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The legitimacy of generation in the islamic jurisprudence and the iranian legal

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Abstract

In the present paper, we dealt with the importance of adhering to the preservation of generational purity from the perspective of the Qur'anic verses, the traditions of the Infallibles (PBUT; Peace Be Upon Them), and decrees independently derived from reason via comparative qualitative research methods. As a result, it seems that in any legal systems, such prohibitions are considered rational and in accordance with the interests of society. In conclusion, all decrees on legitimate children are applicable to illegitimate children, unless what is excluded for a reason.

Keywords: Shariah's Objectives, Purity of Generations, Parentage.

La legitimidad de la generación en la jurisprudencia islámica y la legalidad iraní

Resumen

En el presente documento, tratamos la importancia de adherir a la preservación de la pureza generacional desde la perspectiva de los versos del Corán, las tradiciones de los infalibles (PBUT; La paz sea con ellos) y los decretos que se derivan independientemente de la razón por medio de comparativos. Métodos de investigación cualitativos. Como resultado, parece que en cualquier sistema legal, tales prohibiciones se consideran racionales y de acuerdo con los intereses de la sociedad. En conclusión,

todos los decretos sobre niños legítimos son aplicables a niños ilegítimos, a menos que se excluya por una razón.

Palabras clave: Objetivos de la Sharia, Pureza de las generaciones, Paternidad.

1.INTRODUCTION

In the Islamic legislative system, if all rights are assumed as a tree, its root will be God's right over His creatures, and the rest of the rights will make up the branches and leaves of this tree. Throughout his life from the beginning to the end, a human has a close relationship with his creator (Javadiamoli, 2009; Mesbah, 2001). God Almighty has invited human beings to possess insight and pay full attention to the creation system. And He defined the highest attribute of men possessed of minds to be reflecting upon the rules based on causes, philosophies, purposes, expediency, and so on. The Islamic law directs people's attitudes and behavior towards the right and correct direction in accordance with healthy nature and wisdom, so that based on their inner incentives and external necessities, and through employing their wisdom, human beings can find ways to meet their natural and psychological needs, thus achieving a desirable life. On the other hand, the general principle governing the system of creation and legislation in the religious thought is the balanced consistency that exists between the creation system and the legislation method in Shariah.

This means that the Creator of nature is the same legislator of laws, and not only are there reasons, philosophies, and purposes behind each of the divine rules and laws, which are intended by the legislator, but also, in a general view, the system of rights and duties is a system, which is safe

from any extremism, and which is governed by rightfulness, moderation, and realism (Mirkhani, 2011; Hekmatnia, 2007). The purity of generations is one of the major objectives of Shariah, which is considered effective in the formation and development of human beings, and which is clearly reflected in the laws of the Iranian legal system. In the religious scriptures and traditions, great emphasis has been laid on the importance of the purity of generations, in a way that special practices have been recommended for the purification of the soul at stages before the formation of the zygote, and special attention has been paid to all stages before and after the formation of the zygote, and even to the quality of the mother's nutrition during pregnancy and after childbirth, and to the way she and her infant are dealt with. For this reason, great attention has been paid to relationships between women and men, so that wrong relationship may not be established in society, and thus the firmness and sanctity of the family can be preserved. Because, if sexual promiscuity prevails, families will collapse, and there will be no efficient institutions to bring up the next generation.

Therefore, in Islam, crimes such as adultery, sodomy, etc. are subject to hudud punishments (punishments mandated and fixed by Islamic law), so that no one dares to ignore the fate of the family, the next generation, and the Islamic society, and go beyond the correct path to satisfy their instincts (Tarassoli, 2002). Given the emphasis that Islam placed on the fact that the woman and man should be a perfect match for each other to marry (in terms of knowledge and behavior), it is understood that God Almighty has set all the rules and laws regarding marriage and observing its religious practices, so that the child resulting from the relationship between the woman and man might be a human being and an

example of God's viceroy on the earth. Even the legal effects of legitimate parentage differ from those of illegitimate one.

2.THE PURITY OF GENERATIONS; ONE OF SHARIAH'S OBJECTIVES

The Arabic term Maqaased; objectives are derived from the root (Q. S. D.) meaning the objective, justice, moderation, and to request something (Ibnmanzūr, 1989; Fayyumi, 1993). And technically, Shariah's Maqaased (objectives) are that same ends, for whose realization Shariah has set rules and laws in the interests of people, including preserving the religion, reason, soul, generation, and property, losing each of which will result in corruption (Raissouni, 1997). The first person who divided the necessary interests into five interests (preserving the religion, reason, soul, generation, and property) was Abu al-Ma'ali al-Juwayni (Raissouni, 1997).

Al-Shatibi; one of Sunni Islamic legal scholars, believes that Shariah preserves these interests in two ways: First, preserving these interests in existential terms by establishing and maintaining the foundations of these interests. Secondly, preserving these interests from the perspective of absentialism, in a way that it has eliminated what might potentially or actually lead to the destruction or cessation of these interests. These are the laws of religion. And there should be a soul to achieve its perfection, and this soul should have a reason. Because the crazy and insane are not expected to be responsible for any tasks. In addition, the soul should survive and continue to exist, and should not stop

at some point (generations). And since human beings have a body, they also benefit from material properties to preserve the soul (property).

For the first time, this theory of objectives scientifically and practically emerged in the words of our infallible imams (Mirkhani, 2011). One of the great Shiite Islamic legal scholars; Al-Shaykh al-Saduq has repeatedly discussed the aims and goals, and explained the reasons, philosophies, and purposes in his book *Ilal al-shara'i*; the causes of the religious laws, which is one of the early jurisprudential books. In addition, one of the early Islamic legal scholars; The First Martyr, states: Shariah's major objectives are among the religion's necessities, in a way that Shariah has come to preserve them. The consensus of Islamic scholars is that the issue of objectives and observing the principle of the purposefulness of religious legislation in *Ijtihad* (independent reasoning or the thorough exertion of a scholar's mental faculty in finding a solution to a legal question), is the same compatibility of the laws and rules with the spirit of Shariah.

3. THE IMPORTANCE OF GENERATIONAL PURITY IN THE FAMILY

In the creation system, one of the definite and unchangeable rules about living creatures is a reproduction. Animals and humans have been endowed with the power of lust and sexual desire in order to prevent the extinction of living creatures. In humans, this power is accompanied by reason and will, which are among distinct characteristics of humans, and this power should not be used outside the family and for purposes other

than reproduction and bringing up new generations (Bostan, 2013; Cheraghi, 2009; Salarifar, 2004). One of the children's rights over their parents is to have a worthy father and mother, who, in the first step, marry each other legally and based on religious law. And the birth of a child outside this limit is an example of encroaching on their rights (Motahhari, 2003; Vaziri, 2005). The purity of generations is one of the interests regarded by the legislator, and its absence will lead to corruption and destruction. In addition, in the Holy Qur'an, destruction does not only mean genocide, but an illegitimate generation is, in itself, a kind of destruction in society.

Because marriage prevents a person from implication and immersion in corruption, and a society, whose members are free to have sexual relationships, is subject to corruption and destruction. Children born of free sexual relationships are mostly deprived of proper upbringing, and will become delinquents suffering from emotional and psychological disorders. Hence, in the Islamic legal system, the legitimacy of parentage is an irreducible principle. And the most reliable sources to explain this objective of Shariah (purity of generations), are undoubtedly the Holy Qur'an, authentic traditions, and reason.

3-1- The Importance of Generational Purity from the Perspective of the Qur'an

Verse 223 of Chapter Al-Baqarah indicates that God Almighty leads mankind to the essential fact that if the mother manifests in herself the mission of making human life blossom, and tries to do this through

worship and piety, the garden of life will become green, perfect, and beautiful from her skirt. Verse 34 of Chapter Al-Nisaa indicates that the highest mission of a woman in the family, is to preserve the intellectual and practical health of the family members and in general to preserve the family's honor. Therefore, this verse points out the necessity for women to preserve chastity and human and faith merit. In this regard, Ayatollah Hasanzadehamoli writes:

The mother, in the creation system, is like a tree that maintains the body of life constant through its purity, and this purity becomes manifest in society. Therefore, the religion's attitude towards women in terms of reproduction is not to consider them as tools, but it is rather an independent and dignified attitude, which is tangible and evident in all Qur'anic models of women (2000: 10).

One of the Qur'anic instances and models having been introduced as righteous women, is St. Mary the Virgin, who was chosen by God because of her chastity and modesty, as well as the purity of her generation (Mirkhani, 2011). The Qur'anic verses even consider the position of leading and guiding people to belong to children, whose origins are clean and pure. The Holy Qur'an says about the Prophet Moses (PBUH): And We had forbidden him aforetime to be suckled by any foster mothers. Therefore, his mother, the one in whose womb and during whose pregnancy, virtues were transferred to Moses, must also fulfill the same mission during suckling. It is inferred from the content of these verses that the mother's lap, milk, thought, and prayers are influential in the formation and development of children. Hence, according to the Qur'anic verses, it can be said that the descendants of those who are subject to the verse And will bring none into the world but corrupt and ungrateful offspring, are not guided due to their heredity. Therefore heredity is very effective in

accepting guidance. Another case confirming this fact is the Prophet Zechariah (PBUH), who reaches old age, but has no children; This verse brings the message of purity to mothers in whose wombs generations are raised (Mirkhani, 2011).

3-2- The Importance of Generational Purity from the Perspective of the Traditions

The notion that every divine law has a philosophy and expediency behind it can be seen in many traditions. Someone asked Imam Reza (PBUH): Can a wise person force a slave to do something without giving a reason? Imam answered: He cannot do this, because a wise person is not ignorant. Then the man asked: Can common people be forced to do something? Imam answered: It can be, but you must give a reason for that. Again the man said: Please, inform me of the known and existing reasons, and the unknown and hidden reasons. Then Imam said: These reasons are with people endowed with them.

Here, the statement of Imam (PBUH) indicates an important point; that is, every thoughtful human has the right to ask about the reasons, goals, and purposes provided by Shariah to explain the type of legislation. Hence, the Islamic school is known as the School of Freedom of Thought. On the other hand, great emphasis on marriage can be seen in the prophet's behavior. Because, the purity and preservation of generations are realized through marriage. In addition, forbidding adultery in Islam, and imposing hudud punishments on it imply that human beings must be pure and clean from their birth origin, so that they can be a source of blessing

for themselves, their families, and their society (Mirkhani, 2011). In this regard, the Holy Prophet (PBUH) says to Amr ibn al-'As: "O' Amr ibn al-'As, your first problem is that your mother was a prostitute, and you were born after your mother's illegitimate relationship with several men" (Majlesi, 1982: 20). Whereas, in the book *Ziyarat Warith*; the pilgrimage to the inheritor, the purity of generations is counted as one of the distinct characteristics of the Prophet's household. For instance, it says to Imam Hussein (PBUH): "I bear witness that you were a beam of light in great loins and purified wombs, which indicates that Imam Hussein the master and head of martyrs had enjoyed the purity of generations, generations after generations" (Majlesi, 1982: 18).

The following is quoted from Imam Sadeq (PBUH): A person born of adultery has several signs: He or she 1) is hostile to us the Prophet's household; 2) is interested in the same unlawful thing done to bring him or her into the world; that is adultery; 3) does not care about the religion and religious orders; and 4) says bad things about people. And nobody speaks bad about their brethren, unless he or she is born of an unlawful zygote or their mother was menstruous during intercourse. Therefore, it is inferred from the verses and traditions that hereditary backgrounds and the purity of generations are very influential in the preparation of people towards values and capabilities, and the legitimate parentage differs from the illegitimate parentage in terms of their legal origins. But statements like And that man can only have the fruit of what he has striven for, reflect the fact that hereditary factors are not the only factors bringing salvation or misery to someone. Hence, through his or her own efforts, an illegitimate child can climb the ladder of salvation and reach divine nearness.

3-3- The Importance of Generational Purity from the Perspective of reason

Right reason explains this issue based on its inferences that since God is wise and knowledgeable, He pursues a special goal through the formulation of His rules. And Shiite scholars consider one of the factors proving religious decrees to be the rule of the companionship of reason; that is to say, when reason sees the existence of a concrete and complete interest in doing a practice, perceives the necessity of doing it, and considers its doer as deserving to be praised, the religion decides upon the necessity of that practice as well. In other words, the realm of the arrival of reason in the perception of religious decrees results from the rule of the companionship of reason (Alidoost, 2002). On the other hand, what disturbs the identity of mankind and the human system is certainly indecent in rational terms, as nothing can be a substitute for legitimate relations within the family framework. Because in the event of any deviations from the right path, the family's pillars and stability will be disturbed, and a society, in which the family's pillars become loose, will suffer social and moral deviations (Hekmatnia, 2007).

3-4- The Place of Generational Purity in the Iranian Legal System

The principle of proportionality of punishment to offense requires that offenses that are more important from the legislature's point of view, and that have worse effects, have more severe punishments as well. The purity of generations is so important that the legislature has determined the most severe punishments for a person who distorts this value depending on

the case. Marriage is the family's only source, and the common pillars of parentage in a family are as follows:

- 1) A woman and a man, to whom returns the child parentage, shall be a legal and legitimate couple.
- 2) The child shall be born as a result of their intercourse.
- 3) The intercourse and formation of the infant's zygote shall occur after marriage (Katuzian, 2004).

The law cannot legitimize a child born outside of the family framework. Because the equality of their rights with legitimate children is a denial of the necessity of forming a family, and is contrary to the interests and purposes of Shariah. Moreover, the importance of the purity of generations from the legislature's point of view and its supportive approach in dealing with the family and children has led the legislature to consider legal evidence of intercourse between the couple to suffice for proving the child's legitimacy. In this regard, Article 1158 of the Civil Code stipulates: The child born during the wedlock belongs to the husband, provided that the time passed from the date of intercourse until the date of childbirth is neither less than six months nor more than 10 months. In addition, the legislature has not made its denial possible in an easy way. For instance, a man who considers the born child not to belong to himself despite the evidence of intercourse between him and his wife, has to disown the child through Mula'anah [accusing his wife of adultery and laying God's curse upon the one who lies]. The said article is set based on the scholars' famous verdict, but contrary to the famous verdict,

Sayyed Morteza considers the longest pregnancy to be 12 months, and considers it possible for the born child to belong to the husband until this time.

Given the fundamental difference between the Islamic system and other legal systems, the functions will also be different. For instance, in the common law legal system, it is sufficient for a child to be born in wedlock. Therefore, if the natural parents of the fetus are married together before the childbirth, the child will be legitimate. But the marriage of a woman and a man who have an illegitimate child, if taking place after the childbirth, will not legitimize the child. In Roman law, a child is considered legitimate if he or she is born in wedlock. But marriage after intercourse and formation of the infant's zygote does not turn an illegitimate child into a legitimate child. It is also noteworthy that doubtful intercourse does not impinge on the purity of birth. Because this action has taken place based on an unintentional mistake. And that is why some jurists have said: Illegitimate parentage takes place when the relationship between the woman and man is out of wedlock and intercourse is not doubtful (Safaei, 1999). Among Islamic scholars, Mohaqqeq Helli writes the following in his book *Shara'i' al-Islam; The Laws of Islam*: “Muslims with right and wrong parentage inherit. Because doubt is like the right marriage in the attribution of parentage” (Mohaqqeq, 1988: 18). The following is written by The Second Martyr in his book *Masalik Al-Afham* in order to describe and explain this statement of Mohaqqeq Helli: the Wrong parentage refers to a child whose birth is not based on correct marriage. Otherwise, the child born of a doubtful relationship is also correct, and all the decrees on parentage will be applied to him or her.

3-5- The Legal Effects of Generational Purity in the Iranian Legal System

The purity of generations; as one of the objectives of Shariah, is a matter of concern in the Islamic legislative system. Hence, many religious decrees (regarding the legitimacy of parentage) have been issued in order to protect and preserve this objective, and consequently, the legal effects of generational purity have been reflected in the Islamic legal system. The present paper addresses some effects of the individual and social rights of legitimate children to clarify the importance of generational purity as one of Shariah's objectives, and to clarify its reflection in jurisprudential and legal decrees.

4- THE INDIVIDUAL RIGHTS OF AN ILLEGITIMATE CHILD

Based on the holy religion, Islamic scholars believe that parentage is proved through the right marriage and doubtful intercourse. But adultery prevents its realization. Therefore, if a man makes adultery with a woman and a child is born of his sperm, the child will not be attributed to that man. For instance, Mohaqqeq Helli made the following statement: No parentage will be assigned to a child born of adultery (Mohaqqeq, 1988). To prove this point, Sahib al-Jawahir (the author of the book *Al-Jawahir* refers to the researched consensus and the narrated consensus, and even claims them necessary (Najafi, 1983). A statement like this can also be seen in the book *Jami' al-maqasid*: The non-attribution of parentage to illegitimate children means that the law ignores the natural parentage of illegitimate children, and does not apply the legal effects of parentage such

as natural guardianship, custody, financial support, and inheritance to them (Ardabili and Toqanipur, 2011). Of course, some contemporary Islamic scholars have explicitly stated that the same decrees on a legitimate child would apply to an illegitimate child, unless there is a reason for the exclusion of decrees, which is the same topic of inheritance, etc., due to external reasons. Supreme Court Precedent no. 1376/4/3-617 confirms the author's point of view as well, which will be described later in this paper. In what follows, we will compare some of the most important rights of legitimate and illegitimate children:

4-1- Custody

Custody means taking care of children and bringing them up. And guardianship means protecting and managing their property. Custody begins at birth and continues until maturity. The question is that who is responsible for custody and guardianship of a child born of adultery. General Islamic scholars believe that there is a parentage relationship between a child born out of wedlock and his or her mother. The rights and duties existing in legitimate parentage, exist in the relationship between them as well. And only the mother is responsible for custody of the child and taking care of them. This is surprising because of the difference they put between the father and mother in the realization of parentage. As already mentioned, Imamiyyah scholars recognize a child of adultery to belong to neither the adulterer nor the adulteress. But there are differences in the scope of it. The fact is that a child was born that needs care and protection. Refusing to support them may lead to their death. And this is something which is not approved by the legislator, and the legislator has

even forbidden aborting them. Then, who shall be responsible for custody and guardianship of them? Most Islamic scholars believe that the mother can refuse the responsibility for custody of the child and taking care of them, but the father never can. Nowadays, most Shiite scholars believe in custody by the adulterer, which is both in the interest of the child and in the interest of society (Najafi, 1983).

Article 1168 of the Iranian Civil Code considers custody as both a right and a duty of parents; that is to say, parents can neither remove this responsibility from their shoulders nor even ask compensation for doing it, because they do their duty. This article is also true based on Islamic scholars' religious decrees (Fatwas) and precedent no. 1376/4/3-617 on illegitimate children. In other words, although there is no legal parentage relationship between an illegitimate child and their parents, but on the other hand, since they have caused the child to be born, the child is attributed to them in terms of causation as well as genetics and mores, thus they are responsible for supporting the child. Moreover, fairness requires us to recognize the parents as being obliged to take custody of the child and take care of them. Especially, if the child's natural parents do not cause his or her moral degradation, protect him or her properly, and are volunteers for this, it will seem reasonable and justifiable to prioritize them over strangers or government-run institutions and orphanages. Article 1173 of the Iranian Civil Code stipulates the following: Whenever, as a result of failure to take care of the child or due to the moral degradation of the father or mother who is responsible for custody of the child, the child's physical health or moral manner is in danger, at the request of the child's relatives or guardian, or at the request of the

prosecutor, the court can make any decision that is appropriate for custody of the child.

Moreover, according to the supreme court precedent, the natural (customary) father is obliged to take custody of the child. It seems that the fact that the precedent has put all responsibilities for the child born of adultery on the natural father's shoulders does not mean that the natural mother has no responsibilities for custody of the child, but the father's responsibility stipulated in the precedent is just in terms of importance.

4-2- Financial Support

Every child needs financial support, and the child's guardian must provide it to him or her, because based on the Prophet's Shariah, Islamic scholars consider kinship as one of the causes making financial support obligatory. For instance, the following is said by Mohaqqeq Helli in his book *Shara'i' al-Islam*, and by The Second Martyr in his book *The Book of Marriage*: "Financial support will not become obligatory unless due to one of the three causes: marriage, kinship" (Mohaqqeq, 1988: 18). The question is that who is responsible for paying financial support to a child born of adultery, and that whether it is considered obligatory for the father of an illegitimate child to pay financial support to them. Contemporary Islamic scholars consider the father of an illegitimate child to be responsible for paying financial support.

For instance, in the section of religious questions regarding specific civil courts, the following question was asked of Imam Khomeini (May

God have mercy on him): If a child born of adultery does not belong to the adulterer, then who should pay financial support to the child? He answered: "His or her father is responsible for paying financial support" (Karimi, 1986: 18). Moreover, in Question 47 of the same section, he was asked that according to Problem 2 on page 246 of the book *Tahrir al-Wasilah* volume 2, whether His Holiness meant that the adulterer was neither responsible for paying financial support to the child born of adultery nor responsible for taking care of them and protecting them. He answered: No, it is not the case, but the verdict on a child born of adultery is the same as that of other children in terms of financial support and custody.

In this regard, Ayatollah Araki's opinion is the same as that of Imam Khomeini (Araki, 1996). In contrast, Ayatollah Marashi Najafi believes that financial support must be paid by the treasury to a child born of adultery until he or she becomes mature. And if the child is considered to belong to the mother, the mother must pay financial support, and if she cannot afford to pay it, then the treasury will be responsible for paying it. And if it is said that the child belongs to the father, it will be the father's responsibility to pay financial support, and if he cannot afford it, the mother must pay it. Otherwise, it will be paid from the treasury. In his book *Civil Rights*, Emami writes: "A child born of adultery has not the right to receive any financial support from their relatives' side, and their relatives are also deprived of this right from their side" (Emami, 2003: 10).

Because the right to financial support, as it can be inferred from the relevant articles, is one of the results of legal relation, and according to Article 1167 of the Civil Code: "A child born of adultery does not join to

the adulterer” (Emami, 2003: 18). Then he points out: But, since financially supporting a needy person is a sufficiency obligation, and the sense of social conscience obliges wealthy people to take care of them and financially support them, and furthermore, the natural parents, who brought the child into the world, have priority over the others to take care of the child, thus it does not seem unreasonable in terms of causation to recognize the parents to be obliged to financially support the child. In his book *Family Law*, Katuzian states:

What seems undeniable is that the natural parents of a child are morally responsible for the fruit of their sin; a debt known by general conscience and morality. But the law has not given the creditor the right to go to the debtor, and according to the general rules of commitments, fulfilling the commitment to paying a natural debt turns it into a legal debt (Katuzian, 2004:18).

In addition, the precedent which was established based on the verdicts and religious decrees (fatwas) of contemporary Islamic scholars, and which was expressed previously, confirms the obligation of such financial support.

4-3-Inheritance

Inheritance between the parents and legitimate children is one of the undeniable principles of Islamic Shariah, and there are even some decrees on it having been explicitly mentioned in the Holy Qur'an. Is it possible to recognize an inheritance relationship between illegitimate

children and their parents too, or not? There are two verdicts regarding inheritance between an illegitimate child and their parents: Most Shiite scholars believe that a child born of adultery does not inherit from their natural but illegitimate parents, and neither do the parents. And similarly, if a child of adultery dies and has neither any legitimate children nor a wife, what is left by him or her will not belong to his or her illegitimate parents, but will rather belong to the infallible Imam. For instance, the following can be mentioned: Mohaqqeq Helli in his book *Shara'i' al-Islam* and Khomeini (2000). The second view is that the verdict on an illegitimate child is the same as that of a child of *Mula'annah*; that is, a child whose father disowns them through *Mula'annah* [a ceremony in which the husband accuses his wife of adultery and they lay God's curse upon the one who lies], so the child only inherits from their mother, and their mother inherits from them, but they merely do not inherit from their father and his relatives. Among those who have accepted the second opinion and believe in it are (Alshaykh, 1994).

The following is stipulated in Article 884 of the Iranian Civil Code, which follows the example of the famous verdict in Shiite jurisprudence: A child born of adultery inherits neither from their parents or from their relatives. But, if the unlawfulness of the relationship that the child is a result of is only attributable to one of the parents and not to the other one due to doubt or they're being under compulsion, the child will only inherit from this side and their relatives, and vice versa. Because inheritance is one of the effects of legitimate parentage, and there is no legitimate parentage between a child born of adultery and their parents. In order to justify this deprivation, some jurists have mentioned some reasons including the fact that the equality of an illegitimate child with a legitimate

child involves a denial of marriage, and this will lead to an increase in free relationships between women and men, and consequently an increase in illegitimate children, and the rights of other children who are born of marriage and legal relationships, and especially their share of inheritance will be diminished (Emami, 2003). They also believe that if some rights are supposed to be given to these children, then they should not be equal to the rights that the law has recognized for legal children. Because the result of this equality is the recognition of the natural family, which will itself be a great danger that will destroy the legal family.

4-4- Diyah (mulct)

Article 448 of the Islamic Penal Code defines Diyah as follows: Diyah (mulct) is a certain amount of property imposed by the holy Shariah on unintentional crimes committed towards a soul, a body organ, or an interest, or on intentional crimes which are not subject to Qisas (equal retaliation) for any reason. There are opposing points of view regarding the amount of Diyah which should be paid to a child of adultery. Mohaqqeq Helli refers to these different points of view in his book *Shara'i' al-Islam*, and says: Some believe that if a child born of adultery declares his or her Islam, the Diyah paid to him or her will be equal to the Diyah paid to a Muslim. But some others say that it shall be equal to the Diyah paid to tributaries (Majlesi, 1982). It is inferred from the words of some Islamic scholars that an illegitimate child who is not grown enough to be able to choose Islam as their religion; that is to say, an illegitimate child who has not yet reached puberty, and who have not declared their Islam, has no right to Diyah. Because they consider Diyah specific to an

illegitimate child who is grown enough to be able to choose Islam. Only, the author of the book *Tahrir al-Wasilah* and Ibn Idris doubted this opinion.

5- THE SOCIAL RIGHTS OF AN ILLEGITIMATE CHILD

Since an individual lives with others and communicates and interacts with them, he or she has duties and responsibilities and consequently has some social rights as well. Among the social rights, the following can be mentioned:

- 1) The right to have a name and surname, which distinguish him or her from others and this requires having an identity document, in which the person's existence and his or her family status are recorded.

According to precedent no. 1376/4/3-617 and by taking account of Imam Khomeini's fatwa (religious decree), the country's Supreme Court General Council has recognized the adulterer as a customary father to the born child, who must perform his paternal tasks such as obtaining an identity document for the child.

- 2) The right to residence, which specifies their place, where they perform their important tasks.

- 3) Citizenship, which relates an individual to a state, and causes that state to provide some interests to that person. There is no

difference between a legitimate and an illegitimate child in these matters. And an illegitimate child also needs social rights as a person living in society and communicating with people. However, they are deprived of some secondary rights, such as the occupation of certain social positions due to the special place of these positions in society and the impact they have on society, including the position of being a religious reference to be followed, judgment, testimony, and so on. According to the famous opinion of Shiite scholars, purity of birth is a condition for performing such tasks.

In what follows, we will discuss some of these deprivations that cover a wider range of social instances. We will also investigate the reasons for them. But before addressing these social instances, it is necessary to note that the prohibition of an illegitimate child from occupying certain positions does not mean that he or she is guilty, but rather indicates the importance and special place of these positions, and that these positions require special conditions, in a way that a person without generational purity is not suitable for such positions, and if they are assigned to perform some other tasks, they can perform their tasks like others.

5-1- Prohibition of Testimony

There are two opinions in Shiite jurisprudence about considering the purity of birth as a condition. The famous opinion refers to the non-

acceptance of testimonies made by illegitimate children, and the rare opinion to the acceptance of their testimonies.

1.The famous opinion: In this regard, the author of the book *Al-Jawahir* states :

The testimony of a person born of adultery is not acceptable at all based on an opinion which is so famous among our scholars that have almost become unanimous. But it is also subject to acceptance, disputes, adequacy, and being a mystery (Najafi, 1983: 18).

Based on the famous opinion, the testimony of a person born of adultery is not acceptable at all, and this is so famous among our scholars that have almost become unanimous. Mohammad ibn Moslem quoted the following from Imam Sadeq (PBUH): A person born of adultery is not permitted to make a testimony The following is also written in Zurara's book of correct traditions: I heard from Imam Baqer (PBUH) saying: If four witnesses testify to me against a man for adultery, if one of them is a person born of adultery, I will impose hudud punishment on all of them. Because those born of adultery are not allowed to make testimonies, and people should not follow them. In addition, Obaidullah Halabi quotes from Imam Sadeq (PBUH) that it is better not to allow those born of adultery to make testimonies, and people should not follow them either. Because Noah's ship did not carry those born of adultery while carrying dogs and pigs (Horrarneli, 1970).

2. The non-famous opinion: On the other hand, some others believe that testimonies made by those born of adultery are acceptable in some

cases. For instance, Al-Sheikh Al-Tusi stated the following in his book *Al-Nihayah* (Altusi, 1986): A person born of adultery is not allowed to make a testimony. But if I recognize a little justice in him, I will accept his testimony about unimportant matters. He also states the following in his other book *Al-Mabsut*: Some groups accept testimonies made by those born of adultery about adultery and other matters. This opinion is strong, but traditions received from our scholars indicate that their testimonies are not acceptable. Some groups accept testimonies made by those born of adultery about adultery and other matters, and this is a strong opinion. But some traditions indicate that their testimonies are not acceptable. He then states that merely the inconsistency between the traditions does not necessitate us to return from what is strong. It is permissible to deviate from traditions when it is required and there are many instances of it. And the reason for deviation is clear. Because the majority of evidence from the book and the tradition implies that a testimony made by a just person is acceptable, which also includes a person born of adultery, even though most of the Islamic scholars have opposed this view.

What is noteworthy here is that, although the birth of a child of adultery is not pure, if that arouses suspicions about them, it will not resolve any problems. Because if they have a desire for perfection, effort, and diligence in understanding the religion, in justice, and in piety, the sinfulness of adultery cannot affect them. This is acceptable by reason, and is not against the necessities of our religion. Although there are some things leading them toward evils and wrongdoing, such as psyche, instincts, and lust, which lead them to wickedness, they can fight them, and achieve levels of perfection. Therefore, there is nothing that implies the non-acceptance of their testimonies. And all general and absolute

principles, which apply to people's testimonies, apply to theirs as well. In addition, the verse and nobody bears the load of another implies that nobody bears the burden of someone else's sins, and nobody is to blame for what they had no authority over its occurrence.

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5-2- Prohibition of Occupying the Position of a Judge

Shiite scholars consider being born legitimately as one of the conditions for becoming a judge. As the author of the book *Al-Jawahir* states the following in this regard: A person born of adultery may not be appointed to the position of a judge, even if he meets all the conditions. Similarly, neither his leadership nor his testimony is correct in worthy

matters then he goes on to say that this will be the case if we denounce a person born of adultery as being guilty of disbelief. But, if we do not denounce him as being guilty of disbelief, the main reason why a person born of adultery cannot be appointed to the position of a judge, will be what prevents him from leadership and testifying. And people's hatred of him will be another reason. Many traditions on the prohibition against using those born of adultery for the position of judgment, contain weak citations. And some traditions that have been quoted about those born of adultery, do not explicitly prohibit them from such positions. But the Islamic scholars issued a religious decree on the prohibition against using those born of adultery for the position of judgment based on *qiyas al-awlawiyya* (a *fortiori* application of the jurisprudential ruling of an issue to another analogous issue on which there is no ruling in religious texts). The reasons why the purity of birth is one of the conditions for judges are as follows (Mohammadi, 2006):

1. A person born of adultery is an unbeliever and thus does not believe in Islam, and one of the valid conditions for judges is Islam. Of course, this reason is not approved by Islamic scholars. Because most Islamic scholars do not consider those born of adultery as being unbelievers. The weakness of this reason has been clarified previously.

2. The position of judgment is the position of prophets and guardians sent by God. Verse 26 of Chapter Sad reads as follows: David, behold, We have appointed thee as viceroy on the earth; therefore judge between people justly, in which the phrase Judge between people justly is subordinate to the phrase We have appointed thee as a viceroy. There is a famous tradition from Imam Sadeq (PBUH) saying:

“Abstain from judging among people. Surely this position is dedicated to a leader who knows judgment, and who is known as a just and righteous person among Muslims, such as a prophet or a guardian” (Horrameli, 1970: 18). There are also many traditions that prohibit a person, born of adultery, from testifying and being a leader of congregational prayer, and do not allow them to be as a witness or a leader of congregational prayer. Therefore, first of all, they are prohibited from being judges, and on the other hand, people obviously hate those born of adultery and do not value them.

3. There is a narrated consensus on the validity of purity of birth and prohibition of those born of adultery from occupying such a position. This means that the position of judgment is one of the positions occupied by the prophets and the imams, and requires the purity of one's inner pat and appearance, as well as desirable qualities, and a person born of adultery, whom people talk about, does not have such purity, and his occupying such a position will degrade Shariah (Mohammadi, 2006; Tarnoto et al., 2019).

Following the example of Shiite jurisprudence, Iran's law has mentioned purity of birth as one of the conditions for occupying the position of judgment. According to Article 163 of the Constitution, The qualities and conditions for judges shall be specified by law in accordance with jurisprudential standards. In order to implement this article, a law on the selection of judges was passed by the Islamic Consultative Assembly for the first time after the Islamic Revolution in 1982. According to Paragraph 3 of this law, purity of birth was determined as one of the conditions for occupying the position of judgment. As for other rights,

such as political, social, and cultural rights, these children receive all kinds of support like all legitimate children. And a child cannot be deprived of his or her social rights, merely because his or her parentage is unknown. In Articles 19 and 20 of the Constitution, the position of judgment is excepted due to its important and special place in society, and in order to protect and support the interests of the society. It is noteworthy that this issue is not propounded only in the Islamic legal system. Other legal systems, too, depending on their bases and origins, consider multiple criteria for the occupation of important social positions, for instance: military officers and judges are prohibited from representation in the parliament in countries such as Norway, Canada, The United Kingdom, and Brazil (Qazi, 2005). As a result, it seems that in any legal systems, such prohibitions are considered rational and in accordance with the interests of society.

6- CONCLUSION

1- The spirit of legislation in Islam has objectives running in all laws on a large scale. Paying attention to these objectives in the process of legislation will provide us with deep insight, so that we can identify the legislator's intention of setting these rules as far as possible, and apply them in the arena of legislation.

2- A profound understanding of Shariah's objectives for setting the rules, makes it possible to find out that the difference between laws on legitimate and illegitimate children is for the realization of interests and elimination of corruption. Because one of the

legislator's goals is to prevent the expansion of unauthorized generations. And the differences arising from the legitimacy and non-legitimacy of parentage in the Islamic legal system, are not based on discrimination, but rather arise from one of the major goals of Shariah; that is, the generational purity.

3- Preservation of generations is supported by decrees on marriage and its corresponding affirmative statements, as well as the dissenting and prohibitive decrees on adultery and its corresponding hudud and discretionary punishments through the Qur'anic verses and Islamic traditions. God wants to guarantee the prevention of free relationships through the parents' affection towards their child and their concern about the fate of their illegitimate child. Because legitimizing this kind of children and considering their rights equal to those of legitimate children will result in the denial of one of Shariah's objectives and the necessity of establishing a family.

4- The Iranian legislature has addressed verdicts on illegitimate children in some articles, such as Articles 1045 and 1167 of the Civil Code, and Article 633 of the Islamic Penal Code, and has explained some of their legal statuses in the Civil Code and Precedent no. 1376/4/3-617. In addition, in their verdicts, Islamic scholars and jurists have explained various statuses of illegitimate children, such as: custody, guardianship, financial support, equal retaliation against their murderers, illegitimate abortion, and so on.

5- All decrees on legitimate children are applicable to illegitimate children, unless what is excluded for a particular reason. In other words, all decrees on legitimate children are applicable to illegitimate children, unless what is excluded for a reason, and they do not differ from others in decrees, such as financial support, custody, *Diyah* (mulct), and so on.

7- SUGGESTION

Given that human nature is interested in expediency and elimination of corruption, the human need to know Shariah's objectives, becomes more and more evident. Furthermore, nowadays, one of the most important logical mechanisms to answer questions raised about the Iranian legal system, is awareness of the religion's goals and Shariah's objectives. Because this will desirably lead to the sustainability and applicability of rules and laws in the Iranian legal system, and on the other hand, it will be better possible to defend the honor and identity of the Islamic legal system, and show the advantage of this system over the other human schools. Therefore, our suggestion is that steps should be taken to review the theory of Shariah's objectives and their place in the arena of legislation. The achievement of this goal requires new research, especially into the legal system. Because, in some cases, references have been made to the issue of Shariah's objectives in the science of jurisprudential principles, but unfortunately, no research has been conducted into the manifestation of this theory and its effects on the legal system, even though for the first time in this paper, we have dealt with it using a legal approach. Hopefully, experts will take successful steps in this area.

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