



The study of the support system available within the body of Iran's Islamic jurisprudence (Figh) and criminal law and the international body of criminal laws for the female survivors of sexual violence

Afsaneh Parsamand

Faculty of Humanities, Department of Management, Islamic Azad University, Marvdasht Branch, Iran

Abstract

Sexual violence against women whether in developed countries or developing countries has always presented itself as a challenge and a social anomaly. These days, the phenomenon of domestic violence still presents itself as a global problem in spite of all the developments that have been made in the industrial fields, science and technology, and the advancement of the civilizations and the cultural nature of the societies. The purpose of this study is to examine the studies and the body of work that has been done on the subject of supporting women against sexual violence. In order to prevent and to protect women against sexual violence, first, the difference between the two concepts of "being the victim of a crime and becoming complicit in that crime for women" should be clearly defined and introduced in the ways that are receptive across all cultures, second, there needs to be a commitment to the support of the female survivors of sexual violence and the necessary interactions between countries need to be further developed in order to combat this issue. The results of this study indicate that today the developments in the field of science and technology must be employed to advance the cause of justice so that the crimes can be solved with the help of science and science can pave the path towards catching the perpetrators which would, in turn, lead to the rule of law and justice being served for many of the criminals and perpetrators. Therefore, the lawmakers are required to make into law the application of highly advanced and innovative scientific methods as a way to gather credible and independent body of evidence according to which the courts can issue credible verdicts that are based on facts and to sentence the criminals to the punishments appropriate to their crimes, which would mean that despite all the issues that are present within this concept, no perpetrator is going to walk free and the rights of the victims and the survivors of the sexual violence shall not be disregarded.

Keywords: supporting women, sexual violence, criminal law, islamic jurisprudence (figh), the international body of the criminal law

Introduction

These days, despite all the progress that has been made in the field of science, the existing problem of violence still weighs on our conscience, and as a challenging social dilemma in the modern world, it is observed in various new forms. Violence against women is a phenomenon in which women are subjected to violence and their rights are violated by the opposite sex (their male companions) mainly because of their sex and because of the fact that they are born into a female body. If the violence occurs within the family and between spouses, it is called domestic violence and all behaviors, or the possibility of them, that could result in physical, sexual, mental harm or that would create a sense of deprivation and torment, are considered as the instances of violence against women. This definition shall also include the threats of such acts and behaviors, the violation of one's freedom whether as a result of a force that is inflicted upon them or as a product of their own choice, whether it occurs in the realm of one's personal life or the society.

The violent act of forced sexual intercourse with one's spouse is one of the various instances of sexual violence within the institution of family which results from faulty interpretations of cultural and belief system; since some men believe that women belong to them, in the form of their properties, or that the constitution of marriage indicates that

women are required to have sexual intercourse with their husbands whenever he pleases and the notion of women's consent is not even an issue in this regard (Amirkhani, 1379). In some countries, the idea of 'rape' is culturally regarded as sexual intercourse with a woman to whom the male perpetrator is not married and has not issued consent on the subject of the intercourse and was unwillingly forced to do it, and this cultural interpretation is sometimes even observed within the body of the legal system of some countries, like Iran, as well (the Article 224 of the civil law, Ghadiri, 1393). The scholars of Islamic jurisprudence as of yet have not issued their independent opinions on this matter in the Book of Limitations and Punishments in Spousal Sexual Violence, which might be due to the fact that there are no anecdotal accounts on this regard in Islam, and have simply referred to the subject of sexual violence within the body of regulations on the subject of Qisas ^[1] since it might lead to the instances of Qisas or Diyah ^[2]. However, it can be suggested that due to the criminalization concerns such as the prevalence of sexual violence, harassment, and oppression against women and the necessity of providing women support in these areas, it could be criminalized for which the appropriate punishment be assigned. Therefore, the performance of the legislative body in this regard is prone to some judgments since it has not provided women support against their violent spouses and that it appears that

the appropriate platform for the establishment of such support is not yet created.

The significance of this study centers on the examination of the body of support that women are offered against sexual violence alongside the inspection and the adjustment of the instances of sexual violence against women within the body of Islamic jurisprudence, Iran's criminal laws, and the international criminal laws. There are also suggestions made on the improvement of the methods employed to counteract and reduce the crimes of sexual violence against women and the preventive measures that could be put in place in order to ensure women's safety in the initial stages of their criminal lawsuits against their perpetrators, during the legal proceedings, and also at the final stage in which the verdict is issued. The main question that is examined within this study is: To what degree can the lawmaker reduce the instances of crimes of violence against women while taking supportive and preventive measures? The main hypothesis of this study is that: it is suggested that the Iranian lawmakers while employing productive and preventive measures, take important and essential steps in the prevention of sexual violence against women.

Literary Review

In general, the existing literature on this topic can be examined within two categories which include the factors that cause the violence against women and the various theories on the subject of sexual violence against women. These two categories are studied in detail in the following:

The Factors Causing Violence

The identification and realization of the various factors that cause violence against women is an important step in prevention, control, and putting a stop to the violence, since the identification and realization of the factors that cause it and then implementing solutions to combat it, provides the platform necessary to deal with the effects as well.

Personal Factors

The findings of various researches that have taken place on this subject suggest that the enforcement of violence can be learned and the individuals mostly learn from all the violence that they have suffered or witness in their early childhood and as adults implement those violent behaviors from one generation to the other. Therefore, one of the factors that cause violence against women is childhood experiences (Molaverdi, 1378) ^[9]. Women who have witnessed their mothers physically being abused by their fathers are five times more in danger of having physically abusive husbands (Rahimi, 1375) ^[4]. One other factor relating to the violence against women is the personal traits and attributes of the perpetrator, which entails that if one individual repeatedly and in similar circumstances acts in a violent manner, violence is known to be a part of their character (Rafieifar, 1377) ^[5]. Alcohol and illegal substance abuse are two of the other personal factors relating to the emergence of violence against women. In the assessment of the cases regarding 60 victims of physical abuse, it was observed that in 93% of the cases alcohol abuse was the most important contributing factor and within another study, alcoholism was observed to lead to a circle of violence and

violent behavior in 40% of the cases (Molaverdi, 1378) ^[9].

Familial Factors

Many factors contribute to the emergence of violence within the households, and one of these factors is the lack thereof an effective body of legal support for the victims. For instance, the Article 1117 of the civil laws on the subject of the husband's right to forbid his wife from having a job that might interfere with their family interest or might possess a threat to the wife or the husband's honor, is widely interpreted this way that it is absolutely within the husband's right to forbid his wife from having an occupation (Asadi, 1383) ^[2]. The other contributing factor in this regard arises when the spouses come from different cultural backgrounds. In Islam, much stress has been made upon the spouses having the same backgrounds, and this same background is mainly stressed on the subject of religion and religious beliefs, however, these days having the same status for the spouses should also be observed in the matters related to their physical appearances, financial background, and etc. Therefore, cultural, religious, and moral conflicts within the spouses are the contributing factors to tensions that arise within the family in most cases which might, in turn, lead to the employment of the violence (Asadi, 1383) ^[2].

Social Factors

One of the social factors relating to violence against women is the unjust distribution of power between men and women in society which is influenced by social conventions and public moral values. The overreaching culture of patriarchy within the society and the ambiguities that exist regarding some laws related to the family, go hand in hand. Other social factors contributing to sexual violence against women are briefly detailed in the following: the oversexualized view of women, the cultural norms that originate from stereotypical and biased conventions, the methods implemented in solving the conflicts, the negligence by the governments and ruling bodies, the impact of collective media, and religious beliefs.

Feminists Weigh In

In the 1970s, feminists attempted to introduce spousal rape and physical violence as a serious threat posed to the lives of women by their men. Among all the theories that attempted to define the phenomenon of spousal abuse, the feminist theory of equality between women and men attracted more support. This theory stresses the notion of gender and further explains that women are regarded as "the second sex" within the society and takes it upon itself to end this unjust dynamic (Hamidian, 1387) ^[3].

The Theory of Functionalism

In contrast to the feminists, the functionalists believe that domestic violence is actually justified. They regard the family as a group in which the hierarchies are not set based on specialty, qualification, and competence, but they are assigned based on gender, age, and financial power. The emergence of inhomogeneous interests shall lead to the emergence of overt or covert conflicts. These conflicts destroy the appropriate features and functions of the family. Therefore, any measures that are taken in order to solve these familial conflicts, even if they are implemented by force and violence in some cases, are justified and

considered necessary (Ezazi, 1380) ^[1].

The Theory of Culture

The theory of culture of violence is one of the theories that expound upon spousal abuse. According to this theory, the foundation of various abusive behaviors such as spousal abuse, child abuse, and elderly abuse is created within and through society. According to this theory, culture is the social heritage of the past which impacts the present and future behavior of the individuals. The features of such culture include the impact of male violent behavior, the dominance of patriarchy, and the submission of women to men. In some societies, when the social order is disrupted in an attempt to reestablish order violence is employed. This form of social surveillance which entails the employment of violence in order to maintain the social order in the community is observed both in the broader sense of the societies and in smaller scope within the families (Ezazi, 1380) ^[1].

Method and the Theoretical Groundwork

The method incorporated within this study is analytical and upon exploring the legal aspects of the matters at hand the descriptive method is employed. In order to gather the basic information needed for this paper, the library method was employed, which includes the assessment of the scholarly papers published in Iran and around the world, books, websites, eBooks, and the body of research that has been previously done on this subject. The analysis of the facts within this study was done by taking a discursive approach which employs the legal assessments that have been made on the subject through the employment of the relevant theories and attitudes. Upon reaching conclusion, some suggestions are made in order to properly deal with the matter at hand through the examination of the paradoxes, shortcomings, and failures that have taken place around the subject of sexual violence against women. Furthermore, the findings were assessed within a practical platform. Within this study, in order to prove the trustworthiness of the data that was resulted from the study, the four criteria of the trustworthiness of the qualitative research including credibility, transferability, dependability, and confirmability which were introduced by Lincoln and Guba were employed (Flake, 1387).

I order to assess the credibility the maximum variety is employed in the selection of the resources. The transferability entails the practical use of the findings of the study within other populations and samples; therefore, it demonstrates the collected data to what extent represents a bigger population. The employment of various theories and the focus on the collection of the maximum number of resources and the demonstrated data and the proper categorization of them shall increase the transferability of the findings of the study. Furthermore, the dependability of the findings are assessed through the extent to which the results apply to other situations as well (Mehraban, Adel, 1394); due to this fact, there has been an attempt to increase the dependability of the findings while employing credible sources and the proper assessment and the reassessment of them. Finally, the credibility of qualitative research is examined by the number of people that can vouch for the credibility of the collection process, accuracy, and the corresponding nature of the findings of the study. Therefore, there has been an attempt to avoid personal inclinations

from entering the process of collection and assessment of the data and to assess the entire body of the assessment process by the related experts.

Findings of the Study

Within this part of the study, the findings of the research which resulted from gathering data from multiple resources are being assessed through the proper organization of the data which shall help us in the process of finding the answers to the main questions that are suggested within the study.

The Difference between the Opinions of the Scholars of the Islamic Jurisprudence and the Western Countries on the Crimes of Sexual Nature

Within the body of the western legal system, sexual acts with the exception of incest, are only considered a crime if they are done in a violent manner and without the consent of the victim. The ideas of being 'done in a violent manner' and 'without the consent' do not merely suggest the implication of violence, rather in some cases when the other involving party is not willing to initiate the sexual act having a sexual encounter with that person is then legally considered a crime. For instance, within the body of England's legal system, children who are under the age of 16 can never give consent to engage in a sexual act with those above 18 years old. Furthermore, until 1984, the initial consent of women to engage in a sexual act was considered enough not to make it a crime. However, within this year the case of *Kitamaki v R* indicated that sexual intercourse is a continuing process during which at any time the woman issues her unwillingness to engage in the act if the man then continues the sexual intercourse he is then considered guilty of rape. This viewpoint was then approved by the body of the criminal law in 2003.

Criminal Justice and the Prevention of Sexual Violence against Women within the body of Islamic Punishment Laws

Within the body of the Islamic Punishment Laws, the crimes of sexual nature or the crimes against the public honor and virtue, are categorized within two general categories; first, the offenses that violate Hudud ^[3] such as adultery, sodomy, intercrural sex, homosexuality, and procuring, and second, the offenses that can be legally charged such as having extramarital relations or any inappropriate sexual conduct other than adultery, running brothels, and the encouragement of the members of the society towards inappropriate sexual conduct and immorality or providing the necessities for such indecent behavior.

1. The Articles 221 to 232 of the Islamic Punishment Laws which was initiated in 1392, has provided the exact definition of "adultery", the ways of proving that it has been committed within the courts, the various types of punishments regularly sentenced for it, and the way of implicating those punishments, and has quite clearly defined the roles of the police enforcement and the judicial system of The Islamic Republic of Iran upon interaction with this crime. The punishment which is decided for adultery, depending on the type of it, varies from whipping with leather lashes 100 times to death.
2. The Articles 133 to 241 of the aforementioned laws expound upon three other types of sexual crimes

including sodomy, intercrural sex, and homosexuality and has defined what those crimes constitute and their punishment terms. According to the Article 234 “the punishment sentenced for the perpetrators in the case of sodomy, if it was done through force, without the consent of the victim, or if the person was currently married, are death sentence and otherwise, it is being whipped with the leather lash 100 times. The punishment sentenced for the person who was sodomized is at all times (whether he was married or not) is a death sentence. According to the Article 236, “in case of intercrural sex, both the initiator of the act and the person upon whom the act was carried out, is being whipped with leather lashes 100 times”; therefore, there are no differences between the acts that are done by married or unmarried people or whether it was done by force or not. In Article 239, the required punishment for homosexuality is considered being whipped by leather lashes 100 times.

Punitive Intervention and the Prevention of Sexual Violence against women in the International Stage

For the first time after the second war in 1948 at the United Nations General Assembly which was held in Paris, the legal matters regarding sexual fertility were included within the “The Universal Declaration of Human Rights”. The Article 16 of this declaration indicated that adult men and women, without any racial, national, or religious limitations, have the right to get married and start a family and have equal rights in the matters relating to the marriage, the continual or the annulment of it. Upon that incident, the United Nations declared within the Article 1 and 2 of “the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages” which was initiated in New York in 1962, that marriage cannot legally be approved unless both parties have agreed to it and the countries that have signed this convention are required to set a minimum age limit for marriage.

In 1995, the International Federation for Family Development drafted a declaration for fertility and sexual rights. This declaration is based on 12 rights which are extracted from the international documents on human and complementary rights upon honoring which this federation is established and its standards have been developed according to the documents that have been able to reach the highest consensus amongst the members in four key United Nation Assemblies from 1993 to 1995. This published draft demonstrates the response of the International Federation of Family Development to the relationship between human rights and their application in matters related to sexual health and fertility. However, even until the year 2000 when the United Nations Assembly in New York presented the developmental objectives of the millennium as reducing poverty and the development of industries around the world, fertility, and sexual rights were not mentioned as a specific objective and it was not until 2004, that at the 57th Assembly of World’s Health that the significance of fertility and sexual health was stressed and the establishment of the rights related to it was recognized as a necessity and a strategy within the body of the developmental objectives of the millennium.

Conclusion and Suggestions

Since the crimes of sexual nature pose a threat to the human

embodiment of the societies, destabilize the foundations of the families, and create the platform for the variety of other crimes and corruptions to be committed, the legislative bodies besides taking punitive measures, must take preventive measures in order to stop the increasing rate of these crimes and violent offenses. Since in many cases related to sexual violence, there is no possibility to take the witness to the stance four times to state what has befallen them to call four witnesses; therefore, upon issuing the verdict it is important to refer to other means such as the body of knowledge that is possessed by the judge, the medical evidence that is legally approved and is also validated within the body of the Islamic Laws.

It can be suggested that the legislations made regarding women’s rights are made by female representatives in order to be able to tackle the problems faced by women in a more effective way through the legal system. The male sex cannot access a clear understanding of the problems faced by women. Furthermore, practical measures such as the establishment of a secure hotline for the reports of domestic violence that is active 24/7, the employment of expert social workers, expanding the authority of the social institutions that deal with the matters regarding abuse and violence within households, and holding consultation sessions for the male perpetrators of domestic violence in order to prevent them from ever doing it again.

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