



Examining the factors involved in family disputes from a jurisprudential and legal perspective

Seyed Mohsen Taheri Mousavi¹, Seyed Hessamoddin Hosseini^{2*}, Farkhondeh Kornasi Dezfuli³

¹. PhD student, Department of Jurisprudence and Fundamentals of Islamic Law, Ahvaz Branch, Islamic Azad University, Ahvaz, Iran.

². Assistant Professor, Islamic Lifestyle Quranic Research Center, Ahvaz Branch, Islamic Azad University, Ahvaz, Iran (Corresponding Author).

Email: shesam_hosseini@yahoo.com

³. Assistant Professor, Department of Islamic Studies, Ahvaz Branch, Islamic Azad University, Ahvaz, Iran.

Abstract

Family law in Iran is based on Imami jurisprudence, and after the Islamic Revolution, several amendments were made to the laws related to this area in order to further Islamize it. Today, the Iranian family finds itself caught in a conflict between the Iranian-Islamic lifestyle and modernity. On the one hand, it is faced with a lifestyle that is rooted in history, culture, and religion, and on the other hand, it is faced with a modern lifestyle that not only has some attractions but is also imposed on it out of necessity and must adapt to it. Law, as a systematic science that regulates social relations that have legal effects, must provide these relations with legal regulation and find an appropriate response to them. One of the solutions to maintain family stability when family disputes arise is to refer to arbitration. Referral to arbitration allows couples to use the valuable experience of competent and experienced people and not change the fate of their lives with insignificant and repairable troubles by suddenly deciding to divorce. According to the Holy Quran, the reference to arbitration is when there is fear of a rift between the spouses. The rift has a wider scope than cases in which, even without a disagreement, the man attempts to divorce the wife, or the woman alone or the couple together requests a divorce by mutual consent.

Keywords: family disputes, jurisprudential, legal system

Received: 5 Nov 2023

Revised: 25 Dec 2023

Accepted: 31 Dec 2023

Introduction

Individual and social rights and observing the limits of everything are important legal issues that have been extracted from the Quran and Hadith. Understanding these issues from a jurisprudential perspective and the need to remember the legal issues that have been recommended in Islam are of great importance in today's way of life. In recent years, the issue of lifestyle has been seriously raised in parallel with the rapid and comprehensive developments in the field of technology and changes in consumption patterns and changes in the culture of advanced societies, and it has also affected our society. The importance of lifestyle is that it connects the most superficial layers of life to its deepest layers. This issue, along with its entry into various sciences, has enjoyed a privileged position. Lifestyle is therefore important for religious analysts because it shows how the values of a social class dominate all levels of society with behaviors focused on fashion or diversity. The family is the focal point in the reproduction of styles, where the most basic and first mental inputs emerge in its environment and behaviors are internalized. The fact that the number of family disputes in our country is increasing day by day is not hidden from any organization or institution. Therefore, it is necessary for all institutions to try to prepare cultural grounds for returning to the Islamic

lifestyle, along with educational institutions, because the root of many family problems is distancing from the Islamic lifestyle, and these problems will not be resolved until dynamic Islamic programs are implemented in families. Therefore, it is necessary to provide solutions to deal with family disputes in order to preserve the family identity and support this important social institution in order to create and maintain the mental health of the society.

Research Method

The present research is applied in terms of objectives and descriptive-analytical in terms of research method, which will be carried out by referring to library documents and also referring to the opinions of researchers and researchers in this field. It will also be analyzed by part-to-whole analysis and generalization of the results to policies and the main subject of the research.

The concept of family law

Family law is a branch of civil law that deals with the rules and regulations of the formation, continuation and dissolution of the family. In this branch of law, by considering matters such as the interests of the members and the family institution and the functions of this institution (such as preserving and surviving the generation, meeting the emotional and psychological needs of the members and establishing a care and support system for children), the legal relations of family members are explained, and their rights and duties towards each other are determined (Safaei et al., 1401: 1-3). Although in jurisprudential sources, the rights and duties of husband and wife, mother and father and children towards each other have been raised in various chapters (including marriage, divorce and child custody), the use of the term family law, as one of the most important topics of private law, does not have much history in Islamic countries and its regulations in these countries are usually raised in the form of the topic of "personal status" (Emami, 1373: 100).

The issue of family law is not purely legal and is mixed with religious, moral and social issues for various reasons. The nature of the family is such that the regulation of relations between its members is much more dependent on religious and moral teachings than on legal laws, and therefore it cannot tolerate excessive interference from the government and statutory laws (Katouzian, 2003: 7).

The historical course and position of the family in jurisprudence and law

In this topic, the historical course and position of the family in jurisprudence and law will be evaluated in two sections. The family is the only social system that has been accepted and developed in all religious and non-religious societies and has various roles, bases and statuses in different societies. Its structure and configuration have been different in different societies from the past to the present. Political, social, economic and cultural conditions and circumstances have affected it and created changes in it.

There is no accurate information about the lives of humans in the past. This ignorance about family issues and its vital system is much greater and more extensive throughout history and in different regions of the world. In the past, forming a family was actually a kind of economic goal and accordingly, in the very distant past, the family was considered a production unit. Aspects related to work and production forced men and women to live together and raise the generation. The child itself was considered a productive factor and on this basis it was very obvious that boys should be preferred over girls and the same situation is said to be the case today for many primitive and poor societies. In ancient Iran, it is said that such a goal was pursued and for this reason the family was formed as several relatives together to bear a greater productive burden and to have a greater possibility of preserving and safeguarding the achievements. In the past, the family was very large and included spouses, children, relatives and kinsmen, causal and relative relatives, grandchildren and great-grandchildren, who are said to have formed an economic unit as a whole and today we see its manifestation in some rural areas and qiyil societies. In ancient Iran, the father was the head of the family, the judge, the ruler, the executor of religious customs, the guardian of the family, the leader of spiritual and physical aspects, the keeper of the family fire and the aspect of holiness. At the same time, the woman was also the lady of the house and respected, all family members had to obey the father and even swore an oath to protect his value (Zarinjoui, 2016: 11). In the past, marriage, like today, has always been

accompanied by a ceremony that, while arousing the admiration and wonder of people, is sometimes funny or painful. For example, in some societies, it was seen that the bride and groom were tied to a tree and a tooth of both was broken. In ancient Iran, engagement and eating sweets before marriage was a tradition from childhood. Its day was determined by the calendar. The bride's family sent some sweets to the groom, and the young man who wanted to get married had to give the girl's parents a dowry, in cash or in kind. But later, in case of infertility, the woman could take it back and... (Qaemi, 2012: 26-27).

Today's world is a developed world in terms of industry, but it is very weak and unstable in what concerns the form of human life. Its spiritual turmoil and intellectual conflict have spread so much that some people are exposed to mental illnesses and anxiety. In the new human culture, right and wrong are mixed together, and right and wrong education, right and wrong knowledge have caused many deviations. Since the second half of the twentieth century and with the expansion of industrial life, we have been faced with a weakness of faith and moral decline. The factor of spirituality has become weak and even in the matter of forming a family, there is a lack of interest or indifference, which in itself causes many difficulties and corruptions. It is true that today the family is not a productive and economic unit, but if we think carefully, the same economic system exists in the family, of course with a more limited scope. In the past, all family members worked hard to earn a living under the supervision of the head of the family, and today, both husband and wife are obligated to fulfill this duty. In the Islamic family system, the man is responsible for providing bread and sustenance for the family members, and the woman is obligated to manage the house, create warmth and peace in it, and manage and raise the children. However, today, in the industrialized world, each husband and wife must be busy somewhere with providing bread and sustenance, and with effort and effort, earn money and continue their lives. It is obvious that in such a case, children also grow up in places separate from the home, that is, in kindergartens and preschools, and acquire morals beyond the family's morals. In today's world, the family is more subject to instability and disintegration than in the past. Husband and wife do not have a proper relationship with each other due to separations, many occupations, divergent thoughts and ideals, and diverse emotions and beliefs. The purity and intimacy that was seen between husband and wife in traditional societies has become a dream in the industrialized society. In today's world, we are faced with the young generation's avoidance of forming a family and evading their responsibilities. The marriage rate is low and the divorce rate is very high (Qaemi, 2012: 36-34).

According to the researcher, the scientific and industrial successes that mankind has achieved have not improved the relationship between humans and have not led to the development of intimacy and piety. This is to the extent that even the family can be included in this regard. Industrial life has damaged family relationships and deprived them of the stability and peace that was born of good relationships, good morals, and legitimate wishes. In the shadow of such a thing, human dignity and moral virtues have disappeared and have made husbands and wives so weak and indifferent to each other that they break up with the slightest excuse and give up on each other at a cheap price.

Family Protection Law in Iran

In Iran, family protection has always been a concern of legislators, but for the first time in July 1967, a law entitled the Family Protection Law was passed, which was replaced by the law approved in February 1974 with the same title. However, it can be said that the title of family protection for the two laws mentioned is objectionable, because these two laws protected women and, to some extent, children born of marriage, rather than the family as a unit and social institution. After the revolution, some articles of the Family Protection Law that contradicted Islamic jurisprudence were repealed. However, some articles still remain in force and valid. However, most of the family protection regulations are included in the civil law. Non-Shiite Iranian citizens are subject to the regulations of their religion in family law. Given the importance of the family and the lawsuits related to it, and the need for expertise and experience, eliminating cumbersome procedural procedures, and observing moral and social aspects in handling such lawsuits, family courts have been established in many countries to handle family lawsuits. In Iran, there have long been Sharia courts in the modern justice system to hear these cases, but their jurisdiction was limited to cases concerning marriage and divorce since 1928. The Family Protection Law of 1967, by granting the county court the authority to hear family cases without observing the formalities of civil procedure and

without the presence of spectators, in fact established a type of family court, which the Family Protection Law of 1974 also preserved. After the victory of the revolution in 1979, a special civil court was established, consisting of a comprehensive mujtahid or a person appointed by him and one or two legal advisors. The main jurisdiction of this court was regarding family cases, and in fact, the special civil court was also considered a type of family court that heard family cases with specialized judges and without the specifications of civil procedure. Unfortunately, the General Courts and Revolution Law of 1994 replaced the general courts with the previous courts, including the special civil courts, and the general court, as its name suggests, had the authority to hear all cases, including family cases. However, since the general court had replaced the special civil court, it was not bound by the formalities of the civil procedure in hearing these cases; moreover, in hearing cases concerning the principle of marriage and divorce, it would require the special permission of the head of the judiciary. Considering the problems arising from the new judicial organization and the need for courts specializing in family matters, and in view of Article 21 of the Constitution, which foresees "the establishment of a competent court to preserve the integrity and survival of the family," the legislator returned to the previous system of the Family Protection Law in 1997 and, pursuant to the "Law on Allocating a Number of Existing Courts to Courts Subject to Article 21 of the Constitution (Family Courts)," established a type of family court to hear family cases (Safaei et al., 2009: 15-16).

The social importance of the family should be the incentive for the legislator to support it. Any rule that the legislator makes in this regard can be effective in strengthening or weakening it. Therefore, in the field of the family, the legislator must act with complete caution and avoid any action that leads to the weakness of the family and always consider the influence of the family in his reforms and innovations. Undoubtedly, the legislator must pay attention to the interests of each member of the family; but what is of primary importance is not the family as an institution and social unit, and its strength and support should be considered more than anything else. In the reforms of laws and regulations related to the family, family customs and traditions must be taken into account, otherwise the implementation of the law will encounter many problems and may lead to the weakness and incapacity of the family.

Sanctifying Marriage

All divine religions emphasize the sanctity and sanctity of the family institution and have rules and regulations for regulating family relations. For this reason, the family in believing nations has always been stronger, and divorce and family breakdown are much less common than in non-believing nations. Islam, with its own legislative system, has always tried to preserve the family and strengthen its pillars based on moral and value principles. From the perspective of Islam, the family institution has a special valuable status and sanctity that is incomparable to any other institution. In the spiritual teachings of religious leaders, there have always been many recommendations on the high status and importance of forming a family and preserving and protecting it. Without a doubt, the family center is formed by the sacred marriage of a man and a woman, and it grows and excels through the love of the couple and their spiritual and psychological development, as well as raising healthy and well-behaved children (Mohammadi Ray Shahri, 2010: 14).

The modern world is a world of transformation and change in the private and public spheres of humans. Modernity, with its transformation of economic, political, social and cultural structures, is one of the most important factors that has changed the structure of the family, marriage and the human and moral concepts related to it. In a way, perhaps none of the developments in today's world are as significant as the events that are taking place in personal life, marriage and family. One of the most fundamental and deeply rooted foundations of strengthening the family is that the vision of men and women towards the family is a monotheistic and faith-based vision. According to psychologists, human behavior is the result of his or her attitudes. The relationship between attitude and behavior is also clearly seen in Quranic stories. Faith-based attitude directly or indirectly affects the behavior of the individual through his or her psychological state (Azerbaijani et al., 2014: 161).

According to experts, one of the important factors in the decline of the status of the family in the West and societies influenced by Western culture is the general process of “secularization” or “desacralization,” which has affected the family in addition to other areas of social life (Bostan, 2011: 178).

A faith-based approach to marriage is the apple of its sanctity and sanctity. According to Islamic texts, it can be said that Islam has tried to spread a sacred view of marriage in societies. The following example can reflect the spiritual and sacred approach of Islam to marriage and family: The Holy Prophet of Islam (peace be upon him) said: “Marriage is my tradition, so whoever turns away from my tradition is not from me” (Allamah Majlisi, 1410: 220).

A person’s purpose in marriage should be a spiritual, holy, and pure purpose. Marriage should be done to obey the command of God and follow the way of the prophets, and to ensure the happiness of the spouse and the divine and heavenly upbringing of children. In the matter of marriage, a man and a woman should prepare themselves for entering into a great act of worship. They should aim at the pleasure of God in marriage and know that both of them are trustees of God through their loins and wombs. They should know that their child, who is a trust of God, is a guest of God in the loins of his father for a short time and a guest of his mother's womb for six to nine months. During this time, with the careful reception that God has bestowed upon him, he transfers all the states and characteristics of the entire being of his parents to himself without his will. The intermediary between you and marriage should not be the eyes, the reasons for marriage should not be lust, the purpose of marriage should not be to achieve wealth, wealth and status from the other party's family, achieving a beautiful face and a beautiful appearance should not be the goal of this program, which has so far shown that these matters have not brought happiness and its fruits and fruits are few. Aim for God, spirituality, worship, and striving to respect the rights of the spouse, raise righteous children, and gain God’s approval so that the fruit of this marriage will be eternal and permanent benefits. If marriage is divine, there is no way to divorce (Ansarian, 1377: 72-71).

Those who marry for God and understand the purpose of marriage well, fully respect the rights of their spouse, and the least harm is done to their spouse by him. Muslim men and women should take the marriage of Amir al-Mu'minin and Hazrat Zahra (peace be upon him) as their example, a marriage that took place for God and divine goals were pursued in it. Shiite traditions have interpreted verses 19 to 22 of Surah Ar-Rahman as this pure marriage: “The paradise of the two seas, they meet.” {19}; Between them is a isthmus that they do not desire. {20};... From them emerge pearls and corals. {22}”.

The two seas refer to the existence of the Commander of the Faithful and Fatima Zahra, who are two seas of knowledge, insight, patience, faith and insight. The meaning of the barzakh and the distance is the Messenger of Allah ﷺ, and the meaning of pearls and corals is Hazrat Hassan and Hussein.

The danger that threatens the human race in today’s world is the desecration of the family center. The leaders of arrogance and exploitation, who see the sanctity of the family as a fundamental obstacle to their own illegitimate studies and desires, are trying with all their might to create a culture that desecrates the family. The leaders of arrogance, who have targeted the destruction of the Islamic family, are making great efforts to formalize same-sex families and cohabiting couples (Giddens, 2013: 452) and the communal family (Bostan, 2011: 64).

From the perspective of those who do not consider the family sacred, the main purpose of forming a family is to enjoy sexual pleasures. But from the perspective of the Quran and Islamic hadiths, forming a family has various psychological, moral, social and religious wisdoms and reasons, and these wisdoms are actually considered the principles and foundations of Islam's emphasis on forming a family and the necessity of strengthening and consolidating this institution: "And among His signs is that He created for you from among yourselves mates that you may find tranquility in them, and He put between you affection and mercy. Indeed, in that are signs for a people who reflect."

The compatibility of couples

Given the important role of marriage in forming a successful and fruitful family in order to achieve inner peace that leads to the realization of high human goals and the growth and development of the human race,

special care and attention in choosing a partner is one of the most important factors that plays a major role in this regard, which leads to a healthy and stable marriage and deep marital relationships and minimizes family problems and disputes. One of the most important factors for the stability of married life is the similarity of men and women in behavioral and personality characteristics. In choosing a spouse, paying attention to the principle of similarity between husband and wife, which is raised in religious texts under the title of "sufficiency" and is called "homosexuality" in sociological texts, has received much attention. Sufficiency and similarity are in various matters, including similarity in faith, intellectual and cultural similarity, similarity in education and science, age, physical, economic and social compatibility. The concept of "sufficiency" is relative, meaning that it has multiple levels; For example, a person may be higher in some respects than his wife, while his wife is superior to him in other aspects. In the religion of Islam, the moral sufficiency of couples is highly emphasized. Moral moderation is considered one of the requirements of piety for couples, in the sense that the jurisprudential ruling of the religious sufficiency of couples, which is one of the certainties of Islamic jurisprudence, is the basis for the moral compatibility of couples. In general, from the perspective of Islam, the most fundamental element of the similarity of men and women is their similarity in faith and belief; hence, it is stated in the narrations: "A believing man is the equal of a believing woman." In another narration, it is stated that if it were not for Imam Ali (peace be upon him), there would be no similarity for Imam Zahra (peace be upon her) among humans." This point shows that in similarity, first of all, attention should be paid to the level of faith of individuals. During the time of the Prophet Muhammad (peace be upon him), successful marriages took place between people belonging to two different social classes or two different racial groups, which, due to their similarity in faith and beliefs, brought a happy family life for both men and women. For example, the story of the young black man, ugly in appearance, strange and poor named "Juybar" who, at the behest and mediation of the Holy Prophet of Islam, married "Delfa", the beautiful daughter of "Ziyad ibn Labid", one of the famous nobles of Medina; the marriage of "Miqdad", a freed slave, with "Zaba'ah", the cousin of the Prophet, which took place at the request and insistence of the Prophet; and the marriage of Imam Sajjad (peace be upon him) with his freed slave girl, which resulted in a reproachful letter from the Caliph of the time and a sharp reaction from the Prophet, show examples of Islam's efforts to introduce and replace a certain model for equal marriage (Hur Ameli, 1404: 69).

In a hadith, the Prophet (peace and blessings of Allaah be upon him) is quoted as saying: "Marry your near relatives and your relatives of equal rank, and marry from them." (Nuri Tabarsi, 1408: 174).

The Holy Quran states that a believer cannot form a family with an unbeliever (Al-Baqarah/221) because marriage to a non-Muslim and someone whose beliefs are not in harmony with the person may lead the Muslim towards disbelief and polytheism or the undesirable spirits that emanate from it due to the intensity of the influence that the husband and wife can have on each other. In addition, marriage is in fact a spiritual and physical bond between two spouses, and its purpose is to provide an intimate environment for the growth and development of the husband and wife and their children. In this case, will the marriage of two people, one a believer and the other an unbeliever, bring such a bond and warmth? Can one expect peace and the upbringing of worthy and faithful people in a house with two different ways of thinking and two separate ways, methods, and rituals of life? Obviously, the answer is negative, and such marriages either lead to the gradual weakening of belief and faith or to incompatibility and separation (Mohammadi Ray Shahri, 2010: 138).

Avoiding extravagance and waste

Excessiveness and waste are among the matters that have tangible and objective effects. The author of the book "Al-Tahqiq fi Kalamat Al-Quran" considers the only principle in this matter to be an action that exceeds the limit that has been considered in it, whether it is rational or customary. Just as in eating, excess is beyond the limit and spending is beyond the norm, and the criterion is excess of its status and status (Mustafawi, 1374). In short, extravagance is referred to any type of transgression that has gone beyond the limits and criteria that have been determined.

Extravagance literally means scattering and causing confusion (Mu'in, 1375: 1021). Raghīb says: "Excessiveness means scattering and its principle is sowing seeds and it is said of anyone who wastes his wealth" (Raghīb Isfahani, 1412: 113).

Many verses of the Holy Quran emphasize the prohibition of extravagance and extravagance, some of these verses are mentioned below:

"... and do not sow for sow. {26}Indeed, the sowers are like the brothers of the devils. And the devil was a blasphemer for the Lord {27}" (Isra: 26 and 27).

"... and we are the poor" (Prophets/9).

"... such a person leads God astray who is a frequent spendthrift" (Ghafir/34).

Many verses of the Holy Quran are dedicated to extravagance and the prohibition of extravagance, which we will refrain from mentioning here to avoid making the matter too long (Shu'ara/151-152; Ghafir/28).

Here we will mention a few narrations about extravagance that Sheikh Kulayni, may Allah have mercy on him, has mentioned in the fourth volume of the book Fur'u'l-Kafi, chapter on the dislike of extravagance and slander:

- Imam Ja'far al-Sadiq (peace be upon him) recited the blessed verse "And those who spend..." (Furqan/67), and closed his hand, which was full of pebbles, and said, "This is slander." He opened his hand and poured out the pebbles, and declared that this is extravagance. Then he filled his hand with pebbles again, poured out some of it, and kept some of it, and said, "These are the people." In this way, he explained the meaning of the blessed verse to the audience, both audibly and visually.

-Hazrat Ali (peace be upon him) said: In spending on dependents, one should avoid extravagance and be moderate.

-Imam Jafar Sadiq (peace be upon him) said: Extravagance destroys blessings.

Today, extravagance and wastefulness have become a custom and habit, and sometimes a value. The researcher's observations confirm that many disputes between spouses are due to extravagance and wastefulness of the husband or wife or both. Extravagance is a scourge that unfortunately many people in our Iranian society suffer from. Each person is extravagant in some aspect of their life; one in clothes and the other in food, etc. For example: a woman must prepare new clothes for each guest; because the clothes she wore at the previous party, as she says, have been seen by others and are repetitive, or the host must prepare all kinds of well-known foods for her guests and prepare food for five people as much as twenty people. Since freedom and protection of individual rights are of particular importance, there is no punishment specified in the general and Islamic penal laws for such wasteful individuals, but in the holy religion of Islam, wastefulness is forbidden, and verses and narrations have been mentioned in this regard. If spouses observe moderation in all matters and avoid excess or extravagance, especially in economic matters and expenses, they will prevent many disputes and have a peaceful and sweet life. How many families have been broken up due to excess and extravagance. Avoiding wastefulness and extravagance is very important both before and after the formation of a family and in the early stages of life (Jamshidi, 2017: 42).

Strategies for preventing family disputes before forming a family in law

This discussion will discuss legal strategies for preventing disputes before forming a family: As soon as the author of law reaches the family, he finds the techniques he has learned in advance insufficient and the arguments are made to stumble. The same is true of law. Because it is difficult to confine human emotions and social reflections within the framework of rules. In the period of his socialization, man has more or less learned that in order to coexist with others, he must obey social rules. He must wear borrowed clothes and make his behavior and actions gentle to the nature of others. But during this period, he also considered the conduct in the family to be a private matter related to himself so that he could behave as he pleased and have a corner of solitude and non-interference alongside social life. Perhaps the natural desire to live freely

has caused him to preserve the family as a minimum of a free environment for himself and keep it as a sacred center away from the reach of governments. Law has always faced great obstacles in penetrating this center. The wise have considered the government's intrusion into this public house harmful and dangerous. Experience has shown that whenever governments have wanted to impose their existence on the family, they have harmed it. Therefore, they have been forced to destroy this center in order to remove the obstacle to their tyranny and power display. In the family, everything is relative and subject to the material and spiritual conditions of each family's specific life, and law cannot decide on such an environment appropriately. Therefore, it is forced to establish vague and abstract rules such as the necessity of cooperation between husband and wife and fair treatment of spouses, and it leaves the determination of examples of cooperation and justice to custom and morality. Those who seek to find the rules governing the family or to reform it, whether in the capacity of legislators, judges, and professors, should seek help from the sociology of the family in addition to legal research to understand what actually governs the family. They should not ignore traditions and consider religious and human ideals as effective factors in interpreting rules, because the strength of the family is based on these traditions and ideals, and the roots of many rules lie in them. The family cannot be modernized in the same way as the irrigation department or the registration of documents, and a Western model can be chosen for it, and transforming it is accompanied by the loss of national identities. Especially if the foundation of the family has a religious and spiritual aspect, as is the case in our society. This national transformation becomes more obvious because it is regrettable that the relations between husband and wife and mother and child are governed by laws instead of religious ethics and traditions. This law is not compatible with the family and its imperative rules, and the effect of laws in creating order in it is insignificant. Therefore, if we seek to throw away traditions and replace them with law, we are actually making it empty. It is then that the husband and wife appear as two claimants facing each other. The wife demands a salary from her husband in return for managing the house and, like other hired workers, she sabotages and goes on strike, while the husband demands lordship and rule in return for the money he gives. Children are also either not taken into account in the midst of the conflict or become a means of intimidation and threat. Law is satisfied with creating a non-aggressive and orderly human being and sees justice in ensuring that everyone gets their due, but the family needs something more than these. Sacrifice and selflessness are not a condition and are the foundation stone of this building (Katouzian, 1375: 11-12).

In Islam, the cornerstone of healthy and good human relationships is built on the basis of morality, and morality has always been the intention of the holy lawgiver in religious verses, traditions and commands. Accordingly, in regulating human relationships, before leading them towards the rule of law and rights, they have been advised to observe moral commands. This feature is more evident in the family, which is the foundation of human society. Accordingly, if the relationship between spouses is governed by the means of law instead of being based on the rule of morality, it will cast a shadow of weakness and coldness on the relationships of family members, and life will be lifeless and devoid of joy and happiness. In regulating the relationship between spouses, morality always takes precedence over the law, and moral rules prevail over legal rules. In this regard, we are talking about human emotions, love, intimacy, and loyalty, and the law is incapable of governing them. Therefore, neither can a man be forced to associate well with a woman and respect her rights by the executive power of the court, nor can a woman be forced to obey her husband and be loyal and fulfill her duty to him. Only morality can maintain this spiritual unity, not the force of law, and in cases where there is no way to exercise rights, one can resort to law and civil law. There are developmental differences between men and women; that is, men and women have talents and spirits commensurate with the responsibility that the system of creation has placed on them. Nature has assigned different roles to men and women and has provided them with the physical and mental tools to fulfill these roles. These differences in creation have been established in order to achieve specific goals, and they are not in vain. Ignoring these differences is in fact ignoring some of the natural needs and talents of humans and oppressing them. Since the law is to provide for the needs of the people and prepare the field of life for the growth and development of human talents and the realization of their rights, the differences between men and women must be reflected in the law, the expression of rights and duties that are the result of legislation, and as a result, rights and duties that are in harmony with and appropriate to the natural roles

should be established for each of them to help them fulfill their natural roles. Something that has been manifested in Islamic legislation and has caused irreconcilable differences

Familiarity of couples with their duties and rights

To prevent disagreements and weakening of relationships and to increase the efficiency of the family, familiarity with duties and clarity of the mandatory and optional limits and expectations of family members is inevitable; that is, if husband and wife are familiar with each other's rights and duties from the beginning and regulate their performance according to these rights and duties, the health of the family will be ensured more; because many of the incompatibilities that endanger and weaken the health of the family are rooted in the failure to observe the rights and ingratitude of each spouse towards the other. In a family where husband and wife know their duties well and act on them, an atmosphere of friendship, affection and cooperation prevails and individuals achieve happiness in this world and the hereafter in the shadow of peace that has been created. The mutual rights and duties of couples are among the matters that the revealing religion of Islam has established to strengthen the family and its growth and development. Observing these rights and fulfilling the responsibilities related to them brings couples closer and closer and prevents disagreements and chaos in the family. Today, due to the weakness of the religious foundations of individuals and the influence of Western intellectual-cultural trends, especially feminist thoughts, Islamic teachings of the low-value family, couples have become indifferent to their duties towards each other and do not perform their duties towards their spouses well. Inattention and low importance to these duties, considering the central and influential role of couples in the family, in addition to making the relationship between spouses vulnerable, can disrupt the relationships of other family members and even put the family at risk of collapse.

One of the most valuable and feasible topics to be discussed in the family center is the issue of responsibility. Responsibility means that each member of the family (couples) correctly recognizes the scope of their duties, authorities, and performance and acts accordingly (Fazelnia, 2015: 51).

The Holy Quran considers family members responsible for each other and says about the responsibility that each person has towards his family: "O you who believe, be strong, for you and your family are in the Fire..." (At-Tahrim: 6).

Wherever a right has been established for a person, there is undoubtedly a duty or obligation placed upon him. Therefore, in this article, when discussing the mutual rights and duties of a husband and wife, what is the right of a woman is the duty that has been placed on the husband, and what is the duty of a woman is the duty that has been introduced as the right of a man. The duties of a couple are explained in three topics:

- Common duties of a man and a woman
- Specific duties of a man
- Specific duties of a woman

Solutions to resolve family disputes in jurisprudence

Islam, which is a comprehensive and comprehensive religion, has addressed in numerous verses and narrations how to resolve family disputes, especially disputes between spouses. In this discussion, we will examine the solutions of jurisprudence in the field of dispute resolution.

Family disputes or disputes are generally divided into three types:

- Male disobedience
- Female disobedience
- Male and female disobedience (division)

The word "disobedience" literally means superiority, elevation, and height (Farahidi, 1410: 232). Disobedience is defined as the hatred and disgust of each spouse for the other and the desire to disobey the spouse and bad association with him (Ibn Manzoor, 1414: 418). Also, specifically, the wife's disobedience

means hatred for the husband and disobedience to his obedience and disliking him (Ragheb Isfahani, 1412: 493). And the husband's abuse is defined as beating, torturing, and harming his wife (Zubaidi et al., 1414: 159). "Abuse" is a term referring to the refusal to fulfill the duties of a wife; the obligatory duties that the marriage contract creates. Therefore, the refusal to fulfill the duties of faith is outside the definition. The purpose of the duties of faith is the religious duties that are conceivable in the relationships of all Muslims; such as the need for trustworthiness, secrecy, some instances of good socializing, etc. These duties do not arise from the marriage contract and do not disappear with its dissolution. For this reason, their violation by the wife is not included in the concept of abuse; although it is included in the general concept of crime and is subject to punishment (Hedayatnia, 1395: 11).

The Holy Quran in many cases advises couples to pursue the path of peace and forgiveness towards each other and to resolve their common issues through negotiation and admonition (Al-Taghabun/14; An-Nisa/34 and 128). If these solutions are not effective, it allows them to resort to other methods of resolving disputes.

Legal solutions to resolve family disputes

Morality should govern the relationship between husband and wife, because the family, which has been introduced by the Quran as a center of affection and mercy and a place of peace, comfort and affection, is not very compatible with its rights, laws and imperative rulings, and legal regulations cannot oblige the members of this center to love each other and organize the family, because rigid and inflexible regulations and laws are too weak to create order in such a warm center, especially if the foundation of the family takes on a religious and spiritual aspect. In such a case, the rules of morality, beliefs, religious and moral traditions that shape the family impose themselves on the family. In the solutions that the Holy Quran has presented for resolving family disputes, the priority of moral methods over legal methods is clearly understood. However, sometimes moral solutions may not be considered or existing disputes cannot be resolved in this way. In this case, there is no choice but to resort to legal solutions.

Conclusion

Family law in Iran is based on Imami jurisprudence, and after the Islamic Revolution, several amendments were made to the laws related to this area in order to further Islamize it. Today, the Iranian family finds itself caught in a conflict between the Iranian-Islamic lifestyle and modernity. On the one hand, it is faced with a lifestyle that is rooted in history, culture, and religion, and on the other hand, it is faced with a modern lifestyle that not only has some attractions but is also imposed on it out of necessity and must adapt to it. Law, as a systematic science that regulates social relations that have legal effects, must provide these relations with legal regulation and find an appropriate response to them.

One of the solutions to maintain family stability when family disputes arise is to refer to arbitration. Referral to arbitration allows couples to use the valuable experience of competent and experienced people and not to change the fate of their lives with insignificant and repairable troubles by suddenly deciding to divorce. According to the Holy Quran, the reference to arbitration is when there is fear of a rift between the spouses. The rift has a wider scope than cases in which, even without a disagreement, the husband divorces his wife, or the wife alone or the couple together requests a divorce by mutual consent. Regarding the importance of the role of family arbitration in preserving the family unit, it is enough that God Almighty has exposed His great masterpiece in the form of the "Family Peace Court" to the world and says in verse 35 of Surah An-Nisa: "If you fear separation between husband and wife, appoint an arbitrator from the husband's relatives and an arbitrator from the wife's relatives, to handle the matters." From the review and examination of the above, it is clear that according to the current laws, the appointment of an arbitrator (of course, only in divorce cases and not consensual divorces, as the new law no longer considers the arbitrator in consensual divorce cases) is the responsibility of the spouses, unless the spouses refuse to nominate an arbitrator, in which case the court will proceed to appoint an arbitrator.

In general, it can be said that the religious view of lifestyle is a normative view. The prelude to the rule of principles is contentment, avoiding the path of laziness in life, and belief in the system of right and wrong.

Stylization with a religious approach, each of these principles, in accordance with its own requirements, has a determining effect on shaping the personality and spiritual organization of individuals, the logic of their understanding of life and relationships in it, especially the mystical relationship with life, the desired educational system, family orientations, choice as an active human behavior, and adherence to principles and concepts related to right and wrong and good and evil. Since the family is the primary place for educating individuals and the best place for internalizing basic intellectual institutions and principles governing behavior, it is also the primary institution responsible for religious indoctrination. The resistance of religious families to religious life despite the encirclement of social structures is indicative of the power of the family when it adheres to principles.

References

The Holy Quran

Nahj al-Balagha

1. Ibn Babawiyah, Sheikh Saduq, Muhammad ibn Ali ibn al-Hussein, 1389, Al-Khasal, Translator and Corrector: Ahmad Fahri, Vol. 3, Qom, Sadra Publications.
2. Ibn Babawiyah, Muhammad ibn Ali, 1413, Man la Yahadr al-Faqih, Tehran, Islamic Culture Foundation.
3. Ibn Zuhrah, 1417, Ghanyeh al-Nuzoo, Qom, Imam al-Sadiq (a.s.) Institute.
4. Ibn Manzur, Jamal al-Din, 1414, Muhammad ibn Makram, Lisan al-Arab, Third Edition, Beirut, Dar al-Fikr for Printing, Publishing and Distribution, Dar Sader.
5. Ibn Abi al-Hadid, 1386, Sharh Nahj al-Balagha, Vol. 2, Publications of the Ayatollah Marashi Library.
6. Ibn Idris Helli, Muhammad bin Mansur, 1408, Mustastrafat al-Sara'er al-Hawi for the Tahrir al-Fatavi, Qom, Islamic Publications Office affiliated with the Qom Seminary Teachers' Association.
7. Arjandi, Alireza, 1397, The Jurisprudential-Legal Perspective of Arbitration and Its Position in Family Disputes, Ara'a Scientific Quarterly, No. 8.
8. Asadi, Seyyed Hassan, 1387, Family and Its Rights, Vol. 1, Mashhad, Astan Quds Razavi Publications.
9. Esmaili Yazdi, Abbas, 1385, Farhang Tarbiat, Qom, Da'il Ma Publications.
10. Eftekhari, Zahra, 1383, What Women and Men Do Not Know, Tehran, Nasl Nawandish.
11. Elhami Nia, Ali Asghar, 1391, Jurisprudence of Family, Sixth Edition, Zamzam Hedayat Publications.
12. Amini, Ebrahim, 2009, Marriage Ritual or Family Ethics, Vol. 17, Tehran, Islamic Publications.
13. Ansari Nejad, Nasrallah, 2012, Analysis of Juvenile Delinquency, Tehran Correctional Center, Volume 12, Number 45.
14. Ansarian, Hossein, 2018, Family System in Islam, Vol. 8, Qom, Um Abiha Publications.
15. Azarbaijani, Masoud and others, 2014, Social Psychology with an Attitude to Islamic Sources, Tehran, Seminary and University Research Center and Department.
16. Amadi, Abdul Wahid bin Mohammad, 2017, Gharr al-Hakam and Darr al-Kalam, Qom, Advertising Office Publications.
17. Babaei, Seyyed Mohammad, 2014, Islamic Lifestyle, Ahl al-Bayt Magazine, Year 6, Issue 13.
18. Bazgir, Yadollah, 2001, Judgment and Rulings Regarding It, Vol. 1, Tehran, Ferdowsi Publications.
19. Baum, Rosen Heidi, 2008, Family as a Structure in Front of Society, Translated by: Mohammad Sadeq Mahdavi, Tehran, University Publishing Center.

20. Bauman, Zigmund, 2005, Hints of Postmodernity, Translated by Hassan Chavoshian, Tehran, Qoqnos Publications.
21. Bahrani, Yusuf bin Ahmad bin Ibrahim, 2005, Al-Hadaq al-Nazeera fi ahkam al-Atazah al-Tahirah, Qom, Al-Ma'arif al-Islamiyyah.
22. Boromandnasb, Masoud; Shakrakam, Hossein; Najarian, Bahman, 1997, Studying the relationship between parental parenting attitudes and the locus of control in middle school students of Dezful city, Journal of Educational Sciences and Psychology, Shahid Chamran University of Ahvaz, Volume 3, Year 4, No. 1 and 2.
23. Bostan, Hossein, 1991, Islam and Sociology of the Family, Seminary and University Research Institute.
24. Bokhinsky, A.M., 1983, Contemporary European Philosophy, Tehran, Scientific-Cultural Publishing Company.
25. Boomer, Franklin Luffan, 1983, Major Currents in the History of Western Thought, Translator: Hossein Bashirieh, Tehran, Baz Publications.
26. Bahadori, Yousef, 1995, An Essay on Divorce, Marefat Publications.
27. Behbahani, Mohammad Rahim, 1988, The Place of Arbitration in Family Law, Islamic Culture and Thought Research Institute Publishing Organization.
28. Bahravan, Hossein, 2013, The role of family differences and factors in committing crimes and delinquency of young people, Family and Security Conference, Yazd, Ordibehesht
29. Biruni, Abu Rayhan, 2013, Al-Jamahir fi al-Jawaher, Tehran, Yousef al-Hadi Publications.
30. Payandeh, Abolghasem, 2015, Nahj al-Fasaha, Javidan Publications Organization.
31. Pradel, Jean, 2002, History of Criminal Thoughts, translated by Ali Hossein Najafi Abrandabadi, Vol. 1, Tehran, Samt Publications.