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Characteristics of the Crime of Forcing a Woman to Marry or Obstruction Her from Marrying

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Abstract: This article analyzes in detail the characteristics of the crime in the form of forcing a woman to marry or preventing her from entering into marriage, that is, objective and subjective characteristics, as well as issues of obstruction this act. In particular, the opinions of scientists and analysis of law enforcement practice on this crime are considered. The article also highlights the mandatory and optional features of the subject, the subjective side of this crime, and reveals the motive and purpose of the crime. The author presents the relevant scientific and theoretical conclusions.

Keywords: woman, freedom, personality, honor, dignity, sanity, spouses, unfree state, coercion, violence.

The people of Uzbekistan respect universal values, but have a unique way of life, which is especially noticeable in marriage and family relations. In the conditions of the market economy, we continue to follow the traditions that arose in a completely different era, in a completely different political and economic environment, based on family legislation developed on the basis of the European model. Simply put, our views on family issues inherited from our ancestors are slightly different from the model described in the law[1].

At the beginning of the last century, A. Qadiri wrote about different views on the family, and then opinions were expressed during the Soviet era. Polygamy, early and forced marriages have been in the spotlight. Legal measures have been used to eliminate these negative situations. Liability for them is still provided by law:

In the Criminal Code of the Republic of Uzbekistan (hereinafter referred to as the Criminal Code) - Article 126 (polygamy)[2], Article 136 (forcing a woman to touch the ground or preventing her from touching the ground)[3], Articles 128, 129 (having sex with a person under the age of 16)[4] and doing obscene actions against him)[5];

In the Code of Administrative Responsibility - Article 47-3 (violation of legal documents on the age of marriage)[6].

Currently, crimes against the family are included in a separate group in the national criminal law, and their category includes criminal acts defined in the articles of Chapter V of the Criminal Code.[7] Legal

[1] S. Latipov. Marriage and family: are legal documents effective
[2] https://lex.uz/docs/111453
[3] https://lex.uz/docs/111453
[4] https://lex.uz/docs/111453
[5] https://lex.uz/docs/111453
[6] https://lex.uz/docs/97664
[7] A. Atajonov. Crimes against the person. Academy of Ministry of Internal Affairs of the Republic of Uzbekistan, T.2012. - B.136.

Volume: 3 Issue: 8 | Aug–2024 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

protection of the interests of the family and minors Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights

(1966) is determined on the basis of leading international documents. [8]According to paragraph 3 of Article 16 of the above declaration and paragraph 1 of Article 23 of the International Covenant, the natural and main part of society is the family, which must be protected by society and the state.

Protecting and reliably protecting the family institution, which is a form of social life, is the main priority task and duty of the state. Article 63 of our National Dictionary contains a firmly established norm that the family is the main link of society and is under the protection of society and the state. A similar rule exists in the Family Code, which has a leading role in regulating family relations.[9] A similar general principle is defined in other relevant laws and regulations.

There is no single approach to the term "family" in legal documents and scientific views. Not only in science, the Family Code does not provide a legal definition of the term "family", only in civil and family law, the concept of family includes marriage, kinship or other legal forms of raising children (guardianship, sponsorship, adoption, patronage, etc.) the circle of persons with personal non-property and property rights and obligations is understood.[10]

The concept of family has a social and legal meaning. From a social point of view, the concept of family means persons who have personal property and non-property relations on the basis of marriage or kinship, who are integrally related on the basis of mutual support and upbringing of children.

From the legal point of view, the family institution is defined as the circle of persons with rights and obligations arising from marriage, kinship, adoption, patronage or other forms of raising children (sponsorship, guardianship). As the researcher S.Grishaev rightly pointed out, in a social sense, a family can be dissolved when a marriage ends, but it does not end in a legal sense (for example, even if a couple has already divorced and does not live together, their mutual rights and obligations can be preserved).

Analyzing the direct object of this crime, we see that there are different approaches among scientists. According to M.H. Rustambaev, the direct object of the crime is the will and dignity of a woman, social relations that guarantee her freedom to decide independently whether to touch the ground or to continue living with her husband. M. Kadyrov considers the object of this crime to be a woman's freedom in marital relations.[11]

In our opinion, the direct main object of forcing a woman to touch the ground or preventing her from touching the ground is the social relations that ensure the freedom and freedom of a woman in marital

[8] Uncle D. Mejdunarodno-pravovye aspekty zashchity prav detey // Social protection of children: prospects for improvement of curatorial functions: Proceedings of a scientific-practical conference. - T., 2007. - B. 274-281.

[9] "Family Code" of the Republic of Uzbekistan dated 04/30/1998. // Bulletin of the Oliy Majlis of the Republic of Uzbekistan 1998. No. 5-6, Article 4.

[10] Комментарий к Semeynomu kodexu Rossiyskoy Federatsii: (uchebno-prakticheskiy): (postateynyy) / O. G. Alekseeva, L. V. Zaets, L. M. Zvyagintseva [i dr.]; pod ed. S. A. Stepanova. M., 2015. – B.254. Dostup iz sprav.-pravovoy sistemy "KonsultantPlyus".

[11] Grishaev S. P. Postateyny kommentariy k Semeynomu kodexu Rossiyskoy Federatsii. 2-e izd. pererab i dop. Prepared for the system "Consultant Plus", 2017. - P.168. Dostup iz sprav.-pravovoy sistemy "Consultant Plus".

Volume: 3 Issue: 8 | Aug–2024 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

relations,[12] and the direct additional object is the social relations that ensure the inviolability of a woman's life or health.[13]

From the objective side of crime:

first, forcing the woman to touch the ground or to continue living in marriage;

secondly, abducting a woman in order to marry her against her will;

thirdly, it consists in preventing the woman from touching the ground.

According to M.H. Rustambaev, forcing a woman to touch the ground or to continue living together in marriage should be understood as the use of physical or mental violence against her in order to force her to touch the ground or to continue living in marriage.[14] In this regard, in the comments to the code, "it is necessary to understand that the use of physical violence means beating, punching a woman, inflicting light or moderately severe damage on her body."

In cases where a woman is seriously injured during the act of coercion, the perpetrator's actions are determined by articles 136 and 104 of the Criminal Code.

Mental violence should be understood as using physical violence, disclosing information that a woman wants to keep secret, threatening to destroy her property, etc. In cases where the guilty woman threatens to kill or injure a person using violence, the act of the guilty person is not additionally qualified by Article 112 of the Criminal Code (threatening to kill or use violence).[15]

Abduction of a woman consists of taking a woman against her will, seducing her into a marriage by tricking or using force, sequestering her in some place (for example, taking her away in a transport, etc.).[16] Abduction of a woman for marriage against her will is not classified as a crime under Article 137 (kidnapping) of the Criminal Code. Abduction of the victim without the intention of marrying her should be qualified by Article 137 of the Criminal Code. If a woman is abducted for the purpose of marriage, and the abducted woman consents to this, the crime referred to in Article 136 of the Criminal Code does not exist.

Preventing a woman from touching the ground is expressed in the use of physical or mental force (intimidation) in order to prevent her from touching the ground of her own free will. The physical or mental coercion used to prevent a woman from touching the ground is the same as the coercion used to force a woman to go through marriage and continue living in marriage.[17] Persuasion by relatives and others to change a woman's desire to marry does not constitute a crime.

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[12] Rustambaev M.H. Criminal law course of the Republic of Uzbekistan. T. 3. Crimes against the person. Crimes against peace and security: Textbook. - Tashkent: ILM ZIYO, 2011. - B. 193.

[13] Kadyrov M.M. Ugolovnoe pravo Republic of Uzbekistan. Osobennaya chast: Uchebnik. - Tashkent: Adolat, 1997. - S. 105.

[14] Rustambaev M.H. Criminal law course of the Republic of Uzbekistan. T. 3. Crimes against the person. Crimes against peace and security: Textbook. - Tashkent: ILM ZIYO, 2011. - B. 193.

[15] Comments on the Criminal Code of the Republic of Uzbekistan. / Z.Kh.Gulomov, R.A.Zufarov, R.Kabulov. - Tashkent: Adolat, 1997. - B. 169.

[16] Rustambaev M.H. Criminal law course of the Republic of Uzbekistan. T. 3. Crimes against the person. Crimes against peace and security: Textbook. - Tashkent: ILM ZIYO, 2011. - B. 194.

Volume: 3 Issue: 8 | Aug–2024 ISSN: 2720-6882
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When determining the age at which a person can be held criminally liable, the legislator takes into account the level of psycho-physiological maturity of a person, that is, his ability to understand the importance of his actions (mental factor) and control them (mental factor). Such ability does not appear in a person immediately, but after he reaches a certain age. This age is regulated in Article 17 of the Criminal Code of the Republic of Uzbekistan, and in accordance with this provision, sane individuals who have reached the age of sixteen before committing a crime are held responsible.

The subject of this crime can be any person over the age of 16. As noted by F. Tokhirov, "in most cases, a woman's parents, brothers, sisters, other relatives, son-in-law are the subjects of the crime." M. Kadyrov, expressing the same opinion, notes that in practice, in many cases, the subject of this crime is a woman's close friends.

Regarding the subjective aspect of this crime, F. Takhirov noted that it was committed intentionally. However, this crime can be committed only with the right intention. The author did not clarify the issue in this regard.[18] *Other scientists, in particular* [19]*M.H. Rustambaev and M. Kadyrov, expressed a clear opinion about the fact that the crime was committed on purpose. The culprit realizes that he is forcing the woman to touch the ground or preventing her from touching the ground and wants to achieve his goal. The motive for committing this crime may be different (for example, revenge, jealousy, greed, etc.) is not important in the qualification of the crime.*

So, what measures should be taken to prevent these crimes?

First of all, in economic measures to prevent crimes against the interests of personal freedom, [20]it is necessary to expand the production sector in relation to trade and consumer relations, modernization and creation of new enterprises and organizations in various fields; It is appropriate to increase their funding in order to provide employment to citizens of different categories (taking into account their education, territorial proximity, etc.) and meet the needs of the region. In this regard, special attention should be paid to agricultural districts, because the population is decreasing year by year due to the decrease of jobs and the lack of normal living conditions (in some rural settlements there is still no gas, the quality of well water often does not meet sanitary requirements).[21]

In this regard, we believe that it is necessary to direct state funds to finance the restoration of agricultural enterprises. In particular, supporting family farms not only helps provide jobs, including a decent income, to residents of agricultural districts, but also leads to infrastructure development in these districts, which in turn reduces youth migration. The presence of a job and stable income creates a stable material base in the family and significantly reduces the number of various crimes.[22]

Practical steps are already being taken in this regard. In particular, according to the Decree No. PF-5325 of the President of the Republic of Uzbekistan Shavkat Mirziyoyev dated February 2, 2018 "On measures to fundamentally improve activities in the field of supporting women and strengthening the family institution", the socio-political and social activity of women in our country wide-scale work is

[18] Rustambaev M.H., Tokhirov F., Erkahodzhaev F.K. Criminal law. Special part: Textbook. / Responsible editor: Y.M. Karaketov. - Tashkent: World of Economics and Law, 2000. - B. 135.
[19] Rustambaev M.H. Criminal law course of the Republic of Uzbekistan. T. 3. Crimes against the person. Crimes against peace and security: Textbook. - Tashkent: ILM ZIYO, 2011. - B. 195.
[20] Rustambaev M.H. Criminal law course of the Republic of Uzbekistan. T. 3. Crimes against the person. Crimes against peace and security: Textbook. - Tashkent: ILM ZIYO, 2011. - B. 193.
[21] Kadyrov M.M. Ugolovnoe pravo Republic of Uzbekistan. Osobennaya chast: Uchebnik. - Tashkent: Adolat, 1997. - S. 106.
[22] Lichnost prestupnika i profilikatika prestuplenii: monograph / Yu.M. Antonyan, pod ed. — M.: "Prospect", 2017., 224 p.

Volume: 3 Issue: 8 | Aug–2024 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

being carried out to increase, create conditions for them to realize their abilities and opportunities in various fields and sectors, ensure unconditional observance of their rights and legal interests, comprehensive support for motherhood and childhood, as well as strengthening the institution of the family.

In order to equalize the property status of citizens, it is necessary for the state to develop and support small and medium-sized businesses established on the basis of family relations, which is especially appropriate for the districts of agricultural specialization. These measures not only help to get out of the difficult financial situation for many families, but also prevent the crimes of human trafficking (trafficking of prostitutes), forcing a woman to touch the ground (especially the rich) or preventing her from touching the ground, and in general, increase the level of material well-being of society and its marginal part. reduces

67.4% of the respondents emphasize the need to improve the economic structure of society. Social measures to prevent crimes against personal freedom should be based, first of all, on the special attitude of the state to the family as the main boss of society, as well as to each of its members.

In this regard, we support the views of a group[23] of scientists regarding the need to develop and adopt a special law "On State Support of the Family" with the following goals:[24]

1) basic indicators of the quality of life in the family, including determining the minimum social standards for the minimum volume of social services provided by the state to the family;

2) creating conditions for the economic independence of families, stabilizing the material situation of families, overcoming poverty;

3) providing employees with children with favorable conditions for combining work with family duties;

4) creating conditions for the development of individual work activities, family entrepreneurship;

5) creating conditions for health care, healthy lifestyle formation;

6) providing support to the family in the field of raising and educating children;

7) formation of social infrastructure for families, social service system for families.

Measures in the spiritual and moral sphere to prevent crimes against personal freedom must be based on the fact that the global deformation of human values and directions in life, which began in the 90s of the last century, has unfortunately not stopped until now.

We support the opinions of scientists who have expressed their views on the importance of changing the direction of media activity, in our opinion, taking concrete measures aimed at prohibiting the display of violence, aggression, immoral behavior, and the violation of these requirements can lead not only to the cancellation of the license, but also to severe criminal punishment. must issue.

Accordingly, in our opinion, within the framework of the unified state program, mass media should be entrusted with the task of further expanding and improving the quality of video, audio and printed products that educate real human values, mutual sympathy, mutual help, etc.

[23] Decree No. PF-5325 of the President of the Republic of Uzbekistan Shavkat Mirziyoev of February 2, 2018 "On measures to fundamentally improve activities in the field of supporting women and girls and strengthening the family institution".

[24] . http://www.sovetpamfilova.ru/text/38/?parent=/ (obraschenie 01.08.2016)

Volume: 3 Issue: 8 | Aug–2024 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

Concrete measures for victimological prevention of crimes against the family can be mentioned as follows: reducing the level of various negative diseases, alcoholism, and drug addiction in the family; wide promotion of legal and psychological methods of protection against negative aspects of family life; immediate and effective reaction of law enforcement agencies to even single facts of crimes against the family; carrying out preventive measures individually with the victim's family members, registering unhealthy families; extensive involvement of psychologists in conducting individual victimological prevention; in order to avoid re-victimization of the victims, it is appropriate to apply reconciliation, mediation and rights restoration methods in the cases provided for by the law.

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