Investigating Violence against Women form the Perspectives of Islam and Law

Farangis Boroon
M.A. in Jurisprudence and foundations of low, Isfahan (Khorasgan) Branch, Faculty of Law and Human Sciences, Islamic Azad University, Isfahan, Iran
f.boroon5857@yahoo.com

A'azam Rejali*
Assistant Professor, Department of Theology, Isfahan (Khorasgan) Branch, Islamic Azad University, Isfahan, Iran
*Corresponding author: A.rejali@khuisf.ac.ir

Abstract

Violence against women is defined as any sexual or sexist act which brings physical, psychological, or social harm and suffering to women; this might include physical, sexual, or psychological violence. Islamic teachings deny all forms of violence towards all human beings and emphasize respect and flexibility in social relations for individuals. Penal Codes of our country have specified certain constitutions, such as dual criminal and civil enforcements of blood money for abolishing girl’s virginity. Many Quran verses and traditions form prophet and Imams of violence against women in the family have been quoted. The present of the present study is investigating the issue of violence against women in the family from the perspectives of constitutional and Islamic principles.

Keywords: violence, domestic violence, criminal protection.
1. Introduction

A long history of violence against women in human societies, whether developed or developing, has foregrounded the necessity of movements to stop or minimize gender-based violence as a dynamic and unifying tendency. Hence, nowadays objective of women’s rights activists is to present women as one of the most important groups of vulnerable victims and, as a result, identify strategies to prevent occurrence or reoccurrence of violence to provide the best possible protection of abused women. Criminal protection signifies investigating Iran’s legislative policies and criminal law according to which fulfillment or abandonment of acts contrary to the rights of girls and women is considered worthy of criminal sanction.

General objective

Describing domestic violence and legal protection of girls and women

Reviewing laws existing on the protection of abused girls and women

2. Concept Description

Violence
Violence means a non-peaceful and illegal action to change cultural, political, and social structures within an individual in the society; personal dissatisfaction of the abused is one of the distinctive aspects of violence. (Mojtahed Shabestari 1381: 452)

Domestic violence
Domestic violence means both psychological abuses, such as intimidation, fear, humiliation, and physical violence, such as slapping, fierce criticism, subtle pushing, and use of guns. (Salarifar 1389: 98)

Criminal protection
The issue of protection of women subjected to violence has been mostly discussed within the framework of criminal policy and legislative support in Iran; for example, dual criminal and civil enforcements of blood money for abolishing girl’s virginity. (RajianAsli 1384: 19)

3. Causes and Roots of Domestic Violence

In general, the causes for the emergence of violence can be considered in three categories: personal, interpersonal, and socio-economic. Followings are the main factors that can be cited for personal reasons:

Biological aspects: some social pathologists believe that biological factors, such as physical defect and certain genetic conditions, are the main causes of social deviance (Setoodeh 1380: 89). Human biological issues and the differences between men and women are the first factors to be considered in examining the causes of violence.
Moral weakness: according to Islam, man’s lack of adherence to morality is the major factor behind the emergence of domestic violence (Bostan 1383: 165). Domestic violence is far from moral goods ad is considered a personal vice in Islamic texts. (Suguti 1401: 632)

Couples’ disregard of religious beliefs: families with special commitment to religious values and principles tend to be less aggressive and violent; they experience and witness less domestic violence, too. Based on violence subculture theory, each culture includes certain elements, such as values, norms, attitudes, and beliefs that may increase or decrease the violence of men; actually, they practice self-control. (Moradi and Zandi 1386)

Interpersonal causes of violence against women in the family return to the interaction of gender relations between men and women and their special relationship as a couple in the family. The most common interpersonal causes of violence against women include:

Sex: Some perspectives insist on the role of gender and patriarchal attitudes in violence against women in Iranian families. (Eazazi 1380: 71). According to a research carried out on 100 women who referred to court in Tehran, there is significant relationship between patriarchal views and domestic violence.

Marriage type: forced marriage and polygamy are risk factors for domestic violence against women in Iran. Forced marriage complicates couple’s compatibility and decreases marital satisfaction and this provides ground for violence. Based on a survey carried out in Sanandaj, there is direct significant relationship between forced marriage and physical violence, so that 23/5 of women who are forced into marriage and 7/8 of women married with consent experienced physical violence. (Hasheminasab 1385)

Culture: family relations are based on social and anti-social behavior in a culture. Family’s private space is one of the most common cultural ideas about families which exists in many communities. Sanctity of family and maintenance of familial information within domestic realm are both the base of secrecy theory and one of the causes of violence against women. Recently, some governments have legislated more responsible conducts to prevent violence against women even within home. (Molaverdi 1385: 530)

4. Law

Identifying domestic violence and family conflicts as private affairs is one of the main causes of violence. Ambiguity in legal definition of violence results in its acceptance; for example, to what extent is corporal punishment permissible for husband and to what extent forced sex a reluctant woman is a case of domestic violence and causes physical and mental damage? The basis of this legal ambiguity returns to the scope of governmental supervision on families. If we emphasize this legal perspective that family is a thoroughly private space, social institutions, such as police and court, do not have the right to monitor families and this, in turn, facilitates emergence of domestic violence. (Eazazi 1380: 66-67)
Second factor involves all discriminatory laws that give men the privilege of absolute freedom of any desirable actions in relation with their wives; some of these known laws are rules regarding divorce, alimony, inheritance, and child custody. According to Special Report of UN’s commission on human rights, violence against women in Iran roots in gender discriminations present in Iran’s constitution (child custody, long divorce proceedings, stigma and dishonor resulting from this process); however, women’s rights reforms have processed and progressed significantly in recent years. (Molaverdi 1385: 222)

5. Anti-Violence Laws and Constitutions

Basically, violence against women is a universal phenomenon; there has always been this question that whether criminal justice system succeeds in fighting against domestic violence. Two approaches have been proposed in this regard:

a. The first view insists on conciliation, mediation, treatment, and welfare services rather than involvement of law, arrest, prosecution, and punishment; use of criminal law is considered the last resort in case of most extreme violence. Proponents of this view argue that criminal law is fundamentally punitive rather than involving educational programs and practices, programs which enable men to control their aggression and invasion. This groups believes that when the assailant is arrested and convicted, the punishment would be limited to short-term imprisonment, fine, and other penalties which will involve the whole family, because the breadwinner is in prison and might lose his job. It is also possible that the victim’s conditions improve temporarily, but she might face a more aggressive and violent case of the release of the convicted.

b. According to the second view, familial conflict is considered a crime. Proponents of this view advocate dealing with the phenomenon of violence against women in the same way as other crimes. According to this group’s beliefs, prosecution, conviction, and punishment clearly show that society considers the convicted as a wrongdoer and emphasize his personal responsibility for actions and behaviors. Criminal proceedings resulting from government’s legislative power is the only guaranteed solution to provide safety of the abused women, rehabilitate the criminal, and decrease the frequency of the repetition of the crime. (Moazemi 1383)

6. Criminal Protections for Violence Against Women

The issue of protecting women subjected to violence is mostly based on criminal-legal policy and punishment framework support levels in Iran, such as dual criminal and civil enforcements of blood money for abolishing girl’s virginity. Article 619 of the Islamic Penal Code has identified insulting and harassing women as a crime punishable with imprisonment and whipping. In case of adultery of a strange man with a married woman (Article 630 IPC), if the woman is reluctant, crime turns into rape and the woman becomes a victim who needs to be supported. Article 642 of Islamic Penal Code considers disregard of alimony as a crime in which women become victims. In all these cases, legislator’ protection of the abused women is mostly within a framework of
criminal protection (Rajian 1384: 19). The rest of the paper discusses other examples of criminal protections in detail.

7. Criminal Protections for Physical Violence

The emphasis of Iranian legislators on the obscenity of physical violence is preceded by the development of the General Penal Code in 1304. Article 170 of the Penal Code has determined execution as the penalty of intentional murder; articles 171, 173, and 174 of the same law, by granting public aspects of intentional assaults, has determined imprisonment as the punishment based on the duration of the treatment of the injured or assaulted person. After Islamic Revolution, in law sanctions enacted in 1362, public aspects of physical violence against people were removed and punishments prescribed by 1361 laws of retribution, and blood money were applied again; due to adverse results, removal of public aspects of physical violence against people, legislators bowed to return to the Penal Code and forging imprisonment punishment (in addition to retribution and blood money) for intentional murders and bodily injuries. According to Articles 612, 613, and 614 of Islamic Penal code adopted in 1375, bringing public injury to people involves a public aspect and, even with the forgiveness of a private plaintiff, social aspects of the punishment have to be carried out. (Asadi 1383: 226)

Also, in accordance with Article 622 of Islamic Penal Code, applying any sort of physical violence against pregnant women is considered a crime and necessitates punishment. The mentioned Article stipulates that “whoever knowingly and intentionally does something which causes miscarriage in a pregnant woman, in addition to payment of blood money and retribution, shall be sentenced to imprisonment of one to three years”.

8. Views of Islam and Jurisprudence on Violence

While all forms of violence towards all human beings are prohibited in Islamic teachings, respect and conciliation with people is considered a moral virtue. Prophet, in this regard, says that “Faith, conciliation, and tolerance with people are the most cherished virtues for God and prophet and violence against people and blasphemy are the ugliest vices”. (Majlesi 1403: 4570)

9. Corporal Punishment of Women in Quran

Based on various traditions and sayings of religious scholars, punishing a woman in form of hitting must not lead in wound and injury; rather, it should make the wife understand her duties and obligations. Fragile body parts of a woman, such as face, tuck, and stomach, must be avoided while punishing her; refrain from putting too much pressure on a certain area of the body and disperse the pressure over different parts (Najafi 1397: 206). Thus, it can be said that hitting a woman must be, same as a child, for multiplication, discipline, and punishment; there should be no blood or wound and using the stick of a toothbrush is recommended to create the atmosphere of a lovingly clever joke. (Al-Amel 1419: 356)
10. Islam and Rejection of Violence

Quran has invited men to kindness and friendship in their relationship with women and it denounces defaming women in order to retake the dowry (MakaremShirazi 1347: 374). Finally, it can be said that any behavior or speech that is unpleasant and dehumanizing for other people is not permissible; prophet says that “whoever hurts the feeling and personality of a faithful person through humiliation and dehumanization or slaps him and causes his distress, the angels curse him until he satisfies the abused person, repents, and asks for forgiveness.

11. Conclusion

Familial violence means applying power to fulfill forced action and personal will carried out by one member of the family against other members. Different types of violence, which are mostly enacted against women and girls in the family, include physical, sexual, psychological, financial, political, and cultural. While all forms of violence towards all human beings are prohibited in Islamic teachings, respect and conciliation with people is considered a moral virtue; numerous verses and traditions have criticized violence against women. Legislations and Constitutional Codes against violence can result in preventing distress and decreasing mental damage in women. One of the most crucial critiques against Iranian legislators in prescribing Codes against mental violence to protect psychological integrity of women is weakness of such steps. Ignoring abuses against women in the family environment, which is realized through restricting the rights of women in the realms of employment, education, social activities, and human rights, on one hand and ambiguous definitions of do’s and don’ts of rights and duties of the couple on the other hand are most important defects of the legislators. Since honorable judges are exposed to common sense notions, judicial procedures will be affected by these far from reality convictions. Discussing violence and fighting against it in a healthy society should not be observed through the lens of completion and conflict between men and women; rather, the main purpose must be improving moral standards and mental state of families within the community through integration and cooperation between men and women. Violence is a moral problem which roots in false training and incorrect human interactions; therefore, correction of attitudes, habits, emotions, and behaviors is the only solution to overcome this problem. Thus, suitable, practical plans need to be designed to organize women appropriately, empower them, and consider their benefits and interests as the main priorities in sketching developmental perspectives, so that more balanced and sustainable employment opportunities and life conditions are available to women as well as men. Eliminating male-dominated culture to prepare the ground for greater participation of women will result in the creation of diverse employment opportunities. Revising the Constitution and the elimination of discriminations between sexes will have an important role on the advancement of women in decision making. Based on numerous studies carried out worldwide on domestic violence, this issue has emerged as a gigantic problem in recent years, a disaster with terrible consequences, serious physical damage, and, even, death.
References


