Legal Entitlements of Wives In The Classical Islamic Family Law

Mansur Isa Yelwa¹ & Najibah Mohammad Zin²

ABSTRACT: This paper addresses the presupposition that without the codified laws of modern Islamic family law, women would end up wandering in pursuance of their legal entitlements in marriage as no concern was given to their rights in the classical law. It proves that such codified laws that protect the conjugal rights of women were extracted from the classical texts of Islamic jurisprudence. Accordingly, the paper brings forth a set of Shari’ah rulings on wives’ rights in the absence of a regulated family law framework for concerned jurisdictions. Textual authorities and juristic dicta are translated, quoted and vividly analyzed comparatively, outlining the diversity of Islamic law within its various Schools of Thought. Legal entitlements covering maintenance, clothing, shelter, sexual relations and other essentials are discussed in depth.

Keywords: Classical law; Marriage; Women; Rights; Jurists

Introduction

The fundamental philosophy and objective of the Islamic family law is the realization of a harmonious and fruitful marital life where rights are protected as pointed out by Ibn al-Arabi.³ The basic principles of the Islamic family law are analysed in the light of textual authorities that enshrine certain entitlements designated as fundamental rights of the spouses in the marriage institution. Islamic family law guides the spouses towards the rights of one another.⁴ It directs men towards the direction of

---

¹ PhD Researcher, Ahmad Ibrahim Kulliyyah of Law, International Islamic University Malaysia, email: abuabdirraheem@gmail.com
² Professor, Ahmad Ibrahim Kulliyyah of Law, International Islamic University Malaysia
fairness, kindness and mildness to women. At the same time, it directs women towards obedience, faithfulness and commitment towards the husband. By knowing and applying these qualities, men and women become responsible spouses enjoying a blissful marriage union. A man cannot attain the status of a responsible and model Muslim husband without rendering the legal entitlements of his wife accordingly. The woman on the hand attains the status of a responsible and model Muslim wife when she becomes obedient to her responsible husband accordingly. It is rightly observed that most people among the Muslim folk lack adequate awareness of the rights provided for the wife in Muslim marriages. Many are aware of such rights provided for the husband. However, the rights of wives need more concern than those of men. This is because men are given a better position in the marriage institution to safeguard their rights, having given the privilege of leadership in the family, the right to polygamy and the right for unilateral divorce. The Islamic classical texts have a detailed provision for the protection of the wives’ marital rights. These provisions will be analysed here based on the juristic opinions available in the various texts of Islamic jurisprudence. It will be a comparative analysis across the prominent Schools of Thought, but with special reference to the Maliki School. These entitlements include the protection of their rights to maintenance, housing, sexual relations, other essentials and their personal dignity.

**Right to Maintenance (Al-Nafaqah)**

Maintenance is a fundamental entitlement of the wife in marriage as enshrined in the basic sources of Islamic law. Husbands are duty bound to bear the maintenance expenditure of their wives throughout their marital lives. This is in accordance with the provisions of the Qur’an and Sunnah which commanded those who cannot afford to support the wife not to marry in the first place. Instead, they are required to persevere, keep chaste and fast. In the Qur’an, Allah says:

“And let those who find not the financial means for marriage keep themselves chaste, until Allah enriches them of His Bounty.”

---

7 Al-Nafaqah is defined as spending money or it’s like for the expenditure of one’s self, his family or another, in terms of feeding, clothing and other essentials. However, in the context of this article, maintenance is confined within the meaning of feeding and clothing. Other entitlements are discussed as separate issues. See: al-Jurjānī, ‘Alī Bin Muhammad, *al-Ta'rīfat al-Fiqhīyyah*, (Beirut: Dar al-Kitāb al-‘Arabi, 1405 A.H.), at 57.
This verse indicates that a person who is not well off to bear the financial responsibilities of marriage is advised to remain chaste and endure the hardship of his bachelorhood until he gets the means to do so.

In a Hadith, Abdullah narrated thus:

“We were with the Prophet while we were young and had no wealth whatever. So Allah’s Apostle said, “O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power.””

The Hadith sheds light on the preceding verse teaching that young men are encouraged to get married only when they have the means of doing so. If however, they cannot afford its responsibilities, they should alternatively fast as a means of suppressing their sexual libidos. In the Qur’an, Allah declares that men are responsible for women.

“Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means.”

The verse commands men to protect the rights of women under their marital care emphasizing that the protection status is given to them due to their spending from their wealth in supporting their wives by means of maintenance. It is inferred from the verse that a man who does not fulfil the obligation of maintenance is not eligible for the status of being a protector over his woman. Hence, an illegible man lacks the quality of being a husband. In a Hadith, Abdullah Ibn ‘Amr said: I heard the messenger of Allah (peace be on him) saying:

“Sufficient it is as a sin for a man to leave his family starved.”

By this Hadith, it is morally reprehensible in the face of Islamic law for a man to neglect the maintenance responsibility of his family.

---

8 Qur’an, 24:32.
10 Qur’an, 4:34.
11 Al-Ḥākim, Muhammad Ibn ‘Abd-Allah al-Naysābūrī, al-Mustadrak ‘alā al-Saḥīḥayn, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1990), Vol. 4, at 545. He added that it is Sahih in accordance with the conditions of Bukhari and Muslim, though they did not report it.
As regards the provision for the husband’s obligation to provide food and drink, authorities from the Qur’an and Sunnah establish the basic principles. In the application of these principles, juristic opinions are sought in determining the sphere of their applicability and the extent of the interpretation of their context. For instance, the Qur’an makes a general statement in its provision for the mandatory right of wives to maintenance. It says:

“Let the rich man spend 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.”

The law, by virtue of this verse, limits the amount of sufficiency in maintenance provision within the financial status of man. Thus, it does not impose on him to provide beyond his capacity and does not accept what is below such capacity. The Hadith contains similar provisions as well. The Prophet (peace be on him) is reported to have said:

“Fear Allah regarding your women for you have taken them by Allah’s covenant and were allowed to enjoy with them sexually by Allah’s word. You have the right on them they do to allow anyone you dislike to sit on your mat if they do that, then discipline them leniently. They have the right to be spent for and to be bought clothes in what is reasonable.”

It teaches that it is a religious obligation on every man to handle the responsibility of his wife’s maintenance with trust as if the husband is the custodian of the wife’s right. It also shows that provision of maintenance is not a privilege for women, but a right. In another narration, Bahz bin Hakim narrated that he asked the Prophet (peace be upon him) saying:

“O Messenger of Allah what is the right the wife of one of us has?” The Prophet (peace be upon him) said: To feed her when you eat, buy her clothes when you buy for yourself.”

The Prophet here explains the meaning of the verse quoted above that the minimum requirement of maintenance sufficiency is where the husband

---

12 Qur’an, 65:70.
ensures the satisfaction of his wife in food and clothing just as he takes care of himself in that respect.

The scope of Islamic law protection of the wife’s right to maintenance is widened in its provision that the wife is permitted by law to take her due from the husband’s wealth even without his consent and against his will. This principle is derived from the decision of the Prophet (Peace be on him) who judged in favour of a wife who lodged her complaint before him against her husband’s attitude in relation to her right of maintenance. The fact of that case was that Hind Bint Utbah lodged a complaint before the prophet (peace be on him) that her husband, Abu Sufyan, was a miser and did not provide sufficient maintenance for the family. The Prophet (peace be on him) judged that she had the right to take on reasonable terms, that which would be sufficient for the family from his wealth even if it would be without his knowledge and consent.15

The popular view among many Maliki jurists is that the husband is obliged to provide sufficient feeding and clothing for each of his multiple wives according to her personal needs considering both his income and her status. In their opinion, the husband’s income is not the only considerable factor in determining what is due for the wife. Thus, if the social and economic statuses of the wives differ, then the husband is required to provide for each wife what is relevant for her status according to the background of her family. Al-Šāwī elaborates the position of the Maliki jurists in this regard where he said:

“The custom (for maintenance) is considered in accordance with the husband’s means as well as the wife’s status. Thus, if he is rich and she is poor, he should elevate her from the status of the poor. And if he is poor, he must provide for her such maintenance that indicates her poor or rich status. Therefore, it is not obligatory on the rich man to provide for the poor what equalizes the maintenance of the rich woman (so long as he elevates her status from that of the poor). And it is not sufficient for the poor man to provide for the rich woman the like of a poor woman’s maintenance. By contrast, he must elevate her status from that of the poor woman as much as he can.”16

This view is predominant among the later Maliki jurists even though it is technically not in the interest of justice. This is because considering the status of the husband and the wife at the same time can be detrimental to

16 Al-Šāwī, Ahmad Bin Muhammad al-Mālikī, Bulghah al-Salik li Aqrab al-Masālik, (Beirut: Dar al-Fikr, 1990), Vol. 6, at 144.
either the husband or the wife or both, as the case may be. Thus, a husband whose means of income is lesser than his wife’s, would be thrown in hardship if he is obliged to elevate the status of his wife according to her rich background. Also, the practicability of justice among multiple wives will be impossible if each wife is treated in accordance with her economic background and not in accordance with the background of her husband. The majority view of the early jurists even among the Malikis is that this opinion is contrary to the principle of justice and as such, the husband, on whose back is the burden of maintenance, is the one whose economic status determines what is due for his wives from what Allah has provided for him. This opinion is not only consistent with the clear Qur’anic provision, but is also supported by Imam Malik’s personal opinion as well as the opinion of the other Schools of Thought. Islamic law requires that if the husband has more than one wife, he is required to treat them fairly and equally in terms of maintenance. In this vein, the prophet (peace be upon him) says:

“Whoever has two wives but leans unduly to one of them will come on the Day of Judgment with half of his body leaning.”17

Similarly, the Hadith of ‘Aisha (RA) tells us that the Prophet (peace be upon him) used to divide rights among his wives equally and say:

“O Allah this is my division concerning what I possess, so do not blame me concerning what you possess and I do not.”18

The two authorities indicate that man has to be cautious of the gravity of injustice which results from undue inclination towards a particular wife to the detriment of her co-wife. Going by these authorities, in al-Mudawwanah, Imam Malik recommended that the amount of expenditure for maintenance should rather be in accordance with the financial status of the husband, not in accordance with the status of the wife herself.19

Feeding here includes that the husband is obliged to provide his wives’ daily sustenance of the grain that is the staple food of the town in which they live. If a wife demands for something other than the staple food of the town, the husband does not have to provide it for her. He is also obliged to cover the expenses of grinding it into flour and baking it into bread (if it be of their customary means for instance) even when she is used to doing it herself, as there would otherwise be need for this expenditure.

17 Abu Dawud, Hadith no. 2188.
18 Abu Dawud, Hadith no. 2136.
Also, he must buy the foods that normally accompany a particular variety of food to make it serviceable and agreeable, as much as is customary in the town of water, meat, oil, and so forth. The wife also deserves cooking implements and utensils for eating and drinking. It is obligatory for the husband to give his wife the expenditure for her support at the first of each day. The quantity of each of the afore-mentioned commodities is determined by the custom of the town where they live. If husband and wife agree that he gives her monetary compensation in place of the above-mentioned things then she is entitled to it and this is permissible.\(^\text{20}\)

Where the wives are plural, their individual needs may vary according to the quantity of their consumptions, depending on their physical or biological differences. Similarly, their social status may vary in respect of quality, depending on their geographical or family status and background. If the husband provides for each one what she is due, there is no harm in additional gifts he may wish to give to some exclusively.\(^\text{21}\) It should be noted that this rule applies where the wives live in separate houses. However, if they live together in the same house sharing in cooking and the like, the husband is recommended to equalize between them in both quantity and quality to avoid chaos and hatred in the family.\(^\text{22}\)

As regards clothing, the wife is entitled to the kind of clothing that is customary in town for dressing oneself. What is obligatory is the amount necessary for the woman, which varies according to her stature as to whether she is tall or short, thin or fat, and varies with the hot or cold climate of various towns as well. Al-Dasūqī summarized the principles regarding what is considered sufficient in clothing for the wife where he said:

“(The minimum required) clothing is estimated at twice per year, one in the winter that which is relevant, and another in the summer that which is relevant. (That is) if one of them is not befitting for the two (seasons), otherwise, one is sufficient.”\(^\text{23}\)


\(^{22}\) Ibid.

This implies that what is required as the minimum entitlement of each wife for clothing is once in every year in case there is no requirement for addition due to seasonal changes. Otherwise, she is entitled to new clothing at every seasonal change that requires a special dress. This, he added, includes all that is attached to make a full dressing, such as the shirt, wrappers, skirt, under-wears, head scarf, etc. depending on the custom. Apart from what he will provide for her adornment to wear at home, a Shari‘ah-compliant dress is specially required for her prayers. The dress she requires for her outings is, according to some Maliki jurists, not the husband’s responsibility because he is responsible for what she wears for him in his house. This opinion is however contrary to Malik’s personal opinion in case of a well off husband.

The provision of the Maliki classical texts with respect to other essentials is to the effect that the husband is responsible for providing the ingredients required for cooking, all that it requires in making a complete make-up in dressing, health care items and the like. Regarding this, al-Ṣāwī elaborated the principle in the following words:

“Now that you know it is obligatory on the husband to provide maintenance according to the custom, she is entitled to water for drinking, bathing and washing of her clothes, cooking utensils, hand and also for ablution. And (also requires) oil for applying in the body and for consumption. And (also requires) fire from either wood or other means according to the custom, and food ingredients such as salt and onions…”

This shows that the Maliki School requires the husband to be responsible for everything the wife requires to complete the meaning of maintenance. These consist of what she needs of her healthcare, articles for personal hygiene, cosmetics for cleanliness and adornment, etc. In detail, they include oil for her body and hair, shampoo, a comb to keep her hair clean, the kohl for her eyes, etc.; of the kind and amount customary in town, in order to prevent harm to herself and keep herself clean and tidy. The husband is also required to provide perfume and deodorant or the like to

---

24 Ibid.
27 Al-Ṣāwī, Vol. 6, at 146.
stop disliked odour.\textsuperscript{29} The controversial issue upon which the Maliki jurists are opposed in this context is the issue of health care. According to al-Muktasar and its commentaries, the husband is not responsible for the medical expenses of his wife.\textsuperscript{30} Even though this opinion is popular among the jurists of the four Schools, it can be criticized as it lacks logical strength. If the husband is agreed to be responsible for minor things such as the eye kohl as completion of maintenance, then the requirement for the wife’s health care should be more important especially where the sickness originated under his responsibility. Of course the case may sound different where such sickness is a chronic one that deprives him from enjoying the fruits of husbandhood or that it originated when she was under the care of her family. Fairness suggests that the husband shall bear his wives’ medical expenses such as doctor’s fees, the purchase of medicine and so on and so forth. Wahbah al-Zuhayli canvassed on this issue opining that what could be a right decision of \textit{ijtihad} in the past may not necessarily be right in the contemporary era. Thus, if medical care was not that important during the time of the past jurists, the reverse is the case in the present time. Based on his sound \textit{ijtihad}, he strongly upheld the argument that a wife’s medical expenses are a responsibility on the husband.\textsuperscript{31}

Right to Housing (Al-Suknô)\textsuperscript{32}

The classical law enshrines that every wife is entitled to a convenient housing in accordance with her status. Her status however does not warrant her to demand that which surpasses the limit of the husband’s capacity as discussed earlier based on the preferred view. The Qur’an provides the basis of this principle in the following verse:

\begin{quote}
Lodge them where you dwell, according to your means.
\end{quote}

Although this verse was specifically revealed for the case of a divorced wife, its application is general. It serves as an emphatic provision on the incumbent wife’s right to the house to live in. On the application of the verse, Imam Malik made the following comment:

\begin{quote}
“It means the irrevocably divorced women who have been impeded from their husbands so that they cannot take them back and she is not pregnant. She has the right to be lodged, but has no right of maintenance and clothing, because she is
\end{quote}

\textsuperscript{29} Ibid. See also: al-Juzayrî, Vol. 4, at 427.
\textsuperscript{30} See: al-Dasuqi, Vol. 10 at 299.
\textsuperscript{32} \textit{Al-Suknā} is an abode given to someone as accommodation to live in for free. See: Ibrāhīm Muṣṭafā, Ahmad al-Zayyāt, Ḥāmid Abdul-Qādir and Muḥammad al-Najjār, \textit{al-Mu’jam al-Wasiṭ}, (n.p., Dār al-Da’wah, n.d), Vol. 1, at 440.
\textsuperscript{33} Qur’an, 65:6.
impeded from him… But if she is pregnant, then she has the right of maintenance and clothing and lodging until her iddah period expires.\textsuperscript{34}

The rationale behind the relevance of this provision is that if an irrevocably divorced wife is entitled to such right during her iddah (waiting period), then the existing wife is more entitled to such right a fortiori. The commentary of Imam Malik on its application indicates that the wife, even after divorce is entitled to the right of housing. If the divorce is revocable then she is entitled to all rights with the exception of time division. If it is irrevocable, then she is only entitled to housing right so long as she remains within the waiting period. Pregnancy guarantees for her the right of maintenance, clothing and housing even if irrevocably divorced considering both her right and that of the unborn child.

The wife is obliged to stay in the lodgings her husband arranges for her. According to some jurists, if she had servants in her father’s house, the husband is obliged to provide servants for her. However, if the husband is not financially capable to bear this, the wife is obliged to bear the responsibility of cooking and the like for the family.\textsuperscript{35} All jurists agree that a polygamous husband is obliged to prepare a separate house for each of his wives. The entitlement of each wife to a separate house is not a matter of privilege but a right.\textsuperscript{36} These rules conform with the prophetic tradition earlier cited which shows that all the prophet’s wives lived in separate house and he visited each one in her house. Jurists added that if he has a single building comprising of sections, each having separate bedroom, toilet, kitchen etc. and is demarcated from the others, it is sufficient and the husband has the right to dwell them therein. But if the house is one apartment with separate rooms but common toilets and kitchen, the husband can dwell them therein only on their consent.\textsuperscript{37} Dwelling them in a single room is generally not allowed. It can only be allowed in case of necessity like in a journey or in emergency situations.\textsuperscript{38}

However, if the prevailing custom warrants that multiple wives are dwelled in single apartments with their consent, then, according to the

\textsuperscript{37} Al-Juzayrī. Vol. 4, at 193-194.
\textsuperscript{38} Ibid.
principle of jurisprudence, silence may amount to consent.\textsuperscript{39} But, if any of the wives declares her disapproval afterwards, the husband has no right to compel her to live with her co-wives, except if it was a condition stipulated earlier. This principle is crucial in places like Nigeria, where the predominant custom is that wives live together in the same compound, sharing things together, and yet they live in amity and mutual understanding. However, the general rule should be strictly applied in homes where such peaceful coexistence among the wives is not realistic. This argument is based on the jurisprudence principle that customs are source of law.\textsuperscript{40}

If the husband has a separate house or room for himself, it is allowed for him to invite any of his wives in during her due time.\textsuperscript{41} The Maliki jurists however, hold the view that it is preferable and recommended that the husband should go round his wives to sleep in their places during their respective times as was the practice of the prophet (peace be on him). Hence, he has no right to compel them to meet him in his place unless with their consent.\textsuperscript{42} In any case, it is her right to have sexual satisfaction from her husband, but it is not obligatory for the husband to sleep with her on her bed even in her house. He has the right to invite her to his bed and she is obliged to submit herself at his convenience. The prophet (peace be on him) says that if a man invites his wife to his bed but she refuses to come and he spends the night angry with her, the angels will curse her until the next morning.\textsuperscript{43}

It is important to note here that fairness in all the aforementioned rules governing sexual relations, maintenance and housing are not in the layman’s interpretation. That is to say it does not mean that the quantity and quality of the \textit{nafaqah} must always be same and equal. It rather means that he must provide for each wife what is sufficient for her according to her need and according to his means. For instance, they may vary in terms of their sexual desires, the quantity of their food consumption, quantity of clothing, number of children for the purpose of shelter, etc. Once the minimum requirement of law is provided, there is no harm in any excess with which he may wish to support any of them depending on the variations of circumstances.\textsuperscript{44}

\textsuperscript{41} Al-Hattāb, Vol 5 at 259.
\textsuperscript{42} Al-Dasuqī. Vol. 2 at 342.
\textsuperscript{43} Bukhārī, Vol. 7 at 30. No. 5193; Muslim, Vol. 2, at 1060, Hadith no. 1436.
\textsuperscript{44} Ibn Hajar, Vol. 9, at 313; al-Juzayri, Vol. 4, at 185.
Right to Sexual Relations and Division of Time (Al-Qasm)\(^{45}\)

Sexual relations between married spouses is not merely the husbands right. Rather, it is a mutual right that both husband and wife have upon each other.\(^{46}\) The Qur’anic verse earlier cited which states that the husband and wife are garments for each other clearly indicates that the wife has a right over her husband to satisfy her sexual desires, according to his capacity. The other verse that says both spouses have rights upon each other further indicates that the husband’s right on his wife to submit herself to him for his sexual desires also applies for the wife on him. In the hadith, the Prophet (PBUH) encourages the husband that he gets the reward of *sadaqa* (charity) whenever he has sexual intercourse with his wife.\(^{47}\) Also, when Abu al-Darda’ deserted his wife and resolved to spending his nights praying, the Prophet (PBUH) told him that “verily, your wife has a right on you, therefore, render the right to everyone that has a right on you.”\(^{48}\) The preponderant view among the Maliki jurists is that sexual intercourse is an obligatory right of the wife on her husband.\(^{49}\) Among all jurists across all Schools of Thought, the most preponderant opinion among them is that it is obligatory on the husband to answer his wife’s call when she requests for sexual satisfaction by any means understandable to him, when he is physically able to do so. However, the law does not compel any of the spouses anything above their sexual capabilities even upon the request of the other spouse. Therefore, it is not permissible for a husband to desert his wife’s bed for a long time in which she is harmed. If he does so without a sound reason, then he is sinful and he deserves Allah’s Punishment. Also, the wife has the right to apply for the dissolution of the marriage in case her husband deserts her in bed. If his desertion lasts for four months, his case becomes *‘ilā‘* (oath of sexual abstinence from wife) which is judged by the Qur’an in the following:

> “Those who swear to abstain from their wives have four months of waiting. Therefore, if they revert back, Allah is Oft-Forgiving, Most Merciful. And if they resolve to divorce, then Allah is All-Hearing, All-Knowing.”\(^{50}\)

In the opinion Imam Malik, where the husband refuses to have sexual intercourse with his wife for four months and she takes the case to court, the

---

\(^{45}\) *Al-Qasm* in juristic terminology refers to the equal sharing of the husband’s time (especially spending the nights, otherwise known as *al-mabit*) among his multiple wives. See: al-Jurjānī, at 224.


\(^{47}\) As narrated by Abu Dharr al-Ghifari in: Muslim, Vol. 2, at 697. Hadith no. 1006.


\(^{50}\) Qur’an, 2:226-227.
The judge will give judgment in her favour dissolving the marriage automatically. Imams Shafi’i, Ahmad and Dawud al-Zahiri opine that she should not be divorced; rather, the husband should be compelled through court sanction and punishment until he reverts to his wife. But Abu Hanifah in the contrary views the divorce occurs automatically with the expiration of the four months period. The main objective of the jurists in this argument is the protection of the wife’s sexual right which, according to them, is more crucial than her right to maintenance.

If he has more than one wife, all Muslim jurists have agreed that justice between wives in time division is obligatory on the husband. It is considered the basis and the most important aspect of justice in polygamy. They based their decision on the Qur’anic verse that says: “And live with them on equitable terms.” The earlier cited Hadith that says whoever has two wives but leans unduly to one of them will come on the Day of Judgment with half of his body leaning is also relevant. In his practice, it is narrated that the prophet (peace be upon him), used to be just in this respect even when he was seriously sick. The wisdom behind this religious emphasis is clear in that no right of a married woman is more important than this. The law has mandated her to leave her family’s home to stay with the husband in a new home that is expected to be her last abode for life. All other rights she may be entitled to, pertaining to maintenance and the rest, are available in her parental home. The sexual right she has is the only remaining right that is not legally available anywhere, save in the husband’s home and can only be obtained from a single man, the husband. This shows the significance of this matter in a polygamous marital life where clash of interest is apparent. Hence, division of time is considered the most important matter in the right of wives in polygamous marriage.

Ibn ‘Abd al-Barr, a prominent jurist of the Maliki School summed up the laid down principles regarding the husband of multiple wives in this regard.

“It is obligatory on the husband to treat his wives fairly in time division, for each one is a day and night, and he cannot add on that except with their consent. He cannot join them in one house except with their consent. The wife’s sickness or

---

52 Al-Zuhaili, Vol. 9, at 6851.
53 Qur’an, 4:19
54 Supra.
55 Although he was not obliged to do so, as stated in Surah al-Ahzab (33:51); it is narrated that he used to be lifted by his aides around his wives’ houses until they resorted that he remained in the house of A’isha. See: Bukhari, Vol. 9 p. 317; Muslim, vol. 4 at 1893.
her menstruation cannot negate her right as he must stay with her in her day and night times.”

One of the principles pointed out in this juristic dictum is that the basic time considered by the law in time division is the night, with the day being an adjunct. This is because the night is the period for sharing bed with the wife in sleeping and for physical rest after the day job. Allah says:

“He it is who has appointed for you the night that you may test there in, and the day to make things visible (to you).”

“And we have made the night is a covering (for privacy and rest). And have made the day for your livelihood.”

The two verses prove that the husband’s night time is more significant for the wives in terms of sharing. However, some jurists added that it is allowed if he decides to make the day as his basic time for division as the case of someone who makes their living at night, provided he deals fairly.

In line with Ibn Abd al-Barr’s statement, the time division is a right of every wife irrespective of her health or age status. All wives are included in taking turns, whether a wife in her period or postnatal bleeding, one who is ill, or one who cannot have intercourse because of a vaginal birth defect. However, if there is understanding, the wife can voluntarily relinquish such right in favour of the husband or a particular co-wife. It is recorded that A’ishah said that when Sawdah bint Zam’ah became old, she forfeited her days in favour of A’ishah, and the prophet used to spend Sawdah’s night with A’ishah. Based on this Hadith, it is allowed, according to the jurists, for a wife forfeit her right of division to the husband or give it up for any of her co-wives. If the right is given in favour of the husband and he accepts, he can spend it where ever he wishes. But if she gives it in favour of a particular woman among her co-wives, the husband cannot spend it elsewhere. Also, the woman for whom it was given cannot reject the husband, because his sexual right on her was only interrupted by the right of the other wife who has now relinquished on her own. It is also allowed if agreement is reached that she gives up her right or part thereof in lieu of a

57 Qur’an, 10:67.
58 Qur’an, 78:10-11.
60 Bukhari, vol. 9 at 312.
61 Al-Hattab, Vol. 5 at 257.
It is important to mention here that Islamic law requires equality between the wives in this division even if a non-Muslim (kitabiyah) or a slave woman exists among them. In Mudawwanah, it is recorded that Imam Malik said even where the wives are from different religious background and from different social freedom status they should be treated equally in time division.

When a fresh polygamy takes place, the prophetic tradition provides that the newly married virgin wife has the exclusive right of seven consecutive days at start with the husband and three days in case of a bride who had a previously marital experience. This serves as a courtesy for the new wife that is newly introduced into the new family. Imam Malik expounded that when the husband begins spending the nights afterwards, he cannot decide on more than one night for division except with the wives’ consent. This means only one day is within the right of the husband. When he wants the division to be more than that, then he has to consult the wives for what they may wish to decide. Whenever he spends the night or nights as the case may be with one wife, he is obliged to spend the same with the others, giving equal time to each one.

By virtue of the earlier discussed verse of Surah al Nisa that says: “You will never be able to do perfect justice between wives even if it is your ardent desire”, the Maliki jurists elucidated that its applicability is to the effect that the husband cannot be compelled to deal equally between his wives in sexual relations, as it is naturally beyond his control. However, it does not warrant him being negligent. A’isha narrated that the messenger of Allah used to visit each of his wives on daily basis and repose to her though without sexual intercourse. The Malikis are of the view that this Hadith deals with one of the Prophet’s peculiar rights and it is not allowed for a polygamous husband to enter and stay with his wife outside her due period except in case of necessity as same amounts to injustice.

However, al-San’ani holds a contrary view upholding that of the Shafi’is and Hambalis. He says the prophet (peace be upon him) is a model in his actions for his people, as such he husband is allowed to stay with any of his wives even outside her due time, during the day and can touch her as he wishes, on the condition that he cannot have intercourse with her and he

---

62 Ibid., at 258.
63 Malik, Vol. 6 at 13.
64 Bukhari, Vol. 7, at 34. Hadith no. 5213.
67 Qur’an, 4:129.
69 Ibid., at 208.
70 Al-‘Abdari, Vol. 4, at 14.
shares the same conduct for other wives.\textsuperscript{71} Jurists are also of the opinion that the husband is not allowed to sleep with two women on one bed.\textsuperscript{72} It is also forbidden according to the Maliki jurists for the husband to have sexual relations with one of his wives in the presence of another.\textsuperscript{73}

Jurists of the four Schools have divided on the preferred view with respect to the polygamous husband who wants to travel with one of his wives. The argument however relates to where there is clash of interest between the wives as to who should be chosen. If in that case one of them relinquishes her right, then there is no ground for contest. The difference of opinions comes up where each wife wants to be selected for the trip. Their argument is based on the Hadith narrated by Aishah that says:

“The Prophet (peace be upon him) used to draw lots between his wives when he wanted to travel, whoever wins the lottery, he would go with her.”\textsuperscript{74}

Based on this Hadith, jurists of the Shafi’i and Hambali Schools are of the view that the husband can only select the wife to travel with through drawing lots.\textsuperscript{75} In a dissenting view, the Maliki School is of the view that he is entitled to choose whoever he likes; based on her suitability for the purpose of that journey and not based on his selfish aggrandizement.\textsuperscript{76} For example, her ability to assist him in accomplishing the mission of the trip, her ability to satisfy his sexual desire to protect him against unlawful means (like if one of the wives is within her postnatal or menstrual period and the chosen one is not), her ability to endure the hardship of the journey if any, etc., should be considered. Imam Malik elaborated his philosophy in this argument saying that it could cause a negative effect on the family if he were to choose and travel by lot if it falls on the most important pillar-wife; on whom the interest of his house, wealth and children depend.\textsuperscript{77}

Although it is disagreed by the Shafi’i and Hambali Schools, Imam Malik’s argument makes sense considering the fact that each woman has some peculiar benefits and may be better than another in a particular issue as is clear. However, the husband is required to select the accompanying

\textsuperscript{72} Zuḥaylī, Vol. 9, at 6594.
\textsuperscript{73} Al-Juzayrī, Vol. 4 at 193-194.
\textsuperscript{74} Bukhari, Vol. 3, at 208, Hadith no. 2593; Muslim, Vol. 8, at 112. Hadith no. 7196.
\textsuperscript{76} Malik, Vol. 2, at 190.
\textsuperscript{77} Ibid.
wife by drawing lots if it is a ritual journey, like that of pilgrimage or jihad.\textsuperscript{78} Lot also serves when there is disagreement among the wives and each one is suitable for the journey.\textsuperscript{79} If he returns home, a view among the Maliki’s says he is at liberty to choose where he wishes to stay.\textsuperscript{80} In another view, perhaps the preferred, he is required to stay at where he was before his journey. That is, if her turn was not complete, he should complete for her, otherwise, he stays at the next turn where he was supposed to be before he left.\textsuperscript{81}

**Right to Good Treatment (Al-MuʿĀsharah Al-ḤAsanah)\textsuperscript{82}**

Every wife is entitled to her husband’s good treatment and manners of good human relation for mutual respect and understanding. This is a right that both spouses deserve from one another and plural wives deserve individually from their husband. It is the taste of marital life and boosts love, harmony, understanding and tranquility in the marital life. Thus, it is not permitted for a man who cannot treat multiple wives equally by sharing his physical love and good manners between them in this regard to marry more than one wife. The significance of the quality of being humble, kind and friendly to one’s wives cannot be overemphasized in Islamic law. A good example for every husband in this quality is the Prophet (peace be upon him) who, though he had multiple wives of different status and backgrounds, none of them was shown discrimination, neglect, humiliation, degradation or segregation. Rather, his treatment to his wives was of honourable, noble, and superb nature. His wives were on tops in respect of honour, satisfaction, patience, modesty, and service.\textsuperscript{83}

In the Qur’an, Allah ordains men to honour their wives as He says: And live with them honourably.\textsuperscript{84} In the light of this verse, jurists unanimously agree that the husband is duty bound to act upon its provision. In his commentary on the verse, Ibn al-Arabi stated the following:

\textsuperscript{78} Ibid.
\textsuperscript{79} Ibn 'Abd al-Barr, Vol. 2, at 253.
\textsuperscript{80} Ibid.
\textsuperscript{81} Al-Dasuqi, Vol. 2, at 340. It should be noted from this argument that the question of drawing lots arises where there is conflict of interests. If all the wives agree on a particular wife to go and it coincides with the husband's choice, then there is no issue; all the law is advocating is for the wives' interests.
\textsuperscript{82} This juristic terminology is synonymous with 'ishratu al-Nisā’ and muʿāsharah al-zawfiyyah as is interchangeably used in juristic literatures. It denotes the good companionship of the husband towards his wife by rendering all the conjugal rights she deserves and being humble, lovely, faithful, kind and friendly to her. See: Qurtubi, Vol. 5, at 94.
\textsuperscript{83} Şafī al-Raḥmān al-Mubarakfūrī, al-Raḥīq al-Makhtūm (The Sealed Nectar ), [Trans. by Issam Diab], (Riyadh: Dar-us-Salam Publishers, n.d), at 315.
\textsuperscript{84} Qur’an, 4:19.
“Allah the Most Glorified has commanded husbands that when they marry women that the relationship and companionship between them should be a perfect and complete one. That is more relaxing in the heart, more comforting in the eye and more gratifying for (marital) life. This is obligatory on the husband. But this (principle) is not binding on him judicially (being a rule of morality), except where people are accustomed to their bad habit (of ill treatment against wives), then they (judges) can impose conditions on them and enforce them by oaths.”

This commentary is crucial in this context as it sets a principle that it is obligatory on the husband to treat his wife as a friend and associate with whom he shares his open and secret, his joy and sorrow and his well off and badly off situations. Thus, he is not allowed to share one part of these circumstances with one of his wives and share its opposite with the other. Ibn Kathir commented that this can be done by saying kind words to them, treating them kindly and making your appearance appealing for them, as much as you can, just as you like the same from them.\textsuperscript{86} Allah said in another verse, “and they have rights similar over them to what is reasonable.”\textsuperscript{87} The Prophet (peace be on him) said the best among you is he who is the best with his wives, and verily, I am the best one among you with my wives.\textsuperscript{88} It was the practice of the Messenger of Allah to be kind, cheerful, playful with his wives, compassionate, spending on them and laughing with them. The Messenger used to race with `A'ishah, as a means of kindness to her. She narrates this saying: “He once raced with me and I won the race. This occurred before I gained weight, and afterwards I raced with him again, and he won that race. He said, this victory is for that victory.”\textsuperscript{89} He taught them to be friendly to one another as members of one indivisible family. When the Prophet was at the home of one of his wives, sometimes all of his wives would meet there and eat together, and they would then go back to their homes. He and his wife would sleep in the same bed. He would remove his upper garment, sleeping in only his lower garment. He used to spend part of his night time talking and chatting with the wife whose night it was, after praying `Isha’ and before he went to

\textsuperscript{85} Ibn al-`Arabî, Vol. 2, at 244.
\textsuperscript{87} Qur’ân, 2:228.
\textsuperscript{89} Abu Dawud, Vol. 2, at 334. Hadith no. 2580.
sleep.\textsuperscript{90} Allah said to other men concerning his model attitudes in general: Indeed in the Messenger of Allah you have a good example to follow.\textsuperscript{91}

A critical issue that is very crucial in this context was raised by Ibn al-Arabi in his statement as quoted above where he said: “...but this (principle) is not binding on him judicially (being a rule of morality), except where people are accustomed to their bad habit (of ill treatment against wives), then they (judges) can impose conditions on them and enforce them by oaths.” This statement is very crucial as it sets a ruling that the Shari’ah Courts are at liberty to impose such conditions that can serve as protection for the wife’s right where it appears that men’s aggressive conducts against their wives erodes the society. The conditions imposed can stipulate for instance, that the man, during the sustenance of his first marriage cannot be permitted to practice polygamy. It can also stipulate that he must take an oath that he shall be fair to each wife if he is allowed to practice polygamy. In case of his non-compliance, the conditions can stipulate that the injured wife has the right to lodge a complaint before the Court, which will decide on whether she could be granted divorce or claim for damages. Imposing conditions in marriage for the purpose of protecting the interests of women is a known principle in Islamic law. In theory, the Prophet (peace be on him) says:

“Verily, the most deserving conditions to be fulfilled are those that make (women’s) private parts lawful for you.”\textsuperscript{92}

In practice, the Prophet (peace be on him) prevented his son in-law from marrying a second wife on the ground of his daughter’s protest against the proposed marriage. This is accordance with the narration of al-Miswar bin Makhrama who said that he heard the Prophet (peace be upon him) who was on the pulpit, saying:

“Banu Hisham bin Al-Mughira have requested me to allow them to marry their daughter to Ali bin Abu Talib, but I don't give permission, and will not give permission unless 'Ali bin Abi Talib divorces my daughter in order to marry their daughter, because Fatima is a part of my body, and I hate what she hates to see, and what hurts her, hurts me.”\textsuperscript{93}

It is understood from the two Hadiths that the right and interest of the woman should be given due consideration in marriage and that her family

\textsuperscript{90} Ibn Kathir, Vol. 2, at 240.
\textsuperscript{91} Qur’an, 33:21.
\textsuperscript{92} Bukhari, Vol. 7, at 26. Hadith no. 5151; Muslim, Vol. 4, at 140. Hadith no. 3537.
\textsuperscript{93} Bukari, Vol. 7, at 47. Hadith no. 5230; Muslim, Vol. 7, at 140. Hadith no. 6460.
or a relevant authority such as the court can stand on her behalf in stipulating conditions for the protection of her right in marriage.

The summary of this argument is that parents, guardians and judges who have the authority of giving out women for marriage are cautioned against unsuitable suitors who cannot treat wives fairly. Suitability between the proposed husband and wife in terms of character should also be considered so as to avoid subjugating responsible women in the hands of irresponsible men. The Prophet (peace be upon him) shows that only a man with good religious background and sound character should be given a righteous wife to marry. Others should be left until they become responsible and eligible to marry virtuous women. He said:

“If there comes to you a suitor with whose religion and character you are pleased, marry (your ward) to him. If you fail to do so, huge disorder and corruption will evolve (in the society).”

This Hadith instructs that assessment should be carried out on the character of men before authorising their marriages to avoid inconveniences that lead to social disorder. It also guides the guardians to a point that religious quality alone is not sufficient to make him suitable for marriage as this is a quality that affects his personal life. Hence, a man can possess the quality of religion and lack the quality of good human relation which is very crucial in marriage. For the security of the wife’s rights, in case there is uncertainty about his ability to handle polygamy, jurists have added that the proposed woman or her guardian can stipulate a condition of no-polygamy on the husband. However, the condition stipulated is not binding on the husband until it is enforced by oath. Al-Abdari made the following statement:

“Ibn Shās mentioned that among the conditions are those that do not relate to the contract (validity), such as a condition that he would not marry another wife on her or that he would not take her out of her town, he said: this type of condition is detested, but does not invalidate the contract, and is not binding unless it is accompanied with a consideration or oath.”

---

95 Al-'Abdarî, Vol. 5 at 438.
It is important to note from the above statement that stipulating a condition by a woman during the marriage formalization that the husband cannot marry another wife is allowed but detested. Furthermore, if she wants it to have a binding effect on him, then she or her guardian or the court should make it enforceable by relinquishing part of her dower in lieu of the agreement or should require him to take an oath of solemnization enforcing his undertaking. In case this condition has been stipulated and is breached by the husband, Imam Malik opined in al-Mudawwanah that if the stipulation contains a statement that she would have the right to terminate their marriage contract by divorce in case of breach of that condition, it would be effective even if she pronounces triple divorce on herself. He added that its effect depends on the stipulation, so, where it contains a clause that she can pronounce up to triple divorce, her pronouncement would be effective as triple divorce, and it would not avail him even if he denies that her pronouncement was not for triple divorce.  

Conclusion

From the foregoing detailed analysis of the textual authorities and juristic opinions, we have seen a comprehensive provision for the legal entitlements of married wives in the classical Islamic law. Only a few among the Muslims, from both men and women, are fully aware of these provisions. The provisions have enshrined an awesome legal framework that is sufficient to regulate Muslims’ marriage institution with respect to the protection of women’s conjugal rights. They are very crucial for scholars, spouses, Sharī‘ah judges and legal practitioners, especially in jurisdictions where the classical uncodified Islamic family law is applied. For those jurisdictions and beyond, it is strongly suggested that these provisions be further studied, improved, reviewed and codified in a detailed model for easy reference.

References

Abū Ḥayyān, Muhammad Bin Yūsuf al-Andalusi, al-Bahr al-Muḥīṭ fī al-Tafsīr, Beirut: Dār al-Fikr, 1420 AH

Al-‘Abdārī, Muḥammad Bin Yūṣuf Bin Abī al-Qāsim, al-Tāj wa al-Iklīl li Mukhtaṣar Khalīl, Beirut: Dār al-Fikr, 1398 AH
Al-Shāfi‘ī, Muḥammad Bin Idrīs, al-Umm, Beirut: Dār al-Ma‘rifah, n.d


