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**INTERNATIONAL JOURNAL OF  
 ADVANCED RESEARCH (IJAR)**

Article DOI: 10.21474/IJAR01/2921  
 DOI URL: <http://dx.doi.org/10.21474/IJAR01/2921>



### RESEARCH ARTICLE

#### IMPLEMENTATION OF MARRIAGE DISSOLUTION BY *LI'AN* (INVOKING MUTUAL CURSES) IN ISLAM

Mahyidin Hamat<sup>1</sup>, Zuliza Mohd Kusrin<sup>1</sup>, Ezad Azraai Jamsari<sup>2</sup>, Noorsafuan Che Noh<sup>2</sup> and Md Yazid Ahmad<sup>1</sup>.

1. Department of Syariah, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, Selangor, Malaysia.
2. Department of Arabic Studies and Islamic Civilization, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, 43600 UKM Bangi, Selangor, Malaysia.

#### Manuscript Info

##### Manuscript History

Received: 24 November 2016  
 Final Accepted: 25 December 2016  
 Published: January 2017

##### Key words:-

*Li'an*, marriage dissolution, Patani Province, Southern Thailand

#### Abstract

*Li'an* as a mode of divorce is seldom used among the Muslim society. It involves taking an oath to avoid *hudud* punishment for the charge of adultery (*zina*). This research begins from a study by Abdul Rahim Abdullah which interpreted the term *li'an* as taking a religious oath due to a husband's accusation against his spouse, deemed as slander (*qazaf*) in the absence of four witnesses, whether to accuse her of adultery or to deny paternity of a child conceived by her. Thus, the purpose of this research is to explain in detail the concept and meaning of *li'an* in Islam. This research examines the law on *li'an* and its implementation according to Islam. In addition, this research also studies *li'an* as a mode of marriage dissolution according to al-Qur'an and al-Hadith. It also uncovers reasons for the occurrence of *li'an* and its implementation based on al-Qur'an and al-Hadith as well as the effect of legal implications on couples who go through it. The research methodology employed is literature review in order to obtain adequate related information on *li'an*.

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#### Introduction:-

*Li'an* is a method of taking oath to avoid *hudud* punishment for the charge of adultery (*zina*). *Li'an* is also a method for the purpose of denying paternity of a child. However, it is rarely practised as a form of divorce among the Muslim society.

#### Meaning of *Li'an*:-

*Al-Li'an* originates from the word (*لاعن*) and from *wazan* (*فانل*) which means to expel and being driven away from the mercy of Allah (al-Zuhayli, 1989). *Li'an* in *Ahwal al-Shakhsiyyah* (Muslim Family Law) terminology consists of specific words used as allegation by the accuser against his spouse for desecrating their conjugal bed and dishonour on the ground of adultery (*zina*). The act is named *li'an* because the words used by both parties in the procedure are swear words invoking the curse or wrath of Allah and in doing *li'an* the parties are distancing themselves from each other (al-Khin, 2007).

*Li'an* slightly differ according to the terminology of jurists from different schools of law (*fuqaha' al-Madhahib*). *Madhhab al-Hanafiyyah* states that *li'an* is a name which occurs between spouses with specific or prescribed pronouncements in their testimonies (Fath al-Qadir). In *al-Shafi'iyyah* school of law, the words used are for the

**Corresponding Author:- Ezad Azraai Jamsari.**

Address:- Department of Arabic Studies and Islamic Civilization, Faculty of Islamic Studies.

accusation of tarnishing the bedspread or carpet (dishonour) and relating it to denial of paternity for a child (al-Ramli, 1967). In *al-Malikiyyah* school of law, *li'an* is an oath taken by a husband, who is Muslim and accountable (*mukallaf*), that his wife has committed adultery or denying paternity of a child conceived by her. The wife also swears that the husband is falsely accusing her. Thus both spouses swear four times by pronouncement of *Ashhadu bi Allah* in the presence of a judge (*al-Sharh al-Saghir li Dardir*, 1/492). According to *al-Hanabilah* school of law, *li'an* is the testimony under oath of both spouses followed by an oath invoking the curse of Allah on himself and wrath of Allah on herself in the place of accusation for adultery (al-Bahuti, n.d.). And lastly, according to *al-Ja'fariyyah* school of law, *al-mubahalalah* (invoking mutual curses) between the spouses to avoid punishment for adultery and deny of paternity of a child through prescribed pronouncement before a judge (al-'Amili, n.d.).

#### **Legal Establishment of *Li'an*:-**

Legal authority for *li'an* is based on a few sources. The first is the commandment of Allah in al-Qur'an, surah al-Nur, 24:6-9 which bears the following meaning:

And for those who launch a charge against their spouses and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth; And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they are tell a lie; But it would avert punishment from the wife if she bears witness four times (with an oath) by Allah that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth.

#### **The second source is a Hadith as follows, meaning: -**

Sahl ibn Saad RA said: An Ansari man came to Allah's Apostle (pbuh) and said: "O Allah's Apostle! If a man saw another man with his wife, should he kill him, or what should he do? So Allah revealed concerning his affair what is mentioned in the Holy Qur'an about the affair of those involved in a case of *li'an*. Then the Prophet (pbuh) said: "Allah has given His verdict regarding you and your wife". Sahl RA said: "So they both carried out the process of *li'an* in the mosque while I was witness". In another narrative, it is mentioned: "Both of them carried out *li'an*. I was present among the people with Allah's Apostle(pbuh)" (al-Bukhari, 1993).

The third source is consensus of scholars. Scholars are unanimous in this matter and none of them dissented (al-Zuhayli, 2007).

#### **Conditions for *Li'an*:-**

There are six conditions for *li'an*. The first is that a person who does *li'an* must qualify to take an oath (al-Irdabili, 1970), that is, he must have passed puberty age and be of sound mind (Sabiq, 1969). The second condition is that the husband must have first accused his wife of adultery (al-Bujayrimi, 1951). The third is that the words of curse and wrath of Allah must come after the four oaths, and the four oaths must be consecutive. Any long pauses between the oaths will nullify or invalidate the *li'an* and require repetition of process.

The fourth condition is that the two *li'an* of the spouses are not required to be consecutive. The fifth condition is that the prescribed pronouncement of *li'an* may not be altered, hence both husband and wife must be committed to the truth of the words spoken. If one of them alters the pronouncement such as the oath (I swear in the name of Allah) or changes the pronouncement of wrath with curse or vice versa, the *li'an* becomes not valid. The pronouncements of *li'an* are narrated as clear evidence in the Book of Allah, therefore it is obligatory to maintain outwardly clear or definite statement in *li'an*.

The fifth condition is that the judge is obliged to advise the couple doing the *li'an* of the risk of severe punishment on the day of Judgment from Allah on the one who tells untruth. The sixth condition is that *li'an* may only begin upon order of the judge after he has instructed on how to do the pronouncement. If a husband does *li'an* before getting permission from the judge, his *li'an* is not considered valid. *Li'an* on the part of the wife may only be done subsequent to the husband's *li'an* (al-Irdabili, 1970).

#### **Reasons for Occurrence of *Li'an*:-**

*Li'an* occurs for two reasons. First, when a husband accuses his wife of adultery without producing four witnesses to support his allegation. The accusation may be true, for example if he himself witnessed with his own eyes his wife

in a compromising situation, but there are no four witnesses to corroborate his allegation or if the wife confesses to adultery and her confession is accepted and admitted based on clear and proven testimony. Thus in such a case, the husband shall as best as possible divorce his wife without *li'an*. But if her adultery is not proven with clear evidence, the husband may submit his allegation.

The second reason for occurrence of *li'an* is when a husband rejects the child conceived by his wife. For example, he admits that he has not consummated their marriage, or the wife has given birth to the child before six months from consummation. In this case, the *qadi* or judge shall remind and advise the couple, as explained by the Prophet (pbuh) in his hadith narrated by Abu Hurairah as follows, meaning:

Any woman who brings to a people (a child from fornication) not from that people, will not get any share from Allah, and shall not enter Paradise. Any man who rejects a child, whom he knows to be his, will be driven away from Allah, and will be humiliated in the presence of people before and after (Abu Dawud, 1990).

#### **Implementation of *Li'an*:-**

The majority of jurists hold the opinion that the process of *li'an* shall not be carried out except as recommended by Allah in al-Qur'an (Salleh, 2003), including the use of (prescribed) pronouncement. It also cannot be carried prior to a judge's order (Salih, 1979).

Before *li'an* can be carried out, it is commendable (sunnah) to select a suitable time for the event. The most suitable time is after *'asar* (afternoon prayer) on Friday. The venue would be the most honourable and glorious place in a country such as the place between *Hajar al-Aswad* and *Maqam Ibrahim* in Mecca, in the Apostle's (pbuh) Pulpit in Medina (al-Irdabili 1951), by the rock which was the *qibla* of past prophets (al-Haytami, 1971) or other places such as the top of the pulpit in a mosque (al-Bujayrimi, 1951).

At the event, there should be at least four witnesses, comprising of four pious, righteous and just believers. At the beginning of the ceremony, the judge will remind both parties, husband and wife, to fear Allah and advise them of a very grievous and lasting doom in the hereafter. This reminder has to be served more solemnly after they have finished the fourth oath, that is, before the fifth oath. While doing *li'an*, it is commendable to stand on their feet (al-Irdabili 1951).

As mentioned above, the first party to initiate *li'an* is the husband. He has to say "I bear witness in the name of Allah, that I am one of the truthful in the allegation of adultery against my wife and the child is from fornication and not mine". This statement is uttered four times. By the fifth oath, the husband must confirm with the statement, "I solemnly invoke the Allah's curse upon me if I tell a lie".

Before the fifth oath, it is recommended for the judge to read what was once said by the Apostle (pbuh) to Hilal, "Fear Allah. Verily the penalty in this world is lighter than punishment in the hereafter". It is also desirable that the judge order a man to close the mouth of the husband with his hand so that hopefully he may refrain from the fifth oath.

The same procedure is followed when the wife begins *li'an* against her husband. Before she begins it and before the fifth oath, the judge will also remind her of the grievous penalty in the hereafter. Then, he will order a woman to cover the wife's mouth with her hand with the hope that she will discontinue her intention to take the fifth oath. If she still intends to continue, the judge will so order (al-Bujayrimi, 1951). But in her case, the words Allah's curse are changed to Allah's wrath, with the pronouncement, "I solemnly invoke Allah's wrath upon me if he (the husband) tells the truth" (al-Haytami, 1971).

Imam Shafi'i held the opinion that if a husband forgets in his *li'an* to deny paternity of the child conceived by his wife, he may pronounce again in front of the judge. If the wife denies it, she may repeat her *li'an* against her husband (al-Shafi'i, 1973). According to an authentic opinion, the wife's *li'an* is irrelevant to paternity for the child (al-Bujayrimi, 1951).

### **Legal Implications of Husband's Refusal to do *Li'an* Upon Allegation:-**

According to *Madhhab* Maliki, Shafi'i and Hanbali, if a husband accuses the wife of adultery and then refuses to do *li'an* against her, he shall be punished for *qazaf* (slandering). By his failure to produce four witnesses to corroborate his allegation, he is considered as someone else (not as her husband). This means that the husband's accusation of adultery is treated as against another woman, not as against his own wife.

Therefore, in *Madhhab* Maliki, Shafi'i and Hanbali, the husband is considered as having slandered (*qazaf*) and faces two options, either to present evidence or face hudud punishment. This is based on the Prophet's (pbuh) hadith narrated by Ibn 'Abbas as in the following meaning:

That Hilal ibn Umayyah accused his wife of committing adultery with Sharik ibn Sahma' in front of the Prophet. So the Messenger of Allah said, "Produce proof or face punishment on your back". Hilal said, "O Messenger of Allah, one of us sees a man go on top of his wife's abdomen, you ask for evidence". The Messenger of Allah said, "Produce proof, or face punishment on your back" (al-Jawziyyah, 1990).

This hadith is authority that if a husband willfully accuses his wife of adultery without producing four witnesses, it becomes mandatory to sentence him with hudud punishment for slandering. But however, if he does *li'an* against his wife, the sentence is dropped. This principle is based on the majority opinion of scholars. However, *Madhhab* Hanafi holds the opinion that if a husband refuses to go through the *li'an* process against his wife, he shall not be sentenced for *qazaf*, but shall instead be imprisoned until he carries out *li'an* against his wife or he admits to telling untruth, in which case, the sentence for *qazaf* is imposed on him, that is, eighty stripes. Similarly, if a wife refuses to neutralize her husband's *li'an* against her in his accusation of adultery with her *li'an*, then according to Imam Malik and Imam Shafi'i, the judge shall sentence her with hudud punishment for adultery, that is, death by stoning (Said, 2001).

Similarly, Imam Abu Hanifah held the opinion that if a wife refuses to respond to her husband's *li'an*, she will not be sentenced for adultery. Instead, she shall be imprisoned first until she agrees to do pronounce *li'an* against her husband or admits to having committed adultery. If she admits guilt to her husband's allegation, the judge shall sentence her for hudud punishment for adultery. Imam Abu Hanifah's opinion is reasoned from the Prophet's (pbuh) hadith as follows, meaning:

It is not permissible to shed the blood of a Muslim, except for three reasons, adultery (*zina*) of the married man or woman, apostasy after believing (*murtad*), and killing another person not in retaliation (*qisas*).

Shedding of blood because of refusal to swear in *li'an* contradicts the principles of Islamic jurisprudence (*usul al-fiqh*). Thus most jurists do not make hudud punishment mandatory for refusal to swear in *li'an*, preferring to follow the better opinion of Imam Abu Hanifah. Strictly speaking, Islamic law protects against the claim for blood and a wife shall not be killed by stoning to death except if adjudged with utmost fairness with clear evidence or by her own admission of guilt. Nevertheless, Imam Maliki and Imam Shafi'i maintained their opinion that a wife who refuses to swear against her husband's *li'an*, shall be sentenced with hudud punishment for adultery, that is, death by stoning.

### **Legal Implications of Husband's *Li'an* against His Wife:-**

When a husband initiates *li'an* against his wife in the manner described above, five implications arise as follows:

First, the husband will not be subject to hudud punishment of *qazaf* (al-Nasa'i, 1964). Second, the wife will be sentenced with hudud punishment for adultery unless she also swears in *li'an*. Third, their marriage is permanently dissolved. Fourth, where the husband's paternity for any child conceived or thereafter born is denied, the child shall not take the husband's name and will be surrendered to the wife. Fifth, it is forbidden for the man and woman to re-marry forever as mentioned in two hadith of the Prophet (pbuh). The first hadith was narrated by Ibn Umar RA that: "The Prophet (pbuh) carried out *li'an* between a man and his wife, resulting in denial of paternity for the woman's child (the child could not take the father's name). The Prophet (pbuh) separated the couple, and established the child's lineage only to the mother" (al-Bukhari, 1993). The second hadith was narrated by Sahl ibn Saad RA who

said, "After that event, it became the practice (*sunnah*) that a couple who carried out *li'an* must be separated, and can never ever re-marry" (Abu Dawud, n.d).

#### Effects of *Li'an*:-

Upon the husband's *li'an*, the divorce is affirmed between him and his wife. The effect of divorce gives rise to five legal implications as follows:

First, the hudud charge of *qazaf* (slandering) on the husband is dropped. Instead, hudud charge will be imposed on the wife who shall have to do *li'an*. Second, a wife who chooses not to do *li'an* against her husband will be charged with adultery. If she chooses to swear in *li'an* against her husband, the sentence for adultery will be averted. Third, the couple will be permanently divorced by *talaq ba'in* (irrevocable divorce). Fourth, the husband will be denied paternity of the child if he rejected it in his *li'an* against his wife. Instead the child will only maintain lineage to its mother (the wife). Fifth, it is not permissible (forever) for the husband to re-marry the wife who did the *li'an*, even if she thereafter marries other husbands.

#### Conclusion:-

In conclusion, Islam is a simple and perfect religion. The laws relating to divorce are not to encourage divorce but may be taken and implemented in critical situations, that is, when a husband and his wife no longer have mutual love and affection for one another and married life becomes meaningless. In such cases, Shariah law allows mutual repudiation of the marriage. Most of the divorce cases frequently occurring between couples in Muslim society are by the modes of *talaq*, *talaq by ta'liq*, *fasakh* and *khulu'*. In comparison, divorce by *li'an* very rarely happens.

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