

# Post-Divorce Financial Support from the Islamic Perspective (*Mut‘at-al-ṭalāq*)

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## Introduction

The subject of this study is post-divorce financial support and its affinity to *Mut‘at-al-ṭalāq*, as we know it in Islamic jurisprudence. The target audience is Muslim jurists who would appreciate the fairness and justice of Islamic Sharī‘ah law for its care for women in general and for divorced Muslim women in particular. The jurist would strongly uphold the right of divorcee women as illustrated in the Holy Qur’an, applied by the Prophet (pbuh) and eventually join hands to develop an effective approach for reviving such Qur’anic and prophetic injunctions pertaining to post-divorce financial support, for the protection of contemporary divorced Muslim women in general, and in the Western hemisphere in particular.

The predominant scholastic understanding and prevailing judicial applications in the Muslim world of today indicate that women are not entitled to any post-divorce financial support (*Mut‘at-al-ṭalāq*) and property settlement, or any wealth of their household that accumulated during the marital course, under the pretext that these women have already exhausted their shares by being sheltered, clothed, and fed by their husbands during the period of their marital life. They conclude by saying that those women are only entitled to three months of spousal support during their religiously prescribed waiting period, known as *‘iddat al-ṭalāq*.

As a former judge of Sharī‘ah 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 entertained numerous cases of this nature. In addition, I have seen the injustices imposed against divorced women and their suffering due to neglect of the Islamic rules of post-divorce financial support (*Mut‘at-al-ṭalāq*). This un-Islamic and inhumane treatment of divorcee Muslim women triggered my attention and motivated my conscience to address this topic.

Although the Qur’an has addressed this topic in its several verses and the practical Sunnah confirmed its application during the lifetime of the Prophet, his companions, and the successors, this subject matter has become one of the most marginalized and neglected parts of our Islamic transactional jurisprudence.[\[1\]](#)

*Mut‘ah* is an Arabic term that linguistically, means enjoyment and happiness as opposed to gloominess, depression, and grief. Idiomatically, it is the post-divorce financial support, or post-divorce payment to be made by the divorcer to his divorcee, in an attempt to uplift her self-esteem and tone down the negative impact of the social humiliation associated with the term “divorced woman.”

Although this definition reflects the psychological component of the aftermath of the divorce, it does not inclusively cover the fact that *Mut‘at-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 Shari‘ah, *Mut‘at-al-ṭalāq* is one of the three fixed rights that are due to women beside their owed shares of inheritance: the dowry at the time of the marriage performance; the maintenance throughout the course of the marriage; the *Mut‘at-al-ṭalāq* after the occurrence of the irrevocable divorce[\[2\]](#); and their allocated shares of inheritance upon the death of the husband.

## Post-Divorce Support (*Mut‘at-al-ṭalāq*) in the Holy Qur’an

*Mut‘at-al-ṭalāq* is profoundly rooted in the divine scripture as clearly illustrated in the following Qur’anic verses:

There is no blame on you if you divorce women before consummation or the fixation of their dowry; but bestow on them *Mut‘at-al-ṭalāq*, the wealthy according to his means and the poor according to his means; (such *Mut‘at* of a reasonable amount is due from those who wish to do the right thing (i.e. *Mut‘at-al-ṭalāq*)).<sup>[3]</sup>

“And for divorced women is a suitable *Mut‘at*. This is a duty on the righteous.”<sup>[4]</sup>

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).<sup>[5]</sup>

O you who believe! When you marry believing women and then divorce them before you touched them, no prescribed waiting period should be imposed on them, but grant them the *Mut‘at* and set them free in a handsome manner.<sup>[6]</sup>

### The Commentaries of the Qur’an on *Mut‘at-al-ṭalāq*

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

#### *Tafsīr* of al-Ṭabarī<sup>[7]</sup>

Al-Imam al-Ṭabarī is among the oldest Qur’anic commentators. In his commentary on the foregoing Qur’anic verses, he strongly advocated for women’s rights in the *Mut‘at*. He sturdily defended his belief that payment of *Mut‘at-al-ṭalāq* to a divorced woman is an obligation on the husband by the virtue of the aforementioned Qur’anic verses. And after reporting different opinions of the jurists on this matter, he said, “I believe what represents the truth among all of the above jurists’ arguments is the argument of those who say that post-divorce *Mut‘at* is mandatory for all divorced women, because Allah has said: ‘For all divorced women *Mut‘at* as a duty on the *muttaqīn*.’”

Al-Ṭabarī was an authoritative jurist, and not passive like many other jurists who just reiterated what had been reported by others. As an independent jurist he expressed 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‘at* 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‘at*.<sup>[8]</sup>

### **Tafsīr al-Qurṭubī**

Mohammad b Ahmed al-Ansārī<sup>[9]</sup> al-Qurṭubī is a well-known commentator of the Holy Qur'an. His commentary on the Quranic verses in question is among the more instructive and demonstrates his independent opinion regarding the post-divorce *Mut'at*. Although a Maliki School of Jurisprudence disciple, like other North West African jurists, his independent conscience enabled him to depart from prevailing fetters of the Mālikī School with regard to women's post-divorce right to *Mut'at*. According to Imam Malik, the post-divorce *Mut'at* is not mandatory but rather is just recommendable. Al Qurṭubī did not endorse Imām Mālik in this particular matter and audaciously declared his dissatisfaction on the point made by Mālik and other jurists of the Mālikī School.

Al-Qurṭubī quoted Abdullah ibn Omar, 'Alī ibn Abi Tālib, Sa'īd ibn Jubair', and other prominent scholars of the successors who hold that the rule of *Mut'at-al-ṭalāq* came in the form of a command and therefore is a binding rule (*wājib*), although Mālik, Judge Shuraiḥ, and other jurists hold it as a non-binding Islamic rule, saying it is just a recommendable rule. Al-Qurṭubī continued to say that the supporters' argument is based on the wording of Qur'anic verse as an imperative and binding command from Allah, while the second party did not deny that the word is a command, but based its understanding on the recipient of the said command, claiming the verse addresses the *muḥsinīn* and the *muttaqīn* only, so it is binding only upon the *muḥsinīn* (righteous people) and the *muttaqīn* (pious people of means). Further, they said that if *Mut'at-al-ṭalāq* were a binding Islamic rule, it would have been imposed on all people, not only on righteous and pious people.

After discussing the above conflicting opinions, al-Qurṭubī strongly endorsed the first party's opinion and determination. He added that the second party's argument is indefensible, because the contextual indication and the understanding thereof show the command of *Mut'at al-ṭalāq* referred to the divorcees, and the preposition letter (*lām*) in the word (المطلقات) is 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* emphasize and further assure the right of divorced women to post-divorce *Mut'at*, because being a *muḥsin* and a *muttaqī* is a duty on all Muslims. He then addressed jurist opinions on the eligibility of divorced women. He stated that in accordance with Ibn Abbās, Ibn Omar, Jābir b Zaid, al-Ḥasan, 'Atā' ibn Rabāḥ, Ishāq, Imām al-Shāfi'ī, Imam Aḥmed, and opinion adherent jurists, *Mut'at-al-ṭalāq* is mandatory only for the divorced woman who has been divorced before the consummation of the marriage and whose dowry was not fixed, and that it is only recommendable for all other divorcees.<sup>[10]</sup>

### **Tafsīr ibn Kathīr**

Abū al-Fidā' Ismail ibn Kathīr,<sup>[11]</sup> in addition to what he shares with other commentators, added some considerable points in his famous *Tafsīr*. First, he defined *Mut'at-al-ṭalāq* by saying that *Mut'at* is something paid by the husband to his divorced wife, according to the husband's means, so as to compensate the divorced woman for what she lost because of the divorce. Then, he quoted Abdullah ibn 'Abbās who determined the amount of *Mut'at-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 defined the clothing by quoting al-Shābī, one of the successor jurists, who determined the amount of *Mut'at al-talaaq* as "a vest, a head scarf, a blanket, and a dress."

Note that he made no mention of a pair of shoes and underwear, which would raise the number of pieces to seven or eight items. Keep in mind that in our present time women need at least two sets of each item.

### ***Tafsīr al-Fakhr al-Rāzī***

Imām al-Fakhr al-Rāzī [12] is one of the prominent jurists of his time and he was obviously not in favor of the opinion of the jurists who believe that the *Mut‘at-al-ṭalāq* is not an optional matter but is fittingly mandatory. According to his understanding, both Imām Abū Ḥanīfa and Imam al-Shāfi‘ī support the opinion that *Mut‘at-al-ṭalāq* is obligatory on the husband. His comments on verse 2:236 could summarize his inclination to consider divorced women of three categories:

- Women who are divorced before the fixation of their dowry and before the consummation of their marriages. For them the *Mut‘at* is mandatory on their divorcing husbands.
- Women who are divorced after the fixation of their dowry and before the consummation of their marriages. For them there will be no *Mut‘at*, but they are entitled to 50 percent of the fixed dowry.
- Women who are divorced after the fixation of their dowries and consummation of their marriages. For them *Mut‘at-al-ṭalāq* is mandatory.

Imām al-Rāzī quoted Abdullah ibn Omar as saying that *Mut‘at-al-ṭalāq* is prescribed for all divorced women. Al-Rāzī did not hesitate to support his argument by the same points made by al-Qurṭubī, as mentioned above, then added that the preposition letter ‘*Alā* in Arabic indicates that the matter in question is neither optional nor recommendable, but rather is obligatory.[13]

### ***Tafsīr al-Zamakhsharī***

Al-Zamakhsharī[14] is also among the famous jurists and well-known among Muslim scholars. In his well-accepted book of *Tafsīr* known as *al-kashāf*, he commented on the foregoing Qur’anic verses and quoted the opinion of Sa‘īd bin Jubair, Abū al-‘Āliyah, and al-Zuhrī, who are among the jurists who believe that *Mut‘at* is a mandatory duty to all divorced women. Al-Zamakhsharī did not endorse their opinion. He, like other commentators, supports Mālik, who believes that post-divorce support is mandatory only for women who are divorced before the consummation of the marriage, and is only recommendable for other divorcees.[15]

### ***Tafsīr al-Manār***

*Tafsīr al-Manār* by al-Shaikh Rashīd Ridā[16] of the twentieth century discussed and impressively defended the enforcement of post-divorce support. He supports the scholars who endorsed the eligibility and the right of divorced women for post-divorce support as a mandatory duty on the divorcing husband.[17]

## **The Role of Translation of the Holy Qur’an**

There is no doubt that translators of Qur’anic language have done a tremendous service for people in their understanding of the meaning of the Qur’an. The translators’ role is to help those who cannot understand the original language of the Qur’an through which it was revealed.

Translation alone would not convey the exact meaning of some Qur’anic terms. Therefore, speakers of the Qur’anic language, the translators of Qur’an, and the end users of the

translations should join hands in helping each other to understand the exact intended meaning of certain Qur'anic terms and terminologies. This should occur preferably before the final stage and before the publication of the translation, in order to avoid some vital terminological mistakes, particularly when the meaning of the 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 translated the term *Mut'at* as a gift. Some translators have taken this erroneous translation from the earlier translators and the latter translators continued to quote them, apparently, out of respect and good faith.

We know there are Five Rules of Islamic Law: *ḥalāl* (lawful or permitted); *ḥarām* (unlawful or not permitted); *mundūb* (Sunnah) and *makrūh* (disapproved but lawful); and *mubāḥ* (permissible). According to Islamic law, "gift" does not fit in the first or the third category. Rather, it is classified under the last category, *mubāḥ*. 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 take another form of rules. Moreover, in accordance with the Islamic Sharī'ah Law, a gift has its own jurisprudential rules that are completely different from that of post-divorce financial support.[\[18\]](#)

### **Post-Divorce Financial Support from the Sunnah Perspective**

In accordance with the Prophetic Sunnah, the Prophet (pbuh) was married to a woman known as Umrah, 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 on her, he granted her post-divorce *mut`ah*. [\[19\]](#) In another Prophetic narrative, a man from al-Ansār 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 (*Mut'at*).[\[20\]](#) Many of the Prophet's Companions, including Uthmān ibn 'Affān, Abdu Rahmān ibn 'Auf, the judge Shuraiḥ, and Ḥasan ibn 'Alī ibn Abī Tālib gave *mut`ah* to their divorced wives.[\[21\]](#)

### **Post-Divorce Financial Support from the Perspective of Muslim Jurists Prelusion**

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

Ninety percent or more of our revered jurisprudential resources are either written down or traced back to the second century after the Hijrah -- more than twelve hundred years ago -- during the time of Imam Abū Ḥanīfah,[\[22\]](#) Imām Mālik, and Imam al-Shāfi 'ī.[\[23\]](#) Until now in some Muslim countries or in remote isolated villages, it has been customary that the divorced woman, along with her children, are returned back to her family home, where they would be accommodated and financially supported by her extended family.

### **Imām Abū Ḥanīfah**[\[24\]](#)

The Ḥanafī Jurisprudential School is the oldest Sunnī school of fiqh. The prevailing opinions of its jurists endorse post-divorce support as a mandatory (*wājib*) in two cases. The first was in the case of *al-mufāwadah*,[\[25\]](#) when a woman married without fixation of dowry and divorced before the consummation of the marriage. For her, 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 there is no blame if a man divorces a woman before consummation or fixation of the dower and bestows on them a suitable gift, the wealthy according to his means and the poor according to his means.[\[26\]](#)

In the second case of a divorced woman whose *mahr* was fixed but who was divorced before the marriage was consummated is stated in the Qur'an, "O, you who believe when you marry believing women and then divorce them before you have touched them, [there is] no (prescribed) waiting period ( *'iddah*) upon them, so bestow on them the post-divorce support and release them in a handsome manner."[\[27\]](#)

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.[\[28\]](#) This position drives many Muslim jurists, judges, and common people to treat post-divorce support as an optional matter.

### **Imām Mālik ibn Anass**

Imam Mālik [\[29\]](#) and the majority of his disciples say that post-divorce support is not mandatory at all but is instead recommendable for all divorced women except the ones with fixed dowries and who were divorced before the consummation of the marriage. Women with a fixed dowry are not entitled to *Mut'at-al-ṭalāq* .[\[30\]](#)

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 *Mut'at* is mandatory only for these two categories of people. The best repudiation of the Maliki school position is that of Imām al-Qurṭubī, a Mālikī jurist, who truly represented the Mālikī school in his reply as we have advanced in this study. However, al-Qurṭubī's denial of the Mālikī school position faced a defense in favor of the said position by Imām Shams al-Dīn al-Dusūqī, in his book *Hāshyat al-Dusūqī* on the commentary of al-Shaikh Aḥmed al-Dardīr, with commentary of al-Shaikh 'Olaish [\[31\]](#).

### **Imām al-Shāfi'ī**

Al-Shāfi'ī'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.[\[32\]](#) Although al-Shāfi'ī'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. Those who are eligible for post-divorce financial support fall under list A, below, as opposed to list B.

#### **List A:**

- A woman divorced without any fault on her part
- A woman whose divorce occurred before fixing her *mahr* and before the consummation of the marriage
- A woman divorced via a competent court due to the husband impotence
- A woman divorced due to her husband's bad attitude or his physical and mental cruelty

- A woman divorced due to husband's desertion
- A woman divorced due to her husband's failure to secure the necessary maintenance for her
- A woman divorced due to *`illāh* (that is chronic sickness) or *zihār* (an ancient Arab custom, where the husband forswears any marital relations with his wife, declaring her to be "like the back of his mother.") undertaken against her by her husband

**List B:**

- A divorced woman whose dowry was fixed but whose marriage was not consummated
- A woman who demanded a *khul'* a divorce (divorce sought by the wife through a Muslim judge)
- A woman whose marriage was revoked by a competent court due to being accused by her husband of having an extramarital affair to *mulā'anah*
- A woman whose divorce was based on a defect attributed to her
- A woman who chose to divorce her husband over maintaining her marriage with him[33]

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 Qur'an: "You know not whether your parents or your children are nearest to you in benefit." [34] As such, marriage in Islam is based on benefit reciprocity. Spouses should know that a useless person in the family and in the community could be tolerated only for a limited period before people start to feel that his very existence has turned burdensome.

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

Husbands and wives who are undergoing this kind of trial should apply the wisdom of Sowdah bit Zamah, the wife of the Prophet. When she grew old she lost her fitness and beauty, and recognized the norm that Allah created in the nature of men, so she entered into a deal with her husband to maintain their marriage, and in exchange, she handed over her spousal rights to 'Āishah, the youngest wife of the Prophet. Ibn Ḥajar al-ʿaskalānī said that a Qur'anic verse [35] 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." [36]

**Aḥmed ibn Ḥambal [37]**

The Ḥambalī jurisprudential position towards post-divorce support is almost the same as those of the Ḥanafī and Shafī'ī schools. [38] [highlighted the consensus between the three major Islamic jurisprudential schools as he pointed out the similarities among them.](#) [39] In his famous *Majmū' Fatawā*, Shaikh-ul-Islām Imām ibn Taymyah said that Abdullah ibn Omar, Imam al-Shāfi'ī, and Imām Aḥmad ibn Ḥambal all consider post-divorce support (*Mut'at*) to be mandatory for every divorced woman, except those who were divorced after the fixation of

dowry but before consummation of the marriage. For such divorcees with a fixed dowry, no post-divorce support is required. Abdu-Rahmān al-‘āṣimī al-Najdī al-Ḥambalī

In contrast, Imam ibn Taymiyah inserted an excellent point that as the Islamic Sharī‘ah considers a marriage contract the reason for the prerogative of acquiring bridal dowry *mahr al nikāh*, likewise divorce is the reason for the prerogative of acquiring post-divorce support *Mut‘at-al-ṭalāq*. He said that married women whose dowry was not fixed are entitled to a *mahr* similar to that of her peers based on the marriage contract, and such prerogative is to be delivered even after the death of the husband. Then he quoted the case of *Brou’ bint Wāshiq*, whose husband died before her dowry was fixed, and the Prophet awarded her the *mahr* of her peers.[\[40\]](#) After discussing the opponents’ arguments against post-divorce support (*Mut‘at*), he reported the other opinion of Imam Ahmad Ibn Hanbal and said that the accurate opinion reported from Imam Ahmad is what was previously quoted, which described post-divorce support as mandatory for each divorced woman.[\[41\]](#)

During Ibn Taymiyah’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, the divorced woman has no place of resort and no financial means to support herself and her 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 Abdullah ibn ‘Abbās and al-Ḥasan ibn ‘Alī.

Abdullāh ibn ‘Abbās was reported to have assessed the post-divorce financial support for a woman who was married to a wealthy man, stating that she is entitled to a slave man or woman, and that a woman who was married to a man of limited income is entitled to three or four pieces of clothing.

Dr. Wahbah al-Zuḥaylī, 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 Dr. al-Zuḥaylī, post-divorce financial support is based on 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 highly regarded class, the divorcee shall be entitled to more than clothing; i.e. she shall be granted a servant (slave), but if the couple is of low social class and limited income, then the divorcee shall be entitled to three to four pieces of clothing, and if the couple is from different social backgrounds, the divorcee shall be granted the average between the two.

In his conclusion, Dr. Zuḥaylī seems to support the opinion of Imam Abū Ḥanīfa, 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 hinted that there should be no ceiling for post-divorce financial support because of the absoluteness in the Qur’an.[\[42\]](#)

The strongest evidence on the assessment of post-divorce financial support is the ḥadīth of Abdullah 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.[\[43\]](#)



Assessment of post-divorce financial support made during the time of Ibn Abbas in cash or in kind would not necessarily suit our present time because we do not own slaves 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 us with a standardized criterion on which we could process the assessment, which would enable 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 ḥadīth 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 believes that a divorced woman whose husband is wealthy is 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.[\[44\]](#)

In the process of determining the financial support, one should not ignore the financial contribution of the divorced woman to the household and her contribution into the accumulated assets during the marital course. Women's financial contributions to the household expenditures should be taken into consideration, besides their help in the husband's business, their care for the husband and the parties' children, household work such as cleaning, cooking, laundry, and dish washing, et cetera.

The prevailing western socio-economical life style, which includes Muslim communities as part of the American structural fabric, is based on family cooperation among the adult members in the household. Often, both husband and wife work from nine to five. In some cases, one or both of them may have more than one job and usually a joint bank account. Therefore, they share the expenses of life and equally enjoy the surplus of their earnings. If their marital life ends for any reason, all the real and personal assets, in principle, shall be subjected to a communal division.

This status quo, in principle, disturbs some Islamic Sharī'ah rules, including, but not limited to, the principles of financial independence of the spouses, the Islamic rules of inheritance (whereas the share of the wife is only one fourth or one eighth in case of the presence of a child), the rules of guardianship (*al-qiwāmah*), and eventually, the rule of one-sided spousal support.

### **Post-Divorce Financial Support: Reflections through Case Study**

We will now present some case study samples on 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. The following two cases have been widely publicized among Muslims in America and in American media: a Muslim family case in Detroit, Michigan, adjudicated by the Sharī'ah Scholar Association of North America (SSANA), and a Muslim family case in Bethesda, Maryland, adjudicated by a courthouse in the State of Maryland.

## Case Study #1

The couple was married overseas and then migrated to the United States, where they lived and raised their children. Both husband and wife were medical doctors. They accumulated large wealth in cash and real estate, worth millions.

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

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

- Being an abusive husband to his wife and children
- Planning to inflict a despotic divorce against the wife for no justification other than her age
- Deceiving his wife to accept an Islamic Sharī'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 will be granted an Islamic divorce effective the date of the judgment.
- The wife will be granted one million dollars in cash from the husband's accumulated assets for her post-divorce financial support, including her *'iddah* period expenses.
- The wife will be granted one of the two mansions with all furniture therein.
- The wife will be granted the physical custody of the minor children.
- The wife will be granted child support on a monthly basis.

Upon reading the verdict, the husband crumpled the paper 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 he 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 got 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 will 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 just reiterated the same recommendation as before. He did accept it this time, and it did work for him.

### **Case Study #2**

This case was widely publicized by the American media in June 2008. It is a family law case where both parties are Muslims from Pakistan. The case is one example out of an increasing number of cases of the same prototype in the Muslim community across the United States. I entertained some cases of this nature while I was a Sharī'ah court judge in Sudan, as well as here in the United States, as an Islamic arbitrator, and have similar despotic divorce cases pending on my desk.

The players in these cases are Muslim immigrants from various Muslim countries and they are of different socio-economic levels and cultural backgrounds. The common factors among them are 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 Sharī'ah law, while everybody knows the motive behind their attempts to revoke the marriage at home – rather than here in the US - is to save them money, satisfy their self-image and to deprive their divorcees their due rights unjustly.
- Revengeful husbands against their wives and minor children who are the most vulnerable victims of these despotic divorces, where we find husbands divorcing their wives at their country's consulate office, or by sending them home to the country of their origin via a one way ticket, then a few weeks later sending them a letter of divorce, after blocking their access to visas so as not to find a way back to the U.S. anymore.

The parties married in 1980 in the city of Karachi, Pakistan. Shortly after their marriage, the husband moved to England. The wife joined him later. They resided there 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 here for twenty years. The wife filed for divorce here and the husband went to the Pakistan Embassy and performed *ṭalāq*. The parties have two children, both of whom were born in this country and reside in this country. The wife is now a resident of Maryland, and holds a green card status.

According to the *Washington Post*, the court of Maryland declined to “afford comity” to the Pakistani divorce. 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 will not afford comity to such contracts and foreign statutes.

From the *Post*: Farah 'Alīm filed case suit for a limited divorce from her husband, Irfān 'Alīm 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 Irfān ‘Alīm, do hereby divorce Faraḥ ‘Alīm, daughter of Mahmūd 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 him 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 this country. 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” (*‘Alīm v. ‘Alīm*, 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 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 is the petitioner’s pension, which is titled only in the husband’s name. This stark discrepancy highlights the difference in the public policies of this 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 the marriage, the property follows the possessor of its title.

The central issue in the present case concerns the wife’s attempt to have the husband’s pension from the World Bank, which relates primarily to his work performed while he was a resident of this country, declared to be “marital property,” and to have 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 *ṭalāq* divorce of countries applying Islamic law, unless substantially modified, was contrary to the state’s public policy. The court declined to give *ṭalāq*, as presented in this case, any comity. The court found further that Pakistani statutes providing that property owned by the parties to a marriage follows title upon the dissolution of the marriage unless there are agreements 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 *ṭalāq* and, without prior notice to the wife, performing “I divorce thee...” three times and thus summarily terminating the marriage and depriving his wife of marital property. Accordingly, for this additional reason, the courts of Maryland did not recognize the *ṭalāq* 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-ṭalāq*) 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. Below are some reasons:

- It is a command of Allah as reported in number of verses in the Holy Scripture.
- It has been supported and illustrated by the prophetic tradition, the companions of the Prophet, and the successors.
- It is a manifestation of the Islamic profoundly rooted principle of justice and fairness for all in general and towards women in particular.
- It is for the best interest of the minor children who are the first victims of many arbitrary subjective divorces.
- It serves as a means to deter harm of all kinds that would befall divorced women who are now crying out for help, but receiving none.
- Finally it is an implementation of the Prophetic recommendation (*waṣīyah*) to his *Ummah* on the Day of ‘*Arafah* during his Ceremonial Declaration known as the farewell Pilgrimage Sermon. [\[45\]](#)

Beside all of the above, Muslim jurists should consider the growing trend of the married women who are working full-time outside the household by the consent of their husbands, while caring for the household, the parties’ children, and for their husbands.. If men are usually working for eight to ten hours a day, those women work sixteen to twenty hours a day.

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

In another episode when a Muslim woman gives up her schooling or her secured profession and career in order to get married and serve the husband and the household and raise the parties' children, or if a woman worked years and years in her husband's business then eventually got divorced, is it an equitable act to kick her out of the house and the business and leave her with no post-divorce financial support and property settlement?

Due to the need to answer the above questions and more, Muslim jurists are called upon to heed this eminent emerging challenge to the fundamental principles of the Sharī'ah law on one hand and the application of justice and fairness on the other.

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[1] In a brief research paper, in the year 2003, I partially discussed this matter with one of our contemporary scholars of jurisprudence. Some of those scholars do agree with me, but nonetheless were hesitant to speak out against what they called the common understanding of the Muslim jurists for centuries, so they opted to distance themselves from such an audacious pace, while other scholar friends manipulated to attribute the initiative for themselves.

[2] Abdel Karīm Shabūn, *Sharh Mudawwanah al-Ahwāl al-Shakhsyah al-Maghribiyah*, vol.1. (Rabat, Morocco: Maktabat al-Ma'ārif: nd)

[3] (2:236).

[4] (2:241).

[5] (33:28).

[6] (33:49).

[7] Abū Ja'far Mohammad b. Jarīr al-Ṭabarī, d. 310 H.

[8] Al-Ṭabarī Mohammad b. Jarīr, *Jāmi' al-bayān 'an ta'wīl āy al-Qur'an*, Taḥqīq Aḥmad Shākir, vol.2 (Mu'assasat al-Risālah:2000), pp.80-82.

[9] Muḥammad. b. Aḥmed al-Ansārī al-Qurtubī, d. 671 AH.

[10] Al-Qurtubī, *al-jāmi' li ahkām al-Qur'an*, vol.3, 3<sup>rd</sup> ed. (Dār-al-Kitāb al-'Arabī: 1999), pp.200-201.

[11] Abū al Fidā' Ismā'īl ibn Kathīr, d. 774 AH.

[12] Al-Fakhr al-Rāzī 544-604 AH.

[13] Al-Rāzī, *Tafsīr al-Kabīr*, vol.5 (Dar-al-Fikr: 1995), pp.150-151.

[14] Al-Zamaksharī 467-538 AH.

[15] Al-Zamaksharī, *Al-Kashāf 'an haqā'iq al-tanzīl wa 'uyūn al-aqāwīl fī wujūh al-ta'wīl*, vol.1 (Dar-al-fikr: nd), p.337.

[16] Rashīd Ridhā was a Syrian-Egyptian jurist (1865-1935).

[17] Ridhā *Tafsīr al-Manār*, vol.2 (Dar ul-Fikr:1947), pp.430-431.

[18] See translation of (2:236) in Abdullah Yūsuf Ali's and King Fahad's translations, among others.

[19] Ibn Seyyed al Nāss, *'Uyūn al-āthār fī funūn al-maghāzī wa al-shām'il wa al-ssiyar*, vol.1, p.389.

[20] Ibid.

[21] See al-Qurtubī, *al-Jāmi' li ahkām al-Qur'an*, vol.3, pp.201-203.

[22] Imām Abū Ḥanīfah, d. 150 AH.

[23] Imām al-Shāfi'ī, born in the day Imām Abū Ḥanīfah passed away.

[24] Imām Abū Ḥanīfah (al-N'umān ibn Thābit), 80--148 or 150 AH.

27 See *al-mausū'ah al-Fiqhyah*, (Kuwaiti Ministry of Endowment: nd), vol.36, pp.94-95.

[26] (2:236).

[27] (33:49).

[28] Shams al-Din al-Sarkhasī, *al Mabsūt*, vol.5 (Beirut: Dar al-Ma'arif: 1331 H), p.62.

[29] Imām Mālik ibn Anās, 93-179 AH.

[30] Al-Qurtubī, *al-Jāmi' li Ahkām al-Qur'an*, vol.3, p.200.

[31] *Hāshyat al-Dusūqī 'Alā al Sharḥ al-Kabīr*, vol 2. (Dar Ihyā al-kutub al-Arabiyyah), , p.425.

[32] His position on post-divorce financial support was summarized in *Mudawwanah al Ahwaaal al-Shakhsiyah al Maghribiyah*.

[33] See Abdel Karīm Shahbūn, *Mudwwanat al-Ahwaaal al-Shukhsyah*, vol.1, pp.249-250.

[34] (4:11).

[35] See (4:128).

[36] See Saḥīḥ al Bukhārī, *Book of Marriage*, vol.9, p.312.

[37] Imam Ahmed, 164--241 AH.

[38] See *al-Mausou 'ah al-Fiqhiyyah* , vol.36, p.94 .

[39] Abd al-Raḥmān bin Qāsīm al-'Asimī, *Hāshyat al-Rawdh al-Murbi ' , Sharh Zād al-Mustaqni ' ,* vol.6, 4<sup>th</sup> printing, p.393.

[40] See the collection of Ibn Taymyyah, *Fatāwā*, vol.32, p.27; and Shams-al-Dīn al-Sarkhasī, *Al-Mabsūt*, vol.5 (Beirut: Dar al-M'arifāh), p.61-63.

[41] See the above reference, and for Imam Aḥmad's other opinion see Nashwah al-Waany, *Mausou 'at Ahkam al-Marah al-Muslimah*, vol.2 (Damascus, Syria: Dar-al-Maktaby, 2002), p.837.

[42] See Wahbah al Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol.7 (Damascus, Syria: Dar-al-Fikr: nd), pp.320-321.

[43] Ibid, p.321.

[44] Ibn Kathīr Abū al-Fidā', *tafsīr al-Qur'ān al-'azīm* vol.1 (Dar al-Faiḥā' Library), p.387.

[45] Imām Muḥyi al-dīn Abī Zakariyyah Yaḥya ibn Sharaf al-Nawawī Al-Dimashqī *Minḥāj al-Ṭālibīn: A Manual of Muḥammadan Law According to the School of Shāfi'ī.*, Translated by E. C. Howard from the French translation of L. W. C. Van Den Berg. London: W. Thacker & Co., 1914