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Interest in Criminalizing the Phenomenon of Intersex & Its Implications

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Abstract:

The interest considered to be behind the decriminalization of intersex is the personal interest of members of society; The sound intuition, reason and balanced logic all affirm that disregard for monstrosity, intersex, homosexuality or homosexuality, it is perpetrated in the sight and hearing of all and the sanctity of religions leads to the corrupting of society and its transformation from a society that is honourable to a decimated and decimated society, as well as potential and inevitable damage to the individual, the family and society, it is forbidden to create a corrupt society in which the special interest prevails over the public interest (Badrani, p54). Iraqi law, like the majority of Arab laws, which have taken the root of French law in terms of explicitly decriminalizing the act of intersex, considers that pure personal acts contrary to morality, morality and the provisions of religion may be punishable only if their effects exceed by inflicting harm on others.

Keywords: *Considered Interest, intersex, Criminalizing, Iraqi legislation.*

1. Introduction:

Criminalization, whether in Islamic criminal jurisprudence or in accordance with the policy of the penal legislature, is aimed at protecting the State in all its systems, in the interests of the individual and society. This is in the light of the legislature's own policy, which is imposed on it by renewed social and moral imperatives and which can be derived and recognized in the light of the values and customs prevailing in society. The legal system is designed as the set of rules governing the conduct of individuals where appropriate by sanctioning anyone who violates the rules on the protection of public order in all its elements, in particular public morality; Through this criminalization, it aims to achieve two objectives: to preserve the entity of the individual and society by establishing public morality and ensuring the public interest .

The second is to safeguard and protect individual freedoms and prevent their incompatibility with others' freedoms. States thus decide to criminalize the phenomenon of intersex to protect an individual's entity as the most important element of society and to maintain public order in its various elements. (Creapeau & Hansen, 2022)

2. Importance of the Study

Research is important because of the seriousness and negative effects of the phenomenon of intersex on society, which leads to the deviation of individuals' behaviour and their incompatibility with the rights and freedoms of others to think and believe because it affects the identity and belief of society; especially in Islamic States; this study therefore shows the social and moral imperatives that call for the

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criminalization and criminal treatment of transsexuality.

3. Study Problem

The balance of social interest in the field of morals and public morals is one of the most dangerous tools that the legislator possesses to criminalize phenomena that contradict these considerations, because this type of criminalization affects the rights and freedoms of people, therefore, all considerations must be taken into account when setting the rules of criminalization and punishment. Therefore, this study raises some questions in the light of this problem, the most important of which are:

- A. To what extent is the public interest attributed to the private interest in criminalizing effeminacy?
- B. Should the legislator prioritize considerations of criminalization of effeminacy over individual rights and freedoms?
- C. Is the criminalization of effeminacy absolute or according to rules and limits that must be stopped?
- D. What are the effects of effeminacy on society?

4. Study Methodology

We will discuss this issue from the criminal aspect, with the help of the Shari'a aspect, and what the jurists dealt with, and what the Islamic law contained in terms of special provisions related to changing the morals and infringement of the right to bodily integrity, we will rely on the analytical approach; To understand the provisions of the Iraqi legislation related to the criminalization of the phenomenon of effeminacy, with a comparison of the legal texts related to the subject of the study in Iraqi law and other laws whenever the study requires it, reinforced by the opinions of jurists and available judicial applications. (Franco et al., 2023)

5. Interest in Criminalizing the Phenomenon of Intersex

Criminalization aims to protect the State in its various systems, including the social values and interests of society, in the light of the legislative policy imposed by renewed social imperatives and within the framework of the State's thinking and making it part of its public order (Al-Shamri, 2011, p74). In Iraq, as in the majority of Islamic States, Islam is the State religion, and no law may be enacted that is incompatible with the constants of Islam (Constitution of the Republic of Iraq, 2005). Accordingly, in the light of its constitutional obligation to combat situations and practices that contravene Islamic values and principles as contrary to society's values and prejudice its interests (Hanoun, 2013, p74).

In this requirement, we will try to indicate the interest considered in criminalizing the phenomenon of intersex in the Islamic and legal perspectives through the following sections:

5.1. Interest in Criminalizing the Phenomenon of Intersex in the Islamic Perspective

The interest and virtue of the legitimate perspective are intertwined. The virtue entails the general human interest, which is itself the highest interest and its names, there is no interest in vice or virtue other than an interest; In other words, the interest and virtue are different in meaning, but they are in fact synonymous. The Islamic Shariah has no purpose whatsoever and is in the interest of achieving it, criminalization in Islamic law, as a general asset, aims to protect the group's interest from disobeying the order of the street (Return, p.609), in fact, criminalization is a deterrent to the perpetration of what has been discontinued, leaving what has been ordered. Before the act, and after it, it is a marriage

(Salam, 1977, p. 5). 44

The criminalization of disobedience to the street is originally intended to protect human beings from the corrupt and deceased of life and to save them from the clutches of Jehovah and to guide them to the path of good and righteousness, and to desist from disobedience. Criminalization and punishment in the Islamic Shariah are imposed on violation of God's Order to compel people to hate as long as the order is in the interest of (Return, p. 609). The perceived interest that Islam came to protect is the real interest, not the fancy, and may be subjective and may be additional, the meaning of their subjectivity is that they do not lag behind their demand and must be protected in any event. It means that it is additional when it is in an interest at a time without time and in a time without time and for people without people. This is in openings such as foods (Abu Zahra, p.34). Whether the interest is subjective or additional, it is a real one, and the perceived interests protected by Islam by establishing the right to criminalize and punish when abused are due to five origins: the preservation of religion, the preservation of oneself, the preservation of reason, the preservation of offspring and the preservation of money. (Riley et al., 2022)

For this reason, the punishment of intersex, homosexuality, sodomy and other punishments appalling and punishing those who commit them are crimes that violate society's interest, morals and morals, the aim of criminalization in this light is to protect society from vice control, the prohibition in sharia law, although severe in a narrow scope, aims at broad and comprehensive justice, the basis of which is criminalization in sharia law. Islamic legislation has a collective tendency to limit one's sovereignty by restricting one's actions that are contrary to Islam and its values - such as transsexuality and tendency - as such acts are contrary to the interests of the group and in which the individual abuses his right. It is not the case that positive laws do not release and protect sexual freedom and the private interest, if the special interest conflicts with the public interest, the public interest is provided and the greatest harm is eliminated in pursuit of the lesser harm (Al-Anbki, 1971, p. 65). Punishment in Islamic legislation, as we have shown, is commensurate with the gravity of the crime. This gravity is essentially linked to the gravity of the damage that the crime inflicts on the interests considered in Islam (the public interest in society) as well as to the gravity of the offence or responsibility (practical and impractical crimes, for example, the interest in punishment for moral offences is the general interest in the protection of offspring, presentation and religion, not the protection of sexual freedom as in the positive laws (Hamed, p.76).

5.2. Interest in Criminalizing the Phenomenon of Intersex in the Legal Perspective

Crime is a phenomenon that constitutes an aggression against the interests of all members of society. This is what individual jurisprudence advocates, or crime is the birth of unjust social conditions. This is what socialist jurisprudence advocates; crime is a natural matter in any society and is the complement to it is not an accidental disorder in society but a routine occurrence in man's experience and deserves the attention of those concerned, and criminality is the sum of actions that are intolerable in any society (happy, p43). (Lorenzetti et al., 2023)

In our view, therefore, English and French law has not criminalized homosexuality, homosexuality and many states within the United States of America, nor are these crimes punishable, to be considered an untraceable and restrictive personal liberty, the criminalization of which results in damage and problems that are far more evil than overlooking, ignoring and tolerating such monsters (Muhyiddin, 1981, p.30). Such legislation absolutely protects the private interest to consider personal liberty and the requirement that associated acts, including intersex, should not be criminalized as individual conduct and subject to one's choice. According to the philosophy of this legislation, even if the legitimate prohibited act is infringed by the nature of its effects on others, its decriminalization is due to the

tendency of personal freedom and the individual's interest in doing so and the need to protect it (Obeid, 1978, p. 99). These laws take direct personal account of any direct personal interest in this regard, all of which attempt to extend legal protection in society in order to protect the public interest on the one hand and the interests of everyone on the other, Such legislation should have elaborated a special provision that explicitly criminalizes intersex as long as this act applies to others in societies in general and in our society in particular. A man who engages in intersex abuses his family and society in his reputation and morality, the prima facie view of the provisions of Iraqi law supports our foregoing. The thorough examination and examination of these provisions leads us to state that when the offence of public indecency, which is one of its forms, is punishable, they do so for the obvious reason of protecting the public's sentiment from being hurt by the vision of certain naked views or manifestations of morality and morality that are concealed and contrary to Muslims and Islamic values and principles; Among them are the appearance of men as females (Happy, 2002, p.174). This rationale for criminalization is not aimed at a society's public interest but rather a private interest. Thus, in our view, the legislature has not criminalized these acts in order to protect the general interest of society, which requires that the gravity of the moral and criminal act be viewed as a vice. In our view, therefore, the Iraqi Criminal Code has not sought to achieve the public interest in criminalizing such acts for reasons and obligations previously. If this had erred in style and manner, it should have criminalized the act as a vice, whether consented or not, openly or invisibly (happy, p.176). However, the adoption of such legislation remains on the basis of personal consideration and private interest as a basis for criminalization, so that the gaps in which many crimes emerge into society have increased under the consideration and encouragement of the law and its protection of individual liberty and personal freedom (Obeid, p.88).

6. Criminalization of the Phenomenon of Intersex

The phenomenon of intersex as an expression of human deviant behaviour resulting from its biological and psychological motives affects the moral order of society and produces some effects (Drissy, p.47). That we will address in accordance with the following detail:

A. Moral Imperatives of Criminalization

Morality is the safety valve of every nation. Morality is the foundation of people's building and without it the nation ends and goes away; this demonstrates the importance of morality in nation-building. We cannot imagine a nation without morality. Corruption when it pervades the nation leads to its demise and non-survival (Mezer, 2013, p. 2462). Consequently, individuals' adherence to dignified morality, religious values and his distance from vices and abnormal practices such as androgyny awakens his conscience. Ethics, as mentioned, is the safety valve of the nation. Without this valve, the nation lives in grave danger (Mezer, 2013, p.2462).

Transsexuality is more prevalent in morally dissolved societies that do not adhere to religious values and virtuous morals advocated by divine laws, governments therefore have a duty to disseminate religious values to their people. The dissemination of these values helps to reduce different vices and visualizes individuals' eyes on many things they, too, have lost sight of. Religion is the bulwark of every human being and prevents him from committing any criminal conduct or even any minor guilt. Therefore, attention to instilling religious values within citizens prevents them from committing any immoral behaviour, such as intersex, by which security, prosperity and peace are achieved for all citizens of the homeland (Al Obaideen, 1999, p.180).

Some of the State, however, inadvertently or inadvertently prevents this by ignoring religious values by marginalizing them in the school curriculum. If we look at the teaching materials taught in today's

schools, we find religious education to be much marginalized. As a result, the State must place religious education at the forefront of the subjects, which are of great importance. However, it has deliberately neglected and marginalized different ages in all educational grades. This has helped to spread various vices and crimes among students and among all citizens and has become abnormal and uninterested in the direction of intersex (Mizer, 2013, p. 2459). If we also move to the media, we find it far from spreading religious values as well, where are the religious programmes and films? Where are the children's religious programmes? All these things disappeared and were replaced by immoral films and subversive programs that spread vice and did not have morals. The media map must be changed to the extent that it preserves morality within society and achieves censorship of films and programs, especially among adolescents, in order to ensure that their thoughts are not confused towards vices and intersex, this is also achieved through the dissemination of religious consciousness so that the people learn about the provisions of their religion and know God in every act. This will be reflected positively on their behaviour (Al-Zalami, p.69).

Thus, in our view, the State's interest in media policy reflects its interest in disseminating different religious values and creates the dissemination of these values to its children in order to ensure that anomalies such as intersex, homosexuality and other immoral crimes do not spread. The widespread phenomenon of homosexuality undermines family ties and changes the forms of a natural family of women, men and children; The practice of intersex leads to young people's reluctance to marry, and also contributes to the social problem of headline, divorce, infidelity and sexual impairment (Boston, p67). It is accepted legitimately and humanly and in accordance with common sense that a male must be masculine and must exercise his role as a man, because intersex can push him out of malouf like sex with the same sex and that's what happens with some bisexual, marriage can be difficult for him, and the individual is affected by his environment, such as growing up in the middle of a society suffering from the stimulation of the phenomenon of intersex. In his view, this is normal and remains the same; In order to keep man's actions away and away from everything that takes them out of their natural frame and to preserve the morals of man and society from deviation, Islam deprived intersex and warned against falling into it (Al-Mizer, 2013, p2462).

Interstitial is also detrimental to society's ideological ideas, which occupy a prominent position of importance for the human person in particular, and for society and its moral system in general. Building civilization and cultural identity, however, intersex has a significant impact on it as it results in society's loss of its morals and social and cultural identity, the penetration of intersex ideas into society is, in the long run, more serious, more severe and moral than any other impact; Because other influences can be addressed and dealt with (Michael, 2006, p.89). Morally harmful interstitials are the most addicted to drugs and drunkenness and lead to potentially serious consequences with age. They are the most vulnerable to depression, especially if they are young.

B. Social Imperatives of Criminalization.

Islam addresses marriage and sexual relations in clear terms. It emphasizes common sense and men's place in society as being of high importance and prestige, therefore, Islam establishes fixed and visible gender divides that are reflected in their respective roles; often women play the role of dependent and obedient subordinate, women are not equal socially with men, so we note the glorification of male and sexual power. Every weakness in sexual ability or desire leads to a narcissistic wound, so the androgyny in society is treated with enmity and utter ostracism (Ben Smail, 2015, p.40). We therefore note that the transsexual generally does not care about matrimonial life and is not one of his priorities; in recent times, the phenomenon of young people's reluctance to marry has been considerably exacerbated and is becoming increasingly difficult and the causes of delayed marriage are not limited to unemployment, housing and difficult economic conditions. It is

partly due to some young people practising anomalies such as intersex, and delayed marriage may itself be a cause of intersex (Moses, p.89).

As well as being a consequence of it; difficult economic conditions and delayed marriage result in a young person's desperation to marry and to practise anomalies such as intersex and other forbidden acts; the reason for this is the widespread corruption so that young people are unable to obtain employment opportunities and to provide habitable and livable housing, as well as economic possibilities that allow them to start and other countless things, which, of course, are reflected in marriage, the delay in marriage and the resulting negative effects on the individual and society. What does a young person do except that he is involved in the arms of vice? He has been unable to achieve it with the legitimate methods of marriage. In search of other ways, the impact has spread too many moral crimes, which are considered one of the most serious crimes and seriously harm society and adversely affect the family, which is the first cell to build society. The State must assume its responsibility and act to address the causes that have helped to spread many immoral vices and have also helped to spread intersex and other moral crimes such as harassment and rape (Ben Smail, p.40). What if you provide employment opportunities for young people, provide them with adequate housing, pay them adequately, lower prices, and a young person can marry, thereby fortifying himself from falling into vice because marriage is a fortress for men and women. The Holy Apostle said, "The young man who was able to marry you, he turned a blind eye and fortified the vulva and who could no fasting, he came to him because marriage prevented from falling into the beasts" (Al Obaidin, p.187).

The prevalence of diseases among homosexuals, such as sexually transmitted diseases, notably immunodeficiency and resistance disease in the body (AIDS), and other floral diseases, is also an effect of intersex. In addition, physical diseases such as hepatitis, "gay bowel syndrome" and cytotoxic fever are prevalent among homosexuals. In addition to neurological diseases and psychiatric disorders such as anxiety, depression, feeling, deficiency, sadism, etc., psychiatric disorders may lead to suicide or murder (Bensmail, p. 40).

Its impact on society in terms of health has been scientifically confirmed by the existence of many deadly diseases affecting bisexuals; According to scientific and medical studies and research published in journals and reliable scientific sites, modern medicine occasionally reveals a deadly disease that is a misfortune or disaster for transsexuals, once doctors find a useful treatment for one of the diseases, they find a new disease that is preoccupying them with the previous disease, leaving them baffled in the face of this bitter midst, including the evils and dangers published by global news agencies about the horrifying viral monkey pox disease and warnings from the World Health Organization about its outbreak, especially in European countries (Vuzan, p. 73). Moreover, the bisexual in Iraqi society confronted their society with some dare in dress, appearance and attitudes that were not previously familiar, owing to the American occupation, which contributed to the encouragement of such actions.

It is also noted that the Government's corrupt policy has helped to spread the various vices within society, which it had a duty to reduce by all means and to do so, but we find that different vices have spread dramatically and this is the result of the corrupt policy of the State that led to their emergence and has not limited them, which has led to their significant spread, through our quick passage from the street to shops, businesses, banks, schools, hospitals and government interests. Likewise, it is clear to us that the vices are excitingly widespread, the Government has not restricted these various vices, which have spread significantly in society, the Government should have enacted various laws to reduce these vices, which have spread in society. The media have played a negative role in exacerbating this phenomenon and the spread of such vices, where we find downward films, immoral programmes,

other films, series and even children's programmes have become destructive and immoral because these different channels are immoral.

Conclusion

First: Results

1. Most States have not explicitly regulated the phenomenon of transsexuality in their laws, resulting in a lack of legislation and a lack of legislation on the criminalization of intersex, which is subject to the judge's power to adapt texts.
2. There are several effects of intersex on the individual and his morals, as well as on the society in which he lives, where interstitial delinquency leads to morality and homosexuality.
3. There is a great convergence between the imperatives of criminalizing the phenomenon of intersex in the Islamic sharia and the law. The Islamic sharia, which views intersex as immoral behaviour and contrary to the values prevailing in society, is very similar to the criminalizing imperatives adopted by some Islamic States to criminalize moral crimes that are included in the content of intersex.

Second: Recommendations

1. Spreading awareness and culture among the children of the community to treat this group as sick and not as an anomalous phenomenon that alienates people upon discovery.
2. We recommend that consensual sexual relations between the same sex be criminalized; As an offence punishable by the Penal Code, there is no provision in Iraqi law punishing the practice of consensual homosexuality among adults.
3. We call on the Iraqi legislature to criminalize and prohibit images of intersex that are inviolable in Islamic law, in contravention of Islamic morality and values that are considered public order and may not be infringed in countries where Islam is the State's religion.
4. The need to treat the androgyny with psychotherapy. The patient suffers from a psychiatric disorder, consisting of his lack of acceptance of his type and gender, which requires psychological rehabilitation, by preparing psychologically and socially for coexistence according to his condition.

References

- Abdelkader Odeh, Islamic Criminal Legislation Compared to Positive Law, J1, Al-Raha Foundation, Beirut, No Year Published.
- Abdul Hamid al-Obeidin Medicine and Science - Shari 'a and Law, Free Table Series, Beit al-Hakma, Baghdad, 1999.
- Ben Samaael, "Intersex in Algeria is a phenomenon of phenomenon and culture", Al-Raskhin magazine, 16, 2015.
- Creapeau, L. J. G., & Hansen, K. E. (2022). Sandy Shores Care Center: A Long-Term Care Staffing Crisis. *International Journal of Instructional Cases*, 6. <https://ijicases.com/menuscript/index.php/ijicases/article/view/29/30>
- Franco, F. A. A. E., Angélica, M. P. L., Romero, M. Á. M., Delicia, H. L. F., Abel, C. M. J., Luzmila, S. C. P., Arquímides, F. V. J., Hernán, A. T. E., & Antonio, C. S. M. (2023). Role of Common Law Principles (Presumption of Innocence and Castle Doctrine) on the Criminal Justice System in Kurdish Region: Moderating Role of Government Support. *Kurdish Studies*, 11(1), 132-144. <https://kurdishstudies.net/menu-script/index.php/ks/article/view/300/190>

- Gallagher, Maggie " Banned in Boston: The coming conflict between same- sex marriage and religious liberty, scarecrow press.
- Hamid Hanoun Khalid, Human Rights, 2, Sinhoori Library, Baghdad, 2013.
- Hind Akil Al-Mizer, Homosexuality: Factors and Effects, Journal of Studies in Social Service and Humanities, No. 34, Helwan University, 2013.
- Hussein Naji Mohammed Muhyiddin, Trial of Materials of Presentation, Adultery and Morality in Positive Laws to Reason, Custom and Sharia, Dar Al-Science Foundation, Kuwait, 1981.
- Imam Mohammed Abu Zahra, Crime and Punishment in Islamic Jurisprudence, Arab Thought House, Cairo.
- Kamel Al Saeed, Explanation of the Penal Code Crimes against Honour and Liberty "Analytical Study", I, Publisher of International Scientific House and Culture House for Publishing and Distribution, Oman-Jordan, 2002.
- Kazim al-Shammari, Criminalization Policy in Private Criminal Law, Journal of the Faculty of Law, Baghdad University, vol. 36, Special Issue, J1, 2011.
- Lorenzetti, D., Lorenzetti, L., Nowell, L., Jacobsen, M., Clancy, T., Freeman, G., & Paolucci, E. O. (2023). Exploring International Graduate Students' Experiences, Challenges, and Peer Relationships: Impacts on Academic and Emotional Well-being. *Journal of International Students*, 14(2). <https://doi.org/10.32674/jis.v14i2.5186>
- Majid Al-Anbeki, Interest in the Legislation of Governance between the Islamic and English Systems, master's Thesis, Faculty of Law, University of Baghdad, 1971.
- Mohammed Salam, Philosophy of Crime and Punishment in Islam and Determination of Criminal Responsibility, research published in the Journal of Justice of the United Arab Emirates, No. 15, fourth year, 1977.
- Rauf Obaid, Crimes of Assault on Persons and Property, 7, Arab House of Thought, Cairo, 1978.
- Riley, H., Ketola, H., & Yadav, P. (2022). Gender, Populism and Collective Identity: a Feminist Analysis of the Maoist Movement in Nepal. *Journal of Human Security*, 18(2), 35-46. <https://doi.org/10.12924/johs2022.18020035>
- Rocke, Michael, (2006): Forbidden Friendships: Homosexuality and male Culture in Renaissance Florence, Columbia University Press.
- Saleh bin Fawzan, Satisfactory Facts in Hypothetical Detective, Ta '3 Publications of Imam Mohammed bin Saud Islamic University, Saudi Arabia, 1408 Hijri.