

MATAA' (ALIMONY OR CONSOLATORY PAYMENT)

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Summary

Marriage holds significant importance in the lives of both men and women, acknowledged by both Islamic and conventional legal systems as the cornerstone of human society. However, marriages often encounter challenges worldwide, leading to marital breakdowns, estrangement between spouses, separation of children from their parents, and the erosion of family institutions. In such circumstances, family laws offer temporary relief from these hardships and calamities, particularly for divorced wives. Various provisions exist to ensure that a divorced wife receives necessary support, which may include Mat'ah, maintenance, lump sum payments, or property division. This paper focuses on examining Mat'ah and maintenance for a divorced wife. Mat'ah, an Arabic term, refers to something given for the benefit of the recipient or an act that brings pleasure, such as a gift from the husband to his wife upon divorce. According to Islamic teachings, a revocably divorced woman (i.e., following the first or second talaq) is entitled to maintenance during her 'iddah, and she cannot be expelled from the marital home, as stated in the Quran (al-Talaaq 65:1). Mat'ah serves to counter negative assumptions and uphold the dignity of both the wife and her family, thus playing a crucial role in the physical, emotional, economic, and social well-being of the divorced wife. Islamic law and Malaysian Muslim Law provide for the maintenance of a divorced wife only until the end of the 'iddah period. However, this right may be forfeited if the wife is found guilty of nusyuz (disobedience). In the context of Sri Lanka, Mat'ah serves as a potential solution, offering social security for divorced wives.

1. Introduction

Marriage is an important institution in the life of a man and woman. Thus, it has been recognized by Islamic and conventional law as the basis of human society. It is a union of two loving souls with the hope of their dreams. At the time of marriage, they exchange joyfulness and happiness with each other and because of this, it is said that the marriages are determined in heaven. However, these dreams, unfortunately, become untrue for some people through divorce, which is a necessary evil.

All over the world marriage crumbles, spouses become estranged, children are separated from their parents, and family institutions are destroyed. Independent women may just look at what happened as a hiccup in their life and carry on but dependent women who look upon their husband as their source of love and life may treat it as a major disaster and suffer emotionally for an indefinite period.

In these circumstances, the family laws provide provisional relief from these hardships and disasters. The divorced wife is ensured to get such relief through various tools. It may be in the form of Mat'ah, maintenance, lump sum payments, or property division. This paper attempts to examine the Mat'ah and the maintenance of a divorced wife.

2. Mat'ah: concept and practice

Mat'ah: an Arabic word, meaning something given for the benefit of it or an act that brings pleasure or a gift from the husband to his wife upon divorcing her.

It is something from which pleasure can be gained or something capable of giving benefit thereof which is, however temporary and permanent. It is something received by the divorced woman, for example, clothes or like that. Mat'ah is named as such as the woman can obtain pleasure from these articles.

Mat'ah takes the form of a consolatory gift or compensation in a lump sum payment which may be payable in installments. This sum is perhaps comparable to the lump sum provision for non-Muslim divorced women. It serves as a parting gift to be offered to a wife on separation due to the dissolution of marriage by the husband to manifest fairness on his part. In other words, it is property that should be given by the husband to his divorced wife.

The revocably divorced woman (i.e., first or second *talaaq*) is entitled to maintenance during her '*iddah*, and it is not permissible to make her leave the house, because of the words of Allah (interpretation of the meaning):

“And turn them not out of their (husband’s) homes nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself. You (the one who divorces his wife) know not it may be that Allah will afterward bring some new thing to pass (i.e. to return her to you if that was the first or second divorce)”

[al-Talaaq 65:1].

Based on this, women are entitled to request the maintenance that their father spent on them during their ‘iddah, if what their husband gave them was not enough, and women can refer the matter to the Shariah court and make a claim there. If there is no Shariah court, and it is not possible to take their rights by advising their husband or through the intervention of good people, it is permissible to refer the matter to the civil courts, even though it is not proper to refer for judgment to man-made laws, but do not want to take more than they are entitled to, even if that is awarded to them by the courts.

Allah says:

“And for divorced women, maintenance (should be provided) on reasonable (scale). This is a duty on Al- Muttaqoon (the pious)”

[al-Baqarah 2:241]

This maintenance is obligatory in the case of a woman who is divorced before consummation if she did not have a specified mahr at the time of the marriage contract because Allah says:

“There is no sin on you if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their Mahr (bridal money given by the husband to his wife at the time of marriage). But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good”

[al-Baqarah 2:236].

But if the divorce came after consummation, then maintenance is not obligatory according to the majority of fuqaha’, rather it is mustahabb.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) was of the view that it is obligatory for all divorced women.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said: Maintenance must be given to every divorced woman, even after consummation. And he quoted as evidence for that the verse in which Allah says:

“And for divorced women, maintenance (should be provided) on reasonable (scale). This is a duty on Al- Muttaqoon (the pious)”

[al-Baqarah 2:241]

“Divorced women” is general in meaning, and the entitlement is confirmed by the word “duty” [haqqan]. This is further confirmed by the words “on the pious”. This indicates that doing this is part of piety or fearing Allaah (taqwa), and fearing Allaah is obligatory.

But if the marriage lasted for a year, or two years, or a few months, then in that case what Shaykh al-Islam (may Allaah have mercy on him) said is sound. This is a moderate view that falls in between two others which say that it is either *mustahabb* in all cases or obligatory in all cases.

Maintenance depends on the husband’s situation, whether he is rich and well off or poor and hard up. Allaah says:

“But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means”

[al-Baqarah 2:236].

There is no specific, set amount in this case. If a man divorces his wife, he should offer some consolation by giving her some money.

3. The wisdom behind the Mat’ah

Kindness is the main theme in the gift, both as consolation to the wife and as a sign of *taqwa* to Allah. Mat’ah also saves the dignity of the wife, since it is a sign to the world that the divorce was not due to any fault on her part and was initiated by the husband. This is the vital role played by the gift as divorces normally ignite bad assumptions and gossip. When Mat’ah is presented to the divorced wife, these bad assumptions may be rebutted and the dignity of both the wife and her family preserved. Thus, Mat’ah is essential for the physical, emotional, economic, and social well-being of the divorced wife. This is further fortified in the Holy Quran: “*So if they obey you, seek not way against them*”.

Since it may take the form of money or other valuables, it might console the wife and soothe her broken heart, if not totally perhaps up to a considerable extent. In some cases, it might even preserve the relationship of the spouses, though separated.

Mat’ah from the Islamic perspective is a token from the husband. The act of giving Mat’ah is considered a meritorious act as it may lessen any burden born by the divorced wife and serve as a basis for her to start her life anew.

Professor Dr. Hamka illustrated “That amongst the rationale that Mat’ah seeks to underscore is avoidance of gossip made against the woman by her society.

It is also a sign that the husband is compassionate in not leaving his divorced wife destitute until she remarries or so that she will not pose a burden on her parents.”

4. Mat’ah in the light of Al-Qur’an

The following Quran verses describe Mat’ah as an obligatory duty upon the righteous. This manifests its importance since giving Mat’ah is considered an act of piety.

“And for divorced women a provision in kindness; this is obligatory for the righteous.”

“The parties should either hold together on equitable terms or separate with kindness.”

5. The differences of opinion on the payment of Mat’ah

The major four schools of law differ in their opinions as to whether the payment of Mat’ah to the divorced wife is obligatory or only recommendable.

Imam Malik

According to Imam Malik, Mat’ah is not obligatory at all. However, if the Mahr was stipulated during *aqad* and divorce took place either before or after consummation, Mat’ah is recommendable to be awarded to the wife. In the *Muwattah*, Imam Malik mentioned that it came to his knowledge that Abdul Rahman bin Auf had divorced his wife and given her a female slave as a gift.

The Hanafies

Mat’ah is obligatory upon a divorce initiated by the husband before the consummation or fixation of her dower. However, Imam Abu Hanifa is of the opinion that payment of Mat’ah is recommendable.

Imam Ahmed Bin Hanbal

He held that payment of Mat’ah is only recommendable. Thus, it is desirable for every divorced woman after consummation, but it is neither mandatory nor desirable before consummation, where she will be entitled to half of her dower.

The Shafies

This school held that Mat’ah is obligatory on every divorce. The sole exception to this is divorce before consummation with the Mahr stipulated during the

aqad. In such a case, the wife is entitled to only half of the mahr. However, if the cause of divorce was due from the wife, for example, a defect on her leading to divorce, then she will not be entitled to Mat'ah.

6. The practice in Malaysia

The Malaysian enactments of the various states do provide that the Mat'ah shall be payable if she is divorced without any reasonable cause by her husband. Section 56 of the Islamic Family Law (Federal Territories) Act 1984 provides that A woman who has been divorced without just cause by her husband may apply to the court for Mat'ah. The following case laws emphasis on this fact. In Noor Bee Vahmed Shanusi, Chief Quadi held that Mat'ah is the name of the property paid by a man to his wife for divorcing her. In another case, SabariahV Zainol, the husband disputed the wife's right to Mat'ah on the ground that he was not treated properly as a husband. However, the Chief Quadi held that Mat'ah is the right of a wife who was divorced as long as the divorce did not proceed from her like fasak. Therefore, the Mat'ah is a right of a divorced wife.

7. Quantum of Mat'ah

There is no specific rule on how the amount of Mat'ah shall be calculated or how much would be payable to her. This is another area for different opinions. Pertaining to this, there are some precedents in classical authorities quoted in Tafsir Ibn Kathir that will be beneficial. Thus, Mat'ah may be

1. A servant
2. Some quantity of silver
3. Three pieces of dress (at least)
4. Five hundred dirham
5. Ten thousand dirham

None of these precedents are, however, binding in themselves but serve as guidance for the Quadi to determine the reasonable amount of Mat'ah considering the circumstances of each particular case including the financial conditions of each spouse. There are some examples from those classical scholars. However, in modern times, it should be decided based on the needs and means of the parties.

Imam Abu Hanifa opined that its value should not exceed half of the Mahr whilst Imam Shafie and Imam Ahmed bin Hanbal ultimately left it to be determined by the hakam of the Muslim society.

As we saw above, there is no hard and fast rule on the quantum of Mat'ah payable, but guidance can be sought from the following verses from the Holy Quran.

“the wealthy according to his means and the poor according to his means - a gift of reasonable amount is due (to the wife) from those who are kind in their treatment.”

“For divorced women, Mat'ah should be provided on a reasonable scale. This is a duty on the righteous.”

IFLA, 1984, provides some guidelines in this regard. Section 56 provides that, “the husband to pay such sum as may be fair and just according to Hukum Syara.” According to this provision, “fair and just” will be decided by the Qadi or Judge.

Rohania V Haji Ujang

In this case, where there is a dispute as to the amount of Mat'ah. The Qadi shall decide and take into consideration what is fair according to the position of the parties including the financial position of the husband and the position of quality of the wife.

Sharifah v Zainal Alam

In this case, where the wife claims for RM 2000 as Mat'ah and the husbands' salary was RM 295, the Mat'ah of RM 500 was ordered.

Tengku Anun Zaharah v Dato Dr. Hussain

In this case, counsel referred to the book of al- Ehwal Shaksiah fi Ahkamb Zajout Watalak and cited the instance whereby Saidina Hassan bin Ali Talib upon divorcing his wife, had sent 10000 dinars as Mat'ah to his former wife. Counsel argued that if such a huge amount was already payable as Mat'ah during the 17th Century, what more in that case whereby RM 25,200 would not be a burden to the husband since he is a well-off person having the ability to satisfy the claim. The Qadi thus allowed the whole amount as Mat'ah. There was even another instance whereby Saidina Hassan was reported to have paid 20000 dirhams as Mat'ah to his former wife.

Conclusion

From the foregoing discussion, it is evident that Mat'ah is a parting gift that is given by the divorcing husband to the divorced wife. This right will not be lost on the sole ground that the divorced wife was guilty of nusyuz or disobedience. This amount should be decided according to means and the quality of parties.

The maintenance of a divorced wife under Islamic law and Malaysian Muslim Law only is up to the expiry of the period of Iddat and no further. This right of divorced wife will be deprived, if she is found guilty of nusyuz.

It is submitted that generally, women are not interested in receiving maintenance from ex-husbands. E.g in Iran, women started an anti-maintenance drive in the 1960s demanding that ex-husbands need not pay anything. In this regard, it is the wisdom of Almighty Allah who knows the nature of human beings well has revealed relevant laws regarding the matters of maintenance of a wife after divorce.

A non-Muslim divorced wife in Malaysia is entitled to receive maintenance from her former husband until she remarries or dies. However, her rights will be deprived if she is found guilty of adultery with other person.

Islam has guaranteed the rights of a divorced wife properly and provides her with a life with dignity and respect. However, it is suggested for the best interest of divorcees, a National Fund for Divorcees (NFD) may be established to provide them with relief.