

A Working Wife under Islamic Law: Is Her Right Protected or Jeopardised?

By

**Associate Prof Noor Aziah Mohd Awal
Universiti Kebangsaan Malaysia**

Introduction

In Malaysia before British colonization, most Malay/Muslim women are not working. If they do work, they worked as farmers in the paddy field, assisting their husbands. There are many women who are self employed particularly as business person or running a small scale industry like batik printing, making cookies or sewing. These work were performed at home and were done on a part-time basis. They were never considered working or bread winner but merely to help their husband to ease the burden of maintaining the whole family.

During the British colonization many young girls were given the opportunity to go to school and upon completing their education they began to work. Many were teachers, office girl or nurses. The British also brought along the Indians from India to work in the rubber plantations and Chinese from China to work in the tin mines. The growing number of non-Malay females working in all these sectors have also triggered the Malay women to come out and work. Upon independence women are given equal opportunity in education and were able to work and being given the same opportunity as men to get a good job. To date women are almost half of the Malaysian working force and therefore played an important role in the Malaysian economy. However, on the family financial sides, women have become an equal partner to men in earning for the family. The question that arises is whether such role played by women now is taking the role of the husband as bread-winner of the family and whether this has jeopardise or waive her rights to maintenance or matrimonial property. This paper intends to look as these issues and highlights some of the changes that has been made in Malaysia.

Wife's Right to Maintenance

In Islam the duty to maintain a wife is the sole responsibility of a husband under Islamic Law. This can be seen in the Quran where it states that:

“Men shall take full care of women with the bounties which Allah has bestowed more abundantly on the former (men, with several special merits) than on the latter (women) , also because they spend a part of (their wealth) to maintain them....”¹

This command is further strengthened by a number of Hadis (sayings of the Prophet) as follows:

From Jabir r.a.reported that the Prophet was said the following concerning women,
” And their rights which are your responsibility is to feed and clothed them in accordance to their needs”²

¹ Quran: Surah An-Nisa':34

² Riwayat Muslim

Aisyah r.a. spoke to the Prophet of a woman who was never given any maintenance by her husband, the Prophet said,
“Take from his property what is necessary and adequate for your maintenance and your children.”³

It is further commanded that children shall look after their parents when they are old. This can be seen in the Quran as follows:

*And we enjoined on man to show kindness to his parents... ”*⁴

Hence, from the above it is the duty and responsibility of a husband to support his wife from the day he married her. This responsibility continues as long as they are married to each other. Upon divorce, a husband has to maintain his wife during the *iddah* period which is approximately 3 months. After the 3 months is completed, a husband may no longer have to support her. Apart from maintenance a woman is also entitled to *mutaah* (consolidation payment upon divorce) and matrimonial property (*harta sepencarian*)

Considerations taken by the Syariah Courts in Assessing Wife’s Maintenance

In Malaysia the Syariah Courts of each state are guided by their Islamic Family Law Enactments where provisions of maintenance existed. In the State of Negeri Sembilan⁵ this can be seen as follows:

Section 60(1) The court may, subject to Hukum Syarak, order a man to pay maintenance to his wife or former wife.

This section is very specific that it is the man that support his wife or former wife and not otherwise.

Section 61 provides that the Court may order any person *liable* thereto according to Hukum Syarak, to pay maintenance to another person where he is incapacitated, wholly or partially from earning a livelihood by reason of mental or physical injury or ill-health and the Court is satisfied that having regard to *means* of the first-mentioned person it is reasonable so to order.

This section indicates that any person may be ordered to pay maintenance. The question is who is any person? Only husband or can a wife be ordered to pay maintenance to her husband? The answer is to look at the list of persons who are responsible to maintain a wife and children. Under Islamic law, if a husband/father is not capable of paying maintenance due to the above, the next person who is responsible to maintain his family are as follows:

- (i) His own father (i.e. the father-in-law or the children grandfather)
- (ii) His elder or younger brother from the same father and mother (i.e. uncle to the children on the father’s side)
- (iii) His nephew (i.e. his brother’s sons);

³ Riwayat Bukhari and Muslim

⁴ Quran: Al-Ahqaf: 15

⁵ Islamic Family Law (Negeri Sembilan) Enactment 2003.

(iv) His uncle (i.e. children's grand uncle); and other person within the hierarchy downwards.

Hence, under Islamic law, if a husband had gone missing and does not pay maintenance, the wife may ask from her father-in-law to support her and her family. It is his duty and responsibility. If the husband's family cannot afford it, it shall be the responsibility of the state (*Baitulmal*)

Section 62 provides that in determining the amount of any maintenance to be paid, the court shall base its assessment primarily on the *means and needs* of parties, regardless of the proportion the maintenance bears to the income of the person against whom the order is made.

Hence when assessing the amount to be paid, the court will look at the wife's needs and see whether the husband can afford it. Whether or not a wife is working does not seem to have an effect on the maintenance she is to receive from her husband. This is because the obligation to maintain is of the husband and it is immaterial whether or not she is earning an income. According to Islamic law, a wife loses her right to maintenance if she is *nusyuz* or disobeys her husband. According to the opinions of 'Abd Fatah Amru, a contemporary Muslim scholar, a working wife is not entitled to maintenance if her husband does not permit her to work. If she is working before marriage, upon marriage her husband has a right to ask her to stop working and if she does not stop working, she will not be entitled to maintenance from her husband.⁶

Mustafa ShÉlabÊ in his book added that if a wife works from home or at home like sewing, writing novels or gardening which does not disturb her daily routine, then she does not lose her right to maintenance.⁷ In Malaysia as many women are working before marriage and carried on working due to financial constraints as well as family financial needs, a wife does not lose her right to maintenance. This is also the same in Egypt.⁸ The question that follows is whether as a working wife she waived her rights to be maintained by her husband and overburdened herself with extra responsibilities of supporting her family. By shouldering all the responsibilities a wife may not be able to perform her own responsibility as a wife and mother. She also has to do two jobs at any one time or sometime three but only get paid for one especially when she is only doing 'house work' or her part-time or informal jobs like sewing which were not considered as working. She still has to pay income tax especially when she is earning a substantial amount but does not get sufficient tax deduction as her husband has the right to get the deduction first. The informal jobs do not entitle her to get employee benefits and she has no insurance. Many working wives in Malaysia today are also overburdened by husband debts and other financial problems.

Islamic law has made it clear that a wife shall be maintained by her husband. She is also entitled to a house maid as decided in the case of **Noor Bee V Ahmad Sanusi**⁹ where the Judge said the followings: “

⁶ 'Abdul Fatah 'Amru, *al-Siyasah al-Shar'iyah Fi al-Ahwal al-Shakhsiyyah*, hlm. 90.

⁷ Muhammad Mustafa Shalabi, *Ahkam al-Ushrah*, hlm. 429.

⁸ Zakiy al-Din Sha'ban, hlm. 319.

⁹ 1 JH [1978] 63

matrimonial property recognised by hokum syarak is based on services and living together as husband and wife. The wife looks after the house and the husband goes out to work to earn a living to support his family. According to hokum syarak a wife has a right to a house maid in assisting her to manage and look after the house. Otherwise, work such as cooking, washing and managing the home considered as work under the husband's responsibility." (Translated)

In the case of **Haminahbe v Shamsudin**¹⁰ and **Yang Chik v Abdul Jamal**¹¹ the opinion from the Book of al-Majmuk written a An-Nawawi, a renounced Shafie scholar, was adopted as follows:

" It is not obligatory for the wife to work such as making bread, pounding wheat, and others.. because the marriage vows for a woman is to live happily with her husband, not obligatory upon her other than that like doing house work such as cooking and others..."

At present in Malaysia a working wife may lose her right to maintenance if she carry on working without her husband permission but at the same time what she is doing may not be considered as a job and she is not given any privileges or considerations as an employee. She may increase family income but in many circumstances not covered by insurance and may be sued for negligence etc. It is suggested that if a wife is a full time house wife that devoted herself to her family, she must be considered working as a full time house wife is a job under the husband's responsibilities. She must be paid a salary and considered as '*protected*' under the law.

Conclusion

A Muslim wife does not have to work and she has a right to be fully supported by her husband. At present many Muslim women are working as well as being married. They are working with the permission of their husbands. However, those who are working part-time or from home run the risk of not getting any considerations any protection under the law evethough she have contributed to family income.

¹⁰ 1JH[1979] 71

¹¹ 6JH[1986] 146