

## MATERIAL AND NON-MATERIAL RIGHTS OF WIFE AS DISCUSSED IN THE TAFSIR OF AL-QURTUBĪ

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### **Abstract**

Due to the noticeable misconception and ignorance of some people about the wife's rights stipulated in Islamic law, this research study, examined the material and non material rights of the wife as discussed by al-Qurtubi in his Tafsir. The study was aimed at identifying the correct rules deduced from some Qur'anic passages and their implications on the contemporary happenings in respect of the wife's rights. Thus, the exegetical method was employed in this paper in order to rightly stand on the intended meaning of the Qur'anic passages. In this regard, the study established that the wife has the right to collect a little or large amount of *mahr* according to the means of her husband's income. Also, it showed that the wife must be given her right to maintenance in as much as she accepts her husband as the guardian of the family as ordained by Allah in the Glorious Qur'an. More so, the paper identified the extent to which the husband must give his wife the right to sexual intercourse and fair treatment between his multiple wives. The study therefore concluded that Al-Qurtubi really showed his great intellectuality and erudition in raising from the Glorious Quranic copious issues which are topical. Moreso, Al-Qurtubi's objectivity shown in his exegetical comments is an indication that it is essential to reasonably consider views of other scholars being sentimental about any of them.

### **Introduction**

It was rightly stated by a host of scholars including Adebayo, R.I. that Islam liberates women from the shackles of men's chauvinism. It should be noted that before the advent of Islam in Arabia, women were considered as mere objects of sexual pleasure, possessing no rights or position whatsoever.<sup>2</sup> It is noted in this contemporary Nigerian society that some husbands only claim their rights without having consideration for the rights of their wives. For

instance some of the husband believe that the maintenance of the wife is not an obligation of the husband as being practiced in some Western countries nowadays<sup>3</sup>. Besides, the sexual intercourse is regarded as a right of husband solely' whereby it is subjected to his decision as it has been a practice in the Pre-Colonial Ilorin Emirate Society<sup>4</sup>.

In this regard, by the researcher's exploration into the Tafsir of Al-Qurtubi it is noted that there are a number of specific rights stipulated for a woman, by Allah. He considers her as a honoured partner of her husband in raising a happy and healthy family. The rights examined in this paper as categorized by Abdul'Ati<sup>5</sup> among others are as follows:

- Material Rights: Valuable amount of *mahr* and maintenance of the wife
- Non-Material Rights: Sexual intercourse and justice between co-wives

Thus, this paper is intended to examine the views of Al-Qurtubi on the contemporary happenings regarding the financial and non-financial rights of the wife discussed in his work which he titled: *Al-Jāmi' u li-Ahkām al-Quran*. The study is aimed at making a contribution to the scholastic efforts put up in finding solutions to the problems affecting the wife's rights in the contemporary society.

### **Biographical Sketch of Al-Qurtubi**

A prolific author whose work is the main focus of this paper is Al-Qurtubi. His full name is Abu Abdullah Muhammad bin Ahmad bn Abibakr bn Farah al-Qurtubi. He was born in the 13<sup>th</sup> century C.E in Cordoba in the present day Spain. It should be noted that the name 'Al-Qurtubi is a derivative of an Arabic name of Cordoba from where he emanated. He was educated in Cordoba before he left for Alexandria in Egypt where he studied Hadāth and Exegesis. It should be pointed out that al-Qurtubi's migration to Egypt was as a result of the capture of Cordoba by king Fernando 1, which also led to the killing of Al-Qurtubi's father in 1236 C.E. Al-Imam Abu Abdullah al-Qurtubī was a renowned jurist and an exegete who wrote a number of works on various branches of knowledge. However, the greatest contribution of Al-Qurtubi to the field of knowledge is his monumental work which he titled: *A-Jāmi' u li-Ahkām al-Quran* (the Compendium of the Rules of the Qur'an). He died in the year 671 A.H /1273 C.E. in Munya Abi al-Khusayb. Egypt.

Juristic Views on the Right of the Wife to a Valuable Amount of *Mahr*.

The bridal gift referred to as *mahr* or sadaq in Islam was defined by some Hanafi jurists as:

ما تستحقه المرأة بعقد النكاح أو الوطء

“Something that the woman is entitled to receive by virtue of the contract of marriage or sexual intercourse (between the spouses)”.

It is noted from the definition quoted above that the woman has the right to *mahr* because of two things as also noted by al-Zuhayli: Valid contract of marriage and intercourse between the spouses.

Thus, in order to protect the right of the woman to get a valuable *mahr*, *tendirham* was stipulated by Hanafi jurists as a minimum amount, while Maliki Jurists stipulated three dirham as the minimum. On the contrary, al-Shafi'i, Ahmad, Is'haq, bn al-Musayyib among others maintained that it is permitted to give out as *mahr* anything regarded as *māl* (wealth) in as much as the contractual parties give their consent on it. “

As regards the issue of the wife's right to plenty amount of *mahr*, Shafi'i and Hanbali jurists asserted that it is advisable not to give out as *mahr* what is beyond the amount or value given out by the Prophet (Pbuh) or what was collected by his daughters as *mahr*.

### **Valuable Amount of *Mahr* as Determined in the Tafsir of Al-Qurtubi**

The amounts fixed as minimum value of *mahr* in the contemporary different localities are noted to have been creating some problems for the men who cannot afford to pay them. In Arabian countries particularly Saudi Arabia, the amounts fixed as minimum value of *mahr* by different families render most of their spinsters unmarried till the age of forty years owing to the fact that *mahr* being asked for them is not affordable for most of the men. Thus the women's marriage is put on hold while the bachelors indulge in unethical things, such as adultery.

Also, in Nigeria, it is noted that the amount fixed as the minimum *mahr* does not make a difference among different families and socio-economic classes of the people. This is the reason why the husbands of the high class give a little amount as *mahr*. It should be noted also that while twenty thousand naira is stipulated as current minimum amount of *mahr*, there are some workers who earn an amount below fifteen thousand naira monthly in the contemporary

Nigeria. Thus, the low income earners among the husbands are sometimes disgraced in the marriage gatherings because the guests are usually begged to support the husband for his inability to meet up with the stipulated minimum amount of *mahr*. This idea of begging for financial support according to al-Qurtubi is not permitted because of a Hadith which reported that the Prophet (Pbuh) frowned at a man who did it.

However, it should be noted that only the money given to the wife by the husband is usually regarded and announced as *mahr* in Nigerian society and Ilorin emirate in particular. Some moderators of marriage contract do not realize that Maliki jurists included all the items given to the wife during the marriage contract as a part of *mahr*. Thus, if both the money and the items are estimated together as *mahr*, the amount of the *mahr* paid by the low income husbands would be more valuable to the women in Nigeria.

In this regard, while commenting on the Qur'an 4:24, Al-Qurtubi debunked various amounts stipulated by some jurists as a minimum amount of *mahr*. He therefore upheld the stance of al-Shafii which is in contrary to the claims of Abu-Hanifah and Malik as follows:

فتعلق الشافعي بعموم قوله تعالى: "بأموالكم" في جواز الصداق بقليل وكثير، وهو الصحيح:  
"وبعضه قوله عليه الصلاة والسلام في حديث الموهوبة" ولو خاتما من حديد

*Thus, al-Shafii added his view regarding the general implication of the statement of Allah "... with gift from your property (Qurân 4:24) to legalize the little or plenty of amount of mahr. This is correct. Thus, this is justifiable with a Hadith of the Prophet (Phuh) about a woman given in marriage to a man. (The Prophet told the man;)" ...even if it is an iron ring.*

Thus, Al-Qurtubi noted that a Hadith relied upon by Abu Hanifah to stipulate ten dirhams as the minimum amount happened to be an assertion of Ali Ibn Abi Tâlib which was turned to a Hadith of the Prophet. In this regard, Al-Qurtubi quoted a Hadith of the Prophet as follows:

وقال أبو سعيد الخدري: "هو سألنا رسول الله صلى الله عليه وسلم عن صداق  
النساء فقال: "هو ما اصطاح عليه أهلوه"

*Abu Sa'idai-Khudri said: We asked the Apostle of Allah (Pbuh) about the mahr of women. Then, he (the Prophet) said: It is what their people agree upon to make it.*

It is therefore important that the guardians should consider in this respect the social status of their daughters and their husbands. That is the reason why al-Razi argued that a Hadith of the Prophet which reported that a woman gave her consent to a pair of shoes given to her as *mahr* is an indication that the value of *mahr* may be lesser than ten dirham stipulated by Abu Hanifah as the minimum amount. Al-Razi contended that he is very sure that such kind of a man and a woman who agreed upon a pair of shoes as *mahr* are very poor in the lower class of the socioeconomic status.

### **Right of the Wife to an Exorbitant Amount of *Mahr***

What is noted in several parts of Yoruba speaking areas of the contemporary Nigeria is that some wealthy husbands do not give priority to the payment of a very valuable amount of money as *mahr* to their wives. Similarly, the guardians of the wife would rather lay emphasis on their own gifts instead of fighting for their daughters to get a very valuable amount of *mahr*. That is the reason why a husband who was able to hire a hall for marriage reception at a cost of five hundred thousand naira would hardly pay thirty thousand naira as *mahr*. This may be due to the fact that several scholars object to the payment of huge amount of money as *mahr* citing a Hadith of the Prophet which reads:

خير الصداق أيسره

*The best mahr is that which is the most convenient to pay.*

This Hadith may however imply that the convenience of the payment is determined by the financial capacity of the husband. Thus, if it is very easy for a particular husband to pay a huge amount of money as *mahr*, it is also the best and blessed *mahr* for such a husband. Allah says:

وءاتيتم إحداهن قنطارا

*“And even if you have given one of them a plenty of money” (as mahr (Q4:20)*

In his comment on the verse stated above, Al-Qurtubi maintained that there is an indication in the passage that an exorbitant amount of *mahr* is permitted, because Allah does not illustrate except with something that is permitted. therefore cited a report narrated about ‘Umar Ibn al-Khattāb who warned the people Al-Qurtub to desist from giving or collecting an amount of *mahr* which exceeded the amount paid by the Prophet as *mahr*. It was reported that ‘Umar later retreated from his warning. The reason for his retreat as stated by Al-Qurtubi reads thus:

فقامت إليه امرأة فقالت: يا عمر, يعطينا الله وتحرمنا, أليس الله سبحانه وتعالى يقول “  
وءاتيتم إحداهن قنطارا” فقال عمر: أصابت امرأة وأخطأ عمر

*Thus, a woman stood up and said: Oh Umar! Allah gives us (a right), but you deny us. Don’t you realize that Almighty Allah says: “..and even if you have given one of them a plenty of money (as mahr)” (Quran4:20). Then, ‘Umar replied: the woman is right while Umar has made a mistake.*

Abu Abdullah al-Rāzi however noted that the Quranic passage cited in the above report did not indicate the legality of payment of an exorbitant amount as *mahr*. It should be noted in this respect that, when the woman used the Qurānic passage to prove that a woman has the right to plenty of money as her *mahr*, Umar agreed with her and none of the Companions was reported to have objected to the View of the woman. It should be noted that there are different classes of socioeconomic situations of the husbands. This is applicable to every era and society. Al-Qurtubi had noted that during the life time of the Prophet (Pubh), a man whobegged for financial assistance to pay his *mahr* of two hundred dirham was blamed by the Prophet because of the man’s poor economic situation. Another Companion of the Prophet used his share from booty as *mahr*. The *mahr* was sold by the wife at the cost of a hundred thousand dirham. According to Al-Qurtubi, when Khalifah ‘Umar married Ummul-kulthūm, a daughter of Ali from Fatimah, he paid her forty thousand dirham as her *mahr*. These instances indicate that the wife is entitled to collect a huge amount of *mahr* according to the financial capacity of her husband. Thus, a house or motor car can be given to a wife as *mahr*.

## **Juristic Views on What Makes the Maintenance of the Wife Incumbent on Her Husband**

Jurists held divergent opinions on the circumstances that makes a wife entitled to maintenance from her husband. Thus, the majority of jurists asserted that what makes the maintenance of a wife incumbent on her husband is the marital union or being a wife of the husband.

Besides, it should be noted that the husband's failure to maintain his wife maybe due to his financial difficulty. Maliki jurists therefore asserted that the wife's maintenance is not incumbent on the husband during his financial problem. Thus the majority of jurists, including Maliki, were of the view that since the endurance would be harmful to the wife and make her suffer seriously from the husband's inability to maintain her, she has the right to annul the marriage. But Hanafi jurists argued that if the husband has a financial problem which does not allow him to maintain the wife, her maintenance still remains incumbent on him. They therefore asserted that the wife can survive by seeking support from her relatives, or borrowing on his behalf.

## **Condition that Necessitates the Maintenance of the Wife in the Tafsir of Al-Qurtubi**

In Islamic law, maintenance, referred to as *Nafaqah*, is centered on three things which according to the jurists consist of feeding, clothing and housing. It should be noted that the majority of jurists argued that what makes the maintenance of wife an obligation on the husband is being his wife. But in the common law, the principle of gender equality or equal protection as being emphasized in the western countries has led to the abolition of the traditional alimony which was solely the right of the wife to be given maintenance by her husband. Thus, alimony (spousal maintenance), under the current law in the West, may be a payment by either the wife or the husband in support of the other, this implies that the wife may also be the payer of the maintenance in addition to her natural burden of pregnancy and breast-feeding, while the husband shall be the recipient of the maintenance. It should be noted that the consequence of this new order which proclaims gender equality and equal protection between the spouses is that; in 1965, married French women obtained the right to work without their husbands consent. More so, paternal authority of a man over his family was ended in France in 1970. Similarly, in Greece, the practice of adopting the name of the

husband as the wife's surname has been banned, all in the name of gender equality. Thus, the husband ceases to be the leader of the family under the common law.

Thus, it is noted that some husbands who do not want to shoulder the responsibility of maintenance of their wives imbibe that aspect of western culture in the name of gender equality. However, the men still love to be proud of being the head of their families, controlling the affairs of their wives, but they refuse to discharge the financial responsibility of the position which they claim.

While commenting on Quran 2:228, Al-Qurtubi noted that the status of a man over a woman as indicated by Allah in this verse implies that the husband is placed on a higher position in the matrimonial home. The Qur'anic passage reads thus:

“وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ”

*And women shall have rights similar to the rights against them, according to what is equitable, but men have a degree over them.*

*(Qur'an 2:228)*

The implication of this higher position of husband according to Ibn Abbas as cited by Al-Qurtubi in his comment on this passage reads thus:

قال ابن عباس: الدرجة إشارة الى حض الرجل حسن العشرة, والتوسيع النساء في المال والحلق

*Ibn Abbas said: The degree is an indication to urge men on exhibition of good companionship and making provision for the women in one's wealth and conduct.*

It is to be noted from the foregoing that the purpose for which Allah gave the position of family leadership to husband is to care for the wife with maintenance and good companionship. It should be noted also that matrimonial home is like a company which requires a leader to pilot its affair. Al-Razi, in his comment on the Quran 2:228, noted that the husband is like a commander and career while the wife is like a follower and a person to be cared for. Thus, immediately a woman becomes a wife of a man, she is entitled to maintenance from the man, because he has assumed the position of her leader, protector and maintainer as indicated in Qur'an 4:34. In this regard, Al-Qurtubi asserted thus:



ولا تسقط نفقة المرأة عن زوجها لشيء غير النشور

*The maintenance of wife shall not be withdrawn from her husband due to anything other than (the wife's) arrogance and disobedience.*

Therefore, the principle of gender equality which removes the husband from the position of authority and headship of the family may be seen as a support for the wife's arrogance to the husband who is to take care of her and her children. Thus, Al-Qurtubi used the following Hadith to prove the obligation of the wife's right to maintenance:

وحقهن عليكم أن تحسنوا إليهن في كسوتهن وطعامهن

*The right of the wives which is an obligation on you (husbands) is that you should do good to them in clothing and feeding them.*

Abdul-Ati noted that since the husband has been appointed to assume the family leadership because of his qualification, he is bound by the rules of the office. According to him, if the husband violates the rules of the office, he ceases not to qualify for it, because the family leadership assumed by the husband is not only allocated to him but also subjected to checks.

It should be noted in this contemporary Nigerian society that some husbands love to be proud of being the leaders of households. Hence, the wives park to their home, take them as their guardians and bear their names as their surnames. Rather, the husbands fail to carry out their responsibility of the maintenance as the leaders of the family. Consequently, as noted in some quarters, the wives who feel that their maintenance has been violated start to reduce the degree of their right to submissiveness to the husbands. Thus, this unwarranted marital relationship usually results in a marital dispute and perhaps leads to the dissolution of marriage.

In this regard, it is noted that if the husband wishes to effectively maintain his position as the leader of the matrimonial home, the wife must not be denied her right to maintenance, because she is entitled to it for being a wife placed by Allah under the care of the husband. Thus, it is noted that if the right of wife to maintenance is given priority by the husbands, marital disputes on lack of maintenance which bombard the Nigerian customary courts of law would have reduced drastically.

## **Inability to Maintain the Wife and its Implication on the Marriage of spouse as Discussed by Al-Qurtubi**

Failure of the husband to provide maintenance for his wife may be involuntary at times as noted by Abdul-Ati. However, some of the contemporary husband also deliberately cause their inability to provide maintenance for their wives. They preferred to purchase luxuries and spend for their lady-friends with a little money they earn. This development is captured in the following statement of Sherifah Abubakr:

*..While most husbands cannot even provide the minimum Islamic obligation. Worst still, such incurred additional financial burden in the name of ego. This from prevents an average Ilorin man from proper maintenance of his family.*

In his comment on Quran 4:34, Al-Qurtubi stated an opinion of some scholars that whenever the husband is unable to provide maintenance for his wife, he has no right to be her guardian (*qawwäm*) any more. And as a result, she has the right to annul the marriage because of the absence of the major thing which is the essence of the marriage. Thus, he declared as follows:

*وفيه دلالة واضحة من هذا الوجه على ثبوت فسخ النكاح عند الإعسار بالنفقة والكسوة, وهو مذهب مالك والشافعي, وقال ابو حنيفة لايفسخ لقوله تعالى إن كان ذو عسرة فنظرة إلى ميسرة*

*There is an obvious indication this view that dissolution of marriage is absolute due to financial difficulty which hinders the feeding and clothing (of the wife); It is a juristic view of Malik and alShafici But Abu Hanifah was of the view that the marriage is not to be dissolved because of the word of Allah which reads: If a debtor is in a difficult, grant him time till it is easy for him to repay. (Qurân 2:280)*

Thus, in his submission to the view of Malik and al-Shafi' which was also upheld by Al-Qurtubi, al-San'ani noted that though there was no any woman during the life-time of the Prophet that asked for divorce on the basis of her husband's financial difficulty, but the fact of the matter is that the wife has the right to ask for divorce if her husband becomes unable to

provide her maintenance because there is no harm that is serious to a wife more than to leave her without maintenance, and Allah said:

ولا يضاروهن

*..and do not harm them.*

Thus, as he maintained his stance that the next step for the wife is to separate from her destitute husband, Al-Qurtubi argued further as follows:

وإنما يكون ذلك إذا دخلت على اليسار فخرج معسرا, أو طرأ الإعسار بعد ذلك لأن الجوع لا صبر عليها

*This annulment of marriage is due if at first instance she married the financially comfortable husband and later he became destitute, or financial difficulty just happened to him thereafter, because no patience for hunger.*

However, if the wife is unlucky to remarry a better husband after the marriage dissolution as it happens in some quarters, such may be another problem. In this regard, Abdul Ati noted that she may retain the marital bond and hire by her own volition, or she may seek dissolution of marriage to become free from her marital commitments.

In this regard, Hanafi jurists maintained that inability of the husband to provide maintenance for his wife does not necessitate the dissolution of marriage. Rather, the wife can seek financial support from her relatives and borrow money on behalf of the destitute husband until the situation improves. With this situation, Hanafi jurists argued that the maintenance of the wife during the husband's financial constraint remains his obligation as he is bound to repay it when the situation improves. However, it is noted that this step may not be possible if the wife's relatives are poor and the situation persists for a long time, In view of this, it is to be noted that if the wife is employed or economically empowered, it may be convenient for her to support her husband during his financial difficulty. It is to be noted that Zaynab, the wife of Ibn Mas'ud was encouraged by the Prophet to give her husband charity from her wealth. This admonition indicates that the wife is wealthier than her husband. Doi however noted that the wife's job should be Islamically lawful while she also obtains the consent of her husband and adhere to the Islamic principles in respect of dress and modesty.

It is noted in some quarters in the contemporary Nigerian society that some women whose husbands encounter financial hardship do not resort to the dissolution of marriage, rather, they work with the consent of their husbands and supplement their husbands' effort to maintain the family. This development actually happened particularly during the period around 2015-2016 when some husband who were salary earners were owed six to ten months salaries in Nigeria.

### **Juristic Views on Non-Material Rights of Wife**

Some of the non-material rights of wife according to Sayyid Sabiq include good companionship and justice among co-wives. According to the majority of jurists, it is an obligation on the husband to confine his wife to himself in respect of sexual satisfaction, so that she would not look for it from other men. But Shafii jurists argued that sexual intercourse with the wife is not an obligation on her husband more than once in his life, rather it is his right which he may avoid. According to the jurists, this right is just as a right of a person who hired a house. He has the right to use it or leave it.

As regards the issue of doing justice by a husband among his multiple wives who are of different socio-economic status, Maliki and some Hanafi jurists were of the view that the equality among them on the maintenance is not incumbent on him in as much as each of them has been given by their husband what is due to her category in the same social-status. But some other Hanafi jurists argued that, it is incumbent on the husband to give them equal treatment according to his means.

### **Al-Qurtubi Exegetical Views on the Non-Material Rights of Wife**

#### **The Intercourse with the Wife as Her Right**

The intercourse with the wife is one of her rights and a part of the obligations of the husband. This assertion was upheld by the majority of the jurists. Thus, it is discovered from the conversation of some women with some men that failure of their husbands to sexually satisfy them happens to be a root cause of adultery indulged in by the women. In this regard, Al-Qurtubi suggested a solution to this problem as follows: Allah says:

*And women shall have rights similar to the rights against, them, according to what is equitable.. (Qur'an 2:228)*

Al-Qurtubi submitted in his comment on this verse as follows:

ثم عليه أن يتوخى أوقات حاجتها إلى الرجل فيعفها ويغنيها عن التطلع إلى غيره

*Then, husband must observe the time when his wife is in need of man for the intercourse so that he would not make her self-restraint or satisfied by not looking for somebody else.*

In this regard, it is noted from the forgoing that one of the essential non- material rights which must be given priority by husband is the sexual intercourse. It must be understood also that, as a man's sexual urge rises, that of the woman also rises as well. It is in view of this that Al-Qurtubi gave a report about a woman who complained to Khalifah 'Umar Ibn al-Khattab that his husband was a religious devotee who did not have time for her. Thus, Ka'b who interpreted the woman's complaint was directed by Umar to judge between the spouses. The husband confessed that though he gave the wife enough food, he did not have time to have sexual intercourse with her because of his religious devotion. Thereafter, Ka'b admonished the husband with a poem, part of which reads:

إن لها عليك حقا بارجل\*\*يصيبها في أربع لمن عقل

فاعطها ذلك ودع عنك العلل

*- Indeed, she has a right which is an obligation on you, oh you man!*

*- Her share is one of the four days for those who understand.*

*- Give her this thing and leave all sorts of reasons.*

The judgment of Kab indicates that the woman at least has the right to a day every week as her share among four wives with whom she is in a polygamous home. However, the husband may be a traveler. In view of this, Hanbali jurists were of the view that it is not permitted to avoid the intercourse with one's wife more than four months which is the maximum period of ila (suspension of conjugal relation)

As regards the need to give priority to the wife's right to sexual satisfaction which makes her desist from adultery, Al-Qurtubi suggested thus:

وإن رأى الرجل من نفسه عجزاً عن إقامة حقها في مضجعها أخذ من الأدوية إلى تزيد في باهه  
وتقوي شهرته حتى يعفها

*If a man notices an inability in himself to discharge his responsibility pertaining her right in her bed, he should take a medicine which could increase his performance and strengthen his sexual urge until he makes her avoid illicit relation.*

It is to be noted that medically there are some symptoms which if not cured, the performance of man with his wife may be affected. A contemporary physician noted that the use of medicine for this purpose is okay, but one should desist from self-medication.

In this regard, it is noted also that some men who have multiple wives but could not sexually satisfy them do not realize that the sexual satisfaction is a right of the wives and an obligation of the husbands. Oloruntele has noted thus:

*This implication is that Islam authorizes the practice of polygamy on condition that the husband is able to fulfill the required obligations. For instance some husbands are incapable of satisfying the first wifely sexually, yet they married more wives simply because they are wealthy.*

### **Justice Among Wives as a Right of the Wife**

In Islamic law, Allah conditioned the permission of marrying more than one wife with the ability of the husband to do justice among his co-wives. Allah says:

فإن خفتن ألا تعدلوا فواحدة

*If you fear that you shall not be able to deal justly (with them), then only one... (Qurän 4:3)*

What is noted in some quarters is that several women have been lodging complaints to seek advice from some scholars about the refusal of their husbands to divide time and resources equally among the wives. Thus, a piece of advice being given to such complainants as posted on the internet is that the affected wife should admonish the husband to fear Allah. If the husband did not adhere to the injunction of shari'ah, the wife must then exercise patience. If the suffering is too much for her to bear, then she may refer the case to an Islamic

council for dissolution of marriage. For instance, in Ilorin Emirate, it is noted that the preference being given by some husbands to one wife over the other often leads to marital disputes

In this regard, Allah says:

ترجي من تشاء منهم وتتوى إليك من تشاء

*You may defer (the turn of) any of them that you pleases,  
and may receive any you pleases. (Quran 33:51)*

In his comment on the Quran 33:51 quoted above, Al-Qurtubi asserted that, of all the scholars various interpretations of this verse, the most correct one is that, the Prophet (Pbuh) was permitted to avoid distribution of his time among his wives if He wished so. In spite of this permission, the Prophet maintained the equal distribution among his wives, in order to please their hearts and protect them against utterances of jealous which could lead to unwarranted consequences. Also, majority of scholars, as stated by al-Sabüni, submitted that despite the fact that distribution of time among the Prophet's wives is not incumbent on him, he still maintained the justice and equality in the distribution among them.

Thus, Al-Qurtubi insisted in his comment on Qur'an 33:5 1 that, it is incumbent on the husband to do justice among his wives. Al-Qurtubi however stated that while the majority of jurists asserted that both the day and night must be rotated among the wives, some other jurists argued that only the night must be allocated equally among them. In this regard, Al-Qurtubi submitted to the assertion of the majority of the jurists as follows:

ولا يدخل لإحداهن في يوم الأخرى وليلتها لغير الحاجة

*And he should not enter the room of one of them in the day  
and night allocated for other one without genuine reason.*

It is noted that if the husband enters the room of one of his wives on the day not allocated to her, there may be a suspicion from the other wife who owns the day Bakr however stated that it is not forbidden for a man to meet with his wife on the day allocated to the other, though without having intercourse with her. Bakr used the following Hadith to prove his assertion.

فقد جاء في السنن: أن النبي صلى الله عليه وسلم كان يطوف على نساته بعد صلاة العصر ويدنو من كل واحد منهن دون مسيس (أى دون جماع) وكان يجتمعن عنده ويتحدثن معه ثم يبيت عند صاحب الليلة.

*Indeed, it is contained in the Sunnah that the Prophet (Pbuh) used to go round to meet each of his wives after Asr prayer. And he comes near every one of them without having sexual intercourse. They also converge and have conversation with him. Then, he would sleep with the owner of the particular night.*

It must be understood that this kind of visitations the Prophet paid to his wives every evening, is a way of taking care of their welfare without affecting equal distribution of his time among them. In this wise, the husband may enter the room of one of his wives on the day not allocated to her if there is a genuine reason for such as noted by Al-Qurtubi.”

Pertaining to the issue of equality in the maintenance of the multiple wives, Al-Qurtubi cited a view of Malik in this respect as follows:

قال مالك: ويعد بينهن في النفقة والكسوة إذا كن معتدلات الحال ولا يلزم ذلك في المختلفات المناصب.

*Malik said: (Husband) must do justice among co-wives in feeding and clothing if they are in the same situation. But this should not be applied to the wives of different socio-economic ranks.*

The implication of the view cited above is that the situation and status of each of the wives must be considered in the giving of maintenance to each of them. Thus, what should be the share of a wife with three children is different from that of a wife with one child. Similarly, the share of a wife from royal or high socio-economic class must be different from that of a wife of low status. This kind of differences in the maintenance on the basis of social-status is considered by some women as injustice and discrimination against the wives of low ranks under the same husband.

It must be noted that unlike having equal love for the co-wives which naturally is impossible, as asserted by Al-Qurtubi in his comment on Quran 4:129, the equal distribution of maintenance is possible if the husband has the will to do so. Allah says:

ولن تستطيعوا ان تعدلوا بين النساء ولو حرصتم فلا تميلوا كل الميل فتذروها كالمعلقة



*You are never able to do justice between wives even if it is your ardent desire but turn not away (from a woman) altogether...(Qur'an 4:129)*

While commenting on this verse, Al-Qurtubi stated that Mujāhid asserted:

لا تَعْمَدُوا إِسَاءَةَ بِلِإِزْمَا التَّسْوِيَةِ فِي الْقِسْمِ وَالنَّفَقَةِ لِأَنَّ هَذَا مِمَّا اسْتَطَاعَ.  
*Do not willingly cause harm; rather, maintain equality in the distribution of time and maintenance, because this is possible.*

In this regard, in his comment of the Qur'an 4:129, al-Rāzi quoted the following Hadīth to lend support to the equal distribution of the maintenance among the wives of different social-status.

وروى أن عمر بن الخطاب رضي الله عنه بعث إلى أزواج رسول الله صلى الله عليه وسلم بمال فقالت عائشة: إلى كل أزواج رسول الله صلى الله عليه وسلم بعث عمر بمثل هذا؟ فقال: لا، بعث إلى القرشيات بمثل هذا، وإلى غيرهن غيره فقالت للرسول ارفع رأسك وقل لعمر: إن رسول الله صلى الله عليه وسلم كان يعدل بيننا في القسمة بماله ونفسه، فرجع الرسول فأخبره فأتى لهن جميعاً

*It was narrated that Umar Ibn al-Khattāb, May Allah be pleased with him, sent property to the wives of the Prophet (Pbuh). Then, Aishah asked: were kinds of these items 'Umar sent to all the wives of Apostle of Allah (S.A.W)? Then, the messengers replied: No, these were sent to only the Quraysh wives (among you), while some other items were sent to those who are not Quraysh (among you). Then, "Aishah told the messenger: Rise and tell 'Umar: Indeed, the Apostle of Allah was used to do justice among us in the distribution of his wealth and himself. Then, the messenger returned to Umar and informed him what Aishah said. Thereafter, Umar made it complete (equally) for all of them.*

## Findings

The points of views deduced from the foregoing discussion are as follows:

- Some views of other scholars upheld by Al-Qurtubi in his exegetical comments against those ones upheld by Malik indicate that Al-Qurtubi was objective. The

implication of this approach of Al-Qurtubi is that they must not confine their opinions to only a particular contemporary scholar's school of thought.

- In his support to al-Shafi'i, Al-Qurtubi maintained that the valuable *mahr* which the wife is entitled to is to be decided by the family of the bride according to economic situation of the husband rather than stipulating a particular amount as minimum by jurists. This view optimistically shall provide a lasting solution to the problem of humiliation of some low income husbands in the public as it is happening in some quarters.
- In order to show that the wife's right to valuable amount of *mahr* is adequately taken care of, the items presented by the husband to the wife for contract of marriage should be estimated together with the money given as *mahr* as asserted by Maliki jurists.
- The wife is entitled to a plenty amount of *mahr* even if it is beyond the amount paid by the Prophet (Pbuh) in as much as it is affordable for her husband as noted by Al-Qurtubi.
- The wife is entitled to maintenance in as much as she submits herself to her husband as the leader of the family as indicated in the Qur'an 2:228 and 4:34
- A wife whose husband could no longer maintain her has the right to seek the dissolution of marriage in order not to become a liability or an additional problem for her destitute husband, because no patience for hunger, as upheld by Al-Qurtubi. However, there may not be need to dissolve the marriage, if she can borrow money on behalf of her destitute husband as suggested by jurists or she is economically empowered to earn money and earn the effort destitute husband till the situation improves.
- The wife's right to sexual intercourse must be given to her by her husband, so would not indulge in adultery.
- If a man becomes too sexually weak to satisfy his wife, he may use a prescribed medicine or eat suitable food to energise himself
- As a part of the ways to ensure the wife's right to fair treatment, the husband must divide his days and nights among his multiple wives, and should not enter the room of one of them on the day allocated to another, unless with a genuine reason.
- Equal giving of maintenance among wives of different social-status is not incumbent on the husband as narrated by Al-Qurtubi from Malik. This, in our humble opinion,

may however be termed as discrimination which is contrary to the Sunnah as indicated in this paper

## Conclusion

This study has identified the rules that guard the right of the wife to get valuable amount of *mahr* without denying the wife her right to get plenty amount of *mahr*, instigating humiliation of some low income husbands or delaying them from getting married at an appropriate time. This research study has also justified the reason why the wife's right to maintenance must not be abolished by true Muslims who recognized that Allah appointed every husband as the leader of the family to take care of the wife and her children with good companionship and maintenance. It is noted therefore, that an attempt to abolish or deny the right of the wife to maintenance may lead to the increase of immoral acts in the society as it is happening in some western countries.

More so, since the wife may not be able to bear the suffering and hunger, Al Qurtubi upheld the view that the wife has the right to seek the dissolution of marriage if her husband becomes unable to maintain her, so that she would not become liability and an additional problem for destitute husband. However, it has been suggested in this paper that if the wife can borrow money on behalf of her destitute husband as asserted by Hanafi jurists, or she is economically empowered to work and supplement the effort of the destitute husband until the situation improves, there is no need for the dissolution of the marriage.

In this regard, it is noted that the high degree of intellectuality and erudite status of Al-Qurtubi are manifested in his ability to deduce various rules regarding both the rights to financial and non-financial aspects of the life of the wife from the passages of the Qur'an. Thus, as one of the right to non-material possessions by the wife, the emphasis was laid on the need for the husband to give priority to the wife's right to sexual satisfaction from him. However, the view of Malik as stated by Al-Qurtubi that the giving of maintenance among the wives of different socioeconomic status should not be equal may be questionable as noted by some scholars in Ilorin. Thus, a view of some Hanafi jurists that equality should be maintained in this respect may be correct in order to avoid discrimination, jealousy and enmity in the family.

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