

**FORMATION AND DEVELOPMENT OF THE THEORETICAL AND LEGAL
FOUNDATIONS OF VICTIMOLOGICAL PREVENTION OF OFFENCES****Kudiyarov Sharapat Salievich****Independent Researcher of the Academy of the Ministry of Internal
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Abstract. This article provides a historical and legal analysis of the formation and development of the theoretical and legal foundations of victimological prevention of offences. It examines ancient customary norms, the Avesta, Sharia rules, Temur's Code, foreign victimological doctrines, and the development of victimological prevention in the legislation of Uzbekistan during the years of independence. The authors substantiate that protecting victims' rights, compensating for harm, and preventing victimization are important areas of victimological prevention.

Keywords: victimology, victimological prevention, offence prevention, victim, crime victim, Avesta, Sharia, Temur's Code, victimization, compensation for harm.

Before expressing a definite view on the victimological prevention of offences, it is appropriate to answer several questions: did such prevention exist in historical periods; if it did, what role did it play in human life; and did it serve to prevent people from becoming victims of particular offences? It would be unreasonable to assume that relations connected with victimology emerged suddenly only in the present day. Historical sources show that, in certain periods, strict rules having the force of law existed for the purpose of preventing offences, including the rules of the Avesta and Sharia. Conduct contrary to the rules and orders existing at that time, or to Sharia rules, was considered unlawful, and the inevitability of punishment was ensured on the basis of those rules. It should also be emphasized that, regardless of the historical period, it is impossible to deny that someone suffered as a result of a committed offence.

From this point of view, it is necessary to study whether the victimological prevention of offences and related relations had a legal basis, how such relations were regulated, and what the state of protection of the rights of persons harmed by offences was in particular historical processes. For this purpose, it is important to examine historical and legal sources reflecting information about offences, victimological prevention, persons harmed by offences, punishments applied for committed acts, and other related matters. It is also necessary to determine whether victimological prevention of offences existed in historical processes and, if so, how the related relations were regulated and implemented. This is important because, in order to assess the future of victimological prevention of offences, it is appropriate to analytically study certain sources that reflect the earliest doctrines concerning this field.

In this regard, doctrines on the victimological prevention of offences may be understood as the totality of ideas, views, and concepts, from the emergence of the first states to the present day, aimed at preventing people from suffering from wrongful acts. Since ancient times, each state and society has had its own mentality, lifestyle, and customs, and various ideas and views have emerged from these specific features. In many cases, doctrines on the victimological prevention of offences were reflected in the works of scholars and philosophers of their time.

Taking into account the specific features of different historical periods, the stages of development of doctrines on the victimological prevention of offences may be divided into several periods.

The first period is the ancient period, during which people followed moral norms created by themselves. According to the historian A. N. Narbekov, historical sources indicate that humanity passed through several million years of gradual development before reaching its present condition. This process is divided into a number of stages. Around 40–35 thousand years BCE, *Homo habilis* was replaced by *Homo sapiens*. The earliest representative of *Homo sapiens*, the Cro-Magnon human, differed sharply from its predecessors in physical structure, physiological capacity, and mental abilities. From that period onward, important elements of culture began to emerge, including communication through language, kinship relations, and regulation of interpersonal relations on the basis of moral norms.

It should be emphasized that the emergence of views connected with the victimological prevention of offences was associated with the emergence of human society, as well as with the formation of ideas that a committed act could be wrongful or criminal and that it was necessary to oppose or combat such acts. Indeed, some literature states that in the ancient, or primitive, period, when various tribes lived as communities on the territory of present-day Uzbekistan, social relations were regulated on the basis of unwritten customary norms. According to customary norms, a wrongful act corresponded to what is today recognized by law as an offence or crime, an act for which administrative or criminal punishment is provided; persons who committed such acts were punished on the basis of customary norms.

It is evident that as a result of any wrongful or criminal act, someone inevitably suffers material, physical, or moral harm. This, in turn, means that such an act creates a victim. From this point of view, if the wrongful acts reflected in ancient sources are treated as crimes, the measure applied against them was punishment; for more serious crimes, severe measures of that period, such as exclusion from the primitive group, were applied. Punishments imposed on persons who committed wrongful acts served to morally correct people, prevent them from committing wrongful acts, and restrain them from future criminal conduct.

Accordingly, these customary norms also performed a preventive function by restraining members of primitive tribes from committing acts directed against the life and health of individuals, tribal property, and personal property. In addition, it is logically possible to conclude that such norms served to prevent individuals from becoming victims of certain abnormal acts and criminal encroachments. This provides grounds to assume that relations connected with the victimological prevention of offences were, in a broad sense, reflected in customary norms. However, in that period there were no theories or distinct views concerning the interaction between offender and victim in the commission of a crime, the role of the victim in the criminal event, or measures to prevent a person from becoming a victim of crime. Moreover, because there is no sufficiently grounded source on social relations in the primitive period, it would be methodologically incorrect to draw conclusions based only on assumptions.

The second period covers the time from the emergence of early states until the ninth century. In Central Asia, particularly on the territory of Uzbekistan, this period includes the ancient slave-owning states such as the Kushan, Khorezm, and Davan states, as well as the periods of Persian, Greco-Macedonian, and Arab conquests. During this period, major teachings were reflected in such sources as the Avesta and, later, the Holy Qur'an.

The creation of these sources led to the regulation of social relations on the basis of religious and moral norms that emerged as religious views and doctrines developed. Religion has always encouraged people to do good, to refrain from evil deeds, and to avoid causing harm to others. It has urged people to live in harmony, to strive for better days, and to endure the trials of life. People sought to perform good deeds, refrain from evil, and struggle against it. Any wrongful act was regarded as sinful, and a person who committed such a sin was punished on the basis of religious norms. One of the earliest religious teachings that emerged in our homeland was Zoroastrianism.

The sacred book of Zoroastrianism is the Avesta. The opinions of certain legal scholars and the analysis of some sources show that it was not only a historical source, but also one of the ancient and earliest sources of law regulating various relations of its time, including relations between nature, society, and human beings. Although this legal source does not contain specific modern concepts or rules relating to the victimological prevention of offences, it is possible to observe provisions that, in substance, reflect preventive and victimological features. In particular, the chapter known as the Vendidad regulates matters of crime and punishment and contains rules providing liability for a number of offences. Non-compliance with these rules and their violation produced certain legal consequences. These rules also served to prevent people from becoming victims of various offences.

For example, in Fargard 4, paragraph 17 of the Vendidad, if a person took a weapon with the purpose of striking another person, the sin committed by that person was evaluated as achiripta¹. The person who committed the sin of achiripta was punished by flogging. If the same sin was committed repeatedly, punishment from ten to ninety lashes was envisaged, and after the act was repeated eight times, the person's deed was considered pishavtanu² and a more severe punishment, including the death penalty, was applied. A similar second case concerned actions by which a person took and brandished a weapon with the purpose of striking another person; this was considered the sin of avauyrayishta³. Such an act was punished by ten lashes, and if repeated, by fifteen to ninety lashes depending on the repetition. If avauyrayishta was committed for the seventh time after compensation had been paid, or if the offender refused to pay compensation, the act was likewise evaluated as pishavtanu and a more severe punishment, namely the death penalty, was applied.

A third type of sinful act was aridush⁴, meaning the sin of a person who intended to strike another person, even if the injury, if inflicted, would heal within three days. Persons who committed this act were punished by fifteen lashes for the first offence and, depending on repetition, by twenty to ninety lashes. If aridush was committed for the sixth time after compensation had been paid for previous sins, or if the offender refused to pay compensation, the act was evaluated as pishavtanu and the more severe punishment of death was applied⁵. In

¹ Achiripta means 'to take.' According to the Vendidad, the sin of a person who takes a weapon with the intention of striking another person is described in this way (Vendidad, Fargard 4, paragraph 17).

² In the Avesta, pishavtanu means 'a person who has dedicated his body for his sin.' Another meaning is 'cheap death,' that is, a person who receives the death penalty for his sins (Vendidad, Fargard 4, paragraph 17).

³ Avauyrayishta means 'to brandish' or 'to swing.' It denotes the sin of a person who takes a weapon and violently brandishes it with the intention of striking someone (Vendidad, Fargard 4, paragraph 17).

⁴ Aridush denotes a person who takes a weapon in hand and intends to strike someone. In this case, the offender does not necessarily strike the oppressed person; if he does strike, the wound must heal within three days.

⁵ See: Avesta. Historical and Literary Monument. Translated by Asqar Mahkam. Tashkent: Sharq, 2001, pp. 118–121.

addition, flogging and the death penalty were provided as a rule for causing bodily injury to another person or rendering a person unconscious by striking. These rules were significant because they formed in the minds of people of that period an understanding of the negative and legal consequences of committing crimes and, in substance, reflected general and victimologically significant preventive measures.

It may also be stated that such rules protected persons who were likely to become victims of offences from various forms of encroachment. In the Avesta, not only was the inevitability of punishment ensured according to the nature of the act committed, but rules also existed imposing an obligation to pay compensation for harm caused to persons injured by an offence. The above analysis shows that the provisions of the Avesta secured, first, restraint from committing certain antisocial acts; second, the inevitability of punishment for a culpable act; third, the proportionality of punishment to the act; fourth, repetition of an act as an aggravating circumstance; and fifth, the obligation of the person who committed the crime to eliminate the harm caused, along with being punished.

Thus, the rules of the Avesta imposed, first, punishment on the person who committed a criminal act and, second, the obligation to compensate material, moral, and physical harm caused to victims of offences. This indicates that the Avesta was a legal source that embodied not only matters related to religion, but also rules protecting the human being, his or her rights, freedoms, and lawful interests, relations concerning judicial and legal issues, and rules relating to the prevention of offences, including, in substance, their victimological prevention.

The third period covers the time from the ninth century, the early Renaissance, to the nineteenth century. It includes the doctrines that developed during the periods of the independent states that existed in the territory of Uzbekistan after the Arab conquest, including the Samanids, Karakhanids, Seljuks, Ghaznavids, the Khorezm state, the Mongol period, the Timurids, Shaybanids, and Ashtarkhanids, as well as the Khiva and Kokand khanates and the Emirate of Bukhara.

As is known, the religion of Islam emerged in the Arabian Peninsula at the end of the sixth and the beginning of the seventh centuries as a result of social, economic, and political changes. By the middle of the eighth century, Islam had entered and spread widely in Central Asia, including the territories of our country, leading to the formation of new rules of Muslim law. Fiqh and Sharia have remained among the largest legal systems up to the present day. The main distinction of Islam from other religions was its promotion of monotheism and its call for Muslims to believe in the one God. Like all religions, Islam encouraged people to do good and righteous deeds and to refrain from bad deeds, that is, sinful acts. At the same time, appropriate punishments were applied to persons who committed wrongful acts.

In Islam, all relations were regulated on the basis of Sharia rules, and the principal source of these rules is the Holy Qur'an. It is a source that reflects the moral, socio-economic, and legal views of Muslim peoples. Indeed, this source contains a number of rules relating to all branches of law, including criminal law, expressed in religious-legal concepts. In a certain sense, the principle of the inevitability of punishment for a committed crime was reflected at that time in the phrase *al-qisasu minal-haqq*, meaning "retribution is a right" or that every crime deserves punishment. This, in turn, served, first, to prevent offences that might be committed in the future and, second, to protect certain persons, as well as state and public property, from criminal encroachments.

In the scholarly works of legal researchers who have studied the Holy Qur'an and related issues, it can be observed that certain surahs and verses contain provisions with a victimological character or, more precisely, rules that substantively express measures now recognized as victimological prevention of offences. In the course of the present research, it is necessary to analytically examine and interpret the scholarly works of authors who have studied Sharia and related relations. Among such scholars is the legal scholar M. Rajabova. However, her research object focused more on crime and punishment in Sharia and related relations. Since victimological prevention of offences was not the object of her research, the terms victimology and related concepts do not appear directly in her works. Nevertheless, a deeper analysis of these works shows that issues related to victimogenic factors, victimological prevention of offences, and related preventive measures, which form the object of the present study, are substantively reflected.

The strict punishments established for crimes in Sharia rules had a preventive character, encouraging individuals to refrain from acts contrary to Sharia and from committing crimes. This, in turn, served to restrain certain categories of persons living at that time from committing various criminal acts and to prevent other categories of persons from becoming victims of criminal encroachments. For instance, in the scientific monograph of the above-mentioned scholar, examples are cited from Surah al-Isra of the Holy Qur'an: verse 31, which states, "Do not kill your children for fear of poverty," and verse 35, which requires that when measuring in transactions and trade, the measure be given in full and the balance be weighed correctly.

History shows that in various periods people suffered from famine and poverty, which sometimes led to cases where parents, unable to provide for their children, killed them. According to Sharia rules, taking the life of another person was considered one of the gravest sins and was subject to the most severe punishment. From this point of view, such Sharia rules may be assessed as rules related to the victimological prevention of homicide. This is because, in the Muslim world of that period, the Holy Qur'an and its surahs and verses were regarded as the word of God, and people strictly followed the cited verses of Surah al-Isra. The next verse calls on people not to deceive others and not to betray the rights of others; through this, it prevented certain persons from suffering harm in the sphere of trade. More precisely, the correct use of measures and scales served to prevent material harm to individuals.

The period of Amir Temur and the subsequent era deserve special attention. In Temur's Code, authored by the great commander and statesman Amir Temur, one can observe certain terms that are substantively connected with the victimological prevention of offences, including oppressors, the oppressed, material and physical harm, oppression and injustice, guilty persons, and sinners. In Temur's Code, the following statements are relevant to the subject of this research: "I took the right of the oppressed from the oppressor. After establishing the material and physical harms caused by the oppressor, I judged the matter between the two according to Sharia, and I did not inflict oppression on another in place of one guilty person."⁶ It is also stated: "I did not allow corrupt, foul-mouthed, and slanderous people into my assembly, nor did I act on their words. If they slandered or gossiped about anyone, I did not listen."⁷ Another provision states: "If I heard that any governor or soldier had inflicted

⁶ Temur's Code / Editorial board: B. Abdukhalimov et al. Tashkent: O'zbekiston, 2012, p. 76.

⁷ Temur's Code / Editorial board: B. Abdukhalimov et al. Tashkent: O'zbekiston, 2012, p. 77.

oppression upon the people, I immediately took measures against them on the basis of justice and fairness.”⁸

Indeed, Amir Temur was one of the statesmen who paid serious attention to judicial and legal matters in his state. According to Temur’s Code, judges were required to issue well-grounded judgments and decisions. At the same time, a separate institution known as the Court of Justice operated in Temur’s state; it mainly examined crimes against the state, crimes against the order of governance, and official crimes, and imposed appropriate punishments. Ensuring the inevitability of punishment served to prevent, to a certain extent, future crimes and undesirable incidents. The special criminal search service dealt with ensuring the safety of trade caravans, identifying and apprehending gangs of robbers and thieves, and taking measures against those who violated Sharia rules, vagrants, and beggars.

In Temur’s state, chroniclers also had an important role: they were present in every country, province, city, and village and informed the head of state about events taking place there. This protected citizens living in Temur’s state from various crimes, incidents, public disturbances, and attacks by external enemies. In general, strict order and discipline were established in Temur’s state, and those who violated order did not remain unpunished. The establishment of such order contributed to peace and stability throughout the country and created conditions for the development of the economy, culture, and trade⁹.

The fourth period is the period of Tsarist Russia and the former Soviet Union. During this period, the first scientific conclusions concerning the role of victims in the commission of crimes appeared in the eighteenth century. For example, one of the representatives of classical legal thought, Jeremy Bentham (1748–1832), proposed introducing necessary provisions into criminal legislation to ensure compensation for harm caused to victims and thereby restrain potential offenders from pursuing certain criminal purposes¹⁰.

The issue of crime victims as a specific factor, and crime as a particular relationship between the person causing harm and the victim, was first indicated by the German scholar Hans von Hentig in his work *The Criminal and His Victim*, published in 1948¹¹.

The adoption of a number of laws also ensured the legal protection of victims’ rights. In 1963, New Zealand adopted the world’s first law on compensation for harm caused to crime victims¹²; in 1972, the United States adopted a federal law on assistance to crime victims; in 1976, the Federal Republic of Germany adopted a law on assistance to victims of violent crimes; in 1982, the United States adopted a federal law on the criminal-law protection of crime victims and witnesses¹³; and in May 1980, the Japanese Parliament adopted legislation, effective in 1982, on the payment of monetary compensation to crime victims. These laws, as well as the recognition of compensation for material harm by offenders as an independent form of legal measure, provided a legal basis for protecting victims’ rights.

⁸ Temur’s Code / Editorial board: B. Abdukhalimov et al. Tashkent: O’zbekiston, 2012, p. 78.

⁹ Akmal Saidov, Jura Toshkulov. History of the State and Law of Uzbekistan. Textbook. Tashkent, 1995, p. 32.

¹⁰ Criminology: Textbook / Z. S. Zaripov, A. S. Yakubov, G. A. Avanesov et al. Tashkent, 2006, p. 429.

¹¹ Arakelyan, K. N. The emergence and development of victimology as a science of victim behavior: a historical overview. *Applied Legal Psychology*, 2016, No. 1, pp. 70–74.

¹² Akhmedshina, N. V. The emergence and development of domestic victimology. *Bulletin of Tomsk State University*, 2007, No. 300(1), pp. 138–141.

¹³ Vishnevetsky, K. V. Development of the concepts of victimity and victimization in Russian criminology. *Criminological Journal*, 2007, No. 1(11), pp. 29–34.

The foregoing developments are undoubtedly of great importance. This experience may be used not only in the law-making process, but also in practical terms through criminological institutions and, in particular, within the systems of international cooperation such as Interpol, thereby helping to solve many practical problems.

At the beginning of the twentieth century, ideas concerning offences and crime were developed in the works of representatives of the Jadid movement in Uzbekistan. Abdurauf Fitrat, Abdulhamid Cholpon, Abdulla Qodiriy, Mahmudkhoja Behbudiy, Munavvarqori Abdurashidkhonov, Abdulla Avloniy, and other Jadids advanced numerous ideas in their works. Their ideas gave an important place to freedom, liberty, and national identity. Mahmudkhoja Behbudiy's play Padarkush, created during that period, revealed shortcomings in the upbringing of children, the need to pay special attention to the upbringing of minors, and the possibility that, without proper upbringing, children could grow into criminals like the parricide depicted in the work. During the former Soviet period, criminological scholars expressed views and ideas in scientific works on crime and its prevention.

The development of doctrines on the victimological prevention of offences during the years of independence constitutes the fifth period. The doctrines of victimological prevention in each historical period differ from one another according to their specific features and were shaped by the conditions and system of governance of their time. During the years of independence, the term victimology began to be used in the views of a number of criminological scholars. These scholars include Z. S. Zaripov, I. Ismailov, Yu. Karaketov, A. Usmonaliev, Q. R. Abdurasulova, Z. G. Zokirova, S. S. Niyozova, J. S. Mukhtorov, M. Z. Ziyodullaev, and others.

The works of these scholars mainly developed theoretical and methodological approaches concerning victimology, its content and essence, certain related concepts, types of victimology, and issues related to victims. Their views also reflected the first approaches to the victimological prevention of crimes. The continuous research carried out by national legal scholars and real-life circumstances were directed, first, at implementing victimological prevention of crimes; second, at identifying categories of persons who may suffer from crime and measures to eliminate material, moral, and physical harm caused to victims; and third, at revealing the factors that lead a person to become a victim of crime and the specific features of such categories of persons.

These views have now found expression in legal norms, in particular in the Law of the Republic of Uzbekistan "On the Prevention of Offences," where victimological prevention of offences has been consolidated as a separate chapter. The adoption of this law and a number of normative legal acts based on it, and the establishment therein of preventive measures aimed at providing legal, social, psychological, medical, pedagogical, and other forms of assistance not only to persons who have committed offences or display antisocial behavior or a predisposition to commit offences, but also to persons who are victims of offences or are prone to victimization, have acquired special significance.

The law established rules providing for a new type of offence prevention, namely the implementation of preventive measures in a special procedure with categories of persons who have a high probability of suffering from offences, within the framework of victimological prevention. The law and the normative legal acts adopted on its basis determine the procedure for carrying out victimological prevention and related preventive measures as a new type of offence prevention. Therefore, offence prevention should now be understood not only as

measures aimed at preventing the commission of offences, but also as measures of victimological prevention carried out with persons who have been harmed by offences or who have a high predisposition to becoming victims, with the aim of preventing them from suffering from offences.

At the foundation of all this lies, above all, the priority of protecting the human being, his or her rights, freedoms, and lawful interests. This period encompasses the time from the day Uzbekistan gained independence to the present. In the national legislation created during the years of independence on the basis of the principle of building a free democratic state suited to the Uzbek people, one can understand the content and essence of doctrines on the victimological prevention of offences.

At the same time, it should not be forgotten that today it is difficult to say that a sufficient number of legal scholars have devoted their research specifically to the victimological prevention of offences or to issues of its improvement. From this point of view, the comprehensive and in-depth study of the victimological prevention of offences remains one of the urgent issues of contemporary legal science.

