

DOMESTIC VIOLENCE: AN ISLAMIC LAW PERSPECTIVE

BY

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ABSTRACT

Domestic violence has always been contentious as far as Islam is concerned. It is an issue which is widely misinterpreted by some Muslims and non-Muslims alike. For the Muslims, some believe and think that Islam has given them license to beat their wives mercilessly even to the extent of causing them harm and to the non-Muslims there is the strong believe that Islam is oppressive to women and encourage any abusive and oppressive behaviour including domestic violence. The whole bone of contention is the Quranic verse 4:34. Using doctrinal and hermeneutical methodologies, this paper attempt to clarify the concept of domestic violence from Islamic Law perspective based on *Surah* 4:34 and the extent of the application of the verse using traditional sources of Islam, the interpretation of classical and contemporary jurists. The paper finds that although the *surah*4:34 makes it lawful for men to beat their wives, such beating should not be excessive to the extent of causing harm. The paper recommends that men should follow the life of the Prophet (PBUH) as he frowns at men beating their wives and never in his lifetime hit any of his wives.

Keywords: Domestic violence, Islam, *Nushuz*, *Jahiliyya*, *wadhribunna*, *Qawwamuna*

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1. Introduction

Domestic violence is a global issue with ancient history. This has origin in the way women are conceived. Some societies questioned if women were human or had souls. Historically, women were considered inferior to men, the modulation of sin with no rights.² It is believed that the major religions in the world encourage and condone domestic violence. For instance it is believed that wife beating is deeply entrenched in Christianity, Judaism and Islam.³

Domestic violence in Islam has generated controversies because of the Quran verse 4:34. On one hand Islam has protected women rights including respect for her dignity, freedom from torture, inhuman and degrading treatment. This can be seen from many verses of the Quran and the practice and life of the Prophet (PBUH).⁴ On the other hand, the Quran makes it lawful for husbands to beat their wives as a form of a discipline where she rebels against the authority of her husband. Both the *sunnah* of the Prophet and the Quran are major sources of Islamic Law. It seems therefore, that there is a gap in understanding as to whether Islam encourages wife beating, the circumstance and extent of the application of the verse 4:34 and what is the most preferable thing to do in respect of a *nashiz* (rebellious) wife.

It is important to note that Muslims manners and practices are not always related to Islam. Many things may influence the way and manner Muslims behave like culture and some external factors. Some Muslims beat up their wives in the name of Islam based on their own interpretation and understanding of Surah 4:34. This verse has been subject of misinterpretation and

² Haifaa, J., (1998). *The Rights of Women in Islam: An Authentic Approach* St. Martins Press, Inc., p. 1

³ Ibid p.1

⁴ See Quran 16: 58-59, Quran 4:7

application. Other non-Muslims believe that this *surah* (Quranic chapter) condones wife beating.⁵

This paper seeks to examine the concept of wife beating from Islamic law perspective. First it will look at the status of women before and after the advent of Islam, the essence of marriage in Islam before delving into the controversial issues in the *surah* 4:34. The paper employ doctrinal methodology in analysing verse 4:34 using the interpretation of classical and contemporary Islamic jurists and scholars.

2. Status of women before and after the Advent of Islam

The period before the advent of Islam in Arabia is referred to as the *Jahiliyya* period (period of ignorance) by Islamic historians.⁶ Islam was revealed in a patriarchal, male dominated society when the Arabs were deeply entrenched in practices that were cruel and hard for women.⁷ Women in Arabia during this period had no right or position. In fact, women were treated similar objects meant for entertainment and pleasure and as sex objects.⁸

Women had no property and were regarded as chattels themselves subject to being inherited.⁹ Although there are arguments by some scholars that women in the pre-Islamic Arabia had some rights like the Prophet's (PBUH) wife, Khadija who was a highly successful business woman. For instance it was noted by Stowasser that "we hear of publicly visible, independent wealthy women who are active in their own rights. The best known example here is of course, Khadija,

⁵ See Syed K. T., (2008). Misconceptions about Human Rights and Women's Rights in Islam *Interchange* Vol. 39 Available at <http://doi.org/10.1007/s10780-008-9062-3>

⁶ Engineer, A. A., Rights of Women and Muslim *Societies Socio-Legal Review*

⁷ Haifaa, J., op.cit fn 1

⁸ Muhammad Abdel Haleem (1999). *Understanding the Quran* I. B. Publishers. See also Haifaa, J., op. cit fn 1 p. 1

⁹ Haifaa, J., op. cit fn 1 p.1. see also Khaled Abou El Fadl (2007). *The Great Theft: Wrestling Islam from the Extremist* Harper Collins Publishers Hp.271

Muhammad's first wife ..."¹⁰ However, it has but been argued that Khadija's case is an exceptional one as Stowasser continued that "... (but) aside from such rare figures of public visibility, involvement and independence as Khadija, the majority of Pre-Islamic urban women appear to have lived in a male dominated society in which their status was low and their rights were negligible"¹¹ Such cruel practices begin the moment a girl child is born. Female children were buried alive as they were considered as bringing shame and an economic burden to the family.¹² This was a culture that the Arabs were deeply entrenched in and was culturally acceptable.

Marriage and divorce were unregulated. Women were married forcibly and their dowry taken away by their fathers or other male relatives. Unrestricted polygamy was practiced by Arabs in those days. Husbands could treat their wives any how they wanted as women were considered their property. Divorce was at the liberty of the husbands who could abandon his wife or leave the wife hanging (*ila*), or liken her to his mother (*zihar*) or pronounce triple divorce at the same time and continue living with their wives. Widows were inherited and subsequently married off to their step sons or other male relatives in the family and were stripped off their property and inheritance.¹³ No waiting period (*iddah*) was prescribed for women and divorced women did not enjoy right to maintenance.¹⁴

The advent of Islam liberated women from the *Jahiliyya* practices that were mean and degrading and restored their

¹⁰ Stowasser, B. F., The Status of Women In Early Islam In: Hussein, F., (ed) (1983), Muslim Women Croom Helm London cited In: Haifaa, J., op. cit fn 1 p. 4

¹¹ Ibid

¹² This is evident from the Quranic verse where Allah (SWT) said: "When the birth of a girl is announced to one of them, his face grows dark and he is filled with inward gloom. Because of the bad news, hides himself from men: should he keep her with disgrace or bury her under the dust? How ill they judge. (Q16:58)

¹³ Alhabdan, S., (2015). Domestic Violence in Saudi Arabia Thesis and Dissertations. Paper 27 Retrieved on 12/12/2016 from www.repository.law.indiana.edu/etd

¹⁴ Ibid

dignity and worth as human beings. First and foremost, Islam positioned women on equal footing with men as human beings. It gave them rights equal to those of men. The Quran provides:

For Muslim men and women, for believing men and the believing women, for devout men and the devout women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise;- for them Allah has prepared forgiveness and great Reward.¹⁵

The Quran in many places established equality between men and women.¹⁶ It explained that men and women are created the same: "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".¹⁷ The Prophet (PBUH) also established the principle of equality between men and women when he said: "All people are equal as the teeth of a comb. There is no claim of merit of an Arab over a non-arab, or a white over a black person, or a male over a female. Only God fearing person merits preference with God."¹⁸

Islam has laid down rules and laws regulating marriage and divorce. It changed marriage custom by making mercy and love the basis of marital relationship. The Prophet (PBUH) discouraged forced marriage and gave women right to seek for divorce through *khul'i* (disengagement) or through judicial separation where it becomes intolerable for the spouses to live together. However, because of the importance attached to marriage by Islam, divorce is discouraged and when the spouses

¹⁵ Quran 33:35

¹⁶ See Quran 3:194, 9:71, 48:5, 5:37, 40:30

¹⁷ Quran 4:1

¹⁸ Summarized Sahih Bukhari English-Arabic Translated by Muhammad Muslim Khan p. 181-82 Maktabat Dar-Us-Salam, Saudi Arabia (1994)

are having any problem, it prescribes ways that aim at reconciliation.¹⁹ When reconciliation is not possible, they should part in kindness.²⁰ Men are admonished to be kind to their wives and not to take any gift that they give to them after divorce.²¹ Although Islam retained polygamy, it restricted the number of wives a man can marry to four and also with condition attached to it.²²

Perhaps the greatest change Islam brought to the rights of women was the condemnation of female infanticide and in the area of economic rights of women. The Arab practice of female infanticide was prohibited²³ and women were allowed to own and dispose of their property.²⁴ Islam also allowed women to inherit and gave them rights as human beings with equal rights accorded to men and as such raised their dignity and freed them from the inhuman and degrading treatment of being inherited.²⁵ The Prophet (PBUH) warned against spousal abuse on many occasions. He admonished the believers in the following words “fear Allah in respect of women”²⁶ and “the best of you are they who behave best to their wives”.²⁷

3. The Essence of Marriage in Islam

Marriage in Islam is considered as a contract between a man and a woman. It is also considered as an act of worship. Looking at the way Islam has lifted the status of women from the way they were treated as commodity subject of inheritance to a complete human being capable of having rights equal to that of men, the woman enters into marriage contract with those rights. First of

¹⁹ Quran 4:35, 17:31, 137:140

²⁰ Quran 4:19, 2:237,

²¹ Quran 2:229

²² Quran 4:3

²³ See Quran 81:9

²⁴ The wife of the Prophet (PBUH) Khadijah (RA) is an example of how women could own and dispose of their. Property.

²⁵ Quran 4:19-20

²⁶ Sahih Muslim 1218

²⁷ Sunan al Tirmidhi 1163

all her consent must be sought before marriage²⁸ and within the marriage she has certain rights upon the husband just as much as the husband has over her. Allah (SWT) said "...and women shall have rights similar to the rights against them, according to what is equitable."²⁹ The Prophet (PBUH) was also reported to have said similar thing in his farewell message when he said "O people! It is true that you have rights over your women, but they also have right over you..."³⁰

One of the purposes of marriage in Islam is the attainment of peace and tranquillity. The Prophet (PBUH) places high esteem for marriage and advised his companions that "Whoever among you can afford to marry should do so, and whoever cannot afford it should fast, for it will be a restraint for him."³¹ It is through marriage that family is formed. The family is the bedrock of every society and a safe haven for women and children. It is a place where love, peace and tranquillity reigns. Allah (SWT) says in the Quran:

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.³²

The relationship between husband and wife should therefore, be based on mutual love, cooperation, mutual consultation and compassion. The husband and wife are to console each other, find tranquillity with each other and be a constant source of joy, happiness and fulfilment for each other.³³ Allah (SWT) has

²⁸ See Translation of Sahih Muslim, "The Book of Marriage (*Kitab Al Nikah*) Book 8 Hadith No. 3303 where the Prophet (PBUH) was reported to have said: A widow (or a divorcee) is not to be married before her consent is sought and no virgin girl is to marry without first consulting her, and her approval is her keeping silent.

²⁹ Q 2:228

³⁰ Sahih Muslim Hadith 98, Sahih Bukhari 1623

³¹ Sahih Muslim book 8 Hadith 3231

³² Q 30:21

³³ E. Abul Fadl., Mohsin, op. cit p.18

enjoined husbands to live with their wives in kindness or leave them amicably.³⁴

The Prophet (PBUH) is reported to have established the bedrock of equality and kindness to women. In his *khutbat al Wadaa* (farewell message), he was reported to have said:

O people! Fear God regarding women; for you have taken them (in marriage) with trust of God... It is true that you have certain rights with regard to your women but they also have a right over you. If they abide by your right, then to them belong the right to be fed and clothed in kindness. Do treat your wives right and be kind to them for they are your partners and committed helpers....³⁵

Men are to fear Allah in their dealings with wives and to treat them with kindness and respect. They are expected to be patient with their wives and try as much as possible to balance their imperfection with their good qualities. The Prophet (PBUH) has said: "let a believing man not dislike a believing woman. If something in her is displeasing another trait may be pleasing."³⁶ Allah (SWT) has said in the Quran: "...And live with them on a footing of kindness and equity if ye take dislike to them, it may be that ye dislike a thing and Allah brings about through it a great deal of good."³⁷ Men are also admonished to be kind to women that they divorce.³⁸ In describing the relationship between a husband and wife, Allah (SWT) described them as

³⁴ Q 2:229. see also Q 49:113, 24:33, 8:70

³⁵ Sahih Muslim Hadith 98, Sahih Bukhari 1623, Tirmidhi 1628, 20146, 2085, Masnud of Imam Ibn Hambal 19774

³⁶ Transmitted by Sahih Muslim 1469. Also cited in Al-Qaradawi Y, (1985). *The Lawful and the Prohibited in Islam* Islamic Book Trust, Kuala Lumpur p. 226

³⁷ Q 4: 19

³⁸ Allah (SWT) said: When you divorce women and they fulfil the term of their *iddah* (waiting period) either take them back on equitable terms or release them on equitable terms; but do not take them back to injure them or to take undue advantage, if anyone does that he wrongs his own soul...." Quran 2:231

garment³⁹ of each other signifying their closeness and the warmth, comfort and love they share.

4. Domestic violence in Islam

Wife beating in Islam is closely attached to marriage as it is within the marriage that men beat their wives claiming that Islam sanctions it. Although Islam preaches peace and harmony within the family, it also at the same time envisages times when couples may have problem or discord. As a result, it provides ways and procedures in dealing with marital discord. Men are placed as the maintainers of the marriage. They have the responsibility of salvaging the marriage from collapse. Hence, the right to take step to make things right and normal again in cases of marital discord is vested in the man in *surah* 4:34. This can be seen in *Surah* 4:34-35 which began with men as the maintainers of women.

The verse reads thus:

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. 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, seek not against them Means (of annoyance): for Allah is Most High, great (above you all).⁴⁰

Although there is a Quranic provision which permits wife beating, there are also several prophetic traditions condemning it and/or even prohibiting it and there are also many verses of the Quran which advocate for kindness towards women. Perhaps that is why some modern scholars hold strongly that wife

³⁹ Quran 2:187

⁴⁰ Ali, Y The Holy Quran Surah 4:34

beating is prohibited in Islam⁴¹ and some hold also that the *sura* (chapter) 4:34 is contextual and applied only during the time of the Prophet (PBUH). For example Engineer A.A., hold that “...it will be seen that this verse is purely contextual and does not lay down any stricture regulating behaviour.”⁴²

The Arabs had the practice of beating their wives excessively because men at that time could beat up their wives at the slightest provocation or to exert their authority over them. For example a report attributed to Asma bn Abu Bakr daughter of the closest friend to the Prophet (PBUH) and also wife of Zubair b al-awwam explained that her husband used to beat them with a *mishjab* (a piece of wood used in hanging clothes) until it broke whenever he was angry with them.⁴³ To this end, some modern scholars hold the view that Quran 4:34 was revealed to restrict the Arabs from beating their wives.⁴⁴

However, in understanding the Quranic Injunction of wife beating, one must trace the cause of revelation of Surah 4:34 (*asbab al-nuzul*) and also apply the numerous traditions of the Prophet (PBUH) and the overall *maqasid Shariah* (Objectives of Shariah). In this case the specific objective of marriage. The issue of wife beating in Islam came up with the concept of *nushuz* in the *sura* (Quranic chapter) 4 verse 34. The cause of revelation of the verse can be traced to the case of Sa’d b. Abi al-Rabi and his wife Habiba bt. Zaid b. Abi Zuhair. She disliked him so much that she deserted him as a result of which he slapped her. She went with her father and reported to the Prophet (PBUH). Soon afterwards, the Prophet (PBUH) asked them to come back He said to them “Just now angel Gabriel came to me and revealed the judgement of this case” and he

⁴¹ Khaled Abou El-Fadl (2006). The Search For Beauty in Islam: A Conference of the Books p. 120

⁴² See Engineer, A. A., (2008).op.cit fn 5 p. 57.

⁴³ Mahmoud, M., (2006). To Beat or Not to Beat: On the Exegetical Dilemmas over Quran 4:34 *Journal of the American Oriental Society*, Vol. 126, No. 4. See also Chaudhry, S. A., (2013). *Domestic Violence and Islamic Tradition: Ethics, Law and the Muslim Discourse on Gender* Oxford University Press p. 51

⁴⁴ See Engineer, A. A op.cit fn 5

added “I intended something and Allah intended something else and what Allah intended is the best.”⁴⁵ By asking the wife Habiba to retaliate shows how the Prophet (PBUH) frowns against wife beating but at the same time when the verse was revealed, his opinion on retaliation had to be revoked to what was revealed by Allah (SWT) as the Prophet (PBUH) could not go against the law set by Allah (SWT)

This *surah* (Quranic chapter) established wife beating (not violent beating) in Islam and has been subject to great misinterpretation and application by some Muslims and Non-Muslims alike.

5. Analysis of Surah 4:34

The contentious words in the verse ⁴⁶ are *qawwamuna* (maintainers, protectors and caretakers), *nushuz* (disloyalty to the husband or to Allah (SWT)) and *wadhrubuhunna* (hit them). The word *qawwamuna* has been a bone of contention particularly because it is seen as establishing male superiority over women. For instance, Ibn Kathir in his *tafseer* (exegesis) explains that *qawwamuna* means the man is responsible for the woman, and he is her maintainer, caretaker and leader who disciplines her if she deviates and because men excel over women and are better than them for certain task (men have a degree of responsibility over women).⁴⁷ Maududi also hold the view that because Allah (SWT) has made men superior to women, He made them their managers.⁴⁸ Zamakhshari hold that men are the managers of the affairs of women but also hold that they are such because they are most preferred by Allah (SWT)

⁴⁵ N. Ibrahim and M. Abdalla, *A Critical Examination of Surah 4:34 and its Relevance to Intimate Partner Violence in Muslim Families* Available at www.tandfonline.com/doi/abs/10.1080/1556498.2010.551278 Last accessed 12/03/15. See also Z. Alwani, *Domestic Violence: Islamic Perspective* Available at <http://karamah.org/wp-content/uploads/2012/07/Domestic-violence-Islamic-Perspective-FINAL.pdf> Last accessed 12/03/15

⁴⁶ Q 4:34

⁴⁷ Tafsir Ibn Kathir Quran 4:34

⁴⁸ Maududi, Abul Ala (1958). *Tahfimul Quran* cited in Ali, S. M., (2004). *The Position of Women in Islam: A Progressive View* State University of New York Press, Albany p. 51

in terms of intelligence, physical constitution, determination and physical strength.⁴⁹

Yusuf Ali in his Quran commentary explained that the word *qawwam* means “one who stands firm in another business, protects his interest, and looks after his affairs- or it may be standing firm in his own business, managing affairs, with a steady purpose”.⁵⁰ According to Assad “the expression *qawwam* is an intensive form of *qa'im* (“one who is responsible for” or “takes care of” a thing or a person). Thus, *qama 'ala l-mar'ah* signifies he undertook the maintenance of the woman” or “he maintained her.”⁵¹ According to Qutb,⁵² the verse relates to the relationship between husband and wife and that men are in charge of women only because they provide for them. So the word *qawwamun* signifies taking care or maintaining something. Being *qawwam* therefore, does not mean superiority of any kind. Men are said to be maintainers and providers of their wives and should live with them on a footing of kindness and equity.⁵³

Allah (SWT) has in many verses of the Quran established equality between men and women. For example He said in the Quran that:

O mankind! We have created you from a single (pair) of male and female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).⁵⁴

⁴⁹ Zamakhshari, (1977). *Al Kashaf* Beirut: Dar al Ma'arif cited in Ali, S. M., (2004). Ibid p. 52

⁵⁰ Yusuf Ali The Holy Quran: Text, Translation and Commentary 4th ed., Lahore Ahmadiya Anjuman Ishaat Islam

⁵¹ Assad, M., (1980). The Message of the Quran p. 166. Retrieved on 5/1/17 from www.islamicbulletin.org

⁵² Qutb, S., (1980). *Fi Zilal Al-Quran* Cairo: Dar al Shuruq cited in Ali, S. M., (2004) op.cit p. 51

⁵³ Q 4:19

⁵⁴ Q 49:13.

It is an irony to say that the same Islam that brings to light women and their rights preaches inequality. Islam teaches that all men and women are equal in worth and value regardless of race, ethnicity or class. Allah has said:

O mankind! Reverence your guardian-lord, who created you from a single soul. 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.⁵⁵

However, in as much as Allah (SWT) created men and women differently, it is for a purpose and not for one to claim superiority or inferiority over the other.⁵⁶ They complement each other. The Prophet (PBUH) described them as committed helpers to each other; partners⁵⁷ and Allah (SWT) described them as garment to each other⁵⁸ and protectors of one another.⁵⁹ There is a reason why Allah (SWT) has created us the way we are because we have different roles to play in the society. And each one of us is created to suit that role. “Each gender has special qualities that better enable it to perform a certain social role; when that role is fulfilled then society as a whole then functions more effectively.”⁶⁰ For example, men are said to be providers and maintainers of women as they are spend financially on their families while women are to bear children and to be supported and taken care of by men. That does not however, mean that women cannot take up jobs outside the home where the needs permit. The differences is not a competition but complementary. As Zainab Alwani puts it:

⁵⁵ Q 4:1

⁵⁶ Allah (SWT) said: “And the male is not like the female” (Q 3:36) and also Allah Knows best why He created us that way for He said: “Does not the one who created, know? And He is the most kind” (Q 67:14)

⁵⁷ *Khutba wada*

⁵⁸ Q 2:187

⁵⁹ Q 9:71

⁶⁰ Alwani, Z., (2013)., Domestic Violence: Islamic Perspective op.cit 11 fn p. 10

It is important to make a distinction between being identical and equal. Islam recognizes that men and women have different abilities and strengths that complement each other. They differ physically and emotionally, but their differences do not lead one gender to be superior to the other. While men and women are considered equal in God's sight, they have different roles to play in their life as they each seek to live according to God's will. However, there is no higher value placed on one's role versus the other, since both men and women must work as partners in order to have healthy families and societies.⁶¹

So the verse usually quoted to assert men superiority over women is more of assigning responsibility to men as the maintainers of women in terms of feeding, shelter clothing education safety needs of the family.⁶² In Islam, the idea of superiority is rooted in righteousness and piety as described in the Quran.⁶³ The word *nushuz* has been subject of controversies among jurists and Islamic scholars. It literally means "to rise above, or act superior to."⁶⁴ *Nushuz* could either be from the husband (Allah (SWT) said: "And if a woman fears cruelty or desertion on her husband's part there is no sin upon two of them if they make term of reconcile and reconciliation is better").⁶⁵ Similarly, *nushuz* could come from the wife. Jurists interpret *nushuz* as the wife's disobedience or rebellion against her husband or a wife who rises above and act contrary to Gods law and injunctions.⁶⁶ And the question posed here is "is the disobedience of a *nashiz* wife directed to disobedience Allah (SWT) or to disobedience to the husband"? Some contemporary

⁶¹ Ibid, See also Sayyib Qurtb In the Shade of the Quran Vol. III Sura 4 p. 109

⁶² Holy Quran Translation Ali Y op. cit fn 49

⁶³ Q49:13

⁶⁴ See Al Hibri ,A.Y., (2003). "An Islamic Perspective on Domestic Violence" Fordham International Law Journal vol. 27, Issue 1 Art 8 p. 213

⁶⁵ Quran 4:128

⁶⁶ Al-Hibri, A. Y op. cit fn 63 p. 215

scholars ⁶⁷ argue that the Quranic verse “...therefore, the righteous women are devotedly obedient and guard what Allah would have them guard” show that the *nushuz* referred to is sexual misbehaviour. And they based their argument on the Prophetic tradition narrated by Jabir Ibn Abdullah that the Prophet (PBUH) said:

Fear Allah concerning women because they come to you with Allah’s trust (that you will fulfil their rights) and sexual intercourse with them has become permissible for you by Allah’s word. Your right on them is that they not let men whom you like not come to your beds. If they do such, beat them lightly in a way which would not leave a mark. Their right on you is that you provide their needs of food and clothing to the best established way.⁶⁸

Accordingly, they argued that *nushuz* does not extend beyond sexual misbehaviour and should not be based on the husband’s subjective judgement.⁶⁹ According to them, the disobedience referred to in the verse is disobedience to Allah (SWT) and not disobedience to the husband.

However, the majority of the jurists hold the opinion that disobedience referred to in the verse goes beyond open lewdness and include the neglect of the wife’s primary duties as a wife and a mother.⁷⁰ The wife therefore, has a duty to obey her husband’s lawful command. For instance, Usmani hold that *nushuz* of the wife refers to her breach of sexual conduct, her arrogance and taking advantage of her husband and does not pertain to ordinary household quarrels.⁷¹ For the Hanafi *nushuz*

⁶⁷ Ibid

⁶⁸ Al Bukhari Sahih Al Bukhari Bi Hashiyat Al Sindi 265 (Beirut: Darul Ma’rifah n.d cited in: Al Hibri A. Y. op.cit p. 203

⁶⁹ K. Siddique, *The Struggle of Muslim Women*, American Society for Education and Religion, Inc. USA, 1986. See also Q 65:1

⁷⁰ See Muhammad Ibn Ahmad Al Ansari Al Qurtubi, *Al Jami’ Li Ahkam Al Quran*, Beirut: Dar Ihya’ Al-turath Al-Arabi 1985

⁷¹ Usmani Umar Ahmad (1980). *Fiqh al-Qur’an* Karachi n.p cited in Ali, M., op.cit p. 53

is the wife's leaving her house without her husband's permission and keeping her husband from her without due right.⁷² According to the Maliki, a wife becomes *nashiz* (recalcitrant) when she departs from the obligatory obedience to her husband, preventing him from sex, leaving the house without permission to a place that she knows he would not permit her to go, leaving the rights of God upon her such as performing the complete washing after sexual intercourse or fasting the month of Ramadhan and her locking the door on her husband, keeping him out.⁷³ To the Shafie, *nushuz* is the wife disobeying the husband and elevating herself about what God has obliged upon her and her rising herself above fulfilling her obligatory duties.⁷⁴ The Hambalis hold *nushuz* as the wife's disobedience of her husband concerning those acts of obedience that are obligatory upon her from the rights of marriage.⁷⁵ They based their argument on the Prophetic tradition where the Prophet (PBUH) said: "the woman who observes her five daily prayers, fast in the month of ramadhan protects her private parts from illegal sexual intercourse and at the same time obeys her husband, will enter paradise of her Lord."⁷⁶

The next word of contention is *wadhrubuhunna* (hit them). The contention with the word *wadhrubuhunna* is that it conflicts with the other verses of the Quran which extol being kind to women and the practice of the Prophet (PBUH). Some scholars argue that although beating is permitted, it is not preferable.⁷⁷ Abul El Fadl explains that the meaning of (beating) must be examined within the context of other verses of the Quran and hadith of the Prophet (PBUH).⁷⁸ Accordingly he argued that "the

⁷² Al Kasni Bada'i 'al-Sana'i Vol. 4, p. 22 cited in: Imam Abdallah Hasan "The End to Hitting Women: The Quranic Concept of Darb (Hitting) Islamic Perspective of Spousal Reprimand, Domestic Violence and Intimate Partner Violence p.12. Retrieved on 12/11/16 from <http://cdn.muslimmatters.org/wp-content/upload>

⁷³ Jawahir al -Iklil, Vol.1, p. 328 cited in Imam Abdallah Hasan ibid

⁷⁴ Al Majmu 'Sharh al-Muhadhab, vol. 16, p. 445 in Imam Abdallah Hasan ibid

⁷⁵ Al-Kafi Fi al in Imam Abdallah Hasan ibid

⁷⁶ Reported by Ahmad and Al Tabarani

⁷⁷ N. Ibrahim and M. Abdalla, op.cit p. 18

⁷⁸ Ibid, p. 19

greater *maqasid* or higher objectives of Islamic Law regarding marriage indicate that the beating of women is forbidden in Islam; that the *wadhrubuhunna* referred to in 4:34 has specific conditions and is to be used only in certain situations.”⁷⁹

Some contemporary scholars ⁸⁰ also argue that the word *wadhrubuhunna* has different meaning one of them being “go away or separate” and the verse does not mean “beat” but “go away”.⁸¹ They support this contention with the practice of the Prophet Muhammad (PBUH) when he had problem with his wives and he left the house for them for twenty-nine days. They argued that if the verse had meant “beat them” it would had been easier for the Prophet (PBUH) to have beaten up his wives than leaving the house for such length of time.⁸² Others like Ahmed Ali⁸³ hold that *daraba* metaphorically means “not to have intercourse” and hence translate the word to mean “don’t go to bed with them” while Ata Ibn Abi Rabah hold the view that *daraba* means “to express anger to the *nashiz* wife (*yaghdab ‘alayha*).”⁸⁴

On the other hand, majority of the jurists are unanimous that *wadhrubuhunna* means “beat them.” For instance, Yusuf Ali, Zamakhshari, Maududi, Assad all translate *wadhrubuhunna* as “beat.” However, for those who translate *wadhrubuhunna* as beating hold that such beating is mild and not injurious beating.

⁷⁹ Khaled Abou El Fadl, *The Search for Beauty in Islam: A Conference of the Books*, Lanham MD: Rowan and Littlefield, p. 34

⁸⁰ See for instance Abu Sulayman, Abdilhamid, A., (2006). *Marital Discord: Recapturing the Full Islamic Spirit of Human Dignity* International Institute of Islamic Thought, London p. 19

⁸¹ See for instance the view of Abu Sulayman (2006). Op. cit p.20-21 cited in: Imam Abdallah Hasan op. cit p.4, See also Asghar, A. A., *Rights of Women in Islam* op. cit fn 1

⁸² Ibid

⁸³ Ahmed Ali., *Al Quran: A Contemporary Translation* Princeton University Press p. 78-79. See also Raghieb Imam Abul Qasim (1485). *Al Mufradat Fi Gharib al Qur’an* Tiras n.p cited in Syed Muhammed Ali, ., op.cit p. 53.

⁸⁴ Al Qadi Abu Bakr b. al ‘Arabi., *Ahkam al Quran*:1/469, pub. Dar Maarif, Egypt, *Tahqiq* (verified) by Ali Muhammad al Bijawi cited in Imam Abdullah Hasan *The End to Hitting Women: The Quranic Concept of Darb(hitting): Islamic Perspective of Spousal Reprimand, Domestic Violence and Intimate Partner Violence (IPV)* p. 12-13

Wife beating is symbolic beating for correction and not supposed to be a violent beating as to cause bodily harm or injury, humiliation, disgrace and violating a woman's dignity. The Prophet (PBUH) has instructed that wives should not be beaten in the face or cruelly or with anything that might leave mark on her body. Adha'u asked bn Abbas as to what constitute beating. He replied "it is the one with a chewing stick or something similar."⁸⁵

Similarly, according to Shafi'i wife beating should be by a wrapped handkerchief with his hand but he should not beat her with stick or whip.⁸⁶ He justified this opinion by the Prophet's personal feelings with regards to this problem.⁸⁷ The symbolic beating should not be on the face for it is prohibited in the Shariah to hit anyone on the face. Qaradawi describes beating to be permissible in extreme cases and defines beating lightly with the hands, avoiding the face and other sensitive parts.⁸⁸ Badawi holds that the Quran does not allow for violence but in extreme cases, the husband may administer a "gentle tap with a *miswak*"⁸⁹ without causing any physical harm to the body or leaving any mark, stressing that this option is the last resort after exhausting all other prerequisite steps." Ibn Abbas also explained beating that is *ghairi mubarrih* (not violent) to be one with the *siwak* (toothbrush) and the like.⁹⁰ Ar Razi said that beating should be a striking with a folded handkerchief or his palm, and not to strike her with whips or clubs.⁹¹

⁸⁵ Tafseer At-Tabari 9377

⁸⁶ Qurtubi Jamiu, *Ahkamu Quran*, Vol. 5 p. 172 in: A. H., *An Nushuz (Marital Discord): Its Contents and Remedies under Shariah*, An unpublished LLB thesis submitted to the Faculty of Law, Bayero University, Kano, (2000).

⁸⁷ See Assad, M., The Message of the Quran Retrieved on 6/07/17 from Muhammad-assad.com/message-of-the-Quran.pdf

⁸⁸ Qaradawi, Y., (1985). The Lawful and the Prohibited in Islam op.cit fn 35 p. 205

⁸⁹ A. Badawi, *The Concise Presentation of the Fiqh of the Sunnah and the Noble Book*, Riyadh, Saudi Arabia: International Islamic Publishing House, p.13.

⁹⁰ Ibn Maja p.784, Malik Muwatta p. 745

⁹¹ Tafsir Ar Razi 4:34, Sunnan al Tirmidhi 1163

It should also be noted that beating is a concessionary rule of shariah (*Rukhsa*) and not a norm and should therefore be limited to the exact wordings of the textual provision of the Quran. A beating in accordance to the provision of the Quran does not create liability upon the husband. But where he exceeds the limit and gives his wife a beating that leaves marks or injury on the organs and limbs, there shall be liability in accordance to the general principles of shariah.

Any translation of beating other than this (above) is a transgression and goes contrary to the general principle objectives of *maqasid al shariah* (general objectives of shariah). In this context it includes a woman's right to life (*nafs*), soundness of her mind (*aql*), family (*nasl*) and her right to dignity (*'ird*).

6. Steps to be taken against a *nashiz* wife

The whole essence of Islam with regard to marital discord is to salvage the marriage and reconcile in order to restore the objective of marriage based on affection and compassion. Divorce or separation is detested and should be the last thing that spouses should seek in the event of marital discord. Spouses should resolve marital problem and seek reconciliation. As such, Islam does not prescribe wife beating at the slightest marital discord nor does it prescribe it as the first step taken to correct the *nashiz* (rebellious) wife. Rather certain measures are prescribed before taking the final step which is wife beating. The prescribed three measures to be taken against the rebellious wife are explained in Surah 4:34. The first step is admonishment. Being the *qawwam* (maintainer or care taker of the family) husbands are prescribed to admonish their wives in cases of marital discord as the first step toward correcting her. He is to admonish her to fear Allah, reminding her of Allah's teachings for her to take heed. Where the wife repents and mends her ways, the husband is commanded not to use that disobedience as a point of reference in anything that may subsequently come up between them. Allah (SWT) says:

“...then if they obey you, seek not a way against them, surely Allah is High, Great.”⁹²

Where admonishment fails, the second step is to sleep apart from the wife. This has been interpreted to mean “sleeping in a separate bed or bedroom to avoid conjugal relation with the wife”.⁹³ However, some jurists hold that they could sleep in the same room and the same bed but the husband turns his back from his wife. Some jurists also interpret it to mean not to speak to her or talk to her.⁹⁴

The last step is beating which has been described by the Prophet (PBUH) as *ghair mubarrih* (not violent beating). Where all the above steps are taken and the husband still fears discord, Allah (SWT) as a way of reconciling the spouses advocate for them to appoint an arbiter one from both sides.⁹⁵

Although beating (not violent) is permitted in Islam, the Prophet (PBUH) discouraged his companions from beating their wives. Muawiyya Al Qushiri narrated that he went to the Prophet (PBUH) and asked him what the rights of our women on us are. The Prophet (PBUH) said: “feed and clothe as well as you do yourself and do not abuse them and do not beat them.”⁹⁶ As a way of discouraging men from beating their wives the prophet (PBUH) was reported to have said: “Many women have gone round Muhammad family complaining against their husbands and he (PBUH) said “they are not the best among you.”⁹⁷ In another tradition he is reported to have said: “Do not beat the servants (women) of Allah.”⁹⁸ Abu Huraira reported the Prophet (PBU) said: the most complete of the believers in faith are those with the best character, and the best of you are the best in behaviour to their women.”⁹⁹

⁹² Q 4:34

⁹³ See Tafsir Ibn Kathir on Surah 4:34

⁹⁴ See Tafsir Ibn Kathir on Surah 4:34

⁹⁵ Quran 4:35

⁹⁶ Sunan Abu Dawud 2142

⁹⁷ Ibid 2146

⁹⁸ Sunan Abu Dawud 2141

⁹⁹ Sunan at Tirmidhi 1162

It was reported by Aisha (RA) that the Prophet (PBUH) never hit a woman or a servant with his hands he only raised his hands in jihad in Allah's way¹⁰⁰ and Allah (SWT) said:

Indeed in the Messenger of Allah (Muhammad) you have a good example to follow, for whoever hopes for the meeting with Allah and the last day and remembers Allah much."¹⁰¹

In another verse Allah (SWT) said "And "verily you (O Muhammad) are on an exalted (standard of) character."¹⁰² And the prophet (PBUH) is reported to have said "the best of you is one who is best to his family and I'm the best of you."¹⁰³ The Prophet (PBUH) is also reported to have discouraged women from marrying men who are known for their harshness.¹⁰⁴

Violence breeds fear, misery and oppression in the home which is inimical to the whole essence of marriage. It further aggravates or fuels the already existing problems and renders reconciliation almost impossible within the family.¹⁰⁵ The Prophet (PBUH) asked: "How does one beat his wife as he beats the stallion and then embrace?"¹⁰⁶ This shows that violence and tranquility are world apart. A man cannot beat his wife in the day time and then expect all to be alright at night for him to embrace her.

¹⁰⁰ Sahih Muslim 2328

¹⁰¹ Quran 33:21

¹⁰² Ibid 68:4

¹⁰³ Sunan At Tirmidhi 3895

¹⁰⁴ Sahih Muslim "*Kitab Nikah*" (The Prophet (PBUH) is reported to have advised Fatima bint Qays who reported to him that her period of *Iddah* was over and had received two marriage proposals: one from Mu'awiya b. Abu Sufyan and another from Jahm. The Prophet was reported to have advised her thus: "As for Abu Jahm, he does not put down his staff from his shoulders, as for Mu'awiya, he is a poor man having no property. Marry Usama b. Zaid. Fatima objected to the Prophet (PBUH) advise but he advised her again "Marry Usama) and so she married Usama b. Zaid. The marriage was blessed and she became the envy of others.

¹⁰⁵ Allah (SWT) encourages reconciliation among spouses: "if you fear discord between the two (spouses), then send an arbiter from his family, and another from hers; if they wish to repair (the situation), God will reconcile them. For God has full knowledge is expert in all things." Q 4:35

¹⁰⁶ Sahih Bukhari 5695

Majority of the jurist are unanimous that wife beating is *makruh* (disapproved) despite the provision of Surah 4:34. According to Al Shafie, beating is permitted but not is preferable.¹⁰⁷ Also, Aisha (RA) while describing the Prophet (PBUH) said he is a living Quran and the “the messenger of Allah never struck anything with his hand, neither a servant nor a woman and in the light of this, the best is not to hit or strike the *nashiz* wife as it carries the ruling of *makruh* (disapproved) meaning that a Muslim will be rewarded for not doing it. He is also reported to have said: “O Allah, bear witness that I declare inviolable the rights of two weak ones: the orphans and women.”¹⁰⁸

7. Findings

Based on the forgoing, the paper finds as follows:

- i. That wife beating is lawful in Islam going by the provision of Quran 4:34;
- ii. That the beating prescribed is not a violent beating and not meant as a form of humiliation to the wife. Rather, it is a symbolic beating meant to correct her rebellious acts and not to harm her in any way;
- iii. That despite the strict description of wife beating contained in Quran 4:34, prophetic traditions as well as the prophets relationship with his wives demonstrates that Islam does not condone domestic violence;
- iv. Any transgression of the classical interpretation of Quran 4:34 which results injury or harm occasioned on the wife will create liability on the husband in accordance to the general principles of Shariah.

8. Recommendations

- i. The paper recommends that Muslim men should lead an exemplary life of the prophet (PBUH). He was reported

¹⁰⁷ Fakhr al- Din al Razi Tafsir al Fakhr Al Razi Beirut: Darul Fikr 1985

¹⁰⁸ An Nisa'i book of Miscellany Book 1 hadith 270

to be kind to his wives and never raised his hands on any of them.

- ii. Where the wife rebels against the husband, he should follow the steps prescribed in Quran 4:34 strictly noting the prophetic and classical juristic interpretation of beating as prescribed in the verse.

9. Conclusion

Based on all these, wife beating though is stated in the Quran, it is the last steps to be taken against the rebellious wife. Also, though wife beating is state in the Quran, it is highly discouraged by the Prophet (PBUH) as his life showed that he was kind to his wives and never raised his hands on them. The beating that is permitted in Islam is a non-violent beating, one that is done for the purpose of correcting the *nashiz* wife where it is the only means to serve such purpose. Any beating that goes beyond that would be a transgression against the ruling set by the Prophet (PBUH). For a religion to raise the status of women in high esteem and to give her rights before, during and even after marriage it becomes an irony to at the same time advocate for violence against the same vulnerable that it seeks to protect. Exceeding the limits set by Islam will breed hatred which is inimical to harmony expected in the family as advocated in the Quran and practised by the Prophet (PBUH).