



The relationship of crime to society in the countries of Asia and the Arabs

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Abstract

Aim: The study's overarching goal is to review and advance Libyan criminal law by uncovering and analyzing domestic violence and studying it in depth, openly, and independently. Compare and contrast international social science research. So that Islamic law will be treated equally. The study also seeks to keep an eye on the legal system and to determine what the law is by comparing the legal sanction set by Libyan legislators with Islamic law.

Method: Using a descriptive analysis strategy, the researcher compiles information from textbooks and encyclopedias on Libyan criminal law. Information about Islamic law comes from a variety of books called fiqh. The researcher then organizes the information by topic and reviews it using the lens of Libyan law and the opinions of four prominent ulemas. The final steps of any scientific process involve making comparisons and drawing conclusions.

Findings: The outcome demonstrates that the Libyan lawmaker has followed Islamic principles in legitimizing domestic violence. In some instances, however, the law must be applied in a way that diverges from its usual form to protect human rights, public safety, and social stability. The inability of the law to evolve and adapt to changing circumstances is the root cause of the situation. Domestic violence and improper use of a mediator are left to the jurisdiction of criminal law, which is why they are not addressed directly in Libyan family law. The clarification of the family condition in criminal law, however, will help to strengthen the argument.

Implications/Novel Contribution: Due to the relevance of the topic, the researcher hopes to attract the attention of those in charge at judicial bodies, human rights organizations, and scientific institutions so that they can receive a comprehensive study of these crimes, complete with analysis, description, development, and treatment of deficiencies, as well as codification of new standards, all of which are in strict accordance with Islamic law.

Keywords: Crime, Society, Domestic violence, Criminal law

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INTRODUCTION

Background Search

As a social issue, crime has persisted throughout all human society in countless iterations. Many academics and thinkers have taken an interest in this. All participants made some effort to share their thoughts and offer analysis. It is a problem that has plagued human societies ever since they first began to form. Because humanity is not absolute, in the sense that it indicates a fixed action has specific circumstances, but rather a relative thing determined by many factors, including time, place, and culture, some acts that were not considered crimes in the past are now considered crimes in modern societies, and vice versa¹.

And committing a crime means committing a sin (according to the Bible), so don't you dare, Shenn people. That is to say, release your grip, as it is claimed he has not earned you, and he will be held accountable for any wrongdoing he has not committed footnote Muhammad ibn Abi Bakr bin Abda Lokadir al-Razi, Mukhtar al-Sahah (Cairo: Dar al-Hadith, a new edition, 1424 AH, 2003) Bab al-Jim, 67.

Most human sciences use nearly identical language to describe them; however, they all refer to the same thing: the intentional infliction of pain on a human being or any other physical or moral entity, and as such, they

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¹Omar Mohieddin Houry, Crime and its causes against it, a comparative study in Sharia, law and social sciences (Damascus: Dar al-Fikr al-Arabi, 1, 2003)

share a common foundation with the prohibitions upon which positivism's laws are founded (Iryani & Murtiwi-dayanti, 2017; Wicourts, 2006).

If so, it's a reality that threatens to destabilize the social unit and undermine its fundamental interests like safety and peace. A child's playgroup is a microcosm of adult society. It's a significant factor in forming one's character, influencing one's choices, and determining one's destiny. The individual is shaped by the experiences of his formative years and throughout his life. Of the care or neglect, and thus its impact on the personal reality is unavailable; however, studies have shown that any disorder or disorder that prevents the family from carrying out her mission in the education of children most likely leads to future deviation and criminality; where the family has many problems in years Age, these problems may be economic or psychological; and where children are exposed to adversity at home. The mood at home and the connection between the parents are influenced by the couple's or a child's romantic or parental ties. Harmony, contentment, and unity can weather any storm if the relationship is healthy and stable. But if it's not strong, the strike and the imbalance will throw the whole family into chaos ².

Research Problem

Most modern theories and studies have proven that any disorder or disorder that hinders the family from performing its mission in the upbringing of children fully will often lead to deviation and criminality in the future.

The basis of the research problems is the subject of violating the Libyan Penal Code for contemporary societies such as Indonesia. The Libyan Constitution represented by the green document in Article states that "the Koran is the law of society." Thus, this provision is clear and unequivocal that all provisions and provisions of Libyan law derive Of the Islamic law, but the researcher thinks and believes that some of the provisions of this law, especially the Libyan Penal Code "General Crimes" in Chapter I of Chapter II of the articles on family crimes may be deficient and may be contrary to Indonesian society and this is contrary to Constitutional.

Among the problems is also the researcher believes that the provisions of the Libyan Penal Code are all rigid and inflexible, through continuous research and access to the researcher found that this law was issued in 1953 after the independence of the Kingdom of Libya directly, and came rigid rigid and non-flexible crimes related to the families did not occur Any change or change to the present day, and this is consistent with contemporary crimes and penalties for the family, which need to be analyzed to reach the jurisprudential, in accordance with Islamic law. Thus, the weakness of the entity and the severity of the strike and lost its balance may result in multiple crimes, the Islamic Sharia has imposed special penalties, also that most laws have been subjected to penalties, including the Libyan law represented by the Penal Code and the Personal Status Law, as most of their provisions derived from Islamic law under the slogan "The Holy Quran is the law of society" and since the researcher thinks and believes that some of the provisions of this law do not agree with the sharia on the pretext of achieving security and the interests of the people.

Research Questions

- 1-How are family-related crimes in the perspective of Asian and Arab societies?
- 2-How can the penalties for such crimes compare between Indonesian and Libyan law?

Research Goals

The objectives of this research are embodied in several principles: As a result of recent developments within the Libyan state, including the passing of new laws and the revision of existing ones, the researcher hopes that the results of this study will be used as a blueprint for the future by the Libyan government. At the same time, the people of Asia learn from and apply its lessons in the diagnosis, treatment, and correction of certain flaws in the system for determining which crimes are most closely associated with specific households. To form a complete view of these crimes in terms of jurisprudence and law and a statement under their wealth, it is necessary to protect the rights of the people, maintain the safety and stability of the community, and promote its development and progress. When deciding how to best safeguard societal interests, legislators must consider the possibility that

²Major Hatem al-Tira, director of public security in the Libyan city of Benghazi, presented the Libyan authorities with comparative statistics for the crime of family abuse for the years 2004 to 2006 AD, where it became clear that these crimes are increasing in Libya and each year in an unnatural manner, which necessitates amending the law and imposing more severe penalties to deter And reduce its spread

citizens will fail in their constitutional duty to be obedient and loyal to the state. The legislator's act or abstention is criminal because it violates the state's orders and powers, including the prohibition against family and other crimes.

The Importance of the Subject

By identifying the provisions of the Libyan and Indonesian Penal Codes in these crimes and comparing them, this study contributes to the enumeration of the most common types of crimes within families committed by the couple or by children due to their lack of familiarity with the fundamentals of sound education and to include them in studies. This will ensure that families are well-informed about the criminal activity in their community.

The practical importance of the subject

The study's authors want to get the attention of those in charge at judicial bodies, human rights organizations, and scientific institutions so that they can provide those groups with a comprehensive look at these crimes, complete with analysis, description, development, and treatment of deficiencies, as well as the codification of new standards, all in strict accordance with Islamic law.

LITERATURE REVIEW

The difference in the similarities and differences between this study and the study in which the researcher will examine the fact that this study dealt with the subject in terms of social aspect only, and did not address the researcher in terms of legal aspect, did not mention the penalties that are supposed to be applied in the event of such crimes.

Search Limits

The scope of the study in this research is determined between the Arab and Asian societies in determining the crimes through a comprehensive study of the crimes, sentences and penalties that affect the interest protected by law and society. This is supported by the laws and penalties that you have chosen for this study (Alahoul, Azizan, & Alwi, 2016; Thomas, 2007).

In this book, the Libyan law refers to general crimes in particular, and the Personal Status Law in general. The Libyan Personal Status Law regulates the relations that arise from the fact that a person is male or female, that he is a husband, widowed or divorced, As he is full of eligibility or incomplete for his age or lack of knowledge of the law did not specify those sanctions in the case of if it was violated, where most of the texts are only organizational matters (Ambikai & Ishan, 2016; Thamer, 2015).

As for the Penal Code, which is of particular interest to us in this book, we find that the Libyan legislator in Chapter II, which deals with the crimes committed against families in Chapter I, has listed specific provisions and penalties for those crimes, which are in accordance with Islamic law, The society has its security and stability and works on its growth and progress. It has identified three crimes in general and listed criminal penalties in particular³.

The first concerns the crime of failure to perform family duties. The second is a crime related to all those who misuse the means of reform or education illegally. The third is a crime related to the ill-treatment of family members and children, as these crimes, as provided for in the law, are only prosecuted on the basis of the complaint of the injured party. It is strange that the Libyan legislator considered them crimes that rise to criminal offenses and evidence that he listed an independent door in the Libyan Penal Code.

In this regard, the researcher saw that the relationship between these crimes must be examined, analyzed and described in a detailed and explicit legal detail independent, and compared with the Islamic jurisprudence in terms of crimes and penalties (Omar, 2003; Patrick, 2017).

³Abdurrahman Almuala, Crime and Punishment in Islam, (part 1 of 5): Published on 08 Mar 2006 , Last modified on 16 Oct 2011 Printed: 1836, Introduction 2

METHODOLOGY

Research Type and Methodology

The methodology followed by the researcher is the descriptive and analytical research methodology that relies on the library. Most of the Libyan literature related to this context has not been created or published in the international information network, so the use of the library is necessary and necessary. And tried to transfer what can be transferred directly from them, and through the use of the library also enables the researcher to obtain books helped him to extract under the wealth of information and others, and where it was necessary to rely on the writing of the first section and the previous studies and the theoretical framework, and can not imagine The person wrote In these two sections and in this form of the enlarged itself and the results of his ideas, but to be a scientist or a scholar or something like that, regardless of any approach applied ([United States Agency for International Development, 2007](#)).

A purely desktop approach is the careful and thorough collection of records and documents available in relation to the problem of research and then a comprehensive analysis of their contents in order to deduce from the research problem evidence and evidence proving the answer to the research questions ([Essmat, 2008](#)).

This approach approach descriptive approach is intended descriptive is the researcher described the reality of the phenomenon, which wants to study as it is completely, accurate description based on the collected accurate information on the phenomenon, and factors affecting it. It is also known that most laws guaranteeing the rights of people to take appropriate punishment are supposed to define a clear and unequivocal definition of the question of doubt. This is the second legal gap: the Libyan legislator did not separate these duties in the sense of their legal nature, For the judge to be determined by certain criteria relating to the offender's condition and condition at the time of the offense.

In addition, there are contemporary statistics in Libya, which have prompted the researcher to write on this subject, which recorded the highest percentage of crimes of families in the second largest city after the capital, with increasing rates of complaints and cases referred to the Public Prosecution in this regard, where it turned out that every ten thousand families in the city Benghazi: Nineteen families registered a family crime case in 2006.

It was found that the highest rate of assault recorded against the father of 276 families followed by the mother of 179 families and followed by the brothers among them 111 families, the proportion of 49% for the first 32% for the second 20% for the third.

The researcher believes that contributing to providing the Libyan judicial bodies with an ad hoc study in these crimes makes it easier for judges to reach the meaning of the texts in a quick and detailed manner. The researcher will examine each of the crimes and examine them independently. The researcher to study these texts to stand and see only the books and public documents, but will address the independent publications printed especially in this subject ⁴.

Where most modern theories and studies have proved that any disorder or disorder that hinders the family from performing its mission in the upbringing of children in the most complete manner will often lead to deviation and criminality in the future.

However, the crimes committed by families under the Libyan Penal Code, which include the failure to perform family duties and the misuse of means of reform, education and ill-treatment of family members, may be deficient in some cases. A sacred entity must be protected criminally, and this law did not expressly explain the things that fall under those crimes concerned, and only the adoption of public standards only, by making the discretionary judge to judge it in what he deems appropriate, although the Islamic system has proved successful experience in the interpretation Provisions ⁵.

Critic critic criticizes the fact that the penalties for freedom are no longer used by the world in line with modern reality, but if the researcher hopes in Libyan law, he finds that these sanctions are still prevailing in the world, especially in the Libyan, Egyptian, Algerian and other penal laws, This is confirmed by the statistics on the penal status, and because of the negative consequences of these sanctions, which were the accumulation of prisons

⁴Ahmed Mahmoud Khalil, mediator in the legislation of family courts for Muslims and non-Muslims (Egypt: The Modern University Office, 1, 1429, 2008)

⁵Libyan Penal Code, General Crimes, Chapter Two Crimes against Families, Chapter I Crimes related to Family Assistance Article 396, Article 397, Article 398

for minors, although the increase in the expenditure of the state negatively affects them, in addition to the futility of reducing the recurrence of the return of crime for short periods of time, What the modern penal policy aims at.

Other thinkers see sanctions as a concept that must be considered in comparative Islamic legal thought, not in contemporary and contemporary ideas, which violate the principle, which is that some of the penalties are the right of God and may not be developed or submitted amendments on the pretext of the development of society, , Sabri Mohammed Khalil, professor of philosophy at the University of Khartoum, where he believes that in the Islamic Criminal Code has been texts on the sanctions and marginal punishment and no one can enter ideas on them, but the penalties of the other Taazir is fine because it did not respond to the Sharia, Decides to judge what he deems fit Asbah in crimes that have no limit, no expiation or punishment, where Islamic jurisprudence has many rules that benefit the right of the state to adopt certain legal rules to become binding for the people.

The judgment of the jurists and the judges is considered to be the beginning of the jurisprudence in the field of punitive sanctions. It is not an end to it. This jurisprudence includes important points to benefit from the contributions of contemporary societies provided they do not conflict with the fundamental rules of Islamic jurisprudence.

Based on this, the researcher believes that Ijtihad in the field of sanctions is absolutely canceled because it is a right to God, although some call for absolute diligence in the field of sanctions. Here is what the scholar Ismat Seif Al-Dawah pointed out in his book on Arabism and Islam. Are based on revenge, but are like all the provisions of Islam, based on the interests of human beings, or the protection of interests as said in the jurisprudence of criminal law, and social enough to maintain the force of binding in the rules of jus cogens and end ⁶.

RESULTS AND DISCUSSION

In the context of contemporary criminal policies, criminal legislation in general does not specify specific penalties for each crime. However, all legislations, in particular the Libyan legislator, leave flexibility between a minimum and a higher limit, in which the judge has broad discretion, And circumstances at the time of the commission of the crime. For example, the Libyan legislator's decision in the Penal Code in Article 172 Penalties punishes the offender from three to five years' imprisonment. The law also provides them with two different penalties in the form, such as article 396, Shall be liable to imprisonment for a period not exceeding one year or a fine not exceeding fifty pounds ([United Nations Office on Drugs and Crime, n.d.](#)).

This is due to the judgment of the trial judge, who chooses the appropriate punishment in accordance with the circumstances of the offense and the case of the accused in every case brought against him. However, the judge is obliged to state the justification for the punishment referred to in article 28, The judge may not exceed the limits stipulated by the law unless there are reasons for mitigation or tightening. In case of any of these reasons, the judge here shall not exceed what the law allows in this regard ([Ahmed, 2008](#)).

This limitation provided for the scope of the judge's discretion in Article 27, "The judge shall rule the penalty he deems fit within the limits of the law and shall explain the reasons for which he is justified and shall not exceed the limits prescribed by law for each penalty by increasing or diminishing it. Except in cases determined by law "and therefore the criterion for assessing the punishment is the nature and intent of the act, the behavior of the perpetrator at that time and the circumstances of his or her personal, family and social life.

The Supreme Court of Libya also ruled that if the judge had convicted the offender of the minimum penalty applicable, the fact that it was not justified was not contrary to the law and the convicted person could not challenge the judgment against his lack of interest ([Abdurrahman, 2011](#)).

Where the rates of evidence gathered for complaints of ill-treatment of family members and their children over time are increasing "by years of schooling", thus the results were as follows:

The largest percentage of population congestion in the jurisdiction of the police station of Araba followed by the police station, and registered the highest proportion of the crime of ill-treatment of family members in the police stations of Araba followed by the police Albaraka and Benghazi new in 2006.

In every ten thousand families in the city of Benghazi, there are 19 families registered against their members in connection with the crime of ill-treatment of family members during 2006.

⁶Essmat Saif Al-Dawla, Arabism and Islam, Series of National Culture, Part 6 (Damascus: Center for Arab Unity Studies, unpublished) 23

The increasing number of cases referred to the Public Prosecutor's Office concerning offenses of ill-treatment of family members, misdemeanors and offenses in general over time according to the years of study.

It was found that the highest rate of assault recorded against the father "276" followed by the mother "179" followed by the brothers among them, "111" crime so that the proportion of 49% 32% 20%.

The Results Reached by the Researcher in his Book

Result of the first section

A) The crime of failure to perform family duties, the researcher concluded that this crime falls under the law before reaching the minor to the legal age, and this is contrary to the opinion of the most correct in Islamic jurisprudence, where the crime is achieved before and after the age of puberty, Muhammad the tunnel on his sons in both cases, and not default in their right.

The researcher concludes that this crime is not valid in Libyan law, except after considering the outcome of the act, and restricting it to the complaint of the injured party, and the opinion of the majority of jurists otherwise, to criminalize this act and not to take the complaint of the injured party as a result For this act because the victim is a minor who has not reached the age of majority.

C) The crime of ill-treatment of family members and children. The researcher concluded that this crime is a deliberate crime according to Libyan law, which requires the general criminal intent to provide the flag of science and will. The majority of jurists went on to say that this crime is not a deliberate crime, Libya, where it does not require the achievement of those elements, and does not require the signing of sanctions already premeditated.

D) The crime of disposing of the minor's property and waste. The researcher concluded that the Libyan law does not allow the guardian or guardian to dispose of the minor's money, whether it is beneficial or harmful, except with the permission of the court. The most likely opinion of the jurists is that the guardian may act in the minor's interest in the interest without being censored in beneficial acts. Libyan law is contrary to Islamic law.

E) The crime of not paying alimony or custody after a final judgment. The researcher concluded through the analysis that this crime is a criminal offense that has a description of the crime, in which the defendant can not provide a guarantor for him in paying the maintenance value, nor does he provide a guarantor, contrary to the opinion of the most likely jurists. If the defendant refrained from paying the maintenance after The court orders his imprisonment to be released at any time when he makes a payment or provides a guarantor.

As for the position of the Libyan Personal Status Law, he did not address all these crimes in particular, but rather left them to the Penal Code "General Crimes" in the enactment of special laws for them, except in some matters such as organizing alimony. And to support the judiciary in determining its legal description and adaptation.

Result of Section II

A) The researcher concluded that the penalty for the offense of default in carrying out family duties is not supposed to be taken by the Libyan Penal Code, since it does not rise to felony, where the term of imprisonment is imprisonment, which is not more than one year and not less than twenty four hours or a fine And this is contrary to the opinion of the most likely jurists of Islamic jurisprudence, where this opinion went to the lack of financial penalty "fine" at all, and the view is also likely, that the minimum duration of imprisonment in this crime in one day Only, the most six months.

B) The penalty for the offense of misuse of the means of reform or education. The term of imprisonment in this crime according to the Libyan law is up to eight years, which is contrary to Islamic law, in that it does not rise to criminal offenses. The jurists of Islamic jurisprudence based their opinion on the correct opinion, which takes the punishment of Taizir, which made it a substitute for alternatives to imprisonment in this crime, where if the result of this crime death, the judge here the discretion in determining the maximum and minimum penalty.

The judge concluded that the Libyan Penal Code gave the judge an discretionary power to judge the minimum amount of punishment that he deems appropriate in his opinion when the crime occurred. This opinion was in accordance with the principle or opinion of the most correct jurists of Islamic jurisprudence, This is done by simply waiving by the injured person, and contrary to the opinion of the most likely jurists who is suspended by the

execution of the sentence either by death or madness or pardon or intercession ⁷.

CONCLUSION, RECOMMENDATIONS AND IMPLICATIONS

Theory of Outcome

The researcher criticized the Libyan Penal Code, because it made family crimes criminal offenses in violation of Islamic law in some of its texts, and introduced them under the Criminal Code to protect them criminally. The researcher's theoretical framework related to the economic situation of the family, The researcher found that it was based on factors based on custom and social tradition. This is what the researcher believes is that these crimes are supposed to fall under the Libyan Personal Status Law. The legislator, when protecting an interest within society, considers the violation of his duty in the Lighter and loyalty to the law of personal status, not the law of criminal offenses and penalties, the crimes of family are considered disobedience of the orders of personal status law, and in this lies the legislator to justify the criminalization of this act or omission that.

The reader's criticisms of data, evidence and theories have been written about this. If the reader hopes in the book "The Mediator in the Legislation of Family Courts for Muslims and Non-Muslims" by Ahmad Mahmoud Khalil, there is the theory that the Personal Status Law regulates the relationships that arise from the fact that the person is male or Female, widowed or widowed, full-fledged or under-age, or not familiar with the law.

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⁷Thamer Bin Saeed Al-Ghamdi, Working for the Public Benefit as an Alternative to the Prison Penalty, A Field Social Study on a Sample of Professionals and Prisons of Correctional Institutions (Saudi Arabia: King Abdulaziz University, 2015).