

Criminalization Of Defamation And Backbiting The Jurisprudence Islamic And Statute Law

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Abstract In the Iranian legal system, divine law is the main source of legislation. In this regard, multiple topics have been discussed to examine the relationship between law and religious. So, here goes a question whether the law, especially criminal law should criminalize all religious sin or not, and the other point is whether the judge can prosecute a person according to unforeseen punishment in the Penal Code. The two sin which are considered as destructive and intense in Islamic law and jurisprudence are backbiting and defamation. Although Iranian law has a strong relationship with the jurisprudence, it also has its own principles. One of the most important principles are models and processes of criminalization. This means that, in order for a religious guilt to be treated as a crime in the law, it must successfully pass the criminalization models. One of the most common models for morally justified criminalization is filtering as a decision-procedure by Schonsheck Jonathan. After reviewing backbiting and defamation based on this model, it was found that the backbiting primarily should not be criminalized, however, if it makes the shame and damage the dignity of the person, can be criminalized on the basis of filtering model. On the other side, the study of defamation based on the filtering model represented that defamation should be criminalized and be regarded a crime. Considering Articles 12, 18 and 220 of the Penal Code, in the case of the unforeseen punishment should be stated that judges do not have the authority to prosecute the unforeseen punishment (prescribed or unprescribed) ruled by Islamic law and jurisprudence. Key words: Sin, Crime, Criminalization, Backbiting, Defamation, Filtering Model of Criminalization

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