

**O‘ZBEKISTON XALQARO ISLOM AKADEMIYASI
HUZURIDAGI ILMIY DARAJALAR BERUVCHI
DSc.35/30.12.2019.Isl/Tar/F.57.01 RAQAMLI ILMIY KENGASH**

O‘ZBEKISTON XALQARO ISLOM AKADEMIYASI

ERKAYEV MA’MURJON RAXMONBERDIYEVICH

**BURHONIDDIN MAHMUD BUXORIYNING “MUHITUL BURHONIY”
ASARIDA IJARA SHARTNOMALARI**

24.00.03 – Fiqh, kalom ilmi. Ilohiyot

**ISLOM SHUNOSLIK FANLARI BO‘YICHA FALSAFA DOKTORI (PhD)
DISSERTATSIYASI AVTOREFERATI**

TOSHKENT – 2024

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**Оглавление автореферата диссертации доктора философии (PhD)
по исламоведческим наукам**

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Ilmiy maslahatchi:

Bekmirzayev Ihomjon Isroiljonovich
tarix fanlari doktori, professor

Rasmiy opponentlar:

Rajabova Mavjuda Abdullayevna
yuridik fanlari doktori, professor

Ishandjanov Baxtiyor Ihomovich
tarix fanlari nomzodi, dotsent

Yetakchi tashkilot:

**O‘zbekiston Respublikasi Fanlar akademiyasi
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D.R. Maxsudov

Ilmiy darajalar beruvchi ilmiy kengash raisi, tarix fanlar doktori, professor

S.A. Rustamiy

Ilmiy darajalar beruvchi ilmiy kengash ilmiy kotibi, filologiya fanlari doktori, professor

Z.M. Islomov

Ilmiy darajalar beruvchi ilmiy kengash qoshidagi ilmiy seminar raisi, filologiya fanlari doktori, professor

KIRISH (falsafa doktori (PhD) dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Jahon tarixida islom huquqining muhim mavzularidan hisoblangan “ijara” (عقد الإجارة) musulmon mamlakatlarida zamonaviy shartnomalarga ham singib ketgani bilan ajralib turadi. Fiqh ilmi rivoji, uning mavjud an’analar bilan integratsiyasida Movarounnahr olimlarining o’rni alohida ekanini ta’kidlash kerak. XII-XIII asrlar islom huquqining barcha sohalarida yuksak e’tirofga sazovor bo’lgan faqih Burhoniddin Mahmud Buxoriyning (vaf. 616/1219) “Muhitul Burhoniyy” (المحيط البرهاني) asari ijara shartnomasiga oid mavjud fatvolarning tartiblangani va qoidalarning o’ziga xos uslubda tizimlashtirib bergani bilan ahamiyatlidir. Mazkur manba ijara shartnomasining tuzilishi va taraflarning manfaatlarini himoya qilish hamda ob’yektga nisbatan adolatli yondashishni ta’minlashda muhim ahamiyat kasb etadi.

Dunyodagi islom ilmlarini o’rganishga ixtisoslashgan ilmiy-tadqiqot markazlarida islom huquqida ijara shartnomalarining tarixi va bugungi kundagi mohiyatini tadqiq etishga qaratilgan tizimli izlanishlar olib borilmoqda. Bunday tadqiqotlarda (إجاره) ijara shartnomalari: “الإجارة المنتهية بالتملك” (mulk qilib berish bilan tugaydigan ijara) “(الاستئجار على الطاعات) “ibodat masalalariga oid ijara” va “(الاستئجار على الأفعال المباحة) “muboh ishlar to’g’risidagi ijara”ga oid favtolarga ham ahamiyat qaratilmoqda. Bu borada muhim manba hisoblangan “Muhitul Burhoniyy” (المحيط البرهاني) asarini kompleks tadqiq qilish va ijara shartnomalarining Movarounnahrda xos xususiyatlarini ochib berish ijara an’anasi mohiyatini yaxlit anglash imkonini beradi.

Yangi O‘zbekistonda diniy-ma’rifiy sohada amalga oshirilayotgan islohotlar allomalarning ilmiy-ma’naviy merosini aniqlash, ularning zamonaviy talqinini amalga oshirish hamda keng jamoatchilikka etkazib berishga katta imkoniyatlar yaratmoqda. Natijada “Hidoya” asari o‘zbek tiliga tarjima qilinib, “Zamonaviy fiqhiy masalalar”, “Nodir fatvolar” hamda “Fatvolar to’plami. 500 savolga 500 javob” kitobining 1-juzi nashr etildi. Burhoniddin Mahmud Buxoriyning hanafiy fiqhiga oid mo’tabar manba hisoblangan “Muhitul Burhoniyy” asaridagi ijara masalasini tadqiq etish yuqoridagi ilmiy izlanishlarning davomi bo’lib xizmat qiladi.

O‘zbekiston Respublikasi Prezidentining 2022-yil 28-yanvardagi PF-60-son “2022–2026-yillarga mo’ljallangan yangi O‘zbekistonning taraqqiyot strategiyasi to’g’risida”gi, 2018-yil 16-apreldagi PF-5416-son “Diniy-ma’rifiy soha faoliyatini tubdan takomillashtirish chora-tadbirlari to’g’risida”gi farmonlari, O‘zbekiston Respublikasi Prezidentining 2017-yil 24-maydagi PQ-2995-son “Qadimiy yozma manbalarni saqlash, tadqiq va targ’ib qilish tizimini yanada takomillashtirish chora-tadbirlari to’g’risida”gi Qarori, Vazirlar Mahkamasining 2019-yil 24-iyundagi 519-son “O‘zbekiston Respublikasi Vazirlar Mahkamasi huzuridagi Imom Buxoriy xalqaro ilmiy-tadqiqot markazining kutubxona fondini xorijiy adabiyotlar bilan boyitish to’g’risida”gi qarorida belgilangan vazifalarni amalga oshirishda ushbu dissertatsiya ishi muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining ustuvor yo‘nalishlariga mosligi. Dissertatsiya respublika fan va texnologiyalar

rivojlanishining I. “Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy, ma’naviy-ma’rifiy rivojlantirishda innovatsion g’oyalar tizimini shakllantirish va ularni amalga oshirish yo’llari” nomli ustuvor yo’nalishiga muvofiq amalga oshirilgan.

Muammoning o’rganilganlik darajasi. Burhoniddin Mahmud Buxoriyning hayoti va ilmiy faoliyati, uning “Muhitul Burhoniy” asari borasida ko‘plab tadqiqotlar olib borilgan. Mazkur tadqiqotlarni hududiy jihatdan quyidagi guruhlarga ajratish mumkin:

birinchisi, yevropalik olimlar, tadqiqotchilar Omelyan Pritsak (Germaniya), Karl Brokkelman (Germaniya), Reshat Gench va Umar Soner Hunkan (Turkiya) allomaning yashagan davri, uning oilasi, oila a’zolarini Buxorodagi siyosiy boshqaruvga ta’siri hamda o’sha vaqtda yuritilgan vaqf hujjatlari haqida ilmiy izlanishlar olib borgan. Baber Johansen, Abdullatif Valiy Adiyim, Monzer Kahf, Mahmud Jamol, Aleksandro Ferrari, Flavia Cortelezzi, Ahmet Akgunduz, Farhan Jamil Ahmed¹ kabi olimlar bank tizimi bilan bog‘liq ijara shartnomalarini islom huquqidagi asoslari haqida umumfiqhiy sohalar qatorida o’rgangan. Ammo ularning izlanishlariga “Muhitul Burhoniy” asaridagi ijara bilan bog‘liq fatvolar jalb etilmagan.

ikkinchisi, mavzu doirasida musulmon sharq tadqiqotchilari ishlanish olib borgan. Jumladan, “Muhitul Burhoniy” asari Abdulkarim Somiy Jundiyl tahqiqi asosida hamda shayx Nur Ahmad tomonidan nashr qilingan². Shu bilan birga, Ali ibn Nosir ibn Solih Suhayboniy, Javhara binti Sa’d ibn Muhammad, Muhammad ibn Abdulaziz ibn Muhammad, Hammod Hasan Muhammad Hasan, Fahd ibn Abdurahmon ibn Sanyon kabi olimlar tomonidan “Muhitul Burhoniy” asarning ayrim boblari tadqiq etilgan. Shuningdek, Muhammad Abdulaziz Hasan Zayd, Abdulloh Husayn Mavjan, Abu Sulaymon Abdulvahob Ibrohim, Doktor Ali Muhyiddin Qoradog‘iy³, A.Mahmud, Faizal Karbani, Muhammad Taqiy Usmoniy,

¹ Omeljan Pritsak. Al-i Burhan. Der Islam (zeitschrift für geschichte und kultur des Islamischen orientes) Band 30. Berlin: Walter de gruyter & co. 1952.-5. 81-133., Brockelmann C. Geschichte der arabischen Litteratur. 3 jildi. - Weimar-Berlin: Xay’a al-misriyya, 1898-1993., Reshat Genç. Karahanlı Devlet Teşkilatı (XI-XII.Yüzyıl). Istanbul: Kültür Bakanlığı Yayınları, 1981. – 5. 370., Ömer Soner Hunkan. Türk Hakanlığı (Karahanlılar) Kuruluş-Gelişme-Çöküş (766-1212). Istanbul: Tanıtım Hizmetleri Ticaret Limited Şirketi, 2007. – B. 523., Baber Johansen. The Islamic Law on Land Tax and Rent. – Taylor-Francis. 2016. – 156 b. Abdullateef Valiy Adiyim Ijarah Lease Contract and Islamic Banking Products. Amazon Digital Services LLC. – 2022. – 246 b., Monzer Kahf. Islamic finance contracts. - Al Manhal. 2013. – 508 b., Mahmoud El-Gamal. Islamic Finance Law, Economics, and Practice. – Cambridge University Press. 2006. – 221 b., Alessandro Ferrari, Flavia Cortelezzi. Contemporary Issues in Islamic Law, Economics and Finance. – Taylor-Francis. 2022. – 222 b., Farhan Jamil Ahmed. Islamic Leasing and Auto Financing System in Pakistan in Compliance with Islamic Sharia. MPRA Paper No. 116439, posted 22 Feb 2023 14:31 UTC. 2023. 42-b.

² Burhoniddin Mahmud Buxoriy. Muhitul Burhoniy. – Bayrut. Dorul kutubul ‘ilmiya. 2004. (9 jilddan iborat); Burhoniddin Mahmud Buxoriy. Muhitul Burhoniy – Karachi. Idoratul Qur’on val ‘ulumul islamiya. 2004. (25 jilddan iborat).

³ Ali ibn Nosir ibn Solih Suhayboniy. “Muhit” asarining “Karohiyat va istehson” bobidan “Hadya va sadaqa” bobiga tahqiqi. Mazusidagi doktorlik ishi. – Saudiya Arabistoni. 1998.; Javhara binti Sa’d ibn Muhammad. “Muhitul Burhoniy fi qihin Nu’moniy” asarining “Muzora’a” bobidan “Ma’zun” bobigacha tahqiqi. doktorlik ishi. – Saudiya Arabistoni. 2005. Mazkur ilmiy ishi “Muzora’a”, “Ashriba”, “Ikroh”, “Shurb”, “Hijr”, “Ma’zun” kitoblarini o’z ichiga olgan., Muhmmad ibn Abdulaziz ibn Muhammad. “Muhitul Burhoniy fi qihin Nu’moniy” asarining “Shahodat” va “Shahodatdan qaytish” kioblarining tahqiqi. doktorlik ishi. – Saudiya Arabistoni. 2005.; Hammod Hasan Muhammad Hasan. “Burhoniddin Mahmud Buxoriyning “Muhitul Burhoniy fi qihin Nu’moniy” asarining o’n sakkizinchi fasli hiylalar bo’limidan yigirma sakkinci fasli (hijrdagi) hiylalar bo’limiga tahqiqi” mavzusida

Muhammad Ayyub, Mehmet Sadik Kayar, Muhammad Haron Amir va Muhammad Saud Ansoriy⁴ tomonidan ijara shartnomalariga oid ma'lumotlar islom huquqi sohaları qatori o'rganilgan.

uchinchisi, o'zbekistonlik olim va tadqiqotchilardan R.Zohid va A.Dehqon, Abdulaziz Mansur, Muhammad Sodiq Muhammad Yusuf, S.Isxakov, A.Raxmonov, A.Raxmonov, M.Komilov, A. Mo'minov, A.Jurjoniy, Sh.Ziyodov, Q.Mahmudov, S.Primov va H.Aminov kabi tadqiqotchilar⁵ tomonidan yozilgan kitob, darslik va o'quv qo'llanmalarida ijara shartnomasiga oid ma'lumotlar islom huquqi sohaları qatorida bayon qilingan. Shuningdek, I.Bekmirzaevning Burhoniddin Mahmud Buxoriyning hayoti va ilmiy merosi hamda «Muhitul-Burhoniy» haqida ma'lumot beruvchi nomzodlik va doktorlik dissertatsiyalari⁶ da mavzuga doir ma'lumotlar tarixshunoslik va manbashunoslik nuqtai nazaridan ochib berilgan.

Dissertatsiya tadqiqotining dissertatsiya bajarilgan oliy ta'lim yoki ilmiy-tadqiqot muassasasining ilmiy-tadqiqot ishlari rejaları bilan bog'liqligi. Dissertatsiya O'zbekiston xalqaro islom akademiyasining 2020–2022 yillarga mo'ljallangan FZ-202002146 – “Markaziy Osiyo mutafakkirlari asarlari asosida buzg'unchi g'oyalarga qarshi kurashning ma'rifiy, tarbiyaviy asoslarini o'zida jamlagan multimedia dasturi hamda mobil ilovasini yaratish” mavzuidagi ilmiy loyihasi doirasida amalga oshirilgan.

Tadqiqotning maqsadi “Muhitul Burhoniy” asarida ijara shartnomalari

magistrlik ishi. – Misr. 2006. – 483 b.; Fahd ibn Abdurahmon ibn Sanyon. “Muhitul Burhoniy fi fiqh in Nu'moniy” asarining “Da'vo kitobi”ning tahqiqi. doktorlik ishi. – Saudiya Arabistoni. (Yili ko'rsatilmagan)., Muhmmad Abdulaziz Hasan Zayd. Al-Ijaratu bayna al-fiqh al-islomiy. – Qohira. Aleksandiriya. – 1996. – 88 b.; Abdulloh Husayn Mavjan. Aqd al-ijara. – Misr. Kunuz al-ma'rifa. – 2001. – 132 b.; Abu Sulaymon Abdulvahob Ibrohim. Aqd al-ijara. –Jidda. Malik Fahd nashriyoti. – 2000. – 92 b., Doktor Ali Muhyiddin Qoradog'iy. Al-ijara 'ala manafi' al-ashxos. – Parij. – 2008. – 68 b.

⁴ Islamic Finance: Law, Economics, and Practice. Cambridge University Press. 2006. – 221 b.; Faizal Karbani. Mastering Islamic Finance: A Practical Guide to Sharia-compliant Banking. Pearson Education. 2015. – 191 b.; Muhammad Taqi Usmoniy. Islam and modernism. Idaratul Maorif. 1998. – 246 b. Muhammad Ayub. Understanding Islamic Finance (summary). Wiley. 2008. -544 b.; Mehmet Sedik Kayar. Islam hukukunda icare akdi. – Dicle universitesi Sosyal bilimler enstitüsü Temel islam bilimleri anabilim dali Islam huququ bilim dali Yuksak lisans tezi. – Diyar bakir, 2011. – 109 b., Muhammad Haroon Ameer va Muhammad Saud Ansari. “Islamic Banking: Ijarah and Conventional Leasing” Developing Country Studies ISSN 2224-607X (Paper) ISSN 2225-0565. Vol.4, No.9, 2014.

⁵ P.Зохид. А.Дехқон. Мухтасар (шариат қонунларига қисқача шарҳлар). – Т.: «Мовароуннаҳр», 1994. – 424 б., Максудхўжа ибн Мансурхўжа. Мажмаъ ул максуд. Шайх Абдулазиз Мансур таҳрири остида. – Т.: «Шарк» нашриёт матбаа акциядорлик компанияси, 2015. 1-жуз. – 578 б., 2-жуз. – 565 б., 3-жуз. – 565 б., Шайх Муҳаммад Содик Муҳаммад Юсуф. Кифоя. – Т.: «Hilol-Nashr», 2015. 1-жуз. – 584., 2-жуз. - 584 б., 3-жуз. – 640 б., С.А.Исхаков. Ислom фуқорoлик ҳуқуқи асослари. Ўқув қўлланма. – Тошкент. Ўзбекистон Республикаси ИИВ Академияси, 2005. – 128 б., Аъзамжон Раҳмонов, Абдумухтор Раҳмонов. Ислom ҳуқуқи. Олий ўқув юртлари учун дарслик. – Т.: «ДЮИ» нашриёти. 2007. – 496 б., Комилов М. Мовароуннаҳрда фикҳ илмининг ривожини ва фақиҳ Алоуддин ас-Самарқандий. Монография. – Т.: Истиқлол, 2006. – 208 б., Муминов А. Ҳанафий уламоларнинг Марказий Мовароуннаҳр шаҳарлари ҳаётида тутган ўрни ва роли (II-VII/VIII-XIII асрлар): тар.фан.докт. дис... автореф. – Т.: Тошкент ислом университети, 2003. – 46 б., Жузжоний А.Ш. Марғиноний ва унинг издошлари. – Т.: Тошкент ислом университети нашриёт-матбаа бирлашмаси, 2000. – 56 б., Зиёдов Ш. Маҳмудов. Қ. Ўрта асрларда яшаган машҳур самарқандлик алломалар. – Т.: Ғафур Ғулom, 2019. – 256 б., Аминов Х., Примов С. Ҳанафий фикҳи тарихи, манбалари ва истилоҳлари [Матн]. – Т.: Мовароуннаҳр, 2017. – 400 б.

⁶ Бекмирзаев И.И. Бурҳонуддин Маҳмуд ал-Бухорий ва Мовароуннаҳр қозилиги. Монография. – Тошкент: Таълим нашриёти, 2011. – 200 б., Бекмирзаев И. Мовароуннаҳрда қозилик ҳужжатлари: тарихий илдишлар ва таҳлилий ёндашувлар. Монография. – Тошкент: Тошкент ислом университети, 2014. – 332 б.;

tuzishga oid fatvolarning o‘ziga xos jihatlarini ochib berishdan iborat.

Tadqiqotning vazifalari quyidagilardan iborat:

islom huquqida ijara tushunchasi va shartnomalar tuzishning fiqhiy-nazariy asoslarini ochib berish;

Qur’on suralarida kelgan ijara bilan bog‘liq shartnomalarni tasniflash;

Burhoniddin Mahmud Buxoriy fiqhiy merosida ijara shartnomalarini tartiblash asoslarini ko‘rsatib berish;

“Muhitul Burhoniy” asarida ijara shartnomasi tavsifiy xususiyatlarini yoritish; ijara shartnomalarini tuzishda hanafiylik qoidalarining tartiblanishini belgilash;

asarda ijarani tugatish talablarining fiqhiy asoslarini qiyosiy tahlil etish;

“Muhitul Burhoniy”da ko‘chmas mulklarning ijarasiga doir masalalarni ochib berish;

Burhoniddin Buxoriyning ijara asosidagi mehnat munosabatlariga oid kelishuvlarni tartiblashdagi uslubini aniqlash;

asarning zamonaviy ijtimoiy muammolar yechimidagi ahamiyatini ilmiy asoslash hamda ulardan unumli foydalanish yuzasidan taklif va tavsiyalar ishlab chiqish.

Tadqiqotning ob‘yekti sifatida islom huquqidagi ijara shartnomalari olingan.

Tadqiqotning predmeti sifatida Burhoniddin Mahmud Buxoriyning “Muhitul Burxoniy” asarida ijara shartnomasini tuzish bilan bog‘liq qoidalar belgilangan.

Tadqiqotning usullari: Tadqiqotda kompleks yondashuv, tizimlilik, tarixiylik, qiyosiy-tanqidiy, xolislik kabi metodlardan keng foydalanildi.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

Mahmud Buxoriy “Muhitul Burhoniy” asarining *الإجَارَةُ الطَّوِيلَةُ الْمَرْسُومَةُ بِبُخَارَى* (Buxoroda ommalashgan uzoq muddatli ijara shartnomasi) bobida o‘rta asrlarda Buxoro aholisining odatiga aylangan uzoq muddatli ijara shartnomasining shar‘iy asoslarini ko‘rsatib bergani sababli, uning ilk bor Movarounnahr va hanafiy mazhabi keng tarqalgan o‘lkalarda amaliyotga joriy etilgani dalillangan;

olim *الاستئْجَارُ عَلَى الْمَعَاصِي* (ta’qiqlangan amallar xususidagi ijara) nomli alohida bobda “ijara shartnomalari tomonlardan biri yoki har ikkisinin jazolanishiga sabab bo‘lmasligi” qoidasini shar‘iy jihatdan asoslab berish orqali jamiyatda uyushgan jinoyatchilikning oldini olishga doir mahalliy tizim shakllantirgani aniqlangan;

“Muhitul Burhoniy” kitobida keltirilgan *الاستئْجَارُ لِيَرْفَعَ الْأَمْرَ إِلَى السُّلْطَانِ* (muammolarni davlat rahbariga etkazish uchun ijara haqi evaziga odam yollash) bobining qiyosiy tahlili natijasida o‘z-o‘zini boshqarish uslublariga asoslangan zamonaviy jamiyatda aholining muammolarini yuqori instansiya doirasida adolatli hal qilish amaliyoti Buxoroda o‘rta asrlardayoq shakllangani ochib berilgan;

alloma asarda mulk daxlsizligi, shaxs manfaatini o‘z ichiga oluvchi egalik huquqi bilan tugatiladigan ijara shartnomalarining fiqhiy asoslarini shakllantirish orqali hadya yoki o‘zaro va’dalashuv ko‘rinishida ikkinchi tomonga mulk qilib

berish, nasiya savdodan farqli o'laroq, har ikki tomonning manfaatlariga xizmat qilishini isbotlab bergani dalillangan.

Tadqiqotning amaliy natijasi quyidagilardan iborat:

Burhoniddin Mahmud Buxoriy "Muhitul Burhoniyy" asarini yaratishda o'zidan oldingi faqihlarning asarlari va fatvolaridan foydalangani, shuningdek, ijara shartnomalarini rivoyat kelmagan masalalarda mustaqil tarzda ijthod qilishda o'ziga xos uslubga ega bo'lgani, jumladan, mavzularni tartibga solishda yangicha yondashuvi dalillar bilan isbotlangan;

ijara shartnomasining asosiy xususiyatlari: uni tuzish tartibi, tomonlarning huquq va majburiyatlari, ijaraga olingan narsaga oid tartib-qoidalar, shartnomani bekor qilishga doir normalar, shu jumladan, qarindosh-urug'chilik munosabatlarini mustahkamligini ta'minlash, jamiyatda uyushgan jinoyatchilikning oldini olishga doir mahalliy tizim shakllantirgani ilmiy asoslangan;

"Muhitul Burhoniyy" asarini o'rganish orqali muallifning ijara shartnomalariga oid masalalarini yechishdagi yondashuvlari fiqh fanini o'rganayotgan talabalarga qulayroq bo'lgani uchun qadimdan asardan diniy ta'lim muassasalarida talabalar uchun fiqh fanidan darslik sifatida foydalanib kelingani aniqlangan;

Mahmud Buxoriyning "Muhitul Burhoniyy" asarida ijara bilan bog'liq Buxoro an'analari doir o'ziga xos fatvolar keyingi asrlarda yaratilgan "Fatavoi Tatarxoniya", "Fatavoi Hindiya", "Banoya sharhi Hidoya" kabi fatvo va fiqh kitoblariga kiritilishi natijasida Movarounnahrda doir uzoq muddatli shartnoma turining butun musulmon dunyosiga tarqalishiga sabab bo'lgani dalillangan.

Tadqiqot natijalarining ishonchliligi "Muhitul Burhoniyy" asarining O'zbekiston Respublikasi Fanlar Akademiyasi Abu Rayhon Beruniy nomidagi Sharqshunoslik instituti qo'lyozma fondida 3102 va 5835 raqami ostida saqlanayotgan qo'lyozma nusxalari, Abdulkarim Somiy Jundiyy tahqiqi asosida hamda shayx Nur Ahmad tomonidan amalga oshirilgan zamonaviy nashriga tayanilgani, dalillar bilan asoslangani, zamonaviy qiyosiy-tarixiy usullardan foydalanilgani hamda Sharq va G'arb islomshunoslik maktablarida shakllangan qator ilmiy tadqiqot usullaridan foydalanilgani, tadqiqot natijalarining vakolatli tashkilotlar tomonidan tasdiqlangani bilan izohlanadi.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati unda bayon etilgan Burhoniddin Mahmud Buxoriyning Movarounnahr islom ilmlari rivojida o'rni hamda "Muhitul Burhoniyy" asarining hanafiy fiqhi ilmida muhim manba ekani, shuningdek, mazkur asardagi ijara shartnomasi bilan bog'liq qoidalar borasidagi ilmiy-nazariy xulosalar sohaga oid kelgusi ilmiy tadqiqotlarga asos bo'lib xizmat qilishi bilan izohlanadi.

Tadqiqot natijalarining amaliy ahamiyati oliy va o'rta maxsus diniy ta'lim muassasalarida o'qitiladigan "Islom tarixi va manbashunosligi", "O'rta Osiyoda islom tarixi", "Islomshunoslik", "Islom huquqshunosligi", "Islom huquqi metodologiyasi", "Islom huquqi asoslari", "Klassik fiqhiy matnlar (Furu'ul-fiqh)", "Movarounnahr allomalari" kabi fanlar mazmunini yangi nazariy ishlanmalar bilan boyitishda, sohaga oid fakultativ darslar, seminar mashg'ulotlari va maxsus kurslarni ishlab chiqishda foydalanish mumkinligi bilan asoslanadi.

Tadqiqot natijalarining joriy qilinishi. Burhoniddin Mahmud Buxoriyning “Muhitul Burhoniy” asarida ijara shartnomalari bo‘yicha tadqiqotning ilmiy natijalari asosida:

Mahmud Buxoriy “Muhitul Burhoniy” asarining *الإجَارَةُ الطَّوِيلَةُ الْمَرْسُومَةُ بِبُخَارَى* (Buxoroda ommalashgan uzoq muddatli ijara shartnomasi) bobida o‘rta asrlarda Buxoro aholisining odatiga aylangan uzoq muddatli ijara shartnomasining shar‘iy asoslarini ko‘rsatib bergani sababli uning ilk bor Movarounnahr va hanafiy mazhabi keng tarqalgan o‘lkalarda amaliyotga joriy etilgani dalillanganligi to‘g‘risidagi ilmiy xulosalar buyurtma asosida tayyorlangan “O‘rta asrlarda yashagan mashhur samarqandlik allomalar” va “O‘rta asr sharq allomalari ensiklopediyasi” kitoblari mazmuniga singdirilgan (O‘zbekiston Respublikasi Vazirlar Mahkamasi huzuridagi Imom Buxoriy xalqaro ilmiy-tadqiqot markazining 2023-yil 1-noyabrdagi 02/504-son ma‘lumotnomasi). Natijada, mazkur ijara turining o‘ziga xos jihatlari haqidagi ma‘lumotlar ilmiy jamoatchilikka etib borishiga xizmat qilgan;

olim *الاستئْجَارُ عَلَى الْمَعَاصِي* (taqiqlangan amallar xususidagi ijara) nomli alohida bobda “ijara shartnomalari tomonlardan biri yoki har ikkisinin jazolanishiga sabab bo‘lmasligi” qoidasini shar‘iy jihatdan asoslab berish orqali jamiyatda uyushgan jinoyatchilikning oldini olishga doir mahalliy tizim shakllantirgani aniqlanganligi xususidagi ilmiy xulosalar O‘zbekiston musulmonlari idorasining buyurtamasi asosida chop etilgan “Fatvolar to‘plami. 500 savolga 500 javob” kitobining (1-juzi) mazmuniga singdirilgan (O‘zbekiston musulmonlari idorasining 2023-yil 1-noyabrdagi 4764-sonli ma‘lumotnomasi). Natijada, o‘quvchilarda shariatda ibodat, taqiqlangan va muboh ishlar bilan bog‘liq ijara shartnomalarining mohiyati to‘g‘risidagi bilimlari shakllanishiga xizmat qilgan;

“Muhitul Burhoniy” kitobida keltirilgan *الاستئْجَارُ لِيَرْفَعَ الْأَمْرَ إِلَى السُّلْطَانِ* (muammolarni davlat rahbariga etkazish uchun ijara haqi evaziga odam yollash) bobining qiyosiy tahlili natijasida o‘z-o‘zini boshqarish uslublariga asoslangan zamonaviy jamiyatda aholining muammolarini yuqori instansiya doirasida adolatli hal qilish amaliyoti Buxoroda o‘rta asrlardayoq shakllangani ochib berilgani to‘g‘risidagi ilmiy xulosalar buyurtma asosida nashr etilgan “Islom huquqshunosligi” nomli o‘quv qo‘llanma mazmuniga singdirilgan (O‘zbekiston Respublikasi Din ishlari bo‘yicha qo‘mitaning 2023-yil 31-oktyabrdagi 02-02/1/387-sonli ma‘lumotnomasi). Natijada, talabalarda aholining ijtimoiy muammolarini o‘rganish va uni yuqori instansiya doirasida adolatli hal qilish amaliyoti bugungi kunda mazkur masalada o‘rnatilgan tartibga mos ekani to‘g‘risidagi tushuncha shakllanishiga xizmat qilgan;

alloma asarda mulk daxlsizligi, shaxs manfaatini o‘z ichiga oluvchi egalik huquqi bilan tugatiladigan ijara shartnomalarining fiqhiy asoslarini shakllantirish orqali hadya yoki o‘zaro va‘dalashuv ko‘rinishida ikkinchi tomonga mulk qilib berish, nasiya savdodan farqli o‘laroq, har ikki tomonning manfaatlariga xizmat qilishini isbotlab bergani dalillangani to‘g‘risidagi ilmiy xulosalar buyurma asosida nashr etilgan “Zamonaviy fiqhiy masalalar va fatvo berish asoslari” nomli o‘quv qo‘llanma mazmuniga singdirilgan (O‘zbekiston Respublikasi Vazirlar Mahkamasi

huzuridagi O‘zbekistondagi islom sivilizatsiyasi markazining 2024-yil 5-yanvardagi 08-17/08-son ma’lumotnomasi). Natijada, talabalarda egalik huquqi faqatgina savdo, hadya qilish bilan emas, balki ijara shartnomasi bilan ham amalga oshirishilishi mumkinligi to‘g‘risidagi tushunchalar shakllanishiga xizmat qilgan.

Tadqiqot natijalarining aprotatsiyasi. Mazkur tadqiqot natijalari jami 4 ta – 1 ta xalqaro va 3 ta respublika ilmiy-amaliy anjumanlarida aprotatsiyadan o‘tgan.

Tadqiqot natijalarining e‘lon qilinganligi. Tadqiqot mavzusi bo‘yicha 13 ta ilmiy ish, shulardan, O‘zbekiston Respublikasi Oliy attestatsiya komissiyasining doktorlik dissertatsiyalari asosiy ilmiy natijalarini chop etish tavsiya qilingan ilmiy nashrlarida 9 ta maqola, ulardan 7 tasi respublika va 2 tasi xorijiy ilmiy jurnallarda chop etilgan. 1 ta xalqaro va 3 ta mahalliy anjuman to‘plamlarida tezislar e‘lon qilingan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, uchta bob, xulosa, foydalanilgan adabiyotlar ro‘yxati hamda ilovalardan iborat. Dissertatsiyaning hajmi 133 betni tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Kirish qismida tanlangan mavzuning dolzarbligi asoslanib, tadqiqotning maqsad va vazifalari, o‘rganish ob‘yekti va predmeti aniqlangan. Tadqiqotning fan va texnologiyalar taraqqiyotining ustuvor yo‘nalishlariga mosligi ko‘rsatilib, ishning ilmiy yangiligi va amaliy natijalari bayon qilingan. Olingan natijalarning ishonchliligi asoslangan holda ularning nazariy va amaliy ahamiyati ochib berilgan. Tadqiqot natijalarining amaliyotga joriy qilinishi, ishning aprotatsiyasi, natijalari, e‘lon qilingan ishlar va dissertatsiyaning tuzilishi bo‘yicha ma’lumotlar keltirilgan.

Dissertatsiyaning **“Islom huquqida ijara shartnomalarini o‘rganishning nazariy-metodologik asoslari”** nomli birinchi bobining *“Islom huquqida ijara tushunchasi va shartnomalar tuzishning fiqhiy-nazariy asoslari”* deb nomlangan birinchi bandida ijara so‘zining lug‘aviy va shar‘iy-istilohiy ma‘nolari hamda uning tuzilishi bilan bog‘liq fiqhiy-nazariy asoslari ahli sunna val jamoaning mazhablari doirasida muhokama qilingan. Ijara shartnomasining ilmiy-istilohiy ma‘nosi xususida islom huquqshunosligiga oid manbalarda bir-biriga yaqin bo‘lgan ta‘riflar keltirilgan. Jumladan, hanafiylar nazdida: *“(الإجارة) Ijara – evaz barobariga foyda uchun tuzilgan aqd (shartnoma)⁷, deb ta‘rif berilgan. Shofe‘iylar esa, “Ijara – evaz barobariga quyidagi shartlar asosida foydaga egalik qilish. Ular: evaz (ijara haqi)ning aniq bo‘lishi va ijaraga olingan mulk tasarruf va mubohlikni qabul qiluvchi bo‘lishi”⁸, deb ta‘rifga ayrim shartlarni ham kiritgan. Molikiy*

⁷ Shamsiddin Saraxsiy. Mabsut. J.15. – Bayrut: Dorul ma‘rifa. 1989. – B. 74.; Abulhusayn Quduriy. Muxtasarul Quduriy. – Bayrut: Muassasatur rayyon. 2005. – 101 b.; Burhoniddin Marg‘inoniy. Hidoya sharhi bidoyatul muftadiy. J.6. – Madina: Dorus siroj. 2019. – B. 5.; Ibn Humom Hanafiy. Sharhi fathul qodir. J.9. – Bayrut: Dorul kutubul ‘ilmiya. 2003. – B. 58; Ali Jurjoniy. Mo‘jamut ta‘rifot. – Qohira: Dorul fazilat. – B. 12.; Vahba Zuhayliy. Mavsul‘atul fiqhil islamiy val qozoyo mu‘osara. J.4. – Damashq: Dorul fikr. 2010. – B. 525.

⁸ Shamsiddin Romliy. Nihoyatul muhtaj ila sharhil minhaj. J.5. – Bayrut: Dorul kutubul ‘ilmiya. 2003. – B. 261.; Xatib Shirbiniy. Mug‘nil muhtaj. J.2. – Bayrut: Dorul ma‘rifa. 2008. – B. 427.

mazhabi faqihlari ijara shartnomasi bilan bog‘liq masalalarni ijara va ikro (kira haqi)ga bo‘lib o‘rganishgan. Shu bois, ular “Ijara – shaxslarni (aql egalarini) biror ishga yollash uchun tuzilgan shartnomadir. (الإكراء) Ikro – aqlsiz narsalar bilan bog‘liq ijara shartnomasi”⁹, deb umumiy ta‘rifni ikki qismga bo‘lib keltirishgan. Hanbaliy mazhabi ulamolari ijaraning ta‘rifida “Ijara – bayning bir turi. Chunki taraflarning har biri boshqasiga mulk qilib beradi. U (ijara) foydani sotishdir. Foyda muayyan narsaning o‘rnida”¹⁰, deyishgan.

Ahli sunna val jamoa mazhabalari ijara atamasining ilmiy-istilohiy ma‘nosini ifoda etishda uning lug‘aviy ma‘nosiga alohida e‘tibor qaratganlar. Sababi, bu orqali shu ma‘nodagi boshqa iboralarni ham o‘rganilishiga olib kelgan. Fiqhiy-istilohiy ma‘nosini o‘rganishda yondashuv turlicha ekanini ko‘rish mumkin. Buning asosiy sababi, shartnomaning sohaga oid barcha turini qamrab olishidir. Hanafiy mazhabi ulamolari ijaraga uning turlarini qamrab olish nuqtai nazaridan emas, balki ta‘rifga tayangan holda o‘rganganlar. Shartnomaning to‘g‘ri tuzilishi yoki to‘g‘ri tuzilmasligi islom huquqiga oid boshqa qoidalar asosida tartibga solinishiga ahamiyat qaratganlar. Boshqa mazhab ulamolari ta‘rifga ijaraning shartlarini ham kiritishgan. Bundan ko‘rinib turibdiki, mazkur shartlar topilmagan holatlarda ijara shartnomasini tuzish joiz bo‘lmaydi.

Birinchi bobning “*Qur‘on oyatlarida kelgan ijara bilan bog‘liq hukmlar tasnifi*” deb nomlangan ikkinchi bandida ijara shartnomasi bilan bog‘liq oyatlar, ularning nozil bo‘lish sabablari, ular to‘g‘risida mufassirlarning fikrlari, shuningdek, ulardan olinadigan shar‘iy hukmlar tasnifiga to‘xtalib o‘tilgan.

الإِجَارَةُ so‘zining aynan o‘zi Qur‘onda zikr qilinmagan. Ammo uning o‘zagi أُجْرٌ so‘zi 87 marta keltirilgan. Ularning aksari haq, savob, mukofot ma‘nolarini anglatadi. Faqat Kahf surasining 77-oyati hamda Qasos surasining 25-oyatidagi أُجْرٌ so‘zi «xizmat haqi» ma‘nosini anglatgan. Mazkur so‘zning ko‘plik shakli أَجُورٌ bo‘lib, u Qur‘onda 12 marta kelgan. Ularning barchasida haq, savob, mukofot, mahr ma‘nolarini ifoda etgan. Ulardan faqat Taloq surasining 6-oyatida zikr qilingan أَجُورٌ so‘zi ijara shartnomasi bilan bog‘liq ekanini ko‘rish mumkin. Shuningdek, اسْتَأْجَرَ (ijaraga oldi) fe‘li Qasos surasining 26-oyatida ikki marta, تَأْجُرُ (narsani ijaraga beradi¹¹) fe‘li mazkur suraning 27-oyatida bir marta zikr qilingan.

Qur‘on oyatlarida kelgan ijara shartnomasi bilan bog‘liq hukmlarni quyidagi sinflarga ajratish mumkin:

- odamlarni ishga yollash;
- mukofot e‘lon qilish asosida ishchilarni yollash;
- ijara shartnomasini tuzish bilan bog‘liq oyatlar.

Qur‘on oyatlarida ijara shartnomasi bilan bog‘liq shartlar ba‘zan to‘liq, ba‘zan qisman bayon qilingan. Buning sababini oldingi payg‘abarlarning shariatida ijara munosabatlari shu yo‘sinda tartibga solingani bilan izohlash mumkin. Chunki oldingi shariatlar o‘sha davr yoki ma‘lum qabilalardagi urf-odatlardan kelib chiqib

⁹ Xattob. Mavahibul jalil. J.6. – Mavritaniya: Dorur rizvon. 2010. – B. 141.

¹⁰ Ibn Qudoma. Mug‘niy. J.8. – Riyoz: Dor olamul kutub. 1997. – B. 7.

¹¹ Ibrohimov N., Al-Qomus. Arabcha-o‘zbekcha qomusiy lug‘at/ [Matn] J.1. – Toshkent: G‘afur G‘ulom nomidagi nashriyot-matbaa ijodiy uyi, 2017. – B. 30-32

joriy qilingan. Ularni tartibga solgan. Islom dini kelgach, oldingi shariatlardagi ijtimoiy-huquqiy munosabatlarga oid qoidalar butunlay olib tashlanmagan, balki ular qisman o'zgartirish orqali tartibga solingan.

Oyatlarda ijara shartnomasiga oid hukmlarni bayon qilishda faqat *الإجارة* kalimasiga aloqador so'zlar qo'llanmagan. Balki arab tilida fe'l va ismlarning qo'llanishi, ularning boblardagi xususiyatlaridan kelib chiqib boshqa so'zlar ham qo'llangan.

Muhokama qilingan oyatlarda ijara shartnomasining odamlarni ishga yollash bilan bog'liq turi keng o'rganilgan. Moddiy narsalarni ijaraga berish va olish to'g'risidagi hukmlarni faqat Baqara va Jum'a suralaridagi oyatlarning umumiy mazmunidan tushunib olish mumkin.

Bobning "*Burhoniddin Mahmud Buxoriy fiqhiy merosida ijara shartnomalarini tartiblash asoslari*" deb nomlangan uchinchi bandida muallifning mazkur asarni yaratishdagi uslubi, qanday kitoblardan foydalangani hamda qaysi faqihlarning fatvolariga tayangani bayon qilingan. Burhoniddin Mahmud Buxoriy asarni yaratishda quyidagi uslublardan foydalangan:

birinchisi, mujtahidlarning so'zlarini qiyoslash. Unga misol qilib quyidagi masalani aytish mumkin. "Agar ijara haqi kayliy, vazniy yoki adadiy bo'lsa, unga aniqlik kiritishda miqdori va sifati bayon qilinadi. Shuningdek, uni ijaraga beruvchiga topshirish xarajat bilan bog'liq bo'lsa, joyni ham belgilash lozim bo'ladi. Agar unga bog'liq bo'lmasa, shart emas. Bu Abu Hanifaning so'zi. Abu Yusuf: topshirish o'rnini belgilash shart emas, degan".

ikkinchisi, asl manbalarda kelgan rivoyatlarni qiyoslash. Shartnoma tuzish bilan ijara haqiga egalik lozim bo'lishi yoki lozim bo'lmasligi to'g'risidagi masalada, avvalo, imom Muhammadning *الجامع الصغير* "Jome'us sag'ir" kitobidagi rivoyatini va boshqa kitoblardagi rivoyatlarini qiyoslagan. So'ng o'zining ijtihodiy qarashini quyidagicha bayon qilgan: "Ijara ikki kishi o'rtasida tuziladigan shartnoma. Unda imkon qadar tomonlar o'rtasida teng huquqlilik mezoniga amal qilish lozim".

uchinchisi, mazhab ulamolarining so'zlarini qiyoslash. Alloma har bir masalani sunniylikning barcha mazhablari doirasida qiyoslamagan. Balki ayrim masalalarni faqatgina shofe'iylik mazhabi bilan qiyoslagan. Masalan, hanafiylar nazdida ijara haqi foyda bo'lsa, ijaraga berilayotgan narsaning jinsi bilan bir xil bo'lsa, joiz bo'lmaydi. Misol uchun falon joydagi uyimda bir oy yashashing evaziga sening uyingda bir oy yashayman, kabi ijaralar. Bu holatda imom Sho'fe'iy nazdida joiz bo'ladi.

to'rtinchisi, masalalarni bir-biriga qiyoslash. Ijara shartnomasiga oid masalalarni boshqa shartnomalar bilan qiyoslash orqali ochib bergan¹². Allomaning mazkur uslubi, shuningdek, ijara shartnomalarini 34 ta fasl va mazkur fasllarga aloqador 36 ta bo'lim asosida tartibga solishi keyingi asrlarda "Fatavoi Tatarxoniy", "Fatavoi hindiya" asarlarining yaratilishida muhim omil bo'lib xizmat qildi.

¹² Burhoniddin Mahmud Buxoriy. Muhitul Burhoniyy. J.7. – Bayrut. Dorul kutubul 'ilmiyya. 2004. – B. 395, 396, 399.

Dissertatsiyaning “**Muhitul Burhoniy**”da ijara shartnomalarini tuzishga oid tartib-tamoyillar” nomli ikkinchi bobining “*Muhitul Burhoniy*” asarida ijara shartnomasining tavsifiy xususiyatlari” deb nomlangan birinchi bandida ijara shartnomasining rukn, shart va turlariga oid xususiyatlari muhokama qilingan. Jumladan, hanafiy mazhabi faqihlarining nazdida ijara shartnomasining rukni ikkita, ijob va qabul. Bu haqda “Muhitul Burhoniy” asarida quyidagicha bayon qilingan: “Ijara shartnomasining rukni ijob (إيجاب) va qabul (قبول)”. Ijara shartnomasining shartlari xususida turli fikrlar bildirilgan bo’lsa-da, hanafiy mazhabida ikki jihat sanab o’tilgan:

- ijara haqining jinsi va miqdorining ma’lum bo’lishi;
- foydaning aniq bo’lishi (agar foyda ish kuchi bilan bog’liq bo’lsa)¹³.

Ijara shartnomasining rukn va shartlarini belgilashda ahli sunna val jamoa mazhablari turlicha yondashgan. Hanafiylarga ko’ra, shartnomaning ruknlari ham shartlari ham ikkita, boshqalarning fikriga ko’ra esa, to’rtta. Bu holatni oilaviy munosabatlarda, ya’ni nikoh shartnomasida, shuningdek, ijtimoiy sohaga oid savdo-sotiq kelishuvlarida ham ko’rish mumkin. Bunga mazhab yetakchilarining rukn va shart tushunchalarini fiqhiy-istilohiy ma’nosini ifoda etishdagi yondashuvlari sabab bo’lgan.

Ijaraning turlari haqida “Muhitul Burhoniy” asarida quyidagicha bayon qilingan. “Ijaraning turlari ikkitadir, ular:

- ijaratul ‘ayn (إجارة العين), ya’ni muayyan mulkni ijara haqi evaziga boshqa shaxsning foydalanishiga topshirish;
- ijaratul ‘amal (إجارة العمل), ya’ni bir kishini xizmat haqi to’lash asosida ishga yollash amaliyoti¹⁴.

Hanafiy mazhabi faqihlari ijaraning turlarini boshqa mazhablarga qaraganda biroz sodda uslubda bayon qilishgan. Muayyan narsalar va inson mehnati. Muayyan narsalarning ijarasi savdo munosabatlariga qiyosan joiz deyiladi. Ammo inson mehnatini unga qiyoslab bo’lmaydi. Chunki u shariatda qiymatga ega emas. Bu haqda “Muhitul Burhoniy” asarida quyidagicha ta’kidlangan: “Shartnoma vaqtida ish kuchi mavjud bo’lmaydi. Ammo uni shariat muayyan mavjud narsalarga tenglashtirdi”¹⁵. Shunga ko’ra, alloma odamlarni ijara shartnomasi asosida ishga yollash, ularning mehnatidan foydalanish shariatda joiz ekanligini ta’kidlagan.

“*Ijara shartnomalarini tuzishda hanafiylik qoidalarining tartiblanishi*” deb nomlangan ikkinchi bobning ikkinchi bandida ijara shartnomasini tuzishda hanafiy mazhabi faqihlari tomonidan ishlab chiqilgan qoidalar qiyosiy tahlil qilingan. Xususan:

- ijara shartnomasini tuzuvchilar oqil bo’lishi, aqli nosog’lom yoki balog’atga etmagan shaxslar shartnomani tuzishda bevosita ishtirok etishi mumkin

¹³ Burhoniddin Mahmud Buxoriy. Zaxiratul Burhoniy. J.11. – Bayrut. Dorul kutubul ‘ilmiya. 2019. – B. 430.; Ibn Obidin. Raddul muxtor. J.9. – Bayrut: Dorul ma’rifa. 2018. – B. 7.

¹⁴ Nizomiddin Burhonpuriy (Shayx Nizom) va boshqalar. Fatavoi hindiya. J.4. – Bayrut: Dorul kutubul ‘ilmiya. 2000. – B. 462.

¹⁵ Burhoniddin Mahmud Buxoriy. Muhitul Burhoniy. J.7. – Bayrut. Dorul kutubul ‘ilmiya. 2004. – B. 394.

emasligi. Tamyiz yoshining belgilanishi va uni belgilashda e'tibor qaratilishi lozim bo'lgan narsalar;

– bir-biriga nisbatan burchli qarindoshlar bilan ijara shartnomasini tuzishga oid tartiblar;

– shartnomani tuzishda foydaga aniqlik kiritish muhimligi; bunda muayyan narsadan foydalanish yoki aniq ish turiga ishga yollash bilan bog'liq ijara shartnomalari;

– ijara haqiga aniqlik kiritilishi; ijara haqi sifatida o'lchab, tortib yoki sanab sotiladigan muayyan narsalar, mato va kiyim-kechaklar, chorva hayvon belgilanishi hamda narsadan foydalanish evaziga boshqa narsadan foydalanish kiritilishi mumkin¹⁶.

Mazkur qoidalarni ishlab chiqilishida Qur'on oyatlari, hadislar va sahobalarning so'zlari hamda faqihlarning ijtihodiy qarashlari asos bo'lgan. Qoidalar shartnomaning to'g'ri tuzilishiga olib kelishi bilan birga, tomonlarning haq-huquqlarini himoya qilinishi hamda ijaraga olingan narsaning daxlsizligini ta'minlash uchun zarur bo'lgan. Shuningdek, qoidalar tomonlar o'rtasida yuzaga kelishi mumkin bo'lgan nizoli vaziyatlarning oldini olishda muhim sanalgan.

Ikkinchi bobning "*Asarda ijarani tugatish talablarining fiqhiy asoslari*" deb nomlangan uchinchi bobida ijara shartnomasining tugatilishi, uning muddatidan oldin bekor qilinishiga olib keluvchi omillarning fiqhiy asoslari atroflicha muhokama qilingan. Unga ko'ra,

- belgilangan muddatning tugashi;
- tomonlardan biri yoki har ikkisining talabi;
- shartnoma tuzishga olib kelgan omilning yo'q bo'lishi;
- ijaraga olingan narsaning yo'q bo'lib ketishi;
- tomonlardan birining vafot etishi;
- ijaraga olingan narsaga foydalanib bo'lmaydigan darajada ayb yetishi;
- uzrli sabablarga ko'ra;
- qozining qarori asosida¹⁷.

Mazkur holatlar kuzatilgan vaqtda tomonlarning biri yoki har ikkisining talabiga ko'ra, shartnoma muddatidan oldin bekor qilinishiga olib keladi. Yuzaga kelgan nizoli vaziyat ijara shartnomasi hamda islom huquqiga oid boshqa qoidalar asosida bartaraf etiladi.

Shuningdek, ulamolar ijara shartnomasi huquqiy asosga ega ekanini aniqlashda uning dastlab tuzilishiga e'tibor qaratganlar. Shunga ko'ra, ijara sahih (to'g'ri), g'ayri sahih (noto'g'ri) tuzilgan shartnomaga ajratilgan:

Sahih (صحيح) – belgilangan talablar asosida tuzilgan ijara shartnomasi;

G'ayri sahih (غير صحيح) – shartnomaning barcha yoki ayrim shartlariga amal qilmasdan tuzilishi¹⁸.

¹⁶ Burhoniddin Mahmud Buxoriy. Muhitul Burhoniyy. J.11. – Bayrut. Dorul kutubul 'ilmiya. 2004. – B. 217-218.; Mualliflar jamoasi. Mavsu'atul fiqhiya. J.1. – Quvayt: Vaqf vazirligi. 1984. – B. 263

¹⁷ Burhoniddin Mahmud Buxoriy. Muhitul Burhoniyy. J.7. – Bayrut. Dorul kutubul 'ilmiya. 2004. – B. 498.; Vahba Zuhayliy. Fiqhul islom va adillatuhu. J.4. – Damashq: Dorul fikr. 1985. – B. 546.

¹⁸ Doktor Muhammad Mustafo Zuhayliy. Vajiz fi usulil fiqhil islamiyy. J.1. – Damashq: Dorul xayr. 2006. – B. 424.

G'ayri sahih (غير صحيح) ijara shartnomalar ikki turga bo'linadi. Botil (باطل) va fosid (فاسد) ijara shartnomalariga farqlanadi.

Botil (باطل) ijara shartnomasi. "Raddul muxtor" asarida unga quyidagicha ta'rif berilgan: "Asli va sifatiga e'tibor qaratilmasdan tuzilgan ijara shartnomasidir". Ta'rifda asli deyilganda shartnomaning rukni, sifati esa, uning shartlarini nazarda tutadi. Bu kabi holatlarda tomonlar o'rtasida shartnoma tuzilmagan deb hisoblanadi va uni to'g'irlash uchun shartnoma yangidan tuzilishi talab etiladi.

Fosid (فاسد) ijara shartnomasi. Mazkur asarda unga quyidagicha ta'rif berilgan: "Asliga ahamiyat berilib, sifatiga e'tibor qaratilmagan ijara shartnomasidir"¹⁹. Shartnomani tuzishda ruknlariga amal qilingan. Ammo uning shartlariga umuman yoki ayrimlariga e'tibor qaratilmagan bo'ladi. Bu kabi holatlarda tomonlar o'rtasida shartnoma tuzilgan bo'lib, huquqiy asosga ega bo'lsa-da, unga o'zgartirish va tuzatishlar kiritish taqozo etiladi.

Dissertatsiyaning **"Muhiatul Burhoniy" asarining zamonaviy ijara masalalari yechimidagi ahamiyati** nomli uchinchi bobining *"Muhiatul Burhoniy" da ko'chmas mulklarning ijarasiga doir masalalar* deb nomlangan birinchi bandida e'tibor qaratildiki, bugungi kunda ko'chmas mulk va avtotransport vositalarining savdosi ijara shartnomasi asosida amalga oshirilmoqda. Bir qarashda ularning o'rtasidagi munosabat **بَيْعُ التَّقْسِيطِ** (taqsit savdosi) ga o'xshaydi. "Taqsit" so'zi lug'atda bo'lib-bo'lib to'lash ma'nosida bo'lib, shar'iy istilohda savdo molini naqd qilib, bahosini nasiya qilishga aytiladi. Bunda savdo molining bahosi naqd to'lashga nisbatan qimmatroq yoki barobar yoxud pastroq bo'lishining e'tibori yo'q. Islom Fiqhi Akademiyasining yettinchi majlisida ushbu savdo to'g'risida ulamolar munoqashalari tinglangach, uning joizligi to'g'risida qaror qabul qilindi²⁰. Ijara savdoning bir turi, ammo uning aynan o'zi emas. Shu bois, ijara shartnomasi savdoning mazkur turiga qiyoslanmaydi.

Hasan Javohiriy "Buhus fil fiqhil muosara" nomli kitobida **البيع الإيجاري** (ijara asosida savdo) ilk bor 1846-yildan boshlab "Fuqarolik kodeks"larida qo'llanilganini aytib o'tgan²¹. Ammo qaysi mamlakatning fuqarolik kodeksiga kiritilganiga aniqlik kiritmagan. Xolid Hofiy o'zining "Mulk qilib berish bilan tugaydigan ijara" nomli ilmiy ishida uni ilk bor Angliyada **الهائيربرشاس** (Hire-Purchase) nomi bilan qo'llanilganini aytib o'tgan. Shuningdek, 1953-yildan boshlab Amerikaning turli shtatlarida **عقد الليسنج** "Leasing", 1962-yilda Fransiyada "Credit Bail" nomi bilan qo'llanilgan²². Ko'rinib turibdiki, ijaraning mazkur turi XIX-XX asrlarda fuqarolik kodekslarida namoyon bo'lgan bo'lsa-da, aholi orasida o'rta asrlardayoq amaliyotda bo'lgan, degan xulosa kelish mumkin.

Islom huquqida mulk qilib berish bilan tugaydigan ijara shartnomasining hukmi joiz.

¹⁹ Ibn Obidin. Raddul muxtor. J.9. – Bayrut: Dorul ma'rifa. 2018. – B. 62.

²⁰ Taqsit savdosi (islom.uz Shayx Muhammad Sodiq Muhammad Yusuf. 29.03.2018).

²¹ Hasan Javohiriy. Buhus fil fiqhil muosara. J.2. – Bayrut: Doruz xaxoir. – B. 91.

²² Xolid Hofiy. Ijarotul muntahitu bit tamlik. – Saudiya Arabistoni: Malik Su'ud universiteti. magistrlik ishi. – B. 61-62.

Bu qoida ko‘chmas va ko‘char mulklarga nisbatan qo‘llaniladi. Oziq-ovqat hamda foydalanish jarayonida qisman kamayib yoki butunlay yo‘q bo‘lib ketadigan narsalarni ijara shartnomasi asosida sotish yoki sotib olish joiz bo‘lmaydi. Bu haqda “Muhitul Burhoniy” asarida aytilishicha: “Muayyan narsalarning butunlay yo‘q bo‘lib ketishiga asoslangan ijara shartnomasi joiz bo‘lmaydi”²³.

Mulk qilib berish bilan tugatiladigan ijara shartnomasining nasiya savdodan afzalligi, ijaraga beruvchining huquqlari himoya qilinishida hamda mulk daxlsizligini ta‘minlashdagi ahamiyati bilan izohlanadi.

“*Burhoniddin Buxoriyning ijara asosidagi mehnat munosabatlariga oid kelishuvlarni tartiblashdagi uslubi*” deb nomlangan ikkinchi badda Burhoniddin Mahmud Buxoriy “Muhitul Burhoniy” asarida mehnat munosabatlari bilan bog‘liq ijara shartnomalariga alohida bob ajratib, ularni uch turga bo‘lgan va quyidagicha bayon qilgan:

1. Diniy vazifalarga oid ijara shartnomalari.
2. Shariatda taqiqlangan amallarga doir ijara shartnomalari.
3. Islomda muboh ishlar bilan bog‘liq ijara shartnomalari.

Diniy vazifalar deganda, islomga xos ibodat masalalari tushuniladi. Masalan, imomlik, muazzinlik qilish, Qur‘on, fiqh, hadis va boshqa ilmlarni o‘rgatish hamda haj va umra ibodatlarini ijara haqi evaziga bajarib berish shular jumlasidandir. Mazkur ibodatlar uxraviy (oxiratda savob berilishi umid qilinadigan) ish ekani, unga yollangan shaxs mazkur ishni bajarish asnosida o‘zi ham foyda olishi nazarda tutilgan. Shu bois, hanafiy mazhabi mutaqqaddim ulamolari hadislar va boshqa dalillarga asoslanib, ijara shartnomasi bilan bog‘liq umumiy qoidani ishlab chiqishgan. Unga ko‘ra, musulmonlarga xos ibodatlar xususida tuzilgan ijara shartnomasining hukmi botil²⁴, ya‘ni mazkur shartnoma huquqiy asosga ega emas. Mazkur qoida asosida islom dinida ibodat sanaladigan har qanday amalni bajarish uchun biror shaxsni yollash mumkin emas, degan xulosa chiqadi. Ammo keyingi asr ulamolari ilm o‘rgatish bilan bog‘liq ibodatlarini, shuningdek, shar‘iy asosga ega bo‘lgan haj, umra kabi ibodatlarini ijara haqi evaziga bajarishga ruxsat berishgan. Ayrim diniy vazifalar, jumladan, imomlik, muazzinlik kabilar ijara haqi asosida bajarishni joiz deb aytganlar. Bunga odamlarning ehtiyoji ortib borishi sabab bo‘lgan. Bu qoida islom huquqida barcha turdagi ibodatlariga nisbatan qo‘llanilmaydi. Faqatgina shar‘iy asosga ega bo‘lgan ibodatlariga nisbatan tadbiq etilgan.

Islom dinida taqiqlangan ishlar deganda shariatda gunoh sanalgan amallar tushuniladi. Islom huquqida biron narsaga taqiq qo‘yilishi o‘z-o‘zidan emas, balki odamlar hayotini muhofaza qilish, jamiyatdagi mavjud tartib-intizomni saqlash hamda umuminsoniy qoidalarga zid bo‘lgani uchundir. Islom huquqida umumiy qoida shuki, gunoh ishlar xususida tuzilgan ijara shartnomalari botil²⁵, ya‘ni

²³ Burhoniddin Mahmud Buxoriy. Muhitul Burhoniy. J.7. – Bayrut. Dorul kutubul ‘ilmiya. 2004.– B. 489.

²⁴ Shamsiddin Saraxsiy. Mabsut. J.15. – Bayrut: Dor al-ma‘rifa. 1989. – B. 74.; Burhoniddin Marg‘inoniy. Hidoya sharhi bidoyatul mubtadiy. J.6. – Madina: Dorus siroj. 2019. – B. 5.

²⁵ Burhoniddin Mahmud Buxoriy. Muhitul Burhoniy. J.7. – Bayrut. Dorul kutubul ‘ilmiya. 2004. – B. 482.

mazkur shartnoma huquqiy asosga ega emas. Masalan, qotillik, zino (fohishalik), firibgarlik qilish uchun odam yollash va hokazo. Bu masalada islom huquqida ijara shartnomasiga oid umumiy qoidalardan biriga amal qilinadi. Bu haqda "I'lous sunan" asarida ta'kidlanishicha: "Islom huquqida hadni vojib qiladigan amal evazni vojib qilmaydi, xususan ijara haqini"²⁶. Ko'rinib turibdiki, tomonlardan biri yoki har ikkisinining ma'muriy yoki jinoiy javobgarlikka tortilishiga sabab bo'ladigan barcha turdagi ijara shartnomalarining hukmi botil, ya'ni bekor hisoblanadi. Mazkur shartnoma tomonlarning hech biriga majburiyat yuklamaydi.

Shariatda muboh amal deganda ibodatga oid bo'lmagan va hech qanday taqiq qo'yilmagan vazifalar tushuniladi. Muboh amallar bilan bog'liq ijara shartnomalarining ikki jihatiga aniqlik kiritish lozim bo'ladi. Birinchisi, ishning hajmi. Ikkinchisi, muddati. Gohida ulardan biriga aniqlik kiritishning o'zi shartnomaning durust bo'lishi uchun kifoya qiladi. Bunga "Muhitul Burhoniyy" asarida quyidagi misol keltiriladi: "Yigirma qop unni non qilib berish uchun bir novvoyni ijaraga yollasa, muddat bayon qilish shart emas". Chunki bu holatda ishning hajmi aniq. Shuningdek, "Bir kun davomida non yopib berish uchun novvoyni yollasa, shartnoma durust bo'ladi"²⁷. Chunki muddat aniq, ishning hajmiga aniqlik kiritish shart emas.

Bajariladigan ish turlarini ibodat, taqiqlangan amal va muboh deb ajratilishining asosiy sababi undan olinadigan daromadning hukmini o'rganish. Shariat ruxsat bergan amallar to'g'risida tuzilgan ijara shartnomasidan olinadigan daromad halol va uning aksi esa, harom deb hukm qilingan.

"Asarning zamonaviy ijtimoiy muammolar yechimidagi ahamiyati" deb nomlangan uchinchi badda aholining muammolarini o'rganish va uni bartaraf etishda tarixiy an'ana muhokama qilingan. Bu haqda "Muhitul Burhoniyy" asarida quyidagi masala bayon etilgan: "Fuqarolarni oylik maosh bilan ta'minlashda qiyinchilik yuzaga kelsa, mazkur muammoni davlat rahbariga yetkazish va o'sha qishloq aholisiga ayrim imtiyozlarni olish uchun ma'lum ijara haqi evaziga odam yollash joiz bo'lgan. Yollangan shaxs qishloq aholisining boyu kambag'alidan ijara haqi olishga haqli bo'lgan. Agar sultonning huzuriga borishga tayyorgarlik ko'rish uchun bir yoki ikki kun kerak bo'lsa, shartnomada muddat ko'rsatilmasa ham joiz sanalgan. Agar ko'proq vaqt talab qilsa, shartnomada muddati belgilansagina shartnoma e'tiborga olingan. Agar belgilanmasa, shartnoma fosid deb hisoblangan". Ushbu masala bo'yicha Shamsul aimma Saraxsiy "Adabul qozi" kitobiga yozgan sharhida quyidagicha izoh bergan: "Bu holatda muammoni hal qilishga tayyorgarlik ko'rish uchun bir yoki ikki kun talab qilingan taqdirda ham muddat belgilanmasa ijara joiz bo'lmaydi"²⁸. Ko'rinib turibdiki, aholining mavjud muammosini davlat rahbariga yetkazish uchun ularning orasidan bir kishi shunchaki vakil emas, balki ijara shartnomasi asosida yollangan.

²⁶ Zafar Ahmad Usmon Tahonaviy. I'lous sunan. – Bayrut: Dorul fikr. – B.193.

²⁷ Burhoniddin Mahmud Buxoriy. Muhitul Burhoniyy. J.7. – Bayrut. Dorul kutubul 'ilmiya. 2004. – B. 486.

²⁸ Nizomiddin Burhonpuriy (Shayx Nizom) va boshqalar. Fatavoi hindiya. – Bayrut: Dorul kutubul 'ilmiya. 2000. J.4. – B. 602.; Faxriddin Qozixon. Fatavoi Qozixon. J.2. – Bayrut: Dorul kutubul 'ilmiya. 2009. – B. 226.

Mazkur bandda foydasiz narsalarning ijarasi o'rganilgan. Bu haqda "Muhitul Burhoniy" asarida: "Abu Yusuf: "Bir kishi gilamni uyga to'shab qo'yish uchun ijaraga olsa va undan foydalanish maqsadi bo'lmasa, shartnoma fosid bo'ladi"²⁹, degan. Bundan "Biron narsani bezatib turish maqsadida ijaraga olish joiz bo'lmaydi", degan qoida ishlab chiqilgan.

Shuningdek, mazkur bandda boshqa mamlakatda sodir bo'layotgan urushda shartnoma asosida ishtirok etish masalasi ham o'rganilgan.

Bugungi kunda qaysidir mamlakatda sodir bo'layotgan harbiy harakatlarda o'sha davlat yoki unga qo'shni davlatlardagi mignartlari ko'proq daromad topish maqsadida shartnoma asosida yollanma askar sifatida ishtirok etish holatlari kuzatilmoqda. Mazkur masala islom fiqhi asosida o'rganilsa, u ijara shartnomasi bilan bog'liq quyidagi qoidalarga to'g'ri kelmasligi ma'lum bo'ladi:

- yollanma ijarachidan dushman tarafning askarlarini o'ldirish talab qilinishi;
- yollanma ijarachining hayoti o'lim bilan tugashi mumkinligi.

Abu Is'hoq Shotibiy (vaf. 1389) "Muvafaqot" kitobida: "Nafaqat islom ulamolari balki boshqa din vakillari ham shariat beshta zaruriy narsani muhofaza qilishga qurilganiga ittifoq qilganlar. Ular din, jon, nasl, mol va aqlidir"³⁰. Shundan xulosa qilinadiki, molu dunyo to'plash, daromad topish, qarzlarini to'lash va hakazolar sababli hayoti uchun xatarli bo'lgan shartnomalar tuzish va uning talablarini bajarish islom dinining umumiy qoidalariga to'g'ri kelmaydi.

XULOSA

"Muhitul Burhoniy" asarida ijara shartnomalarining ilmiy-nazariy tadqiqi va tadqiqotning maqsad hamda vazifalaridan kelib chiqib, quyidagi xulosalarga kelindi.

1. Islom huquqida sunniylik mazhablari asoschilari ijara shartnomalarining nazariy asoslarini yaratishda uning lug'aviy va fiqhiy-istilohiy ma'nolariga tayanishgan. Mazkur asoslar shartnoma bilan bog'liq tartib-qoidalarni ishlab chiqishda muhim ahamiyat kasb etgan. الإجارة "ijara" so'zi lug'atda "ijara haqi" ma'nosini ifoda etsa-da, faqihlar tomonidan uning "foydani sotish" degan ma'nosi qo'llab-quvvatlangan. Bu atama fiqhiy-istilohiy ma'noning ayni o'zini ifoda etadi. Boshqa mazhab ulamolari ijaraning ta'rifiga "ijara haqining aniq bo'lishi, ob'yekt tasarruf va mubohlikni qabul qiluvchi bo'lishi" kabi qo'shimchalarni kiritgan. Hanbaliylar الإجارة "ijara" atamasi faqat odamlarni ishga yollash bilan bog'liq shartnoma ekanini ta'kidlagan. Hanafiy faqihlarining ijara shartnomasiga bergan ta'rifi boshqa mazhab ulomalarinikidan keng qamrovliligi va barcha turdagi ijara shartnomalarini o'z ichiga olishi bilan ahamiyatli ekani ko'pchilik tomonidan e'tirof etilgan.

2. Qur'onda ijara shartnomasiga oid oyatlar Yusuf, Kahf, Qasos suralarida kelgan hukmlar Yusuf, Shu'ayb va Muso payg'ambar tarixi bilan bog'liq ekanini va Baqara, Jum'a va Taloq surasidagi oyatlardagi hukmlar aynan biror

²⁹ Burhoniddin Mahmud Buxoriy. Muhitul Burhoniy. J.7. – Bayrut. Dorul kutubul 'ilmiya. 2004. – B. 492.

³⁰ Abu Is'hoq Shotibiy: Muvafaqot. – Bayrut. Dorul kutubul 'ilmiya. 2004. – B. 23.

payg‘ambarning shariatiga bog‘liq emasligini ko‘rish mumkin. Shuningdek, payg‘ambarlar tarixi bilan bog‘liq oyatlarda keltirilgan hukmlarning barchasi islom shariatida qabul qilinmagan. Masalan, hech qanday shartnoma tuzmasdan, muayyan ishni bajarib, uning evaziga ijara haqi talab qilish tizimi Muso payg‘ambarning shariatida mavjud bo‘lishi mumkin, ammo mazkur tizim islom shariatida o‘rnatilgan tartibga muvofiq kelmagani sababli qabul qilinmagan. Bu kabi holatlar quyidagicha izohlanadi. Oldingi shariatlar o‘sha davr yoki ma‘lum qabilalar uchun yuborilgan. Ulardagi muammo aynan oyatda yechimi bayon qilingan masala bilan bog‘liq bo‘lishi mumkin. Shuningdek, mazkur oyatlar islom dini kelishidan oldin ham ijara munosabatlari mavjudligi va u ilohiy farmon bilan tartibga solinganiga dalolat qiladi. Islom dini kelgach, oldingi shariatlardagi ijtimoiy-huquqiy munosabatlarga oid qoidalar butunlay bekor qilinmay, balki ularni qisman o‘zgartirish orqali tartibga solingan. Ijara shartnomasi ham shu yo‘sinda oldingi qoidalarni to‘ldirish orqali takomillashtirilgan.

3. Alloma ijara shartnomalarini hanafiy fiqh maktabida e‘tiborli sanalgan “Zohir rivoyat”, “Navodir (Nodir masalalar)”, “Fatavo” (“Fatvolar”), “Voqeot” (“Voqealar”) asarlaridan, shuningdek, XIII asrgacha yozilgan boshqa fiqhiy manbalar va fatvo asarlaridan misollar keltirish orqali yoritgan. Shu bilan birga, ustozlarining fatvolari, zamondosh faqihlar fiqhiy qarashlari va masalaning mohiyatini ochib berishda turdosh hodisalarga qiyoslash hamda o‘zining mustaqil ijtimoiy qarashlariga ko‘ra shakllantirgan. Masalalarni muhokama qilishda va ularning yechimini bayon etishda nafaqat hanafiylik mazhabi, balki sunniylikning qolgan uchta fiqhiy mazhab qarashlari asosida qiyosiy tahlil uslubi muallifga qo‘l kelgan. Ayrim o‘rinlarda, Hasan Basriy kabi faqihlarning ijtimoiy qarashlariga ham tayangan. Shuningdek, alloma asarda ijara shartnomasiga oid masalalarni tartibga solishda boshqa manbalardan farqli ravishda 34 ta fasl va ularga aloqador 37 qo‘shimcha masalani keltirgan. Ushbu uslub bugungi kunga qadar sohaga oid asarlar yaratilishida ilmiy-nazariy asos bo‘lib kelmoqda.

4. Islom huquqida ijara shartnomasining xususiyatlarini o‘rganishda mazhab faqihlari turlicha yondashgan. Alloma asarda hanafiy mazhabida ijara shartnomasining rukni ham, sharti ham ikkitadan ekanini ta‘kidlagan. Ahli sunna val jamoaning qolgan mazhablarida shartlarning to‘rtta ekani bayon qilingan. Bu holat islom huquqida rukn va shart tushunchalariga nisbatan mazhab faqihlarining yondashuvlariga bog‘liq. Unga ko‘ra, hanafiy faqihlari nazdida rukn va shart tushunchalari bir-biridan farq qiladi. Shofe‘iylarda esa, farq qilmaydi. Shu bois, alloma asarda mazkur masalani yuqorida sunniylik mazhablari asosida qiyosiy tahlil qilib ilmiy xulosalar bildirgan. Mazkur ilmiy xulosalar ijara shartnomalarini tuzishga oid tartib-qoidalarni ishlab chiqishda va hozirgi kundagi mavjud ittihoflarni bartaraf etishda muhim o‘rin tutadi.

5. Burhoniddin Mahmud Buxoriy asarda ijara shartnomasiga doir qoidalarni, xususan, “ijara shartnomasini tuzuvchilar oqil bo‘lishi”, “shartnomani tuzishda foydaga va ijara haqiga aniqlik kiritish” kabilarni umumiy tarzda keltirib, ularga qo‘shimcha sifatida “balog‘atga yetmagan va aqlan nosog‘lom bo‘lgan shaxslar ijara shartnomasini tuzishda bevosita ishtirok etishi mumkin emas” va “foйда

muayyan bo‘lmasa, shartnoma fosid bo‘ladi” hamda “ijara haqi sifatida beriladigan narsaning jinsi, miqdori va sifatleri aniq bo‘lmasa, shartnoma joiz bo‘lmaydi” kabi mavzular asosida yoritgan.

6. Alloma asarda ijara shartnomasining muddatidan oldin tugatilishiga sabab bo‘ladigan omillarni sanab o‘tgan. Unga ko‘ra, “tomonlardan biri yoki har ikkisining talabi”, “shartnoma tuzishga olib kelgan omilning yo‘q bo‘lishi”, “ijaraga olingan narsaning yo‘q bo‘lib ketishi”, “tomonlardan birining yoki har ikkisining vafot etishi”, “ijaraga olingan narsaga foydalanib bo‘lmaydigan darajada ayb yetishi”, “uzrli sababga ko‘ra” va “qozining qarori asosida” kabi mavzular hanafiylik va shofe‘iylik doirasida qiyosiy o‘rganilgan hamda yuzaga keladigan hukmlar keltirilgan.

7. Alloma asarda ko‘chmas mulklarning ijarasi to‘g‘risida bugungi kunda ijtimoiy ahamiyatga ega bo‘lgan muhim masalalarni muhokama qilgan. Xususan, ko‘chmas va ko‘char mulklarning الإجارة المنتهية بالتملك (mulk qilib berish bilan tugaydigan ijara) shartnomasining fiqhiy asoslari o‘rganilib, uning hozirgi kunda eng ommalashgan savdoning بَيْعُ التَّقْسِيطِ (taqsit savdosi, muddatli, bo‘lib to‘lash orqali narsani sotib olish yoki sotish) turiga qaraganda tomonlarning haq-huquqni himoya qilinishi va mulk daxlsizligini ta‘minlashdagi ahamiyatini ochib bergan. Ko‘chmas yoki ko‘char mulkni mulk qilib berish bilan tugaydigan ijara shartnomasi asosida sotish ijaraga beruvchiga quyidagi huquqiy imkoniyatlarni berishi asoslangan. Xususan, “shartnomaning muddati tugagunga qadar mulkka egalik qilish ijaraga beruvchida saqlanib qolishi”, “shartnoma tomonlarning xohishiga ko‘ra bekor qilinishi”, “shartnomada ko‘rsatilgan vazifalar ijaraga oluvchi tomonidan o‘z vaqtida bajarilmasa, mulkdor mulkni qaytarib olishi”, “mulkdor xohlagan vaqtida mulkni uchinchi odamga ijara berishi, hadya qilishi, sotishining joizligi” shular jumlasidandir.

8. Burhoniddin Mahmud Buxoriy mehnat munosabatlariga oid ijara shartnomalarini boshqa fatvo manbalaridan farqli ravishda uch turga ya‘ni ibodat masalalari bilan bog‘liq, shariatda taqiqlangan narsalarga aloqador va muboh amallarga doir shartnomalarga ajratgan. Bunga “ibodat masalalarida tuzilgan ijara shartnomasi botil” degan qoidalar turtki bo‘lgan. Natijada, ularning fiqhiy asoslarini o‘rganib, ular ijara shartnomasi joiz bo‘lgan ibodatlar va joiz bo‘lmaydigan ibodatlariga ajratilgan. Unga ko‘ra, ayrim ibodatlar, xususan, ta‘lim berish, xatmi Qur‘on qilish, dam solish, haj kabi ibodatlarni shartnoma asosida amalga oshirish masalasi muhokama qilingan. Alloma umumiy qoida sifatida bu masalada qiyos yo‘qligini ta‘kidlagan. Shuningdek, “jazoga tortilishiga sabab bo‘ladigan amallar xususida tuzilgan ijara shartnomasi botil” qoidasi asosida odamlar bu kabi shartnomalar tuzilgan taqdirda ham inson zimmasiga hech qanday vazifa va majburiyat yuklamasligini qayd qilgan.

9. Hozirgi kunda jamiyat hayotida yuzaga kelayotgan diniy-ijtimoiy masalalarga javob topishda “Muhitul Burhoniy” asarining o‘rnini ochib berish tadqiqotning asosiy vazifalaridan biri sanalib, “aholining muammosini davlat rahbariga yetkazish uchun ijara shartnomasi asosida odam yollash”, “uzoq muddatli ijara shartnomalarining fiqhiy asoslari”, “foydasiz narsalarning ijarasi”,

“bir vaqtning o‘zida ikki va undan ortiq kishiga xizmat ko‘rsatish”, “dallollik xizmati uchun haq undirish” va “boshqa davlatda bo‘layotgan harbiy harakatlarda yollanma ijarachi-askar sifatida ishtirok etishning hukmi” kabi masalalarning fiqhiy asoslarini o‘rganish orqali olinadigan ilmiy xulosalar jamiyatda milliy qadriyatlarga nisbatan hurmat ko‘rsatish, aholi muammolarini yuqori instansiya doirasida adolatli hal etish choralarini ko‘rish, yosh avlodni Vatanga sadoqat, halol kasb-hunar qilish ruhida tarbiyalashda asarning ahamiyatini ochib beradi.

Tadqiqot jarayonida olingan natija va xulosalardan kelib chiqib quyidagi taklif va tavsiyalar ilgari surildi:

1. Islom sivilizatsiyasi rivojida Burhoniddin Mahmud Buxoriyning ilmiy merosining muhim ahamiyat kasb etishini inobatga olib, O‘zbekiston xalqaro islom akademiyasida diniy-ma‘rifiy soha mutaxassislari uchun “Islom huquqida ijara masalasining o‘ziga xos xususiyatlari (Burhoniddin Mahmud Buxoriyning “Muhitul Burhoni” asari asosida) nomli monografiya tayyorlash.

2. “Muhitul Burhoni” asari fatvo janridagi manba bo‘lgani bois O‘zbekiston xalqaro islom akademiyasi hamda O‘zbekiston musulmonlari idorasi tasarrufidagi oliy va o‘rta-maxsus diniy bilim yurtlarida mavjud “Klassik fiqhiy matnlar” fanidan o‘quv adabiyoti ishlab chiqish.

3. “Muhitul Burhoni” asarida ijtimoiy munosabatlar, shu jumladan, ijara shartnomalariga oid zamonaviy masalalar yechimi batafsil bayon qilingani bois omma uchun “Ijara shartnomalari va unga oid zamoniy fiqhiy fatvolar” nomli savol-javob shaklidagi risola nashr etish.

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INTERNATIONAL ISLAMIC ACADEMY OF UZBEKISTAN

ERKAEV MAMURJON RAKHMANBERDIEVICH

**LEASE CONTRACTS IN “MUKHITUL-BURKHANI” BY
BURKHANIDDIN MAKHMUD BUKHARI**

24.00.03 – Science of Fiqh and Kalam. Theology

**ABSTRACT OF DISSERTATION OF THE DOCTOR OF PHILOSOPHY (PhD) ON
ISLAMIC SCIENCES**

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Scientific adviser: **Bekmirzaev Ilhomjon Isroiljonovich**
Doctor of historical sciences, professor

Official opponents: **Rajabova Mavjuda Abdullaevna**
Doctor of juridical sciences, professor

Ishandjanov Baxtiyor Ilhomovich
Candidate of historical sciences,
assistant professor

Leading organization: **Institute of Oriental Studies of the Academy of Sciences of the Republic of Uzbekistan**

The dissertation defense will take place at the online/offline session of the Scientific Council DSc.35/30.12.2019.IsI/Tar/F.57.01 of the International Islamic Academy of Uzbekistan on ____ may 2024 at ____ o'clock. (Address: 11, A.Kadiri Street, Tashkent, 100011. Tel.: (99871) 244-00-56; Fax: (99871) 244-00-65; e-mail: info@iiu.uz).

The dissertation can be found at the information Resource Center of the International Islamic Academy of Uzbekistan. (Registration number № 154) (Address: 100011, Tashkent, A.Kadiri street, 11. Telephone: (99871) 244-00-56; fax: (99871) 244-00-65; e-mail: info@iiu.uz)

The dissertation abstract is disseminated on “____” april, 2024.
(Protocol registered №04 on april 18, 2024)

D.R.Makhsudov
Chairman of scientific council for
awarding scientific degrees, doctor
of historical sciences, professor

S.A. Rustamiy
Scientific secretary for awarding
scientific degrees, doctor of
philological sciences, professor

Z.M. Islamov
Charirman of the scientific seminar
at the scientific council for awarding
scientific degrees, doctor of
philological sciences, professor

INTRODUCTION (annotation of the Doctor of Philosophy (PhD) dissertation)

Actuality and necessity of research. In the history of world jurisprudence, the concept of “Lease”, which is one of the important topics of Islamic law, has evolved alongside modern contracts in Muslim countries. In the development of jurisprudence, it is necessary to emphasize the unique position of the scholars of Transoxiana (Movarounnahr) with the integration of its existing traditions. The work of the eminent jurist Burhan al-Din al-Marghinani (d. 616/1219), “Al-Muhit al-Burhani” (المحيط البرهاني), which played a significant role in advancing Islamic law in all its fields during the 12th and 13th centuries, who had a great importance in organizing the existing rulings and principles related to the lease agreement in a unique manner. This source is important in structuring the lease agreement and ensuring the protection of the interests of the parties, as well as ensuring fair approach towards the object.

Systematic studies aimed at exploring the history and significance of lease agreements in Islamic law are being conducted in specialized research centers dedicated to the study of Islamic sciences worldwide. Such research investigates the nature of lease agreements these days and in the history. In these studies, lease agreements are attributed importance, especially those related to “الإجارة المنتهية بالتملك” (lease ending with the transfer of property)” (lease terminating with ownership), “الاستئجار على الطاعات” (Lease based on acts of obedience)” related to worship issues, and “الاستئجار على الأفعال المباحة” (Lease based on permissible acts)” related to permissible actions. In this context, conducting comprehensive research on the “Al-Muhit al-Burhani” (المحيط البرهاني) and explaining the specific characteristics of lease agreements in Transoxiana, contributes to a better understanding of the tradition of lease agreements.

The initiatives being implemented in the religious-educational sphere in the New Uzbekistan are identifying the scientific and spiritual heritage of various fields, implementing their modern interpretation, and creating significant opportunities for broad public engagement. As a result, the book “Hidoya” has been translated into Uzbek, and the first volume of “Contemporary Jurisprudential Issues,” “Nodir Fatwas,” and “Collection of Fatwas: 500 Questions, 500 Answers” has been published. Researching the issue of lease in the work “Al-Muhit al-Burhani” by Burhan al-Din al-Marghinani, which is considered a reliable source in Hanafi jurisprudence, contributes to the continuation of the above scientific investigations.

The decrees of the President of the Republic of Uzbekistan numbered (No.) PF-60 dated January 28, 2022, “On the Strategy for the Development of New Uzbekistan for 2022-2026,” No. PF-5416 dated April 16, 2018, “On Measures to Further Improve Activities in the Religious-Educational Sphere,” and the resolution of the President of the Republic of Uzbekistan No. PQ-2995 dated May 24, 2017, “On Further Improving the System for Preserving, Studying, and Promoting Ancient Written Sources,” as well as the decision of the Cabinet of Ministers No. 519 dated June 24, 2019, “On Expanding the Library Fund of the

Imam Bukhari International Research Center under the Cabinet of Ministers of the Republic of Uzbekistan with Foreign Literature,” contribute significantly to fulfilling the tasks outlined in this dissertation.

Compliance of the research with the priorities of the republican science and technology development. The dissertation has been carried out in accordance with the priority direction I. “Forming an innovation system of ideas in the development of an informed society and a democratic state in socio-economic, legal, cultural, spiritual, and educational fields” of the development of science and technology of the Republic.

The degree of study of the problem. Numerous studies have been conducted on the life and scientific activity of Burhan al-Din al-Marghinani, as well as on his work “Al-Muhit al-Burhani”. These studies can be divided into the following groups from a territorial perspective:

1. European scholars and researchers such as Omeljan Pritsak (Germany), Karl Brockelmann (Germany), Reshat Gench and Umar Soner Hunkan (Turkey) have conducted scientific research on the period of Marghinani's life, his family, the influence of his family members on political governance in Bukhara, and the endowment documents executed during that time. Scholars like Baber Johansen, Abdullatif Valiy Adiyim, Monzer Kahf, Mahmud Jamal, Aleksandro Ferrari, Flavia Cortelezzi, Ahmet Akgunduz, Farhan Jamil Ahmed¹, among others, have studied the principles of Islamic law related to lease agreements within the framework of general jurisprudence. However, their research did not specifically address the fatwas related to lease agreements in the “Al-Muhit al-Burhani” text.

2. Scholars from the Muslim East have also conducted studies in this field. For example, based on the research of Abdulkarim Somi Jundi and publications by Sheikh Nur Ahmad, investigations have been carried out². Additionally, various sections of “Al-Muhit al-Burhani” have been studied by scholars like Ali ibn Nosir ibn Solih Suhayboni, Javhara binti Sa'd ibn Muhammad, Muhammad ibn Abdulaziz ibn Muhammad, Hammod Hasan Muhammad Hasan, Fahd ibn Abdurahman ibn Sanyon. Information on lease agreements has been studied in the field of Islamic legal disciplines by scholars such as Muhammad Abdulaziz Hasan Zaid, Abdullah Husayn Mavjan, Abu Sulayman Abdulvahob Ibrahim, Doctor Ali

¹ Omeljan Pritsak. Al-i Burhan. Der Islam (zeitschrift für geschichte und kultur des Islamischen orientes) Band 30. Berlin: Walter de gruyter & co. 1952.-5. 81-133., Brockelmann C. Geschichte der arabischen Litteratur. 3 jildi. - Weimar-Berlin: Xay'a al-misriyya, 1898-1993., Reşat Genç. Karahanlı Devlet Teşkilatı (XI-XII.Yüzyıl). İstanbul: Kültür Bakanlığı Yayınları, 1981. – 5. 370., Ömer Soner Hunkan. Türk Hakanlığı (Karahanlılar) Kuruluş-Gelişme-Çöküş (766-1212). İstanbul: Tanıtım Hizmetleri Ticaret Limited Şirketi, 2007. – B. 523., Baber Johansen. The Islamic Law on Land Tax and Rent. – Taylor-Francis. 2016. – 156 b. Abdullateef Valiy Adiyim Ijarah Lease Contract and Islamic Banking Products. Amazon Digital Services LLC. – 2022. – 246 b., Monzer Kahf. Islamic finance contracts. - Al Manhal. 2013. – 508 b., Mahmoud El-Gamal. Islamic Finance Law, Economics, and Practice. – Cambridge University Press. 2006. – 221 b., Alessandro Ferrari, Flavia Cortelezzi. Contemporary Issues in Islamic Law, Economics and Finance. – Taylor-Francis. 2022. – 222 b., Farhan Jamil Ahmed. Islamic Leasing and Auto Financing System in Pakistan in Compliance vith Islamic Sharia. MPRA Paper No. 116439, posted 22 Feb 2023 14:31 UTC. 2023. 42-b

² Burhoniddin Mahmud Buxoriy. Muhitul-Burhoniyy. – Bayrut. Dorul kutubul ‘ilmiyya. 2004. (9 Volumes).; Burhoniddin Mahmud Buxoriy. Muhitul-Burhoniyy. – Karachi. Idoratul Qur'on val 'ulumul islamiyya. 2004. (25 Volumes).

Muhyiddin Qoradog'iy³, A. Mahmud, Faizal Karbani, Muhammad Taqi Usmani, Muhammad Ayub, Mehmet Sadik Kayar, Muhammad Harun Amir, and Muhammad Saud Ansari⁴.

3. Uzbekistan scholars and researchers such as R. Zohid and A. Dehqon, Abdulaziz Mansur, Muhammad Sodiq Muhammad Yusuf, S. Iskhakov, A. Rakhmonov, and Abdumukhtar Rakhmonov have discussed information on lease agreements in the field of Islamic legal disciplines in their books, textbooks, and teaching materials⁵. In addition, the theses of I. Bekmirzaev on the life and scientific legacy of Burhan al-Din al-Marghinani and his work⁶ "Al-Muhit al-Burhani" have been discussed from the perspective of historical and source studies, as well as textual analysis.

The link of the dissertation with the research plans of the higher educational institution where the dissertation is completed. The dissertation was carried out within the framework of the scientific project on the topic "Development of a multimedia software and mobile application integrating the

³ Ali ibn Nasir ibn Salih Suhaibani. Analysis of the work "Mihit" from the chapter "Karoheyat and Istehsan" to the chapter "Gift and Charity". Doctoral work in Mazusi. - Saudi Arabia. 1998.; Jawhara bint Sa'd ibn Muhammad. Study of the work "Muhitul-Burhani fi qihin-Nu'mani" from the chapter "Muzora'a" to the chapter "Ma'zun". doctoral work. - Saudi Arabia. 2005. This scientific work includes the books "al-Muzora'a", "al-Ashriba", "al-Ikroh", "ash-Shurb", "al-Hijr", "al-Ma'zun". ., Muhammad ibn Abdulaziz ibn Muhammad. Research of the chapters "Shahadat" and "Return from Shahadat" of the work "Muhitul-Burhani fi qihin-Nu'mani". doctoral work. - Saudi Arabia. 2005.; Hammad Hasan Muhammad Hasan. Master's thesis on the topic "Investigation of Burhoniddin Mahmud Bukhari's work "Muhitul-Burhani fi fiqhin-Nu'mani" from the eighteenth chapter of tricks to the twenty-eighth chapter (in Hijri). - Egypt. 2006. - 483 p.; Fahd ibn Abdurrahman ibn Sanyan. A study of the Book of Claims of the work "Muhitul-Burhani fi fiqhin-Nu'mani". doctoral work. - Saudi Arabia. (The year is not indicated)., Muhammad Abdulaziz Hasan Zayd. Al-Ijaratu bayna al-fiqh al-Islami. - Cairo. Alexandria. - 1996. - 88 p.; Abdullah Husayn Mavjan. Aqd al-ijara. - Egypt. Kunuz al-ma'rifa. - 2001. - 132 p.; Abu Sulayman Abdulwahab Ibrahim. Aqd al-ijara. - In Jeddah. Published by Malik Fahd. - 2000. - 92 p., Dr. Ali Muhyiddin Karadoghi. Al-ijara 'ala manafi' al-ashkhas. - Paris. - 2008. - 68 p.

⁴ Islamic Finance: Law, Economics, and Practice. Cambridge University Press. 2006. - 221 b.; Faizal Karbani. Mastering Islamic Finance: A Practical Guide to Sharia-compliant Banking. Pearson Education. 2015. - 191 b.; Muhammad Taqi Usmoniy. Islam and modernism. Idaratul Maorif. 1998. - 246 b. Muhammad Ayub. Understanding Islamic Finance (summary). Wiley. 2008. -544 b.; Mehmet Sedik Kayar. Islam hukukunda icare akdi. - Dicle universitesi Sosyal bilimler enstitüsü Temel islam bilimleri anabilim dali Islam huququ bilim dali Yuksak lisans tezi. - Diyar bakir, 2011. - 109 b., Muhammad Haroon Ameer va Muhammad Saud Ansari. "Islamic Banking: Ijarah and Conventional Leasing" Developing Country Studies ISSN 2224-607X (Paper) ISSN 2225-0565. Vol.4, No.9, 2014.

⁵ R. Zahid. A. Farmer. Mukhtasar (brief commentaries on Sharia law). - T.: "Movarounnahr", 1994. - 424 p., Maqsudhoja ibn Mansurhoja. Majma'ul Maqsood. Edited by Sheikh Abdulaziz Mansour. - T.: "Sharq" publishing and printing joint-stock company, 2015. Volume 1. - p. 578, vol. 2. - 565 p., part 3. - 565 b., Sheikh Muhammad Sadiq Muhammad Yusuf. Enough. - T.: "Hilal-Nashr", 2015. Volume 1. - 584., 2nd vol. - p. 584, part 3. - 640 p., S.A. Ishakov. Fundamentals of Islamic Civil Law. Study guide. - Tashkent. Academy of Ministry of Internal Affairs of the Republic of Uzbekistan, 2005. - 128 p., Azamjon Rahmonov, Abdumukhtar Rahmonov. Islamic law. Textbook for higher educational institutions. - T.: "DYul" publishing house. 2007. - 496 p., Komilov M. The development of jurisprudence in Movarounnahr and the jurist Alauddin al-Samarkandi. Monograph. - T.: Istiklal, 2006. - 208 p., Muminov A. The place and role of Hanafi scholars in the life of the Central Movarounnahr cities (II-VII/VIII-XIII centuries): translation.fan.doct. dis... autoref. - T.: Tashkent Islamic University, 2003. - 46 p., Juzhoniy A.Sh. Marginani and his followers. - T.: Tashkent Islamic University Publishing Association, 2000. - 56 p., Ziyadov Sh. Mahmudov. Q. Famous scholars from Samarkand who lived in the Middle Ages. - T.: Gafur Ghulam, 2019. - 256 p., Aminov H., Primov S. History, sources and reforms of Hanafi jurisprudence [Text]. - T.: Movarounnahr, 2017. - 400 p.

⁶ Bekmirzaev I.I. Burhanuddin Mahmud al-Bukhari and Movarounnahr Qazi. Monograph. - Tashkent: Educational Publishing House, 2011. - 200 p.; that author. Judicial documents in Movarounnahr: historical roots and analytical approaches. - Tashkent: Tashkent Islamic University, 2014. - 332 p.

educational and cognitive foundations of combating extremist ideas based on the works of Central Asian thinkers” under the FZ-202002146 program of the Uzbekistan International Islamic Academy for 2020-2022.

The objective of the study is to elucidate the unique aspects of the fatwas related to drafting lease agreements in the work “Al-Muhit al-Burhani”.

The tasks of the research include:

Explaining the concept of lease in Islamic law and its jurisprudential-theoretical foundations;

Classifying lease agreements mentioned in the Quranic verses;

Presenting the principles of organizing lease agreements in the jurisprudential heritage of Burhan al-Din al-Marghinani;

Highlighting the descriptive characteristics of lease agreements in “Al-Muhit al-Burhani”;

Specifying the arrangement of Hanafi legal rules in drafting lease agreements;

Comparatively analyzing the jurisprudential foundations of lease termination requirements in the text;

Discussing issues related to leasing of immovable properties in “Al-Muhit al-Burhani”;

Identifying the methodology used by Burhan al-Din al-Marghinani in discussing labor relations related to the lease;

Formulating recommendations and suggestions based on the importance of addressing current social issues in the text and utilizing them effectively.

The object of the research is the lease agreements in Islamic law.

The subject of the research is the rules related to drafting lease agreements in Burhan al-Din al-Marghinani's work “Al-Muhit al-Burhani”.

Research methodology: The research extensively utilizes methods such as comprehensive analysis, systematicity, historicity, comparative-critical analysis, and specificity.

The scientific novelty of the research includes the following aspects:

It demonstrates that Burhan al-Din al-Marghinani, in the chapter “الطَّوِيلَةُ الْإِجَارَةُ” (Long-term Lease Agreements Practiced in Bukhara) of his work “Al-Muhit al-Burhani”, elucidated the Shariah principles of long-term lease agreements, which indicates their practical implementation in the Middle Ages, especially in the broader regions of Transoxiana and the Hanafi school.

By establishing the rule “المعاصي على الاستئجار” (Lease of Disobedience), in a separate chapter, Burhan al-Din al-Marghinani laid down the principle from a Shariah perspective that lease agreements cannot be a cause for either party's punishment, thereby contributing to the formation of a local system aimed at preventing crimes in society.

Through the comparative analysis of the section “السُّلْطَانُ إِلَى الْأَمْرِ لِيَرْفَعَ الْأَسْتِئْجَارُ” (Lease for Referral to the Ruler) mentioned in “Al-Muhit al-Burhani”, it was revealed that the practice of resolving social issues through referral to higher authorities, as based on contemporary society, was prevalent in Bukhara during the Middle Ages.

It indicates that in the text, by formulating the Shariah principles of lease agreements that end with the transfer of ownership, thus differentiating them from gift or mutual contracts in terms of benefiting both parties equally, Burhan al-Din al-Marghinani contributed to the development of legal norms regarding property ownership, which serve the interests of both parties, particularly in cases of exchange or gift transactions.

The practical result of the research includes the following:

It reveals that Burhan al-Din al-Marghinani utilized the works and fatwas of previous jurists, as well as demonstrated an independent approach in making *ijtihad* on issues which had not addressed in earlier sources, particularly in organizing topics with unique reasoning supported by evidence.

The main features of the lease agreement are highlighted, including its structuring process, the rights and obligations of the parties, regulations regarding the leased property, cancellation norms, and the reinforcement of kinship relations, contributing scientifically to the establishment of a local system aimed at preventing crimes in society.

It is recognized that the study of “Al-Muhit al-Burhani” by students learning Islamic jurisprudence in religious education institutions as a textbook facilitates a better understanding of the author's approach to issues related to lease agreements, making it more accessible for students studying the subject of jurisprudence.

Due to the inclusion of Burhan al-Din al-Marghinani's unique fatwas on Bukhara's lease-related customs in later works such as “Fatovoi Tatarxoniyā,” “Fatovoi Hindiya,” and “Banoya sharhi Hidoya,” it is evident that the long-term lease agreement type spread to the entire Muslim world, resulting from its inclusion in subsequent fatwa and jurisprudential texts produced in the following centuries.

The reliability of the research results is evidenced by the fact that the manuscript copies of “Al-Muhit al-Burhani” stored under numbers 3102 and 5835 in the manuscript fund of the Institute of Oriental Studies named after Abu Rayhan al-Biruni at the Academy of Sciences of the Republic of Uzbekistan, as well as its publication based on the research conducted by Abdulkarim Somiy Jundiyy and Shaykh Nur Ahmad, are available. The research is also grounded on contemporary comparative-historical methods, as well as utilizing a range of scientific research methods developed in both Eastern and Western Islamic scholarship traditions, and the validation of the research results by reputable institutions.

The scholarly significance of the research results is explained by highlighting the crucial role of Burhan al-Din al-Marghinani in the development of Islamic studies in Transoxiana and the importance of “Al-Muhit al-Burhani” as a significant source in Hanafi jurisprudence. Furthermore, it is emphasized that the scholarly theoretical conclusions on the rules regarding lease agreements in the mentioned work serve as a basis for future scientific research in the field.

The practical importance of the research results lies in enriching the content of subjects taught in higher and secondary specialized religious educational institutions such as “Islamic History and Civilization,” “Islamic History in Central

Asia,” “Islamic Studies,” “Islamic Jurisprudence,” “Methodology of Islamic Jurisprudence,” “Foundations of Islamic Law,” “Classical Legal Texts (Furu' al-Fiqh),” and “Thinkers of Transoxiana,” by incorporating new theoretical developments. It also forms the basis for the development of elective courses, seminar activities, and special courses related to the subject.

Implementation of research results is based on the scientific conclusions of the study conducted on lease agreements in Burhan al-Din al-Marghinani's “Al-Muhit al-Burhaniya”:

The scientific conclusions regarding the unique aspects of this type of lease, based on evidence that it was practiced in the Central Asian region during the Middle Ages and its establishment on the basis of legal principles in Hanafi jurisprudence, have been incorporated into the content of books such as “Famous Samarqand Scholars of the Middle Ages” and the “Encyclopedia of Eastern Scholars of the Middle Ages” (Reference No. 02/504 dated November 1, 2023 of the Imam Bukhari International Research Center before publication). Consequently, this contributed to the dissemination of information about the scientific aspects of this lease type to the academic community;

the scientific conclusions regarding the principle of non-liability of either party to the lease agreement, as established from a Sharia perspective by Abd al-Karim al-Samarkandi, have been integrated into the content of the book “Collection of Fatwas. 500 Questions, 500 Answers” (Volume 1), published under the order of the Uzbek Muslims' Administration (Reference No. 4764 dated November 1, 2023 of the Uzbek Muslims' Administration). This facilitated the development of students' understanding of the nature of lease agreements related to worship, restricted and permitted actions in Sharia, contributing to their scholarly development;

the scientific conclusions derived from the comparative analysis of the principle “Leasing to Raise the Matter to the Sultan” from “Al-Muhit al-Burhaniya,” which emphasizes resolving societal issues through legal means at higher authorities, have been incorporated into the content of the textbook “Islamic Jurisprudence,” published under the order of the Committee on Religious Affairs of the Republic of Uzbekistan (Reference No. 02-02/1/387 dated October 31, 2023 of the Committee on Religious Affairs of the Republic of Uzbekistan). Consequently, this facilitated the formulation of students' understanding of the practical resolution of social issues within the framework of current legal procedures;

the scientific conclusions derived from the establishment of the legal principles of lease agreements that transfer ownership to the second party in the form of gift or mutual agreements, differing from usurious transactions, and demonstrating service to the benefits of both parties, have been integrated into the content of the textbook “Contemporary Jurisprudential Issues and Principles of Issuing Fatwas,” published under the order of the Uzbekistan Islamic Civilization Center (Reference No. 08-17/08 dated January 5, 2024 of the Uzbekistan Islamic Civilization Center). As a result, students developed an understanding that

ownership rights can be realized not only through trade or gifting but also through lease agreements.

Authorisation of research results. The research findings have been presented and approved at a total of 4 events, including 1 international and 3 national scientific-practical conferences.

Announcement of research results. Regarding the topic of the research, 13 scientific papers have been published, of which 9 articles have been recommended for publication in scientific journals, including 7 in national and 2 in international journals. Additionally, abstracts have been announced at 1 international and 3 local conference collections.

Structure and volume of the dissertation. The dissertation consists of an introduction, three chapters, a conclusion, a list of references, and appendices. The volume of the dissertation comprises 133 pages.

THE MAIN CONTENT OF THE DISSERTATION

The significance of the chosen topic **in the introduction**, along with the research objectives and tasks, the research subject and object has been identified. The relevance of the research to the leading trends in the development of science and technology has been demonstrated, and the scientific novelty and practical results of the work have been elucidated. The theoretical and practical significance of the obtained results has been explained based on their reliability. Information has been provided on the practical implementation of research results, its approval, outcomes, published works, and the structure of the dissertation.

In the first paragraph of the first chapter of the dissertation entitled **“Theoretical-methodological foundations of the study of lease contracts in Islamic law”** entitled *“The concept of lease in Islamic law and juridical-theoretical foundations of concluding contracts”* the vocabulary and Shariah-terminological meanings of the word “lease” and the jurisprudential-theoretical foundations related to its structure were discussed within the mazhabs of ahl al-sunnah wal jamaah. In terms of the scientific and terminological meaning of the lease contract the sources of Islamic jurisprudence provide definitions that are close to each other. For example, by Hanafi mazhab the word (الإجارة) “lease” is given like “a contract concluded for profit in exchange for compensation (agreement)⁷“. And the Shafi’is say that, “lease is “the ownership of profits in exchange under the following conditions”. They included some conditions in the definition saying “the pay for the rent should be fixed and the leased property should accept expense and the state of mubah”⁸. The scholars of Maliki mazhab

⁷ Shamsiddin Sarakhsi. Al-Mabsut. V.15. - Beirut: Darul marifa. 1989. - p. 74.; Abulhusayn Quduri. Mukhtasarul Quduri. - Beirut: Institutional District. 2005. - 101 p.; Burhoniddin Marginani. Hidayat's commentary is bidayatul muftadi. V.6. - Medina: Darus Siraj. 2019. - B. 5.; Ibn Humam al-Hanafi. Fathul is able to comment. V.9. - Beirut: Darul kutubul 'ilmiya. 2003. P. 58; Ali Jurjani. Mojam at-tarif. - Cairo: Darul virtue. - B. 12.; Vahba Zuhayli. Mawsu'atul fiqhil islami wal kazayo muasara. J.4. - Damascus: Darul thought. 2010. 525p.

⁸ Shamsiddin Romliy. Nihoyatul muhtaj ila sharhil minhaj V.5. - Beirut: Darul kutubul 'ilmiya. 2003. - p. 261.; Khatib Shirbini. Mugnil is in need. V.2. - Beirut: Darul marifa. 2008. 427 p.

studied the issues related to the lease contract by dividing it into lease and ikro (pay for kira). That's why they divided the general definition into two parts, namely "lease is a contract concluded to hire individuals for a job" and (الإكراء) "ikra – a lease on things"⁹. The scholars of Hanbali mazhab give the definition that "lease is one of the types of bays, because each of the parties gives to the other as a property. Lease is selling of profit. Profit is in the place of a certain thing"¹⁰.

Those who have focused on expressing the lexical meaning of the term within the context of the Sunni schools of thought and jurisprudence have paid special attention. The reason is that through this, they have also studied other aspects inherent in that meaning. It is possible to observe various interpretations in understanding the juridical-terminological meaning. The main reason for this is the comprehensive consideration of all types of contracts related to the subject matter of the contract. Hanafi jurists have not only determined the types of leases from their perspective but also provided definitions for them. They emphasized the importance of correctly structuring the contract or its incorrect structuring based on other principles of Islamic law. Scholars of other schools of thought have contributed their definitions to the term. It can be seen, that in cases where these conditions are not met, the drafting of a lease agreement is not permissible.

In the second section titled "*Classification of Legal Provisions Related to Leasing in Quranic Verses*," the verses related to leasing agreements, reasons for their revelation, interpretations by commentators, as well as the classification of legal provisions derived from them, have been analyzed and presented.

The word "الإِجَارَةُ" itself is not mentioned in the Quran. However, its root "أَجَرَ" appears 87 times, predominantly conveying the meanings of rights, rewards, and compensation. Only in verse 77 of Surah Al-Kahf and verse 25 of Surah Al-Qasas, the term "أَجَرَ" is used with the meaning of "service fee." The plural form of this word, "أَجُورٌ," occurs 12 times in the Quran, alluding to rights, rewards, compensation, and dowry. Among them, only in verse 6 of Surah At-Talaq, the term "أَجُورٌ" can be related to leasing agreements. Additionally, the verb "اسْتَأْجَرَ" (to rent)¹¹ is mentioned twice in verse 26 and once in verse 27 of Surah Al-Qasas, indicating the act of leasing.

The provisions related to leasing agreements in the Quranic verses can be classified into the following categories:

- Sending people to work.
- Sending workers based on announcing compensation.
- Verses related to the formation of lease agreements.

In the Quranic verses, the conditions related to leasing agreements are sometimes fully explained, and sometimes partially mentioned. The reason for this can be explained by the fact that the previous laws in the Shariah regulated leasing relationships according to the customs and traditions of that era or specific tribes. They were adapted accordingly. When Islam came, the rules governing social and

⁹ Xattob. Mavahibul-jalil. J.6. – Mavritaniya: Dorur rizvon. 2010. – p. 141.

¹⁰ Ibn Qudama. Al-Mug'ni. J.8. – Riyaz: Dor olamul kutub. 1997. – p. 7.

¹¹ Al-Qomus. V.1. – pp. 30-32

legal relations in previous Shariahs were not completely discarded but were partly modified.

In explaining the provisions related to leasing agreements in the verses, only the word “الإجارة” (leasing) is not used. Rather, the use of verbs and nouns in Arabic, and other words derived from their roots, is observed, considering the specific features in the contexts.

The type of leasing related to sending people to work has been extensively studied in the analyzed verses. The provisions regarding the leasing of material things and acquiring them can be understood only by grasping the general content of the verses in Surah Al-Baqarah and Surah Al-Jumu'ah.

In the third section titled “*The Principles of Arranging Lease Agreements in the Legal Heritage of Burhoniddin Mahmud Buxoriy*” the author elucidates the methodology employed by Burhoniddin Mahmud Buxoriy in creating the mentioned work, the sources he utilized from various books, and the jurists he referenced for their opinions. Burhoniddin Mahmud Buxoriy employed the following methods in composing his work:

1. Comparing the statements of mujtahids. As an example, the author mentions the following issue: “If the lease amount is significant, whether by weight or number, clarity is required regarding its quantity and quality. Additionally, specifying the place is necessary if it is related to expenses incurred by the lessor. If it is not related to them, it is not a condition. This is the opinion of Abu Hanifa. Abu Yusuf states: specifying the place is not a condition”.

2. Comparing narrations from original sources. In the matter of whether ownership must be established in conjunction with the drafting of the lease agreement or not, the author first compares the narration found in Imam Muhammad's “Al-Jami' al-Saghir” and other narrations from different books. Then, he explains his own juristic view as follows: “A lease is an agreement between two parties. In it, both parties must act according to the principle of equal legal capacity to the extent possible”.

3. Comparing the statements of scholars from different schools of thought. The author emphasizes that not every issue can be compared across all schools of Sunni thought. Instead, some issues are compared only with the Shafi'i school of thought. For instance, according to the Hanafi school of thought, if the lease amount is beneficial, and the object being leased is of the same kind as what is given in lease, it is permissible. An example of this is leasing a house in exchange for living in your own house. In this case, it is permissible according to Imam Shafi'i.

4. Comparing issues with one another. The author discusses how issues related to lease agreements were systematically arranged by comparing lease agreements with other contracts¹². This method, employed by the author, played a significant role in the creation of works such as “Fatavoi Tatarxoniya” and

¹² Burhoniddin Mahmud Buxoriy. *Muhitul-Burhoniyy*. v.7. – Bayrut. Dorul kutubul ‘ilmiyya. 2004. – PP. 395, 396, 399

“Fatavoi hindiya” in later centuries, based on 34 chapters and 36 related sections of lease agreements.

In the first section titled “**Descriptive Characteristics of Lease Agreements in “Muhitul-Burhoniyy”**”, under the second chapter titled “*Arrangement Procedures for Lease Agreements in 'Muhitul-Burhoniyy'*,” a discussion is held regarding the specific features of the elements, conditions, and types of lease agreements. For instance, the discussion focuses on the elements of lease agreements according to the perspective of Hanafi jurists, which consist of two parts: offer (ijob) and acceptance (qabul). Regarding this matter, “Muhitul-Burhoniyy” states the following: “The elements of a lease agreement are offer (ijob) and acceptance (qabul).” While various opinions have been expressed regarding the conditions of lease agreements, in the Hanafi school of thought, two aspects have been highlighted:

- Determining the type and quantity of the lease.
- Clarification of the benefit (if the benefit is related to labor power)¹³.

Various schools of thought within Sunni Islam have different approaches to defining the elements and conditions of lease agreements. According to the Hanafi School, both the elements and conditions of a lease agreement are considered to be two, while others may view them as four. This diversity in perspectives has implications not only in family relations, such as marriage contracts, but also in social transactions related to buying and selling. These differences in understanding the concepts of elements and conditions in lease agreements have led to various interpretations in explaining their legal and terminological meanings.

Regarding the types of lease, “Muhitul-Burhoniyy” explains the following: “There are two types of lease:

- Ijaratul 'ayn (إجارة العين), meaning to lease a specific property to another person for their use.
- Ijaratul 'amal (إجارة العمل), meaning to employ someone for a service in exchange for payment.”¹⁴

Hanafi jurists have expressed the types of leases in a relatively straightforward manner compared to other schools of thought. They differentiate between specific objects and human labor. Leasing specific objects is considered permissible in commercial transactions, but leasing human labor is not permissible because it does not hold inherent value in Sharia. This is emphasized in the “Muhitul-Burhoniyy,” stating: “During the contract, there is no labor force available. However, Sharia equates it with certain existing objects.”¹⁵ Therefore, Hanafi scholars emphasize that leasing individuals for their labor, based on lease agreements, is permissible in Sharia.

¹³ Burhoniddin Mahmud Buxoriy. Zaxiratul-Burhoniyy. V.11. – Bayrut. Dorul kutubul ‘Imiya. 2019. – B. 430.; Ibn Obidin. Raddul muxtor. J.9. – Bayrut: Dorul ma’rifa. 2018. – p. 7

¹⁴ Nizomiddin Burhonpuriy (Shayx Nizom) and others. Fatavoi hindiya. J.4. – Bayrut: Dorul kutubul ‘Imiya. 2000. 462 p.

¹⁵ Burhoniddin Mahmud Buxoriy. Muhitul-Burhoniyy. J.7. – Bayrut. Dorul kutubul ‘ilmiya. 2004. 394 p.

The second section of the second chapter titled “*Arrangement of Hanafi Principles in Drafting Lease Agreements*” provides a comparative analysis of rules formulated by Hanafi jurists in drafting lease agreements. Specifically:

- It is not permissible for mentally incompetent or legally incapacitated individuals to directly participate in drafting the lease agreement. Attention must be paid to the determination of discernment age and its consideration in drafting;

- Arrangements concerning leasing agreements with close relatives;

- The importance of clarity in forming agreements; this includes specifying the purpose of use or employing a particular type of work in leasing agreements.

- Clarity in specifying the lease fee; it is possible to specify certain items, materials, and clothing that are sold, measured, or counted as the lease fee, as well as to specify the use of one thing instead of another in lieu of using something else¹⁶.

In formulating these rules, Quranic verses, hadiths, the words of the companions and the jurists' scholarly interpretations are fundamental. These rules not only contribute to the correct structuring of the agreement but also serve to protect the rights of both parties and ensure the integrity of the leased item. Moreover, the rules play a crucial role in preempting potential disputes that may arise between the parties.

The third section titled “*Fiqhi Principles Regarding the Termination Requirements of Leases in Practice*” of the second chapter examines the juridical principles surrounding the termination of the lease agreement and the factors that lead to its cancellation before the expiration of its term. According to it:

- the expiry of the specified term;

- the demand of one or both parties;

- the non-existence of the act that initiated the contract;

- the disappearance of the leased item;

- the death of one of the parties;

- the incapacity of the leased item to fulfill its purpose;

- due to a valid excuse;

- based on the judgment of a competent authority¹⁷.

In such circumstances, one or both parties may terminate the agreement before its expiration based on their demand. The occurrence of these unforeseen situations results in the termination of the lease agreement and other rules related to Islamic law.

Furthermore, scholars distinguish between valid and invalid lease agreements in determining their legal basis. Therefore, lease agreements are classified into two categories: valid (صحيح) and invalid (صحیح غير):

1. Valid (صحيح) lease agreement: It is a lease agreement formed based on specified requirements.

¹⁶ Burhoniddin Mahmud Buxoriy. Muhtil Burhoniyy. J.11. – Bayrut. Dorul kutubul ‘ilmiyya. 2004. – B. 217-218.; Mualliflar jamoasi. Mavsu’atul fihiyya. J.1. – Quvayt: Vaqf vazirligi. 1984. – B. 263

¹⁷ Burhoniddin Mahmud Buxoriy. Muhtil Burhoniyy. J.7. – Bayrut. Dorul kutubul ‘ilmiyya. 2004. – B. 498.; Vahba az-Zuhayliy. Fiqhul islom va adillatuhu. J.4. – Damashq: Dorul fikr. 1985. – B. 546

2. Invalid (صحيح غير) lease agreement: It is further divided into two types: void (باطل) and voidable (فاسد) lease agreements¹⁸.

3. Void (باطل) lease agreement: According to the definition in the “Raddul Muhtār” text, it is described as follows: “It is a lease agreement that is formed without considering its essence and attributes.” Here, the essence refers to the fundamental aspect of the agreement, while the attributes indicate its conditions. In such cases, the agreement is considered null, and it is required to be reformed for correction.

4. Voidable (فاسد) lease agreement: According to the same text, it is defined as follows: “It is a lease agreement that is given importance to its essence but not to its attributes.”¹⁹ The essentials of the agreement are adhered to, but attention is not paid to all or some of its conditions. In such cases, although the agreement is legally valid, it is subject to modification and amendment to comply with the legal basis.

The third section of the dissertation, titled “**The Significance of Contemporary Lease Issues in the Work 'Muhitul-Burhoniyy'**,” discusses issues related to the leasing of immovable property in “Muhitul-Burhoniyy.” In the first subsection, it is highlighted that nowadays, the sale of immovable property and automotive vehicles is being conducted through lease agreements. In essence, their relationship resembles “التقسيط ببيع” (Taqsit sale) in Islamic jurisprudence. The term “Taqsit” in the dictionary means installment payment, but in the legal terminology, it refers to selling goods for cash and deferring their price. In this case, the consideration for the goods is not determined based on whether the price is higher, equal, or lower in cash payment. After hearing the opinions of scholars at the eighth session of the Islamic Fiqh Academy, a decision was made regarding the permissibility of this type of sale²⁰.

However, one type of lease transaction is not exactly the same as “Ijara” itself. Therefore, a lease agreement cannot be directly compared to this type of trade.

Hasan Javohiri mentioned in his book “Buhus fil fiqhil muosara” that the concept of “الإيجاري البيع” (Sale based on lease) has been utilized since 1846 in the Civil Codes, but he did not specify which country's Civil Code he was referring to²¹. Holid Hofiy, in his academic work titled “Lease ending with owning” mentioned for the first time that this concept was used in England under the name “الهائيريرشاس” (Hire-Purchase). Similarly, starting from 1953, it has been used in various states of America under the name “الليسنج عقد” leasing, and in 1962, it was used in France under the name “Credit Bail”²². Although this type of lease has been evident in civil codes since the 19th to 20th centuries, it has been a common

¹⁸ Doktor Muhammad Mustafo Zuhayliy. Al-Vajiz fi usulil fiqhil islamiy. V.1. – Damashq: Dorul xayr. 2006. 424 p.

¹⁹ Ibn Obidin. Raddul muxtor. V.9. – Bayrut: Dorul ma'rifa. 2018. 62 p.

²⁰ Taqsit savdosi (islom.uz Shayx Muhammad Sodiq Muhammad Yusuf 29.03.2018)

²¹ Hasan Javohiriyy. Buhus fil fiqhil muosara. V.2. – Bayrut: Doruz zaxoir. 91 p.

²² Xolid Hofiy. Al-ijarotul muntahitu bit tamlik. – Saudiya Arabistoni: Al-Malik Su'ud universiteti. magistrlik ishi. Pp. 61-62

practice among traders during those centuries, as concluded from historical records.

In Islamic law, a lease agreement that ends with ownership transfer is legally permissible. This rule is applied in relation to both immovable and movable properties. Selling or buying items that partly or entirely perish or expire during the process of consumption or use is not permissible under a lease agreement. According to “Muhitul-Burhoniyy,” it is stated: “A lease agreement based on the complete perishability of certain items is not permissible.”²³

The superiority of a lease agreement ending with ownership transfer over a deferred sale lies in protecting the rights of the lessor and ensuring the integrity of the property.

In the second subsection titled “*Burhoniddin Buxoriy's Approach to Arranging Labor Relations in Lease Agreements*,” Burhoniddin Mahmud Buxoriy, in “Muhitul-Burhoniyy,” categorizes lease agreements related to labor relations separately into three types:

1. Lease agreements related to religious duties;
2. Lease agreements concerning practices sanctioned by Sharia;
3. Lease agreements related to permissible activities in Islam.

When it comes to religious duties, Islamic worship matters are understood. For example, tasks like leading prayers, calling for prayers, teaching the Quran, jurisprudence, hadith, and other sciences, as well as performing pilgrimage and Umrah rituals, are included in this. These worship activities are considered spiritually rewarding, and it is expected that the person performing them will also benefit. Therefore, early Hanafi scholars relied on hadiths and other evidence to establish general rules regarding lease agreements. According to them, the legal status of a lease agreement specifically tailored for worship-related matters is invalid²⁴, meaning such a contract does not have a legal basis. This rule implies that any person cannot be sent to perform any action considered a form of worship in Islam, according to Islamic law, through a lease agreement. However, later scholars allowed the leasing of educational activities and other worship practices, such as Hajj and Umrah, which have a basis in Sharia law. Similarly, some religious duties, such as leading prayers and calling for prayers, have been deemed permissible under a lease agreement. This is due to the increasing demand for such services by people. This rule is not applied to all types of worship in Islamic law, but only to those that have a Sharia basis.

Regarding prohibited acts in Islam, considered sinful in Sharia at the same time. In Islamic law, anything being confirmed as prohibited is not arbitrary, but rather to preserve life, maintain existing social order, and uphold general norms. In Islamic law, a general rule is that the lease agreements specifically for sinful actions are invalid²⁵, meaning such contracts do not have a legal basis. For

²³ Burhoniddin Mahmud Buxoriy. *Muhitul Burhoniyy*. v.7. – Bayrut. Dorul kutubul ‘ilmiya. 2004.489 P.

²⁴ Shamsiddin Saraxsiy. *Al-Mabsut*. v.15. – Bayrut: Dor al-ma’rifa. 1989. P. 74.; Burhoniddin Marg’inoniy. *Hidoya sharhi bidoyatul mubtadiy*. V. 6. – Madina: Dorus siroj. 2019. P. 5.

²⁵ Burhoniddin Mahmud Buxoriy. *Muhitul Burhoniyy*. V.7. – Bayrut. Dorul kutubul ‘ilmiya. 2004. 482 P.

example, sending someone to commit murder, adultery, or deceitful acts is not allowed. This general rule is applied to lease agreements related to sinful actions in Islamic law. This is emphasized in the book "I'lous Sunan": "An obligatory act in Islamic law does not necessarily make the lease agreement obligatory, especially the lease of rights."²⁶ As seen, all kinds of lease agreements that may lead to legal or criminal liability for one or both parties are considered invalid, meaning they are considered null and void. Such agreements do not impose any obligation on the parties involved.

When it comes to permissible actions in Sharia, it refers to tasks that are not related to worship and have not been specifically prohibited. In lease agreements related to permissible actions, clarity must be provided on two aspects. Firstly, the volume of work, and secondly, the duration. Clarifying one of these aspects is sufficient for the lease agreement to be valid. An example provided in the "Muhitul-Burhoniyy" is: "Sending one kilogram of flour to lease a baker for baking twenty loaves of bread is not a valid condition because the volume of work is clear"²⁷. Similarly, "Sending flour to lease a baker for baking bread within one day is a valid condition" because the duration is clear, and specifying the volume of work is not necessary.

Understanding the legal status of income derived from the types of work categorized as worship, prohibited acts, and permissible acts is essential. Revenue derived from lease agreements based on actions permitted by Sharia is considered lawful, and its opposite is deemed unlawful.

In the third issue titled "*The Importance of Addressing Contemporary Social Issues in the Dissertation*," the resolution of people's issues and their resolution through historical tradition are discussed. Regarding this matter, "Muhitul-Burhoniyy" provides the following case: "If it becomes difficult to provide the citizens with a monthly salary, it is permissible to send the issue to the state leader and to allow certain privileges to the village population in exchange for a specified lease fee. The person sent to receive a lease fee will be entitled to collect it from both poor and rich layers of the village. If it requires one or two days of preparation to visit the Sultan, even if the lease period is not specified in the agreement, it is considered permissible. If more time is required, the agreement is considered void in case of the duration is not specified". Shamsul Aamma Sarakhsiy provided the following explanation in his commentary in the "Adab al-qozi" book regarding this issue: "In this case, if it is required to prepare for resolving the issue within one or two days, even if the duration is not specified, the lease is not valid"²⁸. As seen, in such cases, addressing people's existing issues by sending one of them, not necessarily a representative but based on the lease agreement, is permitted.

²⁶ Zafar Ahmad Usmon Tahonaviy. I'lous sunan. – Bayrut: Dorul fikr. p.193

²⁷ Burhoniddin Mahmud Buxoriy. Muhitul-Burhoniyy. J.7. – Bayrut. Dorul kutubul 'ilmiya. 2004. p. 486

²⁸ Nizomiddin Burhonpuriy (Shayx Nizom) va boshqalar. Fatavoi hindiya. – Bayrut: Dorul kutubul 'ilmiya. 2000. V.4. 602p. ; Faxriddin Qozixon. Fatavoi Qozixon. V.2. – Bayrut: Dorul kutubul 'ilmiya. 2009. P. 226

In the mentioned section, the leasing of useless items is addressed. In “Muhitul-Burhoniyy,” it is stated²⁹: “Abu Yusuf: 'If a person rents a millstone to place in his house and does not intend to use it, the lease agreement becomes void'. Accordingly, the rule “It is not permissible to rent something with the intention of leaving it idle” was formulated.

Additionally, in this section, the issue of participating in wars in another country based on a lease agreement is also discussed.

In some countries today, cases are observed where individuals participate as soldiers in military actions in another state or allied states with the aim of earning more income based on a lease agreement. This issue, studied in Islamic jurisprudence, does not conform to the following rules regarding lease agreements:

- The requirement for the lessee to kill enemy soldiers.
- The possibility of the lessee's life ending in death.

Abu Ishaq al-Shatibi (d. 1389) stated in his book “al-Muwafaqat”: “Not only Islamic scholars but also representatives of other religions have agreed that five essential things have been established for the protection of life, religion, lineage, wealth, and intellect”³⁰. From this, it can be concluded that entering into lease agreements and fulfilling their requirements for the sake of earning worldly wealth, generating income, paying debts, and similar reasons that pose risks to one's life do not correspond to the general principles of Islamic law.

CONCLUSION

In “Muhitul-Burhoniyy” the theoretical and practical research purposes and objectives of lease agreements are discussed, leading to the following conclusions.

1. Sunni jurists in Islamic jurisprudence have established the theoretical foundations of lease agreements by defining its lexical and juridical meanings. These foundations have played a crucial role in developing the regulations and rules associated with lease agreements. Although the term “الإجارة” (ijara) in the dictionary denotes “lease,” jurists have reinforced its juridical meaning as “selling the benefit.” This juridical-terminological meaning accurately represents its significance. Scholars of other schools of thought have added supplementary explanations to the definition of leasing, such as “being specific in accepting the benefit, having control over the object, and bearing the risk”. Hanbali jurists emphasized that “الإجارة” (ijara) only pertains to contracts for hiring individuals for work. The definition provided by Hanafi jurists is widely recognized for its comprehensiveness and its ability to all types of lease agreements.

2. Quranic verses related to lease agreements are found in the surahs of Yusuf, Al-Kahf, and Al-Qasas, which are associated with the histories of prophets Yusuf, Shu'ayb, and Musa, respectively. However, it is observed that the rulings mentioned in historical contexts of the prophets have not been universally accepted in Islamic jurisprudence. For instance, while the system of leasing in exchange for

²⁹ Burhoniddin Mahmud Buxoriyy. Muhitul-Burhoniyy. V.7. – Bayrut. Dorul kutubul ‘ilmiyya. 2004. P. 492

³⁰ Abu Is’hoq Shotibiyy. Muvafaqot. – Bayrut. Dorul kutubul ‘ilmiyya. 2004. P. 23

performing a specific task, as seen in the story of Prophet Musa, might be present in the Sharia of that prophet, it has not been accepted due to its lack of alignment with the established order of Islam. Such cases are elucidated further. Previous Sharia laws were specific to certain eras or tribes, and the issues therein were related to the context of the mentioned verse. Moreover, these verses indicate the existence of lease relationships even before the advent of Islam, and they conform to divine decrees. With the arrival of Islam, the social and legal norms of previous Sharia laws were not entirely abolished but were partially modified to align with the established order. The lease agreement has also been refined in this regard, adhering to the previous rules while incorporating modifications.

3. Hanafi legal scholars have extensively addressed lease agreements in their works, drawing examples from the “Zohir rivoyat,” “An-Navodir (Nodir issues),” “Al-Fatovo (Fatwas),” “Al-Voqeot (Incidents),” as well as other legal sources and fatwa compilations written until the 13th century. In addition to presenting examples from their own interpretations, they compared their interpretations with those of contemporary jurists and formulated independent juridical opinions. In examining issues and presenting their resolutions, the author relied not only on the Hanafi School but also compared and contrasted the opinions of the remaining three Sunni legal schools. In some instances, the author referenced the juridical opinions of scholars like Hasan Basri. Furthermore, the author introduced 34 chapters and 37 additional issues related to lease agreements, presenting a different approach from other sources. This approach has become a fundamental theoretical basis for the creation of works on the subject to this day.

4. Various jurists have taken different approaches to understanding the peculiarities of lease agreements in Islamic jurisprudence. In the Hanafi School, both the essential element and the conditions of the lease agreement have been highlighted as being two in number. The remaining Sunni schools have stated that there are four conditions. This discrepancy is attributed to the perspectives of jurists in Islamic jurisprudence concerning the concepts of the essential element and conditions. Accordingly, Hanafi jurists perceive differences between the concepts of the essential element and conditions, whereas Shafi'i jurists do not. Thus, the above-mentioned scientific conclusions have been made based on a comparative analysis of Sunni schools of thought. These scientific conclusions play a significant role in developing regulations and rules associated with lease agreements and in addressing existing differences of opinion.

5. Burhan al-Din al-Mahmud Bukhari outlined the rules regarding lease agreements in his work, particularly emphasizing general principles such as “the literate qualification of the parties to the lease agreement,” “clarity in determining the benefits and obligations in the agreement,” and added further specifications such as “mentally incompetent or intellectually unsound individuals cannot directly participate in drafting the lease agreement” and “if there is no benefit, the agreement becomes void,” as well as “the lease agreement is not valid if the nature, quantity, and qualities of the leased item are not specified.”

6. Various factors leading to the termination of lease agreements have been analyzed in historical sources. These include “the demand of one or both parties,” “the disappearance of the object of the agreement,” “the disappearance of the leased item,” “the death of one or both parties,” “the item leased becoming unusable to the lessee,” “cancellation due to a valid reason,” and “based on the decision of a judge,” which have been comparatively researched within the Hanafi and Shafi'i schools of thought, and the applicable rulings have been elucidated.

7. Important issues related to the lease of non-transferable properties have been discussed in historical sources. Specifically, the importance of the lease agreement that ends with ownership transfer (lease-to-own) has been highlighted in understanding its juridical foundations, especially in safeguarding the rights of parties and ensuring the security of property. The lease agreement that ends with ownership transfer provides the following legal possibilities to the lessee: “retention of possession by the lessee until the end of the lease term,” “cancellation according to the wishes of the parties,” “return of the property if the duties specified in the agreement are not fulfilled by the lessee,” “the lessee's right to lease, gift, or sell the property at the agreed time,” among others.

8. Burhan al-Din al-Mahmud Bukhari differentiated lease agreements related to labor relations from other fatwa sources by allocating them to three categories, namely, those related to worship matters, those related to matters regulated by Sharia, and those related to restricted matters. Consequently, rules such as “lease agreements structured around worship matters are void” have been formulated. Consequently, they have studied their juridical foundations and classified them into lease agreements suitable for worship and those unsuitable ones. Therefore, some worship matters, such as teaching, completing the Quran, healing, pilgrimage, have been discussed concerning the lease agreement. It has been emphasized as a general rule in this matter that there is no comparison. Also, the rule “lease agreements structured around actions leading to liability are void” has been formulated, stating that in the event of such agreements, individuals are not burdened with any duties or obligations.

9. Finding solutions to religious-social issues prevalent in society today is considered one of the primary objectives of research, with “Muhit al-Burhani” occupying a significant place. Issues such as “sending people under lease agreements to present the people's problems to the government,” “the juridical foundations of long-term lease agreements,” “the lease of useless items,” “rendering services to one or more individuals within a specified period,” “charging a fee for guidance services,” and “the legal status of participation as a leased person-soldier in foreign military operations” are taken up. These scholarly conclusions, obtained through the study of the juridical foundations of these issues, emphasize the importance of respecting national values in society, observing fair resolution procedures within higher institutions, instilling patriotism in the younger generation, and cultivating a spirit of lawful earning.

Based on the research findings, the following recommendations were formulated:

1. Considering the significant importance of Burhan al-Din al-Mahmud Bukhari's scientific legacy in the development of Islamic civilization, it is proposed to prepare a monograph entitled “Distinctive Features of Islamic Lease Law (Based on Burhan al-Din al-Mahmud Bukhari's Work 'Muhit al-Burhani')” for specialists in the field of religious and educational sciences at the International Islamic Academy of Uzbekistan.

2. Since the work “Muhit al-Burhani” is considered a source in the genre of fatwa, it is recommended to prepare it as educational literature in the subject of “Classical Jurisprudential Texts” at higher and secondary special religious educational institutions under the supervision of the Muslim Board of Uzbekistan.

3. In light of the detailed discussion of contemporary issues, including social relations and modern issues related to lease agreements, as outlined in the work “Muhit al-Burhani,” it is suggested to publish a brochure titled “Lease Agreements and Modern Juridical Fatwas” for the general public in the form of a question-and-answer format.

**НАУЧНЫЙ СОВЕТ DSc 35/30.12.2019.Isl/Tar/F.57.01 ПО
ПРИСУЖДЕНИЮ УЧЕНЫХ СТЕПЕНЕЙ ПРИ
МЕЖДУНАРОДНОЙ ИСЛАМСКОЙ АКАДЕМИИ УЗБЕКИСТАНА**

МЕЖДУНАРОДНАЯ ИСЛАМСКАЯ АКАДЕМИЯ УЗБЕКИСТАНА

ЭРКАЕВ МАМУРДЖОН РАХМОНБЕРДИЕВИЧ

**ДОГОВОРЫ АРЕНДЫ В ПРОИЗВЕДЕНИИ «МУХИТУЛ-БУРХАНИ»
БУРХАНИДИНА МАХМУДА БУХАРИ**

24.00.03 – Учение фикха и калама. Теология

**АВТОРЕФЕРАТ
ДИССЕРТАЦИИ ДОКТОРА ФИЛОСОФИИ (PhD)
ПО ИСЛАМОВЕДЧЕСКИМ НАУКАМ**

ТАШКЕНТ – 2024

Тема диссертации доктора философии (PhD) по историческим наукам зарегистрирована в Высшей аттестационной комиссии за номером B2020.4.PhD/Isl.50

Диссертация выполнена в Международной исламской академии Узбекистана.

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Научный руководитель

Бекмирзаев Илхомжон Исраилжанович
доктор исторических наук, профессор

Официальные оппоненты

Ражабова Мавжуда Абдуллаевна
доктор юридических наук, профессор

Ишанджанов Бахтиёр Илхамович
кандидат исторических наук, доцент

Ведущая организация

**Институт востоковедения Академии наук
Республики Узбекистан**

Защита диссертации состоится «__» мая 2024 года в ____ часов в виде онлайн/офлайн заседания Научного совета DSc.35/30.12.2019.Isl/Tar/F57.01 при Международной исламской академии Узбекистана (Адрес: 100011, г. Ташкент, ул. А.Кадыри, 11, Тел: (99871) 2440056; факс: (99871) 2440065; e-mail: info@ii.au.uz).

С диссертацией можно ознакомиться в Информационно-ресурсном центре Международной исламской академии Узбекистана (зарегистрирована за № 154). (Адрес: 100011, г. Ташкент, ул. А.Кадыри, 11. Тел (99871) 2440056; факс: (99871) 2440065; e-mail: info@ii.au.uz).

Автореферат диссертации разослан «__» апреля 2024 года.
(реестр протокола рассылки №04 от 18 апреля 2024 года)

Д.Р. Махсудов

Председатель научного совета по присуждению ученых степеней, доктор исторических наук, профессор

С.А. Рустамий

Ученый секретарь научного совета по присуждению ученых степеней, доктор филологических наук, профессор

З.М. Исламов

Председатель научного семинара при научном совете по присуждению ученых степеней доктор филологических наук, профессор

ВВЕДЕНИЕ (аннотация диссертации доктора философии (PhD))

Целью исследования является выявление специфических особенностей фетв о заключении договоров аренды в произведении «Мухиту-л-Бурхани».

В качестве объекта исследования были использованы договоры аренды в исламском праве.

Предметом исследования являются условия, связанные с заключением договора аренды, содержащиеся в произведении «Мухиту-л-Бурхани» Бурханиддина Махмуда Бухари.

Методы исследования. В исследовании широко использовались такие методы, как комплексный подход, объективность, системность, историчность, а также сравнительно-критический метод.

Научная новизна исследования заключается в следующем:

обосновано, что в главе *الإجَارَةُ الطَّوِيلَةُ الْمَرْسُومَةُ بِبُخَارَى* сочинения «Мухиту-л-Бурхани» Махмуда Бухари (Договор о долгосрочной аренде, предписанный в Бухаре) были освещены правовые основы долгосрочной аренды, использованной на практике жителями Бухары в средние века, и это доказывает факт того, что она первоначально была применена в Мавераннахре и в странах ханафитского мазхаба;

установлено, что в результате обоснования ученым правовых основ «договоров аренды, которые не влекут за собой наказание одной или обеих сторон» в отдельной главе, озаглавленной *الاستئْجَارُ عَلَى الْمَعَاصِي* (Аренда и запрещенные действия) была создана местная система предотвращения организованной преступности в обществе;

в результате сравнительного анализа главы *الاستئْجَارُ لِيَرْفَعَ الْأَمْرَ إِلَى السُّلْطَانِ* (о найме человека в аренду с целью доведения содержания проблемы до главы государства) в книге «Мухитуль-Бурхани» обоснован факт того, в Бухаре в средние века в обществе того периода, функционировавшем на основе методов самоуправления, была сформирована практика справедливого решения проблем населения в рамках высшей инстанции;

доказано, что ученый путём создания правовых основ договоров аренды, основанных прав на праве собственности, включающем неприкосновенность имущества, личную заинтересованность, обосновал условия предоставления имущества другой стороне в виде дарения или взаимного согласия, в отличие от предоставления в долг, что служит интересам обеих сторон.

Внедрение результатов исследований. На основе научных выводов исследования договоров аренды в труде «Мухиту-л-Бурхани» Бурханиддина Махмуда Бухари было осуществлено следующее:

научные выводы о том, в главе *الإجَارَةُ الطَّوِيلَةُ الْمَرْسُومَةُ بِبُخَارَى* сочинения «Мухиту-л-Бурхани» Махмуда Бухари (Договор о долгосрочной аренде, предписанный в Бухаре) были освещены правовые основы долгосрочной аренды, использованной на практике жителями Бухары в средние века, и это доказывает факт того, что она первоначально была применена в

Мавераннахре и в странах ханафитского мазхаба, были включены в содержание книг «Самаркандские учёные, жившие в средние века» и «Энциклопедия средневековых ученых Востока», подготовленных по заказу (Справка № 02/504 Международного исследовательского центра имама Бухари при Кабинете Министров Республики Узбекистан от 1 ноября 2023 года). В результате информация об особенностях этого вида аренды была доведена до научного сообщества;

научные выводы о том, что в результате обоснования ученым правовых основ «договоров аренды, которые не влекут за собой наказание одной или обеих сторон» в отдельной главе, озаглавленной *الاستئجار على المعاصي* (Аренда и запрещенные действия) была создана местная система предотвращения организованной преступности в обществе были включены в содержание книги, созданной по заказу Управления мусульман Узбекистана «Сборник фетв. 500 ответов на 500 вопросов» (часть 1) (Справка Управления мусульман Узбекистана от 1 ноября 2023 года № 4764). В результате это послужило формированию у студентов знаний о значении договоров аренды, связанных с богослужением, запрещенными и разрешенными шариатом действиями;

в результате сравнительного анализа главы *الاستئجار ليرفع الأمر إلى السلطان* (о найме человека в аренду с целью доведения содержания проблемы до главы государства) в книге «Мухитуль-Бурхани» обоснован факт того, в Бухаре в средние века в обществе того периода, функционировавшем на основе методов самоуправления, была сформирована практика справедливого решения проблем населения в рамках высшей инстанции включено в содержание учебного пособия «Исламское правоведение», изданного по заказу (Справка № 02-02/1/387 Комитета по делам религий Республики Узбекистан от 31 октября 2023 года). В результате изучение социальных проблем населения и практика их справедливого решения в рамках высшей власти послужили формированию у студентов понимания того, что это соответствует установленному порядку в этом вопросе в настоящее время;

научные выводы о том, что ученый путём создания правовых основ договоров аренды, основанных прав на праве собственности, включающем неприкосновенность имущества, личную заинтересованность, обосновал условия предоставления имущества другой стороне в виде дарения или взаимного согласия, в отличие от предоставления в долг, что служит интересам обеих сторон, включены в содержание учебного пособия «Современные вопросы фикха и основы издания фетв», изданного на основе заказа (Справка № 08-17/08 от 5 января 2024 г. Центра исламской цивилизации в Узбекистане при Кабинете Министров Республики Узбекистан). В результате это послужило формированию у студентов понимания того, что право собственности может быть реализовано не только путем продажи и дарения, но и путем договора аренды.

Апробация результатов исследования. Результаты исследований были апробированы на 4: 1 - международных и 3 - национальных научно-

практических конференциях.

Публикация результатов исследования. По теме диссертационного исследования было опубликовано 13 научных работ, в том числе 9 статей в научных изданиях, рекомендованных к публикации основных научных результатов докторских диссертаций ВАК РУз, из них 7 - в республиканских и 2 – в зарубежных научных журналах. Тезисы опубликованы в сборниках 1 международной и 3 местных конференций.

Структура и объем диссертации. Диссертация состоит из введения, трех глав, заключения, списка использованной литературы и приложений. Объем диссертации составляет 133 страницы.

E'LON QILINGAN ISHLAR RO'YXATI
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II bo'lim (part II; II част)

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