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# **LASU Journal of Humanities (LASUJOH)**

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# 2

## Maintenance on the matrimonial home and authority in kinship in the light of *Jawahirul-Iklil of Abu Ishaq*

Gambari, Muhammad Aliyu Phd

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### Abstract

*Family is the nucleus of every society. In Muslim matrimonial set-up, rights and duties are being shared by the husband and wife. As women are to look after the children and take care of the family household, men are to provide adequate maintenance for their wives children and other close relatives. However, the type of the maintenance to be provided by the husband according to the book under study Jawahirul-Iklil of Abu Ishaq is to be determined by social positions of the partners and in line with the environment in which they live. Thus, this paper identifies different types of maintenance of wife (s), husband and their nature in diverse situation according to the Jawahirul-Iklil of Abu Ishaq. Analytical method was adopted in this paper and it was concluded that maintenance of wife (s) is essential for peace to reign in matrimonial home in the Muslim Communities.*

### Introduction

*An-Nafaqah*, literally, means 'maintenance,' expenses, spending, and provision. By further explanation it is all the financial support or provision made by a husband to take care of his household, ranging from cloth, shelter and other social amenities. It also transcends to other essential services and medicine as in line with the tradition of the Prophet Muhammad.

The provision varies from time to time and from one place to another. It is argued that they are to be adjusted in the light of modern necessity to suit the circumstances of the countries and their living standard. This paper according to

the book under study (Jawahirul-Iklil) focuses a different types of the maintenance to be provided for a wife in her matrimonial home. Explanations are given on major and minor provisions on the maintenance. The researcher will discuss the nature of maintenance to be provided at the time of hardship and as at the time the husband embarks on journey. Equally, this paper will shed more light on nature of maintenance for slaves, livestock etc. At the end, all Muslim men would stand to uphold their divine obligations for Allah, to maintain the family affairs and therefore bring tranquility in our mundane lives.

### **Brief Biography of the author of Jawahirul-Iklil**

Khalil was a popularly known as Abu Ishaq and a doctrinal of Imam Malik, Imam Darul IHijrah (RA) The book Jawahirul Iklil, *Sarh Mukhtasar* Khalil is one of the books of the fundamentals of jurisprudence that have attracted the attention of students of knowledge especially in jurisprudence themes and its equivalents studies in generals because the book under study deals with the foundation of jurisprudence and *fiqh*, such as the science of the Qur'an and biography of the prophet, the origins of interpretation and health, and Islamic philosophy which makes it a distinguished and unique book among other jurisprudential books. Shaykh Salih Abdul-Sarni' al-Abi al Azhari is one of the scholars of the 14<sup>th</sup> century and who was an excel among his contemporary in understanding the *fiqh*, jurisprudential themes contained in the Quran his famous book contained a lot of hidden and outer meanings that simply means an important aspect in the field of *fiqh*. He is the proponent of the school of thought, and he cared well for explaining some of the basic books on the school of thought. Summary of the contents of the book Jawahirul Iklil. The book Jawahirul-al- Iklil is a compendium book that talked about *fiqh* aspect of Islam, this book is among the modern *fiqh* book that is all about the teachings and daily aspect of *fiqh* practices in fundamental prayers, ibadat, *muamalat*, business interactions etc. The book is divided into two parts with about 327 pages each of the two volumes.

The summary index for the first part and which is the aspect of this research are;

Chapter one: a chapter that raises the events

Chapter two: The chapter on the time chosen for prayers

Chapter three: the chapter on which Zakat's obligator for the *nisab*

Chapter four: a chapter confirming Ramadan with the completion of Sha'ban or with the sighting of two just men

Chapter five: chapter on *I'tikhaf*

And with the chapter on family kinship is included.

The book *Jawahirul-Iklil* is among the Islamic books leading in this modern time, who's the students of Arabic and Islamic Studies found it difficult to understand because of some terminologies words used by author in the famous book. He died in the year 1335AH/1916CE

A group of authors *Jawahirul al-Khalil*, a brief explanation of Khlil (assessed 2022)

### **Maintenance according to Jawahirul-Iklili**

Islam is a complete religion that provided rules and regulations for individual to follows in the Qur'an as well as the tradition of the Prophet Muhammad (SAW). Both the Qur'an and tradition of the Prophet Muhammad (peace be upon him) enjoying the Muslims to marry the women of their choices especially if they have the means that is to maintain and provide for the family. The Qur'an buttresses the above point which read thus:

Marry women of your choice, (Qur'an  
4:3)

Providing maintenance for a matured wife who is capable of having sexual cohabitation is incumbent upon the husband. Maintenance for immature or very young girl is not compulsory on the husband either the husband is a slave or freeborn. Both of the couple should be matured. (Jawahirul- Iklil of Abu Ishaq, 45) Types of maintenance to be provided for the wife according to Jawhoru-Iklil

It is compulsory for the husband to provide variety of common foods and important ingredients such as meat and other common items. He should also provide clothe for prevention against hot or cold weather. He should also provide shelter where to live. (Jawahirul- Iklil of Abu Ishaq, 46) All these are to be provided in accordance with what is being operated in the locality and in line with the financial capacity of the husband. Also to be taken into consideration is the status of the wife, is she from a well to do family background or a less privileged on? Also one should be moderate if the wife is a type from neither affluent nor downtrodden class. The verse below of the Qur'an gives a clarification on the submissions of Abu Ishaq on the maintenance.

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, after a difficulty, Allah will soon grant relief. (Q65:7)

Abu Ishaq was one of Imam Maliki jurist said that family expenses should be in line with the wife's status, caliber and the capacity of the husband's ease and adversity. Also, the life should be in conformity with the environment in which they live and the current standard of living. (Matn Risalah, 32) Also is very necessary for going into prices of the commodity, is it high or low and the availability of the goods, is it easy to get or had all those will determine the subject matter i.e. family expenses. The most important thing is to satisfy the wife, provided she is not a glutton. However if she is a glutton type to the extent that she can eat more than the women of her type

The husband should regard this as trial (from Allah) befall him and henceforth try satisfy her or (otherwise) to divorce her.

### **Maintenance for nursing Mother**

It is expected of a man to increase his spending, for her nursing wife more than others. This increment is what will boost her health during this breast feeding and lactation period and supply her of all necessary things needed,

But as for the unhealthy woman and those of nature low appetite. According to Al-mutayati (Sarhu Jawahirul Iklil, 402), what is mandatory on the husband is only what they will eat to sustain them. In the view of Abu Imran it is recommended in such a situation to provide what is in between i.e. moderate. As for the low appetite one the husband provide what he feels can suffice her then she can do whatever she wishes to the remnants i.e. the remaining ones. (Sarhu Jawahirul Iklil, 403)

### **Provision of Clothe According to Jawahiru-Iklil**

It is not mandatory for a husband to purchase silk or expensive material as clothe for his wife even if she is a type that cherishes a very affluent life. It is holding directly that it (Al-hariir) has special consideration for the descendants of Ibn Qasim over other cities. Ibn Qasar in the book of Jawahirul Iklil held that it is only peculiar for women living in the city of medina to give them honor over others but in other parts of the world the husbands should spend for their wives according to their financial capacity and capability. (Sarhu Jawahirul Iklil, 402) Ibn Ishaq recommended that there is need for husband to provide the needs for her wive (s) at least twice in a year, especially the clothes, jewelry and other essential commodities for his wives

It is recommended that the husband purchases dress for her twice in a year in the winter and during summer. He should purchase new dress for her especially if the first one is old but if it is not too old, it is not compulsory to purchase a new one for her.

### **Provision of foods**

It is mandatory upon the husband to provide water for his wife for drinking, ritual birth in case of *Janabah*, or birthing on festival days or Fridays (*Umuat* day), and also washing of clothes and other utensils. He should also provide oil for drying, preparing of food and body lotion. He should also provide fire-wood for cooking and baking. He should also provide salt to be part of important ingredients and to make foods palatable and delicious. Also adequate supply of meat it is also mandatory to provide mattress to be put under the blanket and again bed is needed for her convinces to protect against discomfort. In the same vein, the husband should pay for the wages of a lady that assisted her during her maternity period and also endeavor to provide for all her needs. (Sarhu Jawahirul Iklil, 52)

Of equal importance, the husband should shun an ornament that can injure or affect the feelings of the wife such as the common antimony and cream. He should provide natural herbal paint that is common among women; he should also provide hair lotions such as cream and other hair fresheners. Husband should render the needed services to the wife either the one that needs her physical support or purchasing a helper. It may be to employ a house-helper either slave or freeborn, even if it is to employ more than one maid if one cannot be enough, he should employ four or five according to the status of the wife or if she is from the tribe of Hashim<sup>4</sup> family. Even if she requests from the husband to pay her own

maid and the husband said she should pay for her maid from the allowance meant for his own maid. The husband may willingly decide to take care of the service himself or equivalent to the payment being made for her maid or more. Then he fulfills the payment of her maid.

Also, if he decides to provide a residence for lieu or she decides to be staying in her own residence.

Everything depends on her wish unless she is suspected by the neighbor as someone who is always indebted to the service of the house-maid or known for stealing her husband's money.

Otherwise she is entitled to internal/inner service to be rendered in the house e.g. making of dough (flour), sweeping, bed laying, cooking and not open or external assignments like: weaving, spinning, spinning, tailoring, embroidering, which are not compulsory on her irrespective of whether she has accustomed to it or not. So also the case or container of antimony, the content, special dress to be wearing when going out for visitation, marriage etc. are not compulsory on him. (Sarhu Jawahirul Ikliil, 45)

The husband has the right to enjoy whatever is reduced for him in her dowry. Then he can put on what is normal and then be protected will be covered. The husband can forbid her from selling her property or offering it as gift if he (the husband) derives pleasure in those things.

The husband should not be compelled to replace what has been used before except what is necessary to be replaced like mattress and overall garment and utensils, the husband can forbid the wife from eating, anything that has bad odor like onion and the wife cannot forbid the husband as such. The husband cannot forbid her parents or her child (got from other husband) to enter into her.

It is decreed and sanctioned especially if the husband has sworn that those people should not enter into her. It is just like the husband sworn that on no occasion should her wife visit them, though she can go out to visit them if she is a trustworthy and self-control woman. Even if she is a young woman. But she should not go out if she is not trustworthy someone even if she is self-reliant woman.

It should not be overlooked if the husband swears by Allah or swears to divorce her, in such a case, the wife should never go out of his house to visit any of those categories and is never compel on her to visit any of the two because of his intention to protect her and not to harm her.

Her young child (got from another husband) can enter into her every day so as to know her condition. But her elder children (got from another husband) are to be visiting her once in every Friday as well as her two parents. It can be with a reliable / trustworthy lady from his own side. Thus he can impose time on her if she suspects her cruelty or indecency.

### Living with the Husband's relatives

The wife should not live with the husband's relatives in order not to harm her because of their knowledge of their entire life or their secrecy unless there is no fear of any harm. However, if the wife is such a useless someone or one that is of little value to the husband, she needs not to be prohibited from living with her relatives unless there is apparent danger and to honour her from their plot, it is like prohibiting a young child belonging to one of them from living with his/her parent (among the couple) especially if there is a house maid with her.

The husband is to spend according to his financial capability i.e. his daily income if his type of work is such that she collects the wages on daily basis or on Fridays, weekly or monthly salary system. It may even be annual income like farming. (Sarhu Jawahirul Iklil, 402)

### Home Situation

It is compulsory for the husband to provide salt, oil etc as mentioned earlier. He can disallow the wife from her spending on what can incur debt upon

him except something necessitated by her poverty in a situation when he is afraid of her getting lost or running into problem, otherwise she cannot be disallowed. Cash giving for the wife is not made compulsory once the wife is living with the husband. Though she has the right to isolate herself from eating with him and to claim her right, eating with him is the best because it fosters love and good relationship. (Sarhu Jawahirul Iklil, 56)

Again, spending for her is also made not compulsory if the wife denies her husband from sexual intercourse without cogent excuse and refuses him from making love (romancing) before cohabitation, in the same vein, spending it is not compulsory for him if she packs out of her house without the permission of the husband. Such husband cannot be compelled to return her to her to house by himself, his delegate or judge. According to Al-Bananiy, this judgment refers to three matters. If she is not pregnant, otherwise spending is still mandatory on him in spite of the fact that she has packed out of the house without her consent. Equally spending is not mandatory if the wife has asked for the release from the husband (*khulu'*)

The divorce woman because of misconduct or the one divorced irrevocably is entitled to spending if she is pregnant and also entitled to dressing completely from the early stage of the pregnancy to the late stage. If the marriage is dissolved (irrevocably) during the pregnancy months, she is entitled to necessary treatment and dress in the rest months. If the husband died before she delivered baby, she continues to live in his apartment because it is a obligation tightened to his neck, hence his death never raze such responsibilities like other obligations. Either the residence is for him or not. (Sarhu Jawahirul Iklil, 56)

The wife is not obliged .to return the dress given to her when they were not in good term and then she or he dies after some months. But it she dies after two months or not up to it should he returned to him. This is not applicable to the child died while he was cared for after death or divorce of the mother, thus the lather would return the dress if it is new. If it is old, it will be returned to the woman. If the divorced woman is a nursing mother, she must also be paid for the breast feeding.

However, he should not spend for an alleged or controversial pregnancy once it is confirmed by two reliable women in less than three months or movement of the fetus. Thus he should spend for her if he divorced her from the begging of pregnancy. One should not spend for pregnancy that occurred after imprecation especially if he rejects the pregnancy. Also maintenance for a slave-



girl divorced irrevocably is not compulsory upon her father either he is a slave or freeman hut on her master because authority is prevailed more than relation. No maintenance for a pregnant slave who has been divorced. Her maintenance is on her parent except the revocable divorce whose maintenance during pregnancy is upon her husband either the husband is freeman or bondsman. Husband is free from the wife's maintenance when he is in the state of hardship. However, the husband is not free from the maintenance of the wife when she is deprived of her right. Also maintenance of the wife is not also removal if she trivializes the obligation. She is entitled to not. She is entitled to normal maintenance :i\_ii,;

If the wife is such that is adamant to change for better character, the husband, notwithstanding must provide for the maintenance, clothing and residence as explained earlier,

### **Maintenance during the Hardship**

If the husband is constrained after he had been buoyant before, hut he failed to provide for the wife during his period of surplus. It is ruled that the period when he was financially alright and he refused to provide is counted against him e.g He was buoyant in Sha'ban and did not discharge his financial obligation to his wife and then became constrained in Ramadan. The responsibilities neglected in Sha'aban when it was well with him will be counted against him by the judge. (Sarhu Jawahirul Iklil, 64)

Thus, the wife has the right (if she wishes) to claim what she has spent when the husband was in that situation and she must not overcharge. If the husband is in adversity when the wife was spending her wealth 'on him, it is like a person spending his wealth for a non-relative person, such person has ever right to claim back what he has spent, if he wishes but should not be extravagant, except if the intention is for tightening family affinity.

But as for one who spends for a young people. The money can also be paid back if he has the means to repay it or to be paid by a capable father recognized by that young people and was unable to get to him when he was in the problem. If he swears to affirm that he spent the money, he must be paid back and should not also be extravagant.

### **Dissolution of marriage because of financial incapability**

According to Ibn Shas, Ibn Hijab and other Maliki Jurists, the wife can seek for revocable divorce if she observes that the husband cannot provide for

current maintenance and not previous spending that he neglected when he was buoyant. However, if the two of them are servants or one of them, such dissolution cannot be granted as result of husband's, incapability to meet up with current spending. Moreso, if she had known the condition i.e. poverty of the husband (before) us at time of solemnization. (Sarhu Jawahirul Iklil, 78)

All the same, even if he was buoyant before and later constrained or she as aware that the husband was a beggar. Expect if the husband discontinues this act. of begging by which he is famous and thus affect his-matrimonial maintenance she cannot opt for divorce. The Judge can ask the husband to defend himself with reasonable evidence, then he will be ordered to provide maintenance as well as clothing or divorce. As a matter of fact, he will be instructed to maintain the family and if he fails to do so, the marriage will be dissolved.

However, if the problem is obvious either at the beginning or after the judicial instruction, the judge can make relief for him to delay the final judgment for a day, three days, a month, two months, etc. This period of delay will be prolonged if the husband is sick or imprisoned along the line. If after log delay the problem still persists, the marriage will be dissolved. (Sarhu Jawahirul Iklil, 79)

But if the husband endeavors to provide only what can sustain the lives of his family i.e. basic things like food. The marriage will still keep undissolved once he is capable of providing enough food even if it is among the raw food or baked bread without ingredients, if he provides what can only cover the nudity made of wool or cotton. But if the wife is a rich someone and all these cannot satisfy her, separation is compulsory.

In this situation, the divorced husband can still revoke the divorce if his condition has change for better.

### **Provision for the family during Husband's Journey**

The wife has the right to make her request when the husband is planning to embark on a journey. This is to take care of the future expenses while he is not around. The husband can also delegate someone to take care of the expenses as agreed with the husband on daily, weekly or monthly basis.

If the husband travels without leaving anything for neither the wife nor any delegate to spend on his behalf, if the case is brought to the judge and he orders him to make the payment without any delay. The expenses would be paid from the wealth of such husband who traveled without making provision for the family. It can also be paid from his property entrusted to a reliable someone or to

settle debt incurred from transaction with other people. If the wife claims that she owes someone certain debt and the husband refuses, the wife must bring evidence of proof after swearing. (Sarhu Jawahirul Iklil, 78)

The wife must not take from the property of the absentee (husband), from his deposit entrusted with someone or his debt unless there is a delegate for her protection or to serve as proof when the husband arrives from the journey. The house may be sold to cater for the needs of the wife in his absence

This is allowed when there is no other thing to cater for her and after the confirmation as per the ownership of the house. This must be witnessed by two just people. They should have the knowledge that the wife is still under the authority of the husband.

Then after the confirmation, they verify the possession of the house by sending a judge to go round in and out of the house to know its boundary and make the measurement.

If the wife requests for all her expenses during the absence of the husband and the two of them disagree upon whether the husband is at ease or adversity during the period of his absence each of them make his/her case. His condition as at the time of arrival will be looked into; if he arrived un- comfortably his case must be supported by swearing. Otherwise her case will be backed up by swearing. (Sarhu Jawahirul Iklil, 402)

In the same vein, if they disagree on delivery of message e.g of packed clothes. The husband claims that it has been delivered while the wife disagrees in such case, the case will be left for her to swear. Then it may be decided by the judge. The ease will no more be left for her once it is put before the witnesses or the neighbors and the relief granted for the husband.

However, if the case is not taken before a judge and he is at ease and it is taken to someone other than him the husband must support his claim with swearing.

The similitude is like a husband living in the same town with the wife, the husband claims that he provides his maintenance for her and she denies it and the husband is at ease, here the husband must swear (applicable) if it is not something obligatory, if it is an obligatory thing he must also tender evidence because it is treated as debt. (Sarhu Jawahirul Iklil, 405)

A situation when to honor the husband claim (as regards sending the message to the wife) is when he swears that 'she has received the message from him' or 'from his delegate. He must not swear that 'I have sent the message to the wife' because the root of the matter is the assurance. of the delivery of the message. if they disagree on what the court has made compulsory on him without recording it down. If it is ambiguous, the husband will provide what is to be provided for women of her status. If it is not ambiguous the claim of the wife should be looked into.

### **Maintenance for slaves, livestock's, relatives (kinship) domestic's servants, child nursing and related issues.**

It is mandatory upon the master to provide adequately for his slaves and also his live stocks if there is no sufficient grass land Otherwise, it is compulsory to rear them by himself or by his paid employee. lithe slave master cannot spend on his slave or on his flock animals because of his stinginess or weakness we should offer it for sale provided we get buyer for it otherwise we offer it as gilt or taken out of his authority by direct means or slaughtered for eating. It is like imposing on the master what he can only bear out of extra vigor and additional stress. It is allowed for the master to collect milk from domestic animals what can not affect its off-springs. (Sarhu Jawahirul Iklil,79)

It is compulsory for a freeborn child who is prosperous y.,,y' Old or young male or female, single or many, healthy or unhealthy, Muslim or unbeliever who is aware of Islamic family law, to make maintenance for the parents i.e. the real mother and father that are freeborn and are poor even if both are non- Muslims and the child is a Muslim or both have different or the same religion. According to Al-Baji and other Islamic jurists, even if the father is capable of providing for his livelihood, the necessity is for her husband to provide alternative. If the plight (poverty) of the parents is testified by two just people and the child disagrees. Not on the basis of the swearing by the two of them rather with the testimony from two just people because the child is disobedient. A child, it his parents request for maintenance and complains of not having enough, he must support his stand with two just people and swearing an oath or ifhe is challenged of having enough they must confirm their claim.

Maintenance of the parents is to be from his wealth and not from his liability since it is different from debt. There are two points here. The best is that we consider the condition of the parents, if they do not have other child he should

seek for his /their co-operation to join him to provide for the parent. (Sarhu Jawahirul Iklil, 81)

### **Maintenance under Kinship**

It is also compulsory under kinship to cater for the house maid of the parent to fulfill their right. Also under kinship, it is compulsory to cater for the house maid of the father's wife. Under kinship again, it is recommended to provide for wife in the case of a father, with one wife or if the wives are many and one of the wives happen to be his master 'preference has to be given to his mother. Under kinship, it is not compulsory for a child to take care of his mother's husband who is poor nor is it compulsory for him maintenance of his grandfather or grandmother from paternal or maternal side. So also it is not compulsory to cater for the maintenance of one's son, if case arises child of one's daughter is preferred.

On the other hand, man is not free from providing for the mother irrespective of the status of her husband either prosperous or poor. If such (mother's) husband can cater for part of the mother's (his wife) maintenance the son or father should take care of the rest.

Maintenance of the parents is to be distributed among the prosperous children irrespective of the difference or equality in prosperity. So also, the maintenance is not distributed for them on gender basis. It is not also distributed on the principle of law of inheritance

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Or on the basis of their affluence, all according to the opinions of many Maliki jurists like: Al-lakhmi, Ibn Habiib and Muhammad. The kinship, the able father who is also freeborn must provide for his male child who is freeborn weak and poor from his own food or that of his wife or wives until the child becomes matured, mentally sound, and physically able to work. As for the female daughter until she gets married to a matured husband. (Sarhu Jawahirul Iklil, 82)

One is free from spending on past maintenance especially when the condition of the weak parent or child has changed for better and he is asked to repay for the past maintenance, unless it is court order, one is not also free from offering past maintenance especially if the parent or the child is being catered for by a person and not considered as voluntary donation.

## Conclusion

*An-Nafaqah* is an important aspect of Islamic family law. It cannot be over emphasized to allow peace to reign in our mundane and heavenly lives. According to Maliki jurists and other Muslim jurists, as discussed in this paper, the following conditions must be fulfilled before we think of adequate maintenance:

- i. The marriage must be a valid marriage.
- ii. The wife submits herself to her husband and his obedient.
- iii. She gives him free access at all lawful times.
- iv. She does not refuse to accompany her husband.
- v. When both parties can derive benefit from each other.

On the other hand, according to Maliki Jurists it is not essential to provide one's wife with maintenance if;

1. The wife packed and moved out of her matrimonial home without any religious cause.
2. She traveled without his permission.
3. She puts on Ihram for Hajj without his permission.
4. She refused sexual intercourse to her husband.
5. She is imprisoned after committing a crime.
6. The husband dies and she becomes a widow.

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