



## Marital Discord Resolution in AbdulHamid AbuSulayman's Viewpoint: A Maqāsidic Analysis

## حل الشقاق الزوجي في نظر عبد الحميد أبو سليمان: تحليل مقاصدي

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### Abstract

The research aims to illustrate the viewpoints of AbdulHamid AbuSulayman on marital discord's resolution, which he corresponded in one of his pivotal books entitled "Marital Discord: Recapturing Human Dignity through the Higher Objectives of Islamic Law". He profoundly noticed a long lasting and historical debate among scholars of Islam regarding the chastisement of a wife and its intensity whether a mark of beating could be seen on her body, or a slight beating with a light stuff like a siwāk (toothbrush) could be enough to chastise. AbuSulayman entirely disagreed with such perception of beating and claimed that where the foundation of a family in Islam is based on affection, compassion, cooperation, and benevolence, how coercion, repression, or abuse should have the space there? He also argued that how an adult person can beat another adult while each spouse has the right to leave the family and terminate the marital bond when it becomes detrimental? Conversely, scholars like Ibn Abi Hatim, Ibn Jarir and other classical scholars of four madhāhib endorsed the husband's role to discipline his wife by slight beating. Modern scholars like Muḥammad 'Abduh, Rashīd Riḍā, Sayyid Quṭb and Yūsuf al-Qaradāwī also opined the same. To resolve disputes between spouses, AbuSulayman proposed some steps that could be taken by a husband to normalize the relationship avoiding any chastisement. The study followed a qualitative methodology, where the researchers extensively studied the aforementioned book and other related sources and analysed the author's viewpoints and that of other scholars from Maqāsid al-Sharī'ah perspective. **Keywords:** AbuSulayman, Marital Discord, Maqāsid al-Sharī'ah, Domestic Violence, Resolutions.

### ملخص البحث

يهدف البحث إلى بيان آراء عبد الحميد أبو سليمان في حل الشقاق الزوجي، والتي كتبها في أحد كتبه المحورية بعنوان "الشقاق الزوجي: استعادة كرامة الإنسان من خلال المقاصد العليا للشريعة الإسلامية" وقد لاحظ بشدة جدلاً طويلاً وتاريخياً بين علماء الإسلام حول تأديب الزوجة وشدة، هل يمكن رؤية أثر الضرب على جسدها، أو الضرب الخفيف يكفي للتأديب بأداة خفيفة مثل السواك؟ اختلف أبو سليمان تماماً مع هذا التصور للضرب وادعى أنه حيث يقوم أساس الأسرة في الإسلام على المودة والرحمة والتعاون والإحسان، فكيف يجب أن يكون هناك مساحة للإكراه أو القمع أو الإساءة؟ وجادل أيضاً كيف يمكن لشخص بالغ أن يضرب شخصاً بالغاً آخر بينما يحق لكل من الزوجين ترك الأسرة وإنهاء الرابطة الزوجية عندما تصبح ضارة؟ وعلى العكس من ذلك، أيد علماء مثل ابن أبي حاتم وابن جرير وغيرهم من علماء المذاهب الأربعة دور الزوج في تأديب زوجته بالضرب الخفيف. كما أيد هذا الرأي علماء العصر الحديث مثل محمد عبده، ورشيد رضا، وسيد قطب، ويوسف القرضاوي. ولحل الخلافات بين الزوجين، اقترح أبو سليمان بعض الخطوات التي يمكن أن يتخذها الزوج لتطبيع العلاقة وتجنب أي تأديب. اتبعت الدراسة المنهج النوعي، حيث قام الباحثان بدراسة الكتاب المذكور والمصادر الأخرى ذات الصلة دراسة مستفيضة، وتحليل آراء المؤلف وآراء العلماء الآخرين من منظور مقاصد الشريعة.

**الكلمات المفتاحية:** أبو سليمان، الشقاق الزوجي، العنف الأسري، مقاصد الشريعة، الحلول.

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## 1. Introduction

### 1.1 Background of the Study

In our Muslim society, there is a common perception that Islam allows a husband to beat his wife if she exposes disloyalty or disobedience (*nushūz*) to the will of her husband. In this case, to argue, they present the verse number 34 of *Sūrat al-Nisā'*:

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاجْزُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنْ أَطَعْتُنَّ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا﴾

*Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But*

*if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand. [al-Nisā': 34].*

And the *ḥadīth* of Ibn 'Abbās (r.t.a.):

((وَقَالَ عَطَاءٌ: قُلْتُ لِابْنِ عَبَّاسٍ: مَا الضَّرْبُ غَيْرُ الْمَرْج؟ قَالَ: "بِالسَّوَاكِ وَنَحْوِهِ").

And 'Aṭā (r.t.a.) said: I asked Ibn 'Abbās: What is non-severe beating? He said: "With the (toothbrush) *siwāk* and the like" (al-Qurṭubī, 2007, 712).

Some *mufasssīrūn* claim that beating wife is legal and approved by the Islamic *Shari'ah*. Having read such interpretation of the Qur'ānic verse and specific *ḥadīth*, some people treat their wives as their subordinates, like the specific people who are working in their domestic area and other places under their uncompromised authority. Such perception regarding the *Shari'ah* laws made women their subordinates (slaves), whose duty is only to follow what they instruct them (Shireen J. Jejeebhoy, 1998, 7). If they (women) disagree to accede the instruction given by their husbands, they deserve to be chastised or inflicted on pain and oppression.

In the contemporary time, divorce rate across the Muslim countries is increasing day by day. In some places it has now become more than double, where majority of divorced women accuse of being tortured and abused by their husbands. Like in Bangladesh, the divorce rate has been doubled in 2022 compared to the previous year, as unveiled in the Bangladesh Bureau of Statistics (BBS) report titled Bangladesh Sample Vital Statistics (BSVS) 2022 (Dhaka Tribune, 2023). Another report explains that the rate of divorce rose to 1.4 per thousand people in 2022, compared to 0.7 per thousand in 2021. The national statistics agency said the divorce rate was higher in rural areas, which saw an increase of 0.6 per thousand compared to 0.5 per thousand in urban areas (Anadolu Agency, 2023). In Malaysia, in 2022, 15% divorce happened due to the domestic violence and at the top (31%) is communication breakdown (Malay Mail, 2023). In Türkiye the number of divorces fluctuated, though mostly increased from 2001 to 2022. Over this time period the number of divorces in Turkey has increased from

approximately 92 thousand in 2001 to almost 181 thousand in 2022 (Statista, 2023).

In the western world, women go to the court if they face domestic violence or become repressed by their husbands, and the respective husbands are seen to face trial according to the rules of that state. Such law is now also implemented in the Muslim countries (The Daily Star, 2015). But most of the time, Muslim women do not show their anger against their husbands going to the court. They silently tolerate to avoid further conflict or to preserve peace and stability in the family. Contrary to that, some go to the court and terminate the marital knot.

If Islam is a religion of peace, discouraging all sorts of violence, discrimination and abuse, then why even Muslims oppress their wives? Where the Qur'an describes the speech of mercy, forgiveness, cooperation and benevolence, then why Muslims still have to beat their wives? Is it due to the verbatim meaning of specific verse of the Qur'an and the *ḥadīth*? The Qur'an's wording '*idribūhunna*' (al-Nisā':34) and *ḥadīth* (Al-Nawawī, 2003, no.175) indicate to chastise the wives?

1. What is the verse of the Qur'an and *ḥadīth* telling regarding the beating of wife?
2. What did Muslim classical scholars and other modern scholars opine regarding beating the wife?
3. How did AbdulHamid AbuSulayman interpret the specific verse of the Qur'an and *ḥadīth* indicating beating the wife? And how did he pave the way of marital dispute?
4. What is the stance of *Maqāṣid al-Sharī'ah* on marital dispute resolution?

All the questions' answers have been discussed below gradually through an extensive study and analysis of the book entitled "*Marital Discord: Recapturing Human Dignity through the Higher Objectives of Islamic Law*", written by AbdulHamid AbuSulayman.

## 1.2 Literature Review

To conduct this research **Marital Discord Resolution in AbdulHamid AbuSulayman's Viewpoint: A Maqāṣidic**

**Analysis**, the researchers have explored some other partially relevant articles written by some experts, researchers and intellectuals under different related titles. Azizah Y. al-Hibri wrote one of the crucial articles about American Muslim societal context from Islamic perspective. Her paper is entitled *An Islamic Perspective on Domestic Violence*. Through this study, Azizah showed how the traditional Islamic scholars viewed the domestic violence and how they dealt with the issue. She explained the gender relations especially within the family which is rooted in the Qur'an and examined that. The Qur'anic verse (4:34) which talks about beating the wife, has been the centre of debate among the scholars of past and contemporary time. The wording of this verse (*idribūhunna*) has been interpreted in different ways by the scholars. Rachel M. Scott had conducted a research specially on this verse. The title of his research is *A Contextual Approach to Women's Rights in the Quran: Reading of 4:34*. Through this study, the researcher explained that Muslim feminists claimed that no verse of the Qur'an can truly have an oppressive androcentric intent; such an intent comes only from the male dominated interpretive tradition. Another research was done by Elizabeth Katz on *Judicial Patriarchy and Domestic Violence: A Challenge to the Conventional Family Privacy Narrative*. The researcher described that according to the conventional domestic violence narrative, judges historically ignored or even shielded 'wife beaters' as a result of the patriarchal prioritization of privacy in the home. He further added in the early twentieth century, judges regularly and enthusiastically protected female victims of domestic violence in the divorce and criminal contexts. Ex-rector of IIUM, Zaleha Kamaruddin and Umar A. Oseni published an article entitled *Between Ideals and Reality: Violence against Women and the Real Image of the Women in Islam*. In this paper they illustrated that it is often perceived that Islam is biased against women, such perception is not ill conceived. This is because the patriarchal conjugal relationships practiced in countries such as Pakistan, Afghanistan and Saudi Arabia show the subservient roles women play in relation to their husbands. The next article

entitled *Managing Domestic Violence-Islamic Religious Perspective* written by Zaleha Kamaruddin, R. Abdullah, and I. Ramzy. They stated that domestic violence is one of the most wide-spread crimes in the contemporary society, irrespective of race, ethnicity, country, religion, and culture. The vindication of violence against women based on religious affiliation and a high rate of partner violence among particular religious communities, has led social scientists to consider religion as a reason for violence in the family. The last article *Islamic Perspectives on Domestic Violence* written by Tesneem Alkiek. She stated that one out of three women would be abused in their lifetime by an intimate partner. This staggering statistic applies across race, religion, and nationality. Having raised a question regarding religion, she said what role then does religion play in allowing or prohibiting domestic violence? The abusers take advantage of misinterpretations of religious texts and exploit scripture as a justification for harming others both physically and mentally. She suggested that religious communities and leaders in converse can provide fundamental resources to raise awareness of the harms and impermissibility of domestic violence and provide support for victims.

### 1.3 Methodology

The researchers have followed the qualitative methodology to write this article. The book of AbdulHamid AbuSulayman entitled: *'Marital Discord: Recapturing Human Dignity through the Higher Objectives of Islamic Law'* has been intensively studied by the researchers and analysed through *Maqāṣid al-Sharī'ah* aspect. The researchers have studied other books, articles and videos related to the issue of the author. And books, articles and videos of other scholars and researchers who wrote regarding him and his contributions also have been intensively scanned and studied.

### 1.4 Biography of AbdulHamid AbuSulayman at A Glance

AbdulHamid AbuSulayman was one of the great intellectuals, thinkers, reformers, educationists and scholars of Islam (Anwar Ibrahim, 2010), whose

intellectual contributions built an unparalleled bridge between the Eastern and Western worlds. AbuSulayman was born in Makkah, Saudi Arabia, in 1936 and died on August 18, 2021 at the age of 84 (Imad ad-Dean, 2022). He received his BA and MA from University of Cairo and a PhD in International Relations from University of Pennsylvania, USA in 1973 (The Global Muslim Brotherhood Daily Watch, n.d.). During his lifetime, he massively contributed to the development of Muslim *Ummah* through establishing organizations, academic institutions, production of knowledge and its dissemination in societies across the world. He wrote numerous significant books and articles, where he left his unique and dynamic ideas, thoughts, insights and guidance. Islamization of Knowledge (IOK) was his prime vision in life, who is also called as one of the pioneers of this movement across the world. His objective was to achieve mastery of Islamic thought in various branches of human knowledge to build a sound contemporary Islamic base for dynamic action in all spheres of life and civilization (Ghalia and Hossen, 2019, 8-9).

He involved himself with several organizations and institutions in the western and Islamic world, and played a vital role being on the top of the committees and trustees of the boards. He was the Secretary General of the World Assembly of Muslim Youth (WAMY) from 1973 to 1979, Chairman, Department of Political Science at King Saud University, Riyadh, Saudi Arabia, from 1982 to 1984. He was also in the Initial Board of Directors of SAAR Foundations (1983), a Founding member of Association of Muslim Social Scientists (AMSS) (1972) and was its President from 1985 to 1987. He was one of the founding members of International Islamic University Malaysia (IIUM) and was its 2<sup>nd</sup> Rector from 1989 to 1999 (Hasan, 2021). He was the Chairman of the Board and Trustee of International Institute of Islamic Thought (IIIT) and its founding member and President as well (Hasan, 2021).

From the year 1988 to 1998, during his rectorship IIUM went through a massive expansion both in terms of quality in education as well as physical expansion. His efforts were impressive towards academic structure of the university, which made a spectacular effort in bringing the

university to the position of one of the top universities in the world to study for Muslims (IIUM Student Union TV, January 15, 2022). AbuSulayman sought the recognition of Islam as a global religion. After all, more than a quarter of the world's population are Muslims, and they live in locations far from the Middle East where the religion originated. Today, most Muslims live in Asia (Indonesia has the largest Muslim population with more than 230 million) (Luke Gibson, 2022, November 10).

## 2. Interpretations of Quranic Verse and *Ḥadīth* by Scholars on Chastising Wives

Women are the most vulnerable part like children and old ones in society. They always need kind and affectionate behavior from men. The Almighty Allah Himself declared that men are the care takers and guardians of women:

*"Men are the protectors and maintainers of women, because Allah had made one of them to excel the other, and because they spend (to support them) from their means. Therefore, the righteous women are devoutly obedient (to Allah and to their husbands), and guard in the husband's absence what Allah orders them to guard (e.g., their chastity, their husband's property). As to those women on whose part you see an ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly, if it is useful); but if they return to obedience, seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great. [al-Nisā': 34].*

In a *ḥadīth* Prophet (saw) said:

((عَنْ سُلَيْمَانَ بْنِ عَمْرٍو بْنِ الْأَحْوَصِ، قَالَ حَدَّثَنِي أَبِي أَنَّهُ، شَهِدَ حَجَّةَ الْوَدَاعِ مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ وَذَكَرَ وَوَعَّظَ فَذَكَرَ فِي الْحَدِيثِ قِصَّةً فَقَالَ " أَلَا وَاسْتَوْصُوا بِالنِّسَاءِ خَيْرًا فَإِنَّمَا هُنَّ عَوَانٌ عِنْدَكُمْ لَيْسَ تَمْلِكُونَ مِنْهُنَّ شَيْئًا غَيْرَ ذَلِكَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبِينَةٍ فَإِنْ فَعَلْنَ فَاجْهَرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرِجٍ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا أَلَا إِنَّ لَكُمْ عَلَى نِسَائِكُمْ حَقًّا وَلِنِسَائِكُمْ عَلَيْكُمْ حَقًّا فَأَمَّا حَقُّكُمْ عَلَى نِسَائِكُمْ أَلَّا يُوطِئْنَ فُرُشَكُمْ مَنْ تَكْرَهُونَ وَلَا يَأْذَنَنَّ فِي بُيُوتِكُمْ لِمَنْ تَكْرَهُونَ أَلَا وَحَقُّهُنَّ عَلَيْكُمْ أَنْ تُحْسِنُوا إِلَيْهِنَّ فِي كِسْوَتِهِنَّ وَطَعَامِهِنَّ ")).

*Narrated from Sulaymān bin 'Amr bin al-Aḥwaṣ: My father narrated to me that he had attended Ḥajjat al-Wadā' (the*

*Farewell Hajj) with the Messenger of Allah (saw) who delivered a speech. He praised Allah His due praise, admonished the people, and mentioned a story, then he said: "Behold! Be kind to women for they are as captives under your protection, and you do not possess anything other than that, except if they bring forth a manifest wrong deed. If they did so, separate from them in the bed and beat them lightly. If they obey you, do not transgress. Indeed, you have rights on your women and they also have rights on you. As to your rights on them, they are not permitted to admit anyone you dislike to your houses. As to their rights on you, it is for you to treat them kindly and moderately as regards their clothing and food" (al-Nawawī, 2003, no. 165, 312-313).*

Ibn Abī Ḥātim in his *tafsīr* said: *iqribūhunna* (beat them), means beating would be by *siwāk* and likewise stuff (Ibn Abi Hatim, 1997, V.1, 944). Ibn Jarīr mentioned in his *tafsīr*: So, o men, admonish them in their disobedience, and if they deny to return to what is required of you, then bind them in their homes, and beat them so that they will fulfill what is obligatory upon them of obedience to Allah in your rights that are necessary for them. Later he said: "The people of interpretation said: the nature of the beating that Allah has permitted for the disobedient wife to hit is non-excruciating beating" (Ibn Jarīr, 1994, Vol.2, 453). Ibn Kathīr said: you may beat them without causing any harm (Ibn Kathīr, 1999, 296).

Al-Mawsū'ah al-Fiqhiyyah describes: In beating the wife for disobedience or for other reasons, it is necessary that the beating be not severe, without blood, and that he avoids the face and secret places, and that he does not hit her except for what is related to his right, such as disobedience, and he should not hit her for the right of Allah according to the majority of jurists, such as abandoning prayer (al-Mawsū'ah al-Fiqhiyyah, 1993, Vol.28, 177).

It is crystal clear from the above-mentioned discussion that the Qur'ānic verse indicates beating of wife and Prophetic *ḥadīth* also supports that through a further detail. In a *ḥadīth*, Prophet (saw) instructed to beat the wife when she commits any evident act of *fāḥisha* (sinful acts). And that symbolic beating is the third option after advice and abandonment. It is neither obligatory, nor

*Sunnah*, nor recommended, rather, it is permissible for the husband if finds himself in front of a disobedient wife and is assured that this is the only means that will return the wife (Ahmad Sabri, 2022, retrieved on October 10, 2023).

In the modern period, scholars like Muḥammad 'Abduh and Rashīd Riḍā have defended the hitting of women without severe harm. Sayyid Quṭb argued that a man may beat his wife as a preventative measure in an unhealthy situation in order to protect the family against collapse. The popular scholar Yūsuf al-Qaradāwī stated that a man is entitled to the obedience and cooperation of his wife, and that if he does not receive this, as a last resort, he can beat her lightly with his hands, avoiding her face and other sensitive areas (M. Scott, 2009, 62).

### 2.1 Misunderstanding of 'Chastisement' (*al-Ḍarb*)

The chastisement of women is a complex and crooked issue in the contemporary Muslim societies. It is conventionally understood to mean a way by which a husband can practice his prerogative to solve marital conflict, which is created from recalcitrance and defiance of wife, said AbdulHamid AbuSulayman (AbduSulayman, 2008, 1). In order to overcome the dissatisfaction and alienation felt by both spouses within a failing marriage, the issue massively deserves to be discussed and analysed. The issue of chastisement has been misunderstood and abused by men, which made them oblivious to the issue of women's rights and also position of Islam concerning the status and treatment of women (Ibid). The word of the Qur'ān "*ḍaraba*" is not providing an indication of beating wife or hitting by man. It is just a way of showing anger of husband to the wife, AbuSulayman explained (Ibid). According to 'Aṭā' bin Abī Rabāḥ (d.732AD), "*ḍaraba*" does not refer to hitting the wife at all; rather, it is a symbolic gesture that reflects one's anger (Tesneem Alkiek, n.d. 11). Ibn 'Ashūr in his famous *tafsīr* said that: a man does not hit his wife. He simply expresses that he is upset with her (Ibn 'Ashūr, 1984). Al-Dāramī (d. 869AD) illustrated that Imām Bukhārī and Muslim (ra) in their books of *ḥadīth* compilation composed a chapter naming: The Prohibition on Striking Women (Jonathan Brown, 2014, 274), which

directly objects domestic violence. The nineteenth-century Syrian jurist, Ibn 'Ābidīn announced that any harm given by husband that causes a mark on wife's body is considered to be the physical punishment (Elyse Semerdjian, n.d.). Similarly, the advocates of human rights within the fold of Islam are working hard toward a perspective and resolution that can remove all sorts of subjugation and oppression against women and normalizes any likelihood of treating them unfairly and unjustly in the name of religion.

### 2.2 Women are More Defenceless Members of Society

AbdulHamid AbuSulayman said that women are the most vulnerable members of society (AbuSulayman, 2008, 1-2). It has been seen throughout the history and across the cultures where women were seen suffering from torture and suppression rendered by their male partners. It could be due to their unequalness to their male counterpart in terms of social and economic position in society as well as in the family. In addition, there are several pressing factors threatening women's right and status which render them more open and easier to be controlled by men. The factors are such as their physical weakness, emotional and physical attachment to their children, and lack of development (Ibid.2).

### 2.3 Issues Contradicting Essential Human Rights Should be Scrutinized

AbuSulayman said that any issue which contradicts essential human rights, should be scrutinized (Ibid.6). It should be rechecked and restudied to justify its accuracy. Each legal ruling of Islam is for protecting human rights and preserving the wellbeing of people. The issues which have appeared opposing to humans' welfare, must be studied and deeply researched in order to diagnose the flaws. No system should be allowed which does not fulfil the objectives of Islam and does not match with its spirit and purposes to function in society. Moreover, family relationship in Islam is also a pivotal issue. Any anomalous system that militates against the concepts upon which the foundation of family stands up should be

scanned to discover their flaws and weakness (Ibid). The structure of family in Islam basically upholds repose, affection and compassion. Hence, any perception against these basics grows among Muslims, should be nullified and should be working to serve the mentioned basics.

#### 2.4 Chastisement Verses Love and Respect

He stated that the relationship that stands upon suffering, fear, frustration and anxiety; that leads to hate, isolation and apathy (Ibid.8). It never brings good endings neither to the family nor to the society or state. Meanwhile, the relationship which stands upon mutual love, respect, solidarity, cooperation and trust; that leads to charity, dedication and enthusiasm. Love, solidarity and respect make a relationship strong and long lasting. Since long time, the *Ummah* have been experiencing severe oppression and mortification, and a culture of authoritarianism and patronage; across Muslim societies such abuses and suppression have become a part of common culture and happen among different classes of people, especially between the “Weak” and “Strong”, which is contrary to the spirit of kinship and solidarity in Islam. Yet, Prophetic tradition depicts: ‘One structure whose parts support one another’ (Ibid), which refers to mutual cooperation energizing Muslims instead of dividing and fragmentations.

#### 2.5 Each Muslim is a brother of His Fellow Muslim

Based on the Prophetic *ḥadīth*, all Muslims are like a human body. When a part of body pains, the entire body responds to that pain. Similarly, when a Muslim feels pain or suffers from any hurt or aching, all other members of a Muslim society or *Ummah* should feel the similar pain and sufferings. As Prophet (saw) said: “the example of believers in their mutual sympathy and compassion as one body that collectively cares for any ailing organ until it recovers” (Ibid.9). The Prophetic tradition provides many parables of such spirit: each Muslim is a brother of his fellow Muslim and should not suppress, disdain or abandon him; it is sufficient evil for a Muslim to demean his brother (in faith); a Muslim is his whole sanctuary,

property and character. In other saying Prophet (saw) said: Allah does not bestow mercy upon someone who does not show mercy to others (Ibid). He only bestows mercy on His merciful servants. Another *ḥadīth* describes that: “A believer can never be a slanderer, a blasphemer, or an obscene or vulgar person” (Ibid). The most faithful and trustworthy among the believers are the ones with the best morals and the best of you are the best to their wives.

#### 2.6 Prophet (SAW) Never Hurt Any Human Being

AbuSulayman illustrated that relationship between the spouses is based on repose, affection and compassion, and the Prophet (saw) never hurt any human being in his life. He even harshly rebuked the husbands who beat their wives and later again approach them to seek affection and love. He criticized their emotions as well saying like today they hurt their wives and tomorrow they love them. Prophet (saw) said: “one of you continues to beat his wife as a slave and is not ashamed to keep cuddling her” (*Mawsū’at al-Sunnah*, 1992, 153). In another *ḥadīth* it is found that: “Several women came to Muhammad’s family bemoan (the abused by) their husbands, and those are not best of you” (AbuSulayman, 2008, 9). AbuSulayman added that Prophet (saw) himself set a highest parable of kindness, compassion, dignity, and benevolence: “He never extended his hand to hurt a woman, or servant or anyone else” (Ibid).

#### 2.7 Quranic Statement Regarding Chastisement

According to AbuSulayman, through studying the relevant Qur’ānic verses and Prophetic *ahādīth* it is found that the relationship is shaped by the sentiments of affection, compassion and the obligation of patronage. In such a relation, the governing factors are affection, compassion and benevolence. In contemporary Muslim societies, women are sadly confronted by mental and physical cruelty as well as oppression. The oppressing people, in order to justify their practices, provide evidences from misreading of certain antiquated *fatāwā* that grant a husband the headship of a family and along with this, they provide him an extensive mandate in

family matters. Such perception of a family relationship ignores the established foundations of this institution which are compassion, solidarity, cooperation and integration. If we are to avoid women and consider the family is the mere property of men, the meaning of such texts must be misinterpreted and taken out of context and exploited (Ibid.10-12).

## 2.8 Past Backwardness Compelled Women to Be Home Centric

Regarding the backwardness and being home centric of women AbuSulayman said that in past, women's capacity was restricted to the sphere of home and family, which gave burden to men along with obligation, and delegated extra power to manage their family matters. Muscular capability of men was the prime means of earning a living and keeping the family secure. On the other hand, taking care of house and family needs exhausted women's energy and time, which consequently curtailed their interests weakening their perception, and isolated them from the world that grew a naïve mentality in them. But that time, society never raised any question regarding the men's excessive authority in the family. Nevertheless, today, the world is much different than past and full of equal opportunities for both men and women. This equal opportunity made women equivalent to men. As a result, woman now came out from the familial realms and started contributing to every sector of society's development outside the family beside men (Ibid.13).

## 2.9 Re-examining Our Own Perception to the Family Structure

AbuSulayman said that in this age of technological and other surrounding development of the world, our own perception regarding the family structure should be re-examined. Our current world is not like any other time of previous world which our forefathers went through. Now many things changed around us. The perceptions which were created before thousand years might not be the same today. It should be reformed and renewed based on current demands and circumstances. The family structure

which we find long before in history, we do not see the same today, and in future we might not see as usual. Upon the changes of time and behaviours of human beings, the perception of family structure also changes. It has been facing many shapes and transformations across the cultures and civilizations throughout the world. Hence, to avoid all sorts of tensions and conflicts in family relations and values that enable each member of the family to pursue his/her prospective roles, while complementing the roles of other members, we have to re-examine and restudy our own understanding concerning the family structure within the context of current pragmatism (Ibid).

## 2.10 Chastising Women against *Shari'ah's* Principles

Through the writings of AbuSulayman it is found that chastising a woman is opposite to *Shari'ah* principles. The principles which are talking to render the affection (*mawaddah*) and compassion (*rahmah*) between the husband and wife, that can never support chastising by which a man tries to bring his wife to his will. The principles supporting cohesion and maintain its identity is the foundation of a family. In Islam, family membership is by choice: coercion, repression or abuse is not endured, and each spouse has the right of leaving the family and terminate the marital bond, especially when it becomes detrimental. At least, separation is less harmful to family members than a relationship based on hate, discord and acrimony (Ibid.14). In this case, the *Shari'ah* grants both the husband and wife the right of seeking divorce and *khul'* respectively. In the latter case, the wife has choice of being released from the marital bond by agreeing to return the dowry that she received from husband so that husband's greed for her personal property or that of her family does not provide an excuse for abuse or result in the disintegration of the family (Ibid).

## 2.11 Steps to Resolve Disputes between Spouses and *Maqāṣid al-Shari'ah*

To resolve disputes between a husband-and-wife AbuSulayman prescribed three steps which he extracted from the Qur'ānic verses and practical example of the life



of Prophet Muhammad (saw). He said that when the dispute arises between the spouses, the husband firstly should caution her. It means the husband must try best to persuade her and bring her to the reconciliation. In this case, he should adopt all possible ways and means to help sooth her anger and remove misunderstanding arose in her mind, and to caution her regarding the next consequences if she remains on her rigidity and disobedience. If the first step fails, the husband should adopt the second step. And that is refusing to share the marital bed. The husband ought to leave her and leave the marital bed so that she becomes alone, and this loneliness should be longer if she remains on her stance. If she can be put in isolation and the husband does not share the marital bed for a period of time, she might feel the gravity of the needs of husband, and later, she may come back to the normal position. Despite such steps, if she does not become normal and still exposes her rigidity and disloyalty, the husband should adopt the third step. And that is he should handover the matter to the two middlemen (arbitrators), one will be from his guardianship and other will be from her guardianship. The both arbitrators will try best to normalise the relationship between the spouses. If that process also does not become fruitful and reconciliation cannot be rendered, then they should go ahead to the dissolution of marriage. Termination of marriage is now a right solution to this problem.

### 3. Discussion

Throughout the entire study it has been found that AbdulHamid AbuSulayman is plainly against all sorts of beating, torturing and oppression of a husband to render a wife loyal to his obedience. On the other hand, we found that other all classical and modern scholars to endorse beating of wife although it could be as light as possible. They provided such opinion in the interpretation of the Qur'anic word "*wadribūhunna*". To interpret the metaphorical, verbatim, and contextual meaning, they endorsed a slight beating. What the interpretation of the word they did, is fully based on the relevant *ahādīth* and

circumstantial demand of the verse. It is also a part of semantic analysis from all classical scholars. But what AbdulHamid AbuSulayman interpreted, is based on his own whim and understanding. He could not provide any example of his such interpretation from any previous *mufasssīrūn* (interpreters). It could be either from classical scholars, or from the modern ones. What interpretation he did is from his own reasoning and analysis. This is because, what he proposed to resolve a dispute between a couple like firstly doing advice, then not sharing the bed and thirdly managing two arbitrators, all these are Qur'anic clear guidance. These three steps are already stated in the Qur'an. At the end when all these three steps will fail to bring the reconciliation between the spouses, husband should beat her in order to protect the relationship from collapse. When all the classical and modern scholars endorsed the slight beating of the wife, AbuSulayman's rejecting the meaning of beating of the word (*ḍaraba*) is irrational and whimsical, although the word *ḍaraba* directly and indirectly indicates beating. He said that Prophet Muhammad (saw) never beat any of his wives although he observed long one-month isolation from the wives when his all wives raised their demand to increase the monthly allowance. However, Muhammad (saw) was a Prophet and he did not hit any human being in his life, it was a special part of his Prophethood. It was his prophetic character which suited only to him. He is the model for all human beings, but it does not mean that the meaning of *ḍaraba* gives other meaning rather than beating in the specific verse. If the meaning of beating is denied, then the justice has not done to the Qur'an and its guidance.

#### 3.1 Maqāṣidic Analysis

*Maqāṣid al-Sharī'ah* means the purposes of Islamic law. The word "*al-Maqāṣid*" is plural, its singular is *maqṣad* (purpose) (al-Raysūnī, 2014, 9). The meaning of *Maqāṣid al-Sharī'ah* to Yūsuf al-Qaraḍāwī: the purposes that the texts (*naṣūṣ*) aim at are commandments, prohibitions, and permissibility, and partial rulings seek to achieve them in the lives of those charged with individuals, families, groups, and the nation (al-Qaraḍāwī, 2008, 20).

In the intellectual discourse of Islamic studies, nowadays the participation of *Maqāṣid al-Sharī'ah* is more prevalent than any other time. Scholars, researchers and experts on Islamic law and other all branches of knowledge are significantly trying to develop their researches based on the notion of *Maqāṣid al-Sharī'ah*.

However, *Maqāṣid al-Sharī'ah* was expressed by many scholars of Islamic law for many centuries. They are Imām Bannānī, Asnawī, Imām Ghazālī, Āmidī, Ibn al-Hājib, Shāṭibī and Ibn 'Āshūr. Imam Shāṭibī has categorized *Maqāṣid* into three dimensions: *Ḍarūriyyāt* (necessities), *Hājiyyāt* (needs) and *Taḥsīniyyāt* (luxuries) (Zaprlul Khan, 2018, Vol.26, No.2, 450). After Shāṭibī the discourse of *Maqāṣid al-Sharī'ah* was closed for six centuries until the emergence of Ṭāhir bin 'Āshūr, who made the *Maqāṣid al-Sharī'ah* an independent scientific discipline (Ibid. 451). *Ḍarūriyyāt* implies everything that is fundamental and essential to maintain the interests of the world and the hereafter. To illustrate more, *Ḍarūriyyāt* means anything, if it is not available, will cause damage to life (Ibid. 452). The second category of *Maqāṣid* is *Hājiyyāt* which is comprehended as everything that is significant for the protection of human's life but does not reach the emergency level. At this level if the rights are not fulfilled then some of these rights can still be carried out even though they do not achieve the ideal and are very likely weak (Ibid). The third category is *Taḥsīniyyāt* which are not significant for the protection of rights but if they are fulfilled, *Taḥsīniyyāt* will improve the implementation of other rights (Ibid). Necessities are further classified what preserves one's faith, soul, wealth, mind and offspring. Some scholars of *uṣūl* added preservation of one's honor in *Maqāṣid* (Jasser 'Audah, 2007, 3). 'Allāmah Yūsuf al-Qaraḍāwī, surveying the Qur'ān, concluded the following universal *Maqāṣid*: preserving true faith, maintaining human dignity and rights, calling people to worship Allah, purifying the soul, restoring moral values, building good families, treating women fairly, building a strong Islamic nation, and calling for a cooperative world (Ibid. 9). To Ṭāhā Jābir al-'Alwānī, the supreme and prevailing *Maqāṣid* are: The Oneness of Allah (*tawḥīd*), purification

of the soul (*tazkiyyah*), and developing civilization on earth (*'imrān*) (Ibid).

In the contemporary world, the meaning and explanation of five or six *Ḍarūriyyāt* of *Maqāṣid* are no more confined in the previous scholars' provided definition and explanation, rather these are now interpreted more widely and extensively for a greater and wider purposes, which is found in the discussion of Jasser Auda and further explained by Soni Zakaria in his paper. *Ḥifẓ al-Dīn*, before its meaning was protection of religion, which was meant by killing the apostates or infidels in war. But now in the modern context, it is interpreted as freedom of faith or freedom of belief. *Ḥifẓ al-Nafs* and *Ḥifẓ al-'Ird*, before these were meant protection of life and protection of honor, but now their interpretation extends to protection of human dignity and protection of human rights. *Ḥifẓ al-'Aql*, before its meaning was protection of the mind from drinking alcohol etc., but now it is developed into the development of science by respecting scientific thought and work, further studies for new knowledge production, preventing claims of work or plagiarism, against the mentality of imitation, and protection of intellectual property and rights. *Ḥifẓ al-Māl*, before it was meant protection of property but now in the contemporary context, it extends to punishment for the crime of theft, while *Al-Jūwaynī* means protection of money. It is now further developed into economic development, distribution of wealth/property, social welfare, reduction of economic inequality. *Ḥifẓ al-Nasl*, before it was meant protection of heredity, prescribing punishment for immoral crimes like flogging or stoning for adultery. But in the modern context, its meaning is significantly shifted to a theory oriented towards family development (Zakaria, 2021, 88-90).

Nevertheless, according to *Maqāṣid al-Sharī'ah*, the purpose of getting married is to have affection and compassion by the couple (Jamāl al-Dīn 'Aṭīyyah, 2001, 150), and giving birth to children (Ibid) and establishing a peaceful, cooperative and meaningful family. And such family will be created and will be running on mutual love, respect, dignity and cooperation (Ibid). When such situation is not obtained, the life of couple faces threat of

damages. Life becomes detrimental to both. All principles of foundations of a family are absent. Hatred, disrespect and abuse, all detrimental elements prevailed in the familial life; such marital contract must be ended. Because, one of the main purposes of *Maqāṣid al-Sharī'ah* is protection of life (Ibid). When a life is in danger, relationship is no more in priority. Life must be saved and protected first even though by the dissolution of marriage and this is the plain demand of *Maqāṣid al-Sharī'ah*.

### 3.2 Conclusion

Chastising or beating someone never brings a good solution to a specific problem. Rather, it creates many more new problems and drawbacks, especially for a martial bondage. Across the entire Qur'ān, the word “*ḍaraba*” has been mentioned in many places where only in three places it meant beating (I. Epistemology e-Newsletter, March 17, 2015). And this beating has never been implemented by Prophet (saw) himself. He never beat anyone of his wives and never allowed others to beat them. Abū Bakr, 'Umar (ra) also wanted to beat their respective daughters ('Ā'ishh and Ḥafṣah rta) but Prophet (saw) did not allow them to do so (Ibid). Beating of an adult to another adult is unexpected and indecent, and by this way the achievement of a good result is unthinkable. The noble Qur'ān commands men not to treat women with harshness and cruelty, rather commands to live with kindness:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَحِشَةٍ مُبِينَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴿١٩﴾

“O you who believe! You are forbidden to inherit women against their will; and you should not treat them with harshness, that you may take away part of the dowry you have given them, unless they commit *Fāḥishatun Mubayyinah* (improper behaviour). And live with them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good” [al-Nisā': 19].

In a *ḥadīth* it is mentioned that:

((وَعَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - عَنِ النَّبِيِّ ﷺ قَالَ : (( مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يُوْذِي جَارَهُ , وَاسْتَوْصُوا بِالنِّسَاءِ خَيْرًا , فَإِنَّهُنَّ خُلُقْنَ مِنْ ضَلَعٍ , وَإِنَّ أَعْوَجَ شَيْءٍ فِي الضَّلَعِ أَعْلَاهُ , فَإِنْ ذَهَبَتْ تَقِيمَهُ كَسَرْتَهُ , وَإِنْ تَرَكْتَهُ لَمْ يَزَلْ أَعْوَجَ , فَاسْتَوْصُوا بِالنِّسَاءِ خَيْرًا { مُتَّفَقٌ عَلَيْهِ , وَاللَّفْظُ لِلْبَخَارِيِّ } .

Narrated from Abū Hurayrah (ra): The Prophet (saw) said: “Whoever believes in Allah and the Last Day should not hurt (trouble) his neighbour. And I command you to take care of the women in a good manner, for they are created from a rib, and the most crooked portion of the rib is its upper part, if you try to straighten it, you will break it, and if you leave it, it will remain crooked. So, I command you to take care of the woman in a good manner”, [Agreed upon; the wording is al-Bukhari's] (Al-Nawawī, Vol. 2, No. 163. 311).

## 4. Findings

Women are usually comparatively physically less strong than men. As a result, they face impossibility to counter aggression from their opposite gender. They are often softer and more lenient, and affectionate to their children, which is not seen within the folk of men. Having thought the pains and sufferings children may face after their divorce, most of the time, they remain silent for this. To develop the children's future, they tolerate all sorts of sufferings in family and social life. Moreover, their illiteracy is also another barrier to them. To escape the intolerant situation of life, they do not know what to do and how to get rid of this obstacle hampering the peace of their life.

From the entire study, it is perceived that Prophet Muhammad (saw) is the best role model not only for Muslims but also for any human being. Regarding the issue, the reality is that Prophet Muhammad (saw) never hurt any of his wives despite his isolation from them for around one month. No wife faced any physical hurt from him, rather all of them perceived their mistakes and later rectified themselves through accepting the Prophet's decision. Another instance is, he never hurt any human being whether it is from *kuffar* (infidels) or Muslims, or from any other religions. In such circumstance, no Muslim

should beat his wife if he truly follows the teachings of Prophet (saw) and claims to be among his disciples.

At the end, it could be said that although the Qur'an mentions the word "*daraba*" which denotes several meanings, one of them is beating. Since beating causes pains, disgrace and consequently leads to the termination of a relation, and where the Prophet (saw) also never raised his hand to anyone of his wives although they were in strike for long one month, it never instigated him to punish any of them. Hence, we have still chance to take other meanings of the word like isolation, separation or leaving as Prophet (saw) adopted. If anyone truly wants to retain his marital relationship with his wife, he has chance not to take the meaning of beating, rather to take the meaning of separation or leaving the house, and that is the proper way to handle the situation to bring the reconciliation, better understanding and keep the relationship intact (I. Epistemology e-Newsletter, March 17, 2015).

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