



Feasibility of Denying Spousal Maintenance During the Exercise of the Wife's Right of Retention: A Critical Analysis of Article 1085 of the Civil Code

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DOI:

10.30497/flj.2025.246963.2078



Introduction

One of the most significant legal effects of marriage in Islamic jurisprudence and the Iranian legal system is the obligation of the husband to provide maintenance (*nafaqa*) to his wife. At first glance, this obligation is presumed to stem directly from the establishment of the marriage contract (*'aqd al-nikāh*). However, the role of *ta'ah* (obedience) or *tamkīn* (sexual and non-sexual availability) in the obligation of *nafaqa* has long been a matter of scholarly contention. Article 1085 of the Iranian Civil Code stipulates that a wife may refuse to fulfill her marital duties until her dowry (*mahr*) has been paid, without losing her right to maintenance. This legal provision is grounded in a jurisprudential view that treats the marriage contract as an independent and sufficient cause for the obligation of maintenance. Proponents of this view—prevalent among contemporary Shi'a jurists (*fuqahā-ye mu'āṣir*)—base their position on two main premises: first, that the contract of marriage independently obliges the husband to provide *nafaqa*, and second, that only disobedience (*nushūz*)—defined as unjustified refusal—nullifies the wife's entitlement to *nafaqa*. However, classical and some later Shi'a jurists challenge this view, holding that *nafaqa* is contingent upon both the marriage contract and the wife's actual compliance with her marital obligations. Thus, even if a wife's refusal is justified—for instance, due to the legitimate exercise of her right of retention (*haqq al-habs*)—the obligation of maintenance would still lapse. The present study seeks to critically examine the jurisprudential foundations of these two opposing perspectives and assess the validity of Article 1085 in light of authentic Shi'a jurisprudence.

Literature Review

Numerous studies have addressed issues related to *nafaqa*, *tamkīn*, and *haqq al-habs*, focusing primarily on their legal interpretations, judicial practices, and contractual applications. Key contributions include works by Ghayyāthī Thānī (2017), 'Aẓīmzāda Ardabīlī (2011), Fattāhzāda (2012), and Forūtan et al. (2020). These studies often center on the evidentiary challenges and judicial inconsistencies concerning *tamkīn* or

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nushūz, but none has specifically engaged in a rigorous jurisprudential analysis of the effect of exercising *ḥaqq al-ḥabs* on the obligation of maintenance. Thus, this research seeks to fill a significant scholarly gap.

Methodology

This study employs a descriptive-analytical method based on extensive library research. It draws on classical and contemporary Shi'a jurisprudential sources, judicial interpretations, and legal texts. The research unfolds in two stages: the first stage critically evaluates the theory of *tamkīn* as a condition (*sharṭ*) for the obligation of maintenance; the second analyzes the theory that the marriage contract is an independent cause (*sabab mustaqill*) of *nafaqa*. Both rational and textual arguments—such as *sīrah al-mutasharri'ah* (juristic practice), Qur'anic verses (e.g., *wa 'āshirūhunna bil-mā'rūf*), and logical maxims like the impermissibility of obligating in return for an uncertain countervalue (*iṣṭihālah al-'iwaḍ al-majhūl*)—have been employed in the analysis.

Findings

The critical examination reveals that the theory asserting the independent causality of the marriage contract in obligating *nafaqa* lacks internal coherence and sufficient jurisprudential grounding. Its reliance on general narrations and broad legal interpretations does not withstand scrutiny when measured against classical jurisprudential principles. In contrast, the view upheld by early and many later Shi'a jurists—that actual *tamkīn* is a necessary condition for the obligation of maintenance—is more robustly supported. According to this position, the obligation of *nafaqa* arises only when both the contract and the wife's compliance are present. Consequently, even justified non-compliance based on the right of retention (*ḥaqq al-ḥabs*) leads to the suspension of the husband's duty to provide maintenance. This is supported by a cumulative reading of scriptural sources, juristic tradition, and logical coherence.

Conclusion

The findings of this research suggest that Article 1085 of the Iranian Civil Code, which affirms the wife's continued entitlement to *nafaqa* during the exercise of her *ḥaqq al-ḥabs*, requires fundamental reconsideration. The prevailing assumption that the contract of marriage independently gives rise to the obligation of *nafaqa* does not align with the more consistent and well-substantiated view that actual *tamkīn* is a prerequisite for such an obligation. Therefore, the law must be revised to reflect this jurisprudential reality. Additionally, Article 1102 of the Civil Code—which deems all spousal rights to be established upon conclusion of the contract—should also be qualified to exclude *nafaqa* in the absence of *tamkīn*.

Keywords: Right of retention (Ḥaqq al-Ḥabs), obedience (Tamkīn), Article 1085, disobedience (Nushūz), maintenance (Nafaqa), Shi'a jurisprudence, marriage contract.