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Jurisprudential issues in which there are three aspects according to the Shafi'is from the book Al-Bayan by Al-Amrani (558 AH) regarding the issue if one spouse stole money from his significant other's safeguarded property

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Abstract--Imam Al-Omrani, may God have mercy on him, is one of the imams of the Shafi'i school of thought. He became famous and became famous among his peers. He was ascetic in this world, a devotee, a hermit, of soft nature, loved, revered and respected by people. He was distinguished by the strength of understanding, science, and wisdom, and this is evident through his works, the most important of which is his book Al-Bayan fi Al-Imam Al-Shafi'i school of thought, to the extent that he was called by it. He was called the author of the statement, and one of the most famous of what was mentioned in the book of the statement is the issues that came from three aspects, in which he, may God have mercy on him, explained the jurisprudential aspects that relate to each issue with the owner of the face mentioned with most of the issues. In my research, I showed a brief summary of the life of the Imam, may God have mercy on him, then I followed it up with an example from the book of theft, which is an issue that concerns if one of the spouses stole from the money of the other from what is considered a safeguard. So, I mentioned the Shafi'i aspects, and I did not limit myself to them only, but I mentioned the rest of the schools according to the agreement of the saying with the aforementioned face with mentioning the evidence and the most correct statement from them, and God Almighty knows best.

Keywords--jurisprudential issues, safeguarded property.

Introduction

The glorious Islamic Sharia was, and still is, its provisions valid for every time, place and every person. Where it answered all the questions and clarified and clarified everything that constitutes a Muslim person, and from here I would like to show a legal ruling that is compatible with the situation of its owner, brought by Islamic Sharia with what is consistent with the human nature that God Almighty created people with, as these issues are mentioned in three aspects in Shafi'i jurisprudence.

Research Problem

1. Mention a brief summary of Al-Omrani's life.
2. A statement of the ruling on the theft of one of the spouses from the same property.

Importance of the Topic

This topic and similar topics are of great importance in answering many questions that arise in the mind of the questioner and knowing the appropriate ruling for them.

Reasons for choosing such Topic

Because it is part of the requirements for obtaining a Master's Degree in Islamic Sciences.

Research Plan

This research consists of an abstract, an introduction, two topics, a conclusion, and references.

As for the abstract, I mentioned a brief summary of the research.

Then the Introduction

The First Topic: The Life of Imam Al-Omrani

The Second Topic: If one of the spouses steals the money of the other from the same property.

Conclusion: Includes the most important results.

The Life and Upbringing of Imam Al-Omrani

The First Requirement: Personal Life of the Imam

First: His name, birth and lineage

- 1- His name: "He is the jurist, Imam Jamal al-Islam, the sun of Sharia, Yahya bin Abi Al-Khair bin Salem bin Asaad bin Abdullah bin Muhammad bin Musa bin Imran" ⁽¹⁾.
- 2- His birth: Al-Omrani, may God have mercy on him, was born in the village of Sayer ⁽²⁾, but the people of al-Sayer and the translators differed about the

¹ Layers of the Jurists of Yemen, by Al-Jaadi (174)

year of his birth. It was said that he was born in the year 489 AH, that is, in the year 1096 AD ⁽³⁾. Al-Khatib al-Baghdadi, may God have mercy on him, stated that he was born in the year 487 AH. After tracing, it became clear to me that the year in which the Imam was born is (489 AH) ⁽⁴⁾, which is what he mentioned in most history books.

- 3- His lineage: Al-Omrani: It is related to his grandfather, Imran bin Rabia bin Abs ⁽⁵⁾, and may be attributed to his hometown: Al-Siri, in relation to the manufacture of Sir ⁽⁶⁾.

Second: His Upbringing

It is no secret to anyone that the country of Yemen is considered one of the Islamic countries that is famous for science and scholars. The urban imam grew up in it, studied and taught it at the hands of the most famous sheikhs and jurists at that time. He travels in the cities of Yemen and did not leave them, except for his pilgrimage to the Sacred House of God or a visitor to the tomb of our master Muhammad (peace and blessings of God be upon him), in the year (521 AH) ⁽⁷⁾.

First: His Conquest for Knowledge

Imam Al-Omrani, may God have mercy on him, began to seek knowledge from his early childhood, so he began from his youth to learn the Noble Qur'an and memorize it by heart, and all translations agreed that he took knowledge a lot from his Sheikh Shirazi, and he recited the polite and warning and some of the obligatory duties, and he was only 13 years old ⁽⁸⁾. He learned it from groups, including his uncle, Imam Abu al-Futuh bin Othman al-Amrani, and among them was Imam Zayd ibn Abdullah al-Yafa'i, and he heard the hadith from a group of the people of Yemen ⁽⁹⁾. In the year (517 AH) he traveled to Dhi Ashraq, and began his classification of the book of the statement in the following year (518 AH), and finished writing it in the year (533 AH). He also classified the appendages in the year (517 AH) and completed their classification after nearly 4 years ⁽¹⁰⁾. Then he made the pilgrimage from Dhul-Sharq al-Haram, and in Makkah al-Mukarramah he debated the Sharif "Muhammad bin Ahmed al-Othmani" on various issues of jurisprudence and theology. Then he visited the tomb of the Prophet (may God bless him and grant him peace) and then returned to Yemen ⁽¹¹⁾.

² It is called Masnaa Sir: It is a town in Yemen, east of al-Jund. See: Dictionary of Countries, Yaqt Al-Hamawi: (3/296).

³ See: Layers of the Jurists of Yemen, by Al-Jaadi: (174).

⁴ See: Gift of the knowers, by Al-Babani: (2/520).

⁵ See: Layers of the Jurists of Yemen, by Al-Jaadi: (174).

⁶ See: Mu'jam Al-Buldan, by Al-Hamwi: (3/296).

⁷ See: Al-Suluk, by Al-Jundi: (1/294-295), Shazarat Al-Dhahab, by Ibn Al-Imad Al-Hanbali: (6/310).

⁸ See: behavior, soldier: (294).

⁹ Tabaqat al-Shafi'i al-Kubra, by al-Subki: (7/336).

¹⁰ See: Tabaqat al-Shafi'i, al-Subki: (7/337).

¹¹ See: Tabaqat al-Shafi'i, al-Subki: (7/337).

Second: His Sheikhs and Disciples

His Sheikhs

All the sources that translated Imam, may God have mercy on him, agreed that he was keen to seek knowledge, learn it, and travel for it. Therefore, he met several sheikhs and took knowledge from them orally. Among his most famous sheikhs are:

- A- Abu Al-Fotouh bin Othman bin Asaad bin Abdullah bin Muhammad Al-Omrani. He is the uncle of the Imam, and the first to be famous for jurisprudence from among the children of Imran, and he is considered the first of his sheikhs who were taken from them. He took from him “Al-Tanbih” and “Kafi Al-Farid” in the jurisprudence of inheritance by Sheikh “Ishaq bin Ya’qub Al-Sardafi” ⁽¹²⁾.
- B- Musa bin Ali Al-Saabi, and he, may God have mercy on him, lived in the area of Dhul Hafar in the isolation of Naima, and he was a teacher there. Imam Al-Omrani took from him the book “Al-Tanbah” a second time. He died, may God have mercy on him, in the year 450 AH ⁽¹³⁾.
- C- Abdullah bin Ahmed bin Muhammad bin Abdullah Al-Hamdani, “He taught him about Abu Bakr Al-Mukhai and Zaid Al-Yafa’i, and he went to Ibn Abduwayh and recited it to him. Zabran used to live in the desert of al-Jund, and there he died in 523 AH ⁽¹⁴⁾. Al-Yafa’i had given him permission to issue a fatwa regarding calamities, and to give his name to it during his lifetime, trusting him with his knowledge and the quality of his memorization, and he preferred him to his companions because of his knowledge ⁽¹⁵⁾.

His Disciples

Imam Al-Omrani, may God have mercy on him, was keen to spread the knowledge that he spent most of his life seeking and learning, and he had many disciples, the most famous of whom were:

- A- Abu Al-Tayyib Taher bin Yahya Al-Omrani, the Shafi’i jurist, the son of Imam Al-Omrani, may God have mercy on him, was born in the year 518 AH. In addition to extreme piety and solid asceticism, he succeeded his father in the judiciary and knowledge, and after the strife that spread in the provinces of Yemen, he joined Mecca and lived there (7 years), then returned to his homeland (in 566 AH) and took over the district of Dhi Jableh and its works, and among his works: Al-Shafi’i and Ahmad), “The Purposes of Al-Luma”, “Aid of Students” and “Explaining Thought in Refuting Those Who Deny Predestination” and he was dominated by theology. He died, may God have mercy on him, in the year (587 AH) ⁽¹⁶⁾.

¹² See: behavior, soldier: (1/291, 294).

¹³ See: behavior, soldier: (1/284, 294).

¹⁴ Tabaqat al-Shafi’i al-Kubra, by al-Subki: (7/120).

¹⁵ Layers of the Jurists of Yemen, by Al-Jaadi: (154).

¹⁶ See: Tabaqat al-Shafi’i al-Kubra, by al-Subki (4/223), al-Alam, by al-Zarkali: (3/223).

- B- Ahmed bin Zaid bin Muhammad bin Al Hussein bin Muhammad bin Ibrahim bin Omar Al Yazni, he taught fiqh by Imam Yahya bin Abi Al-Khair, and he kept a copy of the book Al Bayan at the hands of his sheikh, he was the mufti of his country, and he died in the village in which he lived and his son came after him ⁽¹⁷⁾.
- C- Muhammad bin Muflih Al-Hadrami "He was one of the characteristics of his companions, and he referred to him in the sermon of Al-Mushkil, where he said, "Some of those who are dear to me asked me his question, and his worth and status are of a great consideration to me" ⁽¹⁸⁾.

Third: His Legacy

Behind Al-Imam Al-Omrani there are great scientific monuments, which are referred to as stubbornness. Among his most important scientific monuments are:

1- (Al-Bayan) The Disambiguation

It is one of the most famous books of Imam Ibn Abi al-Khair al-Amrani, may God Almighty have mercy on him, and it is one of the beneficial and blessed classifications, and one of the most important works of the Shafi'i school of thought, to the extent that he was famous for it, and one of his nicknames is "The author of Al-Bayan" ⁽¹⁹⁾. He began categorizing his book Al-Bayan in the year (528 AH) when he moved to Dhi Ashraq, and finished classifying it in the year (533 AH) ⁽²⁰⁾.

2- Appendages

Imam Al-Omrani, may God Almighty have mercy on him, composed the book Al-Zawa'id with a reference from his Sheikh Zaid Al-Yafa'i, meaning that he consulted his Sheikh which explanations are more appropriate to read. So, he collected everything that deviated from the Muhadhab and copied it. His sheikh al-Yafa'i advised him to collect all the existing explanations and extract their appendices on the book of the Muhadhab, so he collected it in the year (517 AH) and completed its composition in the year (520 AH) ⁽²¹⁾.

3- Victory, in response to the wicked fatalism

It is a book in theology, in which he supports his creed, and prejudices against the Ash'ari who say predestination, and exaggerated in his response to them and the Mu'tazilah, a matter that the jurists rejoiced when they finished it and copied it ⁽²²⁾.

Fourth: His Death

There is no dispute among historians that Imam al-Omrani died in the village of Dhi al-Saffal, to which he left at the end of his life. He died as a martyr on the night of Sunday, and it was said at the end of the night of Wednesday after dawn,

¹⁷ See: behavior, soldier: (1/355).

¹⁸ Behavior, for the soldier: (1/342).

¹⁹ See: Refinement of Asma and Languages, by Al-Nawawi: (2/553).

²⁰ See: Tabaqat al-Shafi'i al-Kubra, by al-Subki: (7/337).

²¹ See: Al-Suluk, by Al-Jundi: (1/295), Tabaqat Al-Shafi'i Al-Kubra, by Al-Subki: (7/337).

²² See: Al-Suluk, by Al-Jundi: (1/297), Shazarat Al-Dhahab, by Ibn Al-Imad: (6/310).

on the 16th of Rabi` al-Akhir in the year 558 AH, may God have mercy on him and grant him peace in His vast gardens ⁽²³⁾.

The Second Topic

If one spouse stole from the other spouse of the same property

The jurists, may God Almighty have mercy on them, agreed that the hand of the thief and the thief should be cut off if they stole that which necessitates the punishment of theft, and they fulfill the conditions that necessitate the punishment of theft, including what is in the thief himself and what is in the stolen thing and its place of property ⁽²⁴⁾. But they differed as to whether one of the spouses stole from the other's money, according to three opinions:

The first saying: If one of the spouses stole from the other's money, whether it is safe or not, it is obligatory for each one of them to be cut off, and this is the first view of the Shafi'is ⁽²⁵⁾. It was said by the Malikis ⁽²⁶⁾, and one of the two sayings of the Hanbalis ⁽²⁷⁾, which is the choice of Abu Bakr ⁽²⁸⁾, and Abu Thawr, and it is the apparent meaning of the words of Al-Kharqi ⁽²⁹⁾, and the Zahiriyya ⁽³⁰⁾, Zaydiyyah ⁽³¹⁾ (may God have mercy on them).

They cited the following:

First: From the Holy Qur'an:

The Almighty's saying: "(As for male and female thieves, cut off their hands for what they have done—a deterrent from Allah. And Allah is Almighty, All-Wise)" ⁽³²⁾.

Significance: The Qur'anic verse indicates the obligation to cut off whoever steals, whoever he is ⁽³³⁾.

Second: From the Sunnah of the Prophet

"Aisha said, "A woman from Bani Makhzumiya committed a theft and the people said, 'Who can intercede with the Prophet (ﷺ) for her?' So, nobody dared speak to him (i.e., the Prophet) but Usama bin Zaid spoke to him. a theft, they would cut his hand. But I would cut even the hand of Fatima (i.e., the daughter of the Prophet) if she committed a theft." ⁽³⁴⁾.

²³ See: Al-Suluk, Al-Jindi: (1/300), Tabaqat Al-Shafi'i, Al-Subki: (7/338).

²⁴ See: The Differences of the Scholars of the Imams, by Ibn Hubayrah: (2/ 270).

²⁵ See: Al-Muhadhab, by Al-Shirazi: (3/362), Al-Bayan, by Al-Omrani: (12/476), Rawdat Al-Talibeen, by Al-Nawawi: (10/120).

²⁶ See: The crown and the crown by Mukhtasar Khalil, by Abi Abdullah (8/419), the adequacy of the student, Al-Munofi: (2/436), in the language of the traveler, Al-Sawy: (4/254).

²⁷ See: Al-Kafi, by Ibn Qudamah: (4/74), Al-Mughni, by Ibn Qudamah (9/135).

²⁸ See: Al Kafi, by Ibn Qudamah: (4/ 74).

²⁹ See: Al-Mughni, by Ibn Qudamah: (9/135).

³⁰ See: Al-Muhalla Athar, by Ibn Hazm: (12/340).

³¹ See: Controversy, Sheikh Al-Tusi: (8/411).

³² Surah Al-Ma'idah: Verse 38.

³³ See: Tafsir Al-Razi: (11/352).

³⁴ Sahih Al-Bukhari: The Book of Limits, Hating Intercession in the Limit if Raised to the Sultan, No. (6788): (8/160).

"A woman committed theft in the Ghazwa of the Conquest (of Mecca) and she was taken to the Prophet who ordered her hand to be cut off. `Aisha said, "Her repentance was perfect and she was married (later) and used to come to me (after that) and I would present her needs to Allah's Messenger" (35).

Significance: It is not permissible to leave the implementation of the limits of God on those who deserve it, and whoever does this has violated the Sunnah of the Prophet, upon him be the best prayer, completed the submission and refused to follow his path (36).

Third: From Reason

Marriage is a contract in which the benefit is permissible, and it did not affect the forfeiture of the pieces, such as the lease. and what was narrated on the authority of Umar - may God be pleased with him -. it can be understood as: that he stole from a place that was not safe (37). The second saying: If one of the spouses stole from the other's money from a fortress or from a fortress, they went to the view that cutting is not obligatory, and this is the second aspect of the Shafi'is (38), which is the saying of the Hanafis (39) (may God have mercy on them). They cited the following:

First: From the Sunnah of the Prophet

Ibn 'Umar (May Allah be pleased with them) reported:

I heard Messenger of Allah (ﷺ) saying, "All of you are guardians and are responsible for your wards. The ruler is a guardian and responsible for his subjects; the man is a guardian and responsible for his family; the woman is a guardian and is responsible for her husband's house and his offspring; and so, all of you are guardians and are responsible for your rewards." (40).

Significance: From the hadith that if one of the spouses stole from the other's money, it is not interrupted by the presence of permission to enter, as each of the spouses is trustworthy over the other's money (41).

Second: From the Legacy

Ibn 'Umar has told that a man brought a slave of his to 'Umar and said, "Cut off his hand, for he has stolen a mirror belonging to my wife." 'Umar replied, "Cutting off the hand may not be inflicted on him. It is your servant who has taken your

³⁵ Sahih Al-Bukhari: The Book of Maghazi, Chapter: Who Witnessed the Conquest, No. (4304): (5/151).

³⁶ See: Explanation of Sahih Al-Bukhari, by Ibn Battal: (8/407)

³⁷ See: Al-Bayan, by Al-Omrani: (12/476).

³⁸ See: Al-Muhadhab, by Al-Shirazi: (3/362), Al-Bayan, by Al-Omrani: (12/476), Rawdat Al-Talibeen, by Al-Nawawi: (10/120).

³⁹ See: Al-Banna Sharh Al-Hidaya, Al-Aini: (7/36), Al-Hidaya fi Sharh Bidayat Al-Mubtada, Al-Marghinani: (2/367).

⁴⁰ Sahih Al-Bukhari: Book of Friday, Chapter on Friday in Towns and Cities, No. (893): (2/5).

⁴¹ See: Mirqat al-Maftahat, Explanation of Miskat al-Masbah, Ali al-Qari: (20/94).

belongings.”⁽⁴²⁾. That is, as long as he did not cut off his slave by stealing his money... he did not cut off his master by stealing it⁽⁴³⁾.

Third: From Reason

- 1- That each of the spouses has a suspicion regarding the other's money, as for the wife, she deserves alimony in the husband's money, and as for the husband, he has the right to restrain his wife and prevent her from disposing of her money (according to the saying of some jurists)⁽⁴⁴⁾.
- 2- The custom and the custom is that each of the spouses does not collect his money from the other, and if one of them gains his money from the other, it is rare, so they add the rare to the majority⁽⁴⁵⁾.

The third saying: If one of the spouses stole from the other's money from Haraz or from others, then in this saying they went to differentiate between theft of each of the spouses, meaning that the husband must be cut off if he stole from his wife's money, and the wife is not cut off if she stole from her husband's money, this is the third aspect of the Shafi'is (may God have mercy on them)⁽⁴⁶⁾.

They cited the following

First: From the Holy Qur'an

- 1- The Almighty's saying: "(Give women 'you wed' their due dowries graciously. But if they waive some of it willingly, then you may enjoy it freely with a clear conscience)"⁽⁴⁷⁾.
- 2- The Almighty's saying: "(If you desire to replace a wife with another and you have given the former 'even' a stack of gold 'as a dowry', do not take any of it back. Would you 'still' take it unjustly and very sinfully?)"⁽⁴⁸⁾.

The significance of the two verses: The two verses indicate that it is not permissible to harm wives, and this includes stealing from their money⁽⁴⁹⁾.

Second: From Reason

They said this is because the husband does not deserve any right to the wife's money and in return the wife deserves a right to her husband's money⁽⁵⁰⁾.

⁴² Abdul Razzaq's workbook, Kitab al-Laqta, chapter of betrayal, No. (18866): (10/210).

⁴³ Al-Muhadhab, by Shirazi: (2/362); Al-Majmoo', Al-Nawawi: (20/94).

⁴⁴ Al-Bayan, by Al-Omrani: (12/476).

⁴⁵ See: Al-Bayan, by Al-Omrani: (12/476), Al-Muhadhab, by Shirazi: (3/362), Rawdat Al-Talibeen, by Al-Nawawi: (10/120).

⁴⁶ same source.

⁴⁷ Surah An-Nisa: Verse 4.

⁴⁸ Surah An-Nisa: Verse 20.

⁴⁹ Tafsir al-Tabari: (20/94).

⁵⁰ Al-Bayan, by Al-Omrani: (12/476), Al-Muhadhab, by Shirazi: (3/362), Rawdat Al-Talibin, by Al-Nawawi: (10/120).

Choosing what is Reasonable and Correct

Thus, after presenting the opinions of the jurists, may God Almighty have mercy on them, and their evidence, it becomes clear to us that the second doctrine is preferable, which says not to cut, because the relationship between husband and wife is based on harmony, affection, and mercy. Also, for the simplicity of the life of the spouses together, especially in money, usually and indicative, and because between them is a reason for inheritance ⁽⁵¹⁾, it is not necessary for each of them to cut off, and God knows best.

One of the contemporary calamities of our time is the (Master Card). That is, if the wife takes this card and uses it without her husband's knowledge and he is not failing her right, she should not and is not allowed, and advice should be given and the matter explained to her, and the tolerant Islamic Sharia is very keen on the permanence of the family and the stability of its ties, it is better to overlook such if it is something light, in order to preserve the entity of the family, and this is in accordance with what the owners of the second opinion said.

Conclusion

At the end of this research, I reached the most important conclusions:

- 1- The generosity and simplicity of Islamic Sharia and that it is valid for every time and place.
- 2- The Shafi'i school of thought is considered one of the most important Islamic schools of thought spread in all Islamic countries.
- 3- Imam Al-Omrani is considered one of the pillars of the Shafi'i school of thought, and one of his most important jurists, and on his hand the Shafi'i school of thought spread, and he served the Islamic religion with what God gave him of knowledge and understanding.
- 4- Theft is a big matter that cannot be underestimated in any case.
- 5- The lack of interruption in the theft of the spouses came in order to preserve the entity and permanence of the family, because the Islamic religion is keen to strengthen the bonds of the family and not tolerate it.

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