

THE PERSISTENCE OF LEGAL PLURALISM IN A CONSTITUTIONALLY SECULAR, MUSLIM-MAJORITY UZBEKISTAN

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ABSTRACT

This paper explores the application and consideration of Shari'a in resolving disputes between individuals within the local courts and Islamic authorities of Uzbekistan.

Historically a crucible of Islamic civilization, Uzbekistan transitioned to a secular state due to colonization, leading to the exclusion of Shari'a from public life. Post-independence, the nation has witnessed a resurgence in its Islamic heritage, with an increasing inclination towards the foundational principles and teachings of the Quran. Consequently, Islamic values, ideas, and rules have regained their prominence in society. The trend has become particularly noticeable following the political changes in 2016.

Shari'a has started to reassert its influence not only in the everyday lives of citizens but also in the adjudication of legal disputes. This article aims to demonstrate, through recent family and criminal cases, the continued relevance of Shari'a in the local judicial system. Furthermore, it examines the role of the Muslim Board in offering alternative dispute resolution mechanisms under Shari'a, highlighting the existence of legal pluralism and underscoring the growing significance of Shari'a alongside statutory law in ensuring justice. This examination employs case studies supplemented by social situation analysis and interviews with practicing legal professionals.

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INTRODUCTION

As highlighted by several legal pluralists, legal pluralism is a ubiquitous phenomenon.¹⁾ This concept is defined as the co-existence of a number of different legal systems within one sovereign territory.²⁾ Legal pluralism is also regarded as a doctrine that stands in opposition to the state's monopoly over lawmaking within its sovereign territory.³⁾ The existence of legal pluralism is evident in Uzbekistan, a nation historically subjected to Stalin's totalitarian regime, where the legal framework was once entirely shaped by socialist ideals and Soviet legal centralism prevailed for over seven decades.⁴⁾

In recent years, Uzbekistan has experienced a notable Islamic revival, where the secular state governs a predominantly Muslim population. Diverging from the Soviet era and the initial post-independence period (1991-2016), the current government's liberal policies have facilitated a renewed interest in Islam, with a marked increase in the demand for Shari'a⁵⁾ since 2016.⁶⁾ Presently, Shari'a is

1) Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (2021), p. 1; see also Paul S. Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (2012), pp. 41–42.

2) See John Griffith, "What is legal pluralism?", *Journal of Legal Pluralism*, Vol. 24 (1986), pp. 1–55.

3) Franz von Benda-Beckmann, "Who is Afraid of Legal Pluralism?", *Journal of Legal Pluralism*, No. 47 (2002), p. 37; Paul S. Berman, "The New Legal Pluralism", *Annual Review of Law and Social Science*, Vol. 5 (2009), p. 229; see also Bryan S. Turner and Adam Possamai, "Legal Pluralism and Shari'a", in Adam Possamai, James T. Richardson, Bryan S. Turner eds., *The Sociology of Shari'a: Case Studies from around the World* (2015), pp. 1–3.

4) After the independence of Uzbekistan in 1991, all basic laws such as Family Code, Criminal Code, Labor Code and other statutory laws were adopted a new, but all of them, along with the judicial system itself, were heavily influenced by Soviet legal principles. See Katsuya Ichihashi, "Law and Legal Assistance in Uzbekistan" in Yoshiharu Matsuura ed., *CAL Books 2: The Role of Law in Development Past, Present and Future* (2005), p. 42.

5) Shari'a has its broader and narrower interpretations. It will in this paper be used mainly in the narrower interpretation as given by Mathias Rohe: "in the narrower interpretation particularly the Islamic norms of personal status, family and inheritance law, as well as Quranic criminal law and, in parts, the law relating to pious foundations and trusts". See Mathias Rohe, *Islamic Law in Past and Present* (Gwendolin Goldbloom trans., 2014), p. 627. Even though Islamic law cannot be equated with Shari'a, these terms will be used interchangeably in the paper.

6) Svante E. Cornell and Jacob Zenn, "Religion and the Secular State in Uzbekistan", in S. Frederick Starr, Svante E. Cornell, *Uzbekistan's New Face* (2018), pp. 205–210.

being progressively integrated into the daily, social, and economic lives of the populace alongside state laws.⁷⁾ This integration is particularly evident in family, inheritance, and criminal law, with present trends indicating its expanding influence in commercial and civil transactions as well.⁸⁾

Nonetheless, state judges are strictly bound by secular state law to adhere to statutory law when resolving cases. Prominent Uzbek jurists also emphasize that, as a secular state, statutory law takes precedence, and all residents are required to follow it exclusively.⁹⁾ Even law university textbooks rarely mention the significance of religious rules and customs in legal practice, with legal education seemingly disconnected from societal realities.¹⁰⁾ This discrepancy becomes apparent when recent graduates attempt to apply their acquired professional knowledge in their workplaces. Consequently, many law graduates assert that practical experience differs markedly from theory learned in college.

In academia, since the dissolution of the Soviet Union, numerous research papers have been written concerning the history of Islam in the region and the relationship between state and religion in Uzbekistan.¹¹⁾ However, when it comes to legal pluralism, especially the legal scope and influence of Islam in resolving

7) Andrea Schmitz, "Religious policy in Uzbekistan: Between liberalisation, state ideology and Islamisation" in SWP Research Papers 8/2023, pp. 22–23. Available at <https://www.swp-berlin.org/publications/products/research_papers/2023RP08_ReligionUzbekistan.pdf>. This webpage and all others cited in subsequent footnotes were last visited on January 27, 2024.

8) The liberal policy of the new government towards business and Islamic revival has also brought natural and growing demand for Islamic commercial and financial instruments. Many local entrepreneurs are introducing basic rules of Shari'a into their contracts, responding to market demand. Local banks of Uzbekistan have been entering into cross-border financial transactions with Islamic financial institutions, and some non-bank financial institutions such as "APEXTAKAFUL" LLC and "IMAN Invest" are already operating in the country. See for details: Alam Asadov., Ikhtiyorjon Turaboev, "Legal Challenges Hindering the Development of Islamic Finance in Uzbekistan", *Access to Justice in Eastern Europe* (2023); see also Jakhongir Imamnazarov, *Landscaping Analysis of Islamic Finance Instruments in Uzbekistan* (UNDP Uzbekistan, 17 June 2020), available at <<https://www.undp.org/uzbekistan/publications/landscaping-analysisislamic-finance-instruments-uzbekistan>>.

9) See for details: "Diniy masalada munosabat bildirganda xolis bo'lishni so'raymiz — Din ishlari qo'mitasi [We ask to be impartial when reacting to religious issues - Religious Affairs Committee]", available at <<https://www.gazeta.uz/oz/2022/02/16/din/#!>>.

10) Ichihashi, *supra* note 4, p. 48.

11) For example, Adeeb Khalid, Paolo Sartori, Johan Rasanayagam and etc. have conducted valuable historical, political and anthropological studies about Islam in Uzbekistan.

legal disputes alongside state law, the discussion remains limited. Nevertheless, some literature has addressed legal pluralism, focusing on the parallel existence of statutory and traditional laws, and the significance of Shari'a as an unofficial law. For instance, Ichihashi, in the early 2000s, highlighted that legal pluralism has long existed in Uzbekistan, with a “new wave of legal pluralism” emerging.¹²⁾ He observed a general neglect of statutory law as a primary issue and thus recommended the adoption of “life-sized statutory laws” to garner public trust in state law.¹³⁾ Dzhabbarov discussed the enduring importance and increased significance of Shari'a rules related to family matters in society, even following the Soviet Union's hostile stance towards Islam.¹⁴⁾ Urinboyev and Svensson conducted ethnographic research on living law and legal pluralism in Uzbekistan. Although their study primarily focused on informal transactions and corruption, it offers valuable insights into the role of informal law in the daily lives of ordinary people.¹⁵⁾ Urinboyev, in another study, explained how Islam functions as a legal order at the local level of Uzbek society.¹⁶⁾ A notable study on the court's legal practice concerning Shari'a was conducted by Wazaki during a period of repressive state policies towards religiosity. He accurately noted that the statutory law of Uzbekistan is based on secularism and legal centralism and therefore denies and excludes Islamic elements, although Islamic law, as a living law, significantly influences the legal relationships of people.¹⁷⁾ Furthermore, his study observed two local cases on divorce and inheritance, ultimately finding that local

12) Ichihashi, *supra* note 4, pp. 43–44.

13) *Ibid.*, pp. 47–48.

14) Dzhabbarov, S. *Shariat, semeinoe i obychnoe pravo v uzbekistane: istoriia i sovremennost* [Shari'a, family and common law in Uzbekistan: History and modernity] (1996), pp. 49–65.

15) Rustamjon Urinboyev and Mans Svensson, “Living law, legal pluralism, and corruption in post-Soviet Uzbekistan”, *The Journal of Legal Pluralism and Unofficial Law*, Vol. 45, No. 3 (2013), pp. 372–390.

16) Rustamjon Urinboyev, “Islamic legal culture in Uzbekistan”, *Legal Pluralism and Critical Social Analysis*, Vol. 55, Issue 3 (2023), pp. 402–429.

17) Seika Wazaki, “Tsuma no kenri o meguru ningen moyō — gendai Uzubekisutan no hō seido to unyō” [Human patterns surrounding the rights of wife: The legal system and its operation in contemporary Uzbekistan] in Kenichi Isogai and Masumi Isogai eds., *Teikoku Roshia to musurimu no hō* [Imperial Russia and Muslim Laws] (2022), pp. 237–238.

notaries and courts did not consider Shari'a rules.¹⁸⁾

Despite the variety of research, the role of Shari'a in state courts remains ambiguous. In other words, while previous academic works unanimously confirm Shari'a's substantial influence on the daily life of Muslim society in Uzbekistan as an unofficial law, the question persists: Are these religious rules considered in the secular courts of the state? Therefore, this paper does not aim to discuss the living-law functions of Shari'a in daily life but seeks to gauge the extent of consideration of Shari'a in state courts.

Moreover, some pious individuals, due to their adherence to Shari'a, prefer to bring their disputes to religious leaders and Islamic authorities rather than state courts. For example, Merrell and Peshkova found that Muslim leaders, particularly women, resolve or mediate interpersonal disputes based on Islam within families.¹⁹⁾ Urinboyev, in his ethnographic research, discovered that local Islamic leaders, such as mullahs or imams, play a significant role in the administration of local communities.²⁰⁾ Another notable publication by Sadyrbek, "Legal Pluralism in Central Asia," elaborates on the critical role Islamic leaders play in dispute resolution, not only in family cases but also in the "kun" (blood money) process. She argued that religious leaders act as mediators or consultants in a wide range of local cases in Central Asia.²¹⁾ However, these socio-legal scholarly explanations have largely overlooked or left open the question of intervention of official bodies in Islamic activities in dispute resolution between Muslims. Against this backdrop, this study aims to explore the influence of official Islamic bodies on dispute resolution by focusing on the dispute resolution system and the application of Shari'a by the Muslim Board of Uzbekistan in interpersonal disputes.

The study will employ the case study method to clearly address two major

18) *Ibid.*, pp. 215–235.

19) Svetlana Peshkova, "Bringing the Mosque Home and Talking Politics: Women, Domestic Space, and the State in the Ferghana Valley (Uzbekistan)", *Contemporary Islam*, Vol. 3, No. 3 (2009), pp. 251–273; see also David E. Merrel, "Islam and Dispute Resolution in Central Asia: The Case of Women Muslim Leaders", *New Middle Eastern Studies*, No. 1 (2011), available at <<http://www.brismes.ac.uk/nmes/>>.

20) Urinboyev, *supra* note 16, pp. 7–8.

21) Mahabat Sadyrbek, *Legal pluralism in Central Asia: local jurisdiction and customary practices* (2018), pp. 170–179.

research questions: First, whether parties raise Shari'a-involved claims in and outside of state courts, and second, how Shari'a can be applied or considered by local courts and Islamic authorities in Uzbekistan when there is conflict or overlap between state and religious legal orders. Selected cases were collected from outside and within courts, as well as published case law on the official website of the Supreme Court of Uzbekistan. Some cases were obtained through direct observation and interviews with judges and participants in disputes.²²⁾ However, it is important to note that the cases presented in this research are not representative of all such cases; rather, many are representative of minority cases. Moreover, unofficial interviews with legal professionals²³⁾ (judges, prosecutors, assistant judges, and experts working in the city of Tashkent, in Tashkent region, and in the Ferghana Valley) provide an opportunity to understand the actual procedures and legal technicalities in local courts when parties raise Shari'a-involved claims. Additionally, cases collected through observation of the official websites of Islamic authorities and related interviews not only reveal how the Fatwa Councils apply Shari'a but also demonstrate the importance of the religious elite in resolving disputes among/between Muslims outside state courts.

The rest of the paper consists of three parts. The next section, the second part, begins with some background history and explains how the current complex situation of the legal system emerged. The relationship between the state and religion, particularly the state's stance on the secular legal system and recent changes in the state's policy towards Islam, will also be briefly discussed in part two. The third part focuses on judges' attitudes towards the rules of Shari'a and their consideration during the decision-making process in cases where parties raise claims involving Shari'a in family and criminal cases. After explaining and analyzing the key issues of disputes in state courts, the last part of the paper examines the Muslim Board as instrumental in the application of Islamic law when Muslims look to the religious elite's fatwas in their dispute resolution.

22) Although most of the selected cases involved a conflict between the parties, some did not. Therefore, the term "*dispute*" is chosen as a neutral term applicable to all cases.

23) These unofficial interviews with legal professionals were conducted on author's behalf in 2022–2023. I thank all legal professionals and experts for their support. Their names and workplaces remain anonymous at their request.

Finally, the conclusion sums up the arguments on how Shari'a rules are considered and applied by state courts and by the Muslim Board to achieve better solutions.

HISTORICAL BACKGROUND AND ITS IMPACT ON LEGAL CULTURE

Uzbekistan, a Central Asian country where the vast majority (94%) of the population consists of Muslims adhering to the Hanafi school of law (*mazhab*) within the Sunni branch, is deeply embedded in Islamic traditions. Islam plays a crucial role in the societal fabric, influencing both cultural practices and societal norms to the extent that the distinction between tradition and Islamic rules often blurs.²⁴⁾

The state, however, has adopted the French model of “*laïcité*” secularism, moving away from the “hostile” secularism inherited from the Soviet era.²⁵⁾ This is reflected in the Constitution of Uzbekistan, where Article 1 proclaims, “Uzbekistan is a sovereign democratic, legal, social, and *secular* state with a republican form of government” (emphasis added).²⁶⁾ Principles of equality before the law and freedom of conscience are guaranteed by Articles 19 and 35, respectively. Moreover, Article 75 mandates that “Religious organizations and

24) Johan Rasanayagam, *Islam in Post-Soviet Uzbekistan: The Morality of Experience* (1st ed., 2010), pp. 28–34.

25) Svante E. Cornell and Jacob Zenn describe those models in Uzbekistan as follows, “The French model of “*laïcité*” secularism adopts a skeptical approach to religion that seeks to insulate the state from the influence of religion”. “The hostile model is any outright state hostility to any manifestation of religion”. See Svante E. Cornell and Jacob Zenn, *supra* note 6, p. 197.

26) Even though the word “secular” in Article 1 was added after the amendments to the Constitution on May 2023, both former and current governments of Uzbekistan have always claimed that “Uzbekistan is a secular state”. Nonetheless, since the amendment secularism and separation of religion and state have become some of the most heated and openly debated topics in Uzbekistan. Scholars and the public are showing a desire to understand the importance of the concept of a secular state in the context of Uzbekistan. See “O‘zbekiston – dunyoviy davlat. Bu nima degani? - tahlilchilar bilan suhbat” [Uzbekistan is a secular state. What does it mean? - a conversation with analysts] (June 2, 2023), available at < <https://kun.uz/uz/news/2023/06/02/ozbekiston-dunyoviy-davlat-bu-nima-degani-tahlilchilar-bilan-suhbat>>; see also Kamoliddin Robbimov, “Dunyoviylik nima va u O‘zbekiston uchun nega muhim?” [What is secularism and why is it important for Uzbekistan?] (March 3, 2023), available at < <https://kun.uz/uz/news/2023/03/03/dunyoviylik-nima-va-u-ozbekiston-uchun-nega-muhim>>.

associations shall be separated from the state and equal before the law. The state shall not interfere in the activity of religious organizations".²⁷⁾ Despite the seemingly straightforward relationship between state and religion outlined in these constitutional articles, the reality is far more complex, significantly influenced by historical factors that continue to shape the legal lives of the population.

Islam was introduced to Transoxiana, the historical region that includes present-day Uzbekistan, in the 8th century.²⁸⁾ Bukhara, Khorezm, Samarkand, and Fergana were not merely Muslim-inhabited cities but served as centers of Islamic theology and scholarship. These cities contributed significantly to Islamic civilization, producing scholars and scientists of central importance.²⁹⁾ For instance, *Sahih al-Bukhari*, the most authentic collection of hadiths, was compiled by Imam al-Bukhari, a native of Bukhara. This work is considered the second most important text after the Quran in the Muslim world.³⁰⁾ Presently, two major *aqeedah* (creeds) dominate the Sunni branch. One of them is the Maturidi school, founded by Abu Mansur al-Maturidi, a native of Samarkand.³¹⁾ Furthermore, the contribution of Central Asian *fuqaha* (jurists) to the development of the Hanafi school of law is unparalleled.³²⁾ These historical elements have significantly influenced the Islamic revival in Uzbekistan, with the current generation venerating the Islamic scholars of the past as their esteemed great ancestors.

Shari'a has been the dominant legal system in Uzbekistan for over a millennium. The Russian invasion in the 19th century introduced Western law to the region for the first time,³³⁾ marking the beginning of a shift in perceptions

27) The Constitution of the Republic of Uzbekistan (May 1, 2023), [an unofficial English translation is available at <https://lex.uz/docs/4032775>].

28) Peter B. Golden, *Central Asia in World History* (2011), p. 59.

29) Galina M. Yemelianova, *Muslims of Central Asia: An Introduction (The New Edinburgh Islamic Surveys)*, (1st ed., 2019), pp. 16–17.

30) Jonathan Brown, *The Canonization of Al-Bukhari and Muslim: The Formation and Function of Sunni Hadith Canon* (2007), pp. 47–69.

31) Ulrich Rudolph, *Al-Māturīdī and the Development of Sunnī Theology in Samarqand* (Rodrigo Adem trans., 2016), pp. 1–4.

32) Muhammad Sodiq Muhammad Yusuf, *Samarqandning sara ulamolari* [The greatest scholars of Samarkand] (E-book ed., 2014), pp. 3–8.

33) M. B. Hooker, *Legal pluralism: an introduction to colonial and neo-colonial laws* (1975), p. 428.

towards Muslim legal scholars among Central Asians.³⁴⁾ Despite this, native Shari'a courts were permitted to continue operating,³⁵⁾ and Shari'a law, along with *adats* (customs), was preserved as long as it did not conflict with government policy.³⁶⁾ The legal pluralism persisted until the Soviet Union's statutory law began to predominate.

Under Soviet rule, efforts to curtail legal pluralism started.³⁷⁾ Islamic law was seen as an undesirable competitor. An imposition of several anti-Islamic policies led to a gradual decline in the prominence of Shari'a.³⁸⁾ Socialist statutory law became the sole basis of legal order, effectively reducing or nearly eliminating legal pluralism.³⁹⁾ However, despite these changes, Islam's role as a national heritage persisted in the daily lives of Soviet Muslims.⁴⁰⁾

After the independence, Islam Karimov, the first president of independent Uzbekistan, recognized Islam as a crucial component of his nation-building strategy. However, the early post-independence period was marked by a scarcity of individuals with adequate religious knowledge, which allowed various extremist ideologies to infiltrate the country. The situation escalated following two devastating incidents in Uzbekistan, whereupon Islam was casted as a significant threat to the nation's sovereignty and constitutional framework. "The Islamic Threat"⁴¹⁾ became the predominant regulatory paradigm throughout Karimov's

34) Paolo Sartori, "Exploring the Islamic Juridical Field in the Russian Empire: An Introduction", *Islamic Law and Society*, Vol. 24, No. 1/2 (2017), p. 6.

35) Paolo Sartori, *Visions of Justice Shari'a and Cultural Change in Russian Central Asia* (2017), p. 5.

36) Golden, *supra* note 28, p. 128.

37) Hooker, *supra* note 33, pp. 428–433.

38) *Ibid.*, p. 434.

39) Sadyrbek, *supra* note 21, p. 34.

40) See for details: Adeeb Khalid, *Islam after Communism: Religion and Politics in Central Asia* (2007), pp. 50–115.

41) It is worth noting that Islam in its entirety was never considered a threat by Karimov's government. The former government stringently restricted religious freedoms, as it perceived Muslim scholars as weak and the population as lacking sufficient knowledge about Islam. This policy is aptly described by Johan Rasanayagam as distinguishing between "good" and "bad" Islam within state ideology. He describes this defensive discourse as follows: "'Good' Islam is portrayed as culturally authentic, tolerant of other religious traditions in the region, and nonpolitical. 'Bad' Islam is characterised as alien in origin, antiethical to Central Asian spiritual values, intolerant in that it espouses a narrow version of Islam that excludes many Central Asian practices, and politically motivated". See Rasanayagam, *supra* note 24, p. 96.

rule which spanned over a quarter of a century.⁴²⁾ Karimov's repressive government severely impacted operations of state courts and law enforcement agencies, with its effects persisting to some degree to the present day. The era was characterized by draconian punishments for religious-related offenses and individuals' religious culture was disregarded in judicial proceedings.⁴³⁾ Despite the early 1990s witnessing the introduction of Western legal norms and Uzbekistan becoming a laboratory for Western rule of law initiatives,⁴⁴⁾ the core principles of numerous Soviet statutes remained unaltered. Nonetheless, it would be inaccurate to assert that the Islamic legal culture of the populace was completely ignored during this period. Certain institutions were established that considered both the legal culture of the people and the interests of the state, as discussed in the subsequent section.

From the onset of his administration, Mirziyoyev emerged as a reformist. He called for comprehensive reforms within the Supreme Court and law enforcement bodies, emphasizing the paramount importance of justice—a value highly esteemed by the Uzbek people—and the necessity for judges to be cognizant of the conditions, people, and mentality within their jurisdictions.⁴⁵⁾ Furthermore, his liberal policies and efforts to ensure religious rights and foster cooperation with Islamic authorities have accelerated Islamic revival in Uzbekistan.⁴⁶⁾ This revival, along with significant societal shifts and the critical reforms brought about by intense criticism, began to influence the operational manner and attitudes of courts and other state entities towards the Islamic legal culture.⁴⁷⁾ In particular, the

42) Alexander Wolters, "The State and Islam in Central Asia: Administering the Religious Threat or Engaging Muslim Communities?", *PFH Private Hochschule Göttingen*, No. 2014/03 (2014), p. 6.

43) For nuanced details about the situation in the courts and law enforcement agencies during this period, see Bagila Bukharbayeva, *The Vanishing Generation: Faith and Uprising in Modern Uzbekistan* (2019).

44) Urinboyev, *supra* note 16, p. 1.

45) *Prezident ilk bor parlamentga Murojaatnoma taqdim etdi* [President addressed the Parliament] (December 22, 2017), available at < <https://president.uz/oz/lists/view/1370>>.

46) Andrea Schmitz, *supra* note 7, pp. 29–31.

47) For example, in one case of criminal investigation (2021), one of the Muslim leaders expressed an opinion on the line of the National Anthem of Uzbekistan "*Manly spirit of ancestors is companion to you!*". The Imam said, "This is a shame and illogical. Only Allah can help people. It is totally unacceptable to believe that spirits of our ancestors are accompanying us. Perhaps they themselves need help now in the eternal world." The

structured Islamic education provided by the Muslim Board and leading Islamic scholars in the country played a pivotal role in fostering an Islamic legal culture and significantly enhancing religious literacy among the younger generation. Both secular and religious leaders in Uzbekistan presently acknowledge the instrumental role of Islam in shaping national identity.⁴⁸⁾

The diverse historical context outlined above means that the identity and legal culture of the Uzbekistani people have undergone profound transformations. Consequently, understanding Islam and Muslims in Uzbekistan poses challenges.⁴⁹⁾ Although the majority of Uzbekistan's population identifies as Muslim, adherence to Shari'a is not universal. For instance, numerous Muslim families, self-described as "*ruslashgan*" (russianized, a term equated with westernization and modernization), exhibit skepticism towards Shari'a and Islamic scholars, opting instead for statutory law. Additionally, a significant portion of the self-identified Muslim population lacks basic knowledge of their faith, failing to observe even the most fundamental Islamic rituals.⁵⁰⁾ Conversely, there are Muslims with deep knowledge of Islam who strive to live in accordance with Shari'a, often seeking to circumvent state laws that conflict with Islamic principles. Urinboev aptly describes the legal cultures in Uzbekistan as "a peculiar blend of Soviet, Western, and Islamic legal cultures."⁵¹⁾ This amalgamation introduces complexities but also produces intriguing cases in legal practice, as will be explored in subsequent sections.

audio was disseminated on the Telegram social network leading to a provisional charge by an investigator under Article 215 of the Criminal Code (Desecration of state symbols). The investigator then enlisted a cultural expert for the investigation. The expert explained, "He expressed his opinion on the national anthem based on the principles of Islam. Today, in books approved by the Muslim Board, it is stated that acts such as believing the spirits of ancestors or tying rags on sacred trees are heresy. If we take into account his religion (Islamic monotheism) and his culture, I see no intentional act of desecration of state symbols". After that expert opinion the investigation was closed and the all charges were dropped. This case summary was prepared based on an interview (January 16, 2023) with an expert who participated in the investigation.

48) Andrea Schmitz, *supra* note 7, pp. 5–30

49) Adeeb Khalid, "A Secular Islam: Nation, State, and Religion in Uzbekistan", *International Journal of Middle East Studies*, Vol. 35, No. 4 (2003), p. 473; see also, Rasanayagam, *supra* note 24, p. 178.

50) Rasanayagam, *supra* note 24, p. 30.

51) Urinboev, *supra* note 16, p. 2.

SHARI'A IN UZBEKISTAN'S COURTS

1. Family cases

The Family Code of Uzbekistan is heavily influenced by Soviet law and secularized.⁵²⁾ It is unique among post-Soviet countries in recognizing the application of local customs and traditions in family relations (Article 8) whenever there is an absence of relevant norms in the legislation.⁵³⁾ Nonetheless, akin to many other formerly colonized Muslim countries, Uzbekistan has seen a more significant preservation of pre-colonial rules and regulations in family matters compared to other legal areas. According to a report from the Legislative Chamber of Uzbekistan, the incidence of *shariy nikah* (Muslim marriage based on Shari'a) and polygamy has been on the rise in recent years, with a concurrent increase in the number of children born from these religious marriages. For instance, in 2020, there were 16,564 such children registered, and by 2022, this number had increased to 18,955.⁵⁴⁾ Consequently, civil courts frequently encounter cases where the rules of Shari'a are either contradictory or complementary to statutory law, especially in annulment and divorce cases. Despite the propensity of judges in state courts in Uzbekistan to over-rely on the literal interpretation of statutory law, overlooking local justice or the legal culture of citizens, the following annulment and divorce cases demonstrate that some judges, albeit a minority, de facto recognize the coexistence of two or more legal systems within society.

52) Wazaki, *supra note* 17, p. 237.

53) L.V. Saenko, "Osnovnie polojeniya semeynogo zakonodatelstva stran-uchastnits SNG: opit sravnitel'nogo pravovedeniya" [Basic provisions of family legislation of the CIS member states: experience of comparative law], *Vestnik PAGES*, Vol. 1, No. 46 (2015), p. 44.

54) The Legislative Chamber is concerned about the consequences of this tendency. According to the Legislative Chamber, there are various problems associated with establishing paternity, alimony, and inheritance, and this tendency also undermines women's trust in the state as a guarantor of their rights' protection. Available at < <https://t.me/qonunchilikpalatasi/16737>>.

(a) Annulment of Marriage

Case Study 1.

In a marriage annulment case published by the Namangan inter-district civil court,⁵⁵⁾ the plaintiff (Odinakhon) and the respondent (Shavkatbek) requested the court to nullify their legal marriage, which was registered at the Civil Registry Office on August 12, 2021. Both parties claimed in the courtroom that the marriage registration was executed to fulfill their parents' wishes, as their parents, being relatives, sought to strengthen their familial ties through this union. However, both the plaintiff and the respondent asserted that they never intended to establish a family, given their lack of affection for each other. Consequently, they highlighted that the wedding ceremony had not been scheduled, and they had not cohabitated. A protocol from their *mahalla*⁵⁶⁾ committee corroborated that the parties had registered their legal marriage under parental pressure, but they did so without arranging a date for the wedding ceremony.

After reviewing relevant articles and the decision of the Plenum of the Supreme Court, as is common for many district and regional courts in Uzbekistan, the court proposed the following solution in the summary of the concluding part of the judgment:

“The bride and the groom have never intended to create a family. Moreover, the wedding ceremony day has not been arranged yet, and they have not lived together. These grounds could be sufficient to consider a marriage invalid.”

[Translation by the author.]

55) Namangan Region, Namangan Inter-District Civil Court, Judgment, October 18, 2021 (No. 2-1601-2104/15704), available at <<https://public.sud.uz/>>.

56) The term of “mahalla” is well-defined by Temur Dadabaev as follows: “The mahalla refers to a residential neighborhood within a city, which is a community group based on residence and a self-governing administrative unit”. See Timur Dadabaev, “Between State and Society: The Position of the Mahalla in Uzbekistan” in Timur Dadabaev., Murod Ismoilov., Yutaka Tsujinaka (eds.), *Social Capital Construction and Governance in Central Asia* (2017), p. 78.

This case study illustrates two essential aspects of considering Islamic rules, rituals, and other traditions in state courts. Firstly, it demonstrates how the general rules of statutory law afford judges greater latitude to eschew textual interpretation and consider the existing facts when there is no dispute between the plaintiff and the respondent. Secondly, it reveals how the rules of Shari'a and other rituals, considered by judges, can be reflected in the judgment of local courts even when said rules do not align with relevant statutory law.

Article 49.3 of the Family Code addresses the issue of sham marriages, stipulating that a marriage may be deemed invalid “where the spouses have, or either of them has, registered the marriage without the intention to create a family.” this marriage can be found invalid. The provision is markedly broad and has led to a directive by the Plenum of the Supreme Court which states that the norms are not to be interpreted broadly in annulment cases (Paragraph 34).⁵⁷⁾ This rule is therefore primarily invoked in cases where marriage registration is suspected of being a means to circumvent law for the purpose of emigrating or migrating within the country.⁵⁸⁾

From the perspective of Uzbek judges who favor a literal interpretation and predictability in law, this application may seem unusual and arbitrary. Although Articles 49-56 of the Family Code outline the grounds and procedures for marriage annulment, none explicitly or implicitly include the reasons presented in Case Study 1. In practice, judges often dismiss claims related to intent as “a difficult matter to prove,” refraining from broad interpretations of the norms and considering participation in the registration process as indicative of an intention to

57) The same decision of the Plenum sets an even stricter requirement stating “*Even if the spouses have, or either of them has, registered the marriage without intent to create a family, if they started actual family life before the court date, the rules of the annulment shall not be applied*”. The Decision of the Plenum of the Supreme Court No. 06/2011. Available at <<https://lex.uz/acts/-2414114#-2414750>>.

58) For example, in the judgment No. [2-1802-2303/7403] a military man legally enters into marriage with a woman who is a permanent resident of Tashkent City to move his workplace from Fergana Valley to Tashkent City. The court annuls their legal marriage by applying Article 49.3 of the Family Code. Kashkadarya Region, Shakhriyabz Inter-District Civil Court, Judgment, November 6, 2023 (No. 2-1802-2303/7403); see also the judgments No. [2-1403-2302/6392] and No. [2-1802-2211/6319] where parties enter into their legal marriages in order to emigrate to Germany and South Korea respectively. All judgments mentioned in this footnote are available at <<https://public.sud.uz/>>.

marry.⁵⁹⁾

However, in Case Study 1, the judge identified two fact-based reasons to substantiate the absence of any intent to establish a family: 1) Arrangements for the wedding ceremony have not been made; 2) The parties had not cohabited. It is plausible that the judge subtly considered Shari'a and other rituals. For instance, the reference to an unscheduled wedding ceremony might imply an acknowledgment that "*shariy nikah*"⁶⁰⁾ and other rituals typically occur after setting a wedding date. More crucially, by stating that the parties had not lived together, the judge could be alluding to the common understanding that, within the Muslim community, state registration of marriage is often a mere formality, with the true marital union being recognized through "*shariy nikah*." Despite the Family Code's secularization, the validity of marriages in Uzbekistan's society frequently hinges on adherence to Shari'a. Consequently, many Muslim couples conduct their marriage ceremonies in accordance with both state law and Shari'a, often registering their legal marriage subsequent to the religious ceremony. Additionally, the judge might have considered societal norms, such as the young woman's lack of agency in an arranged marriage, a common practice that restricts the choices of young women in Uzbekistan's patriarchal society.⁶¹⁾ Moreover, recognizing validity of the marriage could adversely affect the woman's future.

59) According to Article 72.1 of Civil Procedure Code "each party shall be obliged to prove the circumstances to which it refers as the basis for its claims and objections". An unofficial translation is *available at* < <https://lex.uz/docs/5535095>>. Therefore, judges emphasize that whenever there is an intent-related claim in the annulment cases, parties fail to prove circumstances. Conversely, their signature in the relevant documents of the Civil Registration Office serves as proof of intent to create a family. See, for example, Tashkent City, Mirabad Inter-District Civil Court, Judgment October 12, 2023 (No. 2-1002-2308/21451), *available at* <<https://public.sud.uz/>>.

60) "*Shariy nikah*" is a form of marriage based on religious tradition and the rules of Shari'a. In Uzbekistan this term is used to distinguish Islamic marriage from legal marriage, called "*Nikah*" in the Family Code. Likewise, in this paper "*shariy nikah*" refers to Islamic marriage.

61) Shari'a prohibits forced marriage, as does the statutory law of Uzbekistan (for example, Article 136 of the Criminal Code). However, in Uzbekistan, parents sometimes exert pressure (rather than force) on their daughters in arranged marriages. They argue that the marriage is beneficial for their daughter, and, according to tradition and religion, the child should obey the parents' reasonable request. Consequently, young girls enter into legal marriages without their consent but due to their parents' pressure and societal norms. Realizing their mistake, they later take their case to court before a religious marriage ceremony is performed.

This reasoning is echoed in several court decisions concerning annulment, although references to Shari'a or religious customs are conspicuously absent, even when parties cite these elements in their claims.⁶²⁾ Instead, courts tend to issue general statements or note parental coercion without substantial evidence, relying solely on oral testimony to meet the criteria for invalidating a forced marriage as outlined in Article 53 of the Family Code.⁶³⁾

The following insights from informal interviews with local legal professionals regarding the discreet inclusion of references to Shari'a and customs in judgments offer a deeper comprehension of this practice. For example, a professor of Civil Procedure Law offers this generalization of the situation:

*In Civil Courts, judges invariably consider Shari'a and other adats in family disputes. However, they abstain from explicitly mentioning them in their judgments, as the state upholds secularism and mandates judges to adhere strictly to statutory law.*⁶⁴⁾

In the next two interviews legal professionals describe the techniques and rationale for the discreet incorporation of Shari'a and other customs in judicial decisions. An assistant to a judge in the regional civil court of the Fergana Valley offers the following insight:

In several family disputes, particularly in divorce proceedings I have observed, parties often cite 'triple talaq' as a basis for their divorce. However, we refrain from employing this term in our judgments, regardless of whether it influences our decision-making. Primarily, the legislation does not recognize terms such as talaq or triple talaq.⁶⁵⁾ Secondly, it is deemed more prudent to

62) See, for example, Kashkadarya Region, Karshi Inter-District Civil Court, Judgment, March 10, 2022 (No. 2-1801-2206/1606), available at <<https://public.sud.uz/>>

63) See, for example, Fergana Region, Fergana Inter-District Civil Court, Judgment, June 7, 2022 (No. 2-1501-2206/30089), available at <<https://public.sud.uz/>>

64) The Law on Courts states in Article 8: "Justice in the Republic of Uzbekistan shall be carried out strictly in accordance with the law". An unofficial translation is available at <<https://lex.uz/docs/6118937>>.

65) The *talaq* represents divorce in Shari'a, granting the husband the unilateral right to end

utilize legal or generic terminology. Thus, rather than specifying ‘talaq or triple talaq has been pronounced,’ we opt for ‘the parties have been living separately.’”

An informal interview with a judge from a district criminal court in Tashkent reveals that similar legal strategies can be employed in criminal courts. According to the source, some judges might impose lighter sentences based on an offender’s religious marriage (*shariy nikah*), even when this stands in contradiction to the Family Code.

“In certain instances, the wife and children of some defendants attend every court session, visibly distressed about the defendant’s future. It becomes apparent to me as a judge that they are the family of the convicted individual. Our criminal law stipulates that having a family or being the sole provider for a family can be considered mitigating circumstances. Under these circumstances, the defendant is required to furnish a marriage certificate and the birth certificates of any children. However, there are instances where spouses are unable to present a marriage certificate, claiming to be in a shariy nikah, with children from the wife’s previous marriage. We proceed to verify these claims by consulting a representative from the local community council (mahalla committee) where they reside. In our judgments, we avoid mentioning that the defendant is in a religious marriage, as this would conflict with the Family Code. Instead, we simply state that ‘the offender has a family,’ which serves as a basis for imposing a lighter sentence.”

It is evident from these unofficial interviews that, in Case Study 1, the judge took into account the principles of Shari’a and other traditional rituals, albeit hiding them within the general norms and terminology used in the judgment.

the marriage by pronouncing a formula of divorce. There are some revocable and irrevocable types of *talaq*. The *triple talaq* is an irrevocable type of *talaq* and it occurs when a man repudiates his wife by three divorces at once. See for details: Burhan al-Din al-Marghinani, *Hidoya 2-juz* [The Guidance Vol. 2] (A’zamkhon Khambarov translator/commentator., E-book ed., 2020), pp. 169–322. see also Judith E. Tucker, *Women, Family, and Gender in Islamic Law* (2008), pp. 86–87;

(b) Divorce Cases

Case Study 2.

I was personally involved in this case by providing advice to A, a high-ranking military officer, who petitioned the Uzbekistan inter-district civil court for a divorce after discovering that his wife, a school teacher, had covertly used all his money and movable property to settle her debts over several years. However, the court initially dismissed the case, citing the absence of any serious grounds for divorce. Eight months later, A reapplied, and the case was accepted. He provided clear evidence and testimony that upon learning of his wife's secret involvement in the gold jewelry business, he sold his car, liquidated five years of savings, and other valuables to cover her debts. Yet, it became apparent that the extent of her debts was far greater than she had disclosed. Over a period of more than three years, she had been deceiving him and sold their movable assets, such as the washing machine, refrigerator, and television, several times while he was on military duty.

Furthermore, he stated in his claim that, a month after the court's initial dismissal, he pronounced *triple talaq*, rendering cohabitation with his legal wife prohibited under Shari'a, so that family cohabitation became practically impossible. Despite this, his wife refused a legal divorce, claiming they had previously enjoyed a harmonious family life and could be happy again. A suggested his wife had an ulterior motive: under the internal rules of military service, the government had provided a house in Fergana city for A and his family. He believed his wife's primary aim was to reside in that house rent-free due to her financial struggles, hence her persistent refusal to divorce, despite knowing that their marriage was effectively over following the *triple talaq* and could not be resumed unless she remarried, as both parties were Muslims. However, Judge X found no serious grounds, as per the Family Code and the Supreme Court's rulings, to grant a divorce. The wife's reluctance to divorce was the primary reason for the judge's dismissal of A's claims,⁶⁶⁾ leading to a

66) Article 41 of the Family Code stipulates that "*A marriage shall be dissolved if the court establishes that further cohabitation of the spouses, and the preservation of the family*

six-month mandated reconciliation period.⁶⁷⁾

After this period, A approached the court again, and this time he faced a different judge due to the court's internal rotation. Initially, his wife opposed the divorce once more. However, upon learning that Judge X had been transferred to the Fergana inter-district civil court, she requested to change the court venue, claiming it was more convenient. A remarked, "She thought Judge X would not grant a divorce, but this was her gravest error and my greatest fortune. Judge X's perspective on my claims shifted significantly, showing an understanding of real-life situations." Despite the wife's strong opposition, Judge X recognized the pronouncement of *triple talaq* and A's subsequent *shariy nikah* as sufficient grounds for concluding that further cohabitation was impossible under the Family Code. These Shari'a-related reasons, however, like in many other judgments, were neither mentioned in the initial claim nor in the judgment's concluding remarks. A also noted that upon receiving the judgment copy, he observed that his primary claims were largely unaddressed. Instead, the judge summarized the grounds for divorce in most general terms.⁶⁸⁾ At the end of the

have become impossible". Article 41 is too broad, which is why directive No. 06/2011 of the Plenum of the Supreme Court provides additional clarifications. Specifically, it states, "Temporary discord in the family and conflicts between spouses caused by random reasons, as well as not confirmed by serious reasons, the unwillingness of one or both spouses to continue the marriage cannot be considered sufficient grounds for its dissolution". See Paragraph 16 of The Directive of the Plenum of the Supreme Court No. 06/2011. Available at <<https://lex.uz/acts/-2414114#-2414750>>.

67) Article 40.3 "The court shall be entitled to appoint a period of up to six months for the spouses to reconcile, by postponing the proceedings of the case". An unofficial translation is available at <<https://lex.uz/docs/5712113>>. In almost all divorce cases the judges provide for a reconciliation period due to the pressure from the Supreme Court, which is based on the state policy of "reducing the dramatic increase in divorce rates". During this period, without direct court involvement, the mahalla committee, relatives, and local community elders engage in efforts to facilitate successful reconciliation between spouses and preserve the family unit. See Maksud Karaketov, "Creating an appropriate model of court-connected mediation for Uzbekistan", *Nagoya Journal of Law and Politics*, Vol. 258 (2014), pp. 207–208. This reconciliation model also bears much resemblance to the classic dispute settlement procedure under Shari'a. For the classic dispute settlement procedure in Islamic law, see Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (2009), pp. 159–164.

68) In the concluding part of the judgment (on April 28, 2023), the court stated, "The disagreements between the parties are not of a temporary nature. The couple has lived separately for a significant period without maintaining family relations, during which the family has not been reconciled, nor has there been any possibility of restoring the family [...]".

day, A spent nearly two years achieving this outcome, during which he had to pay rent for a government-provided house and for a separate accommodation for himself.

First and foremost, Case Study 2 demonstrates that people in Uzbekistan can manipulate rules to their advantage. On one hand, A leveraged Shari'a rules to obtain a divorce, as statutory law did not permit him to separate from his wife. On the other hand, his wife exploited statutory law to address her financial predicament and even switched courts based on state law to achieve her objectives.

Furthermore, this case highlights that the existence of *shariy nikah* between one or both spouses and another individual can, as well as *talaq*, serve as Shari'a-related factors that significantly influence divorce proceedings in Uzbekistan's state courts. For instance, when Azon TV asked Tursunali Akbarov, the head of the press service of the Supreme Council of Judges, about incorporation of religious customs in state court decisions, he underscored the importance of *talaq* with the following statement:

"We instruct judges to consider religious issues in dispute resolution. For example, the pronouncement of triple talaq in divorce cases signifies that saving the marriage is unrealistic. In such instances, judges are advised to consult with representatives of the Muslim Board in the region for further clarification on triple talaq."

Nevertheless, this mechanism has not yet been formally integrated into legal practice. One civil court judge discussed the challenges associated with *talaq*, noting that young couples often seek a divorce citing the husband's pronouncement of *talaq*. Although judges are familiar with *talaq*, they lack comprehensive understanding of its validity and applicability under Shari'a. Consequently, especially in cases involving young couples, judges either dismiss the case or assign a reconciliation period. During this interim, couples seek advice from individuals knowledgeable about Shari'a. The judge also mentioned instances

where, after granting a divorce based on *talaq*, couples have requested the restoration of their legal marriage upon discovering a reconciliation pathway within Shari'a or realizing the *talaq* was not valid.⁶⁹⁾

These informal interviews highlight a significant issue: the lack of collaboration between state courts and religious authorities in family law cases in Uzbekistan.⁷⁰⁾ As a result, judges hesitate to consider *talaq*, even *triple talaq*, as a substantial reason due to their limited understanding of Shari'a, further complicating situations for individuals like A in Case Study 2.

Notwithstanding the lack of collaboration, my observations of court decisions on family matters reveal an emerging trend in divorce cases. Specifically, a significant number of cases⁷¹⁾ now have judges explicitly referencing *shariy nikah* as a basis for divorce.⁷²⁾ These judgments primarily cite two reasons. The first is the spouses' disagreement during the reconciliation period mandated by Article 40 of the Family Code. The second is the existence of *shariy nikah* between one or both spouses and another individual. These grounds are deemed to satisfy the general rule stipulated in Article 41.

However, Article 13 of the Family Code clearly states that "A marriage concluded under any religious ceremony shall have *no legal value*" (emphasis added). In other words, this rule establishes that under no circumstances do

69) This unofficial interview with a Civil Court judge was conducted on the author's behalf on November 12, 2022.

70) The Committee of Mahalla is authorized to intervene in family matters to facilitate spousal reconciliation. See: Ismatov Aziz., Alimdjano Sardor, "Developmental Trajectory of Mahalla Laws in Uzbekistan: From Soft Law to Statutory Law", *Nagoya University Asian Law Bulletin*, Vol. 4 (2018), p. 6. Nevertheless, in many Shari'a-involved cases, it is a serious challenge for members of the Mahalla Committee to find a solution without sufficient knowledge of Shari'a.

71) In the absence of official statistics, this information was obtained by the author checking divorce cases in the open data of judgments of the Supreme Court of Uzbekistan in "<https://public.sud.uz>".

72) See, for example, Tashkent Region, Okhangaron Inter-District Civil Court, Judgment, January 13, 2023 (No. 2-1107-2201-7018), available at <<https://public.sud.uz/>>. The court concluded, "Upon reviewing the applicant's claim, it was determined that the marital relationship between the spouses ended in September 2020. The reconciliation period was unsuccessful, as there were no attempts to reconcile during that time. Furthermore, given that the applicant has established another family based on Shari'a, the court finds that further cohabitation of the spouses and the preservation of the family are impossible." [Translation by the author.]

marriages based on Shari'a have any legal status or consequences. Despite this, legal practice shows that when judges consider the existence of another *shariy nikah* as a significant reason in divorce cases, they can overlook the mandate of Article 13.

2. Criminal Cases

The Criminal Code has most contradictions with Shari'a as it has retained numerous provisions from the Criminal Code of the Uzbek Soviet Socialist Republic, which has played an important role in destroying the old Shari'a framework and establishing a new system during the Soviet era.⁷³⁾ Nonetheless, Shari'a continues to be applied and/or assumes a significant complementary role in criminal cases. This section aims to highlight the areas within Criminal Law where Shari'a presents not merely contradictions but complementary functions.

(a) The Institute of Reconciliation

The Institute of Reconciliation (Restorative Justice) was introduced into the Criminal Code in 2001, reflecting the cultural values of forgiveness, apology, and tolerance prevalent among the population.⁷⁴⁾ Today, Article 66¹ encompasses the provision for crimes cited in over 40 Articles, addressing more than 60 crimes of minimal or medium severity. In this institute, forgiveness is paramount.⁷⁵⁾ Despite harsh criticism by some scholars,⁷⁶⁾ this institute has been extensively applied in practice to date. According to Supreme Court statistics, the Institute of Reconciliation regulates nearly a quarter of all criminal cases in the country.⁷⁷⁾

73) Hooker, *supra* note 33, pp. 439–443.

74) “Yarashuv instituti – insonparvarlik va erkinlik omilidir” [The Institute of Reconciliation as a Factor of Humanity and Freedom], *available at* < [https://www.norma.uz/oz/bizning_sharhlar/yarashuv_instituti - insonparvarlik va erkinlik_omilidir](https://www.norma.uz/oz/bizning_sharhlar/yarashuv_instituti_-_insonparvarlik_va_erkinlik_omilidir)>.

75) Rustamboyev. M. X., *O'zbekiston Respublikasining Jinoyat kodeksiga sharh* [Commentary on the Criminal Code of the Republic of Uzbekistan] (2016), pp. 480–481.

76) See, for example, Cynthia Alkon, “The Increased Use of Reconciliation in Criminal Cases in Central Asia: A Sign of Restorative Justice, Reform or Cause for Concern?”, *Pepperdine Dispute Resolution Law Journal*, Vol. 8, No. 3 (2007), p. 41.

77) The Supreme Court of Uzbekistan, “Jinoyat ishlari bo'yicha sudlarning 2018–2022 yillar hamda 2023-yil 9 oylik faoliyat yakunlarining asosiy ko'rsatkichlari” [The Main

The existence of the Institute of Reconciliation in criminal cases enables parties to negotiate a settlement independently of state law enforcement and judicial intervention. Since there is no defined mechanism for how the reconciliation process is carried out,⁷⁸⁾ this freedom in some cases leads parties to turn to Islamic scholars. These scholars address issues or offer advice as consultants based on Shari'a. For instance, on the Fatwa Council's website of Islamic scholars, "*Zikr ahlidan so 'rang'*⁷⁹⁾ (*Ask the people of knowledge*)", people ask questions about the permissibility and amount of compensation during the reconciliation process. Additionally, there are some cases in which people ask about the permissibility of forgiving a person who has committed a wrongful act, and ask for the guidance of Islam on forgiveness while in or before entering into the reconciliation procedure.⁸⁰⁾ Providing that the parties reach an agreement, the court recognizes it in its judgment irrespective of the reconciliation method. Thus, the court may grant binding force to an agreement forged under Shari'a principles.

(b) Manslaughter

Case Study 3.

This case took place 10 years ago in the Uzbekistan District of the Fergana Region. When I was an undergraduate student at the Tashkent State University of Law, I received a call from my father who said that my uncle (*Fakhridin*) died in a car accident while vacationing with friends. The primary cause was excessive speed of the car. However, the driver (*Bakhodir*), who was my uncle's friend and a distant relative within our extended family, survived. Throughout the funeral, Bakhodir's family, including his ten-year-old son, participated fully,

Indicators of the Results of Criminal Courts Activity in 2018-2022 and in the First 9 Months of 2023], available at <<https://stat.sud.uz/>>.

78) Rustamboyev, *supra* note 75, pp. 480–483.

79) This channel has emerged as one of the most prominent platforms for Muslim community. It was created by one of Uzbekistan's most distinguished Islamic scholars, Sheikh Muhammad Sodik Muhammad Yusuf. Its Fatwa council use the site "savollar.islom.uz" to provide fatwas and religious advice to the Muslim community.

80) See, for example, Question & Answer No. 383 [Fazil] 17:03, January 8, 2023. Available at <<https://savollar.islom.uz/s/232879>>.

offering deep apologies for the tragedy.

After my uncle's funeral, I researched relevant norms of the state legislation, and sought advice from my professors to understand the potential legal consequences for the driver and the compensation we might expect. Despite sharing this information with my relatives, it seemed they did not regard it with the seriousness I anticipated.

Days after the funeral, our extended family convened at my grandfather's house and collectively decided to forgive Bakhodir. At the meeting, it was acknowledged that Bakhodir's driving had been recklessly negligent, warranting severe punishment. Yet, it was recognized that his actions were not intentional. The discussion also covered the well-being of Bakhodir's family and his children. Ultimately, the family concluded that incarcerating Bakhodir would serve no beneficial purpose; rather, it would only sow discord between our families. The elders expressed that, despite the anger and grief caused by the accident, forgiveness was paramount, attributing Fakhridin's death to divine will and acknowledging the brevity of his life. Fakhridin's widow and children concurred with this resolution, and at the court hearing, they refrained from pressing any claims against Bakhodir, requesting a lenient sentence for him. Initially, our family did not pursue any form of blood money (*diya* or *kun*).⁸¹⁾ However, years later, Bakhodir voluntarily contributed to the expenses of extending my uncle's widow's house. He and his family also actively participated in the recent wedding of my uncle Fakhridin's son.

This case exemplifies a prevalent practice in Uzbekistan, where forgiveness and apology significantly influence the resolution of such matters. Although reconciliation is not formally sanctioned in these instances, the Criminal Code permits and facilitates the incorporation of forgiveness and apology into judicial decisions. For example, Article 266 stipulates that causing death by violating traffic safety rules or by operating a vehicle recklessly is punishable by up to

81) For the origins of blood money and its classical application, see Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (2005), pp. 18 and 24. See also Hallaq, *supra* note 66, chapter 10, section 3, above.

seven years in prison, along with the deprivation of certain rights. This penalty applies unless the victim's representatives choose to forgive the offender. In many cases, individuals opt for forgiveness, guided by moral principles and Islamic beliefs, underpinning the notion that all events unfold according to divine will.⁸²⁾

Moreover, they consider the future of the children and other close relatives of the offender, as well as the harmony within the local community, as they offer profound apologies to the victim's family, as illustrated in Case Study 3. In addition, the offender's family often tries to provide financial support for the funeral and offers blood money to the extent possible. On the court day, the victim's representative declares that there are no claims against the offender, provided the offender's apology is accepted by the victim's family. This situation leads to the application of Article 57 of the Criminal Code.⁸³⁾ Article 57 serves as a general provision that sets forth the criteria for imposing a lighter sentence based on the principle of humanity.⁸⁴⁾ In essence, this rule grants the judge the discretion to impose a more lenient punishment than that specified in Article 266. Furthermore, the decision to accept compensation from the offender rests with the victim's representatives.

Interestingly, in similar situations,⁸⁵⁾ the Fatwa Council of Islamic Scholars has issued *fatwas* (religious decrees or legal opinions) with analogous content on several occasions. Initially, these *fatwas* reference Surah Al-Baqarah, Ayah 179

82) A similar situation has been noted in the neighboring Kyrgyzstan, see Sadyrbek, *supra* note 21, pp. 79–84.

83) Article 57 stipulates: "A court, taking into account circumstances considerably decreasing a degree of social danger of a committed crime, may, as an exception, inflict a penalty below the lower limit of severity envisaged by an Article of the Special Part of this Code for a crime in question, or another, more lenient penalty not envisaged by an appropriate Article". Available at <https://sherloc.unodc.org/cld/document/uzb/1994/criminal_code_of_the_republic_of_uzbekistan.html?>.

84) Rustambojev, *supra* note 74, p. 426.

85) In a query addressed to the Fatwa Council of *Zikr ahlidan so'rang*, a man named Nozimjon asked, "In 2012, my eldest son passed away at the age of 15 due to a surgical error. The doctor attended my son's funeral but then vanished. Believing everything to be God's will, I refrained from confronting him. At that time, I was unaware of the concept of *kun* (blood money) and thus did not seek any compensation. Seven years have passed; can I now claim my son's *kun*, or should I await God's rewards in the Hereafter?" Question & Answer, No. 2169, February 25, 2019 (22:47), [Nozimjon], available at <<https://savollar.islom.uz/s/87901>>.

from the Quran, which affords the right to retaliate. However, the scholars also emphasize that individual acts of revenge are strictly forbidden today, and any retribution must be sought through the appropriate state organs. Additionally, they delineate other options such as accepting “*kun*” (blood money) or pardoning the offender, at the discretion of the victim or their representatives, as outlined in Surah Al-Baqarah, Ayah 179. This demonstrates that in manslaughter cases, statutory law and Shari’a provide remarkably similar guidelines.⁸⁶⁾

In short, we can say that Islamic moral values, such as forgiveness and apology, still exert a significant influence on the resolution of criminal cases both within and outside of state courts, and therefore the outcomes of such cases in Uzbekistan are a synthesis of statutory law, Shari’a, and local customs.

(c) Economic Crimes as a New Phenomenon

Case Study 4.

The defendant in the case, X, and his partner Y jointly borrowed \$20,000 from the plaintiff, Z. Over two years, Z repeatedly requested the repayment of the debt from X and Y. However, upon realizing the deception in 2022, Z appealed to the state authorities for legal intervention. By this time, Y had fled abroad. Following an investigation, the defendants were found guilty, and the case proceeded to court. The judge noted that the resolution of the case appeared straightforward until the moment of delivering the judgment, as X had admitted guilt and the evidence left no room for doubt. Furthermore, the defendant was only capable of repaying 10% of the debt, which, under the Criminal Code, justified deprivation of liberty. However, just before the judgment was to be pronounced, the plaintiff made the following request to the court:

“I visited X’s house and saw his family. He has children. I was convinced that his economic situation was not good enough to him to afford repaying his debts.

86) See for details: Muhammad Sadiq Muhammad Yusuf, *Kifoya sharhi Muxtasari Viqoya* Vol. 3 (E-book ed., 2021), pp. 533–573.

If he were to be imprisoned, who would provide for his children? Therefore, I do not wish to demand repayment of the debt. I do not know whether he will repay it in the future or not. If he does not, let me reckon with him on the Day of Judgment.”

The judge acknowledged the Islamic belief in such forgiveness as a Muslim but highlighted the complexity it introduced to the case. On one hand, it involved an economic crime where the plaintiff, not the state, was the victim, and the victim was willing to forgive the perpetrator. On the other hand, the Criminal Code mandated imprisonment. The judge’s final decision was informed by two considerations: firstly, the plaintiff’s claim and religious convictions, given that he was the economically affected party; and secondly, the recognition that incarcerating the defendant would not benefit society or the state, but would exacerbate his family’s hardship and potentially foster resentment towards the state and its laws. Ultimately, the judge made his decision basing on the principle of humanity and other fundamental tenets of Criminal Law.⁸⁷⁾

Case Study 4 presents a distinctive scenario. Firstly, it illustrates how political shifts or accommodation of religious rights and freedoms can become the reason for the emergence of new and unexpected phenomena within certain legal domains. A district criminal court judge gave an explanation of the new phenomenon in economic crimes.⁸⁸⁾ He noted that, following the resurgence of

87) The case summary was prepared based on an interview with a District Criminal Court judge on January 18, 2023.

88) This judge also recounted an economic crime case in which the consideration of Islamic legal culture played a pivotal role. In the unpublished 2022 case, a legal entity secured \$400 000 from a bank using a property as collateral but failed to repay within the agreed timeframe. The property owner was unaware that his building had been used to secure a loan by the director and deputy director, who had since fled. Handwriting experts could not conclusively verify the authenticity of the signature. However, the building owner, a pious elderly man, stated he had never engaged in conventional banking transactions involving *riba* (usury), prohibited in Islam. The judge, focusing on this assertion, reviewed his banking history and confirmed that the property owner had had no transactions with the bank. This was corroborated by other employees and business partners. The judge then found the signature was a forgery. The director and deputy director were later apprehended, and both confessed that the signature had been forged.

Islamic influence in society, the principles of Shari'a have begun to significantly inform the economic dealings of entrepreneurs and that the courts are now increasingly being confronted in the sphere of economic crimes with particularly complex cases and previously unencountered scenarios.

Secondly, this case study reveals that these novel phenomena cannot be addressed through existing institutional frameworks and mechanisms. For instance, In Case Study 4, where a crime has been committed by two people, the Criminal Code prohibits reconciliation. Additionally, unlike in manslaughter cases, there is a scarcity of legal precedent, which affords judges broad discretion. Thus, the incorporation of religious rules and the pursuit of an optimal resolution are significantly influenced by the judge's personal judgment. Judges who are members of the local community and who aware of its complexities may render decisions that diverge from those anticipated by statutory law.

THE ROLE OF THE MUSLIM BOARD

As discussed earlier, pious Muslims in Uzbekistan do not solely depend on state courts for resolving disputes or for advice; they can turn to religious authorities, in particular, to the Muslim Board of Uzbekistan (O'zbekiston Musulmonlari Idorasi) (hereinafter referred to as "the Board") and its representatives. The Board, succeeding the former Spiritual Administration of the Muslims of Central Asia, operates as a non-governmental entity. It is a governance body that engages in the spiritual unification of all Muslims and is the central coordinating body of Islamic religious organizations in Uzbekistan.⁸⁹⁾ The Board is recognized as the sole authorized institution that issues official *fatwas*⁹⁰⁾ in Uzbekistan.⁹¹⁾

89) The Charter of the Muslim Board of Uzbekistan, Paragraphs 1.1 and 1.2.

90) Fatwa is considered expert legal opinion in response to a posed question. For the definition and origin of fatwa, see Wael B. Hallaq, *An Introduction to Islamic Law* (2009), pp. 9–11, 13, 173 and 175.

91) *Fatvo va uning odoblari, fatvo beruvchining mas'uliyati haqida Homidjon domla bilan suhbat* [Interview with religious teacher Hamidjon about fatwa and its manners, and the responsibility of the fatwa giver], available at <<https://m.kun.uz/uz/news/2019/09/17/fatvo-va-uning-odoblari-fatvo-beruvchining-masuliyati-haqida-homidjon-domla-bilan-suhbat>>.

Prior to the establishment of the new government in 2016, the state frequently intervened in the affairs of the Board and other religious bodies. Article 61 (now Article 75) of the Constitution, though formally acknowledged, was not respected in practice, with such interventions being predominantly one-sided. The state exerted stringent control over religious practices and kept them out of politics and legislation.⁹²⁾ The government stance is reflected in several *fatwas* issued by religious authorities during that period.⁹³⁾ However, in recent years, the state has adopted a more lenient approach towards control. The Mirziyoyev administration has favored a path of collaboration with religious authorities, especially with the Board.

In addressing the application of the Board's *fatwas* and decisions in the daily lives of Muslims, particularly in matters of family and inheritance, the representative bodies and imams of mosques under the Board play a pivotal role across all regions.⁹⁴⁾ Colloquially, these entities are referred to as “*qadi*'s (Islamic judge) courts.” The organization has even offered expertise on issues related to terrorism and extremism, albeit in a very small number of cases.

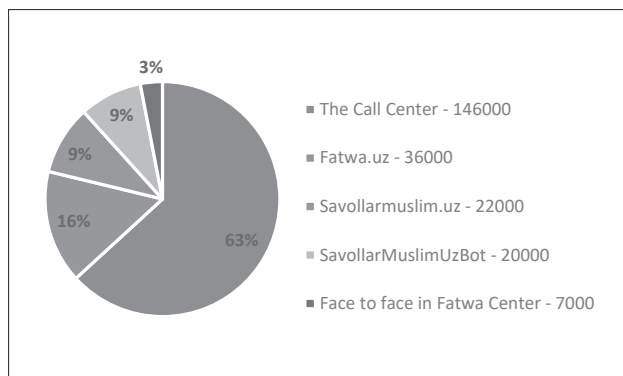
In addressing Shari'a-related issues, the Fatwa Center of the Board, established in 2021, stands as a primary entity. Led by the *mufti* (the head of the Muslim Board), 15 *ulama* (scholars with specialized knowledge of Islamic law) are responsible for (1) answering questions from citizens; (2) issuing *fatwas* on actual matters; and (3) finding solutions to problems citizens bring before the Board. The Center's website, “Fatvo.uz,” categorizes citizen inquiries into four groups: Contemporary Issues, Women's Issues, Economic Issues, and Creed's Issues. Although the answers, recommendations, and *fatwas* issued by the Fatwa Center are non-binding, they are widely adhered to in practice. Guidance based on Shari'a

92) Henrik Ohlsson, “Islam and Secular State in Uzbekistan: State Control of Religion and its Implications for the Understanding of Secularity”, *Cahiers d'Asie centrale*, 19 (20) (2011), pp. 489–492.

93) See, for example, “*Sheikh Abdulaziz Mansur: Niyat to 'g'ri qilinsa, kreditga mashina olish halol*” [An auto loan could be halal if the intentions are pure], available at < <https://www.ozodlik.org/a/25209576.html> >.

94) There are 14 regional representatives (*hududiy vakillik*) and 2066 mosques operating in the country. More than 3000 imams (*imom-xatib*) and deputy imams (*imom-noib*) serve in the mosques. Available at < <https://t.me/muslimuzportal> >.

is offered by the Center in person (at the Center's reception) and digitally (via websites or telephone) Case Study 5 explores an instance of providing a solution to a problem in person.



The Number of Responses by the Fatwa Center
(total: more than 230 000⁹⁵⁾)

Case Study 5.

Dilshoda and her ex-husband Zaynobiddin separated after he pronounced triple talaq in 2011, when their son was 13 years old. Their legal marriage was never formally dissolved, primarily due to the lengthy and arduous process involved. There was no perceived immediate need for formal dissolution, as they divided their common property in 2015 amicably.

In 2017, Zaynobiddin entered into a *shariy nikah* (Islamic marriage) with another woman, Shakhnoza, with whom he had a daughter a year later. Subsequently, Dilshoda also entered into a *shariy nikah* with a different man, though her second marriage was also unsuccessful. In 2020, at Shakhnoza's behest, Zaynobiddin initiated divorce proceedings against Dilshoda. However, he unexpectedly died from a heart attack before the divorce proceedings

95) Pie Chart was prepared based on the video content provided by the Board in its official Telegram and YouTube channels (posted on December 12, 2022), available at <<https://t.me/muslimuzportal>> and <https://www.youtube.com/watch?v=08_FXT3eWrU&t=3s>.

commenced.

A year later, a friend suggested to Dilshoda that she could claim inheritance from Zaynobiddin, as their legal marriage had not been dissolved. Upon consulting a notary and a lawyer, Dilshoda learned that, according to the Family Code, she remained Zaynobiddin's legal wife and, as per the Civil Code, was the primary heir.⁹⁶⁾ They further clarified that a wife in a shariy nikah was not entitled to any share of the inheritance.

Dilshoda was from a modern yet pious family. A conflict among Dilshoda's family members ensued when her brothers opposed her decision to initiate the legal inheritance procedure. However, her sisters supported her in the decision. Dilshoda argued that she had contributed more to that portion of the property during her residence there than Shakhnoza and Zaynobiddin. Furthermore, she questioned why she should forego the inheritance when state legislation provided her the opportunity. Nevertheless, her brothers presented their arguments. Firstly, they highlighted that Dilshoda's financial situation was stable: she owned a house and had a job, while her son was a successful businessman. In contrast, Zaynobiddin's widow, Shakhnoza, was unemployed, and their daughter was very young. Secondly, they contended that Dilshoda had already received half of the real-estate property during Zaynobiddin's lifetime; hence, her further pursuit of the inheritance was deemed unfair and shameful for their family within the local community. Relatives criticized her, cautioning, "you will destroy our family's honor in the mahalla," and pointing out, "you should consider your hereafter; you cannot claim inheritance based on a mere piece of paper (the marriage certificate). You are taking advantage of an orphan and a poor woman."

After two general meetings, an agreement was reached to consult the Muslim Board in March 2022 for a final decision based on Shari'a, as all family members believed in the supremacy of God's laws.

96) In accordance with Article 1135 of the Civil Code, the wife (in legal marriage) of a deceased person is one of the heirs in the first order of succession, inheriting in equal parts. The Civil Code of the Republic of Uzbekistan, March 1, 1997. Available at <<https://lex.uz/docs/-180552#-198916>>.

A brother of Dilshoda's went to the Muslim Board as a witness. After being briefed on the situation, a scholar (*ulama*) of the Fatwa Center, stated that the issue was resolvable according to the principles of *Faraid* (Islamic inheritance jurisprudence). Ultimately, it was determined that Dilshoda's son, Zaynobbidin's wife in the *shariy nikah* (Shakhnoza), and their daughter were the rightful heirs, and the property was to be divided among them in specified portions as per Islamic inheritance jurisprudence. He further clarified that according to Shari'a, Dilshoda was not considered an heir. This resolution effectively ended the family conflict. Out of respect for local community values, Dilshoda's son gifted his portion to his half-sister. Dilshoda has since refrained from revisiting the issue.⁹⁷⁾

There are three crucial points to be made. Firstly, Case Study 5 demonstrates that the Fatwa Center of the Board can serve as an alternative dispute resolution mechanism for Muslim families, applying Shari'a law irrespective of state law mandates. Secondly, it shows that statutory law does not always align with local justice; Shari'a rules sometimes offer a more equitable solution for pious families and local communities. Finally, and most importantly, it highlights a significant issue in current legal practice: the lack of protection for women in *shariy nikah* under statutory law.⁹⁸⁾ Presently, many Muslims, when faced with prolonged divorce proceedings due to state intervention in the courts and traditional lifestyle, opt for religious marriage without legally dissolving their previous marriage. In disputes concerning inheritance and joint property, statutory law disregards the legal standing of *shariy nikah*, forcing judges to overlook facts and standings derived from religious rules.⁹⁹⁾ As a consequence, a woman who is legally married

97) The case summary was prepared based on an interview with Dilshoda from the Uzbekistan district of the Fergana region on December 17, 2022.

98) Niginakhon Saida, "Uzbekistan's Second Wives Marry in Secret and Suffer Without Legal Protection", (posted on February 18, 2022), *available at* <<https://thediplomat.com/2022/02/uzbekistans-second-wives-marry-in-secret-and-suffer-without-legal-protections/>>.

99) However, a professor of Civil Procedure Law indicated that courts have developed a practice of segregating the property acquired under *shariy nikah* from the joint property of legally married spouses. For this segregation, the wife in *shariy nikah* must present receipts for movable properties. Yet, this practice does not extend to immovable properties.

but separated continues to enjoy substantial privileges in inheritance and property matters,¹⁰⁰⁾ as Case Study 5 illustrates.

However, it would be erroneous to conclude that the Fatwa Center adheres to the rules of Shari'a alone and disregards the implications of Uzbekistan's statutory law. For instance, in divorce cases, Muslim women who have divorced their husbands through state courts inquire whether they can remarry another man following the dissolution of their previous marriage by divorce judgment. This raises the question of whether it is permissible to remarry after a state court divorce or whether a pronouncement of *talaq* is also required.¹⁰¹⁾ This suggests that Muslim women divorced according to state laws may remain undivorced in the eyes of Shari'a.

In such instances, the Fatwa Center has emphasized the importance of determining whether words equivalent to *talaq* were uttered and what was the exact wording on the documents signed by the couples. Numerous *fatwas* from the Fatwa Center have indicated that any words equivalent to *talaq*, spoken during litigation, could be recognized as a pronouncement of *talaq* under Shari'a. Thus, the Center advises couples facing these issues to consult the representative office of the Muslim Board or mosque imams to ascertain the events which took place during the litigation.¹⁰²⁾ In other words, they adopt a hybrid approach, considering facts of the case along with their legal ramifications.

FINAL REMARKS AND A PATH TO THE FUTURE

This paper has explored whether parties present Shari'a-involved claims within and outside state jurisdiction and, if so, how Shari'a is applied or considered by local courts and Islamic authorities in Uzbekistan to resolve disputes between

This information was obtained from an unofficial interview conducted by the author on January 12, 2023.

100) See, for example, Tashkent Region, Yangiyul Inter-District Civil Court, Judgment, May 27, 2022 (No. 2-1108-2201/1643), *available at* <<https://public.sud.uz/>>.

101) See, for example, question ID 426 and the Fatwa Center's answer. *Available at* <<https://fatvo.uz/question-view/451>>.

102) See, for example, question ID 169 the Fatwa Center's answer. *Available at* <<https://fatvo.uz/question-view/189>>.

individuals. The presented case studies have demonstrated that Shari'a often emerges as a legal system that either conflicts with or overlaps statutory law, both within and beyond state courts, since Muslim parties come from an Islamic legal culture. Moreover, recent religious freedom reforms by the new government have contributed to a broader and more visible presence of Shari'a-involved claims in Uzbekistan's state courts.

Although state law is just one of several legal orders regulating relations in Uzbekistan's society,¹⁰³⁾ the analysis of case studies has unequivocally demonstrated its dominance in state courts, where statutory law mandates judges to ensure a fair trial by adhering to them. However, the reviews of Civil and Criminal Courts' judgments and informal interviews conducted in the course of this research have shown that some judges exhibit leniency towards unofficial law in cases where the sole application of statutory law does not result in justice and rational outcomes. Hence, as observed in case studies 1 through 4, judges have acknowledged de facto *shariy nikah*, de facto divorce under *triple talaq*, or de facto resolution of criminal cases under local justice, originating from Shari'a and integrating these with statutory law. When confronted with disputes involving Shari'a, courts in Uzbekistan manage legal pluralism (by which we understand the coexistence of Shari'a and state law) by leveraging existing institutes, like reconciliation or common practices in criminal matters, within the statutory law framework. In the absence of such institutions or practices, they attempt to reason considering the situations in the cases as members of the local community. To find solutions that align with the Muslim expectations of local communities, they rely on the general rules of statutory law in both criminal and family matters, subtly incorporating considerations of Shari'a within their rulings.

Observation of application of Shari'a at the Fatwa Center has demonstrated that Islamic institutions and religious leaders in Uzbekistan are modernizing. They are not only serving as consultants or mediators in interpersonal disputes within their local areas but are also offering Shari'a-based solutions across the country through well-known online platforms.¹⁰⁴⁾ This development indicates the emergence of a

103) Urinboyev and Svensson, *supra* note 15, pp. 375–376.

104) For well-known online platforms, see Pie Chert "The Number of Responses by the

new, unofficial yet systematized dispute resolution framework, serving as an alternative to state courts, with qualified Islamic scholars for citizens who prefer to live according to the rules of Shari'a.

Consequently, one might argue that the need to adopt the life-sized statutory laws, as suggested by Ichihashi, is more pressing than ever, since the approach ensures certainty by anticipating people's behaviors and responses to these behaviors. As a result, individuals could find familiar rules and fairness in life-sized statutory laws,¹⁰⁵⁾ and state courts could apply them without difficulty. However, in complex societies like Uzbekistan, addressing issues solely through the inclusion of appropriate religious rules and customs in written legislation is challenging. The *triple talaq* in Case study 2, where it was deemed a significant reason for divorce, or the recognition of a second wife's right to inheritance under the rules of *faraid* of Shari'a and local justice in Case Study 5, illustrate this complexity. These unofficial rules contradict not only norms of state law but the modern legislation of Uzbekistan and the basic principles of the Constitution. Parties can also behave unpredictably, as described in Case Study 4, where the victim forgave the offender instead of seeking a punishment for him, which underscores the variability which exists within the Muslim society in Uzbekistan. Additionally, alternative dispute resolution mechanisms within the Muslim community, as evidenced by the recent practices of the Fatwa Center of the Muslim Board, can constitute viable solutions.

Nonetheless, it is essential to recognize that state courts have always been pivotal for the government in building a modern and democratic Uzbekistan and in ensuring adherence to the rule of law. Thus, an appropriate solution would be to create mechanisms and institutions that would allow judges of state courts to manage complexities in Shari'a-involved cases. The general and flexible rules of the Family and Criminal Codes could, as the case studies demonstrate, be effective tools in facilitating hybridity, serving as a bridge between the requirements of statutory law and the realities arising from unofficial law. However, there is considerable doubt regarding the ability of Uzbekistan's judges, trained in secular

Fatwa Center" on page 106 and footnote 79.
105) Ichihashi, *supra* note 4, pp. 47–48.

laws, to comprehend Shari'a rules presented to them by case parties. Regretably, the outcome of cases becomes highly dependent on the judge's personal disposition, as has been observed time and again in family matter disputes in Uzbekistan.

Therefore, I suggest, without dismissing the necessity of crafting life-sized statutory laws and of alternative dispute resolution mechanisms in Uzbekistan, that introducing tandems of judges and expert Islamic scholars from the Muslim Board in state courts could be an effective approach for successful resolution of cases involving Shari'a. Such a collaborative institute could offer a perspective on the pluralistic society of Uzbekistan from the angles of both state law and Shari'a customs. However, such a cooperation might prove ineffective in practice unless it is properly designed. Thus, it becomes imperative for today's Uzbekistan to arrive at a theoretical approach to establishing institutions or mechanisms capable of managing decision-making process hybridity in state courts to facilitate better solutions. Given the inevitable conflict and overlap of legal orders, the focus should be on managing pluralism rather than on attempting to eliminate it.¹⁰⁶⁾

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106) Berman, *supra* note 1, pp. 141–190.

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