



Spouses' Obligations in the Afghan Legal System

Abdul Hameed Arefi

Researcher and Professor, Faculty of Law, Goharshad University. Kabul, Afghanistan

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Abstract

The family is the most fundamental social institution of human society, whose vitality, dynamism, and health guarantee the secure continuity of human generations. Although human relationships within this institution are organized based on the laws and standards of innate morality, and its continued existence deeply depends on ethical principles, human behavior sometimes does not observe moral norms, necessitating legal rules and regulations. Accordingly, relationships within the family institution require legal rules to organize internal family conduct. For this reason, the present research attempts to discuss the obligations of the family from the perspective of the Afghan legal system.

Keywords: *Marriage; Obligation; Personal Status Law and Civil Law of Afghanistan*

Introduction

The family system is the smallest social unit and serves as the foundation and infrastructure of larger human social structures. The growth and flourishing of this beloved and unparalleled system depend on the recognition and strict observance of the rights and duties of each of its members toward one another. Although the family is considered a tripartite system consisting of the wife, husband, and children, the essential pillars of the family system are the wife and husband, each of whom has rights and obligations toward one another and their children. Fulfilling these obligations strengthens the bonds of the thriving family system and paves the way for a dignified and humane life.

On the other hand, humans are social beings for whom life without others is difficult, which is why they spend most of their lives within the family. Naturally, overcoming crises and psychological distress and enjoying a peaceful life depends on fulfilling the duties and responsibilities established and codified by the legal and moral system.

The First Speech: Concepts and Generalities

A. The Concept of Marriage

Marriage, in lexical terms, means "the contract of matrimony, the union of two individuals, their cohabitation, and is also interpreted as a contract that establishes the bond of matrimony between a man and a woman." (Dehkhoda 377:101)

In jurisprudential and legal terminology, marriage is a legal relationship based on a contract that permits sexual intimacy and other forms of lawful conjugal enjoyment.

From the perspective of jurists, marriage is a contract through which a man and woman unite legally with the intention of shared life and mutual support. Its purpose is partnership in life, carrying specific legal and financial consequences.

According to the prevailing view among jurists, marriage signifies a covenant and contract, and its usage commonly refers to the contract itself. (Katouzian 2003:20) Accordingly, husband and wife are bound together through the marriage contract, becoming one entity that engages in the affairs of life. (Moḥaqeq Damad 1986:22)

The Afghan Civil Code, in Article 60, defines marriage as follows:

"Marriage is a contract that legitimizes the cohabitation of a man and woman to form a family, establishing the rights and obligations of both parties."

Furthermore, Article 66 explicitly states:

"The marriage contract is concluded in a single session through an explicit offer and acceptance that conveys immediacy and permanence, without any time restriction."

2. Legal Effects of Marriage

As soon as a valid marriage is concluded with all valid Sharia and legal conditions, it creates rights and obligations for the spouses, as the Afghan Civil Code clearly states in Article 90: Upon a valid marriage, all its effects, such as alimony, inheritance rights, proof of lineage, and the sanctity of marriage, are regulated.

In Article 91, it is stipulated that: "In the case of the necessity of the entire dowry, valid privacy has the same ruling as entering into a valid marriage, even if the spouse is the same. Similarly, in the case of proving lineage, maintenance, and the sanctity of the marriage of the wife's sister, the rule of valid privacy has the same ruling as entering into a valid marriage."

Second Speech: Shared Responsibilities of Spouses

Some non-financial obligations are placed on both spouses; some of them are specific to the husband and others are specific to the wife. The non-financial obligations that the legislator has placed on spouses include:

1. Shared Residence

The primary objective of marriage is the formation of a family and living together, from which a significant portion of emotional tranquility and connection arises. Achieving this objective is not possible through separation. The Civil Code explicitly states in Article 115: "The husband shall provide suitable housing for his wife according to his financial capacity."

Therefore, the husband must prepare an appropriate residence for his wife, and it is obligatory for the wife to reside in the home provided by her husband. According to accepted social norms, it is also necessary for the wife to live in the residence prepared by the husband, and if she refuses, she will not be entitled to maintenance. However, if the wife has secured the right to choose and determine the residence through a stipulation within the marriage contract, then since the husband has granted her this right, he must provide a home in accordance with her wishes.

Jurists also believe that even in the absence of such a stipulation, the wife may demand a separate residence. As the legislator has explicitly stated in Article 116 of the Civil Code: "If a person has more than one wife, he may not compel them to live together in a single residence without their consent." From the jurists' perspective, if the husband provides a residence suitable for the wife and she refuses to live in it, the issue of the wife's disobedience (*nushūz*) arises, and she is considered recalcitrant (*nāshizah*).

The obligation of shared residence is guaranteed by the legislator in various ways. For this reason, the wife has the right to request a divorce on grounds of hardship (*'usr wa ḥaraj*) if the husband abandons the family and refuses to live together. As stated in Clause 3 of Article 141 of the Personal Status Law for Shi'a Muslims: "Abandonment of family life by the husband for at least one year without a valid excuse is recognized as a case of hardship and justifies a request for divorce."

2. Good Company

For the stability of a family, mere cohabitation of husband and wife is not sufficient. Through marriage, they have voluntarily committed to living together and sharing in each other's joys and sorrows. Being spouses means their conduct toward one another should be marked by kindness, peace, and affection. Both must refrain from actions that breed hatred, resentment, or grief in the other.

This implies that all behaviors considered socially offensive—such as verbal abuse, physical violence, quarreling, humiliation, and the like—constitute instances of poor conduct within the family. As Almighty God states in the Holy Quran: "Interact with your spouses with good manners."

Of course, good conduct varies among individuals, but in marital life, beyond that, maintaining the marital relationship requires observing other obligations as well—such as engaging in intimate relations in a manner appropriate to the natural circumstances and condition of the spouses. The wife should not evade this duty, just as the husband must not neglect the legal and religious requirements of the marriage contract. As the Prophet Muhammad (peace be upon him) said: "The most perfect believers are the best in character, and the best of you are those who are kindest to their families." (Al-Majlisi, 1983: 226)

The legislator, in Article 122, Clause 1 of the Personal Status Law for Shi'a Muslims, explicitly states regarding good conduct: "The spouses are obligated to fulfill the religious and legal duties of marriage and to treat each other, as well as each other's parents and relatives, with kindness."

Thus, the mutual duty of spouses toward one another includes treating each other with goodness and living together in a peaceful and harmonious family environment.

From a legal perspective, a wife's misconduct deprives her of the right to claim maintenance. However, if the misconduct comes from the husband and makes marital life unbearable or impossible for the wife, according to Article 183 of the Afghan Civil Code, she may request the court to compel her husband to divorce her.

3. Raising Children

One of the fundamental objectives of forming a family and entering into marriage is the mutual cooperation between husband and wife in ensuring the happiness and welfare of the household. Spouses must not withhold assistance from one another in family matters and the upbringing of children, as child-rearing is among the most vital responsibilities that cannot be fulfilled without mutual support. Achieving this goal depends on their agreement, unity, and harmony. If parents fail to align their approach to raising children, each pursuing their own separate methods, it may lead to tension and ultimately rupture the marital bond. Moreover, contrary to the parents' intentions, the children may grow up undisciplined.

Thus, the Islamic tradition strongly emphasizes and encourages parents to nurture their children properly. Almighty God states in the Holy Quran:

"You who have believed, protect yourselves and your families from a Fire..."

This noble verse clearly highlights the critical importance of proper child-rearing. Children raised under their parents' guardianship become beneficial and capable individuals, both for themselves and society.

Accordingly, the legislator has explicitly addressed this matter in Clause 2 of Article 122 of the Personal Status Law for Shi'a Muslims:

"The spouses are obligated to cooperate and assist one another in strengthening the foundation of the family and in the upbringing of their children."

Therefore, this legal provision establishes child-rearing as one of the most essential duties of both husband and wife, binding upon them equally.

Third Speech: Specific Duties and Obligations of Couples

In addition to the common duties that couples have towards each other, each has specific duties for each other, which are explained below.

A: Specific Obligations of the Couple

1. Head of the Family

In Islam, both husband and wife have certain rights over one another, and neither is permitted to violate the other's rights, neglect their duties and responsibilities, or overstep the boundaries of their authority. As Almighty God has stated:

"And women have rights similar to their obligations in a reasonable manner..." (Al-Baqarah: 228)

However, in Surah An-Nisa, the position of the husband within the family structure and some of his responsibilities toward his wife are addressed, where it is stated:

"Men are the protectors and maintainers of women by what Allah has given one over the other and by what they spend from their wealth." (An-Nisa: 34)

Men have authority over women and the right of guardianship, due to what Allah has granted some over others, and because men must provide for women from their wealth. This verse points to the important and special position of men within the family structure, referring to their authority and guardianship, which is interpreted as the leadership of the family. "Qawwam" means one who undertakes the management and rectification of another. Of course, the initial phrase of the verse does not imply despotism, oppression, or transgression; rather, it refers to responsible leadership and management by legal and religious obligations. The latter part of the verse states: "And this guardianship is also due to the financial commitments that men bear about women and the family." (Shirazi, 2003: 396)

A family requires a responsible leader or guardian, and in its absence, disorder, chaos, and instability will arise. The husband's leadership in matters about the management of the family is both religiously and legally established. As explicitly stated in Article 123 of the Personal Status Law: "The leadership of the family is among the rights and responsibilities of the husband unless this right is transferred to the wife by court order due to the husband's mental incapacity."

Thus, there is no doubt regarding the principle of granting family leadership to the husband, and male guardianship over the family is recognized within the legal systems of various countries. (Tabatabai, 1984: 405)

2. Provision of Alimony

The responsibility for providing for the family rests upon the man, and the obligation to financially support the wife is not limited to cases where she is unable to meet her expenses. Rather, it is unconditionally considered the husband's duty. The obligation of maintenance (nafaqah) is an established principle in both Islamic jurisprudence and civil law (Taheri, 1991:199), with numerous Quranic verses emphasizing this ruling. In this regard, verse 233 of Surah Al-Baqarah states:

"Mothers may breastfeed their children for two full years, for those who wish to complete the nursing period. And upon the father is their provision and clothing according to what is reasonable."

The Afghan legislature, recognizing the importance of maintenance, has dedicated several clear provisions to this matter. Article 117 emphasizes: "Through a valid and effective marriage contract, maintenance becomes obligatory upon the husband." Article 118 of the Civil Code states: "The wife's maintenance includes food, clothing, housing, and medical care commensurate with the husband's financial capacity." Furthermore, Article 119 stipulates: "If the husband refuses to provide maintenance or his negligence is proven, the competent court shall compel him to fulfill this obligation." Additionally, Article 161 of the Personal Status Law for Shi'a Muslims defines maintenance as: "The conventional necessities of life required by ordinary individuals, such as food, clothing, housing, medical treatment, and similar essentials."

The Reasons for Alimony Include

- Permanent marriage
- Kinship in accordance with the provisions of this law

Also, Article 162 of the Shia Personal Status Law states: "The husband is obligated to pay his wife's maintenance upon the conclusion of the marriage and the wife's residence in his home. If he refuses, he is indebted to her." Article 123 of the Afghan Civil Code also states: "The wife's maintenance shall be provided according to the husband's financial ability, provided that the maintenance is not less than the wife's minimum subsistence level." And also, Article 125 of the Civil Code states: "If the husband refuses to pay the obligatory alimony, he becomes obligated to pay the wife's alimony from the date of refusal."

Cases of Alimony Failure

In this regard, the legislator has explicitly stated in Article 122 of the Civil Code: The wife shall not be entitled to maintenance in the following cases:

- If she leaves the marital home without the husband's permission or for illegitimate purposes.
- If she refuses to fulfill her marital obligations.
- If there is no obstacle preventing her from moving to the husband's residence.

According to Article 128 of the Afghan Civil Code, "The obligatory maintenance (nafaqah) is not waived except through payment or formal release." Furthermore, Clause 2 of Article 162 clarifies: "If the wife refuses to fulfill her religious and legal marital duties without a valid Sharia or legal excuse, she shall not be entitled to maintenance."

3. Providing Housing

According to Article 117 of the Afghan Civil Code: "The wife has the right to refuse to move to the husband's residence if suitable housing, in accordance with Articles 115 and 116 of the Civil Code, has not been provided by the husband, or if her prompt dowry (mahr) has not been delivered."

Article 115 explicitly states: "The husband shall provide suitable housing for his wife according to his financial capacity." This article incorporates the wife's right to demand housing commensurate with the husband's financial means. Similarly, Article 116 clarifies: "If the husband has more than one wife, he may not compel them to reside together in a single dwelling without their consent."

Therefore, the wife is entitled to request that the husband prepare and provide a separate residence for her.

4. Dowry Payment

One of the husband's key financial obligations is the payment of mahr (dower), which becomes binding upon him immediately after the marriage contract is concluded. Mahr refers to an asset that the man is obligated to pay to the woman following the marriage contract. It stems from legal mandate rather than contractual agreement. Thus, even if both parties remain silent on the matter in the contract or mutually agree that the wife is not entitled to mahr, this does not absolve the husband of his responsibility in this regard. (Taheri, 1991:161)

The Afghan legislator has not provided a definition of mahr in the Civil Code but has merely obligated the husband to pay it under Article 98. However, Article 140 of the Personal Status Law defines mahr as follows: "Mahr refers to an asset or action that a man gives or performs for a woman in exchange for marriage." Therefore, mahr is a legal obligation imposed on the man, and only the spouses may determine its amount—either at the time of contracting the marriage or afterward—through mutual agreement. In other words, mahr is a legal measure designed to elevate the intrinsic value of women and place them in a higher standing. (Diyani, 2008:120)

In the noble verses of the Quran, mahr is referred to as sadaq (dower) and farīdah (obligation), as expressed in the following verses:

"And give the women their dower as a gift..." (Al-Nisa: 4)

"But if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer." (Al-Baqarah: 237)

Additionally, another verse states:

"And pay the women their dower as an obligation..." (Al-Nisa: 24)

Types of Dowry

Based on jurisprudential texts, scholars have classified mahr (dower) into four types: mahr al-musamma (specified dower), mahr al-mithl (standard dower), mahr al-mut'ah (consolatory gift), and mahr al-sunnah (dower according to prophetic tradition). These classifications depend on whether the mahr is specified in the marriage contract or not.

Mahr al-Musamma: Refers to a specified dower (al-Muhaqqiq al-Hilli 1996:545). This is the mahr whose amount, type, and description are explicitly agreed upon by both parties either at the time of the marriage contract or afterward, and is termed in jurisprudential and legal terminology as mahr al-musamma.

Mahr al-Mithl: This is the dower determined when no amount was agreed upon in the contract, or when the agreement is invalidated. Civil law entitles the woman to mahr al-mithl and in some cases to "mahr al-mut'ah". Some jurists maintain that in determining mahr al-mithl, the social status of women in her family should be considered, provided it does not exceed mahr al-sunnah (al-Muhaqqiq al-Hilli 1996:548). Other jurists additionally consider factors like age, virginity, and intellect in determining its amount.

Mahr al-Mut'ah: This applies to a woman whose dower was not specified and who is divorced before intercourse. It is also the right of a woman who delegated the determination of mahr, but the person authorized died before specifying it (Taheri 1991:162).

Mahr al-Sunnah: This is the dower not exceeding 500 dirhams (equivalent to 50 dinars). It is called mahr al-sunnah because the Prophet Muhammad established this amount for his wives. Some jurists recommend that women's dower should preferably not exceed mahr al-sunnah (Taheri 1991:162).

Allah the Almighty has commanded men: "And give the women their dower as a gift..." The command to give mahr indicates its obligatory nature, meaning the woman becomes the full owner of the mahr. Anything that can be owned, whether tangible assets or benefits like teaching a skill, craft, or Quranic verses, can be stipulated as mahr. Moreover, its amount should not be unspecified - the wife must be fully aware of its quantity.

Upon marriage, the woman becomes the owner of the mahr and may dispose of it as she wishes. She even has the right to refuse conjugal duties if the mahr is immediately due and no deferment was stipulated, and may legally claim it through courts if necessary. This right exists only for immediate mahr; if the mahr is deferred, she has no such right and refusal would render her disobedient (*nashiz*), forfeiting her maintenance rights.

The Afghan Civil Code in Article 98 states: "The full mahr becomes due upon valid seclusion (*khulwat al-sahihah*) or death of either spouse, even if before intercourse." Article 99 states: "The wife is entitled to the specified mahr. If no mahr was determined at contract or was negated, mahr al-mithl becomes due."

Thus, considering the above civil code provisions, Quranic emphasis, and jurists' opinions, mahr is an important matter given special significance, holding a particular status in social norms too. The civil law addresses mahr-related matters including its conditions, payment timelines, husband's obligations, mahr amount in divorce, and mahr in temporary marriage.

According to Afghan civil law and Shi'a personal status law, the woman becomes the owner of the mahr upon marriage contract and may dispose of it as she wishes. She may even refuse marital duties until receiving the mahr, provided it is immediately due. Moreover, her refusal to perform duties for claiming mahr does not affect her right to maintenance.

B: The Wife's Exclusive Obligation

1. Acceptance of the Husband's Leadership

In marital and family life, if any problem or issue arises, its resolution lies with the husband's final decision. However, this responsibility of the husband must not violate good conduct (*husn al-mu'asharah*), contradict Sharia or the law, nor should it lead to the husband's abuse of authority.

As previously mentioned, a man's leadership in the family is framed as *qawwamah* (guardianship). The husband's role as *qawwam* (guardian) over his wife entails responsibility for protection, care, and similar duties—not superiority or domination.

The Afghan legislator explicitly states in Article 123(1) of the Personal Status Law for Shi'a Muslims:

"Guardianship of the family is the right of the husband unless this right is transferred to the wife by court order due to the husband's mental incapacity."

2. Obedience (Tamkin)

A wife's duty of obedience (tamkin) to her husband means she must be fully prepared for conjugal relations and marital intimacy within reasonable bounds.

The legislator emphasizes in Article 162(2) of the Personal Status Law for Shia Muslims:

"If a wife refuses to fulfill her religious and legal marital duties without legitimate sharia or legal justification, she shall not be entitled to maintenance."

Obedience constitutes one of the wife's fundamental duties toward her husband, which is divided into two categories:

Specific obedience (tamkin khass) - Fulfilling the husband's conjugal rights

General obedience (tamkeen aam) - Performing household duties, submitting to the husband's authority, and accepting his leadership of the family unit.

This does not extend to financial, economic, intellectual or cultural matters.

3. Obedience to the man in the place of residence and dwelling, unless the authority has been entrusted to the woman, or it is contrary to the woman's social status, or it causes physical and psychological harm to the woman.

The legislator has stipulated in Article 164, Clause 1 of the Shia Personal Status Law that: "The wife is obliged to reside in a place that her husband has provided for her, unless the wife was given the option of determining the residence during the marriage or her residence there causes fear of financial, personal or honorable harm."

4. Getting Permission

Obtaining permission from the husband to leave the house within the limits of legitimacy and custom, other than to perform religious duties, medical treatment, and the like, is a specific obligation of the wife, as the legislator has clarified in Article 123, Clause 2 of the Shia Personal Status Law, stating: "It is permissible for a wife to leave the house for legitimate and custom purposes."

Conclusion

The conclusion drawn from this discussion is that the continuity and sustainability of family life fundamentally depend on the principle of mutual good conduct (husn al-mu'asharah) between spouses as the most essential behavioral foundation. This principle of companionship represents an ethical standard that regulates the conduct and interactions between husband and wife, fostering loyalty, affection, fairness, and forgiveness in their marital relationship while preventing family disintegration, collapse, and stagnation. Many legal systems have recognized this principle as a substantive legal norm, incorporating it into statutes governing spousal rights and obligations.

However, given humanity's fallible nature, the boundaries of proper conduct may sometimes be breached, causing ethical behavior to lose its operational framework. This necessitates legal regulations to

govern familial relations, delineate spousal rights and duties, and enforce compliance with such provisions. Consequently, legal systems establish juridical frameworks for family structures based on their philosophical foundations, mandating adherence to their respective regulations. The Afghan legal system has similarly developed a juridical framework for family matters, articulating both shared and individual spousal rights and obligations - the very provisions we have examined in this research regarding Afghanistan's family law system.

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