

Women's Sexual Freedom in Marital Relations

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Abstract

Family relationships with its moral, social and legal nature, is a rather complex phenomenon. The circle of obligations imposed on a family is wide – it is a part of a big mechanism. The family should provide basis of morality, spirituality, tolerance which, in its turn, will guarantee the stabilization of society and minimize social problems. The family, which manifests itself in violence, especially when men violate their spouses' sexual freedom predestined to conflict and destruction. In homes where there are similar problems, chronic irritability, stress, lack of trust and mutual respect are frequently met. Wives – victims of sexual abuse have to adapt to severe physical and mental consequences. Unfortunately, the reasons of violence very often is hidden in mental views of a particular state. In traditional countries women's obedience is a norm. Accordingly, the fear of public censure does not allow women to defend their sexual freedom and put an end to sexual abuse committed by their spouses. In many cases, wives who follow traditions and customs, consider intimate relations with their husbands as their duty, do not perceive it as violence and adapt to bullying. Overcoming the mentioned problem is even more difficult when traditional norms are deeply implemented in a particular state's legislation and sexual relation with husbands is recognized as statutory duty. The aim of this report is to find out how the traditional society of Georgia views the recognition of women's sexual freedom within the framework of marital relations and what normative approaches the state has.

Keywords: Marital immunity, woman, family, sexual abuse

Introduction

After the long, strained marital relationship on September 18, 1990, S.W.'s wife said that she wanted to divorce. That same evening, the man had violent sexual intercourse with the woman. His trial began on April 16, 1991. One month earlier, in the case of a similar category, particularly, on the trial against R.v.R the court took into account the amendments in marital relations and the husband was found guilty of raping his wife.

It is remarkable that before taking a decision on RvR-'s case, the English law had the so called concept of „marital immunity“ which, in 1736, was first announced by the Judge Matthew Heily and which meant that the husband could not be regarded as a sex offender to his wife, as according to the marriage agreement, a wife was completely submitted to her husband and did not have the right to reject any further.

This approach was condemned on hearings of S.W. and R.v.R cases by England's first instance court as well as the appellate court. The court of Britain found S.W. guilty of rape, assault and attempted murder on October 23, 1991.

SW-'s advocate by individual application applied to the European Human Rights Court on March 29, 1992. The motif for the application was violation of his client's rights according to „Human rights and fundamental freedoms of the European Convention“ Article 7 which states that: a person cannot be justified according to the provision which was not active by the time the action was committed. The lawyer explained that on March 14, 1991, the R.v.R- case created a precedent when a husband who committed sexual abuse was imposed responsibility for rape, while in S.W.-'s case a sexual intercourse with his wife took place earlier, on September 18, 1990. Exactly because of this, the Court of England should not have granted retroactive effect to the precedential provision, which imposes liability for the actions. Even more, the court should not have used the provision which did not exist by the time the act was committed. On November 22, 1995, the European Court of Human Rights declared a decision, which stated that there the Article 7 of the Convention was not violated.

Although SW-'s action was preceded by the creation of a precedent, he was rightly found guilty of rape, sexual assault because sexual violation towards a wife is not only condemnation of civilized concept of marriage, but also breaching the human rights and security of fundamental freedoms of the European Convention, which in the first article recognizes human liberty and the principles of respect to inviolability (1).

It may be said that even in England which has rich legal history, until 1991, intimate relations between married couple was considered as obligation and if a man-abuser raped his wife, so called „marital immunity“ defended him. As a result of the righteous legal practice established by the European Court of Human Rights, the Western states, society and particularly women began to realize that the family is the voluntary union that should be united by love and respect.

Intimate relation of spouses is not an obligation, but a right and if this right is violated, it is necessary to use all protection means guaranteed by the law. Yet in some countries, it is still hard for society to admit the fact that a woman has the right to get rid of sexual exploitation committed by her

husband; moreover, she believes in the myth that an intimate relation between a husband and a wife cannot bear a violent character and women can be victims of rape committed only by other men. This wrongness of this position is proved by many scientific papers, such as for example, the most important research “Sexual Abuse of Wives” conducted Finkelhor and Yllo in 1985 (2) according to which, 10-14% of married women were victims of sexually abuse at least once. Keeping this in mind, the article aims to find out whether Georgia - the country which follows traditions and customs, also is a signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international acts, is among the countries fighting against sexual abuse committed by husbands; whether Georgian society and legislation share the concept of “marital immunity”.

Purity of family relations, case and respect of family members is the historical characteristic feature of the Georgian nation. However, the traditions of our country collide with the international principles of human rights depicted in the Georgian legislation. One of such traditions is an unconditional obedience of a woman to her husband, including intimate aspects. The fact that old customs are still alive in people's consciousness is proved by the survey carried out by us. A rather delicate issue of women's sexual freedom in marriage was to be discussed; hence, to ensure the sincerity of the respondents the survey was carried out via the social network (6). 100 citizens filled out the questionnaire anonymously who besides recording socio-demographic data, answered to two major questions. As a result:

- 97% of respondents expressed the idea that men and women enjoy equal rights in family relations;
- 2% of the respondents (divorced women living in the capital city and married men living in the city) – said that the most important is men's position and women should always have to obey them;
- Only 1% of respondents (city residents, single men) stated that women' position regarding all matters is very important.

It should be noted that the responses indicate that the majority of the society supports men's and women's equal rights relations. But analysis of the subsequent question casts doubt on the seemingly unambiguous approach of the society.

Question – is the married woman's right or her obligation to have intimate relations with her husband?

- 75% of respondents admitted that it is a woman's right, 10% consider it as obligation;
- 12% of respondents found it hard to answer;
- 3% of respondents did not want to talk about it.

Simply focus on the interpretation - 75% of the respondents considers the mentioned as a right; 25% - do not. It may seem surprising that 22% out of 25% of respondents stated that husband and wife have the same rights and women do not have to necessarily obey their husbands will.

Based on the above mentioned, the fact that 10% of the respondents consider intimate relation with their spouses as duty, a part of the respondents did not want to speak about the issue, and some found it hard to answer, suggests that a woman's marital obedience to tradition is still too deeply rooted in the consciousness of the society and it is difficult for them to recognize sexual freedom of a married woman.

If citizens are asked about the equality of marriage partners' rights, all respondents simply state that marriage partners' rights are equal. But a particular question on a wife's sexual freedom clarifies their gender-based attitude and the impact of traditions on them.

It should be noted that the respondents' answers were unstable. Besides, another unexpected aspect was revealed. As 83% were female and 17% male, stereotypically we could have thought that the vast majority of men would not consider women's intimate relations with their spouses as their right, though, 17 out of 25 respondents were women. 17 women out of hundred people who do not recognize a wife's sexual freedom as a right and consider it as a duty or do not have a clear approach to the issue may seem to us as a small number; but this number may increase if the survey is carried out throughout the whole country. (According to the data of the last 5 years (5), the population of Georgia is approximately 4 millions). Thus, if a woman does not understand that she has a sexual freedom in marriage, she will not even try to defend herself in case her right is violated. And if the society recognizes the concept of "marital immunity", fear of public criticism will make women lose a desire to escape from the violence of their spouses. It should be noted that the inter-national approach to the above-mentioned practice is uniquely different. In particular, the Civil Code of Georgia regulates family law provisions that determine the personal and property rights and responsibilities of spouses. In the so-called list of responsibilities we have obligations for reciprocal respect and financial support, bringing up children together, making joint solutions on other family related issues, free choice of business activities, profession, and place of residence (3).

The abovementioned list does not include the statutory provision the content of which states that intimate relation with a spouse is an obligation. Accordingly, if a woman does not want to have intimate relation with her husband and the husband forcibly reaches the goal, it means that a husband violated his wife's right of sexual freedom. It must be admitted that sexual freedom of a person is the right that is guaranteed and protected by the

Constitution and the Criminal Code of Georgia. Furthermore, since May 2012, the Article 11¹ of the Criminal Code of Georgia was amended and is determined as “responsibility for the domestic crime” which means that domestic violence was criminalized (4):

Domestic crime is a crime determined by the Articles137-141..... of the Criminal Code of Georgia which is committed by one family member against other family members...

Responsibility for Domestic criminal offense is defined in the relevant article of the Criminal Code of Georgia with reference to this article.

Note: According to this Article family members are: spouse, mother, father, grandfather, grandmother, child (children), stepchild, adoptive child, adoptive parent, spouse of adoptive parent, foster family (mother, father), guardian, grandchildren, siblings, spouse’s parents, son in law, daughter in law, ex-wife, as well as persons who are or were engaged in common household activities."

It can be said that if a man has taken action which contains the signs of the crime determined in the Article 137 of the Criminal Code (rape) and / or in the Article 138 (sexual abuse), the legal mechanisms of crime suppression against him will come into force. In particular, Article 11¹ shall precede the Article 137 of the Criminal Code and the responsibility imposed to a man for raping his wife shall be determined.

It should be noted that the Criminal Code of Georgia considers as punishable violence committed not only against married women but also against cohabitantes who jointly manage the household, which in turn, reflects the legislature's desire to protect citizens' personal rights despite the legal status of their relations. Foregoing is confirmed by the fact that the law protects married women's sexual freedom and does not recognize „marital immunity" concept, which frees men from the responsibility for committing violence.

Conclusion

Women who became victims of sexual violence committed by aliens, have to live with it and deal with feelings and memories, and the wives who experienced the same from their husbands have to cohabit with the abusers which is a strong physical and moral suffering.

Fortunately, in Georgia family related problems, sexual abuse among them gradually becomes adjustable at the legislative level. Hopefully, in the future there will be no taboos in society regarding this issue. Increasing society awareness of legal defending mechanisms for prevention of violence, study programmes, trainings, and meetings will make it possible to eliminate from the public consciousness traditions that violate women’s rights, especially in marital relations.

It is necessary to note that we are planning a thorough exploration of the issue within the framework of the dissertation research. It will be very interesting to find out to what extent the law enforcement bodies and the courts use the legislative norms which defend women's sexual freedom in practice. How often become Articles 137/138 11¹ the basis for starting investigation, criminal prosecution and conviction.

In this regard, we plan to carry out detailed studies of the statistics and practice of the Ministry of Internal Affairs and the General Court what will help us to devise strategies for preventing domestic violence, particularly, for preventing sexual abuse committed by spouses.

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