

Redefining the Right of Sexual Enjoyment in Marriage: A Jurisprudential-Legal Reflection on the Role of Custom and the Challenges of the Digital Age

1. Samira Shariatnia[✉]: PhD Student, Department of Jurisprudence and Fundamentals of Islamic Law, Vap.C., Islamic Azad University, Tehran, Iran

2. Hassan Asadi*[✉]: Department of Jurisprudence and Fundamentals of Islamic Law, Vap.C., Islamic Azad University, Tehran, Iran

3. Akbar Ahmadi[✉]: Department of Jurisprudence and Fundamentals of Islamic Law, Vap.C., Islamic Azad University, Tehran, Iran

*Correspondence: asadihasan@iauvaramin.ac.ir

Abstract

The right of sexual enjoyment, as one of the fundamental rights and obligations arising from the marriage contract, has long been considered in Islamic jurisprudential and legal systems. However, social, cultural, and technological developments in the contemporary world have raised fundamental questions regarding the nature, scope, and manifestations of this right. The present article, adopting an analytical-critical approach and employing a comparative methodology between Imami jurisprudence and Iranian positive law, addresses three central issues: first, establishing the customary nature of the concept of sexual enjoyment and rejecting the existence of a specific religiously defined meaning (*ḥaḳīqah shar‘iyyah*) for it; second, substantiating the wife’s right to sexual enjoyment as a parallel, reciprocal, and claimable right corresponding to the husband’s right of sexual enjoyment; and third, providing a jurisprudential and legal analysis of the emerging phenomenon of sexual enjoyment in cyberspace. The findings of this study indicate that “sexual enjoyment” is an entirely customary concept for which the Sacred Legislator has referred the determination of its instances, limits, and manner of implementation to the common understanding of people (general custom) through the mechanism of “honorable marital conduct” (*mu‘āsharah bi al-ma‘rūf*). Based on the Qur’anic principle of reciprocity (*Al-Baqarah: 228*), the principle of mutuality of rights and obligations, and the principles of *lā ḍarar* (no harm) and *lā ḥaraj* (no hardship), the wife’s right to sexual enjoyment is established as a parallel and reciprocal right. Regarding virtual sexual enjoyment, by distinguishing between “legitimate preliminaries” and the “religiously prohibited domain,” a jurisprudential-legal framework is proposed for determining the rights and obligations of spouses. By presenting two theoretical models, namely “customarily recognized sexual enjoyment” and “reciprocal marital compliance in the digital age,” this article provides a coherent, flexible, and equitable framework for redefining the right of sexual enjoyment in today’s changing world.

Keywords: Right of sexual enjoyment, marital compliance, custom, honorable marital conduct, wife’s right to sexual enjoyment, virtual sexual enjoyment, Imami jurisprudence, Iranian Civil Code.

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1. Introduction

The family, as a sacred and foundational institution in Islam, is built upon principles such as affection, mercy, tranquility, and honorable marital conduct. In this context, the right of sexual enjoyment, as one of the fundamental and reciprocal rights and obligations of spouses, plays a central role in strengthening this foundation. This right, which is rooted in the verses of the Qur'an, the traditions of the Infallibles, and established jurisprudential principles, is also recognized in the Iranian legal system through provisions such as Article 1103 of the Civil Code, concerning good conduct, and Article 1108, concerning disobedience and the forfeiture of maintenance. Nevertheless, the main challenge in this area lies not in the existence of this right itself, but in determining its "conceptual scope" and "practical instances" within the context of contemporary social and cultural transformations (Katouzian, 1989). In common jurisprudential literature, discussion of the right of sexual enjoyment has generally been centered on the husband, while the wife is portrayed merely as the party obligated to marital compliance and to the satisfaction of the husband's sexual needs. This one-sided approach raises fundamental questions about gender justice in Islamic and Iranian family law: Does the wife, like the husband, possess the right of sexual enjoyment? Can she demand the fulfillment of her sexual and emotional needs from her husband and, in the event of the husband's refusal, benefit from legal and religious enforcement mechanisms? Is it even possible to speak of the "husband's obligation of marital compliance toward the wife"? In addition to this theoretical challenge, the remarkable development of communication and information technologies in the past century has transformed the lifeworld of contemporary human beings in an unprecedented manner and has added new dimensions to the issue of sexual enjoyment in marriage (Abbasi, 2012). Today, spousal relations are no longer limited to in-person interactions; rather, with the emergence of digital communication tools, new forms of marital relations have taken shape. This transformation has generated important questions in the fields of jurisprudence and law: Can sexual enjoyment between spouses in cyberspace be considered an instance of the right of sexual enjoyment? Just as the wife is obligated to marital compliance in physical space, is she also obligated to compliance in virtual space? And can the concept of "complete sexual enjoyment," as used in jurisprudential texts, be realized in a virtual context? In this regard, the role of "custom" as one of the sources for identifying religious and legal subject matters gains double significance. Jurisprudential texts have repeatedly indicated that some marital matters are subject to custom and that determining their instances falls within the authority of social custom. The question, however, is how this referral mechanism operates. Can custom play a determinative role in matters marked by generality and ambiguity? And in the event of conflict between general custom and special custom, which one should serve as the operative criterion?

The present article, with the aim of answering these fundamental questions, is organized around three main axes. The first axis analyzes the conceptual foundations of the right of sexual enjoyment and establishes its customary nature. The second axis examines and substantiates the wife's right of sexual enjoyment as a parallel and reciprocal right alongside the husband's right of sexual enjoyment. The third axis analyzes the emerging phenomenon of sexual enjoyment in cyberspace from jurisprudential and legal perspectives. Using a descriptive-analytical method and adopting a comparative approach between Imami jurisprudence and Iranian positive law, this article seeks to provide a coherent, equitable, and up-to-date framework for understanding and implementing the spouses' right of sexual enjoyment in the contemporary world.

2. Conceptual Analysis of the Right of Sexual Enjoyment and Establishing Its Customary Nature

2.1. Lexical and Technical Analysis of Sexual Enjoyment and Its Distinction from Parallel Concepts

The term "sexual enjoyment" is derived in Arabic from the trilateral root "m-t-a" and follows the verbal form of "istif'al." Prominent Arabic lexicographers, including Ibn Faris in *Mu'jam Maqayis al-Lughah*, have regarded the original meaning of this root as indicating "benefit and enjoyment accompanied by pleasure and continuity" (Rahbar, 2014). This original meaning, when placed in the "istif'al" form, which denotes seeking or requesting, develops into the concept of "seeking benefit and pleasure." Raghīb al-Isfahani, in *Mufradat*, defines sexual enjoyment as "long-term enjoyment and benefit" and contrasts it with temporary enjoyment, which denotes a fleeting benefit (Rahbar, 2014). This lexical subtlety indicates that sexual enjoyment in the context of marriage is not a momentary gratification, but rather a stable, continuous, and tranquil form of benefit; this is fully consistent with the Qur'anic objective expressed in "so that you may find tranquility in them" (Al-Rum:

21). In the Qur'an, the term "sexual enjoyment" appears in verse 24 of Surah Al-Nisa: "So for whatever you have enjoyed from them, give them their prescribed compensation." Although the occasion of revelation and the well-known interpretation of this verse among Imami jurists indicate temporary marriage, and although some jurists, such as Shaykh Tusi in *Al-Khilaf*, have regarded "sexual enjoyment" in this verse as possessing a specific religiously defined meaning in the sense of temporary marriage (Ghojaji Khameneh & Tayeb Hosseini, 2016), its primary lexical meaning cannot be ignored (Ghanei & Yazdanmehr, 2019). In itself, the term denotes every kind of benefit and pleasure-seeking and is not restricted to a particular type of marriage contract. In other words, a possible religiously defined meaning in this verse does not negate its general lexical meaning in other jurisprudential chapters. In jurisprudential and legal terminology, sexual enjoyment means the lawful enjoyment of spouses from one another within the framework of marital relations, including intercourse, touching, kissing, lustful looking, foreplay, erotic intimacy, and other lawful sexual interactions. The central point in conceptual analysis is the subtle distinction between this term and parallel concepts such as "marital compliance," "intercourse," and "good marital conduct." Lexically, marital compliance means "granting power and authority" and "placing oneself at another's disposal." In jurisprudential terminology, marital compliance is divided into general and specific compliance. General compliance means accepting the husband's authority within the framework of law and custom and performing other marital duties apart from sexual relations. Specific compliance, however, concerns acceptance of and readiness for ordinary sexual relations with one's spouse. The essential distinction is that "sexual enjoyment" is a "right" and an "act"; this right belongs to the person who enjoys the other party, which in traditional literature has primarily been the husband. By contrast, "marital compliance" is an "obligation" and a "state" imposed upon the other party, usually the wife (Alidoust & Sajedi, 2011). More precisely, sexual enjoyment is the aim and end, while marital compliance is the necessary means and prerequisite for achieving that aim. These two concepts are mutually entailed, and neither is meaningful without the other. "Intercourse" and "cohabitation," however, specifically refer to "complete sexual relations," namely penetration. By contrast, "sexual enjoyment" is a broader and more inclusive concept that also encompasses intercourse. This generality and inclusiveness constitute the main key to understanding the dynamism of jurisprudence in confronting emerging instances such as sexual enjoyment in cyberspace. Jurists who restrict the scope of sexual enjoyment to intercourse face difficulties in legally analyzing new instances, whereas those who accept its generality can define new instances under it on the basis of customary "honorability." "Good marital conduct," which has a Qur'anic basis (Al-Nisa: 19) and a legal basis in Article 1103 of the Civil Code, is a very broad concept and a "governing principle" over all relations between spouses. The right of sexual enjoyment and the obligation of marital compliance are both among the most evident and fundamental instances of good marital conduct in marital relations. In other words, customary sexual enjoyment, accompanied by consent, affection, and mutual respect, is the concrete manifestation of "honorable marital conduct." Whenever sexual enjoyment departs from its balanced, customarily acceptable, and religiously permissible path and results in harm, violence, humiliation, or conduct contrary to human dignity, it exits the sphere of the "honorable" and becomes reprehensible (Tabatabaei Yazdi, 1988).

2.2. *The Composite "Right-Obligation" Nature of Sexual Enjoyment and the Transition Beyond One-Sided Assumptions*

The question of the nature of the "right of sexual enjoyment" and whether this concept is merely a "right" of the husband and an "obligation" of the wife, or whether one can also speak of the "wife's right of sexual enjoyment" and the "husband's obligation," is one of the most fundamental debates in the philosophy of Islamic family law. The traditional and dominant reading in jurisprudence, relying on the apparent meaning of some proofs, has emphasized especially the husband's right and has considered marital compliance a one-sided obligation imposed on the woman. The roots of this view can be traced to several factors: first, the social and economic structure of premodern societies, which regarded male authority and the husband's exclusive responsibility for financial maintenance as established facts and, in return, defined the wife's obedience and marital compliance as the balancing element of this relationship; second, the appearance of certain Qur'anic expressions which, according to traditional interpretation, imply a kind of ownership or authority of the man over the woman, such as the phrase "your wives are a tilth for you" (Al-Baqarah: 223); and third, narrations that, using particular wording, require the wife to fulfill the husband's "need" and, in some reports, praise the wife's maximum obedience in this regard through figurative language. Against this view, there exists a more balanced and equitable reading of religious texts, according to which the nature of the "right of sexual enjoyment" may be understood as a "reciprocal obligation" or a bilateral "right-obligation." The cornerstone

of this theory is verse 228 of Surah Al-Baqarah, which states: “And they have rights similar to those upon them, according to what is honorable.” This verse is a golden rule and a foundational principle in family law. The word “similar” in this verse denotes equivalence, parity, and balance in rights and obligations. It is self-evident that, due to the natural differences between women and men, this “similarity” does not mean complete identity or sameness of rights and obligations; rather, it indicates that whenever a right is created for the husband, a corresponding and balanced obligation arises for him toward the wife, and vice versa. This balance and parity are themselves limited and regulated by the phrase “according to what is honorable”; that is, the criterion for identifying the limits of these reciprocal rights and obligations is “approved custom.” In addition, the principle of “commonality in cause and rationale” also supports this view. The philosophy behind the legislation of marriage and the permissibility of sexual enjoyment is the “preservation of religion and worldly life,” “protection of sexual chastity,” “creation of tranquility and peace,” and “prevention of moral corruption.” These rationales are common to both women and men. If the man’s sexual need is answered through the “right of sexual enjoyment” so that he may be protected from sin and deviation, then, a fortiori, the woman’s sexual need must also be answered in the same manner (Ghojaei Khameneh & Tayeb Hosseini, 2019). Apparent differences in the manner in which sexual desire is expressed in women and men cannot lead to the “denial of the very existence of desire” in women or the “negation of the right to its fulfillment.” From rational and customary perspectives as well, this argument gains strength. Sexual instinct is a primary and innate need shared by women and men. Just as the suppression of this instinct in men can lead to hardship, distress, and moral corruption, the same is true for women. If the philosophy behind the legislation of marriage and the husband’s right of sexual enjoyment is “preserving his religion and worldly life” through the lawful satisfaction of instinct, this rationale applies, a fortiori, to the wife as well. It cannot be accepted that the Wise Lawgiver would establish a right for the protection of men from sin while leaving women unsupported against the harms caused by sexual deprivation.

2.3. *An Usuli Analysis of Religious Legal Meaning and Emphasis on the Customary Subject Matter of Sexual Enjoyment*

To establish that “sexual enjoyment” is a “customary subject matter” and not a “religiously defined meaning,” this usuli theory must be analyzed precisely. A religiously defined meaning means that the Sacred Legislator has taken a word that had a meaning in language and custom and assigned it a new and specific meaning, such that the word, without any contextual indicator, turns toward that new meaning. The most famous example is the term “prayer,” which in Arabic originally means “supplication” and “seeking mercy,” but the Lawgiver assigned it to a “specific act of worship” with particular elements and conditions. In this case, “prayer” possesses a religiously defined meaning, and the jurist, in deriving rulings from the proofs, cannot interpret it according to its lexical meaning of supplication. To identify the existence of a religiously defined meaning, several elements must be established: first, the existence of an explicit or gradual designation by the Lawgiver or by the religious community; second, the abandonment of the original lexical and customary meaning; and third, the inclination of the minds of religious people toward the new meaning without contextual evidence. Now, do these elements exist with regard to the word “sexual enjoyment”? It appears that the answer is negative (Ziaei & Rostami, 2017). Although some jurists, such as Shaykh Tusi, have claimed that the word “sexual enjoyment” in verse 24 of Surah Al-Nisa acquired a religiously defined meaning in “temporary marriage” (Ghojaei Khameneh & Tayeb Hosseini, 2016), this claim is open to criticism for two reasons. First, this religiously defined meaning is “specific to the context of the verse on temporary marriage” and has no implication for other verses and narrations. When narrations speak of the “husband’s sexual enjoyment of the wife,” the mind does not turn toward “temporary marriage,” but rather toward the lexical meaning of “taking pleasure.” Second, and more importantly, even in the meaning of temporary marriage, the religiously defined meaning does not negate the lexical meaning; rather, this contract has been called “sexual enjoyment” because its primary aim and purpose is “sexual enjoyment and pleasure” for a specified period. Therefore, the spirit of the lexical meaning is preserved even within this religiously defined meaning (Al-Hurr al-Amili, 2020). Accordingly, in the domain of permanent spousal relations, there is no doubt that “sexual enjoyment” has neither a religiously defined meaning nor a juristically defined meaning, and is an entirely customary concept that the Lawgiver has entrusted to the ordinary understanding of people. Establishing this point has very important consequences in jurisprudence and law: first, it becomes possible to expand or restrict the scope of the instances of sexual enjoyment in accordance with customary transformations; second, in identifying religious limits, custom can fill the sphere of permissibility and the

discretionary area; and third, determining the instances of disobedience, non-compliance, misconduct, and their enforcement mechanisms becomes entirely dependent on the customary nature of these concepts.

3. Jurisprudential-Legal Analysis of the Wife's Right of Sexual Enjoyment as a Parallel and Reciprocal Right

3.1. *The Historical and Jurisprudential Background of the Issue and the Grounds for Its Marginalization*

A historical and genealogical examination of the wife's right of sexual enjoyment shows that this issue has undergone many fluctuations in different periods of Islamic jurisprudence and has always been influenced by specific cultural, social, and methodological factors. In the earliest periods of Islamic jurisprudence, namely the age of legislation and the period of the presence of the Infallible Imams, the question of women's sexual rights, although not expressed in today's terminology and titles, can be traced in the questions of narrators and the responses of the Infallibles. Reference to early hadith compilations such as *Al-Kafi*, *Tahdhib*, and *Man La Yahduruhu al-Faqih* shows that questions were raised concerning "the woman's right over the husband in cohabitation," "the permissible duration for the husband to abandon sexual relations," and "the man's obligations in fulfilling his wife's emotional-sexual needs." The famous narration from Imam Al-Sadiq, in which he responds to a question about the wife's rights over the husband by ruling on the obligation of "cohabitation once every four months" and the impermissibility of "withdrawal and abandonment of relations beyond that period" (Mousavi Khoei, 1997), indicates that, even in that period, the woman's sexual right was recognized as a "religious claim." Likewise, numerous narrations recommending men to engage in "foreplay with the wife," "pre-coital stimulation," and "avoidance of hurried and harsh conduct," and prohibiting "intercourse without foreplay," all indicate the existence of an ethical-legal system concerned with mutual consent and pleasure in marital relations. Nevertheless, with the transition from the age of the presence to the age of occultation and the gradual formation of argumentative jurisprudence, this dimension of women's rights gradually became less prominent. Several factors contributed to this marginalization: first, the dominance of "patriarchal culture" over medieval Islamic societies, in which women were essentially defined as dependent beings under male guardianship; second, "methodological limitations" in the early periods of jurisprudential codification, which were mostly centered on "specific textual proofs" and "particular rules"; third, the "intermingling of ethics and jurisprudence," which caused narrational recommendations concerning women's rights to be generally interpreted as recommended conduct and emptied of legal force and enforcement mechanisms; and fourth, a "restrictive interpretation of the concept of marital compliance," which limited it to "non-prevention" and "bodily submission" and ignored its affirmative and qualitative dimensions (Al-Najafi, 1984).

3.2. *Jurisprudential Foundations for Establishing the Wife's Right of Sexual Enjoyment*

Against the dominant view, which regards the right of sexual enjoyment as a unilateral right of the husband, the preferred view in this study is the "reciprocity and parallelism of the spouses' right of sexual enjoyment." According to this view, the right of sexual enjoyment is not a unilateral right of the husband, but a reciprocal "right-obligation" for both parties to marriage. The foundations of this view are as follows. First: the Qur'anic principle of similarity. Verse 228 of Surah Al-Baqarah explicitly states: "And they have rights similar to those upon them, according to what is honorable." This verse is a "foundational principle" and a "golden rule" in family law. The word "similar" in this verse expresses "equivalence" and "balance" between the rights and obligations of spouses. If the wife bears the obligation of "marital compliance" and "fulfilling the husband's sexual need," then the "similar" obligation also rests upon the husband, and that is nothing other than his obligation of "marital compliance" and "fulfilling the wife's sexual need." The phrase "according to what is honorable" also regulates this equivalence within the framework of "approved custom." Allameh Tabatabaei writes in *Al-Mizan* under this verse: "What is meant by similarity is equality in the essence of right and obligation, not in quantity and quality" (Katouzian, 1989).

Second: the principle of commonality in cause and rationale. The philosophy behind the legislation of marriage and the permissibility of sexual enjoyment is the "preservation of religion and worldly life," "protection of sexual chastity," "creation of tranquility and peace," and "prevention of moral corruption." These rationales are shared by women and men. If the man's sexual need is answered through the "right of sexual enjoyment" so that he may be protected from sin and deviation, then, a fortiori, the woman's sexual need must also be answered in the same manner. Apparent differences in the manner in which

sexual desire manifests in women and men cannot lead to the “denial of the very existence of desire” in women or the “negation of the right to its fulfillment.”

Third: the principles of no harm and no hardship. There is no doubt that “long-term sexual deprivation” and “the absence of satisfying sexual relations” can result in “harm” and “hardship” for the wife. This harm includes physical, psychological, emotional, and even social dimensions. According to the principles of “no harm” and “no hardship,” anything that causes harm or hardship to a Muslim is negated. Therefore, it cannot be accepted that the husband, through unjustified refusal to perform his marital duty, may cause harm and hardship to his wife. This principle implicitly establishes the “wife’s right of sexual enjoyment” and the “husband’s obligation to fulfill it” (Mohaghegh Damad, 1993).

Fourth: implied customary condition and rational practice. In every contract, there exists a set of “implied conditions” and “customary presumptions” which, although not explicitly stated in the text of the contract, are understood by the parties when they conclude it. In the marriage contract as well, “the reciprocal fulfillment of sexual needs” is an “implied customary condition.” When a woman and a man marry one another, both have, in the background of their minds, the expectation that the other party will fulfill their sexual needs within ordinary limits. This expectation and presumption amount to an “implied condition” in the marriage contract, which is binding pursuant to the rule that “believers are bound by their conditions” and the principle of fulfilling contracts.

3.3. *Legal Analysis of the Derivability of the Wife’s Right of Sexual Enjoyment from the Civil Code*

Although the Iranian Civil Code has not explicitly addressed this matter under the title of “the wife’s right of sexual enjoyment,” this does not mean that such a right is absent from the Iranian legal system. Through analysis of existing legal provisions and the use of interpretive capacities, this right can be derived from the law. First: Article 1103 of the Civil Code. This article provides: “Husband and wife are obligated to maintain good conduct toward one another.” In today’s custom, “good conduct” within the family is not limited merely to “providing housing and food”; it also includes “fulfilling emotional and sexual needs,” “expressing affection,” “seeking the spouse’s satisfaction,” and “avoiding harmful and humiliating behavior.” A husband who, without a justified excuse, refuses sexual relations with his wife, or who, in such relations, thinks only of his own pleasure and disregards the wife’s needs and inclinations, has in practice violated the “obligation of good conduct” and has engaged in “misconduct.” Second: Article 1102 of the Civil Code. This article provides: “As soon as marriage is validly concluded, marital relations between the parties come into existence, and the rights and obligations of the spouses toward one another are established” (Rahbar, 2014). A precise analysis of the words of this article reveals profound implications for the reciprocity of rights and obligations. The phrase “rights and obligations of the spouses,” using the plural form and attributing them to “the spouses,” indicates the plurality of right-holders and duty-bearers. The phrase “toward one another” also shows that these rights and obligations are defined mutually and in relation to each other. Whenever a right is created for one party, a corresponding obligation is placed upon the other. Third: Article 1104 of the Civil Code. This article obligates spouses to “assist each other in strengthening the foundations of the family and raising their children.” “Strengthening the foundations of the family” and “mutual assistance” are broad and general concepts that can also include “the reciprocal fulfillment of sexual needs.” How can a family in which one party ignores the sexual needs of the other “strengthen” its “foundations” (Al-Shahid al-Thani, 1992)?

Fourth: the opposite implication of Article 1108 of the Civil Code. Although this article appears to concern the “wife’s obligation,” its opposite implication is that “if the husband refuses to perform marital duties without a legitimate impediment, the wife will still be entitled to maintenance, and in addition, she may benefit from other enforcement mechanisms.” This opposite implication shows that “marital duties” are not imposed only on the woman; rather, the man too has “duties,” and in the event of refusal, he will face enforcement consequences.

4. Custom and Its Role in Determining the Instances of the Right of Sexual Enjoyment

4.1. *Jurisprudential Analysis of the Basis of “Treat Them Honorably” and Its Relation to Sexual Enjoyment*

The noble verse “And treat them honorably” (Al-Nisa: 19) is one of the principal legal verses in the field of family law and may be called the “ethical and legal charter of the family.” The command “treat them” is derived from the root meaning

companionship and close association, signifying life accompanied by intimacy, association, cohabitation, and close, affectionate interaction. This word conveys a meaning beyond merely “living next to one another” and indicates a form of emotional, psychological, and bodily intertwining. For this reason, some lexicographers have also interpreted it as meaning sexual intercourse, which shows its semantic proximity to sexual enjoyment. The central core of this command is the qualification “honorably.” “Honorability” is a three-dimensional concept whose scope is determined by a combination of reason, religion, and custom (Tabatabaei Yazdi, 1988). The first dimension is “reason.” In this dimension, honorable conduct is anything that sound reason and pure human nature recognize as good, beautiful, and proper. The second dimension is “religion.” Honorability is defined within the framework of religious rulings and values. The third dimension is “custom,” referring to accepted and established practices, traditions, and behaviors among the general public, that is, general custom. The key point here is the connection among these three dimensions. In the noble verse, “honorability” is a concept in which the three elements of reason, religion, and custom are interwoven. Inspired by this verse, Imami jurists have established important rules. The late Allameh Bahrani, in *Al-Hada'iq al-Nadira*, considers the wife’s performance of the preliminaries of sexual enjoyment obligatory not merely as a “prerequisite of an obligation,” but directly on the basis of the “verse of honorable conduct” (Makarem Shirazi, 2003). He maintains that whatever, according to the “honorability” of the time, is necessary for the realization of good and complete marital conduct is obligatory upon the wife (Makarem Shirazi, 2003).

4.2. *The Position of Custom in Identifying the Subject Matters and Instances of Religious Rulings*

In the system of jurisprudential inference, custom cannot serve as a source for legislating or abrogating religious rulings, but in identifying the “subject matters” of rulings and determining their “instances,” it plays a unique and determinative role. This rests upon an important presupposition in the philosophy of Islamic jurisprudence: that the Sacred Legislator, in expressing rulings, has adopted the method of “general custom” and “rational discourse,” leaving concepts to the ordinary understanding of people except where a “religiously defined meaning” or a “juristically defined meaning” has been established for a concept. Imami jurists believe that the Sacred Legislator, when legislating and expressing rulings, acts like a rational lawgiver and uses the method and logic of rational people in discourse, explanation, and understanding. One of the basic pillars of this rational method is “referral to custom” in understanding the meanings of words and identifying subject matters. Therefore, whenever the Lawgiver uses a word and does not establish a contextual indicator showing the intention of a specific meaning, that word is understood according to its customary and rational meaning. Consequently, acting upon custom is acting upon the “apparent meaning of the Lawgiver’s speech,” and the authority of custom derives from the authority of “apparent meaning.” In the issue of “sexual enjoyment” and its “preliminaries,” as assumed, no “religiously defined meaning” or “juristically defined meaning” has been established. The Sacred Legislator has used this word in its lexical and customary meaning of “benefit and pleasure-seeking.” This means that determining which behavior constitutes “sexual enjoyment,” what counts as its “preliminaries,” and what the scope of “obligatory marital compliance” is, has been entirely entrusted to general custom and the ordinary understanding of people in every time and place (Makarem Shirazi, 2003).

4.3. *Referral to Custom in Cases of Generality and Ambiguity in the Proofs*

In jurisprudential inference and legal interpretation, whenever a word or legal proof lacks sufficient clarity and precision in indicating its instance, we are faced with the phenomenon of “generality” or “ambiguity.” Generality in religious texts and legal provisions concerning sexual enjoyment is rooted in the nature of this concept and in the mode of expression adopted by the Lawgiver and the legislator. For example, the noble verse “Your wives are a tilth for you, so come to your tilth however you wish” (Al-Baqarah: 223), which expresses the scope of sexual enjoyment, is ambiguous or at least unclear in several respects. Questions such as what is meant by “however you wish,” whether this phrase concerns only the time and place in which intercourse is permissible or extends further to the manner and quality of sexual enjoyment, and whether this “wishing” is absolute or restricted by “honorability,” all indicate degrees of ambiguity in the text that prevent it from having complete and interpretation-independent meaning. Article 1108 of the Civil Code is not free from this ambiguity either. It provides: “If the wife refuses to perform marital duties without a legitimate impediment...” The phrase “marital duties” in this article is a general and broad expression for which the legislator has not provided a precise definition. Do these duties include only

“specific marital compliance,” or do they also include “sexual enjoyments” in the general sense, “the preliminaries of sexual enjoyment,” and even “the fulfillment of the husband’s emotional-psychological needs”? This ambiguity necessitates the existence of an “interpreter” and “indicator” for determining the scope of the ruling (Al-Shahid al-Thani, 1992). It is here that “custom” enters as the main clarifier and interpreter of these generalities and ambiguities. Custom answers these questions by providing a “shared understanding” and an “ordinary practice.” In other words, the Lawgiver and the legislator, either intentionally or by virtue of the nature of these concepts, have expressed them generally and entrusted the determination of instances and the removal of ambiguity to “customary understanding.”

4.4. *The Role of General Custom in Relation to Special Custom*

To determine the final criterion for identifying instances of sexual enjoyment, it is indispensable to distinguish between “general custom” and “special custom.” “General custom” means a practice, behavior, and understanding in which the overwhelming majority of members of a broad society participate, regardless of their particular religious, ethnic, class, or gender affiliations. This custom possesses “inclusiveness” and “generality.” By contrast, “special custom” refers to practices and behaviors prevalent in a specific social group, geographical region, ethnic group, profession, or even family. The primary principle and rule is the “validity of general custom” and the “non-validity of special custom” in determining concepts that serve as the basis of law and jurisprudence for society as a whole. This is because when the Sacred Legislator attaches a ruling to a customary subject matter, such as “marital duties” or “honorable marital conduct,” the apparent meaning of the address is directed to all legally responsible persons across times and places. Therefore, to interpret these addresses and determine their instances, one must refer to an understanding that is “shared” among all addressees, and that understanding is nothing other than “general custom.” Nevertheless, “special custom” may be valid in one case: where it becomes an “implied condition” or “contractual custom” between the parties. If spouses live in a particular region with a particular custom, and both are “aware” of that custom and have implicitly expressed their “consent” to it, it may be said that this special custom has entered their marriage contract as a “constructive condition” or “customary condition” and is binding upon them (Ghojajei Khameneh & Tayeb Hosseini, 2016).

5. **Sexual Enjoyment in Cyberspace: A New Challenge in Family Jurisprudence and Law**

5.1. *Cyberspace as a “Second Lifeworld” and Its Impact on Spousal Relations*

The remarkable development of communication and information technologies in the past century has transformed the lifeworld of contemporary human beings in an unprecedented way. Cyberspace should not be regarded merely as a “communication tool” alongside other tools, such as the telephone; rather, it should be understood as a “second lifeworld” and a “new existential sphere” for contemporary human beings. With its unique characteristics, this space has transformed the nature of “presence,” “interaction,” and “experience.” The first characteristic of cyberspace is “remote presence.” In this space, a person can “meet,” “converse,” and even share “feelings” and “emotions” with another without being physically present in a location. Although this type of presence is not physical presence, it cannot in any way be reduced to “absence.” It is a kind of “virtual presence” that leaves real psychological and emotional effects on individuals (Mousavi Khomeini, 1997). The second characteristic is “remote sexual arousability.” Scientific research shows that visual, auditory, and even textual stimuli can effectively cause sexual arousal in human beings. The human brain is the largest sexual organ, and imagination, mental imagery, and the reception of sensory stimuli from a distance can activate the sexual response cycle. Therefore, the idea that “sexual relations” are limited solely to “physical contact between organs” is not compatible with contemporary scientific findings. Today, many spouses, due to work obligations, long journeys, geographical distance, or even contagious diseases, have transferred a significant portion of their emotional and sexual interactions to cyberspace. For such individuals, cyberspace is not a “temporary and emergency substitute,” but has become “the main platform for the continuation of marital life.” Under these circumstances, “virtual sexual enjoyment” is not a “pastime” or “superfluous matter,” but a “necessity” for preserving the integrity of the family and preventing its collapse (Al-Shahid al-Thani, 1992).

5.2. *Typology of Virtual Sexual Interactions and Their Jurisprudential-Legal Challenges*

Sexual interactions in cyberspace include a broad spectrum of acts that may have different jurisprudential and legal rulings. The first type is “verbal and textual communication with emotional-sexual content.” This type of interaction includes the exchange of text messages, voice messages, and internet phone calls whose content involves expressions of love, affection, sexual descriptions, shared fantasies, and mutual verbal stimulation. The main challenge in this type of interaction is “the boundary between lawful and unlawful pleasure.” The second type is “the sending and exchanging of private images and videos,” or sexting. This type of interaction includes photographing and filming the body, private parts, or sexual acts and sending them to one’s spouse. The challenges of this type of interaction are much more serious. The first challenge is “security and privacy.” In cyberspace, the risk of hacking, involuntary dissemination, and misuse of these images is very high. The second challenge is “the prohibition of image-making and viewing obscene images” (Al-Najafi, 1984).

The third type is “live video calls with sexual content.” This type of interaction involves a live video call in which spouses see each other in real time and engage in mutual sexual stimulation and satisfaction. This is the closest form to in-person sexual relations. The main challenge here is whether this act is an instance of masturbation, which is intrinsically prohibited, or whether, because of the spouse’s presence, even if virtual, it exits the scope of prohibition.

The fourth type is “the use of remote smart sexual devices,” known as teledildonics. This is the newest form of virtual sexual interaction, involving internet-connected sexual devices through which one spouse can remotely control a device attached to the body of the other spouse.

5.3. *Jurisprudential Analysis of the Concept of Complete Sexual Enjoyment and the Possibility of Its Realization in a Virtual Context*

To answer the question of whether “virtual sexual enjoyment” can be considered an instance of the “right of sexual enjoyment” in the marriage contract, one must first examine the concept of “complete sexual enjoyment” in jurisprudence and identify its constitutive elements. “Complete sexual enjoyment” in jurisprudential literature is a concept mostly used in contrast to “incomplete sexual enjoyment,” such as enjoyment from a minor wife or preliminary forms of sexual enjoyment, and important legal effects such as “full establishment of the dower,” “obligation of the waiting period after divorce,” and “perpetual prohibition in some cases” are attached to it (Mousavi Khoei, 1997).

From an analysis of the opinions and statements of jurists, three main elements can be identified for the realization of “complete sexual enjoyment.” The first element is “the capacity and possibility of obtaining sexual pleasure.” This element can be fully realized in virtual sexual enjoyment. The second element is “direct involvement and participation of both parties.” This element can also be realized in virtual sexual enjoyment. Live video calls, the exchange of messages and images, and even remote control of sexual devices are all instances of “reciprocal interaction” and “participation” by spouses in a shared sexual act. The third element is “religious lawfulness and legitimacy,” which is the most important and at the same time the most challenging element. For a form of “sexual enjoyment” to constitute an instance of the spouses’ “right” and to possess religious and legal effects, it must be “lawful” and “permissible.”

In the comparative analysis of “intercourse” and “virtual enjoyments,” the principal point of distinction is “the absence of physical contact.” In intercourse, “penetration” occurs, whereas in virtual enjoyments, there is no direct physical contact between the spouses’ sexual organs. This difference has important jurisprudential effects. For example, “major ritual impurity,” which is one of the rulings of intercourse, is not realized through virtual sexual enjoyment. Likewise, “marital capacity through consummation,” meaning permanent marriage accompanied by penetration and serving as a condition for the implementation of the punishment of stoning, is not realized through virtual sexual enjoyment. This shows that, from a jurisprudential perspective, “virtual sexual enjoyment” never fully replaces “intercourse” and occupies a lower rank than it (Tabatabaei Yazdi, 1988).

5.4. *A Jurisprudential Framework for Distinguishing Lawful Preliminaries from the Religiously Prohibited Zone*

In light of the foregoing analyses, it is possible to present a standard fatwa-oriented framework based on the distinction between “lawful preliminaries” and the “religiously prohibited zone.” The first domain consists of lawful preliminaries of

virtual sexual enjoyment. There are a set of virtual interactions that are “intrinsically lawful” and do not “entail a prohibited act.” These interactions may be used as “preliminaries and preparation” for in-person sexual relations or as a “minimal means of fulfilling emotional-sexual needs” under conditions of distance and necessity. Instances of this domain include emotional and affectionate conversation through text, voice, and video messages; video calls with customary Islamic covering, without exposing the private parts and without prohibited sexual intent, solely for “virtual meeting” and “reducing longing”; and expressions of feelings and affectionate descriptions while avoiding vulgar and obscene words. The second domain is the religiously prohibited zone. There are a set of virtual interactions that “entail a definitively prohibited act” and cannot constitute the subject of a religious “right” or “obligation.” The most evident instances of this domain include masturbation in any form, whether by the individual alone, with the virtual participation of the spouse, or through remote control of a device; exposing and viewing the private parts, front or back, directly through a video call or indirectly through sending images and videos; and photographing and recording sexual acts and private organs, which, due to the high risk of disclosure and misuse, is highly problematic and subject to serious caution even with the consent of both parties. The third domain is the zone of doubt and disagreement. Between these two domains lies a gray area in which jurists disagree. Examples include “looking at an image of the spouse’s body without exposure of the private parts” or “exchanging sexual messages without masturbation.” In this area, the principle of caution applies (Makarem Shirazi, 2003).

5.5. *Legal Analysis in Light of Article 1108 and the Concept of Marital Compliance in the Digital Age*

The main question in legal analysis is whether, in light of Article 1108 of the Civil Code and the concept of “marital compliance,” “virtual sexual enjoyment” can be considered part of “marital duties,” such that refusal of it would constitute “disobedience” and lead to the forfeiture of maintenance. Answering this question depends on customary analysis of the subject matter and on distinguishing between “ordinary conditions” and “emergency conditions.”

Under “ordinary conditions,” where spouses live together and “in-person specific marital compliance” is fully possible, “general custom” does not regard “virtual sexual enjoyment” as part of “marital duties.” If, under these circumstances, a husband asks his wife to engage in “virtual relations” with him instead of in-person relations, and the wife refuses, this refusal is in no way considered “disobedience.” However, under “emergency conditions,” such as the husband’s long-term travel, the wife’s contagious illness that prevents physical contact, the husband’s imprisonment, or any other circumstance that makes “in-person specific marital compliance” impossible for a long period, the customary analysis differs (Alidoust & Sajedi, 2011).

Under these circumstances, “custom” and “equity” indicate the existence of an “obligation” for the wife and, reciprocally, for the husband. When the husband, in order to secure the family’s livelihood, is compelled to endure prolonged distance from his wife, “good conduct” and “mutual assistance in strengthening the foundations of the family” under Articles 1103 and 1104 require the wife as well to use all “lawful and customary tools” to preserve the emotional and moral integrity of the family. One of these tools is “emotional and intimate virtual communication” within the framework of lawful preliminaries. Nevertheless, the enforcement consequence of refusing lawful virtual sexual enjoyment under emergency conditions is not “forfeiture of maintenance,” but rather other measures may be conceivable, such as “judicial compulsion to perform the duty,” “impact on a divorce claim” as one of the indications of misconduct, and “the possibility of claiming moral damages.”

6. Conclusion

The present study, through an in-depth examination of the jurisprudential, legal, and usuli layers of the “right of sexual enjoyment,” reached fundamental findings that can open new horizons in Islamic and Iranian family law. The findings of this study may be summarized under several main axes. First: the customary nature of the subject matter of sexual enjoyment. This study established that “sexual enjoyment” is a customary concept lacking a “religiously defined meaning” or “juristically defined meaning.” The Sacred Legislator has used this word and its related concepts in the lexical and customary sense of “benefit and pleasure-seeking” and has referred the determination of its instances, limits, and mode of implementation to the ordinary understanding of people, namely general custom, through the mechanism of “honorable marital conduct.” Accordingly, custom, as a rational, dynamic, and rule-governed instrument, plays the role of “revealing the Lawgiver’s intent”

and “interpreting the legislator’s will,” serving as the “connecting bridge” between fixed texts and changing social realities. Second: establishing the wife’s right of sexual enjoyment as a parallel and reciprocal right. By presenting a comprehensive argument based on firm foundations such as the Qur’anic principle of similarity (Al-Baqarah: 228), the principle of reciprocity of rights and obligations under Article 1102 of the Civil Code, the principle of commonality in cause and rationale, the principles of no harm and no hardship, and implied customary condition, this study established the wife’s right of sexual enjoyment as a parallel, reciprocal, and claimable right corresponding to the husband’s right of sexual enjoyment. In light of this finding, the concepts of “marital compliance” and “disobedience” were also redefined: “marital compliance” was elevated from a one-sided and female-oriented concept to “the reciprocal obligation of each spouse to provide the possibility of lawful and customary sexual enjoyment for the other party,” and “disobedience” was recognized as a phenomenon that can also be committed by the husband. Third: presenting a framework for analyzing sexual enjoyment in cyberspace. By adopting a balanced approach free from excess and negligence, and by distinguishing between “lawful preliminaries,” such as emotional conversation and customary video calls, and the “religiously prohibited zone,” such as masturbation and exposure of the private parts, this study presented a jurisprudential-legal framework for determining the rights and obligations of spouses in the realm of virtual sexual enjoyment. According to this framework, under ordinary conditions, virtual sexual enjoyment is not part of marital duties; however, under emergency conditions, its lawful preliminaries may be regarded as part of the obligations arising from good conduct and mutual assistance in strengthening the foundations of the family. Fourth: presenting two complementary theoretical models. This study presented the two theoretical models of “honorable sexual enjoyment” and “reciprocal marital compliance in the digital age” as coherent, flexible, and equitable frameworks for regulating spousal relations in today’s changing world. The model of “honorable sexual enjoyment” indicates that the right of sexual enjoyment is a dynamic, equitable, and human-dignity-oriented right whose limits and instances are constantly being redefined and adapted to emerging needs within the dynamic context of general custom and within the framework of the elevated principles of sacred religion. The model of “reciprocal marital compliance in the digital age” also emphasizes that marital compliance is a bilateral ethical-legal obligation that operates both in physical space and, within lawful limits, in cyberspace.

Based on the findings of this study, the following practical recommendations are offered.

First: “Reform and completion of laws.” It is recommended that the legislator, by making the necessary amendments to the Civil Code, especially Articles 1102, 1103, and 1108, explicitly recognize the “wife’s right of sexual enjoyment” and the “husband’s obligation of reciprocal marital compliance,” and define “the husband’s disobedience” and its enforcement mechanisms. Second: “Formulation of judicial guidelines and a unifying precedent.” It is recommended that the judiciary formulate “comprehensive guidelines for adjudicating claims related to the sexual rights and obligations of spouses,” and that the Supreme Court, by issuing a unifying precedent, clarify “the husband’s obligation of marital compliance toward the wife” and “the limits of spouses’ virtual obligations.” Third: “Development of specialized arbitration and mediation institutions.” Given the private and delicate nature of such disputes, it is recommended that, before a claim is filed in court, the matter be referred to “specialized arbitrators and mediators,” including clinical psychologists, family counselors, and trained sex therapists. Fourth: “Education and enhancement of public awareness.” It is recommended that, by using the capacities of media and educational institutions, a scientific, ethical, and religious discourse be formed regarding the reciprocal sexual rights and obligations of spouses and the opportunities and threats of cyberspace for the family.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

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