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## **FORCE AND THREAT OF VIOLENCE ARE AS THE WAYS OF COMMISSION OF RAPE**

**Annotation:** This article illustrates that the ways commission of rape, including the theoretical and practical problems of the ways commission of rape. In addition, proposals and recommendations for further improvement of the criminal legislation of the Republic of Uzbekistan.

**Key words:** rape, sexual offence, sexual assault, grievous bodily harm, force, threat of violence, constraint, a threat to kill, criminal sexual conduct, sexual abuse.

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## **НАСИЛИЕ И УГРОЗА КАК СПОСОБЫ СОВЕРШЕНИЯ ПРЕСТУПЛЕНИЯ В ИЗНАСИЛОВАНИИ**

**Аннотация:** в данной статье представлены насилие и угроза как способы совершения преступления и их уголовно-правовые аспекты в изнасиловании, в том числе его теоретические и практические проблемы, которые указаны в уголовном кодексе республики Узбекистан. Кроме того, разработаны предложения и рекомендации по дальнейшему совершенствованию уголовного законодательства республики Узбекистан.

**Ключевые слова:** изнасилование, сексуальное преступление, сексуальное насилие, тяжкие телесные повреждения, насилия, угроза, принуждение, угроза убийством, преступное сексуальное поведение.

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## **ЗЎРЛИК ИШЛАТИШ ВА ҚЎРҚИТИШ НОМУСГА ТЕГИШ ЖИНОЯТИНИНГ УСУЛИ СИФАТИДА**

Аннотация: мазкур мақолада номусга тегиш жиноятида жиноят содир этиш усули ва унинг жиноят-ҳуқуқий жиҳатлари, шунингдек, Ўзбекистон Республикаси Жиноят кодексига келтирилган айрим жиноят объектив томони ва унинг факультатив белгилари билан боғлиқ назарий ва амалий муаммолар ёритилган бўлиб, бу борада Ўзбекистон Республикаси жиноят қонунчилигини такомиллаштириш бўйича аниқ таклиф ва тавсиялар ишлаб чиқилган.

Калит сўзлар: номусга тегиш, жинсий эркинликка қарши жиноятлар, жинсий зўрлик, оғир жисмоний шикаст етказиш, зўрлик ишлатиш, қўрқитиш, улдириш билан қўрқитиш, жинсий эркинликка қарши жиний хатти-ҳаракат.

Actually there are many terms are related to the rape (sexual offence). They are such as "sexual assault", "sexual intercourse without consent", "criminal sexual conduct", etc. Therefore, in many countries other terms are used instead of rape. Rape is the crime of sexual intercourse (with actual penetration of woman's vagina with the man's penis) without consent and accomplished through force, threat of violence or intimidation (such as a threat to harm a woman's child, husband or boyfriend) [1].

There is no federal law that related to the rape in the United States. In most states, the term "rape" is not used in state laws. Instead of it, other terms are used such as "sexual assault", "criminal sexual conduct", "sexual abuse", "sexual battery" etc.

**RAPE.** - Any person subject to this chapter who commits a sexual act upon another person by -

- (1) using unlawful force against that other person;
- (2) using force causing or likely to cause death or grievous bodily harm to any person;
- (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;
- (4) first rendering that other person unconscious; or
- (5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct [2].

According to the State laws sexual assault means that any person who commits a sexual act upon another person by threatening or placing that other person in fear; or making a fraudulent representation that the sexual act serves a professional purpose; or inducing a belief by any artifice, pretense, or concealment that the person is another person;

According to the US laws proof of threat means that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

By the way the term "grievous bodily harm" means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

The term "force" means the use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or inflicting physical harm sufficient to coerce or compel submission by the victim.

The term "threatening or placing that other person in fear" means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action [3].

According to the Article 131 of the Criminal Code of Russia, rape, that is, a sexual intercourse with the use of violence or of a threat thereof, with respect to the victim or to other persons or with the use of a helpless state of the victim -

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shall be punishable with deprivation of freedom for a term of three to six years. A rape:  
a) committed by a group of persons, or by a group of persons in preliminary collusion, or by an organised group;

b) connected with a threat of homicide or with causing a grave injury to the health, and also committed with special cruelty with respect to the victim or to other persons;  
c) which has entailed the infection of the victim with a venereal disease -

shall be punishable with deprivation of freedom for a term of four to ten years with restriction of liberty for a term of up to two years or without such.

A rape:

a) of a minor girl;

b) which has entailed, by negligence, the causing of a grave injury to the health of the victim, the infection of her with AIDS or other grave consequences -

shall be punishable with deprivation of freedom for a term of eight to fifteen years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years and with restriction of liberty for a term of up to two years.

A rape:

a) which has entailed by negligence the death of the victim;

b) of a girl victim who has not reached the age of fourteen years -

shall be punishable with deprivation of freedom for a term of twelve to twenty years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a term of up to twenty years and with restriction of liberty for a term of up to two years.

The deed provided for by Item b of Part Four of this Article made by a person with a previous conviction for having committed an offence against sexual integrity of a minor -

shall be punishable by deprivation of liberty for a term of fifteen to twenty years with deprivation of the right to hold definite offices or to engage in definite activities for a term of up to twenty years or by life imprisonment.

According to the English law (England and Wales) rape is a statutory offence which is defined as follows: Rape

A person (A) commits an offence if he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis; in this situation B does not consent to the penetration, and (A) does not reasonably believe that B consents[4].

According to the French penalty code any act of sexual penetration, whatever its nature, committed against another person or on the perpetrator, by violence, constraint, threat or surprise, is rape. Rape is punished by a maximum of fifteen years' criminal imprisonment. Rape is punished by a maximum of twenty years' criminal imprisonment in certain aggravating factors (including victim under age of 15). Rape is punished by a maximum of thirty years' criminal imprisonment where it caused the death of the victim. Rape is punished by a maximum of imprisonment for life when it is preceded, accompanied or followed by torture or acts of barbarity [4].

In New Zealand instead of rape the term of sexual violation is used. According to the law Sexual violation is the act of a person who rapes another person. On the other hand person has unlawful sexual connection with another person. One person may be convicted of the sexual violation of another person at a time when they were married to each other.

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According to the Article 118 of the Criminal Code of Uzbekistan, Rape, that is, a sexual intercourse committed by force, threats, or abuse of helpless - shall be punished with imprisonment from three to seven years.

Rape:

- a) of at least two persons;
- b) committed repeatedly, by a dangerous recidivist or a person previously committed a crime envisaged by Article 119 of this Code;
- c) committed by a group of individuals;
- d) committed with a threat to kill - shall be punished with imprisonment from seven to ten years.

Rape:

- a) of a person known to be under eighteen years of age;
- b) of a close relative;
- c) committed by a member of a mass disorder;
- d) committed by a special dangerous recidivist;
- e) that resulted in a grave consequences - shall be punished with imprisonment from ten to fifteen years.

Rape of a person known to be under fourteen years of age - shall be punished with imprisonment from fifteen to twenty years.

(As amended by the Law of 29.08.2001).

Actually, force and threat of violence are as the ways of commission of the crime in rape.

So force or the threat of its use in the corpus delicti under Art. 118 and 118 of the Criminal Code is a constructive sign of objective side - the way (method) of committing a socially dangerous act. The objective side of rape consists of two consecutive actions. They are physical violence or the threat of its use by the offender to the injured victim and subsequent sexual intercourse in how it previously determined natural form. Rape using the helpless state is usually committed without prior physical or mental violence against the victim.

As we say at the top, the term "force" means the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or inflicting physical harm. We may also add to one type of the force is the use of a weapon.

Violence in criminal law is understood to be intentional and unlawful physical force against another person who infringes on it bodily integrity, health or life restricting or excluding his freedom. As well as intentional unlawful influence on the psyche of another person to suppress his or her will, or forced certain actions or omissions, as well as actions, characterized by the real possibility of harm to protected by law in the interests, accompanied by a mental impact on the victim [5, p. 24-26].

Criminal law uses the term "violence" in the sense of physical influence. The threat has a different meaning: either as a mental effect (not called violence), or as a real danger of harm [6, p. 72-75].

Under the threat to kill, provided for in paragraph "d" of part two of article 118 of the Criminal code should be understood not only the direct statements of the perpetrator, which is expressed the intention of immediate use of physical violence to the victim. And his close relatives or other persons against whom the victim has a certain responsibility, but also such threatening actions of the perpetrator, such as, for example, demonstration of weapons or objects that can be used as weapons (knife, razor, ax, etc.) [7].

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Force and threat of violence are obligatory signs of the objective side of rape and they are as the ways of commission of the crime in rape.

After analyzing the foreign countries' criminal law and penal codes, we will be able support their laws. After that, we should give some proposals. They are:

Rape, that is, a sexual intercourse committed by force, threats, violence, constraint, threat, surprise, or abuse of helpless -

shall be punished with imprisonment from three to seven years.

In conclusion, force and threat of violence have criminal legal aspects as follows: They are:

First one is they may be mentioned in criminal code by legislative as the obligatory signs of the objective side of the crime at the qualification of the criminal offence. For example, according to the Criminal code of the Republic of Uzbekistan, facultative sign (exactly the way of committing a crime - force, threats) of the objective side of the crime is mentioned as obligatory sign at the article 118 of the Criminal code. According to article 118, rape, that is, a sexual intercourse committed by force, threats, or abuse of helpless. Force, threats is the way of committing a crime.

Second one is they may be mentioned in criminal code by legislative as the qualifying elements at the qualifying offense (criminal act). For example, according to the Criminal code of the Republic of Uzbekistan, facultative sign (exactly the way of committing a crime - threats) of the objective side of the crime is mentioned as obligatory sign at the article 118, part 2 paragraph "d" of the Criminal code. That is, rape is committed with a threat to kill.

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#### References/Сноски/Адабиётлар

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1. <http://legal-dictionary.thefreedictionary.com/rape>
2. United States Code: Title 10,920. Art. 120. Rape, sexual assault, and other sexual misconduct | LII / Legal Information Institute Law.cornell.edu (2013-03-03). Retrieve on 2013-03-03.
3. [www.law.cornell.edu/uscode/text/10/920](http://www.law.cornell.edu/uscode/text/10/920)
4. "en - English / Traductions / Accueil | Legifrance - Le service public de l'acc?s au droit" (in French). 195.83.177.9. Retrieved 30 December 2012.
5. Bezruchko E. V. the Use of the term "violence" in criminal the legislation of Russia // Criminal law. 2014. № 5. (Безручко Е.В. Использование термина "насилие" в уголовном законодательстве России // Уголовное право. 2014. № 5.)
6. Kruglikov L.L. On the concept and the criminal legal assessment of violence // Criminal law. 2015. № 1. (Кругликов Л.Л. О понятии и уголовно-правовой оценке насилия // Уголовное право. 2015. № 1.)
7. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan. October 29, 2010 № 13 "On judicial practice on cases of abusive and abusive treatment of sexual orientation" paragraph 13. (Ўзбекистон Республикаси Олий суди Пленумининг 2010 йил 29 октябрдаги 13-сонли "Номусга тегиш ва жинсий эҳтиёжни гайритабиий усулда қондиришга доир ишлар бўйича суд амалиёти тўғрисида"ги Қарори)