

Legal- juridical study of deception in marriage from Imamate jurisprudence view and France view

Atiyeh Akhondzadeh^{1*} and Nader Mokhtari Afrakati²

1. Department of Jurisprudence and Principles of Islamic Law , Faculty of Theology and Philosophy, Islamic Azad University, Zahedan Branch, Zahedan, Iran

2. Department of Jurisprudence and Principles of Islamic Law, Faculty of Theology and Philosophy, University of Sistan and Bluchestan, Zahedan, Iran

Corresponding author: Atiyeh Akhondzadeh

ABSTRACT: In this paper legal- juridical study of deception in marriage from Imamate jurisprudence and France penal view have been investigated the research method is descriptive – analyticas.

The propose of this paper is to explain the deception dimensions in marriage and this issue is a crime from penal law and it will be punish. This paper identifies deception and trickery in marriage for people when people face it, know their rights and attempt to take their rights and it also compares two France and Iran penal views, determine strength and weakness and presents suitable strategies to prevent criminal act.

The results show that deception has been reproached in verses and narrations and is a crime legally. The punishment of deception is between 6 months to one year imprisonment of course, if – person who is perceived won't to continue life the right of marriage cancellation is considered without divorce phases and immediately. Article 1196 of France's civil code each trickery whatever mental or physical (action) in traduces as deception and considers punishment for it.

Keywords: marriage, deception, marriage cancellation, franc penal, special deficits.

INTRODUCTION

The high position of family is as the most identification of social institution from a long time and especially in the recent centuries. The importance of family in continuous conflate nation history is as some extent that each political, social and philosophical schools pay it from the primary days of emerging human on the land family is a considerable part of mental busies of human.

To live two human with each other by mutual agreement comprehension, sympathy and to provide bliss and health for themselves and their children, the main and essential condition is the interest and attachment to each other and the condition of the interest and attachment to each other is that in each one of parties, there isn't a cause that leads to hate and lack of unity.

In this research, it has been tried to introduce deception subject in marriage and study its cases and example and legal and juridical coordination.

Literature review and research background

About deception in marriage legal and juridical books and thesis have been performed such as: Leila sadat Asadi (2013) studied family penal law and two jurisprudence and civil law `s districts related to family and deception in marriage from jurisprudence and law Alireza Hasani (2004) studied marriage cancellation in Iran law and the munner of adduction of claims related to it and also it's condition and marriage cancellation because of deception and regarding it's similarity with deception option, he tried to study their difference.

Ali Hossein Najafi (2010) studied the history of penal thoughts that the legal and technical views of international penal law scientists have been used in this book and he studied international crimes law and studied penal rules of some countries about trickery in marriage.

Addolreza Diani (2008) studied family law, this book studies a mixture of ethics and rights, it also studied moral delicacies related to family and the rules related to marriage it's conditions and obstacles in detail.

Terminology meaning of deception in jurisprudence and law.

The terminology meaning of deception in juridical and legal texts is near to its verbal meaning but is wider. It means that one of parties in contract performs delusive acts or he/she awares and by trickery of other party, he/she can conclude it (Mir shamsi, 2011, 151:1). Thus, deception in addition to covering deficit includes non-existent perfection expression (Hosseini Ameli, volume 10, page 1107). According to article 438 of Iran civil law, deception is an operation that deceive contract parties, in more precise clause, deception in marriage is to hide deficit by fraudulently acts or introduce with perfection state that he/she doesn't have it.

Four factors effect on deception research

Deception examples

The most important samples of deception are the refusal of milking the milked animal temporally to milk more at the time of animal sale or covering deficits of woman with use of cosmetic materials.

The criterion to implement deception :

According to jurists and lawyers, each delusive act doesn't include deception, many common displays and simulation like in commerce like decoration of goods or cloth or the decoration of the parties of marriage contract at common extent is desirable from the wise view, it doesn't cause the option even though that some jurists considered them law full (Dr. Nasser Katosian v.s. p. 340) other samples of deception are deception in marriage that is by thrickey of spouse parents, concluder and even marriage mediator so that deceiver deceives other party (volume 5 p. 340).

Each one of parties deceive other pary by expressing perfection quality that he/she doesn't have or covering deficit that leads to marriage cancellation (Deyani, 220: 1).

Juridical study of deception in marriage

Juridical texts of Shiite and Sunni have direct points about deception. In the beginning of Islam and among prophet's companions and their quotation, there were samples of deception.

At the old Sunni texts, definition to Dales, means deception used for transition and the used cases is related to verbal meaning «poacher».

Deception elements

To implement deception there were two essential elements:

- 1) Material elements
- 2- spiritual element

Material element:

It means to perform fraudulently acts like use of cosmetic materials or a word that indicates the description of missed perfection and the point is that trickery wants to trick

Of course, if deception was transient and artificial or against the custom, it can be a deception, removing deficit permanently or creating perfection quality permanently can't be considered deception like implanting head hair, common surgeries like (naise) are permanent and a if an action is deceptive that is transient and removes by first bath.

Spiritual element

The acts that must be performed willingly and deliberately and by trickery intent, so that if this deception not perform and the parties weren't ready to marriage and contract is by trick, it is spiricual element of deception Deficits leading to deception and deception kinds in marriage. Each one of the below deficits is in man and woman during marriage and parties don't knows by deception intention such as:

1. Madness, sexual sickness, inability in matrimany act, cut- off of genital organ so that he can't perform sexual act.

Each of below deficits was in woman and man doesn't know

2. Madness, obstacle in valve, skin sickness, sexual sickness, puralytic, blindness of two eyes.

Deception kinds

According to legal sources and mainly publication related to family affairs, deception has various kinds. The general titles are as follows:

Deception in contract party, deception in physical characteristics, deception in mental and spiritual characteristic. Deception in educational and moral feature, deception in historical identity deception in cultural status. Deception in social status, deception in economical status, deception in political status.

Marriage cancellation resulting from deception

In marriage contract, man and woman have same situation namely, the will and intent and satisfaction of each one are condition for marriage correction. But about marriage cancellation is performed with one- side legal act and by unilateral obligation, namely the party who be tricked, can cancel marriage.

Marriage cancellation like cancellation of each other necessary contract is optional and in certain cases, according to law, is given to one of contract parties and one can cancel marriage contract. There fore deception is one of triple cases of marriage cancellation.

In Iran law contract cancellation and cancellation of marriage contract not need to deree of family court. Study of marriage cancellation mediated by deception.

Many jurists, according to narrations believe to cancellation right mediated by trickery in contract, some of them have mentioned virginity state after they mention deception

If the above condition is considered, if it violates, cancellation right is correct. Some jurists don't consider deception the cause of cancellation absolutely, but they believe cancellation right at the time of state conditions.

Penal responsibility of deception in marriage

Trickery in marriage measured bu crime as one of the crimes against family duties and rights in article 647 of Islamic penal code and it's punishment is 6 months to 2 years.

According to this legal article, if each one of parries befor marriage deceives other party by false affairs like high education, richness, social status, job and special position and marriage bases on them, the deceiver convicts to 6 months to 2 years imprisonment (Diani, 1998, 223).

Deception in France law

In france law deception has been dissussed. Article 1197 of civil code states that one of earties must do manetovers to implement deception. The word "maneuver" means measures or of material element of deception. In Rome law deception was crime and had penal punishment, france law included this subject in it's law. France courts and wide interpretation in moneaver word. Although the performed act in deception has penal aspect, but france legislator in civil section has implemented theoretical deception that even one can say this action includes silence and lie in much time.

In France law, usually hiding deficit isn't considered as deception in legal writings. Because other rules in other legal texts like guarantee of hidden deficit in sale and rent support the damaged person in other ways. Deception is regarded as consent deficit. While guarantee of hidden deficit not depends on consent analysis of contract and resulted from independent law order.

While in article 1196 of france civil law, actual deception has been mentioned, but legal interpretors emphasized on the promised deception on the other hand. If lying leads to conclusion of contract, then deception option exists.

By viewing france law one, can't understand that silence is a sample of deception absolutely. But in cases that silence is because of deficit hiding if it disclose, the other party doesn't want to contract, it can be considered as deception.

In France law, mental element of deception hasn't been mentioned expressly, but juridical interpretation and procedures indicate that France law validate mental element as one of constituent elements of deception. If an act not followed by mental bad intention, the contract isn't accounted deception conclusion.

In deception subject there are two elements include spiritual element to conclude contract. Deception in Islam law despite meaning does not comprehensire definition and its guarantee is more moral and other world. Jurists infer to the constituent elements of deception and some its examples.

Deception in Iran law and civil law has been presented about sale contract and marriage contract and it causes deception option for damaged person. In France law, deception has broad and wide meaning and formed from two material and spiritual elements. France law introduced material act of deception as maneuver that has broad concept and must be punished.

In this system, for the damaged person, there is the right of contract cancellation. Iran law has followed France law in deception.

REFERENCES

- Ansari M. 2004. misrepresentation of the marriage of the wife, the journal Proceedings No. 44.
- Asadi L. 2013. Criminal law of family, printing, Tehran, published by Mizan.
- Ayatollah Z. 1999. the effects of legal jurisprudence and deception in marriage, Qom, Qom Theological Faculty.
- Bokhnovh MH. 2001. A comparative study of cucumber misrepresentation in Islamic jurisprudence, Tehran.
- Boroujerdi Abdou M. 2001. Civil Rights first edition, Tehran, Majd Publications.
- Emami H. 1998. Civil Rights, Vol. 4, sixteenth, Tehran, Eslamieh Publication.
- Pour Amini L. 2007. relax in the family way, Qom, publishing Nineveh
- Jabari Arablu, Ardabil, M., (1362) Dictionary of Islamic jurisprudence, Tehran, Amir Kabir publication.