

Post-Divorce Financial Support from the Islamic Perspective (Mut^ʿ at al-Ṭalāq)

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INTRODUCTION

THE subject of this paper is post-divorce financial support and its affinity to *Mut^ʿ at al-Ṭalāq*, as we know it in Islamic jurisprudence. The target audience is Muslim jurists who should fully appreciate the fairness and justice of Islamic Shari^ʿah law in all matters, including the care of women in general and divorced Muslim women in particular. As such, Muslim jurists should strongly uphold the right of divorcee women, as illustrated in the Qur'an and applied by the Prophet, and work jointly to develop an effective approach for reviving Qur'anic and prophetic injunctions pertaining to post-divorce financial support, both for the protection of contemporary divorced Muslim women in general, and those in the western hemisphere in particular.

Predominant scholastic understanding and prevailing judicial applications in the Muslim world today indicate that women are not entitled to any post-divorce financial support (*mut^ʿ at al-ṭalāq*), property settlement, or indeed any wealth of their household accumulated during the course of their marital life. The pretext being that the shelter, food and clothing provided by husbands during marriage fully exhausts any share ex-wives can expect to receive post-marriage. This understanding considers women as being only entitled to three months of spousal support during the religiously prescribed waiting period known as *ʿiddat al-ṭalāq*.

As a former judge of Shari^ʿah courts in Sudan, as a former resident imam of one of the largest Islamic centers in the U.S., as an Islamic

adjudicator and arbitrator for the Muslim community for more than twenty years in North America, I have encountered and been involved in numerous cases of this nature. In addition, I have witnessed the injustices imposed against divorced women and their suffering due to the neglect of Islamic rules of post-divorce financial support (*mutʿat al-ṭalāq*). This un-Islamic and inhumane treatment of divorced Muslim women affected me deeply motivating a desire to study the issue for myself in the interests of women and to examine the correct Islamic position with regards to compensation.

Although the Qurʿan addresses the subject in several verses, and the Sunnah confirms its application during the lifetime of the Prophet, as well as his Companions, and the Successors, nevertheless the issue has become one of the most marginalized and neglected elements of Islamic transactional jurisprudence.

Mutʿah is an Arabic term which linguistically means enjoyment and happiness as opposed to gloominess, depression, and grief. Idiomatically, it refers to the post-divorce financial support, or post-divorce payment, made by a divorcer to a divorcee, in an attempt to uplift the divorcee’s sense of self-esteem (many women unfortunately feel a sense of social humiliation associated with the term “divorced woman”) and tone down the negative impacts of the divorce.

Although this definition reflects the psychological component of the aftermath of divorce, it does not inclusively cover the fact that *mutʿat al-ṭalāq* is first the right of the divorcee from the accumulated wealth of the household whereof she was part and a full partner in ownership. In accordance with Islamic Shariʿah, *mutʿat al-ṭalāq* is one of the three fixed rights due to women beside their owed shares of inheritance. Altogether these rights are thus: dowry on the occasion of marriage; maintenance provided throughout the course of the marriage; *mutʿat al-ṭalāq* after occurrence of the irrevocable divorce;¹ and their allocated shares of inheritance upon the death of the husband.

POST-DIVORCE SUPPORT (*MUTʿAT AL-ṬALĀQ*) IN THE QURʿAN

Mutʿat al-Ṭalāq is profoundly rooted in the divine Scripture as clearly illustrated in the following Qurʿanic verses:

There is no blame on you if you divorce women before consummation or the fixation of their dowry; but bestow on them provision [*matī^cuhunna*], the wealthy according to his means and the poor according to his means; such [*matā^can*] of a reasonable amount is due from those who wish to do the right thing. (2:236)

And for divorced women is a suitable [*matā^cun*]. This is a duty on the righteous. (2:241)

O, Prophet, say to your wives: “if you desire the life of this world and its glitter, then come! I will make a provision for you and set you free in a handsome manner” [i.e. divorce you all]. (33:28)

O you who believe! When you marry believing women and then divorce them before you have touched them, no prescribed waiting period should be imposed on them, but grant them the *mut^cah* and set them free in a handsome manner. (33:49)

QUR’ANIC COMMENTARIES ON *MUT^cAT AL-ṬALĀQ*

It is remarkable that most existing commentaries of the Qur’an are largely identical, not only in terms of meaning and concepts employed, but also on many occasions the words used.

Tafsīr al-Ṭabarī

It is worth noting that one of the oldest Qur’anic commentators, Imam al-Ṭabarī, in his commentary on the foregoing Qur’anic verses, strongly advocated the rights of women with regards to the *mut^cah*. He sturdily defended his belief that payment of *mut^cat al-ṭalāq* to a divorced woman was an obligation on the husband by virtue of these Qur’anic verses. After detailing the different opinion of jurists on the matter, he states, “I believe what represents the truth among all of the above jurists’ arguments is the argument of those who say that post-divorce *mut^cah* is mandatory for all divorced women, because Allah has said: ‘For all divorced women *mut^cah* is a duty on the *muttaqīn*.’”²

Al-Ṭabarī was an authoritative, not a passive jurist, meaning that unlike many other jurists who simply reiterated / repeated what had been reported by others he remained independent expressing his

viewpoints intellectually, honestly, rationally, and even sometimes aggressively, refuting the faulty arguments of his opponents. He was quoted in his *tafsīr* as saying:

It is my conviction that post-divorce *Mut'ah* is an obligatory payment on the husband who divorced his wife, and he is liable to pay her *mut'at al-ṭalāq* just like he is liable to pay her due dowry, and he will never be exonerated from such obligation until he pays her or her proxies or heirs, and that *mut'at al-ṭalāq* is like other debts that are due to her, and the husband is subject to incarceration and his property can be sold for not paying his divorced wife her post-divorce due *mut'ah*.³

Tafsīr al-Qurṭubī

Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭubī's⁴ commentary of the Qur'an is among the most famous of his works. Imam al-Qurṭubī's commentary on the Qur'anic verses in question is among the more instructive, and like al-Ṭabarī, he demonstrates his independent opinion with regards to post-divorce *mut'ah*. Although a Mālikī (one of the four schools of Islamic jurisprudence) scholar like other North West African jurists, (he was from Cordoba), his independent conscience enabled him to depart from the prevailing fetters of the Mālikī School with regards to women's post-divorce right to *mut'ah* such that where Imam Mālik considered post-divorce *mut'ah* to be not mandatory but rather just recommended, al-Qurṭubī nevertheless did not endorse Imam Mālik's or indeed any other Mālikī jurists view on this matter audaciously declaring his dissatisfaction with the position.

Hence, although Mālik, Judge Shurayḥ, and other jurists considered it as a non-binding Islamic rule, regarding it as recommended only, al-Qurṭubī quoted 'Abd Allāh ibn 'Umar, 'Alī ibn Abī Ṭālib, Sa'īd ibn Jubayr, and other prominent scholars of the Successors who held that the rule of *mut'at al-ṭalāq* had come in the form of a command and therefore was a binding rule (*wājib*). Al-Qurṭubī continued to state that the supporters' argument was based on the wording of the Qur'anic verse as an imperative and binding command from Allah, while the second party did not deny that the wording was in command form, but based its understanding of its implementation in terms of to whom it was addressed, claiming that the verse addressed the *muḥsinīn* and the

muttaqīn only, so it was binding only upon the *muḥsinīn* (righteous people) and the *muttaqīn* (pious people of means). Further, they stated that if *mutʿat al-ṭalāq* had been a binding Islamic rule, it would have been imposed on all people, not only on the righteous and pious.

After having discussed these conflicting opinions, al-Qurṭubī strongly endorsed the first party’s viewpoint, mentioning the second party’s argument to be indefensible, because the contextual indication and understanding thereof demonstrated that the command of *mutʿat al-ṭalāq* referred to divorcees, and the preposition letter (*lām*) in the word (*li al-muṭallaqāt*) was a possessive letter and an indicative element that gives divorced women an undeniable right to their post-divorce financial shares.

Furthermore, al-Qurṭubī pointed out that *muḥsinīn* and *muttaqīn* in fact emphasize and further assure the right of divorced women to post-divorce *mutʿah*, because to be a *muḥsin* and a *muttaqī* is a duty on all Muslims. He then refuted the opinion of jurists who believed that *mutʿah* was prescribed for women whose marriage had not been consummated and whose *mahr* had not been fixed, jurists such as i.e. Ibn ʿAbbās, Ibn ʿUmar, Jābir ibn Zayd, al-Ḥasan, ʿAṭāʾ ibn Rabāḥ, Ishāq, Imam al-Shāfiʿī, Imam Aḥmad, etc.⁵

Tafsīr Ibn Kathīr

Abū al-Fidāʾ Ismāʿīl Ibn Kathīr,⁶ in addition to what he shares with other commentators, added some considerable points in his famous *tafsīr*. First, he defined *mutʿat al-ṭalāq* by saying that *mutʿah* was something paid by the husband to his divorced wife, according to the husband’s means, so as to compensate the divorced wife for what she lost due to the divorce. He then quoted ʿAbd Allāh ibn ʿAbbās who determined the amount of *mutʿat al-ṭalāq*, saying, “...If the husband is wealthy, he should compensate his divorced wife by providing her with a servant or the like, but if he is of limited resources then he should provide her with four pieces of clothing.” He defines the clothing by quoting al-Shābī, one of the successor jurists, who determined the amount of *mutʿat al-ṭalāq* to be “a vest, a head scarf, a blanket, and a dress.”

Tafsīr Fakhr al-Rāzī

Imam Fakhr al-Dīn al-Rāzī⁷ one of the most prominent jurists of his time was in favor of the opinion of jurists who believed that *mutʿat al-ṭalāq* was not an optional matter but fittingly mandatory. According to his understanding, both Imam Abū Ḥanīfah and Imam al-Shāfiʿī supported the opinion of *mutʿat al-ṭalāq* being obligatory on the husband. His comments on verse (2:236) divide divorced women into three categories:

- Women divorced before the fixation of a dowry and before the consummation of marriage. For these *mutʿah* is mandatory by husbands upon divorce.
- Women divorced after the fixation of a dowry but before the consummation of marriage. For these no *mutʿah* is due but they are entitled to 50 percent of the fixed dowry.
- Women divorced after the fixation of a dowry and after the consummation of marriage. For these *mutʿat al-ṭalāq* is mandatory.

Imam al-Rāzī quoted ʿAbd Allāh ibn ʿUmar as saying that *mutʿat al-ṭalāq* was prescribed for all divorced women. Al-Rāzī did not hesitate to support his argument by the same points made by al-Qurṭubī, mentioned earlier, then added that the preposition letter ʿ*alā* in Arabic indicates that the matter in question is neither optional nor recommendable, but rather is obligatory.⁸

Tafsīr al-Zamakhsharī

Al-Zamakhsharī⁹ is also among the most famous jurists and scholars of Islam. In his well-accepted *tafsīr* known as *al-Kashshāf*, he comments on the foregoing Qurʾanic verses quoting the opinion of Saʿīd ibn Jubayr, Abū al-ʿĀliyah, and al-Zuhrī, jurists who believed *mutʿah* to be mandatory compensation due to all divorced women. Al-Zamakhsharī does not endorse their opinion. Rather, like other commentators, he supported Mālik, who believed post-divorce support to be mandatory only for women divorced before the consummation of marriage, and only recommendable for other divorcees.¹⁰

Tafsīr al-Manār

Tafsīr al-Manār by Shaykh Rashid Rida,¹¹ a relatively modern twentieth century scholar, conversely discusses and impressively defends the enforcement of post-divorce support. Rida supported scholars who endorsed the eligibility and the right of divorced women to post-divorce support as a mandatory duty upon the divorcing husband.¹²

THE ROLE OF TRANSLATION OF THE QUR'AN

There is no doubt that translators of the Qur'an have done a great service to humanity in their attempt to understand and then render the meaning of the Qur'an from its original Arabic into other languages.

However, translation alone cannot convey the exact meaning of certain Qur'anic terms. Therefore, speakers of Qur'anic Arabic, translators of Qur'an, as well as end users of the translation should join hands in helping one other to understand the exact intended meaning of certain Qur'anic terms and terminologies. This should occur preferably before the final stage of the translation production process and of course before publication, in order to avoid some vital mistakes in terminology, particularly when the meaning of a specific word determines the rights of a human being, in which case the accuracy of the translation becomes crucially imperative.

For instance, most Qur'anic translators have translated the term *mut'ah* as a gift. Some translators have taken this erroneous translation from earlier translators apparently, out of respect and good faith.

We know that there exist Five Rules of Islamic Law: *ḥalāl* (lawful or permitted); *ḥarām* (unlawful or not permitted); *mandūb* (Sunnah); *makrūh* (disapproved but lawful); and *mubāh* (permissible). According to Islamic law, "gift" does not fit into the first or third category. Rather, it is classified under the last category, *mubāh*. However, Muslim jurists have determined that a gift is not a mandatory transaction, but rather a social non-binding transaction, unless and until it is fully acquired by the recipient, when it would be governed by another form of rules. Moreover, in accordance with Islamic Shari'ah law, a gift has its own jurisprudential rules which differ completely from that of post-divorce financial support.¹³

POST-DIVORCE FINANCIAL SUPPORT FROM THE
PERSPECTIVE OF THE SUNNAH

In accordance with the Prophetic Sunnah, the Prophet was married to a woman known as ʿUmrah, daughter of Yazīd, son of John, from the tribe of Kilāb, but due to an uncertain reason the marriage was not consummated. Upon divorcing her, the Prophet paid her what was due according to her post-divorce right and sent her back to her family. In this Prophetic practice, we learn that despite the short time she spent in the Prophet house, when he pronounced an irrevocable divorce upon her, he granted her post-divorce *mutʿah*.¹⁴ In another Prophetic narrative, a man from the al-Anṣār married a woman from the tribe of Ḥanīf, but divorced her before the consummation of the marriage. The Prophet commanded him to pay her post-divorce financial support (*mutʿah*).¹⁵ Many of the Prophet’s Companions, including ʿUthmān Ibn ʿAffān, ʿAbd al-Raḥmān ibn ʿAwf, judge Shurayḥ, and Ḥasan ibn ʿAlī ibn Abī Ṭālib gave *mutʿah* to their divorced wives.¹⁶

POST-DIVORCE FINANCIAL SUPPORT FROM THE
PERSPECTIVE OF MUSLIM JURISTS

Muslim jurists hold two different opinions on post-divorce financial support. Some jurists regard it as mandatory (*wājib*), in the first category of Islamic rulings; and some as *mundūb* (commendable), in the second category of rulings. However, in terms of practicality, Muslim jurists do not hold post-divorce support as obligatory. Even those who believe it to be a mandatory command from Allah do not advocate it, much less apply it. The principle is almost totally ignored, and buried under the prevailing rubble of custom.

Ninety percent or more of our revered jurisprudential resources were either compiled or can be traced back to the second century after the hijrah – more than twelve hundred years ago – during the time of Imam Abū Ḥanīfah,¹⁷ Imam Mālik, and Imam al-Shāfi ʿī.¹⁸ Until now in some Muslim countries and in remote isolated villages, it has been customary for divorced women, along with their children, to be returned back to their family home, where they are accommodated

and financially supported by the extended family. However in today's society many women have to fend for themselves and earn an income to support themselves and their children. In circumstances such as these compensation for divorce becomes even more important because the safety net of extended family systems is fast eroding.

Imam Abū Ḥanīfah¹⁹

The Ḥanafī Jurisprudential School is the oldest Sunni school of fiqh. The prevailing opinions of its jurists endorse post-divorce support as mandatory (*wājib*) in two cases. The first is in the case of *al-muḥāwadah*,²⁰ referring to a woman married without fixation of a dowry and divorced before consummation of the marriage. In this case post-divorce financial support is mandatory, because it is a substitute of her right to 50 percent of the dower (*mahr*). The Qur'an states that there is no blame if a man divorces a woman before consummation or fixation of the dower, but mentions bestowing on her a suitable gift, the wealthy according to his means and the poor according to his means (2:236).

The second is in the case of a divorced woman whose *mahr* was fixed but who was divorced before consummation of the marriage:

O you who believe! When you marry believing women and then divorce them before you have touched them, no prescribed waiting period (*‘iddah*) should be imposed on them, but grant them the *mu‘ah* [post-divorce support] and set them free in a handsome manner. (33:49)

The Ḥanafī position is not precisely clear with regard to divorcee women in other situations. According to the majority of Ḥanafī jurists, post-divorce support is just recommendable.²¹ This position drives many Muslim jurists, judges, and common people to treat post-divorce support as an optional matter.

Imam Mālik Ibn Anas

Imam Mālik²² and the majority of his disciples state that post-divorce support is not mandatory at all but is instead recommendable for all divorced women except those with fixed dowries and who were

divorced before the consummation of the marriage. Women with a fixed dowry are not entitled to *mutʿat al-ṭalāq*.²³

The argument provided by the Mālikī school to justify the dispensability of post-divorce support is based on the words *muḥsinīn* and *muttaqīn*, which say *mutʿah* is mandatory only for these two categories of people. The best repudiation of the Mālikī school position is that of Imam al-Qurtubī, a Mālikī jurist, who as discussed earlier truly represented the Mālikī school in his reply meaning that his opinion represents the best juristic opinion in the Mālikī school.

Imam al-Shāfiʿī

Al-Shāfiʿī's recent and most publicly publicized opinion holds that any divorced woman who is not the direct reason for the divorce is entitled to post-divorce support.²⁴ Although al-Shāfiʿī's opinion on this matter has been reputed as the most balanced among the Islamic jurisprudential schools, he did not offer a blank check to all divorcee women. He found that divorcee women fall into two categories (listed below) with those eligible for post-divorce financial support falling under category A, as opposed to B.

Category A:

- A woman divorced without any fault on her part
- A woman whose divorce occurs before fixing of the *mahr* and before the consummation of marriage
- A woman divorced via a competent court due to the husband's impotence
- A woman divorced due to her husband's bad attitude or his physical and mental cruelty
- A woman divorced due to a husband's desertion
- A woman divorced due to her husband's failure to secure necessary maintenance for her
- A woman divorced due to *ʿillāh* (that is chronic sickness) or *zihār* (an ancient Arab custom, where the husband foreswears any marital relations with his wife, declaring her to be "like the back of his mother") undertaken against her by her husband.

Category B:

- A divorced woman whose dowry has been fixed but whose marriage has not been consummated.
- A woman who demands a *khulʿa* divorce (divorce sought by the wife through a Muslim judge).
- A woman whose marriage has been revoked by a competent court due to her being accused by the husband of having an extramarital affair (*mulāʿanah*, an Islamic legal term meaning the mutual act of swearing an oath is carried out before a judge when a husband accuses his wife of adultery and cannot prove it with four witnesses. see Yusuf Ali commentary on 24:6-7).
- A woman whose divorce was based on a defect attributed to her.
- A woman who chooses to divorce her husband over maintaining her marriage with him.²⁵

Furthermore, like all other human life paradigms, mutual benefit is the central point of human interactions, which is true even in the relations between parents and their children as suggested in the Qurʿan: “...You know not whether your parents or your children are nearest to you in benefit...” (4:11). As such, marriage in Islam is based on benefit reciprocity. Spouses should know that a useless person in the family and in the community can be tolerated only for a limited period before people start to feel that his very existence has turned burdensome.

It is natural that a husband desires to have children and enjoy a physical and personal life, but if due to chronic illness or the like, his wife cannot bear him children or falls short physically, husbands should not divorce their wives for this reason. Divorcing a wife due to what is out of her control is a gross betrayal of the matrimonial bond. In the best interests of children and the extended family, husbands should remain married. At the same time, women with chronic health disorders such as these should not deprive their husbands of taking another wife. Not doing so would otherwise furnish a ground for losing their post-divorce financial support.

Ibn Hajar al-ʿAsqalānī states that a Qurʿanic verse²⁶ was revealed to address such type of family disputes: “If a wife fears cruelty or desertion on her husband’s part, there is no blame on them if they arrange an

amicable settlement between themselves, and such settlement is best, even though men's souls are swayed by greed, but if you do good and practice self-restraint, Allah is well-acquainted with all that you do."²⁷

Husbands and wives who are undergoing this kind of trial should apply the wisdom of Sawdah bint Zam'ah, the wife of the Prophet. When she grew old and lost her strength and beauty, in recognition of the norm that Allah has created in the nature of men, she handed over her spousal rights to 'Āi'shah, the youngest wife of the Prophet.

Aḥmad Ibn Ḥanbal²⁸

The Ḥanbalī jurisprudential position towards post-divorce support is almost the same as those of the Ḥanafī and Shafī'ī schools.²⁹ 'Abd al-Raḥmān al-'Āsimī al-Najdī al-Ḥanbalī highlighted the consensus between the three major Islamic jurisprudential schools as he pointed out the similarities among them.³⁰ In his famous *Majmū' Fatāwā*, Shaykh al-Islām Imam Ibn Taymiyyah states that 'Abd Allāh ibn 'Umar, Imam al-Shāfi'ī, and Imam Aḥmad ibn Ḥanbal all considered post-divorce support (*mut'ah*) to be mandatory for every divorced woman, except those divorced after the fixation of the dowry but before consummation of the marriage. For such divorcees with a fixed dower, no post-divorce support was required.

In contrast, Imam Ibn Taymiyyah makes an excellent point, this being that as Islamic Shari'ah considers a marriage contract the reason for the prerogative of acquiring a bridal dowry *mahr al-nikāh*, likewise divorce is the reason for the prerogative of acquiring post-divorce support, *mut'at al-ṭalāq*. He states that married women whose dower had not been fixed were entitled to a *mahr* similar to that of her peers based on the marriage contract, and such prerogative was to be delivered even after the death of the husband. He then quotes the case of *Barwa' bint Wāshiq*, whose husband died before her dower had been fixed, and the Prophet awarded her the *mahr* of her peers.³¹ After discussing the opponents' arguments against post-divorce support (*mut'ah*), he reports the other opinion of Imam Aḥmad ibn Ḥanbal stating that the accurate opinion reported from Imam Aḥmad is what was previously quoted, which described post-divorce support as mandatory for each divorced woman.³²

During Ibn Taymiyyah's time, the need for imposing post-divorce support was less pressing than in our present time. In his time, social consolidation and extended family accommodations were in full operation. Today, in many cases, divorced women have no such places of refuge and no financial means to support themselves or their children.

ASSESSMENT OF POST-DIVORCE FINANCIAL SUPPORT

Regrettably, our predecessor jurists left us with a very limited legacy on the subject of assessment for post-divorce financial support, and almost nothing on property settlement. Most assessments were reported from either the Companions of the Prophet, such as ʿAbd Allāh ibn ʿAbbās and al-Ḥasan ibn ʿAlī or there is the incident of the Prophet himself when he divorced one of his wives before consummation of the marriage, gave her *mutʿah* and asked Abū Usayd to take her to her family:

Al-Bukhari reported in his Sahih that Sahl bin Saʿd and Abu Usayd said that Allah's Messenger married Umaymah bint Sharahil. When she was brought to the Prophet he extended his hand to her, but she did not like that. The Prophet then ordered Abu Usayd to provide provisions for her along with a gift of two garments.³³

ʿAbd Allāh ibn ʿAbbās was reported to have assessed post-divorce financial support for a woman who had been married to a wealthy man, stating that she was entitled to a servant man or woman, and that a woman who was married to a man of limited income was entitled to three or four pieces of clothing.

Wahbah al-Zuhayli, a prominent contemporary Muslim jurist, reported all the opinions of highly regarded Muslim jurists on the matter of post-divorce financial support, in his famous book *al-Fiqh al-Islāmī wa Adillatuhu*. According to al-Zuhayli, post-divorce financial support is based on the financial and social status of the couple, as in the prevailing jurist opinion (*fatwa*) on this matter that purports if the couple is from a wealthy and high background, the divorcee's compensation should be in accordance with this, and if the couple is of limited income, then the divorcee shall be entitled accordingly, and if

the couple are from different social backgrounds, the divorcee shall be granted the average between the two.

In his conclusion, al-Zuhayli seems to support the opinion of Imam Abū Ḥanīfah, Imam Mālik, and Imām Shāfi‘ī with regard to the assessment of post-divorce financial support. He states that the assessment of the financial support should depend on the discretion of the trial judge. He also hints that there should be no ceiling for post-divorce financial support (amount of *mut‘ah*) because the Qur’an does not put a limit on it.³⁴

The strongest evidence with regards to the assessment of post-divorce financial support is the hadith of ‘Abd Allāh ibn ‘Abbās, which determines that the highest type of post-divorce support is to give the divorcee a servant, the second to provide her with sustenance, and the lowest to clothe her.³⁵

The assessment of post-divorce financial support made during the time of Ibn ‘Abbās in cash or in kind would not necessarily suit our present time because we do not own slaves/servants or process our transactions in *dirhams* and *dinārs* as during the lifetime of the Prophet, his Companions, and Successors. However, comparing the living costs in both eras would provide a standardized criterion on which to process the assessment, enabling us to determine the satisfactory amount of post-divorce financial support that should be paid by the economically more fortunate husband vis-à-vis the less fortunate one.

In addition to using Ibn ‘Abbās’s hadith as supportive evidence, Ibn Kathīr made two important points that represent an important breakthrough in determining post-divorce financial support in kind and in cash, taking into consideration that Ibn Kathīr lived in the seventh century after the Hijrah – 656 years ago – when owning a servant was tantamount to owning a house in our time. Therefore, if Ibn Kathīr believed that a divorced woman whose husband was wealthy was entitled to a servant who would serve her and her dependents for the rest of her life and be inherited by her children after her death, then we can easily deduce that in our modern time a divorced woman whose husband is wealthy should be entitled to no less than a house to shelter her and her dependents for the rest of her life and be inherited by her children after her death.³⁶

In the process of determining the level of financial support, one should not ignore the financial contributions of divorced women to the household and their contribution to accumulated assets during the marriage. Women's financial contributions to household expenditures should be taken into consideration, besides their help in a husband's business, care for their husband and children, household work such as cleaning, cooking, laundry, and dishwashing, etc.

The western socio-economical style of life, which Muslim communities residing in the West inevitably imbue an element of as part of the western structural fabric, is based on family cooperation among the adult members of the household. Often, both the husband and wife work fulltime with in some cases, one or both having more than one job and usually a joint bank account. Therefore, they jointly share the expenses of life and equally enjoy the surplus of their earnings. If their marital life ends for any reason, then all the real and personal assets, in principle, should be subjected to a communal division.

This state of affairs in principle, disturbs some Islamic Shari'ah rules, including, but not limited to, the principles of financial independence of the spouses, the Islamic rules of inheritance (where the share of the wife is only one fourth, or one eighth in case of the presence of a child, see Qur'an 4:12), the rules of guardianship (*al-qiwāmah*), and eventually, the rule of one-sided spousal support.

POST-DIVORCE FINANCIAL SUPPORT:
REFLECTIONS THROUGH CASE STUDY

Outlined below are two sample case studies concerning issues related to post-divorce financial support and property settlement in Muslim communities in North America to illustrate the serious problems facing Muslim families in the West, and to support the most viable solution based on the Qur'an and Sunnah, both of which call for adherence to fairness and justice. Both cases have been widely publicized among Muslims in America and in the American media: one concerns a Muslim family in Detroit, Michigan, whose case was adjudicated by the Shari'ah Scholar Association of North America (SSANA), and the second concerns a Muslim family in Bethesda,

Maryland, whose case was adjudicated by a courthouse in the State of Maryland.

Case Study #1

This involved a couple who had been married overseas and then emigrated to the United States, where they lived and raised their children. Both the husband and wife were medical doctors, and had accumulated considerable wealth in cash and real estate, worth millions.

After some time, the husband proposed that his wife quit practicing as a physician and stay at home, to care for him and their children. She accepted the proposal and quit. Some years later, the husband decided to divorce the wife for personal reasons. Once she learned of his intention, she was disturbed and wanted to secure physical custody of their minor children and obtain some post-divorce financial support. She thought of hiring a lawyer to help her in court, but the husband convinced her that resorting to American courts would be against the Islamic Shari‘ah and that an alternative solution allowing adjudication of the matter in accordance with the Shari‘ah in a way that would satisfy both of them would be better. Both parties willingly appeared before the Shari‘ah Scholars Association of North America (SSANA) for an Islamic arbitration. The couple signed a prepared binding arbitration agreement.

The arbitration panel conducted all the prerequisite legal procedures, including family history, the husband’s abusive attitude, annual business income, the best interests of the children, and so forth. The panel found the husband guilty of the following:

- Being abusive to his wife and children
- Planning to inflict a despotic divorce against the wife for no justification other than her age
- Deceiving his wife into accepting an Islamic Shari‘ah law that would entitle her to three months of post-divorce support, known as the *‘iddah* period

The panel rendered its judgment as follows:

- The wife to be granted an Islamic divorce effective from the date of the judgment.
- The wife to be granted one million dollars in cash from the husband's accumulated assets as her post-divorce financial support, including her *'iddah* period expenses.
- The wife to be granted one of the two mansions [they owned] with all furniture therein.
- The wife to be granted physical custody of the minor children.
- The wife to be granted child support on a monthly basis.

Upon reading the verdict, the husband crumpled the paper containing the verdict, before the panel, saying, "This is trash, this is not Islam." He immediately called me and asked for my intervention, as I was the chairman of the Islamic Judiciary Council of SSANA. I advised him to settle the case with his wife outside the court through reconciliation, to facilitate my intervention. He rejected the idea and hired two lawyers to fight the case before the state court. He lost the case in Detroit and asked his lawyers to appeal the verdict. While his lawyers pursued a lawsuit against SSANA's judgment and against his wife, he went to Al-Azhar in Egypt and to Saudi Arabia to get a fatwa against the verdict, but failed.

I do not know what answers he obtained from Muslim scholars in Egypt and Saudi Arabia, but he lost the case before the state courts, as the trial court upheld our arbitral judgment. The plaintiff's lawyers filed at the special Appellate Court of Michigan, but I assume the lawyers advised him of the likelihood that the Appellate Court would uphold the Islamic arbitration ruling. Therefore, before the Appellate Court decided on the case, the plaintiff called me again requesting review of the verdict. I simply reiterated the same recommendation as before. The husband accepted my advice, humbly met his ex-wife and was able to persuade her to enter into a bilateral agreement with him upon which she agreed to withdraw all pending cases, demands or litigations against him.

Case Study #2

This case was widely publicized by the American media in June 2008.

It concerns a family law case where both parties were Muslims from Pakistan. It is one example of an increasing number of cases of this type in the Muslim community across the United States. I entertained some cases of this nature while I was a Shari'ah court judge in Sudan, as well as here in the United States, as an Islamic arbitrator, and have similar cruel divorce cases pending on my desk.

In cases such as these the parties involved are invariably Muslim immigrants from various Muslim countries, of different socio-economic levels and cultural backgrounds. Common factors among them are consistently the following:

- Evasion of post-divorce financial support and property settlement prescribed by the Qur'an and Sunnah in favor of their divorced wives.
- Invocation of family law from back home, erroneously labeling it Shari'ah law, whilst everybody is fully aware of the motive behind their attempts to revoke the marriage at home, rather than in the US, that is to save them money, satisfy their self-image and deprive their divorcees of their due rights unjustly.
- A vindictive attitude of revenge by the husbands against their wives and minor children who are the most vulnerable victims of these cruel divorces. We find husbands divorcing their wives at their country's consulate office, or sending wives back home to their country of origin via a one way ticket, only to a few weeks later send them a letter of divorce, after blocking their access to visas so as not to allow them a way back to the U.S. anymore.

Returning to the issue of the second case study. The parties in question had married in 1980 in Karachi, Pakistan. Shortly after the marriage, the husband moved to the UK, the wife joining him later, where they lived for four years while he completed his studies. They then moved to the United States and began to reside in Maryland while the husband worked at the World Bank. They maintained a residence in the US for twenty years. Eventually the wife filed for divorce in the US and the husband went to the Pakistani Embassy and performed *Talāq*. The parties had two children, both of whom were

born and resided in the US. The wife was now a resident of Maryland, holding a green card status.

According to the *Washington Post*, the court of Maryland declined to “afford comity” to the Pakistani divorce (Comity is a legal term relating to international Law that governs various Countries respect to each other’s legal system). The alleged Pakistani marriage contract and the Pakistani statutes addressing the division of property upon divorce conflicted with Maryland’s public policy and the Maryland courts would not afford comity to such contracts and foreign statutes.

From the *Post*: Farah Alim filed a case suit for a limited divorce from her husband, Irfan Alim in the Circuit Court for Montgomery County. The husband thereafter filed an answer and counterclaim, raising no jurisdictional objections. Without, however, any advance notification to the wife, and while the Montgomery County action was pending (between the filing of the action for a limited divorce and the filing of the amended complaint for an absolute divorce), the husband, a Muslim and a national of Pakistan, went to the Pakistan Embassy in Washington, D.C., and performed divorce (*Talāq*) by executing a written document that stated: “Now this deed witnesses that I the said Irfan Alim, do hereby divorce Farah Alim, daughter of Mahmud Mirza, by pronouncing upon her divorce/ *Talāq* three times irrevocably and by severing all connection of husband and wife with her forever and for good.”

The petitioner posited that the performance by the husband of *Talāq* under Islamic religious law and under secular Pakistan law, and the existence of a “marriage contract” deprived the Circuit Court for Montgomery County of jurisdiction to litigate the division of the parties’ marital property situation in the US. The trial court found that the marriage contract entered into on the day of the parties’ marriage in Pakistan specifically did not provide for the division of marital property and thus, for that reason alone, the agreement did not prohibit the Circuit Court for Montgomery County from dividing the parties’ marital property under Maryland law.

The court of Special Appeals agreed “thus, the Pakistani marriage contract in the instant matter is not to be equated with a premarital or post-marital agreement that validly relinquished, under Maryland law,

rights in marital property” (*Alim v. Alim*, 175 Md. App. 663, 681, 931 A.2d 1123, 1134 (2007)). The court of Special Appeals further stated:

If the Pakistani marriage contract is silent, Pakistani law does not recognize marital property. If a premarital or post-marital agreement in Maryland is silent with respect to marital property, those rights are recognized by Maryland law. . . . In other words, the ‘default’ under Pakistani law is that Wife has no rights to property titled in Husband’s name, while the ‘default’ under Maryland law is that the wife has marital property rights in property titled in the husband’s name. We hold that this conflict is so substantial that applying Pakistani law in the instant matter would be contrary to Maryland public policy (*Id.* At 681, 931 A.2d at 1134).

The “marital property” as it would be defined under Maryland law included the husband’s pension from the World Bank valued at approximately \$1,000,000, real property valued at \$850,000, personal property valued at approximately \$80,000, and two or more vehicles. The primary property focus in the present case was the petitioner’s pension, which was titled only in the husband’s name. This stark discrepancy highlights the difference in the public policies of the US state and the public policies of Islamic law, in the form adopted as the civil and secular law of countries such as Pakistan.

Under Pakistani law, unless the agreement provides otherwise, upon divorce all property owned by the husband on the date of the divorce remains his property and “the wife has [no] claim thereto.” The opposite is also applicable. The husband has no claim on the property of the wife. In other words, upon the dissolution of marriage, the property follows the possessor of its title.

The central issue in the present case concerned the wife’s attempt to obtain the husband’s pension from the World Bank, which related primarily to his work performed while a resident of the US, declaring it to be “marital property,” and to have the other property declared marital property and thus be entitled to half of that pension and property under Maryland law.

“Comity,” in the legal sense, is neither a matter of absolute obligation nor of mere courtesy and good will, but is the recognition one nation allows within its territory to the legislative, executive, or judicial

acts of another nation, due both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws. A judgment affecting the status of persons, such as a decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own law.

The court found the *Talāq* divorce of countries applying Islamic law, unless substantially modified, to be contrary to the state's public policy. The court declined to give *Talāq*, as presented in this case, any comity. The court found further that Pakistani statutes which regarded division of property upon the dissolution of marriage to be governed by whose name the property was titled in, unless there existed an agreement(s) specifying otherwise, conflicted with state laws where, in the absence of valid agreements otherwise or in the absence of waiver, marital property is subject to fair and equitable division. Thus, the Pakistani statutes were found wholly in conflict with state public policy as expressed in its statutes, and the court afforded no comity to those Pakistani statutes.

Additionally, the husband was found to confer insufficient due process to his wife, by evading a divorce action begun in the state by rushing to the embassy of a country recognizing *Talāq* and, without prior notice to the wife, performing "I divorce you..." three times and thus summarily terminating the marriage and depriving his wife of marital property. Hence, for this additional reason, the courts of Maryland did not recognize the *Talāq* divorce performed.

CONCLUSION: URGENT CALL TO MUSLIM JURISTS

Muslim jurists should take a proactive role in reviving the application of post-divorce support (*mut'at al-talāq*) as it has been clearly decided by the Qur'an and the Sunnah. There are numerous reasons for reinforcing the application of post-divorce support, in our modern time. A few are given below:

- It is a command of Allah as reported in a number of verses in the Scripture.

Post-Divorce Financial Support from the Islamic Perspective

- It has been supported and illustrated by the Sunnah, the Companions of the Prophet, and the Successors.
- It is a manifestation of the profoundly rooted Islamic principle of justice and fairness for all in general and towards women in particular.
- It is in the best interests of minor children, largely the first victims of arbitrary subjective divorces.
- It serves as a means of deterring all kinds of harm that divorced women may fall victim to, women who today are crying out for help, but receiving none.
- Finally it is an implementation of the Prophet's recommendation (*waṣiyyah*) made to his Ummah on the Day of ʿArafah during the Prophet's Ceremonial Declaration known as the farewell Pilgrimage Sermon.³⁷

Besides these reasons, Muslim jurists should consider the growing trend of married women working full-time outside the household by the consent of their husbands, while caring for the household, their children and husbands. If men usually work from eight to ten hours a day, then these women work sixteen to twenty hours a day.

According to ongoing practices in Muslim communities, in the case of divorce all properties and accumulated assets go to the husband. Is it fair to deprive these women of their Islamically-prescribed post-divorce support and financial settlement?

In the same vein when a Muslim woman gives up her education or her career/profession in order to marry and look after the husband, the children, and the home, or works for many years in her husband's business, then is it an equitable act upon divorce to kick her out of the house and the business and leave her with no post-divorce financial support and property settlement?

These issues are fundamental and critical, they impact on human lives and have far reaching consequences. As such I urge Muslim jurists to face this emerging challenge fully, to apply the fairness and justice of Islamic Shari'ah law in all matters, and to protect all the rights of women.

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