

Qur'anic Approach to the Marital Discord

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1. Introduction

The Holy Qur'an, the ultimate solution for humanity as firmly and deeply rooted in the faith of Muslims, proclaims to be a guide for all things.¹ One of the *maqasid*² of the *Sharia* is to protect the

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¹ This fact finds its recognition in the Holy Quran (An-Nahl 16:89). Here Allah (SWT) clearly lays down "... We have sent down to thee the Book explaining all things..." The translation of all the verses of the Holy Qur'an contained in this article are adopted from the '*Holy Qur'an Text, Translation and Commentary*, Ali, A. Yusuf, published by Amana Corp., Maryland, 1st edition 1938.

² The Arabic word *maqasid* (sing. *Maqsid*) literally implies the higher purposes or objectives or intents. This term is commonly & recurrently used alone to refer to the higher objectives or end goals of Islamic Law in general, that is, *maqasid al-Shariah*. It may also be referred to as the spirit of the law and its guiding principles. The terms *maqasid alShari* (the higher objectives of the Lawgiver), *maqasid al-Shariah* (the higher objectives of Islamic Law), and *al-maqasid al-shariyyah* (legal objectives) are all terms which are used interchangeably. See Author's Preface on the Meaning of Maqasid and the Theory of Higher Objectives, Raysuni, Dr. Ahmad Al, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, published by the International Institute of Islamic Thought, Herndon, VA 22070, USA, 1st edition 2005. Though Abu Ishaq al- Shatibi, the father of the discipline '*Maqasid al Shariah*' didn't define the term in his book *al-Muwafaqat* Ibn Ashur took pain to define the same in his noted book *Maqasid al-Shariah al-Islamiyah* (p. 50) in the following way: "The general objectives of Islamic Law are the meanings and wise-purposes on the part of the Lawgiver which can be discerned in most or all of the situations to which the Law applies such that they can be seen not to apply exclusively to a particular type of ruling. Included here are the occasions for the Law's establishment, its overall aim, and the meanings can be discerned throughout the Law. It otherwise includes objectives which are not observable in all types of rulings, although they are observable in many of them." Usually the five essential values of the *Shariah* namely faith, life, intellect, property and lineage

lineage which has its root in a valid marriage. As a guide for all things, the Qur'an specially focuses on the very basic institution family where two persons conjoin together through a sacred bond.³ Family, a place of peace and tranquility, plays a vital role in shaping and developing the morals and characters of the children and consequently contributes to construct and reconstruct a healthy *ummah*. Being a sacred and immutable revelation for all the ages and eras, the Qur'an speaks both on the good and strained relationship between the spouses. The Qur'an specifies the manner and suggests different strategies for solving the marital discord in a proper manner without dragging on a bitter relation resulting into severing the marital tie. Of different verses on this issue, one of the verses of Sura Al-Nisa (4:34) specifically directs husband to follow a special procedure where he fears rebellion from his unruly wife. To one eminent author, this verse has achieved special notoriety in the West, as well as in some Muslim circles, for its supposed licensing of husband to beat their wives.⁴ She further continues to say that many non-Muslims in the West and even many Muslims throughout the whole world miserably understand

are designated by the majority jurists as *maqasid-al-shariah*. Ibn Taymiyyah was serious critique of this approach of confining the scope of *maqasid* to any specific number and his strong conviction was that the ultimate goals of *Shariah* are numerous and they vary with circumstances. To him, *maqasid* should be seen as an open chapter rather than a close circuit. Dr. Yusuf al-Qaradawi also agrees with Ibn Taymiyyah in this regard. It is pertinent to mention here that jurists have classified *maqasid* into the three categories of essential (*daruriyyat*), complementary (*hajiyyat*) and embellishments (*tahsiniyyat*). See Kamali, Mohammad Hashim, *The Dignity of Man: An Islamic Perspective*, published by Ilmiah Publishers, Selangor, Malaysia, revised edition 2002, pp. 90-91.

³ *Nikah*, or marriage in the Holy Qura'n (*Al-Nisa* 4: 24 & 25), has been designated as *hishn* or fort. It implies that marriage like a fort provides protection and acts as a safeguard for the couple joined together in marital tie.

⁴ Sulayman, Abul Hamid A. Abu, *Marital Discord Recapturing the Full Islamic Spirit of Human Dignity*, published by the International Institute of Islamic Thought, London, 1st edition 2003, from Forward by Bullock, Dr. Katherine.

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this verse to condone the abuse of the wife by the husband which in modern connotation implies domestic violence.⁵ In this article, we aim to concentrate on the Qur'anic approach towards marital discord with special emphasis on the provision which is popularly misunderstood as conferring license to the Muslim husband for beating the wife. For this purpose, we would make an effort to trace out the true intent of Allah (SWT) as legislator here and construe an alternative paradigm or approach instead of sticking with stereotype interpretations.

2. Philosophy underlying marriage in Islam

It is the general *sunnah* of Allah (SWT) that He creates everything in pairs.⁶ In order to execute His desire of establishing a lawful relationship between man and woman He created humankind in pairs.⁷ The importance of marriage is quite evident when Allah (SWT) clearly decrees that He has established the marital tie and made arrangements for the continuation of lineage.⁸

In delineating the sign and glory of Allah (SWT) and one of the objectives of marriage the Holy Qur'an ordains:

And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.⁹

⁵ *ibid.*

⁶ In this respect, the Holy Qur'an proclaims: "And of everything We have created pairs: That ye may receive instruction. (Ad-Dhariyat 51:49). The similar connotation occurs in Qaf 50:7, Al-Hajj 22:5.

⁷ Allah (SWT) ordains: "That He did create in pairs-male and female" (An-Najm 53:45). This type of expression also takes place in An-Naba 78:8, Ya-Seen 36:36.

⁸ The Holy Qur'an proclaims: "It is He Who has created man from water: then has He established relationships of lineage and marriage: thy Lord has power (over all things). Al-Furqan 25:54.

⁹ Al-Room 30:21.

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Marriage is a sign of love and mercy which is also reflected in the following verse:

It is He Who created you from a single person, and made his mate of like nature, in order that he might dwell with her (in love).¹⁰

Another verse also sheds light on the point in the following manner:

And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best: will they then believe in vain things, and be ungrateful for Allah's favours?¹¹

The same spirit is beautifully reflected in the following verse:

O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women;- reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever watches over you.¹²

To Dr. Jamal A. Badawi, marriage within the Qur'anic framework can be considered on three different levels. Firstly, it serves as a source of overall human solidarity and cohesiveness. Secondly, it implies the cornerstone of the family structure and only legitimate way of continuing the human race. Lastly, the real essence of marriage lies in the very fact that it refers the specific relationship which exists between a husband and his wife.¹³

¹⁰ Al-Araf 7:189.

¹¹ An-Nahl 16:72.

¹² An-Nisa 4:1.

¹³ Badawi, Jamal A., *Islamic Teaching Course*, Vol. 3, *Social System of Islam*, G-25 *Selection of Spouse and Engagement*, retrieved from [http: www.witness-](http://www.witness-)

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3. Qur'anic Approach to Marital Discord

A thorough understanding of the above verses within the framework of *Sharia* makes it very clear that the real spirit of marital relationship is shaped by mutual love and affection, sympathy and compassion, mercy and consolation. In this connection, one renowned scholar comments:

...in the light of the collective injunctions of the Shariah and the overall Prophetic ideals and traditions, we find that the real spirit of the marital relationship is shaped by the sentiments of “affection” and “compassion” and the obligations of “patronage”, so that the governing factors in such a relationship are “affection, compassion, and benevolence”.¹⁴

Given the flagrant violations of women's rights in different parts of the contemporary world including Muslim society in the name of the religion, Qur'an must be read from emancipatory point of view instead of misogynistic point of view.

3. 1 Different Strategies of the Qur'an in Resolving Marital Discord and the Measures Adopted by the Husband for Rectifying Wife

The Qur'anic text suggesting different strategies in resolving the marital discord and which also refers the chastisement of the wife by the husband reads as follows:

...As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience,

pioneer.org./vil/Books/JB/Islamic Teaching Course-3.html#G-25, accessed on April 04, 2010.

¹⁴See n.4, p.10.

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seek not against them Means (of annoyance): For Allah is Most High, great (above you all).¹⁵

This verse focuses on pre-emptive measures aimed at reaching and achieving an early but amicable reconciliation when rebellion is feared. Maududi delineates that a man is not allowed to these three measures simultaneously, but that they may be employed only if a wife adopts an attitude of obstinate defiance.¹⁶ Most importantly, he mentions that so far as the application of these measures is concerned, there should, naturally, be some correspondence between the fault and the punishment that is administered.¹⁷ After focusing on this basic philosophy he points out that if a light touch proves to be effective one should debar from adopting sterner measures.¹⁸

The very word '*nushuz*' is derived from the root word '*nashaza*' meaning rising. It implies that if a wife rises above the limit which Allah (SWT) has determined for fulfilling the obligation towards the husband, she will be treated as rebellious.¹⁹ Generally, the very term *nusus* is used to refer a situation where the wife is found guilty of non-fulfillment marital obligations without lawful justification or excuse. In the same way, it can be said that *nushuz* is also used to refer the husband who fails to fulfill his conjugal obligation towards his wife and children.²⁰

¹⁵ An-Nisa 4:34.

¹⁶ Mawdudi, Sayyid Abul Ala, *Tafhim al-Qur'an* (Towards Understanding the Qur'an) vol. II (Surahs 4-6) Translated and edited by Ansari, Jafar Ishaq, published by the Islamic Foundation, Leicester, 1989, p.36.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Al-Razi, *Mukhtar al-Sihah*, Mu'assasah al-Risalah, Beirut, 1988,660.

²⁰ Syed Sabiq, *Fiqh al-Sunnah*, vol. 8, Dar al-Dayyan li al-Turath, Cairo, 1990, 450.

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Mohammad Asad in his well reputed exegesis²¹ in explaining the term *nusuz* mentions that it literally means 'rebellion' and particularly in relation to this verse it implies ill will. To him, it comprises every kind of deliberate bad behaviour of a wife towards her husband or of a husband towards his wife. In keeping pace with the development of linguistics he points out that it includes 'mental cruelty' with reference to the husband. Apart from this, it also implies 'ill-treatment' in the physical sense, of his wife. Afterwards, he vehemently mentions that the term *nusuz* here is used to mean a deliberate, persistent breach of the marital obligations of the wife. To Mufti Shafi, this text refers to women who are either straight disobedient to their husbands or fail to cooperate with them in conducting family affairs in the recognized manner or properly.²²

This Qur'anic verse prescribes three different but effective methods to rectify the conduct of an unruly wife. The first step towards their correction is admonition or talk over them softly and nicely in a very prudent and gentle manner. For Ibn Abbas, this part refers to the admonition by means of sacred knowledge and the Qur'an.²³ The ultimate object behind this admonition is, as one eminent scholar puts it, to treat the symptoms of rebellion before it

²¹ Asad, Mohammad, *The Message of the Qur'an*,
<http://www.geocities.com/masad> accessed on May 19, 2009.

²² Usmani, Mufti Mohammad Shafi, *Ma'ariful Qur'an*, retrieved from
[http://www.islamibayannat.com/English/Mareful Quran.html](http://www.islamibayannat.com/English/Mareful%20Quran.html), accessed on April 04, 2010.

²³ Tanwir al Miqbas min Tafisr Ibn Abbas, translated by Mokrane Guezzou, published by Royal Aal al-Bayt Insitute for Islamic Thought ,Amman,Jordan,2008,
<http://www.altafsir.com/Tafsir.asp?tMadhNo=0&tTafsirNo=74&tSoraNo=4&tAyatNo=34&tDisplay=yes&UserProfile=0&LanguageId=2> accessed on May20,2009.

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develops and takes root.²⁴ Regarding this issue, another contemporary scholar aptly remarks:

...when the wife shows the signs of disaffection and defiance, the Qur'an ordains the husband to counsel, plead with, and perhaps admonish her. This will give him ample opportunity to communicate his concerns, to clarify differences, to explore possible solutions, to demonstrate his keen interest in maintaining their marriage on equitable terms, and eventually to make clear the potentially unpleasant outcome of divorce.²⁵

If the admonition fails to bring about the desired results²⁶ and still they remain adamant, cling to their disobedience and do not change their attitude by conciliatory counsel alone²⁷ the next step is to separate the bed. In making exploration why the first method may fail in certain circumstances Sayyid Qutb vehemently observes:

This is possibly because of strongly held views, uncontrolled reactions, too much consciousness of one's beauty, wealth, family position or the like. Any of these reasons may make a wife forget that she is a partner in an institution, not an adversary in a contest.²⁸

²⁴ Qutb, Sayyid, *In the Shade of the Quran(Fi Zilal al-Qur'an)*, vol.III, translated and edited by Salahi, Adil and Shamis, Ashur, published by The Islamic Foundation, Leicester , 1st edition 2001/1421 AH, p.136.

²⁵ See n.4, p.13.

²⁶ See n. 24.

²⁷ See n. 22.

²⁸ See n. 24.

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This step of not sharing the same bed with them is prescribed, as one prominent commentator mentions, for the very reason that they may realize the displeasure of the husband towards them as expressed through this symbolic separation and may express grief for their obstinate conduct.²⁹ This measure is in effect a gesture of dignity and negating everything in which certain women boast of e.g. beauty, wealth etc.³⁰ In executing this step, Muslim jurists deduced that this staying apart should be confined to 'beds' and not to the 'house' itself meaning that the women, in no circumstances, in this stage, should be left alone in the house, something which necessarily injures her feeling much more and which makes the possibility of further straining of relations far stronger.³¹ Sayyid Qutb emphatically comments that certain requisites must be observed during the implementation of this step. To him, the separation of bed must be confined to the room where the spouse is alone and more emphatically this should not be taken in front of the children as this may affect them adversely and also not before the strangers since this would be very humiliating for the woman and consequently lead her to be hardened in the rebellion.³² In explaining the meaning of separation of bed, Ibn Kathir, in his noted commentary mentioned a report narrated by Ali bin Abi Talhan. Quoting from Ibn Abbas he clarified that the abandonment refers to not having intercourse with her, to lie on her with his back to her. This is supported by other scholars. Ibn Kathir further mentioned the opinions of other scholars like As-Saudi,

²⁹ See n. 22.

³⁰ See n. 24.

³¹ See n.22.

³² See n.24.

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Ad-Dahhak, Ikrimah and another narration of Ibn Abbas. They added this implies also not to speak with her or talk to her.³³

He summarizes the true intent of this step in the following manner:

This is a measure which aims at dealing with rebellion, and does not aim to humiliate the wife or to bring about a bad influence on the children.³⁴

The effectiveness of this method is logically summed up by a contemporary eminent scholar in the following way:

Taking note of his lack of interest in her, she will intuitively realize the gravity of the situation and the seriousness of the consequences. That would, in turn, offer her a window of opportunity to abandon her tactics of “rejection” and “antagonism”, to rethink the whole situation, to realize that she has reached a crossroads, and to find a way out of the discord so as to reestablish the state of “affection” and “compassion” between both of them.³⁵

If this measure proves to be ineffective and the wife stubbornly adheres to the position of disobedience and rejection, there should be no doubt, as one author remarks, that this marriage is in jeopardy i.e. the threat of disintegration is looming on the horizon

³³ Al-Busrawi, Abu Al-Fida Imad Ad-Din Isma'il bin Umar bin Kathir, *Tafsir al-Qur'an al-'Adhim*, popularly known as *Tafsir Ibn Kathir*, retrieved from <http://www.tafsir.com>, accessed on April 04, 2010.

³⁴ See n.24.

³⁵ See n. 4, p.14.

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of this family and both the spouse must apprehend the gravity of the situation.³⁶

In this critical juncture, the last step i.e. chastisement which is the focal point of our article will come into scene.

Before going into the detailed analysis of this issue historical context of the verse must be unveiled. Al Wahidi in his renowned *Asbab Al-Nuzul* made an attempt to trace out the context of revelation of An-Nisa 4:34. According to Muqatil this verse was revealed about Sa'd ibn al-Rabi', who was one of the leaders of the Helpers (nuqaba'), and his wife Habibah bint Zayd ibn Abi Zuhayr, both of whom from the Helpers. Once upon a time Sa'd slapped his wife on the face as she became unruly and showed rebellion against him. Then her father along with her went to the Prophet (PBUH) and narrated the incident. After being informed of this unexpected incident He directed her to have retaliation against her husband. But when she was leaving with her father to execute the retaliation the Prophet (PBUH) called them back and mentioned that Gabriel has come to me and Allah (SWT) has revealed this verse. Then the Prophet (PBUH) remarked: 'We wanted something while Allah wanted something else, and that which Allah wants is good'. Retaliation was then suspended.³⁷

³⁶ Ibid.

³⁷ Al-Wahidi, *Asbab Al-Nuzul*, translated by Guezou, Mokrane, published by Royal Aal al-Bayt Institute for Islamic Thought, Amman, Jordan, 2008. Retrieved from <http://www.altafsir.com/Tafsir.asp?tMadhNo=0&tTafsirNo=74&tSoraNo=4&tAyatNo=34&tDisplay=yes&UserProfile=0&LanguageId=2> accessed on May20, 2009. Al-Wahidi mentioned other two sources of narration of the incident relating to revelation of this verse. The chain of narration is as follows: Sa'id bin Muhammad ibn Ahmad al-Zahid informed that Zahir ibn Ahmad from Ahmad ibn al-Husayn ibn Junayd and he from Ziyad ibn Ayyub and he from Hushaym and he from Yunus ibn al-Hasan who basically narrated the incident. Another

Regarding the status of the *hadith* one prominent scholar comments that this *hadith* is thought to be unauthentic as it could not be found in any of the acceptable *Hadith* references.³⁸ Even if it were, he adds, it does not legitimize slapping. Rather, this incident suggests that in case of physical injury, cruelty or slapping between spouses, retaliation cannot work as a remedy, for such a remedy could further deteriorate or aggravate or complicate the matter and be a definite route to divorce.³⁹ In all the circumstances, the Prophet (PBUH) raised his voice against any type of oppression whether physical or mental. If life turns to be intolerably severe for the couple to live together and before physical and mental cruelty amounts to criminal acts, it is better for them and their children to get divorced on good terms.⁴⁰ In this connection, an issue which necessarily comes into the scene is that if the husband is at fault or shows cruelty or unfair to the wife what remedy or remedies are available to her under Islam. This question reserves due attention and for this we clarify the stance of the *Sharia* on this issue in later part of the article.

As regards the third step, we would explore the renowned exegeses of the Holy Qur'an of classical, medieval, modern and contemporary scholars with a view to reach a conclusion which would be compatible with the true spirit of the Qur'an, Sunnah and *Maqasid al Sharia*.

link of narration is as follows: Abu Bakr al-Harithi informed that Abu'l-Shaykh al-Hafiz and he from Abu Yahya al-Razi and he from Sahl al-Askari and he from Ali ibn Hashim and he from Ismail and he from al-Hasan who narrated the incident.

³⁸ See n.4, p.25.

³⁹ Ibid.

⁴⁰ Ibid.

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Ibn Abbas opined that third method is to scourge the wife in a mild, unexaggerated manner.⁴¹ To him, the verb *daraba* bears this connotation.

As per the issue of chastisement is concerned, to Ibn Kathir, the word *daraba* implies that the husband is allowed to discipline the wife, without severe beating.⁴² In this connection, he quoted a *hadith* narrated by Jabir and which is recorded in Sahih al Muslim. As per the tradition is concerned, during the Farewell Hajj, the Prophet (PBUH) said: Fear Allah regarding women, for they are your assistants. You have the right on them that they do not allow any person whom you dislike to step on your mat. However, if they do that, you are allowed to discipline them lightly. They have a right on you that you provide them with their provision and clothes, in a reasonable manner.)

Quoting the opinion of Al-Hasan Al-Basri he commented that the verse refers to a beating that is not severe.⁴³

Tafsir al Jalalayn comments that the third method is to strike the wife but not violently.⁴⁴ So this exegesis also negates the concept of violent beating.

In describing the attitude of the Prophet (PBUH) regarding the issue of chastisement Sayyid Abul Al'a Maududi in his noted commentary enumerated that the Prophet (PBUH) permitted a man

⁴¹ See n.23.

⁴² See n. 33.

⁴³ See n. 33.

⁴⁴ Tafsir al-Jalalayn, translated by Feras Hamza ,published by Royal Aal al-Bayt Insitute for Islamic Thought, Amman, Jordan, 2008, <http://www.altafsir.com/Tafsir.asp?tMadhNo=0&tTafsirNo=74&tSoraNo=4&tAyatNo=34&tDisplay=yes&UserProfile=0&LanguageId=2> accessed on May20,2009.

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to inflict corporal punishment to his wife, he did so reluctantly and continued to express his distaste for it. However, in case of dire necessity, the Prophet (PBUH) instructed men not to hit across the face, nor to beat severely nor to use anything that might leave marks on the body.⁴⁵

Another eminent commentator of the Qur'an in explicating the third step mentioned that in this phase token beating is permitted and the optimum limit of which is that it should not leave any mark on the body or produce no effect on the body.⁴⁶ The Prophet (PBUH) disliked this practice as he vehemently remarked that the gentleman would not do that.

According to another renowned scholar, beating is prescribed as practical and psychological indications suggest that in certain situations this measure may be the appropriate one to remedy a certain perversion and to bring satisfaction.⁴⁷ However, he mentioned this measure is not applicable to all women and when certain situations necessitate the application of this method the same must be used to safeguard the family. The real connotation of the verb *daraba* becomes clear when he depicts the ultimate object of this measure in the following manner:

When we remember the aim behind all these measures, we realize that this beating is not a form of torture motivated by seeking revenge or humiliating an opponent. Nor is it aimed at forcing the wife to accept life under all unsatisfactory conditions. It is rather a disciplinary measure akin to the punishment

⁴⁵ Maududi here relies on the *hadith* reported in the Ibn Maja.

⁴⁶ See n. 22.

⁴⁷ See n.24, p.137.

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father or a teacher may impose on wayward children.⁴⁸

He, however, commented emphatically that all the three measures are accompanied by stern warnings against them.⁴⁹ In this connection, after quoting several *ahadith*, he shows that the Prophetic illustrations as to the treatment of his family, his verbal teachings and directives serve as a restraint against any sort of extremism.⁵⁰

As regards the chastisement issue, after quoting few *ahadith* Mohammad Asad, a prominent scholar emphasized that the idea of beating of one's wife is intensely detested by the Prophet (PBUH).⁵¹ Even, as he observed, the Prophet (PBUH) in his last sermon on the occasion of the Farewell Pilgrimage, shortly before his death, instructed that beating should be taken as a last resort only if the wife "has become guilty, in an obvious manner, of immoral conduct" and more importantly it should be done in such a manner as not to inflict any suffering or to cause any pain (*ghayr mubarrih*) the truth of which is reflected in different traditions as reported in Muslim, Tirmidhi, Abu Da'ud, Nisai and Ibn Majah.⁵² However, he candidly expressed that on the basis of these traditions all the authorities stress that this "beating", if resorted to at all, should be more or less symbolic.⁵³ Quoting from Tabari (Tabari relied on the views of scholars of the earliest times) and Razi, Asad exemplifies that the beating would be with a toothbrush or some such thing or even with a folded handkerchief.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ See n.24, p. 138.

⁵¹ See n. 21.

⁵² Ibid.

⁵³ Ibid.

Finally, Mohammad Asad mentions that some of the greatest Muslim Scholars (e.g. Ash-Shafii) opine that it is just hardly permissible, and should preferably be avoided and they justify this opinion by the Prophet's personal feelings regarding this issue.⁵⁴

As the true spirit of marriage in Islam is love, mercy, peace, sympathy and consolation, it may not be very much unusual to be confronted with the question is the verb *daraba* used in the aforesaid Qur'anic verse should be construed to mean to slap, to hit, to flog, to strike, to beat or any sort of ancillary castigation which inflicts suffering, pain and disgrace and to compel a woman to maintain marital bond against her will?⁵⁵ In the context of seeking reconciliation between estranged spouses, after the husband has attempted to restore peace and tranquility through the adoption of first two measures the third measure cannot be interpreted to mean something which would repress and subjugate the wife.⁵⁶ Thus, we have to conduct an intellectual exploration to find out the real meaning of the verb *daraba* in this specific context. For this, one author strongly recommends that this matter should be examined meticulously and comprehensively and with proper knowledge of its diverse dimensions and connotations without jumping to quick conclusions.⁵⁷ He then clarifies the causes why the verb *daraba* should not mean any type of corporal punishment, violence or injury and simultaneously poses a question regarding the true connotation of the same verb in the following manner:

The Qur'anic recommendations that refer to the idiom *daraba/darb* are focused on how to reconcile spouses in a way that promotes

⁵⁴ Ibid.

⁵⁵ See n. p.4, 15.

⁵⁶ See n.4, pp.14-15.

⁵⁷ See n.4, p.15.

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affection, compassion, and intimacy, restoring the objective of marriage. These recommendations do not yet seek the last resort: the arbitration by referees from the spouses' families. Therefore, if the purposes and recommendations of the Qur'an do not allow any excuse for violence, injury or pain in resolving marital problems, what then, is the true interpretation of this verb?⁵⁸

In keeping line with the arguments of Ibn Abbas, the author observes if the verb *daraba* implies few strokes or taps with a *siwak* or something similar, such as a “toothbrush” or a “pencil”, this meaning in no way include punishment, injury, pain or sufferings.⁵⁹ Rather, it necessarily implies a physical expression of gravity, frustration, or disinterest in the wife by a husband who no longer shares her bed.⁶⁰ He also remarks that such an expression just represents the reverse picture of touching or cuddling which implies warmth and intimacy. This line of thinking, of course, negate the explanation of those jurists and scholars who put much ink in interpreting the idiom *daraba* as strokes, beating etc. They failed to appreciate the spirit of the true intent of the legislator and many jurists who goes to the extent of saying whether the beating should not exceed twenty or forty strokes really did not think about certain crucial and vital factors associated with this chastisement e.g. whether the beating should be applied to different parts of the body or not, injure organs or not, cause a bone or member fracture or not, whether the poor wife will survive or not.⁶¹ Dr. Sulayman finds the interpretation of Ibn Abbas reasonable and fairly flawless,

⁵⁸ Ibid.

⁵⁹ See n. 4, p.16.

⁶⁰ Ibid.

⁶¹ Ibid.

since it does not entail any injury to the human dignity and due respect between spouses who are virtually bound by marital bonds, of nuptial association.⁶² In spite of providing this moderate interpretation it still develops a flaw for misunderstanding which was manipulated in the past to justify abusive conduct and can still be exploited to use as a weapon to inflict injury, pain, agony or sufferings on women under the auspices of the *fatwa* of strokes.⁶³ The author then opines that both the perception and resolution should leave no chance of misreading the real concept of *daraba* and should justify no rude behaviour or hostile attitude or infliction of neither any sort of pain nor abuse of that concept. Such precaution, he remarks, certainly fit the true intents of the *Sharia* in founding a family on the very basis of love, affection, mercy, compassion and dignity.⁶⁴

3.2 Different Connotation of the word '*daraba*' in the Qur'anic Context

In search of the true connotation of the idiom *daraba* Dr. Abdul Hamid A. Abu Sulayman, one of the renowned scholar of the contemporary world, embarked on a courageous but necessary journey. In this noble venture he followed a comprehensive method of research which, he mentioned, involved the examination of various aspects, circumstances, and factors of the issue, as well as overall dimensions.⁶⁵ As regards his methodological approach he vehemently admitted:

I also committed my work to a methodological discipline in which each premise or motif is located in the current position, proportion, or context without allowing bias to dominate the

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ See n.4, p. 4.

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whole or the circumstantial which would invalidate an established principle. It is important to pursue with sound reasoning the impartiality and epistemic integration between the verses and guidance of the Glorious Revelation and the patterns of the universe and the examples of human experience.⁶⁶

In order to pursue this methodological approach he focused and meticulously considered deep-rooted Islamic principles of human dignity, status and freedom, graduation of obligations and prohibitions in the Holy Qur'an, the adaptability of message to suit different times and places, the Sunnah of the Prophet (PBUH), and the plurality of approaches of the different schools of jurisprudence within and outside, recently discovered miracles of the Qur'an, its phenomenal accuracy. On the one hand he is not in favour of discarding the enriched historical heritage but on the other hand he does not confine his thought within the four walls of the *madhab* rather explores the tool of *ijtihad* for reaching into a concrete solution. As regards the yardstick to determine whether a particular matter falls within the Islamic framework or not he tartly observes:

Clearly, any system of human relations inconsistent with such basic principles⁶⁷ does not represent the Islamic spirit, objectives, or purposes, and should be scrutinized to diagnose the flaws which contradict essential human rights and responsibilities. Moreover, no system should be allowed to breach the foundation of the family

⁶⁶ Ibid.

⁶⁷ The author uses these words to imply certain deep-rooted, basic Islamic principles of human dignity, freedom, and responsibility, the human beings' status as the vicegerent of Allah (SWT) and the legitimate right of self-determination.

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relationship in Islam, which is, by and large, built upon the concept of “repose, affection, and compassion”. Any anomalous systems that militate against these concepts should be scanned to discover their flaws.⁶⁸

It is one of the basic principles of the exegesis of the Qur’an is that it is the best approach to use the Qur’an to interpret the Qur’an. The best exegesis of the Glorious Qur’an, he argues, can be produced by the Revelation itself and fine-tuned by the *maqasid al Sharia*.⁶⁹

To Abdul Hamid A. Abu Sulayman, the compilation of the various connotations of *daraba* and its derivatives in the Qur’an produces approximately seventeen distinct nuances in the following verses.⁷⁰

“Allah sets forth/propounds the Parable...” (An-Nahl 16:75, 76, 112, At-Tahrim 66:11)

“When (Jesus) the son of Mary is held up as an example, behold, thy people raise a clamour thereat (in ridicule)!” (Az-Zukhruf 43:57)

“See what similes they strike for thee: but they have gone astray, and never can they find a way.” (Al-Isra 17:48)

“Invent not similitudes for Allah: for Allah knoweth, and ye know not.”(An-Nahl 16:74)

“When ye travel through the earth...”(An-Nisa 4:101)

“Then We draw (a veil) over their ears, for a number of years, in the Cave, (so that they heard not).” (Al-Kahf 18:11)

⁶⁸ See n. 65, p.4.

⁶⁹ See n. 4, p.17.

⁷⁰ See n.4 , pp.17-18.

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“Shall We then *take away* the Message from you and repel (you), for that ye are a people transgressing beyond bounds?” (Az-Zukhruf 43:5)

“...they should *draw their veils* over their bosoms... and that they should not *strike their feet* in order to draw attention to their hidden ornaments...” (Al-Noor 24:31)

“...Travel by night with My servants, and *strike a dry path* for them...” (Ta-Ha 20:77)

“Then We told Moses by inspiration: “*Strike the sea with thy rod.*” So it divided, and each separate part became like the huge, firm mass of a mountain.” (Al-Shuara 26:63)

“Allah disdains not to use the similitude of things, lowest as well as highest...”(Al-Baqara 2:26)

“And remember Moses prayed for water for his people; We said: “*Strike the rock with thy staff.*” Then gushed forth therefrom twelve springs...” (Al-Baqara 2:60)

“They *were covered with* humiliation and misery; they drew on themselves the wrath of Allah...” (Al-Baqara 2:61)

“Shame is *pitched over them* (Like a tent)...”(Al-E-Imran 3:112)

“But how (will it be) when the angels take their souls at death, and *smite* their faces and their backs?” (Muhammad 47:27)

“...I will instil terror into the hearts of the Unbelievers: *smite* ye above their necks and smite all their finger-tips off them.”(Al-Anfal 8:12)

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“And take in thy hand a little grass⁷¹, and *strike* therewith: and break not (thy oath)...”(Sad 38:44)

“Therefore, when ye meet the Unbelievers (in fight), *smite* at their necks; At length, when ye have thoroughly subdued them, bind a bond firmly (on them)...” (Muhammad 47:4)

“O ye who believe! When ye *go abroad* in the cause of Allah, investigate carefully...”(An-Nisa 4:94)

“...So a wall *will be put up* betwixt them, with a gate therein. Within it will be Mercy throughout, and without it, all alongside, will be (Wrath and Punishment!”(Al-Hadid 57:13)

“Then did he turn upon them, *striking* (them) with the right hand.” (As-Saaffat 37:93)

After quoting these verses Dr. Sulayman pointed out that the root verb (idiom) *daraba* (transitive and intransitive) has several figurative or allegorical connotations.⁷² It may mean to isolate, to separate, to develop, to distance, to exclude, to move away etc.⁷³ When something is, he mentions, subjected to such action, that means it is to be extracted, distinguished, and presented as a clear example. He skillfully sketches out the different meanings attributable to the word ‘*daraba*’ in different contexts. He

⁷¹ Dr. Abdul Hamid A. Abu Sulayman clarified this point in end notes. He mentioned that, in fact, the literal Qur’anic expression is *digh*, which is construed as a raceme of numerous soft palm leaves. Allah (SWT) bestows grace and sanctity upon humankind, clearly instructs His Prophet Ayub, whose wife annoyed him while he was enduring a prolonged and severe ailment and adversity, to make good of his oath to chastise her with a hundred strokes by touching her with a raceme of a hundred palm leaves, as figurative manifestation of his vow, without inflicting any sort of pain, injury or disgrace on her.

⁷² See n.4, p.18.

⁷³ Ibid.

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mentions the following different connotations of the verb '*daraba*'.⁷⁴

As regards land it implies to *travel* or to *depart*. If the verb is used as to the ear, it means to *block* it or prevent it from hearing. In regard to the Qur'an, it means to *neglect*, *ignore* and *abandon* it. As to the truth and falsehood it means to make either of them *evident* and to *distinguish* one from the other. When the verb is used relating to the veil it means the *drawing* of the head-covering over the bosoms. If the verb is used as to seas or rivers it means to *strike a path* through the water pushing it aside. In regard to erecting a wall it means to *partition* or *separate*. If the verb is used as regards the people it means to be *overshadowed* by ignominy. The verb also implies to *cut*, to *slash*, and to *strike* if the same is used in relation to the feet, necks, faces, backs. Apart from these connotations it is also used to imply to impel, to shock, to slap, or to damage in the rest of the quotations.

From the above discussion he concluded that the general connotation of the root verb *daraba* in the Qur'anic parlance mean to separate, to distance, to depart, to abandon, and so forth.⁷⁵

It is noteworthy to mention that the Qur'anic text does not use the idiom *daraba* to imply physical or corporal punishment; rather, it uses the idiom *jalada* (to lash, to whip, to flog, etc.). The relevant Qur'anic verse reads as follows:

The woman and the man guilty of adultery or fornication, - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment.⁷⁶

⁷⁴See n.4, p.19.

⁷⁵Ibid.

⁷⁶Al-Noor 24:2.

He then carefully concludes that *darb* in the context of improving a crucial marital relationship and restoring peace, harmony and tranquility should be construed as to “leave “ the marital home, to “move away” or “separate” from her. He justifies this interpretation through the depiction of Prophetic tradition and his actual practice.⁷⁷

3.3 Traditions of the Prophet (PBUH) and the Interpretation of the verb ‘daraba’

The *hadith* focusing on this Prophetic incident of keeping him secluded for one month from his wives is narrated as follows.

Ibn 'Abbas narrated:

I had been eager to ask 'Umar bin Al-Khattab about the two ladies from among the wives of the Prophet regarding whom Allah said 'If you two (wives of the Prophet namely Aisha and Hafsa) turn in repentance to Allah, your hearts are indeed so inclined (to oppose what the Prophet likes). (66.4) till 'Umar performed the Hajj and I too, performed the Hajj along with him. (On the way) 'Umar went aside to answer the call of nature, and I also went aside along with him carrying a tumbler full of water, and when 'Umar had finished answering the call of nature, I poured water over his hands and he performed the ablution. Then I said to him, "O chief of the Believers! Who were the two ladies from among the wives of the Prophet regarding whom Allah said: 'If you two (wives of the Prophet) turn in repentance to Allah your hearts are indeed so inclined (to oppose what the Prophet likes)?" (66.4) He said, "I am astonished at your question, O Ibn Abbas. They were 'Aisha and Hafsa." Then 'Umar went on narrating the Hadith and said, "I and an Ansari neighbor of mine from Bani Umaiyya bin Zaid who used to live in Awali-al-Medina, used to visit the Prophet in turn. He used to go one day and I another day. When I went, I would bring him the news of what had happened that day regarding the Divine

⁷⁷ See n.4., p.20.

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Inspiration and other things, and when he went, he used to do the same for me. We, the people of Quraish used to have the upper hand over our wives, but when we came to the Ansar, we found that their women had the upper hand over their men, so our women also started learning the ways of the Ansari women. I shouted at my wife and she retorted against me and I disliked that she should answer me back. She said to me, 'Why are you so surprised at my answering you back? By Allah, the wives of the Prophet answer him back and some of them may leave (does not speak to) him throughout the day till the night.' The (talk) scared me and I said to her, 'Whoever has done so will be ruined!' Then I proceeded after dressing myself, and entered upon Hafsa and said to her, 'Does anyone of you keep the Prophet angry till night?' She said, 'Yes.' I said, 'You are a ruined losing person! Don't you fear that Allah may get angry for the anger of Allah's Apostle and thus you will be ruined? So do not ask more from the Prophet and do not answer him back and do not give up talking to him. Ask me whatever you need and do not be tempted to imitate your neighbor (i.e., 'Aisha) in her manners for she is more charming than you and more beloved to the Prophet." Umar added,"At that time a talk was circulating among us that (the tribe of) Ghassan were preparing their horses to invade us. My Ansari companion, on the day of his turn, went (to the town) and returned to us at night and knocked at my door violently and asked if I was there. I became horrified and came out to him. He said, 'Today a great thing has happened.' I asked, 'What is it? Have (the people of) Ghassan come?' He said, 'No, but (What has happened) is greater and more horrifying than that: Allah's Apostle; has divorced his wives. 'Umar added, "The Prophet kept away from his wives and I said "Hafsa is a ruined loser.' I had already thought that most probably this (divorce) would happen in the near future. So I dressed myself and offered the Morning Prayer with the Prophet and then the Prophet; entered an upper room and stayed there in seclusion. I entered upon Hafsa

and saw her weeping. I asked, 'What makes you weep? Did I not warn you about that? Did the Prophet divorce you all?' She said, 'I do not know. There he is retired alone in the upper room.' I came out and sat near the pulpit and saw a group of people sitting around it and some of them were weeping. I sat with them for a while but could not endure the situation, so I went to the upper room where the Prophet; was and said to a black slave of his, 'Will you get the permission (of the Prophet) for 'Umar (to enter)?' The slave went in, talked to the Prophet about it and then returned saying, 'I have spoken to the Prophet and mentioned you but he kept quiet.' Then I returned and sat with the group of people sitting near the pulpit. but I could not bear the situation and once again I said to the slave, 'Will you get the permission for 'Umar?' He went in and returned saying, 'I mentioned you to him but he kept quiet.' So I returned again and sat with the group of people sitting near the pulpit, but I could not bear the situation, and so I went to the slave and said, 'Will you get the permission for 'Umar?' He went in and returned to me saying, 'I mentioned you to him but he kept quiet.' When I was leaving, behold! The slave called me, saying, 'The Prophet has given you permission.' Then I entered upon Allah's Apostle and saw him Lying on a bed made of stalks of date palm leaves and there was no bedding between it and him. The stalks left marks on his side and he was leaning on a leather pillow stuffed with date-palm fires. I greeted him and while still standing I said, 'O Allah's Apostle! Have you divorced your wives?' He looked at me and said, 'No.' I said, 'Allah Akbar!' And then, while still standing, I said chatting, 'Will you heed what I say, O Allah's Apostle? We, the people of Quraish used to have power over our women, but when we arrived at Medina we found that the men (here) were overpowered by their women.' The Prophet smiled and then I said to him, 'Will you heed what I say, O Allah's Apostle? I entered upon Hafsa and said to her, "Do not be tempted to imitate your companion ('Aisha), for she is more charming than you and more

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beloved to the Prophet.' " The Prophet smiled for a second time. When I saw him smiling, I sat down. Then I looked around his house, and by Allah, I could not see anything of importance in his house except three hides, so I said, 'O Allah's Apostle! Invoke Allah to make your followers rich, for the Persians and the Romans have been made prosperous and they have been given (the pleasures of the world), although they do not worship Allah.' Thereupon the Prophet sat up as he was reclining. and said, 'Are you of such an opinion, O the son of Al-Khattab? These are the people who have received the rewards for their good deeds in this world.' I said, 'O Allah's Apostle! Ask Allah to forgive me.' Then the Prophet kept away from his wives for twenty-nine days because of the story which Hafsa had disclosed to 'Aisha. The Prophet had said, 'I will not enter upon them (my wives) for one month,' because of his anger towards them, when Allah had admonished him. So, when twenty nine days had passed, the Prophet first entered upon 'Aisha. 'Aisha said to him, 'O Allah's Apostle! You had sworn that you would not enter upon us for one month, but now only twenty-nine days have passed, for I have been counting them one by one.' The Prophet said, 'The (present) month is of twenty nine days.' 'Aisha added, 'Then Allah revealed the Verses of the option. (2) And out of all his-wives he asked me first, and I chose him.' Then he gave option to his other wives and they said what 'Aisha had said. "(1) The Prophet, ' had decided to abstain from eating a certain kind of food because of a certain event, so Allah blamed him for doing so. Some of his wives were the cause of him taking that decision; therefore he deserted them for one month.⁷⁸

⁷⁸*Sahih Bukhari*, Vol. 7, Book 62: Wedlock, Marriage (Nikah), Hadith no. 119. See also, *ahadith* nos. 129, 130 and 131. The English translation of all the *ahadith* of *Sahih Bukhari* mentioned in this write up are adopted from the *Sahih Bukhari*, English Translation, Khan, M. Muhsin, retrieved from

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Thus, the above-mentioned *hadith* reveals that the Prophet (PBUH) stayed away from his wives when they revolted after their demands for an improved standard of living were denied. In such a critical moment, he secluded him from his wives and offered them either to accept the standard of living which he could afford and to stay with him or to be released from the marital tie and separate with status and dignity.⁷⁹ This issue is emphatically addressed in the Qur'an in following manner:

O Prophet! Say to thy Consorts: "If it be that ye desire the life of this World, and its glitter, - then come! I will provide for your enjoyment and set you free in a handsome manner. But if ye seek Allah and His Messenger, and the Home of the Hereafter, verily Allah has prepared for the well-doers amongst you a great reward."⁸⁰

Other *ahadith* of the Prophet (PBUH) also focuses on the special features of the women, contains prohibition of chastisement, his severe distaste or disliking towards it, orders husband to show respect towards wife.

In one *hadith* he proscribes the cruel and inhuman picture of husband's flogging of wife.

'Abdullah bin Zam'a narrated:

The Prophet said, "None of you should flog his wife as he flogs a slave and then have sexual intercourse with her in the last part of the day."⁸¹

<http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/bukhari/> accessed on May 20, 2009.

⁷⁹ See n.4, p. 20.

⁸⁰ Al-Ahzab 33:28-29.

⁸¹ *Sahih Bukhari*, Vol. 7, Book 62: Wedlock, Marriage (Nikah), Hadith no. 132.

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He in another tradition depicts the special feature of the women and instructs the man to adopt a moderate approach in dealing with them.

Abu Huraira narrated:

Allah's Apostle said, "The woman is like a rib; if you try to straighten her, she will break. So if you want to get benefit from her, do so while she still has some crookedness."⁸²

The Prophet (PBUH) also advises husband to consider the positive traits of the wife instead of negative traits or aspects.

Abu Huraira (Allah be pleased with him) reported Allah's Messenger (may peace be upon him) as saying: A believing man should not hate a believing woman; if he dislikes one of her characteristics, he will be pleased with another.⁸³

In another *hadith* he strongly opposes the trend and habit of oppression and chastisement.

Mu'awiyah al-Qushayri narrated:

Mu'awiyah asked: Apostle of Allah, what is the right of the wife of one of us over him? He replied: That you should give her food when you eat, clothe her when you clothe yourself, do not strike

⁸² *Sahih Bukhari*, Vol. 7, Book 62: Wedlock, Marriage (Nikah), Hadith no. 113. See also *hadith* no. 114. *Sahih Muslim*, Vol. 3, Book 8, The Book of Marriage (Kitab al-Nikah), Chapter 38: Advise in regard to women, *Ahadith* nos. 3466, 3467 and 3468. The English translation of all the ahadith of *Sahih Muslim* mentioned in this write up are adopted from the *Sahih Muslim*, English Translation, Siddiqui, Abdul Hamid, retrieved from <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/muslim/> accessed on May 20, 2009

⁸³ *Sahih Muslim*, Vol. 3, Book 8, The Book of Marriage(Kitab al-Nikah), Chapter 38: Advise in regard to women, Hadith no. 3469. See also Hadith no. 3470.

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her on the face, do not revile her or separate yourself from her except in the house.⁸⁴

The Prophet (PBUH), in another tradition, also says so. Mu'awiyah ibn Haydah narrated:

I said: Apostle of Allah, how should we approach our wives and how should we leave them? He replied: Approach your tilth when or how you will, give her (your wife) food when you take food, clothe when you clothe yourself, do not revile her face, and do not beat her.⁸⁵

From many reliable and authentic traditions it is proved that there is no instance of beating by the Prophet (PBUH). The following *hadith* focuses on this issue.

'A'isha reported: Never did Allah's Messenger (may peace be upon him) make a choice between two things but adopting the easier one as compared to the difficult one, but his choice for the easier one was only in case it did not involve any sin, but if it involved sin he was the one who was the farthest from it amongst the people.⁸⁶

⁸⁴ *Sunan Abu-Dawud*, Vol. 2, Book 11 Marriage (Kitab al-Nikah), Hadith no.2137. See also hadith no. 2139. The English translation of all the ahadith of *Sunan Abu-Dawud* mentioned in this write up are adopted from the *Sunan Abu-Dawud*, Partial English Translation, Hassan, Prof. Ahmad, retrieved from <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/abudawud/> accessed on May 20, 2009

⁸⁵ *Sunan Abu-Dawud*, Vol. 2, Book 11 Marriage (Kitab al-Nikah), Hadith no.2138.

⁸⁶ *Sahih Muslim*, Vol. 3, Book 30, The Book Pertaining to the Excellent Qualities of the Prophet (PBUH) and his Companions, (Kitab al Fada'il), Chapter 20: The Hatred of Allah's Apostle (PBUH) Against Sin and the Adopting of a Course of Action Which is Easier to Adopt From Amongst the Permissible Acts, Hadith no. 5754. See also hadith no. 5755.

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Another hadith also focuses how the Prophet (PBUH) reacted after hearing the sad news of beating of wife by the husband.

Abdullah ibn AbuDhubab narrated:

Iyas ibn Abdullah ibn AbuDhubab reported the Apostle of Allah (peace be upon him) as saying: Do not beat Allah's handmaidens, but when Umar came to the Apostle of Allah (peace be upon him) and said: Women have become emboldened towards their husbands; he (the Prophet) gave permission to beat them. Then many women came round the family of the Apostle of Allah (peace be upon him) complaining against their husbands. So the Apostle of Allah (peace be upon him) said: Many women have gone round Muhammad's family complaining against their husbands. They are not the best among you.⁸⁷

Thus, from the critical analysis of the above-mentioned hadith, it appears that Prophet (PBUH) did never inflict pain, injury on any of his wives rather he encourages the men to show mercy and compassion towards their wife. On the basis of first hadith or other related hadith as they shed light how the Prophet (PBUH) behaved towards his wives, Dr. Abdul Hamid A. Abu Sulayman aptly remarks:

...the Prophet never inflicted injury, pain or insult on any of them. If there had been a divine ordinance of physical discipline as a remedy, the Prophet would have been the first to take note of it and put it into practice. Therefore, when the consorts of the Prophet realized the seriousness of the situation, sensed the wrath of their own families, and missed his relationship and

⁸⁷ *Sunan Abu-Dawud*, Vol. 2, Book 11 Marriage (Kitab al-Nikah), Hadith no.2137. See also hadith no. 2141.

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intimacy, that was enough to inspire them to be content with the lifestyle that the Prophet offered.⁸⁸

Prophet's (PBUH) seclusion from his family for one month really help his wives to recognize their mistakes, and having found themselves on the threshold of the potential consequences they returned to the dignity of acceptance.⁸⁹ Therefore, the Prophetic instances clarify that the interpretation of *daraba* during his era was to seclude, to move away, and to distance himself from them.⁹⁰ This construction of the very idiom *daraba* is consistent, as one author reasonably believes, on the one hand, with the psychological nature of the matter, and on the other, with the common understanding of the different Qur'anic usages of the same verb and its abstractions, derivatives and figuratives.⁹¹

If the third step proves effective and objective is reached, no further step can be taken as such act would amount to disobedience to Allah's (SWT) commandment and oppression to the poor wife. Allah (SWT) ordains:

But if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).⁹²

In this regard, Sayyid Qutb tartly remarks that it is obedience based on positive response, not forced obedience as he firmly believes that latter type of obedience is detrimental to the establishment and running of a healthy and sound family.⁹³ He emphatically

⁸⁸ See n.4, p. 21.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² An-Nisa 4:34.

⁹³ See n.24, p. 138.

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maintains that as per the Qur'anic injunction is concerned, to continue to resort to any of these measures after the goal of obedience is achieved takes the husband beyond his allowed limits.⁹⁴ Why this prohibition is followed by a reminder of the greatness of Allah (SWT) he provides the following explanation:

This prohibition is followed by a reminder of the greatness of God so that people submit to His directives and repress any feeling of might or arrogance which they may entertain. This fits with the Qur'anic method of combining temptation with warning: "*God is indeed Most High, Great*".⁹⁵

It is pertinent to mention here that all the aforesaid measures are applicable in a situation where rebellion is feared not actually taken place. However, the Qur'an addresses that situation also when actual rift occurs and both the spouses are not at ease to maintain their matrimonial rights and obligations. In that situation, the measures mentioned above are ineffective, useless and may be counterproductive. For this, the Qur'an prescribes a distinct approach to protect the family from collapse. It lays down:

If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.⁹⁶

The verse so quoted implies that this is last measure and it is resorted to when an actual breach is feared. In case of such strained

⁹⁴ Ibid, p. 139.

⁹⁵ Ibid.

⁹⁶ An-Nisa 4:35.

relationship, the appointment of arbiters from the families of both spouses is necessarily to be appointed. One renowned commentator of the Qur'an has focused on this issue in the following manner:

...there are times when the family feud becomes long- drawn. It may be because the woman is temperamentally obstinate and contumacious, or it may be the fault of the man who may have been unjustly oppressive. Whatever it actually is, one thing is certain that the unfortunate tussle will not remain restricted within the four walls of the house; it will definitely spread out. Then, as usual, supporters of one party will go about maligning the others with all sort of accusations. This will cause tempers of parties to rise and what started as the disagreement of two individuals will turn into a confrontation between two families. It is to block the road to this terrible discord that, in the second verse, the Holy Qur'an addresses government authorities of the time, the guardians of the parties concerned and their supporters, and the general body of Muslims, and suggests a decent method which would cool down tempers, shut out avenues of accusations and make a compromise between the affected parties possible, so that the dispute which, no doubt, could not remain restricted to the couple's home, would at least be settled within their families and not go to a court of law to become public knowledge. This particular method requires that concerned officials of the government or the guardians of the parties or a

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body of Muslims which has the necessary integrity, influence and authority should take charge and appoint two arbitrators to help bring about a compromise between the parties concerned - taking one arbitrator from the man's family and the other from that of the woman.⁹⁷

The Holy Qur'an prescribes this method for the very purpose of bringing peace and reestablishing amicable relationship between the spouses. To effect these basic intents the Qur'an mentions the qualifications of the arbiters. They must have the keen intellect, integrity, farsightedness, non-biased attitude, trustworthiness and above all the capacity to settle the dispute peacefully and amicably.⁹⁸ They have to strive hard for ensuring the best interests for the spouses, children, if any, without injuring the reputation of both families. This duty, as a corollary matter, entails a restriction upon them i.e. they are under a strict legal obligation not to express the family secrets, causes of rift etc. to anyone. Their principal duty, if we put in a word, is to achieve reconciliation between the couple. Sayyid Qutb puts it in the following way:

...If the man and his wife truly desire such reconciliation, but are only prevented from doing so by strong feelings of anger, then a serious effort by the arbiters will be successful, with God's help: *"If they both want to set things aright, God will bring about their reconciliation.."* (Verse 35) Their own desire to bring about reconciliation is endorsed by God, who responds favourably to their serious wish.

⁹⁷ See n. 22.

⁹⁸ The Holy Qur'an uses the very word '*hakam*' for the arbitrators.

This is the relationship between people's efforts and God's will.⁹⁹

3.4 Strategies of Islamic Law in Rectifying Husband's Behaviour by the Wife

The Holy Qur'an also refers the term *nushuz* in relation to a husband also as evident from the following verse:

If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if ye do good and practise self-restraint, Allah is well-acquainted with all that ye do.¹⁰⁰

Thus, a *nushuz* husband is recognized by the Qur'an and certain measures have to be put into action to rectify his attitude and conduct. As per the Islamic Law is concerned, the wife also has the right to mend the behaviour of the husband to help him to set right on the proper track. The underlying philosophy is grounded on the very basic Qur'anic norm that is enjoining good and forbidding wrong. The Holy Qur'an, in one place, mentions:

Ye are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah. If only the People of the Book had faith, it were best for them: among them are some who have faith, but most of them are perverted transgressors.¹⁰¹

⁹⁹ See n.24, p. 140.

¹⁰⁰ An-Nisa 4:128.

¹⁰¹ Al-E-Imran 3:110.

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Allah (SWT) also ordains:

The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise.¹⁰²

In the Sunnah of the Prophet (PBUH) we also find the reflection of the above spirit.

'Abdullah b. Amr b. al-As is reported to have said: Verily a person asked the Messenger of Allah (may peace and blessings be upon him) who amongst the Muslims was better. Upon this (the Holy Prophet) remarked: From whose hand and tongue the Muslims are safe.¹⁰³

Under the *Sharia* she can resort to the following measures to rectify the manner of her husband.

Firstly, she should urge him with politeness and kindness to do good and appeal to his conscience. Secondly, she should try to find out the cause of aversion and disliking of the husband towards her and his cruelty and consider whether any concession and compromise can be made on both sides to improve the situation. Thirdly, she can lodge complaint to a judge regarding the barbaric conduct of the husband. The judge, as Maliki School prescribes, may exhort the husband to rectify his behaviour. Even then, the husband clings to his unruly behaviour, the judge can order a

¹⁰² Al-Tawba 9:71.

¹⁰³ *Sahih al-Muslim*, Vol. 1, Book 1 The Book of Faith (Kitab al-Iman), Chapter 15 Concerning the Eminence of Islam and of the Affairs which are Excellent, Hadith no. 64. See also Ahadith no. 65 & 66.

temporary separation of the couple to rectify the stubborn husband and if this also fails, he may order that the husband would be physically chastised or if necessary be detained in prison. Lastly, the wife can initiate divorce proceedings against her husband for his continued ill-conduct and cruelty.¹⁰⁴ Why the wife herself would not chastise her husband –in response to this issue a contemporary scholar argues in the following manner:

The fact that on average husbands are physically much stronger than their wives diminishes the possibility of wives successfully chastising their husbands. In addition the fact that the husband does have the position of head of the family means that if the wife attempted to physically chastise him the result could be automatic divorce which would defeat the purpose of this concession given to husbands in attempting to correct their wives.¹⁰⁵

4. Modern Legislation and the Prohibition of Spousal violence against Women.

In this modern era, different domestic and international instruments contain the prohibitions of violence against women. It is noteworthy to mention that, the Declaration on the Elimination of Violence against Women, 1993 emphatically condemns all type of violence including domestic violence against women. Article 4 of the Declaration provides that States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and

¹⁰⁴ See n.13.

¹⁰⁵ Ibid.

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without delay a policy of eliminating violence against women. Very recently, wife battering is declared as a criminal offence in Bangladesh through the enactment of the Domestic Violence (Prevention & Protection) Act, 2010. Under this legislation the very word 'violence' is used in a generic sense meaning it covers physical, mental, sexual violence and financial loss inflicted upon the woman and child by any person who is connected with the latter through any familial bond. This piece of legislation also embodies provisions relating to payment of compensation to the victim and other types of remedy as deemed fit to the concerned court. Before the enactment of this Act, in case of domestic violence especially of spousal violence the woman could take the refuge of the Repression of Violence against Women and Children Act, 2000 only if the offence is related to dowry demands or other offences punishable under the same Act. In other cases she had to rely on the Penal Code, 1860.

5. Concluding Remarks

Qur'anic injunctions and Prophetic traditions make it very clear that wife battering is strictly prohibited in Islam. Even it would not be an exaggeration to say that this act is *haram* and is regarded as a crime under the framework of Islamic Criminal Law. The Quranic reference of 4:34 is misconceived and misinterpreted by many persons who regard it as a license to beat the wife. Even this misconception leads them to argue that this is their prerogative right to discipline the wives. Certainly, the Qur'an and the Sunnah base the marital relationship on an equal footing of mutual love, respect, affection and mercy. The traditional interpretation of the verb *daraba* implies pain, injury and suffering which really goes against the basic intents of Qur'anic framework of human dignity. Therefore, we propose that the very phrase *daraba* is to be interpreted to mean "move away" from the wife, to separate him from her and to "depart" from the abode as a last resort to restore

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her to a reasoned and conscientious decision and help her to comprehend the severity and gravity of recalcitrance and its budding consequences for her and their children and overall its impact on the society and in the long run on the *ummah*. This line of interpretation is in consonance of the Quranic injunctions and the practices of the Prophet (PBUH) and this serves as an effective emotional remedy which would ensure the *maqasid* of the conjugal relationship within the Islamic framework. Modern legislation prohibiting violence against women, to certain extent, is in consonance with the provisions of Islamic Law.