

The Right to Maintenance

There is consensus among all Muslims that marriage is one of the causes that make maintenance *wajib*. A similar consensus exists regarding kinship (*al-qarabah*). The Holy Qur'an has explicitly mentioned the wife's maintenance in the following verse:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ

...And on the child "s father (the husband) is their food and clothing... (2:233)

By the pronoun *هُنَّ* are meant wives and the *الْمَوْلُودِ لَهُ* is the husband. There is also a tradition which says:

حق الزوجة على زوجها أن يشبع بطنها ويكسو جثتها وإن جهلت غفر لها

The right of a woman over her husband is that he feed her, clothe her, and if she acts out of ignorance, to forgive her.

The Qur'an has referred to the maintenance of relatives in the phrase *إحسانا* , and the Prophet (S) has said (You and your property are for your father).

Our discussion comprises two issues: first, the maintenance of a wife and her maintenance during the *'iddah* period; second, the maintenance of relatives.

The Maintenance of a Wife and a Divorcee During 'Iddah

The legal schools concur that the wife's maintenance is *wajib* if the requisite conditions, to be mentioned subsequently, are fulfilled, and that the maintenance of a divorcee is *wajib* during the *'iddah* of a revocable divorce. The schools also concur that a woman observing the *'iddah* following her husband's death is not entitled to maintenance, whether she is pregnant or not, except that the Shafi'i and the

Maliki schools state: If the husband dies, she is entitled to maintenance only to the extent of housing.

The Shafi'is have said: If he separates from her while she is pregnant and then dies, her maintenance shall not cease.

The Hanafis observe: If she is a revocable divorcee and the husband dies during the *'iddah*, her *'iddah* of divorce shall change into an *'iddah* of death, and her maintenance shall cease, except where she had been asked (by count) to borrow her maintenance and she had actually done so. In this case, the maintenance shall not cease.

There is consensus that a woman observing *'iddah* as a result of 'intercourse by mistake' is not entitled to maintenance.

The schools differ regarding the maintenance of a divorcee during the *'iddah* of an irrevocable divorce. The Hanafis observe: She is entitled to maintenance even if she has been divorced thrice, whether she is pregnant or not, on condition that she does not leave the house provided by the divorcee (husband) for her to spend the period of *'iddah*. According to the Hanafi school, the rules which apply to a woman in an *'iddah* following the dissolution of a valid contract are the same as those which apply to a divorcee in an irrevocable divorce.

According to the Maliki school, if the divorcee is not pregnant, she shall not be entitled to any maintenance except residence, and if she is pregnant she is entitled to her full maintenance; it shall not subside even if she leaves the house provided for spending the *'iddah*, because the maintenance is intended for the child in the womb and not for the divorcee.

The Shafi'i, the Imamiyyah and the Hanbali schools state: If she is not pregnant she is not entitled to maintenance, and if pregnant, she is entitled to it. But the Shafi'is add: If she leaves the house of her *'iddah* without any necessity, her maintenance shall cease.

The Imamiyyah do not consider the dissolution of a valid contract similar to an irrevocable divorce; they observe: A divorcee undergoing the *'iddah* of a dissolved contract is not entitled to any maintenance whether she is pregnant or not.

A Disobedient Wife (al-Nashizah)

The schools concur that a disobedient wife is not entitled to maintenance. But they differ regarding the extent of disobedience which causes the maintenance to subside. According to the Hanaf'is, when a wife confines herself to her husband's house and does not leave it except with his permission, she shall be regarded as 'obedient' even if she denies him her sexual company without any valid reason.

Therefore, though such an act is Haram for her, it shall not cause her maintenance to cease. Thus, the cause which entitles her to maintenance, according to the Hanafis, is her confining herself to her husband's home, and her denial of her sexual company has no effect at all. This view of the Hanafi

school is contrary to the view of all the other schools who concur that if a wife does not allow her husband free access to her person without any legal and reasonable excuse, she shall be considered 'disobedient' and shall not be entitled to any maintenance. The Shafi'i further add: Her allowing him free access is not enough unless she comes forth and says expressly to him: 'I surrender myself to you'.

In fact, the criterion for ascertaining 'obedience' and 'submission' is the general custom and there is no doubt that the people consider a wife obedient if she does not deny him access when he demands it, and they do not consider it necessary that she offer herself to him morning and evening. Whatever be the case, we have here the following questions concerning 'obedience' and 'disobedience'.

(1) If the wife is a minor, unfit for intercourse, and the husband a major capable of it, shall maintenance be *wajib*?

The Hanafis say: There are three types of female minors:

- (i) A minor wife who is neither of any use for service nor for sociability, shall not be entitled to maintenance.
- (ii) A minor wife with whom intercourse is possible enjoys the rights of a major wife.
- (iii) A minor wife who is of use for service or for sociability alone, but not for intercourse, shall not be entitled to maintenance.

The remaining schools state: A minor wife is not entitled to maintenance even if the husband is a major.

(2) If the wife is a major capable of intercourse while the husband is a minor and incapable of it, the Hanafi, the Shafi'i and the Hanbali schools observe: Her maintenance is *wajib* because the hindrance is from his side, not her.

The Malikis and some scholars of the Imamiyyah have said: Maintenance is not *wajib* because the sole granting of access from her side has no effect while there exists a natural disability in the husband, and a minor husband is free of obligations (*ghayr mukallaf*), and as to the duty of his guardian, there is no proof (that he is responsible for his ward's wife's maintenance).

(3) If the wife is sick or suffers from *al-ratq* or *al-qarn*,¹ her maintenance does not cease according to the Imamiyyah, the Hanbali and the Hanafi schools,² and it does according to the Maliki school if she is suffering from a serious disease or if the husband himself is similarly ill.

(4) If the wife apostatizes, her maintenance ceases according to all the schools. The maintenance of a wife belonging to the *Ahl al-Kitab* is *wajib*, and there is no difference between her and a Muslim wife from the viewpoint of maintenance.

(5) If a wife leaves her husband's home without his permission or refuses to reside in a house which fit

her status, she shall be considered 'disobedient' and shall not be entitled to maintenance according to all the schools. The Shafi'i and the Hanbali schools further add: If she goes out with his permission for his need she shall be entitled to maintenance, and if she goes out not for his need, her maintenance shall cease even if he had granted her permission to do so.

(6) If she goes out for performing the obligatory Hajj pilgrimage, her maintenance shall cease according to the Shafi'i and the Hanafi schools, and according to the Imamiyyah and the Hanbali, it shall not.

(7) If the wife is obedient to the husband in granting him access and resides with him wherever he wants. but uses harsh language while talking to him, frowns in his face and opposes him in many matters, as is the case with many women, shall this be a cause for the maintenance to cease or not?

I have not come across the views of the schools on this question, but in my opinion if the wife has a hot-tempered disposition by nature and this is her way of behavior with everyone including her parents, she shall not be considered disobedient. But if she is not so by nature and is well-disposed towards everyone except her husband, she should be considered disobedient and not entitled to maintenance.

(8) If the wife refuses to obey her husband unless she is paid her *mahr*, agreed to be paid immediately, shall she be considered disobedient? The schools have divided the question—as mentioned in the chapter on *mahr*—between her refusing him before granting him access to her person and her refusal after granting him access willingly before taking the *mahr*.

In the first case, her refusal is due to a legally valid excuse and therefore she shall not be considered disobedient. In the second case, her refusal is without any valid excuse and. therefore, she shall be considered disobedient.

(9) I have come across an opinion expressed by the Hanbali's that if a wife imprisons her husband, demanding her maintenance or *mahr*, her maintenance shall cease if he is indigent and unable to meet her monetary rights, and if he has the means to pay but delays doing so it shall not.

This opinion is both good and firm because if she has imprisoned him while he is an indigent man unable to pay, she is oppressing him; and if she has imprisoned a husband who has the means to pay her but delays doing it, he is oppressing her. A verse of the Qur'an says:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ

And if the debtor is in straitness, let there be postponement till the lime of ease... (2:280)

And there is a tradition which says:

الواجد تحل عقوبته وعرضه

It is permissible to punish and dishonor a person who possesses (but does not pay his liabilities).

It has also been narrated that 'Ali (A) used to detain one who delayed his creditors and release him if his penury was ascertained. Accordingly, a judge, after having ascertained that the circumstances of the husband are straitened and that the wife is entitled to maintenance, will order it to be considered a debt payable by the husband until further notification. If the judge determines the maintenance without mentioning the period during which it is to be paid, and the wife then imprisons the husband despite indigence and poverty, the husband is entitled to approach the judge to have her maintenance annulled from the date of his imprisonment, and the judge is bound to respond to his plea.

(10) If a wife is divorced while she is disobedient. she will not be entitled to maintenance; and if she is undergoing the *'iddah* of a revocable divorce and turns disobedient during this period, her maintenance shall cease; but on her reverting to obedience, it shall resume from the date of his knowledge of her becoming obedient.

(11) If the wife remains at her father's home after –the recital of the marriage contract for a period of time and then claims maintenance for that period, shall she be entitled to it?

The Hanafis observe: She is entitled to maintenance even if she hasn't shifted to her husband's home, either because the husband hasn't asked her to do so, or has but she has refused to come until she is given her *mahr* (Ibn 'Abidin).

According to the Maliki and the Shafi'i schools, she is entitled to maintenance if the marriage has been consummated or she has offered herself to him.

The Hanbali school states: If she doesn't offer herself, she is not entitled to maintenance even if she remains in such a state for years.

The Imamiyyah consider her entitled to maintenance from the date of the consummation of marriage–even if such consummation should occur while she is with her family–and from the date of her asking him to take her along with him.

From the above–mentioned views, it follows that all the schools entitle her to maintenance if she has offered herself and showed her readiness to comply, and also if the marriage has been consummated, except that the Hanafis do not suffice with consummation but consider her willingness to confine herself also necessary. Apart from this, it has been pointed in the answer to the eighth question of this section that the wife has the right to refuse obedience till she is paid her prompt *mahr*, and her doing so is legally valid and does not cause her maintenance to cease.

(12) The Maliki, the Shafi'i and the Hanbali school state: An absent husband is similar to a husband present in regard to the rules of maintenance. Therefore, if an absent husband has any known assets, the judge shall order her maintenance to be paid from them, and if he does not possess such property,

the judge shall pass an order of maintenance against him and the wife will borrow against his name. This is the procedure followed in Egypt (*al-'Ahwal al-shakhsiyyah*, Abu Zuhrah).

In *al-'Ahwal al-shakhsiyyah* (1942, pp. 269. 272) of Muhammad Muhyi al-Din 'Abd al-Hamid it is stated: The Hanafi school presumes that the absent husband has left in his property a share for his wife... and if he has not left any property, the judge shall consider him liable to pay the maintenance and will order the wife to borrow against his name. If she complains of not having found a person ready to lend her in her husband's name, the judge shall order the person on whom her maintenance is *wajib* to lend her on the supposition that she has no husband, and if this person refuses to lend her maintenance. The judge will imprison him.

The Imamiyyah observe: If the husband disappears after her surrendering herself to him, her maintenance is *wajib* upon him on the supposition that her obedience still persists from the time he left her; and if he disappears before consummation, she shall appear before the court and declare her obedience and willingness to live with him. The judge will then order the husband to present himself to inform him of her willingness. If the husband presents himself, or sends for her, or sends her, her maintenance, it suffices. But if he does not fulfill any of these alternatives, the judge shall allow a period of time sufficient for the issuance of a notification and the reception of his reply or for his sending of her maintenance; he will not issue any order during this period. After the expiry of this period he shall issue orders. If, for instance, such a period is two months, he shall order the payment of maintenance beginning from the date of expiry of the two months. Or if the wife informs the husband of her state without the mediacy of the judge and proves it, it shall also suffice. Then she shall be entitled to maintenance from that date.

(13) If the wife pleads before a judge to pass an order against the husband for the payment of her maintenance without mentioning the date from which she is entitled to receive it, the judge shall order payment from the date of her demanding maintenance, after ascertaining that the conditions have been fulfilled. If the wife mentions a date which is prior to the date of demand, shall the judge order payment of her maintenance for the period prior to the date of demand?

The Hanafis have said: Past maintenance may not be demanded from the husband; it is annulled by the passage of time except when the period is less than a month or if the judge has ordered its payment, because maintenance ordered to be paid by court remains a debt for the husband irrespective of the passage of time.

The Malikis observe: If the wife demands her past maintenance, and the husband possessed the means to pay her during that time, she has the right to such a claim against him even if it had not been ordered by the court. But if the husband was indigent and unable to pay during that period, she cannot claim her maintenance from him, because, according to this school, indigence annuls maintenance; and if his indigence is subsequent to his affluence, the maintenance for the period of indigence shall be void and he shall be liable for the payment of the maintenance pertaining to his period of affluence.

The Imamiyyah, the Shafi'i and the Hanbali schools state: The wife's maintenance remains his liability, if the conditions entitling the wife to maintenance are fulfilled, no matter how much time has passed and irrespective of whether he was affluent or indigent during that time and regardless of whether the judge had ordered such payment or not.

1. The Hanafis state: If she falls sick at her husband's home, she is entitled to maintenance; and if she falls sick before consummation and it is not possible to shift her to his home, she will not be entitled to maintenance. This opinion of the Hanafis is in accordance with their basic principle that maintenance is a compensation for her confining herself to her husband's home.

2. The Malikis state: The wife's maintenance ceases during the husband's indigence, irrespective of consummation. If he becomes well-off later on, she does not have the right to claim maintenance for the period during which he was indigent.

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