

Nushuz and Its Impact on Family Relationship: An Analysis In The Light of Sharih and Law

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Abstract

It is an exploratory study, which is conducted to investigate that what are the causes of nushuz and what are the remedies in order to protect the family relationship and also the impact of nushuz on family and children. Questionnaires will be used for data collection.

The study will explore whether nushuz (marital discord) is the most common problem of traditional Pakistani will investigate the grounds of nushuz, Moreover; this study will discuss how selecting arbiters from relatives of the spouse can play a vibrant and positive role for reconciliation between partners and resolve the matter which had led to nushuz and lack of submission.

This paper articulates the relationship between husband and wife towards each other. Study presents why Islam has given the family an abode of peace and tranquility, and how the Qur'an addresses living with each other on a footing of kindness, mercy, love, and mutual consultation between husband and wife.

Main Purpose of this article is to describe how misunderstanding, disobedience, financial problems, and mutual lack of confidence is creating marital discords which usually end up in crises and to which extent nushuz is also a cause in increasing divorce rate. Study will discuss the process of reforming the family after an instance of nushuz, what are the essentials in bringing the relationship back to normal.

This paper will present suggestions and guidance from Quran that will help to solve the marital discord and establish a good relationship between husband and wife. This study will discuss whether Mutual consultation in each and every matter is compulsory for strong relationship between spouses.

It is concluded that as matter of fact in our changed decadent society we need such men and women who are committed to religion and are eager to inculcate the spirit of religion in their children and society in order to save their family from discord.

Key Words:relationship,disobedience, discord

Introduction

Family is the essential and basic unit of social organization, its proper foundation, and functioning is therefore necessary for the health, and happiness of the society and this state is achieved through the institution of marriage.

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In Islam marriage is the institution which develops the intimate relationship between husband and wife. Marriage creates a beautiful bond of love and companionship between women and men who receives worthy position of husband and wife in society. Marriage is therefore basic step towards tranquility progress and development of the Muslim society where it creates number of rights and obligation between husband and wife in return.

Sometimes it does happen where this beautiful bond of marriage stop to survive mostly due to the discord from wife or husband side resulting in to the separation between both and adversely affecting the children, families of the spouses and lastly the society. Islamic law dealing with the issue of the scriptural treatment of a disobedient wife (nushuz) as detailed by both exegetes and classical jurists has emerged as one of the much debated topics in readings on Muslim women in our time. Islam condemns all acts of oppression against women.

The Holy prophet (P.b.u.h) repeatedly denounced men who physically abused women. .on one occasion, He asked:

“how can one of you hit his wife like an animal, then he may embrace her”.¹

The term nushuz literally means” rebellion, here rendered as ill will, comprises every kind of deliberate bad behavior between the spouses. When one of the spouses is disobedient, it is called nushuz on the part of that spouse, whether husband or wife.

Definition and development.

Nushuz means a wife disobeying her husband with regard to her obligations towards him.

Nushuz is translated as 'marital discord'. Literally, it means “violation of marital duties”².

The word nushuz is derived from the Quran. As in the verse

وَاللَّيِّئَاتِ فَسُحْرًا

*“And as for those women from whom you anticipate rebellion”*³

Holy Prophet Peace be upon him stated nushuz in his farewell address,

“You men have rights against women and they have rights against you. It is your right that they do not bring someone, dislike in to your bed, or they commit clear adultery. If they do

then Allah has permitted you to desert them in bed and hit them lightly”⁴

Thus the highest degree of nushuz is adultery, and short of that there are degrees of disobedience from frowning in the face to open rebellion, and a woman may be admonished, banished or even chastised.⁵

The word *nushuz* when used in the context of spousal relationship, it denotes the idea of being at logger head with each other and living in a state of mutual hate. Juristically, classical jurists belonging to various *sunni* schools have delineate it variously.

For instance, to al-Zayla'i of the Hanafiyyah, “it signifies leaving the marital home without the husband’s permission or refusing sexual intercourse with him.”⁶

To al-Dardir of the Malikiyyah, it signifies, “defiance of obligatory obedience to the husband, such as preventing him to sexually enjoy her, or leaving the marital home to places which she knows that her husband would not allow, or violating the right of God, such as not performing the prayer etc, or locking the husband out of the house or committing an act of infidelity against him or mishandling his property.”⁷

To al-Nawawi of the Shafi’iyyah, “it denotes, recalcitrance of wife in the form of defiance of the husband’s lawful wishes.”⁸

Types of Cases of Nushuz

There are two different instances of nushuz, as Allah has made clear in his book.

- i. The first instance is where the wife commits nushuz.
- ii. The second instance is nushuz on the part of the husband.

i. Nushuz committed on the part of wife

Allah says in Holy Quran:

وَالَّذِينَ تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا
عَلَيْهِنَّ سَبِيلًا

“And as for those women from whom you anticipate rebellion, admonish them, avoid them in the sleeping place and hit them. If they obey you, do not desire and further way to harm them. Surely, Allah knows, Great”⁹

Ibn Kathir wrote a famous commentary on *Qur'an* named as Tafsir al-Qur'an, also known as tafseer ibn kathir¹⁰. Ibn Kathir had given the explanation of the verse 34 of Surah Al Nisa, with these words, As to those women on whose part you see ill

conduct, meaning, the woman from whom you see ill conduct with her husband, such as when she acts as if she is above her husband, disobeys him, ignores him, dislikes him, and so forth. When these signs appear in a woman, her husband should advise her and remind her of Allah's torment if she disobeys him. Indeed, Allah ordered the wife to obey her husband and prohibited her from disobeying him, because of the enormity of his rights and all that he does for her.

Messenger of Allah almighty said,

It was narrated from Abu Zahra that the prophet (P.b.u.h), said:

"If a woman spends a night forsaking her husband's bed the angels will curse her until morning."¹¹

This is why Allah said, (As to those women on whose part you see ill conduct, admonish them (first)). Allah's statement (abandon them in their beds.)' The Sunan and Musnad compilers recorded that Mu`awiyah bin Haydah Al-Qushayri said:

"O Allah's Messenger! What is the right that the wife of one of us has on him" The Prophet said, To feed her when you eat, cloth her when you buy clothes for yourself, refrain from striking her face or cursing her, and to not abandon her, except in the house". Allah's statement, (beat them) means, "if advice and ignoring her in the bed do not produce the desired results, you are allowed to discipline the wife, without severe beating"¹².

Allah said:

"but if they return to obedience, seek not against them means of annoyance" meaning, when the wife obeys her husband in all that Allah has allowed, then no means of annoyance from the husband are allowed against his wife. Therefore, in this case, the husband does not have the right to beat her or shun her bed. Allah's statement "Surely, Allah is Ever Most High, Most Great". Reminds men that if they transgress against their wives without justification, then Allah, the Ever Most High, Most Great, is their Protector, and He will exert revenge on those who transgress against their wives and deal with them unjustly.

Legal ruling

To the majority of the legal scholars, the legal ruling (*hukm*) about wife-beating is one of permissibility (*ibahah*) – neither mandatory (*wajib*) nor recommended (*mandub*). The reason is that although the Qur`an apparently makes it mandatory but the *sunnah* of the Prophet provides the context to it by unveiling the intention of God (lawgiver) when he stated:

"Treat your wives well except if they commit an act of gross indecency (adultery) in which case you could set them apart from bed or beat them lightly."¹³

At a among the classical jurists, however, arrived at an entirely different conclusion by maintaining that the *hukm* about wife-beating is one of impermissibility (*adam jawaz/makruh*). To him this verse when read with many traditions of the Prophet on kind treatment of women makes it abundantly clear that God's intention in the verse in question has not been to sanction wife-battering. For instance, the Prophet on many occasions instructed his companions in terms such as these:

*"do not beat the salves of Allah"*¹⁴; *"why a man whips his wife as one whips a slave during the day and still would have sex with her in the evening."*¹⁵; and *" those beating their wives are not the best amongst you."*¹⁶

Majority of the jurists, however, countered by saying that these *ahadith* are repealed by the Qur`anic injunction on beating. Nevertheless, upon analytical evaluation of the position of the majority *vis-`a-vis`* Ata, Ibn Hajar , held that even according to the view of permissibility of wife-beating, a mere threat of beating or other means must be the option as beating instead of restoring the harmonious relations between the estranged couple will further deteriorate it.¹⁷

The idea emerging from the foregoing is that the law of *nushuz* (legislation dealing with refraction/recalcitrance/disobedience) on the part of a wife was no doubt enacted by virtue of the Qur`an.

The second case is nushuz on the part of the husband.

Allah almighty says in Holy Quran :

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَغْلِهَا يُشْوَرًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا
وَالصُّلْحُ خَيْرٌ

*"And if a woman fears nushuz from her husband or that he may turn away, there is no sin upon the two of them to make terms of agreement between them and agreement is better."*¹⁸

Ibn katheer gives the explanation of the verse 128 of surah nisa, in tafseer of holy Quran by ibn katheer, describes the Ruling Concerning Desertion on the Part of the Husband.

Impact of marital discord on children

Marital conflicts can have a huge negative impact on growing children. The most horrifying things for child are the possibility that their parents may break up. Many people fail to identify that the intense fear engender in their children due to the marital discord. Moreover, negative effects of parental discord are found for both boys and girls.

Children typically feel deep loyalty to both their parents. As a result, when they become aware of feelings of opposition between parents, it creates internal dissonance for the child. That is, they feel stressed when either parent is under attack for whatever reason.

Children become impotent when they repeatedly witnesses hostility between their parents, the result is often a feeling of impotency if a person does not have the power to stop the hostility, and he/she cares about the recipient of the hostility. The dangerous circumstances of home life mean that the young child may not develop a sense of trust or security.

Childhood is regarded as a period of special protection. Children's development is expected to unfold within a secure and nurturing environment. Where the environment is infected marital conflicts, all the normal tasks of growing up are likely to be adversely affected. Marital conflict has been found to be the strongest risk factor for behavioral problems (Marshall & Watt, 1999). It was significantly associated with externalizing and internalizing behaviors and social, attention and thought problems when children were assessed at the age of five. And the more frequent and intense episodes of inter parental conflict were, the more likely it was that children exhibited problem behaviors¹⁹.

So, the short and long term effects of parental conflict can be extremely harmful to children.

Rights and obligation of spouses

Holy Quran describe the relationship between the wife and husband as the body and garments.

هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ

They (women) are your garments. And you are their garments"
²⁰(2:187)

Ibn katheer give the explanation of the verse 187 of surah al-baqarah in tafseer ibn katheer, that describes that women are Libas "i.e., body-cover, or screen" for you and you are Libas for them." Ibn `Abbas, Mujahid, Sa`id bin Jubayr, Al-Hasan, Qatadah, As-Suddi and Muqatil bin Hayyan said that this Ayah means, "Your wives are a resort for you and you for them." Ar-Rabi` bin Anas said,

"They are your cover and you are their cover."

In short, the wife and the husband are intimate and have sexual intercourse with each other, and this is why they were permitted to have sexual activity during the nights of Ramadan, so that matters are made easier for them.

Libaas is used for intimacy and closeness, concealment of faults, confidentiality and an adornment for one another. We act as a covering and protection for each other from fornication and any other such danger by sexually fulfilling one another. It is clear that husband and wife must seek to sexually fulfill each other whenever needed in order to remove that need or want from one another; in this way can they help one another.

Chap: 90 “your wife has a right over you.” This has been narrated by abu juhaifa from the prophet(p.b.u.h).(sahih al bukhari)

Baab : layzoyayka alaika haqa , qalahu abu hanifah anan an nabi sal’a allahu alayhi wasalam

127. narrated Abdullah bin amr bin al aa: Ayesha ‘s apostle(p.b.u.h) said:

" o Abdullah ; have I not been informed that you fast all the day and stand in prayer all night?" I said, " yes , o Allah's apostle ; he said, "do not do that; observe the fast sometimes and also leave them (the fast) , at other times; stand up for the prayer at night and also sleep at night, your body has a right over you, your eyes have a right over you and your wife has a right over you."

Obligations of husband: wife's right

➤ **Kind and fair treatment**

The role of the husband evolves around the moral principle that it is his solemn duty to Allah to treat his wife with kindness, honor, and patience; to keep her honorably or free her from the marital bond honorably; and to cause her no harm or grief. Allah Almighty says:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

"Consort with them in kindness, for if you hate them it may happen that you hate a thing wherein Allah has placed much good." (An-Nisa': 19)

Allah says in Holy Quran:

"If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good."

Allah says that your patience, which is demonstrated by keeping wives whom you dislike, carries good rewards for you in this life and the Hereafter.

The marital relations in Islam we realize that Islamic laws advocating marital bonds between man and wife are based on affection, mercy, kindness and good treatment towards each other and consider the marriage contract as a sacred covenant.

Through this wonderful legal relationship, Islam builds the connection between the couple on the basis of an exact and just equation. The woman has her legal rights upon her husband, as also the man has legal rights upon her. In short, Islam has imposed certain rights upon both husband and wife.

➤ **Maintenance and protection of family**

A man is the head of the family in Islam. The special role established by the following verse of holy Quran:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

*Men are in charge of women by [right of] what Allah has given one over the other And what they spend [for maintenance] from their wealth*²¹.

Allah said, (Men are the protectors and maintainers of women,) meaning, the man is responsible for the woman, and he is her maintainer, caretaker and leader who disciplines her if she deviates. (Because Allah has made one of them to excel the other,) meaning, because men excel over women and are better than them for certain tasks. This is why prophet hood was exclusive of men, as well as other important positions of leadership.(and because they spend from their means.) meaning the dowry, expenditures and various expenses that Allah ordained in His Book and the Sunnah of His Messenger for men to spend on women. For these reasons it is suitable that he is appointed her maintainer, Husband as the maintainer and the protector of the family is under obligation to provide maintenance and financial support to his wife and children according to his means and the needs of the family.

Chapter 92: the statement of Allah subhana hu ta;ala

"men are protectors and maintainers of women(4:34)"

129. Narrated anas razi allahu anhu :allah's apostle(p.b.u.h) took an oath that he would not visit his wives for month month, and he sat and an upper room belonging to him , then, on the twenty ningth day he came down. It was said,"

O Allah's apostle: you had taken an oath not to visit your wives for one month." He said," the present month is of twenty nine days".p 9

Baab: qul Allah ta'ala – al rjaal qawamun a aala un nisa.

Obligations of the wife: husband's right

➤ **Obedience of husband**

One of the primary obligations of the wife towards her husband is the obedience. Allah has described the righteous women as obedient and guardian for their husband.

The Holy Quran says:

فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ

"So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard"²².(4:34)

In tafseer ibne kaatheer verse 34 of surah nisa describes the Qualities of the Righteous Wife Allah said:

"Therefore, the righteous" women, "are Qanitat", obedient to their husbands, as Ibn `Abbas and others stated. "And guard in the husband's absence" As-Suddi and others said that it means she protects her honor and her husband's property when he is absent, and Allah's statement, "What Allah orders them to guard". Means, "the protected", husband" is the one whom Allah protects. Ibn Jarir recorded that Abu Hurayrah said that the Messenger of Allah said": The best of the women is the one who pleases her husband when he looks at her, obey him when he asks, and does not oppose him in anything he dislikes as regards herself and her wealth.²³

Then, the Messenger of Allah recited the Ayah:

"Men are the protectors and maintainers of women", until its end."

To observe fidelity to the husband

The wife is also required to observe utmost fidelity to her husband, which means to be faithful to her and guard his honor for him, in accordance with Islamic values of chastity and virtue.

The Holy Quran says:

حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ

"Guarding in [the husband's] absence what Allah would have them guard"²⁴

Management of the house

Home is the wife's realm and she is the responsible for taking care of it and for raising the children and their education and upbringing.

Holy prophet (P.b.u.h) said:

"All of you are the guardians and responsible for your wards. The ruler is a guardian and the man is guardian of his family, the lady is a guardian and is responsible for her husband's house and his offspring, so all of you are guardians and responsible for your wards"²⁵.

Pakistani law in case of nushuz

In Islam, marriage is expected to last until one of the spouses dies. However, if the spouses

Cannot live together in peace and harmony any more in the marital relationship, then its continuance is no longer considered desirable. Divorce is permitted as a matter of necessity for the avoidance of greater evil, which may result from the continuance of the marriage. The failure of marriage can be due to many reasons such as certain defects or faults in one or both of the spouses which give the right to apply for *khulu'* or *ta'liqto* the wife and *talaq* to the husband.

Further, the 13th century classical scholar, judge, and Qur'anic exegete Imam Baydawi defined *nushuz* as "disobedience". The 12th century jurist Ibn Rushid said that:

"A *nashiz* is a deviant woman who refuses to pray, fast, or cleanse herself from impurities"²⁶

When the wife's conduct is undesirable such as *nushuz* (marital discord) to her husband, the husband is permitted to divorce her. When the husband becomes a transgressor, for example, the husband is incapable of maintaining the wife or he ill-treats the wife, Islam also grants women the right to dissolve the marriage. Men and women have similar rights and obligations to one another. For that reason, Islam provides some grounds for women to obtain divorce.

As a result of the valid marriage, the husband becomes obliged to support his wife. Nafaqah of maintenance refers to the provision for the necessities of life, which a man is obliged to provide to his wife or wives equitably according to the resources of giver and the needs of the recipients. Maintenance include everything that is indispensable for sustenance, i-e. Dwelling, clothing, etc, according to the financial and social standing of the giver.

A women is held to be entitled to maintenance in all the modern personal status codes of Muslim countries if she submit herself or offers to submit herself to husband.

Wife is not entitled to maintenance in case of nashizah

The wife, however; loses her right of maintenance, according to the unanimous opinion of the

Muslim jurists, in case of *Nushuz*, that is her hatred or defiance of husband or her attraction to Another person.

1. when a wife becomes nashizha or refractory, she is not entitled to maintenance, the husband's obligation to her wife cease for the period during which she remains refractory or unsubmitive .nushuz refers to an act which hamper the purpose of marriage which is held to be that of sexual gratification and procreation, it also include not being available by leaving the marital home without the husband's permission or not removing a condition that creates aversion in him.
2. When she refuses to live with him in the same dwelling place , in the marital house
3. When she leave t her husband, due to the fault of her part.
4. When she is guilty of adultery and act of lewdness.
5. In spite of her husband's valid objection she engages herself in some employment.
6. When she refuses sexual intercourse to her husband. This means that her non-submission frees the husband from the duty to pay nafaqah.²⁷

When husband commit nushuz

Islam takes a realistic view of human affairs and therefore, it attaches great importance to the happiness of both the spouses in marriage. It provides that every attempt should be made to preserve a marriage, but once it is established that marriage has broken down. Islam allows the parties to separate from each other. However, if the spouses cannot live together any more in peace and harmony in the marital relationship, then its continuance is no longer considered desirable. When the husband becomes a transgressor, for example, the husband is incapable of maintaining the wife or he ill-treats the wife, Islam also grants women the right to dissolve a marriage .It is stated in the Qur'an that: "And women have rights similar to those against them in a just manner". This verse shows that men and women have similar rights and obligations against one another. For that reason, Islam provides some grounds for women to obtain divorce .if the husband behavior is not good towards her, there is an element of desertion, failure to pay maintenance, and harm caused to the wife. Upon a woman's petition, a court will make an inquiry into the validity of the divorce and, if satisfied, the court will confirm and record the divorce. In case of

husband's recalcitrance to maintain wife, the law enforcement agencies are required to enforce maintenance. The majority of Muslim jurists also allow the wife the right to seek divorce in such a case. If she wishes so, the court must comply with her request and Grant her the divorce.

Dissolution of the marriage at the request of wife in two ways

✓ A divorce orders by the court if she proves that she is being subjected to harm in her marriage

✓ khula

The women reserve an absolute right of khula as stated in the holy Quran.

"If you (judge) 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 gives something for her freedom²⁸."

Sayyed mawududi in his commentary on this particular verse writes ; in this matter if some sort of settlement is reached between the man and the wife in the house itself , then the decision taken thus will be effective. However if the matter goes to the court , the court will only investigate as to whether the woman has become averse to the husband to such a degree that to carry on with him is not possible. After investigation this, the court is empowered to suggest a compensation ad to divorce his wife. nomally jurist have not approved that the husband should be given more the dower which he may have given her. Hoveever, if the same couple should desire to mary again (by nikah) then it will be perfectly lawful for them to act thus. ²⁹ . Justice S.A rehman in famous judgement Ms, khurshid bibi v babu Muhammad amin (PLD K67 .S.C 97) favored the same point as expressed by mawlana mawdudi.

When a husband is guilty of ill treatment his wife , she can complaint to the qadi ,who shall investigate the matter ,if he wife's complaint is found to be correct , the qadi shall severely admonish the husband ,and may order his chastisement. If the wife is still subjected to ill treatment by her husband and she makes repeated complaints to the qadi, but has no proof in support of her allegation, the qadi shall appoint two arbitrators, one representing each party to look into and decide the case. If they deem it proper to separate the parties, they may make the declaration to the effect; this declaration shall amount to the judicial decree for the dissolution of the marriage

Conclusion

Allah almighty blessed this ummah with the perfect and most complete law .This law give us solutions to one of the most common everyday problems of human life, problems between husband and wife. Even if both the husband and wife are pious, but sometime marriage presents additional tests which many do not pass as well as they should. Mutual consultation in each and every matter is compulsory for strong relationship between husband and wife.

The main obligation of the wife as a partner in a marital relationship is to contribute to the success and blissfulness of the marriage as much as possible. She should be attentive to the Comfort and well-being of her mate.

When there is discord happen between the spouses; Allah's shari'a has laid down certain processes that the husband and wife should go through, to try to set right the situation. A family's religious beliefs can promote family bonds, particularly between parents and children. It is the duty of the spouses to resolve conflict in a healthy manner and always respect the other person's perspective. Never minimize your spouse's point of view.

Islam recognizes that sometimes termination of the marriage is preferable - through divorce or other means. The book of Allah deal with not only good relations between husbands and wives, but also those times when the atmosphere is stressed. The holy Qur'an provides different strategy for the husband and wife to follow when either spouse is disobedient for reconciliation.

It is concluded that as matter of fact in our changed decadent society we need such men and women who are committed to religion and are eager to inculcate the spirit of religion in their children and society in order to save their family from discord. Husband alone has the right of sexual intimacy with wife. The wife must not allow any other person to have access to that which is exclusively the husband's right. Wife has similar right in this regard.

Islam has given the correct principles and instructions regarding rights and obligations of Husband and principles, if obeyed in true spirit, would ensure and social life instructions wife.

These principles, if obeyed in true spirit, would ensure better family and social life.

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