



DISOBEDIENCE OF THE WIFE: ITS PROVISIONS AND EFFECTS ACCORDING TO THE LAW AND ISLAMIC LAW, A COMPARATIVE STUDY

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Article history:		Abstract:
Received:	November 20 th 2021	The place of disobedience must be of great importance in family life. That is why Islam, with all its legislation, is keen to preserve family life and combat all behaviors that would destroy this intimacy between family members, especially with regard to what is between husband and wife, which is the main pillar of the family and its formation. Hastening to put in place the necessary measures to reform the family's affairs when any dispute arises that would lead to a dispute between spouses to reduce the possibility of divorce and the dissolution of the family bond. Therefore, we discussed in the first section of this research the definition of disobedience and its cases in jurisprudence and law. As for the second topic, we referred to disciplinary measures. The wife and its effects, then the results and recommendations we reached, and God grant us success.
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INTRODUCTION

It is considered one of the most important requirements for building civilized and advanced societies that keep pace with the development taking place in various fields, whether social, civilized or cultural, is to build a strong interconnected family free of differences and marital problems.

One of the most prominent problems facing the marital and family relationship is the phenomenon of disobedience. Therefore, Islamic Sharia was interested in explaining the reasons and appropriate treatments for this phenomenon in order to maintain the continuity of the marital relationship, to be the basis for building these developed societies. This was done by researchers or the legislator, where they touched on the issue of disobedience with some brevity and relied on Islamic law and jurisprudence in dealing with cases of disobedience that were not dealt with by law, so we wanted from this research to be one of the contributors to developing effective remedies and solutions for what the law neglected in its articles.

RESEARCH METHODOLOGY

In this study, the researcher relied on the comparative analytical method in analyzing the texts of law and Islamic law, deriving legal and legal rulings, and supporting the research with some judicial decisions to address the problem of disobedience.

The first topic: Definition of rebellion and its cases

The first requirement: the definition of nushuz

First: Definition of Nushouz Language:

An-Nushuz is a language of oddity. The weight of the fil is a high place on the ground, and its plural is nushuz. Likewise, "Nushuz" is two-holes, and the plural is "Anshaz" and "Nashaz" with a fracture like a mountain, a mountain, and a mountain (1) and "Nashuz" a man rises in a place and his door is struck and victory, and from him the Almighty's saying: So they rebelled" (2) and the woman disobeyed her husband, and she hated him, and at his door, he entered and sat down, and her husband disgraced her(3).

Al-Nashuz is also the matan that rises from the ground, and the plural is anarchy and disobedience, and an-Nushuz: it is what has risen and appeared from the ground (4).

Secondly, the definition of nushuz idiomatically

There are several interpretations of the term "disobedience", where Ibn Kathir mentioned in his interpretation: The disobedient woman: she is the one who rises above her husband, who abandons his command, which turns away from him, and hates him (5).

Al-Tabari explained it by saying: His saying "their disobedience" means that they are superior to their husbands and rise above their beds through disobedience from them, and the disagreement over them regarding what they are obligated to obey them in, out of their hatred and disdain for them (6).

Third: Defining disobedience in jurisprudence

Islamic jurists have dealt with many definitions of disobedience, as shown below

** Definition of disobedience according to the Jaafari jurists



The wife's disobedience is achieved by her deviating from the obedience of the husband that is obligatory upon her by not enabling him to enjoy what he deserves, as well as by leaving her home without his permission(7).

**** Definition of disobedience according to the Hanafi jurists**

That the wife left her husband's house unjustly (8), and in this definition indicates that the reason for the wife's disobedience is her leaving her husband's house unjustly.

Another definition was mentioned in the Hanafi jurisprudence, which is the one who leaves her husband's house without his permission, and the same prevents him from doing so (9).

**** Definition of disobedience according to the Shafi'i jurists**

The Shafi'a jurists defined it by saying: "A disobedient wife is a disobedient woman who disobeys her husband." (10) Accordingly, the wife is disobedient if she leaves her husband's house without his permission or prevents him from enjoying her.

**** Definition of disobedience according to the Maliki jurists**

It is the wife's departure from obedience to her husband or the deviation from the obligatory obedience, and here the obligatory obedience is to prevent the husband from enjoying her or to go out without permission to a place where the wife knows that her husband hates that place, or leaving her the rights of God Almighty such as purification or prayer, or closing the door in the face of her husband or She prevented him from entering the house or betrayed him in herself or his money (11).

**** Definition of disobedience according to the Hanbali jurists**

Disobedience, which is disobedience to the husband in the obedience that God has imposed on her, such as disobeying him and refraining from his bed, or leaving his house without his permission (12).

After we have come to know the opinions of the jurists, disobedience can be defined as the wife's deviation from obeying her husband, and preventing him from empowering herself without a right and a legitimate excuse. Thus, it can be said that she has violated the marital rights that God Almighty imposed on her towards her husband.

Fourth: Defining nuisance legally

The Iraqi Personal Status Law No. 188 of 1959 did not deal with a specific definition of cases of disobedience, but relied on that in its definition on Islamic jurisprudence and the opinions of jurists.

The second requirement: cases of disobedience

First: Cases of disobedience in Islamic jurisprudence

The jurists of Islamic Sharia, represented by the five schools of thought, agreed that the wife would be disobedient if she left her adornment to the husband, disobeyed the husband in bed, went out of his house without his permission and without legal right, and left religious obligations (13), and Jaafari jurisprudence added to the above, the burden of the wife fulfilling the husband's needs, boredom and changing her habits of her manners towards

her husband, or to answer him in harsh words, or to show disdain and timidity and not be kind to him, or to declare her desire, frankness, or hatred to live with him (14).

In the above, we will show the cases of the disobedient wife in a general way, what was dealt with in Islamic jurisprudence:

- 1- The wife is considered disobedient if the husband invites her into marital intercourse or in bed and she refuses to answer him unjustly (15).
- 2- If she leaves his house without the knowledge and permission of her husband (16).
- 3- Leaving the adornment for the husband, such as not removing the antidote to enjoyment and pleasure (17).
- 4- Leaving the religious obligations (18).
- 5- If she becomes heavy in fulfilling the husband's needs, and what is meant is that she becomes heavy and bored.
- 6- Changing the wife's habits and etiquette in saying and doing, by answering her husband with harsh words after he was soft, and not responding to him with fluency and rejoicing, or showing frowning symptoms after being kind to him (19).

Second: Cases of disobedience in the law

The Iraqi Personal Status Law No. 188 of 1959 dealt with Article 25, paragraph (1), that (20): ((We shall not spend it on the wife in the following cases))

- a- If she leaves her husband's house without permission without a legitimate reason.
- b- If you are imprisoned for a crime or religion.
- c- If she refuses to travel with her husband without a legitimate excuse.

In view of the foregoing, the Iraqi Personal Status Law specified the cases that would cause the wife's maintenance to fall and make her disobedient and be one of the reasons for judicial separation, but there are cases where the wife is not disobedient and does not commit to obeying her husband if he is abusive in the request for obedience intending to harm her or restrict her. Prior to abuse and damage, what was included in Article 25, Paragraph 2 above, of the Iraqi Personal



Status Law No. 188 of 1959, which stipulates the following (21):

- 1- The husband's failure to provide his wife with a legal home that is commensurate with the social and economic situation of the spouses.

If the well-equipped legal home is far from the wife's workplace, so as to harm her reconciliation between her home and job obligations.

3- If the furniture provided for the legal house does not belong to the husband.

4 - If the wife is sick with a disease that prevents her from obeying the husband, but the judge must not rush to pass a judgment on the wife's disobedience until he is informed and convinced of the reasons for the wife's refusal, her husband's obedience and compliance with his orders.

This confirms our humble opinion about the issuance of the decision of the Federal Court of Excellence in the Republic of Iraq, Judgment No. 806 / Personal Status Authority, date of verdict 8/3 2012, which includes: Reversal of the judgment of the Personal Status Court in Muqdadiyah, which states that the plaintiff's claim that his wife is legally intercourse with her according to a valid contract, refraining from His obedience was in the legal house that was prepared for her despite the issuance of a decision to obey and a request to invite her to plead, and the judgment of her failure to bear all the expenses, and where the court issued a judgment in the presence of the defendant's disobedience, as it included a decision to reverse the judgment of the Personal Status Court because it is contrary to the provisions of Sharia and the law and hastened to issue its judgment in violation of the provisions of Article 25. Paragraph 3 of the Personal Status Law, which states: "The court should wait to pass a judgment on the wife's disobedience until she finds out the reasons for her refusal to obey her husband." (22)

Second: Procedures for disciplining the wife in law

The law permitted the husband to hit his disobedient wife with the intent to discipline her in order to stop her from disobedience. However, the law stipulated that the beating should take place when there is fear of disobedience and after using all the means stipulated by Islamic Sharia, such as preaching, desertion in beds and beatings, provided that the husband begins beating his wife in good faith and that the beatings be Lightly, it does not leave traces in the body of the disobedient woman, and what is meant by discipline here is light beating, and this is what Article [41/1] (23) of the Iraqi Penal Code No. 111 of 1969 in the chapter on the use of the right stipulates:

(("There is no crime if the act takes place in the use of a right established in accordance with the law and is considered a use of the right")) where paragraph 1 states:

"Disciplining the husband to his wife and the discipline of parents, teachers and those who are like them, children and minors within the limits of what is prescribed by Sharia, law or custom."

Here, the husband must abide by the disciplinary conditions, and if he exceeds his limits, he will be punished according to the law.

The Iraqi judiciary has stressed the application of the procedures and discipline related to beatings. The decision of the Court of Cassation issued by the General Assembly stated the following:

"((On examination and deliberation by the General Authority of the Court of Excellence, it was found that a family dispute occurred between the two parties due to the complainant's desire and insistence to continue her studies at the Teachers Preparation Institute... and the defendant's objection to that on the pretext of his parents' lack of consent, and at eight o'clock in the evening on the day of the incident when The complainant was about to enter the aforementioned building. She saw the accused standing near the door of the building, so he followed her, attacked her, grabbed her by the hair, slapped her with his hand several slaps on her face and head, and kicked her with his leg, and the aforementioned act of the accused applies to her Article 415 of the Penal Code because he exceeded the limits of what is prescribed for him under Provisions of Paragraph 1 of Article 41 of the Penal Code, and when looking at the content of the decision, we find that the Iraqi judiciary gave the wife the right to request separation and demand a penalty for that act, as the law gave the wife sufficient guarantees to protect her from the husband's abuse of his right to beat and discipline his wife Contrary to Sharia and law, and thus this right is legally and legally guaranteed (24).

The third topic / the consequences of the wife's rebellion

First: the consequences of the wife's disobedience to jurisprudence

The marriage contract entails rights for both spouses, including what is proven once the marriage contract is concluded, such as the dowry or dowry, and others after consummation such as alimony. his house without his permission, or she travels without his knowledge and consent, and this has consequences for the loss of her alimony.

The first direction, where they said:



The Hanafis, the Malikis, the Shafi'is, the Hanbalis, and the Imamis all said that the wife's alimony is forfeited upon her disobedience, and they infer from this that alimony is in exchange for the empowerment of enjoyment (25), and the Imami inferred that the wife does not deserve alimony at all if she refuses.

Whoever empowers her husband by herself, but if she refuses to enable her in some cases without a legitimate excuse or goes out of her house without his permission, then she does not deserve alimony either (26).

As for the second trend: where the apparent view is that alimony is not waived by disobedience, and they infer that it is the property of enjoyment, and enjoyment does not go away with disobedience and alimony is not forfeited (27).

Second: The legal consequences of the wife's rebellion

The amended Iraqi Personal Status Law No. 188 of 1959 dealt with the consequences of the wife's disobedience and urging her to compel her to obey her husband, and that was in accordance with Article 25, paragraph 1, paragraph 4, paragraph 5 a, b, and paragraph 6 thereof (28).

Whereas Paragraph 1 of the above Article stipulates that there is no maintenance for the wife if she leaves her husband's house without his permission, as well as if she is imprisoned for a debt or a crime and if she refuses to travel with her husband without an excuse.

As stipulated in the fourth paragraph of the above article, the court must rule the wife's disobedience after she has exhausted all her efforts to remove the reasons that prevent obedience.

As the fifth paragraph /a of the above article stipulates that the wife may request separation after two years have passed from the date on which the judgment of disobedience acquired a final degree, and the court must rule for separation, in which case the deferred dowry is forfeited.

As for the (fifth paragraph /b) of the above article, where it included the husband requesting separation after the judgment of disobedience acquired a final degree, and the court must rule for separation and obligate the wife to return what she received from her accelerated dowry and her deferred dowry forfeits if the separation is before consummation, then the deferred dowry falls and the wife is obligated to return half of what His fist if he had caught all the dowry.

And as the sixth paragraph considered the differentiation of disobedience according to the fifth paragraph of this article, an irrevocable divorce, a minor Baynunah.

As for the wife's disobedient right to housing, what is stipulated in the amended Iraqi Law No. 77 of 1983 of the Divorced Wife's Right to Residence Law, which stipulates that the divorced wife is deprived of the right to housing and the text of Paragraph A of Article Three deprives the wife of this right in one of the following cases ((If the cause of Divorce or separation is her marital infidelity or her infidelity)) (29).

*** We also wanted to point out the position of the Egyptian law in dealing with the effects of disobedience, as the Egyptian Personal Status Law went according to the text of Article 11 bis 2 on the fall of the alimony for the disobedient if the wife was informed of the warning of obedience and the deadline passed and she did not object to it within 30 days her expenses cease from the next day; Because the Egyptian legislator considered the disobedient wife's lack of objection to the warning of obedience as a presumption of her refusal to return to obedience to her husband, and thus the cessation of the wife's alimony is achieved (30).

Also, the issuance of the ruling to return to the marital home and her refusal to implement it, this abstention proves her departure from the obligatory obedience to her husband and makes her disobedient (31).

As for the dowry in Egyptian law, he considered it a condition for the husband to fulfill it and to expedite her dowry in order to obey him. Rather, she has the right to refrain from obeying her husband until she meets her deferred dowry without being considered disobedient.

** And after we discussed the issue of the wife's disobedience in jurisprudence and law, we reached the following conclusions and recommendations

First: the results

A - The Iraqi legislator did not provide a definition of disobedience in the Iraqi Personal Status Law No. 188 of 1959. Rather, it relied, in defining disobedience, on Islamic Sharia and jurisprudence.

B - The Iraqi legislator neglected to allocate a separate chapter in the Personal Status Law, but rather dealt with the issue with some brevity and brevity, and relied on Islamic law and jurisprudence to develop appropriate solutions to address the deficiency in some articles that dealt with the issue of disobedience, and this is a legislative deficiency that must be avoided and addressed.

C - The researcher was able to put a definition of disobedience, perhaps a comprehensive concept of it, after studying the opinions of jurists and commentators of the law in an extensive and comprehensive study.

D - The Egyptian law indicated that the wife does not object to the obedience warning within 30 days from the day following the notification and the expiry of the date indicates her refusal to return to obedience to her



husband, and this ensures that the alimony must be stopped on the disobedient wife.

Second, the recommendations :

A- We recommend that the Iraqi legislator dedicate a special chapter dealing with the issue of disobedience in the most accurate detail in terms of clarifying the definition of disobedience, its cases, causes and rulings, due to the great importance of the topic in family life

B - We recommend the Iraqi legislator to follow the example of the Egyptian legislator with regard to dealing with cases of disobedience, especially with regard to the dowry, which he considered a condition for the husband to fulfill.

C - We recommend the Iraqi legislator to take the opinion of the Jaafari jurisprudence with regard to the obligatory precaution not to forfeit the alimony of the disobedient if it refrains from enabling itself in some cases, not for a legitimate excuse, and as for the dowry, it does not fall without any problems.

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