

Journal of legal and social studies

Issn: 2507-7333

Eissn: 2676-1742

The physical harm between understanding the muslim heritage and reason

Iman Kaci Moussa*

Algiers University2 (Algeria), imenekaci@yahoo.com

Date of send: 03 / 09 / 2023

date of acceptance: 12 / 12 /2023

Date of Publication: 17/12/2023

* **Corresponding author**

Abstract:

The physical harm is a bodily injury that causes physical, psychological and social pain. In terms of language, the concept linked to the term "الضرب" /Aḍḍarb/" in the Arab culture is now determined by physical harm (Beating). Many circumstances contributed to its diffusion and have clearly affected the religious heritage in this regard.

As social imagination is the cause of other acts, this fact led to some practices that are contrary to human dignity.

Based on that, there are many legal materials intended to protect woman who is the first to suffer from this behavioral disorder, whose effects have reached unsatisfactory levels. That is why, we must search the true meanings of religious texts and the relation linking to what is currently recognized, in order to understand the phenomenon roots by assimilating the real causes toward the fallacies that led to the deviation of the Muslim doctrine from its real purposes.

Keywords:

Concept ; religious heritage ; beating ; woman ; social imagination ; religious texts ; Muslim doctrine.

Introduction

Beating is a social phenomenon that have contributed to its spread a number of factors like civilizational, physiological, sociological and cultural ones. Also, it has strengthened it even the concept agreed religiously for the term "الضرب-/Aḍḍarb/", which was taken as a pretext to defend this behavior; an inconsistent act with the total issues that exist within the general framework of individual and collective freedoms, without losing sight of sociological connotations for that.

Of course, a normal person seeks what his instinct dictates and what his mind desires; so, we find that he tends to combine cultural-religious transmission and rationality (reason) at the same time in order to achieve the stability of society.

Because the term interpreted to « Beating » exists in the Holy Qur'an, the first source of legislation in Islam, according to which man made interpretations that permit and encourage the abuse of hitting woman in the name of Islam, it may be necessary to identify the causes of the conceptual flaw that is occurring and its impact on public imagination and social reality. After that, moving the critical thinking.

What is the significance of "الضرب-/Aḍḍarb/" interpreted as « Beating » and what are its manifestations on the practical level?

Where is the flaw in the spread of this act turned into a social phenomenon?

Semantics :

The dictionary of "Lisan Al Aârab" written by Ibn Manzur (died in 711 AH) addresses the same signification currently recognized for « Beating », with different indications such as travel, departure, and alienation, according to contexts, in addition to striking and what is related to the linguistic root "D.R.B-ض.ر.ب" in Arabic.

In "Almoôjam Alwassit" dictionary, it was said in Arabic (ضربت الطَّيْر), which means « the birds went far »; the ones who travel distances in search of sustenance¹.

The jurisprudential rulings of the beating act:

As for the jurisprudential rulings of this act, they are conflicting and unstable between the prohibition with reservations and permissibility with details in the method of hitting itself, especially with regard to the treatment of women because of the inconsistencies that occurred ; which indicates to him that he is legally abhorred even if it is permitted.

We'll not refer here to the confusion that led to the jurisprudence (fatwa) by light beating "siwaak"..etc. However, the constant is that we didn't receive a hadith that says that the Messenger - PBUH - struck one of his husbands, despite the mistakes that were made from them, but he abandoned them for a month (Al-Bukhari reported that from Umm Salamah)².

From his part, Ibn Hazm said that a woman must divorce and retaliate if she is subjected to a "severe beating".

An example of that is in his saying: "It is not permissible to be beaten severely, even if he knows that she doesn't leave disobedience except with it"³.

The act of beating between jurisprudence and law:

From the prohibition to the criminalization, we note that the Algerian legislator in the Penal Code (2015) recognized the intent to safeguard the right of the deliberately assaulted, whether it is a woman or a man (which causes wounds or permanent disabilities, amputation of one of the organs or death) and by a more severe punishment than in ordinary cases and without taking advantage of mitigation conditions.

This is in contrast to some Arab laws, such as the Kuwaiti Penal Code in its article 29 which states that there is no crime if the act occurred using the so-called "disciplinary right" from a person "whom the law conferred on this right"⁴.

Likewise, with regard to the Jordanian Penal Code in its article n°59 (found in the first section of Chapter Three), which declares that the act committed in the exercise of the right without abuse is not considered as a crime⁵.

This is what makes us notice perplexity and linguistic confusion even in drafting the laws themselves.

In this regard, Dr. Abd al-Hamid Ahmad Abu Suleiman said: “And because of what is presented in the arbitrary utterance of the Fatwas from the traditional heritage that exaggerate the man’s authority in managing his family’s affairs as the head of the family, ignoring that the institution of the family must be based on tenderness, complementarity, cooperation and interdependence. It is not correct That the significances of the texts be misunderstood and exploited so that the woman and the family become like a herd of ownership ”⁶.

Returning to the Algerian legislator, the articles added and amended from the Penal Code as a result of the rise in the violence against women phenomenon (such as Article 266 bis and Article 330 bis dealing with the issue of extortion of the wife to intimidate or coerce her in order to deprive her of her property) made the male category of this society strongly opposed to these two laws protecting Women and their dignity, which lead to ask a lot of questions about the reasons led to the ease of such negative actions against women to the extent to consider this law limits the freedom of men!

Are the reasons for not being convinced of that mainly due to the structure of this society itself ? Or mores and outdated legacies? Or to the religious factor, if any, the offender isn’t able to invoke it before the judge, because the Algerian Penal Code is a purely positivist law.

It is clear from the data of the official website to eliminate violence against woman of the United Nations, which covered 78 countries and extends between 2005 and 2016, that 19% of women between the ages of 15 and 49 have been subjected to violence by their partners⁷, which reflects the exacerbation of this phenomenon that contradicts human rights before talking about women's rights.

Here, the question is asked about the reason for the exacerbation of violence in Arab countries, and whether the laws of deterrence are sufficient, or the reasons should be rooted out, whether they are apparent or hidden, especially with the lack of conviction of these same laws by males - at least in Algeria - and with the silence of many females from claiming their rights reluctantly for reasons of preserving family cohesion.

4-The concept of /Al darb/ in the Holy Qur'an:

Since the religious aspect has a great impact, it leaves on the unconscious of individuals and is often taken as a pretext to defend these actions, it is necessary

to move to the concepts included in the term in the first source of Islamic law, which is the Holy Qur'an, to which the reformers have previously pointed out in this regard such as The researcher Dr. Abdul Hamid Ahmed Abu Suleiman, the researcher Zaid Ali Al-Mahdi and the thinker Dr. Muhammad Shahrour. This is what the Ibadi school of thought in the era of Jaber bin Al-Harith in the first century AH (after hijra of the prophet) said, as it was the first interpretation of what we'll see.

We find among the verses that include the word "Al-darb" the Almighty's saying, by the name of God the Most Gracious, the Most Merciful:

« cannot move about in the land » (Al Baqarah 273)(The word /Al-darb الضرب was interpreted as moving)

« And (remember) when Mûsâ (Moses) asked for water for his people, We said: "Strike the stone with your stick » (Al Baqarah 60). (The word / Al-darb / الضرب was interpreted as striking, but the more correctly is keeping away the stone with the stick; because if it was only striking the stone in the current sense of the word without displacement, there is no way for the water to escape, which is the purpose of it in the verse).

« Shall We then take away the Message from you and repel (you), for that you are a people transgressing beyond bounds? » (Al Zukhruf 5) (Was interpreted as preventing/stopping).

« So a wall will be put up between them, with a gate therein » (Al ħadid, from the verse 13).

« Therefore We covered up their (sense of) hearing (causing them, to go in deep sleep) in the Cave for a number of years » (Al Kahf, 11).

« And they were covered with humiliation and misery » (Al baqarah, from the verse 61).

« And Allah puts forward the example of a township (Makkah), that dwelt secure and well content; its provision coming to it in abundance from every place, but it (its people) denied the Favours of Allah (with ungratefulness). So Allah made it taste the extreme of hunger (famine) and fear, because of that (evil, i.e. denying Prophet Muhammad) which they (its people) used to do » (Al nahl, 112).

« And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to

show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.) and not to reveal their adornment except to their husbands... » (Al Nur, from the verse 31).

Thus, we note that there are multiple connotations of the word “al-darb” according to the Qur’anic context, but it is dominated by “staying away, creating a distance and prohibition, as we find the concept of moving, which must be with making distance, as we find also the meaning of creating a barrier in his saying, “So there was a wall between them that had a door”/« So a wall will be put up between them, with a gate therein » (Al hadid, from the verse 13).

Finally, It is noticeable that they revolve in general in the same concept of spacing.

Consequently, we conclude that these connotations, despite their differences, still share the same conceptual field and maintain the logical link that achieves the meaning of the saying without defect if that saying is understood, of course. And that logical link is understood in light of the stages of the concept’s emergence, which is reflected in the words of Al-Ragheb Al-Isfahani meanings:

«To hit the ground means to go there, and he hit it with the feet »⁸.

And because the bottom line is in the idea of divergence, we find this as well in the case of proverbs such as his saying : « And he puts forth for Us a parable, and forgets his own creation. He says: "Who will give life to these bones when they have rotted away and became dust? « (Yasin 78).

Dr. Abdel-Hamid Ahmed Abu Suleiman sums up the aspects of the meanings of /Al darb/ in the Holy Qur’an in 17 aspects between the forms of direct transgression and those were used metaphorically, in which the meanings of isolation, separation, exclusion and abandonment are available⁹.

As for Zayd Ali al-Mahdi, he sums up the meanings of /Al darb/ mentioned in the Qur’an in four:

Pushing away or staying away, distancing with travel, approaching and adhesion, and moving something away with a tool¹⁰.

Based on the aforementioned, it becomes clear that the verb to turn away is the meaning of /Al darb/ most frequently mentioned in the Holy Qur’an and the

common element in the conceptual field ; because each time is linked to the element of place.

But when we arrive to the verse that sparked a great deal of controversy :

« Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with.¹ And if you sense ill-conduct from your women, advise them 'first', 'if they persist,' do not share their beds, 'but if they still persist,' then discipline them 'gently'.² But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great »¹¹ (Al nisaa 34)¹².

We soon notice that the methods of dealing came gradually from the sermon to abandonment in the beds, then followed by the act that carries psychological connotations with the aim of submissiveness and self-questioning. If the meaning was other than that, the place of "beating" or its tool against women would have been mentioned.

Likewise, don't we wonder why the Holy Qur'an may associate the concept of beating, which we represent in our minds, only between husbands? Is the woman only a wife?

Are not the connotations that lead to good dealing and renunciation of violence the ones that are compatible with the Almighty's saying: « Women have rights similar to those of men equitably » (Al baqarah/ from the verse 228).

« Make the women to dwell where you yourselves dwell according to your means, and do not harm them so as to straiten them »¹³. (Al talaq/ from the verse 6).

« And those who hurt the believing men and believing women without doing anything, they have taken over their heads a calumny and an open sin »¹⁴. (Al ahzab 58).

« And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought »¹⁵. (Al Roum/ vrese 21).

The act of /Al darb/ between religious heritage and reason:

From the forementioned, does religious reform require an attempt to assimilate the Sharia sources concepts in itself ? Or it is sufficient to heal the

social projections of inherited concepts with some laws, away from the control that the sacred exercises in the minds of the public, in what it is conceptually ambiguous?

In sociology, we often resort to tracing the phenomenon causes by studying its variables, ignoring the conceptual linguistic aspect that makes us understand in one way rather than another.

So, speaking about the duality linking between signifier and signified to which the Swiss scholar Ferdinand de Saussure pointed out, we find him describing it as arbitrary as a result of absence of rule or logical relationship that says that the word in the minds is equal to the concept that we represent in reality.

Also, the relation between the term and its concept, or the transformation of the connotation, is affected by the social change mechanisms between time and place and the structure of society itself and its level of awareness, also between educational attainment and the extent of its civilizational progress, with the intervention of reproduction factors, cultural spread and even social conflict that contribute to the emergence of new concepts each time, the product of what is called "conditions of production" in linguistics, which made us witness the emergence of the "social linguistics" field.

The connotations to which the term settles may remain in the conceptual field itself, such as the saying "strike on the ground" which means as a preliminary conception "putting fett on the ground" and in terms of the meaning intended we have travelling and moving away (which is the transition to the figurative meaning in the language).

However, we may also see what makes the expression turn completely through time ; for example, lots of vocabulary turns its meaning negatively, with what is called in linguistics as "degeneration of connotation", which makes the transformation clear.

This reversal may also be positive. Until today, if we get used to the old books and dictionaries, we'll soon find that we are adapting to a specific concept, while if we go to contemporary books, we are directly dependent on the currently accepted concept, perhaps, neglecting that it is the same word that has undergone a change of meaning through time.

Returning to the word /*Aḍḍarb*/, the issue of comprehending its meaning may be associated even with intuition that makes us pay attention to the vocal rhythm between words.

This is in addition to the examples that we can derive from ancient poetry, such as the saying of Al-Musayyib, one of the poets of the pre-Islamic era:

This, in addition to the examples that we can derive from ancient poetry, such as the words of Dhul-Rimma from the Umayyad era: O May, if the days **make distance** between us, there is no secret publisher, nor a changer.

فَإِنْ تَضْرِبِ الْأَيَّامُ، يَا مَيِّ، بَيْنَنَا، *فَلَا نَاشِرٌ سِرًّا، وَلَا مُتَعَيِّرٌ¹⁶

Conclusion:

We conclude, from the aforementioned, that the Qur'an is conceptually stable in itself, and it is not difficult to derive its concepts from the Qur'anic arguments, which prove that it interprets itself by itself. This is naturally available with the development of language, which guarantees its vitality. It isn't logical to project on this book current or temporary concepts that we produced, and may differ in their cultural meaning even at the same time, and we continue to count on them without scrutiny, not to mention the superficial criticisms that have come to affect this same source in light of another issue represented in the tendency of Muslims to not respect the priority of the sources of Islamic law order in deciding their affairs.

So, it applied to them The Almighty's saying in verse 30 of Surat Al-Furqan: "And the Messenger said, O Lord, my people have abandoned this Qur'an". And it is not surprising that this book itself is available on what leads to contemplation, as the Almighty says in verse 29 of Surah (PBUH): "A Book which We have sent down to you, full of blessings that they may ponder over its Verses, and that those with understanding may remember".

And in His saying, Glory be to Him, in verse 82 of Surat Al-Nisa: "Will they not ponder the Qur'an, even if it was from other than Allah, they would have found in it a great deal of discrepancy". (Great truth of God).

And because the issue is often conceptual, as previously mentioned, it is worth saying that language is the mirror of social growth that reproduces its concepts every time according to the circumstances of that production itself.

Therefore, before deciding on the epistemology of religious heritage, the epistemology of linguistics itself must be researched first in order to achieve the principle of consensus on the semantic contents that don't cease to migrate according to time and place, even if it maintains the relational system that characterizes its conceptual network, as we have seen through the examples mentioned in the subject of « Beating or Making distance ».

If we turn to the problem of interpretation, we find those who say that interpretation is “discovering possible assumptions,” given that understanding the speaker's intent is not an easy matter. So, interpretation is nothing but an attempt to reach a way through which the rationality of a text is discovered by tracing its requirements, and this is provided that the sequence combines coherence and logic (Al-Malakh and Ismaili Alawi, 20). 09).

Because the process is rational, it refers us to many verses that called for the use of reason, reflection and contemplation, and its example is the verse 24 of Surah Muhammad: “Do they not ponder over the Qur'an, or are there locks on their hearts?”.

Bibliography list:

- 1- The **Holy Qur'an**.
- 2- Albukhari Abu Muhammad Bin Ismail, **Sahih Albukhari**, AlQuds editions, Cairo, Ed 1, 2014.
- 3- Ibrahim Anis, Abdelhalim Montasser, Atiya Assawalhi, Mohamed Khalfellah Ahmed, **Almo3jam Alwassit المعجم الوسيط**, linguistic academy, Ashuruq international library, 2004.
- 4- Alhafed Abderrahman, **Asharh alkabir, الشرح الكبير**, 2001.
- 5- Abu Suleiman Abdelhamid Ahmad, (Beating woman is a way to resolve marital disputes ?) **!ضرب المرأة وسيلة لحل الخلافات الزوجية ؟**, Alfikr Editions, international institute for Islamic thought, 2002.
- 6- Al Asfahani Al Ragheb, (Al Moufradat fi Gharib Al Qur'an) **المفردات في غريب القرآن**, Nezar Musthapha Elbaz Library, part 1.

- 7- Al Alwy Ahmed, (Issues about Islam and knowledge) *الطبيعية والتّمثال* مسائل عن الإسلام والمعرفة, The Moroccan Company of United Publishers, 1988.
- 8- Alkeddy Alaamrany Mohammed, (Jurisprudence of the Muslim Family in the Diaspora) *فقه الأسرة المسلمة في المهاجر*, Scientific Books Editions, 2001.
- 9- Almellakh M'hammed, Hafedh Ismaili Alawy, (Epistemological issues in linguistics) *قضايا إبستمولوجية في اللسانيات*, The Arab house of science-Publishers, Al Ikhtilaf Editions, From Aldwiri Abdelrahim, (A study of text and linguistic practice, interpretation and belief) *دراسة في النصّ التّأويل والمعتقد والممارسة اللغوية*.

10-Al Harwy Mohammed Ben Ahmed, Ben Al Azhary, (Language refinement) *تهذيب اللغة*, Ihiaa Al Tourath Al Araby Editions, Beirut, 2001.

11-AlMahdi Zaid Ali, (Qur'an and beating women) « القرآن وضرب النساء », article published in Ahl Alqur'an site, 2011, consulted on August 2018, http://www.ahl-alquran.com/arabic/show_article.php?main_id=8276.

12- The State of Kuwait, Law No. 16 of 1960 issuing the Penal Code (16/1960), consulted on November 2018, <http://www.gcc-legal.org/LawAsPDF.aspx?opt&country=1&LawID=4204>.

13- The Jordanian Penal Code, Qanun website, consulted on September 2018, <https://www.qanon.ps/news.php?action=view&id=17244>.

14- The U.N official site, <http://www.un.org/ar/events/endviolenceday/>, consulted on September 2018.

¹ Anis Ibrahim, Abdelhalim Montasser, Atiya Assawalhi, Mohamed Khalfellah Ahmed, **Almo3jam Alwassit** *المعجم الوسيط*, linguistic academy, Ashuruq international library, 2004, p536.

² Abu Muhammad Bin Ismail Albukhari, **Sahih Albukhari**, AlQuds editions, Cairo, Ed 1, 2014, p763.

³ Abderrahman Alhafed, **Asharh alkabir**, *الشرح الكبير*, 2001, p343.

⁴ The State of Kuwait, Law No. 16 of 1960 issuing the Penal Code (16/1960), (consulted on 17 November 2018), <http://www.gcc-legal.org/LawAsPDF.aspx?opt&country=1&LawID=4204>.

⁵The Jordanian Penal Code, Qanun website, (consulted on 1 September 2018), <https://www.qanon.ps/news.php?action=view&id=17244>.

⁶ Abdelhamid Ahmad Abu Suleiman, !ضرب المرأة وسيلة لحلّ الخلافات الزوجية ؟, Alfikr Editions, international institute for Islamic thought, 2002, p23.

⁷ The U.N official site,(consulted on 12 September 2018), <http://www.un.org/ar/events/endviolenceday/>.

⁸ Al Ragheb Al Asfahani, المفردات في غريب القرآن, Nezar Musthapha Elbaz Library, part 1, p384.

⁹ Abdelhamid Ahmad Abu Suleiman, !ضرب المرأة وسيلة لحلّ الخلافات الزوجية ؟, Alfikr Editions, international institute for Islamic thought, 2002, p23.

¹⁰ AlMahdi Zaid Ali, « القرآن وضرب النساء », article published in Ahl Alqur'an site, 2011, consulted on August 2018, http://www.ahl-alquran.com/arabic/show_article.php?main_id=8276

¹¹ [Surah An-Nisaa - 34 - Quran.com](http://Quran.com)

Translated by Dr Mustafa Khattab.¹²

¹³ [Surah Al-Ahzab - Translation in English \(ahadees.com\)](http://ahadees.com)

¹⁴ [Surah Al-Ahzab - Translation in English \(ahadees.com\)](http://ahadees.com)

¹⁵ [Surah Ar-Rum - 21 - Quran.com](http://Quran.com)

¹⁶ Al Harwy Mohammed Ben Ahmed, Ben Al Azhary, تهذيب اللغة, Ihiaa Al Tourath Al Araby Editions, Beirut, 2001, p12, p18.