

# Wife-Beating in the Pre-Modern Islamic Tradition:

An Inter-Disciplinary Study of *Ḥadīth*, Qur'anic Exegesis and Islamic Jurisprudence

By

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## DEDICATION

For Rumees,  
My Love.  
My Life.  
My Everything.  
For the Man I am honored to call Husband,  
Without You, I would not be Me.

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## ABSTRACT

In contemporary Muslim discussions of progressive visions of Islam, the role of “tradition” is contested. Some argue that the pre-modern Islamic intellectual tradition offers a complex, nuanced and highly sensitive heritage whose study can be fruitful and relevant, while others argue that the tradition is patriarchal, misogynistic and ought to be abandoned in favor of a direct connection with the Qur’anic text. The present study considers the pre-modern Islamic tradition through an inter-disciplinary approach, by evaluating *ḥadīth* literature (normative reports from Muḥammad), Qur’anic exegesis (*tafsīr*) and Islamic jurisprudence (*fiqh*) concerning the right of husbands to discipline their wives. The ethical discussion surrounding the disciplinary rights of husbands is examined through various methods. The worldview shared by pre-modern scholars, which included a divinely-ordered social hierarchy, is examined. In *ḥadīth*, the texts of individual reports are analyzed along with the manner in which scholars labeled, organized and presented specific *aḥadīth* relating to wife beating. The ethical discussion within *ḥadīth* literature includes conversations about the basic right of husbands to hit wives and also outline the appropriate procedure for hitting one’s wife, which is often described as ‘non-extreme’ (*ghayr mubarrih*). In Qur’anic exegesis, exegetical methods such as



occasion of revelation, historical precedent, prophetic practice and philology are studied. Finally, in legal works, school specific approaches are surveyed. **Both Qur'anic exegesis and Islamic jurisprudence assume a husband's right to discipline his wife and the ethical deliberations therein are concerned only with the procedure of hitting.** Since husbands were not liable for exceeding the recommended non-extreme methods of hitting wives - unless the hitting resulted in death or broken bones - pre-modern scholars appealed to the conscience of husbands when suggesting moderate hitting. The weight of this appeal rested in the accountability of husbands before God regarding the just maintenance of their charges, which included wives, children and slaves.

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## Introduction

During the colonial period, the role of women in Islam became highly contested and politicized. In the post-colonial period, gender equality has become the yardstick for measuring the progress of societies, and in response Muslims have turned their attention toward the Qur'an - the sacred scripture for Muslims - to argue either that the Qur'an is fundamentally egalitarian or that it is patriarchal and/or misogynistic in nature. Assuming the Qur'an to be egalitarian or misogynist determines its role as either aiding or stunting social progress, thereby testifying to its relevance in the modern world. Most scholars do not approach the text in isolation, but rather justify their positions through reference to the inherited, pre-modern exegetical and juridical tradition. To this end, modern scholars have referred to the pre-modern tradition summarily, seeking either to garner its prestige or to dissociate themselves from it altogether. For this reason, the disciplines of *ḥadīth*, Qur'anic exegesis and Islamic jurisprudence remain largely unstudied and modern debates concerning gender are surprisingly oblivious to those traditions.

If the pre-modern tradition viewed the Qur'an as egalitarian, then the text is seen as both modern and subversive by granting women equality as defined by

contemporary standards in patriarchal contexts. If, however, the tradition is characterized as reading the Qur'an as instituting misogyny, then the text is either indicted as misogynist or the traditional exegetes and jurists are guilty of reading misogyny into the text. In this way, the role of the inherited tradition takes center stage in conversations about the relevance of the Qur'an to modern conceptions of gender. Often, however, scholars focusing on specific verses in the Qur'an, which can be read as either promoting or undermining gender equality, engage only superficially in textual analysis of sources from the pre-modern period. They frequently make sweeping and unsubstantiated generalizations about the exegetical and juridical material to which they refer. A key Qur'anic verse in these conversations is Chapter 4, Verse 34.

In 2007, a German judge denied an expedited divorce to a German-Moroccan woman who was physically abused by her husband on the basis of the judge's interpretation of Q. 4:34. Judge Christa Datz-Winter based her denial on the argument that the Qur'an "sanctions such physical abuse".<sup>1</sup> This case underscored the central issues of male authority and domestic violence as the nexus of the discussions in gender and Islam. This dissertation takes gender hierarchy within the marital relationship and domestic violence in Islamic

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<sup>1</sup> Mark Lander, "Germany Cites Koran in Rejecting Divorce." *The New York Times*, March 22, 2007.



scholarly discourses as the focus of its study. More specifically, it engages in a comparative analysis of the methodological approaches of the disciplines of *ḥadīth* study, Qur'ānic exegesis and Islamic law on the topic of wife-beating in Q. 4:34.

Verse 4:34 is the one verse in the Qur'ān that discusses the disciplinary power of husbands over wives. It reads,

Men are *qawwāmūn* (in authority) over women, because God has *faḍḍala* (preferred) some over others and because they spend of their wealth. *Ṣāliḥāt* (good) women are *qānitāt* (obedient) and guard in [their husbands'] absence what God would have them guard. Concerning those women from whom you fear *nushūz* (disobedience/ rebellion), *fa-'iḏūhunna* (admonish them), *wa-hjurūhunna fī l-maḍājji'* (abandon them in bed), *wa-ḍribūhunna* (hit

them). If they obey you, do not seek a means against them. God is most High, Great. (Q 4:34)<sup>2</sup>

There are several words and phrases in this verse that have contested meanings and were the subject of extensive discussion in the exegetical and juridical discussions in the pre-modern period. Such words/phrases include God's "preference" (*faḍḍala*) of men over women, the object of obedience for "obedient" wives (*qānitāt*), and the meaning of "fearing" (*khawf*) of a wife's disobedience (*nushūz*). According to conventional readings of this verse, the three steps that men should undertake if they fear *nushūz* from women are: to admonish them (*fa'izūhunna*), shun them in bed (*wa-hjurūhunna fi'l-maḍāji*),

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<sup>2</sup> This is my translation of Q. 4:34. I have left contentious words and phrases in the Arabic, and the translations in the parenthesis are those generally offered by pre-modern exegetes and jurists. Yusuf Ali translates this verse as follows: "Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all)." Abdullah Yusuf Ali. *The meaning of the Holy Qur'ān* (Beltsville, Md: Amana Publications, 1997) Q. 4:34. As I mention in the article entitled "The Problems of Conscience and Hermeneutics: A Few Contemporary Approaches", "Ali displays his discomfort with the prescription of wife-beating in this verse by taking two steps. First, he interprets the three prescriptions of verbal admonishment, shunning in bed, and beating to be sequential rather than simultaneous. Second, he qualifies the unqualified Qur'anic prescription of beating by adding "lightly" in parentheses. Ali's hermeneutic move is an example of how the explicit textual command to beat women who commit *nushūz* violates notions of justice and gender egalitarianism that many contemporary scholars bring to the text. These conscientious objections arise in part because they perceive this verse to stand in counter-distinction to other verses in the Qur'an that promote reciprocity, mutual love and respect in marriage, and encourage the establishment of justice." Ayesha Chaudhry, "The Problems of Conscience and Hermeneutics: A Few Contemporary Approaches" in *Comparative Islamic Studies*, v. 2.2., (2006) 158.

and/then strike or beat them (*wa'dribūhunna*). Although this entire verse figures prominently in contemporary discussions about the (in)equality of men and women in the Qur'ān, it is the latter part of the verse - the prescription of striking - that is central to this dissertation.

In addition to being directly connected to the question of divine sanction or justification for domestic violence, Q. 4:34 also raises questions regarding essentialist views of Islam that assume that the entire content of the religion can be directly deduced from the “clear” meaning of the Qur'ānic text. These views are adopted by both outsiders to the faith -represented by the German judge here - and believers, who approach the Qur'ān directly in defining norms for historical Muslim communities, without approaching it through the interpretive traditions of *ḥadīth*, Qur'ānic exegesis and Islamic law. Although contemporary scholars have engaged Q. 4:34 when discussing the (in)equality of genders in Islam, few have grappled with the prescription to use physical discipline against wives. Also, despite multiple claims made by modern scholarship about the pre-modern tradition, serious investigation of that pre-modern tradition with regard to Q. 4:34 has generally not been undertaken. Further, when the relevant primary components of the pre-modern tradition – *ḥadīth*, exegesis and law – have been addressed, they have been treated in isolation from each

other. This dissertation approaches the three fields of pre-modern *ḥadīth* studies, Qur'ānic exegesis (*tafsīr*) and Islamic law (*fiqh*) in a comparative fashion, specifically with regard to the prescription of wife-beating in Q. 4:34.

I examine various approaches adopted within the pre-modern disciplines of *ḥadīth*, Qur'ānic exegesis and Islamic law to evaluate whether the scholars in these three fields use the tools at their disposal to expand or restrict male/female power in marriage. For example, how were historical precedent, prevailing social customs and philology employed in order to restrict/expand this disciplinary power of husbands over wives? The research for this project shows that scholars in the fields of *ḥadīth*, Qur'ānic exegesis and Islamic law were concerned with the procedure of wife-beating in Q. 4:34. Scholars in all three fields ubiquitously qualified the prescription to hit wives instead of leaving it unqualified, as it is in the Qur'ānic text. This qualification was based largely on prophetic reports, although Q. 4:34 itself did not figure prominently in *ḥadīth* literature. Although prophetic reports were treated by pre-modern exegetes and jurists as “raw” material for their interpretive choices, the research for this project demonstrates that the discipline of *ḥadīth* was autonomous and created an implicit ethical discourse that displayed greater moral reservations with wife-beating than the disciplines of Qur'ānic exegesis and Islamic jurisprudence.

The *ḥadīth* discourse was autonomous in the sense that it offered resources that were not tapped by exegetes and jurists, who neglected the more ambivalent or negative traditions about wife-beating that were included in *ḥadīth* collections.

Scholars of Qur'anic exegesis and Islamic jurisprudence placed Q. 4:34 within a much broader set of conceptions about gender hierarchy, making a limited set of male prerogatives outlined in the verse into the centerpiece of the divinely ordered social hierarchy encompassed in the worldview of these scholars. This dissertation examines the methods employed by the exegetes and jurists in order to justify the right of men to hit/beat women, but at the same time safeguard women against abuse.

### **Literature Review and Significance**

Although Q. 4:34 figures prominently in the debate regarding the role of women in Islam, most modern scholarship relating to this verse has focused on the first part of this verse which deals with the *qiwāmah* (dominance/authority) that men have over women. Few works address the latter, more controversial, aspect of this verse, which deals with fear of *nushūz* and wife-beating, except in passing. Contemporary discussion surrounding the classical discourse among Muslim

scholars concerned with issues of gender has been related to two issues: First, are classical discourses misogynistic or fundamentally anti-egalitarian with respect to gender? Second, is the classical interpretive tradition fundamentally a highly sophisticated and methodologically stringent body of thought that must be taken seriously by anyone who takes the Qur'ān and *aḥādīth* in earnest, or is it fundamentally arbitrary and distorted by the biases and backgrounds of pre-modern scholars? If it is the latter, is this an inherent feature of how texts produce meaning or is it a flaw that can be rectified? In essence, to what extent is it possible or valid to recuperated elements of the pre-modern interpretive tradition in the contexts of the progressive project of constructing an Islamic discourse that is simultaneously egalitarian and authentic.

Of the works that struggle with the latter section of Q. 4:34, few engage extensively with the historical past. When scholars do engage in a study of the pre-modern sources, they often engage with the exegetical and juridical traditions in isolation from each other. Fatima Mernissi, Amina Wadud, Asma Barlas, Sa'diyyah Shaikh and Hadia Mubarak argue that the patriarchal and misogynistic nature of pre-modern exegesis prevented it from offering anything

constructive for an egalitarian discourse on the interpretation of Q. 4:34.<sup>3</sup> They also argue that the patriarchal discourse surrounding Q. 4:34 misrepresented the otherwise egalitarian message of Islam. Mohamed Mahmoud also acknowledges the patriarchal nature of pre-modern exegetical works and offers that modern scholarship may be able to “virtually abrogate” the prescription of hitting in Q. 4:34.<sup>4</sup>

Barlas and others based their assumptions about the misogynistic nature of pre-modern Qur’anic exegesis on Leila Ahmed’s claims regarding the inherent patriarchy and misogyny of texts produced in the medieval period. Ahmed’s cogent arguments regarding the exclusively male authorship of medieval texts, where the voice of women was all but absent, became a defining theme in feminist works in Islam. She argues that the patriarchal context in which men wrote exegetical and juridical works naturally influenced their interpretations and became an integral part of normative works. Once patriarchal assumptions

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<sup>3</sup> See Fatima Mernissi, *The Veil and the Male Elite* (Cambridge:Perseus Books, 1991), especially Chapters 3 and 4, Amina Wadud, *Qur’an and Woman* (New York: Oxford University Press, 1999) 95, Asma Barlas, *Believing Women: Unreading Patriarchal Interpretations of the Qur’an* (Austin: University of Texas Press) 189, Sa’diyya Shaikh, “Exegetical Violence: Nushuz in Qur’anic Gender Ideology” *Journal for Islamic Studies* 17 (1997): 49–73, Hadia Mubarak, “Breaking the Interpretive Monopoly: Re-Examination of Verse 4:34” *Hawwa* 2, no. 3 (2005): 261-298.

<sup>4</sup> Mohamed Mahmoud, “To Beat or Not to Beat: On the Exegetical Dilemmas Over Qur’ān, 4:34” in *Journal of the American Oriental Society*, 126.4 (2006): 537-550. See especially p. 549-550.

were absorbed into normative texts, these assumptions became “prescriptive utterances”, and in turn, justified existing patriarchal institutions.<sup>5</sup>

Wadud, and later Barlas, argue that the inability of pre-modern exegetes to recognize what they perceived as the overall egalitarian message of the Qur’ān was due to the “atomistic”<sup>6</sup> or “linear-atomistic”<sup>7</sup> methodology adopted by exegetes. They suggest that because Qur’ān interpreters tried to discover the meanings of the Qur’ān through verse-by-verse, line-by-line analysis, they missed the forest for the trees and lost sight of the general ethos of the Qur’ān.<sup>8</sup> The general ethos of the Qur’ān, according to these scholars, advocates for equal partnership between the genders.<sup>9</sup> These scholars rely on Fazlur Rahman’s conception of the relationship of the Qur’ān to itself to point out that

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<sup>5</sup> Leila Ahmed, *Women and Gender in Islam* (New Haven: Yale University Press, 1992) 82-83.

<sup>6</sup> “Atomistic” is Wadud’s term. Wadud, *Qur’an and Woman*, p. 2.

<sup>7</sup> “Linear-atomistic” is Muntasir Mir’s term. Muntasir Mir, *Coherence in the Quran* (Plainfield: American Trust Publication, 1986) 1. Also see Barlas, *Believing Women in Islam*, p. 8.

<sup>8</sup> Mernissi also makes this point in *The Veil and the Male Elite*, p. 125-129. The opposite argument could also be made – that is, that the misogyny of many classical interpretations is based on the use of broad synthetic concepts such as *qiwāma* and *fitna*, which are used to structurally inform legal and interpretive reasoning, rather than on the supposedly purely “atomistic” methodology of early exegetes.

<sup>9</sup> Wadud, Barlas, Sheikh and Mubarak all argue that interpreting Q. 4:34 as sanctioning violence against wives breaches the core message of the Qur’ān. Wadud, *Qur’an and Woman*, p.95, Barlas, *Believing Women*, p. 189, Shaikh, “Exegetical Violence”, pp. 49–73, Mubarak, “Breaking the Interpretive Monopoly”, pp. 261-298.



by narrowly focusing on individual verses, exegesis “failed to yield a creative synthesis of Qur’ānic principles”.<sup>10</sup> As a result, these scholars advocate returning to the text of the Qur’ān in order to recover its justice driven ethos.

Writing on the genre of Qur’anic exegesis, Karen Bauer undertakes an extensive study of exegesis on issues related to gender hierarchy. Her work consists of a wide-ranging diachronic study of pre-modern exegetical justifications for the hierarchy of men over women, as found in the discussion surrounding three verses, Q. 2: 228, 4:1 and 4:34. Treating the genre of Qur’anic exegesis on its own terms, Bauer argues that exegetes understood gender hierarchy in a patriarchal context without being misogynistic. Like Ahmed, Bauer argues that exegetes’ “personal opinion and mores of their societies” were most influential in determining their interpretations. Unlike previous scholars though, she distinguishes misogyny from patriarchy, writing,

Because the mores of the exegetes contradict the mores of many current-day readers, especially with regards to gender issues, some scholars have dismissed them as misogynist. Indeed, it seems that the prevailing view of women in the pre-modern period was that they were not as rational, strong, or capable as men; thus men need to protect them. But the distinction between this view of women, and hatred of them, is an important one. Many exegetes

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<sup>10</sup> Fazlur Rahman, *Major Themes in the Quran* (Minneapolis: Bibliotheca Islamica, 1980) xi. Also see Barlas, *Believing Women in Islam*, p. 8.

in this study, while avowing that women are not as capable as men, also seek to protect women's interests. I refer to this attitude as patriarchal, rather than misogynist.<sup>11</sup>

The attitude of protectiveness over women, who were assumed to be less capable and thus in need of male guardianship, might also be referred to as "paternalism". Nonetheless, Bauer's work bears out Ahmed's initial claims about the inherent patriarchy of pre-modern exegetical texts. The discussion surrounding the discipline of Islamic jurisprudence has been more varied. Along the lines of discourse set out by Ahmed, scholars such as Barbara Stowasser have argued that the medieval conception of gender inevitably permeated legal texts as well as exegetical ones. These texts, in turn, provided theological and legal justification for gender hierarchy.<sup>12</sup>

Mohammad Fadel concedes that the tradition of Qur'anic exegesis may have been patriarchal in nature and did not allow for an egalitarian discourse of gender. However, he takes issue with the attempt of scholars to paint the entire Islamic tradition in this light, especially the discipline of Islamic jurisprudence.

While Fadel does not address Q. 4:34 directly, based on his study of post 11th

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<sup>11</sup> Karen Bauer, *Room For Interpretation: Qur'anic Exegesis and Gender* (Dissertation: Princeton University, 2008) 6.

<sup>12</sup> Barbara Stowasser, *Women in the Qur'an: Traditions, and Interpretation* (New York: Oxford University Press, 1994) 7.

century jurists, he asserts that the tradition of Islamic jurisprudence was not misogynistic and homogeneous as Qur'anic exegesis might have been. According to Fadel, like Abou El Fadl after him, the field of pre-modern Islamic jurisprudence was complex, pluralistic and contained the potential for egalitarian interpretations.<sup>13</sup> In fact, he proposes that it is due to the atomistic nature of Qur'anic exegesis - which, in his mind, lends itself more easily to patriarchal assumptions - that scholars are more likely to find plurality in the juristic rather than the exegetical community. The juristic community's use of systematic reasoning rendered their thinking less misogynistic than that of the exegetes, since anti-woman sentiments that could be wielded on an ad-hoc basis in *tafsīr* could not be sustained on a systematic basis in legal reasoning. Thus, the discipline of Islamic jurisprudence took on broader interpretive perspectives which were often more gender-neutral in nature.<sup>14</sup>

In her study of marriage laws in foundational normative legal texts, Kecia Ali argues that although there was diversity of doctrine within legal texts, they were nonetheless consistently hierarchical in their conceptions of marriage. She

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<sup>13</sup> Khaled Abou El Fadl, *Speaking in God's Name Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001) Chapter 4, and *Confession of the Books: The Search for Beauty in Islam* (New York: University Press of America, 2001) See especially Preface.

<sup>14</sup> Mohammad Fadel, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought", *International Journal of Middle East Studies*, 29 (1997): 186.

contends that it is essential to consider the conceptions of marriage itself in normative legal texts, in addition to applied law, because the structure of marriage as conceived by jurists permeated applied law in myriad ways.<sup>15</sup> Ali challenges Fadel's assertions both of the juristic community being potentially more more gender-neutral and of the widespread heterogeneity in the field of jurisprudence.<sup>16</sup> With regard to Q. 4:34 itself, she finds that the various interpretations of Q. 4:34 throughout Islamic history indicate an overtly patriarchal bias. According to Ali, although it is possible to envision both both misogynistic and egalitarian interpretations, Muslim scholars must grapple directly with the androcentric nature of the Qur'anic text itself.<sup>17</sup>

In contrast to scholars such as Aziza Al-Hibri, who hold that certain elements of classical law are liberatory and can be central to a progressive reading of Islam, Ali argues that - in the context of marriage - there are inherently unequal underlying structural features of juridical discourse that render it problematic to

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<sup>15</sup> Kecia Ali, *Money, Sex, and Power: The Contractual Nature of Marriage in Islamic Jurisprudence of the Formative Period*. (Dissertation: Duke University, 200) See especially Conclusion.

<sup>16</sup> *Ibid.*, p. 453-454.

<sup>17</sup> Farid Esack also makes this point. Farid Esack, "Islam & Gender Justice: Beyond Simplistic Apologia" in *What do Men Owe Women: Men's Voices from World Religions*, ed. J. C. Raines and D. C. Maguire. (Albany: State University of New York Press, 2001) 195, and Kecia Ali, *Sexual Ethics and Islam* (Oxford: One World, 2006) 112.

re-appropriate individual elements that appear advantageous to women.<sup>18</sup> Al-Hibri offers the example of the absence of any obligation for wives to even nurse one's child in classical Islamic law as potentially progressive.<sup>19</sup> An analogy in the research here is the relatively frequent current citation of the idea that the physical discipline of a wife ought to be carried out with a *miswāk*<sup>20</sup> or a folded handkerchief. This idea makes wife-beating practically - and possibly symbolically - innocuous, but is drawn from an overall legal discourse on this topic that assumes a marital hierarchy where wives are ranked lower than husbands.

Judith Tucker's conclusions are contrary to Ahmed's and similar to Fadel's, with regard to Islamic jurisprudence. She argued that legal discourse enabled jurists to protect women by providing them with a perspective from which to critique local customs that were disadvantageous to women. In her discussion of the relationship between legal discourses and judicial practice in seventeenth and eighteenth century Ottoman Syria, she argues that in Islamic legal practice, or, applied law, gender was treated as a "social relationship", which was subject to

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<sup>18</sup> Ali, *Sexual Ethics and Islam*, p. xxiv.

<sup>19</sup> Azizah Al-Hibri, "An Introduction to Muslim Women's Rights" in *Windows of Faith* (Syracuse: Syracuse University Press, 2000) 65.

<sup>20</sup> "*miswāk*" is a toothbrush. For more on this, see Chapter 3, section 3.4.2.

change given each particular time and place. Tucker's focus is applied law as opposed to normative law, and she argues that courts and muftis between the seventeenth and eighteenth centuries in Ottoman Syria and Palestine often used the broadest applications of legal theory in order to issue rulings that took transient human needs into consideration. Since jurists were involved in making concrete decision for real lives, their decisions were influenced by the politics, cultures and social mores of any given society. She argued that branches of legal studies, such as "*shuruh*" texts - commentaries on legal doctrine - allowed for multiple legal opinions, even within the same school of thought.<sup>21</sup> Rather, muftis were able to use the legal mechanisms already available in the law to offer women a higher degree of protection than that offered by social customs. This does not mean that the courts and muftis reversed the male bias in Islamic law, but Tucker claims that they often fought against oppressive social customs in order to protect women. Citing Baber Johansen, Tucker argues that "fatwa collections" are the "locus for doctrinal change".<sup>22</sup> Tucker's arguments form a counterpoint to Ahmed's assumption that

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<sup>21</sup> Judith Tucker, *In the House of the Law* (Berkeley: University of California Press, 1998) 13.

<sup>22</sup> Tucker, *In the House of the Law*, p. 10-11 and 13. Zarinebaf-Shahr on her work on court cases related to marriage and divorce in 17th-century Ottoman Turkey, and Merriwether in her work on 18th-century Ottoman Aleppo child custody court cases, make arguments similar to Tucker's regarding the widespread flexibility found in the legal application as opposed to the legal theory of Islamic law when dealing with legal redress for mistreated wives. See Zrinebaf-Shahr and Merriwether in *Women, the Family and Divorce Laws in Islamic History* (Syracuse: Syracuse University Press, 1996).

legal discourses reflect social mores. According to Tucker, the legal discourse was somewhat autonomous from society, offering the jurists a vantage point from which to critique misogynist customs.

### **Sources and Methodology**

The methodology of this project is largely comparative. Following in the footsteps of Maneula Marin's article "Disciplining Wives: A Historical Reading of Q. 4:34", it draws on three bodies of Sunni primary sources: prophetic reports (*aḥādīth*), pre-modern exegetical works (*tafsīr*), and juridical works (*fiqh*) directly related to wife-beating.<sup>23</sup> These sources are entirely pre-modern. I consider exegetical and juridical sources from the earliest available written sources (second/eighth century) until the 18th-century. The survey ends with the 18th-century in order to mitigate - but not avoid altogether - the effects of colonialism, which around this time became a reality in many Muslim countries. Colonialism fundamentally altered the discourse of Muslim scholars, especially with respect to issues related to gender.<sup>24</sup>

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<sup>23</sup> Maneula Marin, "Disciplining Wives: A Historical Reading of Q. 4:34" *Studia Islamica*, no. 97 (2003): 5-40. I came upon this article after having begun the research for this project.

<sup>24</sup> Ahmed, *Women and Gender in Islam*, see especially Chapter 8 and 9.

The first chapter surveys prophetic reports (sing. *ḥadīth*, pl. *aḥādīth*) related to the issue of husbands hitting wives. Muḥammad’s practice was considered normative for Muslim scholars, and alongside the Qur’anic text, influenced exegetical and juridical works. Exegetes and jurists were informed by and drew upon Qur’anic verses and prophetic practice to support “desired”<sup>25</sup> interpretation and law. This was done in a selective manner by individual exegetes and jurists and illustrated the interpretive preference of these scholars. Despite pre-modern exegetes’ and jurists’ treatment of *ḥadīth* as a resource to promote their preferred interpretations, this chapter shows that the *ḥadīth* texts themselves reflected active grappling with the moral problems presented by the issue of wife-beating. *Ḥadīth* scholars actively selected, ordered and titled collections of relevant *aḥādīth* to create a distinctive moral discourse. Only one verse in the Qur’ān, Q. 4:34, explicitly addresses the physical discipline of wives. However, there are several prophetic reports that discuss Muḥammad’s personal stance on hitting wives, which are examined in the first chapter.

The second chapter considers pre-modern exegetical approaches to hitting in Q. 4:34. Exegetes used several methodological tools to unpack the meanings of Q. 4:34. Some of those tools - occasion of revelation, prophetic practice,

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<sup>25</sup> Behnam Sadheghi, *The Structure of Reasoning in Post-Formative Islamic Jurisprudence* (Dissertation: Princeton University, 2006), see especially Introduction.



worldview, philology - are analyzed in order to observe how exegetes extracted and defended their interpretations of Q. 4:34. The occasion of revelation literature is examined to elucidate the assumed purpose and focus of Q. 4:34. Prophetic practice was selectively used by exegetes to argue for or against a particular interpretation, and these were embedded throughout, in the use of other interpretive methods. Exegetes also used lexicology to argue for their preferred interpretations; sometimes this method was used to argue for interpretations that were the opposite of the plain-sense meaning of the word at hand. The various social and theological worldviews that exegetes brought to bear on their interpretations of Q. 4:34, and which emerges from a close reading of their interpretations of this verse, is expounded in the section on the divinely ordered social hierarchy envisioned by pre-modern exegetes. The overall interpretations of exegetes' were informed by their broader assumptions, including the assumption of gender hierarchy. In addition to using auxiliary disciplines explicitly acknowledged by the discipline of *tafsīr* - such as, prophetic reports and philology -, structural assumptions about social and cosmic hierarchies played an important role in Qur'anic exegesis.

The third chapter considers the legal conversations surrounding the three prescriptions of admonishment, abandonment in bed and beating in the

exegesis of Q. 4:34. The deliberation regarding what is permissible or prohibited, encouraged or disliked in the genre of Qur'anic exegesis is extensive. The conversation of exegetes here mostly revolved around the ethics of disciplining one's wife and not rigorously defining the legal boundaries of such discipline. These discussions were legal insofar as they addressed the do's and don'ts of disciplinary action on the part of husbands, but they were mostly ethical since they did not carry legal liability if they were not followed. The worldview of exegetes, lexicology and prophetic reports continued to play a significant role in the way that exegetes framed the discussion of husbands' right to physically discipline wives, based on a divinely sanctioned gender hierarchy.

The fourth chapter explores the legal approaches adopted in normative legal texts such as regarding the right of husbands to physically discipline their wives. Q. 4:34 played a central role in these juridical discussions. Here, the conversation of jurists revolved around the legal boundaries and liability of husbands in the case of excessive violence, rather than the ethics surrounding beating. Like exegetes, jurists also drew on a shared worldview which encompassed a divinely ordered social hierarchy, where marriage represented one of a set of asymmetrical relationships. They also used prophetic reports

selectively in order to discourage husbands from beating their wives and to establish their right to discipline them under certain circumstances.

### **A Few Conclusions**

The research for this project shows that although pre-modern *ḥadīth* scholars, jurists and exegetes shared a common world view and had similar resources at their disposal, their conversations surrounding the right of husbands to physically discipline their wives were distinct. Both exegetes and jurists used the methodological tools at their disposal to argue divergent points. As other scholars have argued already, this research shows that the relationship between the Qur'ān and normative practice of Muḥammad and the Islamic sciences of Qur'anic exegesis and Islamic law were not linear and causal.<sup>26</sup> Rather, the relationship was more complex and symbiotic. The Qur'anic text and prophetic practice certainly informed the work of exegetes and jurists, but so did other factors such as social mores, history and theology. Exegetes and jurists justified their preferred interpretation of the right of husbands to hit wives through the selective use of Qur'anic verses and prophetic reports. While these sources did not determine the preferred interpretation of scholars, they did limit their interpretive choices. An obvious example of this is that no exegete or jurist

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<sup>26</sup> Behnam Sadeghi, *The Structure of Reasoning in Post-Formative Islamic Jurisprudence*, p. 22 and Bauer, *Room for Interpretation*, p. 3.

argued that it was impermissible for husbands to hit wives, but they did argue for various degrees of qualification of husbands' prerogative to hit by using prophetic reports.

The discipline of *ḥadīth* emerged as autonomous in this study; it offered a distinctive approach to issue of wife-beating. Unlike the fields of Qur'anic exegesis and Islamic jurisprudence, Q. 4:34 was not central to the discussion of the right of husband to hit their wives in *ḥadīth* literature. The often multifarious versions of relevant *aḥādīth* reflected an active and diverse deliberation over the issue of wife-beating and that the compilers of *ḥadīth* collections sometimes constructed a very nuanced ethical discourse about domestic violence in their selection, organization and titling of *aḥādīth*. Since the discussion of hitting wives in *ḥadīth* literature was independent of Q. 4:34, the ethical debate surrounding the right of husbands to hit their wives at all was most prominent in the *ḥadīth* literature. This also meant that the discussion of hitting wives was not limited to disciplinary hitting as a result of wifely *nushūz*, but included considerations of abusive hitting. It can be argued that precisely because abusive hitting was included in the subject matter of hitting wives that Muḥammad was able to declare that good men did not hit their wives or that only the worst of men hit their wives.

A shared worldview between exegetes and jurists inevitably influenced their exegesis and jurisprudence to a great degree. As scholars such as Fadel, Ali, Sadeghi and Bauer have argued, existing social structures informed but did not determine the worldview of exegetes and jurists. The center of the worldview of pre-modern exegetes and jurists, as gleaned from their discussions of wife-beating, was not men but God. Gender hierarchy was divinely ordained and, therefore, ultimately theological in nature. God was intimately involved not only in the personal life of each individual but was an essential part of the marital relationship. Being at the center of that relationship meant that the purpose of both spouses and the *raison d'être* of the marriage itself was to please God. Husbands did this by justly overseeing the moral rectitude of their wives, and wives pleased God by pleasing their husbands. The relationship between spouses and God were intertwined. However, it is important to note that the fact that God was central to this conception of society did not prevent it from being favorable to men. In fact, feminist scholars of religion would argue that a privileged relationship with God is exactly the religious and ideological linchpin of male privilege on the social plane. Rather than balancing or ameliorating male privilege by placing God at the top of the hierarchy and at the focus of attention, such a formally God-centered approach makes male privilege transcendent.

Exegetical discussions surrounding wife-beating focused on the ethics of hitting, rather than the legal parameters of it. In Qur'anic exegesis, the question of whether husbands could hit their wives at all was not prominent, given that Q. 4:34 was central to this discussion. Since Q. 4:34 unambiguously permitted husbands to hit wives, exegetes did not – for the most part – grapple with this issue. Additionally, all discussion of hitting was restricted to disciplinary hitting for wifely *nushūz*. In most cases the ethical discussion surrounding hitting was limited to the procedure of hitting, where exegetes appealed to the conscience of husbands to be just and measured in the use of their divinely granted disciplinary powers. Still, within the discipline of Qur'anic exegesis, some exegetes managed to discourage husbands from hitting at all - this discussion signified the influence of *ḥadīth* and Islamic jurisprudence (Shāfi'ī) on exegesis in the work of Fakhr al-Dīn al-Razī, or the influence of historical precedent in the work of Abū Bakr b. al-'Arabī and his discussion of the position of 'Aṭā of disciplining wives - even when they were guilty of *nushūz* - as reprehensible (*makrūh*).

Husbands were not granted this power without accountability; since the power was divinely granted, they were accountable to the Divine for their use of it.

Although scholars have argued that the atomistic nature of exegesis prevented exegetes from grasping the general ethos of the Qur'ān, the research here proves otherwise. Exegetes wielded a great deal of interpretive choice in their interpretations of Q. 4:34 and drew upon other verses of the Qur'ān and prophetic practice to bolster their points. When they did not draw on the verses or prophetic reports that modern scholars consider to be obviously connected to Q. 4:34, this was a function of their interpretive choice and not their disregard for a holistic approach to the Qur'ān or the Islamic tradition. For instance, one of the most prevalent prophetic reports regarding hitting found in *ḥadīth* literature is that 'Ā'ishah is said to have reported that Muḥammad never hit anyone, not his wives or slaves. Despite the widespread nature of this report, it was never absorbed by any exegetes (or jurists), even when they made a case for the preferrability of avoiding hitting one's wife. Yet, more obscure prophetic reports that sanctioned the hitting of one's wife were regularly cited by exegetes.

As in Qur'anic exegesis, the juridical discourse on hitting wives generally centered on the moral and ethical procedure of husbands to physically discipline their wives. The juridical discussion also considered enforceable parameters of this divinely ordained right of husbands. One of the main

distinctions between Qur'anic exegesis and Islamic jurisprudence on the topic of disciplining wives is that hitting did not always emerge as an obvious topic under the subject of wifely *nushūz*. Loss of maintenance and allotted nights were more commonly cited consequences for wifely *nushūz*. When the disciplinary right of husbands over wives did emerge as a relevant topic, Q. 4:34 was central to the discourse. The result of the use of Q. 4:34, in Islamic jurisprudence as in Qur'anic exegesis, was that it prevented discussions of whether husbands should hit their wives at all. The exception to this general rule were the Shāfi'īs who attempted to mitigate the tension between prophetic practice and Q. 4:34 by making it preferable for husbands to avoid hitting their wives - while still maintaining that disciplinary hitting was permissible. For some schools of jurisprudence (especially the Ḥanafīs), the definition of disciplinary hitting was expanded from the Qur'anic text and exegetical discussions of hitting for wifely *nushūz* to encompass discretionary punishment (*ta'zīr*) - whereby husbands could hit their wives for disciplinary purposes as a result of causes that extended beyond wifely *nushūz*. Jurists were concerned with procedural questions surrounding the physical discipline of wives and the role that a court might play if husbands exceeded their power by harming their wives in a serious manner or killing them. There was little unity among the juridical



schools regarding the extent of involvement of a judicial body in the marital relationship.

The results of this study suggest that the sources under study interacted in a complex way to promote ethical boundaries and legal injunctions concerning the practice of beating one's wife. The findings do suggest that the social background of the authors affected their interpretations, but so too did the sources at their disposal. As a result, this study finds that the ethical and legal pronouncements of exegetes and jurists favored men in a manner that could be described as patriarchal. Still, that appellation would provide a partial description of a worldview where God played a central role. Marriage was only one of the interconnected and interdependent social institutions that mediated individuals' relationship with God.

## Chapter One: Prophetic Example

### 1.1. Introduction

The Qur'ān and *aḥādīth* (sing. *ḥadīth*) are purported to form the primary foundation of Qur'anic exegetical and Islamic juridical scholarship.<sup>27</sup> In order to understand the interpretive choices made by exegetes and jurists when discussing the physical discipline of wives it is important first to consider the related Qur'anic verses and prophetic practice. As mentioned earlier, there is only one verse - Q. 4:34 - which addresses the disciplinary power of husbands over wives. Prophetic practice (*sunnah*) also formed an integral part of the interpretive framework for many Islamic sciences, including Qur'anic exegesis and Islamic jurisprudence. Jonathan Brown writes,

The normative legacy of the Prophet is known as the Sunna, and, although it stands second to the Quran in terms of reverence, it is the lens through which the holy book is interpreted and understood. In this sense, in Islamic civilization the Sunna has ruled over the Quran, shaping, specifying, and adding to the revealed book. Understanding how the message of Islam spread outward from Arabia in the seventh century and how it nurtured the various legal, theological, mystical, and cultural dimensions of

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<sup>27</sup> G. H. A. Juynboll, *Muslim Tradition: Studies in Chronology, Provenance, and Authorship of Early Ḥadīth* (Cambridge: Cambridge University Press, 1983) 58.

Islamic civilization must begin with the study of the heritage left by Muhammad.<sup>28</sup>

Brown is correct in noting that *sunnah* is commonly considered the “lens” through which the Qur’ān is understood, though the relationship between the *sunnah* and the interpretive traditions of exegesis and jurisprudence is not straightforward. As will be seen later, the relationship between prophetic *sunnah* and the two sciences of Qur’ānic exegesis and jurisprudence was more symbiotic. *Sunnah* did provide an interpretive lens to exegetes and jurists, but it was also used selectively and discerningly to serve the purposes and intentions of particular exegetes and jurists.

*Sunnah* was mostly incorporated into exegetical and juridical works through the inclusion of and allusions to specific *aḥādīth*. Brown acknowledges that while *sunnah* is “not fully synonymous with ‘*hadīth*’”, the “concerned study of *ḥadīths*...[became] the essential route for learning and implementing the Sunna of the Prophet.”<sup>29</sup> *Aḥādīth* were oral reports about Muḥammad’s behavior and actions, which were collected and written after Muḥammad’s death. As Goldziher pointed out, *aḥādīth* did not necessarily document the speech and

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<sup>28</sup> Jonathan Brown, *Hadith: Muhammad’s Legacy in the Medieval and Modern World* (Oxford: Oneworld Publications, 2009) 3. For more about the role of *sunnah* in deriving law, see Bernard G. Weiss, *The Search for God’s Law* (Utah: Utah University Press, 1992) Chapter 4.

<sup>29</sup> Brown, *Hadith*, p. 150

actions of Muḥammad, but rather reflected the beliefs and “aspirations of the Islamic”<sup>30</sup> community at the time that they were collected, during the “decades and even centuries”<sup>31</sup> after Muḥammad. Given the imprecise nature of *ḥadīth* collection along with the lapse of time between Muḥammad’s purported speech and actions and their collection in written works, *aḥādīth* were highly susceptible to errors in transmission and forgery.<sup>32</sup> Goldziher’s account of the development and nature of *ḥadīth* is disputed by conservative scholars who claim that the classical discipline of *ḥadīth* criticism did, in fact, yield a highly reliable canon of authoritative reports that represented Muḥammad’s actual words and actions. For the purposes of this study, Goldziher’s assertion that *ḥadīth* literature reflected the beliefs of the Muslim community regarding

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<sup>30</sup> Ignác Goldziher and Bernard Lewis. *Introduction to Islamic Theology and Law* (Princeton, N.J.: Princeton University Press, 1981) 40.

<sup>31</sup> Brown, *Hadīth*, p. 3

<sup>32</sup> To read more on the topic of *ḥadīth* forgery, see Goldziher, *Introduction to Islamic Theology and Law*, p. 40 and Brown, *Hadīth*, p. 69-77, and Chapter 8. Brown writes that “Goldziher lays out four main stages and motivations for the forgery of hadiths by Muslims during the first three hundred years of Islam: political agendas, legal agendas, sectarian agendas, and communal/historical agendas.” Brown, *Hadīth*, p. 206. About forgery, Brown also writes that “Pious figures sometimes replied that the Prophet had forbidden the Muslims to lie about him, whereas they were lying for him. In the case of those early jurists who forged legal hadiths to support their school of law, it seems that they saw no contradiction between their actions and their commitment to preserving the Prophet’s teachings. After all, as one famous hadith put it, ‘The scholars are the inheritors of the prophets (*al-‘ulamā’ warathat al-anbiyā’*).’ It was the scholars who interpreted the message of Islam as it faced new challenges and circumstances. Phrasing their conclusions about proper acts or beliefs in the formula of ‘the Prophet said ...’ was simply neatly packaging their authority as Muhammad’s representatives. As one early jurist explained, ‘When we arrived at an opinion through reasoning we made it into a hadith.’ Hadith critics, of course, found such excuses reprehensible.” Brown, *Hadīth*, p. 74.

Muḥammad's behavior - at the time of their collection - will be upheld. This is not to argue that these collections could not have reflected Muḥammad's verified behavior, but that at the very least it can be safely assumed that they reflected the early Muslim community's understanding of prophetic behavior.

Each *ḥadīth* had two main components that verified its authenticity and veracity, namely the chain of transmission (*isnād*) and the text (*matn*). The chain of transmission "traced the *matn*, or text, of a *ḥadīth* back to the Prophet".<sup>33</sup> While much of *ḥadīth* studies in western academia has focused on *isnād* criticism, few scholars have engaged in *matn* criticism. This study shows that generally exegetes and jurists drew upon the texts (*matn*) of *aḥādīth* without regard to their authenticity in terms of their chains of transmission. Exegetes and jurists were willing to rely on *aḥādīth* of dubious authenticity, as long as the message within the text was sound, or served their purposes. This was true even after the crystallization of standards for *ḥadīth* criticism. Although certain standards of *ḥadīth* criticism were sometimes mentioned by exegetes and jurists, they did not come to determine the inclusion or exclusion of specific prophetic reports in exegetical and juridical discussions. Brown argues that as long as a *ḥadīth*

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<sup>33</sup> Brown, *Hadith*, p. 4.

was known not to be forged, scholars considered it admissible as evidence for a particular position, as long as this position was not a legal one. He writes,

Scholars of the Late Sunni Tradition made large numbers of hadiths admissible in religious discourse by exploiting the tremendous range of questionable hadiths found in the late *musnad* collections of the tenth to twelfth centuries as well as the principle that weak hadiths were acceptable as proof on non-legal issues. Basing their argument on the above-mentioned stance of early masters like Ibn Hanbal, leading late Sunni scholars like al-Nawawī and al-Suyūṭī all agreed that as long as a hadith was not forged it could be used in any discussion not concerning the prohibition and permissibility of an act. In order to raise a hadith to the level of admissibility in such cases, all a scholar had to do was prove that it was not forged – proving that it was merely ‘weak’ sufficed.<sup>34</sup>

In the case of Q. 4:34 permissibility/obligation/right<sup>35</sup> of husbands to hit wives was based on the text of Q. 4:34, where this privilege is discussed in the imperative form. However, pre-modern exegetes and jurists drew on *aḥādīth* to make their cases regarding both the permissibility and the procedure of the physical discipline of wives.

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<sup>34</sup> Ibid., p. 108.

<sup>35</sup> As will be seen in the next two sections, exegetes and jurists described the disciplinary power of husbands over their wives in these multiple and interconnected ways - disciplinary power was divine permission, command, obligation and a right of husbands over their wives.

Given the centrality of the text (*matn*) for exegetes and jurists, this study does not attempt to trace the lineage of *ḥadīth* texts but rather provides an expository survey of extant *aḥadīth* related broadly to the issue of husbands hitting wives. The purpose of summarizing and categorizing the available corpus of *aḥādīth* related to hitting wives is to provide the background of prophetic practice which informed exegetical and juridical opinions. As mentioned above, selective use of prophetic practice also illustrated the interpretive choices of exegetes and jurists. Though the contemporary Sunnī Muslim community considers six to nine *ḥadīth* collections to be canonical<sup>36</sup>, this study is not limited to those collections. This is because pre-modern exegetes and jurists did not limit themselves to the canonical collections even after their authority was established. Brown writes that “less stellar isnāds were also used in law, and weak hadiths were used very commonly in preaching, Quranic exegesis, and books of zuhd and good manners.”<sup>37</sup>

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<sup>36</sup> There is some debate surrounding precisely which six to nine books form the canon. Brown writes that “The flexible boundaries of the hadith canon make sense when we consider one of its two primary functions. Even as early as 800 CE, al-Shāfi‘ī had said that it was impossible for one person to know all the hadiths in circulation. If the Prophet’s Sunna was essentially boundless, the Muslim community needed a tangible and manageable selection of hadith books to represent its core. Whether the canon was five or six books, or exactly which books these were, did not affect this function.” Brown, *Hadith*, p. 39-40.

<sup>37</sup> *Ibid.*, p. 38.

There is some debate regarding the relationship between *sunnah* as a mediating science and other Islamic disciplines rooted in the Qur'ānic text. The presumption in some scholarly literature has been that *aḥādīth ipso facto* dictated exegetical and juridical positions.<sup>38</sup> Recently, Bauer has argued against this position, arguing that *ḥadīth* selection illustrated interpretive choice on the part of exegetes.<sup>39</sup> This dissertation suggests that the relationship between the Islamic sciences of exegesis and jurisprudence and *ḥadīth* studies was complex and symbiotic in nature. It supports Bauer's argument that not only are the boundaries of Qur'ānic exegesis porous<sup>40</sup>, but so are the boundaries of *ḥadīth* studies and jurisprudence.<sup>41</sup> This is especially evident in the person of *ḥadīth* scholars and legal scholars who wrote works of Qur'ānic exegesis.<sup>42</sup> However, the exegetical and juridical use of *aḥādīth* cannot be examined without first considering the treatment of wife-beating in *ḥadīth* literature.

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<sup>38</sup> See Karen Bauer on Brannon Wheeler. Karen Bauer, *Room For Interpretation*, p. 3 and Brannon Wheeler, *Prophets in the Qur'ān: an introduction to the Qur'ān and Muslim Exegesis* (London: Continuum, 2002) See especially Introduction.

<sup>39</sup> Bauer, *Room For Interpretation*, p. 3.

<sup>40</sup> *Ibid.*, p. 14.

<sup>41</sup> Brown mentions that the sub-study in Qur'ānic exegesis known as "*Aḥkām I-Qur'ān*" gave rise to the sub-study in *ḥadīth* known as "*Aḥkām I-ḥadīth*". Brown, *Hadīth*, p. 61.

<sup>42</sup> For example, Abū Bakr al-Jaṣṣāṣ, Abū Bakr Ibn 'Arabī, al-Qurṭubī, al-Baghawī, al-Suyūṭī etc.



The purpose of this chapter is to consider how the discipline of *ḥadīth* treated the issue of wife-beating in order to bring out the unique qualities of the *ḥadīth* material, which was not explicitly exegetical or strictly legal. This study undertakes a comprehensive survey of *aḥādīth* that used any permutation of the word *d-r-b* (to hit, to strike). All *aḥādīth* in which either the grammatical construction or the textual context of *d-r-b* connoted something other than beating were eliminated.<sup>43</sup> Also excluded, for the purposes of this study, are *aḥādīth* exclusively related to hitting servants or slaves. These *aḥādīth* are retained in the survey only when they self-consciously offered direct analogies to hitting wives. In the same spirit, *aḥādīth* related to men hitting their daughters or parents hitting their children are not addressed.<sup>44</sup> Exploring prophetic practice in this way will shed light on which *aḥādīth* were emphasized

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<sup>43</sup> *D-r-b* has many different meanings in the *aḥādīth* literature. Some of the meanings for *d-r-b* used in the *aḥādīth* literature were: to walk, to run, to rape, to whip/flog, to slap, to present an example, to behead, to play the *daff*, to knock on a door, to wear a *hijāb*, to pitch a tent, to apply a poll tax. The verb *d-r-b* does not have most of these meanings without a specific direct object, preposition, or other verbal indicator. In this way it is very much like the English verb “to strike,” which can be used in the phrases “strike a pose,” “strike a bargain,” “strike a similitude,” etc. – but never has these meanings in isolation. This is relevant to the arguments that are made by contemporary scholars such as Bakhtiar who argue that *d-r-b* by itself could mean “to go away”. See, Bakhtiar, *The Sublime Quran*, esp. Introduction.

<sup>44</sup> Most of the *aḥādīth* I found on this topic related to Abu Bakr, the first Caliph, hitting his daughter and Muḥammad’s wife ‘A’ishah, wherein the Prophet verbally disapproved of his behavior, though he forgave him with a warning.

over others and which were ignored by exegetes and jurists.<sup>45</sup> This chapter will bring to light the treatment of wife-beating in the *ḥadīth* literature in order to provide to backdrop for more fruitful analysis of *ḥadīth* usage by pre-modern exegetes and jurists when we turn to their works in the next three chapters. A broad survey of the *ḥadīth* tradition shows that it provided a frame of reference for Islamic norms independently of whether individual *aḥādīth* were

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<sup>45</sup> The following *ḥadīth* sources are cited in this chapter: Abū Muḥammad ‘Abd ibn Ḥumayd, *al-Muntakhab min musnad ‘Abd ibn Ḥumayd* (Beirut: ‘Ālam al-Kutub, 1988), ‘Abd Allāh ibn Muḥammad Abū al-Shaykh, *Akhlāq al-Nabī wa-ādābuhu* (Riyadh: Dār al-Muslim, 1998), Abū Dā‘ūd Sulaymān ibn al-Ash‘ath al-Sijistānī, *Sunan Abī Dā‘ūd*, (Beirut: Dār al-Kutub al-‘Ilmīyah, 1996), Aḥmad ibn al-Ḥusayn al-Bayhaqī, *al-Ādāb* (Beirut: Dār al-Kutub al-‘Ilmīyah, 2004), Aḥmad ibn al-Ḥusayn al-Bayhaqī, *al-Sunan al-kubrā* (Beirut: Dar al-Kutub al-‘Ilmīyah, 1994), Aḥmad ibn al-Ḥusayn al-Bayhaqī, *Dalā‘il al-nubuwwah wa-ma‘rifat aḥwāl* (Beirut: Dār al-Kutub al-‘Ilmīyah, 1985), ‘Abd Allāh ibn ‘Abd al-Raḥmān al-Dārimī, *Musnad al-Dārimī* (Riyadh: Dār al-Mughnī, 2000), ‘Abd al-Raḥīm ibn al-Ḥusayn al-‘Irāqī, *Kitāb taqrīb al-asānīd wa-tartīb al-masānīd* (Beirut: Dār al-Kutub al-‘Ilmīyah, 1984), Muḥammad ibn ‘Abd Allāh Ḥākim al-Nīsābūrī, *al-Mustadrak ‘alā al-ṣaḥīḥayn* (Mecca: Maktabat Nizār Muṣṭafā al-Bāz, 2000), Aḥmad ibn Shu‘ayb al-Nasā‘ī, *Kitāb al-sunan al-kubrā* (Beirut, Lebanon: Dār al-Kutub al-‘Ilmīyah, 1991), Yaḥyā ibn Sharaf al-Nawawī, *Riyāḍ al-ṣāliḥīn* (Beirut: Mu‘assasat al-Risālah 1982), Muḥammad ibn Hārūn al-Rūyānī, *Musnad al-Ṣaḥābah, al-ma‘rūf bi-Musnad al-Rūyānī* (Beirut: Dār al-Kutub al-‘Ilmīyah, 1997), ‘Abd al-Ra‘ūf ibn Tāj al-‘Ārifīn al-Suyūṭī, *Jāmi‘ al-aḥādīth* (Beirut: Dār al-Fikr, 1994), Sulaymān ibn Aḥmad al-Ṭabarānī, *Mu‘jam al-Awsaṭ* (Beirut: Dār al-Kutub al-‘Ilmīyah, 1998), Sulaymān ibn Aḥmad al-Ṭabarānī, *Al-Mu‘jam al-ṣaḥīr li l-Ṭabarānī* (Beirut: Dār al-Kutub al-‘Ilmīyah, 1983), Muḥammad ibn ‘Īsā al-Tirmidhī, *Al-Shamā‘il al-Muḥammadīyah: wa-al-khaṣā‘il al-muṣṭafawwīyah* (Beirut, Lebanon: Dār al-Kutub al-‘Ilmīyah, 1996), ‘Abd Allāh ibn Muḥammad Ibn Abī Shaybah, *al-Kitāb al-muṣannaf fī al-aḥādīth wa-al-āthār* (Beirut: Dār al-Kutub al-‘Ilmīyah, 1995), Hannad Ibn al-Sari, *Kitāb al-Zuhd* (Kuwait: Dār al-Khulafā’ lii-Kitāb al-Islāmī, 1985), ‘Abd al-Malik ibn Muḥammad Ibn Bishrān, *al-Amālī* (Riyadh: Dār al-Waṭan, 1997), ‘Abd al-Raḥmān ibn ‘Alī Ibn al-Dayba’, *Taysīr al-wuṣūl ilā jāmi‘ al-uṣūl min ḥadīth al-Rasūl* (Beirut, Lebanon: Dār al-Fikr, 1997), Aḥmad ibn Muḥammad Ibn Ḥanbal, *Musnad al-Imām Aḥmad ibn Ḥanbal* (Beirut: ‘Ālam al-Kutub, 1998), Muḥammad Ibn Ḥibbān, *Al-Iḥsān bi-tartīb Ṣaḥīḥ Ibn Ḥibbān* (Beirut, Lebanon: Dār al-Kutub al-‘Ilmīyah, 1987), Muḥammad ibn Yazīd Ibn Mājah, *Sunan Ibn Mājah* (Beirut: Dār al-Jīl, 1998), Ibn Rāḥwayh, *Musnad Ishāq ibn Rāḥwayh*, (Beirut: Dār al-Kitāb al-‘Arabī, 2002.) Abū Ya‘lā Aḥmad ibn ‘Alī al-Mawṣilī, *Musnad Abī Ya‘lā al-Mawṣilī* (Beirut: Manshūrāt Muḥammad ‘Alī Bayḍūn, 1998), Muslim ibn al-Ḥajjāj al-Qushayrī, *Ṣaḥīḥ Muslim* (Beirut: Dār Ibn Ḥazm, 1995), Nūr al-Dīn ‘Alī ibn Abī Bakr al-Haythamī, *Ghāyat al-maqṣad fī zawā‘id al-Musnad* (Beirut: Dār al-Kutub al-‘Ilmīyah, 2001).

appropriated by exegetes and jurists or not. While many *aḥādīth* reflected a discomfort on the part of Muḥammad with the prescription or permissibility of wife-beating, most *aḥādīth* at the same time assumed the right of men to physically discipline their wives. The *aḥādīth* further provide directives regarding the appropriate procedure and etiquette of physically disciplining one's wife.

In this survey, prophetic practice related to the physical discipline of wives will be considered through a binary vision of *sunnah*; it will consider *aḥādīth* that attribute to Muḥammad a) specific behaviors and practices with regard to physically disciplining his own wives and his verdicts in the capacity of a judge on matters related to wife-beating (*sunnah fi'līya*) and b) spoken opinion on the topic of hitting wives (*sunnah qawlīya*).<sup>46</sup>

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<sup>46</sup> Muḥammad's tacit approval (*sunnah taqrīrīya*) will not be examined in this section, since that would require an argument from silence that is beyond the parameters of this project. Also, another prophetic report regarding Muḥammad's *sunna fi'lī* that is not considered in this section is a report used by scholars such as Laleh Bakhtiar, who translate the imperative of "*wa-ḍribūnna*" to mean "to go away" as opposed "to hit". This report is not overtly linked to Q. 4:34 and does not discuss disciplinary action against wives explicitly. Bakhtiar bases her translation partly on a report where Muḥammad was said to have left his wives for a month when he was displeased with them. Bakhtiar argues that since Muḥammad preferred to leave his wives instead of hitting them shows that Q. 4:34 did not instruct men to hit their wives. See Bakhtiar, *Sublime Qur'ān*, Introduction, esp. p. xxvi. Interestingly, this report emerged in Abū Ḥayyān's commentary of Q. 4:34, but he understood it to apply to the second prescription of Q. 4:34 - abandonment in bed -, rather than the third prescription. Muḥammad himself did not explain his behavior as following into one of the three categories in Q. 4:34 of admonishment, abandonment or hitting. For more on this, Chapter 3, 3.5.2.3.

## 1.2. Muḥammad's Actions (*sunnah fi'līya*)

### 1.2.1. Did Muḥammad Hit His Wives?

There are two prophetic reports in which Muḥammad's specific actions with regard to hitting his wives are discussed. Highlighting prophetic unease with hitting wives, it was reported from 'Ā'ishah bt. Abī Bakr (d. 58/678)- Muḥammad's youngest wife - that Muḥammad never hit anyone in his life, neither a woman nor a servant. The text of this *ḥadīth* varied and often included other behaviors of Muḥammad, such as his not seeking vengeance against anyone except for God's sake and always choosing the easier of two matters – unless the easier matter was sinful, in which case he steered clear of it. However, the portion of this *ḥadīth* that is relevant to this study was generally reported in the exact same wording, with only minor variations. The most common text, as recorded in the *Ṣaḥīḥ* of Muslim (d. 261/875), reads:

The Prophet of God, may peace and blessings be upon him, never hit anyone with his hand, not a

woman nor a servant, except when struggling in the path of God.<sup>47</sup>

In this *ḥadīth*, ‘Ā’ishah asserted that Muḥammad exercised a general policy of non-violence, except when he was engaged in religiously motivated warfare. The fact that she emphasized that he never hit anyone with his hands, “not a woman, nor a slave” is arresting. The parallel between women and slaves suggests that these two groups would be the obvious recipients of violence. Women and slaves represented lower strata of a social hierarchy wherein it was commonplace for those privileged in the hierarchy to behave violently towards those lower in ranking.<sup>48</sup> That Muḥammad refrained from this otherwise acceptable behavior, as a matter of general practice, was remarkable and therefore emphasized.

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<sup>47</sup> This *ḥadīth* is reported in most collections, including: Muslim, *Ṣaḥīḥ Muslim*, v. 4, p. 1447, Ibn Rāḥwayh, *Musnad b. Rāḥwayh*, v. 2, pp. 282-283, Abū al-Shaykh, *Akhḫāq al-Nabī*, v. 1, p. 178, Ibn Bishrān, *Amālī*, v. 1, p. 315 and v. 2, p. 477, al-Bayhaqī, *al-Ādāb*, p.63, al-Sarī, *Kitāb al-Zuhd*, v. 3, p. 365, Ibn Abī Shaybah, *al-Kitāb al-muṣannaḥ*, v. 5, p. 224, al-Bayhaqī, *al-Sunan al-kubrā*, v. 10, p. 324, al-Nasā’ī, *Kitāb al-Sunan l-kubrā*, v. 5, p. 370, al-Tirmidhī, *al-Shamāil*, v. 1, p. 390, al-Ḥākim al-Nīsābūrī, *al-Mustadrak*, v. 10, p. 2, al-Ṭabarānī, *Mu’jam al-awsaṭ*, v. 12, p. 164, al-Bayhaqī, *Dalā’il al-nubuwwah*, v. 1, p. 311-2, al-Bayhaqī, *Shu’ab al-imān*, v. 2, p. 153, al-Mawṣilī, *Musnad al-Mawṣilī*, v. 4, pp. 15-16, Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān*, v. 2, p. 470, ‘Abd ibn Ḥumayd, *al-Muntakhab*, v. 4, p. 107, al-‘Irāqī, *Taqrib l-asānīd*, v. 4, p. 107, Ibn al-Dayba, *Taysīr*, v. 1, p. 150, Abū Dā’ūd, *Sunan Abī Dāwūd*, v. 3, p.255, Ibn Mājah, *Sunan Ibn Mājah* v. 3, pp. 400-1, al-Dārimī, *Musnad al-Dārimī*, v. 3, p.1424, al-Haythamī, *Ghāyat al-maqṣad*, v. 6, p. 258. This *ḥadīth* was also recorded in the *Ṭabaqāt of Ibn Sa’d*. See, Marin, “Disciplining Wives”, p. 17.

<sup>48</sup> Yossef Rapoport explains that slavery was not stigmatized. He writes, “Slavery, rather than being a contemptible institution, was the exemplary patriarchal model, with the bond between a master and his slave the organizing principle of the military elite...” in Yossef Rapoport, *Marriage, Money, and divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005) 52.

Without challenging a hierarchical view of society, this report contained a protective message for weaker members of society by offering a non-violent model to those in power; that is, to husbands and masters who had authority over wives and slaves. This *ḥadīth* is significant because it displayed an apparent disconnect between the divine injunction of Q. 4:34 and prophetic practice. If the prophetic practice was “exemplary” rather than “exceptional”<sup>49</sup>, then the prophetic practice and Q. 4:34 offered two different models of behavior for believing men. As will be seen, pre-modern exegetes and jurists sometimes attempted to reconcile these disparate models of behavior even though they did not explicitly draw on or reference this particular *ḥadīth*.

The above mentioned *ḥadīth* stands in counter-distinction to another *ḥadīth*, which although considered weak, was nonetheless recorded by Muslim.

‘Ā’ishah reported that she noticed Muḥammad sneaking away in the middle of night, so she secretly followed him. When Muḥammad learned that she had spied on him, he struck (*lahada*) her in the chest such that it caused her pain

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<sup>49</sup> Kecia Ali, ““A Beautiful Example”: The Prophet Muḥammad as a Model for Muslim Husbands” in *Islamic Studies*, 43:2 (Summer 2004) 276.

(*awja'at*).<sup>50</sup> This account stands in contrast to the previous one wherein Muḥammad was said to have never hit anyone. Here, however, he hit his wife hard enough to cause pain. Together, these *aḥādīth* display a complicated relationship between the prophetic example and the divine command to strike disobedient wives.<sup>51</sup> The versatility of *ḥadīth* literature is especially visible here, where mutually contradictory reports often co-existed in the corpus of widely accepted *ḥadīth* texts.<sup>52</sup>

### 1.2.2. Muḥammad's Legal Verdicts for Abused Wives

There were two accounts concerning women who were hit by their husbands and sought justice from Muḥammad in his role as an adjudicator. One account was recorded in *ḥadīth* collections but was ignored by both exegetes and jurists, while the other was conspicuously absent from *ḥadīth* works yet was regularly cited by exegetes though not jurists. Both reports convey Muḥammad's disapproval of husbands hitting wives. In the first report, which is contained in *ḥadīth* collections, Muḥammad expressed his dislike for domestic

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<sup>50</sup> Laury Silvers writes "The text reports "*fa lahadanī fī sadrī lahdatan awja'atnī*" indicating a slap or a forceful push with an open hand" in *Ṣaḥīḥ Muslim, Kitāb al-Janā'iz*. Laury Silvers, "In the Book We have Left out Nothing": The Ethical Problem of the Existence of Verse 4:34 in the Qur'an" in *Journal of Comparative Islamic Studies*, v. 2.2., (2006) p. 413, fn. 14.

<sup>51</sup> I translate *nushūz* as disobedience, since this is how it was understood by pre-modern exegetes and jurists. This will be seen in the next two chapters.

<sup>52</sup> Neither of these *aḥādīth* were cited in the exegetical and juridical works considered in the next chapters.

abuse by considering it a legitimate cause for divorce. It was reported that Thābit b. Qays<sup>53</sup> beat his wife, Jamīlah bt. ‘Abd Allāh such that he broke her hand. This prompted Jamīlah’s brother to complain to Muḥammad against Thābit. Muḥammad responded by initiating a divorce on Jamīlah’s behalf. It was reported that Muḥammad sent for Thābit, and said to him, “Take what you owe her and release her”.<sup>54</sup> Thābit agreed to this, so Muḥammad ordered Jamīlah to wait for one menstrual cycle and then sent her to join her family.<sup>55</sup>

This *ḥadīth* was generally recorded in the Book of Divorce as opposed to the Book of Marriage<sup>56</sup>, presumably because of the outcome - the dissolution of the marriage - disqualified it from being related in the Book of Marriage. Since the

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<sup>53</sup> Generally I do not provide death dates for Companions of Muhammad, since they are mostly speculative and because their roles in these reports are limited to uncovering Muḥammad’s stances on particular issues.

<sup>54</sup> “*khudh alladhī lahā ‘alaika wa khallī sabīlahā*”. This phrase seems to assume a knowledge of classical legal terminology and jurisprudence. If this knowledge is assumed, the translation could refer to a wife initiated divorce (*khul*), where the husband is being offered his unpaid dowry (*mahr*) to divorce his wife. Some *ḥadīth* compilers, such as al-Nasā’ī did consider this to be a *khul*, since he labelled it “*Bāb ‘iddat ‘l-mukhtali‘ah*”. According to him, the subject of this *ḥadīth* is the length of the waiting period (*‘iddah*) and not necessarily that hitting is a grounds for divorce. Al-Nasā’ī, *Kitāb al-sunan l-kubrā*, v. 2, p. 383.

<sup>55</sup> Reported in: Abū ‘Awānah, *Musnad Abī ‘Awānah*, v. 2, p. 412, al-Nasā’ī, *Kitāb al-sunan l-kubrā* v. 2, p. 383, al-Ṭabarānī, *Mu‘jam al-Awsaṭ* v. 7, p. 96, v. 15, p. 235, al-Rūyānī, *Musnad al-Ṣaḥābah* v. 43, p. 430. This *ḥadīth* is unique in comparison to the other *aḥādīth* in this chapter as it is recorded in the Book of Divorce (*Kitāb al-Ṭalāq*) as opposed to the Book on Marriage (*Kitāb al-Nikāḥ*). This *ḥadīth* is found in the “Chapter Concerning the Waiting Period of the Divorcing Woman” in al-Nasā’ī, *Kitāb al-sunan l-kubrā* v. 3, p. 383, and the “Chapter Concerning the Third Divorce” in *Sunan Abī Dā’ūd* v.1, p. 267.

<sup>56</sup> *Muḥaddīthūn* who catalogued this *ḥadīth* in the Book of Divorce included, Abū Dā’ūd and al-Nasā’ī.



beating resulted in broken bones, it crossed the line of acceptable physical discipline, and thereby constituted grounds for divorce.<sup>57</sup> It also indicated the required waiting period for a woman divorcing her husband. The issue of *nushūz*, or acceptable cause for physical discipline, did not emerge as a relevant issue in this story. **The nature of the beating - whether it was disciplinary or otherwise - was not discussed in this report. There appeared to be an understanding on the part of all parties involved – Jamīlah bt. ‘Abd Allāh, her brother, Muḥammad, and even Thābit b. Qays – that what Qays did was unacceptable and warranted a divorce.** Muḥammad considered Thābit’s beating abusive and did not ask what instigated Qays to beat Jamīlah to begin with, nor did he try to adjudicate between the two. However, Jamīlah also did not receive any compensation and/or retaliation for being beaten so severely by Thābit; Thābit was not punished for his actions, other than having to divorce his wife.

In this *ḥadīth*, Muḥammad did not discuss the issue of beating itself, but took action to protect a wife against a man who had beaten her excessively. It is important to remember however, that Thābit did not merely beat his wife but broke her hand. Also, he was offered a divorce with little personal cost, since

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<sup>57</sup> As will be seen in the exegetical and juridical sections, broken bones were a common limitation placed on the disciplinary power of husbands over wives.

he was permitted to re-claim “what is [his]” from Jamīlah. Nonetheless, this *ḥadīth* did offer a possible limit on the physical discipline of wives by suggesting that it ought not to result in broken bones.

The second report from Muḥammad did not appear in any of the *ḥadīth* collections in this study, but was widely cited by exegetes since it was considered to be the incident that precipitated the revelation of Q. 4:34. Since this report was so widespread in the exegetical literature and came with a text and chain of transmission, it warrants reference in this section. This report is discussed more extensively in the Qur’ānic exegesis section and will be mentioned here only briefly. It is reported in the occasion of revelation (*asbāb al-nuzūl*) literature that Ḥabībah bt. Zayd was slapped by her husband, Qays b. Rabī‘, which prompted her to complain to Muḥammad against him. In some narrations, it is reported that the mark of the slap remained on her face. Muḥammad judged in Ḥabībah’s favor, deciding that she deserved retaliation from Qays. At this point, Q. 4:34 was revealed, causing Muḥammad to revoke his decision. Muḥammad is alleged to have responded to Q. 4:34 by saying, “I wanted one thing, and God wanted another”. In some narrations, it is further reported that he said, “and what God wanted is best”. It could be speculated that Muḥammad’s attitude in response to the divine command may have been

viewed as more appropriately submissive if he verbally approved of God's correction of his earlier decision.<sup>58</sup>

The above-mentioned *aḥādīth* illustrate that reports of Muḥammad's personal behavior (*sunnah fi'līya*) displayed a general trend of disapproval of husbands hitting their wives. But his available *sunnah fi'līya* also presented a model wherein it was acceptable to hit one's wife, as long as the hitting was not excessive.

### 1.3. Prophetic Speech (*sunnah qawlīya*)

#### 1.3.1. Moderate Hitting as a Marital Right

The right of husbands to physically discipline wives and the right of wives to have that physical discipline be moderate were embedded into the basic conception of the marital structure by the *ḥadīth* literature. One *ḥadīth* in particular emphasized the intertwined nature of marital rights and the disciplinary power of husbands over wives. This *ḥadīth* was cited by a few exegetes.<sup>59</sup> It is reported in this *ḥadīth* that a Companion<sup>60</sup> asked Muḥammad

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<sup>58</sup> For more discussion on this report, see the *asbāb al-nuzūl* sub-section in the Qur'anic Exegesis chapter.

<sup>59</sup> Such exegetes include al-Baghawī and al-Māwardī.

<sup>60</sup> This question was posed by different individuals in the various narrations. Most often, it was asked by the father of Hakīm b. Mu'āwiyah al-Qushayrī.

“What are the rights of our wives over us?”<sup>61</sup>  
Muhammad replied, “That you feed her when you eat, and clothe her as you clothe yourself, and do not hit her in the face, do not disfigure [lit., “make her ugly”]<sup>62</sup> and do not abandon her except in the house.”<sup>63</sup>

This *ḥadīth* assumed the right of husbands to discipline wives, by rooting wives’ rights over their husbands in the financial and moral responsibility of husbands over wives. Muḥammad’s response in this *ḥadīth* reflected the rights and responsibilities assigned to husbands in a manner that was compatible with the text of Q. 4:34. This *ḥadīth* outlined the functional outcome of the privileges assigned to husbands in Q. 4:34 by stating that husbands were responsible for providing for their wives financially, for feeding and clothing them, and for

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<sup>61</sup> The major variations of the question are: “*Yā rasūl l-llāh, mā ḥaqq zawjat aḥadinā ‘alayhī?*” (Nawawī, *Riyāḍ al-ṣāliḥīn*, p. 163), or “*Yā rasūl allāh, nisā’unā mā na’tī minhunna wa mā nadh’ar?*” Abū Dā’ūd, *Sunan Abī Dāwūd*, v. 2, p. 110.

<sup>62</sup> Violence is implied in the context of the phrase “*la tuqabbih*”. It is mentioned in the context of disciplinary action and mentioned immediately after Muḥammad advised men to avoid hitting their wives on the face. In this context it makes sense to translate it as “do not disfigure”. Ibn Manẓūr discusses this specific *ḥadīth* when he interprets “*la tuqabbihu al-wajh*” figuratively to mean “Do not say that it is ugly, because God is the one who formed it and He created everything beautifully” and also the possibility that it means “Do not say, ‘May God make so-and-so’s face ugly.’” This second rendition assumes the common-sense interpretation of the phrase, which is to make someone’s face ugly.

<sup>63</sup> The collections in which this *ḥadīth* is reported includes al-Nawawī, *Riyāḍ al-ṣāliḥīn*, p. 163, al-Nasā’ī, *Sunan al-Kubrā* v. 5, p. 373, Muslim, *Ṣaḥīḥ Muslim*, v. 3, p. 1333, Ibn Bishrān, *al-Amālī*, p. 232, al-Bayhaqī, *Kitāb al-sunan al-ṣaḥīḥ*, v. 2, p. 79, and Abū Dā’ūd, *Sunan Abī Dāwūd*, v. 2, p. 110. As a point of interest, there are similar narrations regarding the rights of slaves over their masters – that the masters feed and clothe them as they feed and clothe themselves. However, there is not any discussion in those narrations about beating the slaves. Also, this *ḥadīth* is found either in the “Chapter of Not Hitting the [a Woman’s] Face and Disfiguring Her, and Not Abandoning [Her] Except Within the House” (*Bāb lā yaḍrib l-wajh wa lā yuqabbih wa lā yahjur illā fī l-bayt*) or in the “Chapter Concerning the Rights of a Woman Over Her Husband” (*Bāb fī ḥaqq l-mar’ah ‘alā zawjihā*).

wielding their disciplinary power over their wives appropriately - by not hitting them in the face, not disfiguring them and not abandoning them except in their homes. While the disciplinary power of husbands over wives was limited in this *ḥadīth*, the legitimating cause(s) for such discipline was left unqualified.

As far as this *ḥadīth* is concerned, there was no tension between prophetic speech and the Qur'ānic prescription to physically discipline wives, except insofar as Muḥammad qualified that a wife could not be hit in the face by her husband. This *ḥadīth* stands in counter-distinction to Muḥammad's personal behavior, where he displayed discomfort with husbands hitting their wives. It is possible that these two reports were circulated in different milieus and were not considered as directly challenging each other. If they were, they might be harmonized if Muḥammad's behavior were considered to be ideal or exceptional, rather than exemplary.

### **1.3.2. Legitimate Causes for Physical Discipline**

The text of Q. 4:34 restricts its command to husbands to hit their wives to the condition of wifely *nushūz*. If husbands fear the *nushūz* of their wives, they are commanded to admonish them, abandon them in bed and/or beat them. As will be seen, the meaning of wifely '*nushūz*' was varied, but was most broadly

interpreted as “disobedience” in pre-modern exegetical and juridical works.<sup>64</sup> It is important to note that while Q. 4:34 appears to discuss beating in the form of the physical discipline of wives, this was not always the case in the *aḥādīth*. As seen above, prophetic reports often discussed the husbandly privilege to hit wives without reflecting on the disciplinary nature of the hitting and without specifying the specific cause(s) that might legitimate hitting. The beating of wives was a broader category in prophetic traditions, and could be corrective, punitive or abusive.<sup>65</sup> When *aḥādīth* did discuss acceptable reasons for hitting wives, the two legitimate justifications offered were wives’ sharp tongues and their permitting strangers into their husbands’ homes and/or beds.

### 1.3.2.1. Sharp Tongues

It is reported that a group of people was visiting with Muḥammad when the Companion Ṣabrah sought advice from him regarding trouble he was having with his wife. He complained to Muḥammad that his wife possessed “contemptuous/obscene/bawdy” (*badhāʾ*) speech.<sup>66</sup> In another narration, Ṣabrah described his wife’s tongue as “long” as well as *badhāʾ*, indicating that

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<sup>64</sup> For more discussion on the meanings of *nushūz* offered in exegetical and juridical works, see Chapter 2, section 2.4.2.

<sup>65</sup> The categorization of these three forms of beating that I present emerged from a conversation with Kecia Ali.

<sup>66</sup> al-Bayhaqī, *Sunan al-kubrā*, v. 7, p. 303.

by *badhā'* he meant contemptuous rather than bawdy.<sup>67</sup> **Muḥammad** responded, “Divorce her”. Ṣabrah protested this advice, saying “I have a child with her and I have companionship with her (*wa la-hā ṣuḥbah*)”. The Prophet replied, “admonish her or talk to her (*fa-’murhā/iḏ-hā/qul la-hā*<sup>68</sup>), and if there is good in her then accept her [as she is], and do not hit your wife (*ḏa’īnataka*) as you would hit your female slave (*umayyatak*)”.<sup>69</sup>

The unpleasant character of a wife, manifested through abusive/contemptuous speech, was an acceptable cause for divorce in this *ḥadīth*. Though this *ḥadīth* was never cited by exegetes and jurists, it was alluded to by some exegetes.<sup>70</sup> It is noteworthy that Muḥammad suggested divorce as the initial recourse to Ṣabrah when the latter complained of a sharp-tongued wife. This advice contrasts with that found in Q. 4:34-35, where adjudication and divorce are presented as options only after the three prescriptions of admonishment, abandonment in bed and/or beating have been exhausted. **When Ṣabrah was dissatisfied with the suggestion of divorce – ostensibly because he had a child**

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<sup>67</sup> al-Bayhaqī, *Kitāb al-sunan al-ṣaghīr*, v. 2, p. 78.

<sup>68</sup> Various narrations use different imperatives at this point.

<sup>69</sup> Reported in: al-Bayhaqī, *Kitāb al-sunan al-ṣaghīr*, v. 2, p. 78, al-Ṭahāwī, *Mushkil al-āthār*, v. 6. P. 13, al-Suyūṭī, *Jāmi’ al-aḥādīth*, v. 8 p. 239. This *ḥadīth* is located in the “Chapter Concerning Admonishing [a Wife]” (*Bāb mā jā’a fī wa’ḏihā*).

<sup>70</sup> Such exegetes include Abū Bakr Ibn al-‘Arabī and al-Tha’ālibī.

with the woman and enjoyed her company - Muḥammad advised admonishment and conversation. He further suggested that if Ṣabrah found enough good qualities in his wife and did not want to divorce her then he should accept her as she was.

The implication of this *ḥadīth* on wife-beating is contested. Though Muḥammad did not explicitly advise Ṣabrah to physically discipline his wife, it is arguable that he assumed it to be a legitimate course of action available to him. This is evident in Muḥammad's advising Ṣabrah not to beat his wife as he would a female slave. Muḥammad did not prohibit the man from hitting his wife, only instructed that this hitting should be qualitatively different from how he would hit a female slave. Nonetheless, it could also be argued that this *ḥadīth* displayed a discomfort on Muḥammad's part with wife-beating in two ways. First, by saying that Ṣabrah should not hit his wife as he would a slave, Muḥammad might have been suggesting that Ṣabrah should avoid hitting his wife altogether. Further, the physical discipline of a wife was not prescribed in a positive injunction ("Hit her") but only in a negative exhortation ("Do not hit her as you would a female slave"). Second, this report suggested that Muḥammad preferred divorce to the physical discipline of a wife. In his advice to Ṣabrah, Muḥammad did not follow the prescriptions of Q. 4:34. He first advised divorce,



and then worked backwards to advise verbal exhortation. He only qualified any potential physical discipline Ṣabrah might engage in along with a suggestion for Ṣabrah to accept his wife as she was, even if her behavior could warrant divorce.

That this *ḥadīth* raised tensions between alleged Prophetic speech and the text of Q. 4:34 was not lost on the *ḥadīth* scholar al-Ṭaḥāwī (d. 321/933).<sup>71</sup> In his commentary of this *ḥadīth*, al-Ṭaḥāwī discussed Muḥammad’s advice to Ṣabrah, specifically with regard to his stipulation that Ṣabrah should “not hit his wife as he would a female slave”. Arguing against the the potential interpretation that Muḥammad might have prohibited Ṣabrah from hitting his wife, al-Taḥāwī wrote that this admonishment did *not* constitute a prohibition against husbands hitting their wives. Rather, he contended that a man “should hit [his wife] in a manner that is different [from hitting his female slave]”.<sup>72</sup> Al-Taḥāwī argued that this was the only possible meaning of this admonishment, since God had permitted the hitting/beating of wives (*ḍarbihinna*) in Q. 4:34.<sup>73</sup> He contended that if there were any *aḥādīth* in which Muḥammad permitted

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<sup>71</sup> Al-Ṭaḥāwī records this *ḥadīth* in his “Chapter on excursus of the difficulties of what was transmitted from the Prophet of God, peace be upon him, concerning men hitting their wives: what is forbidden and what is permitted”. Al-Ṭaḥāwī, *Mushkil al-āthār*, v. 6, p. 13.

<sup>72</sup> Al-Ṭaḥāwī, *Mushkil al-āthār*, v. 6, p. 13.

<sup>73</sup> *Ibid.*, v. 6, p. 13.

hitting wives, then the matter would be settled in favor of his preferred interpretation - that husbands were permitted to hit their wives. To this end, al-Taḥāwī mentioned Muḥammad's Ḥajj Sermon, which will be considered in greater detail next. Al-Taḥāwī argued that Muḥammad's unambiguous permission for husbands to hit their wives in the Ḥajj sermon proved that Muḥammad only meant to restrict Ṣabrah from hitting his wife in an extreme manner. Al-Taḥāwī opined that as long as the hitting was non-extreme (*ghayr mubarrīḥ*), husbands were permitted to hit their wives. It is worth noting, however, that the *ḥadīth* itself does not seem to have any exegetical element. Rather than commenting on or clarifying verse 4:34, it seems essentially oblivious to the verse.

### **1.3.2.2. Permitting Strangers into a Husband's Home and/or Bed**

The Ḥajj Sermon was delivered by Muḥammad during his pilgrimage to Mecca; most Muslim historians placed this event in March/April of the year 10 AH/632 CE.<sup>74</sup> This sermon was delivered on Mount 'Arafat at the climax of the *ḥajj* and appeared in historical, exegetical and juridical works.<sup>75</sup> In this sermon, Muḥammad offered general advice to believers. Interestingly, one of the issues

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<sup>74</sup> Ibn Hishām, *al-Sīra al-nabawīyah*, v. 4, p. 188.

<sup>75</sup> The text in the sermon regarding the general treatment of wives is recorded in either the "Chapter of Sermons during the Pilgrimage" (*Bāb al-khuṭab fī l-ḥajj*) or in the "Chapter Pertaining to Hitting [a Wife]" (*Bāb mā jā'a fī ḍarbihā*).

he touched on in this sermon was marital rights. In two variations of this sermon, Muḥammad is reported to have said: “Fear God concerning women” and then is said to have expounded on this. In one narration, he is reported to have said,

Fear God concerning women, indeed you take them as a trust from God, and intercourse with them has been made permissible for you by God’s word. Your rights over them are that they do not give your beds (*furushakum*) to anyone that you dislike.<sup>76</sup> If they do this, then hit them in a non-extreme manner (*ghayr mubarrīḥ*). Their rights over you are that you feed them and clothe them in a manner that is according to custom (*bi l-ma’rūf*).<sup>77</sup>

The second narration is more extensive. It reads:

Fear God concerning women, indeed they are for you as captives (*‘awān*), they do not have ownership over themselves. And they have rights over you and you have rights over them. They should not give your beds (*furushakum*) to anyone other than you and they should not permit anyone that you dislike into your homes (*buyūtikum*). If you fear *nushūz* from them, then admonish them, and abandon them in bed, and hit them without causing extreme pain (*ghayr mubarrīḥ*). And [their rights over you are that] you provide for them and clothe them in a manner that is appropriate. Indeed you take them as a trust

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<sup>76</sup> Bauer translates this as “... they do allow anyone you dislike to enter your house [lit: tread on your carpets]”. I think the more literal meaning is “beds” and will discuss this further below. Bauer, *Room For Interpretation*, p. 89.

<sup>77</sup> Al-Bayhaqī, *Sunan al-kubrā*, v. 2, p. 257-60. A variation of this *ḥadīth* also reported in *Tafsīr al-Qur’ān*. This report can also be found in Ibn Ḥishām’s *Al-Sīra al-nabawīya*, ed. ‘U. ‘A. Tamuri, (Beirut, 1987) IV, p. 249. Also see, A. Guillaume, in Ibn Ishāq, *Sīrat rasūl Allāh. The life of Muhammad* (Oxford: Oxford University Press, 1955) 651-652. Also see, Marin, “Disciplining Wives”, p. 20.

from God, since you seek to make their private parts permissible to you with God Almighty's word, and the one who has a trust must return it to the one who entrusted it to him.<sup>78</sup>

While the above mentioned variations of this *ḥadīth* were similar, there were significant differences between them as well. The *aḥādīth* were similar in that they discussed the husbandly privilege of hitting wives as a disciplinary right. However, they offered different legitimating causes for physical discipline of wives. According to the first narration, husbands could physically discipline their wives if their wives allowed those whom their husbands dislike into their beds. Although there is no explicit mention of sexual disloyalty in this narration, it is implied through the use of the word “*furush*” (sing. *firāsh*) which referred to beds. Some narrations also mentioned open lewdness (*fāḥishat mubayyinah*) as wifely behavior that required husbandly discipline.<sup>79</sup>

If *firāsh* was used here to mean the marital bed, then this *ḥadīth* seems to suggest that wives may allow those whom their husbands like into their beds, without committing *nushūz*. Given the strange meaning this *ḥadīth* would offer if *firāsh* were translated to mean the marital bed, Bauer has translated it to

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<sup>78</sup> Al-Bayhaqī, *Sunan al-Kubrā*, v. 2, p. 257.

<sup>79</sup> Al-Nawawī, *Riyāḍ al-Ṣāliḥīn*, v. 1, p. 163.

broadly mean the “house”.<sup>80</sup> However, the second narration seems to restrict the definition of *firāsh* to refer exclusively to the marital bed by distinguishing between the bed (*firāsh*) from the house (*bayt*). According to the second narration, husbands were permitted to physically discipline their wives if they allowed anyone other than their husbands into their beds or if they permitted those whom their husbands dislike into their homes.<sup>81</sup> It suggested that both these acts constitute *nushūz*, in which case husbands were to follow the three prescriptions outlined in Q. 4:34. It is important to note that the beds and houses in both narrations were referred to as possessions of the husband, of which their wives were the keepers.<sup>82</sup>

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<sup>80</sup> Bauer, *Room For Interpretation*, p. 89.

<sup>81</sup> The differentiation between *firāsh* and *bayt* was not lost on pre-modern scholars. Though most did not comment on it, this was used by the Mālikī judge from Baghdad, Isma‘īl b. Ishāq al-Jahḍamī (d. 282/896) in his interpretation of Q. 4:34. In his *Aḥkām l-Qur‘ān* he drew upon a variation of the *ḥajj* sermon, which stated, “And your rights over them are that they not give your beds (*furushakum*) to anyone you dislike, and they should not display any lewdness (*fāḥishah*)”. Isma‘īl b. Ishāq differentiated the two behaviors from each other and argued that the three prescriptions in Q. 4:34 - admonishment, abandonment in bed and hitting - were required only in the latter case, when wives displayed lewd behavior. The three steps did not apply to the first crime of letting those one’s husband disliked into bed, since he argued that this was adultery (*zina*). Lewdness constituted wifely *nushūz*, but allowing others into the marital bed was adultery and therefore beyond *nushūz*. He cited a report from Ikrimah stating that if a woman commits *zina* then she is to be stoned. See Muranyi, Miklos. *Beiträge zur Geschichte der Ḥadīth und Rechtsgelehrsamkeit der Mālikiyya in Nordafrika bis zum 5. JH. D.H.: bio-bibliographische Notizen aus der Moscheebibliothek von Qairawān. Quellenstudien zur Ḥadīth- und Rechtsliteratur in Nordafrika.* (Wiesbaden: Harrassowitz, 1997) 371-374.

<sup>82</sup> As will be seen in the next section, husbands were the keepers of wives and wives were the keepers of their husbands’ property.

Another noteworthy variation between the two narrations was that the second narration alluded to the wording of Q. 4:34, whereas the first did not appear to do so. In the first narration, Muḥammad prescribed hitting in a non-extreme manner (*ghayr mubarrih*) directly. There were no intervening steps between the wife's action of allowing someone whom the husband disliked into his home and the husband's hitting his wife in a non-extreme manner, and there was also no mention of *nushūz*. By contrast, the wording of the second narration was almost verbatim from Q. 4:34. Husbands who feared wifely *nushūz* were to admonish, abandon in bed and beat their wives. However, the text of this *ḥadīth* differed from Q. 4:34 in that it qualified the unqualified prescription of beating in Q. 4:34 as "non-extreme" (*ghayr mubarrih*). The close mirroring of the text of Q. 4:34 in this narration makes the qualification more significant since it required a departure from the text of Q. 4:34. By qualifying the unqualified prescription of the physical discipline of wives in Q. 4:34, it might be argued that this *ḥadīth* placed less confidence in those men who undertook the physical discipline of their wives than did the Qur'anic text.

There was a brief discussion of wives' rights over husbands in both narrations. These were limited to the right to financial provision. Wives were to be fed and clothed according to custom. Similar to the *ḥadīth* encountered earlier wherein

Muḥammad responded to the question regarding the rights of wives over their husbands, the authority of husbands to physically discipline their wives was embedded in the conception of basic spousal rights. The *ḥadīth* discussed in the earlier section restricted wife-beating to bodily location rather than intensity, by stipulating that it was a wife’s right not to be hit in the face by her husband. The *aḥadīth* in the present section limited husbands’ right to physically discipline wives by degree and cause. They stipulated that husbands were permitted to hit their wives for specific reasons and in a non-extreme (*ghayr mubarriḥ*) manner. There was no discussion in the *ḥādīth* literature surrounding the discussion of hitting wives about the definition of non-extreme (*ghayr mubarriḥ*) hitting.<sup>83</sup> Deliberation surrounding the definition of *ghayr mubarriḥ* appeared in reports related to the punishment of lashing as a consequence for alcohol consumption. A man was ordered to be whipped/lashed in manner that was described as “*ghayr mubarriḥ*”. The Companion and narrator of this report, Abū Mājīd, asked, “what is *ghayr mubarriḥ*?” He was told that it was “a hitting that is neither severe/intense (*shadīd*) nor is it negligible/easy (*hayyin*)”.<sup>84</sup> It is

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<sup>83</sup> Mahmoud translates *ghayr mubarriḥ* as hitting that is “not greivous”. He does not explain what he bases this translation on. See Mahmoud, “To Beat or Not to Beat”, p. 544. Bauer mentions that although *ghayr mubarriḥ* is “often translated as ‘non-violent’, hitting is intrinsically violent”. Bauer prefers the translation of *ghayr mubarriḥ* as “without causing severe pain” based on Kazimirsky’s translation of *mubarriḥ* as “very harsh, very painful, causing intense pain”. For the sake of convenience, *ghayr mubarriḥ* is translated in this work as “non-extreme”. Bauer, *Room For Interpretation*, p. 114.

<sup>84</sup> Al-Bayhaqī, *Sunan al-kubrā*, v. 8, p. 326.

not clear whether Muḥammad referred to this sort of beating when he advised husbands to hit their wives in a *ghayr mubarrīḥ* manner. Nevertheless, it is significant that the descriptor “*ghayr mubarrīḥ*” was used to characterize the nature of both the lashing meted out to a drunkard and the physical discipline permitted for husbands to use upon their wives.

### 1.3.3. Prophetic Censure of Men who Hit their Wives

A *ḥadīth* that was common to both exegetical and juridical sources was the prophetic report wherein the Companion ‘Umar b. al-Khaṭṭāb sought Muḥammad’s permission for men to hit their wives. Although this *ḥādīth* was sometimes cited in discussions surrounding Q. 4:34, the verse was not directly referenced in the variations of this *ḥadīth*.<sup>85</sup> The most concise variant of this *ḥadīth* reads:

The Messenger of God – may peace be upon him – prohibited (*nahā*) men from hitting women. They complained [of this], so he permitted [husbands] to hit [their wives].<sup>86</sup>

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<sup>85</sup> al-Bayhaqī made the argument that this *ḥadīth* was connected to Q. 4:34. He wrote that Muḥammad prohibited husbands from hitting their wives before Q. 4:34 was revealed and then permitted husbands to hit them after the verse was revealed, but still preferred that husbands not hit their wives. Al-Bayhaqī, *Ma’rifat al-sunan wa-al-āthār*, v. 5, pp. 433-435. It is notable, however, that there is nothing in the *ḥadīth* itself to suggest that it explicitly refers to the revelation of a divine commandment on this subject; the *ḥadīth* does not seem to be exegetical.

<sup>86</sup> Ibn Rāhawayh, *Musnad ibn Rāhwayh*, v. 5, p. 112.



In this *ḥadīth*, Muḥammad prohibited husbands from hitting their wives. There was no discussion of what prompted this prohibition, or why men complained about it. All that is known is that men complained against the prohibition and were granted permission to hit their wives. Muḥammad apparently did not offer any qualifications to the type or extent of beating permitted. Could husbands only hit their wives for disciplinary purposes? How intensely were they permitted to hit their wives? In some narrations, the wording was slightly different from the more common “he permitted them to hit [their wives]”<sup>87</sup>, and stated instead that Muḥammad granted [husbands] license to hit [their wives]<sup>88</sup>, or he commanded men to hit their wives<sup>89</sup>.

In a more prolix variation of this *ḥadīth*, Muḥammad was reported to have said,

The Prophet of God, may peace and blessings be upon him said, “Do not hit the maidservants of Allāh (*imā’ allāh*)”. As a result the women became

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<sup>87</sup> “*fa-adhina lahum*” in *Al-Iḥsān bi l-tartīb Ṣaḥīḥ Ibn Hibbān*, v. 9, p. 491, al-Taḥāwī, *Mushkil al-āthār*, v. 6, p. 16.

<sup>88</sup> “*fa-rakḥkhaṣa fī ḍarbihinna*” in Abū Dā’ūd, *Sunan Abī Dāwūd*, v. 2, p. 111 and Dārimī, *Musnad al-Dārimī*, v. 3, pp. 1424-5. Also reported in Ḥākim al-Nīsābūrī, *al-Mustadrak*, v. 3, p. 1045.

<sup>89</sup> “*fa amara bi-ḍarbihinna*” in Ibn Mājah, *Sunan Ibn Mājah*, v. 3, p. 401.

audacious (*dha'ira*)<sup>90</sup> and they [exhibited] offensive behavior (*sā'at akhlāquhunna*) toward their husbands. Then 'Umar, may God be pleased with him said [to Muḥammad], “O Prophet of God, since you prohibited [husbands] from hitting their [wives], the women have started to behave offensively and their behavior is threatening to their husbands. The Prophet said, “Then hit them (*fa-ḍribūhunna*)”. Then the people hit their wives that night, and many women complained [to Muḥammad] about the hitting. The Prophet said, “Tonight, the house of Muḥammad was surrounded by seventy women, all of them complaining about being hit. I swear by God, you will not find [those who hit their wives] the best of you”.<sup>91</sup>

According to this narration of the *ḥadīth*, a problem arose as a result of Muḥammad's prohibiting men from hitting the “maidservants of God”. “*Imā' allāh*” is the female equivalent of “*abd allāh*” and suggests parity between the genders by emphasizing women's' status as equal members of the Muslim

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<sup>90</sup> Ibn Manẓūr (d. 711/1311), in his *Lisān l-'Arab* provided a basic definition of *dha'ira* as aversion, estrangement, with overtones of antipathy. He also defines *dh-'r*, when applied to a woman's behavior towards her husband to mean that “she commit *nushūz* and changed her behavior” (*nashazat wa-taghayyara khuluquha*.)” This is an interpretation derived from this same *ḥadīth* under discussion and might reflect later assumptions about the behavior that would lead a man to beat his wife. He added further that in the context of this *ḥadīth*, wives displayed antipathy to their husbands, they commit *nushūz* and became bold and audacious (*nafarna wa nashazna wa-jtara'na*).

<sup>91</sup> This *ḥadīth* is from al-Bayhaqī, *Sunan al-kubrā*, v. 2, p. 257-260. Narrations that include the explicit command from Muḥammad of “Do not hit the female slaves of Allah” are most often reported by Iyās b. Abī Dhubāb. *Aḥādīth* that include this explicit command are recorded in collections such as al-Haythamī, *Mawārid al-ẓam'ān* v. 4 pp. 259-60, al-Bayhaqī, *Kitāb al-sunan al-ṣaghīr*, v. 2, pp. 78-9, al-Nasā'ī, *Kitāb al-sunan al-kubrā*, v. 5, p. 371-2, Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān*, v. 17, p. 371, al-Bayhaqī, *Ma'rifat al-sunan*, v. 5, pp. 433-4, Abū Dā'ūd, *Sunan Abī Dāwūd*, v. 2, p. 111, Ibn Mājah, *Sunan Ibn Mājah* v. 3, p. 401, al-Dārimī, *Musnad al-Dārimī*, v. 3, pp. 1424-5, al-Baghawī, *Sharḥ al-sunnah*, v. 8 p. 186, Ḥākim al-Nīsābūrī, *al-Mustadrak*, v. 3, p. 1045, al-Nawawī, *Riyāḍ al-ṣāliḥīn*, p. 164.

community before the eyes of God.<sup>92</sup> Even so, given the usage of this phrase in a context wherein husbands were ultimately granted permission to hit their wives, any suggested parity between the genders was negated by the permission to hit. As in the previous narration, Muḥammad initially prohibited husbands from hitting their wives, without any explanation for what might have motivated this ban. Men complained about the prohibition, but in this narration they were represented by ‘Umar, who specified particular reasons why Muḥammad ought to reconsider his prohibition. He contended that after the prophetic decree prohibiting hitting, women began to behave offensively such that men found their behavior threatening. In his *Lisān l-‘Arab* Ibn Manẓūr discussed “*dha’ira*” with regard to this *ḥadīth* specifically, and interpreted it to mean wifely *nushūz*, a change in behavior as well as a display of aversion and estrangement. Therefore, ‘Umar was complaining that Muḥammad’s prohibition against hitting wives led to women behaving offensive ways which their husbands found displeasing. Other narrations supported the interpretation of women’s behavior as audacious by describing the behavior of wives in the

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<sup>92</sup> This was pointed out by Marion Katz. She offered an example of this in the *ḥadīth* in which Muḥammad is reported to have ordered men not to prevent the female servants of God from attending the mosque, “*lā tamna‘ū imā’ allāh masājid allāh*”.

aftermath of Muḥammad’s prohibition against hitting wives as becoming “spoiled/corrupt” (*fasadna*)<sup>93</sup> or “forward” (*jarā’a ‘alā al-azwājihinna*).<sup>94</sup>

In response to this observed behavior on the part of women, ‘Umar complained to Muḥammad on behalf of the men who were feeling threatened. Muḥammad considered the reason offered - masculine, threatening, offensive behavior on the part of wives - good reason to reverse his prohibition. He responded: “Hit them”.<sup>95</sup> As in the previous narration, he did not qualify his permission/command to husbands to hit their wives in order to keep them in line. He also did not outline any intermediary steps husbands might turn to - such as admonishment and abandonment in bed - before resorting to hitting. He simply granted men permission to hit their wives as a result of their complaining.

Once Muḥammad granted men permission to hit their wives, the *ḥadīth* states that men availed themselves of the permission to hit wives that very night. In response to their being beaten, women congregated around Muḥammad’s house complaining against their husbands. According to the *ḥadīth* narrative,

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<sup>93</sup> Al-Suyūṭī, *Jāmi’ al-aḥādīth*, v. 1, p. 287.

<sup>94</sup> Abū Dā’ūd, *Sunan Abī Dāwūd*, v. 2, p. 111. Marin offers a translation here that states that women started to act “as if they were superior to men”. Marin, “Disciplining Wives”, p. 18.

<sup>95</sup> Al-Bayhaqī, *Sunan al-Kubrā*, v. 2, p.257-260.

having women surround Muḥammad's house forced him to confront the consequence of his permission for men to strike their wives. When Muḥammad saw this he was displeased, and although he had granted men permission to hit their wives, he now censured them for hitting. He said that the men who had hit their wives were not good men, or the best of men. In one narration of this *ḥadīth*, he was reported to have also said, "The best of you will not hit [their wives]"<sup>96</sup> Al-Dārimī's narration of this *ḥadīth* cited Muḥammad as saying: "I do not like to see a man so influenced by his anger, so violent in his vigilance/control of his woman that he kills her"<sup>97</sup> It is notable also that Muḥammad did not punish any man who had hit his wife, nor were women offered any compensation for suffering abuse.

According to another variation of this report, women did not come to Muḥammad complaining about their husbands beating them. Rather, after Muḥammad had granted men permission to hit their wives, he heard loud

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<sup>96</sup> Ibid., v. 7, p. 304.

<sup>97</sup> "*Mā uḥibbu an arā al-rajul thā'iran ghaḍabuhu farīṣan riqbatuhu 'alā mara'atihi yaqtuluhā*". *Musnad Ishāq Ibn Rāhawayh*, v. 5, p. 112. In Ibn Sa'd, the *ḥadīth* reads "*Mā uḥibbu an arā al-rajul thā'ira farīṣ 'aṣab raqabatihī 'alā muray'atihi yuqātiluhā*," which means "I do not like to see a man with the sinews of his neck protruding [in anger] against his little woman, doing battle against her." Ibn Manẓūr has a brief discussion of the precise meaning of the word *farīṣ* in the context of this particular *ḥadīth*, suggesting that it refers to the sinew of the neck. Marin also mentions this reference in Ibn Sa'd. She translates it as, "I do not like to see a man who is excited and whose neck veins are trembling while he is beating his wife." Marin, "Disciplining Wives", pp. 18-19.

sounds and inquired as to their source.<sup>98</sup> Although the reports do not delve into the nature of the sounds, it is clear that there was a sufficient commotion coming from homes that Muḥammad noticed and asked about the sounds. In response he was told, “You permitted men to hit their women”. In one narration, Muḥammad responded to this by prohibiting men (*nahāhum*) from hitting their wives after hearing the commotion rather than beginning with this prohibition.<sup>99</sup> This was the only instance in which Muḥammad forbade men from hitting their wives as a result of women’s complaints. Nowhere is the tension between the prophetic prohibition against hitting wives and the command to do so in Q. 4:34 more obvious. In most variations of this story, though, Muḥammad did not prohibit husbands from hitting their wives, but only censured them for doing so.

In reply to the justification offered for the commotion, Muḥammad was also reported to have said, “The best of you are the best of you to their wives and I am the best of you to my wives”.<sup>100</sup> In so doing, he drew attention to his own behavior as a model for emulation by believers. The premise of Muḥammad’s exhortation was that since Muḥammad was the best of the believers he was the best to his wives, and he never hit his wives. Ergo, believers who wished to

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<sup>98</sup> Variations of this *ḥadīth* are reported by Ibn Ḥibbān and al-Taḥāwī.

<sup>99</sup> Al-Haythamī, *Mawārid al-ḡam’ān*, v. 4 p. 258.

<sup>100</sup> *Ibid.*, v. 4 p. 258. Also in, Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān*, v. 17, p. 365.

emulate Muḥammad - the best of men - would also be good to their wives by not hitting them. This was a positive exhortation, as opposed to the negative one mentioned earlier, wherein Muḥammad said that the men who had hit their wives were not the best of men.

The reaction of men to Muḥammad's permission to hit wives is worth pausing over. Not only was Muḥammad's personal behavior considered exemplary for the Muslim community, but Muḥammad's community was also viewed as exemplary by Muslim scholars. The fact that Muḥammad's own community reacted to his permission to hit wives with such an outpouring of domestic violence makes one wonder about the reaction of the early Muslim community to the command to strike recalcitrant wives in Q. 4:34.<sup>101</sup> While some modern scholars have argued that the prescription for the physical discipline of wives in Q. 4:34 was not meant to lead to abusive behavior against women/wives<sup>102</sup>, that is precisely what Muḥammad's permission led to in this *ḥadīth*. Once

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<sup>101</sup> There is no documentation of the behavior of the Muslim community in Medina after the revelation of Q. 4:34. This brings to mind Fatima Mernissi's representations of the community in Medina at the time of Muḥammad. Based on her readings of biographical sources, she represented this community as turbulent and riven by gender tensions. This vision of the early Muslim community conflicts sharply with the classical Sunni veneration of the Companions as a group. The Sunni representation of the early Muslim community as idyllic is tension with the abundant narratives of misbehavior that are captured in *ḥadīth* and *sīra* literature. See Mernissi, *The Veil and the Male Elite*, esp. Part II.

<sup>102</sup> For example, see Badawi, *Gender Equity in Islam: Basic Principles*, ([www.iad.org/pdf/gei.pdf](http://www.iad.org/pdf/gei.pdf)), Wadud, *Qur'an and Woman*, pp. 74-78, Barlas, "Believing Women" in Islam, pp. 184-189.

Muḥammad granted men permission to hit their wives, the men in his community were so excessive in their use of violence that it led to either a) women surrounding Muḥammad's house in large numbers, complaining of being beaten by their husbands, or b) such a commotion in households that Muḥammad became concerned about its cause. Unfortunately, pre-modern exegetes and jurists who cited any variation of this report did not consider how the behavior of the early Muslim community did or did not influence the revelation of Q. 4:34.

*Ḥadīth* scholars sometimes expressed their personal approach to this *ḥadīth* through the chapter headings under which they recorded it. It was generally catalogued under chapter headings such as: "Chapter on the Beating of Women".<sup>103</sup> However some *ḥadīth* scholars used more extensive headings for this *ḥadīth*, which betrayed their personal understanding of the message contained in this *ḥadīth*. Al-Dārimī (d. 255/869) understood the basic message of this *ḥadīth* to be a prohibition against hitting. As a result, he recorded it under the heading "Chapter on the Prohibition against Hitting Women".<sup>104</sup> Indicating a

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<sup>103</sup> "*Bāb ḍarb al-nisā'*. Muḥaddithūn who used such headings for this *ḥadīth* included al-Bayhaqī. Additionally, al-Bayhaqī cited variations of this *ḥadīth* under "Chapter Concerning the Choice to Abandon Beating" (*Bāb al-ikhtiyār fī tark al-ḍarb*) in his *Sunan al-Kubrā* and "Chapter of the Nushūz of a Woman Over her Husband" (*Bāb nushūz al-mar'ah 'ala al-rajul*) in *Ma'rifat al-sunan wa al-āthār*.

<sup>104</sup> Al-Dārimī, *Sunan al-Dārimī*, "*Bāb fī l-nahī 'an ḍarb l-nisā'*".



cautious approach to hitting, Ibn Ḥibbān (d. 354/965) recorded this *ḥadīth* under rubrics such as “Concerning Beating Women; given that the best of people are the best to their wives”<sup>105</sup> and “Concerning the Hitting of Women; except when it is necessary for discipline [in which case one should] hit them without causing extreme pain”.<sup>106</sup> Al-Suyūṭī (d. 911/1505) recorded this *ḥadīth* under two titles based on unique narrations of the *ḥadīth*, which indicated that he understood the message of this *ḥadīth* as disapproving of husbands who hit their wives. His titles for this *ḥadīth* were “Hit them – meaning women – and the best of you will never hit” and “Hit them and only the *worst* of you will hit” (emphasis mine).<sup>107</sup> In his chapter headings, al-Suyūṭī used a variation of the *ḥadīth* where the Prophetic saying stated “only the worst of you will hit” instead of “the best of you will not hit”. Al-Ṭaḥāwī’s heading for this *ḥadīth* captured his discomfort with the tensions this *ḥadīth* presented between prophetic speech on the physical discipline of wives and the Qur’anic text on the same issue. He placed this *ḥadīth* in his “Chapter Presenting the Obscurity in what was Transmitted from the Messenger, may the peace and blessings of God be upon

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<sup>105</sup> Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān*, “*An ḍarb l-nisā’ idhā khayr l-nās khayrum li-ahlih*”.

<sup>106</sup> Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān*, “*An ḍarb l-nisā’ illā ‘ind l-ḥājah ilā adabihinna ḍarban ghayr mubarrih*”. He also recorded this *ḥadīth* under the title, “Chapter on Relations between Spouses” (*Bāb mu’āsharat l-zawjayn*).

<sup>107</sup> Al-Suyūṭī, *Jāmi’ al-aḥādīth*, v. 1, p. 459, “*iḍribūhunna ay al-nisā’ wa lan yaḍriba khiyārukum*” and “*iḍribūhunna wa lā yaḍrib illā shirārukum*”.

him, Concerning Men Hitting their Women: what is prohibited and what is permitted”.<sup>108</sup> Based on his discussion of the Ṣabrah *ḥadīth*, it is possible to speculate that he was not pleased with the mixed message this *ḥadīth* sent regarding what he considered the divine right of husbands to physically discipline their wives.

In summary, the variations of this *ḥadīth* leave Muḥammad’s stance on hitting wives somewhat ambiguous. It is clear that at some point he forbade men from hitting their wives and that he later revoked this prohibition and permitted men to hit their wives. He also did not approve of men hitting their wives and censured men who did this by saying that the best of men did not hit their wives. At the same Muḥammad did not punish men who had hit their wives and he did not provide women who complained of being hit by their husbands any compensation or retaliation. These narrations exhibit discomfort on Muḥammad’s part with his own permission to hit wives.

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<sup>108</sup> Al-Ṭaḥāwī, *Mushkil al-āthār*, “Bāb bayān mushkil mā rawā ruwiya ‘an l-rasūl (s.a.w) fī ḍarb l-rijāl nisā’ahum man’ wa min ibāḥah”.

### 1.3.4. Muḥammad Invoked God Against a Man Who Repeatedly Beat his Wife

As seen in Muḥammad's personal behavior (*sunna fi'līya*), when women who had been hit by their husbands approached him for adjudication, Muḥammad was inclined to decide in their favor. Muḥammad divorced Jamīlah bt. Abdullah when her husband broke her hand while hitting her. In the case of Ḥabībah bt. Zayd, Muḥammad decided in her favor only to be corrected by the revelation of Q. 4:34. There is another documented *ḥadīth* wherein the wife of the Companion al-Walīd b. 'Uqbah complained to Muḥammad against al-Walīd for hitting her. This *ḥadīth* was not referred to by the pre-modern exegetes and jurists in this study. It reads,

The wife of al-Walīd b. 'Uqbah came to the Prophet of God (may peace and blessings be upon him) and complained to him against her husband that he hit her. [Muḥammad] said to her, "Return to him and tell him 'The Prophet of God has taken me under his protection (*qad ajāranī*)'." So she went away for an hour or so and then returned, saying, "O Prophet of God, he did not desist [from beating] me".<sup>109</sup> Muḥammad cut a fringe of his robe and handed it to her, saying, "Tell him, 'The Prophet of God has taken me under his protection, and this is a fringe from his robe". She left for an hour and returned, saying, "O Prophet of God, he only increased in beating me". Then the Prophet of God raised his hands and prayed, "O Allāh, you deal with al-Walīd, for he has

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<sup>109</sup> "*lā aqla'a 'annī*". In al-Haythamī's narration she states both times, "He did nothing but hit me harder (*mā zādanī illā ḍarban*)". Al-Haythamī, *Ghāyat al-maqṣad*, v. 2, pp. 262-3.

sinned against me twice”. He repeated this two or three times.<sup>110</sup>

There was no discussion in this *ḥadīth* regarding the cause or intensity of al-Walīd’s beating. The unnamed wife of al-Walīd bin ‘Uqbah independently appeared on the scene and complained to Muḥammad of being beaten by her husband. Muḥammad sided with al-Walīd’s wife, offering her protection and asking al-Walīd to desist from his behavior - through al-Walīd’s wife as the bearer of this message. It is unclear what Muḥammad meant when he took al-Walīd’s wife under his protection. This protection did not mean that she was protected from al-Walīd’s beatings, since Muḥammad returned her to him twice, and she was beaten each time. He did not offer her any retaliation, compensation or divorce. It is surprising that Muḥammad did not expect al-Walīd to become enraged and beat his wife further when he heard that she had complained to Muḥammad against him. It is also intriguing that Muḥammad did not ask al-Walīd to appear before him personally, in order to hold him accountable for his actions or to adjudicate between the couple. Rather, he repeatedly sent al-Walīd’s already abused wife back to him with messages.

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<sup>110</sup> Recorded in al-Buṣṭī, *Ithāf al-khayrah* v. 4, p. 30, al-Haythamī, *Ghāyat al-maqṣad*, v. 2, pp. 262-263. This *ḥadīth* was always recorded under chapter heading “Concerning the Hitting of Women” (*Bāb ḍarb al-nisā*).

When al-Walīd's wife returned to Muḥammad complaining that al-Walīd had only intensified his beating, Muḥammad sent her back with a piece of his robe. This suggests that Muḥammad assumed that al-Walīd required physical evidence to prove that his wife had complained to Muḥammad against him, and that Muḥammad had actually taken her under his protection. The physical evidence was ineffective in persuading al-Walīd from the continued beating of his wife. She returned once again, complaining of even more beating and Muḥammad raised his hands and cursed al-Walīd, saying that al-Walīd had sinned - not against his wife - but against Muḥammad himself. Muḥammad's complaint to God against al-Walīd was not directly motivated by al-Walīd's abusive behavior against his wife, but rather by al-Walīd's blatant disregard for Muḥammad's wishes. The thrust of this report implies that Muḥammad's cursing of al-Walīd had negative consequences for the latter, at least metaphysically. He did not face any social or legal consequences for beating his wife and for denying Muḥammad's requests. The fate of al-Walīd's wife remained open-ended in this report - it is not clear if she ultimately returned to her abusive husband or if being under Muḥammad's protection granted her some type of refuge. Given that Muḥammad sent her back to al-Walīd twice, where she was assuredly to be beaten - especially the second time -, it can be speculated that she was forced to return to her husband without meaningful protection.

At least in the text of this report, Muḥammad did not take any action to protect al-Walīd's wife from his violence. Muḥammad's stance conveyed strong disapproval of men who hit their wives, but this disapproval did not translate into a juridical opinion that prohibited the act of beating one's wife, or legislate a punishment for husbands that would safeguard wives from violence at the hands of their husbands. As in previous *aḥādīth*, his sayings maintained the moral degeneracy of wife-beaters, but did not question the legal right of husbands to beat their wives. The prophetic model presented for husbands in *ḥadīth* literature was more complex than the one offered by the legal prescriptions in Q. 4:34.

### **1.3.5. The Etiquette of Physically Disciplining A Wife**

A few *aḥadīth* were concerned with the etiquette of beating. As observed in most of the *aḥādīth* cited above, these prophetic reports assumed the right of husbands to hit their wives, but did not identify the nature or legitimate cause of hitting - disciplinary or otherwise - and did not always qualify the amount and intensity of hitting permissible.

### 1.3.5.1. Hitting the Face

The idea of avoiding hitting the face emerged earlier in our discussion of the rights of women over their husbands. **One of the rights that women had over their husbands, along with the right to be fed and clothed, was to not be hit in the face. An entire complex of *aḥādīth* addresses the issue of avoiding hitting the face.** These *aḥādīth* were not limited to discussions on hitting a wife – they included hitting a slave, another man, and even animals (donkeys and camels).<sup>111</sup>

The most common version of these *aḥādīth* reads: “When one of you hits, avoid (*fa ‘l-yajtanib/fa ‘l-yattaqi*) the face.”<sup>112</sup> Some narrations explain that the reason for this is that “God created Adam in His own image”.<sup>113</sup> Hence, according to these narrations, since humans were created in the image of God, hitting someone’s face was an affront to God. So, when one found oneself hitting another person, male or female, one was encouraged to avoid the face. The

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<sup>111</sup> These *aḥādīth* were recorded under the subject headings of: “Chapter Concerning the Rights of a Woman over her Husband”, “Chapter Prohibiting the Hitting of the Face” (*Bāb al-Nahy ‘an ḍarb l-wajh*), “Chapter Concerning Avoiding the Face when Hitting” (*Bāb li-yajtanib al-wajh fi l-ḍarb*), “Chapter Prohibiting Hitting Animals in the Face” (*Bāb al-Nahy ‘an ḍarb l-ḥayawān fī wajhihī*).

<sup>112</sup> Included in Ḥākim al-Nīsābūrī, *al-Mustadrak*, v. 3, pp. 1044-1045, Ibn Bishrān, *al-Amālī*, p. 232, Muslim, *Ṣaḥīḥ Muslim*, v. 3, p. 1333, al-Nawawī, *Riyāḍ al-Ṣāliḥīn*, p. 163, Ibn Khuzaymah, *Kitāb al-Tawḥīd*, v. 1 p. 82-83, al-Bayhaqī, *Kitāb al-sunan al-ṣaḡīr*, v. 2, p. 79, al-Haythamī, *Mawārid al-ẓam’ān*, v. 4 p. 218, Abū Dā’ūd, *Sunan Abī Dā’ūd* v. 2, p. 110.

<sup>113</sup> Ibn Bishrān, *Amālī*, p. 232 and Ibn Khuzaymah, *Kitāb al-Tawḥīd*, p. 82.

principle of avoiding the face when hitting one's wife was commonly cited by pre-modern exegetes and jurists.

#### **1.3.5.2. On Beating Wives, Slaves and Sexual Intercourse**

The discussion of avoiding hitting wives as one would hit slaves was encountered previously in the *ḥadīth* wherein the Companion Ṣabrah sought Muḥammad's advice regarding his sharp-tongued wife. At end of that report, Muḥammad advised Ṣabrah not to hit his wife as he would a female slave. This portion of his advice was also found in narrations of a separate *ḥadīth*, wherein Muḥammad distinguished between the hitting of wives and slaves, with the added implications of marital violence for sexual intimacy between spouses. The variations of this *ḥadīth* were drawn upon in exegetical and juridical discussions of hitting wives. The most common version of this *ḥadīth* reads



Does one of you hit his wife as he would hit a slave (*al-'abd*), then have intercourse with her (*yujāmi'uhā* or *yunāqi'uhā*) at the end of the day?<sup>114</sup>

Some variations of this *ḥadīth* add further a phrase that should be familiar from the *ḥadīth* wherein 'Umar sought permission on behalf of men to hit their wives.

Such variations add, "Indeed the best of you are the best to their wives".<sup>115</sup>

Some versions of this *ḥadīth* intensified the beating discussed here and use the word *j-l-d*, as opposed to *ḍ-r-b*, leading the *ḥadīth* to read:

None of you should whip (*yajlid*) his wife as he would a slave (*al-amah*), for he might have intercourse (*yudāji'uhā*) at the end of his day.<sup>116</sup>

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<sup>114</sup> This version is taken from *al-Sunan al-kubrā* of al-Bayhaqī, v. 7, p. 305. Variants of this *ḥadīth* are also recorded under the following subject headings: "Concerning Men Disciplining their Wives" (*fī l-rajul yu'addib mara'atahu*) in Ibn Abī Shaybah, *al-Kitāb al-muṣannaf*, "Chapter Concerning the Choice to Abandon Beating" (*Bāb al-ikhtiyār fī tark l-ḍarb*) in al-Bayhaqī, *al-Sunan al-Kubrā*, "Concerning a Man Whipping/Lashing his Woman with the Intention of Disciplining Her" (*'An jald al-mar' mra'atahu 'inda irādatihi ta'dībahā*) in Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān*, "Chapter Concerning what is Disliked of the Hitting of Women" (*Bāb mā yukrahu min ḍarb l-nisā'*) in al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, "Chapter Concerning the Hitting of women" (*Bāb ḍarb al-nisā'*) in Ibn Mājah, *Sunan Ibn Mājah*, "Chapter concerning the Prohibition of Hitting Women" (*Bāb al-nahy 'an ḍarb l-nisā'*) in al-Dārimī, *Sunan al-Dārimī*, al-Baghawī, *Sharḥ al-sunnah*, "Concerning a Man Hitting his Wife" (*ḍarb l-rajul zawjatahu*) in al-Nasā'ī, *Kitāb al-sunan al-kubrā*, and "Chapter of Advice Concerning Women" (*Bāb al-waṣiyyah bi l-nisā'*) in al-Nawawī, *Riyāḍ al-Ṣāliḥīn*.

<sup>115</sup> Al-Bazzār, *Musnad al-Bazzār*, v. 3, p. 196, 208.

<sup>116</sup> Ibn Abī Shaybah, *al-Kitāb al-muṣannaf*, p. 225.

Yet another narration evoked feelings of shame for the man who persisted both in hitting his woman like a slave (male or female) and in being intimate with her.<sup>117</sup>

The various narrations of this *ḥadīth* were sometimes related to a context wherein Muḥammad dispensed general advice to his companions, including how to treat women. He told his companions not to hit their women as they would a female slave and then be intimate with them on the same evening. He then went on to admonish his companions for laughing at one another when one of them passed wind.<sup>118</sup> In the context in which Muḥammad offered this advice, the fact of men hitting women was considered a matter of mere etiquette, similar to men laughing at one another on passing wind.

As in previous prophetic reports concerning the matter of husbands hitting wives, this *ḥadīth* did not question the right of men to hit their wives nor did it dwell on legitimate causes for hitting. Read broadly, this *ḥadīth* could imply that whipping or hitting one's wives was incompatible with the intimacy of a marital

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<sup>117</sup> Al-Suyūṭī, *Jāmi' al-aḥādīth*, v. 7, p. 302. Marin mentions another version of this report in the *Ṭabaqāt* of Ibn Sa'd. In this report a men are told that they ought to be ashamed of themselves for beating their wives like slaves and then sleeping with them in response to a woman complaining against her husband beating her. See Marin, "Disciplining Wives", p. 18.

<sup>118</sup> For example, see al-Nawawī, *Riyāḍ al-Ṣāliḥīn*, p. 161 and al-Baghawī, *Sharḥ al-Sunnah* v. 9 p. 182.

relationship; hence the emphasis on not engaging in marital violence on the same day as being intimate with one's wife. Taken more narrowly, it is also plausible that this report assumed the right of men to hit their wives and added two qualifications for such behavior: husbands should not hit/whip their wives as they would their slaves and they should not expect to be intimate with their wives on the same evening that they beat/whip them. The frequent use of the word *j-l-d* as a substitute for *ḡ-r-b* suggests that whipping was considered to an acceptable form of beating in the marital relationship. In this more narrow reading, it can be argued that Muḥammad sought to mitigate the intensity of the beating by comparing it to the hitting of the slave and entreated men to treat their wives better than their slaves.

### **1.3.5.3. Questioning Men About Beating Wives**

'Umar b. al-Khaṭṭāb figured prominently in *aḥādīth* concerning the beating of wives. He appeared earlier in a prophetic report in which he represented men seeking permission from Muḥammad to beat their wives. He appeared in another report wherein he advised a Companion, al-Ash'ath b. Qays, about three things that he attributed to Muḥammad. Both these reports made their way into exegetical and juridical works. Al-Ash'ath b. Qays reported that

One night I was a guest of 'Umar b. al-Khaṭṭāb,  
when in the middle of the night he went to his wife

and began beating her, so I came between the two of them [and separated them]. When [‘Umar] returned to his bed he said to me, “O al-Ash‘ath, remember three things from me that are from the Prophet of God, peace and blessings be upon him: A man should not be asked why he hit his wife, do not sleep without praying the *witr* [prayer]<sup>119</sup> and I forgot the third”.<sup>120</sup>

Some narrations of this *ḥadīth* did not record the context in which ‘Umar offered his advice, just that he offered this advice.<sup>121</sup> Other narrations mentioned that the second piece of advice of ‘Umar was that one should not sleep without the ablution (*wuḍū’*).<sup>122</sup> Other narrators, possibly disquieted by either ‘Umar’s or al-Ash‘ath’s forgetfulness, suggested that he only offered one piece of advice - do not ask a man why he hit his wife<sup>123</sup> -, or added the third portion of the advice as “do not ask a man concerning whom he trusts or distrusts”.<sup>124</sup>

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<sup>119</sup> Three-cycle supererogatory prayer, performed at the end of the night, ‘*Ishā’*, for the last of the five daily prayers.

<sup>120</sup> This version of the *ḥadīth* is related in Ibn Mājah, *Sunan Ibn Mājah*, v. 3, p. 402. This *ḥadīth* was recorded under the chapter headings of “Chapter on Not Questioning a Man Concerning Hitting his Wife (*Bāb lā yus‘al l-rajul fī mā ḍaraba mra‘atahu*)” in al-Bayhaqī, *Sunan al-kubrā*, “Chapter on Hitting Women (*Bāb ḍarb l-nisā’*)” in Abū Dā‘ūd, *Sunan Abī Dāwūd* and *Sunan Ibn Mājah* and “On a Man Hitting his Wife (*ḍarb l-rajul zawjatahu*)” in al-Nasā‘ī, *Kitāb al-sunan al-kubrā*.

<sup>121</sup> For example, al-Bayhaqī *Sunan al-kubrā*.

<sup>122</sup> For example, Abū Dā‘ūd, *Sunan Abī Dā‘ūd*.

<sup>123</sup> See, al-Ṭaḥāwī, *Mushkil al-āthār* v. 6, p. 18, Abū Dā‘ūd, *Musnad Abī Dāwūd*, v. 1 p. 41.

<sup>124</sup> Al-Suyūṭī, *Jāmi‘ al-aḥādīth*, v. 8 p. 162.

The wording of ‘Umar’s advice not to ask a man why he hit his wife - *lā tas’al l-rajul fī-mā ḍaraba mra’atahu* -, echoes a Qur’ānic verse which states that none will be asked about their sins on the Day of Judgement - *fayawma’idhin lā yus’alu ‘an dhanbihi insun wa-lā jānn* (Q. 55:39).<sup>125</sup> However, the Qur’anic phrase was used in the context of discussing God’s knowledge of all things, so none would be asked about their sins - since they will wear their marks upon them. Because of its placement in the midst of discussions of the Day of Judgment, the notion of accountability for one’s deeds is very present in the Qur’anic text. By contrast, in the context of ‘Umar’s advice, the phrase functioned in the opposite way. ‘Umar sought to decrease social accountability about hitting wives when he was prevented from hitting his own wife. He did this by deflecting judgment on his treatment of his wife and he sanctioned his advice with prophetic authority. The injunction not to ask a man about hitting his wife granted husbands unbridled license to hit their wives while removing the possibility of social censure against the practice of hitting one’s wife. This report contradicts Muḥammad’s behavior of inquiring about the loud commotion that he heard after granting men permission to hit their wives. When he learned that the noise was the result of men beating their wives, he publicly reproached them for their behavior. Of all the *aḥadīth* considered in this study, this *ḥadīth*

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<sup>125</sup> I am grateful to Kecia Ali for offering this point when discussing this chapter.

of ‘Umar gives men the most unchecked power with regard to hitting their wives.

#### **1.4. Conclusion**

Based on this survey of *ḥadīth* literature, we see that Muḥammad’s behavior concerning the hitting of one’s wife was portrayed as divergent. On the one hand, his actions - *sunnah fi’līyah* - displayed a general trend of him personally refraining from hitting his own wives and also being inclined to adjudicate in the favor wives in cases where husbands hit their wives. On the other hand, his verbal pronouncements or *sunnah qawlīyah*, assumed the prerogative of men to hit their wives as a basic spousal right. Here, Muḥammad attempted to qualify the unqualified prescription of hitting as outlined in Q. 4:34. Muḥammad obeyed the prescription of the physical discipline of wives as outlined in Q. 4:34 in the sense that his potential discomfort with the prescription never translated into a juridical decision against hitting wives. However, his behavior with regard to the issue of wife-beating can also be described as resistant, as evidenced by his general exhortations either not to hit wives at all or to observe limits when hitting.

The issue of wife-beating was presented in the genre of *ḥadīth* compilations largely as an ethical issue, with an emphasis on the moral censure of wife-beating. *Aḥadīth* with legal relevance, which either affirmed the husband's prerogative to hit wives or those that regarded it as grounds for divorce, were relegated to the Books on Marriage (*nikāḥ*) and Divorce (*ṭalāq*). In contrast, *aḥadīth* that morally censured husbands for hitting their wives were included in a wide range of chapters, including the chapter on *ḥajj* sermons, the chapter on avoiding hitting the face, the chapter on forgiving the slave, the chapter on a man disciplining his wife, the chapter on the choice of leaving off hitting etc. This ethical discord, as recorded in the *aḥādīth* about Muḥammad's behavior and sayings, is important for considering the selective preference of pre-modern exegetes and jurists for some *aḥadīth* over others.

## Chapter Two: A Typological Approach to Qur'anic Exegesis

### 2.1. Introduction

The genre of Islamic scholarship devoted to commentary and interpretation, or exegesis of the Qur'ān, is broadly referred to as *tafsīr*. This genre is composed of diverse works, each with its own complex of hermeneutic methods.

Exegetes used various methodological tools in order to explicate the meaning(s) of Qur'anic verses. Though exegetes did not adhere to a singular method of exegesis, the majority of exegetical works proceeded in the following fashion: an exegete would analyze either the entire Qur'ān or large sections of it and offer interpretations of short units of the text, often referred to as “lemmas”.

An exegete might be so meticulous as to address meanings of individual verses, words, particles, pronouns and prepositions. Norman Calder describes *tafsīr* as

...a literary genre with definable formal characteristics. The most fundamental of these is the presence of the complete canonical text of the Qur'ān (or at least a significant chunk of it), segmented for purposes of comment, and dealt with in canonical order. In a work of *tafsīr*, passages of comment invariably follow canonical segments.<sup>126</sup>

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<sup>126</sup> Norman Calder. “*Tafsīr* from Ṭabarī to Ibn Kathīr: Problems in the description of a genre, illustrated with reference to the story of Abraham” in *Approaches to the Qur'ān*. Ed. G.R. Hawting and Abdul-Kader A. Shareef. (London: Routledge, 1993) 101.



The second formal characteristic that Calder offers for *tafsīr* as a genre is “the citation of named authorities and the consequent polyvalent readings of the text”.<sup>127</sup> According to Calder, this component of *tafsīr* delivered an important theological message. Embracing polyvalent readings as part of the tradition of *tafsīr* implied that community and text “could contain multiplicity while remaining one community and one text”.<sup>128</sup> In this context, ‘prophetic history’ - encompassing prophetic biography in “*qiṣaṣ al-anbiyā*” and “*sīrat al-nabi*” - was an important element of *tafsīr*. The third component of *tafsīr* as a genre is the effort to relate the Qur’anic text to one or more of the Islamic religious and auxiliary disciplines, such as philology (*luḡha*), speculative theology (*kalām*), jurisprudence (*fiqh*), mysticism (*taṣawwuf*), etc.<sup>129</sup> This component is especially relevant to this study since it raises the question of whether the difficulty in interpretation of certain Qur’anic passages emerges from the text itself, or from the perceived discrepancy between the Qur’anic text and some external framework of religious understanding.

The genesis of exegesis as a genre is located by many scholars in the figurehead of Ibn ‘Abbās (d. 68/687-8). Ibn ‘Abbās was a companion of

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<sup>127</sup> Ibid., p. 103.

<sup>128</sup> Ibid., pp. 103-104.

<sup>129</sup> Ibid., p. 106.

Muḥammad whom the latter reportedly dubbed “the expositor of the Qur’ān” (*tarjumān al-Qur’ān*).<sup>130</sup> Despite Ibn ‘Abbās’ hagiographical status as the primordial exegete, there is disagreement in Islamic Studies regarding the authenticity of his reputed works, especially in so far as they are available to current scholars. Though there are at least three extant works that claim to be authored by Ibn ‘Abbās, there is general agreement in the field that these are false attributions. Fuat Sezgin argues that it is possible to have access to the works of Ibn ‘Abbās’ pupils, while John Wansbrough placed the earliest available authentic works from the genre of exegesis to 200 A.H./815 C.E.<sup>131</sup>, over 125 years after the death of Ibn ‘Abbās.

Several types of works are generally categorized under the heading of *tafsīr*. What modern scholarship commonly refers to as Qur’anic exegesis includes forms of exegetical works that describe themselves as *tafsīr*, *ta’wīl*, *bayān*, *i’rāb* and *aḥkām* works. Wansbrough traced the development of the “*tafsīr*: *ta’wīl* dichotomy”<sup>132</sup> to conclude that, ultimately, the difference between the two came

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<sup>130</sup> John Wansbrough, *Qur’anic Studies: Sources and Methods of Scriptural Interpretation* (Oxford: Oxford University Press, 1977) 158.

<sup>131</sup> Fred Leemhuis, “Origins and Early Development of the *tafsīr* Tradition” in *Approaches to the History of the Interpretation of the Qur’ān*, ed. Andrew Rippin (Oxford: Clarendon Press, 1988) 15.

<sup>132</sup> Wansbrough, *Qur’anic Studies*, pp. 154-155.

down to a fundamental difference in the “exegetical relationship between canonical and non-canonical material as witness to revelation preserved and transmitted by the Muslim community”.<sup>133</sup> In this dichotomy, the central concern of *tafsīr* was the transmission of canonical tradition, while *ta’wīl* was occupied with the contributions of extra-canonical sources to the exegetical project. Gätje asserts that over time, *tafsīr* came to be understood as the ‘external’ tradition-bound meaning of the Qur’ān, while *ta’wīl* came to represent the inner or allegorical meanings of the Qur’ān.<sup>134</sup> *Bayān* exegesis, also known as *tafṣīl* works, purported to be works of “clarification” of the Qur’ān<sup>135</sup>, particularly of discrete words and phrases in the Qur’ān that may have multiple or abstruse meanings. Wansbrough located the methodology of *i’rāb* as an extension of *bayān* works, in that *i’rāb* used philology as a central tool in “clarifying” the meanings of the Qur’ān.<sup>136</sup> Finally, *aḥkām* works were described by Wansbrough as “*halakhic*”<sup>137</sup>, given their legal nature. A key form of legal analysis used these works was applied analogical deduction.

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<sup>133</sup> Ibid., pp. 154-156

<sup>134</sup> Helmut Gätje, *The Qur’ān and its Exegesis: Selected Texts with Classical and Muslim Interpretations*. p. 32

<sup>135</sup> Ibid., p. 153

<sup>136</sup> Ibid., p. 155

<sup>137</sup> Ibid., p. 151

Thus, various tools were used by exegetes when attempting to explain the meaning(s) of specific verses in the Qur'ān. The tools that exegetes relied upon depended not only on the stylistic approach of a particular exegete, but also on the category of the specific verse being interpreted. Many exegetes divided verses of the Qur'ān into the broad categories of legal and non-legal verses. This division is heuristically helpful for the present study, despite the fact that legal verses form a minority of verses in the Qur'ān.<sup>138</sup> The overwhelming majority of verses in the Qur'ān are not legal, but rather narrative, allegorical, exhortative, etc. However, because of its imperative nature and content, Q. 4:34 falls in the category of a legal verse.<sup>139</sup> This means that Q. 4:34 contains direct legal implications that are represented by prescriptive commands in the verse and it was treated as a legal verse by the overwhelming majority of exegetes as well as jurists. This is significant because the legal status of the verse leads to the predominance of certain tools of exegesis applied to the verse, to the exclusion of other tools.

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<sup>138</sup> Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī, *Al-Itqān fī 'Ulūm al-Qur'ān*, (Damascus: Dār Ibn Kathīr, 2000) v. 2, pp. 1025-1040. For discussion of legal verses (*ayāt al-aḥkām*), see Chapter 65.

<sup>139</sup> I argue that the imperative to discipline wives in Q. 4:34 is a command with legal ramifications – it was understood as such by all exegetes and legal scholars consulted for this study.

As Calder notes, Wansbrough offered a “typological approach to the historical development (diachronic) of *tafsīr*. His types [were] haggadic, halakhic, masoretic, rhetorical and allegorical”. Calder offered his own typology for the study of exegesis, dividing it into “instrumental” and “ideological” structures. According to Calder, instrumental structures included “orthography, lexis, syntax, rhetoric, symbol/allegory”, and ideological structures comprised “prophetic history, theology, eschatology, law and *taṣawwuf*”.<sup>140</sup> Regardless of the particular structure or typology at hand, the typological approach to the study of exegesis is extremely valuable. A typological approach examines the methodology of exegesis by which various interpretations are offered.

The typological approach of studying works of Qur’anic exegesis was adopted by Walīd Saleh in his book *The Formation of the Classical Tafsīr Tradition: The Qur’ān Commentary of al-Tha’labī*. Saleh offered a detailed typological study of the exegetical work of Aḥmad ibn Muḥammad al-Tha’labī (d. 427/1035). His typology includes the “merit-of-sura” preambles, philology, anthology, fictive narratives (which included *asbāb al-nuzūl* literature), mystical interpretations, polyvalence, admonitory discourses, political interpretations, and prophetic

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<sup>140</sup> Calder, “*Tafsīr* from Ṭabarī to Ibn Kathīr”, pp.104-105

history.<sup>141</sup> Saleh's work is unique in that it explored the hermeneutic methods employed by al-Tha'labī in contrast to some commentaries of exegetes who preceded and followed him. However, his project is mostly limited to al-Tha'labī's commentary.

Karen Bauer discusses the competing views on whether exegetes were guided by prophetic history in their interpretations of Qur'anic texts or they selectively manipulated them in order to suit their preferred interpretations. In her dissertation, Bauer offers a diachronic study of a large number of pre-modern exegetes by focusing her research on four Qur'anic passages.<sup>142</sup> Bauer's project involves tracing the trajectory of change over time in specific methodological approaches with regard to rationales offered by exegetes for the hierarchy of men over women. Bauer argues, against scholars like Brannon Wheeler, that external disciplines - such as prophetic practice - were employed by exegetes selectively in order to strengthen their preferred interpretations. Wheeler argued for a causal relationship between the Qur'ān and prophetic practice, where prophetic history determined exegesis of the Qur'ān.<sup>143</sup> In

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<sup>141</sup> Walid Saleh, *The Formation of the Classical Tafsīr Tradition: The Qur'ān Commentary of al-Tha'labī* (Leiden: Brill, 2004). See especially chapters 5 and 6.

<sup>142</sup> Bauer, *Room For Interpretation*, see especially pp. 1-2.

<sup>143</sup> Brannon Wheeler, *Prophets in the Qur'ān*, p. 5, also see Introduction.

contrast, Bauer argues, in line with Behnam Sadeghi's conclusion with regard to Islamic jurisprudence<sup>144</sup>, that exegetes' selectivity of sources external to the Qur'ān shed light on their methodology. This was the case because exegetes drew on external scholarly sources as it suited their purposes and "desired"<sup>145</sup> interpretations. In this respect, Bauer wrote that "Sources such as *ḥadīths* do not travel on a one-way road from the past to dead-end in the mind of any one exegete; instead, the exegete is at the center of a roundabout of converging influences".<sup>146</sup>

Combining the typological approach of Saleh and the analysis of sources spanning several centuries by Bauer, who themselves were indebted to Wansbrough and Calder, this section on Qur'anic exegesis considers pre-modern interpretations that surround the imperative or permission<sup>147</sup> to hit wives in Q. 4:34. Specifically, the focus of this section is an examination of methods adopted by various pre-modern exegetes regarding the prescription to hit

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<sup>144</sup> Behnam Sadeghi, *The Structure of Reasoning in Post-Formative Islamic Jurisprudence*, see especially Introduction.

<sup>145</sup> Sadeghi used this term with regard to "desired law", when discussing the sources jurists drew on to advance a particular "desired law". Sadeghi's dissertation argues that the sources did not define Islamic jurisprudence, but rather jurists selectively employed sources to make the case for desired law. See Introduction, especially p. 2.

<sup>146</sup> Bauer, *Room for Interpretation*, p. 3.

<sup>147</sup> As will be seen below, pre-modern exegetes understood the imperative form of *wa-dribuhunna* to mean both a permission and a command.

recalcitrant (*nāshizāt*) wives. Hence, it will survey the scope and range of extant exegetical positions thematically, rather than synchronically or diachronically. This chapter is divided by typological approaches to the prescription for husbands to physically discipline wives. The methodological tools employed by exegetes in this respect were: context of revelation (*asbāb al-nuzūl*) literature, worldview, philology, law and prophetic history. Each section will consider the relevance of the methodological approach to the prescription for hitting wives and the scope of available positions within that typology. Prophetic history will not be discussed in a separate section but rather its pertinence will be discussed throughout this section. Legal discussion in the genre of Qur’anic exegesis - which drew upon a shared world view, philology and prophetic history - will be discussed separately in the next chapter. Relevant exegetical commentaries will be referenced and explored with respect to each interpretive approach.

## **2.2. Setting Up Context: *Asbāb al-nuzūl* of Q. 4:34**

*Asbāb al-nuzūl* literally means “causes”, or, “occasions of revelation”. This literature sought to explain the reason for the revelation of specific verses by providing context in the form of an historical narrative. Hence, *asbāb al-nuzūl* were *ḥādīth* reports that claimed to describe a moment in the life of the early



Muslim community that occasioned the revelation of a particular verse to him.<sup>148</sup> These reports were therefore considered to be distinct from *aḥādīth* regarding Muḥammad's general practice, which exegetes also drew on interpretively, but were not directly related to any specific verse. This distinction is significant, since it led many scholars to treat *asbāb al-nuzūl* as a separate sub-category of prophetic practice.<sup>149</sup> As a result of being a separate sub-category, many reported *asbāb al-nuzūl* gained currency amongst exegetes and legal scholars in spite of weak chains of transmission. In the case of Q. 4:34, for example, the preeminent *sabab al-nuzūl* was *mursal* in its transmission, meaning that the chain of transmission could not be traced back beyond a Successor, in this example, al-Ḥasan al-Baṣrī (d. 110/728). Moreover, this report cannot be found in any major *ḥadīth* collection. Nevertheless, exegetes almost unanimously treated this report as authentic. It may be that the historical context and Prophetic sanction provided by *asbāb al-nuzūl* was so hermeneutically fruitful that to exclude context would be to forfeit an exegetical tool that was at the same time historically accessible and authoritative. Regardless of the motivation behind exegetes' according an authoritative status to otherwise

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<sup>148</sup> See Andrew Rippin "The Function of *Asbāb al-Nuzūl* in Qur'anic Exegesis", *Bulletin of Oriental and African Studies*, University of London, v. 51 n. 1 (1988): 1-20.

<sup>149</sup> Saleh considers *asbāb al-nuzūl* a separate sub-category in his discussion of "fictive narratives", but does not discuss it in a significant manner. Saleh, *The Formation of the Classical Tafsīr Tradition*, p. 162.

dubious reports, *asbāb al-nuzūl* played a central role in Qur'anic exegesis in general and Q 4:34 in particular.

Pre-modern exegetes were limited, however, by the *asbāb al-nuzūl* reports that were circulated in the second/eighth century, and these reports did not address all Qur'anic verses.<sup>150</sup> Thus, exegetes could not always rely on *asbāb al-nuzūl* reports to provide stories/events surrounding legal verses. For those verses that did have corresponding *asbāb al-nuzūl*, Wansbrough explains that the reports describe two types of revelation; “spontaneous” (*ibtidā'an*) and “in response to an event or query” (*'aqiba wāqi'a aw su'āl*).<sup>151</sup> For the purpose of exegesis, the *sabab al-nuzūl* that describes the second type of revelation provides context that can shed light on the legal thrust and scope of the verse. Q. 4:34 has two documented causes (*sabab*) for its revelation, both of which helped exegetes explain the verse's legal import.

In practice, the *Asbāb al-nuzūl* genre served various functions in Qur'anic exegesis. Rippin considered some of these functions at length in his article entitled “The Function of *Asbāb al-Nuzūl* in Qur'anic Exegesis”. He located the general motivation behind *asbāb al-nuzūl* literature as a result of the theological

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<sup>150</sup> Rippin, “Function of *Asbāb al-Nuzūl*”, p. 12.

<sup>151</sup> Wansbrough, *Qur'anic Studies*, p. 178.

need to “historicize the text of the Qur’ān in order to be able to prove constantly that God really did reveal his book to humanity on earth; the material thereby acts as a witness to God’s concern for His creation”.<sup>152</sup> Often then, *asbāb al-nuzūl* simply provided a general context for the revelation of a particular verse and answered the questions of what problem(s) were addressed by the verse, and/or when the verse was revealed. It could also attempt to answer the question of “why” the Qur’ān mentioned a specific issue or story<sup>153</sup> or it could “adduce the *jāhilī* ‘foil’, where things were worse off before Islam”.<sup>154</sup> In this way, a *sabab al-nuzūl* could completely transform or determine the legal force of a verse.

In his *Qur’anic Studies*, Wansbrough wrote about the link between *asbāb al-nuzūl* and legal verses that,

... the finding of specific and useful juridical material (*ḥukm/aḥkām*) in the text of scripture was in practice frustrated by the absence of an unambiguous and uncontradictory historical framework. Solutions to the problems resulting from that condition were sought, and for the most part found, by imposing upon the document of revelation a chronological

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<sup>152</sup> Rippin, “Function of *Asbāb al-Nuzūl*”, p. 2

<sup>153</sup> *Ibid.*, p. 10

<sup>154</sup> *Ibid.*, p. 10

stencil. Historical order could thus be introduced into what was essentially literary chaos.<sup>155</sup>

The “primary device” employed by exegetes to the end of establishing a “chronology of revelation”<sup>156</sup> of a legal verse, according to Wansbrough, was the *asbāb al-nuzūl* literature.<sup>157</sup> Since *Asbāb al-nuzūl* literature was not always helpful in (re-)constructing chronology, especially in the case of “spontaneous” revelation, its use in exegetical sources was not always limited to the establishment of chronology in revelation.

In the case of Q. 4:34, the *asbāb al-nuzūl* literature not only provided a context for its revelation, but also narrowed the exegetical possibilities of the verse. Since the context of revelation literature was narrowly focused on the hitting of wives, exegetes were able to use the *asbāb al-nuzūl* to make the prescription to hit wives the central hermeneutical concern of the verse. Thus, the hierarchy of husbands over wives became intricately connected to the right and/or responsibility of husbands to discipline their wives by various means, including physical discipline. This is in line with Rippin’s assessment that, in addition to playing a “central role in supporting exegetical decisions regarding the

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<sup>155</sup> Wansbrough, John, *Qur’anic Studies*, pp. 177 and 185

<sup>156</sup> *Ibid.*, p. 141

<sup>157</sup> *Ibid.*, p. 177

establishment of context”<sup>158</sup>, *asbāb al-nuzūl* was often used by exegetes to support their interpretation of a verse *ex post facto* with a *sabab*.<sup>159</sup> In the case of Q. 4:34, *asbāb al-nuzūl* provided “narrative expansion” by “providing an example of the application of a law found within the Qur’ān”<sup>160</sup>, or, by making a specific *halakhic* point.<sup>161</sup> The specific legal point that the *asbāb al-nuzūl* of Q. 4:34 made for exegetes was that, barring extreme circumstances such as death or a serious wound, there could be no retaliation for a wife due to the disciplinary measures undertaken by her husband.

### 2.2.1. Two Occasions and Three Verses

The *asbāb al-nuzūl* surrounding Q. 4:34 were an important element in the exegesis of the verse. Roughly half of the commentaries considered in this survey referred to the occasion of revelation of Q. 4:34 explicitly and used it to

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<sup>158</sup> Rippin, “Function of *Asbāb al-Nuzūl*”, p. 8

<sup>159</sup> *Ibid.*, p. 8

<sup>160</sup> *Ibid.*, p. 14

<sup>161</sup> *Ibid.*, pp. 4 and 12

define the discourse surrounding this verse.<sup>162</sup> The most common *sabab* (pl. *asbāb*) cited for the revelation of Q. 4:34 was directly related to the physical discipline of wives. It is unclear whether this *sabab* caused the exegesis of Q. 4:34 to be focused on the physical discipline of wives, or whether, as Rippin would argue, this *sabab* provided a means for exegetes to make Q. 4:34 about the physical discipline of wives, *ex post facto*. In either case, what is clear is

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<sup>162</sup> Exegetes who considered the *asbāb al-nuzūl* for Q. 4:34 included Mujāhid, *Tafsīr al-Imām Mujāhid ibn Jabr*, pp. 274-275, Muqātil, *Tafsīr Muqātil ibn Sulaymān*, v. 1, pp. 234-236, Ibn Wahb, *al-Jāmi'*, v. 1, pp. 145-146, v. 2, pp. 41-42, 'Abd al-Razzāq al-Ṣan'ānī ibn Hammām al-Ḥimyarī, *Tafsīr al-Qur'ān* (Riyadh, Saudi Arabia: Maktabat al-Rushd, 1989), v. 1, pp. 157-158, Abū Ja'far Muḥammad ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī: al-musammā Jāmi' al-bayān fī ta'wīl al-Qur'ān* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyah, 1999) v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Jaṣṣāṣ, *Aḥkām al-Qur'ān* v. 2, pp. 188-189, Naṣr ibn Muḥammad Abū al-Layth al-Samarqandī, *Tafsīr al-Samarqandī, al-musammā, Baḥr al-'ulūm* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyah, 1993) v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qur'ān*, v.1, pp. 366-368, Aḥmad ibn Muḥammad al-Tha'labī, *al-Kashf wa-al-bayān: al-ma'rūf Tafsīr al-Tha'labī* (Beirut, Lebanon: Dār Iḥyā' al-Turāth al-'Arabī, 2002) v. 3, pp. 302-303, al-Māwardī, *al-Nukat wa-al-'uyūn: tafsīr al-Māwardī. Min rawā'ī' al-tafāsīr*, v. 1, pp. 480-483, Abū al-Ḥasan 'Alī al-Wāḥidī Nīshābūrī, *al-Wajīz fī tafsīr al-Kitāb al-'azīz* (Damascus, Syria: Dār al-Qalam, 1995) v. 1, pp. 262-263, al-Ḥusayn ibn Mas'ūd al-Baghawī, *Tafsīr al-Baghawī al-musammā Ma'ālim al-tanzīl* (Beirut, Lebanon: Dār al-Ma'rifah, 1986) v. 5, pp. 422-428, Maḥmūd ibn 'Umar al-Zamakhsharī, *al-Kashshāf 'an ḥaqā'iq ghawāmiḍ al-tanzīl wa-'uyūn al-aqāwīl fī wujūh al-ta'wīl* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyah, 2003) v.1 pp. 490-497, Ibn 'Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1997) v. 4, pp. 70-73, 'Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, *Tafsīr al-Qur'ān: ikhtiṣār al-Nukat lil-Māwardī* (Beirut, Lebanon: Dār Ibn Ḥazm, 1996) v. 1, p. 320-322, Muḥammad ibn Aḥmad al-Qurṭubī, *al-Jāmi' li-aḥkām al-Qur'ān: tafsīr al-Qurṭubī* (Beirut, Lebanon: Dār al-Kitāb al-'Arabī, 1997) v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Tafsīr al-Khāzin: al-musammā Lubāb al-ta'wīl fī ma'ānī al-tanzīl*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, Muḥammad ibn Ya'qūb al-Fīrūzābādī, *Tanwīr al-miqbās min tafsīr Ibn 'Abbās* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyah, 2000) pp. 91-92, Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī, *al-Durr al-manthūr fī al-tafsīr al-ma'thūr* (Beirut, Lebanon: Dār al-Ma'rifah, 1970) v. 2, pp. 150-157, Muḥammad ibn Aḥmad al-Shirbīnī, *Tafsīr al-Khaṭīb al-Shirbīnī: al-musammā al-Sirāj al-munīr fī al-'ānah 'alā ma'rifat ba'ḍ ma'ānī kalām rabbīnā al-ḥakīm al-khabīr* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyah, 2004) v. 1, pp. 346-347, Abū al-Su'ūd al-'Imādī, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

that the prevalent *sabab* allowed exegetes to justify the prescription of the physical discipline of wives with the hierarchy of men over women. Thus, the exegesis of Q. 4:34 inextricably bound men's hierarchy over women, found in the beginning of the verse, to the disciplinary power men have over women in the latter part of the verse.

### 2.2.1.1. Occasion One: Preference of Men over Women

Exegetes cited two potential causes for the revelation of Q. 4:34, and at least three potential verses that were revealed in response to these events. The more infrequent citation of the *sabab al-nuzūl* of Q. 4:34 was the instance in which Umm Salamah, a wife of Muḥammad, narrated that women in Medina asked Muḥammad why men had preference (*faḍl*) over women in inheritance.

Q. 4:32 was said to have been revealed in response to this query, stating,

And do not covet that by which Allah has made some of you excel (*faḍḍala*) others; men shall have the benefit of what they earn and women shall have the benefit of what they earn; and ask Allah of His grace; surely Allah knows all things.<sup>163</sup>

Exegetes such as Ibn 'Aṭīyah (d. 541/1146), Fakhr al-Dīn al-Rāzī (d. 606/1209), al-Qurṭubī (d.671/1273) and Abū Ḥayyān (d. 745/1344) directly connected Q. 4:34 with the proclamation in Q. 4:32. They argued that while Q.

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<sup>163</sup> M.H. Shakir, *The Qur'an*. (Elmhurst, N.Y.: Tahrike Tarsile Qur'an, 1990) Q. 4:32.

4:32 stated the *faḍl*, (preference/excellence) of men over women, Q. 4:34 outlined the functional outcome of this preference.<sup>164</sup> In this scheme, Q. 4:34 was indirectly related to the context of revelation, through Q. 4:32.<sup>165</sup> Q. 4:32 was revealed in direct response to Umm Salamah's question regarding the preference of men over women, and Q. 4:34 functioned essentially as an exposition of the hierarchy of men over women as outlined in Q. 4:32. Against the backdrop of this context of revelation, the main thrust of Q. 4:34 was the hierarchy of men over women, and the disciplinary power of husbands over wives was a function of that hierarchy.

Bauer argues that according to Fakhr al-Dīn al-Rāzī, the hierarchy of husbands over wives was not necessarily unfair to women. Rather, he saw a husband's monetary advantage balanced out by increased responsibility to provide for wives.<sup>166</sup> Regardless of whether the marital hierarchy was (un)fair to wives, what is important to note here is that Fakhr al-Dīn al-Rāzī considered the Umm Salamah occasion of revelation for Q. 4:32 to be an explanation of the divinely

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<sup>164</sup> Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, and Abū Ḥayyān Muḥammad ibn Yūsuf, *Tafsīr al-baḥr al-muḥīṭ* (Beirut: Dār al-Kutub al-'Ilmīyah, 1993) v. 3, pp. 248-253.

<sup>165</sup> Manuela Marin argues that Q. 4:34 was revealed in response to the Umm Salamah context of revelation. However, I argue that according to exegetical literature, Q. 4:32 was revealed in direct response to the Umm Salamah *sabab* and Q. 4:34 was connected to this *sabab* through the mediation of Q. 4:32. See, Manuela Marin, "Disciplining Wives" especially. pp. 11-12.

<sup>166</sup> Bauer, *Room for Interpretation*, pp. 138-139.



preferred status of husbands over wives in Q. 4:34. Even if he did not consider the marital hierarchy to be unfair for wives, Fakhr al-Dīn al-Rāzī still considered this hierarchy to be an intrinsic part of marriage. Nevertheless, this context of revelation for Q. 4:34 was not preferred by exegetes. Rather, most commentators cited another context of revelation that was more directly connected to Q. 4:34, which slightly but significantly altered the focus of the verse.

#### **2.2.1.2. Occasion Two: Sanctioning a Husband's Right to Slap his Wife**

The second and far more widespread *sabāb al-nuzūl* for Q. 4:34 was cited by all exegetes who considered the cause for the revelation of Q. 4:34 in their exegesis, including exegetes who cited the above-mentioned *sabab*. The basic framework of this *sabab* was that a woman complained to Muḥammad against her husband, who had struck/slapped (*laṭama/ṣakka*) her. Muḥammad decided that the woman deserved retaliation until Q. 4:34 was revealed, causing Muḥammad to revoke his decision. In this context, the verse nullified Muḥammad's initial decision with a statement that justified the hierarchy of husbands over wives as a result of the *faḍl* of men over women. Q. 4:34 further described attributes of "good" wives (*ṣāliḥāt*), and prescribed the appropriate procedure for disciplining recalcitrant wives (*nāshizāt*). That this was the most

commonly cited *sabab* of Q. 4:34 is significant since it focused the discussion of Q. 4:34 on the right of men to physically discipline their wives, by directly linking men's divine *faḍl* to their right to discipline their wives. This is in contrast to the *sabab al-nuzūl* mentioned above, wherein the right to discipline wives was one among many consequences of the *faḍl* of men over women. In the present *sabab*, however, discipline plays a central role, and the *faḍl* of men over women justifies the right of husbands to engage in physical discipline. Hence, the exegetical use of a context wherein Q. 4:34 revoked Muḥammad's decision to grant retaliation to a slapped wife allowed for an interpretive move whereby this verse provided divine justification for husbands who physically disciplined their wives.

Interestingly, this was how Q. 4:34 was primarily used in Islamic jurisprudence, as will be seen in the chapter on Islamic Jurisprudence. As will be seen in this section, the *halākhic* point that Q. 4:34 made for some exegetes was that when legal considerations were drawn from this *sabab*, they stipulated that this story proved that there could be no recompense for a wife within the context of marriage. If a wife was killed by her husband, than her family was owed compensation for her death. Other exegetes argued that a wife herself was owed recompense in the case of wounds and broken bones. In this case, the

*sabab al-nuzūl* decreased the rights women had when seeking retaliation against abusive husbands in a post-Qur’anic context, while increasing husbands’ power over wives. The context of revelation where Muḥammad’s decision to grant retaliation to a wife was revoked by Q. 4:34 also created a tension between Muḥammad’s judgment on the one hand, and God’s command to the contrary on the other. The tension between prophetic practice and the prescription of Q. 4:34 is an important theme that is discussed in greater detail below.

### **2.2.2. Did Ḥabībah Commit *Nushūz*?**

The woman who complained against her husband in this *sabab* was unnamed in a few narrations, but most exegetes thought her to be one of three women. She was most commonly identified as Ḥabībah bt. Zayd b. Abī Zuhayr, wife of Sa‘īd b. Rabī‘ b. ‘Amr. She was also referred to as ‘Umayrah (and in some cases Ḥabībah) bt. Muḥammad b. Muslim, wife of As‘ad or Sa‘d b. al-Rabī‘. She was least commonly denoted as Jamīlah bt. ‘Abdallah b. ‘Ubayy wife of Qays b. Shimās. For the sake of clarity, I will refer to the couple as Ḥabībah and Sa‘īd, given the predominance of those names in the narrations. A good number of exegetes mentioned that the couple was from the Anṣār, and that Sa‘īd belonged to the leaders (*nuqabā’*) of the Anṣār. This fact may have been

significant for exegetes because it helped explain not only Ḥabībah's reaction in seeking retaliation for being struck/slapped by her husband, but also her father's reaction, which was to seek retaliation on her behalf. The story implied that Ḥabībah, a Medinese woman, felt wronged after being struck by her husband and may remind the reader of the *ḥadīth* discussed in the *Ḥadīth* chapter, in which 'Umar sought permission to beat wives. In some exegetical variations of this *ḥadīth*, 'Umar sought this permission in response to the altered behavior of Makkan women, who, after mingling with the women of Medina (also known as Anṣārī women), became ill-behaved in 'Umar's eyes<sup>167</sup>.

Exegetes commonly used the words *laṭama* (he slapped, struck), or *ṣakka* (he struck, beat), to describe Ḥabībah being struck/slapped by her husband. In a few instances, they also used the word "to strike" (*ḍaraba*).<sup>168</sup> According to the early exegetes, following this strike/slap, Ḥabībah and her father approached Muḥammad, seeking retaliation against Sa'īd. Her father is reported to have said: "I married my daughter to him and gave her to his bed and he slapped

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<sup>167</sup> For example, see Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

<sup>168</sup> It is worth noting briefly here that in the variants of this *sabab al-nuzūl*, *laṭama* and *ṣakka* were used interchangeably with *ḍaraba*, the term utilized in the text of Q. 4:34.

her”.<sup>169</sup> Al-Ṭabarī (d. 311/923) narrated several versions of this *sabab* with variant chains of transmission. In one of the variations, Ḥabībah herself complained or sought retaliation from Muḥammad against Sa‘īd. In a second narration her family complained on her behalf, while in a third narration, she and her father complained to Muḥammad together.<sup>170</sup> Most exegetical narrations after al-Ṭabarī recorded that either Ḥabībah complained to Muḥammad herself, or she complained with her father. Ibn Kathīr (d. 773/1371)<sup>171</sup> and al-Suyūṭī (d. 911/1505)<sup>172</sup> mentioned that when Ḥabībah complained to Muḥammad, she was accompanied by an unnamed man from her tribe. The various words used to describe Ḥabībah’s behavior were that she complained (*tashkī*), appealed for assistance against (*tasta’dī*) or sought (*taltamis/ṭalabat*) retaliation against her husband.

One chronological trend that was relevant to this context of revelation is that exegetes before al-Ṭabarī generally did not relate or speculate about any behavior on Ḥabībah’s part that may have led to her being struck by Sa‘īd. Al-

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<sup>169</sup> I have taken this translation from Bauer’s dissertation, p. 112. Also see footnote 234. The Arabic reads: “*ankaḥtuhu wa-afraštuhu karīmatī fa-laṭamahā*”. Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236.

<sup>170</sup> Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72.

<sup>171</sup> Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603.

<sup>172</sup> Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

Ṭabarī briefly considered the basis of Sa‘īd’s violence against Ḥabībah when he related a narration of this *sabab* from Isma‘īl b. ‘Abd al-Raḥmān al-Suddī (d. 127/745), wherein al-Suddī hinted at the cause of Sa‘īd’s strike/slap. Al-Suddī is reported to have mentioned that there were “[harsh] words” (*kalāmūn*), that is, some sort of verbal disagreement between the “Anṣār man” and his wife.<sup>173</sup> Even so, there was no designation of blame in this narration, especially on the part of Ḥabībah, who was unambiguously the victim. The offending party was clearly Sa‘īd, against whom Ḥabībah sought retaliation.

Al-Tha‘labī cited a narration of this *sabab* that effectively displaced sole blame from Sa‘īd and cast blame on both Ḥabībah and Sa‘īd. Al-Tha‘labī related that Ḥabībah was recalcitrant (*nashazat*), so her husband struck her, as a result of which she complained to Muḥammad.<sup>174</sup> The reference to Ḥabībah’s *nushūz* became prevalent starting with al-Tha‘labī, and most exegetes after him who referenced the *sabab al-nuzūl* of Q. 4:34 mentioned that Ḥabībah was recalcitrant, as result of which she was struck by her husband. This slightly altered wording of the *sabab al-nuzūl* transformed Sa‘īd’s striking of Ḥabībah from a potentially random and undeserved act of physical violence to an act of

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<sup>173</sup> Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72.

<sup>174</sup> Al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303. Manuela Marin also notes this shift in blame from the abusive husband to rebellious wife with al-Wāḥidī. See, Marin, “Disciplining Wives”, p. 10.

physical discipline that later achieved divine sanction.

Though all major exegetes after the fifth/eleventh century who cited the context of revelation of Q. 4:34 mentioned Ḥabībah's *nushūz*, a few exegetes cited slightly different variations of the *sabab* that are worth mentioning. In the exegetical work attributed - falsely, according to Rippin<sup>175</sup> - to al-Fīrūzābādī (d. 817/1414), the narration reads that Ḥabībah was slapped specifically because of "her disobedience in bed".<sup>176</sup> Fakhr al-Dīn Al-Rāzī (d. 606/1209) offered a particularly interesting version of this *sabab* in which he insinuated that Ḥabībah's disobedience was in bed. He described the *sabab al-nuzul* of Q. 4:34 in the following manner:

Ibn 'Abbas said: This verse was revealed regarding the daughter of Muhammad bin Salmah and her husband Sa'd b. al-Rabi', one of the chiefs/leaders (*nuqaba*) of the Anṣār. He slapped her so she rose (*nashazat*) from his bed, went to the Prophet and relayed her complaint, [namely] that he slapped her and the mark of the slap remained on her face. So the Prophet said: "Seek retaliation (*iqtaṣṣī*) from him", [but] then he said to her "Be patient until I decide [on the matter]". Then this verse was revealed: "Men are *qawwāmun* over women" meaning that they are given power (*musallaṭūn*) over their [women's] character and they have the upper hand. So it is as if God made him a chief (*amīr*) over her and a guardian [*naḥīdh l-hukm*] with respect to

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<sup>175</sup> Rippin, "Ibn Abbās and Criteria for Dating Early *Tafsīr* Texts", *JSAI* 18 (1994): 38-83

<sup>176</sup> Muḥammad ibn Ya'qūb al-Fīrūzābādī, *Tanwīr*, pp. 91-92.

her. Hence, when this verse was revealed the Prophet said: “we wanted one thing [*‘amr*] and God wanted another thing and what God wanted is better”, and he therefore withdrew [his previous command for] retaliation. When God established the dominion of men over women and appointed them executors of their affairs, He clarified that there were two rationales for that....<sup>177</sup>

Fakhr al-Dīn al-Rāzī’s use of the verb of “*nashaza*” (she rose) “from [her husband’s] bed” possibly implied both that Ḥabībah had refused her husband sexually and that this constituted *nushūz* on her part.<sup>178</sup> The matter is complicated by the fact that Fakhr al-Dīn al-Rāzī suggested that Ḥabībah rose (*nashaza*) from her husband’s bed only after Sa‘īd had already slapped her. Hence, there was ambiguity regarding Ḥabībah’s guilt of *nushūz* -- it is not clear that Sa‘īd hit her as a result of her *nushūz*, but the employment of the verb *nashaza* to describe her behavior following her husband’s violence is confounding. It is unlikely that his use of the verb *n-sh-z* to mean “to rise” was a coincidence in a context wherein *nushūz* deserved physical discipline. It is more likely that the use of this verb helped soften the stark contradiction between Muḥammad’s initial judgment for retaliation and the Qur’anic command to the contrary, by intimating that Ḥabībah might have been deserving of physical discipline.

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<sup>177</sup> Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

<sup>178</sup> This is how al-Tha‘labī meant *nashaza*. Al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303.



### 2.2.3. Mitigating the Contradictory Nature of Prophetic and Divine Judgements

Fakhr al-Dīn al-Rāzī's account mitigated the tension between Muḥammad's judgment and the Qur'anic text to the contrary through other means as well. He wrote that when Ḥabībah presented her complaint to Muḥammad, the "impression of the strike/slap was still present on her face".<sup>179</sup> This addition to the *sabab al-nuzūl* narrative meant that Ḥabībah had evidence that she had, in fact, been struck by her husband and further that the blow had been strong enough to leave an impression or mark (*athar*) on her face. This version of the *sabab al-nuzul* helped moderate the contradiction between Muḥammad's decision for retaliation and its subsequent nullification by Q. 4:34, because it emphasized the reasonableness of Muḥammad's decision for retaliation. Muḥammad had not decided in Ḥabībah's favor simply based on a fanciful claim on her part, but rather his judgment was based on concrete evidence - the impression of Sa'īd's slap on Ḥabībah's face. Despite Q. 4:34's command to physically discipline wives, in Fakhr al-Dīn al-Rāzī's mind, that injunction was conditioned by Muḥammad's discouragement from hitting one's wife in a manner that left a mark and an admonition against hitting her on the face. It is

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<sup>179</sup> Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

clear that his reading of Q. 4:34 was informed by his reading of *aḥādīth* on the subject, as well as by his allegiance to the Shāfi‘ī school’s position on hitting.<sup>180</sup> The variations in Fakhr al-Dīn al-Rāzī’s version of the *sabab al-nuzūl* reflected the characteristic Shāfi‘ī need to reconcile the prophetic *sunnah* and the Qur’anic text. This Shāfi‘ī concern will be explored further in the next chapter, but it is sufficient to say here that Fakhr al-Dīn al-Rāzī’s version of the *sabab al-nuzūl* attempted to soften the tension between Muḥammad’s personal and intuitive judgment concerning marital violence and divine will to the contrary.

Mitigating the contradictory nature of Muḥammad’s judgment in Ḥabībah’s favor and the Qur’anic revocation of this judgment was a concern not only for exegetes who followed the Shāfi‘ī juridical school. Other exegetes used approaches similar to Fakhr al-Dīn al-Rāzī’s. The Mālikī exegete al-Qurṭubī, for example, cited a slightly different narration of the *sabab al-nuzūl* wherein Ḥabībah was slapped by her husband on her face. In this narration, Ḥabībah is reported to have said to Muḥammad, “My husband struck my face” (*inna zawjī laṭama wajhī*).<sup>181</sup> Ibn Kathīr and al-Suyūṭī mentioned a variant of this *sabab*, wherein an unnamed man from the Anṣār complained on behalf of an unnamed

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<sup>180</sup> As we will see later, Fakhr al-Dīn al-Rāzī mentions some of these *aḥādīth* and the Shāfi‘ī juridical position explicitly in his commentary on Q. 4:34.

<sup>181</sup> Al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167.

woman that she was struck in the face by her husband and that the impression of the strike remained on her face (*innahū ɗarabahā fa-aththara fī wajhihā*).<sup>182</sup>

Both the acts of hitting a wife on the face and hitting hard enough to leave an impression<sup>183</sup> were discouraged in *aḥādīth* concerning the etiquette of hitting.<sup>184</sup> The mention of these acts in these *sabab* variants incriminated Sa'īd for striking his wife, even if she did commit *nushūz* prior to being struck, as al-Qurṭubī, Ibn Kathīr and al-Suyūṭī claim she did. Sa'īd's slapping of Ḥabībah's face lent legitimacy to Muḥammad's judgment on her behalf. These exegetes concluded that Muḥammad's initial reaction was therefore reasonable, and that revelation was required to introduce a caveat into Muḥammad's otherwise reasonable response. Still, although the reference of Sa'īd hitting Ḥabībah's face and a leaving an impression made Muḥammad's initial reaction appear more justifiable, it ultimately enhanced rather than resolved the tension between the Qur'ān and *sunnah*. In light of this *sabab* narrative, the Qur'an appears to support a man even if he hit her on the face and left a mark, whereas the *sunnah* deplores these practices. It is possible that this version of the *sabab* is

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<sup>182</sup> Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603 and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>183</sup> This is clearly not *ghayr mubarrīḥ* or *ghayr mu'aththir* hitting, which are the limits of hitting outlined in the *aḥādīth* literature.

<sup>184</sup> This was covered earlier in 1.2.2.6.

implying that the Qur'ān's legal permission for husbands to hit their wives and leave a mark overrides Muḥammad's moral disapproval of such behavior.<sup>185</sup>

In most exegetical accounts, once Ḥabībāh's case was presented to Muḥammad — whether by herself, by her father or by a male relative — Muḥammad adjudicated in her favor. Marin argues that Muḥammad's judgement for retaliation was based on pre-Islamic tribal law.<sup>186</sup> He judged that she deserved retaliation from Sa'īd, by saying definitively “let take retaliation from her husband” (*li-taqtāṣṣa min zawjihā*)<sup>187</sup>, or “retaliation/reprisal” (*al-qiṣāṣ*).<sup>188</sup> Alternatively, narrators mentioned that Muḥammad sought to grant her retaliation, using phrases such as *yuqiṣṣahā minhu*<sup>189</sup>, *yuqīdahā minhu*<sup>190</sup>,

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<sup>185</sup> This last point was mentioned by Marion Katz.

<sup>186</sup> Marin, “Disciplining Wives”, p. 9.

<sup>187</sup> Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, 'Abd Allāh ibn 'Umar al-Bayḍāwī, *Anwār al-tanzīl wa-asrār al-ta'wīl*. (Cairo: Dār al-Kutub al-'Arabīyah al-Kubrā, 1970) v. 1, p. 85, al-Khāzīn, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>188</sup> Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'azīm*, v. 1, pp. 601-603, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>189</sup> Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Zamanīn, *Tafsīr al-Qur'ān* v.1, pp. 366-368, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347.

<sup>190</sup> 'Abd al-Razzāq al-Ṣan'ānī, *Tafsīr al-Qur'ān*, v. 1, pp. 157-158.

or stating simply that he decided in her favor.<sup>191</sup> It is clear from these accounts that Muḥammad felt that Ḥabībah had been wronged by her husband and deserved some sort of retaliation, though it is not clear what sort retaliation was expected. Possibly, the retaliation was monetary. However, one exegetical source suggested that it was physical. The Mālikī Ibn ‘Aṭīyyah mentioned that Muḥammad ordered Ḥabībah to “strike/slap him [i.e. her husband] as he had struck/slapped her”.<sup>192</sup> Once Muḥammad had decided in Ḥabībah’s favor, narrations mentioned either that Ḥabībah and her father set out to seek retaliation against her husband<sup>193</sup> - in some accounts with Muḥammad in tow - or that Ḥabībah returned with her husband to Muḥammad, in order to receive retaliation from him in Muḥammad’s presence.<sup>194</sup>

In an attempt to lessen the tension between prophetic and divine judgment,

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<sup>191</sup> Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma’ālim al-tanzīl*, v. 5, pp. 422-428, ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>192</sup> Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>193</sup> Exegetes who mention that Ḥabībah and her father set out to seek retaliation, sometimes with Muḥammad in tow, from Sa’īd include al-Tha’labī, *al-Kashf*, v. 3, pp. 302-303, al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263, al-Baghawī, *Ma’ālim al-tanzīl*, v. 5, pp. 422-428, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251.

<sup>194</sup> Exegetes who mention that Ḥabībah returned with her husband to receive retaliation from him in Muḥammad’s presence and that they were sent away after the revelation of Q. 4:34, include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236 and al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72. This account did not surface in later commentaries.

some narrations of the *sabab al-nuzūl* surrounding Q. 4:34 were worded so that Muḥammad did not actually decide in Ḥabībah’s favor before Q. 4:34 was revealed. Instead, they stated that Muḥammad was only in the process of making a decision in Ḥabībah’s favor, but had not actually made that decision when Q. 4:34 was revealed. Al-Ṭabarī mentioned one narration wherein Q. 4:34 was revealed during the process of adjudication, before Muḥammad passed his decree in Ḥabībah’s favor (*fa-baynamā hum ka-dhālik nazalat āyah*).<sup>195</sup> This narration was repeated by al-Suyūṭī.<sup>196</sup> As we saw earlier, Fakhr al-Dīn al-Rāzī acknowledged that Muḥammad sought retaliation from Sa‘īd in Ḥabībah’s favor, but also added, “Be patient until I decide [on the matter]”. The significance of this narration, wherein Muḥammad was in the midst of making a decision in Ḥabībah’s favor, as opposed to having already made the decision, was that it diminished the tension between prophetic judgment and divine command and did not put Muḥammad and God at odds. If Muḥammad had already decided in Ḥabībah’s favor, then he would have had to revoke his decision with the revelation of Q 4:34, which sanctioned the physical discipline of wives. However, if he was in the midst of making this decision, then Q. 4:34 did not contradict his ruling so much as it helped him in the decision-making process.

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<sup>195</sup> Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72.

<sup>196</sup> Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

Exegetes were then left to explain Muḥammad’s reported reaction to Q. 4:34 in a way that presented him as comfortable with God’s command. Fakhr al-Dīn al-Rāzī, along with other exegetes, used interpretive maneuvering to soften Muḥammad’s potentially disagreeable reaction in some narrations of this *sabab al-nuzūl*. In one narration, Muḥammad’s responded to the revelation of Q. 4:34 and the subsequent nullification of his adjudication in Ḥabībah’s favor by saying “I desired one thing and God desired another” (*aradtu amran wa arāda’llāhu ghayrahu*).<sup>197</sup> In this narration Muḥammad signaled discomfort with Q. 4:34, differentiating his own opinion from God’s viewpoint on the matter. While some commentators were comfortable with the tension between prophetic opinion and divine decree inherent in this *sabab al-nuzūl*, others attempted to diminish the divergent judgments of Ḥabībah’s case. To this end, these exegetes - including Fakhr al-Dīn al-Rāzī - made two amendments to Muḥammad’s statement regarding the revelation of Q. 4:34. They modified his statement from “I desired one thing and God desired *another*” (*aradtu amran wa arāda’llāhu ghayrahu*) to “I desired one thing and God desired *one*

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<sup>197</sup> Exegetes who mentioned “I wanted one thing and God wanted another” , without following it with “And what God wanted was better” include al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 2, pp. 188-9, Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48 (mentioned both variations), Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157 (even though he mentioned four variations, he never included “and what God wanted was better” in any of them).

thing” (*aradtu amran wa arāda l-allāhu amran*). They also added the phrase “and what God desired is better” to the end of the statement. In this version of the narration, Muḥammad’s comments read, “I desired one thing, God desired one thing, and what God desired is better” (*aradtu amran wa arāda ‘llāhu amran wa-l-ladhī arāda ‘llāhu khayr*).<sup>198</sup> It could be speculated that Muḥammad’s verbal approval of God’s correction of his initial judgment helped smooth over any uneasiness about his reception of Q. 4:34. Muḥammad’s attitude in response to the divine command may have been viewed as more appropriately submissive if he verbally approved God’s correction of his earlier decision.

#### 2.2.4. Q. 20:114 and Prophetic Hastening to Judgement

The tension between divine and prophetic judgment was especially acute surrounding Muḥammad’s imposing retaliation on Sa‘īd, and the Qur’anic reversal of this decision. Some exegetes sought to soften the contradictory nature of divine and prophetic judgment regarding the matter of Ḥabībāh, but

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<sup>198</sup> Exegetes who mentioned “And what God wanted was better” at the end of the *sabab* report include Mujāhid, *Tafsīr Mujāhid*, pp. 274-275, Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303, al-Wāḥidī, al-Baghawī, *Ma‘ālim al-tanzīl*, v. 5, pp. 422-428, Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48 (mentioned both variations), Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su‘ūd, *Tafsīr Abī al-Su‘ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202. It is possible to argue that this variation existed prior to al-Tha‘labī in pre-Ṭabarī commentaries. However, given the unreliability of the authenticity of the pre-Ṭabarī commentaries, it is more plausible that the reconciliatory variation of the narrative appeared later on.



others fleshed out this contradiction in favor of divine judgment. In narrations where the tension between prophetic and divine command was heightened, the verse that was revealed in direct relation to the *sabab al-nuzūl* was Q.

20:114.<sup>199</sup> Q. 4:34 was revealed secondarily in response to the same incident.

The Ḥanafī jurist Aḥmad b. ‘Alī al-Jaṣṣāṣ (d. 370/981) recorded two variations of the occasions of revelation concerning Ḥabībāh, which resulted in the revelation of two verses (Q. 4:34 and Q 20:114), and which in turn, made two comparable legal/*halākhic* points. The first occasion of revelation for Q. 4:34 was similar to the one regarding Ḥabībāh, except that, in this case, an unnamed woman’s brother complained on her behalf to Muḥammad against her husband, who had wounded/injured (*jaraḥa*) - as opposed to the more common slap (*laṭama*) - his wife. As in the case of Ḥabībāh, Muḥammad decided in her favor, prompting the revelation of Q. 4:34, which effectively overruled Muḥammad’s initial ruling. The legal point al-Jaṣṣāṣ made in relation to this narration was that there was no retaliation in marriage, except in the case of death. A husband was permitted to hit his wife such that he wounded her, without any liability. However, in the case where a husband injured his wife to

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<sup>199</sup> Q. 20:114 reads “Supremely exalted is therefore Allah, the King, the Truth, and do not make haste with the Qur’ān before its revelation is made complete to you and say: O my Lord! Increase me in knowledge”. Shakir, *The Qur’an*, Q. 20:114.

the degree that she died as a result of that injury, he was liable. Here, the *sabab al-nuzūl* functioned as a justification for the right of a husband to hit his wife without retaliation, since men were *qawwāmūn* over women.<sup>200</sup>

In the second version of the occasion of revelation narrative, Q. 4:34 was revealed only secondarily. In this narration, a man slapped (*laṭama*) - not injured (*jaraḥa*) - his wife. His wife complained to Muḥammad, who granted her retaliation. The revelation in response to this incident was Q. 20:114, wherein God reprimanded Muḥammad for hastening to a decision without consulting Him. Q. 20:114 reads:

Supremely exalted is therefore Allah, the King, the Truth, and *do not make haste with the Qur'ān before its revelation is made complete to you* and say: O my Lord! Increase me in knowledge.<sup>201</sup> (emphasis mine)

The italicized phrase was cited by some exegetes as being the primary response to the aforementioned *sabab al-nuzūl*, and Q. 4:34 was subsequently revealed only as a legal footnote to the particular situation wherein Muḥammad

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<sup>200</sup> Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 2, p. 188.

<sup>201</sup> Shakir, *The Qur'an*, Q. 20:114.

had been hasty.<sup>202</sup> According to this narrative of the *sabab al-nuzūl*, Q. 20:114 reproached Muḥammad for making a legal decision without seeking God’s opinion on the matter. As Bauer mentions, ‘Abd al-Razzāq al-Ṣan‘ānī went so far as to say that Muḥammad’s initial decision was incorrect.<sup>203</sup> Q. 20:114 also anticipated the revelation of Q. 4:34. Al-Qurṭubī wrote that after the revelation of Q. 20:114, Muḥammad waited (*amsaka*) for the revelation of Q. 4:34.<sup>204</sup> According to this *sabab al-nuzūl*, Q. 20:114 clarified the appropriate prophetic etiquette when considering legal decisions and divine commands. In addition, according to al-Jaṣṣāṣ, Q. 4:34 established the legal principle that husbands were permitted to slap their wives if they committed *nushūz*.

Al-Jaṣṣāṣ wrote:

Chapter Concerning the Obedience of a Wife to her Husband.

God said, “Men are *qawwāmūn* over women, with that in which God has preferred some over others and because they spend of their wealth”. It is

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<sup>202</sup> The telling of this account began, in the sources in this study, in the fourth century A.H., with al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72 and was repeated by, among others, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn ‘Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603 and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>203</sup> Bauer writes “The clear message is that Muḥammad spoke from his own judgment on the matter, before he truly understood God’s law, which he should have waited for; the method of rebuke – and interpretation - is another Qur’ānic verse.” Bauer, *Room for Interpretation*, p.115.

<sup>204</sup> Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

related from Yūnus [b. ‘Ubayd (d. 140/757)] from al-Ḥasan [al-Baṣrī, d. 110/728] that a man wounded/ injured (*jaraḥa*) his wife, so her brother complained to the Prophet of God, peace and blessings be upon him, who called for retaliation (*al-qīṣāṣ*). Then God revealed “Men are *qawwāmūn* over women” (Q. 4:34) and the Prophet said, “we wanted one thing and God wanted another” (*aradnā amran wa arāda ‘llāhu ghayrahu*).

It is related from Jarīr b. Ḥāzim from al-Ḥasan that a man slapped (*laṭama*) his wife, so she sought help against him (*fa-sta‘adat ‘alayhi*) from the Prophet of God, who said, “you owe retaliation” (*‘alaykum al-qīṣāṣ*). Then God revealed, “Do not make haste with the Qur’ān before its revelation is made complete to you” (Q. 20:114). Then God revealed, “men are *qawwāmūn* over women” (Q. 4:34).

Abū Bakr [al-Jaṣṣāṣ] argued that the first (narration) proves that there is no retaliation (*qīṣāṣ*) between [married] men and women except in the case when a life [is taken]. Similarly, [Ibn Shihāb] al-Zuhrī (d. 124/741-2) narrated that the second *ḥadīth* is proof that it was permissible for the husband to slap his wife because she had committed *nushūz* against him. God has permitted (*abāḥa*) hitting her (*ḍarbahā*) when she commits *nushūz*, by saying, “concerning those women from whom you fear *nushūz*, admonish them, abandon them in their beds and hit them”.

If it is said: if hitting her was permitted because of her *nushūz*, then why did the Prophet impose retaliation? It should be said to such a person that the Prophet said this before the revelation of this verse which permitted hitting with the presence of *nushūz*, because God revealed, “men are *qawwāmūn* over women” to “beat them” afterward. As a result, husbands were no longer liable in any matter [concerning their wives] after the revelation of this verse. The statement “Men are *qawwāmūn* over women” implies that men are in authority [over

wives] concerning their moral education (*ta'dīb*), management (*tadbīr*), protection (*ḥafẓ*) and maintenance (*ṣiyāna*). [This is] because God has preferred men over women in their intellect (*'aql*) and opinion (*ra'y*), and God has charged them with spending their wealth [on wives].<sup>205</sup>

Like al-Jaṣṣāṣ, exegetes who considered the case of Ḥabībah as the *sabab al-nuzūl* for Q. 4:34 held that the revelation of this verse caused Muḥammad to either revoke his decision in her interest or backtrack from his personal intuitive approach to the case. In narrations wherein Ḥabībah and her father - and in some cases Muḥammad - had set out to seek retaliation from Sa'īd, they were called back and told about the revelation of Q. 4:34.<sup>206</sup> Other narrations mentioned that the retaliation was lifted (*rufi'a al-qīṣāṣ*)<sup>207</sup>, that the first command was abolished/annulled (*naqiḍa al-ḥukm al-awwal*)<sup>208</sup>, or that she returned without retaliation (*fa-raja'at bi-ghayr al-qīṣāṣ*).<sup>209</sup> In the narration

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<sup>205</sup> Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 2, p. 188.

<sup>206</sup> For example, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

<sup>207</sup> This wording is used by, among others, al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303, al-Baghāwī, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, al-Rāzī, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>208</sup> Ibn 'Aṭīyyah and al-Qurṭubī use this configuration. Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48 and al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167.

<sup>209</sup> Narrations with this wording included by Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, Ibn Kathīr, *al-Tafsīr al-'azīm*, v. 1, pp. 601-603, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, al-Khāṭib.

wherein Ḥabībah returned with her husband for retaliation, they were both sent away without any retaliation for Ḥabībah.<sup>210</sup> Once Q. 4:34 was revealed, Ḥabībah was left without a recourse that Muḥammad initially judged she deserved.

When Q. 4:34 was mentioned in the *sabab al-nuzūl* of Ḥabībah's case, commentators specifically cited the first portion of the verse - "Men are *qawwāmūn* over women". Though citing the first part of a verse was shorthand used to denote the entirety of the verse, it is nonetheless significant that the first part of Q. 4:34 was mentioned, and not the second part, which specifically deals with the physical discipline of recalcitrant wives. The reader will remember that when exegetes cited Q. 20:114, the relevant mid-section of the verse was cited and not the beginning of the verse. Thus, it is not necessarily the case that exegetes cited the first part of a verse to allude to the second, rather it is likely that they would have cited the relevant part of a verse. The fact that exegetes cited the first half of Q. 4:34 indicates its centrality to the issue at hand. Sa'īd was allowed to strike/slap his wife because men were *qawwāmūn* over women. In these narrations, the hierarchy of men over women was a justification for the right of men to physically discipline their wives.

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<sup>210</sup> Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

### 2.2.5. Summary

According to Rippin's framework, the *sabab al-nuzūl* of Q. 4:34 provided a *raison d'être* for the verse by setting a scene in the context of which the verse could be understood. The scene created by this *sabab* was not a neutral one. It created a setting for the verse whereby women in Medina - who previously expected external recourse to retaliation if they suffered violence at the hands of their husbands - were now denied this recourse. In this context, it would appear that women lost this recourse in a post-Qur'anic context and that husbands' power over their wives increased. It might be alternatively hypothesized that Ḥabībah expected to receive retaliation through Muḥammad because of her perception - or the perception of those who produced this anecdote - that he was receptive to the grievances of women. In this scenario women in the early Muslim community might not have lost status, but rather failed to experience an anticipated gain in status.

In their use of the contexts of revelation surrounding Q. 4:34, exegetes did not demonstrate ethical unease with the prescription of the physical discipline of wives over and against Muḥammad's reported interest in compensating Ḥabībah for her suffering violence at her husband's hands. Exegetes did not

consider Ḥabībah's fate after the revelation of Q. 4:34 nor did they consider her plight at losing her right to retaliation. Rather, their discomfort and concern lay with Muḥammad's alleged discontent with Q. 4:34. Interpretive energy was devoted to relieving the tension between the prophetic judgment for retaliation and divine revocation of this decision.<sup>211</sup> As a result of this maneuvering, a hierarchy of men over women in Q. 4:34 was underscored and used to justify the right of husbands to physically discipline their wives.

### **2.3. The Divinely Ordered Social Hierarchy of Marriage**

As seen above, exegetes used the available *asbāb al-nuzūl* to argue that gender hierarchy justified the disciplinary power of husbands over wives. In order to establish this point, exegetes set about constructing an asymmetrical relationship between husbands and wives that had theological underpinnings and was part of a larger worldview that included a divinely ordered social hierarchy, for which Q. 4:34 played a crucial role. This worldview was not always explicitly expounded upon by every exegete, but Marin argues that there was a shared view of "social gender hierarchy".<sup>212</sup> Bauer's work shows that the

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<sup>211</sup> For more discussion on relieving the tension between the prophetic judgment for retaliation and divine revocation of this decision, see Kecia Ali, "The best of you will not strike", p. 143-155.

<sup>212</sup> Marin, "Disciplining Wives", p. 29.



maximal “cosmic” interpretation of gender hierarchy emerged only gradually.<sup>213</sup> However, it can be argued that it was a fundamental aspect of the way pre-modern Qur’ān exegetes approached the question of Q. 4:34 and accounts for the consistently similar interpretive choices made by exegetes in interpretations of this verse with respect to the hierarchy of husbands over wives. According to Bauer, “the insistence on men’s authority and women’s obedience [was] one point of real agreement” for pre-modern exegetes.<sup>214</sup>

In the divinely ordered social hierarchy, the hierarchal relationship between God and men ran parallel to the hierarchal relationship between husbands and wives. Believing men earned God’s pleasure through obedience and submission to him. Meanwhile, believing women earned God’s pleasure through obedience and submission to their husbands - as long as their husbands did not command them to do anything that violated God’s command. This is not to say that the husband replaced God for the wife, but rather that he worked as a kind of intermediary, such that if a righteous husband were pleased

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<sup>213</sup> Bauer, *Room for Interpretation*, p. 17.

<sup>214</sup> Bauer, mentions the point about the similarities of exegetical choices especially with regard to the hierarchy of men over women. She writes “Despite what may seem to be a staggering number of new interpretations, common contexts can lead to a shared understanding and to basic similarities between exegetes’ opinions. This is the case with their insistence on men’s authority and women’s obedience – one point of real agreement between them.” Bauer, *Room for Interpretation*, p. 18.

with his wife's obedience and submission, that pleasure indicated that God was pleased with the wife, and vice-versa. Hence, the relationship that wives had with God was dependent on the relationship that they had with their husbands.

The God-wife relationship was so thoroughly mediated by the husband that wives were not permitted to undertake supererogatory devotional activities, such as fasting, without their husbands' permission.<sup>215</sup> As Bauer points out, men's role as "financial and moral maintainers of women" made them responsible for the financial, social and moral well-being of their wives.<sup>216</sup> Therefore, husbands were charged with maintaining the moral rectitude and

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<sup>215</sup> Exegetes used *aḥādīth* to argue that wives should restrain themselves from undertaking any independent action without their husbands permission, including devotional activities such as fasting and mundane activities such as leaving the house. Al-Jaṣṣāṣ, al-Maḥallī and al-Suyūṭī mentioned *aḥādīth* related to both of these activities in their commentary. Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 2, pp. 188-9 and Jalāl al-Dīn Muḥammad ibn Aḥmad al-Maḥallī and Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī, *al-Qur'ān al-karīm: bi-al-rasm al-'Uthmānī* (Beirut: Dār al-Qalam, 1982) pp. 105-106 and pp. 179-181. Bauer mentions that no interpretations of Q. 4:34 prior to al-Jaṣṣāṣ's commentary mention that husbands have the right to "prevent their wives from undertaking supererogatory religious performances." However, she correctly argues that "direct citation of the *ḥadīth* may not have been necessary for its content to affect interpretation". Bauer, *Room for Interpretation*, p. 75. Along these lines Mahmoud also writes that, "The logic of the situation is as follows: inasmuch as obedience to the Prophet is ultimately obedience to God, a wife's obedience to her husband, in what does not violate the law, is ultimately obedience to God... This leads to the conclusion that outside the strictly prescribed domain of what is obligatory, a wife anxious to draw near to God by means of supererogatory works stands to incur the wrath of God if her husband does not approve of what she does." Mahmoud, "To Beat or Not to Beat", p. 540.

<sup>216</sup> Bauer, *Room for Interpretation*, p. 110.

piety<sup>217</sup>, of their wives so that the latter pleased both God and husbands. If a wife fell short in either fulfilling her obligations to God, like praying and fasting, or being submissive to her husband, then the husband had to correct her if she were to avoid God's displeasure. It was within this divinely ordered social hierarchy that exegetes understood the permission and duty for husbands to physically discipline recalcitrant wives.

According to many exegetes, the moral authority granted to husbands over wives was a result of men's *qiwāmah* over women, which in turn, was the result of God's preference (*faḍl*) of men over women. Since the authority of husbands over wives was divinely ordained, when wives disrupted the hierarchy by failing to fulfill their religious obligations - which included obedience to their husbands - they disobeyed God. In doing so, they evoked divine wrath. Given this interconnected hierarchical system, when wives fell short of their obligations to their husbands by not being sufficiently submissive to them, they necessarily "rose" (*nashazat*) from their place in the hierarchy. It was impossible for wives to assert any independence that was not sanctioned by and/or displeased their husbands without threatening the hierarchical nature of the marital relationship.

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<sup>217</sup> Speaking of al-Dahḥāk's commentary on Q. 4:34, Bauer writes "Al-Ḍahḥāk offers a more detailed explanation of this verse, in which he explains that men are in charge of women's piety and, should they fail to obey God's commands, of their earthly punishment." Bauer, *Room for Interpretation*, p. 110.

The threatening of the marital hierarchy jeopardized the entire structure of authority by undermining the divinely ordained authority (*qiwāmah*) of men over women and God's *faḍl* of men over women. It is consistent in this worldview that when wives disobeyed their husbands, they committed *nushūz* (rising) against the hierarchy, and that their husbands were responsible and accountable for returning them to their appropriate submissive position, thereby restoring the divinely ordained social order.

### **2.3.1. God's Preference of Men over Women**

Exegetes often grounded their conception of gender hierarchy in the first part of Q 4:34, which states, "Men are *qawwāmūn* (supporters of/in authority) over women, with what God has *faḍḍala* (caused to excel/preferred) some over others, and with what they spend of their wealth". Men's *qiwāmah* over women was thus a consequence of their *faḍl* over women.<sup>218</sup> Some exegetes interpreted "with what God has *faḍḍala* some over others", to mean that "some" referred to "men" whereas "others" indicated "women". So, the phrase "some over others" was read to mean "men over women". This reading was consistent with the worldview offered by exegetes, wherein men needed to be superior to

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<sup>218</sup> Bauer discusses the rationale offered for the arguments of the superiority of men over women in the pre-modern exegetical tradition. Bauer, *Room for Interpretation*, Chapter 3. Also, since the meanings of *qawwāmūn* and *faḍl* are ambiguous and can have several meanings, these terms are employed in Arabic for the sake of consistency and clarity.

or preferred over (*faḍḍala*) women in order for them to have *qiwāmah* over women. The *qiwāmah* of men over women was, in turn, a necessary prerequisite for husbands to have disciplinary power over their wives.

Effectively promoting the divinely ordered social hierarchy where not only were husbands preferred over wives, but also men over women, exegetes offered various arguments for the superiority of men over women. Objective and inherent superiority of men over women was required to justify the social and moral authority of men over women, thus accounting for the former's disciplinary power. It is worth noting here that with respect to the issue of superiority of men over women, the question of the women of Medina - articulated through Umm Salamah - as the context of revelation of Q. 4:34 provided a backdrop against which Qur'anic commentators attempted to prove the superiority of men over women. By arguing that men were superior to women, exegetes were not only offering rationales for husbands' right to physically discipline wives, but also a hierarchical system wherein men's privileged legal status based on their gender (such as in the case of inheritance) was warranted.

Since Bauer has extensively examined the interpretive arguments for the

superiority of men over women offered in exegetical sources, such arguments will be considered here only with respect to their significance to the divinely ordained social hierarchy. Exegetes drew on religious, legal, social and historical rationales to argue for the superiority of men over women. They contended that men were superior to women because of essential and secondary characteristics.<sup>219</sup> Men were essentially superior to women in intelligence (*'aql*)<sup>220</sup> and strength (*quwwah*).<sup>221</sup> Secondary characteristics that described men's preferred status over women included, but were not limited to, the reality that men were entrusted with political leadership, commanding of good and forbidding of evil<sup>222</sup>, prophethood and scholarship. Men were also considered more complete in religion; they had the right to deliver sermons and

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<sup>219</sup> Mahmoud describes al-Zamakhsharī's argument for the superiority of men over women as divided into the categories of "intrinsic", "social" and "sharī'a" based prerogatives. See, Mahmoud, "To Beat or Not to Beat", pp. 540-541.

<sup>220</sup> Abū Bakr Ibn 'Arabī cited the *ḥadīth* in which Muḥammad is alleged to have said that women are deficient (*nāqis*) in their intellect and their religion. Bauer discusses this *ḥadīth* in her dissertation, see Bauer, *Room for Interpretation*, p. 124.

<sup>221</sup> See Bauer's *Room for Interpretation* for a detailed study on the topic of rationales for the superiority of men over women in pre-modern exegesis. Bauer, *Room for Interpretation*, pp. 124-126.

<sup>222</sup> The choice of exegetes to entrust men exclusively with the responsibility to "order good and forbid evil" is especially interesting since the Qur'anic can be read to view this as shared responsibility between men and women. Q. 9:71 reads: "The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise." Ali, *The meaning of the Holy Qurān*, Q. 9:71.

Friday prayers<sup>223</sup>, and be involved in public affairs, including public worship.<sup>224</sup>

Further, the testimony of two women was considered the equivalent to that of one man, men could marry up to four wives whereas women were restricted to one husband<sup>225</sup> and men controlled the marriage and owned the right to divorce exclusively. Al-Zamakhsharī (d. 538/1143) wrote:

Men are the commanders [of right] and forbidders [of wrong], just as a governor guides the people... The “some” in *some of them* refers to all men and all women. It means that men are only in control over women because God made some of them superior, and those are men, to others, and they are women. This is proof that governance is only merited by superiority (*tafḍīl*), not by dominance, an overbearing attitude, or subjugation. Concerning the superiority of men over women, the exegetes mention rationality (*‘aql*), good judgment (*ḥazm*), determination, strength, writing – for the majority of men – horsemanship, archery, that men are prophets, learned (*‘ulamā’*), have the duties of the greater and lesser imamate, *jihād*, call to prayer, the Friday sermon, seclusion in the mosque (*i’tikāf*),

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<sup>223</sup> That the ability to participate in Friday prayer, along with the right to deliver the Friday sermon is cited as an indication of men’s *faḍīlah* over women is significant for the modern debate amongst Muslims, regarding the contested issue of gender related to space in mosques as well as the right to give the sermon. This is a topic that requires further research.

<sup>224</sup> Al-Tha’labī cited Q. 33:33, which addresses Muḥammad’s wives explicitly, but Tha’labī considers the address to apply to women in general by citing it when mentioning men’s public roles in contrast with women being discouraged from such public roles. Al-Tha’labī, *al-Kashf*, v. 3, pp. 302-303. Q. 33:33 reads: “And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance; and establish regular Prayer, and give regular Charity; and obey Allah and His Messenger. And Allah only wishes to remove all abomination from you, ye members of the Family, and to make you pure and spotless.” Ali, *The meaning of the Holy Qurān*, Q. 33:33.

<sup>225</sup> Al-Baghawī mentioned the fact that women are restricted to one husband as a contrast to the right of men to marry several women. Al-Baghawī, *Ma’ālim al-tanzīl*, v. 5, pp. 422-428.

saying the prayers during the holidays (*takbīrāt al-tashrīq*), according to Abū Ḥanīfa they witness in cases of injury or death (*ḥudūd* and *qīṣās*), they have more shares in inheritance, bloodwit (*ḥimāla*), pronouncement of an oath 50 times which establishes guilt or innocence in cases of murder (*qasāma*), authority in marriage, divorce, and taking back the wife after a revocable divorce, a greater number of spouses, lineage passing through the male line, and they have beards and turbans.<sup>226</sup>

The fact that exegetes drew on such an extensive array of information in order to argue for the inherent and social superiority of men over women, which made them deserving of *qiwāmah* and disciplinary power over wives, indicates that the *qiwāmah* of men over women was not limited to the marital relationship. The marital relationship was part of a complex structure of inter-connected social, juridical and theological relations that could not be isolated from each other. Men deserved *qiwāmah* over women because they were superior to women intellectually, religiously, legally and socially.<sup>227</sup> Furthermore, this superiority was divinely granted to men. It was as a result of this superiority

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<sup>226</sup> This is Bauer's translation of al-Zamakhsharī, Bauer, *Room for Interpretation*, p. 137. From al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497. Also, the issue of beards proved to be a matter of contention amongst exegetes. While the beard was a sign of the *faḍīlah* of men over women for some exegetes, such as al-Zamakhsharī, al-Qurṭubī disagreed, arguing that the beard did not indicate the *faḍīlah* of men over women. For more discussion on this, see Bauer, 2.6.

<sup>227</sup> The divinely preferred status of men over women had ramifications beyond the marital realm. Ibn Kathīr commented that the political consequence of the preferred status of men over women was that women were ill-suited to receive prophethood and be rulers of nations. To this end, he cited the *ḥadīth* related in by al-Bukhārī where Muḥammad is reported to have said, "A nation led by a woman will never be successful." Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603.



over women that men were responsible for the financial, social, moral and religious well-being, and thus discipline, of their wives. As Bauer explains, the superiority of men over women that exegetes derived from the term *qiwāmah* operated at several levels, marital, societal, political, theological, not all of which were elaborated by all exegetes. Bauer suggests that there was an overall trend from specificity to more encompassing interpretations of male superiority.<sup>228</sup>

The relegation of financial responsibility to men over women was instrumental in both granting husbands tangible power over wives and making wives dependent on their husbands. Exegetes argued that only one of the many functions of the *faḍīlah* of men over women was expressed in the text of Q 4:34 as “and with what they spend of their wealth”. The “they” in this phrase was interpreted to mean “men” and “what they spend of their wealth” referred to dowry (*mahr*) and maintenance (*nafaqah*). In this light, “and with what they spend of their wealth” was read as “and with what men spend in dowry and maintenance”. The financial responsibility of husbands over wives resulted in the financial and social control of wives. In return for dowry and maintenance,

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<sup>228</sup> Bauer, *Room for Interpretation*, p. 17 and Chapter 3.

wives were required to be obedient to their husbands.<sup>229</sup> It is also for this reason that exegetes such as al-Qurṭubī considered whether a marriage was nullified if a husband was incapable of providing maintenance for his wife/wives.

Al-Qurṭubī wrote:

And [regarding the phrase] “with what they spend of their money”, when husbands are incapable of paying maintenance then they are not *qawwām* over their wives, and since they are not *qawwām* over them, then the wives have the right to annul the contract, due to the cessation of the intention for which the marriage was legislated. In this is a clear proof pertaining to the annulment of the marriage in cases of nonpayment for maintenance and clothing, which is the opinion of the schools of Mālik and Shāfi‘ī. Abū Ḥanīfa says it is not annulled.<sup>230</sup>

Bauer argues that while the *qiwāmah* of husbands over wives was contingent on the ability of husbands to financially provide for their wives, men’s *faḍl* over women was not. Given the “physical, intrinsic nature” of the difference between the genders, only men could ever be *qawwām* over their wives, while wives could never achieve this status due to their gender.<sup>231</sup>

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<sup>229</sup> It is partly for this reason that the prevalent juridical discussion regarding the *nushūz* of wives centered around the loss of maintenance. For more legal discussion on the connection between maintenance and wifely *nushūz*, see Ali, *Money, Sex, and Power*, Chapter 2.

<sup>230</sup> This is Bauer’s translation of this passage. She cited this passage in order to highlight exceptional Mālikī views of the *qiwāmah* of men over women, in light of their legal doctrines on maintenance. Bauer, *Room for Interpretation*, p. 135. Al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167.

<sup>231</sup> Bauer, *Room for Interpretation*, pp. 135-136.

It stands to reason that the incapacity of husbands to provide for their wives financially resulted in their inability to control their wives socially. This, in turn, undermined their authority over their wives. If husbands were not providing for their wives financially, then wives were no longer financially motivated to obey their husbands. This disrupted the gender hierarchy so that husbands forfeited their entitlement to control their wives. Another implication of this logic is that gender hierarchy was considered to be so fundamental to and constitutive of the marital relationship that the existence of the marriage was thought to be effectively void if the hierarchy ceases to exist. The failure of husbands to financially provide for their wives called into question the *qiwāmah* of men over women, since financial provision for wives propped up this *qiwāmah*. Men were *qawwāmūn* over women partly because God preferred men over women, but also because they financially provided for women.

### **2.3.2. The *Qiwāmah* of Husbands over Wives**

Exegetes tied the gender hierarchy that resulted from the *faḍl* of men over women to the right of husbands to discipline their wives by linking *qiwāmah* with the responsibility of husbands to discipline (*ta'dīb*) their wives. There were two common ways in which the relationship between husbands and wives was described in the interpretation of “Men are *qawwāmūn* over women”. Some

form of the root word *qawwāmūn*, such as *qā'im*, *yaqūmu*, *qayyim* or the word *qawwāmūn* itself, was used to describe the relationship between husbands and wives.<sup>232</sup> In these contexts, husbands were the managers, directors, guardians, protectors of their wives as well as being in charge of and responsible for them. To this end, the phrase *al-wilāyah 'alā al-ri'āyah*<sup>233</sup> was sometimes used to clarify the relationship denoted by husbands' *qiwāmah* over wives: husbands were considered to have charge or custody over their wives, much as a shepherd had custody over his flock.

Other descriptions in the commentaries for husbands' guardianship help shed

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<sup>232</sup> Exegetes who used some form of *q-w-m* to describe the relationship between husbands and wives included: Al-Ḍaḥḥāk ibn Muzāḥim, *Tafsīr al-Ḍaḥḥāk* (Cairo, Egypt: Dār al-Salām lil-Ṭibā'ah wa-al-Nashr wa-al-Tawzī' wa-al-Tarjamah, 1999) v. 1, pp. 285-286, Abū Ishāq Ibrāhīm ibn al-Sarī al-Zajjāj, *Ma'ānī al-Qur'ān wa-i'rābuh* (Beirut, Lebanon: al-Maktabah al-'Aṣrīyah, 1973) v. 2, pp. 48-49, al-Ṭabarī, *Jāmi' al-bayān fī 'l-ta'wīl al-Qur'ān*, v. 4, pp. 59-72, Aḥmad ibn Muḥammad al-Naḥḥās, *Ma'ānī al-Qur'ān al-karīm* (Mecca, Saudi Arabia: Jāmi'at Umm al-Qurā, 1988) v. 2, pp. 77-79, al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 2, pp. 188-9, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn 'Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, pp. 320-322, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, 'Abd Allāh ibn Aḥmad al-Nasafī, *Tafsīr al-Nasafī, al-musammā bi-Madārik al-tanzīl wa-ḥaqā'iq al-ta'wīl* (Beirut, Lebanon: Dār al-Qalam, 1989) v. 1, pp. 354-355, Ibn Juzayy, *al-Tashīl*, v.1, pp. 251-253, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Aḥmad ibn Yūsuf al-Samīn, *al-Durr al-maṣūn fī 'ulūm al-kitāb al-maknūn* (Damascus, Syria: Dār al-Qalam, 1986) v. 3, pp. 670-673, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, 'Abd al-Raḥmān al-Tha'ālibī, *Tafsīr al-Tha'ālibī, al-musammā bi-al-Jawāhir al-ḥisān fī tafsīr al-Qur'ān* (Beirut, Lebanon: Dār Iḥyā' al-Turāth, 1997) v. 2, pp. 229-231, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>233</sup> Exegetes who use this phrase to describe the relationship between husbands and wives include al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

light on the understanding of the marital relationship as analogous to a ruler-subject relationship. By comparing the husband-wife relationship to the relations between a ruler and his subject, exegetes furthered the parallel between the husband-wife and God-man hierarchies. Exegetes emphasized the overall idea of the dominion and sovereignty of husbands over wives. When explicating the meanings of *qiwāmah*, exegetes used terms such as commander/chief (*amīr*)<sup>234</sup>, head/chieftain (*raʿīs*)<sup>235</sup>, judge/sovereign (*ḥākim*)<sup>236</sup> and legal guardian (*nāfidh al-ʿamr*)<sup>237</sup> to describe husbands in relation to their wives. Additionally, exegetes understood husbands had been given authority

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<sup>234</sup> Exegetes who use this term to describe husbands' relationship with wives include al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, Ibn 'Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, Ibn Juzayy, *al-Tashīl*, v. 1, pp. 251-253, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-ʿaẓīm*, v. 1, pp. 601-603, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>235</sup> Ibn Kathīr, *al-Tafsīr al-ʿaẓīm*, v. 1, pp. 601-603.

<sup>236</sup> Exegetes who use this term to describe husbands' relationship with wives included al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Kathīr, *al-Tafsīr al-ʿaẓīm*, v. 1, pp. 601-603.

<sup>237</sup> Exegetes who use this term to describe husbands' relationship with wives include al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72 and Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

over (*musallaṭūn*) they wives<sup>238</sup>, they were the overseers (*muṣayṭir*) of their wives<sup>239</sup>, and their marital role was described as restraining their wives (*wa l-akhdh 'alā aydīhinna*).<sup>240</sup> Such descriptions conferred on husbands financial, social, religious and moral authority over their wives.

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<sup>238</sup> Exegetes who use this term to describe husbands' relationship with wives include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, 'Abd Allāh ibn Muḥammad al-Dīnawarī, *Tafsīr Ibn Wahb, al-musammā, al-Wāḍiḥ fī tafsīr al-Qur'ān al-karīm* (Beirut, Lebanon: Manshurāt Muḥammad 'Alī Bayḍūn, Dār al-Kutub al-'Ilmīyah, 2003) v. 1, pp. 150-151, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qur'ān*, v.1, pp. 366-368, al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303, Ismā'īl ibn Aḥmad al-Nīsābūrī al-Ḥīrī, *Wujūh al-Qur'ān*. (Mashhad: Majma' al-Buhūth al-Islāmīyah, 2001) p. 455, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>239</sup> Exegetes who use this term to describe husbands' relationship with wives included al-Nasafī. Al-Nasafī, *Madārik*, v. 1, pp. 354-355. See use of *muṣayṭir* in Q. 88:22 "Thou art not at all a warden over them." Marmaduke William Pickthall, *The Meaning of the Glorious Qur'an: Text and Explanatory Translation* (Beltsville, MD: Amana Publications, 1994), Q. 88:22.

<sup>240</sup> Bauer writes the following about "*wa l-akhdh 'alā aydīhinna*": "Another expression used by the exegetes is *akhdh 'alā yadayhā*: this (in masculine form) is described by Ibn Manzūr as "preventing someone from doing something which he wishes to do, as if you grabbed (*amsakta*) hold of his hand." I translate this expression as "restraining them". Incidentally, this exact definition is also in Lane, who took it from the Lisān; this term is not in Kazimirsky. *Akhdh 'alā* is not in Lane or Ibn Manzūr. Kazimirsky describes it just as Ibn Manzūr has described *akhdh 'alā yad*: "*occuper, intercepter quelque chose à quelqu'un; s'emparer du terrain, de la place/contre quelqu'un.*" A few exegetes, such as al-Wāḥidī and Fakhr al-Dīn al-Rāzī, say *al-akhdh fawq yadayhā*, which seems to indicate that the family's income is in the man's hands. The expression is not in the dictionaries." Bauer, *Room for Interpretation*, p. 22, fn. 40. Exegetes who use variations of this term to describe husbands' relationship with wives included Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Zamanīn, *Tafsīr al-Qur'ān*, v.1, pp. 366-368, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, 'Izz al-Dīn al-Sulamī, *Ikhtīṣār al-Nukat lil-Māwardī*, v. 1, pp. 320-322, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181.

Exegetes drew on prophetic traditions to emphasize the role that *qiwāmah* assigned husbands over wives. This discussion was not driven so much by the rights and obligations of one spouse over another as by propriety. A commonly cited *ḥadīth* in service of the general etiquette required of wives in relation to their husbands' *qiwāmah* reported Muḥammad to have said, "If I had ordered a [person] to prostrate oneself to another, I would have commanded a wife to prostrate herself to her husband (*law amartu aḥadan an yasjuda li-aḥadin la-amartu l-mar'ah an tasjuda li-zawjihā*)".<sup>241</sup> In connection with this *ḥadīth*, exegetes such as al-Maḥallī (d. 864/1459) and al-Suyūṭī cited another *ḥadīth* in which Muḥammad is reported to have said,

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<sup>241</sup> Exegetes who mentioned this narration in their commentary included al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, pp. 376, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347. Khaled Abou El Fadl discusses both the prostration *ḥadīth* along with the one of the wife licking her husband's wounds as well as the *ḥadīth* where angels curse a woman who refuses her husband in Chapter Seven of *Speaking in God's Name: Islamic Law, Authority and Women*. He acknowledges the symbolic power of these *aḥadīth*, although he argues that the symbolic power of these reports disqualify them from being authentic positions of Muḥammad. He writes, "We observe a similar association between husbands and the symbols of Divinity in the submission tradition. A whole host of angels in the Heavens are aggrieved by the frustration of a man's libido. This only raises the question: what is it about a man's sexual urges that make them so fundamental to the pleasure of the Heavens? Does this include all forms of pleasure by men or only sexual? What if a man's pleasure consists of being breastfed by his wife or of being tied up and whipped by his wife? Do the Heavens maintain their enthusiasm for the male libido regardless of its many forms and regardless of the emotional consequences upon the wife?....[These traditions] contradict the theological notion of the undivided supremacy of God and God's Will". Abou El Fadl, *Speaking in God's Name*, p. 214. I argue that exegetes were precisely making this point by citing these traditions - they did not see the traditions as contradicting the "undivided" unity of God, because the hierarchy was divinely ordained.

The rights of a husband over his wife [are so great] that if he were covered with a wound oozing blood and puss, she would be incapable of fulfilling his rights even if she were to lick his wound with her tongue. If it was appropriate for one person (*bashar*) to prostrate himself to another, I would have ordered the wife to prostrate herself to her husband when he enters upon her, as a result of God's preference (*faḍḍalahu*) for him over her.<sup>242</sup>

This *ḥadīth* was not as commonly cited as the previous one, but was present in exegetical discourse as early as al-Jaṣṣāṣ in the fourth/tenth century and was cited by al-Suyūṭī as late as the tenth/sixteenth century. The use of the above-mentioned prophetic reports in the exegesis of Q. 4:34 illustrates the parallel hierarchy that exegetes constructed between the husband-wife and God-man relationship. Here, husbands' *qiwāmah* in marriage granted them, within the limits of monotheism, the status of a shadow deity over their wives. In this role, husbands oversaw the social, religious and moral well-being of their wives and were responsible for disciplining them when they fell short.

Al-Ṭabarī captures the intertwined nature of the preferred status and *qiwāmah* of men over women and a husband's right to discipline his wife in his commentary. He wrote,

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<sup>242</sup> Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157 and al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181. Al-Jaṣṣāṣ also mentioned this report in his commentary. Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376.



...by “men are *qawwāmūn* over women”, God means that men are women’s guardians (*ahl qiyām ‘alā*) for they discipline them (*ta’dībihinna*) and restrain them (*al-akhdh ‘alā yadayhinna*) in those matters that God has made obligatory for the women and themselves... *With what God has given some of them more than others* meaning, God has made men superior to women, in terms of payment of the dowry, spending on the wives from the men’s property, and providing them with provisions. That is the superiority (*tafḍīl*) given by God Almighty to men over women, and because of it men have been made *qawwām* over women, executors of command over them, in that part of women’s affairs that God has granted to men.<sup>243</sup>

As Bauer points out, when discussing the *qiwāmah* of husbands over wives, exegetes considered it the responsibility and/or duty of husbands to discipline (*ta’dīb*) their wives, especially to ensure that wives fulfilled their religious obligations.<sup>244</sup> The religious obligations of wives in this context consisted of obedience to God and their husbands. It is reasonable in the given the divinely ordered social hierarchy for husbands to be charged with enforcing their wives’ execution of religious obligations, since wives’ religious obligations were intertwined with their wifely duties. If a wife took her religious duties lightly, she would be likely to be neglectful of her wifely duties, and vice versa. As we will see in the next chapter, this perception was shared by exegetes and jurists

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<sup>243</sup> Bauer’s translation of al-Ṭabarī. Bauer, *Room for Interpretation*, pp. 121-122. Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72.

<sup>244</sup> Bauer, *Room for Interpretation*, pp. 121-122.

alike.

### **2.3.3. The Disciplinary Duty of Husbands**

The right of husbands to discipline wives was a principal function of the *qiwāmah* of men over women. Many exegetes used some form of the word *ta'dīb* in order to describe the ethos of this discipline. The term *ta'dīb* was employed by exegetes to mean both that husbands were responsible for the education/edification of wives and that they were responsible for the discipline and moral rectification of wives. Sometimes, the educational aspect of *ta'dīb* was highlighted when it was mentioned alongside *ta'līm*. Here, the husband's instructional role in teaching and training wives was emphasized. More commonly, however, *ta'dīb* referred to “chastisement”, “correction”, “punishment”, “discipline”, and, most relevant in this case, “disciplinary

punishment” of wives.<sup>245</sup> In his exegesis of this portion of Q. 4:34, Ibn Kathīr remarks,

Men are in charge of, responsible (*qayyim*) for women, meaning, [the husband] is [the wife’s] head/manager (*raʿīṣuhā*) and her chief (*kabīruhā*). He is a ruler over her (*al-ḥākīm ʿalayhā*) so he disciplines her when she is crooked (*muʿaddibhā idhā ʿawijat*).<sup>246</sup>

Another term that was sometimes paired with *taʿdīb* is *tartīb*, meaning that husbands were to manage and regulate their wives. Al-Qurṭubī explained the twin responsibilities of husbands’ *taʿdīb* and *tartīb* of wives in the following passage:

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<sup>245</sup> Hava and Hans Wehr. Exegetes who use the terms *taʿdīb*, *taʿlīm*, *tartīb* or *tadbīr* to describe husbands’ responsibility in disciplining wives include: Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Ṭabarī, *Jāmiʿ al-bayān*, v. 4, pp. 59-72, al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, v. 1, p. 376 and v. 2, pp. 188-9, Abū al-Layth al-Samarqandī, *Baḥr al-ʿulūm*, v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qurʾān*, v.1, pp. 366-368, al-Thaʿlabī, *al-Kashf*, v. 3, pp. 302-303, al-Māwardī, *al-Nukat wa-al-ʿuyūn*, v. 1, pp. 480-483, ʿAbd al-Karīm ibn Hawāzin Al-Qushayrī, *Laṭāʾif al-ishārāt: tafsīr Ṣūfī Kāmil lil-Qurʾān al-Karīm* (Cairo, Egypt: Dār al-Kātib al-ʿArabī, 1968) v. 2 p. 330, al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263, al-Baghawī, *Maʿālim al-tanzīl*, v. 5, pp. 422-428, Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, ʿIzz al-Dīn al-Sulamī, *Ikhtīṣār al-Nukat*, v. 1, pp. 320-322, al-Qurṭubī, *al-Jāmiʿ*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-ʿaẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Maḥallī and al-Suyūṭī, *al-Qurʾān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>246</sup> Ibn Kathīr, *al-Tafsīr al-ʿaẓīm*, v. 1, pp. 601-603. The use of the word *ʿawijat* to describe women’s behavior that needs correction, alludes to the *ḥadīth* in which Muḥammad is said to have advised men that women were made of Adam’s rib and were therefore crooked. Because women were “crooked”, Muḥammad advised husbands not to straighten them out too much, as they would break. It is in line with Ibn Kathīr’s anti-*Israʿīliyyāt* approach that he argued for the opposite of the above report, which he surely would have considered an *israʿīliyyāt* given its origin in biblical sources.

The meaning of men being *qawwām* over women is that is that [the husband] manages (*yaqūmu bi-tadbīrihā*) and disciplines (*ta'dībihā*) [his wife]. He keeps her in the house and prohibits her from emerging/being prominent [outside of the house]<sup>247</sup>. And it is obligatory on [a wife] to obey [her husband] and accept his command, as long as he does not command her to disobey [God]. The explanation for this ruling is found in men's superiority, management skills, rationality, strength, that they have been ordered to fight *jihād*, that they have been given inheritance, and the [responsibility to] command right and forbid wrong.<sup>248</sup>

Along the lines of corrective discipline, Abū Bakr Ibn al-'Arabī (d. 543/1148) described husbandly responsibility as reforming, cultivating and/or rectifying wives' condition for the better (*yuṣliḥu fī ḥālihā*).<sup>249</sup> The general discussion of the disciplinary power of husbands over wives was inextricably tied to physical discipline in the minds of exegetes. Al-Tha'labī wrote, "The man is the manager (*qā'im*) of the woman, he commands her to the obedience of God, and if she

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<sup>247</sup> Al-Qurṭubī wrote, "*imsākihā fī baytihā wa man'ihā min al-burūz*". Al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167.

<sup>248</sup> The last sentence of this translation is Bauer's translation on al-Qurṭubī. The first two sentences are my own. Bauer, *Room for Interpretation*, p. 135, footnote 279. Al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167.

<sup>249</sup> Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500.

refuses, he should hit her without causing extreme pain (*ghayr mubarrīh*).<sup>250</sup> Al-Tha‘labī discusses the physical discipline of wives as a result of a wife’s disobedience to her husband - which necessarily denoted her disobedience to God - without the intervening steps of admonishment and abandonment in Q. 4:34. This indicates the centrality of physical discipline to the discussion of general disciplinary rights of husbands over wives. The mention of husbands’ right to physically discipline their wives, without the intervening steps of admonishment and abandonment in bed, also evokes other sources that shed light on the disciplinary rights of husbands over wives. One source that comes to mind is Muḥammad’s *ḥajj* sermon wherein he advised believing men to physically discipline their wives, without mentioning the intermediate disciplinary steps of admonishment and abandonment, when wives allowed those whom their husbands disliked into their homes.<sup>251</sup>

The potential for violence during the course of disciplining one’s wife was captured in the selection of *aḥadīth* exegetes drew upon when discussing the

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<sup>250</sup> I have taken this translation of *ghayr mubarrīh* from Bauer who makes a good case for it in her dissertation. Bauer, *Room for Interpretation*, p. 111, footnote 230. She writes, “*Ghayr mubarrīh* is often translated as “non-violent,” but hitting is intrinsically violent, despite the qualifications of not breaking bones, or seriously wounding. Given this context, “without causing severe pain” is a better translation. Kazimirsky says that *mubarrīh* is: “very harsh, very painful, causing intense pain (*très sensible, très-pénible, qui cause une douleur violente*).” Al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303.

<sup>251</sup> See Chapter 1, p. 1.3.2.2. Allowing Strangers into a Husband’s Home and/or Bed.

disciplinary power of husbands over wives. Muḥammad was reported to have said, “hang the whip where your wives can see it”.<sup>252</sup> Both al-Tha‘labī and al-Zamakhsharī mentioned this *ḥadīth* from Muḥammad alongside a report wherein Asmā’ b. Abī Bakr al-Ṣiddīq narrated that when her husband, the Companion Zubayr b. al-‘Awwām, “got angry [at one of his wives], he would hit her with a pole of a clothes rack (*‘ud al-mishjab*) until he broke it while hitting her”.<sup>253</sup> Abū Bakr Ibn al-‘Arabī and al-Qurṭubī offered an expanded version of this report in their commentaries which read,

Asmā’ bt. Abī Bakr complained to her father that al-Zubayr reprimanded her and her co-wife (*al-ḍarrah*) for going out too much. He did this by tying their hair together and then hitting them intensely (*shadīdan*). Asmā’ was hit more than her co-wife, leaving a mark, because she was less God-fearing than her co-wife. So she complained to her father, the Companion Abū Bakr, who said to her, “Be patient, my daughter, for al-Zubayr is a righteous man (*rajul ṣāliḥ*). It might be that he will be your husband in paradise, for I have heard that in paradise a man is married to the woman he

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<sup>252</sup> Al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303 and al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497. Both cited the *ḥadīth* as “*‘aliq l-sawṭ ḥaythu yarāhu ahl l-bayt*”. As mentioned in the *ḥadīth* chapter, I translate “*ahl l-bayt*” as “wives” rather than “households” because in the contexts surrounding this study, the phrase is consistently used to refer to wives rather than households.

<sup>253</sup> This report was recorded by among others, al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500 and al-Qurṭubī, *al-Jāmi’*; v. 5, pp. 161-167.

deflowers (*ibtakara*).<sup>254</sup>

While the Shāfi'ī al-Tha'labī and the Ḥanafī al-Zamakhsharī alluded to the above mentioned report of Asmā' bt. Abī Bakr unproblematically, the Mālikī exegetes Abū Bakr Ibn al-'Arabī and al-Qurṭubī both found it extremely problematic. Abū Bakr Ibn al-'Arabī rejected the Asmā' report as inappropriate to the discussion of hitting wives. Abū Bakr Ibn al-'Arabī did not appear to have qualms with al-Zubayr's use of physical discipline on his wives, but rather with the extent of physical violence he utilized. The version of the Asmā' report that he cited described al-Zubayr's violence as extreme (*shadīd*), which many exegetes and jurists considered unseemly when disciplining wives. As will be seen later, a popular limitation on the physical discipline of wives was that the beating should not be extreme (*ghayr mubarrih*), which was often explained as

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<sup>254</sup> This *ḥadīth* was reported by Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167 and Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253. Abū Ḥayyān explicitly contrasted this *ḥadīth* to another attributed to Ibn 'Abbās where he says that husbands are to hit wives with a *siwāk* or something like it. Interestingly, al-Tabarānī mentioned a *ḥadīth* about al-Zubayr hitting Asmā' as well. However, in this report, their son Abdallah b. Zubayr scolded his father for beating Asmā' and got her a divorce from al-Zubayr. Mentioned in *al-Mu'jam al-Kabīr*, v. 1, p. 116. Marin mentions that another version of this *ḥadīth* recorded by Ibn Ḥabīb. She translates this report in the following way: "Al-Zubayr b. al-'Awwām arrived to his house and he ordered his wife Asmā' bt. Abi Bakr and another of his wives to sweep the floor under his bed. When he later came again into the house, he found that his orders had not been carried out. Asma' said: He took both of us by our heads and beat us with his whip, hurting us. My co-wife accepted the punishment, but I did not; it affected me strongly. I went out and complained to 'A'isha, who asked Abu Bakr to come to her and told him: What has done this man to my sister? Abī Bakr told me [Asmā']: My little daughter, he is a pious man and he is the father of your children. God may marry him to you in Paradise. Now be patient and go back to your home." She also mentions that Asmā' was later divorced from al-Zubayr by her son, who rescued her when she was being beaten by her husband. Marin, "Disciplining Wives", p. 15-16. Also, Ibn Ḥabīb, *Adab al-nisā'*, no. 182.

“not intense (*shadīd*)”. Al-Qurṭubī based his objections to this report on Abū Bakr Ibn al-‘Arabī’s remarks.<sup>255</sup>

It is worth noting that even when exegetes, such as Abū Bakr Ibn ‘Arabī and al-Qurṭubī, frowned upon the use of excessive violence by husbands when disciplining their wives, they did not draw upon *aḥādīth* from Muḥammad that discouraged hitting. It is striking that despite all the discussion of the use of physical violence in *ta’dīb*, no exegete cited the *ḥadīth* of ‘Ā’isha, where she is said to have reported that Muḥammad never hit anyone, not his wife or slave, except in course of battle.<sup>256</sup>

For al-Tha‘labī and al-Zamakhsharī, the Asmā’ narration confirmed their conception of the interlinked *qiwāmah* and disciplinary rights of husbands over wives. For them, Zubayr b. al-‘Awwām’s physical chastisement of his wives did not compromise his righteousness. Instead, it simply illustrated the extent of disciplinary power permissible to husbands. In line with this, several exegetes, including al-Qurṭubī, cited another prophetic report where Muḥammad allegedly

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<sup>255</sup> This may be an instance where the juridical school of an exegete directly influenced his choice of legitimate *aḥādīth* in his exegesis. Al-Tha‘labī was Shāfi‘ī and al-Zamakhsharī was Ḥanafī, while both Abū Bakr Ibn al-‘Arabī and al-Qurṭubī were Mālikī.

<sup>256</sup> This *ḥadīth* was mentioned earlier in Chapter 1, section 1.2.1.



said, “Do not ask a man about hitting his wife”.<sup>257</sup> This *ḥadīth* emphasized the disciplinary power of husbands as a result of their *qiwāmah* over wives.

Granting husbands social immunity, and therefore preventing social accountability for husbands that beat their wives, pointed to the parallel structure of the God-man and husband-wife hierarchies. Since God made husbands responsible for the moral, social and religious edification of their wives, as a result of which they were authorized with disciplinary power, husbands were largely unaccountable with respect to how they exercise their power over their wives.

#### **2.3.4. Righteous Wives Please their Husbands**

Not surprisingly, in a divinely ordered social hierarchy wherein the *qiwāmah* of husbands over wives granted them a ruler-like status over their wives, the most desirable characteristic of a wife was that she please her husband. If husbands had moral, religious and legal authority over their wives due to divine preference for men over women, then it stood to reason that the ideal quality of a good wife was to obey her husband’s commands, as long as he did not command her to violate divinely ordained religious obligations. If husbands

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<sup>257</sup> Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Maḥallī and al-Suyūṭī, *al-Qur’ān al-karīm*, pp. 105-106 and pp. 179-181 and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157. Also see, Marin, “Disciplining Wives”, p. 25.

ordered their wives to disobey a divine command, then they violated the hierarchy between God-man-wife, and as such were not to be obeyed. A wife's obedience to her husband in all other cases was a religious obligation for her. Wives obeyed God by obeying their husbands; they pleased God by pleasing their husbands. The text of Q. 4:34 provided a means for exegetes to expound this worldview by describing ideal characteristics of good/righteous women. According to the text of Q. 4:34, righteous wives had two key attributes: they were "obedient" (*qānitāt*) and "protectors of what God would have them protect in the absence [of their husbands] (*ḥāfiẓāt li-l-ghayb bi-mā ḥafīẓa-llāh*)". The relevant section of Q. 4:34 reads, "So good women (*ṣāliḥāt*) are obedient, guarding in secret that which Allah hath guarded".<sup>258</sup> The exegetical discussion of the two qualities of righteous wives corresponded to their behavior in two circumstances. When husbands were present, wives pleased God by obeying their husbands. Likewise, when husbands were absent, wives pleased God by protecting their husbands' property and their own chastity -- both of which belonged to their husbands.

#### **2.3.4.1. Pleasing Husbands through Obedience**

Since husbands were considered the rulers (*qawwāmūn*) of wives and

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<sup>258</sup> Pickthall, *The Meaning of the Glorious Qur'an*, Q. 4:34.

responsible for their education and discipline, it was essential that wives be obedient to their husbands or else be disciplined by them. Exegetes made the need for wives to be obedient to their husbands a corollary of husbands' *qiwāmah* over their wives. Al-Ṭabarī quoted Ibn 'Abbās as explaining "Men are *qawwāmun* over women" as "meaning: [men are] commanders (*umarā'*) [over wives], so it is [a wife's] obligation to obey [her husband] regarding what God has commanded her".<sup>259</sup> Righteous women were considered "righteous" because they were obedient and they guarded themselves and their husbands' property in their absence. They were also righteous in religion (*ṣāliḥāt fī l-dīn*)<sup>260</sup> and they performed good deeds (*'āmilāt bi l-khayr*).<sup>261</sup>

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<sup>259</sup> Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

<sup>260</sup> Exegetes who mentioned *ṣāliḥāt fī l-dīn* as a descriptor of righteous wives included Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, pp. 320-322, Ibn Juzayy, *al-Tashīl*, v. 1, pp. 251-253, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231.

<sup>261</sup> Exegetes who mentioned *'āmilāt bi l-khayr* as a descriptor of righteous wives included al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231.

Exegetes regularly used the descriptor *muṭī'āt* to define *qānitāt* wives.<sup>262</sup> Both words denote obedience. Predictably, the objects of wifely obedience in pre-modern exegesis were both God and husbands. Wifely obedience to God and husbands was so intertwined that some exegetes described wifely obedience as “obedience to God with respect to their husbands (*al-muṭī'āt li-llāh fī azwājihinna*)”.<sup>263</sup> In this instance, the God-wife relationship was only possible through the mediation of a husband. Wives expressed their obedience to God through obeying God’s commands regarding their husbands, which amounted to them obeying God by obeying their husbands. Sometimes, exegetes used the feminine equivalent of *qā'im*, as in *qā'imāt*, to expound on the duties of wives to their husbands. When used in reference to wives, *qā'imāt* took on

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<sup>262</sup> Exegetes who used the descriptor *qānitāt* or *ṭā'ah* to describe *ṣālihāt* wives include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, 'Abd al-Razzāq al-Ṣan'ānī, *Tafsīr al-Qur'ān*, v. 1, pp. 157-158, al-Hawwārī, *Tafsīr Kitāb Allāh al-'Azīz*, v. 1, pp. 377-378, al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79, al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376 and v. 2, pp. 188-9, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qur'ān*, v.1, pp. 366-368, al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn 'Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, 'Izz al-Dīn al-Sulamī, *Ikhtīṣār al-Nukat*, v. 1, pp. 320-322, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Juzayy, *al-Tashīl*, v.1, pp. 251-253, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'azīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>263</sup> Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Ibn Juzayy, *al-Tashīl*, v.1, pp. 251-253, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, *al-Jawāhir al-Ḥisān fī tafsīr al-Qur'ān*, v. 1, pp. 368-370

different overtones. Wives were expected to be *qā'imāt* by upholding or fulfilling the rights of their husbands. Al-Bayḍāwī (d. 691/1292) characterized wifely obedience as “*qāniḥāt*: obedient to God by upholding the rights of husbands (*muṭī'āt li-llāh qā'imāt bi-ḥuqūq l-azwāj*)”.<sup>264</sup> Emphasizing the importance of wives being obedient to their husbands, Ibn Kathīr wrote,

When a woman obeys her husband in everything that he desires from her, from that which is permitted from him by God, then he should not find a means against her, he should not hit her or abandon her.<sup>265</sup>

Prophetic traditions were used by Qur'ān commentators in order to drive home the inseparable nature of husbandly and Godly (dis)pleasure for wives. The most frequently cited *ḥadīth* in exegesis described the effects of a good woman on her husband. This *ḥadīth* was directly connected to Q. 4:34, not as a context of revelation, but as a self-conscious exegesis of the verse. In this report, Muḥammad is alleged to have said,

The best of women is one who makes you smile when you look at her, obeys when you order her, and in your absence preserves herself and your wealth. Then the Prophet of God, may peace and blessings be upon him, recited, “Men are

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<sup>264</sup> Al-Bayḍāwī, *Anwār*, v. 1, p. 85. Similarly, al-Nasafī wrote, “*fa-ṣāliḥāt qāniḥāt*: obedient, upholding what is obligatory on them with regard to their husbands (*muṭī'āt qā'imāt bi-mā 'alayhinna li-l-azwāj*)”. Al-Nasafī, *Madārik*, v. 1, pp. 354-355.

<sup>265</sup> Ibn Kathīr, *al-Tafsīr al-'azīm*, v. 1, pp. 601-603. He mentions this in his exegesis of the last portion of Q. 4:34 which reads, “If they obey you, do not seek a means against them”.

*qawwāmūn* over women” to the end of the verse.<sup>266</sup>

Al-Qurṭubī mentioned two narrations of this *ḥadīth*. He mentioned the more common above mentioned narration, as well as another narration, wherein the *ḥadīth* begins with Muḥammad asking, “Shall I tell you about the best treasure a man can have? A righteous woman who makes you smile when you look at her, obeys when you command her, and in your absence, preserves herself”<sup>267</sup>. In these prophetic traditions, wives’ righteousness or value as a treasure was measured against how much they pleased their husbands. A wife pleased her husband by being obedient to him in his presence and guarding his wealth and herself in his absence.

The interlinked nature of pleasing God through pleasing one’s husband was emphasized in the citation of other prophetic reports in exegesis as well. One

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<sup>266</sup> This translation is loosely based on the translation in Bauer’s dissertation. Bauer cites this *ḥadīth* in order to illustrate the selective use of *aḥādīth* by premodern exegetes despite its status with respect to authenticity. She writes that although this particular *ḥadīth* was not to be found in any of the canonical *ḥadīth* sources, it was still quoted fairly regularly by exegetes, even after the canonization of *ḥadīth* books. Bauer, *Room for Interpretation*, pp. 123-124. Exegetes who cited this *ḥadīth* include Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, al-Tha’labī, *al-Kashf*, v. 3, pp. 302-303, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma’ālim al-tanzīl*, v. 5, pp. 422-428, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn ‘Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Tha’alibī, *Jawāhir*, v. 2, pp. 229-231, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347.

<sup>267</sup> Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

*ḥadīth* reported Muḥammad to have said, “A woman who dies enters paradise if her husband is pleased with her”.<sup>268</sup> Here, a husband’s pleasure with his wife resulted in her receiving the reward of paradise from God. Since the command to obey husbands was divinely ordained, God rewarded wives for pleasing their husbands by rewarding them Himself. Another *ḥadīth* that linked the salvation of wives to the devotional acts of fasting and praying as well as to the obedience of husbands stated,

The Prophet of God, peace and blessings be upon him said: When a woman prays five times, fasts for a month, protects her chastity and obeys her husband, it will be said to her, “Enter paradise from any of the Doors of Paradise that you desire”.<sup>269</sup>

According to this *ḥadīth*, a woman’s salvation depended on her obedience to her husband and the protection of her chastity, in addition to worshipful activities such as praying and fasting. An important aspect of wives’ obedience to their husbands included their granting their husbands sexual control over themselves. A *ḥadīth* on the topic of wives offering themselves to their husbands whenever they might be desired, however inconvenient the circumstance, stated, “A woman should not refuse herself [to her husband] even

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<sup>268</sup> Cited in the exegesis of al-Khāzin al-Baghdādī, *Lubāb al-ta’wīl fī ma’ānī al-tanzīl*, pp. 373-376 and al-Ḥaqqī, *Rūḥ*, v. 5, p. 202. Abou El Fadl discusses this *ḥadīth* as well, and finds the notion of “God’s pleasure contingent on the husband’s pleasure” problematic. *Abou El Fadl, Speaking in God’s Name*, p. 219

<sup>269</sup> Al-Jaṣṣāṣ and Ibn Kathīr cited this *ḥadīth* in their commentaries. Al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9 and Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603.

if she is on the back of a camel”.<sup>270</sup> Another *ḥadīth* with the same intent read, “When a man calls his wife to his need/desire, she should go to him even if she is at the baking oven”.<sup>271</sup>

The full extent of the divinely ordered social hierarchy becomes clear in the disparate methods for men and women to demonstrate their devotion to God. Theoretically, the ultimate expression of a believer’s dedication to God was his involvement in a military expedition for the sake of God. By doing so, a believer illustrated his willingness to sacrifice his life for God’s sake and the reward - in this life and the hereafter - for men who engaged in such an expedition was tremendous. Al-Suyūṭī cited a *ḥadīth* in his exegesis that offers women the reward of participating in *jihād*, an otherwise predominantly male activity, through obedience to their husbands. In this report,

A woman came to the Prophet of God and said, “O Prophet of God, I come to you as a delegate for women (*wāfidat al-nisā*). Concerning the *jihād* that God has prescribed for men; if they win (*yuṣībū*) they are rewarded, and if they are killed “they live, finding their sustenance in the presence of their

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<sup>270</sup> Al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Maḥallī and al-Suyūṭī, *al-Qur’ān al-karīm*, pp. 105-106 and pp. 179-181 and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>271</sup> Al-Maḥallī and al-Suyūṭī, *al-Qur’ān al-karīm*, pp. 105-106 and pp. 179-181 and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.



Lord” [Q. 3:169].<sup>272</sup> And we, the community of women, assume their burden<sup>273</sup>, so what is there for us in this? The Prophet replied, “I have heard that a woman who obeys her husband and recognizes his rights over her will be rewarded the equivalent [of men participating in *jihād*]. And only a few of you will be able to do this.”<sup>274</sup>

By being obedient to their husbands and recognizing the magnitude of their husbands’ rights over them, wives received the merit of going into the battlefield and risking their lives for God’s sake. This *ḥadīth* tacitly acknowledged that by being obedient wives, women sacrificed their own lives to their husbands, for the sake of God. The difficulties women face in being an obedient wife are also noted, by making this comparable to fighting on the battlefield. According to Bauer, this *ḥadīth* illustrates the spiritual equality of men and women, since women can technically attain the reward of martyrs by being obedient to their husbands and fulfilling their rights. However, as Bauer acknowledges, this

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<sup>272</sup> The entirety of the verse reads, “Think not of those who are slain in Allah's way as dead. Nay, they live, finding their sustenance in the presence of their Lord.” Ali, *The meaning of the Holy Qurān*, Q. 3:169.

<sup>273</sup> The Arabic here reads, “*wa naḥnu ma’shara l-nisā’ naqūmu ‘alayhim fa-mā lanā min dhālika?*” I translated “*naqūmu ‘alayhim*”, as “we assume their burden” because the woman in the report seems to suggest that women must tend to their husbands duties when their husbands are absent, and also care for them if they are injured, and find a means to do without them if they are killed. As such, the women saw themselves as “assuming the burden” of their husbands’ *jihād* activities.

<sup>274</sup> Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

spiritual equality does not erase the marital hierarchy.<sup>275</sup> The martyrdom of women is, after all, attained through their obedience to their husbands.

Mirroring the above *aḥadīth* wherein women pleased God by pleasing their husbands, some exegetes, especially in the medieval period, also drew on *aḥādīth* in which women incurred the anger of God by displeasing their husbands. The most commonly cited *ḥadīth* to this effect states that “a woman who refuses herself to her husband and leaves his bed is cursed by the angels until morning”. A variation of this report offers that such a woman was cursed “until she returned herself to [her husband’s] control”.<sup>276</sup> Yet another variation of this *ḥadīth* suggested that a wife would be cursed by the angels if she left home without her husband’s permission and would be continuously cursed thereafter

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<sup>275</sup> Bauer mentions different version of this *ḥadīth*, from al-Tha’labī’s discussion of the degree of men over women in his commentary on Q. 2:228, not Q. 4:34. The version in al-Tha’labī reads, “On the authority of Abū Ja’far Muḥammad b. ‘Alī, on the authority of Jābir b. ‘Abd Allāh, he said, “While we were with the Messenger and a group of his Companions, a woman came so close that she nearly stood on his head, saying, ‘Peace be upon you, O Messenger of God. I am a delegate to you from the women, and no woman heard of my coming to see you without being delighted by it, O Messenger of God. Indeed, God is the Lord of men and the Lord of women, and Adam is the father of men and the father of women, and Eve is the mother of men and the mother of women. So why is it that when men go out (*kharajū*) in the path of God and are killed, they will live with their Lord and be rewarded, and when they go out, the matter is as I say, but we women are confined by them, and we serve them (*nakhdumuhum*) – so do we receive any reward at all?’ The Prophet said, ‘Yes, greet the women and say to them that their obedience to their husbands and recognition of their rights will [have a result] equal to the husbands’ reward, although few of you do it.” Bauer, *Room for Interpretation*, p. 79-80.

<sup>276</sup> literally, “...ḥattā turājjī’ wa taḍa’ yadahā fī yadihī”. Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

until she returned.<sup>277</sup> A related *ḥadīth* establishes that “God does not look at a woman who is ungrateful to her husband when she is dependent on him”.<sup>278</sup> In these reports, when wives displease their husbands they incur the anger of God and the angels. God is a constant presence in the marital relationship; He assigned *qiwāmah* to husbands over wives, granted husbands disciplinary power over wives, and also rewarded and punished wives in the hereafter when they pleased or displeased their husbands. By displeasing their husbands, wives jeopardized their own salvation. According to the worldview within which the primary objective of wives was to please husbands, God was squarely on the side of husbands if any dispute arose between spouses, unless of course, husbands were commanded their wives to disobey God.<sup>279</sup>

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<sup>277</sup> Variations of the above-mentioned report are included in the commentaries of al-Qurṭubī, *al-Jāmiʿ*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-ʿaẓīm*, v. 1, pp. 601-603, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>278</sup> Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>279</sup> Both Ali and Bauer note the correlation between obedience to husbands and God in exegetical and juridical works, as well as the obedience of wives being contingent on obedience to God. Ali writes “Only if what her husband asks her is *maʿṣiya* [sinful disobedience] may she refuse him. Otherwise, her failure to obey itself becomes *maʿṣiya*, sinful disobedience. While *maʿṣiya* typically refers to sinful disobedience to God, through an interpretive maneuver it is made to come full circle: God has ordained that women must obey their husbands, and thus disobedience (*nushūz*) to one’s husband is sinful disobedience (*maʿṣiya*) to God.” Kecia Ali, “Women, Gender, *Taʿa* (Obedience), and *Nushūz* (Disobedience) in Islamic Discourses.” In *Encyclopedia of Women and Islamic Cultures*, ed. Suad Joseph (Leiden: Brill, 2003) and Bauer, *Room for Interpretation*, p. 76.

### 2.3.4.2. Obedience to God: A Potential Alternative

Ibn ‘Aṭīyyah<sup>280</sup> and Abū Ḥayyān<sup>281</sup> cite al-Zajjāj (d. 311/923) as interpreting *qānitāt* wives in Q. 4:34 as referring to women who exhibit qualities of devoutness in prayer. It should be noted that in his *Ma‘ānī I-Qur’ān*, al-Zajjāj interprets “righteous women are obedient” as wives who “uphold the rights of their husbands”.<sup>282</sup> In this work, his interpretation is consistent with the larger interpretive tradition. However, according to Ibn ‘Aṭīyyah, al-Zajjāj interpreted “*qānitāt*” as women who were “devout in prayer”. Though this is not the interpretation that al-Zajjāj himself provides for *qānitāt* in his *Ma‘ānī I-Qur’ān*, it is possible that Ibn ‘Aṭīyyah was referring to another work of al-Zajjāj that is no longer extant. In any case, Ibn ‘Aṭīyyah considered al-Zajjāj’s interpretation to be far-fetched and argued instead that “*qānitāt*” referred to wives who were “obedient to their husbands or to God with respect to their husbands.” In Ibn ‘Aṭīyyah’s citation of al-Zajjāj’s interpretation, there was a possibility of some disentanglement of women’s relationship with God from their relationship with their husbands. If *qānitāt* was interpreted to refer to women who were devout in prayer, then that allowed the potential for women to have a direct relationship with God without the mediation of their husbands. Other than Ibn ‘Aṭīyyah and

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<sup>280</sup> Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>281</sup> Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

<sup>282</sup> Al-Zajjāj, *Ma‘ānī al-Qur’ān*, v. 2, p. 48.

Abū Ḥayyān, this interpretation of *qānitāt* was not taken up by any other exegetes.

Whether the interpretation attributed to al-Zajjāj by Ibn ‘Aṭīyyah and Abū Ḥayyān was authentic or not, it is important that this interpretive possibility existed in the pre-modern exegetical tradition. Moreover, this interpretation was not as far-fetched as Ibn ‘Aṭīyyah made it out to be. The interpretation may have alluded to Q. 3:43 or Q. 66:12, both of which use conjugations of *q-n-t* to describe qualities of devoutness for God in the figure of Mary. Q. 3:43 states, “O Mary! Be obedient (*uqnutī*) to thy Lord, prostrate thyself and bow with those who bow (in worship)”.<sup>283</sup> Yusuf Ali translates this verse as, “O Mary! Worship thy Lord devoutly (*uqnutī*): Prostrate thyself, and bow down (in prayer) with those who bow down.”<sup>284</sup> In both these translations, Mary’s obedience and devotion were directed towards God, without a male intermediary. Similarly, Q. 66:12 described Mary as having “put faith in the words of her Lord and His scriptures, and was of the obedient (*qānitīn*) [to God]”.<sup>285</sup> The context of the verses surrounding the story of Mary in the Qur’ān lacked reference to male figures. It was, therefore, clear that the object of her devotion/obedience was God.

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<sup>283</sup> Pickthall, *The Meaning of the Glorious Qur’an*, Q. 3:43.

<sup>284</sup> Ali, *The meaning of the Holy Qurān*, Q. 3:43.

<sup>285</sup> Pickthall, *The Meaning of the Glorious Qur’an*, Q. 66:12.

Nevertheless, the model of Mary, a woman who worshipped God directly without male mediation, would have been threatening to the worldview wherein the husband-wife relationship mirrored the God-man hierarchy.<sup>286</sup>

There are two other verses in the Qur’ān that use a conjugation of the verb *qanata* to refer to women. Q. 33:35 refers to *qānitāt* (fem. pl.) as a parallel of *qānitīn* (masc. pl.), when describing the spiritual parity of believing men and women. Q. 66:5 addresses Muḥammad’s wives and uses the quality of *qānitāt* to describe the sort of women God would replace them with if they misbehaved. This verse declares: “Maybe, his Lord, if he divorce you, will give him [Muḥammad] in your place wives better than you, submissive, faithful, obedient (*qānitāt*), penitent, adorers, fasters, widows and virgins”.<sup>287</sup> Q. 66:5 is the only verse of the four mentioned above where it is possible to argue that the verb *qanata* referred to obedient wives, rather than women who are obedient to God directly. This would be argued based on the context of this verse, which suggests a concern with insubordination on the part of Muḥammad’s wives. In

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<sup>286</sup> As Katz pointed out during the editing process: “It is also notable that the root *q-n-t* is used in the Qur’ān to refer to men’s – or all creation’s -- relationship with God, rather than to men’s obedience to human authorities (e.g., 16:120, 2:237, 2:116, 39:9 [specifically about prayer]). On the other hand, verse 33:31 does use this verb to express the relationship to “God and His Messenger,” so it is not completely impossible for it to relate to a human being (at least in conjunction with God, and at least in the case of the Prophet).”

<sup>287</sup> Shakir, *The Qur’an*, Q. 66:5.

Q 66:5, as in Q. 4:34, wives worship God through worshipful behavior to their husbands. Still, this argument could be disputed based on the reasoning that the object of obedience in Q. 66:5 is God and not Muḥammad, since the overall list of adjectives appears to designate spiritual qualities that are oriented towards God. It is significant that, in al-Zajjāj's alleged interpretation, exegetes had access to an alternative interpretation of the descriptor *qānitāt*, such that *qānitāt* could have referred to devout women, as opposed to obedient wives.<sup>288</sup> The fact that this interpretation did not gain currency in the exegetical literature sheds light on the limiting effect that the worldview that exegetes brought to bear on Q. 4:34 had on their interpretive choices.

#### **2.3.4.3. Pleasing Husbands by Guarding their Property**

According to pre-modern exegetical interpretations of Q. 4:34, righteous women pleased God by being obedient to their husbands when their husbands were present. When their husbands were absent, wives pleased God and their husbands - since the two were intertwined - by “guarding in the absence of their husbands what God would have them guard (*ḥāfiẓāt li l-ghayb bi-mā ḥafiẓa-llāh*). There was some difference of opinion regarding what, exactly, wives were to be guarding in their husbands' absence. Most exegetes argued that wives

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<sup>288</sup> Interestingly, Mahmoud translates *qānitāt* as “devout” without discussing his choice of translation. Mahmoud, “To Beat or Not to Beat”, p. 537.

were to guard their husbands' property<sup>289</sup> and their own chastity (*furūjahunna*).<sup>290</sup> Exegetes discussed a wife's chastity and her husband's wealth in proprietary terms. Wives guarded in their husband's absence what otherwise their husbands would guard if they were present. A husband's wealth belonged to him just as a wife's chastity belonged to her husband. Hence, when husbands were absent, exegetes argued that wives were to protect their

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<sup>289</sup> Exegetes who argued that wives were to protect their husbands' wealth/property in their absence included Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, Al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79, al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376 and v. 2, pp. 188-9, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263, al-Zamakhsharī, *al-Kashshāf*, v. 1 pp. 490-497, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Juzayy, *al-Tashīl*, v. 1, pp. 251-253, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>290</sup> Exegetes who argued that wives were to protect their own chastity in their absence included Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, 'Abd al-Razzāq al-Ṣan'ānī, *Tafsīr al-Qur'ān*, v. 1, pp. 157-158, al-Hawwārī, *Tafsīr Kitāb Allāh al-'Azīz*, v. 1, p. 377-378, al-Dīnawarī, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376 and v. 2, pp. 188-9, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qur'ān*, v. 1, pp. 366-368, al-Ḥīrī, *Wujūh al-Qur'ān*, p. 424, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, al-Zamakhsharī, *al-Kashshāf*, v. 1 pp. 490-497, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Juzayy, *al-Tashīl*, v. 1, p. 251-253, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.



property and themselves. Fakhr al-Dīn al-Rāzī wrote,

[A wife] should protect herself (*taḥfāz nafsahā*) from adultery (*zinā*), so that her husband is not afflicted with shame/disgrace (*al-‘ār*) as a result of her adultery, and also so that a child is not attributed to him that is created by someone else’s sperm (*nuṭfah*).

According to Fakhr al-Dīn al-Rāzī, wives protected their husbands’ property and their own chastity for the sake and benefit of their husbands. It was as if their own selves – in this context meaning their chastity - were a trust given to wives by their husbands when their husbands were absent. For exegetes, a husband’s absence did not open up the possibility for a wife to have a direct connection with God. Rather, a wife was to guard her husband’s property and her own chastity until her husband returned. In this way, wives pleased their husbands and God. When wives fell short of their duty to guard themselves in their husbands’ absence, this resulted in a blemish on their husbands, because it indicated a failure in the moral and religious education and discipline of their wives, for which husbands were responsible.

A few exegetes specified additional items a wife ought to protect/guard in her husband’s absence. Some claimed that a wife should protect her husband’s

house in addition to his wealth.<sup>291</sup> Al-Baghawī (d. 516/1122) and Ibn Juzayy (d. 741/1340) mentioned that women should protect their husbands' secrets (*asrārihi*).<sup>292</sup> Ibn Abī Ḥātim al-Rāzī (d. 327/939) mentioned that this also entailed a wife's being good to her husband's family.<sup>293</sup> Exegetes advised that when wives displayed the above-mentioned character traits, thereby fulfilling the rights of their husbands, they should be rewarded with positive treatment from their husbands. When wives were *sāliḥāt*, *qānitāt*, and *ḥāfiẓāt li-l-ghayb*, then husbands were to treat them with beneficence and charity (*fa-aḥsinū*).<sup>294</sup> Husbands were to be good to righteous wives (*fa-aṣliḥū*).<sup>295</sup> and they were to treat them with justice.<sup>296</sup> The positive exhortation for men to treat their wives well was conditional on the good behavior of women. Thus, the exegetical writings surrounding Q. 4:34 made a husband's behavior toward his wife contingent on her conduct. When wives behaved well, by embodying righteous

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<sup>291</sup> These exegetes include: al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Juzayy, *al-Tashīl*, v.1, pp. 251-253, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, and al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>292</sup> al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428 and Ibn Juzayy, *al-Tashīl*, v.1, pp. 251-253.

<sup>293</sup> al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Ibn Kathīr, *al-Tafsīr al-'azīm*, v. 1, pp. 601-603, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181.

<sup>294</sup> al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181.

<sup>295</sup> Al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497 and Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>296</sup> Al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

characteristics, husbands were to treat them well. When wives misbehaved, husbands were to discipline them. In this way, the relationship of husbands to wives as promoted by exegetes was quite similar to the God-man, ruler-subject and master-slave relationships.

### **2.3.5. Parallel Hierarchies**

The parallel nature of the God-man and husband-wife relationship was captured particularly well in the exegesis of the last portion of Q. 4:34, which reads, “if/when they (wives) obey you (husbands), do not find a means against them”. Exegetes interpreted this to mean that husbands should treat their wives as they would want God to treat them (husbands); they should not transgress against their wives, should not make unreasonable demands on them and ought to forgive their wives as God forgives them. Al-Ṭabarī wrote that if wives were obedient to their husbands, then husbands should

...not seek a path towards harming them and being hateful to them. Nor should you seek a way to what is not lawful to you in terms of their bodies and their property on any pretext, such as one of you saying to his obedient wife, “You do not love me - you hate me!” and hitting and harming her because of that. For God Almighty has said to men, *when they obey you*, meaning [that they obey] even when they hate you. So [when they are obedient despite their hatred of you] do not become angry with them,

hitting them and harming them, and do not oblige them to love you, for that is not in their hands.<sup>297</sup>

Al-Ṭabarī's exegesis addressed husbands as the overseers of their wives. Husbands were permitted to judge their wives' obedience through the latter's actions, but not through their dispositions. This highlighted the limits of the correlation between the God-man and husband-wife relationship. Whereas God could judge a person's actions based on his or her intentions, a husband was not permitted to judge his wife's behavior based on the condition of her heart. It was not permitted for a husband to make his wife love him, since love was beyond her control. This idea was expressed by several exegetes.<sup>298</sup> At this point, the husband-wife relationship resembled more closely the ruler-

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<sup>297</sup> Bauer's translation of al-Ṭabarī. Bauer, *Room for Interpretation*, p. 162. al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

<sup>298</sup> Exegetes who mentioned that it was not permitted to discipline a wife for not loving her husband include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, Muḥammad ibn al-Ḥusayn al-Sulamī, *Ḥaḡā'iq al-tafsīr: tafsīr al-Qur'ān al-'Azīz* (Beirut: Dār al-Kutub al-'Ilmīyah, 2001) v. 1, p. 145-146, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

subject relationship, wherein the ruler judged his subjects solely on the basis of their actions.<sup>299</sup>

Nevertheless the God-man parallel remained relevant for much of the exegetical tradition.<sup>300</sup> In their interpretation of this portion of Q. 4:34, exegetes reminded husbands that while they had *qiwāmah* over their wives, God was greater than husbands, and husbands were ultimately accountable to God. Al-Zajjāj instructed husbands that just as God only held humans accountable for what was within their capacity, husbands should hold wives responsible for what was reasonably within the rights of a husband and the capacity of a wife.<sup>301</sup>

Husbands were not to demand of their wives what their wives could not give

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<sup>299</sup> As Marion Katz pointed out, there is a parallel here with classical interpretations of Q. 4:3 which mentions that men would not be able to treat multiple wives equally; the predominant interpretation is that men are responsible for the fair outward behavior, but not for equal emotional devotion or sexual attraction. In this way, there is some sense of parallelism between the husband's duties and the wives'. Both are responsible for proper behavior, but not for proper subjective states. However, the man's duty is articulated in the context of polygamy, which is in itself an asymmetrical structure. Also, Bauer discusses the political undertones in exegetical description of husbands as wives' "commanders". Bauer, *Room for Interpretation*, p. 111.

<sup>300</sup> Exegetes who drew a parallel between the God-man and husband-wife relationship include al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, Muḥammad ibn Aḥmad al-Shirbīnī, *Tafsīr al-Khaṭīb al-Shirbīnī: al-musammā al-Sirāj fī al-i'ānah 'alā ma'rifaṭ ba'd ma'ānī kalām rabbīnā al-ḥakīm al-khabīr* (Beirut: Dār al-Kutub al-'Ilmiyah, 2004) v. 1, pp. 346-347.

<sup>301</sup> Al-Zajjāj, *Ma'ānī al-Qur'ān*, v. 2, p. 49.

them. If wives pleased God by pleasing their husbands, then husbands pleased God by being just overseers of their wives. Al-Shirbīnī (d. 968/1570) advised husbands to be fearful of God since He would punish them if they transgressed (*z-l-m*) against their wives.<sup>302</sup> In line with this, husbands were exhorted to be lenient with their wives as they would want God to be lenient with them.<sup>303</sup> Husbands were also encouraged to overlook and forgive the shortcomings of their wives as God forgives those who fall short in fulfilling His rights.<sup>304</sup>

### 2.3.6. Summary

One of the unifying elements of pre-modern exegesis in the interpretation of Q. 4:34 was a shared worldview. Exegetes were able to interpret Q. 4:34 and the right of husbands to physically discipline wives through the articulation of a hierarchical worldview that was God-centric. God preferred men over women, which granted men a privileged status in the religious, social, political,

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<sup>302</sup> Al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347.

<sup>303</sup> Exegetes who implicitly or explicitly drew a parallel between the lenience of God and husbands included al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, Al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>304</sup> Exegetes who compared the forgiveness of God with that of husbands included Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, Al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

economic, legal and marital realms. Since men were divinely preferred to women within the marital realm, husbands were bestowed with *qiwāmah* of wives. This meant that husbands were financially, morally, religiously and socially responsible for the well-being of their wives. The main objective of husbands was to please God and they did this partly by responsibly discharging their duties with respect to their wives. When wives were righteous, husbands were to treat them kindly. When wives erred, husbands were responsible for their discipline. In order to discipline their wives effectively, husbands were granted the right to use physical violence.

Within this arrangement, the goal of wives was also to please God. However, their relationship with God was mediated by their husbands. The salvation of wives lay in their ability to please their husbands. When wives (dis)pleased their husbands they (dis)pleased God. The ideal characteristics of a righteous wife were that she was obedient to her husband when he was present, and she guarded his property - including her chastity - in his absence. A wife's ability to successfully guard her husband's property in his absence reflected well on his education and disciplining of her, just as her failure to do so indicated that her husband was derelict in educating and disciplining her. In this way, it is possible to see that husbands' relationship with God was also mediated, to some extent

though not entirely, through the righteousness of their wives. Exegetes argued for a conception of marriage that was only comprehensible as part of a larger interconnected system of asymmetrical relationships. In this system, husbands needed to have *qiwāmah* and disciplinary power over their wives, and wives needed to be obedient and not express independence. When any of the players in this system did not play by the rules, the entire system was threatened.

#### **2.4. The Lexical Approach: Expanding and Restricting Male Authority**

The second half of Q. 4:34 reads: “As to those women on whose part you fear (*takhāfūna*) recalcitrance/disobedience (*nushūz*): admonish them (*fa’izūhunna*), abandon them in their beds (*wahjurūhunna fī al-maḍāji*), and beat them (*waḍribūhunna*); if they obey you (*aṭa’nakum*), do not seek a means against them. Allah is Most High, Great.” As seen above, the interpretive choices of pre-modern exegetes not only determined the main focus of Q. 4:34 but also illustrated the worldview that underpinned their interpretive choices. Lexicology also played an important role in the discussion of the disciplinary power of husbands over wives in the exegesis of the verse.



In their exegesis of Q. 4:34, exegetes conceptualized wives as falling into one of two categories. Wives were either righteous (*ṣāliḥāt*) or they were recalcitrant (*nāshizāt*). The text of Q. 4:34 provided specific characteristics for righteous wives - exegetes understood these to be that righteous wives were obedient to their husbands in their husbands' presence and they guarded their husbands' property and their own chastity when their husbands were absent. According to exegetes, wives who were righteous were to be treated kindly (*fa aḥsinū ilayhinna*).<sup>305</sup> The text of Q. 4:34 did not provide specific characteristics of recalcitrant (*nāshizāt*) wives, but it did prescribe disciplinary measures for husbands to employ in order to correct such behavior. Although Q. 4:34 did not define the specific characteristics of recalcitrant wives, exegetes used the definition of righteous wives as a negative definition for recalcitrant wives. Since righteous wives were characterized by their obedience to their husbands when their husbands were present, recalcitrant wives were broadly defined as wives who were disobedient. There was an assumption on the part of exegetes that the discussion of recalcitrant wives in Q. 4:34 occurred in the presence of husbands, since wives were to be disciplined when they exhibited recalcitrance (*nushūz*).

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<sup>305</sup> Exegetes who used this phrase include al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181.

The multiple meanings of two key terms, *khawf* (fear) and *nushūz* (recalcitrance), provided exegetes with interpretive flexibility to either expand or restrict the disciplinary power of husbands over wives.<sup>306</sup> Although the plain sense meaning of “*khawf*” is “fear”, commentators generally offered “*ilm*” (knowledge) or “*yaqīn*” (certainty) as more appropriate interpretations. By limiting the meaning of *khawf* to knowledge, as opposed to mere fear, exegetes effectively restricted the wanton abuse of power by suspicious husbands. It may be theorized that the limitation of a husband’s disciplinary power to certain knowledge of misbehavior on his wife’s part was motivated, in part, by legal considerations that will be discussed below. *Nushūz* had a less obvious plain sense meaning, and therefore lent itself more easily to multiple interpretations. Nevertheless, exegetes tended to interpret *nushūz* as broadly referring to the general disobedience of wives. Defining *nushūz* as unqualified disobedience of wives, as opposed to specific acts of disobedience, expanded the disciplinary power of husbands over wives. It is possible that this interpretive choice was driven, in part, by the worldview exegetes brought to bear on Q. 4:34. Ideal wives were obedient to their husbands, and when they were generally

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<sup>306</sup> For the sake of consistency, these two words will be employed in Arabic in this chapter.

disobedient to their husbands - which constituted both a religious and marital failing - they were to be disciplined by their husbands.

#### **2.4.1. Fear: Knowledge vs. Suspicion**

The section of Q. 4:34 relevant to this examination of lexicology reads “As to those women on whose part you (masc. pl.) fear (*takhāfūna*) recalcitrance/disobedience (*nushūzahunna*)...” The interpretation of *khawf* in Q. 4:34 influenced the amount of disciplinary power exegetes granted husbands over wives. It determined whether husbands were permitted to discipline their wives based on the mere suspicion of future/present *nushūz* or they were only permitted to exercise their disciplinary powers based on unambiguous evidence of *nushūz* that was already manifest. Interpretations of the term “*khawf*” were found between the extremes of “certain knowledge” (*‘ilm* or *yaqīn*) and the more tenuous “suspicion” (*shakk*), and a spectrum of hermeneutic options existed between these two possible extremes. Restricting the definition of *khawf* to certain knowledge required a burden of proof from the husband before he could discipline his wife. Exegetes did not discuss to whom that proof might need to be presented but it is likely that the distinction between *shakk* and *yaqīn* was directed to the husband’s conscience and not for legal proof. Conversely, understanding *khawf* more broadly as “suspicion” both decreased the level of

proof husbands needed to discipline wives and increased the disciplinary purview of the husband.

#### **2.4.1.1. *Khawf* interpreted as ‘*Ilm*, *Ẓann* or *Yaqīn***

Al-Rāghib al-Iṣfahānī (d. 412/1021) discusses the meaning of “*khawf*” as it appears in the Qur’ān in his compendium of meanings of Qur’anic terms, *Mufradāt Alfāz al-Qur’ān*.<sup>307</sup> In his entry on *khawf*, al-Iṣfahānī does not cite Q. 4:34 specifically, but he does cite two other verses in the fourth chapter related to marriage, Q. 4:3 and Q. 4:35. Q. 4:3 is related to the topic of polygamy and reads, “If you fear (*khiftum*) that you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if you fear (*khiftum*) that you shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice”.<sup>308</sup> Q. 4:35 is linked to Q. 4:34 more closely as it provides the option of adjudication for a married couple who are unable to resolve their marital discord after exhausting the three steps outlined in Q. 4:34. This verse reads: “If you fear (*khiftum*) a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for

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<sup>307</sup>Abū al-Qāsim al-Ḥusayn ibn Muḥammadī Al-Rāghib al-Iṣfahānī, *Muʿjam mufradāt alfāz al-Qur’ān* (Beirut, Lebanon: Dār al-Kātib al-‘Arabī, 1972) v. 1, p. 429.

<sup>308</sup>Ali, *The meaning of the Holy Qurān*, Q. 4:35.

peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things”.<sup>309</sup> In both these verses, a different conjugation of the root word *kh-w-f* is used to express a sentiment similar to that in Q. 4:34. In these contexts, al-Rāghib al-Iṣfahānī suggested that *khawf* meant *yaqīn* (certainty) and *maʿrifah* (knowledge).<sup>310</sup>

While none of the exegetical works in this study used the word *maʿrifah* to explain *khawf*, *ẓann* and *yaqīn* figured prominently as meanings of *khawf*. Of the exegetes who discussed the meanings of *khawf*, most interpreted it to mean that husbands needed to have knowledge and/or evidence of their wives’ *nushūz* before they could commence with disciplinary action. By far the most common interpretation of *khawf* was *ʿilm* (knowledge).<sup>311</sup> Muqātil (d. 150/767) and Abū al-Layth al-Samarqandī (d. 375/985) wrote that the phrase “and on

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<sup>309</sup> Ali, *The meaning of the Holy Qurān*, Q. 4:35.

<sup>310</sup> Al-Iṣfahānī goes on to explain that the fear under discussion is not like the fear of a lion, but rather fear that prevents one from disobedience (*al-maʿāṣī*) and compels one to choose obedience. Al-Rāghib al-Iṣfahānī, *Muʿjam*, v. 1, p. 429.

<sup>311</sup> The translation of *khawf* as a cognate for *ʿilm* was preferred by Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, Aḥmad Yūsuf Najātī al-Farrāʾ, *Maʿānī al-Qurʾān*. (Cairo: al-Hayʾah al-Miṣrīyah al-ʿĀmmah lil-Kitāb, 1980) v. 1, pp. 264-266, al-Ṭabarī, *Jāmiʿ al-bayān*, v. 4, pp. 59-72, Abū al-Layth al-Samarqandī, *Baḥr al-ʿulūm*, v. 1, pp. 351-352, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn ʿAṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmiʿ*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Suʿūd, *Tafsīr Abī al-Suʿūd*, v. 1, pp. 338-339.

those women on whose part you fear *nushūz*” referred to those women on whose part husbands “knew of their disobedience (*ta‘lamūna ‘iṣyānahunna*)”.<sup>312</sup>

In line with this, some exegetes argued that husbands needed to have clear evidence of their wives’ *nushūz* before disciplinary action became either permissible or obligatory on them. Ibn ‘Aṭīyyah wrote that it was the presence of *nushūz* itself that made admonishment obligatory (*wuqū‘ al-nushūz huwa alladhī yūjib al-wa‘z*).<sup>313</sup> In al-Sulamī’s (d. 660/1261) abridgment of al-Māwardī’s (d. 450/1058) commentary, al-Sulamī explains that the intended meaning of *khawf* in Q. 4:34 was “evidence/proofs (*istidlāl*) of [a wife’s] bad actions (*sū’ fi’lihā*) that make her *nushūz* apparent”.<sup>314</sup> Ibn Kathīr did not dwell on suitable meanings for *khawf* but instead explained, “*wallātī takhāfūna* means when [wives] have committed *nushūz* against their husbands”.<sup>315</sup> While Ibn Kathīr did not mention knowledge (*‘ilm*) explicitly as an interpretation for *khawf*, he implied it by defining *khawf* as the unambiguous presence of *nushūz*. For

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<sup>312</sup> Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236 and Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352. Along the same line al-Ṭabarī and al-Māwardī described *khawf* of a wife’s *nushūz*, as “knowledge” of her *nushūz*. Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72 and al-Māwardī, *al-Nukat*, v. 1, pp. 480-483.

<sup>313</sup> Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>314</sup> ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322.

<sup>315</sup> Ibn Kathīr, *al-Tafsīr al-‘azīm*, v. 1, pp. 601-603.

Ibn Kathīr, wives needed to have committed *nushūz* before they could be chastised.

The second most common meaning offered for *khawf* in the interpretive tradition was *ẓann* (speculation). *Ẓann* lent itself to a greater number of meanings than *‘ilm*, as it encompassed a spectrum that ranged from informed belief to mere speculation. Nevertheless, when exegetes used *ẓann* as a meaning for *khawf* they emphasized its definitive rather than tentative meaning. In most cases, a husband’s *ẓann* was basically equivalent to his having knowledge (*‘ilm*) of his wife’s *nushūz*.<sup>316</sup> Ibn al-Jawzī (d. 597/1200) characterized *ẓann* as “what becomes apparent from indicators (*dalā’il*) of [a wife’s] *nushūz*”.<sup>317</sup>

Al-Samīn (d. 756/1355) offered three possible interpretations of *khawf* in his exegesis. He wrote,

Some [scholars] say that “*wa l-lātī takhāfūna*” means “and concerning those women on whose part you fear *nushūz*, and then they commit *nushūz* (*wa*

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<sup>316</sup> Exegetes who used *ẓann* as a meaning of *khawf* included al-Farrā’, *Ma‘ānī al-Qur‘ān*, v. 1, pp. 264-266, al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, ‘Izz al-Dīn al-Sulamī, *Ikhtīṣār al-Nukat*, v. 1, p. 320-322, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Samīn, *al-Durr al-maṣūn*, v. 3, pp. 670-673, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, Abū al-Su‘ūd, *Tafsīr Abī al-Su‘ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>317</sup> Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78.

*nashazna*)”. What is intended here is that it is impermissible to commence with admonishment and what comes after it [i.e. the disciplinary process] on the basis of fear alone. And some have said: this [interpretation of wives having committed *nushūz*] is unnecessary because *khawf* means *yaqīn* (certainty). Yet other [scholars] mention that probability [of *nushūz*] is sufficient.<sup>318</sup>

Al-Samīn shows that the commentary tradition had legitimately interpreted *khawf* in Q. 4:34 to mean knowledge on a husband’s part that his wife had already committed *nushūz*, certainty that his wife had committed *nushūz* or the probability that a wife might have committed *nushūz*. In all three cases, a wife needed to have either committed or been suspected of having committed *nushūz* before a husband could begin the disciplinary process. It is worth noting here that in contrast to Ibn ‘Aṭīyyah’s discussion of the disciplinary process as obligatory, al-Samīn discusses it in terms of permissibility. Exegetes discussed the disciplinary process both in terms of its permissibility and its obligatory nature, without indicating that this necessarily reflected a difference of opinion in their understanding of the imperative verbs in the second half of Q. 4:34.

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<sup>318</sup> Al-Samīn, *al-Durr al-maṣūn*, v. 3, pp. 670-673.



Some exegetes preferred the use of *yaqīn* (certainty) as the meaning of *khawf*.<sup>319</sup> *Yaqīn*, like *ẓann*, was used to mean knowledge (*‘ilm*) as interpretation of *khawf*. Historically, *yaqīn* was not a popular descriptor for *khawf* and was not picked up by the exegetes in this study until the sixth/twelfth century, when it was used along with *‘ilm* (knowledge) by Ibn ‘Aṭīyyah as corresponding to *khawf*.<sup>320</sup> Ibn ‘Aṭīyyah used *‘ilm* and *yaqīn* as meanings for *khawf* in order to make the point, mentioned earlier, about the necessity for *nushūz* to pre-exist disciplinary action. Overall, interpreting *khawf* as a husband’s knowledge of the pre-existing *nushūz* of his wife was the preferred interpretive choice of exegetes. By interpreting *khawf* against its “plain sense”<sup>321</sup> meaning of “fear” to mean “knowledge,” exegetes limited the disciplinary power of husbands over

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<sup>319</sup> Exegetes that used *yaqīn* as a meaning of *khawf* include Abū ‘Ubaydah Ma‘mar ibn al-Muthannā al-Taymī Abū ‘Ubaydah, *Majāz al-Qur‘ān*, (Beirut: Dār al-Kutub al-‘Ilmīyah, 2006) p. 59, Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-‘Arabī, *Aḥkām al-Qur‘ān*, v. 1, pp. 493-500, al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167, Ibn Juzayy, *al-Tashīl*, v.1, p. 251-253, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Samīn, *al-Durr al-maṣūn*, v. 3, pp. 670-673.

<sup>320</sup> Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>321</sup> I take the phrase “plain sense” from Peter Ochs. He writes “I take the term “plain sense” from the exegetical practice of medieval Jewish scholars, for whom the “plain sense” (*peshat*) of a text is its meaning within the rhetorical context of some body of received literature. Here, “plain sense” is contrasted with “interpreted sense” (*derash*), much in the way we might contrast textual exposition with hermeneutical or performative use of a text – provided that we do not grant epistemological authority to one sense over the other. This epistemological model comes from the pre-medieval scholars or “rabbis” of the Talmud, for whom, as I read them, the lived meaning of a scriptural text will be found in its *derash*, but only when the *derash* is itself performed within the grammatical, philological and semantic rules of the *peshat*: as the Talmud says “the scriptural text must not be deprived of its plain sense.” Peter Ochs, *Peirce, Pragmatism and the Logic of Scripture* (Cambridge, UK: Cambridge University Press, 1998) pp. 5-6.

wives and anticipated legislative issues related to abuse of the disciplinary power of husbands.

#### 2.4.1.2. *Khawf* Interpreted as Suspicion or Expectation

Although exegetes considered *shakk* (doubt) as a possible meaning of *khawf* (fear) in their commentaries of Q. 4:34, most did not prefer this interpretation of *khawf*.<sup>322</sup> Exegetes across the board agreed that it was impermissible for husbands to undertake the disciplinary actions of abandonment and hitting without the manifestation of a wife's *nushūz*. Still, exegetes disagreed as to whether it was permissible for husbands to begin the disciplinary process, by admonishing their wives, on the basis of fear that their wives might commit *nushūz* in the future. In his *Aḥkām al-Qur'ān*, al-Shāfi'ī (d. 204/820) uses the word *khawf* in order to describe two possible scenarios. When husbands merely fear *nushūz* from their wives, it is appropriate for husbands to begin the disciplinary process by admonishing their wives.<sup>323</sup> Although al-Shāfi'ī permitted husbands to admonish their wives before they committed *nushūz*, he cautioned that it was impermissible for husbands to abandon wives in their beds

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<sup>322</sup> Such exegetes included al-Farrā', *Ma'ānī al-Qur'ān*, v. 1, pp. 264-266, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72 and Ibn 'Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>323</sup> Muḥammad b. Idrīs al-Shāfi'ī, *Aḥkām al-Qur'ān*, (Beirut: Dār al-Kutub al-'Ilmiyah, 1975) v. 1, pp. 206-213. This work is attributed to him and compiled by Aḥmad b. al-Ḥusayn b. 'Alī b. 'Abdallāh al-Nīshapūrī (d. 458/1349).

until they manifested their *nushūz*. However, in the case that husbands feared the persistence (*lajājatahunna*) of their wives' *nushūz*, after it had already manifested itself, they were permitted to combine the three disciplinary steps - admonishment, abandonment and hitting.<sup>324</sup>

Based on al-Shāfi'ī's understanding of *khawf* in the application of the disciplinary process outlined in Q. 4:34, Fakhr al-Dīn al-Rāzī considers the plain sense meaning of *khawf* - fear - to be the preferred understanding of *khawf*. Fakhr al-Dīn al-Rāzī defined *khawf* as “a condition that enters the heart [of a husband when he] suspects [that his wife will commit] a reprehensible deed (*amr makrūh*) in the future”.<sup>325</sup> Like al-Shāfi'ī, Fakhr al-Dīn al-Rāzī considered it permissible for husbands to begin the disciplinary process by admonishing their wives if they feared that their wives might be inclined to commit *nushūz* in the future. It is possible that Fakhr al-Dīn al-Rāzī took up this position because he belonged to the Shāfi'ī school of jurisprudence, especially since this position remained popular with exegetes who belonged to the Shāfi'ī and Ḥanbalī schools of jurisprudence. These exegetes endorsed the principle that husbands ought to admonish their wives when they feared the

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<sup>324</sup> Al-Shāfi'ī also noted the use of *khawf* in Q. 4:35 as mentioned above. In Q. 4:35 *khawf* was discussed with regard to the community's treatment of a couple whom the community deemed to have irreconcilable differences. Ibid., pp. 206-213.

<sup>325</sup> Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

latter might commit *nushūz*, but proceed with abandonment and hitting only after a wife manifested her *nushūz* unambiguously.<sup>326</sup> ‘Abd al-Razzāq al-Şan‘ānī (d. 211/826), a teacher of Aḥmed Ibn Ḥanbal (d. 241/855), wrote,

When [the husband] fears [his wife’s] *nushūz*, he should admonish her. If she does not accept this [by ceasing her *nushūz*] then he should abandon her. If she does not accept this, he should hit her in a non-extreme (*ghayr mubarriḥ*) manner.<sup>327</sup>

Abū Ḥayyān came out strongly against the idea that any disciplinary action could be taken against one’s wife without the manifestation of *nushūz* on her part. To this end, he argued that mere *tawaqqu‘* (expectation) was insufficient to put disciplinary action into motion. Rather, the presence of *nushūz* was necessary to make the command of disciplinary action necessary for the husband. He wrote,

Admonishment and what follows [i.e. the disciplinary process] is permitted only after the persistent of the appearance of what one initially feared (*li’anna’l-wa’z wa-mā ba’dahu innamā huwa fī dawām mā zahara min mabādī’i mā yatakhawwaf*).<sup>328</sup>

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<sup>326</sup> Such exegetes include ‘Abd al-Razzāq al-Şan‘ānī, *Tafsīr al-Qur’ān*, v. 1, pp. 157-158, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322 and al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

<sup>327</sup> ‘Abd al-Razzāq al-Şan‘ānī, *Tafsīr al-Qur’ān*, v. 1, pp. 157-158.

<sup>328</sup> Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

Ibn al-Su‘ud (982/1574) and Ismā‘īl al-Ḥaqqī (d. 1137/1724) used wording similar to Fakhr al-Dīn al-Rāzī’s to describe *khawf*, but they did not adopt his position of allowing men to discipline their wives - even with admonishment - as a result of expected future actions. They dubbed *khawf* “a condition that obtains in the heart [of a husband] with the presence of [his wife’s] reprehensible actions”. Here, *khawf* was not the husband’s anticipation of his wife’s (future) misdeeds, but his feelings of disquietude upon observing the misdeeds.

Despite the multiple meanings of *khawf* considered in the pre-modern exegetical tradition, it can be seen that most exegetes preferred to interpret *khawf* as closer to knowledge. While some exegetes interpreted *khawf* to refer to expectation of future actions, the application of this interpretation was limited to the first of the three disciplinary steps outlined in Q. 4:34. Husbands could only admonish their wives based on their fear of future actions that might constitute *nushūz*, but husbands were authorized to abandon and hit their wives only if they manifested *nushūz*.

#### 2.4.2. *Nushūz*: Defining Disobedient Wives

Just as the various definitions of *khawf* affected the circumstances in which a husband could discipline his wife, so the various definitions of *nushūz* granted exegetes latitude with regard to the amount of disciplinary power they assigned to husbands. Interpreting *nushūz* expansively or restrictively directly affected which wifely behaviors were deemed to be worthy of discipline and which fell outside disciplinary constraints. If, on the one hand, the definition of *nushūz* was narrow and restricted to specific actions, then wives were safeguarded from wanton disciplinary action against them. If, on the other hand, the definition of *nushūz* was more ambiguous and general, then husbands' disciplinary power was significantly increased.

It can be argued that pre-modern Qur'ān commentators understood the definition of *nāshizāt* women as inversely related to the description of *ṣāliḥāt* women. That is to say, *nāshizāt* women fell short of the criteria of *ṣāliḥāt* women. They were women who did not fulfill either God's and/or their husbands' rights, they were disobedient to their husbands, and/or they did not guard their husbands' property and/or their own chastity in their husbands' absence. Fakhr al-Dīn al-Rāzī introduced *nāshizat* (disobedient/recalcitrant) wives in the following manner: "And know that after God mentioned righteous

(*ṣāliḥāt*) women, he discussed those women who were other than righteous (*ghayr ṣāliḥāt*).<sup>329</sup> Abū Ḥayyān introduced *nāshizat* women in a similar fashion.

He wrote:

God mentioned those women who are disobedient (*al-‘āṣiyāt*) to their husbands in contrast to those who are *ṣāliḥāt*, [who] are those women who are obedient (*al-muṭī‘āt*) to their husbands and guard themselves in their husbands’ absence”.<sup>330</sup>

Al-Rāghib al-Iṣfahānī discussed the meaning of *nushūz* in both of his works on Qur’anic vocabulary. He considered *nushūz* in his compendium *Mufradāt Alfāz al-Qur’ān*, which discussed individual words in the Qur’ān<sup>331</sup>, as well as his compilation that focused on “strange” words in the Qur’ān, *al-Mufradāt fī Gharīb al-Qur’ān*.<sup>332</sup> The basic definition that al-Iṣfahānī provided for *n-sh-z* is a hillock, or a place that is raised from the ground.<sup>333</sup> In reference to Q. 4: 34 specifically, al-Iṣfahānī described a woman’s *nushūz* as “her hate (*bughḍ*) for her husband, and raising herself from his obedience, and having her eye on

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<sup>329</sup> Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

<sup>330</sup> Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253. Also, al-Biqā‘ī introduced his discussion of *nāshiz* women by describing them as “other than” *ṣāliḥāt* women. Ibrāhīm ibn ‘Umar al-Biqā‘ī, *Naẓm al-durar fī tanāsub al-āyāt wa-al-suwar* (Hyderabad: Maṭba‘at Majlis Dā‘irat al-Ma‘ārif al-‘Uthmānīyah, 1972) v. 5, pp. 269-272.

<sup>331</sup> Al-Rāghib al-Iṣfahānī, *Mu‘jam*, p. 429.

<sup>332</sup> *Ibid.*, p. 493.

<sup>333</sup> It can also mean “to stand up”, as used in Q. 58:11, where, in reference to prayer, it states, “and when it is said: Rise up, then rise up (*wa idhā qīla-nshuzū fa-nshuzū*)”.

someone who is not her husband.”<sup>334</sup> Several exegetes mentioned the origins of *nushūz* as a place raised from the ground, or a hillock.<sup>335</sup> Though it was usually mentioned in passing, this imagery was used to describe a *nāshizah* wife as one who raised herself from her “proper” place. The definition of a *nāshizah* wife who rose from her assigned place presupposed a marital structure wherein husbands and wives were hierarchically related.

Al-İşfahānī’s definition of *nushūz* includes three of the four meanings of *nushūz* prevalent amongst exegetes. He mentions a wife’s disobedience, her elevating/raising herself against her husband, and her hatred for her husband. The fourth widespread description of *nushūz*, which was closely related to the quality of disobedience, was a wife refusing herself sexually to her husband. Al-İşfahānī also mentions the possible disloyalty of a wife, captured in the phrase, “her having her eye on someone other than her husband”. This was a unique meaning for *nushūz* and did not gain widespread currency in the pre-modern exegetical material on Q. 4:34. This aspect of al-İşfahānī’s understanding of

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<sup>334</sup> The Arabic for this reads: *wa nushūz al-mar’ah: bughḍuhā li-zawjihā wa raf’a nafsihā ‘an ṭā’atihī wa ‘aynihā ‘anhu ilā ghayrihī*. Same wording in both al-İşfahānī texts.

<sup>335</sup> Exegetes who mention this definition of *nushūz* included al-Zajjāj, *Ma’ānī al-Qur’ān*, v. 2, pp. 48-49, al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma’ālim al-tanzīl*, v. 5, pp. 422-428, Ibn al-‘Arabī, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Taymīyyah, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, Abū al-Su’ūd, *Tafsīr Abī al-Su’ūd*, v. 1, pp. 338-339.



*nushūz* resonates with modern Muslim scholars, who often describe *nushūz* as “adultery” or “open lewdness” on the part of the wife. The basis for this assertion is usually the Farewell Sermon mentioned in the first chapter, in which Muḥammad advised husbands to beat their wives if they are guilty of open lewdness (*fāḥishah mubayyinah*). Modern Muslim scholars argue that in this sermon, Muḥammad offered *fāḥishah mubayyinah* as a meaning of *nushūz*.<sup>336</sup> They further posit that open lewdness may refer to adultery. However, pre-modern exegetes argued that while open lewdness constituted the *nushūz* of a wife, neither lewdness nor *nushūz* were commensurate with adultery. Al-Qurṭubī and al-Tha‘ālibī (d. 873/1468), consider open lewdness (*fāḥishah mubayyinah*) as a possible definition of *nushūz*, but discounted adultery as a valid meaning for *nushūz*.<sup>337</sup> Al-Qurṭubī argues that adultery (*zinā*) could not be an accurate interpretation of *nushūz*, since *zinā* would need to be addressed by a designated (*ḥadd*) penalty, not husbandly discipline.<sup>338</sup>

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<sup>336</sup> See, G.F. Haddad, “Wife-Beating” on <<[http://www.livingislam.org/fiqhi/fiqha\\_e32.html](http://www.livingislam.org/fiqhi/fiqha_e32.html)>>. He writes, “*fahisha* [sic] *mubina* [sic]= adultery”.

<sup>337</sup> Al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167 and al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231.

<sup>338</sup> Al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167. Al-Qurṭubī’s perspective on *zīna* as a possible meaning of *nushūz* was no doubt influenced by his juridical school. The Mālikīs were reticent to give husbands undue power over wives, and the judge was heavily involved in the marital relationship. The right of husbands to undertake the *ta‘zīr* of wives was not a Mālikī position.

### 2.4.2.1. *Nushūz* means Disobedience

As Bauer points out, the disobedience of wives to their husbands was a primary meaning of *nushūz* in premodern exegesis of Q. 4:34.<sup>339</sup> By designating the disobedience of wives to their husbands as an essential element of *nushūz*, exegetes were able to institutionalize the hierarchy of husbands over wives, as well as apply punitive stipulations that result from *nushūz* to insubordinate wives. Some exegetes used “disobedience” as a general synonym for “*nushūz*”, without specifying particular acts of disobedience that could qualify as *nushūz*. Such exegetes simply replaced “*nushūzahunna*” with

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<sup>339</sup> Exegetes who offered wifely disobedience as a possible meaning for *nushūz* include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Ṭabarī, Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qur’ān*, v.1, pp. 366-368, al-Tha’alibī, al-Ḥīrī, *Wujūh al-Qur’ān*, p. 562, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Wāḥidī, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzīn, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92 al-Biqā’ī, *Naẓm al-durar*, v. 5, pp. 269-272, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Maḥallī and al-Suyūṭī, *al-Qur’ān al-karīm*, pp. 105-106 and pp. 179-181, Abū al-Su’ūd, *Tafsīr Abī al-Su’ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202. The preponderance of “*nushūzahunna*” as “*‘iṣyānahunna*” was partly based on the text of Q. 4:34 which states, “If [your wives] obey you, do not find a means against them”. Some exegetes, such as Abū Ḥayyān, explicitly linked their definition of *nushūz* as disobedience to the above mentioned phrase. Abū Ḥayyān wrote, “if they obey you” “suggests that [wives] become disobedient (*‘āṣiyāt*) when they commit *nushūz*”. Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253. See also, Bauer, *Room for Interpretation*, p. 155-156.

“*işyānahunna*”.<sup>340</sup> Muqātil interpreted the meaning of “as to those women on whose part you fear *nushūz*” as meaning “as to those women on whose part you know of their disobedience to their husbands”.<sup>341</sup> Al-Ṭabarī cited a report from Ibn ‘Abbās in which he described wifely *nushūz* as “reneging on her husband’s rights” and “disobeying her husband’s commands”.<sup>342</sup> Al-Jaṣṣāṣ cited another report from Ibn ‘Abbās wherein he described wifely *nushūz* as “disobeying a husband in matters wherein it is necessary for [wives] to obey their husbands”. Al-Jaṣṣāṣ noted that this was also the definition of *nushūz* according to ‘Aṭā’ b. Abī Rabāḥ (d. 115/733) and al-Suddī (d. 127-8/744-5).<sup>343</sup> Al-Māwardī proposed the disobedience of a wife to her husband as the definition of *nushūz* by mentioning both a wife’s active disobedience to her

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<sup>340</sup> Exegetes who replaced “*nushūzahunna*” with “*işyānahunna*” include Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qur’ān*, v.1, pp. 366-368, al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303, al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263, al-Baghawī, *Ma‘ālim al-tanzīl*, v. 5, pp. 422-428, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Biqā‘ī, *Nazm al-durar*, v. 5, pp. 269-272, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, Abū al-Su‘ūd, *Tafsīr Abī al-Su‘ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>341</sup> Muqātil, he used the following two phrases in his work on the topic, “*ta‘lamūna ‘işyānahunna min nisā’ikum*” or “*ta‘lamūna ma‘şiyatahunna li-azwājihinna*”. Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236.

<sup>342</sup> Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72. The entire statement of Ibn ‘Abbās on the matter reads: “*wa tastakhiff bi-ḥaqq zawjihā wa lā tuṭī‘ amrahu*”. Other exegetes who mention this narration include Ibn Abī Ḥatīm, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944.

<sup>343</sup> Al-Jaṣṣāṣ, “*wa ammā’l-nushūz.. arāda bihī ma‘şiyat al-zawj fīmā yalzamuhā min ṭā‘atihi wa aṣl al-nushūz al-taraffu‘ ‘alā’l-zawj bi-mukhālafatihī*”. Al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 2, pp. 188-189.

husband (*ma‘ṣiyata ’l-zawj*), as well as discontinuing obedience to her husband (*wa’l-’imtinā’ min ṭā’atihī*).<sup>344</sup> Ibn Kathīr mentioned the same quality of abandoning a husband’s commands (*al-tārika li-amrihi*) as part of his definition of *nushūz*.<sup>345</sup> According to these exegetes, the general and unqualified disobedience of wives to their husbands constituted *nushūz*, and thus deserved disciplinary action.

Fakhr al-Dīn al-Rāzī and al-Biqā’ī (d. 885/1480) noted specific behaviors on the part of wives that formed signs/proofs (*adillah*) that, in turn, made the “fear” of *nushūz* obligatory for a husband. Al-Rāzī wrote,

*Nushūz* can be in speech and it can be in action. Say, for example, that [a wife] answers [her husband’s] call when he calls her, and is submissive (*takhda’a*) in speech when he addresses her, [but] then she changes. And [it can be] in action, for example [if] she would stand when he entered upon her, or she would hurry to his order and hasten to his bed with rejoicing when he touched her, [but] then she changes from all of this. These things are indications of her *nushūz* and her disobedience (*’iṣyānihā*).<sup>346</sup>

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<sup>344</sup> al-Māwardī, *al-Nukat*, v. 1, pp. 480-483.

<sup>345</sup> Ibn Kathīr, *al-Tafsīr al-’aẓīm*, v. 1, pp. 601-603.

<sup>346</sup> Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73. Al-Biqā’ī’s wording is almost exactly the same as al-Rāzī’s on the topic of the signs of wifely *nushūz*. Al-Biqā’ī, *Naẓm al-durar*, v. 5, pp. 269-272. Also, al-Tha’labī specified that a wife’s disobedience needed to manifest itself in the form of actions in order to be considered *nushūz*. He wrote about wifely *nushūz*, “*wa aṣluhū min’l-ḥarakah*”. Al-Tha’labī, *al-Kashf*, v. 3, pp. 302-303.

Once wives exhibited such uppity behavior, Fakhr al-Dīn al-Rāzī and al-Biqā'ī agreed with al-Shāfi'ī, that husbands could reasonably expect their wives to commit *nushūz*. The expectation, or fear, of wifely *nushūz* permitted husbands to begin the disciplinary process by admonishing their wives.

Al-Biqā'ī and al-Khāzin al-Baghdādī (d. 741/1341) agreed with Fakhr al-Dīn al-Rāzī that a wife's *nushūz* was her disobedience, and that it was manifested through her actions and words. He also included arrogance (*takabbur*) as a key element of wifely *nushūz*.<sup>347</sup> By describing a wife's disobedience of her husband as motivated by her arrogance, al-Khāzin al-Baghdādī highlighted the direct relationship between a wife's disobedience to her husband and her arrogance in the worldview of pre-modern exegetes. Wives were assigned a lower place than their husbands in a divinely arranged hierarchy, and their ideal behavior in this place was to be obedient to God through obedience to their husbands. Any assertive behavior on the part of wives that constituted disobedience to their husbands - and by extension, God - necessarily indicated their arrogance in the face of their husbands and God. This is because when wives were disobedient to their husbands, they questioned not only their

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<sup>347</sup> Al-Baghawī also included a wife's arrogance (*takabbur*) in his description of wifely *nushūz*. He was the only other exegete I came across who included a wife's arrogance in his description of wifely *nushūz*. Al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428.

husbands' authority over them but also God's placement of their husbands in authority over them. Hence, it can be argued that *nāshizah* wives thought themselves to be better than their divinely assigned status in the marital hierarchy, and therefore exhibited arrogance when they disobeyed their husbands.

#### 2.4.2.2. *Nushūz*: Rising against the Hierarchy

The interpretation of “rising” (*irtifā'*) of wives against their husbands as a meaning of *nushūz* was as ubiquitous as was disobedience (*'iṣyān*).<sup>348</sup> *Al-irtifā'* can be translated as “rebellion”, but “rising” is closer to the literal meaning. Of the Arabic equivalents for *nushūz* offered by pre-modern exegetes, *irtifā'* was closest in philological meaning to *nushūz*. The basic verbal form of *nushūz*'s trilateral root, *n-sh-z*, means “to rise”. Sometimes, *isti'lā'* was used to denote the same meaning of “rising”. If obedience defined a key characteristic of “good” wives in the husband-wife hierarchy, then *irtifā'* provided an image of

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<sup>348</sup> Exegetes that translate *nushūz* as “rising” by using *al-irtifā'* or a conjugation of *'alā*, include al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79, al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376 and v. 2, pp. 188-9, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Biqā'ī, *Naẓm al-durar*, v. 5, pp. 269-272, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

how wives' self-assertion automatically meant their resistance to the marital hierarchy. When wives attempted to rise above their divinely ordained rank in the hierarchy - obedience to their husbands - their behavior was described as *nushūz* or rising (*irtifā*).

The two notions of a wife rising against her husband and rising against him in bed were intertwined for al-Ṭabarī. In addition to describing *nushūz* as disobedience, he described it as “the rising of wives (*isti'ālā'ahunna*) against their husbands, and their rising (*irtifā'ahunna*) from their husbands' bed in disobedience to them”.<sup>349</sup> For many exegetes, such as Fakhr al-Dīn al-Rāzī and 'Izz al-Dīn al-Sulamī, a wife's disobeying her husband was the same as her rising against her husband. Fakhr al-Dīn al-Rāzī wrote, “and concerning *nushūz*, it is the disobedience of the husband and the rising up against him in opposition”.<sup>350</sup> Al-Sulamī, al-Bayḍāwī and al-Nasafī (d. 710/1310) connected wifely disobedience to wives rising against their husbands, by writing that a

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<sup>349</sup> Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

<sup>350</sup> Al-Rāzī, “*wa ammā'l-nushūz fa-huwa ma'ṣiyat al-zawj wa al-taraffu' 'alayhi bi'l-khilāf*”. Al-Naḥḥās offered a two-fold definition of *nushūz*, whereby it meant enmity (*'adāwah*) along with rising (*irtifā*). According to al-Naḥḥās, linguistically, *nushūz* meant rising, but in the exegesis of Q. 4:34 it meant enmity, such that enmity here referred to “the rising and withdrawing [of a wife] from that which is obligatory”. Al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79. Al-Jaṣṣāṣ also cited Ibn 'Abbās, 'Atā' and al-Suddī as considering the rising of a wife against her husband and in opposition to him (*bi-mukhālifatihī*) as the original (*aṣl*) meaning of *nushūz*. Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376 and v. 2, pp. 188-9.

*nāshizah* wife was one who “rises from the obedience of her husband”.<sup>351</sup> Al-Qurṭubī explained,

“As for those women from whom you fear *nushūz*”, means “[as to those women from whom] you fear disobedience (*‘iṣyānahunna*) and their raising themselves (*ta‘āliyahinna*) from what God has made obligatory for them with regard to the obedience of their husbands.”<sup>352</sup>

Abū Ḥayyān described a wife’s *nushūz* as representing her “rising” against her divinely assigned place in the marital hierarchy. He wrote that wifely *nushūz* occurred when “a woman becomes crooked (*tata‘awwaj*) and she rises (*tartafi‘*) above her nature (*khulq*) and she elevates herself (*tasta‘ilī*)<sup>353</sup> against her husband”.<sup>354</sup> This definition of *nushūz* presumed that the appropriate role of wives as obedient to their husbands was based on their nature as women.

When wives were disobedient to their husbands, they violated their own nature, along with the marital hierarchy. Al-Biqā‘ī captured the link between the act of

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<sup>351</sup> Al-Sulamī wrote, “*wa’l-nushūz min al-irtifā‘ li taraffu‘ihā ‘an ṭā‘ati zawjihā*”. ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, pp. 320-322. Al-Bayḍāwī wrote, “*‘iṣyānahunna wa tarrafa‘uhunna ‘an muṭāwa‘at al-azwāj*”. Al-Bayḍāwī, *Anwār*, v. 1, p. 85. Al-Nasafī wrote, “*‘iṣyānahunna wa taraffu‘ahunna ‘an ṭā‘at al-azwāj*”. Al-Nasafī, *Madārik*, v. 1, pp. 354-355.

<sup>352</sup> Al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167. He also noted that a *nāshizah* wife was a wife that was bad for companionship (*al-sayyi‘ah li’-‘ishrah*).

<sup>353</sup> Mahmoud translates “*isti‘lā*” as “haughty arrogance”. See Mahmoud, “To Beat or Not to Beat”, p. 543.

<sup>354</sup> Abū Ḥayyān and al-Tha‘ālibī, “*wa’l-nushūz: an tata‘awwaj al-mar‘ah wa yartafi‘ khuluqahā wa tasta‘liya ‘alā zawjihā*”. This description was later adopted verbatim by al-Tha‘ālibī. Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253 and al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231.



wifely *nushūz* and the disruption of the husband-wife hierarchy in his Qur’ān commentary. He wrote “and concerning those women from whom you fear *nushūz*’ means, [those women who] rise against you from the rank assigned to them by Allah”.<sup>355</sup> According to al-Biqā’ī, when wives did this, they caused a disturbance by their rising (*al-inzi’āj fī’l-irtifā’*). By interpreting *nushūz* as an upsetting of the husband-wife hierarchy, exegetes interpreted any attempt by wives to resist their placement in the hierarchy as morally reprehensible and deserving of discipline by their husbands.

#### 2.4.2.3. *Nushūz* as Hate

Although exegetes usually described *nushūz* as either the disobedience or the rising of a wife against her husband, they sometimes sought to define it more precisely. In this context, the hatred (*bughḍ*) or repugnance (*karāhīya*) of a wife for her husband was a significant factor for identifying *nushūz*.<sup>356</sup> For exegetes, the hatred of a husband was either what motivated a wife to disobey him and rise up against him, or it was constitutive of *nushūz* itself. For Abū ‘Ubaydah (d.

<sup>355</sup> Al-Biqā’ī, “*wa’l-lātī takhāfūna nushūzahunna: ay taraffu’ahunna ‘alaykum ‘an al-rutbah al-latī aqāmahunna’l-lāh bihā, wa ‘iṣyānahunna lakum fīmā ja’ala ’l-lāhu lakum min al-ḥaqq. wa aṣl al-nushūz: al-inzi’āj fī’l-irtifā’.*” Al-Biqā’ī, *Naẓm al-durar*, v. 5, pp. 269-272

<sup>356</sup> Exegetes who considered either *bughḍ* or *karāhiyyah* to be part of their definition of *nushūz* included Abū ‘Ubaydah, *Majāz al-Qur’ān*, pp. 59, al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Zajjāj, *Ma’ānī al-Qur’ān*, v. 2, pp. 48-49, al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur’ān* v. 3, pp. 939-944, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603.

209/824), *bughḍ* was the sole definition of *nushūz*. He wrote, “*nushūzahunna*: hatred for the husband (*bughḍ al-zawj*)”.<sup>357</sup> A few exegetes followed Abū ‘Ubaydah’s lead on this, including Ibn al-Jawzī (d. 597/1200), who in his *Zād al-Masīr*, also offered *bughḍ* as the primary definition of *nushūz*. He wrote that *nushūz* was “the hatred of a woman for her husband”.<sup>358</sup> Ibn al-Jawzī based this definition on the close connection between the terms *nashaza* and *nashaṣa*, as the latter constituted conjugal hatred as well the discontent of a wife with her husband.<sup>359</sup> Ibn Kathīr listed a number of behaviors on a wife’s part that made up *nushūz*. On his list was a wife’s rising against her husband, abandoning his command, shunning him and hating him.<sup>360</sup>

The interpretation of *nushūz* as hate seems inherently to open the possibility of a gender-neutral interpretation since hatred is not, by definition, hierarchical.

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<sup>357</sup> Abū ‘Ubaydah, *Majāz al-Qur’ān*, pp. 59. Ibn Abī Ḥātim al-Rāzī quoted al-Suddī as translating “*nushūzahunna*” as “*bughḍahunna*”. Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944.

<sup>358</sup> Ibn al-Jawzī, like al-Biqā’ī after him, also cited upset or disturbance (*inzi’ā*) as the root (*aṣl*) of *nushūz*, but he did not connect this directly to “rising” as did al-Biqā’ī. Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78 and al-Biqā’ī, *Naẓm al-durar*, v. 5, pp. 269-272.

<sup>359</sup> Al-Zamakhsharī also mentioned the discontent of a wife with her husband as part of his definition of *nushūz*. He described a wife’s *nushūz* as disobeying her husband (*an ta’ṣiya zawjahā*), as well as a wife’s discontent/dissatisfaction with her husband (*wa lā taṭma’inna ilayhi*). Al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497.

<sup>360</sup> Ibn Kathīr, “*wa’l-nushūz: huwa al-irtifā’, fa’l-mar’ah al-nāshiz hiya al-murtafi’a ‘alā zawjihā, al-tārika li-amrihi, al-mu’riḍah ‘anhu, al-mubghīḍah lahu*”. Ibn Kathīr, *al-Tafsīr al-‘azīm*, v. 1, pp. 601-603.

One can hate a superior, a subordinate or an equal. However, since the interpretation for *nushūz* as hatred was offered in the context of Q. 4:34, it was interpreted to mean the hatred of a wife for her husband. The most gender neutral definition of *nushūz* was proposed by al-Zajjāj. He suggested an atypically gender-neutral interpretation of *nushūz* as the repugnance of one spouse for the other (*karāhiya li-ṣāhibihi*).<sup>361</sup> It is significant that this exegesis appeared as an interpretive possibility early on but was consistently ignored in most of the later exegetical works. Al-Qurṭubī is the only exegete in this study who mentioned this gender-neutral interpretation, even if only in passing. Al-Qurṭubī attributed this quotation to Abū Manṣūr al-Lughawī (d. 429/1038)<sup>362</sup>, who was purported to have described *nushūz* as the “hatred of each spouse for the other”.<sup>363</sup> Nonetheless, al-Qurṭubī opted for a definition of *nushūz* that was primarily rooted in the disobedience of wives to their husbands.

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<sup>361</sup> Al-Zajjāj, “*al-nushūz karāhiyat aḥadhimā li-ṣāhibihi*”. Al-Zajjāj, *Ma’ānī al-Qur’ān*, v. 2, pp. 48-49.

<sup>362</sup> The philologist Abū Manṣūr ‘Abd al-Mālik b. Muḥammad wrote *Kitāb fiqh l-lughā wa l-isrār al-‘arabiyyah*.

<sup>363</sup> Al-Qurṭubī wrote “*al-nushūz karāhiyat kull wāḥid min al-zawjayn ṣāhibah*”. Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167. Later exegetes, such as Abū Ḥayyān, paraphrased the quotation from Abū Manṣūr so that it was no longer gender neutral. Abū Ḥayyān’s re-wording read that the *nushūz* of a wife was her hatred (*bughḍuhā*) for her husband, even though he attributed the position to Abū Manṣūr. Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

For al-Ṭabarī, the hatred of a wife for her husband was the motivation for her *nushūz*, which was her rising against him in disobedience, particularly in bed.

He wrote about *nushūz*,

It is the rising [of wives] against their husbands, and rising from their beds in disobedience to their husbands. And it is their opposition against them in that which has been made obligatory on them regarding obedience [to husbands], in hatred [for them] and in shunning them.<sup>364</sup>

Al-Māwardī also mentioned hatred (*bughḍ*) and repugnance (*karāhīya*) as motivating emotions that lead to the disobedience of wives. He argued that *nushūz* occurred when a woman “stopped obeying her husband as a result of hatred and repugnance”.<sup>365</sup> In a similar vein, scholars such as al-Zamakhsharī thought that a wife’s discontent with her husband amounted to her *nushūz*.<sup>366</sup> It is not clear how al-Zamakhsharī expected husbands to know of this discontentment - that is, whether wives needed to verbally express their discontent or if husbands could intuit their discontent. Nevertheless, it is clear

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<sup>364</sup> Al-Ṭabarī, ““*fa innahu isti’lā’uhunna ‘alā azwājihinna, wa irtifā’uhunna ‘an furushihim bi’l-ma’ṣiyah minhunna, wa’l-khilāf ‘alayhim fī-mā lazimahunna ṭā’atuhum fīhi, bughḍan minhunna wa i’rāḍan ‘an-hum*”. Also, al-Ṭabarī used the term *bughḍ* as a meaning for disobedience when he wrote that *nushūz* was “the hatred and disobedience of the husband”. Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72.

<sup>365</sup> Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483.

<sup>366</sup> Al-Zamakhsharī wrote “*wa lā taṭma’inn ilayhī*”. Al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497.

that, for al-Zamakhsharī, when wives were discontented with their husbands they could be considered *nāshizāt* and therefore disciplined.

#### 2.4.2.4. *Nushūz* is Sexual Disobedience

Some exegetes limited the definition of wifely *nushūz* to wives' disobedience to their husbands in bed.<sup>367</sup> Al-Dīnawarī (d. 308/920) and al-Fīrūzābādī held that *nushūz* occurred when wives disobeyed their husbands in bed (*'iṣyānahunna fī al-maḍāji*).<sup>368</sup> Al-Ṭabarī located the marital bed as a possible site for a wife's disobedience to her husband. As seen above, he included wives' "rising from their husbands' beds in disobedience to them" in his definition of *nushūz*.<sup>369</sup> For some exegetes, a wife's refusal of sex or her withholding herself from her husband was the primary definition of *nushūz*. Ibn Abī Ḥātim al-Rāzī quoted Mujāhid as saying that a husband was required to admonish his wife when she "rose" (*nashazat*) from his bed.<sup>370</sup> Ibn Abī Zamanīn (d. 399/998) also

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<sup>367</sup> Exegetes who defined *nushūz* as sexual disobedience included 'Abd Allāh ibn Muḥammad al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Zamakhsharī, *al-Kashshāf*, v. 1 pp. 490-497, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>368</sup> Al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151 and al-Fīrūzābādī, *Tanwīr*, pp. 91-92.

<sup>369</sup> Al-Ṭabarī, "*wa irtifā'ihinna 'an furushihim bi'l-ma'ṣiyah minhunna*". Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

<sup>370</sup> Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944.

considered a wife blameworthy for refusing her husband's sexual advances. He wrote that a woman commits *nushūz* against her husband when she “does not permit him to cover her (*yaghshāhā*)”.<sup>371</sup>

Al-Zamakhsharī employed the term “disruption” (*inzi'āj*) in locating the origin (*aṣl*) of *nushūz* “as disturbance in the marital bed” (*al-inzi'āj fī'l-maḍāji*).<sup>372</sup> For al-Zamakhsharī, husbands wielded sexual control of their wives, and when wives were troublesome in bed they were guilty of *nushūz*. Abū Bakr Ibn al-'Arabī described the *nushūz* of wives as their “withholding/denying themselves” to their husbands.<sup>373</sup> In order to emphasize the connection between the act of withholding oneself and *nushūz*, Abū Bakr Ibn al-'Arabī argued that anything that withheld itself from another “committed *nushūz*”. As such, even if water in a well withheld itself from a person, it committed *nushūz* against that person. Abū Ḥayyan had a relatively extensive discussion of *nushūz* in his *al-Baḥr al-Muḥīṭ*. He cited 'Aṭā' b. Abī Rabāḥ (d. 114-7/732-5) as saying that a wife committed *nushūz* against her husband by “not perfuming

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<sup>371</sup> Ibn Abī Zamanīn, “*tanshiz 'alā zawjihā falā tada'uhu an yaghshāhā*”. Ibn Abī Zamanīn, *Tafsīr al-Qur'ān*, v.1, pp. 366-368.

<sup>372</sup> Al-Zamakhsharī, “*nushūzuhā wa nushūshuhā: an ta'ṣiya zawjahā wa-lā taṭma'inna ilayhi, wa aṣluhū al-inzi'āj {fī'l-maḍāji} fī'l-marāqīd. ay lā tudkhillūhunna taḥta 'l-luḥud aw hiya kināyah 'an 'l-jimā'*.” Al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497.

<sup>373</sup> Ibn al-'Arabī, “*nushūzahunna: ya'nī imtinā'ahunna minkum*”. Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500.

herself for him, denying herself to him, and changing anything that she used to do in preparation for him”.<sup>374</sup>

It is worth considering that the two most popular modern definitions of *nushūz* did not appear in any of the exegetical works under study. Neither adultery nor lewd behavior was regarded as a definition of *nushūz* in pre-modern exegesis, even when exegetes discussed the sexual disobedience of wives to husbands. For pre-modern exegetes, *nushūz* was a moral crime that was committed within marital confines, by a wife against her husband, and did not involve extra-marital actors. This is significant for two reasons. First, as mentioned already, the predominant modern translations of *nushūz* often include some sort of extra-marital misconduct by married women. Second, the pre-modern accounts of *nushūz* do not seem to consider the report of the Prophet’s Ḥajj Sermon, in which he advised men to hit their wives if they allowed those whom their

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<sup>374</sup> Abū Ḥayyān, “*nushūzuha an lā tata’aṭṭar, wa-tamna’ahu min nafsihā, wa tataghayyar ‘an ashyā’ kānat tataṣanna’u li’l-zawj bihā*”. He also mentioned two anonymous sources in the exegeses of wifely *nushūz*. One opinion stated that *nushūz* consisted of a wife “refusing herself from his enjoyment of her when he seeks her (*man’uhā nafsahā mina’l-istimtā’ bihā idhā ṭalabahā li-dhālik*)”. The second anonymous source had a unique interpretation of *nushūz*. It described wifely *nushūz* as the wife, not withholding her person so much as access to herself. That is to say that she lived in a place that “he does not desire her to live in (*qīla: imtinā’uhā min’l-maqām ma’ahu fī baytihi, wa iqāmatuhā fī makān lā yurīdu’l-iqāmah fī-hī*)”. According to this anonymous source, a wife committed *nushūz* against her husband when she refused to live with him and rather lived in a place that he disapproved of. This interpretation was unique and was not taken up by other interpreters. It was however taken up in the legal tradition, and was connected to the sexual unavailability of a wife to her husband which resulted in her losing her entitlement to maintenance (*nafaqah*). Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

husbands disliked into their homes/beds. This report did not warrant mention by any of the exegetes under study when discussing the meanings of the *nushūz* of wives. However, as will be seen later, the Ḥajj sermon did figure prominently when exegetes qualified the prescription of physically disciplining wives in Q. 4:34. Therefore, it can be argued that not relying on the Ḥajj sermon when defining wifely *nushūz* was an exercise of interpretive choice on the part of commentators who sought to expand the definition of wifely *nushūz* and limit the subsequent disciplinary actions on the part of husbands to the marital structure. Among other consequences, this ensured that *nushūz* was identified and rectified within the marriage. Recourse to extra-marital actors - adjudicators and judges - was restricted to circumstances when all husbandly attempts at rectification had failed.

#### **2.4.2.5. A Few Other Characteristics That Qualify As *Nushūz***

There are a few other definitions of *nushūz* that appear in the exegetical literature in this study, and they are worth discussing briefly. These characteristics are important because they expand or restrict the field of blameworthy actions wives can commit, as well as the disciplinary power of their husbands over them. Some of these characteristics have already been hinted at above, and others are unique. Some exegetes considered *nushūz* to



be a wife's reneging on her divinely ordained duties to her husband. Al-Ṭabarī mentioned Ibn 'Abbās' interpretation of *nushūz*, which was repeated consistently after him, and can be found in authors as late as al-Suyūṭī.<sup>375</sup> Ibn 'Abbās is reported to have said that in addition to disobedience, *nushūz* was the behavior of a wife that made light of/disdained (*tastakhiff*) her husband's rights.<sup>376</sup> A similar Prophetic report cited by some exegetes stated that Muḥammad advised husbands to "Hit [wives] when they disobey you (husbands)".<sup>377</sup> As with disobedience and "rising", this definition of *nushūz* was sufficiently vague as to require interpretation on the husband's part. Since disciplining one's wife was the prerogative of the husband, the result of *nushūz* being defined so vaguely was that the husband's powers as judge and executer were exponentially increased.

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<sup>375</sup> This report was included in the exegesis of several exegetes including al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Nasafī, *Madārik*, v. 1, pp. 354-355, and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>376</sup> Al-Ṭabarī, quotation attributed to Ibn 'Abbās, "*wa tastakhiff bi-ḥaqq zawjihā wa lā tuṭī' amrahu*". Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

<sup>377</sup> There were several variations of this *ḥadīth* but the most basic version reads, "*iḍribūhunna idhā 'aṣaynakum*". Other variations add to that, "*...fī l-ma'rūf*", and also qualify the beating to "*ghayr mubarrīḥ*". Exegetes who include variations of this *ḥadīth* include al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48 and al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231.

‘Izz al-Dīn al-Sulamī described wifely *nushūz* as the blameworthy actions of a (*sū’ fi’lihā*), though he grounded this anomalous reading in the more common conception that blameworthy actions were those that “raise” (*taraffu’uhā*) a wife from her husband’s obedience”.<sup>378</sup> As mentioned above, al-Qurṭubī quoted Ibn Fāris as saying that a woman committed *nushūz* when she became “difficult for her husband”.<sup>379</sup> And al-Khāzin al-Baghdādī described the *nushūz* of wives as their evil (*shurūrahunna*), generally speaking.

Some exegetes interpreted wifely *nushūz* resulting from a wife’s “crookedness” (*‘iwa*).<sup>380</sup> For Abū Ḥayyān, these characteristics included a wife “raising her nature (*khuluqahā*) and herself against her husband”, along with “withholding herself from living with [her husband] in his home, and instead staying in a place that he did not approve”.<sup>381</sup> The appearance of the adjective “crooked” is intriguing. On the one hand, it might call to mind the image of a

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<sup>378</sup> Al-Sulamī, “*yurīdu al-istidlāl ‘alā’l-nushūz bi-mā tubdīhi min sū’ fi’lihā, wa’l-nushūz min al-’irtifā’ li-taraffu’ihā ‘an ṭā’ati zawjihā*”. ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322.

<sup>379</sup> Al-Qurṭubī, “*wa nashazat al-mar’ah istaṣ’abat ‘alā ba’lihā*”. Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

<sup>380</sup> Such exegetes included Ibn Kathīr, *al-Tafsīr al-’azīm*, v. 1, pp. 601-603, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253 and al-Tha’ālibī, *Jawāhir*, v. 2, pp. 229-231.

<sup>381</sup> Abū Ḥayyān, “*wa’l-nushūz: an tata’awwaj al-mar’ah wa yartafi’ khuluquhā wa tasta’liya ‘alā zawjihā*”, and also, “*imtinā’uhā min’l-maqām ma’ahu fī baytihi, wa iqāmatuhā fī makān lā yurīdu al-iqāmah fīhi*.” Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253. Ibn Kathīr also used the adjective of “crookedness” for women who deserved physical discipline. Ibn Kathīr, *al-Tafsīr al-’azīm*, v. 1, pp. 601-603.

wife deviating from her divinely ordained place in the hierarchy between husbands and wives. On the other hand, it might have alluded to the report attributed to Muḥammad, wherein he advised men that women were by nature “crooked” like the rib of Adam and thus, if they tried to straighten their women too much they might break them.<sup>382</sup> Given that the context surrounding the word “crooked” was one in which wives needed to be disciplined for their crookedness, it can be argued that exegetes who used the term were trying to call to mind the image of wives deviating from their divinely assigned placement in the marital hierarchy.

Al-Tha‘ālibī shared Abū Ḥayyān’s description of *nushūz* consisting of a crooked woman, along with a wife who raised herself against her husband.<sup>383</sup> He also added that a wife was guilty of *nushūz* if she exhibited contemptuous/bawdy (*badhā*) speech. The adjective “*badhā*” was encountered in the Ḥadīth chapter when it was used by Ṣabrah to describe his wife’s abusive/ contemptuous speech. It is possible, given the lack of use of that term in the exegesis of this verse, that al-Tha‘ālibī had this report in mind when he included abusive/contemptuous behavior by a wife in his description of *nushūz*.

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<sup>382</sup> For an in-depth discussion of the “crooked” *ḥadīth* in pre-modern Qur’ān commentaries, see Bauer, *Room for Interpretation*, pp. 48-54.

<sup>383</sup> Al-Tha‘ālibī, “*al-nushūz: an tata’awwaj al-mar’ah*” also “*badhā*” and “*wa yartafī’ khuluquhā, wa tasta ‘lī ‘alā zawjihā*”. Al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231.

#### 2.4.2.6. A Husband's *Nushūz*

Finally, a word about husbandly *nushūz*. There is a verse in the Qur'ān that specifically refers to a husband's *nushūz*. Q. 4:128 states,

If a wife fears *nushūz* or desertion (*i'rāḍ*) 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 ye do good and practice self-restraint, Allah is well-acquainted with all that you do.<sup>384</sup>

Karen Bauer, writing about *nushūz* in the Qur'ān, says that

*Nushūz* is a word which appears in the Qur'ān to describe the behavior of both wives and husbands. The Qur'anic verse regarding wives' *nushūz* is directly addressed to husbands ("if you fear *nushūz*") whereas the verse regarding the husbands' *nushūz* is impersonal ("if a wife fears *nushūz*"). Likewise, the suggestions about dealing with *nushūz* in the Qur'ān are different for husbands and wives: whereas husbands confronting their wives' *nushūz* are advised to implement the three-stage punishment described above, the suggestion for wives dealing with husbands' *nushūz* is that it is "best" to reach an "amicable settlement."<sup>385</sup>

It is worth noting that the *i'rāḍ* was paired with a husband's *nushūz* in Q. 4:128.

*I'rāḍ* was translated by Yusuf Alī as "desertion", and as "reluctance" by Bauer.

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<sup>384</sup> Ali, *The meaning of the Holy Qurān*, Q. 4:128.

<sup>385</sup> Bauer, *Room for Interpretation*, p. 156.

At a basic philological level, *i'rāḍ* means “turning away” and has been interpreted historically to mean a husband’s ceasing to have sex with his wife or “antipathy” towards his wife.<sup>386</sup> In this context, the interpretation for *nushūz*, offered by Abū Manṣūr al-Lughawī and al-Zajjāj, as the repugnance of each spouse for the other takes on greater significance. It would appear that their interpretation took into account the dual use of *nushūz* in the Qur’ān, by reflecting the meaning of *nushūz* for both partners in marriage. Despite the reciprocal component of sexual refusal, as Bauer explains above, the interpretation of Qur’anic *nushūz* was distinctly different for husbands and wives. When husbands committed *nushūz*, their wives were encouraged to come to some sort of settlement with them. As will be seen in the next chapter on juridical literature, this settlement included wives giving up their allotted nights to their younger and/or more desirable co-wives, in exchange for not being divorced by their husbands.<sup>387</sup> When wives committed *nushūz* against their husbands, however, they were to be disciplined.

It may be speculated that the vastly different consequences of *nushūz* on the part of husbands and wives in the Qur’ān led exegetes to consider *nushūz* as having different meanings when applied to husbands and to wives. This may

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<sup>386</sup> Ali, *Money, Sex, and Power*, p. 70.

<sup>387</sup> *Ibid.*, pp. 300-305.

explain why none of the exegetes under study considered Q. 4:128 explicitly in their exegesis of Q. 4:34, especially when the link between the two verses would have otherwise been obvious. Exegetes, for the most part, did not consider the *nushūz* of husbands when they reflected on its meaning in Q. 4:34. Rather, they limited their discussion solely to the behavior of wives. This is especially significant in the interpretation of *nushūz* as a wife's refusal of sex to her husband. Although the *nushūz* of men was essentially considered to mean refusing sex to wives, in most cases no explicit connection was made between this and the interpretation of female *nushūz* as the refusal of sex to husbands.

There were a few exegetes, in addition to Abū Maṣṣūr al-Lughawī<sup>388</sup> and al-Zajjāj, who mentioned the *nushūz* of husbands in their exegesis. Al-Ṭabarī quoted 'Aṭā' as saying that *nushūz* in Q. 4:34 referred to a wife who preferred "separation/distance [from her husband]", and further stated that the same was true for the husband's *nushūz*, meaning that he also preferred separation from his wife.<sup>389</sup> Al-'Ayyāshī (d. 320/932) mentioned that wives committed *nushūz* when they sought a divorce (*khul'*) from their husbands in exchange for money.

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<sup>388</sup> Known through al-Qurṭubī's work.

<sup>389</sup> Al-Ṭabarī, "*al-nushūz*", *an tuḥibba firāqahu, wa al-rajul kadhālik*". Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

Al-‘Ayyāshī mentioned that a husband’s *nushūz* was disunity (*shiqāq*).<sup>390</sup> By defining husbandly *nushūz* as disunity (*shiqāq*), al-‘Ayyāshī anticipated adjudication as an appropriate measure resulting from husbandly *nushūz*. This interpretation dovetails seamlessly with Q. 4:35, which advises such adjudication if disunity (*shiqāq*) is feared from a couple.

Also, al-Qurṭubī cited Ibn Fāris’ opinion that a woman committed *nushūz* by becoming difficult for her husband, whereas a husband committed *nushūz* against his wife by hitting her (*ḍarabahā*) and shunning her (*jafāhā*).<sup>391</sup> It is significant that unqualified hitting and shunning - both legitimate acts of discipline according to Q. 4:34 - were considered acts of *nushūz* of the husband against his wife by Ibn Fāris. Nonetheless, this was a unique interpretive move that was not taken up by the larger exegetical tradition. Even when al-Qurṭubī mentioned this interpretation, he did not comment upon it. He only mentioned it in passing along with the interpretations of other early exegetes, like Abū Manṣūr al-Lughawī. It appears that the earlier exegetes considered the gender-neutral nature of *nushūz*, or at least its applicability to both wives and

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<sup>390</sup> Muḥammad ibn Mas‘ūd al-‘Ayyāshī, *Tafsīr*. (Qom: Mu‘assasat al-Ba‘thah, 2000) v. 1, pp. 330 and 395. Bauer also mentions that this was one of few times that the *nushūz* of both spouses was discussed together. Bauer, *Room for Interpretation*, p. 157, fn. 330.

<sup>391</sup> Al-Qurṭubī, “*wa nashaza ba‘luhā ‘alayhā idhā ḍarabahā wa jafāhā*”. Al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167.

husbands, in greater numbers than later exegetes. Most exegetes after al-Ṭabarī defined *nushūz* in Q. 4:34 only in relation to the behavior of wives. Hence, they discussed wifely *nushūz* in isolation from the *nushūz* of husbands, though the latter was discussed in the same chapter of the Qur'ān.

### **2.4.3. Summary**

As seen above, pre-modern exegetes employed a lexical approach with regard to two key words in Q. 4:34 - *khawf* and *nushūz* - in order to both restrict and expand the disciplinary power of husbands over wives. Exegetes generally interpreted *khawf* to mean knowledge. By interpreting *khawf* as knowledge against the plain sense meaning of fear, exegetes appealed to the conscience of husbands in order to safeguard wives from wanton abuse of the disciplinary power of husbands. If one were to take a more pragmatic approach, it is arguable that the purpose of ensuring that husbands had clear knowledge of their wives' *nushūz* before undertaking disciplinary action protected husbands from liability should a case of marital discord appear before a judge. In this case, husbands could defend their disciplinary action by arguing that their wives' had committed actual *nushūz* and not just that they had action on suspicion of wifely *nushūz*.



Since exegetes did not explicitly state their reasons for interpreting *khawf* to mean knowledge, their intentions can only be speculated upon. The interpretive choice for *nushūz* was complex for pre-modern exegetes. The overwhelming majority of exegetes defined wifely *nushūz* as some form of wifely disobedience. A marital hierarchy was presupposed in most definitions of wifely *nushūz*, wherein wives' *nushūz* against their husbands involved their rebelling against the marital hierarchy. Although more divergent and egalitarian interpretations of *nushūz* existed early on in the exegetical tradition, these were not the preferred interpretive choices of most exegetes. So, while exegetes restricted the disciplinary power of husbands over wives by limiting the meaning of *khawf* to knowledge they also expanded this disciplinary power by opting for more expansive interpretations of wifely *nushūz*. Both interpretive choices functioned to limit the identification and rectification of *nushūz* to the confines of the marital structure.

## **2.5. Conclusion**

The characteristics of *ṭafsīr* as a genre described by Norman Calder proved to be an accurate reflection of key features of the pre-modern exegetical works examined in this thematic survey. The exegesis surrounding Q. 4:34 was characterized by its ability to simultaneously contain many divergent

opinions.<sup>392</sup> There was a very wide scope and range of interpretive choice at the disposal of exegetes and they fully availed themselves of these hermeneutic options. As Marin and Bauer argue, exegetes were comfortable with forging new interpretations without precedent and also in rejecting previous interpretations.<sup>393</sup> This leads to the conclusion that when exegetes adopted previous positions that belonged to the “tradition” of exegesis on a particular point, it was an active choice on their part and not simply a rote practice. As Bauer pointed out,

The variations documented here between early and later interpretations show that the earliest interpretations did not determine the later ones. In every age, exegetes pick and choose which interpretations to include in their own works, and they do not include every early exegesis. Some early exegesises virtually disappear through time, and are not reproduced in later periods.<sup>394</sup>

The prophetic tradition was also deeply embedded in the exegetical tradition so that it appeared throughout their exegesis in concert with several interpretive

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<sup>392</sup> Calder, “*Tafsīr* from Ṭabarī to Ibn Kathīr”, p. 106.

<sup>393</sup> Marin, “Disciplining Wives”, p. 27 and Bauer, *Room for Interpretation*, p. 185-6. p. 27. Marin writes “what is interesting to note, is how a centuries-old tradition of exegesis offered commentators the possibility of making a personal choice among the Prophetic traditions at their disposal.”

<sup>394</sup> Bauer, *Room for Interpretation*, p. 185-186.

tools. Walid Saleh wrote about the role of prophetic tradition in Qur'anic exegesis, that

The prophetic tradition was made an integral part of Qur'anic interpretation and thus the two revelations, the written and the prophetic or oral, were as it were reunited, thus recreating in the hermeneutical event a structure resembling the character of Muhammad, who was the only individual in whom both were once united. The Qur'ān, read through the prophetic Sunnah, becomes the incarnation of that which will guide the Muslim nation: the Qur'ān (present as lemmas) and the Sunnah (present as exegesis) made into one. The formulation of *tafsīr* as the embodiment of both divine revelation and prophetic revelation necessarily made it a replacement of Muḥammad... In *tafsīr* the Sunnī community has, in effect, its immanent prophet through textual fiat.<sup>395</sup>

It may be true that exegetes attempted to recreate the prophetic presence by embedding prophetic history into their Qur'ān commentaries. However, this view does not capture the complexity of the exegetical relationship with prophetic history. Just as exegetes were selective in which exegetical positions they aligned themselves with or against, exegetes were also discriminating in their selection of *aḥādīth*. Prophetic history played an important role for commentators by supporting their various positions through prophetic authority and thereby granting their specific position religious legitimacy. Exegetes drew on prophetic history without regard to the authenticity of their chains of

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<sup>395</sup> Saleh, *The Formation of the Classical Tafsīr Tradition*, p. 193.

transmission. Rather, *aḥādīth* were incorporated into exegesis for the purpose of reinforcing the desired interpretation that an exegete might have in mind.<sup>396</sup> This does not mean that exegetes manipulated prophetic history for their personal ends since the desired interpretation of exegetes was, in part, informed by prophetic history. As such, the relationship between exegesis and prophetic history was neither straightforward nor one-way; rather, the relationship between these two Islamic sciences was fluid and interdependent.<sup>397</sup>

Based on this thematic survey of pre-modern exegetical works on the topic of the physical discipline of wives as found in Q. 4:34, it can be seen that exegetes brought a worldview to their study of Qur’anic exegesis. The understanding of a divinely ordained social hierarchy underpinned their conception of the marital

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<sup>396</sup> I use the term “desired” interpretation as a parallel for “desired” law as coined by Sadeghi. See Sadeghi, *The Structure of Reasoning in Post-Formative Islamic Jurisprudence*, p. 2-9.

<sup>397</sup> Bauer also discusses how it is impossible to argue that the *ḥadīth* tradition formed a basis for the exegetical tradition. She writes, “Yet some scholars claim that, despite the exegetes’ quest for immediate relevancy, the venture of exegesis ultimately rested on the behavior of the Prophet and on early exegeses. In this view, in addition to the Qur’ān itself, *ḥadīths* on the authority of the Prophet and his Companions and Successors were the real basis of interpretation with exegetes adding their own explanations to these sources in order to make them relevant in different times and places. Indeed, it is undeniable that the exegetes considered these elements to be at the heart of their venture. However, I have shown that the authoritative sources such as *ḥadīths* cannot be considered to be the basis of interpretation: they were always cited in a subjective way, not in the objective way that would put them at the foundation of the enterprise. Rather, I have argued, context is key in determining interpretation.” Bauer, *Room for Interpretation*, p. 187.

relationship and their reading of any verses related to marriage. Marin asserts that “the assumption of male superiority and the necessity to discipline wives are assumptions common to all the texts consulted”.<sup>398</sup> Bauer argues, it was not the case that exegetes endorsed violence against wives simply based on a misogynistic impulse.<sup>399</sup> Rather, they understood the marital relationship as part of a larger system of interconnected and interdependent relationships. For pre-modern exegetes, God was deeply involved in the marriage and the proper marriage reflected God’s will. He designed marriage to be an asymmetrical relationship between husbands and wives, wherein the role of the husband was that of a shadow deity to his wife. In this arrangement, husbands were responsible for the financial, social, moral and religious well-being of their wives and furthermore stood as intermediaries between wives and God. Wives pleased God by pleasing their husbands and when they displeased their husbands they incurred the anger of God and thus jeopardized their salvation. The role of husbands as shadow deity to wives did not compromise a monotheistic vision of the world. Husbands were still accountable to God regarding the treatment of their wives. If husbands transgressed their divinely appointed power over wives, then they would be accountable in the Hereafter.

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<sup>398</sup> Marin, “Disciplining Wives”, p. 39.

<sup>399</sup> Bauer, *Room for Interpretation*, p. 169.

Importantly, they were also accountable if they failed in the establishing the moral rectitude of their wives.

## Chapter Three: Legal Discussions in Qur'anic Exegesis

### 3.1. Legal Discussions: Procedure of Discipline and Liability

Legal verses in the Qur'ān often became the site for fluid discourse between the fields of Islamic jurisprudence and Qur'anic commentary. This was the case in the exegesis of Q. 4:34, where exegetes discussed the physical discipline of wives in legal terms. Exegetes inevitably brought their own subjectivities to bear in their interpretive choices. In this way, the exercise of Qur'anic exegesis can at the same time be seen as an exercise in eisegesis.<sup>400</sup> This prevented legal derivation from the Qur'ān from being a systematic process that yielded a single result.<sup>401</sup> Instead, the relationship between Qur'anic text and legal derivations - at least in the case of Q. 4:34 - was influenced by multiple disciplines and actors. As will be seen, exegetes incorporated the previously mentioned methods - philology, prophetic history and worldview - to their legal discussions of husbands' right or obligation to physically discipline their wives.

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<sup>400</sup> "Eisegesis" is the opposite of "exegesis". It refers to the activity of a reader reading into the text as opposed to deriving meaning from the text. For more discussion on this see Sands, Kristin Zahra. *Šūfī Commentaries on the Qur'ān in Classical Islam* (London: Routledge, 2006), p. 5.

<sup>401</sup> In the contemporary period, feminist scholars of the Qur'ān argue for a single point of gendered interpretation of the Qur'ān. Such scholars include Amina Wadud in *Qur'ān and Woman*.

The three divine commands to husbands when disciplining their wives in Q. 4:34 took on legal significance in pre-modern exegesis. Q. 4:34 stated that if husbands feared (*khiftum*) *nushūz* from their wives they should admonish them (*fa'izūhunna*), abandon them in bed (*wa-hjurūhunna fī'l-maḍāji'*), and beat them (*wa-ḍribūhunna*). It further advised husbands not to find a “means against” their wives “if they were obedient” to their husbands. The range of pre-modern exegetical and legal approaches to each of these three disciplinary prescriptions attempted to qualify the disciplinary power of husbands over wives in various ways. Qualifying the unqualified prescription of *wa-ḍribūhunna* was a key element in limiting the extent of permissible physical discipline of wives. The question of whether the three disciplinary steps - admonishment, abandonment and beating - were to be followed simultaneously or sequentially also legally limited the power of husbands to resort to physical violence as an immediate reaction to wifely *nushūz*. The *aḥādīth* that exegetes chose to emphasize in their exegesis also illustrated their hermeneutic and legal preferences. These questions resulted in a myriad of hermeneutic options for the legally acceptable procedure for disciplining wives.



### 3.2. “Admonish them” (*fa-‘iḏūhunna*)

When husbands feared the *nushūz* of their wives, Q. 4:34 prescribed that they admonish (*fa-‘iḏūhunna*) them. Some exegetes did not extensively discuss the meaning(s) or explanation(s) of this instruction, possibly because they considered its meaning sufficiently clear such that it did not require explanation. Nonetheless, several exegetes in this study did deliberate on the meaning(s) of *fa-‘iḏūhunna*, even if only briefly. Several points of interest emerge from their discussions of admonishment, including whether admonishment was to serve as a “reminder” for wives, or rather a “warning” to them. Also, a question emerges regarding precisely what wives were being reminded or warned of; that is, whether they were being warned of God monitoring their behavior, or reminded of their husbands’ rights over them, or, more particularly, whether they were being instructed to return to bed and/or face beating as a consequence of their refusal to do so.

### 3.2.1. “Remind them” (*yudhakkirūhunna*)

Some exegetes considered the purpose of admonishment to be a reminder for wives.<sup>402</sup> According to these exegetes, admonishment involved husbands reminding wives of their own rights and wives’ divinely assigned placement in the husband-wife hierarchy. It also included reminding wives of God’s watching over them and the duty of husbands to discipline their wives when they were out of line. Husbands could discipline their wives for neglecting both their duties to God and their duties to their husbands. In both these cases, the husband was charged with overseeing that their wives fulfilled God’s rights and their own rights. There was an assumption here that a husband’s contentedness with his wife depended on her pleasing both her husband and God. So, if a wife refused to pray she was just as likely to be punished by her husband as when she sexually disobeyed her husband. Al-Ṭabarī cited a report from Ibn ‘Abbās, in which he linked the right to discipline wives to the marital hierarchy. He reported from Ibn ‘Abbās that

When [a wife] commits *nushūz*, God has  
commanded [the husband] to admonish her, remind

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<sup>402</sup> Exegetes who discussed *fa’izūhunna* as a “reminder” include al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Naḥḥās, *Ma’ānī*, v. 2, pp. 77-79, Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, Ibn Kathīr, *al-Tafsīr al-‘azīm*, v. 1, pp. 601-603, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

her of God and emphasize/aggrandize (*yu‘azzim*)  
his rights over her.<sup>403</sup>

Thus, the content of the reminder to a wife overtly linked the husband’s rights to God’s rights. Admonishment, interpreted as ‘reminder’, placed the husband in the role of necessary intermediary in the wife-God relationship, wherein wives needed to please their husbands in order to please God. Husbands were given the responsibility to remind wives of the former’s intermediary role in the God-husband-wife relationship when wives were out of line. Ibn ‘Aṭīyyah wrote that admonishment consisted of reminding wives of the “commands of God and calling them to what was obligatory upon them, through the book of God and the practice of his prophet”.<sup>404</sup> Given Ibn ‘Aṭīyyah’s description of *nushūz* as the “rising” of wives against their place in the husband-wife hierarchy, reminding wives of the “commands of God” consisted of reminding of their obligations to God and to their husbands, as well as reminding wives of their place in that hierarchy. Reminding wives of their appropriate place and their obligation to their husbands “through the book of God” presumably referred to reminding them of the text of Q. 4:34 itself, which outlined the appropriate behavior of “good” wives.

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<sup>403</sup> Al-Ṭabarī, “*amarahu ‘llāhu idhā nashazat an ya‘īzahā wa yudhakkirahā ‘llāh, wa yu‘azzim ḥaqqahū ‘alayhā*”. Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72.

<sup>404</sup> Ibn ‘Aṭīyyah, “*dhakkirūhunna amra ‘llāh, wa istad‘ūhunna ilā mā yajib ‘alayhinna bi-kitābi ‘llāhi wa sunnatihī wa nabīyyihī*”. Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

In this vein, a few exegetes expressly mentioned the preferred status (*faḍl*) of husbands over wives, the necessity of wifely obedience, and the right of husbands to hit wives in their exegesis of admonishment. Abū Bakr al-Jaṣṣāṣ wrote that admonishment meant to remind wives of God in an effort

...to attract them to the reward that resides with God, as well as make them fear His punishment. In addition, the consequence of this is that [a husband] should make her cognizant (*yu'arrifuhā*) of the good etiquette required for creating beatific companionship as well as the fulfillment of marital responsibilities and meeting the claims of obedience to the husband, and recognizing his degree over her.<sup>405</sup>

For Abū Bakr al-Jaṣṣāṣ, the reminder of the degree of a husband over his wife was a key element in the husband's admonishment of his wife. Reminding wives of God meant reminding them of the divine ordering in which the assigned ranks of husbands was higher than that of wives. Al-Qurṭubī also interpreted admonishment as a reminder of the divine ranking of husbands over wives. He wrote that the main tool of admonishment was the "Book of God", whose imperatives would lead husbands to remind their wives about "what God has made obligatory on [wives], of good companionship and beatific

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<sup>405</sup> Al-Jaṣṣāṣ, "wa huwa al-tadhkīr bi'llāhi fī'l-targhīb li-mā 'indahū min thawāb, wa'l-takhwīf li-mā ladayhi min 'iqāb, ilā mā yattabi'u dhālika mimmā yu'arrifuhā bihi min ḥusni'l-'adab fī ijmāl al-'ushrah, wa'l-wafā' bi-dhimām al-ṣuḥbah, wa'l-qiyām bi-ḥuqūq al-ṭā'at li 'l-zawj, wa'l-'itirāf bi'l-darajah allatī lahu 'alayhā". Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376 and v. 2, pp. 188-189.

companionability (*jamīl al-‘ishrah*) with the husband, and a recognition of his degree over her”.<sup>406</sup> For al-Qurṭubī, as with Abū Bakr al-Jaṣṣāṣ, the wife’s recognition of her husband’s degree over her was an essential element in her being a good companion. If wives understood and accepted their appropriate place, and behaved accordingly - i.e. obediently - then the marriage would be beatific since husbands would be pleased with their wives. Abū Ḥayyān specified that when husbands admonished their wives, they ought to remind them of their own degree over them along with the disciplinary power this degree granted to husbands. He interpreted *fa’iḏūhunna* as

...reminding [wives] of God’s commands of obedience to the husband, and explaining to them that God has permitted hitting them when they are disobedient, as well as God’s punishment for them when they are disobedient.<sup>407</sup>

According to Abū Ḥayyān, admonishment also involved husbands’ getting their wives to consider the “punishments of God” if they persisted in disobedience. By interpreting admonishment as reminding wives of the right of husbands to physically discipline them, Abū Ḥayyān anticipated physical chastisement by using it as a verbal threat.

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<sup>406</sup> Al-Qurṭubī, “*fa’iḏūhunnaḥ: ay bi-kitābi’llāh, ay dhakkirūhunna mā awjaba’llāhu ‘alayhinna min ḥusn’l-ṣuḥbah wa jamīl al-‘ishra li’l-zawj, wa’l-i’tirāf bi’l-darajah allatī lahu ‘alayhā*”. Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

<sup>407</sup> Abū Ḥayyān, “*wa wa’iḏūhunna: tadhkīruhunna amra’llāh bi-tā’ati’l-zawj, wa ta’rīfuhunna anna’llāha abāḥa ḍarbahunna ‘inda ‘iṣyānihinna, wa ‘iqābu’llāhi lahunna ‘alā’l-‘iṣyān*”. Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

In contrast to admonishment being a formal threat to wives, some exegetes argued that admonishment was a positive exhortation to wives in an attempt to motivate them to desist from wifely *nushūz*. Ibn al-Jawzī, for example, was largely positive in his approach to admonishment. He noted that according to al-Khalīl b. Aḥmad (d 170/786)<sup>408</sup>, the purpose of admonishment was a “goodly reminder”, which would soften (*yuriqqu*) the heart of one’s wife.<sup>409</sup> Al-Biqā‘ī, speaking of influencing the hearts of wives, wrote that it was important to remind wives of such things from God’s commands as would soften (*yaşda’u*, lit. crack open) soften their hearts. Additionally, he encouraged husbands to cause their wives to fear (*yukhīfahunna*) the majesty of God.<sup>410</sup> For al-Biqā‘ī, it appears that the purpose of admonishment was to persuade wives, through both positive as well negative motivators, to return to obedience to their husbands, and by extension to their divinely appointed place in the husband-wife hierarchy. This is especially so given his definition of *nushūz* as both the disobedience of husbands and wives’ “rising against [their husbands] from the

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<sup>408</sup> According Mohammed Fadel, his death date is contested. “Rules, Judicial Discretion and the Rule of Law in Naşrid Granada” in *Islamic Law: Theory and Practice*, p. 78.

<sup>409</sup> Ibn al-Jawzī “*al-wa’z: al-tadhkīr bi’l-khayr fī-mā yuriqqu lahu al-qalb*”. Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78.

<sup>410</sup> Al-Biqā‘ī, “*ay dhakkirūhunna min amri’llāh bi-mā yaşda’u qulūbahunna wa yuraqqiquhā wa yukhīfahunna min jalāli’llāh*”. Al-Biqā‘ī, *Naẓm al-durar*, v. 5, pp. 269-272.

rank to which they were appointed by God”.<sup>411</sup> Al-Biqā‘ī thought that husbands needed to admonish their wives in such a way that the latter would be persuaded to return to obedience to their husbands through the softening of their hearts. They were also to be persuaded through the fear of God’s majesty and by being reminded of their crime in disobeying their husbands, since in disobeying their husbands they were essentially disobeying God.

The positive and negative motivations that could be used in admonishment were emphasized by Abū al-Su‘ūd.<sup>412</sup> Abū Su‘ūd described admonishment as advice that included both the carrot (*targhīb*) and the stick (*tarhīb*).<sup>413</sup> Al-Ḥaqqī elucidated the close relationship between *targhīb* and *tarhīb* by citing a report allegedly from Abū Manṣūr.<sup>414</sup> In this report, Abū Manṣūr described admonishment as

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<sup>411</sup> Al-Biqā‘ī, *Naẓm al-durar*, v. 5, pp. 269-272.

<sup>412</sup> Al-Baghawī’s commentary also mentioned these positive and negative motivators. His interpretation of “*fa-‘izūhunna*” will be discussed in the next section, 4.2.2. Al-Baghawī, *Ma‘ālim al-tanzīl*, v. 5, pp. 422-428.

<sup>413</sup> Abū al-Su‘ūd, *Tafsīr Abī al-Su‘ūd*, v. 1, pp. 338-339 and al-Ḥaqqī, *Rūḥ*, v. 5, p. 202 wrote, “*fa-nṣaḥū bi’l-targhīb wa’l-tarhīb*”.

<sup>414</sup> The interpretation attributed to Abū Manṣūr by al-Ḥaqqī appears verbatim in al-Nasafī’s work, with the exception of the “reminder of the punishments”. In al-Nasafī’s *tafsīr*, this report is not attributed to anyone and appears as his own thoughts on the matter. Given the use of this report in Ḥanafī works, Abū Manṣūr most probably refers to Abū Manṣūr al-Māturīdī (d. 333/944). Al-Nasafī, *Madārik*, v. 1, pp. 354-355 and al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

...speech that softens the hardened hearts (*al-qulūb al-qāsiyah*), and inspires (*yuraghghib*) the aversive disposition [due to *nushūz*], and this is done through a reminder of the punishments (*al-‘awāqib*).<sup>415</sup>

On the surface, *targhīb* and *tarhīb* appear to be opposing forms of motivation, such that *targhīb* persuaded a wife to be obedient to her husband through positive means, such as softening her hearts, and *tarhīb* motivated a wife to be obedient to her husband through intimidation. Contrary to this initial understanding, both forms of motivation could function negatively. According to the report from Abū Manṣūr, the speech that “softens the heart and inspires the aversive temperament” was a “reminder of the punishments”. Neither Abū Manṣūr nor al-Ḥaqqī clarified exactly what “punishments” were to be reminded of. It is possible that they referred to the three disciplinary steps outlined in Q. 4:34, or more generally to God’s punishment in the Hereafter, since disobeying husbands was also disobeying God.

### 3.2.2. “Warn them” (*khawwifūhunna*)

While some exegetes interpreted *fa-‘iẓūhunna* to mean that husbands needed to “remind” their wives, others interpreted it to mean that husbands needed to “warn” their wives. These two interpretations were not mutually exclusive and

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<sup>415</sup> Al-Ḥaqqī wrote further, “*al-‘iẓah kalām yulīn’l-qulūb al-qāsiyah wa yuraghghib al-ṭabā’i’ al-nāfirah wa hiya bi’l-tadhkhīr al-‘awāqib.*” Al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.



were often combined in one exegetical work. Exegetes who interpreted admonishment primarily as a form of warning used some form of the roots *kh-w-f* or *t-q-w* to express this meaning.<sup>416</sup> While the meanings of *kh-w-f* are more varied, especially with regard to the object of one's fear, the meanings of *t-q-w* usually referred to the fear of God. It was in the context of the fear of God that al-Ṭabarī referred to warning one's wife. Al-Ṭabarī recorded Mujāhid as saying that when a husband fears *nushūz* from his wife, he should say to her, "Fear God (*ittaqī'llāh*)". He also cited al-Ḥasan as saying that a husband should "command his wife to fear God and obey him (*ya'muruhā bi-taqwa'llāhi wa ṭā'atih*)".<sup>417</sup> The object of obedience in this statement is unclear. The wife may have been instructed to obey God or her husband, or more likely both, since a husband was the one "commanding" his wife to obey God. In obeying God a wife obeyed her husband, just as in obeying her husband she obeyed God. Abū al-Layth al-Samarqandī made this point explicit when he wrote that

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<sup>416</sup> Exegetes that used a conjugation to *kh-w-f*, *t-q-w* to interpret "*fa-izūhunna*" include al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, Abu Bakr Ibn 'Arabī, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, pp. 320-322, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>417</sup> Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72.

admonishing a wife meant saying to her, “Fear God, for the rights of the husband are obligatory upon you”.<sup>418</sup>

Al-Māwardī used both sorts of warning, citing fear of God as well as fear of husband to describe *fa-‘izūhunna*. Like al-Ṭabarī, al-Māwardī wrote that the admonishment (*wa‘z*) by a husband of his wife included his ordering/ commanding her (*ya’murahā*) to fear God (*bi-taqwā’llāh*) and obey him. Additionally, he mentioned that a husband should

...warn his wife (*yukhawwifahā*) of what will be due to her on the Day of Reckoning as a result of her disobeying [her husband], and that God has permitted him to hit her (*ḍarbihā*) when he is contradicted [by her].<sup>419</sup>

Al-Māwardī linked the hierarchy of husbands over wives to the duty of wives to obey their husbands. In the absence of wifely obedience, husbands were divinely obligated to discipline their wives, first through admonishment. In this way, obedience of husbands and God were connected to each other so that they became co-dependent. Al-Māwardī connected husbands’ right to physically discipline their wives to the act of admonishment, such that physical

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<sup>418</sup> Al-Samarqandī, “*fa ‘izūhunna bi-llāhi, ay yaqūlu lahā: ittaqī’llāh, fa-inna ḥaqq al-zawj ‘alayki wājib*”. Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352.

<sup>419</sup> Al-Māwardī wrote, “*ammā wa‘zuhā fa-huwa an ya’murahā bi’taqwa’llāhi wa ṭā’atihi, wa yukhawwifahā istiḥqāq al-wa’id fī ma‘ṣiyatihi wa-mā abāḥahu’llāhu ta’ālā min ḍarbihā ‘inda mukhālafatihī*”. Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483.

discipline was wielded as a threat in order dissuade wives from the continued disobedience of their husbands.

Al-Baghawī also used a form of *kh-w-f* to describe *wa'z*, although the object of *khawf* for him was God. He wrote that a husband should admonish his wife by means of inducing fear (*takhwīf*) of God.<sup>420</sup> Abū Bakr Ibn al-'Arabī, like al-Baghawī before him and Abū Su'ūd and al-Ḥaqqī after him, encouraged husbands to use a mix of both positive and negative motivators when admonishing their wives. He interpreted "*fa'izūhunna*" as the "remembering (*tadhkīr*) of God, in inspiring (*targhīb*) [wives] with reward and warning (*takhwīf*) them of His punishment (*'iqāb*)".<sup>421</sup> For Abū Bakr Ibn al-'Arabī, there needed to be a balance between the carrot and stick approach in order to effectively administer admonishment. Hence, husbands were to call to mind the results of worldly actions in the hereafter when enjoining wives to be obedient to their husbands. They did this by reminding them both of God's reward promised for obedient wives and the threat of His punishment for disobedient wives.

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<sup>420</sup> Al-Baghawī, "*bi-takhwīf mina'llāh wa'l-wa'z bi'l-qawl*". Al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428.

<sup>421</sup> Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500.

Fakhr al-Dīn al-Rāzī used the imperative form of *t-q-w* to encourage husbands to warn their wives of God. Although the object of fear was only God, Fakhr al-Dīn al-Rāzī closely tied the obligation of obedience to one's husband to fulfilling divine command. Quoting al-Shāfi'ī, he wrote that in admonishing a wife, a husband should say,

“Fear God (*ittaqī'llāh*), for I have rights over you, so return from whatever it is you are up to, and know that obedience to me is obligatory for you”, and so on. He should not hit her at this stage because it may be that [the admonition] is sufficient for her [to return to her former state].<sup>422</sup>

For Fakhr al-Dīn al-Rāzī, there was a direct connection between the imperative to “fear God” and the fulfillment of the rights that husbands had over wives, which were divinely ordained. He considered general wifely obedience to be an obligation, and thus he instructed the husband to call her to “return” from whatever it was she was doing, rather than from a specific act of disobedience. In this speech directed to wives, God and His wrath become weapons that can be used by husbands to intimidate their wives into submission. Yet, by mentioning the possibility of physical discipline when discussing admonishment,

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<sup>422</sup> Quoting al-Shāfi'ī, Fakhr al-Dīn al-Rāzī wrote that husbands should say to their wives, “*ittaqī'llāh fa-inna lī 'alayki ḥaqqan wa-rjī'ī 'ammā anti 'alayhi, wa-'lamī anna tā'atī farḍun 'alayki wa naḥwa hādhā.*” Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73. Al-Khāzin uses the same quotation verbatim in his exegesis, but does not attribute to either al-Shāfi'ī or Fakhr al-Dīn al-Rāzī. Al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

Fakhr al-Dīn al-Rāzī made the physical discipline of wives the immediate threat that wives faced at their husbands' hands if they were disobedient.

The idea that a husband's right to physically discipline his wife was a sort of immanent divine punishment for disobedient wives was expressed by 'Izz al-Dīn al-Sulamī in his abridgment of al-Māwardī's exegetical work. He wrote that admonishment consisted of ordering wives to fear God (*ittaqī'llāh*) and further "warning (*al-takhwīf*) them of the hitting (*al-ḍarb*) that God has authorized (*adhina'llāh*) in this matter".<sup>423</sup> According to 'Izz al-Dīn al-Sulamī, husbands did not hit their wives of their own accord when their wives were disobedient to them<sup>424</sup>, but rather as a result of God's command. Since husbands hit their wives as a result of God's command, it is possible to argue that their hitting of disobedient wives was a form of divine punishment, since God prescribed the punishment. In a similar vein, al-Nasafī used the word *khawf* to describe *wa'z*, but as in the case of Abū Bakr Ibn al-'Arabī before him, the object of the fear was God's punishment rather than husbands' punishment. More precisely, al-Nasafī instructed men to "warn them (*khawwifūhunna*) of the punishment of

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<sup>423</sup> Al-Sulamī wrote, "{*fa'izūhunna*} bi'l-'amr bi-taqwā, wa'l-takhwīf min al-ḍarb alladhī *adhina'llāhu ta 'ālā fī-hi*." 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322.

<sup>424</sup> Al-Sulamī had previously described *nushūz* as a wife's "raising herself from her husband's obedience (*li-taraffu'ihā 'an ṭā'ati zawjihā*)". Ibid., v. 1, p. 320-322.

God.<sup>425</sup> He did not, however, explicate what he was referring to by the “punishment of God”. As demonstrated by Fakhr al-Dīn al-Rāzī and ‘Izz al-Dīn al-Sulamī, there was some conflation in the exegetical tradition between divine punishment and the right of husbands to discipline their wives. Hence, al-Nasafī and Abū Bakr Ibn al-‘Arabī may very well have used the phrase “punishment of God” to refer to a husband’s right to beat his wife.

Ibn Kathīr interjected the issue of the hierarchy of husbands over wives in the context of husbands’ warning their wives. He wrote that when the “signs of *nushūz* become apparent”, a husband should both “admonish (*fa’l-ya’iẓhā*) and warn (*wa’l-yukhawwifhā*)” his wife. He used the two terms, admonish and warn, interchangeably. He wrote,

God has made the husband’s rights obligatory on [a wife], as well as obedience to him. And He has forbidden [a wife to] be disobedient to [her husband], since he has a preferred status (*faḍl*) and merit (*ifḍāl*) over her.<sup>426</sup>

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<sup>425</sup> Al-Nasafī, “*fa’iẓūhunna: khawwifūhunna ‘uqūbata’llāhi ta’ālā. wa’l-ḍarb wa’l-iẓah kalām yulayyin al-qulūb al-qāsiyah wa yuraghghib al-ṭaba’i’ al-nāfirah.*” Al-Nasafī, *Madārik*, v. 1, pp. 354-355.

<sup>426</sup> Ibn Kathīr wrote, “*fa-matā zahara la-hu amārat’l-nushūz fa’l-ya’iẓhā wa’l-yukhawwifhā ‘iqāba’llāhi fī ‘iṣyānihi, fa’inna’llāha qad awjaba ḥaqqa’l-zawj ‘alayhā wa ṭā’atahu, wa ḥarrama ‘alayhā ma’ṣiyatahu li-mā la-hu ‘alayhā mina’l-faḍl wa’l-ifḍāl.*” Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603.

Here again, there was the persistent connection between the divinely established ranking of husbands over wives and wifely disobedience as constituting disobedience to God. This disobedience to God was, in turn, punished by God through husbands. Hence, the purpose of admonishment was for husbands to remind wives of their appropriate place and behavior and of the disciplinary powers granted to them by God in the face of continued disobedience.

It is worth considering al-Shirbīnī's unique conception of what wives should be warned of their husbands. Like his predecessors, he interpreted admonishment (*fa-izūhunna*) as warning (*khawwifūhunna*), but he also mentioned additional punishments a wife might have to endure as a result of her *nushūz*. He wrote that a husband should say to his wife,

“Fear God concerning the obligatory rights upon you and avoid the punishments (*al-‘uqūbah*)”. And he should explain to her (i.e. the wife) that *nushūz* cancels out maintenance (*nafaqah*) and allotment of nights (*qasm*).<sup>427</sup>

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<sup>427</sup> Al-Shirbīnī wrote, “*ay khawwifūhunna ka-‘an yaqūla li-zawjatihi: ittaqī’llāha fī’l-ḥaqq al-wājib lī ‘alayki wa’ḥdharī al- ‘uqūbah wa yubayyina lahā anna’l-nushūz yusqit al-nafaqah wa’l-qasm*”. Al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347. The first of the two punishments, loss of economic sustenance (*nafaqah*) was mentioned in Abū Bakr Ibn al-‘Arabī and al-Qurṭubī’s discussion of the three disciplinary steps. However, they did not discuss loss of division of allotted nights. Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500 and al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

Loss of a wife's share in the allotment of nights, which were presumably distributed amongst co-wives, is arguably similar to interpretations of the second disciplinary step, "abandonment in bed". One can imagine how being abandoned in bed result in the loss of the division of nights a particular wife was allotted in a polygamous context. However, the discussion of the loss of maintenance was only carried on by a minority of exegetes. While the issue of the maintenance of wives and what actions might result in the nullification of their right to it was the subject of lively juridical debate, it was not popular in exegetical literature.<sup>428</sup>

### 3.2.3. Admonishment is Verbal

Although the Qur'anic text did not elaborate on either the nature of the admonishment or the exact wording to be used, exegetes generally understood the form of admonishment to be verbal (*bi'l-qawl*, or *bi'l-lisān*).<sup>429</sup> Al-Ṭabarī cited a few relevant reports of *fa-ʿiẓūhunna* in his exegesis that underscore the

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<sup>428</sup> For a greater juridical discussion of the issue of maintenance and when husbands must or may not maintain their wives, see Kecia Ali, *Money, Sex, and Power*, Chapter 3. Also, Abū Bakr Ibn ʿArabī discussed the issue of suspending maintenance, though not division of nights, in his exegesis of the disciplinary steps.

<sup>429</sup> Exegetes who mentioned "verbal" in some form or other in their exegesis include al-Ṭabarī, *Jāmiʿ al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qurʾān*, v. 3, pp. 939-944, Ibn Abī Zamanīn, *Tafsīr al-Qurʾān*, v.1, pp. 366-368, al-Baghawī, *Maʿālim al-tanzīl*, v. 5, pp. 422-428, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmiʿ*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.



verbal nature of admonishment. He reported from al-Ḥasan al-Baṣrī (d. 110/728) that “when a woman commits *nushūz* against her husband, he should admonish her with his speech (*bi-lisānihi*)”.<sup>430</sup> He also reported from ‘Aṭā b. Abī Rabāḥ (d. 114-5/733-4) and Sa‘īd b. Jubayr (d. 95/714), both of whom understood *fa-‘iḏūhunna* as admonishment that was to be delivered verbally.<sup>431</sup>

As seen above, a few exegetes ventured to describe exactly what words a husband should use in admonishing his wife. In these cases, exegetes encouraged husbands to remind their wives of the divine order of the genders, along with the rights of husbands over their wives. They also encouraged husbands to warn their wives of the divine consequences of their disobedience.

Al-Ṭabarī reported from Muḥammad b. Ka‘b al-Qarḏī (d. 117/735) that

When a man sees frivolity in [in his wife’s] eyes, and [sees] her coming and going [at will], he should say to her verbally, “I have seen from you such and such, so stop!”<sup>432</sup>

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<sup>430</sup> The quotation in al-Ṭabarī from al-Ḥasan reads, “*idhā nashazat al-mar’ah ‘alā zawjihā fa’l-ya’iḏhā bi-lisānihi. yaqūl: ya’murhā bi-taqwā’-llāh wa ṭā’atihi.*” Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72.

<sup>431</sup> In al-Ṭabarī, from ‘Aṭā, “*fa’iḏūhunna*”, *bi’l-kalām*”, and Ibn Jurayḥ said, “*bi’l-alsinah*”, from Sa‘īd b. Jubayr, “*iḏūhunna bi’l-lisān*”. *Ibid.*, v. 4, pp. 59-72.

<sup>432</sup> The quotation in al-Ṭabarī from al-Qarḏī reads, “*idhā ra’ā al-rajul khiffatan (fickleness, frivolity) fī baṣarihā wa-madkhalihā wa makhrajihā, qāla yaqūlu lahā bi-lisānihi, “qad ra’aytu minki kadhā wa kadhā, fa’ntahī!*” *Ibid.*, v. 4, pp. 59-72.

There is something remarkable about the manner in which exegetes attempted to teach husbands to express their concerns. On the one hand, they offered assistance to husbands in verbally expressing their displeasure to their wives. On the other hand, it is difficult to imagine contexts in which the suggested speech would be helpful when dealing with an insubordinate wife.

A handful of exegetes mentioned “God”, the “book of God”, and/or “knowledge” as guiding instruments for admonishment. Muqātil and al-Naḥḥās (d. 338/949) noted that the husbands’ admonishment of their wives should be “of God”.<sup>433</sup> In his exegetical work, al-Dīnawarī explained that admonishment should be carried out “with knowledge (*‘ilm*) and the Qur’ān”.<sup>434</sup> Al-Fīrūzābādī followed al-Dīnawarī’s lead and used knowledge and the Qur’ān as key forces of admonishment. Al-Ṭabarī quoted Ibn ‘Abbās as saying that admonishment was to be conducted with the “book of God”.<sup>435</sup> Al-Jaṣṣāṣ included this citation of Ibn ‘Abbās in his exegesis of admonishment, and added another citation from Ibn ‘Abbās in which he clarified also that the admonishment was supposed to

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<sup>433</sup> Muqātil, “*fa’izūhunna bi-l’illāh*”. Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236.

<sup>434</sup> Al-Dīnawarī, “{*fa’izūhunna*} *bi-l-‘ilm wa’l-Qurān*”. Al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151.

<sup>435</sup> Al-Ṭabarī, according to Ibn ‘Abbās, “*fa’izūhunna*” *ya’nī: ‘izūhunna bi kitābi’l-illāh*”. Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72.

be verbal.<sup>436</sup> When the exegetes mentioned the “Book of God” or “knowledge” as being what needed to inform the admonishment of husbands to their wives, they alluded to the rights of husbands and obligations of wives outlined in the Qur’ān. Al-Wāḥidī (d. 468/1075) and Ibn ‘Aṭīyyah mentioned this plainly in their works. Al-Wāḥidī wrote that husbands needed to admonish their wives “with the book of God and remind them of God and what He has commanded them in it”.<sup>437</sup> Similarly, Ibn ‘Aṭīyyah wrote that husbands were to admonish their wives with “what He has made obligatory on them in His book”, to indicate that husbands needed to refer to the book of God in order to cite the obligations of wives to husbands and the rights of husbands over wives.<sup>438</sup>

### 3.3. “Abandon them in beds” (*wa-hjurūhunna fī l-maḍāji*)

The second prescription outlined in Q. 4:34, after admonishment, is abandonment in bed (*wa-hjurūhunna fī l-maḍāji*). The exegetical conversation surrounding the possible interpretations of abandonment in bed was lively and complex. Karen Bauer discusses the development of these discussions,

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<sup>436</sup> Al-Jaṣṣāṣ quotes Ibn ‘Abbās as saying, both “*‘iḏūhunna bi kitābi’l-llāh*” and “*al-‘iḏah bi’l-lisān*”. Al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 2, pp. 188-189.

<sup>437</sup> Al-Wāḥidī, “{*fa’iḏūhunna*} *bi-kitābi’llāhi, wa dhakkirūhunna’llāha wa-mā amarahunna bi-hi.*” Al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263.

<sup>438</sup> Ibn ‘Aṭīyyah, “{*‘iḏūhunna*} *ma’nāhu: dhakkirūhunna amra’llāh, wa stad’ūhunna ilā mā yajib ‘alayhinna bi-kitābi’llāhi wa sunnatihī wa nabīyyihī.*” Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

especially with regard to time, in her dissertation.<sup>439</sup> Therefore, the discussion of exegetical approaches to abandonment in bed will be discussed here only with respect to the legal discussions - in terms of behavioral norms - pre-modern exegetes adopted, especially in connection with what these interpretations tell us about exegetes' conception of marriage and the disciplinary power of husbands over wives. The available interpretations of *wa-hjurūhunna fī l-maḍāji'* included the following possibilities: general abandonment, sexual abandonment, abandonment in speech, harsh speech and tying one's wife in bed. Most exegetes considered more than one possible interpretation of this phrase.

### **3.3.1. General Abandonment**

Exegetes discussed the general abandonment by husbands of their wives in two ways. They described it as either "turning one's back on one's

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<sup>439</sup> Bauer, *Room for Interpretation*, pp. 162-180.

wife” (*yuwallīhā zahrahu*)<sup>440</sup> or “distance” (*bu‘d*).<sup>441</sup> They argued that if admonishment was ineffective in persuading wives to abandon their *nushūz*, then husbands should avoid their wives by turning their backs to them or by distancing themselves from them. The punishment, in this interpretation, consisted of shunning a wife through lack of intimacy. Some exegetes limited the location of turning one’s back to one’s wife to the marital bed, while others argued that it extended beyond the marital bed.

Al-Ṭabarī cited Ibn ‘Abbās as having restricted the site of abandonment to the marital bed. He wrote that “a man and his wife were to remain on the same

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<sup>440</sup> Bauer notes that this is the most widespread interpretation of abandonment as a disciplinary measure. Bauer, *Room for Interpretation*, p. 180. Also, exegetes in this study who mention “turning one’s back in bed” as a possible interpretation of *wa-hjurūhunna fī l-maḍāji* include al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur‘ān*, v. 3, pp. 939-944, Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352, al-Tha‘labī, *al-Kashf*, v. 3, pp. 302-303, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Wāhidī, *al-Wajīz*, v. 1, pp. 262-263, al-Baghawī, *Ma‘ālim al-tanzīl*, v. 5, pp. 422-428, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn ‘Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-‘Arabī, *Aḥkām al-Qur‘ān*, v. 1, pp. 493-500, ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, pp. 320-322, al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Tha‘ālabī, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>441</sup> Exegetes who mentioned *bu‘d* as an interpretation of abandonment in bed included al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167 and Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

bed”, but the husband was to “turn his back” (*yuwalliyahā l-ẓahr*) to his wife.<sup>442</sup> Al-Qurṭubī similarly clarified that what was meant by abandonment in bed was that husbands should remain in their marital beds with their wives while turning their backs to them. He wrote,

Abandonment in bed: it is lying with [your wife] and turning your back to her, and not having sex with her. (*wa'l-hajr fī'l-maḍāji'ī huwa an yuḍāji'ahā wa yuwalliyahā ẓahrahu wa lā yujāmi'ahā*).<sup>443</sup>

Avoiding sex was not always included as part of husbands turning their backs on their wives. Some exegetes, such as al-Naḥḥās, stipulated that what was meant by abandonment in bed was that husbands were to ostracize their wives in bed, without relinquishing sex.<sup>444</sup> For al-Naḥḥās, ostracizing wives in bed did not necessarily result in husbands forfeiting their own sexual rights.

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<sup>442</sup> Al-Ṭabarī cites from Ibn 'Abbās, “*an yakūn al-rajul wa-mra'atuhu 'alā farsh wāḥid lā yujāmi'uhā*”. Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72. Along the same lines, al-Tha'labī wrote that this possibly meant “*wallūhunna ẓuhūrakum fī'l-maḍāji'*”. Al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303. Ibn Abī Ḥātim al-Rāzī also cited Ibn 'Abbās as interpreting abandonment in bed as both abandonment of intimate relations with one's wife and turning one's back to her in bed. Ibn Abī Ḥātim al-Rāzī cites Ibn 'Abbās as saying, “*allā yujāmi'ahā fī firāshihā wa yuwalliyahā l-ẓahr*.” Also from Muqātil b. Ḥayyān, “*yuwallīhā ẓahrahu*”. Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944.

<sup>443</sup> Al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167. Although “*yuḍāji'ahā*” can mean to have sex, I can only assume that it does not mean that here, but rather means only to lie with one's wife, since al-Qurṭubī goes on to say, in the same sentence, that “one should turn his back on his wife, and not have sex with her”.

<sup>444</sup> Al-Naḥḥās, citing Sufyān, “*wa-hjurūhunna fī l-maḍāji', qāla Sufyān, min ghayr tark l-jimā'*.” Al-Naḥḥās, *Ma'ānī*, v. 2, pp. 77-79.

Al-Wāḥidī used another word, ‘separate’ (*fariqū*), to suggest that husbands should separate from their wives in bed.<sup>445</sup> His wording was ambiguous as to whether husbands and wives should “separate” in bed by being in separate beds altogether, or whether they should remain in the same bed but avoid sex. Al-Nasafī and al-Suyūṭī argued that it was necessary for husbands to remain in the same bed as their wives, while turning their backs on them and/or avoiding sex with them.<sup>446</sup> Al-Nasafī reasoned that if husbands were meant to leave the bed, the prescription - *wa-hjurūhunna fī l-maḍāji* - would have used the preposition “from” (*‘an*) rather than “in” (*fī*) before “beds” (*al-maḍāji*). However, since this was not the case, this prescription required husbands to remain in bed with their wives while avoiding sex and turning their backs to them. For al-Nasafī, avoiding sex was an extension of turning one’s back to one’s wife in bed. Al-Baghawī and al-Khāzin al-Baghdādī suggested, on the authority of Ibn ‘Abbās, that turning one’s back on one’s wife in bed might include leaving the

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<sup>445</sup> Al-Wāḥidī, “*fariqū baynakum wa baynahunna fī l-maḍāji*”. Al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263.

<sup>446</sup> Al-Nasafī wrote “{*wa-hjurūhunna fī l-maḍāji*} fī l-marāqidi, ay, lā tudkhillūhunna taḥt l-luḥuf wa huwa kināyah ‘an l-jimā’, aw huwa an yuwalliyahā zahrahu fī l-maḍja’ li-annahū lam yaqul ‘an l-maḍāji’”. Al-Nasafī, *Madārik*, v. 1, pp. 354-355. Also, al-Suyūṭī wrote, citing Ibn ‘Abbās, “*ya’nī bi l-hujrān, an yakūna al-rajul wa mra’atuhu ‘alā firāsh waḥid lā yujāmi’uhā*”. Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

marital bed for another bed altogether.<sup>447</sup> Qur'ān commentators who argued that husbands should sleep in a separate bed appear to have been motivated by the undue difficulty that might be imposed on husbands who were sexually desirous of their wives but could not engage in sexual relations with them even as they lay next to them.

### 3.3.2. Sexual Abandonment

The second most common interpretation of *wa-hjurūhunna fī l-maḍāji'* was that husbands avoid sex with their wives.<sup>448</sup> This interpretation was closer to the

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<sup>447</sup> Al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, from Ibn 'Abbās, “*yuwalliyahā ḡahrahu fī l-firāsh wa-lā yukallimahā*” and some say “*ya'tazil 'anhā ilā firāsh 'ākhar*”. Al-Khāzin also mentions this quotation from Ibn 'Abbās, but he takes both parts of these statements and unifies them into one statement: “*huwa an yuwalliyahā ḡahrahū fī l-firāsh wa-lā yukallimahā wa qīla huwa an ya'tazil 'anhā ilā firāsh 'ākhar*”. Al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376. Also, Abū Ḥayyān mentioned on the authority of al-Ḍaḥḥāk and al-Suddī that *wa-hjurūhunna fī l-maḍāji'* means to “abandon speech and turn your backs to them in bed (*itrakū kalāmahunna, wa wallū zuhūrakum fī l-firāsh*). Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

<sup>448</sup> Mahmoud writes, ““The "sexual deprivation" measure expressed by "*wa hjurūhunna fī l-maḍāji'*" (and abandon them in bed) proved confusing to the exegetes. For one thing, if a woman's disobedience is motivated by her dislike or hatred of her husband, such an abstention on his part would be most desirable as far as she is concerned.” Mahmoud, “To Beat or Not to Beat”, p. 543. Also see, Bauer, *Room for Interpretation*, p. 180. Exegetes who consider “avoiding sex” with one's wife as a possible interpretation of *wa-hjurūhunna fī l-maḍāji'* include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Samīn, *al-Durr al-maṣūn*, v. 3, pp. 670-673, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.



plain sense meaning of abandonment in bed. In contrast to admonishment, wherein husbands sometimes commanded their wives to return to the bed, they were now commanded to abandon their wives in bed if wives did not desist from their recalcitrance. Mahmoud and Bauer discuss the paradox that this interpretation created for some exegetes, in that a wife who refused herself to her husband sexually was in turn punished by her husband through sexual denial.<sup>449</sup> This was troubling as a punishment because it seemed to give wives exactly what they wanted. This interpretation struggled with the question encountered earlier, of whether husbands were required to remove themselves from the marital bed during sexual abandonment, or if they were required to remain in the marital bed while sexually shunning their wives.<sup>450</sup> Nevertheless, sexual abandonment was a fairly widespread interpretation of *wa-hjurūhunna fī l-maḍāji'* in pre-modern exegesis.

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<sup>449</sup> Bauer, *Room for Interpretation*, p. 167.

<sup>450</sup> Exegetes who considered “leaving the bed” as an interpretive possibility include Ibn Wahb, *al-Jāmi'*, v. 1, pp. 145-146, v. 2, pp. 41-42, al-Zajjāj, *Ma'ānī al-Qur'ān*, v. 2, pp. 48-49, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur'ān*, v. 3, pp. 939-944, Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn 'Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, pp. 320-322, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Maḥallī and al-Suyūṭī, *al-Qur'ān al-karīm*, pp. 105-106 and pp. 179-181, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347.

Exegetes such as al-Māwardī<sup>451</sup>, Ibn ‘Aṭīyah<sup>452</sup>, and Ibn al-Jawzī<sup>453</sup> argued that the imperative to abandon wives in bed was specifically intended to deny wives intimacy and/or sexual relations.<sup>454</sup> Thus, they concluded, husbands must leave their wives’ beds altogether. To the same end, al-Khāzin al-Baghdādī cited Ibn ‘Abbās as saying that husbands needed to remove (*ya’tazil*) themselves to another bed.<sup>455</sup> Similarly, Abū Ḥayyān cited Mujāhid to argue that husbands needed to separate themselves from their wives such that they “slept in a bed that was not their [wives’] bed”.<sup>456</sup> Muqātil explained that abandonment in bed meant that husbands should not approach their wives

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<sup>451</sup> Al-Māwardī wrote, “*an yahjur firāshahā wa muḍāja’atahā*”. Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483. Ibn Wahb also wrote about *wa’hjūrūhunna*, “*yahjur firāshahā*”. Ibn Wahb, *al-Jāmi’*, v. 1, pp. 145-146, v. 2, pp. 41-42.

<sup>452</sup> Ibn ‘Aṭīyah wrote, “*uhjurūhunna bi rafḍ l-maḍāji’i aw bi tark al-maḍāji’i*”. Ibn ‘Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>453</sup> Ibn al-Jawzī wrote, “*annahū hajr firāshihā, wa muḍāja’atahā*”. Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78.

<sup>454</sup> Bauer discusses additional exegetical opinions of al-Ṭabarī’s contemporaries in fn. 367. Bauer, *Room for Interpretation*, pp. 171-172.

<sup>455</sup> Al-Khāzin cites Ibn ‘Abbās here, “*huwa an yuwalliyaha zahrahū fī l-firāsh wa-lā yukallimahā wa qīla huwa an ya’tazil ‘anhā ilā firāsh ākhar*”. Al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

<sup>456</sup> Abū Ḥayyān cites Mujāhid, “*fāriqūhunna fī ‘l-firāsh, ay nāmū nāḥiyatan fī firāsh ghayr firāshihinna*”. Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253. Similarly, al-Ḥaddād wrote “*min l-hajr wa huwa an lā yaqraba firāshahā wa-lā yanāma ma’ahā*”. Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251. Al-Suyūṭī cited Mujāhid as saying, “*lā yaqrabuhā*”. Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157. Suyūṭī & Maḥallī, “*i’tazilū ilā firāsh ākhar in aḥarna l-nushūz*”. Al-Maḥallī and al-Suyūṭī, *al-Qur’ān al-karīm* pp. 105-106 and pp. 179-181. And al-Shirbīnī wrote “*ay, i’tazilūhunna fī l-firāsh*”. Al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347.

sexually.<sup>457</sup> He also encouraged husbands to avoid any intimacy that may lead to sex while their wives were in a state of *nushūz*. By interpreting *wa-hjurūhunna fī l-maḍāji'* as avoiding sex, these exegetes encouraged husbands to avoid their wives' beds as a preemptive move, since joining recalcitrant wives in bed might lead to sexual relations.

However, not all exegetes who interpreted abandonment in bed as sexual avoidance felt that husbands needed to avoid their wives' beds.<sup>458</sup> These exegetes discussed the shunning of wives by avoiding sex without discussing the question of whether husbands should remain in the same bed with their wives or they should separate beds. Al-Bayḍāwī, like al-Nasafī after him, emphasized the location of the bed as the site for shunning. He contended that the specificity of "in beds" (*fī l-maḍāji'*) in the prescription of abandonment indicated that the abandonment of wives was sexual and that this should occur in bed (*marāqīd*). Husbands needed to be in bed with their wives when they

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<sup>457</sup> Muqātil, "*lā taqrabuhā li'l-jimā'*". Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236.

<sup>458</sup> Such exegetes included Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, pp. 320-322, and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157. Al-Māwardī, cited five possible interpretations of *wa-hjurūhunna fī l-maḍāji'*, including avoiding sex. He wrote, "*an-lā yujāmi'ahā*". Ibn 'Aṭīyyah wrote, "*jannibū jimā'ahunna*" and Abū Bakr Ibn al-'Arabī wrote, "*lā yujāmi'ahā*". Ibn al-Jawzī wrote, "*annahu tark al-jimā'*". Al-Suyūṭī wrote, citing Ibn 'Abbās, "*lā yujāmi'ahā*".

avoided them sexually, and they achieved this by remaining in the same bed but by not getting under the covers with their wives.<sup>459</sup>

A divergent interpretation of “in beds” (*fī l-maḍāji*) in the prescription of abandonment was found in a minority of exegetical works.<sup>460</sup> Exegetes who adopted this position argued that the “beds” in “abandon them in their beds” did not refer to the site where husbands should abandon their wives, but rather to location when the “cause” (*sabab*) for the abandonment - i.e. wifely *nushūz* - occurred.<sup>461</sup> In this interpretation, beds were the site of *nushūz* rather than abandonment. Al-Samīn wrote that husbands were to ostracize their wives as a result of their contrariness (*takhallufihinna*) in bed. According to al-Samīn, if

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<sup>459</sup> Al-Bayḍāwī, “{*fī l-maḍāji*} *fī l-marāqid, falā tudkhillūhunna taḥta l-luḥuf aw lā tabāshirūhunna fayakūnu kināyah ‘an al-jimā*”. Al-Bayḍāwī, *Anwār*, v. 1, p. 85. The case of al-Nasafī was discussed in the previous section. Abū al-Su‘ūd wrote, “{*fī l-maḍāji*} *fī l-marāqid, fa-lā tudkhillūhunna taḥta l-luḥuf wa-lā tubāshirūhunna, fa-yakūnu kināyatan ‘an l-jimā*”. Abū al-Su‘ūd, *Tafsīr Abī al-Su‘ūd*, v. 1, pp. 338-339. Al-Ḥaqqī paraphrased this statement in his exegesis. Al-Ḥaqqī, *Rūḥ*, v. 5, pp. 202. Bauer also mentions that “Al-Ṭabarī also cites ‘Alī ibn Abī Ṭalḥa is cited as changing the word “beds” into “lie with”; he specifies that lying with does not entail having sex.” Bauer, *Room for Interpretation*, p. 173.

<sup>460</sup> Exegetes who mentioned this position in their commentary include al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, al-Samīn, *al-Durr al-maṣūn*, v. 3, pp. 670-673 and al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231.

<sup>461</sup> Al-Samīn wrote “*fa-hjurūhunna min ajl itakhallufihinna ‘an al-muḍāja‘ati ma‘akum*”. He also cites al-Wāhidī as connecting “*al-maḍāji*” with “*nushūz*”, such that the re-worded portion of the verse reads, “*wa l-lātī takhāfūna nushūzahunna fī l-maḍāji*”. I did not find this in the work of al-Wāhidī’s *al-Wajīz*. Al-Samīn, *al-Durr al-maṣūn*, v. 3, pp. 670-673. Tha‘ālibī wrote, “*annahā bi-ma‘nā al-sabab, ay, uhjurūhunna bi-sababi l-maḍāji, ka-mā taqūlu: fī hādhihi l-jināyah ‘uqūbatun*”. Al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231. This position was in contrast to al-Biqā‘ī’s on the matter.

beds were the site for wifely *nushūz* rather than abandonment, then Q. 4:34 would read, “concerning those women from whom you fear *nushūz* in bed, abandon them”. This interpretation restricted the meaning of wifely *nushūz* to sexual disobedience, but expanded the meaning of abandonment so that husbands could abandon or shun their wives in multiple settings. The significance of this interpretation is that it demonstrates the flexibility present in the exegesis of the prescriptions in Q. 4:34, even within the constraints of a hierarchical worldview. While it is true that exegetes did not argue against the fundamental right of husbands to discipline their wives, they were able to interpret the prescriptions of discipline in different ways. Further, they were able to devise new interpretations of prescriptions such as *wa-hjurūhunna fī l-maḍāji*, despite the lack of precedent for such interpretations.

### **3.3.3. Abandoning Speech**

As seen above, “admonishment” was interpreted by exegetes to mean that husbands were to verbally advise their wives to abandon their *nushūz* through persuasion and/or intimidation. When admonishment was ineffective, some exegetes advised husbands to shun their wives by abandoning speaking to them altogether. In these interpretations, speech was a tool of power that was wielded by husbands against their wives. Speech was employed for

disciplinary purposes in admonishment when husbands reminded and/or warned their wives of the consequences of their persisting in *nushūz*. Hence, speech was central in interpretations of *wa-hjurūhunna fī l-maḍāji'* in that husbands were encouraged to shun their wives by not speaking to them. Abandoning speech, like turning one's back to one's wife and avoiding sex, was a form of withholding intimacy. Exegetes mentioned abandonment of speech, either on its own, or in combination with other measures, such as abandoning sex and turning one's back to one's wife, as possible interpretations of *wa-hjurūhunna fī l-maḍāji'*.<sup>462</sup>

For al-Daḥḥāk (d. 125/723), abandoning speech was part of a larger set of disciplinary actions, including avoiding sex while remaining in the same bed with one's wife, that husbands undertook against their wives in order to

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<sup>462</sup> Exegetes who mentioned abandonment of speech as a possible interpretation of *wa-hjurūhunna fī l-maḍāji'* included Mujāhid, *Tafsīr Mujāhid*, pp. 274-275, al-Daḥḥāk b. Muzāḥim al-Hillālī, *Tafsīr al-Daḥḥāk*, v. 1, pp. 285-286, 'Abd al-Razzāq al-Ṣan'ānī, *Tafsīr al-Qur'ān*, v. 1, pp. 157-158, al-Zajjāj, *Ma'ānī al-Qur'ān*, v. 2, pp. 48-49, al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-'Arabī, *Aḥkām al-Qur'ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, 'Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603, al-Tha'ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347. Al-Māwardī, "*an lā yukallimahā wa yuwalliyahā ḡahrahu fī l-maḍja*". Ibn 'Aṭīyyah, quoted Sa'īd b. Jubayr as saying "*hiya ḡajr al-kalām ay lā tukallimūhunna wa a'riḡū 'anhunna*". Abū Bakr al-Rāzī, "*lā yukallimahā*". Ibn al-Jawzī, "*annahu tark al-kalām*". Ibn Kathīr, "*al-hujrān huwa an lā yujāmi'ahā, wa yuḍāji'ahā 'alā firāshihā wa yuwalliyahā ḡahrahu*", also, "*wa lā yukallimahā ma'a dhālika wa-lā yuḡaddithuhā*".

ostracize them.<sup>463</sup> Abandonment of speech was Fakhr al-Dīn al-Rāzī's preferred interpretation for abandonment as a disciplinary measure, although he acknowledged that abandoning sex was also a possible interpretation of the phrase. Fakhr al-Dīn al-Rāzī cited al-Shāfi'ī to argue that abandonment of speech should not exceed three days. Although he did not mention it explicitly in his exegesis, he alluded to the *ḥadīth* wherein Muḥammad is alleged to have advised believers to refrain from abandoning speech with other believers for more than three days.<sup>464</sup> Al-Suyūṭī agreed with Fakhr al-Dīn al-Rāzī's preference for this interpretation over others, as he wrote that abandonment referred specifically to abandoning speech but not to abandoning sex.<sup>465</sup> The fact that the phrase *wa-hjurūhunna fī l-maḍāji'* mentions beds specifically did not figure in al-Suyūṭī's interpretation in that he did not attempt to account for the phrase "*fī l-maḍāji'*". Perhaps he intended for the abandonment of speech to occur in bed, but he did not clarify this.

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<sup>463</sup> Al-Ḍaḥḥāk, "*yuḍāji'ahā wa yahjur kalāmahā wa yuwalliyahā zahrahū*". Al-Ḍaḥḥāk, *Tafsīr al-Ḍaḥḥāk*. v. 1, pp. 285-286.

<sup>464</sup> This *ḥadīth* figured largely in juridical discussions of husbands' disciplinary powers.

<sup>465</sup> Al-Suyūṭī, cited Mujāhid as saying, "lā yukallimhā, and further wrote "*al-kalām wa l-ḥadīth, wa laysa bi l-jamā'*". al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

Al-Zajjāj and later Fakhr al-Dīn al-Rāzī elaborated on the desired end of the prescription of *wa-hjurūhunna fī l-maḍāji*.<sup>466</sup> Although al-Zajjāj's interpretations of wifely *nushūz* and abandonment were different than Fakhr al-Dīn al-Rāzī's, their reasoning regarding the desired end of abandonment was the same. They wrote that when a wife was shunned by her husband,

...if she loved her husband, this would be cumbersome (*shaqqa*) for her, so she would abandon her *nushūz*. [However,] if she harbored hatred for her husband, this would be agreeable (*wāfaqahā*) for her. This, [in turn], would be evidence of the totality of her *nushūz*.<sup>467</sup>

For both al-Zajjāj and Fakhr al-Dīn al-Rāzī, the prescription in Q. 4:34 was a test that could verify the presence of wifely *nushūz*. By shunning one's wife, especially by refusing to speak with her, husbands could use their wives' behavior to verify the presence or absence of wifely *nushūz*. According to this test, if wives corrected their behavior as a result of being shunned by their husbands then this was evidence that they were not committing *nushūz*. However, if wives persisted in their behavior then this was clear evidence of

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<sup>466</sup> Al-Zajjāj wrote, "*fa-innahunna in kunna yuḥbibna azwājahunna shaqqa 'alayhinna l-hijrān fī l-maḍāji' wa in kunna mubghidātīn wāfaqahunna dhālika fa-kāna dalīlan 'alā l-nushūz minhunna*". Al-Zajjāj, *Ma'ānī al-Qur'ān*, v. 2, pp. 48-49.

<sup>467</sup> Fakhr al-Dīn al-Rāzī, "*wa ayḍan fa-idhā hajarahā fī l-maḍja' fa-'in kānat tuḥibbu'l-zawj shaqqa dhālika 'alayhā fa-tatruku'l-nushūz, wa-in kānat tubghiduhu wāfaqahā dhālika'l-hijrān, fa-kāna dhālika dalīlan 'alā kamāli nushūzihā*". Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.



their hatred for their husbands.<sup>468</sup> In this interpretation a wife's hatred for her husband was implicitly equated with her *nushūz*. While the interpretation of wifely *nushūz* as the hatred of one spouse was favored by al-Zajjāj, it was tacitly endorsed by Fakhr al-Dīn al-Rāzī here.

As in his exegesis of admonishment, Fakhr al-Dīn al-Rāzī anticipated the prescription of hitting by mentioning that if this measure did not work then husbands should undertake the beating of their wives, presumably after three days.<sup>469</sup> Ibn al-Jawzī also wrote that if abandonment did not work, then God had permitted husbands to hit their wives in a non-extreme manner.<sup>470</sup> Al-Ḥaddād (d. 800/1397) mentioned beating as an extension of the abandonment

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<sup>468</sup> Abū al-Layth al-Samarqandī made a similar argument in his commentary, although he also disagreed with al-Rāzī's interpretation of abandonment. Al-Samarqandī preferred the interpretation of abandonment in bed rather than speech. He wrote that, "*lā yaqrabu firāshahā, li-'anna al-zawj idhā a'raḍa 'an firāshihā fa-'in kānat muḥibbatan li'l-zawj yashuququ 'alayhā fa-tarji'u ilā'l-ṣalāh, wa-'in kānat mubghīḍah fa-taẓhar al-surūr fī-hā, fa-yatabayyanu anna'l-nushūz min qibalihā*". Abū al-Layth al-Samarqandī, *Baḥr al-'ulūm*, v. 1, pp. 351-352. Similarly, al-Qurṭubī wrote, "*fa inna l-zawj idhā a'raḍ 'an firāshihā fa-in kānat muḥibbatan li l-zawj fa-dhālika yashuququ 'alayhā fa-tarji'u li-ṣalāh, wa in kānat mubghīḍatan fa-yāẓhar al-nushūz min-hā, fa-yatabayyanu anna l-nushūz min qibalihā*." Al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167. Al-Ḥaddād wrote along similar lines, "*wa idhā lam yanfa'hā l-wa'ẓ hajarahā zawjuhā fī l-maḍja', fa-in kānat tuḥibbu zawjahā shaqqa 'alayhā l-hijrān, wa-in kānat tubghīḍuhu wāfaqahā dhālika fa-kāna dalīlan 'alā l-nushūz min qibalihā fa-yāḍribuhā ḥīna'idhin ḍarban ghayr mubarrīḥ*". Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251.

<sup>469</sup> Fakhr al-Dīn al-Rāzī, "*wa lā yazīdu fī hajrihi'l-kalām thalāthan*", and further added, "*thumma 'inda hādhihi'l-hujrah in baqiyat 'alā'l-nushūz ḍarabahā*". Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

<sup>470</sup> Ibn al-Jawzī, "*uhjurhā fī'l-maḍja', fa in aqbalat wa illā fa-qad adhina'llāhu an taḍribahā ḍarban ghayr mubarrīḥ*". Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78.

in his commentary. Once he had explained the evaluative nature of abandonment along the lines described above, he wrote that if wifely *nushūz* became evident, then “husbands should beat [their wives] in a non-extreme manner”.<sup>471</sup>

The purpose of abandoning speech was also hinted at, though more generally, by al-Ṭabarī and Ibn Kathīr. Both scholars cited Ibn ‘Abbās as having said that if husbands refused to speak to their wives while carrying out the second disciplinary measure of Q. 4:34, the only circumstance in which they might speak to them was if they were speaking to terminate the marriage.<sup>472</sup> This, agreed al-Ṭabarī and Ibn Kathīr, would be difficult (*shadīd*) for the wife. The purpose of abandoning speech was to make things difficult for one’s wife, and to persuade her to alter her behavior in order to remove this difficulty. Similarly, al-Samarqandī offered that the purpose of shunning (*i’rāḍ*) of one’s wife was to anger/exasperate her (*yughīzuhā*).<sup>473</sup>

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<sup>471</sup> Al-Ḥaddād, “*fa-kāna dalīlan ‘alā l-nushūz min qibalihā fa-yaḍribahā ḥīna’idhin ḍarban ghayr mubarrih*”. Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251.

<sup>472</sup> Al-Ṭabarī wrote, “*lā yukallimuhā min ghayr an yadhara nikāḥahā, wa dhālika ‘alayhā shadīd*”. Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72. Ibn Kathīr, “*wa lā yukallimuhā ma’a dhālika wa-lā yuḥaddithuhā*”. Ibn Kathīr cited Ibn ‘Abbās as saying, “*wa-lā yukallimuhā min ghayri an yadhara nikāḥahā, wa dhālika ‘alayhā shadīd*.” Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603.

<sup>473</sup> Abū al-Layth al-Samarqandī, “*ay yu’riḍ ‘an-hā, fa-inna dhālika yughīzuhā*”. Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352.

A few exegetes deliberated on the appropriate duration and location of abandonment. As seen above, Fakhr al-Dīn al-Rāzī thought that abandonment should not continue for more than three days. Abū Ḥayyān proposed that refusal of speech ought to be limited to the home, which he defined as the place where one sleeps. Describing abandonment as inclusive of sexual and verbal remoteness, Abū Ḥayyān suggested that husbands could shun their wives for the duration of a month. He based this assertion on the report that once, when Muḥammad was displeased with his wives, he removed himself to a separate quarter from them for the duration of a month.<sup>474</sup> Abū Ḥayyān was alone in the inclusion of this report in his commentary on Q. 4:34. Other exegetes may not have considered this report relevant to Q. 4:34 because, according to the reports of this incident, Muḥammad did not merely abandon speech or turn his back to his wives, but rather removed himself to a completely separate location away from them. Certainly, he did not limit this abandonment to his home, but rather his shunning of his wives occurred outside of their homes, in such a

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<sup>474</sup> Abū Ḥayyān, cited al-Ḍaḥḥāk and al-Suddī as saying, “*utrukū kalāmahunna, wa wallū zuhūrakum fī l-firāsh*”. He also mentions from Qatādah and al-Ḥasan that if abandonment means “*al-bu’d*”, then “*uhjurūhunna bi-tarki l-jimā’ wa l-jitimā’, wa izhār al-tajahhum, wa l-i’rāḍ ‘anhunna muddatan nihāyatuhā shahrūn kamā fa’ala ‘alayhi l-salām ḥīna ḥalafa an lā yadkhula ‘alā nisā’ihi shahrān*”. Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253. Al-Qurṭubī also advised husbands to abandon their wives for a month, presumably based on the same *ḥadīth* source as Abū Ḥayyān. Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167. Al-Shirbīnī also mentions Muḥammad’s leaving his wives for more than three days when he was in dispute with them. This report from Muḥammad had no bearing on the disciplining of wives by husband, apart from the discussion of how long husbands were permitted to abandon their wives. Al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347.

manner that the community became aware of his private domestic conflict. The parallels between this story and the prescription of the verse are limited. Nonetheless, it is significant that Abū Ḥayyān introduced this previously unmentioned prophetic report into his exegesis of Q. 4:34, even if it never became popular.<sup>475</sup> Contrary to both Fakhr al-Dīn al-Rāzī and Abū Ḥayyān, al-Tha‘alibī linked the duration of abandonment to its (in)effectiveness. He wrote that husbands should leave off speaking to their wives and turn away from them until “they return”.<sup>476</sup>

### 3.3.4. Engaging in Harsh Speech

Speech figured prominently in discussions of abandonment in pre-modern Qur’ān commentaries. Contrary to suggesting that *wa-hjurūhunna fī l-maḍāji’* meant that husbands ought to abandon their wives by refusing to speak to them, some exegetes interpreted *wa-hjurūhunna fī l-maḍāji’* as meaning that

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<sup>475</sup> Interestingly, modern Muslim feminists have often used this story to argue the exact same point as Abū Ḥayyān - that the Qur’ān actually prescribed that husbands separate from their wives. However, a key difference is that they use this incident to encourage separation as an interpretation of *wa ḍribūhunna*, rather than *wa hjurūhunna fī l-maḍāji’*. For example, see See Bakhtiar, *Sublime Qur’ān*, Introduction, esp. p. xxvi.

<sup>476</sup> Al-Tha‘alibī, *al-Kashf*, v. 3, pp. 302-303. Ibn Jubayr says: “*hiya hijratu l-kalām, ay, lā tukallimūhunna, wa-a’riḍū ‘anhunna*”. Also, leave them until they return, “*ḥattā yurāji’na*”. Al-Ṭabarī cited a similar opinion, wherein husbands were encouraged to abandon their wives until their wives “returned to what pleased [their husbands] (*lā taqrabūhunna fī farshihinna, ḥattā yarji’na ilā mā tuḥibbūn*)”. Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72.

husbands ought to speak to their wives harshly.<sup>477</sup> As Bauer points out, this interpretation was based on one of the lexical meanings of the verb *h-j-r*<sup>478</sup> to mean “vile or offensive speech”. In this interpretation, *wa-hjurūhunna fī l-maḍāji*’ was an intensified form of admonishment, wherein husbands could ostracize their wives by speaking to them in a crude and insulting manner. In this way, it extended exegetes’ interest in speech as a disciplinary instrument. As with abandonment in speech, some exegetes sought to restrict harsh speech to the marital bed while others allowed for generally abusive speech in multiple settings. While some exegetes argued that husbands were not permitted to have sexual relations with their wives while they spoke to them crudely, others encouraged husbands to continue sexual relations with their wives even as they spoke to them harshly.<sup>479</sup> Interpreting “*uhjurūhunna fī l-*

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<sup>477</sup> Exegetes who mentioned “harsh speech” as a possible interpretation of “abandonment in bed” include ‘Abd al-Razzāq al-Ṣan‘ānī, *Tafsīr al-Qur’ān*, v. 1, pp. 157-158, al-Zajjāj, *Ma‘ānī al-Qur’ān*, v. 2, pp. 48-49, al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72 (although he mentions this as an interpretive option, prefers to interpret it as tying one’s wife in bed with ropes), Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn ‘Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48 (mentions this as an option but does not agree with it as a legitimate interpretation), Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, ‘Izz al-Dīn al-Sulamī, *Ikhtīṣār al-Nukat*, v. 1, p. 320-322, al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>478</sup> Bauer writes “The method of interpretation here is to change the form of the word. The verbal form *hajara* is changed to *ahjara*, rendering it as “speak roughly/harshly,” rather than “avoid.” Bauer, *Room for Interpretation*, p. 164.

<sup>479</sup> For more discussion on this see, Bauer, *Room for Interpretation*, pp. 164-165. She mentions that exegetes argued for this recourse to be undertaken by husbands when they were motivated by need of sex.

*maḍāji*” with reference to the fairly plausible meaning of “rough speech” addressed many exegetes’ apparent concern that “abandonment in bed” in the sense of “abstaining from sex” would punish the husband and/or gratify the rebellious wife.

‘Abd al-Razzāq al-Ṣan‘ānī reported from Ibn ‘Abbās that abandonment in bed referred to speaking roughly (*yughliḏ la-hā bi l-qawl*) to one’s wife while avoiding sexual relations with her. However, he also reported from ‘Ikrima (d. ca. 105/723) that abandonment meant speaking roughly to one’s wife, but did not mean the abandonment of sexual relations.<sup>480</sup> Al-Māwardī and Ibn al-Jawzī stipulated that harsh speech was to be restricted to the marital bed.<sup>481</sup> They did not specify whether husbands were to use crude speech with their wives while they were avoiding sexual relations with them in bed, or they were to use rough speech while having sex with their wives. Al-Qurṭubī described the nature of speech to be used by husbands in this interpretation as, “ugly words, meaning

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<sup>480</sup> ‘Abd al-Razzāq al-Ṣan‘ānī reports from Ibn ‘Abbās, “*yahjuruhā bi-lisānihi, wa yughliḏ la-hā bi l-qawl, wa lā yada‘u jimā‘ahā*”. Also reports from ‘Ikrima, “*inna-mā l-hijrān bi l-manṭiq, an yughliḏa la-hā wa laysa bi l-jimā*”. ‘Abd al-Razzāq al-Ṣan‘ānī, *Tafsīr al-Qur‘ān*, v. 1, pp. 157-158. Ibn Abī Ḥātim al-Rāzī cited this saying from ‘Ikrima as well. Ibn Abī Ḥātim, *Tafsīr al-Qur‘ān*, v. 3, pp. 939-944.

<sup>481</sup> Al-Māwardī offered several possibilities for abandonment. One of them was coarse speech. He wrote, “*wa-qūlū lahunna fī l-maḍāji‘ hujran, wa huwa al-ighlāz fī l-qawl*”. Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483. Ibn al-Jawzī also offered several meanings, one of which was coarse speech. He wrote, “*annahū qawl al-hujri min al-kalām fī l-maḍāji*”, presumably during sex. also “*qūlū lahunna fī l-maḍāji‘ hujran min al-qawl*”. Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78.

rough/coarse speech”.<sup>482</sup> Al-Ḥaddād described the appropriate speech as obscene/vile (*al-kalām al-fāḥish*).<sup>483</sup>

As Bauer mentions, ‘Abd al-Razzāq al-Ṣan‘ānī had a particularly interesting interpretation of *wa-hjurūhunna fī l-maḍāji’*. Essentially, he interpreted it as the opposite of its plain-sense meaning. Instead of abandoning wives in bed, he interpreted *wa-hjurūhunna fī l-maḍāji’* to mean that a husband should call his wife to bed. Bauer noted that on the authority of Muḥammad b. al-Sa‘īd al-Kalbī (d. 146/763), ‘Abd al-Razzāq al-Ṣan‘ānī disagreed with the interpretation of abandonment as harsh speech. He wrote,

Al-Kalbī says, the *hajr* in the beds does not mean to speak roughly to wives (*yaqūl la-hā hujran*). It is ordering them to come back, and return to their beds...<sup>484</sup>

Bauer argues that al-Kalbī’s and ‘Abd al-Razzāq al-Ṣan‘ānī’s interpretation of *wa-hjurūhunna* was not based on any proof texts. She writes,

This is the most arbitrary of all of the early exegeses, since it does not adequately explain how a word with the apparent meaning of “avoid” or even “speak roughly” could mean “order to return.” Rather than

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<sup>482</sup> Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

<sup>483</sup> Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251.

<sup>484</sup> Bauer’s interpretation of ‘Abd al-Razzāq. Bauer, *Room for Interpretation*, p. 164. ‘Abd al-Razzāq al-Ṣan‘ānī, *Tafsīr al-Qur’ān*, v. 1, pp. 157-158. He wrote, al-Kalbī says, “*laysa l-hajr fī l-maḍāji’i an yaqūla la-hā: hujran, wa l-hajr an ya’muruhā an tafī’ wa tarji’ ilā maḍāji’ihā*”.

taking into account the words of the Qur’ān, it seems that this interpretation takes into account only the exegete’s *desired* interpretation. In other words, in this interpretation al-Kalbī says what he thinks the verse means, without providing proof for it.<sup>485</sup>

Al-Kalbī and ‘Abd al-Razzāq al-Ṣan‘ānī’s interpretation of *wa-hjurūhunna fī l-maḍāji’* as the opposite of its plain-sense meaning, based on desired interpretation, is important because it indicates the flexibility of hermeneutic options available to exegetes in their exegesis of Q. 4:34. Although al-Kalbī and ‘Abd al-Razzāq al-Ṣan‘ānī’s interpretations did not gain currency after them, they were also not actively discredited by later exegetes. This allows for a range of viable hermeneutic options, even when an interpretation may be the opposite of the plain-sense meaning of a text.<sup>486</sup>

### 3.3.5. Tying One’s Wife in Bed

Marin, Mahmoud and Bauer mention a final interpretation that was offered in the pre-modern exegetical tradition by al-Ṭabarī.<sup>487</sup> Bauer discusses this

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<sup>485</sup> Bauer, *Room for Interpretation*, p. 164.

<sup>486</sup> This is especially interesting given Ahmed Ali’s translation of “*wa ḍribūhunna*” in Q. 4:34 to mean “and have sex with them”. More recently Laleh Bakhtiar translated “*wa ḍribūhunna*” to mean “to walk away from them”. In both instances, they have come under criticism that they are interpreting the prescription of “*wa ḍribūhunna*” to mean something other than its plain sense meaning for their desired interpretation. Exegetes such as al-Kalbī and ‘Abd al-Razzāq al-Ṣan‘ānī show that there is historical precedent for such an approach in Qur’anic exegesis.

<sup>487</sup> Marin, “Disciplining Wives”, p. 24, Mahmoud, “To Beat or Not to Beat”, p. 544, and Bauer, *Room for Interpretation*, pp. 165-169, and pp. 171-179.



interpretation and the surrounding debates extensively in her dissertation in order to illustrate that ability of pre-modern exegetes to forge new interpretations, without precedent.<sup>488</sup> This interpretive possibility is worth brief mention here, as it is relevant to the discussion at hand. As Bauer points out, al-Ṭabarī considered the above mentioned interpretations but rejected them in favor of an interpretation wherein husbands were commanded to tie their wives to their beds with ropes. He wrote,

The likeliest interpretation concerning His words *wa-hjurūhunna*, and that which comes closest to its intention is securing with the *hijār*, according to [the sources] we have mentioned in which the Arabs say about the camel, when its owner has tied it up as we have described, that it has been “tethered”... When this [is taken as] the meaning, then the interpretation of the verse is: those from whom you fear *nushūz*, admonish them concerning their rising up against you. And if they accede to the admonition, then you have no way against them. If they refuse to repent of their disobedience, then imprison them, tying them to their beds, meaning in their rooms, or houses, in which they sleep, and in which their husbands lie with them.<sup>489</sup>

As Bauer explains, al-Ṭabarī justified his reasoning for preferring this interpretation as a result of the paradox mentioned above, wherein a wife’s

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<sup>488</sup> Bauer, *Room for Interpretation*, p. 165-169, and then p. 171-179.

<sup>489</sup> Bauer’s translation, p. 167. She mentions that she translated “*istawthaq min*” – as to imprison, according to Dozy. Bauer, *Room for Interpretation*, fn. 359. Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72. I replaced “ostracized” with “tethered” in the translation, since al-Ṭabarī is arguing not that people “ostracize” camels, but that the verb in question can refer to “tethering” rather than to ostracism.

sexual refusal to her husband constitutes *nushūz*, yet punishing her by sexual refusal appears to give her exactly what she desires. Al-Ṭabarī argued against the interpretations of abandonment in speech as similarly ineffective, since a wife who hates her husband would only be happy if her husband did not speak to her.<sup>490</sup> Since this ruled out sexual and verbal abandonment, al-Ṭabarī argued that *wa-hjurūhunna fī l-maḍāji'* could only mean that husbands were to tie their wives in bed with ropes. To support this point, Bauer explains that he cited a prophetic tradition, wherein Muḥammad responded to the question of the rights of wives over their husbands by saying,

That he feeds her, clothes her, does not hit her face,  
does not insult her, and does not ostracize her  
except in the house (*lā tahjuru illā fī 'l-bayt*)...<sup>491</sup>

In this narration, Muḥammad's command to "ostracize" or "abandon" wives only in their homes meant that wives could only be tied to their beds in their own homes and not elsewhere.

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<sup>490</sup> Bauer, *Room for Interpretation*, fn. 360, p. 167.

<sup>491</sup> Bauer's translation. *Ibid.*, p. 168. Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72. He also cited another variation of this *ḥadīth*. The full quotation from Bauer's translation is as follows: On the authority of Ḥakīm b. Mu'āwiya, on the authority of his father, [who said that] he came to the Prophet, and said, "What is one of our wives' rights over us?" The Prophet responded, "That he feeds her, clothes her, does not hit her face, does not insult her, and does not **ostracize** her except in the house (*lā tahjuru illā fī al-bayt*)...Bahz b. Ḥakīm narrated, on the authority of his grandfather, that he said to the Messenger of God, "O Messenger of God, what can we take from our wives, and what do we give [to them]? He said, "[your wives are] your tilth, so go to your tilth when you will [Q2:223], but do not hit their faces, nor insult them, nor **ostracize** them except in the house. And feed them when you eat, clothe them as you clothe yourself [and] in the same manner [as you clothe yourselves]."

Bauer explains that al-Ṭabarī sought to provide precedent to his preferred interpretation by attributing it to al-Daḥḥāk and ‘Alī b. Abī Ṭalḥā (d. 133/750). However, Bauer argues that it is likely that the interpretation that al-Ṭabarī imputes to al-Daḥḥāk and ‘Alī b. Abī Ṭalḥā were not actually part of their original works.<sup>492</sup> Al-Ṭabarī’s interpretation was also unpopular with exegetes who followed him. Marin and Bauer show that exegetes such as Abū Bakr Ibn al-‘Arabī took great pains to discredit this interpretation.<sup>493</sup> According to Bauer, the fact that later exegetes rejected al-Ṭabarī’s interpretation illustrates the “limits on interpretation” for pre-modern exegetes.<sup>494</sup> If Bauer’s conclusions about the genre of *tafsīr* are applied to al-Ṭabarī’s example, then al-Ṭabarī’s preferred interpretation also demonstrates the ability of pre-modern exegetes to forge new interpretations (as seen in the example of al-Ṭabarī’s preferred interpretation) and also their willingness to reject previous interpretations (as

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<sup>492</sup> Ibid., pp. 172-173. Bauer writes “I believe that the transformation of “bed” into “lie with” was one made by al-Ṭabarī, and was not intrinsic to those authorities. The first clue that this phrase may not be original to the exegeses of al-Daḥḥāk and ‘Alī ibn Abī Ṭalḥā lies in the fact that this unusual wording is shared between the two works, and they are reconstructed directly from al-Ṭabarī’s work. The compilers of the al-Daḥḥāk reconstruction, who cite al-Ṭabarī, have copied this wording verbatim from his *tafsīr*.” p. 173. Azizah al-Hibri and Raja’ M. El Habti also translate Abū Bakr Ibn al-‘Arabī’s passage in refutation of al-Ṭabarī’s interpretation of “*wa’ḥjurūhunna fī l-maḍāji*” as “tying one’s wife in bed”. See, *Sex, Marriage and Family in World Religions*, Ed. Don S. Browning, M. Christian Green and John Witt, Jr., (New York: Columbia University Press, 2006) pp. 196-196.

<sup>493</sup> Marin, “Disciplining Wives”, p 24 and Bauer, *Room for Interpretation*, p. 165.

<sup>494</sup> Bauer, *Room for Interpretation*, p. 165.

seen in the rejection of al-Ṭabarī's preferred interpretation), no matter how great the authority. Pre-modern exegetes were selective in what interpretations they accepted or rejected from their predecessors. In this light, their interpretive choice to uphold the tradition of exegetical commentary or deviate from it reflected independent legal exegetical reasoning. Although the discussion surrounding *wa'hjurūhunna fī l-maḍāji'* was lexically based, it was carried out in the service of legal stipulations outlining the procedure of how exactly husbands were to carry out the divine imperative of *wa'hjurūhunna fī l-maḍāji'*.

#### **3.4. “Hit them” (*wa-ḍribūhunna*): Qualifying the Unqualified**

The third prescription in Q. 4:34 for husbands attempting to rectify the behavior of wives who committed *nushūz* is “hit them” (*wa-ḍribūhunna*). **This command is offered in the imperative form of *d-r-b*, and was unanimously understood to mean “to hit”, “to strike” or “to beat” in the pre-modern exegetical and juridical traditions.**<sup>495</sup> The command for husbands to hit wives from whom they feared *nushūz* was unqualified in the text of Q. 4:34. The most widespread approach exegetes adopted with regard to the unqualified prescription in Q. 4:34 was to

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<sup>495</sup> In the contemporary period, there has been a move to interpret “*wa-ḍribūhunna*” to mean something other than its more violent connotations. See Ahmed Ali, *Al-Qur'an: A Contemporary Translation* (Princeton: Princeton University Press, 2004) and Laleh Bakhtiar, *The Sublime Quran* (Chicago: Kazi Publications, 2007). For more discussion of contemporary interpretations of *wa-ḍribūhunna*, see, Chaudhry, “The Problems of Conscience and Hermeneutics: A Few Contemporary Approaches” in *Comparative Islamic Studies*, pp. 157-170.

qualify it. None of the exegetes considered in this study left the prescription for the physical discipline of wives unqualified. The difference in the exegetical approaches to wife-beating lay in how exegetes qualified this prescription, rather than in various lexical interpretations of this command. Some exegetes qualified it minimally by saying that the beating should not be extreme. Others added it should not break bones or cause wounds. The weapon used to physically discipline a wife came under discussion. Were husbands permitted to punch or kick their wives? Should they hit them with whips and rods, or should they limit themselves to using a folded handkerchief? Exegetes deliberated about whether it was preferable for a husband to refrain from hitting his wife when confronted with wifely *nushūz*. They also sought to restrict or expand husbands' disciplinary power over wives by stipulating whether the three prescriptions in Q. 4:34 - admonishment, abandonment and hitting - were to be followed simultaneously or sequentially. Finally, exegetes considered the liability of husbands if their beating lead to death or serious injury of their wives.

### 3.4.1. The Etiquette of Hitting Wives

#### 3.4.1.1. Non-Extreme (*Ghayr Mubbariḥ*) Hitting

The most common qualifier exegetes used to restrict the command to hit wives in Q. 4:34 was *ghayr mubbariḥ*.<sup>496</sup> Marin translates this as “non-violent hitting”, but Bauer mentions that hitting is intrinsically violent”.<sup>497</sup> Bauer prefers the translation of *ghayr mubbariḥ* as “without causing severe pain” based on Kazimirsky’s translation of *mubbariḥ* as “very harsh, very painful, causing intense pain”.<sup>498</sup> For the sake of convenience, *ghayr mubbariḥ* is translated here as “non-extreme”. The source of this ubiquitous qualification was a report wherein Muḥammad advised men regarding their rights with respect to women.

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<sup>496</sup> Exegetes who used this qualifier include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, ‘Abd al-Razzāq al-Ṣan‘ānī, *Tafsīr al-Qur’ān*, v. 1, pp. 157-158, al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Zajjāj, *Ma‘ānī al-Qur’ān*, v. 2, pp. 48-49, al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Naḥḥās, *Ma‘ānī*, v. 2, pp. 77-79, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352, al-Tha‘alibī, *al-Kashf*, v. 3, pp. 302-303, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma‘ālim al-tanzīl*, v. 5, pp. 422-428, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, ‘Izz al-Dīn al-Sulamī, *Ikhtisār al-Nukat*, v. 1, p. 320-322, al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Juzayy, *al-Tashīl*, v.1, p. 251-253, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Tha‘alibī, *Jawāhir*, v. 2, pp. 229-231, al-Maḥallī and al-Suyūṭī, *al-Qur’ān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su‘ūd, *Tafsīr Abī al-Su‘ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>497</sup> Marin, “Disciplining Wives”, p. 22 and Bauer, *Room for Interpretation*, p. 111, fn 230.

<sup>498</sup> Bauer, *Room for Interpretation*, p. 111, fn 230, Kazimirsky: “très sensible, très-pénible, qui cause une douleur violente”. Bauer writes further, “*Mubbariḥ*, the term that I have translated as “causing severe pain,” is actually of unknown meaning: all content ascribed to it seems to come from exegesis and *ḥadīths*”. Bauer, *Room for Interpretation*, p. 114.

Some exegetes attributed this report to Muḥammad’s *ḥajj* sermon, while others cited it without reference to the Ḥajj sermon. These reports formed an important part of the exegesis of Q. 4:34 because they identified a particular definition of *nushūz* that distinguished adultery from *nushūz* and also qualified hitting as “non-extreme”. The standard relevant portion of this sermon, along with al-Qurṭubī’s commentary, reads:

“Fear God concerning women, you take them as a trust from God and make their private parts permissible for you with the word of God. Your rights over them are that they not give your beds to anyone whom you dislike. If they do this, hit them in a *ghayr mubarrīḥ* manner. [Qurṭubī comments,]... Meaning that [wives are] not to permit anyone you dislike from among relatives and foreign women into your homes (*manāzilakum*).<sup>499</sup>

Al-Qurṭubī cited another variation of this *ḥadīth* that elaborated on the transgressions a wife might commit to deserve physical chastisement from her husband. Al-Qurṭubī also commented on the question of whether adultery (*zinā*) qualified as wifely *nushūz*. In this report, wives were to be physically chastised if they committed openly lewdness (*fāḥishatin mubayyinah*) in addition to their allowing those whom their husbands disliked into their bed and/

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<sup>499</sup> *Ḥadīth* is from *Ṣaḥīḥ Muslim*, and does not refer to the Ḥajj sermon directly. Cited by al-Qurṭubī, *al-Jāmiʿ*, v. 5, pp. 161-167.

or homes. The *ḥadīth* went on to stipulate abandonment in bed, along with physical chastisement, as a result of a wife’s openly lewd behavior. It reads,

“If they [commit openly lewd behavior], then abandon them in the beds and hit them in a *ghayr mubarrīḥ* manner. If they obey you (*aṭa’nakum*) do not find a means against them. You have rights over your wives and your wives have rights over you. Your rights over your wives are that they not give your bed to anyone whom you dislike, and they not permit anyone into your homes that you dislike. And their rights over you are that you are good (*tuḥsinū*) to them in clothing (*kiswathinna*) and feeding them (*ṭa’āmihinna*)”.<sup>500</sup> [Al-Qurṭubī comments:] What is meant by openly lewd behavior (*fāḥishatin mubayyinah*) is that [wives] not let those whom their husbands dislike and are angered by enter [their homes]. What is not meant by openly lewd behavior is adultery (*zinā*), since that is forbidden (*ḥarām*) and it necessitates the *ḥadd* penalty.<sup>501</sup>

This version of the *ḥadīth* parallels Q. 4:34 more closely than the previous narration. In the context of paraphrasing the Qur’anic text, the insertion of “non-extreme” to qualify hitting is significant. This *ḥadīth* provided exegetes with a qualification for hitting – namely, that it be non-extreme - that became so

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<sup>500</sup> This *ḥadīth* can be found in the collection of al-Tirmidhī, cited by al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

<sup>501</sup> Some version of the above mentioned reports were included by exegetes such as Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-189, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603. Also, some versions of this *ḥadīth* mention the “wives are captives (*‘awān*) of their husbands”. Al-Khāzin clarified this point by stating, “This means that a woman enters under her husband’s command as a prisoner (*bi l-asīr*)”. He also said that hitting a non-extreme (*ghayr mubarrīḥ*) manner meant hitting them in a manner that was “not intense or hard (*al-shadīd* and *al-shāqq*)”.



widespread in the exegetical tradition that hitting was never mentioned without some sort of qualification. Nonetheless, while exegetes considered the qualification of “non-extreme” in this *ḥadīth* to apply across the board to husbands who physically disciplined their wives, they did not consider the specification of wifely *nushūz* in this *ḥadīth* to apply to their discussions of *nushūz*. That is to say that exegetes conceded that when husbands hit their wives, they should do so in a non-extreme manner. However, most exegetes preferred to define *nushūz* more broadly as the disobedience of wives to their husbands, and did not limit this definition to wives who were openly lewd or allowed disliked persons into their homes.

Abū Bakr Ibn al-‘Arabī’s citation of this *ḥadīth* carried some important distinctions. He made the rights of wives over their husbands conditional on their behavior. If wives were openly lewd, then they were to be abandoned and hit in a non-extreme manner. If wives did not commit open lewdness, then they were to be provided for in an appropriate fashion (*bi l-ma‘rūf*). While the rights of husbands were absolute in this narration, the rights of wives were conditional on their good behavior. Abū Bakr Ibn al-‘Arabī agreed with al-Qurṭubī that

openly lewd behavior was not adultery, but rather that it was bawdy (*al-badhā*) behavior.<sup>502</sup>

### 3.4.1.2. Hitting Without Leaving an Impression

Some exegetes qualified the physical discipline of wives as non-extreme (*ghayr mubarrīh*) without further explanation. Other exegetes delved into the meanings of ‘non-extreme’ further. Among these exegetes, some described non-extreme hitting as hitting that did not leave any marks/impressions causing disfiguration (*ghayr shā’in* or *ghayr mu’aththir*).<sup>503</sup> Ibn Abī Ḥātim al-Rāzī reported from al-Ḥasan that non-extreme hitting was hitting that did not leave an impression (*ghayr mu’aththir*). Al-Jaṣṣāṣ mentioned a report from Qaṭādah (d. 117/735)

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<sup>502</sup> Abū Bakr Ibn ‘Arabī’s version of this *ḥadīth* reads: “O people, you have rights over your wives and they have rights over you. Your rights over them are that they not give your bed to those whom you dislike and that they not engage in openly lewd behavior (*fāḥishatin mubayyinah*). If they do this, then God has ordered you to abandon them in the beds and hit them in a non-extreme (*ghayr mubarrīh*) manner. If they stop [their open lewdness], then [their rights are that] you provide for them and clothe them in an appropriate fashion (*bi l-ma’rūf*).” Abū Bakr Ibn al-‘Arabī explained that “this narration suggests that there is no maintenance (*nafaqah*) or clothing (*kiswah*) for a wife who commits *nushūz*. Also lewdness (*fāḥishah*) is obscene/bawdy (*al-badhā*) behavior, [and this is] not adultery (*zinā*), as the ‘*ulamā* have said”. Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500. Al-Tha’alibī cited did this same narration and attributed it to Abū Bakr Ibn ‘Arabī, and made the same legal point about maintenance (*nafaqah*). Al-Tha’alibī, *Jawāhir*, v. 2, pp. 229-231.

<sup>503</sup> Exegetes who used *ghayr shā’in* as an interpretation of *ghayr mubarrīh* included Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, al-Dīnawarī, *Al-Wāḍiḥ*, v. 1, pp. 150-151, al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, Ibn Abī Zamanīn, *Tafsīr al-Qur’ān*, v.1, pp. 366-368, al-Tha’alibī, *al-Kashf*, v. 3, pp. 302-303, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Tha’alibī, *Jawāhir*, v. 2, pp. 229-231, Abū al-Su’ūd, *Tafsīr Abī al-Su’ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

that the hitting should not disfigure (*ghayr shā'in*). He then mentioned a *ḥadīth* wherein Muḥammad said

A woman is like a rib (*ḍil'*). If you try to straighten her she will break, but leave her (as she is) and you can enjoy (*tastamti'*) her.<sup>504</sup>

This report de-emphasized the role of husbands in physically disciplining their wives, but also emphasized their right to the sexual enjoyment of wives. It insinuated that as long as wives provided for their husbands sexually, husbands should not be overly concerned with disciplining them in other matters. Al-Tha'labī described the hitting of wives in a manner similar to al-Jaṣṣāṣ but used a different *ḥadīth*, which gave his interpretation a decidedly different feel. He wrote that the beating should be non-extreme (*ghayr mubarrīḥ*) and should not disfigure (*wa-lā shā'in*). He then mentioned two *aḥādīth*; in the first, Muḥammad was reported to have said, “Hang the whip where your wives can see it”.<sup>505</sup> The second report is the one encountered above, wherein Asmā' bt. Abī Bakr narrated that her husband al-Zubayr used to beat her until he broke his rod/rack (*'ūd al-mishjab*).<sup>506</sup> By presenting this report as unproblematic, al-

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<sup>504</sup> Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, v. 1, p. 376 and v. 2, pp. 188-9.

<sup>505</sup> “*'alliq l-sawṭ ḥaythu yarāhu ahl l-bayt'*. Al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497 and Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253.

<sup>506</sup> Al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303.

Tha'labī implied that al-Zubayr's hitting of Asmā' was appropriate and qualified as non-extreme hitting.

The examples of al-Jaṣṣāṣ and al-Tha'labī show that the *aḥadīth* that exegetes selected relating to the physical discipline of wives illustrated their individual approach to the prescription in Q. 4:34. Al-Jaṣṣāṣ seemed more interested in advising husbands to avoid disciplining their wives too much, given their fragile nature, as long as they satisfied their husbands' sexual needs. Al-Tha'labī qualified the prescription of hitting wives in Q. 4:34 in the exact same way as al-Jaṣṣāṣ - non-extreme and without leaving an impression - but he saw wives as capable of handling a rather severe beating, as illustrated through his selection of reports that involved hitting, or threatening to hit, wives with whips and rods.

#### **3.4.1.3. Breaking Bones and Causing Wounds**

Some exegetes specified additional negative criteria for husbands who found themselves in a situation in which they needed to hit their wives for disciplinary reasons. In addition to arguing that husbands should hit their wives in a non-extreme manner that did not leave impressions, some exegetes also mentioned

that the hitting should not result in broken bones or wounds.<sup>507</sup> Al-Zamakhsharī wrote,

It is obligatory (*yajib*) that the hitting be non-extreme (*ghayr mubarrih*). It should not wound (*yajraḥuhā*) [the wife], and not break her bones. It should also avoid the face. It is related from the Prophet of God [that he said], “Hang the whip where your household<sup>508</sup> can see it”. And it is related from Asmā’ bt. Abī Bakr al-Ṣiddīq, may God be pleased with him, “I was the fourth of the four wives of al-Zubayr b. al-‘Awwām. When he got angry with one of us, he would hit her with a rack/rod until he broke it on her”.<sup>509</sup>

When read without the *ḥadīth* references, it could be argued that al-Zamakhsharī advocated husbands to be cautious when beating their wives, taking care to avoid the face as well as broken bones and wounds. However, in light of his selection of *aḥādīth*, it is arguable that al-Zamakhsharī understood the prescription of beating wives - even with the qualification of non-extreme - to

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<sup>507</sup> Exegetes who stipulated that hitting should not result in broken bones or wounds included al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Tha’ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>508</sup> I translate “*ahl*” here as household because translating it as wives alone did not seem to capture the spirit of the report. Since it was acceptable in the *ḥadīth* literature for men to hit their wives, children and slaves, it seemed appropriate to translate “*ahl*” as “household”, which includes all three categories. Marin prefers the translation of “wife” here. Marin, “Disciplining Wives”, p. 23.

<sup>509</sup> Al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497.

involve fairly intense beating. For him, beating in a manner that was just short of breaking bones and causing wounds appears, therefore, acceptable.

Some exegetes emphasized the disciplinary role of beating wives while qualifying the extent of hitting permissible. Ibn ‘Aṭīyyah hinted at the purpose as well as the limits of beating when he wrote,

The hitting in this verse is hitting for disciplinary purposes (*ḍarb l-adab*). It is the type of hitting that does not break bones or disfigure a limb (*yashīn jāriḥah*).<sup>510</sup>

Al-Qurṭubī also argued that the purpose of hitting was disciplinary (*ḍarb l-adab*), but he explained the nature of hitting further. He wrote that

The hitting [prescribed] in this verse is disciplinary hitting (*ḍarb l-adab*) [and it is meant to be] non-extreme (*ghayr mubarrīḥ*). This is the type of hitting that does not break bones and does disfigure a limb, like punching/kicking (*lakzah*) and similar things. What is desired [from the hitting] is rectification (*iṣlāḥ*) [of wifely *nushūz*] and nothing else. Hence, if the hitting unexpectedly leads to the death [of the wife], the husband is liable. This is similar to the case of an educator (*al-mu’addib*) disciplining a boy while teaching him the Qur’ān and literature (*al-adab*).<sup>511</sup>

The discussion of the teacher-student relationship as legally analogous to the husband-wife relationship was a prominent feature of Mālikī legal discussions

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<sup>510</sup> Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>511</sup> Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

on the question of liability. However, this analogy did not make a significant appearance in exegetical discussions.<sup>512</sup>

#### 3.4.1.4. Avoiding the Face

A final qualifier offered to husbands when they hit their wives was that they should avoid hitting their wives on the face.<sup>513</sup> Al-Baghawī cited Muḥammad as saying,

The right of a woman is that you feed her as you feed yourself, and clothe her as you clothe yourself. Do not hit her face, do not revile her, and do not abandon her except in the house.<sup>514</sup>

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<sup>512</sup> Also, al-Ḥaddād, a Ḥanafī, compared a husband's hitting his wife to a man's hitting a child. Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251. Al-Qurṭubī also mentioned a *ḥadīth* in his exegesis where "It is related from 'Umar that he used to beat his wife and he was rebuked/ censured for this practice (*fa'udhila fī dhālika*). So he said (by way of justification), I heard Prophet Muḥammad say, "A man is not to be asked why he beat his wife (*lā yus'alu l-rajul fī-mā qaraba ahlahu*)." Al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167.

<sup>513</sup> Exegetes who suggested that husbands ought to avoid their wives' faces while hitting them included al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, al-Biqā'ī, *Naẓm al-durar*, v. 5, pp. 269-272, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su'ūd, *Tafsīr Abī al-Su'ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.

<sup>514</sup> Al-Baghawī, *Ma'ālim al-tanzīl*, v. 5, pp. 422-428. Al-Māwardī cited a similar report, except he emphasized the preferred status of husbands over wives as well as the right for husbands to have sexual access to their wives. Al-Māwardī's narration tied husbands' sexual access and disciplinary rights to each other. His citation read, "[Your wife is] your tilth, so come to your tilth as you wish, except do not hit her in the face and do not revile her except in the house. Feed her as you eat, clothe her as you clothe yourselves and indeed some of you have been preferred over others." Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483.

By citing this report, al-Baghawī did not question the right of husbands to physically discipline their wives, but he did emphasize the rights of wives over their husbands, as well as the limitations on a husband who hits his wife. Al-Biqā'ī offered an explanation for why husbands were to avoid hitting their wives' faces. He wrote,

Hit them (*wa-ḍribūhunna*) means that if [wives] persist (*aṣrarna*) [in their *nushūz*] then [husbands are to] hit them for disciplinary purposes (*ḍarb al-ta'dīb*) in a non-extreme manner. This is [hitting that] does not break bones or wound limbs. It [also] shifts [location] on the body and does not repeatedly [strike] one spot. [Furthermore, this hitting] avoids the face because [the face] is the place where beautiful features are gathered (*majma'a l-maḥāsin*), and it should be fewer than forty [strikes].<sup>515</sup>

For al-Biqā'ī, avoiding hitting a wife's face was not out of concern for her well-being; it would be difficult to make such an argument since he was comfortable with a husband striking his wife up to forty times. Rather, the concern was connected to the face as a symbol. The symbolism of hitting someone on the face, which was seen as the place for the convergence of beauty, was a sort of affront to God who had created this beauty.

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<sup>515</sup> Al-Biqā'ī, *Naẓm al-durar*, v. 5, pp. 269-272.



### 3.4.2. Tools of Discipline

A few exegetes delved into the question of what instruments a husband could or could not use when physically disciplining his wife. The most commonly suggested weapon was a toothbrush (*siwāk*).<sup>516</sup> The mention of the toothbrush arose in a commonly cited *ḥadīth* in which Muḥammad is reported to have said,

“Hit women in a non-extreme manner when they disobey you in what is appropriate (*ma'rūf*).” ‘Aṭā’ said, “I asked Ibn ‘Abbās, ‘What is hitting in a non-extreme manner (*al-ḍarb ghayr mubarrīḥ*)?’ He replied, ‘With a toothbrush (*siwāk*) or something similar.’”<sup>517</sup>

Exegetes cited either a part of this report or its entirety to support using a toothbrush when physically disciplining one’s wife. Al-Farrā’ (d. 207/822) was

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<sup>516</sup> Exegetes who offered the toothbrush as a tool for disciplinary punishment included al-Farrā’, *Ma’ānī al-Qur’ān*, v. 1, pp. 264-266, al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, al-Baghawī, *Ma’ālim al-tanzīl*, v. 5, pp. 422-428, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Tha’ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157. Wensinck describes *miswāk* as, “A term denoting the toothbrush as well as the tooth-pick. The more usual word is *siwāk* (plural *suwuk*) which denotes also the act of cleansing the teeth. Neither of the two terms occurs in the Qur’ān. In *Ḥadīth*, *miswāk* is not used, *siwāk*, on the other hand, frequently. In order to understand its use, it is necessary to know that the instrument consists of a piece of smooth wood, the end of which is incised so as to make it similar to a brush to some extent. The piece of wood used as a tooth-pick must have been smaller and thinner, as appears e.g. from the tradition in which it is related that Muḥammad one day received a visitor and kept the tooth-pick “at the end of his tongue”. For more discussion on *miswāk*, see, Wensinck, “Miswāk.” *Encyclopaedia of Islam, Second Edition*. Mahmoud also translates *siwāk* as “toothpick”. See Mahmoud, “To Beat or Not to Beat”, p. 545. In the context of hitting one’s wife though, “toothbrush” is more accurate.

<sup>517</sup> This particular version of the report is cited by al-Qurṭubī. Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167. Al-Ṭabarī also cited a version of this *ḥadīth*, but instead of the beginning statement by Muḥammad, in his version ‘Aṭā’ asked his question in response to Muḥammad’s *ḥajj* sermon where he mentioned *ghayr mubarrīḥ* hitting. Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72.

the only exegete who offered a completely different report, wherein Muḥammad was purported to have said, “I have been commanded [to hit] with a toothbrush (*miswāk*) when I fear trouble [from my wives].” This report was strange because Muḥammad is commonly reported not to have hit his wives. At any rate, several exegetes took up the report from ‘Aṭā regarding Ibn ‘Abbās’ interpretation of non-extreme hitting as hitting with a toothbrush. Ibn ‘Aṭīyah and al-Tha‘ālibī reported the above mentioned narration, except that they reported that when ‘Aṭā’ asked Ibn ‘Abbās what the meaning of non-extreme hitting was, Ibn ‘Abbās responded that it was hitting with a shoelace (*shirāk*), as opposed to a toothbrush (*siwāk*).<sup>518</sup> Al-Ḥaddād was alone in offering the sandal (*na‘l*) as the appropriate tool for physically disciplining wives.<sup>519</sup>

Fakhr al-Dīn al-Rāzī and al-Khāzin al-Baghdādī suggested that a folded handkerchief or a headscarf (*mandīl*) as well as the hand were suitable tools for

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<sup>518</sup> Exegetes who mentioned a *shirāk* as a tool of physical discipline included Ibn ‘Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48 and al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231. This was a variant reading of the same *ḥadīth*. As Everett Rowson pointed out, *siwāk* and *shirāk* appear almost identical when written without dots and diacritics, so it would have been difficult to confirm what a given author had actually written. Marin also mentions that according to Sufyan b. ‘Uyayna (d. 196/811) that the hitting was meant to be carried out with a *siwāk*. Marin, “Disciplining Wives”, p. 22.

<sup>519</sup> Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251.

hitting a wife.<sup>520</sup> It is not clear if they meant slapping or punching when they referred to the hand. As mentioned above, al-Ḥaddād specified that a husband should hit his wife a sandal or slap her two or three times.<sup>521</sup> Fakhr al-Dīn al-Rāzī specified that it was impermissible for husbands to hit their wives with a whip or a rod.<sup>522</sup> In contrast, al-Khāzin al-Baghdādī offered one opinion in which husbands were advised not to exceed ten lashes (*‘asharat aswāṭ*) when hitting their wives. Al-Khāzin al-Baghdādī also mentioned the opinion that husbands should not use the whip when hitting wives.<sup>523</sup> While none of the exegetes explicitly promoted the rod or clothes rack as a choice weapon for disciplining wives, they did not always object to al-Zubayr’s use of a rod or clothes rack (*‘ūd al-mishjab*) on his wives. Also, al-Qushayrī (d. 464/1072) implicitly acknowledged the potentially legitimate use of a rod (*‘aṣā*) in the physical chastisement of wives. He wrote,

*And those from whom you fear nushūz, admonish them, leave them in the beds, and beat them i.e., increase the punishment gently, by degrees, and if*

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<sup>520</sup> Fakhr al-Dīn al-Rāzī and al-Khāzin. Both wrote, “*yanbaghī an yakūna al-ḍarb bi-mandīl malfūf aw bi-yadihi.*” Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73 and al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

<sup>521</sup> Al-Ḥaddād wrote, “*fa l-awlā an yaḍribahā bi l-na’l wa l-laṭm ḍarbatayn aw thalāthan.*” Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251.

<sup>522</sup> Fakhr al-Dīn al-Rāzī, “*...wa-lā yaḍribhā bi l-siyāṭ wa-lā bi l-‘aṣā...*”. Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

<sup>523</sup> Al-Khāzin wrote, “*...wa-lā yablughu bi l-ḍarb ‘asharat aswāṭ...*”. Also offered the differing opinion, “*...wa-lā yaḍrib bi l-sawṭ wa l-‘aṣā...*”. Al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

the matter is fixed after the admonishment, then do not use the stick (*'aṣā*) to hit.<sup>524</sup>

Although al-Qushayrī mentioned the use of the rod negatively, he did not object to the use of the stick/rod as an appropriate tool for disciplining wives. Rather, he objected to the use of the rod as the first course of action for disciplining a wife.

### 3.4.3. Limits of Physical Chastisement

Pre-modern exegetes discussed the desired end of physical discipline along with contexts in which hitting was (im)permissible. Husbands were not permitted to hit their wives gratuitously and without cause. As seen earlier, some exegetes emphasized that hitting needed to serve a disciplinary purpose for a wife's moral rectification. Al-Māwardī wrote,

It is permitted for [a husband] to hit [his wife] for disciplinary purposes (*ta'dīb*) in order to prevent (*yazjurhā*) her from *nushūz*. The hitting should not be in an extreme or severe manner (*wa-lā munhik*).<sup>525</sup>

While it was clear that husbands were permitted to hit their wives for disciplinary purposes, the question arose as to the duration of the permitted beating. Some

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<sup>524</sup> Bauer's translation. Bauer, *Room for Interpretation*, p. 158. Al-Qushayrī, *Laṭā'if*, v. 2 pg. 330. Al-Qushayrī's quote above is verbatim the same al-'Ayyāshī's before him. See, al-'Ayyāshī, *Tafsīr*, v. 1, pp. 330 and 395.

<sup>525</sup> Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483.

exegetes argued that husbands were permitted to hit their wives until they were willing to have sex with them.<sup>526</sup> Al-Ṭabarī related from Ibn ‘Abbās that

{*wa-hjurūhunna fī l-maḍājī’i wa-ḍribūhunna*} [Ibn ‘Abbās] said do this, and hit [the wife] until she returns to [her husband’s] obedience in bed. When she obeys him in bed, he is not to find excuses against her when she sleeps with him.<sup>527</sup>

Al-Ṭabarī argued further that husbands were not authorized to discipline their wives unless they disobeyed them. He emphasized the importance of admonishing one’s wife before hitting her. Once husbands admonished their wives and wives disobeyed their husbands’ command, then husbands were permitted to hit their wives.<sup>528</sup> Similarly, Ibn Abī Ḥātim al-Rāzī wrote that “God has forbidden [husbands to hit their wives] when [wives] are obedient [to their

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<sup>526</sup> Exegetes who thought that it was permissible to hit wives until they were willing to have sex with their husbands included al-Zajjāj, *Ma‘ānī al-Qur’ān*, v. 2, pp. 48-49, al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72, Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-189, al-Ḍamanīn, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, al-Fīrūzābādī, *Tanwīr*, pp. 91-92, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>527</sup> Al-Ṭabarī and Ibn Abī Ḥātim al-Rāzī made a similar point in his exegesis. Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72 and Ibn Abī Ḥātim, *Tafsīr al-Qur’ān*, v. 3, pp. 939-944.

<sup>528</sup> Al-Ṭabarī based this argument on the *ḥadīth* encountered above where Muḥammad commanded believers to “Hit women in a non-extreme manner when they disobey you in what is appropriate (*ma‘rūf*)”. He argued that this was proof that husbands were not permitted to hit their wives until after they had admonished them. He wrote that this *ḥadīth* shows that “it is impermissible for a man to hit his wife until after he has admonished her to desist from her *nushūz*. This is because she is not disobedient to him until he presents her with a command or admonishment that is appropriate as God has commanded him”. Al-Ṭabarī, *Jāmi‘ al-bayān*, v. 4, pp. 59-72.

husbands]”.<sup>529</sup> Al-Jaṣṣāṣ agreed that husbands were not permitted to hit their wives when their wives obeyed their husbands in bed.<sup>530</sup>

In contrast to the above mentioned positions, al-Ḥaddād granted husbands greater use of personal judgment when it came to the extent of permissible hitting. He wrote,

The [extent of the beating] will be entrusted to the husbands’ reasoned opinion and their independent judgment (*ijtihād*), according to what they see as being helpful. Because of this, it is said that this blow is restricted by the condition that [the wife remains] sound [in body] (*muḥayyad bi-sharṭ al-salāma*), and the best thing is to hit [recalcitrant wives] with a sandal or a slap, and [the blow] should be twice or three times.<sup>531</sup>

In al-Ḥaddād’s scheme, husbands were capable of judging and disciplining their wives based on their independent judgment because God granted them custody of their wives. Still, al-Ḥaddād restricted the right of husbands to physically discipline their wives by the condition that they not compromise the well-being of their wives by causing them bodily harm. To this end, he advised

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<sup>529</sup> Al-Jaṣṣāṣ wrote, “*fa-ḥarrama l-lāhu ḍarbahunna ‘inda l-ṭā’ah*”. Al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9.

<sup>530</sup> *Ibid.*, v. 1, p. 376 and v. 2, pp. 188-189.

<sup>531</sup> This translation is based on Bauer’s translation of al-Ḥaddād with some modifications. Bauer, *Room for Interpretation*, p. 160-161. Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251. Al-Qurṭubī also mentioned *salāma* as a desired end of hitting. Al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167.

husbands that a blow with a sandal or three slaps were appropriate for husbands when they physically disciplined their wives.

#### **3.4.4. Hitting is Permitted but not Preferred**

All exegetes permitted husbands to physically discipline their wives, although, as seen above, their individual criteria regarding the condition, extent and intensity of beating varied. Some exegetes suggested that while husbands were permitted to use physical discipline in order to deter their wives from *nushūz*, it was preferred for them to avoid physical discipline altogether.<sup>532</sup> This position was based on al-Shāfi‘ī’s approach to the prescription for husbands to hit their wives.<sup>533</sup> Although this position belonged mostly to the Shāfi‘ī legal school, it was adopted by exegetes from other juridical schools as well. Nonetheless, one of the major proponents for this position in the exegetical tradition was the Shāfi‘ī Fakhr al-Dīn al-Rāzī. He based his position on al-Shāfi‘ī’s legal decision on the matter. For al-Shāfi‘ī as well as for Fakhr al-Dīn al-Rāzī, the *ḥadīth* of Umar, wherein he sought permission from Muḥammad for husbands to beat their wives, was central to their position that the physical discipline of wives was permitted but not preferred. Fakhr al-Dīn al-Rāzī wrote,

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<sup>532</sup> Marin, “Disciplining Wives”, p. 20.

<sup>533</sup> For a thorough discussion of al-Shāfi‘ī’s approach to hitting wives, see Kecia Ali, ““The best of you will not strike”: Al-Shāfi‘ī on Qur’an, *Sunnah*, and Wife-Beating”, *Comparative Islamic Studies*, v. 2.2, p. 143-155.

Al-Shāfi‘ī said: Hitting is permissible (*mubāh*) and leaving it is better/preferred. It has been related that ‘Umar b. al-Khaṭṭāb said: [When] we were in the society of the Quraysh, our men owned (*tamlīk*) our women, but when we came to Medina we found their women owned their men.<sup>534</sup> Then our women mingled with their women and they became frightening/threatening (*dha’ara*)<sup>535</sup> to their husbands, meaning they committed *nushūz* and became audacious. So I went to the Prophet and said: the women are quarreling with their husbands, so permit us to strike them. Thereafter the apartments of the wives of the Prophet were surrounded by a gathering of women complaining about their husbands. So [the Prophet] said: “The family of Muhammad was surrounded tonight by seventy women, all of them complaining about their husbands, and you will not find [those husbands] to be the best of you.”

And the meaning [of this *ḥadīth*] is that those people who struck their wives are not better than those who did not strike them. Al-Shāfi‘ī said, “This *ḥadīth* indicates that it is more fitting that one leave off hitting. Though if [a husband] does strike [his wife], it is absolutely obligatory that the striking not be carried out with in such a way as to lead to [her] death; [so] the blows should be distributed by him (*mufarraḡan*) to different parts of her body, and he should not strike one place consecutively, and he should avoid the face – because it is the consummate place of beauty – and [the striking]

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<sup>534</sup> None of the narrations of this *ḥadīth* encountered in the previous section mentioned that it was as a result of the mingling between the Medinan and Mekkan women that ‘Umar sought permission to hit wives. Rather, the narrations in the *ḥadīth* collections cited prophetic prohibition against hitting wives as the cause for women’s misbehavior. Marin notes that this narration is included in Ibn Sa’d’s *Ṭabaqāt*. Her analysis of this report is that “the conflict here arises, thus, from the difficulties in assimilating two different family structures within the same religious community during its formative years”. Marin, “Disciplining Wives”, p. 19.

<sup>535</sup> This translation is based on *Lisān I-‘Arab*. Ibn Manẓūr, *Lisān I-‘Arab* (Beirut, Lebanon: Dār I-Kutub al-‘Ilmiyyah, 2003).



should be less than forty [overall strikes]. And from amongst our contemporaries are those who say: do not reach twenty [strikes] because the rights of a slave prescribe [twenty strikes] as the utmost limit [when beating a slave]. And from amongst them are those who say: It is desirable that the striking be [carried out] with the use of a folded handkerchief/ headscarf (*mandīl*) or with his hand. And he should not hit her with a whip or a stick. In sum, the preponderant view is that one should try to be light/moderate [in hitting].<sup>536</sup>

In his exegesis of the *ḥadīth* of ‘Umar and the Qur’anic text, Fakhr al-Dīn al-Rāzī tried to harmonize the Qur’anic prescription and qualifying prophetic practice by limiting the permitted beating in multiple ways. He urged husbands to avoid beating whenever possible. In the event that husbands found themselves in a situation where they had to beat their wives, he advised them to be moderate in their beating. Fakhr al-Dīn al-Rāzī’s contribution to this discussion was in the degree of moderation he urged. He considered the number of strikes permissible for husbands and placed the number rather high, as husbands were permitted twenty to forty strikes.<sup>537</sup> But he moderated the types of tools permitted to husbands when they hit their wives. He insisted that

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<sup>536</sup> Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73. Other exegetes who mentioned that hitting was permitted but not preferred included Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376 and al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347. Al-Shirbīnī mentioned specifically “that it is preferred (*awlā*) for [a husband] to be forgiving”.

<sup>537</sup> Marin also mentions this. Marin, “Disciplining Wives”, pp. 23-24.

whips and rods were not permitted, and introduced folded handkerchiefs or headscarves as disciplinary weapons<sup>538</sup>.

There are some important differences between Fakhr al-Dīn al-Rāzī's narration of the *ḥadīth* from 'Umar cited above and other exegetes' citations of the same report. Fakhr al-Dīn al-Rāzī's citation began with 'Umar narrating the chaos faced by Makkan men when their women picked up social cues from Madinan women, who were more independent than their counterparts. Ibn Kathīr's narration of this *ḥadīth* began with Muḥammad actively prohibiting men from hitting their wives.<sup>539</sup> In his narration, Muḥammad stated, "Do not hit the slave women of God". 'Umar then resisted this prohibition by complaining against the women and asked for permission to hit them. In all narrations, Muḥammad ultimately granted men permission to hit their wives. Fakhr al-Dīn al-Rāzī ended his citation of the *ḥadīth* with Muḥammad judging the men who hit their wives, by saying, "you will not find [those husbands] to be the best of you". Al-Suyūṭī reported another version of this *ḥadīth*, which was narrated by Umm Kulthūm, the daughter of Abū Bakr. In this report, Muḥammad told husbands

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<sup>538</sup> Fakhr al-Dīn al-Rāzī was the only exegete in the sources under study to mention a folded handkerchief or headscarf as an instrument of discipline. Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

<sup>539</sup> Ibn Kathīr's version of the *ḥadīth* was related by Abū Dāwūd, al-Nasā'i and Ibn Mājah. This version of the report was also mentioned by al-Khāzin. Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603 and al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376.

that “the best of you will never hit”, even as he granted husbands permission to hit their wives.<sup>540</sup> In this version of the prophetic report, Muḥammad censured the men who would hit their wives before their wives complained against them to Muḥammad. The different variations of this *ḥadīth* can partly be attributed to exegetical (dis)comfort with the prophetic command not to hit wives and the Qur’anic directive to the contrary.

When discussing the extent of strikes authorized to husbands, Fakhr al-Dīn al-Rāzī drew upon an analogy between a master hitting his slave and a husband hitting his wife. This analogy was not very prominent in the exegetical tradition, emerging only a few times, but was more common in the juridical tradition. In the juridical tradition, this analogy surfaced in the context of justifying the right and responsibility of husbands to undertake the moral discipline of their wives. Just as masters could hit their slaves for disciplinary purposes, husbands could hit their wives. In contrast, this analogy emerged in the exegetical tradition in the form of two prophetic sayings that discouraged husbands from hitting their wives. In one *ḥadīth*, Muḥammad told believers “You should not whip your wife like a slave and then have intercourse with her at the end of the day.” Another narration of this same *ḥadīth* reads, “Are you not ashamed that one of you

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<sup>540</sup> Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

might hit his wife as he would a slave in the beginning of the day and then sleep with her at night?”<sup>541</sup> The second *ḥadīth* that exegetes used to draw an analogy between beating a slave and a wife did not itself compare the two in its text. The Companion Abū Mas‘ūd (‘Uqbah b. ‘Amr al-Anṣārī) narrated in this *ḥadīth* that

I was hitting my slave and I heard someone say, “Know, Abū Mas‘ūd.” I turned around and saw the Prophet of God saying, “Know, Abū Mas‘ūd, that God has more power over you than you have over this slave”.<sup>542</sup>

The text of this *ḥadīth* did not draw a comparison between hitting a wife and hitting a slave, but the commentators who cited this *ḥadīth* in their exegesis of Q. 4:34 did draw a parallel between the two. By doing so, they did not make a controversial point. Rather, they expressed what most exegetes assumed

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<sup>541</sup> One of the two narrations were cited by Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376 and al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

<sup>542</sup> Cited by Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48 and al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231.

regarding the disciplinary power that those higher up in the divinely ordained hierarchy had over those who were placed lower in the ranking.<sup>543</sup>

The analogy of wives and slaves was especially significant for Abū Bakr Ibn al-‘Arabī. He felt that the above mentioned *aḥadīth* made a solid case for husbands to avoid disciplining their wives, particularly physically, in all circumstances. Abū Bakr Ibn al-‘Arabī went further than suggesting that hitting wives was permissible but not preferred. He suggested that hitting wives was reprehensible. After mentioning the standard traditional limitations on hitting - it should not leave a mark on the body, break bones or cause a wound - he wrote,

‘Aṭā’ said: “If [a husband] commands [his wife] (*amarahā*) and prohibits her (*nahāhā*) and she does not obey him, he should not hit her but rather be angry with her (*yaghḍabu ‘alayhā*).” Al-Qādī [Abū Bakr Ibn al-‘Arabī] said that this was the jurisprudence (*fiqh*) of ‘Aṭā’ based on his understanding of the *sharī‘ah*. His position was an indication of his independent legal reasoning [*ijtihād*], [whereby] he argued that the command [for a husband] to hit [his wife] is [merely] a command of permission (*amr ibāḥah*). In one sense, he was

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<sup>543</sup> There was also some discussion about class in al-Qurṭubī’s exegesis. Bauer wrote about this, “Perhaps the most interesting case of imposing limits on men’s hitting has already been discussed by Manuela Marín. She points out that al-Qurṭubī makes a class distinction in his recommendation to hit women who do not do the housework: lower class women may need to be beaten, while upper class women may not. By citing class differences, al-Qurṭubī explicitly avows that circumstance can affect the implementation of law: special circumstances produce special limits on men’s behavior.” Bauer, *Room for Interpretation*, p. 160. Al-Qurṭubī, *al-Jāmi‘*, v. 5, pp. 161-167. Manuela Marín, “Disciplining wives: a historical reading of Qur’ān 4:34,” *Studia Islamica*, 2003, 26.

arguing for the reprehensibility (*al-karāhiyah*) [of hitting], based on Muḥammad’s saying in the *ḥadīth* of ‘Abdallāh b. Zam‘ah (d.): “I dislike (*la-akrahu*) that a man hit his slave-woman in anger, and then bed her on the same day”. It is also narrated by...Yaḥyā b. Sa‘īd [al-Qaṭṭān, d.198/813-4] that “The Prophet of God was asked permission to hit women and he said, ‘Hit, and the best of you will not hit’ (*aḍribū walan yaḍriba khiyārukum*).” So [Muḥammad] permitted [hitting] but encouraged refraining from it (*fa’abāḥa wa nadaba ilā l-tark*). The extreme limit (*ghāyah*) of discipline (*al-adab*) is in abandonment (*al-hajr*).

In my opinion men and women are not the same (*yastawūn*) in this; for the slave is [in need of] of being struck (*yuqra’u*) with a rod (*‘aṣā*) while a symbolic gesture (*ishārah*) is sufficient for the free man. As for women, and even for some men, they are not rectified except with discipline. So when a man knows [of his wife’s *nushūz*] he [should] discipline (*yu’addib*) her, but if he leaves it then it is better (*wa in taraka fa-huwa afḍal*). And someone said that when he was asked “What is the worst *adab* (*aswa’u l-adab*)? He replied, “I do not like it when my child/son persists in the corruption (*fasād*) of my religion (*dīn*)”. And it is said, “The good character of the master (*al-sayyid*) is the bad etiquette of his slave”.<sup>544</sup> And when God does not grant a man a righteous wife and an upright slave, [the man] does not straighten his affair with the two of them except by losing (*bi-dhahāb*) a part (*juz’*) from his [own] religion (*dīn*). And this is well-known with experience.<sup>545</sup>

It appears that after grappling with the contradiction between the prescription to hit wives in Q. 4:34 and the prophetic commands to the contrary, Abū Bakr Ibn

<sup>544</sup> “*min ḥusni khuluq l-sayyid sū’u adabi ‘abdihi*”.

<sup>545</sup> Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500.

al-‘Arabī settled in favor of Muḥammad’s position on the matter. He chose to privilege prophetic practice over the Qur’anic text, instead of trying to maintain the validity of both positions. He felt that it was always better for husbands to avoid disciplining their wives and slaves. Although he initially distanced himself from the position by attributing it to ‘Aṭā’, he also endorsed it by making the very same argument. Abū Bakr Ibn al-‘Arabī made the case for husbands to avoid disciplining their wives, not for the sake of women but for the sake of men.<sup>546</sup> Husbands could not engage in the disciplining of their wives and slaves without compromising their own religion. This position stands in stark contrast to the majority of exegetes who argued that husbands fulfilled their obligations to God by ensuring the moral well-being of their wives (and slaves).<sup>547</sup> Arguing that husbands compromised their own relationship with God by overseeing the moral rectitude of their wives undermined the worldview of the majority of exegetes who considered husbands religiously responsible for the moral probity of their wives. The disciplinary tools offered in Q. 4:34 validated this position for them. It is surprising that, given Abū Bakr Ibn al-‘Arabī’s radical position on

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<sup>546</sup> Marin also argues that Abū Bakr Ibn ‘Arabī endorsed ‘Aṭā’s position, by considering beating one’s wife to be a reprehensible act. Marin, “Disciplining Wives”, p. 25.

<sup>547</sup> It is important to emphasize that Abū Bakr Ibn ‘Arabī’s position here is unique. Al-Hibri and El-Habti do not mention the uniqueness of his position when citing the passage above that describes his own abhorrence to hitting wives. Rather, it is presented as if it were representative of the tradition, which is not the case. See, Al-Hibri, Aziza and Raja’ M. El Habti in *Sex, Marriage and Family in World Religions*, p. 195-196.

the matter, later exegetes did not comment on his position to either agree or disagree with him. This is significant because Abū Bakr Ibn al-‘Arabī’s exegesis of Q. 4:34 was referenced by later exegetes who cited him as having discredited al-Ṭabarī’s interpretation of *wa-hjurūhunna fī l-maḍāji’* as tying one’s wife in bed with ropes.

### 3.4.5. Disciplinary Steps: Simultaneous vs. Sequential

Exegetes generally argued that husbands needed to follow the three prescriptions of admonishment, abandonment and hitting sequentially and not simultaneously.<sup>548</sup> However, they disagreed regarding the exact sequence. Some exegetes argued that husbands needed to follow each command in Q. 4:34 exhaustively before proceeding to the next. Other exegetes argued that husbands were required to admonish their wives when they only feared wifely

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<sup>548</sup> Exegetes that argued that the three prescriptions in Q. 4:34 were to be followed sequentially include Muqātil, *Tafsīr Muqātil*, v. 1, pp. 234-236, ‘Abd al-Razzāq al-Ṣan‘ānī, *Tafsīr al-Qur’ān*, v. 1, pp. 157-158, al-Zajjāj, *Ma‘ānī al-Qur’ān*, v. 2, pp. 48-49, al-‘Ayyāshī, *Tafsīr*, v. 1, pp. 330 and 395, al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, Al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 59-72, al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, v. 1, p. 376 and v. 2, pp. 188-9, Abū al-Layth al-Samarqandī, *Baḥr al-‘ulūm*, v. 1, pp. 351-352, Ibn Abī Zamanīn, *Tafsīr al-Qur’ān*, v.1, pp. 366-368, al-Qushayrī, *Laṭā’if*, v. 2 p. 330, al-Wāḥidī, *al-Wajīz* v. 1, pp. 262-263, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, Ibn ‘Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, v. 1, pp. 493-500, Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73, al-Qurṭubī, *al-Jāmi’*, v. 5, pp. 161-167, al-Bayḍāwī, *Anwār*, v. 1, p. 85, al-Nasafī, *Madārik*, v. 1, pp. 354-355, Ibn Juzayy, *al-Tashīl*, v.1, p. 251-253, al-Khāzin al-Baghdādī, *Lubāb*, pp. 373-376, Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253, Ibn Kathīr, *al-Tafsīr al-‘aẓīm*, v. 1, pp. 601-603, al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251, al-Tha‘ālibī, *Jawāhir*, v. 2, pp. 229-231, al-Maḥallī and al-Suyūṭī, *al-Qur’ān al-karīm*, pp. 105-106 and pp. 179-181, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157, al-Shirbīnī, *al-Sirāj*, v. 1, pp. 346-347, Abū al-Su‘ūd, *Tafsīr Abī al-Su‘ūd*, v. 1, pp. 338-339, al-Ḥaqqī, *Rūḥ*, v. 5, p. 202.



*nushūz*, but were permitted to join all three prescriptions when wifely *nushūz* was manifest. Yet others contended that admonishment and abandonment could be enacted on the basis of the fear of *nushūz*, but that hitting was only authorized after wifely *nushūz* was manifest. Several exegetes stipulated that physical discipline was to be undertaken only after admonishment and abandonment had proven to be ineffective in dissuading wives from their *nushūz*.<sup>549</sup>

Al-Māwardī captured two exegetical positions on the issue of sequence in his commentary. He wrote,

{*wa'dribūna*} God made the punishments [of the wife] when she commits *nushūz* comprise three things: admonish her, abandon her, hit her. And [regarding] its sequence (*tartīb*) there are two opinions. The first [opinion] is that when [a husband] fears [his wife's] *nushūz*, he should admonish and abandon her. Then if she persists (*aqāmat*) [in her *nushūz*], then he should hit her. The second [opinion] is that when he fears [his wife's] *nushūz*, he should admonish her. When she manifests (*abdat*) her *nushūz* he should abandon her. Then if she persists (*aqāmat*) in [her *nushūz*] he should hit her.<sup>550</sup>

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<sup>549</sup> An example of such an exegete was al-Nasafī. He wrote, “[God] commanded [husbands] to first admonish [their wives], then (*thumma*) abandon them in the beds, then hit them if [the previous two measures of] admonishment and abandonment were ineffective.” Al-Nasafī, *Madārik*, v. 1, pp. 354-355.

<sup>550</sup> Al-Māwardī, *al-Nukat*, v. 1, pp. 480-483.

Al-Māwardī considered both positions equally legitimate and did not express preference for either. Ibn ‘Aṭīyah argued for following each of the three prescriptions in sequence, and further stipulated that “if obedience occurs (*waqa‘at*) in any of these stages [the husband] should not proceed to the rest of [the prescriptions]”.<sup>551</sup> Ibn al-Jawzī made a similar point in his commentary, noting further that it was impermissible to hit one’s wife as the first course of action. He wrote,

And a group of scholars have said: the verse [promotes] sequence (*al-tartīb*). Admonish [your wives] when you fear *nushūz*. Abandon them when *nushūz* becomes manifest (*zuhūr*) and hit them when they repeat (*takarrar*) [their *nushūz*] and continue (*lajāj*) in it. It is not permissible to hit at the beginning (*ibtidā‘*) of *nushūz*.<sup>552</sup>

Ibn al-Jawzī went on to differentiate his position, as a Ḥanbalī, from that of al-Shāfi‘ī. According to Ibn al-Jawzī, al-Shāfi‘ī permitted husbands to begin hitting their wives at the “beginning of *nushūz*”. In fact, al-Shāfi‘ī’s position was not

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<sup>551</sup> Ibn ‘Aṭīyah, *al-Muḥarrar*, v. 2, pp. 46-48.

<sup>552</sup> Ibn al-Jawzī, *Zād al-masīr*, v. 2, pp. 73-78. Ibn Juzayy’ added the criterion of severity to time sequencing. He wrote “The admonishment and abandonment in bed and the hitting: these are types of disciplinary [measures used] for a women when she commits *nushūz* against her husband. And they [are meant to be applied] in stages (*marātīb*) with admonishment for light *nushūz* (*al-nushūz al-khafīf*), abandonment for more intense (*ashaddu*) [*nushūz*], and hitting in [cases] when [*nushūz*] is most intense. And when [the wife] ceases her *nushūz* as a result of the disciplining (*al-ta’dīb*), [the husband] should not proceed to the next [stage].” According to Ibn Juzayy, it was not just that admonishment comes first and abandonment and hitting follow if the wife persists, but that abandonment and hitting are for offenses of greater magnitude - even, perhaps, if they are not preceded by the exhortation stage. Ibn Juzayy, *al-Tashīl*, v.1, pp. 251-253.

that different from Ibn al-Jawzī's. Al-Shāfi'ī made stipulations similar to those of Ibn al-Jawzī in his discussion of the disciplinary steps. He wrote that husbands should admonish their wives when they feared wifely *nushūz* based on the signs of *nushūz* in speech and action. Once wifely *nushūz* was manifest (*abdat*), then husbands were to admonish their wives and then only if wifely *nushūz* persisted (*aqāmat*) were husbands permitted to hit their wives. Al-Shāfi'ī went only to say that this meant that only admonishment was permissible before the reprehensible act (*fi'l al-makrūh*) of wifely *nushūz*.<sup>553</sup> However according to al-Rāzī, the Shāfi'ī juridical school did allow husbands to decide which disciplinary action was the most effective means of persuading their wives to abandon their *nushūz*, once wifely *nushūz* was established.<sup>554</sup>

Exegetes discussed the appropriate course of action for a husband who has exhausted the three prescriptions of admonishment, abandonment and beating without succeeding in dissuading his wife from her *nushūz*. At this point, some exegetes followed the command in Q. 4:35 of appointing adjudicators from each side in order to settle the matter. For al-Wāḥidī, the three commands in Q. 4:34 were weapons at the disposal of husbands, as they tried to dismantle wifely *nushūz*. He wrote,

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<sup>553</sup> Al-Shāfi'ī, *Aḥkām al-Qur'ān*, v. 1, pp. 206-213.

<sup>554</sup> Al-Rāzī, the extensive quotation from al-Rāzī is below.

The husband [should] correct (*yatalāfā*) his wife's *nushūz* with God's commands. He should admonish her with speech, if she does not stop then he should abandon her in bed, and if she refuses then he should hit her. If she still refuses to be admonished with hitting, then two adjudicators should be appointed.<sup>555</sup>

Al-Ṭabarī and Ibn Kathīr considered the possibility of divorce as an alternate to appointing two adjudicators. Al-Ṭabarī reported from al-Ḥasan [al-Baṣrī] (d. 110/728) that if the three prescriptions in Q. 4:34 were ineffective, then it was permissible for the husband to divorce his wife and also take his dowry (*mahr*) back from her.<sup>556</sup> Ibn Kathīr wrote similarly, that if a wife were unwilling to give up her *nushūz* - even after being beaten - then it was permissible for a husband to take a ransom (*fidyah*) from her.<sup>557</sup> Although he did not discuss the ransom further, it is probable that Ibn Kathīr was referring to the dowry mentioned in the

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<sup>555</sup> Al-Wāḥidī, *al-Wajīz*, v. 1, pp. 262-263. Abū Bakr b. al-'Arabī made a similar point in his commentary.

<sup>556</sup> Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72. Reported from al-Ḥasan that, "When a woman commits *nushūz* against her husband, he should admonish her with speech. If she accepts his admonishment [then the matter is settled], but if [the admonishment] is ineffective then he should hit her in a non-extreme manner. If she returns [from her *nushūz*] then this is sufficient [then the matter is settled]. [However] if she does not return [from her *nushūz*] then it is permissible for [the husband] to take [his *mahr*] from her and leave her.

<sup>557</sup> He wrote, "The jurists have said: [The beating] should not break a limb/organ (*uḍwan*) and should not leave an impression of any kind. Alī b. Abī Ṭalḥa (d. ) reported from Ibn 'Abbās that [the husband should] abandon [his wife] in bed. If she accepts this [the matter is settled] but if she does not, then God has commanded you (husbands) to hit her in a non-extreme manner that does not break bones. If she accepts this [the matter is settled], but if she does not then it is permissible to take a ransom (*fidyah*) from her." Ibn Kathīr, *al-Tafsīr al-'aẓīm*, v. 1, pp. 601-603.

report from al-Ḥasan, especially since wives were seen as financially dependent on their husbands.

The exegetical opinion of Abū Ḥayyān on the question of disciplinary sequence ran counter to that of all other exegetes. In order to consider Abū Ḥayyān's stance better, it is necessary to review Fakhr al-Dīn al-Rāzī's perspective on the question of sequence. Fakhr al-Dīn al-Rāzī shared the views of other exegetes when he argued for a disciplinary approach wherein husbands followed each command in Q. 4:34 sequentially and exhaustively. He wrote,

And I say: What indicates this is [i.e. the point he just made] that God [intended a progression] beginning with admonition, then proceeded to abandonment in bed, and then proceeding to hitting/beatings. That is a hint that serves virtually as an explicit statement that whenever the objective is obtained by the lighter method one must be satisfied with that, and it is impermissible to embark upon a more severe method, and God knows best.

The third problem: our contemporaries disagree amongst themselves [concerning] whether the injunctions in the verse must be carried out sequentially. Some say yes, arguing that although the apparent reading of the verse indicates simultaneity [in carrying out the three prescriptions of admonition, abandonment and hitting], the holistic message of the verse indicates [that they should be carried out] sequentially. The Chief of the Believers, 'Alī b. Abī Ṭālib (d. 40/660), may God be pleased with him, said: [a husband] should admonish [his wife] with speech, and if she stops then there is no path for him against her. If she [continues to]

disobey, then abandon her in her bed, and if she [further] disobeys then strike her. And then if she [still] does not heed the hitting, he should appoint two arbiters [to adjudicate between them]. And others say: the sequence is only relevant when there is fear of *nushuz*, meaning that when there is certainty of *nushuz*, there is no harm in combining all [three prescriptions]. And some of our contemporaries say: There is agreement in our [Shāfi‘ī] school of law that [a husband] may admonish [his wife] when he fears *nushuz*, but may he also abandon her? When there is the possibility [of *nushūz*], that is in with the nascence of *nushuz* it is for [the husband to decide] whether to admonish, abandon, or strike [his wife].<sup>558</sup>

Given the positions of Fakhr al-Dīn al-Rāzī in this passage as well as the one cited earlier, wherein he limited the contours of the prescription for husbands to hit their wives, Abū Ḥayyān’s comments are perplexing. Abū Ḥayyān, like Fakhr al-Dīn al-Rāzī, conceded that the apparent meaning of Q. 4:34 seems to be that the three prescriptions ought to be followed simultaneously. However, the majority of exegetes argued against this plain sense meaning to insist that husbands were meant to follow the three prescriptions in sequence. Abū Ḥayyān provided an accurate summary of Ibn ‘Aṭīyah and al-Zamakhsharī’s approaches on the subject of sequence. He then provided a wildly inaccurate summary of Fakhr al-Dīn al-Rāzī’s position on the matter. He wrote,

The apparent (*ẓāhir*) [meaning] of the verse indicates (*yadullu*) that [a husband can] admonish,

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<sup>558</sup> Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr*, v. 4, pp. 70-73.

abandon in bed and hit [his wife when] he fears her *nushūz*. He can combine (*yajma'u*) [the three prescriptions] and begin with [whichever measure] he wishes, because the *waw* [in this verse] is not a *waw* of sequence (*tarattub*). While some people say this, the general opinion is that [a husband is to] admonish [his wife] when he fears *nushūz* from her, and hit her when her *nushūz* manifests (*ḡuhūrihi*) itself. Ibn 'Aṭīyyah said that the admonishment, abandonment and hitting is [meant to be followed in] sequence. And if obedience occurs at any of these stages then [the husband] should not advance to the remaining [steps]. Al-Zamakhsharī said: [God] commanded admonishment [for wives] first, then abandonment in their beds and then hitting, if admonishment and abandonment were ineffective. And al-Rāzī said, in summary: Begin with pliable speech in admonishment, but if this does not work, then [admonish] her with rough (*fa bi-khashinihi*) [speech]. [If this is ineffective] then abandon her sexually. [If this is still ineffective], then avoid her altogether (*bi i'rāḡ 'an-hā kulliyya*). Then hit her lightly, such as slapping and punching/kicking her (*lakzah*) and such things that make known (*yush'ir*) his contempt (*iḡtiqār*) [for her] and how she forfeited her inviolability (*wa isqāṭ al-ḡurmah*). Then, [if she is still not persuaded], hit [her with] a whip (*sawḡ*) and a soft switch/stick (*al-qaḡīb al-layyin*) or something similar, that results in pain (*alam*) and scrapes (*wa l-inkā*). [However, the hitting] should not result in destroying/shattering (*hashama*) [bones] and should not lead to bleeding. If none of these measures are effective, then [the husband] should tie [his wife] with a rope and force her to have sexual intercourse (*al-waṭ'*) [with him], because this is his right [upon her]. If any [of the above mentioned measures] that we have sequenced brings [the wife] back from her *nushūz*, then it is impermissible for [the husband] to

move to the next [measure], because “if they obey you, do not find a means against them” (Q. 4:34).<sup>559</sup>

As seen from the previously cited quotation from Fakhr al-Dīn al-Rāzī, Abū Ḥayyān misrepresented his work severely. While Abū Ḥayyān claims that Fakhr al-Dīn al-Rāzī differentiated between gentle and coarse speech as two separate disciplinary steps, this was not the case. Also, Fakhr al-Dīn al-Rāzī specifically mentioned in his commentary that husbands were not permitted to use whips and rods as tools of discipline. He also did not mention punching/kicking (*lakza*) in his commentary, though he did mention that it was permissible to use one’s hand as a tool of physical discipline. Finally, at no point did Fakhr al-Dīn al-Rāzī condone tying wives to their beds with ropes and forcing them to have sex with them.<sup>560</sup> On the contrary, he proposed that two adjudicators be appointed in order to settle the matter.

The question arises as to why Abū Ḥayyān misrepresented Fakhr al-Dīn al-Rāzī’s work so badly. It can be argued that he simply was a poor scholar or misinformed. However, he cited the works of Ibn ‘Aṭīyah and al-Zamakhsharī accurately. Also, it is difficult to believe that he was unaware of the debates surrounding the issue of tying wives to their beds, given al-Ṭabarī’s

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<sup>559</sup> Abū Ḥayyān, *al-baḥr al-muḥīṭ*, v. 3, pp. 248-253

<sup>560</sup> Marin attributes this quote to Abū Ḥayyān himself and does not discuss Abū Ḥayyān’s claims that this is Fakhr al-Dīn al-Rāzī’s position. Marin, “Disciplining Wives”, p. 27.



interpretation of *wa-hjurūhunna fī l-maḍāji'*, and Abū Bakr Ibn al-'Arabī's refutation of this position. Al-Qurṭubī also commented on this issue, citing Abū Bakr Ibn al-'Arabī's refutation. Both Abū Bakr Ibn al-'Arabī and al-Qurṭubī were Mālikī scholars, whose work Abū Ḥayyān - as a Mālikī himself - must have encountered. Bearing this in mind, it may be argued that Abū Ḥayyān might have intentionally misrepresented Fakhr al-Dīn al-Rāzī's positions, using his name as an authority to support his own unique interpretation of the prescription of beating in Q. 4:34. Citing al-Ṭabarī may have been a red flag, since he was well known for his controversial position on tying wives in their beds. Abū Ḥayyān's intentions in this matter can only be speculated upon, but is difficult to understand why he might have misconstrued Fakhr al-Dīn al-Rāzī's position on wife-beating so egregiously.

#### **3.4.6. Liability in Cases of Extreme Violence**

A final legal consideration that a few exegetes touched on briefly was the liability of husbands when they were excessive in their use of violence when physically disciplining their wives and either harmed them severely or killed them.<sup>561</sup> Of the exegetes who did discuss a husband's liability, all agreed on

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<sup>561</sup> Exegetes who considered legal considerations included al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303, al-Māwardī, *al-Nukat*, v. 1, pp. 480-483, Ibn 'Aṭīyyah, *al-Muḥarrar*, v. 2, pp. 46-48, al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497, al-Suyūṭī, *al-Durr al-manthūr*, v. 2, pp. 150-157.

the general statement that there was to be no retaliation in marriage. This position was drawn from the *sabab al-nuzūl* wherein Ḥabībah's request for retaliation was denied by the revelation of Q. 4:34. Exegetes wrote that the legal point of this story was that there was no retaliation between a husband and wife, except in the case of death. The disagreement amongst pre-modern exegetes centered around whether husbands owed monetary compensation, retaliation or nothing at all, when excessive violence on their part resulted in broken bones and wounds.

Al-Ṭabarī argued that while there was no retaliation between a husband and wife, husbands did owe monetary compensation to their wives if they harmed them significantly. He wrote on the authority of al-Zuhrī (d. 124/742) that

Even if a man fractures [his wife's skull] (*shajjahā*) or wounds her (*jaraḥahā*), there is no retaliation (*qawad*) on him for this, but he is responsible for monetary compensation (*al-'aql*). Except [in the case] that he transgresses against her and kills her, and so is killed because of her.<sup>562</sup>

Al-Māwardī related the first portion of this report, which he also attributed to al-Zuhrī. He wrote that al-Zuhrī said, "There is no retaliation (*qiṣāṣ*) between a

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<sup>562</sup> Al-Ṭabarī, *Jāmi' al-bayān*, v. 4, pp. 59-72, Al-Zuhrī said, "*law anna rajulan shajja mra'atahu aw jaraḥahā, lam yakun 'alayhi fī dhālika qawadun, wa-kāna 'alayhi al-'aql, illā an ya'duwa? 'alayhā fa-yaqtulahā, fa-yuqtal bi-hā*". Al-Tha'labī had a similar quote in his commentary, but he did not related it to al-Zuhrī. He related it to an unknown source. Al-Tha'labī, *al-Kashf*, v. 3, pp. 302-303.

man and his wife in any matter other than [taking] a life (*al-nafs*)”.<sup>563</sup> Al-Māwardī’s citation did not include any discussion of monetary compensation for broken bones or wounds. Al-Zamakhsharī offered two positions on the issue of retaliation between a married couple<sup>564</sup>. He wrote,

And [the scholars] disagreed in this [matter]: some said there is no retaliation (*qiṣāṣ*) between a man and his wife in matters other than [taking] a life (*al-nafs*), even if he wounds her. If he wounds her, he is only responsible for monetary compensation. Others have said, there is no retaliation [between a married couple] except in the case of a wound (*jarḥ*) or death (*qatl*).<sup>565</sup>

According to the second position, it was possible that husbands could face retaliation if they wounded their wives. As Bauer correctly pointed out, by not making husbands legally liable for hitting their wives excessively, unless the beating resulted in broken bones and/or wounds, exegetes did not consider their own recommendations for husbands to hit their wives in a non-extreme manner to be legally binding. Bauer writes,

What appears to be a contradiction between the doctrine that men should “not wound or kill” and the more restrictive doctrine that all hitting should be

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<sup>563</sup> Al-Māwardī wrote that al-Zuhrī said, “*laysa bayna al-rajul wa mra’atihi qiṣāṣ fī-mā dūna l-nafs*”. Al-Māwardī, *al-Nukat* v. 1, pp. 480-483.

<sup>564</sup> “Retaliation” and “compensation” were discussed interchangeably in the exegetical literature in this study. The distinction between the two is worth considering further and is the subject of future work.

<sup>565</sup> Al-Zamakhsharī, *al-Kashshāf*, v.1 pp. 490-497.

“without causing severe pain” is not. “Without causing severe pain,” and other limitations such as “with a tooth-stick,” are not legal rulings – they are recommendations about how hard hitting should be, taken from the *ḥadīths* of the Prophet. If men cause serious injury with their hitting, or if they hit with a cane instead of with a tooth-stick, they are not liable for legal punishment, but they have gone beyond the boundaries of what the exegetes think is proper.<sup>566</sup>

In this light, it is clear that while exegetes went to great lengths to outline the correct procedure and boundaries of the appropriate level of physical violence husbands could engage in when disciplining their wives, they also safeguarded husbands legally by not considering any of the recommendations legally binding. In this way, the restrictions that exegetes offered for husbands who engaged in the physical discipline of their wives were merely exhortations whose adoption depended on the goodwill of husbands.

### **3.5. Conclusion**

Given the hierarchical worldview that exegetes brought to bear in their interpretive approach, it is understandable that they considered it natural that men were preferred over women and that wives were “good” or “bad” in relation to their husbands. Good wives were obedient and pleasing to their husbands in both the presence and absence of their husbands. “Bad” wives resisted their

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<sup>566</sup> Bauer, *Room for Interpretation*, p. 114

placement in the marital hierarchy and were disobedient to their husbands. Since husbands had a higher placement in the ranking, God equipped husbands with the necessary disciplinary tools to return wives to their appropriate place in the marital hierarchy when they rose (*nashaza*) from their lower ranking. As a result, husbands were permitted to use physical discipline in order to “return” wives from their rebellion.

The exegetical discussions surrounding the three prescriptions in Q. 4:34 of admonishment, abandonment in bed and beating highlighted the interpretive flexibility available to exegetes. Although the exegetical discussions were legal in nature, they also drew on lexicology and the worldview of exegetes which incorporated a divinely ordered social hierarchy. Prophetic reports were used selectively as a tool of interpretation to suit their own particular and varied ends. The command to admonish wives was used by exegetes to reinforce the hierarchal worldview that allowed husbands to physically discipline their wives. Husbands were to verbally remind their wives of each of their divinely ordained places in the marital hierarchy and warn them of their own disciplinary powers over their wives. The command to abandon wives in bed was interpreted by exegetes to mean a range of instructions, from sexual abandonment and abandonment in speech to tying one’s wife in bed with ropes. The command to

hit wives was not contentious in and of itself, but the contours and extent of permitted beating was contested. Exegetes disagreed with each other as to whether it was permissible to punch, kick or lash a wife. They also challenged each other on the tools permitted for physical discipline, and the liability of husbands in cases of excessive violence. All in all, the lack of consistency within the exegetical tradition on the above mentioned issues illustrated the interpretive choice Qur'ān commentators enjoyed within a patriarchal tradition that consistently sought to safeguard for husbands the exercise of their disciplinary powers over wives.

With this background in mind, it is unsurprising that exegetes attempted to grant husbands as much power as possible, within the construct of marriage, to resolve any marital conflict without the involvement of a court. However, it is conceivable that the power they granted husbands needed to be qualified and restricted, so that if the matter did end up in courts, husbands were safeguarded.<sup>567</sup> To this end, exegetes insisted that husbands ought to have knowledge of their wives' *nushūz* before they physically disciplined them. They also defined wifely *nushūz* as expansively as possible, arguing that general

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<sup>567</sup> To this end, Bauer mentions "These authors' concern for women's welfare should not be seen as subverting the patriarchal household structure, but rather as supporting it and providing further justification for it." *Ibid.*, pp. 136-137.

disobedience constituted *nushūz*. Exegetes also made several recommendations to husbands concerning the proper procedure for carrying out the three disciplinary commands in Q. 4:34 - admonishment, abandonment in bed and beating. Despite the extensive nature of the exhortations, exegetes did not consider any of their own recommendations to be legally binding for husbands. Rather, they appealed to the conscience of husbands and attempted to restrict the liability of husbands as much as possible, limiting it only to excessive violence that results in broken bones, wounds or death.

Short of broken bones, wounds or death, husbands were not legally accountable for hitting their wives. Insofar as some exegetes cited *aḥadīth* stating that men who beat their wives were “not the best”, it is possible to argue that they considered there to be some other-worldly consequences to abuse of disciplinary power that did not result in broken bones, wounds or death. This leads to the question of why exegetes went to such great lengths to qualify the prescription of hitting, if husbands were not to be held liable for exceeding the restrictions. It appears that the purpose for the recommendations was to encourage husbands to be just and equitable overseers of their wives. This was a moral exhortation, and not legally binding. Since husbands were deputized by God to regulate their wives’ behavior, they were not culpable for

using excessive force unless that force resulted in a debilitating physical injury that could be proven in court. Therefore, exegetes did not exhibit any ethical discomfort with the command for husbands to physically discipline their wives, but merely tried to differentiate “proper” hitting from “improper” hitting. The command to hit fit seamlessly with a worldview wherein husbands were *qawwāmūn* over their wives, and therefore were entrusted with the responsibility to maintain the marital hierarchy by keeping wives in their place.



## Chapter Four: Wife-Beating in the Sunni Jurisprudential Tradition

### 4.1. Introduction

In her book *Women and Gender in Islam*, Leila Ahmed argues for an understanding of historical Islam that had the potential for both egalitarian and patriarchal manifestations. According to Ahmed, it was the patriarchal understanding of Islam that coincided with the social mores of early and medieval Islamic societies, and that ultimately came to define the legal and exegetical corpora of orthodox Islam.<sup>568</sup> The scholarly works of Amina Wadud, Asma Barlas, Sa'diyya Sheikh and Hadia Mubarak reinforce this idea, particularly through their study of exegetical works<sup>569</sup>. These scholars argue that while there is an undeniable egalitarian vision of Islam to be found in the Qur'ān, this vision was lost in the works of exegesis in which the subjective views of individual exegetes -based on their social, cultural and historic milieu - erased the egalitarian vision of Islam in favor of a misogynist vision.

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<sup>568</sup> Ahmed, *Women and Gender in Islam*, pp. 65-66.

<sup>569</sup> To see a discussion of the work of these scholars with regard to the patriarchy of Qur'anic exegesis see, Chaudhry, "The Problems of Conscience and Hermeneutics", pp. 160-163. See also, Fatima Mernissi, *The Veil and the Male Elite* (Cambridge:Perseus Books, 1991), especially Chapters 3 and 4, Amina Wadud, *Qur'ān and Woman* (New York: Oxford University Press, 1999) p. 95, Asma Barlas, *Believing Women: Unreading Patriarchal Interpretations of the Qur'an* (Austin: University of Texas Press) 189, Sa'diyya Shaikh, "Exegetical Violence: Nushuz in Qur'anic Gender Ideology" *Journal for Islamic Studies* 17 (1997): 49-73", Hadia Mubarak, "Breaking the Interpretive Monopoly: Re-Examination of Verse 4:34" 266, 275." *Hawwa* 2, no. 3 (2005): 261-298.

Mohammad Fadel takes issue with Ahmed's portrayal of the triumph of a patriarchal Islam over a more egalitarian one, arguing that while it was true that there have been two opposing voices in Islam, one did not undeniably triumph over the other. Based on his study of women's testimony in the Islamic legal tradition, Fadel argues that the patriarchal and egalitarian voices of Islam were in constant tension with each other "if not outright dialectic".<sup>570</sup> Fadel argues further that unlike the field of Qur'anic exegesis, Islamic jurisprudence provided a space for the ethical voice of Islam to emerge. Fadel concedes, along with Wadud, that Qur'anic exegesis was "dominated by the atomistic methodology of verse-by-verse interpretation [which] allowed the misogynistic assumptions of the reader to dominate the text".<sup>571</sup> However, according to Fadel, the field of Islamic jurisprudence was distinctly different from that of Qur'anic exegesis, because it necessitated that jurists take into account a much wider set of data than simply the verse at hand in order to derive a ruling.<sup>572</sup> In view of this, Fadel wrote that "What is most striking about the medieval Sunni legal discourse on this complex of issues is the extent to which it exists in tension

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<sup>570</sup> Mohammad Fadel, "Two Women, One Man", p. 200.

<sup>571</sup> Ibid., p. 186.

<sup>572</sup> Ibid., p. 200.

with popular notions of gender roles [at that time]”.<sup>573</sup> Fadel did not argue that jurists were more or less misogynistic than Qur’anic exegetes, but rather that the nature of legal reasoning forced jurists to think systematically. This placed in doubt discriminatory inferences (e.g., that women had a lesser capacity for credible testimony) that conflicted with other known rules (e.g., that women could unrestrictedly transmit *ḥadīth*, with the same credibility as men).

Discussing the legal issues surrounding women’s testimony, Fadel concluded that the discomfort of jurists with “impeaching the probative value of women’s statements based on their gender” that led some of them “to offer sociological explanations” for such a ruling.<sup>574</sup> In Fadel’s study, he did not find analogous explanations in works of Qur’anic exegesis. Both Bauer’s work and the present work show that exegetes did, in fact, offer sociological explanations for the superiority of men over women, which justified not only the *qiwāmah* of husbands over wives but also the right of husbands to physically discipline their wives.<sup>575</sup> According to Fadel’s assessment, this may be an expression of the exegetes’ discomfort with the prescription for husbands to physically discipline their recalcitrant wives.

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<sup>573</sup> Ibid., p. 186.

<sup>574</sup> Ibid., p. 200.

<sup>575</sup> See Chapter 2, especially section 2.3. Also, see Bauer, *Room for Interpretation*, 2007.

Kecia Ali's work on the relationship between conceptions of marriage and concubinage in foundational juridical texts also challenges the claims put forth by Fadel regarding the connection between the juristic practice of considering a wide range of data and a defiance of existing gender norms. While it may have been the case that jurisprudence concerning gender on the topic of female witnesses contained the possibility for a gender-neutral position, Ali's work shows that this was not the governing rule in the jurisprudence of marriage. In her work, Ali shows that Islamic jurisprudence institutionalized existing gender norms, as observed in the conception of marriage. Kecia argued that a husband's ownership (*milk*) over his wife, expressed through the right of husbands to have sexual access to their wives, formed the structural foundation for the conception of marriage in the Ḥanafī, Mālikī and Shāfi'ī schools. She noted that

There is no room for mutuality in this right, no sense in which women as people, human individuals, can be recognized to have either rights to refuse intercourse, if they do not want it, or to claim it, if they do. Even where there are moves in the direction of asserting women's sexual rights, they cannot progress very far. The entire structure of marital rights, including allotment of time, maintenance, deriving enjoyment, and exercising restraint, is built on a woman's accessibility to her husband, not the reverse. Simply asserting that women have rights to sexual satisfaction in marriage

“in Islam,” as many activists and even scholars do, does not make it so.<sup>576</sup>

Hence, Ali’s findings bolstered Ahmed’s claims regarding the patriarchal voice of Islam as having triumphed in the juridical tradition of Islam, at least with regard to conception of marriage in the majors legal schools.

This chapter shows that, in the case of the disciplining of wives, pre-modern Islamic jurisprudence did not deviate from existing gender norms but rather confirmed and institutionalized a patriarchal structure of marriage. As far as the right of husbands to discipline their wives was concerned, Islamic jurisprudence posed no tension with patriarchal gender roles and norms. In fact, these juridical texts can be sources for understanding existing gender norms. The following study of juridical texts shows that because these texts were written in patriarchal societies, the texts reflected those values. This explains the scant variance of juristic positions on wife-beating, regardless of epoch, geography, or legal school. Further, jurists did not have ethical problems with the right of husbands to physically discipline their wives. Hitting was not considered to be abuse, but the notion of abuse did exist for jurists. Abuse occurred in the marital context when husbands used excessive violence when hitting their wives. The boundaries of appropriate and excessive or abusive hitting was

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<sup>576</sup> Kecia Ali, *Money, Sex and Power*, pp. 469-470.

disputed by jurists.<sup>577</sup> While the Qur'anic text, which specifically permitted the hitting of wives, may have contributed to a lack of discomfort on the part of jurists, the social mores of patriarchy also served to reinforce the absence of ethical concern with this prescription.

The work of jurists on the right of husbands to physically discipline their wives differed in significant ways from exegetical writings, but it also demonstrated important similarities. These similarities and differences will be discussed through the works of jurists from the four major Sunni juridical schools, from the earliest available sources to eighteenth century. As with the exegetical works, this study will consider works prior to the eighteenth century because, by this time, the uncontested presence of European Colonial influence began to permeate and drastically altered the discourse on gender.<sup>578</sup>

## 4.2. Ḥanafī School

Each of the four juridical schools of Sunni Islam had a unique way of discussing the right of husbands to physically discipline their wives. For that reason, this chapter is divided first by schools and then by thematic approaches relevant to

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<sup>577</sup> I am grateful to Kecia Ali and Karen Bauer for bringing this point to my attention.

<sup>578</sup> How European colonial influence altered the discourse on gender in traditional sciences, such as Qur'anic exegesis and Islamic Jurisprudence, is a fascinating topic and deserves further study.

each school. In the Ḥanafī school, as in others, not all jurists discussed the physical discipline of wives. Even when jurists discussed the *nushūz* of wives, some limited their discussion to the question of maintenance. Most commonly, they debated whether a wife's *nushūz* nullified her right to maintenance from her husband, or if a husband was still obligated to maintain his wife despite her having demonstrated *nushūz*.<sup>579</sup> It is not clear why jurists did not always discuss the physical discipline of wives, even when they deliberated wifely *nushūz*. It cannot be assumed, however, that the absence of this discussion suggests some sort of discomfort on the jurists' part concerning the right of husbands to discipline their wives. The comfort of jurists with the general right of husbands to discipline their wives is evident in their discussions of the *nushūz* of wives. These discussions occur in the context of some sort of disciplinary action by husbands against their wives, even if this discussion was limited to a wife's loss of maintenance. More importantly, a jurist might not discuss the physical discipline of wives in his deliberations on the *nushūz* of wives, yet he may acknowledge this right of husbands when discussing matters such as discretionary punishment (*ta'zīr*) as a matter of liability.

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<sup>579</sup> For example, the important Ḥanafī *al-Hidayah* by al-Marghīnānī only talks about *nafaqah* and its suspension with regard to *nushūz*. It does not discuss the hitting of wives. v. 2, pp. 39-41.

#### 4.2.1. *Nushūz*: Legitimate Causes for Hitting

In contrast to their exegetical counterparts, Ḥanafī legal texts discussed *nushūz* with regard to both husbands and wives. In comparison, exegetes rarely mentioned the *nushūz* of husbands when discussing the *nushūz* of wives. However, as Fadel mentioned, because jurists had to consider a wider array of information, they were able to consider both Qur’ān 4:34, which dealt with wifely *nushūz* and Qur’ān 4:128 which considered husbandly *nushūz*. In pre-modern exegetical literature, al-Zajjāj was one of the few early exegetes who defined *nushūz* as “the hatred of either spouse for the other”.<sup>580</sup> While this gender-neutral interpretation of *nushūz* did not significantly influence later exegetes, the idea persisted in juridical writings.<sup>581</sup>

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<sup>580</sup> Al-Zajjāj, *Ma’ānī al-Qur’ān*, v. 2, pp. 48-49. He suggested an atypically gender-neutral interpretation of *nushūz* as the repugnance of one spouse for the other. He wrote, “*al-nushūz karāhiyat aḥadihimā li-ṣāhibihī*”.

<sup>581</sup> An example of a Ḥanafī jurist who mentioned the *nushūz* of both husbands and wives was al-Kasānī, *Bidā’ī al-ṣanā’ī fī tartīb al-sharā’ī*, v. 7, pp. 233-234. He describes the initiation of divorce (*khul’*) as a form of *nushūz*, and argues that this can be committed by either the husband or the wife, depending on who initiates divorce. He writes, “*anna l-nushūz lā yakhlū immā in kāna min qibal l-zawj wa immā in kāna min qibali l-mar’ah*”. Al-Sarakhsī also made a similar point. He wrote, “When a woman seeks divorce from her husband out of *nushūz*, then God, the angels and all the people curse her. And it has similarly been related about a man who divorces (*yakhla’u*) his wife”. Muḥammad ibn Aḥmad Al-Sarakhsī, *Kitāb al-mabsūṭ* (Beirut, Lebanon: Dār al-Ma’rifah, 1972) v. 3, p. 2. Also, al-Bābartī in his discussion of *khul’* mentioned divorce initiated by a wife was often an expression of her *nushūz*. He wrote, “*wa l-khul’ nushūzan min qibali l-mar’ah ghāliban*.” Muḥammad ibn Maḥmūd Akmal al-Dīn al-Bābartī, *al-’Ināyah sharḥ al-Hidāyah* (Beirut, Lebanon: Dār al-Kutub al-’Ilmīyah, 2007) v. 5, pp. 464-465, *bāb al-khul’*.



The fifth/eleventh century Ḥanafī jurist Abu Sahl al-Sarakhsī noted that either the wife or the husband could seek divorce from the other as a function of their respective *nushūz*. This discussion appeared in his deliberation on the abhorrence of divorce despite its legal permissibility. Drawing on *aḥādīth* that comment on the moral reprehensibility of divorce, he argued that divorce was not permitted (*lā yaḥill*) except in cases of necessity (*ḍarūrah*).<sup>582</sup> This was so because divorce constituted “ingratitude for [God’s] blessings (*kufrān al-ni’mah*).

Al-Sarakhsī mentioned several *aḥādīth* to prove his point. After citing the *ḥadīth* that stated “God curses the one who enjoys (*dhawwāq*) divorce” al-Sarakhsī mentioned two *aḥādīth* regarding divorce initiated by a wife or husband. As for a divorce initiated by a woman, the *ḥadīth* read “The curse of God, the angels and all the people are on the woman who seeks divorce from her husband out of *nushūz*”. It was narrated about men who sought divorce from their wives that “a man who seeks divorce (*yakhla’u*) from his wife [demonstrates] his ungratefulness (*kufrān*) of [God’s] blessings, since [marriage] is from amongst the blessings of God upon His servants”.<sup>583</sup> Based

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<sup>582</sup> Many Ḥanafī jurists included *aḥādīth* in their discussions of divorce as something that was permissible but to be avoided if possible. Among them are, Ibn al-Humām and al-Ḥalabī. Ibn al-Humām wrote “the most hated of permissible things with God is divorce”. Ibn al-Humām, *Kitāb al-Ṭalāq*, v. 3, p. 22. Also al-Halabī has a discussion of ṭalāq being the most hated thing by God. ‘Abd al-Raḥmān ibn Muḥammad al-Halabī, *Majma’ al-anhur* (Beirut, Lebanon: Dār al-Kutub al-‘Ilmīyah, 1998) v. 3, pp. 202-203, *kitāb al-ṭalāq*.

<sup>583</sup> Al-Sarakhsī, *Kitāb al-Ṭalāq*, v. 3, p. 2.

on these narrations, we can see that one manifestation of wifely *nushūz* was her seeking divorce for unnecessary or illegitimate reasons. In neither of these cases did *nushūz* explicitly necessitate physical violence or discipline.

The sixth/twelfth century Ḥanafī jurist ‘Alā al-Dīn al-Kāsānī supported the idea of *nushūz* being gender-neutral in the sense that both husbands and wives could commit *nushūz* by initiating divorce from the other. *Nushūz*, in this case, resulted in monetary repercussions for both spouses, though it did not carry any other disciplinary consequences for either spouse. Al-Kāsānī stipulated that if the husband exhibited *nushūz* by initiating divorce, then he could not demand anything from his wife that he had given her, including the bride-price (*mahr*).<sup>584</sup> However, if the wife expressed her *nushūz* by initiating divorce, then her husband was entitled to take back his wealth from her, approximating the amount of the bride-price.<sup>585</sup> Here, the foregoing of the bride-price was the punishment for both spouses initiating divorce, as a consequence of *nushūz*. The exception to this ruling, according to al-Kāsānī, was the case wherein a husband sought divorce from his wife not as a result of his *nushūz*, but rather in

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<sup>584</sup> Al-Kāsānī, *Bidā’ī’ al-ṣanā’ī’ fī tartīb al-sharā’ī’*, v. 7, pp. 233-234. To support his point, al-Kāsānī mentioned Q. 4: 20, which states “But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower take not the least bit of it back: would ye take it by slander and a manifest wrong?” Ali, *The meaning of the Holy Qurān*, Q. 4:20.

<sup>585</sup> Al-Kāsānī, *Bidā’ī’ al-ṣanā’ī’*, v. 7, pp. 233-234.

response to her *nushūz*. An example of such *nushūz* included a wife's lewd behavior (*fāḥishah mubayyinah*).<sup>586</sup> In the case of a wife who was *nāshizah*, a husband could both initiate divorce and take the bride-price back from her.<sup>587</sup> For al-Kāsānī, both husbands and wives could exhibit *nushūz* by initiating divorce without good cause and by not trying to avoid it, except in the case of necessity. Also, wives could commit *nushūz* in more ways than one, including by displaying lewd behavior. Certain wifely *nushūz*, such as lewd behavior, formed legitimate cause for a husband to initiate divorce. In all of these cases, wifely *nushūz* did not result in disciplinary action requiring physical discipline.

Ḥanafī jurists considered several behaviors on the parts of wives to constitute *nushūz*. , These jurists cited other specific behaviors that constituted wifely *nushūz* in addition to disobedience of the husband, lewd behavior and the above-mentioned initiation of divorce by the wife. In his tenth century/sixteenth century commentary on al-Nasafī's (d. 710/1310) legal work, Ibn Nujaym (d. 970/1563) mentioned al-Zajjāj's opinion on *nushūz* verbatim, without explicitly citing al-

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<sup>586</sup> Here, al-Kāsānī referred to Q. 4:14, which states "O ye who believe! ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them, — except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them, it may be that ye dislike a thing and Allah brings about through it a great deal of good." Ali, *The meaning of the Holy Qurān*, Q. 4:14.

<sup>587</sup> Al-Kāsānī, *Bidā'i' al-ṣanā'i'*, v. 7, pp. 233-234 and v. 3, p. 235.

Zajjāj. He wrote that *nushūz* was the “hatred of each spouse for the other”.<sup>588</sup> He also considered two other forms of husbandly *nushūz*. A husband might commit *nushūz* against his wife by abandoning her (*tarakahā*) and by shunning her or treating her with cruelty (*jafāhā*).<sup>589</sup>

The discussion of *nushūz* occurred most frequently and in greater detail with regard to wives. Al-Kāsānī included a wife’s refusing her husband’s call to bed as part of his definition of wifely *nushūz*. In his marital scheme, the marriage relationship was arranged such that a wife received her bride-price (*mahr*) and maintenance (*nafaqah*) in return for obedience and guarding/protecting herself in her husband’s absence. When wives displayed disobedience to their husbands, they were deserving of disciplinary actions against them, including physical discipline. Al-Kāsānī wrote that,

It is obligatory for her to be obedient to her husband when he calls her to bed. God said, “And [wives] have rights similar [to the rights] against them, according to what is equitable (*ma’rūf*)”.<sup>590</sup> It is said that she is entitled to the *mahr* and *nafaqah* in

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<sup>588</sup> Ibn Nujaym, *Baḥr l-rā’iq*, v. 4, p. 128, and p. 303.

<sup>589</sup> *Ibid.*, v. 4, p. 128.

<sup>590</sup> Q. 2:228, which reads “Divorced women shall wait concerning themselves for three monthly periods Nor is it lawful for them to hide what Allah hath created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them and Allah is Exalted in Power, Wise.” Ali, *The meaning of the Holy Qurān*, Q. 2:228.

exchange for obedience to him with regard to herself and protecting [herself] in his absence. [And this is evident in] God's order to discipline them (fem. pl.) with abandonment and hitting when they do not obey. [God] also prohibited [husbands from] the obedience [of their wives] by saying "And if/when they obey you [husbands], do not seek a means against them".<sup>591</sup> This proves that discipline is required [only in] the absence of obedience, which in turn attests to the necessity for [wives] to obey their husbands.<sup>592</sup>

According to al-Kāsānī, wives were required to be obedient to their husbands, especially with regard to their sexual availability. The obedience of wives to their husbands was not to be reciprocated by a husband's obedience to his wife. Interestingly, al-Kāsānī used Q. 2:228 to support his hierarchal conception of marriage. The relevant part of this text reads, "And [wives] have rights similar [to the rights] against them, according to what is equitable (*ma'rūf*)". Whereas the relatively ambiguous text of Q. 2:228 in question is used by many modernist Muslims to argue for an egalitarian conception of Islam, al-Kāsānī saw it serving a patriarchal marriage structure, where women were financially supported by their husbands in exchange for sexual availability.

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<sup>591</sup> Q. 4:34

<sup>592</sup> Al-Kāsānī, *Bidā'i' al-ṣanā'i'*, v. 6, pp. 172-174.

Al-Kāsānī saw the authority of husbands over their wives as extending from the financial to the moral realm. Because the bride-price and maintenance essentially bought obedience, husbands were allowed to discipline their wives by means of “abandonment and hitting” if the wives were neglectful in their obedience.<sup>593</sup> In this context, Q. 4:34 was used to emphasize the appropriate role of wives in marriage. al-Kāsānī emphasized the portion of the verse that is marginalized in exegetical literature, “And if they obey you [husbands], do not seek a means against them”, to argue that wives were required to be obedient to their husbands.

Al-Kāsānī also briefly discussed the physical discipline of wives in his Book of Maintenance (*nafaqah*), wherein he delved into the question of why maintenance of wives was obligatory for husbands. As evidence for the obligatory nature of the maintenance of wives, he used the reported speech of Muḥammad on the Farewell Sermon as an explanation of Q. 2:228. In the sermon, Muḥammad is purported to have said,

Fear God concerning women, for they are your prisoners. They do not have ownership over themselves and you take them as a trust from God and make their private parts permissible for yourselves with the word of God. Your right over

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<sup>593</sup> Although al-Kāsānī did not mention admonishment in this passage, he did dwell on the importance of admonishment when discussing the procedure of hitting wives.

them is that they not give your bed to anyone [other than you] and not permit anyone you dislike into your homes. If you fear *nushūz* from them, then admonish them, abandon them in the beds, and hit them in a non-extreme (*ghayr mubarrīh*) manner. And their rights over you are that you are that you clothe them and provide for them equitably...”<sup>594</sup>

Al-Kāsānī explained that “this *ḥadīth* clarifies what is already in the [Qur’ān]”.<sup>595</sup>

He considered Muḥammad’s instruction to husbands to physically discipline their wives to have legal import. However, al-Kāsānī did not discuss the repercussions a husband might face for beating his wife in an extreme manner. The only case in which al-Kāsānī considered a husband potentially liable for extreme hitting of his wife was if the hitting resulted in her death. This will be discussed further in 4.2.4.

Al-Kāsānī also relied on another *ḥadīth* to emphasize the financial and moral obligations of husbands over wives in marriage. He mentioned the *ḥadīth* wherein a man asked Muḥammad about the rights of wives over their husbands. The text of the *ḥadīth* reads:

A man came to the Prophet of God, may peace and blessings be upon him, and said, “What are the rights of a woman over her husband?” He replied, “That he feed her as he eats and clothe her when he

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<sup>594</sup> Al-Kāsānī, *Bidā’ī’ al-ṣanā’ī’*, v. 3, pp. 417-418.

<sup>595</sup> *Ibid.*, v. 3, pp. 417-418.

clothes himself, and that he not abandon her except in the house, and not hit her and not revile her”.<sup>596</sup>

The narration of the above *ḥadīth* differed from the more widespread narration discussed in the *ḥadīth* chapter in a slight but significant way, in that Muḥammad included the general imperative of a husband not hitting his wife as part of her rights over her husband. In the narration of this *ḥadīth* considered earlier, the imperative read, “...[the husband should] not hit [his wife] in the face and not revile her”.<sup>597</sup> The imperative for husbands to not hit their wives at all, without any caveat in al-Kasānī’s narration of this *ḥadīth* not only contradicted the text of Q. 4:34, but also the *ḥadīth* immediately preceding this one, wherein Muḥammad advised husbands to hit their wives in a non-extreme manner if they committed *nushūz*. Nonetheless, since al-Kāsānī did not comment on this very obvious contradiction, it can be speculated that he did not see any contradiction between this *ḥadīth* and the Final Sermon *ḥadīth* or Q. 4:34. It may be that according to al-Kāsānī, it was obvious that the general prohibition

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<sup>596</sup> Ibid., v. 3, pp. 417-418. This *ḥadīth* was followed by a narration of another *ḥadīth* where Muḥammad permitted Hind to take money from her husband, Abū Sufyān, without his permission. She was permitted to take money from him as she needed without his permission, since her maintenance (*nafaqah*) was obligatory on him.

<sup>597</sup> One version of this *ḥadīth* states that a Companion asked Muḥammad “What are the rights of our wives over us?” Muhammad replied, “That you feed her when you eat, and clothe her as you clothe yourself, and do not hit her in the face, do not disfigure [lit., “make her ugly”] and do not abandon her except in the house.” The collections in which this *ḥadīth* is reported include *Sunan al-Kubrā* by al-Bayhaqī, *Sunan al-Kubrā* by al-Nasāī, and *Sunan Abī Dā’ūd*.



from hitting wives was restricted to cases wherein wifely *nushūz* was not manifest.

Al-Kāsānī used Q. 4:34 to explain why men were obligated to support their wives financially through maintenance. He wrote that there were many reasons offered by jurists for why it was obligatory on husbands to maintain their wives, including the ownership associated with marriage (*milk al-nikāḥ*), or the *qiwāmah* of husbands over wives. To this end, al-Kāsānī cited the first portion of Q. 4:34, and argued that “maintenance was made obligatory [on husbands] because they are *qawwāmūn* [over their wives]. This *qiwāmah* was established by the marriage, so the cause of the obligatory nature of maintenance (*nafaqah*) in marriage is the spending [of the husband on the wife]”.<sup>598</sup> In this argument, he compared the husband-wife relationship to that of a master (*mālik*) who must provide for his slaves (*mamālīk*).<sup>599</sup> The analogy between the husband-wife relationship and the master-slave relationship is not a coincidental one, as Ali’s work demonstrates.<sup>600</sup> It is one that persisted both in *ḥadīth* literature and juridical sources, and is embedded in the very foundational understandings of marriage. In the context of marriage as analogous to a slave-holding institution,

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<sup>598</sup> Al-Kāsānī, *Bidā’i’ al-ṣanā’i’*, v. 3, pp. 417-418.

<sup>599</sup> *Ibid.*, v. 3, pp. 417-418.

<sup>600</sup> Ali, *Money, Sex, and Power*, see especially Introduction.

it is possible to understand both the inherent hierarchy in marriage and the right of husbands to discipline their wives through multiple means, including physical discipline.

In his Chapter on Maintenance (*Bāb al-Nafaqah*) Ibn Nujaym, like al-Kāsānī, offered an explanation as to why maintenance was obligatory for husbands. While al-Kāsānī said that maintenance was made obligatory by marriage and required the obedience of wives to their husbands, Ibn Nujaym argued the opposite. He made the case that the obedience (*tusallim*) of a wife to her husband was what necessitated maintenance.<sup>601</sup> It is possible to argue that by using the conjugation of the three lettered root *s-l-m* - the same root for Islam and Muslim - to define an appropriate mode of being for a wife in relationship to her husband, Ibn Nujaym implicitly drew an analogy between the husband-wife and God-man relationship.<sup>602</sup> While this analogy was plentiful in the exegetical tradition, the use of the word “*tusallim*” or any of its other conjugations in reference to the appropriate behavior of a wife to her husband is unique to the

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<sup>601</sup> Ya‘akov Meron translated “sallamat” as “delivers”, as in “maintenance is due to the wife from her husband... if she delivers (SALLAMAT) herself into his domicile”. Meron, Ya‘akov. “The Development of Legal Thought in Hanafi Texts.” *Studia Islamica*, 30 (1969): 80.

<sup>602</sup> *s-l-m* is a widely used and semantically productive root and does not always have profound religious connotations or theological overtones. However, I suggest that the introduction of this unique adjective to describe the husband-wife relationship in the discourse of wife-beating might have some significance.

juristic tradition. Ibn Nujaym required a greater extent of ownership or control of husbands over wives in exchange for maintenance than his predecessor al-Kāsānī.

Ibn Nujaym, like al-Nasafī before him, made a causal connection between the obedience of wives to their husbands and the obligatory nature of maintenance. al-Nasafī wrote that “When [wives] fail to surrender (*tusallim*) themselves to [their husbands] when it was obligatory on them to surrender (*al-taslīm*), then maintenance is not obligatory [on husbands]”.<sup>603</sup> In his exposition on al-Nasafī’s statement, Ibn Nujaym used the term *nushūz* to refer to a woman who failed to surrender herself to her husband.<sup>604</sup> He further described a *nāshizah* as a woman who struggles against (*al-‘iṣābah ‘alā*) her husband, hates (*al-mabghidah*) him and leaves her husband’s house without his permission.<sup>605</sup> Although he does not mention sexual disobedience here, it is possible that this was implied, since a wife’s expression of any of the above mentioned behaviors would result in her avoiding sexual relations with her husband. It is clear though, that Ibn Nujaym’s definition of *nushūz* extended beyond sexual disobedience to include other forms of disobedience as well. When a woman

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<sup>603</sup> Ibn Nujaym, *Baḥr I-rā’iq*, v. 4, p. 305.

<sup>604</sup> *Ibid.*, v. 4, p. 305.

<sup>605</sup> *Ibid.*, v. 4, p. 128 and 305.

was in such a state of *nushūz*, a husband was not obligated to provide her with maintenance. This discussion of *nushūz* did not refer to Q. 4:34 nor to physical discipline, but simply posited a connection between a husband's obligation of maintenance and wifely *nushūz*. It is nonetheless pertinent to this discussion because in his summary of this section, Ibn Nujaym maintained that as long as a wife remained in her husband's house, she was owed maintenance, even if she were disobedient and withheld sex. He wrote that

...even if it were seen that [the wife] was not in the obedience of her husband regarding sex, it is not the case [that she is not owed maintenance]; because if she is not in obedient to him, she is still in the house. Thus, the maintenance is not cancelled because the husband could [still] prevail upon her (*yaghlibu 'alayhā*)".<sup>606</sup>

Here, Ibn Nujaym appeared comfortable with the prospect of forced sexual relations and assumed it as a consequence of sexual disobedience. The implications of marital rape being acceptable are important to consider in the larger conception of marriage, in the context of which the physical discipline of

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<sup>606</sup> Ibid., v. 4, p. 304.

wives is prescribed.<sup>607</sup> Though forced sexual relations could be employed against a wife refusing herself to her husband, this was not considered disciplining according to Ibn Nujaym, nor was Q. 4:34 cited in connection with this conversation.

#### **4.2.2. *Ta'dīb*: Desired End and Procedure of Hitting**

Al-Kāsānī discussed hitting for the purpose of the discipline of wives extensively. As mentioned above, al-Kāsānī saw the discipline of wives as part of the governance (*wilāyah*) of husbands over their wives; specifically when wives stopped obeying them “in matters in which they are required to be obedient”.<sup>608</sup> When husbands were faced with the disobedience of their wives, which constituted *nushūz*, then it was a husband’s responsibility to discipline his wife. However, he emphasized that this discipline must be carried out

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<sup>607</sup> Kecia Ali considered the following regarding the discussion of marital rape in classical juridical texts. “My use of the phrase “against her will” reflects the texts’ use of terms derived from the root k-r-h. For more on these terms, see the Introduction. Rape is treated in these texts as a form of *ghaṣb* or *ighṭiṣāb* – usurpation, a property crime that by definition cannot be committed by the husband. See Chapter 1. By not using the term rape, I am not diminishing women’s victimization in the coercive sexual encounters the Hanafī jurists authorize. Rather, I am attempting to elucidate the jurisprudential understanding of a man’s sexual rights with regard to his wife. Jurists of the formative period do not utilize a category approximating “marital rape.” Nonetheless, this passage demonstrates that they recognize a distinction between consensual and forced intercourse within marriage.” By “this passage”, she referred to a different Hanafī passage on forced sexual relations with a wife. Kecia Ali, *Money, Sex and Power*, p. 188.

<sup>608</sup> Al-Kāsānī, *Bidā’i’ al-ṣanā’i’*, v. 6, pp. 172-174.

sequentially.<sup>609</sup> Al-Kāsānī promoted a two-step approach to admonishment. When confronted with wifely *nushūz*, a husband was first required to admonish his wife with gentleness (*rifq*) and compassion (*līn*), encouraging her to “be from amongst the righteous (*ṣāliḥāt*), obedient (*qānitāt*) and protectors in [her husband’s] absence (*ḥāfiẓāt li l-ghayb*)”.<sup>610</sup> Here, al-Kāsānī used the first admonition in a positive exhortative manner, such that wives were encouraged to adopt qualities that defined “good women”, mirroring Q. 4:34. Al-Kāsānī speculated that this gentle and compassionate speech might persuade the *nāshizah* wife to return to her husband’s bed. However, if this were not successful, then this positive exhortation was to be followed by threatening speech, wherein a husband was to “warn (*yukhawwif*) [his wife] of abandonment” before actually abandoning her.

If, in turn, the warning did not work, then he was to separate (*al-i’tizāl*) from his wife and abandon both the marital bed and sexual relations (*tark l-jimā*). As in the exegetical literature, there was discussion about the different kinds of abandonment a husband could practice in order to discipline his wife. However, the discussion of abandonment was unique in this section, in that it explicitly revolved around how sexual abandonment might harm a husband, who did not

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<sup>609</sup> Ibid., v. 6, pp. 172-174.

<sup>610</sup> Ibid., v. 6, pp. 172-174.

deserve to lose his sexual rights because his wife was *nāshizah*. Al-Kāsānī

wrote,

There is a disagreement about the nature of abandonment. It is said, “abandon her by not having intercourse with her, and do not sleep with her in the marital bed”. And it is said, “abandon her by not speaking to her during intercourse with her, and it does not mean abandoning sex and sleeping with her”. This is so because this [sexual intimacy] is a shared right between them (*ḥaqqun mushtarakun baynahumā*), and in this [abandoning of sex and the bed] there is the some harm/disadvantage (*al-ḍarar*) for [the husband] as there is for [the wife]. [The husband] is not to discipline [his wife] in a manner whereby he hurts/damages himself and nullifies his own rights (*ḥaqqahu*). Some say, “abandon her by separating from her in bed, and instead bedding another for her right of division”. [This is a possible reading] because he is obligated to fulfill her rights in division and protect the boundaries of God only in a state of agreement, and not in a state where she forfeits her rights, and there is fear of *nushūz* and strife (*al-tanāzu*). And it is said, “he should abandon her by leaving her bed (*muḍāji’atahā*) but he should have sex with her when he is overcome with desire for her (*li-waqt ghalabat shahwatihā*), and not at the time that she needs him”. This is so because this discipline (*al-ta’dīb*) and forcible prevention (*al-zajr*) is meant to discipline her (*yu’addib-hā*) and not [the husband] by preventing him from having intercourse when he needs her.<sup>611</sup>

Sexual rights of the husband were the center of al-Kāsānī’s discussion surrounding the discipline of wives. The reason that wives were being

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<sup>611</sup> Ibid., v. 6, pp. 172-174.

disciplined was because of their sexual disobedience to their husbands, so it makes sense that the paradoxical message of “abandon them in their beds” was discussed in such detail. If wifely *nushūz* constituted sexual disobedience, then depriving wives of sexual intimacy as a disciplinary measure posed two problems: one, this did not help husbands who were already being denied sexual access to their wives, and two, this would not be a punishment for a wife who already did not want to have sex with her husband. It was in response to this dilemma that the exegete al-Ṭabarī opted for the unpopular interpretation of “abandonment in bed” as “tying one’s wife in bed”.<sup>612</sup> Although most exegetes dismissed this interpretation, the problem remained. Al-Kāsānī seemed to think that the Ḥanafīs addressed this problem by permitting husbands to bed another wife or concubine, or by leaving a wife’s bed but continuing to have sexual relations with her according to his desire while refusing sex to her if she desired it. In arguing that having sex only when a husband desired it and not when a wife might want it was a punishment, al-Kāsānī suggested that wives were ordinarily entitled to sex when they desired it. This view conflicts with earlier juridical opinions analyzed by Ali, where sex was treated as primarily a

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<sup>612</sup> For more discussion on al-Ṭabarī’s interpretation of *wa-hjurūhunna fī l-maḍāji’* as “tying one’s wife in bed” see Chapter 3, 3.3.5. Also see, Bauer, *Room for Interpretation*, p. 167.



husband's and not a wife's right.<sup>613</sup> In contrast, al-Kāsānī described sexual intimacy as a "shared right" between the two spouses.

If abandonment succeeded and the wife left off her *nushūz*, then the husband was to cease disciplining her further. However, if abandonment was not effective in dissuading a wife from persisting in her *nushūz*, then a husband was to hit her in a non-extreme (*ghayr mubarrih*) manner that did not leave an impression (*sha'n*). Here, al-Kāsānī cited the relevant disciplinary section of Q. 4:34, emphasizing the sequential rather than conjunctive nature of the "and" (*wa*) used between each disciplinary measure. Al-Kāsānī did not dwell on the nature and extent of hitting extensively. He qualified hitting by saying that it should be non-extreme, it should not leave a mark and if it was not beneficial, it should be discontinued and the matter should be referred to adjudication. It is not clear by whom this adjudication is supposed to be carried out - whether it should be a representative of hers, his or a judge. It is interesting that each step of discipline - admonishment, abandonment and hitting - was qualified by al-Kāsānī. Yet, it is not clear that he displayed any ethical problems with the prescription of hitting. He emphasized that it was to be used only after exhausting the punitive efficacy of admonishment and abandonment. However,

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<sup>613</sup> Ali, *Money, Sex and Power*, Chapter 2.

it is important to remember, that al-Kāsānī's conception of abandonment carried implications of sexual violence.

Al-Kāsānī summarized his own discussion regarding the disciplining of wives in the following manner,

The matter [of discipline] begins with kind and gentle exhortation without harshness (*al-taghlīz*) in speech. If she accepts this [the matter is settled] but if she does not [accept this] then [the husband] is to use harsh/coarse speech (*ghallaḥa l-qawl*). If she accepts [the coarse admonishment, then the matter is settled], but if she does not, the [the husband's] power is extended (*basaḥa*). And similarly, if she engages in something that is worthy of censure (*maḥḥūran*) other than *nushūz* that transgresses clearly demarcated boundaries, it is the [responsibility] of the husband to discipline her (*yu'addibahā*) by chastisement/rebuke (*ta'zīr*).<sup>614</sup> This is so because it is the right of the husband to chastise his wife just as it is the right of the master (*li l-mawlā*) to chastise his property/slave (*mamlūkahu*).<sup>615</sup>

Al-Kāsānī discussed the husband's discipline of his wife as a "right" and extended the right of husbands to discipline their wives for behaviors that were forbidden but were outside the scope of *nushūz*. He did this by once again

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<sup>614</sup> I translate *ta'zīr* as chastisement and/or rebuke, but *al-ta'zīr* as discretionary punishment, even though the two are related. Chastisement/rebuke involve discretionary punishment for the Ḥanafī scholars in this study. It appears that is the most consistent way to translate these two related ideas, so that they make sense in translation.

<sup>615</sup> Al-Kāsānī, *Bidā'i' al-ṣanā'i'*, v. 6, pp. 172-174.

drawing an analogy between the master-slave and husband-wife relationship. Just as husbands and masters were required to provide for their wives and slaves respectively, so too was it the right of husbands and masters to undertake the moral discipline of their wives and slaves.

After discussing the discipline of wives, al-Kāsānī recalled Q. 4:19 to exhort husbands to treat their wives in an equitable manner. The relevant passage of Q. 4:19 reads, “and live with them in equity/kindness (*bi l-ma’rūf*)”. He explained that husbands were to live with their wives “with graciousness (*faḍl*)<sup>616</sup> and excellence (*iḥsān*) in speech, actions and character”.<sup>617</sup> He further elaborated that this meant treating one’s wife in a manner in which the husband himself would like to be treated. To express this point more fully, al-Kāsānī drew on a portion of the *ḥadīth* related by ‘Umar, which states “The best of you is the one who is the best to his wife, and I am the best of you to my wives”. We encountered this *ḥadīth* in the first chapter, which reported that ‘Umar sought permission on behalf of men in Medina to hit their wives. In various reports of this *ḥadīth*, Muḥammad granted him permission and men responded by hitting their wives and the wives complained to Muḥammad. It was in this

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<sup>616</sup> The use of the word “*faḍl*” in how husbands should treat wives is loaded, since Q. 4:34 - which is alluded to throughout this discussion - states that men have *faḍl* over women.

<sup>617</sup> Al-Kāsānī, *Bidā’i’ al-ṣanā’i’*, v. 6, p. 174.

context that Muḥammad is reported to have made the above statement. It is significant that al-Kāsānī mentioned this excerpt from a *ḥadīth* that was centered around the hitting of wives immediately after dealing with the legal rulings sanctioning the discipline of wives. That this *ḥadīth* created no ostensible tension for him in deriving legislation regarding the duty of husbands to discipline wives makes it clear that he was able to hold Q. 4:34 on the one hand and this *ḥadīth* on the other without seeing any contradiction between the two. It appears that the message of the *ḥadīth* for him was not so much Muḥammad's conflicted stance on the physical discipline of wives, but rather focused on the general exhortation to treat wives well. While the exemplary intent of Muhammad's refraining from hitting his wives is patent in the *ḥadīth*, it would appear that this message was not central for al-Kāsānī.

Two centuries later, Ibn Nujaym's commentary on Nasafī's *Kanz I-Daqā'iq* addressed the issue of the physical discipline of wives in reverse order from al-Kāsānī's work. While al-Kāsānī ended with an exhortation for men to live with their wives in kindness and equity, Ibn Nujaym began with this appeal. Like al-Kāsānī, he used Q. 4:19 to urge husbands to treat their wives well, as they would like themselves to be treated. When a wife did commit *nushūz*, though, husbands were responsible for their discipline, which needed to be carried out

in gradual stages, beginning with admonishment and ending with hitting. Also like al-Kāsānī, Ibn Nujaym discussed multiple interpretations of abandonment, emphasizing the need of the husband to have sexual access to his wife.

Mirroring al-Kāsānī as well as the exegetical tradition, Ibn Nujaym stated that a husband's duty to discipline his wife was tied up in the expectation of wifely obedience. So, for Ibn Nujaym, a wife committed *nushūz* against her husband by disobeying him in any of his lawful commands. That is to say, wives were required to obey their husbands as long as their husbands' command would not cause them to disobey God, thereby sustaining the chain of command. In addition to general disobedience, a wife committed *nushūz* by refusing sexual access to him, as well as leaving his home without his permission.<sup>618</sup>

Ibn Nujaym added that husbands further had the right to chastise/rebuke their wives, through non-extreme hitting if they displayed lewd behavior (*fāḥishah mubayyinah*). Instead of going into greater legal detail here, Ibn Nujaym ended

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<sup>618</sup> Ibn Nujaym, *Baḥr l-rā'iq*, v. 3, p. 284. Also, Ibn Nujaym has a discussion about whether a wife is permitted to leave her husband's house if he forbids her to, even if it is to care for a chronically ill father who has no one to care for him, neither a believer nor a non-believer. He suggests that it would be acceptable for her to disobey her husband in this condition. Marin mentions that al-Suyūṭī also mentions a version of this report. She writes, "A woman was forbidden by her husband to leave their home while he was away on a military expedition. The woman, learning that her father was gravely ill, asked the Prophet's permission to attend him. The Prophet's answer was to recommend that she obey her husband, even when the father finally died. This is how, said the Prophet, the dead man was forgiven by God, thanks to his daughter faithful obedience to her husband." Marin, "Disciplining Wives", pp. 37-38. Also see, Al-Suyūṭī, *al-Durr al-manthūr*, v. 2, p. 276.

the section with two *aḥādīth*: “Do not ask a man why he hit his his wife”, and that Muḥammad “forbid a woman from complaining against her husband”.<sup>619</sup> It may be speculated that Ibn Nujaym mentioned these two *aḥādīth* in response to the contention that a woman might seek legal redress if she were beaten. However, he did not explicitly discuss options for legal redress in cases where wives who were beaten by their husbands. Instead, it appears that these two *aḥādīth* were used to both to extend a husband’s power over his wife without legal and moral accountability and to socially discourage wives from complaining against their husbands in the context of the discussion on disciplining wives.

On the subject of *ta’dīb*, Ḥanafī jurisprudence appears to be even more restrictive for women and more expansive for husbands than the exegetical literature. In summary, according to the Ḥanafī scholars in this study, husbands were permitted, even responsible, to use physical violence not only in the case of *nushūz*, but to address moral indiscretions on their wives parts that reached beyond the limited scope of *nushūz*. The most common way that Ḥanafī jurists spoke about physical discipline in these circumstances was through the legal term *ta’zīr*, meaning discretionary punishment.

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<sup>619</sup> Ibn Nujaym, *Baḥr l-rā’iq*, v. 3, p. 385.

#### 4.2.3. *Ta'zīr*: Discretionary Punishment

*Ta'zīr* was an important concept in legal discussions of the disciplinary power of husbands over wives. Dien describes *ta'zīr* as “a term of Islamic law meaning discretionary punishment, e.g. by the *kāḍī*, for the offenses for which no *ḥadd* [q.v.] punishment is laid down”.<sup>620</sup> The term *ta'zīr* itself cannot be found in the Qur'ān and *aḥādīth*, both “contain practical examples of *ta'zīr*”.<sup>621</sup> A prime example of punishments mentioned in the Qur'ān that are unspecified but are not considered *ḥadd* punishments are the disciplinary measures outlined in Q. 4:34. In its practical application, Dien mentions that “the amount of *ta'zīr* should be lower than the lowest *ḥadd*”, and often involves instruments such as “the hand, whip, stick, and *dirra*, which is a whip of ox-hide, or made of strips of hid on which date-stones have been stitched”.<sup>622</sup>

If the master-slave analogy was relevant in understanding the fiduciary-cum-moral relationship between a husband and a wife, then it is even more central in

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<sup>620</sup> M.Y. Izzī Dien. "Ta'zīr (a.)." *Encyclopaedia of Islam, Second Edition*. Edited by: P. Bearman , Th. Bianquis , C.E. Bosworth , E. van Donzel and W.P. Heinrichs.

<sup>621</sup> M.Y. Izzī Dien. "Ta'zīr (a.)." *Encyclopaedia of Islam, Second Edition*.

<sup>622</sup> M.Y. Izzī Dien. "Ta'zīr (a.)." *Encyclopaedia of Islam, Second Edition*. Dien also mentions the opinion of Muḥammad b. 'Iwaḍ al-Sunāmī (d. 734/1333) as follows: “Ḥadd is specified by the text, unlike *ta'zīr* which is at the discretion of the Imām ; *ḥadd* lapses if based on suspicion ( *shubha* ), whereas *ta'zīr* is obligatory if there are grounds for suspicion. Ḥadd is not applicable to a minor (*ṣabī*), while *ta'zīr* can be applied to minors.”

grasping the role of *ta'zīr* in a marital relationship. 'Uthman ibn 'Alī al-Zayla'ī (d. 743/1342) also commented on al-Nasafī's *Kanz I-Daqā'iq* in his work *Tabyīn I-ḥaqā'iq sharḥ kanz I-daqā'iq*. In his section on *ta'zīr*, al-Zayla'ī defined *ta'zīr* as “the non-specified (*ghayr muqaddarah*) chastisement (*al-zawājir*) [applied] when necessary in order to remove corruption (*fasād*)...[and] requires a disciplinary action (*ta'dīb*) other than the application of the *ḥadd* penalty”.<sup>623</sup>

So, for al-Zayla'ī, *ta'zīr* constituted either official (i.e., carried out by government agents) or non-official (carried out by a husband, master or even teacher) chastisement for a crime that fell short of *ḥadd* crime. Al-Zayla'ī directly connected this definition of *ta'zīr* to the physical discipline of wives prescribed in Q. 4:34, by using it as a proof text for the permissibility of non-*ḥadd* punishments. He further connected both *ta'zīr* and Q. 4:34 to a *ḥadīth* wherein Muḥammad was reported as saying, “Do not raise your rod (*'aṣā*) from your wives”. Al-Zayla'ī understood this *ḥadīth* to be evidence that husbands were to keep their wives in line with the threat of physical chastisement, using a rod/ stick as a tool of punishment. The purpose of the command to hit wives was thus for general discipline (*ta'dīb*) and rectification (*tahdhīb*).<sup>624</sup>

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<sup>623</sup> 'Uthmān ibn 'Alī Al-Zayla'ī, *Tabyīn al-ḥaqā'iq* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyah, 2000) v. 3, p. 633.

<sup>624</sup> *Ibid.*, v. 3, pp. 633-634.



Al-Zayla‘ī considered the punitive possibilities of *ta‘zīr* to extend beyond merely hitting one’s wife. He cited a case presented to the legal scholar, Abū Ja‘far al-Hinduwānī (d. 362/973), wherein the latter was asked whether a man was permitted to kill the man with whom he found his wife. He responded that if the husband knew (*‘alīma*) that screaming at (*al-ṣiyāḥ*) and hitting the adulterer would restrain him then it was impermissible for the husband to have killed the adulterer. However, the husband was permitted to kill the adulterer if he knew that the latter would not be restrained except by death. Further, if the wife was not being raped, but rather yielded to the adulterer, then it was also permissible for her husband to kill her as well. Since both adultery and killing are normally *ḥadd* crimes, it appears strange that this case was included in a discussion on non-*ḥadd* punishment (*ta‘zīr*).<sup>625</sup> According to al-Zayla‘ī this case demonstrated that hitting, even to the point of death, was a non-*ḥadd* punishment if one owned the person one was hitting.

Though al-Zayla‘ī’s explanation focused on why it was permissible for a husband to kill his wife if he found her consenting to sexual relations with another man – he owned her – did not explain why he could kill the man who he

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<sup>625</sup> It is possible that what is referred to here is “killing as an act of punishment for the sake of upholding public order (*al-ḥatl siyāstan*). For more on this, see Dien, “Ta‘zīr (a.).” *Encyclopaedia of Islam, Second Edition*.

found committing adultery with his wife. Since he does not own that man, then why is it permissible for him to kill the man committing adultery with his wife? Here, there seems to be an implied understanding that owners who found their property being violated by anyone were entitled to defend their property by any means necessary, including killing the one who violated their property. It is clear from the context of the discussion here that people - wives and slaves - could be owned. Further evidence that al-Zayla‘ī did not consider the husband’s killing of his wife and adulterating partner a *ḥadd* crime was that he did to catalogue it under the chapter on *ḥadd* punishment, but rather suggested that it belonged in the chapter of rectifying an abomination (*munkar*) with one’s hands. The subject heading of this chapter was based on the *ḥadīth* where Muḥammad allegedly advised his companions, “Whosoever of you sees a abomination should change it with his hands. If he is not able to, then he should speak out against it. If he is not able to do this, then he ought to hate it in his heart - and this is the weakest of faith”.<sup>626</sup>

Ibn al-Humām (d. 861/1457) in his *Sharḥ Faṭḥ al-Qadīr* defined, introduced and discussed *ta‘zīr* in a manner similar to al-Zayla‘ī. He defined *ta‘zīr* as disciplinary chastisement for non-*ḥadd* crimes. Ibn al-Humām’s chief concern

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<sup>626</sup> Al-Zayla‘ī, *Tabyīn al-ḥaqā‘iq*, v. 3, p. 634.

in his discussion was the question of imposition of *ta'zīr* by someone other than a judge (*qādī*), which he related to the distinction between the rights of God (*ḥaqq l-Ilāh*) and social rights (*ḥaqq l-'ibād*). According to Ibn al-Humām, husbands were permitted to apply *ta'zīr* to their wives. He cited the disciplinary measures mentioned in Q.4:34 as a proof text for the legitimacy of physical violence as chastisement for the purpose of discipline (*ta'dīb*) and rectification (*tahdhīb*) in a non-*ḥadd* context. He further argued that *ta'zīr* as a practice was mandated (*mashrū'*) by Q. 4:34. As with exegetes, the central relevance of Q. 4:34 for Ḥanafī jurists was its legislation of the physical discipline of wives. Like al-Zayla'ī, Ibn al-Humām cited the *ḥadīth* about “not raising your stick from your wives/household”, along with three other *aḥādīth*. In one, Muḥammad was reported to have ordered men to hang their whips where their wives/household could see them. In the second, he advised men not to whip someone more than ten times except in the case of the *ḥadd* penalty.<sup>627</sup> And in the third *ḥadīth*, Muḥammad said that children over the age of ten were to be hit for abandoning prayer.<sup>628</sup> According to Ibn al-Humām, these prophetic traditions, along with Q. 4:34, were the legal indicants that establish the legitimacy of *ta'zīr* punishment.

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<sup>627</sup> This might emerge from the Ḥanafī idea that *ta'zīr* must be lower than the lowest *ḥadd* penalty. For more on this, see Dien, "Ta'zīr (a)." *Encyclopaedia of Islam, Second Edition*.

<sup>628</sup> Ibn al-Humām, *Sharḥ Faṭḥ al-Qadīr*, v. 4, p 212.

The discussion of the parental duty to hit children alongside the husbandly duty to physically discipline wives suggests that, for Ibn al-Humām, these were analogous actions and did not need to be distinguished from each other. Like al-Zayla‘ī, Ibn al-Humām referenced the legal opinion of Abū Ja‘far al-Hinduwānī regarding the permissibility of killing both one’s wife and the man with whom she was found committing adultery. He used this reference to make the case that one was permitted to use hitting as a *ta‘zīr* punishment for those with whom one had a proprietary relationship.<sup>629</sup> Both al-Zayla‘ī and Ibn al-Humām’s discussion of *ta‘zīr* show that they conceived of it as closely related to the husband-wife relationship. Further, their treatment of *ta‘zīr* allows for a discretionary use of violence severe enough to result in the death of the wife in certain circumstances.

Both Ibn Nujaym<sup>630</sup> and ‘Alā’ al-Dīn al-Haskafī (d. 1088/1677)<sup>631</sup> considered the legal consequences for husbands if their wives were to die as result of their

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<sup>629</sup> Ibid., v. 4, p. 212.

<sup>630</sup> Ibn Nujaym, *Baḥr l-rā‘iq*, v. 5, pp. 69-70.

<sup>631</sup> Ibn ‘Abidīn, *Radd al-Muḥtār*, v. 6, pp. 107-110. For Ibn Nujaym, the husband-wife relationship was a helpful analogy to the master-slave one in many ways. For example, he used it to settle the question of whether a husband is responsible for his wife’s burial if she does not have any wealth to cover burial costs. He argues that if she was a *nāshizah* before her death, then he is not responsible. However, if she was not a *nāshizah*, then it is obligatory on him to bury her, just as it is obligatory on a master to bury his slave. See, Zayn al-Din b. Nujaym, commentary on al-Nasafi’s *Kanz al-daqa’iq*, d. 710/1310, *Takfīn al-mayyit*, where he writes, “*ka dhawā al-arḥām wa l-‘abd ma’a l-mawlā wa l-zawjah ma’a l-zawj.*”

physical discipline or *ta'zīr* punishment. The question of the legal responsibility of the husband in this case was raised in both the exegetical and juridical traditions. For Ibn Nujaym and al-Haskafī, blood money was owed in this circumstance, since they considered this scenario in the context of analogous scenarios, such as a master killing his slave, a father his child, or a teacher his student. Though the liability of the hitter was the same in all these cases, both jurists argued that a father hitting a child was qualitatively different from a husband hitting his wife, which was more comparable to a master hitting his slave. Ibn Nujaym considered a father hitting his child as obligatory on the father, because hitting is necessary for the well-being (*maṣlaḥah*) of the child. Similarly, a father could permit a teacher to physically discipline his child when teaching him, by transferring his ownership rights (*bi tamlik abīhi*) to the teacher. Here, the teacher hitting the child would be like the father hitting his child. For Ibn Nujaym, hitting one's wife was more like hitting a slave and cited Q. 4:34's command to "hit them" as proof.<sup>632</sup> It appears that the right of hitting children, slaves and wives formed a central part of the ownership rights of men over them. While the physical discipline of a child could be outsourced to a teacher, a man had to undertake the physical discipline of his slave and wife himself and this right was non-transferrable. Alongside this, husbands and

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<sup>632</sup> Ibn Nujaym, *Baḥr l-rā'iq*, v. 45 p. 83.

masters were responsible for the discretionary punishment (*al-ta'zīr*) of their charges in non-*ḥadd* cases. Hence, according to al-Haskafī, if a man killed his wife while hitting her, he was financially liable for her death. The exception to his was if he found her willingly committing adultery, in which case he was not financially liable.<sup>633</sup>

#### 4.2.4. Summary of Ḥanafī Approaches to Wife-Beating

In summary, based on the Ḥanafī positions on the *nushūz* of wives assessed in this chapter it can be seen that ideas of marriage, slave ownership, and the responsibility to physically discipline one's charges were interconnected. The Ḥanafīs did not display ethical discomfort with patriarchal hierarchy and, in fact, institutionalized it in their legal discourse. Q. 4:34 was used as a central proof text to support this staggered view of society, where husbands were granted almost unlimited legal power over their wives. In some ways, the Ḥanafī position on the right of husbands to physically discipline their wives was more pronounced in the juridical texts than in the exegetical ones. This is especially so because in the legal tradition, a husband's right to physically discipline wives was given legal contours while also protecting husbands through minimal legal liability. There was no discussion in the juridical texts in this study about the

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<sup>633</sup> Ibn 'Abidīn, *Radd al-Muḥtār*, v. 6, pp. 107-110.

conflicted reports from Muḥammad on the matter of hitting wives. Jurists selectively considered prophetic traditions to support their conceptions regarding the rights and liabilities of husbands in hitting their wives. While jurists advised husbands to hit their wives only in a non-extreme manner, there was no discussion regarding the recourse wives had if they were abused excessively, or of the liability of husbands if they did hit their wives in an extreme manner that did not result in death.

### **4.3. Malīkī School**

The Mālikī school's treatment of the physical discipline of wives was unique compared to those of the Ḥanafīs, Shafī'īs and Ḥanbalīs in that the role of the judge (*qāḍī/ḥākim/imām*) was much more prominent and involved. The Hanafīs, in contrast, considered the role of a judge to emerge in cases of domestic disruption only after a husband failed at disciplining his wife, and thus after the use of physical violence. Even in cases of *ta'zīr*, the judge played a minimal role, so that the bulk of the responsibility for disciplining those in one's charge was designated to the husband. The Mālikīs, however, gave a much more prominent role to the judge, who was involved in the disciplining of wives, sometimes from the very beginning of the disciplinary procedure initiated in response to *nushūz*. Further, unlike the Ḥanafīs, the Mālikīs overtly addressed

the question of retaliation against husbands if they abused their disciplinary power over their wives. The role of the judge was so involved in the marital relationship that husbands and judges appeared to share in the responsibility of disciplining wives.

#### 4.3.1. *Tartīb* and the Role of the Judge

Al-Khalīl's (d. 767/1365) legal manual, *Mukhtasar al-Khalīl*, formed an important basis for discussions on the disciplinary power of husbands over wives. Muḥammad Ibn Muḥammad al-Ḥaṭṭāb (d. 954/1547) wrote a commentary on al-Khalīl's *Mukhtasar* where he assumed an external party's involvement in the disciplining of a wife from the very first measure of discipline outlined in Q. 4:34. In his commentary on al-Khalīl's work relating to "admonishment of the one who commits *nushūz*" he saw several possibilities as to how the discipline of a wife might play out. In the first scenario, a husband was responsible for restraining/reprimanding (*zajr*) his wife when he knew (*'alima*) of her *nushūz*, "if the matter had not already been referred to the local leader (*imām*)".<sup>634</sup> The second and third scenarios constituted cases wherein a wife's *nushūz* had already been referred to a local. In this event, the local leader could ask the husband to rectify his wife's behavior himself, in which

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<sup>634</sup> Al-Ḥaṭṭāb, *Mawāhib*, v. 4, p. 15. I translate *imām* as local leader to mean that he can have religious and communal authority.



case the husband was responsible for restraining his wife. Alternatively, the local leader could personally assume responsibility for restraining/rebuking the wife (*zajrahā*).<sup>635</sup>

The Mālikī discussion of the abandonment (*hajr*) of one's wife was also decidedly distinct from other legal schools. They were not as concerned as the Ḥanafīs with how sexual abandonment might compromise a husband's right of sexual access to his wife. In his commentary on "then abandon them", al-Ḥaṭṭāb wrote that abandonment meant abandonment of the marital bed. He cited al-Qurṭubī to limit the duration of abandonment to four months, although al-Ḥaṭṭāb thought it more appropriate for it to last for only one month. While al-Ḥaṭṭāb did not directly address the issue of simultaneity or succession of the three disciplinary prescriptions in Q. 4:34, he assumed that each prescription was to be executed in order, only after the previous ones were exhausted. The *Mukhtasar* text he expounded on replaced the possibly conjunctive "and" (*wa*) in Q. 4:34 with the adverbial "then" (*thumma*) to describe the temporal relationship between each disciplinary action. Al-Ḥaṭṭāb maintained this distinction in his writing.

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<sup>635</sup> Ibid., v. 4, p. 15.

The Mālikī discussions on the physical discipline of wives was more complex and nuanced than the Ḥanafī sources referenced in this study. Mālikī jurists were concerned with the limits of permissible physical discipline and the consequences of exceeding those limits. Mālikī exegetical and juridical discourses were closely connected in this discussion. The right of husbands to physically discipline their wives was inextricably bound to the text of Q. 4:34 in Mālikī jurisprudence. Al-Qurṭubī's exegesis of this verse informed al-Ḥaṭṭāb's understanding of the prescription. In his exposition on “and then (*thumma*) hit them”, he wrote,

In his exegesis of God's speech, “And concerning those women from whom you fear *nushūz*”, al-Qurṭubī said that the hitting in this verse is disciplinary hitting (*ḍarb l-adab*), in a non-extreme (*ghayr mubarrih*) manner. [The hitting] should not break bones or cause a disfiguring wound (*yashīnu jāriḥatan*), as would be the case with punching (*al-lakzah*), etc. This is because the desired end [of the hitting] is rectification (*al-ṣalāḥ*) and nothing else. If this [hitting] advances to death, then [the husband] is liable. And al-Abīyun related on the authority of 'Iyāḍ in his commentary on the *ḥadīth* of Jābir in the Book of the pilgrimage (*Ḥajj*): what is meant by “*ghayr mubarrih*” (non-extreme) is “*ghayr shadīd*” (non-severe/intense). And in his *al-Qurbā* in the tenth chapter in his description of the prophet's Pilgrimage, al-Muḥibb l-Ṭabarī stated that when [the prophet] said, “and hit them in a non-extreme (*ghayr mubarrih*) manner”, he meant in a manner that does not leave impressions (*ghayr mu'aththir*) and does not cause a fracture (*wa lā shāqqin*). Some say that [the hitting] may be in a mildly violent manner,

meaning that the disciplinary hitting [of wives] is such that it does not leave apparent impressions... [Jamāl al-Dīn] Ibn al-Ḥājib (d. 646/1248) restricted hitting by saying that the hitting should not cause fear [of injury or death] (*ghayr makhūf*). [Khalīl b. Ishāq al-Jundī (d. 749/1348 or 767/1365)] said in *al-Tawḍīḥ*: the hitting should be corrective and should not be threatening. If it becomes clear to [the husband] that the hitting is not beneficial (*yufīdu*) then it is not permissible for him to hit her. It is stated in *al-Jawāhir*<sup>636</sup> that if it is clear to him (*ghalaba ‘alā ḡannihī*) that she will not abandon her *nushūz* except by means of threatening hitting then it is completely impermissible for him to use a discretionary punishment (*ta‘zīruhā*) [that involves hitting of a greater intensity].<sup>637</sup>

As seen in the above passage, al-Ḥaṭṭāb’s discussion of the physical discipline of wives centered around the desired end of hitting along with its method and limits. Drawing on al-Qurṭubī’s exegesis of Q. 4:34, al-Ḥaṭṭāb asserted the right of husbands to physically discipline their wives, but also delineated the why and how of such discipline. Husbands were permitted to use physical violence toward their wives for the sole purpose of discipline (*ta’dīb*) and rectification (*al-ṣalah*). The hitting was not to be neither fearsome (*ghayr makhūf*) nor extreme (*ghayr mubarrih*). It could not leave impressions, break bones or cause

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<sup>636</sup> *Al-Jawahir* is probably the *al-Jawāhir al-thamīnah fī madhhab ‘ālim al-madīnah* of the Mālikī Jalāl al-Dīn b. Shās (d. 616/1219).

<sup>637</sup> Muḥammad ibn Muḥammad al-Ḥaṭṭāb, *Mawāhib al-Jalīl li-sharḥ Mukhtaṣar Khalīl* (Ṭarabulus, Libya: Maktabat al-Najāh, 1972) v. 4, pp. 15-16.

disfiguration. Punching was also not permitted. In this regard, the discussion of the physical discipline of wives is similar to the discussion of the Ḥanafīs.

However, the Mālikīs were unique in discussing the circumstances in which a husband was not permitted to hit his wife. If a husband was convinced that his hitting would not be beneficial in rectifying or disciplining his wife, then he was not permitted to hit her. Further, if he were convinced that a light hitting would suffice, then he would not be permitted to conduct the *ta'zīr* of his wife.

In the context of this discussion, al-Ḥaṭṭāb did not define *ta'zīr* explicitly.

Nevertheless, it is possible to extrapolate from the text that non-threatening hitting constituted chastisement that involved both disciplinary discretionary punishment (*ta'zīr*). He considered the chastisement (*ta'zīr*) of wives by their husbands impermissible if husbands were convinced that fearsome hitting (*ḍarb makhūf*) would not suffice in disciplining their wives. While the role of the judge (*imām/ḥākim*) was an important part of the discussion of admonishment and a husband's responsibility upon witnessing his wife's *nushūz*, the judge did not play a significant role in al-Ḥaṭṭāb's discussion of hitting. The judge's role was only implied in his passing mention of the husband's liability should he accidentally kill his wife while disciplining her.

A century after al-Ḥaṭṭāb, Muḥammad ibn ‘Abd Allāh al-Kharashī (d. 1101/1690) wrote another commentary on al-Khalīl’s *Mukhtasar*. Al-Kharashī also used al-Ḥaṭṭāb’s commentary on al-Khalīl’s *Mukhtasar* in order to supplement his own commentary. This super-commentary discussed the issue of the physical discipline of wives in two places, in the chapter on maintenance and under the heading of the ruling for *nushūz*. Unlike the Ḥanafī scholars in the previous section, the Mālikī scholars under discussion were comfortable discussing wifely *nushūz* without considering husbandly *nushūz*. Like the Ḥanafī’s, wifely *nushūz* for al-Kharashī involved a woman denying herself to her husband or being disobedient to him. He described the disobedience of a wife to her husband as “her leaving the station of obedience to him such that he no longer maintains control (*lam yaqdir ‘alayhā*) over her”.<sup>638</sup> Al-Khalīl originally wrote in his *Mukhtasar*, “admonish the one who commits *nushūz*, then (*thumma*) abandon her, then hit her if you think (*ẓanna*) that it will be beneficial (*ifādatahu*)”. In his commentary on this, al-Kharashī explained that a wife was deserving of admonishment from her husband when she refused herself to him and he no longer had control over her, or she behaved in a blameworthy manner by leaving his house without his permission or by refusing to fulfill her

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<sup>638</sup> Al-Kharashī, *Sharḥ Mukhtasar al-Khalīl*, v. 4, p. 191.

divinely ordained obligations to him.<sup>639</sup> As in the exegetical sources, there was an explicit connection made between wives fulfilling their divinely ordained obligations to their husbands and pleasing God. For al-Kharashī, a wife pleased God by pleasing her husband. Admonishment was meant to remind a wife of her proper place by specifying that it was obligatory for her to obey him and to evoke a husband's legal power by mentioning the other two disciplinary commands, abandonment and hitting. As with some exegetes<sup>640</sup>, admonishment was to be used to threaten wives of the remaining disciplinary steps in Q. 4:34. Al-Kharashī drew on al-Ḥaṭṭāb's position on the intimate role of the judge in commencing the disciplinary steps against one's wife, once her *nushūz* became evident, beginning with admonishment.

If admonishment did not work, then husbands were to abandon their wives by staying away from their beds. Like al-Ḥaṭṭāb, al-Kharashī mentioned the abandonment of wives in passing. He also drew on Qurṭubī's position of providing the upper limit of four months, and suggested a more appropriate time range of a month, for the duration of abandonment. However, he too focused in greater detail on the command to physically discipline wives. If abandonment

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<sup>639</sup> Ibid., v. 4, p. 192. For more discussion on the connection between sexual disobedience and *nushūz*, see Kecia Ali, *Money, Sex and Power*.

<sup>640</sup> Examples of such exegetes include al-Māwardī and 'Izz I-Dīn al-Sulamī.

did not work, then a husband was to “hit her in a non-extreme (*ghayr mubarrih*) manner”.<sup>641</sup> As with al-Ḥattāb, al-Kharashī specified that the hitting ought not to break bones or cause a disfiguring wound. He also added that husbands were not permitted to harm their wives if they were certain that they would not abandon their *nushūz* without fearsome hitting. Al-Kharashī wrote,

If it becomes clear to [a husband] that [his wife] will not abandon her *nushūz* except by means of fearsome (*makhūf*) hitting, then it is impermissible for him to harm her (*taḍrīruhā*). If [the wife] claims aggression (*al-‘adā’*) and the husband claims discipline, then she has the final say. It is similar in the case of the slave and the master when they disagree with each other. [The husband] is not to proceed from one [disciplinary] step to the next until it is clear to him that the previous step was not sufficient for reigning her in. He should do everything except hitting. If he does not think that [hitting] will be beneficial to him, perhaps something other than hitting [will be beneficial]. He should not [hit] except when he knows that intensifying [the discipline] will be beneficial for him.<sup>642</sup>

In the above passage, al-Kharashī stressed that the physical discipline of a wife was to be undertaken by a husband only when he was certain that it was necessary and would be beneficial. He emphasized the need to exhaust the three prescriptions in Q. 4:34 sequentially rather than simultaneously. In this passage, al-Kharashī equated fearsome hitting with harm, such that harming

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<sup>641</sup> Al-Kharashī, *Sharḥ Mukhtasar al-Khalīl*, v. 4, p. 192.

<sup>642</sup> *Ibid.*, v. 4, p. 192.

one's wife was never permissible. It was impermissible for a husband to harm his wife even if he knew that that only means of persuading her to abandon her *nushūz* was severe hitting that might result in harm to her. While the husband was permitted to hit his wife, and to use his judgment to determine when and how much hitting was necessary, he was also restricted to following the prescriptions of admonishment, abandonment and hitting sequentially. He was also prohibited from hitting her if he thought it would unpersuasive in deterring his wife from *nushūz*.

An important point emerged in the passage above. Like the Ḥanafī scholars in this study, al-Kharashī did not think it problematic to compare the husband-wife relationship to the master-slave relationship. However, unlike the Ḥanafī scholars, al-Kharashī considered the connection between these relationships in a manner that was advantageous to both wives and slaves. He argued that if there were to be a dispute between a husband and wife, such that she claimed to have been harmed by her husband's aggression and the husband claimed that he had only harmed her in the service of disciplining her, then her claim was to take priority over his claim (*fa l-qawl qawluhā*). Al-Kharashī explained that this was similar to the case of the master and the slave when they made similar accusations against the other. Al-Kharashī's privileging of a wife's



claims over her husbands relates to the overall Mālikī attitude towards *ḍarar* (harm) in the marital relationship, which they elaborated more than other Sunnī schools. For instance, Mālikī's are much more severe towards husbands who harm their wives in the hopes that the wives will ransom themselves through *khul'* (wife-initiated divorce)<sup>643</sup>. To this end, they favored the wife's testimony of abuse over the husband's denials.

It is possible to find justification for this approach in several of the *aḥādīth* surrounding Q. 4:34. In the context of the revelation of Q. 4:34, when the Ḥabībah bt. Zayd approached Muḥammad regarding her husband's slapping/hitting her, he simply accepted her claim and was inclined to grant her retaliation.<sup>644</sup> Similarly, when Jamīlah bt. 'Abdullāh's brother complained to Muḥammad about her husband, Qays b. Thābit, hitting his sister and breaking her hand, Muḥammad accepted the claim on her part against her husband's without considering Qays' side of the story.<sup>645</sup> Finally, when Walīd b. Uqbah's wife complained to Muḥammad about her husband beating her, Muḥammad urged Walīd to refrain from beating her and eventually cursed him. He did this without inquiring whether the motivation of Walīd's beating was disciplinary or

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<sup>643</sup> This point was brought to my attention by Marion Katz.

<sup>644</sup> See Chapter 2, under discussion of *Asbāb al-nuzūl*.

<sup>645</sup> See *Ḥadīth* Chapter, 1.2.2.5. Domestic Violence as Acceptable Cause for Divorce.

not.<sup>646</sup> Although al-Kharashī did not mention any of these *aḥādīth* explicitly, it can be argued that such traditions were connected to the principle of privileging an abused wife’s claims against her husband’s claims of discipline.

In line with al-Khalīl’s *Mukhtasar*, al-Kharashī deferred the physical discipline of wives to a husband’s judgment of whether he considered physical discipline to be beneficial or not. However, he argued that the preceding two commands of admonishment and abandonment needed to be exhaustively employed before a husband could physically discipline his wife. While a husband needed to have knowledge of his wife’s *nushūz* before he undertook physical discipline, the two commands of admonishment and abandonment could be undertaken on the mere suspicion (*shakk*) of *nushūz*. This was because the command to hit one’s wife was categorized under “the commanding of good and forbidding of evil” while the first two commands of admonishment and abandonment fell under the heading of “a person’s removing harm from himself”.<sup>647</sup> Evidence for this classification can be found in al-Kharashī’s reading of Q. 4:34, wherein he understood the text to mean, “and if you fear the harm of their *nushūz* [from your wives] (*takhāfūna ḍarara nushūzahunna*)”. Thus, al-Kharashī limited the “fear” (*khawf*) referred to in Q. 4:34 to the first two prescriptions of

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<sup>646</sup> See *Ḥadīth* Chapter 1.2.2.4. Muḥammad Curses a Man for Repeatedly Beating his Wife.

<sup>647</sup> Al-Kharashī, *Sharḥ Mukhtasar al-Khalīl*, v. 4, p. 191.

admonishment and abandonment and did not extend it to the last prescription of hitting. If husbands feared *nushūz* from their wives, they were to admonish and abandon them and they were only permitted to hit them if they were certain both that the wife was *nāshizah* and that hitting would be an effective deterrent. Al-Kharashī, like the other jurists in this study, connected the right of husbands to hit their wives with Q. 4:34 and the hierarchy of men over women.<sup>648</sup>

As for the nature of the physical discipline itself, al-Kharashī expanded on al-Ḥaṭṭāb's notion that the hitting not be fearsome/threatening (*ghayr makhūf*). According to al-Kharashī, the emphasis on non-threatening hitting stressed the importance of the hitting being appropriate (*munāsib*). For al-Kharashī, non-threatening hitting was a further limitation on non-extreme (*ghayr mubarrih*) hitting, since "hitting that does not break bones and does not disfigure limbs can still be threatening".<sup>649</sup> He included "punching someone on the chest or breasts" as examples of hitting that was threatening or fearsome (*makhūf*).<sup>650</sup> Al-Kharashī's position is especially strange considering the *ḥadīth* where 'Ā'ishah reported that Muḥammad hit her on her chest once in such a manner

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<sup>648</sup> Ibid., v. 4, p. 192.

<sup>649</sup> Ibid., v. 4, p. 192.

<sup>650</sup> Ibid, v. 4, p. 192.

that it caused her pain.<sup>651</sup> According to al-Karashī, who makes no mention of this report, this would have been unacceptable. It is worth mentioning here how little the Mālikī scholars in this study refer to prophetic reports.

Al-Kharashī modified al-Ḥaṭṭāb's principle of accepting a wife's claims of aggression over her husband's claims of discipline when the case reached a judge. In this situation, he cited al-Qurṭubī to argue that a husband's claims were to be privileged in the case of a wife's discipline but his claims could not overrule his wife's with regard to voiding maintenance. Maintenance could only be voided through clear evidence of aggression (*al-'adā'*) and *nushūz* on the wife's part against her husband.<sup>652</sup> Al-Kharashī cited the opinion of some jurists who argued that, as in the case of the master-slave relationship, the claim of the master or husband ought to settle the matter with regard to his charge (slave or wife), both in cases of discipline as well as maintenance. However, al-Kharashī preferred al-Qurṭubī's position. This position expanded the power of husbands to discipline their wives while curtailing their power to financially disempower their wives. This was distinct from the position of al-Ḥaṭṭāb who appeared to restrict the power of husbands over their wives with regard to their ability to use physical violence.

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<sup>651</sup> See Chapter 1, 1.2.1.

<sup>652</sup> Al-Kharashī, *Sharḥ Mukhtasar al-Khalīl*, v. 4, p. 191.

Loss of maintenance was the fourth means that al-Kharashī considered husbands to have for controlling their wives. When a wife persisted in *nushūz*, even after her husband exhausted the three prescriptions in Q. 4:34, and he found that neither he himself nor a judge (*ḥākim*) was capable of returning her to a state of obedience, then a wife was guilty of the most extreme *nushūz* (*ashadda l-nushūz*). At this point she deserved (*tastahiqq*) to lose access to her maintenance. Unlike the Ḥanafī scholars in the previous section, who considered *taʿzīr* to be an acceptable formal punishment, al-Kharashī described this loss of maintenance as the chastisement (*taʿzīr*) of a wife who remained recalcitrant even after beating. According to al-Kharashī, *taʿzīr* in this context was punishment of an intensely recalcitrant wife carried out by a judge, pursued after physical chastisement by the husband was ineffective. Al-Kharashī referred to *taʿzīr* here as the “*taʿdīb* of the judge”. He wrote,

When [a woman] leaves the place of [her husband’s] obedience without his permission, and he is not capable of bringing her back (*ʿawdihā*) either by himself or with the judge (*ḥākim*), then this is the most intense *nushūz* (*ashadda l-nushūz*), and the maintenance (*nafaqah*) is dropped. At point she becomes deserving (*tastahiqqun*) of *taʿzīr* for [this behavior]... He should say to her, “You can either return to your house or seek adjudication with your husband and see that justice is done. If [you do not do either of these things], then you are not owed maintenance”. This is a form of chastisement of the

judge (*ḥākim*) and justice... [Her husband] or the judge should discipline her. And the case of the runaway/fugitive (*al-hāribah*) is similar to the case of the recalcitrant one.<sup>653</sup>

As mentioned above, the judge was regularly involved in marital disputes in Mālikī jurisprudence, such that he was part of the process of discipline itself as well as a recourse for a husband who could not discipline his wife. While the judge had greater leverage within the marital relationship, his authority was also somewhat redundant once a wife refused to abandon *nushūz*. Since he followed steps similar to the husband, it is not clear what external pressure he could bring to bear on an incorrigibly recalcitrant wife.

#### **4.3.2. Retaliation for a physically abused wife**

While Mālikī jurists conceded the right of husbands to physically discipline their wives, they were also concerned with the abuse of such a right and thus considered the appropriate compensation for excessive violence. The Ḥanafī scholars in this study held husbands liable if they killed their wives while chastising them, but Mālikī scholars held husbands liable if they seriously hurt their wives while disciplining them. The fifth/eleventh century scholar Abū al-Walīd al-Bājī (d. 474/1081) addressed this issue in his commentary on Mālik b.

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<sup>653</sup> Ibid., v. 4, p. 192.

Anas' (d. 179/795) *al-Muwaṭṭa'*. Four source texts formed the foundation of al-Bājī's position on a husband's liability for seriously hurting his wife. They were Q. 4:34, Q. 5:45 and a reported saying of Muḥammad wherein he said, "for everything, there is retaliation", and the *Muwaṭṭa'*. The relevant text of Q. 4:34 for al-Bājī states, "and concerning those women on whose part you fear *nushūz*, admonish them, abandon them in beds and beat them". The relevant portion of Q. 5:45 reads, "Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal".<sup>654</sup> Finally, the *Muwaṭṭa'* mentioned the number of camels a wife was permitted to receive in compensation if her husband cut off her fingers. She was owed twenty camels if he cut off four of her fingers, but if he cut off her index finger, then scholars disagreed whether she ought to receive five camels (a fourth of four) or ten camels, presumably given the importance of the index finger. Also, Mālik cited the incident of a man

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<sup>654</sup> This verse in its entirety reads: "We ordained therein for them: "Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (No better than) wrong-doers." Ali, *The meaning of the Holy Qurān*, 5:45. Also, in its Qur'anic context, the verse referred to the ordination for the Children of Israel.

who wounded his wife and owed blood money (*diyya*)<sup>655</sup> but might not deserve retaliation (*qīṣāṣ*).<sup>656</sup> Mālik argued that the punishment would be based on the man's intention -- he owed blood money but did not deserve retaliation if he accidentally took out his wife's eye with his whip. However, if he intended to wound his wife, then he would be subject to retaliation.<sup>657</sup>

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<sup>655</sup> Tyan describes "*diyya*" as "a specified amount of money or goods due in cases of homicide or other injuries to physical health unjustly committed upon the person of another. It is a substitute for the law of private vengeance. Accordingly it corresponds exactly to the compensation or *wergeld* of the ancient Roman and Germanic laws. Etymologically the term signifies that which is given in payment. The *diyya* is also called, though very much more rarely, *ʿaql*. In a restricted sense—the sense which is most usual in law— *diyya* means the compensation which is payable in cases of homicide, the compensation payable in the case of other offences against the body being termed more particularly *arṣḥ*." For more on *diyya*, see Tyan, E. "Diya." *Encyclopaedia of Islam*, Second Edition. Brill, 2009.

<sup>656</sup> Schacht writes about *qīṣāṣ* that "synonymous with *ḳawad*, retaliation ("settlement", not "cutting off" or "prosecution"), according to Muslim law is applied in cases of killing, and of wounding which do not prove fatal, called in the former case *qīṣāṣ fi 'l-nafs* (blood-vengeance) and in the latter *qīṣāṣ fi-mā dūn al-nafs*." Here, Mālik is discussing *qīṣāṣ* in matters other than death. Schacht writes the following about this type of *qīṣāṣ*: "*Qīṣāṣ fi-mā dūn al-nafs* according to the Ṣharīʿa . If any one deliberately (with *ʿamd*, opposite of *ḳhaṭ*; cf. *ḳatl* , i, 5) and illegally (this excludes the wounding of one who tries to murder or injure or rob a fellowman, if it is not possible to repel him otherwise; it is for example permitted to strike someone in the eyes or throw something in the eyes of a man who forces his way into another's house without permission) has inflicted an injury, not fatal, which could be inflicted on the doer's person in an exactly similar way (what is meant by this is very fully discussed in the *Fīḳh* books), he is liable to *qīṣāṣ* on the part of the wounded man, (except that Mālik makes it be inflicted by an expert), if the conditions necessary for carrying out the *qīṣāṣ fi 'l-nafs* are present with the following modifications: according to Abū Ḥanīfa, *qīṣāṣ fi-mā dūn al-nafs* is not carried out between man and woman or slaves among themselves, but it is according to Mālik, al-Ṣhāfiʿī and Aḥmad b. Ḥanbal; Abū Ḥanīfa and Mālik further allow no *qīṣāṣ fi-mā dūn al-nafs* between free men and slaves. According to Mālik, al-Ṣhāfiʿī and Aḥmad b. Ḥanbal, this *qīṣāṣ* is inflicted for one on several, but not according to Abū Ḥanīfa. A sound limb may not be amputated for an unsound one; if the guilty person has lost the limb, there can of course be no *qīṣāṣ* . In the case where he loses it after committing the deed, there is a corresponding difference of opinion, as in the case of his death before the execution of *qīṣāṣ fi 'l-nafs*." For more on *qīṣāṣ* see, Schacht, J. "*Qīṣāṣ*." *Encyclopaedia of Islam*, Second Edition. Brill, 2009.

<sup>657</sup> Sulaymān ibn Khalaf al-Bājī, *al-Muntaqā: sharḥ Muwaṭṭa' Mālik* (Beirut, Lebanon: Dār al-Kutub al-ʿIlmiyah, 1999) v. 2, p. 327.



Based on these source texts, along with the *Muwaṭṭa'*, al-Bājī argued that the intention of a husband when he hurt his wife was the decisive factor in determining his punishment. Just as Mālik had claimed a husband's intention in hurting his wife as relevant to the outcome of liability, al-Bājī argued that if a husband hit his wife with the intention of disciplining her (*adabihā*) with a whip (*sawṭ*) or a rope (*ḥab*), and accidentally damaged her eye or some other body part, then he was responsible for compensating her monetarily, but was not subject to retaliation. Al-Bājī used Q. 4:34 to argue that husbands were within their rights when they used physical violence against their wives for the purpose of discipline. Evidently, he thought it was permissible to use weapons such as a whip or a rope in order to discipline one's wife, as long as the weapons did not damage the wife's body parts. It appears that al-Bājī's criterion for appropriate hitting differed from of both al-Ḥaṭṭāb and al-Kharashī, who stipulated that a husband's hitting should be neither fearsome nor extreme. Al-Bājī reasoned that because husbands were responsible for the discipline of their wives, and because they were permitted to physically discipline them, no retaliation (*qiṣāṣ*) could emerge as a consequence for disciplinary action.<sup>658</sup> According to Mālik

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<sup>658</sup> Ibid., v. 2. p. 327.

and al-Bājī, there was a distinction between monetary compensation and retaliation.

However, if a husband intended to harm his wife, by “gouging out her eye or cutting her hand”, then he was liable for retaliation, without any restrictions.<sup>659</sup> Although al-Bājī did not say so explicitly, he considered this to be the case when a husband beat his wife for the sake of beating her, and not for the purpose of disciplining her. Both Q. 5:45 and the *ḥadīth* of Muḥammad provided al-Bājī an imperative for retaliation to prevail. As an aside, it was this principle that Muḥammad was purported to have upheld in the occasion of revelation story for Q. 4:34. He ruled for retaliation in favor of Ḥabībah bt. Zayd when she complained against her husband.<sup>660</sup> It was thus this imperative of retaliation that was at the very least modified, if not voided, by Q. 4:34 providing a context in which one could hit with impunity. Al-Bājī did not mention the context of revelation story for Q. 4:34, although it is difficult to imagine that he was unaware of it when writing his legal work.

The role of a judge remained a significant one for Mālikī scholars, not simply for the purpose of retaliation but also in the procedure of verifying claims of abuse

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<sup>659</sup> Ibid., v. 2, p. 327.

<sup>660</sup> For a lengthier discussion on *asbab al-nuzūl*, see Chapter 2, section 2.2.

by a wife. Ibrāhīm Shams al-Dīn Muḥammad b. Farḥūn (d. 799/1396) offered a third alternative to al-Ḥaṭṭāb and al-Kharashī's approaches to claims of abuse. Al-Ḥaṭṭāb argued above that the wife's claim was to be privileged against her husband's if she claimed that he had transgressed against her, and his only defense was that he had been engaging in disciplinary punishment. Al-Kharashī reasoned that in the case of discipline, a husband's claims were to be admitted over and against his wife's claims of aggression, however her claims were more weighty if a loss of maintenance would result, such that the husband needed to present proof of her *nushūz* to a judge before maintenance could be cancelled. Ibn Farḥūn, in a slightly different vein, wrote that if a woman complained of harm (*al-ḍarar*) from her husband, then the judge should require her to bring forth clear proof of such harm, presumably a mark or a witness, in order to verify her claim. It was possible, Ibn Farḥūn argued, that what she considered harm was in fact a husband exercising his rights over her by "preventing her from going to the bathhouse or disciplining her for abandoning prayer".<sup>661</sup> If, in fact, she was being harmed by her husband and not disciplined, then the husband was to be confronted since it was possible that he would confess and then the matter could be dealt with as such. However, if he denied her claims of abuse and she persisted in those claims without clear

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<sup>661</sup> Ibn Farḥūn, *Tabsirat*, v. 1 p. 170.

evidence, then the judge was to involve her neighbors in the affair, seeking a trustworthy witness to shed light on the matter. If no trustworthy person was to be found, then the judge was to have his own wife live with the couple and see for herself if the wife's claims were verifiable. If the judge's wife verified that the husband was hitting without proper cause, then it was the judge's responsibility to discipline the husband and prevent him from returning to abusive behavior.<sup>662</sup>

In Ibn Farḥūn's scheme, husbands were permitted to restrict their wives' mobility and also regulate their relationship with God<sup>663</sup>. This was expressed through their right to prevent their wives from visiting the bathhouse and also disciplining them for abandoning prayer. However, a husband's power over his wife was limited. He could not restrict or discipline her without cause. Also, a wife's claims against her husband were never ignored, even if they were made without clear evidence. The role of the judge and his wife was prominent in resolving such marital disputes and it is important that the decision of the judge's wife counted as evidence or clear proof for a husband's transgressions against his wife. In such cases, a husband was not only subject to retaliation

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<sup>662</sup> Ibid., v. 1 p. 170.

<sup>663</sup> He also talked about the right of husbands to discipline their wives if they did not pray, fast or perform the greater ablution after sex (*janābah*). He also made a clear distinction between *zinā* and *nushūz* as two completely separate categories of legal infractions. Al-'Abdari, *al-Tāj wa l-akīl li-mukhtasar Khalīl*, v. 5, p. 319.

from his wife or obliged to compensate her, but he was also subject to discipline at the discretion of the judge.

#### **4.3.3. Summary of Mālikī Approaches to Wife-Beating**

In summary, the emphasis on the sequential order of the three prescriptions in Q. 4:34 (*tadrīj*), the highly involved role of the judge and importance of retaliation for an abusive husband highlight the Mālikī approaches to Q. 4:34. If the Mālikī jurists struggled with the tension between the Qur’anic prescription for hitting wives and Muḥammad’s *sunnah* to the contrary, they did not do so explicitly. Nevertheless, they actively limited the role of physical violence as a disciplinary measure. This can be seen in their emphasis on *tadrīj*, their restricting the use of physical discipline only to cases in which a husband judged it to be beneficial, and their providing legal recourse to abused wives. Mālikī jurists also prohibited husbands from hitting their wives if the hitting would result in harm to their wives. It can be argued that this reflected an ethical discomfort on their part with the command to physically discipline wives in Q. 4:34. However, some Mālikī jurists also argued that appropriate hitting could include weapons such as a whip or a rope. So, while Mālikī jurists were interested in limiting the role of physical violence in marriage and sought to protect wives against abuse, they also expressed comfort with and saw the

necessity of a moderate amount of violence in the context of disciplinary action by husbands against wives. Mālikī jurists rarely discussed either the Qur'ān or the *aḥadīth* explicitly in their jurisprudence, but often cited the works of previous jurists and exegetes.

#### **4.4. Shāfi'ī School**

As with the Ḥanafī and Mālikī jurists, Q. 4:34 played a critical role in the discussion of the discipline of wives for Shāfi'ī jurists. The *aḥadīth* regarding wife-beating played a more prominent role for Shāfi'ī jurists who explicitly confronted the tension between the Prophetic discouragement of wife-beating and the Qur'anic command to hit wives who were suspected of *nushūz*. Like the Ḥanafī scholars, Shāfi'ī jurists saw a minimal role for a judge in resolving marital disputes, leaving husbands with the bulk of the responsibility for disciplining their wives. Like Mālikī jurists, Shāfi'ī scholars nonetheless sought to limit potential abuse by husbands against their wives by legislating a legal recourse for abused wives. Unlike both Ḥanafī and Mālikī scholars, Shāfi'ī jurists expanded the definition of wifely *nushūz* to encompass a wider range of specific behaviors than simply disobedience and sexual withdrawal. As such, they offered a complex approach to the physical discipline of wives.

#### 4.4.1. Extending the Definition of *Nushūz*

Ḥanafī jurists considered some measure of reciprocity in their discussions of marital *nushūz* in that both husbands and wives could be guilty of transgressing against the other through mutual hatred. Mālikī jurists, like many exegetes, mostly discussed wifely *nushūz* in isolation from husbandly *nushūz*. Husbandly *nushūz* did not emerge as a relevant topic in their discussions of wifely *nushūz*. However, like the Ḥanafī jurists and unlike the Mālikīs, Shāfi‘ī jurists raised the specter of husbandly *nushūz* in their discussion of wifely *nushūz*. Yet, reflecting the differences in the Qur’anic texts of Q. 4:34 and Q. 4:128<sup>664</sup>, they defined the *nushūz* of wives and husbands differently, and offered different approaches for reconciling the tensions created by the *nushūz* of each spouse. Shāfi‘ī jurists conceded that discord (*shiqāq*) and estrangement (*waḥshah*) in a marriage could be caused by the *nushūz* or transgression (*yata‘addī*) of either spouse against the other.<sup>665</sup> Husbandly *nushūz* was seen as a husband’s neglect of or aversion to his wife, for reasons including her illness or her advanced age. In light of God’s disdain for divorce, Shāfi‘ī jurists encouraged wives to give up some of their rights in exchange for remaining in the marriage. The model of

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<sup>664</sup> Q. 4:128 reads “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 ye do good and practice self-restraint, Allah is well-acquainted with all that ye do.” Ali, *The meaning of the Holy Qurān*, Q. 4:128.

<sup>665</sup> Al-Nawawī, *Rawḍat al-Tālibīn*, v. 7, p. 370, and al-Anṣārī, *Fath al-Wahhāb*, v. 2, pp. 110-111.

Muḥammad's wives was used to illustrate this legal ruling. Jurists cited the report wherein Sawdā' offered up her nights to 'Ā'ishah in order to remain married to Muḥammad without imposing on him by demanding all her rights.<sup>666</sup>

Wives committed *nushūz* by disobeying their husbands as well as by making themselves unavailable for their husbands' sexual enjoyment. Like Fakhr al-Dīn al-Rāzī, both Yaḥyā b. Sharaf al-Nawawī (d. 676/1278) and Zakariyyah b. Muḥammad al-Anṣārī (d. 926/1520) discussed the "signs" of wifely *nushūz* and what they might look like. Incidentally, al-Nawawī noted in passing that abusive and reviling speech (*al-shatm wa l-badhā'*) on a wife's part did not constitute *nushūz* proper but was still deserving of a husband's discipline because of its offensive nature.<sup>667</sup> Both al-Nawawī and al-Anṣārī agreed with Fakhr al-Dīn al-Rāzī that the signs of wifely *nushūz* could be expressed through a disagreeable alteration of speech (*qawlan*) and/or actions (*fi'lan*). If a wife habitually conversed with her husband in a gentle and kind manner (*layyin*) but then began speaking to him in a crude and rough manner (*khaṣim/khashin*), then this was a clear sign of her *nushūz*. A wife also displayed signs of *nushūz* if she habitually treated her husband with cheerfulness (*ṭalāq*) and kindness (*luṭf*) and

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<sup>666</sup> Kecia Ali discusses this in great length in her dissertation. Ali, *Money, Sex and Power*. Also see al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 371, and al-Anṣārī, *Fath al-Wahhāb*, v. 2, pp. 110-111.

<sup>667</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 369, and al-Anṣārī, *Fath al-Wahhāb*, v. 2, pp. 110-111.



then began shunning (*irāḍan*) him and acting in a melancholy (*‘abūsan*) way.<sup>668</sup> Like al-Rāzī<sup>669</sup>, both al-Nawawī and al-Anṣārī thought that these signs were sufficient to begin a progressive disciplinary process starting with admonishment. Both jurists were quick to clarify that a husband was not permitted to use physical violence against his wife based on these signs alone.

#### 4.4.2. Rules of Discipline: *Tartīb* and Maintenance

In the work *Aḥkām l-Qur’ān*, attributed to Muḥammad ibn Idrīs al-Shāfi‘ī, there was a brief commentary on the exegesis of Q. 4:34 briefly. This exegesis came to be the foundation of Shāfi‘ī jurisprudence concerning the physical discipline of wives. Al-Shāfi‘ī made a marked distinction between the signs of *nushūz* and *nushūz* proper. He further distinguished the appropriate response to each. He wrote that if a husband witnessed the “signs” of wifely *nushūz* in her speech or actions - he did not specify what those signs were - then he ought to admonish her. According to al-Shāfi‘ī, admonishment was permitted to a husband when he witnessed behavior that might lead to a reprehensible act (*fi’l l-makrūh*), before his wife actually committed that act. When she manifested (*abdaʿ*) *nushūz* proper, which presumably occurred when she performed the

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<sup>668</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 370, and al-Anṣārī, *Fath al-Wahhāb*, v. 2, pp. 110-111.

<sup>669</sup> To see a detailed discussion of Fakhr al-Dīn al-Rāzī’s approach to wifely *nushūz*, see Chapter 2, section 3.3.1.

reprehensible act, then her husband was to abandon her. If she then persisted (*aqāmat ‘alayhi*) in her *nushūz*, despite abandonment, then he was to beat her. A husband was not permitted to beat his wife until she committed *nushūz* through “clear actions”<sup>670</sup> and he “feared the persistence of *nushūz*”, at which point he was permitted to join all three prescriptions of admonishment, abandonment and hitting. Al-Shāfi‘ī understood the fear (*khawf*) of *nushūz*, referred to in Q. 4:34, to be the fear of the persistence of *nushūz*.<sup>671</sup>

Later Shāfi‘ī jurists, such as al-Nawawī and al-Anṣārī, maintained al-Shāfi‘ī’s rulings in their jurisprudential writings and Q. 4:34 remained a central text in their discussions of wife-beating. al-Nawawī argued that if wives transgressed (*ta‘addī*) against their husbands and displayed signs of *nushūz* as discussed in the previous section, then they were to be admonished. Admonishment was meant to accomplish three things: a) it was to remind wives of their divinely ordained responsibilities to their husbands, b) warn them of the punishments for persisting in their disobedience, and c) threaten them with the loss of maintenance as well as their share of allotted nights that would ensue if they

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<sup>670</sup> Al-Shāfi‘ī, *Aḥkām al-Qur’ān*, v. 1, pp. 207-210

<sup>671</sup> Ibid., p. 207-210, See also, Kecia Ali, ““The best of you will not strike”: Al-Shāfi‘ī on Qur’an, *Sunnah*, and Wife-Beating”, *Comparative Islamic Studies*, v. 2.2, p.146. She writes about al-Shāfi‘ī’s approach to wife-beating in the *al-Umm* and describes it in following manner, “Throughout this discussion, Shāfi‘ī attempts to restrict the circumstances under which husbands may resort to physical chastisement without ever questioning its basic lawfulness.”

were guilty of *nushūz*.<sup>672</sup> While the first two functions of admonishment were similar to the Mālikī approach to admonishment, the third part was different in that it added the loss of allotted nights to the loss of maintenance. The loss of allotted nights (*qasm*) presumed the norm of polygamous relationships, wherein husbands divided their nights between multiple wives and concubines.

At the stage of admonishment a husband was neither to abandon nor hit his wife.<sup>673</sup> Al-Anṣārī also intimated that admonishment was not simply meant to be a one-way speech from the husband to a wife. Rather, it was meant to be a conversation. This was implied in his suggestion that admonishment might clarify the cause of a wife's *nushūz* to her husband or cause her to repent if she did not have a good excuse for her behavior.<sup>674</sup> This was the only time in the sources considered for this study that a jurist explicitly considered the cause of a wife's *nushūz* and sought to address this through admonishment.

If the admonishment did not work and the husband was able to verify (*yataḥaqqaq*) his wife's *nushūz*, then he was to abandon her along with continued admonishment. There was some discussion among the Shāfi'ī jurists

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<sup>672</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 371.

<sup>673</sup> *Ibid.*, v. 7, p. 369.

<sup>674</sup> Al-Anṣārī, *Fatḥ al-Wahhāb*, v. 2, pp. 110-111.

that was captured by al-Nawawī regarding the permission to abandon one's wife in speech. While all jurists thought that the abandonment was meant to include sexual abandonment, there was disagreement regarding whether it also included abandonment in speech. After all, how could a husband continue admonishing his wife while he sexually abandoned her, if he was not permitted to speak to her? The Shāfi'ī jurists agreed that a husband should continue speaking with his wife<sup>675</sup>, based on the *ḥadīth* from Muḥammad that prohibited believers from abandoning one another in speech for more than three days.<sup>676</sup>

Al-Anṣārī brought a husband's intentions to bear on the matter of verbal abandonment. He claimed that if a husband was motivated by selfish reasons to verbally abandon his wife, then he was permitted to do so, but not for longer than three days. He cited Muḥammad's tacit approval in the above mentioned *ḥadīth* to prove that it was permissible to abandon someone verbally for up to three days, without restrictions. However, if a husband was motivated by a desire to abandon his wife due to her disobedience or in order to rectify her religion (*iṣlāḥ dīnihā*), then he was permitted to abandon her for more than three days.<sup>677</sup> Unlike Mālikī jurists, the Shāfi'ī scholars in this study did not

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<sup>675</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 370.

<sup>676</sup> This *ḥadīth* was also cited by the exegetes Fakhr al-Dīn al-Rāzī and al-Suyūṭī.

<sup>677</sup> Al-Anṣārī, *Fatḥ al-Wahhāb*, v. 2, pp. 110-111.

mention anything about the duration of one to four months as relevant categories for admonishment. Like the Ḥanafī scholars, Shāfi'ī jurists were concerned with the sexual needs of husbands while they sexually abandoned their wives. Given the presumption of a polygamous norm for marriage, as mentioned above, and the loss of recalcitrant wives' right to maintenance as well as allotted nights, al-Shāfi'ī argued that a husband could give a *nāshizah* wife's nights to one of his other wives or concubines during this period.<sup>678</sup> As Ali points out, the connection between maintenance, division of nights, sexual availability of wives and therefore *nushūz* --which often denoted the sexual refusal of wives -- were closely connected in Shāfi'ī jurisprudence, as in all of the major juridical traditions.<sup>679</sup>

If abandonment was not effective in deterring a wife from her *nushūz* and she persisted (*takarrar/iṣrār*) in *nushūz*, then al-Nawawī considered it permissible for a husband to use physical violence against her, along with continuing her

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<sup>678</sup> Muḥammad ibn Idrīs al-Shafī'ī, *Mawsū'at al-Imām al-Shāfi'ī al-kitāb al-Umm* (Beirut, Lebanon: Dār Qutaybah, 1996) v. 11, p. 166.

<sup>679</sup> Ali, "The best of you will not strike", p. 150. She writes "Early jurists readily linked a wife's right to support with her sexual availability to her husband. They conceptualized marriage as a transaction that conveyed to the husband, in exchange for a dower, a type of control, power, or dominion [milk] over his wife that made intercourse between them lawful. A wife had the right to maintenance and the husband had the right to control her movements and derive sexual enjoyment from her in exchange. In a polygynous marriage, each wife had an allotted portion of her husband's time; this was not precisely a sexual claim but one to companionship. But a wife who removed herself from the household or who refused her husband's sexual advances lost her rights to both companionship and support."

sexual abandonment. Like the Mālikīs, he also stipulated a caveat of utility, urging husbands to undertake the physical discipline of their wives only if they thought that it would be beneficial.<sup>680</sup> Al-Anṣārī was emphatic in limiting (*taqayyad*) hitting to a husband's judgment of its effectiveness. He wrote,

And hitting (*al-ḍarb*) is restricted (*taqayyad*) by its benefit... [A husband] should not hit when it is not beneficial, just as he should not hit in an extreme (*mubarrīḥ*) manner, not hit her face, or hit her in a way that causes death. And it is preferable to forgive, leave the bed and abandon speech.<sup>681</sup>

Al-Anṣārī and al-Nawawī sought to qualify the prescription of hitting by several means. One means was to restrict hitting based on its perceived effectiveness in rectifying a recalcitrant wife. Another means, as seen above, was to follow the principle of avoiding hitting whenever possible, since it was not preferred. Yet another means of qualifying the physical discipline of wives was to emphasize that the three prescriptions in Q. 4:34 were to be followed sequentially.

Al-Nawawī argued that following these three steps in order (*marātib*) was the sanctioned (*al-mu'tamadah*) way of undertaking the discipline of one's wife.<sup>682</sup>

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<sup>680</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 369.

<sup>681</sup> Al-Anṣārī, *Fatḥ al-Wahhāb*, v. 2, pp. 110-111.

<sup>682</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 370.

However, he acknowledged that this was not the uniform opinion of the school. According to al-Nawawī, Ibn Kajj (d. 405/1014) permitted abandonment and hitting when a husband feared *nushūz* from his wife. The latter's argument was based on the apparent meaning of the Qur'anic text. It is significant that al-Nawawī allowed for the apparent reading of the Qur'anic text to differ from his preferred interpretation of Q. 4:34 based on al-Shāfi'ī's approach to the verse. Al-Nawawī also noted that al-Ḥanātī offered three potential readings of the text of Q. 4:34, once wifely *nushūz* became apparent. In the first reading, a husband was permitted to admonish, abandon and hit his wife simultaneously. In the second reading, a husband could not only join all three prescriptions but was also not restricted to following them in order. In effect, he could choose whichever prescription he thought would be most effective. In the third reading, the husband had to follow the three prescriptions exhaustively and in order.<sup>683</sup> On the whole, Shāfi'ī jurists were not uniform in their approach to the question of sequence vs. simultaneity regarding the three prescriptions in Q. 4:34: they were willing to allow for several interpretations.

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<sup>683</sup> Ibid., v. 7, pp. 369-370.

#### 4.4.3. Hitting and the Question of Abrogation

The circumstances surrounding the physical discipline of wives was discussed by Shāfi‘ī jurists in great detail. They were concerned with the extent of hitting, its connection to the *ḥadd* penalty, as well as its contradictory portrayal in the Qur’ān as opposed to the sunnah. In her article entitled “‘The best of you will not strike’: Al-Shāfi‘ī on Qur’ān, Sunnah and Wife-Beating”, Kecia Ali explores the means that al-Shāfi‘ī employed to reconcile the Qur’anic prescription of beating wives on the one hand, and the Prophetic command to “not beat the maidservants of God” on the other. Al-Shāfi‘ī considered one Prophetic report in particular in this regard - the *ḥadīth* of ‘Umar, encountered in the first chapter, wherein he sought permission to beat wives after Muḥammad had expressly forbidden it. Muḥammad granted this permission and when women protested in response, he is reported to have said “The best of you will not strike”.<sup>684</sup> Ali explains that according to al-Shāfi‘ī’s legal principles upholding “the exclusive authoritativeness of Muḥammad’s *sunnah*, the non-contradiction of Qur’ān and Sunnah, and the rejection of cross-genre abrogation”, he sought to find a method for reconciling the Prophetic discouragement with Q. 4:34 that maintained the veracity of both, without one abrogating the other.

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<sup>684</sup> Ali, “The best of you will not strike”, pp. 145-146.



Al-Shāfi‘ī reconciled the prescription of Q. 4:34 with the prophetic command to not hit wives by claiming that while the physical discipline of one’s wife was permissible, it was not preferred. Ali argues that in this reconciliation prophet practice was privileged in relation to the Qur’anic prescription. She writes,

In fact, Muhammad’s *sunnah* governs the way Shafi‘ī discusses Q 4:34, rendering what is a straightforward textual permission or command into something that should, in fact, be avoided as much as possible. This illustrates the second strategy used by the *Umm* in reconciling the evidence on striking women: differentiating between what is allowed and what is preferred. Despite the eventual permission for striking, Shafi‘ī still discourages it through his selection and presentation of Sunnah evidence. While the Qur’anic revelation necessitates a new Sunnah (to abrogate the explicit prohibition “Do not strike God’s female servants”), this new Sunnah is clearly only grudgingly accepting of male use of the permission to strike. Thus, for Shafi‘ī, the Prophet’s words “The best of you will not strike” contain “an indication that striking them is allowed; [it is] not obligatory to strike them.” In this context, Shafi‘ī alludes to the Prophet’s personal behavior. He counsels that a man should choose for himself “in this what the Messenger of God, may God’s blessings and peace be upon him, chose, and we prefer [*nuhibbu*] for a man not to strike his wife due to the sharpness of her tongue toward him or what resembles that”.<sup>685</sup>

Not surprisingly, al-Shāfi‘ī’s basic principles, as outlined above, were maintained by later Shāfi‘ī jurists. Al-Nawawī, like al-Shāfi‘ī, stressed that while

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<sup>685</sup> Ibid., p. 148.

the use of physical discipline was permitted, it was important to remember that forgiveness was preferred to physical discipline. It is worth noting that like Ḥanafī jurists, he compared the hitting of a wife to the hitting of a child (*al-ṣabiyy*), but argued for a different approach to hitting both. While it was preferable for a husband to avoid hitting his wife if possible, it was preferred for a guardian (*walī*) to hit a child for disciplinary purposes whenever necessary.<sup>686</sup> This was because it was in the interest (*maṣlahah*) of the child to be physically disciplined. Nevertheless, al-Nawawī considered it permissible for husbands to use violence against their wives for purposes of discipline (*ḍarb al-ta'dīb*) and discretionary punishment (*ḍarb al-ta'zīr*). While he extended the use of violence by a husband against his wife to cases of discretionary punishment, he also restricted the force of such violence so that the beating was not extreme, did not cause bleeding, avoided the face and did not lead to death.<sup>687</sup>

Al-Nawawī also considered the discrepancy between the command to hit wives in Q. 4:34 and the prophetic prohibition to hit wives. He reasoned, based on Shāfi'ī's approach above, that there were two ways to reconcile this apparent contradiction. First, it could be argued that the prohibition against hitting wives by Muḥammad was abrogated (*mansūkh*) by either by the Qur'anic command to

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<sup>686</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 7, p. 370.

<sup>687</sup> *Ibid.*, v. 7, p. 370.

hit wives when it was feared that they were guilty of *nushūz*, or by the *ḥadīth* of ‘Umar wherein Muḥammad permitted husbands to beat their wives. Second, it could be argued that the Prophetic prohibition meant to convey the reprehensible nature (*karāhiyyah*) of physical discipline, such that refraining from physically disciplining one’s wife was preferable. In this case, the Prophetic prohibition was operative in cases where there was no cause for hitting one’s wife, and was considered a discouragement when physical discipline was justified.<sup>688</sup> Al-Nawawī, like al-Shāfi‘ī, preferred the second method of reconciliation presumably given al-Shāfi‘ī’s rejection of “cross-genre abrogation”.<sup>689</sup>

#### **4.4.4. The Role of a Judge in *Ta’zīr* and Abuse of Wives**

Al-Nawawī had an approach similar to the Ḥanafī jurists in this study regarding the discretionary punishment (*ta’zīr*) of wives. This was disciplinary punishment that might be carried out against a wife in cases wherein discipline was necessary, but that did not constitute either *nushūz* proper or a *ḥadd* crime. Al-Nawawī maintained that cases of discretionary punishment ought to be handled by a husband against his wife. An example of such behavior was a wife’s using reviling (*al-shatm*) and abusive speech (*al-badhā*). The term *badhā*’ was

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<sup>688</sup> Ibid., v. 7, p. 370.

<sup>689</sup> Ali, “The best of you will not strike”, pp. 145-146.

encountered in the first chapter, when Muḥammad counseled Laqīt b. Ṣabrah's father to divorce his wife, in response to the latter's query about his wife's using abusive (*al-badhā'*) speech.<sup>690</sup> Al-Nawawī felt that while abusive speech did not constitute *nushūz*, it still was an offensive behavior that deserved discipline. In such cases, he argued that husbands themselves were responsible for disciplining their wives and should prevent the matter from reaching a judge (*al-qāḍī*), since that would harm the reputation of the husband. He specifically wrote that allowing the matter to reach a judge would lead to difficulty (*mashaqqah*) and disgrace (*'ār*) for the husband.<sup>691</sup>

The role of the judge was minimal in the case of marital discord when a wife was at fault, and the responsibility of rectifying one's wife was entrusted to her husband. However, in cases in which a wife was abused by her husband, the Shāfī'ī's allowed a judge and the wider community to have a greater role in rectifying the matter. Both al-Nawawī and al-Anṣārī deliberated on the appropriate course of action when a wife claimed abuse by her husband. Al-Nawawī reasoned that if it was verified that a husband denied his wife her maintenance, allotted nights or hit her without cause, then it was the judge's responsibility to forbid (*nahā*) him from such behavior. If he persisted in his

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<sup>690</sup> Chapter 1, section 1.2.2.2.i.

<sup>691</sup> Al-Nawawī, *Rawḍat al-Tālibīn*, v. 7, p. 371.

behavior, then a trustworthy (*thiqah*) neighbor would be required to observe (*yanḏuruhumā*) the couple and prohibit the husband from transgressing against his wife. Although al-Nawawī provided some sort of recourse for an abused wife, in that a judge or trustworthy neighbor could prohibit a husband from transgressing against her, this recourse had limited utility. There was no discussion of actual compensation or retaliation for an abused wife, which figured prominently in Mālikī discussions of an abused wife.

Further, while some Mālikī scholars argued for the privileging of a wife's claims of abuse against her husband's claims of discipline, al-Anṣārī granted the privilege to a husband in the case of contradictory claims from a husband and wife. He wrote that if a husband hit a wife claiming she was guilty of *nushūz*, and his wife claimed that she had been hit without cause, then his claim was to be preferred over her allegation. Al-Anṣārī reasoned this to be the case since the husband was the guardian (*walī*) over his wife, and because of this, his

claim superseded her claim.<sup>692</sup> So, while the Shāfi'ī jurists in this study preferred that husbands choose not to hit their wives, based on prophetic practice, they also provided little recourse to wives in cases where they were physically abused by their husbands.

#### 4.4.5. Summary of Shāfi'ī Approaches to Wife-Beating

At first glance, it may appear that Shāfi'ī jurists displayed a decided discomfort with the Qur'anic prescription of the physical discipline of wives because of their preference for forgiveness over hitting. However, a closer reading shows that their discomfort was focused on reconciling the discrepancy between the Qur'anic prescription and the Prophetic prohibition to hit wives. Their discomfort was not necessarily the result of any ethical tensions they may have had with hitting wives in general. In fact, Shāfi'ī jurists displayed a great deal of comfort with hitting wives, children and slaves. Ali mentioned that al-Shāfi'ī

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<sup>692</sup> Al-Anṣārī, *Fatḥ al-Wahhāb*, v. 2, pp. 110-111. *Wilāyah* is an important concept in legal discussions in the marital relationship and deserves further study. Dien describes it as the following: "Technically, *wilāya* can be either optional (*ikhṭiyāriyya*), when entered into by personal choice, such as *wakāla* [q.v.], or compulsory (*idjbāriyya*). However, in practice *wilāya* is a term used only to describe the latter, namely, *idjbāriyya*, which is determined by legal rule or judicial order. This can be divided into the following categories: the custody of infants (*hadānat al-ṣaghīr*) and the custody of a person (*wilāyat al-naḥs*) requiring care for a child who has passed the age of infancy or for an insane person. It also includes the marriage custody of a virgin girl. Financial custody may cover all young persons, the insane, and those with proven impediments to the exercise of normal free will." Mawil Y. Izzi Dien; Walker, P.E. "Wilāya (a)." *Encyclopaedia of Islam, Second Edition*. Brill, 2009.

thought it permissible for men to apply the *ḥadd* penalty itself on concubines.<sup>693</sup>

Al-Nawawī believed that husbands could hit their wives for purposes of discipline and discretionary punishment. The Shāfi‘ī jurist ‘Izz al-Dīn Al-Sulamī (d. 660/1262) wrote in his legal work,

“No one should try to receive what is rightfully theirs through beating” and the exception to this is the male or female slave who refuses to serve their master or otherwise fails in their duties and is not deterred [from such behavior] by either admonition or reasoned speech. Similarly, a *nāshizah* wife should be beaten by her husband so that he can receive his rights. And the beating should always be in a non-extreme (*ghayr mubarrih*) manner and he should adjust/modify [the severity] of his beating based on the strength or weakness of the one he is hitting.<sup>694</sup>

Hence, while Shāfi‘ī jurists greatly discouraged the beating of wives in their jurisprudence, this was not because of ethical problems they might have had with beating wives. Rather, their discomfort with the Qur’anic prescription centered on the heightened importance of Prophetic Sunnah in their jurisprudence. There was little discussion in the Shāfi‘ī sources regarding the amount of beating permissible, apart from the general guidelines of non-extreme hitting that did not lead to death. Husbands did not face

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<sup>693</sup> Ali, “The best of you will not strike”, p. 149.

<sup>694</sup> Al-Sulamī, *Qawa’id al-Ahkam*, v. 2, p. 56.

discouragement from hitting their wives excessively in the form of legal penalties for such excess.

#### **4.5. Ḥanbalī School**

The Ḥanbalī position on the right of husbands to discipline their wives was quite similar to that of the Shāfi‘ī school. The emphasis on husbands following the three disciplinary steps of admonishment, abandonment and hitting sequentially (*tadrīj*) was re-emphasized. Also, the Ḥanbalī scholars in this section stressed the distinction between “signs” of *nushūz* and *nushūz* proper. They also utilized the master-slave relationship as a model by which to expound on the rights of husbands to physically discipline their wives. Still, Ḥanbalī scholars in this study displayed original ideas in issues concerning the particularities of *nushūz*.

##### **4.5.1. *Nushūz* and Masculinity**

The seventh/thirteenth century Ḥanbalī scholar Muḥammad b. Abdullāh b. Qudāmah (d. 620/1223) wrote a legal treatise, *al-Mughnī*, that became a central Ḥanbalī work. In his discussion of the husbandly discipline of wives, Ibn Qudāmah described wifely *nushūz* in multiple ways in isolation from husbandly *nushūz*. Ibn Qudāmah considered wifely *nushūz* to generally include the “disobedience of wives to their husbands in all matters in which they were



obligated by God to obey their husbands”.<sup>695</sup> To drive home the connection between *nushūz* and the husband-wife hierarchy, he wrote: “The literal meaning of *nushūz* is rising (*al-irtifāʿ*) [of a wife over her husband] because she raises herself and aggrandizes herself over and above the God-given obligation to obey her husband”.<sup>696</sup> Though exegetes often mentioned the literal definition of *nushūz*, they only implicitly drew links between a *nāshizah* wife and a wife who did not know her place in the divinely ordained hierarchy between husbands and wives. Ibn Qudāmah, on the other hand, explicitly made the connection between *nushūz* and a wife aggrandizing herself over husband.

Under the umbrella of disobeying a husband in all permissible matters, Ibn Qudāmah included a wife’s sexual refusal of her husband, and a wife leaving her husband’s house without his permission. He also deliberated on the specific “signs” (*amārāt*) of *nushūz* that could be observed in a wife’s behavior. Earlier, it was observed that Shāfiʿī jurists and exegetes argued that a wife’s sudden change in behavior for the worse - in words and deeds - constituted signs of *nushūz*, which in turn warranted admonishment, though not abandonment or hitting. Ibn Qudāmah specified a wife’s “signs” of *nushūz* further. He wrote,

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<sup>695</sup> Ibn Qudamah, *al-Mughnī*, v. 10, p. 259.

<sup>696</sup> *Ibid.*, v. 10, p. 259.

So when signs of *nushūz* become manifest in her - for example, if she is sluggish (*tatathāqal*) or withholding (*tudāfi*) when he calls her and she only complies grudgingly (*bi-takarruhin*), grumbling (*damdamatin*) the whole time - then he should admonish her.<sup>697</sup>

Here, Ibn Qudāmah expanded the definition of the signs of wifely *nushūz* from a decisive change for the worse in a wife's behavior towards her husband, to the husband's displeasure with his wife's general disposition. Although Ibn Qudāmah's list of wifely behaviors that betray *nushūz* does not include sexual refusal, it is implied, since a wife might display any of these characteristics in her attitude towards sex as well. She might be sluggish, withholding and comply only grudgingly to his sexual demands. Still, like the Shāfi'īs, he limited a husband's appropriate response at this point to admonishment.

Perhaps picking up on the juristic methodology of defining specific behaviors on a wife's part to constitute wifely *nushūz*, Mar'ī b. Yusuf al-Karmī (d. 1033/1623-4) added a few items to the list of behaviors that might constitute wifely *nushūz*. Significantly, he connected wifely *nushūz* to emasculating behavior. He wrote,

And the husband is charged with disciplining [his] wife when he is emasculated (*yukhillu bi-muru'atih*)

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<sup>697</sup> Ibid., v. 10, p. 259.

[by her], or [when she] lacks etiquette, or leaves off an obligatory act of worship.<sup>698</sup>

Here, al-Karmī introduced the idea that a husband's obligation to discipline his wife was connected to his masculinity. The subtext of al-Karmī's position appeared to be that husbands were charged for the moral and social discipline of their wives because they were men. Hence, if wives disobeyed husbands or rose above their divinely designated place in the marital hierarchy, then they not only sinned against God but they also emasculated their husbands. Husbands were required to repossess their masculinity through expressions of divinely sanctioned disciplinary power over their wives, including physical violence.<sup>699</sup> Husbands were also permitted to discipline wives for abandoning their religious obligations. This is understandable in al-Karmī's system, since wifely obedience itself was a religious obligation. If wives began to take their religious

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<sup>698</sup> al-Karmī, *Ghāyat al-muntahá fī al-jam' bayna al-lqnā' wa-al-Muntahá*. (Riyadh: al-Mu'assasah al-Sa'dīyah, 1981) v. 2, p. 236.

<sup>699</sup> Later jurists confirmed this understanding of al-Karmī's work. Muṣṭafā ibn Sa'd al-Suyūṭī (d. 1242/827) wrote a super-commentary on al-Karmī's work. Explaining this passage, he wrote, "And he - that is, the husband - is charged with the discipline of his wife and steering her aright when she commits sin. [This sin is defined as] anything, in speech or in action, that emasculates (*yukhillu bi-muru'atih*) the husband, like lesbianism (*musāḥaqatin*), or breaches of etiquette like laughing inappropriately, and speaking loudly and being scornful (*tamaskhurin*) and similar indiscretions. [The offending sin] can also be comprised of her neglecting her [religious] obligations. The husband is not given full autonomy to discipline her in matters that are not religiously mandated. For example, if she were to neglect some etiquette that he himself demanded from her, like an etiquette of sitting or something devised by tyrants (*aḥdathathu al-jabābirah*), then he cannot discipline her for her negligence, because that etiquette does not find its source in the religion of the Muslims." Muṣṭafā ibn Sa'd al-Suyūṭī, *Maṭālib ulī al-nuhā fī sharḥ Ghāyat al-muntahā* (Damascus: al-Maktab al-Islāmī, 1961)

obligations, such as prayer or fasting, lightly, then they might also make light of their religious obligation of obedience to their husbands. Since obedience to God and husbands was so closely tied, it is a logical necessity that a neglect of religious obligations would lead to the neglect of her wifely duties and vice-versa. In connecting wifely *nushūz* to a husband's emasculation and connecting wifely obedience to divine obedience, it appears that al-Karmī explicitly stated what most jurists and exegetes implied in their works; namely, that in many ways a husband is to a wife as God is to a husband.

#### **4.5.2. Reiterating *Tadrīj* and Establishing the Right to Hit Wives**

Like the Ḥanafī, Mālikī and Shāfi'ī scholars in this study, Ibn Qudāmah emphasized the necessity of following the three disciplinary steps - admonishment, abandonment and beating - sequentially. Like the Shāfi'ī scholars in this study, he also stressed the difference between the "signs" (*amārāt*) of *nushūz*, which he understood as the "fear" (*khawf*) of *nushūz*, and actual wifely *nushūz*. The fear of wifely *nushūz*, which resulted from the manifestation of signs of *nushūz*, only enabled husbands to admonish their wives verbally. Husbands were not permitted to hit wives at this point. He wrote, "...the punishment should correspond to the [level] of fear of *nushūz*; and

there can be no debate that it is impermissible to hit her for [mere] fear of *nushūz*, without it having been manifested”.<sup>700</sup>

Ibn Qudāmah cited al-Shāfi‘ī and Q. 4:34 to emphasize the need to use physical violence against wives only after admonishment and abandonment. He wrote, “And Shāfi‘ī said: if a wife was not deterred (*tartadī*) by admonition and abandonment, then the husband should hit her, because God, Most High, said, ‘And beat them’”.<sup>701</sup> Ibn Qudāmah also cited Muḥammad’s *ḥajj* sermon, (which by this time had been recorded in the *Ṣaḥīḥ* of Muslim) wherein Muḥammad was reported to have said, “It is your right that [your wives] not let anyone into your bed/home whom you dislike, and if they do so then beat them in a non-extreme manner”.<sup>702</sup> In this report, Muḥammad did not mention hitting after admonishment and abandonment, but directly as a result of a wife allowing someone her husband disliked into his home/bed. Although Ibn Qudāmah brought up this report in his discussion of sequence, he did not explicitly connect it to the issue of sequence. Rather, he focused on the report’s permission for husbands to beat their wives in a non-extreme manner.

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<sup>700</sup> Ibn Qudamah, *al-Mughnī*, v. 10, p. 260.

<sup>701</sup> *Ibid.*, v. 10, p. 260.

<sup>702</sup> *Ibid.*, v. 10, p. 259-263. Also see Chapter 1, 1.3.2.2. for more details on this *ḥadīth*.

For Ibn Qudāmah, if a husband feared *nushūz* from his wife, based on the signs of *nushūz* discussed above, then he was to admonish her. Unlike the Ḥanafī scholars who encouraged the admonishment to be first gentle and kind followed by harsh and threatening speech, Ibn Qudāmah's version of the admonishment was entirely threatening. He wrote,

This means he should make her fear (*yukhawwifhā*) God, most Glorious, remind her that he has divinely-mandated rights over her [that include] obedience, and [remind her] that she gains sin by opposing him (*bi-l-mukhālafatihi*) and by disobedience (*al-ma'ṣiyah*). Further, [he should remind her] of what she will lose as a result of her behavior - namely maintenance (*al-nafaqah*) and clothing (*al-kiswah*) - and that he is allowed to abandon and beat her.<sup>703</sup>

Ibn Qudāmah saw admonishment as a means of reminding wives of their place in the hierarchy, such that sinning against the husband was akin to sinning against God. Further, the punishments she would receive for her disobedience were material (loss of maintenance and clothing), physical (abandonment and beating) and metaphysical (the gaining of sin). Thus, by sinning, a wife sins against herself, her husband and God concurrently. As a result of this, she receives punishment pertaining to all three.

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<sup>703</sup> Ibid., v. 10, p. 259.

Q. 4:34 played an important role in Ibn Qudāmah's discussion of wifely *nushūz* and discipline. It is possible that Ibn Qudāmah drew the loss of maintenance threat from the Shāfi'ī approach, since, as seen above, al-Shāfi'ī considered loss of maintenance to be an outcome of *nushūz*. However, Ibn Qudāmah was selective in his reliance on the Shāfi'ī approach, since he did not adopt the loss of allotted nights along with the loss of maintenance, as a consequence for wifely *nushūz*. Ibn Qudāmah did not cite his source for the loss of clothing (*kiswah*) as an obvious result of wifely *nushūz*. It is strange that he mentioned clothing as separate from maintenance at all. This is especially significant given that he cited the *ḥadīth* wherein Muḥammad's response to the right of wives over their husbands included "feeding and clothing them as you feed and clothe yourselves".<sup>704</sup> Most jurists considered feeding and clothing to be included in maintenance. However, Ibn Qudāmah separated the responsibility of husbands to clothe their wives from their responsibility to maintain them.<sup>705</sup> Though it is not clear as to why he made this distinction, he was able to use the two as separate threats against wives who exhibited signs of *nushūz*.

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<sup>704</sup> Ibid., v. 10, p. 259. Ibn Qudāmah's citation of this *ḥadīth* is fascinating, since it does not include the command not to hit wives explicitly, even in its qualified form of not hitting them in the face.

<sup>705</sup> Finding out what prompted this division between maintenance and clothing for Ibn Qudāmah would make a good research project, but exploring this question further is beyond the scope of this project.

Like the Mālikī but unlike the Ḥanafī and Shāfi‘ī scholars in this study, Ibn Qudāmah did not dwell on the command of abandonment in great detail. He mentioned that a wife’s *nushūz* becomes manifest when “she disobeys her husband, refuses his bed or leaves his house (*manzil*) without his permission”, then she was to be sexually abandoned by her husband, because of the apparent meaning of Q. 4:34 - “abandon them in the bed”.<sup>706</sup> Ibn Qudāmah mentioned that verbal abandonment should be limited to only three days, given the *ḥadīth* wherein Muḥammad prohibited believers from abandoning each other in speech for longer than three days.

Ibn Qudāmah’s discussion of the physical discipline of wives centered around Abū Ḥussayn al-Khiraqī’s (d. 334/1223) position on the matter. According to al-Khiraqī it was not permissible to hit a wife the first time (*awwal marrah*) she committed *nushūz*. It appeared that al-Khiraqī disagreed with the position of Ahmed b. Ḥanbal (d. 241/855) on this issue, since Ibn Ḥanbal had said that if a wife disobeyed her husband, she ought to be hit in a non-extreme (*ghayr mubarrīḥ*) manner. Ibn Qudāmah sided with Ibn Ḥanbal’s position on hitting a *nāshizah* wife, even if it was the first time she committed *nushūz*. He used Q. 4:34, “and beat them”, as evidence for his position. Therefore, he argued that

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<sup>706</sup> Ibn Qudamah, *al-Mughnī*, v. 10, p. 260.



when a wife was overt (*ṣarraḥat*) in her *nushūz*, then it was permissible for a husband to hit her. Ibn Qudāmah argued that although the punishment for a wife's *nushūz* was contingent on the overtness of her disobedience, the punishment did not change based on its recurring nature. That is to say, once a wife manifested her *nushūz*, it was irrelevant whether this was her first time she committed *nushūz* or not. Thus, a wife was to be beaten in all cases of manifest *nushūz*. In this respect, he compared the disciplining of wives to the *ḥadd* penalty, which is equally applicable regardless of the number of times a crime was committed. Since *ḥadd* penalties were not contingent on the recurring nature of a crime, so too was the physical discipline of wives separate from the issue of recurrence. In his comparison of the application of physical discipline against wives by husbands and the implementation of the *ḥadd* penalty by the court, Ibn Qudāmah blurred the line between the two.

However, Ibn Qudāmah did see the two punishments - a husband's disciplinary action against his wife and a court's punishment in the case of a *ḥadd* crime - as nevertheless distinct.<sup>707</sup> He cited the *ḥadīth* wherein Muḥammad was reported to have said, "Do not beat anyone with more than ten lashes, except in

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<sup>707</sup> It is worth noting here that the Ḥanbalī scholars in this study did not consider the question of discretionary punishments (*ta'zīr*) with respect to the physical discipline of wives.

*ḥadd* punishments ordained by God”.<sup>708</sup> Hence, Ibn Qudāmah thought it permissible to beat one’s wife with a whip, as long as it did not exceed ten lashes. Ibn Qudāmah also qualified the intensity of hitting wives in a general manner. Apart from using the usual non-extreme (*ghayr mubarrīḥ*) qualification, he cited Abū Bakr al-Khallāl (d. 311/923)’s conversation with the grammarian Aḥmad b. Yaḥyā (291/903).<sup>709</sup> Al-Khallāl asked Ibn Yaḥyā what was meant by “non-extreme” (*ghayr mubarrīḥ*) hitting. Ibn Yaḥyā said it meant not severe/intense (*ghayr shadīd*). Ibn Qudāmah’s interpretation of this was that the beating ought to avoid the face and places where beating would be perilous/dangerous (*al-mawāḍi‘ l-makhūfah*). He wrote that this was the case because the desired end of beating was discipline (*al-ta’dīb*) of one’s wife and not her annihilation or destruction (*al-ittlāf*). So, according to Ibn Qudāmah, a husband’s right to physically discipline his wife was restricted by his need to follow the three prescriptions of Q. 4:34 sequentially, as well as the Prophetic qualification to hit wives in a non-extreme (*ghayr mubarrīḥ*) manner, such that a husband did not seriously cause harm while hitting his wife in the process of disciplining her.

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<sup>708</sup> Ibn Qudamah, *al-Mughnī*, v. 10, p. 261.

<sup>709</sup> Probably Abu al-‘Abbās Aḥmad b. Yaḥyā al-Tha’lab (d. 291/903), Baghdādī grammarian.

### 4.5.3. Wives and Slaves

As with other jurists, Ḥanbalī jurists saw the husband-wife relationship as analogous to the master-slave relationship. The analogical relevance of these two relationships to each other was especially significant in discussions of the physical discipline of wives or slaves. Ibn Qudāmah connected the restriction of hitting one’s wife to ten lashes to the disciplining of a slave. He offered two reports from Muḥammad in succession:

‘Abd Allah al-Zam’ah reported that the prophet (saws) said, “None of you should hit your women like you hit a slave and then sleep with her at the end of the day,” and “do not exceed ten lashes when beating her”.<sup>710</sup>

Ibn Qudāmah did not comment on these *aḥādīth* further, except to mention them in the context of the procedure and extent of the beating a husband was permitted while disciplining his wife. It appears the point he was making was that the hitting of a slave was meant to be qualitatively different from the hitting of a wife, especially considering the rights of intimacy a husband had over his wife. However, since a husband also had rights of intimacy with a concubine, this point would only hold if either the “slave” (*al-’abd*) referred to in the *ḥadīth* was a male slave or the intimacy of a master and a concubine was seen as qualitatively different than that of a husband and wife.

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<sup>710</sup> Ibn Qudamah, *al-Mughnī*, v. 10, p. 661.

The Ḥanbalī jurist Manṣūr b. Yūnus al-Bahūtī (d. 1052/1641-2) saw more similarities than differences in the wife-slave analogy. He wrote,

And he (meaning the husband or father or master) is entitled to discipline a wife and a son - assuming that the son is of age and could be married - with a non-extreme beating, just as one would beat a slave. The discipline should be light when they commit wrong (*adhḥabu*) and you should be clement with them in the first or second instances [of wrongdoing]. [Physical discipline] is not permitted unless there is an instance of wrongdoing, and he should not hit in an extreme manner. The *ḥadīth* corroborates this, “Do not hit with more than ten lashes unless [enacting] a *ḥadd* punishment ordained by God”.<sup>711</sup>

For al-Bahūtī, with respect to discipline, the analogical relevance of the master-slave, father-child and husband-wife relationship was extremely strong.

Husbands were obligated to discipline their wives when the latter committed wrongdoing, and although he maintained al-Shāfi‘ī’s principle of forgiveness first, he followed al-Khiraqī’s lead in doing so. The other Ḥanbalī scholars in this study, other than al-Khiraqī, did not advise forgiveness over discipline. In fact, Ibn Qudāmah argued the opposite when he insisted that if a wife committed *nushūz*, she was to be disciplined in the first instance, and not only if it reoccurred.

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<sup>711</sup> Al-Bahūtī, *Irshād*, v.2, p. 1133.

#### **4.5.4. Summary of Ḥanbalī Approaches to Wife-Beating**

As with the other juridical traditions in this chapter, Ḥanbalī jurists did not display any overt discomfort with the prescription of husbands to physically discipline their wives. Further, it was observed that Q. 4:34 was a central text in their discussions of the command to hit wives. While the Ḥanbalī jurists in this study attempted to restrict husbands from abusing their wives through excessive violence that might result in permanent damage, they also considered it a husbandly obligation to physically discipline their wives when they committed *nushūz*. Ḥanbalī jurists expanded the definition of *nushūz* to include a greater number of specific acts a wife could commit in order to deserve discipline. They permitted husbands to discipline their wives with a whip, and though they encouraged husbands to not exceed ten lashes, there was no discussion regarding the rights of wives against their husbands if they were abused.

#### **4.6. Conclusion**

The jurists in this chapter adopted distinct approaches to the discussion of the physical discipline of wives, but they also shared the core ideas of ranking husbands over wives and the responsibility of husbands to rectify recalcitrant

wives. Q. 4:34 played a central role as a source text in the discussion of physical violence in marriage in all Sunnī legal schools. While jurists institutionalized a patriarchal structure of marriage wherein husbands were obligated to physically discipline wives if necessary, they also attempted to qualify the unqualified prescription of Q. 4:34. Almost all emphasized the need to follow the three prescriptions of admonishment, abandonment and beating in succession (*tadrīj*), exhaustively. They also generally qualified the unqualified Qur’anic prescription to beat wives with the Prophetic qualifier of “non-extreme” (*ghayr mubarriḥ*) beating.

Furthermore, the jurists produced distinct discussions on the proper methodology for physically disciplining wives. Ḥanafī jurists used the Prophetic qualifier of non-extreme hitting, and emphasized sequential (*tadrīj*) discipline. They also expanded the right of husbands to use violence in order to discipline their wives beyond the scope of *nushūz*, extending their right to cases of discretionary punishment (*ta’zīr*), and arguably even *ḥadd* punishment.<sup>712</sup> In the Ḥanafī scheme, an external judge was only relevant in cases of irreconcilable marital disharmony. Until a marriage reached this point, external

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<sup>712</sup> Although Ḥanafī scholars argued that a husband could kill both his wife and the man with whom she committed adultery if the husband found them together, they argued that this counted as discretionary punishment (*al-ta’zīr*) and not the *ḥadd* penalty since the wife was owned by her husband. See section 4.2.3.

authority played a very small role in the regulation of marriage. Husbands were granted a great deal of executive power in managing their wives' behavior. Additionally there was very little discussion about potential repercussions for husbands if they were to abuse this extensive power.

Mālikī jurists granted the judge, an external arbiter, and the larger community a much greater role in the managing of individual marriages. Husbands and judges shared the responsibility of disciplining wives. Often, a judge might be involved in the discipline of a wife at the very initiation of the disciplinary process, that being admonishment. Husbands' powers over their wives were restricted in a tangible manner, with extensive discussion surrounding the liability of a husband if he abused his power. Mālikī jurists additionally restricted a husband's disciplinary hitting with the qualifier non-threatening (*ghayr makhūf*) in addition to non-extreme (*ghayr mubarrih*) hitting. Still, some Mālikī jurists considered it permission to hit one's with with weapons such as a whip or a rope.

The Shāfi'ī discussion surrounding the physical discipline of wives was centered on the tension between the Prophetic prohibition against hitting wives and the Qur'anic permission and/or imperative to hit wives. Shāfi'ī jurists

resolved this tension by making the status of hitting one's wife legally permissible (*mubāḥ*) but not preferred. Their approach to the physical discipline of wives was that it was preferred for husbands to not hit their wives.

Forgiveness was considered better than hitting. Still, Shāfi'ī jurists upheld the right of husbands to engage in physical discipline. They also introduced the distinction between *nushūz* proper and "signs" of *nushūz* in order to expand the catalog of disapproved behaviors on the part of wives. They also asserted the right of husbands to handle discretionary punishment against their wives themselves, rather than suffering the dishonor of having such cases referred to a judge.

Ḥanbalī jurists upheld the Shāfi'ī principle of preferring forgiveness over hitting whenever possible. However, they also emphasized the need to hit when wifely *nushūz* persisted. They further criminalized wifely *nushūz* to some degree by comparing it to *ḥadd* crimes deserving penalty. Like the Ḥanafī and Shāfi'ī jurists, Ḥanbalī jurists did not devote much attention to the legal repercussions against husbands who abused their power over wives by using excessive violence. The whip was permitted as a weapon of discipline in marriage, though it was restricted to ten lashes. Still, the Ḥanbalī scholars in this study did not



explicitly expand the right of physical discipline in response to *nushūz* to include discretionary punishment.

In his article “Two Women, One Man”, Fadel argues that it was essential to consider Islamic jurisprudence when studying issues related to gender.

Focusing on Qur’anic exegesis alone might cause a scholar to miss vibrant debates concerning the same issues in the juridical tradition. He writes,

Muslim modernism in general, and Muslim feminism in particular, might profit from exploiting problems and tensions that have long been recognized to exist within Islamic law. In the long run, this strategy may be more successful than claiming the need for a "new" jurisprudence that is to be derived *ex nihilo* from the original sources of Islamic law. This assumes that many of the issues that make up the modernist agenda have potential solutions waiting to be derived from already existing principles of Islamic law. Although this may or may not actually turn out to be the case, the evidence presented regarding women's testimony suggests that the battle between the "two voices" of Islam manifested itself more dramatically in positive law than it did in other arenas of religious discourse. Therefore, any study of gender in the Islamic middle periods that ignores *fiqh* is not only dangerously incomplete, but it will also probably miss the most interesting medieval discussions of gender.<sup>713</sup>

Based on the above examination of juridical positions within the four major schools of Sunni Islamic law, it is difficult to argue that the egalitarian and

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<sup>713</sup> Fadel, “Two Women, One Man”, p. 200-201.

patriarchal voices in Islam were “in battle”, so to speak. In fact, it is difficult to even hear two voices; when approaching works of pre-modern jurisprudence on this issue, only a patriarchal voice is heard. There was no gender egalitarian thrust to any of the works under study. To the contrary, pre-modern jurists accepted the command for husbands to use physical violence for the purpose of disciplining their wives as ordinary. They did not exhibit any ethical tensions with this prescription. When jurists discussed the nature of hitting, their tendency was to try to restrict the hitting. However, when they delved into the particularities of the level of violence that husbands could inflict upon their wives, it was seen jurists were comfortable with the use of weapons such as a whips and ropes.

The very concept of a wifely *nushūz* that deserved discipline invoked a hierarchical relationship between husbands and wives. The marital relationship was centered on a divinely ordained hierarchy between husbands and wives, where husbands pleased God, in part, by ensuring the moral, ethical and social rectification of their wives. In this hierarchy, wives please God by pleasing their husbands. The primary definition of *nushūz* in juridical texts, as in exegetical texts, was the disobedience of wives to their husbands. As seen above, this disobedience included many behaviors on the part of a wife including sexual

denial to a husband, leaving a husband's house without his permission, allowing those whom the husband disapproved of from entering his house, speaking scornfully to one's husband and obeying his commands only grudgingly. Also, jurists sometimes added behaviors that might arouse suspicion of wifely *nushūz*, such as a sudden alteration of a wife's behavior that her husband did not find pleasing. It logically follows that if a wife pleased God by pleasing her husband, then she displeased God by displeasing her husband. By disobeying her husband, a wife not only challenged her status as lower than her husband's, but she also challenged God, since the marital hierarchy was divinely ordained, according to jurists. As Vardit Rispler-Chaim pointed out in her article, "the legal term *nushūz* is used to designate the rebellion of a woman against her husband, disobeying him and causing him anger. By these acts she is metaphorically placing herself in a position higher than his".<sup>714</sup>

The emphasis on the hierarchical nature of the marriage relationship is difficult to miss in juridical works on marriage. Both Rispler-Chaim and Ali argue that the marital relationship was deeply analogous to the master-slave relationship. Rispler-Chaim saw this analogy embedded in the conception of wifely *nushūz*. She argues that wifely *nushūz* basically constituted the independent expression

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<sup>714</sup> Vardit Rispler-Chaim, "Nushūz between Medieval and Contemporary Islamic Law: The Human Rights Aspect" in *Arabica* (tome XXXIX, 1992), p. 315.

of a wife, by taking control over her body sexually and/or taking control of her movement in and out of her husband's house.<sup>715</sup> She argues that this arrangement "smacked of slavery". Citing al-Ghazzālī and Ibn Qayyim, she wrote,

Al-Ghazzali (d. 1111) stated that marriage is "a type of slavery" (*naw' min al-riqq*), and that the wife is the slave of her husband (*raqīqa lahu*); she is obligated to obey all his orders except for anything that entails a sin. Ibn Qayyim in the 14th century describes the wife as a captive of the husband (*asīra*), who like all captives must obey the captor. Captivity and slavery have much in common. This view of marriage helps to understand the encouragement in Islamic law to punish the rebellious woman – disloyal slaves always deserved punishment.<sup>716</sup>

Ali argues a similar point regarding the ownership (*milk*) that husbands gained over their wives by means of the marriage contract. She wrote that "the conceptual vocabulary of *milk* saturates all discussion of marriage and divorce. While this ownership may be limited or even, in some sense, fictive, it nonetheless colors every aspect of the legal regulation of the spousal relationship".<sup>717</sup>

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<sup>715</sup> Ibid., p. 317.

<sup>716</sup> Ibid., p. 318.

<sup>717</sup> Kecia Ali, *Money, Sex and Power*, p. 453.

Since Q. 4:34 played such a central role in most discussions surrounding the physical discipline of wives, it can be argued that jurists were constrained by its imperatives. That is to say, because Q. 4:34 prescribed the physical discipline of *nāshizah* wives, jurists did not have any flexibility with respect to the basic ruling itself. Hence, it is possible that they were only able to express their ethical discomfort with the Qur'anic prescription by qualifying it. However, it is difficult to find a voice of ethical discomfort in the juridical discussions surrounding wife-beating as an acceptable practice. As seen in this chapter, though Muslim jurists qualified the right of husbands to physically discipline their wives, they also displayed a great deal of comfort with the general right of husbands to engage in that physical discipline. When there was some discomfort with the prescription itself, it was not as a result of ethical concern for wives, but rather as a result of Muḥammad's complicated *sunnah* with respect to wife-beating.

## Conclusion

This project undertook a comparative analysis of the treatment of wife-beating in three separate Islamic disciplines in the pre-modern period; namely, prophetic reports (*ḥadīth*), Qur’anic exegesis (*tafsīr*) and Islamic jurisprudence (*fiqh*). I found that the three disciplines had both similar and distinct interpretations of the right of husbands to hit their wives for disciplinary and non-disciplinary purposes. As shown in Bonner and Bauer’s work, the boundaries of these three disciplines were porous such that *ḥadīth* studies and Qur’anic exegesis influenced works of Islamic law and vice-versa.<sup>718</sup> Pre-modern exegetes and jurists displayed independence and creativity in their preferred interpretations of the right of husbands to hit wives. They drew upon the Qur’ān, prophetic practice and historical precedent in a selective manner that helped bolster their individual interpretations.

Despite the significant divergences in their interpretive choices, pre-modern exegetes and jurists also shared a God-centered worldview, wherein social hierarchy reflected God’s vision of a perfect society. In this inter-connected and

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<sup>718</sup> Bauer, Room for Interpretation, p. 14. Also see Micheal David Bonner, *Jihad in Islamic History*, p. 37. He writes, “*Tafsīr* uses many of the same materials as the other three genres [*sīrah*, *maghazī* and *ḥadīth*]; the boundaries among them are porous”.

inter-dependent social system, the institutions of marriage and slavery were closely related. Specifically, God held the highest rank in the hierarchy and his authority extended directly to husbands and masters, whose authority in turn extended to wives and slaves. Two lesser-cited analogous relationships, found more prominently in legal texts than in exegetical ones, were those of a father and his child or a teacher and his student.<sup>719</sup> Given the assumptions about social stratification that informed the analogy between these various relationships, pre-modern exegetes and jurists tied the right of physical discipline to hierarchical relationships of authority. In these relationships of authority, one party - the husband, master, father or teacher - was entrusted with the social and religious responsibility for the control and/or moral improvement of another person - the wife, slave, child or student. Since Q. 4:34 was the only Qur'anic text that discussed the right of one party to physically discipline another, in this case for husbands to discipline wives, Q. 4:34 played a central role in legal discussion on *ta'dīb* (disciplinary power). In these cases, the marital relationship served as a model for several different forms of asymmetrical relationships.

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<sup>719</sup> The only exegetes I came across that used the parent-teacher analogy to the marital relationship was al-Qurṭubī. Al-Qurṭubī, *al-Jāmi'*, v. 5, pp. 161-167. Al-Ḥaddād was the only exegete who used the parent-child analogy in a similar way. Al-Ḥaddād, *Kashf al-tanzīl*, v. 2, pp. 247-251. However, both of these analogies figured significantly in the juridical works.

Q. 4:34 did not play as prominent a role in the discipline of *ḥadīth*, but the master-slave relationship remained relevant in this discipline. Whereas the master-slave analogy was used in the exegetical and juridical literature to validate the right of husbands to hit their wives, in the *ḥadīth* literature this analogy was drawn upon in order to discourage husbands from hitting wives. To this end, *aḥādīth* recorded Muḥammad never hitting a woman or a slave and Muḥammad discouraging his Companions from hitting their wives as they would slaves.

The distinctions among these relationships was also emphasized in the exegetical and juridical traditions, but for the purpose of discerning the nature of discipline (*ta'dīb*) that was considered appropriate for each one. For instance, the analogy that linked a wife to a child was utilized when arguing that husbands, fathers and teachers were responsible for the moral development of the wife and child. If wives and children fell short morally, they were to be disciplined. In contrast, in discussions of the owner's right to discipline a slave, it was the slave's service and not his/her moral development that was emphasized. This does not necessarily mean that masters were not permitted to discipline slaves for the purpose of moral rectification, but rather that when disciplinary action against slaves was discussed, it was in the context of failure



of service which could arguably be considered a moral failure. Husbands were broadly permitted to discipline their wives when they neglected both God's and their husbands' rights. Hence, when wives neglected to pray or refused their husbands sexually, husbands were responsible for rectifying both behaviors.

The status of wives clearly was not equal to that of slaves or children, but it was analogous in its asymmetry, in that wives could be physically disciplined by their guardians when they fell short in their duties. Thus, wives were solidly at the bottom of the tripartite marital relationship, which consisted of God, husbands and wives. The God-centered nature of the marital relationship did not prevent the marital structure from privileging husbands, or primarily serving the needs of husbands. However, it also created a structure for the accountability of husbands, such that they did not have free rein over their wives. Even when they were not socially liable through legal structures, they were always liable before God.

This understanding of the marital relationship was extremely influential in exegetical and juridical interpretations of Q. 4:34. It is striking that the vague terms within the verse and the available prophetic reports were all interpreted to fit within this understanding of marriage. In the available *ḥadīth* collections, for

example, prophetic practice was recorded to reflect ethical discomfort with husbands hitting their wives. This ethical discomfort was, for the most part, ignored by pre-modern exegetes. Pre-modern Qur'anic exegetes displayed a great deal of interpretive creativity and independence in their selection of prophetic tradition and historical precedent to conform to ideals of marriage they had in mind. Exegetes displayed comfort in disagreeing with previous interpretations and also in devising new interpretations. Thus, as Bauer argues, even when exegetes upheld the "tradition" in their preferred interpretation, they exercised hermeneutic choice. Bauer's work shows that "the corpus of early interpretations, and the existence of ḥadīths pertinent to the topic of exegesis, did not determine the content of exegeses".<sup>720</sup> The Qur'anic text and prophetic practice informed the interpretive choices of exegetes and was also used by exegetes to strengthen their desired interpretation.<sup>721</sup>

Based on this research, it is difficult to argue that the "linear-atomistic"<sup>722</sup> approach of exegetes prevented them from having a holistic understanding of

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<sup>720</sup> Bauer, *Room for Interpretation*, p. 17. Also see, p. 63.

<sup>721</sup> Ibid., Chapter 3. Bauer argues that exegetes selectively used authoritative sources, such as prophetic reports, in order to "reflect their own milieu". p. 107. Manuela Marin also discusses the exercise of personal choice by exegetes in their selective approach to prophetic practice, which granted them flexibility in interpretation. See, Marin, "Disciplining wives", *Studia Islamica*, 2003, pp. 5-40

<sup>722</sup> "Linear-atomistic" is Muntasir Mir's term. Muntasir Mir, *Coherence in the Quran*, p. 1. Also see Barlas, *Believing Women in Islam*, p. 8.

the Qur'anic text. Rather, what is more plausible is that pre-modern Qur'ān exegetes had a different understanding of the holistic message of the Qur'ān, which in turn resulted in a different conception of marriage, than contemporary scholars. Pre-modern exegetes understood the comprehensive message of the Qur'ān in light of a God centered social hierarchy, where God's kingdom on earth was composed of divinely arranged hierarchical social institutions. Marriage was only one of a set of inter-dependent institutions that embodied asymmetrical relationships. As a result, exegetes did not exhibit ethical discomfort with the right of husbands to hit wives - which makes sense given their worldview -, but they did feel compelled to qualify the Qur'anically unqualified prescription through the use of prophetic reports. Although this worldview does not apply equally to all pre-modern exegetical sources, it was a unifying factor for the work of exegetes, as it accounted for the consistently pervasive hierarchal conception of marriage in pre-modern exegetical works.

Feminist theologians would not see this as weakening the argument that the entire "cosmic" structure is ultimately about privileging the male. After all, the homology between the man's authority over the woman and that of God over man is one that powerfully consecrates male superiority. Adding God at the top of the hierarchy does not necessarily demote men, but is precisely what gives

gender hierarchy a transcendent dimension that tends to remove it from the realm of ordinary social negotiation. On the other hand, given that the male is not at the apex of the hierarchy, which culminates in God, he is also subject to divine scrutiny and displeasure. To this end, exegetes, jurists and *ḥadīth* scholars were able to appeal to the conscience of men in order to encourage them to be moderate and just in the use of their disciplinary power. Exegetes emphasized that God had commanded men to not transgress against their wives if they were obedient to them and that they could not judge their wives' intentions and motivations - only their actions. Exegetes and *ḥadīth* scholars also encouraged husbands to treat their wives as they would want to be treated. This was a motivation for husbands to be lenient with their wives and a warning against transgression since husbands were accountable to God for their behavior. The notion in *ḥadīth* literature that wives were a "entrusted" to their husbands and that husbands were liable for this trust in the hereafter was absorbed into both the exegetical and juridical disciplines.

The field of pre-modern Islamic jurisprudence also displayed creativity, independence and flexibility. Interestingly, wife-beating did not always emerge as a relevant topic in the discussion of recalcitrant wives. Some jurists, such as al-Marghīnānī, did not discuss the right of husbands to hit wives even when

they discussed wives who commit *nushūz*.<sup>723</sup> Pre-modern jurists were more inclined to discuss the loss of maintenance and allotted nights, rather than hitting, when they deliberated on wifely *nushūz*. In contrast, loss of maintenance and allotted nights did not emerge as a relevant topic in pre-modern exegetical discussions surrounding wifely *nushūz*. When jurists delved into the topic of the right of husbands to hit their wives, Q. 4:34 was used as a primary source text to justify this right.

Pre-modern jurists, like exegetes, mentioned several behaviors on the part of wives that could constitute *nushūz*. However, they differed in their emphasis; while exegetes emphasized general disobedience and rebellion as constitutive of wifely *nushūz*, jurists stressed sexual disobedience of wives through sexual refusal or sexual inaccessibility by leaving their husbands' homes. As in *ḥadīth* literature, jurists were also inclined to discuss the right of husbands to hit wives in contexts beyond wifely *nushūz*. Similar to Qur'anic exegesis, juridical works drew upon an underlying understanding of a divinely ordered social hierarchy to build their hierarchical conception of marriage. Within this worldview, it was uncontroversial for husbands - who were charged with the moral, social, financial and religious well-being of their wives -, to not only have the right, but

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<sup>723</sup> See *al-Hidayah* by al-Marghīnānī, v. 2, pp. 39-41.

be obligated and responsible to physically discipline recalcitrant wives. Like Qur'ān exegetes, pre-modern Islamic jurists did not display any ethical discomfort with the right of husbands to hit their wives.

It is important to note that among the legal schools, Ḥanafī and Ḥanbalī jurists did not dwell on the legal consequences for husbands who used excessive violence in disciplining their wives. Pre-modern exegetes did not dwell on this detail either, but it is more significant in a legal context than a hermeneutic one. Similar to exegetes, jurists unanimously qualified the right of husbands to hit their wives to non-extreme (*ghayr mubarrih*) hitting and often emphasized the need for husbands to follow the three steps of admonishment, abandonment in bed and hitting in sequence. As in the case of exegetes, some jurists took exception to this, but they were exceptional in that regard. Ḥanafī and Shafī'ī jurists also extended the right of husbands to hit their wives for disciplinary (*ta'dīb*) purposes or for discretionary punishment (*ta'zīr*). Mālikī jurists were demonstrably concerned with the ethics of hitting and attempted to introduce external arbiters into the marital relationship from the very beginning of the disciplinary process. They were also unique in their extended deliberation on recompense against husbands who wounded their wives, broke their bones or killed them. Due to their discomfort with the tension between Prophetic practice

with regard to hitting wives and the Qur'anic text commanding hitting, Shāfi'ī jurists reconciled this friction by making the hitting of wives permissible (*mubāḥ*) rather than obligatory.<sup>724</sup> In contrast, some jurists, such as the Ḥanbalīs, considered it a husband's obligation to rectify his wife's behavior through disciplinary means including physical discipline whenever she erred.

Overall, pre-modern jurists did not display greater ethical concern than pre-modern exegetes with wife-beating. They drew on similar sources, such as the Qur'anic text and prophetic practice, and displayed creative and independent legal interpretation. Islamic jurists did not represent broader interpretive perspectives with greater egalitarian potential than the exegetical works in this study, as hypothesized by Fadel.<sup>725</sup> In fact, legal discussions in Islamic jurisprudence surrounding the right of husbands to hit wives could sometimes be more asymmetrical than in Qur'anic exegesis. For instance, the notion of hitting wives for the purpose of discretionary punishment (*ta'zīr*) was a legal concept that was not found in exegetical works. However, this is not say that Qur'anic exegetical works were more egalitarian in nature than juridical works. They both institutionalized a hierarchical view of marriage wherein husbands

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<sup>724</sup> Kecia Ali, *Money, Sex and Power*, pp. 300-305.

<sup>725</sup> Fadel, "Two Women, One Man", 1997.

had guardianship over their wives such that they were responsible for them socially, financially, morally and religiously.

Although the God-centered hierarchy privileged and “preferred” husbands over wives, the limits on husbands’ disciplinary power were explored and wives were granted limited recourse to retributive justice, whether in this life or the next. However, these limits and recourses were more often than not reflections of the exegetes’ and jurists’ own world views. They were not rooted in a literal reading of the text, nor did they find exact precedent in prophetic practice. Thus, the pre-modern tradition tells us more about the pre-modern context in which they were writing – which was in part informed by sacred texts and the larger Islamic tradition – than the range of possible interpretations afforded by the Qur’anic text.

It would seem that scholars such as Wadud, Barlas, Shaikh and Mubarak are correct in arguing that the pre-modern tradition cannot provide egalitarian possibilities for the interpretation of Q. 4:34. Also, scholars such as Badawi and al-Hibri, who argue that the pre-modern tradition instituted egalitarianism by safeguarding women from abuse and restricting men from abusing wives have a valid point, but only if one assumes a God-centered social hierarchy in which



God gave certain rights and responsibilities to men that he did not give to women. I argue that pre-modern interpretations of Q. 4:34 have little to offer contemporary scholars seeking to reclaim a buried egalitarian potential in the pre-modern “tradition”. What pre-modern scholars have to offer to contemporary progressive Muslim scholars is not the substance of their interpretations but their precedent of engaging in independent and flexible exegesis.

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