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The Wife's Right to Husband's Property Earned Upon Marriage: A Juristic Study

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Abstract--There are rising voices at present calling for the wife's sharing ownership of her husband's property that is earned during their marital relationship, on the premise that such property is earned due to the mutual effort of both spouses, with the wife carrying out house chores and thus allowing the husband time to work, or with both having jobs and contributing to the welfare of the family and maximizing their property. Some countries legalized such matrimonial property, binding the husband to share with his wife whatever he earns during their marital relationship. In this study, I examined the corroborating proofs of such a stance and concluded that each spouse is independent in terms of ownership, wealth, income, and disposal. I also concluded that financial transactions between the spouses are liable to legal rulings on financial transactions in general and that if the two spouses dispute the ownership of any property, the claimant is bound to prove the validity of such a claim.

Keywords---husband, marriage, property earned, right, wife.

Introduction

This research includes an introduction, three sections, and a conclusion. As for the introduction, it deals with the significance of the topic, the reasons for choosing it, the statement of the research problem, its pertinent questions and objectives, and the study plan (Anderson et al., 1992). The first section addresses the definition of the key terms introduced in the title of the study (Frémeaux & Leturcq, 2018). Then, the second section involves a statement of what is meant by the matrimonial property of the spouses. The third section engages the evidence given by proponents of the claim that the wife has a right to the husband's money earned after their marriage, and discusses it (Kelly, 2000). Then, the conclusion contains the key findings and recommendations. The importance of the topic and the reasons for choosing it:

- Illustrating what distinguishes Islam from other positive laws.
- Responding to the slanders directed at Islam, that it oppresses women and denies them their rights.
- Addressing the rising calls for giving women the right to have a share in the property earned by the husband upon marriage (Kamo, 2000).
- The tendency in some countries to pass legislation rendering the property acquired upon marriage a joint property of the spouses.
- Attempting to keep up the family.

Problem statement

- Some Muslims are deceived by the claims coming from non-Muslim countries, without verifying the true aims of these claims.
- The lack of awareness regarding some of the objectives of Islamic law in marriage and establishing a family based on tranquility, mercy, and affection, dealings with the family on a material basis.
- Attempts by some to misinterpret or twist the texts and proofs of the Shari'ah, and to load them with meanings and connotations beyond their true tenor.
- Some people try to use specious slogans to challenge the rulings of Shari'ah law and destroy the family.

Research questions

- What is meant by matrimonial property?
- Does a woman have an independent financial liability?
- What is the default ruling in financial transactions between spouses?
- What is the ruling on the wife's sharing ownership of the money that the husband has acquired after marriage?

Research objectives

- Illustration of what is meant by matrimonial property.
- Illustration of the implications for the independence of the wife's financial responsibility.

- Illustration of the ruling on financial transactions between spouses.
- Illustration of the ruling on the wife's sharing ownership of the money acquired by the husband upon marriage (Naved et al., 2006).
- Responding to those who claim that Islam oppresses women and deprives them of their rights.

Definition of terms related to matrimonial property

Definition of the term “Haqq (right)”

Haqq means share, obligation, certitude, and fixed right (Ibn Faris, 2/15:16; Ibn Manzhur, 10/49; Al-Fayyumi 1/143). Technically, however, it means “a legally fixed assignment for the achievement of interest, and it requires authority or mandate.” (Damiriyyah 40/358).

Definition of “wife”

Wife means a woman married to a man, and she is called a spouse (Ibn Faris 3/35; Ibn Manzhur, 2/292; Al-Fayyumi 1/258).

Definition of Māl (money)

Literally, Māl refers to everything that people possess. (Ibn Manẓūr 11/635; Al-Fayoumi 2/586) Yet, technically it means “everything that customarily has a value, and that is lawful to use according to Shari’ah in the case of wellbeing and volition.” (Al-Dabu, p. 228).

Defining the term *zawj* (husband)

Literally, a *zawj* is the individual who has a companion, so the man is the *zawj* of the woman, and she is his *zawjah*. Technically, a *zawj* is the wife's husband. (Ibn Faris 3/35; Ibn Manẓūr 2/291; Al-Fayoumī 1/258).

Definition of acquired property (al-muktasab)

Al-muktasab means to be acquired and possessed by somebody. The person who has the ability to acquire wealth (*kasb*) is called *almuktasib*. *Kasb* means working to gain sustenance and to make a living. (Ibn Manẓūr 1 / 716; Al-Fayūmī 2/532).

The essence of matrimonial property

Shared or commonly owned money is that having more than one owner. (Ibrahim Mustafa et al 1/480). What is meant by the matrimonial property is all the money that one of the spouses earns during the marriage period. (Nihaya Muhammad <https://gupw.net/page43.html>).

The wife's right to the husband's money acquired during the marital relationship

Those who proposed the wife's right to share in the ownership of the money earned by the husband acquired during a marital relationship when the husband

divorces her or seeks to marry another woman (Beschlin et al., 2000), or dies, drew on some proofs that can be traced to the following sources:

- Almighty Allah's saying, "For men is a share of what they have earned, and for women is a share of what they have earned. "(An-Nisa': 32) Such scholars claimed that the interpretation of this verse is that every man and woman have a share in acquired property.
- If the husband dies or divorce takes place, it is customary to divide the money acquired during their married life between the spouses.
- That this is in the interest of the woman to protect her from loss and help her in managing the affairs of her life and the life of her family after divorce or the death of the husband, or for fear that the husband may wrong her if he marries another. (Sahid, p. 7-8. Al-Muqrini, <https://www.facebook.com/permalink.php?id=226390091134799&story>).
- That this is fairness, because the money acquired was as a result of the effort exerted by both spouses together, whether through the woman's undertaking domestic work that enabled the husband to work freely outside the house or through the two spouses having jobs and contributing together to the accumulation of the family's wealth.
- That it is customary to register the family property in the name of the husband, without taking into account the joint roles of the spouses in the accumulation of such wealth. (Nihayah Muhammad, <https://gupw.net/page43.html>. Damen Abdul Qadir, p.109)

But these proofs are not valid in sustaining an irrefutable argument for the following points:

First: These calls are but an attempt to imitate the laws of Western countries, and this is explained as follows:

- In Western legislation, the principle of joint financial responsibility of the spouses is applied, according to which the spouses' funds are combined upon marriage (Robles & Kiecolt-Glaser, 2003). And if the marital relationship ends, these funds are divided between them, knowing that some countries give the spouses the right to choose between the financial separation of spouses' liability or unity of their financial liability, or the combination of both systems. This contradicts what Islam has enacted regarding the independence of the financial responsibility of each spouse. (Al-Bajī 6/113; Muhammad Al-Zuhaili 1/350-351; Al Mahmoud 1/448)
- In Western countries, when the girl reaches a certain age, she must work to support herself, and if she gets married, she must contribute with her husband to the household expenses (Al-Rubaish 1/175-176). This is contrary to the Islamic legislation in which the woman is not required to spend on herself; rather her husband or her male guardian is bound to spend on her (Linde, 2021).

Second: Accepting these calls makes the family based on a materialistic basis, while the family life in Islam is based on tranquility, affection, mercy, and good cohabitation between the spouses (Yeates, 1999).

Third: The verse used by proponents of the above claim as the evidence does not indicate their purport, and their interpretation of it disagrees with the nation's

agreed-upon interpretation of it. Ibn Kathir said in his interpretation of this verse, “every individual is rewarded for his/her deeds duly; good for good, and evil for bad. This is the same opinion of Ibn Jarīr. It was said that the meaning of this verse applies to inheritance, meaning that everyone inherits a share according to his kinship status.”(Ibn Kathīr 2/287). This is supported by what was reported as the cause behind the revelation of this verse. It was reported on the authority of Umm Salamah (may Allah be pleased with her) that she said: O Messenger of Allah, why would men join in battles while we do not; why can we not fight along with men and fall martyrs. Why should we only have half the share in inheritance?” Thereupon, the verse was revealed (Reported by Ahmad 320/44). Rather, the verse bears a contrary indication to that inferred by the proponents of the above opinion (Gbaguidi & Allagbe, 2018; Romdhani, 2020). For Allah Almighty made for every man and woman a share in their earnings, not in the earnings of someone else.

Fourth: Using the customary practice as proof is invalid, because of the following:

- One of the conditions for inference based on customary practices is that it be practiced consistently or often. That is not the case here; the customary practice of giving each spouse a share in the gains of the other spouse is neither consistent nor predominant. Rather, the predominant customary practice is to the contrary.
- Another condition of the authoritative customary practice is that it must be universal (*‘ām*); knowing that the universal practice of the nation since the time of the Prophet to this day contradicts what they inferred.
- The customary practice must not contradict a legal text. However, the claim that each of the spouses has the right to share ownership of what the other earns upon marriage contradicts many legal texts, including the verses of inheritance and other texts. (Zaydan, p. 255; An-Namlah 3/1022)

Fifth: The claim that dividing the money acquired during the marriage is in the interest of the wife as it aims at protecting her from loss and helping her build a new life, is based on the Western concept that a woman must spend on herself (Waldron et al., 1996). Yet, in Islamic legislation, the wife does not have to spend on herself. Indeed, Islam has legislated financial rights for a divorced woman and a female widow. The reasoning based on the interest (*al-maṣlaḥah*) is bound by certain conditions, including the point that the ruling is enacted in the interest of the general population and not in the interest of a specific individual or group. The ruling should also be enacted to protect something necessary or to lift a restrictive hardship, which does not apply in the present case. (Zaydan, p. 242. An-Namlah, 3/1099)

Sixth: The claim that these funds came as a result of the effort made by both spouses can be refuted through the following points:

- That a woman’s work is divided into the following: Work in keeping her house and taking care of her family and work undertaken when having a job or a vocation. As for the first, it is known that the wife is not entitled to a wage in return for her dedication to housework and raising the children. This is based on the correct opinion of scholars that this is an obligation for the wife within a reasonable limit. (Al-Kasani 4/24). As for the second type:

the wife has her independent financial liability and the money accrued by her through her professional or vocational work is her own property. No one else has the right to it except upon her consent. The basic principle in financial dealings between spouses is that such dealings are liable to Shari'ah rulings that govern financial matters in general. So, if a wife contributes through her own money in acquiring a property, she has the right to share in the ownership of that property in proportion to the money she contributed. Likewise, if the wife gives her husband money as a loan, then she can reclaim it. And if the wife gives her husband money as a sleeping partnership (*qirād*), that money becomes liable to the sleeping partnership laws. Similarly, if she gives her money to her husband as a gift, it is treated as a gift. Moreover, if the wife pays money to the husband out of her own free will without stipulating that it is a loan, a *qirād* or as a partnership, then this money is a gift to the husband, and the wife may not reclaim it after the husband collects it (Haydar 2/464). Still, if the wife claims that she was forced into offering him the gift, or that she paid the money to the husband by way of a partnership, loan, or *qirād*, she must prove that using legally valid evidence, and if her right is proven, the judge rules in her favor. (Ash-Shafi'i, 4/64)

- The wisdom of making inheritance in Islam for spouses and relatives is that spouses and relatives usually have a role in growing the wealth of the inheritor. Just as each of the spouses has a role in increasing the wealth of the other, children have a role in developing the wealth of their parents, and parents have a role in developing the wealth of their children (Suryasa, 2019).

Seventh: The claim that justice dictates dividing money earned during a marital relationship, between the two spouses is contradictory to the principle of justice itself. Indeed, justice dictates that everyone be free to dispose of his/her property the way they like without interference by any other person. So, the wife should have her property for herself and so does the husband. And if she purchases something it should be exclusively hers. Still, if they jointly pay for something, each of them should have a share in ownership commensurate with their share in the payment. Hence, justice entails the application of legal rulings to the transactions between spouses and not the importation of solutions that do not spring from our religion and Shari'ah. (Abu Al-Basal 1/413-414).

Conclusion

The key findings of the study can be summed up as follows:

- Islam has established a woman's independent financial liability and full legal competency.
- A woman in Islam is not required to spend on others; rather she is required to be provided for by her husband or her male guardian.
- Financial dealings between spouses are subject to Shari'ah provisions related to financial transactions in general.
- The wife is not entitled to receive a wage in return for the time she dedicates to housework and raising the children.
- If the spouses disagree about something, then the plaintiff must prove the validity of his/her claim, and they should reconcile.

Second: Recommendations and suggestions:

- Each of the spouses must protect the rights of the other, especially financial rights.
- Spouses should agree on financial issues, so as not to let their financial disagreements affect their marital life.
- Financial transactions between the spouses should be documented, to prevent conflict, discord, or loss of rights.
- In solving the issues of the Muslim community, the criterion must be the provisions of Islamic Shari'ah.
- We should not be deceived by specious slogans of equality, women's rights, and other slogans that are intended to destroy the structure of society.

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