

The Impact of Disobedience on Nursery in Islamic Jurisprudence

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Abstract

This study deals with an issue of nursery issues, which is the effect of disobedience on nursery, and whether the disobedient proves his right to nursery.

This issue was a matter of disagreement among the jurists, as the doctrine of the majority of Maliki, Shafi'i and Hanbali jurists stipulates that the nurse should be fair; and the right of the nurse is waived if he is disobedient, the Hanafi difference between disobedience, whether it transgresses the fostered child or not, so they dropped the right of the nurse in the first type without the second, and among the jurists are those who did not require justice at all, but established the right of the disobedient at all, and this was said by Ibn al-Qayyim, al-Shawkani and others.

This issue has been scientifically investigated by studying and discussing the evidence, and the study concluded with the weighting of the Hanafi school of thought, which is the distinction between disobedience, if it exceeds his disobedience of the newborn, then he forfeits his right to nursery, and if his disobedience does not exceed the fostered child, then he does not forfeit his right.

Keywords: *disobedience, Nursery, Islam.*

Introduction

Praise be to God, Lord of the Worlds, and the most perfect and perfect prayers and peace be upon the best of creation and messengers, our Master Mohammed, and upon his family, his companions altogether, and those who followed them with goodness until the Day of Judgment, and after:

The precious Sharia came to establish rights for the child, and these rights came to guarantee a decent life, based on care, preservation and protection from all harm.

In order to achieve these lofty and noble goals, the Islamic Sharia enjoined a right for the child, which is the right of nursery, the nursery is to carry out the affairs of the child, care and preserve for him, the child cannot be independent or carry out his affairs by himself, and therefore the wise legislator established the one who is based on this right, which is the nurse, such as the mother, or the mother's mother, or the maternal aunt, in order and detail regarding who proves this right to him, and its place is the lengthy books of jurisprudence.

In order to achieve the goals of this right - which is the right of nursery - Sharia stipulated conditions for the nurse, the most prominent of which is justice.

Accordingly, the question is answered: If this description is absent in nurse, meaning that he was disobedient, as if the father used to drink forbidden things such as intoxicants, then does his right to nursery fall?

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This study came to investigate this issue, and when looking at the books of the jurists, we find that this issue was a source of disagreement among them, and I investigated this issue according to the doctrines of the jurists in it, and their evidence, and discussed it, to reach the most correct opinion in my view.

Study Problem:

The problem of the study lies in answering the following questions:

- 1- What is the effect of disobedience on the nursery?
- 2- Does the right of the nurse fall due to disobedience? Or does his right remain even if he was disobedient?

Previous studies:

The advanced jurists from the owners of the considered schools of jurisprudence dealt with the issue of the nursery of the disobedient, and the requirement of justice in the nurse, and they stipulated it in the book of custody, but I did not find - after the research - who isolated this issue from the contemporaries with an independent research; To root it and achieve it, and collect its various things, which this research seeks to achieve.

Study Methodology:

This study is based on the scientific method based on:

- 1- The inductive method: It is the main method in this research. Because extracting the impact of disobedience requires extrapolation of what the legal texts came with, and what the jurists mentioned in this chapter.
- 2- The deductive method: I relied on it in analyzing and explaining what was extrapolated.
- 3- The conclusion based on reducing the meanings of the texts in order to reach the construction of this issue of meaning, origin and importance.

Study plan:

The research in this case required to consist of an introduction, two topics, and a conclusion, as follows:

Topic one :definition of the terms mentioned in the research

There are two requirements:

Requirement one : the definition of disobedience

Requirement two: the definition of nursery

Topic two : the extent to which the right of nursery of the disobedient is established.

There are two requirements:

Requirement one: the doctrines of scholars in the nursery of the disobedient

Requirement two : evidence and discussion

Requirement three : weighting

Conclusion

It includes the most important results

God is behind the intention, and I ask God to make this work purely for His honorable face, necessitating His pleasure, and God knows best.

Topic One

Defining the terms used in the research

This topic includes a definition of the most important terms mentioned in the research, namely: disobedience, nursery, purposes of legislation, and a statement of that in three successive requirements as follows:

Requirement One

Meaning of disobedience,

Branch one : Disobedience in language:

Disobedience in the language: departing from the thing, and breaking away from it. It is said: the fresh-date was loosed from its peel: if it came out, and that is corruption for it, and the stirrups were loosed with the intention of the path: it ran, and from it was called the disobedient mouse, for her exit from her hole and her corruption, and from the foregoing, it is clear that disobedient in the linguistic situation indicates the meaning of exiting in the face of corruption and harm, and the disliked exit.

Branch one : Disobedience in terminology:

The scholars' statement differed in explaining the reality of disobedience in legal terminology, and I saw that these statements - despite their differences - do not contradict each other. As it teaches one meaning, which is that disobedience: the commission of the chosen one who is aware of the prohibition of what has been proven to be a major sin, without repenting from it, or the commission of minor sins while insisting on them, and safety from heresies in belief.

Ibn Najim says in defining disobedience: "Committing a major sin, or insisting on a minor one."

Al-Ghazali gave a definition of disobedience by saying: "committing the sin, even if it is small."

Al-Sherbiny defined disobedience by saying: "disobedience is achieved by committing a major sin, or insisting on a minor one, and his obedience did not prevail over his sins."

In directory of the terminology of arts and sciences: "disobedience is the act of a Muslim committing a major or minor sin with insisting over it."

Requirement Two

Meaning of Nursery

Branch one : Nursery in language:

Nursery in linguistics: a source from the embrace of the nursery, it is said: the boy's embrace: if he puts him in his lap or nurtures him, and the nurses and female are entrusted with the boy in preservation and upbringing.

The nursery below the armpit to Kashh, (Side part of the body)and it was said: It is the chest and the upper arms and what is between them.

And the H, Ted and Nun are one origin, indicating the preservation of the thing, its maintenance, and the standing on it, and it is said that I embraced the thing: that is, I put it in my lap. .

Al-Nawawi said: "nursery by opening the H: the upbringing of the child is taken from the lap by breaking the H, and his plural embraces is the side; Because she holds him in her bosom, it is said: I embraced the thing, put it in my lap, and embraced the boy. .

Branch two : Nursery in terminology:

Jurists of different sects have mentioned the definition of nursery, and the following is a part of it:

- Hanafis defined nursery by saying: The upbringing of a child is for the one who has the right to nursery.

The Maalikis gave a definition of nursery, and they said: “Keep the child in his home, the provisions for his food, his clothes, his bed, and the cleaning of his body.”

- And according to the Shafi’is: “To protect the one who does not discriminate and is not independent in his command, to raise him with what is good for him, and to protect him from what is harmful to him.”

- The Hanbalis defined nursery by saying: “Safeguarding a young child and the like from what harms him, and bringing him up by working for his interests.”

These definitions, despite the difference in the phrase in explaining the fact of nursery, are a difference in diversity; As they agree that the focus of nursery is on education, and that the purpose of nursery is to achieve the interest of the child in nursery, to protect him, to educate him, and to take care of his affairs, such as washing his body and clothes, and the like that achieves his interests.

Topic Two

Proof of the right of nursery of the disobedient

The opinions of the jurists differed in the extent to which nursery is established for the disobedient and is it required for the nurse to be of justice? In this topic, a statement of the doctrines of jurists on this issue, their evidence, discussion, and a statement of the most correct of them, in two requirements as follows:

Requirement One

Doctrines of scholars in the nursery of the disobedient

Branch One: Editing the Place of Dispute:

The jurists agreed that if the nurse was characterized by justice, then the right to the nursery is established for him, whether the nurse is a mother, father, or someone else who has the right.

Branch Two: The Scholars’ Doctrines on the Issue:

The jurists differed on this issue and there are three opinions:

The first saying : The nurse is required to be fair, and the right of the nurse is waived if he is disobedient. This is the view of the majority of jurists from the Maliki, Shafi’i, Hanbali and Dhahiri jurists.

The following is detail of the public's doctrine:

The Malikite text states that the nurse is required to be trustworthy. Al-Dasouki said: “And the nurse is to be understood as a trust until it is proven that it is not.” This is only described by those who are just, and who are apparently free from disobedience. As for the one who is known for disobedience and is known for it, such as drinking alcohol and fornication, then this description is denied. .

Malikis stipulated that the place of nursery is required to be trustworthy, so if the nurse was trustworthy, just, and the place was a shelter for disobedient, then his right to nursery is forfeited.

- Shafi’is and Hanbalis stipulate that the one who follows nursery is required to be of justice, so there is no nursery of the disobedient, and justice is sufficient for them in

appearance, such as witnesses of marriage. Al-Ramli said: “It is sufficient for her concealed, i.e. concealed justice.” If disobedience occurs over justice, then his right to nursery is forfeited, and the right is transferred to the one who follows him, without a choice between the parents due to the presence of the impediment, and if disobedience is removed - which is the impediment - the right returns to him.

Al-Bahuti said: “There is no nursery either for disobedient, because he does not fulfill his right to nursery, If the impediments are removed, such as the emancipation of the slave, the conversion of the infidel, the justice of disobedient, even if it is apparent, and insane came to his mind, and the wife is divorced, even if irrevocably, they return to their right of nursery, because her reason is present, but she refused for an impediment, so if the impediment is removed, the right is returned to the previous inherent reason.

The second saying: Justice is not required for the nurse, and the right of nursery is established for nurse even if he is disobedient,, unless he is disobedient, that necessitates the loss of the newborn, and this is the Hanafi school of thought.

To clarify this: Hanafi jurists see a distinction between two kinds of disobedience:

First type: That disobedience of the nurse does not transcend to the newborn, meaning that his disobedience is limited to himself, and does not lead to the loss of the newborn, as if the fostered person does not understand disobedience of the nurse due to his young age, in this type, the right of nursery remains constant for the nurse despite his disobedience.

Second type: that the disobedience of the nurse is a disobedience that causes the newborn to be lost, as if the fostered person was sensible and aware of disobedience of the nurse, then he is taken away from him and his right to nursery is forfeited, and this right is transferred to the one who follows him.

Ibn Abidin says: “The conclusion is that if the female nurse is disobedient and disobedience, will lead him to lose the child, then her right is forfeited. Otherwise, it is more deserving of it until it becomes sane and is removed from her.”

Third saying: Justice is not required for the nurse, and the right of nursery is established for the nurse even if he is disobedient, this is the saying of Ibn al-Qayyim, al-Shawkani and al-Sana’ani.

The proponents of this saying do not require justice in the nurse, and they agree with the proponents of the second opinion - Hanafis - in proving the right of nursery even if one who deserves it - i.e. the nurse - is disobedient, except that they exaggerated in proving it. They said that it is proven to be disobedient,, without differentiating one type without another.

Ibn Al-Qayyim said: “The correct view is that justice is not absolutely required in the nurse, although the companions of Ahmad, Al-Shafi’i and others stipulated it, and it was required in the case of being far away.” And Al-Shawkani said: “Saying: It moves from each to one who follows him with disobedience, I say: There is no evidence for this; the law of justice considering what the Sharia considered, not in every matter, and considering it in this situation is a great embarrassment and severe difficulty.” Al-Sana’ani said: “The public – who are the Hadawiya, and the companions of Ahmad and Al-Shafi’i – stipulated that the female nurse is fair, and that disobedient woman has no right to her, even if it is a very remote condition.”

Requirement Two

Evidence and discussion

Branch one: Evidence for the First Saying:

Those who hold the first opinion - and they are the majority - who say that justice is required to establish the right of nursery of the nurse, inferred the following:

First: The Almighty's saying: "Help one another in righteousness and piety," and Almighty's saying: "Be upholders of justice," and the Almighty's saying: "And give up the apparent and hidden sin."

The point of evidence from these noble verses: Leaving the child in the nursery of disobedient is inconsistent with the requirements of these noble verses. As there is cooperation in sin and transgression, and not cooperation in righteousness and piety, and disobedient does not establish justice with the fostered child, and there is no abandonment of the apparent and inward sin, and all of this indicates the requirement of justice in the nurse and that he forfeits his right to that if he is disobedient.

It was discussed as inference with these noble verses: that the inference is not explicit by the requirement of justice in the nurse, and that falls under the generalities, while the right of the nurse is that it is established by an explicit and clear text, and it is not transferred from this principle except by a clear principle.

Second: Almighty saying: "God commands you to return the trusts to their rightful owners."

The point of evidence: that the fostered child is a trust in the hands of the nurse, so he should preserve this trust and fulfill it in accordance with the noble verse, and it is not possible to do that except for those who are characterized by justice, and as for disobedient, he does not trust - and he is the place of the trust - he is lost for him, and he is not trusted to do what the wise legislator commanded to perform the duty.

Third: The wise legislator only obligated nursery to take care of the interests of the fostered child, to take care of him, and to look into the best for him, and the child under custody was observed for him in his nursery with disobedient; Because he is brought up in his own way, and is affected by his behavior, and he fears that the fostered child will be brought up on the bad morals of the disobedient, or that he will not be indifferent to his proper upbringing, and this contradicts what is meant by nursery at that time.

Ibn Hazm says: "Whoever abandons a small or minor sin, they will be trained to listen to disbelief, and they will be trained to deny the prophet hood of the Messenger of God, may God's prayers and peace be upon him, and to stop praying, eating in Ramadan, drinking alcohol, and being intimate with it, so that the laws of disbelief will become easier for them, or for the company of those who are not good." In it, and preoccupied with affliction, he helped sin and transgression, and did not help in righteousness and piety, and did not establish justice, he slipped away from the outward and inward sin, and this is forbidden and a sin.

Branch Two: Evidence for the Second Saying:

The owners of the second opinion - and they are Hanafi jurists - who say that disobedience does not forfeit the right of the nurse in nursery unless his disobedience necessitates the loss of the newborn, as evidenced by the following:

First: Hadith of Rafi bin Sinan - may God be pleased with him -: "He embraced Islam, and his wife refused to become Muslim, so the Prophet - may God's prayers and peace be upon him - made the mother sit on one side, and the father on one side, and the boy sat between them, so he leaned towards his mother, and said: Oh God, guide him." So he leaned towards his father. So he took it."

The point of evidence: that the Prophet - may God's prayers and peace be upon him - gave the boy the choice between his parents, even though the mother was an infidel, and he gave him the choice between them, which indicates that she has a right to nursery, otherwise he did not choose her, and if this right is established for the unbeliever, then it is established for the disobedient from a foremost chapter; The unbeliever is worse off than the disobedient.

Second: The basis for the failures of nursery is based on the loss of the child, and its clarification: that when it is verified or it is most likely that the child is lost, then it is usually for the legislator to forfeit the right of the nurse, and vice versa, and all of this is intended to take into account the interest of the child in nursery, and what indicates the validity of this area in nursery - I mean that the lesson in considering the loss of the birth as a reason for dropping this right - is that the jurists stipulated that if the mother was righteous, prayed a lot, and the love and fear of God seized her, except that she was too busy with the child to be wasted, If it is removed from her, it forfeits its right to nursery.

if we want to apply this to disobedient, then it differentiates between disobedience if it transgresses the child in nursery, or is affected by it, and disobedience that is not affected by the child in nursery.

Branch Three: Evidence for the Third Saying:

The owners of the third opinion - and they are ones who say that disobedience does not waive the right of the nurse in the nursery - with a number of evidences, and explained them as follows:

First: There is no explicit text that indicates the requirement of justice to establish the right of nursery for the nurse, so the right of the nurse is established by explicit evidence, and it is the original, so it is not transferred from this principle except with clear evidence, and the rule says: "It is not permissible to delay the statement from the time of need."

Second: nursery was prescribed for the interest of the child under nursery, and to take charge of his affairs, If justice was stipulated in the nurse, the fostered would be lost, and the hardship of the nation would be great, and the stubbornness would be intensified.

Third; it is from the time Islam was established until the day of judgment, the disobedient children among them, and no one will oppose them despite their fact that they are the majority.

If that was a barrier to nursery, the Prophet - may God's prayers and peace be upon him - would have demonstrated what is clear, and he does not know a single incident during the era of the Prophet hood, or the honorable companions, that the child was taken from his parents or one of them due to his disobedience.

Ibn al-Qayyim says: "If the disobedient had been deprived of nursery and guardianship of marriage, then explaining this to the nation would be one of the most important things, and the nation would take care of his transmission, and the action of it was inherited taking precedence over many of what they transmitted, and the work was inherited by it taking precedence over many of what they transmitted, and they inherited the work by it, so how is it permissible for them to loss it, and to connect the work with something other than it?"

Al-Shawkani says: "Considering it in this situation - that is, justice as a condition for nursery - is a great embarrassment and severe difficulty, because women are often lenient in many religious matters, and if justice was considered for them, and a justification for removing their children from their hands, there would be no boy left in his mother's hands except in the rare conditions, and in that is the greatest crime against the boys by separating them from those who look after their interests and ward off their corruption, and a crime against the mother by taking charge of her son and separating her from him, and it is a violation of what the people of Islam who preceded and followed them.

Fourth: The nurse, even if he is disobedient, takes care of his child, takes precautions for him, and does not lose him., and does not lose him, and all of this is according to nature, and God knows best.

Requirement Three

Outweighing (Tarjih)

What is more outweigh in my opinion - and God knows best - is the second saying, and it is the saying of Hanafi jurists, who say that disobedience does not forfeit the right of the nurse in nursery unless his disobedience necessitates the loss of the newborn, and that is for the following:

First: This statement includes observance of the right of the child in nursery, and presenting his interest and preserving him, which is the basis for nursery, and clarifying that:

The saying that justice is required in the nurse, which is based on its lack of proof, i.e. on proof of the disobedience of nurse, forfeiting his right to nursery – as the public says – may result in more harm than the harm resulting from leaving him in the care of the disobedient nurse, especially if the nurse is a mother or a father, and this is in the event that the disobedience does not transgress the child in nursery..

This is unlike if the disobedience of the nurse transgresses the child under nursery, especially if the child is of an age that understands matters and is affected by them, because the harm in his remaining in the lap of the disobedient is greater than the harm that is based on his removal from the disobedient embrace, and this is in contrast to those who do not stipulate justice in the nurse at all, as those who say the second say.

Second: This saying is certified by a number of jurisprudential rules, including:

“If two evils conflict, the one that causes the greatest harm should be taken into account by committing the lesser of them.”

The point of evidence: This rule indicates that if there is a conflict between two evils, we look at which of them is more severe, so we give precedence to the one that is lighter than it.

With regard to the matter of forfeiting the nursery of the nurse due to disobedience, the conflict occurred between the harm caused to the fostered child due to the disobedience of the nurse, and his being affected by that disobedience, and the harm resulting from the removal of nursery from this nurse - especially if the nurse is a father or a mother - and transferring him to another nurse, so the lesser evil is committed and it is said: That disobedience does not forfeit the nursery's right to nurse unless his disobedience necessitates the loss of the newborn.

Conclusion

At the conclusion of this research, I reached the following results:

First: disobedience: The commission of the chosen one who is aware of the prohibition of what is proven to be a major sin, without repenting from it, or committing minor sins while insisting on them, and being safe from heresies in belief.

Second: nursery is achieving the interest of the child in nursery, protecting him, raising him, and taking care of his affairs, such as washing his body and clothes, and the like that achieves his interests.

Third: The jurists agreed that if the nurse is characterized by justice, then he is proven to have the right to nursery, whether the nurse is a mother, father, or someone else who has the right.

The jurists differed in proving this right to disobedient, and is it required in the nurse to be fair?

Fourth: The majority of Maliki, Shafi'i, Hanbali and Dhahiri jurists are of the view that justice is required in the nurse, and the right of the nurse waived if he is disobedient

Fifth: The achievement of the Hanafi school of thought is that justice is not required in the nurse, and the right of nurse is established for the nurse even if he is disobedient, unless it is disobedience that necessitates the loss of the newborn.

Sixth : Ibn al-Qayyim, al-Shawkani and al-Sana'ani held that justice is not required for the nurse, and the right of nursery is established for the nurse even if he is disobedient.

Seventh: What is more likely in my view - and God knows best - is the second saying, which is the saying of the Hanafi jurists, who say that disobedience does not waive the right of the nurse in nursery unless his disobedience necessitates the loss of the newborn, because this saying contains observance of the right of the child in nursery, giving priority to his interest, and conservatism It is the nursery, because this saying is witnessed by a number of jurisprudential principles, including: the rule: "If two evils conflict, the one that causes the greatest harm should be taken into account by committing the lesser of them."

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