# Law: Modern Family Law, 1800–Present

## Central Asia and the Caucasus

Twenty years after the death of the Prophet, Islam swept into Central Asia. It stayed there, influencing and being influenced by the constant attrition between nomads and sedentary peoples. Stagnancy of any sort was impossible in Central Asia: it was always at the center of some ferment or other. And so the Islamic sect that flourished was the most liberal and accommodating: the Sunni Hanafi sect. The liberalism of the Hanafi sect meant that the family law of the region was plastic and variegated. The plasticity of the whole meant a durable central core. Its durability was tested sorely.

Some generalizations about family law prior to the Soviet period are possible. Family systems in Central Asia have generally been patrilineal and patriarchal. Islam inherited and reinforced those tendencies. Marriages were traditionally arranged by the parents, and cemented relations within and between clans. The notion of bride price was almost universal, as was the payment of dowry. Polygyny was common, especially among the wealthy.

No such generalizations can be made about purdah practices. Tajik women were almost totally secluded and completely veiled, as were women in Bukhara. The Kazakhs, however, had no such tradition. It is impossible to say that seclusion in a particular culture was an Islamic as opposed to a cultural phenomenon: the distinction between culture and Islam, at all times for which meaningful records exist, had become blurred almost to non-existence.

Throughout the nineteenth century the Russians gradually crept into Central Asia. They had little impact on local life until the 1870s, when there was increasing expropriation of land from the northern fringes of the steppe southwards. By the 1890s significant numbers of Russian settlers had reached the ancient khanates of the Silk Road. This was a fairly unsystematic sort of colonialism, though. The Tsar frowned uncomprehendingly on Islam: he did not fight it. The main effect on the true locals was to make them react against the arrogant western ways of the Tsar's men. Islam experienced a minor renaissance in some places, and a retrenchment in others.

This conservative Islamic backlash against Russian colonialism itself produced a significant, although largely ineffective counter-reaction. In Uzbekistan, for instance, the Jadids strove to modernize Islam, and focused (half a century before the Soviets did), on equality and education for women and the abolition of veiling and seclusion. There were similar movements throughout Central Asia and the Caucasus.

From the time of the annexation by the Soviets, however, the Islamic communities of Central Asia really did have something to react against. Moscow saw the Central Asian social order as decrepit and feudal, and its Islamic element as frankly malignant. It set out to destroy both. It saw the region's women, primed by the Jadids and similar organizations, as natural allies in the war against the old order, and the literacy and education of women as the principal weapon. In the period from annexation in the mid-1920s to the early 1930s, the Communist Party raged against patriarchy and abolished Sharīʿa law, bride price, and the veil. It denounced the practice of underage marriage, setting the minimum age at which a girl could marry as 18. This was later reduced to 17 in the Armenian, Kazakh, and Kyrgyz republics. All the forbidden marriage practices, however, remained common. Article 35 of the Soviet Constitution provided that women and men "have equal rights." The marriage laws were logical corollaries of this position. The Soviet marriage code established equality between spouses, secularized marriage, and made divorce easy and accessible to both partners. Soviet law linked social benefits to a woman's employment status, not her matrimonial status. Marital assets were regarded as co-owned by the partners, and there was a presumption of equal distribution on divorce. Women were allowed 112 days of maternity leave on full pay, and could take up to a year off work if they wished. Pregnant or nursing women could not have their pay reduced, or be dismissed: part-time work was a statutory option for mothers with small children.

In the early days of Soviet influence in Central Asia, Moscow's policy was to dismantle marriage. It saw it as the product, repository, and breeder of anti-Soviet values. But this was to change. By Stalin's time marriage was seen as an important social adhesive, divorce as socially corrosive, and the production of children as an industrial and military imperative. There were few consequential

changes in the substantive family law of the Soviet Union, but practice began to change. Couples who wanted to divorce were required to appear before a reconciliation committee to explore the possibility of marital salvage. The committees were legally fairly impotent, but in practice they were used until the 1980s to make divorce a lot more difficult than the law said it should be.

The evolution toward Soviet endorsement of marriage was formalized in 1968 with the law entitled "Principles of Legislation on Marriage and the Family of the USSR and the Union Republics," which provided that parents must "raise their children in the spirit of the moral code of a builder of communism, to attend to their physical development and their instruction in and preparation for socially useful activity." Soviet family law did not regulate any more explicitly the relations between parents and children. It did not need to. The cited clause said that parents held their children on trust for the state. Alleged breach of that trusteeship obligation often led dissenting parents to the gulags.

The law of inheritance has always posed a problem for communists. For a true believer, property always belongs to the state, and so must revert to the state on death. But from the birth of the Soviet entity such a pure rule was recognized by the legislature to be unworkable. So in all parts of the Soviet Union there were always exceptions. From the start it was possible to bequeath both real and personal property to close relations. The law became increasingly liberal, and in any event the state often turned a blind eye to legally dubious bequests. By the time the Soviet Union collapsed there were few restrictions on what one could do with one's property either in death or life. The modern law of the Central Asian states is similarly laissez faire.

Moscow eased the war on Islam from the early 1930s onwards. At least in the matter of outward Islamic practice, it had been very successful. By the end of the Second World War veiled women were a rare sight throughout most of Central Asia. The disparity between the literacy rates men and women narrowed significantly and continued to narrow until the end of the Soviet period. By the end of the Soviet period 96 percent of Central Asian girls were literate. The collectivization of agriculture and pressing industrial imperatives involved large numbers of women in the national economic effort. By the end of the Soviet period 90 percent of adult Central Asian women worked outside the home. All this did something to erode the traditional patriarchy. But Stalin could not undo in a few decades what millennia of steppe and mountain life had created. The basic structures survived, to be revived and potentially to be re-Islamicized. Across the Caucasus, Ataturk had had his own secular revolution, formally abolishing Sharīʿa law in 1926, banning the veil, and excising Islam from public expressions of nationhood. Turkish women were given the right to vote in and run for municipal elections in 1930 and national elections in 1934. Despite the stridency of Ataturk's rhetoric, Turkey was a lot gentler than Stalin's Soviet Union, and the old ways and beliefs were wounded less in Turkey than in the Soviet Union.

Wars can help to emancipate women – to show them and to show men that they can run things on their own while the men are off fighting. The Second World War did something of this for the women of Soviet Central Asia, although collectivization had done a great deal of it already. Certainly the postwar period was a bad time for Islam. The underground enthusiasm generated by the repression of the 1920s and 1930s had subsided: secularism, superimposed on a bruised patriarchy, seemed to have won the day.

The former Soviet Central Asian republics gained their independence in 1991. Their governments, generally headed by old Soviet functionaries, are authoritarian and deeply suspicious of Islam. Knowing how to act on that suspicion is difficult for them, but they all recognize the political significance of female emancipation in the control of reactionary Islam, and give some resources to nudge it forward. In Azerbaijan, for example, the government has funded huge women's clubs for newly unveiled women. These give instruction in reading, writing, and household management, and act as social clubs; they try to normalize the unveiled life.

The Central Asian states have, by and large, left in place the old Soviet legislation regulating family matters. The traditional practices of bride price, dowry, and so on, which never ceased during the Soviet era, are now practiced openly. In Kazakhstan, for instance, the groom gives a vigorously negotiated amount of livestock to the bride's family in return for the bride's hand. There is sometimes some reciprocation: the bride sometimes contributes some of her family's animals to the new household. The dowry is a familial asset, not the husband's: it can only be inherited by the children of the marriage.

The extended family remains powerful in all the Central Asian states. A newly married woman is likely to be young and to have little income-generating power of her own. Until she has produced her first child she is at the bottom of the familial pecking-order, and (particularly in Uzbekistan and Tajikistan) her parents-in-law are likely to be the

ultimate arbiters of decisions about her life. They will determine whether she goes out to work, whether she can study, and how often she sees her own family. The laws of the land give her autonomy: they are often trumped by the unwritten laws of the community.

Arranged marriages are still common throughout Central Asia: in both rural and urban communities a significant minority of brides do not know their husbands before the wedding day. There have been complaints that some states, notably Uzbekistan, are beginning to unravel some of the old Soviet laws that protected the rights of women in marriage – making it difficult for women to obtain divorces or to be given an equitable financial settlement on divorce. After a few decades of reasonably easy divorce, the reconciliation committees are again being abused to frustrate divorce. The pattern is of reversion to the old patriarchal presumptions: in Uzbekistan women whose husbands do not consent to divorce have sometimes been debarred from all claims to the matrimonial assets.

Following the Soviet pattern, all the former Soviet states acknowledge the mother's right to custody of the children, give paid maternity leave of varying lengths, (often, at the moment at least, considerably longer than under the Soviet regime) and pay the mother an allowance in relation to each child, whether legitimate or not. If the biological mother is not the primary carer the benefits can be transferred to whoever is.

Increasingly, these benefits are casualties of the economic pressures on Central Asia and the Caucasus: in Georgia, for instance, paid maternity leave has been dramatically curtailed. This pattern is likely to be repeated throughout the region: child and maternal support are getting pushed ever further down the list of national priorities.

Muslims comprise the majority of the population in all the Central Asian and Caucasian states except Kazakhstan, where the proportion is about 50 percent. Those proportions may well grow in the future. There are some indications that Islamic enthusiasm is growing too, but Hanafi Islam has never been fertile soil for violent Islamic revolution. The veil is commonly seen in Uzbekistan and Tajikistan. Islamist groups, especially in Tajikistan, are advocating voluntary seclusion of women. Gulf oil money pays for splendid new mosques and Islamic schools throughout the region.

Most of the Central Asian republics are worse off economically than they were under the Soviet regime, which subsidized Central Asia. Economic considerations are important in determining the way that Central Asian women live. While Islam classically flourishes where there is economic hardship and political repression, those conditions can sometimes inhibit a conservative Islamic lifestyle. Seclusion in Tajikistan, for instance, is unpopular because it means that only men can support the family financially, and that is difficult. The marriage and divorce rates have dropped dramatically in the region since independence. In the Caucasus the marriage rate has fallen by 49 percent since 1989; the divorce rate has fallen by 57 percent. In Central Asia the corresponding figures are 31 percent for marriage and 7 percent for divorce. Economic hardship is commonly given as the reason: dowries are more difficult to find. Those women who do marry seem to be marrying earlier than they did; again, economic necessity might be the reason.

Despite the drop in the overall incidence of marriage, polygyny (banned throughout the region in the Soviet era but never entirely extinguished) is growing in popularity throughout the region. It remains technically unlawful, since the old Soviet legislation still applies. There are several reasons for its renaissance. Particularly in Tajikistan, the large number of men working abroad has meant a dearth of male candidates for marriage back at home. Although women tend to dislike the idea of polygyny, it is often seen as preferable to destitution or prostitution. Sometimes having an additional wife is simply a badge of wealth. And sometimes the men have mundane practical reasons: in Kazakhstan, for instance, second wives are often rather older than the first, and are frequently justified financially on the grounds of the help they can give around the house, and with the children of the already established family.

Covert polygyny leaves women terribly exposed. There are calls throughout many of the Central Asian republics (most stridently in Tajikistan) for legal recognition and regulation of polygamous marriages. Predictably, these calls are often framed in Islamic terms, and accordingly often resisted on the grounds that if Sharīʿa gets a foot in the legal door it will soon take over the whole house.

Both the incidence and the severity of domestic violence (often an index of economic depression) have apparently increased significantly across Central Asia since the fall of the Soviet Union. In 1997, 25 percent of women in Azerbaijan reported being beaten regularly and forbidden to leave the house alone. In Tajikistan, 23 percent of women reported physical domestic abuse. In Kyrgyzstan, injuries from domestic violence requiring hospital attention are increasing.

Afghanistan is of course a much discussed exception to much of what has been said in this entry.

Historically a liberal Hanafi state, it was catapulted into the notorious rule of the Taliban by the Soviet invasion of 1979, the subsequent war, and the triumphant expulsion of the Soviets in 1989. The Taliban regime fell in 2001. The new constitution says that no law should be "contrary to Islam," and requires the state to create a democratic society based on social justice, and to protect human dignity and rights. The state is pledged to abide by the United Nations Charter, a number of international treaties and conventions, and the Universal Declaration of Human Rights. It remains to be seen what this means in practice for Afghanistan's women.

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