

Unveiling the Complexities of Spousal Rights Abuse: An Exploration within the Afghan Socio-Legal Milieu and Islamic Jurisprudence

Aminullah Poya¹⁾, Habiburrahman Rizapoor²⁾

¹⁾Islamic Jurisprudence Department of the Shariah Faculty of Badakhshan University Afghanistan & Ph.D. Student at IIUM International Islamic University of Malaysia

²⁾Islamic Studies Department of the Shariah Faculty of Badakhshan University Afghanistan

*Corresponding Author

Email: habibraghi@gmail.com

Abstract

This study endeavors to conduct a comprehensive investigation into the intricate matter of rights abuse within the context of Islamic jurisprudence, with a specific focus on instances of spousal rights abuse within the cultural and legal framework of Afghanistan. The primary objective of this research is to elucidate the diverse manifestations of abuse, regulatory mechanisms, potential remedies, and the foundational marital norms that contribute to this phenomenon. Employing a methodological approach that combines inductive reasoning and analytical techniques, this inquiry systematically navigates the nuanced dimensions of spousal rights abuse, unraveling its implications while proposing pragmatic measures to alleviate its adverse societal repercussions. Situated within the intricate socio-cultural landscape of Afghanistan, this study delves into the comprehension and practices of prevailing marital norms. Special emphasis is placed on grasping the dynamics of spousal rights abuse, encompassing scientific, economic, ethical, and cultural dimensions. Through meticulous data collection from primary and secondary sources, this research rigorously examines Islamic jurisprudence to illuminate distinct forms of abuse, their regulatory constraints, and defining criteria, culminating in thorough discourse and analysis. The findings of this investigation underscore the extensive implications of spousal rights abuse, underscoring its deleterious effects on individuals, families, and the broader society. Notably, this study identifies a substantial void within the existing literature concerning the application of abuse within the domain of rights exercise within the familial context of Afghanistan. The research advocates for the establishment of a committee comprising jurists and subject experts, dedicated to addressing and rectifying this pervasive issue. With a theoretical and applied approach, this research offers a unique vantage point on the subject of abuse in rights exercise, with particular attention to gender dynamics. By suggesting feasible remedies and accentuating the significance of education and awareness, this study serves as a valuable reservoir of information for individuals, governmental bodies, and stakeholders engaged in the resolution of spousal abuse-related disputes within the Afghan context.

Keywords: Abuse, Criteria, Forms, Controls, Causes, Methods, Conjugal Rights.

INTRODUCTION

This study aims to explore the legal factors and variables that contribute to addressing spousal rights abuse according to Islamic jurisprudence and how Afghan Laws address this issue. Drawing upon previous researchers' ideas and textual evidence, the study endeavors to engage in discussions and compare different perspectives to understand and combat the prevalent issue of spousal rights abuse within the Afghan community, particularly in rural and desert areas. Recognizing the negative consequences of such abuse is crucial, as ignorance and lack of consideration for its far-reaching implications can lead to detrimental effects on families and their children.

Spousal rights abuse within the Afghan community is a deeply concerning and complex issue that warrants meticulous attention from both scholars and practitioners alike. This distressing phenomenon encompasses a range of harmful behaviors perpetuated against spouses, predominantly targeting women, which severely undermines their fundamental rights and well-

being. The patriarchal societal norms prevalent within Afghan culture often exacerbate this abuse, perpetuating power imbalances and restricting women's autonomy. Factors such as economic dependency, limited access to education, and lack of legal protection further contribute to the perpetuation of this grave injustice. Addressing spousal rights abuse within the Afghan community necessitates a multifaceted approach, incorporating culturally sensitive interventions, legal reforms, and awareness campaigns to challenge deeply ingrained gender inequalities and promote equitable relationships.

The researcher found no previous studies regarding the abuse of spousal rights in Afghanistan containing both legal and judicial aspects. Therefore, the study aims to shed light on this subject and suggest potential remedies for the problem that has affected the community significantly.

Spousal rights abuse poses a formidable problem that affects both individuals and society. Such abuse undermines justice, creating conceptual and practical ambiguity and disrupting the balance and harmony within marriages—the abuse of spousal rights represents a global crisis that transcends borders and does not distinguish between states or nations. It is considered a violation of human rights and is ethically and religiously forbidden, even if practiced within the boundaries of legality. Spousal relationships constitute the foundation of society, and abuse within these relationships has far-reaching consequences.(Abdulbasit, 2019, 18-20).

The problem of spousal rights abuse is prevalent in the Afghan community, particularly in rural areas. This may be attributed to the ignorance of couples regarding the permissible limits of their rights, leading them to abuse their rights, often believing they have complete freedom in exercising them without considering the harm they cause to the other spouse. Such abuses can be based on cultural practices, prevalent customs, or deviant traditions embraced by one or both spouses, leading them to consider their actions as legitimate even if they constitute abuse. The study, supported by UNICEF, aimed to explore women's perspectives regarding domestic violence within the context of a broader investigation into maternal and child health. Participants were presented with a series of hypothetical scenarios or justifications that could potentially lead a husband to physically harm his wife. The findings revealed that a significant majority, approximately 92 percent, of Afghan women believe there are circumstances where a husband's use of violence against his wife is warranted. These situations include instances such as going out without informing the husband, neglecting childcare responsibilities, engaging in arguments with the husband, declining sexual advances, and mishandling food preparation. Notably, 78 percent of respondents indicated that a husband's physical aggression is acceptable when a wife goes out without notifying him, while 31 percent held the same view regarding mishandling food.(Clifton , 2012).

Comparatively, the acceptance of spousal violence among Afghan women surpasses rates observed in neighboring countries: 54 percent in India, 36 percent in Bangladesh, and 23 percent in Nepal. Furthermore, the data underscores the influence of women's educational background on their attitudes toward domestic violence. In India, 62 percent of women without formal education condone domestic violence, while this percentage decreases to 31 percent among those with secondary education or higher. It is worth noting that a significant proportion of Afghan women, 82 percent, lack formal education, emphasizing the need for targeted interventions to address this concerning issue.(Clifton , 2012).

The idea explored by many researchers revolves around the theory of spousal rights abuse in a general sense, mentioning examples that represent rights related to family rights and the abuse thereof. However, most of these studies did not specifically focus on conjugal rights from the point of view of jurists and Afghan laws when investigating the theory of spousal rights abuse. Some researchers opted to choose one of the marital rights as the field of application for

this phenomenon. Nevertheless, the researcher could not find any study that exclusively delved into the topic of conjugal rights and the abuse therein. This distinction sets apart the current study from its predecessors.

Among the contemporary studies in this field is the book titled *Al-Mar'a Bayna Al-Fiqh Wal-Qanon* "Women Between Jurisprudence and Law" by Dr. Mustafa Al-Saba'i. In this book, the author discusses the evolution of women's rights throughout history, highlighting the oppression, humiliation, and subjugation faced by women. He then illustrates Islam's stance in elevating women's status, making them equal to men in most matters except for a few minor issues. The book also addresses the disparities between men and women, such as testimony and others. It delves into the topic of polygamy and the opposition it faces from critics. Additionally, the author examines the varying opinions of jurists regarding divorce and the political and social rights of women. However, this book lacks coverage of "spousal rights abuse" specifically, particularly in its contemporary applications within the Afghan Community, which is precisely what the researcher aims to address in this current study.(Al-Saba'i, 1999).

One of the prominent studies concerning the theory of spousal rights abuse is the book "*Nazariyat Al-Ta'suf Fi Isti'mal Al-Haqq Fi Al-Fiqh Al-Islami*" by Aldarini. The author thoroughly discusses the origins of the theory of abusing rights in Islamic legislation since ancient times and emphasizes that the concept of justice in Islamic law is a real and practical matter, not merely a philosophical idea detached from the provisions and objectives of the Sharia. Aldarini divides the book into two significant sections. In the first section, he presents evidence on the prohibition of abusing rights in Islamic law, addressing the issue of paternal abuse of rights over their children and discussing arbitrary divorce. Nonetheless, this study lacks an investigation of spousal rights abuse between couples concerning conjugal rights according to the customs and traditions prevailing in the Druwaz Directorate, which is the focus of the present researcher's study.(Aldarini, 1408h).

RESEARCH METHODS

This research uses the inductive and analytical approaches: The inductive method involves ascending from simple cases to comprehensive and general principles. The researcher will analyze juristic opinions about the concept of spousal rights abuse between couples. The study will present various viewpoints of jurists on this matter, conducting a detailed examination to determine the most prevalent opinion. To gather relevant information, the researcher will refer to primary and secondary sources, employing various supportive methods to facilitate data collection.

The analytical approach will facilitate the transfer and evaluation of evidence from different juristic schools. The researcher will derive Islamic legal rulings from the works of jurists, analyze and extract opinions and judgments, and correlate them with contemporary life, thus providing insights that promote familial and societal benefits while mitigating harmful effects. The study will delve into the various forms and regulatory measures of spousal rights abuse within Islamic jurisprudence, engaging in comprehensive discussions, analysis, and preference of scholars' opinions where necessary.

RESULT AND DISCUSSION

Some contemporary jurists have considered abus of rights as a form of exceeding the limits and transgressing while exercising rights, while others treated abuse as a specific and independent subject, having its essence, manifestations, and principles governing its application.(Mustafa^{n.d.}).

Scholars have differed in defining abuse based on their varying perspectives, resulting in two opinions: The first opinion holds that abuse is synonymous with exceeding the limits and transgressing. Advocates of this view consider them as equivalent and interconnected. Mohammed Abu Zahra defined abuse as "the use of a right in a manner that harms others, either by exceeding the permissible scope of usage or by causing greater harm to others than the benefit gained by the right holder.(Abu Zahra, n.d). Similarly, Jamal Fakhry cited Mustafa al-Siba'i's definition of abuse as misusing a right in a way that causes significant harm to others, this definition is also supported by Wahbah al-Zuhayli.(Al-Zuhayli^{n.d.}). Also, Rafat Mohammed Hamad defined abuse as the use of one's right in a manner that inflicts harm upon oneself or others.(Hammad^{n.d.}). Likewise, Zaki Abdelbar defined it as causing harm without justification. (Abdulbar,n.d. 55/47). Equally, Ahmed Abu Sunnah stated that abuse is the utilization of one's right in an unlawful manner.(Abu Sunnah^{n.d., 100}). Al-Darini defined abuse as contradicting the legislator's intent in handling a matter that is legally authorized, based on its original state.(Aldarini, n.d. 62).

On the other hand, the second opinion, upheld by scholars who consider abuse in exercising rights as a separate entity independent of exceeding limits and transgressing, revolves around considering the right's purpose, outcome, and recognized benefit within the Islamic context, as well as the extent of adherence to these factors and not deviating from them. This view is considered as an independent subject separate from transgression and violation. Advocates of this viewpoint primarily examine the purpose, outcome, and consequences of rights, specifically in terms of their legitimate benefits and the extent of commitment to them. Accordingly, they have formulated definitions following this perspective. Aldarini defined abuse as "contradicting the legislator's intent in an action that is authorized in principle.(Aldarini, n.d, 87). Secondly, Abdullah Aldar'an defined it as an individual's practice of a lawful act, originally permitted, in a manner that causes harm to others or contradicts the wisdom of its legitimacy. (Al-Dar'an,1993, 256).

Prohibition of Abuse in the Use of Rights:

Numerous texts from the Holy Quran and Prophetic hadiths explicitly establish the prohibition of abuse in the use of rights. This prohibition contradicts the intention of the divine legislator in enacting these rights and is reinforced by strong warnings against engaging in such abuse in both theory and practice. Abusing rights is considered impermissible based on the comprehensive evidence presented, as outlined below:

1. Evidence from the Holy Quran:

Firstly, Allah states:

لَا تُضَارَّ وِلْدَةٌ بِوَالِدِهَا وَلَا مَوْلُودٌ لَّهُ بِوَالِدَةٍ

"Let no mother suffer because of her child, nor should the father suffer because of his child" (Al-Baqarah: 233). Al-Qurtubi, while interpreting this verse, affirms that it is not permissible for a father to prevent the mother from breastfeeding their child against her will. This view is unanimously agreed upon by Muslims. He further adds: Nor should the child be taken away from her after she willingly accepted breastfeeding and bonded with the infant. Taking the child away from the mother after her acceptance and consent to breastfeeding, whether done gratuitously or with payment as agreed upon by others, constitutes an abuse of the use of rights, which is strictly

prohibited by Islamic law as it demonstrates an intention to harm the mother, which is religiously forbidden. (Al-Qurtubi, 1964, 3/167).

Secondly, Allah says:

وَالَّذِينَ اتَّخَذُوا مَسْجِدًا ضِرَارًا وَكُفْرًا وَتَفْرِيقًا بَيْنَ الْمُؤْمِنِينَ وَإِرْصَادًا لِمَنْ حَارَبَ اللَّهَ وَرَسُولَهُ مِنْ قَبْلُ وَلَيَحْلِفُنَّ إِنْ أَرَدْنَا إِلَّا الْحُسْنَى وَاللَّهُ يَشْهَدُ أَنَّهُمْ لَكَاذِبُونَ

"As for those who have taken a Masjid to cause harm, disbelief, and division among the believers, and as a base for plotting against those who previously fought against Allah and His Messenger, they swear, 'We only desired good.' But Allah bears witness that they are truly liars" (At-Tawbah: 107).

The rationale behind the evidence is that constructing Masjids is an obligatory right for every Muslim. However, if an individual's intention behind building a Masjid is to harm Muslims, cause division among them, and turn it into a hub for conspiring against Muslims, such an act becomes impermissible and unlawful. This contradicts the divine intention that emphasizes the construction of Masjid as places for remembrance and facilitating worship and prostration to Allah, as demonstrated by the hypocrites who built a Masjid in Madinah for harmful purposes, using it as a center for their anti-Islamic activities. Consequently, the Prophet Muhammad (peace be upon him) forbade praying in the Masjid of Harm (Masjid ad-Darar) and ordered its demolition, subsequently making it a dumping ground for rocks and trash. (Al-Qurtubi, 1964, 8/254).

2. Evidence of Prohibition:

Abu Sa'id al-Khudri (may Allah be pleased with him) narrated that the Prophet (peace be upon him) said: There should be no harming or reciprocating harm. Whoever harms others, Allah will harm him; and whoever causes hardship to others, Allah will cause hardship to him. (Al-Dar Qutni, 1966, 3/77). The hadith categorically negates harm and reciprocation of harm, serving as an explicit prohibition against actions leading to harm, whether intentional or unintentional. It encompasses the eradication of harm in all its forms and is to be applied broadly, except where there is a specific exemption indicated by the evidence. (Al-Durayni, n.d. 177). Abu 'Umar explains that the Prophet's statement "no harming" encompasses all forms of harm, except those exceptions specifically delineated by a Shariah text. (Al-Qurtubi, 1964, 7/191).

Similarly, Abu Dawood narrated from Samurah ibn Jundub that he said: I had a palm tree in the wall of a man's house from the Ansar, then Samurah would enter into his palm tree and get hurt by him and his family, and he found it troublesome. So he sought from him to sell it, but he refused. Then he sought him to relocate it, but he refused. So he came to the Prophet, peace and blessings be upon him, and informed him about it. The Prophet, sought from him to sell it, but he refused, then he sought from him to relocate it, but he refused. The Prophet, peace be upon him, said: Gift it to him and you will have such and such reward in return, he still refused. The Prophet, peace be upon him, then said: You are someone who wants to hurt others. and said to the Ansari: Go and uproot his palm tree. (Al-Sijistani, 2009, 5/478).

This hadith indicates the importance of exercising one's rights responsibly and ethically, avoiding actions that cause harm to others. While individuals are granted the latitude to exercise their rights, they are also expected to consider the potential harm that may result from their actions and to act in ways that align with the principles of justice and societal well-being.

The Scenarios of Abuse of Rights from the Perspective of Islamic Jurists:

The scenarios of abuse are varied and have several constraints. Some researchers have limited them to five, while others have stated that there are only three. Issues of abuse in the use of rights are numerous: The first scenario is when a person intends to harm others without any intention of achieving any benefit in using their right. For example, if someone falsely accuses another person of a crime, of which they are innocent, with the sole intention of harming them.

Islamic jurists state that such a claim is not accepted, and the accuser is punished if their claim is proven to be false. (Al-Yamari,1986, 2/148).

The second scenario is when the benefit that the person seeks to gain by using their right is insignificant compared to the harm inflicted on others. For instance, if a man wants to open a hole or window that overlooks his neighbor's property to allow air, light, and sun into his house, this benefit does not justify the harm caused to his neighbor's privacy. Therefore, it should be entirely blocked unless the opening is old. This view is held by the Maliki school and some Hanafī scholars. (Al-Maliki, 1994, 7/128). As for the Shafi'i school, it allows the owner to open holes or windows that overlook his neighbor, and the neighbor cannot prevent him from doing so. If he builds a wall next to the opening in his property to prevent light and vision, he can do so to protect himself from harm. (Al-Baghdadi, 1994, 6/394). The Hanbali school prohibits opening such holes or windows altogether, whether they cause harm or not, and whether with or without the ruler's permission. This is because it involves dealing with someone else's property without their permission, which is not permissible. It also obstructs the road and blocks light, and dust may accumulate over time, causing harm to passers-by. (Ibn Qudamah, 1992, 5/34).

The third scenario is when the benefits sought are originally illegitimate, which includes any legitimate act intended to achieve an illegitimate benefit. For example, temporary marriage (mut'ah) is prohibited because marriage is originally legitimate for building a good family, but this is not the purpose of temporary marriage. It does not achieve the goal of legitimate marriage because he violated the accurate information outlined in its prohibition, as attributed to Ali ibn Abi Talib (may Allah be pleased with him), that the Messenger of Allah (peace be upon him) prohibited temporary marriage (mut'ah) on the day of Khaybar, and eating the flesh of domestic donkeys. (Al-Bukhari, 1422h, 5/135). Similarly, temporary marriage (mut'ah) contradicts the objectives of legitimate marriage. The purpose of legitimate marriage is permanent companionship, the establishment of a proper marital household characterized by affection, mercy, harmony, and unity, as well as the procreation and nurturing of children in a peaceful atmosphere filled with love, compassion, and tenderness. Such expectations are not met in temporary marriage (mut'ah), which is akin to renting through unlawful means. Moreover, the prohibition of temporary marriage (mut'ah) is a consensus among Muslims. Although it was initially permissible in the early days of Islam, it was later prohibited during the Farewell Pilgrimage of the Prophet (peace be upon him), specifically towards the end of his life. Since then, there has been virtually unanimous agreement among the scholars, except for certain groups among the Shia. (Al-Busti, 1932, 3/190).

The fourth scenario is what scholars refer to as excessiveness in exercising one's rights, such as using one's right in an inappropriate manner that leads to harming the neighbor. It is well-known that individuals have the freedom to exercise their rights in ways that achieve benefit for themselves or prevent harm. However, when exercising a right through a normal means results in harm to others, if the harm is not significant and egregious, then in such cases, people must bear the consequences among themselves. On the other hand, if the harm resulting from exercising a right through a common and customary manner is significant or egregious, the holder of the right is prohibited from exercising it, as his conduct in this way is illegitimate and arbitrary. Such behavior leads to severe and considerable harm to others, which is impermissible. Therefore, this behavior is also prohibited. (Al-Siyawashi,n.d. 7/236).

The fifth scenario is using legitimate rights without caution, in a way where harm is inherent to the nature or necessity of exercising this right. If a person fails to exercise caution while exercising this right it is a situation where caution and precaution are possible, for example, if someone aims to hunt a bird and shoots an arrow, thereby harming a person or an animal.

Hunting is permissible in Sharia, but the person did not exercise caution in exercising their hunting right, causing harm to others. (Fahmi, n.d. 124).

Criteria and Standards of Abuse in the Utilization of Rights:

Scholars and researchers, both classical and contemporarily, unanimously agree on the prohibition of intending harm to others. The prohibition of such intent is well-established through scriptural sources, including the Quran and the Sunnah, as well as the consensus of the Companions of the Prophet, may Allah be pleased with them, and the majority of scholars from various Islamic schools of thought. (Aldarini, n.d. 226).

The outlined criteria and standards can be categorized into two fundamental types:

- A. Self or Personal Standards: This criterion delves into the intentions of the rightful claimant and the driving force behind their exercise of rights. It scrutinizes whether the intention is to harm others or to illicitly attain benefits that contradict the legislated purpose of rights by the Divine Law (Sharia). (Aldarini, n.d. 74).
- B. Material or Objective Standard: This standard revolves around the balancing act between the interests sought through the exercise of a right and the potential benefits and drawbacks resulting from its use. If, upon careful consideration, the benefits are equal to the drawbacks outweigh the benefits, the exercise of the right may be restricted. This is because averting harm takes precedence over pursuing benefits. This standard also governs conflicts between individual rights and public rights. (Aldarini, n.d. 226).

Consequently, understanding these facets and revealing the criteria of abuse in the utilization of rights is of paramount importance to every individual within society, especially spouses. It serves as a framework for regulating the exercise of rights, ensuring that each person employs their rights correctly, far from arbitrary intentions and actions. This approach safeguards against harm, damages, conflicts, and disruptions that may undermine marital and familial relationships, among others. These rights are blessings and favors bestowed by Allah. As Allah states: "And whatever you have of favor - it is from Allah. Then when adversity touches you, to him you cry for help." (Surah An-Nahl, 16:53). Their rightful and non-detrimental utilization is an expression of gratitude towards the Benevolent Creator.

These criteria and standards provide a comprehensive framework for evaluating the exercise of rights, striking a balance between individual interests and communal well-being. Adhering to these principles fosters a just and harmonious society, where rights are upheld and protected while simultaneously preventing abuse and maintaining the integrity of relationships.

The Husband's Right to Obedience and the Potential for Abuse:

It is universally accepted that both spouses possess rights and responsibilities towards each other, obligations that must be fulfilled by the appropriate legal or statutory guidelines. Such obligations are the foundation of marital life and without them, the fabric of marriage may unravel. Among the husband's rights over his wife is her obedience in matters that conform to Shariah and customary norms.

Linguistically, obedience denotes compliance with a directive. If one adheres to a command, they are considered obedient. (Ibn Manzur, n.d. 8/240) and (Al-Jurjani, n.d., 2/380). It is linked to a command, as in he commanded, so I obeyed. In technical terms, Ibn Hajar al-Asqalani defines it as complying with what is commanded and abstaining from what is prohibited. (Ibn Hajar, 1379h, 13/112). Al-Munawi defines it as compliance with a command or any act that leads to satisfaction and draws one closer to Allah. (Al-Munawi, 1410h, 477). Regarding conjugal obedience, Abu Saneenah defines it as complying with the husband's directives and following them in a manner sanctioned by Sharia. (Abu Sinnah, n.d. 45).

Allah makes men in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth." (Surah An-Nisa, 4:34). The implication

from this verse is that the husband is responsible for the welfare of the wife, including financial support, sustenance, clothing, and more. He has the right to retain her within the household and restrict her movements, and it is within his rights to expect obedience in these matters unless it involves disobedience to Allah. Al-Jassas states: that the verse 'men are in charge of women' undoubtedly indicates the obligation of a wife's obedience to her husband, as his being in charge necessitates this. (Al-Hanafi, 1405h, 2/68). Furthermore, the Prophet Muhammad, peace be upon him, is reported to have said: If I were to command anyone to prostrate to another, I would have commanded the wife to prostrate to her husband due to the magnitude of his rights upon her. (Al-Bayhaqi, 1406h, 7/297).

Under the guise of a wife's obligation to obey her husband lies the potential for significant injustice and the curtailment of her freedoms. This could result in a lack of consultation on matters concerning both parties, let alone those exclusively concerning her. Failing to consult her is reprehensible and contrary to the ethics of harmonious coexistence. Even young children engage in consultation on certain matters, let alone spouses. Allah emphasizes the principle of consultation among believers: "And those who have responded to their Lord and established prayer and whose affair is [determined by] consultation among themselves." (Surah Ash-Shura, 42:38). How then can a husband neglect to consult his wife or consider her opinion? Unless we claim that he acts unjustly and arrogantly, such an approach to utilizing this right becomes illegitimate, as it contradicts the intended purpose of Sharia regarding her obedience to him and leads to harm.

Muslim woman is required to reside in her husband's home and should not leave it without his permission. This is based on the verse: "And abide in your houses and does not display yourselves as [was] the display of the former times of ignorance." (Surah Al-Ahzab, 33:33). The implication of this verse is explicit in mandating a wife's obligation to remain in her husband's house, as a command implies obligation unless there is evidence to the contrary. While the verse was initially addressed to the wives of the Prophet Muhammad, peace be upon him, its significance extends to all women. Moreover, Islamic jurisprudence is replete with evidence that urges women to remain within their homes and not to leave except for necessity. (Al-Qurtubi, n.d. 14/179).

Abuse in exercising this right can manifest when a husband prevents his wife from visiting her parents. Some jurists do not permit a husband to prevent her wife from doing so if it harms her, as such prevention would constitute disobedience and severing family ties. (Al-Maliki, 1420, 1/310). In Islamic law, a husband is not allowed to impose a condition on his wife that would result in cutting off relations with her parents. Preventing her from visiting them could lead to defiance and disobedience, conflicting with the intended purpose of legal marriages. Likewise, a husband should not prevent his wife from attending the Masjid on Eid days, Fridays, or for lessons of preaching and guidance. (Al-Kuwaitiyyah, n.d. 7/91). The Prophet Muhammad, peace be upon him, said: Do not prevent the female servants of Allah from the Masjids of Allah. (Al-Sijistani, n.d. 1/423). Such prohibitions can be seen as an abusive exercise of the right, with the harm being evident to anyone with a fair and jurisprudential mindset.

Disciplining a Disobedient Wife:

Islamic Sharia has granted the husband the right to discipline his wife in cases of disobedience, solely intending to guide her back to obedience by fulfilling her obligations towards Allah and her responsibilities towards her husband. (Al-Qurtubi, n.d. 5/170). The purpose of this discipline is to promote reform by encouraging her obedience, following three steps and a fundamental Quranic methodology. The foundation for this right is based on the verse:

وَالَّذِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا
كَبِيرًا

"As for those women from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, seek not a way against them." (Quran, Surah An-Nisa, 4:34)

This verse provides evidence for the permissibility of disciplining a wife who displays disobedience. The condition for this discipline is that the husband should have legitimate concerns about her behavior, as explained by Ibn Abbas (may Allah be pleased with him), that clear signs of disobedience must be evident, not just mere suspicion. Actual disobedience must occur, such as neglecting her duties to Allah, committing prohibited acts, or showing reluctance and resistance when summoned by her husband. Such resistance should not stem from simple aversion but from a genuine feeling of dislike and disapproval. (Al-Kasani, 1420h, 2/334). This verse outlines a comprehensive intellectual framework for addressing the issue of disobedience in marriage, which serves as a corrective methodology in three sequential steps, as proposed by some scholars. (Al-Asfahani, 1999, 3/1224). Some argue that the sequence is not obligatory; rather, the main goal is to guide the wife back to obedience. The apparent perspective is that the value lies in following the sequence as prescribed by the Quran, rather than the husband's perceived wisdom. The three steps are as follows:

Step One: Admonition and Guidance. Admonition should be conducted using the Quran and the Sunnah with gentle and compassionate counseling. Excessive use of this right during this step could lead to belittlement or the humiliation of her dignity or family. The guidance and counseling should be discreet, and if the admonition proves effective, it is well and good. If not, then proceed to the second step.

Step Two: Bed Separation, This involves the husband refraining from sharing the marital bed. Some interpretations suggest that the term "send them to beds apart" refers to abstaining from physical intimacy while remaining silent. Others argue that the husband should engage in physical intimacy without verbal communication. (Al-Tabrasi, 2006, 3/67). Alternatively, both forms of separation may apply simultaneously. What seems apparent is that the intended separation includes both physical and sexual withdrawal, as both contribute to her discomfort when experienced together. However, the withdrawal of communication alone might not contribute to the intended reform, particularly in cases of disobedience.

Step Three: Husband's Right to Discipline Through Light Beating, when advice and separation fail to rectify the situation and guide the wife back to obedience, the husband is permitted to resort to light physical discipline, as indicated by the phrase "and beat them." This beating must not cause injury, break bones, or target sensitive areas like the face and head. (Al-Sarakhsi, 1993, 9/72). The purpose of discipline through beating is correction rather than harm. The beating should not be severe, impactful, or harsh, following the teaching of the Prophet (peace be upon him): "You have rights over your wives, and they have rights over you. Do not call your wives obscene names, and do not be harsh with them. (Muslim, n.d. 2/886). Additionally, even during separation, he should not insult her or her family. Such actions would constitute excess and abuse of this right, and Islamic law would hold him accountable before the hereafter. (Al-Ansari, n.d. 3/239).

If the aforementioned steps prove inadequate and other human means of reconciliation fail to resolve the conflict and repugnant disputes between spouses, divorce becomes the most effective solution to address these harmful issues that tarnish the taste and tranquility of life. Although divorce might entail pain and misery, it remains the most suitable remedy for this situation.

It is worth noting that the use of physical implements like sticks and sandals, as well as similar forms of physical discipline, for correction can amount to abuse and infringement upon the rights of the individual being disciplined. The use of implements like sticks, sandals, and painful whips should generally be reserved for cases of punishment according to the gravity of the offense and the condition of the offender, usually within the context of legal penalties or disciplinary measures. (Kawthar, 2006, 23).

The Right of a Husband to Polygamy:

At-ta'dud (Polygamy), in the Arabic language, signifies abundance or multitude. It pertains to numerical quantity, denoting a quantity composed of units. (Al-Misbah Al-Muneer, n.d. 2/395). Polygamy is concerned with what exceeds the unit, as the unit itself cannot be pluralized. Individuals increase beyond one; they become numerous. Thus, the concept of polygamy refers to a man having more than one wife simultaneously, be it two, three, or four. However, religious law prohibits exceeding this number. (Al-Mawsū'ah, n.d. 12/229).

In Islamic jurisprudence, a man is permitted to marry up to four wives if valid reasons and conditions are met. This permission is subject to the stipulation of equitable treatment among the wives concerning financial support, housing, clothing, lodging, and all matters that ensure equitable treatment according to both religious and customary norms. Arbitrary behavior, particularly concerning affection and favoritism, should be avoided since controlling emotions, such as love, is beyond human control. Moreover, a man intending to practice polygamy must possess both physical and financial capacity, as this decision entails rights and responsibilities that must be fulfilled. (Al-Tuwayjiri, 2010, 1/799).

The evidence supporting the permissibility of polygamy is found in the Quranic verse:

فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلثَ وَرُبُعَ فَإِنِ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ بَدَأَ اللَّهُ يُخَوِّفُ لَعَلَّكُمْ تَعْقِلُونَ
“Then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]” [An-Nisaa: 3]

This verse indicates the allowance of marrying up to four wives simultaneously while emphasizing the condition of treating them justly. However, if a man fears injustice or unfair treatment, he is advised to marry only one woman to avoid causing harm to the woman and to prevent arbitrary behavior. It is widely acknowledged that anyone unable to provide for, accommodate, and maintain equitable treatment for a single wife is unlikely to be capable of achieving justice among two, three, or four wives.

Engaging in polygamy without the required financial and emotional capacity is considered an abuse of this right. Such a situation leads to negative consequences and destructive outcomes, adversely affecting the family and wives through injustice and aggression. In this scenario, the husband is unjust to himself before perpetrating injustices against his wife. By imposing undue financial burdens on himself, he contradicts the wise and knowledgeable dictates of the Sharia: "Allah does not burden a soul beyond that it can bear" (Quran 2:286).

Afghan Laws and Abuse of Spouse right:

In the year 1993, the global phenomenon of violence against women is defined as follows: Any gender-related violent act that results in physical, sexual, or psychological harm or suffering, whether it is intentional or incidental, can have such consequences. This encompasses acts such as threatening violence, imposing forced deprivation, or restricting freedom and the ability to act either coercively or by choice within society or in private life. (Ghelami,1388h). According to the World Health Organization (WHO), nearly 90% of women in Afghanistan have encountered domestic violence, with 17% experiencing sexual violence and 52% enduring physical violence. The prevalence of violence against women can be attributed to legal and institutional challenges, resulting from the State's ambiguous and contradictory regulatory

frameworks concerning women. While there has been an increase in reported violence against women cases due to women's improved awareness of their rights, many cases remain unregistered and convictions are rare. The formal justice system is unsupportive of women's rights and struggles to effectively manage violence against women cases. (Qazi Zada, 2021). Afghanistan, undertook its inaugural Demographic and Health Survey (DHS) in the year 2015, incorporating a dedicated segment focusing on domestic violence, encompassing queries regarding acts of spousal violence. The research revealed that within a sample size of 21,324 women who were meticulously selected and interviewed for the specific domestic violence module, a notable 15% entered into marriage before reaching the age of 15. Moreover, the prevalence of some form of physical, emotional, and/or sexual violence inflicted by their present or former husbands was observed among 55.54% of women aged 15 to 49 years. (Shaikh, 2022). For an extended period, Afghanistan has grappled with internal insecurity, conflicts, and political instability, causing significant repercussions for its female population. Women in this context have witnessed a reduction in personal freedoms, leaving them susceptible to maltreatment and aggression within their homes. Disturbingly, violence against women has become ingrained within this environment, often justified as a means of asserting dominance. While historical gender inequalities have long impacted the lives of Afghan women, the ongoing political upheaval exacerbates their victimization. Startlingly, statistics suggest that almost half of Afghan women have experienced intimate partner violence during their lives. However, the incidence varies significantly across regions, ranging from 6% in Helmand and 7% in Badakhshan provinces to a staggering 92% in Ghor and Herat provinces. Recent findings from a Demographic and Health Survey in 2017 highlight that around 52% of Afghan women of reproductive age have directly encountered episodes of violence. (Chauhan, 2022).

Several factors contribute to intimate partner violence in Afghanistan. These include early marriages, gender disparities, economic hardship, limited education for women, a disturbingly widespread acceptance of such violence, and misuse of spousal rights. (Hennion, 2014). The normalization of such abusive behavior is evidenced by instances where women rationalize the mistreatment they endure, whether from their partners or the broader community. Importantly, men who exhibit controlling behaviors, adhere to patriarchal ideologies and engage in substance abuse are more likely to perpetrate spousal violence. (Chauhan, 2022).

The former government of Afghanistan (Islamic Republic of Afghanistan) formulated and implemented legislation to eradicate all forms of violence against women, including the misuse of marital rights. This law encompassed various forms of violence, such as sexual assault, coercion into indecent acts, recording and disseminating personal information, arson, or the use of chemical substances to harm or eliminate women. Other forms of violence included physical harm, disability, beating, buying and selling of women, defamation, forced marriages, obstruction of the right to marriage, marriage before the legal age, verbal abuse, humiliation, or intimidation of women. Furthermore, the law addressed psychological and physical harassment, forced isolation, compelling women into substance addiction, inheritance rights restrictions, and limitations on property ownership. All these acts were categorized as crimes against women, whether perpetrated by husbands or others. (Qanun-e Man' Khoshunat Alayh-e Zanan, 2009). However, due to ongoing internal conflicts and governmental negligence, these laws had limited opportunities to be fully enacted. Consequently, violence against women persists despite these legislative efforts.

The specter of spousal abuse casts a shadow over the societal fabric of Afghanistan, necessitating a multifaceted strategy for mitigation. The gravity of this challenge demands a comprehensive approach that converges on cultural norms, legal frameworks, educational initiatives, and elaborate support infrastructure. Central to this endeavor is the recalibration of

legal norms through reforms and vigilant enforcement. Strengthening the existing legal architecture is paramount, involving the review and modernization of laws that pertain to domestic violence. An imperative component is the elevation of the seriousness with which the legal system treats instances of spousal abuse, a facet that necessitates the sensitized training of law enforcement and judicial officials in the intricate handling of such cases.

Complementary to legal amendments is the imperative of widespread awareness and education. To this end, nationwide campaigns are poised to serve as transformative agents, elucidating the corrosive consequences of spousal abuse while promoting ideals of gender equality. Such campaigns possess the power to challenge deeply ingrained attitudes and bolster notions of respect within relationships. Simultaneously, the nurturing of gender equality programs, especially within educational institutions and communities, embarks on dismantling traditional gender roles and nurturing the concept of equitable rights for all, regardless of gender. It is through the establishment of shelters, hotlines, and counseling services that victims find refuge from the dark abyss of abusive relationships. These vital safe spaces not only offer immediate assistance but also provide a multifaceted support structure comprising legal advice, psychological succor, and the resources imperative for a potential escape from the clutches of abuse.

CONCLUSION

In culmination, this research voyage into the depths of spousal rights abuse within the intricate tapestry of Afghanistan's socio-legal landscape has yielded illuminating insights. The investigation, framed within the purview of Islamic jurisprudence, casts a discerning eye on the multifaceted dimensions of abuse, ranging from the scientific and economic to the ethical and cultural. Employing a meticulous blend of analytical rigor and inductive reasoning, the study peels back the layers of this complex issue, uncovering its far-reaching implications for individuals, families, and the wider societal fabric.

The research magnifies a critical gap in the existing discourse—namely, the dearth of attention to the interplay between abuse and rights exercise within the familial realm of Afghanistan. In response, the study calls for the establishment of a dedicated committee, composed of jurists and subject matter experts, to tackle and ameliorate this pervasive concern. Furthermore, it advocates for holistic solutions rooted in education and awareness, spotlighting their potential to catalyze lasting change and alleviate the societal consequences of spousal rights abuse.

Ultimately, as the pages of this study close, they leave behind not only a repository of knowledge but also a clarion call for action. Armed with a profound understanding of the complexities at hand, stakeholders from all walks of life are beckoned to join hands in the pursuit of a more equitable, respectful, and secure future for all members of Afghan society.

REFERENCES

- Abdul Basit, and Buqfa. *Al-Tasafu fi Isti'mal Haq al-Qawama al-Zawjiya fi al-Fiqh al-Islami wal-Qanun al-Jaza'iri*, (2019). <http://dspace.univ-eloued.dz/handle/123456789/4404>
- Abdullah al-Dar'an, *Al-Madkhal lil-Fiqh al-Islami*, (Riyadh: Maktabat al-Tawbah, 1st edition, 1413 A.H./1993 A.D.).
- Abu Hajir, Mahmoud Mohamed Said. *Nazariyat al-Tasfi fi Isti'mal al-Haqq wa Nazariyat al-Thuruf al-Tari'a*. (Tahqiq: Amman: Dar al-'Ilmiyyah al-Dawliyyah li al-Nashr wa al-Tawzi', n.d.).
- Ahmad Fahmi Abu Sunnah, *Al-Nazariyat al-'Amah lil-Ma'amalat fi al-Fiqh al-Islami*, (Egypt: Maktabat Dar al-Talif, n.d.), p. 100.
- Ahmad ibn Ali Abu Bakr al-Razi al-Jassas al-Hanafii, *Ahkam al-Quran*, Tahqiq: Muhammad Sadiq al-Qumhawi, (Beirut: Dar Ihya' al-Turath al-Arabi, 1st ed., 1405 AH).
- Al-Asfahani, Abu al-Qasim Hussein ibn Muhammad, known as Al-Raghib Al-Isfahani, *Tafsir al-Raghib Al-Isfahani*. (1st ed.) (Beirut: Dar al-Kutub al-Ilmiyyah, 1420 AH / 1999 CE).
- Al-Bayhaqi, Abu Bakr Ahmad ibn al-Husayn. *Al-Sunan al-Kubra*, (3rd ed.), (Al-Madinah al-Munawwarah: Al-Nashir Al-Jami'ah al-Islamiyah, 1406 AH).
- Aldarini, Dr. Muhammad Fathi. *Nazariat Al-Tasfi fi Isti'mal Al-Haqq*. (T.4) (Beirut: Mu'assasat Al-Risalah, 1408 AH / 1988 AD).
- Al-Fadl ibn al-Hasan Abu Ali al-Tabrasi, *Majma' al-Bayan fi Tafsir al-Qur'an*, (Beirut: Dar al-Murtada, 1st ed., 1427 AH / 2006 CE), Vol.3, p.67.
- Ali bin Muhammad bin Muhammad al-Basri al-Baghdadi, *Al-Shuhra Bi Al-Mawardi, Al-Hawi Fi Fiqh Al-Shafi'i*, (Beirut: Dar al-Kutub al-Ilmiyya, 1st edition, 1414 AH / 1994 AD).
- Ali bin Omar bin Ahmed Abu al-Hasan al-Dar Qutni, *Sunan al-Dar Qutni*, Tahqiq: Al-Sayyid Hashim al-Yamani al-Madani (Beirut: Dar al-Ma'arif, Dr. edition, 1386 AH / 1966 AD).
- Al-Kasani, Abu Bakr ibn Mas'ud. *Bada'i al-Sana'i fi Tartib al-Sharai*. (1st ed.) (Beirut: Dar al-Ma'arifah, 1420 AH / 2000 CE).
- Al-Saba'i, Dr. Mustafa bin Hassani. *Al-Mar'ah Bayn al-Fiqh wal-Qanun*. (Beirut: Dar al-Waraq lil-Nashr wal-Tawzi', 1420 H / 1999 CE).
- Areeh Abdul Rahman Al-Sanan, *Al-Adl Bayna al-Zawjat*, (Jordan: Dar Al-Nafa'is, 1st ed., 1423 AH/2002 AD).
- Chauhan, Bal Govind, and Suresh Jungari. "Prevalence and predictors of spousal violence against women in Afghanistan: evidence from Demographic and Health Survey data." *Journal of biosocial science* 54, no. 2 (2022): 225-242.
doi: <https://doi.org/10.1017/S0021932020000759>
- Donna Clifton, "Most Women in Afghanistan Justify Domestic Violence" (2012), accessed on 10\08\2023 from <https://www.prb.org/resources/most-women-in-afghanistan-justify-domestic-violence/>
- Fathi al-Darini, *Al-Manahij al-Usuliyah fi al-Ijtihad bil-Ra'y fi al-Tashri' al-Islami*, (Beirut: Mu'assasat al-Risalah, 3rd edition, n.d.).
- Hamid Allah Ghelami, "Wusfahaye Jermi va Qava'id Mahawi-e Qanun-e Man' Khoshunat Alayh-e Zan 1388 va Qavanin Mortabet" *Faslname-ye Ilmi-Pejoheshi Sarnawal*, Shomareh 59, P 4. <https://ago.gov.af/sites/default/files/2021-08/5.pdf>
- Hennion, Camille. "Displacement and violence against women in Afghanistan." *Forced Migration Review* 46 (2014): 34.

<https://www.proquest.com/docview/1533428056?pqorigsite=gscholar&fromopenview=true>

- Ibn Qudamah, Abdullah bin Ahmad. *Al-Mughni wa Sharh al-Kabir*. (Beirut: Dar al-Fikr, Dr. edition, 1413 AH / 1992 AD), Volume 5, page 34
- Ibrahim bin Ali bin Muhammad, Ibn Farhun Barhan al-Din al-Yamari, *Tabsirat Al-Hukkam Fi Usul Al-Aqdiah Wa Manahij Al-Ahkam*, (Maktabat al-Kulliyat al-Azhar, 1st edition, 1406 AH / 1986 AD).
- Kawthar Kamil Ali, *Ahkam Tasarrufat al-Mar'ah fi al-Shari'ah al-Islamiyyah*, (Cairo: Dar al-Nahda al-Arabiyya, 1st ed., 2006 CE).
- Ministry of Justice of the Islamic Republic of Afghanistan, Qanun-e Man' Khoshunat Alayh-e Zanan, (2009). https://law.acku.edu.af/wpcontent/uploads/2022/11/acku_risalah_hq1735_6_qa_af29_1388_n989_dari_title1.pdf
- Muhammad Abdul Raouf al-Munawi, *Al-Tawqif 'ala Mahamat al-Ta'arif*, Tahqiq: Muhammad Ridwan (Beirut: Dar al-Fikr al-Mu'asir, 1st ed., 1410 AH).
- Muhammad Abu Zahra, *Al-Ta'suf fi Isti'mal al-Haqq, Asbou' al-Fiqh al-Islami wa Muhrajjan al-Imam Ibn Taymiyah - al-Majlis al-A'la li-Ri'ayat al-Funun wal-Adab wal-'Ulum al-Ijtimaiyah* (Damascus: 16-21, n.d.).
- Muhammad bin Abdullah bin Ibrahim Al-Tuwayjiri, *Mukhtasar al-Fiqh al-Islami fi Dhaw'i al-Kitab wa al-Sunnah*, (Saudi Arabia: Dar Asda' al-Mujtama', 11th ed., 1431 AH/2010 AD).
- Muhammad bin Abi Yusuf Abi al-Qasim al-Abdari al-Mawq al-Maliki, *Al-Taj Wa Al-Iklil Li-Mukhtasar Khalil*, (Beirut: Dar al-Kutub al-Ilmiyya, 1st edition, 1416 AH / 1994 AD).
- Muhammad bin Ahmed bin Abi Bakr al-Ansari Abu Abdullah al-Qurtubi, *Al-Jami Li-Ahkam Al-Qur'an*, Tahqiq: Muhammad al-Bardouni, wa Ibrahim Atfich (Cairo: Dar al-Kutub al-Misriyya, 2nd edition, 1384 AH / 1964 AD).
- Muhammad bin Ismail Abu Abdullah al-Bukhari al-Ja'fi, *Al-Jami Al-Musnad Al-Sahih Al-Mukhtasar*, Tahqiq: Muhammad Zuheir bin Nasser al-Nasser, (D.M: Dar Touq al-Najah, 1st edition, 1422 AH).
- Muhammad ibn Abi Bakr Ayyub al-Zur'ayi Ibn al-Qayyim al-Jawziyya, *Bada'i al-Fawa'id*, Tahqiq: Hisham Abdul Aziz Ata, and Adel Abdul Hamid Al-Adawi, and Ashraf Ahmed Al-J (Makka: Maktabat Nazar Mustafa al-Baz, Vol.1,1996).
- Muhammad ibn Ahmad ibn Abi al-Sahl al-Sarakhsi, *Al-Mabsut*, (Beirut: Dar al-Ma'arif, 1st ed., 1414 AH / 1993 CE).
- Muhammad ibn Ali ibn Hajar al-Asqalani, *Fath al-Bari*, Tahqiq: Muhammad ibn Ali ibn Hajar al-Asqalani al-Shafi'i (Beirut: Dar al-Ma'rufah, 1st ed., 1379 AH).
- Muhammad Zaki Abdulbar, "Isa'at Isti'mal al-Haqq fi al-Fiqh al-Islami," *Majallat al-Qanun wal-Iqtisad*, vol. 55, (n.d.), p. 47.
- Qazi Zada, Sebghatullah. "Legislative, institutional and policy reforms to combat violence against women in Afghanistan." *Indian Journal of International Law* 59, no. 1-4 (2021): 257-283. <https://link.springer.com/article/10.1007/s40901-020-00116-x>
- Ra'fat Muhammad Hammad, *Al-Nazariyya al-'Amah lil-Haqq*, (Cairo: Dar al-Nahdah al-Arabiyyah, n.d.).
- Shaikh, Masood Ali. "Spousal violence against women in Afghanistan: Bivariate mapping of correlates." *JPMA. The Journal of the Pakistan Medical Association* 72, no. 5 (2022): 961-964. doi: <https://doi.org/10.47391/JPMA.22-62>

Sulayman bin Ash'ath al-Azdi Abu Dawood al-Sijistani, *Sunan Abi Dawood*, Tahqiq: Shuayb al-Arnaut, Muhammad Kamal Qarahbully (D.M: Dar al-Risalah, 1st edition, 1430 AH / 2009 AD).

Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, (Damascus: Dar al-Fikr, n.d.).

Yusuf bin Abdullah bin Abd al-Barr Abu Umar al-Qurtubi, *Al-Jami' Li-Madhahib Fuqaha' Al-Amsar*, Tahqiq: Salem Muhammad Atta and Muhammad Ali Ma'wad (Beirut: Dar al-Kutub al-Ilmiyya, Dr. edition, 2000 AD).