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Wife's Right to Her Husband's Property That Is Disputed by Them Both: A Juristic Study

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Abstract--This research study addresses the perspective of Islamic jurisprudence on the right established for a wife in her husband's property that is disputed by them both, especially after termination of their marital relationship. The research problem lies in that many women, upon their separation from their husbands, believe that their husbands' financial welfare was only a result of their own assistance in undertaking marital responsibilities. This research study attempts to answer the question raised in such cases: What are the rights established for women against their husband in case they claim so?. The study seeks to highlight the objectives of the Shari'ah behind marriage and legalization of divorce, and to illustrate the established as a woman's right in her husband's property which she should have shared with him or substituted him in managing, through different considerations. The significance of the study lies in the emergent need for investigating it due to contemporary occurrences. This study builds on a descriptive and deductive comparative approach, along with a referential and applied method based on the juristic maxims and Shari'ah objectives, drawing only on preponderant legal opinions; outweighed views and their proofs are not mentioned in this study.

Keywords---dispute, husband's property, juristic study, marital relationship, wife's right.

Introduction

Woman's right to reclaim her money she has spent on herself

The default rule in Sharī'ah is that a husband is bound to spend on his wife since she is fully dedicated to him. Such spending covers food, drink, clothing, medication, and shelter (accommodation). The amount of such expenditure is calculated according to customary practices, being equal to the expenditure due for the woman's equals. Besides, spending on the wife is due on the husband when she obeys him. Yet, if she disobeys him, expenditure is no longer binding on him, since expenditure is due in return for a woman's keeping up her marital relationship (Gau et al., 2012; Kronmüller et al., 2011). When this prerequisite is absent, the husband's obligation to spend on her becomes non-binding (See Al-Mawṣeli; Al-Kharshī; Al-Dumairī)

In this section, I will introduce seven cases in which a wife spends on herself out of her own money and will point out which of them are due on her husband and which are not (Kamo, 2000; Bhattacharyya et al., 2011).

First case: When the two spouses agree to the wife's dropping her right to maintenance, fully or partially and for a specific term or for good, for any reason whatsoever, then her right to maintenance falls in the manner agreed. Then, nothing of this maintenance is acknowledged for the wife and she cannot claim any reimbursement of such dropped maintenance from her husband, since her agreement to dropping it is a sort of gift and it is prohibited to reclaim gifts.

Second case: When a woman is having a job, based on the consent of her husband, and it is customarily established that she provides for her own food, drink, clothing, transportation, and medication, then she cannot claim a refund for such expenditure from her husband during her workdays. No such expenditure is established for her since her consent to working while knowing that it involves such expenditure indicates her consent to dropping such right (to expenditure) on her husband. This dropping of maintenance right does not apply in other than her workdays or the days she spends unemployed, or when she does not go to work in order to care for her husband, whether this be through her own choice or upon her husband's request (Ibn Najīm; Al-Shirbīnī)

Third Case: When the wife is having a job upon the consent of her husband and her employer pays for her expenditure during her workdays, then she cannot claim such expenses from her husband since it is not due to her then. When some of the wife's duties are dropped, some of her rights are commensurately dropped too. Yet, if she is denied such expenditure fully or partially due to her negligence of her duties at work, being busy caring for her husband or attending to him during his sickness, or the like, then she can reclaim such expenditure from her husband, since she is then fully dedicated to caring for him.

Fourth Case: When the husband asks his wife to do work for him outside their home and she agrees for his sake, then she can reclaim her expenditure from him

along with any other expenses entailing such work, as long as it is a legal work. This is because she is maintaining obedience to him even if she fails to perform some of her duties towards him to do such work. It is also because he dropped some of his rights on her in return for having her do other works for him that are not binding on her.

Fifth Case: When a man marries a working woman and she stipulates that she keeps her job and he approves of it, then her maintenance due on him is not dropped (out of his fulfillment of her stipulation), and since the husband have waived some of his rights, and thus she can reclaim such expenditure from him (Ibn 'Ābidīn; Ibn 'Arafah; Al-Jamal; Al-Maqdisī)

Sixth Case: When a husband fails to provide for his wife and she explicitly indicates her patient acknowledgement of this, then she has no right to reclaim the money she spends on herself due to his failure, since she have waived her right to it and she could have asked for divorce due to his inability to spend on her.¹ And if the wife lends her insolvent husband money to spend on her and he consents to it, then if such expenses be reasonable, the husband is bound to repay it when he becomes solvent, since this is a debt, unless she be disobedient to him. And whatever exceeds the customarily reasonable limit of expense is payable by the husband only upon his approval of and consent to it since such excess expenditure is deemed as a payment that has not pre-approved (*taṣrruf al-faḍūlī*) (Al-Sherbinī).

Seventh Case: When a husband is away from his wife and has left her no money to spend on herself, then she can claim a refund from him for her reasonable expenditure during his absence,² since it is a sort of debt on him. And whatever exceeds reasonable expenditure is payable only upon the husband's approval, given that it has not been pre-approved.

Wife's right to a refund from her husband for the money she spends on her children

Scholars indisputably agree that children maintenance is undertaken by the father alone (Ibn al-Mundhir). A wife may spend on her children of her own money and then claim a refund from her husband. In this section, I will introduce six cases in which a wife spends on her children and the occasions on which she is entitled or not entitled to a refund (Bertoni & Brunello, 2017).

First Case: When a wife willingly spends on her children driven by tenderness and compassion, she is not entitled to claim a refund or restitution from her husband, since in this case, she is considered as a donor or a bestower.

1 The proponents of this opinion are the Malikis and the Shafi'is, while the Hanbalis deemed that the wife has the right either to endure the husband's insolvency or to ask for divorce, unlike the Hanfis who viewed that the spouse should not be separated for this reason and that the wife is entitled to incur debts to provide for herself and transfer such debts to the husband.

2 This is the opinion of the Malikis and the Shafi'is and the Hanbalis, unlike the Hanafis who deem it non-obligatory unless it be established by the ruler (*Bidayat al-Mujtahid* 2/436; *Al-'um* 8/388; *Al-Hidayah Sharh al-Bidāyah* 2/240)

Second Case: When a wife spends on her children based on a stipulation mutually agreed upon with the husband that she gets a job in return for her spending on all or some of her children and she consents to it, then she is not entitled to reclaim such expenses from her husband. She is then required to respect their stipulated condition unless the husband violates the condition.

Third Case: When a husband asks his wife to spend on the children, say due to his insolvency, as a form of debt on him to her, then she is entitled to reclaim such debt from her husband.

Fourth Case: When a wife spends on her children in a way the husband cannot afford, and upon his consent to her spending within a certain limit that he identifies, then she is entitled to claim a refund for the amounts she spends within the determined limit. Yet, she is not entitled to reclaim whatever she spends in excess of the agreed upon limit, since she is then considered as a donor or bestower. Still, the husband may compensate her for it if he chooses to; it depends on his choice because it has not been pre-approved by him.

Fifth Case: When a wife is committed to spending on all or some of her children in return for her having the right to get a job, then she is not entitled to claim a refund from her husband for such expenditure, since this is a customary requirement. However, if it is not stipulated that her spending on the children is in return for her having a job, then she can claim a refund from the husband for such expenditure.

Sixth Case: When a wife spends on her children in the absence of her husband (the father) and in case he has not left them money for home expenses, then she is entitled to claim a refund from her husband within a fair limit, since it is a sort of debt on him. Yet, whatever is spent in excess of the fair limit can be reclaimed only upon the husband's consent, since such spending has not been pre-approved by him.

Wife's right to reclaim from her husband the money she shares in saving to secure their own future

When marital life commences, there occurs a sense of harmony, fidelity, and mutual sacrifice for the happiness of both. Yet, when disagreement emerges, such feelings dwindle gradually when mutual understanding is lacking. In this chapter, I will introduce four cases of marital sharing and the respective rights due to the wife (Saxbe & Repetti, 2009).

First Case: This is when the wife has shares in marital expense as a sort of gift or gratuity or out of her feeling that her efforts shall be in the interest of her children by any means, as in the case of a giving, a gift or inheritance (Sudama, 2020). She may also give him money as a charity or Zakat, when he is an eligible recipient thereof, or even give him money to condone a moral or physical deformity on her part, or in return for a fulfilled condition. In this case, a wife is not entitled to reclaim any of such expenses from her husband (Shanfield et al., 1979).

Second Case: If a woman has contributed something to her husband in the form of a debt, a gratuitous loan (*'āriyah*), a gratuitous loan generating benefit for the

borrower (*manīḥah*), a sleeping partnership (*qirāḍ*), a farming contract of *muzāra'ah*, *musāqāh* or *mukhābarah*, renting, mortgage or partnership, then she is entitled to reclaim such money she has spent or claim a restitution for any consequence of such spending (Sobko et al., 2021).

Third Case: When a wife participates with her husband in securing a happy and prosperous life for themselves and their children, from the perspective of being partners and whether she declares that or not, then she is entitled to reclaim whatever she has spent according to her share in expenditure, be it a third or a half and so on. This is established in jurisprudence and by customary practices (Suryasa, 2019).

Fourth Case: When a wife shares in (familial) expenses with her husband towards his ultimate ownership of the property but on condition that he does not divorce her, she can reclaim her spent money from him if he divorces her, since he would have violated the condition. In this case, his ownership of the property is conditioned on not divorcing her, and thus ultimate ownership takes place only when one of them passes away while the marriage exists.

Conclusion & Recommendations

The study concludes with the following recommendations,

- Piety is necessary since it prevents a person from engaging in transgression or injustice.
- I would recommend guardians to marry the females in their custody to devout persons, since a devout person would not wrong others. Besides, marital lawsuits and disputes that take place today are a result of lacking such devoutness (Ross & Ward, 1995; Lam et al., 2009).
- I would recommend the two spouses to document their offerings to each other in writing or through getting witnesses. If they do so, the respective rights of each on the other would be maintained.

I would recommend respective authorities to issue a law that makes it easy for spouses to document their mutual financial rights through facilitating procedures, especially with the lack of devoutness and prevalence of injustice and transgression.

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