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Abstract

The issue of marital disobedience (nushuz) and its branches is addressed both in Islamic jurisprudence, derived from divine revelation, and in contemporary legal scholarship. Consequently, it frequently arises in family courts through petitions for enforcement of conjugal duties or declarations and recognition of a wife's disobedience. A review of numerous judicial rulings reveals significant inconsistency and divergent judicial opinions. This study aims to investigate the reasons behind such judicial fragmentation and multiplicity of case law concerning obedience and disobedience. One of the main causes for the judiciary's inefficiency in our country is that court rulings have not been sufficiently exposed to experts and legal scholars for evaluation. If existing case law were codified into law, the judicial system would no longer require repeated legislative revisions. Since the nature of legal rules demands stability and firmness, repeated reviews cause confusion among legal practitioners. The solution to this dilemma lies in focusing on judicial precedent (Zandi, 2009). The issue of conjugal obedience and disobedience is a critical matter in marital relations and family courts. Given the rising status of women in society and their increased social participation, many ambiguities have emerged regarding obedience and disobedience. Claims related to conjugal obedience and disobedience largely depend on the judge's interpretation, which leads to multiple judicial precedents. Achieving judicial consistency necessitates analysis and evaluation of court precedents, including their conformity or lack thereof with jurisprudential principles and codified laws. Given the abundance of rulings on this

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subject, in-depth examination is required. The causes of divergence and contradiction can be categorized into issues with jurisprudential roots, legal and legislative aspects, and implementation stages of laws. Ambiguities can also be classified according to the procedural stages: filing a claim, trial, verdict issuance, and enforcement. Because judicial decisions depend heavily on judges' interpretations, multiple precedents arise; thus, evaluation of judicial precedents and their alignment with both jurisprudence and statutory law is necessary to achieve unity of precedent.

Literature Review

- Sabermahani, Mahya (2015). Examination of the Limits of Wife's Obedience in Shi'a Jurisprudence and Iranian Law. Master's thesis, Shahid Bahonar University of Kerman.
- Moghni, Mohammad (2020). Concept and Effects of Husband's Disobedience and Its Enforcement: A Comparative Study in Shi'a Jurisprudence and Iranian Law. Master's thesis, Imam Sadiq University.
- Masoumi Gorji, Khadijeh (2013). Examination of Spousal Obedience from the Perspective of Islamic Jurisprudence and Law. Master's thesis, Payame Noor University of Mazandaran.
- Mo'men, Roghieh Sadat (2013). The Status and Limits of Sexual Rights of Spouses in Shi'a Jurisprudence and Iranian Law. Tehran: Imam Sadiq University Publications.
- Yari, Nazila (2014). Clarification of Husband's and Wife's Disobedience in Jurisprudence and Statutory Law. Master's thesis, Urmia University.

Methodology

This study employs a descriptive-analytical approach using library and documentary research. It analyzes judicial rulings on conjugal obedience and disobedience sourced from the National Judicial Precedents Database and consultative opinions from the Legal Department of the Judiciary.

Findings

Judicial rulings on conjugal obedience and disobedience largely depend on judges' interpretation, resulting in multiple conflicting precedents. Therefore, judicial precedents should be analyzed to assess their

conformity with jurisprudential and statutory principles. After reviewing rulings and relevant jurisprudential and legal resources, it appears that some issues stem from jurisprudential differences among scholars or their silence; some arise from legislative aspects; and others relate to the implementation and application stages of laws. Ambiguities can be categorized according to procedural phases: filing, trial, verdict issuance, and enforcement.

Conclusion

Following an examination of rulings, jurisprudential and legal sources, consultative opinions of the Judiciary's Legal Department, and judicial discussions, the following conclusions were drawn:

- Some challenges in judicial precedents stem from jurisprudential disagreements or silence among jurists.
- Some challenges relate to legal and legislative aspects.
- Others concern the implementation and application of laws.
- Ambiguities can be classified according to procedural stages: filing, trial, verdict, and enforcement.
- Existing laws regarding nushuz are vague, incomplete, and lack clear definitions, conditions, and criteria. Given the significance and widespread application in family law, comprehensive legislation and related executive regulations defining nushuz, its manifestations, obstacles, and consequences should be enacted.
- Jurisprudential ambiguities should be addressed through the inherent flexibility and vitality of Islamic jurisprudence.
- Legal definitions, scope, conditions, consequences, and obstacles of obedience and disobedience should be clarified and corrected.
- Some causes of divergent rulings are rooted in enforcement and judicial stages, which require detailed executive regulations to prevent contradictory judgments.

Keywords: Judicial precedent, Marital disobedience (nushuz), Specific obedience, General obedience, Judicial proceedings

References:

- Alvari, Z. (2017). *Judicial approach to the obstacle of nushuz or the causal role of obedience in the wife's right to maintenance* (Master's thesis, University of Qom, Iran).
- Ansari, M., & Taheri, M. A. (2005). *Encyclopedia of Private Law* (Vol. 2). Tehran: Mehrab-e-Fekr Publishing.
- Diyani, A. (2004). The relationship between obedience, nushuz, and the legal consequences of disobedience. *Dadresi Journal*, 45, 10–15.
- Zabihi Bidgoli, A. (2020). *Obedience enforcement in judicial precedent* (1st ed.). Tehran: Judicial Research Institute.
- Ragheb Esfahani, A. H. M. (1991/1412 AH). *Al-Mufradat fi Gharib al-Qur'an* (1st ed.). Beirut: Dar al-Ilm – Al-Dar al-Shamiyya.
- Zandi, M. R. (2009). *Judicial precedents of Tehran Province Appellate Courts in family matters: Obedience and remarriage* (Vol. 3, 1st ed.). Tehran: Jangal Publications.
- National Judicial Precedents Database. Retrieved from <http://www.ara.jri.ac.ir>
- Legal Department of the Judiciary. Retrieved from <https://edarehoquqy.eadl.ir>
- Judicial Research Institute of Iran. Retrieved from <http://www.ijri.ir>
- Sabermahani, M. (2015). *An examination of the boundaries of wife's obedience in Shi'a jurisprudence and Iranian law* (Master's thesis, Shahid Bahonar University of Kerman, Iran).
- Sadr-al-Ashrafi, H. (1940). Obedience, nushuz, and their legal effects on the obligation of maintenance. *Legal Collection*, 155, 254–256.
- Tabatabaei, S. M. H. (1984). *Al-Mizan Exegesis* (Vol. 4, M. B. Mousavi Hamadani, Trans.). Tehran: Islami Publishing.
- Tabarsi, F. b. M. (1988/1408 AH). *Majma' al-Bayan fi Tafsir al-Qur'an* (2nd ed.). Beirut: Dar al-Ma'rifa.
- Muhaqqiq Hilli, J. b. H. (1929/1308 AH). *Shara'i al-Islam* (Vol. 2, 2nd ed.). Qom: Isma'iliyan Institute.
- Vice Presidency for Codification and Publication of Laws and Regulations. (2011). *Civil Code of Iran* (A. R. Esfahani, Ed. & Annotator) (8th ed.).
- Masoumi Gorji, K. (2013). *An investigation of spousal obedience from the perspective of Islamic jurisprudence and law* (Master's thesis, Payame Noor University of Mazandaran, Iran).

- Moghni, M. (2020). *The concept and consequences of husband's nushuz and its sanctions: A comparative study in Shi'a jurisprudence and Iranian law* (Master's thesis, Imam Sadiq University, Iran).
- Mo'men, R. S. (2013). *The status and boundaries of spouses' sexual rights in Shi'a jurisprudence and Iranian law*. Tehran: Imam Sadiq University Press.
- Mahdavi, E. (2017). *Is the claim of obligation to obedience admissible?* Retrieved from Judicial Training Office of Tehran Province: <http://www.ghavanin.ir/PaperDetail.asp?552>
- Najafi, M. H. (1983/1404 AH). *Jawahir al-Kalam* (Vol. 31, M. Ghochani, Ed. & Annotator) (7th ed.). Beirut: Dar Ihya' al-Turath al-Arabi.
- Hedayatnia, F. (2018). *Nushuz of spouses in Islamic jurisprudence and the Iranian legal system*. Tehran: Institute for Culture and Islamic Thought Research.
- Yari, N. (2014). *Clarification of husband's and wife's nushuz in jurisprudence and statutory law* (Master's thesis, Urmia University, East Azerbaijan, Iran).