

# JURNAL CITA HUKUM

*Indonesian Law Journal*



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## Investigating the Injuries of Murder in Prohibition in Iranian Laws\*

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### Abstract

The issue of murder in marriage is regulated in Article 179 of the Criminal Code before the revolution originated in Article 324 of the French Criminal Code, and was previously reflected in Article 630 of the Islamic Criminal Code after the amendment in 1996. This problem has been criticized in terms of jurisprudence and validity. Deficiencies appear to be seen as weaknesses of a legitimate defense theory as a justified basis for verdicts, weaknesses in jurisprudence, and opportunities for misuse of sanctions for murder in marriage. Most of the objections are caused by; First, the lack of attention to place the problem into the realm of legal certainty, not the realm of proof, and second: the lack of careful analysis of the principles of jurisprudence and only refers to the views of some legal experts. This study uses a qualitative research method with the statutory approach. The results of the study stated that murder in marriage is relative in terms of defense and deserves the death penalty. In this study, the authors examined the damage to victims, the views of well-known legal experts, and an analysis of Iran's statute law with an analytical approach.

**Keywords:** Damage, murder in marriage, statutory regulations

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## Investigasi Cedera Pembunuhan Karena Larangan Dalam Hukum Iran

### Abstrak

Masalah pembunuhan di dalam perkawinan diatur dalam Pasal 179 KUHP sebelum revolusi berasal dari Pasal 324 dari KUHP Perancis, dan sebelumnya tercermin dalam Pasal 630 KUHP Islam setelah perubahan pada tahun 1996. Masalah ini, mengalami kritik dalam hal yurisprudensi dan validitas. Kekurangan tampak terlihat seperti kelemahan teori pertahanan yang sah sebagai dasar yang dibenarkan untuk vonis, kelemahan yurisprudensi, dan peluang penyalahgunaan sanksi pembunuhan di dalam perkawinan. Sebagian besar keberatan disebabkan oleh; Pertama, kurangnya perhatian untuk menempatkan masalah ke ranah kepastian hukum, bukan ranah pembuktian, dan kedua: kurangnya kecermatan analisis pada prinsip-prinsip yurisprudensi dan hanya merujuk kepada pandangan beberapa ahli hukum saja. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan peraturan perundang-undangan. Hasil penelitian menyatakan bahwa pembunuhan di dalam pernikahan bersifat relatif dalam hal pembelaan dan layak mendapatkan hukuman mati. Dalam penelitian ini, penulis melakukan pemeriksaan pada kerusakan korban, pandangan terkenal para ahli hukum, dan analisis pada hukum statuta Iran dengan pendekatan analitis.

**Kata kunci:** Kerusakan, pembunuhan di dalam nikah, peraturan perundang-undang

## Расследование Травм Убийства В Запрете В Иранских Законах

### Аннотация

Проблема убийства в браке регулируется статьей 179 Уголовного кодекса до революции, возникшей в статье 324 Уголовного кодекса Франции, и ранее была отражена в статье 630 Исламского уголовного кодекса после внесения поправки в 1996 году. Эта проблема подвергнута критике с точки зрения юриспруденции и обоснованности. Недостатки, по-видимому, рассматриваются как слабые стороны законной теории защиты в качестве оправданной основы для вынесения вердиктов, слабые стороны в юриспруденции и возможности неправильного применения санкций за убийство в браке. Большинство претензий вызваны: во-первых, недостаточным вниманием, чтобы поместить проблему в область юридической однозначности, а не в область доказывания; во-вторых: недостаточным тщательным анализом принципов юриспруденции и отношением только к мнениям некоторых судебных экспертов. В данном исследовании используется качественный метод исследования с законодательным подходом. Результаты исследования показали, что убийство в браке является относительным с точки зрения защиты и заслуживает смертной казни. В этом исследовании авторы провели расследование ущерба, нанесенного жертвам, мнения известных судебных экспертов и анализ статутного права Ирана с аналитическим подходом.

**Ключевые слова:** Ущерб, Убийство в браке, Законодательные нормативно-правовые акты



## Introduction

Article 630 of the mentioned law on murder in marriage bed has both jurisprudence and jurisdiction judgments and its subject was also ruled in Article 179 of the former General Penal Code, although the Islamic Penal Code 1983 and 1991 didn't refer to this matter. According to Article 630 BC ... "Whenever a man sees his wife committing adultery with a foreign man and knowingly obeys the woman, he can at the same time kill them and, if the woman is duressor, he can kill just the man, and the sentence of assault and battery is like murder."

Adoption of Article 179 BC was mostly done adopted by the French Penal Code and because of this; the provision of this article in Iranian law has no historical record. The French legislator, in the second sentence of Article 324 of the Penal Code, approved 1810 after stating that "[t] the killing of the wife by a husband or the killing of a husband by the wife is not the punishments of exemption unless the life of the perpetrator is endangered": "However, if a man observes his wife in the joint home of the couple, committing adultery (as predicted in Article 326 of this Act).

On the other hand, it should be acknowledged that the issue of "murder in marriage bed" and the commission of the murder of a woman who betrayed her husband and was present in the bed of alien man is one of the topics that have been discussed even in the oldest civilizations. According to the Assyrians, the killing of a woman committing adultery by her husband because of her infidelity was the undisputed right of the man. In the Japanese Empire, if a husband saw his wife betraying and committing adultery with an alien, he could have killed them both immediately (Durant, 1988). In ancient Greece and the fifth century, direct retribution was permitted under certain circumstances, and therefore if a man saw that his wife or mother or his companion or sister or daughter had an illicit relationship with an alien man, their killing was permitted. In ancient Roman law, of course, in addition to the husband, the father was also given the right to kill them if he saw his wife or daughter in a relationship with an alien man. This was rooted in the old and early notions of authority and domination of husband and father in relation to his wife and daughter in life (Vaziri, 1973).

Because of the existence of such a ruling in ancient civilizations over many centuries, it was predicted in the laws of many countries. Including Article 272 of the Portuguese Penal Code and Article 428 of the Monaco Penal Code and Article 413 of the Belgian Penal Code approved 1867 and Article 587 of the Italian Penal Code approved 1930. There are also judgments in-laws of

some Arab countries about this. For example, under Article 153 of the Kuwaiti Penal Code approved 1960, and Article 409 of the Iraqi Penal Code approved 1969, the punishment for such a murder is up to three years in prison, and in fact, the committed person enjoys a partial exemption. According to Article 237 of the Egyptian Penal Code, adopted in 1937, the death penalty for a proportionate imprisonment sentence has been reduced from the death penalty and imprisonment by the hard labor in the provisions of Articles 234 and 236. Therefore, according to the material mentioned and the importance of the subject under investigation, we discuss the position of murder in the marriage bed in the statute laws of Iran and discuss the damages caused by it and the objections on it (Habibzadeh, Jafar-Babaei, & Hossein, 1999, p. 4).

The existence of honor prejudices in our country of Iran, and most of the cases that lead to murder, assault and battery and tribal ethnic conflicts among traditional religious families may be such honor and dignity prejudices that made the importance of investigating and analyzing the provisions of the article 302 and 630 ten times more. It causes to consider it deeply, so that, after a scientific and legal examination of the subject, it is possible, in the first place, to have unintentional contacts and conceptions of the substance of the matter, and in the second place, the possibility of abuse of the provisions of the Article or individual misunderstandings in the practice of society to be eliminated and wherever possible, to be prevented public disorder by abusing the text of Article mentioned that is required for the individual and social life of society. The theoretical and practical implication of this research is the rational response to the objections expressed in the texts and scientific articles on these articles, and it has made the necessity to explain the terms and conditions of the article more tangible to explain the way of the contact of Shiite jurisprudence with this issue. Thus, with the legitimate aim of enacting such an article that cannot be attained except by legal *ijtihad*, deliberation, and contemplation in the substance and meaning of the article, it can obtain legal lines and frameworks intended by the legislator and combat with any deviation from the text of the articles and prevent the intervention and deliberate personal motives on misunderstood or law-breaker people. The main purpose of the research is to investigate the damages of murder in the marriage bed in the statute laws of Iran.

### **In Article 630**

Article 4 The Punishment Law refers to words and expressions in its text that the final discussion of the sentence contained in the text above shall not be

possible unless it encompasses and understands the meaning of these words. Of course, this line recognizes the dominance of its dissertation audiences, who are often students and professors capable of criminal law. The article states: "If a man sees his wife committing adultery with an alien man and has the knowledge of obeying the woman, he can kill them at the same time, and only if the woman is duressor, he can the man only..."

### **Murder in Marriage Bed**

The Islamic Penal Code enacted, in Article 302, considers murder in the marriage bed as one of the causes of impunity and retribution explicitly in the law. In other words, if a man suspects that his wife is committing adultery with an alien man, and kills her, he will be exempt from the punishment of retribution and the payment of blood money. Because murder in the marriage bed has been classified as quasi-deliberate murders (Jahangir, 2013, p. 123). According to Article 302, the killing of a woman by a husband for adultery is exempt from the punishment of retribution and the payment of blood money if she has committed adultery. Following the amendments to the Islamic Penal Code in 2013 of Article 630 of punishment law, it has been changed to Article 302. It is a legal provision to permit the killing of adulterers (adulterous men and women) by the adulterous husband. And he is exempt from the punishment for this murder, whether in paying for blood money or retribution because the victims of the murder are relative.

Deserving death, according to the religious rules, means that Muslim blood is respected and validated and no person can kill a Muslim and be free from retribution or payment of blood money unless the person killed has the conditions that his shed blood is free to other Muslims, and such a person would be called Mahdur Al-Dam or deserving death. So if someone is legally entitled to be killed, they will be called Mahdur al-Dam or deserving death. Committing adultery for wife and man committing adultery is one of the instances in which the killing of those men and women is free for the husband or the wife (Zadegan & Ali, 2003, p. 236). The Islamic Penal Code 2013 states in Article 301: "Retribution shall be proved if the offender is not the father or one of the paternal ancestors against ..." According to this article, whenever the father and paternal ancestor are the deliberate killers of their child or grandchild, they cannot be sentenced to retribution. Of course, this sentence only applies to the father and the paternal ancestor and does not include the mother and the paternal ancestor (including mother and father' ancestors), and they will be sentenced to retribution if the child is killed in case of other



conditions. Of course, killing a child by a father or paternal ancestors will not be unpunished. There are four types of penalties in jurisprudence and Islamic law for the crime of child murder: 1). Father pays the blood-money of his child and has no right to it; 2). The father must be exiled by the judge's order; 3). 3. Punishment (This case is determined by the judge's opinion); 4). Atonement (Sarkani & Sajjad, 2010, p. 21).

### **Conditions of Permission for Murder in The Marriage Bed**

According to the fatwas of jurists and Article 630 of the Ta'zir Law, the existence of a marital relationship is one of the necessary conditions for the application of a murder permit. The marital relationship begins with the execution of the marriage contract and ends with the divorce, termination, or death of one of the couples (in temporary marriage with the expiration of the marriage). The husband shall be exempt from the penalty for the killing of his wife or alien man or both, under Article 630 of the mentioned Act. In case of the dissolution of this legal relationship, whether due to divorce, termination, or any other cause, the man cannot use the exemption provided for in the encounter with such a scene and the killing of alien man or former wife. According to Shiite rich jurisprudence (Hali, 1409, pp. 2-309) and civil law, marriage is two types: 1). Permanent marriage 2). Temporary marriage.

Although the legislator does not explicitly define permanent marriage, the definition of permanent marriage becomes clear under Article 1075 of the Civil Code<sup>2</sup> which deals with temporary marriage. Although permanent and temporary marriages differ in many aspects, the essential distinction and main difference between them is that in temporary marriage, men and women decide to marry temporarily, and after the end of the term, if they would like to continue to renew it or else they will be separated by the expiration of the term. While the requirements for permanent marriage are durability and permanence, the following cases are considered:

### **Legislative Background of Murder in Marriage Bed in Criminal Law in Iran**

The issue of the murder of marriage in bed in Iran's law had no prior record and was, for the first time, introduced into Article 179 of the General Penal Code approved 1925 by imitating French Penal Code. It is noteworthy that this was a translation of Article 324 of the French Penal Code approved 1810 (Napoleon Code). In any case, the former Article 179 provided: (Whenever

a husband observes his wife with an alien man in a bed and commits murder or assault or beats one or any of them, he is exempt from punishment. Whenever he sees his sister or daughter with an alien man, and in fact, there is not couple interest and committing murder, he will be sentenced to one month to six months in prison) And if he commits an offense or misconduct in the latter part of this article, he shall be sentenced to a term of imprisonment of eleven days to two months (Kamangar, 1972), the provisions of the exemption was under consideration and provocation as a legal excuse of secrecy, constituted the first and last philosophy of the law, and it cannot be said that the above-mentioned article is derived from the jurisprudential principles.

By approving the Islamic Penal Code in 1991, there was no mention of the sentence referred to the former Article 179 in the religious form. According to Article 226 of the Code of Punishment and Retaliation approved 1982, the killing of the person has resulted in the retribution if the victim is not entitled to murder and if he deserves to be killed, the killer must prove his right to murder under the rules of the court. It was not foreseen in the law if the victim was entitled to murder. But according to the jurisprudential source of the article, it can say that one of the examples of deserving murder that does not follow retribution for the killer is when the victim is killed in adultery with a married woman in a single marriage bed. One of the most important questions during the rule of Islamic Penal Code adopted in 1982 and 1992 was whether the perpetrators of murder, beatings or assault should be sentenced to the retaliation or because of the silence of new Islamic laws, the perpetrator of murder in marriage bed should be considered exempt from retaliation under former Article 179. The answer was that, given the lack of explicit revision of the rules contrary to the Ja'fari law after the victory of the revolution, and on the other hand, the judges were obliged to issue sentence, even in the case of the silence of statute law, according to the lack of explicit legal advice in this regard, according to Imam Khomeini's fatwa, our ruling has been issued and implemented. But lack of explicit legal ruling and (not legal) legal gap on this particular issue, especially existing criticisms, made the urgent need for an Islamic legislator to enact an article ten times more.

In the case of legitimate defense in law 1925, the attack was not considered from legal defense and the judicial process did not require such a requirement. Therefore, defending against attack, whether it was to provoke a defender or not, was considered a legitimate defense in the case of other circumstances, defense for the attack that the husband against his wife or adulterer or both was committed was one of the cases (Samadi Article 179 of the Iranian Penal Code and its comparison with Article 324 of the French Penal

Code, p. 56 citing from Dast Goshade, Ibid: 166). But under Article 43 of the General Penal Code 1973, one of the essential conditions of the defense's legitimacy was that the attack was not carried out as a result of self-defense (such a condition does not currently exist in Islamic Penal Code). Therefore, because the husband's attack to the wife and the alien man was the result of the provoking caused by their action, so if one or both of them defense and committed a crime against the physical integrity of the husband, the title of legitimate defense did not apply for their action and were prosecuted and punished.<sup>1</sup> But if such a case now occurs under Article 630, because the defense against the offense is legitimate, it will not be considered a legitimate defense against the offenses which the law has justified and excluded the criminal description, and since Article 630 of the Ta'zir Act, by bringing the word "can", has removed the criminal description from the act of the husband, contrary to former Article 179 that still considered husband's action as a crime), if the wife or alien man or both of them defended their lives and assaulted or murdered the husband, the act would be a crime and cannot be exempt from punishment based on the Articles related to legitimate defense; Just as the resistance to government forces performing their legal duties is not legitimate, the legislator himself has destroyed the legal element by deciding to perform these duties. Here are some questions.

Whenever a woman is forced to commit adultery, but her husband is unaware of it and attacked her by watching adultery, if a wife acts against her husband's physical integrity, is she committed a crime? Since in this case, the practice of the husband is outside Article 630 of the Punishment Act and is considered a crime -because it does not permit the husband to kill or beat the duressor- hence the defense against crime is committed that by law such defense is considered legitimate. It may be said that because the husband was unaware of the reluctance (ignorance of the subject), therefore, his act was not a crime to defend against it to be legitimate. In response, ignorance of the issue is one of the factors for criminal responsibility, and defense against ignorant aggression is also legitimate and will have no responsibility, both criminal and civil (Azmayesh, 1973).

### **Analysis of Documentation of Non-Famous View (Absolute prohibition of murder in marriage bed)**

The most important issue in analyzing the views of this group is the confusion between the position of ascertaining and proof. It seems that the permission of murder in the marriage bed for the couple, described by the

Shari'ah, is confined to the realm of ascertaining, not proof. When the husband sees his wife committing adultery with an alien man, at the same moment, in the world of ascertaining, the two become deserving of death towards her husband and he will be allowed to kill them. Therefore, if they are killed, the sin the killing person will not be for him near the God, and the first and fifth narratives mentioned in this study, as discussed in the preceding discussion also refers to the husband's right of ascertaining. Whereas the world of proof has a different status, because in the world of proof, it is based on appearance, and according to Amir al-Mu'minin (AS) who says: "I judge among you by eye and oath", the husband by resorting the evidence of proof in criminal cases should prove their adultery and get rid of retribution. Otherwise, he will be sentenced to retribution.

The problems that the jurists opposed to permitting murder in marriage bad by narratives of famous view which confirms absolute permit of murder in marriage bed have been taken from the document does not seem correct; because the science of biography and criticism of traditionists is one of the sciences that jurisprudents disagree on authentication or non-authentication of a hadis, and each of them issues a fatwa based on his biography and criticism of traditionists.

### **The Legal Nature of Murder in The Marriage Bed**

In examining the legal nature of the murder in the marriage bed, it is alleged that the sentence was recognized as a right to punish the husband. This theory is from the perspectives of the subject and is inferred from the words of Shahid Aval in the lessons.

Shahid Aval in the book of lessons says:

"The trustee can execute punishment only if he sees or in case of confession of a person and under a promise that is valid for the ruler. The father can also execute punishment for his son and grandchildren, and the husband for wife and there is not any difference between flogging and the stone, because it is said that when a man sees his wife with an alien man in adultery, he can kill both. Allameh Helli excludes enforcing punishment of stone and theft (cutting hand) (Sani, 1413, p. 48).

Although the words of Shahid Aval in the lessons implies the appearance that murder in the marriage bed such as the punishment was recognized by a trustee to person and thus does not require judicial proof, it is not valid assuming such a view of the Shahid Aval because if it was recognized

as a judicial right, it would not be about the responsibility and accountability of the killer, as it is for other agents and enforcement agents, since the execution of the punishment as a law enforcement officer is on the responsibility of judge of executing the sentences, so if anyone makes a claim against them for wrongdoing, the burden of proof is not on the responsibility of law executor. Besides, the transfer of the right of executing punishment to non-Imams and jurists is contrary to the principle and requires valid reasons, which is why some jurists have even doubted the legitimacy of the accused judge. Therefore, if the legislator wants to adhere to this theory, he has passed a very wrong way.

Besides, jurists agree that the right of executing punishment is only in the jurisdiction of the Imam and in the time of the absentee, only in the jurisdiction of the jurists, so transferring such a right to others is contrary to the principle (Al-Ehsa'i, 1403, p. 204).

### **Jurisprudence and legal analysis Article 630 of the punishment law**

The subject of Article 630 of the punishment law is one of the offenses against the dignity and the right of the family. In this statute, the husband is permitted to execute the penal code without any formal and legal formalities, whenever he sees his wife committing adultery and knowingly obeys his wife, he can kill them. In the jurisprudence pursuit, it is concluded that the ruling is exceptional and contradicts the general jurisprudential principles of such articles (Azgadi, Ali, & Attorney, 2012).

The legislator in Article 630 permitted the killing of an alien man committing adultery with a married woman as well as the killing of a woman if she committed this act and allowed him to kill or beat them. It can be said that according to the legislator, men and women commit this unlawful act in this state are deserved to die, and the husband can decide to kill and execute it himself and his action will not follow any punishment. But the permissibility of this murder is that the man first observes his wife committing adultery with the alien man, so if a man witnesses another woman committing adultery such as his sister, daughter or mother with the alien man, he may not be allowed to kill and even beat and he will face retribution if convicted, as provided in Article 179 of the former General Penal Code, if one sees his daughter or sister with an alien man in a bed and commits murder, he will be sentenced to one to six months imprisonment. That is, it has a great discount.

Second, He must see them committing adultery; i.e, the act of adultery must be conducted to the murder to be permissible. Naturally, for the killer to be exempted from punishment, he must be able to prove the act of adultery; i.e, in terms of substance and the individual's duty that observed the adultery of a man and the wife and convinced the adultery, he can act murder. However, for the court to declare his action permissible and to exempt his sentence, he must prove adultery by the testimony of four just or three just men under Article 199 of the Islamic Penal Code or Articles 211 and 212 of the mentioned Law, and anyway, without ascertaining adultery, murder is not permitted and without proving it in court, he will not be exempted from punishment.

Third, the murder must be committed while observing the act of adultery; so if a man ensures in another way that his wife has an unlawful relationship with an alien man, he cannot, under this article, kill or punish the man or woman and to be exempted from punishment, except as provided in Article 303 of the Islamic Penal Code. Fourth, there is no difference between double adultery and non-double adultery it for permission to kill and exempt punishment, if double adultery is not considered that its punishment is stone, for example, alien man lacks a woman or the conditions required for the woman is not aggregated (Although she is married), as provided in Article 630, committing murder is permissible and causes exemption from punishment.

Fifth, according to Article 630, and uncertainty of basis and philosophy of this Article, as we shall deal with later, if the husband commits murder by anger and sudden simulation by the observation of the situation, suddenly and by accident encountering a woman with an alien relationship or having been aware of woman's relationship with him, and the decision, even previous plan, and preparing the ground for the woman's issue with the alien man, he is exempt from punishment anyway. If under Article 197 of the General Penal Code, according to its philosophy, the murder cannot be allowed and exempted, as some jurists have said, however, under Article 630, as stated above, the killing, in any case, is permissible and causes exemption from punishment (Azgadi, Ali, & Attorney, 2012).

However, according to the author's view, since Article 630 of the Ta'zir Law is a special and exceptional ruling, its scope must be interpreted as to limit as possible, and in cases of doubt, its expansion to be avoided. So here, we have to say that it can only be relied upon if the husband suddenly observes adultery and if he prepares the ground with the previous plan and commits the killing of the wife and partner, there is no place for reference to Article 630 which



expresses an exceptional sentence. The phrase "observe" confirms this, and such an inference can be presented.

## Conclusion

Historical and theoretical studies have shown that the right of the husband to murder his treacherous wife and alien man violating his husband's privacy by imposing a more severe punishment than this, has long had a special status among Islam and different nations and it has not been devoted to Islam. It has and is still practiced in many Western and Arab states. The basic wisdom of sentencing to murder in marriage bed in various penal laws of the world, as well as the former General Penal Code, has been the emotional arousal of the husband. It is assumed that the man, by observing his wife's betrayal with alien man, becomes so angry and weak and nervous and committing a crime, and lacking the will and authority exempts him from possible punishment in normal state.

Following the victory of the Islamic Revolution and the need to match laws, according to Shari'a rules and regulations, the general penal code remained practically abandoned (although not explicitly or implicitly enacted), and the penal code was replaced in 1982, 1983, 1991 and finally in 1998 and Article 729, there was no explicit revision of the Ta'zir law from a sentence in Article 630 to 1996. However, following the fatwa of Imam and the existence of exemptions, it was also possible to enforce Article 630 until the legislator foreseen and stated Article 630 in the ongoing debate on legitimate defense in the course of amending the Islamic Penal Code.

The wisdom of describing this ruling, contrary to former Article 179, which was adopted by the French Penal Code and entered the General Penal Code with an incomplete translation, narratives, and documents have been jurisprudential. According to the jurists, the wisdom of enacting the sentence is either to waste the time of the victims or to execute the divine punishments or to enjoin the good and forbid the evil or the legitimate defense. But according to the jurists, the philosophy and the wisdom of the law contained in Article 630, or the theory of legitimate defense, the theory of domestic spiritual coercion, the intense provocation of the killer, the exception (privilege case of legitimate defense), the rule of law or the permission of law.

The Islamic Penal Code enacted in 2013 in Article 302 explicitly considers murder in the marriage bed as one of the causes of impunity and retribution. In other words, if a man suspects that his wife is committing

adultery with an alien man, he will be exempt from the punishment of retribution and the payment of blood money, because murder in the marriage bed has been classified as quasi-deliberate. According to Article 302, the killing of a woman by husband for adultery is exempt from the punishment of retribution and the payment of blood money if she has committed adultery.

Following the amendments to the Islamic Penal Code in 2013, Article 630 of the former Islamic Penal Code has been amended to Article 302. It is a legal provision to permit the killing of adulterers (adulterous men and women) by the husband of an adulterous wife. And he is exempt from punishment for this murder, whether he is paid for blood money or retribution because the victims are deserving death.

Deserving death according to the religious rules means that Muslim blood is respected and no person can kill a Muslim and be free from retribution or payment of blood money unless the person killed has the conditions that her/his shed blood to be free to other Muslims, and such a person would be called Mehdur al-Dam or deserving death. So if someone is legally entitled to be killed, he/she is called Mehdur al-Dam. Committing adultery for wife and man committing adultery is one of the instances in which killing a husband and wife is free for husband.

Despite any possible deficiencies and objections, however, the existence of this article as one of the provisions of the law should be accepted and it was intended to limit the scope of the relevant article as far as possible to reduce the harmful effects of Article 630 of the punishment law. The sentence of murder in the marriage bed is a true judgment and related to the husband and his God to execute one of the divine ordinances; but it should prove the deserving of victims to murder to be released from possible retribution punishment, which, if he cannot prove her adultery, he will surely be punished;

Finally, we concluded that this judgment has certain deficiencies and objections, both in terms of the basis (which is the traditions and news available in this case) and in terms of its legal wisdom, which is embodied with its jurisprudential wisdom.

With little reflection on Article 630 of the Punishment Act and the enactment of the "can" by the legislator, it is observed that the legislator has authorized the killing in the mentioned article for the husband. In other words, the legislator has somehow advocated for private justice and entrusted the fate and end of the act to the husband, so that the entire process of the proceedings, from the discovery of the crime to the execution of the sentence, was made by

the husband and supported the private court. The legislator, by enacting Article 630 of the Penal Code prevented the husband from committing the crime in such cases and issued a murder permit to the husband, which, by legal nature, should regard Article 630 of the Penal Code as one of the justifiable factors or barriers to the commission of the crime.

Article 630 of the Ta'zir Law is an incomplete adaptation of the problem in Imam Khomeini's "Tahrir al-Wasileh". Because it has only converted part of the issue related to ethics to Article 630 and has been silent about the legal section which is the requirement to testify for proving adultery. By writing this provision, the legislature has encouraged people to murder rather than persuade them to sacrifice. Whereas in jurisprudence words, the principle is based on the husband's retribution and the husband only gets rid of the retribution if he brings witness or parents of victim confirm him.

We have found that none of the foundations of legitimate defense, the prohibition of evil, right to execute punishment for husband, etc. are nor defensible for justifying Article 630 of the Ta'zir Law and cannot justify the provision of Article. On the other hand, as stated in the present study, the jurisprudential foundations of Article 630 cannot be cited and there is no consensus among the earlier and later jurists in this regard and the narrations have not been adopted by the jurists and cannot be cited to justify the ruling.

It was also found that Article 630 was contrary to the principle of innocence and contrary to Article 37 of the Constitution. Because according to that principle, the principle is on innocence and no one is found guilty by law unless his crime is proven in a competent court. While the legislator in Article 630 allowed the husband to kill the two before proving the crime of adultery in a competent court, this was contrary to Article 37 of the Constitution and deprived them of the right to defend.

As stated in the jurisprudence books, the punishment for adultery is variable and varies depending on the crime committed and its conditions. And the punishment for murder is only for a few groups of adulterers, and the sentence of all types of adultery is not murder. However, the legislator has stipulated in Article 630 of the Ta'zir Law: "Whenever a man sees his wife committing adultery with an alien man ..." and in this article, the word adultery is uttered and includes any kind of adultery. As a result, even though the purpose and source of this article were in the jurisprudence and fatwas of jurisprudents and narrations in 1996, the legislator has gone further and acted contrary to the Shari'a law, which is contrary to the Shari'ah and customary and requires review.

## Offers

Following the subject of this study and the problem of murder in marriage bed that causes both irreparable challenges and damages both legally and socially and culturally, the following cases are offered as solutions:

1- Honor killing is one of the important issues that is stated in the Islamic Penal Code adopted in 2013 in Articles 301,302 and 303 of its provisions, conditions, and sentences. The importance of this issue is because of its relation to human life. Although the provisions of the Islamic Penal Code regarding honor killings are based on the famous doctrines of the jurists, there are differences among the famous jurists in this regard and some have questioned in the necessity and non-necessity of adulterous person. In their authentic jurisprudential books, they have mentioned their drawbacks, this limit of necessity is not only free from the defects, but also forbidden, and that the arguments and documents and validity of the sentence are either poor in terms of document or they have no indication of the subject. Therefore, it is not reasonable to refer to these traditions to issue a firm and contrary ruling, that is, the authorization to kill adulterer or adulterer by the husband; therefore, it is suggested that the legislator also consider the opposing views of the jurists and reach a more acceptable consensus.

2. Another issue is related to the philosophy of issuing this sentence. From the customary viewpoint, the philosophy of this sentence is to provoke the husband and get him out of the normal state of mind and exposure to such a heinous scene, and it is a state of mental stimulation that exempts him from punishment and crime. Therefore, from customary law, the admission of the murder in the marriage bed is based on his incitement. But according to Islamic Shari'a, some jurists have permitted the base of this ruling on legitimate defense and some regard the husband's act as a divine punishment and allow him to do so and believe that if the adulterer and adulteress are deserved death, the husband's act has been as divine punishment, so it is offered that legal solution to be provided for these cases.

3. The articles in Islamic Penal Code concerning honor killing have two stages: one is the ascertaining stage, which is the stage of the actual existence of the right without regard to external appearance and the other is in the proof stage, which is the external appearance and its certainty in the court. Therefore, if the husband commits the killing of a wife and an alien man under the Islamic Penal Code, he must comply with the conditions of this article and prove the occurrence of adultery to be free from retribution. Thus, it seems that the provisions of the Islamic Penal Code are suspended or at least all its elements

are unlikely; that is why jurists believe that if the husband's claim is not proved, and if it is truly realized, it has not Shariah responsibility, but he is sentenced to retribution worldly. Therefore, the legislator has introduced a provision that would allow the husband to commit murder, and his life at risk if not done. Therefore, it is offered that the literature encouraging to murder in these articles be changed to restrictive literature and interpreted above so that the reader can clearly understand that the rational solution from the perspective of law, is to refer the court, and any arbitrary action has possible consequences including retribution.

4. Is it necessary to remove legal and jurisprudence uncertainties from these Articles and the legislator to determine whether 4 or 2 witnesses are required to prove the claim? And do witnesses have to testify the principle of adultery or do they need to testify in detail? And what is the sentence of murder and the retribution of husband if the wife is not married?

5. The legislator should remove the clause from Article 630 and use exempt exceptions. In a way that not prescribe the commission of the murder, but consider exemption.

6. Therefore it is offered that the legislature of Article 630 amends the Ta'zir Law as follows: Article 630: "Whenever the husband claims to have seen a man committing adultery with his wife, and for that reason has killed them, he shall be sentenced to retribution. Unless he states reasons and proves these reasons the crime scene. Note 1 - The evidence must prove the details of the subject to the degree required in other cases of adultery. Note 2- The husband must know her husband's obedience and authority. Note 3- stating being marriage in the wife and alien man is the condition for the realization of this matter.

7. It seems that the most important solution in the field is culture-making and institutionalizing the need to respect and protect women's rights rather than to monitor and control their actions. But this seems to be a serious problem, it seems to be very difficult and time-consuming to make culture in this field and the only way to prevent it is to change the provisions of the law in the way it was stated.

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