**MUSLIM WIFE'S RIGHTS TO MAINTENANCE:
HUSBAND'S DUTY TO MAINTAIN A WORKING
WIFE IN ISLAMIC LAW AND
THE LAW IN MALAYSIA***

*Azizah Mohd**
Badruddin Hj Ibrahim****

ABSTRACT

Islamic law imposes a duty on the husband to maintain his wife. This duty arises as soon as the marriage contract is completed. The duty to maintain her continues until the contract of marriage ends either through death or separation. This paper 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 Malaysia governing maintenance of a Muslim wife. The paper will further analyze the law on the extended duty of the husband to maintain the

* This paper is an improved version of the presentation at the International Conference on Harmonisation of Civil Laws and Shari'ah, held at Attorney General's Chambers of Malaysia, Putrajaya on 8th – 9th December 2009. This research is sponsored by Research Management Centre, International Islamic University Malaysia.

** Assistant Professor, Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia.

*** Assistant Professor, Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia.

wife, even though the wife is working and especially earning a good salary of her own.

Keywords: Wife, rights, maintenance, working wife, Islamic law, law in Malaysia.

DEFINITION OF MAINTENANCE (*NAFAQAH*)

Nafaqah is an Arabic word, rooted from *infāq*, which means to spend for a good purpose. Literally it means what a person spends for his family members.¹ In general, maintenance refers to what is spent to support one's family with food, clothing, accommodation and other expenditures.² Muslim jurists have given several similar definitions of the word *nafaqah*. For example, the Ḥanafī jurists have defined *nafaqah* as food, clothing and accommodation.³ The Ḥanbalī jurists have defined *nafaqah* as what is sufficient for maintaining a family with food, clothing and accommodation and their supplements.⁴ The Shāfi'ī jurists have expanded the scope of maintenance to the wife which includes whatever is eaten as food (*al-ʿadam*), clothing, cleaning tools, house appliances like cooking equipment, accommodation and servant in the case where the wife has ever used the service of a servant before her marriage.⁵

¹ Ibn ʿĀbidīn, al-ʿAllāmah Muḥammad Amīn bin ʿUmar bin ʿAbd al-ʿAzīz ʿĀbidīn al-Dimashqī, *Radd al-Mukhtār ʿalā al-Durr al-Mukhtār al-Maʿrūf bi Ḥāshiyāt Ibn ʿĀbidīn*, Vol. 5, Dār Iḥyāʾ al-Turāth al-ʿArabī, Beirut Lebanon, 1998/1419, p. 222.

² See Ibrāhīm Anīs, ʿAbd al-Ḥalīm Muntasir, ʿAtiyyah Sawalihi & Muḥammad Khalf Allāh Aḥmad, *Muʿjam al-Waṣīṭ*, Dār Iḥyāʾ al-Turāth al-ʿArabī, Beirut, n.d., Vol. 2, p. 943.

³ Ibn Nujaym al-Imām al-ʿAllāmah al-Shaikh Zayn al-Dīn ibn Ibrāhīm ibn Muḥammad, “*al-Baḥr al-Rāʾiq Sharḥ Kanz al-Daqāʾiq*,” Vol. 4, Dār al-Kutub al-ʿIlmiyyah, Beirut-Lebanon, 1997/1418, p. 293; Ibn ʿĀbidīn, *Radd al-Mukhtār ʿalā Durr al-Mukhtār*, Vol. 5, p. 223.

⁴ See Maṣṣūr ibn Yūnus al-Bahūtī, *Kashshāf al-Qināʾ*, Dār al-Fikr, Beirut, 1982/1402, Vol. 5, pp. 459-460.

⁵ Al-Shirbīnī, *Mughnī al-Muḥtāj*, Vol. 3, pp. 542-543.

On the other hand, some of the contemporary scholars like Zakī al-Dīn Sha‘bān and Muḥammad Muṣṭafā Shalabī, in their definition of maintenance have included an additional scope of maintenance that is any kind of necessary service based on the custom of a society.⁶ Based on Malaysian custom therefore, the scope of maintenance for the people in Malaysia in general will also include medical expenses and other basic needs of a family.

The Shafi’i jurists have divided *nafaqah* into two categories; *nafaqah* that is obligatory upon oneself and *nafaqah* that is obligatory to be spent upon somebody else. Therefore, a person is obliged to maintain himself before he maintains another person.⁷ This is based on the *ḥadīth* of the Prophet (pbuh):

“Start with your own self and spend it on yourself, and if anything is left, it should be spent on your family, and if anything is left (after meeting the needs of the family) it should be spent on relatives, and if anything is left from the family, it should be spent like this, like this...”⁸

Nafaqah is obligatory on another person for three reasons namely; marriage, kinship and ownership.⁹ Marriage refers to the duty to maintain a wife, while kinship refers to the duty to maintain one’s relatives, including children and other descendants however low, parents however high and siblings.

⁶ See Zakī al-Dīn Sha‘bān, *Aḥkām al-Shar’iyyah li Aḥwāl al-Shakṣiyyah*, 6th Edition, University Qaryunus, Benghazi, 1993, p. 675. See also Muḥammad Muṣṭafā Shalabī, *Aḥkām al-Uṣrah fī al-Islām*, 2nd Edition, Dār al-Nahḍah, Beirut, 1977, p. 417. See also Badruddin HJ Ibrahim & Azizah Mohd, “Parental Rights to maintenance under Islamic law,” *Shariah Law Reports*, Vol. 4, 2007, p. 48.

⁷ Al-Shirbīnī, *Mughnī al-Muhtāj*, Vol. 3, p. 542. See also Muṣṭafā al-Khin, Muṣṭafā al-Bughā & ‘Alī al-Sharbajī. *Al-Fiqh al-Manhajī ‘alā Madhhab al-Imām al-Shāfi’ī*. Dār al-Qalam; Damshiq, 1412/1996, Vol. 2, p. 162.

⁸ See Muḥammad Ibn ‘Alī ibn Muḥammad al-Shawkānī, *Nayl al-Auṭār*, Dār al-Ma‘rifah. Beirut, Lebanon, 1419/1998, Vol. 6, p. 867.

⁹ *Ibid.*

LEGAL BASIS ON DUTY TO MAINTAIN ONE'S WIFE

Nafaqah of a wife is compulsory on a husband. This was established by authorities from the *Qur'ān*, the *Sunnah* of the Prophet (pbuh), *Ijmā'* of the *Fuqahā'* as well as being based on logic.

The *Qur'ān* states to the effect;

“Let the man of means spend 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...”¹⁰

“...But he shall bear the cost of their food and clothing on equitable terms...”¹¹

In another verse, the *Qur'ān* states to the effect;

“Men are the protectors and maintainers of women because Allah 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 would have them guard.”¹²

The above three verses show that the husband is responsible to maintain his wife based on his capability and financial standing.

The *Qur'ān* further states to the effect;

“Let 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...”¹³

¹⁰ Al-Qur'ān, Sūrah al-Ṭalāq; 65:7.

¹¹ Al-Qur'ān, Sūrah al-Baqarah; 2:233.

¹² Al-Qur'ān, Sūrah al-Nisā'; 4:34.

¹³ Al-Qur'ān, Sūrah al-Ṭalāq; 65:6.

According to al-Zuḥaylī, the above verse which commands placing the wife in the place where the husband lives indicates the obligation on the husband's part to pay maintenance to the wife. This is due to the fact that, in that situation, the wife cannot maintain herself unless she goes out to work.¹⁴

As to the *Sunnah* of the Prophet (pbuh), Jābir (r.a.) said that the Prophet (pbuh) said;

“Fear Allah concerning women! Verily you have taken them on the security of Allah and intercourse with them has been made lawful to you by words of Allah. You too have right over them, and that they should not allow anyone to sit on your bed whom you do not like. But if they do that, you can chastise them but not severely. Their rights upon you are that you should provide them with food and clothing in a fitting manner...”¹⁵

Another *ḥadīth* was narrated by al-Tarmidhī from Sulaimān bin ‘Amru bin al-Aḥwas;

“Don’t you have rights over them, and that they should not allow anyone to sit on your bed whom you do not like, and they should not allow anyone to enter your house whom you do not like, and their rights upon you are that you should provide them with food and clothing in a fitting manner...”¹⁶

There is a *ḥadīth* narrated about Hindun binti ‘Utbah, the wife of Abū Sufyān to the effect;

¹⁴ See Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, 3rd Edition, Dār al-Fikr, Damshiq, 1409/1989, Vol. 7, p. 786.

¹⁵ Imām Muslim, Ṣaḥīḥ Muslim (tr.), ‘Abd al Hamīd Siddīqī, Kitāb al-Haj, Vol. II, n.p., n.pp, n.d., pp. 615-616.

¹⁶ See al-Mubarakfurī, Imām al-Ḥāfiz Abī al-‘Alī Muḥammad ‘Abd al-Raḥmān bin ‘Abd al-Raḥīm. *Tuḥfat al-Ahwādhi bi Sharḥ Jāmi’ al-Tarmidhī*, Second Edition, Vol. 4, Maktabat al-Salafiyyah, Medina, 1375/1965, p. 326.

Narrated from Aishah that Hindun binti ‘Utbah said; “O Rasūlullāh, Abū Sufyān is a miser and does not give me what is sufficient for me and my children, can I take of his property without his knowledge?” Rasūlullāh (saw) said, “Take what is sufficient for you and your children, and the amount should be just and reasonable.”¹⁷

According to al-Zuḥaylī, the above *ḥadīth* shows the obligation to provide sufficient maintenance to the wife. Therefore, if the husband did not provide sufficient maintenance while he is able to do so, the wife can even take the husband’s property in secret but in a kind manner, in order to fulfill her need.¹⁸

As to the *ijmā’* of the *Fuqahā’*, all are unanimous on the fact that the husband is obliged to provide maintenance to the wife when the husband is an adult person (*bāligh*)¹⁹ unless if the wife shows disobedience (*nushūz*) to the husband. The Ḥanafīs view that maintenance of a minor wife who is incapable of having sexual intercourse is not obligatory on the husband, due to the fact that, the husband cannot enjoy sexual relations with her.²⁰

¹⁷ Al-Bukhārī, Saḥīḥ al-Bukhārī (tr.), Muḥammad Muḥsin Khān, Chapter *al-Nafaqah*, Vol. VII, 6th edition, Kazi Publication, Lahore, 1983, p. 212.

¹⁸ Al-Zuḥaylī, Vol. 7, p. 787.

¹⁹ Under Islamic law, a major person refers to a person who has attained the age of puberty. A person attains the age of puberty when his natural symptoms become manifest or when he reaches the age of fifteen years. The symptoms of puberty in a boy are sexual dream, ejaculation of sperm, and the ability to impregnate a woman. The symptoms of puberty in a girl are sexual dream, menstruation, and the ability to become pregnant. In case there is no natural symptoms, the age of puberty according to the Shāfi’īs and the Ḥanbalis is fifteen years old. While according to the Mālikis eighteen years and according to the Ḥanafis eighteen for a boy and seventeen for a girl. For further details see Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī, *al-Ashbāh wa al-Nazāir*, Dār al-Kutub al-‘Ilmīyyah, Beirut, 1983/1403, p. 219. See also Aḥmad Ḥassan, *Principles of Islamic jurisprudence: The command of the Shari‘ah and juridical norm*, Islamic Research Institute, International Islamic University Islamabad, 1993, Vol. 1, p. 303.

²⁰ Al-Zuḥaylī, Vol. 7, p. 787.

Finally, it is rational that the wife is obliged to obey the husband by virtue of the marriage contract (*'aqd*). Due to her position, she is exempted from working as she is specially dedicated to the husband. Meanwhile, her time is fully devoted to safeguarding the husband's rights. Therefore, the husband is obliged to provide sufficient maintenance to the wife as a reward for her devotion to the husband.²¹

REASONS FOR HUSBAND'S OBLIGATION TO MAINTAIN THE WIFE

In general, the husband is obliged to provide maintenance to the wife by virtue of a valid marriage. The Muslim jurists have discussed a few reasons why the husband is obliged to provide maintenance to the wife. The jurists can be categorised as holding two views; the first is the view from the Ḥanafī jurists who opined that the reason for maintenance of the wife is because of the valid marriage. Accordingly, the husband is also obliged to maintain the wife who is observing the period of *'iddah* after divorce either through *ṭalāq* (revocable or irrevocable) or through *khulu'*, *ta'liq* or *fasakh*. This is also applicable regardless of whether at the time of divorce, the wife is pregnant or not. However, if the divorce is due to the wife's wrongdoing, she is not entitled to maintenance during *'iddah*.²²

The second view from the majority of the *fuqahā* opine that the reason for the obligation for maintenance is the husband and wife relationship; i.e. the subsistence of the marital relationship. Due to that fact, a husband is only obliged to maintain the wife so long as she remains a wife or if she is observing *'iddah* of a revocable divorce. This is due to the subsistence of the marital relationship in the *'iddah* of a revocable divorce. The husband is similarly obliged to maintain a divorced wife (revocably or irrevocably) who is pregnant as the husband's right to the unborn child exists in the wife. They base this on the *Qur'ān*, *Sūrah al-Ṭalāq* verse 6, as mentioned earlier, to the effect that the husband is obliged to place the divorced wife in his place of residence and as to the wife who is pregnant, the husband has to maintain her until she delivers

²¹ Al-Zuḥaylī, Vol. 7, p. 787.

²² Al-Kāsānī, *Badāi' al-Ṣanāi' fī Tartīb al-Sharāi'*, Vol. 4, p. 23.

the baby, regardless of the kind of divorce. This is also based on *ḥadīth* of the Prophet (pbuh) in the case of Fāṭimah binti Qais who was divorced with three *ṭalāq*.²³ The prophet said to her;

“You are not entitled to maintenance unless you are pregnant...”²⁴

The Muslim jurists are in disagreement in the case of a wife who is not pregnant and is divorced with irrevocable divorce. According to the Mālikīs, Shāfi‘īs and a view from Ḥanbalī jurists, if the wife is divorced irrevocably and she is not pregnant, she is not entitled to maintenance during ‘*iddah*, but to mere accomodation.²⁵ An apparent view in the Ḥanbalī school states that the wife who is divorced irrevocably is not entitled to both maintenance and accomodation during ‘*iddah*.²⁶

CONDITIONS OF MAINTENANCE TO A WIFE

The Muslim jurists have also discussed the fulfilment of several conditions to entitle the wife to maintenance by the husband. A majority of Muslim jurists²⁷ has stipulated that the wife must fully submit to the husband in terms of access to sexual intercourse, eventhough the husband is a minor.²⁸ Therefore, if the wife prevents the husband from touching her or having sexual intercourse with her, she is not entitled to

²³ Al-Kāsānī, *Badāi‘ al-Ṣanāi‘*, p. 23; Ḥāshiyah Al-Khurashī, p. 205; Al-Shīrāzī, Abī Ishāq Ibrāhīm ibn ‘Alī ibn Yūsuf al-Fairuzabādī, *al-Muḥadhdhab fī Fiqh al-Imām al-Shāfi‘ī*, Vol. 2, Dār Iḥyā’ al-Turāth al-‘Arabī, Beirut-Lebanon, 1994/1414, pp. 204 & 210-211. Ibn Qudāmah, Abī Muḥammad ‘Abdullah ibn Aḥmad ibn Muḥammad ibn Qudāmah al-Maqdīsī, *al-Mughnī ‘alā Mukhtaṣar al-Kharaqī*, Vol. 7, Dār al-Kutub al-‘Ilmiyyah, Beirut-Lebanon, 1994/1414, p. 405.

²⁴ Al-Shawkānī, *Nayl al-Auṭār*, Vol. 6, p. 843.

²⁵ Ḥāshiyah Al-Khurashī, p. 205; Al-Shīrāzī, *Al-Muḥadhdhab*, pp. 210-211; Al-Mughnī, p. 405.

²⁶ Ibn Qudāmah, *al-Mughnī*, p. 405.

²⁷ Al-Kāsānī, *Badāi‘ al-Ṣanāi‘*, pp. 27-32; Ibn Nujaym, *Baḥr al-Rā’iq*, pp. 293-305; Al-Shirbīnī, *Mughnī al-Muḥtāj*, Vol. 3, pp. 554-555; Al-Shīrāzī, *al-Muḥadhdhab*, pp. 204-205; *al-Mughnī*, pp. 402-405.

²⁸ Al-Kāsānī, *Badāi‘ al-Ṣanāi‘*, p. 28.

maintenance. This is based on the practice of the Prophet (pbuh) who married 'Āishah (a minor) and had stayed together with her only two years after the marriage. The Prophet (pbuh) only maintained her after they stayed together (i.e. slept with her).²⁹ However, if the wife prevented the husband from having sex with her due to a lawful reason, like failure on husband's part to pay prompt dower to her, then this will not disentitle her to maintenance.³⁰

Another condition to be fulfilled by the wife is that she must be a major person and therefore allowed to have sexual relationship. A minor is not suitable for sexual relationship and therefore, the husband is not obliged to maintain her. Furthermore, the marriage must be a valid marriage, if the marriage is invalid, irregular or doubtful as to its validity (i.e. *shubhah* marriage), the husband is not obliged to maintain the wife. Finally, the wife's right to maintenance must be unaffected by certain factors which may disentitle her to maintenance. For example, disobedience (*nushūz*) will deprive a wife's right to maintenance from her husband.³¹

The Mālikī jurists have given separate conditions for the husband's duty to maintenance which are quite similar to the conditions given by the majority of *Fuqahā'*. Among the conditions are firstly, the wife does not refuse to have sexual intercourse with the husband. Her refusal will disentitle her to maintenance. Secondly, the wife is capable of having sexual intercourse. If the wife is incapable due to her physical impediment that prevents sexual intercourse, but the husband nevertheless enjoys conjugal relationship with her and knows her defect, the husband is still liable to maintain her. Thirdly, the husband is a major person and capable of having sexual intercourse. If the husband is a minor, but he has sexual relationship with the wife, he is obliged to maintain her. Finally, either the husband or the wife is not incapable of having sexual intercourse due to death sickness. Nevertheless, if intercourse still takes place in that condition, the husband is obliged to provide maintenance to the wife.³²

²⁹ Al-Shīrāzī, *al-Muḥadhdhab*, p. 204.

³⁰ Al-Shirbīnī, *Mughnī al-Muḥtāj*, p. 554-555; Ibn Nujaym, *Baḥr al-Rā'iq*, p. 294; *Al-Mughnī*, p. 404.

³¹ *Al-Muḥadhdhab*, p. 204-205. Ibn Nujaym, *Baḥr al-Rā'iq*, pp. 293-305. For examples of *nushūz*, see below.

³² Al-Dusūqī, al-'Allāmah Shams al-Dīn Al-Shaikh Muḥammad 'Arafah, *Ḥāshiyah al-Dusūqī 'alā al-Sharḥ al-Kabīr*, Vol. 2, Dār al-Fikr, Beirut-Lebanon, 1998/1419, pp. 799-800.

The Muslim jurists have also discussed situations where a wife is considered *nushūz* or disobedient in matters which become the right of the husband. In this situation, she is disentitled to maintenance from her husband.³³ Example of *nushūz* is when the wife prevents the husband from touching her or declines to have sexual intercourse without lawful reasons. What are lawful reasons are rather subjective but among the examples that were given is illness which results in pain after having sexual intercourse.³⁴

A wife is also considered *nushūz* in several other situations, including going out from the husband's home or travelling without the husband's permission. This is exceptionally allowed in the case of necessity like the house is falling down or she has to visit her parents who are sick or for the purpose of her own treatment. The Shāfi'is view is that, the wife is not considered *nushūz* if she went out from the husband's home to visit her parents or family for the purpose of giving treatment or conveying condolence. A wife is considered *nushūz* if she performed pilgrimage (*ḥajj*) or minor pilgrimage (*ʿumrah*) without the husband's permission and finally, if she refuses to move to the matrimonial home after her marriage to the husband.³⁵

HUSBAND'S DUTY TO MAINTAIN A WORKING WIFE: RATIONAL AND JURISTIC ARGUMENT

When discussing the husband's duty to maintain a working wife, the first issue which arises is whether the wife has fulfilled the conditions for maintenance, and secondly, whether by being a career or working woman, her right to maintenance ceases to exist.

Based on the discussion on the conditions of maintenance of a wife, it seems that a working lady might be able to fulfill conditions, like submission to the husband in term of sexual intercourse, but this submission might not be complete. Furthermore, if a wife is working, on many occasions she has to go out from the matrimonial home. Therefore, the next issue arises as to whether this will cease her right to maintenance.

³³ Al-Zuḥaylī, Vol. 7, p. 779.

³⁴ Al-Zuḥaylī, Vol. 7, p. 779.

³⁵ See al-Zuḥaylī, Vol. 7, pp. 779-780.

Rationally, if the husband has given her permission to work, working will not deprive her right to maintenance. On the other hand, if a wife works without her husband's permission, she can be considered *nushūz* when she goes out from home without his permission.

In principle, the Muslim jurists have not discussed in detail on the husband's duty to maintain a working wife. The *fuqahā'* who discussed most about this issue are the Ḥanafī jurists. Most Ḥanafīs generally view that a working wife does not fully submit herself to the husband, therefore she is not entitled to maintenance.³⁶ Nevertheless, there is an opinion in the Ḥanafī school of law which states that if the wife goes out from the matrimonial home for working purposes and the husband consents to it, she is entitled to maintenance as she is still in obedience to the husband's wish and is not *nushūz*. If the husband did not consent, she will lose the right to maintenance as she is considered *nushūz*.³⁷

The Muslim jurists, other than the Ḥanafīs, did not clearly discuss the duty of a husband to maintain a working wife. It can be understood from their discussion that the legal implication is based on the wife's fulfillment of the conditions of maintenance and that she is not disqualified from maintenance due to unfulfillment of certain conditions like the wife being *nushūz*. In other words, the wife's entitlement to maintenance or the husband's duty to maintain a working wife is based on whether the wife is obedient and not *nushūz*. For example, the Mālikī jurists in *Sharḥ al-Ṣāwī* mentioned that among the conditions of maintenance is that the wife is not *nushūz*. This includes the situation when the wife abstained herself from the husband's access without any valid reason and, due to that fact, the husband is unable to enjoy marital relationship with the wife. Similarly, in the case where she goes out from the matrimonial home without the husband's consent.³⁸ The Shāfi'ī jurists state among others that, maintenance to the wife is obligatory on the husband due to a valid marriage and the possibility for sexual enjoyment at any lawful time. It was stated in *al-Muhadhdhab*, the book of *al-Shīrāzī*, that a wife who partially submitted to the husband during night time only is not

³⁶ Ibn Nujaym, *Baḥr al-Rā'iq*, p. 305; Ibn 'Ābidīn, *Ḥashiyāt Radd al-Mukhtār*, p. 229.

³⁷ Ibn 'Ābidīn, *Ḥashiyāt Radd al-Mukhtār*, p. 229.

³⁸ Al-Ṣāwī, *Aḥmad*, *Bulghat al-Sālik li Aqrab al-Masālik 'Alā al-Sharḥ al-Ṣaghīr*, Dār al-Kutub al-'Ilmiyyah, Beirut-Lebanon, 1995/1415, pp. 483-484.

entitled to maintenance because of her partial or imperfect submission. Meanwhile, the Ḥanbalī jurists state in *al-Mughnī*, the book of Ibn Qudāmah, that if the wife goes out from the matrimonial home without the husband's permission, she will lose the right to maintenance,³⁹ therefore the husband is not obliged to maintain her at that particular time.

Based on the above discussion, it can be inferred that in general, most Muslim jurists agree that the husband is obliged to provide maintenance to the wife as far as she is obedient and not *nushūz*. On this basis also, ‘Abd al-Fattāḥ ‘Amru, a contemporary Muslim scholar, held that a working wife is not entitled to maintenance if the husband did not give her permission to do so. If at the time of the marriage, the wife is a career woman, the husband has the right to ask the wife to quit her job, and if she refuses and proceeds with her job, she is considered *nushūz* and disentitled to maintenance.⁴⁰ Other contemporary scholars, like Zakī al-Dīn Sha‘bān, in discussing the above issue states the same idea and emphasizes that the husband who allows the wife to work is obliged to maintain her. If the husband has prevented the wife from working at the early stage of marriage life, but the wife persists, she will forfeit her right to maintenance. Similarly, if the husband allows her to work in early marriage life and later asks her to stop, she is bound to obey or otherwise, her right to maintenance will cease, as she is considered *nushūz*.⁴¹ In addition, Muḥammad Muṣṭafā Shalabī states that, if the wife is working at home like sewing, writing a book etc which does not affect her duty as a wife, she is still entitled to maintenance.⁴²

On the other hand, the practice in Egypt and Syria is that if a wife is a career woman and working before the marriage and at the time of the marriage, and the husband with such knowledge did not prevent

³⁹ Al-Shirbīnī, *Mughnī al-Muḥtāj*, Vol. 3, p. 435; *Al-Mughnī*, Vol. 8, p. 159. See ‘Abd al-Fattāḥ ‘Amru, *al-Siyāsah al-Shar‘iyyah fī al-Aḥwāl al-Shakhṣiyyah*, 1st Edition, Dār al-Nafā‘is, Jordan, 1998/1418, p. 90.

⁴⁰ ‘Abd al-Fattāḥ ‘Amru, *al-Siyāsah al-Shar‘iyyah fī al-Aḥwāl al-Shakhṣiyyah*, p. 90.

⁴¹ Zakī al-Dīn Sha‘bān, *al-Aḥkām al-Shar‘iyyah li al-Aḥwāl al-Shar‘iyyah*, 6th Edition, Jāmi‘ah Qaryūnis, Banghāzī, 1993, pp. 318-319. See also Muḥammad Muṣṭafā Shalabī, *Aḥkām al-Uṣrah fī al-Islām*, 2nd Edition, Dār al-Nahḍah al-‘Arabiyyah, 1977/1397, p. 429.

⁴² Muḥammad Muṣṭafā Shalabī, *Aḥkām al-Uṣrah*, p. 429.

her from working, he is still obliged to maintain her when he proceeds with the marriage.⁴³

Section 73 of the Syrian Personal Law 1953 provides that the wife's right to maintenance will cease if she goes to work without husband's permission.⁴⁴

AMOUNT AND ASSESSMENT OF MAINTENANCE

There is no discussion among the Muslim jurists on the amount and assessment of maintenance to a working wife. Basically, we can refer to the amount of maintenance to a wife in general. For this purpose, the Muslim jurists differ on the basis of the amount and assessment, whether it is based on the husband's situation, or the wife's situation or both.

The Shāfi'ī jurists and one opinion in the Ḥanafī school of law state that the amount of maintenance is based upon the husband's situation and capability. If the husband is poor, the amount of maintenance is based on his capability even though the wife is rich.⁴⁵ They base this on *Sūrah al-Ṭalāq* verse 7, which was earlier mentioned, and the *ḥadīth* of the Prophet (pbuh) from Mu'āwiyah al-Qushairī to the effect;

“Spend for (your wife's) food from what you eat and provide them with clothing from what you wear, and do not beat them and do not say ugly words about them.”⁴⁶

Additionally, if a woman agrees to marry a poor person, this means that she agrees to accept a suitable amount of maintenance from a poor man.⁴⁷

The second view from the Mālikī schools and one view from the Ḥanafī state that the amount of maintenance is based on the situation of

⁴³ Zakī al-Dīn Sha'bān, p. 319. See also al-Zuhaylī, Vol. 7, p. 792.

⁴⁴ Act No. 59.

⁴⁵ Zakī al-Dīn Sha'bān, p. 324.

⁴⁶ Narrated by Abū Dāwūd, see al-Shawkānī, Muhammad bin 'Alī bin Muḥammad, *Nayl al-Awtār Sharḥ Muntaqa al-Akhyār*, Vol. 6, Dār al-Ma'rifat, Beirut-Lebanon, 1998/1419, p. 879.

⁴⁷ Sha'abān, p. 324.

the husband and the wife. If both husband and wife are rich people, the wife is entitled to the amount of a rich person. If the husband is a rich person and the wife is poor person, the wife is entitled to a medium amount of maintenance. If the husband is a poor person, the husband is obliged to pay whatever he can afford to, and the remainder shall be a debt owed by the husband to the wife when he can afford to pay it. The Mālikīs, however, in this situation, on of the view that the husband is not burdened with what he cannot afford. To support their argument, they also use the same verse in *Sūrah al-Ṭalāq* verse 7 which provides for assessment maintenance to be based on the husband's capability. They also rely on the case of Hindun binti 'Utbah, when the Prophet said to her to 'take whatever sufficient for her in a good manner.' If the amount of maintenance is not sufficient, there is failure to maintaining in a good manner based on the that *ḥadīth* of the Prophet (pbuh).

Contemporary Muslim jurists like Zakī al-Dīn Sha'abān has commented on the above differences of opinion and he gave preference to the view of the Shāfi'īs, and one Ḥanbalī, that maintenance to the wife is based on the means of the husband as the *Qur'ān* in *Sūrah al-Ṭalāq* has clearly mentioned this.⁴⁸

Therefore, based on the above discussion, we can conclude that the amount of maintenance based upon the means of the husband is the more acceptable view. Accordingly, if the wife is working, maintenance is still obligatory on the husband. As regards the amount of maintenance, it shall be based upon the means of the husband. What the wife earns as a result of her work, can be used for her own use, especially where the amount of maintenance imposed on the husband is insufficient for the wife needs. Nevertheless, the wife must have prior consent from the husband before she goes to work.

As regards enforcement of maintenance, al-Zayla'ī from the Ḥanafī school, has emphasized that, a poor husband is still obliged to maintain a wife based on his means, eventhough the wife is a rich person.⁴⁹ Ibn 'Ābidīn from the same school supported this view and asserted that if the husband declines to provide maintenance, a judge (*qāḍi*) can force

⁴⁸ Sha'abān p. 324.

⁴⁹ See al-Zayla'ī, al-Imām Fakhruddīn 'Uthmān bin 'Alī, *Tabyīn al-Ḥaqā'iq*, Vol. 3, Dār al-Kutub al-'Ilmiyyah, Beirut-Lebanon, 2000/1420, p. 302-303.

him or imprison him.⁵⁰ Saydī Khalīl from the Mālikī school of law states that if the husband is not capable of maintaining the wife, she will have the right to apply for *fasakh* divorce from the husband.⁵¹ In this case, the Ḥanbalī jurists had the same opinion as the Mālikīs.⁵² The apparent view under the Shāfi'ī school of law states that a wife is allowed to apply for *fasakh* divorce from the husband unless she can be patient, and in that case, the amount of maintenance which is not paid by the husband will become a debt until the husband is able to maintain the wife.⁵³

The Muslim jurists are unanimous on the fact that when a wife fulfills all the conditions of maintenance, the husband is obliged to maintain her. However, they differ in the case of whether the failure to maintain will become a debt. Imām Mālik, Shāfi'ī and Aḥmad view that, in the case where the husband declines, it becomes a debt on him to pay. The debt will not cease unless and until the husband pays the debt or the wife waives her right or forgives the husband (*istibra'*). The debt does not cease with the change of time and period, or the wife becomes *nushūz* afterwards or after divorce or death takes place.⁵⁴

PROVISIONS OF THE LAW ON DUTY TO MAINTAIN A WORKING WIFE UNDER THE LAW GOVERNING MUSLIMS IN MALAYSIA

Basically, there is no provision on duty to maintain a working wife under the law governing Muslims in Malaysia. Nevertheless, there are provisions on duty of a husband to maintain a wife in general. Similarly,

⁵⁰ See Ibn 'Ābidīn, al-ʿAllamah Muḥammad Amīn bin 'Umar bin 'Abd al-ʿAzīz 'Ābidīn al-Dimashqī, *Radd al-Mukhtār 'alā al-Dur al-Mukhtār al-Ma'rūf bi Ḥāshiyāt Ibn 'Ābidīn*, Vol. 5, Dār Ihya' al-Turāth al-ʿArabi, Beirut Lebanon, 1998/1419, p. 232-233.

⁵¹ Saydī Khalīl, *Mukhtasar Saydī Khalīl cetakan bersama Ḥashiyah al-Khurashī*, Vol. 5, p. 213.

⁵² See al-Bahūtī, Manṣūr Ibn Yūnus bin Idrīs, *Kashshāf al-Qinā' 'an Matn al-Iqnā'*, Vol. 5, p. 478-479.

⁵³ See al-Shirbīnī, *Mughnī al-Muḥtāj Ilā Ma'rīfat Ma'ānī alfaẓ al-Minhāj*, Vol. 3, p. 563.

⁵⁴ See Zakī al-Dīn Sha'bān, *al-Aḥkām al-Shar'iyyah*, p. 334-335.

the law has provided for entitlement of the wife to maintenance and the situation where a wife is disqualified and considered *nushūz*. For example the provisions under the Islamic Family law (Federal Territories) Act 1984⁵⁵ provides:

“The Court may, subject to Hukum Syara’, order a man to pay maintenance to his wife or former wife.

Subject to Hukum Syara’ and confirmation by the Court, a wife shall not be entitled to maintenance when she is *nushūz*, or unreasonably refuses to obey the lawful wishes or commands of her husband, that is to say, *inter alia*-

When she withholds her association with her husband;
When she leaves her husband’s home against his will;
or

When she refuses to move with him to another home or place,

Without any valid reason according to Hukum Syara.

As soon as the wife repents and obeys the lawful wishes and commands of her husband, she ceases to be *nushūz*”⁵⁶

The above provision in general lays down a general principle that a husband owes a duty to maintain a wife regardless of whether the wife is a full time housewife or is working. The mere exception provided applies to the situation where the wife is disqualified from maintenance. Those situations can also be applicable to a working wife, especially the first and second situations i.e. when she withholds her association with her husband and when she leaves her husband’s home against his will. Accordingly, if the wife refuses access to the husband or goes to work without the husband’s permission, then she can be considered *nushūz* and is disqualified to maintenance. In these circumstances, this provision will be applicable to the wife who works without her husband’s permission.

The husband’s duty to maintain a working wife can be indirectly analysed from the decision of the Syariah Court when the Court decided

⁵⁵ Act 303.

⁵⁶ Islamic Family law (Federal Territories) Act 1984, s. 59(1) & (2).

that a husband is obliged to maintain a wife in many cases without specifying the exception to the wife who is working. It seems that in many cases, where the Syariah Court tried cases on claim of maintenance, especially on claim of maintenance during '*iddah*,⁵⁷ the Court did not highlight the issue that the wife is working.⁵⁸ Most of the time, the Court highlights the issue on whether the wife is *nushūz* or not.⁵⁹ The best example can be seen in the case of *Ida Hidayati binti Taufik v Ahmad Shukri bin Kassim*.⁶⁰ The plaintiff was married to the defendant, a MAS pilot in 1993 and they divorced in 1998 through a Court order. In relation to the divorce, the plaintiff claimed among other things, maintenance during '*iddah* amounting to RM6,317.40 for her food and drink, clothing, medical, house rental and the cost of petrol and toll from her house in Seremban to her work place in Bangsar, Kuala Lumpur. The Court ordered the husband to pay RM4,100, exclusive of the cost of petrol and toll as this was not considered under the scope or principle of maintenance. Nevertheless, before making the order, the Court had also taken into consideration whether the wife had ever been declared *nushūz* by any other Court prior to this application.

The above case seems to highlight the principle that the duty of a husband to maintain a working wife is obligatory as long as the wife by working, does not commit any act which amounts to *nushūz*.

Further decisions of the Syari'ah Court can be seen in the case where the wife applied for *fasakh* divorce on the ground that the husband failed to provide maintenance. For example, in the case of *Salina binti Mohd. Dahlan v Mohd. Salleh bin Haji Haron*,⁶¹ the plaintiff (wife) applied for *fasakh* on the ground of failure to provide living amenities (*zāhir*) and discharge conjugal duties (*bāṭin*) for more than one year. The defendant (husband) was a Police Officer. Despite the fact that the plaintiff was a teacher, the Court did not consider that the husband's duty to maintain her came to an end as she was working and able to

⁵⁷ '*Iddah* refers to certain period of waiting for the woman who is divorced or legally separated from her husband or whose husband died. For details see Muṣṭafā al-Khin, al-Fiqh al-Manhajī, Vol. 2, p. 151.

⁵⁸ See *Hj Abdullah b. Hj Hamzah v Cik Bon bt. Yaacob* (1983) 3 JH (1), p. 110.

⁵⁹ See *Haji Ali bin Hussein v Aishah binte Yusof* (1982) 2 JH (2), p. 241.

⁶⁰ (2004/1425) 18 JH (2) p. 259.

⁶¹ (2001/1422) 14 JH (2) p. 287.

maintain herself. Instead, the Court referred to the book of ‘Alī Ḥasbullāh *al-Firqatu Bainā al-Tazwijaini*, page 113 which states:

“There is no doubt that to hold a wife without any maintenance causes her severe harm (*ḍarar*) and pain. In this case, the husband is supposed to let the wife go in a kind manner. When the husband did not do that, *Qāḍī* can pronounce *ṭalāq* to avoid cruelty and harm.”⁶²

The Syari’ah Court found that failure to maintain the wife resulted in harm and *ḍarar* and therefore ordered *fasakh* divorce.

In the case of *Samsidar bte Shamsudin v Ramlan bin Hussain*,⁶³ the wife applied to the Court to confirm the pronouncement of *ta’līq* by her husband on the ground of failure to provide living amenities and maintain conjugal duties for about one year. The fact that the wife was working as a teacher did not deny her right to maintenance. In this case, even though the husband claimed that the wife was disobedient (*nushūz*), he failed to discharge the burden of proof and the Court allowed the application of the wife.

In several other cases the Syaria Court have decided in favour of the wife in her application for maintenance without considering expenses⁶⁴ or whether the wife is working.⁶⁵ These decisions show that in Malaysia, the law supports the principle that a Muslim man is obliged to maintain his wife regardless of whether the wife is working or not.

CONCLUSION

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 like midwifery. Nevertheless, in the case where the

⁶² *Salina binti Mohd Dahlan v Mohd Salleh bin Haji Haron* (2001/1422) 14 JH (2), p. 292.

⁶³ [2007] 3 ShLR 120.

⁶⁴ See for example *Rasnah binti Arifin v Safri bin Khalid* (2002/1423) 15 JH (2), 189.

⁶⁵ See for example *Sanisah binti Saad v Zulkifli bin Abd Ghani*, (2002/1423) 15 JH (2), 197.

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. For the husband, he owes the duty to maintain the wife, while the wife, owes the duty to obey the husband. This should also be applicable to a working wife. As the husband owes the duty to maintain her, she must obtain permission to continue working, so that mutual understanding and tolerance in family life will be achieved and further realised through fulfillment of marital responsibilities.

On the other hand, there are also situations where the wife has to work because the husband declines to provide maintenance. This situation can be considered exceptional as it forces the wife to earn a living. The principle goes back to what is highlighted by the majority of the Muslim jurists as earlier discussed that if the wife has become disobedient (*nushūz*) due to a lawful reason, she is still entitled to maintenance from the husband. Therefore, even though the wife can be considered *nushūz* if she goes out without husband's permission, due to necessity or any other lawful reason, the issue of *nushūz* might not arise as the wife has no other option.