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**RADICAL TRANSITIONS: SHIFTING GENDER DISCOURSES IN LEBANESE
MUSLIM SHI'I JURISPRUDENCE AND IDEOLOGY, 1960-1979 AND 1990-1999**

by

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**A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
(Near Eastern Studies)
in The University of Michigan
2002**

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DEDICATION

To my family

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CHAPTER 1

INTRODUCTION

The Present State of Research

The Islamic revolution in Iran (1978-1979) sparked an interest in the study of Shi`ism in general and the study of gender within the Shi`i context in particular. A number of factors contributed to this interest, including massive participation of women in the Islamic revolution, the Islamization of the state after the establishment of the Islamic Republic (1979), as well as the significant role played by Iranian intellectuals - inside and outside Iran - in attracting attention to events related to women in the country. As a result, a vast body of literature was produced in the last two decades dealing with Shi`i ideology, and the role of the theologians in the shaping of gender constructs in contemporary Iran. For the most part, however, such research has been confined to the Iranian context, with contemporary Shi`i communities outside Iran receiving little or no scholarly attention on the subject of gender.

In this dissertation, I hope to address this gap in the scholarship on gender and Shi`ism outside Iran by providing an in-depth analysis of gender and Shi`ism within the Lebanese context. It is also my purpose to provide fertile material for further investigation.

Before I proceed with my treatment of the literature dealing with Lebanese Shi'i women, I will review the literature dealing with Shi'ism and gender in Iran, giving brief synopsis only of prominent works:

Collections of articles by Iranian authors educated and living in the West such as Tabari, Yeganeh, and Afshar¹ are but few examples of such literature. These articles evaluate the gender discourse of the early ideologists of the Islamic revolution - such as Ali Shari'ati, Murtada Mutahhari, and Ayat-Allah Khomeyni. These writers argue that key Qur'anic verses which grant men rights over women form the basis for the Muslim clergy's (*ulama's*) views of women's lower legal, personal, economic, and social status. In order to confine women to an inferior position in all spheres of life, the *'ulama* advanced a number of arguments grounded in biology. The clergy often invoked images of earlier Shi'i female figures such as Fatima and Zaynab, and hailed the role these figures played, not so much as social and political activists but primarily as mothers, sisters, and wives. The scholars also point to the fact that, the Islamic revolution did not bring relief to women as expected. Rather, Shi'i views of women and the ideologies disseminated had grave repercussions on women in Iran. They point to a number of facts such as the barring of women from judiciary and management positions, the dismantling of the Family Protection Law (enacted earlier by the Pahlavi regime in 1967, which curtailed men's right to a unilateral divorce and child custody, the imposition of the veil, and so forth.

¹ Haleh Afshar, "Khomeini's Teachings and their Implications for Iranian Women" in *the Shadow of Islam: The Women's Movement in Iran*, eds. Azar Tabari and Nahid Yeganeh (London: Zed Books, 1982); *idem.*, "Women, Marriage and the State in Iran" in *Women, State and Ideology*, ed. Haleh Afshar (London: MacMillan, 1987); Azar Tabari "Islam and the Struggle for Emancipation of Iranian Women" *Ibid*; also, Nahid Yeganeh, "Women's Struggle in the Islamic Republic of Iran" *Ibid*.

A counter-discourse developed in Iran to rebut and refute secular critiques of Shi'i gender ideology. To evaluate it, I will consider the positions of such authors as Rahnavard, Hashemi, and Etezadi Tabatabai.² These were the first Muslim females to intellectually, religiously, and politically address the gender critique with counter gender position. They argued that biological differences account for some intellectual and psychological differences between men and women – e.g. that women's menstrual cycle and childbearing functions are basis for barring them to serve as judge. They also supported and accepted Islamic rulings on women in the sphere of family law. At the same time, they advocated women's right to work outside the home (as long as it is within the Islamic framework). Islam is the only religious system, they argue, that does not marginalize women because although it assigns them to the home, it does not exclusively confine them to it.³ of these authors, however, a woman's primary task is motherhood.⁴ So these women were not attempting a feminist reading of Islam as it is an affirming of Shi'i gender ideology by women.

A decade or so after the revolution, many writers began to note new developments in Iran in relation to gender and gender policies. Scholars⁵ note that the 1990s signal a period of rapprochement between secular and religious authors. Radio, television,

² See Maryam Poya, "Introduction" in *Women, Work, and Islamism* (London & New York: Zed Books, 1999).

³ *Ibid.*, pp. 6-7.

⁴ *Ibid.*

⁵ See for instance, *Ibid.*: and Ziba Mir-Husseini, "Introduction" in *Islam and Gender: The Religious Debate in Contemporary Iran* (London: Zed Books, 1999).

newspapers, and international conferences⁶ dealing with women's issues facilitated and hastened this rapprochement. *Zane Ruz*, for instance, a state-sponsored women's journal, invited contributions from secular women on women's issues and invited them to engage in open dialogues on intellectual debates. It was forums like this that brought religious and secular women authors together and made them realize that the institutionalization of patriarchy and women's subordination in various spheres of social and personal life are far more important than their political differences. This discourse occasioned changes in gender policies of the state, and shifted the official discourse of the Islamic Republic with respect to gender.⁷

Of the studies dealing with the changing discourse in the second decade of the Islamic Republic,⁸ I would mention Mir-Husseini⁹, Haeri¹⁰, and Afshar¹¹. Mir-Husseini

⁶ The participation of religious Iranian women in Conferences such as the International Women's Conference in Beijing in 1995, says Poya, brought religious and secular Iranian women in exile together, where they debated gender issues in Iran—a debate that soon found resonance within Iran and brought the issue to the fore. See Poya, "Women's Responses to Patriarchy" in *Women, Work and Islamism*, pp. 139-141.

⁷ See Poya, "Introduction" in *Women, Work and Islamism*. Also, Mir-Husseini, *Islam and Gender*.

⁸ Also see Valentine Moghadam, "Women, Work and Ideology in the Islamic Republic" in *International Journal of Middle East Studies* 20, no. 2 (1998): 221-43; *Idem*, *Modernizing Women: Gender and Social Change in the Middle East* (Boulder: Lynne Rienner, 1993); Nesta Ramazani, "Women in Iran: The Revolutionary Ebb and Flow" in *Middle East Journal* 47, no. 3 (1993): 409-28; Eliz Sansarian, "Politics of Gender and Developments in the Islamic Republic of Iran" in *Journal of Developing Societies* 8, no. 1 (1992): 56-68; Nayereh Tohidi, "Gender and Islamic Fundamentalism: Feminist Politics in Iran" in *Third World Women and the Politics of Feminism*, eds., Chandra Mohanti, Ann Russo, and Lourdes Torres, (Bloomington and Indianapolis: Indiana University Press, 1991), pp. 251-267; *Idem.*, "Modernity, Islamization, and Women in Iran" in *Gender and National Identity: Women and Politics in Muslim Societies*, ed. Valentine Moghadam (London: Zed Press, 1994), pp. 110-147; and Nouchine Yavari-d'Hellencourt, "Discours islamiques, actrice sociale et rapports sociaux de sexe" in *Les femmes en Iran: pressions sociales et strategies identitaires*, ed. Nouchine Yavari-d'Hellencourt (Paris: Harmattan, 1998), pp. 190-229.

⁹ Ziba Mir-Husseini, "Divorce, Veiling and Feminism in Post-Khomeini Iran" In *Women and Politics in the Third World*, Haleh Afshar, ed., (London: Routledge, 1996), pp. 142-170; also for Mir-Husseini, "Stretching the Limits: a Feminist Reading of the Shari'a in Iran Today" In *Feminism and Islam: Legal and*

argues that contrary to earlier arguments, the impact of the revolution on women had been emancipatory for it paved the way for the emergence of a popular feminist consciousness. Once Islam is in power and is no longer part of the oppositional discourse, Mir-Husseini argues, a re-reading of the Shari`a is possible. For once the custodians of the Shari`a are in power, they find themselves in a position of dealing with contradictory premises: on the one hand, they must uphold the promise that Islam guarantees women's rights, at the same time they must uphold patriarchal gender notions. Such contradictions create a space for the emergence of feminist counter-discourse. And that's how, Mir-Husseini continues, the new discourse was possible.¹² The changes in the gender policies of the Islamic Republic brought about by these new developments amounted in fact to a reversal of some of the early policies of the revolutionary regime. They included removal of earlier bans against women studying certain topics such as agriculture and mining, lifting of the prohibition on women serving as judges, as well as amendments to Divorce Regulations curtailing men's right to unilateral divorce (enacted in 1992). Mir-Husseini points out that in effect the amendments reinstated the earlier Family Protection Law, though under a different legal topic. Next, Mir-Husseini investigates the premises on which the Shari`a notion of gender rests. The author categorizes three notions of gender current in Shi`i jurisprudence since the Iranian

Literary Perspectives, ed. Mai Yamani (London: Ithaca, 1996b), pp. 284-320; *Idem, Islam and Gender: The Religious Debate in Contemporary Iran* (New Jersey: Princeton University Press, 1999).

¹⁰ Shahla Haeri, "Temporary Marriage: An Islamic Discourse on Female Sexuality in Iran" in *Women in Post-Revolutionary Iran*, eds. Mahnaz Afshami and Erika Friedl (London & New York: I.B. Tauris, 1994).

¹¹ Afshar, *Islam and Feminisms*.

Islamic revolution (1978-1979): “traditional”, “neo-traditional”, and “modernist”. These notions, Mir-Husseini argues, are not rigid categories separate from each other; rather one witnesses a dialogue among their advocates. Thus, they should be seen as three stages in the unfolding debates over gender and power in the Islamic Republic.¹³ The traditional, patriarchal interpretation asserts the naturalness of gender inequality. It views a gendered system of difference in the form of “complimentarity” between the sexes. This point of view is best advocated by the early ideologues of the Islamic revolution such as Allameh Muhammad Husayn Tabataba’i (d. 1981)¹⁴ and his student, Mortada Motahhari.¹⁵ The “neo-traditionalist” approach emphasizes balance of gender roles. Thus, sanctioning changes within the framework of the Shari`a in accordance with the lived realities of contemporary times. The active promoters of neo-traditionalist views are the young clerics of Qum who express their views in various publications financed by the Islamic Propagation Bureau of Houzeh. The third attempt is that of the “modernists,” who opt for gender equality. The major supporter of this interpretation is the intellectual Hojjat al-Islam Sa’idzadeh, whose initiatives shifted the debate to uncharted plains. He argues, Mir-Husseini continues, that gender inequality found in the Shari`a is the work of a mistaken construction of male jurists.

¹² See Mir-Husseini, “Stretching the Limits: A Feminist Reading of the Shari`a in Post-Khomeini Iran” in *Feminism and Islam: Legal and Literary Perspectives*, ed., Mai Yamani (New York: New York University Press, 1996), pp. 285-286.

¹³ Mir-Husseini, “Conclusion” in *Islam and Gender*, pp. 275-276.

¹⁴ The writer of the famous Qur’anic commentary, *al-Mizan fi Tafsir al-Qur’an* (Balance in the Exegesis of the Quran) written between 1954-1972.

¹⁵ The author of *The Systems of Women’s Rights in Islam* (1974).

Afshar, on the other hand, argues that the mode of Islamization of the state during the early years of the Revolution has had detrimental effects on the position of women. At the same time, she claims that Islam itself is flexible enough to accommodate women's needs and demands, and it is through women's struggle and relentless efforts to change their position that they may, in the author's opinion, secure their rights.¹⁶

I would also like to note another valuable work by Poya¹⁷, who studies women in the economic context, specifically women's employment in Iran and its relation to ideology and the state. She argues that economic necessity, inflation, unemployment, unwillingness of men to perform women's jobs in the reconstruction period (following the death of Ayatollah Khomeini in 1989), pushed women into wider and larger participation in the public sphere. It is in response to such reality that the state had to adjust its gender ideology and to find an acceptable and compromising framework in which women can continue to participate in labor. Thus, ideology comes to play a limited role in women's position in a society where economic pressures produce such significant impact on social sphere.

In the dissertation, I will address the question of whether these varying notions of gender have any resonance within Shi'i religious debates in Lebanon. By and large, the studies on Shi'ism and gender deal primarily with textual analysis of corresponding Qur'anic verses and judicial pronouncements. Others might provide a context and show how Islam is adaptable to the specificities of time and place. As shown above, for

¹⁶ See Afshar, *Islam and Feminisms*.

¹⁷ Poya, *Women, Work, and Islamism*.

instance, Mir-Husseini agrees that the notion of *ijtihad* and its adaptation to contemporary reality creates a space in which women could hope for gender equality in Shi'i ideology and jurisprudence. Contemporary reality, thus, bears a significant weight on *ijtihad*. Poya, for instance, showed how economic necessity impelled the adjustment of Shi'i jurisprudence and ideology to such reality.

De Groot (1996), although not undermining the value of textual analysis, argues that,

Formal and prescriptive religious influences need to be related to the more informal, communal, and family-based aspects of gender regulation for any full appreciation of gender dynamics. Such studies will allow one to understand not only the socio-cultural basis of religious ideology, but also the interrelation between ideology, its cultural expressions, and the circumstances of people's lives.¹⁸

The questions that are forthcoming then, are: by what processes do the reality and circumstances in which Shi'i women live- political, social, and economic on the one hand and the Islamic *text* on the other, intertwine and influence each other? Are there aspects of gender notions in the Islamic Shari'a that will persist superseding the specificities of time and local?

It is only through answering some of these questions that one will be able to understand the contradictions that one often witnesses in the literature dealing with women and Shi'ism under consideration here. In the course of my dissertation these issues will be addressed and analyzed.

¹⁸ De Groot, "Gender, Discourse and Ideology" in *Gendering the Middle East: Emerging Perspectives*, ed., Deniz Kandiyoti (New York: Syracuse University Press, 1996), pp. 40-42. Also in the same article, De Groot points out prominent examples of authors adopting such approaches.

The issue of gender is integral to Islam's value system. It is hardly surprising, then, to find gender issues at the center of discussion by Islamic scholars and clerics in Iran and elsewhere. This takes us to the Lebanese context. In the past forty years or so Lebanese Shi'i scholars have produced a large number of ideological and jurisprudential works dealing with gender specific issues. Despite this plethora of writing by major Shi'i Lebanese clerics, Western and Eastern scholars have not giving it adequate attention. Scholarly attention have been directed, instead, toward the socio-political and economic transformations of the Lebanese Shi'i community.¹⁹ Also in recent years Lebanon had been engulfed in war and an unstable political atmosphere that hindered scholars from traveling and conducting research there. Recently, however, I noticed the emerging of a limited number of works dealing with Lebanese Shi'i women- Holt²⁰, Shehadeh,²¹ and el-Bezri²². Even these works do not deal with Shi'ism and gender in the Lebanese context adequately but provide a glimpse into some of the ways that Shi'i gender ideologies are

¹⁹ Studies have mainly been conducted on the socio-economic and political contexts of Shi'i communities outside Iran. Prominent works dealing specifically with Lebanon are articles by Nikki R. Keddie and Juan R. I. Cole, "Introduction" in *Shi'ism and Social Protest*, eds., Juan R. Cole and Nikki R. Keddie (New Haven: Yale University Press, 1986); Augustus Richard Norton, "Shi'ism and Social Protest in Lebanon" *Ibid.*; Helena Cobban, "The Growth of Shi'i Power in Lebanon" *Ibid.*; Norton, "The Political Mobilization of the Shi'a" in *Amal and the Shi'a Struggle for the Soul of Lebanon* (Austin: University of Texas, 1987); and Majed Halawi, in *Lebanon Defied: Musa al-Sadr and the Shi'a Community* (Boulder: Westview Press, 1992).

²⁰ Mariah Holt, "Lebanese Shi'i Women and Islamism: A Response to War" in *Women and War in Lebanon*, Lamia Rustum Shehadeh ed., (Florida: Florida University Press, 1999), pp. 166-194.

²¹ Shehadeh, *Women and War in Lebanon*.

²² Dalal el-Bizri, *L'ombre et son double: femmes islamistes, libanaises et modernes*, (Beirut: Cermoc, 1995).

articulated in Lebanon. Thus my review of the literatures on Shi'ism and gender within the Lebanese context will be limited to these works.

Although Shehadeh's work focuses mainly on gender, military activities, and war, it provides but a glimpse of how Shi'i gender ideology is treated in the literature on Shi'i Lebanese women. Shehadeh finds that women's participation in war was limited to roles seen as an extension of domestic roles. Shi'i women full participation in the public sphere was confounded by different forms of social control and values embedded ideologically in the family, community and religious law.²³ She does not tell us, however, where exactly in the ideology and religious law that these regulations are most evident.

Although Holt could have properly assessed Lebanese Shi'i women and Shi'i gender ideology had she developed her work further. Holt as well misrepresents Shi'i gender ideology and again provides us with an essentialist approach of the notion of women's subordination in Shi'i ideology as divine and therefore immutable ordinance. This is despite the fact that changes have been taking place in the gender discourse in general and in Shi'i ideology on the subject in particular in the last decade.

El-Bezri provides an intricate analysis of the Shi'i women in the context of the relationship between modernity and Islam. The second chapter "Islamized Modernity" (*al-Hadathah al-Mu'aslamah*) has some bearing on my work. In the chapter, she discusses the reformulation of gender ideology in the 1980s by Islamists and the bearing of such reformulation on controversial issues such as headscarf (*hijab*), gender relations, judicial positions, female head of state, etc.

²³ Shehadeh, *Women and War*.

Thus far, these abovementioned studies do not provide a thorough and an adequate analyses of gender debates within the Lebanese Shi`i context. The differences between my work and their work are the sources. Their sources are either interviews or jurisprudential works.

Justification of Suggested Research

The period between the sixties and nineties witnessed a major development in Shi`i gender debates in Lebanon. Shi`i Lebanese scholars/clerics such as Sayyid Musa al-Sadr, Muhammad Mahdi Shams al-Din, Muhammad Husayn Fadl-Allah, and Sayyid Muhammad Hasan al-Amin wrote and lectured extensively on gender issues within Islamic Shi`i ideological and jurisprudential domains. In this dissertation, I will deal with their intellectual output on major gender issues such as marriage, divorce, inheritance, testimony, and female occupation of positions such as head of state, jurisprudence, and judgeship. In my treatment of their major intellectual output and gender question, I will provide as well a summary of their general activities in order to provide an historical and intellectual context for these debates.

It is my contention that Shi`i gender notions in Lebanon (from the sixties to the nineties) has undergone major transformation- namely, a reconceptualization of "gender inequality" to one of "gender equality," albeit theorized within an Islamic framework through a rereading of main Qur'anic provisions and jurisprudential gender constructs. This change in gender ideology resulted in some changes in gender legal decisions. Since the clerics discussed in my dissertation, did sometime translate these re-readings into their jurisprudential works. I argue at the same time that overall their jurisprudential

pronouncements remained, at best, contradictory to their alternative gender equality discourse.

In my dissertation, I will trace the development of gender constructs over two major periods (1960-1979) and (1990-1999). Changes in the first period (1960-1979) are closely related with the activities of al-Sadr. Changes in the second period (1990-1999) were associated with the activities of Shams al-Din, Fadl-Allah, and al-Amin.

In general, in the first period (1960-1979) Musa Al-Sadr embarked on a “social justice campaign” to change the lot of Shi`i women and men. While revolutionary in and of itself, his campaign fell short of effecting specific gender change on the higher religious legal level. This is due to his political involvement and to his occupation with Shi`i general socio-economic and political grievances. What he opted for was a gradual change in the lot of women, so he hastened Shi`i women’s participation in the public sphere within the still traditional Shi`i context. Al-Sadr attempted gradual change for women with consideration of cultural constraints. Shams al-Din a close associate of al-Sadr and his successor of many of al-Sadr’s undertakings, remained true to the initial spirit of al-Sadr’s “social justice campaign”. Shi`i gender ideology was generally much embedded in gender inequality and “complementarity of the sexes” best advocated by laymen and clerics such as the Iranian Murtada Mutahhari.

The period of 1980 to 1990 witnessed rather major socio-economic and political transformations taking place within Shi`i communities in Lebanon and overseas: the disappearance of al-Sadr on a trip to Libya (1979), the onset of the Islamic revolution (1978-1979) in Iran and the Iranian women model of participating in the revolution, and the Israeli Invasion of Lebanon (1982). By the mid-1980s, Lebanon, with its society and

state weakened, was witnessing the arrival of Muslim Shi'i Islamist tide. Hizb-Allah, an Islamist movement emerged on the national scene and contended for Shi'i following along with the Al-Sadr's established movement called *Amal*. The political upheaval during that period coupled with Shi'i struggle to consolidate their power precluded from any serious Shi'i intellectual engagement with any issue outside the domain of politics. This is the reason I do not deal with this period in my dissertation. Gender issues were foreshadowed by the immediate social needs of communities and citizens struck by war. The war had changed the position of all Lebanese women, including the Shi'is. Thanks to the efforts of NGO's, whose members are predominantly women, that the gender discourse kept going- even if on a very limited scale- due to the growing need to respond to people's social needs in the absence of a state-sponsored social services.

In the third period (1990-1999) the political landscape of Lebanon began to change. The civil war ended and normalcy began to return to the lives of most Lebanese. Debates on how to re-construct the nation, to reform electoral laws and judiciary, and to build a civic society began. Intellectual and cultural activity, especially through Lebanon's free press, ensured that the debate entered the public domain.²⁴ It is in this broader social context that issues of gender began to be raised, more consistently by Lebanese NGO's and religious authorities, especially Muslim clerics. I find that the major Shi'i intellectual output on the question of gender begins precisely during this period. It is only by the beginning of the 1990s that gender discourse began to be seriously addressed on the local level in conjunction with growing international concern over women's issues. Shams al-Din and Fadl-Allah (the later closely related to Islamists)

responded to this and, in series of sermons and lectures, began to rethink major Shi`i gender constructs; especially those that show blatant gender discrimination. Still, why the transformation in Shi`i gender discourse came to fruition at this juncture, between the 1990s and 1999s?

It is equally important to note that, as I mentioned earlier, a new gender discourse emerged during the same period in Iran. In the dissertation I will examine the significance of such timing and whether debates in Iran were monitored or mirrored in Lebanon. The champion of debates for the reassessment of gender ideologies is Muhammad Husayn Fadl-Allah (b.1935). He became a “cause celebre” in the gender debates on women in Lebanon not only within the Shi`i community but in the society at large. This was partly due to his engagement with wider audiences outside the Shi`i community. His activities involved participation in open forums at the American University of Beirut and other local universities, and engagement in debates with eminent Western-educated Lebanese personalities such as Ghassan Tuwaini, the Greek Orthodox publisher and politician. The debates were often broadcasted on major Lebanese television stations and watched by large audiences. In the course of my dissertation, I will analyze how Fadl-Allah’s gender ideology helped to dramatically alter Shi`i basic gender assumptions. I will as well consider the works of Shams Al-Din, chairman of the Supreme Shi`i Council, and an establishment representative, whose views on a number of issues are respected by different confessional groups, but his gender views are confounded to intellectual Shi`i circles. I will also consider the Shi`i eminent judge Muhammad Hassan al-Amin on gender, whose audience vary but is predominantly Shi`i

²⁴ Shehadeh, “Introduction” in *Women and War in Lebanon*.

intellectual circles. I will show how in the 1990s and in response to globalized modernity, the debate was shifting from gender inequality towards gender equality. I will also examine the reasons that this “Equality Principle” so much advocated for by the clerics considered here is qualified in some aspects of their jurisprudential gender works.

So far in my research, I have not come across a single work that deals with Shi`i women of Lebanon and Shi`i gender debates. I believe that a rich corpus of primary sources are untouched and awaits scholarly analysis and attention. Therefore I deem it necessary to take this step to further enrich the field of Shi`i studies and studies of gender.

I will closely examine the corpus of written and oral works (ideological and jurisprudential) on women and gender issues by Muhammad Mahdi Shams al-Din and Muhammad Husayn Fadl-Allah. Since Al Sadr and al-Amin did not write on women’s issues, I will concentrate on their oral pronouncements drawn from lectures, symposia, and interviews.

Organization of the Dissertation

This dissertation includes seven chapters of which this Introduction is the first. Chapter 2 begins with a general background of the Shi`i community of Lebanon in 1960s and a brief introduction of the theological discussions on gender prior to al-Sadr’s arrival and moves to discussion of the ideological and jurisprudential public pronouncements of Musa al-Sadr (1960-1979) and his initiatives to change the lot of Lebanese Shi`i women as part of his “social justice” campaign. The dominant gender ideological and perspective during that period was based on the principles of the “complimentarity of the

sexes” and “gender inequality”. Al-Sadr vacillated between the two trends of reform and tradition, accepting both cultural and social constructs of motherhood as well as female agency by an increased female public role.

Chapters 3, 4, and 5 focus on the ideological and jurisprudential works of Muhammad Husayn Fadl-Allah, Muhammad Hassan al-Amin and Muhammad Mahdi Shams al-Din on major contemporary gender issues. Chapter 3 will cover the period of early 1990s for all three authors and will highlight mainly the transitional phase of gender debates, which unfolded in response to growing public interest. I consider the works of Muhammad Husayn Fadl-Allah, whose arguments mark the beginning of a new trend toward the reconceptualization of gender among the Shi`is of Lebanon. I shall then analyze the activities of Muhammad Mahdi Shams al-Din, who, as chairman of the Supreme Islamic Shi`i Council, significantly contributed in the area of jurisprudential interpretation of gender rulings. Finally, Muhammad Hasan al-Amin, the chief judge of the Shi`i court of Lebanon, provides a focal point for the analysis of ideology versus application on gender rulings in Lebanese Shi`i courts.

While chapter 3 deals specifically with their gender ideologies, the following two chapters will be dedicated to their legal interpretations of gender. The difference will be mainly in the use of sources: ideological works express the opinion of their authors and do not demand compliance. The legal works are a highly specialized texts aiming at making concrete change in gender rulings, which are binding and demand full compliance. The rethinking of gender and gender roles in the discourses of the clerics considered here took place in a framework in which they adopted the principle of “Gender Equality” and rearticulated it to fit the context of Islamic discourse. At times,

such developments led to the emergence of novel gender constructs; but at other times, they resulted in mere resurfacing of old gender constructs. In Chapter 4, I focus on the rethinking of gender constructs by the two Lebanese Shi`i scholars, Muhammad Husayn Fadl-Allah and Muhammad Mahdi Shams al-Din between 1990-1999, either through their written literature or oral public pronouncements. This debate culminated in revisions of some of the major juridical gender rulings in many different areas of Islamic law, such as personal status law (marriage, divorce, and child custody), evidence law, and so forth. On one hand, the debate was facilitated by discussions on the role of independent efforts to deduce new legal rulings called *Ijtihad* in Islamic law as a dynamic process and the renewal of its methodologies (*al-tajdid al-fiqhi*) to adequately assist jurists in dealing with the complexities of life and society. On the other hand, the change came as a response to the social realities of women, which prompted clerics to delve into the juridical sciences in search of answers to gender concerns and inquiries. The process involved changes to a number of areas in the law: 1) the reinterpretation of the four sources, resorted to in the presence of a legal precedent (*al-adillah al-ijtihadiyyah*), such as the Qur'an, Sunna (In Shi`i jurisprudence traditions include the sayings, deeds, and practice of the Imams and their companions as well as Sunni sources), consensus (*ijma`*) and reasoning (e.g., categorical rational proofs (*al-`aql*)) in order to provide categorical rulings in favor of gender reformation; 2) the employment of procedural principles, resorted to by jurists in the absence of legal precedent (*al-`usul al-`amaliyyah*); and 3) the elaboration of the theories and methodologies of the *jurisprudential principles* (*al-qawa'id al-fiqhiyyah*) to further widen their theoretical implications and practical applications. This process led to revisions of old legal gender rulings as well as the

emergence of new ones that may be considered responsive to women's aspirations and needs.

Chapter 5 deals with the jurisprudential oral works of Muhammad Husayn Fadl-Allah and Muhammad Hasan al-Amin on issues of evidence laws and legal rulings barring women from serving as judges (1990-1999). I will also look at the written work of Muhammad Mahdi Shams al-Din that deals with the specific issue of maleness as a prerequisite for posts of leadership and judiciary.

Chapter 6 introduces the Muslim Shi'ite women who are the champions of these debates and whose inquiries and anxieties push the debates into the open. I will provide a glimpse of their activities and the ways in which they chose to express their demands for equal rights.

Chapter 7 ends with conclusionary remarks and a final analysis of the implications that works on gender have for Lebanon, Shi'is and women at large.

CHAPTER 2
MUSA AL-SADR, (1960-1979): « GENDER COMPLEMENTARITY » AS PART
OF “SOCIAL JUSTICE CAMPAIGN”

General Background

The unwritten National Pact (*al-Mithaq al-Watani*), which formed the political bases for Lebanon's independence (from the French colonialist in 1943), divided the political power of the country between two main groups - the Maronite Christians and the Sunni Muslims. According to the Pact, the presidency and the command of the army went to the Christian Maronites, the post of the premier to the Sunnis, and the office to the speaker of the parliament to the Shi'ite Muslims. The latter office, however, was associated with only symbolic powers and played no significant political role.¹ In addition to their political hegemony, the Maronites also won considerable socioeconomic

¹ This underprivileged position of the Shi'is was worsened even further by the ineffectiveness and complacency of their political representatives, the *zu`amah*. Although the office of the *zu`amah* was electoral and thus, ideally, accessible to everybody, in reality, the limitations of ballots rights. Lebanon's electoral laws, for example, made it impossible for a person to change his electoral constituency throughout his lifetime, effectively restricted its candidates to members of a small numbers of influential families. For more information, see Augustus Richard Norton, "Shi'ism and Social Protest in Lebanon" in *Shi'ism and Social and Social Protest*, eds. Juan R. Cole & Nikki R. Keddie (New Haven : Yale University Press, 1986), p. 158.

privileges that were unavailable to other Lebanese confessional groups, among which the Shi'is occupied the lowest level of the social pyramid.²

From the sixties onward, the country witnessed a number of rapid socio-economic changes- much as the process of modernization,³ emergence of a variety of anti-establishment groups,⁴ and the establishment of religious movement, *Amal*, led by the Irano-Lebanese cleric, Musa al-Sadr,- which contained direct implications for the Shi'i community. They ended the political isolation of the Shi'is and contributed to their awakening and readiness for political mobilization. Also, social mobilization of the Shi'is such as changes in employment and residence. Agriculture, the common occupation for Shi'is fell drastically, driving the Shi'i to other occupational sectors. This decline in the agrarian sector, in turn, led to an internal and external migration of the Shi'is. Internally, they migrated to Beirut and its environs. Externally, to West Africa and Arab Middle East.⁵ It is against this broader context that Musa al-Sadr arrived on the Lebanese scene.

² Socioeconomic differentiation, which emerged among religious groups as a result of this situation, manifested itself in all spheres: education, employment, income, etc. Shi'ite populated areas such as, e.g., Southern Lebanon and the Biqa' valley, were by far the poorest and least developed regions of the country.

³ The modernizations processes, such as the intrusion of the media, agricultural mechanization, improved transportation, accessibility of education, put an end to the social isolation of the Shi'is making a large number of them available for political action. See, Norton, "Shi'ism and Social.." in *Shi'ism and Social...*, p. 159; also Norton, "the Political Mobilization of the Shi'a" in *Amal and the Shi'a Struggle for the Soul of Lebanon* (Austin: University of Texas, 1987), p. 37.

⁴ Such as the Communist Party (*al-Hizb al-Shuyu'i*), the Communist Action Organization (*Munazzamat al-'Amal al-Shuyu'iyya*), Arab Liberation Front, and Fida'i military groups, etc. These groups appealed to the disinherited and disfranchised Shi'is with slogans pledging equality and improved socioeconomic conditions. It is hardly surprising, then, to find a growing number of Shi'i lending their support to them. On their part, the Shi'is saw in these alternative alliances an opportunity to brake with their traditional leadership. *Ibid.*, p.38.

⁵ Norton bases his analysis of the Lebanese Shi'i social mobilization on Karl W Deutsch. For more see, Norton, "Change among the Shi'a of Lebanon" in *Amal and the Shi'a: Struggle for the Soul of Lebanon*, pp. 22-23.

Gender Debates Preceding al-Sadr's Campaign

Before Musa al-Sadr arrived in Lebanon in the late 1950s, the subject of gender as a public issue was almost absent from Lebanese Shi'i intellectual debates. Gender was primarily treated within the context of *fiqh* (Islamic jurisprudence) literature. The Fiqh books –worldly affairs and rituals (*al-mu`amalat* and *al-`ibadat*)- consisted of gender rulings, which served as a legal reference to guide believers in their religious and daily affairs. In the case of worldly affairs (*mu`amalat*), rulings on women ranged from those that explicitly privileged men to those that awarded women certain rights. Implicit in a number of jurists' gender rulings was a set of assumptions that consisted of the following idea: men and women are created equal but have different natural functions which account for the distinctions in obligations and rights in certain social realms. These distinctions do not enforce gender differences but simply reflect natural differences, thereby, fulfilling, the principle of justice in the treatment of men and women.

This assumption determined the legal status of women in a number of spheres, including personal status law and penal law. It also served as a basis for the regulations restricting women's access from the positions of judge, head of state, and jurist. For decades, such assumptions went uncontested. Even when jurists did rule in some instances against certain mainstream principles in Shi'ite gender ideology (e.g., women's right to work, education, stipulation of terms favorable to women in the marriage contract), the social realities of the Lebanese Shi'i community and the cultural norms of the primarily patriarchal Lebanese society, precluded the circulation and dissemination of such changes.

There were attempts by some Shi'i scholars (*`ulamah*) such as `Abd al-Husayn Sharaf al-Din⁶ (d. 1957), to alter the social realities of Shi'i women. By establishing schools⁷ for instruction in religious and contemporary sciences, he tried to prepare women to undertake a more active social role. Sharaf al-Din's efforts, however, did not raise the issue of gender to higher legal spheres because Shi'i grievances in socio-economic and political arenas took precedence.

The only works I came across that may be mentioned here as an example of how gender was treated in the early Shi'i scholarly writings, are works by Muhammad Jawad Mughniyyi (1904-1979)⁸. He is known for his extensive literary output characterized by a lucid and simple style, making his books intelligible even for ordinary audiences. Although he was not known for his political activism in the same capacity as writers like Imam al-Sadr, he articulated Shi'i demands for women's equal access to social, economic, and political privileges. Mughniyyi published two books on women -- one exalting the figure of Zaynab: *The Heroine of Karbala*⁹ (*Zaynab Batalat Karbala*) and the other, called *Marriage and Divorce (al-Zawaj wa al-Talaq)*, dealing with marital relations. *Marriage (Al-Zawaj)* is a compendium of Islamic rulings (*fatawah*) (although the book is not considered *fiqh* in the proper sense) in which he discusses men's and women's rights in conjugal life according to the five Islamic legal schools: Hanbali,

⁶ `Abd Al-Husayn Sharaf al-Din was a renowned *Mujtahid* in the Southern Lebanese coastal city, Tyre. For a brief account on his life and activities, see, Majed Halawi, "Leader and Movement" in *A Lebanon Defied: Musa al-Sadr and the Shi'a Community* (Boulder: Westview, 1992), pp. 121-123.

⁷ Such as al-Madrasah al-Ja'fariyyah (a primary and secondary school founded 1938-1939) [The Ja'fari School] (the school started as boys schools but became co-educational in the early 1960s); Madrasat al-Zahra' [Al-Zahra' School] ((for girls) founded 1942); also the establishment of cultural and religious centers. For a brief account on his life and activities, see, *Ibid*.

⁸ For more on his life, see, Ali al-Mahriqi, *Muhammad Jawad Mughniyyi: Siratuh wa `Ata'uh (Muhammad Jawad Mughniyyi: His Life and His Output)* (Beirut: Maktabat Fikhrawi, 1997).

⁹ Unfortunately this book was not available to me at the time of writing.

Shafī'i, Maliki, Hanafī, and Ja'fari. Issues covered in his book include: bridal gift (*mahr*), maintenance, divorce revocable (*raj'ī*) and irrevocable (*ba'in*). On most of the topics, Mughniyyi's views concur with mainstream juridical interpretations. For instance, he affirms men's unilateral right to divorce, child custody, and so forth. Of "Women's Prenuptial Agreement" ("Shurut al-Zawjah 'ala al-Zawj")¹⁰.

It is here that space is created in *fiqh* where women can negotiate and alter marital terms that may otherwise prove disadvantageous to their status. There are, however, numerous interpretations to this principle, which may limit or expand these terms. Mughniyyi, for instance, argues that conditions stipulated by the wife in the marriage contract that stand in apparent contradiction to the *substance* of the contract are ineffective. Such conditions include, those, which deny the man the right to divorce his wife, marry another wife, inherit the wife, and control the wife's physical mobility outside the home.¹¹ The wife, however, is permitted to negotiate the terms of the couple's locale and country of residence. It is difficult to assess the extent to which Mughniyyi's opinion on this specific matter resonates the *fiqh*'s stance since such *fiqh* books are not readily available. In any case, his book lacks the detailed analysis required for the treatment of this subject and, written for too general an audience. The book, nevertheless, does reflect the multitude of juridical opinions present during the 1960s¹².

¹⁰ Muhammad Jawad Mughniyyi, "Shurut al-Zawjah 'ala al-Zawj" ("The Conditions of the Wife on the Husband") in *al-Zawaj wa al-Talaq: Ala al-Madhahib al-Khamsah—al-Ja'fari, al-Hanafī, al-Maliki, al-Shafī'i, al-Hanbalī* (Marriage and Divorce According to the Five Schools—Ja'fari, Hanafī, Maliki, Shafī'i, and Hanbalī) (Beirut: Dar al-'Ilm Lil-Malayin, 1960) pp. 16-17.

¹¹ Husband's consent is a prerequisite, according to some jurists, for the wife's mobility outside the home.

¹² The Shi'is of South Lebanon, however, followed the juridical opinions of the Great Lebanese Shi'i *Marja'*, Sayyid Muhsin al-Amin (d. 1952). For his life and works, see Al-Imam al-Sayyid Muhsin al-Amin, "Sirat al-Mu'allif" ("The Biography of the Author") in *A'yan al-Shi'ah (The Dignitaries of the Shi'is)* edited by Hasan al-Amin, vol. 10 (Beirut: Dar al-Ta'aruf Lil-Matbu'at, 1986) pp. 333-378. Unfortunately, his *fiqh* book, *Masa'il Fuqhiyyah*, which consists of question and response, and, which could have shed light on the juridical rulings prevalent in Lebanon during that period, is not available to

It demonstrates that on many of legal issues the jurists (*mujtahids*) often held varying opinions, which sprang from the different juridical principles to which they adhered. Although jurists' opinions are not themselves a source of imitation, such as the opinions of the jurists (*marja`*), they nevertheless impact their audiences and help shape the community's gender conceptions. Current juridical opinions did not preclude Mughniyyi from reflecting on the low status of women in Lebanese society and the necessity of changing their social reality. For instance, his admiration of the peasant's wife stems from her equality with men.

In his book, *The Experiences of Muhammad Jawad Mughniyyi (Tajarib Muhammad Jawad Mughniyyi)*, the author declares his admiration for the peasant's (*fallah's*) wife. He holds the peasant's wife in high esteem due to her fair and equal share of responsibilities with her spouse:

The peasant's wife is the only woman in the East who works and produces in the same manner as her man folk and carries her responsibilities fully in life. It would be great if all wives from different classes would produce and work in the same manner as their men folk and participate in the progress and elevation of the status of the Islamic community (*ummah*).¹³

This is clearly an indication of an aspiration to see women on an equal footing with men. How this aspiration is reconciled with Mughniyyi's opinion that encourages prohibiting women from negotiating terms in their marriage contract is not clear.

Musa al-Sadr: "Social Justice Campaign"

Elements of serious engagement with gender debates within Lebanese Shi'i circles are not visible until the beginning of 1970s, which also marks the beginning of Shi'i intellectual renaissance. Debates launched by the two Iranian scholars Murtada Mutaharri and Ali Shari'ati in 1967 over the nature of Islam and Shi'ism marked the

me. Upon al-Amin's death, Lebanese Shi'is turned to the *Marja`iyyat* of the two renowned jurists, Sayyid Muhsin al-Hakim (d. 1390 A. H.) and Abu al-Hasan al-Asfahani (d. 1365 A.H.).

¹³ Muhammad Jawad Mughniyyi, *Tajarib Muhammad Jawad Mughniyyi: Bi Qalamih*, edited by `Abd al-Husayn Mughniyyi (Beirut: Dar al-Jawad, 1980), p. 342.

intellectual awakening in the Shi`i world;¹⁴ Al-Sadr identified with the intellectual endeavors of the Western-educated Iranian scholar, Ali Shari`ati. In the seventies, Shari`ati visited al-Sadr in Lebanon a number of times where they shared a friendship and intellectual concerns. Whereas Shari`ati advocated for innovative approaches to religion and society in Iran, the modernist reformer Musa al-Sadr ushered in the beginning of this engagement in Lebanon.

Musa al-Sadr¹⁵ was born in Iran, in 1928. He studied Islamic jurisprudence (*fiqh*) in the two Shi`i theological centers, Iran and Iraq. He visited his ancestral home, Lebanon, in 1957, and permanently moved to the country in 1960. He became the religious head of the Shi`i community after the death of his predecessor, `Abd al-Husayn Sharaf al-Din (d. 1957). Shortly after, he began his project of political and socio-economic reform.

Al-Sadr capitalized on the absence of a community-wide Shi`i base, and the growing dissatisfaction among the Shi`is with their traditional leadership. What the community needed, the cleric thought, was a “dose of its own religious history, a sense of pride in its own triumphs, and the courage to act in its own interest”¹⁶. He set out first to move the *‘ulamah* beyond the juridical role they had traditionally played within the Shi`i community, in the Lebanese Shi`i community into the leadership of a broad-based protest against social injustice.¹⁷ In addition, he strove for the establishment of an autonomous administrative apparatus through which the Shi`is could run their spiritual and temporal

¹⁴ See, Halawi, “Shi`a Society by Numbers” in *A Lebanon Defied*, p. 111-114.

¹⁵ For more, see, Fouad Ajami, *The Vanished Imam: Musa al-Sadr and the Shi`a of Lebanon* (Ithaca: Cornell University Press, 1986).

¹⁶ Halawi, “Mythos and Praxis” in *Lebanon Defied, Ibid.*, p. 178.

¹⁷ Helena Cobban, “The Growth of Shi`i Power in Lebanon” in *Shi`ism and Social Protest*, p. 143.

affairs. Under his persistent demands, the government finally issued a resolution establishing the Supreme Islamic Council (SISC)¹⁸ with al-Sadr as its first president.

According to Norton, the council

Quickly made itself heard with demands in the military, social, economic, and political realms, including improved measures for the defense of the South, the provision of development funds, construction and improvement of schools and hospitals, and an increase in the number of Shi'i appointed to senior government positions.¹⁹

The council's demands, however, despite all the efforts of its leader and its members, went unheeded by the government. Government impenetrability to Council's initiatives along with rapidly changing political atmosphere in the country,²⁰ forced al-Sadr to mount a militant non-violent activism to secure Shi'i interests and to protect Shi'i lives. On March 17, 1974, speaking before a Shi'i rally in the city of Ba'labeck, al-Sadr publicly announced the launching of the "Movement of the Deprived" (*Harakat Amal*). In his speech, al-Sadr called upon the government to immediately address Shi'i grievances and demands. The establishment of the Movement of the Deprived was soon (July 1975) followed by the formation of the military group under the name of the Lebanese Resistance Detachment (*Afwaj al-Muqawamah al-Lubnaniyyah*), or, Amal ("Hope"), which temporarily allied itself with Palestinian militia.²¹

¹⁸ The Lebanese Parliament passed a law in 1976 establishing the SISC but the council did not come into actual existence in 1969.

¹⁹ Norton, "Shi'ism and Social Protest" in *Shi'ism and Social Protest*, pp. 165-66.

²⁰ Such as the influx of the Palestinians into Lebanon (1970-1971), the increased military activities of the *fida'iyyin*, and the Israeli reprisal raids against the South.

²¹ Norton, "Shi'ism and Social Protest" in *Shi'ism and Social Protest*, pp. 166-67.

Al-Sadr's activity were not limited to his attempts to secure equal political rights or the Shiites. Just as important, in his opinion, was to reform and mobilize the Shi'i community itself through education. This included sermons, speeches, as well as the establishment of various educational institutions. Al-Sadr's success in moving the Shi'i masses rested largely on his ability to employ familiar religious symbols, idioms and images. Thus, he often drew on familiar themes such as the martyrdom of Husayn at Karbala.²² By Husayn's role in Karbala, he admonished the Shi'i masses to follow in the Imam's footsteps and not to succumb to their fate; to rise in defense of their social as well as political rights. What are the implications of al-Sadr's social justice campaign for women?

Al-Sadr: Gender and the "Social Justice Campaign"

Questions of gender and the role of women are integral to Islam's value system. Subsequently, it is hardly surprising to find these questions at the center of discussion by Islamic scholars and reformers such as al-Sadr. Although the sixties and seventies witnessed the political activism of a number of Lebanese Shi'i women, their influence on the overall political life of the community remained practically unnoticeable.²³ The 1970s saw beginning of active discussion of women issues in Islam and in Shi'ism, discussions that stemmed from larger debates on the role of Islam in the modern world. Al-Sadr aimed at changing the social reality of Shi'i women bringing them in line with the changes experienced by their contemporaries from Lebanon's other confessional communities. Al-Sadr sought to move women beyond the realm of private family life.

²² The incident in which the Prophet's grandson along with other members of his household were assassinated in the year 680 A.D.

²³ Halawi, "Mythos and Praxis" in *A Lebanon Defied*, p. 181.

This was a significant development, especially in an environment where social and public spheres belonged to men.²⁴ Al-Sadr took important steps in order to ensure greater participation of women in the socio-political activities. This fact is attested to in the number of schools and institutions which he established for the education of women in various vocational and academic fields, which helped many Shi'i women to break away from their traditional roles in society. Among the institutions which al-Sadr founded for the vocational and academic training of women are Girl's Home (*Bayt al-Fatat*), School of Nursing (*Madrasat al-Tamrid*), School of Languages (*Madrasat al-Lughat*), The City of al-Zahra (*Madinat al-Zahra*), to name a few.²⁵

In his attempts to deliver his message, al-Sadr often drew on Shi'i history as well as Islamic religious sources, strategy that will persist in the writings of Shi'i scholars well into contemporary times. Here again examples of female figures from classical Islamic past, such as Fatima, the daughter of the Prophet Muhammad, and Zaynab, the Prophet's grand daughter, are invoked. In the introduction of a book dedicated to the study of the life of Fatima, al-Sadr touches on aspects of her life, shedding light on her role as a devoted mother, wife, and daughter. He also emphasizes her efforts in preserving and defending Islam at crucial times in the history of Islam's formative years. Fatima, says al-Sadr, was the vanguard among Muslim women to participate in the battlefield and to fulfill her role – the role that women played then – tending to the injured and providing the supportive measures needed in war.²⁶ She also played a major role in disseminating knowledge and becoming among the trusted

²⁴ *Ibid.*

²⁵ For a comprehensive accounts on these schools, see, 'Adnan Fahs, *Al-Imam Musa al-Sadr: al-Sirah wa al-Fikr (Imam Musa al-Sadr: Life and Intellectuality)* (Beirut: Dar al-Fikr al-'Arabi, 1996).

²⁶ *Ibid.*, p. 177.

transmitters of Traditions.²⁷ Al-Sadr's emphasis on Fatima's role is indicative of his ideological stance that women's roles as mothers and wives should not hinder their participation in public life and education. In a speech entitled "the Role of Women" (*Dawr al-Mar'ah*), al-Sadr questions the absence of women from the public sphere, absence that he found to be strange compared to the active role that women played during early Islamic period. The central female figure at Karbala, Zaynab, also stood for al-Sadr as a prototype of female socio-political activism. Praising Zaynab's role in the events of Karbala, al-Sadr said that it was Zaynab who, "...went with the caravan of prisoners to Kufa and... spread the news of the battle from the heart of the desert to the capitals of the Muslim world, from Kufa to Hums to Hama to Aleppo to Ba'laback and then Damascus. The women in Karbala complemented the role of man and his struggle".²⁸

Another object of al-Sadr's criticism was the age-old tradition that kept women homebound under the authority of either brothers or husbands:

It is not right to treat a woman upon her birth with disdain as people do. To subjugate her, thereafter, to the authority of her brothers as well as the pressures of her husband. A woman is not to be treated merely as a tool of pleasure and procreation, as it happens in some areas. Such things take away from the essence of womanhood... For the Prophet said: 'daughters are the best among your offspring.' We, in our contemporary society, are in dire need to accomplish the message of the Prophet. We are in need of women who could strengthen the will, for we are in need to enlist all of our resources to achieve that which God has prescribed for us.²⁹

Qur'anic message serves here as the main source of al-Sadr's gender vision. In the above-mentioned introduction dedicated to the study of Fatima al-Zahra,³⁰ al-Sadr

²⁷ Al-Imam Musa al-Sadr "al-Zahra': Fasl Min Kitab al-Risalah" ("al-Zahra'" A Chapter from The Epistle Book") in *Manbar wa Mihrab: al-Imam Musa al-Sadr 1960-1969 bi al-Kalimah wa al-Surah* (Beirut: Dar al-Hawra', 1987), pp. 167-179.

²⁸ See "Dawr al-Mar'ah" ("The Role of Women") in *Al-Imam Musa al-Sadr: al-Rajul, al-Mawqif, al-Qadiyyah* (Beirut: Maktabat Sader, 1993), p. 150.

²⁹ *Ibid.*

³⁰ Al-Imam Musa al-Sadr, "al-Zahra'" in *Manbar wa Mihrab*, p. 163.

critiques scholars for their failure to properly assess women's situation in Islam and delivers a tacit criticism of the cultural constraints practiced in the community and sanctified in the name of religion. Hence,

In order to discern Islam's position on women, one must take into account that there are two types of Islamic traditions: transmitted religious teachings and inherited customs which are not part of Islam's [authentic] traditions (*ta`alim diniyya ma`thura wa`adat mawrutha ghayr warida fi al`athar al-diniyya*); thus one must separate the one from the other.³¹

Along these lines, Al-Sadr argues, "that Islamic traditions (*athar*) dealing with women are of two types as well:

- 1) those dealing with women in a specific historical period and
- 2) those that form the eternal fundamental teachings of Islam (*ta`alim asasiyyah Khalidah*)."³²

The Islamic jurists involved in the science of deriving general judicial principles from various religious sources (*the usulis*), according to al-Sadr, differentiate between tradition (*khobar*) and subject (*qadiyyah*), naming them actual or true subject (*qadiyyah haqiqiyyah*) or temporal subject (*qadiyyah kharijiyyah*). The former deals with immutable rulings on a given subject that transcend time and space whereas the latter deals with rulings in context – the circumstances and time when a ruling was issued.³³

Al-Sadr's next argument is that the Qur'an is the only source that symbolizes an actual or true subject (*qadiyyah haqiqiyyah*). Other sources, such as sayings attributed to the Imams, (particularly those attributed to Imam Ali in *Nahj al-*

³¹ *Ibid.*, p. 163.

³² *Ibid.*, p. 164.

³³ *Ibid.*, p. 164.

Balaghah),³⁴ are temporal rulings reflecting the context from which they were issued (*qadaya kharijiyyah*). Researchers, therefore, must make the Qur'anic verses the principal foundation upon which they conduct their research on gender issues. It is only then, argues al-Sadr, that one can distinguish between rulings and customs, and can discern immutable rulings from temporal opinions.³⁵

There are a number of verses in the Qur'an pointing to equality between men and women, argues al-Sadr. "Equality in genus" (*al-musawah al-dhatiyyah*) is ascertained by the reiteration of the sentence "the one of you being from the other" ("*ba`dahum li ba`d*") and the reinforcement of this equality with laws that respect women on all levels: material, spiritual (3: 195), economic (4: 32), and political (60: 13).

³⁶ This respect, argues al-Sadr, extends to women's right to inheritance and the acknowledgment of all her rights in life. Thus, the author continues, we do not find in all Qur'anic verses an indication of that which prevents women from controlling her money or that which allows the imposition of marriage without her consent. Father's consent for the daughter's first marriage, says al-Sadr, is a "consultation right" (*haqq istishari*) which

³⁴ Shi'i scholars argue that these specific traditions reflect the socio-economic and political context of the period in which they were issued.

³⁵ Al-Imam Musa al-Sadr, "al-Zahra' "in *Manbar wa Mihrab*, p. 164.

³⁶ "So their Lord did respond to them (saying) "I will not suffer the work of any of you that worketh to be lost, be he male or female, the one of you being from the other..." (3:195); "And covet not that by which God hath raised some of you above others; for men shall have of what they earn; and for women shall have of what they earn; and ask God of His Grace; Verily, God is (very well) in the Know of all things" (4: 32); "O' (Our) Prophet (Muhammad!) when come unto thee believer women pledging that they will associate not aught with God, and they will steal not, and they will commit not adultery and kill not their children, and they will utter not slander, nor utter any falsehood which they had forged themselves between their hands and their feet and they will not disobey thee in what is fair, then accept thou their pledge, and ask forgiveness for them from God is Oft-Forgiving, the Most Merciful"; (60: 12) and "Whosoever did good, whether male or female, and he be a believer, then We will certainly make him live a life good and pure,

does not grant him the right to impose marriage without the daughter's consent. "If the father objects and prevents the marriage of his daughter in cases where there is a suitable [partner] and where benefits are evident (*ma` wujud al-kafa`ah wa al-maslahah*), then his [consultation] right is forfeited".³⁷

However, with further analysis of Qur'anic text, it seems that gender equality dissolves in the face of a number of verses that explicitly benefit men. How does al-Sadr reconcile his equality argument with the verses that are considered gender biased?

Men and women in the Qur'an, as argued by al-Sadr, possess equal obligations and rights except in marital life. In the same introduction mentioned before, al-Sadr restricts the key words (*faddal* and *darajah*) in the controversial Qur'anic verses 4:34 and 2:28, to marital life and the financial obligation of the husband. The verses read as follows: "Men have authority (*qawwamuna*) over women on account of the qualities with which God hath caused the one of them to excel (*faddala*) the other and for what they spent of their property..."; and "...and for the woman shall be similar rights (over men) in fairness, and for men (their rights) on women, is a degree above (*wa-lil-rijali`alayhinna darajah*); and God is Mighty, Wise".³⁸ The two key Qur'anic terms *qawwam* and *faddl* in this context have been interpreted by some Shi'i scholars (Al-Sadr's contemporaries) to indicate that men are intrinsically superior to women; therefore, in the

and certainly We will give them their return with the best of what they were doing". Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali (New York: Tahrik Tarsil Qur'an, Inc., 1988).

³⁷ Al-Imam Musa al-Sadr, "al-Zahra'" in *Manbar wa Mihrab*, pp. 164-165.

³⁸ Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali.

general affairs of life, men have dominion over women.³⁹ Al-Sadr does not agree with Shi'i scholars who maintain the universal applicability (*dhu itlaq `amm*) of these Qur'anic provisions. Instead, he restricts them to conjugal life. Al-Sadr reminds his readers that equality is the spirit guiding the verses. It is evident in the words “.. [A]nd for women shall be similar rights (over men) in fairness, and for men (their rights) on women...” Al-Sadr concludes that only conjugal life necessitates that one person be head of household. In addition, the Qur'anic reference to degree of difference in the obligations and rights between men and women, is due to the difference in qualifications, proclivities, and specialization of each of the sexes, based on their physiological and psychological tendencies. Women, argues al-Sadr, are more fit for domestic life (bearing and rearing children). By not obliging women to maintain the family, he writes, Islam, provides them with an opportunity to perform their natural functions of child bearing. Islam, however, obliges men to provide financial support. In return, Islam compensates men by granting them the right to hold twice the share of women.⁴⁰

³⁹ Majma` al-Bahrayn, for example, gives two meanings to the word *qawwam*: an “intrinsic/natural advantage” or an “earned advantage”. Thus, in the meaning of the word, the implications of the statement contained in the Qur'anic verse are due to their natural advantage God favored men over women in certain matters, such as prophethood, imamate, and authority. The second is an earned advantage due to the welfare matters, e.g., men providing women with financial support. Al-Tabataba'i, a twentieth century commentator, in his renowned exegetical work *al-Mizan*, interprets the first part of verse 34 of the Sura Nisa in the light of the first meaning: “*Al-Fadl*” in this verse to men's natural superior qualities (such as rationality, strength, and power) versus women's emotional and delicate nature... Therefore, the universality of this cause (*wa `umum hadhihi al-`illa*) demands that the ruling based on it—namely, *al-rijal qawwamuna `ala al-nisa'*—should not be limited to conjugal life, but should generally apply to all matters involving men and women; matters such as legal procedures, state leadership, and military defense... Therefore, this verse (men have authority over women) has a universal applicability *dhu itlaq `amm*”. For more on the lexical meanings of the key Qur'anic words, see, Al-Shaykh Fakhr al-Din al-Turayhi, “Qawwam” in *Majma` al-Bahrayn*, edited by al-Sayyid Ahmad al-Husayni, vol. 6 (Tehran: al-Maktabah al-Murtadiyyah, 1386 A.H.), p. 142. For the exegetical interpretation of the same Qur'anic verses, see, al-Sayyid Muhammad Husayn al-Tabataba'i, *al-Mizan fi Tafsir al-Qur'an*, vol.4 (Beirut: Mu'assasat al-`Amili Lil Matbu'at, 1983), p. 343.

⁴⁰ *Ibid.*, pp. 165-166.

These verses continue to occupy a central position in Islamic gender debates. Leila Ahmed, for example, argues that Islam has always possessed these two divergent tendencies within its message. Its “ethical message” establishing the moral and spiritual equality of all human beings, was undermined by the “sexual hierarchy”, which privileges men. It was, this message that occupied the central position in the formulation of laws and institutions, thus, unarticulating Islam’s message of equality of all human beings, particularly with respect to women.⁴¹ Al-Sadr did not adequately account for these two tendencies in the Qur’an and thus failed to consolidate them in his gender discourse. Al-Sadr acknowledged women’s role in public life. Still, he was unable to completely rid himself of some dominant cultural gender assumptions.

Al-Sadr on Jurisprudence and Gender Issues

On the juridical level, al-Sadr debated key issues in Shi’i jurisprudence without engaging thoroughly with their wider implications. This is partly due to his political engagement, which did not leave him time to write extensively on gender legal issues. However, as a qualified jurist who may follow his own legal rulings but which cannot be followed by ordinary people (*mujtahid*), al-Sadr used his knowledge of sacred texts as an opportunity to educate his community on legal matters, especially those issues that were often neglected due to societal and cultural factors. Al-Sadr called for new interpretations (*ijtihad*) but only within the framework of the Shari`a, since the immutability and divinity

⁴¹ Leila Ahmed, “Conclusion” in *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), p. 238.

of the *Shari`a* precludes altering its divine essence.⁴² Otherwise, Islam becomes similar to any other secular system.

In a series of lectures sponsored by the Lebanese Symposium entitled “Christianity and Islam in Lebanon” (“Al-Masihiyah wa al-Islam fi Lubnan”), al-Sadr points to the necessity of *ijtihad* in tackling new issues by resorting primarily to the Qur’an and the Sunna. It is true, he says, that sometimes answers to new issues are not readily available in the *Shari`a*, but the *Shari`a* provides general principles from which the jurists can always deduce solutions to contemporary demands. The jurist’s role is not to invent new laws, but to deduce (*istinbat*) new rulings. As an illustration, al-Sadr points to the changes and developments made thus far in the contemporary juridical books on Transactions (*al-Mu`amalat*).⁴³

One such development was that jurists were able to honor any form of contract, old or new, in accordance with a general Qur’anic principle: “fulfill your contracts” (“*ufu bi al-`uqud*”) which is based on a the Qur’anic verse “O’ ye who believe! Fulfill the contracts made (by you)” (5:1).⁴⁴ This principle became instrumental in ratifying modern contracts. Such modifications, points al-Sadr, are possible as long as they do not contradict the general principles set forth by the *Shari`a*. In a similar manner, marriage contracts could be ratified by applying, the general principle “the believers are held accountable by their own conditions except for a condition that makes licit that which is

⁴² Al-Sadr, “al-Islam wa Thaqafat al-Qarn al-`Ishrin” (“Islam and the Culture of the Twentieth Century”), in *Minbar wa Mihrab*, p. 52.

⁴³ *Worldly affairs*, e.g., any matter outside the domain of rituals and worship.

⁴⁴ Quoted from the *Holy Qur’an*, trans. S.V. Mir Ahmed Ali.

illicit, or makes illicit that which is licit (“*al-mu'minuna `inda shurutihim illa shartan ahalla haraman aw harrama halalan*”).⁴⁵

As I will show in the upcoming chapters the main points of contention in dealing with these principles are the nature of such conditions and whether there is room for a wife or husband to negotiate those terms of their marriage contract that are in contradiction with the substance of the Shari`a (e.g., conditions that forfeit men’s rights to polygamy, divorce, primary child custody, obedience). Such principles form the backbone of *fiqh* and have their theoretical basis in the science of juridical inferences (*`ilm al-usul*). Both jurists and jurisconsults cite them repeatedly in their books, although they do not occupy a central position in gender debates until the 1990s. In the 1970s, the Grand Ayatu Allah Abu al-Qasim al-Khu’i (d. 1992),⁴⁶ in his seminal fatawa book *al-Selected Issues (Masa’il al-Muntakhabah)*, ruled for the legality of certain terms a wife can negotiate in the marriage contract, including her right to obtain the power of attorney (*wakalai*) to initiate divorce.⁴⁷ For instance, a woman may be granted the power of attorney (from her husband) to initiate divorce without the husband’s consent; thereby, divorcing herself on his behalf. But this ruling did not gain momentum; women did not widely exercise it for cultural and social reasons. They were either ignorant of their legal

⁴⁵ Al-Sadr, “al-Islam wa Thaqafat al-Qarn al-`Ishrin” (“Islam and the Twentieth Century Culture”), in *Minbar wa Mihrab*, p. 52.

⁴⁶ Lebanese Shi`is followed his legal rulings after the death of both *marja`-s-* Muhsin al-Hakim and Abu al-Hasan al-Asfahani.

⁴⁷ Ruling number 1110 which states that “...If she [the wife] stipulates the right to divorce herself on his behalf (*an takuna wakilatan `anhu fi talaqi nafsiha*) in an absolute manner (*mutlaqan*, e.g., to have unrestricted right to divorce herself) or [in a restricted manner] under conditions which involve travel or failure [to provide] financial support [by the husband], her divorce (e.g. initiating divorce without his consent) is valid. See, Al-Sayyid Abu al-Qasim al-Khu’i, “Masa’il Mutafarriqa fi al-Talaq” in *al-Masa’il*

rights or feared men's retaliatory responses, which usually resulted in men withdrawing marriage proposals. This suggestion of stipulating conditions in the marriage contract by al-Sadr opens the door for Muslim women to pursue their interest in conjugal life by stipulating conditions, similar to American settlement agreements. Thus, Al-Sadr, educating Lebanese Muslim Shi'i women to the possibilities that existed in religion that could open doors for them to demand changes. In an interview with a local newspaper, al-Sadr was asked his opinion on the Tunisian government's decision to forbid polygamy; al-Sadr disagreed with the decision. He argued that the Qur'anic verse permitting polygamous marriages was driven by concerns over the fate of numerous orphans left after the early Islamic wars. Fearing that justice was not served by taking care of the orphans and their mothers, Islam sanctioned polygamy, though restricting such marriages to equal treatment of all wives by their husbands. Thus, the ruling for polygamy is immutable, though conditioned by specific social circumstances.⁴⁸ As such, it cannot be abolished, argues al-Sadr, by government decrees. He further writes, neither is unconditional legalization of polygamy a valid option. Instead, he suggests, these issues should be left to the discretion of Islamic courts, which will decide whether conditions validating that marriages are fulfilled in each case.

Al-Sadr did not actively seek to raise these issues in the higher legal sphere. Rather, in pointing out the fact that there existed possibilities for alternative interpretations of Qur'anic verses dealing with gender issues, al-Sadr seems to leave it to

al-Muntakhaba: Al-`Ibadat wa al-Mu`amalat (Selected Issues: Rituals and Wordly Affairs), 12th edition (Iraq: n.p., 1979), p. 309.

⁴⁸ Hanan Ma'luf, "Jawlah ma' al-Sadr" (an interview conducted by "Mulhaq al-Nahar" ("al-Nahar Supplement") and published in 1969) quoted in *Minbar wa Mihrab*, p. 181.

women themselves to explore these opportunities through education and *ijtihad*.

Although one fails to find in al-Sadr's works a fully-articulated, legal concept of gender based on the principle of equality, one senses the urgency with which he cautions his audience to keep in mind the egalitarian message of the Qur'an, even when reading core verses that appear to stand in explicit contradiction with it. By doing so, al-Sadr initiated a trend toward rethinking Islamic gender constructs. This is where al-Sadr's mark of innovation is located.

CHAPTER 3

TRANSITIONING FROM “GENDER COMPLEMENTARITY TO GENDER EQUALITY! SHI’I DISCOURSES 1990-1999

In the previous chapter, I finished discussion of the role that Musa al-Sadr played between 1960 and 1979 in Lebanon and the gender debates he engaged in as part of his “social justice campaign”. In this chapter I will discuss the gender ideological debates of Shi’i scholars in Lebanon between 1990-1999, leaving discussion of gender legal decisions to the two next chapters.

The emergence of gender as a critical subject in Lebanese intellectual debates in the 1990s resulted in an extensive production of literary and audio materials, such as books, pamphlets and cassettes- as well as increased number of public seminars, conventions, television talk shows and interviews dedicated to the issue. It was in response to such growing public interest debates by eminent Lebanese Shi’i theologians on the subject of gender and its construction (Muhammad Husayn Fadl-Allah, Muhammad Mahdi Shams al-Din and Muhammad Hasan al-Amin) take place. First, I shall consider Muhammad Husayn Fadl-Allah, whose arguments mark the beginning of a new trend toward the reconceptualization of gender among the Shi’is of Lebanon. His position as a jurisconsults (*marja`*) (a source of imitation for Muslims in Lebanon and abroad) made his works quiet significant. I shall then analyze the activities of Muhammad Mahdi Shams al-Din, who, as chairman of the Supreme Islamic Shi’i

Council, significantly contributed to the area of juridical interpretation of gender rulings. Finally, Muhammad Hasan al-Amin, the chief judge of the Shi'i court of Lebanon, provides a focal point for analysis of the ideology versus application of gender rulings in Lebanese Shi'i courts. In this chapter, I will deal specifically with their gender ideologies, while the two following chapters will be dedicated to their legal interpretations of gender.

The rethinking of gender and gender roles in the discourse of the ulama took place in a framework whereby the principle of "Gender Equality" was adopted and rearticulated to fit the context of Islamic discourse. At times, such developments led to the emergence of novel gender constructs, but at other times, they result in mere resurfacing of old gender constructs. This process of oscillation between the two gender constructs reflects the general dialectics present in the emergence of any new social notion. On one hand, the theoretical articulation of the gender equality principle is still in progress. On the other hand, the pace of such progress is determined by the present social and cultural situation which, at the same time, defines its scope. Seen from this angle, it would be more accurate to speak about the gradual shift toward "gender equality", rather than view it as the comprehensive underlying principle of gender discourse. Even though the latter was the goal of the thinkers mentioned here.¹

Let me begin with Muhammad Husayn Fadl-Allah. He was born to a Lebanese scholarly family in Iraq in 1935 and received his education as a student of Islamic

¹ Fadl-Allah states does not consider his intellectual input on any topic as final and conclusive and he invites criticism of his work. See, Muhammad Husayn Fadl-Allah, "Qadiyyat al-Mar'ah: al-Ahamiyyah wa al-Manhaj," in *Dunya al-Mar'ah*, ed. & comp. Mona Bulaybil (Beirut : Dar al-Malak, 1998), p. 27.

jurisprudence. From the outset, Fadl-Allah demonstrated an unequalled command of classical Arabic, Islamic law, theology, and philosophy under the tutelage of several renowned Shi`ite scholars, such as Ayat-Allah Muhsin al-Hakim, Abu al-Qasim al-Khu`i, al-Sayyid Mahmud al-Shahrudi, and al-Mulla Sadra al-Badkubi. In addition to his high academic standing, he was a talented young poet and skillful writer. In the mid-1950s, Iraq underwent political turmoil. Various political ideologies—communism, Arab nationalism, and Arab socialism—contended to win Shi`ite following. Shi`ite clerics participated in a number of political activities and began the rethinking of Islam in light of the newly emerging political, intellectual, and social demands. Fadl-Allah, along with leading Shi`ite cleric Muhammad Baqir al-Sadr, established an Islamist movement (“Hizb al-Da`wa”) and contributed a number of editorials to a local Islamic journal. As a reformist and a modernist, Fadl-Allah called for the rethinking of major Islamic issues and for reclaiming Islam as a religion compatible and relevant to changing circumstances, capable of serving humanity. Fadl-Allah’s essays, and his writings later “conveyed the vitality and originality of his intellect, and above all his ability to stretch convention without breaking it”.²

After years of political and ideological turmoil in Iraq, Fadl-Allah returned to his ancestral home, Lebanon. In 1966, Beirut was the hub of varied intellectual, ideological, artistic, and academic movements, which introduced young Fadl-Allah to a world that differed profoundly from that of Iraq’s religious seminary. The two worlds left their imprint on the rising Fadl-Allah, a fact attested to in his innovative analyses of textual

² Martin Kramer, “The Oracle of Hizbullah,” in *Spokesmen for the Despised: Fundamentalist Leaders of*

religious sources in light of social, economic, and political realities of Muslims. Upon his return to Lebanon, he established a number of academic and vocational institutions as well as centers for the needy.³ In addition to his social-charitable programs, he lectured extensively and published a number of books dealing with a broad range of socio-political and religious issues.⁴ In 1982, he embarked on a political career supporting the Islamist Movement in Lebanon, especially the potent radical, the Party of God (*Hizb-Allah*).⁵ The Party gained great following from the Shi'i suburbs in Beirut and a sizable number of Amal's members- who defected to the Party. In 1991, *Hizb-Allah* alongside its military initiative, was using other means to reach the Lebanese population--was using the power of the media: Its weekly newspaper *al-'Ahd* (The Pledge), was launched on 1984; and *al-Nur* (The Light) radio station was already established. The Party's television station *al-Manar* soon followed. On the social level, *Hizb-Allah* has taken upon itself the responsibility of providing for the poor Shi'i communities, a responsibility that the Lebanese government welcomed with open arms since it could not provide its constituency with the same services: in 1989, the Party launched *Jihad al-Bina'* to supply residents of southern suburbs of Beirut with drinking water and electricity. The organization dug wells, collected garbage, repaired sewers, and laid electricity cables. Also, it rebuild houses in villages struck by shelling in order to encourage people to stay

the Middle East, ed. R. Scott Appleby (Chicago & London: The University of Chicago press, 1997), p. 89.

³ Such as *Madrasat al-Duha* and the Islamic Law Institute.

⁴ Among his books are: *Mafahim Islamiyyah 'Ammah*, *al-Harakah al-Islamiyyah: Humum wa Qadaya*, *al-Din bayna al-Akhlaq wa al-Qanun*, and *al-Hiwar fi al-Islam*. For more on his life and political career, see, Kramer, "The Oracle of Hizbullah," in *Spokesmen for the Despised*, pp. 83-181.

⁵ See for instance, Hala Jaber, *Hizbollah: Born with a Vengeance* (New York: Columbia University Press, 1997).

in their homes. It established the Islamic Health Committee (IHC). The Committee provides health care to injured civilians who are subjected to shelling and dispossession in the South. To this end, the organization has built health clinics and centers.⁶ equally important to the Party is the welfare of women, especially the wives of their martyrs. Among their welfare programs, the “Women Association” of *Hizb-Allah* deals with the problems of martyr’s wives. Often, after the death of the father, paternal grandfathers claim custody of their grandchildren. The wives, fearing loss of their children, move in with their children’s grandparents, which subject them to many unnecessary hardships. The Association follows up on the living conditions of these wives, and offers them and their children free housing. The Association also grants mothers custody of their children and protects women in cases where grandparents might contest these arrangements. Also, education looms big on their social agenda. Generally schools in the South and Beqa’ are of poor quality and those which offer vigorous programs are expensive and inaccessible to the poor. To help change the growing illiteracy among poor Shi’is, the Party established a number of subsidized schools (the government does not allow private organizations to offer free education) in the South and Beqa’.

It is in that political and social context that Fadl-Allah emerged. Fadl-Allah attracted wide attention from the West who believed him to be the Party’s leader. Fadl Allah denied this. The opposition that *Hizb-Allah* has shown Muhammad Husayn Fadl Allah, perhaps, concurs this fact. Fadl-Allah’s modernist ideas and innovative approaches to major intellectual and theological issues facing the Muslim community won him great prominence among wider Lebanese audiences — secular and religious. He lectured in

⁶ Jaber, “The Necessities of Life” in *Hezbollah*, p. 158.

major Lebanese universities, mosques, and seminars, and appeared repeatedly on major television talk shows to share his views and to debate the issues of gender in Islam. His reformulation of gender shook some old gender constructs predominant in Shi'i cultural and religious circles and created space for some Shi'i women to legitimize their social and political activities. This is evident by the appearance of some Muslim Shi'i women broadcasting the news and hosting talk-shows on *Hizb-Allah's* television, *al-Manar*. In any case, Fadl-Allah's mode of reasoning worked sociological considerations and psychological reflections⁷ into his thesis. Fadl-Allah was the first among Shi'i theologians to address issues of sexuality and love between the sexes in an open and unconventional manner—an approach that assured Fadl-Allah continuous criticism from the conservatives.

My analysis of the contents of Fadl-Allah's gender discussions will be based here on his text: *Islamic Reflections on Women (Ta'ammulat Islamiyyah Hawla al-Mar'ah)*.⁸ I will also consider some of Fadl-Allah's public discussions and interviews on the subject gender to illuminate the oral aspects of his gender views. These will include Fadl-Allah's *Woman's World* and an interview conducted by "al-Mashriq" television, as well as materials of two seminars: "Women's Right to an Islamic Socio-Political life"⁹ and "Towards a New Reading in Juridical Women's Rights"¹⁰

⁷ Stephan Rosiny notes this, see, "The Tragedy of Fatima al-Zahra," in *The Twelver Shi'a in Modern Times: Religious Culture and Political History*, eds. Rainer Brunner and Werner Ende (Boston: Brill, 2000), p. 215.

⁸ Muhammad Husayn Fadl -Allah, *Ta'ammulat Islamiyyah Hawla al-Mar'ah* (Beirut: Dar al-Malak, 1992).

⁹ Fadl-Allah, "Mudakhlat al-Sayyid Muhammad Husayn Fadl- Allah," in *Al-Mar'ah bayna Waqi'ha wa Haqqiha fi al-Ijtima' al-Siyasi al-Islam: Nadwah Hiwariyyah ma` Samahat al-`Allamah al-Sayyid*

Muhammad Husayn Fadl-Allah's work *Islamic Reflections on Women* (*Ta'ammulat Islamiyyah Hawla al-Mar'ah*) marks the beginning of serious and active debate in the 1990s on gender within the Shi'i Lebanese intellectual and religious circles.¹¹ Fadl-Allah's new gender ideology and his views on women's role in Islam were criticized for challenging the dominant gender ideas grounded in biology that define woman's role primarily through her sexual and reproductive system. Such ideology *a priori* excludes social factors from the construction of gender concepts. Fadl-Allah's reformulation of gender was welcomed by some Muslim Shi'i women who saw hope in his work for addressing women as subjects and in his attempt to address the various dimensions of women's lives. In *Islamic Reflections* (*Ta'ammulat*) and subsequently in other works, Fadl-Allah presents his gender ideology which argues for a new approach to the study of women's roles in society, questioning age-old assumptions - cultural and textual - and providing his opinion on matters ranging from women's rights, engagement, marriage, polygamy, and love, to friendship between the sexes. In the following passages, I will deal specifically with his gender ideology as constructed in his

Muhammad Husayn Fadl Allah (The Woman and Her Right to an Islamic Socio-Political Life: an Open Panel with his Honorable Sayyid Muhammad Husayn Fadl Allah), vol. 1 (Beirut: Dar al-Thaqalayn, 1995), pp. 31-51.

¹⁰ Fadl Allah, "Mudakhlat al-Sayyid Muhammad Husayn Fadl-Allah," in *Qira'ah Jadidah li Fiqh al-Mar'ah al-Huquqi: Nadwah Hiwariyyah ma' Samahat al-'Allama al-Sayyid Muhammad Husayn Fadl Allah* (Toward A New Reading In Juridical Women's Rights: an Open Panel with his Honorable Sayyid Muhammad Husayn Fadl -Allah), vol. 2 (Beirut: Dar al-Thaqalayn, 1997), pp. 19-34.

¹¹ Fadl Allah states that the present book is a late publication of earlier versions of papers he wrote for journals and views he aired throughout the years (from the 1960s onward). His decision to publish the book in the 1990s, according to the author, was not a reaction to challenges from contending ideologies on the issue of the religious ideological conceptualization of women as much as it was a move to correct misconceptions of women in religion. See, *id.*, "Nass al-Muqabalah al-lati Ajraha Talvision 'al-Mashriq' ma' Samahat al-Sayyid Muhammad Husayn Fadl Allah hawla Kitabih 'Ta'ammulat Islamiyyah Hawla al-Mar'ah Bitarikh Wahid, Tishrin al-Thani, Alfin wa Tis'u Ma'atin wa Arba'atin wa Tis'in," in *al-Mar'a Bayna Waqi'iha wa Haqqiha fi al-'Ijtima' al-Siyasi al-Islami*, p. 77.

discourses on: the relationship between text and context and the role such relationship plays in the formation of gender constructs in Islam; the role that Qur'anic female figure plays in his textual analysis; the major gender assumptions dominating religious, social, and cultural gender views; and the proper Islamic gender view as constructed in his thesis "humane equality" (*al-musawah al-insaniyyah*).

In the beginning of the chapter "The Woman's Personality In the Hub of Life and Her Effective Role" (*Shakhsiyyat al-Mar'ah fi Harakat al-Hayat wa Dawruha al-Fa'il*), Fadl-Allah addresses the question of methodology in examining the subject of women's issues in Islam and the relationship of context to text in the formulation of gender constructs in Islamic ideology. He argues that,

Is the way to discover women's personality, intelligence, faith, and so forth embodied in the religious texts or [does it lie] in the study of the elements of woman's subjective personality, – through her active presence in a living reality; on the level of her openness to scientific horizons; in the depth and scope of her intellectuality; in the nature of her perspective on things around her; in the soundness of her opinions and her honest view of things; in the quality of her inner dedication to the doctrine; in the ways of her belief in God, His messengers, His books, and His laws, – as well as her outer commitments, – dedication to work, endurance, observance of God's prescribed ways; intellectual and spiritual piety in everything; her ability to face challenges in the arena of intellectual struggle while accomplishing her mission; [ability] to face real problems on the ground in the course of struggle?... We believe that the study that delves into the human reality of women, - as that which deals with the human reality of men, - is the best method to lead to balanced conclusions. Thus, we [must first] achieve this, then enter [into the process of] understanding the texts. Based on all of this, we, then, will perceive the nature of the circumstances in which the texts operate and the [nature of their] worldview. Perhaps we can find some evidence, which will dismiss the apparent [meaning] of the text (*zahir al-nass*) in favor of an alternative interpretation, which does not differ from the outer reality [of life]; or to discover the inaccuracy of the Tradition (*hadith*) because of its disagreement with the fundamentals of the doctrine. A matter, which makes it in disagreement

with the religious necessity, obtained from the Book and the Sunna, and so forth.¹²

Fadl-Allah concludes that “in light of what had preceded [in the abovementioned passage], we observe, the difficulty of differentiating between men and women men and women who live in similar political, social, and cultural conditions. Men are not necessarily more cognizant of political, social, and cultural issues than women”.¹³ In support of this argument, the author examines social, cultural, and political realities of past periods, drawing examples from historical female figures in the Qur’an and from contemporary reality.

However, Fad-Allah does not limit his analysis to Muslim female figures such as Fatima al-Zahra¹⁴, Zaynab¹⁵, and Khadija.¹⁶ Rather, he supplants them with Qur’anic female models such as Mary and Bilqis (queen of Sheba),¹⁷ whose activities are stripped of their transcendental character. It is interesting to see how Fadl Allah transformed the tales and their meanings, the providing paradigms that are applicable to modern Islamic society. Fadl-Allah provides a rational interpretation of various dimensions of their personalities by dismissing supernatural factors as the key to their elevated status. By

¹² Fadl Allah, “Shakhsiyyat al-Mar’ah fi Harakat al-Hayat wa Dawruha al-Fa’ il,” in *Ta’ammulat Islamiyyah*, pp. 7-8.

¹³ *Ibid.*, p. 8.

¹⁴ Prophet Muhammad’s daughter and wife of Ali.

¹⁵ Prophet Muhammad’s granddaughter and Imam Ali’s daughter.

¹⁶ The Prophet’s first wife.

¹⁷ Sovereign ruler of her pagan sun-worshipping nation. She is placed in relation to the Yemenite Ma’rib-based Himyarite royal house. For more, see, Barabra Stowasser, “The Chapter of Bilqis, The Queen of

analyzing the realities in which they lived, he argues in favor of paradigms measuring cultural, social, and political determinants as the most significant elements in the formation of gender identities and norms.¹⁸ He explains,

We find no special designation [in the personalities of these women so as to single them out as an exception rather than the norm] except the normal conditions [under which they lived] which guaranteed them opportunities for spiritual and intellectual growth, as well as a practical commitment; to the degree, that a balance [is struck] in the development of one's personal characteristics in a normal manner.¹⁹

Hence, as to the claims that these women are designated by divine decree, which accounts for their personalities and thus considered an exception, Fadl-Allah calls the validity of such claims into question. In illustration of his point, Fadl-Allah turns to the Qur'anic accounts of Mary and queen of Sheba, Bilqis.

The selection of Mary as one of the most virtuous women was carried on the basis of her spiritual devotion to God and her obedience to Him. This is evident, says Fadl-Allah, in the Qur'anic accounts of Mary's personality and life experiences, living under Zacharia's care and facing the unexpected pregnancy and delivery of her child.²⁰

Sheba," in *Women in the Qur'an, Traditions, And Interpretation* (New York: Oxford university Press, 1994), pp. 62- 65.

¹⁸ Stephan Rosiny notes that "Fadl-Allah introduces modern modes of reasoning, especially sociological considerations and psychological reflections, into his thesis. The Saints... Instead, they are stripped of their transcendent characteristics and transformed into representatives or symbols of a program worth of imitation". Rosiny's article provides an excellent insight into Fadl-Allah's "Rationalist" approach which reflects the "Rationalist's School" "adoption of a critical, universalist understanding of religion". See, *id.*, "The Tragedy of Fatima al-Zahra," in *The Twelver Shi`a in Modern Times*, p. 215.

¹⁹ Fadl-Allah, "Shakhsiyyat al-Mar'ah fi Harakat al-Hayat wa Dawruha al-Fa'il," in *Ta'ammulat Islamiyyah*, p. 9.

²⁰ *Ibid.*

According to Fadl- Allah, the presence of the Spirit to guide her, recounted in the Qur'an, cannot be interpreted as evidence of her supernatural status. It is simply an act of Divine compassion supporting Mary at a moment in her life when she is experiencing normal human weakness associated with childbirth. Men, argues Fadl-Allah, would experience similar weaknesses in critical situations.²¹ For Fadl Allah, gender plays no role in the manner in which men and women deal with adverse situations. He argues that there are no differences between men and women in the manner in which they face hardships, for example, being in a position which compromises one's integrity and moral decency and facing society's rejection without any justifiable excuse to account for one's actions (i.e., Mary's pregnancy with Jesus Christ).²²

The story of Bilqis, the queen of Sheba, has eluded Muslim exegetes for centuries. Muslim interpreters overlooked the notion of Bilqis' sovereign rule. Their emphasis was on the tale of her wise decision to submit to Solomon as well as the miraculous aspects of the story. To the best of my knowledge, Fadl-Allah is the first modernist Muslim author who breaks away from classical, modernist conservative, and fundamentalist interpretations and concentrates on the Qur'anic text which describes Bilqis as a female sovereign ruler in her own right.²³ The author argues,

²¹ *Ibid.*

²² *Ibid.*

²³ Barbara Freyer Stowasser's work on the Qur'anic female figures in the writings of classical and modern Islamic works is an excellent study. In her analysis of literature related to queen of Sheba, the author argues that medieval and contemporary interpreters provide legendary material on the subject without searching for the "applicability" of the story, that is, its sociomoral "lesson" for Islamic society. And either classical or modern conservative and fundamentalist religious interpreters do not accept the notion that Bilqis was the sovereign ruler of her nation as part of the Islamic paradigm. Thus, for Stowasser,

When we look at history in the Qur'anic Stories from an angle other than the spiritual one, we learn [e.g.] about Sheba - from what the Qur'an relates to us on her situation and her dialogue with her people upon the arrival of Solomon's letter - how she gathered her people to consult with them on the proper course that she must adopt in response to Solomon's threats. Perhaps, resorting to consultation alludes to the presence of a sound mind by which her personality is characterized. It is that [wisdom] which - in her capacity as a queen - prevents her from deciding the matter except after consulting with her people. This is what God related to us in the Aunt Chapter: "Said (the Queen of Sheba) "O' ye Chiefs! Verily, has been delivered unto me a letter honorable! "Verily it is from Solomon; And it is: " In the name of God the Beneficent, the Most Merciful!" That "exalt not yourselves against me, and come ye unto me submitting (yourselves to God)" Said she: "O' ye chiefs! Advise me in (this) my affair; (ye know) that I decide not any affair but in your view" (verses 29-32).²⁴ Thus, she wanted the men among her people to provide her with the political opinion that might assist [her] and illuminate the decision that she must adopt in such a dangerous situation; however, they restored the matter to her to make that decision [based on what they knew] of the soundness of her mind and her command of her opinion. Thus, they delegated to her the authority of making the final decision. Their role was confined to carrying out her commands [based on what they possessed] of strength and mighty prowess in facing all challenges created by other kings against her sovereignty and against their freedom. [Thus], they said: " We are endued with strength and possess mighty prowess, and to command is thine: so think (well before) what thou wilt command" Said (the Queen): "Verily Kings, when they enter a town (victorious), ruin it and make the noblest of its people the meanest; and thus will they (also) do. " And verily I will send unto him a present, and (wait to) see with what (answer) return the messengers." (The Aunt Chapter, verses 33-35).²⁵

The Qur'an, in Fadl Allah's analysis, provides Belqis as an example of a person who depended on her rational faculties rather than her emotions in making decisions.

The responsibilities associated with her post provided her with leadership skills and the necessary political expertise to command men who found in her a strong and a wise

queen of Sheba's story escapes "paradigmatization". This is not the case here, for Fadl-Allah's work is an example of a modernist whose interpretation of the literature on queen of Sheba's story in the Qur'an considers it as an applicable sociomoral story for Islamic society and as a relevant example of a woman's political sovereign rule as a paradigm of female political sovereignty. For more, see, Stowasser, "The Chapter of Bilqis," in *Women in the Qur'an*, pp. 62-65.

²⁴ Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali (New York: Tahrik Tarsil Qur'an, Inc., 1988).

²⁵ Fadl-Allah, "Shakhsiyyat al-Mar'ah," in *Ta'ammulat*, pp. 9-10.

person competent to run their affairs.²⁶ Fadl-Allah concludes that a woman is capable of overcoming aspects of her feminine weakness, which may negatively affect her judgment and her way of handling affairs. This indicates that such weakness is not woman's decreed destiny of which she cannot rid herself.²⁷

Fadl-Allah's aim is to dispel gender assumptions and theories, which reduce women to weak, emotional beings. He provides examples where women and men have equal qualities -- strength, mental capabilities and practical commitments . In this age, human experience in the spheres of science, culture, and social and political activities provide ample examples of women able to impose their presence and pioneering spirit, women able to challenge, stand steadfast, and break-ground in all domains of private and public life.²⁸ Thus, Fadl Allah's study rests, on the assumption that differences in sex, as a biological function, do not determine nor deter women from attaining equal mental capabilities, strong will, and practical flexibility with men, that is, as long as social circumstances do not hinder woman's intellectual development throughout her life.²⁹ This reformulation of gender has implications for women in general, beyond the Shi'i intellectual circles. It has been noted in a number of Lebanese studies, although class, religion, education, employment, and ethnicity, play significant role in gender ideology and gender roles in Lebanon, they did not uproot the persistent and systematic cultural

²⁶ *Ibid.*, p. 11.

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 13.

²⁹ *Ibid.*

gender bias across the continuum, for Shi'ite women and others.³⁰ In the confessional system of Lebanon, religion does not only serve as the strict and prescribed way of living shaping the lives of its adherents, but also functions as a source of cultural identity (*al-hawiyyah al-thaqafiyah*). Thus, the authority that religious discourses possess in shaping gender discourse gains its legitimacy through the interplay of these two levels. In any case, Fadl-Allah's counter mainstream ideology comes at a time when some women are no longer home-bound but look for ways to weaken the contradictions between changed social realities and cultural identity. Therefore, Fadl-Allah's impact is significant because it forges an alternative, legitimate model of rethinking gender in which Muslim women can lay claim without fearing cultural repercussions.³¹

Let's turn to the Islamic texts and see how Fadl-Allah constructs this alternative model of gender ideology.³² Fadl-Allah asks if a negative Islamic gender view exists, coloring the popular outlook of Muslim people and some Muslim scholars and theologians, based on the theory that women are inferior to men in intellect, faith, and, therefore, social function. Further, he questions if this view is consistent with the

³⁰ See for instance, the study conducted by Jack Qabbanji and As'ad al-Atat on the role of cultural gender ideology in the formation of a cultural gender discourse based on distinctive functions between the sexes. The religious discourses, the media and the press, and educational materials (such as school text books) reinforce such gender ideology. For more, see, *id.*, "al-Itar al-'Am," in *al-Mar'ah al-'Amilah fi Lubnan: Nata'ij Maydaniyyah wa Tahliliyyah* (Beirut: Sharikat al-Matbu'at lil-Tawzi' wa al-Nashir, 1997), pp. 34-41.

³¹ An acquaintance noted to me that as soon as the book was published, it was sold out.

³² I am not claiming here that Fadl-Allah is the first in Lebanon to provide such arguments. He is though the first clergyman to rearticulate an ideology resonating that of the Feminists of the 1960s into modernist Islamic discourse. Also, Fadl-Allah's work, according to the author, although aired before the 1990s, its rise to significance in the 1990s came as a result of a noted absence of potent contending secular and feminist's ideologies.

Qur'anic outlook.³³ His thesis focuses on the ways in which women's lived reality is reconciled with the text. Fadl-Allah does not accept the reconciliatory approach adopted by some Muslims between reality and text, in the desire to make Islam contemporary and expose it to the whims of contemporary intellectual currents. Hence, he argues,

We are not interpreting the Qur'anic or prophetic texts in favor of this theoretical conclusion in the study of reality, on the basis of reconciliation between the human experience and the text... We do not adopt such reconciliatory approach which stems from the idea of making Islam contemporary [*'asranat al-Islam*] by exposing it to unexpected changes ensuing from the hegemony of a particular ideology concerning man's activities in contemporary reality- far away from life's truths on the level of its authentic reality... The issues, for us, are to begin from the Islamic truths embodied in the categorical Qur'anic or prophetic texts in order to confirm them on the level of reality [based] on the clear elements found in the explicit text. This [fact] is what confirms to us our Islamic convictions concerning our commitment to [a given] ideology or our operation according to [a given] Shari'a. And if we study life [e.g., reality] in its authentic elements, we do it according to our belief that Islam does not disavow the truths but ascertains them and operates, in its law making, on the basis of harmony with them. This leads us to the reconsideration of the texts that are explicitly in disagreement [with such truths], in order to work on discovering some hidden elements which may lead to an alternative way of understanding; so that [the implicit meaning] of such texts would function as an internal evidence contrary to the apparent meaning of the text [*iradat khilaf al-zahir*]. This is the issue we want to raise in our discussion on discovering Islam's authentic view of woman- in her humanity as a whole on the level of her responsibility before God.³⁴

In the above passage, Fadl-Allah touches on two aspects of the relationship between text and context. First, he speaks about categorical Qur'anic or prophetic text. Second, he speaks about non-categorical texts. On a different occasion,³⁵ the author explains this second relationship (between non-categorical text and context).

³³ Fadl-Allah, "Shakhsiyyat al-Mar'ah," in *Ta'ammulat*, p. 13.

³⁴ *Ibid.*, p. 14.

³⁵ See "Hiwar al-Ustadhah Zaynab Jum'ah: al-Mar'ah bayna al-Nas wa al-Waqi'," in *al-Mar'ah bayna Waqi'ha wa Haqqiha fi al-Ijtima' al-Siyasi*, pp. 52-54.

Considering non-categorical texts (in Usuli terminology *al-zawahir*) (i.e., texts that do not contain categorical prescriptions, or that are not open to interpretation), Fadl-Allah argues that they cannot be regarded as 100% conclusive. Such texts convey only seventy percent of their apparent meaning while the remaining 30% is considered contrary to the apparent meaning (*khilaf al-zahir*) and accounts for alternative interpretations.

In Islamic jurisprudence, apparent meanings (*al-zahir*) are considered a legal proof (*hujjah*). After establishing the meaning of the text in this manner, jurists examine the historical and political context of the it. If the circumstances point to the peculiarity of the case, the jurists restrict applying the text only to those specific circumstances. In other instances, the text is compared and contrasted to other similar texts to test its reliability. In the absence of another text to illuminate the apparent meaning of the text, the jurists turn then to the lived reality. If they find through their daily interaction with their environment that the text contradicts reality, they forgo the text in favor of reality. This process is called in usuli science- disregarding the text (*tarh al-nass*), not forgoing the text altogether, but discarding its relevance to this specific activity. Otherwise, jurists may look for possible alternative interpretations.

A similar procedure is used when jurists forgo *naql* (transmitted texts on the authority of Prophet Muhammad, the Imams, and their companions) in favor of categorical rational proof (*al-hukm al-'aqli al-qat'i*). In the Qur'an, for example, the following verse illustrates this principle: "...[F]or, verily God leaveth to stray [yudillu man yasha'] whomsoever He willeth and guideth He whomsoever He willeth, so let not thy self go (*in vain*) in grief for them; Verily God knoweth all they do" (The Originator:

8).³⁶ The jurists argue that the key word here to go astray (*al-dalal*) does not mean “to lead astray”. It is impossible for God to lead some people astray and then hold them accountable for their actions. In light of this, jurists reinterpret the key words in order to provide other possible meanings. In this case, going astray (*al-dalal*) means that God removes his compassion and forsakes the person in question. In cases where the probability of the rational proof is 60%, it is considered rational assumption (*hukm `aqli zanni*). In this case, transmitted text (*al-naql*) takes precedence.³⁷ The text’s motion, thus, according to Fadl-Allah, operates in tandem with the motion of reality.³⁸

The relationship between text and context is central to Islamic jurisprudence. It has created many debates among scholars, both in and out of Islamic circles. Fadl-Allah’s analysis illuminates one aspect of it, (i.e., non-categorical texts). An increased number of juridical reinterpretations regarding gender rulings fall under this category. A similar question, however, arises in conjunction with categorical texts. By what means can Shi`i jurisprudence account for living reality when dealing with categorical texts, particularly in relation to gender rulings? Upon closer evaluation of women’s reality, Fadl-Allah concludes that women are not in any way weaker than men and there are no biological bases for assumptions that reduce women’s existence to such a dimension. Having arrived at this conclusion, Fadl-Allah turns his study to Islamic texts, primarily the Qur’an. But what should be done, with categorical texts that stand in contradiction to

³⁶ Quoted from the *Holy Qur’an*, trans. S.V. Mir Ahmed Ali.

³⁷ Muhammad Husayn Fadl-Allah, “Qadiyyat al-Mar’ah: al-Ahamiyyah wa al-Manhaj,” in *Dunya al-Mar’ah*, pp. 24-25.

certain lived realities? According to Fadl-Allah, the text takes precedence in such cases simply by virtue of its divinity, which assures its continuity. For instance, this is true in cases of Qur'anic verses dealing with men's unilateral right to divorce, polygamy, and blood-retribution, he continues. It is not surprising then, to find Fadl-Allah contradicting his earlier statements when considering such issues as polygamy. If this is the case, at least on the theoretical level, then the gender-biased constructs, no matter how limited these are, and subsequent gender rulings must remain intact, even in instances where gender inequality is clear. For these reasons, no amount of twisting and manipulation of Qur'anic injunctions and instructions about women's rights and obligations could make Islam compatible with the idea of gender equality³⁹ as such as long as certain aspects of its teachings are systematically upheld and continued as a source of subordination to women. That said, numerous examples in Islamic jurisprudence show that when it comes to actual application of the Shari`a, more often than not, the lived reality is taken into consideration. This leads to a situation where gender equality is achievable in the practical application of the Law, even though it is not fully ensured on the theoretical level. Thus, Islam's contingent character may be instrumental here.⁴⁰ I shall leave a more detailed discussion of this topic for the next chapter. Let me now turn to Fadl-

³⁸ Fadl-Allah, "Hiwar al-Ustadhah Zaynab Jum`ah: al-Mar`ah bayna al-Nas wa al-Waqi'," in *al-Mar`ah bayna Waqi`iha wa Haqqiha fi al-Ijtima` al-Siyasi*, p. 53.

³⁹ Haideh Moghissi, "Feminism and Islamic Fundamentalism," in *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* (London & New York: Zed Books, 1999), p. 140.

⁴⁰ Although I agree with Moghissi that, on the theoretical level, the sexual hierarchy identified in the Qur'an precludes Islam's compatibility with "gender equality" as such, I disagree with her that Islam's contingent nature does not even allow such possibilities. Such general statement ignores the complexities and fluidity of the Islamic legal system. Such fluidity allows for gender equality in the application of the Shari`a, which, at the end, yields the same desired results.

Allah's analysis of what constitutes the true Islamic view on women as expounded in the Qur'an.

Fadl-Allah questions: "Is there [anything] in the Qur'an which negates the existence of common elements in men's and women's personalities, as far as their fundamental nature is concerned?"⁴¹ Fadl-Allah addresses three points raised in the Qur'anic verses which could be interpreted as favoring the view of women's inferiority:

Various rulings determining that a woman's share in inheritance is half of that of a man (e.g., The Women: 11);⁴² similar weight is assigned to the testimony of a woman in court (The Cow: 282)⁴³;

The terms dominion (*qawwamah*) and a degree above (*darajah*) in the Qur'anic verses (The Women: 34; The Cow: 228)⁴⁴, which appear to allude to women's inferior status in comparison to men;

The verse suggesting that God views women as sexual objects governed by weaknesses of their nature that prevent them from taking an effective and serious role in life (The Ornaments of Gold:18).⁴⁵

⁴¹ Fadl-Allah, "Shakhsiyyat al-Mar'ah," in *Ta'ammulat*, p. 14.

⁴² The verse reads as follows: "God enjoineeth you about your issues! The male shall have the equal of the shares of two females..." Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali.

⁴³ The Qur'anic verse reads as follows: "...then call to witness two witnesses from among your men and if there not be two men, then (*take*) a man and two women, of those ye approve of the witnesses, so that should one of the two (*women*) forget the (*second*) one of the two may remind the other..." *Ibid*.

⁴⁴ These two verses and the key words considered in the text have been discussed in Chapter two.

The three verses do not, according to Fadl-Allah, indicate the inferiority of women's human status to that of men's. The inheritance laws, for example, point to the nature of dividing wealth according to the economic roles shouldered by the inheritors, which necessitate the balancing between women's and men's shares.⁴⁶ Another such example occurs when children's share in inheritance is greater than that of their fathers'; this by no means implies the superiority of the children over the father in respect to their human value before the law.⁴⁷ The verse regarding court testimony, argues Fadl-Allah, is merely a precaution to safeguard justice. It does not signify women's inherent deficiency. Rather, the second testimony is considered a matter of precaution and a measure of ascertaining justice in case one woman forgot. As similar situation is found when rulings require two male testimonies for some cases.⁴⁸

In the second point, Fadl-Allah says, dominion (*qawama*) is confined to marital life where men oversee women's affairs due to their financial obligations toward the family, and does not necessarily point to women's shortcomings in any arena of intellectual competence or insight. If some interpret the term to extend to all domains,

⁴⁵ The Qur'anic verse reads as follows: "What! The one which was brought up amidst ornaments and in disputes can make not itself plain (*to be associated with God*)". Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali.

⁴⁶ Fadl-Allah, "Shakhsiyyat al-Mar'ah," in *Ta'ammulat*, p. 15; *id.*, "Al-Mar'ah fi Mizan al-Huquq," in *Dunya al-Mar'ah*, pp. 111-113; and, *id.*, "al-Nadwah al-Hiwariyyah li-Samahat Ayat Allah al-Sayyid Muhammad Husayn Fadl Allah 'Qira'ah Jadidah li-Fiqh al-Mar'ah al-Huquqi," in *Qira'ah Jadidah*, pp. 26-27.

⁴⁷ *Ibid.*

⁴⁸ Fadl-Allah, "Shakhsiyyat al-Mar'ah," in *Ta'ammulat*, pp. 15-16; and *id.*, "Al-Mar'ah fi Mizan al-Huquq," in *Dunya al-Mar'ah*, pp. 116-118; and, *id.*, "al-Nadwah al-Hiwariyyah li-Samahat Ayat Allah al-Sayyid Muhammad Husayn Fadl-Allah 'Qira'ah Jadidah li-Fiqh al-Mar'ah al-Huquqi," in *Qira'ah Jadidah*, pp. 28-29.

such as position of judge and head of state, Fadl-Allah argues that this verse is not intended to provide a universal ruling, but only a ruling pertaining to marriage. The man is obliged to give material support to his wife, not as a woman, but as a wife, just as he is obliged to support his daughter as a daughter and not as a woman.⁴⁹ If, argues Fadl-Allah, this ruling were intended to applied universally, they would probably appear under some other topic (e.g. judgeship, statesmanship, jihad, etc.), rather than marriage, and then the proper term would be general dominion (*qaymumah*). The other term, a degree above (*darajah*), also implies, in Fadl-Allah's view, "degree above" in conjunction to man's unilateral right to divorce in the specific context of conjugal right.⁵⁰

As for the third point, Fadl-Allah argues that it also does not point to any weaknesses in the nature of women, but refers to the environment in which women are brought up and conditioned to act as sexual objects for men. Fadl-Allah goes even further to suggest that the verse may allude to the possibility that providing women with a different socio-cultural context would lead to positive effects on them. In any event, even if the verse does not point in that direction unequivocally, it does not, at least, suggest any woman's natural weakness.⁵¹

⁴⁹ Fadl-Allah, "Shakhsiyyat al-Mar'ah." in *Ta'ammulat*, pp.15-17; and *id.*, "Al-Mar'ah fi Mizan al-Huquq," in *Dunya al-Mar'ah*, pp. 89-90; and, *id.*, "al-Nadwah al-Hiwariyyah li-Samahat Ayat Allah al-Sayyid Muhammad Husayn Fadl-Allah 'Qira'ah Jadidah li-Fiqh al-Mar'ah al-Huquqi," in *Qira'ah Jadidah*, pp. 24-25.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

In many ways, Fadl-Allah's discourse bears the imprint of feminist discourses of the 1960s:⁵² "woman's weakness is not her destiny", "woman can attain masculine qualities", "socialization is responsible for woman's detrimental status", "men and women realizing the greater humanity" and so forth. While Fadl-Allah's predecessors, such as al-Sadr, opened ways for Muslim women's participation in the public sphere, still much of the gender discourse construed women as helpers to men. Women's images were constructed not in and of themselves as agents, but only in relation to men. Fadl-Allah takes the debate a step further and argues against gender as a construct for the assessment of the Qur'an's view of female/male constructs. Rather, he suggests that the whole debate be placed within discussions on humanity. Thus arguing for a "humanistic paradigm". Instead of speaking of gender, he speaks in terms of humans in their own right, moving toward the completeness, harmony (*takamul*) in the greater cosmos. For Fadl-Allah, the Qur'an speaks of this greater world in which men and women occupy positions in their own right and in which "femininity" and "masculinity" occupy a small part in relation to their humanity. The Qur'anic verse (The Clans: 35)⁵³ illustrates this perspective.⁵⁴

⁵² Dalal el-Bezri, "Tawq al-Islam al-Jadid," in *Bahithat* 1 (1994-1995): 93.

⁵³ The Qur'anic verse reads as follows: "Verily the Muslim men and the Muslim women an the believing men and the believing women and obedient men and the obedient women, and the truthful men and truthful women, and the patient men and the patient women, and the humble men and the humble women, and the alms-giving men and the alms-giving women, and the fasting men and the fasting women, and the men who guard their private parts and the women who guard (their private parts) [italics the author's], and the men who remember God (*much*), and the women who remember God (*much*), for them hath been prepared forgiveness and a great recompense". Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali.

⁵⁴ Fadl-Allah, "Shakhsiyyat al-Mar'ah," in *Ta'ammulat Islamiyya*, p.19.

This verse discusses men and women together in their active life (unrelated to their functions as fathers, mothers, or spouses), in two circles: negative and positive. Furthermore, this verse does not endow men with larger, more important roles than women and does not isolate either from their respective responsibilities in life while maintaining their private roles (fatherhood, motherhood, marriage). Perhaps, says Fadl-Allah, “ it is the public role that [extends] to the private role and charges it with its humanistic spirit; [such process produces] positive influences on human’s mind and spirit, which extends to encompass [human’s] reality... ”.⁵⁵

Some Islamists, according to Fadl-Allah, have a problem in their view of women, defining her solely as a sexual being, (i.e., one who opens up to the world through her sexuality and reproductivity). Woman’s life on every level - subjective, moral, and social, - is then reduced to this view, which precludes any other perspective, including ones that take a woman’s broader humanistic dimensions into account, viewing her as a being capable of imbuing life with intellectuality, dynamism, and innovation. The same people, argues Fadl-Allah, have no qualms about viewing men differently, even though one does not find any differences between men and women with respect to their sexual function (e.g., the instinct to achieve physical release; the urge to reproduce to ensure the survival of the human species).⁵⁶

⁵⁵ *Ibid.*, p. 24.

⁵⁶ *Ibid.*

Others raise the issue of women's motherhood as the most significant and fundamental role that Islam requires of them, says Fadl-Allah. It is true that women experiences contain aspects of motherhood (such as pregnancy and breast-feeding) on the physical level, but motherhood, in Fadl-Allah's opinion, is the same as fatherhood on the level of shared responsibilities. Why is it then, inquires Fadl-Allah, that one must regard motherhood as the primary task for women and not view fatherhood as the primary task of fathers? The man's role as a father does not exclude him from practicing his life as a human being and as a Muslim on every social, intellectual, and political level. Should then woman's role as a wife, or a mother cancel her social functions?⁵⁷ Fadl-Allah concludes: "Thus, motherhood and fatherhood represent but two features of the many features that govern human relations which God willed for them to move through life in interrelated cycles; at the same time Islam imposes on the father and the mother the duty to conform to the general outlines that govern all humanistic features in all human's activities..."⁵⁸ He states,

The emphasis on woman's role as "head of household" is equal to emphasis on man's significance in his role as "head of household", neither of which cancels the necessity to operate in the path of humanity which extends to embrace human's reality on the basis of Islam's openness to all of that [reality's] issues, big and small; on the righteousness of the path in line with the objectives and [in line with] rising up against corruption.⁵⁹

Fadl-Allah further argues,

⁵⁷ *Ibid.*, p.22.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* p.23.

that [such is] what one infers from the Qur'anic verses [the Repentance: 71]⁶⁰ which assign believing women the responsibility of enjoining good and forbidding evil as it assigns believing men; and the issue [responsibility of enjoining good and forbidding evil] extend in its social hints suggesting an Islamic humanistic integration in [the domain] of *al-wilayah* [e.g., in the general guardianship] to the degree that [men and women] become guardians to one another (*awliya' ba'd*) by working together, helping and backing each other and cooperating together in all aspects of their common life...⁶¹

Despite the fact that Fadl-Allah's theory is formulated in a way to close the distinctive gaps created in the gender ideology between masculinity/femininity, male/female, man/woman as basis for gender bias in the general dominions in life, he does not advocate for equality of rights and obligations before the law. He provides an alternative definition for gender equality which sets it apart from the western notion of "gender equality". Fadl-Allah calls it "humane equality" ("*al-musawah al-insaniyyah*"), a definition that shares some aspects of al-Sadr's "equality in genus" "*al-musawah al-dhatiyyah*". The author does not agree with an equality that denies the specifics of masculinity and femininity, so that man and woman become sexless and, as a consequence, are granted equal obligations and rights.⁶² For Fadl-Allah, equality means to rule for men's and women's parity in humanity. At the same time, justice, does not require evenness of their respective roles. For it is not, argues Fadl-Allah, unjust for women to get pregnant and for men not. Instead, justice necessitates the granting of each

⁶⁰ The verses read as follows: "And for the believer men and believer women, they are guardians to one another; they enjoin good and forbid evil and they establish (*the regular*) prayer and pay the poor-rate and obey God and His Apostle (*Muhammad*), These, God will bestow on them his mercy; Verily God is All-Mighty, All-Wise". Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali.

⁶¹ Fadl-Allah, "Shakhsiyyat al-Mar'ah," in *Ta'ammulat Islamiyyah*, p.23.

⁶² Muhammad Husayn Fadl-Allah, "Waqi' al-Mar'ah Bayna al-Madi wa al-Hadir" in *Dunya al-Mar'ah*, pp. 36-37.

human being his or her rights as far as he or she is a human being.⁶³ But Fadl-Allah's conceptualization of the western notion of gender equality misses the point. The western notion of "gender equality" does not ignore sex, or any other mark of difference for that matter. Today's feminists "no longer find it constructive to insist on the modernist idea of "sameness" in men and women as a basis for claiming equal rights". Feminists today stress the differences between men and women and among women. They define equality as " ' indifference to difference for the purpose of ending economic discrimination' ".⁶⁴ Although *Ta'ammulat Islamiyyah* and Fadl-Allah's subsequent works contain an attempt at reconceptualizing major ideological gender assumptions relating to women, this is achieved by: rethinking gender assumptions reducing women's lives to mere sexual and reproductive dimensions; re-evaluating women's socio-economic, political and cultural realities to correctly assess their situation; viewing women as subjects in their own rights; addressing female paradigms from the Qur'anic past, and from contemporary reality, as evidence that women are capable of performing equal tasks with men in all aspects of life; and by considering, however briefly, the role of the text and context.

Upon further examination of Fadl-Allah's views, differences between the sexes, no matter how minimal, continue to account for many instances of gender discrimination. This discrimination is evident in privileging men in the family as head of household and as beholder of the unilateral right to divorce, acknowledging, that the family system in Islam is a patriarchal one. Also, he defends men's right to polygamy

⁶³ *Ibid.*, pp. 50-51.

⁶⁴ Moghissi, "Women, Modernity and Social Change," in *Feminism and Islamic fundamentalism*, p. 96.

and calls for the preserving its legal aspects, arguing that history knew polygamy, legally and illegally, and suggesting that it be viewed as an alternative arrangement even though monogamy is considered the origin in Islamic marriage.⁶⁵ But polygamy is restricted to men; for as long as the family system is patriarchal, women cannot have equal access to polygamy. Fadl-Allah also argues that women are known historically not to look for variety in their sexual activities.⁶⁶ This assumption may reflect the author's living environment where women tend not to publicly announce their sexual experiences. In addition, no studies are available to contextualize Fadl-Allah's statements. Further, This part of his argument ignores studies conducted in United States, which point to an increase in multiple relations among women and, although the percentage of men engaged in such relations exceeds that of women, the difference is minimal.

By and large, Fadl-Allah's work began a major rethinking of Islamic gender constructs and had, on some level, positive ramifications for young Muslim Shi'i women. But the question remains. Can Fadl-Allah, as an innovative and rationalist reformer, succeed in the future to find a theoretical basis for "gender equality" in Islamic text, observing, the general objectives of the Shari'a which require one to free oneself from bondage and domination, not its detailed specificities? In my opinion, it will take a very courageous theologian to publicly announce the theoretical basis for "gender equality" under the current social and cultural norms of the Muslim community.

⁶⁵ Fadl-Allah, "Ta'addud al-Zawjat," in *Ta'ammulat Islamiyyah*, p. 157.

⁶⁶ *Ibid.*, pp. 157- 159.

Recently, I came across recent legal books authored a number of leading Shi'i jurists. I was astonished to find the precondition of maleness under the heading listing the prerequisites for assuming the position of jurisconsults (*marja`*) or jurisprudent (*mujtahid*). Although debated in juridical works and although women were legally permitted to assume such positions, maleness continued to appear in print to avoid irritating the ire of the conservatives, offending their culturally sanctioned gender biases.

Following in the footsteps of Fadl-Allah , Muhammad Mahdi Shams al-Din, the second jurisprudent (*mujtahid*) whose views on women I shall briefly consider here, has also contributed to the process of rethinking gender issues in Islam. Shams al-Din was born in Iraq in 1936 and received his education as a student of Islamic jurisprudence. Although he shared many of al-Sadr's aspirations concerning reformation of the Shi'i community, Shams al-Din preferred to dedicate his time to intellectual and educational endeavors. Al-Sadr disappeared during a trip to Libya in 1978. The burden of responsibility for fulfilling the goals outlined by al-Sadr weighted heavily on the chairman of SISC, Muhammad Mahdi Shams al-Din. He had to fill gap that al-Sadr's disappearance left behind.

Upon his return to Lebanon, he participated in a number of educational activities, including: teaching, attending sermons, and weekly meetings, publishing a series of books,⁶⁷ and establishing academic and vocational institutions, centers for the needy and

⁶⁷ Shams al-Din is a prolific and versatile writer. He has written extensively on different subjects such as history, politics, Islamic jurisprudence, and so forth. For more information on his scholarly work, see, Farah Musa, *Sheikh Muhammad Mahdi Shamseddine between the Glow of Islam and the Ice Doctrines* (in Arabic) (Beirut: Dar al-Hadi, 1993), pp. 57-62.

orphanages. For instance, The Social and Cultural Center of al-Sayyidah Zaynab, the Technical Islamic Center, and Duha Elementary School.

At the height of intellectual debates on women and gender in Islam, Shams al-Din, following Fadl-Allah's example, published four books in a series entitled, *Sensitive Issues in Women's Jurisprudence (Masa'il Harijah Fi Fiqh al-Mar'ah)*. In these books, he gives examples of his own legal interpretation (*ijtihad*) of juridical issues covering moral decency (*Touch and Sight (al-Lams wa al-Nadhar)*), women's occupation of the office of head of state and judge (*Women's Qualification to Assume Leadership Ahliyyat al-Mar'ah li Tawalli al-Sultah*), marriage and women's rights to employment (*Marital Rights and The Right to Work (Huquq al-Zawjiyyah wa Haqq al-'Amal)*).⁶⁸

Shams al-Din's works are primarily juridical. His discussions on gender ideologies are treated as part of his analysis of gender-biased arguments that are provided by different sources as bases for legal gender biased rulings. For instance, in *Women's Qualification to Assume Leadership (Ahliyyat al-Mar'ah li Tawalli al-Sultah)*, he refutes arguments in conjunction with his juridical work on women's rights to occupy the post of the head of state and any other political offices. In the chapter entitled "Agreeable Options" (*al-Wujuh al-Istihsaniiyah*), he argues that those who ban women from occupying certain judicial and political offices in Islam base their arguments on women's gender shortcomings and men's natural superiority. They argue that in their very nature,

⁶⁸ See Muhammad Mahdi Shams Al-Din, *al-Lams wa al-Nadhar (Touch and Sight)*, vol. 1 (Beirut: Dar al-Mu'assasa al-Dawliyya lil Nashr, 1996); *Ahliyyat al-Mar'ah li Tawalli al-Sultah (The Qualification of Women for the Occupation of Post of Head of State)*, vol. 2 (Beirut: al-Mu'assasah al-Duwaliiyyah lil Nashr, 195); and *Huquq al-Zawjiyyah wa yalih Haqq al-'Amal lil Mar'ah (Conjugal Rights Followed by Women's right to Work)*, vols 3 & 4 (Beirut: al-Mu'assasah al-Duwaliiyyah lil-Dirasat wa al-Nashr, 1996).

both physiologically and psychologically, women and men differ from each other; with women being emotional and sensible and men being rational and hardheaded. Therefore, each one must occupy the position that is suitable to one's nature.⁶⁹ It is not befitting for women, therefore, to work in domains such as law, politics and defense, because such areas demand rationality. In critical cases before the law, the accused or the defense lawyer might easily sway them [women] and, their tender nature would lead them to the wrong judgment.

Some argue, continues Shams al-Din, that justice does not translate into equality but does necessitate fairness between men and women, based on their natural physical and psychological differences. Thus, rulings banning women from occupying certain offices in Islam are not oppressive, instead, they are just.⁷⁰ Shams al-Din refutes such claims arguing that recent experiences have proven men and women to possess equal rational abilities, and any discrepancy between them is only limited to women's physical and psychological differences associated with motherhood. In and of itself, this is not a sufficient ground for banning women from occupying any of the aforementioned positions. As far as justice and fairness are concerned, Shams al-Din argues that they demand that not just any man can be elected for the office of, say, a judge, but only the one who is considered the most wise and rational among his contemporaries, one who not characterized by his sensitivity or emotions, though such potentials are equal in men

⁶⁹ Shams al-Din, *Ahliyyat al-Mar'ah li Tawwali al-Sultah*, pp. 131-132.

⁷⁰ *Ibid.*, p. 132.

and women.⁷¹ For those who believe women's primary obligation to be motherhood and marriage, Shams al-Din advances an argument similar to the one found in Fadl-Allah's writings: such responsibilities are as equally demanding in fatherhood, though males are not precluded from pursuing other public interests.⁷²

What I also find interesting in this work is Shams al-Din's position that stories related in the Qur'an on female models such as Mary, Queen of Sheba and so forth, although briefly analyzed, are not merely there to provide historical information, but also to serve as both a socio-moral lesson to women and men and as a general Qur'anic outline to govern Islamic law. Such accounts point not to individual examples for women per se but to ways in which societies operate on a collective level. Shams al-Din is suggesting here that the Qur'anic "spirit" (referred to as *maqasid al-Shari'a aw al-Qur'an* ("objectives" or *rationes legis*) should illuminate the specificities and particularities of *fiqh* and, conversely, what is in accordance with the Qur'anic spirit in the *fiqh* rulings should survive and what is not should be discarded.⁷³ Unfortunately, Shams al-Din discusses the matter briefly and does not make a comprehensive argument in this particular work nor does he provide sufficient examples to show how such an approach can affect change in Islamic gender issues.

The third person considered here is al-Sayyid Muhammad Hasan al-Amin, a Shi'i scholar known in the field of the judiciary (*qada'*). He presided over Lebanese

⁷¹ *Ibid.*, p. 136.

⁷² *Ibid.*, p. 10.

⁷³ Shams al-Din, *Huquq al-Zawjiyyah wa yalih Haqq al-'Amal lil Mar'ah*, pp. 240-242.

Shi'i courts as its supreme Shar'i judge (*qadi al-Shar'*) dealing with personal status laws.⁷⁴ He was born in Lebanon in 1946. He received his theological education and training in Lebanon and Iraq. Muhammad Hasan al-Amin has not produced any written work on gender but has contributed to a number of articles and participated in a number of seminars in which he expressed his opinion on the subject in his capacity as a cleric and chief judge of The Ja'fari Court (*al-Mahkamah al-Ja'fariyyah*) in South Lebanon. In his presentation on the issue of women's legal rights (specifically in the domain of family laws) in Islam, *The Position of Women's Legal Rights Between the Constant and the Changing (Wad' al-Mar'ah al-Huquqi bayna al-Thabit wa al-Mutaghayyir)* and in his article "Observations and General Outlines on the Subject of Marriage and the Family in Islam" ("Mulahazat wa 'Anawin fi Mawdu' al-Zawaj wa al-Ussrah fi al-Islam"),⁷⁵ al-Amin airs his perspective on gender. The topics range from women's position in Islam, Islamic legal system's stance on women and its application, and the gap between theory and practice in the Lebanese Shi'i community and, in general, the wider Islamic societies, to the necessary measures that the community must adopt to ensure women's legal rights on theoretical and on the practical levels. I will leave his legal arguments for the next chapter and deal here specifically with his gender ideology.

Broadly speaking, al-Amin's gender ideology is in congruence with the gender arguments advocated for by the Shi'i theologians considered in this paper. Al-Amin,

⁷⁴ Lebanon recognizes 18 formal sects with their own courts to deal with personal status laws.

⁷⁵ Markaz Shu'un al-'Amal al-Nisawi, *Wad' al-Mar'ah al-Huquqi bayna al-Thabit wa al-Mutaghayyir: Nadwah Hiwariyyah ma' Samahat al-'Allamah al-Sayyid Muhammad Hasan al-Amin*, Silsilat Mansurat Markaz Shu'un al-'Amal al-Nisawi, no. 3 (Beirut: Dar al-Thaqalayn, 1997); Muhammad Hasan al-Amin, "Mulahazat wa 'Anawin fi Mawdu' al-Zawaj wa al-Ussrah fi al-Islam," *al-Anwar* (Beirut), 24 January 1998.

however, diverges from them, claiming the family unit in Islam as the fundamental reason behind certain male privileges that persist and supersede time and place (such as man's dominion (*qawwamah*) and a degree above (*darajah*) and a man's share in inheritance laws which is equal to twice the share of a woman). Such gender constructs for al-Amin are closely related to Islam's ideological stance on the family which is considered a constant entity and not an "institution". Before I discuss al-Amin's argument on this subject, let's first see how, in al-Amin's opinion, the public debate on gender is treated. Al-Amin argues that the issue of gender must be contextualized in the broader socioeconomic and political contexts of Third World countries. For instance, he situates the contemporary gender debate within the larger global context of imperialism and Western centrism which, in his opinion, deliberately magnify the issue of gender so as to minimize the more significant issues of economic regress, poverty and political sovereignty in Third World countries.⁷⁶ Upon further observation of the Western society, argues al-Amin, one finds that the number of human rights attained there in general, and gender rights in particular, do not view the "family" as a constant unit. Rather, they view it as an "institution" capable of developing, attaining its own goals and, upon their attainment, dissolving. As a result of the disintegration of the family, the West engaged in debates on the contemporaneous problems facing the family, among which emerged the issue of women's equality. In the specific context of Third World countries, non-Christian countries, and Islamic societies, one finds that the issue of women cannot be treated separately from broader issues facing these societies; thus, one cannot speak of

⁷⁶ Al-Amin, "Muhadarah lil-Sayyid Muhammad Hasan al-Amin fi Qa'at al-Jinan hawla 'Wad' al-Mar'ah al-Huquqi bayna al-Thabit wa al-Mutaghayyir," in *Wad' al-Mar'a al-Huquqi*, pp. 22-23.

man's issue or woman's issue but societal issues. Any aspect of backwardness and lack of progress in these societies is accompanied by social, political, economic, and human rights issues. Therefore, debating the issue of women's rights in these countries must be debated within that broader context.⁷⁷

Although political, social, and economic factors do impact women's lives, women as *women* are systematically discriminated against, a fact ignored in al-Amin's argument. Let me turn now to al-Amin's gender perspective with regards to Islam's stance on women's legal rights. al-Amin makes the following points: 1) following Islam does not prevent man from progress and development in any domain—cultural, spiritual, social, epistemological, social, technical, and technological;

2) following the fundamentals of Islam, however, does not by itself translate into prosperity and progress. Islam is not a magical wand nor can it replace man's power of reasoning. Such aspiration, according to al-Amin, contradicts the essence of Islam which views man as a free being capable of exercising one's mental faculties to arrive at solutions to one's life. Hence, every legal system must provide a space termed in Islamic legal writings as discretionary areas (*manatiq faragh fi al-Shari`ah*); any legal system that does not provide this maneuvering space is not considered a beneficial system. The Shari`a, according to al-Amin, does not directly provide a solution to every problem. The Shari`a observes the evolving nature of man and, as such, its legal system should not be decisive as to limit such development. Man has the freedom to fill such gaps with whatever meets the demands of a human society undergoing change.

⁷⁷ *Ibid.*, pp. 21-22.

Many of the Qur'anic and hadith texts are open for an indefinite number of interpretations. Any particular reading of the texts does not express the objectives of the texts conclusively; it provides a particular understanding in a given period of time, at a particular stage. Thus, one cannot speak of conclusive solutions to a number of problems, especially those pertaining to women's issues. Any assumption in that regard is beyond *fiqh* reality, which is always in process of change and development, in contrast to Shari'a which is constant. The evolving *fiqh*, thus, represents jurists' own construction of what the immutable Shari'a may be, and as such is always particular and relative; 3) women are absent from some domains and do not occupy political, administrative and social positions, leading to the mistaken conclusion that Islam is the cause behind such phenomenon. I do not deny, continues al-Amin, that in a number of instances Islam has been interpreted to support male authority; (i.e., that a society which advances male's authority will reflect upon the Islamic text in relation to issues of life, man in general, and women in particular). Thus, the aforementioned characteristic present in Islamic society, continues al-Amin (whether it is called male proclivity, male dominance, male authority) could have contributed, to some extent, to the understanding of texts on women and their rights in a manner that guarantees men's privileges over those of women's. On the practical level, "I acknowledge," says al-Amin,

Here I am referring to the legal institutions such as Islamic courts which deal with personal status and the relation between men and women, that the measures followed in these courts did not develop in line with the potential and possibilities that exist in the Shari'a for development. These rulings applied in the courts, in many instances, in my capacity as a judge, I feel that they are not just to women. For instance, a man divorces his wife after twenty years of marriage. The only financial security such woman is entitled to is her bridal gift, which in many instances, is very limited and does not provide a financial security to the woman.

What is this woman's life and destiny after the marriage? Is it possible for the Shari`a to let her go without any security?⁷⁸

Al-Amin poses these questions and argues that it is the responsibility of the jurists to find solutions to women's problems such as the one mentioned in the above passage. This shortcoming in Islam is the responsibility of jurists and not the Shari`a. In this case, one must redefine the concept of a man's wealth accrued during marriage. The man's wealth could not have accumulated without two contributing factors: man's work outside the house and woman's work in the house. In such case, al-Amin argues, it is not the responsibility of the Shari`a to teach Muslims that there could be two contributing factors for the accumulation of wealth, it is the responsibility of the jurists who must actively seek to get involved in people's lived realities.

The Shari`a, thus, provides space for juridical interpretation which can contribute to the elimination of biases against women. The Shari`a is not a subject in a book; it must be woven into the fabric of reality, to transfer the text to reality, to become a humane project, according to al-Amin. Any failure in this respect is considered a mark of backwardness inflicting not only society, but also jurists first and foremost. Despite the space created in the Shari`a to address issues of gender (such as women's testimony, which in his opinion, is historical and cannot be considered as normative), al-Amin upholds man's headship of the household, his right to divorce, and his right to greater share in inheritance. Such rights, in his opinion, constitute the core elements that ensure the stability of the family, since in Islam, the family is not considered an institution with potential for change in tandem with society's evolution. In this regard, however, such

⁷⁸ *Ibid.*, p. 28.

rights are restricted and are not in any way intended to give man free reign. Thus, man's *qawwamah* is an administrative privilege confined to maintenance in conjugal life. Even if a woman contributed to half of the family income or even became wealthy, such development would not alter this privilege.⁷⁹ This right, says al-Amin, could be abused by men similar to any abuse committed by men in administrative positions. Under such circumstances, it is necessary to educate society;⁸⁰ The unequal division of wealth in inheritance laws is normative and is not restricted to a particular historical period, (i.e., to claim that it is restricted to a period when the man was the economic producer and a woman a dependent (for material support)).⁸¹ Any changes in the nature of society, will not affect these rulings as long as the stability and continuity of the family is at stake.⁸²

“Any abuses committed against women are a result of men extending the circle of the permitted to the degree of oppression,” says al-Amin.⁸³ Islam granted man dominion (*qawwamah*) to spend on the household and gave man the unilateral right to divorce (preventing women from safeguarding her rights by stipulating such right). The other important issue, which contributes to women's detrimental status, according to al-Amin, is the practice of polygamy, which is leading to a number of abusive practices against women. Women are greatly harmed by the unrestricted application of that right;

⁷⁹ Al-Amin, “Mulihazat wa `Anawin”.

⁸⁰ Al-Amin, “Muhadarah lil-Sayyid Muhammad Hasan al-Amin fi Qa`at al-Jinan hawla `Wad` al-Mar`ah al-Huquqi bayna al-Thabit wa al-Mutaghayyir,” in *Wad` al-Mar`ah al-Huquqi*, pp.24-26.

⁸¹ Al-Amin, “Mulihazat wa `Anawin”.

⁸² *Ibid.*

⁸³ *Ibid.*

Thus, for al-Amin, the unconditional legalization of polygamy is not a valid option. Instead, he suggests, that such issue be left to the discretion of Islamic courts.⁸⁴

All in all, there is enough evidence in this chapter to demonstrate two tendencies in the Islamic gender debates of the '90s. First, there has been an unmistakable shift from traditional interpretations of such concepts as female right, duty, obligation, morality, embedded in the theory of “complimentarity of the sexes” toward the “Equality Principle” rearticulated from within an Islamic religious context. In Fadl-Allah’s principle of “humane equality”, one sees an attempt to provide an overarching theoretical framework for Islamic views on gender. Second, due to social and cultural determinants, gender constructs oscillated between novel innovations and old conceptualization, leaving the inequality principle operative on the theoretical level but bypassed in the actual application of the law.

⁸⁴ *Ibid.*

CHAPTER 4
CONTEMPORARY LEGAL DECISIONS AND DOMESTIC RELATIONS:
MUHAMMAD HUSAYN FADL-ALLAH AND MUHAMMAD MAHDI SHAMS
AL-DIN, 1990-1999

In light of growing gender debates in Lebanon in the 1990s, the rethinking of gender constructs by Lebanese Shi`i scholars, either through written literature or oral public pronouncements, has culminated in revisions of some of the major juridical gender rulings in many different areas of Islamic law, such as personal status laws and evidence law. The change was due, in part, to the role of legal interpretation (*Ijtihad*) in Islamic law as a dynamic process and renewal of its methodologies (*al-tajdid al-fiqhi*) to adequately assist the jurists in dealing with the complexities of life and society in the contemporary era. The change also came as a response to the social realities of women, prompting clerics to delve into the juridical sciences in search of answers to gender concerns and inquiries directed to them by lay Muslim women and men. The shift in legal rulings involved changes in a number of areas in the law: The reinterpretation of the four sources resorted to in the presence of a legal precedent (called *al-adillah al-*

ijtihadiyyah)¹ in order to provide categorical rulings in favor of gender reformation; the employment of procedural principles called procedural principles (*al-usul al-`amaliyyah*),² the principles resorted to by jurists in the absence of legal precedent); and the elaboration of the theories and methodologies of the *juridical principles* (*al-qawa'id al-fiqhiyyah*) to further widen their theoretical implications and practical applications. This process has led to revisions of old juridical gender rulings as well as the emergence of new rulings, which may be considered responsive to women's aspirations and needs. In the previous chapter, I dealt with the ideological works of Shi'i Lebanese scholars on gender and the major changes achieved in their theorization of the equality principle within an Islamic context. In this chapter, I will closely examine some juridical perspectives that deal with personal status laws, specifically focusing on marriage and its related issues, such as obligations, rights, divorce and child custody.

I will begin with the juridical writings of Muhammad Husayn Fadl-Allah: *Jurisprudential Issues (al-Masa'il al-Fiqhiyyah)*³, which is a compendium of fatwas, composed in the question- response manner, on major juridical issues in the areas of rituals (*`ibadat*) and worldly affairs (*mu`amalat*). I will examine Section Two "Worldly

¹ Such as the Qur'an, Sunna (In the Shi'i jurisprudence traditions include the sayings, deeds, and practice of the Imams and their companions including as well as Sunni sources, consensus (*ijma`*) and reasoning (*al-aql*, e.g., categorical rational proofs).

² When the legal ruling cannot be directly inferred by resorting to the four sources (Qur'an, Sunna, consensus and reason), the Shi'i Jurists resort to four special principles (exempt (*al-bara'ah*) prudence (*al-ihtiyat* or *al-ishtighal*), option (*takhyir*) and continuance (*al-istishab*) that have been laid down for such circumstances. For an introduction to these four procedural principles, see Hossein Modarressi Tabataba'i, *An introduction to Shi'i Law: A Bibliographical Study* (London: Ithaca Press, 1984), p. 10. Also, see Muhammad Baqir al-Sadr, *al-Ma`alim al-Jadidah lil-Usul (The New Characteristics of the Science of Juridical Inferences)* (Najaf: Matba'at al-Nu'man, 1385 A.H.).

³ Muhammad Husayn Fadl-Allah, *al-Masa'il al-Fiqhiyyah (Jurisprudential Issues)* (Beirut: Dar al-Malak, 1995).

Affairs” (“Al-Mu`amalat”), and in particular, the chapter dealing with marital life “Issues Concerning the Relationship with The Woman and the Wife” (“Shu’un al-`Alaqah bi al-Mar’ati wa al-Zawaj”). I will address his oral debates based on *Women’s World (Dunya al-Mar’ah)*,⁴ also based on *The Woman Between Her Reality and Her Right to An Islamic Socio- Political Life (al-Mar’ah bayna Waqi`iha wa Haqqiha fi al-Ijtima` al-Siyasi al-Islami)*⁵ (a symposium conducted in celebration of the birth of Fatimah, the daughter of Prophet Muhammad) and *New Readings in Women’s Legal Rights (Qira’ah Jadidah li-Fiqh al-Mar’ah al-Huquqi)*.⁶ I will also analyze the juridical writings of Muhammad Mahdi Shams al-Din, another prominent writer in this field, though not a jurisconsults (*marja`*) since he did not produce his Practical Treatise (*Risalah `Amaliyyah*). Shams al-Din’s writings are considered personal juridical opinions (*ijtihadat shakhsiyyah*), indicating that the author arrived at a certain degree of knowledge allowing him to provide his own juridical opinions on legal matters, but which cannot be followed by ordinary believers. Such juridical writings are, nevertheless, very significant since they contribute to the debate on major issues within Shi`i jurisprudence on gender. The jurisconsults themselves examine these opinions and incorporate compelling ones into their fatwas. Shams al-Din’s book, which I will analyze here, is *Marital Rights (Al-*

⁴ Muhammad Husayn Fadl-Allah, *Dunya al-Mar’ah*, ed. Mona Bulaybil (Beirut: Dar al-Malak, 1997).

⁵ Silsilat Manshurat Lajnat al-`Amal al-Nisa’i, *al-Mar’ah bayna Waqi`iha wa Haqqiha fi al-Ijtima` al-Siyasi al-Islami: Nadwah Hiwariyyah Ma` Samahat Ayat Allah al-Sayyid Muhammad Husayn Fadl-Allah*, no. 1, (Beirut: Dar al-Thaqalayn, 1995).

⁶ Silsilat Manshurat Lajnat al-`Amal al-Nisa’i, *Qira’ah Jadidah li- Fiqh al-Mar’ah al-Huquqi: Nadwah Hiwariyyah Ma` Samahat Ayat Allah al-Sayyid Muhammad Husayn Fadl Allah*, no. 2, (Beirut: Dar al-Thaqalayn, 1996).

Huquq al-Zawjiyyah)⁷, a seminal work examining conjugal rights and obligations, and covering such areas as recalcitrance, sexual submission of the wife, and so forth.

The juridical shift in gender rulings closely corresponds with debates of the role that reality plays in the formation of Islamic legal gender rulings. The incorporation of reality is not new to the Islamic legal system and has always been an integral part of Islam's legal foundation. Disagreements among jurists have arisen on the degree to which social reality interact and influence certain laws. It is my interest to explore the nature of these interactions and how they are incorporated into the `ulama's new assessments of gender rulings. Since understanding the legal arguments made by the aforementioned scholars is critical to a discussion of the nuances of Islamic Shi'i jurisprudence, I will begin my analysis with a brief description of these juridical arguments, highlighting the major terms and principles guiding such works.

Jurists make a distinction between two types of rulings when dealing with gender. Defining these two types of rulings may clarify issues that sometimes baffle scholars working on gender and Islam. These are binding rulings (*al-ahkam al-ilzamiyyah*) which include such issues as child custody, inheritance, maintenance and headship of the family, and the husband's unilateral right to divorce, and non-binding rulings which include issues such as polygamy and sanctioning of wife beating as a form of disciplinary measure in instances of wifely recalcitrance. Binding rulings demand compliance, while non-binding rulings allowing believers to act otherwise. Binding rulings are constant (*thabit*), changing only in dire circumstances (and when only as long as such

⁷ Muhammad Mahdi Shams al-Din, *Huquq al-Zawjiyyah wa yalih Haqq al-'Amal lil-Mar'ah*, Masa'il Harijah fi Fiqh al-Mar'ah, vols, 3&4 (Beirut: al-Mu'assasah al-Duwaliiyyah lil-Dirasat wa al-Nashr, 1996).

circumstances last), while non-binding rulings can be nullified for a specific period of time, as determined, or they may be rendered moot. These legal nuances may explain the often contradictory claims by some scholars who, on one hand, argue that the fluidity of the Shari`a guarantees compatibility between Islam and feminism, and on the other hand, argue the Shari`a gender rulings, in their fundamental skeletal framework, are immutable and predicated on sex-biased assumptions which are inimical to the progress of women. As a result, one may not consider Islam as a vehicle for social change when Islamic laws in their present form presuppose some form of subordination of women to men.⁸

I think both sides of the continuum address some significant gender issues. So far, Islamic Shi`i jurisprudence has shown flexibility and the ability to accommodate the newly emerging social realities of women. Yet, such changes have their limitations as well, at least as far as I can see from my analysis of the period considered here. First, these Shi`i gender debates emerged at a critical juncture in Shi`i juridical writings, a transitional phase. Scholars working on gender in Iran dealt with the shift in gender discourses under the Islamic Republic in the 1990s, and debates in Lebanon, in particular, may have emerged at this juncture as well to mirror debates in Iran. Cross-fertilization of ideas occurred on both levels, scholarly and socially. Theological books written in both countries were translated from Arabic into Persian and vice versa, which make them available to a wider audience. Delegates of Lebanese women, Muslims and Christians, visit Iran every year and experience first-hand the changes and shift in gender discourses

⁸ Haideh Moghissi, "Feminism and Islamic Fundamentalism," in *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* (London & New York: Zed Books, 1999), p. 140.

and policies. Still Lebanese Shi'i women deal with gender biases of varying cultural norms and do not live under an Islamic government; subsequently, there is no state to sponsor or limit the direction of changes. Although armed with the juridical opinions of scholars, Muslim Lebanese Shi'i women have no recourse to enforce their demands. It all depends, to a larger extent, on the goodwill of people who may or may not abide by these rulings. Thus, there are real social obstacles to such changes, which also come back and define the direction of the debate. It is, at this point, I argue, that the theoretical ground for radical change in Lebanon, in my opinion, began.

The societal context, however, determines the boundaries and extent of such change. In the 1990s, one may conclude that the general direction of the juridical writings pointed towards change, yet, their transitional nature also precludes that same conclusion. As a result of such context, one finds in the juridical works of the Lebanese Muslim Shi'i scholarly works two juxtaposing each other and sometimes even overlapping trends: new rulings reflecting women's social realities and accommodating those circumstances, as well as rulings that are consistent with a patriarchal, traditional model of gender relations. At least the traditional gender discourse can no longer monopolize gender debates. Instead, several discourses co-exist. There is an indication from the newly emerging gender discourse in the 1990s that it, may, in time, co-opt opposing religious Shi'i discourses to its own camp. Let me now turn to the analysis of how reality and text interact

Crucial to the understanding of the relationship between reality and text in the formulation of legal rulings, are issues of binding rulings and non-binding rulings, primary principle and secondary principle. I will introduce them here in order to facilitate

discussion of that relationship between legal rulings and people's social circumstances. Binding rulings are assured continuity and only allow for change under secondary principles. Let me first illustrate, how the law allows for circumstances to govern its rulings. There are so-called "*rulings under primary principles*" (*Ahkam awwaliyyah*) when dealing with binding rulings in which one can draw the actual ruling (*al-hukm al-waqi'i*). They define the type of particular ruling on a matter, which, if unaltered by extraordinary circumstance, is considered constant (*thabit*), such as "drinking water is permissible". Under certain circumstances, such as a person needing water to survive, a new ruling changes the original one from mere permissibility to an obligatory act. The change from the former ruling to the latter is termed in Arabic as "*ruling under secondary principle*" (*hukm thanawi*). In another example, a husband is capable of running the affairs of the family and providing the family's finances; the law under the primary ruling is definitive, relegating the responsibility of final household decisions to the husband and obligating him to provide for the family regardless of the wife's financial contributions. In cases where the circumstances change, where the husband is not qualified to run the affairs of the family or to maintain the family, the secondary ruling delegates legal responsibility of governing the family and its financial affairs to the wife. Additionally, in cases where the husband is capable, he is awarded custody of children who are of legal age (most jurists rule for the husbands right to custody of the children when the female child reaches seven years and the male child turns two). But when the husband is not capable of child rearing, he must return the children to the custody of their mother regardless of their age. Hence, binding gender laws may be altered under certain circumstances and as such cannot be presumed immutable. The

question then arises that if, in exceptional cases, the law allows changes in its fundamental principle by changing the ruling from a primary one to secondary one, what happens when the social reality changes so that what was initially considered an exception becomes the norm? Let me consider here women's employment.

In the 1980s and 1990s in Lebanon, women (across the religious and sectarian continuum) were employed; their financial contribution to the household had become a necessity under the economic hardship that Lebanon had undergone. Yet, such financial contribution did not translate into a religious gender ideology recognizing women's contribution and dismantling rulings granting men the headship of the household. Consequently, one asks why does the husband *retain headship of the marital household under such circumstances?* I will return to this topic later.

This and similar questions are closely related to the question of continuity and resiliency of Islamic Law in the face of social change. Among questions that have been posed by some critics of the existing Islamic legal system are:⁹ if the system allows (as seems to be the case) for change in its fundamental ruling under some extraordinary circumstances, what happens when what used to be an exception becomes the norm? Shouldn't one simply do away with the old principles in favor of those new, revised and updated rulings that better reflect contemporary realities? Doesn't this mean that the laws are crumbling from the inside if they continuously require patching?

The two Muslim Shi'i scholars considered here provide different answers to questions about the relationship between text and reality. For Fadl-Allah, the relationship

⁹ Ziba Mir-Hosseini, "Agreeing to Differ: Final Meeting with *Payam-e Zan*" in *Islam and Gender: The Religious Debate in Contemporary Iran* (New Jersey: Princeton University Press, 1999), p. 191.

between text and reality is not a dialectical one. Neither defines the other. Rather, the reality is viewed as providing the subject matter for the application of the text. When applied to legal texts, this would mean that modern reality does not interfere with the subject of the ruling itself; rather, it defines the subjects for the application of the ruling. Thus, when dealing with the Islamic legal system, reality does not alter the legal ruling internally but instead defines the cases for the diverse legal rulings in order to give to give direction.

Let me illustrate this matter further. One finds two rulings: one stating that using alcohol is prohibited, the other stating that using vinegar is permitted. The case in question involves a drink that fits all definitions of alcohol; the existing reality (the alcoholic beverage) then informs the legal ruling of prohibition that its subject is here. Let's suppose now that using a certain procedure, one changed the alcohol into vinegar. The procedure represents a shift in reality, which informs the legal ruling of permissibility of the drink. Hence, the ruling itself was not altered internally; instead, the changed reality paved the way for the application of a separate ruling with a different subject matter. The first ruling in the above-mentioned case ceases to be the object of discussion. Each ruling, concludes Fadl-Allah, contains its own subject that corresponds to a particular reality and the rulings are not eradicated when reality changes, rather one sees a multiplicity of rulings reflecting the multiplicity that exists in reality.

In light of Fadl-Allah's view on the relationship between reality and text, a new question arises about the relationship of primary ruling and secondary ruling: if reality does not alter the legal ruling, how does one explain the change in the ruling from a primary principle into a secondary principle? In Fadl-Allah's view, the legal ruling is

fundamentally connected to its subject and it cannot be separated; thus, reality cannot alter the legal ruling as long as a specific subject matter exists in reality. As far as the primary and the secondary principles are concerned, argues Fadl-Allah, the secondary principle contains the defining issue (of changing the primary ruling if a certain condition exists). For example, one ruling states that drinking water is legal, which corresponds to another ruling decreeing that anything causing man harm and death is illegal. If one adds these two issues together, continues Fadl-Allah, one finds an established ruling pertaining to each particular category- primary and secondary. In light of the above-mentioned, concludes Fadl-Allah, the established ruling dealing with the former category, defines the subject under the primary principle, which is not affected by the secondary principle, to conclude that every act is legal if it does not cause harm, and every act is illegal if it causes harm. Thus, the secondary ruling did not alter the primary ruling but further defined it and, as such, the primary principle complements the secondary principle in dealing with the general matter by passing a ruling on that level, and another ruling on another level.

Such understanding of the relationship between text and reality, in the view of the jurists such as Fadl-Allah, is a crucial question concerning the continuity of Islamic law. Just as the author assures on one level consideration of changed social realities in Islamic law, he assures on another its continuity and resiliency so as one cannot argue for the elimination and eradication of the Shari`a itself.

Shams al-Din proposes a differing view of the relationship between text and context and reality. In Shams al-Din's opinion, there is a mutual influence between reality and Islamic legal rulings (*al-ahkam*), which is not adequately examined by jurists.

What Shams al-Din launched is a serious reconsideration of such issues, especially in light of the newly emerging concerns about globalization, reciprocal influences between cultures, and hybridity. In his opinion legal rulings were designed (for historical reasons) focusing on the individual, as opposed to focusing on the larger society. For example, there is a ruling that “one has the liberty to use one’s money as one pleases” in accordance to a principle that “people have authority over their belongings”. A person buys land with his or her money and decides to use it for dumping waste, contaminating the environment. From a legal standpoint, his or her action is considered legal since he or she has ownership rights over the land. Shams al-Din concludes that this is true if the jurist takes into consideration only the individual right of the person. If the jurist, however, has the larger society in view, he would bar the person from acting in a manner hazardous to the environment and prohibit the action guided by another principle named “no excessive use and no excess” (“*la tafrit wa la ifrat*). The new approach may open ways to tackle new issues and develop new subject-areas for study. Another equally important change should take place in the actual methodologies used by *ijtihad* itself: scope of their application, to discern whether certain Traditions are procedural (i.e., they ensued from the Prophet in his capacity as a leader, a father, or a husband, and not as a Prophet).

Other changes in the 1990s have been in the field of jurisprudence, notably in the further theoretical elaboration, expansion, and application of juridical principles (*al-qawa'id al-fuqahiyyah*). These principles govern the specific legal rulings and may render them ineffective and illegal. One very important juridical principle, which, in my

opinion, may benefit Muslim women, is the principle of “one does not harm nor get harmed”. “*la darar wa la dirar*.”¹⁰ The application of this principle radically changed some of the old gender rulings pertaining to marriage. The elaboration of such juridical principles will become evident when dealing with Fadl-Allah and Shams al-Din’s analyses of marital rights and obligations. For example, historically, a wife who was properly maintained by her husband, and whose husband did not suffer from any mental or physical disabilities, had no legal grounds for divorce. Applying the principle of “one does not harm or get harmed” justified divorce for the wife without the husband’s consent, even if the husband maintained her, did not suffer from any physical disabilities, and treated her fairly. If she is still unhappy, under the “no harm principle” the wife is entitled to affect the divorce; hence, the law leaves to the wife the right to decide whether the continuity of the marriage is harmful to her. This shift in divorce law signals as well a shift in the way that gender is constructed. The wife is acknowledged as a separate agent in the marriage, a partner entitled to her feelings and decisions. The laws provide opportunities for women to employ certain juridical and *usul* principles to their advantage.

I mentioned in the previous chapter that under contracts (*al-mu`amalat: al-`uqud*), a wife is allowed to stipulate conditions either in the marriage contract or outside of it. As also mentioned previously, jurists may disagree on the type of stipulations allowable and whether they contradict the substance of the contract. There is also no juridical consensus about what elements are considered fundamental to the

¹⁰ There are a number of jurisprudential principles in Shi`i jurisprudence that allow the jurists to alter legal decisions, such as “one does not harm or get harmed”, which can alter any legal decision once harm is

substance, beyond spousal right to sexual services. For instance, as I mentioned in Chapter Two, Mughniyyih prohibits a woman from stipulating conditions by which she can gain power of attorney on her husband's behalf to divorce her husband, or that prevent the man from contracting additional marriages. Abu al-Qasim al-Khu'i, on the other hand, permits the wife to stipulate conditions preventing the husband from taking additional wives. The question arises: is a condition that opposes an incident of the marriage contract considered one that contravenes a ruling? If a man has an inalienable right to take additional wives, how could the wife prevent him from doing so without contradicting another significant principle in the law of contracts: "one may stipulate any condition except for a condition that which makes that which is licit illicit and that is which illicit licit"?

Abu al-Qasim al-Khu'i solved this controversy by looking outside marriage contracts to avoid legal problems. He argued that the woman might negotiate such terms under a separate contract – an idea similar to American settlement agreement (*musalahah*). A wife and a husband may settle any issues arising in the future, before they enter the marriage. As a result, a wife can stipulate, from the outset, her primary right to child custody, her headship of the household, and her lodging choice. Additionally, she can prevent the husband from exercising his right to polygamy and the right to freedom of movement outside the home even if such mobility contravenes one of the husband's most fundamental right arising from the marriage contract, the right to sexual submission. Fadl-Allah even allows the latter condition to be stipulated in the marriage contract itself. The importance of including Al-Khu'i's legal opinion here is his

established.

compelling legal argument which solved a legal problem for many scholars after him and the fact that both Fadl-Allah and Shams al-Din concur with his juridical opinion on the legality of stipulating conditions favorable to the wife in an additional contract. Thus, what I see in the 1990s is the move to remain true to the patriarchal model of retaining men's privileges on the theoretical level while simultaneously responding to women's arising needs in the new social context of the 1990s on the practical level. Hence, on the theoretical level, men still possess the unilateral right to divorce, child custody, and household headship and women may stipulate conditions contrary to them. Yet, on the practical level, women's stipulation of conditions in the marriage contract yields the desired result – equality. Thus far, such methodologies have been applied primarily in the marital segment of the law and have not penetrated other important areas, such as law of blood-retribution and evidence, though the latter has been the target of revision by Muhammad Hasan al-Amin, whom I will discuss in the next chapter.

So far, I have been discussing binding rulings. Major criticism is also directed toward non-binding rulings such as polygamy and wife beating. The question of social and cultural reality plays a significant role in such legal debates. Many scholarly efforts have been directed to examine the context in which the text was revealed and to determine the general direction of the text vis-à-vis the social reality of modern times. I will be dealing with those shortly. Fadl-Allah is the only scholar who addresses the legal aspects of controversial Qur'anic provisions (such as wife-beating and polygamy) in his works. Shams al-Din does not deal with such matters at all.

Let me turn now to Fadl-Allah to examine how his gender ideological stance is translated into his juridical works. In *Jurisprudential Issues (al-Masa'il al-Fuqahiyyah)*

and in subsequent works the author diverts from conventional *Fiqh* views on some issues and remains true to its traditional spirit in others. In the chapter dealing with marital relations in *al-Masa'il*, Fadl-Allah responds in the form of a legal opinion (*fatwah*) to major juridical inquiries dealing with a wide range of issues: the general requirements of marriage, marriage contracts, marital rights, pregnancy and abortion, children, breastfeeding, and divorce. I will limit my discussion to marriage contracts and marital rights.

In his legal opinion on gaining parental consent for marriage, he writes:

[(Q)] If a woman has reached thirty years of age and is virgin (*bikr*), is it incumbent upon her to obtain permission (*isti'than*) to contract her marriage?
 [(A)] It is not obligatory upon her [to do so], especially if [such request creates] difficulty (*haraj*), or [if the woman] is unable or it is difficult for her to secure such consent.¹¹

On the subject of marital rights, pertaining to the wife's right of freedom to move outside the home, Fadl-Allah writes:

[(Q)] - Is it permissible for a woman to go out from the marital home without [the husband's] permission? And does the woman have to obey [the husband] by not leaving the house even though such act does not clash with his legal right?
 [(A)] - A woman is not permitted to leave her marital home in the case where [such act] might stand in opposition to his right to *al-istimta'* [e.g., his right to sexual services], and it is permissible [the wife freedom of mobility] beyond [that restriction], even though it is preferable (*istihaban*) to forgo [of such act]. [Similarly], it is permissible for the man to prevent his wife from leaving the home if [her action] may contravene his right to sexual demands; if it is not so, then it is not permissible for him [e.g., to prevent the wife to leave the home] and she does not have to obey her husband. Although it is precautionary preferable (*al-ahwat istihaban*) to obey the husband. In all cases, the Muslim husband should not act in such manner with his wife because such actions contravene the

¹¹ Muhammad Husayn Fadl-Allah, problem 2 in "Fi al-'Alaqah al-Zawjiyyah" in *al-Masa'il al-Fiqhiyyah*, p. 255.

provision “treating the wife with fairness” (“*al-mu`asharah bi al-ma`ruf lil-zawjah*”).¹²

[(Q)]- Is it permissible for the woman to join the Islamic parties and movements without the knowledge of her guardian or her husband -although such participation may lead to social mixing with foreign men [*al-rajul al-ajnabi* refers here to men who are not legally related to the wife either through marriage or kinship]. Is [the wife] obligated to inform her husband [of her political affiliations]? Does her leaving the house in order to fulfill some of her responsibilities toward the movement require that she obtain [the husband’s] permission? And let’s assume that her husband does not agree with such affiliation and he prevents her from practicing her Islamic activities, what would her stand be?

[(A)] -It is permissible as a matter of principle [for the wife to act independent of her husband’s consent and approval]. It is permissible for the man [to do so as well] for there isn’t jurisdiction (*wilayah*) for her husband or her father over her [pursuing] her political and social affiliations and her economic affairs. And it is not illicit for her to converse or to mix with foreign men as long as she adheres to the prescribed legal limits [in her dealing with foreign men] and she does not contravene the husband’s right to sexual demands (*haqq al-`istimta`*) by working. As for leaving the house, it is permissible, as long it does not contravene his right to sexual services- in cases, when [the husband] is absent or occupied with his work and so forth that [the wife] knows [that such actions definitely do not contravene such right]. With the possibility of denial, she must obtain his permission [to leave] unless the work is [considered] an obligatory act in itself even if under a secondary principle when a greater Islamic interest [outweighs that of the husband’s demands]. But she [the wife] must observe her obligations concerning this issue and to protect her marriage which may drive her to lessen some of her practical obligation to the Islamic movement.¹³

Whereas in *The Treatises (al-Masa`il)*, Fadl-Allah limits his opinion to simply providing a fatwah, in *Woman’s World (Dunyah al-Mar`ah)* he responds to inquiries on juridical issues, providing explanations usually absent from the Practical Treatises. In the chapter “Men and Women in the Scale of Rights” (“*al-Mar`ah wa al-Rajul fi Mizan al-Huquq*”) in section one “*al-Huquq Fi al-Itar al-Khas*” (“Rights in the Private Framework”) Fadl-Allah deals with the following issues: 1) the man’s right to dominion

¹² *Ibid.*, problem 1, p. 261.

and its boundary (*haqq al-qawwamah lil-rajul wa hududuha*); 2) the limits of the wife's obedience to the husband; 3) the woman's freedom of mobility and movement; 4) the woman's sexual rights; 5) recalcitrance (*al-nushuz*) and violence against women; 6) the woman's right to divorce; 7) child custody; 8) polygamy and the condition of "justice".¹⁴ Each issue is dealt with in response to a question. I will leave discussion of the role of the women participants in the unfolding debates to chapter six.

Here I will consider each issue separately:

The Man's Dominion Over the Woman and its Boundary

(Q) The dominion of the man over the woman is a very distinguished privilege favoring the man over the woman in the legal domain. As such, in the opinion of some [people], it is the reason that [keeps] justifying historically [the man's] control over the woman. Is restricting such right to men alone congruent with the acknowledgement of men and women's equality in humanity?

(A) Some expand the [meaning] of the term *al-qawwamah* to cover everything to the degree that the man dominates all of the woman's affairs while the woman has no control over hers. The man's dominion, in our opinion, is restricted to maintenance... And there is a similar [concern] that may arise in conjunction with the holy verse "And for them shall be similar rights upon them in fairness and for men a degree above".

(Q) Would you please clarify what is meant by [the] words you just recited: "and for them shall be similar rights upon them in fairness?"

(A) Every right a man possesses over a woman, a woman possesses [an equal] right over the man except for maintenance - the woman is not obligated to support the man - and the right of divorce. Beyond that, "And for them shall be similar rights upon them in fairness and for men a degree above". The degree is [limited] to the man's right to divorce and his responsibility to maintain. Other than that, the verse is inclusive of all rights.¹⁵

(Q) If the man's right of dominion (*al-qawwamah*) is predicated on the man's maintenance of the wife, do you observe that the wife's sharing in the responsibility of maintenance removes such justification?

¹³ *Ibid.*, problem 13, p. 264.

¹⁴ Also included in this section the issue of the waiting period (*al-'iddah*, e.g., waiting period between the woman's divorce and a subsequent marriage which is outside the scope of the present work).

¹⁵ Fadl-Allah, "al-Mar'ah fi al-Itar al-Khas" in *Dunya al-Mar'ah*, p. 90.

(A) Even if we suppose that the woman spend [on the household], her [financial] contribution does not change [the fact] that it is a an act of sheer grace and is not an obligatory act.¹⁶

Although the term dominion is considered in the verse as merely an administrative process (*`amaliyyah idariyyah*), according to Fadl-Allah, women's economic contribution is given no significance in the marriage. In other words, men's economic contribution gains him headship of the household and custody of children, whereas women's contribution is accepted as an act of good deeds but does not amount in any specific privileges in the household.

The Limits on the Wife's Obedience to the Husband

Jurists have long argued whether the right of "degree above" stated in the Qur'an entails the man's right to demand obedience or submission (*al-ta'ah*) from the wife. Fadl-Allah argues that jurists agree that "the degree above" covers divorce but disagrees whether such right is all-inclusive. The word "a degree above" ("darajah") is not clear, according to Fadl-Allah and, in such case, jurists limit themselves to what is certain (*al-qadar al-mutayaqqan*), which is the right to divorce. *Al-qadar al-mutayaqqan* is a very important juridical term encouraging focus on the facts when drawing a ruling, not speculation.¹⁷ Thus, obedience is restricted to the woman providing the husband with his marital rights (e.g., access to the wife's sexual services).

¹⁶ *Ibid.*

¹⁷ Let's elucidate here the term *al-qadar al-mutayaqqan*, which is a very significant term in juridical writings. For example, let's assume that the Imam is offered tea but he declines to drink. One is faced with two possible interpretations for the issue: either (1) tea is forbidden; or (2) the Imam does not like tea. Since both options are speculative and cannot be substantiated from the contents of the Imam's actions, one is not allowed to follow either one of them, for their certainty has not been established (*khuruj `an al-yaqin*). The only certain inference that can be made is that to decline tea is permissible.

(Q)- How is it then it is said that the woman has to obey her husband in pursuance of her obedience to God?

(A) ... Islam did not impose on woman [the obligation] to obey her husband in an absolute manner, so that for his sake she obliterates her will, [forgo of] her obligations and [alters] her convictions in her private and public life. The woman's obedience to her husband in pursuance of God's prescribed ways entail her fulfillment of the marital obligations to which she committed herself in the marriage contract, just as the man is obligated to obey his wife in pursuance of God's prescribed ways by fulfilling his contractual and religious obligations towards the wife. Islam does not obligate the woman to cater to the husband's political and social views or even his moods. A man cannot impose his lifestyle on his wife as well. A wife is a human being who also has rights outside the marital relationship. As far as her marital obligations are concerned, she must submit her will to the husband's will within the context imposed [upon her] by the nature of the marital obligations [e.g., with the sexual domain].¹⁸

The Woman's Freedom of Mobility

(Q) If a woman is not obligated to obey her husband, why is it incumbent upon her then to obtain his consent for going out? Isn't such a thing considered an excuse to control her freedom of movement? Does the man have the right to imprison his wife for life [as well]?

(A) Most Shi'i and Sunni jurists rule in favor of the man's right to imprison his wife for life as long as he is meeting all of her [material] needs. We [Fadl-Allah] disagree with most of the jurists on this matter and we refuse to admit to the legality of [such mandate]. When [forming] our [juridical] opinion [e.g., the illegality of the husband's right to imprison the wife], we base it on the incongruity of the idea of imprisonment for life with that of the principle of "retaining [the wife] with fairness and treating [the wife] with fairness" ("*al-imsak bi al-ma'ruf wa al-mu'asharah bi al-ma'ruf*") that is supposed to govern the Qur'anic view, on one hand, and the incongruity of such ruling, on the other, with the principle of "alleviation of distress" ("*raf' al-haraj*"). There is no doubt, granting the man the right to imprison the wife for life at his own discretion is [considered] the worst distress a woman may undergo- regardless whether the man actually practices such right or not. Since sex is a crucial element in the marital relationship, fulfilling man's sexual need is the woman's obligation towards the man and vice versa. Thus, it is incumbent upon the woman to act in a manner that does not contravene the fulfillment of such need. Thus, we say, that the woman should not leave the home only when such behavior contravenes the man's demand for sex. Under all other circumstances, however, it is permissible

¹⁸ Fadl-Allah, "al-Huquq fi al-Itar al-Khas", p.92.

for her [to leave the house] in instances, for example, when he [the husband] is [absent] traveling, at work, and so forth.¹⁹

Fadl-Allah further argues that marriage is considered a safe haven for men and women and a shield to protect them against corruption (*fusad*). If a woman leaves the house as she wishes without observing the husband's sexual needs, then she may drive the man to seek sexual gratification outside the [marital] home, which may further complicate the marital life. Thus, continues Fadl-Allah, the adverse consequences resulting from the man's extramarital affair outweigh those that result from demanding the wife to secure consent from the husband when leaving the home.²⁰

The Woman's Sexual Rights

(Q) It is evident from all the justifications you have [so far] made concerning the wife's mobility preconditioned on the husband's consent, is your great emphasis on the man's sexual right. Does the woman possess equal [sexual] rights in comparison to those [male privileges]?²¹

Fadl-Allah diverges here from an old-age attitude among jurists who do not recognize the woman's sexual rights. This comes at a juncture where such issues are penetrating public debates and breaking conventional taboos against sexual discussions (Fadl-Allah is the first to brake such taboos in his writings as I mentioned in the preceding chapter). Studies conducted in the West on the psychological and social effects of women's sexuality are even employed by theologians to back up their new interpretation of women's sexuality arguments. Fadl-Allah's work incorporates such studies in his analysis of the woman's equal sexual right in the marriage and warns

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 93.

against the negative ramifications that sexual deprivation may have on the physical and emotional well-being of the wife. He argues:

In general jurists do not recognize that sex is a woman's right as well, but they consider it the man's unequalled right. Some of the jurists even go as far as ruling that the wife has no grounds for divorce in cases where the husband may be absent for [a period] of four months as long as she is maintained. We disagree with such opinion because marriage was sanctioned to protect (*yuhassin*) men and women alike. A number of traditions support [our] opinion and among them are those that encourage early marriage for a woman. Not acknowledging the right of the woman's sexuality renders marriage [for woman] a cause for the woman's corruption instead of her protection. It is in the confines of marriage that the woman experiences her sexuality, which explains the reason that women's sexual drive increases after marriage while it was suppressed prior to marriage. Accordingly, sex is one of the most important objectives of marriage for men and women alike. The woman does not marry in order to eat and to drink with her husband, just as the man does not marry for such end as well. Thus, God's words: "And for the women shall be similar rights (*over men*) in fairness" (the Cow: [sic 228]) apply to both the man and the woman. Just as much as it is incumbent upon a woman to respond to the man's [sexual needs], it is incumbent upon the man to respond to the woman's [sexual needs], especially if [the woman] fears erring [e.g., committing adultery].²²

Sunni and Shi'i jurists did not acknowledge nor address the wife's right to unrestricted sexual services through the marriage contract. They almost all agree for husbands who travel, wives are entitled to sexual intercourse at least once every four months, and for non-traveling husbands, two nights per week. The husband, however, is granted undue and unlimited access for the fulfillment of his sexual desires. The failure in traditional Shi'i juridical works to address women's sexual needs within marriage has been vehemently criticized by Fadl-Allah, who finds that such mandates are contrary to the general direction that many traditions, some of which encourage early marriage for

²¹ *Ibid.*, p. 93.

²² *Ibid.*, p. 94.

girls, acknowledging their sexuality and protecting them against sexual defiling. In Fadl-Allah's view "not acknowledging the woman's right to sexuality makes marriage a cause of woman's corruption instead of her protection".²³

In order to eradicate the sex biases related to granting such right only to one party in the marriage, Fadl-Allah ruled in favor of granting the wife the same right, the right to her husband's sexual submission as well. Fadl-Allah is the first Shi'i Lebanese scholar, to the best of my knowledge, to issue such a legal ruling. He also dismantled one of the old legal rulings followed by some jurists in which the husband was allowed to imprison his wife for life on the condition that he was providing her with life's necessary needs. The husband's unrestricted right to hinder his wife's mobility in case she contravenes his right to her sexual submission is also, in my opinion, a problem, given the commitment and obligations that the wife has to her public life, which may be complicated by a rulings that demands her to secure her husband's consent for her mobility. The problem with such ruling is that it is drawn with the individual in view and not the society at large. In any case, anticipating the complications that may arise from such ruling, Fadl-Allah advises women who work and who cannot be restricted by such marital obligation to protect their interests by stipulating conditions preventing the husband from practicing this right.

Shams al-Din, in contrast (as I will show later) does not allow granting the husband undue rights to restrict his wife's movements founded on his right to her unrestricted sexual submission. He argues that a husband is permitted to make such

²³ *Ibid.*

demands as long as such demands do not contradict the principle of “no harm and no harming”. It is clear, argues Shams al-Din, that a wife, whose work and normal daily activities suffer due to such demands, is definitely harmed. Thus, at this juncture, Fadl-Allah’s and Shams al-Din’s works are creating a trend toward considering the wife’s emotional and psychological well being to being as significant to marriage as material well-being, though this is more the case in Shams al-Din’s work

Wife Beating

Perhaps one of the most controversial issues in gender and Islam, which has also been the subject of heated debate, is the Qur’anic injunction permitting the use of “beating” (“*adribuhunna*”) women when they refuse to submit to their husbands’ sexual demands. Although jurists (Sunni and Shi’i- in the past and the theologians considered here) have tried vehemently to thwart criticism against such sanctified acts, they fall short of arriving at full prohibition of “wife beating”. This is due to the fact that they follow the traditional approach to Qur’anic analysis to women’s issues.²⁴ In their approach they fail to: 1) limit the verse to the context in which it was revealed; 2) adequately account for the changed social realities of men and women; and 3) reinterpret the verse. Still jurists qualify such verse by ruling against injury or the infliction of serious pain. The extent of the wife’s obedience to her husband has also been debated. Generally, jurists

²⁴ Ziba Mir-Hosseini, for instance, provides a novel reinterpretation of the verse by one of the leading scholars in Iran, whose alternative analysis of the verse defy its conventional interpretation. Although in my opinion, such interpretation is far- fetched and unconvincing since the literal and metaphorical evidence of Arabic leaves no doubt that the word “beating” (“*adribuhunna*”) is meant as such. See, *Id.*, “Stretching

argue that when deducing the extent of the wife's obedience to the husband, one must forgo of the speculative aspect and agrees on the certain limit (*al-qadar al-mutayaqqan*),²⁵ one would agree that the husband has a right to sexual fulfillment. The Qur'anic verse (4:34)²⁶ in question admonishes men to attempt alternate measures in solving the recalcitrant (*nashiz*) wife problem before resorting to beating. Suggestions are made for the husband is to try the following order before resorting to beating: admonish her, abandon the marital bed, and seek mediation from a family member. If these measures still fail to achieve the desired effect, the husband is then permitted to hit his wife, as long as the beating is not excessive, causing injury or scarring.

Despite Fadl- Allah's modernist and somehow sympathetic approach to women's rights, he did not attempt to provide any juridical grounds prohibiting these acts.²⁷ He argues that the man's right to beat his wife in instances where she rejects to fulfill him sexually is due to the fact that a marriage is the legal venue (religiously, legally, and socially) for men's and women's sexual fulfillment, which is grounded in ensuring that neither party feels the need to seek sexual gratification outside the marriage. If the woman rebels against her husband (e.g., abandoning him for a short or indeterminate period of time), he is susceptible to outside seductions and may stray. Consequently, this situation may lead him to: admonish his wife; abandon their marital bed [e.g., to inflict

the Limits" in *Feminism and Islam: Legal and Literary Perspectives*, ed. Mai Yemini (New York: New York University Press, 1996), pp. 313-314.

²⁵ See note 17.

²⁶ The Qur'anic verse reads as follows: "... And so to those whose perverseness ye fear, admonish them and avoid them in beds and beat them; and if they obey you, then seek not a way against them; Verily, God is Ever-High, Ever-Great." Quoted from the *Holy Qur'an*, trans. S.V. Mir Ahmed Ali (New York: Tahrik Tarsil Qur'an, Inc., 1988).

psychological damage]; or marry another woman. Marrying another woman, however, may further complicate the situation, and is not considered an apt solution, since [the problem] may reoccur in a second marriage. Alternatively, the husband may litigate his matter before the law, which is also not practical since the law cannot execute and enforce its judgments in the intimate and private lives of its people. Although the husband may resort to divorce, it is not considered a solution to his problems, but a way to run from them. Where the choices facing the husband are not realistic and in instances where nothing seems to work, Fadl-Allah advises that the man is permitted to chastise his wife on the grounds that he is a man with a claim. Thus, wife-beating under these circumstances is considered a practical solution for a very private matter, in Fadl-Allah's opinion and, as such, is not considered an act of violence.

The man has no right to beat the wife in instances when she does not perform her house duties or when she does not care for the children, for those services are not part of her [prescribed obligations]; He does not have the right to beat her for any personal reason, so that we can claim it is an excuse for violence; he has a right to beat her only in the specific case prescribed by the law in instances when her behavior may threatens to destroy the marital institution. The man who bears the burden of responsibility of the marital home- the responsibility of the bridal gift, maintenance and so forth, has the legal authority to solve the marital problem using such disciplinary measure in order to protect marital life from the negative [factors] that may destroy the marital institution and thus the man's and woman's lives. For Islam does not view the marital life- as some do- in an idealistic [way] as if the man and the woman are two angels; rather [Islam] views it realistically taking into consideration the dynamics of marital life with its sweetness and bitterness. Beating becomes- from a strictly an emotional perspective- a barbaric and a monstrous act when the man oppresses the woman, so as to beat the woman in an animalistic manner considering himself the absolute master over [her affairs]. When beating happens, however, under the conditions previously mentioned, it is considered [then] a rational [read: a disciplinary measure] procedure and not as a barbaric [act]- considering

²⁷ Some Shi'i jurists did indeed prohibit wife-beating.

that its objective is to reform. In other words, one should not look at the means in isolation from the objective which it seeks to achieve, for the value of the means is [equal] to the value of the objective and are similar in kind; for if the objective is to save the marital home, and as such, [to save] the family institution from dissolution, the means, even if it looks hard in its direct perspective, may seem justifiable and reasonable in view of the objective it seeks [to fulfill]. The presence of such protective measure may function as a preventative measure for the woman [so as to thwart the wife from acting in such manner] before [the wife actually becomes] disobedient, which may destroy the marriage. Each disciplinary procedure [for that matter] in reality does not have one dimension but has two dimensions: first, [the] prevention of the criminal act itself in order to establish righteousness and justice; and second, to prevent those who may think about acting in such [criminal manner]. [For instance,] does the international penal law that protects human interests, finds in the use of force, - if necessitated by the general interest of society-, an act of humiliation for human integrity? And does our discipline [beating] of our children if they err considered against their humanity? Does [beating the children] indicate that we do not love them? We caution that except in instances of disobedience [as legally defined], it is not permissible for the husband, the brother, the father, the paternal or maternal uncle, or for any male to attack a woman and no one has a legal right to beat her.²⁸

If one agrees with Fadl-Allah that a particular wife-beating act is a disciplinary procedure designed to prevent her from disobeying her husband, and that the act is created to instill fear so she does not dare act in such a manner. Well, if the order of using physical force is restricted and if the husband is not allowed to injure or to scar his wife, then the element of fear is gone, thus, such methods may not work.

Furthermore, what is the message imparted to Muslim women? When you enter a marriage contract, make sure you stipulate that your husband is not allowed to beat you! Fadl-Allah's argument ignores the critical relationship between violence, sex, and low self-esteem in women. Consideration of modern studies in psychology, which advocate peaceful measures and open communication between the spouses as an alternative

²⁸ Fadl-Allah, "al-Huquq fi al-Itar al-Khas", pp. 96-97.

conflict resolution technique may result in better outcomes for spouses experiencing difficulties in the relationship.

In light of modern psychological studies and the changed social realities of women, some Lebanese Shi'i scholars do not concur with Fadl-Allah on the matter of wife beating.²⁹

Let me illustrate some of these alternative arguments. There is a clear Qur'anic verse endorsing slavery. Muslim scholars argue that slavery should be examined from the socio-political and economic context of the period, during which Islam would have had enormous difficulty outlawing slavery since it was an important facet of the community's economy. From a political standpoint, even Muslims were enslaved. Yet, in observing the objectives of the Shari'ah (*rationes legis*) as grounded in the overall Qur'anic view of equality of humans and interpreting them in conjunction with prophetic traditions encouraging emancipation of slaves, one can conclude that Islam contributed to the end of slavery, to the degree that Qur'anic provision allowing slavery (only as a non-binding ruling) is no longer legal in Islam.

Jurists argue that polygamy and wife beating follow the same line of argumentation. Wife beating was originally prohibited and reintroduced when the Prophet was faced with disapproval from the community, so the Qur'an permitted it but restricted it. The permission to use the order of wife beating intended to reform. But, today's modern woman is different and historical measures may not fulfill their intended objective of reforming, they may instead threaten the relationship, in which case this non-

²⁹ It was related to me that Fadl-Allah had later rescinded his earlier ruling of the legality of wife-beating to one of prohibition. I did not find, however, in the literature available to me evidence to that effect.

binding ruling becomes moot if not illegal. Does that mean that such laws become illegal in Islam such as slavery was? Some Jurists say yes concerning wife beating and no concerning polygamy. Slavery is illegal because there is no necessary human need for it. However, polygamy may be necessary in instances where the number of marriageable women exceeds that of men, possibly creating a real social problem. In such case, special circumstances may demand the application of this type of law as a solution. Some jurists argue that the law becomes available in the event of human need. Polygamy may become ineffective (*yu`attal*) but cannot be eradicated like slavery unless the course of social reality itself eradicates its application.

So one naturally asks, is the wife entitled to use the same measures [stated above] in cases where her husband becomes recalcitrant? Fadl-Allah concurs with other jurists³⁰ that, if he becomes disobedient (*nashaz*) and denies his wife sex [*falam yuqbil `ala zawjatihi*], she has the right to deny him as well. Similarly, in cases where he does not maintain his wife, she may deny him sex. It is not practical for her to beat her husband since he is [considered] the head of the marital household, concludes Fadl-Allah. Thus, wives are not permitted to use this form of measure to rectify the situation.³¹

Child Custody

Except for the wife's right to stipulate in the marriage contract from the outset her right to retain custody of children, she otherwise has no recourse but to submit to the juridical ruling granting custody of children (above age seven for girls and age two for

³⁰ Such as Muhammad Baqir al-Sadr and Al-Sayyid Muhsin al-Hakim.

³¹ Fadl-Allah, "al-Huquq fi al-Itar al-Khas" in *Dunya al-Mar'ah*, p. 98.

boys) to the father,³² predicated on the fact that both are equally capable of nurturing and providing the children with all necessary means of living.³³ For Fad-Allah the social reality of the Lebanese context determines, to some extent, his justification of this male privilege. Fadl-Allah states the following:

[(Q)] Why did Islam grant the man the right to custody of the children in the case of divorce and did not grant it to the woman, especially that the children's need of the mother is greater psychologically?

[(A)] The man's right to the custody of his children is based on the Islamic social philosophy which considers the man solely responsible for the family's growth and its demise; observing as such the woman's inability to take the psychological as well and the financial responsibility of the children. [Islam] respects as well the woman's need to remarry and does not desire for the children to become an obstacle in the face of that. In case the woman was divorced while still young and wished to remarry, the husband usually objects to [his] children's living in the same household [with the step father]. The father's social responsibility of his children does not translate into depriving the mother of her children after the divorce. For the [husband] is not allowed to hide them [the children] from their mother... The woman has the right to see the children according to an agreement between the two respective parties. Thus, the issue of child custody is examined with [reality in view]. The man may keep his children when he remarries, but the opposite is not true though.³⁴

There is no doubt that the custody laws are gender biased and continue to support male privilege: men can remarry without fear of losing their children, while women may avoid remarriage for fear of losing their children. In this respect, Fadl-Allah's juridical argument is in line with conventional Shi'i juridical perspective which ignores the modern women's reality: even though the law requires the man to maintain the family, today the woman's financial and social contribution to the family has become a necessity.

³² In the event the wife remarried, the custody of the children automatically reverts to the father.

³³ The wife is usually granted custody of children in cases where the husband is proved an unfit parent.

³⁴ Fadl-Allah, "al-Huquq fi al-Itar al-Khas" in *Dunya al-Mar'ah*, pp. 102-103.

These laws also explore and address only the financial aspect of child rearing subsuming other equally important dimensions such as the emotional and psychological well-being of the children beyond the early formative years, which may not be served with laws so strict and rigid. By what rational should a woman be forced to give up her children? Is the law simply a punishment for women seeking divorce? Even though the law prohibits the man from keeping the children from their mother, daily interaction is lost in common custody settlements. The mother cannot sleepover and is not able to take part in regular decision-making. Women are entitled to see their children at the discretion and goodwill of the ex-husband. There is an obvious gender bias in these laws, and ultimately, they only serve the interests of men.

Overall, Fadl-Allah succeeds in translating his gender ideology into his gender juridical works by: acknowledging the wife's right to equal sexual entitlements (a diversion from old fiqh rulings); by allowing women to contract marriage on their own without paternal consent, especially in sensitive situations; and by forbidding the man to imprison his wife even in cases he provides for her. Nevertheless, Fadl-Allah's "humane equality" did not penetrate other aspects of the law such as child custody, wife beating and polygamy. Despite the many innovations that Fadl-Allah introduced to Shi'i juridical works, one might ask why he failed to address the need to change rulings on these issues?

Such questions take us to the writings of Muhammad Mahdi Shams al-Din, whose book, *Marital Rights (Al-Huquq al-Zawjiyyah)* specifically examines various legal Shi'i sources upon which men's and women's marital rights and obligations are constructed. Shams al-Din's writings on gender are characterized by a deep sensibility and

commitment to making change, taking into account the long-ignored realities governing the lives of Muslim women in contemporary times. His innovative approach to Islamic sources and textual analysis are all the more welcomed by some Shi`i women, though his academic, legal style of writing make his books less accessible to a wider audience than Fadl-Allah's writings. Shams al-Din, through his analysis of marriage and concomitant marital obligations and rights, grounded the debate on these issues in the general framework of the "equality principle" and the "denial of harm principle", structuring his whole argument according to the Qur'anic provisions in chapter 2, verses 228 and 233. By making these provisions as the foundation of his argument and interpreting the legal sources in their light, he succeeded in navigating uncharted waters in conventional Islamic Shi`i legal works such as the emotional and psychological dimension of the marital relationship. In the following pages, I will analyze each chapter of his book showing how Shams al-Din deconstructed the sources and making an argument as to whether he succeeded in applying the "equality principle" on which he based his argument.

The General Framework of Shams al-Din's Argument

In the chapter "Majal al-Bahth" ("The Scope of Research"), Shams al-Din identifies general categories under which rights and obligations are defined and established in the marriage and in relation to the parties involved.

1- The right/ the incumbency of the wife's submission to her husband—the husband's rights and the wife's obligations.

2- Women's rights upon her husband/ the husband's obligations towards the wife.

In the Shi'i legal sources, the two aforementioned categories are listed under two broader categories: the husband's the "right to submission" and "the wife's rights".

Such classification reflects the nature of the rights that each party has in comparison to the other. The first reflects the husband's specific right to his wife's sexual submission. The second, in contrast, is broader and reflects the numerous rights a wife holds over her husband. In other words, when dealing with marital rights and obligations, one speaks of the husband's right to his wife's sexual submission and the husband's obligations to his wife.

The marital rights and obligations ensue from the marriage contract and become effective by the actual consummation of the marriage, e.g., by the wife's sexual "surrender" and "submission" (*al-taslim* and *al-tamkin*) and by the husband's fulfillment of his marital obligations. Shams al-Din examines the implications of such terms as "rights" (*al-haqq*) and "obligations" (*al-hukm*) and their significance in the jurists' reading of the textual sources. Jurists disagree whether these commands ensuing from the marital contract are considered rulings or rights. "Right", according to Shams al-Din, means authority (*saltanah*) granted by the Divine Law-Maker, defined and specified by law, to a person over another person, over a group of people, or over a thing. It is one of the lower forms of ownership. A person who has a right may exercise that right at one's own discretion and need only observe the boundaries imposed by law. The distinction between a "right" and a "legal ruling" (*al-hukm*) is that the former is free to either keep or forfeit the right while in the latter one is not free to forfeit or transfer a ruling. Also significant, a ruling is considered constant and may only be altered by the Divine Law-

Maker.³⁵ Hence, jurists disagree whether the husband's right to sexual submission of the wife is a right or a legal ruling. Some jurists argue, Shams al-Din argues, that it is a right in the specific sense of the word, and so, cannot be relinquished, or transmitted, (either at will or through inheritance). Others argue that it should be considered a ruling by the Law-Maker, obligating the wife to sexually "submit" (*tamkin*) to her husband and not deny him as long as he is fulfilling all his obligations toward her.³⁶

According to Shams al-Din, regardless of the type of marital contract and whether the conditions are considered rights or rulings, both parties enjoy equal rights and obligations vis-à-vis each other. The following textual sources support his argument:

- The Qur'anic text: "... [A]nd for the women shall be similar rights (*over* men) in fairness, and for men (*their* rights) on women, is a degree above; and God is Mighty, Wise" (The Cow: 228).³⁷
- The Prophetic Tradition: "All of you are considered shepherds and all of you are responsible for one's flock... The man is the shepherd over his house and the wife is a shepherd over her husband's house and child...."³⁸

The term "shepherd" in the above tradition means caring (*ri`ayah*), which requires some degree of authority (*sultah*), compassion (*sufh*), and forgiveness (*ghufran*).

According to Shams al-Din, similarity in rights between the husband's rights and those of

³⁵ For more on legal differences between different types of rights, see, Shams al-Din, "Majal al-Bahth" in *al-Huquq al-Zawjiyyah*, p. 11.

³⁶ *Ibid.*, pp. 12-13.

³⁷ Quoted from the *Holy Qur'an*.

³⁸ Quoted by Shams al-Din from major *Hadith* collections- Sunni and Shi'i- such as *Sahih al-Bukhari*, *Muslim*, and so forth. For more, see, Shams al-Din, "Majal al-Bahth" in *al-Huquq al-Zawjiyyah*, p. 13.

his wife do not contradict the Qur'anic provision establishing man's dominion (financially), as indicated in the latter part of Surah al-Baqarah (the Cow) verse 228, "and for men (*their rights*) on women, is a degree above". Furthermore, Shams al-Din writes that such degree does not,

Allow men to become tyrants in their home and to deprive the wife from her role in the family so as to turn her into nothing more than a mere tool in their hands; rather, it is incumbent upon the man to practice this degree within the framework of the [Qur'anic provision] of "treatment with fairness" which cannot be achieved without observing [a degree] of balance and equality (*tawazun wa taqabul*) between the wife's and the [husband's] rights.³⁹

The above statement by Shams al-Din suggests that the "degree above" granted to men in the verse should be restricted by the verse's provision of "treatment with fairness". By and large, any discussion of rights and obligations in marital life should only apply to parties who fulfill their contractual obligations toward each other. Conversely, individual rights of each spouse are automatically forfeited when one of them becomes recalcitrant (*nashez*). How then is spousal recalcitrance legally defined and what are the implications of its application? First, argues Shams al-Din, the following two Qur'anic verses compare a wife's recalcitrance with the husband's: "...[A]nd so to those whose perverseness ye fear, admonish them and avoid them in beds and beat them; and if they obey you, then seek not a way against them; Verily, God is Ever-High, Ever-Great"(4: 34);⁴⁰ "[a]nd if a woman feareth ill-treatment or desertion from her husband, then shall it be no fault on the twain on they effect compromise (*peace*) between them two amicably; for compromise (*peace*) is good; and avarice is

³⁹ *Ibid.*, p. 14.

made to be present in (*people's*) minds; and if ye do good and guard yourselves (*against evil*), then verily God is All-Aware of what ye do" (The Women: 128).⁴¹ Having established the Qur'anic context of recalcitrance, Shams al-Din argues further that the whole issue should be subjected to and grounded within the framework of "equality" mentioned in the Qur'anic provision: "[A]nd for the women shall be similar rights (*over men*) in fairness..."⁴² Shams al-Din concentrates on the terms and conditions of recalcitrance and ignores the different measures adopted between the wife and the husband in such situations.

Before further delving into other legal sources to discuss recalcitrance and its implication for women, Shams al-Din provides lexical and semantic analyses in order to show how the term has been used and applied in a variety of contexts. The lexical meaning of the Qur'anic term *nushuz* is to rise or to protrude (*al-irtifa*), as in "the land protruded", or "the man was seated and he rose" (*nashaza al-rajul*). Such meanings have also been implied in the Qur'an to indicate that *al-nushuz* is one's deviation from (or rising above) the straight path. The word, thus, refers to anything that deviates from what is considered normative, according to Shams al-Din. In general, a person who ignores the legal boundaries in his or her marital relationship and does not observe the conventional positive social norms in marriage is considered *nashez*. Such meaning, however, has been stretched beyond its lexical meaning in Arabic, to include any kind of

⁴⁰ Quoted from the *Holy Qur'an*.

⁴¹ *Ibid.*

⁴² Quoted from the *Holy Qur'an*; also see Shams al-Din, "Majal al-Bahth" in *Al-Huquq al-Zawjiyyah*, p. 16.

estrangement between husband and wife - emotional, physical and psychological.⁴³ Hence, in *Sihah al-Lughah*, the word “*nashazat al-zawjah*” (the wife has become recalcitrant), on one hand, that a wife has become stubborn (*ista`sat*) and resents her husband, and, on the other hand, means that a recalcitrant husband (*nashaza`alayha*), beats his wife and becomes aloof [toward her]. *Majma` al-Bahrayn*, for example, gives the following meaning of *nashazat* (she became recalcitrant): “she became disobedient (*`asat`alayhi*) and she no longer submitted to him (*kharajat`an ta`atihī*); also *nashaza* (he became recalcitrant): he became recalcitrant and avoided her (*jafaha*), he harmed her, he resented her, and he mistreated her when in his company (*wa asa`a suhbataha*)”.⁴⁴ It is evident, says Shams al-Din, that the conventional meaning of the word *nushuz* has been stretched by many linguists and clerics beyond its lexical meaning to include every act of stubbornness and deviance a person displays in his or her marriage.

In contrast, in the juridical writings, the term recalcitrance (*nushuz*), is restricted to the specific rebellious acts undertaken by one of the spouses against the other and is applied to the spouse who fails to fulfill the marital obligations as laid down by law.⁴⁵ let me now turn to some of the juridical materials discussed by Shams al-Din - the fundamental sources of Islamic Law - along with their various interpretations, to assess the spectrum of legal opinions regarding such issues.

⁴³ Shams al-Din, “Majal al-Bahth” in *Al-Huquq al-Zawjiyyah*, p. 17.

⁴⁴ *Ibid.*, p. 18.

⁴⁵ If, however, both parties become recalcitrant, then it is considered a breach of marital obligations and specifically a breach of the law itself (the word is termed in Arabic as *tanashuz*); such marital state is described by the Qur’an as follows: “If ye fear a breach between the couple, then send an arbitrator (*chosen*) from her family; if they both desire compromise, God Will effect harmony between the couple;

The Textual Sources

In the chapter of Shams al-Din's book, *Marital Rights*, "The Right of Obedience: its Terms and Scope" ("Haqq al-Ta`ah Mufradatih wa Masahatih"), Shams al-Din examines the effects of a marriage contract for the husband, and the husband's rights, (e.g. his right to his wife's obedience). He examines in depth the implications of such terms as obedience (*ta`ah*), rebellion (*nushuz*), the right to sexual services (*haqq al-`istimta`*), and domicile (*al-musakanah*).

The Qur'anic verse (4: 34) mentions two key terms *nushuz* and *ta`ah* (rebellion and obedience) which stand in opposition to each other - the obedient wife is not rebellious and the rebellious wife is not obedient. In this context, the meaning of the term "obedience" is considered absolute, necessitating the wife's obedience in all matters demanded by the husband. Conversely, rebellion (*nushuz*) occurs when the wife is not obedient. Although in the context of the Qur'anic verse the term obedience (*ta`ah*) is not restricted, jurists have long agreed that the term is restricted and that the Divine Law-Maker did not intend it to be all-inclusive. As such, the extent of the wife's obedience has been limited to observing the boundaries imposed by the contract. Rebelliousness (*nushuz*), thus, occurs when the wife does not *obey* the husband in the restricted sense of this word.

Which primary legal obligation ensues from the marriage contract, the wife's obligation to obey her husband or her obligation to avoid recalcitrance? In case of the former, according to Shams al-Din, one should act cautiously according to the procedural principle of caution (*ihhtiyat*). This principle requires the wife to obey her husband even

Verily God is All-Knowing, All-Aware" (The Women: 35). Quoted from the *Holy Qur'an*; see also Shams

in cases when she may doubt the obligatory nature of her obedience.⁴⁶ According to Shams al-Din, some jurists argue that one should forgo speculation, opting for what is certain. Shams al-Din argues that this type of doubt differs from simple doubt that can be quantified such as the number of prayers one performed during a given time. In that case, one observes the minimal required limit and is exempt from further obligations. Further obligation would exceed *what is certain* (termed in juridical writings as *al-qadar al-mutayaqqan*).⁴⁷ One cannot apply this same measure to the issue of obedience, according to Shams al-Din because the obligatory act in question is not quantifiable (*inhilali*).⁴⁸ One cannot measure it and is therefore exempt from any additional obligations beyond “that which is certain” (*al-qadar al-mutayaqqan*). Under such circumstances of uncertainty (e.g., in the absence of quantitative measures), one should instead resort to a different procedural principle called *al-ishtighal al-yaqini yastad`i al-faragh al-yaqini*. This principle obligates one to be cautious and to comply with all possible options that may be subsumed under obedience (*tahsil `umwanin bi `aynihi*) in order to free oneself of responsibility. This principle specifically addresses qualitative obligations. Let’s say a wife obeys her husband in matter x, but has doubts about whether acting in matter y also comes under the category of obedience. Since there is no comprehensive concept to

al-Din, “Majal al-Bahth” in *Huquq al-Zawjiyyah*, p. 19.

⁴⁶ Muhammad Mahdi Shams al-Din, “Haqq al-Ta`ah Masahatuh Mufradatuh” (“The Right of Obedience its Scope and Terminologies) in *Huquq al-Zawjiyyah*, p. 26.

⁴⁷ *Ibid.*,

⁴⁸ Jurists draw a distinction between quantitative and qualitative act. For example, when one doubts the times of prayers one performed, then one can adhere to the minimal time- since such number can be counted. In qualitative acts, one cannot resort to counting, so how can one determine what is considered minimal or maximal?

delineate between the two matters, the wife should act as if matter y is subsumed under obedience.⁴⁹

If the primary obligation, however, is the prohibition of recalcitrance (*hurmat al-nushuz*), then one must act in accordance with the procedural principle of exemption, which states that, when in doubt, one is not held liable either by law or by reason (*al-bara'ah al-shar'iyyah wa al-'aqliyyah*).⁵⁰

Thus far, I have been discussing the legal rulings concerning the wife. As far as the husband is concerned, contends Shams al-Din, it is considered irrelevant whether the primary legal obligation is the incumbency of obedience or the prohibition of recalcitrance. The husband cannot demand obedience or submission from his wife when the legitimacy of their obligatory nature is in doubt. In other words, the husband can only demand submission of that which has been legally and categorically established as his right over his wife. Such restriction concerning the husband is analyzed according to another principle, says Shams al-Din. One of the postulates agreed upon by all Shi'i jurists is that of general authority (*al-wilayah al-'ammah*). According to the principle of "general authority", no one has authority or jurisdiction (*wilayah*) over another unless there is a legal proof allowing restricting such postulate. For instance, when the Divine Law-Maker gives the Prophets and Imams jurisdiction over believers, this inherently places limitations on the primary postulate of general authority. Hence, the principle of "general authority coupled with the fact that the incumbency of the wife's submission to the husband's demands is restricted, the man is prohibited from demanding submission

⁴⁹ Shams al-Din, "Haqq al-Ta'ah Masahatuh Mufradatuh" in *Huquq al-Zawjiyyah*, p. 26.

from the wife in matters that he doubts the licitness of such demands. The husband, thus, must limit his demands to what is considered certain- the known value (*al-qadar al-mutayaqqan*).⁵¹

What is the wife's primary legal obligation, to obey her husband or prohibition of recalcitrance? According to Shams al- "it is evident from the Qur'anic verse [mentioned above] that the primary principle is the unlawfulness of rebellion and not the obligatory nature of obedience".⁵² There is no clear command to obey implied either implicitly or explicitly in the Qur'anic verse. If such a command existed, the wife would be addressed directly; rather, the general direction of the verse indicates that the wife is prohibited from an unlawful act (*manhiyyah `an muharram*). The Qur'anic speech is actually directed toward men – husbands – in the context of advising men on measures they may adopt in response to the wife's defiance. Hence, the last part of the verse "...[I]f they obey you..." concerning the wife ensue from the unlawfulness of recalcitrance and not the obligation to obey her husband. This distinction requires one to identify the foundations of recalcitrance, thereby also clarifying the limits of obedience.

Nevertheless, the juridical works have long been assigning to wives obligations that, in Shams al-Din's opinion, have nothing to do with her role as a wife. Probing the juridical references, Shams al-Din scrutinizes a number of traditions in which he doubts either the content of the text (*dirasat al-matn*) or the validity of its transmission (*dirasat al-sanad*). He finds that in a great number of the traditions, jurists confuse the wife's

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 27.

⁵² *Ibid.*

obligations with general obligations incumbent upon all believers. For example, they include acts that do not ensue from the marriage contract, but from an individual's obligation as a believer. Shams al-Din highlights a series of traditions quoted in *Jawahir al-Kalam* upon which the wife's obedience to the husband is constructed. I will consider here some of these traditions leaving discussion of others till later in this work.

1) "For each one of the spouse's a right mandating fulfillment toward the other and which is *recommended* in accordance with the Book ..."

Shams al-Din argues that as far as the tradition is concerned, a right is obligatory upon the person and cannot be merely recommended. There are a number of traditions, which recommend treating one's relatives with kindness but such recommendations do not become rights.⁵³

2) "Even the husband's rights are held in higher esteem than those of the wife's for she has no right over him equal to his rights over her, not even one in a hundred, he holds the greatest right over her."⁵⁴

As for the second tradition, Shams al-Din casts doubt on its chain of transmitters, arguing as well that the husband's rights compliment the wife's and are not superior to them.

3) "...Among his rights that she obeys him and not disobeys him, not to give alms from his home except with his consent..."⁵⁵

⁵³ *Ibid.*, p.31.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

The third tradition is not related to the woman as a wife but as a believer. No believer is permitted to use another's money without his or her permission.⁵⁶

4) "...A woman who sleeps at night while her husband is angry with her (concerning any of his rights), her prayers and deeds are not accepted until he is content with her; if she leaves his home without his permission, damned by the angels of earth and heaven and by the angels of mercy and anger until her return home".⁵⁷

As for the last tradition mentioned above, its chain and content are weak, in Shams al-Din's view.⁵⁸

One may infer from the juridical sources that the man's right over the wife is restricted to the right to sexual services (*haqq al-istimta`*) and by correlation the right to domicile (*haqq al-sakan*, e.g., the sexual relationship demands that the wife reside with the husband). Perhaps some additional rights are accorded to husbands by jurists due to confusion that such rights are correlated with the right of sexual pleasure.

In contrast, historically, Muslim jurists⁵⁹ confine the husband's right to sexual entitlements, and by extension, the right to domicile (*musakanah*). There are differences in legal opinions on this matter.

For instance, on the authority of al-Muhaqqiq al-Hilli: "for each of the spouses a right that one is obligated to fulfill... Hence, it is incumbent upon the wife to submit to the husband's sexual demands (*al-tamkin min al-istimta`*) and to avoid that which the

⁵⁶ *Ibid.*, pp. 31-32.

⁵⁷ *Ibid.*, p. 30.

⁵⁸ *Ibid.*, pp. 31-32.

⁵⁹ Such as al-Qadi Ibn al-Barraj, al-Shaykh al-Mufid, al-Muhaqqiq al-Hilli, and Ibn Zahrah al-Halabi.

husband finds appalling... And he has a [right] to prevent her from visiting her father and mother and to leave his home except for an overarching obligation.”⁶⁰ In addition, Al-Mufid said: “And he [the husband] has to spend on his wives as long as they are under his [care]... If a wife became recalcitrant against her husband and left his home without his permission, her right to maintenance and clothing is forfeited it.”⁶¹ Sallar al-Dilamy said as well that: “... And maintenance is incumbent [upon the man] if the wife submitted herself to him sexually (*idha amkanat al-mar'ah min nausea*), and if she denies, then no maintenance is due her”⁶²

Let us consider now some of the traditions upon which Shams al-Din executed major revisions. Overall, the author cites 11 traditions, casting doubt on their validity in relation either to their chain of transmitters or even their weak linguistic or logical contents. I will limit my analyses to few of them.

1- It is related that on the day the women pledged allegiance to the Prophet, he said: “Listen you [addressing the women]. I pledge (*ubayi`ukunna*) that you do not associate anyone with God, you will not steal, you will not commit adultery, and you will not kill your children... And *you will not disobey your husbands in what is fair* [emphasis is mine]. Do you accept? They said: Yes”⁶³

Jurists provide different meanings to the phrase “what is fair” stated in the first tradition: 1) to enjoin good and forbid evil; the political meaning as defined in the

⁶⁰ Quoted by Shams al-Din, “Haqq al-Ta`ah : Masahatuh, Mufradatuh” in *Huquq al-Zawjiyyah*, p. 35.

⁶¹ Quoted by Shams al-Din, *Ibid.*

⁶² *Ibid.*, p. 36.

⁶³ Quoted by Shams al-Din, p. 37. Also related Qur’anic verse (The Examined One: 60).

women's pledge of allegiance to the Prophet; and 3) or the conventional meaning of the term, considering any positive act of love, cooperation, and forgiveness between the spouses, or any act considered conducive to marital happiness as a measure for "what is fair". Shams al-Din opts for the last meaning leaving discussion of what is considered acceptable to different societal norms to decide the matter as long as such measures do not contradict the legal boundaries. By adopting the second meaning of the term, some jurists even considered certain recommended rulings as obligatory by virtue of a woman simply turning into a wife.⁶⁴ Whereas the verse concerning the women's allegiance to the Prophet has no relation to marriage.

2- The tradition of al-Sudduq transmitted by Shu'ayb b. Waqid, on the authority of al-Husayn b. Zayd, on the authority of al-Sadeq on his fathers on the Prophet in the tradition called al-Manahi, he said: "...And he warned the woman not to leave her house without her husband's permission, and if she leaves the home, *every angel in heaven will curse her, and everything from jinn and people will curse her until her return home.*"⁶⁵

As for the second tradition, Shams al-Din finds its chain of transmitters weak. He argues as well that the linguistic content of the tradition is weak, for how can the jinn curse and use man's expression?⁶⁶

Shams al-Din concludes most of the traditions have a weak chain of transmitters and nevertheless, they have no proof that the husband has special rights emanating from the marriage contract except the right to sexual pleasure and whatever is correlated with

⁶⁴ *Ibid.*, p. 38.

⁶⁵ Quoted by Shams al-Din, "Haqq al-Ta'ah : Masahatuh, Mufradatuh" in *Huquq al-Zawjiyyah*, p. 42.

⁶⁶ *Ibid.*

it, such as the right to the same domicile (*al-musakanah*). Other obligations are those that are incumbent upon all believers in general (e.g. one is prohibited to use anyone's money without permission) and are unfounded.⁶⁷

The Qur'anic verse 60: 12 (the Examined One):

“O’ (*Our*) Prophet (*Muhammad*) when come unto thee believer women pledging that they will associate not aught with God, and they will steal not, and they will commit not adultery and kill not their children, and they will utter not slander, nor utter any falsehood which they had forged themselves between their hands and their feet and will not disobey thee in what is fair, then accept thou their pledge, and ask forgiveness for them from God; Verily God is Oft-Forgiving, the Most Merciful.”⁶⁸

Men's right to sexual pleasures from his wife (*haqq al-tamkin*) has been defined by Islamic law to include all modes of sexual activities allowed within the boundaries of the law. The wife cannot by law deny the husband such right except when there is a legal reason for such denial.⁶⁹ For example, if the wife has deficient mental or physical capabilities, the husband cannot demand the right to sexual pleasure as long as her health warrants it. If she is exposed to “harm” and “hardship” under these circumstances, the man's right is automatically forfeit, since these latter principles (“no harm” and “no hardship”) overrule the statute of his “right of sexual pleasure”.⁷⁰ This is a significant change in the legal ruling, from historically restricting her right to denial (to exceptionally difficult physical situations such as pregnancy, menstruation, or physical pain) to leaving the degree of difficulty to the wife to decide.

⁶⁷ *Ibid.*, p. 66.

⁶⁸ Quoted by *Holly Qur'an*.

⁶⁹ Men are to abstain from sexual intercourse during the wife's menstrual period and fasting.

In addressing the husband's right to "domicile" (*haqq al-musakanah*), Shams al-Din writes that the wife is obligated (unless she stipulates otherwise in the marriage contract) to reside wherever the husband chooses as the dwelling place of the couple, given, of course, that the husband observes the wife's socio-economic status and customary needs.⁷¹ Common debate arises over the connection between the husband's right to sexual pleasure and his right to choose the couple's domicile over the wife- is the wife obligated to seek permission from her husband to travel, to come and go as pleases? Does the husband have a legal right to prevent her from going and coming as she pleases? And most importantly, are such rights – the incumbency to seek permission and the right to prevent travel and mobility – based on the husband's right to domicile as an extension of his right to sexual pleasure? According to Shams al-Din, if such right emanates from his right to domicile and to sexual pleasure, then the wife is obligated to remain home to make it feasible for the husband to seek her. Other than that, she has the freedom to come and go as she pleases and he has no right to prevent her from doing so.⁷² If such right, however, does not emanate from the husband's right to domicile and sexual submission, but is an independent right, then the wife is obligated to seek the husband's permission for her mobility at all times and the husband has the right to prevent her from coming and going as she pleases.⁷³

⁷⁰ Shams al-Din, "Haqq al-'Istimta': Ma'nah wa Hududuh" in *Huquq al-Zawjiyyah*, p. 70.

⁷¹ For more on this matter and on what is considered acceptable by customs and applicable by law, see, Shams al-Din, "Haqq al-Musakanah", in *Huquq al-Zawjiyyah*, pp. 77- 78.

⁷² *Ibid.*, p. 79.

⁷³ *Ibid.*

Shams al-Din concludes, however, that there is no correlation (“*mulazamah*”) between the husband’s rights of sexual submission and cohabitation and that the wife’s incumbency to seek permission to leave the house. The issue is an independent matter that has no relationship to the issue of the husband’s right to sexual pleasure. There is no doubt, says Shams al-Din, that the wife is obligated to seek permission in instances when her husband wants her sexually. Otherwise, the burden of proof is on those who rule in favor of gaining the husband’s consent for the wife’s mobility, either partially or totally.⁷⁴

The juridical opinion ruling for the wife’s incumbency to seek permission to leave the house is not based on Qur’anic text but on traditions. Shams al-Din divides the Islamic measure of dealing with the spousal relationship into two broader dimensions: the physical/material and the psychological/emotional. He points out that juridical writings generally concentrate on the former dimension, neglecting the latter. In Shams al-Din’s view, the two aforementioned dimensions should form the framework that an Islamic marriage is grounded in. Shams al-Din further states that the legal marital boundaries should not be the sole definition of a good marriage. The law allows couples to choose for themselves other courses in their relationship that may help them in their lives together, and juridical arguments should not in any way, continues Shams al-Din, be considered the only reference to such matters.⁷⁵

For Shams al-Din, the framework that must guide marriage is based on the Qur’anic verses (The Cow: 229 and 223 and The Women: 19), which prohibit husbands from harming the wife.

⁷⁴ *Ibid.*

Scholars agree that the term “what is fair” (*ma`ruf*) means to treat women kindly and maintain and clothe them. Even in cases of divorce, men are warned to separate fairly with their wives, without causing harm. The term “harm” is crucial to understanding of the verse, for men are prohibited from harming women in any way. It is evident, argues Shams-al-Din, that the verse is speaking to men and it is they who are directed to treat women with fairness and kindness.⁷⁶ Shams al-Din also argues that the marriage contract affects a number of rights and obligations between the spouses that restrict their freedom; yet, these restrictions should not sacrifice their rights to privacy and each should take care not to offend the other when rights of privacy are exercised. According to the Qur’anic perspective regarding marriage, continues Shams al-Din, a wife does not become a mere slave to her husband upon entering the marriage. Any demand the husband makes beyond his right to sexual pleasure from his wife is considered harm (*darar, mu`adalah*), unless she permits it. Conversely, the husband should not be ignored and neglected. The “treatment with fairness” (*al-mu`asharah bi al-ma`ruf*) dictates the measures by which jurists examine marriage in all its aspects.⁷⁷ In this regard, says Shams al-Din, the verses containing the concept of dwelling (*al-sakan*) and the concept of apparel (*al-libas*) become all the more relevant:

And of His signs is that He created for you from yourselves, mates that ye dwell (*inclined*) unto them, and caused between you love and compassion: Verily in this are signs for a people who reflect (30:21).
 He it is who created you from a single self and from it did He make his mate that he may dwell! Resting unto her... (7:189).

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, p. 86.

⁷⁷ *Ibid.*, pp. 82-83.

They are apparel to you and you are apparel to them (1:187).⁷⁸

Thus, argues Shams al-Din, the above-mentioned verses set the standard for which one can gauge “treatment with fair” as indicated in the Qur’an. “For the nature of what is “fair” is that each spouse becomes as apparel for the other, (e.g., achieving tranquility and security in emotional and social matters).”⁷⁹ Thus, the matter of fair treatment is not restricted to sexual pleasure, but goes beyond it, becoming as a dwelling and as apparel to one another.⁸⁰ Shams al-Din, however, concurs that just as the husband is obligated to treat his wife with kindness and fairness in accordance with the spirit of the Qur’an, she is also obligated to treat the husband within the boundaries of “apparel” and “resting” in accordance with the spirit of the Qur’an.⁸¹ In summary, Shams al-Din concludes that the woman cannot leave her home under two conditions: when her right to leave the home conflicts with his right to sexual services and when she may be subjected to illicit attractions and seduction.⁸²

Shams al-Din argues, however, that the first condition is obligatory while the second is considered speculative; it is better for the wife to consult with her husband but not obtain his consent. The conditions are further restricted by the following provision: the husband does not have the right to restrict his wife from leaving the home in an absolute manner because it contradicts “what is considered treatment with fairness”.

⁷⁸ Quoted from *Holly Qur'an*.

⁷⁹ Shams al-Din, “Haqq al-Musakanah”, in *Huquq al-Zawjiyyah*, p. 84.

⁸⁰ *Ibid.*, pp. 84-85.

⁸¹ *Ibid.*, p. 88.

⁸² *Ibid.*, p. 89.

Moreover, since the spousal relationship is considered as “apparel” and as “resting dwelling”, such restriction on the wife renders her a slave-girl, deprived of freedom and integrity. Such actions are considered by customs, says Shams al-Din, as oppressive, *zulm*, harm, *darar*, and duress, *mu`adalah*.⁸³

Shams al-Din recounts a number of Shi`i Imami traditions which suggest the wife submit to her husband in circumstances extending beyond the two aforementioned boundaries- sexual demands and marital harmony and kindness. According to Shams al-Din, jurists have misunderstood the general connotations of these traditions. These traditions generally fall into two categories: 1) those that direct the wife to submit to her husband in an absolute manner; and obligate her to reconcile with him, (e.g., “...And she does not sleep while her husband is angry with her even if he had wronged her”, Lo! To a wife whose husband is angry with her and blessed is the wife whose husband is content with her”; and ‘she does not sleep while her husband is angry with her. She said: “O Prophet of God, even if he were oppressive?” He said: “Yes.”); and 2) those that advise a wife not to anger her husband without reason, and to oblige her to reconcile with him under such conditions and warning her not to sleep without attempting to remedy the problem (e.g., the most famous among such traditions, the tradition stating “.... Except for a woman who sleeps while her husband is angry with her with a justifiable reason (*bi-ghayri haqq*)”).⁸⁴ In the two aforementioned traditions, says Shams al-Din, there is no juridical proof for accepting a wife’s absolute submission. If such traditions suggest

⁸³ *Ibid.*, p.90.

⁸⁴ Shams al-Din quotes varied versions of the same tradition from different Shi`i tradition books, for more see, *id.*, pp. 98-100.

anything, it is that the wife should respect her husband. Several other traditions also warn the husband to respect his wife. It is related on the authority of the Third Shi'i Imam, Aba Abd-Allah: "A wife came to the Prophet and asked him about the husband's rights incumbent upon the wife, the Prophet informed her. Then she said: "What are her rights before him?" He said: "...If she errs, he forgives her (*ghafara laha*)".⁸⁵ The Prophet said: "the best among you are those who are the best in the way that treat their family [e.g., wife] and I am the best in the way [I treat] my family."⁸⁶ Seen from such perspective, the verse considered here (2:228) indicates that for every right a woman has, there is an equally matched right that a man has before her. Shams al-Din contends that men's and women's rights are similar and balanced. According to Shams al-Din, there are a number of traditions that enlighten the verse like those related by al-Tabari⁸⁷, the famous Sunni commentator, and al-Tusi⁸⁸, the famous Shi'i theologian and jurists. "Due to them upon their husbands the kind and just treatment and companionship as much as is due to [husbands] upon them [the wives] submission as prescribed by God"???? see reference in book.

On the authority of Zayd: "the husbands have to fear God when [dealing with] them [the wives] just as they [the wives] have to fear God in their [dealing with] them

⁸⁵ *Ibid.*, p. 102.

⁸⁶ *Ibid.*, pp 102-103.

⁸⁷ See for the author, *al-Jami' Li-Ahkam Shawahid al-Qur'an*, vol. 2. p. 453; Quoted by Shams al-Din, "Haqq al-Musakanah" in *Huquq al-Zawjiyyah*, p. 103.

⁸⁸ See for the author, *al-Tibyan*, vol. 2, p. 241; Quoted by Shams al-Din, "Haqq al-Musakanah".

[the husbands]”.⁸⁹ Other traditions commenting on and supporting the above verse state that the wives have the right upon their husbands to beautify and to offer themselves (*al-tasannu` wa al-muwatal*).

Ibn Abbas, the famous tradition transmitter, concurs with the afore-mentioned tradition and states: ‘I would like to beautify myself for her as I like [her] to beautify herself for me because God has mentioned it “as for them similar treatment with fairness”...’⁹⁰ Al-Tabari, however, has interpreted the phrase “similarity in rights” (*al-mumathalah*) as similar in the way that each treats the other, (e.g., each will equally abstain from harming the other). Shams al-Din finds such restriction untenable in light of the unrestricted nature of the verse and concurs with the following interpretations by al-Zamakhshari, the famous Sunni Qur’anic commentator, and Muhammad `Abduh, the eminent modern Egyptian theologian. The former states that the term similarity, (*mumathalah*), points to the similarity in the nature of the obligatory act (e.g., in the good nature of the deed), but does not imply similarity in the actual act; “for it is not incumbent upon him if she washed his clothes or baked for him to do the same, but he matches [such acts] with whatever is considered appropriate for men to do.”⁹¹ The latter states:

This is an all-inclusive principle indicating that the woman is equal to the man in all rights except in one matter indicated in His words: ‘And for men a degree above...’ And He has referred the knowledge of what qualifies as treatment with fairness due to each other among people to the degree in which one treats one’s family. For this sentence furnishes the man with the standard by which he measures his treatment of his wife in all affairs and matters. So if he wanted to demand something, he would remember that he is obligated to [respond] to a similar request. It is in the context of that verse [2:228] that Ibn Abbas said: “I

⁸⁹ Quoted by Shams al-Din, *Op., Cit.*, p.103.

⁹⁰ Quoted by Shams al-Din, *see, Ibid.*, p. 104..

⁹¹ *Ibid.*

adorn myself for my wife just as she adorns herself for me...” What is implied here [with the term] *Al-mithil*, “similar” is not the essence of things and its attributes (*a'yan al-ashya' wa ashkhasiha*); rather what is implied are the rights reciprocated between them, and that they are compatible (*akiffa'*), e.g., that for every work the woman does for the man, the man has a similar responsibility vis-à-vis her even if the work is not similar in its essence but similar in its genus. They are equal in rights and deeds, just as they are equal in self, feelings, and reason; that each is a complete human being who possesses the [faculty] of reason to ponder where one's interests are, a heart to like and to dislike whatever does not agree with one's [personality]; for it is not just for one of the parties to control the other and to deal with one as a slave to humiliate him [or her] and to use him [or her] for one's self interests.⁹²

How does Shams al-Din then, in light of the “similarity principle”, interpret the latter part of the verse (2:228) “...[A]nd for men a degree above”? Again, Shams al-Din examines the multitude of opinions with respect to the aforementioned verse, akin to al-Tabari's Qur'anic commentary *Jami' al-Ahkam* or al-Tusi's *al-Tibyan*, in which they cite the traditions which interpret “as a degree above” to mean a degree above in inheritance and war (*jihad*), command and obedience, or what Ibn Abbas said: I do not like to demand all of my rights awarded me upon her [in pursuance] of God's words “and for men a degree above.”⁹³ Shams al-Din concurs with Ibn Abbas's opinion and interprets the verse in light of such meaning: He states,

That the degree [in the verse concerned here] is for the man to forgive his wife for some of her obligations, and to overlook some of [such obligations] while he fulfills all of his obligations towards her. And that God had mentioned it “and for men a degree above” following his words “and for them similar rights” ...then he called upon men to gain such degree with preference (*al-fadel*) if they relinquish some of the obligations required of them [the wives] towards them [the husbands].... [Such verse] impart the meaning of inviting men to hasten to

⁹² Ibid., pp. 103-105; quoted by Shams al-Din from Muhammad Abduh, *Tafsir al-Manar*, vol., 2, pp. 297-298.

⁹³ See Shams al-Din, “Haqq al-Musakanah”, p. 106.

gaining a degree above women by kind treatment so that they would have the benefit of a degree.⁹⁴

Shams al-Din argues that this perspective, seen in conjunction with other Qur'anic verses dealing with the family and the principle of "treatment with fairness", indicates that the verse (the latter part of (2:228) does not mean that man is preferred and due a larger share in inheritance and war (*jihad*) (to which men are entitled to regardless of their marital status). Rather, the meaning of the verse "degree above" is specific to the context of conjugal life and the nature of the marital relationship between the respective spouses.⁹⁵ Shams al-Din's opinion on the verse in question diverges from the widely held opinions of his contemporaries such as Fadl-Allah, who stated that the verse refers to man's unilateral right to divorce. Shams al-Din continues that the degree above granted to the man in the context of "similarity" of rights between the spouses is predicated on the man's awareness of his wife's hardship as she fulfills her family responsibilities. It suggests that the husband not treat his wife like a business partner, holding her accountable for everything- but instead he suggests overlook her shortcomings, forgiving her. It is this "degree" that the man is ordered to obtain, the meaning of which has been established from numerous traditions ordering the husband to forgive his wife's mistakes and to overlook her shortcomings, says Shams al-Din. Just as she is ordered to treat him with kindness and fairness, he is ordered to do so as well. So, according to Shams al-Din, the husband's forgiveness of his wife's mistakes is not considered charity but obligation. Just as the wife is obligated to respect her husband's social station and position, he is

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

prohibited from making any demands that may humiliate her or clash with her psychological and emotional well-being. For such measures are oppressive and oppose the “treatment with fairness” provision.⁹⁶

Having discussed men’s rights in Islam, the definition and scope, let’s turn now to women’s rights in order to examine Shams al-Din’s argument in this respect. In his treatment of women’s rights in Islam, Shams al-Din discusses the issue in the primary sources, shedding light on their nature and scope:

The Qur’an: seven verses deal specifically with the woman’s rights in the conjugal life: (The Women: 14 and The Cow: 229, 233, 231, 232, 234, 240, and 241).

The Sunna: It is related that Safwan b. Yiha asked the Shi’i Imam, al-Rida: If a man with a young wife abstain from her for a period of four months or a year errs even if he did not wish to harm her?” the Imam responded: “If he abandons her for four month, then he erred after that, unless he obtains her consent”.⁹⁷ In an analysis of their content, Shams al-Din argues that the first tradition indicates that a husband is prohibited from abstaining from sexual intercourse for more than four months except in instances where he is inflicted with something. Under normal circumstances, the tradition gives no direction; there was no question or response pertaining to this issue. Shams al-Din writes that it is apparent that the Law-Maker has left such matters to the spouses’ discretion, adding that sexual desire cannot be relegated to rigid rules and strict timeframes. Instead, the traditions caution against neglecting the wife in instances where she desires such activities. Therefore, the husband breaches the law by not cohabiting with her if she

⁹⁶ *Ibid.*, pp. 106-107.

desires him, even if four months has not passed.⁹⁸ Shams al-Din cites a number of traditions in which the husband is advised to fulfill his wife's sexual needs, from preliminary foreplay to sexual satisfaction. The husband is advised to consider his wife a partner and to respect her wishes, not treat her as a mere tool for his sexual release. Clearly, the sexual relationship, argues Shams al-Din, is not a mere animalistic one, but an ethical, emotional, and aesthetic act.⁹⁹

Shams al-Din further discusses the wife's rights in cases where the husband does not fulfill his marital obligation. He begins by examining the meaning of the term rebellion in regards to the husband. He states that *nushuz*, recalcitrance, has two meanings: 1) the husband's dislike and abhorrence of his wife (as evident in verse 128 of chapter 4); 2) the husband is rebellious and no longer fulfilling his legal husbandly responsibilities, leading to his breach of the "treatment with kindness" principle (and all concepts such as the spouses being as an "apparel" and as a "dwelling" place for each other) rendering his actions oppressive, harmful, and creating duress.¹⁰⁰ It is the latter meaning that Shams al-Din discusses when dealing with women's rights in the chapter "The Right of the Wife, the Divorce, and the Widow" ("Huquq al-Zawjah, wa al-Mutallaqah, wa al-Mutawaffat 'Anha Zawjaha"). He concurs that man is considered recalcitrant when he no longer fulfills his obligations toward his wife. Such obligations include: maintenance in its broader meaning; sexual intercourse at least once every four

⁹⁷ Quoted by Shams al-Din. *Ibid.*, p. 135.

⁹⁸ Shams al-Din "Huquq al-Zawjah fi al-Sunnah al-Sharifah" in *Huquq al-Zawjiyyah*, p. 138.

⁹⁹ *Ibid.*, pp. 140-141.

months; sharing of the marital bed without sexual intercourse once every four nights; and treating the wife with respect (e.g., not to mistreat the wife either verbally or in his dealings with her).

Thus far, these obligations may be further categorized: the right to sexual activity in its broader meaning includes the right to sleep with the wife; and the rights ensuing from sharing life together in its broadest meaning encompasses both the material support of the wife and support of her emotional well-being (e.g., to refrain from abusing the wife emotionally).

As for maintenance, Shams al-Din concurs with jurists on the wife's right to financial support, proper medical care, appropriate housing and so forth.

Jurists have debated what rights the wife has to her husband concerning sharing their marital bed in addition to her right to sexual intercourse (*haqq al-mudaja`ah* and *haqq al-wat`*).¹⁰¹ Pertaining to sharing life together, does Shams al-Din concur with the general juridical opinion? Pertaining to "sharing a life together", Shams al-Din argues that the guidelines outlined in the Shari`ah concerning the wife's rights to "of sharing a life together" (*Huquq al-`aysh al-mushtarak*) are stated clearly in the Qur'an, prohibiting any form of harm or duress against the wife by the husband. He states that the traditions support the provision that "...the man shall bear the burden of torture if he was towards her abusive and oppressive." In addition to the clear prohibition against harming the wife in any form or shape, Shams al-Din clearly prohibit oppression, for one person to hurt

¹⁰⁰ Shams al-Din, "Huquq al-Zawjah, wa al-Mutallaqah, wa al-Mutawaffah `Anha Zawjaha" in *Huquq al-Zawjiyyah*, p. 147.

¹⁰¹ For major arguments concerning the wife's right to sexual entitlement and all its concomitant issues, see *Ibid.*, pp. 152-153.

another. Clearly, Shams al-Din says, with respect to the Qur'an, the general framework is to treat the wife with fairness, which also includes the meanings of "apparel" and "dwelling".¹⁰² He continues that there are a number of traditions discussing the wife's rights in this regard, either explicit or implicitly suggested, such as the tradition related by woman's right on her husband that when he undertakes it, it is considered a good deed. It is related that the Imam said: "that he feeds her, he clothes her, and that if she errs, he forgives her."¹⁰³ Shams al-Din relates five variations of the tradition related on the authority of the Imams, and one additional tradition from Sunni traditions.¹⁰⁴ Shams al-Din concludes that the proscribed Qur'anic provision "treatment with fairness" and "the prohibition against the infliction of harm and duress" which are interpreted by traditions as "clothing, feeding, providing residence and compassion or forgiveness" show two dimensions to the "life-together" (*mu`asharah*) - the material dimension and the emotional-ethical dimension. It is evident, says Shams al-Din that the jurisconsults have traditionally concentrated on the material dimension of the conjugal relationship, neglecting the emotional-ethical dimension. Therefore, the treatment with fairness provision (which entails the imparted meaning of "apparel" and "resting") prove that the provision is not limited to the wife's right to maintenance, but includes the emotional-ethical dimension of the relationship as well. In such cases, the husband is called upon to treat his wife "in a manner in which human dignity and compassionate love is provided in

¹⁰² *Ibid.*, p. 156.

¹⁰³ *Ibid.*, p. 157.

¹⁰⁴ *Ibid.*, pp. 156-158.

which the relationship with the wife is not a mere animalistic and sexual relationship in which the wife is transformed into a mere object for sexual pleasure”.¹⁰⁵

To the best of my knowledge, Shams al-Din is the first Lebanese Shi'i scholar who has debated this often-neglected issue. Though men are called upon to treat women with kindness, the principal has never been interpreted as an inherent legal obligation for which a man is legally reprimanded upon circumventing the law. Such legal interpretation is further substantiated by Shams al-Din when he argues that the number of traditions supporting this obligation discuss the matter of “forgiveness”, or *al-ghufran*, in conjunction with discussions on the wife's rights and the husband's obligation to clothe his wife and to feed his wife. In such cases, the ruling obligates the husband to clothe and feed his wife, equally obliging him to “forgive the wife”. Forgiveness requires that the husband understands his wife's emotional and psychological well-being, forgiving her mistakes and ill-treatment, especially when she is stressed. “Forgiveness” in this context, says Shams al-Din, in no way suggests that it is merely a request, but rather an obligatory act required of the husband just as he is obligated to maintain the wife.¹⁰⁶

Shams al-Din makes another interesting argument. He writes that this obligation is also required of the wife (e.g., “to forgive” the husband suggested in the tradition in which it is stated “that the wife's *jihad* is the good manner in which she obeys her husband”).¹⁰⁷ The meaning of “forgiveness” most befitting in this context of “kindness”, “*al-ma`ruf*”, “apparel”, “*libas*”, and “resting”, “*sakan*”, which suggests a sort of emotional cover or

¹⁰⁵ *Ibid.*, p. 158.

¹⁰⁶ *Ibid.*, p. 159.

¹⁰⁷ Quoted by Shams al-Din, *Ibid.*, p. 163.

emotional protection, perfection, and emotional beautification. In other words, says Shams al-Din, the functions of clothing include covering, protecting, and beautifying as to the emotional dimension. This obligation is stressed less in the tradition because the wife's position in the family is weaker than the husband's; the wife is the target of the husband's aggressive and violent behavior, and he may be more neglectful than the wife in matters requiring justice, fairness, and care.¹⁰⁸

In conclusion, the juridical works by the authors considered here reflect, on one hand, the internal debates particular to Shi'i theological circles on the role of contemporary *ijtihād* and the nature of the relationship between the text and reality; and the urgent need, on the other hand, to respond to newly arising questions concerning gender biased rulings detrimental to women in modern times. What make these works important is that they are examples of legal literature produced in light of debates on gender ideology on women's rights and equality within an Islamic context. Just as the ideological works of the 1990s vacillated between traditional and modernist gender constructs, the juridical works of the authors here, more so in Fadl-Allah's case than in Shams al-Din's, vacillated in the middle, remaining true to the traditional *fiqh* in some aspects and making novel changes in others. Although Fadl-Allah overturned a number of age-old gender biased rulings such as the wife's imprisonment, the consent of the husband as prerequisite for the wife's mobility, the wife's lack of equal sexual entitlements in the marriage, the power of divorce, and so forth, he kept rulings on audacious practices against women such polygamy, wife-beating and child custody stagnant. Shams al-Din, however, although did not provide a comprehensive gender

¹⁰⁸ *Ibid.*, pp. 160-161.

ideology, he addressed significant and critical legal issues. He is the first Shi'i Lebanese scholar, to address the psychological and emotional dimension of the marital relationship. In the past, Muslims, considered such dimension as the man's moral and ethical obligation. Shams al-Din, however, gave it the legal force by arguing for its obligatory legal nature. Hence, I argue that at this juncture, the fluidity of the Shari`a and the contingent nature of Islam has been instrumental in guiding the gender rulings in the positive direction; yet, such fluidity, seems to have its limits as well when it collides with persistent theoretical considerations true to "gender inequality" and historical patriarchal models of constructing the way men and women must relate to their contemporary reality. The failure in making important and much needed changes in custody laws for example, reflect the complexity of the cultural and social context of Lebanon.

CHAPTER 5
CONTEMPORARY LEGAL DECISIONS AND EVIDENCE, JUDICIARY, AND
OCCUPATIONAL LAWS: MUHAMMAD HUSAYN FADL-ALLAH,
MUHAMMAD MAHDI SHAMS AL-DIN, AND MUHAMMAD HASAN AL-
AMIN, 1990-1999

In the previous chapter I finished discussion of major contemporary Lebanese Shi'i legal works dealing with domestic relations such as marriage, divorce, child custody, polygamy, wife-beating, and marital rights and obligations. In this chapter I will continue discussion of the major contemporary legal works dealing with evidence, judiciary, and occupational laws.

The theoretical implications of these rulings are of immediate concern to women since many of the gender assumptions underlying the debates are couched in the "sex differentiation," "differentiation of roles" between the sexes, and "deficiency theory" concepts discussed in the previous chapters. These issues required the responses of Muhammad Husayn Fadl-Allah, Muhammad Hasan al-Amin, and Muhammad Mahdi Shams al-Din. Fadl-Allah and al-Amin, however, did not analyze the matters in depth but voiced, their juridical opinions in a number of seminars and lectures. In this chapter, I will analyze the various lectures of these two scholars on these issues. I will analyze Fadl-Allah's lecture published in *The Woman and Her Right to an Islamic socio-political*

*Life (al-Mar'ah bayna Haqqiha fi al-Ijtima` al-Siyasi al-Islami)*¹ and *Towards A New Reading in Juridical Women's Rights (Qira'ah Jadidah li Fiqh al-Mar'ah al-Huquqi)*², and Muhammad Hasan al-Amin's presentation published in *The Position of the Woman's Legal Right Between the Constant and the Changing (Wad' al-Mar'ah al-Huquqi bayna al-Thabit wa al-Mutaghayyir)*.³ It was Muhammad Mahdi Shams al-Din who provided a comprehensive juridical analyses of Shi'i juridical sources to recast and challenge major classical Shi'i juridical mandates on the right of women to occupy positions such as head of state and to serve as judges. Here, I will specifically analyze his seminal work *The Qualification of Women to Assume Leadership (Ahliyyat al-Mar'ah li Tawalli al-Sultah)*.⁴

With the success of the Islamic revolution in Iran, the beginning of inquiries on the Shi'i role in politics, and the establishment of an Islamic government, Shi'i women began to inquire into the role of women in public political life. The debates on women's rights rising in Iran focused on the barring of women to serve as judges and the assumptions that the testimony of women in courts was deficient as proscribed by evidence laws. These and similar questions rose within the Shi'i religious circles in

¹ Silsilat Manshurat Lajnat al-'Amal al-Nisa'i: *al-Mar'ah bayna Waqi'iha wa Haqqiha fi al-Ijtima` al-Siyasi al-Islami: Nadwah Hiwariyyah Ma` Samahat Ayat Allah al-Sayyid Muhammad Husayn Fadl-Allah*, no. 1, (Beirut: Dar al-Thaqalayn, 1995), pp. 28-33.

² Silsilat Manshurat Lajnat al-'Amal al-Nisa'i, *Qira'ah Jadidah li- Fiqh al-Mar'ah al-Huquqi: Nadwah Hiwariyyah Ma` Samahat Ayat Allah al-Sayyid Muhammad Husayn Fadl Allah*, no. 2, (Beirut: Dar al-Thaqalayn, 1996).

³ Silsilat Manshurat Lajnat al-'Amal al-Nisa'i, *Wad` al-Mar'ah al-huquqi bayna al-Thabit wa al-Mutaghayyir: Nadwah Hiwariyyah Ma` Samahat al-'Allamah al-Sayyid Muhammad Husan al-Amin*, no. 2, (Beirut: Dar al-Thaqalayn, 1997).

⁴ Muhammad Mahdi Shams al-Din, *Ahliyyat al-Mar'ah li Tawalli al-Sultah (the Qualification of Women to Assume Leadership)*, *Masa'il Harija fi Fiqh al-Mar'ah*, vol. 2 (Beirut: Dar al-Mu'assasah al-Duwaliyyah Lil-Nashr, 1995).

Lebanon as well. Unlike Iran⁵, there were no particular incident in which a woman in Lebanon was barred from serving as judges in the Shari`a court to stir a controversy and to raise the issue to the level of public debate. It is the debates worldwide, and in particular in Iran, that made their impact within the Shi`i intellectual circles of Lebanon. If women in Iran could attain certain rights within Shi`i context, why couldn't Lebanese Shi`i women demand such rights, even if they remained grounded in theoretical debates, especially since Shi`is could legally follow any jurist regardless of his or her ethnic background? If a gender ruling granted women the right to occupy such a position, why wouldn't the Lebanese Shi`i women want to secure the same right? It is in such context that the Iranian experience made its impact.

Let me begin my analysis with the first scholar, Muhammad Husayn Fadl-Allah.

Fadl-Allah's input on gender debate is mainly noticeable in family law.

Nevertheless, he voiced his juridical opinions on the issues considered here, shedding light on their general mandates without really delving into juridical analysis. Concerning women's occupation of the position of head of state, Fadl-Allah, as well all other scholars considered here, agree on the permissibility of women to occupy such positions. Fadl-Allah's standing is evident in his ideological work on the role and significance that Qur'anic female figures play in modeling active participation in political activities. Fadl-Allah's analysis of the Queen of Sheba story (as a sovereign ruler of her people) is a case in point. At a seminar entitled "The Woman between Her Reality and her Political Right" ("al-Mar'ah Bayna Waqi`iha wa Haqqiha al-Siyasi"), Fadl-Allah takes issue with

⁵ The debates in Iran began when Khomeini barred women from occupying the position of a judge- a rule that was overturned in 1998, when Muhammad Khatemi, the Iranian president, appointed the first woman judge.

the famous tradition related on the authority of the Prophet, which states “Those who entrust their affairs to women will never know prosperity (*la-yuflihu qawmun waliyathum imra'ah*)”. This tradition has been employed by classical Sunni traditionists to limit women’s political participation, and by extension, her right to serve in the judiciary. Although the tradition has not been authenticated, Fadl-Allah argues that even if one were to consider that the Prophet did indeed make such a remark, he may have been referring to the nature of leadership known then. The nature of that leadership was very different from the nature of leadership known today. Thus, Fadl-Allah questions, can a woman lead her country under the form of political institution known today, which is not controlled and directed by individuals? If one is to accept the Prophetic tradition, how may one reconcile such text with the clear Qur’anic verses on the Queen of Sheba’s sovereign political rule? If a woman is indeed not fit to lead or to occupy such positions, then what is the Qur’an’s objective in furnishing the model of a politically competent female sovereign ruler? Fadl- Allah concludes that women and men are both equally responsible for the political, social, and economic stability of their nations.⁶

As far as barring women from serving as judges and the prerequisite maleness for the occupation of such a post, Fadl-Allah argues that there is only one tradition in Imami books stating “...And the woman is not to be appointed in the judiciary” on which Shi’i theologians base their arguments. This tradition is weak and may not serve as a proof against women serving as judge. Thus, some Imami jurists began reconsidering such issue beginning with al-Ardabili’s book, *The Jurisprudence of Judging (Fiqh al-Qada’)*, which suggested the juridical possibility of rereading primary and secondary sources, and

⁶ Fadl Allah, *al-Mar’ah bayna Waqi’iha wa Haqqiha fi al-Ijtima’ al-Siyasi al-Islami*, pp. 40–45.

questioning the content of several traditions to that effect. These traditions are generally weak and lack solid evidence against women's right to serve in the judiciary, although there are unnoticeable reservations regarding certain domains in which women may be restricted from ruling. However, the issue is open for interpretation, concludes Fadl-Allah.⁷

Muhammad Hasan al-Amin, whose juridical contribution has not been discussed in Lebanese Islamic intellectual circles, to the best of my knowledge, offers the following evidence law that equates one man's testimony to two testimonies by women:

[Q] We would like to discuss the woman's general testimony. Some claim that the woman's position in the Arab society was inferior. We all know that the girl used to be buried right after her birth... And since religion aimed at freeing humanity from the [shackles] of norms and traditions, taking a big leap in the position of women would not have been received warmly. Therefore, a contemporary reading of the text considers the law that grants one of the woman's testimony in addition to the other is one [aimed] at a gradual reform and not a final one. Therefore, even in the opinion of some jurists, if the society is ready for another leap, then it is possible to overlook such ruling. Briefly is the mandate of two women's testimony equal to that of a man is an historical mandate or a static ruling?

[(A)] There is no objection whatsoever to present an historical reading – as a matter of principle. What catches our attention is the Qur'anic provision “..that one of the two may remind the other...” [(Cow: 282)] of the verse, e.g., there is a spoken wisdom to the text: why is it two testimonies and one may go astray? Such [questioning of the text] may open horizons to think in this matter in the following: that in the period of the pre-Islamic era, women occupied the lowest level of the social ladder which may account for the reasons that Islam in a very valuable period stripped her from some significant characteristics for testimony, the force of testimony and the ability to testify; so that she became more vulnerable to go astray more than the man who has self-confidence due to social situations and traditions. Therefore and, in order to safeguard the money, decreed that there shall be one man's testimony and two women's testimony and not one woman since the woman in her very psychological makeup was not capable to withstand and to provide a trustworthy testimony so that she needed another woman [for such task]. I say that the door for ijihad in this matter is possible.

⁷ Fadl Allah, “Qira’ah Jadidah li Fiqh al-Mar’ah al-Huquqi” in *Qira’ah Jadidah li Fiqh al-Mar’ah al-Huquqi*, pp. 32-33.

And we encourage further interrogation and the possibility of different perspectives concerning this matter that may conclude with a possibility of not reserving two women's testimony to one man's testimony in financial matters.⁸

In an attempt to find solutions to women's issues that, on the one hand, place women's interests at the core of the debate, and on the other hand, remain true to the spirit of Islam, Shams al-Din writes his series on women entitled *Masa'il Harijah fi Fiqh al-Mar'ah* (Sensitive Issues in Women's Jurisprudence) where, among other issues, he discusses maleness as a *conditio sine qua non* for occupying the office of judge.

In support of this prohibition, Shi'i scholars traditionally invoke four fundamental sources of Islamic law: the Qur'an, the sayings of the Prophet and the Imams (*hadith*), consensus (*ijma*), and reason (*'aql*). Shams al-Din proposes a fresh look at the four aforementioned sources for proper reassessment. In his re-reading of the texts, Shams al-Din considers both juridical principles of Shi'i jurisprudence:

- Derivation of principles of legal procedures in the presence of a legal precedent (*al-'usul al-ijtihadiyyah*); either Qur'anic injunctions or a Hadith, and
- Derivation of procedural principles in the absence of a legal precedent (*al-usul al-'amaliyyah*).

Qur'an

Those who oppose women serving as head of a state or judge ground their opinion mainly in the following two Qur'anic verses (4:34 and 2:28): "men have authority

⁸ Muhammad Hasan al-Amin, in *Wad' al-Mar'ah al-Huquqi bayna al-Thabit wa al-Mutaghayyir*, pp. 45-

(*qawwamuna*) over women on account of the qualities with which God hath caused the one of them to excel (*faddala*) the other and for what they spent of their property...” and “...and for the woman shall be similar rights (over men) in fairness, and for men (their rights) on women, is a degree above (*wa-lil-rijali `alayhinna darajah*); and God is Mighty, Wise”).⁹ The two key Qur’anic terms *qawwamah* and *fadl* in this context have been interpreted by some Shi’i scholars to indicate that men are intrinsically superior to women and have dominion over women in the general affairs of life. The interpreters maintain that the lexical meaning of the term *qawwam* is “authority” and “dominion”. Thus, in this meaning of the word, the implications of the statement contained in the Qur’anic verse are that due to their natural advantage God favored men over women in domains such as prophethood, imamate, and authority (*wilayah*). Shams al-Din and other contemporary Shi’i scholars refuse such interpretation and opt for the second meaning, which states that men have an earned advantage due to welfare issues, (e.g., men providing women with financial support).¹⁰ Men’s “authority”, thus, argues Shams al-

47.

⁹ Quoted from the *Holy Qur’an*, trans. S.V. Mir Ahmed Ali (New York: Tahrik Tarsil Qur’an, Inc., 1988).

¹⁰ Majma` al-Bahrayn, for example, gives two meanings to the word *qawwam*: an “intrinsic/natural advantage” or an “earned advantage”. Thus, in the meaning of the word, the implications of the statement contained in the Qur’anic verse are due to their natural advantage God favored men over women in certain matters, such as prophethood, imamate, and authority. The second is an earned advantage due to the welfare matters, e.g., men providing women with financial support. Al-Tabataba’i, a twentieth century commentator, in his renowned exegetical work *al-Mizan*, interprets the first part of verse 34 of the Surah Nisa in the light of the first meaning: “*Al-Fadl*” in this verse to men’s natural superior qualities (such as rationality, strength, and power) versus women’s emotional and delicate nature... Therefore, the universality of this cause (*wa `umum hadhihi al-`illah*) demands that the ruling based on it-namely, *al-rijal qawwamuna `ala al-nisa`*- should not be limited to conjugal life, but should generally apply to all matters involving men and women; matters such as legal procedures, state leadership, and military defense... Therefore, this verse (men have authority over women) has a universal applicability *dhu itlaq `amm*”. For more on the lexical meanings of the key Qur’anic words, see, Al-Shaykh Fakhr al-Din al-Turayhi, “Qawwam” in *Majma` al-Bahrayn*, edited by al-Sayyid Ahmad al-Husayni, vol. 6 (Tehran: al-Maktabah al-Murtadiyyah, 1386 A.H.), p. 142. For the exegetical interpretation of the same Qur’anic verses see, al-

Din, is confined to the realm of the family, and more importantly, is a condition arising from the contract of marriage which women could easily forfeit should they wish, by stipulating so in the marriage contract. The meaning of the word *qawwamuna*, argues Shams al-Din, is not limited to “authority” and “guardianship”. It also means to “protect” and to “maintain.” *Lisan al`Arab* by Ibn Manzur, for example, contains the following definition for *qawwam*:

“It was related that Ibn Birri said: *qiyam* in the context of God’s words “men *qawwamuna* over women” and “ except those whom you continue to maintain and to protect (*illa ma data `alayhi qa`iman*) means to protect (*al-maharajah*) and to maintain (*al-isle*).”¹¹

The verses considered above, conclude Shams al-Din, are about protecting and maintaining the family financial considerations. The Qur’anic usage of words such as dominion (*qawwam*) does not indicate, concludes Shams al-Din, either explicitly or implicitly, that men are intrinsically superior to, or that they have authority and dominion over women so as to disqualify women from assuming state leadership or the office of a judge.¹²

Hadith

Sayyid Muhammad Husayn al-Tabataba’i, *al-Mizan fi Tafsir al-Qur’an*, vol. 4 (Beirut: Mu’assasah al-`Amili Lil-Matbu`at, 1983), p. 343.

¹¹ Ibn Manzur, “ Qawam” in *Lisan al-`Arab*, Tome XII, vol. 50 (Beirut: Dar Sadir and Dar Bey, 1956), p. 497.

¹² Shams al-Din, “Dalil al-Kitab al-`Aziz” in *Ahliyyat al-Mar’ah*, pp. 65-66.

1) **“Those who entrust their affairs to women will never know prosperity (la-yuflihu qawmun waliyathum imra’ah)”¹³**

This saying has been transmitted without a chain of transmitters (e.g. *mursal* and without *isnad*), and can be found in seven variations in the Shi’i *hadith* books. The fact that this lacks chain of transmitters and not sound (*mursal wa ghayr sahih*).¹⁴ in and of itself, according to the principles of Shi’i jurisprudence, obviates its legitimacy as a legal proof (*hujjah*). However, Shams al-Din argues that even if this tradition were to be used as a legal proof, the wording found in it- will not know prosperity/ did not know prosperity/ and God does not honor (*lan yufliha ma aflaha la yaqaddisu Allah*) – cannot be taken to mean disqualification of women from leadership and judicial positions. The aforementioned tradition:

Is not a statement of prohibition of women’s jurisdiction (*wilayah*); instead, it implies that such a choice might not be sound under particular circumstances, e.g., when it involves conducting a generally sound action under inappropriate conditions. Although not invalidating the nature of an action itself, it prevents it from attaining optimal results. Just if one is saying: “those who sell summer goods in winter will not know prosperity” (*la yuflihu man ittajara bi hida`at al-sayfi fi al-shita`i*). This statement points to the fact that selling *summer* goods during the *winter* is not a sound choice (for instance, the seller may not make his expected profit), not that the selling itself is not valid.¹⁵

2) **[P]erforming Friday prayer, visiting the sick, marching in funeral processions...are not incumbent upon women (laysa `ala al-mar`ati... jumu`ah... wa**

¹³ Muhammad b. al-Hasan b. Ali al-Tusi, *al-Khilaf*, vol. 3 (Qum: Matba`at al-Hikmah, 1960), p. 311.

¹⁴ A *sahih hadith* is a tradition that all of its narrators belong to Twelver Shi’ism.

¹⁵ Shams al-Din, “Dalil al-Sunnah al-Sharifah” in *Ahliyyat al-Mar`ah*, p. 82.

mar'ah al-qada'').¹⁶

Even before considering the text of the *hadith*. Shams al-Din casts doubt on the reliability of its transmitters. The chain of transmitters (*sana'id*) is weak (*da'if*): therefore it is not a legal proof. Despite the fact that this *hadith* also cannot be used as a legitimate proof. Shams al-Din proceeds with its grammatical analysis to prove his opponents wrong. He notes that the sentence *laysa 'ala al-mar'ati...* in the text of the *hadith*. is not grammatically equivalent to an explicit prohibition of the type. e.g., do not write (*la taktub*). As the grammar of the text suggests, performing such things is *permissible* but not *incumbent* (*al-hukm al-taklifi*) upon women, whereas it is incumbent upon men. There are certain religious duties that a women is not obliged to perform (such as attendance of Friday prayers at the mosque), but this does not imply that performance of such duties are prohibited for her. Shams al-Din argues that the negative article "do not" (*la*) in the second part of the *hadith* is synonymous with *laysa*. Here too, what is meant is the negation of the incumbency of a command, and not the banning of women from performing these religious duties (or, assuming judicial positions). All of these considerations allow Shams al-Din to conclude that in both instances, women are simply excused from performing these duties but are by no means banned from them altogether.

¹⁶ Al-Shaykh Muhammad b. al-Hasan al-Hurr al-'Amili, "Kitab al-Qada'" (The Chapter on Legal Procedure), in *Wasa'il al-Shi'ah ila Tahsil Masa'il al-Shari'ah*, ed. Muhammad al-Razi, vol. 18 (Tehran: al-Mataba'at al-Islamiyya, 1388 A.H.), p. 6. This *hadith* is also mentioned with other additions to it in one of the "four books" (*al-kutub al-arba'ah*) in *Man la Yahdaruhu al-Faqih* by Muhammad b. Ali b. Bubawayh al-Qummi, known as al-Sadduq; many jurists refer, however, to *Wasa'il al-Shi'ah* because it is the most popular legal work of reference which gathers the legal traditions contained in the "four books" and in many sources, and it is limited to traditions concerned with legal subjects.

Many traditions found in the Shi`i “four books” run along similar lines. Their themes vary from statements that declare women unfit to rule because of their inherent deficiencies, to statements that indicate clear abhorrence for women’s participation in public life. Having collected ten of the most prominent of such accounts, Shams al-Din notices that five of them have no chain of transmitters at all (*mursal*), one is weak (*da`if*), and four have parts to them that are either weak or have no chain of transmitters (*mursal*).

It is evident, concludes Shams al-Din, that the weakness and lack of chains of transmitters (*isnad*) in the aforementioned traditions undermines their usefulness as legal proof (*hujjah*) in general, and more specifically, as proof for banning women from being judges.

Ijma`

In the absence of clear Qur’anic injunctions, or *hadith* guidance in judicial matters, Shi`i jurists use consensus (*ijma`*) of the jurists as a means of inference (*istinabr*) of legal rulings. According to Shi`i jurisprudence, unanimity of the Shi`i jurists’ views on a certain legal question is not a source in and of itself, but can become a means through which the Imams’ opinion may be discovered and that can later be applied as legal regulations.¹⁷ The key phrase here is *the discovery of the opinion of the Imams*. What must be established first is that the issue on which the jurists reached a consensus was also among the issues that were dealt with (e.g., speaking in legal terms, had a precedent) during the time of the Imams up to the period of the major occultation (874). In this case, there is a possibility that if a decision on such issues was reached, it involved

¹⁷ Hossein Mudarressi Tabataba’i, *An Introduction to Shi`i Law : A Bibliography Study* (London: Ithaca Press, 1984), p. 3.

In this case, there is a possibility that if a decision on such issues was reached, it involved a reference to the opinion of a living Imam. If, however, no such reference can be found in the early Shi'i tradition (*hadith*) literature, one assumes that the issue is from the category of "new" or "unprecedented" issues (*al-masa'il al-mustahdathah*). The existence of a legal ruling on such issue would mean that it was reached, according to the principles of Shi'i legal procedure, on the basis of judicial reasoning involving *ijtihad* in juridical issues (*fi al-masa'il al-fuqahiyyah*). The unanimity of the jurists (regardless of their number) on such issues has no universal validity of its own. Rather, this unanimity reflects the jurists' own understanding of the issues involved, which is not binding upon the believers.

According to Shams al-Din, examination of the collections of early *fatawa*, issued by the jurists who lived during the period close to the Imams, shows no reference to maleness as a prerequisite for assuming judicial office. It is safe to assume, therefore, argues Shams al-Din, that such issue had no precedent in early Shi'i jurisprudence.

The earliest reference to this prerequisite in Shi'i legal writing dates back to Shaykh al-Ta'ifah, Muhammad b. Hasan al-Tusi (d. 1067) (known simply as "al-Shaykh" in Shi'i legal works). Al-Tusi mentions this condition in two of his books: *Kitab al-Mabsut* and *Kitab al-Khilaf*. Prior to the two aforementioned works, al-Tusi wrote a book- *al-Nihayah*- in the form of a tradition (*hadith*) collection. In the introduction to his *al-Mabsut*, al-Shaykh states: " a long time ago, I wrote a book, *al-Nihayah*. In it, I

Shams al-Din, contains no reference to maleness as a *condition sine qua non* for judgment. This fact clearly demonstrates first, that this matter was not dealt with during the lifetime of the Imams, and second, that there was no reliable *hadith* to support it.¹⁹ This principle, thus, falls under the category of secondary issues (*al-masa' il al-ijtihadiyyah*) the consensus (*ijma`*) upon which, according to the principles of Shi'i jurisprudence, has no absolute authority.²⁰

Reason

Finally, says Shams al-Din, those who do not accept women in the head of state position, extension as a judge, base their arguments on women's gender shortcomings and men's natural superiority. The arguments of the proponents of such view may be summarized as follows,

In their very nature, some scholars, according to Shams al-Din, argue that both physiologically and psychologically, women and men differ from each other, women

¹⁹ Considering the reasons for al-Shaykh's later mentioning such a condition, Modarrissi suggests: "These two works [*al-Mabsut* and *al-Khilaf*] were modeled upon Sunni works and through them an important part of Sunni legal scholarship passed into Shi'i law..." Modarrissi, "the Periods of Shi'i Law," p. 44. Also see al-Tusi, *al-Mabsut*, p.6 in which he states that what prompted him to write this book is the constant badgering of the Imamis by the Sunni jurists (*'ammah*). He reports that this book, upon its completion, would be unique so one will not find a similar book to it neither in the books of his companions nor in the books of his opponents). Also, for the impact of Sunni legal schools on the formative period of the Shi'i legal school is well presented in Stewart who argues that "...[I]t is nevertheless clear that the parameters set by the Sunni legal *madhhabs* guided the Shi'ites' formulation and implementation of their views concerning the elaboration of Islamic law during the Occultation". For more see, Devin j. Stewart, "Conclusion" in *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System* (Salt Lake City: the University of Utah Press, 1998), p. 242.

²⁰ " [Mujtahids] permit *ikhtilaf* (disagreement) in *al-ahkam al-ijtihadiyyah* (judgments reached on the basis of *ijtihad*), and they do not declare to be an error someone who adheres to the opposite of what *al-waqi`* (reality) in *al-masa' il al-far`iyyah* (the secondary issues)." - Andrew Joseph Newman, "The Development and Political significance of the Rationalist (Usuli) and Traditionalist (Akhbari) Schools in Imami Shi'i History from the Third/Ninth to the Tenth/Sixteenth Century A.D.", pt. I (Ph.D. diss., University of California, 1986), p. 35.

In their very nature, some scholars, according to Shams al-Din, argue that both physiologically and psychologically, women and men differ from each other, women being emotional and men rational. Therefore, each one must occupy the position that is suitable to one's nature. Thus, the prerequisite of maleness for judgment or head of state is not oppressive to women; on the contrary, it is just, as is the prerequisite of femaleness for certain positions.

Shams al-Din refutes such claims arguing that recent experiences have proven men and women to possess equal rational abilities, and any discrepancy between them is only limited to women's physical and psychological differences associated with motherhood. In and of itself, this is not a sufficient ground for banning women from occupying any position. As far as justice and fairness are concerned, Shams al-Din argues that scholars who demand that no man be elected for the office of judge, unless is considered the most rational and wise among his contemporaries, not one who is characterized by his sensitivity and emotions. He sees such potential as equal in men and women. To those who consider women's primary obligation to be motherhood and marriage, he argues that such responsibilities are as equally demanding as fatherhood, and that fact does not preclude men from pursuing other public interests.²¹

Having demonstrated the problematic nature of the arguments utilized by the opponents of women judges as argued by Shams al-Din, I will now turn attention to the last resort used in support of such views: the principle of prudence (*ihdiyat*) in (*Fiqh al-Qada'*) (*al-usul al-'amaliyyah*) procedural principles.

Procedural Principle (Al-Asl al-'Amali)

²¹ Shams al-Din, "Ahliyyat al-Mar'ah fi al-Shari'ah al-Islamiyyah lil-'Amal al-Siyasi" in *Ahliyyat al-Mar'ah*, p. 10.

When a legal ruling cannot be directly inferred by resorting to the four aforementioned sources, the Shi'i jurists resort to four principles that have been laid down for such circumstances; these are known in Shi'i jurisprudence as *usul 'amaliyyah*.²² The focus of analysis will be limited to two principles: exemption (*al-bara'ah*) and prudence (*al-ihtiyat*).

One of the postulates of that has been agreed upon by all Shi'i jurists is the principle known as "general jurisdiction" (*al-wilayah al-'ammah*). According to this principle, no one has the right of authority or jurisdiction (*wilayah*) over anyone else. However, in addition to this principle, there is another which allows the imposition of certain limitations on the primary postulate. For instance, the Divine Law Maker grants jurisdiction over the people to Prophets and Imams. In the absence of Prophets and Imams, in order for the community to run its affairs, it must appoint rulers and judges from its members. Naturally, the question arises regarding whether both men and women can attain such an office.

In the absence of explicit Qur'anic provisions for deciding the matter, what should the community do? Those who oppose the appointment of women to leadership positions argue that Muslims must act according to the principle of caution or prudence (*ihtiyat*). In this case, the interpreters maintain, the principle of prudence requires that one forgo of the speculative options and rule in favor of what is certain (*yaqin*). Applied to this discussion, the principle of *ihtiyat* means the following: in deciding between two speculative possibilities of men and women being rulers, one should favor the first option for this is the only variant among the two that contains certain knowledge (*yaqinan*): men can become rulers or judges because such precedents exist. Let me consider now, writes Shams al-Din, how one might apply the principle of prudence or caution in attaining rulings excluding women from potential rulers. The question is whether, in

²² For an Introduction of these principles see, Modarressi, *Op. Cit.*, p. 10.

the absence of both Prophet and Imams can women become rulers? For those who express doubts about the permissibility for women to assume any kind of leadership role, the answer is “no”. Since, they maintain, there are no clear textual provisions that the limitations imposed by the Divine Law-Maker on the primary postulate (that it is permissible for humans to take charge of their affairs in the absence of both Prophets and Imams) included women, choosing a female ruler would contradict the precedent of all first Islamic rulers being men, and would amount to “going beyond what is certain “ (*khuruj `an al-mutayaqqan*).²³

Others argue that in cases of absent clear textual injunctions, one must act in accordance with the principle of exempt (*al-bara'ah*), (i.e., exemption from any legal obligations in cases when it is not known whether such obligation is incumbent). Shams al-Din, although supporting the general applicability of the principle of exemption in the absence of clear textual provisions, remarks:

Are we to believe that God had left such matter to juridical principles (*al-usul al-`amaliyyah*) despite the fundamental importance of this issue for the Muslim community? There are no clear general injunctions on other fundamental issues, why should this one be an exception? There is prima facie good reason to believe that this issue is not to be subsumed under *al-`usul al-`amaliyyah* since we have the juridical proof (*al-dalil al-ijtihadi*) for women’s right to assume leading positions.²⁴

According to Shams al-Din, since the primary postulate clearly states that “ no one has authority or jurisdiction over anyone else”, this means that this ruling, on its own, necessitates the jurisdiction of man over himself/herself. For it is not possible for both options to be present at the same time: for no one to have authority over anyone, and for anyone not to have authority over oneself. Thus, according to Shams al-Din, we can conclude that the

²³ Shams al-Din, “al-Asl al-‘Amali” in *Ahliyyat al-Mar’ah*, p. 143.

²⁴ *Ibid.*, pp. 144-145.

aforementioned principle necessitates the authority of one over oneself in all cases except when there are clear textual injunctions restricting such authority.

Regarding such restrictions, Shams al-Din considers the evidence of the Qur'anic verses (33:6 and 33:36), whereby the prophet has been granted authority over Muslims. Considering the grammatical usage in the Qur'anic phrases in question, Shams al-Din mentions that is not (*ma kana*) in the Qur'anic verse (33: 36) signifies the general negation of the ability and the denial of the right of the believers' own authority in face of God's decree, the significance of usage of both grammatical genders- the believers men and women (*al-mu'minuna wa al-mu'minat*).²⁵

In light of Shams al-Din's statement, one may conclude that within the Qur'an is the proof (*dalil*) that both men and women have the right to assume judicial and leadership positions. And one may add, argues Shams al-Din, in the absence of the Prophets and Imams, these affairs are left for the people to decide themselves. This can be supported, for instance, by the already mentioned verse 6 of The Clan (*Ahzab*), which shows that in the absence of the Prophet, the believers are to decide their own affairs.

Shams al-Din cites many Qur'anic verses such as "...Every man shall for what he hath wrought, be responsible" (52:21) and "Nay! (*there is no need as*) man against his own self shall be a witness" (75:14)²⁶ and authentic traditions in support of his thesis. One particular tradition cited in *al-Kafi* supports the postulate of one's absolute right to have authority or jurisdiction

²⁵ Shams al-Din, "al-Mashru'iyah li-Tawalli al-Mar'ah li-Ri'asat al-Dawlah" in *Ahliyyat al-Mar'ah*, p. 148.

²⁶ Quoted by *Holly Qur'an*. Also see (2: 134 and 141; 6:164; 9:105; 16:111; 17: 13 and 14; and 30:44).

over oneself: “ God has delegated (*fawwada*) to the believers everything except the humiliation of oneself.”²⁷

Hence, the rulings barring women from serving as judge and assuming state leadership are legally unfounded, according to Shams al-Din. The question is how many of these legal issues continue to inform Islamic legal gender rulings? Shams al-Din has shown that a re-reading of the text with a different gender perspective in view may indeed yield favorable results.

Conclusion

In light of the trend toward reinterpreting the Islamic text in order to deal with contemporary issues, Muhammad Husayn Fadl-Allah, Muhammad Hasan al-Amin, and Muhammad Mahdi Shams al-Din succeed in arguing for woman’s right to serve as judge and head of state. Only al-Amin, however, reconsiders the evidence law (requiring the testimony of two women of that to one man’s). Al-Amin attempts as I have shown to read the verse in its historical context. My analysis of Shams al-Din’s work, in particular, on the subject have yielded the following results:

First, I have established that the principle of banning women from judgeship has neither legal precedence in early Shi’i jurisprudence, nor can it be substantiated beyond doubt by the two textual sources in Islamic law: Qur’an and Hadith. Second, this suggests that the issue belongs in the category of secondary issues, (i.e., that legal rulings interpreted in cases where such issues are at stake involve a jurisconsults’ interpretive effort- *ijtihad*). Third, the validity of such rulings, therefore, is not absolute due to at least two reasons: a) the validity of a particular ruling ceases with the death of its author and b) as I have shown, most of the textual evidence involved is

²⁷ Abu Ja’far b. Ya’qub al-Kulayni, “Kitab al-Jihad” in *al-Kafi*, vol. 5 (n.p. 1955-56?), p. 64.

either weak or lacks chain of transmitters, which, according to the fundamental principles of Shi'i Imami jurisprudence, have no legal value. Moreover, legal rulings concerning "secondary issues" are not binding, even during the life of the Mujtahids. Fourth, the use of prudence could provide an argument for those supporting maleness as a prerequisite for judgeship; it could be clearly demonstrated that such restrictions are embedded in the premise, out of which a ruling is inferred through prudence (*ih̄tiyāt*).

However, as Shams al-Din's analysis suggests, the principle that "nobody have authority over somebody else, unless it is inevitable due to certain circumstances" (e.g., in the absence of the Prophet or an Imam) by no means suggests that if such authority were to be granted, males should be its only recipients. The most viable interpretation, according to Shams al-Din, is that "everyone is to have authority over him/herself, unless there are clear textual injunctions limiting such authority."

Shams al-Din does not only succeed in undermining and refuting the arguments of the opponents of women judges and state leaders, but he gives his own opinions legal force by grounding them in textual sources, the Qur'an and the authentic traditions. He thus restores to women their unequivocal right to assume a judicial position. Shams al-Din began a trend toward reconsideration of major rulings in Shi'i Imami jurisprudence on gender where clear instances of gender biases are observed.

CHAPTER 6

LEBANESE SHI'I WOMEN SPEAK

Major criticism of works on gender and Islam has been directed against the analyses of discourses of male writers. In my present work, I have concentrated on the works of male Shi'i theologians due to the fact that Lebanese Shi'i women, to the best of my knowledge, did not publish literature concerning the legal and ideological debates on gender. This is not to say that Lebanese Shi'i women were absent from the wider debates. Almost all the books discussed here and dealing with the oral gender debates of Fadl-Allah and al-Amin were compiled and edited by women. The moderators of symposia held at different times are women, and the questions raised by the audiences, are raised by women. Prior to the 1990s, especially in the 1960s and 1970s, most Shi'i women who participated in public life were those members active in liberal, socialist, and communists groups. It is in that context that feminist issues were raised. Most Shi'i women, outside that context, played a marginal role in gender debates even after al-Sadr's initiatives to strengthen their role in society. They even remained marginal in raising gender debates in the legal sphere, an observation that remained true until the outbreak of the Islamic revolution in Iran and its concomitant repercussions in countries with Twelver Shi'i communities. Gender debates in Iran were monitored, to varying degrees of interest, by the Shi'i community of Lebanon. By the 1990s, the contradictions between some Shi'i Lebanese women's social reality and juridical texts on gender further

complicated their lives and generated undue anxiety. Of course, the same anxiety was present, to a lesser degree, even before these debates for Lebanese women for whom the cultural norms were not on par with their changed social life. It is in such context that these women entered the debate.

Although in Lebanon participating in the debate does not translate into a real religious commitment, for some women, the debates are intellectual discussions on current events. Though little is known about these Shi`i women, for no biographical literature is available about them, one can patch together a scanty picture of their profiles. They are generally educated professional Lebanese Shi`i women representing a wide range of ideological affiliations, ranging from secular liberal women to those who are religiously committed. Their names included Dr. Dalal `Abbas, Professor of Arabic, Sawsan `Awwad, a journalist, Zaynab Hammoud, an acclaimed poetess and a journalist, Layla Hamiyyah, Lubna Bulaybil, and Jamal al-Husayni. The urgency of their questions and gender concerns, as they unfold in the debates I examined, speak of voices united across the spectrum, cutting across religious and familial affiliations. Women's issues seemed to unite Lebanese women, even more so among those women who shared the same confessional community. They questioned injustices, whether committed in the name of religion or tradition. They were aware of the gender biases they face contradicting their social reality of work, education, and modern challenges. Let's look, for instance, at Jamal al-Husayni, a member of the Center of Women's Affairs and the moderator of a symposium held in 1995 (the content of the symposium was published in a book in 1997). The occasion is the celebration of the birth of Fatimah, the daughter of Prophet Muhammad, which also marks International Women's Day.

The talk about Islam's honoring of women in the general Islamic public discourse is [growing], yet the application is inadequate. The Muslim woman is still treated as an inferior in the family, in institutions, or in the Islamist movements. Such inferiority is evident on a number of levels. She [the Muslim women] is still treated as a juvenile and, as such, in need of male guardianship. Where did such negative views come about? To what extent are such views congruent with the Qur'anic spirit, which honors and liberates man [read: humans]? Who is responsible for deepening the division and widening the gap between such views and the [Qur'anic] spirit? For how long should such division continue to [separate] between a comprehensive outlook observing the Qur'anic spirit and the general objectives of the Shari'ah and the specificities of conflicting interpretations of juridical works (*ijtihadat*)? ...Our symposium which we hold today under the title "A New Reading in the Woman's Juridical Rights" is but an attempt to shed light on such issues that, in reality, are problems generating confusion and anxiety as they face us when [we] read the juridical textual works on rights produced by the minds of jurists throughout history. They are problems generating confusion and anxiety as they face our minds as Muslim women. For we recognize their danger and their negative effects on the woman's being in the general Islamic discourse... We hear much about Islam's liberation of women, its establishment of her right to education and to work, for instance, but how do such rights stand in congruency with a command decreed by a number of jurists that prohibits the woman to leave her home without her husband's consent? Or how may a woman be convinced that she has her own independence, honored and respected in Islam in light of an almost juridical consensus on the woman's lack of qualification to serve as a witness in the simplest matters such as the sighting of the moon during the [fasting month] of Ramadan? ... The questions and the issues are [continuously reproduced] and the juridical product is still reproduced from the same uterus, producing similar forms generating more questions. A number of courageous and academic attempts [have managed] to escape such [preexisting] confines to go against the [idea], which persisted as one of the juridical axioms [*badihiyyat*] for centuries such as women's qualification to assume political leadership. What about the post of jurisconsults? How about the judicial position? Inheritance? Testimony? Blood Money? And others. These are subjects that are forbidden... Is there a way to enter them and to inquire about them in a serious and an academic manner? Do we have enough courage and freedom to announce our results without leaning on the backward, the established [norms], the customs, and the consensus?¹

¹ Jamal a-Husayni, "Muqaddimat al-Nadwah al-Ukht Jamal al-Husayni," *Silsilat al-'Amal al-Nisawwi, Qira'ah Jadidah li-Fiqh al-Mar'ah al-Huquqi: Nadwah Hiwariyyah ma' Samahat al-Sayyid Muhammad Husayn Fadl-Allah*, no. 2 (Beirut: Dar al-Thaqalayn, 1997), pp. 13-15.

Another example of women's participation in the debate is a seminar under the title "Women's Legal Position Between the Constant and the Changing". The urgency of the topic is brought about, says the moderator of the seminar,

...[A]s a result of many global challenges, the evolving discourses on human rights, and the growing change concerning women's legal rights. One notices, in such a wider context, the almost absent Islamic response- in the form of textual prescriptions- addressing significant issues and problems arising from the urgent needs and demands created by modernity and the realities of contemporary life. The absence of the Islamic text is accompanied by a significant number of abuses committed against women. According to enlightened scholars, who argue that they are [gender rulings] historically situated and are a subject of specific social circumstances. This necessitates the revisiting and questioning of such texts by theologians and mujtahids alike. The process requires theologians to deconstruct the texts taking present realities into account, observing the spirit of the *Shari`ah* and, not so much, the specificities and details of the legal body which stands in apparent contradiction to it. It is in the spirit of the *Shari`ah* which honors man [in this context humans] and appoints man God's vicegerent on earth, with all the responsibilities associated with such role – which provides man the freedom in behavior, work, and choice and invites man to engage in thorough reflection and thinking, that one may find in such atmosphere that the space for change by the process of inferential science based on the Qur'an is adequately open. Such space is available to jurists who are called upon to remove the accretions, which were added to the texts as a result of inadequate and, even sometimes, patriarchal system. [A system], which establishes male's authority over women, opens the door for men to be abusive, sanctifies historical experiences and applies the historical experiences on to current situations which are completely different from the preceding ones. It is time for the jurists and intellectuals to open the gate of history to fend off established customs and mores attached to the Holy Qur'an, in addition to [issues] of women's dependency, men's and society's addiction to temptations such as power, money, and so forth.²

² Fatimah al-'Abd Allah, "Muqaddimat al-Hiwar: Fatimah al-'Abd-Allah," *Silsilat al-'Amal al-Nisawwi, Wad' al-Mar'ah al-Huquqi bayna al-Thabit wa al-Mutaghyyir: Nadwah Hiwariyyah ma` Samahat al-Sayyid Muhammad Hasan al-Amin*, no. 3 (Beirut, Dar al-Thaqalyan, 1997), pp. 11-13.

There is clearly in the voices of the Lebanese Shi'i women a beginning of feminist consciousness and an urgent need for alternative gender discourses that tackle the blatant gender biases in some areas of Islamic law and provide equality of rights. I see both statements as an Islamic Feminist rereading of gender by women. Is it possible for their to be a "radical feminist" reading with a rearticulated Islamic religious context? The issue of "Islamic feminism" has been hotly debated and contested issue in the field of Middle Eastern and Women's studies.³ The debates generated more questions and misgivings than providing a clearer picture of the situation.⁴ I consider these voices feminist because they argue against gender inequality and aim for gender equality. Also, although the female moderators in the above quotations set their demands within an Islamic framework, they are simply not women defending the faith. They find no excuses for the present gender biased rulings and demand an explanation for their continuity, ardently challenging existing religious establishments.

Despite their awareness of juridical gender biases, Lebanese Shi'i women and Lebanese women in general have not fully succeed to adequately challenge religious gender assumptions. The major shortcoming that I see in this regard was the fact that Lebanese women did not engage in the *fiqh* debate itself, in contrast to their Iranian counterparts. It seems that Lebanese women lacked and are still lacking the proper background to address and discuss the *fiqh* issues on a level of formidable scholarship. Although Lebanese Shi'i women may not feel comfortable expressing themselves in legal

³ See, for instance, Miriam Cooke, *Women Claim Islam: Creating Islamic Feminism through Literature* (New York: Routledge, 2001);

terms, they express themselves through literary writings on gender. Prominent among them, are Layla Ba`albakki and Hanan al-Shaykh.

Ba`albakki wrote mainly at the end of the 1950s- early 1960s. She rose to prominence despite her Shi`ite background. Her first book, *I Live (Ana Ahya)* deals with rebellion. The character, Lina Fayyad, tries to escape her oppressive hypocritical environment by attempting suicide, an act of defiance against the forces of traditionalism and modernity.⁵ Her choice to commit suicide, in Accad's view, is due to the cultural milieu, which has a vested interest in producing women who are child-like and unable to deal with the real world emotionally and intellectually.⁶ Her second book, a collection of short stories entitled *Spaceship of Tenderness to the Moon (Safinat Hanan ila al-Qamar)*. The story, depicts a heroine, who initiates implied sexual contacts. Her suggestion of female agency in matters sexual aroused the ire of people who saw in that a clear challenge to values of male dominations in a culture where women's sexuality is inhibited and curtailed. Despite its toned down sexual language, the book created controversy and resulted in Ba`albakki's prosecution on charges of obscenity. Ba`albakki fought the charges and won after an arduous defense. In 1965, Ba`albakki published another collection, *The Disfigured Gods (al-Alihah al-Mamsukhah)*. A critique of disfigured traditions and the demands and pressures they create for men and women,

⁴ Omaila Abou-Bakr, "Islamic Feminism: What's in A Name?" in *Middle East Studies Women's Review*, vols, 15 & 16, No. 4 & No. 1 (2001), pp. 1-4.

⁵ For more see, Evelyne Accad, "Contemporary Arab Women Writers," Monograph series of the Institute for Women's Studies in the Arab World, *Contemporary Arab Women Writers and Poets*, No. 5 (Beirut: Beirut University College, 1985), pp. 34-35.

⁶ *Ibid.*, p. 34.

especially in relation to female sexuality such as the woman's virginity. Aida, the character in the story is married to a university professor, a proponent of modernism; yet, her husband abstains from having sex with his wife because she was not a virgin when he married her.⁷

Hanan al-Shaykh, was born in South Lebanon in 1947 and comes from a very religious and conservative Shi'i family. Worked as a freelance journalist for the Lebanese newspaper, *Ann Nahar*. She published a number of novels⁸ but is best known for her novel, *The Story of Zahra (Hikayat Zahrah)* (1980), dealing with "taboo-laden sexual problems".⁹

In the 1990s, publishing houses in Beirut were filled with literature on gender published by male scholars. The few formidable publications on gender by female authors came from *Bahithat*, a journal dealing with gender issues with a decidedly secular tone and feminist inclinations. Yet, the academic nature of the journal restricts it to an academic audience. The only female Muslim *Bahithat* writer (half Shi'ite and half-Sunni) who has succeeded in attracting the attention of any scholars and ordinary believers is Dalal el-Bezri, a Professor of Sociology at the Lebanese University.¹⁰ Though her works are modest compared to the plethora of books on gender by Lebanese Shi'ite male scholars, her writings and especially her book, *Akhawat al-Zil wa Al-Yaqin*

⁷ See, *Ibid.*

⁸ *The Suicide of A Dead Man (Intihar Rajul Mayyit)* (1971) and *Satan's She-Horse (Faras al-Shaytan)* (1975).

⁹ Accad, "Contemporary Arab Women Writers," in *Contemporary Arab Women Writers*, P.63.

¹⁰ Recipient of Ford Foundation's grants.

(translated into French as *L'ombre et son double*), had been widely read and criticized by a major Islamist newspaper, a *Hizb-Allah* mouth piece, *al-`Ahd* (The Pledge). The interest in her book, published in the 1990s, was due to two factors: first, her topic was Muslim Shi`i women affiliated with the Islamist political movement, *Hizb-Allah*; second, it is the only work that provides (even though they are only ten women participants) a glimpse into some of the Lebanese Shi`ite women affiliated with the Islamist movement, *Hizb-Allah*. They speak of their struggles with religious discourse on women and also of their social reality, education, employment, and active social and religious participation. Again taking us She is the only writer in Lebanon who has succeeded in covering Muslim women from both ends, Shi`i and Sunni, aided by her own diverse sectarian background. She understands the nuances of the relationship between modernity and Islam within the Lebanese context. I see her grounding in feminist studies as capable of aiding her to challenge religious gender discourse in Lebanon.

Despite the modest attempts by the women considered here to raise issues concerning gender and gender biased rulings and practices, they succeed in creating an alternative feminist voice in the religious circles, one that no longer takes biases lightly. Additional research and biographical literature are needed in order to arrive at a better understanding of how Lebanese Shi`i women reconcile the inherent contradictions between binding gender biased legal rulings and feminist aspirations. What wider implications of radical feminist rereading of gender may entail for Lebanese Shi`i women? Would they succeed in implementing an effective campaign to reform, for instance, personal status laws applied in Shi`i courts of Lebanon? These are questions

that need to be answered in order to appreciate the Lebanese context in relation to gender and Shi'ism.

CONCLUSION

The periods between 1960-1979 and 1990-1999 witnessed a radical change in the gender discourses of Lebanese Muslim Shi`i. The change was due, in part, to the role of legal interpretation (*Ijtihad*) in Islamic law as a dynamic process and renewal of its methodologies (*al-tajdid al-fiqhi*) to adequately assist the jurists in dealing with the complexities of life and society in the contemporary era. The change also came as a response to the social realities of women prompting clerics to delve into the juridical sciences in search of answers to gender concerns and inquiries directed to them by lay Muslim women and men. Musa Al-Sadr, Muhammad Mahdi Shams al-Din, Muhammad Husayn Fadl-Allah, and Muhammad Hasan al-Amin each attempted to address gender biased ideologies and legal issues such as personal status laws, evidence laws, laws barring women from serving as judge or assuming political leadership.

In 1960-1979, al-Sadr came upon a Lebanese Shi`i constituency already socially mobilized and highly politicized. He launched a “social justice campaign” to secure Shi`i demands for equal socio-economic and political rights. He adopted the principle of “gender complementarity of the sexes” into his “social justice campaign”, drawing on Islamic history and Muslim female models to legitimize Shi`i women’s right to the public sphere. He achieved his objectives by framing the woman’s public participation as an extension of her primary role of motherhood. Al-Sadr’s innovation was in the fact that he initiated a trend towards rethinking gender issues.

In the second phase, between 1990-1999, already the Shi`is have become of an age. Globalized modernity and growing international and local interest in gender issues pushed the debate to the fore. Lebanon’s long internecine war ended. During this period

of reconstruction, the Lebanese were now ready debating significant issues, of which the issue of gender stood at the forefront. On the international level, Iran was also undergoing radical shifts in the gender discourses. Cross-fertilization of ideas between the two Shi'i communities took place on two levels, scholarly and socially. Questions of Islam's merits and demerits in a modern world became heated debates, especially in relation to gender. Shi'is questioned the relationship between reality and text in an effort to reform the most audacious gender biased rulings. It is in this wider context that Lebanese Muslim Shi'i scholars grappling with contradictory realities launch their gender debates.

Fadl-Allah' gender ideology and legal decisions began serious rearticulating of gender. He acknowledged women's agency drawing mainly on female Biblical figures such as Mary and Balqis, Queen of Sheba. He argued that considerations of women's social and cultural contexts are crucial to their development. He criticized the aged-old gender assumption that women's and men's roles were differentiated and grounded in biology and advocated an alternative interpretation of the "Gender Equality Principle" adopted by the West. His principle "equality in humanity" (*"al-musawat al-insaniyyah"*) came close to arguing for a gender-neutral approach, but he did not fully succeed. Fadl-Allah did not fully elaborate the principle in its wider application and ignored the biases associated with granting men sole custody of children after a certain age, polygamy and wife beating. Although he challenged ideologies and legal decisions that allow for the wife's imprisonment, unequal sexual rights in the marriage, men's dominion, he opted for traditional interpretations on the former subjects.

Muhammad Mahdi Shams al-Din contribution in the field of gender legal writing is unprecedented in Lebanon. He tackled head on major religious gender biased

assumptions concerning marital rights and obligations, women's right to serve as judge or lead a state. He engaged in the old fiqh books and attempted to cast them in a new light, seeking to restore to women their rights and respect. He armed woman with the right to become a judge or a state leader, finding evidence of such rights within the primary sources of the law. He is also the first to acknowledge women's emotional and psychological well-being not as an ethical and moral duty of Muslim husbands but as the husband's legal obligation. Thus, demanding full compliance from men.

Al-Amin also sheds light on the importance that such changes in women's rights be reflected and translated into reality, especially in the Shari` courts where women are often left socially and legally deprived of some of their basic rights.

The questions that are forthcoming then, are: by what processes do the reality and circumstances in which Shi`i women live- political, social, and economic on the one hand and the Islamic *text* on the other, intertwine and influence each other? Are there aspects of gender notions in the Islamic Shari`a that will persist superseding the specificities of time and local?

Crucial to the understanding of the relationship between reality and text in the formulation of legal rulings, are issues of binding rulings and non-binding rulings, primary principle and secondary principle. Binding rulings which include such issues as child custody, inheritance, maintenance and headship of the family, and the husband's unilateral right to divorce, and non-binding rulings include issues such as polygamy and sanctioning of wife beating as a form of disciplinary measure in instances of wifely recalcitrance. Binding rulings are constant, changing only under dire circumstances in accordance with the secondary principle, and when only as long as such circumstances

last. For instance, a husband is capable of running the affairs of the family and providing the family's finances; the law under the primary ruling is definitive, relegating the responsibility of final household decisions to the husband and obligating him to provide for the family regardless of the wife's financial contributions. In cases where the circumstances change, where the husband is not qualified to run the affairs of the family or to maintain the family, the secondary ruling delegates legal responsibility of governing the family and its financial affairs to the wife. Additionally, in cases where the husband is capable, he is awarded custody of children who are of legal age. Hence, binding gender laws may be altered under certain circumstances and as such cannot be presumed immutable. While non-binding rulings can be nullified for a specific period of time, as determined, or they may be rendered moot. Question then arises that if, in exceptional cases, the law allows changes in its fundamental principle by changing the ruling from a primary one to secondary one, what happens when the social reality changes so that what was initially considered an exception becomes the norm. Shouldn't one simply do away with the old principles in favor of those new, revised and updated rulings that better reflect contemporary realities? Doesn't this mean that the laws are crumbling from the inside if they continuously require patching?

The three Muslim Shi'i scholars considered here provide different answers to questions about the relationship between text and reality. For Fadl-Allah, the relationship between text and reality is not a dialectical one. Neither defines the other. Instead, the changed reality paved the way for the application of a separate ruling with a different subject matter. The first ruling ceases to be the object of discussion. Each ruling, concludes Fadl-Allah, contains its own subject that corresponds to a particular reality and

the rulings are not eradicated when reality changes, rather one sees a multiplicity of rulings reflecting the multiplicity that exists in reality.

In Shams al-Din's opinion, there is a mutual influence between reality and Islamic legal rulings (*al-ahkam*), which is not adequately examined by jurists. What Shams al-Din launched is a serious reconsideration of such issues, especially in light of the newly emerging concerns about globalization, reciprocal influences between cultures, and hybridity. In his opinion legal rulings were designed (for historical reasons) focusing on the individual, as opposed to focusing on the larger society. The new approach may open ways to tackle new issues and develop new subject-areas for study. Another equally important change should take place in the actual methodologies used by *ijtihad* itself. This is true when considering the text (Qur'an and Hadith), to examine the dimension and scope of their application, to discern whether certain Traditions are procedural (i.e., they ensued from the Prophet in his capacity as a leader, a father, or a husband, and not as a Prophet).

For al-Amin, discretionary space in the Shari'a allow jurists to consider contemporary reality. Many aspects in the law are considered open for reinterpretation. Thus, in Islam there are a number of binding rulings that are that are unequal which will persist regardless of time. However, on the level of application, there are open channels for women under contracts for instance to negotiate their favorable conditions.

Other changes in the 1990s in the field of jurisprudence, notably in the further theoretical elaboration, expansion, and application of juridical principles (*al-qawa'id al-fuqahiyyah*). These principles govern the specific binding legal rulings and may render them ineffective and illegal. One very important juridical principle, which, in my

opinion, may benefit Muslim women, is the principle of “one does not harm nor get harmed”, “*la darar wa la dirar*.” For instance, a woman, who is not happy in her marriage, may under this principle, affect a divorce, despite the husband’s unilateral right to divorce.

Also, in contracts, a wife is allowed to circumvent any gender biased rulings by stipulating otherwise, under a settlement agreement called *Musalahah*.

Thus, on the theoretical level, there is no equality. Equality is achieved, however, in the actual application of the law.

In the 1990s, one may conclude that the general direction of the juridical writings pointed towards change, yet, their transitional nature also complicates that same conclusion. As a result of such context, one finds in the juridical works of the Lebanese Muslim Shi`i scholarly works two juxtaposing each other and sometimes even overlapping trends: new rulings reflecting women’s social realities and accommodating those circumstances, as well as rulings that are consistent with a patriarchal, traditional model of gender relations. At least the traditional gender discourse can no longer monopolize gender debates. Instead, several discourses co-exist. There is an indication from the newly emerging gender discourse in the 1990s that it, may, in time, co-opt opposing religious Shi`i discourses to its own camp.

Finally, the women played a significant role in directing gender debates in Lebanon in the two periods considered here. Although Lebanese Muslim Shi`i women do not feel comfortable expressing themselves in juridical terms, they opted for literature to convey their aspirations. In the 1990s, women voiced ferocious criticism against gender-biased rulings. What one sees is a beginning of a radical feminist voices within a religious

context. Since not much information was available to me on women's participation in the debates, I deem a necessary step to look in the future into this contemporary history of Lebanese Shi'i women and examine whether a development of an alternative gender discourses may run similar to the Iranian example.

In this dissertation I examine the writings and religious pronouncement of Shi'i clerics of Lebanon on gender without really examining the processes in which such ideologies intertwine with the actual lived realities of Lebanese Shi'i women, an issue that must be addressed in future research to fully appreciate the complexities involved in women's lives.

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