population which were wide-spread among nomadic folk of Turkestan, marriage is an “agreement concluded for the reason of acquisition of the woman for marriage cohabitation” that was in counterweight to Sharia. [7.86 (Chapter I. About marriage.)] i.e. civil deal between family of the bridegroom and brides where close relatives with their help in the payment of bride dowry take part also.

The opinion and consent of bride and bridegroom is of no importance; since they are in full subservience of the will of the parents especially of the father. The girl is often allowed to marry before the achievement of “marriage age” i.e. puberty if marriage is profitable for the head of the family or relatives senate. According to Adat – the woman absolutely has no rights and liberties of the choice, this proves the Article 7, on which “in the case of death of the bride, if there is not engaged sister (baldiz) she must marry him instead of her; otherwise, bridegroom returns bride dowry” [7.87 (the Common law of nomad (Adat). Chapter I. About marriage. The Article 7)], but in the case of “death of the bridegroom, governing right (responsibility) on bride goes to the brother of a deceased, directly his following or nearest relative. If there is no such person or they do not want to use this right parents of the deceased returns one half of paid bride price [7. 87 (The Common law of nomad (Adat). Chapter I. About marriage. The Article 8)]” but if the girl “engaged in infancy on the achievement of the majority runs away with another boy in this case he must give the previous bridegroom one another girl or pay bride price” [2.58].

According to Adat woman was not also protected from tyrant-husband and in questions of the divorce unlike Sharia the desire of the wife was not absolutely taken into consideration. Even though husband addressed with his wife cruelly and even beat her; she has no right to require the divorce. According to the suit of the parents and relatives of wife husband could be condemned for this only to fine, but the divorce could not take place. Thereby woman had only one way – to run away to native or with another person, but it was equaled to “evacuation of one’s wife” and was punished by fine in favour of husband. Even in case of proving of “torment or mutilation” and if husband requires his wife back, but relatives protect her and do not return her to the husband, husband gets fine from the relatives with the deduction of only “guilt (ayb)” for caused frustration to the health of wife [7.91 (About divorce)]. That was the reason why woman leading nomadic lifestyle left their husbands in exceptional situations if found protection from parents or relatives. According to the information of N.I. Grodekov that studied the legal life (lifestyle) of nomadic people (the kirghiz-karakirghiz): “man does not limit the numbers of his wives...” [2.84]; “divorced woman does get neither property, nor children” [2.92].

All the above mentioned information about nomadic population was determined during the auditing and it was determined in the convention that during the auditing initial “kirghiz Adat of ancestors was not survived and was converted into the right representing mixture of the rules of Adat and Sharia”. As the senator K.K. Palen pointed out “most positions serving as a reflection of the all-powerful at one time generic beginning with unlimited power of the head of the family and wide rights of father of the family and with oppressed bad position of women ...began gradually to yield to the milder beginnings of Sharia” [7.85].

4. RESULTS.

The earl being European himself and from the European point of view thought that probably Western lifestyle of the family lacks in Turkestan, “family” in that meaning which was understood in Russia “simply did not exist”. He judged the family according to the planning of the house which was different from European houses by division of it into two parts: male (external) and feminine (internal) and being European senator did not take into account the culture, traditions and custom of the Moslem population. K.K. Palen noted in his memories that “Moslems consider woman as an animal that has not soul” [8.34] – much distorted information about position of women was described by senator. Though the information given above describes the true position of the woman-Moslem in the epoch of the spreading Islam, but during the auditing religious scholasticism was governing in the area and religion was used and interpreted with profit only for “elected” that served for the formation of wrong conclusion by senator. Though his critique was fair and he criticized objectively the position and attitude to woman existing exactly at the time of auditing and with big participation tried to relieve the life of woman-Moslem: medical help of Russian women doctors and midwives was organized that was a big breakout in the fight with feminine death-rate, especially during confinement; free hospitals were organized; the marriage of minor girls was forbidden.

5. Conclusion.

According to the given information we can come to the following conclusion that the auditing of the senator K.K.Palen studied the Moslem code of the laws of both settled and nomadic population to modernize the legislative managerial system in the area. Thereby marriage in Islam according to Sharia was considered and is considered as a means of calmness of the soul and heart, and family – is a cell of society, exactly in it the person either blooms or perishes. This is the root that population come out. Any human being needs house, family and in all times it depended on the woman how will be morality spirituality, religiosity of the future generations. In conclusion it is worth to mention the utterance of Moslem scientist: “If you teach the man – you teach one person, if you teach the woman – you teach the nation” [3.16].

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