

# *Feminism* AND **ISLAM**

LEGAL AND LITERARY PERSPECTIVES

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# STRETCHING THE LIMITS: A FEMINIST READING OF THE *Shari'a* IN POST-KHOMEINI IRAN

*Ziba Mir-Hosseini*

Women's issues are now an integral part of modern Islamic discourses, as evidenced in the plethora of "Women in Islam" titles in religious publishing projects all over the Muslim world.<sup>1</sup> In practice, this has entailed re-readings of the old texts in search of solutions – or more precisely, Islamic alternatives – for a very modern problem, which has to do with the changed status of women and the need to accommodate their aspirations for equality and to define and control their increasing participation in the politics of the Muslim world. Despite their variety and diverse cultural origins, what these re-readings have in common is an oppositional stance and a defensive or apologetic tone. Oppositional, because their agenda is to resist the advance of "Western" values and lifestyles which were espoused by states and adopted by secular elites earlier this century. Apologetic, because they are attempting to explain the gender biases which are inadvertently revealed by going back to the *shari'a* texts.

A question that arises is whether these solutions can be "feminist", in the sense of representing women's perspectives as well as redressing their oppression at work, in the home, and in society. In other words, to what extent and by what means can limitations imposed on women by *shari'a* texts be renegotiated? In this paper I argue that a "feminist" re-reading of the *shari'a* is possible – even becomes inevitable – when Islam is no longer part of the oppositional discourse in national politics. This is so because once the custodians of the *shari'a* are in power, they have to deal with the contradictory aims set by their own agenda and discourse, which are to uphold the family and restore women to their "true and high" status in Islam, and at the same time to uphold men's *shari'a* prerogatives. The resulting tension – which is an inherent element in the practice of the *shari'a* itself, but is intensified by its identification with a

modern state – opens room for novel interpretations of the *shari'a* rules on a scale that has no precedent in the history of Islamic law.<sup>2</sup>

Iran is a case in point. Now fifteen years into an Islamic Republic, there are clear signs of the emergence of a feminist re-reading of the *shari'a* texts. This is manifest in two opposing currents. The first reflects the official Shi'a discourse adopted by the Islamic Republic, and is most evident in the 1992 Divorce Amendments. These amendments represent a radical, and if you like feminist, interpretation of *shari'a* divorce provisions. They not only curtail men's right to repudiation, *talaq*, but place a monetary value on women's housework and entitle them to *ujrat al-mithl*, "domestic wages", for the work they have done during marriage. The second current reflects the recent non-establishment Shi'a discourse and is most manifest in legal articles published in *Zanan*, a women's magazine launched in February 1992. These put forward a novel interpretation of *shari'a* provisions on women; they neither cover up nor rationalise the gender inequalities that are embedded in many aspects of the *shari'a*, but propose to recast them within the limits of the *shari'a*. Both currents, in their different ways, can pave the way for an unprecedented reinterpretation of the *shari'a* rules which is indeed gender sensitive, if not "feminist" in the Western sense.

By tracing the evolution of the *shari'a*-based discourses in Iran, I aim to show how and why such "feminist" re-readings of the old texts have come about. The paper is divided into two main parts. The first part is an attempt to place the contemporary Shi'a discourses, as they emerged in the last decades before the revolution, in their proper context. Such contextualisation is in order because they continue to be read in an essentialist and anachronistic way. The second part first explores their impact on other post-revolutionary discourses on women and then examines the emergence of a "feminist" discourse, as articulated in *Zanan*.

### Pre-Revolutionary *Shari'a* Discourses on Women

With the establishment of an Islamic Republic in Iran came a wave of popular and scholarly Western publications on Shi'ism. Two topics have predominated: Shi'ism as a religion of protest, and Shi'a attitudes to women. While the first is a scholarly response to the Revolution,<sup>3</sup> which caught students of Islam and Iran by surprise, the second is motivated by a feminist concern to safeguard women's rights in an Islamic Republic.<sup>4</sup>

Two events early in the revolution validated such a concern. The first was the dismantling of the Family Protection Law, which had come into effect in 1967 and had restricted polygamy and made divorce easier for women; and the second was the imposition of Islamic dress (coat and head-scarf).

It was in such a climate that a large portion of the literature on Shi'a attitude to women was produced. Attention was focused on two writers, Dr 'Ali Shari'ati and Ayatollah Mortaza Motahhari: they were not only the most prominent contemporary Islamic thinkers (in Iran) whose writings dealt with women's issues, but both men were dead, which gave their views an aura of immutability. Their writings soon came to shape the contours of the contemporary Shi'a discourses on women, in short, they became "texts". In this way not only were they decontextualised but they were read and examined anachronistically, that is in the light of events in the early years of the Revolution. In focusing on their gender assumptions, the literature on both texts tends to trivialise the specific circumstances which gave rise to each.<sup>5</sup>

In what follows my aim is not to offer a critique of this literature, nor of the two texts themselves, rather it is to describe the circumstances in which the texts were produced. First it should be noted that both texts were written in the context of gender debates and legal reforms of the late Pahlavi era.

#### 'Ali Shari'ati's text: Fatima is Fatima

'Ali Shari'ati was a lay Islamic thinker who enjoyed enormous popularity in the Iran of the 1970s. He came from a clerical family, read sociology at the University of Paris and became a vocal critic of the Pahlavis. Upon his return to Iran in 1964, he was imprisoned for his anti-regime activities but he was released after six months and became Professor of Sociology in Mashhad University. However, he was soon dismissed and continued to be persecuted. In 1977, shortly after his latest release, he died in England where he had gone for medical treatment. His ideas formed the intellectual backbone of a modern Shi'a opposition to the Pahlavi regime and its policy of blind Westernisation. He used his public lectures in the Hosseiniyeh Ershad, a celebrated religious institution, to air his views.<sup>6</sup>

His seminal text on women has its origin in one of these lectures, delivered in April 1971. The text of this lecture was later published in an extended form as *Fatemeh Fatemeh ast* (Fatima is Fatima), which came

to be regarded as an Islamist treatise on women, though it can best be read as a critique of Iranian society and its values in the early 1970s, rather than a treatise on women in Islam. Its rhetorical style and revolutionary tone arouse emotions without ever entering on any kind of serious examination of women in the *shari'a*. In fact its preface reveals the extent to which Shari'ati improvised during the lecture.

I first wanted to talk about Professor Louis Massignon's research on the complex life of Fatima, especially its impact on Muslim societies . . . But when I entered the room and saw many others in addition to my own students, I realised that the gathering called for a more urgent topic. So I decided to provide an answer to this "destined question" which today intensely occupies our society. Women who endure their traditional mould have no problem, and women who accept their new imported mould have the problem solved for them. In between these two types of "moulded" women, there are those women who can neither tolerate the inherited mould nor can surrender to the imposed new one; what should they do? These women want to choose for themselves, want to "make" themselves; they need a "model", an "ideal type". For them the question is "how to become". Fatima by "being" herself is the answer to this question.<sup>7</sup>

The text, which could be divided into two parts, sets out to answer this question. In the first part (pp. 1–90), Shari'ati attempts to define the "women's question" and the dilemmas that Muslim women are facing in this century. He is critical of both those Muslim women who unquestioningly accept their "traditional" role, and those modern, Westernised women who, by aping the West, are becoming mindless consumers. He sees the latter as a new addition to the human species: "a creature who shops"<sup>8</sup>, for which he blames the colonial policies of the West. Having understood women's pivotal role in maintaining the fabric of Islamic societies, the West set out to alienate them from Islam so that Muslims could be dominated. But Muslim men and the narrow-minded clergy, who continued to misrepresent Islam, are equally to blame: they also conspired to deny Muslim women their truly Islamic rights. By being denied their humanity, educated women were left with little option but to look to the West for an alternative.

In the second part (pp. 91–189), Shari'ati discusses the solution, which is to be found in the person of Fatima, the Prophet's daughter,

'Ali's wife, and mother of Hassan and Husain. The picture that he draws of Fatima's life is romanticised but rather gloomy. More than offering a clear and tangible model to be emulated, it epitomises the Shi'a ideals of silent suffering and covert defiance. As he has it, Fatima died of grief at the injustice that followed her father's death, in which 'Ali was denied his right to the Caliphate, at having her inherited land (*fadak*) taken away from her, and at the failure of her attempts to enlist support for 'Ali's claim.

The text ends without providing a coherent answer to the crucial question that Shari'ati considered was facing Iranian women of the 1970s. In fact the question is often by-passed; out of 189 pages, less than ten deal with the question of women in Islam. Even in these pages Shari'ati neither elaborates on women's position in the *shari'a*, nor does he engage with the proponents of the *shari'a* discourse on women. Instead he uses the occasion to elaborate on his own interpretation of Shi'a history, to condemn those in power for distorting it, to denounce Iranian society as one of pseudo-Muslims, whose ways have little resemblance to true Islam, to blame the clergy and intellectuals alike for not enlightening people on true Islam. Although he is critical of narrow interpretations of Qur'anic rules, he remains imprecise and evasive. On the other hand, he is both explicit and direct when he criticises the secularising policies of the Pahlavis.

In short, what he had to say on "women in Islam" was vague, contradictory and at best inconclusive. He did not offer a concrete solution but a romanticised revolutionary vision, which was soon eclipsed with the establishment of the Islamic Republic.

#### *Mortaza Motahhari's text: The System of Women's Rights in Islam*

The thinker whose writings on women survived into the post-revolutionary era, and became identified with the view of the Islamic Republic, was a clergyman, Ayatollah Mortaza Motahhari. Motahhari was both a theologian and an academic, teaching both at religious schools in Qom and at secular universities in Tehran. He became a member of the Revolutionary Council in February 1979, but was assassinated in May of that year. Motahhari was one of the few Shi'a clergy to have written lucidly and extensively on the issue of women's rights in Islam, and the only one who has entered a debate with secular thinkers on the issue.

The debate, which was conducted in a glossy women's magazine, *Zan-e Ruz*, was predicated on the enactment of the Family Protection

Law in 1967, which introduced radical changes in divorce provisions. In 1966 *Zan-e Ruz* was airing the views of those who were arguing for changing the family provisions of the Iranian Civil Code, which reflect the dominant opinions within Shi'a *fiqh*. The most prominent among the reformers was a secular judge, Mahdavi Zanjani, who had prepared a 40-article proposal to replace some of the articles of Book Seven of the Code, which deals with marriage and divorce. This had alarmed the religious authorities, and Motahhari was approached by a leading Tehran clergyman to prepare a response in defence of the Code. Motahhari agreed to do so, provided that his replies were printed intact. His condition was accepted and *Zan-e Ruz*, as a good-will gesture, even printed his original letter which contained his proviso. Motahhari's first reply appeared in November 1966 as a direct response to the first of the 40 articles proposed by Judge Mahdavi. Although the sudden death of Mahdavi meant that the debate ended after six issues, Motahhari continued his discussion, which by then had attracted a large readership, for another 27 issues. In 1974, he compiled these articles into a book, *The System of Women's Rights in Islam*.<sup>9</sup>

The book is divided into 15 sections, each dealing with a cluster of rights and obligations arising from marriage. It starts with marriage proposal and engagement, the subject-matter of the first articles of Book Seven of the Civil Code, which was also the starting-point of Judge Mahdavi's 40-article proposal. In the following chapters Motahhari deals with temporary marriage, women and social independence, Islam and modernity, women's human status according to the Qur'an, the natural basis of family laws, differences between men and women, *mahr* and maintenance, the question of inheritance, the right to divorce, and polygyny. In each section, Motahhari is selective in choosing his facts and sources, especially when he invokes Western scholarship to justify the necessity for the different treatment of women in Islam.

Evidently, Motahhari's text cannot be separated from the debates and legal reforms of the Pahlavi era; it was written to offset the harsh criticisms of the *shari'a* position on women, embodied in Book Seven of the Iranian Civil Code. To defend the *shari'a* Motahhari not only painted a rosy picture of its treatment of women but glorified gender inequality by arguing that it is in harmony with the law of nature. He dismissed equal rights for men and women as a Western concept and alien to the Islamic world-view. He argued that, if properly understood, the *shari'a* laws are the very essence of divine justice, as they embody God's design for men, women and society. While he admitted the injustices done in the name

of the *shari'a* – the plight of divorced and abandoned women was widely highlighted by *Zan-e Ruz* – he blamed this state of affairs on un-Islamic society and men who abandoned Islam. In so doing, he not only detached the *shari'a* from social reality but also left little room for debate and changes in line with the demands of the time.

### Post-Revolutionary Discourses

With the triumph of the Islamists early in the Revolution, Shari'ati's text with its idealistic and vaguely reformist vision soon faded into obscurity, while Motahhari's text with its legalistic approach became the Islamic Republic's official discourse on women. In 1981 his book was translated into English, and by 1989 it had been reprinted in Persian over fifteen times. His arguments are the most eloquent and refined among those which hold the concept of gender equality to be contrary to the *shari'a*. They were successfully invoked to stifle any opposition to the dismantling of the Family Protection Law in the early years of the Revolution, and later to validate the gender policies of the Islamic Republic.<sup>10</sup>

For over a decade Motahhari's text remained uncontested, at least at the public and official level. The larger part of the vast post-revolutionary literature, especially that produced by the Islamic Propaganda Organisation, not only embodies his position but simply reproduces his arguments verbatim. However, this hegemony is now losing ground to a different discourse which, although located in the *shari'a*, argues for gender equality on all fronts.

The new discourse combines the legalistic style and tone of Motahhari with Shari'ati's egalitarian vision, but it differs from them both in two fundamental ways. First, it no longer defines itself in opposition to the West, but in opposition to patriarchal interpretations of the *shari'a*. Secondly, it challenges the hegemony of the orthodox interpretative process, paving the way for tackling the "women's question" from an entirely novel perspective within the *fiqh*.

As far as context and medium of expression are concerned, there are two striking parallels between this discourse and that developed by Motahhari. Both were grounded in debates generated by state initiatives in changing the divorce laws; and in both cases a women's magazine became the forum for their articulation and development. Let me elaborate.

In December 1992, more than a decade after dismantling the Family Protection Law (FPL), which curtailed men's right to divorce and

polygamy, the Majlis (Parliament) ratified a law with similar goals. The new law, entitled Amendments to Divorce Law, outlaws registration of all divorces without a court certificate called Impossibility of Reconciliation – incidentally the same name as that required by FPL. A divorce can now be effected and registered only when the husband pays his wife, in cash, all her dues (*mahr*, past *nafaqa* and maintenance, '*idda*') unless it is of *khul'* type, that is, when she forgoes all her dues in return for her release. These amendments also require that every divorcing couple go through the process of arbitration; and allow the appointment of women judges as advisers to the main judge. More importantly, they enable the court to place a monetary value on women's housework and entitle her to *ujrat al-mithl* (literally wages in kind) for the work she has done during marriage, provided that divorce is not initiated by her or is not caused by any fault of hers. All these amount not only to the resurrection of the rejected provisions of the pre-revolutionary law of divorce, but to taking them a step further, in short a complete U-turn.

But this U-turn proved to be neither smooth nor complete. It caused a rift between two of the highest law-making bodies. The first draft of these amendments passed by Majlis in March 1991 was twice rejected by the Council of Guardians, whose task is to ensure that all laws passed are in line with the *shari'a*. The Council objected to the concept of *ujrat al-mithl*, as formulated by the Majlis. The dispute between these two bodies was not resolved until November 1992, and then only through the intervention of the highest constitutional authority.<sup>11</sup> In December 1992, the new law came into effect, but it soon became evident that, rather than protecting women against an undesired divorce, by requiring all cases to go through arbitration the new amendments are creating problems not only for the court but for those couples who have reached mutual consent.<sup>12</sup>

All this suggests that debates over women's position in law, which were so harshly stifled early in the revolution, are resurfacing. Interestingly, they centre on divorce provisions, as these have come to embody the essence of the injustices to which women are subjected in law. But this time debates are conducted in an Islamic Republic, whose claim to uphold the *shari'a* makes it directly responsible for such injustices. It is in this context that the journal *Zanan* makes its first appearance, opening a new chapter in an old debate. The magazine itself is the fruit of the Revolution, an outgrowth of "Islam in power" for over a decade. Its editor and founder, Shahla Sherkat, was among those who helped to Islamise *Zan-e Ruz*, the glossy pre-revolutionary women's magazine

which featured Motahhari's articles in the 1960s. She was invited to join *Zan-e Ruz* in 1982 and remained its chief editor until 1991 when she was dismissed because of unresolved disagreements over the ways in which gender issues were being addressed. Seven months later, in February 1992, the first Number of *Zanan* appears, to coincide with the 13th anniversary of the revolution. Referring to a decade of fighting against the centuries-old oppression of women in Iran, and hinting at obstacles faced, Sherkat writes:

We believe that the key to the solution of women's problems lies in four realms: religion, culture, law and education. If the way is paved in these four principal domains then we can be hopeful of women's development and society's advancement.<sup>13</sup>

At the end of 1994, 19 Numbers of *Zanan* have appeared. With a few exceptions, every issue contains articles classified under "Law/Rights", *Huquq*, where aspects of gender inequality in the *shari'a* are discussed and new interpretations are attempted. So far, the following three themes have been addressed: women in family law (*Zanan* 1, 2, 9, 18, 19); women as judges, arbitrators, and *mujtahids* (*Zanan* 4, 5, 6, 7, 8, 17); women in penal law, *qissas* (*Zanan* 11, 13, 14, 15, 16).

It is in these articles that one can find the contours of a different Shi'a discourse. In what follows I attempt to convey something of the evolution of ideas and interpretations of the sacred texts in these articles, especially the ways in which *Zanan* manages to reinterpret them to accommodate women's aspiration for equality and to introduce notions such as the legitimacy of women's choices and their demands for equal treatment at home and in society.

#### *The beginning: A hesitant voice*

Legal sections of the first three Numbers, written by lay women, are similar to Shari'ati's writings, where the mode of argumentation is more sociological than legal. Like him, the authors shy away from engaging with *fiqh* sources, instead they focus on Civil Code provisions and hold them responsible for making women subordinate in marriage. In support of their position, which is that of partnership in marriage, they resort to the Qur'an and appeal to its patent message of equality and justice. The end result is that the authors do not challenge on their own grounds *fiqh*

concepts such as *tamkin* (woman's duty to submit to her husband's will) and *nushuz* (her refusal to submit, rebellion), which legitimate women's subordination in marriage, but instead they add two qualifiers. First, *tamkin* as it is interpreted by the Civil Code is faulty: "in a mutual human relationship, shaped by modes and characters of those involved, one cannot consider the woman as a (sexual) object ready to be manipulated and used." Secondly, *tamkin* and *nushuz* must be reciprocal, that is, it is necessary to take into consideration women's sexual needs and to subject men's defiance of their duties to legal sanctions.

To illustrate the tone and mode of argumentation in these articles, let us take a closer look at two of them, representing *Zanan's* earlier stance. The first article, co-authored by Shokufeh Shekari and Sahereh Labriz, is entitled "Tamkin" and opens with the text of Article 1105 of the Civil Code, stating: "headship of the family is among men's attributes, *khasa'es*." The authors note that this article raises a number of critical questions for women in our society. For instance, "According to what logic and on what grounds is the man head of the family? Does such a headship imply his absolute rule? Does the mandate of *tamkin* in conjugal life equally apply to men? If not, why not? Should a woman be beaten if she is unwilling or is not ready – psychologically and physically – to fulfil her husband's (sexual) wishes?"

In search of answers the authors go through a wide body of legal opinions in Shi'a *fiqh* and in legal text-books in which Civil Code articles are expounded on. Although overtly critical of the Code, they remain hesitant to challenge its gender premise and other assumptions which are all derived from the Shi'a *fiqh*. Instead they tend to reinterpret them in a more liberal light, to play them against each other, or against other articles of the Civil Code. For instance, as regards men's headship, they write:

this headship does not imply that a man has an absolute and despotic rule in the family according to which the wife is required to slavishly follow him; but it entails a certain authority defined by law and custom. A woman is not her husband's mere subordinate but his partner, companion and aide.

Likewise, as regards *tamkin*, the authors cite a passage from Ayatollah Khomeini's treatise in which *tamkin* is limited to a woman's submission to her husband's sexual demands. To this the authors add a modifier: "the emphasis placed on meeting the husband's sexual demands

should not be taken as his wife's ever-readiness for sexual intercourse." Without questioning the prime assumption of the passage, which, in line with the *fiqh* position, sees sexual submission as a woman's duty in marriage, they make two deductions from it. First, in the non-sexual aspects of marital duties – which they term "ordinary duties" – a woman is not required to obey her husband and can even demand wages for what she does in the house. Secondly, whereas in *fiqh*, *nushuz* (rebellion, non-fulfilment of marital duties) pertains to the conduct of both spouses in marriage, in the Civil Code it merely pertains to the wife's. When a man neglects his marital duties, there is no legal recourse open to his wife apart from asking for a divorce. "Such a solution is not befitting of an Islamic state, given the degree to which Islam abhors divorce."<sup>14</sup>

The second article, entitled "Man, Partner or Boss?", places the question of headship and power relations in the family in an evolutionary framework. Drawing on anthropological theories of the evolution of societies from matriarchy to patriarchy, the authors note that "in the Islamic world view we encounter a new anthropology and a fresh perspective in which men and women are declared equal before God, and that they are created from the same substance in order to console, to complete and to fulfil each other." Referring to Verse 13 of Sura Hujurat (see below), they contend that "this verse on its own suffices to convince us that, despite other existing evidence, Islam is not a sexist and racist school of thought."

This becomes a prelude to defying the conventional understanding of other verses, notably verse 34 of Sura Nisa (see below), which the authors believe is mistakenly invoked to perpetuate the belief that "in essence, in attributes and in conception, men are superior to women; this is so deep-rooted that even some women came to believe that they are defective, *naqis*." The reader is reminded that such beliefs have little to do with Islam but are products of historical processes that not only pre-date Islam but gained momentum after the Prophet's death due to socio-political realities of the time. Today there are other realities: women are now highly educated and skilled, they actively participate in society at large – even take part in wars. There is now more than ever an acute need to redefine their *shari'a* rights. The authors end their discussion by demanding total equality in marriage: "in our view, in a healthy relationship there is no need to have a superordinate and subordinate"; and "in many cases women are more to be trusted with the headship of the family."<sup>15</sup>

## Gaining legitimacy: A fiqh voice

With *Zanan* 4, not only is there a discernible shift in tone, style and mode of argumentation but the focus changes from gender biases in the Civil Code to those introduced soon after the revolution. Articles in five consecutive Numbers, which appeared between May and December 1992, discuss the question of women's right to serve as judges and arbiters in marital disputes in courts, and as *mujtahids*. Interestingly – but perhaps not unexpectedly – the author of these five articles is a male cleric in Qom using a female pseudonym, Mina Yadegar Azadi. He takes issue with the very premise on which the official Shi'a discourse on the position of women is based, laying bare its inherent gender bias. His mastery of the shari'a art of argumentation, coupled with his command of the sacred sources, not only ensures that the debate remains within acceptable boundaries but gives a different edge to these arguments.

To appreciate the nuances of these arguments, we should take a closer look at the mode of argumentation, the juristic and logical devices the writer employs to obtain different interpretations of those Qur'anic verses on which *shari'a* rules on women are based. Two of these articles, entitled "Women in Judgement" (*Zanan* 4 and 5), discuss the sensitive issue of forbidding women since 1979 to serve as judges on the grounds that it is against the explicit rule of *shari'a*. The author says that those who see women as unfit to serve as judges resort to two kinds of reasoning. The first is that women have delicate constitutions, are ruled by emotions, and are, thus, unable to deliver justice. The second is that Islam forbids them to do so, and "in support of this assertion they invoke the Qur'an; *sunnah*, practice of the Prophet; *ijma'*, consensus of the jurists; and *aql*, reason." It is those who use the latter argument that the author considers it more important to tackle first, especially since some of them are opposed to women's work outside the home. They ground their arguments in three Qur'anic verses (4 (Nisa): 34, 2 (Baqara): 228, and 59 (Ahzab): 33); and so the writer commences by discussing these.<sup>16</sup>

He opens the discussion by interpreting the first part of verse 34 of Sura Nisa as follows:<sup>17</sup>

According to God's way, *sunnat*, which has caused some to excel over others, men, because they give from their own property, have an advantage over women, thus honourable and respectful women guard their husband's interest covertly, as this right has been reserved for them (men) by God.

He then adds that those who oppose women serving as judges say that,

according to this verse, men have dominion over women and God has made men maintainers of women; thus how can women judge men and decide their fate? Whereas this verse as translated does not indicate that men are superior to women, it merely recalls the place of married men and women and reveals an external fact; and discusses the status of men in conjugal life. Beside, this verse does not embrace single or widowed men and women.

In order to confine men's supremacy to the realm of the family, and more importantly to define it as a condition arising from the contract of marriage, the writer performs an etymological analysis of two key words of the verse which are taken as Qur'anic evidence for men's superiority and women as their wards: *fadl*, to excel, and *qawwam*, to maintain. He starts by reviewing the usage of each word in other verses to establish that *fadl* does not denote a natural/intrinsic advantage but an achieved/earned one, which in most cases relates to material and welfare matters. He then deliberates on the meaning of *fadl*, which, as he has it, is a kind of "excess from equilibrant" which can have either a positive or a negative sense. In a positive sense – referred to as *fadl-i mamduh* – it can be one of the following three: (a) *fadl* by variety, jins, such as superiority of animal kind over plant kind; or (b) *fadl* by species, *nou'*, such as superiority of human species over horse species; and (c) *fadl* by essence, *zat*, such as advantage of one person over another which is commonly measured by some determined criteria, such as wealth.

Therefore, men's *fadl* to women is the superiority of one person over another among the equal species of human, and in the honoured verse, man in his capacity of being married and managing the family has an advantage, not that all men are superior to all women.

The same goes for *qawwam*, which speaks of a convention, a custom, a contract according to which men voluntarily undertake to run the affairs of the family. This in no sense signifies that they are superior, but merely that they protect and maintain their wives.



Seen from this perspective, the verse is indeed not about men's dominion over and guardianship of women but is about married women, who are called to fulfil their share of duties in the family.

The two other verses are subjected to the same treatment. As regards verse 228 of Baqara – which is again taken as evidence of men's superiority, as it says men are a degree higher than women – Azadi argues that, given the entire text of the verse, this supremacy again has to do with men's and women's different marital rights and duties.<sup>18</sup>

Difference in rights and duties, which is both relative and a matter of convention, cannot be taken as men's intrinsic (natural) superiority over women. Both are human, thus equal.

As regards Verse 33 of Ahzab, which is invoked by those who disapprove of women's work outside the home because in it they are enjoined to stay home and not to display their ornaments, Azadi has the following to offer.<sup>19</sup> First, as the preceding verse (32) reveals, it is addressed to women of the Prophet's household, thus it is not incumbent on all Muslim women, who certainly are not on the same level. Secondly, even if it were addressed to all women, its command, *hukm*, is a guiding, *irshadi*, not a binding, *ilzami*, one. On this all jurists agree, in his words: "We have not yet heard a single *faqih* decree as a binding and obligatory command of God that women be house-bound."

He concludes his discussion of the Qur'anic verses by reiterating that the three verses in no way oppose women's right to serve as judges; and that they are but a pretext for those whose real intention is to keep women in a state of depravity, restrict the scope of their activities, and in short confine them to the home.

Having dealt with the Qur'anic verses, the *Zanan* writer turns his attention to the Traditions that opponents of women judges invoke in support of their position. He finds these to be of three kinds. First, those sayings, *rawayat*, in which there is a specific ban on women from assuming certain offices, such as a judge or public prayer leader. Secondly, those from which a ban can be inferred because of the repercussions on women's work outside home, such as the preference, *istihab*, for their segregation, or the abhorrence, *ikrah*, of their presence in Friday prayers. Thirdly, those traditions that the author classifies as dealing with general themes and banning women as a result of their own internal logic. He starts with the first kind and focuses on three sayings. The first is a

saying by Imam Baqir (the fifth Shi'a *Imam*), who is reputed to have said "do not leave judgement to women." The second is the Prophet's last will addressed to 'Ali, in which, among a long list of prohibitions placed on women, two are: "women are not to be in charge of the task of judging, and they are not to be consulted." The third is the *wilayat hadith* whereby the Prophet said that "the people, the *wilayat* (running) of whose affairs is entrusted to a woman, will not be saved."

To set the record straight, and more importantly to show why and how these three sayings do not constitute a ban on women's right to serve as judges, the writer puts forward altogether 20 arguments, 13 relating to the first two sayings, and seven relating to the third one. These arguments are varied: some are rooted in *fiqh*, others in linguistics, sociology, logic, reason and common sense. They range from discussing their chain of transmitters to etymological and logical arguments, with the aim of placing them in context by drawing attention to the fact that each pertains to a specific set of events and reflects the dictates of its time, which are not necessarily the same as ours. For instance, as to the third *hadith*, in a long passage he argues that the Prophet was specifically referring to events in Persia, where a female monarch had just assumed the throne. The *hadith* is a political commentary on the affairs of Sassanid Persia, where in the course of four years twelve monarchs had been enthroned.<sup>20</sup>

It reveals an external fact about the Persians, that this time too the Sassanid throne cannot be saved, not that if women rule, people will not be saved in *akhirat* (the last day).

Suppose in a given society, all men are afflicted with the disease of feeble-mindedness, and there is one wise and learned woman, in that case is her *wilayat* still invalid? What happens if we assign this *wilayat* to imbecile men?! Or let's suppose that in other planets, women are stronger and more learned than men, do we accept their custom or do we reject it totally?

In the next Number (*Zanan* 5, June–July 1992) the writer turns his attention to *ijma'* (consensus of jurists on an issue). He starts the discussion by defining the nature, scope and function of *ijma'* in Shi'a *fiqh*, clarifying its place in the process of *ijtihad*. The gist of his argument is as follows. *Ijma'*, strictly speaking, entails gathering the opinions of Islamic scholars and jurists on a certain issue, and on its own is not a source of law but merely a tool for deriving a law from the primary sources. In practice, since there is no requirement as to the minimum

number of these opinions, it has become customary to claim that *ijma'* has been achieved for some legal rulings whose essence is not strictly in line with the primary sources. There are two kinds of *ijma'*: *ijma'-i muhassil* (obtained consensus), whereby one needs to collect the views of contemporary jurists on an issue; and *ijma'-i manqul* (narrated *ijma'*), whereby a *faqih* or *mujtahid*, in support of his own opinion, makes a claim of other jurists' consensus, without any thorough research. Since obtaining the first type of *ijma'* is difficult, and even impossible, whenever jurists invoke *ijma'*, they are talking of the second type. In that case its function is that of affirming the *sunna* and has little validity on its own, otherwise the jurists' opinion could replace the Book and the Tradition.

With this background, Azadi concludes that, with regard to maleness as a prerequisite for judgement, there is no *ijma'* of the first kind; and he then lists arguments that some jurists have put forward that the *ijma'* (which is of course the second kind, *manqul*) requires a judge to be of male sex. He points out that the whole issue of maleness as prerequisite for judgement is in fact a Sunni debate which entered Shi'a *fiqh* in the sixth century AH under the influence of Shaikh Tusi, mainly in order to gain acceptability and avoid further criticism by his Sunni counterparts.

In the last part of the discussion, which is entitled "Women's Judgement from the Perspective of Reason", Azadi notes:

Probing the reasons put forward by those Islamic jurists who deny women the right to be a judge, proves that their offensive on woman focuses on her incapacity and inability. It is the question of women's gender shortcomings and men's natural superiority. They regard men as powerful beings and women as weak and worthless. It is of course evident to us that such perceptions arise from centuries of confinement, living behind closed doors, in inner quarters, *andarun*, of homes separated from the society . . . Nevertheless, to prove women's inadequacy they have brought up other arguments.

He then discusses three arguments that are put forward by jurists in support of the doctrine that women are innately flawed. First, there has never been a woman prophet or Imam, which proves that God has not entrusted women with the task of judging men. Secondly, the primary postulate is that of everyone's '*adam-i wilayat*', i.e. that no one has the right of *wilayat*, authority or jurisdiction, over anyone else; therefore,

those who oppose this postulate must provide convincing evidence. Thirdly, women are defective in nature and thus cannot be entrusted with tasks such as *wilayat* or judgement.

The way Azadi tackles each of these sets of reasoning is both skilful and provocative, laying bare their circular nature, inner contradictions and misogynous roots. For instance, as to the first, he states:

1) It is obvious that not having become a prophet or *Imam* is different from not being able to become one; as we learned in philosophy and logic, not finding something does not prove that it does not exist.

2) That women have not taken the mantle of Prophethood – which requires intense social activity – cannot be taken as an evidence for women's depravity so as to deny them other offices. This (women not becoming prophets) did not happen for numerous factors that the Divine Law-Maker willed.

3) That women have not been appointed as prophets is after all a report; perhaps there were women prophets whose missions were denied by men.

4) According to the explicit text of the Qur'an, revelation, which is one of the attributes of prophecy, was received by women, such as the mother of Moses, and particularly Mary mother of Jesus.

As to the second set of arguments, the '*adam-i wilayat*' postulate, Azadi states that if we are to take this postulate literally then no one, including men, can judge or rule, thus there can be no rule or government. He then expresses a view that goes against the very grain of establishment clerical opinion:

The Divine Law-Maker (*Shar'-i Islam*) has left ordinary affairs to people themselves and only guides them in this respect; whether people are going to vote for this or that person is something which belongs to the realm of the ordinary; religion is neither for nor against it, unless the actions of the voters or candidates contradict a principle of the faith.

As to the third argument, women's defectiveness (*naqs*), he focuses on Imam 'Ali's Sermon (*khutba*) 79 in *Nahj al-balagha*,<sup>21</sup> in which the Imam registers women's deficiencies in clear and strong terms, leaving no room for modification.<sup>22</sup> Here Azadi is clearly at pains to qualify the Imam's saying, or cast doubts on its authenticity; what he does is to place the *khutba* in context and argue that one cannot generalise from it. It was delivered soon after the Battle of the Camel and it specifically addresses 'A'isha's ill-judgement and action, not all women.

Finally, he turns to tackle those who argue that because of their delicate and emotional nature, women are incapable of correct judgement.

Rather than criticising women, they are willy-nilly implicating the Creator, and if they believe that there is no defect in the Creation, then they cannot claim that women's emotionality makes them defective, and if they believe otherwise, then we need to enter a discussion on the fundamentals (*usul*) with them; their views on women are attributable to other belief systems than Islam and knowledge of God.

He ends the whole discussion on women and judgement by going back to the Qur'an, and cites verse 13 of Hujurat,<sup>23</sup> to prove that men and women are equal in the eyes of God; what invests either with privilege is their action; and verses 21 to 42 of Sura Naml, to prove the wise judgement and good rule of a woman through the Qur'anic account of the encounter between Solomon and the Queen of Sheba.<sup>24</sup>

In the next three Numbers (*Zanan* 6–8, which appeared between July and December 1992), Azadi turns his attention to two themes: women as arbitrators in family courts and as religious leaders (*marja'*). Given the subject-matter of the preceding articles, his first theme seem repetitious, if not incongruous. But as his argument progresses it becomes evident that they are an implicit critique of the post-revolutionary divorce laws and the Majlis debates concerning the disputed divorce amendments which were rejected by the Council of Guardians. In these articles Azadi offers an extended commentary on Verse 35 of Nisa, which recommends that if separation between spouses is feared, an arbiter from each side should be appointed to deal with the dispute. This verse became the basis for the establishment of *shari'a* courts in 1979 to replace the Family Protection Courts as well as the first modification in *shari'a* divorce provisions effected in the Islamic Republic.<sup>25</sup> Azadi first takes

issue with "some of the graduates of *Howzeh*" (centres of religious learning in Qom) who contend that the Verse is addressed to the judge and, thus, "it is up to him to choose to settle the dispute by appointing the arbiters." Before offering his own view, Azadi discusses diverse commentaries on this verse, and then concludes that,

the choice of the arbiters must be left to the disputing couple; it is allowed, even preferable, that one of them should be a woman; they should be empowered to settle the dispute by bringing about either a reconciliation or a negotiated divorce.<sup>26</sup>

In the second part, he discusses the limits to the powers of arbiters as understood from the above verse. He then turns to an examination of arbitration in the modern legal systems of three Muslim countries: Iran, Iraq and Lebanon. He uses the occasion to point out that, apart from two minor details, the provisions of the dismantled Family Protection Law correspond with the *shari'a* mandates, and its dismantling has resulted in a number of problems which need urgent attention.<sup>27</sup>

In his last contributions, entitled "Women's *Ijtihad* and *Marji'at*", Azadi follows his usual format and grounds the question in sacred texts and rational debates. However, both the thrust of his argument and the tone of his writings are more forceful and less implicit. He draws a clearer line between primary (the Qur'an and *sunna*) and secondary (*fiqh* texts) sources of Islamic law. He then points out that there is no evidence in the primary sources to support the contention of the secondary sources which bans women from issuing decrees and becoming religious leaders. According to him, the secondary sources reflect views and conceptions of Muslim thinkers not Islam. They should not be accepted at face value and need to be questioned in the light of the primordial principles inherent in the primary sources. In refuting the views of some Muslim thinkers, Azadi takes his arguments, refined in the course of the last four issues, to their logical conclusion and calls for absolute gender equality in all spheres of the *shari'a*. This is done under the heading of "Rational Principles" (*Usul-i 'Uqala'i*), in which he elaborates on six principles amounting to a declaration of a *shari'a*-based bill of rights for women. All entail equal rights in (1) following education, (2) choosing an occupation, (3) administering justice, (4) attaining spiritual perfection, (5) receiving rewards and punishments, and finally (6) developing a healthy society and fulfilling other social and human needs.<sup>28</sup>

*Debating the sacred and the legal: A challenging voice*

A year after its launch, in a review of Ayatollah Javadi Amoli's book, *Women in the Looking Glass of Majesty and Beauty*, Zanan starts to take issue with the official Shi'a discourse on women.<sup>29</sup> The book is important not only because it is the first substantial publication by an eminent Ayatollah since the Revolution but it also encapsulates the latest, state-of-the-art, official Shi'a discourse on women produced under the Islamic Republic, as evidenced in three ventures in which the book is rooted.<sup>30</sup> The first is a course of lectures that Ayatollah Amoli delivered in Qom in 1989–90 to female students of the al-Zahra seminary. These students, who were all at the advanced level of religious studies, also helped in "elucidating certain ambivalences of *fiqh* texts and Qur'anic commentaries". The second is a seminar organised by the Iranian National Radio and Television in which Amoli prepared a special text to fit the seminar's theme, "The high status of women in Islam, protecting their honour by amicable means in the society, and combating the Western cultural invasion." The third is a set of "scientific questions with regard to specific Qur'anic exegesis", asked by the director of the Centre for Women's Studies.<sup>31</sup>

Ayatollah Amoli's stance on gender is identical to that taken by Ayatollah Motahhari three decades earlier, although his mode of argumentation is different. While concurring with Motahhari's thesis of the complementarity of gender rights and duties, Amoli places the whole issue of gender inequalities in the *shari'a* on a spiritual plane, justifying them through a series of mystical inferences. In so doing, he aims to relegate gender disparity in the *shari'a* to the mundane material realm and refers the reader to the spiritual realm, where the real destinies of men and women lie. For instance, as far as family matters are concerned, he writes that "The endurance of hardship (for women) might on the surface appear an evil (*sharr*) but its immense goodness (*khair*) is to strengthen the family and protect its essence."<sup>32</sup> The book's title, on which Amoli dwells at length in the introduction, aims to underline the eternal duality in the mundane and spiritual destinies of men and women. In Amoli's words:

In short a woman must offer the subtleties of wisdom (*zara'if-e hikmat*) in the subtleties of art (*zara'if-e honar*) and man must display subtleties of art in subtleties of wisdom, that is to say that a woman's majesty (*jalal*) is hidden in her beauty (*jamal*) and a

man's beauty is reflected in his majesty and this division of labour is neither a blame for women nor a praise for men. But it is the guide-line for each, each (sex) is assigned to its proper tasks and deserves praise for compliance with this order, and blame for defiance.<sup>33</sup>

Zanan's review, entitled "Women in the Perspective of Reason and Perfection", marks the beginning of a new phase in *shari'a*-based discourse in post-revolutionary Iran. Its author, Mohsen Sa'idzadeh, is a cleric teaching in Qom who takes a totally different position from Amoli's.<sup>34</sup> Drawing upon arguments developed in previous Numbers, Sa'idzadeh rejects the very premise of Amoli's arguments and denounces the notion of "complementarity of rights" – developed by Motahhari and on which Amoli's arguments rest – as a pretext to deny women their Islamic rights. In a set of inter-connected arguments, Sa'idzadeh contends that Islam grants women the same rights as men in all matters, including the right to become leaders, both religious and political, and to serve as judges. Islam regards the material and the spiritual as two sides of the same coin, and it is sheer folly to expect that we can continue to subjugate women in this material world through an illusory promise of spiritual reward. The following extracts give an idea of the nature and force of his arguments, which are both challenging and novel.

Money is the root of all good as much as it can be the root of absolute corruption. If a woman were an (economically) independent legal person (in marriage) and did not have to depend on her husband for *nafaqa* (maintenance), she would not put up with the indignity of an unjust *tamkin* (obedience) and a thousand and one other hardships; this is what frightens men. If humanity ruled, irrespective of being wealthy or not, a woman would be her husband's partner and aide. Did Khadija not spend her large wealth for the Prophet? Was she not wealthy and powerful? Why did she follow him and remain loyal to him?

It is time to ameliorate men's level of awareness in society, to make them understand that the criterion for good conjugal relations is no longer domination, paying for women's maintenance and ruling them, but the reason for a woman obeying a man is his humanity. Indeed we do not have any strata in this country more oppressed and sacrificing than women.

It is not evident why, instead of being realistic, some of our religious leaders resort to fanciful, and sometimes distorted, justifications and interpretations. Why do they not want to accept women's God-given and intrinsic demands, which are in no way threatening to society? Why in the sphere of Islamic law, which claims universal application, should these matters be missing?

We believe that the problem is not with Islam but with Islamic thinkers' understanding of Islam, which is tinted with political and patriarchal notions. Why, as soon as an enlightened *mujtahid* or an aware Islamic scholar tries to correct these, is he faced with all sorts of accusations? If our logic is strong then we should not be frightened and if it is weak we should find ways to remedy it.<sup>35</sup>

With two gaps, the legal sections of the next five Numbers (*Zanan* 11–16, which appeared between June 1993 and February 1994) extend the debate to an examination of the gender basis of current penal laws. The debate started with *Zanan*'s decision to publish an article by a secular woman lawyer, Mehrangiz Kar, delivered at the "First Seminar of Women's Social Participation". The seminar, organised by the Tehran Governor's Office, was part of an official campaign to promote women's status in society by highlighting their "high status" in Islam. Kar's paper is a factual analysis of the gendered basis of the Islamic Punishment Law as codified in 1991, in which she merely lists – without one single comment – the instances in which men and women receive different punishments for the same crime.

*Zanan*'s decision to publish a paper by a secular feminist, whose primary assumption is that "gender equality even in punishment" is a principle to which the legislator should adhere, marks another phase in the development of *Zanan*'s stance. *Zanan*'s willingness to join forces with secular feminists to protest against the gender biases of a law which is derived from the *shari'a* is indeed novel in post-revolutionary politics. Capitalising on recent pro-women slogans, *Zanan* introduces Kar's article with an explicit call for *ijtihad*:

In recent years Iranian women have been subjected to especial praise and honours, naturally raising their expectations. They now expect the thinkers and policy-makers to re-examine the inequalities that exist in penal laws of the country and prescribe a fundamental revision. In other words: "It is time for *ijtihad*."<sup>36</sup>

To defuse an eventual riposte, the introductory passage to Kar's paper contains two other points: first, that

Islam is a collection of Qur'anic Verses, *sunna* and opinions of the Islamic jurists, and we know that jurists differed in their perspectives and opinions. Some refute others and it is exactly here that we can be hopeful for progressive *ijtihad*s.

Secondly, that when the author refers to "legislator", *qanungozar*, she means "law-making authorities and apparatus of the country", not the "Divine Law-Maker", *Shar'i-e Islam*. This distinction is also made in the title of Kar's article: "The position of Women in Penal Laws of Iran".

*Zanan* 13 continues the debate, but this time from the *fiqh* perspective. This is done in a three-part article entitled "Position of Women in Penal Laws of Islam", written under the name of Zinat al-Sadat Kermanshahi. The approach and the style of argumentation in these articles are exactly the same as in those written by Azadi. However, they have a stronger tone and the arguments are further refined, giving them a more forceful thrust. Before starting the discussion, the author carves out a framework with two objectives: to ground and contain the discussion within the *fiqh* tradition with the aim of pre-empting any charge of heresy; and to promote *shari'a*-based arguments for reforming the present penal laws which are themselves based on the *shari'a*. To expand the scope of debate as developed in earlier issues of *Zanan*, and to free the author from previous constraints, five points are stressed at the outset. These are:

1) In arguing for gender equality in the penal laws of Islam we start with the postulate of *takafu* (equality) in religion, then we proceed to examine the postulates of gender, freedom and slavery – all within the *fiqh* framework.

2) After the Prophet's death, the need for new laws and re-interpretations of the old ones gave rise to the emergence of various schools of law and thought whose founders used their own judgements in an endeavour to find solutions for legal problems. Thus their views and deductions cannot unequivocally be attributed to Islam, as they are the views and commands of Muslims not Islam.

3) It is evident from the arguments and views of Islamic jurists, *hadith* experts, and commentators that the penal laws of Islam are more ratifactory (*imza'i*) than foundational (*ta'sisi*); and that Islam largely accepted past customs and introduced certain modifications, including the removal of discrimination. Thus well versed in the rules of *fiqh* and *usul*, the present writer does not find it necessary to confine him/herself to current idioms.

4) The requirements of the age, of place and politics have undeniably shaped Islamic laws, *fiqh* and its commands, as confirmed by a number of *hadith*. Therefore, a review of these laws does not diminish their value and sanctity but enhances their power. The "Divine Law-Maker of Islam" had foreseen and allowed for such changes.

5) This article is a critique to assist the legislator (*qanungozar*) in reforming (penal) laws; its aim is neither to be a decree (*fatwa*) nor to innovate (*ibda'*).<sup>37</sup>

Within this framework, the author proceeds to examine the place of gender in *shari'a* penal laws under five headings: retribution in case of murder, *qissas-i nafs*, retribution in case of the loss of a bodily organ, *qissas-i 'uzw*, money compensation paid in lieu of *qissas (diya)*, fixed punishment, *hudud*, and punishment defined by the Islamic judge, *ta'zirat*. For each of these forms of punishment, the author scrutinises the diverse opinions of the jurists and divides them into three groups: advocates of the "theory of difference", who maintain that men and women should be subjected to different punishments for committing the same crime; proponents of the "theory of equality", who hold that men and women should receive the same punishment for committing the same crime; and supporters of the "theory of inequality", who argue that a man should not be subjected to *qissas* for murdering a woman.

These articles are interrupted in *Zanan* 14 (October–September 1993) by a harsh critique of Kar's paper, to which *Zanan* duly replies in the same Number. The critique, apparently written by a seminary-educated woman, Muzhgan Kiyani Sabet,<sup>38</sup> is in fact a pretext to rebut the earlier articles in the legal sections of *Zanan*, written by Azadi. However, its author chooses to single out Kar's article as the culprit. This is so not only because Kar, as a secular feminist, is a safer target to attack, but also because the author probably found it difficult to challenge Azadi's articles which are all argued within acceptable *fiqh* boundaries.

The critique, and *Zanan's* reply, written by Sa'idzadeh, encapsulate the conflict between *Zanan* and those who see gender differences in the *shari'a* as reflecting the divine design for mankind. Space does not allow a full treatment here; I can give only an intimation.<sup>39</sup>

Following the style set by *Zanan*, "Kiyani Sabet" starts her critique with an introductory section, establishing the framework and the position taken. This section makes seven points, whose primary aims seem to be twofold: to close the debate on gender inequality in the *shari'a*, and to reaffirm the official Shi'a position. These are conveyed in a set of seven arguments in which the author contends that (1) as penal laws in Iran are now derived from the *shari'a*, any discussion of them involves the *shari'a*, i.e. the sacred; (2) to object to them is to object to the *shari'a*, which is not permissible as the believer is required to follow its provisions without any probing. The following four arguments simply reiterate that Islamic law is divinely ordained, based on the laws of nature; women are treated differently because their natures are different and this is indeed the very essence of justice. Here the author simply reproduces the arguments put forward by Ayatollah Motahhari and more recently by Amoli, quoting from their books. The final argument is theological, whereby the author states that "prior to entering a discussion of *fiqh* one needs to enter a discussion on fundamental and doctrinal issues of Islam," which is followed by a discussion of two of the fundamentals of religion, *usul-i din*: Unity of Attributes, *Towhid-i Sefati*, and Divine Justice, '*Adl-i Elahi*'.<sup>40</sup>

*Zanan's* reply, entitled "But Our Response", written by Sa'idzadeh, is not only daring and erudite but carves out another space for *Zanan's* position within the *fiqh*-grounded debates. It tackles the critique on its own terms, responds to each of its arguments within the *fiqh* context, shows how its author commits the very sin that s/he forbids others, and points out the instances in which the author deviates from the *fiqh* and the fundamentals of the religion by issuing a number of groundless fatwas. In so doing, *Zanan* highlights the ways in which the critique misunderstood and misrepresented *fiqh* fundamentals, the Iranian legal system, and Kar's article, laying bare its implicit gender biases.<sup>41</sup>

#### *Debating the legal and moral: An emerging feminist voice*

*Zanan* 18 (June–July 1994) marks another important phase in its progression towards a *shari'a*-based feminist discourse. Here *Zanan*

questions the classic divide in *shari'a* marriage rules between the moral and the legal and holds it responsible for the injustices in marriage to which women have been subjected. This is done in two ways. First, *Zanan* takes issue with assertions made about *nafaqa* (maintenance) by the head of the judiciary, Ayatollah Yazdi. Reflecting the dominant opinion within the Shi'a *fiqh*, Ayatollah Yazdi, in a Friday Prayer sermon (3 June) said that, legally speaking, the wife's right to maintenance does not include the expenses of major medical treatments.<sup>42</sup> *Zanan's* critique of the Ayatollah's position, again written by Sa'idzadeh, took the form of an extended article, entitled: "According to What Law Is a Husband Not Responsible for his Wife's Major Medical Expenses?" The Ayatollah felt compelled to reply to these challenges not merely to his credentials as an advocate of justice, but to his competence as a jurist/scholar.<sup>43</sup> Secondly, *Zanan* adopts a different approach in discussing issues which were examined in the first two Numbers, such as the wife's obedience and the husband's right to headship of the household, dealing now with the sociological, legal and *fiqh* aspects separately, and highlighting their interconnections.

The sociological aspects are examined in a section labelled "Report", which like the "Legal" is a feature in most Numbers. In Number 18, the "Report" is devoted to women's actual experiences of marital violence, under the title: "Sir, Have You Ever Beaten Your Wife?" It consists of a number of interviews with men, women and children from different walks of life, seemingly innocent, but sharply pointed. These interviews reveal the extent to which women are at the mercy of their husbands, who see it as within their right to beat them if they object to or ignore their demands. In other words, the Report shows what the *shari'a* concepts such as *tamkin* and *nushuz* entail in practice, and how humiliating and disturbing is their impact on women and children.

The "Report" is followed by an interview with a female lawyer (Mehrangiz Kar), discussing the legal rights of a wife who is trapped in a violent marriage. Only in case of extreme physical violence can a woman have recourse to law, either to claim compensation or to obtain a divorce. But since the concept of "maltreatment" (of a wife) is not clearly defined by the Civil Code articles, the outcome of many cases depends on the outlook of the judges, who are all male and *shari'a* trained. Some consider that a man has the right to punish his wife, while others consider beating as a violation of her rights. The whole legal procedure is complex and a woman must provide medical reports or bring witnesses in support of her claim, and only those whose injuries are severe, such as

loss of a limb, can get any kind of compensation. Since this is not always the case, women often end up giving their consent to abandon the case against their husbands.<sup>44</sup>

The *fiqh* dimensions are discussed in a two-part article (*Zanan* 18 and 19, June–September 1994), under the title: "Wife-beating: Another Consequence of Men's Headship". In contrast with the first two Numbers, *Zanan* not only now engages with *fiqh* texts but tackles Qur'anic verses which are commonly used to legitimate women's subordination. The author of this article is a man well-versed in sacred traditions; although he uses the name Mohsen Qa'eni, he is rumoured to be the same cleric who has contributed many earlier articles. Like the contributors to Numbers 1 and 2, he starts the discussion with Article 1105 of the Civil Code and verse 34 of Sura Nisa, but unlike them he sets out to prove that Article 1105 has no *shari'a* justification, and that its content cannot be attributed to the divine Law-Maker of Islam. He challenges dominant interpretations of the above verse and the underlying assumptions behind them before offering his own reading, which reflects *Zanan's* position: that men's headship of the household is a male construct, and, like other male privileges which are attributed to *shari'a* laws, actually has its roots in the culture and customs of the time of revelation. In these sections the author introduces a number of ingenious ideas and opens the way for a feminist reading of some of the Qur'anic verses. To understand how this is done, we should take a closer look at these two articles.

After a lengthy critique of the prevailing conceptions of marriage and marital relations in the works of Islamic jurists, Mohsen Qa'eni asserts that, in the sphere of the family as elsewhere, the Qur'an's aim was to introduce change gradually. For instance, at the time when women had no inheritance rights, the Qur'an entitled them to half the share of a man; had the economic and social conditions been favourable, most probably they would have been given equal shares then and there. The absolute authority of men, and the maltreatment of women, were among the customs of Arabs; the Qur'an, however, modified them to a large extent. For instance, the wealthier or more powerful a man, the more wives he took; what the Qur'an did was to limit the number to four and make women a party to the contract; if the situation had arisen, it would have limited the number to one, as there is a clear indication of this in several places in the Qur'an itself.

To show the extent to which verse 34 of Sura Nisa is predicated on the customs and conventions of its time, Qa'eni urges the reader to follow the practice of the Prophet, reminding the believer that s/he is required

to do so by the Qur'an itself. He then goes through 15 Traditions to argue that the Prophet himself never acted according to the dictates of the verse: not only did he never raise his hand to strike any of his wives, but he condemned wife-beating. However, he tolerated it as it was a part of the patriarchal culture of the time, which he intended to abolish gradually through reforms. To separate the ideas and views of Islamic thinkers further from those of the Prophet, the author makes six logical deductions, the gist of which is as follows.

1. Islam intends to resolve disputes primarily through persuasion, *mu'izeh*, and advice, *nasihat*, and by logical means, then through indirect means, such as avoidance, *qahr*, and it is only after these that out of necessity a warning or a threat is issued. The same holds true for marital disputes: the permission, *ibaheh*, to beat is merely a gesture, a caution, aiming to create awe. Seen from this perspective, Islam empowers both spouses to prevent each other from straying from the correct path of marital life. Each (sex) may resort to different measures.
2. To improve social relations, Islam has endorsed some of the existing rules – and probably added some, that is to say that, since certain customs and beliefs were so deep-rooted among Arabs, Islam did not see it expedient to fight them overtly. Among them were beating of wives and *talaq*, but the fact is that Islam abhors men who beat their wives or divorce them at will.
3. In Islam, "command", *amr*, has different functions – depending on the context. Whenever a command is inferred from the Qur'an, compliance is not required. For instance, Verse 3 of Nisa cannot be taken as commanding men to take four wives.<sup>45</sup>
4. According to the view of some commentators, beating is to be resorted to only in case of the husband's inability to achieve the desired result in a conciliatory manner, i.e. in case of extreme duress, *iztirar*. Evidently, any *iztirar* is blameworthy, *makruh*; the preferred command of Islam for a man is to establish a loving relationship with his wife and not to hurt her. Those who take this verse at its face value and criticise the Qur'an for sanctioning wife-beating either have other motives or lack knowledge of its essence.

5. Positively, the content of the verse is a report on the people of that age. To extend its relevance to all times, we need other proofs, *dalil*. One issue in theoretical bases of Islamic law, *usul al-fiqh*, is the question of the extent to which Qur'anic commands can be extended validly to those who were not its face-to-face addressees, *ghair-imushafihan*. According to the perspective of the non-extension, '*adam-i shumul*', it is up to those who hold that the Qur'an sanctions the beating of a wife to provide proofs that the command extends to people of all ages. The same is true of those verses which were used to legitimate men's dominance over women. The Qur'an states that men have a privilege over women, which is that granted to them as their maintainers, but it does not say whether this (being their maintainers) is good or bad. The rest of the verse merely states that "good women are obedient" but does not tell them to be obedient. If the Qur'an wanted them to be obedient, it would have said so directly. Why has it not ordered them to be so, as in other instances when men and women are ordered to obey God and his Prophet, and to do their prayers five times a day and to fast during the Ramadan? This means that the Qur'an simply endorsed the conduct and custom of the time – as it did with other marriage rules – but it does not mean that the Qur'an held them as just and unchangeable.
6. If we accept the view of some of Islamic jurists, *ulama-yi 'ilm-i usul*, a Qur'anic command can be revoked, *naskh*, by means of visible proofs. In the case of the above verse we are facing a kind of *naskh*. The order to strike, *daraba*, in its conventional interpretation is removed because of the interest of the situation, *mashlihat-i waz'*, of wisdom, *hikmat*, and of other interests. In light of the traditions, *ahadith*, discussed above – transmitted by both Sunnis and Shi'as – and given other principles of the Qur'an and Sunna which oppose any kind of aggression and seek to promote peace and harmony in all matters, the revocation, *naskh*, of the word *daraba* (in its conventional meaning) is then certain.<sup>46</sup>

Having put forward the above logical reasoning, the author then surveys the *fiqh* literature to show the diversity of jurists' opinions on the subject. A minority, who share the author's point of view, hold that men are not permitted to beat their wives under any condition. The majority, who think otherwise, are divided into two groups: those who consider this treatment applicable to all women; and those who make a distinction



according to the wife's status, which suggests that the command has always had its social side. In subtle ways the discussion reveals the complexity and yet the absurdity of the whole issue, especially in the modern legal context when the wife can successfully challenge any charge of disobedience. It is argued that beating a wife has no religious legitimacy and is a matter that the legal system must deal with. Men who beat their wives must be brought to justice.

Finally, in *Zanan* 19, the writer goes back to the verse and offers an alternative interpretation, which is indeed novel. Under the title "But Our Stand-point", Qa'eni argues that, first, we need to understand the real sense of the verse, and its underlying message. The verse, more than telling men how to punish their wives, tells them how to understand the psychology of women and the reasons for their disobeying. It is indeed about marital disharmony and how a man should respond if he fears that his wife might enter the state of *nushuz*. There are many underlying reasons for *nushuz* (itself a vague term, which can mean rebellion in general, or a denial of sexual access in particular). As some commentators remark, some women become rebellious in order to seek further attention, some want to test their husband's love, and there are many other reasons. Qa'eni then examines the root radicals for three key words in the verse: *wa'aza*, to exhort, *hajara*, to abandon, and *daraba*, to strike. He argues that, in the verse concerned, the first word enjoins the husband to reason with her, the second to give her space, and the third to strike her with fondness. To arrive at this, the author engages in a linguistic analysis whose gist is that in the Qur'an the word *daraba* has different senses whose meaning becomes clear in association with others (it means "striking with awareness" in verses 75 and 76 of Nahl, "travel" and "speed in flight" in verse 156 of 'Umran, etc.). "Whenever *daraba* is used in the sense of beating it is in association with another word, for example in verse 27 of Muhammad and verse 44 of Suad." This is not the case in verse 34 of Sura Nisa where, he argues,

*daraba* when read in *bab al-af'al*, and when taken in association with *wa'aza*, no longer denotes beating. Therefore, the meaning of the verse could be that "disobedient" women are of three kinds: those who need to be reasoned with; those who need to be left alone for a while; and those who need to be caressed, and taken to bed, rather than abandoned.<sup>47</sup>

## Conclusion

In the course of 19 Numbers, the legal sections of *Zanan* have not only refined a mode of argumentation, but taken it to its logical conclusion by using it to tackle some hoary issues in the *shari'a*. As is evident, the approach is that of *fiqh* texts: first, by reviewing the divergent positions of the Muslim jurists, the issue is introduced and placed in context; then diverse opinions of the jurists are scrutinised in the light of the Qur'an, *hadith*, *ijma'*, reason and the practice of their time; finally, those which are contrary to the writer/s' position are refuted and those which are not are elaborated. Among the juristic and logical devices that *Zanan's* writer/s use/s, the following can be singled out: distinctions between the divine Law Giver (*Shar'-i Islam*) and the mundane law maker (the Islamic Republic), and between primary and secondary sources of *shari'a*. While primary sources are subjected to innovative interpretations, the secondary sources are debated and at times refuted by the aid of the former. It is argued that time and politics are among the decisive factors in upholding or modifying any *shari'a* rule, even if it is rooted in explicit Qur'anic injunctions, which are in turn divided into two categories: *ilzami*, binding, and *irshadi*, guiding. At the same time the classical divide in the *fiqh* rules between moral and legal is challenged, and jurists are urged to give legal force to the former; finally they are reminded that the time for radical *ijtihad* has come. In this way, *Zanan's* writer/s is/are gradually but surely turning the classical texts on their head, using their own style of reasoning and argumentation.

The process is still unfolding; so is our understanding of it. However, some tentative conclusions can be offered at this stage.

*Zanan's* *shari'a* discourse is not isolated, but is part and parcel of a new tendency within the centre of the religio-political establishment. This tendency, which can perhaps be best termed "post-fundamentalist", represents the latest faction in post-war and post-Khomeini Iran. It is changing the very terms of not only the *shari'a* discourse on women but that of the Islamic Republic, by arguing for a kind of demarcation between state and religion. Ironically, its most outspoken advocates were part of the early political leadership which defined the Republic's polity. This tendency has its intellectual core in Tehran, gathered around Dr Abdul Karim Soroush, the guiding inspiration of the Kiyan Cultural Institute, which publishes a monthly *Kiyan* – *Zanan's* brother paper – in which these views are aired.<sup>48</sup>

This tendency advocates a brand of feminism which takes Islam, not the West, as its source of legitimacy. What is significant about this

“feminism”, and especially its line of argument, is that it is grounded in a Shi’a discourse which is radically different from the official one – still closely identified with the position taken by Ayatollah Motahhari as part of the discourse of opposition to the Shah’s reforms. Whereas Motahhari used Western scholarship to explain the reasons and the necessity for the different treatment of women in Islam, the new “feminists” use Shi’a scholarship to argue that old texts should be re-read in line with changed conditions. They take for granted gender equality on all fronts, including the rights accorded by the *shari’a*, unlike Motahhari, who rationalised gender difference in terms of complementarity of rights. Again, in contrast to Motahhari and other *shari’a*-based discourses, the new tendency sees women’s sexuality as defined and regulated by their familial and social circumstances, not by nature and divine will. By diverting the focus of *fiqh* away from women as sexual beings to women as social beings, the new discourse has opened a door which can no longer be closed. It has given a new lease of life to the old question of “Women in Islam” and by asking suppressed questions it has brought about a shift in the very premises of the debate on women’s role at home and in society. What made such a shift possible is the Islamic Republic’s ideological understanding of Islam, which opens the way to challenging the hegemony of the orthodox interpretative process.

Finally one should note parallels in the emerging conditions of the pre- and post-revolutionary *shari’a*-based discourses. What gave rise to both were debates that preceded changes in family laws, especially those pertaining to divorce. In both cases, a women’s magazine became the forum for this debate: *Zan-e Ruz* in the pre-revolutionary era, and now *Zanan*. Despite their differences, both discourses have provided an “Islamic” alternative to the state-sponsored feminism of their time. What separates them is that, while in the 1960s such an “Islamic” alternative was defined in opposition to the Shah’s gender policies, now it is defined in opposition to those promoted by the Islamic Republic.

## NOTES

- 1 I make a distinction between *shari’a*-based writings on women, whose writers are mostly Muslim/Islamist men and with which I am concerned here, and feminist writings on Muslim women, whose writers are mostly Muslim feminist women who locate their feminism in Islam. For examples of the first type see B. Stowasser, ‘Women’s Issues in Modern Islamic Thought’ in J. E. Tucker (ed.), *Arab Women: Old Boundaries, New Frontiers* (Bloomington: Indiana University Press, 1993); and for recent examples of the second, see L. Ahmed, *Women and Gender in Islam: The Roots of a Modern Debate* (New Haven: Yale University Press, 1992), F. Memissi, *Women and Islam: An Historical and Theological Enquiry* (Oxford: Blackwell, 1991).
- 2 See Z. Mir-Hosseini, ‘Divorce, Veiling and Feminism in Post-Khomeini Iran’ in H. Afshar (ed.), *Women and Politics in the Third World* (London: Routledge, 1996).
- 3 For example, see J. R. I. Cole and N. R. Keddie (eds.), *Shi’ism and Social Protest* (New Haven: Yale University Press, 1986); B. Lewis, ‘The Shi’a’, *New York Review of Books*, Vol. 32, pp. 7–10.
- 4 For example, see G. Nashat (ed.), *Women and Revolution in Iran* (Boulder, Colorado: Westview Press, 1983); F. Azari (ed.), *Women of Iran* (London: Ithaca Press, 1983); A. Tabari and N. Yeganeh (eds.), *In the Shadow of Islam* (London: Zed Books, 1982); K. Millet, *Going to Iran* (New York: Coward, McCann & Geochegan, 1982).
- 5 Both texts are treated extensively in the literature on women in post-revolutionary Iran. For example, A. K. Ferdows, ‘The Status and Rights of Women in Ithna ‘Ashari Shi’i Islam’ in A. Fathi (ed.), *Women and the Family in Iran* (Leiden: E. J. Brill, 1985); M. K. Hermansen, ‘Fatimeh as a Role Model in the Works of Ali Shar’iati’ in G. Nashat (ed.), *Women and Revolution*; G. Nashat, ‘Women in the Ideology of the Islamic Republic’ in G. Nashat, *Women and Revolution*; S. Mahdavi, ‘The Position of Women in Shi’a Iran: Views of the Ulama’ in E. Fernea (ed.), *Women and the Family in the Middle East: New Voices of Change* (Austin: University of Texas Press, 1985); F. Azari, ‘Islam’s Appeal to Women in Iran: Illusions and Reality’ in F. Azari, *Women of Iran*; Tabari and Yeganeh, *In the Shadow of Islam*; N. Yeganeh and N. R. Keddie, ‘Sexuality and Shi’i Social Protest in Iran’ in Cole and Keddie, *Shi’ism and Social Protest*. With the exception of the latter, the rest largely deal with the gender premises of both texts.
- 6 For a bibliographical sketch and a sample of his lectures in English, see A. Shar’iati, *On the Sociology of Islam*, trans. H. Algar (Berkeley: Mizan Press, 1979).
- 7 A. Shari’ati, *Fateme Fateme ast* (Tehran: Shabdiz Press, 1978), pp. i–ii. His other text, based on another lecture ‘The Expectation of the Present Era from the Muslim Woman’ (Tehran: n.d.), expresses similar views.
- 8 A. Shari’ati, *Fateme Fateme ast*, p. 88.
- 9 M. Motahhari, *The Rights of Women in Islam* (Tehran: World Organization for Islamic Services, 1981), pp. xxxvii–xl. In this English translation, the word “system” (*nezam*) was omitted from the title.
- 10 For the dismantling of the Family Protection Law and its post-revolutionary counterpart, see Z. Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law*

- (London: I. B. Tauris, 1993).
- 11 The Assembly for Ascertaining the Regime's Interest (*Majma'-e Tashkhis-e Maslehat-e Nezam*).
  - 12 For an extended discussion of these changes in law, see Mir-Hosseini, 'Divorce, Veiling and Feminism in Post-Khomeini Iran'.
  - 13 *Zanan* 1 (February 1992/1370), p. 2.
  - 14 *Zanan* 1 (February 1992/1370), pp. 58–63.
  - 15 *Zanan* 2 (March 1992/1370), pp. 26–33.
  - 16 *Zanan* 4 (April 1992/1371), pp. 20–6.
  - 17 The verse reads: "Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you, do not seek a way against them, surely Allah is High, Great." This and other translations are taken from Holy Qur'an, translated by M. H. Sakir (Qom: Anasariyan Publications, n.d), which is distributed abroad by the Islamic Republic.
  - 18 The verse reads: "And the divorced women should keep themselves in waiting for three courses; and it is not lawful for them that they should conceal what Allah has created in their womb, if they believe in Allah and the last day; and their husbands have a better right to take them back in the meanwhile if they wish for reconciliation; and they have rights similar to those against them in a just manner, and the men are a degree above them, and Allah is Mighty, Wise."
  - 19 The verse reads: "And you stay in your houses and do not display your finery like the displaying of the ignorance of yore; and keep up prayer, and pay the poor-rate, and obey Allah and His Apostle. Allah only desires to keep away the uncleanness from you, O people of the House! and to purify you a (thorough) purifying."
  - 20 Compare Fatima Mernissi's account in *Women and Islam*.
  - 21 *Nahj al-balagha* is the most reputed collection of the sayings of 'Ali, the first Shi'i Imam.
  - 22 The *khuṭb* reads: "O people, women are deficient in belief, inheritance and wisdom. Their deficiency in belief is due to not praying and fasting during menses; their deficiency in wisdom is that witness of two women equals one man and in inheritance is that their share is half of men's. Therefore, avoid bad women and beware good ones; do not follow their good advice and actions so as not to encourage them to spread bad advice and actions (i.e. impel you to follow them)."
  - 23 The verse reads: "We have created you of a male and a female, and made you tribes and families that you may know each other; surely the most honourable of you with Allah is the one among you most careful (of his duty)."
  - 24 *Zanan* 5 (June–July 1992), pp. 17–26.
  - 25 See Mir-Hosseini, *Marriage on Trial*, pp. 55–6.
  - 26 *Zanan* 6 (August 1992/1371), pp. 22–9.
  - 27 *Zanan* 7 (September–October 1992/1371), pp. 25–9.
  - 28 *Zanan* 8 (November–December 1992/1371), pp. 24–32.
  - 29 *Zanan* 9 (January–February 1993).
  - 30 Ayatollah Javadi Amoli, *Zan dar A'ineh-ye Jalal va Jamal* (Tehran: Reja' Cultural Press, 1371/1992).
  - 31 Amoli, *Zan*, pp. 17–18.
  - 32 Amoli, *Zan*, p. 22.
  - 33 Amoli, *Zan*, p. 28.
  - 34 Sa'idzadeh is believed to be the author of *Zanan*'s previous legal sections, writing under the pseudonym Azadi. The fact that he chooses to use his own name when taking issue with Amoli can be interpreted as an indication not only of his confidence, due to the acceptability and erudition of his earlier contributions, but also of the appeal of *Zanan*'s line of argument among some clerics. The debates among these clerics, the issue of male authorship of *Zanan*'s legal articles and the use of female pseudonyms are among the topics that I discuss in a larger project of which the present paper is a part.
  - 35 *Zanan* 9 (December–January 1992–3/1371), pp. 29–34.
  - 36 *Zanan* 11 (June–July 1993/1372), p. 16.
  - 37 *Zanan* 13 (September 1993/1372), pp. 56–60.
  - 38 It is rumoured that the article was written by her husband, himself a cleric.
  - 39 I am dealing with these two perspectives in a forthcoming book.
  - 40 *Zanan* 14 (October–November 1993/1372), pp. 42–9.
  - 41 *Ibid.*, pp. 50–7.
  - 42 *Zanan* 18 (June–July 1994/1373), pp. 34–7.
  - 43 *Zanan* 19 (August–September 1994), pp. 7–8. Ayatollah Yazdi starts his reply by expressing his delight that among women there are those who are apparently capable of such scientific and analytical, i.e. *fiqh*-based, discussion, but chooses on the one hand to ignore that the critique of his own speech was written by a man (Sa'idzadeh), while insinuating that *Zanan*'s articles were written by men. This again raises the issue of male authorship and the ways in which women's issues have become a main debating ground among male clerics.
  - 44 As my own study of divorce cases shows, maltreatment is the most difficult ground to establish, although it is the most commonly claimed, constituting 34 per cent of all cases. For an extended discussion, see Mir-Hosseini, *Marriage*, pp. 67–71.
  - 45 The verse reads: "And if you fear that you cannot act equitably towards orphans, then marry such women as seem good to you, two and three and four; but if you fear that you will not do justice (between them), then (marry) only one or what your right hands possess; this is more proper, that you may not deviate from the right course."
  - 46 *Zanan* 18 (June–July 1994/1373), pp. 55–9.
  - 47 *Zanan*, 19 (August–September 1994/1373), pp. 68–70.
  - 48 For a journalist's account of Soroush's ideas, see R. Wright, 'An Iranian Luther Shakes the Foundations of Islam', the *Guardian*, 1 February 1995. It is rumoured that this tendency has a clerical core in Qom, of which little is reported.