



ISSN: 2249-7315

Vol. 11, Issue 10, October 2021

SJIF –Impact Factor = 8.037 (2021)

DOI: 10.5958/2249-7315.2021.00076.9

HISTORICAL ROOTS OF FAMILY AND MARRIAGE IN UZBEKISTAN

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ABSTRACT

The article deals with the long history of the development of the foundations of the family law of the Uzbek people. In each period, the features and differences in family law legislation are analyzed. For example, if before the spread of Islam in Central Asia the «Avesta», the sacred book of Zoroastrianism, guided them then after the arrival of the Arabs, from the eighth to the beginning of the 20th century. Islamic law occupied a significant place in the history of Uzbekistan. It is worth noting that the jurists of Maverannahr in the Middle Ages made a great contribution to the development of the foundations of family law and the principle in their works. In the period from the conquest of Central Asia by Russia to the state independence of Uzbekistan, a new legal system was implemented based on the principles of Russian legislation under a common standard, including the Code on Marriage and Family in Marriage and Family Relations. After the proclamation of the state independence of Uzbekistan on August 31, 1991, strengthening and protecting the family, the health of mothers and children, raising a healthy and harmoniously developed generation, increasing the well-being of the family, strengthening care for young families, both from society and the state, became a priority in the republic. A new period of development of the Family Code of the Republic of Uzbekistan is associated with the proclamation of the "Year of the Family" in 1998, which chose its own path of family legal renewal and progress.

KEYWORDS: *Marriage, Family, Family Structure, Strengthening The Family, Features, Motivation, Problems, Traditions, Customs, Surveys, Young Family.*

INTRODUCTION

The history of the development of the basis of the family law of the Uzbek people has its deep age-old roots, because the family is the result of a long historical development and the unification of groups of persons with rights and responsibilities in society. The family is considered a unique way of building social life for people and plays a vital role in social life. Various cultures, legal traditions, upbringing of children and their spiritual development, spiritual unification of people are born in it. The study of the history of the development of

the foundations of family law is one of the most important for understanding the process of human development. Based on ancient manuscripts and modern sources, the long history of the development of the basis of family law of the Uzbek people can be divided into five periods

1. The ancient period from the beginning of the first millennium BC. before the arrival of the Arabs in Central Asia at the end of the 7th century A.D. Before the spread of Islam in Central Asia in the late 7th - early 8th centuries, the peoples of this region believed in various trends and cults, such as shamanism, Zoroastrianism, Buddhism, Christianity, Manichaeism and other cults. The ancient people of Uzbekistan were guided by the "Avesta" - the sacred book of Zoroastrianism, which was influenced by the laws of the king of Hammurabi, the Achaemenids. An important place in the Avesta is given to marriage and family relations. It considered incestuous marriage between relatives, as the most pious, especially for royal families, which made it possible to secure the throne for the reigning surnames [8]. Revolutionary changes in family relations were brought about by the rapid development of cattle breeding in Central Asia. A monogamous family replaced group marriage and paired family, maternal inheritance, where the husband, the father of the family, took a dominant position. He owned cattle, family property, which was inherited by his children, and not his wife's brothers and sisters, as it was before. It should be noted that in the Avesta (dating from the 8th-7th centuries BC), the family was called "nmana" ("house" as the family's dwelling, its household), and the head of the patriarchal family was called "manapati" - "master of the house". According to the text of the Avesta, the wife is called "nmanapatni" - a housekeeper who, according to her status, took her place after the spouse with certain rights in managing the household.

Before Islam, in our era, on the present territory of Uzbekistan, among the Turkic peoples of the ancient state of Turan, it was a tradition to marry the wife of their deceased older brother, who died in battle. In this way, family ties were preserved and legal family traditions developed [10, p. 48].

2. The period of Islam in Central Asia, from the 8th century to the colonial conquest by Russia at the beginning of the 20th century It should be noted that the family is one of the most important supports of the social order in Islam, and it is vigilantly guarded from death, decay and destruction. From the 8th to the beginning of the 20th century, Islamic law occupied a significant place in the history of Maverannahr. The development of this religion in Maverannahr covered the social and spiritual life of people and influenced their cultural, national and legal traditions. Although the Arabs introduced Islamic law, later scholars of Maverannahr developed it according to local conditions and traditions. The real flourishing of Islamic law came and became the main law of the state in the 9th-12th centuries, during the leadership of the state by the Samanids (in 875–999), the Karakhanids (in 990–1212), the Gaznevites (in 962–1186) and Seljukids (1040-1160). Back in the late 8th - early 9th centuries, Hanafi theological schools were established in Tashkent, Bukhara, Samarkand, Khiva, Fergana and other cities of Uzbekistan, and all issues in various spheres of public life were approached from the point of view of Islam. It is worth noting that the jurists of Maverannahr in the middle Ages made a great contribution to the development of the foundations of family law and the principle in their works. Among the most popular fundamental works were the works "Al-Kafiy" al-Hakim al-Shahid (855-945), "Khizanat al-fiqh" by Abu-l-Lays al-Samarkandi (d. 985), "Kitab al-Hidoi" Sheikh-ul-Islam BurkhanuddinalMarginani (1123-1197) - this work is considered one of the important legal texts written in Maverannahr, etc. In particular, the legal foundations of the conditions for the validity of marriage, adulthood, property (mahr) that the husband allocates to his wife at the time of marriage were carefully developed. The principles of prohibiting marriage in degrees of kinship, the relationship of dairy kinship, the rights and obligations of a husband and wife after marriage were also considered as formulas for dissolution of marriage. The term "iddah"

for widows or divorced women, alimony, initiation of the wife for divorce “hul'a” through the consent of the husband or a court order, the right to the necessary maintenance of the wife, parents and children, inheritance and other issues. During the reign of the State of Khorezmshahs (1097–1231), despite the continuous battles for power, the Islamic call was transferred to new levels in Maverannahr, the principles of government were in accordance with Islamic law and local customs [10, p. 95]. In 1219, the Mongols, under the leadership of Genghis Khan, began the conquest of Central Asia. They went against the huge Muslim Khorezm state. Genghis Khan's troops managed to conquer many cities, especially Bukhara, Samarkand, Merv, Binaket, Khojent and Gurganj, which turned into ruins. The norms of nomadic life began to be regulated by Yasa, which determined various types of legal relations in the Mongolian state. Religiously, the Mongols, who ruled Central Asia for more than two hundred years, gradually converted to Islam. The Mongols allowed Muslim religious leaders to direct the lives of believers [10, p. 143].

Genghis Khan's grandson Berke (1255–1266) converted to Islam thanks to the efforts of the Khorezm dervish of the Kubravi sheikh Sayfuddin Dervish (died 1263) and became one of the first Mongol rulers to convert to Islam. Following him and his descendants: Tudemengu and Uzbek adopted Islam. Other Mongol khans converted to Islam under the influence of Muslim wives. Buddhism and Nestorian Christianity were also widespread among them. The Uzbek, who adopted the Muslim name Sultan Muhammad Uzbek Khan, made Islam the state religion. From this point on, Muslim rituals began to prevail over the previously practiced non-Muslim ones. AzatSarsenbayev mentioned in his research [14] that in the XIV century, Islamic jurist Abu al-Barakat al-Nasafi (died 1310) wrote the work "Kanz ad-Dakaik", which highlights the legal problems that arose in connection with the stay of the Mongols on the territory of Maverannahr. Apparently, this was the reason that the work of "al-Wikaya" Taj ash-Sharia al-Mahbubiya and the work of Abu al-Barakat "Kanz al-Dakaik" became famous and many jurists sought to interpret them, and they entered the four famous legal texts (al-mutun al-arbaa). The grandson of Taj ash-Sharia Al-Mahbubi, Ubayd Allah ibn Masud (1346), wrote the work "An-Nuqaya", where he combined the views of his grandfather described in "al-Wikaya" and in the commentaries of this book. In it, you can trace the conditions of the times of the Mongols and the influence of Sufi views. This work was popularly known under the name "Mukhtasar al-Vikaya". This was the last legal text written in Maverannahr. For this reason, since the 14th century, it has been used as the main source in legal training for beginners. The development of the foundations of family law in the public life of people continued in the same way. The Mongols (Chingizids) ruled Central Asia until the time of Amir Timur (1370–1405), who founded the Timurid dynasty, which ruled until the 16th century. Timurid times were also the heyday of Sharia law. Timur introduced the institution of Sheikh-ul-Islam (the highest cleric or Muslim elder) in Central Asia, who made the Muslim elder an adviser to the ruler. He significantly strengthened the Sufi tarikati in the region. After the collapse of the Timurid state, political life, from the beginning of the 16th to the middle of the 18th century, was characterized by continuous wars, a struggle for power between representatives of the new Turkic dynasty of the Shaybanids and Astrakhanids. During the reign of the Shaybanids and Astrakhanids, the sources of law were based on Sharia, legal traditions and the decrees of the khan. Property relations, marriage and family and criminal law, as well as legal proceedings were determined by the norms of Sharia. At the end of the 18th century, three large Muslim states emerged on the territory of Central Asia: the Bukhara Emirate, the Khiva and Kokand Khanates. At one time, the influence of scholars and religious leaders, especially Sheikh al-Islam, Qaziyah and Mufti, in the legal framework and principles of government was significant. In general, during these centuries, until the conquest of Central Asia by Russia in the middle of the 19th century, the strengthening of family relations was regulated by the norms of Islamic law of the Hanifite sense, which provides for a whole range of measures aimed at caring for the family.

3. The colonial period from the conquest of Central Asia by Russia to the state independence of Uzbekistan in 1991. In the second half of the 19th century. The Russian Empire conquered Central Asia and formed the Turkestan Territory. The Emirate of Bukhara and the Khiva Khanate recognized the protectorate of Russia, and the Kokand Khanate ceased to exist.

In 1920, because of the operation of the Red Army troops, the Bukhara Emirate and the Khiva Khanate were overthrown. Instead of them, the Khorezm and Bukhara People's Soviet Republics were formed. Before that, Muslim law functioned in Central Asia as the only legal system. If before the revolution, the legal basis for marriage and family in Central Asia served the norms of Sharia, then after it in 1917-1920. The Soviet state implemented a new legal system based on the principles of Russian legislation according to a common standard. Among other things, the Code of Laws on Acts of Civil Status, regulations on Marriage, Family and Guardianship Law (1918) were created. The code consisted of 4 sections, 17 chapters and 246 articles. He formulated the provisions that formed the basis of all subsequent family legal codifications. Moreover, this was like the first stage of the Bolshevik experiment in the field of marriage and family relations. On October 27, 1924, the Uzbek SSR was formed. It was then that the Bukhara SSR became part of the Uzbek SSR and the name "Uzbek" was established for its main population. The process of extracting Sharia norms and creating the first marriage and family code in the Uzbek SSR began on March 7, 1928. It is worth noting that prior to that, the application of Sharia norms retained its influence in the marriage and family sphere, to one degree or another. The decision of the Sharia courts on family law was recognized. A feature of the new code, adopted in 1928, was the regulation of issues on the procedure for registering marriage, the rights and obligations of spouses, marriageable age, alimony obligations, adoption, custody and guardianship, the rights and obligations of parents and children. The most significant change in the legislation that strengthened the Soviet family was the publication of the Decree of the Presidium of the Supreme Soviet of the USSR of July 8, 1944 "On increasing state aid to pregnant women, mothers with many children and single mothers, strengthening the protection of mothers and children, on establishing the honorary title "Mother Heroine". The establishment of the Order of Maternal Glory and the Medal of Maternity. The main principles of this Decree for all union republics were to stimulate an increase in the birth rate, to recognize legally valid only registered marriages, forms of divorce with an indication of the motives for divorce, monogamy, equality of men and women.

Based on the analysis of this Decree, it can be concluded that it was effective during the Great Patriotic War to strengthen the family, provide material and moral support to a pregnant woman, and reduce divorces. On June 6, 1969, the Code on Marriage and Family of the Uzbek SSR was adopted based on the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and Family. It consisted of 6 sections, 25 chapters and 275 articles. Until the beginning of the 90s of the twentieth century, changes and additions were made to it many times, and all issues related to marriage and family relations were regulated. It should be noted that the family legislation of the Uzbek SSR only copied union or Russian laws, party and government decisions, adopted norms without contradicting the Fundamentals of Legislation. Therefore, not yet declaring its independence, the Republic of Uzbekistan made changes and additions to the Marriage and Family Code of the Republic of Uzbekistan on June 14, 1991. So, on June 20, 1990, the Declaration of Independence of the Republic of Uzbekistan was adopted.

4. The modern period from 1991 to the proclamation of 1998 as the "Year of the Family" On August 31, 1991, an extraordinary 6th session of the Supreme Soviet of the Uzbek SSR was held in Tashkent, at which the state independence of Uzbekistan was proclaimed. From the first days of independence of the Republic of Uzbekistan, the priority has been to strengthen and protect the family, the health of mothers and children, bring up a healthy and harmoniously developed generation, increase the well-being of the family, and strengthen

care for young families, both from society and from the state. The Basic Law of the Republic of Uzbekistan, adopted on December 8, 1992, enshrined equality between men and women; Chapter 14 of the Constitution of the Republic is called "Family" and is devoted to the protection and protection of the family, motherhood and childhood [1, Art. 63-66]. After that, the Code on Marriage and Family began to be called the Family Code of the Republic of Uzbekistan. From 1991 to 1998, family relations in the republic were regulated by the Code on Marriage and Family of the Uzbek SSR, adopted on June 6, 1969, drawn up on the basis of the legislation of the USSR and the Union republics on marriage and family on June 27, 1968. The code did not take into account the specific customs of the Uzbek people, local and national characteristics.

5. A new period of development of the Family Code of the Republic of Uzbekistan is associated with the proclamation of the year of the "Family" in 1998, which chose its own path of family legal renewal and progress. № 607-I, entered into force on 01.09.1998), as well as regulations adopted in accordance with it (Resolution of the Cabinet of Ministers of the Republic of Uzbekistan № 171 of 12.04.1999, etc.). The code consists of 8 sections, 30 chapters and 238 articles. The main tasks of family legislation are strengthening the family, building family relations based on feelings of mutual love, trust and mutual respect, cooperation, mutual assistance and responsibility to the family and all its members. As well as the inadmissibility of arbitrary interference by anyone in the affairs of the family, ensuring the unhindered exercise by family members of their rights and their protection are considered. [2, article 1] A special feature of the Code is the application of local customs and traditions in family relations. In the absence of relevant norms in the legislation in the regulation of family relations, local customs and traditions are applied that do not contradict the principles of the legislation of the Republic of Uzbekistan [2, Article 8].

The main principles of family law are:

- Equality of spouses in resolving all family issues;
- Equality of spouses and other family members regardless of their nationality, race, attitude to religion;
- Protection and promotion of motherhood;
- Taking care of the upbringing of minor children and ensuring their interests;
- Monogamy;
- Freedom and voluntariness of the marriage union;
- Freedom to dissolve a marriage under the control of the community;
- Mutual moral and material support of the participants in family relations and care for each other. It should be noted that in recent years, special attention has been paid to the creation of a legal framework for the protection of the family, motherhood and childhood, the guarantee of the rights of mothers and children, and the achievement of ensuring the stability of families.

The Resolution of the President of the Republic of Uzbekistan ShavkatMirziyoyev "On Approval of the Concept of Strengthening the Institution of the Family in the Republic of Uzbekistan" dated June 27, 2018 became a new impetus in the country, as well as the Action Strategy for the five priority areas of development of the Republic of Uzbekistan in 2017-2021. Further support, development and strengthening of the family, increasing its role in the upbringing of the future generation to be spiritually mature and harmoniously developed were clearly spelled out in it. Unfortunately, over the past six months, the number of divorces has been increasing in the country. According to statistics from the Oila Center and the Women's Committee of Uzbekistan for January-February 2019, 769 divorces were registered in Tashkent. This figure has increased by 131 cases compared to the previous year. It became

known that about 48% of divorces occurred due to constant scandals. Also, the main reasons for divorce were: 16% - due to the fact that young people did not live together, 9% - due to childlessness, 6% - due to adultery and 2% - due to the fact that one of the spouses suffered from alcohol addiction. Other reasons for divorce are also: the absence of children in the family, illness of one of the spouses, the unwillingness of young people to manage, support the family, lack of responsibility and ignorance of the foundations of the family. Based on this, President ShavkatMirziyoyev signed a decree "On additional measures to further strengthen guarantees of children's rights" dated April 22, 2019 [7]. In accordance with the presidential decree, starting from September 1, 2019, the minimum age for women entering into marriage in Uzbekistan is being raised from 17 to 18 years. According to article 15 of the Family Code of the republic, men in Uzbekistan could marry at the age of 18, and women at the age of 17. By his decree, the President equalized the marriageable age of men and women. Determining the marriageable age of a woman has a complicated history. Humanity has been moving towards its rise for centuries. At the end of the 19th century, on the territory of modern Uzbekistan, the average age of marriage was 15-17 years for men. The marriage of a 12-13-year-old girl was common. According to the 1897 census, in Central Asia 64% of girls aged 17-19 were already married. It can be emphasized that an increase in the age of marriage is a global trend that has already emerged in Uzbekistan. However, it is worth noting that it is completely impossible to reduce the number of divorces only by the equation of the marriageable age of men and women. In my opinion, it is necessary to strengthen families by developing a culture of family relations based on the Uzbek cultural, historical and spiritual tradition, to preserve traditional family values in society, to improve the spiritual and moral atmosphere in families, to form responsibility, a sense of pride and respect for your family. In addition, it is necessary to implement mutual moral and material support for the participants in family relations.

The most important thing for improvement is updating legal family legislation and solving a number of systemic problems and shortcomings in this area, including:

- The code does not have enough rules to clarify the principles prohibiting marriage in degrees of kinship, links of dairy kinship. At the moment, the country prohibits marriages between relatives in a direct ascending and descending line, between full and incomplete brothers and sisters, as well as between adoptive parents and children [2, Art. 16];

- During the registration of a marriage, witnesses do not undertake as a condition for the validity of the marriage [2, Art. 13].

According to the traditions of the people, witnesses are present there are no clear norms in the code obliging young people entering into marriage to undergo a medical examination [2, Art. 17], although this is mandatory in the country, according to the resolution of the Cabinet of Ministers of the Republic of Uzbekistan [5].

Still, information about such medical examinations is very important not only for their own health, but also for the future healthy generation. In the end, I would like to note that the study of the centuries-old development of the foundations of family law in the Republic of Uzbekistan allows us better imagine the differences and trends in the regulation of family and marriage relations in the past and modern life. In addition, this publication with a submitted proposal for the development of marriage legislation in Uzbekistan will be useful for specialists in the field of family law.

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