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Silence traces in Iran judgment religion jurisprudence

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Abstract

silence means refusing to say and not speak and will notice explicit or implicit legal concept lack of something. From a legal standpoint silence, except in cases of exceptional is effective and substantially lack of expression will parties is silent and this rule that silence gives consent, is including Iranian civil law origin effect, however, exceptional cases will be is silence effect. Imamieh silence as the absence is will not work unless in exceptional circumstances like silence virgin in marriage in the marriage contract, like all contracts of commitment is necessary so famous that requires commitment by the wife is declared by pair, Miss silence in marriage, according to legal scholars to accept stronger view is evidence of the commitment to prompt satisfaction that we have as a mirror of modesty virgins at marriage for the first time can be prevented from expressing and this is mirrored along silence implies consent. In this paper, we will be examples of silence in legal procedure, according to Shia jurisprudence examined.

Key words: Silence, Permits, Customs, Offer, Acceptance, Literature, Jurisprudence

Introduction:

Despite important role that has parties will in create legal effects as well as being willing to bet anything that indicates the intention to create its legal effects. In fact, both silent acquiescence, silence is not a sign of acceptance rather than rejection, is necessary legal determination of commitment, since there is no silence, nothing but silence can only veterans evidence is not necessary because it requires the existence its declaration of non-existence is impossible by acceptable jurists also as a general rule, it can be said that silence is the silence of a vehicle without a valid mirror. not accept the declaration stated that if the effects of the procedure This silence has to be symmetric with legal effects, such as silence for, when called on to read and lack vigor and reasons why a claim is denied his claim against the claimant claimed that the ruling requested by the defendant if the defendant swears But the claim will be discarded if it was not denied by the claimant turned into means that it is explicitly stated: I am not swear, this silence as acceptance is here.

Read the rules of the law of silence that the preliminary sentence has been served to the legal silently not to appeal the sentence above has been confirmed following the collapse of the constitutional deadline silently here as a defendant is acceptable. In this article we will try to silence the law library to research about the effects of Procedure Iran.

Defendant silence

Defendant for strict sense, a person who is justice. Whenever you want, read on and lack vigor claim denied his claim against the roots is claimed, that the claims of the ruling requested by the defendant, if the defendant is sworn in, the claim will be discarded; but when evil I swear it did not turn into claims, meaning that it is explicitly stated: I cannot swear I swear if the claim is true. In this case, if the claim oath, his assertion is proved. But if you refrain from oath, in fact, to remain silent, the right of the sentence he is given Read silence the Shiite.

plaintiff silence in Shiite jurisprudence: The judge must adopt the measures, disagree that their studies are discussed below:

1: Defendant prison

Many Shiite clerics or that, if read in silence magistrate's questions, to admit or deny the prison or those who want to exercise their right to pass.

The reasons for this category of law are as follows:

First:

It was narrated that the researcher has stated resolution, the text of this story is available and they have just said that this is the promise Marvi. According to this narrative, as a result, is controversial because it is not available due to the fact that the narrative text cannot be attributed to the Immaculate promise fulfilled to the authority of tradition is not enough. In addition, although the majority Shiite scholars agree promise to arrest and alleged ties have done, there is no consensus on it among the jurists and others have acted contrary to the tradition that the next words will be investigated.

Second reason:

The public narrative according to which the Prophet said: "The one who is retarding debt, punishment makes him reliable in business if their religion is not favored by God" is a kind of punishment.

This tradition is also controversial, because is MUFADDAL in a series of stories and this one is weakened by many Shiite. The punishment mentioned in the story, is not necessarily good prison because the general concept punishment is just one of the examples of Venice tradition is unique to the individual case that has proved it has the money to pay off debts person is in While we debated the existence of religion is not constant, and so, essentially narrative read as expressing there is rule from silence called for the conclusion.

2: following the orders enjoining evil

Some scholars believe that the silence when called, and shall not be required to answer him with soft words. If the answer was willing to make a commitment or a claim denial, it is time to consider the next steps if it did not, the judge repeated his demand for the faster this time, with expression and in the event that it to remain silent, the judge expressed by famous evil, repeats his demand for more severe verbal warning from any instrument sampling, beat, insult, - uses to break the silence Read into another. Seyed Ali Tabataban andAhmed NARAGHI that are a fan of the idea. Late NARAGHI writes: "If silence he is hurt, he is required to respond. This requirement first and then thanks to much higher concentrations far lower intensity according far from the famous will be denied. So if the goal is reached, or else he will hold to respond to questions. The prison until they respond, or the other person died, or die continues. The quality argument is famous for denied by the jurists, is as follows:

Firstly: without a doubt, detention, rights of instances it is necessary to deny that the prohibition, read with silence but want to achieve prohibits deserved. Read silence is so evil about him and shall implement the various stages prohibited. For this reason, it has been argued that it is not obligatory in all kinds of Called to the example of the famous is evil, but in some cases authorized by the virtue the evil of affairs cannot be allowed. Thus, it denied knowing Read silence is unfounded.

Second: public story that other than first promised, argued. in the narrative text, which includes qualified property is an absolute illusion of possessing the power to speak.

Any such claim against the silence that has refused to pay the rights of others, within your the solvent. The phrase different absolute evil is about to enjoin be different than reliance on a quiet run. Due to this problem, which has been compiled, is finally read something that silence can imply, the default of types, but the default type, depending on the nature of the dispute, in some cases, by rejecting the plaintiff is permitted, such as In the case of property, such as claims related to the wife, refused the oath is permissible for such action in cases such as property claims related to the wife, I swear to seek rejection is obligatory. Therefore, one cannot generally be denied any silence because the rejection will be permitted and not obligatory to leave it considered and rejected the arguments of reliance to be fast.

3: proof of claim

Read some jurists silent about the claim would prove their claims. The jurists are of the opinion that, writes: "The problem is that the urge to silence pledged in favor of the cause is that the ruling could his judgment ... and consequently, the applicant's claim is considered stable. For this promise, mentioned two reasons: The first reason narration from Imam Ali (AS), which according to tradition, brought him to a dumb person claiming to be a religion based on his neck lacks vigor. Ali ordered Quran and dumb person they said: What's this? The person's face to the sky and pointed out that the word of God. Then he ordered that the reason they brought him inkwell paper wrote that God swear to god but He, ... so, son of so and so, who claims that, in any way whatsoever and no causal volunteers upon certain rights, certain boy meaning person is not. Then Imam Ali (AS) and rinse it with the paper and dumb person ordered to drink the water, but the man refused mute. The Commander of the Faithful him to pay the debt forced proponents to prove the claim, saying that the story in question, Imam Ali (AS) to refuse the implementation of the oath, right into the claims made.

In the silence, the silence of the implementation of the oath read. Nevertheless refused to refer the plaintiff to perform Yamin need to read and to remain silent, the judge is required to give judgment in favor of plaintiff.

On this reasoning, it criticized the Imam Ali (AS) to spend avoid running into claims by right; the narrative is expressed primarily in the implementation of Yamin is quiet and is not related. Also this argument contradicts the Prophetic Hadith in which the Prophet said: I am only on the basis of evidence. Second, narrated by obey from Imam Sadiq (as) that he was right about the person against whom the claim alleging lack of evidence, but it is said that the man swore and oath to deny the rightful owner and if claims did not swear, for it is not right.

Believers to reject the oath according to the tradition, they say that when the judge read any alleged he had read that oath or swear or the reward he wanted it to. Otherwise, in fact, if the silence of the defendant, the judge right into demand data and type of demand is not required. on this comment forms Due to lack of evidence, which was entered by the claims, the term "right Fela crush" refers to calls, not to read. If you do not accept the view which makes the read the note, which said, is that this is not fixed to read than it is right that we claim to want to prove.

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4- Refused to take an oath or promise to default

Another view of Shiite jurisprudence provided by some, is called the silent, his silence is default and is rejected by the plaintiff. For example, Shaykh Tusi wrote: "But the third kind of premises defendant to ask three questions of his reaction to the proposed action (assuming all three are: confession, denial, and silence) Tub Time to remain silent, or say I'm not admit nor deny if applicable In these three times, he says, if the answer to claims not you? If you're silent, you are the default reject into the opposite side. Some said that he will hold to admit or deny respond to him when he did not put the default and default and does not warrant silence. If you say I do not confess, default is not the first .requirement of our faith is strong second.

writes this promise right from the verdicts of the jurists of our religion and what the religion requires is that the two things together, the default is to make his ruling. into the opposite side is rejected.

One of the contemporary jurisprudence also writes: If the defendant then demanded answers from him quiet if to excuse such as deafness or dumb or misunderstanding of language or because of anxiety and fear is ruling his excuse for what is right, fix If silence does not excuse him for, but out of stubbornness and obstinacy, the ruling him with kindness and tolerance, then the answer is highly concentrated. So if you insisted on silence, precaution is to say to her, "Answer me, or you default on my account." It is

better to be repeated three times. Then, if insisted, ruling rejected oath. So if the claim swear, deserved to be fixed .

The reason for this is that when I read the words expressed with respect to claims for the correct answer, a claim he denies, has also pledged to deny validity to lose. If you refuse to swear not to reject it, the judge put him swear into demand returns. If that is read from the beginning remain silent and request a hearing regarding pending claims does not respond (to admit or deny), a fortiori, is because of both the (admitted or rejected) and when they default Read the explicit denial of credit shall be judge, a fortiori, I read her silence will be valid .

According to previous conflicts, with full respect for the opinions, the last promise seems more logical because it promised to jail or proof of claim and to comply with the enjoining evil, the various aspects of the recent promise These problems have been cleared of silent Read more acceptable recognize and protect the rights of both sides is in order. The silence is finally read something that could have implications for those types of default of Eitan.

5: the role of silent expression of will

that is such. Article 717 of the Civil Procedure Law professors have mentioned it as the examples. Legislation: In the expression "data on legal fees but not legal fees and the folder Price, however, is silent about it is this silence as an expression of the folder indicates that the price is not legal fees." The Article 249 of the Civil Code of silence, even if the owner is not allowed to attend the ceremony, because silence does not mean the presence of the owner in terms of satisfaction with Iran's legislators will not be mirrored on the consent of the owner. The task of the House of Representatives on the need to break the silence duty is applicable constitutional principles into rules designs took into law.

6: silence on testimony from view of jurists

"Testimony" or "witness", the many legal books in a separate chapter entitled "Ironically martyrdom" is proposed, which is represents the most important cause of proof of claim in the view of scholars.

"Witness" means heart and is the legal term "judicial authority of the person seen or heard news or other information which are randomly or at the request of one of the parties has been the subject."

Testimony in Islamic law system of general schools of Islamic jurisprudence is unanimous fights and one of the reasons · stability is partly because is true certain powers Muslim religious evidence .

Jurists silent testimony would infringe upon the rights of others know, so jurists believe that the testimony is obligatory sufficiency, meaning that if multiple witnesses, the sufficiency of which is the necessity of testifying capitation, silently it is legally correct it and the prohibition placed. In accordance with Article 243 of the law civil procedure, evidence that the law has been invoked, if the deadline is not present, will be summoned again. According to this article, a witness refuses to appear before the court sanction except summoned again. The question that arises here is that if the witness would testify after silently invoke the silent witness viewpoint can be concluded? As with so confession testimony is necessary, or that the provisions of the witness can testify verbally or through gestures or hand write his testimony to confirm or deny the matter. The legislator did not mention the silent witness at the hearing and for the silence Vamtna Vedrine is the explicit provision of testifying, there is no enforcement. So until silence and state, cannot be authenticated into him, and also in accordance with the principle of to silent promise 'cannot be silent witnesses theoretical concluded.

7: induction silence provisions of Islamic law

Although scholars assume that silence means to interpret the will of the satisfaction of certain conditions agreed, but argued the validity of the different jurists. Now, briefly, to express some scholars argued over the silence will be discussed:

Zaydiyya Vamamyh believe that silence can be interpreted as the will of satisfaction, such as the virgin silence his marriage situations.

Malekite also agree in many cases Hanafiyya, including: the silence impossible in order to respect indicated his consent know
Shafyh, expression meaning rule "Laynsb Lsakt promise to Alhajh expressed per buying off" in many cases, silence is seen as a sign of satisfaction, such as reading the hadith narrated by Ibn Sina in the case of His silence indicated his satisfaction .
The Hanbali sect Considering the aforementioned points, associated with silence, there is much controversy, such as silence Shafi after finding the deal that is a symbol of the overthrow of its pre-emption.
But the famous rule "Laynsb Lsakt words" except in cases of limited into, accept, in such a way that Ibn Qudama said: "Language is a means to express things that are the heart, therefore, any local language interpretation for permission , except for low value and little things that silence, so side effects, alternative language, it is valid.
Regarded only two positions, silence will consider passage of Ibn Hazm said: "silence is consent only two signs:

Based on the evidence indicates silence

Another kind of silence, a silence that based on the evidence available, will be based on the satisfaction or non-satisfaction of the Moscow Tnh quiet, it will be marked. This silence, silence is called wear denomination it is that silence, the evidence provided by it will be the works of the law will be applied it is covered.
Mirror, means that the state law, the judge of something unknown, it is known to guide the Guidance. In almost all countries the rules of evidence, the arguments invoked. Including state laws in Iran, for example, in article 109 of the Civil Code, mirrored wall that is located between two property "was approved; it is an instrument of the common wall between the two properties is the owner unless Unlike symmetric or because it is available. "
Ibn al-Qayyim in this regard, said the lawyer, evidence, reasons for not paying the cancellation, but with sources and determine which factors in the induction law, the law of the harvest, they treated it as evidence that judgments on them will be introduced He symmetrical in terms of Islamic law, is legitimate; verses of Surah Yusuf 18.26 and 27 confirms this. Silence has custody of one year, in spite of having such a right, if married woman who has custody of the child into a symbol of the overthrow of custody because of his silence evidences of Reza considere. Some of the scholars, the defendant's silence as a sign of his aphorisms default issued against him the view, despite the traditional reasons, such mirror silence defendant's claims.

Standard silence Clothing

There are indications paying, the fundamental criterion is considered silence detection wear treated legal rule to buying off silent promise to Alhajh advertisement stated" concluded deploy alternative by need, silent about the speech that will be necessary, Confession is an expression that said, in some cases, a symbol of contentment, acceptance, acknowledgment, and is allowed as long as denial, rejection, lack of satisfaction and .... that evening on the basis of relevant evidence, the inference will be be. there are tow criteria to detect these cases:
First: In some cases, silence, his consent is that conceals a mirror, and this can be considered a proof of his consent said that the believe that the silence of a virgin in her, due to his shame, would conceal his satisfaction and from this it can be deduced his consent. Accordingly, seal his silence girl by her father, shall be interpreted as permission to bill .
But silence widow in her marriage, getting the seals to be considered, because of their tendency to hide her shame .
Venice silence someone donation or gift is given, because he was ashamed to admit it, a sign of his consent. By studying some legal issues as well as view the status of people in certain situations, Diane It

is understood that many people, because of embarrassing, to say yes, stating to accept, refuse, for example, the person in charge of, crushed, against, themed against and .... many cases, because the performance against them is a kind of thanks to other parts, due to the shame expression refuse to accept it, but the people, rejection and lack of acceptance, no shame and if you wish, very comfortable expressing their satisfaction with their lack rejected. In some cases, shame, modesty is a sign of lack of satisfaction that this interpretation will lead to understanding it will refuse to type was so symmetrical.

Second, losses and loss: in some cases, to signify silent when it is marked, silently, he interpreted his silence as will not have a negative position, where she used to silence He provided that there is no obstacle, as the speech is considered . this function, losses on financial relations is paying personal. Survey fields of jurisprudence, represents several cases in which silence, in order to prevent a loss of will be interpreted, including: silence Shafi seek pre-emption, if lack of knowledge of the deal, which means the loss of pre-emption will be. By this, because of customer losses because of pre-emption in the event of going, capture the customer on the property, not the absolute or the Shafi, at any moment it desires, he cancels the capture from the the President Hanafiyya, Shafyh, Hanbali and Shafi Shiite therefore seek to maintain that silence of pre-emption, would be pre-emptive decline .

One of those cases, silent couple gave birth to his son telling him that will be considered proof of acknowledgment of parentage and thus view Hanafiyya President, Malekite Vqvl New Shafi'iyya vote of religion Vamamyh Hanbali, couples can claim later denied birth ; the Zyraastma commitment to rejecting his claim on behalf of his son, son's wife cause harm .

In addition, he denied the confession will be heard. In the case of the "Civil Code in Article 1162 of this issue stipulates when a husband is explicitly or implicitly admitted that the father has, the action of denying the son of his for example, the husband, the letter or document, his father or his "Read your child is not going to be heard, if the explicit confession after his birth, the hospital presented with a bouquet presented to her mother, their satisfaction from the birth of a child is declared, be deemed to be an implicit acknowledgment. Silence before the sale, at times it's from being damaged, provided that the Notifier is righteous, consent is to defect. The group because Hanafiyya maintain that if the be unfaithful, Reza is because of the invalidity of the defect, the customer after notice of defect or it's going to remain silent.

conclusion:

The silence of the law and procedure generally in Iranian law as a lack of will silently with is not from a legal standpoint, except in exceptional cases filed It is not the lack of expression of the will of the parties is silent and this rule that silence on civil rights, including satisfaction of the conditions on the basis of the evidence of any impact. However, the silence will be paying Drmhtva Vmnsha' work. As a result of this article, were evaluated examples of the origin of such silence for silence, silence, read, proof of claim, silence and silence. In fact, contrary to the principle of whether silence means consent silently origin does not work, we conclude the silent any circumstances in jurisprudence and in other laws, not only silence origin effect with the effect of evidence such as those that the study highlights the intention of the parties was in fact with silence, then silence, but not always in exceptional cases will silence the party or parties and has legal effects of the assignments.

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