

THE MAINTENANCE OF WIFE AND ITS EFFECT ON IRANIAN LAW AND JA'FARI JURISPRUDENCE

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Abstract: Iranian law is influenced not only by the Islamic law but also by the Ja'fari jurisprudence. One of the most important duties of spouses in respect of each other is providing the livelihood. The alimony of wife is one of the financial rights which the man is responsible for paying it. Also, the man must manage the family. Alimony is in the category of Jus cogens. Today, many philosophers believe that both parties can make an agreement about the amount of alimony. We will investigate about the concept of alimony and its relationship with the management of husband in the family. Also, the current study is about reviewing the civil law and maintenance.

Keywords: Condescension; marriage; maintenance; husband; wife; divorce; right; duty; management of husband.

The family is the most important part of the society or even the nations. The value and importance of each society are dependent on the importance of family position in the society. When the foundation of the family becomes weak, the society will lose its existence and essence.

The human encountered with the varieties of challenges since he learned about socialization. He considered to the family in order to conduct well with the family members and even protect his privacy. He defined the concept of family as a little holy society. This little society if formed just by the marriage of man and woman based on especial traditions. Maintaining is one of the most important subjects which play an important role in the marriage life. There is stated in the article 1102 of the civil law that both man and woman have different rights towards each other. These rights are financial as well as moral rights. One of the spouse is responsible for spend time and money in order to educate children. Therefore, man and woman have the legal relationship towards each other based on the financial aspect (Katouzian, 1999: 136). According to the Islamic law, man is responsible for supplying the cost of the family (Mohaghegh Damad, 1995: 279). The woman is free to spend her money or not. This is the right of a woman to receive maintenance.

DEFINITION OF MAINTENANCE

The word of maintenance means everything which is paid to wife and even the family. The life cost for wife and children is defined as a concept of maintenance (Moein Dictionary).

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Another definition of maintenance is everything which is paid or consumed (Almonjed Altollab).

Most of the concepts in the Islamic law have definitions and related examples in the Islamic law.

According to the statement in *Javaher Alkalam*, the needs of a woman such as food, clothing, servant and cooking utensils must be appropriate with the position of woman in the city (Najafi, 1987: 330). Some *Fuqahā'* added extra items to the above definition such as: cleaning products and makeup products like a comb, soap, cream and the cost of the bath (Shahid Sani, 1989 volume 5, p 469).

The definition of maintenance in the *Tahrir Alahkam* is everything that a woman needs incompatible with her position in the city (Helli, 1988: volume 2, p 47). It seems that the maintenance concept is completely a common concept. The holy legislator believes that the maintenance is fully dependent on the place and time which is acceptable by the Holy Quran. Most verses emphasize on the common law about the definition of maintenance (Alnisa, 19). An honorable keeping or allowed to go with kindness (Albaqare, 229). It is for the father to provide for them and clothe them with kindness (Albaqare, 233). The expression "honorable thinking" is interpreted as common issues in some interpretations. Some interpreters described the above verse (Albaqare, 229) as the following: aliment means everything which the husband is responsible for paying to his wife such as clothing, foods and breast milk (Tabatabai, 1984, volume 2, p 360). Clothing and foods are some kinds of needs in our life (ibid, p 404). Some scholars believe that the word "Ma'rouf" means honorable and appropriate (Makarem Shirazi et al, 1987: 31). It means that the maintenance must be in accordance with the dignity of woman in the city.

The Legal Definition of Maintenance

The legal law doesn't have any definition about maintenance. Of course, it represents some examples of maintenance in article 1107. Maintenance means every clothing, housing, food and objects which are in accordance with the position of woman in the society. There must be a servant for the wife if it is necessary. There are different definitions in the doctrine law. According to Feiz, maintenance means providing the livelihood as it needed like housing, food and other needs (Feiz, 1987: 387). Ja'afari Langaroodi stated that maintenance is the noun of "spending money". The definition of maintenance in the civil law dictionary is as the following: spending money for supplying the livelihoods such as foods, clothing, and furniture. The above costs are in accordance with the ability to forgive a person on the basis of the common law (rights terminology, Lagaroodi, M). Some scholars believe that maintenance is everything which is needed for life (Safaei & Emami, 1995, p 393). Others represented a comprehensive definition for the maintenance concept: maintenance means everything which the woman needs in her marriage life including her mental

conditions and physical conditions (Katouzian, 1999, p 187). It seems that if we add some explanations to the above expressions it become more comprehensive: “commonly or common” (Khomeini, 1978, volume1, p 283).

Definition of Maintenance by Holy Quran

Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers’ provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child and no father through his child. And upon the [father’s] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do (Albaqare, 233).

And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality (Alnisa, 19).

Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment (Albaqare, 229).

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth (Alnisa, 34).

The last verse points to the men’s responsibility in their life in order to pay maintenance to their wives. In the previous verse, the almighty God stated a duty and its related right. The right means the management of the family, giving maintenance to wife and children. Almighty God gave the man this duty because of his high power. Almighty God also prepared different features in the creation of man and woman. After that, he gave the man this duty which is giving maintenance to his wife and children. Men must accept some obligations toward their families (Makarem Shirazi, 1987: 371). The preference of men over the women is because of the social interests and the physical conditions of the man. The natural and innate features of the men are different with women. According to the statement of Quran, man and woman are equal with each other. Virtue is the most important factor which separates people from each other. “The noblest of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted” (Alhojarat, 13). Allame Tabatabai states that people are all like the aspects of a tree of the human nature and society. Each society needs every person in order to form a coordinated community. The nature of humanity in developmental and social life needs to express intensity, statements of power, love, and mercy. These two characteristics indicate the attraction and repulsion in the human society. This kind of verdict is derived from the healthy society which is far from indulgence or extremism. All these

difference are because of the differences in the society (Tabatabai, 1984: volume 4, pp. 405-406). According to the statement of Holy Quran, the man is responsible for paying maintenance to his wife. This responsibility is because of different and even strong characteristics of the man (Makarem, 1987: 370). Manouchehrian argues that our civil law forces the man for paying maintenance to his wife. This maintenance includes foods, clothing and house. Therefore, the man is responsible for supplying the above issues. Some of the Quran translators like Sha'arani believe that the word "Qavamoon" refers to rulers. Another Arab jurist believes that the management of husband is a kind of administrative authority it is not autocratic (Zoheily, 1420: p 82).

Definition of Maintenance from the View Point of Narrations

Imam Sadeq stated that there is no problem if the man pays maintenance to his wife such that she could resolve her needs (Ameli, 2014: volume 15, p 223). Imam Baqir (peace be upon him), states that if the married man doesn't pay maintenance to his wife, Imam is able to separate them (ibid, p2).

When Hind bint Utbah asked Muhammad: is it possible for me to have some of my husband's properties? Our prophet answered: you can have some of them in a normal amount (al-Muttaqi al-Hindi, 1988: vol. 16, p 557).

Muhammad states that: Wives have rights over you and you have rights over women. Your wives must get the permission of you when somebody intends to enter your house. If they obey you, you are responsible for paying their maintenance (Alharrani, 1984: 22-24).

Imam Reza (peace be upon him), interpreted the verse "Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment" as follows: prevention means paying the maintenance (Ameli, 2014: volume 15, p 236). We can infer many concepts from the above narrations as the following:

1. It is necessary to pay maintenance to wife.
2. The amount of maintenance must be normal.
3. If we investigate these narrations, we comprehend that paying the maintenance is necessary.
4. There should be a bound for nonpayment of maintenance

The theories of maintenance necessity in Fiqh:

Why are men forced to pay maintenance to their wives? What are the reasons?

Shia scholars have some statements about the reasons of maintenance as the following:

1. **The relationship between the maintenance and special condescension:**
The most famous Shia scholar believes that condescension is the same as an exchange. They noted that the maintenance must be paid based on the

existence of condescension (Helli, 1990, p 52; Shahid Sani, 1989: volume 2, p 465; Ibn- Baraj, 1985, volume 2, p 347). According to the statement of one of the scholar, when he rejects all the reasons, the maintenance must be paid based on the lack of condescension (Fazil Hindi, 1987, volume2, p 107). Meanwhile, the Presumption of Innocence is done just when there is no reason of book and tradition. However, the necessities of paying maintenance in the holy Quran and narrations are clear and obvious, so the Presumption of Innocence is not able to determine these generalities. Some scholars state that if the necessity of maintenance is related to condescension, both conditioned and condition must be canceled. It means that when the condescension is not possible because of some reasons such as ratqa or other defects, it is necessary to pay maintenance (Najafi, 1987: volume 31, p 306). The necessity of condition is everything which is opposite of condescension (Ebrahim, 1970: 13).

2. **The relationship between maintenance and marriage:** Numerous scholars believe that there is a direct relationship between the marriage and maintenance. In other words, the marriage is the obligation of maintenance and disobedience leads to non-payment of maintenance (Momen, p. 194). Another scholar states that there is a strong relationship between the marriage and necessity of maintenance. According to the Iranian law, the courts issue the second decree. It means that the court will issue the decree of condemnation for the man if he is married and doesn't pay any maintenance.
3. **The relationship between the maintenance and husband's management:** Some scholars believe that if the man is the manager of the family he is required to pay maintenance to his wife and children. It seems that many verses also agree with this statement such as the 34th verse of Nisa surah: "Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth". Therefore, man is required to pay maintenance because of his power over the family (Najafi, 1987: volume 31, p 306). Imam Baqir (peace be upon him) and Muhammad (Peace be upon him and his progeny) stated: a woman came to Muhammad and asked him what is the right of a husband by the wife? Muhammad said: obey your husband, don't commit any sin and don't fast without his permission. Also don't go out without his permission (Ameli, 1973, volume 14, chapter19, p 112). Another person asked Imam Sadeq about the right of a wife by her husband. Imam answered that he must provide foods, clothing and everything which is needed in life (Ameli, 2014, volume 14, chapter 88, p 121). Therefore, there is a direct relationship between the rights of man versus the right of man. It means that the wife should obey her husband when he pays her maintenance. Hence according

to the statement of Muhammad Hasan al-Najafi, it is necessary to obey the husband in order to pay the maintenance; otherwise, the payment of maintenance would be canceled because of disobedience (Najafi, 1987: volume 31, p 307). However, disobedience leads to nonpayment of obedience. As a result, disobedience will lead to the cancellation of the maintenance and this definition is different with the necessity of marriage and its relation to the maintenance (ibid, p 306). In other words, if there is a marriage contract without any management with husbands, the woman doesn't have any right of receiving the maintenance.

One of the contemporary scholars believes that all the reasons and statements which are related to the rights of husband and wife are in accordance with the condition in which the husband is the manager of the family. If a married woman is in her father's house, she cannot receive any maintenance (Araki, 1998: 745). Hence, it is necessary for the husband to pay maintenance even in the voidable divorce. When the wife wants to divorce her husband, the maintenance must be paid while there isn't any condescension. There isn't any maintenance in the *Nikāḥ al-mut'ah*. Muhammad Hasan al-Najafi believes that if the woman suffers from the abnormality in her vagina, the husband is allowed not to give her any maintenance. The concept of disobedience is not compliance with the condescension. A delinquent woman must obey her husband completely. She shouldn't go out without her husband's permission (Mohaghegh Damad, 1995: p 297).

Disobedience has a direct relationship with the management of the husband (*Jami' al-maqasid*).

Disobedience means forbidding from the condescension and going out just by the permission of husband (Alizah-Alfavaed, Helli, 206, volume 3, p 274). It should be mentioned that if the woman was not able to obey her husband based on the custom and law, the concept of maintenance doesn't take place in this situation (Sadouq, 1994: 273).

The Legal Basis of Maintenance

Husband is required to pay maintenance to his wife according to the article 1106 of the civil law. The man is responsible for paying the maintenance to his wife in the permanent marriage. However, there isn't any exact rule for the amount of this payment. Therefore, some of the authors in the civil law didn't state anything about the concept of maintenance. The civil law doesn't have a comprehensive idea about the concept of maintenance. The legislator didn't represent any precise definition for maintenance. According to the statement of the legislator, disobedience leads to the nonpayment of maintenance (Katouzian, 1999:p 186). Considering to the marriage certificate with the number 4051, it is clear that there is a marriage relationship between the willing and defendant since 10/11/1955. Therefore, the defendant is responsible for paying maintenance to his wife.

Another juristic believes that the woman can receive maintenance after marriage but when she disobeys of her husband, he can avoid of giving maintenance (Emami, 1991: 456).

There are also two other possibilities for this kind of interpretation:

- First interpretation: based on the article 167, the judge is responsible to find every verdict in the civil law in order to make an effective decision. If he couldn't find any related verdict in the civil law he must refer to the Islamic resources.
- Second interpretation: some authors of the civil law defined the condescension with the obeying the husband. Based on the article 1105 of the civil law, the management of the family is by the husband. After that, according to the article 1106 of the civil law, man is responsible for paying maintenance to the woman. The legislator defines both concepts as a mutual commitment (Ja'fari Langaroodi, 1997: 173). Hence, many authors of the civil law believe that both man and woman must help each other in the process of managing the family. Of course, man is the manager of the family so he is responsible in order to pay maintenance to his wife (Katouzian, 1999: p 183). Katouzian also states that this rule needs a little change. He means that if the woman disobeys her husband, the man shouldn't give any maintenance (ibid, pp184-185). There is a statement about the maintenance in the article 1108 of the civil law as the following: if the man doesn't give any marriage portion to his wife, he commits a crime and the court can issue an imprisonment verdict. The woman is free to do nothing for the home's affairs until the man gives her maintenance. Based on the article 1108 of the civil law, disobedience leads to the nonpayment of maintenance. The lack of competency doesn't mean that a disobedience woman must be sentenced to jail.

The Legal Effects of Maintenance Principles

It should be mentioned that the above statements have some effects in both theoretical and operational aspects. We will investigate as the following:

1. **The affirmance of maintenance by the woman:** If the woman asked her husband for the maintenance, the issued verdict would be different because of determining the defendant and willing (Katouzian, 1999: p 185). Some religious jurists believe that when a claimant says that his wife doesn't fulfill her obligations, he must represent some strong reasons (Korki, 1986, volume12, p 477).
2. **The affirmance of disobedient woman by the man:** According to the second principle, just when the marriage contract is definite, the man is responsible for paying maintenance to his wife. However, based on the third

principle (the relationship between the maintenance and the management of the husband), the management of the man is one of the rules based on the permanent marriage. Once this contract occurs, the woman is obliged to accept the management of her husband and she must obey all his needs. After that, the man is responsible for paying maintenance to his wife unless she disobeys him. Regarding this statement, one of the most common scholars states that if the woman is not under the supervisor of the husband, she must represent some reasons about the nonpayment of maintenance (Araki, 1998: 746).

The Maintenance of the Contract Period

Is the man responsible for paying maintenance to his wife after the marriage and even before the marriage life?

We can answer this question based on the above statements as the following:

Based on the first basis, if there isn't any obedience, the man is not obliged for paying maintenance. Helli believes that it is important to state the necessity of obedient through a verbal expression (Helli, *Tahrir Al-Ahkam*, volume2, p 45). Toosi believes that there are extra parameters rather than the obedient (Toosi, 2036, volume 6, p 11). Helli also states that the woman must attend the court if her husband is absent. Therefore, if the court accepts her demand, she is deserved of receiving maintenance (Helli, volume 2, p 52, *Ibn-e-Boraj*, 1985: volume2, p 347). Nevertheless, according to the obedience theory, some jurists believe that the man is not responsible for paying maintenance between the times of marriage contract and consummation of the marriage (Mohaghegh Damad, 1995: 298).

Based on the second basis, the husband is responsible for paying the maintenance just after the marriage contract (Momen, p 195). If the man was able to approve the woman's disobedient, he is not responsible for paying maintenance. Emami believes that the woman is deserved of receiving maintenance even during the marriage contract and marriage ceremony (Emami, 1991: 455). Of course, many courts in Iran follow this rule and issue the conviction sentence for the husband if he avoids of giving maintenance to his wife.

Based on the third basis, it is not necessary for paying maintenance if there is not any marriage contract and even when they have not begun their marriage life. Najafi believes that the man is not responsible for paying maintenance before the consummation of marriage. However, the woman is obliged to accept her husband's management when they begin their marriage life. It should be mentioned that if the man is not responsible for paying maintenance when they are in the period of marriage contract unless the woman was in her husband's house.

Maintaining: right or duty?

According to the Islamic law and even the Iranian law, the man is responsible for paying maintenance to his wife. There is a question here: is this kind of maintaining changeable or not? Is each of the both marriage contract able to have another agreement of this issue? Is it possible for each of the parties to make extra conditions about maintenance?

Many jurists believe that it is the duty of man to be a manager of the family. However, it is not the right of the woman (Katouzian, 1999: p 226). Hence, maintaining is a kind of legal decree which the legislator is obliged to represent. Maintenance is a kind of woman's right. Although the maintenance of woman is a right, her last maintenance transforms to doubt. This kind of doubt is demandable. Hence, many scholars accept the process of waiving for the past and future maintenance. Abu al-Qasim al-Khoei states that the maintenance of each woman is able to dilapidate (Khoei, 1985:p 289, Mas'a'e, 1987, Ali al-Sistani, 1991: volume 3, p 129, Rouhani, Mas'ale 432, 1985, p 315, Mas'ale, 1987). Abdollah Javadi-Amoli believes that the guardianship of the husband is no his duty. It means that if the woman is independent of the economic aspect, she must state it in the marriage certificate. Of course, the incentive condescension is different from the interior guardianship. The first one is another's right which is in accordance with the permanent marriage (Javadi-Amoli, 2002: 344-345).

The Reasons for Nonpayment of Maintaining

1. Disobedient Woman

All the scholars believe that the man shouldn't give any maintenance to his disobedient wife. Disobedience means not to obey the demands of husband or wife. This definition is especially for disobeying the wife from her husband. Of course, this kind of disobedient refers to stated duties in the Islamic law. Hence, each incompatibility and mistreatment are not related to the disobedience (Mohaghegh Damad, 1995: 95). According to the statement of the ibn Khordadbeh abusing is not accounted as disobedient (Shahid Sani, 1991: volume 1, p. 571). Scholars believe that there is the difference between the misconduct and disobedience. Helli states that the man is able to deprive his wife of any communication when his wife doesn't have an appropriate behavior (Helli, 1978: p. 338). The statement of the rule 1108 is as the following: when the woman doesn't do her marriage duties without any legal impediment, the man shouldn't give her any maintenance. If she disobeys her husband because of legal reasons, she is not a disobedience woman. In this regard, the following events don't are the impediments of the maintenance:

- If the woman suffers from some abnormalities in her vagina which lead to the lack of intercourse.

- It is necessary to go out in order to treat the diseases based on the statement of a doctor. (ibid, p 308).
- When the woman is afraid of something in her house, she can leave her house (Article 1115, Civil Law).
- Religious obligations which are obligatory for Muslims. If the husband doesn't permit his wife to do things except for religious obligations, the woman must obey him. The woman can do her late prayers and fasts in other times based on her husband's satisfaction (Ibid: 314, Mohaghegh Damad, 1995: 293).

2. Dissolution of Marriage

Maintaining is a kind of duty for the man in accordance with the woman's obedience. Divorce, dissolution of marriage and death of wife are those events which the man is not responsible for paying any maintenance (Sarakhsi, 1981: 187; Helli, 1985: 36).

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