



Research Paper

Reappraisal of the Condition of "Observing" Wife's Betrayal to Prove Mutual Cursing (Li'ān) in Islamic Criminal Policy

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Abstract

The wise solution of li'ān's institution (mutual cursing) in Islamic criminal policy has been based on God's grace to overcome difficulties in matrimonial life. However, the effectiveness of this institution is limited to the requirement of "observing" the wife's betrayal. Therefore, the research question is: "According to the jurisprudence of Islamic schools, does the implementation of li'ān depend on the husband's claim to his wife's adultery or not?" Islamic schools differ regarding such "seeing" condition. The Imāmī jurists, except Shahīd Thānī and a Mālikī jurist, consider observing the wife's adultery as a condition for proving betrayal. Hence, they do not consider a blind person or someone who has not observed his wife's illegal relationship to be deserving of li'ān, although Mālikī jurists exclude the blind and believe that his li'ān is valid as well. However, according to Zaidīs, Hanafīs, Shāfi'īs, Hanbalīs, and some Mālikīs, the seeing condition is not considered, that is, even a blind person who has not seen his wife's adultery can perform li'ān. Accordingly, this research is done to explain that the seeing condition for cursing is not defensible. To achieve this goal, it is necessary to describe and analyze the propositions of Islamic jurisprudence and human sciences, using library data. The result is that the lack of subjectivity in this condition not only protects more individuals involved in ominous phenomena under the cover of cursing, but also eases the bottleneck faced by the criminal justice system in executing justice for the aforementioned individuals.

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Extended Abstract

1- Introduction

"Laan" institution is one of the wise ways to end the marital relationship in the Islamic criminal policy, which has been legislated by the Holy Sharia since the beginning of Islam, to get out of the difficulties of married life. Although, from the point of view of many commentators of civil law, the spirit of this law in the pre-revolution era was considered to be derived from jurisprudence; However, in the case of legal proceedings, in cases of silence and conflict of law, he referred to jurisprudential principles. Because at that time, Islamic jurisprudential institutions such as: cursing, apostasy, non-inheritance of a non-believer from a Muslim, and negation of birth, apart from their legalization in the Sharia Anwar of Islam and explicit or implicit legislation in the civil law, were among the abandoned provisions. they were going As a result, such claims could not be heard by the courts.

But after the victory of the Islamic revolution and according to the stipulation of the fourth article of the constitution, on the one hand, the general public should obey all laws and regulations based on Islamic standards, on the one hand, and the special provision of article 167 of this law, on the other hand, requiring the judges to refer to valid sources of jurisprudence or fatwas. At the time of silence and conflict of laws, a new approach was opened in Iran's legal and judicial system to use institutions such as Laan to solve some family problems, so that through this way, some unfortunate emotional and social consequences such as reaching Revenge and use of violence and threats, assault and even murder of the wife were prevented in order to heal the heart and get rid of the heavy gaze and speech of the people and to remove the stigma of betrayal that is imprinted on the man's mind.

Despite all this, the point worthy of attention with regard to the wisdom of

blasphemy legislation in building a suitable platform for turning more to the institution of blasphemy in the current conditions of society, is the subjectivity or method of "seeing" a woman's infidelity as a way to prove such a wise institution, which is necessary. It should be analyzed in the light of criminal policy and Islamic jurisprudence opinions. Therefore, the present research is trying to analyze and evaluate the documentation of the intelligent institution of blasphemy in Islamic criminal policy to analyze the subjectivity or method of having this condition in order to clarify Saeb's theory in this field.

This research, relying on the descriptive-analytical method and referring to library and computer resources, tries to solve the challenges facing the use of Laan institution, especially the challenges related to the subjectivity of the condition of "seeing" which From the point of view of Islamic religions, it is considered a controversial issue and in some way it cannot be defended considering the current conditions of the society, it should be analyzed in order to make the use of this institution more useful and intelligent legal and judicial. To prevent the occurrence of unfortunate consequences caused by marital disputes.

2- Method

This research, relying on the descriptive-analytical method and referring to library and computer resources, tries to solve the challenges facing the use of Laan institution, especially the challenges related to the subjectivity of the condition of "seeing" which From the point of view of Islamic religions, it is considered a controversial issue and in some way it cannot be defended considering the current conditions of the society, it should be analyzed in order to make the use of this institution more useful and intelligent legal



and judicial. To prevent the occurrence of unfortunate consequences caused by marital disputes.

3- Result

The findings of the research show that the efficient institution of Laan has the necessary capacity to process and resolve some family disputes in the judicial system of Iran along with the accuracy, speed and quality of service and the challenges facing this very intelligent institution. In the criminal policy of Islam; For example: the objectivity of having the requirement that the husband sees the wife's infidelity to prove it is not such a serious challenge that prevents the use of this institution in the judicial system; Because the mentioned condition is considered as one of the disputed issues for proof of blasphemy from the point of view of Islamic religions. Therefore, by applying the condition of seeing to prove this beneficial institution, it is possible to provide grounds for the judicial system to withdraw from some family cases, and also prevent many unfortunate social and family consequences that rely on statistics that are caused by marital disputes .

4- Conclusion

The necessity of using the institution of Laan, even though it appears and from the point of view of reason, logic and Sharia of Anwar Islam, in opposition to important goals such as the establishment of the sacred institution of the family; Preserving the generation, strengthening and observing more piety, maintaining the mental and physical health of the family and its members, and the proper upbringing of children, as well as the mission of humanizing women, is the cause of breaking and collapsing the foundations of the family; But since according to the rule "it is impossible to lack (something), to be given (something)", a woman who, due to performing unconventional and contrary behaviors against modesty and modesty, is

deprived of honesty, trust and chastity, mental health from the institution of the family and Strengthening the feeling of hatred and enmity between oneself and one's spouse, the source of mental peace cannot be placed in the warm center of the family and the source of human development, and righteous children, education and Send it to society.

Therefore, in the current situation of the society, where the hidden nature of marital infidelity and the lack of real statistics of this crime and the sin that destroys the family foundation, the statistics show that due to the conditions arising from the very sharp and stunning social transformations in the past decades, Marital infidelity by women has also increased. In such a way that some statistics obtained from research conducted in this field indicate that a percentage of family murders are related to women who were killed by their husbands due to marital infidelity and suspicion.

Therefore, in order to prevent such unfortunate consequences, by updating institutions such as Laan, which have been left in the hands of oblivion, it is necessary to find new judicial solutions for the judicial system and the citizens involved in the disputes and bottlenecks that have occurred in Marital relations are given. Therefore, the institutionalization of the aforementioned institution is considered as an aid to the judicial system to solve some complex family cases and solves the problems of the people involved in the aforementioned cases, so that social peace can be ensured by preventing unfortunate consequences.

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6- Authors' contribution

Dr. Abdul Samad Aliabadi, a scientific member of the Faculty of Jurisprudence and Law of the University of Islamic Denominations, is the corresponding



author of this article, who has contributed to 55% of this article.

Dr. Mashalla Karimi, a scientific member of the Faculty of Law of University of Ayatollah Boroujerdi, is the co-author who contributed to 45% of this article.

7- Conflict of Interest

The authors declared no conflict of interest.

8-Acknowledgement

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