



THE ISSUE OF QAWAMAH IN TRADITIONAL AND MODERN LEGAL DISCOURSE

1. Abida Hassan

Visiting Professor of Law University of Management & Technology, Lahore

Email: doctor.abidahassan@gmail.com

ORCID ID:

<https://orcid.org/0000-0002-9972-6519>

2. Samza Fatima

Assistant Professor of Law,
Bahauddin Zakariya University,
Multan

Email: samza.fatima@bzu.edu.pk

ORCID ID:

<http://orcid.org/0000-0002-8689-8629>

3. Muhammad Bilal

Assistant Professor of Law, Bahauddin Zakariya University, Multan

Email: nidamustafa37@gmail.com

ORCID ID: <http://orcid.org/0000-0002-5232-6075>

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Abida Hassan, Samza Fatima, Muhammad Bilal

ABSTRACT:

The present study discusses the concept of Qawamah (leadership in the family), in modern society and its legal discourse. The term 'Qawamah' which means males are protectors of females and they are also responsible to provide a peaceful environment in society. Family Law has been subject to a far greater degree of codification. This topic has been under discussion in different times and this research scans gender (husband and wife) roles and codification of family laws in Pakistan as a trail for protecting the rights of women as well as men. The conception of guardianship has provided the basis of gender (husband and wife) roles in Muslim societies. Women are often expected to be submissive and loyal wives and mothers, living within the family, and men are normally taken as to be defenders and custodians of the family. The fairness of this system lies in the fact that Allah favored the man with the necessary abilities and services for the 'guardianship' and also handed over him with the responsibility to provide for the arrangement's upkeep. This research validates the constitutional, Quar'anic, and global reference points. Following some diverse sources, and while legal codification in much of the Islamic world has introduced fundamentally male-controlled legal norms. This whole discussion provides a wider context of an organized and codified legal system in the Muslim world.

KEYWORDS: Qawamah, Gender, Islamic, judicial, pronouncements, Family, Islamic

1. Introduction

Qawamah is the concept of Qur'anic and Surah Al-Nisa: 34, legalizes the concept of qawamah, which literally means that male are responsible to look after all the matters of women irrespective of financial and security of women. Some of the feminists have given controversial concept to people and explained this view of scholars in negative sense which actually did not mean that. Therefore, this topic is important to be discussed and for making it clear to remove the ambiguities and clean the negativity of minds spread all over the world through some feminist groups. A descriptive and qualitative method of research has been applied during writing of this article, and the author compared the ayat (verse) with understandings of present Muslim scholars. The research also discloses that an empty claim intended to distinguish the observations on the verse of qawamah.¹

If we read the ayat kareema carefully, we see that Allah Almighty has placed male and female on their specific positions with different duties and responsibilities which are binding on both male and female to be fulfilled by remaining within their limits and no one is allowed to interfere with the responsibilities of each by force except with consent. It is the main fact which is necessary to explain in the present time and especially to non-Muslims who have been misinterpreted about the meaning and concept of ayat kareema. The non-Muslims have concept that in Muslim

¹ N. Ahmad & M. A Rasheed, The Qur'anic Concept of Qiwamah: A Review of Commentaries on the Verse: 4:34, January 2018 *Al-Shajarah* 23(1):169-181

Culture, only men are all in all and they have all authorities to exercise against women, which in the simple language can be described as discrimination with women, while it is not so. In Muslim Societies, women are given special care, great importance, and even some time men scarify their lives for the protection of their women but do not compromise to let any person to humiliate or degrade their women which is a great act on the part of men. In the study under discussion, it has been tried to focus on some special issues which are growing up in families now a days and are creating misunderstanding among them regarding equality gender equality and at the end of article to suggest some appropriate recommendations as well.

2. Literature Review

Abu-Al-Maududi describes the meaning of qawamah as ‘administrators of the matters of women’,² with the description that in Arabic language, the word qawamah or qayyam is meant for a person who is answerable for his conduct, protection and care for the affairs of other people. Therefore, the person who owns such big responsibilities and sacrifices his desires to fulfill his duties and keep other person at ease and pleasure then he deserves some respect and honour from the other side³. We can say that this is also a form of give and take, if one is providing such services in the terms of responsibilities then the other is also bound to perform his/her responsibilities which is also mention in Universal Declaration on Human Rights, 1948 (UDHR). It is very much clear in the said declaration that if some boy does not complete his/her duty then

² Maududi, The Meaning of the Quran, vol.1,329

³ Shagufta Qamar, Qawamah in Islamic Legal Discourse: An Analysis of Traditionalist and Modernist Approaches, shaguftaqamar@yahoo.com

he/she can not claim his/her right. In this article, it has been tried to make it clear that the meaning of Ayat Kareema is same as it has been provided in Universal Declaration on Human Rights, 1948 (UDHR). Men are more powerful as compare to women or men are superior to women does not mean that women are not respectful or they do not deserve dignity in the society but it is mean physical power of men. Many times, women themselves call men for their help, they hesitate to move outside alone and as for company of men which shows that women physically are not as strong as men are and this is the reason that they are called powerful or superior rather to take it in other sense. Both husband and wife are bound to obey the commands of Allah and both have right to deny if any one finds it against the will of Allah Almighty.

Abdul Majid Daryabadi explains the term as that a qawamah is in fact a responsibility handed over to men for proper and appropriate care and protection of women which entitles men also to be respected and honoured in terms of his duties or responsibilities.⁴ According to this explanation, Qawamah gives more right to women as compare to men because women are not responsible to protect men, women are not responsible to look after the financial matters of family but men are bound to fulfill their obligation in any way, by viewing the meaning of Qawamah deeply, it is more understandable for a sensible person that women's rights

⁴ Daryabadi, Tafseer-e-Majdi, vol. 1, 325, 326. He has given references from bible as to the subjective position of women to their husbands marking the difference in attitude and instructions for dealing with women by Islam. He also provides references from sociological literature for the family structures and systems in dealing with the issue.

are more respectful and women are more important than men in respect of honour, protection and care.⁵

Mufti Mohammad Shafi Usmani states that ayat kareema clearly defines the rights of women and responsibilities of men which show the importance of women in the life of men. The ayat kareema also makes it clear to men that women are as important as men if men are taking responsibility of women, children and house the women are discharging their duties toward housekeeping, house maintaining and caring of their families. The actual meaning of this ayat kareema is not that men are the only soul to order, to command or to take action but it is meant for that both spouses i.e., men and women are equally responsible to perform their duties and take decision about their families with mutual understanding and by taking consent from each other. This word can be explained more beautifully men and women are like a circle which is incomplete even if one cell is takes out from the circle. around a point which cannot move without that standard role of a man, with regard to woman, has been mentioned in this verse through the word, qawamah which has been translated in various ways, the most common being in the sense of 'hakim' or one who rules, governs or decides. Other alternate used are guardians, custodians, overseers and protectors.⁶ According to him if the meaning is taken in the sense of a career.

⁵ Ibid., 421-422

⁶ Mohammad Shafi Usmani , Maarif ul Quran, trans. Muhammad Hasan Askari & Prof. Muhammad Shamim, Revised by Justice Mufti Muhammad Taqi Usmani, 417-418

available at: <http://www.islamibayanaat.com/EMQ.htm>, last accessed on 12.01.2011. Urdu version of the Tafseer is also consulted, vol-2 ,Pp. 395-397

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A financial head, and not in the political sense of a ruler or dictator; the qawamah or hakim of the Qur'an offers a base of understanding from common experience to have a head or chief or authority for any group-living or for any organized system to arbitrate in the case of a difference and take decisions to run affairs smoothly. Allah elected men for this responsibility because their natural capabilities are more pronounced than those of women and children, an undeniable fact of human life. According to him, the gist of the matter as seen from this verse⁷ and the message is that the rights of both man and woman are similar to each other and are as incumbent upon men as the rights of men are upon women, with only one exception that men have a certain precedence in functional authority, hemmed too with other balancing factors. The authority specified is not that of a dictator and a tyrant for exercising which he is bound by the supreme law of Islam, the Shariah.⁸ Referring to the required obedience of wife, he says righteous women accept the rule of the precedence of men and obey them, and even in the absence of their husbands stand guard on their own selves, husband's earnings, and everything else in the house under their charge.

Pir Mohammad Karam Shah Al-Azhari translates the term qawwam as Mohafiz and Nigran with the explanation that the Arabic term qawamah means someone who provides all life necessities, protects and monitors, and is responsible for maintaining the appropriate conduct. He warns that it should in no way be considered by this arrangement as if the women are being enslaved as they have their established rights to those for

⁷ Al-Quraan, Surah Baqara 2:228

⁸ Ibid

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men according to Al Baqara, verse 238. He further says that getting close to Allah is open for both of them according to their efforts denying supremacy of men on women.⁹

Dr. Ahmad Shafat, one of the contemporary dawah workers, explains that Qawamah is an intensive form of qaim and has a sense of continuity in the action involved. So it means one who is continuously standing over something (as, for example, a guard or caretaker) or one who is continuously making something stand, i.e. is maintaining it. In the Qur'anic usage of qawamah and related words, an idea of propriety is almost always present. For example, aqamah of salah is not only praying but also praying properly. The function of qawamah is also understood in the Qur'an to be characterized by fairness. Thus to be a qawamah over something or someone is to guard, maintain or take care of that something or someone in a proper and fair manner. According to him, if there is any single word in English that can convey the meaning of the word as used in the present word it is probably the one used by Muhammad Pickthal, namely, guardian.¹⁰ He gives the translation of the word fazeelat, as 'more favoured' and which enables men to guard women against some of the dangers to which they may be exposed in society and to take care of some of their needs. He further discusses that there may be other areas where women may be favored more than men. Still there are other favours of Allah like wealth, health, strength, intelligence education, status which

⁹ Pir Mohammad Karam Shah Al Azhari, Zia Al Quran, (Lahore: Zia Al Quran Publications, 1995), vol.1, 341.

¹⁰ Ahmad Shaffat, Tafseer of Surah an-Nisa, Ayah 34, (Islamic Perspective, 1984), available at: <http://www.islamicperspectives.com/Quran-4-34.htm>, last accessed on 12.01.2011.

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cannot establish the superiority of one over the other except the one of taqwa, 'piety'.¹¹

Amna Wadud considers the verse describing functional distinction in the family system taking support from Syed Qutb. She rejects the idea of supremacy of all males over all females or of males vs females in all the spheres of life. Discussing the verse she elaborates on all related concepts of daraja, fadala (fazeelat), qawamah, nushuz and darab.¹²

3. Qawamah in Traditional & Modern Legal Discourse

In the light of questions framed above, the results which were drawn from both traditionalist and modernist regarding equality by aptly describing both men and women as equal human beings in their origin, created from 'the same soul', both making up the human race together, as equal partners. They both have been endowed with heart, brain and adequate reasoning powers and together they stand in need of physical and intellectual education and training.¹³

Thus describing the most intimate relationship between man and woman, it has been pronounced in the Quran that your fellow (applies to both) has been created from your own kind. The basis of the marriage relationship is declared as love, affection, harmony, mutual tolerance, respect and trust. And in all these qualities, the husband and wife are interdependent, complementary, reciprocal and mutual. They are expected to find peace and tranquility in each other's company and be bound

¹¹ Ibid

¹² Amina Wadud, *Quran and Woman, Rereading Sacred Text from a Woman's Perspective*, (New York: Oxford University Press, 1999).

¹³ Ibid

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together not only by the ‘sexual relationship’ but by ‘love and mercy’, depicted by the following verse of the Quran:

‘And of His signs is, that He has created for you wives from your own species that you may find peace with them, and created love and mercy between you. Surely in this there are many signs for those who reflect.¹⁴’ Based on the same pedestal of social, legal and moral equality as human beings, Islam differentiates between roles and responsibilities of men and women in the family system, based on equity and justice. With prescribed duties of both, for smooth functioning of the family, whereby one of the two members is being designated as qawamah (head of the family) as an administrative measure.¹⁵

The verse states, ‘Men are the managers of the affairs of women because Allah has made the one superior to the others and because men spend of their wealth on women. Virtuous women are, therefore, obedient; they guard their rights carefully in their absences under the care and watch of Allah. As for those women whose defiance you have cause to fear, admonish them and keep them apart from your beds and beat them. Then, if they submit to you, do not look for excuses to punish them: note it well that there is Allah above you, Who is Supreme and Great.¹⁶

In the simplest manner, the verse 4:34 describes the family set up with husband taking the position of guardian of the family further endorsed by many sahih ahadith which pronounce both as guardian of their families with wife taking role of co-equal of her husband in family

¹⁴ Surah-Al-Rum, 30:21

¹⁵ Surah An-Nisa, verse 34

¹⁶ Al Nisa 4:34, Translation from Sayyid Abul Ala Maududi - Tafhim al-Qur'an - The Meaning of the Qur'an, englishtafsir.com

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affairs.¹⁷ Only in greater matters affecting the welfare of the family, the husband is given a degree of supremacy, duly supported by the Quranic reference, since two co-ordinate authorities with equal power are likely to lead to clashes and conflicts such as may destroy the balance and poise of the family life. On the basis of his being the head of the family, man has been designated with functional supremacy over his family.

The same verse describing men as Qawamah, goes on to answer the questions regarding woman's response to husband's authority, describing two attitudes of women, one showing obedience towards husband being mindful of her familial duties and the other one depicting rebelliousness or ill conduct resulting in disruption of smooth family functioning. For the other type of women –who consider themselves above their husbands, or don't want to obey them, or who are of ill conduct, or are rebellious and this constant behavior of them results in disruption of family harmony- the verse gives multilateral strategy to deal. But at the same time, it raises many concerns with reference to permission of striking or beating woman, to the husband. The verse ends with the warning to the husband to be mindful of Allah, All Knower's authority over all.

The other reason provided in the Quran is that they spend their means; he explains its meaning as the dower and various expenses that Allah ordained in His Book and the Sunnah of His Messenger for men to spend on women.

¹⁷ Mohammad Ismail al-Bukhari, Sahih, Chapter: 566, trans. Allama Waheeduz-Zaman, (Lahore: Maktaba Rahmania, 1985)

4. Conclusion

Traditionalists believe that the concept of qawamah has very far reaching implications for women in almost all matters dealing with family sphere and public life as if it is a general principle for regulation of whole gender of man and woman interaction. This tension is due to the assumption by them that the verse is adhered to the whole community and not limited to husband and wife within family. Traditionalists are more comfortable with extended export of the verse despite the fact that the verse itself militates against such interpretation. Certain physical and mental differences have naturally been between both sexes, elaborating the term qawamah, all traditionalists entail a long list of responsibilities for men as must for this responsibility. They very clearly and boldly describe that qawamah means taking care of women and family in multiple and describe that qawamah means taking care of women and family in multiple and diverse areas yet implying the meaning of monitoring and supervising her conduct regarding obedience to Allah and all other matters of life with the authority or powers of tadeeb in achieving all these goals.

Discussing the reasons for man being made qawamah, fazeelat of men over women is described by traditionalists endorsing it with the reference to Quran.¹⁸ Traditionalists are convinced of male superiority over women implied by the verse 4:34. They describe men being superior in physical power, intellect, wisdom and azm. To them family matters include husband's privilege of spending for mehar and nafaqa, having four

¹⁸ Al-Baqara, 2:228

wives, authority of taking into marriage, right of being obeyed, exclusive divorce right and revoking of divorce etc. To them, public law issues include differences in law of evidence, different inheritance share, diyat amount (blood money), leading prayers, giving adhan, capabilities of prophethood and becoming a ruler, physical power for jihad, and amar bil maroof wa nahi unil munkir. They further include the exceptional matters for women provided to her as an exemption to be her inferiority to men like exemption from jihad, congregational and Friday prayers, shahada in hudood cases, and similarly being qazi for hadood cases (which is an inference and not a declared issue) etc. In the light of all these interpretations by mufasireen, it is a general notion amongst traditionalists that all men are better or superior than all women.

Main tension here appears that the inherent male capabilities suitable for this responsibility and then earned capacity of spending has led them to declare the absolute superiority in homes and outside world, whereas Allah has not declared these differing natural capabilities between males and males or females and females or between males and females to be the source of superiority over each other. This opinion does not find support in the Quran and the hadith.¹⁹

Similarly, the earning and spending responsibility given to men for wives and families provides them family leadership role but how can it be a source of superiority in the sphere where women are not given the role to compete with them or excel in it anyway?.

¹⁹ *Al Hujrat* 49: 13, *Al Ahzab* 33:35, *Ale Imran* 3:195, *Al Nahal* 16: 97, *Al Momin* 40: 40, *An Nisa* 4: 124, *Al Taubah* 9: 71 & 72.

Therefore according to modernists, husband is head of the family, but this leadership does not in any way confer license of dictatorship or misuse. To them, qawwamah is a heavy and sensitive responsibility and obligation to be fulfilled and not merely an authority to abuse. They infer the verse 2:228 combined with verse 4:34 as describing the degree of responsibility and not a privilege or preference. Still some of them consider verse 2:228 related to the right of divorce discussed in that verse and not in conjunction with qawamah verse. The feminist group further does not feel comfortable with the idea of permanent leadership role of men in the family considering it to be a contextual matter.

Traditionalist's point of view has resulted in improper understanding of the concept of qawwamah or family leadership in our society. It has endorsed and strengthened the patriarchal set up and mode of family and society which was not meant to be established by Islam. Following are the salient features resultant of such thoughts of scholars:

- Consideration of absolute authority of men over women
- Ruler like attitude (patriarchal) resulting in ruler-ruled relationships.
- Constant expected servility/servitude on part of wife or daughter in law resulting in totally controlling their lives as what to do and what not to do.
- Domestic violence taking form of all kinds of psychological, physical or sexual abuse (scolding, using abusive language, swearing demonizing, condemning her abilities or likes and dislikes, taunting, de naming or defaming in laws relatives, pushing, hitting, severe beating,

crimes against body, injuring, throwing acid and even killing)

- Considering all household activities and child rearing and upbringing as sole responsibility of women

It is evident that the verse 4:34 describes the family set up with husband taking the position of guardian of the family further endorsed by many sahih ahadith which pronounce both as guardian of their families' with wife taking role of coequal of her husband in family affairs.²⁰ Only in greater matters affecting the welfare of the family, the husband is given a degree of supremacy, duly supported by the Quranic reference, since two co-ordinate authorities with equal powers are likely to lead to clashes and conflicts which may destroy the balance and poise of the family life. On the basis of his being the head of the family, man has been the family life. On the basis of his being the head of the family, man has been designated with functional supremacy over his family, which in no way gives a man the absolute supremacy over women. The reasons provided by the Quran for this responsibility are not endorsing man's superiority over women rather describing functional

²⁰ *'All of you are guardians and responsible for your wards and the things under your care; a man is guardian of his family and is responsible for them, a woman is guardian of her husband's home and the children and is responsible for them, all of you are guardians and all of you are responsible for your wards Mohammad Ismail al-Bukhari, Sahih, Chapter: 566, trans. Allama Waheed-uz-Zaman, (Lahore: Maktaba Rahmania, 1985).*

distinctive abilities suited for this responsibility. Family leadership- should be: Taking responsibility of family affairs; having consultative approach to family members; cherish love and equality; ignoring or forgiving the matters.



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