



## The Possibility of Satisfying the Wife's Right to Maintenance from the Husband's Illicit Assets

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### Introduction

The wife's maintenance (*nafaqah*) is considered one of the husband's financial obligations in Islamic law. This obligation is emphasized in several Qur'anic verses, including verses 3, 19, and 34 of Surah al-Nisa, verses 229 and 233 of Surah al-Baqarah, and verse 7 of Surah al-Talaq, as well as Articles 1102–1108 of the Iranian Civil Code.

From a jurisprudential and legal perspective, maintenance includes all essential needs of a woman's life, such as housing, clothing, food, and medical care. According to Islamic rulings, the obligation of maintenance is not merely a religious obligation but is also supported by rational necessity. This issue arises from the natural division of responsibilities between spouses and the greater physical capacity generally attributed to men. Accordingly, even if a woman possesses significant wealth, providing living expenses remains the responsibility of the husband, and the wife is not obligated to bear her own living costs.

Imami jurists, both classical and contemporary, unanimously hold that maintenance of a permanent wife is obligatory upon

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the husband when the wife fulfills her marital duties and is not considered disobedient (*nashiz*) (Makarem Shirazi, 1424 AH, Vol. 7, pp. 8, 47; Najafi, 1362 AH, Vol. 31, p. 302).

Shahid al-Thani considers the wife's maintenance superior to the maintenance of relatives and identifies important distinctions between the two. One such distinction is that unpaid past maintenance owed to the wife remains a debt upon the husband's liability and is transferred to her heirs upon her death, whereas maintenance owed to relatives does not have the same legal status.

Given the significant jurisprudential and legal importance of maintenance, this study seeks to answer the main question: **Is receiving maintenance from the husband's unlawful assets legally and religiously permissible?**

To answer this question, the present fundamental-applied research, conducted through library-based methodology, examines the opinions of jurists and religious authorities. It appears that due to the obligatory nature of maintenance, the source of the husband's property does not affect the legitimacy of the wife's maintenance; however, some jurists may consider such receipt impermissible under certain circumstances.

### **Research Background**

Previous studies have examined related issues, including:

- Jahānbakhsh (1401) on the financial consequences of dissolution of marriage;
- Qaderi (1400) on financial conflicts between spouses;
- Izadifar and Hosseinejad (1398) on the jurisprudential analysis of a wife's theft of maintenance;
- Khobiyari (1399) on the nature of maintenance;
- Khazaei (1395) on the conditions for the obligation of maintenance;



- Seyyed Hashemi and Mortazavi (1393) on the legal nature of maintenance.

However, no previous research has specifically examined the issue of obtaining maintenance from unlawful property belonging to the husband.

### **Research Methodology**

This research is a fundamental-applied study conducted through documentary and library-based methods. The study relies on Qur'anic sources, jurisprudential works, legal sources, and related academic materials.

### **Research Findings**

The findings of this research indicate the following:

#### **1. Possibility of Receiving Maintenance from Unlawful Assets in Cases of Necessity**

A wife may satisfy her right to maintenance from the husband's unlawful assets **only in situations of necessity (*darurah*) or emergency (*idtirar*)**.

#### **2. Conditions for Necessity**

The permissibility of obtaining maintenance from unlawful assets depends on the existence of specific conditions, including:

- The presence of a serious and immediate or imminent danger;
- The absence of intentional creation of the danger by the person claiming necessity;
- Proportionality between the action taken and the danger faced;
- The necessity of the action to remove the danger.

#### **3. Impermissibility under Normal Circumstances**



Receiving and possessing the husband's unlawful property for the purpose of maintenance in ordinary, non-emergency circumstances is not permissible.

#### **4. The Role of the Principle of Necessity in Islamic Jurisprudence**

Since the principles of necessity and emergency are among the fundamental principles of Islamic jurisprudence and apply throughout different areas of fiqh, the fact that some contemporary authorities have not explicitly mentioned this exception in their legal opinions regarding the wife's right to obtain maintenance from unlawful property does not indicate rejection of the principle. Rather, it may be because such an exception has been considered self-evident.

#### **Conclusion**

Based on the foregoing discussion, the findings demonstrate that receiving and using the husband's unlawful assets for maintenance in normal circumstances is impermissible.

In other words, satisfying the wife's right to maintenance from unlawful property belonging to the husband is possible only when necessity exists and conditions such as serious danger to the wife's survival or essential needs are fulfilled.

However, Imami jurists and the majority of Sunni jurists consider it permissible for a wife to take from the husband's unlawful assets only to the extent necessary to preserve life, remove hardship, and satisfy essential needs. Any amount beyond the level of necessity and basic need is considered an act of transgression and aggression.

Furthermore, because the principles of necessity and emergency constitute fundamental rules of Islamic jurisprudence applicable across various legal fields, their absence from some jurists' explicit opinions regarding this matter should not be interpreted



as denial of their applicability; rather, it likely results from considering such an exception obvious.

**Keywords**

Wife's Maintenance; Debt; Acquisition; Unlawful Earnings (*Makasib Muharramah*); Necessity (*Idtirar*).

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