

**The Analytical Study of Maintenance of
Working Wife in The Light of Decision of
Superior Courts of Pakistan**

Thesis for MS Muslim Family Law



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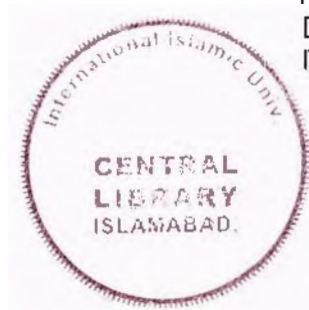
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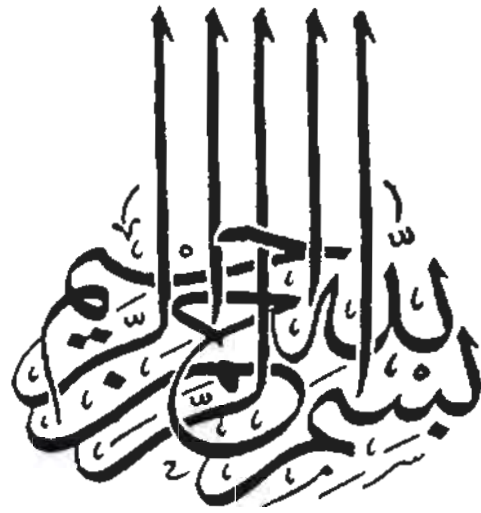
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NAA

women - Employment

Married women - Employment - law and legislation

Married " - legal status, laws, etc. - Pakistan

In the name of Allah – Most Gracious, Most Merciful



My Lord! Increase me in knowledge
(20:114)

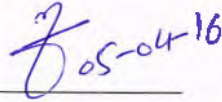
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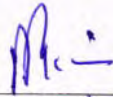
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A thesis submitted to Department of Shari'ah (Islamic Law),
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Family Law

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DEDICATION

Firstly I dedicated to my Lord Allah Almighty, without who's Raza I can't
take a single step

Then

"Dedicated to my Parents"

I am most indebted to my parents whose affection has been the source of
encouragement for me and whose prays have always been the key to my
success

DECLARATION

I hereby declare that the work present in the following thesis is my own effort and never been presented in any other institute. I, moreover, declared that any secondary information use in this dissertation has been duly acknowledged.

Student: NazmaYasmin

Signature: _____

Date: _____

TRANSLITERATION TABLE

ا	a	آ	ā	ع	ʿ	آ	ā	Long Vowels
ب	b	ب	bh	ت	t	آ	ā	
پ	p	پ	p	ق	q	آ	ā	
ث	ṭ	ث	ṭ	ك	k	ی	ī	
ج	ǰ	ج	ǰ	گ	g	ی	ī	
ح	ḥ	ح	ḥ	ل	l	ی	ī (URDU)	
خ	ḫ	خ	ḫ	م	m	ی	ī (URDU)	
د	d	د	d	ن	n	ی	ī	
ذ	ḏ	ذ	ḏ	و	w	ی	ī	
ر	r	ر	r	ی	y	ی	ī	

Diphthongs		Doubled							
و	<table border="1"> <tr> <td>(ARABIC)</td> <td>aw</td> </tr> <tr> <td>(PERSIAN/URDU)</td> <td>aw</td> </tr> <tr> <td>(TURKISH)</td> <td>ev</td> </tr> </table>	(ARABIC)	aw	(PERSIAN/URDU)	aw	(TURKISH)	ev	و	www/evv
(ARABIC)	aw								
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(ARABIC)	ay								
(PERSIAN/URDU)	ay								
(TURKISH)	ey								

Letter ʿ is transliterated as elevated comma (‘) and is not expected when at the beginning.

Letter ḥ is transliterated as elevated inverted comma (‘).

ض as Arabic letter is transliterated as ḏ, and as Persian/Turkish/Urdu letter as z.

ر as Arabic letter is transliterated as w, and as Persian/Turkish/Urdu letter is transliterated as y.

ه is transliterated as ḥ in pause form and as h in construct form.

Article ا is transliterated as al- (ʾ in construct form) whether followed by a moon or a sun letter.

و as a Persian/Urdu conjunction is transliterated as -u.

Short vowel َ in Persian/Urdu possessive or adjectival form is transliterated as -i.

Acknowledgement

Praised be Allah The Most Exalted, creator of the haven and the earth.

Peace and blessing be upon His Holy Prophet Muhammad ﷺ. Allah The

Most Exalted Allah created me with the capacity to preserve and provide

the means to complete this study. Unto Him belong the highest in praise

and gratitude. I bear witness that there is no God but Allah and

Muhammad is His Servant and Messenger.

I am grateful to Allah The Most Exalted for giving me wonderful parents.

My father and Mother provided me with the best upbringing. Their prayers

and blessing for me acts as a shield from all tumultuous circumstances in

life. May Allah the Most Exalted reward them for their good deeds.

I am deeply obliged my supervisors Prof. Dr Muhammad Zia-ul-Haq for

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world and hereafter.

I am thankful to my Teachers, especially Miss Samina Bashir who is Head

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affection and support. I am thankful to all my teachers for whatever they did for me. May Allah the Most Exalted blessed and reward them all.

I must acknowledge the love, the regard and the hospitality with which I was treated by my Husband, Brother and Sisters. Their exceptionally warm and loving company made my life comfortable. I am thankful to each one of them and wish them happiness and success, both in this world and hereafter.

I am grateful to all my friends for their support and encouragement and thank them all. I am thankful to each one of them and wish them happiness and success, both in this world and hereafter.

Any mistake and faults in this thesis are mine alone. May Allah the Most Exalted forgive me for these mistakes and guide me to right path. .Amin

Nazma Yasmin

List of Abbreviation

etc.	Etcetera
e.g.	For example
i.e.	That is
Ibid	Referring to the consecutive references
No	Number
P or pp	page or pages
P.B.U.H	ﷺ
R.A	رضى الله عنه
Vol	Volume

Acronyms

CLC	CivilLawCases
Cr.P.C	Criminal Procedure Code
DMM	Dissolution of Muslim Marriage Act
MFLO	Muslim Family Law Ordinance
MLD	Monthly Law Digest
NLR	National Law Reporter
P.L.D	Pakistan Legal Decisions
PLJ	Pakistan Law Journal
PPC	Pakistan Penal Code
SC	Supreme Court
SCM	Supreme Court Monthly Review

List of Cases

Hafiz Muhammad Younis Vs Mst. Shaheen Qurashi

Dr .Naseem Akhtar vs The VIIIth Civil Family Judge Karachi

Mst Iqra v Abuzar

Mst Anar Mamanav vs Mishal Gul

Mst Farah Naz vs Judge of Family Court, Sahiwal

Liaquat Ali Vs Additional District Judge and three others

Lubna Qaziv vs Amir Aslam

Muhammad Umar Islam v Mst. Irum Shazadi and other

Major (Retired) Ishtiaq Mehmood Vs Mst Zareen Gul

Sohail Saeed Khan and others Vs Mst. Mehreen and others

Mst. Nabeela Tabassam and other Vs Syed Najmal Hassan

ABSTRACT

Islamic law imposes a duty on the husband to maintain his wife. This duty arises as soon as the marriage contract is accomplished. The duty to maintain her remains until the contract of marriage ends either through separation or death. Maintenance under Islamic Law is one of the rights of the wife that her husband should support her while she is living with him and she is under the obligation to look after the comforts of the husband. This dissertation seeks to examine the provisions of Islamic law on the husband's duty to maintain a working wife. The examination extends to the adequacy of provisions of the law in Pakistan governing maintenance of wife. The dissertation will further analyze the law on the duty of the husband to maintain the wife, for this various cases discuss in the light of decision of superior courts of Pakistan which is implicitly related to the maintenance of working wife. It is an immediate step to safeguard the position of women in Pakistan is to regularize also the concept of the so called prompt and so called deferred dower. The present thesis clearly shows that the existing laws of maintenance in classical Islamic Law and domestic law of Pakistan are mostly identical; however deficiencies exist due to the existing social environment.

Introduction to Research

also includes a right to noble life which is full of respect and facilities. To provide a wife all necessities is mandatory duty of the husband, whether he is rich or poor and whether she is wealthy or not, spending on wife is an obligation.⁶ Expending is compulsion on husband because she is devoting herself for his benefit and also for the benefits of his house and children. So, her maintenance is incumbent upon the husband even she owns Millions of money.⁷

In Pakistan working women face most of problems that are not facing by working women in developed countries. In Pakistan mostly men don't share household chores. It is the prime duty of women to make food, look after children and family, clean the house and other routine works. Therefore major burden come on shoulders of women.

According to Pakistani law it is mandatory upon the husband to maintain his wife. Firstly, according to section 2 of The Dissolution of Muslim Marriage Act, 1939 gives wife the right to dissolve marriage if her husband fails to maintain her for the period of two year. Secondly according to section 9 of the 1961 ordinance during marriage it is obligatory upon Muslim husband to maintain his wife. The ordinance of 1961 enables the wife to seek the certificate from the Arbitration Council, specifying the amount.

⁶ Wani,M, Afzal, *The Islamic Law on Maintenance of Wife, Children, Parents And Other*(Upright Study Home, 1995) p.23

⁷ Haska fi, Alauddin, *Al-Durr al- Mukhtar* (Bombay, 1309 H) Vol.3, p.437.

2. Thesis Statement

Islamic law provides maintenance right to the working wife. It bounds the husband to full fill all the needs of the wife as per his income. However in practice there are certain problems in the protection of this right. From this thesis statement following question of the problem is emerged

- ❖ What is the right of maintenance of working wife in Islam?
- ❖ What are the laws in Pakistan regarding Maintenance of the working women and their practices?
- ❖ What are the decisions of superior courts regarding maintenance of working wife?

3. Hypothesis

Husband is responsible and duty-bound for Maintenance of working wife.

Husband responsibility if he claim he is poor cannot ended, in order to loophole his responsibility of providing monthly maintenance to his wife.

Wife has right to recover the amount from husband when the circumstances are in his favour, the amount she recover is spend by her to support the family when husband is not financially strong to support his family

4. Objectives of Research

This research aims to shed light on the problems regarding maintenance of working wife in Pakistan. The present dissertation is based on the premises that the Qurān established a clear duty for men

to be concerned about their wives. Maintenance the right of wife is not affected by the socio economic policies in developing country like Pakistan. The dissertation emphasis on the position of working wife in Islam; also discuss about the difficulties faced by Pakistani working wife for their right of maintenance.

The research is aim to define and described legal injunctions related to maintenance of wife in Islamic law and Pakistani law with comparison explore if there is any difference in the law of maintenance in working and non-working wife. And also to compare the laws of various countries related to the maintenance of working wife.

5. Research Methodology

Following methodology have been employed for accomplishment of this study.

In this research firstly collect information from The Holy Qur'an and then collect the information from the Sunnah of the Holy Prophet ﷺ. Opinion of Jurists and eminent scholars would be used in this research. Internet would also be used for the collection of data. For the collection of data, libraries would be consulted as a tool of research

In this research methods of case study have been administered, and relevant 15 year cases have been mentioned decided by the superior courts of Pakistan.

Literature Review

The issue of maintenance has been discussed in classical books of Muslim Jurists. Al-Mughnī and Al Sharh Al- kabīr by Ibn Qadāmah, Mughnī Al Muhtāj by Al Shīrbīnī, Badā'ī Al Sana'ī fi Tartīb Al Sharahī

by Al kāsānī , Kashāf al Qinā by Al Bahūtī , Badāya tu ul Mujtāhīd by Ibn Rushed , Kitāb al-Umm by Imām Shāfi, Al Muwattā Mālik Ibn Anas, Kitāb al Fiqh al Mudhāhib al Arba by Al Jazarī, Nayl al Awatrā by Al Shawāknī , Al Mubsūt by Al Sarakhasī, Al Muhallāh by Ibn Hazma, Akhām al Qurān by Abu Bakar Ahmed Ibn Al Jassās, Majallah al Ahkām al-Adliyyah fatawa Alamgīriāh are some of classical books in which the topic of maintenance has been discussed comprehensively by the jurists.

This issue of maintenance of wife is discussed in contemporary literature such as

Mohammadan Law by Sayed Ameer Ali⁸ in vol 2 provides useful information about the maintenance of wife. The book contains the chapter regarding maintenance in the chapter writer discuss in detail laws regarding maintenance of women in the light of all schools of thought.

A Text Book on Muslim Law by Pearl David⁹ the book covers the topics of maintenance and inheritance, divorce and marriage. It explores the significant information of interpersonal and international laws of UK from the comparative perspective of Pakistan, India and Bangladesh. However neglect the classical law and merely review the judicial decisions and statute laws

The Islamic Law of Personal Status by Jamal J. Nasir¹⁰ the book discuss the topic of maintenance of wife , their right in inheritance and

⁸Ali, Sayed Ameer, *Mohammedan Law: The Law Relating to Succession and Status* (All Pakistan Legal Decisions, 1965)

⁹David ,Pearl , *A Text Book on Muslim Law* (Croom Helm, 1979)

¹⁰Nasir ,Jamal J. (edited), *The Islamic Law of Personal Status*(Brill Archive, 1990)

the laws regarding right of wife and children's are discussed in details and also the laws of maintenance are discussed in all perspective.

Women in Muslim Family Law By John L. Esposito¹¹ explore the updates about the family law as it refer to a women with regard to maintenance, inheritance marriage and divorce in the Middle East. Esposito explains discuss laws of different countries and compare them.

The Status of Women under Islamic Law and Modern Islamic Legislation by Jamal J. Nasir¹²

The book scrutinizes the position of Muslim women with regard to, maintenance, marriage, the iddat and custody. The author has examined original sources of Islamic text books and reviewed regulation of the different Arab countries in order to present the most updated material on the subject. It is hoped that this clear, objective account will dispel many of the commonly-held misunderstandings about the position of Muslim women in the modern world.

In this context chapter 2 examines in details the issue of maintenance in traditional Islamic law. The issue first discuss in the light of the relevant Qurānic verses. An effort is made to demonstrate how the liberal but general Qurānic verses were later reinterpreted to give way to the position that there is no maintenance for a divorced woman after the iddah period and a widow once her husband dies. It is apparent that the issue we discuss here has been significant importance, right from early development of Islamic law. Therefore after Qurānic verses we

¹¹Esposito, John L., *Women in Muslim Family Law*(Syracuse University Press, 2001)

¹²Nasir, Jamal J. (edited)*The Status of Women Under Islamic Law and Modern Islamic Legislation*(Brill, 2009)

first discuss the authority of the prophet Muhammad (saw) to interpret the Qurān and examine the role of the first four caliphs of newly formed Muslim Empire after the Prophet's death. In order to meet the new problems they applied their judgments in the light of the Qurān and the Prophet's example. After the discussion on the authority of the companion to interpret the Qurān we move further to the crucial period where the jurists as it seems gradually assumed the role of sole interpreters of the Qurān. The verses of the Qurān were interpreted in such a way that the result appears to have become an almost domestic notion to the effect that divorced Muslim wives are not permitted to any kind of maintenance after the iddat. The approach of the jurists seems to be even worse for widows and their right to maintenance nevertheless during the iddat period has been successfully brushed aside. This chapter also examines in some details how this Islamic axiom developed and to what extent it is maintainable today owing to the Islamic scholarship and in view of the needs of contemporary Muslim society especially in Pakistan

Chapter 3 studies in detail issue of maintenance in the existing laws of Pakistan where there is no law that could safeguard a women who has become a widow or has been divorced. The Pakistani courts following the hanfi doctrine generally have simply stuck to the established restrictive juristic view that a woman who has loses her husband either through divorce or death is not allowed to any kind of maintenance from her previous husband once the iddat is ended. May Muslim

husbands do not honour the dower arrangements and it seems that the situation on the ground is much worse than the official law assumes.

Chapter 4 examines in details the issue of maintenance through cases of superior courts of Pakistan

Chapter 5 contain the concluding analysis and recommendations in the light of finding of the thesis we concluded with a set of recommendation made to the Pakistan and authorities concerning protection of Muslim wives from becoming destitute. The recommendation can be easily implemented. Especially under the cover of Islamisation and thus contribute to meaningful improvement for the position of Muslim wives.

Chapter 1

Maintenance of Wife under Classical Islamic Law

1. Introduction

The purpose of the present chapter is to examine classical Islamic law with reference to the right of maintenance of Muslim wives under three possible scenarios: that is (i) a wife, (ii) as a widow and (iii) as a divorcee.¹³ Islam improves the social status of women, prior to Islam the status of women was degraded they were treated less like people and more like possessions of men, they could not make decisions based on their own beliefs women were sold in the name of marriage. Islam brought very positive changes to the Arabian society in general and in particular the women of Arabia. According to Islamic law that the husband is duty bound to facilitate his family expenses including the personal needs of his wife; the wife has no obligation in this respect. The wife may be financially strong but she is still not obliged to bear the family expenses.¹⁴

¹³ This issue has been under discussion by classical as well as contemporary scholars. Some valuable studies on this issue are stated here, Al Rāzī, Muhammad, *Mukhtār Al-Sahāh*, (Kuwait: Dār Al-Kitāb Al-Hadīth, 1987); Al-Tabarī, Muhammad, *Jāmi' Al Bayān Fi Tawīl Al-Qurān*, (Beiru: Dār Al kutuba Al ilmiyyah, 1978); Ibn Qudāmah, Muwafiq Al-Dīn, *Al-Mughnī Wa Yalīh Al Sharah Al Kabīr* (Riyad : Maktaba Al Riyad Al Hadīth, 1980); Ibn Qudāmah, Muwafiq Al-Dīn, Al-Kāfī, Adil Abdul Mawajud, (Beirut : Dār Al Kitāb Al-Arabi, 2000); Ibn Hazam, Ali, Al-Muhalla, (Beirut: Dār Al-Jaid, 1987); Al-Sarakhsī, Shams Al-Dīn, *Al-Mubāsūt*, (Beirut: Dārul Marifah, 1987); Ibn Tamiyah, Ahmad, *Majmū Al-Fatawa Al-Shāfi, Muhammad, Al-Risālah, Ahmad Shakir* (edit), (Beirut: Al-Maktabah Al-Ilmiyyah, 1939); Al-Marghīnānī, Ali ibn Abi Bakr, *The Hedaya: Commentary On The Islamic Laws* (Premier Book House, 1975); Chaturvedi, Archan (edit), *Encyclopedia of Muslim Women*, (Commonwealth, 2003); Mir-Hosseini, Ziba, *Marriage On Trial: A Study of Islamic Family Law* (I.B. Tauris, 2000); Mansoori, Muhammad Tahir, *Family Law in Islam Theory and Application* (Lahore: Shariah Academy, 2006); Khan, Arif Ali (editor), *Encyclopedia Of Islamic Law*, (Pentagon Press, 2006)

Zieba shorish- shamley, *Women Position, Role And Right In Islam*, (university of Urband champaign, 1985); Ali, syed Ameer, *Muhammadan Law*, (Lahore : law publishing company)

¹⁴ Chaturvedi, Archan (edit), *Encyclopedia of Muslim Women* (Commonwealth, 2003), vol.4, p.173.

The chapter begins with the discussion about ruling of Qurān and Sunnah about maintenance it followed by discussion about the condition of rights of maintenance the third part of the chapter deals with miscellaneous matters such as condition for the right of maintenance , wife who carrying profession or business her right of maintenance ,rule regarding past maintenance, standard of maintenance, divorce wife right on maintenance and right of maintenance in case of Khula and consequences if husband fail to maintain his wife.

1.Injunction Of Al- Qurān And Sunnah On Maintenance

1.1.Qurānic Provision Regarding Maintenance

The Muslim jurists have determined ruling regarding maintenance of women from various Qurānic verses. Some of these verses which establish the legitimacy of maintenance. As it is stated in the Qur'an¹⁵

﴿ وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِيمَ
الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ
إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِيهِ وَعَلَى
الْوَارِيثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ وَتَشَاوُرٍ فَلَا
جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْرِعُوا فِصَالَهُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا
سَلَّمْتُمْ مَا بَيْنَكُمْ بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ
بَصِيرٌ ﴾

"The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear"

¹⁵ Al-Qurān 2:233.

Imam ibn Kathir has understood the meaning of this verse that the While suckling of the child is duty of the mother but it is the responsibility of the father on the other side to facilitate her need and this responsibility carry on as far as the marriage or the post-divorce waiting period of wife ('iddah) become ended. After the 'iddah period the responsibility of the husband towards the expenses of his wife will end, but the father will continue duty bound to pay for the suckling of his child.¹⁶

Mata be taken to mean maintenance As it is stated in the Qur'an¹⁷

وَالْمُطَلَّاتِ مَتَعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ ﴿٢٤١﴾

“For divorced women Maintenance (should be provided) on a reasonable (scale) this is a duty on the righteous.”

Imam Qurtabi explain the meaning of this verse that if we take *mata* to mean a particular benefit, that is, the giving of a gift or set of clothes, then giving this to a particular type of divorced woman is obligatory which has been pointed out earlier. In the rest of the cases, this is desirable. And should *mata* be taken to mean maintenance or Nafaqah, then it is obligatory until the expiry of *iddah*¹⁸ in the case of a divorce after which *iddah* has to be observed. The divorce may be revocable or irrevocable it does not matter. To sum up, the verse, by using universally applicable words, covers all situations.”¹⁹

¹⁶ Ibn, Kathir, *Tafseer Ibn Kathir*, (Riyadh: Dārussalam Publication, 1999), vol.2, P.192.

¹⁷ Al-Qurān 2:241

¹⁸ "iddah means the waiting period prescribed for a divorced woman before she can marry another man. In the case of a divorcee, it is three periods of menstruation.

¹⁹ Qurtubī, *Tafsir Al-Qurtubī*, vol.1, p .455.

Ibn Kathir has explained the meaning of the verse that The Mut'ah (reasonable gift) at the time of divorce is required for every divorced woman, whether she had a bridal-money appointed for her or not, and whether the marriage was consummated or not, relied on this Ayah when they issued their ruling.²⁰

In Al-Qurān the word *Quwwam* is used for the maintainer, *Quwwam* is described in the following verse of the Al-Qurān.²¹

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا قَضَىٰ اللَّهُ بَعْضُهُمْ عَلَىٰ بَعْضٍ
وَمَا أَنفَقُوا مِنْ أَمْوَالِهِمْ فَلَا يَسْلُبُكَ فَنَيْتُكَ حَبِطَتْ لِقَائِهِ بِمَا
حَبِطَ اللَّهُ وَالَّذِينَ تَخَافُونَ تَخَافُونَ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِى
الْمَضَاجِعِ وَامْتَرُوهُنَّ فَإِنْ أَطَعْتِكُمْ فَلَا تَجْعَلُوا عَلَيْهِنَّ سَبِيلًا إِنَّ
اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿٣٤﴾

“Men are the protectors and maintainers of women, because Allah ﷻ has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah ﷻ would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah ﷻ is Most High, great (above you all).”

Imam Ibn Kathir has understood the meaning of this verse that the Arabic word *qawwam* stands for a person who is responsible for the right conduct, safeguard and maintenance of the affairs of an

²⁰ Ibn, Kathir, *Tafseer Ibn Kathir*, vol.2, P.224.

²¹ Al-Qurān 4:34.

individual, an institution or an organization. Thus, than is governor, director, protector and manager of the affairs of women. Men are superior to women in the sense that they have been endowed with certain natural qualities and powers that have not been given to women or have been given in a less degree, and not in the sense that they are above them in honor and excellence. Man has been made qawwam (governor) of the family because of his natural qualities and woman has been made his dependent for her own safety and protection because of her natural drawbacks. Verse opens with an important statement: which has been translated as men stand caretakers of women."²²

Imam Quratbi explains the meaning of the word "because they support them from their means" If a Man who is unable to spend on her then he is not Qawwam (In charge) of her. And when he is not Qawwam on her then it is allowed for her to terminate the contract, because the aim of marriage is not fulfilled due to which Nikah is prescribed. This verse is the evidence of terminating the nikah when one is unable to spend on maintenance. This is the saying of Imam Malik and ash-Shafiee, but Imam Abu Hanifa said: Nikah should not be terminated because Allah says: "And if someone is in hardship, then let there be postponement until a time of ease."²³

It is also argued that a maintenance that is payable by the husband to the wife makes her accept, with content, his guardianship and

²²Ibn, Khathir, *Tafseer Ibn Khathir*, vol.4, p56-57.

²³ Qurtubi, *Tafsir Al-Qurtubi*, vol.3, p .180.

protection of her. Maintenance is actually compulsory, because it is prescribed by Allah ﷻ on the husband as stated in Al-Qurān²⁴

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُوهُنَّ
لِيَضْحَكُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلًا فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى
يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآئُوهُنَّ أَجُورَهُنَّ وَأَتَمِرُوا
بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتْرٌ لِيَهُ الْآخِرُ ﴿٦﴾

“Let t the women live (in ‘iddah) in the same style as ye live, according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable.....”

Muhammad Taqī Usmānī stated that this verse lays down the rule that if a divorcee is pregnant at the time of divorce, her maintenance is obligatory on the husband. On the basis of this verse, there is a complete consensus of the Ummah on this point. Similarly, if she is not pregnant, and the divorce given to her is revocable, her maintenance too is compulsory on the husband till the expiry of her "iddah. This point too is agreed upon by all the jurists of the Ummah. However, if a wife is given irrevocable divorce, whether a ba'in divorce or the divorce pronounced three times, or if a woman has got her marriage terminated by way of khul' (got herself separated from the husband), will not have to be maintained by the husband according to Imams Shafi'i, Ahmad and others. However, according to Imam Abu Hanifah, her maintenance is

²⁴ Al-Qurān 65:6.

also incumbent upon the husband. He argues that just as she is entitled to residence during the term of 'iddah as is provided in verse, she is entitled to sustenance too. The husbands are obligated to provide them with these necessities of life during 'iddah. This is further supported by those Traditions in which it has been reported that when Sayyidna Umar heard the report of Ftimah bint Qais who claimed that her husband was not obligated to maintain her after divorce, he said: "We cannot abandon the Book of Allah ﷻ and the Sunnah of the Prophet, on the basis of this narration. The Book of Allah apparently refers to this verse. Sayyidna 'Umar reports that he heard the Messenger of Allah ﷺ say that women divorced by three pronouncements are also entitled to maintenance and lodging"²⁵

The amount of the maintenance relies heavily on what the man can afford, but it should not be a burden laid upon him greater than what he bear. Elsewhere as it is stated in the Qur'an²⁶

لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ ۖ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا
 آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ تَقْصِيرًا ۗ إِلَّا مَا آتَاهَا سَيِّئًا ۗ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا



"Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah ﷻ has given him. Allah ﷻ puts no burden on any person beyond what He has given him. After a difficulty, Allah ﷻ will soon grant relief."

²⁵Usmānī, Muhammad Taqī, *Ma'ariful-Qurān*, (Maktaba-e-Dārul-Uloom, 1996), vol.8, pp.510-11.

²⁶ Al-Qurān 65:7

Imam Qurtabi explain the meaning of this verse that “In other words, in determining the quantum of the divorced wife's maintenance the financial position of the husband will be taken into account If the husband is wealthy, he should spend on his divorce wife according to his resources; and if he is indigent, he should spend according to his limited resource even if the wife is wealthy. This is the ruling of Imam Abu Hanīfā. Other schools of jurisprudence hold differing views.”²⁷

Ibn Kathir explain the meaning of the verse and stated “Let the rich man spend according to his means; means, the wealthy father or his representative should spend on the family according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him.”²⁸

1.2.Provision of Maintenance in Sunnah of Prophet ﷺ

Under the Sunnah, it was reported that the Holy Prophet ﷺ (SAW) in his farewell sermon said;

“Fear Allah in your affairs with women, verily; you have taken them under the covenant of Allah. You have indeed made lawful the intercourse with them by the word of Allah, verily, they have rights over you; to be fed and clothed generously.”²⁹

Again, it was reported that a companion came to the Holy Prophet ﷺ and asked him (i.e. the Holy Prophet): “What are the rights of a wife

²⁷ Qurtubī, Muhammad ibn Ahmed, *Tafsir Al-Qurtubī: Classical Commentary of the Holy Qurān* (Dār al-Taḳwa, 2003) vol.9, p .480.

²⁸ Ibn, Khathīr, *Tafseer Ibn Khothīr*, vol.8, P.19.

²⁹ Al- Bukhārī,, Muhammad Ibn Ismail, *Sahih Al Bukhārī*, , trans Muhammad Muhsin Khan , Book: 2, HadīthNo:53 (Kazi Publications, 1994) vol.7.

over her husband? The messenger of Allah ﷺ replied: Let him feed her whenever he feeds and cloths her whenever he cloths and never shall he abandon her except in the room nor shall he beat her face or disgrace her”³⁰

Furthermore, the Messenger of Allah ﷺ did not only show that the man has a maintenance obligation towards his wife. He explained the great reward that the man will get in return for giving maintenance, as was “Narrated Abu Masud: The Prophet ﷺ said, if a man spends on his family (with the intention of having a reward from Allah) sincerely for Allah's sake then it is a (kind of) alms-giving in reward for him.”³¹

It was also narrated by Hind Bint Utba that she once came to the Messenger of Allah ﷺ complaining about how mean and stingy her husband, Abu Sufyan, was. He did not give them enough money in maintenance, so she took from his money, without his knowledge that. She came to the Prophet ﷺ asking him about whether what she was doing was legitimate or not. She said:“O Allah's Apostle ﷺ! Abu Sufyan is a miser and he does not give me what is sufficient for me and my children. Can I take of his property without his knowledge The Prophet ﷺ said, Take what is sufficient for you and your children, and the amount should be just and reasonable.”³²

Furthermore, the Messenger of Allah ﷺ is recommended Marriage for the one who desires it and can afford it, and the one who cannot afford it should distract himself by fasting was narrated by “Abdullah

³⁰ al-Qushayrī , Muslim ibn al-Hajjāj, Ṣaḥīḥ Muslim (Kitāb Bhavan, 2000), vol. 2, Hadīth no .1218

³¹ Al- Bukhārī,, , *Ṣaḥīḥ Al Bukhārī* , , Book: 2, HadīthNo:52.

³² Bukhārī, , *Ṣaḥīḥ Al Bukhārī* , ,Book: 64, HadīthNo:272.

b. Mas'ud (Allah be pleased with him) reported that Allah's Messenger () said to us: O young men, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford It should observe fast for it is a means of controlling the sexual desire."³³

2. Classical Muslim Jurist on Maintenance

Muslim scholars agreed unanimously that the husband is duty bound to provide maintenance for his wife. For example, Ibn Qudamah said, Muslim scholars had agreed that the husband is under obligation to provide maintenance for his wife if they were both of the marriage legal age.³⁴

There has not been an explicit statement, according to the Islamic Law, which accurately specifies how much the husband has to pay for his wife as maintenance. It is not clear whether it depends on the circumstances of the couple or it has to do with the man's financial conditions. The unavailability of such a statement gave way for Muslim scholars to express their views and opinions in an attempt to explain this issue. There are two basic accounts that attempted to address this problem.

First, Al-Mālikīyyah, Al-Hanbalīyyah, and some of Al-Hanafīyyah followers, particularly Al-Khassaf, argued that the financial conditions of the couple are of prime concern when deciding how much the woman's maintenance should be.³⁵ Thus, if they (both the husband and the wife) are rich, they have high maintenance in accordance with the

³³ Ibid, Book: 62, HadīthNo:4.

³⁴ Ibn Qudāmah *Al-Mughnī*, vol.11, 348.

³⁵ Al- Marghīnānī, *The Heydaya.*, Vol.1, p.141.

traditions of the time and place where they are. However, if they are both poor and facing some financial difficulties, they have little maintenance, and the husband has to pay only what he can afford. Sometimes, the woman is poor and the husband is well off. In this case, the maintenance she gets is higher than that obtained when the couples are poor but less than the maintenance that is usually obtained when the couples are both rich. And if the husband is poor, he pays only what he can afford.

Mālik says that the financial status of the wife and that of the husband have to be taken into consideration when fixing or calculating maintenance.³⁶

Evidence to support this comes from, a Hadīth by the Prophet ﷺ in which He says to Hind Bint Abi Sufyan: "Take what is sufficient for you and your children, and the amount should be just and reasonable."³⁷

Here, the Prophet ﷺ took into consideration the circumstances of both spouses and he allowed her to take from her husband an amount of money that was reasonably sufficient for her and her children.

Second, the Shāfi'iyyah, Hanbalīyyah, and some Hanafīyyah, particularly Al- Karkhi³⁸ contends that it is only the husband's circumstances, and not those of the woman, that really matter in fixing maintenance. If a man is poor, he may only pay the kind of maintenance that is normally paid by people suffering from same

³⁶ Al-Azhar, Salih, *Jawahr Al-Iklil Sharh Al-Allamah Khalil Min Madhab Al-Imam Mālik*, vol. 1, (Beirut: Dār Al-Kutub al-Ilmiyyah, 1997), p. 570.

³⁷ Bukhārī, , *Sahih Book*: 64, HadīthNo:272.

³⁸ Al-Nawāwī, Muhyidin, *Al-Majmū Sharh Al-Muhādhab*, vol. 17, (Beirut: Dār Al-Fikr,1997), p.90.

locality, although the wife may be quite rich. But if the man is rich, he may pay the kind of maintenance usually paid by rich people, although the wife may be poor. Shaiyyah scholars say that this does not apply to the cost of housing. They argue that the estimation of the housing benefit or cost has to do with the woman's status and not with that of the man alone. Because she spends most of her time in the house, due to the requirement that she should be confined to her husband's house, the residence has to be convenient to her.

Evidence in support of this argument comes from statement by Allah ﷻ in Sura Al- Talaq, verse seven.

It is believe that the second opinion, which was adopted by Shāfi'iyyah and some Hanafīyyah followers, is more appropriate as it depends on the husband's conditions only. The explanation of this opinion is actually based on the requirement that the man, on his own, has to provide the wife's maintenance and the wife already has some knowledge of the man's financial situation and his ability to pay for her living. She agreed to marry him after she knew all about this matter. This makes it plausible that the estimation of the woman's maintenance is based only on the man's financial or economical status.³⁹

The wife's maintenance can be estimated or calculated on a daily, monthly or yearly basis. But, the way it should be paid may take into account the husband's circumstances and the most appropriate way for him to provide the maintenance. If he works and gets a monthly salary,

³⁹ Al- Marghīnānī, *The Hedaya*, Vol.1, p.144.

he pays the maintenance monthly, and if he is a worker and gets his wages daily, the payment may be daily or weekly, and so on. It is very common nowadays that maintenance is paid on a monthly basis.⁴⁰

4. Condition for Provision of Maintenance

According to the four Sunni Schools of Islam, the wife deserves maintenance if the following requirements are met.

4.1 Valid Marriage Contract

The marriage contract has to be a valid one, because if it is not, the wife no longer qualifies for a provision. She is also not entitled to get maintenance if she apostates (i. e. she converts from Islam to something else). Another factor that nullifies the marriage contract, and consequently the women's provision, is the case where a man gets married to a woman and later he realises that she was his foster suckling sister, as they both were breast fed by the same woman. In this case, they are immediately separated from each other and the marriage contract becomes invalid. She cannot get her maintenance nor can she ask for it. As for what the man has already spent on her, he cannot get it back nor can he get compensated for it, according to some Muslim scholars.⁴¹

Al-Khassaf, Al-Hanafīyah School followers, said: The woman who got married in accordance with a marriage contract that is invalid deserves no nafaqah. To explain this, one may argue that maintenance

⁴⁰ Mansoori, Muhammad Tahir, *Family Law in Islam Theory and Application* (Lahore: Shariah Academy, 2006) p.98.

⁴¹ Ibn Al-Humam, *Sharh Fath Al-Qadir*, vol. 4, p. 193. See also Ibn Qudamah, *Al-Mughnī*, vol. 7, p. 664. Al-Marghīnānī, *The Hedaya*, vol. 1, p. 140.

is in exchange for the right to benefit from the woman. Thus, if benefiting from the woman is unlawful, the maintenance is not an obligation whether the woman is pregnant or not. ⁴²

4.2. Capacity of Conjugal Relationship

Maintenance will not be payable if the husband is unable to have easily access for any of act and conduct of the wife e.g. she is imprisoned because of debt (if for that husband is not responsible). The right will be terminated if there is any other difficulty face by the husband to access his wife weather she is living at her husband house or her father. If she makes unjustified refusal to access she lose the right of maintenance. ⁴³

5. Women's Professional Occupation

In Islam the rights and freedom given to men are equally given to women. There is clear evidence in social activities of the people in the time of the Prophet ﷺ and His companion that women were not prohibited after the commandment of Hijjab, doing the normal work. They do their work as usual at home, in the fields and in the market without any interruption. ⁴⁴

5.1 Agriculture and Grazing

Islam fully accommodates the activities of Muslim women in the fields and gardens to help their husbands.

As the incident of Jabir's Aunt according to "Jabir b. 'Abdullah (Allah be pleased with them) reported: My maternal aunt was divorced, and

⁴² Al- Marghinānī, *The Hedaya*, vol.1, p.140; Verma's, B. R., *Islamic Law Personal being commentaries on Muhammadan Law*, (Delhi: Law House, 1986) P.285.

⁴³ Verma's, *Muhammadan Law*.p.287.

⁴⁴ Rahman, *Encyclopaedia of Seerah*, vol.5, p.308.

she intended to pluck her dates. A person scolded her for having come out (during the period of 'Idda). She came to Allah's Prophet (may peace be upon him.) and he said: Certainly you can pluck (dates) from your palm trees, for perhaps you may give charity or do an act of kindness."⁴⁵

In the hadith it is clearly demonstrated that any economic activity which is an essential part of the work of women is permissible and that there are no particular restrictions on her in this respect. However it is necessary that during the course of their work they should observe the instructions relating to their *satar* as it is mentioned in a hadith narrated by Asma' bint Abu Bakr in these words that "when Az-Zubair married me, he had no real property or any slave or anything else except a camel which drew water from the well, and his horse. I used to feed his horse with fodder and drew water and sew the bucket for drawing it, and prepare the dough, but I did not know how to bake bread. So our Ansari neighbors used to bake bread for me, and they were honorable ladies. I used to carry the date stones on my head from Zubair's land given to him by Allah's Apostle and this land was two third Farsakh (about two miles) from my house. One day, while I was coming with the date stones on my head, I met Allah's Apostle along with some Ansari people. He called me and then, (directing his camel to kneel down) said, "Ikh! Ikh!" so as to make me ride behind him (on his camel). I felt shy to travel with the men and remembered Az-Zubair and his sense of Ghira, as he was one of those people who had

⁴⁵ Imam Muslim, ibn al-Hajjaj, *Sahih Muslim*. (New Delhi: Kitab Bhavan, 1984), vol.2 book no.10, Hadith no.3535.

the greatest sense of Ghira. Allah's Apostle noticed that I felt shy, so he proceeded. I came to Az-Zubair and said, "I met Allah's Apostle while I was carrying a load of date stones on my head, and he had some companions with him. He made his camel kneel down so that I might ride, but I felt shy in his presence and remembered your sense of Ghira (See the glossary). On that Az-Zubair said, "By Allah, your carrying the date stones (and you being seen by the Prophet in such a state) is more shameful to me than your riding with him." (I continued serving in this way) till Ahu Bakr sent me a servant to look after the horse, where upon I felt as if he had set me free.⁴⁶

Islam does not restrict the economic activity of the women. They are not harred from engaging in any lawful activity outside their houses which is necessary for their livelihood as Allah's messenger explicitly permitted in these words "O women! You have been allowed to go out for your needs."⁴⁷

5.2.Industry And Trade

Women may start their own business she can open a shop to earn their lively hoods. Whenever there is a genuine need on the part of a woman to engage in such work there is no restriction on it the Islamic shariah. Saudah the Prophet's wife knew about tanning and tanned the skins of animals. Once Hazrat Sauda (the wife of the Prophet) said One of our sheep died and we tanned its skin and kept on infusing dates in it till it was a worm out water skin.⁴⁸

⁴⁶ Bukhārī, *Ṣaḥīḥ Al Bukhārī*, Book 62, Hadith 151.

⁴⁷ Ibid, Book 60, Hdith 318.

⁴⁸ Bukhārī, *Ṣaḥīḥ Al Bukhārī*, Book78, Hadith 677.

The wife of Abdullah ibn Ma'sud was an accomplished artisan and work hard at craft to meet the needs of the family because Abdullah ibn Ma'sud was mostly engaged in work of Deen and did not earn anything. Once a Prophet asked her if she spent her money on her husband and when she replied in affirmative Prophet said you will get your reward⁴⁹

6.Husband's Duty to Maintain a Working Wife: Rational and Juristic Argument

Now a day, things have changed and most women are looking for jobs and professions. But it is clear that there are only two options depending on whether she has permission from her husband. The first case is when the wife gets her husband's permission to get a job. In this case, he has to give maintenance because when he accepts that she works outside, he implicitly exempts her from the home confinement she is usually required to fulfill. However, a new restriction is imposed on the wife regarding the job that she wants to do. It has to be lawful rather than doubtful or undecided. This opinion was held by Shiahties, and Hanbalīes scholars.⁵⁰ Shāfi'ies scholars argued that had she gone out somewhere in town with his permission for something for herself, still nafaqah would not have been dropped because she obtained his permission before leaving and because he still maintains the right to enjoy her whenever he wants her.⁵¹ As for the Hanbalīes scholars, they argued that if the woman hires herself for suckling with her husband's

⁴⁹ Rahman, Afzal, *Muhammad, Encyclopaedia of Seerah: Role of Muslim Woman in Society*, p.311

⁵⁰ Al-Ramli, Shams Al-Din, *Nihayat Al-Muhtaj*, (Cairo:1967), vol. 7, p. 222.

⁵¹ Ali,syed Ameer, *Muhammadan Law*, (Lahore : law publishing company),vol.2,p371.

permission, the hiring contract is legitimate and she deserves nafaqah in this case.⁵² This shows that Hanbalīes scholars consider the woman's hiring herself to suckle is a legitimate thing for the woman to do and get paid for it. If the husband agrees on what she does (i. e. suckling for money), then she is entitled to nafaqah from her husband. Jurist agreed with both Shāfi'es and Hanbalīes in their view about this issue. They said if the wife works during the day or the night and she had her husband's permission to do so, then this does not affect her right in getting nafaqah, because confining the wife to the house is the husband's right and he can give it up if so he wants.⁵³

On the other hand, Shāfi'es, and Hanbalīes, believe that the wife does not deserve nafaqah, if she has not given the permission by her husband. The second case is whether the husband gives his wife permission to work or not give the permission; she does not deserve nafaqah, because the conferment is incomplete. This opinion is held by Ibn Abdin from Hanbalīes School. He states "If the woman gave herself to her husband only during the day or only at night, she gets no maintenance because giving herself to her husband is incomplete. This is the case when a man gets married to a woman who works outside during the day and stays with her husband during the night. Such a wife has no maintenance."⁵⁴ However, it is possible in some cases that before marriage the wife may make the possibility of having a job in the future or keeping her present job a pre marriage condition or

⁵² Ibid, p370.

⁵³ Farhat, Muhammad, *Ahkām Al-Usrah Fi Al-Fiqh Al-Islami*, (Cairo: 1992), p. 296.

⁵⁴ Al-Tamartashi, Shams Al-Din, *Radd Al-Muhtar Ala Al-Durr Almukhtar: Hashiet Ibn Abdin*, vol. 3, p. 577.

promise. In such a situation, the Hanbalīes scholars contend that the husband has to stick to the condition made before the marriage and honor his promise and the wife accordingly, should get maintenance because the husband was aware of her desire to get a job or continue with the job that she had already had before the marriage contract. Other scholars from Hanafīes, Mālikīes, and Shāfīes schools argue that the condition, about the permission to get a job after marriage or continuing with the job she already has, which the wife made before marriage does not commit the husband. In spite of this condition, he can, if and when he wants, prevent her from working. If the man accepted his wife's condition regarding her work, whether she is a teacher or a student, etc., and got married to her, he is obliged to observe the condition. Thus, he cannot prevent her from practicing her profession or job, particularly after consummation.⁵⁵ The husband and the wife have to opt for one of these two possibilities, and the consequences of each option are quite clear. However, a problem may arise when some husbands permit their wives to get the jobs they want. In fact, it is rather common today that one finds some husbands looking for appropriate jobs for their wives in some government offices. At the same time, these husbands refuse to give maintenance to their wives. In other words, they drop the wife's right in getting the maintenance that each wife deserves to get. What is worse is that they even stop paying the children's maintenance if they have any. Their

⁵⁵ Rahman, Tanzil, *A Code Of Muslim Personal Law* (HamDārd academy), vol 1, p.264.

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argument for this behaviour is that the wife has a salary therefore; she should pay the costs of living for both herself and her children.⁵⁶

In effect, this leads to many problems and disputes among husbands and their wives that end up, in most cases, in a divorce or a temporal separation. Now, let us look at how contemporary scholars dealt with this problem. No doubt, what the husband does to his wife in the way presented above does not conform to the rules and regulations of the Islamic Law. This is because the husband is infringing on his wife's right to her own money and he is at the same time, dropping his right to be her protector and maintainer. Of course, this behaviour contradicts Allah's statement in Surat Al-Nisa verse 34 that "Men are the protectors and maintainers of women, because Allah ﷻ has given the one more (strength) than the other, and because they support them from their means." It is said in commenting and interpreting this verse, that men are more preferable because they pay dowers as well as maintenance. Thus, if the husband refuses to pay maintenance, although he gave her permission to work, he will lose his status as her protector and maintainer which is a serious thing, as it threatens the concept of the family. Moreover, when the husband refrains from giving maintenance to his wife and children, he will be committing some sins because he is playing with the lives of those who are supposed to be in his care.⁵⁷ It is inevitable that the couple have to cooperate in organizing maintenance and sharing financial responsibilities, because, particularly nowadays, the husband in most

⁵⁶ Rahman, Tanzil, *A Code Of Muslim Personal Law*, p.265.

⁵⁷ Rahman, Tanzil, *A Code Of Muslim Personal Law*, p.265.

cases cannot bear all the costs of living, so it is natural that he will seek support from his wife to share in maintenance. There is nothing wrong with this kind of sharing. It was mentioned that some female companions in the time of the Holy Prophet ﷺ who used to spend on their poor husbands as well as children. What is spent on them counts as a sort of charity for which she will be rewarded especially if her husband and the children need money. If the husband and wife with their mutual understanding share the cost of living, while the wife is still adhering to her right in getting maintenance, there will be no problem. If the case is one where the husband has permitted her to work, there will be no problem. Abu Al-Nil encouraged the working wife to help her husband in maintenance. He says Even though the working wife has been permitted by her husband to work, she has to pay for part of the maintenance because her work clashes (i. e. affects negatively) with his own interest. This is the case when the two are on good terms. If he permits her to work and leaves her salary, he will be rewarded for that. However, if the two parties disagree, she gets something for what she had lost and this can be estimated according to tradition, and circumstance.⁵⁸ The estimate may vary according to the financial circumstances of each of the husband and the wife, if he does not want her to work, he can prevent her from doing so or he can drop the maintenance which he would usually have to provide for her if she refuses to obey his order. In this case, she cannot ask for maintenance. Second, forcing the wife to pay her husband for allowing her to work

⁵⁸ Abu Al-Nil, *Muhammad, Ai-Ataqat, Al-Usarieh Fi Al-Islam*, (Egypt: Dār Al-Fikr Al-Islamiyyah Al-Hadīth, 1987), 2nd edn, p. 171.

is a kind of exploitation of the wife, because it will become a precedent for other husbands and wives to follow suit, so they will force their women to work to get some money for them although they do not need it. This is unjust for the wife, and men should refrain from doing it.⁵⁹

7. Consequences of Failure to Paying Maintenance

There are different opinions among Islamic jurists as to whether or not the husband's failure to pay maintenance gives the wife a valid ground to apply for divorce. The Hanafīs are categorical in their stance that it is not a valid ground, no matter the husband is simply refusing to pay or unable to pay. They base their opinion on verse of Sura Talaq verse seven.

According to the Hanafīs this covers a husband who fails to maintain his wife because he is poor. With regard to husband who simply refuses to maintain his wife because he is destitute. With regard to a husband who simply refuses to maintain his wife, thereby inflicting injustice upon her, then the Hanafīs rules that this injustice can be redressed without recourse to divorce. For instance, if he is arguing that he cannot afford to pay her when in fact he has property. Alternative he could be put into jail until he resumes paying maintenance. Hanafīs, and the other three Suuni Imams⁶⁰, Mālik's and Hanbalī's jurists in particular allow the wife a divorce through the court on the ground of her husband's failure to maintain her if he has

⁵⁹ Rahman, Tanzil, *A Code Of Muslim Personal Law*, p.264

⁶⁰ Mālik, ibn Hanbalī, Al-Shāfi'i.

no known property.⁶¹ They base their opinion on Sura Baqra verse 231. They hold that a woman taken back by her husband but not being maintained by him cannot be considered to have been taken back by her husband on a reasonable basis.⁶²

8. Conclusion

The chapter discussed a number of issues that relate to maintenance. First, the meaning of maintenance or nafaqah and showed how important it is both for the family to live in tranquility and for the marriage to proceed smoothly and with no problems. After that, it is presented evidence that legalised the concept of maintenance in Islam. The evidence came from different sources: The Qurān, the Sunnah of Prophet ﷺ, the Ijma (or consensus) among Muslim jurists, logic and reasonability. Then it discussed the conditions according to which maintenance is provided. The chapter also explored different types of maintenance, focusing on the wife's maintenance of food, clothing, and housing. Other sorts of maintenance were also discussed, such as the additional maintenance that is payable to the wife in case she has a servant, or in case she needs medication. The chapter is concluded by arguing that it is in the best interest of the family and the marriage that the couple show cooperation, understanding, intimacy, love, and flexibility toward each other, because a relationship based on these values will definitely be able to withstand all sorts of problems it encounters in contemporary everyday life.

⁶¹ Al- Marghīnānī, *The Hedāya*. vol.I, p.141.

⁶² Ibn Rushd, *Bīdayāt al-Mujtāhid Wa Nihāyat al-Mujtāsīd* (Centre for Muslim Contribution to Civilization, 1996) , Vol.II, p.44.

Chapter 2

Maintenance of Wife under Pakistani Law

1.Introduction

This chapter examines in detail the maintenance laws for wives in the broad prospect of family laws of Pakistan. Pakistan was established as national homeland for the Muslims. In the eye of the masses it had been created on the basis of Islam.⁶³ In the Objective Resolution which clearly states among other things, that the in Pakistan Muslims would be permitted, individually and collectively spends their lives in according to the teaching of Islam as set out in the Qurān and Sunnah of the Holy Prophet ﷺ.⁶⁴

In a Pakistan, family is an important and basic unit of the society. For establishment of good family respect and honor is the foundation, in Pakistani society people are live together for the respect and pride of the family. In Pakistani society people are happy to be known by their family.⁶⁵

The developments in Pakistan with regards to the wife's claim for maintenance have been occasioned by reinterpretation and redefinition of the applicable Muslim law and the simplification of the civil proceedings involve. Article 2⁶⁶ of the Constitution of Pakistan had been incorporated into the Constitution of Pakistan as a substantive clause since 1985. The fourth clause of this Article contemplates "that the Muslims shall be enabled to order their lives in the individual and collective sphere in accordance with the teachings and requirements of

⁶³ Jaffrelot, Christophe, *A History of Pakistan and Its Origins* (Anthem Press, 2004) , P. 16-17.

⁶⁴ Khan, Hamid, *Constitutional and Political History of Pakistan* (Oxford University Press: 2001), P.12.

⁶⁵ Rahman, Fazal, *The Ideological Experience of Pakistan in Islam and the Modern Age* (London: Seerah Foundation 1978), vol.1, p.1.

⁶⁶ Constitution of Islamic Republic of Pakistan, Article,2 A .

Islam as set out in the Holy Qurān and Sunnah.”⁶⁷ A Muslim wife right of maintenance by her husband gets importance over, all other family members’ right of maintenance, the wife is preferred even over the young children because wife is considered to be the source or root (asl) and a child is the offspring or a branch (fara).⁶⁸

The chapter begins with the discussion about Pakistani law on maintenance of wife it followed by discussion about the condition of rights of maintenance and the chapter also deals with miscellaneous matters such as Muslim Family Law ordinance on maintenance of wife , withdrawal of maintenance , Post-divorce maintenance and various other legal code on maintenance of wife .

2.Pakistani Law on Maintenance of Wife

The development in Pakistan with respect to the wife’s claim for maintenance, have been associated by reinterpretation of the applicable Muslims law and simplification and civil proceedings involved.⁶⁹ The maintenance of wife under the domestic law of Pakistan as follows.

Before MFLO 1961 the wife also had an opportunity to apply for maintenance under the criminal procedure code provision, 1898,⁷⁰

⁶⁷ Previously it was a part of the preamble of the Constitution and was also enacted in Articles 31 and 230 of the Constitution of Pakistan.

⁶⁸ Wife’s right of maintenance is regulated by Muslim personal law and also by the statutory provisions of the Criminal Procedure Code, 1973 ; Sections 125-128

⁶⁹Nasir ,Jamal J, *The Status of Women under Islamic Law and Modern Islamic Legislation*(Brill, 2009)p.106.

⁷⁰ Rahman, Tanzilur *A Code of Muslim Personal Law*, (Hamdard Academy, 1978), vol.1, P. 261. See also in Ahmed,Jamil, *Mullah's Principal on Muhammadan Law*, (Lahore:Kausar Brother,1984) p.300.

If any person having sufficient means neglects or refuses to maintain his wife or his child unable maintain itself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding four hundred rupees in the whole.⁷¹

3.Conditions of Valid Marriage

Like classical Islamic law husband's is duty bound under the domestic law of Pakistan to provide maintenance to his wife without any lawful cause if husband refuse to maintain his wife, the wife has right to sue him form maintenance.⁷²There are some conditions for a valid marriage contract.

3.1 Fail to Provide Maintenance

The dissolution of Muslim marriage act 1939 section 9 gives wives a good ground for dissolution of marriage if husband fails to provide maintenance to his wife for two years of marriage then wife can be dissolved her marriage through court.⁷³

3.2. Withdrawal of Maintenance:

Though to get maintenance from her husband is the right of wife and the liability or duty of the husband to maintain her but this right is not unconditional and absolute. It is obligatory upon husband to maintain his wife if she is loyal with him.⁷⁴

⁷¹ Cr.C.P, 1898, section 488.

⁷² Rahman, Tanzilur ,*A Code of Muslim Personal Law*, vol.1, P 261

⁷³ Rahman, Tanzilur ,*A Code of Muslim Personal Law*, vol.1, p.262.

⁷⁴ Afradi, Muhammad Razi Khan, *Encyclopedia of Hadith* (Delhi : Anmol Publicatin,2007), vol. 3, P.122

In Bahadar Khan Vs Mst Baghbheri⁷⁵ the Lahore High Court decided that as regard the failure of Mst Baghbheri she refuse to live with her husband, although the decision regarding the matrimonial rights issue to her husband by the court, she is not entitled to maintenance on this ground. It was also held in the case of Majida kathun Vs Paghala Mohd⁷⁶ that as the wife has refuse herself to return to her husband house without sufficient cause she is not entitled to maintenance. The right of maintenance is dependent on wife decision living with her husband and if she decided not to live with her husband without reasonable cause then she is not entitled to maintenance and failure of the husband to provide her with maintenance in those circumstances would not entitle the wife to dissolution of the matrimonial bond⁷⁷

3.3. Quantum of Maintenance

The wife is entitled to maintenance but the domestic law is silent on the question of quantum. However it is assumed by the court that the quantum of maintenance is never static and common for all.⁷⁸ It changes according to the changing economic condition and status of spouse. A wife claim maintenance from her husband according to his social status of and the economic conditions and status of spouse.⁷⁹ A wife can claim maintenance from her husband in Fraida Bano case⁸⁰ the Lahore high court held that the arbitration council can competently

⁷⁵Bahadar Khan Vs Mst Baghbheri ,PLD 1977 Lahore, p.90.

⁷⁶ Majida kathun Vs Paghala Mohd, PLD ,1963.

⁷⁷ Tanzil-ur- Rahman, *A Code Of Muslim Personal Law*, vol.1, P.268.

⁷⁸ Ahmed, Saghir, *Muslim Family Laws* (Lahore: Mansor Book House, 1998), p.68.

⁷⁹ Ibid, P.69.

⁸⁰ PLD1987, Lahore 374

provide maintenance to wife not only for future but for past quantum of which is depending upon the socio- economic status of the parties.

4.The Muslim Family Law Ordinance

It was promulgate in 1961 that If husband fails to maintain his wife sufficiently, or where more than one wife fairly, the all or any of the wives, may apply to the Chairman who shall establish an Arbitration Council to decide or conclude the matter, and then may Arbitration Council issue a certificate to stipulating the amount which shall be paid as maintenance⁸¹

This section of the ordinance deals with the maintenance and provides a simple ways for a neglected wife to claim and attain maintenance. If the husband fails to maintain his wife sufficiently or if he has more wife and fails to maintain them fairly, the wife or wives may sue for maintenance to the chairman of the union council. Chairman notice the application to establish an arbitration council where the chairman himself listen the view of each party. The arbitration council has authority to issue a certificate, in certificate amount of maintenance is specify husband shall pay to his wife as maintenance. Appeal against the decision of the arbitration council may be made to the collector.⁸² If the husband fails to fulfill the responsibility of maintenance as ordered, It will be recoverable as arrears of land revenue The period of the procedure with regard to civil suit for maintenance was streamlined in Pakistan by the establishment of special family courts under the West Pakistan Family Court Act, 1964. . She may also apply for a

⁸¹ MFLO 1961, section 9

⁸² Ahmed, Saghir, *Muslim Family Laws*, p.64.

court order as to payment of her maintenance under the criminal procedure code of Pakistan filing of a suit for 6 years maintenance.⁸³

The court are given jurisdiction in maintenance, marriage restitution of conjugal rights etc. thus a Muslim women before seeking maintenance from her husband has three alternative modes of procedure.

1. An applicant under section 9 of the MFLO

2. Criminal proceedings under section 488 of Cr.P.C

3. Civil proceedings, which in Pakistan would come before the special family courts.

After 1961, in Pakistan the neglected wife can sue her husband for maintenance, either in a court of the family judge under the West Pakistan family court act, 1964 she can apply to the chairman of the village union council. Under section 9 of MFLO there are many cases decided by superior courts of Pakistan⁸⁴ in the first reported case *Sardar Muhammad vs. Mst Bibi and others*,⁸⁵ it was argued by the petitioner that "A Muslim wife was not entitled to a decree for past

⁸³ Rahman, Tanzil-ur, *Muslim Family Laws Ordinance: Islamic & Social Survey*, (Royal Book Company, 1997), p.235.

⁸⁴ The cases decided under MFLO are following, these are *Sardar Muhammad vs. Mst. Bibi and other* PLD 1966 Lahore 703, *Rashid Ahmed Khan vs. Mst Naseem Ara and others* PLD 1968 Lahore 93, *Muhammad Nawaz vs. Mst Khurshid begum* PLD 1972 Supreme Court 302, *Gulam Rasool vs. collector Lahore and another* PLD 1974 Lahore 495, *Inamul Islam vs. MSt Hussain Bano* PLD 1976 Lahore 1466, *Mst Gul Bibi vs. Muhammad Saleem and another* PLD 1978 Quetta 117, *Muhammad Boota vs. Shameem Akhter* NLR 1984 civil 442, *Abdul Latif vs. Mst Bakht Bhari* 1985 CLC 1184, *Mst Perveen AKhter vs. Javed Akhter* 1985 MLD 45, *Majr Ala-ud-Din Akhter vs. Collector* 1985 CLC 2939, *Mushtaq Ahmed vs. the collector* 1986 CLC 2312, *Mst Ruqia Begum vs. Deputy commissioner Sialkot* 1986 CLC589, *Muhammad Abdul Rashid vs. Mst Shazia Perveen* 1987 MLD 766, *Mst Furkhanda Begum vs collector Sialkot District* 1987 MLD23, *Nasreen Ashref vs. Muhammad Iqbal* 1988 CLC 914, *Muhammad Najeem vs. Abdul Sitar* 1989 SCMR 119, *Dr. Abdul Majid vs. Mst Humaira Bibi* 1989 SCMR 1416. *Mst. Farah Naz vs Judge Family Court Sahiwal and Others* , 2006 PLJ Supreme Court 839. *Masood Sadiq vs Mst. Shazia and 3 others* PLJ 2008 Lahore High Court 757.

⁸⁵ *Sardar Muhammad vs. Mst. Bibi and other*, PLD 1966, Lahore , p. 703.

maintenance”.⁸⁶ It was held by the court that a wife could justly claim maintenance from the date of accrual of cause of action and not necessarily from the date of first seeking redress.⁸⁷ By allowing the arrears of maintenance, the court reinterpreted the traditional concept in Hanifi Law. In *Rashid Ahmen Khan Vs Mst.Naseem Ara and others*,⁸⁸ the Lahore high court held the same. It has been argued by the petitioner that the Arbitration Council had no jurisdiction to award arrears of past maintenance.⁸⁹ The court answered “there is nothing in section 9 of the Ordinance to confine its application only to grant future maintenance not covering the past”.⁹⁰ In 1972 a full bench of the supreme court of Pakistan, in *Muhammad Nawaz vs. Mst Khurshid Begum*⁹¹ with a two third majority, also favoured the decision taken in the *Rashid Ahmen Khan vs Mst Naseem Ara and others* case. In this case, it was argued by the appellant that under the MFLO, past maintenance cannot be allowed.⁹² The supreme court held, “on the language of section 9 of the Muslim family Law ordinance 1961, there is no prohibition for granting past maintenance as apposed to this under section 488 of the criminal procedure Code the monthly allowance can be ordered to be paid only from the date of the application .The legislature must have been conscious of the phraseology of section 488, Cr.P.C. in spite of that it did not place any restriction on the power of the Arbitration Council to award

⁸⁶ *ibid* ,p.705

⁸⁷ *ibid*

⁸⁸ *Rashid Ahmed Khan vs.Mst Naseem Ara and others* PLD 1968 Lahore 93

⁸⁹ *ibid* ,p.95

⁹⁰ *ibid* ,p.93

⁹¹ *Muhammad Nawaz vs. Mst Khurshid Begum*, PLD 1972 Supreme Court, p. 302.

⁹² *ibid* ,p.303

maintenance. Under this provision of law the Arbitration Council is competent to award maintenance for the past subject, of course, to the question of limitation.”⁹³

The husband is bound to maintain his wife unless she is disobedient. The law enjoins upon the wife to be faithful to him and respect his reasonable orders. In the famous case *Muhammad Ali v, Mst. Ghulam Fatima*⁹⁴ it was held that the husband is not bound to maintain a wife who is refused herself to him or otherwise disobedient unless the refusal or disobedience is justified by the non-payment of prompt dower or she leaves the husbands house on account of cruelty or bad treatment. Maintenance is an enforceable right and the wife can sue her husband for the decree of maintenance if he neglects or refuses to maintain her. The wealth or the source of income of wife whether that be substantial or meager, does not absolve the husband of his obligation to maintain his wife. If the husband neglects or refuses to maintain his wife without any lawful excuse the wife is entitled to sue the husband for maintenance.

The absence of provision on maintenance for divorced or widowed wives beyond the iddat period has been ignored by the judges of the superior courts of Pakistan.⁹⁵ It seems that the judges have never even tried to take a step for the situation of the women whose marriage has been broken down because of the divorce or death of the husband.⁹⁶ This is evident from the fact that not a single judge either under the

⁹³ *ibid*, p.302

⁹⁴ *Muhammad Ali v, Mst. Ghulam Fatima*

⁹⁵ Carroll. L, *The Muslim Family Law Ordinance, 1961: Provision and Procedure; in: Contribution To Indian Sociology*, (1979), p.118.

⁹⁶ *Ibid*, p.119

Cr.P.C or under MFLO has ever hinted at the desirability of an enactment of a better maintenance law for the benefits of such women. MFLO is silent so far as past maintenance is concerned the court while interpreting the status must keep in mind the intention of the Legislature by adding section 9 MFLO. This is to grant maintenance allowance to a women whose husband has fail to maintain her sufficiently such remedy is an expeditious one and should be available to a wife when there are more wives than one.⁹⁷

5.Post-divorce Maintenance

This has been constant view of indo-Pakistan courts that when the parties are Hanfi Muslims the wife is held not entitled to past maintenance unless there is an agreement or court's decree. A division bench of the high court's of West Pakistan Lahore consisting of Anwar-ul-Haq and Muhammad Afzal cheema.⁹⁸ However held that wife can justly claim maintenance from the date of accrual of the cause of the action and not necessarily from the date of her first seeking redress the date of application or filing suit there for. Their lordships in this case relied upon a question from the book zad al-Maad of ibn al Qayim who was an exponent of Hanbli law. The learned judges held "the mare fact that the neglected wife has been hesitant in promptly coming to the court or has been pursuing alternative remedies out of court cannot in all fairness be so construed as to deprive her of the right of maintenance from the day when the cause of action accrued to her. The court have thus jurisdiction to grant such maintenance subject

⁹⁷ Carroll. L, *The Muslim Family Law Ordinance* , p.118.

⁹⁸ Rahman, Tanzilur, *A Code of Muslim Personal Law*, vol.1, P 271.

of course to consideration of limitation and the relevant circumstances of each case⁹⁹. Governed by classical law In terms of maintenance during and after marriage, the classical law is applied. The post-independence changes to the Indian Criminal Procedure Code that allow a divorced wife who is unable to support herself to claim maintenance from her former husband have not been reflected in the Criminal Procedure Code of Pakistan. While the Indian Criminal Procedure Code was extended so as to apply to divorce, no such reforms have been made to section 488 of the Criminal Procedure Codes Pakistan. The post-divorce maintenance which is controversial in India is very clear in Pakistan. Though it was the Shah Bano case in India that made this issue controversial and the cause was according to the Indian penal code to the Muslim personal law but in Pakistan the law is not ambiguous and is exclusive based on Hidaya. It is held that after divorce during the period of iddah the wife is entitled to maintenance. If the divorce is not communicated to her until after the expiry of that period, she is entitled to maintenance until she is informed of the divorce. In the case of Major Shaukat Ali v Mst Zartaj Hamid¹⁰⁰ the court held that maintenance to the wife duly divorced by the husband shall not be operative beyond the period of iddah after pronouncement of talaq. Inamul Islam v. Mst. Hussain Bano¹⁰¹ "Wife is entitled to maintenance from date she separated from husband till effectiveness of date of divorce plus 90 days but not beyond such period". In another case the Supreme Court in 1990 decided that the

⁹⁹Ibid, P. 272.

¹⁰⁰Major Shaukat Ali v Mst Zartaj Hamid, NLR 1985 Civil Lahore p.246.

¹⁰¹ Inamul Islam v. Mst. Hussain Bano; PLD 1976 Lahore. P.1466.

maintenance is granted for the period of iddah and this is followed by the Karachi high court where in a case it was held that the wife is entitled to past maintenance but she would not be entitled to receive any maintenance after divorce except for the period of iddah. Thus until there is not a single case decided by the high court of Pakistan which have granted maintenance to the divorced wife after the period of iddah.

6. Various Other Legal Codes on Maintenance Of Wife

Under certain condition and under a valid marriage contract, maintenance is the lawful right of the woman, and this is the case in all Arab countries regardless of her religion, and regardless her own personal means. The right derives from the authority of the Qurān, from the Prophet ﷺ tradition and from consensus. ¹⁰²

A woman is held to be entitled to maintenance in all the modern personal status code of the Muslim countries if she submits herself or offers to submit herself to him even if she is staying at her family's home unless the husband asked her to move with him and she refuses without lawful excuse¹⁰³. It became incumbent on the man with the act of consummation in the Moroccan code (article 123) where in Iranian Civil Code it becomes incumbent as a result of wife's submission. These two positions have different procedure in dealing with nafaqah disputes. According to the Moroccan code, it is the husband who has to prove his wife's non submission, as nafaqah become incumbent on

¹⁰²Nasir ,J.Jamal , *The Status of Women under Islamic Law and Modern Islamic Legislation*, p.105

¹⁰³ Ibid,P.106

him upon consummation. Therefore as long as nushūz is not proved a woman continue to have claim to nafaqah. In the Iranian procedure, it is the woman who must prove her submission and she is not entitled to maintenance unless her submission is proved, as nafaqah become incumbent on the husband only as a consequence of her submission.¹⁰⁴

Most Islamic jurist, whether Sunni or Shiah, rule that if the wife goes out to work without her husband permission, then she lose the right of maintenance , and Articles 68 of Jordanian law and 73 of the Syrian law adopt this ruling expressly. The ruling is implied in Article 25/1 of the Iraqi law, where the wife loses her right of maintenance if she goes out of the matrimonial home at all without her husband's permission¹⁰⁵ or without a lawful excuse. Indeed Iraqi lawyer Muhsin Naji specifically includes among those women who have no right to maintenance, the women who continue her job or her profession after being expressly forbidden to do so by her husband.¹⁰⁶

Egyptian law is somewhat more liberal in line with the opinion of more progressive. As long as wife is not actually forbidden to go out of the home, and as long as doing by so she does not in some way comprises the interest of the family, then without losing her right to maintenance she may go out to the circumstances where there is a provision under Shari'ah law or an accepted customs allowing her to do so, or in the event of an emergency, or to do lawful job of work. So

¹⁰⁴ Abdullah A. Al- Naim ,*Islamic Family Law In Changing World* (London: Zed Book Ltd,2002), P.100.

¹⁰⁵ Nasir ,J.Jamal ,*The Status of Women under Islamic Law and Modern Islamic Legislation*, p.109

¹⁰⁶ Ibid

infact the husband can still prohibit his wife from going out of the home, and as long as by doing so she does not in some way compromises the interest of the family, then without losing her right to maintenance, she may go out in the circumstances where there is a provision under Shari'ah law or an accepted customs allowing her to do so, or in the event of an emergency, or to do a lawful job of work. So infact the husband can still prohibit his wife from going out, and should she not heed him, then she lose her right to maintenance.¹⁰⁷

Kuwaiti law is not in dissimilar in that it allows the wife to go out for a lawful reason or to lawful employment without being classed as disobedient, and so without losing her right to maintenance, provided it is not against the interest of the family to do so.¹⁰⁸

The Muslim family codes have a divergent position on the right of women to work. The codes generally confine the women to marital home and do not allow her to go outside the house for work. But realizing the present economic realities, the codes have taken rather a flexible position on the issue. The Moroccan code, for the instance, permits the wife to include in her marriage contract a condition permitting her to work in areas relating to country's public interest.¹⁰⁹

Pakistani society is ignorant of the teachings of the Qurān and Sunnah and thus ignorant of the women's rights. The masses particularly women are unaware of law. The un-Islamic and typical approach

¹⁰⁷De Long- Bas, Natana J, *Women In Muslim Family Law* (Syracuse University Press, 2001), p.97-98.

¹⁰⁸ Abdullah A. Al- Naim *Islamic Family Law In Changing World*, P.110.

¹⁰⁹ De Long- Bas, Natana J, *Women In Muslim Family Law*,p.95.

exists in the society for instance it is believed that once a woman goes to court against her husband she is no longer taken as wife. Court in Pakistan is male dominated. The fear exists in a women that once she went to court, it will annoy her husband that may result in divorce her marriage which is considered a shameful act for her and the divorcee is not respected and regarded in society and even in her parent's house. The most important think is the protection for women. A wife never feels herself protected after her marriage it is presumed that liability of parents cease and now it is her responsibility to build her home.

7. Conclusion

It is concluded that providing maintenance to the wife is the duty of the husband in classic Islamic law as well as traditional Muslim law when the wife is competent to surrender herself to her husband and is obedient and faithful to him. The courts in Pakistan have decided cases in the light of what is stated in Hidayah and have taken guidance from different commentaries on the Qurān and in most of these cases have reinterpreted the verses of the Holy Qurān for the sake of justice to the women. The courts in Pakistan have so far contributed a lot to recognized and protect the right of maintenance to wives. Post-divorce maintenance through differently interpreted by some jurists and commentators of the holy Qurān is understood and recognized till the expiry of iddah and not beyond it in Islamic and domestic law. Widows are not entitled to maintenance as they have to get a share out of the estate of the deceased husband and this is accepted in both Islamic and domestic law. The quantum of maintenance in classic

Islamic law and domestic law in Pakistan is not explicitly specified but can be determined differently in different circumstances and the law is not rigid so far. The quantum of maintenance in Islamic law is recognized by some jurists in regard to the position of the husband, or with regard to the wife's requirements and local customs. From the study of both the classic Islamic law of maintenance and domestic law it is obvious that both are similar in regards to liability of husband to provide maintenance to his wife, maintenance to widow, post-divorce maintenance, Quantum of maintenance and the refusal of husband to pay maintenance to his wife. As they are different interpretations of the verses of The Holy Qurān and The Sunnah of the Prophet ﷺ so the courts in Pakistan are following that which is in the best interest of society and particularly for women community in order to eradicate the social injustice

Chapter 3

The Right of Maintenance of Working Wife in Their Respective Domestic Law and Procedural Code Study In The Light Of Decision of Superior Court of Pakistan

1.Introduction

This chapter examines the development of case law on the issue of maintenance under the current family laws of Pakistan. It also includes the interpretation of the laws by the superior courts on the issues of period of maintenance, amount of maintenance, about consequences of non-payment of maintenance. Section 9 of Muslim Family Law Ordinance 1961 says that wife is entitled to claim maintenance for the iddat period and also claim past maintenance (i.e. for the period during which the subsistence of marriage when wife was not maintained).¹¹⁰

So in Pakistan under section 9 of the Muslim Family Law Ordinance of 1961, the husband is bound by the law to maintain his wife and if he does not do so without legal cause then wife may sue him for her maintenance. She may also apply for a court order as to payment of her maintenance under the Criminal Procedure Code of Pakistan.¹¹¹

The number of family cases is increasing in the courts now days. Most of the cases related to divorce, maintenance and custody of children issues. These cases are increase because of social change taking place in the society, increasing number of these cases result of increasing role of women in economic and political life.¹¹² The rates of divorce and maintenance cases are increasing in the courts; the reason of

¹¹⁰ Ahmed, Saghir, *Muslim Family Laws* (Lahore: Mansor Book House, 1998), p.65.

¹¹¹ Rahman, Tanzilur *A Code of Muslim Personal Law*, (Hamdard Academy, 1978), vol.1, P. 275.

¹¹² Rahman, Tanzilur, *Essay on Islam* (Islamic Publications, 1988), P.271.

increasing these cases might be include the increasing population, and enhanced the awareness among women about their rights.¹¹³

In this chapter it will seek to examine the case law that developed as a result of the decisions of different superior courts in the light of MFLO 1961 and Criminal Procedural Code 1898. These cases are implicitly related to maintenance of working wife. To see how superior courts in Pakistan interpreted the law on maintenance for wife, the material is divided into decision of cases decided by the superior courts of Pakistan. According to the decision the cases is divided into Period of Maintenance, Quantum of Maintenance, Past Maintenance, Maintenance Granted to Wife When She Look after the Minor, Maintenance given to wife till the prompt dower is not fully paid.

2.Case Related to Maintenance of Wife

2.1.Cases on Period of Maintenance:

1.Hafiz Muhammad Younis Vs Mst.Shaeen Qurashi¹¹⁴

1.1.Introduction

The brief fact of the case is that Mst. Shaeen with her son Sannan file a suit for recovery of 20 tolas gold ornaments as dower and maintenance at the rate of Rs.2000/- per month for herself and Rs.1000/- per month for Sunnan with effect from 20-2-2007 to 20-7-2007 , before the learned family court Bannu. During the execution proceeding, Hafiz Muhammad Younis appeared before the executing court and submitted an application for setting aside ex part decree. Due to the efforts of the notables of the area , the matter was patched up

¹¹³Ibid , P.271-72.

¹¹⁴Hafiz Muhammad Younis vs Mst.Shaeen Qurashi. PLD 2012, p.157

between the parties so the decree were dismissed as withdrawal on 29-11-2008. As per the arbitration verdict Mst. Shaeen received 7-1/2 tola gold ornaments but so far as 12-1/2 tola of gold ornaments she could demand from the petitioner at any time. However on 4-3-2010 Mst. Shaeen institute another execution for the satisfaction of her decree before the family court Bunnu to reopen the execution petition before the executing court and claim 12-1/2 tola of gold ornaments as well as maintenance amount and the appeal passed against the petitioner.

1.2. Judgment:

In this suit the petitioner appeal is rejected and the court gives the verdict in favour of Mst. Shaeen because she leaves the house of the petitioner due to the stubborn attitude. Respondent had never relinquished her entire claim against the petitioner. Even otherwise there is no legal impediment to file second execution petition in case of withdrawal of execution petition from the executing court, if the decree has not been satisfied.

1.3. Derivation of law:

If wife leave the house of her husband due to the stubborn attitude and if she file a suit on maintenance and husband wanted settle the matter outside of the court and she agreed on that but she has right to reopen the suit on maintenance at any time. And she has right to claim maintenance if she leave the house of her because of stubborn attitude.

2. Dr. Naseem Akhtar vs The VIIIth Civil Family Judge Karachi¹¹⁵

2.1. Introduction:

The petitioner filed a suit to challenge the judgment of family and appellate courts about the decision on maintenance granted to wife. The petitioner filed that the appellate court was not justified in making decision against the petitioner. The petitioner married to respondent No.3 on 3.2.1989 while Ruksati took place on 20.7.1989 according to the petitioner the Respondent No.3 live one week only she was divorced on 29.7.1989. Although the respondent No.3 divorced by petitioner on 29.7.1989 but she filed a suit for dissolution of marriage in the court VIIIth Civil Family Judge Karachi 10 December 1992. And she denied receiving divorced on 29.7.1989. The petitioner photocopy of the divorce decree stating that the original decree was handed over to the respondent No.3 but he had only one witness and he did not produce that in the court so the court has granted maintenance to respondent No.3 from 20.7.1989 to 24.12.1989.

2.2. Judgment:

As mentioned above the petitioner failed to examine witness in support of contention and thus failed to discharge onus. In these circumstances the learned trial court and appellate court were fully justified in declining to accept the plea of divorces to respondent No. 3. So maintenance given to respondent no.3 from 20.7.1989 to 24.12.1989

¹¹⁵Dr . Naseem Akhtar vs The VIIIth Civil Family Judge Karachi, NLR 2001, Civil 513

was fully justified. There is no jurisdiction error, illegality so the petition is not maintainable and dismissed.

2.3. Derivation of law:

Maintenance granted by family court to wife for period after alleged divorce given by him would be unquestionable when husband had fail to discharge the burden of establishing delivery of divorced deed to the wife.

2.2. Cases on Past Maintenance:

1. Mst Iqra v Abuzar¹¹⁶

1.1. Introduction:

The brief fact of the case is the marriage of the spouse was solemnized on 14.7.2004. After some time their relation becomes strained and the appellant was constrained to file a suit for dissolution of marriage. Along with the suit for dissolution of marriage Mst.Iqra appellant filed a suit for maintenance in which she had claimed maintenance allowance along with expenditure of Rs.25630 incurred during birth of a child in kotli hospital and maintenance allowance from 6.2.2005.

1.2. Judgment:

It is celebrated principle of law that wife can claim past maintenance up to six years. In the language of law it signifies those entire things which are necessary to the support of life, such as food, clothes and lodging. Therefore it can safely be held that grant of delivery expenses is part of maintenance. The substance of wife is incumbent upon husband. When a woman surrenders herself into the custody of her

¹¹⁶ Mst Iqra vs. Abuzar , SC of AJ&K, SD 2012, 494

husband, it would be incumbent upon him to support her. Hence the grant of the Rs. 25630/- as delivery expenses as part of the maintenance

1.3. Derivation of law:

Wife can claim past maintenance up to six years, And the expenses of delivery is also part of maintenance as mullah is his commentary on Muhammadan Law maintenance includes food, raiment and lodging and other necessary expenses for mental and physical well-being of the respondent needed the delivery of the child as well.

2. Mst Anar Mamana vs Mishal Gul ¹¹⁷

2.1. Introduction:

In this suit there are two petitioner wife and daughter write petition for maintenance and the defendant who was a retired from Army. Mst Anar Mamana and her daughter and her daughter Bakhtwar Jaan leave his house in 1988 and in 2000 he send a Jirga to house of his wife to bring her back but she can't and then he divorce his wife in 21-9-2000 during the period he neither visit them and nor gave maintenance to plaintiff during that period. The plaintiff files a suit in family court against Misal Gul for grant a past present and future maintenance for the last 8 years. After hearing counsel and recoding evidence the court granted decree for past maintenance to petitioner 1 at the rate of 1000 per month till her iddah and petitioner 2 Rs.500 per month. But both parties are not satisfied and appeal in district court which gave

¹¹⁷ Mst Anar Mamana and other vs Mishal Gul two other, PLD 2005, Peshawar,194

judgment that the respondent gave maintenance of both the petitioner to three years and the parties still not satisfies and appeal in high court.

2.2. Judgment:

In this suit the petitioner appeal is accepted and they both entitled past maintenance for 6 years to petitioner no 1 at the rate RS.1000 Per Month till her iddah and petitioner no.2 at the rate of Rs.500 per Month till her marriage.

2.3.Derivation of law:

Wife can claim past maintenance up to six years and she will entitle till her iddah period.

3.Mst Farah Naz vs Judge of Family Court, Sahiwal ¹¹⁸

3.1. Introduction:

The suit was filed by the wife for the recovery of past maintenance. Mst Farah Naz married to Inam Qadir on 28.1.1996. Their marital relationship lasted for about one month when the respondent left for Paris leaving the appellant at her parental home in Sahiwal. The respondent did not gave maintenance to appellant-wife for long time and married and second wife in Paris. And in frustration she filed a suit for recovery of maintenance on 16.2.2002 at rate of Rs.10000/- per month. The respondent files a written statement admitted the factum and said that the appellant was insane and he announced oral divorced to her 13.12.1997 in presence of witness; therefore she was not entitled to the relief of maintenance. The suit for maintenance was dismissed by family court with judgment dated 17.7.2003 on the premise that the

¹¹⁸Mst Farah Naz vs Judge of Family Court, Shiwal, PLD 2006, SC 457.

appellant having been divorced on the date of suit was not entitled to her maintenance. Appellant challenged the judgment. On reevaluation of the evidence appellate court held that by reason of divorce announced by the respondent, she would be entitled to claim maintenance with effect from 28.12.1996 to 14.4.1998. Respondent dissatisfied with the decision and filed appeal in Lahore high court and the court while accepting write petition and decided that plaintiff should entitle for the period of three years. But appellant not satisfied and appeal in Supreme Court and Supreme Court allow the appeal and give judgment.

3.2. Judgment:

The Supreme Court observed that the family and high court fell in serious misconception of law. According to the judgment that the respondent announced divorced to her on 13.12.1997 cannot be accepted at all because oral allegation of Talaq would neither be effected nor valid, and binding on the appellant who would in all fairness to claim maintenance and she will entitled for past six years and. According to the Supreme Court the social status and the income of the respondent is enough and the amount maintenance RS.10000/- per month claimed by the appellant was right and justified.

3.3. Derivation of law:

In absence of any proof of dissolution of marital tie, it is legal moral as well as social duty of husband under Islamic principle to provide adequate maintenance for respectable living of wife. In law husband cannot neglect to maintain his wife during subsistence of marriage tie.

4. Liaquat Ali Vs Additional District Judge and three others¹¹⁹

4.1. Introduction:

Brief fact of the case is that the marriage was solemnized between the petitioner and Respondent No.3 in 21.1.1988. Out of the wedlock they have the daughter namely Sana Liaquat was born. The respondent No.3 filed suit for maintenance. For respondent No.3 the family court fixed amount of Rs.1000/- per month and for respondent No.4 their daughter Rs.1000/- per month. For Respondent NO.3 the maintenance should be paid by the petitioner from May 1988 till passing of the decree. The petitioner said that the Respondent No.3 dissolved the marriage on the basis of khula. Therefore she is not entitled by any maintenance as per principle laid down by the superior courts in the following judgments¹²⁰. The petitioner said respondent No.3 left the house own her own will whereas she proof that she left the house of the petitioner on account of mall treatment by petitioner in support of his contention he relied upon the following judgment¹²¹. And Respondent No.3 admitted in suit for dissolution of marriage that petitioner did not do any work so the maintenance fixed by the Judge is not justified but Respond argued that the petitioner do second marriage and he live in Model town and the price of the house is 2 Caror and he earn 12000 per month so the petition is dismissed.

¹¹⁹ Liaquat Ali Vs Additional District Judge, PLJ,2000, Lahore 1551

¹²⁰ Syed hamid Ali shah's case, KLR 1991 civil cases 439.

Mst. Ghulam Fatima case PLD 1958 Lahore 596.

Mst. Maryam Bibi and other case, PLD 1976 AJK9.

Nazir Ahmed's case 1991 law notes 557.

Said Rasul Khan's case NLR 1991 civil 422.

Mst. Perveen Bibi's case 1993, MLD 433.

¹²¹ Mst Rashim Bibi's case PLD 1967,AJK32.

4.2. Judgment:

As mention above courts below had currently found that husband neglect to maintain his wife and had thus violated his duty which a Muslim husband was under obligation to perform. Husband having neglected his wife in her maintenance, she was entitled to past maintenance. It is also a settle proposition of law that maintenance to wife by husband is not extra grant.¹²² Husband is obliged to maintain his wife , wife is entitled to past maintenance even after obtaining decree for dissolution of marriage on basis of khula.

4.3. Derivation of law:

Husband having neglect his wife in her maintenance, she was entitled to past maintenance allowance. Maintenance to wife by husband is not excreta grant husband is obliged to maintain his wife. Wife is also entitled past maintenance even after obtaining decree for dissolution of marriage on the basis of Khula.

5. Lubna Qazi vs Amir Aslam¹²³

5.1. Introduction:

In this suit the plaintiff Lubna Qazi married with defendant Amir Aslam on 7.3.2009. After marriage the defendant went abroad and his mother use to be changed with plaintiff. The defendant mother snatched petitioner gold ornaments and kicked out from the house on 2nd October 2009. On November 2009 the defendant came back and did not take petitioner back to his house and went back to abroad on

¹²² Iftikar Ahmed's case 1988 CLC 2355
Muhammad Nawaz's case PLD 1972 SC 302
Bibi Mussarat's case 1990 CLC 1908

¹²³ Lubna Qazi vs Amir Aslam, Family Court Rawalpindi, 2011

2.12,2009. On 2.2.2010 the divorced paper received by plaintiff was posted from Pakistan. The defendant yet not pay her dower Rs.100000/- and also not pay any maintenance. The plaintiff suit for dower as well maintenance allowance from October, 2009 to 2.2.2010 at the rate of RS.10000/ per month, and also same rate maintenance for three month iddah period.

5.2. Judgment:

In the judgment it is order to give maintenance allowance to plaintiff at the rate of Rs.10000/- per month for past month from October, 2009 to 2.2.2010 and also for the period of iddah.

5.3. Derivation of law:

Wife can claim past maintenance and she will entitle till her iddah period.

2.3.Maintenance Granted To Wife When She Look After The Minor.

1.Muhammad Umar Islam v Mst. Irum Shazadi and other ¹²⁴

1.1 Introduction:

The constitutional petition is directed against the judgment and decree dated 6.5.2008 the suit filed by the respondents were decided for dissolution of marriage and for recovery of maintenance allowance was granted Rs.2000 per month respondent No.1 from the date of institution till her iddat while the respondent No.2 minor was granted Rs.2000 from the date of institution till the age of puberty. The petitioner is WAPDA employer and getting salary per month. Both

¹²⁴ Muhammad Umar Islam v Mst. Irum Shazadi and other, NLR Civil 2009, p.305

parties were dissatisfied with the judgment and decree, preferred to independent appeals; the learned appellate court heard the arguments and disposed of both the appeals by a consolidated judgment dated 6.5.2008, hence constitutional petition.

1.2.Judgment:

Learned counsel for the petitioner made judgment, that the petitioner as admitted by the respondent is getting salary per month from WAPADA, therefore the maintenance allowance fixed by the learned courts below is excessive to the income of the petitioner. The Learned counsel prayed that the petitioner is ready to maintain the minor according to his income whereas the respondent No. 1 is also entitled to recover the maintenance on the ground that there is no rebuttal of the claim of respondent No.1 on the record that she was turned out from the house of the petitioner without any cause and reason and specially she is looking after and bringing up the minor so she in any cause is entitled for the maintenance.

1.3.Derivation of the law:

Maintenance is granted by the family court to the wife when especially she is looking after and bringing up the minor and if there is no rebuttal of wife's claim that she was turned out from the house of her husband without any cause and reason.

21.2.1999. Petitioner No.1 was forced to leave the house of the Respondent by Respondent and his mother. At that tie Petitioner No.1 was pregnant. Petitioner No.2 was borne on 16.10.1999. In Jinnah Hospital Lahore and Rs.20000/- spent on maternity expenses and Respondent did not support Petitioner. The petitioner demand that the respondent is professionally a homeopathic Doctor and he charge Rs.200/- per petition so he can bear all the expenses so he will give prompt dower and maintenance allowance to petitioner No.1 Rs.2000/- per month to petitioner no.2 and Rs.1000/- per month. The petition is accepted.

1.2. Judgment:

The judge granted the maintenance to the Petitioner No.2 Rs.1000/- P.M. and 20% annual enhancement after a year from 24.5.2003 in view of her school going age and prevalent rate of inflation. And for respondent No.1 Rs.2000/- per month from 21.2.1999 till the prompt dower fully paid.

1.3. Derivation of Law:

Maintenance should give to wife till the Prompt dower fully paid by the husband.

3. Conclusion

Pakistani society is unaware of the teaching of the Qur'ān and teachings of the Holy Prophet about the rights of women. In Pakistani society women are unaware of law. It is believe in Pakistani society once a women goes to court against her husband she lose her status

and no longer taken as wife. The fear exist in women that once she goes against her husband for the right of maintenance in court in result may her husband will divorce her. The chapter has focused on the cases decided by superior courts of Pakistan. Mostly those women who could withstand the pressure of prolonged court procedure might succeed in getting maintenance even the working women face too much hardship in this respect.

CONCLUSION AND RECOMMENDATION

Conclusion and Recommendation

In the preceding thesis, it reviewed the laws on maintenance of a working wife in border perspective of Islamic law in Pakistan. Islam does not prevent a woman to work or to be a career woman especially in a field which is highly in need or a field which requires a woman's service. Nevertheless, in the case where the woman is a married woman, she needs to strike a balance between her career and her family responsibilities i.e. the need to work should go together with the purpose of marriage, which is intended at achieving a successful and harmonious family. It is for that purpose that Islam has outlined the responsibilities of husband and wife. .

In order to discuss the law of maintenance in Islam, in the chapter concerning on the Islamic law on maintenance of wife. It is husband liability to provide maintenance to their wife under the Islamic law and later in case of divorce, to their former wives. It found that men in Islamic law are duty bound to provide maintenance to their wives during the subsistence of marriage after divorce the liability is limited to approximately three months, the iddah period.

In the chapter maintenance laws in Pakistan, it found that despite repeated recommendations by the various commissions, the government has been keeping a deaf ear when it comes to legislating on maintenance for a working wife. Divorced women even have to fight long legal battles to claim their maintenance. While men despite the provisions of the MFLO 1961, can still divorce their wives instantly by the al-bida form, most divorced women are deprived of

their iddah maintenance prompt and deferred dower as well. Only those women who could withstand the pressure prolonged court procedure might succeed in getting maintenance. In the thesis brief section on case studies of maintenance of working wife, sometimes women face tremendous hardship in this respect. Modern Pakistani law today needs to make conscious efforts to improve the position of women generally and working wives in particular.

In Pakistani social setup where women economically dependent on men and there are many situations where they could be left without a roof over their head it is important that there should be some form of future security for them. This could be achieved by adding a clause in the Nikkah Nama. The clause is about the husband should be required to file details of his assets and income and also should fix per month maintenance allowance according to the income of the husband and also mention the percentage of annual increase in maintenance allowance of wife. This could be an immediate step that can be taken to provide some sort of financial security to women.

Maintenance is for granted right of wife that cannot be condition anyway. In case if working women husband should cooperate with her and should contribute in house hold activities.

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