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ENSURING CHILDREN'S RIGHTS AND BEST INTERESTS FOLLOWING THE DISSOLUTION OF MARRIAGE

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Abstract: This article examines the legal and practical challenges of ensuring children's rights and best interests following the dissolution of marriage in Uzbekistan. It analyzes national legislation and judicial practice concerning child custody, parental responsibilities, the child's place of residence, and the consideration of the child's views. Particular attention is paid to the influence of social, cultural, and religious values on custody-related decisions, as well as the potential psychological consequences of parental separation. Based on judicial materials and relevant scholarly literature, the article identifies existing gaps and proposes recommendations for improving the legal protection of children.

Keywords: children's rights; best interests of the child; divorce; dissolution of marriage; child custody; parental responsibilities; child's place of residence; parental rights; judicial practice; family law.

Across the world, protecting children's rights and their legitimate interests, providing them with social and economic support, and ensuring their healthy and harmonious development are regarded as among the most important priorities. After all, children are the foundation of the future.

In this regard, a number of international legal instruments have been adopted, and organizations dedicated to safeguarding children's rights have been established. Nevertheless, significant challenges remain, and further measures are still required to ensure the effective protection and realization of children's rights.

In particular, Barbara Bennett (2002), John M. Nunley and Richard Alan Seals (2011), Heikki Hiilamo and Miia Saarikallio-Torp (2011), Daniel Fernández-Kranz, Jennifer Roff and Hugette Sun (2021), among others, have examined various dimensions of child custody disputes, including their specific characteristics and forms, as well as the rights, responsibilities, and entitlements of mothers and fathers. Their studies have contributed significantly to the understanding of the legal and socio-economic factors underlying parental disputes and their implications for children.

Nevertheless, the issue of child custody following the dissolution of marriage remains insufficiently explored in the Uzbek scholarly and legal context. In particular, there is a need for further research into the respective rights and responsibilities of parents following divorce, as well as the factors that influence the child's upbringing, development, and overall well-being in such circumstances. This issue is especially relevant given the distinctive nature of family and child-custody relations in Uzbekistan. The resolution of parental disputes within Uzbek society is shaped by the interaction of several normative and socio-cultural factors, including national traditions and values, elements of Western and Soviet legal legacies, and the influence of Islamic legal culture. Consequently, the regulation and adjudication of child-custody disputes in Uzbekistan require a context-sensitive approach that takes into account not only formal legal norms but also the broader social, cultural, and historical environment in which family relations are embedded.

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However, due to a range of objective and subjective factors, the incidence of marital dissolution in Uzbek society has, regrettably, been increasing.

According to official statistical data, 132,634 marriages were registered in Uzbekistan in 2025, representing a considerable decline compared with previous years. By comparison, 149,096 marriages were registered in 2022, 139,741 in 2023, and 136,713 in 2024. These figures indicate a gradual decline in the number of registered marriages in the country, accompanied by a persistently high level of marital dissolution.

At the same time, the number of divorces has also increased significantly. In 2025, 46,914 divorces were registered, with the overall trend over the past five years demonstrating a substantial increase. In particular, 28,233 divorces were registered in 2020, 39,349 in 2021, 48,733 in 2022, 49,198 in 2023, and 45,132 in 2024.

Taken together, these indicators demonstrate the pressing need to examine a range of issues arising in the context of marital dissolution, including the legal status of children, the nature and future development of their relationships with their parents, the protection of childhood, and the safeguarding of children's physical and psychological development following parental separation. Accordingly, the study of these issues constitutes one of the most pressing areas of contemporary family-law research.

A substantial body of empirical research has demonstrated that parental divorce may have adverse effects on children's psychological well-being, particularly during the initial period following the dissolution of marriage (e.g., Guidubaldi & Perry, 1985; Hetherington, Cox, & Cox, 1979b; Wallerstein & Kelly, 1980). From this perspective, a sociological analysis of child-custody arrangements is particularly significant. Such an analysis contributes to a deeper understanding of the substance and underlying rationale of the legal norms governing these relationships, the factors taken into consideration by courts when making custody-related decisions, and the respective legal positions and interests of mothers and fathers throughout the process (B. Sales & R. Manber, 1992).

This study examines the legal status of children in family relations, particularly in proceedings concerning child custody following the dissolution of marriage, the extent of parental involvement in the upbringing of their children, and the key considerations that should be taken into account when resolving child-custody disputes in Uzbekistan.

To provide a comprehensive theoretical and practical analysis of the issue and to formulate evidence-based conclusions and recommendations, the study seeks to address the following research questions:

- What are the distinctive features of the legal framework governing child-custody disputes in Uzbekistan?
- What roles do fathers and mothers play in child-custody proceedings in Uzbek society, and to what extent does the judiciary tend to favor one parent over the other when determining custody?

It should be emphasized that, shaped by long-standing traditions and deeply rooted national values, the family in Uzbekistan is regarded as a fundamental institution of society and plays a vital role in the upbringing and development of children. Accordingly, one of the fundamental principles underlying the national legal framework governing family relations is the protection of a child's right to live and be brought up in a family environment. Every child has the right to live together with his or her parents.

Nevertheless, in circumstances involving the dissolution of marriage, as described above, determining which parent the child should reside with and which parent should assume primary responsibility for the child's upbringing and development becomes a matter of particular legal and practical significance. This is because a minor child is, by nature, particularly vulnerable and psychologically impressionable and therefore requires special care, protection, and support.

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When determining which parent should assume responsibility for a child's upbringing following the dissolution of a marriage, each country has developed its own distinctive rules based on its historically evolved values and the legal norms enshrined in its legislation. Uzbekistan is no exception, and such matters are addressed in accordance with established legal procedures.

Under the family legislation of the Republic of Uzbekistan, all matters relating to the education and upbringing of children are to be resolved by the parents through mutual agreement, taking into account the best interests of the child and the child's views. Where disagreements arise between the parents, either parent may apply to the guardianship and trusteeship authority or to a court for resolution of the dispute. When parents live separately, the child's place of residence is determined by mutual agreement between the parents. In the absence of such an agreement, the dispute is resolved by the court on the basis of the child's best interests and with due consideration given to the child's views.

In determining the child's place of residence, the court takes into account a range of relevant circumstances, including the child's attachment to each parent, as well as to siblings; the child's age; the moral and other personal qualities of each parent; the nature of the relationship between the child and each parent; and the ability of each parent to provide appropriate conditions for the child's upbringing and development, including factors such as the parent's occupation, working schedule, financial circumstances, family situation, and other relevant considerations (Family Code of the Republic of Uzbekistan).

Accordingly, in cases concerning the determination of child custody and residence, courts are guided by the **"the best interests of the child" principle**. This principle provides an important framework for safeguarding the child's rights, interests, and needs and serves as a fundamental criterion in judicial decision-making concerning the parent with whom the child should reside and who should assume primary responsibility for the child's upbringing (Silman Committee, 2014, Report Examining the Ministry's Policy on Out-of-Home Placement of Children and the Issue of Visiting Rights).

It should be noted that observations of child-custody cases heard by civil courts, together with an analysis of relevant statistical data, indicate that, following the dissolution of marriage, minor children are more frequently placed in the care and custody of their mothers. This tendency may be explained by several interrelated social, cultural, and legal factors.

On the one hand, Uzbek society has traditionally placed particular emphasis on respecting, supporting, and protecting women and recognizing their social role and status. On the other hand, national policies and legislation provide enhanced safeguards and, in certain areas, additional benefits aimed at protecting the rights and interests of women. Such measures may be understood within the framework of positive discrimination or affirmative measures designed to address existing social inequalities.

These cultural traditions and legal guarantees may also influence the resolution of child-custody disputes. Consequently, although judicial decisions are formally expected to be based on the best interests of the child and an assessment of the specific circumstances of each case, broader social attitudes and legal approaches concerning the protection and social role of women may also be reflected in decisions determining which parent assumes primary responsibility for the child's upbringing.

A number of judicial decisions likewise indicate that the role of the mother in child-rearing is given considerable importance in Uzbekistan. In addition, mothers are often able to devote more time than fathers to childcare, daily supervision, and the child's overall development. These circumstances appear to be taken into consideration by courts, at least in some cases, when adjudicating disputes concerning child custody and residence. Notably, there are cases in which a father's claim has been

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rejected despite the absence of any negative characteristics or conduct on his part and despite his ability to provide adequate conditions for raising and caring for his children.

A comparable approach can be observed in Türkiye, a country whose cultural traditions and social values share certain similarities with those of Uzbekistan. In divorce proceedings, Turkish courts may address issues concerning child custody and the arrangements for the child's upbringing alongside the dissolution of the marriage itself.
(https://legamart.com/articles/complete-guide-on-child-custody/) Such an approach may help reduce the likelihood of subsequent disputes between divorced parents concerning the upbringing and care of their children and, importantly, minimize the potential adverse effects of prolonged parental conflict on the child's psychological well-being and development.

It is important to emphasize that, in Uzbek society, factors such as the gender and age of the child may also exert a certain influence on disputes concerning child custody and upbringing. Historically, the father has predominantly been perceived as the primary breadwinner and financial provider for the family. Retrospective analyses indicate that men traditionally engaged in economic activities outside the home and were therefore associated with the public sphere, whereas women were more commonly engaged in domestic responsibilities. As a result, mothers have traditionally assumed a greater share of childcare and child-rearing responsibilities. This historical and socio-cultural pattern may partly explain why courts in some jurisdictions have tended to favor mothers when determining child custody (Henry H. Foster, Child Custody and Divorce: A Lawyer's View).

Nevertheless, under the national legislation of Uzbekistan, parents enjoy equal rights and bear equal responsibilities in relation to their children. Despite this formal legal equality, empirical observations and case analysis indicate that disputes over the custody and upbringing of children arise relatively infrequently when a marriage is dissolved in Uzbekistan. One possible explanation is that a considerable number of fathers do not seek to assume primary custody of their children following divorce, particularly where they subsequently establish a new family.

Parental Rights in Relation to a Minor Child During the Reconciliation Period Granted by Courts in Divorce Proceedings:

It should be noted that marital conflicts may result in spouses living separately, and where such conflicts become particularly serious, the parties may apply to civil courts for the dissolution of their marriage. Although the marriage remains formally valid during this period, the spouses' separate living arrangements may have adverse effects on the child's psychological well-being, upbringing, and development. This is particularly relevant because, under national legislation, divorce proceedings may be procedurally time-consuming. During this period, disputes may naturally arise concerning the parent responsible for the child's day-to-day upbringing, as well as the other parent's right to maintain contact with and visit the child.

According to the Article 40 of the Family Code of the Republic of Uzbekistan, when considering a divorce case, the court may postpone the proceedings and grant the spouses a reconciliation period of up to six months. Judicial practice indicates that, in a considerable proportion of divorce proceedings, courts grant the parties such a period to reconcile.

However, the legislation does not expressly regulate where the child should reside during this reconciliation period or which parent should be primarily responsible for the child's upbringing. In practice, the mother generally assumes responsibility for the child's day-to-day care and upbringing, reflecting established national traditions and social values. The tendency to place the child in the mother's care and allow the child to reside with her during this period may be understood in the context of customs and values that have historically developed within Uzbek society, including the influence of Islamic traditions.

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It should further be noted that, under the Family Code of the Republic of Uzbekistan, where family relations are not directly regulated by specific legislative provisions, local customs and traditions may be applied, provided that they do not contradict the fundamental principles of Uzbek legislation governing family relations.

In particular, such conclusions can be drawn from an analysis of the judicial materials examined within the framework of this study. For example, in January 2024, a claimant, O.A., filed a lawsuit against the respondent, A.N., before one of the civil courts seeking dissolution of their marriage. According to the statement of claim, the parties had entered into a legally recognized marriage in 2011 and had two children. However, due to persistent marital conflicts, they had been living separately since 2022.

Having considered the circumstances presented by the parties, the court concluded that there was no longer a realistic possibility of the spouse's resuming cohabitation or preserving the family and therefore granted the claim for dissolution of the marriage. The court also ordered that the two minor children remain in the care of their mother.

This case illustrates that, even before the formal dissolution of the marriage, the children had remained in their mother's care and that the allocation of parental responsibilities concerning their upbringing was, to a certain extent, shaped by established national traditions and customary practices.

However, a number of important questions arise in situations where the spouses disagree over which parent should live with the children until the final determination of the divorce proceedings. What happens when both parents assert their respective parental rights and a dispute consequently arise over the child's residence and upbringing? Could such a conflict between the parents have adverse consequences for the child's psychological well-being and development?

In our view, these issues warrant further empirical investigation. In particular, conducting sociological research involving parents who have experienced such circumstances, with particular attention to the experiences and well-being of the children involved, could provide valuable evidence for assessing the effectiveness of the existing legal framework. Such research could, in turn, contribute to the development of evidence-based proposals for improving national legislation and strengthening mechanisms for safeguarding the best interests of the child during divorce proceedings.

Such Rules May Also Exist in Countries Where Religious Values Play a Significant Role

In the context of countries where religious values exert a significant influence on family relations, similar rules and approaches may also be observed.

Scholarly research indicates that the age of the child at the time of parental separation or divorce is an important factor influencing the child's subsequent behavior and ability to adapt to the post-divorce circumstances (Bruce Sales & Rachel Manber, Social Science Research and Decision Making in Child Custody, 1992). In general, the later in the child's development parental separation occurs—that is, the closer it occurs to adolescence and later stages of childhood—the more profound its potential effects may be on the child's subsequent development, upbringing, behavior, and psychological adjustment (Kelly & Wallerstein, 1976; Kurdek, Blisk, & Siesky, 1981; Kurdek & Siesky, 1980a; Wallerstein & Kelly, 1974, 1975, 1976, 1980).

In particular, Article 47 of the Code of the Republic of Uzbekistan on Administrative Responsibility establishes liability for parents and persons acting in their place for failure to fulfill their obligations concerning the upbringing and education of children. A particularly noteworthy aspect, however, is that the wording of Article 47 does not clearly specify which parent should be held liable for failure to discharge the relevant obligations in relation to a minor child.

An analysis of judicial cases examined under this provision within the framework of this study reveals that, in the majority of cases, the mothers of the minors concerned were held administratively

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liable. In many of these cases, the parents of the minor who committed the relevant offense had previously divorced, and the minor children had been placed in the mother's care pursuant to a court decision.

These findings provide further evidence that, in cases of divorce in Uzbek families, minor children are frequently placed in the mother's care. Moreover, as noted above, parental separation or divorce may have a significant impact on a child's upbringing, behavior, and psychological development. In certain circumstances, such adverse effects may increase the risk of children engaging in various forms of unlawful or delinquent behavior. Consequently, the relationship between parental separation, the allocation of parental responsibility, and subsequent child development warrants closer examination from both legal and socio-psychological perspectives.

Overall, when adjudicating divorce proceedings, courts face the complex task of ensuring the effective protection of children's rights and legitimate interests and making decisions that safeguard the child's well-being and provide adequate and stable living conditions.

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