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Genesis of Criminal Liability Formation for Crimes Against Women in Uzbekistan

Dilbar J. Suyunova*

Tashkent State University of Law

Tashkent, Republic of Uzbekistan

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Abstract. The article analyzes liability for crimes against women under criminal legislation of the Republic of Uzbekistan, while assessment of Criminal Code rules in terms of identifying its distinctive features of legal regulation conditional to gender and family differences of subjects is provided for the first time. Expert study of criminal legislation related to crimes against women plays a facilitating role in identifying not only the real scope of criminal law rules, but also determine if there is a gap in the law, or legal regulation is insufficiently socially conditioned. Moreover, analysis of the genesis of criminal standards on responsibility for crimes against women made it possible to trace changes in the law in relation to such objects of criminal law protection as, for example, life, health, sexual freedom and sexual immunity, honor, and dignity of woman, interests of the family and its members. As a result, the paper makes some comparisons with the legislation of foreign countries in terms of criminal responsibility for crimes against women, presents practical recommendations for improving the criminal legislation of Uzbekistan.

Keywords: criminal legislation, subjects of criminal matters, crimes against women, life, the health of women, domestic violence, historical variability.

Research area: law.

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Генезис формирования уголовной ответственности за преступления против женщин в Узбекистане

Д.Й. Суюнова

Государственный юридический университет Ташкента
Республика Узбекистан, Ташкент

Аннотация. В статье анализируется ответственность за преступления против женщин по уголовному законодательству Республики Узбекистан, при этом впервые дается оценка норм Уголовного кодекса с точки зрения выявления его отличительных особенностей правового регулирования, обусловленных гендерными и семейными различиями субъектов. Экспертное изучение уголовного законодательства, связанного с преступлениями против женщин, играет вспомогательную роль не только в выявлении реальной сферы применения уголовно-правовых норм, но и в определении того, есть ли в законе пробел или правовое регулирование недостаточно социально обусловлено. Более того, анализ генезиса уголовных норм об ответственности за преступления против женщин позволил проследить изменения в законодательстве в отношении таких объектов уголовно-правовой защиты, как, например, жизнь, здоровье, сексуальная свобода и сексуальная неприкосновенность, честь и достоинство женщины, интересы семьи и ее члены. В результате в статье приводятся некоторые сравнения с законодательством зарубежных стран.

Ключевые слова: уголовное законодательство, субъекты уголовных дел, преступления против женщин, жизнь и здоровье женщины, насилие в семье, историческая изменчивость.

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Introduction

The question of necessity to study criminal responsibility for crimes against women, subject to its specificity, did not arise immediately, since, unlike other branches of law such as labor law or family law, the criminal law is not a daily use one, and is applied only when committing socially dangerous acts (crimes), including against women. In addition, fundamental international legal documents, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979), which Uzbekistan joined in 1995, have no reference to public relations, which are the subject of criminal law.

Thus, the Convention binds States parties over to take necessary measures to eliminate discrimination in political and public life, as well as education field, labor, and matrimonial relations, but it does not address the issues of preventing discrimination against women specifically in

the sphere of criminal law. Merely article 6 of the Convention (International documents, 2007: 24) addresses the issue of crimes against women and establishes that “States parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women”. In addition, according to paragraph a) of the second part of article 11, the Convention prohibits, under threat of a sanction, dismissals from work based on pregnancy or maternity leave (International documents, 2007: 28).

Purpose and objectives of research Purpose and objectives of the research are to develop proposals and recommendations aimed at further improving criminal legislation regarding responsibility for crimes against women.

Objectives of the research. Research on formation and development of criminal legislation of Uzbekistan in terms of crimes against

women, research of elements of the crime that are committed against women, comparative analysis of some crimes against women in the Criminal Code of Uzbekistan and some foreign countries, the rationale for amendment of some articles of the Criminal Code of Uzbekistan where the victim is a woman, development of proposals for improvement of national criminal legislation in order to protect the rights and interests of women.

Research methods. As part of the research, general scientific and special methods of scientific knowledge were used: historical, systematic, comparative- legal, analytical, logical-legal, and others, which made it possible to a certain extent to ensure reliability and validity of the results of this research.

Research results. The paper makes a historical analysis of criminal legislation rules relating to crimes against women, provides a comparative review of some types of criminal liability for crimes against women in CIS and non-CIS countries, demonstrates the need to amend existing articles of the Criminal Code that calls for responsibility for crimes against women, proposes improving the criminal legislation of Uzbekistan, in terms of responsibility for crimes against women.

Assessment of rules of criminal legislation in terms of peculiarities of its legal regulation is conditional to gender differences of subjects and objects of elements of the crime. This analysis has shown that during a certain period of formation and development of independent Uzbekistan, rules of criminal legislation concerning liability for crimes against women have also changed. History of criminal legislation allows us to trace changes in public legal consciousness in relation to objects of criminal law protection, among which life, health, sexual freedom, honor, and dignity of women, interests of the family and its members can be indicated.

In ancient Uzbekistan (1884–1917), at the time of Sharia, attitude towards women was more than humiliating. Parents considered the girl as an “extra mouth” in the family, and from the moment of her birth, they thought about her “arrangement” and looked for a suitor for a one-year-old baby. Girl being in the cradle was the property of another person who bought

her from her parents according to customary sale and purchases transaction – kalym (re-purchase), which was illustrative of the slave position of women in society. The woman was bought and sold for money, no one regarded her opinion.

According to the rule of Sharia – “fear your husband after God” – a woman was the property of her husband, who derived full power over her, could punish for the slightest disobedience continuing until battery legal. Here-with, according to Sharia, the husband was not responsible for the abuse of his wife. A beaten and crippled woman could formally complain about her husband, but no one listened to her or supported her. The Kazi (judge) always took the side of her husband, since he received money from him, and besides himself, as a man, lived according to Sharia.

At the same time, the man had every right to marry again, since the Sharia allowed polygamy, while husbands used a whip against disobedient, obstinate wives since the Sharia enacted “strictness in treatment of wives”.

Later (1917–1991) place of women changed, their emancipation took place and women began to take part in elections to local councils, while law codified their rights to labor, education, medical care, pensions, and others. The structure of the executive branch formed women’s departments, which assisted women, took measures to provide them with work, and protected them from despotic husbands. It was during this period that Uzbekistan adopted the Marriage and Family Code, the Civil Code, the Criminal Code, and other legislative acts regulating the rights and freedoms of women, including their protection from criminal infringements.

What type of crimes against the person the crimes against women have relation to?

Criminal legislation of many countries places special emphasis on problems related to domestic violence. The Family Code of the Republic of Uzbekistan enshrines equality of women and men in family relations (Article 2) and emphasizes that “all citizens have equal rights in family relations” (Article 3), “spouses enjoy equal rights and bear equal responsibili-

ties” (Article 19). At the same time, established practice in applying the law still encounters cases of violation of these rights, which leads to domestic violence against women.

“Issue of domestic violence has long been taboo all over the world, and any attempts to develop and lobby a law on its adoption was perceived as a negative Western influence. Stereotypes reflected in the mentality of many nations justified the situation of violence, and it stopped perceiving as it is. Attitude towards it for the most part has become commonplace, natural. And it increasingly becomes a common type of offense that trenches upon the life, health, and dignity of women and children. According to statistics, most murders, inflictions of bodily harm of varying degrees of severity, beatings, and humiliations, coercion into early marriages, crimes for sexual reasons are committed in the family on domestic grounds”. Today it is no coincidence that programs practicing targeted deterrent models to reduce various forms of violence (Abt 2019) (Morgan, Boxall, Dowling, Brown, 2020) have growing support abroad.

Domestic abuse issues today during the coronavirus pandemic become more pronounced. Many scientists around the world are discussing the danger of COVID-19 not only in terms of health, but also in terms of the atmosphere in the family when all its members are at home, and the likelihood of violence arises. As Katrin Kaukinen rightly noted, “Coronavirus pandemic will have an unprecedented impact on frequency and consequences of crime and violence around the world. This includes influencing the risk, consequences, and decision-making of women experiencing intimate partner violence”. Recent article by Taub in the New York Times (Kaukinen, 2020) suggests, “travel restrictions intended to stop the spread of coronavirus could make domestic violence more frequent, more violent and dangerous”.

The peculiarity of these crimes is that the weakest members of the family – women and children – become the target of violence. As well as the fact that most of these crimes have latent, i.e. insidious nature, when due to fear of husband (father) or due to family obligations, traditions, religious beliefs, material, and oth-

er dependencies, the victims do not report to the law enforcement agencies about acts of violence committing or committed against them (Legal Reform Program in Uzbekistan, 2019: 33)

Many changes have taken place in Uzbekistan with the adoption of the Law of the Republic of Uzbekistan “On the Protection of Women from Oppression and Violence” on 17 August 2019, which aims to regulate relations in the field of protecting women from all forms of oppression and violence.

It is thought that the adoption of such important law on the protection of women’s rights, their protection from violence, will contribute to the introduction of appropriate amendments to the Criminal Code of the following nature.

Section one of the Criminal Code provides for liability for crimes against the person, where, in case of intentional homicide (Part 2, Article 97), incitement to suicide (Article 103), inducement to suicide (Article 103), intentional grave bodily injury (Article 104), intentional moderate bodily injury (Article 105), intentional slight bodily injury (Article 109), torture (Article 110), the threat of homicide or violent use (Article 112), a victim of criminal acts is a person without gender determination, with the exception of “women are known to the perpetrator was pregnant” distinctive feature. In other words, most rules of criminal liability apply to both women and men.

Taking into consideration Uzbekistan’s topical issues on the development of legislative frameworks for combating domestic violence, we presume to include a distinctive feature into indicated elements of the crime against a person that will provide for liability of “spouse or person in an extramarital relationship with perpetrator”. It should be noted that similar liability is provided by the Criminal Code of France (in all crimes of intentional infringements of inviolability of the person, spouse or person in extramarital cohabitation with victim committed such a crime is brought to justice), and the Criminal Code of Belgium (Articles 398–405 – crimes of murder that are not qualified and of intentional harm to health, where the perpetrator committed such acts against his spouse or person with whom he cohabits or cohabited,

maintains or maintained long-term love and sexual relations).

The Turkish Criminal Code provides for liability for crimes against life committed against “wife, husband, brother, sister, adoptive parents, adopted son, adopted daughter, stepmother, stepfather, stepson, stepdaughter, father-in-law (both father of wife and father of husband), mother-in-law (both mother of wife and mother of husband), son-in-law or daughter-in-law” (Article 449).

Chapter 4 of the Criminal Code provides for liability for sexual assault and indecent assault. In order to protect women from criminal infringements, attention should be paid to two elements of crime in this chapter: assault (Article 118) and forcible satisfaction of sexual need in the unnatural form, forcible sodomy (Article 119).

Assault (forcible rape) is one of the most serious violent crimes against women. As evidenced by data of criminal statistics, Uzbekistan registered a rise in the number of assaults until 2014 inclusive; while in the period 2015–2019 figures in records for this crime began to decline. Indeed, if 2014 registered 635 assaults in the country, 2019 showed 204 similar crimes (State Statistics Committee of the Republic of Uzbekistan, 2019). Such dynamics can be explained both by large-scale crime prevention works carried out in the Republic of Uzbekistan and by the high latency of this crime due to the fact that many victims of assault do not apply to law enforcement agencies.

Analysis of criminal legislation on this type of crime has shown that historically assault has always been referred to as a serious crime, while the existence of aggravating circumstances was an especially serious crime.

According to edition 1959 of the Criminal Code, liability for simple and aggravated assault is punished by three up to seven years’ imprisonment and by eight to fifteen years’ imprisonment or by the death penalty (Criminal Code 1966: 32). In accordance with amendments to the Criminal Code introduced by Law in 2001, the current Criminal Code imposes punishment for assault with distinctive features from seven to ten years (part 2, article 118) and from ten to fifteen years (part 3, article 118), while assault of a person under the age of four-

teen, punishment is imprisonment from fifteen to twenty years (part 4, article 118) (Criminal Code 2019: 85).

The objective aspect of assault according to edition 1959 of the Criminal Code consisted in sexual intercourse of a male person with a woman with the use of violence or threat of its use, as well as using helpless state of victim, i.e. with a direct indication of victim gender. In 1994, with the adoption of the new Criminal Code, the content of objective aspect of this crime has transformed, the legislator has determined that in case of assault, Φ person of both female and male sex can be recognized as a victim. In addition, in the specified period, new article 119 was introduced in the Criminal Code, which provides for liability for forcible satisfaction of sexual necessity in unnatural form, sodomy, committed against the victim (without determining the sex).

Note that such notion of assault as a crime, the perpetrator of which, most commonly, is a man¹, and the victim is a woman, is considered traditional both for the doctrine of domestic criminal law and for the law enforcement practice. This circumstance plays important role in determining the objective aspect of this type of crime, since physiologically sexual intercourse in a natural form, although against the will of the person, with the use of violence and threats, is possible only against a woman.

Article 119 of the Criminal Code establishes liability for unnatural cases when actions of the perpetrator are of a violent nature and they infringe on sexual freedom of the person in unnatural form, whose gender does not matter for determining the objective aspect of a specified crime.

Thus, it can be stated that since liability for assault under Article 118 of the Criminal Code was established without taking into account the physiological characteristics of a person, and in order to protect the rights of women in determining objective aspect of the specified element of crime in this article, it is required to

¹ In practice, there are cases when a woman is recognized as a co-perpetrator of this crime, for example, if she, by using violence, helps to suppress resistance of victim. A woman can also be an accomplice in assault, such as helpmate or abettor. For example, in 2013–2015, woman involved 21 assault cases.

specify the sex of the person in whose respect sexual intercourse was done with the use of violence, threats or through his helpless state. At the same time, it should be recognized that the existence of responsibility for assault (Article 118) in the modern Criminal Code and forcible satisfaction of sexual needs in an unnatural form, sodomy (Article 119), testifies the justice in the sense of equal criminal law protection of sexual freedom and sexual inviolability as for women and men. Thus, equality has been established in the protection of mentioned individual rights in the event of infringement on sexual freedom.

Women as an objects of crimes against family, youth, and morality

In terms of analyzing crimes against women, we can consider criminal liability for polygamy (Article 126 of the Criminal Code). It should be noted that the Criminal Code of Uzbekistan in 1959 defined “bigamy or polygamy” as cohabitation with two or more women based on a common household (Criminal Code of the Uzbek SSR, 1966: 43), since then this element of the crime has not undergone any special changes, the word “bigamy” is excluded from the name and disposition of specified content of the current Criminal Code.

Main feature of the objective aspect of this crime is cohabitation with two or more women based on a common household. It seems that these actions, defined by the legislator as “polygamy,” go beyond the latter, since “polygamy” word means “being in an official marriage with several wives at the same time,” while “cohabitation is only life as a couple, living, sexual relationship between man and woman” (Ozhegov, 2014: 587), without the official conclusion of a marriage.

This gives reason to assume that the legislator did not specify under what circumstances actions of the guilty party are recognized as criminal: when a guilty person is in an official marriage relationship with two or more women, or when the guilty party lives together (is in sexual relationships) with two or more women.

It seems that since, according to Article 16 of the Family Code of the Republic of Uzbekistan, marriage is not allowed between

persons when at least one is already in another registered marriage, criminal liability is established not for polygamy (based on the context of this word), but for cohabitation – joint living with two or more women without formal marriage.

Similar disposition of criminal liability for cohabitation with two or more women can be found in the Criminal Codes of Tajikistan and Kyrgyzstan, at the same time, for example, the Criminal Code of Switzerland establishes liability specifically for polygamy: “those who conclude marriage being already married, who concludes marriage with a married person” (Article 215) is subject to criminal liability, while in Japan, Great Britain and Norway, polygamy, meaning as officially concluded several marriages, is also a criminal offense.

According to the Criminal Code of Poland, those who conclude a marriage, despite the fact that they are already in a marriage union, are prosecuted (Article 206), Article 192 of the Criminal Code of Austria stipulates liability for polygamy, i.e. to someone “who concludes new marriage while already in marriage, or concludes marriage with a married person”.

At the same time, criminal legislation of Azerbaijan, Kazakhstan, the Russian Federation, Latvia does not contain criminal liability for polygamy at all.

In the process of studying crimes against women, the particular interest aroused criminal liability for the maintenance of the house of prostitution (Article 131 of the Criminal Code).

It should be noted that edition 1959 of the Criminal Code of Uzbekistan did not contain liability for indicated criminal acts, this article was introduced into the Criminal Code in 1999 and consisted of two parts, the first of which says that “Organization or maintenance of house of prostitution, as well as procuration motivated by money or other base motives”, second part established distinctive features of this crime in the form of involving juvenile, repetition, dangerous recidivist or person who had previously committed crimes related to human trafficking or kidnapping (Criminal Code of the Uzbek SSR, 1999: 76).

Analysis of criminal legislation of foreign countries shows that the concept of

procuration includes prostitution, pimping, engaging in prostitution, etc. For example, the French Criminal Code's section "On procuration and identical criminal acts" determined that "A procuration is an act committed by any person in whatever form, expressed in:

1. Assisting, facilitating, or encouraging prostitution of another person;

2. Capitalizing on the prostitution of another person, participating in the distribution of income from this activity, or receiving payments from the person who systematically engages in prostitution;

3. Involvement in prostitution, seduction or hiring for prostitution, or pressure on the person to force him to engage in prostitution or continue to do so" (Article 225⁵).

The Code determined distinctive features of this crime: making it easier for a pimp to legalize fictitious sources of his income, actions committed against the juvenile, by the ascendant, etc. (Articles 225⁶–225¹² of the Criminal Code of France).

The Turkish Criminal Code contains "Incitement to prostitution", the independent chapter three, which defines the liability of the person who seduces and abets to prostitution a teenager under the age of 15 years, and creates conditions for this if the act of seduction was committed by one of the close relatives in ascendant, from among brothers or sisters, by an adoptive parent, guardian or curator, teacher or tutor, servants or other persons under whose supervision the adolescent has been placed, and if a girl or woman who has reached the age of 21 is incited to prostitution by her husband, a close ascendant relative, brothers or sisters, etc. (Articles 420–426).

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The Austrian Criminal Code's "Crimes against morality" section, establishes liability for procuring (§ 213), facilitation of sexual abuse of others for money (§ 214), assistance in professional prostitution (§ 215), pimping (§ 216). At the same time, for procuring, the one "who inclines a person to sexual abuse with another person with whom he is in relationship specified in § 212 (having parental rights), in the presence of prerequisites provided there, or inclines to sexual cohabitation", is subject to criminal liability.

Conclusion

So, concluding the article, we come to the following conclusions:

– the issue of criminal liability for crimes against women in historical development was regulated by the legislation of Uzbekistan, while some elements of crime of forced nature did not determine the gender of victim and criminal violence against women remained without due attention;

– the current domestic legislation on crimes against women needs to be reformed; it is necessary to carefully review the elements of crimes where the victim is a woman;

– the rules of criminal law in terms of identifying features of legal regulation conditional with gender and family differences of subjects are subject to careful analysis since the content of criminal law rules is not sufficiently socially conditioned.

It should be summarized that since the criminal legislation is the finalizing element in the legal system of the state, it must contain all the grounds for the occurrence of the most severe type of legal liability – the criminal liability for crimes against women.

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