
Legal and Juridical Study of Good Companionship between Spouses

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ABSTRACT

One of couple's duties towards each other is good companionship. Although this task has moral aspect and jurists have expressed different views in this regard, and also it has given legal status in Article 1103 of Civil Code. Since many legal articles have legal basis such as verses and traditions, discussion of extensive jurisprudence reflection on the issue of the statute is undeniable. So this study is conducted about legal- jurisprudence study of good companionship among wife and husband, this study is descriptive type and at the same time it is a citation one and it aims to recognize foundations of verses and traditions of good companionship legal materials, recognizing concepts and meanings of good companionship, identifying duties of the couples and effects of good companionship and it aims to achieve to mentioned goals. Required information was collected through library method, the results suggest that many family laws cannot be interpreted without taking into account common law and its role in interpreting laws is undeniable and, by referring to the jurisprudence sources and exploring different views of jurisprudence, legislator brings a rule that is more accurate and consistent with the society and through this he/she confronts common incorrect practices. On the other hand, because custom is a bed for law enactment and enforcement and custom relationship with society culture is unbroken; in addition to legislator, the cultural institutions of society can be more effective than using law and its penal and legal sanctions with correct culture- building in accordance with the principles of Islam in the context of family.

Keywords: Jurisprudence, Law, Virtue, Good Companionship.

Introduction

The most critical social institution in the society is family and value of every community depends on family importance; family has a very high place in the

perspicuous religion of Islam and it is a holy institution that is formed based on principle of amity, mercy, mutual understanding and good companionship

for human growth, reinforcement and evolution.

Good companionship is a Quranic concept that is taken from noble verse 19 of Sura Nisa ("va asheroo honna belmaarooof"; associate with your wives with good moral and treat them in goodness manner) and in Iranian Islamic law, meaning of this verse from Sura Nisa is inserted in article 1103 of civil code in chapter related to rights and tasks of couples to each other. According to this article (wife and husband are bound to good companionship with each other). Father and mother in place of the most fundamental elements of family interactions, when they consider in their marriage relations to ethical doctrine and be devoted to their tasks, they can make their relations healthy and attractive and also be accepted and valued pattern for transferring concepts and ethical orders to their children (Panahi, 2012: 2). Many psychology thinkers, especially Albert Bandura believe that most of learning and influences are offered for people through observation learning and observing patterns; based on his theory; the more patterns are popular and has special value position, the more influencing on those who take patterns. Also, he believes that parents as first pattern have serious and fundamental effect on children character, their sociability, and interaction methods with others, how they face life difficulties and ethical issues (Cooperation Office of Seminaries and University, 2008: 460).

It is obvious that when father and mother are seriously bound to ethical teachings and marriage principles and compassionate and religious emotional and ethical relations were established between them, thus they will affect their children and they will be directed toward educational issues. In addition, when family environment is friendly, honestly,

affectionate and along with feeling of dutifulness and respect, a calm and spiritual atmosphere will be created and this space will be effective in psychological, peace, flourishing talents and also children creativeness, because one of major conditions for emotional, mental, thought growth of children is family appropriate environment that this space will be created in families that are bound to mutual rights and allocated roles of people. Such families are very similar to families that are called powerful family in psychology. Powerful family is the best type of families and the best type of educational one (Cooperation Office of Seminaries and University 870-880). The important tip is that determining instances of bad companionship and/or good companionship is not possible by law because of habits impact, social customs, etc. So, it is not possible to determine a uniform shape and standard for good companionship through legislation references, but determining its type and quality is solved by law with reference of individuals to reasonable convention and attention to time and place requirements. In addition, all lawyers admit that in family privacy, penetration of law and obligation for its realization without ethics backing, is impossible and entering governments and judicial authorities did not respond to family problems and the more this focus is safe from controversies and legal conflicts, the more stability and strength it has and its people benefit from more complete personality (Jowkar, 2011, p. 85). Therefore, in this article, we are going to study good companionship between couples in terms of jurisprudence and legal viewpoints that it might pave the way for couples to solve problems.

The concept of good companionship

One of the mutual and shared rights and tasks of couples (husband and wife) is

their good companionship with each other. In other words, a woman has a duty to associate with her husband good and she has also the right that wants his husband to behave with good companionship, as the man has also this right. She can want her husband honoring and good companionship and also she is obliged to behave good and kind. Good companionship is a Quranic concept that is taken from this verse ("va ashero hanna bel maarooft"). This concept has several interpretations from commentators' viewpoint but all interpretations are common regarding expressing lawful instances according to society custom (Zamanie, 1990, p 31). Some define virtue as: what theoretical reason and society worthy traditions accepted and recognized (Hussaini, 2007, vol. 3, P. 56.). Some have also said: what is recognized by wisdom and what is recognized by revelation and religious law is virtue (Javadi Amoly, 2012, p. 394). According to that a segment of virtue understanding is formed along with custom expectations, it is suitable. The interpretation of the holy phrase "Ashero honna Belmaarooft" which give some indication of fundamental relations of the spouses is reviewed in the view of some early and late commentators in order to assess and measure it in detail, and we search the extent of insight and knowledge of custom impact in those interpretations. Some commentators of second century only refer to company in favor in this regard (Mousavi Gulpaigani, 1413 AH, vol. 2, p. 364), others in the fifth century defined virtue as fulfilling rights that are obliged for men by God and also divorce in favor (Toosie, 1460 vol. 3, p. 150). Some others are also explained belief of other commentators. Some commentators believe that you need to behave well with them, both in terms of emotions and feelings and love, both in terms of physical

rights and providing their life cost. But some believed that do not behave them angrily, but face them with kindness and happiness and some others said: interpretation of this verse is that behave them like themselves (Tabarsie, 1986, Vol. 2, p 776). Other commentator in seventh century consider associate with virtue as man need to fulfill dowry and alimony of his wife and unless when she sin, do not frown and do not talk angrily and do not talk about other women in front of her (Tabarsi, 1993, Vol. 5, p. 97).

Good companionship from jurists' viewpoints

Allamah Tabatabai believes that the right of men over women is more than right of women over men, and this is not incompatible with the equal rights of men and women; because when virtue is ruler in the community, all people are equal in any verdict and as a result, those commands that are against them are equal to commands that are beneficial to them. Of course, this equality should be considered by maintaining social status; this means it should be considered due to the position and responsibility of them toward others, for example, a person who is influential in perfection and growth of society is different with someone who is not influential and this is the nature of any society that boss and his/her subordinate – whether vice president or minor subordinate- are different. Islam, based on this, issues some commands in favor of the woman and some commands in their loss; that is commands that are in favor of her is equal to commands that are against her, however it considered her position in social relations and her effect on married life and survival of generations, and it believes that men are one degree superior to women in this life and the purpose of degree is the same as excellence and

prestige. It should be noted that Allamah viewpoint in interpreting verse 34 of Surah Nisa is guardianship of men over women; of course, in a general sense that is associated with the life of both parties... Which is like the government and the judiciary that community life depends on them and consistency of these two responsibilities are on wisdom force that is more and stronger in men than women, also it is about defending land with arms that require body power and also wisdom force that both are more in men than women.

Couples good companionship in Iranian law

It should be noted that the purpose of marriage is to form family focus in which couples need to achieve peace and sedation and they need to establish love and affection among them. Wife and husband with the conclusion of marriage create shared life agreement and unity and harmony and honesty should be established among them in order to preserve marriage that formed the basis of family life. The couple while marriage volunteer to live together. In jurist viewpoints, good companionship is determined about custom and habit of time and place, so that a peaceful environment is created (Emami, 1998, vol. 4, p. 497). Good companionship requires that the couple cheerfully and peacefully live together and avoid bickering and insults to each other (Safai and imamie, 2008, p. 136). Dr. Katouzian considering custom role is believed that we can determine tools of good companionship exactly; because habits and social customs and civilization and ethic degree are different in any nation. But in brief we can say that all affairs that are considered insult in terms of society like cursing, beating, dispute or affairs that are against

loving family and kindness between couples like family leave, heedless to wife/husband and his/her demands and harmful addictions are instances of bad companionship in the family. Good companionship tools are not exactly expressed; because degree of civilization, habits and customs in any nation will create a concept that might not be existed in other nation and in brief it can be said that whatever is incompatible with the nature of love between couples and love to family and whatever is considered insult could be an instance of abusive relationships (Katouzian, 2003, p. 219; Emami, 1998, p. 430; Eraqi, 1990, p. 91; Safai and Emami, 2004, p. 119). Also good companionship is the first task of couples (Rasyi Niya, 2000, p. 60; Sharif, 1998, p. 94). It can be said that good companionship is a guarantee for quantitative and qualitative health of family (Qazvini, 2011, p. 256); thus, the mutual obligations of wife toward husband and husband toward wife have not sex basis; because both sexes have been obliged (Homeyti Waghef, 2007, p. 114; Kar, 1999, p. 39). As mentioned, good companionship is a common sense and social customs and habits are effective on type and conduct of men and women. Therefore, legislative authorities cannot determine an exact uniform for good companionship. However, some cases in terms of allegory - not reckoning- are referred that in general in many societies and in various periods, are considered as the examples of good companionship. Iranian Civil Code also referred to some of these cases. Non-financial rights and obligations set couples behaviors with each other that have emotional, physical and mental content and also necessary associations for life. Each of couples have mutual rights to provide durability and welfare of family; although in adjusting

couples relations, ethics is governed more than legal rules, however our country legislatures enact some rules regarding legal support of principle "couples good companionship in family" and in two forms of guidance and warning. First form that refer to articles 1103 and 1104 of civil law obliged each spouses to good companionship and assistance for welfare basis of the family and the upbringing of children. Other legal proposition that has a warning format is article 1103 of civil law whereby, if durability of marriage causes hardship of wife, she could go to the court to file for divorce. First and the most important of them according to article 1103 of the Civil Code is good companionship (Jalali, 2010, p. 117). According to article 1103 of the Civil Code, the husband and wife are bound to good companionship. Good companionship means that couples behave according to custom and time and place habit in order to establish a quiet atmosphere at home. Although it is believed that this article has guidance and moral aspect as duties of the couples has sanction, it can be said that it is a legal rule; so it has sanction (Emami, 1988, p. 430). Also, if there is no good companionship, shared life will not last. Even if the legislature did not refer to it, couples are forced to good companionship with each other in order to keep shared life. It can be said that even the appearance of article 1103 of the Civil Code does not show, but this is a legal rule and it has sanctions as well (Katouzian, 2003, p. 220; Safaie and Emami, 2004, p. 119). Due to the fact that good companionship is taken from a Quranic verse "Asherou honna Belmaarroof" (Nisa / 19), in order to identify examples of good companionship, in addition to articles 1104 and 1107 of the Civil Code, article 167 of the constitution can be referred. Although principle 167 of the constitution deals with

the duty of judge in the dispute, its result is a true knowledge of good companionship. If the judge does not find command in written laws, he can issue command based on valid Islamic sources or authentic fatwa. This command is the same as judicial procedure that a judicial procedure is also one of the sources of law. Article 167 is introduced as a source to identify examples of good companionship, it means that good companionship example does not restrict to civil code and this is very effective on proving abuse associate of each couple (Dawar, 2003, p. 37).

Conclusion

Family is the most fundamental social institutions whose mental and behavioral health is effective on strengthening beliefs and psychological comfort of family members and ultimately each person in the society. In Islamic teachings every Muslim has duties and rights towards his/her society, but in the meantime, the couple enjoyed special rights and undertake certain obligations to the other party. In regulating emotional relationships of couples, morals are superior to law rules. Here we speak of love, devotion and loyalty and law cannot govern them and in addition to rights and duties that each Muslim has toward other people, each of the couple has mutually special rights and duties toward other side. Among common law of couples that wife and husband are obliged to do is good companionship. Much emphasis is on goodness in verses and traditions. In Islam viewpoint, good companionship of couples towards each other is considered a legal and moral rule as well as an unavoidable necessity in strengthening family foundation. To achieve these important goals, some policies and strategies are predicted in Quran and traditions that are

compatible to dignity of man and woman and are compatible to nature and custom of any society. Promotion and deepening of noble religious beliefs not only cause prosperity in family but also it will create cohesion and unity in a society. Flourishing moral values based on what is mentioned in verses and traditions of the Imams (as) lead to a kind of moral unity and convergence between spouses and it will cause to realize family stabilization. In Islam point of view good manner, honor, and respect to each other, love and expressing it, covering imperfections of spouse and sacrificing and remise are the most important duties of spouses that are mentioned in the text among critical components of good companionship, that observing it correctly and worthily by spouses not only lead to stability in the family, but also consequently it will realize a healthy society with a minimum of stress. Also, among especial duties of wife and husband that are mentioned, doubtlessly if performance and mutual relationships of spouses are realized based on Godly method not only roots of many problems of today society like dispute, discouragement, unwillingness, etc will be removed from families, but also we will observe the growing strengths of marriage such as love, forgiveness, sacrifice, etc For this reason, legislator in Iranian civil code consider the first shared duty of wife and husband as acceptance of companionship right with each other and he emphasized on their cooperation in strengthening family. What is more effective than law in family happiness is ethics, so that the couple should live together with sincerity and loyalty and they should not refuse to help each other and cooperation and they should have dedication and remise in order to make family focus warm and prosperous. Recourse to law enforcement and criminal

justice agencies should be used only when necessary and as a last resort. In law, some rights are assigned for husband that wife is obliged to respect them. Such as the right of husband directorship in family that wife is obliged to obey and comply with husband. Other category is the rights that are assigned to wife and the husband is obliged to carry out them. They are alimony and sexual intercourse right. The third category is tasks and duties that spouses are obliged to perform and observe them mutually, such as good companionship, etc.

In addition, all lawyers admit that penetration of law and respect to realize good companionship without ethic backing in family privacy is impossible. But in brief it can be said: all affairs that are socially considered offensive (like insults, beating and humiliation) or what are against love to family focus and love between two spouses (such as family leave, disregard to spouse and his/her wants, harmful addictions) are examples of bad companionship in the family and no court force can compel a man to good companionship with a woman and it is not possible to force a woman to submit and obey the husband and mutual loyalty.

In general, it can be said that many family laws are not be interpreted without taking into account the common law and its role in the interpretation of the rules is undeniable and by referring to the jurisprudence sources and exploring the various legal opinions, legislator can issue a command that is considered as more accurate and appropriate clearly in terms of law and in this way he can confront common inappropriate customs in the society. In other word, because custom is a bed for law enforcement and enactment and relationship of custom with social culture is unbroken, society cultural institutions in addition to legislator can be

more effective than enforcing law and civil and criminal sanctions in suitable culture-building compatible with Islam principles in context of the family.

Suggestions

1. Increase your knowledge and skills in this area by reading books related to choosing a spouse, married rituals, how to communicate with others and participating in sessions of family education.
2. Create healthy relationships among family members by empathy, sympathy, collaboration and consulting with each other about various issues.
3. Each of the couples see the other as the closest and most intimate and consider him/her as a part of himself/herself, his/her protector, and his/her supporter.
4. Improve your relationships by learning communication skills such as listening, respect to each other's ideas and comments and collaboration and consultation.

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