

BEHAVIORAL CHARACTERISTICS WITH RECALCITRANT WOMEN IN FAMILY FROM THE LEGAL PERSPECTIVE

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ABSTRACT

For spiritual eminency and sublimation, Islam bounds women to the same obligations that are required for men in order to reach higher spiritual grades. Except for the cases where, based on the human nature, there could be a difference between men and women and by the demand of women's nature, Islam has exempted the latter from a given canon such as non-necessity of saying prayers and fasting on certain occasions or non-attendance to Jihad, etc. However, when it comes to human rights and values there is no difference between men and women. Of course, by virtue of verse 34, An-Nesa chapter and article 1105 of civil law, in marital relationship the headship belongs to husband so that in reaction to incompatibility and disobedience of wife he could resort to correctional behaviors. One reason for such resort could be the effective role that women have in society and family that the slightest error, indifference and lapse from their side could challenge the family's foundation and cause it to collapse. Assuming such privilege for men had never implied as the dominance of husband over wife because the Sovereignty belongs to God, the almighty. Non-dominance of a human over the other is a principle. Mal adaptation of the subject on one hand and indifference of the experts on the other has unfortunately resulted in a great misinterpretation and misunderstanding over the issue therefore causing the "Discipline" discussion in the mentioned verse become a very challenging and controversial issue. As a result, we are witnessing a multitude of opinions, point of views and interpretations that are gathered in this article and are explained and defined in various aspects such as the scope of men's management and headship over women; stating instances of recalcitrance and disobedience of women. With an eye to nowadays' demands of the Islamic society of Iran and a special attention to opinions of jurists, particularly the contemporary jurists of Iran (the twelve-Imam Shiite {Jafari Jurisprudence}) I have also tried to gain a new approach toward the discipline issue in verse 34, An-Nesa chapter.

KEYWORDS: Behavior, Discipline, Man's Headship, Obedience, Recalcitrance, Wife.

INTRODUCTION

It is intrinsically obvious that we cannot acquire a general verdict of religion through reading a single verse of holy Quran or observing a narrative by prophets, because interpreting verses and narratives is a complicated enterprise that requires its own peculiar specialty. Understanding the religious sciences could not be compared to understanding other sciences because it is very sophisticated. This can justify the popularity of the saying: "becoming an expert and priest in religious sciences is like digging a well with eyelash." Therefore, we cannot count on Islam the inexpertly and illiterately expressed personal beliefs of some Muslims in Islamic society who negligently and exorbitantly interpret the subjected verse regarding women rights. The relation between the rulings that is emerged by virtue of the Islam religion (Shari'ah) in verse 34, An-Nesa chapter, with its subject that is the instances enforcing it by Muslim in Islamic society, is a relation of absolute generality and specificity. The subject is multiple issues that are embodied in the rulings and the rulings is a comprehensive fact, therefore, violating some subjects of the rulings could not interfere with the authenticity of such rulings. Accordingly, should there exist any unfair and unjust conduct towards the women rights in Islamic society, relying on the wrongdoings of some Muslims we cannot blur the just rulings of Islam. Considering the delicacies and intricacies of the subject, in explaining and defining the given issues, first, logically we have to define in brief the scope and boundaries of headship of man over woman in family; then we will explain and define different opinions of jurists over the discipline issue subjected to verse 34, An-Nesa chapter.

1- The scope of man's headship in family

Like many other issues, jurists disagree on determining the scope of man's headship in family, that, however, we can present their opinions and views in two major groups. Considering the maintenance that husband spends for wife as the most important evidence of husband's headship over his wife based on verse 34, An-Nesa chapter, some jurists believe

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since such maintenance is due by husband merely by virtue of existence of marital relationship, therefore, husband's authority over wife is limited to marital relationship. Sheik Fazlollah is amongst such jurists who wrote, "Some generalize the instance of man's authority over woman to include everything in a way that man becomes dominant in every aspect of woman affairs so that she loses her control and will over her own affairs. However, in our belief, the headship does not encompass everything but is envired by the circle of coverture and marital relationship."

As regulated in article 1105 of civil law: "in marital relationship the headship of the family is peculiar to husband", it could be said that the legislator, following the opinion of the mentioned jurists, considers husband's headship over family limited to the marital relationship. It seems that this view fits more with the freewill and non-human-dominance principle, and is more reasonable and logical.

However, as described, some jurists and philosophers believe that the determiner "Al" in Al-Rejal (men) and Al-Nesa (women) [Arabic pronunciation of this word is An-Nesa where, the consonant "L" becomes silent and "N" becomes stressed] is a gender determiner, so in interpreting verse 34, An-Nesa chapter they state that this verse generally refers to the strength of men over women and is not bound to the marital relationship. Ayatollah MoghadasArdebili is one of this jurists who declares: "men are to take over women's affair and are as dominant over them as lords over villeins".

It seems that accepting the opinion that the mentioned verse is trying to imply the general headship of men over women could not be justifiable because, according to the text of this holy verse, it refers to the type of relationship that wives are expected to have with their husbands within the context of their marital lives. Then it points to solutions for treating disobedient wives by their husbands such as forsaking her in bed, which is an instance that only occurs in marital relationship. From another point of view if we accept the men's gender is dominant over women's, so brothers would be dominant over their sisters though in real world such matter is impossible and is unreasonable. Therefore, it could be said that the mentioned verse refers to the dominant of husband over wife merely in marital relationship not in a general sense.

After explaining the domain and scope of authority of men over women and taking into consideration that verse 34, An-Nesa chapter tries to define the headship of husband over his wife within the circle of marital relationship, it has to be said that the consequences of husband's headship over wife are to be discussed basically on financial and non-financial grounds. In financial ground, by virtue of Islam Shari'ah and article 1118 of civil law, which is derived from the same, she is financially independent. In non-financial ground including instances such as wife's abode with the husband, occupation or education of wife, or her going out of house, etc. law experts have studied the issue precisely in details. However, one of the most challenging and important instances and consequences of husband's headship over wife in non-financial ground is the "Discipline" issue mentioned in verse 34, An-Nesa chapter. Unfortunately, because of abuses made by some Muslims in addition to indifferent trends in reviewing and explaining the given verse by some experts, accordingly the inconformity of the subject with modern conditions of Islamic societies has faced Islam Shari'ah with accusations by enemies like violation of human rights or indifferent conduct towards women rights in family. It is hoped that through studies and reviews performed in the present article we could be able to reach to a conclusive solution for resolving and removing the suggested accusations and ambiguities.

2- Recalcitrance

As stated in verse 34, An-Nesa chapter text, the "Discipline" issue suggested therein essentially is the solution for treating the disobedient and incompatible wife who is expressly referred to as "protuberance". Therefore, on principal, in order to review and explain "the Discipline" issue, we have to take a tour to recalcitrance domain and define protuberance wife so that we would be able to engage in discipline issue and state diverse opinions of jurists around the subject.

Recalcitrance word means behaving incompatibly, animosity, swell, saliency; in religious jurisprudence and law, it implies a description of a behavior of a husband or wife towards his/her spouse that breaks the regulations of religion or law in a way that such incompatibility and animosity could result in cruelty and oppression. In a more specific implication, abandoning the husband's house and disregarding the joyfulness of husband by wife is dubbed as recalcitrance.

However, jurists disagree on instances of wife's recalcitrance and disobedience; some experts believe that any sort of disobedience by wife towards her husband totally counts as recalcitrance. These experts state that recalcitrance is not

merely limited to wife's indifference towards sexual desires of her husband but it includes disobedience towards the entire affairs that are religiously indispensable for wife concerning her husband. On the other hand, most jurists emphasize that recalcitrance is disregarding the enjoyment right of husband and practicing affairs that are against such enjoyment. Bin BorajTerablosi and AlamehHelli are among these jurist who interpreted recalcitrance as avoiding specific obedience and mating with husband.

The legislator disagrees with jurists in wife's recalcitrance since the former believes that wife's recalcitrance is not merely her resistance toward specific obedience, whereas in article 1108 of civil law it is stipulated that "whenever wife, having no legitimate reason, resists the exercise of her marital duties, she may not deserve maintenance". These marital duties could be assumed as the entire obligations and duties that are expected from wife. In fact, it should be said that in the opinion of legislator, wife's recalcitrance is her resistance from general and absolute obedience towards her husband. So, a wife, who has no legitimate and legal excuse (i.e. a wife to whom the article 1115 of civil law does not apply) is recalcitrant if: she does not accept to live with her husband; resists to have sexual intercourse with her husband; does not cooperate in managing the family; and, in general, avoids performing her marital obligations. In this case, against the above three sanctions, based on findings of the judge and verdict of the court, the sanction against wife's recalcitrance would be the cessation of maintenance by husband.

According to what have been said before, we can say that there is a difference between legislators and jurists' opinion over the definition of recalcitrance and the sanction to be put against it. So is it that in jurists' view, recalcitrance is the resistance from specific obedience while in legislators' view it is totally non-performance of conjugal obligations and general disobedience. Where, based on the verdict by jurists according to verse 34, An-Nesa chapter, the recalcitrant wife is to be disciplined through three steps of correction that include Advice, Forsaken in Bed, and finally punishment; while by virtue of civil law the consequence of wife's recalcitrance, in case of assertion in the court, would be cessation of maintenance.

There are, of course, some similarities between the opinions of jurists and verdicts of law. These similarities include a very subtle point that needs further examination. Subtlety of this point is that the correction of a disobedient and incompatible wife (i.e. treating a recalcitrant wife) is not included in the domain of the consequences of husband's headship. Hence, whatever that has been stated in the holy verse, is solely the sanction in favor of husband's enjoyment right which, of course, counts as the last solution to rely on in dissolving marital problems and obduracy or obstinacy of wife. The cessation of maintenance, which is stipulated in law, is the sanction against recalcitrant wife. Therefore, recalcitrance that is the same as disobedience and incompatibility of wife is the opposing point of her obedience and considers as a consequent of marriage. Accordingly, by the enforcement of marriage bonds in a flawless manner that results in obedience of wife, the recalcitrance is also a consequence of marriage opposed to obedience so that it could not be considered as a consequence of husband's strength and headship in family and matrimonial context.

3- Discipline

As stated before, beating and punishing a disobedient and incompatible (recalcitrant) wife is one of the most challenging and controversial issues that has raised questions and ambiguities about the consequences of husband's authority. This issue is pointed out in verse 34, An-Nesa chapter. God, the Almighty, after emphasizing men being in charge of women, states: "... So righteous are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist] forsake them in bed; and [finally] strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever exalted and grand."

This versed has somehow caused the creation of this belief in Islamic culture that at the time of wife's arrogance and disobedience from her husband, the latter deserves the right to beat and punish the former pursuant to advice and forsaking. This goes far beyond where some experts and philosophers grant husbands with the right of beating and punishing their wives preceded by stating the authority and being-in-charge of husbands. Mohammad AbouZahre, one of the most known philosophers of Egypt, wrote in this regard, "God has granted husband with the right of punishing his wife because the nature of every society is built upon this principle that one should be superior in rank over others and has to have the authority over their correction. In family, this rank is ordained for man because God stated that men have a [higher] rank over women.

However, such interpretations of the given holy verse and dissemination of this belief that husband as the head of family is entitled to punishing and beating wife for her disobedience contradicts with Islam Shari'ah which is the religion of serenity and peacefulness and negates any sort of hardship and discomfiture. This also is opposed to general

moral principles of women's grandeur and munificence, so maybe that is why in interpreting the holy verse jurists and experts, specifically the contemporary philosophers, have tried to alleviate it by the use of quotation resources and the Prophet's tradition. In interpreting and explaining the holy verse, we would confront miscellaneous opinions and views, so we are going to explain each in details.

3-1 Disciplines a slow beat (with the handle of a toothbrush)

A group of jurists relying on a multitude of quotes has questioned the legitimacy of such right for men. Among these quotes, there is a saying from the Prophet quoting "how could one who beats his wife hold his arms around her; the worst of men is the one who beats his wife and servant".

In addition, a well known saying from the author of "Majma-al-Bayan" who quotes from Imam Bagher: "in verse 34, An-Nesa chapter, by beating it is meant beating by handle of toothbrush".

Imam Khomeini's point of view regarding this issue is: "Beat should be so slow that may not cause any bruise or blush of body and also should be intended for correction and discipline not for revenge or relief." In addition, that in the opinion of most jurists beating and discipline should not be used for revenge or vengeance but for correction, SahebJavaher wrote in this regard: "intention of beating should be correction not revenge or act of relief."

So, the meaning of "Beat" in Quran is a particular kind of beating in a way that may not be hard and annoying, i.e. the beating should be "non severely" and "non blood-shedding", meaning that it should not cause blood congestion under the skin and may not impair or paralyze that is it should be "non chronic". Therefore, it has to be to the extent that could leave no evidence that should raise retribution, atonement or nemesis, and it has to be solely a sign showing that husband is upset with his wife so has made use of it as a tool to manifest his annoyance.

3-2- Discipline the means confronting prostitution

Some other group is of the opinion that beating the disobedient wife is concerned with prostitution and unlawfulness. It implies that the given verse refers to those wives who have betrayed their husbands and, in their absence, have let home the men of kin or outsiders. This group reasons to the text of given verse that before "from whom you fear arrogance" comes the phrase "so righteous are devoutly obedient, guarding in [the husband's] absence", which apparently refers to trusteeship and preserving husband's grace in his absence where immediately follows "from whom you fear arrogance". Hence, the relation between these two phrases is notable and requires special attention because the secret affair of wife with men other than her husband is a matter of honor, the disclosure of which could result in disintegration of a family. That is why the holy Quran advises, of course before the commencement of illegitimate affair by wife, the husband is to resolve the issue through preaching, forsaking and finally discipline and punishment so, in this way, the case will not even dragged into competent course.

Another justification by this group lays in a story quoting from the holy Prophet of Islam stating in his fare well speech: "People! Your wives are entitled to some prerogative over you and you too are entitled to some prerogative over your wives. It is your prerogative over them that they do not bring stranger into your bed, and do not let in the house those who you dislike unless by your permission and do not practice any act of prostitution. Otherwise, God have allowed you to go hard on them, forsake their bed, punish and beat them to the extent that may not do them any harm. Whenever they put an end to it and rendered submissive, you are to normalize their meal and clothing."

There, also, is another quote from the Prophet that: "fear God about your wives, because they are trusted by God into your hands and they became halal to you by God's words. Your prerogative over them is that they do not let anyone to your bed but if they did so, beat them, a beating that is not sever and painful." Anyway, those who have presented this theory, based on their reasoning and argumentations, believe that if such opinion and probability could reinforce, a more suitable interpretation of "beat those [women]" in the given verse would be achieved.

3-3-Discipline in the sense of Punishment

Another group of jurists such as Ayatollah Bojnurdi stated (written in www.aria-law.com, dated Dec. 12, 2011) that the executor of beating verdict mentioned in verse 34, An-Nesa chapter shall be the magistrate not the husband; because "Beat" in Islam means discipline and punishment and we don't have such thing as beating in Islam. Stories tell that punishment shall be performed by the magistrate and to his discretion. "Beat" sometime means written reprimand; some other time it means financial penalty; we have to distinguish how the party would be disciplined. It depends on

the judge to decide that to what resort the party would become disciplined. In my opinion, whenever man finds his methods ineffective, he has to refer to the courts that are held for this purpose. For instance, he has to take his case to court of domestic relations, where he can draft a complaint. There, the court would investigate or oblige whether the wife is recalcitrant and should not receive maintenance.

One method of discipline is to cut the maintenance of wife instead of grabbing a lash and whipping. Whipping is for animal not for human. Best measure for understanding our situation is to see how we react. If someone insults you and you automatically beat him in reaction, it is a sign that the brutality of your nature is strong. Nevertheless, if you advise and warn him that his conduct is not right, it means that your brutality is weak. Reason is the difference between human and wild. Humankind is a reasonable and logical creature. To understand this issue, please consider the following story.

Someone wrote a letter to Khajeh Nasireddin Toosi and addressed him “son of dog”, i.e. your father is dog. Khajeh replied that dogs are quadruped while I am a biped; dogs have tail while I do not; dogs cannot speak while I teach and give speeches; dogs cannot write a thing while I have so far written forty-fifty books. To sum up, he wrote him a couple of sheets about that sentence. The fellow regretted what he had said and apologized. As you can see, Khajeh’s reasoning was stronger than his brutality since he could have replied the same to the fellow and could become level with him. Man is a creature that if someone offends him, he should not offend too. The given verse is primarily on an advisory position. It is written in Quran that “advise them (women) and then forsake them”, if it did not work out, “beat them” implying that go to the court and draft a complaint. Therefore, no one is allowed to beat his wife relying on the given verse.

On the other hand, another point is needed to be taken into consideration: this Quran command, like other commands of Quran such as “amputate hands of the thieves”, may not be executed on the discretion of or by the beneficiary himself and should be judged by magistrate. The reason for this is that, based on the principle, plaintiff, judge and executor logically may not incarnate in one body and on account of the fact that “whatever the reason commands, the religion does the same”, by accepting the reason’s command, the “beating” in the given verse, whether weak or strong, should absolutely be decided and have executed by magistrate like other commands of Quran.

We have to pay an especial attention to execution of the triple solutions against recalcitrance of wife mentioned in the given verse and religious jurisprudence. Particularly, the third solution based on which the man, whose prerogative is neglected by his recalcitrant wife and is claiming the administration of justice, himself becomes the executor of the verdict and takes action to beat and discipline his wife. Now the matter is whether he is able to overcome his anger and sadness and is capable of executing the verdict in accordance with justice in a way that the beating would not be harmful and may not call for nemesis or atonement?!

3-4-Discipline the means mental confrontation

Some group of contemporary Quran experts such as Ayatollah Marefat has presented a notable interpretation of the given verse based on the rank and atmosphere of revelation. In his opinion: in addition to rank of revelation, we have to care about the atmosphere of revelation and the context in which the verse was inspired. In Negligence era, women were in a very low level of living hence, Islam intervened to escalate them to the highest rank of human position to which they were deserved. However, this procedure could not accomplish in an abrupt pace rather it had to undergo a gradual trend that, of course, such policy was applied to other negligent traditions the extermination of which required a long-term opportunity. Slavery is a good instance of these traditions that Islam stood against it though not in an apparent and blunt manner but in gradual passage of time and in miscellaneous methods. Taking such method and policy which was utilized for debasing the traditions that shadowed over the Negligence era, technically was named “arranged abolishment” or timed abolishment. It seems that the issue of men being in charge of women is one of such issues that instant opposition to it was not possible then and required a long-term removal procedure.

We also have many stories quoted from Imams in regard to maintaining women’s honor and grandeur including: a woman named “Hoola” came to the Prophet and asked about women’s right over men and vice versa. The Prophet replied, “My brother, Gabriel, acknowledged me and continuously suggested me about women to the extent that I assumed a husband may not even tell yuck to his wife.” There is a letter from Imam Ali to his son, Imam Hassan, implying that, “thus woman is a flower (symbol of kindness and softness) indeed not a heroine.” That is, woman is like

a flower so you are to treat her like one and do not act harshly and roughly with her; thus do not treat her the way that you treat a hero.

Beside the above stories, it was never quoted that any of Muslim Imams or their disciples have ever treated their wives roughly let alone beating them! Their conduct was forgiveness as the Prophet states: the best of you are the best for their wives; certainly, his highness and innocent Imams have always been the best people for their wives.

The unconditional surface of the given verse is abrogated and what has abrogated it is, notwithstanding strong emphasizes by the Innocents of the Shari'ah on maintaining and keeping sides with the grandeur of women, there are so many stories confirming that even if there is a beat, it has to be very weak and non-injurious. Therefore, in the given verse by beating it does not necessarily imply physical beating however, it could be in the shape of moral or mental reaction of husband toward his wife, without any bad impact being left. It could merely be a method or tool for expressing husband's annoyance to his wife.

3-5- Discipline in the sense of economic reaction

Ayatollah JavadiAmoli has also stated in interpretation of verse 34, An-Nesa chapter that, "the prophet's Shari'ah may not change or abrogate until the judgment day though, in the opinion of some jurists, the application of the verse has abrogated due to the passage of time and words of the Innocents. After all, the fact is that a canon remains unchanged throughout all ages however, it could be understood from the style of the verse that such beating is a prerogative of man not a canon, i.e. beating the disobedient wife is man's prerogative and his not obliged [by virtue of the canon] to punish his wife in such situation whatsoever. Somehow, other methods may exist that may be more effective and useful however, beating women was a very common and most reprehensive factor but Islam alleviated it. Islam does not pay considerable attention to marriage portion [in the event of divorce or upon the death of husband] or dowry, but recognizes the kindness and friendship as the axis and foundation of any family; therefore, it never commands to brutality and breaking hearts. In addition, with respect to conditions and requirements of the modern civilized society, we can say that the implication of beating is not making use of physical strength and the word "beat" is not an indication of painful beating but some of its instances could be without pain. However, such painless and mild beating (even with a toothbrush handle) may bring many ugly consequences to the families of today and may result in their break up.

Therefore, in interpreting the given verse, we could say that punishment in third phase preceded by forsaking in bed and advice is not exclusive to physical punishment but it may include moral and economic punishment and reaction. The proof of this opinion is a story from the Prophet who stated that, "I am astonished by the one who beats his wife while he himself deserves more to get beaten. Do not beat your wives with wood stick otherwise, you would be punished. But, discipline them with starving and nudity (cessation of maintenance) in order to remain in peace in world and afterworld."

Interesting is Motahari, the Teacher's, opinion regarding this issue, "... in this regard, because such question is emphasized in Islamic jurisprudence, the Prophet states: beating, in a way that could cause the body bruise, may be of the kind that requires atonement. Therefore, if as a result of beating the body gets red, for instance marks of finger on facial skin because of slapping, such beating is to be compensated for by atonement too. Now, considering the above-mentioned regulations, is the type of beating that Islam allows, the type that requires atonement? You know that if a face is slapped, especially a woman's face that is more sensitive, it immediately blushes therefore the atonement applies. Does Islam permit a type of beating that requires atonement?! Definitely not. Then how is it? We have to say that by beating it is not meant the action of beating.

The Prophet stated: beat with the toothbrushes that you use to the measure of a phalanx. Therefore, Islam permits a kind of beating that is painless. The Prophet said: "a non-blood-shedding beat" that is not a beat that could cause pain. Do not get it wrong, if it causes pain, Islam will not allow it let alone being painful and requiring atonement. Therefore, the beating that is meant by Quran is an act that implies annoyance; a beating that is painless and leaves no mark. It is obvious that such beating is not a real beating but is just a sign of husband's annoyance from wife's conduct, nothing more nothing less. Have you ever heard from history that the Prophet has beaten his wives? Alternatively, has Imam Ali ever done such thing, even to a wife other than Fatima?; How about other Imams or their disciples? No to mention, no one has ever advised to good behavior and kindness toward women as much as the Prophet himself has. In his

farewell speech in returning from Hajj, in which he gave his most important advices and preaches to his people, he stated, "...You men! God has entrusted women in your hands, keep and respect these trusts."

It seems that to sum up the opinions of jurists, with a special attention to the opinions of contemporary jurists such as Ayatollah Marefat, Ayatollah JavadiAmoli, and the martyr Motahari, considering requirements of the modern era and the atmosphere dominant in Islamic Iran society and of course, according to the statement of Imam Khomeini: "preserving the religion is required more than any other requirements" ; on the other hand, noting the fact that the interpretation of verses has to be dynamic and in accordance with conditions of the society and the difference in time and place that today society has acquired compared to earlier, we can say in interpreting the "beat those [women]" from verse 34, An-Nesa chapter that should the two phases of advising the incompatible wife and, if ineffective, forsaking her in bed, which of course based on a story may not take more than 3 days, also come ineffective so that the wife continued her disobedient behavior, husband is entitled to executing the third phase i.e. "beat those [women]". Having all the above mentioned, and of course considering the conditions and requirements of nowadays society, husband may not, even in a painless and non-injurious way, physically beat wife because the legal department of the judiciary by virtue of the consultative decision number 7/7288, dated October 2001, recognizes as a crime the beat that even may not leave any mark on the person's body based on article 367 of Islamic penal law and has required payment of atonement for such beating. In addition, according to Islamic penal law any sort of battery in any kind is a crime; even if such battery did not cause change of skin's color (like a simple head beat). Such beating, with respect to personality of victim and public judgment is a kind of insult and disgrace so that article 803 of Islamic penal law applies to it. Instead, husbands are required to discipline incompatible wives through mental and moral reactions such as continuance of forsaking her in bed (more than 3 days). If she continues her disobedient behavior, husband may limit her financial prerogatives in order to discipline her. However, we have to keep in mind that in this phase, we intend to limit wife's financial resources not to cease her maintenance because the cessation of maintenance could be considered as a crime and would be applicable merely through the decision of a competent court. According to article 1108 of civil law, the decision to cease maintenance by a competent court against a wife whose recalcitrance was proven, counts as the requital and sanction against a recalcitrant wife.

It could be said that the legislator, recognizing the created problems and issues and making use of a slight contemplation, not only has not mentioned any jurisprudential sanctions against recalcitrance in civil law, but also has solely decided on cessation of maintenance by husband who essentially has to succeed in approving his claim of the wife's recalcitrant conduct.

CONCLUSION

Verse 34, An-Nesa chapter is trying to provide solutions for correcting the behavior of disobedient and incompatible wife in order to preserve the foundation of family. Islam has never been after torturing women and that is why two groups of women are introduced at the beginning of given verse. In reaction to disobedient wife, it presents three phases of confrontation starting from weakest to the strongest. Immediately after introducing these phases, it reminds men never to follow any further path in torturing wives who have amended and changed their wrongful doings.

Concerning the last phase that is "beat those [women]" as mentioned before, the opinions of jurists are of a very miscellaneous nature. Majority of jurists believe that by beating in the given verse, it is meant a type of beating that would not cause any bloodshed, is not severe and painful technically with handle of a toothbrush. Others have stated that verse 34, An-Nesa chapter is merely speaking of women's prostitution and unlawful acts while others emphasized that the addressee in "beat those [women]" is the magistrate not the husband because by beating, the type of punishment is meant that is in the hands of magistrate.

Some jurists, while accepting the arranged abrogation of the surface of the verse because of stories by the Innocents, stated that beating is not the physical beating but is the moral and educational reaction. Finally, some other jurists stated that the Prophet's Shari'ah is not abrogable; therefore, considering the conditions and requirements of nowadays society, we have to keep in mind the point that in legal institution of family that is founded on love and friendship, the moral and mental instruments which are based on kindness, could solve the problems much more quicker and easier than strict legal solutions. Hence, we can say that by beat, the physical confrontation is the farthest intention, but the mental punishment and financial limitation is the main implication.

It seems that the recent theory is the most comprehensive interpretation of “beat those [women]” in Verse 34, An-Nesa, which implies that the two psychological phases of advice and forsaking the bed, are followed by the more severe mental and moral reaction and finally enforcement of financial and maintenance limitation for recalcitrant wife. By accepting the above-mentioned theory, which is in more compliance with today’s time and place conditions, the accusations of neglecting women rights that are made by the enemies of Islam and seemingly defenders of human rights could be answered in the best possible way.

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