



THE EXTENT OF SPOUSES SUBMISSION IN JURISPRUDENCE

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ABSTRACT

According to the legal and jurisprudential laws legislated in Islam and based on codified laws in our country, the wife is obliged to obey her husband. Most of jurists defined the submission as strict meaning in which the wife should make a desirable sexual intercourse with her husband. The following important question is answered in this research: to what extent this submission is and is the wife completely obliged to obey her husband? Jurists and legislators have determined this extent though it could be subjected to changes based on the custom, society and social status of the women. So, we take a special look at jurisprudential laws.

Keywords: Marriage, Submission, Sexual Desirability, Custom, Change of Subject

INTRODUCTION

All living beings are interested in opposite sex and sexual reproduction. Of course, this is a natural necessity and is considered as other necessities such as necessities of eating food, drinking water, sleeping and other instinctive necessities which should be satisfied. One of these instructs is the interest and tendency of the human to have sexual intercourse. Human is a sane and wise living being that chooses and accepts

the way to live with other people and its rules and customs by using his/her intellect. He makes his sexual intercourse lawful and he often meets this need in the form of marriage and family establishment. Thus, marriage and establishment of family are considered as saint, lawful and pure union.

2. The nature and essence of relationship between man and woman in Islam

According to Islam and jurisprudential laws, the relationship between wife and husband is made only by marriage contract. All types of contracts concluded in Islam have their own effects and rules. Therefore, marriage has its own effects and rules.

When the marriage contract is concluded correctly, some rights and obligations are considered for the wife and the husband; they are called by lawyers as "effects of marriage". Submission of the wife is one important effect which is considered as a right for the husband and an obligation for the wife.

We take a short look at definitions about submission and then we will study three important categories of submission.

In the customary terms, submission means that the wife should submit and obey her husband but in the viewpoint of Imamiyah jurists, submission has two meanings: general submission and sexual submission

3. General submission

It means that the wife should have a good behavior and sociability with her husband. It is determined in the scope of the custom. The applicability of general submission is subjected to the law and social and ethical customs and usages which are mostly affected by holy Islamic law. For example, giving thanks to her husband because of his efforts; talking to her husband kindly; being patient in the time of poverty; entertaining

her husband amorously; welcome her husband at the time of his coming; accompany her husband at the time of going out, having suitable and good make-up; dressing (which is considered as an obligation of the wife in the viewpoint of prophet Muhammad and innocent Imams; it is mentioned in the general submission that the wife should obey her husband in the scope of the law and custom in order to maintain the family interests.

4. Sexual submission

It means that the wife should be always ready to have sexual relationship with her husband unless she is ill and it is harmful for her healthy. In other words, whenever the husband requests his wife to have sexual relationship, she has to obey him unless at the time of illness. As Islamic jurists have said, wife is completely at her husband service and she cannot determine the place and the time of sexual relationship. Submission often has the strict meaning and is considered in this meaning at the courts.

Three important subjects about submission include:

- What is the principle of submission and its nature, given that, marriage contract is concluded between man and woman?

- How should we define the submission, given that, some changes occurred in the custom?
- To what extent, custom could affect the submission (which is considered holy, lawful and important)?

5. First subject (the nature of submission given the marriage contract)

As we know, whenever a marriage contract is concluded between man and woman, an interchange is in fact occurred. In this regard, each of them gains a consideration and gives a thing in return for that consideration. In other words, wife possesses marriage portion (which is payable to her) and husband possesses sexual desirability (maybe, it is not a desirable interpretation. Since jurists have used this interpretation in their debates, I have to obey their interpretation in this article).

6. Submission and its hierarchy

According to the definitions presented about submission (especially strict meaning) and lexical meaning of submission (obedience and compliance), it is better to present precise meaning of submission and its hierarchy and ranks.

Going to bed with her husband and having sexual relationship with him could be the final stage of the submission and obedience of the wife.

The objective of marriage and sexual relationship is to establish a family, to have

healthy children, and to reinforce the morale of the spouses; so, we should progress step by step in order to reach such a stage, so that, we could cover this relationship with love and kindness. If we want to determine the hierarchy of submission, we have to say that making sexual relationship and enjoying this relationship is the highest rank in submission hierarchy, so that, the strict meaning of the submission is used in jurisprudential laws. An important note which should be considered here is that wife and husband should progress step by step to reach this stage, otherwise, this relationship could be only something to satisfy their lust and sexual instinct while the following stages can help the spouses to have a lawful relationship after concluding the marriage contract. This is considered as submission for the spouses. Therefore, they possess the following stages as submission. They include:

- Looking at each other;
- Talking to each other;
- Coming closer to each other;
- Changing their look at each other from an ordinary look to a meaningful look;
- Touching each other's body;
- At last, making sexual relationship.

Note that, custom will determine these stages.

7. Second Subject

As mentioned earlier, sexual desirability has diverse stages. These stages are different based on the relationships occurred in different times and places. For example, the relationship between men and women are completely different in rural society and urban society. Even in recent times which is called as communications age, rules of etiquette and relationships between men and women are remained in traditional form in some societies, while the relationship between men and women in urban society are completely different from rural society. For example, when a rural or tribal woman looks at or talks to a stranger, it may be considered as a sin by her husband; while such an act is not an unlawful act in the city. In urban life, men and women have to communicate to each other, something more than a simple family relationship. This kind of relationship is completely inevitable and is not considered as sin in the viewpoint of urban people and city-dwellers. In the case of rural woman, the scope of relationship with a man is confined only to people inside the house, because her words, looking or other acts are possessed by her husband and are considered as submission for her husband. An urban man has different viewpoint towards this issue. Then, the attitude of society towards each subject such as

submission can has considerable effect on determination of its scope and limitations based on *Shariah* criteria. Therefore, we should pay attention to the importance and influence of the custom on explanation of religious laws and commandments.

8. Definition of custom

Custom is a practice or set of practices which are accepted by a social group or people in a gradual process due to spontaneous repetition without interference of legislation during the social necessities and requirements among all people of society or a group of them as an obligatory rule in arrangement and regulation of legal relations between the people of a society.

9. Elements of custom

It is necessary to introduce the elements of custom in order to make clear the scope of the custom usage. Although lawyers have determined some different factors as indications for determination of the custom, we discuss the most important cases:

- A certain act or promise which is differentiated from other acts or promises.
- The mentioned act should be in abundance and repetition so that it includes most of people.
- The mentioned act must not be instinctive and innate but it must be done by will and authority.

- The mentioned act is so prevalent and pervasive that if somebody acts contrary to that, he/she should be denied by society.

10. Spiritual element of custom

Spiritual element is an obligatory force and executive backing for it which has sanction without any external, governmental or any other person's pressures, so that, it could be invoked in procedures and courts.

As it is ordained in the Article 3 of Civil Code, judge should obey a certain custom and spirit of law in the cases of silence of the law or violation of laws or contradiction of laws.

There are different opinions about origin of this obligatory force. The most important opinions include:

- a) Common necessity among all people to choose a special practice in order to regulate their affairs between themselves; they believe that acting contrary to that and violation of that can lead to disorder in their system.
- b) General conscience and collective will which leads to formation of a unique way in practical behaviors and manifestations of the people of that community. This collective will first be manifested as a custom and then it will be used in the form of approved law in society.

- c) Some national and religious feelings and sentiments and paying homage to ancestors will lead to formation or preservation of an special practice. This special practice may be used as a backing for customs of a region or a race.
- d) Using intellectual force of the community people will make people to choose a known and definitive practice proportional to necessities and needs of a society to do their life affairs. The wise of that community choose the best impossible practice accepted and obeyed by other people. That's why the word "custom" is synonymous to the usages of the wise.

11. Custom from the viewpoint of jurists

Although jurists have considered custom in many issues, they have not tried to present an especial definition for custom. They considered custom as a fact or a known problem and they have less dealt with the precise debate of custom. Whenever the legislator couldn't present any clear definition for a subject, she left this duty to the custom to know that subject.

Some jurists have opinions about custom. They include:

11-1. Hosseini Amoli. He says that if we refer to the rules and principles which jurists use in the words and terms presented

by the legislator, we will understand that the words and terms of traditions were interpreted based on same customary meanings at the time of legislator; and whatever was unknown in the custom of the legislator, was interpreted based on general custom or general usages. Since each region has its own special custom, so the sermons were issued in relation to usage and custom at the time of issuance. He declares that whatever could be understood from the rules is that the words and expressions presented in traditions were issued based upon current custom at the time of Imams which should be referred to that meaning. When the custom is known and clear, judgment is rendered based on that custom and when the custom is unknown and unclear, it should be referred to the general custom or general usage.

11-2. Author of *Javaher Al-Kalam*. He says that if the current custom is different from the custom of innocent Imam, the current custom will be the basis for action not the custom of innocent Imam. But this does not mean that religious law will be changed but since the subject is changed, so the judgment and commandment will be changed too. This case is applicable in all customary subjects. Therefore, since change of custom does not lead to the change of religious law and since the legislator accepts this change, there will be

no problem. The words of author of *Javaher Al-Kalam* are important, though other jurists have also mentioned it.

11-3. Imam Khomeini. He has discussed the subject of "refer to the custom" in some of his books. He mentioned in his book *Al-Bei* that it is reasonable to refer to the custom in order to understand the subjects and titles of commandment. It is the only remedy in where there is verbal evidence and subject. Imam Khomeini declared in the section "the reference and criterion of recognizing the richness of opinions of different jurists" of his book *Makaseb* that: "preference and mirth as two induces used in the words of jurists are considered valid because richness was included in both induces in their times; so it is guessed that it is the basis of richness". In his book *Al-Bei*, Imam Khomeini also declares some explicit words about the custom and he says that: "since the sermons of the legislator with the people are identical to the sermons of the people together, and there is no other way for the legislator except the wise custom, there will be no remedy except validating and obeying the opinion of custom about determination of applicability and concepts. In this regard, Imam Khomeini wants to show that it is necessary for jurist to understand the real fundamental and religious texts based on customary understanding in society,

because the readers of these fundamental and religious texts is society custom not the psychological or mystical terms and so on.

12. Some applicable words of jurists

1. Custom plays an important role in many jurisprudential issues.
2. The religious jurisprudent person must recognize the current custom, so that, he could be acquainted with conversations of people.
3. Change of custom leads to change of subject but it does not lead to change in religion and fixed rules and communications.
4. Reference of recognition, objective and the will of holy legislator from the religious texts is to understand the current common custom among the people.

The word "custom" is used in Quran for two times; one is used in the first verse of Surah *Morsalat*. It does not relate to our debate, because custom here means to come continuously and it is a mere lexical meaning. The other one is used in the Surah *Araf*. According to different traditions, it is the most comprehensive social-ethical verse in Quran; so our debate is focused on this verse.

13. Third subject

Whenever we take a look at the custom, we understand that we usually use custom to render a judgment or to determine the

subject. Naturally, submission is considered as a subject here and we want to recognize the submission based on the custom, otherwise, as mentioned earlier, the principle of submission is caused by a contract between wife and husband; in other words, we should first study the sexual desirability so that we can allocate it to the husband. Therefore, the wife is obliged to obey her husband. As discussed earlier, sexual desirability is different in diverse customs and times under different conditions. Sexual desirability is a subject which changes based on customs, terms and places, but its ordinance will never be changed because it is an unchangeable divine ordinance.

CONCLUSION

1. Submission is included in the law and Islamic law; it focuses on the sexual exploitation of the husband from his legal wife.
2. Since the sexual desirability of the wife belongs to the husband, it is ordained in the law and jurisprudence that the husband has this kind of right and he can interfere in this desirability; so, he can prevent her to provide this desirability for other persons.
3. Since the sexual desirability (especially in its general meaning) is different based on diverse

customs, times and places, inference of custom in this case is inevitable.

104 of surah Ale Omran, verse 19 of surah Nesa)

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