

Wife's Refusal Of The Right To Bed, Its Conditions And Rulings (Failure To Sustain Offspring, Waste Of Rights, And Harm To Mental And Physical Health)

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Research Summary:

The basic principle of legal marriage is the establishment of the right to the bed for both parties: the husband, who has paid a dowry through an offer, acceptance, witnesses, and public declaration of the marriage and consummation; and the wife, who has devoted herself to her husband, with her consent and that of her guardian, in service, obedience, submission, and fulfillment of the husband's legal right to satisfy his lawful sexual needs. The right to the bed is established for both parties, and through it, instinctive satisfaction and psychological reassurance are achieved. It is a legitimate means of perpetuating the human race. Failure to comply with this right causes significant psychological harm and may lead to forbidden relationships, on the one hand, and conflicts with the Shari'a's desire to increase the offspring of the Muhammadan nation, on the other.

The research objectives were as follows:

- 1. Providing legal answers to husbands' questions about the ruling on a wife's refusal to fulfill her husband's right to the bed.*
- 2. [Compiling] a group of scattered rulings and regulations related to this topic in one place.*
- 3. Proving Sharia's ability to provide appropriate solutions to people's new challenges.*

This research concluded with a number of findings and recommendations, which are outlined at the end of the study.

Keywords: *Matrimonial bed, rights, desertion, divorce.*

Introduction:

The Islamic Shari'ah has been strict on the subject of the right to bed and has made it obligatory for the wife to fulfill her husband's need to satisfy his sexual appetite, and the Hadith texts clearly indicate the danger of refraining from fulfilling this right by being cursed by the angels until morning comes, and this is a very serious situation, when the angelic curse, with the permission of her Creator, falls on a woman who has not weighed the subject and has not realized the seriousness of refraining. There is no doubt that the curse is a cause of God's displeasure, as well as the removal of blessings from marital life, an imbalance in the level of faith on the one hand, and a clear imbalance in her relationship with her husband on the other

hand, and this abstention may cause a disturbance in the husband's morals that clearly affects the psychological health of the children.

Research Problems and Questions:

This research seeks to answer two fundamental questions: What is meant by a wife's abstention from the right to bed, and what are its conditions and rules.

Reasons for choosing topic:

The reasons for the choice can be summarized in two things:

The first: A strong desire to identify a number of rulings and regulations related to the issue of a wife's refusal to take the marital bed.

The second: Frequent questions from husbands about the legal guidance in this case.

Objectives of the research:

The main objectives of this research are as follows:

- 1- (Serving the research directions of the University of Najran in the field of contemporary jurisprudential issues related to marital life and personal status.
- 2- Contributing with this research to the dissemination of the rulings and regulations related to the wife's refusal to perform the right to bed.
- 3- Collecting the dispersed issues of this research in one place.
- 4- Demonstrating the ability of Shari'ah to address people's problems in light of its original Shari'ah rules.

Previous studies:

After careful research and investigation by the researcher and within the limits of his sources, he found a few articles related to the topic, and sporadic fatwas, but they do not rise to the level and the contents of this research.

Research Methodology:

The nature of the research required me to take an inductive and analytical approach that focused on uncovering the rules and rulings related to the wife's refusal to allow the husband the right to bed.

Research Plan and Procedures:

The research is presented in an introduction , three sections, a conclusion, recommendations, and an index of sources and references as follows.

Introduction:

Islamic Sharia has been strict regarding the right of conjugal intimacy, obligating the wife to fulfill the husband's need to satisfy his sexual desire. The prophetic texts clearly indicate the severity of refusing to perform this right, with the angels cursing her until morning. This is a very serious matter when angelic curses descend by the will of their Creator on a woman who has not committed adultery and does not realize the gravity of refusal. There is no doubt that the curse entails God's wrath, resulting in the removal of blessing from married life, causing disruption in the level of faith on one side, and a clear disturbance in her relationship with her husband on the other. This refusal may also cause moral disorders in the husband, clearly affecting the psychological health of the children.

Research Problems and Questions:

This research addresses two fundamental questions: What is meant by the wife's refusal of the right of conjugal intimacy, and what are its states and rulings? Derived from these two main questions is a set of related inquiries.

Reasons for Choosing the Topic:

The reasons for choosing this topic can be summarized in two points: First, a strong desire to monitor a number of rulings and regulations related to the issue of the wife's refusal of conjugal intimacy.

Second, frequent inquiries by husbands regarding religious guidance in this case.

Research Objectives:

The main objectives of this research can be stated as follows:

1. Serving the research orientations of Najran University in the field of contemporary jurisprudential issues related to marital life and personal status.
2. Contributing through this research to disseminate rulings and regulations concerning the wife's refusal to fulfill the conjugal right.
3. Collecting scattered issues related to this research in one place.
4. Demonstrating the capability of Sharia to address people's problems in light of its authentic legal rules.

Previous Studies:

After thorough research and investigation by the researcher within his sources, some articles related to the topic were found, as well as scattered fatwas that do not rise to the level and contents of this research.

Research Methodology:

The nature of the research required adopting an inductive analytical method based on uncovering regulations and rulings related to the wife's refusal to permit her husband the conjugal right.

Research Plan and Procedures:

The research includes an introductory preamble, three chapters, a conclusion, recommendations, and an index of sources and references as follows:

- Introduction: summarizing the idea of the research, clarifying its importance, problems and questions, reasons for selection, objectives, previous studies, methodology, and plan.
- Chapter One: Clarification of the key terms in the research title.
- Chapter Two: Conditions of the wife's refusal of conjugal intimacy.
- Chapter Three: Related jurisprudence regulations.
- Conclusion: main results and recommendations.
- Index of topics.
- Index of sources and references.

Chapter One: Clarification of the Key Terms in the Research Title

The proposed title of this research is: The Wife's Refusal of the Right of Conjugal Intimacy: Its Conditions and Rulings. This requires clarification of three key terms composing the title: refusal, wife, and conjugal intimacy.

1. **Refusal:** Linguistically, it is the verbal noun of the verb *imtana'a* (to refrain), derived from the root verb *mana'a* (to prevent). It is the opposite of *a'tā* (to give). It is said to prevent something means to obstruct a person from what he desires. For example, "he prevented him from his right" means he obstructed him from it, essentially meaning to put a barrier between him and what he wants. [7]

This linguistic meaning is clearly realized in the wife's refusal to perform her husband's right of conjugal intimacy from the aspect of sexual intercourse and its consequences. She prevents him from this right despite his fulfillment of his obligations of maintenance, housing, food, and drink. She obstructs him from what he desires, which is a right guaranteed by Sharia, and she is warned against neglecting it.

Thus, in the linguistic sense, refusal generally means hindering the granting, delivery, facilitation, and ease of the right. There are many parallels and applications in Islamic jurisprudence in the fields of worship, transactions, and personal status. For instance, the one who leaves zakat is refusing to perform God's right on wealth; the one who delays debt payment is refusing the creditor's right; the guardian who prevents a daughter from marriage is refusing her right. All these applications have specific legal texts prescribing punishment for the doer.

2. **Wife:** In the terminology of jurists, she is the lawful spouse of the man who has deserved her due to the dowry given to her, which is an absolute right for her. This entitlement comes after a lawful marriage fulfilling its pillars. She is called *ḥalīlah* (lawful) because she has become lawful in his home and because each is the cover for the other. [11][7]

Here, *ḥalīlah* (with *ḥā'*) differs from *khalīlah* (with *khā'*). The former means lawful, while the latter means unlawful (concubine or illicit partner). It is meaningless to include the unlawful partner in the discussion when she refuses to grant her paramour conjugal intimacy because the latter is forbidden by default and is not based on a lawful marriage but an obvious fornication. Therefore, Sharia has decisively forbidden taking a concubine. Allah says:

"Marry not women whom your fathers married, except what has already passed; indeed, it was shameful and hateful, and an evil way." [An-Nisa: 25] (Note: the exact verse cited in the Arabic is: ...and do not take as secret lovers...).

Al-Jassas said: "The concubine is a friend of the woman who commits secret fornication with her. Allah forbade all manifest and hidden indecencies." [1]

The point is that a woman with a *khalīl* (paramour) is religiously obliged to refuse and repent by cutting off all ties with that concubine friend and must not permit him any form of access—whether minimal such as submissiveness in speech or full like fornication. This means that refusal of intimacy in such a case is obligatory, as will be further clarified in the chapter on conditions of refusal.

3. **Conjugal Intimacy (Al-Firāsh):** It refers to the place where the husband sleeps with his wife to perform lawful sexual intercourse. Al-Azhari said:

“Al-Firāsh: the husband; Al-Firāsh: the wife; Al-Firāsh: the bed they sleep on; and Al-Firāsh: the house.” [11]

This does not mean that refusal is confined only to the conjugal bed, but rather the concept of refusal includes any act by the wife that counters the husband's request with rejection, even if it does not take place on the conjugal bed. For example, if the husband wants to kiss his wife and she refuses, or if he asks her not to fast voluntary fasts and she refuses, or if he wishes to touch her for pleasure and she withdraws. All these behaviors fall under the scope of refusal, even if not on the marital bed.

The principle is that the wife must respond to the husband's desire for enjoyment either by intercourse in the conjugal bed or by other forms of pleasure. Refusal to both exposes the wife to sin and punishment and causes the husband's hatred, both being pure harms that ruin the marital home. Jurists have classified this behavior as *nushūz* (disobedience) due to the refusal of intercourse and all that is rightfully due to the husband.

Thus, it can be said that the technical definition of conjugal refusal is the wife's rejection to fulfill her husband's desire to have intercourse with her in the conjugal bed. General refusal includes barring the husband without acceptable excuse from enjoying kissing or touching either on the conjugal bed or elsewhere.

Chapter Two: Conditions of the Wife's Refusal of Conjugal Intimacy

The original ruling is prohibition because the purpose of marriage is to achieve chastity, modesty, lowering the gaze, tranquility, and reassurance. The wife's refusal to surrender herself to her husband and abandonment in the conjugal bed, blocking him without legitimate cause, nullifies these noble objectives and is a means for the husband to commit immorality. Jurists have affirmed that:

“Means have the ruling of ends.” [17][19]

Allah says:

“And marry the unmarried among you and the righteous among your male slaves and female slaves. If they are poor, Allah will enrich them from His bounty. And Allah is all-Encompassing and Knowing.” [An-Nur: 32]

Ibn 'Adil said:

“The meaning of richness here is chastity, meaning that marriage makes one independent from falling into fornication.” [21]

If marriage does not achieve its purpose, its wisdom is nullified.

Refusal also deprives the husband of lawful enjoyment despite his fulfillment of legal duties such as dowry and witness presence, granting him the right to enjoyment.

Ibn al-Rif'ah said:

"The purpose of marriage is enjoyment and procreation; thus, witness presence is legislated to preserve lineage and remove suspicion." [20]

Marriage entails fulfilling obligations and acquiring rights. The husband has fulfilled his duties of dowry and maintenance and thus has the right to enjoyment, submission, and obedience. The principle of acquiring rights after fulfilling obligations has many applications in Islamic jurisprudence. Umar ibn al-Khattab said:

"Rights are only cut off when conditions are broken." [13]

It suffices here the Prophet's saying:

"When a man calls his wife to bed and she refuses, the angels curse her until morning." [14][15]

Ibn Hubayrah said:

"This hadith teaches jurisprudence: if a man calls his wife to bed and she refuses, she is unjust by denying him his right, disobedient to Allah, oppressive, ungrateful to her husband, disturbing his peace, a bad companion, and exposing both herself and her husband to temptation. Therefore, the angels curse her until morning or until she returns. If she returns, the angels' curse is lifted except for what has already passed, unless Allah forgives." [4]

Therefore, the original ruling on refusal of conjugal intimacy is prohibition, except when evidence justifies its shift from prohibition to obligation. Such circumstances include:

1. The Major Separation (Al-Baynūnah Al-Kubrā):

If a husband divorces his wife three times, she becomes completely separated from him, obliging her to refuse conjugal intimacy because marriage is dissolved, replaced by divorce. Sexual intercourse after a major irrevocable divorce is explicit adultery without dispute. After the major separation, the wife must leave the husband's house since she has no right to maintenance or residence, and staying in the house may cause intercourse, especially with those ignorant of legal rulings or lenient in religion.

Allah says:

"Then if he divorces her (again), she is not lawful to him afterward until she marries another husband". [Al-Baqarah: 230]

Al-Mawardi said:

"Scholars unanimously agree that triple divorce makes the wife forbidden, and she does not become lawful again until she marries another husband." [12]

The divorced woman after triple divorce and completing her 'iddah becomes lawful to a new husband who acquires conjugal rights. If intercourse occurs during her purity and valid divorce procedures with the new husband, the previous husband may remarry her and regain conjugal rights.

2. **Apostasy of the Husband:**

If the husband apostatizes, the marriage contract is annulled, and the wife must refuse conjugal intimacy because he becomes a disbeliever. It is not lawful for a Muslim woman to remain under the authority of a disbeliever.

Allah says:

“If you know them to be believers, do not return them to the disbelievers; they are not lawful for them, nor are the disbelievers lawful for them.” [Al-Mumtahanah: 10]

There is disagreement on whether separation happens immediately upon apostasy or after the wife’s ‘iddah expires:

- The Shafi‘is and the correct view of the Hanbalis hold that if the apostate returns to Islam before the wife’s ‘iddah ends, the marriage remains valid; if ‘iddah ends before his return, separation occurs, and a new contract is required.
- The Hanafi and Maliki schools say apostasy after consummation results in immediate annulment.

The preferred view postpones separation to the end of ‘iddah because Shariah aims to correct contracts where possible.

However, in all cases, the wife must refuse conjugal intimacy with the apostate husband during ‘iddah, as conjugal intimacy is not permissible between a Muslim and a disbeliever.

3. **Abandoning Prayer:**

Scholars agree that one who openly denies the obligation of prayer is a disbeliever if he is knowledgeable. The evidence is the denial of an established religious duty. Disagreement exists on whether neglecting prayer due to laziness constitutes disbelief.

- Some say it does not constitute disbelief and is a sin (Hanafis, majority of Malikis, Shafi‘is, one Hanbali view).
- Others say it does, applying apostasy rulings (Malikis, some Shafi‘is, main Hanbali view).

Thus, a wife must refuse conjugal intimacy with a husband who neglects prayer until he repents. Her refusal may cause him to repent and return to prayer.

4. **Menstruation and Postnatal Bleeding:**

Menstruation and postpartum bleeding are excuses exempting from prayer and fasting, and prohibit sexual intercourse by unanimous agreement.

Allah says:

“They ask you about menstruation. Say: It is a harm, so keep away from women during menstruation and do not approach them until they are pure.” [Al-Baqarah: 222]

The Prophet said:

“Do everything except intercourse”. [15]

However, the husband may enjoy non-penetrative intimacy like hugging, kissing, and touching, and the wife may not refuse these if he desires.

Ibn Qudamah said:

“Enjoyment of the menstruating woman above the navel and below the knees is permissible by text and consensus; intercourse is prohibited.” [24]

Intercourse during menstruation and postnatal bleeding harms both spouses' health in many ways, including bacterial infections, inflammation of Fallopian tubes, and increased bleeding causing pain.

5. Fasting During Ramadan Daytime:

The wife must refuse sexual intercourse during the daytime in Ramadan. Even if forced, she must resist. Fasting is defined as abstaining from eating, drinking, and intercourse from dawn to sunset with intention.

6. Breastfeeding Suckling Kinship:

If confirmed by trustworthy witnesses that a woman is the husband's milk sister, the marriage must be annulled, and she must refuse conjugal intimacy as she is a forbidden relative.

Allah says:

“...and your sisters from milk”. [An-Nisa: 23]

Scholars discussed the annulment of marriage upon such testimony.

7. Husband's Infection with AIDS or Other Fatal Infectious Diseases:

If the wife confirms her husband is infected with AIDS, she must refuse conjugal intimacy due to the danger of transmitting the disease to herself and unborn child, causing harm and death. The Sharia principle of "no harm nor reciprocating harm" applies.

8. Suspicion of Twin Confusion:

If the husband has a twin who closely resembles him and the wife suspects confusion, she must refuse conjugal intimacy until the husband provides the agreed secret sign. Precaution in such matters is obligatory.

Similarly, insanity of the wife or old age weakening sexual desire are excusing circumstances for refusal.

Chapter Three: Related Jurisprudence Regulations

Several jurisprudence rulings relate to the wife's refusal of conjugal intimacy, including:

1. Every refusal incurs God's wrath, angelic curse, and the husband's hatred.
2. Every refusal carries a legal ruling of obligation, recommendation, prohibition, dislike, or preference.
3. Any valid testimony proving suckling kinship mandates separation and forbids intercourse.

Research Results:

1. The term refusal encompasses several jurisprudential rulings across worship, transactions, and personal status; the wife's refusal of conjugal intimacy falls under this general jurisprudence framework.
2. The right of conjugal intimacy and mutual enjoyment is guaranteed by Sharia with no favor or grace involved.
3. The wife's refusal of conjugal intimacy is jurisprudentially classified as *nushūz* (disobedience), with associated rulings.
4. The terms *ḥalīlah* (lawful wife) and *khalīlah* (paramour) are distinct and have differing legal implications.
5. Refusal technically means the wife's rejection of her husband's desire to have intercourse in the conjugal bed.
6. Refusal includes barring the husband from any form of enjoyment without excuse.
7. The original ruling is prohibition unless compelling evidence justifies otherwise.
8. Refusal must be observed in cases such as major divorce, husband's apostasy, prayer abandonment, menstruation, fasting, suckling kinship, husband's fatal illness, and suspicion of twin confusion.
9. Unjustified refusal harms the health of both spouses and reduces offspring, causing violation of prohibitions.
10. Intercourse during menstruation/postnatal bleeding causes serious health hazards.

Research Recommendations:

The researcher suggests these topics for future study:

1. Refusal and its applications in Islamic jurisprudence.
2. The balance between fulfilling obligations and acquiring rights in personal status jurisprudence.
3. Umar ibn al-Khattab's saying on conditional rights and its contemporary applications.
4. The principle of precaution in matters of chastity: its concept and applications.
5. The jurisprudence approach to correcting contracts in Sharia.
6. Juridical rulings on twins in Islamic jurisprudence.
7. Legal distinctions between lawful wives and concubines.

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