



## Issues of Gender Expertise of Drafts of Normative Legal Acts: Experience of Uzbekistan

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### **Abstract**

This article studies the significance of gender expertise in drafting laws, which strengthen legal bases of democratic reforms in the Republic of Uzbekistan, aim of expertise and its importance. Some suggestions on improvement of the mechanism of gender expertise have been developed.

**Keywords:** *Gender; Gender Expertise; Equality of Women and Men; Expert; Lawmaking; Draft Laws; Legislative Techniques; Legal Expertise; Mechanism of Carrying Out Expertise*

Over the past period, the Republic of Uzbekistan, along with the implementation of the necessary measures aimed at consistently ensuring the solution of human rights protection issues, has joined dozens of international treaties in this area. The supremacy of the generally recognized norms of international law is recognized and enshrined in our national legislation. In particular, the fact that the protection and guarantee of human rights in our country is a priority direction of state policy can be judged by the Declaration of Universal Human Rights, an international legal document ratified for the first time in our country.

Currently, Uzbekistan has ratified more than 80 international documents and pacts in the field of protection of human rights and freedoms. Over the past short period, a mechanism for the protection of human rights has been developed and is being used in practice. In addition, special attention is paid to further strengthening the foundations of the legislative system, which is the legal guarantee of these reforms. In the process of developing laws, an integral system of expert assessment of the protection of constitutional rights and freedoms of citizens and bills was formed.

One of the urgent tasks of improving the quality of laws is to ensure their scientific validity, their interconnection, consistency with economic, political and social reforms carried out by the state, sufficient protection of human and civil rights, as well as full compliance with the requirements of legislative technology. In the implementation of this task, it is important to conduct an examination of draft laws. As you know, bills are undergoing numerous expert examinations. Gender expertise is also important in this process. If you look at the established practice, then this examination is carried out within the framework of legal examination, and in some cases separately.

In recent years, special norms for carrying out this examination have appeared in our national legislation. In turn, it is advisable to further develop the assessment of draft laws from the point of view of gender expertise, to strengthen work to improve its effectiveness.

The Law of the Republic of Uzbekistan "On guarantees of equal rights and opportunities for women", adopted on September 2, 2019, and the Regulation on the procedure for conducting a gender-legal examination of regulatory legal acts, approved on March 30, 2020, strengthened the legal basis for this examination. For the first time, this law has given a definition to the concept of gender-legal expertise, established the procedure and principles for its implementation. This law clearly defines that gender legal expertise is an activity aimed at analyzing regulatory legal acts and their projects for compliance with the principles of ensuring equal rights and opportunities for women and men.

Here it would be appropriate to dwell on the very concept of "gender". Gender (eng. Gender - genus) is a concept that expresses the socio-cultural and spiritual aspect of a person's sex. The term "gender" was introduced into the social sciences in the era of a new approach to the study of the subject of sex, that is, since the 1950s. Prior to this period, the concept of sex meant the division of humanity into male and female sex, meaning the anatomical and physiological characteristics of a person. Sex (i.e. biological characteristics) has been interpreted as the basis and root cause of differences between men and women. But in addition to biological differences between people, there is a certain inconsistency in their social functions, behavior, psyche and feelings. Gender is understood as a set of norms of socio-cultural functions that determine the behavior of men and women living in different societies [1, p. 143].

In addition, the term "gender" in modern science is used to denote a social gender, which is not identical to the category "biological sex". The concept of "biological sex" indicates the anatomical, genetic, physiological differences between a man and a woman. In turn, "social gender" (gender) is a social and cultural structure that includes the norms of male and female behavior in society, which are formed by the society itself and determine the roles of men and women in it [2, p. 5].

For this reason, the concept of gender should be interpreted as a social aspect of relations between women and men, which manifests itself in all spheres of society, including politics, economics, law, ideology and culture, education and science.

At the same time, "gender is organized in a certain socio-cultural stratum, in a certain historical period, and differs in its structure. Gender reflects the image of relations between a woman and a man in society, because they are part of society, that is, gender shows how women and men perceive their social role in this society" [3, p. 95]. In international law, gender equality is the equality of rights and freedoms, responsibilities and opportunities for women and men [4]. The official and practical provision of this equality is recognized as one of the important criteria that determine the degree of realization of human rights and freedoms in democratic states.

One more question remains very relevant. This is a question of the effective use of the practice of quotas for positions in government bodies and representative bodies of the state in ensuring gender equality, since in many countries, electoral gender quotas are considered an effective measure to improve gender balance in parliament, although controversy over them continues. At present, quota systems aim at achieving women at least 30, 40 or even 50%. Many countries around the world are applying gender quotas to offset the barriers women face [5, p. 25].

In our country, systematic work is being carried out aimed at strengthening the guarantees of women's rights and increasing their activity. For example, according to the targeted recommendation of the UN Commission on the Status of Women, women's participation in decision-making at the national level should be at least 30 percent. In order to increase the number of women in leading positions of the middle and top management at the XV session of the Oliy Majlis, the Law "On elections to the Oliy Majlis of the Republic of Uzbekistan" was amended to provide a 30 percent quota for women when

nominating candidates for deputies from political parties to the bicameral parliament of the Republic Uzbekistan [6]. Currently, in the Upper House of the Oliy Majlis, there are 17 percent of women in the Senate, and 32 percent of women in the Legislative Chamber, which indicates an increase in the status of women in the formation of civil society. But this does not mean that the gender problem in our country has been completely resolved [7]. In addition, the proportion of women in public administration remains low (about 15%).

In our opinion, there are a number of tasks in this direction. In particular, such measures as further increasing the political activity of women, increasing their legal knowledge, increasing their number and prestige in the civil service, establishing mandatory quotas in government bodies, supporting their participation in non-profit organizations and initiatives, etc. in turn, tasks in this direction also require a solid legislative base.

It should be noted that in the laws adopted in our country, women's rights are considered as an integral part of human rights. In particular, the fact that Article 46 of the Constitution of the Republic of Uzbekistan determines that "women and men have equal rights" indicates that our country has created a legal guarantee for the wide participation of women in all spheres of life as an active member of society. It should be noted that in the process of creating our Constitution, there was Article 18, which established that "all citizens of the Republic of Uzbekistan have the same rights and freedoms and are equal before the law without distinction of gender, race, nationality, language, religion, social origin, beliefs, personal and social status ". Despite this, on the initiative of our First President, the issue of guaranteeing equality of women and men was introduced into Article 46 of the Constitution, which indicates that this issue was in constant attention of our state.

In addition, the accession [8, p. 6] of the state to the universally recognized international documents on human rights, in particular, in 1995 to the Convention on the Elimination of All Forms of Discrimination against Women, in 1997 to the Convention on the Political Rights of Women, testifies that the protection serious attention is paid to women's rights in our country.

It should be noted that, not without reason, the concept of "gender" was rethought by psychologists and introduced into scientific circulation. Otto Weininger in his book "Gender and Character", published in 1903, noted that "the most important thing is the presence in different proportions of both male and female character traits [9, p. 66]. " Thanks to this approach, Weininger was ranked among the outstanding researchers of human nature. The indirect dependence of biological sex on character traits inherent in men or women prompted researchers to observe the "nature" of "masculinity" and "femininity." For this reason, "the achievement of gender equality in our country today is carried out at all levels." [10, p. 118]

The concept, which is considered as a "set of opinions and recommendations" about what social and legal policy is necessary to practically ensure equality of men and women in all spheres of public life in a particular society, follows primarily from the norms of international legal acts that enshrine the equal rights of men and women. These norms include: Article 2 of the "Universal Declaration of Human Rights", Article 3 of the "International Covenant on Economic, Social and Cultural Rights", Article 3 of the "International Covenant on Civil and Political Rights". The provisions of these documents adopted by the UN were further developed in the "Convention on the Elimination of All Forms of Discrimination against Women", which was developed in 1979 based on the concept of gender equality [11, p. 270].

As the jurist B. Abdullaev correctly noted, "this, in turn, dictates the strengthening of the rules for ensuring gender equality. Regardless of which legal area the legal norm belongs to, a mechanism for determining the case in the content of this project, which denies or belittles gender equality, should be established" [12, p. 90]. In our opinion, carrying out a gender expertise of draft normative legal acts on human rights is an important means of expressing gender equality in a legislative context.

If we consider the definitions given to this type of examination, then its content will become even clearer. According to A.O. Voronina, "gender expertise of legislation is a type of expert activity, the purpose of which is to eliminate gender inequality in the legal field, which means that equality between men and women is not violated. At the same time, this is a huge social stratum - a way to eliminate the negative and undesirable consequences of laws adopted in relation to women and men, as well as the possibility of developing alternative decisions of state bodies" [13, p. 15].

T.M. Tatishvili, however, noted that gender expertise is important in making any decision, describing it as follows: That is, "Gender expertise is the activity of experts aimed at determining, on the basis of gender-disproportionate laws, norms that violate the principles of gender equality" [14, p. 151]. As can be seen from the above definitions, this activity is carried out by specialists and is aimed at eliminating the inequality between the rights and social opportunities of men and women.

PV Solovyov considers this type of expertise as an important tool for ensuring gender equality, as well as a special activity of competent subjects. According to him, "Gender legal expertise of regulatory legal acts is the activity of a specially authorized state body or other legal entity entrusted with the implementation of such activities, according to the assessment of a regulatory legal act or its draft for compliance with the principle of gender equality, the principle of ensuring equal rights and opportunities for men and women" [15, p. 199].

Thus, gender expertise of draft laws is an examination by experts with full knowledge and (or) experience in a particular area of human rights and social activities, in order to assess inequality of rights and social opportunities for men and women in the content of a draft law and eliminate various forms of gender discrimination. registration of the results in the form of a conclusion.

The book *Gender Expertise of the Family and Labor Codes of the Republic of Uzbekistan*, published under the auspices of the Asian Development Bank, notes that "the purpose of conducting a gender expertise is to determine the extent to which the current family law provides each of the spouses with the opportunity to exercise their equal rights. in fact, to what extent does gender-neutral legislation guarantee non-discrimination in real life and, finally, are there norms that violate gender proportions, and to what extent such destructive norms are justified" [16, p. 10].

Of course, this examination can give an effective result only if it is carried out on an impartial and independent, professional basis.

Gender examination of draft laws will allow eliminating the shortcomings and inconsistencies inherent in their content. At the same time, the need for gender expertise of draft laws can be explained by a number of factors, such as:

1. Ensuring gender equality is one of the important tasks facing any society today. The legislation guarantees the political rights of women, such as participation in elections, their activities in government bodies and khokimiyats. In addition, in order to implement these legal guarantees, newly adopted bills should also be subject to a special examination;

2. In order to ensure the rights of women in accordance with international norms and legal standards, our state has joined the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Conventions on the Political Rights of Women and the Protection of Maternity and other international documents on women's rights. The UN Committee on the Elimination of All Forms of Discrimination against Women hears periodic reports on the implementation of the CEDAW Convention in Uzbekistan. This ensures that national legislation is consistent with the principles of international law.

Achieving the above goals requires the implementation of numerous organizational measures related not only to lawmaking, but also to the political, economic, social, legal, and spiritual protection of women. Based on the purpose of this examination, it is necessary to put forward a number of the following recommendations to improve the efficiency of its conduct:

first, to expand the participation of non-governmental non-profit organizations in carrying out this type of examination of draft normative legal acts;

secondly, to introduce a procedure for obtaining an expert opinion from the Women's Committee of Uzbekistan in the development of draft regulatory documents expressing certain restrictions or special requirements in relation to women's rights, as well as granting special privileges only to men;

thirdly, when conducting a legal examination of draft normative legal acts, it is mandatory to establish an assessment of compliance with the requirements of gender equality in the content of the norms.

In conclusion, it should be noted that the gender expertise of draft regulatory legal acts must be carried out on the basis of the values adopted in our country, generally recognized norms and principles of international law. After all, "reliance on firmly rooted in nature values, morality and spirituality of the people, their integration into the content of laws is the key to their long-term effective functioning, successful regulation of social relations."

It should be noted that Uzbekistan pays great attention to the implementation and protection of the rights and freedoms of women in the family and society. Civil society is very rich in traditions and customs, they play a positive role in the moral, spiritual and cultural development of members of society, as well as in the organization of society as a whole. When ensuring the rights and freedoms of women on the basis of legislation, it is also advisable to rely on the socio-economic development of society, legal culture, experience in lawmaking, the level of formation of civil society, etc.

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