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Maintenance of Relatives

Who are the relatives entitled to maintenance and who amongst them is liable to provide maintenance?
What are the conditions which make such maintenance *wajib*?

Definition of a Relative's Maintenance

According to the Hanafi's, the criterion for the responsibility of the relative to provide maintenance of another is the prohibited degree of marriage, so that if one of them is supposed a male and the other a female, marriage between them would be considered *haram*.

Therefore, this responsibility includes fathers—how high so ever—and sons—how low so ever—and also includes brothers, sisters, uncles and aunts, both paternal and maternal, because marriage between any two of them is prohibited.

The nearest relative shall be liable to provide maintenance, and affinity here has nothing to do with the title to inheritance. Therefore, if there is someone in the two classes of lineal ascendants and descendants, maintenance will be *wajib* on him, even if he is not entitled to inherit (from the person he is liable to maintain). One not belonging to these two classes will not be liable to provide maintenance, though he should be entitled to inherit. For example, if a person has a daughter's son and a brother, his maintenance will be *wajib* upon the former and not the latter, though the latter alone be entitled to the entire legacy to the exclusion of the former (*al-Durar fi sharh al-Gharar*, vol. 1, *bab al-nafaqat*).

Similarly, between two relatives of the same class, the nearer one will be responsible, even if he isn't entitled to any share in the legacy. Therefore, if a child has a paternal great grandfather and a maternal grandfather, his maintenance will be *wajib* upon the latter not the former, though the former should be an heir to the exclusion of the other. The secret here is that the maternal grandfather is nearer though he does not inherit, while the paternal great grandfather is comparatively distant, though he is an heir.

The Hanafis also state: The well-to-do son is responsible for the maintenance of his indigent father's wife, and he is also liable to get his indigent father married if he needs a wife.

The Malikis observe: Maintenance is *wajib* only on parents and children, not on other relatives. Thus, a grandson is not responsible to maintain his paternal or maternal grandfathers or grandmothers, and, reciprocally, a grandfather is not liable to maintain his grandsons and granddaughters. On the whole, the responsibility for maintenance is limited to parents and children, to the exclusion of grandparents and grandchildren.

They also state: It is *wajib* upon a well-to-do son to maintain the servant of his indigent parents, even if they don't need him; but it is not *wajib* for a father to maintain his son's servant. A son is also liable to maintain his father's wife and her servant and have his father married to one or more wives, if one wife does not suffice.

The Hanbalis state: It is *wajib* that fathers, how high so ever, provide and receive maintenance. Similarly, it is *wajib* that sons, how low so ever, provide and receive maintenance, irrespective of their title to inheritance. Maintenance of relatives not belonging to the two classes is also *wajib* if the person liable to provide maintenance inherits from the person being maintained either by *fard*¹ or by *ta'sib*²; but if excluded from inheritance, he will not be responsible for maintenance. Thus, if a person has an indigent son and a well-to-do brother, neither may be compelled to maintain him, because the son's indigence relieves him of the responsibility, and the brother by being excluded from inheritance due to the son's presence (*al-Mughni*, vol. 7, *bab al-nafaqat*).

They also state: It is *wajib* on the son to arrange for his father's marriage and to maintain his wife, in the same way as it is *wajib* on the father to have his son married if he is in need of marriage.

According to the Imamiyyah and the Shafi'i schools, it is *wajib* for sons to maintain their fathers and mothers, how high so ever, and it is *wajib* for fathers to maintain sons and daughters, how low so ever. The obligation of maintenance does not transcend these two main lineal classes to include others, such as brothers and paternal and maternal uncles.

But the Shafi'is are of the view that a well-to-do father is liable to have his indigent son married if in need of marriage: and a son is likewise bound to arrange for his indigent father's marriage if in need of marriage. Moreover, the liability for a person's maintenance includes the maintenance of his wife (*Maqsad al-nabih*, *bab nafaqat al-'aqarib*).

Most Imamiyyah legists state: It is not *wajib* to arrange for the marriage of a person whose maintenance is *wajib*, irrespective of whether he is father or son. Similarly, it is not *wajibi* for a son to maintain his father's wife if she is not his mother, or for a father to maintain his son's wife, because the canonical proofs (*adillah*) which make maintenance *wajibi* include neither the father's wife nor the son's, and an obligation is assumed to be non-existent until proved.

Conditions for the Wujub of Maintenance

The following conditions are necessary for making the maintenance of one relative *wajib* upon another.

1. The person to be maintained must be in need of maintenance. Therefore, maintaining a person who is not needy is not *wajib*. The schools differ regarding a person who is needy and can earn his livelihood but does not do so, as to whether it is *wajib* to maintain him or not.

The Hanafi and the Shafi'i school state: The inability to earn is not a necessary condition for the *wajib* of the maintenance of fathers and grandfathers. Therefore, their maintenance is *wajib* on sons even if they have the ability to work but neglect to do so. Regarding other relatives who are able to make a living for themselves, their maintenance is not *wajib*; rather, they will be compelled to make a living, and a one who neglects to work or is sluggish commits only a crime against himself. But the *Shafi'is* say regarding a daughter: Her maintenance is *wajib* on the father until she is married.

The Imamiyyah, the Maliki and the Hanbali schools state: If one who was earlier making his livelihood by engaging in a trade that suited his condition and status later neglects to do so, his maintenance is not *wajib* upon anyone, irrespective of whether it is the father or the mother or the son. The Malikis agree with the Shafi'is' position regarding a daughter and the reason for this is that formerly women were considered generally incapable of earning their own livelihood.

2. That the maintainer be well-off, according to all the schools, except the Hanafi's who say: Being well-to-do of the maintainer is a condition only for the maintenance of those who are neither ascendants nor descendants; but financial capacity is not a condition in the maintenance of the scion by one of the parents or the maintenance of the parents by the scion. The only condition here is the presence of the actual ability to maintain or the presence of the ability to earn. Therefore, a father who is capable of work will be ordered to maintain his child, and similarly a son with respect to his father, except where one of them is indigent and incapable of making an earning, such as due to blindness. etc.

The schools differ regarding the degree of financial ease necessary to cause the liability for providing maintenance to a relative. According to the Shafi'i school, it is the surplus over the daily expenditure of his own, his wife's and his children's.

The Malikis add to this the expenditure incurred upon servants and domestic animals.

According to the Imamiyyah and the Hanbali schools: It is the surplus over the daily expenditure of oneself and one's wife, as the maintenance of descendants and ascendant belongs to the same category.

Hanafi legists differ in defining the state of financial ease. According to some of them, it is possession of an amount of wealth which gives rise to the incidence of *zakat* (*nisab*); according to others, it should be enough to prohibit his taking of *zakat*. The third opinion differentiates between the farmer and the

worker, allowing the farmer his and his family's expenditure for a period of one month and the worker a day's expenditure as deduction

3. According to the Hanbalis, their belonging to the same religion is necessary: thus, if one of them is a Muslim and the other a non-Muslim, maintenance will not be *wajib* (*al-Mughni*, vol. 7).

The Maliki, the Shafi'i and the Imamiyyah schools state: Their belonging to the same religion is not necessary. Therefore, a Muslim can maintain a relative who is not a Muslim, as is the case when maintenance is provided by a Muslim husband to his wife belonging to Ahl al-Kitab.

The Hanafis observe: Belonging to the same religion is not required between ascendants and descendants, but necessary between other relatives. Therefore, a Muslim will not maintain his non-Muslim brother and vice versa (Ab Zuhrah).

Determination of Relative's Maintenance

It is necessary that maintenance paid to a relative be sufficient to cover his/her essential needs, such as food, clothing and housing, because maintenance has been made *wajib* to protect life and to provide its needs. Thus it is to be determined in accordance with the needs (*al-Mughni*, vol. 7. *al-Tawahir*, vol. 5).

It should be noted that if a relative entitled to maintenance receives the maintenance of a day or more through litigation, through gift, *zakat* or some other manner, the maintenance due to him will be deducted to the extent of what he received through these means, even if the judge has ordered the payment of maintenance.

The Order of Relatives on Whom Maintenance is Wajib

The Hanafis observe: If there is only one person responsible for maintenance, he will pay it; if two or more belonging to the same category and capacity are responsible—such as two sons or two daughters—they will share equally in providing maintenance, even if they differ in wealth, after their financial capacity has been proved.³

But where they are of different categories of relationship or of varying capacities, there is confusion in the views of Hanafi legists in providing the order of those responsible for maintenance (*al-Ahwat al-shakhsiyyah*, Abu Zuhrah).

The Shafi'is state: If a person in need has a father and a grandfather who are both well-off, his maintenance will be provided solely by the father. If he has a mother and a grandmother, the maintenance will be solely provided by the mother. If both the parents are there, the father will provide the maintenance. If he has a grandfather and a mother, the grandfather will provide the maintenance. If he has a paternal grandmother and a maternal grandmother according to one opinion, both are equally responsible according to another opinion. the paternal grandmother will be solely liable (*Maqsad al-*

nabih, nafaqat al-'aqarib).

The Hanbalis state: If a child does not have a father, his maintenance will be on his heirs; and if he has two heirs, they will contribute in proportion to each's share in legacy. If there are three or more heirs, they will contribute in proportion to their share in legacy. But if he has a mother and a grandfather, the mother will contribute one-third of maintenance and the grandfather the remainder, as they inherit in the same proportion (*al-Mughni*. vol. 7).

The Imamiyyah state: The child's maintenance is *wajib* on the father, If the father is dead or indigent, its maintenance will lie upon the paternal grandfather; and if the grandfather is dead or indigent, the mother will be liable for maintenance. After him, her father and mother along with the child's paternal grandmother will share equally in the maintenance of the grandchild if they are financially capable. But if only some of them are well-off, the maintenance will lie only on those who are such.

If an indigent person has father and a son, or father and a daughter, they will contribute to his maintenance equally. Similarly, if he has many children, it will be shouldered equally by them without any distinction between sons and daughters. On the whole, the Imamiyyah consider the nearness of relationship a criterion while determining the order of relatives who are liable to provide maintenance; on their belonging to the same class, they are compelled to contribute equally without any distinction between males and females or between ascendants and descendants, except that the father and the paternal grandfather are given priority over the mother.

1. By fard is meant the specific share of inheritance decreed for an heir by the Qur'an.

2. Al-Tasib is a doctrine accepted by the Sunni schools. It applies in situations where the total shares of the decreed sharers fall short of the total legacy. Here, the Sunni schools assign the balance to be inherited by distant relatives, as the nearer relative have already received their decreed shares and are not entitled to anything in addition to their decreed shares. For example, if a person dies leaving behind a daughter and an uncle, the decreed share of the daughter being half, the other half will be inherited by the uncle and the daughter will not be entitled to inherit more than her decreed share.

The Imamiyyah do not accept this doctrine and in the above example entitle the daughter to inherit the whole heritable interest to the exclusion of the father's uncle. They apply the rule: the nearer in degree excludes the remote.

3. Some judges distribute the maintenance of a relative between those on whom his maintenance is *wajib* in accordance with the financial capacity of each. Therefore, if an indigent father has two sons, one of them very rich, and the other merely well-off, the first will contribute more than the second to the father's maintenance.

The Hanafis give no weightage to this difference in financial capacity and consider the two equally liable after their capacity has been proved. This is a right required by the legal bases, and the statements of the author of *al-Jawahir* also bear this out where he says: If he has a son who is presently well-off and another son who is in the course of becoming such, the two will contribute equally because the applicable *adillah* are unconditional.

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