

Legal Safeguards Resulting from Marital Disobedience

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The research seeks to identify the legal means by which the wife is protected from being subjected to any form of abuse and harm, and to specify the civil, family, judicial, and penal regulations applicable in cases of husbands committing acts of marital disobedience, and to compare the regulations of the two jurisdictions, Iraqi and Iranian. The significance of the present research lies in answering one of the family problems that the family faces today and negatively affects its stability and the wife's rights, by revealing the effectiveness of the legal regulation on which both sides the husband and the wife should base themselves to achieve a lasting balance between maintaining the marital bond and protecting the wife from being tied to a situation in which she cannot exercise her rights. The research used the descriptive-analytical method through studying the legal texts, judicial documents, and jurisprudence, in addition to the comparative method to highlight the similarities and differences between the two countries in regulating marital disobedience and its legal consequences. The study has yielded several results; the most important of which is that neither Iraqi law nor Iranian jurisprudence and law consider the husband's recalcitrance to be an independent crime, but rather the legal effects of this phenomenon aimed at protecting the wife are imposed. In Iran, the reliance is greater on the concepts of good cohabitation, hardship, embarrassment, and gradualism in obliging the husband to perform his duties, while in Iraq it focuses more on the criterion of damage and judicial separation as a primary means of protection. It was also found that the judiciary plays a pivotal role in dealing with the effects of the husband's recalcitrance by obliging him to fulfill his marital rights or terminating the marital relationship if it becomes impossible to continue it. There is also the need to develop legal texts that give a more comprehensive and clear protection for the wife in facing different forms of recalcitrance.

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Introduction:

The family constitutes the basic unit upon which society is built. Divine and positive laws have given great importance to regulating the marital relation through setting a number of rights and duties between spouses in order to guarantee family stability and the dignity of the party of marriage. Marital life does not depend on a mere formal bond between spouses, but rather on the principles of affection, compassion, cooperation and good cohabitation, which require from every party to the marriage to comply with the ensuing legal and/or religious duties. In this regard, the issue of marital discord on the part of the husband appears as one of the forms of breach of marital obligations. The concept of marital discord is not limited to the wife's failure to perform her marital duties, but it may also appear on the part of the husband when he fails to fulfill his wife's rights, abandons her, mistreats her or causes her material or moral harm that is incompatible with the requirements of a healthy marital life. The husband's disobedience has raised a number of legal and jurisprudential issues particularly due to the fact that traditional legislative and jurisprudential attention has mostly been directed towards addressing the wife's disobedience while the husband's disobedience has not been studied enough despite its consequences that affect the family unit and the wife's rights.

The research problem centers on the gaps and lack of clarity observed in certain legal provisions concerning marital discord (*nushuz*), particularly regarding its conceptual definition, the criteria governing its establishment, the evidentiary mechanisms for its proof, and the legal effects arising from it. A further dimension of the problem relates to the sufficiency of the statutory safeguards enacted by the legislator to shield the wife from harm caused by the husband's failure to fulfill his marital obligations. The issue also extends to the capacity of the legal framework to achieve a fair equilibrium between two competing objectives: preserving family cohesion on the one hand, and preventing the wife from being exposed to injustice or mistreatment on the

other. This necessitates an examination of the actual efficacy of these protections in both legal theory and practical application. Accordingly, the study is guided by a central question: To what extent have legal rules been successful in establishing effective guarantees to protect wives from the repercussions of spousal misconduct and in attaining balance within the marital relationship?

The study also aims to examine and analyze the legal framework for husbandly recalcitrance, clarify its concept, forms, and causes, reveal the legal guarantees that the wife can rely on to protect her rights, and clarify the role of the judiciary in addressing cases of husbandly recalcitrance and achieving justice within the family. The study also aims to assess the adequacy of the legal texts governing this issue and to arrive at proposals that contribute to the development of the legal protection provided to the wife and to the promotion of a balance between the rights and duties of the spouses.

The scientific importance of the research lies in shedding light on an important legal aspect that has not been adequately studied compared to the wife's recalcitrance, as the study of the husband's recalcitrance contributes to expanding the legal understanding of the principle of equality in bearing marital obligations.

The study relies on the descriptive-analytical approach by analyzing the legal texts and provisions governing marital rights and duties and indicating the extent to which they are consistent with the objectives of legal protection of the family. It also relies on the comparative approach when studying the similarities and differences between the legal systems under comparison.

The first topic: Civil and family guarantees for marital recalcitrance

This section examines the civil and family law safeguards that arise from the husband's marital recalcitrance, by outlining the legal mechanisms designed to protect the wife's rights and to remedy the effects of the husband's failure to meet his marital duties. It further highlights the

function of civil and personal status law provisions in striking a balance between the rights of both spouses and in mitigating the harms stemming from the husband's disobedience.

First Requirement: Guarantees Related to the Wife's Financial Rights

In the event that a marital dispute is proven, guarantees for enforcement can be envisaged, such as the obligation to perform the duty and the obligation to divorce the wife. It must be borne in mind that the two guarantees are closely intertwined, since the court is first asked to enforce the obligation, and in the event of a refusal, a divorce is requested.

First: The obligation to fulfill one's duty: According to the verse 128 from Surat An-Nisa', the first step in the event of discord between spouses is to seek reconciliation and harmony. A good example of this is the wife's waiver of her rights for the sake of preserving the family unit. Reconciliation and harmony are the best solution for most of the marital problems since it restores the calmness of mind of the spouses and spares them from undergoing tedious and exhausting legal procedures. The recommendation of the Holy Quran for the reconciliation in the case of a marital conflict, also demonstrates the importance of this system for the solution of family problems. Each of the spouses relinquish part of their rights in order to continue to live together, albeit with greater restrictions. On the other hand, they refrain from inflicting the damage caused by divorce on the spouses, their children, and the whole surrounding environment. Therefore, reconciliation is recommended as the best practice in the Islamic and humane manner in regard to spouses who evade their legal duties. However, if the compromise is not reached and the husband does not complete the legal divorce proceedings, the wife is left in a vulnerable and fragile position. On the one hand, the husband is apathetic towards his wife and on the other hand, she is considered his legal wife. In this case, the first step is to resort to the judge (a competent judicial authority) and to claim the violated rights based on the principle

of the judge and the abstainer. At this stage, the judge first tries to bring the husband to consciousness of the Sharia and legal duties to him through preaching and guidance. If the admonition does not produce an effect, the judge can first oblige the defendant to fulfill his obligation, as it is the case for any violation of legal or contractual obligations. For example, in the context of the obligation to establish the marital relationship, it was stated that the husband must have intercourse with his wife, even if he only does so once every four months. If he refuses, the wife has the right to resort to the Sharia judge to compel him to fulfill her rights. It is self-evident that in many of the marital relationships, the law cannot be applied in practice due to the intimate character of the marital relationship. However, as a first step and in order to make the evidence of their violation possible, the violation of the rights by the other party becomes crucial¹.

Second: Compelling the husband to pronounce divorce: Where it becomes unfeasible to force the husband to fulfil his legal obligations, an alternative remedy must be secured, namely compelling him to divorce his wife. As the wife's right to seek divorce is exercisable within defined legal parameters, the valid grounds upon which such a claim may be based will be examined below. Two grounds may be invoked to oblige a recalcitrant husband to divorce: one founded on the wife's hardship and ill-treatment, and the other founded on ill-treatment alone. The rule of hardship or lack thereof is one of the subsidiary jurisprudential rules. The first of these rules relates to divorce, which is the husband's power to divorce. However, if the continuation of the marriage will cause serious hardship to the wife and the husband does not divorce her, the wife can request a divorce from the judge as a sub-rule of the rule². Under Article 1130 of the Civil Code, where the continuation of the marriage entails hardship and distress for the wife, she is entitled to petition the Sharia judge for divorce. Upon judicial establishment of such hardship, the court may compel the husband to divorce; if such compulsion proves impossible, the divorce is effected with the authorization of the Sharia

judge. The note appended to this article defines hardship as a condition that renders the continuation of conjugal life difficult and unbearable for the wife. Although the explanatory memorandum does not expressly list the absence of marital relations as an instance of hardship, the concluding part of the memorandum clarifies that the examples enumerated in the article do not preclude the court from granting a divorce in any other case where the wife's hardship is proven before it (Annex 29/14/81). It should be noted that the first paragraph of Article 1130³, before the current reforms, stipulated that in cases where the husband does not fulfill the other mandatory rights of the wife and cannot be compelled to do so, the wife has the right to apply to the judge for divorce. According to legal scholars, the other obligatory rights were the same as those relating to sexual intercourse. According to the fatwas of contemporary jurists, divorce of the wife by the ruler, after imposing a duty and *ta'zir*, takes place in the event of the husband's disobedience. Although this fatwa focuses on the sexual rights of women, it also expresses the patience of women until the stage of hardship and distress in their shared life. In this case, the woman must wait until the point of hardship and distress; as if the wife's rights were both a shadow and a limit to hardship and distress at the same time. In addition, the difficulties of proving hardship and distress have their own difficulties⁴. Therefore, including issues such as the abandonment of sexual relations under the category of hardship and distress would face the objection that the wife cannot seek divorce simply because she is deprived of her rights; rather, this deprivation must have caused her hardship and distress. This highlights the need to consider a separate category for the husband's disobedience. In fact, the legislator anticipated the possibility of filing for divorce in cases such as non-payment of alimony, regardless of the hardship suffered by the wife and merely due to the abandonment of alimony, but remained silent on other rights such as sexual rights. However, this category of rights may be more important for the wife's health and psychological well-being.

Currently, according to the last part of Article 1130 of the Civil Code, any circumstance, which in the opinion of the court constitutes a hardship for the wife, may be used as grounds for requesting a divorce. However, the judge is not entitled to go beyond this stage and use the mere husband's absence without causing a hardship as a basis for judgment. Thus, defining the institution of the husband's absence in the applicable law could be a way to resolve this problem. To overcome this shortcoming, the possibility to rely on the husband's poor behavior could be considered a means for the wife to request a divorce in case of such conduct.

Based on the principles of self-discipline and compassion, a husband is prohibited from subjecting his wife to inhumane treatment, poor living conditions, or leaving her in a state of emotional limbo⁵. Furthermore, while statutory laws may overlook the topic, Islamic jurisprudence mandates the fulfillment of sexual needs for both partners within a marriage. Fulfilling these desires is a primary objective of Islamic law designed to promote marriage and deter immorality. Although historical texts outline reciprocal marital rights, a traditional focus on the husband's privileges has often overshadowed the sexual rights of the wife. Consequently, Islamic law dictates that a husband cannot arbitrarily withhold marital relations without a valid excuse, regardless of whether doing so causes his wife direct physical harm⁶. Consequently, the husband's neglect of his wife confers upon her the right to petition the court for divorce on the basis of ill-treatment or non-fulfillment of marital obligations, and the husband's invocation of a stipulation contained in the marriage contract does not extinguish these legal consequences. Indeed, in light of authoritative jurisprudential sources, defining the concept of marital recalcitrance within positive law presents no significant difficulty, enabling courts to adjudicate such matters by reference to those sources.

With respect to a claim brought by the wife for marital recalcitrance, family court judges may admit such an action on the basis of the principle

of the obligation of proper conjugal relations (as prescribed in Article 1103)⁷.

Citation of article 3 of the Civil Procedure Code, which is based on article 167 of the Constitution, about citing reliable Islamic sources, is also able to solve the problem of the absence of a corresponding legal norm in this regard. In other words, if marital infidelity in the sense described above is not explicitly established by law, then judges, based on the responsibility for proper conjugal relations, may rule on the necessity for the proper conjugal relations of the spouses. One of the conditions for this is the establishment of a normal, consensual sexual relationship between the parties.

We also note that the Iraqi legislator did not explicitly refer to the concept of violence against the wife, so that the phrase used was not explicitly used in the text. The legislator therefore refers to the right to separation due to injury, which is given to both the husband and wife. In other words, the legislator granted both parties in the marriage, that is, the husband and wife, the right to apply to the court for separation if one of the spouses injures the other. The grounds for judicial separation on the basis of harm are extensive and not exhaustive, being cited in Iraqi law merely by way of illustration. The notion of harm encompasses acts of violence perpetrated by the husband against his wife. Accordingly, the Iraqi legislator addressed this matter in the amended Personal Status Law No. 188 of 1959, currently in force. Article 40 provides: "If one of the spouses causes harm to the other spouse or to their children to an extent that makes it impossible to continue the marital life." This provision falls within the scope of domestic violence and the injury it may cause to either the husband or the wife. Selfish acts like beating, insulting, and cursing are considered harmful. Even if the husband is extremely suspicious of his wife, this is a type of harm to his wife, which is why they must separate due to harm. This was decided by the Federal Court of Cassation, where the discriminatory principle states, "The husband's suspicion of his wife concerning her marital status before marriage necessitates

separation due to harm." The evaluation of the degree of this manifestation of discrimination is at the discretion of the court⁸, which must consider the individual characteristics of the victim, since the criterion of harm is a subjective concept⁹.

Harm denotes injury inflicted upon another person, which may be either material or moral. Material harm consists of physical or financial injury sustained by the aggrieved party, whereas moral harm relates to injury to a person's honor, reputation, dignity, and social standing.¹⁰

To address the issue of domestic violence, the government of the Kurdistan Region has enacted legislation aimed at curbing domestic violence in general and violence against women in particular. One such law is Law No. 8 of 2011, concerning the prevention of domestic violence, which is the first law of its kind in Iraq and the Arab countries. This law criminalizes 13 forms of domestic abuse and exploitation of women, as outlined in Article 2. It sets out penalties that can act as deterrents for each offense¹¹.

In this context, it is observed that the Law Against Domestic Violence, despite its numerous merits, is not free from shortcomings that are evident to any impartial observer. Firstly, it does not permit a father to discipline his son, despite such discipline being considered both a religious and social obligation incumbent upon the father. It further deprives the husband of his right to discipline his wife, a right acknowledged by the Holy Sharia, thereby resulting in the erosion and weakening of the husband's right of marital guardianship over his wife.

The statement of the Iraqi representative is more preferable because it does not restrict the right to request a judicial separation to the wife only. There are many cases when a husband can be harmed by his wife. In such situations, he also has the right to file for divorce if he considers his life impossible without separation. Nevertheless, in this case, the husband will have to provide the wife with all her rights according to the law and Sharia, although she is guilty of his divorce. Thus, Article 40 states that both spouses can request a

judicial separation if they have been subjected to any harm.

There are also numerous judicial practices of the Iraqi Courts on the issue of separation based on harm, which are related to the wife's request for separation due to the physical harm she suffers from her husband. In particular, the Court of Cassation in Iraq ruled that the wife's suffering from intermittent severe beatings resulting in serious injuries is recognized as harm that renders the marriage unsustainable and necessitates separation under Article 40/1 of the Personal Status Law¹².

In another judgment of the Personal Status Court in Al-Shaab District, it was deemed that the claimant had been subjected to harm and a form of violence through the fact that she sold her kidney in the presence of her husband, which was considered a factor of pressure on the wife necessitating separation¹³. In another case before the Federal Court of Cassation, it was ruled that the plaintiff had been subjected to significant harm, which rendered it impossible to continue living together, and this harm was not of a particular nature. This is an objective assessment based on the facts and circumstances investigated by the court. The harm could be physical or financial harassment, psychological or verbal maltreatment, or even harm to one of the spouse's relatives. Thus, the plaintiff was subjected to harm by the defendant; consequently, according to Article 140 of the Personal Status Law, the petitioner's request to dissolve the marriage was justified. The noted decision of the court to separate the spouses was correct and had to be enforced.¹⁴

It is observed that the Iraqi judiciary has expressly recognized violence against wives within its rulings on separation on the grounds of harm. This includes both physical violence inflicted upon the wife's body, such as severe beatings, fractures, and other injuries, as well as verbal abuse directed by the husband toward his wife. Both categories of violence against the wife are regarded as valid grounds for separation pursuant to Article 40, Paragraph 1. Based on the preceding discussion, spousal violence justifies a

wife's refusal to obey her husband. Such abuse undermines the husband's right to authority, as he has breached the essential conditions of his guardianship foremost among them being the obligation to treat his wife with kindness and respect. Consequently, a husband who mistreats his partner forfeits his right to enforce his authority over her. She can refuse to obey him and has the right to submit her case to the Sharia judge who will separate her from her husband if she is subjected to the violence of his hands. Thus, it is clear how the husband's guardianship is undermined here by depriving him of his right not to impose his obedience on his wife as well as depriving him of the right to exclusive divorce by the Sharia judge pronouncing divorce on the abused wife.

We propose that the legislator expedite the adoption of the draft Law on Domestic Violence, following the amendment of those provisions that impinge upon the husband's right to legitimate discipline, in order to address the violence prevalent in society that is directed at women generally, and particularly at wives by their husbands.

Second Requirement: Guarantees Related to Family Rights and Their Legal Effects

Article 1103 of the Civil Code also stipulates that the husband and wife must live together in harmony. Verse 19 of Surah An-Nisa confirms this obligation. Taking into consideration the above-mentioned jurisprudence and the text of the article, it is possible to suggest that all actions and inactions that go against mutual good treatment are considered as manifestations of marital discord. For instance, if a husband does not treat his wife well as it is stipulated in the above-mentioned verse and the sixteenth one, she has the right to ask for a divorce on the grounds of hardship and trouble.

The stipulated marital obligations further include the right to cohabitation at least once every four nights, as well as the right to conjugal relations at least once every four months. Failure to observe these constitutes a clear violation of women's rights and an infringement upon proper social

relations within the family. It is not permissible to abstain from marital relations for a period exceeding four months without the wife's consent, even if the husband possesses strong self-restraint. This ruling applies specifically where no valid excuse exists; however, abstention is certainly permissible when a legitimate excuse is present and for the duration of such excuse, such as apprehension of harm to himself or to his wife¹⁵. The aforementioned ruling contained in the transmitted narration prohibits abstention from conjugal relations for a period exceeding four months. With regard to this time frame, it has been argued that the four-month period specified in the narration is unreasonable, as the case concerns an individual who has encountered an adversity and did not intend to cause harm to his wife. Nevertheless, due to this circumstance, the Imam stipulates that the maximum period within which such a person must attend to his wife's conjugal rights is four months. However, this is not used, because all people can harm a woman and it is delayed until after four months, but this causes harm to a woman who needs without any reason. The word "harm" was mentioned in the narration because the lawgiver considered both benefits and harms. On the one hand, there is the man's dignity and his problems, and in the event of calamities, on the other hand, the woman's need is taken into account, so it is said that it can be postponed for a maximum of four months, but this is not accepted. Another person whose delay causes harm without a justified reason can postpone it for four months, and evidence of harm is also used, which is not permissible¹⁶. Consequently, advancements in medical science, modern civilization, and evolving societal customs necessitate updated criteria for evaluating marital obligations. A wife is a person, not merely an instrument for physical gratification, and her sexual fulfillment deserves regular attention rather than being restricted to arbitrary timelines like once every four months. Therefore, these matters must be reassessed based on contemporary conditions alongside local cultural practices. Ultimately, a husband is required to maintain reasonable intimacy with his wife; failing to do so constitutes a breach of his

duty to act with decency¹⁷. Actually, traditional guidelines such as the wife's right to sexual intimacy once every four months or the right to shared nighttime companionship are not rigid, unalterable rules. Instead, they serve as baseline opportunities or guidelines rather than absolute mandates. This flexibility is especially supported by the overarching legal principle requiring good cohabitation, which has a broad and adaptable scope of application¹⁸. In addition, in the case of a more robust wife with a more robust temperament and greater sexual desires, it is said that quitting sex is prohibited according to the principle of harm, and the man is obliged to support his wife, or divorce him¹⁹. In addition to the difficulties arising from abstention from sexual relations, there are further risks, such as the emergence of sexual deviations, the prevention of which has consistently been an objective of the legislator. Accordingly, by revising the traditional perspective, the spouses' duty to maintain conjugal relations in accordance with customary practice may be established as a general rule, while the wife's need is regarded as a personal necessity. Breach of this obligation is deemed an offense, and such a characterization must be accompanied by guarantees of its enforcement.

A husband is required to fulfill marital intimacy in accordance with accepted social customs; otherwise, his failure to do so may violate his fundamental obligation to be a good and considerate companion²⁰. Sexual pleasure and intimacy with his wife in unconventional ways are clear examples of bad companionship, since discussing sexual pleasure is not one of those matters in which only the pleasure and well-being of one party are important. However, in addition to engaging in sexual relations for a normal period of time and taking into account the woman's mood, consideration is given to establishing a relationship of normal quality and without harming the other party. For example, someone asked Imam al-Sadiq (peace be upon him) about a woman's sexual pleasure, and the Imam forbade the man from harassing and mistreating her in exercising this right towards her²¹. As a consequence, despite the fact that the

husband has the right to satisfy his pleasure from his wife, he does not have the right to resort to violence in this case. Violence, abuse, and threats are typical examples of a husband's misconduct in order to have sexual intercourse with his wife²². One example of misconduct is an anal intercourse, that was considered by famous Imami jurists, such as Allam al-Huda, al-Tusi, al-Halabi, and al-Hilli, citing the Sunnah and consensus, which is be reprehensible but not forbidden. On the other hand, some jurists, such as Qamin bin Hamza, Abu al-Futuh al-Rawandi, and Abu al-Makarem, consider it forbidden²³. In some opinions of the Supreme Court it is also considered that the spouses are obliged to divorce due to this example of misconduct. Although it is not possible in this case to identify the clear criterion regarding the natural limits of the marital relations, on the one hand, due to the private and confidential nature of such relations and on the other hand, due to the personal nature of the sexual desires, the medical and psychological diagnostic criteria can be applied in this regard. In addition, dissatisfaction with sexual relations is a clear indication that there is a problem in the establishment of such relations between healthy and normal spouses.

It has already been said that according to Article 1104 of the Civil Code, it is incumbent upon married people to assist each other in laying the foundations of the family and educating their children. According to some jurists, a woman's refusal to help her husband is a matter of negligence, and the husband's negligence in this regard may be regarded as bad company and cause hardship, which may be a reason for the wife to request a divorce²⁴. Another perspective views the marital obligation of mutual assistance as a barrier to claiming financial compensation for household tasks or duties, emphasizing both the legal and moral dimensions of this responsibility²⁵. On the other hand, it has been argued that cases of negligence are fully clarified in jurisprudence, and only deliberate commission or omission of an act by a wife in the context of the husband's rights may be considered negligence. Thus, based on this assumption, if a wife refuses to raise a child, she will not become

a slave, and, consequently, the article demonstrates the moral aspect²⁶.

As it can be seen above, in the discussions raised in this regard, only the wife's refusal to perform the duty of assistance is mentioned and the husband's refusal is not mentioned. It is clear that women are more engaged in household affairs and therefore men are more prone to neglect their duties such as raising children. However, in any case, the arguments raised can be applied to both spouses. The authors believe that separating religious duties from legal duties may be effective in defining and proving neglect. In fact, the basis of the opinion of those who do not consider a wife's lack of interest in fulfilling her duty of assistance as neglect is that the wife does not have a religious duty in these matters. Based on this argument, and given the religious duty of the spouses in some cases of mutual assistance, such as raising a child, these cases can be considered non-compliance. However, the clarification of Article 1104 of the Civil Code and the imposition of this obligation on the spouses precludes any other kind of conclusion, and the failure of any man or woman to fulfill this obligation can be considered non-compliance, especially since the failure to provide mutual assistance deprives the parties of the possibility of living together in the true sense.

In conclusion, to put it shortly, the Iranian legislator has partially regulated the types of husbandly disobedience which have been interpreted through the prism of Islamic law, but which have received a particular legal formulation, concerning the husband's obligations and the consequences of their violations. Refusal to maintain the wife, poor living conditions, and leaving the wife without maintenance or divorce were recognized in the law as the most serious forms of husband's disobedience affecting the family life negatively. The law stipulates that in such cases, the wronged wife has the right to turn to the court in order to claim her moral and material rights, and to demand the divorce if it is impossible to live together anymore.

The second topic: Judicial and penal guarantees

for the husband's recalcitrance

This part deals with the judicial and punitive guarantees stemming from the husband's disobedience, by bringing out the role of the judiciary in protecting the wife and letting her deal with the various forms of abuse and harm resulting from the husband's violation of his marital duties.

Section 1: Judicial Safeguards and Means of Protecting the Wife

Article 43(I) (2) of the Iraqi Personal Status Law deals with a husband's abandonment of his wife. It provides that if a husband has abandoned his wife for two years or more without a just reason, she may get divorced on the ground of his desertion even if he is known, and can support her²⁷. Iraqi legislators, much like the legal frameworks found in several other Arab nations, draw no clear line between the concepts of desertion and absence. When it comes to financial implications, certain monetary consequences follow whenever a judgment of marital disobedience or desertion is issued against either spouse. Should a wife be declared disobedient, she forfeits her right to maintenance, a principle established under Article 25 of the Iraqi Personal Status Law. Conversely, where desertion is involved, a wife who has been deserted by her husband retains her right to maintenance, in accordance with Article 40 of the same law under which the maintenance owed to a non-disobedient wife is treated as a debt that the husband is obligated to pay.

With respect to the fulfillment of marital rights, it becomes evident that both marital discord and the failure to satisfy marital obligations result in granting the wronged spouse the right to seek separation. This principle is set out in Article 25 of the Iraqi Personal Status Law, which addresses petitions for separation following a ruling of marital discord attributed to the wife. Under this provision, the husband may petition for separation once such a ruling has been issued against the wife, while the wife likewise retains the right to seek separation, though only after two years have elapsed from the date the ruling was

handed down. As for the inability to meet marital obligations, Article 43, paragraphs 4 and 6, of the Iraqi Personal Status Law entitles the wife to request separation should her husband suffer from incurable conditions such as ailments affecting the reproductive system or should he contract a contagious disease such as tuberculosis or syphilis. The kind of divorce that arises by separation, in the occasion of discord within marriage, is a minor, irrevocable divorce. Similarly to the one by lack of ability to perform marital rights, some jurists believe, that the separation caused by wife's request of separation, by husband's refusal to give maintenance, is a dissolution.

Since the fundamental aim of marriage lies in the shared cohabitation of the spouses, it naturally follows that the husband bears the duty of providing maintenance for his wife. From this, we can understand that maintenance refers to the husband's obligation toward his wife to support and provide for her throughout the duration of the marriage²⁸. As a consequence of the above, alimony is the woman's right to a customary life without which she has the right to ask for judicial separation. Judicial separation by failure to provide alimony is one of the established principles in legal legislation. However, on the other hand, there are certain restrictions and controls that can be imposed on the problem of separation for failure to provide alimony.

This scenario is addressed in the Iraqi Personal Status Law under paragraph (9) of Article (43), which establishes the wife's right to petition for divorce: " If the husband fails to pay the accumulated alimony ordered by the court, after being granted a maximum period of sixty days by the Enforcement Department." The text makes clear that a wife may seek separation when the husband owes her accumulated alimony arrears and has failed to pay them despite being allowed a sixty-day grace period by the Enforcement Department. Moreover, the wife's right to request separation stays intact even if the husband continues to furnish her current alimony, so long as he has not cleared the accrued past-due amounts²⁹.

The approach in the policy of the Iraqi legislator seems to be subject for criticism. One view in jurisprudence is that the Iraqi legislator has uniquely introduced a situation which does not exist in Islamic jurisprudence or any other law. There is no justification for considering the wife's claim against the husband as a ground for judicial separation as long as the husband continues to provide financial support³⁰. In fact, this view deserves support because the wife can recover the maintenance debt from the husband through established debt collection methods. In addition, broadening the grounds for legal separation is indeed an undesirable trend, which is a criticism of the Iraqi legislator's policy. Therefore, we agree with the view advocating the deletion of paragraph (9) of Article (43) as this approach reduces cases of legal separation.

Therefore, we find that the Iraqi legislator has distinctively classified separation resulting from the non-payment of alimony as an irrevocable divorce³¹. Prior to the amendment, this type of separation was classified as a revocable divorce³². This is more appropriate because it allows the husband the opportunity to return, make amends, or provide support during the waiting period in order to reconcile with his wife.³³ Furthermore, given the separation on the basis of non-payment of alimony as a revocable divorce plays an important role in the continuation of the marital life and the protection of the interests of children, if any. A husband who refuses to pay alimony from the well-known stubbornness may later regret or God will favor a husband who is unable to pay alimony after divorce and during the waiting period. Therefore, it is better to allow reconciliation rather than close the door on the resumption of marital life with a commitment to continue providing alimony.³⁴

The Iraqi Personal Status Law stipulates that: 1. The wife of a missing person whose disappearance has been officially confirmed may petition the court for a legal separation from her husband after four years have elapsed since his disappearance. 2. The wife of the missing person shall be considered a widow after four months and ten days from the date of the separation

ruling. 3. If the missing person returns after the separation ruling, his marriage to her continues unless she marries and the second husband consummates the marriage without knowing of the first husband's existence.³⁵

This provision states that if the missing person returns alive during the waiting period, his wife would return to him. Similarly, she would return to him, in case he returns after the expiry of her waiting period in case she had not remarried, or she had remarried but the second husband did not consummate the marriage. However, if the second husband does consummate the marriage, the relationship with the missing husband is severed, and she becomes the wife of the second husband³⁶. It should be noted that paragraph (3) of the previously mentioned text has been revoked³⁷. Which means if the missing person turns up after the expiry of his wife's waiting period, he can't remarry her whether she has married another person or not. However, can the missing person recover his wife if he turns around during the waiting period? It seems that this matter is not without difficulty, as this law has made the judicial separation after a divorce irrevocable³⁸. This indicates that, under the Iraqi Personal Status Law, a missing husband is unable to reclaim his wife even should he return during the waiting period a stance that runs counter to the views held by Muslim jurists and to comparative legislation. The judiciary has, on numerous occasions, elaborated on how a missing person's return affects the continuation of his marriage, along with the constraints that apply. The Court of Cassation held that: "If the facts of the case reveal that the wife of the missing person married the missing person's brother while she remained bound to her absent husband, then her marriage is void both religiously and legally, since the missing person is deemed to be alive unless his death has been formally declared"³⁹.

Based on the foregoing, it becomes evident that marrying a wife who remains legally tied to her missing husband constitutes a null and void marriage, so long as no decision has been issued declaring the missing person deceased. In a

separate ruling by the same court, it was held that: "A ruling declaring the death of a missing person obliges his wife to observe the legal waiting period of four months and ten days, and she may not marry another man until this period has expired and the ruling has become final."⁴⁰ Another decision of that court confirmed that the missing person has the right to remarry his wife if he returns before the end of her waiting period, pursuant to Law No. 25 of 1994.⁴¹

This decision clarified that the aforementioned law annulled the right for the missing person to reclaim his wife if he returns after the expiry of the waiting period whereas he has the right to claim his wife if he comes back during the waiting period because it is a revocable waiting period, which is a contradiction of article 45 of the Iraqi Personal Status Law which changed judicial separation into a definite divorce

In a separate ruling, the Iraqi Federal Court of Cassation determined that: "The separation between the plaintiff and her missing husband constitutes an irrevocable divorce of the minor degree, and reconciliation is permissible only with a new marriage contract and dowry". Additionally, the wife is obligated to observe a legal waiting period lasting four months and ten days⁴². From all of the above, we conclude that the Iraqi legislator, according to Article 45, deemed separation due to disappearance as an irrevocable divorce, which meant that the missing person could not remarry his wife if he returned while in the wait. This matter was not cited by anyone since the waiting period for the missing person was a mix of the waiting period for the death and revocable divorce.

The Federal Court of Cassation addressed this provision in its decision No. 6286/2022⁴³, where it stated: "The defendant is afflicted with an illness that renders her incapable of obeying her husband. Since it is impossible for the plaintiff to comply with and carry out her marital duties as a wife, she is not bound to render obedience until she has recovered". This means that, in accordance with the law and the aforementioned principle of cassation, a wife who is ill is under no obligation to obey her husband. He may neither

force her to submit to his authority nor penalize her for failing to obey, since her illness constitutes a valid impediment to obedience, thereby nullifying the authority he would otherwise hold over her.

Section Two: Penal Safeguards and Legal Liability Arising from a Husband's Disobedience

Knowledge represents the realization of the agreement in its true essence. When considering knowledge in the context of consensual divorce (khul'), it arises through a breach of the marital obligations set forth by law, coupled with the fulfillment of one of the legally stipulated grounds that permit either spouse to seek separation or divorce owing to the impossibility of sustaining married life. Khul' is essentially equivalent to divorce, with the distinguishing condition that the wife offers a sum of money to her husband in return for dissolving the marital bond. It occurs when the wife divorces herself under a stipulated condition or is granted a divorce by the judge, provided that she returns the dowry the husband had given her. In such a case, the husband must be free of defects and must not have inflicted harm upon her. If she is injured by the husband, she will be entitled to all her rights. One of the reasons for khul' is to prevent the damage that would be incurred by having a life with her husband, which may be due to an innate defect, which she was unaware of before the marriage, which would make it impossible for her to live with him with her existence, and to avoid discord⁴⁴.

The decision of the federal court of cassation stated that upon its reconsideration and deliberation, it was found that the appeal was filed within the statutory period. The court decided to admit it in form. Upon reviewing the appealed judgment, it was found to be erroneous and contrary to the Sharia and the law. According to the jurisprudential principles followed by the parties, the validity of revoking the offer in a khul' divorce requires the husband's knowledge of his ex-wife's withdrawal of her offer within a reasonable period for the purpose of achieving the intended aim of converting the divorce from

khul' to revocable. This necessitated the court to verify this by questioning the parties involved and doing further investigations due to its importance. Because the court delivered its verdict without taking the previously stated matters into account thereby compromising the ruling's legal validity it was ruled that the decision be annulled and sent back to the lower court to carry out the required procedures, with the appeal fees to be decided based on the final outcome. The decision was issued by unanimous agreement on 24 Rajab 1442 AH, corresponding to March 8, 2021. Furthermore, among the grounds for khul' are marital discord, the impossibility of cohabitation between the spouses, and the apprehension that marital rights will not be fulfilled. In such circumstances, both parties consent to divorce or khul', and the separation is carried out amicably and by mutual understanding. Nevertheless, should the husband act unreasonably and start bargaining with the wife for a considerable sum in return for granting her freedom, she may turn to khul' to bring the marital relationship to an end in exchange for compensation⁴⁵.

Similarly, in cases of polygamy, which may prove detrimental to the first wife, if she finds herself harmed by her husband's remarriage, she may pay a sum to secure her release and obtain her freedom through a khul' divorce from her husband. It thus becomes apparent to us that knowledge plays a considerable role both in situations of discord between spouses and in cases of remarriage. Once the wife becomes aware, she has the opportunity either to petition for separation through the court or to negotiate with her husband whether with or without compensation in order to terminate the marriage contract. Even assuming that the husband is unaware that the woman seeking khul' is in a state of purity, the khul' divorce does not take effect. Likewise, if the woman seeking khul' retracts her offer before the waiting period ends (applicable only in the case of the first wife), and the divorced husband is unaware of the retraction while the waiting period has already elapsed, it is not regarded as a revocable divorce, and the provisions concerning authorization or dowry in

gold do not apply to it⁴⁶.

We have already mentioned that neglects, like for example not giving a single alimony payment, are authorized by numerous legal and criminal texts. However, regarding other types of neglect, like for example giving up on sexual relations, a jurisprudence review shows that some jurists consider that the husband should be punished for neglect.

The author of *Al-Jawhara* approves of the punishment of unmarried couples by the ruler⁴⁷. In addition to addressing a husband's potential disobedience, Imam Khomeini (RA) mandated that rulers penalize unmarried spouses who fail to formalize their union. Similarly, Martyr Thani viewed an unmarried man's persistent refusal to marry as sufficient grounds for the governor to administer punishment⁴⁸. Some hold the view that it is necessary first to recognize the wife's right to demand her entitlements in the event of the husband's disobedience, followed by the wife's admonition of the husband, then an assessment of whether appealing to the authority to compel the husband would prove futile, and should the authority's penalizing of the husband fail to yield results, ultimately compelling him to divorce through the court⁴⁹. They further regard the rationale behind criminalizing couples who abstain from cohabitation despite the availability of a remedy such as divorce as the establishment of an offense that safeguards and preserves the standing of the family, as well as society's response against the abuse of rights by individuals⁵⁰. On the other hand, the proposal of taking into consideration the crime of unmarried couples and determining the punishment thereof will have no other effect except increasing the crimes stipulated in the law in the field of family relations. An analysis of the jurisprudence related to family law also indicates the concern of Islamic law with preserving the family and strengthening its foundation. Therefore, in the matter of criminalizing the abusive behavior of spouses in the family system, the principle must be based on non-criminalization, since criminalizing family violations often leads to the breakdown of the family and at least to the cooling of the spouses'

relationship and the creation of mistrust, hostility, and resentment. Based on this moderate and pragmatic view, if such violations by spouses target the foundations and basis of the family, the principle of non-criminalization is established, and the criminal liability of the perpetrator is determined. An examination of jurisprudential teachings reveals that jurists have turned to criminalizing the conduct of spouses by invoking Quranic texts and narrations in matters relating to sexuality and illicit relationships. In other instances, they have advocated remedies such as maintaining companionship in an acceptable manner despite the husband's aversion toward the wife, along with forgiveness, reconciliation, and kindness in situations where the husband's disobedience is feared, and admonition coupled with withdrawal on the husband's part in cases of the wife's disobedience. They have likewise favored the establishment of family courts when disagreement and incompatibility arise between the parties, and, as a final measure, divorce as the most detestable of solutions.⁵¹

If the objective of penalizing the husband is to steer him back toward reconciliation and renewed affection for his wife, resorting to punishment may in fact produce the opposite result, while from a social standpoint this approach risks demeaning the wife's dignity and standing. For this reason, it is unwise to count on criminal enforcement as a reliable safeguard. Instead, it appears more fitting to turn to enforcement guarantees that are more effective and beneficial, such as securing compensation in cases where the wife has suffered material and moral harm, as well as issuing a divorce decree on grounds of the wife's disobedience and without imposing hardship. At the same time, obtaining compensation may not be viewed as an effective enforcement guarantee within the relationship between spouses, because regardless of the wife's financial independence on the one hand in everyday life the spouses are expected to jointly devote their assets to meeting the family's needs, while on the other hand, the parties may exploit financial guarantees as a form of pressure to attain other ends, such as divorce. Therefore, it is necessary to use caution when forecasting and

using this tool. Moreover, counseling, attending courses for family education, and referring to a psychologist can also be beneficial in attempting to solve the problem. Indeed, criminalization without the corresponding victim assistance measures is not only ineffective in terms of eliminating the negative consequences but also causes additional difficulties for the family. For example, if the punishment of the spouses does not lead to their reconciliation or divorce, this will have adverse effects on the further functioning of the family ⁵².

Conclusion:

The research demonstrates that a husband's breach of his marital duties is not simply a passing family dispute, but rather a violation of the legal and moral equilibrium upon which the marital relationship rests. This calls for the intervention of legal and jurisprudential rules to afford effective protection to the aggrieved wife. It has been found that confronting the husband's disobedience relies on an integrated set of safeguards, beginning with corrective measures grounded in reconciliation and guidance, and then extending to civil and family protections, which encompass obligating the husband to satisfy the wife's financial and moral rights and enabling her to seek separation whenever harm is established or the continuation of married life becomes impossible. Additionally, the research demonstrated that the judiciary is crucial in safeguarding wives by evaluating claims of marital harm and disobedience, applying the law to maintain fairness between partners. However, criminal penalties are restricted only to situations where a husband's misconduct intensifies into actual criminal offenses, including violence, physical assault, or coercion.

First: Results:

1. The research revealed that neither Iraqi law nor the Iranian legal system treats the husband's disobedience as a distinct crime; instead, both regard it as a breach of marital duties that carries a range of legal consequences intended to safeguard the wife and establish balance within the family relationship. The

distinction, however, emerges in the legal foundation each system adopts: Iranian law draws more heavily on the jurisprudential principles of good companionship, hardship, embarrassment, and the duty to fulfill marital rights, whereas Iraqi law relies more explicitly on the standard of harm as the basis for judicial intervention.

2. It was found that Iranian jurisprudence and law have been characterized by adopting the principle of gradualism in order to deal with marital discord, as treatment starts with an attempt at reconciliation and reconciliation, then obliging the husband to fulfill his marital duties, and if this is not possible, the process moves to the stage of judicial divorce when the hardship and embarrassment are established in accordance with Article (1130) of the Iranian Civil Code. As for the Iraqi law, it has focused on the role of the judiciary in removing the harm from the wife through the judicial separation in accordance with the amended Personal Status Law No. (188) of 1959.

3. The study indicated that safeguarding a wife's financial rights is a primary mechanism for protecting her against a husband's refusal to fulfill his duties. Under the Iranian legal system, a wife is entitled to demand her marital rights, ensuring she is not left without financial support or proper care. Similarly, Iraqi law establishes alimony as a legally binding debt owed by the husband, granting the wife the right to seek a separation if he fails to pay the court-ordered alimony. Ultimately, both legal systems demonstrate a strong commitment to protecting women's financial security within marriage.

4. The research showed that the notion of marital harm serves as a significant foundation for protecting the wife under Iraqi law, given that the Iraqi judiciary broadened its interpretation of harm to encompass physical, psychological, and moral harm, as well as abuse and abandonment thereby affording the wife a variety of judicial avenues for confronting the husband's recalcitrance. Iranian law, by contrast, has embraced concepts more closely tied to Islamic jurisprudence, such as poor companionship, hardship, and embarrassment, as means of

establishing the impossibility of sustaining married life.

5. It emerged that both schools differ in tackling the issue of refusal to perform special marital rights, particularly the marital relationship. Imamite jurisprudence requires the husband not to refuse to perform this particular right and indicates that the ruler may intervene if the husband continues to refuse, and some jurisprudents even indicated that the marriage contract may be annulled. The Iraqi legislator did not specifically address this issue, but it may be interpreted through the concept of harm leading to judicial separation as stipulated by article (40) of the Personal Status Law.

6. The research indicated that criminal liability stemming from a husband's failure to meet marital duties is restricted in both legal systems. A simple breach of these obligations is not criminalized on its own; rather, penalties only apply when the non-compliance involves separate criminal acts like violence, assault, or threats. Furthermore, Iraqi law depends primarily on standard penal codes to handle such offenses, whereas Iranian jurisprudence explores utilizing *ta'zir* (discretionary judicial punishment) to address specific instances of deliberate refusal to fulfill marital responsibilities.

7. The study concluded that both the Iraqi and Iranian legal systems pursue the shared objective of protecting the family and curbing arbitrary conduct on the part of the husband. The means of protection, however, differ between the two. The Iranian system tends to blend jurisprudential provisions with legal rules in addressing a husband's disobedience, whereas the Iraqi system depends on the judicial remedies laid down in the Personal Status Law. Notwithstanding this difference, both systems stress the necessity of providing legal safeguards that prevent the wife from being left in a state of limbo or stripped of her rights, all while upholding the principle of family stability wherever possible.

Second: Recommendations:

1. The Iraqi legislator must formulate a more precise and direct legal regulation for the

concept of marital disobedience, as it is in some Iranian jurisprudence and applications, which defines the forms of marital disobedience and its legal consequences, rather than addressing its consequences indirectly through the provisions of harm and judicial separation, which aids in providing greater protection to the wife and maintaining the stability of the legal positions of the parties

2. It is suggested that family reconciliation mechanisms be implemented for the first time in the event of separation and divorce, by activating the role of family courts and family mediation, and by obliging spouses to resort to family counseling and rehabilitation programs in case of dispute. These procedures should be a means of reconciliation, not a tool to prolong the wife's suffering or keep her in a damaged marital relationship

3. There is a need to reconsider certain provisions concerning the wife's financial guarantees, particularly in instances where maintenance is not provided, by reinforcing the

mechanisms for the swift enforcement of financial rulings and ensuring that the wife can obtain her rights without having to navigate lengthy and complicated procedures. At the same time, the provisions governing separation on grounds of failure to provide maintenance should be examined and refined in a manner that strikes a balance between safeguarding the wife's rights and preserving family stability.

4. It is recommended that the legal protection of the wife should be reinforced in the face of forms of marital discord that may take the form of violence or psychological and moral abuse, by completing the legislation on combating domestic violence and by developing judicial and penal protection measures, while taking into account that criminal intervention should be envisaged only in the case of particularly serious violations of the rights of the wife and that other corrective measures should be retained as a solution within the framework of family problems.

Bibliography:

First: Arabic Books:

- Al-Jundi, Ahmed Nasr, 2011, Explanation of the Iraqi Personal Status Law, Dar Al-Kutub Al-Qanuniyah, Egypt.
- Al-Difa'i, Wasan Kazem Zarzour, Khul' divorce between the provisions of Islamic jurisprudence and Iraqi law, Faculty of Law, Anbar University.
- Al-Dhannoun, Hassan Ali, 1991, Al-Mabsout fi Al-Mas'uliyya Al-Madaniyya, Dar Al-Kutub wa Al-Watha'iq, Baghdad.
- Al-Zalami, Mustafa Ibrahim, 2014, The Extent of the Authority of Will in Divorce, 1st Edition, Ihsan Publishing and Distribution.
- Al-Zahawi, Judge Rabi' Muhammad, 2019, A Dialogue between the Judge's Decision, the Discriminatory Principle, and Explanations, Al-Sanhouri, Baghdad.
- Al-Saadi, Muhammad Hassan Kashkul Abbas, 2011, Explanation of the Personal Status Law No. 188 of 1959 and its amendments, 2nd edition.
- Al-Sadr, Muhammad, 2007, Beyond Jurisprudence, 1st Edition, Vol. 1, Dar Al-Muhibbin, Qom, Iran.
- Ali, Judge Abdul Qadir Ibrahim, 2006, Summary of Lectures on the Explanation of the Iraqi Personal Status Law and its Amendments, delivered to students of the Judicial Institute.
- Al-Kubaisi, Ahmed, 2006, A Concise Explanation of the Personal Status Law and Its Amendments, 2nd Edition.
- Kashkul, Muhammad Hassan; Al-Saadi, Abbas, Explanation of Personal Status Law No. 188 of 1959 and its amendments, Al-Atak, Cairo, no publication year mentioned.
- Najafi, Muhammad Hassan, 1404, Jawaher al-Kalam fi Sharh Shara'i al-Islam, 7th edition, Beirut: Dar Ihya' al-Turath al-Arabi.

II. Persian References

- Amiri Hossein, 2010, The Sexual Rights of Husband and Wife in Islam, Marifat Monthly, Year 19, Issue 15.
- Tavaghehi, Abdul Ali, 2010, The Necessity of Criminalizing Husband's Disobedience, Journal of Women's Strategic Studies, Volume 12, Issue 48.
- Habibi Tabar Jawad and Ansieh Farahani, 2015, Family Protection Law and Ensuring Effective Enforcement Regarding Husband's Disobedience, Journal of Islamic Studies on Women and Family, Volume 2, Issue 1.

- Khomeini, Ruhollah, 2013, Translated by Tahrir al-Wasila, Book of Marriage, Volume 2, Tehran: Institute for the Compilation and Publication of the Works of Imam Khomeini (PBUH).
- Shakri Golpayegani Tobi, Kardvani Rahleh and Vakili, Vahid, 2014, Jurisprudential and Legal Review of the Scope of Spousal Refusal and the Method of Dealing with It, Quarterly Journal of Strategic Women's Studies, Issue 64.
- Shabiri Zanjani, Seyed Musa, 1419, Book of Marriage, Qom: Ray Pardaz Research Institute, Volume 5, p. 1483.
- Shokri, Farideh and Ruqayya Sadat Momen, 2011, The Role of the Principle of No Harm in the Right of a Woman to Refuse Specific Obedience, Quarterly Journal of Women's Strategic Studies, Volume 51.
- Sadeghi Movahed, Khadijeh Seyed Mohammad Sadri, Ahmad Bagheri, and Haider Amirpour, 2018, Feasibility of Criminalization in the Field of Family Law, Journal of Islamic Jurisprudence and Law Research, Issue 54.
- Katouzian, Nasser, 2002, Civil Law in the Current Legal System, Tehran, Mezan Publications.
- Kulaini Razi Muhammad ibn Yaqub ibn Ishaq, 2009, Furu' al-Kafi, Volume 6, Tehran: Quds Publishing.
- Mohaghegh Damad Seyed Mustafa, 2011, Jurisprudential Review of Family Law, Tehran: Ulum-e Eslami Publishing House.
- Mozaffari, Khadijeh; Hosseini, Zeinab, 1399 [2020-2021], "Husband's Disobedience and Its Effects in the Iranian Legal System," Journal of Law, Volume 85, Issue 115.
- Nubahar, Rahim and Umm al-Banin Hussein, 2015, The Principle of the Obligation to Treat Each Other with Kindness in Husband-Wife Relationships, Family Research Quarterly, Volume 11, Issue 1.
- Hedayatnia, Farajollah and Seyed Javad Seyed Alizadeh Ghanji, 2013, Marital Disobedience in the Jurisprudence and Family Law of the Islamic Republic of Iran, Journal of Islamic Law, Volume 10, Issue 37.

Third: Laws

- Iraqi Personal Status Law No. 188 of 1959. Published in the Iraqi Gazette on 1994, Issue: 3538.
- Family Support Law of 1391
- Law No. 21 of 1978, the Second Amendment to the Personal Status Law No. 188 of 1959, published in the Iraqi Official Gazette, Issue No. 2639, dated February 20, 1978.
- Law No. (25) of 1994
- Law No. 8 of 2011 on Combating Domestic Violence in the Kurdistan Region.

Fourth: Judgments and Decisions:

- Court of Cassation Ruling No. 9455 / Personal Status and Personal Matters Authority / 2018.
- Ruling No. 341 / Personal / 2013, unpublished decision.
- Ruling No. 55 / First Extension / 1990
- Ruling No. 809 Personal Status / 2000.
- Decision of the Islamic Shura Council on 8/5/2020.
- Decision of the Federal Court of Cassation No. 5453 / Personal Status and Personal Matters Authority / 2022 on 4/4/2022.
- Decision of the Federal Court of Cassation No. 6286 / Personal Status and Personal Matters Authority / 2022 on 4/24/2022, unpublished
- Decision of the Federal Court of Cassation, Decision No. 3674, 2021
- Decisions of the Personal Status Court in Al-Karkh, unpublished
- Unpublished decisions of the Court of Cassation, No. 2445/Sh/2008, dated 8/18/2008.
- Decisions of the Court of Cassation, No. 2925 / Personal Status and Personal Matters Authority / 2015 on 4/15/2015

Footnotes:

- ¹ . Mozaffari, Khadija; Hosseini, Zainab, 2020, Disobedience of a husband and its effects in the Iranian legal system, Haqouqi Journal, Volume 85, Issue 115, p. 257.
- ² . Safaei Hossein and Vamami, Asadollah, 2014, A Brief on Family Law, Tehran: Mezan Publishing, p. 235.
- ³ . On August 5, 2020, the Islamic Consultative Assembly approved a single article entitled the Law on the List of Invalid Laws and Decisions in the Field of Health, and Article 1130 of the 1935 Law is also listed in the seventieth row of this list. Therefore, it is questionable whether Article 1130 of the Civil Code, which was

amended in 2002, is still in force or has been repealed based on this law? In response, it appears that the legislator simply intended to repeal the article adopted in 2002, which, of course, was already repealed with the amendment made in 2002. However, considering the other items on this long list shows that the legislator was simply trying to compile and list the repealed laws, as other recurring items on this list had also been previously repealed by subsequent laws. Given the importance of Article 1130, the fact that the Islamic Shura Council did not address this issue and discuss it in the Council is another indication that the single article does not address Article 1130 as amended in 2002.

⁴ . Nobahar, Rahim and Umm al-Banin Hussein, The Rule of the Necessity of Coexistence with a Known Person in the Relationships between Husband and Wife, previous source, p. 81.

⁵ . Tawjehhi, Abdul-Ali, 1389, The Necessity of Criminalizing a Husband's Disobedience, Journal of Strategic Studies on Women, Volume 12, Issue 48, p. 237.

⁶ . Habibi Tabar Javad and Aniseh Farahani, 2015, Family Protection Law and Ensuring Effective Enforcement in Cases of Husband's Disobedience, Journal of Islamic Studies on Women and Family, Volume 2, Issue 1, p. 56.

⁷ . Nobahar, Rahim and Umm al-Banin Hosseini, 2015, The Rule of the Necessity of Kind Treatment in Marital Relations, op. cit., 66.

⁸ . Decision of the Federal Court of Cassation No. 5453 / Personal Status and Personal Matters Authority / 2022 on 4/4/2022.

⁹ . Ali, Judge Abdul Qadir Ibrahim, 2006, Summary of Lectures on the Explanation of the Iraqi Personal Status Law and its Amendments, delivered to students of the Judicial Institute, p. 76

¹⁰ . Al-Dhannoun, Hassan Ali, 1991, Al-Mabsout fi Al-Mas'uliyah Al-Madaniyya, Dar Al-Kutub wa Al-Watha'iq, Baghdad, p. 158

¹¹ . Article 2 of the Law on Combating Domestic Violence in the Kurdistan Region, No. 8 of 2011.

¹² . Unpublished decisions of the Court of Cassation, No. 2445/Sh/2008, dated 8/18/2008.

¹³ . Unpublished decisions of the Personal Status Court in Karkh

¹⁴ . Decisions of the Court of Cassation, No. 2925 / Personal Status and Personal Matters Chamber / 2015, dated April 15, 2015

¹⁵ . Khomeini, Ruhollah, 1392, Translated by Tahir al-Wasila, Book of Marriage, Volume 2, Tehran: Institute for the Compilation and Publication of the Works of Imam Khomeini (PBUH), p. 259.

¹⁶ . Shabiri Zanjani, Sayyid Musa, 1419, Kitab al-Nikah (The Book of Marriage), Qom: Raypardaz Research Institute, Volume 5, p. 1483.

¹⁷ . Safaei Hossein and Vamami, Asadullah, Brief on Family Rights, previous source, p. 141.

¹⁸ . Nobahar, Rahim and Umm al-Banin Hosseini, 2015, The Rule of the Necessity of Treating One's Spouse with Kindness in Marital Relations, Quarterly Journal of Family Studies, Volume 11, Issue 1, p. 77.

¹⁹ . Amiri Hossein, 2010, Sexual Rights of Husband and Wife in Islam, Ma'rifat Monthly, Year 19, Issue 154, p. 83.

²⁰ . Katouzian, Nasser, 2002, Civil Law in the Current Legal System of Tehran, Mezan Publications, p. 141.

²¹ . Kulaini Razi Muhammad ibn Yaqub ibn Ishaq, 2009, Furu' al-Kafi, Volume 6, Tehran: Quds Publishing, p. 597.

²² . Nubahar, Rahim and Umm al-Banin Hussein, The Principle of the Obligation to Treat Each Other with Kindness in Marital Relations, op. cit., p. 66.

-
- ²³ . Shukri Farideh and Ruqayya Sadat Momen, 2011, The Role of the Principle of No Harm in a Woman's Refusal of Special Obedience, Quarterly Journal of Women's Strategic Studies (previous Women's Book), Issue 51, p. 122.
- ²⁴ . Katouzian, Nasser, Civil Law in the Current Legal System, op. cit., p. 203.
- ²⁵ . Safaei Hossein and Vamami, Asadollah, A Brief on Family Law, previous source, p. 133.
- ²⁶ . Mohaqeq Damad Seyed Mustafa, 2011, Jurisprudential Review of Family Law, Tehran: Islamic Sciences Publishing, p. 286.
- ²⁷ . Al-Saadi, Muhammad Hasan Kashkul Abbas, 2011, Commentary on the Personal Status Law No. 188 of 1959 and its Amendments, 2nd Edition, p. 154.
- ²⁸ . Al-Sadr, Muhammad, 2007, Beyond Jurisprudence, 1st Edition, Volume 1, Dar Al-Mohibbin, Qom, Iran, p. 273
- ²⁹ . Al-Jundi, Ahmed Nasr, 2011, Explanation of the Iraqi Personal Status Law, Dar Al-Kutub Al-Qanuniyah, Egypt, p. 123.
- ³⁰ . Al-Zalami, Mustafa Ibrahim, 2014, The Extent of the Power of Will in Divorce, 1st Edition, Ihsan Publishing and Distribution, p. 446.
- ³¹ . See Article (45) of the Iraqi Personal Status Law.
- ³² . The type of divorce for failure to provide maintenance was amended from a revocable divorce to an irrevocable divorce pursuant to Law No. (21) of 1978, the Second Amendment Law to the Personal Status Law No. (188) of 1959, published in the Iraqi Gazette No. (2639) on February 20, 1978.
- ³³ . Al-Kubaisi, Ahmed, 2006, Al-Wajeez fi Sharh Qanun al-Ahal al-Shakhsyah wa Ta'dilatuh, 2nd Edition, Volume 1, p. 169.
- ³⁴ . Al-Zalami, Mustafa, The Extent of the Power of Will in Divorce, previous source, p. 205
- ³⁵ . Paragraph (IV) of Article (43) of this Law.
- ³⁶ . Kashkul, Muhammad Hassan; Al-Saadi, Abbas, Explanation of Personal Status Law No. 188 of 1959 and its amendments, Al-Atak, Cairo, no year of publication mentioned, p. 162.
- ³⁷ . Under Article (1) of Law No. (25) of 1994, which stipulated that: "Clause 3 of Paragraph IV of Article 43 of the Iraqi Personal Status Law No. 188 of 1959 is repealed." It was published in the Iraqi Official Gazette in 1994, Issue No. 3538.
- ³⁸ . Article (45) of the Iraqi Personal Status Law states: "Separation in the cases mentioned in Articles 40, 41, 42, and 43 shall be considered a minor irrevocable divorce."
- ³⁹ . Its ruling No. 55 / First Extended / 1990, cited from: Al-Zahawi, Judge Rabi' Muhammad, 2019, Dialogue between the Judge's Decision, the Discriminatory Principle, and Explanations, Al-Sanhouri, Baghdad, p. 599
- ⁴⁰ . Ruling of the Court of Cassation No. 9455 / Personal Status and Personal Matters Authority / 2018.
- ⁴¹ . Its ruling number: 809 Personal / 2000. Quoted from: Al-Zahawi, Judge Rabi' Muhammad, Dialogue between the Judge's Decision, the Cassation Principle, and Explanations, previous source, p. 597
- ⁴² . Its judgment No. 341 / Personal Status / 2013, an unpublished decision.
- ⁴³ . Federal Court of Cassation Decision No. 6286 / Personal Status and Personal Matters Chamber / 2022 dated 4/24/2022, unpublished.
- ⁴⁴ . Al-Kubaisi, Ahmed, A Concise Explanation of the Personal Status Law and Its Amendments, op. cit., p. 281.
- ⁴⁵ . Federal Court of Cassation Decision No. 3674, 2021
-

⁴⁶ . Al-Difa'i, Wasan Kazem Zarzour, Khul' divorce between the provisions of Islamic jurisprudence and Iraqi law, Faculty of Law, Anbar University, p. 175.

⁴⁷ . Najafi, Muhammad Hassan 1404, Jawaher al-Kalam fi Sharh Shara'i al-Islam, 7th edition, Beirut: Dar Ihya' al-Turath al-Arabi, p. 207.

⁴⁸ . Tavaghehi, Abdul Ali, 2010, The Necessity of Criminalizing the Disobedience of a Husband, op. cit., p. 244.

⁴⁹ . Shakeri Golpayegani, Toubia; Kardavani, Rahileh; and Vakili, Vahid, 2014, A Jurisprudential and Legal Examination of the Scope of Marital Discord and How to Address It, Quarterly Journal of Strategic Studies on Women, Issue 64, p. 163.

⁵⁰ . Tavaghehi, Abdul Ali, 2010, The Necessity of Criminalizing Marital Disobedience, op. cit., p. 248.

⁵¹ . Sadeghi Movahed, Khadijeh Seyed Mohammad Sedri, Ahmad Bagheri, and Haider Amirpour, 2018, Feasibility of Criminalization in the Field of Family Law, Journal of Islamic Jurisprudence and Law Research, Issue 54, p. 92.

⁵² . Hedayatnia, Farajollah and Seyed Javad Seyed Alizadeh Ganj, 2013, Husband's Disobedience in the Jurisprudence and Family Law of the Islamic Republic of Iran, Journal of Islamic Law, Volume 10, Issue 37, p. 38.