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The Role of Ethics Rules in Criminalizing Homosexuality

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Abstract

The philosophy of criminalising adultery in Islamic law is to preserve offspring from the mixing of lineages and chastity and fortify the vulva and marital trust, and purity for women and men criminalized all sexual practices outside marriage. It was noted that most of the penal legislation, including the Iraqi legislator, has been limited to criminalising the assault that occurs on display and public morals in a narrow range and the recognition of sexual freedom for individuals on a scale Wide. Hence the problem of the study, as that Arab countries have an Islamic heritage that strongly condemns every sexual practice that is contrary to Sharia and religion, as well as virility, morals and authentic Arab values, which support the Islamic heritage in condemning and abhorring this matter.

Keywords: *morality, homosexuality, utilitarian thought*

Introduction

The act of anomaly, including the deviation from common human instinct and an anomaly in behaviour, and this obscenity repels sound natures, as the heavenly laws confirmed the prohibition of homosexuality because of its many evils, including an attack on morals, and the resulting organic and psychological health damage, and exposing the human species to annihilation to disrupt the institution of marriage, which is one of the most important functions of procreation, and also leads to the spread of crimes, so all heavenly laws and Islamic law in particular have unanimously prohibited the abnormal act In its two well-known dimensions, and unanimously agreed on its ugliness, because of its violation of God's creation, good taste, and the lofty goal of the legitimacy of marriage, which is to preserve honor and offspring, and to prevent forbidden mixing.

However, this phenomenon has not died and has remained under wraps in different societies in their development and cultures, and is transmitted from one generation to another, as they have their supporters and followers from various segments of society, but what is dangerous in the matter is that in the last two decades of the last century, it has become openly practised and even boasted of belonging to the sect of its supporters and followers on the heads of witnesses. Legal and moral legitimacy for their exercise, under the justifications of respect for sexual freedom and human rights, and in the face of an intellectual tide alien to the social fabric of Arab countries,

Accordingly, the subject of the study raises legal problems, the most important of which is the divergence of the position of penal legislation towards the treatment of homosexual practices,

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as Islamic law has approved the principle of absolute prohibition of these practices, and considers them an embodiment of all meanings of deviation from common sense and good manners, and a flagrant attack on the law of God. While some legislations consider homosexuality and the influence of Western philosophy, it is permissible, and affirm that this practice, in its two parts (sodomy and lesbianism), falls under the umbrella of the sexual rights of the individual, which should not be violated, as long as it is based on The consent of its parties who are of the age of majority, while some other positive legislation has adopted the approach of Islamic law, in terms of criminalizing this practice, and singling out its texts and provisions, and to detail this subject, its treatment came as follows:

First: Definition of Homosexuality

The act of anomaly, including a deviation from common human instinct and an anomaly in behavior, and this obscenity repels sound natures, as the heavenly laws confirmed the prohibition of homosexuality because of its many evils, including an attack on morals, as well as an attack on symptoms and the resulting organic and psychological health damage, and exposing the human species to annihilation to disrupt the institution of marriage, which is one of its most important functions of procreation, and also leads to the spread of crimes, so all heavenly laws and Islamic law agreed In particular, the prohibition of the abnormal act with its two known dimensions, and unanimously agreed on its ugliness.

Based on this importance, homosexuality is any deviation from the normal path in satisfying abundant things of all kinds, so whoever has sex other than his natural position is considered a homosexual ⁽¹⁾. or is characterized by the avoidance of heterosexual sexual reproductive relations with the human adult, with frequent and necessary use of other breathers, subjects or persons for sexual gratification, and is often accompanied by a great deal of anxiety, shame guilt, and a small amount of freedom, flexibility, mutual pleasure and emotional choice.⁽²⁾

It was said to be "a pathological condition that represents a danger to the individual himself or to the members of the society in which he lives, and requires intervention to protect the individual and protect society from him".⁽³⁾

According to the foregoing, homosexuality is a type of sexual need that is met through sexual practices that are outside the norm of formative nature and social custom, and thus expresses a deviation in the natural sexual practice that exists between the organism and the corresponding type of the same species, or with individuals with whom such practices should not be performed, such as incest, children, the dead, animals and the like; and female.

Second: Distinguishing the Rules of Morality from Utilitarian Thought

The utilitarian connotation is based on philosophical foundations completely different from the rules of ethics based on the principle of perfection, and these foundations are related to personal utilitarian values and considerations based on liberal ideas calling for getting rid of the shackles of religion and the dominance of the rules of morality, making personal freedom the basis on which ethics is based in all fields, this led to the emergence of a new concept of sexual acts based on personal freedom and social benefit, and this means that all abnormal sexual acts are a personal right of a person who may dispose of them. According to his free will considered

1Mohsen Mohammed Atwi, *Sex in the Islamic Perception*, Dar Al-Ta'arif Publications, Beirut, Lebanon, 1402 AH, p. 140.

2Dr. Abdel Rahman Ibrahim, *Homosexuality (Analytical Reading)*, research published in the Journal of the Arab Psychological Sciences Network, Issue (20), 2008, p. 131; Arab Journal of Psychological Sciences, a quarterly academic journal issued electronically by the Arab Psychological Sciences Network; available at: (Visited on 18/12/2023)I'll call :I look.com wp-content/uploads 2015

3Hisham Abdel Hamid Farag, *Sexual Crime*, Modern Loyalty, 2005, p. 22.

law, even if such conduct is contrary to the rules of religion or morality, because utilitarian philosophy believes that human happiness increases with personal pleasure and less pain, homosexuality is an exchange of benefit between adults, although in fact it is a selfish satisfaction of our¹ desires.

One of the most important principles on which utilitarian philosophy is based is the complete separation between religion and the State on the one hand, and between morality and positive law on the other.⁽²⁾ That is, the Penal Code protects the interest that it considers worthy of criminal protection, a matter that the law is independent in its discretion away from these rules because it is not of interest to it, but utilitarian thought views morality as individual and relative, so the criminal law should not interfere in the private life of individuals or criminalize sexual acts affecting morality, because it is not a guardian of the individual's morals and conscience⁽³⁾.

The idea of consensual sexual acts has become the basis for the legality of sexual relations, so the protection of sexual freedom should be the function of criminal law, and this idea has been widely accepted in Western societies that believe in utilitarian philosophy, which has led the legislator to repeal the provisions criminalizing acts of homosexuality, and even to regulate and confer criminal protection on such acts, which has led to the emergence of a new type of sexual relations, including homosexuality⁽⁴⁾.

From the foregoing, it is clear that the function of criminal law according to utilitarian philosophy is not to protect morals and spread virtue among people, but rather to leave moral virtue to their conscience, which the law stands at its limits and does not exceed, that is, not to criminalize an act that harms morality, because the basis of criminalization stems from the protection of individual sexual freedom and the prevention of harm from others.

The moral connotation: based on the purity of the offer is not the right of the owner only in the face of others, but it is a duty towards himself as well, the moral concept is intended to maintain the body for every illegal practice of sex and derives this meaning mainly from Islamic law and moral beliefs and this concept tightened his grip on European legislation until the eighteenth century, and guaranteed that every relationship outside marriage is an illegal relationship and therefore is a crime punishable by law⁽⁵⁾ Criminal laws currently apply two trends in criminalizing homosexual practices:

The first trend: goes to the legality of sexual practices that take place only through marriage, but other practices it criminalizes it in the interest of public morals and goes supporters of this trend to protect the offer in itself, and thus expanded the scope of crimes of assault on the offer so that it includes all natural sexual relations, criminalizing the relationship between unmarried men and women, whether this relationship with or without consent and whether they are adults or non-adults, as well as criminalizes abnormal sexual relations such as sodomy (sexual relationship which takes place between men) and lesbianism (sexual intercourse between females) as well as cattle and incest.... etc.⁽⁶⁾

1Dr. Ashraf Tawfiq Shams El-Din, *Criminal Protection of the Right to Maintain Display in Islamic Sharia and Positive Law*, Dar Al-Nahda Al-Arabiya, Cairo, 2004, pp. 83-89.

2Dr. Muhammad Zaki Abu Amer, *op. cit.*, pp. 12-14.

3Dr. Mahmoud Najib Hosni, *The Right to Maintain the Display*, previous source, p. 23.

4Dr. Samir Al-Ganzouri, *previous source*, p. 18.

5 Ali Rashid Abu Hujaila, *Criminal Protection of Presentation in Positive Law and Islamic Sharia (A Comparative Study)*, previous source, p. 25.

6 Maytham Faleh Hussein, *Legislative Deficiencies in the Iraqi Penal Code*, PhD thesis submitted to the College of Law, Al-Nahrain University, 2014, p. 192.

The second trend: recognizes the sexual freedom of individuals, which leads to the restriction of honor crimes, as any sexual relationship that takes place with consent is a legitimate relationship, so supporters of this trend do not require a legal relationship between the parties to the sexual relationship, and therefore this will lead to restriction in the field of criminalization of sexual relations that take place without consent at all or the presence of consent, but it is not considered (such as consent as a result of young age). ⁽¹⁾

Third: The Legal Basis for Criminalizing Homosexuality

The Islamic Sharia approved the principle of absolute prohibition of the act of homosexuality, and then described it as a crime in all its cases, because it is harmful to health, moral corruption, relapse of instinct, spreading vice, obliterating masculinity, and a felony against the right to femininity, and in which the destruction and destruction of the family, that is, Islamic law adopted the moral rule as a basis for prohibiting homosexual practice, because the matter is linked to the idea of legitimate practice of sex, and the result that Sharia ends up with is the criminalization of the act of homosexuality in order to protect morals, which is one of the most important goals that sought Sharia to its realization. ⁽²⁾

The prohibition of homosexuality was not limited to Islamic law only, but was forbidden in the laws of those who were before us from the children of Israel in the Torah and the Injil, it is stated in the Torah (Do not have sex with a male having sex with a woman, that he is an abomination ⁽³⁾, as stated in the same book (if a man lies with a male who has slept with a woman, both of them have done an abomination, they kill, their blood is on them ⁽⁴⁾, and therefore the Jewish religion considers the practice of homosexual behavior between males to be obscene and a great sin that must be avoided, and the punishment for the violator is Murder.

Christian law also takes a strict stance towards the prohibition of homosexuality outside marriage, since homosexual acts in Christianity are considered forbidden because they are incompatible with the common sense of human beings that a man should not live with a woman other than a woman ⁽⁵⁾.

Based on the foregoing, it is clear to us that the divine laws are unanimous in prohibiting acts of homosexuality because it violates common sense, and its tendency to beast, and the killing of virility and magnanimity, and going to modesty and indulging in filth, and corruption of masculinity, and a felony against femininity and degeneration in feeling that relegates its owner to an inferior rank above animals.

Forth: The Scope of Moral Protection as a Significant Interest in Criminalizing Homosexuality

The philosophy and scope of criminalizing homosexuality differ, according to the objectives of the punitive policy in each legislation, the Islamic Sharia believes that these practices embody all the meanings of homosexuality from common sense and good manners, and a flagrant attack on the law of God and its provisions in regulating sexual relations between the sexes, in order to preserve genealogy and prevent their mixing and the permanence of offspring and

1 Ali Rashid Abu Hijla, *Criminal Protection of Presentation in Positive Law and Islamic Sharia (A Comparative Study)*, previous source, p. 27.

2 Hassan Faleh Hassan Al-Hashemi, *The Role of Ethics in Criminal Law (A Comparative Study)*, PhD thesis submitted to the College of Law, University of Karbala, 2020, p. 166.

3 Bible, Leviticus, chapter (18:22)

4 Leviticus (13:20).

5 Salah Rizk Abdel Ghaffar Younis, *Homosexuality Crimes (A Comparative Study in the Light of Heavenly Laws and Man-made Laws)*, op. cit., p. 87.

fight obscenities and vices, as well as the accompanying incurable and infectious diseases, and as a result, they diagnose an imminent danger that threatens the moral structure of the individual and the family, and then the general entity Society in general, therefore, has paid great attention to the tolerant Shariah, no less important than its counterparts in other sexual practices, such as rape, adultery, and the like, so it regulated its provisions and tightened the criminal penalty imposed on it ⁽¹⁾.

The Islamic Sharia approved the natural sexual relations that take place between a man and a female through marriage, but other relationships, have been absolutely prohibited, Islamic law, unlike most man-made laws, did not consider consent not the courtyard of the act, but went towards absolute prohibition, whether the act was with consent or without it, and this means adopting the moral concept of presentation, homosexuality represents a flagrant attack on society through its assault on the family, which represents the first nucleus of society as it leads To the disintegration of the family and the spread of corruption, as well as the mixing of lineages and the spread of diseases.

The purposes of the holy street are the goals that the Sharia has developed in order to achieve them for the immediate and future benefit of the people, and these purposes are limited to preserving five things: religion, soul, mind, offspring and money, which have not been free from their care of boredom or Sharia of laws, because it is one of the tasks that the world system is associated with, being consistent with human instinct, and then the human type does not remain straight-up without its care, everything that includes the preservation of these assets is an interest, and everything that misses these assets or some of them are corrupting ⁽²⁾.

The Islamic Sharia jurists limited the necessities of the wise street in these five matters through the full extrapolation ⁽³⁾ of the provisions of the Sharia, it has indicated that the tracking of the various parts of the legal provisions indicated that they all revolve on these necessities or lead from near or far to serve and care for them, as they are not of the same degree of strength and importance, but are different, when the necessary contradicts with its counterpart, the most important must be presented over the important, religion first, then the soul, then the mind, then the offspring, then money ⁽⁴⁾, However, some jurists have increased in the five purposes a sixth purpose is to save the offer, as they made it late after the money in the series of ranks of purposes ⁽⁵⁾, and others defended that the offer should be in advance of money, reasoning that the habit of the wise give their souls and money without their symptoms, and what is necessarily the first to be necessary, has initiated the felony against him by defamation limit, which is more entitled to preservation than others, that a person may exceed the one who reaped on himself or his money, but does not exceed the one who reaped on his offer ⁽⁶⁾.

In summary, the interest in Islamic legislation to be considered Sharia should be in the orbit of the five overall purposes of Islamic law, that is, the interest must be by and appropriate to the

1Dr. Muhammad Hassanein, Criminal Policy in Islamic Legislation, Al-Ghammam University Press, Muhammad bin Saud Islamic Press, Saudi Arabia, 1984, p. 21.

2 Dr. Mohamed Abdel Ati Mohamed, The legal purposes and their impact on Islamic jurisprudence, Dar Al-Hadith, Cairo, 2007, p. 164.

3 Full induction is the induction in which the census of all 3partial examples in introductions ends to a general conclusion under which all those examples fall, unlike incomplete induction is to track some of the molecules of the kidney required to know its ruling, that is, to judge the total by what was judged on some of its parts, for more see: Dr. Jamil Saliba, previous source, pp. 71-73.

4Dr. Ahmed Raissouni, Introduction to the purposes of Sharia, first edition, Dar Al-Kalima, Cairo, 2010, p. 85.

Dr. Muhammad Abdul 5Ati Muhammad Ali, previous source, p. 165; Saleh Muhammad Saleh and Abdul Malik Abdul Majeed, The presentation is an independent destination and the views of the fundamentalists in it, research published in the Anbar University Journal of Islamic Sciences, a quarterly journal issued by the College of Islamic Sciences - Anbar University, volume 5, issue 18, year 5, 2014, pp. 130 and 131.

6Muhammad bin Ali Al-Shawkani, Guiding Stallions to Achieving the Right in the Science of Fundamentals, edited by Sami bin Al-Arabi, Part Two, First Edition, Dar Al-Fadila, Riyadh, 2000, p. 901.

intention of the street, by being of the type of interests that came out of it and not alien to it, and the interest should not be incompatible with one of the origins of the street or evidence of it.

It concludes from the foregoing that Islamic legislation has unequivocally clarified the five necessary purposes that are the origins and basis of interests and that humanity can follow without there being a difference in ideas and concepts, and these foundations do not constitute harm to the interest of the individual, because they are comprehensive and useful, which makes them valid for every time and place, but rather developed for the interests of the people in the two homes, and achieve the material and spiritual needs of man, because the purposes of Sharia are nothing but achieving the true happiness of society, and this is unless. We stand on it in the three previous positivist directions, because it is the work of the human mind, which lacks perfection and knowledge of the future, regardless of his mental abilities. After all, what he reaches today may not be applicable in the future and what suits one society may not suit another.

While the philosophy of criminalization differs in positive legislation, as these legislations - and the influence of Western philosophy, whether Latin or Anglo-Saxon - believe that this practice in both parts (sodomy and lesbianism) falls under the umbrella of the sexual rights of the individual that should not be violated, as long as it is based on the consent of its parties who are of adult age, and from this point of view some legislation sees it, a permissible act that does not need to be regulated, or intervention by the criminal legislator, while some other positive legislation, and the influence of that philosophy, are lenient in the inclusion of provisions. In particular, when talking about moral or sexual crimes, it pays attention to the crime of rape, and other crimes that come in the second place, considering that rape is an act without consent, and as a result, it is an attack on sexual freedom ⁽¹⁾, not in order to prevent the mixing of lineages, or to preserve the moral and moral aspect of the individual and society, as is the case in Islamic law, while some other positive legislation has adopted the approach of Islamic law, in terms of criminalizing this practice. Acts of homosexuality are major sins that are rejected by Islamic law, and do not tolerate them, and threaten those who practice them with cursing and punishment in this world and the hereafter. ⁽²⁾

As for the position of the Iraqi legislator, he adopted the utilitarian trend as a general asset, did not criminalize homosexuality if it is between adults and the act was with the correct consent, but there are specific cases in which the moral trend was adopted, it is the texts in which the moral significance was adopted, for example, punished by imprisonment for a period not exceeding ten years or imprisonment if sodomy was done with one of the incest with her consent and she had completed eighteen years of age ⁽³⁾ and also what is stated in the Military Penal Code No. 14 of 2007, which punishes with imprisonment for a period of not less than three years if sodomy was committed with a military officer with consent. ⁽⁴⁾ In the final result, both meanings are related to the protection of homosexuality, but the adoption of the utilitarian connotation leads to an attack on important interests, namely the preservation of lineage, the right to physical integration and the protection of public morals, and vice versa with regard to

1Dr. Abed bin Muhammad Al-Sufyani, *The Ruling on Adultery in Law and its Relationship to the Principles of Human Rights in the West* (A Comparative Study), Distributed by Al-Mu'tamin Foundation, Makkah, Saudi Arabia, 1998, p. 26 and beyond. Quoted from Dr. Ghazi Hanoun Khalaf, *Voluntary Homosexuality in Islamic Law and Iraqi Law* (A Comparative Study), op. cit., 254.

2Dr. Abdel Wahab Omar Al-Batravi, *The Crime of Adultery between Divine Laws and Man-made Laws*, Second Edition, Dar Al-Safwa, Cairo, 1992, p. 94.

3Article 385 of the Iraqi Penal Code No. 111 of 1969, as amended.

4Consideration shall be given to the text of article 76/I of the Military Penal Code in force.

the adoption of the moral connotation, and what we call for is the need for the Iraqi legislator to adopt the moral meaning, especially since the Constitution of the Republic of Iraq for the year 2005 stipulated that Islamic Sharia (an official source of legislation and it is not permissible to enact a law that contradicts the constants of the provisions of Islam ⁽¹⁾.

It is clear from the above that the interests protected by the criminalization of homosexuality are reflected in the protection of the individual and society from practices that lead to the violation of traditions, laws, norms and moral, religious and legal rules regulating society, as well as protecting the individual from behaviors leading to the killing of virility and magnanimity and going to modesty, indulging in filth, corruption of masculinity, felony on femininity, and degeneration in feeling, which relegates its owner to an inferior rank, from which animals rise, and monsters and predators heal them, since marriage is the only way to intercourse and extinguish the sexual instinct between Sexual difference is a mandatory condition for ensuring the continuation of life, so the common sense of human beings refuses to inhabit men to non-women. ⁽²⁾

As a result, homosexuality is our enemy on common sense, and at the same time our enemy is on the limits of God and his law to transgress and underestimate, and a kind of filth and inferiority, and contrary to moral, religious and legal rules, it does not affect an individual right only, but also affects the right of God, represented in the interest of the group and the preservation of its entity from the potential defects ⁽³⁾, so criminalized by Islamic law and most man-made legislation, although the philosophy and scope of this criminalization differ, according to the objectives of the punitive policy in each legislation, the Islamic Sharia glue believes that In these practices, the embodiment of all the meanings of deviation from common sense and good morals, and a flagrant attack on the law of God and its provisions in regulating sexual relations between the sexes, in order to preserve genealogy and prevent their mixing and the permanence of offspring and fight immorality and vices, as well as the accompanying incurable and infectious diseases, and as a result, they diagnose an imminent danger that threatens the moral structure of the individual and the family, and then to the general entity of society in general, so the tolerant Sharia paid great attention to it, no less important than its counterparts from other sexual practices, Such as rape, adultery, and the like, so its sentences were regulated and the criminal penalty imposed on it was stricter ⁽⁴⁾.

While the philosophy of criminalization differs in positive legislation, as these legislations - and the influence of Western philosophy, whether Latin or Anglo-Saxon - believe that this practice in both parts (sodomy and lesbianism) falls under the umbrella of the sexual rights of the individual that should not be violated, as long as it is based on the consent of its parties who are of adult age, and from this point of view some legislation sees it, a permissible act that does not need to be regulated, or intervention by the criminal legislator, while some other positive legislation, and the influence of that philosophy, are lenient in the inclusion of provisions In particular, when talking about moral or sexual crimes, it pays attention to the crime of rape, and other crimes that come in the second place, considering that rape is an act without consent, and as a result, it is an attack on sexual freedom ⁽⁵⁾, not in order to prevent the mixing of

1Consideration shall be given to the text of article (II/I/a) of the Constitution of the Republic of Iraq for the year 2005.

2Hani Boujadar, Same-sex Marriage in Divine Laws and International Conventions, previous source, p. 148.

3Ibn Manzar al-Afriqi al-Masri, Lisan al-Arab, chapter (Lot – Lot), 3rd Edition, Volume VII, pp. 395 and 396.

4Dr. Muhammad Hassanein, Criminal Policy in Islamic Legislation, Al-Ghammam University Press, Muhammad bin Saud Islamic Press, Saudi Arabia, 1984, p. 21.

5Dr. Abed bin Muhammad Al-Sufyani, The Ruling on Adultery in Law and its Relationship to the Principles of Human Rights in the West (A Comparative Study), Distributed by Al-Mu'tamin Foundation, Makkah, Saudi Arabia, 1998, p. 26 and beyond.

lineages, or to preserve the moral and moral aspect of the individual and society, as is the case in Islamic law, while some other positive legislation has adopted the approach of Islamic law, in terms of criminalizing this practice. Acts of homosexuality are considered major sins that are rejected by Islamic law, and do not tolerate them, and threaten those who practice them with cursing and punishment in this world and the hereafter.

By criminalizing acts of homosexuality, the legislature protects a legitimate interest, namely the protection of the family from the causes of collapse, as it is the basic unit in the building of society, and the disintegration of the family endangers its security and public order ⁽¹⁾.

We have seen that the philosophy of Islamic law in criminalizing acts is based mainly on the protection of the essential and basic interests that are called the purposes of the wise street represented by the five things, because these same interests are fixed in their origin and essence and have never changed, and are valid at all times and everywhere, and this stability in legislation is due to God Almighty, and the protection of these interests is in fact the protection of a very important pillar of the general social order, which is the rules of morality, which is the source of all other behavioral habits. The five purposes can only be protected by building this pillar on which other interests are built, namely the interest of preserving morals, as the moral base is a fundamental fixed and unchanging interest on which the social order is based.

And that the rules of ethics may be a basis for criminalization in positive criminal legislation in the light of social interests, but the extent to which these rules are adopted in the light of interest is not subject to the theory of interests in general to scientific or logical methods in research, but is based on philosophical foundations looking at the final goals and higher values, and therefore the extent to which the rules of ethics are accepted in the theory of criminalization depends on the extent to which the legislator adopts the philosophy of absolute justice, that is, the extent of his belief in it or his inclination on the contrary to philosophy Material, and we see the legislator when he criminalizes an act that looks at the extent of the benefit or benefit accruing to society from criminalizing it, so he balances between criminalizing it and leaving it, if social necessity prevails, if the act affects an interest on which the entity and existence of society is based, he should criminalize it, because the meaning of leaving it is to harm this interest, or threaten it with the risk of harm. The matter does not stop there, but the legislator goes further to criminalize as well as prejudice to everything that supports and promotes this interest, as the maintenance of the interest of social existence not only requires beating on behavior that is directly harmful to it, but it often requires, in order for such maintenance to be effective, beating on behavior that is a step on the road leading to that harm, even if it has not yet reached the stage of actual harm.

Conclusions

- A- The term homosexuality refers to a sexual relationship between two people of the same sex without deviating from whether the sexual relationship between two males or between two females is far from the usual path and the correct framework for achieving sexual intercourse.
- B- The heavenly laws unanimously prohibit acts of homosexuality, because it violates common sense, and its tendency to beast, and the killing of virility and magnanimity, and going to modesty and indulging in filth, and corruption of masculinity, and a felony on

1Dr. Abdel Wahab Omar Al-Batrawi, *The Crime of Adultery between Divine Laws and Man-made Laws*, Second Edition, Dar Al-Safwa, Cairo, 1992, p. 94.

femininity and degeneration in the feeling that relegates its owner to an inferior rank above animals, as well as other religions that do not allow homosexuality such as Hinduism, Buddhism, Sikhism and others.

- C- Most Arab penal legislation criminalizes homosexuality as a degradation in the moral and moral aspect of the individual and society, as well as some foreign legislation affected by moral norms as a basis for criminalizing homosexual practice.
- D- The position of positive criminal legislation varied in dealing with the subject of homosexuality, including the adoption of the moral concept of sexual acts, criminalizing all or some homosexual practice, while others adopted the principle of sexual freedom as a right of the individual to protect his body from every sexual practice that occurred to him without his legally considered will, such as homosexuality, that is, the permissibility of the act of homosexuality and the release of freedom in it, so it was devoid of any criminal text that criminalizes consensual homosexuality in its two dimensions (sodomy and lesbianism).

Recommendations

- A- Calling on the Iraqi legislator to amend Articles (393-397) of the Penal Code to ensure the criminalization of homosexual practices, including sodomy and lesbianism, in accordance with the philosophy of the moral concept regarding the prohibition of homosexuality, as it poses a threat to the family and society.
- B- Inviting state institutions to hold conferences, seminars and studies in order to shed light on the harms of this shameful practice, whether health or moral.
- C- Strict control by the state on Internet sites, and directing the media to carry out their educational role in this matter by focusing on sound and correct family education, in order to limit the spread of this dangerous phenomenon.

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