AL-KAFĀ'AH (COMPATIBILITY) BETWEEN SPOUSES REGARDING RIGHTEOUSNESS AS DISCUSSED IN THE *TAFSĪR* OF AL-QURTUBI: IMPLICATIONS FOR MARITAL LIFE

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Abstract
Choice of marital partner is determined by a number of catalysts one of which is *al-kafā'ah* (equality of status) between spouses. Some marriages cause a sort of antipathy which leads to discord and separation between the couples as a result of incompatibility emanating from disequilibriumof moral, religious or socio-economic status of the spouses. Jurists hold divergent opinions on qualities which should be considered as genuine criteria for *al-kafā'ah* as various contemporary societies differ in what they determine as criteria for compatibility between spouses. In this wise, the Qur'ānic paradigm relating to the issue of *al-kafā'ah* was exposed by al-Qurtubi in his *Tafsīr*. This paper, therefore, examines al-Qurtubi's exegetical discourse on *al-kafā'ah* between spouses with the intent of identifying genuine criteria for the compatibility and their implications for marital life. Exegetical and analytical methods were adopted for the study. It identifies religion and piety as the basic criteria for the compatibility of status which help to maintain decency and wellbeing of individuals in marital life, while socio-economic status may be waived, but with the consent of wife in order to curb psycho-emotional disturbance resulting from mis-merge of socio-economic statuses. It also pointed out that repentance of unchaste spouse is considerable, and the chaste has the right to either retain the existing marriage with the persistent unchaste or dissolve it for the interest wellbeing of marital life. The study concludes that al-Qurtubi was able to deduce the criteria for the compatibility of status between spouses, from the Qur'ān.

Keywords: *al-Kafā'ah*, Compatibility, *Tafsīr*, Spouse, Marital life

Introduction

Exegesis of the Qur'ān is, no doubt, an inevitable source of Islamic provisions. Having explored the exegetical work of al-Qurtubi which he titled *al-Jāmiʿu li-Ahkām al-Qur'ān*, it was observed that al-Qurtubi has intensively deciphered legislative verses of the Qur'ān to the extent that a great number of marital issues were deduced and expounded. One of such issues is the determinants of compatibility of status between spouses. Some scholars noted that the compatibility of status between the spouses certainly contributes to the success of their marital life, whereas lack of the

compatibility causes a sort of aversion and leads to discord and separation between the spouses.[1]This study, therefore, examines al-Qurtubi's exegetical discourse on the areas of similarity of status between marital partners as deduced from some legislative verses of the Qur'ān. It shall expose genuine areas of the compatibility and their implications for marital life.It is however apposite in this study to first identify who al-Qurtubi was.

Biographical Sketch of Al-Qurtubi

A prolific author whose work is the focus of this study is al-Qurtubi. His full name is Abu Abdullah Muhammad Ibn Ahmad IbnAbubakrIbn Farah al-Qurtubi. He was born in the 13th century C.E in Cordoba in the present day Spain.[2]It should be noted that the name 'al-Qurtubi' is a derivative of an Arabic name of Cordoba from where he emanated. He was educated in Cordoba before he left for Alexandra in Egypt where he studied Hadīth and Exegesis. It should be pointed out that al-Qurtubi's migration to Egypt was as a result of the capture of Cordoba byking Fernando III, in 1236 C.E.[3]

Al-Imam Abu Abdullah al-Qurtubi was a renowned jurist, and an exegete who wrote a number of works on various branches of knowledge. However, his greatest contribution to the field of knowledge is his monumental work which he titled: *Al-Jāmiʿu li-Ahkām al-Qur'ān* (the Compendium of the Rules of the Qur'ān). He died in the year 671 A.H /1273 C.E. in MunyaAbi al-Khusayb, Egypt.[4]

Criteria of *al-Kafāah*in Marriage

Compatibility or similarity of status between marital partners is known as *al-Kafā'ah.* Thus, the criteria of eligibility of ideal spouse in Islam are identified in the concept of *al-Kafā'ah.* This concept, according to Muhammad Bakr and some others, literally means *Al-Musāwāh* (equality) and *al-Mumāthilah* (similarity).[5]*Al-Kafā'ah* in marriage is for the prospective husband to be equal to his prospective wife in the status of religion, family-background, wealth, education, social position and freedom from defaults.[6] This concept is also referred to as equality between spouses. However, there are divergent opinions of jurists Aon the areas in which the compatibility is to be considered. The diversity of the perceptions of various families and societies is on whether religion, noble descent, wealth, occupation or freedom from slavery is to be considered as one of the areas of *al-Kafā'ah.*

For instance, some families in Nigeria prevent their daughters from marrying a poor man, non-adherent of their religion, musician, and a man from humble family or a driver. In Kuwait, religious piety is the sole criterion. In Iraq, parity in age between spouses is the new criterion, while equality in socio-economic status is the criterion in most parts of Africa, whereby if a virgin takes her marital partner from a lower class; it is considered as scandal that affects the whole family and in Jordan, only the remaining criterion is property.[7]

It has been established from the foregoing that both religious and social equalities are considered in some societies, while only one of the two qualities is regarded as what

makes a man eligible to marry a particular woman in some other societies. Commenting on this issue, al-Qurtubi indicated the areas of equality from Qur'an 28:27 which reads: "He (Shuayb) said: I intend to wed one of these my daughters to you".

Al-Qurtubi contended that equality in marriage was considered between spouses in the case of Shuayb being a Prophet of Allah wanting to marry out one of his daughters to another Prophet and Messenger of Allah, Musa. But the jurists expressed divergent opinions on whether it should be considered in (the status of) religion, wealth or family-background, or in some of these. Thus, he was of the opinion that the correct view in this respect is that; marriage of ex-slaves to indigenous Arabs and Qurayshi is lawful, because of statement of Allah which reads: "Verily, the Most Honoured of you in the sight of Allah is (he who is) the most righteous of you." (Qur'an 49: 13). [8]

Al-Qurtubi noted that Prophet Musa came to the righteous in Madyan as a stranger, wanted person, fearer, lonely and hungry person that had nothing with him. He further argued that in spite of the position of Musa, the righteous married his daughter to him when he was sure of Musa's religion and observed his conduct. Thus, the righteous disregarded other fields of compatibility in marriage.[9] It must be noted that Prophet Muhammad (P.b.u.h.) gave permission to the marriage of some women of noble descent to some ex-slaves. According to al-Qurtubi, the sister of Abdul-RahmanIbnAwf was a wife of Bilal (an ex-slave) while ZainabbintuJahsh was a wife of Zayd Ibn Hārith[10] (an ex-slave). Thus, all these instances including the marriage of Prophet Musa to a daughter of the righteous of Madyan indicate that the righteousness of the suitor is to be given preference in the choice of marital partner.

In this regard, Sayyid Sabiq submitted that the authentic is that there is no consideration of family background or noble descent in any prophetic tradition with regard to marriage.[11]Commenting on Qur'ān 49:13 cited above, al-Qurtubi contended that if noble descent is to be considered in the areas of compatibility between spouses, the religion and morality must be considered first and foremost. He declared that the righteous faithful is better than the wicked hailing from noble descent. He argued that if the two suitors are the pious, then, the noble descent should be considered from them[12]

While religion and morality are regarded by al-Qurtubi as an area of status which should be mostly considered in the equality of spouses, as noted from his comments cited above, majority of the jurists excluding Malik, maintained that family background and wealth should be considered as well.[13] To this end, Hanafi and Hanbali scholars laid emphasis on wealth, contending that sufficiency of the husband's wealth to cater for the financial needs of his wife must be considered, such as *Mahr* (Compulsory bridal gift to wife) and maintenance of wife and her ofsprings.[14] It is to be noted that payment of *Mahr* and maintenance of wife are financial obligations of husband according to his means. It is to be noted also that the wife must have considered financial capacity of her husband before giving her consent to marry him in spite of his financial situation. Wives of some of the companions were richer than their husbands. IbnMasʿud's wife was richer than him.[15]This was the reason for which she was encouraged by the Prophet to

give charity to her husband. The economic status of IbnMasʿud which was below his wife may indicate that it is not compulsory to lay emphasis on wealth in as much as the wife gives her consent to marry who is below her in economic status.

The jurists unanimously agreed that equality in religion must be considered between the spouses. Thus, it is not permissible for a Muslim woman to marry a non-Muslim because the spouses are not equal and compatible in this respect.[16]Also, it is unlawful for a continent and descent woman to marry a wicked and an indecent man for the same reason.[17] It must be noted that because of the cultural differences that exist among the religions practised in the world, the guardians of a particular wife would consider her marriage to an adherent of another religion as the loss of their daughter to such a religion. Consequently, this usually leads to the segregation of parents and their daughter.

More so, the majority of jurists excluding Malik held the view that noble descent is to be considered between the spouses.[18] But the Hadith relied upon by the majority of jurists was regarded as fabricated and therefore is null and void according to a number of experts on the science of Hadith including IbnHātim and al-Dāriqutni.[19] The questionable Hadith reads:

> عن إبن عمر قال قال رسول الله (ص) العرب بعضهم أكفاء بعض، والموالى بعضهم أكفاء بعض... رواه الحاكم، وفى إسناده راو لم يسم.
>
> It was narrated from IbnʿUmar who said: The Apostle of Allah said: Arabs are equal to one another; ex-slaves are equal to one another ... Transmitted by al-Hākim, there is unmentioned narrator in its chain of transmission.[20]

While differentiating between social compatibility and religious compatibility, the majority of juristsnoted that the social compatibility of the spouses, is just a right of women and the guardians and it could be waived with the consent of the prospective wife.[21]Thus, if the prospective wife consents to the marriage between her and the man who is below her social status, the marriage is permissible. In the social reality, marrying a woman to a man below her social status without her consent can create emotional problems and social conflicts because the wife may not wish to assume the status of her husband. An example of such a marriage, according to Ibrahim Abdul-GaniyuJawondo, was found in Ilorin community of Nigeria in the past. He lamented that some consummated marriages under *Iyawo Sara* (Giving a woman in marriage to a man as a charity) did not last for reasons of psycho-emotional, socio-political and economic miss-merge. He however noted that one should not deny the fact that the social classes in Ilorin, such as royal families, Islamic scholars, guilds etc., also consummated marriages among themselves through this institution of *Iyawosara* to promote the tie of their relations.[22]

As regards the view that wealth is to be counted as one of the areas of compatibility of spouses, it should be noted that ability of the husband to maintain his wife must also be considered. This may be understood from an authentic tradition of the Prophet which reads:

> "جاءت فاطمة بنت قيس رضى الله عنها إلى رسول الله صلى الله عليه وسلم بعد أن طلقها أبو عمرو بن حفص بن المغيرة بعد إنقضاء عدتها منه فاخبرته أن معاوية بن أبى سفيان وأباجهم خطباها فقال رسول الله (ص): أما أبوجهم فلا يضع عصاه عن عاتقه وأما معاوية فصعلوك لامال له أنكحى أسامة إبن زيد"
>
> Fatimah bintQays (May Allah have His mercy on her) came to the Apostle of Allah after she had been divorced by Abu ʿAmrIbnHafsIbn al-Mughīrah after the expiration of her waiting period. She informed the Prophet that MuʿawiyahbnAbiSufyan and Abu Jahmi proposed marriage to her. Thus, the Apostle of Allah said: So, Abu Jahmi does not put down his cane from his shoulder (i.e. frequently beats his wife), but Muʿawiyah is a lazy man, he has no money. Therefore, marry Usāmah."[23]

Despite the fact that Abu Jahmi was equal to the woman in term of nobility of descent, he was not recommended for her because of his wickedness as noted in the narration. Also, the reason why Muʿawiyah was not recommended for the woman is because of his financial incapability. Therefore, she was advised to marry Usāmah in spite of his humble status as he was theson of an ex-slave. The advice to the woman by the Prophet not to marry Muʿawiyah who was a destitute may indicate that capability to maintain a matrimonial home could also be considered as an area of the compatibility as asserted by Hanafi and Hanbali jurists. However, this may also be waived with the consent of the wife if she is ready to bear the situation.

Marriage between a Decent Muslim and an Unchaste Person

Under the principle of *al-Kafāah*, (compatibility of status between spouses) as pointed out above, the guardian is admonished not to marry his daughter to an incontinent man. But the issue of permissibility of contracting marriage between a decent Muslim and a persistent fornicator, and the issue of nullification of the existing marriage between two morally incompatible persons are polemical among the exegetes based on their divergent interpretations of the word of Allah which reads:

> The adulterer cannot have sexual relations with any but an adulteress or an idolatress. And the adulteress, none can have sexual relations with her but an adulterer or

idolater; to the believers such a thing is forbidden. (Qur'an 24:3).

The majority of Jurists posited that marriage to a persistent fornicator is not prohibited. According to them, this statement of Allah as stated above implies that the persistent fornicator does not like to marry anyone beside a female fornicator like him or an idolatress.[24]Contrary to the position of the majority of Jurists as cited above, al-Qatādah, Ahmad, Is'haq and IbnTaymiyah were of the view that the cause of revelation of this verse and the last statement of the verse indicates that it is not permissible for a decent Muslim to marry a persistent female fornicator.[25] The last statement of the verse which reads: "To the believers, such a thing is forbidden". (Qur'an 24:3) is cited to support their position.

To this end, some scholars noted that marriage to a persistent fornicator implies a lack of protective jealousy.[26]One of the proofs which the scholars rely on to forbid marriage to persistent fornicators is the Qur'an 24:3. Thus, the scholars of the standing committee for issuing juristic views in Saudi Arabia, headed by ShaykhIbnBāz asserted that: It is forbidden to marry a fornicating woman.[27]Al-ᶜUthaymīn however noted that if the fornicating man or woman has repented, it is permissible to marry him or her.[28]

In his comment on this Qur'anic verse, al-Qurtubi cited one of the positions of Ibn- I-Arabi that the intended meaning of the verse is that: Having sexual relation with a female fornicator does not occur except from a male fornicator or idolater. According to Ibn-l-ᶜArabi, this is narrated from Ibn Abbas, and it is a correct (meaning of the verse).[29] The bone of contention in the interpretation of the Qur'an 24:3 is the intended meaning of the word "*Lā yankih*" as contained in the verse. The above stated view of Ibn Abbas upheld by Ibn al-ᶜArabi as cited by al-Qurtubi suggests that the word means *al-wat'* (having sexual intercourse) because it is also called *Nikāh*.This opinion implies that none shall have sexual intercourse with a persistent fornicator except an adulterer or idolater. This interpretation does not indicate that a decent man is prohibited to marry a persistent fornicator, because if he has sexual activity with his indecent wife, he is not to be regarded as a fornicator.

Another report cited by al-Qurtubi is that the Qur'an 24:3 was revealed when MarthadIbnAbiMarthad had a prostitute as a friend. The prostitute is called "ᶜAnāq. Then Marthad went to the Prophet and asked him: "Can I marry ᶜAnāq?". Then, the Prophet kept silent. The Qur'an 24:3 was then revealed. The Prophet sent to Marthad and recited the verse. Then, he said: "Don't marry her". The Hadith was narrated by Abu Dawud and At-Tirimidhi.[30]This narration implies that Muslims should not marry idolaters nor should they marry women fornicators. This also is the position of Shaykh al-Islam (IbnTaymiyyah) and some other scholars.[31]

A view of Abu Jaᶜfar al-Nuhās, Saᶜīdlbn al-Musayyib and others as cited by al-Qurtubi is that this Qur'an 24:3 has been abrogated with Qur'an 24:32 which reads: "Marry those among you who are single".In his submission as cited by al-Qurtubi, IbnᶜAmru argued,in support of the alleged abrogation, that fornicators are part of those singles that are to be married as directed by Allah in Qur'an 24:32. IbnᶜAtiyyah refuted the alleged abrogationand contended that the mentioning of *al-Ishrāk* (idolatry) in the verse has weakened the alleged abrogation.[32]In this regard, it should be noted that if the verse has been abrogated as alleged, it would mean that both idolatresses and prostitutes should be lawful for Muslim to marry. Whereas, if the Hadith cited above about Marthad and a prostitute called ᶜAnāq is taken into consideration, it should be perceptible that people who persist in adultery or idolatry, and do not repent, are forbidden for Muslims to marry.

Equally, al-Qurtubi cited another submission of some Jurists who opined that it is not permissible to marry a male fornicator or female fornicator. But if they repent, then, it is lawful to marry them.[33]This submission of the jurists as cited by al-Qurtubi is in tandem with an assertion of Imam Ahmad as cited by Ibn Kathir.[34]

Going through the cause of revelation of the Qur'ān 24: 3 and the last statement of the verse as cited in the comment of al-Qurtubi, one should agree that marrying a persistent fornicator is forbidden. It must be noted that some of the evils associated with marriage to persistent fornicators include the attributing of children of other men to their husbands and the spread of sexually transmitted diseases (STD).The Qur'an 24:3 quoted above is intended to refrain Muslims from indulgence in the acts of adultery and fornication which lead to evils, such as abortion, unwanted pregnancy, illegitimate children and the spread of Sexually Transmitted Diseases (STD).

Continuity of Marriage between Morally Incompatible Spouses

Commenting on the Qur'an 24:3, al-Qurtubi cited a view of some early scholars that whosoever committed adultery, the marriage contract between him and his wife has been automatically voided.[35] It must be noted that al-Sābūnī asserted that Ali also held this opinion.[36] However, some other early scholars as also pointed out by al-Qurtubi contended thatthe marriage is not automatically voided by that, but the husband should be directed to divorce her if she committed adultery, and if he holds her, he commits sin.[37] To this end, al-Qurtubi cited the opinion of IbnKhuwayz to indicate that a wife who must be divorced is that who is popularly known as a persistent unchaste. A Hadith used as a proof in this respect reads:

لَا يَنْكِحُ الزَّانِي الْمَجْلُودُ إِلَّا مِثْلَه

No one would marry an unchaste except his or her counterpart [38]

Ahmad Ibn Hanbal opined that it is not polite to hold the unchaste wife, because it is a decrease for the husband's faith. He would neither have security in her mischief to his

conjugality nor in bearing illegitimate children for him.[39] However, al-Rāfiʿi noted that it is not compulsory for the husband to divorce the unchaste wife that committed adultery if the husband cannot leave her.[40]This assertion is based on a Hadith in which the Prophet recommended two options for a man that alleged his wife to be too approachable. The Hadith reads thus:

> عن إبن عباس أن رجلا جاء إلى النبى صلى الله عليه وسلم
> فقال: إن إمرأتى لا ترد يد لامس. قال: طلقها, قال: لا
> أصبر عنها, قال: فأمسكها. رواه النسائى ورجاله ثقات.
>
> It was narrated from Ibn Abbas that a man came to the Prophet and said: My wife does not reject the hand of those who demand something. He (the Prophet) said: Divorce her. (The man) replied: I cannot leave her. Then, the Prophet said: hold her. Reported by al-Nasāi, and its narrators are reliable.[41]

To this end, al-Sanʿāni noted that the correct meaning of the complaint brought by the Companion is that the woman is too lenient and approachable for the neighbours. He further asserted that this behaviour of the woman may not make her unchaste.[42] It must be noted that if this is the connotation of the complaint, the woman is still suspicious for immodesty, otherwise, her husband would not bring the complaint, and the Prophet would not firstly advise him to divorce her. Thus, advising the husband by the Prophet to either hold or divorce the immodest and incontinent wife may imply that divorcing her is not essential, rather, it is advisable.

If the husband fears that by divorcing an unchaste wife, he may indulge in illicit sexual activities, or his children may lose their rights to adequate care, it is permissible to retain her as his wife on the basis of Hadith narrated from Ibn Abbas as cited above. But if the husband has confidence that there would be no problem for him after divorcing her, it is advisable to divorce her, because of the evils that may result from continuity of conjugal relations with her.

Conclusion

It has been indicated from the foregoing that al-Qurtubi contendedthat piety and morality are the essential criterion of compatibility which should be considered between spouses in the choice of marital partner. This compatibility assists couples in maintaining an ideal marital life based on decency and wellbeing of individual spouse. However, socio-economic status may also be considered in compatibility of status between spouses to avoid psycho-emotional disturbance of wife and inability of husband to maintain the wife of high class status. But this criterion may be waived with the consent of the wife if she is ready to bear the situation as pointed out by al-Qurtubi in his comment on the Qur'ān 28:27.

More so, many people, both male and female, do not heed to the admonition of Allah which reads: "Nor come nigh to adultery: for it is an indecent (deed) and an evil way" (Qur'ān 32:17).The refusal of the people to desist from this abominate act is an additional contribution to the spread of sexually transmitted diseases. The Qur'ān 24:3 enjoins moral compatibility in marriage in order to guard against unwarranted consequences, such as the spread of disease caused by fornication.[43] If it is true that marrying a continent man or woman who has never fornicated is very rare particularly in the contemporary society as it is noted by some people, it may be essential for any prospective marital partners to have HIV test in order to inform each other's HIV status and associated risks, because a victim may deliberately spread the virus as it occurred in Moi University.[44] This is because modesty is fading while fornication is rampart nowadays. Thus, avoidance of illicit sexual relationship and marriage to only decent persons are some of the main preventive measures against the infection of HIV. To this end, Allah warns: "And fear the trial which affects not in particular (only) those of you who do wrong (Qur'ān 8:25); And make not your hands contribute to (your) destruction. (Qur'ān 2:195)

Similarly, the parents who are like mirror and the first school for their children are supposed to be decent so as to encourage their children to be morally up-right. In this regard, it is noted that one of the cogent reasons which cause marital dispute and perhaps leads to divorce is an act of illicit sexual relation on the part of some spouses in this contemporary society.It should be noted that having illegitimate or bad child and sexually transmitted diseases may result from remaining as the husband of the persistently unchaste wife that does not repent. It should be discernible from the Hadith reported by Ibn Abbas as cited above thatit is not compulsory for spouses to separate when one of them remains unchaste, particularly if the separation can lead to suffering of the chaste one or loss of caring for their children.

This study, therefore, serves as a guide for understanding the intended meanings of some legislative verses of the Qur'ān and their implications for marital life. In the final note, al-Qurtubi's ability to deduce rules from the Qur'ān regarding the criteria of *al-Kafā'ah* in marriage is a manifestation of his high degree of intellectuality and erudition.

Endnotes

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39. Sayyid Sābiq, ...163.
40. Muhammad Ismail Al-Sanᶜāni, ... 277.
41. Muhammad Ismail Al-Sanᶜāni, ... 277.
42. Muhammad Ismail Al-Sanᶜāni, ... 277.
43. R. Ibrahim Adebayo, Religion and Moral Obligation towards HIV/AIDS: A Muslim Perspective, *Islamic Quarterly*, Vol. 54, No. 3, (n.d) 243. Adebayo also submitted:

    The most prominent factor responsible for the spread of HIV/AIDS is indiscriminate sexual intercourse, both homosexual and heterosexual. There is no doubt that the virus is common amongst men and women who are sexually active (i.e youth) than in infants and old men. R. Ibrahim Adebayo, Religion and Moral Obligation towards HIV/AIDS:...233.

44. A note left behind by the woman reads:
    I decided to spread the virus indiscriminately in the campus (and I have no apologies) because it's here I got it and I intend to leave it here. I've a well-documented report of all those guys "who crossed my path" since I joined this college. I will be posting their full names and registration numbers on the students' Notice Board after the end of sem. II (August). So far, I've had 124 students, yes one hundred and twenty four ...R. Ibrahim Adebayo, "A Study of *Nikāh al-Mufᶜah* and Its Implications for Feminine Dignity",*Ilorin Journal of Religious Studies (IJOURELS)*, Vol. 4, No. 1, (2014), 14.

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