



The Jurisprudential Principles of the Nushūz of Husband and the Harms to the Wife with an Approach to the Rule of "Prohibition of Detriment"

Fatemeh Shekari

Level 4 Student, Seminary Teacher, Al-Zahra Institute of Higher Education, Semnan, Iran

Email: f.shekari1356@gmail.com

<http://dx.doi.org/10.18415/ijmmu.v9i1.3314>

Abstract

Maintaining the family center, good socializing, intellectual interaction, psychological peace of the couple and achieving growth and perfection through good socializing and intellectual interaction of the spouses, etc. are among the commands of the holy legislator which are explained in the divine commands. This will be achieved through the efforts and interaction of the spouses. But unfortunately, the basis of some jurists is only a one-sided approach based on the obedience of the wife and her lack of Nushūz¹, and less has been said about the jurisprudential argument of the husband's Nushūz. And ignoring this will cause harm to the wife, including mental and psychological damage and sometimes physical damages, such as the wife being in distress due to not receiving alimony or not paying attention to the wife's sexual pleasures, and having violent and unkind treatment to her and etc., which are realized through the Nushūz of husband. The present research article uses a descriptive and practical method based on collecting the contents and opinions of the jurists from the point of view of the jurists to explain the cases of the husband's Nushūz. Because Nushūz of the husband has caused special losses to the wife, and by relying on the jurisprudential rule of ("causing loss and damage is prohibited in Islam²"), a step can be taken to protect and respect the rights of the wife and prevent possible losses due to the Nushūz of the husband. So we can pay attention to the family center and the material and immaterial rights of both parties, especially the wife.

Keywords: *Nushūz; Tamkīn; Istimtā'; Rule of "Prohibition of Detriment"*

Introduction

One of the important educational contexts in the observance of human rights is the family, but many factors such as stinginess, boredom, selfishness, irresponsibility and... cause that spouses cannot easily provide for each other's rights. The Holy Qur'an, when there is a dispute between spouses, stating some educational principles such as goodness, peace, kindness and mercy, first advises tolerance and compromise between the parties, which is carried out by the couples themselves, and if it is ineffective, the Qur'an uses the judges and finally rulers' power to resolve differences between couples.

¹ refusal of a woman to fulfill her marital duties

² ((لا ضرر ولا ضرار في الاسلام))

According to the order of Islam to associate with the well-known and the jurisprudential rule of "Causing loss and damage is prohibited in Islam", any action and behavior that causes harm to the couples is repelled. Among the losses are non-payment of alimony, lack of association, misbehavior such as beatings, etc., which cause mental, emotional and even physical injuries.

And if two damages were in conflict with each other or one of the parties misused his right and caused the other damage, the holy legislator, according to the important goal of preserving and strengthening the family and to eliminate the damage in the conflict or conflict of damages, takes special measures. The present research article examines the instances of the husband's Nushūz, including non-payment of alimony by the husband, misconduct, and lack of intercourse with the wife, each of which in some way causes the wife to be harmed physically, mentally, economically, etc.

Conceptual and Theoretical Framework

In order to better express some issues, it is necessary to explain its important and basic words so that the subject is known and understood by the reader. Therefore, in the following, we will express some concepts.

Nushūz in Words and Terms

In the word: in the lexicographer's idioms, Nushūz (Ibn Manẓūr, 1407: 111) is called the high place from the earth. (Ibn Manẓūr, 1407: 711; Farāhīdī, 1409: 16) The Nushūz of wife is the disobedience to her husband and to have hatred and disgust toward him (Qomi Sabziwārī, 1090: 33) to leave the obedience of the husband and their relationship becomes weak. (Najafi, 1404: 31/200)

In the term: the literal meaning of Nushūz clarifies its idiomatic meaning, which the owner of Sharāyī' said that leaving obedience is Nushūz, and this is similar to the literal meaning which is the height of responsibility.

Whenever a man and a woman leave their duty, they are called Nāshiz and Nāshizah, because by not performing their duty, they have moved away from what God has made obligatory on them and they have not accepted it. (Ibn Manẓūr, 1407: 11/143) The owner of Jawāhir in the idiomatic sense of Nushūz considers it as the departure of each couple from obedience to the other and a subjugation, which is obligatory on each of them in relation to the other. (Mustafawī, 1989: 11/14)

Therefore, Nushūz in the word means height and rising, and in the term, Nushūz is the departure of a couple from obedience to each other.

Istimtā' in Words and Terms

Istimtā' i.e. enjoyment is an Arabic word from the article "Ma Ta 'Aa" and this article means to benefit and enjoy something. Thus, Istimtā' means seeking benefit and pleasure.

Istimtā': Istimtā' is sexual pleasure in a legitimate or illegitimate way through intercourse, kissing, looking, touching and the like. This title has also been mentioned on marriage and on the occasion of purity, fasting, I'tikāf, Ḥajj, trade and Ḥudūd. (Ḥurr 'Āmulī, 1412: 20/22, 23)

Thus, Istimtā' includes any legitimate sexual interest, but what we mean is enjoyment in a specific state, not in general.

Tamkīn in Words and in Terms

Tamkīn in the word means to place, to establish, to enable and dominate someone over something, etc. (Dehkhodā, nd: 4/6118) and in the term of holy legislators and jurists, it means that a woman is ready for her husband. It means that the wife is ready and obedient in sexual relations whenever the husband wants, unless the wife has a religious excuse (Najafi, 1404: 31/289). It is a legitimate and obligatory use for a woman to abide by her husband, and in case of violation the woman has no right to demand alimony. (Sajjadi, 1424: 1/587)

Rule of "Prohibition of Detriment"

Rule of "Prohibition of Detriment" is the most important jurisprudential rule that is used in most jurisprudential chapters. Shia jurists have considered the meaning of detriment to be customary harm and have considered it needless or indefinable. (Ibn Athīr, 1987)

A search in the words of some jurists indicates that this rule is mainly in the position of forbidding from causing harm in the position of judgment or ruling. (Ibn Babawayh, 1415: 3)

Checking the Types of Nushūz

Jawāhir and some other jurists have five promises about Nushūz:

The first promise: Nushūz is for the couple to get out of what is obligatory for him. This promise has been attributed to Jawāhir (RA) and Sheikh Tūsī in al-Nahāyah.

In the sense of Nushūz of man - which is mentioned in verse 128 of surah Nisā' - they have also mentioned resentment, beating, oppression, persecution, harm, reluctance and disrupting love and affection. To understand the exact meaning of Nushūz, it is necessary to pay attention to a few points:

A. The principle of Nushūz means height and prominence, which is derived from nashaza³, meaning the high parts of the earth. Therefore, the state of height lies in its meaning, whatever it may be.

If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if ye do good and practice self-restraint, Allah is well-acquainted with all that ye do. (Nisā'/128)

Here it means the reluctance of a man and the desire for another woman. Now, the truth of Nushūz must be considered as a meaning that is common in Nushūz on the part of man and Nushūz on the part of woman. It is said that reluctance is on the part of one of the two sides of the couple, and if the reluctance is on both sides, it will be a breach, which is mentioned in verse 35:

If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things. (Nisā'/35) This claim cannot be accepted for some reasons that we mention.

The second promise: Nushūz is for the wife to leave what is obligatory for her. This promise has been attributed by Jawāhir (Najafi, nd: 31/201) to Rāwandī's rulings.

The third promise: Nushūz is true for both men and women, who are free to follow the rules and regulations.

The fourth promise: It is true for a man and a woman if they leave their duty. And also if both of them did not perform their duty together, they will become Nāshiz that it will come later, which is also called a breach. This promise has been attributed to some by Jawāhir (Najafi, 31/200).

The fifth promise: None of the above three cases is Nushūz, but all three cases are called breach. This promise has been attributed to some jurists by Jawāhir.

In this article, a brief description of the wife's Nushūz is given, but the main discussion is about the cases of the husband's Nushūz, of course, considering the cases in which Nushūz causes harm to the wife in the form of physical and mental harm.

Nushūz of Wife

One of the most important issues in the marriage contract, which is considered based on obedience, is alimony. Nushūz is against Tamkīn so that the wife disobeys her husband. In this regard the woman is called Nāshizah. The jurists have given several examples. As Ayatollah Sistani believes in this regard, the wife's Nushūz is that the wife does not fulfill the rights that are obligatory to her. For example, the wife's Nushūz is that she has renounced her rights towards her husband and refrain from doing so. In other words, she must be obedient to her husband, and if she does not obey, she will be Nāshizah. (Sistani, 1410: 3/106)

It is also believed that a woman should keep herself clean from things that are contrary to pleasure and enjoyment, otherwise she will become Nāshizah, or that she will leave cleaning and make-up for husband, or that she will leave the house without her husband's permission, which will cause Nushūz. All these cases that have been said are in a place where this right is obligatory on the wife, but if the right was not obligatory on the wife and the wife did not obey it, she will not be Nāshizah, for example, the husband tells the wife to sweep the house and the wife did not do so, this woman is not Nāshizah. The jurists have mentioned some examples as the Nushūz of wife.

Strategies for Dealing with Wife's Nushūz

According to the obligations of both parties in marriage, obedience (special, and general obedience) is one of the duties of the wife. If these obligations to the husband are not observed, the example of the wife being Nāshizah will be realized. On the other hand, Islam does not want the marriage contract to be broken, so it has treated the issue of Nushūz so that Nushūz does not lead to divorce, separation and disintegration the family foundation. On this basis, the rulings of Nushūz are for the marriage contract to remain between a man and a woman, and God has stated its solution in a verse of the Qur'an. And He says in this regard:

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first),(next), refuse to share their beds, (and last)beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): For Allah is Most High, Great (above you all). (Nisā'/34)

And this is an appropriate treatment to the Nāshizah wife, and since the main topic of this article is not included, it will suffice.

Therefore, according to the verse mentioned above, God Almighty has stated some strategies such as preaching and advising in the first stage, turning back and separating the husband's bed from the wife, (and beating) and these are the stages of dealing with the wife's Nushūz.

Now, if a man does not fulfill the obligatory rights that a woman has on a man, he becomes Nāshiz, for example, he does not pay alimony to his wife, or he does not respect the right of his wife, or he separates himself from his wife, or he harasses his wife. Or he is bad-tempered with his wife without any legal reason (Al-Munjad: being harsh on his wife and being mean or stingy with her) (Sistani, 1410: 3/106)

Tahrīr of (Mousavi Khomeini, nd: 2/305) and Minhāj of Mohaqiq Khoei (Najafi, 1404: 31/200; Abdul Jabbar, 1418: 35) have mentioned the same theme and Ayatollah Wahid has not written a margin for Minhāj either that shows they accept this. It is one of the examples of the husband's Nushūz.

The Nushūz of a man is also realized by not paying alimony and refraining from the obligatory stay at home. (Mugahee, nd: 3) The main reactions in the family are peace and compromise, and if Nushūz manifests itself in it, each party is obliged to eradicate it and deprive it of activity and progress. The three rulings or the three solutions of preaching, separating and beating have been arranged on the fear of Nushūz, although some have taken it to mean certainty to Nushūz, or fear of Nushūz to the health of the family, and so on. But its appearance is a fear of Nushūz being realized.

Losses of Husband's Nushūz for the Wife

In the following, according to the jurisprudential rule of "no harm in Islam", the examples of Nushūz of man that cause harm to the wife are examined. Because each of the cases of Nushūz of the husband makes the possibility of physical and mental harm to the wife.

A. Loss of Non-Payment of Alimony by Husband to the Wife

Among the duties assigned to a man after marriage is to provide for his living expenses (Taheri, 1418: 3/194) including food, clothing, housing and daily necessities and other supplies (Fāḍil Lankarānī, nd: 2/403) without which life is shaken. (Sobhani, 1424: 2/290) This duty has been mentioned in jurisprudential and religious books named as "alimony".

The man is obliged to provide all the above-mentioned items for the wife's life, but if the man is unable to pay it or refuses to do so, the woman can turn to the holy legislator and ask for alimony. (Taheri, 1418: 3/194) If the man is not willing to pay for a woman's life or is unable to do so and does not divorce her, but the ruler of Sharia obliges her to divorce, and if she does not divorce, the woman, the holy legislator makes him divorce her. And if man doesn't divorce her, she is divorced by the holy ruler. (Makarem Shirazi, 1424: 1/2533) Failure to pay alimony in this case is one of the cases of necessary divorce that requires the law to divorce the couple.

Many divorces in this period are due to non-payment of living expenses by the man, although this factor is often due to unemployment, inflation addiction (Rahmati, 2005) and such cases. In any case, non-payment of alimony or miserliness in meeting the needs of the family can also be divided into three categories: one is negligible, in which case divorce is condemned. The other is tolerable, but there is a fear of other harm, in which case the divorce is commendable. Thirdly, it is difficult and unbearable, in which case divorce is necessary.

For example, Imam Ṣādiq (AS) has said about the following verse:

"Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. After a difficulty, Allah will soon grant relief." (At-Ṭalāq/7)

He said: "If a person does not provide adequately for his wife's food and clothing, there will be a separation between them." (Hurr Āmulī, 1409: 14/1)

From this hadith and similar hadiths (ibid., H. 2 and 4) it is clear that whenever the husband refuses to pay alimony to his wife, the religious ruler can divorce the wife against his will, and prevent harm to the wife. And the existence of damage according to the "Rule of no harm" causes the issuance of such a ruling.

B. Loss of Husband's Nushūz When Not Satisfying Sexual Needs of Wife

One of the examples of psychological damage caused by the Nushūz of the husband, which includes the wife, is the failure to meet the sexual needs of the wife. For this reason, a husband should sleep in his wife's bed at least once every four nights (Taheri, 1418: 4/446) and have sex with her at least once every four months (Mousavi Khomeini, nd: 509) Of course, this is the legal minimum dimension, otherwise the man is obliged to satisfy his wife's sexual needs.

The husband cannot avoid sex with his wife for more than four months without a legal excuse. In such a ruling, it is also stated in Tahṛīr al-Wasīlah that: Abandoning one's wife is not permissible except with her permission. Of course, this is a special ruling if the husband or wife has no excuse, but if there is an excuse, it is absolutely permissible to leave it as long as the excuse remains. (Ibid. 4/15)

In addition to the arguments stated in jurisprudential books, the narrations also indicate that if a man has abandoned sexual intercourse with his wife for more than four months, the wife can file a lawsuit and oblige her husband to respect her rights or request for divorce.

«إِذَا غَاضَبَ الرَّجُلُ امْرَأَتَهُ فَلَمْ يَقْرَبْهَا مِنْ غَيْرِ يَمِينٍ أَرْبَعَةَ أَشْهُرٍ اسْتَعَدَّتْ عَلَيْهِ فِيمَا أَنْ يَفِيءَ وَ إِمَّا أَنْ يَطْلُقَ فَإِنْ تَرَكَهَا مِنْ غَيْرِ مُغَاضَبَةً أَوْ يَمِينٍ فَلَيْسَ بِمُؤَلِّ» (وإف، 116/3)

According to the above hadith, woman can file a lawsuit against the husband and the ruler will force him to return or divorce.

C. The Damage Caused by The Misconduct of the Husband

During marriage, a man and a woman commit to live together and share in each other's sorrows and joys. Marriage between a man and a woman means that their behavior is accompanied by happiness, peace and kindness.

"Good" versus "Evil" means a behavior that is legally and intellectually acceptable, which in general, refers to paying woman's rights, including fairness in the part, alimony and good speech and behavior. That is, man shouldn't hit the woman and do not say bad things to her and be kind with her (Hurr Āmulī, 1409: 22/113)

Thus, examples of abuse include bullying, beatings, arguing, humiliation (insult), disregard for one's spouse and her desires, harmful addictions, oppression, harm, and harshness. The Holy Qur'an has explained this issue by stating a general principle called "Good Companionship": And treat them (women) properly.

Perhaps the reason for addressing the man in this verse and other similar verses (Nisā': 19; Baqarah: 229 and 231) is the strong desire of the woman for affection and love (Salarifar, nd: 45) and on the contrary, the physical ability of the man and his less emotional power. So she is possibly being beaten and less likely to be noticed by a man. One of the examples of abuse is "beating". Sometimes disputes and conflicts between men and women lead to loud shouts that the parties must end this dispute with self-control. But in some cases, due to factors such as poor internal control of this high stress, leads to beatings. This act, with all the ugliness that follows, is tolerable in many cases, but sometimes it is not tolerable, it causes a lot of mental and physical damage, and it is resulted to the murder of the couple, especially by the man.

D. The Harm Caused by The Unkindness of the Husband Towards the Wife

One of the basic foundations of married life is love and kindness. This factor is more important in women due to the spiritual differences between men and women; because women need love and men need gratitude. Hence, if this pillar is endangered by the man towards the woman and the man shows indifference and unfaithfulness to his wife, the woman, in addition to becoming cold and disinterested towards him, also seeks the dissolution of life. Because this indifference on the part of women means the collapse of the main pillar of life. But if this principle is endangered by the woman, it is not as important to the man as it is to the woman. Therefore, the ultimate unkindness of a woman to a man leads to two or three days of anger. Because women are very important due to the sensitive spirit of femininity and motherhood.

E. Damage to The Wife Due to The Beating of the Husband

One of the examples of abuse is "beating". Sometimes disputes and conflicts between men and women lead to loud shouts that the parties must end this dispute with self-control. But in some cases, this tension rises due to factors such as poor internal control, leading to beatings. This act, with all the ugliness, is tolerable in many cases, but sometimes it is not tolerable, it causes a lot of mental and physical damage, and it is resulted to the murder of the couple, especially by the man. Many people who have referred to the judiciary have mentioned beating as the reason of divorce. Therefore, in cases where the man feels that their differences are out of control, leading to violence, divorce is the best thing to do (Amīnī, nd: 47/62). Therefore, this type of abuse is divided into three categories: negligible, tolerable and intolerable. In the latter case, divorce is necessary after the treatment and correction process.

F. The Husband Does Not Agree to The Divorce of the Wife and the Wife Suffers

Another reason for proving this theory, which of course can also be mentioned as the basis of judicial divorce, is the rule of "Negation of distress and constriction" and the rule of "Prohibition of detriment" (Ḥurr Āmulī, 1409: 17/341; Kulaynī, 1407: 5/280) no harm is in Islam. And there is no harm in Islam. This rule is used for one of the two purposes: "Proving the right of termination for the wife" in case of the husband's Nushūz and it is not possible for him to comply with the law and "Proving the right of divorce for the ruler" which is not accepted by Imāmī jurists (Sistani, 1414: 133, 149, 302 and 303) but the second is accepted (ibid., 134 and 150) and the argument is that the husband's sovereignty over husband over the absence of divorce, assuming the husband's Nushūz, is the source of harm to the wife. Therefore, with the rule of negation of harm, this ruling (husband's reign over non-divorce) is annulled and, as a result, divorce is enforced on the husband, and if he refuses to do so, the ruler, as the impossible guardian, will execute the divorce. In other words, if the husband refuses to perform his duties and it is not possible to force him, the only possible way to eliminate the substance of the damage is the intervention of the ruler and the elimination of the cause and source of the damage, which is possible except by divorce from the ruler. Therefore, the ruling divorce in this case is like the cutting down of the Ansari tree by the Holy Prophet (PBUH) which is one of the cases of the ruling dignities (Allameh Hillī, 1413: 210). Of course, it is necessary to remind that what is conditional about the distress and constriction of judicial divorce is that the woman is in a difficult situation that is unbearable. (Habibi Tabar, nd: 434)

The mentioned cases are some of the cases of the husband's Nushūz and other examples may be significant, including not talking to the wife and creating irrational acts for the wife, etc., which are all considered as cases of Nushūz. Now, with an approach to the cases of Nushūz, what is the solution? What are the duties of the wife when dealing with these cases?

The Wife's Attitude in The Face of the Husband's Nushūz

The first stage: the wife demands from the husband: the wife's duty; in case the husband refuses to pay alimony, the wife first demands her right and advises the man to fulfill his obligatory Shar'ī rights and to renounce his opposition.

Second stage: If the advice had no effect, the wife goes to the holy ruler and complaints against her husband and she has no right to be angry with her husband or beat him.

The third stage: When the holy ruler is aware of the Nushūz of man, finds him, forbids him from doing haram work and instructs him to perform his obligatory duty. If the command and prohibition of the ruler do not benefit him, he does what he deems fit, which sometimes makes it possible to ask the wife for a divorce, because this is explicitly mentioned in the Qur'an, where God says: A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness. It is not lawful for you, (men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she give something for her freedom. These are the limits ordained by Allah. So do not transgress them if any do transgress the limits ordained by Allah, such persons wrong (themselves as well as others). So if a husband divorces his wife (irrevocably), he cannot, after that, re- marry her until after she has married another husband and he has divorced her. In that case there is no blame on either of them if they re-unite, provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah, which He makes plain to those who understand. (Baqarah/229-230)

The returnable divorce is twice, either keeping the wife with joy and harmony, or let her go in a good manner. In another verse He also says: " When ye divorce women, and they (are about to) fulfill the term of their ('Iddah), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if any one does that; he wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favors on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things." (Baqarah/231)

In verse 2 of Surah Ṭalāq, God commands you to separate well: Thus when they fulfill their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endued with justice, and establish the evidence for the sake of Allah. Such is the admonition given to him who believes in Allah and the Last Day. And for those who fear Allah, He (ever) prepares a way out, (At-Ṭalāq/2)

These verses show that the husband, in relation to his wife, must follow one of the two methods mentioned in the verse. Either he fulfills his rights and duties towards his wife in full (Imsak bi Ma'rūf) or he divorces her according to the rules of Sharia (Taṣrīh bi Iḥṣān) so that the woman can continue her life and the third way has not been determined by God.

Another part of God's word confirms this statement; where He says: Do not treat your wives in a harmful way to oppress them. According to this clause, any kind of maintenance of the spouse that causes harm to the wife is not lawful. Now, this loss is due to the husband's voluntary fault (such as leaving charity, miscommunication, etc.) or the introduction of forced and involuntary loss (such as inability to spend, etc.). The inclusion of involuntary cases in this discussion is due to the fact that the word "To transgress" in the verse in question does not simply mean arbitrary abuse and oppression, so that cases of harm to the wife due to involuntary matters are excluded from the verse. Because the application of the word "To transgress" on involuntary oppression and aggression is as correct and appropriate as its application to arbitrary oppression and abuse.

Just as Nushūz is realized by the wife, so also Nushūz is realized by the husband by violating the wife and not rebelling against the obligatory rights of the wife. So, if Nushūz of husband becomes apparent due to the obstruction of the wife's rights, such as the division of cohabitation and alimony, and the like, then she has the right to demand from the husband, and she preaches to him, so if it does not work, she takes the lawsuit to the holy ruler and he obliges him to do so. And the wife has no right to abandon or beat the husband, and when the ruler learns of the husband's Nushūz, he forbids her from

doing what is forbidden to her and to do what is obliged to her. He is obligated to give orders, so if he benefits, that is the same, and otherwise he punishes him. And the ruler has the right to give alms from the husband's property - if he refuses it - and the ruler can sell his property (Feyz Kashani, 1406: 2/302) If the husband abandons some of the wife's non-obligatory rights or decides to divorce her because he hates her for being too old or otherwise, or decides to marry another woman, then the wife can forgive some of her obligatory rights, such as the division of cohabitation or alimony, and they become halal for man. But if he leaves some of the obligatory rights of the wife or harasses her by beating or insulting her and so on and the wife also forgives her money or some of her obligatory rights until the husband divorce her. Then this money is haram to the husband although he has no intention to force her to renounce her right.

The verdict of a man's Nushūz is the obligation of the ruler to perform his duties, and in the case of refusal to give alimony and the impossibility of giving alms, the ruler can divorce her after referral of the wife and request for divorce and the ruler can force the husband to divorce her wife if he refuses to perform the marital act.

In other words, the ruler makes man choose between performing a duty or divorce. This forced divorce is valid, and in the absence of the ruler, the believers will perform this act (Rouhani, nd: 1/113).

According to the solutions provided, you will find that the holy legislator is not satisfied at all with the squandering of the wife's rights, either financial rights, including non-payment of alimony, or legal rights related to the spiritual and psychological affairs of the wife.

Conclusion

From the issues raised, we conclude that according to the rules and regulations of God for husband and wife based on good fellowship and maintaining the family unit and any of the cases that are the main and essential need to maintain the family, if a couple based on non-payment of alimony, lack of good company or beating, lack of sex and any other cases that apply to the Nushūz of the husband, and this is while some consequences happen such as psychological damage, economic damage and non-payment of financial rights ... and even the possibility of deviation of the wife and any kind of behavior of the husband that causes the Nushūz of the husband. So he is considered Nāshiz based on the jurisprudential rule, which finally the woman can ask for divorce with the advice or referring to the ruler, who can rule on divorce based on the rule of "There is no harm in Islam".

References

Holy Qur'an (Translated by Āyatī)

Allameh, Jamaluddin Hassan, 1413 AH, Qawā'id al-Aḥkām, Qom, Islami.

Amīnī, Ibrahim, nd, Familiarity with the duties and rights of women.

Dehkhodā, Ali Akbar, nd, Dehkhodā Dictionary, Tehran, Volume 4, University of Tehran.

Farāhīdī, Abdul Rahman Al-Khalil ibn Ahmad, 1409 AH, Al-Ayn, Beirut, Dar al-Hijra.

Feyz Kashani, Mohammad Mohsen, 1406 AH, Wāfī, Isfahan, vol. 3, Amir Al-Mu'minin Library.

Habibitabar, Jawād, nd, Family Law, np.

Ḥurr Āmulī, Muhammad ibn Hassan, 1409 AH, Wasā'il al-Shia, Qom, vol. 14, 15, 17, Al Bayt.

Ibn Athīr, 1366 HS. Al-Nihayah fi Gharib al-hadith, Qom, Ismaili.

- Ibn Babawayh al-Qomi, Muhammad ibn Ali ibn al-Hussain (Sheikh Sadūq) 1415 AH. Al-Muqni, Qom, Imam al-Hadi (AS).
- Ibn Manzūr, Abu al-Faḍl, 1407 AH, Lisān al-Arab, Beirut, Dar al-Fikr.
- Khomeini, Mousavi, nd, Taḥrīr al-Wasīlah, Imam Khomeini, Qom, vol. 2, Dar al-Ilm.
- Kulaynī, Muhammad Ibn Ya'qub, 1407 AH, Furū' Kāfī, Tehran, vol. 5, Islamic Library.
- Lankarānī, Mohammad, nd, Fāḍil Jāmi' al-Masā'il, Qom, vol. 2, Amir Qalam.
- Makarem Shirazi, Nasser, 1424 AH, New Istifta'at, Volume 1, Imam Ali School Publications.
- Mugahi, Abdul Rahim, nd, Family Rules, np.
- Muḥaqqiq Ḥillī, Ja'far ibn Hassan Ḥillī, 1408 AH, Sharayī al-Islam fī Masā'il al-halal wa al-Haram, Qom, vol. 2, Ismaili.
- Mustafawī, Hassan, 1368 HS, Research in the words of the Holy Qur'an, Tehran, vol. 11, Book Center for Translation and Publishing.
- Najafī, Mohammad Hassan, 1404 AH, Jawāhir al-Kalām, vol. 31, Dar Ihyā al-Turāth.
- Rahmati, Mehdi, 1386 HS, Economic Fluctuations in 1985, the Factor of Increasing Divorce in Tehran, quoted by: shahr.ir, April 15, 2007.
- Rouhani, Seyyed Mohammad Sadegh, nd, Judicial Referendums and International Law Firm, Vol. 2, np.
- Sabziwārī, Muhammad Bāqir (Sabziwārī), 1090 AD, Kifāyat al-Aḥkām, Qom, Sadr Mahdavi School.
- Salarifar, Mohammad Reza, nd, An Introduction to the Family System in Islam, Qom, Book Garden.
- Sharareh, Abdul Jabbar Ahmad, 1418 AH. The theory of negation of harm in Islamic jurisprudence, the relationship between culture, and Islamic relations.
- Sistani, Ali, 1410 AH, Minhāj Al-Ṣālihīn, vol. 3, Dar al-Ta'aruf.
- Sistani, Ali, 1414 AH, Rule of no harm and no detriment, Qom, the office of Ayatollah Sistani.
- Sobhani Tabrizi Ja'far, 1424, Zakat in Islamic Sharia, Qom, vol. 2, Imam Ṣādiq (AS) Institute.
- Ṭabrīzī Jawād Ibn Ali, nd, New Istifta'at, Qom, np.
- Taheri, Habibullah, 1418 AH, Civil Law, Qom, vol. 3, Islamic Publications Office.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).