


Research Article

## The Rights of A Working Wife to Maintenance: An Islamic Perspective

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**Abstract.** Sharia imposes a duty on the husband to maintain his wife arises when the marriage contract was completed. The right of the husband to maintain his wife continuous until the contract of the marriage comes to an end through divorce or death of the husband. In Islam it is the duty of the husband to provide for his family expenses. In this respect the wife may have wealth more than the husband but still she has no obligation to contribute to the maintenance of the family. The paper is to examine the provisions of sharia on the husband to maintain a wife generally and also the maintenance of a working wife. The paper will analyses the law on the extended duty of the husband to maintain the wife even though the wife is working and earning a good salary.

**Keywords:** Rights, Working, Wife, Maintenance, Islamic

## INTRODUCTION

Maintenance (al nafaqah) is the right of the one's wife and children to get food, clothing accommodation, and some other essential services and medicine, even if the wife happen to be rich<sup>1</sup> Maintenance connotes the act of maintaining or being maintained, the preservation or up keeping of certain object in a particular state or condition<sup>2</sup>

Nafaqah is an Arabic word which is derived from infaq which means to spend for good. Literally it means person to spend for his family.<sup>3</sup> The contemporary jurist like Muhammad Mustapha Shahabi and Zaki al din Shaaban in their definition of maintenance they have included an additional scope of maintenance to include any kind of necessary service based on the custom and tradition of a given society<sup>4</sup>.

Shafii jurist classified maintenance into two categories: Maintenance that is obligatory upon oneself and maintenance that is obligatory to be spend upon somebody else. So it is obligatory for one to maintain self before he can maintain other persons<sup>5</sup>. This is based on the tradition of prophet (SAW) which says:

*"Start your own self and spend it on yourself and if anything is left, it should be spent on your family, and if anything is left (after spending on your family) it should be spent on relatives"*<sup>6</sup>

In sharia Nafaqah implied sufficient provision of feeding, clothing and accommodation and the rest to the dependants.<sup>7</sup> The corresponding word for maintenance is Nafaqah which is defined as a means of support or sustenance. In legal it consists of all things which are necessary to the support of life such as food clothes and lodging.

## METHODOLOGY

In the course of this research, the researcher applied Historical Analytical Method. The secondary sources applied systematically as source of data such as books, journals, published and unpublished works, and works of other researchers etc consulted.

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<sup>1</sup> Abdur Rahman I Doi The sharia the Islamic law Taha publisher London United Kingdom pg204

<sup>2</sup> Aminu Muhammad Gurin Introduction to Islamic family law published and printed in Nigeria by al rauf press limited Zaria 2010

<sup>3</sup> Ibn Abidin al Allamah Muhammad Amin bin Umar Abdulaziz

<sup>4</sup> Zaki al din shaaban ahkam al shariyyah liahwal alshakhsiyya 6<sup>th</sup> edition university qaryunus BENGHAZI 1993.

<sup>5</sup> Al-shirbini, mughni al-muhtaj vol.3 pg 542

<sup>6</sup> Azizah Muhammad Badruddin H j Ibrahim Muslim wives right to maintenance <https://www.researchgate.net/publication>

<sup>7</sup> Al- fauzani S.FA(2001) AL Mulakhas al fiqh riyadh daral al-asinah

## DISCUSSION

### The Basis of Maintenance of a Wife Under Islamic Law

The right of maintenance of a wife and family derived its legal authority from the Quran, Sunnah, Ijma, and ijtiḥad of jurists<sup>8</sup>. The Holy Quran provides that the father of the child shall bear the cost of their food and clothing on equitable terms<sup>9</sup>.

In the above verse it states that the husband as a father of the child is responsible for maintenance of his family according to his own means. The husband is required to provide the maintenance to his family in accordance to the teachings and ethics of Islam.

In another verse Allah says:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارِرُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمِلٍ  
فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأُتْمِرُوا بَيْنَكُمْ  
بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَسْتَزِرْضِعْ لَهُ أُخْرَى (6)

*Let the women live (in iddah) in the same style as you live, according to your means: annoy them not so as to restrict them. And if they are pregnant, then spend your resources on them until they deliver their burden and if they suckle your offspring give them their recompense and take mutual counsel to what is just and reasonable*

Almighty Allah further says that:

لِيُنْفِقَ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا  
آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا (7)

*Let the man of means spend according to his means and men whose resources are restricted let him spend according to what Allah has given him. Allah put no burden on any person what he has given him*

Also another verse is to the effect that for the divorce women maintenance should be provided on a reasonable scale this is a duty on the righteous<sup>10</sup>. Again on the issue of maintenance the Quran says:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ (34)

*Men are the protectors and maintainers of women because God has given the one more strength than the other and because they support them from their means<sup>11</sup>*

<sup>8</sup> Qutut, N H(1995) Mauqifulislam min nush uziz zaujaini au Ahadihima, ummul-Qurah university mecca pg 157-158

<sup>9</sup> A.Yusuf Ali the Holy Quran text,translationand commentary 2:233

<sup>10</sup>Quran 2:241

<sup>11</sup> Quran4:34

Qur'an further provides that O Prophet when you divorce women divorce them at their prescribed period and count accurately their waiting periods and fear Allah your Lord and turn them not out of their houses nor shall they themselves leave except in case they are guilty of some open lewdness<sup>12</sup> The above verse indicated that the husband has a duty to provide maintenance to his wife who is observing iddah.

### **Wives' Right To Maintenance**

Islamic law spelt out that husband to provide their wives with all necessary as soon as the marriage is consummated. It was stated that in Islam husband is bound to provide maintenance during the subsistence of the marital life and wife in return to show her faithfulness and obedience to her husband<sup>13</sup>

Shafii School is of the view that a husband is under obligation to provide maintenance to the wife by virtue of a valid marriage. The right of maintenance and protection of a wife are derived from Quran 4:34 which is to the effect that men are protectors and maintainers of women because God has given them more strength than the other and because they support them from their means.

Husband shall know the importance of maintenance and practice it because maintenance of a wife is the responsibility of the husband as long as the marriage is in existence. There is no reason why the husband should not provide maintenance to the wife. This duty should be performed by the husband no matter in what situation, and the maintenance should be according to his means and capability.

Shafii is of the view that the scale of maintenance shall be according to the means of the husband, If the wife is a minor she will be maintained by her father or guardian. Prophet (SAW) married Aisha she didn't reached the age of puberty and did not give her maintenance. But if the wife submitted herself to the husband though she didn't attained the age of puberty Malik, Shafii opined that she would not be entitled to maintenance.

Abu Yusuf a Hanafi jurist is of the view that if the wife is a minor and the husband accept her in his house she is entitled to maintenance, but if she does not come to his house he would not maintain her. I am of the view that since the condition that makes wife to be entitle to maintenance is consummation of marriage so where a minor wife submitted herself to the husband for consummation of the marriage the wife suppose to be given maintenance. Malik and shafii opined that where the husband refused to provide maintenance to the wife is a ground for divorce while Hanafi said refusals to maintenances are not a ground for divorce. The below are some of the instances where wife loses her right of maintenance

### **Types Of Maintenance (According To Malik)**

- (a) **Feeding:** The husband must provide food and other ingredients to his wife whether she is rich or poor for her sustenance. In a hadith narrated by Umar (R.A) the prophet (saw) used to sell dates of the garden of Banis An –Nadir and

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<sup>12</sup> Quran65:1

<sup>13</sup> Wani M.A (1995) the Islamic law on maintenance of women, children, parent and other relatives 1<sup>st</sup> edition, Delhi upright study home

store for his family so much food as would cover their needs for the year<sup>14</sup>. Failure to feed the wife and family can be used as evidence against the husband in a divorce.

A hadith narrated by Abu Masud al ansari the prophet (saw) was reported to have say when a Muslim spend something on his family intending to received Allah's reward, it is regarded as sadaqa for him.<sup>15</sup> In another tradition of prophet (saw) narrated by Aisha (R.A) Hind Bint Utbah said:

*O apostle Abu Sufyan is a miser and he does not give me what is enough for me and my children. Can I take of his property without his knowledge? The prophet (saw) said take what is sufficient for you and your children in a reasonable way.*<sup>16</sup>

- (b) **Clothing:** Clothing is part of maintenance which is based on the ability of the husband and the condition of the wife; she should be given sets of dresses at least twice a year. A hadith narrated by Abu Dawud the prophet Muhammad (saw) said :

*spend for your wife food from what you eat and provide them with clothing from what you wear and do not beat them and do not say ugly words about them.*<sup>17</sup>

- (c) **Accommodation:** Maintenance of a wife entails her right to lodging. The husband must provide a reasonable lodging for his wife. Almighty Allah says that lodge them where you dwell according to your means.<sup>18</sup>

### Conditions For Entitlement To Maintenance

- (a) The marriage must be valid: a marriage between the couples must have been validly conducted. Therefore an invalid marriage cannot give right to the wife for the husband to maintain her. All the schools agreed that valid marriage confers obligation on the husband to maintain his wife.
- (b) Marriage must be consummated: consummation means having actual sexual intercourse between the husband and the wife. This must take place before the wife to be entitling to maintenance. The wife will be entitle to maintenance where the cause of non consummation is not from her side for instance where the husband is a minor or he is ill that cannot afford to consummate, her maintenance shall be provided from his property.
- (c) The wife must be able to have conjugal relation with her husband: Where the wife cannot be able to cohabit with her husband due to tender age therefore she will not be entitled to maintenance.

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<sup>14</sup> Sahih Al bukhari Vol.7 Bk 69 Hadith 7

<sup>15</sup> Sahih AlBukhari Vol.7 BK 64 Hadith263

<sup>16</sup> Sahih alBukhari Vol.7 BK 69 Hadith 14

<sup>17</sup> Elistina Abubakar, Soadah Ahmad rights of wife to maintenance under Islamic law in Abuja Nigeria A journal of Islamic and comparative law ABU Zaria Vol.32 December 2017

<sup>18</sup> Quran 65:6

- (d) The wife must accept an invitation by her adult husband to cohabit: If the husband is an adult and invites the wife to the conjugal relation she has to comply. Where the wife deny without any good reasons she loses her right of maintenance
- (e) Wife must obey orders of her husband if they are reasonable: The wife is obliged to obey all legal commands or orders of the husband provided it does not contravene the teachings of Islam. The husband in given the orders or commands has to know his limitation. And also is the duty of the wife to put her husband on the right way where he errs in making the commands or orders.
- (f) The wife must be accessible for conjugal relations: Maintenance will not be given to the wife if the husband is unable to have sexual intercourse because of the act or conduct of the wife. Where the wife refuses to have sexual intercourse with her husband without any good reasons she loses her right of maintenance. But where the wife is an adult and the husband is a minor or impotent or sick she would be entitled to maintenance. Where the wife goes to pilgrimage or Umra without the consent of the husband she loses such right. The wife would still be entitled to maintenance where her refusal to have sexual intercourse is as a result of nonpayment of her prompt dowry.

### **Husband's Duty to Maintain a Working Wife the Reasons and the Views of Jurists**

In discussing the right of a working wife to be maintain by her husband we have to consider the following things. What constitute wife to be entitle to maintenance, did working wife possessed it or not and a wife that is working to earn money loses her right of maintenance?

Traditionally wives are expected to stay at home to manage the house work to fulfil their husbands and children needs. But today the tradition of women managing the house work has changed. The duties of wives are no longer solely to serve the family members but they also go out to work and earn their money.

In Islam there is no any provision that prohibit a woman or wife from working to have her own income. It is obliged on the husband to provide maintenance to his wife on two reasons, complete submission of the wife to her husband (ihtibas kamil) and the position of the wife under responsibility of a husband (Tamkin). Majority of the jurists are of the view that the responsibilities to provide maintenance for a working class wife that has the permission of the husband is on him. If the husband gives her permission to work then working will not be a barrier for her to be maintain, but where the wife works against the consent of her husband she can be term as NUSHUZ (disobedient to the husband).

Hanafi is of the view that a working wife does not fully submitted herself to the husband therefore she cannot be entitled to maintenance.<sup>19</sup> He further stated that if she goes out from his house to her working place with his consent she is entitled to maintenance because she is obedience to her husband.

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<sup>19</sup> Ibn Abidin, Hashiyat Radd al mukhtar pg229

Shafii opined that maintenance of a wife is obligatory on the husband because of valid marriage and enjoyment of sexual intercourse at any lawful time. But where the wife submitted herself to her husband partially for instance in the night only she is not entitled to maintenance because of her partial submission. Hanbali stated in al-mughni the book of Qudamah that where the wife goes out from her husband house without his consent she will not be entitled to maintenance.<sup>20</sup>

The above discussions indicate that a husband is obliged to maintain his wife so long she is obedient to him. A contemporary scholars are of the view that a working wife is not entitled to maintenance if the husband did not permit her to do so. If at the time of marriage she is a working class woman, the husband has the right to ask her to quit from her work if she deny complying with the order then she will be considered as disobedient and will be disentitled to maintenance.<sup>21</sup> Abdulrahman I Doi stated that maintenance in modern family any gain from work realized by the working wife belongs to the members of the family and cannot be considered as her personal property.<sup>22</sup>

## CONCLUSION

Maintenance is the obligation of the husband regardless of whether the wife has her own income or not. Islamic law does not prohibit women from working to be career woman more especially in the areas where women services are needed such as nurses, doctors, midwifery, teachers etc. So in the case where woman was married she need to take a career that will not prevent her from performing her family responsibilities. Islam has spelt out the responsibility of husband and wife, the husband duty is to maintain the wife while the wife duty is to obey her husband provided is not against the provision of sharia, this also is extended to a working wife. Since the husband has duty to maintain her. The wife shall obtain permission from the husband to continuous working so that there shall be understanding among the spouses.

In some instances there are situation where the wife has to work to earn money for maintaining herself where the husband deny to maintain her, in this case it must be taken as an exceptional because it is a condition that forces the wife to work for her living with her children if she have them. In an instance where the wife goes out without the husband permission due to necessity the issue of Nushuz might not arise because the wife has no other option, even if the wife become disobedient due to lawful reason the husband is bound to maintain her.

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<sup>20</sup> Al-mughni vol 8 pg 159

<sup>21</sup> Abdal Fattah Amru al-siyasah al-shariyyah fi al ahwal al shakhsiyyah Jordan 1998 pg90

<sup>22</sup> Abdur Rahman I Doi Shariah the Islamic law taha publicer London United Kingdom

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