

Teaching and Job Training Issues in Islamic Law and Children's Right to Education

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ABSTRACT

Nowadays, the issue of child rights in developing countries, especially in Islamic world is becoming more and more concerned topic for many scientific disputes. In particular, the children's right to education and a proper legislation that guarantees it can be considered as one of the most outstanding and important topics in countries such as Afghanistan, Iraq, Bangladesh and the rest of the Islamic world. There have been a number of works published by commonly reputed Islamic scholars in history that assert the duty and the vital necessity of educating children in the light of sacred Islamic sources. As an example, we can consider "Jami' akhkam as-sighar" by Muhammad ibn Mahmud al-Ustrushani, the student of great Central Asian scholar Burkhoniddin Marghinani, who lived in the 12th century. Another prominent work in this area has been published by Shamsuddin Muhammad in his book "Tuhfat al-Mawdudi bi ahkom Mawludi". In this paper we would like to bring these works to the attention of a scientific community for thorough discussion, and in longer perspective build a legislative platform on the basis of which most of the Islamic countries could start implementing corresponding bills that oblige and foster children's right to education.

Keywords: Islamic law, Child, Children's right to education, Teaching and job training issues

INTRODUCTION

Along with teaching Islam, and maintaining a good body shape through physical activities such as swimming, horse-riding etc, Prophet of Islam Muhammad (p.b.u.h.) advised to educate children to a modern knowledge and skills[1]. Moreover it has been stated in article 9 of the documents of "The humanrights in Islam" that trying to gain information is obligatory for each Muslim child, and creating such environment for their education is the responsibility of the state and Muslim community"[2]. This core literature to Islamic world clearly shows that every child has a right to get an education which should conform with modern world, and governments are responsible for providing such environment that could support and foster this process inside any Muslim community. In this paper, we will review some of the most important works of prominent Islamic scholars who lived in Central Asia in XIIth-XIIIth centuries.

CHILD EDUCATION IN ISLAMIC LAW

Looking at the history of Central Asia, we can see that after the advent of Islam, a new legal system emerged in parallel with the old laws of this land. Legal relations of society, the legal system of Islam, its main principles and stages of development have been deeply studied in sources of Islamic law (*fikh*), as well as in the works of famous scholars and specialists in Islamic Law (*fakihes*). They wrote many valuable books. *Fakihes*, who lived and worked in different times, did scientific researches to solve legislative problems among people, in order to develop this science. In particular, we can notice that scientists have researched issues of

children's right with special attention. Amongst, we can consider "Jami' akhkam as-sighar" of Muhammad ibn Mahmud al-Ustrushani, the student of great Central Asian scholar Burkhoniddin Marghinani, who lived in the XIIth century. Full name of the author is Abu al-Fath Muhammad ibn Mahmud ibn al-Husayn ibn Ahmad al-Ustrushani, he lived in the end of XIIth and beginning of the XIIIth centuries in Mawerannahr, and made a valuable contribution to the development of *fikh*. His period was in the last days of Samarkand school of *fikh* just before Mongol conqueror. We have only a little information about his life and works[3].

"Jami' akhkam as-sighar" is considered the only source of Islamic law which is devoted to children's rights. The book, which experienced many years of practice, is valuable as a guide to show parents and children their rights. According to researcher M. Ataev, the work of al-Ustrushani "Jami' akhkam as-sighar", written in 625/1228, is the first and only source in its theme[4].

Almost no books have been written in the Muslim world on children's rights after Majduddin al-Ustrushani. From this perspective, we can conclude that "Jami' akhkam as-sighar" is the only source in the field of *fikh*. However, there is a work, of Shamsuddin Muhammad ibn Abi Bakr ibn al-Qayyim al-Jawziyya (691-751/1292-1350 y.) titled "Tuhfat al-Mawdu' bi ahkam Mawludi". The book is a collection of hadiths, i.e. narrations of Prophet (p.b.u.h.), dedicated to children issues. The work consists of 17 chapters, revealing such subjects as peccability of antipathy against girl babies, announcing birth of the child, reciting "Adhan" and "Iqamah" to the ears of baby, the *aqiqah* ceremony and practices related with it, also cutting hair of the baby and giving charity equal to its weight (in silver), giving name to a child and its rules, circumcision, feeding the baby, practices related to breast feeding and so on[5].

The peculiarity of "Jami' akhkam as-sighar" is that it collected children related issues from more than hundred books of Islamic Law and sorted them. Studying the book, we learn that Ustrushani studied fatawas and decisions of more than 120 contemporaries and collected them in his book. With these features, the work is the main source for professionals who are studying the history of Islam and Islamic law, and it is important to note that the work is useful for the modern jurisprudence.

"Jami' akhkam as-sighar" is mentioned as so valuable source that its manuscript copies are widely spread throughout the world. The book was first published in 1982 by Abdulkholik Abdulhamid al-Bayzali, professor from Iraq. Five copies kept in different libraries were used in performing this publication[4]. They are American Princeton University (№ 1704), "Iraqi National Museum (№ 9626/1) and central waqf (№ 3741/1, № 7460/1) and "al-Ahmadi" central Waqf in Mosul. So far we have known 11 copies of the manuscript of "Jami' akhkam as-sighar", but only 6 of them are well known in scientific world[6]. It is a pity that there were not enough attention to other 5 copies of manuscript stored in Tashkent funds under numbers 6245, 9634, 10409, 8955 and 12723/II. Therefore, third completed and revised edition of the book was published using copies of manuscripts stored in Tashkent and Egypt.

A completed and revised version of «Jami' akhkam as-sighar» was scientifically studied by M. Ataev. The book includes 1289 fatwas, which can be divided into worship, moral, social, economic and legal categories:

1. The worship category consists of six issues. It is ablution, prayer, charity, fast, Hajj and sacrifice. This chapter consists of 120 fatwas, which is 9.31 percent of the book.

2. The Morality category consists of six issues. They are the oath, apostasy, runaway slave, peace treaty, witness and judgeship. This chapter also consists of 120 fatwas, which is 9.31 percent of the work.
3. The Social category also includes six problems. It consists of 516 fatwas which is 40.3 percent of the book.
4. The Economics and Finance category includes 16 issues. This section consists of 346 fatwas, which is 26.84 percent of the work.
5. The law category includes 10 issues. It consists of 215 fatwas, which is 16.68 percent of the work.

The "Jami' akhkam as-sighar" differs from other books of the same type being more detailed and comprehensive. The work consists of more than one thousand fatwas which were derived from about hundred sources relating to the children's rights according to the hanafite school. Ustrushani was acquainted with almost all hanafi authors before writing this book. That is why, the book is considered as very important source for contemporary scientists on Islamic studies and law.

Most issues given in the book have not lost its importance until now. For instance, we can look at individual tuition system that is widely spread in world education.

It is known that childhood is a period of physical and mental development. Therefore, children must be attracted for gaining knowledge at this period. Prophet of Islam Muhammad (p.b.u.h.) said, "*The knowledge obtained in childhood is like an engraving on the stone. The knowledge obtained in old age is like writing on the water*".

In the narration of Imam Tabarani, the famous sahaba Ibn Abbas says: "Allah gave responsibility (prophecy) to his messengers when they were young enough to bear that knowledge. Likewise, scholars also obtain most knowledge in young age".

The great Avicenna stressing on upbringing of young generation says, "After giving primary knowledge to the child we direct him to the field he is talented in. If he wants to be secretary, we direct him to philological sciences. Of course, the will of a child is of most importance"[7].

Learning profession is of main obligations in Islamic legislature. The first book dedicated to rules of learning profession and kinds of professions was written by famous student of Imam Abu Hanifa Imam Muhammad.

Summon of Child to Work

Father or grandfather and child's guardian as well have right to give a child to work at a rental (work) services. Father, grandfather and guardians have the right to use child's labor and do not have to pay the child (but it is better to pay) if it is for child to get used to work and to become practiced.

People Who can Own and Spend Money Which Child was Given for his Labour

The ones who have the right to make child work at rental job can also own payment which was paid for that job. Because it is the right on this contract, so for that reason this right belongs to organizer of the contract. Nobody has the right to spend child's property but father, grandfather and guardians. As well as, although person who cares child can own property of child but he cannot spend it. Imam Muhammad thought that it is in accordance with the purpose to spend for him if child needs it, because just keeping it instead of using for him is out of meaning and there is no benefit for child.

Not to Make Child Work at A Rental Job, Which is Not Suitable for the Condition and Status of Child

If child's father was not weaver, guardian does not have right to make child work at rental work in weaving. Bad side of this skill is that it can influence child's honor and social position.

The Right to Choose after Getting Adult

The child who was put at a rental job by father, grandfather or guardians after recent years, after becoming an adult will have the right to choose: If he wants he continues on his previous job, if he does not want he can cancel the contract. To keep working without getting the right to choose signals that it is to break the rights of child. Abu Hanifa explains it as following: for example although someone is full-grown scholar of Islamic law, even he is suitable for Judge, you let him continue to serve people saying his father led him to this job. It is an awful deed. On the other hand, if there is barrier between him and his property, for example father, grandfather or guardians rent child's household or his slave for certain time and child becomes adult but he cannot cancel that rental contract. Is this right? It is incredibly bad situation.

Hiring of Sons by Father

If sons do not reach adulthood but grow up enough for working, father can lead them to work for money and give alimony from its profit.

Hiring of Daughters by Father

If child is a girl, father cannot hire her to work. Because it is not allowed in sharia to hire woman.

Hiring A Master or Teacher for Children to Give Education or Teach Skills

Qadi (the Judge) Imam Fakhridin in his "Fatawa Fakhridin", in the section of incorrect rental contracts of the chapter dedicated to standards of rent, writes that, if a person hires someone to his child, servant to teach poetry, literature, writing, counting and others or to teach skills, like sewing, for some period of time for example 6 months or so, this contract is considered true and during this period nevertheless that child studies or not the teacher should be paid for his service.

About Payment That Master Pays to Child

In "Fawaid sahibil - muhit" it is said that mentally healthy boy can make a contract with master to learn skill under his father's control. If the boy comes to agreement with his master to work free for 3 years and then to receive 3 dinars payment. And, In the third year he serves for four months and suddenly refuses to work anymore. There is a question if teacher should pay or not. Answer is positive.

About Request of Payment for his Service from Inheritors of Master by Pupil

In "Fawaid sahibil - muhit" it is said that if someone works for master to learn skill, and master dies after teaching him the skill, does the learner have right to make request from master's inheritors or not. This question is solved according to tradition.

In the book titled "Al-Mutlakat" there's a chapter about lease agreements which indicates if a person gives his child for tutor for 4 years to learn specialty and agreed to pay 100 dirhams for this period, but the father takes his child back before the end of agreed period, tutor has no right to ask for full payment, he just has a right to get his payment in the market's value.

Reasons to Call of Lease Agreement

In the book titled “**Fatawa al-kadhi al-Imam al-Fakhriddin**” it’s said that child has a right to call of lease agreement in the case he/she couldn’t learn anything after hiring a tutor in one year period.

In the 8th part of the book “Az-Zakhira” which includes the criterias of leasing it’s said: If one person gave his child for helping to the tutor and bought for him some clothes, but after some time it’s appeared that the child is not doing his responsibilities, such as, one man gave a child silk shirt, tenant has no right to take back this close. This problem is also indicated in the chapter about using others properties without owning them. If tutor gave for his pupil some clothes but he run away from him, but tutor wants to take back this cloth and give it to another he has no right for it. This happens, in the case, if before giving clothes he said that he is giving it only for use, not owing[3].

Nowadays jurisprudence relations existed in ancient times attached firmly with international legislation and civil codex of many states. For instance, all rights mentioned in “The convention on the rights of the child” are guaranteed in Islamic law fifteen centuries ago. Particularly, the right to study of children is guaranteed with chapters 28-29 of the document[8]. Islamic law, formed centuries ago appreciates education and educated people. Everyone is advised to study hard and even go abroad for study. Looking at Koran’s first verses, it can be seen obviously that Islam pays much attention to education. Holy Koran orders: “*Recite in the name of your Lord who created - Created man from a clinging substance. Recite, and your Lord is the most Generous - Who taught by the pen - Taught man that which he knew not*”.

The Koran says that the ones who know are not equal with the ones who know not: “**Say,** *“Are those who know equal to those who do not know?” Only they will remember [who are] people of understanding*”. Also, “*Allah will raise those who have believed among you and those who were given knowledge, by degrees. And Allah is Acquainted with what you do*”.

There are many verses in Koran and hadithes where knowledge and bearers of knowledge are praised and their high rank in hereafter is admitted. For instance, we can remember the hadith from Prophet Muhammad (p.b.u.h.) saying that one day prayer of bearer of knowledge is better than 40 years prayer of the ignorant people. Islam orders gaining knowledge for both man and women: “Studying is fardh (obligatory) for every Muslim man and woman”[9]. In another hadith: “Only three things can benefit the man/women after his/her death. They are: knowledge he left after him, the deeds which are useful for people and children who pray after him for his sake”[10], “Give knowledge to your children because they are born for the time where you exist no more”.

Giving knowledge to children is a responsibility of parents: “The one who do not give advices and improve the knowledge of the ones under his commandment, the Paradise is haram (prohibited) for them”[11]. Speaking about the method of giving education, it should satisfy the age of a child and not be discriminative. As said by Prophet Muhammad (p.b.u.h.): “The child must be given knowledge easy for understanding and prepared for more complicated ones”. Ali ibn Abu Talib also said: “The relations with children must be in various ways”, Ali ibn al-Husayn understands it as: “In giving education to children you should be merciful”. According to “Jami’ akhkam as-sighar” parents or teachers should pay attention to psychology of a child and find out their talents and work on developing it. Teacher should not order him everything in shari’ah. Because, if you order him the work which he is not able to do then he won’t do it and lose his talent. If the educator concludes

that the child has sharp mind, clear understanding, good memory and eager to gaining knowledge, it means that the boy or girl is ready for gaining further education. But, if he notices that the boy or girl is not interested in studying but is talented in other fields, as riding a horse, military work, martial arts then he directs him to the field the boy or girl has interest in. This is more useful for him and Muslim community. So, if an educator notices that he is not talented even in this then he should direct him to the field of work useful for Muslims[12]. Also, rights of children and protecting their honour is considered as of main importance in the book. So, Ustrushani says that guardian has no right to force a child for work in weaving if his father is not weaver. There the book stresses on the issue of owing the children[12].

CONCLUSION

In conclusion, we would like to state that the most of the Islamic sources oblige the community, especially the families to provide education to their children. It is mentioned in multiple suras of Koran, and in the works of reputed scholars that every parent is responsible for his/her children's education and for creating appropriate environment for their future prosperity. These sources also assert that these are not only the duty of parents, but any Muslim community where children are being brought up.

REFERENCES

- [1] Abuzarr, I. Rights of a child in Islam. <http://www.al-shia.ru/section>
- [2] <http://islom.uz/content/view/1309/111/>
- [3] Atayev, M. Imam Ustrushani. (2010). Tashkent, Tashkent Islamic university. - P.28.
- [4] Al-Ustrushani. Jami' akhkam as-sighar. Academy of Sciences of the republic of Uzbekistan, manuscript № 9634. – P. 127^a.
- [5] Shamsuddin al-Jawziyya. (1398 /1977). Tukhfat al-mawdud bi akhkam al mawlud. – Cairo, Maktaba al-Kayyima,– 248 pp.
- [6] Khalidov, A.B. Arabic manuscripts. – V. 1. – P. 188, 206-207.
- [7] Muhammad, A. Islamic education and its philosophy. – Tashkent, «Uzbekistan». - P.197.
- [8] The Convention on the Rights of the Child.(2008) The Law of the Republic of Uzbekistan “On the Guarantees of the Rights of the Child” / Ed. A.Saidov.-T.: National Human Rights Centre of the Republic Of Uzbekistan. –P. 14-15
- [9] Imam Ibn Majah, Kitab al-Muqaddimah (The Book of the Introduction), 1/81, Hadith 224.
- [10] Muslim, Kitab al-Wasiyah (Book of Testimonial Disposition, 3/1255, Hadith 1631.
- [11] Ahmad, T & Maisa, H. (1985). *Caring after child in Islam*. UNICEF-Cairo: University of “Al-Azhar”.-P.18
- [12] Abul-Fath al-Ustrushani (2010). *Jami' akhkam as-sighar /Prepared by U.Alimov, M.Atayev*. –Tashkent, Tashkent Islamic university. -P. 228-229.