

A Comparative Jurisprudential Study of Social Jurisprudence in Al-Sabzwari's Rulings on Divorce, with a Focus on Al-La'an from His Book "Muhadhdhab Al-Ahkam"

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Abstract

This research focuses on explaining social jurisprudence as one of the types of Islamic jurisprudence that concerns the lives of individuals in society. It presents a comparative jurisprudential study on the rulings of divorce and li'an (cursing) as an example from the book "Muhadhdhab al-Ahkam" by Al-Sabzwari. The researcher also presents the opinions of jurists from Islamic schools of thought and the opinion of Al-Sabzwari, along with their evidence and discussion, to make a comparison between them and to clarify the most valid opinion. The results reveal the strength and ability of Al-Sabzwari in deducing the legal rulings from their sources, allowing the researcher to understand the methodologies of eminent scholars and then deduce the social jurisprudence in the issue based on Al-Sabzwari's opinion.

Keywords: Al-Sabzwari, Cursing (Li'an), Divorce Social Jurisprudence.

INTRODUCTION

Islamic jurisprudence stands as one of the most esteemed and essential fields of study, carrying both religious and intellectual significance and holding a prominent position. It serves as a wellspring from which scholars draw, unveiling the riches of the benevolent Sharia, and contributing to the moral integrity of entire human societies. The early generations showed great eagerness in learning and imparting its teachings. Among those scholars, Al-Sabzwari who penned a work titled "Majma' Al-Anhur fi Sharh Multaqa Al-Abhur" in Imamite jurisprudence, and the researchers have selected a topic concerning the laws of divorce (Talaq) to emphasize the social jurisprudence of this jurist. The research includes an introduction that explains the research problem, its objectives, significance, reasons for selection, research methodology, and previous studies on the topic. It also includes a research plan consisting of an introduction, as mentioned earlier, and two sections, each containing two subsections, and a conclusion.

Research Problem

The research problem arises from the attempt to clarify the social implications within the rulings of divorce invoked curses and to demonstrate its impact on the family which is a fundamental part of society.

Research Objectives

This research aims to elucidate Al-Sabzwari's social perspective in the context of divorce and to illustrate its influence on the family, as an integral part of society.

Research Significance

The significance of this research stems from the fact that divorce represents a significant societal issue, given its adverse social and psychological effects on the essential components of society, including individuals and families.

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Research Rationale

This topic was chosen due to the contemporary relevance of studying social jurisprudence, which is essential for addressing social phenomena impacting individuals within the community, and for understanding the role of teachings and legal rulings to avert their negative effects.

Research Methodology

The adopted research methodology encompasses an inductive, comparative, descriptive, and analytical approach to legal rulings. The chosen research topic has not been previously explored extensively, as social jurisprudence is a contemporary subject that has received limited scholarly attention.

Research Plan

The research comprises two main sections. The first section focuses on understanding social jurisprudence, with the first subsection delving into the concept of jurisprudence in language and terminology, and the second subsection investigating the concept of society in language and terminology. The second section is dedicated to exploring Al-Sabzawari's biography and his social jurisprudence within the context of divorce. This includes an in-depth examination of his personal background, encompassing his name, lineage, birth, family, and upbringing. Additionally, it delves into the specific topic of social jurisprudence in relation to divorce, particularly addressing the prohibition of a husband from divorcing his wife by invoking curse. The research concludes by presenting the most significant findings and offering recommendations based on the study's outcomes.

Social Jurisprudence

The concept of social jurisprudence is one of the important issues, especially in our contemporary reality (Al-Saadi & Abdul Razzaq, 2021). It is a composite term consisting of the word "jurisprudence" and the word "social." To understand the meaning of social jurisprudence, it is necessary to know the intended meanings of both jurisprudence and society as follows:

Jurisprudence (Fiqh)

Jurisprudence (fiqh) is defined in linguistic dictionaries as "the knowledge of something, understanding it, and insight. It is predominantly associated with religious knowledge due to its honor and superiority over all other types of knowledge. As mentioned in the Quran: "However, it is not necessary for the believers to march forth all at once. Only a party from each group should march forth, leaving the rest to gain religious knowledge then enlighten their people when they return to them, so that they 'too' may beware of evil" (9:122). Meaning, to become scholars in it (Ibn Manẓūr, n.d). Therefore, jurisprudence in language is the understanding of the speaker's words and knowing their intent (Al-Kandari, 2023). Jurisprudence in terminology has received many definitions, the most prominent of which is that it is "knowledge of practical legal rulings acquired from their detailed evidence" (Al-Subki, A. A. (1984, p. 28).

Al'ijtima' (Gathering)

Al'ijtima' (gathering) in the language: "Al-jamaa' is a noun derived from the verb 'jama'atu' (I gathered) and al-ijtima' is a noun for a group of people gathering for a specific purpose. It is also a noun for people. Al-jamaa'ah is the total number of everything and its abundance. The mosque is called "al-jami'" because it gathers its people (Al-Farahidi, n.d.). Al-ijtima' is the opposite of separation. I gathered the scattered things, so they gathered. The people gathered, they gathered from here and there (Al-Ṭarīḥī, 1881).

Among the humanities, there is a science that deals with the study of the common life among people, that is, the study of human society as opposed to individuals. It is called sociology. It deals with the life of the community, individuals as individuals, some of whom are isolated from others, embodying social actions, and embodying phenomena with a collective nature (Al-Bustani, n.d.).

After defining the terms (fiqh) and (al-ijtima'), social jurisprudence can be defined as a science based on a specific knowledge by saying that social jurisprudence is: the science of practical Sharia rulings acquired from their detailed evidence related to their social nature, which achieves the public interest of society. It is worth noting that Islamic jurisprudence has two aspects: an individual aspect and another aspect which is social (Al-Kannani, 2022), and the latter is the focus of our study.

Al-Sabzawari's Biography

His name: His name is Sayyid Abdul A'la bin Ali bin Rida bin Abdul A'la Al-Mousawi Al-Sabzawari. As for his honorable lineage, it goes back to Sayyid Ibrahim Al-Mujab, the descendant of Imam Musa Al-Kadhim, the son of Ja'far Al-Sadiq, the son of Muhammad Al-Baqir, the son of Ali Zain al-Abidin, the son of Hussein, the son of Ali, the son of Abu Talib (peace be upon them) (Al-Mūsawī, n.d.).

His birth: Regarding his birth, Al-Sabzawari was born in Sabzevar, a city in one of the provinces of the Islamic Republic of Iran, on the 18th day of the month of Dhu al-Hijjah (the Day of Ghadeer al-Aghar), in the year 1328 AH (Al-Hashemi, 1436 AH; Al-Qatīrī, 1429 AH; Al-Talqani, 1425 AH).

His family: Sayyid Abdul A'la Al-Sabzawari comes from a scholarly family renowned for their knowledge, piety, and righteousness. They were known as the "Al-Afghani scholarly family," and it was often said about them, "There has never been an era in history without a member of this family known for their intellect, diligence, and erudition." (Al-Qatīrī, 1429 AH, p. 30).

His upbringing: Sayyid Abdul A'la Al-Sabzawari was raised and nurtured under the guidance of a pious and knowledgeable father. It was natural for him to be influenced by his father's character and follow in his footsteps. He was taught the basics of religious sciences, such as syntax, grammar, rhetoric, logic, and some texts of jurisprudence, at a young age, and he completed them before reaching the age of ten (Al-Husayni, 1425 AH; Al-Qatīrī, 1429 AH).

Social Jurisprudence in the Rulings of Al-La'an According to Al-Sabzawari

The Ruling of the Prohibition of the Wife on The Husband by Mutual Cursing

Before mentioning the scholars' opinions on the issue, their evidence, and discussing it, it was necessary for us to explain cursing in language and terminology. Al-la'an (cursing) in language is derived from the word allan 'curse,' which means 'rejection and expulsion from goodness.' It is also said to mean 'expulsion and rejection from God.' The term al-La'an 'curse' is a noun.' To curse someone is to expel and distance them (Ibn Manẓūr, n.d). Al-La'an in terminology is a specific mutual imprecation between the spouses, taken from the linguistic meaning as well. There is no difference between them except in detail and totality, as is the case in all subjects of rulings that have legal effects and specific rulings, and its effect is to repel the prescribed punishment or to deny lineage (Al-Sabzawari, 1430 AH).

The scholars' opinions on cursing (li'an) is legislated in the Quran, the Sunnah, and by the consensus of the Islamic nation, and it can be concluded based on human nature as well. When the disputants - the husband and the wife - are in a state of dispute, one of them says to the other, "May Allah curse the liar among us." This is legislated in two situations.

The first is when the husband accuses his wife of adultery, and the second when the husband denies his paternity of a child born to his wife with the possibility of his paternity. The scholars have unanimously agreed that the cursed individuals cannot remain as a married couple. However, they have differed regarding the type of separation resulting from cursing: is it a divorce or an annulment? They also debated the sanctity resulting from cursing: is it a permanent sanctity, where the woman is permanently forbidden to the man even if the husband admits to lying, or is it a temporary sanctity that ends if the man admits to lying? (Al-Ṭūsī, 1409 AH; Ibn Al-Qattan, 2004). This is the subject of debate among three schools of thought.

The followers of the first school of thought believe that the separation resulting from cursing is annulment, not divorce. It necessitates permanent sanctity, so the cursed individuals can never return to marriage after cursing. If the husband admits to lying by saying, "she did not commit adultery, and I was lying," he would be subject to the punishment of flogging, and the child would be attributed to another man. His wife cannot return to him. This is the opinion advocated by Sayyid Al-Sabzawari (may Allah have mercy on him) in his book "Muhadhab" where he stated: "When the comprehensive li'an occurs, it leads to certain rulings, including the annulment of the marriage contract, and the separation between them, and the second ruling is the eternal sanctity, so she can never be lawful for him, even through a new marriage contract. These two rulings apply in the case of comprehensive li'an, whether for accusing his wife of adultery, or for denying his paternity of a child." (Al-Sabzawari, 1430 AH). This opinion is also held by the Imamiyyah (Al-Ṭūsī, 1409 AH), as well as by Abu Yusuf and Zufar from the Hanafi school (Al-Kasani, 1982), the Maliki school (Al-Maliki, 1412 AH), the Shafi'i school (Al-Mawardi, 1999), the Hanbali school (Ibn Qudāmah, 1405 AH), the Zahiriyyah (Ibn Hazm, n.d.), and the Zaydiyyah (Al-Shawkani, 1834).

The followers of the second school of thought believe that the separation resulting from cursing is a clear divorce, not annulment, and the permanent sanctity does not apply. The marriage contract becomes invalid immediately. If the husband admits to lying after cursing his wife, he would receive the punishment of flogging, the sanctity would be lifted, and his wife's status would be clarified with a single divorce. He could then propose to her if he wished, and they could remarry with a new dowry and a new marriage contract. This opinion is held by Abu Hanifa and Muhammad from the Hanafi school (Al-Kasani, 1982).

The followers of the third school of thought hold that if the husband admits to lying, he would receive the punishment of flogging, and his wife would be returned to him. This opinion is attributed to Adh-Dhahak and Ash-Sha'bi, and it is also attributed to Sa'id ibn Jubayr in a narration: "His wife would be returned to him as long as she is in the waiting period (iddah)" (Ibn Qudāmah, 1405 AH).

EVIDENCE AND DISCUSSION

Evidence of the First School of Thought

Sayyid Al-Sabzawari (may Allah have mercy on him) and those who agree with him from the proponents of this school assert that the separation resulting from cursing is annulment, not divorce, which necessitates permanent sanctity, based on the noble Sunnah and logical reasoning, as follows:

A- The Noble Purified Sunnah

It is everything that was transmitted from the prophet in terms of words, actions, or reports (Khalil & Abd Shaboot, 2023).

It has been narrated on the prophet peace be upon him (PBUH) in the Sahih of Abdul Rahman bin Al-Hajjaj, where he said: "A man from the Muslims came to the Messenger of Allah (PBUH) and said, 'O Messenger of Allah, what if a man enters his house and finds another man having sexual intercourse with his wife, what should he do?' The Messenger of Allah turned away from him. The man who asked the question was the one who had experienced this with his wife. Then revelation came from Allah regarding this issue. The Messenger of Allah sent back for the man and asked him, 'Are you the one who saw another man with your wife?' He said, 'Yes.' The Messenger of Allah said to him, 'Go and bring your wife, Allah has revealed a ruling concerning you and her.' So, the husband brought his wife, and the Messenger of Allah stood her up and said to the husband, 'Bear witness four times by Allah that you are among the truthful in what you have accused her of.' He bore witness. Then the Messenger of Allah said, 'Hold back and admonish him.' Then he said, 'Fear Allah, for the curse of Allah is severe.' Then he said, 'Bear witness a fifth time that the curse of Allah is upon you if you are among the liars.' He bore witness, and the Messenger of Allah ordered that he be flogged. Then he (the Prophet) said to the woman, 'Bear witness four times by Allah that your husband is among the liars in what he has accused you of.' She bore witness. Then he said to her, 'Hold back and admonish her.' Then he said to her, 'Fear Allah, for the wrath of Allah is severe.' Then he said to her, 'Bear witness a fifth time that the wrath of Allah is upon you if your husband is among the truthful in what he has accused you of.' She bore witness. Then

he separated them and said to them, 'Do not ever come together in marriage after you have cursed each other.' (Al-'Āmilī, 1983).

The evidence from the noble hadith indicates the annulment of the marriage contract, as the Prophet (PBUH) said to the cursed couple after the cursing had taken place: "Do not ever come together in marriage." Therefore, the sanctity is eternal, and the woman can never be lawful for the man, even through a new marriage contract (Sabzawari, 1430 AH).

2. What is authenticated on Ibn Umar, may Allah be pleased with him, from the Prophet (PBUH), in which he said: "The cursed couple, when they separate, should never come together in marriage." (Al-Dāraquṭnī, 1966, 2/276).

The evidence from the noble hadith indicates the perpetuity of sanctity and that the cursed couple cannot be together, as the Prophet (PBUH) said: "They should never come together." This implies the perpetuity of separation from two aspects.

One of them is that separation is explicitly stated, and the other is that if it were permissible for them to reunite, the condition for their reunion would have been mentioned (Al-Mawardī, 1999). As Allah said in the case of triple divorce: "And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon them [i.e., the woman and her former husband] for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know." (2: 230).

This opinion was disagreed upon because the intended meaning is that the cursed couple should never come together as long as they are cursed. The hadith cannot be acted upon in its literal sense because the reality of the active participant is the one engaged in the action, whether in reality or in terms of ruling. If the cursing is removed and they are no longer engaged in it, both in reality and in terms of ruling, then the ruling no longer applies. In other words, if the reality is removed, the ruling ceases to exist. After the denial and the punishment of flogging, the ruling is no longer valid, and there is no longer a reality or a ruling. Therefore, it is permissible for them to reunite, and it is permissible for him to marry her because he is no longer considered one of the cursed individuals in the specific context of the flogging, so the cursing no longer applies (Al-Samarqandī, 1994).

Logical Reasoning

The separation resulting from cursing is annulment, and that the sanctity does not cease with a new marriage or sexual intercourse, making the sanctity perpetual, similar to the sanctity resulting from breastfeeding. Therefore, the conditions of divorce and its rulings do not apply in this case (Al-Bājī, 1332 AH).

The separation resulting from cursing cannot be considered a divorce, as cursing is not explicitly related to divorce, nor is it intended as a means of divorce. Therefore, it does not function as a divorce like other means of annulment, and if it were a divorce, the husband would be subject to cursing without the wife being similarly cursed.

Evidence of the Second School of Thought

The proponents of this school, who assert that the separation resulting from cursing is a clear divorce, not annulment, base their argument on the Quran, logical reasoning, and the following points:

1. The Noble Quran

The verse "Marry off the 'free' singles among you, as well as the righteous of your bondmen and bondwomen. If they are poor, Allah will enrich them out of His bounty. For Allah is All-Bountiful, All-Knowing." (24:32). It is evidence that the general permissibility of marriage is not contingent upon whether the individuals were

previously cursed or not. This indicates that the divorce occurs once after the cursing, and that it is permissible for them to marry again (Al-Jassās, 2010).

This was disagreed upon by stating that the cursing does not fall under the general scope of the Quranic verses, as the generality is specified by the text of the Sunnah. The Sunnah has explicitly stated the perpetual sanctity, so they should never come together after the cursing (Al-Mawardi, 1999).

Logical Reasoning

The separation resulting from cursing is considered a clear divorce, because the cursing is established by explicit text between the spouses. If we were to prove perpetual sanctity, it would be an addition to the text, which is not permissible, especially when the method of enforcement involves punishments. Additionally, the separation is associated with a legal ruling, and its cause is only established in a valid marriage. Therefore, the separation would be null and void, similar to separation due to defamation or false accusation. This is because cursing negates the obligation to maintain good treatment, which necessitates a kind separation (Al-Sarakhsī, n.d.).

This opinion was objected as that perpetuating the sanctity resulting from cursing is not an addition to the text, but rather it is established by the Sunnah. Therefore, it is confirmed by textual evidence (Al-Mawardi, 1999).

Evidence of the Third School of Thought

The proponents of this school, who assert that if the husband admits to lying, his wife is returned to him, and their marriage is reinstated, base their argument on the consensus that if the husband admits to lying, he is subject to the punishment of flogging, the child is attributed to him, and therefore, the marriage becomes permissible again. This is because there is no distinction between these matters (Ibn 'Abd al-Barr, 2000).

This opinion was objected, as previously mentioned, the establishment and affirmation of lineage is a right upon the husband. Therefore, it is permissible for him to claim the denial of lineage, and the increase in sanctity becomes his right. If he does not accept it, then he is making a claim about the increase in sanctity resulting from cursing, while acknowledging the lineage. The claim is not binding, but the acknowledgment is (Al-Mawardi, 1999).

The most plausible opinion, (Tarjīh) after presenting the views of the jurists and discussing the evidence in the matter, seems to be the opinion of Sayyid Al-Sabzawari (may Allah have mercy on him) and those who agree with him from the first school of thought, who assert that the sanctity resulting from cursing is perpetual. Even if the husband admits to lying after the cursing, this sanctity remains in effect, as they have relied on explicit and authentic hadiths in this matter. The proponents of the second school of thought relied on generalizations mentioned in the Quranic verses, which is not valid in the presence of specific textual evidence. As for the evidence of the proponents of the third school of thought, it does not constitute a strong argument, and Allah knows best.

The social jurisprudence embodied by Sayyid Al-Sabzawari (may Allah have mercy on him) is evident in his opinion on the issue, asserting that the sanctity resulting from cursing is perpetual. This is due to the seriousness of cursing, which has a negative social impact on the individual, the family, and the community. It involves accusations and defamation between the spouses, which are not easily rectified. If the husband is lying, he has exposed and wronged his wife by accusing her of committing a heinous act. If the wife is lying, she has tarnished her husband's reputation, falsely accused him, and attributed someone else's child to him, all of which are public knowledge. This leads to animosity, aversion, and discord between the spouses, making it impossible for affection and mercy to exist between them, which are essential elements of marriage as established by Allah. Therefore, the wisdom of the legislator necessitates the respect for the separation and the perpetual sanctity, as living together under one roof in the future becomes unfeasible.

CONCLUSION

After the grace and assistance of Allah, which facilitated the completion of this research, I would like to mention the findings that have been reached through this study:

The researcher in Islamic jurisprudence will discover that it has balanced between the needs of the individual and the needs of the society, taking into account the requirements of each, with a clear preference for the welfare of the community in cases where there is a conflict between the welfare of the individual and the welfare of the community.

After delving into the jurisprudence of Al-Sabzawari and elucidating his opinion on the selected issue from his book "Muhadhdhab al-Ahkam" in the rulings of divorce and cursing, it is evident that his opinion leans heavily towards building a cohesive and sound society, where duties are known, and rights are safeguarded to achieve the common good. Cursing is one of the serious issues that has a negative social impact on the individual, the family, and the community, as it involves accusations and defamation between the spouses, which are not easily forgotten.

RECOMMENDATIONS

I recommend that efforts be made to highlight and study the rulings of social jurisprudence in a detailed and comprehensive manner in theses and dissertations. This will contribute to advancing the field of jurisprudence in general and meeting the needs of contemporary society in particular.

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