

Secular Law and Sacred Norms: Evaluating Uzbekistan's Constitutional Framework

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Abstract

This article examines the relationship between the Constitution of Uzbekistan and Islamic law (Sharia), analyzing the extent of compatibility and potential conflict between the two systems of legal and moral authority. While the Constitution of Uzbekistan is a modern, secular document that reflects the nation's sovereignty and democratic aspirations, it also acknowledges the significant role of Islam in the cultural and historical life of the Uzbek people. This study explores the interplay between secular constitutionalism and Islamic law, with a focus on constitutional provisions related to human rights, the legal system, and religious freedoms. Through a comparative analysis, this article identifies areas where Islamic law may complement the Constitution and instances where tensions arise. The findings indicate that while Uzbekistan's legal framework is largely secular, there are spaces where Islamic principles can influence societal norms, particularly in the domains of family law and personal conduct.

Keywords: Constitution, Islamic law (Sharia), Islamic jurisprudence, fiqh, secularism, secular state, theocratic state.

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1. Introduction

The Constitution of Uzbekistan, adopted in 2023 following the country's independence from the Soviet Union, established a secular, democratic framework for governance. However, Uzbekistan is a predominantly Muslim country, with Islam deeply embedded in its culture and traditions. This duality presents unique challenges for the legal system, especially in balancing the secular nature of the state with the religious values that shape public life.

Uzbekistan's Constitution guarantees various rights and freedoms, such as freedom of speech, religion, and assembly, but it does not explicitly reference Islamic law (Sharia) as a legal source. Instead, the Constitution emphasizes the primacy of secular laws in regulating

public life. Despite this, Islamic law continues to play a significant role in the everyday lives of citizens, particularly in areas such as family law, marriage, inheritance, and personal conduct. This article explores the tension between the secular legal system established by the Constitution and the traditional influence of Islamic law in Uzbekistan.

The objective of this study is to investigate the compatibility between the Constitution of Uzbekistan and Islamic law, considering the constitutional guarantees for religious freedom and the role of Islam in shaping social norms. It examines both the constitutional framework and Islamic legal principles, highlighting areas of overlap and divergence. It is crucial to determine whether the Constitution of Uzbekistan is based on the pure secular law or Islamic law (sharia)

2. Methods

This study employs a comparative legal analysis method, utilizing both primary and secondary sources. The primary sources include the full text of the Constitution of Uzbekistan and Islamic legal texts (primarily focusing on classical Islamic jurisprudence or *fiqh*). Secondary sources include academic literature, articles, and reports on the legal system of Uzbekistan and the role of Islam in its society.

The methodology involves:

1. Textual analysis: A close examination of the relevant constitutional provisions in Uzbekistan's Constitution, particularly those related to religion, human rights, and the legal system.
2. Comparative analysis: Identifying parallels and contrasts between the principles of Islamic law and the constitutional framework of Uzbekistan, especially in areas such as family law, property rights, and personal freedoms.
3. Case studies: A review of instances where Islamic principles have been incorporated into the legal system in practice, especially in family and inheritance law, to assess the extent to which Sharia influences the country's legal landscape.

This methodology provides insights into the ways in which Uzbekistan navigates the challenges of balancing modern secular governance with its Islamic heritage.

3. Results

Today, Islam is the second largest religion in the world. According to estimates, the total number of people who believe in Islam in the world has reached two billion people.

In more than one hundred and twenty countries of the world where there are Islamic communities, Muslims are the majority. The modern Islamic concept of the world legal order mainly takes into account legal concepts traditional to Islam, in which law is closely related to moral and religious norms.

Norms of Islamic law and moral and religious rules form a single religious-legal system - Islamic law. It lays down general legal guidelines and rules of conduct that also affect the field of international law. However, the specific norms of Islamic law are not automatically

transferred to the field of foreign policy and international legal regulation.

According to Islamic scholars, it is the way of life, thinking, work and property balance of Muslims. The words of Prophet Mohammad (PBUH): "White is not superior to black, Arab is not superior to non-Arab", "All people are brothers, they are equal before God alone" can be accepted as a just and moral system.

In Uzbekistan, where the majority of the population is traditionally of the Islamic religion, there is a practice of social support of enlightened Islamic ideas. The fact is that due to historical reasons, Islam was manifested not only as a religion, but also as the basis of people's way of life, thinking, state structure, law, and culture.

The current stage of the construction of the state and society in Uzbekistan is taking place in conditions where local and foreign experience has been accumulated in the formation of a democratic, legal secular society on a constitutional basis. The Constitution is the greatest achievement of world civilization. It reflects the characteristics of the state form depending on the historical development and national mentality, develops humane legal relations between the state and religion.

The adoption of the special resolution "Enlightenment and religious tolerance" at the general session of the UN General Assembly was a vivid expression of Uzbekistan's initiative on religious tolerance. The draft special resolution called "Enlightenment and religious tolerance" developed by Uzbekistan was unanimously supported by all member states of the organization at the plenary session of the General Assembly held on December 12, 2018. The initiative to adopt this resolution was put forward by the President of the Republic of Uzbekistan at the 72nd session of the UN General Assembly in New York in September 2017. Thus, this document, adopted on the initiative of President Shavkat Mirziyoyev, serves to strengthen the culture of religious tolerance among the peoples of the world.

Islamic law is not only in the East, but its development and enrichment is also present in the legal history of Uzbek country. Historical and legal sources indicate that over the course of twelve centuries, scholars from Mavorunnahr made significant contributions not only to the development of Islamic law (Sharia) but also to the preservation and further advancement of the Islamic religion. Over time, Islamic law developed as a separate

legal system . It should be noted separately that in 1937 the World Congress of International Comparative Law was held in The Hague, in which the famous Islamic scholar Mahmoud Shaltut (1893-1963) and the forty-third sheikh of al-Azhar participated. He participated in Islamic jurisprudence with a lecture on criminal and civil law issues, as well as on the relationship between Sharia and the Romano-Germanic legal system . As a result of this conference, Islamic law was recognized not only as an independent legal system, but also as one of the foundations of the modern legal system.

When commenting on the main sources of the Constitution of the Republic of Uzbekistan, they are as follows:

1. 1948 Universal Declaration of Human Rights.
2. 1966 International Covenant on Civil and Political Rights.
3. International Covenant on Socio-Economic and Cultural Rights of 1966 (Two Optional Protocols).
4. Constitutions of developed countries, historical traditions of uzbek people, and uzbek mentality are taken as sources.

The constitutional system is a system of legal relations in which the rights and freedoms of a person and a citizen are recognized and guaranteed, and the state is subject to law and, first of all, to the democratic Constitution .

The Republic of Uzbekistan is a secular state. A state in which the relationship between the state and religion is based on non-interference in each other's affairs and does not allow the establishment of any state religion is considered a secular state. It is known from history that in a number of countries, religious ideology rose to the level of state ideology, or some countries had a completely religious essence. It is known that "theocratic" states existed during the BC era. As typical examples of theocratic states in the present time, the Vatican City and the Kingdom of Saudi Arabia can be cited.

Today, there are countries in the world where the official state religion or the church has an authoritative status. For example, in Sweden, Norway, Denmark, Iceland - evangelical, Lutheran religious movement; In Portugal, Ireland - the Catholic Church; In Greece - the Eastern Orthodox religious direction; In Jordan, Syria, Egypt, Iran, Iraq - Islam; In Israel, Judaism has such a dominant position. In these countries, the privileged status of the

listed religions is strengthened at the constitutional level.

A promising approach for a secular state is the separation of the state from religion. Such countries include the USA, France, the Russian Federation, Bulgaria, the Republic of Uzbekistan, and others.

The Republic of Uzbekistan is a secular, enlightened country on the path of democratic development. The Constitution and laws have a special place in determining the place of religion in uzbek society, in legally rational regulation of the interaction between state agencies and religious organizations. In particular, the Constitution of Uzbekistan guarantees the right of citizens to freedom of conscience and religion. Article 35 of the Constitution of Uzbekistan enshrines the following provision: "Freedom of conscience shall be guaranteed to all. Everyone shall have the right to profess or not to profess any religion. Any compulsory imposition of religion shall be impermissible" .

In order to ensure the implementation of constitutional provisions establishing freedom of conscience and freedom of belief, the State of Uzbekistan adopted the Law "On Liberty of Conscience and Religious Organizations" (new version) on July 5, 2021. The law interpreted freedom of conscience as a guaranteed constitutional right of citizens to believe in any religion or not to believe in any religion.

In addition to strengthening the right of every person to freedom of thought, conscience and religion, Article 18 of the International Covenant on Civil and Political Rights states: may be accessed only with the necessary restrictions to preserve health and morals, as well as to protect the fundamental rights and freedoms of other persons" .

In Uzbekistan, a person can live a decent life and develop freely. Article 19 of Uzbekistan Constitution stipulates that all citizens in Uzbekistan have the same rights and freedoms and are equal before the law, regardless of gender, race, nationality, language, religion, social origin, belief, and social status. Article 39 defines the right of citizens to unite. According to this right, various associations, including religious, trade unions, political parties and other public associations can be formed. Different public institutions play different roles in the life of the state and society. Although the constitution declares the separation of religion from the state, to a certain extent religious organizations also participate in the implementation of state policy.

Developing the provisions of this status, Article 5 of the Law of the Republic of Uzbekistan "On Liberty of Conscience and Religious Organizations" states: "It is not allowed to use religion for anti-state, anti-constitutional propaganda, inciting enmity, hatred, inter-ethnic enmity, spiritual and moral principles and citizens disrupting harmony, spreading slander, destabilizing the environment of fabrication, among the population it is forbidden to cause panic and commit other actions against the state, society and the individual .

According to Article 71 of the Constitution, "Establishment of secret societies and associations is prohibited". Article 72 creates the legal basis for observing equal opportunities for public associations to participate in public life. In accordance with Article 11 of the Law "On Liberty of Conscience and Religious Organizations" in the new version, the powers of state bodies and self-government bodies of citizens in relations with religious organizations are determined. It is noted that coordination of relations between state bodies and religious organizations and control over the implementation of laws On Liberty of Conscience and Religious Organizations is entrusted to the Committee on Religious Affairs under the Cabinet of Ministers of Uzbekistan. Article 12 of this Law stipulates that religious organizations have the right to establish and support international relations for the purpose of pilgrimage or participation in other religious events in accordance with the law.

The analysis reveals that while Uzbekistan's Constitution does not formally incorporate Islamic law into its legal system, it is evident that Islamic principles influence certain aspects of the country's laws, particularly in family law.

3.1 Secularism in the Constitution

The Constitution of Uzbekistan, in its preamble and various articles, establishes the country as a secular state. Article 1 proclaims Uzbekistan as a "sovereign, democratic, legal, secular, and social state." The Constitution guarantees freedom of religion in Article 35, stating that "the state shall ensure freedom of religious confession," and this is consistent with secular legal principles. It emphasizes that religious institutions and clergy must not interfere in state affairs.

3.2 Human Rights and Religious Freedoms

In terms of human rights, the Constitution guarantees

basic civil liberties, including the right to freedom of thought, conscience, and religion. However, the Constitution also places limits on religious practices, especially in public spheres, aiming to maintain a separation between religion and politics. This secular stance is in tension with Islamic law, which traditionally integrates religion with governance and legal practices. The state allows its citizens to practice Islam freely, and the state recognizes the Islamic holidays, such as Ramadan and Eid, which are observed as public holidays.

3.3 Family and Inheritance Law

One of the most significant areas of overlap between the Constitution and Islamic law is in family law and inheritance. Uzbek family law has historically been influenced by Islamic legal principles. The Uzbek Family Code (1998) includes provisions on marriage, divorce, and inheritance that align with Islamic norms, such as the recognition of marriage as a contract, and the allocation of inheritance based on shares defined in Islamic law.

The Family Code allows for divorce under conditions prescribed by Islamic law, but also provides secular legal procedures to protect women's rights, which sometimes leads to conflicts between the secular and religious interpretations. For example, while Islamic law typically mandates that a woman's testimony may not carry equal weight to that of a man in certain contexts, Uzbek family law affirms the equality of both genders before the law.

3.4 Criminal Law and Islamic Influence

Uzbekistan's criminal code is largely secular, following Western-style penal principles. However, the role of Islamic law becomes evident in the social sphere, particularly in issues such as public morality, modesty, and the prohibition of alcohol. There have been instances where Sharia-related practices, such as fasting during Ramadan or prohibitions against gambling, are encouraged or supported by social norms, even though they do not have a direct legal basis. While the secular legal system of Uzbekistan is based on modern legal codes that adhere to international human rights standards, Islamic criminal law (Sharia) includes some punishments and concepts that are not compatible with contemporary legal norms. For example, punishments for offenses such as theft, adultery, and apostasy under traditional Islamic law may involve corporal punishment, including flogging or amputation, which is not part of

Uzbekistan's secular criminal justice system. Although Uzbekistan's penal code is largely modern and aligns with international human rights norms, the debate around the application of Hudud punishments (severe punishments for certain crimes in Islamic law) remains a sensitive issue in some regions.

3.5 Freedom of Expression and Religious Extremism

The Uzbek state maintains strict control over religious expression, particularly regarding the potential for religious extremism. While the Constitution guarantees the freedom of religious practice, the state has implemented laws to regulate religious organizations and prevent the spread of extremist ideologies. In contrast, some interpretations of Islamic law emphasize the role of the state in promoting and enforcing religious observance. This tension reflects the challenge of balancing religious freedom with the need to maintain national security and prevent radicalization.

3.6 Religious Education

In terms of religious education, the Constitution and Islamic law also diverge. The Constitution provides for a secular education system, while Islamic law often emphasizes the importance of religious education. In Uzbekistan, religious education is closely monitored and regulated by the state to ensure that it aligns with national laws and prevents extremism. While students can study Islam, they are also required to receive secular education, creating a tension between the desire to preserve Islamic traditions and the state's need to regulate and control religious institutions.

4. Discussion

The comparative-legal analysis of the carried out regulatory legal documents allows to determine the perspectives of a deeper study of the problem of improving the relations between the state and the Islamic religion. The relationship between Uzbekistan's Constitution and Islamic law reflects a complex balancing act. On the one hand, the Constitution firmly establishes the country as a secular state with a commitment to religious freedom and human rights. On the other hand, Islamic law continues to exert a strong cultural influence on the legal and social systems, particularly in areas such as family law and personal conduct.

While the Constitution seeks to create a legal framework based on modern principles of democracy and human rights, it is impossible to ignore the influence of Islamic tradition in shaping the values and behaviors of Uzbek society. This duality is particularly apparent in family and inheritance law, where Islamic legal principles are often incorporated into the secular legal code, albeit in a modified form.

In some cases, tensions arise when Islamic law and the Constitution's secular provisions conflict. For example, the issue of gender equality in family law may clash with traditional interpretations of Sharia that assign different rights and responsibilities to men and women. Similarly, while the Constitution guarantees the right to religious freedom, social pressures may discourage non-Islamic religious practices, demonstrating the challenge of fully separating religion from public life.

Despite these challenges, the legal framework in Uzbekistan represents a pragmatic approach to navigating the complexities of a post-Soviet state with a rich Islamic heritage. The Constitution allows for religious expression and acknowledges the cultural significance of Islam, while still prioritizing the principles of secularism and human rights in governance.

For many centuries, traditional legal and moral norms of human behavior have been associated with Islam and its laws. It can be argued that in building a fair state and a free society, one must not forget that the pathways to achieving this noble goal are deeply rooted in thousand-year-old religious beliefs. It is no secret to any of us that Sharia norms have been in force in Uzbek country for more than twelve centuries.

The high moral-legal and spiritual-cultural values of Islam are gaining importance in the development of culture, strengthening of statehood, and ensuring the stability of socio-economic development of Uzbek country. Therefore, the study of Islam as a religious system of knowledge of the foundations of Sharia - a systematized collection of Islamic laws is of great scientific and practical importance. This is especially important in the development of the legal system of the state and society, the practice of market relations of the economy, and the development of the secular state in the period when fundamental reforms are being carried out in all aspects of the life of Uzbekistan Republic.

Shavkat Mirziyoev said that the Center of Islamic Civilization of Uzbekistan is being established in

Tashkent in order to deeply reveal the true humanitarian nature and content of religion. Also, in his speech at the conference dedicated to ensuring social stability and preserving the original content of the Islamic religion, the President of Uzbekistan spoke about the need to study the essence and meaning of the Islamic religion and inculcate it in the minds of young people. It was said that one should have a healthy attitude towards Islam .

5. Conclusion

The relationship between the Constitution of Uzbekistan and Islamic law reflects the country's unique positioning at the crossroads of secular governance and a strong Islamic identity. While the Constitution guarantees the principles of secularism, human rights, and democratic freedoms, it also acknowledges the profound influence of Islam on the culture, values, and social norms of the Uzbek people. This dual framework presents both opportunities and challenges for the country as it strives to balance modern legal principles with traditional religious values.

The secular legal system of Uzbekistan, grounded in the Constitution, ensures equality before the law, the protection of individual rights, and the separation of religion and state, aligning with global human rights standards. At the same time, Islamic principles continue to influence key areas such as family law, social ethics, and public behavior, demonstrating that religion remains an integral part of the country's cultural fabric.

Despite the secular nature of the Constitution, there are areas of divergence between the legal frameworks of Sharia and the state's laws, particularly in the domains of women's rights, criminal law, and freedom of expression. These divergences highlight the ongoing challenge for Uzbekistan in harmonizing its secular legal structure with the religious traditions that shape its society.

As Uzbekistan continues to evolve as an independent state, it will likely continue navigating this delicate balance between secularism and Islamic law, ensuring that both constitutional values and Islamic traditions are respected. Ultimately, the future of Uzbekistan's legal system will depend on its ability to integrate modern governance with its Islamic heritage, maintaining a system that is both inclusive and reflective of its cultural and religious identity.

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