



## Marital Discord

Allah the Most High blessed this *ummah* with the most comprehensive and perfect law ever given to mankind - the *Shari'a*, and this law did not fail to give us solutions to one of the most common everyday problems of human life: problems between husband and wife.

Even if both the husband and wife are pious, practicing Muslims in a general sense, marriage presents additional tests which many do not pass as well as they should. They may then begin failing to fulfill their obligations within the marriage and failing to treat one another as they should according to Islam. When this happens, Allah's *Shari'a* has laid down certain processes that the spouses (and possibly others helping them) should go through to try to rectify the situation. Unlike some ignorant "religions" concocted by men, Islam also recognizes that there may situations where resolution is not possible and termination of the marriage is preferable - through divorce or other means.

When one of the spouses is refractory, it is called ***nushooz*** on the part of that spouse, whether husband or wife. In this article we will discuss the nature of *nushooz* and some of the steps which should be taken when it arises.

### The Meaning of *Nushooz*

The meaning of *nushooz* in the language is "rising up".

*An-nushooz* can be on the part of the wife, the husband or both can claim it to be from the other. Here are some of the definitions which the scholars have given to it:

**"Each spouse transgresses and is hostile against the other."**

**"A hatred by one of the spouses for the other or by each of them for the other."**

**"One of the spouses differing from the other."**

**"*One* of the spouses having hatred for the other and treating each other in an improper manner."**

Looking at all of these definitions, one sees that they are very close in meaning and indicate that *an-nushooz* can come from either spouse due to disobedience, hatred, contrariness, diffidence, harshness, aggression, etc.

### ***An-Nushooz on the Part of the Wife***

Here are some definitions from the scholars of *nushooz* when it is committed by the wife:

**"It is the woman leaving the house of her husband without his permission and keeping her husband from her without due right."**

**"It is the woman departing from the obligatory obedience to her husband, her preventing him from her in the bed, her leaving the house without his permission to a place that she knows he would not permit her to go, her leaving the rights of Allah upon her, such as performing the purification of *ghusl* or fasting Ramadhan, and her locking the door on her husband, keeping him out."**

**"It is the wife disobeying her husband elevating herself above what Allah has obliged upon her and her raising herself above fulfilling her obligatory duties."**

From all the these definitions, we see that *nushooz* on the part of the wife revolves around any of four characteristics:

1. She does not beautify herself for her husband when he desires that from her.
2. She disobeys her husband with respect to coming to his bed and she refuses to respond to his calls.
3. She leaves the house without his permission or without any legal right to do so.
4. She does not perform her obligatory religious duties, such as failure to perform some prayers, fasting Ramadhan, covering her *'Awra*, or any other obligatory act of Islam.

### ***Nushooz on the Part of the Husband***

Nushooz on the part of the husband includes when he orders her to do something forbidden or illegal, such as going out in public displaying her beauty or uncovering parts of her that must be covered, to go among men she is not related to, to drink alcohol or take drugs, go to clubs and salons wherein bad things are taking place.

Also from nushooz on the part of the husband is his not fulfilling his marital obligations. For example, he makes life difficult for her with respect to her food, drink, clothing and so forth. Unfortunately, this is one of the biggest marital problems that one can see occurring in the West. Many times, the husbands simply do not support their wives and families. Although they have the physical and other means to work and support their families, they would resort to putting themselves and their families on the welfare system. Often times, the husbands will give the weakest excuses for not accepting work and therefore put families in such situations. Many times, the husband would rather force his wife to go out and work – which, in the West, almost always involves putting the Muslim woman into situations that she should not be put into – rather than he accept a job that he is not completely pleased with. Hence, their families do not achieve the economic well-being that they deserve and, often, the wife loses respect for the husband as he is not performing one of his most important obligations of married life: providing maintenance for his wife and family. Sooner or later this often leads to many other problems within the marriage, although the root of those problems is the husband's unwillingness to work and sustain the family.

In addition, included among the acts of nushooz is his unfair distribution of his time or where he stays, when he is married to more than one wife, without legal justification. Or, he may not fulfill the needs of his wife and children such that their well-being is not met. Or, he does things that hurt and dishonour his wife and show lack of respect for her, such as backbiting, slandering her or joking about her. Or, he may be desirous of her wealth and force her to spend it on his behalf.

The following are also acts that constitute nushooz on the part of the husband: having anal intercourse with her, which is forbidden and is never permissible, his travelling for fun, amusement and entertainment without taking her permission as he is thereby wasting ample wealth for a useless purpose, rather than using it to sustain the rights of his household.

If the man apostates from Islam – and refuge is sought in Allah – that is considered nushooz and the marriage contract is dissolved unless he returns to Islam.

The jurists have defined *nushooz* when it is from the husband as follows:

**"It is where the husband hates his wife and brings about harm to her."**

**"The husband transgresses against his wife and harms her by boycotting her, hitting her in ways not called for by the law, irritating her, abusing her, reviling her, such as cursing and insulting her, etc."**

**"It is for him to harm her by beating her or making life difficult for her or keeping her from getting her rights fulfilled such as proper division between co-wives, support, etc."**

So, *nushooz* when it is committed by the husband, revolves around the following points:

1. The husband wrongfully elevating and raising himself arrogantly above his wife and above the obligations which Allah has placed upon him with regard to her.

2. He transgresses against her by beating her, harming her, reviling her, abusing her and not treating her properly.
3. He fails to fulfill his mandatory obligations toward her such as support, etc.
4. He becomes diffident toward her and unconcerned for her by boycotting her in talk or in the bed, refusing to speak to her, etc.

### **Types of Cases of *Nushooz***

There are three different cases of *nushooz*, as Allah has made clear in His Book.

The first case is where the *nushooz* is committed by the wife. This case and its resolution have been mentioned in the Qur'an where Allah says:

**"And (as for) those (women) from whom you anticipate rebellion, admonish them, avoid them in the sleeping place and hit them. If they obey you, do not desire a further way to (harm) them. Surely, Allah is Knowing, Great". (4:34)**

The second case is *nushooz* on the part of the husband. This has also been mentioned in the Qur'an where Allah says:

**"And if a woman fears *nushooz* from her husband or that he may turn away, there is no sin upon the two of them to make terms of agreement between them and agreement is better. Stinginess has been made present in all souls but if you extend good deeds and beware of Allah, verily Allah is fully knowledgeable of all that you do". (4:128)**

The third case is where *nushooz* (mainly in the sense of 'dislike' and 'turning away') is committed by both the husband and wife. This is mentioned in the Qur'an where Allah says:

**"And if you fear a separation between the two of them, appoint an arbitrator from his family and an arbitrator from her family. If they desire reconciliation, Allah will bring them into agreement. Verily Allah is Knowing, Knowledgeable". (4:35)**

### **The Remedy for *Nushooz* When it is From the Wife**

When a wife is in a state of *nushooz*, the husband can address it with the following three steps:

1. Admonition and guidance.
2. Boycotting

### 3. Striking her

What follows is a detailed discussion of each of these three steps.

#### **The First Step: Verbal Admonition and Guidance**

The first thing a husband should do when his wife commits *nushooz* or the steps that lead to it is to attempt to warn her verbally, using Qur'an and Sunnah to remind her of her duties toward Allah and toward her husband. Allah says:

**"As to those women from whom you see ill-conduct, admonish them..."  
(4:34)**

Admonition is a cure that is gentle and mild. Its goal is to replace estrangement and rebellion with love, compassion and togetherness in obedience to Allah Most High. All of the scholars early and late have agreed that this admonition is only as long as it is in agreement with the Shari'a. Otherwise, the husband has no such right according to the principle:

**"There is no obedience to the created if it involves disobedience to the Creator."**

Here are some of the scholars' definitions of this admonition:

1. "Advising and reminding one of the outcome of ones actions."
2. "Reminding humans in a way that softens their hearts by reminding them of the rewards or punishments."
3. "The husband makes her fear Allah Most High. He reminds her of what Allah has obligated upon her concerning his rights and obedience. She is to be told the results of her sin and disobedience and how she then forfeits her rights of maintenance and clothing. And she is to be told of how that permits him to strike her and boycott her."

From the sunnah, it is narrated that the Prophet (sallallaahu 'alayhi wasalaam) said:

**"If you fear *nushooz* on their part, then advise them, boycott them in their beds and strike them in a way which is not injurious..." (Ahmad)**

The Companions, the Followers and all who came after them to this day agree that this admonition is legally sanctioned when a wife commits *nushooz*. No one has ever rejected that and it is a point of consensus.

## The Second Step: Boycotting and Avoidance

Sometimes verbal admonition may have no effect on ending her state of estrangement and disobedience. In fact, it may increase her obstinance due to some emotion that has overtaken her, a defiant reaction or perhaps she has been deceived by position, wealth or beauty to consider herself better than her husband.

The husband may be partly to blame for this if he allowed his own emotions to interfere with admonishing his wife in the best way. In any case, the next step in trying to end her recalcitrance is boycotting her and avoiding her "in the bed".

Linguistically, this "boycotting" (*al-hajr*) is defined as

**"avoiding, cutting off and not having contact with the one who is being boycotted."**

Allah recommends this using the additional phrase: "in sleeping places". This could mean either avoiding her entirely and sleeping somewhere else or it could mean sleeping in the same bed but keeping away from her and not speaking, etc.

The Qur'an, the Sunnah, consensus of the scholars and sound reason indicate its permissibility and it being one of the means of disciplining the estranged wife when verbal admonition brings about no positive result. Allah says:

**"...And avoid them in sleeping places..." (4:34)**

Imam Ahmad records in his *Musnad* that the Prophet (sallallaahu 'alayhi wasalaam) separated from his wives for a month. Although this was NOT for reasons of *nushooz*, it nonetheless shows the permissibility of the act. The jurists have agreed that it is permissible if it leads to the woman correcting her ways and returning to proper guidance. It is a method which is effective with a woman who loves her husband.

The verse in Sura An-Nisaa is ambiguous as to whether it means to avoid the bed and the bedroom entirely and sleep somewhere else or whether it means to avoid them IN the bed. The latter method is preferable because it avoids making the existence of the problem known to children and other family members and because there is a more positive atmosphere for actual reconciliation.

The boycotting may include boycotting her in speech, but that should not last more than three days according to the hadith in Sahih Muslim:

**"It is not permissible for a Muslim to boycott his fellow Muslim for more than three nights."**

As for boycotting her in the bed, this can continue for as long as he believes it may lead to her stopping her acts of *nushooz* but in no case exceeding four months. This is the strongest opinion among the statements of the scholars. It is based on the time limit which Allah placed on *al-eelaa'* - where a man takes an oath to cut of

relations with his wife. In the *jahiliya*, there was no limit on this, so a spiteful man could leave his wife "hanging", having no relations with her but not divorced for as long as he wished. Allah limited this to four months, saying:

**"And for him who cuts off relations with his wife is a waiting period of four months. Then, if he returns, surely Allah is Hearing, Knowing." (2:226)**

The wife who does not mend her ways after four months of boycotting is not and will not mend her ways. She is deserving of divorce and there is no need to continue this "suspended" situation any further. This is because her continual estrangement and non-cooperation even though she knows full well that it will end in divorce shows clearly that she has no willingness to respond to the action which is taking place and return to a proper Islamic marriage. At the very least, it can be said that she will not be able to live with that husband in a pleasant and proper manner.

### **The Third Step: Striking Her**

In some cases the solution to the problem may require some harshness and toughness. This is because there are some people who cannot be set straight when they go wrong by good behaviour and soft advice alone. Kindness and softness just make such people more arrogant and ignorant. Some people, if met with toughness, respond by cooling down and ending their defiance. Generally speaking, it is not recommended for a husband to ever strike his wife and it is narrated that the Prophet (sallallaahu 'alayhi wasalaam) said about those who do so that:

**"they are not the best of you".**

However, in some cases resorting to harshness including striking may be a beneficial cure which in fact returns the partners back together in love and compassion. In these cases, it can be a positive cure and a spiritual discipline. It is not meant for revenge or punishment. Whoever does it in such a manner is committing a sin and transgressing against his wife. Instead, it is meant to restore what has become improper and bring the disruption to an end. Although it is a bitter medicine, in many cases it may be less harmful to all involved than the destruction of the foundation of the family.

### **The Remedy When *Nushooz* is By the Husband**

Islam has provided remedies for cases when *nushooz* is from the husband in ways consistent with both her feelings and sensitivities as a woman and their respective roles, rights and obligations as husband and wife. She can look for the reasons for his behaviour and admonish him with Islam in an attempt to make things right between them. However, Islam has not given her the right to address this problem

by boycotting him or beating him as has been given to the husband. This is because her nature is different from that of the man and because she does not have the same kind of power and authority in the marriage as he has.

She should use some or all of the following steps:

1. Try to discover the reason for his estrangement and/or bad behaviour.
2. Admonish her husband and remind him of his responsibility in front of Allah towards his wife such as good behaviour and kind treatment.
3. Try to please her husband in order to make things right. This can be just by showing kindness and concern and can also include compromising some of her own rights for the sake of harmony.

Allah says:

**"And if a woman fears cruelty or desertion on her husband's part there is no sin upon the two of them if they make terms of agreement and agreement is better..." (4:128)**

If it becomes clear to her that the signs of *nushooz* are confirmed and he is turning away from her out of dislike for her and wishing to be away from her, then there is no sin upon either of them if the "work out terms of peace". This means that she may give up some of her due rights in order to stay in the marriage. For example, she may give up some of her rights to support, housing or equality of nights with other wives in order to remain under his protection and in the marriage. Or, she may give up some or all of her dowry in exchange for his divorcing her.

Ibn Abbas said:

**"Sawdah feared that the Prophet (sallallaahu 'alayhi wasalaam) was going to divorce her so she said to him, "O Messenger of Allah, do not divorce me but keep me and make my day for Aisha." The Prophet (sallallaahu 'alayhi wasalaam) did so and the verse was revealed concerning that. (Bukhari)**

## **The General Remedy: Appointing of Arbitrators**

"Arbitration" (*At-tahkeem*) means to judge or decide a matter. Allah says:

**"And if you fear a separation between the two of them, appoint an arbitrator from his family and an arbitrator from her family. If they desire reconciliation, Allah will bring them into agreement. Verily Allah is Knowing, Knowledgeable". (4:35)**

The arbitrator mentioned in the verse is the one who has the right to make a ruling and decision for the two in dispute. The meaning of appointing arbitrators in this case is:

**"The two disputing spouses appoint two men from their respective families to bring about accord between them and to settle their dispute."**

### **The Ruling Concerning Such Arbitration**

The scholars have agreed that two arbitrators should be appointed if dissension occurs between the two spouses and it is not clear which of the two (if either) is committing *nushooz* or if both of them are.

The jurists also agree that one of the arbitrators should be from the husband's family and the other from the wife's family if possible. If that is not possible, other people may be appointed depending on what is in the best interest of those concerned. They also agree that when in agreement they are to execute what they see as the best opinion in bringing accord between the spouses. However, if they disagree, then their opinions are not to be executed.

### **The Evidence**

If the two spouses are not able to come to some kind of agreement between themselves and separation seems to be looming, it is permissible for those in authority, a ruler or judge to appoint two men as arbitrators to see how they can bring about a reconciliation. This step is proven by the Qur'an, the Sunnah, consensus and sound reason. Allah says:

**"And if you fear a separation between the two of them, appoint an arbitrator from his family and an arbitrator from her family. If they desire reconciliation, Allah will bring them into agreement. Verily Allah is Knowing, Knowledgeable." (4:35)**

From the Sunnah, there is a report recorded by Ash-Shaafi' in his book *Al-Umm* from Ubaidah As-Salmaani who said:

**"A man and woman came to Ali ibn Abi Talib and each of them had a group of people with them. Ali ordered them to appoint a male arbitrator from his family and one from her family. Then he said to the arbitrators: 'Do you know what your responsibilities are? If you find that you can bring them back together, then do so. If you find that they should be separated, then do so.' The woman said, 'I am pleased with the Book of Allah concerning what is upon me and what is for me.' The man said, 'As for separation, I will not accept that.' Ali told him, 'You are lying, by Allah, until you accept the same things she has accepted.'"**

## **Qualifications of the Arbitrators**

The two arbitrators must meet the following conditions:

1. Muslim
2. Adult
3. Mentally competent
4. Male
5. Free
6. Mature following right guidance
7. People of insight and understanding
8. Just and righteous
9. They must have knowledge concerning matters of reuniting and separating spouses in the Shari'a and what they have been commissioned for.
10. Trustworthy
11. Their intention must be solely to please Allah
12. Pious having fear of Allah
13. It is recommended that they be from the relatives of the spouses

## **The Role of the Arbitrators**

The two arbitrators have a very important role to play, a noble purpose and a great responsibility. They will frequently become the target of enmity from one or both of the spouses and they should be willing to face that for Allah's sake. To attempt to bring about reconciliation and harmony where there is misunderstanding, oppression and/or strife is one of the best good deeds. Allah says:

**"There is no good in most of their secret talks except for one who orders charity, good deeds or reconciliation between people. And whoever does that seeking Allah's pleasure we shall give him a great reward." (4:114)**

It is a must upon the two arbitrators that they spare no effort in trying to bring about reconciliation and harmony between the spouses. Failing that, they also have the authority to separate the spouses according to the strongest opinion among the scholars. In a case where there seems to be no hope of bringing the two back together in a harmonious marriage, then the only solution may be to free the spouses from one another by separation. Otherwise, the situation may just get worse and bring about even greater harm. Allah ordered the husband:

**"Divorce is two times then retaining on reasonable terms or releasing with kindness..." (2:229)**

**"And if they separate, Allah will fulfill their needs from His generosity and Allah is Generous, Wise..." (4:130)**

## **The Different Types of Separation**

Terminating the marriage contract is done through one of three ways:

1. dissolution of the contract by the ruler or judge.
2. *khula'*.
3. divorce.

If reconciliation cannot be achieved, then the arbitrators may separate the two through *khula'* where the woman returns part or all of her dowry if the woman cannot abide by the marriage and the man is unwilling to divorce her unilaterally. If they determine that the problem is from both sides and the differences are irreconcilable they can institute a divorce even if the couple or one of them did not request the divorce.

## **Do the Arbitrators Have the Authority to Separate?**

### **Discussion of the Issue**

There is a difference of opinion among the scholars concerning whether or not the arbitrators have the right to separate the couple and bring an end to the marriage. This difference revolves around the following points:

1. One opinion states that the arbitrators are simply acting as agents for the spouses and they cannot go beyond what they have been commissioned to do without first getting such permission from those who assigned them. Their role is only to attempt to reconcile, not separate.
2. Another opinion is that the arbitrators have been appointed by the judge or ruler to solve the problem between the spouses. They are, therefore, like a judge. The judge may decide according to whatever is in the best interest and if separation is the best solution, then so be it.

The strongest of these opinions is that the arbitrators are like judges and DO have the authority to separate between the spouses with or without their consent. Ibn Al-Qayyim said about this:

**"It is the most amazing thing to say that they are simply agents and not arbitrators or judges. Allah has given them the position of arbitrators or**

**judges. This role has been given to other than the spouses. If they were simply agents or trustees (*wakeel*) working on behalf of the spouses, the verse would read, "And appoint a trustee from his family and a trustee from her family." Furthermore, if they were to be simply agents or trustees, they would not need to be from the respective families. In addition, the judgement has been put in their hands. Allah said, "If they both wish for peace, Allah will cause a reconciliation" however, agents or trustees have no independent will of their own, they only fulfill what their superior has desired. Moreover, the agent (*wakeel*) is never called a judge or arbitrator (*hakam*) in the language of the Qur'an, the language of the law or in common speech. Finally, the arbitrator has the authority to decide a matter and that decision must be implemented. However, neither is true for a *wakeel*..."**

Some of the scholars state that if the ruler or his deputy appoints two arbitrators then they have no role except to study which of the two parties is in the wrong, to advise them and to attempt to bring about reconciliation. If no reconciliation is reached, then the matter is taken up to the ruler or his deputy. This leaves this issue open to three possible opinions:

1. The arbitrators are simply agents or trustees working on behalf of the spouses. This is because the right of divorce is in the hands of the husband only and a settlement other than divorce can only come about when the wife accepts it.
2. The arbitrators are acting in the role of the ruler or his deputy. The ruler may bring about divorce if the harms of the marriage are made evident to him.
3. They are witnesses only.

The strongest opinion is that the arbitrators are like judges and not simply agents or trustees. They have the authority to separate the couple in the same way that they have the authority to make them come back together.