

PROBLEMS AND FEATURES OF ISLAMIC FAMILY LAW IN THE UZBEK FAMILY

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Abstract

This article provides a brief description of the methodological approach to the study of the role of Islamic law and national customs in the family life of Uzbeks. The author analyzed the historical retrospective of the Uzbek family. The main stages in the development of family and marriage relations on the territory of Uzbekistan are highlighted. During the analysis of scientific works of national and foreign scientists, the author's definition of the institution of the family was derived, and the main functions and tasks of the family in modern Uzbek society were highlighted.

Keywords. Family, Islamic law, national traditions, Uzbek family, family law.

The methodological approach of this scientific research is a rational method of studying the role of Islamic law (fiqh)¹ and national customs in the development of marriage and family relationships in the Uzbek family. So, for more than twelve centuries, Islamic law (fiqh) acted as the main legal system of Central Asia, but during the period of the atheistic system, Islamic law changed into a custom, thereby retaining its significance in the life of the Central Asian people. What previously had legal force and was perceived as a law, having passed through the influence of atheistic ideas, passed into the life of the next generation already in the role of traditions, and thus only the form of Islamic law changed, and the content was able to maintain its relevance and significance in family and marriage relations until today.

During the years of independence, an integral school for studying the Islamic scientific heritage in fiqh, kalam, aqida, Qur'anic studies, religious consciousness, and Islamic law was formed in Uzbekistan. One of the significant works on the study of the history of Islamic family law is the doctoral dissertation of the prominent Islamic scholar N. Yusupova "Islamic family law: the emergence, development, sources and institutions"². According to the scientist, today it is a social necessity to study Islamic teachings related to family relations. This is necessary to streamline family and marriage relations, strengthen the institution of the family, and teach young people about family traditions and customs. The author's definition of the concept of marriage is formed in the dissertation, it is "a voluntary agreement between a man and a woman, drawn up with

¹ Fiqh is the knowledge of the rules sent down by the Great Allah, indicated in the Holy Quran, Sunnah and other sources, permitted by Allah. Ibn Khaldun. Muqaddima ("Introduction"). Volume 1. - M.: Dilya, 2015. - 445 p. (in Arabic).

² Yusupova N.J. Islamic family law: origin, development, sources and institutions. Auth. diss. (DSc) ... Doctor of Law, - T.: 2019. - 65 p.

the participation of witnesses, the main purpose of marriage is to create a family, procreate and satisfy the natural needs of a man and a woman”³.

The rights and obligations arising from the family relations of the parties, when creating a marriage and during marriage in Islamic law, have a number of features, and they manifest themselves in the form of regulation such as kafoat, adoption, feeding a child, issues of determining a guardian for him, material support, mahr, inheritance. In particular, the granting of mahr by a husband to his wife for her consent to marriage does not lead to the community of property of the parties, providing for the wife is the task of the husband, providing for children is also under the guardianship of the father, especially the upbringing, education and provision of the daughter is entrusted to the father, and after marriage, the husband, and the maintenance of a woman without a father and husband is entrusted to the brother or to the person replacing them, after the dissolution of the marriage, the iddah period is determined to establish the woman's pregnancy, during the iddah, the woman's right to security and inheritance is preserved⁴.

When there is a mention of Islamic law and Islam, of course, it is impossible not to touch upon the pre-Islamic period. Before the arrival of Islam in Central Asia, this territory already had its own civilization, people subordinated themselves to a single spiritual and legal system - the Zoroastrian doctrine⁵. Zoroastrianism is not only a doctrine, but also a legal system of that time. All legal disputes were resolved on the basis of the sacred Zoroastrian book "Avesta"⁶. Spirituality and law were not separated, traditions were based on the laws of Zoroastrianism. In general, this helped to streamline people's lives and bring social life into a single system. The teachings of Zoroastrianism served as fertile ground for the development of Islam that came there. The norms of the Zoroastrians echoed the norms of Islam. For example, the institution of the family was also revered, kinship relations, respect for parents, a good attitude towards neighbors, maintenance in order of the economy, the sanctity of the family and the birth of children, the duties of spouses and their property legal relations, the rights and obligations of parents and children to elderly parents were elevated. But now the law of the Zoroastrians gives way to the laws of Islam, and itself continues to exist in the form of national traditions (urf). So the traditions and customs of the Zoroastrians, which do not contradict the canons of Islam, retain their influence in everyday life and in marriage and family relations of the Uzbek people. As mentioned above, Islamic law, having existed for several centuries as the main legal system, at the beginning of the 20th century, under the influence of socio-political conditions, changed into the category of traditions. Thus, it becomes clear that now the modern Uzbek people also have national

³ Yusupova N.J. Islamic family law: origin, development, sources and institutions. Auth. diss. (DSc) ... Doctor of Law, - T.: 2019. - P. 56

⁴ See here. - p. 78

⁵ There is some debate among scholars as to whether Zoroastrianism is a religion or a teaching. A convincing definition is that it is a doctrine. In this study, Zoroastrianism is put forward as a doctrine.

⁶ Avesta "The Law Against the Devas" (Videvat). - St. Petersburg: Publishing house of the Poltiekhn.un-ta, 2008. - p. 220.

traditions, whose roots come from the Zoroastrian teachings and “Islamic customs and traditions”, which were transformed from Islamic law (fiqh). It is these features of the formation of national and Islamic traditions in the Uzbek family that must be taken into account when studying the topic and used as a research methodology.

Islamic values in the Uzbek family were formed during the arrival of Islam to the territory of Central Asia. After the adoption of Islam by the population, the norms of Sharia (Islamic law) began to regulate family relations, the model of the family changed, and the attitude to some issues regarding intra-family relationships also changed. At the same time, Zoroastrian family traditions are preserved, such as wedding rituals and family and marriage etiquette of relationships between family members. There is a harmonious fusion of two cultures that complement each other. So the culture of the Zoroastrians had a certain category of family values, which could be reflected in the Islamic norms of family law. This phenomenon served as a good foundation for the assimilation of folk traditions and Islamic law in the families of the Central Asian population.

Speaking about the fusion of national traditions and Islamic law, it is worth highlighting the periodization of the formation of family traditions of the Uzbek family, since the period of the first flowering of Islamic culture served as the beginning of the formation of family relationships, based on the norms of Islam and based only on its values.

The next significant stage in strengthening Islamic values in the family was the period of the second heyday. This stage fell on the reign of the Timurids and left a significant mark in the history of Central Asia.

The third stage of changes in family foundations was the period of Soviet power, where the very model of the family and its social role changed significantly. From a patriarchal family, the Uzbek family moves to the Soviet one, where both spouses are building a new Soviet society on an equal footing. The state is engaged in the upbringing of children, this suggests that now the Soviet government has taken over the educational function. Islamic law was replaced by morality and Soviet legislation. After independence, the Uzbek family experienced major changes. At a time when society had to rebuild itself for a new political system, the family needed to reconsider its values and its role in public life.

In this vein, the question of the evolution of Islamic customs and traditions in the Uzbek family is very interesting. This issue from a historical point of view affects a rather long history, on the one hand, the issue should be considered from the point of view of the introduction of Islamic traditions into the institution of the family during the heyday of the civilization of Maverannahr (VIII-XV centuries), and on the other hand, to outline the next significant transformation by the period Soviet Union (1924-1991), then the third major period of change should naturally be the post-independence period (1991-2021). In historical terms, the process of evolution of Islamic customs and traditions based on the Uzbek family went through three stages:

- the first stage: the stage of formation and implementation of Islamic customs and traditions in the territory of Maverannahr after the Islamic conquest (periods of the first and second Renaissance);
- the second stage: features of preservation and transmission to subsequent generations of Islamic customs and traditions during the period of the former Union;
- the third stage: the revival and widespread use of Islamic customs and traditions during the period of independence (the period of the third Renaissance).

This process is characterized by the fact that in each period the social system, ideology, social formation, state prerogatives very strongly, and sometimes fundamentally, influenced the effectiveness, functionality and existence of Islamic customs and traditions.

Exploring the evolution of Islamic customs and traditions of the Uzbek family, it is of paramount importance to define what is meant by the definition of family, family traditions, family customs, Islamic family customs and traditions. It is necessary to define the content of concepts, highlight their features and distinctive features. Here it is important to understand the definition of the modern family, what it is and why it is of social value. President of the Republic of Uzbekistan Sh.M. Mirziyoyev said that "... a family is a small Motherland, if the family is peaceful, happy, the Motherland will be peaceful"⁷, therefore, the issues of protecting the interests of the family and preparing young people for family life, supporting the status of the family, family education and preserving the family way of life, customs and traditions are recognized as a priority for the strategic development of the country.

In the encyclopedia "Family" G. Shoumarov and Z. Rasulov defined a family as "... a set of people living in the same room, consisting of a man and a woman, their children and close relatives. In general, a family is a small group based on marriage or intimacy. At the same time, a family is a small social group based on marriage or close kinship, which is connected by a single economy, mutual support and spiritual closeness."⁸. F. Akramova, Z. Bilolova, S. Jovliev in their edition of the encyclopedia "Family" identified the following features of the family: "Its distinguishing feature from other social groups is that it is in it that the next offspring is reproduced, the family is responsible for financial, sensual and sexual aspects of the life of family members"⁹.

In his scientific work on the family of K.U. Nazhmiddinova notes: "The family arises as a need to regulate marriage, intra-clan and inter-clan relations. The family is the primary particle, core and foundation of society"¹⁰. George Murdoch, having studied the family

⁷ Sh.M.Mirziyoyev. Speech by the President of the Republic of Uzbekistan at a meeting dedicated to International Women's Day. Official site of the President of the Republic of Uzbekistan. <https://president.uz/ru/lists/view/1545>. 07.03.2018.

⁸ Shoumarov G.B., Rasulova Z.A. Family encyclopedia. Authors: encyclopedia. Publishing house "Ilm-ziyozakovati". T.: 2016. - p.233.

⁹ Akramova F.A., Bilolova Z.B., Jovliev I.S. Family encyclopedia. - T.: State National Scientific Publishing House, 2019. - P.111.

¹⁰ Najmiddinova K.U. The role of national and universal moral culture in family upbringing. - T.: Uzbekistan, 2016. - P.5.

of different cultures, gave the following definition of the family: "The family is a social group that is characterized by common residence, reproduction and economic cooperation"¹¹. A prominent representative of the Jadid enlightenment movement, Abdurauf Fitrat, at the beginning of the last century, gave his definition of the family, from his point of view: "A family consists of a husband, wife and children. In other words, a family is a union of people living under the leadership of one person. So it becomes clear that a family is a group of people, consisting of a certain number of people, and each of them has its own interests. Therefore, a law is needed to regulate the interests of family members."¹². "The family is a socio-spiritual link in society, a small representative of society, and it is on its basis that the present and future of the people are built."¹³.

Having studied a number of definitions of the family of national, Russian and foreign scientists, we can draw the following conclusion: a family is a social group of people united on a legal, spiritual basis by marriage, family ties, living in the same territory.

In the course of this study, it turned out that the family legislation of the Republic of Uzbekistan does not give a precise definition of the term "family". In the Family Code of the Republic of Uzbekistan¹⁴ term has remained without a definite interpretation. Given the changes that have been taking place over the decades in the minds of people around the world regarding the perception of the institution of the family, family relationships, the emergence of same-sex marriages, free cohabitation of a man and a woman, changes in gender perception in families, the emergence of new methods of regulating property and legal aspects of family life, it would be appropriate amend family law and give a legal definition of the family. It should nevertheless be noted that the main Law of the Republic of Uzbekistan differentiates the family as the main unit of society, which has the right to protection of society and the state¹⁵.

Summing up the thoughts on the methodology of studying the relationship between Islamic law and national customs in the Uzbek family, it is necessary to derive the scientific theory of the dissertation research, which lies in the fact that the family, as a strategically important social institution, has a special place in resolving a number of problems of modern Uzbek society. The family, as part of the state system, is the executor in the implementation of such social tasks as the reproduction and worthy education of a healthy generation based on universal values, the preservation of national traditions, the protection of the moral and moral foundations of society, ensuring the

¹¹ Murdoch J. Social structure. - M.: OOO, 2003. - P.295.

¹² Fitrat A. Family or family management procedures // Responsible editor D.Alimova. Tarj. And the author of the comment is Sh.Vakhidov. - 2 editions. Spirituality. - T.: 2018. - S. 10.

¹³ This definition of the term "family" is given by D. Alimova in the preface to the book by A. Fitrat "Oila yoki oila boshkarish tartiblari // Masul muharir D. Alimova. Targe. Vaizoh muallifi Sh.Vohidov". - 2 n.d. - T.: Manaviyat, 2002. - S. 3.

¹⁴ Family Code of the Republic of Uzbekistan. Website of the "National database of legislation of the Republic of Uzbekistan" // <https://lex.uz/docs/104723>. (Last accessed 02/09/2021).

¹⁵ Constitution of the Republic of Uzbekistan. The site of the "National Database of Legislation of the Republic of Uzbekistan" // <https://lex.uz/docs/35869>. Last accessed 28.01.2021.

convergence of Islamic and national culture, customs and traditions, a transformer between globalization, technological and economic progress, national identity and religious beliefs.

Thus, the study of the relationship between Islamic law and national customs in the Uzbek family shows that the conditions, priorities and status of family and marriage relations are changing, and, accordingly, traditions and customs, way of life, and sometimes family values are changing. If earlier it was a priority in the family to teach daughters household skills, today the emphasis in upbringing is more on the education of girls, despite the fact that, according to Islamic law, a man is responsible for the material support of the family, today a woman also makes a significant contribution to the budget families. It is inappropriate to give a positive and negative assessment of the ongoing changes; it is much more important to understand what result they can lead to.