

“EMANCIPATING” MUSLIM WOMEN IN EARLY
NINETEENTH-CENTURY RUSSIA: ĀKHŪND
FATHULLAH BIN HUSEYN AL-URIWI, ḤANAFĪ
LAW, AND MUSLIM WOMEN’S RIGHTS¹

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Abstract

This paper examines the legal authority of Fathullah Huseyn ughli, a prominent jurist (ākhūnd) of the Volga-Ural region between the 1820s and his death in 1843. The analysis focuses on the fatwās he issued and legal cases he resolved regarding women’s divorce. Huseyn ughli’s fatwās reveal several significant points. Firstly, despite increased regulation of Muslim marriage and divorce by the Russian Empire during this period, Huseyn ughli maintained his legal authority and made independent legal decisions with the authorization of the Orenburg Assembly. Secondly, his fatwās highlight his support for women who were suffering and his efforts to find solutions for each unique case with the assistance of local Muslim communities. He utilized his legal authority to identify loopholes and deliver rulings that diverged from mainstream Ḥanafī opinions, particularly regarding divorce based on non-maintenance. However, his flexibility was limited after 1841–42, when Muftī Suleymanov intervened, establishing the mainstream Ḥanafī position that prohibited divorce in such cases and enforcing it as a rule for all Volga-Ural ‘ulamā’.

Keywords: Ākhūnd Fathullah Huseyn ughli al-Uriwi, Islamic family law, delegated divorce, annulment, non-maintenance, Muftī Suleymanov

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On April 27, 1843, the *mufī* of the Orenburg Muslim Spiritual Assembly (hereafter the Orenburg Assembly), ‘Abdulwahid Suleymanov, received a letter from a prominent *ākhūnd*,² Fathullah bin Huseyn al-Uriwi,³ (hereafter Huseyn ughli) who asked for a confirmation of his decision to annul (*faskh*) a marriage, based on a passage (*ibāra*) regarding a husband who does not provide maintenance for his wife found in the Ḥanafī legal manual *Durar al-ḥukkām fī sharḥ Ghurar al-aḥkām*, by the fifteenth-century scholar Mullā Khusraw. Although until this point Huseyn ughli had been dissolving marriages on the basis of this legal source and an authorizing decree of the Orenburg Assembly from September 4, 1831 (no. 1206, hereafter Decree 1206),⁴ the *mufī* of the Orenburg Assembly harshly rejected the request of Huseyn ughli. Muftī Suleymanov declared that neither the *ākhūnd* nor other religious scholars could use that passage from *Durar* to dissolve marriages, as it had a weak legal basis and could lead to “social strife” (*fitna*) within the Muslim community.⁵

The rejection of the *Durar* passage by the *mufī* of the Orenburg Assembly is understandable, as the Ḥanafī school of Islamic law (*madhhab*), which the Muslims of the Volga-Ural region of the Russian Empire followed, did not consider non-maintenance to be valid reason for dissolution of

2 *Ākhūnds* were religious scholars in the Volga-Ural region of the Russian empire who were considered to be experts on Islamic legal matters, i.e. Islamic jurists.

3 *Ākhūnd* Huseyn ughli’s biography is included in RIZAEDDIN FAKHREDDIN, *ĀTHĀR* (1905), in volume 2, part 9. On *Ākhūnd* Huseyn ughli, see MICHAEL KEMPER, *SUFIS UND GELEHRTE IN TATARIEN UND BASCHKIRIEN, 1789–1889: DER ISLAMISCHE DISKURS UNTER RUSSISCHER HERRSCHAFT* (1998); Rozaliya Garipova, *Where Did the Ākhūnds Go? Islamic Legal Experts and the Transformation of the Socio-Legal Order in the Russian Empire*, 19 *YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW* 38 (2018); Rozaliya Garipova, *Between Imperial Law and Islamic Law: Muslim Subjects and the Legality of Remarriage in Nineteenth Century Russia*, in *SHARIA IN THE RUSSIAN EMPIRE: THE REACH AND LIMITS OF ISLAMIC LAW IN CENTRAL EURASIA, 1550–1917*, 156–82 (2020).

4 Decree of the Orenburg Assembly from September 4, 1831, no. 1256 (or 1206, according to *Āthār*) about dissolution of marriages for the reason of non-maintenance (*o rastorzhenii brakov za ostavleniem muzh’iami zhen svoikh bez sredstv k propitaniyu*). Mentioned in TsGIA RB, f. 295, op. 3, d. 2809, l. 27 ob., l. 35. See also Garipova, *Between*, *supra* note 3 at 168.

5 FAKHREDDIN, *supra* note 3 at 2:33 (Letter 21).

marriages (*tafrīq/faskh*).⁶ In different parts of the Islamic world, Muslim communities which followed the Ḥanafī school of Islamic law found different ways of circumventing that restriction.⁷ Since other schools of Islamic law permitted separation on the basis of non-maintenance or desertion, women were able to “forum-shop” and resort to the help of Mālikī, Shāfi‘ī, or Ḥanbalī judges, who granted annulment in these cases. In some societies, the Ḥanafī ‘*ulāma*’ allowed women to claim a temporary change of the school of law that they followed and to apply the permissive rulings of the alternative school.⁸ However, these methods were not accessible to the Muslims of the Volga-Ural region, and Muslim women whose husbands could not or would not support them had to suffer financial difficulties and could not obtain divorces, which would allow remarriage. This article claims that Huseyn ughli responded to that communal problem and supported women’s right to dissolve marriage by going beyond Ḥanafī mainstream thought on divorce. After years of consistently recognizing that non-maintenance justified a woman’s claim to divorce under Ḥanafī law, Huseyn ughli’s seemingly flexible approach to legal reasoning fell victim to the intervention of his superior, the *mufī*, who wanted to bring more uniformity to the interpretation and practice of Islamic law from the top down. This effort was also in line with the Russian imperial efforts to bring order to the Muslim family.⁹

6 All other schools of Islamic law, except the Ḥanafī, allowed women to seek divorce or annulment of marriage with a *qāḍī*. See JUDITH TUCKER, WOMEN, FAMILY AND GENDER IN ISLAMIC LAW 52 (2008); SUSAN A. SPECTORSKY, WOMEN IN CLASSICAL ISLAMIC LAW: A SURVEY OF THE SOURCES 181–82 (2010).

7 JUDITH E. TUCKER, IN THE HOUSE OF THE LAW: GENDER AND ISLAMIC LAW IN OTTOMAN SYRIA AND PALESTINE 83–84 (1998); Kenneth Cuno, *Reorganization of the Sharia Courts of Egypt: How Legal Modernization Set Back Women’s Right in the Nineteenth Century*, 2 JOURNAL OF THE OTTOMAN AND TURKISH STUDIES ASSOCIATION 85 (2015).

8 İsmail KIVRIM, *17. yüzyılda Osmanlı Toplumunda Boşanma Hadiseleri (Ayıntâb Örneği; Talâk, Muhâla‘a ve Tefrîk)*, 10 GAZİANTEP ÜNİVERSİTESİ SOSYAL BİLİMLER DERGİSİ 371, 388 (2011); Hatice Kubra Kahya, *Çareyi Başka Mezhepte Aramak: Osmanlı Aile Hukukunda Mefkûd/Gâib Kocanın Evliliği Problemi*, 12 İSLAM TETKİKLERİ DERGİSİ (JOURNAL OF ISLAMIC REVIEW) 697, 703 (2022).

9 Rozaliya Garipova, *Bringing Order to the Muslim Family: Aleksandr Golitsyn and Imperial/Colonial Law for the Muslim Family*, 43 ACTA SLAVICA IAPONICA 25 (2023).

This study examines the legal authority of Fathullah Huseyn ughli, a highly regarded *ākhūnd* in the Volga-Ural region during a crucial period in the implementation of Islamic family law under Russian imperial rule. Appointed as an *ākhūnd* in 1814 and later as a senior *ākhūnd* in 1819, much of his work as *ākhūnd* occurred during the 1820s and 1830s. During this time, there were significant changes in the practice of Islamic law and the exercise of Islamic religious authority in the Russian Empire.¹⁰ In an effort to bring order to Islamic marriage and divorce practices, imperial authorities introduced various regulations, including the confirmation of the Orenburg Assembly as the highest Islamic legal institution,¹¹ the introduction of civil registries in 1828, a requirement of 1836 to record and provide summaries of all family law petitions from Volga-Ural Muslims sent to the Orenburg Assembly, the 1835 decree on minimum marriage age for Muslims, the 1836 decree allowing Muslim wives of exiles to remarry, and a number of other decrees.¹² *Ākhūnd* Huseyn ughli's *fatwās* from this period provide valuable insight into the exercise of Islamic legal authority during this time.

Scholars who study Islam in the Russian Empire claimed that the *ākhūnds* lost most of their legal authority under tsarist rule.¹³ This depiction reflects a broader pattern in the study of

10 On the changing conditions of Islamic legal practice in the first half of the nineteenth century, see: DANIL AZAMATOV, *ORENBURGSKOE MAGOMETANSKOE DUKHOVNOE SOBRANIE V KONTSE 18—NACHALE 20-GO VV.* (1999); ROBERT CREWS, *FOR PROPHET AND TSAR: ISLAM AND EMPIRE IN RUSSIA AND CENTRAL ASIA* (2006); MUSTAFA TUNA, *IMPERIAL RUSSIA'S MUSLIMS: ISLAM, EMPIRE AND EUROPEAN MODERNITY, 1788–1914* (2015); Garipova, *Where, supra* note 3.

11 The Orenburg Muslim Spiritual Assembly was established in 1788 by an imperial decree in an attempt to regulate relations of the Russian Empire with the Muslim population in the Volga-Ural region, Siberia, and the Kazakh steppe. The Assembly soon evolved into a Muslim court of appellations.

12 DMITRII IU. ARAPOV, *ISLAM V ROSSIISKOI IMPERII (ZAKONODATEL'NYE AKTY, OPISANIJA, STATISTIKA)* 114–16 (2001).

13 AZAMATOV, *supra* note 11 at 92; Marsil' N. Farkhshatov, *İdil-Ural Müslüman Ruhanilerinin Resmi Hiyerarşisinde Ahunlar (18-20. Asrın Başı)* in *CENTRAL EURASIAN STUDIES: PAST, PRESENT AND FUTURE* 501, 503 (Hisao Komatsu, Şahin Karasar, Timur Dadabaev, and Güljanat Kurmangaliyeva Ercilasun, eds., 2011); Nathan Spannaus, *The Decline of the Ākhūnd and the Transformation of Islamic Law under the Russian Empire*, 20 *ISLAMIC LAW AND SOCIETY* 202 (2013).

Muslim societies under colonial or imperial regimes, which shows that legal experts often became co-opted by the state and had their influence curtailed.¹⁴ More recent studies, however, have focused more on how Muslim elites coped with the challenges of colonialism and continued to address social problems and render legal decisions in colonial contexts.¹⁵ As I have demonstrated elsewhere, *ākhūnds* continued to be vital legal authorities and persisted in rendering final legal decisions until the end of the tsarist regime.¹⁶ Despite being accountable to state institutions such as the Orenburg Assembly, *ākhūnds* continued to adjudicate family law cases and make legal decisions independently. In fact, Huseyn ughli’s *fatwās* from the 1820s and 1830s demonstrate that he issued independent legal decisions on various marriage, divorce, and inheritance cases until the early 1840s. Although the Russian imperial state began to intervene in the Muslim community more assertively during this period, I suggest that the adjudication of Islamic legal cases remained relatively flexible and largely unaffected by state intervention. Huseyn ughli emerged as the leader of the Muslim community who sought to address a communal problem that he had observed in his community: the plight of women whose husbands abandoned them and failed to provide for their maintenance.

This paper is based on nineteen *fatwās* delivered by Huseyn ughli upon request from different individuals seeking his legal opinion.¹⁷ These cases are recorded in Rizaeddin Fakhreddin’s biographical dictionary of the Volga-Ural region, *Āthār*, in the form of letters. Each letter represents a single legal

14 See, for example, WAEL HALLAQ, *SHARĪ‘A: THEORY, PRACTICE, TRANSFORMATIONS* (2009).

15 M. Q. ZAMAN, *THE ULAMA IN CONTEMPORARY ISLAM: CUSTODIANS OF CHANGE* (2007); M. KH. MASUD, B. MESSICK, AND D. POWERS (EDS.), *ISLAMIC LEGAL INTERPRETATION: MUFTIS AND THEIR FATWAS* (1996); M. KH. MASUD, R. PETERS, AND D. POWERS (EDS.), *DISPENSING JUSTICE IN ISLAM: QADIS AND THEIR JUDGMENTS* (2006); NURFADZILAH YAHAYA, *FLUID JURISDICTIONS: COLONIAL LAW AND ARABS IN SOUTHEAST ASIA* (2020); IZA HUSSIN, *THE POLITICS OF ISLAMIC LAW: LOCAL ELITES, COLONIAL AUTHORITY, AND THE MAKING OF THE MUSLIM STATE* (2016); Sohaira Siddiqui, *Navigating Colonial Power: Challenging Precedents and the Limitation of Local Elites*, 26 *ISLAMIC LAW AND SOCIETY* 272 (2018).

16 Garipova, *Where*, *supra* note 3.

17 I have used several of these letters in Garipova, *Between*, *supra* note

case involving family and inheritance issues and includes the *ākhūnd*'s resolution. In addition, archival records of eight cases in which Huseyn ughli investigated and provided his decisions are also included in the analysis. Three of these archival cases overlap with the letters in *Āthār*, which were most likely discovered by Rizaeddin Fakhreddin when he served as a *qāḍī* at the Orenburg Assembly and organized the institution's archive. The paper aims to investigate how Huseyn ughli arrived at different conclusions and explore the basis on which he made his decisions.

ĀKHŪND HUSEYN UGHLI AS A JURIST

Ākhūnd Huseyn ughli (1767–1843) was born in the village of Ura, which lies approximately 70 miles (112 km) northwest of the city of Kazan.¹⁸ After studying for a year at the important Muslim education center of the Volga-Ural region, Tatarskaia Kargala,¹⁹ he went to study in Bukhara in 1787 and in 1790. In 1795 he returned from Bukhara and in 1799 received a license to serve as imam in the village of Ura. As a *mudarris*, he trained many students, but also wrote a number of treatises on various legal, theological, and other issues. My focus in this paper is only on his activity as a *sharī'a* expert (or *ākhūnd*) in Islamic family matters. We know from his biography in *Āthār* that some of his students became *qāḍīs* at the Orenburg Assembly. He held high authority at the time of the *mufīī* of the Orenburg Assembly, 'Abdessalam 'Abdrakhimov (1825–40). According to Rizaeddin Fakhreddin, members of the Orenburg Assembly privately asked Huseyn ughli's opinions on many legal issues and used them in official decisions.²⁰

Huseyn ughli functioned as a *fatwā* issuer (*mufīī*), a judge (*qāḍī*), and legal supervisor (Tatar Turki, TT: *ākhūnd*) in

18 R. R. SALIKKHOV, *SLUZHILAIA URA: ROZHDENIE TATARSKOGO KAPITALIZMA* (2015).

19 Hamamoto Mami, *Tatarskaia Kargala in Russia's Eastern Policies*, in T. UYAMA, *ASIATIC RUSSIA*

IMPERIAL POWER IN REGIONAL AND INTERNATIONAL CONTEXTS 32 (2012).

20 FAKHREDDIN, *supra* note 3 at 2:7–13.

his region.²¹ He refers to himself as an *ākhūnd* to whom petitions were sent (TT: *ben morafi* ‘*aleyh akhund*).²² Women and men asked for *fatwās* (*istiftā*) and wrote him petitions (TT: ‘*ariza*, ‘*arz itdem*, *prusheniya yazdim*). In such a case, a woman, after explaining her problem/situation, could write “I would like to ask for a *fatwā*”: *shar* ‘*mujibinje fatwa yazib virsagez ide, fatwa yazib qulima viruegezne utenam*, or Huseyn ughli would mention in his reports that “a [man/woman] requested a *fatwā* from us, the *ākhūnd*” (TT: *biz akhunddan fatwa soradi*). In this case, *Ākhūnd* Huseyn ughli would issue a *fatwā* and indicate at the end that he authored it (TT: *oshbu fatwani yazib virdem, fatwa-name virdem*). A *fatwā* could be given in a written form or in an oral form (TT: *til ile fatwa verub idek*).²³

As a judge, Huseyn ughli shouldered numerous responsibilities. He convened and supervised *sharī’a* court gatherings (TT: *majlis, majlis shar*) and presided as a judge.²⁴ Being a judge entailed building and navigating relationship with other *mullās* and *ākhūnds*. The working relationship of Huseyn ughli with various members of the ‘*ulāma*’ constituted an important part of his work as a prominent *ākhūnd*. He investigated cases and sent orders and instructions to other imams to carry out processes of divorce and marriage and ordered them to record divorces and

21 In the Volga-Ural Muslim community religious scholars held several titles in a loose hierarchy. Graduates of madrassas could be appointed as imam, imam-khatib or muezzin to the mosques in the region after they received took an exam and received a license from the Orenburg Assembly. Senior scholars who were known to be legal experts acquired the title *ākhūnd* and senior *ākhūnd* and acted as supervisors of imams, and resolved or investigated legal cases. The titles *qāḍī* and *mufī* had different meanings among the Volga-Ural Muslim community. The title *qāḍī*, which meant a judge among most of the Muslim societies, was used by the members of the Orenburg Assembly. The title *mufī* referred to the head of the Orenburg Assembly.

22 FAKHREDDIN, *supra* note 3 at 2:19 (Letter 7).

23 *Id.* at 2:23–27 (Letter 10).

24 In Muslim contexts *majlis shar* refers to a court, *shāri’a* court, or *qāḍī* court; however, after the Russian conquest of the Kazan khanate, all local Muslim institutions were destroyed and there was no official institution of *sharī’a* court. What Huseyn ughli was referring to an informal gathering of the local ‘*ulāma*’ and elders, sometimes presided by an *ākhūnd*, where they considered and resolved a *sharī’a* case on a family matter, marriage, divorce, or inheritance. For more detail see Garipova, *Where, supra* note 3.

marriages in the civil registries (Russian: *metricheskie knigi*).²⁵ He questioned the plaintiffs, the accused, and the witnesses, with authority to instruct the police to summon people to these questionings. He invited *mullās* to serve as mediators (TT: *midyatur*). He often had to find trustworthy people (TT: *i 'timadli zatlar*) to act as witnesses and questioned the parties, for example, “in the presence of two imams” (TT: *ike imam huzurinda*),²⁶ or investigated a case together with other members of the ‘*ulāma*’.²⁷ As a judge, he also tried to reconcile (TT: *sulh*) people. And, finally, he took independent legal decisions and asserted his decision by saying: “I annulled their marriage” (TT: *faskh itdem*) or “I decided as such” (TT: *hukm itdem*).

Huseyn ughli also acted as a legal supervisor, in which role he would, upon receiving complaints from people or following instructions from the *muftī* of the Orenburg Assembly, investigate cases of imams accused of violating *sharī‘a*. In a letter dated December 1825, Huseyn ughli expressed his willingness to perform this role, particularly in cases where imams with insufficient knowledge incorrectly performed marriages, made erroneous decisions about the start and end of Ramadan, or committed other acts that misapplied Islamic law.²⁸ Additionally, imams sought his help in complex cases, which shows that Huseyn ughli was a prominent figure among the ‘*ulāma*’ of his region and held esteemed authority. He skillfully managed his relationships, even in times of conflict, where he reversed the decisions of some imams to impose his own rulings.

His relationship with the Orenburg Assembly under Muftī ‘Abdessalam ‘Abdrakhimov was cooperative, and Huseyn ughli

25 Civil registries were the books kept by parish ‘*ulamā*’ in which they had to register information on cases of births, deaths, marriages, and divorces which occurred in the *maḥalla* (congregational district) of their jurisdiction. On the importance of civil registries see Garipova, *Married or not Married? On the Obligatory Registration of Muslim Marriages in Nineteenth-Century Russia*, 24 ISLAMIC LAW AND SOCIETY 112 (2017); Dilyara Usmanova, *Musul‘manskie metricheskie knigi v Rossiiskoi imperii: mezhd u zakonom, gosudarstvom i obshchinoi (vtoraia polovina XIX – pervai a chetvert’ XX vv)*, 2 AB IMPERIO 106 (2015); Elmira Salakhova, *Musul‘manskie metricheskie knigi Rossii*, 1 EKHO VEKOV 81 (2018).

26 FAKHREDDIN, *supra* note 3 at 2:29 (Letter 15).

27 *Id.* at 2:20 (Letter 9).

28 TsGIA RB, f. 295, op. 3, d. 174.

was often called upon to investigate problematic cases, which attests to his authority.²⁹ He sought to shape and engage with the Orenburg Assembly to enforce *sharī‘a* law and supervise its implementation. He called for the Orenburg Assembly to grant him the authority to investigate and bring order to issues arising in the Volga-Ural society. For instance, he asked the Orenburg Assembly to “send [him] instruction in our name” to investigate and prevent cases of disorder in family law.³⁰ In doing so, he regarded the Orenburg Assembly as a central authority that could help solve these problems.

Already in 1825, Huseyn ughli knew about many social and family problems and anticipated more of them in the future. He wrote to the Orenburg Assembly:

I, senior *ākhūnd*, come across many disputes and animosities regarding marriage and deeds that were performed against *sharī‘a*. At certain times licensed [TT: *ukazli*] or unlicensed [TT: *ukazsiz*] imams perform marriages of women who were abducted or who did not have a legal guardian. Some people still live with their wives whom they had irrevocably divorced and live together as husband and wife without renewal of marriage. Some other people take a wife under certain conditions, or they give their wife a choice to divorce [TT: *mukhayyara*], but they do not respect that [given] condition, or, after their wives choose to divorce [TT: *talaq ikhtiyar*], they still live a conjugal life with them and commit a forbidden act [TT: *haram farash*].³¹

Admitting his reluctance to investigate these cases without an order from the Orenburg Assembly, Huseyn ughli pointed to the importance of an institutional decree:

29 FAKHREDDIN, *supra* note 3 at 2:340–410; Liliya Baibulatova, *Orenburgskie muftii i ikh deiatel'nost' v 'Asare' Rizaetdina Fakhretdina*, in *ISTORIJA TATAR S DREVNEISHIKH VREMEN* 6:992.

30 FAKHREDDIN, *supra* note 3 at 2:15 (Letter 3).

31 *Id.* at 2:15–16 (Letter 4).

Although we, in the position of senior *ākhūnd*, are officials who are generally responsible for ensuring that scholars do not perform any act against *sharī'a*, in such cases it would be good if we received official permission [TT: *rukhsat*] to submit to the Orenburg Assembly petitions from victims according to regulations, to investigate their problems and to investigate orders/decisions that were taken against *sharī'a*.³²

Registration of cases at the Orenburg Assembly would give an institutional clout and would make it easier to enforce the decisions of an *ākhūnd*, or to make a husband to pay maintenance (*nafaqa*) and fulfill the conditions of a marital contract. Often women (and men) who approached Huseyn ughli also asked him to forward their cases to the Orenburg Assembly. Upon completing an investigation authorized by the Orenburg Assembly, Huseyn ughli would take a legal decision and ask for the authorization of his decision from the Orenburg Assembly. Thus, Huseyn ughli started to investigate legal cases, conducted the investigations and came to a legal decision with the authorization of the Orenburg Assembly.

WOMEN'S PETITIONS AND INITIATION OF DIVORCE

All Islamic schools of law give more rights to men than to women regarding the annulment of marriage. A man has the unilateral right to annul his marriage with a woman (*talaq*), but women do not have that right. There were certain conditions which allowed a woman to initiate a divorce, and this would require the involvement of judicial authorities. All Islamic schools of law put several restrictions on the implementation of this possibility. One of the ways in which a woman could initiate a divorce was to acquire that right from her husband if the latter had delegated his right to divorce to his wife on certain conditions (*tafwīd al-talaq*). These previously-agreed-on conditions might include his disappearance during a war, abusive behavior towards his wife, acquiring or continuing bad habits, or others. Another way for a

32 *Id.*

woman to ask for annulment of her marriage was to prove that her husband was not capable of fulfilling the requirements of married life because of certain diseases or impotency. With certain differences, jurists from the main schools of Islamic law would allow women to seek divorce in that condition. Judges in the Shāfi‘ī, Mālikī, and Ḥanbalī schools of law also allowed women to annul their marriages and protect their marriage rights in the case of the absence of financial support, desertion, or a husband’s disappearance. In that regard, the Ḥanafī judges differed from those schools. Lack of support or disappearance of a husband did not constitute grounds to end a marriage in the Ḥanafī school of law. However, women could obtain divorce by repudiating some of their marital rights through a process called *khul’*.³³

Most of the cases handled by Huseyn ughli at our disposal are the cases of women who initiated annulment of their marriages on the basis of the failure of a husband to provide and sustain his wife (and often a child). These petitions were written either by the women themselves, or by their fathers on their behalf. Other cases relate delegated divorce (*tafwīd al-talaq*). Several petitions which women sent to Huseyn ughli concerned the correctness of their divorce from their husbands, which Huseyn ughli always approved/confirmed, stating that divorce has taken place. Consider the following petition, a woman from Kazan named Ahmed qizi Mahbubjamal sent to Huseyn ughli is in the form of *istiftā’*:

In 1829 my husband Yaqub Daud ughli was sent to perform army service. When I told my husband, “You are leaving me without provision and clothing [OT: *kiswalek*] and without place to stay [OT: *maskan*]. How can I, being so young, live alone? My husband replied, “You are right, I cannot leave you provision. I don’t even have a chance to go to a *mullā* and write a divorce letter; I am being sent to the army right now . . . Therefore, in this situation, I give you the choice of divorcing yourself if or when you want to with an irrevocable divorce [*talaq bā’in*].”

33 TUCKER, *supra* note 8; Cuno, *supra* note 8.

If you ask witnesses, they will witness before God, that two years later, on 3 December 1831, I divorced him with an irrevocable divorce. Now, after you question my witnesses, I would like to ask for a *fatwā* inquiring if this *talaq* was valid and if it was correct to marry another person of my choice [TT: *dilkhāhuma*].³⁴

Huseyn ughli noted:

I received this petition from the aforementioned woman and authorized the annulment of her marriage on the ground of non-provision [*‘adm ifā’i nafaqa*] and on the basis of the decree of the Orenburg Assembly from September 4, 1831, no. 1206, which was based on an injunction from *Durar*, and on the basis of the order given by the Assembly to me, *ākhūnd*, on February 9, 1826, no. 91. Witnesses confirmed what the woman said and signed their testimonies. Therefore, the free choice of divorce of the aforementioned woman is, in my opinion, proven by testimonies. Since she had a free choice to divorce with irrevocable divorce, irrevocable divorce has taken place, without the necessity of a judge, on the basis of texts *Jāmi’ al-rumūz*³⁵ and *Qazi Khan*.³⁶ The textual proofs for this are the following:

And I issued the following *fatwā*: On the basis of these narrations, the woman who had a choice of divorce was divorced from her husband. It is correct for her to marry a person of her choice after completing the waiting period [*al-‘iddah*]. And it is legally permissible for imams to perform her marriage. December 1, 1833.³⁷

We can observe from this case that a woman asked if an irrevocable divorce was correct and valid and *Ākhūnd Huseyn ughli*’s

34 FAKHREDDIN, *supra* note 3 at 2:17–19 (Letter 6).

35 Shams al-Dīn Muḥammad al-Khurāsānī al-Quhistānī, *Jāmi’ al-rumūz*.

36 Imam Fakhruddin Hassan Bin Mansur al-Uzjandi al-Farghani, *Fatawa-i-Qazi Khan*. A collection of *fatwās* from the Hanafī school.

37 FAKHREDDIN, *supra* note 3 at 2:17–19 (Letter 6).

fatwā confirmed her divorce. Delegated divorce was a practice in other Islamic contexts. Judith Tucker explains in regard to Ottoman Palestine:

The muftis were often asked about this type of divorce, one in which a husband might swear (*ḥalafa*) or make conditional (*‘allaqa*) a divorce as part of his promise to deliver on certain marital obligations, most commonly the provision of *nafaqa*. He might take such an oath before departing on a journey, or swear to remedy a present deficiency, such as inadequate housing, within a certain period of time. This type of conditional divorce was thus another road to what was in effect a *faskh*, or annulment for reasons of non-fulfillment of marital obligations. Rather than resorting to a Shafi‘i or Hanbali judge, however, to annul a marriage in which the husband was not providing, some women managed to have their husbands swear a special oath to support them properly or divorce them. Should that support not be forthcoming, the divorce would be automatic, and require no adjudication. Of course, a husband might deny that he had sworn to divorce, and then, as we have seen, the woman would have to shoulder the burden of proof. Still, it was possible for conditional divorce to operate very much to a woman’s advantage.³⁸

To confirm irrevocable divorce, Huseyn ughli needed to interview the people who witnessed the husband’s swearing. His *fatwā* confirms that the witnesses’ testimony was valid. He confirmed that the status of this woman was *mukhayyara*, i.e. a woman who was given a choice to declare herself to be divorced. He primarily based this decision on Decree 1206, which allowed annulment in case of non-provision. The basis of that decree was an injunction about annulment for non-maintenance from an Ottoman legal text, Mullā Khusraw’s *Durar*.

Mullā Khusraw was an important Ottoman scholar who held several official positions such as *mudarris*, *qādī*, *qādī*

38 TUCKER, *supra* note 8 at 104.

'*askar*, *mufit*, and *shaykh al-islām* in the fifteenth century. His *Durar al-hukkām fī sharḥ Ghurar al-aḥkām* had an important place in the legal education and legal system of the Ottoman state. In this treatise, he embraced the Shāfi'ī reasoning for the annulment of marriages in the case of a husband's inability to provide for his wife when the husband is known to be alive. He mentioned that some Ḥanafī 'ulāma' used that reasoning to annul marriages for the sake of (public) benefit (*maṣlaḥa*). He argued, however, that when a husband is missing (*ghā'ib*), his financial inability cannot be ascertained, so the marriage should not be annulled based on that Shāfi'ī reasoning. Nevertheless, he left the ultimate decision to the person who consulted his source, saying, "Make your own judgement" (Ottoman Turkish: *imdi otesini sen dushun*).³⁹ In all cases that were presented to Huseyn ughli for consideration, the husbands were alive and known to be refusing or unable to provide for their wives. Therefore, Huseyn ughli followed Mullā Khusraw's reasoning to apply the Shāfi'ī ruling allowing the annulment of marriages in case of the confirmed inability of a husband to provide for his wife.

After mentioning legal evidence that gave a right of annulment on the basis of non-maintenance, Huseyn ughli provided other Islamic sources on which he had based his decision. In particular, he cited specific narrations from the texts *Jāmi' al-rumūz* and *Qazi Khan* which allowed annulment of marriage without a necessity of a judge (*bilā ihtiyāj ilā al-qaḍā'*).⁴⁰ Huseyn ughli clearly stated that he issued this *fatwā* and that it came into effect by the order of the Orenburg Assembly. He also underlined that the woman was free to marry a person of her choice after completing a waiting period. Huseyn ughli investigated this case and rendered a legal decision, with the permission (decree) of the Orenburg Assembly; there was no necessity to convene a *majlis* in this case. Thus, if there were no complications, a case could end with an independent decision of an *ākhūnd* where the decree of the Orenburg Assembly signified that Huseyn ughli was authorized to do this.

39 MOLLĀ KHUSRAW, *DURAR AL-HUKKĀM FĪ SHARḤ GHURAR AL-AḤKĀM*, (c. 1480). I used the 1875 Ottoman translation of *Durar*: KUTUB-I MU'TEBERE-I FIKHIYEDEN DURER TERCÜMESİ 298–99 (Istanbul: Matbaa-i Amire, 1875).

40 FAKHREDDIN, *supra* note 3 at 2:17–19 (Letter 6).

A woman could announce irrevocable divorce when her husband violated the terms of a *ta’liqnāma* – which was a document that stipulated the conditions, violation of which would give the right of divorce to his wife.⁴¹ One such *ta’liqnāma* was given to a woman, Ahmed qizi from the city of Kazan, by her husband, Khalid ughli, on June 5, 1839. In her petition to Huseyn ughli, she explained the following:

My husband, Khalid ughli, in your presence and in the presence of many *mullās*, promised that from now on, he will not consume alcohol and will not beat his wife Ahmed qizi; he will not say bad words to her and will provide her with daily maintenance, clothing, and housing; that he will not take her property without her permission; and that he will take the following items [enumerated items] from pawn within three days and the rest within three months.⁴²

After explaining the text of the *ta’liqnāma* and underlining that it was signed by her husband, an *ākhūnd*, and *mullās*, she complained that “Now we are in January of 1841 and Khalid ughli still did not fulfill any conditions”: he did not bring back pawned items, provided no maintenance nor any money for clothes, was constantly drunk, beat her, said bad words such as “infidel” (*KAFĪRA*) and “adulteress” (*zāniya*) and even threatened to kill her. Ahmed qizi finally informed the Third Chast’ (police office) about her husband’s deeds, left her husband’s house with the permission of the police officers, and divorced him with irrevocable divorce because “he did not carry out the conditions stated out in the *ta’liqnāma*.” She finished her petition by requesting a *fatwā* from Huseyn ughli. After that, Ahmed qizi would have to prove that her husband did not fulfill the conditions stipulated in the *ta’liqnāma*, which she appears to have done. The *ākhūnd* responded with a *fatwā* that read in part: “Because this woman chose to divorce (*mukhayyara*), in a situation without the necessity of a *qāḍī*, according to *Jāmi’ al-rumūz* and *Qazi Khan* and

41 On the wives of Muslim exiles see Garipova, *Between*, *supra* note 3.

42 FAKHREDDIN, *supra* note 3 at 2:28–29 (Letter 14).

other prominent books, divorce has taken place.” The text of the *fatwā* also underlined that Khalid ughli had to return her items that he pawned.⁴³

We can observe from this *fatwā* that there had already been a problem between husband and wife. Ahmed qizi had already experienced hardship which led to her first applying to Huseyn ughli. It is clear that Huseyn ughli had already convened a court gathering (*majlis*) where he invited “many *mullās*”, most probably of the *maḥallas* (congregational districts) of the residence where the woman and her husband lived. In this court gathering the authorities present had already forced Khalid ughli to sign a *ta’līqnāma* that he would provide maintenance for his wife and avoid maltreating her in various ways. As she was able to prove her husband’s maltreatment of her, and thus the violation of the *ta’līqnāma*, there were clear grounds for Huseyn ughli to issue such a *fatwā*. It was apparent that conditional divorce was an effective form of pressure against abusive husbands and a decisive way to defend women in miserable situations.⁴⁴

A more difficult situation for Huseyn ughli was a husband who denied that he had sworn to delegate divorce to his wife. Before leaving on a Hajj, Abuyazid Nazir ughli gave his wife, Omer qizi, *ikhtiyār talaq* (a choice to divorce). Omer qizi divorced him and, after her waiting period was over, she married another man named Maqsud ughli. The second marriage was performed by an imam and senior *muḥtasib*,⁴⁵ Nurmuhammad Khujash ughli, who recorded it in the civil registries of 1833. When Nazir ughli returned from Hajj, he denied that he had granted his wife the right to divorce and started creating problems for his former wife. Firstly, he sent a petition to the Kazan land court (Russian: *zemskii sud*), asking to take his wife back. However, the assessor (Russian: *dvorianskii zasedatel’*) convinced him to make peace with his former wife and her new husband, and Nazir ughli signed an agreement stating that he would give a divorce letter to his former wife. However, he later

43 *Id.*

44 *Id.*

45 A religious title of a senior cleric who is responsible of supervising religious affairs in a given region.

submitted a petition to the military governor (*voennyi gubernator*), asking him to appoint an *ākhūnd* named ‘Abdennasir Rahmanquli ughli to investigate his case. This *ākhūnd* took a decision in favor of Nazir ughli, which would force his ex-wife to return to him.⁴⁶

When the new husband of Nazir ughli’s former wife brought the issue again to the attention of Huseyn ughli, he convened a large *majlis* attended by respected *mullās*. In this *majlis* Huseyn ughli disputed and overruled the decision of *Ākhūnd* ‘Abdennasir Rahmanquli ughli. In the presence of mediators, Huseyn ughli interrogated Nazir ughli’s former wife, Imam Khujash ughli, and other witnesses. On March 19, 1835, Huseyn ughli issued his decision, stating that “We established and confirmed that when Nazir ughli was going on the Hajj, he indeed gave a choice to Omer qizi to divorce him, and she did that.” Therefore, Huseyn ughli confirmed her divorce and marriage to another men, announced his decision to the military governor, and sent all written evidence to the Orenburg Assembly.⁴⁷

We can see that Huseyn ughli skillfully defended delegated divorce in this last case. While in the first case discussed (that of Ahmed qizi Mahbubjamal), he only issued a *fatwā* confirming a woman’s divorce, the second and third cases required him to make thorough investigations. In this third case, *Ākhūnd* Huseyn ughli acted as an authority in his own right and contravened the military governor’s decision and the ruling of another *ākhūnd*. Even though the other *ākhūnd*, Rahmanquli ughli, claimed that Huseyn ughli did not have authority to revoke the decision of another *ākhūnd*, Huseyn ughli asserted the woman’s right to get a divorce in the presence of respected imams as mediators, and obtained authorization for his decision from the assessor of the land court. With assertiveness, Huseyn ughli tried to help women escape misery and hardship when they had the choice to obtain divorce and as we will see in the following section even when women were left without a choice to free themselves from dysfunctional marriages.⁴⁸

46 *Id.* at 20–23 (Letter 9).

47 *Id.*

48 *Id.*

ANNULMENT OF MARRIAGE ON THE BASIS OF NON-MAINTENANCE

Petitions of annulment on the grounds of non-provision constitute the majority of the letters and cases that were included as examples of Huseyn ughli's adjudication in *Āthār*. While in the cases analyzed in the previous section, women used their delegated rights to obtain a divorce, there were many cases when women did not have the choice to divorce their husbands but were nevertheless left without financial support. The petitions asking for annulment on the grounds of non-maintenance were written by these women or by their fathers on their behalf. In certain cases, petitions were written by both father and daughter, one after the other.

Nafaqa is the maintenance that a Muslim husband must provide for his wife, regardless of her religion, as his main legal obligation to her. All the legal schools agreed on the major components of this maintenance, namely food, clothing, and appropriate accommodation. However, different legal schools had varying opinions on the appropriate course of action when a man failed to fulfill his duty of providing financial support. According to the Ḥanafī school, the judge should intervene and determine an appropriate amount of maintenance for the wife. In this scenario, the wife would be permitted to borrow this sum with the expectation of repaying it from the husband's funds. Alternatively, if the husband was not present, the judge could authorize the wife to utilize her husband's assets for maintenance, as long as they were suitable for necessities such as food and clothing. However, the Ḥanbalī, Mālikī, and Shāfi'ī schools had a different perspective. If a husband was unable to meet his responsibility of providing basic sustenance due to poverty or absence, his wife had the right to request a divorce. If the husband refused, the judge might advise patience, but ultimately, if the wife desired it, the judge would enforce the divorce.⁴⁹

Since the Volga-Ural Muslims followed the Ḥanafī school of law, non-maintenance was not regarded as a valid reason for women to seek divorce. While other Muslim

⁴⁹ TUCKER, *supra* note 7 at 52.

communities adhering to Ḥanafī *fiqh*, but living together with Muslims from other schools of law, could follow another *madh-hab* to release women from marriage, this was not an option for the Muslims of the Volga-Ural region. The difficult situation of married women who were left without financial support was a serious problem for the Muslim community in the Volga-Urals as well as for the women themselves, and Huseyn ughli provided a solution for the women and the community.⁵⁰

On July 1, 1840, a certain Bashir qizi sent a petition to Huseyn ughli, recounting her marriage to a fellow villager, Habibullah ughli, in 1829. After some time, Habibullah ughli left for the city of Semipalatinsk (Simi) and ten years had passed since then. When he left he did not leave any lodging or maintenance money for his wife, compelling her to live in her father’s house and under her father’s care. During his absence, he never sent any maintenance money to either her or their nine-year-old son. She underlined that “Since that time we survived as we could. We borrowed money, but now there is nobody left who can lend money, and there is nobody to provide for us. We are experiencing extreme hardship.” At the end of her petition, she asked for the annulment of her marriage and permission to remarry.⁵¹

As a response to Bashir qizi’s petition, Huseyn ughli requested written evidence (Russian: *spravka*) from the community and from the *mullās* of her residence. The community confirmed the woman’s statements. The local imam, Ahmed Sa‘id ughli, also corroborated the facts of the case of Bashir qizi to Huseyn ughli. In response, Huseyn ughli explained:

Taking into consideration the different opinions of the great jurists, I favored annulment on the basis of non-provision. With reference to the sayings of great ‘*ulāma*’ who were *muftīs*, and seeing the necessity, I annulled the aforementioned marriage. If, at the end of the waiting period, the aforementioned woman wants to

50 Kahya, *supra* note 9; Garipova, *Divorce from Missing Husbands: Rizaeddin Fakhreddin and Reform Within Islamic Tradition in Imperial Russia*, 65 JESHO 761 (2022).

51 FAKHREDDIN, *supra* note 3 at 2:27–28 (Letter 13).

marry a man of her choice, I gave this letter of order so that imams can perform her marriage. We have ordered a local imam to record this annulment in the civic registries. In line with the narration of *Durar* regarding annulment due to non-maintenance, we received from the Orenburg Assembly a decree of September 4, 1831, no. 1206. I thus performed annulment under the power of that decree.⁵²

It is remarkable how the legal case became a communal affair. First, the fellow villagers helped Bashir qizi survive in the absence of her husband, lending her money to sustain herself and her son.⁵³ After waiting for ten years and enduring extreme hardship, Bashir qizi wrote to Ākhūnd Huseyn ughli asking for annulment of her marriage. Huseyn ughli requested a written proof from the villagers that substantiated Bashir qizi's claims, verifying her husband's departure years ago and her miserable living conditions. The local *mullās* corroborated the facts of her situation.

In his ruling in the case, Huseyn ughli demonstrated that he was aware of the difference of opinion of the prominent jurists on this matter, made reference to the sayings of *fatwā*-issuing great 'ulāma' (TT: '*ulama-i kiramin mufti bihi qawllarena bina'en*') who said that annulment in case of non-maintenance was permissible (TT: '*adm ifa' nafaqa sabable faskh nikahni ja'iz kuruche*') in case of necessity (TT: '*hajet wa dharuret da'iya*').⁵⁴ He specifically referred to the passage about non-maintenance from *Durar*. However, this was not a position accepted by the majority of the Ḥanafī 'ulāma' and Huseyn ughli never included the original passage from *Durar* in his reasonings, nor tried to explain the legal reasoning which would permit the annulment of marriages. He simply wrote "per the passage from *Durar* (TT: '*Durar ibarati mujibinja*')." For him, the stronger legal basis was a previous permission he received from the Orenburg

52 *Id.*

53 *Id.*

54 *Id.*

Assembly with Decree 1206 to annul marriages in the case of non-maintenance.⁵⁵

The favorable approach of Huseyn ughli to the plight of women whose husbands left them without provision was known among the Volga-Ural Muslim community, and women specifically sought his help. In an archival record from 1835, a woman named Zahide Ahmer Adilsha qizi wrote in a petition that she specifically wished the Orenburg Assembly to appoint Huseyn ughli to investigate her case and give her the right to divorce from her husband, who “left her without maintenance, did not take her under his care, did not pay the *mahr*, accused her of being an adulteress, refused to accept paternity of their child, and physically and verbally abused her.”⁵⁶ Huseyn ughli was promptly assigned to investigate the case. With the help of local police force, Huseyn ughli summoned the husband and questioned him in the presence of the petitioning woman, her father, and “well-respected imams who would be mediators” about his wife’s accusations.⁵⁷ While the husband admitted his failure to provide for his wife, he rejected allegations of verbal abuse and denied the paternity of their child. However, he said that he left their house because they did not have affinity (TT: *tatuliq wa mahabbat*) and agreed to pay the deferred dower (*mahr*).⁵⁸

In 1834 another woman, named Sarwijamal, asked the civilian governor of Kazan to appoint Huseyn ughli to annul her marriage, with a similar complaint about non-maintenance. With the help of the Russian authorities, Huseyn ughli summoned Sarwijamal’s husband and ordered him to take care of his wife and within fifteen days. Despite the husband’s assurance that he would take his family under his care, he failed to fulfill his promise and Huseyn ughli granted the woman annulment in 1837.⁵⁹

55 *Id.*

56 TsGIA RB, f. 295, op. 3, d.1178.

57 *Id.*

58 *Id.* at l. 20, l. 22. On *mahr* and women’s financial rights among Volga-Ural Muslims in the late eighteenth to early nineteenth centuries see Danielle Ross, *Complex Legal Lives: Separated Muslim Women’s Financial Rights in Russia (1750s–1820s)*, 6 *GENEALOGY* 72 (2022).

59 TsGIA RB, f. 295, op. 3 d. 1429.

These two cases show the intertwined nature of Islamic and Russian imperial legal systems. The Russian authorities could not secure order without the judicial expertise of Islamic legal scholars. The Islamic legal authorities on the other hand, could not enforce their decisions without the assistance of the Russian imperial authorities. However, this cooperation between the Islamic legal scholar and Russian imperial authorities, which Robert Crews interpreted as helping the implementation of an Islamic orthodoxy⁶⁰ did not always benefit Muslim women such as those who had been assisted by Huseyn ughli in his flexible interpretation of Islamic law.

On February 6, 1830, the imperial state adopted a law that limited the right of women whose husbands had managed to change their exile status to army service to seek divorce. According to the law, such a woman could only ask for divorce if her husband had been deprived of all rights (Russian: *lishen vsekh prav sostoiania*).⁶¹ In the following case Huseyn ughli's decision was overruled by the state decree. This case is recorded in two letters (Letters 7 and 12)⁶² and the information in them varies because they present two different decisions by Huseyn ughli, one in 1834 and the second in 1839. Letter 7 tells us the case of Atiye 'Abdurrashid qizi who wrote a petition to Huseyn ughli stating that her husband, Fathullah Subhi ughli, was detained in 1833 for theft at Makarya fair,⁶³ convicted, and exiled. She wrote that Fathullah "gave me *mahr* but didn't take me to his house; he left neither lodging nor maintenance and there is nobody who could provide for me. If it is appropriate according to *sharī'a*, could you order to the imams to annul our marriage and perform a new marriage for me?" The woman provided letters taken from trustworthy people who confirmed the information on her petition. Huseyn ughli considered the case and decided to initiate annulment:

60 CREWS, *supra* note 11.

61 SVOD ZAKONOV ROSSIJSKOI IMPERII (The Digest of Laws of the Russian Empire), vol. 10 (1857), part 1, art. 51.

62 FAKHREDDIN, *supra* note 3 at 2:19 (Letter 7) and 2:26 (Letter 12).

63 Makar'yevskaia fair was a trade fair in Nizhniy Novgorod held annually every July near Makaryev Monastery.

Therefore, I, *ākhūnd*, to whom the petition was sent, knowing that the petitioning woman is experiencing hardship and knowing the differences of the prominent jurists on this matter, annulled their marriage on the basis of the opinion of the *mufī* who considers it permissible to annul marriage on condition of non-provision. After the end of the waiting period, if the aforementioned petitioning woman wants to marry anew, I made an order that the imams in charge perform her marriage (TT: *khutba-i nikah*). The decree from September 2 [4], 1831, no. 1206 has arrived to us, *ākhūnd*, from the Orenburg Assembly regarding the performance of annulment on the condition of non-provision. On the basis of this decree, I initiated annulment (TT: *faskhke iqdam qilib yazdim*). September 3, 1834.⁶⁴

However, Letter 12 suggests that this annulment did not happen. Letter 12 presents a response of Huseyn ughli to the order of the Orenburg Assembly from January 12–24 of 1839. First, he presents the abovementioned petition of Atiye ‘Abdurrashid qizi that she wrote to him in 1834. The summary of her petition included more details, in which she underlined that when she wanted to marry somebody else. The local imam, Mohammedrahim Mostay ughli, required that she obtain a *fatwā* from an *ākhūnd* before he would perform a marriage ceremony. She also added that the imam and the elders of her village knew that her husband was exiled to Siberia.⁶⁵ Upon learning this, Huseyn ughli asked a different imam, ‘Imadeddin Monasib ughli from a village in Kazan province, to investigate the case. Meanwhile, Mostay ughli and the elders of her village confirmed, with signature, that Subhi ughli was indeed exiled to Siberia. As a result, Huseyn ughli explained that he gave *fatwā* to ‘Abdurrashid qizi, “referring to the *fatwā* of the Crimean *mufī* about persons exiled to Siberia and remarriage of their wives, which had been signed by the Senate; to the *fatwā* about annulment on the basis of non-provision from the ‘famous books’ (*kutub mu‘tabira*);

64 FAKHREDDIN, *supra* note 3 at 2:19 (Letter 7).

65 *Id.* at 2:26–27 (Letter 12).

and to the decree of the Orenburg Assembly from September 4, 1831, no. 1206.”⁶⁶

However, following that statement, Huseyn ughli’s tone sounded apologetic:

I didn’t know that Subhi ughli was a soldier. In the document it was only written that he was exiled. The document that I provided concerns the wives of exiles to Siberia. Probably he opted to serve in the army instead of his sentence. The order about annulment on the basis of non-provision affects thieves exiled to Siberia and sent to the army service. However, we gave our *fatwā* in 1834, and we received a *fatwā* concerning prohibition of divorce to the wives of soldiers only in 1836.⁶⁷

After that Huseyn ughli proceeded to justify the ruling of the imperial decree. He stated that he did not have an objection to the decree which was limiting the right of divorce to wives of soldiers. He even claimed that it was legal and appropriate for rulers to ban their judges from intervening in certain cases. To justify this, he recited some rulings from well-respected Ḥanafī fiqh sources: “There is a record of fatawa of al-Aqkirmani saying that in certain cases emperors prevent *qāḍīs* [from producing *fatwās*] according to *sharī’a* and regulations.”⁶⁸

We may assume that Subhi ughli was indeed sentenced for theft and exiled to Siberia, and at a certain point he decided to apply for a change of his status. Imperial law allowed substituting exile as punishment for certain types of crime with the army service.⁶⁹ After the change of his sentence to army service, he most probably took an opportunity and appealed to his commander about the unjust decision of separation from his wife in his absence. Since the imperial law prohibited divorce of soldiers, his petition must have been led to an investigation by the Orenburg Assembly. It is unclear how the decision of Ākhūnd

66 *Id.*

67 *Id.*

68 *Id.*

69 I describe a similar case, also considered by Huseyn ughli, in Gari-pova, *Between*, *supra* note 3.

Huseyn ughli, which was taken before 1836, was recognized as invalid but if it were not for the new imperial law, the woman would have been granted a divorce. In his decision, Huseyn ughli employed a flexible approach: he recognized difference of opinions among the jurists and preferred to follow a particular opinion to grant divorce to ‘Abdurrashid qizi. We can also observe that he was collaborating with the local Muslim community. The elders (TT: *il qartlari*) and the local imam supported the petition of the woman (TT: *qul quymishlar*) and testified that her husband was exiled. However, the imperial law limited or even prevented the flexibility of options. While Huseyn ughli was able to find a legal reasoning within the Islamic tradition, he was now forced to justify his submission to imperial decree. Moreover, there was another change that halted other attempts by Huseyn ughli to grant women annulment for the failure to provide maintenance.

**THE NEW MUFTĪ AND ĀKHÜND HUSEYN UGHLI:
FAILURE OF ANNULMENT BASED ON NON-PROVISION**

The next three letters (petitions to Huseyn ughli) were written by the fathers of the women who desired a divorce. The most important feature of these cases is that in all three instances, Huseyn ughli took a decision for annulment based on non-maintenance, yet the dissolution of marriage never transpired. I suggest that this has to do with the change of the *muftī*: Muftī ‘Abdessalam ‘Abdrakhimov died on January 1, 1840, and Russian authorities appointed ‘Abdulwahid Suleymanov as the next *muftī* on June 10, 1840. Mufti Suleymanov was from the Nizhnii Novgorod Muslim community and a son of an *ākhünd*. He had higher religious education at a madrassa and had a good command of Arabic and Persian.⁷⁰ He engaged in trade in St. Petersburg, where Muslims appointed him as an imam of their community in 1822. Suleymanov knew some Russian and became acquainted with several high officials. In 1835 he taught Muslim boys in one of the military academies in St. Petersburg. When ‘Abderrahim died, Suleymanov went to Ufa to replace him as *muftī*. His

70 ILDUS ZAHIDULLIN, MOFTILĀR HĀM KAZYILAR 107 (2021).

authoritarian style was emphasized in his biography in *Āthār*.⁷¹ In particular, Fakhreddin underlines that Suleymanov tried to establish a strict hierarchy at the Orenburg Assembly. Fakhreddin refers to Suleymanov's constant rejection of candidates who had been suggested from Kazan for positions as *qādīs* and to Suleymanov's ambition to personally select the members of the Orenburg Assembly. Suleymanov also warned imams not to exceed the limits of their jurisdiction.⁷² Suleymanov's decrees was in line with the actions of Russian imperial authorities, who had started to bring order to the application of legal systems among non-Orthodox populations in the nineteenth century.⁷³ Suleymanov is especially famous for his 1841 compilation of Muslim marriage and divorce rules based on *sharī'a* and imperial law. Such a compilation was no doubt a move to impose uniformity of interpretation and systematization of practice from the top down.⁷⁴ Considering Suleymanov's decision to halt such annulments in the last case presented below, it is most probable that he rejected the annulment decisions by Huseyn ughli in the first two cases based on the same reasoning. We need to understand his decision in light of his effort and desire to regularize the law.

In May of 1837, an old man named Rahmanquli ughli wrote to Huseyn ughli that he had married his daughter Zohra to a certain 'Abid ughli, with a *mahr* of four hundred rubles. 'Abid ughli did not pay the *mahr* in full, did not take his wife to his home, and failed to provide for his wife. On top of that, he beat her and pronounced "words that could dissolve his marriage." Huseyn ughli convened a court gathering and said to 'Abid ughli: "The father of your wife provided for her for six years, and he said that he cannot do this anymore; so now you have to provide for your wife and daughter yourself. And you should leave a written statement that you promise to provide

71 FAKHREDDIN, *supra* note 3 at 2:347–89.

72 KEMPER, *supra* note 3 at 77–78; FAKHREDDIN, *supra* note 3 at 2:354–55; Baibulatova, *supra* note 28.

73 PAUL WERTH, *THE TSAR'S FOREIGN FAITHS: TOLERATION AND THE FATE OF RELIGIOUS FREEDOM IN IMPERIAL RUSSIA* (2016).

74 SBORNIK TSIRKULAROV I INYKH RUKOVODIASHCHIKH RASPORIAZHENII PO OKRUGU ORENBURGSKOGO MAGOMETANSKOGO DUKHOVNOGO SOBRANIIA 1836–1903, 15–18 (1905).

for her.” ‘Abid ughli responded by cursing marriage contracts, and saying, “I will find another judge!” Huseyn ughli responded to him that he could not just refuse like that, and ordered him to provide fifty kopecks per day for his eighteen-month-old daughter. ‘Abid ughli did not follow this order. He did not take his wife and child to his house and refused to provide for them. Consequently, Rahmanquli ughli sent a petition to the military governor, which was forwarded to Huseyn ughli on April 29, 1838. This time Rahmanquli ughli asked for the annulment of his daughter’s marriage and permission to marry her to somebody else because ‘Abid ughli refused to comply with the *shari‘a* ruling, disregarded the decree of the military governor, and failed to provide for his wife and child. Following this, on February 8, 1839, Huseyn ughli requested from the Orenburg Assembly permission (TT: *rukhsategezne talab idamez*) to annul the marriage of the couple, again by referring to Decree 1206 and once again reminding the *mufti* that he had already issued a decree allowing such annulments.⁷⁵

Although Letter 11 ended with Ākhūnd Huseyn ughli’s request, *Āthār* does not inform us whether his decision was implemented or not. When he asked for permission to annul that marriage from the Orenburg Assembly, Mufti ‘Abdessalam ‘Abdrakhimov was still in office, and it would have been expected that the *mufti* should have given permission for the annulment. However, from the archival records we understand that the annulment did not happen.⁷⁶ On November 10, 1842, Zohra’s father Rahmanquli ughli wrote another petition to the Orenburg Assembly, describing the miserable state of his daughter and once again asking for annulment. The correspondence, which continued for years, ended with a document dating to 1851 which again obliged ‘Abid ughli to pay his wife’s *mahr* money. However, Zohra was not alive in 1851 to receive it. ‘Abid ughli informed the authorities that his wife and her father had passed away, and the local imam confirmed their deaths.⁷⁷ This story does not tell us the exact reason why annulment had not taken

75 FAKHREDDIN, *supra* note 3 at 2:24–25 (Letter 11).

76 TsGIA RB, f. 295, op. 3, d. 1611.

77 *Id.*

place, but it shows that the Orenburg Assembly did not approve the decision of Huseyn ughli and did not find a solution to the desperate situation of the petitioning woman and her father, both of whom had died while they waited for it.

The next letter to Huseyn ughli (Letter 19) was written by another father, Ni‘matullah ughli. He wrote that in 1838 he gave his daughter Habibjamal to a man named Seyfulmulk ‘Abidullah ughli in marriage with a *mahr* set at six hundred rubles. Since that time, ‘Abidullah ughli had not provided his wife with lodging or maintenance. He had left his wife in her father’s house and travelled to Orenburg. When he came back, he promised to take her with his mother to Orenburg, but failed to keep this promise. After two years, Ni‘matullah ughli wrote a letter to his son-in-law, requesting him to either send maintenance money or to bring his wife to Orenburg. However, the father received a blunt answer: “My business went wrong after I got married. Your daughter does not have luck, she married at a bad time!” Receiving such an answer, the father expressed disappointment and anger in his petition: “How long should I maintain somebody’s wife?” He begged Huseyn ughli to give an order to annul the marriage of his daughter and son-in-law, and to allow her to marry another man. The letter ends with Huseyn ughli’s request on January 24, 1843, seeking permission from the Orenburg Assembly to annul the marriage under the power of Decree 1206.⁷⁸

The archival records of this case has a report, received and approved by the Orenburg Assembly, which states: “The decision should be implemented according to the report of the *ākhūnd* of Ura, Fathullah Huseyn ughli.”⁷⁹ However, annulment was not granted. For several years, Habibjamal continued to send petitions to the Orenburg Assembly, reminding them of the resolution of Huseyn ughli and asking for the approval of her divorce. A divorce was finally granted in 1851, when Habibjamal’s husband, Abidullah ughli, sent a letter of divorce. This divorce letter, however, included interesting information. Seyfulmulk stated the reason for the divorce was:

⁷⁸ FAKHREDDIN, *supra* note 3 at 2:36–37 (Letter 19). It corresponds to TsGIA RB f. 295, op. 3, d. 1807.

⁷⁹ TsGIA RB f. 295, op.3 d.1807, l. 7.

[Habibjamal] has been living with ‘Abdurreshid ughli for several years, and they have a child. I have been living apart from my wife for several years and I have lost my affection towards her. In order that the children who were born to her not be considered my own children, and with the request of several respected people, I divorce Habibjamal with one *bā’in talaq*.⁸⁰

This letter unveils a situation which in some other cases was implied but not explicitly mentioned. The letter suggests that in certain instances, some women asking for annulment of their marriage from their non-supporting husbands had been living with other men. Some of these women had children from these relationships. In other cases, women were complaining that their local imams refused to perform a new marriage without first obtaining a divorce from their non-supporting husbands or would ask for permission to divorce and to marry a man of their choice. Interestingly, the community within which these women lived did not display any disapproval of these “unlawful” cohabitations. On the contrary, the elders of the village or the neighborhood tried to facilitate the divorce of these women by providing supportive testimony for their requests for annulment, regarded them as divorced even though they did not get an official approval of their divorce, or contacted their non-providing husbands to grant them divorce.

The third case is from Letter 21. In this case, dated March 29, 1842 Muhammadqul Sultanbik ughli had petitioned Huseyn ughli with a request to marry his daughter to Hamid ughli in July 1840 by appointing a prompt (*mu’ajjal*) *mahr* of three hundred rubles. During the *nikāḥ* Hamid ughli gave one hundred and ninety-four rubles, which was recorded in the civil registries, with the remaining hundred and six rubles to be paid later. After marriage, Hamid ughli visited his wife in her father’s home several times for approximately a year, however he didn’t take her into his care. He did not leave money for maintenance or for clothing. Sultanbik ughli tried to convince him to take his wife to his care through the local Russian imperial authorities

80 *Id.* at l. 147.

and through people who know him to no avail. Sultanbik ughli concluded that his son-in-law probably did not want to have his daughter as a wife.⁸¹

Later, two *maḥalla* imams, Yahude ughli and Mustay ughli, invited Hamid ughli to their presence and questioned him. He admitted that indeed he had not provided maintenance, clothing, or lodging to his wife. The imams, together with the head of the local Russian imperial administration, ordered him to provide twelve rubles of maintenance and clothing each month to his wife. If he did not pay it to her, this would be considered as a debt upon him. They authorized Sultanbik ughli to collect the money from him. When Hamid ughli failed to provide for his wife and did not follow the orders of the head of the local Russian imperial administration and the imams, the two *mullās* asked Huseyn ughli to deal with this case and to annul the couple's marriage, and let the woman marry another person.⁸²

On February 25, 1843, Huseyn ughli sent a report and a request to the Orenburg Assembly to annul the marriage of this couple upon the decision of the *maḥalla* imams, according to the passage from *Durar*, and according to the Decree 1206.⁸³ On April 27, 1843, the *muftī* of the Orenburg Assembly, 'Abdulwahid Suleymanov, harshly declined the request of Huseyn ughli. In his response, Suleymanov claimed that Huseyn ughli's decisions would lead to disorder and strictly prohibited him and any other scholar to perform such annulment. Huseyn ughli died in early May of the same year, just a couple of months after he issued this *fatwā*.

CONCLUSION

As he received numerous petitions from women and their families, Huseyn ughli would have been well aware of the gravity of the situation of the women who were left in limbo, without the support of husbands who were known to be alive but refusing to provide for their wives. The parents, neighbors, elders of the

81 FAKHREDDIN, *supra* note 3 at 2:31–34 (Letter 21).

82 *Id.*

83 *Id.*

villages where these women were living, as well as local and provincial administrators, were all looking for a solution to the plight of the women. As the spiritual leader of this community,⁸⁴ Huseyn ughli wanted to provide a solution and thus deviated from the mainstream Ḥanafī ruling on the divorce of women from non-providing husbands, instead relying on a legal source which explains the Shāfi‘ī position on granting divorce in cases when a husband’s inability to provide for his wife can be ascertained, but actually does not suggest annulment. Huseyn ughli’s decisions seem to have aligned with the wishes of the community he served. In this sense, Huseyn ughli acted as a mediator between the legal tradition and the needs and expectations of his community. Women who wrote petitions to Huseyn ughli, either directly or through their fathers, found him to be a supportive ally. He recognized women’s rights and demanded their fulfillment from husbands, Muslim religious authorities, and imperial authorities. Despite the twentieth-century focus on the need to reform women’s family rights to emancipate women from the restrictions of the Islamic law,⁸⁵ cases from the previous century demonstrate that Muslim women, as well as the Muslim community and scholars, were trying to defend women’s rights in marriage and divorce within the Islamic legal framework. The cases from the 1820s and 1830s reveal that Muslim women had already been exercising, claiming, and negotiating their rights within the family, and legal scholars such as Huseyn ughli supported those rights and produced *fatwās* that favored and facilitated women’s causes. However, this does not mean that defending marital rights of women was an easy or always successful undertaking.

As marriage and divorce were largely communal affairs, Huseyn ughli was often assisted by the members of Muslim community in his efforts to find a solution to women’s plight. However, in the 1820s and 1830s, outside intervention in the form of a state decree and the change of the *mufīī* created obstacles. Huseyn ughli was thus forced to adjust to the state decree

84 Huseyn ughli referred to himself in this way. TsGIA RB, F. 295, op. 8, d. 26.

85 Marianne Kamp, *Debating Sharia: The 1917 Muslim Women’s Congress in Russia*, 27 *JOURNAL OF WOMEN’S HISTORY* 4 (2016).

in the case of a conscripted Muslim man's divorce. His decisions were repelled or somehow blocked by the new administration of the Orenburg Assembly, once 'Abdulwahid Suleymanov had become the *muftī*. Suleymanov systematized the marriage and divorce rules in his 1841 regulations on Muslim marriage and divorce, and his views about what constituted a legitimate divorce were very different from those of Huseyn ughli. Suleymanov preferred to base decisions on reliable Ḥanafī opinions instead of the needs of the community, as his remark to Huseyn ughli's *fatwā* suggested. As a result, Huseyn ughli was not able to achieve the same degree of success that he was able to before this outside intervention, despite the efforts of the community to help him.