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Author (s): Nazia Zaman and Dr. Mohyuddin Hashmi

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Fatāwā Related to the Woman's Right of Maintenance in Pakistan, India and Egypt: An Analysis

***Nazia Zaman,**

****Dr. Mohyuddin Hashmi**

Abstract

Islamic system of maintenance is very helpful for living better life especially in case of separation among spouses. Unlike other systems, the liability in Muslim law arises only if the claimant is person of No Means. It is a mandatory thing for a Muslim man, to justify maintenance for her wife and do not give up this responsibility at all, even if she is rich woman. But in other cases, the obligation is not absolute and arises only if the claimant has no means or property for subsistence. The Muslim male is though under personal obligation to maintain his children and parents as in the case of Hindu Law, but unlike the case of wife and similarly as Hindu Law, the obligation is not absolute and depends on the financial condition of claimant, i.e. children and parents. If the children are financially independent, they cannot ask for maintenance. In same way, the responsibility for the maintenance of parents falls on one's shoulders, when parents are unable to meet their basic needs of life.

The rules to provide and receive maintenance are very clear but somehow firm in nature. It is openly stated that, nobody should bear this obligation when there is a financial loss on their part. According to Islamic law, it can be said that, other than wife only those people can receive maintenance that are too young or too old to earn for themselves or those are unable to earn due to some disability and have no source of income. A person is eligible to receive maintenance in the most crucial conditions, like he/she has nothing to do other than begging and asking for money from others. The present paper is the Analytical study of women's right of maintenance in Islam and views of Mufti's of Pakistan, India and Egypt.

Key words: *Fatāwā , woman, rights, maintenance, nafaqah, Pakistan, India, Egypt.*

* Research Scholar, Department of Islamic Studies, AIOU, Islamabad/ Lecturer, Department of Islamic Studies, Fatima Jinnah Women University, Rawalpindi

** Professor/Chairman Department of Islamic Thought, History & Culture, AIOU, Islamabad

Literal meaning

Nafaqah means “an expenditure, an expending, a sum expended”¹. It has also meaning of “expenditure”². It also means whatever a man spends on his family, law calls it feeding, clothing and lodging, simply food³.

English terminology for Nafaqah is maintenance i.e. taking out or ikhraj.⁴ It is also “means of support”⁵. Literally Nafaqah also gives the meaning “what a man spends over his family”⁶. Another dictionary has given the Nafaqah meanings “the necessary expenses for living, a spend, salary, maintenance”⁷.

Maintenance includes, “All those things which are necessary to the support of life, such as food, clothes and lodging; many confines it solely to food”.⁸

Nafaqah Literally means “that which a man spends over his children; in law it means feeding, clothing and lodging; in common use it signifies food”⁹.

It is well defined that “maintenance signifies all those things which are necessary for the support of life and includes suitable food, raiment and lodging”¹⁰,

Maintenance basically “comprehends food, raiment and lodging, though in common parlance it is limited to first”.¹¹

In simple words “maintenance of wife includes: (a) Food; (b) Clothing; and (c) And a separate place to live (in the husband's house)”¹²

“maintenance’ includes food and lodging and, in the case of the wife, the use of a separate apartment to which no one except the husband may have access without her consent, and if the husband is rich, the cost of maintaining one female servant of the choice of the wife.”¹³

In Muslim Law it signifies all those things which are necessary to the support of life, such as food, clothes and lodging, although many confines it solely to food. It has been further laid down that it is payable in three causes of maintenance established by law. (1) Marriage: (2) Relationship (3) Property (i.e. in case of a slave)¹⁴.

Technical Meaning of Nafaqah

Different scholars have given different meanings of Nafaqah such as it is the provision of necessities of life where wife receives it from husband through marriage contract. It is the providence of labor by one person to another for performing some duties.¹⁵

In law definition Nafaqah is everything which is necessary for one's life such as food, shelter etc.¹⁶

Nafaqah has also a separate living place which may be a house or apartment where only husband can access with wife's consent, even rich husband can hire female slave to serve them with the choice of wife.¹⁷

It is also suggested that except necessities further things can also be managed such as husband's responsibility to look after other relatives and his children.¹⁸

Above definitions by various eminent jurists in the Muslim Law, clarify that the word ‘maintenance’ not only includes food, clothing, lodging but cost of education too.

Further the word ‘maintenance’ does include the financial and basic needs of a minor of family. Ideas of social needs and social justice alter; thus, one cannot associate some restrictions in the matter of maintenance and its limits but the most important thing is to make education as its essential part. In the present state of society, which is rapidly advancing in all directions, education up to the higher secondary stage cannot said to be extravagant, so as to be excluded from maintenance.

Elements of Nafaqah

Nafaqah is very important for all human beings but it becomes duty of a man due to three elements i.e. marriage, relationship and property.¹⁹ Be a wife to someone or

having some relationship either through marriage or through parents. Scholars have also discussed third element which bounds man to provide maintenance is servant.²⁰ As for as marriage is concerned, her husband has liability to maintain his wife but wife has to obey husband and depend on him not just because of the contract rather she has to perform certain duties.²¹ Another element is relationship which is of father and children but children are also obliged to maintain old parents.²² Another important element is of ownership of slave by his master.²³

Nafaqah in Qur'ān

Qur'ān has given detailed injunctions about family life. Different verses covers different issues for husband and wife related to their duties and rights. Nafaqah is also detailed from every aspect in Qur'ān and given deep meanings. Allah says

”يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلْوَالِدَيْنِ وَالْأَقْرَبِينَ وَالْيَتَامَىٰ وَالْمَسْكِينِ
وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ”²⁴

[They ask thee (O Muhammad), what they shall spend. Say: that which ye spend for good (must go) to parents and near kindred and orphans and the needy and the wayfarer. And whosoever good ye do, lo Allah is aware of it].

This verse discusses about the spending for Allah sake. Once Umar bin Jamooh has asked Prophet ﷺ what we should spend. Allah revealed this verse in which they were asked to spend the wealth on children, relatives, orphans, needy and who else in society deserves. What you do good for Allah, He is rewarding you for that. Allah has given answer on whom wealth should be spent. And Allah will give reward of it.²⁵ This verse is basically spending on the way of Allah Almighty but Allah has clearly mentioned who are those on whom wealth should be spent.²⁶

The evidence of Maintenance is available in Qur'ānic text. As in Surah Al Baqara Allah says

”وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُبْرِئَ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ
وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا نُضَارُّ وَالِدَةً بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ
مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا
أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ
بَصِيرٌ”²⁷

[And mothers shall suckle their children for two whole ears; (this is) for those who wish to complete the suckling. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor should he to whom the child is born (be made to suffer) because of his child. And on the (father's) heir is incumbent that lie of that (which was incumbent on the father). If they desire to wean the child, by mutual consent and (after) consultation it is no sin for them; if you wish to give your children out to nurse, it is no sin for you in Kindness. Observe your duty to Allah, and know that Allah is seer of what you do].

These verses basically talk about suckling of children. Qur'ān talks of maintenance of divorced women in other verses, but this verse is of children's suckling and gives very moderate rulings. This verse is facilitating both man and woman. This verse has

given rulings of suckling and weaning during marriage and after divorce through introducing proper system. As this verse has removed all kinds of injustice about maintenance. As verse says that suckling is duty of mother which she cannot refuse without any solid reasoning. She is not liable to receive any payment to suckle a child until she gets married with him. Having mother responsibility, father is equally bound to provide maintenance to the wife in post-divorce period till the end of the Iddah period. Whereas suckling to the children will bound the man to pay maintenance till she suckles. This verse further has clarified to both husband and wife that it should not be their intention to force each other for performing their duties as mother can refuse due to some reason, husband will not force her, wife cannot force poor husband to pay because she is suckling the child. If child refuses to take milk of another woman, then mother has to feed the child. Father is even given permission to suckle the child through wet-nurse but he has to give her some amount for feeding his child.²⁸

The Arabic phrase for “the father” in this verse is “al-mawlūd lahu”, because the noun is in the singular, and masculine form. As for the expression “food”, it is “rizquhunna” in Arabic and it refers to maintenance that is unspecified in terms of what and how much it is. This is the case because the word “rizq” includes everything. The purpose of this verse is to tell about the right of a divorcee who suckles her baby to have maintenance from her husband. If a divorcee deserves maintenance, then what about the one who lives with her husband. It is obvious that she deserves maintenance. In commenting on this verse, Ibn Kathīr says: “the father of the child is responsible for the provision of maintenance of mothers and clothing them “on equitable terms”²⁹. This means that he has to provide them with clothes like those of other women similar to them, no more no less. The amount of the maintenance relies heavily on what the man can afford, but it should not be a burden laid on him greater than what he can bear.

In another verse Allah says

لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يَكْفُلُ اللَّهُ نَفْسًا إِلَّا مَّا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا³⁰

[Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease].

Mufti Muhammad Shafi in his tafseer elaborates the mechanism of maintenance in such a way that husband must maintain his wife with his resources. Similarly, whatever a humble husband is providing to his wife, she should be satisfied with that.³¹ Husband income will also be considered while deciding about quantum of amount. Husband will spend according to his capacity and wife is asked to remain content on the amount provided.³²

Nafaqah in Sunnah

Nafaqah has rulings in the Sunnah of the Prophet ﷺ because it is one of the very important family matter. Some Ahādīth are giving clear commandments related to maintenance.

[Narrated Abu Masud al-Ansari the Prophet ﷺ said, when a Muslim spends something on his family intending to receive Allah's reward, it is regarded as Sadaqah for him].³³

[Narrated Abu Hurairah Allah Messenger said, "Allah said, O Son of Adam spend, and I shall spend on you]"³⁴

[Narrated Sad: the Prophet ﷺ visited me at Mecca while I was ill. I said (to him), "I have property; may I bequeath all my property in Allah's cause?" "No" I said, half of it?" He said, "No" I said, "one third of it?" He said, "one third (is alright), yet it is still too much, for you'd better leave your inheritors wealthy than leave them poor, begging of others, whatever you spend will be considered as Sadaqah for you, even the mouthful of foods you put in the mouth of your wife, anyhow Allah may let you recover, so that some people may benefit by you and others be harmed by you]."³⁵

[Narrated Abu Hurairah: The Prophet ﷺ said, "The best alms is that which is given when one is rich, and a giving hand is better than a taking one, and you should start first to support your dependents. A wife says, You should either provide me with food or Divorce me. A slave says, Give me food and enjoy my service. A son says "Give me food; to whom do you leave me? The people said, "O Abu Hurairah, Did you hear that from Allah's Messenger said, No it is from my own self]."³⁶

[Narrated Abu Hurairah: Allah's Messenger said, "The best alms is that which you give when you are rich, and you should start first to support your dependents]"³⁷

[Narrated Umar The Prophet ﷺ used to sell the dates of the garden of Ban an-Nadir and store for his family so much food as would cover their needs for a whole year]."³⁸

[Narrated Aisha Hind bint Utba came and said, "O Allah's Messenger Abu Sufyan is a miser so is it sinful of me to feed our children from his property? Allah's Messenger said, "No except if you take for your needs what is just and reasonable]."³⁹

[Narrated Abu Hurairah: The Prophet ﷺ said, If the wife gives of her husband's property (something in Charity) without his permission, he will get half the reward.]"⁴⁰

"Bahz b. Hakim reported on the authority of his father from his grandfather as saying: I said: O messenger, how should we approach our wives and how should we leave them? He replied: approach your tilth when or how you will, give her (your wife) food when you take food, clothe when you clothe yourself, do not revile her face, and do not beat her."⁴¹

Above Ahādīth has given so many rulings regarding maintenance of wife children and other relatives. The husband is bound to maintain his wife in any way by Islam, without thinking that she is rich or poor, happy or unhappy it is his duty to provide her food, shelter, clothing and other necessities to wife and children.⁴²

Islam gave woman the right of maintenance. Man has advantage over woman due to his physical supremacy and power of patience. In all walks of life his responsibilities are more due to his social status. He must exercise his power to fulfill his obligations and responsibilities.⁴³

Having proper residence is essential for a married life and this duty falls on husband. Husband and wife should live together at same place. It is allowed for married couple to live in separate house. On the other hand, if husband has relatives and he want to live with them then it depends on wife's agreement to that arrangement. If not, then

husband needs to offer her a private living arrangement. The provision of lodging dress and all other necessities will be according to the means of husband.⁴⁴

The ratio of maintenance depends on wealth and assets of a husband. In only condition wife is eligible to receive maintenance; when she is living with her husband and also she has all her loyalties and responsibilities towards her husband.⁴⁵

In a valid marriage contract maintenance of a woman and some certain conditions is a lawful right of her. Provision of maintenance is the duty of husband. Husband need to provide food, clothe, shelter, medicine and other necessities of life to his wife. All of the Muslim code with some slight modifications gives the same rights generally to women.⁴⁶

Maintenance is the right of woman irrespective of her means or religions. Muslim Jurists and Modern Statutes have same unanimous opinion regarding the maintenance right of woman.⁴⁷

The separation between spouses happens due to many reasons. Woman and children are suffering a lot. Maintenance is one of the serious problems which they face after divorce or khul'. It creates more social and moral problems in society.⁴⁸

Nafaqah in Fuqaha's Views

The Husband is responsible to maintain his wife in legitimate marriage. When a wife submit herself to her husband and allow him consortium husband must fulfill her right of maintenance. It is the association of wife with husband which compel her to submit herself to husband.⁴⁹

Sharī'ah has further explained it in detail as husband has sole responsibility of maintenance. Jurists have also opinion of maintenance duty of husband but they have discussed certain condition for it.

Hanafi Views

Hanafi school has opinion that Nafaqah providence is the responsibility of husband with some conditions such as she has to be Muslim, not have any illegal relations, not be in Iddah period, should be in valid marriage with him, must have capacity to have sexual intercourse, should not leave husband's house, she should be healthy as bride.⁵⁰

Maliki Views

He has given two categories first is before intercourse and second is after intercourse. Firstly, guardian along with the wife demand for maintenance which husband refuses. If demand is not from wife or guardian then maintenance will not be provided. She should have physical health to have intercourse. In case of wife being too young and not capable of having intercourse then husband is not liable to pay her maintenance. In case any of them dies due to sickness, she will not be given maintenance. If husband is young and cannot have physical relations then he cannot maintain her. Secondly after intercourse wife will be considered entitle for maintenance even if she suffers some disease after intercourse yet she will be considered liable for maintenance. But once sexual intercourse has happened and then she refuses again, she will not be maintained because it is husband's right to ask for intercourse.⁵¹

Shāfi'i Views

They opine that maintenance become wajib if the wife gives herself completely in the custody of husband. And she utters these words that I will live with you as per your wishes. Shāfi'i school say that wife has to use these words otherwise she will not be given maintenance. She must have capacity to have sexual intercourse, but if she is young for having physical relations then she will not be provided with maintenance. If both of them are not able to have intercourse due to their minority then wife will be entitled for maintenance as responsibility is taken by husband's guardian. Wife has to be obedient to her husband and should accept husband's touching and cohabitation.

She should not go outside house without husband's permission otherwise she will be banned for receiving maintenance. If husband travels and wife accompanies him even without his consent, she will be given maintenance because she is travelling with her.⁵²

Hanbali Views

Maintenance is obligatory on husband if wife surrenders herself to husband wherever he lives. Hanbali's says that she has to be minimum nine years of age to receive maintenance as husband enjoys her relationship with him so he will maintain her. If husband says that due to menstruation, he cannot have intercourse so he will not provide maintenance then in this case she has to give her maintenance as this is from nature. If wife refuse sexual intercourse but likes to please her husband other than sexual intercourse then she will not be entitled for maintenance. On husband's absence if she takes care the respect of him and wants to go in his custody then she will be entitled for maintenance. In case of divorce if she has doubt of Iddah period and has intercourse with second husband, she will not be given maintenance by first husband. Cruel husband if jailed has to provide maintenance because he is given punishment due to his cruel behavior of not maintaining her.⁵³

Maintenance as a right of Wife

A Muslim Male is under an absolute obligation to maintain his wife, irrespective of the fact whether she got her own enough means of subsistence or not. Women is rich or poor does not deter or affect the husband liabilities towards the wife to maintain her. Wife's maintenance has the priority over the husband's obligation to maintain children or any other relation.⁵⁴ In the words of Schacht,⁵⁵ "the maintenance of the wife comprises food, clothing and lodging, i.e. a separate house or at least a separate room which can be locked, for the well-to-do also a servant; she is not obliged to bear any part of the expenses of the matrimonial establishment". A husband is bound to maintain his wife in any case, whether she is Muslim or non-Muslim, poor or rich, young or old if not too young to be unfit for marital intercourse.⁵⁶

In Islam the wife is entitled to claim maintenance arises in the following two cases:

- (i) On account of status arising out of valid marriage;
- (ii) On account of agreement prior to marriage entered by the parties to the marriage, or between the parents of the respective parties.

The Muslim Female's right to claim maintenance can be broadly covered and discussed under the following two heads:

- (i) Right to maintenance during the subsistence of Marriage; and
- (ii) Right of maintenance after the dissolution of Marriage.

According to the ordinary right and events, the right of wife to claim maintenance comes first than any other relation.⁵⁷ As stated earlier also, the wife's right to claim the maintenance and the husband's obligation towards providing her maintenance, is absolute in nature, irrespective of the fact that the wife is female with the means and have got enough property for her subsistence and even though the husband is necessitous and having no means to maintain himself.⁵⁸

Dar Al Ifta' Al-Missriyyah Fawātā Regarding *Nafaqah*

Nafaqah importance in Marital Affairs

A questioner has inquired about husband's responsibility on wife for providing her financial support. It was also asked that can court force husband to support his wife financially even if husband has some financial constraints?

The answer given to her by Dar Al Ifta' Al- Missriyyah was that Sharī'ah has given this responsibility to man for providing maintenance even they have not went through physical intercourse. And this duty is wajib on him as she has completely given herself in his relation. If husbands refuse to provide her maintenance, she has full right to approach court for fulfilling her needs such as food, clothing, and housing. If it becomes confirmed that husband does not will to provide maintenance then she has right to ask court to oblige him for her maintenance. If he cannot afford to provide maintenance then court will ask wife's brother or father to provide her which husband will be bound to return back on having means. Court will also bound husband to return debted amount which wife will receive for her expenditures from someone. But husband will give loan back to the one from whom wife has borrowed. Sometimes if judge considers husband's liabilities unaffordable then he may ask wife to repay the debt by her own self, but wife may reimburse from husband. The ruling of this fatwa is that whoever was supporting her before marriage, will keep on supporting till husband has capacity to return. Whereas court can also allow her to take loan which husband will return? In case husband fails to return then the borrower will sue him for returning his amount. Rest Allah Knows better.

Covering of expenses after divorcing mother or wife

Questioner has asked very relevant and need of time question about maintaining of wife or her mother after father divorce to her. Her father divorced her mother and after divorce stopped maintain her daughter. Although daughter is doing job but she is unmarried and still dependent on them. Is it his responsibility of father to support me or not?

The Mufti has replied that it is the complete responsibility of father to support his daughter till she gets married. But if daughter's amount is enough to live good life then he may have been given freedom not to provide maintenance. It is recommended that father spend money to have pride on his parenthood. It also builds positive relationships among children towards their parents.

Fatwa regarding two years expenditure after divorce

A person has asked about the expenses which husband have to pay to his wife after divorcing her. A 3 years old child is also living with wife. "A man has divorced his co-wife on the basis that he cannot be fair with two wives. He has already 3 children from first wife. According to the claim of wife he can afford the expenses of all as he is travelling and having extra expenses with first wife and children. Now the co wife, who is going to be divorced asking about her right of financial rights due upon husband after divorce. She is asking for two years monthly Nafaqat Mot'a according to Egyptian law. But husband is asking to pay her expense till the period of Iddah, further he will send expense of child but not for her.

According to the fatwa given by the mufti of Egypt, husband is liable to give two years expense as laid down in Islamic law. The husband can pay it in instalments and also it depends upon his financial status. The reference of Surah AL Baqara 236 is given in which it is asked *"But make fair provision for them, the rich according to his means and the poor according to his—this is a duty for those who do good"*. In surah Al Baqara 241 *"Divorced women shall also have such maintenance as is considered fair: this is a duty for those who are mindful of God"*. Is given for the reference of future maintenance by the mufti of Egypt.

In present fatwa the wife also asked about the custody and expense of child. It is mentioned in fatwa that in Islamic Law the expense of child, after divorce, is obligatory upon the father of child. He has to pay the handsome amount, by which the needs and desires of child can be fulfilled. It also depends upon the ability of father.

But he must manage the expenses of his child in which food, clothe, residence, education and other needs are included. He is obliged to pay the expense of residence for the mother of child in which she is residing during the custody period.⁵⁹

Amenity payments (mata'a)

The question is asked about the payment of mata'a defined in Qur'an. For woman after divorce what will be the amount and duration of receiving the expense? If yes, then what are the conditions of receiving it from the husband? What will be the means of payment?

According to the fatwa the marriage must be valid at first hand and should have consummation after that. The divorce takes place without the consent of wife and she is not at fault. Then she deserves other than the expense of period of iddah. She will get a payment of mut'ah which will be at least equal to two years of her expense. The circumstances of divorce and the divorcee prosperity and poverty must be considered to define the payment of mata'a. He is allowed to pay it in instalments. The clarification given in fatwa regarding the payment of mata'a is:

“Since the legal norm is that the husband is the one who issues divorce, and that conventional law does not obligate an amenity payment for the divorcée after consummation has occurred, and it suffices her that she is entitled to the total sum of her marriage payment, called *Mahr*, and expenses during the divorce waiting period. But as for an amenity payment: it is recommended but is not required by the courts.”

At this stage when separation takes place, the sense of integrity has weakened and missing, especially between husband and wife when the bonds of love between them are broken. The divorcees need support in dealing with the effects and monetary difficulties of separation, and divorce waiting period expenses do not meet their requirements. The mata'a payment fulfils the needs of woman. The mata'a payment purpose is to heal and reconcile the broken heart of divorcee. The Sharī'ah has given the rights to woman for the betterment of her life as she is the main character to build a family. When family is broken due to the husband's because. Then she is eligible for financial support. According to Egyptian fatwa, the payment which is called mut'ah is defined in Qur'an as well as it is obligatory according to the opinion of 'New' Shāfi'ī school. According to them it is obligatory for those whose marriage is valid and consummated. Also, there is no fault in woman and she does not ask for divorce. This is also the Opinion of Imām Ahmad. Ibn Taymiyyah also gives the preference to this. The Zāhiri 'Literalist' school and Imām Mālik have the same opinion. According to fatwa these are the reason on which, “the Article 18 was placed to repeat observing guidelines set in the opinions of those Imāms, and it is left to the judge to assess the amount – apart from the previously stated - according to the circumstances of the divorce and to verify that the right is not being abused, and to put it in its proper place if it is. Its assessed amount shall not be less than two years of expenses. To facilitate its payment for the former husband, the article allows for him to pay the prescribed amount in installments.” The word 'nafaqah' ('expenses') to mean 'mata'a' ('amenity payment') is a common mistake. This word mata'a cannot be used as different type of expense for which the word nafaqah is used. It is specific right of woman after divorce. In Surah Al Barah verse 241 the word “maintenance” and “duty” is used which means the emphasis is given on the payment of mata'a. The ruling for mata'a payment imposed by legists is “recommended” as it is not clearly stated in the text. The Mufti of Egypt while giving the verdict regarding the mata'a of two years claims to examine the legal opinions by all schools. He also elaborated that this payment is clearly stated in Qur'an and jurists are differed about its application that whether it is obligatory upon man or recommended to pay. As the order is

speculative in Qur'an that's why Jurist used methodology of Ijtihad to apply ruling about the matter. The woman is not the cause of divorce and her consent is not taken at the time of divorce then the condition of mata'a payment is imposed by the scholars of Islam. It does not contradict with the main goal of Sharī'ah as it is the protection of woman. It can be concluded to sum up the amenity payment recommended by scholars. Firstly, the duration is minimum two years, they did not set the duration which is maximum. Secondly, for the determination of mata'a payment the marriage duration, financial status of man and the circumstances in which divorce is given will be considered. Lastly, the option of payment in instalment is also available for a man but in supervision of judge.⁶⁰

India Fatāwā on Nafaqah

Nafaqah before Rukhsati

The person who's Nikāḥ is already done asking about his responsibility of maintenance before rukhsati. The verdict upon the istiftā is given to him. The husband is bound to maintain his wife after nikāḥ. But consummation is necessary for maintenance. Here in this case the wife is at her parent's house that why maintenance is not due upon husband⁶¹.

Wife not living with relatives of husband

The mustafī asked that, my wife does not want to live with my mother and siblings. I have two children residing with her at her parent's house. Now I want to ask my wife to come back. But my wife is not ready. What should I do? I want to keep my wife with me, also I want to keep my family happy as well.

The wife has the right to ask for separate dwelling and you must provide according to your means. It is the right given by Sharī'ah to woman, you should know that who is at fault in the situation. You should handle the situation according to Sharī'ah. Don't make unhappy to your mother as well as your wife.⁶² A case is presented to a Mufti that woman who is living at parent's house from last two years. She is not getting back to husband house, also she does not demand divorce. She is asking for maintenance. It is asked by Mustafī, she is eligible to get maintenance or not in this situation? The Mufti gave the verdict that, in present case it does not depend upon the woman to demand a divorce. It depends upon man, if he wants to divorce her, he can do this. If she is living at parent's house, there are two situations in this matter. Firstly, if she is asking for prompt dower and saying if you (the husband) will not give me dower I will not be back to you. In this case she is eligible to get maintenance. Second situation is opposite to it, if dower is paid or woman give-up very after marriage. In this case she is not eligible to get maintenance till she will be back at husband house.⁶³

Nafaqa of Disobedient wife

The *Shairah* ruling asked by *mustafī*, if husband and wife do not meet physically from last three years. Then wife left for parent's house without informing the husband. What will be the condition of maintenance if he divorce her?

The husband and wife's if lives in a same house. The non-cohabitation does not mean the relationship of Nikāḥ between husband and wife ends.⁶⁴ If wife left the house without permission of husband and he divorces her in state of disobedience then the maintenance is not due upon husband in period of iddah.⁶⁵ The *nafaqa* (maintenance) of a disobedient wife is cancelled. If someone give *khul'* with a condition that he will not be paying maintenance, then it will be cancelled; otherwise he will have to pay the

maintenance. However, recalcitrance (nushooz) from a woman cancels her right of maintenance. After all, he will have to pay the expenses of his child, who is in the custody of mother, in any case.⁶⁶

Maintenance after Divorce

In present social condition, who is the responsible of maintenance of woman after divorce. The detailed reply is given in book of fatwa. Nikāḥ is a contract between husband and wife, after this contract the relation with the family of a woman is not broken with her. So, if husband dies or divorced her then the family of woman takes care of her. Secondly, the maintenance is *wajib* upon husband in the period of iddah after divorce. If she has children in her custody then father (ex-husband) will pay the expenses of children till the time the children reach the age, defined by Sharī'ah. For boy it is 7 and for girl, till the age of puberty. Indirectly, the woman is getting maintenance for a long time period.⁶⁷

Medical treatment

The expense and bills of hospital are asked by *mustaftī*, that who will pay it if wife dies after delivery of child?

It is elaborated, that all the things which are necessary for life, included in the maintenance. That's why for life, medical treatment is more important than food. So medical treatment is *wajib* upon husband and comes under the definition of *Nafaqa*. Specially, the expenses which are used during child birth. Finally, Zaid has to pay the expense of hospital.⁶⁸

Usage of husband's money without his permission

It was asked by a woman, that can she take some amount from the pocket of husband as he fulfills the basic needs but do not gives expanse for daily matter things.

It is clarified by Mufti that she can use the amount of husband but not more than basic need. The references is quoted that hadith in which the Prphet (SAW) gave permission to the wife of Abu Sufiyan.⁶⁹ Wife should not take more than requirement, without the permission of husband. The money or the valuables related to husband can't be transferred to any relative or non-relative by the wife, as it is also the *Khiyānat*.⁷⁰

Nafaqah without consummation

It is mention by *mustaftī* that, in Ibrar ul Majalis page 98-688, the rights of wife and husband are mentioned. "if woman is not able to consummate then nafaqa is not *wajib* upon husband" the question is posed if the girl is patient or can't consummate due to any illness. What will be the ruling?

The issue is resolved with reference of Fatāwā Alamgiri that this is the ruling when wife is not reached the age of consummation. If she is sick and surrender herself to husband then her maintenance is due upon husband.⁷¹

Pakistani Fatāwā on Nafaqah

Rights of Husband and wife

The rights of wife and husband is asked by *Mustaftī*. In response the mufti comprehensively tells that the husband has to provide maintenance in which clothe, food and residence includes. The wife has to fulfil the marital rights of husband and also take care the husband's house and property.⁷²

Nikāḥ is not annulled by not providing maintenance

The case in presented that a man is living far from wife and spent three years without contact and maintenance also not provided by him. The question asked whether the court have right to annul the marriage or not, in this case?

It is elaborated by Mufti that the court is cannot annul the marriage according to Sharī'ah in this case. If husband did this intentionally then he did wrong. If he did due to any compulsion then May Allah protect him. The husband should review his behavior. Wife can claim for maintenance of period as marriage is still intact.⁷³

Faskh e Nikāh from court upon non provision of maintenance

A woman asked that her husband do not provide maintenance from last eight years. As she is living at her parent's house due to his bad behavior. She has one daughter of ten years old. Now she wants to claim maintenance from husband. Husband did another marriage in her absence and now she wants to terminate her marriage. What the rule of Sharī'ah in this situation.

The answer of her question given by Mufti in detail that she has to prove in the court, the nikāh with that person and non-provision of maintenance from last eight years. Then the court have to call your husband and ask him to provide maintenance and gives you all the spousal rights. Otherwise, the court ask him to give divorce. If he refused to obey, both of the orders, then court has right to dissolve the marriage. Later Mufti suggested her, to remarry after passing the *idda* period, wherever she wants. The husband should pay the maintenance of last eight years. It is wajib upon him. If he will not pay, he will be sinful.⁷⁴

The detailed istiftā' is available by Mufti Taqi Usmani on the Question that, if husband can afford, but not providing Nafaqah to wife. The woman does not have any marital arrangement and the man is not ready to give divorce or khul', then what is the way for female to get out from the situation?

According to Mufti the woman can act according *Mālikī* School in this situation. She can approach court to dissolve her marriage.⁷⁵ Secondly, the woman should approach to the court of Muslim Judge for dissolution of marriage to prove the non-provision of maintenance, despite the fact that he can afford to pay the expenses of wife, which cause severe damage to her. She can claim to dissolve the marriage. Thirdly, the woman should prove her Nikāh with that person and his behavior through witnesses. If she does not have witnesses then the court may ask husband to present himself in the court and take oath. If he refuses to take oath then it will be considered the woman claim is true. After that, the judge asks the husband to pay the maintenance amount to wife otherwise to free the wife through divorce or Khul'. If the husband refuses to do so, then judge, without any delay, dissolve the marriage.⁷⁶ If the husband will not present himself or his lawyer in the court, as now a days it is happening in the cases. If wife can present witnesses, if available, or witnesses are available but she is unable to take them to court then the non-presence of husband after court notices and summon, if husband could not come, then her absence is considered as refusal from taking oath. The court will issue decree against husband and marriage will be dissolved by the judge. Here the decision of faskh has taken from Madhab of Hambli that is "Qadha Alal Ghaib". The Shāfi'ī has the same opinion. If the husband is *Ghaib* and court is asking again and again to present himself, then according to Shāfi'ī, and In Hanafī, Imam Abu Yousaf and Imam Muhammad has the same opinion that the oath of gahib is not possible. So his absence is considered his refusal of taking oath. The decision of the judge will automatically be in favor of woman is agreed by Imam Abu Hanifa, and her oath is not necessary.⁷⁷ It is necessary for wife to file the application in court for *faskh e Nikāh* on the basis of non-provision of maintenance. She should not place application for *khul'*, as one sided *khul'* is not recommended by majority. The ground for *faskh e nikāh* is available, that's why a

woman and a judge can have benefit of this. The woman can remarry after Iddah, where ever she want. But the decision of judge should be based of above-mentioned rules given by Sharī'ah.⁷⁸

Ignoring the maintenance right of woman

The case in presented for istifta' that a man, who is lecturer in a college, also belongs to a *Tablighi jammāt*. He does not take his wife along with him. She is living sometime with in-laws and sometime at her parents' home. When asked, he is saying I left wife at home for parents care, although some other people are also available for parents care. He is not taking wife with him as he is saying it makes trouble in *Tabligh*. he is saying, "I don't need her. I need Allah". He is not fulfilling her rights. What is Sharī'ah rule in this situation, mustaftī asked?

This person should provide the required maintenance and residence to wife that she must not need anyone else for her need. She should have a separate room, kitchen and bathroom. He should fulfill her emotional and physical requirement. After that if he will go for Dawah purpose then it will benefit him, otherwise it is not allowed in Sharī'ah to go for Dawah and not fulfilling the rights of family.⁷⁹

Nafaqah of Disobedient wife

Can a woman left her husband's house without her permission? The Mufti replied that a wife should not leave the house of husband without his permission. She should back to her house and ask Toba and Astaghfar from Allah as it is great sin. She should say sorry to husband on her act.⁸⁰

On second query regarding separate house the mufti replied that this is the right of woman. She can claim personal house without anyone's interference. But she cannot make a condition that she will live in that specific house or colony. Where ever husband can afford, he can ask his wife to stay there.⁸¹ In same question it was also asked that the wife is pregnant. She left for parent's house and they asked her to stay there for delivery. After 15 days her baby delivered. Her husband want by himself to take her to hospital but parents by force took her to hospital for delivery. In that condition the maintenance upon whom is due? was the query by *mustaftī*.⁸² It is clarified in fatwa that the maintenance of disobedient wife is not due upon husband. In the situation presented the expenses of child birth are also not the responsibility of husband.⁸³ A woman who left the house of husband without the permission of husband is called Nashiza, a disobedient one. The maintenance of disobedient wife is not due upon husband till the time she does not abandoned the disobedience and back to husband's house⁸⁴.

In Ahsan ul Fatāwā regarding this matted fatwa is given that the disobedient wife is not entitled to maintenance during the marriage period as well as after the divorce. As she is not obeying the husband during marriage, that why the marriage period expense is also ceased for her.⁸⁵

Medical treatment of wife

In Istifta' it was asked by questioner that in Sunni Baheshti Zaiwar and other sources of Islamic law defines that maintenance of wife, in which food, clothing shelter, is the responsibility of husband. But regarding the medical treatment of wife it is mentioned that it is not the responsibility of husband. I wonder that the sickness is the part of life. If wife has no resources then who should be responsible for medical treatment?

Mufti Taqi Usmani on the above said issue explained that all of the jurists are agreed upon this that medical treatment is not the part of maintenance of wife. After a lot of search, there is no Qur'ānic verse or tradition of Rasul Allah ﷺ, found which proves

that medical treatment is not incumbent upon husband. The Qur'ānic term "*Al Ma'aruf*" denoted that this decision must be taken according to the '*urf*' of the society. The medical treatment can be part of expense according to the '*urf*' of that time. In past the medical treatment was not as lengthy as now a days. That's why according to '*urf*' medical treatment can be the part of maintenance today. Logically, it is also a question that if husband will not bear the medical expense than what woman will do in sickness? Today woman cannot afford the expense of medicine. But the clear ruling is not available on the issue. The mufti sahib suggested the questioner may ask the question to other Muftis as well for clarification.⁸⁶ According to Wahbah Zuhayli in past the medical treatment was not basic need but in present time it is the basic requirement of everyone. In past people were taking care of their health and was not in need of medical treatment as today it is required. That's why Fuqaha has given the decision according to '*urf*' of that time. Today the '*urf*' is changed. Medical treatment becomes the basic requirement like food and clothing. Even medical treatment is more important than food. If the person is not fit physically how can he/she can eat anything? That's why medical treatment is obligatory upon husband. It is against humanity that husband fulfill his rights when the wife is physically fit and leaves her at parents' house when she becomes ill.⁸⁷ In Egyptian Law Article 100 in 1985 this view is incorporated in law. It is according to Mālikī fiqh. It is also practiced in law that food, clothe, residence and medical treatment is included in maintenance of wife.⁸⁸

Expenses of child birth

The query related to child birth expenses at the time of delivery is presented that whether it is the duty of husband or the duty of woman parent's?

it is replied that as child belongs to husband basically that why husband have to bear the expense of child birth and other charges of delivery.⁸⁹

In Fatāwā haqania it is clearly said that the medical treatment is not the responsibility of husband according to Islamic law. If husband do otherwise, then the reward is due.⁹⁰

The wife receives her right from Husband Property

The question was asked that, if the husband refuse to provide maintenance to wife. Can woman take her expense from husband property without his permission?

If the refusal of husband to provide maintenance to wife is not based on any valid reason. Then it is the right of wife and she may take from his property. But if the right of maintenance is ceased due to her non-obedience then she cannot take from his property.⁹¹

Separate residence for wife

If wife does not want to live with the parents or relatives of husband. Is it the responsibility of husband to provide separate residence?

The query is resolved by saying that it is the responsibility of husband to provide separate maintenance to wife. If she does not want to live with relatives of husband. It is not necessary to build a separate house for her if he cannot afford. In the same house he may give her a separate room where other people may not be able to interfere.⁹²

In Ashraf ul Fatāwā it is stated in a verdict of mufti, in response of a question, that it is the right of woman to ask a separate house for her. If she ignores her right, then its upon her. If she demands, then husband have to provide her separate living in which other relatives are not living.⁹³ In Ahsan ul Fatāwā regarding the separate dwelling for wife it is mentioned that it depends upon the social background of woman. If she is

from a rich family then a husband must provide her a separate house. If she is from middle class then he can give her a separate room, kitchen and bathroom in the same house where parents are living. If she is from a poor family, then a separate room must be given in the same house but kitchen and bathroom can be combined.⁹⁴

Maintenance during Iddah period of a widow

If husband dies, who will bear the expenses of widow?

After the death of husband, the widow will get the inheritance from the property of husband as mentioned in Qurʾān that is $1/8^{\text{th}}$ or $1/4^{\text{th}}$. During period of Iddah she can get expense from inherited amount. If the amount is not sufficient and other relatives are also not bearing the expense of widow, then she has to do something for herself by her hands (means she can do any work for earning).⁹⁵

Another fatwa is presented to ask the maintenance of a widow during Iddah. Firstly it is asked that whether the amount of maintenance will be paid to widow from the whole amount of inheritance or she will get after distribution of inheritance amount? Secondly, it is asked that where the woman live after the death of husband, if the house is on rent where they were living together before the death of husband? Thirdly, if a man is living in his personal house then, is it obligatory upon the heirs to let her stay in the same house after his death to spend the Iddah period?

It is mentioned in fatwa that she can get her share of inheritance right first, and can spend the amount as she wants. She cannot ask for maintenance from combined share. Secondly, if she is unable to spend her waiting period in rented house due to financial liability then she can move to a nearest place. Thirdly, if the house of deceased is personal then it is not *wajib* upon relatives to give her the place to stay, if her own share in that house is not enough for her to live there. If they, the relatives, give residence in kindness then she can stay, otherwise she has to move at some place which is near to that house to pass her waiting period⁹⁶.

Woman living at parents' house

If woman is living at parent's house with the permission of husband, then the husband will provide maintenance as she is not disobedient to husband. The consent of husband is not missing in the case.⁹⁷

The maintenance during anger period

If wife becomes angry and left the home. The period in which she lives at her parent's house in state of anger she cannot claim maintenance of that period. If Qadhi decides the case in favor of woman then husband have to give the maintenance of that period. If he will not give after the decision of Qadhi, then it will be considered debt, which is payable at any time in life.⁹⁸

Maintenance of wife and children

The question is asked that the son must be obedient of his parents. Can he give the rights of wife and his children to parents?

It is explained to *mustafī* that the parents have more right over son, but at the same time the maintenance of wife and children both are due upon him. So according to Sharīʿah a man has to take care of parents as well as wife and children.⁹⁹

Maintenance of Minor wife

As the minor boy's expenditure are due upon father, likewise who will provide the maintenance of the wife of minor son, who is also minor?

The maintenance of wife of minor who is also minor will be paid by the property of her husband. If father is surety and took the guarantee of both, then he will be obliged to pay the maintenance in this situation.¹⁰⁰

Maintenance for the period of suckling and custody

Can a woman claim for the maintenance of suckling and custody both?

The fatwa mentioned that she can take the maintenance of custody. After the iddah she can claim both, the suckling and custody expenses. During the iddah period it is not allowed for woman to ask for maintenance in this situation. If the child has his own property or money then mother can take the remuneration. If someone other than mother claims to suckle a child without payment then mother also have no right to claim payment of suckling. She can get expense of custody period. The child will stay with mother and other woman has to come to their residence to suckle the child. If father is poor and cannot afford to pay the custody period amount and some other woman is ready to take custody without payment then mother will also be not allowed to take custody period payment¹⁰¹.

Conclusion

Islamic system of maintenance is very helpful for living better life especially in case of separation among spouses. Man is given the status of maintainer of women and children. He has to provide all means of life to her which she earns through contract of marriage. Maintenance is provided to woman in three cases. When she is in marriage of a man or if she is separated from him or feeding his children or child after separation. One form of maintenance is divorce before marriage but after nikkah. This is very serious issue in all Muslim countries where woman rights are usurped especially when it comes to divorce. Women are not provided with maintenance when they have children with them or when they are feeding his children. In this case Egypt Pakistan and India muftis are consulted for solution of their issues. Maintenance is widely asked problem from muftis in these three countries. Muftis say that in case of divorce at least children will be maintained till boy reaches the age of 7 and girl to the age of 12 whereas wife will just be maintained till the Iddah period. Muftis also have realistic approach when it comes to the rights of women, they verdict that medical treatment is also due on husband because maintenance is wide word to cover so many essentials for living in this world. Indian muftis refer towards Fatāwā Alamgiri for rights of women because they have given detailed Fatāwā in which women deserve right of maintenance. But women if refused to consummate marriage then husband is not liable to pay maintenance. If husband and wife are living separately from so many years. Husbands gets second marriage and does not provide maintenance to her than she may approach court by providing proof he has not maintained her. On husband's non providing maintenance can allow her for dissolution through court.

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- ⁶² *Kitab ul Fatawa*, vol. 5, 147
- ⁶³ Jalal-ul-Deen Ahmad Amjadi, *Fatawa Faiza ar Rasool*, Dar ul Uloom Faiz ar Rasool Braun Sharif, (2015), 170-171
- ⁶⁴ وهو – أي: الطلاق -..... شرعا رفع قيد النكاح في الحال بالبانن أو المال بالرجعي بلفظ مخصوص هو ما اشتمل على (در مختار مع الشامى 423-4:426 مطبوعه مكتبه زكريا ديوبند) الطلاق
- ⁶⁵ <http://www.darulifta-deoband.com/home/en/Talaq-Divorce/56353>
- ⁶⁶ وفى المجتبى: نفقة العدة كنفقة النكاح وفى الذخيرة: وتسقط بالنشوز وتعود بالعود (شامى 5: 333)
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- ⁷¹ *Kitab ul Fatawa*, vol. 5, 151-152
- ⁷² *Ashraf ul Fatawa*, 242
- ⁷³ *Minhaj ul Fatawa*, vol. 3, 401.
- ⁷⁴ *Fatawa Usmani*, vol. 2, 465.
- ⁷⁵ *Ibid*, 461-462.
- ⁷⁶ *Ibid*.
- ⁷⁷ *Fatawa Usmani*, vol. 2, 462
- ⁷⁸ *Ibid*.
- ⁷⁹ *Fatawa Usmani*, vol. 2, 487
- ⁸⁰ *Fatawa Usmani*, 489-490
- ⁸¹ *Ibid*. 490.
- ⁸² *Ibid*. 490.
- ⁸³ *Fatawa Usmani*, 491
- ⁸⁴ *Fatawa Haqania*, vol. 5, 27
- ⁸⁵ *Ahsan ul Fatawa*, vol. 5, 467
- ⁸⁶ *Fatawa Usmani*, 491-492
- ⁸⁷ Zuhayli, W, *Al Fiqh Al Islami wa Adillatuhu*, transl. Yousaf Tanoli, M, Shehzad Amir, M. (Dar ul Asha'at urdu bazar Karachi, September 2012), 518
- ⁸⁸ *Ibid*. 519
- ⁸⁹ *Fatawa Haqania*, vol. 5, 30
- ⁹⁰ *Fatawa Haqania*, vol. 5, 438
- ⁹¹ *Fatawa Haqania*, vol. 5, 433-434
- ⁹² *Fatawa Haqania*, vol. 5, 435
- ⁹³ Ubaid Ullah, M., Abdur Rehman, M., *Ashraf ul Fatawa*, (Mahdam ul Qur'aa, Jamia Ashrafi, Feerozpura, Lahore, 1430 H), 241. The Fatawa mentioned in this book are the answers given by Mufti of jamia Ashrafi thorough email. The mufti online is the source of Jamia Ashrafia for the ease of people. People may get their answers through the website as well.
- ⁹⁴ *Ahsan ul Fatawa*, vol. 5, 476
- ⁹⁵ *Fatawa Haqania*, vol. 5, 25.
- ⁹⁶ Mufti Rasheed Ahmad, *Ahsan ul Fatawa, Bab an Nafaqah*, vol. 5H.M Saeed Company Karachi, 1425 H), 473.
- ⁹⁷ *Fatawa Haqania*, vol. 5, 26.
- ⁹⁸ *Fatawa Haqania*, vol. 5, 27.
- ⁹⁹ *Ashraf ul Fatawa*, 242. see *Fatawa Khaniya, chapter of maintenance*, vol 1, 443, *Fatawa Hindiya*, vol 1, 560
- ¹⁰⁰ *Ahsan ul Fatawa*, vol. 5, 473
- ¹⁰¹ *Ahsan ul Fatawa*, vol. 5, 474