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**LEGAL PLURALISM IN REGARD OF MARRIAGE AND FAMILY
RELATIONS IN SOCIETY**

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Abstract

The article analyzes specific features of legal pluralism in North Caucasian societies based on the example of Chechen society. Three types of law are typical of this peculiarity in the legal framework. Sociocultural causes and possibilities of the development of such legal pluralism in local societies and ways of their legitimation are considered. The example of the Chechen society reveals the complexity of functioning of legal pluralism in the context of divorce. The legal vulnerability of a woman in her claims for raising children does not find a single regulatory support within the framework of adat and sharia due to their inconsistency in interpreting the role of a mother of children during divorce. At the same time, there is a high demand in the society for the sharia as a normative system in the matters of marriage and family. The novelty of the process in the context of globalization of social practices lies in the fact that modernized social processes that are reflected in the minds of women require an increase in rationality in her behavior and thinking to the detriment of traditionalism. This circumstance discloses the idea that the religious identity can act as a cultural and legal “framework” in many spheres of social life. The authors conclude that there must be further improvement of institutional mechanisms for the enforcement of the sharia courts and adat law. At the same time, the core of the Russian legal culture has been shifted aside in a significant part of society.

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Keywords: Pluralism of law; adat, sharia, marriage, traditionalism.



1. Introduction

A number of researchers describing North Caucasian societies and their inclusion in modern transformation processes emphasize some specific features of their occurrence (Starodubrovskaya, Zubarevich, & Sokolov, 2014). They indicate that the modernization process in the North Caucasus has its own specifics. The combination of its characteristics can be reduced to the social reality, in which, on the one hand, there are visible signs of globalization with its increased ability to move, with disclosure, and with rapidly changing level of technical equipment of everyday life. On the other hand, with the increased localization (Sukhov, 2017) of these societies, namely the institutionalization of Islamic law with close intertwining with the customary law of adat in the presence of Russian legal system. A number of researchers also point to the poliouridism (Yarlykapov, 2014; Kosterina, 2017). This social structure is unstable. In this nature of instability, the dual nature of both local and global phenomena can be traced, which affects both levels (Bobkov & Kvachev, 2018). Based on this logic, when implementing civil and administrative rights the legal pluralism, which determines the ratio of modernist and traditional values, creates many contradictory but stable regulatory practices especially in the matters of marriage and family. If to follow the logic of Jemal (2015) about the theoretical construction, the gender relations are always the central structural component of social change. Through the prism of social statuses of both men and women, formal and latent attributive practices it is possible to identify new opportunities for detecting a changing social legal order in the society and to determine the path of its changes.

2. Problem Statement

The life of the societies in the North Caucasus is regulated by several legal systems, i.e. customary law (adat), sharia, and Russian legislation (Albakov, 2004; Syukiyainen, 2014; Yarlykapov, 2014). The combination of these practices, on the one hand, looks like a successful response to the emerging challenges (the presence of a legal system and practices of traditionalism), on the other hand, these legal systems often mutually exclude each other, create complex, and contradictory practices. The resource base of the legal infrastructure is insufficient to ensure the reliable functioning of this local legal system. This circumstance creates the conditions for tension in the society. The indicator of this legal conflict is numerous divorces, in particular, in Chechen society, where the balance of parents' rights regarding custody of children is violated in case of divorce in favor of a father. The predominant practice of divorce cases under customary law (adatu) was the deprivation of rights of women to participate in the upbringing of their children during divorce. An appeal to sharia law significantly increases woman's right to the custody of children. However, the mechanism for implementing the decisions of muftiat is of advisory nature for spouses. In this legal battle, women are often left alone with their misfortune (Sitdykova, 2000). Appealing to the Russian legal bodies, involves many problems of social and cultural nature for women. Such a complex legal relationship creates the conditions for a new social and cultural and legal context that requires scientific reflection and analysis. The consideration of an identified problem expands the scope of analysis of the institutional causes and possibilities of the existence of such practices in modern local societies.

3. Research Questions

After the collapse of the USSR, the Russian Caucasian regions including Chechen society faced the destruction and delegation of state legal institutions. The response to these changes was the activation of new forms of identities, i.e. national and religious identities not connected or weakly connected with the state, but at the same time reflecting the social structure and normative relevance of local societies. The researchers emphasize the fact that the return to religion turned out to be so impressive that it gave rise to the discussions about the “end of secularization” and modern societies as “postsecular” ones (Fetisov, 2018). One of the most vivid symptoms of this process was the revival and strengthening of the sharia legal system with the active functioning of customary law (adat) in traditional societies (Rasskazov, 2014). Certain social practices of this kind or their combination look like a successful response to emerging challenges (Sukhov, 2017). The role of sharia as an institutional mechanism is strengthened under these conditions. At the same time, like any social and legal institution that has a long history of functioning in the society, the adat and sharia have a balance of rights and duties of spouses during divorce proceedings. However, the practice of their application in modern conditions, in the situation of adaptation and “reset” (Starodubrovskaya et al., 2014), is characterized by an inconsistent mechanism of legal protection of women specifically in the matters of their rights regarding children during divorce.

The norms of adats continue to remain the dominant value code in the public consciousness, but with the strengthening and expansion of institutional mechanisms of sharia, the adat law often takes the form of the simulacra of this culture. The Islamic studies scholar and journalist Jemal (2015) states the idea that the laws and norms of sharia set the balance between rights and duties of both men and women. When the manifestations of either one or another are found in various parts of Islamic world, we are not dealing with sharia norms, but with the adat. The adat in general, and in relations between the sexes, is usually not an excusable concession to folklore, ethnicism, nostalgic adherence to native antiquity, etc. It is an obstacle to the implementation of the Islamic project, which causes the Muslims more damage than any enemy. Moreover, the adat conflicts with the rules of sharia on many private issues of marriage and family relations, i.e. the inheritance by wife, daughters, the conditions of divorce and the right to divorce initiated by woman, etc. The complexities of institutional establishment of sharia courts are expressed in the absence of clearly defined legal practices of responsibility of each of the party during divorce. There are two main reasons for such situation: 1 - insufficient knowledge of theological laws in such matters among representatives of the muftiat; 2 - low religious culture in the public consciousness in general in society. Consequently, the traditional legal system (adats) needs theological strengthening and infrastructural support in the implementation of their decisions. In the public consciousness, the legal model under consideration and the culture of the need to execute its decisions have not yet emerged.

In this regard, such legal pluralism does not provide a sufficient degree of women’s security in the matters of marriage and family relations. The media service of the republican DFMS stressed out that today there are about 50 enforcement proceedings on the protection of children’s rights (selection, communication, place of residence). Out of these proceedings, 41 relate to court decisions defining the procedure for communicating with a child (Volunkov, 2017). For example, when solving the issue regarding the stay of a child with either parent, the conflicts between former spouses of varying degrees of intensity arise. According to Russian legislation, in the case of divorce, children should stay with their

mother; according to the norms of adat children should stay only with their father; according to sharia children up to 7–9 years old should stay with their mother unless otherwise agreed separately in favor mother's relatives.

Regional authorities are trying to resolve these issues with the active involvement of qadi of villages as well as muftis. The sharia courts are making efforts to balance the interests of both parents. However, the practice shows that a woman is often deprived of the right to even see her children. The father's dominant right to children in case of divorce has become the main trend of traditional regulatory practices of the last 10 years in the republic. It is true to say that the sharia courts do not unequivocally solve this problem, leaving the mother the right to see the children any time she wants to do it after divorce. Under the conditions of today's Chechnya the Muftiyat as a social institution of spiritual governance in the Republic has an influence on many areas of society, especially regarding marriage and family relations. The difficulty of the legal application of its decisions is based on the absence of its legal legitimization, which means that there is no law enforcement mechanism except for the moral principles. Many decisions based on the ethical norms of traditional culture and religious ethics, religious humanism in relation to mother and child are of advisory nature. It is not a rare case when fathers interfere their ex-wives' right to children when they divorce and reject the recommendations of muftiat, as a result women are deprived of the right to even see their children (Volunkov, 2017).

The violation of the balance of rights of mothers and children during divorces, the inability to protect their interests with the traditional legal norms force women to go to courts. An appeal to the court is possible only if the parents are registered in the registry office. However, even the registration at the registry office cannot be a condition for protecting the interests of mothers and children with increasingly dominant practices of father's right to children who received almost complete legitimacy under the pluralism of the legal system. Dehumanization of the institution of divorce, low level of moral and legal culture in protecting the interests of children during divorce have become a typical issue. According to the Consultant of the department on the provision of activities of the Ombudsman for Children in the Chechen Republic, Rusbek Akhmadov children stay aside while two parties sort out their relationship. This affects childrens' mental and physical condition. The main task is to reduce the level of psychological trauma and risks regarding health and safety of children in the context of parental conflict (Grozny-inform, 2018).

Based on the example of three types of rights in the Chechen society, it can be seen that a significant part is appealing to sharia law. The role of women in this process should be identified as a significant one. The experience shows that the dual opposition, i.e. "modernist women" prefer secular laws and "traditional women" (norms of traditional law and sharia) do not quite reflect the real situation. In our opinion, women demonstrate their willingness to appeal to sharia courts due to several reasons:

- 1) women regard the sharia court as guaranteed social platform of public approval; 2) women rely on their economic safety from their ex-husbands if they manage to keep the children; 3) winning the right to children in the Russian court a woman demonstrates her complete right to the children and thus leaves no room for peaceful contact with her husband's children and his relatives in the eyes of the public, which practically deprives children of their father and his relatives. Such a stereotype in the public consciousness often stops a woman in an attempt to reference to the court.

4. Purpose of the Study

The purpose of this study is to analyze the legal pluralism that has developed in the Chechen society in the context of divorce proceedings and show that everyday practice and divorce chronicles show that the balance of rights and obligations is not equally distributed between a man and a woman due to ambiguous and sometimes mutually exclusive interpretation of legal norms in *adats* and *sharia* regarding the role of a father and a mother institutions in the life of children. This circumstance determines the tension in a society characterized by the legal and social insecurity of a woman in her rights to children during divorce.

5. Research Methods

The theoretical and methodological basis for the analysis of this article is the concept of P. Sorokin, which consisted in the statement that any social reality is subject to both external influence and the existence of an internal source of development (Sorokin, 2008) Strengthening of the institutional mechanism of *sharia* law in Chechen society can be explained by the fact of Islamic globalization throughout the world and in the regions of the North Caucasus, in particular (Syukiyainen, 2012) We can consider this process as a factor of external influence. The low effectiveness of the official state legal system in places, the decline in trust to the legitimate institution of judicial proceedings among population increased the social base for the application of Islamic law and its possibilities in many areas of social life. Theology, as a legal social resource, has been viewed by researchers as an additional institution of rights in a situation of regulatory transformation within the society (Fetisov, 2018) In another words, nowadays the political theology (*sharia* law) is not viewed as the contradiction of secular political understanding, but as an additional resource that opens up new opportunities in crisis situations when familiar regulatory explanations cease to work. Within the framework of these reasoning, an ever-increasing legal demand in the public consciousness for the “fair resolution of *sharia*” of certain issues is understandable. This indicates the presence of a certain religious resource regulatory system in the society capable of providing some level of everyday security for an individual or a group of people, although the process itself and the mechanism of established legal practices in the Republic have many questions due to local imbalances. Besides, among the researchers there remains a controversial question about the impossibility of coexistence of *sharia* law and the Russian legislative system within the framework of one legal field. Syukiyainen (2014) believes that a certain part of *sharia*, which can be called Islamic law, is legal in its nature and is not an integral element of religion. Therefore, the appeal to the *sharia* from this point of view does not encroach on the secular nature of the state and the unity of the legal system enshrined in the Constitution, but aims to use the positive experience of the *sharia* law. The authority of *sharia* law, which has increased in public consciousness, makes it increasingly necessary to appeal to it not only in the matters of family and marriage relations, but also across the whole spectrum of civil and administrative problems. Such a situation makes very topical the need to balance the legal norms of traditional law and the legitimate Russian legal system with *sharia* law. The claims regarding the violation of women’s rights to raise children considered in courts, *muftiats* and *qadi* of rural settlements can be attributed to the field of social life of the region, which confirm the need for a broader explanatory model related to the possibilities of functioning of “postsecular societies” (Krzhevov, 2015), where tradition

and religion would not be considered in the conditions of modernization as social and cultural deformation, but would serve as mechanisms for the renewal of society.

6. Findings

The society demonstrates weakening of state legal identity in the matters of marriage and family, which can be generally explained, including the degradation of the state regulatory and institutional system. The search for a balanced legal response to these changes in local societies such as the North Caucasus is becoming more active (Albakova, 1994) regarding new forms of identity, i.e. the “reset” of traditional legal norms with the institutionalization of sharia legal systems. At the same time, it is considered as a certain simplification if the process is viewed as a “renaissance” of archaization. In any case, everyday legal life in Chechen society as a whole, and the motivation of women to the Islamic narrative, in particular, shows that Islam as a legal system can act as a social and cultural “framework” and its semantic limits go beyond the interpretation of Islam as “traditionalism” and “antiquity”. It is clear that the time challenges define the need to choose a broader perspective of analyzing the causes of the crisis of judgments in the academic environment about the place, role and significance of traditions and religion in the public consciousness (Zhavoronkov, 2018).

7. Conclusion

Despite the vague interpretation and the advisory nature of norms of adat and sharia in the traditional societies, women prefer to see in sharia law a guarantee and a way of their social and legal protection. The core of Russian legal identity remains on the periphery of the legal consciousness of women during divorce.

The traditional and religious law (adat, sharia) in the Chechen society is far from covering the whole problem of social insecurity of the mother’s rights regarding children’s custody during divorce. The regulatory and institutional system of these institutions is in the stage of adaptation and “reset”, namely the low level of legal competence of sharia courts, the controversial interpretation of adat law on many issues of social practices by the representatives of qadi of the villages, an increase in distrust of legitimate judicial practice in places. The designated legal mechanisms contradict each other, creating tension in society, making topical the need to expand the boundaries of their analysis with the view to the possibility and opportunity of functioning in the form of legal systems.

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