



GENDER INEQUALITY IN UZBEKISTAN: PROBLEMS OF ACCESS TO JUSTICE FOR WOMEN AFFECTED BY DOMESTIC VIOLENCE

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Article history:	Abstract:
Received: November 10 th 2022 Accepted: December 11 th 2022 Published: January 18 th 2023	This article presents a legal analysis of existing problems in ensuring gender equality in the Republic of Uzbekistan. The article qualitatively and quantitatively analyzes the problem of domestic violence against women, which is one of the main factors causing gender inequality in society. The political, social, economic and cultural obstacles to the realization of the right and access to justice for women victims of domestic violence are considered in detail. In addition, based on official statistics provided by law enforcement agencies, a cross-analysis was made of the number of protection orders issued to women over the past year, and the number of decisions made by administrative and criminal courts in these types of cases. Based on the problems and shortcomings studied, proposals and recommendations were developed to eliminate domestic violence against women, which is one of the main factors causing gender inequality in Uzbekistan

Keywords: gender equality, domestic violence, justice, stereotypes, respondents, social survey, statistics.

Today, one of the priority areas for the development of Uzbekistan is the creation of conditions for achieving gender equality, ensuring the rights, freedoms and legitimate interests of women, strengthening their role in public and state life.

Recently, ensuring gender equality and increase the role of women in the socio-political life of the country has been carried out in several directions:

- improvement of legislative acts on women's rights;
- improving the institutional framework for the protection of women;
- raising public awareness of gender equality and women's rights;
- training of responsible persons on the basis of relevant legal norms to ensure their implementation in the practice of applying the law.

Over the last years, more than 40 legislative acts have been adopted in this area. An important side of the issue is that all the newly created institutional mechanisms adopted in accordance with the UN Convention represent an integral and unified mechanism for ensuring women's rights, gender equality and the elimination of discrimination against women.

All these actions - adopted normative legal documents and practical measures - are an important step in the implementation of the gender policy of Uzbekistan, in line with international norms and standards of lawmaking and law enforcement practice.

Results of a social survey to study public opinion on the problem of domestic violence.

Despite the measures taken by the state, active gender policy and adopted gender-oriented legal acts, violence against women still remains and is of great concern in Uzbekistan, and stigmatization and ignorance about domestic violence remains widespread. To date, there are several problems on this topic, such as problems in legislation and their implementation, problems in access to justice in cases of violence against women, problems in the minds of people, which is one of the main issues on the agenda.

To analyze this problem, several social surveys were conducted to study the awareness of the country's population about cases of domestic violence, identify problems in the implementation of women's rights in Uzbekistan, and study the level of their access to justice.

As part of the first study aimed at studying the awareness of the population about the problem of domestic violence, 129 people took part, of which 78.3% were women and 21.7% were men, citizens aged 18 years and older, living in all regions of the republic, urban and rural areas, representatives of various social groups. The survey revealed that 93% of respondents believe that there is a problem of domestic violence in Uzbekistan. In general, respondents are convinced that women (96%), children (69.6%), persons with disabilities in the family (36%), the elderly (25.6%), men (8.8%) are most exposed to domestic violence. As for the main causes of domestic violence,



according to the results of the survey, 80% of respondents consider the low level of education and culture, interference of relatives in family life (61.6%), material problems (60.8%), the tradition of family violence in childhood (59.2%), unemployment, social disorder (56.8%), alcoholism (53.6%), poor relationship between husband and wife (50%), poor housing conditions (40.8%), severe socio-economic situation in the country (40%), high level of aggression in society (36.8%), drug addiction (34.4%), genetic predisposition to violence (31.2%) and others.

In addition to the above reasons, very often in cases of domestic violence society blames the victim herself, and not the perpetrators. A popular belief among the public is that women "instigate" or "deserve" violence, and that "arguments" between husbands and wives are a natural part of family life. Discussions on social media about violence against women and girls often elicit harsh stereotyped and prejudiced comments from individuals who also quite often resort to blaming the victim themselves – secondary victimization (victimblaming).

In the study, we asked respondents to indicate what actions of a loved one they would regard as domestic violence. The survey showed that the majority (78.4%) of citizens regard screaming, threats and intimidation as a form of domestic violence, in addition, beating, hair pulling (74%), unjustified cruel punishment of children, beating children (72.8%), humiliation and insult (70.4%), pushing, pinching, arm-twisting (64%), sexual violence (64%), prohibition to work (look for a job), study or self-realize professionally (59%), prohibition to meet with friends and relatives, obstructing communication with them (57.6%), taking money, prohibition to independently manage personal money (57.6%) by citizens is also perceived as a form of domestic violence.

Based on the above answers, we can conclude that a large percentage of respondents can correctly identify the above actions as a manifestation of violence. In addition, according to the results of the study, it turned out that 84.8% of citizens were aware of cases of domestic violence in the family (for example, among relatives, colleagues, acquaintances, etc.).

The survey showed that 60% of respondents sought help from people they knew who had experienced domestic violence. Usually, cases of domestic violence are not reported and women often do not contact the police because of fear of reprisals, social stigma, economic and material dependence on their husbands, or lack of knowledge about their rights.

The study showed that 64% of respondents turned to friends and relatives for help, 28% to the

police, the prosecutor's office, the court, 17% turned to social workers and psychologists, 5.6% turned to help through a helpline, 4.8% to a specialized crisis center and others.

Based on the above results, it can be concluded that a large percentage of victims of domestic violence in such situations usually turn to friends and relatives. The question arises, how aware are people of where to turn for help in such situations? To the question "Do you know any state institutions, social services, crisis centers, public organizations, hotlines that really help people who have been victims of domestic violence?", it was found that the majority (52.8%) of respondents do not know this information. Based on this, it should be noted that educational work to raise public awareness about obtaining protection in cases of harassment and violence against women remains unsatisfactory.

The second social survey was conducted among the victims of domestic violence with the information support of Nemolchi.uz.

The study involved 120 women (93%) and 9 men (7%), aged 18 years and older, living in all regions of the republic, urban and rural areas, representatives of various social groups. According to the results of the survey, the majority of its participants (79%) consider themselves victims of domestic violence. According to the study, the persons who committed violence against women were husband, partner, boyfriend (36.6%), husband, his relatives and mother-in-law (21.8%), parents (32.6%), other relatives (20%).

According to the results of the study, it was revealed that the majority (80.6%) of its participants were subjected to psychological violence, 54% were victims of physical, 32.6% - economic and 21.7% - sexual violence.

The survey showed that 62.1% of respondents did not contact the relevant state authorities when they were subjected to domestic violence due to: feelings of fear (19.4%), feelings of shame (23.3%), stress and psychological state (30.1%), youth, lack of understanding of the seriousness of the situation (38.8%), lack of trust in law enforcement agencies (31.1%) and others.

According to the results of the study, it was revealed that 27.9% of the victims of violence turned to the district police and the police for help, 13.2% to the mahalla, 3.9% to the prosecutor's office, 5.4% to the court, 3.9% to rehabilitation centers. The survey revealed that in relation to victims of violence when seeking help, law enforcement officers: showed distrust and misunderstanding (9.3%), did not want to listen to



the victim (7%), did not accept the application (2.3%), redirected to others (3.9%) were persuaded to withdraw their application (8.5%), referred to NGOs for help, and others. In addition, the survey made it possible to identify respondents' opinions about the effectiveness of protection orders. 50.9% of the respondents answered that this document did not protect them from violence.

The study revealed an interesting trend. The survey showed that the majority (82.9%) of citizens believe that a victim of domestic violence should go to court to protect their rights, but at the same time it turned out that 87.7% of respondents' cases did not reach the court to protect themselves from domestic violence. 12.3% of citizens answered that their cases went to court, but during their consideration there were cases: condemnation, instructions from the court, which as a result remained as feelings of guilt in the victim, reconciliation without paying a fine, also, some expressed an opinion about the need for judges to undergo special training on how to communicate with victims of violence.

Conducted social surveys to study public opinion have revealed very important problems that exist today in our country. Unfortunately, due to deeply rooted patriarchal views and stereotypes about gender roles, such views persist among officials in Uzbekistan, including employees of the Ministry of Internal Affairs, prosecutors and judges. Despite the efforts of some government officials, they have failed to properly convey a consistent message of zero tolerance for domestic violence to the public, and state media continue to perpetuate gender inequality and stereotypes that reinforce the idea that women and girls should be "controlled". All this contributes to a culture of violence and a general climate of impunity for perpetrators. As a result, victims of violence are reluctant to seek help from law enforcement agencies due to the aforementioned reasons.

Gaps in national legislation to combat violence against women

In order to prevent domestic violence, on September 2, 2019, the Law "On the Protection of Women from Harassment and Violence" was adopted, which defines the concepts: "sexual violence", "physical violence", "economic violence", "psychological violence", "harassment", "protection order" (Article 3).

According to Article 4, the victim of harassment and violence has the right to:

file an application on commencement of harassment or abuse of her or a threat thereof to the

relevant authorized bodies and organizations or the court;

obtain free legal consultations, economic, social or other assistance in specialized centers, as well as via a free phone line;

file a claim to the internal affairs bodies for issuing a protection order, and inform them about violation of the terms of a protection order, shall it happen;

file a claim to the court for reimbursing material damage and compensating for psychological damage due to commenced harassment and abuse.

A victim of harassment and abuse shall be exempt from paying stamp duty when applying to the court for reimbursement of material damage and compensation for psychological damage.

A victim of violence has the right to receive a special document - a protection order that provides state protection against harassment and violence, entailing the application of measures of influence determined by the Law "On the Protection of Women from Harassment and Violence" against a person or group of persons who harass women or have committed violence against them.

In the 12 months of 2021, the Ministry of the Interior registered 39,343 cases of violence against women, including psychological violence (18,777 cases), physical violence (13,658 cases), economic violence (234 cases), sexual violence (106 cases) and harassment (7174). According to statistics, 34,330 cases of domestic violence occurred in the family and 26,667 of them were committed against women by the husband. Compared to 2020, the number of issued protection orders (14,774) has more than doubled, which indicates, on the one hand, an increase in the manifestation of violence against women, and, on the other hand, the prevention of violence by employees of the Ministry of Internal Affairs to prevent the manifestation of domestic violence. According to official data from the Ministry of Interior on protection orders for 2020-2021, the rationale for issuing protection orders was the statements of victims of harassment and violence in the amount of 5,071 and 21,947, respectively.

If, during the consideration of the issue of issuing a protection order, signs of a crime under the Criminal Code are revealed, the case materials are sent to the relevant law enforcement agency to resolve the issue of bringing the aggressor to criminal responsibility. If there is a fact of violence, at the request of the victim of harassment and violence or his legal representative for asylum, accommodation is provided in special centers for up to thirty days, which, if necessary, can be



extended. If a victim of violence is placed in a special center, she retains her job, the time spent in the center is not a reason for expulsion from an educational institution due to missing classes.

The Criminal Code of the Republic of Uzbekistan criminalizes a number of attacks on life, health and sexual freedom, but does not include domestic violence. As a rule, cases of domestic violence can be initiated upon the complaint of the victims, i.e. they are under private prosecution. In this regard, in order to protect victims of domestic violence, the state exempted the victim of violence from paying the state fee in terms of a claim for compensation for material damage and moral damage.

Thus, article 325 of the Code of Criminal Procedure of the Republic of Uzbekistan lists a number of crimes against health, sexual freedom, coercion to enter into marriage or obstruction of marriage, slander and insults, against the constitutional rights and freedoms of citizens, criminal proceedings that are initiated only upon the complaint of the victim with a request to bring guilty to liability. This article provides that in exceptional cases, when the victim, due to his vulnerability, dependence on the accused or for other reasons, cannot protect his rights and legitimate interests, the prosecutor is obliged to initiate a criminal case without a complaint from the victim.

The Criminal Code of Uzbekistan provides for punishment for incitement to suicide (Article 103); inducement to suicide (Article 1031); intentional infliction of bodily harm (Articles 104-105, 109); torture (Article 110); threats to kill or use violence (Article 112); rape (Article 118); forcible satisfaction of sexual need in an unnatural form (Article 119); forcing a woman to enter into marriage or preventing her from entering into marriage (Article 136); slander (Article 139); insult (Article 140); violation of the equality of citizens (Article 141). As a rule, perpetrators of domestic violence are held accountable under the above articles.

Despite the provision of official data on the above articles by the Ministry of Internal Affairs, we were unable to obtain them by gender. As a result, this prevents a full-scale analysis and study of statistics on the prosecution of perpetrators of domestic violence. The only gender-specific statistics published on the gender.stat.uz website are Articles 118 and 119 of the Criminal Code of the Republic of Uzbekistan.

Based on the results of studying the statistics on protection orders by gender, it was revealed that in 2021, 26,667 protection orders were issued to women against whom domestic violence was committed by their husband and 11,159 cases of which were in the form of physical violence. But as a result of comparing

the number of protection orders and the number of criminal cases initiated, one can see a big difference between them. The reason for this cut may be the practice of reconciliation of the parties on such crimes.

According to article 66-1 of the Code of Criminal Procedure of the Republic of Uzbekistan, a person who has committed crimes that harm health or sexual freedom is released from criminal liability in connection with reconciliation with the victim. Often in practice one can observe a widespread reconciliation of the parties in cases of domestic violence, even on the part of law enforcement officials. According to the data of the Ministry of Internal Affairs for 2020-2021, 8,166 and 20,568 families were sampled, respectively, based on the results of issuing protection orders to victims of domestic violence.

This practice still remains doubtful and raises many questions, since there are no specific criteria for reconciliation of the parties and constant monitoring of the situation in the family after reconciliation with the aggressor. Usually, victims of violence, under pressure from family, friends and society, and also because of the fear of stigmatization and the stigma of being "divorced", agree to live with the aggressor again. Unfortunately, due to this common practice, perpetrators of domestic violence are rarely brought to justice. There is a lack of due diligence standards regarding the investigation and prosecution of crimes of domestic violence. As a result, women are not adequately protected, and perpetrators in the vast majority of cases go unpunished.

Women's rights activists report that the tragic consequences of insufficient effective protection are reflected in the alarming rise in the suicide rate among women and girls in Uzbekistan, which increased from 600 in 2019 to 900 in 2020, i.e. during the pandemic and when Uzbekistan introduced quarantine to prevent the spread of the virus. The main reasons are conflicts with family members - spouses or mother-in-law, being in a stressful life situation for a long time, etc.

Early marriages also contribute to domestic violence. Although the Family Code stipulates that girls must be 18 years of age to marry, earlier marriages are reportedly common. If there are valid reasons, in exceptional cases (pregnancy, childbirth, declaring a minor fully capable (emancipation), the khokim of the district, city at the place of state registration of marriage may, at the request of persons wishing to marry, reduce the age of marriage, but not more than one. It is difficult to get accurate statistics because young brides (15, 16, 17 years old) are usually married in religious wedding ceremonies and are not registered by the state. Often, parents go to the registry office only when they need to



obtain a child's birth certificate. In the state there is also an increase in the number of polygamous marriages, in addition, there is an open promotion of polygamy both by religious leaders and by people. This trend can contribute to an increase in domestic violence in families.

Access to justice for victims of domestic violence/gender sensitivity of the justice system

In Uzbekistan, cases of domestic violence rarely go to court. According to the Code of Criminal Procedure, the Prosecutor General's Office can initiate criminal prosecution only in cases involving bodily injuries classified as medium or severe, or resulting in death. In all other cases, the victim is forced to file a private prosecution, which constitutes a significant barrier to justice for the victims.

If we compare it with foreign experience, for example, in European countries, then intensive litigation is simplified in cases of domestic violence. That is, where there should be a full-fledged court, domestic violence is considered exclusively in an expedited manner. And in relation to the victims, not by the presumption of guilt (you prove that you were beaten), here there is a presumption of guilt in relation to the offender (you prove that you did not beat her). This is considered the right attitude and acts as an important preventive measure. As mentioned above, we do not have criminal liability for domestic violence, but there is an opportunity to negotiate with the offender (the practice of reconciliation) and all these factors are such that competent entities are interested in not bringing the case to court. And all this suggests that women who have been subjected to violence do not have direct access to justice. Based on this, it is practically impossible to obtain statistics on women's access to justice, since in this context they simply do not exist. Consideration of such issues as the infliction of grievous bodily harm, which can be inflicted by both a man on a woman and a woman on a man.

In addition, women often face socioeconomic and cultural barriers that hinder women's access to justice. The first thing that stops them is the socioeconomic component. It is known that a woman is very dependent on a man and a girl, having married, leaves her family and becomes practically useless to anyone. And as a rule, even if an act of domestic violence is committed against her, she chooses patience rather than being left alone with the children on the street. And the fact that women do not turn and remain silent blocks access to justice and criminal prosecution of the offender. There are also cultural and social reasons that say that "quarrels should not be taken out of public life",

"the army of "divorced women" should not be filled" and other persistent stereotypes in our society that forgive the rapist absolutely any actions.

CONCLUSION

Based on the foregoing, taking into account the proposals submitted by representatives of NGOs on women's issues, independent women's rights activists and other experts, the following recommendations are proposed:

1. To include in the Law of the Republic of Uzbekistan "On the protection of women from harassment and violence" the concepts of "domestic violence" and "harassment".
2. Criminalize domestic violence as a separate crime, as well as provide for separate criminal liability for all types of violence (including psychological and economic violence) in the family.
3. Eliminate administrative liability for violation of the terms of a protection order and introduce criminal liability for this.
4. In cases of violation of the terms of the protection order, provide for a mechanism of legal protection, such as a judicial warning of the offender about the possible eviction from the residential premises, regardless of whether the aggressor is the owner of the property or not.
5. Develop and include in the relevant legal acts the criteria for reconciliation of spouses in cases of domestic violence, as well as develop effective mechanisms for monitoring the state of families in respect of which reconciliation practice has been carried out. This practice is necessary in order to prevent repeated violence in the family.
6. At the legislative level, oblige the Supreme Court to openly publish judicial practice in cases of domestic violence.
7. At the legislative level, oblige law enforcement agencies (Ministry of Internal Affairs, General Prosecutor's Office) to publish in the public domain statistics on cases of domestic violence examined by gender.
8. Conduct a series of ongoing training programs and trainings for law enforcement officers, judges, social workers, psychologists and rehabilitation center workers on how to communicate with victims of domestic violence, as well as on gender issues in order to eliminate stereotypes and prejudices regarding gender roles women in society.
9. Introduce mandatory correctional programs for perpetrators of domestic violence and a procedure for regular judicial review of the accused's progress in the correction process.



10. Based on the experience of Georgia, introduce the procedure for electronic surveillance of the aggressor by introducing an electronic bracelet, the rules for the implementation of which should be established in detail. Thanks to electronic bracelets, law enforcement officers will be able to instantly receive information about the approach of the aggressor to the victim.

11. Legislatively reduce the duration of litigation in cases of violence against women.

12. Provide victims of domestic violence with comprehensive free legal, psychological, social and medical assistance, which will increase the ability of victims to cooperate with law enforcement agencies.

13. Strengthen the campaign to raise public awareness through outreach activities and the creation of social videos that draw attention to the problem itself, as well as explaining the mechanism for protecting victims of violence.

14. Introduce a procedure for conducting gender expertise of mass media products, as well as conduct a series of trainings on teaching gender-sensitive journalism.

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