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## Matrimonial Property: Concept and Ruling

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**Abstract**--This research studies matrimonial property, which is a marital financial right that was not discussed by classical scholars in their books; it is a new, contemporary issue. The problem of this research is that in most contemporary societies, the husband can no longer cover all the household expenses or improve the financial status of the family on his own, which results in the wife's going out for work and contributing to many expenses like the house, car, etc. Spouses may not pay attention to this matrimonial property; however, when marriage is terminated, disputes about it arise. This research offers answers about the concept of matrimonial property and its types; the ruling of this property and how it can be divided. It also elaborates on the definition of matrimonial property and the legality of claiming it. Thus, this research is divided into two sections: the first explains the matrimonial property and its types, and the second clarifies the ruling of the matrimonial property. The paper also includes an introduction and a conclusion that presents the research findings.

**Keywords**---contemporary societies, Islam, marriage, matrimonial property.

### Introduction

Allah Almighty legislated marriage and set regulations and laws that aim at organizing the marital life in order to protect the offspring, which is one of the most important objectives of the Lawgiver. Some of these laws and rulings impose financial obligations on the husband towards his wife like the dowry, *nafaqah* (alimony), *mut'ah* (post-divorce gift) and the wife's inheritance share (Robles & Kiecolt-Glaser, 2003). In the past, women used to stay at home and attend to their family affairs; they rarely went out. However, norms have changed in our

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time; now, women go out to work, contribute to the family expenses and to participate in improvement of the household financial situation. That, in turn, raises the issue of the matrimonial property and women's eligibility to claim their shares of it.

### **Concept and types of matrimonial property**

The Wise Lawgiver has laid down numerous obligations on the husband once marriage is contracted (Waldron et al., 1996; Kelly, 2000). What interest us here are the financial obligations, including:

- *Al-sadaq* (dowry): The money stipulated by the marriage contract that the husband must give to his wife. Allah Almighty states: "Give women 'you wed' their due dowries graciously." (Al-Nisā' 4:4)
- *Al-nafaqah* (alimony): *nafaqah* means providing what is necessary for the sustainability of something (Al-Rumi, 2004), that is, providing what preserves the life and well-being of the human which includes food, cloth and residence (Ibnu al-Humam, n.d.).
- *Mut'at al-talaq* (post-divorce gift): What the husband gives to his divorced wife in addition to her dowry to console her (Al-Dusuqi, n.d.). Scholars have disagreed whether it is obligatory or not; they also disagreed about its scope and value. The preponderant opinion is that it is an obligatory right for the divorced woman. As for its amount, it is decided by the spouses' mutual agreement; otherwise, the decision is left for the ruler.
- Inheritance: The Lawgiver has stipulated one quarter or one-eighth of the deceased husband's wealth as the inheritance share of the wife, as stated in the Qur'an: "And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts." (Al-Nisā' 4:12).

Other financial rights include *haqq al-hadānah* (the guardianship payment) and *ujrat al-raḍa'* (the nursing fees) etc. After explaining these financial rights, we come to the discussion of the concept of the matrimonial property.

### **Concept of Matrimonial Property**

The term "matrimonial property" refers to the wealth acquired during the marriage period, which both spouses, directly or indirectly, participated in acquiring and developing (Sahid, 2016). The concept also includes the property acquired and owned by the spouses through gifting, such as if a real estate has been bequeathed or gifted to them. Such matrimonial property can take the form of visible or invisible, fixed or movable property (Yeates, 1999).

The partnership in the matrimonial property is established only through the explicit or implicit consent of both spouses (Frémeaux & Leturcq, 2018). The scholars unanimously agree that the original ruling of partnership is the permissibility. Allah Almighty said: "And certainly many partners wrong each other, except those who believe and do good—but how few are they!" (Ṣād 38:24) It is also reported from Abū Hurairah that the Prophet (peace and blessings be upon

him) said: "Allah, the Highest, said, 'I am the third (partner) of two partners as long as one of them does not cheat his companion (Linde, 2021). Then, if he cheats (his partner) I depart from them.'" (Abū Dawūd, n.d.)

### **Types of matrimonial property**

Based on the above definition, we can divide the matrimonial property into two categories:

- Direct contributions of both spouses, that is, both spouses participate in acquiring the property in question, or share in the capital of a certain project or jointly purchase a real estate. This direct contribution must be a real contribution with money or labor.
- Indirect contribution like when a wife ensures a comfortable environment for her husband who establishes a business; she takes care of the household and children to enable the husband to perform well in his work. Such indirect contribution is intangible; it doesn't involve money or labor.

### **Ruling of Matrimonial Property**

In Islam, the marriage contract doesn't impose on spouses to have a joint estate; rather, each of them has his/her separate and independent estate that he/she can dispose of as he/she wishes. This was adopted by the International Islamic Fiqh Academy in a decision in the 23<sup>rd</sup> session in 2018.

The ruling of the matrimonial property will be discussed in the following two sections:

#### **Ruling of matrimonial property to which spouses contributed directly**

Some examples for this type are when spouses co-own something like a house they purchase, when they invest their money in a business, or if the wife assists her husband in managing his trade. In this case, the wife is entitled to a share of the property in return for her contribution. Each spouse, in this case, is required to produce evidence that establishes his/her share in the property.

This is supported by the judgment of Caliph Umar in the case of 'Amr bin al-Harith and his wife Habibah bint Zuraiq. She was a tailor who made clothes and turbans; her husband, 'Amr, was a merchant. They worked in their businesses until they accumulated a lot of wealth (Gbaguidi & Allagbe, 2018; Romdhani, 2020). So, when 'Amr died, he left lands, houses and properties. His heirs seized the properties keys and divided them among themselves. So, Habibah raised the case to 'Umar who decided that the two spouses had a partnership and each of them owned half of the property. Accordingly, he judged that Habibah was entitled to half of all the property in return for her work and, in addition, to one quarter of the remainder because it is her share in the inheritance since she is a wife and her deceased husband did not leave children (Al-'Abbadi, al-Hasan, 1999).

If there is no evidence to establish the spouses' shares, the scholars suggested some ways to resolve the dispute. However, it is better in this case that the

spouses reach a consensual agreement in the honor of their previous relationship. If that is not possible, then courts, especially commerce courts, are certainly capable of resolving the dispute.

### **Ruling of matrimonial property to which a spouse contributed indirectly**

The indirect contribution of the wife can take the form of caring for the house and children, encouraging the husband to progress in his business or offering him advice and consultation (Suryasa, 2019). In this case, the wife is not entitled to any share in the property; hence, she does not have the right of claiming anything from her husband. The reason is that if she were entitled to claim a share of the property by virtue of being a wife and partner in his property, then she would have been liable to part of his debts too according to the principle of profit and loss sharing (*al-ghunm bilghurm*); none of the scholars has endorsed such a view. If the wife's claim is based on her advice and service she offered to the husband, that will not be applicable because such advice and service are part of the kind treatment that spouses are commanded to show in their interactions; they are intangible rights that are obligatory on spouses towards each other. Otherwise, it would be the right of any person to claim a share of his friend's business merely because he offered him some advice or consultation.

If the marriage termination is caused by divorce, the Wise Lawgiver has legislated for the wife the post-divorce gift (*mut'at al-ṭalāq*) which varies according to the husband's financial status. In addition, she has the right to claim the deferred dowry if she had stipulated it in the marriage contract. In the event of separation due to the husband's death, a share of the inheritance is reserved for her by Allah. The scholars unanimously agree that the money left by the deceased is to be used first for covering the funeral costs, followed by paying off debts and fulfilling the deceased's will provided that it doesn't exceed one third of the wealth. Finally, the inheritance is distributed among his heirs. Claiming a share in the matrimonial property is not applicable because what she claims is not a debt, as there is no prior financial right owed by the deceased husband to her; also, the claim cannot be based on a bequest since heirs are not eligible for bequests.

In addition, this claim conflicts with the Lawgiver's objectives underlying the inheritance system; this system prioritizes the descendants, who are expected to live longer, over the ascendants and collateral kinship (Al-Hattab, 2002). Arguing that the wife is eligible to claim the matrimonial property implies that she can appropriate the whole wealth of the husband, which goes against the objectives of the Lawgiver. Some Muslim countries allow the wife to claim a share of the property provided that it is less than one third of the wealth. They based their position on three evidences (Sahid, 2016):

- Allah the Almighty said: "For men is a share of what they have earned, and for women is a share of what they have earned." (An-Nisa' 4:32). According to them, although this verse is general, it does establish that both the man and woman have shares of the earnings. However, this is a flawed argument; had the verse indicated what they mentioned, it would have read as follows: "For men is a share of what

women have earned, and for women is a share of what men have earned." Moreover, considering the verse's occasion of revelation shows that the verse is not related to the issue in question. The verse was revealed concerning some women who wished that they had the ranks and blessings peculiar to. So, Allah forbade His servants from pursuing futile wishes and commanded them to pray for His grace instead; that is because such pointless wishes incite hatred, envy and transgression. The verse means that men and women should not wish the blessings that Allah grants their opposite sex; rather they must be content of what Allah gives them and pray for His grace and blessings (Al-Tabari, 1994). It is reported from Qatadah that during the pre-Islamic era, women and children were not entitled to any inheritance because inheritance was distributed only among those who work, bring benefit to the family, or fight. So, when Islam legislated the shares of women and children in the inheritance and gave women half of men's share, women said, "if only our shares were equal to the shares of men", and men said, "we hope that our reward in the hereafter will be greater than women, just as the case is with the inheritance shares in the world." In response to that, this verse was revealed (Al-Wahidi, 1991).

- Another evidence cited to support this opinion is *al-'urf*; the argument is that the division of the matrimonial property between the spouses has been the custom for many years; people have accepted and practiced it until now. Yet, this argument is not valid because one of the conditions of authoritative *'urf* is that it doesn't conflict with a *Shari'ah* text. Claiming the property of the other spouse without a *shr'i* basis is considered unlawful usurpation of people's property. Allah says: "O believers! Do not devour one another's wealth illegally" (An-Nisā' 4:29) Moreover, approving this custom undermines the inheritance system legislated by Islam regardless how much a spouse is entitled, according to the *'urf*, to take from the other spouse's property; it does not matter whether it is the whole, half or one-third of the property.
- The other evidence mentioned in this context is the *maṣlahah*; the argument is that this opinion ensures the interest of the wife and protects her from impoverishment.

Once again, this argument is flawed; the post-divorce gift and the inheritance legislated by Allah for women sufficiently protect their interest. It is more effective to stipulate a deferred dowry in the marriage contract which the wife can claim if she wishes when the marriage is terminated by death or divorce. Codifying and enforcing the post-divorce gift can be a useful measure as well. The decision of the International Islamic Fiqh Academy in its 23<sup>rd</sup> session, 2018, affirms that. It states:

"When marriage is terminated by divorce (*talāq*), court-imposed divorce (*tatlīq*), or wife-initiated separation (*khul'*) and such termination causes harm to the wife, she has the right to turn to the court and claim damages for the harm inflicted on her; that represents a contemporary implementation of the post-divorce gift right guaranteed by the Wise Lawgiver for the divorced woman (Zafirovski, 2019)."

Dividing the wealth according to a fixed ratio after death or divorce is not compatible with the rulings of the *Shari'ah*. It makes wealth, rather than morals and religious commitment, the main criterion when choosing a

spouse. It can even prompt attempts on the other spouse's life in pursuit of financial gains. The Shari'ah closes the door of mischief even if the chances of its occurrence are low in order to block the means to evil. Therefore the International Islamic Fiqh Academy stipulated in the above mentioned session that: "if the spouses consensually agree to divide their wealth among themselves, there is no objection to that in the Shari'ah. However, the spouses cannot be forced to do that (Tainter, 1995)."

## Conclusion

At the end of this research, here are the most important findings:

- Islam pays great attention to the marital relationship; therefore, it introduces perfect marriage laws that are suitable for all times and places.
- The marriage contract does not require merging the spouses estate; although there is no objection to that in Shari'ah.
- The matrimonial property is the estate that both spouses contribute to really and directly through assets or work; indirect contribution is not counted in this regard.
- Both spouses have the right to claim their shares in the matrimonial property; this right is not necessarily associated with the termination of marriage; rather, it is a legal right that spouses can claim any time but they need to establish with evidence their ownership of their shares in the property.
- None of the spouses has any right to claim any portion of the other's property without direct contribution to it; that is considered illegal usurpation of people's wealth.
- The legal solution to protect the wife's rights at the time of separation is that spouses agree on a deferred dowry amount and that the post-divorce gift is codified in accordance with the husband's financial ability in a way that protects the wife from being wronged and ensures the husband is not harmed.

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