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## **Determination of Maintenance**

The schools concur that a wife's maintenance is *wajib* in all its three forms: food, clothing and housing. They also concur that maintenance will be determined in accordance with the financial status of the two if both are of equal status. Here, by the financial status of the wife is meant the financial status of her family and its standard of living.

But when one of them is well-off and the other indigent, the schools differ whether maintenance should be in accordance with the husband's financial status (commensurable with his means if he is well-off and the wife indigent, and commensurable with hi indigence if he is indigent and she is well-off), or whether the financial status of both should be considered and a median maintenance be fixed for her.

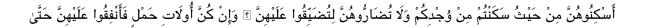
The Maliki and the Hanbali schools state: If the couple differ in financial status, a median course will be followed.

The Shafi'i school observes: Maintenance will be determined in accordance with the financial status of the husband, and the status of the wife will not be considered: this is regarding food and clothing. But as regards housing, it should be according to her status, not his (al-Bajuri, 1343 H., vol.2, p.197).

The Hanafi's have two views. According to the first, the status of both will be considered, and according to the second only the status of the husband.

Most Imamiyyah legists; observe that maintenance will be fixed in accordance with her requirements of food, clothing, housing, servants and cosmetics used by women of her standing among her townspeople. Some Imamiyyah legists consider the husband's not the wife's financial status as the criterion for fixing maintenance.

Whatever the case, it is necessary that the financial condition of the husband be taken into consideration as the Qur'an has expressly stated:



# يَضَعْنَ حَمْلَهُنَّ ؟ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ ؟ وَأُتَّمِرُوا بَيْنَكُمْ بِمَعْرُوفِ ؟ وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى

لِيُنْفِقْ ذُو سَعَةِ مِنْ سَعَتِهِ ١ وَمَنْ قُدرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ ١ لَكَلِّفُ اللَّهُ اللَّالَةَ اللَّالَةُ اللَّالَّالَةُ اللَّالَّالَّالَةُ اللَّالَّالَةُ الل

Lodge them where you are lodging, according to your means ..Let the man of plenty expend out of his plenty... . As for him who has his means of subsistence straitened, let him expend of what God has given him. God does not burden anyone ercep1 to the extent of what He has granted him... (65:6,7)

Under Egyptian law (act 25. 1929), the wife's maintenance, to be paid by the husband, is fixed in accordance with his financial condition, irrespective of the condition of the wife.

Here it becomes clear that providing a servant and expenses of tobacco, cosmetics, tailoring, etc., requires that two things be taken into consideration; the husband's condition and the custom prevailing among her likes. Therefore, if she demands more than that the husband is not obliged to comply, irrespective of his financial condition; and if she demands what her likes generally require, it is compulsory that the husband meet her demands if he is well–off, but not if his means are straitened. Here, the following questions are also pertinent:

### **Medical Expenses**

If the wife needs medicines or surgery, will the husband be compelled to pay her medical and surgical expenses?

The answer to this question leads us to another one: Is medical care part of maintenance or something apart from it? When we refer to the canonical sources, we find that the Qur'an makes the wife's food and clothing *wajib*. The ahadith say: It is for the husband to satiate her hunger and to clothe her. There is no mention of medicine and medical treatment in the Qur'an and the traditions. The legists have limited maintenance to the providing of food, clothing and housing, and have not touched the matter of medical care. On the contrary, some of them have explicitly said that it is not *wajib* for the husband. In *al-Fiqh* 'ala al-madhahib al-'arba'ah, it has been narrated from the Hanafis that medicines and fruits are not *wajib* on the husband during the period of dispute between the couple. In the Imami work *al-Jawahir* (vol. 5) it is stated: The wife is not entitled to claim from the husband medicine during illness, or the expenses of cupping and bathing except during winter. Al-Sayyid Abu al-Hasan observes in *al-Wasilah*: If the medicines are of common use and needed for common ailments, such medicines are included in maintenance and are *wajib* upon the husband; but if the medicines are for difficult cures and uncommon ailments, which require expensive treatment, they are not included in maintenance and it is not the husband's duty to provide them.

This was a summary of the opinions of the legists which I have come across. It is also said that the treatment of simple diseases, such as malaria and ophthalmia, is included in maintenance, as observed by the author of *al-Wasilah*. But regarding surgeries, which require large sums of money, if the husband is poor and the wife is financially well-off she will bear the expenditure; and if he is a man of means while she is poor, he will meet the expenses – for of all people the husband, being her life partner, is most entitled to be kind to her. If, both of them are indigent, they will share in meeting the expenses.

In any case, it is certain that the Shari'ah has not explicitly defined the limits of maintenance, but has only made it *wajib* on the husband, leaving it to be determined in accordance with '*urf* (usage). Therefore, we should refer to '*urf* and not make anything *wajib* for the husband except after ascertaining that it is considered part of maintenance by '*urf*. And there is no doubt that '*urf* disapproves the conduct of a husband who while possessing the means neglects his wife who needs medical attention, exactly as it considers a father blameworthy if he neglects his ailing children while having the means to buy medicines and pay the doctor's fee.

#### **Expenses of Child-birth**

The essential expenses of child-birth and the obstetrician's fee will be paid by the husband when called upon by need.

## **Adjustment of Maintenance**

If a judge determines a certain sum of money, or the spouses mutually settle it in lieu of maintenance, it is valid to adjust it by increasing or decreasing it in accordance with changes in prices or changes in the financial condition of the husband.

## The Wife's Housing

The Imamiyyah, the Hanafi and the Hanbali schools state: It is necessary that the house provided to the wife befit the couple's status, and that the husband's family and children not reside in it except by her consent.

## **Marriage**

The Malikis observe: If the wife is of a humble status, she may not refuse to stay with the husband's relatives, and if of a high social status she can refuse to stay with them except if it had been mentioned as a condition in the contract. If so, it is *wajib* for her to reside with his family on being provided a room; where she can enjoy privacy whenever she desires and does not suffer from mistreatment by his family.

According to the Shafi'i school, it is *wajib* that the housing suit her and not his status, even if he is poor.

The truth is that it is necessary to consider the condition of the husband in everything concerning maintenance, without there being any difference between food, clothing and housing in this regard, because the Qur'an says,

#### Lodge them where you lodge, according to your means, (65:6)

on condition that she have an independent home and does not suffer by staying in it.

### **A Working Wife**

The Hanafis are explicit that a woman if she works and does not stay at home is not entitled to maintenance if the husband demands her to stay at home and she does not concede to his demand. This view is in concurrence with what the other schools hold regarding the impermissibility of her leaving her home without his permission. The Shafi'i and the Hanbali schools further state, as mentioned earlier, that if she leaves home with his permission for meeting her own requirements, her maintenance ceases.

But a correct view would be to differentiate between a husband who knows at the time of marriage that she is employed and her employment prevents her staying at home, and a husband who is ignorant about her employment at the time of marriage. Therefore, if he knew and remained silent and did not include a condition that she leave her job, he has no right in this case to ask her to forgo her job; and if he demands and she refuses to comply, her maintenance shall not cease, because he has concluded the contract with the knowledge that she works. And many men marry working women with an intention of exploiting them, and when they are unable to do so they ask the wives to stop working with the purpose of harming them (financially).

But if the husband does not know that she works at the time of marriage, he can demand that she stop working, and if she does not comply, she shall not be entitled to maintenance.

## **Surety for Maintenance**

Is the wife entitled to claim from her husband a surety to secure her future maintenance if the husband intends to travel alone without leaving anything for her?

The Hanafi, the Maliki and the Hanbali schools observe: She is entitled to do so, and he is bound to arrange a surety for maintenance, and on his refusal she can ask that he be prevented from making the journey. The Malikis further add: She is entitled to claim from him advance payment of maintenance if he intends to go for a usual journey, and if the wife accuses him of planning to go for an unusual journey she has the right to claim immediate payment of maintenance for the period of a usual journey and to

provide her a surety for the period which exceeds the period of a usual journey.

The Imamiyyah and the Shafi'i schools state: She is not entitled to claim a surety for her future maintenance because its payment hasn't become due, and in the future the possibility of its ceasing due to her disobedience or divorce or death is always present.

My opinion is that she has the right to claim a surety because the cause on whose basis a surety is demanded is present, and this is her present obedience. Therefore, al-Shaykh Ahmad Kashif al-Ghita' has observed in his *Safinat al-najat* (*bab al-daman*): But the opinion (that she can claim a surety) is not farfetched if not opposed by consensus (*ijma'*), so that her future maintenance is insured like her past and present maintenance.

No the matter leads to consensus, it lacks strength from the Imami viewpoint, because, according to their principles of jurisprudence, every consensus reached after the period of the Imams (A) faces the possibility of being refuted. Thus if there is a possibility that the consensus of the concurring legists is based on their belief that future maintenance does not become payable presently because it is not correct to provide surety for something which has not become payable, the argument on the basis of consensus fails due to the presence of this possibility. Now it should be seen whether the rule (that everything which has not yet become payable does not require a surety) on which the legists have based their argument is correct and whether it can be applied here or not. Here, as already explained, the cause (the wife's obedience) is present, which is sufficient to justify surety. Accordingly, the wife is entitled to claim a surety for her maintenance if the husband intends to travel, especially when he cannot be relied upon and is known to be irresponsible.

#### **Dispute between Spouses**

If after the husband accepts the wife's right to maintenance, the two differ about the actual payment of maintenance (she denying that he has paid, and he claiming to have paid it) the Hanafi, the Shafi'i and the Hanbali schools observe: The wife's word shall be accepted because she ' the refuter and the burden of proof is not on her.

The Imamiyyah and the Maliki schools state: If the husband resides with her in the same house, his word will be accepted, otherwise her word.

If the husband concedes that he has not paid maintenance on the excuse that she is not entitled to it due to her not surrendering herself to him, his word will be accepted according to all the schools. The consensus on this issue is a corollary to the consensus of the schools on the issue that *mahr* becomes payable on the conclusion of the contract and becomes fully payable on consummation: but maintenance does not become payable solely on the conclusion of the contract, it is necessary for her to surrender herself to the husband. It is the practice of the Shari'ah courts of Lebanon, both Sunni and Shii, when the spouses differ regarding disobedience (*nushuz*) (he claiming that she is disobedient and

she charging him with disobedience), to order the husband to provide a suitable house and to order the wife to reside in it. If the husband refuses to provide a house, he will be considered disobedient; and if he provides a house which fulfils all the conditions and she refuses to reside in it and to obey him, she will be considered disobedient.

## The Wife's Claim of Expulsion

If the wife leaves her husband's home claiming that she has been expelled, and he denies this, the burden of proof will rest on her and he will be made to take an oath; because it is not valid for her to leave home without an acceptable excuse, and as she claims the presence of such an excuse, she is burdened with proving it.

#### **Loss of Maintenance**

When the husband provides his wife with maintenance for the future, and then it is stolen or destroyed while in her possession, it is not *wajib* upon the husband to replenish it, irrespective of whether such loss occurs due to an unavoidable cause or on account of her negligence.

## **Husband's Debt Claim against Wife**

If a wife owes a debt to her husband, can he adjust this debt against her present or future maintenance?

The Imamiyyah legists have dealt with this issue; they observe: If she is financially well-off and yet refuses to repay the debt, it is permissible for him to adjust it from her day-to-day maintenance, which means that he consider her debt to him as her maintenance for each day, separately. But if she is financially straitened, he cannot do so; because any payment towards debt should be from what exceeds her daily expenditures.

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