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Islamic Legal Discourse on Domestic Violence: Classical Sources and Modern Reform Efforts

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Abstract:

Domestic violence is a formidable social and legal issue in numerous societies, including Muslim countries where the injunctions in the scriptures are often cited in discussions on the rights and duties of marriage. The article aims to discuss the meaning of domestic violence as it appears in Islamic legal discourse based on the analysis of the relevant Qur'anic verses, prophetic traditions, classical jurisprudential interpretations and contemporary reformist perspectives. Special consideration is paid to Qur'an 4:34 which has historically been a focal point of discussion regarding marital discipline and authority. The study is mainly based on the fact that while some classical jurists allowed a very limited and harmless type of disciplinary measure under extreme conditions, the general moral atmosphere of the Qur'an and the Sunnah is one of compassion, justice, dignity and avoiding harm. The objectives of Islamic law (*maqāṣid al-sharī'ah*), the principle of public welfare (*maṣlaḥah*) and the legal maxim of removing harm (*al-ḍarar yuzāl*) are increasingly used by contemporary Muslim scholars and legal reformers to justify broad protections against domestic violence. The article concludes that modern legal reforms which are designed to prevent domestic abuse can be viewed as part of the Islamic legal tradition, rather than a rejection of it.

Keywords: *Domestic Violence, Islamic Law, Maqāṣid al-Sharī'ah, Family Law, Legal Reform.*

1. Introduction

Domestic violence is one of the most salient social and legal issues facing modern societies. When the topic of domestic abuse comes up within Muslim nations, a religious interpretation of it is often brought up, especially with regards to Qur'an 4:34 and some Prophetic traditions pertaining to marital relations. Whether such interpretations are invoked to justify limited forms of husbandly discipline, or other interpretations focus on the wider Qur'ānic vision of marriage

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as a relationship based on tranquility, compassion, mutual respect and justice, both positions are equally valid.

The recent attention paid to domestic violence and its public attention as a policy concern has led to new developments in the scholarly discussion of Islamic legal sources. The renewed scholarly discussion of Islamic legal sources is a result of the growing visibility of domestic violence as a public policy issue. Modern scholars, judges and reformers have reinterpreted the classical understanding of the relevant passages for the new social conditions, the new "human rights" language, and the modern goals of Islamic law. This has led to much discussion over how traditional legal principles can be compatible with the modern approach to criminalizing domestic violence and to the extent to which they can be.²

Although there has been much scholarly and popular debate about the implications of Qur'ān 4:34, there is still strong disagreement over the meaning of words like *nushūz* and *ḍaraba*, as well as the legal consequences that can be drawn from them. Classical jurists mostly considered these questions under the rubric of the rights and obligations of marriage, while most modern scholars tackled them with the perspective of ethics, social justice, gender relations and *maqāṣid al-sharī'ah*, etc.³

The article states that although in the classical legal literature there is some space for the imposition of a limited type of disciplinary measure, the prevailing ethical thread of Islamic teachings is that of mercy, justice and avoiding harm. Thus, current legal reforms in the fight against domestic violence can be interpreted as genuine developments of the Islamic legal tradition instead of interventions, rather than imposition of foreign laws on it.

2. Normative Qur'ān and Prophetic Perspective of Marriage and Harm

To discuss domestic violence in the context of Islamic legislation, one must first examine the more general rules laid out by the Qur'ān and the Sunnah on marriage, family relations and the prohibition on harm. The Qur'ān does not talk of marriage in terms of domination, rather in terms of tranquility (*sukūn*), affection (*mawaddah*) and mercy (*rahmah*). This much praised verse "And among His signs is that He created for you spouses from among yourselves that you may find tranquility in them and He placed between you affection and mercy,"⁴ sets forth an ethical ideal that makes it the basis of Islamic family life.

². Kecia Ali, "Islam and Domestic Violence," in *Encyclopaedia of Islam and the Muslim World*, 2nd ed.

³. Ayesha S. Chaudhry, *Domestic Violence and the Islamic Tradition* (Oxford: Oxford University Press, 2013), 15–39

⁴. Al-Qur'ān 30:21

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This vision is supported with other Qur'ānic commands that call for conjugal harmony and affection. The phrase “Live with them in kindness” (*wa 'āshirūhunna bil-ma'rūf*), lays moral duties for husbands and highlights the value of good behavior in marriage. These orders are starkly at odds with cruel, humiliating, coercive or physical mistreatment.⁵

The Prophetic Sunnah reaffirms this moral attitude. Many customs recount the character of the Prophet Muḥammad ﷺ with regard to his interaction with family members and the magnitude of his opprobrium against violence against women. It is reported that he never beat any of his wives and that he always insisted that the best of the believers are those who have the best of character towards their families, which is transmitted in the hadīth collections.⁶

Traditions in which the Prophet disapproved of men who physically abused their wives are of particular importance. Traditions stating that the Prophet disapproved of men who physically abused their wives are of particular importance. In a few instances, he denounced such behavior and asked how a man can beat his wife and then ask for love from her. Even in instances where the law and legal debates recognized that some disciplinary action was necessary, the Prophetic approach was always for reconciliation, patience and moral persuasion rather than physical discipline.⁷

These scriptural teachings are often seen as linked to the goals of Islamic law (*maqāṣid al-sharī'ah*), such as the preservation of life, dignity, family and psychological well-being. The legal principle *al-darar yuzāl* “harm must be eliminated” has gained significant recent prominence in the debates about domestic violence. Since the prevention of abuse is directly connected with human dignity and family welfare, many scholars contend that it is more than just a social preference, it is an Islamic legal obligation.⁸

3. Qur'an 4:34 and Classical Exegesis

3.1 Text, Context and Key Terminology:

When debates are had on the scriptural sources that address domestic violence, none of them are quite as prominent as Qur'ān 4:34. The verse refers to men as *qawwāmūn* upon women and it presents a series of appropriate actions when a husband is threatened with *nushūz* (marital discord or serious marital misconduct) by his wife. The verse tells husbands how to go through

⁵. Al-Qur'ān 4:19

⁶. Muḥammad b. Ismā'il al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Kitāb al-Nikāḥ

⁷. Abū Dāwūd, Sunan Abī Dāwūd, Kitāb al-Nikāḥ

⁸. Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 45–72

three stages, namely admonition (*wa'izūhunna*), separation in bed (*wahujūruhunna fī al-maḍāji'*) and then *wa-iḍribūhunna*, which is traditionally translated as “strike them.”⁹

There has been a great deal of discussion among exegetes and jurists about these terms. The classical scholars, as a rule, knew that the responsibility and upkeep were part of what was meant by the term *qiwāmah*, but they did not consider it to be synonymous with unlimited authority. Likewise, the situation with *nushūz* did not translate to just a disagreement, but to a continual behavior that posed a danger to marriage.¹⁰

The word that is most problematic is the term *ḍaraba*. Classical exegesis generally read it as a physical strike against the man, but at the same time they also set up stringent limitations to avoid harm to the man and also not to impair the dignity of the wife. The legal debate about the verse thus shifted less to authorization of violence and more to the limitation and regulation of a social practice already in existence. This will allow them to feel that their inquiries are appreciated. This will make them feel that their questions are being taken care of.¹¹

3.2 Classical Tafsīr Approaches:

Classical commentators like al-Ṭabarī, al-Qurṭubī and Ibn Kathīr usually interpreted the word *wa-iḍribūhunna* literally, but emphasized that no punishment should be injurious or common, except a special one.¹² They always made the connection between the verse and the general commandments of the Qur'ān that call for kindness, justice and treatment of the spouse.

Al-Ṭabarī suggested that the intent of this verse was not to punish, but to maintain peace in the family. Similarly, any physical action should be symbolic and should not harm or embarrass. Prophetic traditions that banned strikes to the face and harsh treatment towards women were cited as a restriction on the meaning of the verse. Or, take the words of Muḥammad ibn Aḥmad al-Qurṭubī, commenting on 4:34, *Al-Jāmi' li-Aḥkām al-Qur'ān*.

One of the notable aspects in classical exegesis is the attempt to harmonize the verses from Qur'ān 4:34 with the example set by the Prophet ﷺ. A large number of narrators have been reported regarding the Prophet's ﷺ status of not striking any of his wives and his practice has been considered by the exegetes as a way of showing the sounder way of action morally. Hence, although the verse was accepted as a concession to be made under certain conditions, the Prophetic example showed that it was better to avoid physical punishment.¹³

⁹. Al-Qur'ān 4:34

¹⁰. Abū ja'far al-Ṭabarī, *Jāmi' ar-Rūh al-Ammāh 'an Ta'wīl 'Aḥkām al-Qur'ān*, commentary on 4:34

¹¹. Ayesha S. Chaudhry, *Domestic Violence and the Islamic Tradition*, 87–112

¹². Ismā'īl Ibn Umar, al Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, commentary on 4:34.

¹³. Ṣaḥīḥ Muslim, *Kitāb al-Faḍā'il*

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4. Classical Juristic Treatment of Marital Harm

4.1 Disciplinary Measures; Restrictions:

The classical Sunni scholars spoke about this Qur'ānic verse 4:34 mostly in the context of family law and marital responsibilities. Jurists, as a rule, throughout the great legal schools, held that admonition and bed separation should always precede any disciplinary measures and that physical discipline, if it should be resorted to at all, could only be used as a last resort when all else had failed.¹⁴

Significantly, however, jurists put in place strong restrictions on such behavior. There was no exception for physical injury, bruising, broken bones, permanent marks or attacks on the face. Numerous legal manuals said the allowable course of action was not punitive but symbolic and placed emphasis on reconciliation being the goal.¹⁵

The restrictions show that classical jurists did not feel that husbands had absolute disciplinary control. Instead, they looked to limit behaviour within a lawful context, where the goal was to do as little harm as possible and to maintain the stability of the family.

Classical jurists also drew up elaborate theories on harm (*ḍarar*) in parallel to the theories on *nushūz*. Harm was considered a proper ground for judicial action and provided a justification for a number of different legal recourses, such as compensation, disciplinary sanctions and divorce.¹⁶

According to the renowned jurist who was called Ḥanafī, the judicial powers had the authority to inflict *ta'zīr* (penalty) on a husband whose action inflicted serious harm on his wife. Similarly, the jurists of the Mālikī school have established procedures for a woman to petition for a divorce on the grounds of abuse, neglect, or mistreatment.¹⁷

The above doctrines clearly illustrate that there are provisions in Islamic law that safeguard women against serious abuse. In classical law, as in our own, there is a good deal of attention paid to reducing harm and to giving legal relief to the victim, but the focus is rarely on the consequences of discipline.

5. Non-Violent Marital Ethics

The Prophetic Sunnah fits into the mainstream of current debates about domestic violence as it offers a practical framework for understanding the Qur'ānic teachings. The law sometimes

¹⁴. Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuhu* (Damascus: Dār al-Fikr, 1985), 7:561–567

¹⁵. Jamila Hussain, *Islamic Law and Society*, (Sydney: Federation Press, 2010) 112–118

¹⁶. Muḥammad Abū Zahrah, *Al-Aḥwāl al-Shakhṣiyyah*, (Cairo: Dār al-Fikr al-‘Arabī, 1957) 267–280

¹⁷. Ibn ‘Ābidīn, *Radd al-Muḥtār ‘alā al-Durr al-Mukhtār*, vol. 3, 283

allowed a degree of discipline, but the Prophet's actions always demonstrated gentleness, patience and compassion.

It is a true narration that the Messenger ﷺ never beat a woman, servant or dependent. He continually reminded people of the importance of good family relations and stressed that the most excellent of the believers are those who relate well with their families.¹⁸

There are some other customs which point to his discontent with wife beating. Reports of men beating their wives led the Prophet to publicly condemn such behavior and ask about how it could be considered honorable. Contemporary scholars have been influenced by these narrations to believe that the Sunnah actually restricts the use of Qur'ān 4:34 to such a degree that non-violent conflict resolution becomes the preferred way of conflict resolution within Islam. The “misquoting” of Muhammad is well documented through a range of sources. The “misquoting” of Muhammad has been well documented in a variety of sources.¹⁹

The Sunnah also expanded the scope of the concept of harm to include harm to the spirit. Although verbal abuse, humiliation, neglect and extended absence may not harm the marriage, if it does, it may provide grounds for complaint. These precedents offer a significant basis for current law reform which acknowledges psychological, emotional and economic abuse as domestic violence.

In the twentieth century, Muslim scholars began to turn their attention to classical teachings of the Qur'ān 4:34 as a result of a new social landscape, higher levels of education and new awareness of domestic violence. Reformist scholars wished to bridge the gap between fidelity to scripture and current concerns over justice, dignity and gender equality.

A few scholars suggested that the verb *ḍaraba* should be understood symbolically, meaning that it is a gesture that cannot harm. Others suggested other words besides strike, like separation or withdrawal. All of these methods aimed to draw closer to the comprehensive moral guidance of the Qur'ān and the example of the Prophet. According to Qur'ān,

“But if they refuse to withdraw, then neither God is responsible for their refusal.”²⁰

Feminist Muslim scholars also pointed out that many classical interpretations were based on assumptions about the society that they were written in, which was patriarchy. From this viewpoint, the verse is meant to be read in the historical framework and is not meant to be read as limiting the use of force forever.²¹

¹⁸. Ṣaḥīḥ Muslim, Kitāb al-Faḍā'il

¹⁹. Jonathan A. C. Brown, *Misquoting Muhammad* (London: Oneworld Publications, 2014), 221-228

²⁰. Qur'ān 4:34

²¹. Amina Wadud, *Qur'an and Woman* (New York: Oxford University Press, 1999), 68-79

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While the approaches are varied, all of them have in mind the goal of avoiding harm and upholding human dignity. As a result, they have made a significant contribution to the contemporary legal and theological discussions on domestic violence.

6. Human Rights, Contemporary Reform and the Maqāṣid al-Sharī'ah

Among the most significant developments in the law of Islam in recent years has been the increasing focus on the concept of *Maqāṣid al-Sharī'ah* as a blueprint for legal reform. Interpretation of law should seek the greater goals of Islamic law; the protection of life, dignity, intellect, family and human welfare, has increasingly become a basis for argument by the contemporary jurists.²²

Its application to domestic violence implies that any reading that allows physical or psychological violence is at odds with the overall purposes of the revelation. As a result, a large number of modern authors have advocated for an in-depth law that could safeguard the victim, ensure access to justice and enhance the welfare of the family as a whole.

Domestic violence is a topic that has been increasingly denounced by modern fatwa councils, national religious authorities, and Islamic legal academies and the use of non-violent methods of dispute resolution has been promoted. The small number of alternatives which are presented are more often than not those of counseling, mediation, education and judicial intervention, all of which are seen as being more in keeping with the Qur'ānic vision of family life than disciplinary practices that are based upon historically different social conditions.²³

This maqāṣid-oriented approach has also had an impact on legislative changes across the Muslim world. The reformers have tried to convince the conservative Muslim community that comprehensive measures for the protection of women from domestic violence are in tune with Islamic legal principles and not with any other ideologies that existed outside the Islamic system.

8. Legal Reforms in Selected Muslim Majority Countries

8.2 The Development of the Women's Movement:

In recent years, many Muslim majority countries have passed laws to stop domestic violence and to safeguard family members. The changes are predominantly a response to increasing public sensitivity and awareness of abuse, to external human rights obligations and to a reinterpretation of Islamic legal principles on the nature of justice and how to prevent harmful actions.

²². Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, pp. 45-90

²³. Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008), 201 - 212

Some countries like the United Arab Emirates, Morocco, Tunisia, Jordan and Pakistan have implemented different legal systems which define domestic violence, set up protection systems and offer remedies for victims.²⁴ The changes in specific provisions vary from state to state, but common elements of such changes include the state’s role in ensuring family welfare and in protecting persons from abuse.

Importantly, a number of reform advocates have justified such legislation on Islamic law and not through secular legal reasoning solely. The Qur’ānic injunction to live in kindness with spouses (*mu’āsharah bi al-ma’rūf*) and the legal maxim *al-ḍarar yuzāl* have been often invoked as religious justifications for anti-violence laws.²⁵

8.2 Divorce and Judicial Relief Based on Harm:

Judicial divorce on the grounds of harm (*ḍarar*) is one aspect of reform that is relevant. Harm was seen as a valid reason for divorce in classical Islamic law, especially in the Mālikī school. Such doctrines have been extrapolated to current legal frameworks to encompass physical abuse, emotional cruelty, psychological trauma and economic deprivation.

These changes are based on the need to maintain a stable family environment while providing protection for vulnerable spouses from being forced into an abusive relationship. In some places, judges are given more latitude to take action when marriage is destructive or untenable.

9. The role of courts and fatwa institutions

Muslim societies have not only seen legislation to reform their laws. The understanding of domestic violence and marital rights in modern times has also been influenced by courts, fatwa councils and religious authorities.

In some legal systems, *ḍarar* has been interpreted to cover types of abuse that have not always been explicitly mentioned by the classical jurists. There is a judicial trend toward acknowledging emotional distress, psychological force, intimidation and protracted and repeated neglect as legally relevant harms that can support intervention.²⁶

Similarly, the national fatwa institutions and leading religious scholars have given fatwas that domestic violence is not acceptable in Islam. These opinions often challenge the idea of using

²⁴. Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, (Boulder, CO: Westview Press, 5th ed. 2018), 167–194

²⁵. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (Cambridge: Islamic Texts Society, 3rd ed. 2003), 352–368

²⁶. Shari’a: Theory, Practice, Transformations, by Wael B. Hallaq, Cambridge: Cambridge University Press, 2009, 473–495

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Qur'ān 4:34 as justification for systematic abuse and argue that any action that inflicts injury, fear, humiliation or oppression is in violation of Islamic ethics.²⁷

An increase in religious institutions' involvement in DV cases highlights the flexibility of Islamic jurisprudence in its approach to social issues in today's world. The classical legal tradition is not abandoned but rather reinterpreted and applied to safeguard the dignity and welfare of the human person as well as the family.

10. Critical Assessment and Contemporary Debates

While there has been notable advancement in the law and in scholarly reinterpretation, there are important debates about how classical Islamic jurisprudence and modern conceptions of domestic violence connect.

One view counterposes that the classical legal right to a certain extent of disciplinary measures is hard to square with today's emphasis on gender equality and bodily autonomy. Those who hold this view argue that any form of physical punishment, whether symbolic or limited, can become a catalyst for more serious aspects of punishment and coercion.²⁸

The second view is that classical legal concepts should be interpreted in the context of their history. In this perspective, the Qur'ānic laws represented a significant limitation on pre-Islamic social norms and should be examined in an understanding of the social context in which they were born. With respect to the principles of moral reform, contemporary reform extends the moral trajectory that began with revelation, not in place of it.²⁹

A third view is that of methodological continuity. The scholars of this research perspective suggest that reinterpretation should be based on the principles of Islamic jurisprudence already in existence, such as *maqāṣid al-sharī'ah*, *maṣlaḥah* and legal maxims related to harm. This approach is designed to maintain the religious legitimacy and to respond to realities of the modern world.

The ongoing complexity of opinions reflects the dynamism of Islamic legal discourse, rather than its static nature. Rather than being stifled, discussions on domestic violence are ongoing and develop when engaging with scriptural texts, legal theory, social practices and ethical considerations.

11. Results and Discussion

²⁷. The lawful and the prohibited in Islam (Indianapolis: American Trust Publications, 1999), 211-216

²⁸. Ayesha S. Chaudhry, Domestic Violence and the Islamic Tradition, 221-248

²⁹. Kecia Ali, *Sexual Ethics and Islam* (Oxford: Oneworld Publications, 2016), 132-149

This study provides some insightful findings related to the Islamic legal discussion about domestic violence. The Qur'anic and prophetic groundings of Islamic family law place a greater emphasis on compassion, mercy, justice and mutual respect as the norm of marital relationships. Throughout the history of Qur'ān study this verse has been read as allowing a very limited disciplinary action in extreme cases; however, it has always been interpreted alongside of much wider scriptural statements that are against harm and for kindness.

Secondly, the classical jurists imposed far-reaching restrictions on any discipline that might be permitted. These limitations encompassed a ban on injuring, humiliating, using excessive force or striking a woman's face on the body, and also the existence of legal remedies for victims of abuse.

Third, modern-day Muslim scholarship has turned to *maqāṣid al-sharī'ah* and the principle of averting harm in order to bolster the argument for greater prevention of domestic violence. Reformist interpretations focus on the moral purposes of revelation and attempt to make the practice of law conform to the current notions of human dignity and family well-being.

Fourthly, legal reform in Muslim majority countries illustrates how Islamic legal concepts can be utilized as the basis of domestic violence law. Many of the reforms are not only not incompatible with Islamic jurisprudence, but they are in fact taken from well-known principles of Islamic law about harm, justice and public welfare.

The findings thus indicate that the current anti-domestic violence initiatives could be interpreted as continuations of Islamic legal reasoning and not as its abrogation. Islamic law has the moral means to implement a broad framework for the protection of spouses and family well-being.

12. Conclusion

The Islamic jurisprudential discourse on domestic violence is a mixture of scriptural texts, juristic interpretations, moral values and social realities, all of which are dynamic and multifaceted. Classical jurists accepted a limited and carefully regulated concept of a disciplinary treatment, stemming from their understanding of the Qur'ān 4:34, but they also developed a vast array of legal doctrines that aimed to prevent harm, to punish abuse and to protect vulnerable spouses.

The overarching Qur'ānic and Prophetic idea of marriage is one of calm, love, mercy and justice. Such values are the normative basis of the current trends of intervention in domestic violence issues in Muslim societies. Today, many scholars are making the case that the purpose of Islamic law needs strong legal and social frameworks that can be used to avoid any abuse and protect human dignity.

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In the contemporary period, hence, the reform movements have tried to reinterpret the texts in the light of the *maqāṣid al-sharī'ah*, the public welfare and the elimination of harm. Protecting women from domestic violence is justified within the Muslim law tradition, as well as by legislative reforms, judicial developments and fatwa initiatives all over the Muslim world.

It is important to remember that the discussion about domestic violence in Islam is not confined to a small number of words in one verse or one legal ruling. Instead, it should be considered in the context of the Islamic moral system which values justice, compassion, dignity and safeguarding of human welfare. Taken in this context, Islamic law offers considerable assistance in the fight against domestic violence and has a strong message for individuals and society in its call for healthy, respectful and equitable relationships within the family.