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## Sharia Observations on the Concept of Domestic Violence in Pakistani Laws

### Abstract

The women rights have been associated with domestic violence and it has become the core concern of the domestic violence prevention and protection acts that are passed and promulgated by the four provincial and federal governments respectively these acts with the name of “domestic violence (prevention and protection) acts”. The Domestic violence particularly against women as defined by these acts has been in discord between advocates of common laws and scholars of Islamic laws. The definition of “accused or defendant” is particularly conflictual in these acts and contradictory to the set criteria and defined laws of Islam. This article attempts to provide the preferable reviews of Muslim scholars, the analysis of the legal definition with the outlines of Islamic laws.

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## Introduction:

Pakistan is an Islamic state and Islam is a practicing state religion; it is claimed that business of state is run by the guidelines and directions of Islamic law as the constitution of Pakistan clearly states that the laws shall be made according to the injunctions of Islam and no law shall be passed which is repugnant to the teachings of Islam. So, the enactment and implementation of those laws are not permitted which are contradicted the core injunctions of Islam and the commandment of Allah Almighty defined by the Holy Quran and practiced by Prophet Muhammad (PBH). That's the point, the constitution gives mandate to legislature for law making but according to that which is outlined by Islam to run the business of state and it is also its core duty to see that if there is any law which is repugnant to the injunctions of Islam shall be nullified.

Laws against domestic violence which are enacted in four provinces of Pakistan are being discussed among the circles of scholars on the ground, weather these laws are in lines with the essence of Shariah. In this article the Shariah appraisal of domestic violence as defined and elaborated by the laws of promulgated by the four provinces i.e., Sindh, Punjab, Baluchistan and KPK has been given.

In this article, the analyzes of the legal definitions of domestic violence in different domestic provincial laws of Pakistan shall provide insight in the light of Islamic law.

This research comprises on the basic concepts of Islamic law toward the Muslim family system in the light of juristic works of Muslim jurists and scholars. The research describes the basic roots on which Islamic family system is stands for.

It focuses on the persons who are considered as backbone of

family system, their rights, and duties towards their family and why those they are given authority to others and why they enjoy authoritative capacity to run family system in the light of Islamic law.

### Shariah Analysis of Legal Definition:

According to the religious scholars, the definition of domestic violence is the main area of conflict between Islamic and western scholars. That is why the sharia analysis of definitions of domestic violence is necessary.

#### a) Legal Definition of Domestic Violence:

The Sindh Domestic Violence against Women Act 2013, defines domestic Violence as:

“**Domestic Violence** includes but is not limited to, all acts of gender based and other physical or psychological abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship including but not limited to - (a) “abet” (b) “assault” (c) “attempt” (d) “criminal force” (e) “criminal intimidation” (f) “Emotional, psychological and verbal abuse” means a pattern of degrading like”

“(i) obsessive possessiveness or jealousy (ii) insults or ridicule; (iii) threat to cause physical pain; (iv) threat of malicious prosecution; (v) blaming a spouse of immorality; (vi) threats of divorce; (vii) baselessly blaming or imputing insanity, or citing barrenness of a spouse with the intention to marry again; (viii) bringing false allegation upon the character of a female member by any member of the shared household; and (ix) willful or negligent abandonment of the aggrieved person”;

“(g) “harassment” (h) “hurt” (i) “mischief” (j) “physical” (k) “stalking” (l) “sexual abuse” (m) “trespass” (n) “wrongful

confinement”(o)”economic abuse<sup>1</sup>.”

All definitions of domestic violence are providing with little difference the same meanings and context of domestic violence in different acts passed and promulgated by four provincial assemblies of Pakistan.

Wherein, the protection is being provided to victim from defendant and the defendant could be any person who is living in a house like father, brother, husband, and son. According to the definition, the defendant may be a woman like mother or grandmother or mother-in-law, a sister or sister-in-law and other family member. It is said by Pakistani legal scholars that the definitions did not clear or specify the defendant. So, it has covered many persons like watch man, house-made, a sweeper or a driver in it.

On the other hand, in order to discuss the domestic violence, the Muslim scholars do not deny the occurrence of domestic violence in the society, but they do not agree with the method which is obtained by governments to settle down the issue or to stop the violence in the society. Khalil ul Rehman Chishti said: we do not deny the fact that there is not existence of domestic violence in our society, the demand for Dohery, Karo kari,<sup>2</sup> the cruelty of in-laws over the daughter-in-law, the daughter's marriage without her consent and to prevent a woman from Dover and from inheritance are kinds of domestic violence which still facing a woman in our society. Despite of this, it will be unfair to impose the western methodology on eastern society to resolve this issue of

<sup>1</sup> Section 5, The Domestic Violence (Prevention and Protection) Act, 2013

<sup>2</sup> It is an old custom of the tribes of subcontinent In which the girl who want to marry with her own will or with her own choice, she will be killed for her act. In this area it is called as honor killing.

violence at domestic level. This is an issue of a Pakistani Muslim society, so that solution must be according to the Pakistani Muslim society's norms and needs<sup>1</sup>.

The Muslim scholars think that the definition of domestic violence mainly targets the Islamic concept of "Qawwâm" that the main pillar of institution of family is, and family is a basic unit of Islamic society. So, before further elaboration of legal definitions of Domestic Violence, it is necessary to understand the term Qāwwām.

### **b) Meaning of Qawwâm:**

The term Qawwâm is basic term which expresses a complete sense of authoritative nature of role of a man in family, so understanding of this term is inevitable.

#### **1. Meaning of Qawwâm in Arabic Dictionaries.**

##### **i. Âl Maâni:**

“According to the Arabic dictionary Mu’jam Âl Maâni the Arabic word "Qawwâm" is originated from the root word "Qâma" which means to stand, maintain, or to protect something. So, in the verse of Holy Qurân the word "Qawwâmun" is plural of "Qawwâm" which means men are the protector of women, they are guardian, and they are maintainer of family. Men are those who provide the maintenance to the women and continue the provision. So, they are Qawwâmun over women and this higher degree is just because they are the guardians as well as the maintainer of household”.<sup>2</sup>

##### **ii. Âl Misbâh Âl Muneer:**

“According to the Arabic dictionary Âl Misbâh Âl-Muneer,

<sup>1</sup> Chishtī, Khalil ul Rehman, Comentary on the Domestic Violence Laws, Article for a conference conducted on the Domestic Violence Laws, at Islamabad on 18 July 2021.

<sup>2</sup> Al Mu’jam Âl Maâni online dictionary, www.almaany.com accessed on 03-01-2022

the root word of Qawwām is Qāma which means to take care of and it also mentions the person who takes care of something. The word Qawwām means a group of people including men and women. They take care of those who live with them and they provide the support needed in various aspects of life to the members of their group, particularly security and protection, where individuals may not be able to do it alone<sup>1</sup> ”.

### iii. Lisân ul Arab:

“According to the Lisân-ul-Arab, the word Qiyyum is used for one of the most beautiful names of Allah (SWT), Al-Qa-iyum, which means The One Who is in full charge of His creation and their provisions and has full knowledge of everything. Another word which has the same root word is Qiwām which means the provisions and various needed foods and commodities that a person cannot live without. The word Maqām is also including in this root word which means the place of residence or the place a person or a group uses to meet and discuss their affairs<sup>2</sup> ”.

So, according to these dictionaries the literal meaning of Qawwām is; the person who is supporter or provider, caretaker, manager, guardian or custodian of something.

## 2. . Qawwâm in Qurân:

The word Qawwâm is used in Surah Al Nisâ verse No. 34. Where Allah Almighty says:

<sup>1</sup> Al-Falomy, Al Alammah Ahmed Ibn Muhammad ibn Aly Almagry. Kitob Âl Misbâh Âl Muneer Fi Ghareeb Al Sharh Al Kabeer, (Caira, part 1&2, 6" edition, Al-Marbah Al Ameerieah, 1925),714

<sup>2</sup> Al-Afriqey Al-Masry, Abu Al Faḍal Jamal ul Deen Muhammad Ibn Makram ibn Manzoor, "Lisân ul Arab, Vol 12. (Beirut: Sader House for printing and publications, 1956), 503

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ﴾<sup>1</sup>

The meaning of this part of the verse is: “Men are protectors and caretakers of those women who are in their custody”.

“Men are in-charge of women<sup>2</sup>”.

“Men are the managers of women<sup>3</sup>”.

“Men are protectors of women<sup>4</sup>”.

“Men are the protectors and maintainers of women<sup>5</sup>”.

"English translations say that the men are the women's servants". They are holding a position to serve the females because, according to Muslim law, a man is obligated to sustain his wife in all aspects of her life, including clothing, feeding, and housing her. Despite of this, how wealthy she is, that is his obligation.” It is possible she may be wealthier than him, but he must fulfil that obligation, which is why he becomes the family's manager, so, he will be responsible for all housing, clothes, and financial decisions.

There are many Muslim scholars who interpret the term Qawwâm in their books where there they were discussing the matters of women and in their translations of Holy Qurân.

### 3. Qawwâm in Juristic’s Writings;

Different Muslim scholars provide different definition of Qawwâm.

<sup>1</sup> Al-Qur’ân 4:34

<sup>2</sup> Frid ul Haq, Professor Shah, Âl Qurân ul Kareem english translation of Kunzul Emân by Ahmad Raza Khan Brelvi.

<sup>3</sup> Qarî, Alî Qulî, Âl Qurân, English translation, online www.al-quran.info accessed on 06-01-2022

<sup>4</sup> Khan, Molana Waheed Ul Din, The Qurân English Tranlation published by Goodbooks

<sup>5</sup> Alî, Abdullah Yousuf, The Holy Qurân English translation, Dar ul Rurqân, Beirut, Lebanon.

**i. Imam Qurṭbī Says:**

Men are considered Qawwâm (managers), according to the Âl-Qurṭabî, because husbands must financially support their wives. Another aspect is that if a husband does not meet this requirement, he is not regarded as the family's leader, and the wife has the right to terminate the marriage contract if she desires so. So, in his views the authority of men over women is only because of the financial liability which is obligated him by Allah Almighty<sup>1</sup>.

**ii. Imâm Râzî Says:**

One of the greatest commentators on the Qur'an is Imâm Fakhr ul Din Al-Râzî. He emphasized how this verse connects to the earlier verses in Surah Al-Nisa in a unique way. The earlier verses, he claims, dealt with the problem of inheritance and how it should be dispersed among numerous heirs of the deceased. In most situations, men receive twice as much as women of the same kinship to the deceased. The major rationale for such a distribution is given in verse 34. It isn't because Allah (SWT) favors on males over the females or because women are less intelligent than males. Rather, it is because Islam holds males accountable for looking after their female relatives and their families in general, as well as providing them with sufficient economic and other types of support and security<sup>2</sup>.

**iii. Syed Quṭb says:**

“According to the commentary by Sayed Quṭb in his book "Fî Zilâl ul Qurân" he mentioned that there are two elements that

<sup>1</sup> Âl Qurṭbî, Âbu Abdullah Muhammad bin Âhmd Âl Ânṣârî, Âl Jâme Lî Âḥkâm ul Qurân, VOL.5 (Cairo, Dar il Filer 196)7 p 168

<sup>2</sup> Âl Râzî, Muhammad Fakhr ul Deen, Tafseer Âl Kabeer, vol 9. (Dar ul fiker, Beirut 1990), 90.



the Qur'an highlights as it states that in Islamic society, men are required to look after women. It is an assignment of duties based on natural abilities and fair distribution of responsibilities. Each party is assigned the duties to which he or she is most suited by nature." And the other one is that assuming the men on the status of family leadership or guardianship (Qawwām) does not by any means lead to the nullification of the women's character and role in the family home and in society at large. Nor does it mean that denial or rejection of her civil status<sup>1</sup> ”.

#### iv. Molānā Shabīr Āḥmad Usmānī Says:

Shabīr Āḥmad Usmānī interprets Qawwām as; that man has dominion over woman, which is based on two factors: one is natural and God-given, in that every man is born stronger than a woman. He is not only physically strong, but also psychologically, as he has greater emotional and psychological control than a woman. The material advantage of a man over a woman is the second argument. Man is responsible for earning money and spending it on dowry gifts for women, as well as food, clothes, housing bills, and other requirements of life<sup>2</sup> .

In Surah Al-Nisa (4:34), the word "Qawwamun" refers to a man's dominating or leading role in family life due to his physical and other capacities, while a woman fulfils other responsibilities for which she is naturally more equipped. As a result, the partners' functions are dictated by their natural capacity differentials, regardless of whether one of them is superior to the other. A man's leading activities confer no

<sup>1</sup> Al Quṭub, Sayed, Fi Zilāl ul Qurān (In the Shade of Qurān) (Lahore, The Islamic Foundation N.D) 435

<sup>2</sup> Usmānī, Molānā Shabbīr Āḥmad , Tafseer e Usmānī . the Noble Qurān English translation, (by M. Ashfaq Ahmad, Dar ul Ishāat, Urdu Bazar, Karachi N,D), 40

superior position or quality over her, and woman's labor as his assistant has no bearing on her status or privileges. Both are carrying out the roles that nature has allocated to them, based on their abilities, capacities, and skills. It's worth noting that men always take the benefit of being "one degree" ahead of women for granted.

The power that is granted to men in the two Surahs of the Qur'an, Surah Al-Baqarah and Surah Al-Nisa, is based on their natural differences and roles that they play in society because of those differences. They have granted leadership, as well as guardianship and maintenance of a family, but they have not granted any unique rights compared to woman beyond their natural abilities. So, a man is one degree above a woman just because he is physically stronger and tougher. If a man has these natural qualities than he can take the charge of family. If he does not have any natural capability like these, he does not have right to be a Qawwām of the family and nor the caretaker in family matters.

So according to the Qurānic literature which is reviewed and juristic findings on the Qurānic term, the "Qawwām" is a person who is caretaker, manager, custodian, in-charge, protector, or maintainer of woman and the family. He is appointed as Qawwām due to his natural capacities and God gifted nature and abilities which are necessary for a leader or guardian. After understanding this term, which is basic Islamic concept, we come towards the legal definition of Domestic Violence.

The definition of domestic violence presented in domestic violence laws of all provinces of Pakistan is mainly focused on the domestic violence which is done by accused or offender. So when we see the status of offender, we find that the offender which is described in the definition is standing in two

different positions and there are two different types of victim.

- i. First, the offender is committing domestic violence against women on the gender base difference.
- ii. Second, the offender is committing violence against the children.

So according to the definition, there are two types of offenders by whom domestic violence may be committed. In position one where the offender is committing violence based on gender, he maybe a husband who is misusing his authority over the women. The authority which is given to him according to the Islamic injunctions. In second position where the offender is committing domestic violence against children, he may be a father, elder brother, grandfather, or the other family member who holds the title of caretaker or guardian of family.

To understand these two positions of offender and the legal status of offender, the analytical study of Islamic law is imperative. There are three types of offenders who may hold the positions of Qawwâm or they may be liable for domestic violence.

- i. Husband
- ii. The Guardian
- iii. Any Other Elder Family Member

According to the law of domestic violence, the first offender is the husband who may commit violence against his wife. To discuss the authority of husband in Islamic law, it is necessary to understand the basic idea of Islam towards family and the caretaking matters of family.

#### **4. The Husband:**

Firstly, understanding of the basic principle of Islamic law towards the family life and marital status of husband and wife is imperative, because if one does not understand the basic

idea and the principle of Islamic law for the family matters, he cannot be clear about the concept of domestic violence. In the family system, Islam makes the man an authority in all matters. Sor Quranic principle is:

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ﴾<sup>1</sup>

“Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore, the righteous women are devoutly obedient (to Allah and to their husbands), and guard in the husband’s absence what Allah orders them to guard (e.g. their chastity)”

Maulānā Maududī says: to maintain the family system, to give the priority to one of the two persons from husband and wife it is very necessary. If these two-persons having same rights in the family system and both have capacity to order one another, the outcome of this situation will be crash of the family system, because the Islam is a religion of nature, it knows well that it is in the best interest of the family to make one person order giver and the other is taker. To give the title of Qawwām, Islam chose a person who is fit for this title by nature.<sup>2</sup> So, by evaluating the capacity of man Islam has assigned to a man different title to protect the family. According to these titles, the duties have been assigned for protection of family and to

<sup>1</sup> Al-Qur’ān 4:34

<sup>2</sup> Mowdodi, abui Āala, Haqooq ul Zowja’in (Urdu), (Idarah Tarjumān Ul Quran, Lahore N.D), 20.

fulfil the need of women, children, and other family members . After giving him these titles, Islam makes a man responsible to provide these services according to his titles.

#### a) Duties of Husband:

The domestic violence laws are basically enacted for the protection of women's rights. In first sight, when the rights of women are discussed, the women, which appear in the mind, she is a wife. So, for the protection of the rights of a wife, Islam has assigned some duties towards husband.

#### Under the Islamic Law,

##### i. To Pay Mahr:

For women, Islam has granted some rights, first, as a wife Islam has given rights to a woman to obtain dower after the marriage or "Nikāh". Islam has obligated for a husband to pay his wife a certain amount of dower. Islam granted, this specific amount of dower to a woman against her marital relationships. By these relationships, although a woman has also enjoyed the marital life, but the Islamic ideology directs to pay a man a certain amount in the lieu of dower (Mahar) because the Islamic scholar says: in fact, the man becomes Qawwām over a woman only after paying this Dower amount.<sup>1</sup> So, in this regard Islam protects the first right of a woman in the very beginning of her marital life.

This concept of paying dower as her first marital right is laid down in Qur'ān as:

﴿وَأْتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً﴾<sup>2</sup>

“And give to women (whom you marry) Their dower (mahar) :

<sup>1</sup> Mowdodī, abui Āala, Ḥaqooq ul Zowjain (Urdu), (Idarah Tarjumān Ul Quran, Lahore N.D), 20.

<sup>2</sup> Al-Qur'ān 4:4

obligatory Bridal-money given by a husband to his wife at the time of marriage) with a good heart.”

In another verse of Holy Qurân Allah Almighty gives another order to pay the amount of Maher as:

﴿وَأَجَلَ لَكُمْ مِمَّا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْلِفِينَ ۚ فَمَا أَسْتَفْتَعْتُمْ بِهِ مِنْهُمْ فَاتُّوهُنَّ أُجُورَهُنَّ فَرِيضَةً ۚ وَلَا جُنَاحَ عَلَيْكُمْ فِيهَا تَرْضَيْتُمْ بِهِ ۚ مِنْ بَعْدِ الْفَرِيضَةِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا﴾<sup>1</sup>

“All other (women) are lawful, provided you seek (them in marriage) with Mahr (obligatory Bridal-money given by a husband to his wife at time of marriage) from your property, desiring chastity, not committing illegal sexual intercourse, so with those of whom you have enjoyed sexual relation, give them their Mahr as prescribed, you agree mutually (to give more), there is no sin on you. Surely, Allah us Ever All-Knowing, All-Wise”

In the favor of women’s rights, the Allah almighty gave more order to show the importance of the Mahr and said:

﴿وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْنَهُنَّ أُجُورَهُنَّ﴾<sup>2</sup>

“(Lawful to you in marriage) chaste women from the believer, and chaste women from those who were giving the scripture (Jews and Christians) before your time when you have given them their due

<sup>1</sup> Al-Qur’ân 4:24

<sup>2</sup> Al-Quran 5:5

Mahr (bridal money given by husband to his wife at the time of marriage)”

It is mandatory for a man to pay the Mahr amount which he has contracted with his wife on the time of Nikâh as a bridal amount. If the man refuses to pay this amount which he was contracted in Nikâh as a bridal amount, then the woman has right to stop herself to go near him. There is no other way to uplift this responsibility from the shoulder of man. The only way is that the man will must pay the bridal amount at any cost but woman herself has right to give some time to the man that he may pay the bridal amount or she herself may wave off the bridal amount by her on will or with her own consent, if she thinks that her husband is unable to pay her bridal amount due to his poor condition. So, Allah Almighty says:

﴿فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا﴾<sup>1</sup>

“But if they give up willingly to you anything of it, then take it in satisfaction and ease.”

﴿وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرْضَيْتُمْ بِهِ<sup>1</sup> مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا﴾<sup>2</sup>

“But if after a Mahr is prescribed, you agree mutually (to give more), there is no sin on you. Surely, Allah is Ever All-Knowing, All-Wise.”

In this Qurânic order, Allah Almighty gives the option to woman if she wants to live with her husband or if she wants to waive off the amount of dover. So, in Islamic culture, Islam

<sup>1</sup> Al-Quran 4:4

<sup>2</sup> Ibid

starts the protection of women rights from very first day of her life, when she started a new life as a wife in a new atmosphere and new community or in a new family

ii. Nfqah (To Bear the Expense):

To bear all expenses of women and whole family is the primary duty of a male member. According to the Islamic law, it is duty of a man who got married that he must pay all expenses of woman and family. Islam has defined clear boundaries of action for husband and wife and clear for them how they will perform their duties and how they will get their rights from one another. It is said for woman that she will stay at home and will perform all duties in home to take care of the matters inside home with clear Quranic command.

﴿وَقَرْنَ فِي بُيُوتِكُنَّ﴾<sup>1</sup>

“And stay in your houses”

Then described the duties of man that he will go for work outside and earn livelihood for his family and he will fulfil all needs of his family and facilitate them according to the available sources. So, there are three types of primary duties which are imposed on a man as husband.

I. Shelter: to provide a shelter to woman who is in his Nikâh is a basic duty of a man. Allah says:

﴿أَسْكِنُوهُنَّ مِمَّنْ حَيْثُ سَكَنْتُمْ مِّنْ وَّجْدِكُمْ﴾<sup>2</sup>

“Let the women live (in 'iddat) in the same style as she lives, according to your means”

No doubt that this order is given by Allah Almighty in the favor of a divorced woman who is In Iddah (the divorced

<sup>1</sup> Al-Qur'ân 33:33

<sup>2</sup> Al-Qur'ân 65:6



period). If this order may be given in the favor of a divorced women, so the woman who is living with her husband as a wife is more entitled for this right. <sup>1</sup>

Then Allah Almighty says in another order.

﴿وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ﴾<sup>2</sup>

“Live with them honorably”

It is a general order as a noble moral to live honorably with the woman in house with respect and peace. <sup>3</sup>

II. Food: to provide the food is one of the basic duties of a man because he is the caretaker and guardian of a woman and household. The Allah Almighty orders in this regard in Qurân:

﴿لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ \* وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ  
اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَاءً آتَاهَا \* سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا﴾<sup>4</sup>

“The wealthy shall spend according to his means. As for the one with limited resources, let him spend according to what Allah has given him. Allah never burdens a soul beyond what He has given it. Allah will bring ease after hardship”.

Here Allah Almighty is using the word ﴿فَلْيُنْفِقْ﴾<sup>4</sup> which means “to spend”. In this order, The Lord orders husband that he must spend money on his wife according to his source and means. This is also a duty of a husband to provide the treatment facilities to wife for maintenance of her health and

<sup>1</sup> Ibn-e-Qudâmah, Muafiq ul Din Abu Muhammad Abdullah, Al-Mughni vol 8, (Maktbah Al-Qâhira 1388 A.H), 200.

<sup>2</sup> Al-Qur’ân 4:19

<sup>3</sup> Ibid

<sup>4</sup> Al-Qur’ân 65:7

he will provide all the necessary medicines if she becomes ill. <sup>1</sup>

III. Clothes: To provide the Clothes according to weather and necessity of wife is also the duty of a husband that Allah Almighty clearly mentioned in Quran. Allah says:

﴿وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ﴾<sup>2</sup>

“But the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis”

This Quranic order gives the right of clothing to the wife who is feeding her child by breast sucking specially and for the wife who is living with the husband whether she is feeding her child or not. <sup>3</sup> This Quranic order is further clears by Holy Prophet ﷺ sayings where the Holy Prophet ﷺ said:

﴿وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ﴾<sup>4</sup>

The Prophet ﷺ in this hadîth says that it is your (husband’s) duty to provide the food and clothing to his wife in a gentle manner.

These are two main things which make a man protector or caretaker over a woman and the man becomes one step up from woman. In fact, the Qawwâm is a person who has authority or capacity to care take a woman, this capacity is clearly seen in these two characteristics first to paying Mhar second thing is Nafaqa. The Quranic order which makes

<sup>1</sup> Al-Shokânî, Muhammad bin Ali bin Muhammasd bin Abdullah, Al-Sayîl ul Jarâr, (Dâr Ibn Hazam, Beirut, Libnan 2013),736.

<sup>2</sup> Al-Qur’ân 2:233

<sup>3</sup> Ibn-e-kathîr, Ismaeel bin Umer bin Kathîr, Tafseer ibn Kather, VO.:1(Beirut, Dâr ul Kutub Al Ilmîyah 1419 A.H), 477.

<sup>4</sup> Al Qushîrî, Muslim bin Al-Hajjaj Abû al-Husayn, , Al-Saḥîḥ Muslim, VOL.2 (Beirut, Dar Ehyâ ul Turâs Al Arbî N.D),886.

obligatory the amount of Mhar for women and the same Quranic order makes obligatory Nafaqah for women if a man denies paying or 'denies providing Nafaqa the law forces him to pay, and there is possibility if he denies to pay these two responsibilities or he is unable to perform these responsibilities, the law gives her the right to dissolve the marriage. But there is another distinction of Islamic law that Allah Almighty does not depend the amount of Nafaqa on the wish of woman, it is dependent on the capability of man according to his financial condition.

So Qurân says:

﴿عَلَى الْمُسِيعِ قَدْرُهُ وَعَلَى الْمُقْتِرِ قَدْرُهُ﴾<sup>2</sup>

“The rich according to his means, and the poor according to his means”

### iii. Do Not Be Cruel:

The third most essential obligation of a man is to not be harsh to women because he has been appointed as a Qawwâm or guardian by Allah Almighty, and he should not misuse his position.

These three forms of responsibilities defend a woman's rights from the husband with whom she is in a domestic relationship. Domestic violence phenomena could be understood using these factors because these points make him one step superior to woman.

## 5. The Guardian:

The guardian is the second most necessary pillar of the family who takes care of the matters of the family. There are some

<sup>2</sup> Al-Qur'ân 2:236

persons who may be a guardian by law and Islam. The first guardian is father and if he dies or in his absence the elder brother, elder son, grandfather, and father's brother may be the guardian respectively. There are some duties of a father towards his children because he is responsible for his offspring. The Holy Prophet ﷺ said:

﴿كُلُّكُمْ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ،..... وَالرَّجُلُ فِي أَهْلِهِ رَاعٍ، وَهُوَ  
مَسْئُولٌ عَنْ رَعِيَّتِهِ﴾<sup>1</sup>

“All of you are shepherds and each of you is responsible for his flock, a man is the shepherd of the people of his house, and he is responsible.”

Allah Almighty makes the guardian responsible for his home and the people who are in his care take. The according the Prophet ﷺ, he is responsible for all matters of his offspring, for the people who are in his care-take, and he is accountable for his responsibility before Allah Almighty. So, to fulfill this responsibility, there are duties which are imposed on him.

#### a. Brought up the children:

It is responsibility of guardian to concentrate on the rising his children up and provide them healthy meal and food and take care them from the disease and provide them the clothing according to the weather and if he fulfills all his responsibilities, he will be awarded from Allah Almighty. The Prophet ﷺ said:

﴿مَنْ عَالَ جَارِيَتَيْنِ؛ دَخَلْتُ أَنَا وَهُوَ الْجَنَّةَ كَهَاتَيْنِ " . وَأَشَارَ بِأَصْبُعِيهِ﴾<sup>2</sup>

<sup>1</sup> Al Bukhri, Muhammad Bin Ismail, "Sahih Al Bukhari", Vol.2 (Al-Najât, Dâr Tauq.1422 A.H), 31

<sup>2</sup> Al-Tirmizî, Muhammad bin Eisa abu Eisa Al-Tirmazî, Sunan, VOL.3(Beirut, Dâr ul Gharb Al Islamî, 1998), 383.

“Whoever takes care of two girls, he and I will enter Paradise like these two, and he pointed with his two fingers.”

### b. Equality between children:

To provide the equal facilities in terms of clothes, food, and every type of living stuff is basic responsibility of father and if he fulfills this responsibility in a gentle manner, he will get reward for his good conduct. Prophets ﷺ said:

﴿مَنْ كَانَتْ لَهُ أَنْثَى فَلَمْ يَبْدِهَا وَلَمْ يُهِنِّهَا وَلَمْ يُؤْثِرْ وَلَدَهُ عَلَيْهَا قَالَ  
يَعْنِي الذُّكُورَ أَدْخَلَهُ اللَّهُ الْجَنَّةَ﴾<sup>1</sup>

“The Prophet ﷺ said: If anyone has a female child, and does not bury her alive, or slight her, or prefer his children (i.e., the male ones) to her, Allah will bring him into Paradise.”

### c. Education and discipline:

This is in the responsibility of the father that he must provide the better education to his children and make them disciplined in their daily life. So that, they could be able to meet the requirements of present time and they could live a gentle and respectable life in their society.

The Prophet ﷺ says in these two important things:

﴿طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ﴾<sup>2</sup>

“Seeking knowledge is an obligation upon every Muslim.”

This is a general order by Prophet ﷺ to whole Muslim nation and this order shows the importance of seeking knowledge. Making the child disciplined is also the responsibility of

<sup>1</sup> Al- Sajastânî, Abu Dawood Sulaiman bin Al Ashas, Sunan Abî-Dâwood, VOL.4(Beirut, Al Maktabah Al Esrîyah N.D),337.

<sup>2</sup> Ibn-e-Mâjah Abu Abdillah Al Qazvînî, Sunan Ibn e Mâjah,VOL.1(Halab, Dar Ehyââ ul Kutub Al Arîyah N.D), 87.

parents. The Holy Prophet ﷺ said in this regard:

"لَأَنَّ يُؤَدِّبَ الرَّجُلُ وَلَدَهُ - أَوْ : أَحَدُكُمْ وَلَدَهُ - خَيْرٌ لَهُ مِنْ أَنْ يَتَصَدَّقَ كُلَّ يَوْمٍ  
بِنِصْفِ صَاعٍ"<sup>1</sup>

“For a man to discipline his son - or: one of you his son - it is better for him than giving alms every day (a specific measurement) for half”.

Furthermore, to show the importance in this regard, the Prophet ﷺ said:

"أَكْرِمُوا أَوْلَادَكُمْ وَأَحْسِنُوا أَدَبَهُمْ"<sup>2</sup>

“Honor your children and give them good manners.”

#### d. To give the share in inheritance:

To give the inheritance according to their share to offspring without the difference of gender and do not deprive them from their share is also a basic duty of a father or guardian. Allah almighty says:

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ﴾<sup>3</sup>

“Allah instructs you concerning your children: for the male, what is equal to the share of two females.”

#### e. Marriage the children:

To marry their offspring is also the duty of parents. Islamic teachings make the parents responsible for the marriage of their children on a suitable time when they reach the age of puberty.

<sup>1</sup> Al Shīybānī, Abu Abdillāh Aḥmad bin Muḥammad, Musnad-e-Aḥmad, VOL.34(Muasisah ul Risalah 1424 A.H), 459.

<sup>2</sup> Al Qazvīnī, Ibn-e-Mājah Abu Abdullīh Muḥammad bin Yazīd, Sunan Ibn-e-Mājah, VOL.2(Halab, Dār Ehyāʾ Al Kutub Al Arabīya N.D), 1211

<sup>3</sup> Al-Nisā 11

So the prophet said:

"من ولد له ولد فليحسن اسمه وأدبه فإذا بلغ فليزوجه فإن بلغ ولم  
يزوجه فأصاب إثماً فإنما إثمه على أبيه." <sup>1</sup>

“Whoever has a child, let him have a good name and good manners,  
and if he reaches puberty, let him marry him. If he reaches puberty  
and does not marry him, then he commits a sin, then his sin is on his  
father.”

These are responsibilities which make to a father or to a husband or to a guardian Qawwâm of his offspring and wife. On the behalf of these responsibilities some time he may commit domestic violence which is not permissible and unfair use of authorities and refusal to pay his duties.

### 6. The Other Family Members:

As mentioned earlier, domestic violence may be committed by other family members besides the father and husband like mother, younger brother, sister of law, and mother of law. So the law protects a woman from these all kinds of domestic violence and provide the remedies to the victim of violence.

The good behavior of parents is an attribute which makes their children confident and dignified. Sometime the parents or the guardian do not understand the children and leave gentle manner attributes towards their children which make them arrogant and bad tempered. This may be the cause of domestic violence. When the parents and guardians do not understand the situation of children and try to impose their own will at any cost, such rude behavior of guardian or parents for imposing their decision brings very negative results which lead them to

<sup>1</sup> Al Qarî, Mullâ Alî, Mirqât ui Mafâtiḥ Sharḥ Mishqât ul Msâbiḥ, Maktaba Islamîa, Vol 5(Beirut, Dâr ui Fikar), 2002

domestic violence.

So, the definition of domestic violence tells us that accused of domestic violence may be husband, father or guardian and it may be a woman like mother of law, sister of law, or any other family member who is living within the family.

The definition of domestic violence categorizes domestic violence in different types and uses different terms to elaborate these types. The Sharî'ah replaces these all types of domestic violence and describes its limitation. If Sharî'ah finds actual existence of these violence in Muslim society, then it prescribes the remedies for it. These are the grounds which provide a man to be a Qawwâm and using the authorities he may be the offender of domestic violence.

### Conclusion:

The study shows that legislations done by provincial assemblies of Pakistan on the very serious topic of domestic violence are mainly focus on the term "accused or defendant". After deep analysis it has been revealed that the accused or defendant of domestic violence may be a guardian or the relatives of guardian. Who actually desires to protect and prevents his children, wife or anyone who is living under his guardianship etc from ill sort of act or any action which is prohibited by law or morally ill or beyond the limitations set by Islamic injunctions.

Pakistan is an Islamic state, so the constitution of Pakistan makes the duty bound to the legislature that they shall enact the law to run the business of state which are compatible with the Holy Quran and Sunnah. The Sharî'ah analysis of term "accused or defendant" clears that the guardian may be a father, elder brother, son, grandfather, or the husband. Islamic Law has issued special instructions to guardian regarding the



maintenance and upbringing of children and family. In the light of these instructions, he has been authorized to take some necessary steps for wellbeing of children and family within the prescribed limitations. If he acts within the limits described by Islam, then the Islamic law does not consider his act as domestic violence but if he missuses his authority and does not care about Islamic limits and restrictions then he may consider as accused of domestic violence with its complete séance. Besides the guardian, if the mother-in-law or the sister-in-law use their unlawful authority over a woman in the presence of her husband, this conduct may fall under the definition of domestic violence.

### **Finding:**

The definition of domestic violence which is the core subject matter of “The Domestic Violence Prevention and Protection Acts” is analyzed with Islamic Laws. The outcome of study is the concept of domestic violence provided in the law is not compatible with the Islamic law wholly, particularly on the issue of “accused or defendant” as it seems that the explanation the term has been borrowed that does not match with the social norms nor with the injunctions of Islam.

Rather, Islamic law considers the power exercised by accused to be his rights if he does not violate his limitations. Power does not mean that he may exceed his limits which prescribe by Islamic law, if he to do so, then he may be treated as accused of domestic violence according to the aforesaid laws and Islamic law does not prohibit it. So, the modification of definition of domestic violence according to the Islamic law is inevitable.