112002 - Is spending on a defiantly disobedient wife obligatory if she is pregnant?

the question

My wife went out of my house without my permission and went to her family's house. She has been there for a few months and is pregnant. Am I obliged to spend on her during her pregnancy?

Detailed answer

Praise be to Allah.

Firstly:

It is not permissible for a woman to go out of her husband's house without his permission. If she does that then she is nashiz (defiantly disobedient) and she has no right to maintenance until she comes back to obeying her husband.

But it is essential to know the reason why she has gone for this long a time. She may have done that to flee from a husband who was mistreating her or beating her or abusing her and so on. In that case the shortcoming and transgression were on his part, not hers.

Secondly:

If a woman defiantly disobeys her husband when she is pregnant, is the husband obliged to maintain her during the pregnancy or not? There is a difference of opinion among the fuqaha (jurists) concerning this matter, which is based on their difference of opinion as to whether the maintenance during the pregnancy is for the infant or the mother. The majority of scholars are of the view that a pregnant wife who is defiantly disobedient is entitled to maintenance. This is the view of the Malikis and Hanbalis, and is one view of the Shaafi'is.

Ibn Qudamah (may Allah have mercy on him) said: Is maintenance due to the pregnant woman for the sake of the infant or is it due to the infant? There are two views, one of which is that it is due

to the infant. This was the view favoured by Abu Bakr, because it is due owing to the existence of the infant, and ceases to be due when he is weaned. This indicates that it is for him (the infant). The second view is that it is due to her (the mother) because of him (the infant), because it is obligatory whether the man is well off or hard up, so it is like maintenance of wives; and because it is not waived with the passage of time, so it is like the maintenance of the woman so long as the infant is still alive.

Al-Shaafi'i had two views, like those mentioned above, and many other issues are based on these differences, such as: … If a man's wife is defiantly disobedient, and she is pregnant, and we say that maintenance is due to the infant, then her maintenance is not waived, because the maintenance of the infant is not waived because of his mother's defiant disobedience. But if we say that maintenance is due to her, then there is no maintenance for her (in this case), because of her defiant disobedience. End quote from al-Mughni (8/187),

It says in Matalib Ooli al-Nuha (5/627): Maintenance spent on the mother is due to the infant himself; it is not due to her because of him, because it is due because of his existence, and it is waived if he is no longer there. So it is obligatory to spend on a pregnant wife who is defiantly disobedient, because the maintenance is for the infant, and it cannot be waived because of the mother's defiant disobedience. End quote.

Ash-Shaykh Ibn 'Uthaymeen (may Allaah have mercy on him) said: There is a difference of opinion concerning this issue among the fuqaha. Some of them say that maintenance is due to the mother because of the infant.

Some say that maintenance is due to the child and not to the mother because of him. This second view is more correct, but because we have no way of making the maintenance reach the infant except by nourishing the mother, then maintenance must be given to the mother because of the infant.

Based on this difference, if the wife is defiantly disobedient when she is pregnant, is she entitled to maintenance?

If we say that maintenance is due to the infant [which is the more correct view, as stated above], then maintenance is due to her, because the infant is not being defiantly disobedient. But if we say that maintenance is due to her, then her maintenance is waived, because she is defiantly disobedient. End quote from al-Sharh al-Mumti' (13/470).

Based on that, then spending on the infant is obligatory for the father, even if his mother is defiantly disobedient.

If they dispute about the amount of maintenance, then the case should be referred to the qadi (judge), so that he may resolve the dispute justly, as he sees fit.

May Allah help us all to do that which He loves and which pleases Him.

And Allah knows best.