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MAINTENANCE (AN-NAFAQAH) IN ISLAMIC FAMILY LAW: AN ANALYSIS

By

Fatimoh Abdulrasaq (Mrs)* & Aliyu Abdulhameed Bayo**

Introduction

Maintenance is what is spent in order to take care of persons and things under one's control. There are various persons entitled as a matter of right to be maintained based on the dictate of Islamic family law. These persons includes poor parents, wife or wives divorced women during their 'iddah (prescribed waiting period), slaves and pets to mention but a few. Parents that are poor must be maintained by their children and husbands have the responsibility to take care of his wife or wives and divorced wife during 'iddah. In the same vein, the owner of a slave and pet or domestic animal has compulsory duty to maintain them in order to avoid causing harm to them. This is in line with the prophetic tradition which goes thus; '*Harm is neither inflicted nor tolerated*'¹ This paper will examine the concept of *Nafaqah* under-Islamic Family Law, its definition, categories of persons entitled to be maintained and the limitations to such rights.

Definition of the term 'An-nafaqah'

Maintenance literally means what a person spends for his family members. Technically however, it refers to what is spent to support one's family with food, clothing, shelter, medicaments and other basic needs of life.²

Muslim jurists have given several similar definitions of the word *nafaqah*. For example, the Hanafi jurists have defined '*nafaqah*' as food, clothing and accommodation.³ The Hanbali jurists have defined '*nafaqah*' as what is provided for the purpose of maintaining a family such as food, clothing and accommodation and their supplements.⁴ The Shafi'i jurists have expanded the scope of maintenance to the wife which includes whatever is eaten as food (*al-'adam*), clothing, cleaning tools, house appliances like cooking equipments, accommodation and servant in the case where the wife has ever used the service of a servant before her marriage.⁵ The Shafi'ites 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. This is based on the *hadith* of the Prophet (SAW):

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

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¹ Ibn Majah; *Sunnan Ibn Majah*; 2341.

² Ismail M. B.; *Fiqh Al-Wadih*. (vol.2 Daru al-manar, 1997) p.61

³ Azizah M. and Badruddin H.I., *Muslim Wife's Rights to Maintenance: Husband Duty to Maintain a Working Wife in Islamic Law and the Law in Malaysia*, (IIUM Law Journal ch.18, p.103, 2010). P.104

⁴ *Ibid*

⁵ *Ibid*

*family) it should be spent on relatives, and if anything is left from the family, it should be spent like this, like this..."*⁶

Nafaqah (maintenance) is obligatory on another person for three reasons namely; marriage, kinship and ownership.⁷ 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 howsoever low, parents howsoever high and siblings. Also, the duty to maintain one's slaves and pet arises out of ownership.

Categories of People to be Maintained

In Islamic family law, there are various categories of persons entitled to be maintained. They include ones parents, wife, children, servant and animal in one's possession.

Maintenance of Parents

The duty to maintain parents is obligatory on the children especially when the parents are poor and could not work to earn a living. There are different verses of the Qur'an on this point.

Allah says in the Qur'an thus;

وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا إِمَّا يَبْلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا آفٌ وَلَا تُنْهَرُهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا
وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ وَقُلْ رَبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيرًا

*And your Lord has Qada (decreed) that you worship none but Him. And that you be dutiful to your parents. If one of them or both of them attain old age in your life, say not to them a word of disrespect, nor reprimand them but address them in terms of honor. And lower unto them the wing of submission and humility through mercy, and say: "My Lord! Bestow on them Your mercy as they did bring me up when I was young."*⁸

After Allah has ordained that none should be worship among the inhabitants of the earth and heaven, the living or dead. Then He established that the right of parents should be duly accorded to them.⁹ One should do good to them in all sense of goodness, whether in addressing them (in words) or in one's action. This is because they are the reason for the existence of the child and in return for the love they have for the child as well as the kindness and closeness to the child.¹⁰

Allah also says in the Qur'an:

وَاعْبُدُوا اللَّهَ وَلَا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا

*Worship Allah and join none with Him in worship, and do good to parents...*¹¹

Allah also says in the Qur'an:

وَوَصَّيْنَا الْإِنْسَانَ بِوَلَدَيْهِ حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَىٰ وَهْنٍ وَفَصَّالَهُ فِي عَامَيْنِ

⁶Muhammad Ibn 'Ali ibn Muhammad al-Shawkani, *Nayl al-Autar*, (Dar al-Ma'rifah. Beirut, Lebanon, 1419/1998. Vol. 6), p. 867. As cited in Azizah M. and Badruddin H.I., *Muslim Wife's Rights to Maintenance; Husband Duty to Maintain a Working Wife in Islamic Law and the Law in Malaysia*, P.105

⁷*Ibid*

⁸Qur'an 17 verse 23

⁹Abdulrahman N.A.; *Tafsir al-Karim al-Rahman fi Tafsir Kalam al-Manan*, (jam'atu ihiyai al-Turath al-Islami, Kuwait, 2003) on the interpretation of Qur'an 17 verse 23 p.627

¹⁰*Ibid*

¹¹Qur'an 4 verse 36

أَنْ أَشْكُرَ لِي وَلَوْلَاكَ إِلَى الْمَصِيرُ - وَإِنْ جَهَدَاكَ عَلَى أَنْ تُشْرِكَ بِي
مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلَا تُطِعْهُمَا وَصَاحِبُهُمَا فِي الدُّنْيَا مَعْرُوفًا

And We have enjoined on man (to be dutiful and good) to his parents. His mother bore him in weakness and hardship upon weakness and hardship, and his weaning is in two years; give thanks to Me and to your parents. Unto Me is the final destination.) (15. But if they strive with you to make you join in worship with Me others that of which you have no knowledge, then obey them not; but behave with them in the world kindly...¹²

Also there are prophetic traditions evidencing the obligatory nature of the duty to maintain ones parents. These include the following:

Ahmad recorded that a man from Banu Yarbu` said: "I came to the Prophet while he was talking to the people, and I heard him saying:

يَدُ الْمُعْطِي الْعُلْيَا، أُمُّكَ وَأَبَاكَ، وَأَخْتُكَ وَأَخَاكَ، ثُمَّ أَدْنَاكَ وَأَدْنَاكَ

The hand of the one who gives is superior. (Give to) your mother and your father, your sister and your brother, then the closest and next closest.¹³

Imam Ahmad recorded that Al-Miqdam bin Ma`dika'rib said that the Prophet said:

إِنَّ اللَّهَ يُوصِيكُمْ بِآبَائِكُمْ إِنَّ اللَّهَ يُوصِيكُمْ بِأُمَّهَاتِكُمْ إِنَّ اللَّهَ يُوصِيكُمْ
بِأُمَّهَاتِكُمْ إِنَّ اللَّهَ يُوصِيكُمْ بِأُمَّهَاتِكُمْ إِنَّ اللَّهَ يُوصِيكُمْ بِالْأَقْرَبِ بِالْأَقْرَبِ

Allah enjoins you concerning your fathers, Allah enjoins you concerning your mothers, Allah enjoins you concerning your mothers, Allah enjoins you concerning your mothers, Allah enjoins you concerning your close relatives then the next in closeness¹⁴

Imam Ahmad recorded Mu`awiyah bin Jahimah As-Salami saying that Jahimah came to the Prophet and said: "O Messenger of Allah, I want to go out to fight and I have come to seek your advice." He said; *Do you have a mother (فهل لك من أم)* He said, 'Yes.' The Prophet said;

فَالزَّمَهَا فَإِنَّ الْجَنَّةَ عِنْدَ رِجْلِهَا

Then stay with her, for Paradise is at her feet¹⁵

In line with the above Qur'anic and prophetic traditions, the jurists unanimously contend that the parents that are entitled to maintenance, are to be sustained by their children from their children's property. Also, according to the majority of jurists, this also applies to the needy grandparents. According to Malikis, the grandson does not have to maintain his needy paternal or maternal grandparents. While the Zahiris, opined otherwise.¹⁶

The duty of the son to maintain his parents is mandatory only when the parents are poor and not capable of working to earn a living. However, this due is due on him after he has got enough to cater for himself, his wife and children. The female child shares similar responsibilities toward her poor parents. In case where the poor parents have both poor and rich children, the duty falls on the latter and not the former. However, they have joint

¹² Qur'an 31: verses 14-15

¹³ Abu al-Fadhl A.A., *Bulugh al-Maram Min Adilat Al-ahkam* (Dar al-Fikr, Beirut, Lebanon, 2003) hadith 1179 p.204

¹⁴ This was recorded by Ibn Majah from the Hadith of `Abdullah bin `Ayyash.

¹⁵ Similar incidents were also recorded by others. This was recorded by An-Nasa'i and Ibn Majah.

¹⁶ Ibn Qudamah, *Al-Mughni*, (Vol.8.) p.172

responsibility if they are all rich alike. According to Shafi'i, the proportion of the contribution of male and female children in maintaining their poor parents should be 2:1 i.e male provide double of that of the female. However, the majority of scholars including Malikis, Zahiris, and Hanbalis are of the opinion that, there is no deference between male and female in this regard.¹⁷

A man also has responsibility to maintain the wife of his poor father who is not capable of working. However, the law does not impose on him more than one wife of his father to be maintained together with the father, if none of the wives is his mother, the father will choose who among them is to be maintained by his son to the exclusion of others.

The maintenance in this case entails food, clothing and accommodation according to the prevailing conditions in the society and base on the financial capacity of the person bearing responsibility.

The difference in religion is not a condition for the maintenance of parent in Islamic law. Thus, jurists did not stipulate, in this regard, the uniformity of religion between parent and the child. Hence, if a poor parent was a non-Muslim and the child is a Muslim, the child remains duty bound to maintain him. This is because *Nafaqah* in this regard is to preserve one's life and has nothing to do with the religion.

Maintenance of Wife

Maintenance is compulsory on husband to maintain his wife with what will be sufficient for her in term of food, accommodation, medicament and other things she may require as wife, according to the means and power of the husband. Allah says in the Qur'an:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ
وَإِنْ كُنَّ أُولَىٰ حِمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ

*Lodge them where you dwell, according to what you have, and do not harm them so as to suppress them. And if they are pregnant, then spend on them till they lay down their burden...*¹⁸

In yet another verse:

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قَدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ
لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

*Let the rich man spend according to his means;) means, the wealthy father or his representative should spend on the child 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, Allah will grant after hardship, ease.*¹⁹

Imam Muslim reported in his *sahih* that the prophet during his farewell pilgrimage says thus:

¹⁷ Ibid

¹⁸ Qur'an 65 : 6

¹⁹ Qur'an 65 : 7

Also, it is not compulsory to maintain a wife who is working without the consent of her husband and even refuses to disengage herself from working outside the matrimonial house when the husband ask her to do so.²⁷

MAINTENANCE OF A DISOBEDIENT WIFE (NUSHUZ)

The Muslim jurists have also discussed situations where a wife is considered *nushuz* or disobedient in matters which become the right of the husband. In this situation, she is disentitled to maintenance from her husband.²⁸ Example of *nushuz* is when the wife prevents the husband from making love with her or declines to have sexual intercourse without lawful reasons. Though, what amounts to lawful reasons may be subjective in nature, however, among the reason given by the scholars is illness which results in painful sexual intercourse.²⁹

A wife is also considered disobedient (*nushuz*) in several other situations, including going out from the husband's home or travelling without the husband's permission. This is exceptionally allowed in 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 Shafi'i's view is that, the wife is not considered disobedient (*nushuz*) 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 *nushuz* if she performed pilgrimage (*hajj*) or minor pilgrimage (*umrah*) without the husband's permission and finally, if she refuses to move to the matrimonial home after her marriage to the husband.³⁰

Maintenance of Women During 'Iddah

The jurists are unanimous on the fact that there is compulsory accommodation and maintenance for a woman in 'iddah as a result of a revocable divorce.³¹ Thus, it depends on the type of divorce, or in case of a widow, but women are always entitled to maintenance and accommodation during 'iddah period. This can be seen in 'iddah of a woman who was revocably divorced or pregnant woman whether she was revocably or irrevocably divorced.

It is to be noted that, a marital home is usually owned or leased in the husband's name, it is clearly an option given to women who have a legally protected right to remain there during the waiting period. Such a right prevents divorced women from facing immediate economic hardship and homelessness.³² The following are different cases of maintenance of women during 'iddah.

Maintenance of Woman Divorced Through Lian

Some jurists are of the opinion that there is no maintenance for woman who was separated through *Lian*, as well as accommodation during 'iddah period. The story of a woman who

²⁷ *Ibid*

²⁸ *Ibid*, p.61

²⁹ Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu*, (3rd Edition, Dar al-Fikr, Damshiq, 1409/1989, Vol. 7,) p. 786. See also, Azizah M. and Badruddin H.I., *Muslim Wife's Rights to Maintenance; Husband Duty to Maintain a Working Wife in Islamic Law and the Law in Malaysia* p.112

³⁰ Azizah M. and Badruddin H.I., *Muslim Wife's Rights to Maintenance; Husband Duty to Maintain a Working Wife in Islamic Law and the Law in Malaysia*, p.113

³¹ Ismail M. B., *Al-Fiqh Al-wadih*, p.129

³² *Knowing Our Rights: Women, family, laws and customs in the Muslim world*, p.313

separated through *Lian* was reported by *Ibn Abbas*, where the Prophet ordered that she is entitled to neither maintenance nor accommodation. This is because, both of them separated neither through divorce (*Talaq*) nor through the death of her husband.³³ Abu Hanifah said; she is entitled to accommodation and maintenance. This is because; Abu Hanifah perceived separation by *Lian* as a divorce (*Talaq*) and not *Faskh*. Thus, she will be entitled to what a divorce woman will be entitled to, in term of maintenance and accommodation.³⁴

Maintenance of Woman During *iddat Al- Talaq*

The husband is also obliged to maintain the wife who is observing the period of *iddah* after divorce either through *talaq* (revocable or irrevocable) or through *khulu'* 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*.³⁵

Thus, the husband has to provide maintenance as well as accommodation for a divorced woman who is observing *'iddah* of a revocable divorce. This is due to the subsistence of the marital relationship during the *'iddah* of a revocable divorce. This is in line with the prophetic *hadith* that says;

إِنَّمَا السُّكْنَى وَالنَّفَقَةُ لِلْمَرْأَةِ إِذَا كَانَ لِزَوْجِهَا عَلَيْهَا رَجْعَةٌ، فَإِذَا كَانَتْ لَا تُحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ: فَلَا نَفَقَةَ لَهَا وَلَا سَكْنَى

*Spending and housing are required from the husband for his divorced wife if he can return to her. If she is not permitted for him anymore, until she marries another husband, then he does not have to provide her with spending and housing.*³⁶

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 relied on the provision of Qur'anic Chapter 65 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 deliver the baby, regardless of the kind of divorce. This is also based on *hadith* of the Prophet (SAW) in the case of Fatimah binti Qais who was divorced with three *talaq* (divorce). The prophet said to her; 'You are not entitled to maintenance unless you are pregnant...'³⁷

Maintenance of Woman who was irrevocably Divorced

The jurists have divergent opinions on the maintenance of a woman who was irrevocably divorced. Their opinions are classified into three categories; namely:

1. She will be entitled only to accommodation without maintenance. This is because the provisions of *Surat al-Talaq* verse 6³⁸ commanded only provision of accommodation

³³ Reported by Ahmad and Abu Dawud

³⁴ Ismail M. B., *Al-Fiqh Al-wadiah* p.152

³⁵ Al-Kasani, *Badai al-Sanai fi Tartib al-Sharai'*, Vol. 4, p. 23.

³⁶ An-Nasa'i also recorded this narration

³⁷ Abu al-Fadhl A.A., *Bulugh al-Maram Min Adilat Al-ahkam*, Hadith 1145 p.198

³⁸ 'Lodge them where you dwell, according to what you have, and do not harm them so as to suppress them. And if they are pregnant, then spend on them till they lay down their burden.'

but does not command maintenance. This is the view of Maliki and Shafi'i schools of Islamic jurisprudence.³⁹

2. She is neither entitled to accommodation nor maintenance. This was based on the following *Hadith*;

It was reported by Fatimah bint Qais that she said my husband divorced me three times with the assurance from the prophet without given me neither accommodation nor maintenance.

In another report, the prophet said 'accommodation and maintenance is for those divorce revocably' Ahmad, Abu dawud reported that the messenger of Allah told her: there is no maintenance for you unless you are pregnant⁴⁰,

This is also in line with the prophetic *hadith* that goes thus;

إِنَّمَا السُّكْنَى وَالنَّفَقَةُ لِلْمَرْأَةِ إِذَا كَانَ لِرَوْجِهَا عَلَيْهَا رَجْعَةٌ، فَإِذَا
كَانَتْ لَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَلَا نَفَقَةَ لَهَا وَلَا سَكْنَى

Spending and housing are required from the husband for his divorced wife if he can return to her. If she is not permitted for him anymore, until she marries another husband, then he does not have to provide her with spending and housing.⁴¹

This is the opinion of *Hanabilah* and some *Salaf* (the venerable past jurists) and *khalaf* (the later jurists)⁴²

3. Abu Hanifah opined that she is entitled to accommodation and maintenance as in the case of woman who was revocably divorced and pregnant (divorced) woman. This is because maintenance always follows accommodation. Thus, whenever accommodation is compulsory maintenance is also compulsory.⁴³

It is worthy to note that, Umar and A'ishah (may Allah have mercy on them) declared as distasteful (*makruh*) the *hadith* reported by Fatimah Bint Qais. Umar said, we will not abandon the book of Allah and *Sunnah* of His Prophet for the words of a woman whom we do not know whether she had memorized or forgotten it. Then, when the information reached Fatimah Bint Qais, she said; before me and you is the book of Allah, and Allah says in the Qur'an;

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ
وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ
يَأْتِيَنَّ بِفَحِشَةٍ مُبَيَّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ
ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُخْدِثُ بَعْدَ ذَلِكَ أَمْرًا

O Prophet! When you divorce women, divorce them at their 'Iddah and count their 'Iddah. And have Taqwa of Allah, your Lord. And turn them not out of their homes nor shall they leave, except in case they are guilty of Fahishah Mubayyinah. And those are the set limits of Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself. You know not, it may be that Allah will afterward bring some new thing to pass.⁴⁴

³⁹ Ismail M. B., *Al-Fiqh al-wadiah* p.129

⁴⁰ Reported by Muslim and Bukhar as cited in Ismail M. B., *Fiqh al-wadi* p.129

⁴¹ An-Nasa'i also recorded this narration

⁴² Ismail M. B., *Al-Fiqh Al-wadiah*, p.129

⁴³ *Ibid*

⁴⁴ Q. 65:1

Then which hope or new thing (*Amran*) do you expect after the third divorce?⁴⁵ That is, where there is no room for reconciliation. Imam Malik and Shafi'i are in support of this position. Thus, they restrict the right of woman who is irrevocably divorced and not pregnant to only accommodation.⁴⁶

Maintenance of A (Divorced) Pregnant Woman

A pregnant woman is to be maintained and accommodated till she delivers whether she is in her waiting period as a result of a revocable or irrevocable divorce or as a result of the death of her husband. This is in line with the Qur'anic provision that goes thus:

وَأِنْ كُنَّ أُولَاتٍ حَمْلٌ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ

...And if they are pregnant, then spend on them till they lay down their burden...⁴⁷

The 'iddah of a pregnant woman as laid down in the Qur'an and *Sunnah* is till her delivery from pregnancy so also is obligation of her maintenance by her divorced husband. Thus, accordingly if a woman is pregnant at the time she was divorced, her maintenance is compulsory⁴⁸

'Delivery' may be more widely interpreted to include the lying-in period after the birth or more narrowly interpreted to mean only the actual birth. The interpretation of such terms clearly affects the length of time during which a wife is entitled to maintenance.⁴⁹

Maintenance of Woman during 'Iddat Al-Wafat (Mourning Waiting Period)

The relationship between husband and wife terminates by the death of the husband and his wealth is to be distributed among his heirs afterward. Though there is no doubt that his wife will observe 'iddat al-wafat (prescribed waiting period for a widow). Also, it is possible for the widow to be pregnant or not. The jurists have divergent opinions on the maintenance and accommodation of the woman observing 'iddat al-wafat as follow:

1. She is neither entitled to maintenance nor accommodation whether pregnant or not. This is the view Hanafis. Ahmad and his disciples opined further that, maintenance is due because of the marriage tie, and same is not compulsory as the tie has been loosen by the death of the husband. Also, as at the time of the death of the husband, he has ceased to be the owner of his property but the owners are the heirs. Thus, it will not be appropriate to provide compulsory accommodation and maintenance out of the property of the heirs. Also, Allah has stipulated 1/8 or 1/4 of the estate of her deceased husband as her share⁵⁰ and the residue for other heirs. Thus, the accommodation to be given to her is part of the deceased estate to be distributed and that will amount to given her excess of her shares as prescribed in the Qur'an.⁵¹
2. She is only entitled to accommodation but not maintenance whether she is pregnant or not. This is the opinion of Malikis with the condition that the accommodation must

⁴⁵ Ismail M. B., *Al-Fiqh Al-wadiah*, p.130

⁴⁶ Ambali M. A.; *The Practice of Muslim Family Law*, (3rd Ed. Tamaza Pub. Co. Ltd. Zaria, Nigeria, 2003) p.241

⁴⁷ Q. 65:6

⁴⁸ *Impact of Family Law on the right of divorced women*, p.49 retrieved from <www.ncsw.gov.pk> accessed on 12th May, 2015.

⁴⁹ *Knowing Our Rights: Women, family, laws and customs in the Muslim world*, p.313

⁵⁰ Q.4:12 Depending on whether she has children or not.

⁵¹ Al-'Unuzi M.M. 'Nafaqat al-zawjiyyat lil Mu'tadah' (being a thesis submitted at Jami'at al-Mulku Sa'ud, King Sa'ud University) available at <www.ahlalheeth.com> accessed on 15th July, 2015.

belong to her deceased husband. The Shafi'is added that, the maintenance has ceased upon the death of the husband, perhaps maintenance is due in return for the enjoyment derived from the wife by her husband which can no longer be possible in this circumstance.⁵²

It was reported by Nasai from Fari'at bint Malik, Sister of Abi Sa'eed Al-khidri, she said; my husband died and I reported to the Prophet (SAW) and I asked him on whether I can return to my family, because my husband did not leave any house of his own and maintenance. Then the prophet said: 'yes' then when I was inside he called me, he called me and he (SAW) said: '*remain in your house until the end of your waiting period*' then she said; I observed my '*iddah* for four months and ten days. She said also; caliph Uthman also stand by this ruling.⁵³

Thus, had it been she has no right to accommodation except with the consent of the heirs, the Prophet would have asked her to remain in the house with the permission of the heirs just as she has no right to spend a dime out of the estate except with their consent.

3. She is entitled to maintenance and accommodation if she is pregnant. This is in line with what is narrated by Ahmad which has been flawed. The reason adduced for this is that, since she was impregnated by the deceased husband, she has right to both maintenance and accommodation as was enjoying during his lifetime.⁵⁴

The most preferred position is that a widow in her waiting period does not have right to maintenance and accommodation whether pregnant or not. This is because both have stopped upon the death of her husband. Also, the pregnancy could not make her entitled as the property no longer belong to the deceased but the heirs (inclusive of the wife).⁵⁵

Maintenance of Slaves

Pursuant to the provisions in the Qur'an and *Sunnah*, the expression '*ma malakat aymanukum*' is often used to refer to slaves or servants. This expression has been interpreted by different scholars. To this end, bernard Lewis translates *ma malakat aymanukum* as "*those whom you own*".⁵⁶ Abdullah Yusuf Ali translates it as "*those whom your right hands possess*",⁵⁷ as does Shakir M. H.⁵⁸ Dawood N. J. translates the phrase more idiomatically as "*those whom you own as slaves*".⁵⁹

The Qur'anic verses on slaves are expressed in variants of three phrases: '*Abd* (male slave or servant, feminine: *amah*), *ma malakat aymanukum* (that which your right hand possesses, used to highlight right to force sex on female slaves), and *raqabah* (the neck, captive, used to highlight the process of manumission).⁶⁰

⁵² *Ibid*

⁵³ Abu al-Fadhl A.A., *Bulugh al-Maram Min Adilat Al-ahkam*, Hadith 1162 pp.201-202

⁵⁴ Al-'Unuzi M.M. '*Nafaqat al-zawjiyyat lil Mu'tadah*'

⁵⁵ *Ibid*

⁵⁶ Bernard Lewis, *Race and Slavery in the Middle East*, page 146. Available on Wikipedia Online <http://en.wikipedia.org/wiki/ma_malakat_aymanukum> accessed 14th July, 2015.

⁵⁷ Ali, A. Y. (2004). *The meaning of the Holy Qur'an*. Q:4:24

⁵⁸ Shakir, M. H. (Ed.). (n.d.). *The Quran*. (Medford, MA: Perseus Digital Library). Q:4:24

⁵⁹ Dawood N. J., '*The Koran*', (Penguin Classics, Penguin Books, 1999 edition.) Q:4:24

⁶⁰ *Ibid*

It is the duty or responsibility of a man who owns a slave to make provision for him/her in terms of food, clothing and accommodation according to his means. This will continue until final emancipation or sale of the slave. In case of death of a slave the master is bear the funeral expenses. The Qur'an says on maintenance of slave thus:

وَاللَّهُ فَضَّلَ بَعْضَكُمْ عَلَى بَعْضٍ فِي الرِّزْقِ فَمَا الَّذِينَ فُضِّلُوا بِرَأْدَى
رِزْقِهِمْ عَلَى مَا مَلَكَتْ أَيْمَانُهُمْ فَهُمْ فِيهِ سَوَاءٌ أَفَبِعِزَّةِ اللَّهِ يَجْحَدُونَ

And Allah honored some of you over others with wealth and properties. Then, those who are so honored will by no means hand over their wealth and properties to those (captives of war) whom their right hands possess, so that they may be equal with them in that. Do they then deny the favor of Allah⁶¹

Also the prophet was reported to have said:

A slave is entitled to his food and clothing in a reasonable manner, and he should not be burdened except with works that he is capable of doing⁶²

However, if the owner is not able to take care or maintain his slave, he has to choose between selling and setting him/her free. Also, if he refuses to sell him, the court or those in authority will impose on the owner to set him free. Thus, selling or setting him free is to avoid causing unnecessary harm to the slave. This is in line with the principle of Islamic law (*qawaid al-fiqhiyyah*) which forbids infliction of harm on a person or tolerating same. The prophet was reported to have said: '*Harm is neither inflicted nor tolerated*'⁶³

Furthermore, the owner of a slave should not assign him a task which the slave has no capacity to bear. However, there is any course to do that, he should assist him. This is in line with the prophetic tradition which goes does:

Your slaves are your brothers whom Allah has puts under your control He whose brother is under his control should feed him out of what he eats and dress him out of he wears. Do not assign them what is beyond their capacity. If you give them such job, help them to accomplish it⁶⁴

The jurists are of the opinion that, it charitable to maintain a slave above average. Thus, Allah loves those who do good deeds. The maintenance of a slave owned by a minor or an insane is to be deducted from his property. However, if he possess no property, the slave should be sold and the proceeds to be kept for him. This is to avoid causing harm to the slave, in line with the prophetic *hadith*; '*Harm is neither inflicted nor tolerated*'⁶⁵

Maintenance of Pets

It is the duty of a man who keeps, domestic animals as pets, such as sheep, cow, camel, horses cats, birds and so on to provide adequate food for them, except if there are water

⁶¹ Q.16: 71

⁶² Imam Muslim, *Sahih Muslim* (tr.), 'Abd al Hamid Siddiqi, (fil bir wa silah, hadith 37) as cited by Al-Jazairi A.A.; *Minhaj al-Muslim*, p.377

⁶³ Ibn Majah; *Sunnan Ibn Majah*; 2341

⁶⁴ Ambali M. A.; *The Practice of Muslim Family Law in Nigeria*, p.232

⁶⁵ Ibn Majah; *Sunnan Ibn Majah*; 2341

and pasture around them from which they can comfortably and conveniently feed.⁶⁶ This is evident from the tradition of the prophet thus;

*A woman entered fire due to a cat that she lucked up it died from hunger. She did not feed it nor did she release it so that it could feed from the varmints of earth*⁶⁷

It is worthy of note that, failure or inability to maintain pets or domestic animals warrant selling of such animals. If the owner is not willing to sell such animal, the court can order the sale of the animal subject of such an abuse and give the proceeds to the owner.⁶⁸

The court is allowed to remove from the proceeds, the expenses incurred on the animal before and during the actual sale, and then the balance will be given to the owner. However, if the expenses is equal to the proceeds of the sale, then there is no money to be collected by the owner as same will be used to settle the expenses.⁶⁹

Also, the owner of the domestic animals should not overburden what they have no capacity to bear in term of work. This can be seen when the animal such as camel or cow is been used for farming and to transport what they could not carry with ease. In this case the court can order for sale of such animal by the owner.⁷⁰

Limitations to the Various Categories of Maintenance

There are limitations to the maintenance of the various persons or things entitled to be maintained. These limitations are to be discussed as follows:

1. The parents are to be maintained compulsorily by their children in so far the parents do not have means to earn their living. The children male or female have to contribute to the maintenance of their parents according to their means. The duty to maintain parent ceases when they become rich or have means to earn their living, though one has to do good to them as commanded by Allah.⁷¹
2. The husband has compulsory duty to maintain his wife according to his means. This is perpetual unless he divorces his wife or the wife becomes disobedient (*nushuz*). This is because maintenance (*Nafaqah*) is in return of the obedience and submission of the wife to her husband.
3. Where marriage terminates through *talāq*, which is the unilateral pronouncement of divorce by the husband to the wife only, the duty of support continues to run for three menstrual cycles after which all obligations of maintenance upon the husband cease.⁷²
4. The slaves are to be maintained until they are sold or set free. Thus, the duty to maintain a slave continues in so far the slave is under the possession of his/her owner. Also, if the slave is allowed to trade or do his own business (i.e partially freed), he is not to be maintained by the master again.⁷³

⁶⁶ Ambali M. A.; *The Practice of Muslim Family Law in Nigeria*, p.232

⁶⁷ Al-Jazairi A.A.; *Minhaj al-Muslim*, p.389

⁶⁸ Ambali M. A.; *The Practice of Muslim Family Law in Nigeria*, p.232

⁶⁹ *Ibid*, p.233

⁷⁰ *Ibid*

⁷¹ Al-Jazairi A.A.; *Minhaj al-Muslim*, p'378

⁷² Karaan M.T., *Proprietary Consequences Of A Muslim Marriage And Divorce With A Brief Excursus On The History Of Muslim Personal Law In South Africa*

⁷³ Ambali M. A.; *The Practice of Muslim Family Law in Nigeria*, p.232

5. The owner of a pet or domestic animal is under obligation to maintain it until it will be set free or out rightly sold. Thus, the duty to maintain such pet will lapse or cease when same has been sold or set free in order eat from varmint of earth.⁷⁴

Conclusion

It could be observed that various persons are entitled to be maintained in Islamic family law. These persons includes parents, wife or wives divorced women during their '*iddah*' (prescribed waiting period), slaves and pets to mention but a few. Parents are to be maintained compulsorily by their children in so far the parents do not have means to earn their living. The children, male or female have to contribute to the maintenance of their parents according to their means. The duty to maintain parent ceases when they become rich or have means to earn their living, though one has to do good to them as commanded by Allah.

The husband has compulsory duty to maintain his wife according to his means. This is perpetual unless he divorces his wife or the wife becomes disobedient (*nushuz*). This is because *Nafaqah* is in return of the obedience and submission of the wife to her husband. A working wife has to be maintained in so far she does same with the consent of her husband. A divorced wife in '*iddah*' is to be maintained till the end of her '*Iddah*' period but if she is pregnant, till she delivers her burden.

The slaves and the pets are to be compulsorily maintained by their respective owners. However, if the owner could not afford to maintain them; he can set them free or sell them out rightly. Thus, any neglect to maintain or set them free, the owner can be compelled to sell them by the court.

⁷⁴*Ibid* p.233