

**The Alimony and the legislative texts regulating it - a
comparative study -**

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Abstract:

This research paper aims to explain the concept of alimony and its ruling, In Islamic jurisprudence and Algerian family law, this paper concluded that maintenance is obligatory for the wife from her husband, once the valid marriage contract is concluded. The woman also has the right to demand childbirth expenses, as they are elements of maintenance. The amount of maintenance is according to the husband's ability, whether easy or difficult, and the wife's condition, provided that it is not less than the sufficiency level.

Keywords:

Maintenance; Ruling on Nafaqa; Amount of Maintenance; Coverage of Maintenance; Conditions for Obligatory Maintenance.

الملخص:

تهدف هذه الورقة البحثية إلى بيان مفهوم النفقة، وحكمها، في الفقه الإسلامي وقانون الأسرة الجزائري، حيث توصلت هذه الورقة إلى أنَّ النفقة واجبة للزوجة على زوجها، وذلك بمجرد إجراء عقد النكاح الصحيح، كما يحق للمرأة أيضاً المطالبة بمصاريف النفاس، باعتبارها من عناصر النفقة، ومقدار النفقة يكون على حسب قدرة الزوج يسراً وعسراً، وحال الزوجة، على ألا تقل عن حد الكفاية.

الكلمات المفتاحية: النفقة؛ حكم النفقة؛ مقدار النفقة؛ مشمولات النفقة؛ شروط وجوب النفقة.

INTRODUCTION

The wife has many and varied rights, both financial and moral. Among the financial rights is the right to maintenance, as this right is considered one of the greatest and most important rights, because it is related to what preserves human life, such as food, drink, clothing, shelter, and medicine. This right is linked to one of the five objectives or the five necessities, which is money, with which the remaining necessities are preserved, such as religion, life, mind, and offspring.

It is considered This topic is from Topics Which was taken care of by the jurists Old and new, so No book of jurisprudence is devoid of discussing the issues of expenditure characteristic General, And spousal support characteristic specially, The courts became crowded with Alimony issues ,and its thorny issues which does not It's gone raises

Problems Which prompts judges to apply analogy and diligence to address these issues in a sound manner, achieving justice and fairness to litigants by giving each party his right. The issues of spousal support are still the focus of attention of legal experts and a source of dispute among them. Law books, personal status laws, and family codes in modern countries do not lack discussion of spousal support issues. For these reasons, the subject of spousal support has been Worthy By studying and researching.

Based on the above, we pose the following question: What is alimony? What are the legal and legislative texts regulating it?

It is included in Under this problem there is a set of sub-questions, which are:

- what concept Maintenance in Jurisprudence Islamic And the law ?
- And what? she Its sections in Sharia And the law ?
- And what? she Legislative texts explaining it ?
- What is the punishment for someone who neglects it or refuses to pay it?

To answer this problem, we relied on in this Search on The curriculum Comparative The descriptive approach And inductive, and we adopted the following plan.

The first topic: Explaining the concept of alimony and its ruling, **The second topic** Conditions of alimony and the legislative texts regulating them.

The first topic: Explanation of the concept of maintenance and its ruling

The first requirement: The concept of alimony in language and terminology

The first section: Expenses in language: It is derived from the word “nafaq” which means prosperity. It is said that the commodity “nafaq” means it became popular¹. Expenditure includes what a person spends on his family and the like, as he wastes his money and takes it out of his possession to earn their living and meet their needs.

Expenditure includes what a person spends on his family and the like, as he wastes his money and takes it out of his possession to earn their livelihood and meet their needs, such as food, housing, clothing, medicine, and education².

1-Ibn Manzur: Lisan al-Arab, previous source, Volume 6, Chapter on the letter “nun,” Vol. 50, 4508.

2- Al-Zamakhshari Abu Al-Qasim Jar Allah Mahmoud bin Omar bin Ahmed: The Foundations of Rhetoric, Dar Al-Kutub Al-Ilmiyyah, Beirut, Lebanon, 1st ed., 1419 AH/1998 AD, Vol. 2, p. 295.

The second section: Definition in terminology: structure What a person must do towards his wife, children and poor parents in terms of food, clothing and shelter³.

and it is all What the husband spends on his wife, and his children, and his relatives, From food ,and clothing ,and a home, and everything necessary for living according to what is known among people and according to The husband's ease and difficulty.

Maintenance includes everything that a person must provide and offer to those whose expenses he is responsible for, such as food, clothing, housing, medicine, and the necessities and needs of life.

The second requirement: the ruling on maintenance

God Almighty and His Messenger, may God bless him and grant him peace, have commanded the care of this right in several verses and many hadiths because of its great importance in family life, as it is considered a basic factor in the stability, cohesion, and continuity of a

3-Abdul Raouf bin Al-Manawi, Stop on definition tasks, house The world of books, Cairo, 1st ed., 1410 AH 1990 AD, p. 329. Ibn Abidin Mohamed Amin, The Reply of the Perplexed to the Chosen Pearl, Explanation of Enlightenment of the Eyes, Dar Alam Al-Kutub, Beirut-Lebanon, 1st ed., 1423 AH 2003 AD, Vol. 5, p. 278.

family. Among the legal texts indicating the obligation of maintenance are the following:

The first section: The ruling on maintenance in the Holy Qur'an: There are many verses that stipulate the ruling on maintenance and command it to be given to those who deserve it.

God Almighty said: "...And for men They have a degree over them And God Dear and wise"⁴ The evidence from the verse is that granting men this degree is met by the obligation to give the woman a dowry, spend on her, and treat her well.

God Almighty has emphasized the obligation of spending on one's wife, saying: "men protectors and maintainers of women Because God has favored some of them on some And for what they spent of their wealth"⁵

Scholars have linked his guardianship over her to the obligation of spending, and therefore, if he is unable to spend on her, he is not her guardian. Based on that, she can request the annulment of the contract, because the purpose for which marriage was legislated has disappeared.

4- قال الله تعالى: ﴿... وَلِلرِّجَالِ عَلَىٰ نِسَائِهِمْ دَرَجَةٌ ۚ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾ [سورة البقرة 228].

5- ﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَىٰ بَعْضٍ ۚ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ﴾ [سورة النساء 34].

The verse clearly indicates that the annulment of marriage is proven in the event of insolvency in providing for the expenses, according to the Malikis and Shafi'is. and Hanafis disagreed with them on that, as they said that the marriage is not annulled.⁶ They cited the Almighty's saying: "But if he is in hardship, let there be postponement until it is easy for him to repay"⁷ She must be patient with him and give him time until he becomes wealthy. They confirmed their opinion with the words of God Almighty: "And marry those among you who are single"⁸ as God Almighty urged the marriage of the poor. This is clear evidence that poverty is not considered a reason for separation. If it were so, God would have permitted the marriage of the poor in the first place⁹.

6- Al-Qurtubi, The Compendium of the Rulings of the Qur'an, Al-Risala Foundation, 1st ed., 1427 AH 2006 AD, Vol. 6, p. 280. Ibn al-Arabi, The Rulings of the Qur'an, Dar al-Kutub al-Ilmiyyah, Beirut, Lebanon, 3rd ed., 1424 AH 2003 AD, pp. 1-530-531.

7- قوله تعالى: ﴿وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ﴾ [سورة البقرة 280]

8- قوله تعالى: ﴿وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ﴾ [سورة النور 32]

9- Al-Qurtubi, The Compendium of the Rulings of the Qur'an, previous source, Vol. 6, p. 59.

The obligation to spend on her is also indicated by the Almighty's saying: "The father of the child shall provide for them and clothe them according to what is acceptable"¹⁰

The verse is general in terms of the husband's obligation to provide for his wife who is under his protection, whether she breastfeeds or not, due to the empowerment and confinement, as she empowered her husband to have intercourse with her and did not rebel against him, and in return for that empowerment and confinement, he is obligated to provide for her, just as he is also obligated to provide for his wife who has been divorced with a revocable divorce as long as she is in her waiting period.

If she is irrevocably divorced, she is not entitled to maintenance unless she breastfeeds his child, as it is obligatory in return for breastfeeding.¹¹

God Almighty says: "And live with them in kindnes"¹²

10- قوله تعالى: ﴿وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ﴾ [سورة البقرة 233].

11-Al -Qurtubi: The Compendium of the Rulings of the Qur'an, previous source.G4,107.

12- قول الله تعالى: ﴿وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ﴾ [سورة النساء 19].

One of the things that achieves good treatment is the obligation to spend on her, without favors or harm, avoiding rudeness and harshness; because good treatment is considered a guarantee for the sustainability of marital life between them, since it is the nature of the soul to feel reassured, comfortable, and at ease with good treatment¹³.

The second section: The ruling on maintenance, the Sunnah of the Prophet and consensus

1_ The Sunnah of the Prophet: The Sunnah of the Prophet has clarified the ruling on spending and its obligation, in many texts, including: What was narrated by Abu Hurairah, may God be pleased with him, who said: The Prophet, may God bless him and grant him peace, said: "The best charity is that which leaves one self-sufficient"¹⁴¹⁵ "The upper hand is better than the lower hand, and start with those you support." The woman said: "Either feed me or divorce me." They said: "O Abu Hurairah, did you

13- Al-Qurtubi: Al-Jami' li Ahkam al-Quran, the same source, Vol. 6, 159.

14- What he left behind is wealth: meaning what is left over from the sustenance and sufficiency of the family, since if he gives this charity to the poor he is After that, he and they remained rich, without suffering any hardship because of it. See Ibn al-Athir: Al-Nihaya fi Gharib al-Hadith wa al-Athar, previous source. Part 3, p. 391.

¹⁵ - : قال النبي صلى الله عليه وسلم: «أفضل الصدقة ما ترك غنى واليد العليا خير من اليد السفلى، وأبدأ بمن تعمل»

hear this from the Messenger of Allah, may Allah bless him and grant him peace?" He said: "No, this is from Abu Hurairah's pocket."¹⁶

The hadith indicates that the husband is obligated to provide for his wife, and she has the right to request a divorce if he is unable to provide for her, or refuses to provide for her even though he is able to do so. She has the right to take herself to the judge and force him to provide for her or to divorce her.

The Prophet, may God bless him and grant him peace, permitted Hind bint Utbah to take from the money of her husband Abu Sufyan, who was stingy with her and did not give her enough for her and her children. The Prophet, may God bless him and grant him peace, said to her: "Take what is enough for you and your children in a reasonable manner"¹⁷

2_ Consensus: The scholars have agreed that the husband must provide for his wife, even if they differed on its amount, in exchange for detention and empowerment, since whoever is detained for a specific person, his expenses are on him, because he does not have time to earn his living by himself. The origin of this is the judge, the governor, and the speculator if he travels with

16- Al-Bukhari Muhammad bin Ismail, Sahih Al- Bukhari, The Book of Expenses, Chapter on the Obligation of Expenditure on Family and Children, International Ideas House, D.T.T.,number,5355, p. 1059.

17- Al-Bukhari Muhammad bin Ismail,Sahih Al-Bukhari,SourcesameBook of Expenses, Chapter: If a Man Does Not Spend, No.,5364, p. 1062. Narrated by Muslim in his Sahih, Book of Judgments, Chapter on the Case of Hind, No.,1714, p. 712.

the money of the speculation, since the expenses of the judge and the governor are from the state treasury, and

the expenses of the speculator are from the money of the speculation. The reason for the obligation of this expense is the existence of a valid contract, detention and empowerment, since she prevented herself from going out to seek a livelihood in order to serve him, and the expense is obligatory whether he entered her or not, as long as she is able to have intercourse and is able to do what is obligatory for her towards him, and there is no difference between her being Muslim or non-Muslim, so if she surrenders herself to him, then he is obligated to provide for her expenses, clothing, and housing her in a reasonable manner.¹⁸

Section Two: Conditions of maintenance and legislative texts regulating them

The first requirement: The merit of spending and its conditions:

The first section: The merit of spending on one's family:

That Some people think that charity is only what is placed in the hand of a poor person, or given to a needy person, widow or orphan, or spent on

18-Al-Zayla'i Fakhr al-Din Othman bin Ali, Clarifying the facts in explaining the treasure of the minutes, The Grand Printing House in Bulaq, Egypt, 1st ed., 1313 AH, Vol.3, p51.

charitable and good causes. Only ,Most people are unaware that everything they spend on their children and spouses is charity in the balance of their good deeds if they have good intentions and seek reward from Allah for their spending. In the two Sahihs, on the authority of Abu Mas`ud al-Badri, may Allah be pleased with him, on the authority of the Prophet, may Allah's prayers and peace be upon him, he said:: «If a man spends on his family, expecting reward, it will be considered charity for him.»He said to Sa`d ibn Abi Waqqas, may God be pleased with him:;And you will not spend anything seeking thereby the face of Allah except that you will be rewarded for it.,Until you put it in your wife's mouth(In her mouth)».

This SpendingthatA person spends it on his family -His wife and children-notTIt is not an ordinary charity, but rather it is one of the greatest expenditures and the best charity. Sheikh Ibn Uthaymeen, may God have mercy on him, said: "Spending on one's family and children is better than spending in the way of God, better than spending on freeing slaves, and better than spending on the poor... This is because one's family is among those whom God has made obligatory upon you and has made it obligatory upon you to spend on them, so spending on them is better than spending on the poor." duty On the eyeand spending on

other duty On the adequacy, and the personal duty greatest from The collective duty is abundant.

Section Two: Conditions of maintenance:

The husband is not obligated to provide maintenance to his wife unless the following conditions are met:

A- The contract must be valid: The legal effects of maintenance, permissibility of intercourse, and inheritance between them do not result unless the contract is valid.

B- That the wife be able to perform the duties entrusted to her towards her husband, and that she be fit for marital relations.

C- To be ready to move to the marital home.

If one of these conditions is missing, then maintenance is not required, such as the contract being invalid due to the lack of detention, empowerment, and the lack of the obligation of obedience according to Sharia, because she is considered a stranger to him, or because she is young and unable to bear marital relations, or because she is sick with an illness that prevents her from moving to the marital home.

If she falls ill with him after consummation, then she must provide maintenance and treatment according to custom and ability.¹⁹

The second requirement: Legislative texts regulating this expense

Section One: Texts establishing this expense

The Algerian legislator addressed the issue of alimony in the following articles (74, 75, 76, 77, 78, 79, 80) of the Algerian Family Law.²⁰

Article 74 states that “the husband must provide for the wife’s expenses if he has consummated the marriage with her or if he invites her to him with evidence.” This article mentions the reason for the obligation of expenses, which is if he has consummated the marriage with her or if he invites her to him with evidence. Therefore, expenses are obligatory on him in these two cases.

What can be indicated through this article is that the legislator did not consider detention as a reason for the obligation of maintenance, but

19- Ibn al-Najim al-Misri Zayn al-Din Ibn Ibrahim, *Al-Bahr al-Ra’iq*, Explanation of *Kanz al-Daqa’iq*, Dar al-Kutub al-Ilmiyyah, Beirut-Lebanon, 1st ed., 1418 AH 1997 AD, Vol. 4, 292. Abdul Qader Daoudi, *Family Rulings between Islamic Jurisprudence and Algerian Family Law*, p. 172.

20 - Law No. 84-11 of Ramadan 9, 1404 corresponding to June 9, 1984, containing the Family Code, amended and supplemented by Order No. 05-02 of February 27, 2005.

rather it is obligatory upon him by enabling him, even if the woman is working and spends her day outside the home. The criterion for the legislator is entry, or the invitation to it, regardless of detention.

Article 75 of this law stipulates that children must be provided with maintenance if they do not have money. However, there is a difference between males and females in the period during which the maintenance obligation ends. For males, the obligation ends when the son reaches the age of majority, if he is not incapacitated due to a chronic illness that prevents him from earning a living, or is pursuing studies even if he is healthy. As for females, the maintenance continues until the marriage is consummated, or the husband is called to consummate the marriage.

Article 76 of this law obliges the mother to provide for the children in the event that the father is unable to provide for them, and she is able to do so.

The expenses that are due from the husband include food, clothing, medical treatment, housing, or its wages, and what is considered necessities according to custom and habit. This is what Article 78.

explicitly states: “The expenses include: food, clothing, medical treatment, housing, or its wages, and what is considered necessities according to custom and habit.”

The expenses of giving birth and postpartum bleeding are also included in the expenses, as long as this pregnancy is the result of the marital relationship that existed between the spouses, considering the delivery of the pregnancy and the period of postpartum bleeding and the expenses they require as necessities in the customs and traditions of the Algerian family.²¹Article 78 of this law.

This is what was confirmed by Resolution No. 502268, which stipulated that “a divorced woman has the right to demand childbirth expenses, as they are considered an element of maintenance, and the amount of maintenance is according to the husband’s ability, whether easy or difficult, and the wife’s condition, provided that it does not fall below the sufficiency level, and the judge takes into account in estimating it the custom and tradition of the people of the country, the husband’s condition, his financial situation, the high prices, and their

21- Arab Belhaj, *Marital Provisions and Their Effects in Algerian Family Law*, Dar Houma-Algeria, 2nd ed., 2015, pp. 587-588.

rise and fall.”²²In accordance with Article 79 of the Family Law, which states that: “The judge shall take into account the circumstances of both parties and their living conditions when estimating the alimony, and shall not review his estimation before one year has passed from the ruling.” The law has authorized the estimation of alimony. For the subject judges, and this was confirmed by Decision No. 51715, which It states that “it is stipulated by Sharia and law that the estimation of alimony is according to the husband’s means... It is also stipulated that the judge, in estimating alimony, should take into account the situation of both parties and their living conditions, and he should not review his estimation before one year has passed from the ruling. Therefore, ruling in a manner contrary to this is considered a violation of the provisions of Sharia”²³.

The Supreme Court has established that the assessment of alimony is a matter left to the judges of the case, who base their assessment of

22- Al-Arabi Belhaj: Marriage Provisions in Light of the New Family Law According to the Amendments, Dar Al-Thaqafa, Amman, Jordan, 1st ed., 1433 AH/2012 AD, p. 436.

23)amal Sais: Algerian jurisprudence in the matter of personal status, Supreme Court decisions (decision number 51715, issued on 01/16/1989), 1st ed., Click Publications, Vol. 2, 582.

alimony on documents and supporting papers that determine the husband's economic situation.²⁴

Section Two: Partial texts binding on this expense

Whereas, in the event that the husband refuses to pay the alimony awarded to his wife, he shall be prosecuted according to Article 331 of the Penal Code, which stipulates that: "Anyone who intentionally and for a period exceeding two (2) months refrains from providing the amounts required to support his family, and from paying the full value of the alimony due to him to his wife... despite the issuance of a judgment against him obligating him to pay alimony to them, shall be punished with imprisonment from six (6) months to three (3) years and a fine from 50,000 DZD to 300,000 DZD, despite the issuance of a judgment against him obligating him to pay alimony to them. It is assumed that the failure to pay is intentional unless proven otherwise, and the resulting insolvency shall not be considered... For habitual misconduct or laziness, or drunkenness is an acceptable excuse from the debtor in any case, without prejudice to the application of the provisions of Articles 37, 40 and 329 of the Code of Criminal Procedure. The court

24- Arab Belhaj: Marital provisions and their effects in Algerian family law, previous reference, p. 591.

of the domicile or place of residence of the person designated to receive alimony or the beneficiary of assistance shall also have jurisdiction to rule on the misdemeanors mentioned in this article. The victim's pardon after paying the amounts due shall put an end to the criminal prosecution."²⁵.

To implement the provisions contained in Article 331 of the Penal Code, two basic conditions must be met:

1_ The existence of a debt owed by the person claiming maintenance: Article 74 of the Algerian Family Law states that: "The wife's maintenance is due from her husband upon consummation of the marriage, or upon his invitation to her with evidence..." Article 75 of the Law states that: "The father is obligated to pay the child's maintenance, unless there is money, for males until the age of majority, and for females until consummation, and it continues in the event that the child is incapacitated due to a mental or physical defect or is pursuing studies, and it is dropped if he is able to do without it by earning a living."

25- Order No. 66-156 dated June 8, 1966, including the Penal Code, amended and supplemented by Law No. 06-23 dated December 20, 2006.

The best thing that the Algerian legislator did in the text of Article 331 of the Penal Code was to express it in the general form: "...the full value of the maintenance imposed on him..." as this phrase includes all the expenses of food, clothing, and housing, unlike the French legislator who...Limiting it to food expenses only, and nothing else, This also includes the housing fee for practicing custody, which is a periodic monthly fee that the judge rules on in the event of a ruling to dissolve the marital bond and award custody to the mother, according to what is stated in Article 72 of the Algerian Family Law, which states that: "In the event of divorce, the father must provide suitable housing for practicing custody, and if this is not possible, he must pay the rent."

The Supreme Court decision issued on February 27 stated: "The food allowance defined under Article 78 of the Algerian Family Code includes the right to rent and accordingly, considering the right to rent as part of the food allowance is a sound application of the law."

This was also confirmed by a decision issued on November 17, 2016, which stated: "Water, gas, and electricity are included in the

alimony, and failure to pay them constitutes a misdemeanor of failure to pay alimony.”²⁶.

2_ Issuance of an enforceable judicial ruling: This condition is represented by the existence of a judicial ruling obligating the debtor of alimony to pay the required alimony to the beneficiary thereof. The phrase “ruling” mentioned in the aforementioned Article 331 must be considered in its broad sense to include all rulings issued by the primary courts, or decisions issued by the judicial councils, or Urgent orders, as confirmed by the Supreme Court’s decision, which states: “The word ‘judgment’ must be interpreted in its broad sense, which includes the judgment, judicial decision, and urgent order”

What should be noted in the matter of the urgent order related to alimony is that the matter here falls within the powers of the head of the Family Affairs Division, not the head of the court, in application of Article 425 of the Civil and Administrative Procedures Law, which states that: “The head of the Family Affairs Division exercises the powers granted to the urgent judge”

26 - Omrani Kamal El-Din, Legal Problems Raised by the Text of Article 331 of the Algerian Penal Code, *Al-Ijtihad Journal of Legal and Economic Studies*, Volume 11, Issue 01, Year 2022, pp. 309-310.

The judgment ordering maintenance must be enforceable, and this is of course after it becomes final, or is related to urgent orders and judgments subject to immediate enforcement, which is what the two articles of the Civil and Administrative Procedures Law stated, as Article 303 stipulates that “the urgent order does not affect the right itself, and it is immediately enforceable with or without bail despite all means of appeal, and it is not subject to opposition or objection to immediate enforcement.” Article 609 stipulates that “... However, judgments subject to immediate enforcement and urgent orders are enforceable despite opposition and appeal...”

3_ Notifying the debtor of the judgment regarding the alimony: According to the Civil and Administrative Procedures Law, in order to establish evidence of his knowledge of this debt, this is what the Supreme Court has repeatedly confirmed in its numerous decisions, including the decision issued in 1989, which stated in its grounds: “...the criminal prosecution for this crime requires-The crime of failure to pay alimony - the convicted person must have been notified in accordance with the law of the ruling ordering alimony.

While Islamic law and family law guarantee the right to alimony for women, the judiciary and the penal code protect them.

by obligating the man to provide her with everything included in maintenance, such as food, clothing, housing, and medicine, in a reasonable manner, and what is considered necessities of life according to custom and tradition. If he is unable to provide that, then he has no guardianship over her, and she has the right to go out to seek her livelihood, or to demand from him judicially maintenance or divorce her, this is in the case of his hardship. However, if he is well-off, then the Sharia has permitted her to take what is sufficient for her and her child from his money in a reasonable manner.²⁷

It also protected her from any aggression, injustice, oppression, or harm inflicted upon her, and the noble verse is explicit in that, as God Almighty said: "no You harm them in order to make things difficult for them"²⁸

The conclusion:

To conclude this research paper, it can be said that the legal texts from the Qur'an, Sunnah, consensus, and the legislative texts included in the Algerian Family Law and the Child Protection Rights Law

27- This issue will be detailed in the last chapter of this research when studying Article 53 of the Algerian Family Law, which grants women the right to demand divorce if one of the ten reasons mentioned in this article is found.

28- قال الله تعالى: ﴿...وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ﴾ [الطلاق 6].

guaranteed Family rights, and the judiciary and the penal code protect them by obligating the man to provide her with everything included in maintenance, such as food, clothing, housing, and medicine, according to what is known, and what is considered necessities of life according to custom and tradition. If he is unable to provide that, then he has no guardianship over her, and she has the right to go out to seek her livelihood, or to demand from him judicially to provide for her or to divorce her, this is in the case of his hardship. However, if he is well-off, the Sharia has permitted her to take what is sufficient for her and her child from his money according to what is known. Some of the results and recommendations can be mentioned below:

Results:

1- Islamic Sharia and Algerian law have established means and ways to protect the right to alimony, and also made it possible to claim it through the judiciary.

2- The Algerian legislator relied on Islamic law in deriving the provisions regulating personal status, and formulated them in the form of clear texts as legal rules that address issues related to the family in particular, and also address issues related to personal status, including endowments, wills, guardianship, donations, and prestige in general.

3- It is clear to every reader that the position of the judiciary has been clearly demonstrated through the rulings and decisions that have been issued on this topic related to family affairs. We also find that no ruling related to alimony has been devoid of the application of the provisions of Islamic Sharia, regardless of the school of jurisprudence from which the legislator derived the legal rule.

4- Marriage is consideredIt is one of the reasons for maintenance, and therefore the wife's maintenance is obligatory on her husband, provided that the contract is valid, whether he has consummated the marriage with her or not, if she calls for it with evidence.

5- When estimating the maintenance, the husband's financial situation, whether he is wealthy or poor, and according to custom, is taken into consideration, as is the wife's financial situation in the case of polygamy. Justice in maintenance does not mean equality between two wives who live differently with their parents.

Recommendations:

1- The Algerian legislator should clarify how the wife of an absent man is entitled to maintenance, and therefore a special text must be included for this issue, and a suitable solution must be found for the

wife if she does not want to divorce her husband who is absent for a long period of time, during which the wife is harmed by the lack of maintenance, and at the same time she does not want to divorce her absent husband.

- 2- Based on Article 80 of the Algerian Family Law, the judge can rule on alimony for the past year, but what should be remembered is that it is necessary to state this required evidence so that it is easy for the wife to know it and present it easily before the court to claim her right.

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