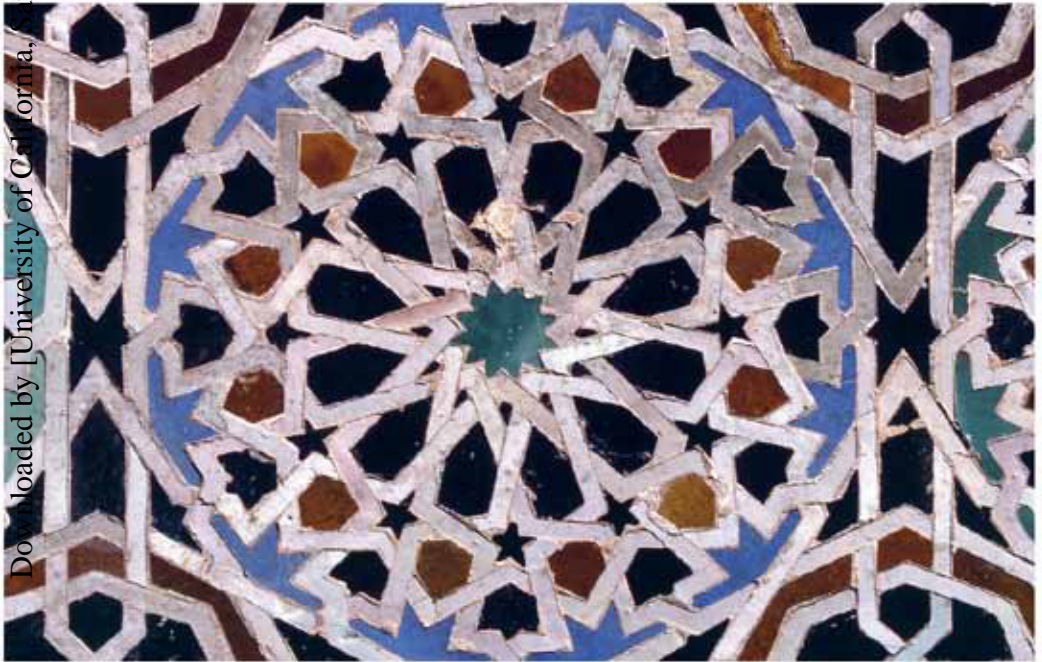


ISLAMIC LAW IN CONTEXT

# WOMAN'S IDENTITY AND RETHINKING THE HADITH

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Nimat Hafez Barazangi

ROUTLEDGE

# WOMAN'S IDENTITY AND RETHINKING THE HADITH

# Islamic Law in Context

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The Islamic Law in Context series addresses key contemporary issues and theoretical debates related to the Sharia and Islamic law. The series focuses on research into the theory and practice of the law, and draws attention to the ways in which the law is operational within modern State practices. The volumes in this series are written for an international academic audience and are sensitive to the diversity of contexts in which Islamic law is taught and researched across various jurisdictions as well as to the ways it is perceived and applied within general international law.

# Woman's Identity and Rethinking the Hadith

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# Preface and Acknowledgments

*Bismi Allah Al Rahman Al Rahim*

(In the name of God, the Merciful, and the Compassionate)

## Preface

The idea of this book and the research that led to it were conceived during the past 10 years while discussing my earlier book *Woman's Identity and the Qur'an: A New Reading* (2004b), mainly through invited lectures and symposiums. As I began my project and the ensuing articles about the “absence of Muslim women in shaping and developing Islamic thought” (2008–09, 2009), the effects of Hadith use and abuse became strikingly crystallized. Hadith was the first and most poignant instrument used to subdue the Qur'anic evidence that, for example, a head-cover for Muslim women was not required for Islamic modesty. From Damascus to San Francisco, by way of Beirut, Vienna, Rabat, New York, Washington, DC, Minneapolis, Omaha, Jeddah, and back to Ithaca, Muslims' apologetic reactions to my highlighting this evidence and exposing the misinterpretation of the concept of modesty as well as several other related concepts added to the urgency for me to research and write about woman's identity and Hadith. As more negative representations of Islam were reflected in the demeaning images of the Muslim woman who “cannot speak for herself,” or “cannot think for herself,” or “cannot defend herself,” the urgency of this book became more pronounced. As I was writing the earlier drafts of the book in 2010 and 2011, the surprises surrounding public involvement of women in what was coined “the Arab Spring,” their protestation, and, consequently, apparent retreat when the politics of “Islam” was invoked, confirmed such urgency, and my diagnosis that there is a crisis in understanding and practicing Islam. This crisis became more apparent while I was making the final revision of this manuscript in late 2014 as the abhorrent events of killing, raping, and enslaving women unfolded in the Middle East in the name of Islam. The goal of *Woman's Identity and Rethinking the Hadith* is to further affirm the necessity to *shift the discourse in understanding Islam from a dogmatic law to a religio-moral rational worldview*.<sup>1</sup> This shift is neither theological nor hermeneutical, because the premises of these approaches, useful and sincere as they may be, do not help develop an ethical and

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1 I am following Ashgate Publishing guidelines, using the italics, instead of underlining, to highlight my own points. When I use italics to add emphasis within a quote, I state (emphasis added). Italics are also used for Arabic terms when they appear the first time in each chapter.



pedagogical understanding of Islam. Nor have these and other approaches helped to alleviate the current crisis in interpreting and representing Islam, particularly the perceived role of Muslim woman as secondary in the ontological and socio-political structure of Muslim societies. The intention and the objectives of this new book are dramatically different from what has dominated the discussion of “Muslim women” and of Hadith in the last few decades. Hadith is the documented reports on sunnah (the sayings and actions) of the Prophet of Islam, Muhammad (May peace be upon him), and is considered by all Muslims as a pivotal source of Islam. I am writing this book to learn and to educate against the abuse and misuse of the different meanings of “sunnah” (also known as the traditions)—beginning with the reported traditions of the Prophet of Islam, Muhammad, to those of his companions, and ending with those of the contemporary *imams* (community and prayer leaders) and *mufitis* (government-heir religious-counsels). These abuses are prevalent in using sunnah of the Prophet before the Qur’an, making Hadith as the primary source of Islam instead of the Qur’an, and in using narratives attributed to the Prophet without corroborating their contents by the Qur’an. In addition, the use of certain narratives (whether or not they are corroborated by the Qur’an) in generating *fiqh* (jurisprudence rules) or *fatwas* (jurist-council edicts), and erroneously calling these rules “shari’a” (Islamic law), is the crux in the crisis of representing and understanding Islam.

Several articles and books have recently been generated, knowingly or unknowingly, in defense against my thesis that Muslim women are absent in shaping and developing Islamic thought throughout the entire history of Muslim societies. Their argument is that women were historically involved in the decision-making process of the Muslim society. Yet, these writings rely primarily on few reported cases (such as early women transmission of Hadith), positive as they might be on the surface; often other reports concerning women and gender contradict the Qur’an.

The traditional and prevailing Muslims’ emphasis on the dependent, but segregated woman contradicts Qur’anic principles of *Tawhid* (Oneness of Deity as a source of knowledge and value, and the unity of God and humanity), *‘Adl* (justice), *Khilafa* (trusteeship), *Imama* (leadership), and *Taqwa* (equilibrium). *Tawhid* as the foundation of Islam was transformed into blind obedience and habitual worship. *‘Adl* as the goal of the Qur’an and the reported sunnah of the Prophet Muhammad was transformed into *hudud* (harsh rules) to punishing the “contesting” woman as if contestation means *nushuz* (fornication). *Khilafa* being the human trusteeship and stewardship has been preserved for the male political heirs and as the only means to establish “shari’a” (with a small “s”, legal rules), confusing it with Qur’anic *Shari’ah* (with a capital “S”, path, guidance {Qur’an 45:18}). Meanwhile, *imama* was confused with male leadership, and *taqwa* became the criterion of passive submission instead of the only criterion that differentiates individuals in their ability to balance autonomous agency with communal good within the guidance of the Qur’an. The realities of the majority of the approximately 800 million Muslim women suggest that they are not considered trustees of themselves and/or for their own children, nor fit to witness the injustices committed in the name of Islam. That

is, because they are considered minors like their children, or sexually vulnerable, hence need “protection.” Meanwhile, non-Muslims emphasize developing an emancipated Muslim woman who identifies with cultural parameters other than her own, or is considered a conformist and/or an oppressed (Barazangi 1996: 84–5). All these trends suggest the need to emphasize self-identity as prerequisite to self-understanding and internalizing Qur’an. Well-intended anthropological, hermeneutics, and other approaches to the study of Muslim women, though they produced temporary solutions and complex theoretical models, have not addressed the core issue, the absence of the Muslim woman in shaping and developing Islamic thought, including the sciences of Qur’an and Hadith. Though I emphasize, as I did in my earlier book (2004b), the importance of self-identity and identification, here, with the Hadith, I also emphasize that the Muslim woman needs to rethink the reported sunnah as much as she needs to identify with it. By using the term “woman” in the singular within the Islamic ethical and pedagogical framework, I am asking Muslims and non-Muslims to please let the Muslim woman think for herself, and act on her own behalf for the benefit of all.

This book attempts to further the goal of *Woman’s Identity and the Qur’an* by integrating the ethical with the pedagogical reading of the Qur’an to analyze and synthesize Muslims’ use and abuse of the reported traditions of the Prophet. It reaffirms the Qur’an as the primary and the only divine source of Islam and explains how self-identification and participation in reshaping Islamic thought and the decision-making process are prerequisites to ontological, philosophical, attitudinal, social, and political change. It is intended to further develop the self-learning process of the Muslim woman away from the traditional passive, proxy morality and conformity or what I call “the reversed feminism.” I recognize the danger of using the category “Muslim woman” but my treatment of “woman” and of “Muslim” to change contemporary gendered global policy-making justifies such usage. Using Qur’an’s pedagogical and ethical framework, each Muslim woman (or man) will be able to affirm her identity and to self-identify with Islam’s goal of justice. By direct access to and conscientious knowledge of the Qur’an, she can act autonomously apart from any intermediary, including the Hadith that is not corroborated by the Qur’an.

I argue that the use and abuse of the reported traditions is the main reason hampering the Qur’anic gender justice in its broadest sense, a creative view of egalitarian active participation in the community’s *shura* (consultative decision-making process). A woman who consciously chooses the Qur’anic worldview as her primary identification to achieve justice cannot further this broad sense of consultative gender justice without actually being involved in the interpretation of the Qur’an and rethinking the reported Hadith, and, hence, the shaping of Islamic thought. Without self-identification, a Muslim woman will not be able to free herself from the societal attitudes and traditional practices that continue to view her as minor, whose role is relegated to that only of wife, mother, or daughter, even if she freed herself from the limitation of biological gender identification. Shifting from conventional discourses, including feminist discourses that try to free women from

cultural constructions of gender, into the discourse of human moral and intellectual autonomy and agency, may shed new light on understanding the Muslim woman and her education and, consequently, help generate new readings of the Qur'an and the Hadith. I should note that "*al hukm al dhati or al istiqlal al dhati*" (autonomy) is used here in the Arabic sense of the word—self-identification as a free-willed agent who has a choice, and that being a prerequisite to self-identification with Islam. I do not use self-identity in the narrow English sense of the word—relying on self as the only source of the moral authority or self-governing.

By starting with Damascus, I intend to counter the claim that the role played by *Muhaddithat* (female narrators), having begun in Damascus after the Prophet's wives and early companions, means that women were involved in shaping Islamic thought. I also intend to challenge the Muslims' dogma that to critique any of the claimed Prophetic traditions particularly those that are not corroborated by the Qur'an is a radical endeavor that discredits the person's credibility and makes his/her writing repugnant or against Islam. If Muslim societies are to transform themselves by their own initiative, we, Muslims, need to educate the Muslim woman (and man) in synthesizing the reported traditions and their relevance to contemporary discussions of Islam and Muslim women; not by having to conform to the conventional boundaries of Islamic thought that were drawn over the centuries under *'Ilm* (erroneously being limited to "religious knowledge" produced by Muslim male scholars) as still done in contemporary Muslim societies and communities. Moving from Damascus to San Francisco, via the Middle East and the Midwest, from North Africa and South Asia to North America, beginning in the 21st century and back to circa 623, is intended to show the persistent problem—the general absence of Muslim woman as an agent of change not as the subject of change—and its implications for the lack of consultative gender justice.

This book is of critical importance in the way it reveals the unjust practices across cultures vis-à-vis the Qur'anic principles of justice and moral autonomy back to their roots, such as the misuse of Hadith. It challenges readers in the fields of Islamic studies, "Islamic" and religious education, women's and gender studies in religion and in civil societies, and Muslim women's studies to re-examine their established parameters and assumptions. It invites the reader to a much-needed participation in rethinking the current representations of Islam and Muslim women in general by providing a different discourse regarding the role of women in cultural interaction and global affairs. This work also challenges policymakers to strive to include the scholarship-activism of Muslim women who self-identify with Islam in understanding the Islamic worldview. *By shifting the Islamic discourse into a religio-moral rationality discourse, this work will achieve this understanding and maintain enough tension to keep equilibrium between the Islamic and American-European Anglo-Saxon values while seeking global citizenship.* This book is also intended as a primer for courses on Islam, Muslim women's studies, international and transnational comparative gender studies in religion, and cultural studies, and as a resource book for the Muslim woman that chooses to affirm her agency around the world.

## Acknowledgments

I would like to thank all the countless Muslim women who struggled with me through the last 20+ years of a participatory action research work, some of whom are still participating in the contestation to change attitudes and actions. I also wish to thank the following for their interest and contributions, directly or indirectly, to different aspects of this work during the research and development processes:

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September, 2015

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*To Nobl*

# Introduction

## Woman's Identity and the Hadith: Rethinking the Sunnah

### Introduction

*Woman's Identity and Rethinking the Hadith* affirms the necessity to shift the discourse in understanding Islam from that of a dogmatic religious law to a religio-moral rational worldview. It also affirms the need to bring the Hadith back to its original position in Islamic thought, as the second textual source of Islam after the Qur'an. In other words, this book continues the shift that began with the pedagogical reading of the Qur'an in my earlier book, *Woman's Identity and the Qur'an: A New Reading* (2004b). The focus here is on the ethical rereading of Hadith literature through corroborating the *matn* (textual content) of the Hadith narratives by the Qur'an. I am presenting the Arabic text (the primary text) of the Qur'an, as well as some other secondary sources, since the English rendition or linguistic translation may not always relate the exact meaning, as explained by Al-Masri (2010), and as we will see the synthesis of meanings throughout this book. I also examine the authoritative value of these narratives by exploring the realities and premises of the believing women on whose authority a good number of those narratives were transmitted. That is, Muhammad bin Abdullah, the Prophet of Islam (may peace be upon him), who carried and knew the message of the Qur'an, could not have said or done what has been reported in some of these and other narratives, because these reports contradict the Qur'an. In addition, despite the fact that many of those narratives were attributed to early Muslim women as transmitters—especially some of the Prophet's wives—history books hardly have reference to these women making meanings in their own *ijtihad* (independent inquiry), generating *fiqh* (jurisprudence) rules of these narratives, or even involving in the development of Qur'an and Hadith sciences. Why?

Implicit in my exploration is the realization that the Hadith has a significant impact on the daily life of Muslims, especially women, and in many instances has been used as the primary source for determining the affairs of the Muslim community, instead of the Qur'an. Hence, as I rethink Muslims' theology of the Prophet's sunnah (I will always use small "s" for the Prophet's sunnah [except in a title or at the beginning of a sentence] to differentiate it from the Qur'anic Sunnah [or Sunnaniyah] (Jawdat Sa'id, 2000–01), I argue that even if it were possible that the Prophet had said or done some of what is being reported, according to Qur'anic directives, the changing time makes it necessary for contemporary Muslims to rethink Hadith's applicability and ethical binding, just as early Muslims did not

apply some Qur'anic text in certain circumstances in order to exact justice (J. al Banna [1920–2013] 2004a: 54; all quotations from J. al Banna are my translation from Arabic. Also, I cite his work more than others who address the subject because it is the most comprehensive among the contemporary Muslim literature. In addition, contrary to the scholarly work of his brother, Hasan al Banna [ca 1906–49], who had a different outlook on Islam and Muslim women (1983), Jamal al Banna's scholarly work is hardly cited, especially in Euro-American literature).

By rereading some of Hadith literature, I want to bolster the present Muslim woman's moral courage to stand up for her rights and to effect change in understanding the role of sunnah in her life. My hope is that there will also be a shift in understanding Islam, and a shift in the fields of Islamic studies and of Muslim women's studies by changing the current premises of studying and using Hadith (I use hadith with a capital "H," only to indicate the totality of the corpus of *ahaadith* [pl. of hadith]). By synthesizing the moral effect of the theories of Hadith history and the theologies of the sunnah on Muslim women in general, I explore the centuries-old process that led to current misuse of Hadith and subsequent unjust treatments of the present-day 800-million plus Muslim women and for the past 14 centuries. My goal is to develop a new approach to understanding and using Hadith literature as I and other Muslim women reclaim our identity and identification with the message of Islam—the Qur'an, with the authentic sunnah of the messenger—Muhammad, and with early women believers and narrators such as 'A'ishah bint Abi Bakr (ca eight years before AH/606-58AH/678), Hafsa bint 'Umar (ca five years before AH/609-45AH/665), Um Salama (d. ca 59AH/679), and Um Waraqa (d. ca 650) (Kahhalah 1959, juz 3: 9, 129; Juz 1: 274–7; Juz 5: 221–27; Juz 5:284–5) amongst others.<sup>1</sup>

### Rereading Hadith and Rethinking Sunnah

Given that there are different definitions of hadith and sunnah in the literature, some of which overlap, I am presenting my working definitions in order to set the groundwork for this project.

"Sunnah" comes from the Arabic infinitive (root) "sanna" meaning to establish (a pattern/path of action) (Wehr 1974: 433). The genre "sunnah" is also referenced as the *seerah* (reported sayings or actions of the Prophet of Islam, Muhammad, and/or his biography), other than the Qur'an. The sunnah as the second source of Islam has been used in *fiqh* (Muslim jurisprudence) as evidence for rulings

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1 I use "ca" when there is no consistency in the sources of converting the Hijra dates (or AH, marking the Islamic lunar calendar that began with the emigration of the Prophet Muhammad and his companions from Makkah [Arabic/ Islamic transliteration for Mecca] to Madinah [Medina] in 1/622) into the Gregorian calendar year or the Common Era (CE). When citing antiquated references, I use the following: (name of author [birth date and/or death date if available] date of publication).

concerning *a'amal* (actions), not *'aqa'id* (beliefs) (Fawzi 1994: 29, all quotations from Fawzi are my translation from Arabic). We need to distinguish between the Prophet's sunnah and the historical or natural laws that the Qur'an references as "Sunnat Allah," that is, Sunnah, with a capital "S," as explained in two different *surahs* (chapters) of the Qur'an, indicating that Qur'anic Sunnah is the only divine and morally and or legally binding source of Islam:

{38} مَا كَانَ عَلَى النَّبِيِّ مِنْ حَرَجٍ فِيمَا فَرَضَ اللَّهُ لَهُ سُنَّةَ اللَّهِ فِي الَّذِينَ خَلَوْا مِنْ قَبْلُ وَكَانَ أَمْرُ اللَّهِ قَدَرًا مَقْدُورًا

There can be no embarrassment to the Prophet in what Allah has indicated to him as a *fardh*: it was the Sunnah of Allah amongst those who passed away aforetime, and the command of Allah is a decree determined.

{62} سُنَّةَ اللَّهِ فِي الَّذِينَ خَلَوْا مِنْ قَبْلُ وَلَنْ تَجِدَ لِسُنَّةِ اللَّهِ تَبْدِيلًا .

Such has been Allah's way (Sunnat Allah) with those who passed away aforetime, and never will you find any change in Allah's way {al Ahzab 33: 38, 62},

{23} سُنَّةَ اللَّهِ الَّتِي قَدْ خَلَتْ مِنْ قَبْلُ وَلَنْ تَجِدَ لِسُنَّةِ اللَّهِ تَبْدِيلًا .

Such has been Allah's way (Sunnat Allah) with those who passed away aforetime, and never will you find any change in Allah's way {al Fath 48: 23}.<sup>2</sup>

2 The translations of the Qur'an are either taken directly from or modified on the basis of Yusuf Ali (1938) and Muhammad Asad (1980, 2003). I rely on both, the site "Mawqif al Islam: Qur'an," for the electronic texts, and on Asad's (2003) rendering in English, also with some modification. The variations in the English renderings or translations support my argument that the use of English and other languages are in part responsible for the confusion of meanings in contemporary interpretations or representation. One only needs to read the different English meanings given to the word *hijab* (curtain), for example, to realize such evidence. Hence, I have intentionally kept within the main body of the text both the Qur'anic Arabic origin—the first and primary source of Islam—with the English rendition of Qur'anic verses to emphasize or clarify a meaning, and for the scholar reader to compare and realize some of the discrepancies in meanings as a result of the translations. I have also kept the Arabic version for most of the *ahaadith* (pl. of hadith, reported narratives attributed to Prophet Muhammad) and *tafaaseer* (exegesis or interpretations of the Qur'an) for the same purpose. The brackets { } refer to the title of the Qur'anic *Surah* (chapter), its numerical order and the specific verse number. I list the title of each *surah* in order to eliminate any mistake/confusion because there is a variation in the commonly used numeration systems.

Note that in order not to confuse the narratives or the interpretations with the Qur'anic verses, I do not use the numerical order at the beginning of each narrative attributed to the Prophet Muhammad, or at the beginning of each quote from an interpretation (nor do I bold their Arabic text). The accent (ˆ) in the Arabic transliteration indicates the (*hamza*, ء and



“*Hadith*” comes from the Arabic infinitive (root) “haddath,” meaning to produce [a narrative] (Wehr 1974: 161). The genre “Hadith” could describe a single narrative attributed to the Prophet or the collections of the textually documented narratives that are attributed to the Prophet through a chain of oral narrators. The majority of sources suggests that the movement from the oral transmission into a written documentation form of the narratives, and, subsequently, into different collections attributed to the primary collector or his disciples (for example, Bukhari, Muslim, and so on) began more than 100 years after the death of the Prophet and his companions. Some of these companions lived well after the reign of Mu’awiya bin Abi Sufyan, the first Umayyad Caliph (d. ca 680). Since this book does not concern itself with the authenticity and documentation process of hadith and its dynamics, I am only presenting some headlines to engage the reader with a cursory chronology of the process. The lengthy authentication process to detect *isnaad* (the chain of narratives) and the trustworthiness of the narrators took place during the latter part of the first and the second centuries of the Islamic calendar that began in (ca 622) and ended into the various collections that were used as the second authentic source of Islam—the Qur’an is the first source—by *fuqaha* (jurisprudence scholars or jurists) (al Tabari [ca 838–923] 2003; Fawzi 1994: 36). Each collection was named after the primary collector or his disciples—most prominent among them are Bukhari, Muhammad. b. Ismail [d. 256/870] *Jami’ al Sahih* (1966); Muslim, Abu al Husayn b. al Hajjaj [d. 261/875] *Sahih Muslim* (1962); al Tirmidhi, Muhammad. b. ‘Isa [d. 279/892] *Sunan* (1965); al Nasa’i, Ahmad b. Shu’ayb [d. 303/915] *al Sunan al Kubra* (1991); Abu Daud, Sulayman b. al Ash’ath [ca 818–89] *Sahih Sunan* (2008); Ibn Maja, Abu ‘Abd Allah [d. 273/887] *Sunan* (nd); al Darimi, Abd Allah b. A R. [d. 255/869] *Sunan* (1970); Malik b. Anas, Abu ‘Abd Allah [d. 179/795] *Kitab al Muawtta’* (1986); Ibn Hanbal, Ahmad b. M. [d. 241/855] *Musnad* (1998).

There have been several debates on the historiography of these collections and on their relationship to the biography of the Prophet, some of the most recent of which can be found in Gregor Schoeler (2011), Fred Donner (2010), and Ma’ruf al Rusafi [1875–1945], (2002). I rely on the biography of the Prophet in its primary and most referenced source—Ibn Ishaq’s [d. ca 768], *Sirat Rasool Allah* as abridged in ‘Abd al Malik Ibn Hisham [d. ca 834], *Tahdhib Sirat Ibn Hisham* (n

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the accent (ˆ) symbol indicates the Arabic letter (*ayn*) that does not exist in English. I will not use any other diacritic marks, even if it was used in the different spellings of proper nouns, in order to simplify the reading. In addition, it should be emphasized that Arabic linguistic use of the masculine does not mean that Qur’anic guidance is exclusive to males. Finally, although most books related to Islam and Islamic/Arabic studies use the Middle East Studies Association or the Library of Congress transliteration systems, I prefer to use the Islamic/Arabic system as proposed by Isma’il Raja al Faruqi ([1921–86] 1986), with minor modifications. That is, because I found this latter system closest in its phonetic to the Modern Standard Arabic pronunciation, and it uses less diacritics remarks. I will use the italics for the first appearance of each Arabic word in each chapter in order to maintain a smooth reference.

d, n p),<sup>3</sup> and its English translation by Alfred Guillaume (1955). I try to balance the biography and the Hadith collections (I will use “*hadith*” in capital letter “Hadith” to reference the corpus of these collections) through corroborating the reports from these sources by comparable narratives in the Qur’an within its collective spirit as represented in Islam’s central principle of *Tawhid* (I. al Faruqi (1982), and its basic principles ‘*Adl, Khilafa, Imama, and Taqwa*’ (Barazangi 1996):

{102} يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنْتُمْ مُسْلِمُونَ

O you who believe! Be conscientious of Allah as God should be your guide, and die not except in a state of Islam

{104} وَلَتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ

Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: they are the ones to attain felicity {`Al Imran 3; 102, 104}.

I emphasize here that my concern with the biography of the Prophet Muhammad and with the collections of Hadith is centered on the matn (textual content) of some of the reported ahaadith only. That is, we should distinguish between hadith narratives and when the Qur’an speaks in the voice of a Prophet, as in {surah Yusuf 12: 101} below, for example. The latter example is considered part of the corpus of the Qur’an, and not of the Hadith corpus:

{101} رَبِّ قَدْ آتَيْتَنِي مِنَ الْمُلْكِ وَعَلَّمْتَنِي مِنْ تَأْوِيلِ الْأَحَادِيثِ فَاطِرَ السَّمَاوَاتِ وَالْأَرْضِ أَنْتَ وَلِيِّ فِى الدُّنْيَا وَالْآخِرَةِ تَوَفَّنِي مُسْلِمًا وَأَلْحِقْنِي بِالصَّالِحِينَ

O my Sustainer! You have indeed bestowed on me something of power, and You have imparted unto me some knowledge of the inner meaning of happenings. O You Originator of the heavens and the earth! You are my Protector in this world and in the Hereafter. Take my soul (at death) as one accepted Your Will (as a Muslim), and unite me with the righteous {Yusuf 12: 101}.

I explore the corroboration of some ahaadith by the Qur’an because, they are used as an authoritative textual base on which fuqaha drew practical rulings centuries later (Kamali 2003: 1–7). These rulings were further made into collections attributed to different scholarly schools that were later codified as legally binding to be followed by all Muslims at all times and places. Even with a little evolution of these rules, mainly in areas where earlier scholars did not fully address, the dynamics of interpretation became stagnant to the point that only four of these jurisprudence collections remain in circulation, representing what became known

3 Author’s personal copy, published in Arabic, no date (nd), no place of publication (np).

as the major schools of thought—Hanafi (Abu Hanifah's [d. ca 767] *Musnad Abi Hanifah*, 1967), Maliki (Malik ibn Anas' [d. ca 795] *al Muwatta`*, 1986), Shafi'i (Muhammad ibn Idris al-Shafi'i's [ca 767–820] *Al Risalah*, 1988), and Hanbali (Ahmad ibn Muhammad Ibn Hanbal's [ca 780–855] *Musnad Ibn Hanbal*, 1990). The collections of traditions and/or the rulings listed under these schools became known at a later date as the Sunni schools of thought in relation to the Shi'a Ja'afari school. Since "in Twelver Shi'ism, Hadith includes not only the sayings of the Prophet as one finds in Sunni collections, but also those of the Twelve Imams—although a clear distinction is made between the two" (Nasr et al. 1988: 2), I do not deal with specific Shi'a literature because it requires a project in itself. That is, even as Sunni Muslims do sometimes confuse the Prophet's sunnah with that of his companions, the historical process that resulted in the two types of documentation (Sunni vs. Shi'i) requires special focus that is not part of this project.

One might ask: Why reread and rethink Hadith and sunnah? A Muslim woman, and man for that matter, should reread and rethink the Hadith and the sunnah because *her identity has mostly been shaped by Hadith as invoked mainly by men and some women who may, or may not, have deciphered the relationship between its authenticity and authority.* A good example of conflating the two, and the first problem I address here, is found in the description of Musa (2008: 5), that Hadith authenticity and authority are interdependent. Musa starts her book with the assertion that Hadith is a second *revelatory* source of *law* and guidance in Islam (p.1, emphasis added). It might be true that the vast majority of Muslims revere Hadith as such, as Musa states, but this is exactly the main problem that I address in this book. The fact that Muslims, knowingly or unknowingly, depend on sunnah more than they depend on the Qur'an does not make Hadith a *revelatory* textual source of Islam. Even if the details in Hadith helped Muslims in making immediate decisions at the time, as J. al Banna (2004b: 7) suggests, we should remember that the Prophet himself and his early companions prevented the documentation of the Prophet's traditions in writing, as evidenced in the primary sources cited by J. al Banna. These sources range from early literature, such as *Tadhkirat al Huffadh* by al Dhahabi [ca1274–1348] (1915), *Tabaqat ibn Sa'd* [ca 784–845] (1968), *Sahih al Bukhari* [ca 810–870] 1991, *Majma' al Tafseer al Kabeer* by al Tabarani [ca 873–971] (2008), to the most recent, such as 'A' ishah 'Abd al Rahman's [ca 1913–98] *Tahqiq al Balqani* [ca 1182–1245] (1990).

The second problem that I address here, that is also in Musa's description and in others' writings, is that we cannot rely on the same methodology that was used by early Muslims who established the sciences of Hadith and its authenticity—detecting the chain of narrative and trustworthiness of the narrators—in order to determine the authority of Hadith. Nor should we rely on contemporary users of Hadith who made the Prophet's praxis (his interpretation and practice of the Qur'an) a static process. To determine the authoritative value of a narrative requires its corroboration by the Qur'an first and foremost:

{6} تِلْكَ آيَاتِ اللَّهِ نَتْلُوهَا عَلَيْكَ بِالْحَقِّ فَبِأَيِّ حَدِيثٍ بَعْدَ اللَّهِ وَآيَاتِهِ يُؤْمِنُونَ

These are Signs of Allah that We rehearse to you in truth: then in what exposition will they believe after (rejecting) Allah and His Signs? {al Jathiyah 45: 6}.

In classical Islamic literature, corroboration by the Qur'an was seen mainly as a criterion for the authenticity of Hadith and not of its authority. For example, Speight (2009) states: "The nature of the *hadith* text (*matn*) constituted another criterion for testing the authenticity of the material. Scholars suspected reports that were illogical, exaggerated, or of a fantastic or repulsive character, or that contradicted the Qur'an."

Also, Speight stated earlier in another work (1979: 66–7):

A few voices give promise of new directions in *hadith* research. They represent no movement, no school of thought, but their views are respected by many. Fazlur Rahman [d. 1988], a Pakistani who spent many years at the University of Chicago, points out the crucial fact that *hadith* provide the only access Muslims have to Muhammad and the Quran. To facilitate this access for the present generation, Fazlur Rahman feels that scholars should study; using modern techniques, the connections between Muhammad and the early Muslim community, between the evolution of thought and practice and the growth of *hadith*.

Despite Speight's optimism and Rahman's suggestion, we still need to be vigilant so as not to rely primarily on Hadith even when the *matn* of a particular *hadith* is corroborated by the Qur'an. That is, because this is what the Qur'an instructs in the above verse {al Jathiyah 45:6}.

The third problem that I address here, and that is also asserted by Musa and others, is the general use of the word "law" when discussing Islam and the "legal" rules that were derived from it. I caution against the general use of this and other similar terms, such as "Islamic law" and "Islamic shari'a," even when I recognize the need for "an adequate awareness of the structure of authority that underlies it [shari'a]," as Hallaq (2001: ix) suggests. Though I may agree with Hallaq concerning the structure of authority, *my thesis in this book is based on the Qur'anic assertion that Islamic "Shari'ah" is a morally guided path and not a law:*

{18} ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيحَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

Then [O Muhammad], We set you on a way by which the purpose [of faith] may be fulfilled: so follow you this (path), and follow not the desires of those who know not {al Jathiyah 45: 18}.

Hence, *Qur'anic authority is primarily a moral guide, neither legal as understood in the Western concept of law, nor dogmatic as understood in the general meaning of religion* (to be discussed further in Chapters 1 and 5).

Furthermore, although the emancipation of the Muslim woman begins with her self-identity and identification with Islam and with the Qur'an as its primary and

the only divine source, it will not be completed without rereading and rethinking the Hadith and the sunnah. This argument expands on my earlier argument that the Muslim woman's emancipation is contingent on her self-identification with the Qur'an through Islamic higher learning (Barazangi 1991a, 1997, 2000, 2004b). *I must reiterate here that I am neither discrediting the reported Hadith, nor refuting its central value and importance for Muslim thought and life. Rather, I want to demystify the divine halo that has been cast over Hadith literature and that has caused injustices, especially to the Muslim woman by misusing and abusing the theology of sunnah.* Muslims in general came to use sunnah as a means to defend their biased interpretation of the Qur'an concerning women, the most striking of which is the use of stoning as a punishment for adultery or sex outside marriage even though the Qur'an addresses the matters completely differently:

{32} وَلَا تَقْرَبُوا الزَّانَا إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Nor come close to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils),

{33} وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا

Nor take life—which Allah has made sacred—except for just cause. And if anyone is slain wrongfully, We have given his/her heir authority [to demand *Qasaas* (revenge) or to forgive]: but let him/her not exceed bounds in the matter of taking life; for he is helped (by the order of nature) {al Israa' 17: 32–3};

{15} وَاللَّائِي يَأْتِينَ الْفَاحِشَةَ مِنْ نَيْسَابِكُمْ فَاسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّىٰ يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا

If any of your women are guilty of lewdness, ask the evidence of four (reliable) witnesses from amongst you against them; and if they testify confine them (the women) to the houses until death do claim them or Allah ordain for them some (other) way {al Nisa' 4: 15}.

In addition, the Qur'an warns against false accusation of women:

{4} وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

And those who launch a charge against chaste women, and produce not four witnesses, (to support their allegations), flog them with eighty stripes; and reject their testimony ever after: for such men are wicked transgressors {al Noor 24: 4},

and that Muslims should leave alone those (women and men) who repent:

{16} وَالَّذَانِ يَأْتِيَانِيهَا مِنْكُمْ فَأَدُوهُمَا فَإِنَّ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا

If two among you are guilty of lewdness, punish them both. If they repent and amend, leave them alone; for Allah is Oft-Returning, Most Merciful {al Nisa` 4: 16};

Also, the Qur`an prescribe that:

{2} {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيْسَ لَهُمَا عَذَابُهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ}

The woman and the man guilty of adultery or fornication *flog each of them with a hundred stripes*: let not compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the Last Day: and let a party of the believers witness their punishment,

{3} {الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرْمٌ ذَلِكَ عَلَى الْمُؤْمِنِينَ}

Let no man guilty of adultery or fornication marries any but a woman similarly guilty, or an unbeliever: nor let any but such a man or an unbeliever marries such a woman: to the believers such a thing is forbidden {al Noor 24: 2–3}.

That is, both men and women are punished by the same means for fornication, lewdness, and adultery. In addition, the Qur`an emphasizes the need of four witnesses against a woman in order to protect her from false accusations; and that those who accuse women without providing four witnesses should be flogged. Finally, the Qur`an reminds the believers that they should leave alone the guilty if he/she repents. Also, since it is debated as to whether or not the Prophet has ordered stoning (as the Jews used to do in the case of lewdness (al Bayan 1999: Kitab al Hudud # 981)—given that stoning means taking the life of the person—which cannot be part of Shari`ah (J. al Banna 2011: 204–8), it is time that the Muslim women themselves ameliorate such abuses and misuses of the sunnah by putting them to rest.

## How to Reread Hadith Literature and Rethink the Theology of the Sunnah

According to the Qur`an, the Prophet of Islam, Muhammad, as an agent of change, was willing to take a risk by challenging the common sense knowledge of his time, as in:

{49} {قُلْ لَا أَمْلِكُ لِنَفْسِي ضَرًّا وَلَا نَفْعًا إِلَّا مَا شَاءَ اللَّهُ لِكُلِّ أُمَّةٍ أَجَلٌ إِذَا جَاءَ أَجْلُهُمْ فَلَا يَسْتَأْخِرُونَ سَاعَةً وَلَا يَسْتَقْدِمُونَ.}

Say: “I have no power over any harm or profit to myself except as Allah willed. To every *ummah* (people) is a term appointed: when their term is reached, not an hour

can they cause delay, or (an hour) can they advance (it in anticipation)" {Yunus 10: 49},

{7} إِنَّ أَحْسَنْتُمْ أَحْسَنْتُمْ لِنَفْسِكُمْ وَإِنْ أَسَأْتُمْ فَلَهَا فَإِذَا جَاءَ وَعْدُ الْآخِرَةِ لِيَسُوءُوا وُجُوهَكُمْ وَلِيَدْخُلُوا الْمَسْجِدَ كَمَا دَخَلُوهُ أَوَّلَ مَرَّةٍ وَلِيُتَبِّرُوا مَا عَلَوْا تَتْبِيرًا

If you did well, you did well for yourselves; if you did evil, (you did it) against yourselves. So when the second of the warnings came to pass (We permitted your enemies) to disfigure your faces, and to enter your place of prostration as they had entered it before, and to visit with destruction all that fell into their power {al Israa' 17: 7}.

To the contrary, the majority of today's Muslims are not willing to abandon the centuries-old representations of Islam that are misleading and unjust, and replacing them with the egalitarian intention of Islam as outlined in the only divine and binding source, the Qur'an. Muslims forget that the Qur'an remained the only written source for more than 100 years after the death of the Prophet and before his biographies were written, and the reported "traditions" were attributed to him, compiled and collected in what later became known as Hadith and/or sunnah. The earliest biographer, Ibn Ishaq died [ca 768], that is, about 150 years after the Prophet's emigration from Makkah (Mecca) to Madinah (Medina) in [ca 622]. We are also told that Ibn Ishaq relied mainly on the orally transmitted accounts, that is, traditions: "The definitive redaction of these accounts did not take place until the third/ninth and fourth/tenth century; thus the transmission process took 150–250 years before the material was redacted in the works we possess now" (Schoeler 2011: 2). Furthermore, we only have the abrogated version of Ibn Ishaq's biography in Ibn Hisham's [ca d. 834] *Sirat Rasool Allah* (nd, np).

Finally, the words or actions in ahaadith are of a human being, and not the words of God as the case is with the Qur'an, and hence, unlike the Qur'an, they are not protected by Allah against corruption (Denffer 1983: 20). Obviously, this last statement might be disputed by non-Muslims since, in their view, it is mainly based on Muslims' belief in the Qur'an. True, one may not understand the collective spirit of the Qur'an without knowing and accepting its nature, being the miracle of Islam, and that it represents Islam's means to guidance, the center of which is both human heart and mind (J. al Banna 2004a: 59–67). But the predominant historical evidence indicates that the contents of the Qur'an have not changed since the reign of the third Caliph, 'Uthman ibn 'Affan [d. ca 656], in what was known as Mushaf 'Uthman (al Suyuti [ca 1445–1505] 2005: v.2: 334, v 3: 374).

Although the narratives attributed to the Prophet are considered by the majority of Muslims as an essential source of Islam, I explore the authoritative value of the content in some of these narratives because some of them are not corroborated by the Qur'an. In addition, these same narratives were and continue to be misinterpreted by male interpreters; the most controversial among them

today is the issue of woman's attire and seclusion, and the punishment for adultery, as stated earlier in the first section. For example, Muslims are ignoring the basic teaching of the Qur'an about modesty that does not necessarily require a head-cover for Muslim women: "The affirmation of *khimar* in the Qur'an does not mean making it an obligation. Rather it means being accepted by a society that has taken the practice before Islam" (J. al Banna 1998: 28; 2008a: 37).

Muslims often use two narratives on the authority of 'A'ishah bint Abi Bakr, the beloved wife of the Prophet, to emphasize an extreme seclusion of women behind hijab (a curtain), confusing it with the head-cover, even though neither justify such extreme behavior:

قَالَتْ عَائِشَةُ : دَخَلْتُ عَلَيَّ ابْنَةَ أُخِي لِأُمِّي عَبْدَ اللَّهِ بْنِ الطُّفَيْلِ مُرَيَّةً , فَدَخَلَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَعْرَضَ , فَقَالَتْ عَائِشَةُ : يَا رَسُولَ اللَّهِ إِنَّهَا ابْنَةُ أُخِي وَجَارِيَةٌ . فَقَالَ : " إِذَا عَرَكْتَ الْمَرْأَةُ لَمْ يَجَلْ لَهَا أَنْ تُنْظَرَ إِلَّا وَجْهَهَا , وَإِلَّا مَا دُونَ هَذَا " , وَقَبِضْ عَلَى ذِرَاعِ نَفْسِهِ , فَتَرَكَ بَيْنَ قَبْضَتِهِ وَبَيْنَ الْكَفِّ مِثْلَ قَبْضَةِ أُخْرَى

On the authority of 'A'ishah, Said: My niece entered [my quarter] with "ornaments", then the Prophet entered, and turned his face. I informed him that it was a young niece of mine, and he replied: when a woman "reaches puberty" she should only show her face and her lower arm, pointing to the space above the palm (my translation from Arabic, quoted in *Tafseer al Tabari* under # 19658, Mawqi' al Islam: Qur'an—Tafseer [accessed: December 16, 2014]).

حَدَّثَنَا ابْنُ وَكَيْعٍ , قَالَ ثنا زَيْدُ بْنُ حُبَابٍ , عَنْ إِبْرَاهِيمَ بْنِ نَافِعٍ , قَالَ : ثنا الْحَسَنُ بْنُ مُسْلِمٍ بْنِ بِنَاقٍ , عَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ , عَنْ عَائِشَةَ , قَالَتْ : لَمَّا نَزَلَتْ هَذِهِ الْآيَةُ : { وَليَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ } قَالَ شَقِيقُ الْبُرْدِ مِمَّا يَلِي الْحَوَاشِي , فَأَحْقَمَرْنَ بِهِ .

On the authority of 'A'ishah: when the verse "*walyadhribna bi khumurihenna `ala juybihenna*" (women should draw their *khumur* [pl. of *khimar*, shawls] on their bosoms) was revealed, women tore the ends of their garment and used them to cover themselves (my translation from Arabic, quoted in *Tafseer al Tabari* under # 19664 Mawqi' al Islam: Qur'an—Tafseer [accessed: December 16, 2014])

Erroneously called "hijab," the *khimar* (shawl or head-cover) was worn before Islam and continued to be worn by Muslim women for cultural or environmental reasons as well as for modesty. More specifically, the verse concerning the "khimar" is part of the overall guidance concerning modesty for both men and women as in:

{30} قُلْ لِلْمُؤْمِنِينَ بَعْضُوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا أَرْوَاجَهُمْ ذَلِكَ أَرَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ

Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: and Allah is well acquainted with all that they do.



{31} وَقَلَّ لِلْمُؤْمِنَاتِ يَخْضَعْنَ مِنْ أَبْصَارِهِنَّ وَيَخْفِظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَائِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوْ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَابَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلَا يُضْرَبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتَوْبُوا إِلَى اللَّهِ جَمِيعًا إِنَّهَا السُّؤْمُونَ لَعَلَّكُمْ تَقْلِحُونَ

And say to the believing women that they should lower their gaze and guard their chastity; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their khimar over their *Juyub* (private folds, breasts in this context) and not display their beauty except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers or their brothers' sons, or their sisters' sons, or their women, or what their right hands possess, or male servants free of physical desires, or small children who have no sense of the privacy of private parts; and that they should not strike their feet in order to draw attention to their hidden ornaments ... {al Noor 24: 30–31}.

Khimar, incorrectly named “hijab” or translated into English as “veil,” talks about covering women's *juyub* (folds, such as the bosoms in this case) only (J. al Banna 2007a: 165), and not the hair, neck, or ears, as al Tabari [ca 832–923] below added in his interpretation of the above two narratives on the authority of 'A`ishah:

وَقَوْلُهُ : { وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ } يَقُولُ تَعَالَى ذِكْرُهُ : وَلْيَأْبِئْنَ خُمْرَهُنَّ ، وَهِيَ جَمْعُ خِمَارٍ ، عَلَى جُيُوبِهِنَّ ، لِيَسْتُرْنَ بِذَلِكَ شُعُورَهُنَّ وَأَعْنَاقَهُنَّ وَفُرْطَهُنَّ بِهِ

In addition, and as I discussed in Chapter 3 of my earlier book, *Woman's Identity and the Qur`an* (Barazangi 2004b), the totality of the Qur`anic verses concerning women's modesty suggest that the covering of the bosoms was intended not only for modesty purposes but mainly to guard the place of lactation, just as the covering of the rest of the body was intended to guard the wombs (guarding chastity); both affect lineage determination and, consequently, the inheritance.

Although the verses related to khimar {surah al Noor} and to hijab {surah al Ahzab} appear together in many classical books of tafseer, such as *Marwiyat Ibn Hanbal fi al Tafsir* [ca 780–855] (1994), *Tafsir al Nisa`i* [ca 830–915] (1990), *Al Durr al Manthur fi al Tafsir al Ma`thur* by al Suyuti [ca 1445–1505] (1990), *Majma`al Bayan li`Ulum al Qur`an* of al Tabarsi [d. ca 1153] (1958), and *Al Gami`: Tafsir al Qur`an* of `Abd Allah Ibn Wahb (ca 743–812) (1992 or 93), to conflate khimar and hijab, the Qur`an clearly does not intend the same thing! Needless to say, even if early believing women followed Qur`anic directives and/or the Prophet's interpretations of these directives by dressing in a certain way, we should realize two things: (1) the Qur`an's directive was not an obligation, rather a modification of *'urf* (a practice or a known social norm of the time) that was accepted by the society then (J. al Banna 1998: 28), and (2) the changing time and place may make it necessary to address the applicability of such interpretations just as al Tabari and other scholars were at liberty to add their own perspectives of these directives 11 centuries ago.

In this book I examine the use of the reported Hadith as a supportive tool in the jurisprudence process as well as its role in Muslims' ethical life and action. Although the case of "khimar" in the above section is not the focus of my argument, *I make woman's attire and modesty central to this discussion, mainly because it has resulted unjustly in secluding and marginalizing women, and partly because I want to demystify and reflect on the authoritative and binding value or "legality" of Hadith in general in the way it has been practiced by the majority of Muslims.* Also, this issue (of head-cover) received a tremendous amount of attention but rarely was discussed in relation to other important issues such as woman's leadership and participation in the public realm, that I will discuss shortly. Regardless of its historiography and authenticity, *I discuss the ethical, non-binding authority of Hadith.* I base my approach here on the following three rationales.

### *The First Rationale*

Contrary to the Qur'an, the theology of sunnah concerning women and gender in general has dismissed woman's autonomous morality and confused her privacy with the pre-Islamic practices. I have explained earlier (Barazangi 2004b) how Muslim interpreters misused Hadith and confused "khimar" {al Noor 24: 31} with the special order for the Prophet's wives to remain in their quarters "*waqarna fi buyutikunna*" if they want to maintain their status as the Prophet's wives despite the poor living conditions that they were protesting {al Ahzab 33: 32–3}, and with "hijab" (curtain) in which Muslim men were ordered to speak to the wives of the Prophet from behind a curtain to protect the wives' privacy:

{53} يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتَ النَّبِيِّ إِلَّا أَنْ يُؤْذَنَ لَكُمْ إِلَى طَعَامٍ غَيْرٍ نَظِيرِينَ إِنَاهُ وَلَكِنْ إِذَا دُعِيتُمْ فَادْخُلُوا فَإِذَا طَعِمْتُمْ فَانْتَشِرُوا وَلَا مُسْتَأْنِسِينَ لِحَدِيثٍ إِنَّ ذَلِكُمْ كَانَ يُؤْذِي النَّبِيَّ فَيَسْتَحْيِي مِنْكُمْ وَاللَّهُ لَا يَسْتَحْيِي مِنَ الْحَقِّ وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَاسْأَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ ذَلِكُمْ أَطْهَرُ لِقُلُوبِكُمْ وَقُلُوبِهِنَّ وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ اللَّهِ وَلَا أَنْ تُتَّخِذُوا أَزْوَاجَهُ مِنْ بَعْدِهِ أَبَدًا إِنَّ ذَلِكُمْ كَانَ عِنْدَ اللَّهِ عَظِيمًا

O you who believe! enter not the Prophet's houses—until leave is given you—for a meal (and then), not (so early as) to wait for its preparation: but when you are invited, enter; and when you have taken your meal, disperse, without seeking familiar talk. Such (behavior) annoys the Prophet: he is ashamed to dismiss you, but Allah is not ashamed (to tell you) the Truth. And when you ask (his consorts) for anything you want, ask them from *behind a curtain*: that makes for greater purity for your hearts and for theirs. Nor is it right for you that you should annoy Allah's Messenger, or that you should marry his widows after him at any time. Truly such a thing is in Allah's sight an enormity {al Ahzab 33: 53}.

A narrative attributed to Anas suggests that this verse was revealed as the Prophet was waiting for the men to exit from the quarter of his new bride, Zaynab, after the wedding meal. Anas states that after they left, the Prophet entered the quarter and drew the door curtain (hijab) down [according to the verse] (al Bayan 1999: Kitab al

Nikah # 809). Incidentally, this narrative is listed in Bukhari and Muslim under the section on “the ethical value of a man marrying his own slave after he set her free.”

Obviously, one should not also ignore the general tribal attitude toward women that formed the context within which the Prophet and early Muslims were applying Qur’anic principles (L. Ahmed 1992: 67, 84–6). The norms of tribal living in Arabia and elsewhere considered women in general like any treasures of war and, hence, women were *mulk*, “possessed,” and/or enslaved by the winning party. These norms were to be modified or abolished by Qur’anic directives that encourage Muslims to free those women through marriage, but after satisfying three conditions; asking for the consent of girls’ folk, giving the girls monetary compensation while treating them with kindness and care, and helping them stay chastised:

{25} وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُخْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتْيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُم مِّن بَعْضٍ فَانكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَأَتُوهُنَّ أَجُورَهُنَّ بِالْمَعْرُوفِ مَخْصَنَاتٍ غَيْرِ مُسَافِحَاتٍ وَلَا مَخْذُذَاتٍ إِذَا أَحْصَيْنَ فَإِنَّ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُخْصَنَاتِ مِنَ الْعَذَابِ ذَلِكَ لِمَنْ خَشِيَ الْعَنَتَ مِنْكُمْ وَأَنْ تَصْبِرُوا خَيْرٌ لَّكُمْ وَاللَّهُ غَفُورٌ رَّحِيمٌ

If any of you have not the means wherewith to wed free believing women, they may wed *believing girls from among those whom your right hands possess*: and Allah has full knowledge about your faith. You are one from another: wed them with the leave of their owners, and give them their dowers, according to what is reasonable: they should be chaste, not lustful, nor taking paramours: when they are taken in wedlock, if they fall into shame, their punishment is half that for free women. This (permission) is for those among you who fear sin; but is better for you that you practice self-restraint. And Allah is Oft-Forgiving, Most Merciful {al Nisa` 4: 25}.

Yet, the concept of *ma malakat aymanukum* (those whom your right hands possess) was stretched even by some early Muslims to license the old practice of males having the upper hand over women’s sexuality and morality, be it a free or slave woman (K. Ali 2010: chapter 4). There is no doubt that such an attitude had affected certain interpretations of modesty in order to preserve the class order or the kinship status (El Guindi 1999: xvii) or to separate the slave from the free woman, as ‘Umar bin al Khattab [d. ca 644], the second Caliph, has ordered.

Despite Qur’anic emphasis on uplifting the social status of slaves:

{221} وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ وَلَأَمَةٌ مُّؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ أُولَئِكَ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Do not marry unbelieving women until they believe: *a (slave) woman who believes is better than an unbelieving woman*, even though she allures you. Nor marry (your girls) to Unbelievers until they believe: *a (slave) man who believes is better than an Unbeliever even though he allures you*. Unbelievers do (but) beckon you to the Fire.

But Allah beckons by His Grace to the Garden (of Bliss) and forgiveness, and makes His Signs clear to mankind: that they may receive admonition {al Baqara 2: 221}.

'Umar ibn al Khattab ordered free women to cover their head in order to distinguish them from slave women (Mattson 1999).

Furthermore, Qur'anic emphasis on uplifting the status of the slave did not seem to change the tribal attitude concerning women in general. Good evidence appears in Mattson's (1999) discussion of the phrase above: "a believing (slave) is better than unbelieving women," in which she (Mattson) focuses on the "belief" aspect while overlooking the fact that the `ama or `abd (that are generally understood as a slave girl and slave boy, respectively) do not have a free will, a basic condition for accepting/believing in Islam (to be discussed further in Chapter 4).

In addition, one should not overlook the intertwined conceptual relations between these confused views of modesty with women's participation in the public sphere, particularly in the mosque. Asma Sayeed (2001: 1) wrote: "After deliberation on the legality of women's attendance at mosques for congregational prayers, the majority of jurists, both Sunni and Shi'ite, concluded that women – particularly young, attractive women – should avoid mosques for fear of the social unrest (*fitna*) associated with their presence there."

The critical questions, therefore, are: (1) Is it possible that Muhammad as the Prophet of Islam could have said or done all what was reported concerning women, knowing what he knew of the message of the Qur'an?, and (2) Knowing how the tribal norms might have affected Muslims' perception of the message and their selection of the rules on which they developed the theology of the sunnah, aren't we obliged by the message of the Qur'an to rethink these interpretations and the rules that were derived from them? Given what some fanatic Muslim men are doing now (in ca 2014) with the innocent women of different ethnic, religious, sectarian, or ideological groups in the Middle East, we need more than just moral courage to rethink these interpretations. It becomes our duty to reject these interpretations because those extremists are relying on them!

I question contemporary Muslims' understanding of the message of the Qur'an also because I observe how the majority of them have reduced Qur'anic instructions—take the example of the Prophet as a believing monotheist who carries the message:

{1} تَبَارَكَ الَّذِي نَزَّلَ الْفُرْقَانَ عَلَى عَبْدِهِ لِيَكُونَ لِلْعَالَمِينَ نَذِيرًا

Blessed is He Who sent down the Criterion to His creation [the Prophet], that it may be an admonition to all creatures {al Furqan 25: 1}—

into merely emulating the Prophet's certain temporal application of the message. As I discussed earlier (Barazangi 2009), though the Qur'an states that Muslims should take what the Prophet has brought, this emphasis in the verses below

pertains to reading and relating the message of the Qur'an, and not to the Prophet's own words or actions:

{3} وَمَا يَنْطِقُ عَنِ الْهَوَىٰ . {4} إِنَّ هُوَ إِلَّا وَحْيٌ يُوحَىٰ

Nor does he say (ought) of (his own) Desire. It is no less than revelation sent down to him {al-Najm 53: 3–4}.

Since Prophetic interpretation of the message into ethical actions was intended to change the existing social structure, as well as attitudes and perceptions of the time, *the Prophet's sunnah should be viewed as an example of how to proceed in interpreting the message of the Qur'an in time and place.* Hence, sunnah cannot be viewed as an idealized action to the point of placing it at the same level as the Qur'an or using it as authoritative textual evidence instead of the Qur'an. The search for answers to the above two critical questions may also help us, as scholars of Islam and/or as practicing Muslims, to remember that the Prophet was only a *Rasool* (messenger) and that the Qur'an instructs the believers to accept his *Nubuwah* (Prophecy) because he carried the message of the Qur'an:

{30} كَذَلِكَ أَرْسَلْنَاكَ فِي أُمَّةٍ قَدْ خَلَتْ مِنْ قَبْلِهَا أُمَمٌ لِّتَتْلُوَ عَلَيْهِمُ الَّذِي أَوْحَيْنَا إِلَيْكَ وَهُمْ يَكْفُرُونَ بِالرَّحْمَنِ قُلْ هُوَ رَبِّي لَا إِلَهَ إِلَّا هُوَ عَلَيْهِ تَوَكَّلْتُ وَإِلَيْهِ مَتَابِ

Thus have We sent you amongst a people before whom (long since) have (other) peoples (gone and) passed away; in order that you might rehearse unto them what We send down unto you by inspiration; yet do they reject (God), the Most Gracious! Say: "He is my Sustainer! There is no god but God! On God is my trust, and to God do I turn!" {al Ra'd 13: 30}.

### *The Second Rationale*

Muslims seem to overlook the fact that it is permissible to forgo some of the Prophetic traditions at a certain time and place. Such permissibility had a precedent in early companions' suspending the application of some Qur'anic verses, as the Qur'an instructs. I should note here that suspending the application of a verse because of a change in circumstances should not be understood as abolishing the directive in the verse, as the term in *Surat al Baqara* {the Qur'anic Chapter "the Cow"} has been misunderstood. The term "ayah" in the Qur'an means a sign, and not a verse:

{106} مَا نَنْسَخُ مِنْ آيَةٍ أَوْ نُنسِئُهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلَهَا أَلَمْ تَعْلَمْ أَنَّ اللَّهَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

None of our signs do We abrogate or cause to be forgotten, but We substitute something better or similar: don't you know that Allah has power over all things? {al Baqara 2: 106}.

According to J. al Banna (1998: 7 fn 1), the expression “ayah” appears in 80 different places in the Qur’an, all of which indicate the same meaning. Hence, to interpret it as if it meant to abolish a particular verse is misleading:

{101} وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ وَاللَّهُ أَعْلَمُ بِمَا يُنزِّلُ قَالُوا إِنَّمَا أَنْتَ مُفْتَرٍ بَلْ أَكْثَرُهُمْ لَا يَعْلَمُونَ

When We substitute one revelation or a sign for another—and Allah knows best what He reveals (in stages)—they say, “you [Muhammad] art but a forger”: but most of them understand not {al Nahl 16: 101}.

Suspension implies, for example, what ‘Umar bin al Khattab did only two years after the death of the Prophet when he refused to pay “*al Mua’allaqatu qulubuhum*” (those whose hearts were steadfast by Islam) from *Sadaqat* (alms, pl. of sadaqah, not “sadoqat” meaning the special gifts to women when a marriage contract is being executed) or *Zakat* (alms tax) as directed in the Qur’an:

{60} إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةٌ مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

The sadaqah offerings are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Islam); for those in bondage and in debt; in the cause of Allah; and for the wayfarer: (thus is it) faridha (an obligation ordained) by Allah, and Allah is the Knower, and the Wise {al Tawbah 9: 60}.

‘Umar’s reasoning was that the people who have been won over by Islam are strong enough at that time that they do not need such support anymore (J. al Banna 2007a: 249). Furthermore, the philosopher Jawdat Sa’id (2000-2001: 95) reminds us that:

[T]he Qur’an is full of historical laws (or patterns) {Fatir 35: 43}, thus testifying that human history has emerged from the era of supernatural to “Sunnaniah,” the era of nomotheticism; and those with knowledge [of nature pattern and of human behavior] and call for justice have replaced those from the world of prophecy.

Such reminding was clearly repeated twice with similar emphasis in two different contexts of the same surah of the Qur’an:

{134} تِلْكَ أُمَّةٌ قَدْ خَلَتْ لَهَا مَا كَسَبَتْ وَلكُمْ مَا كَسَبْتُمْ وَلَا تُسْأَلُونَ عَمَّا كَانُوا يَعْمَلُونَ

That was a community that have passed away. They shall reap the fruit of what they did, and you of what you do! You will not be accounted for what they were doing! {al Baqara 2: 134}, and

{141} تِلْكَ أُمَّةٌ قَدْ خَلَتْ لَهَا مَا كَسَبَتْ وَلكُمْ مَا كَسَبْتُمْ وَلَا تُسْأَلُونَ عَمَّا كَانُوا يَعْمَلُونَ

That was a community that have passed away. They shall reap the fruit of what they did and you of what you do! You will not be accounted for what they were doing! {al Baqara 2: 141}.

That is, Jawdat Sa'id goes on to explain the intent of these verses, to accept khilafa (to carry the trust on earth) does not mean to emulate the fathers but to live in our time and to benefit from those who have already solved problems.

### *The Third Rationale*

This rationale, as well as the basic drive behind my thesis, is the general *absence of Muslim women in developing and shaping Islamic thought for the past 14 centuries*. Despite the fact that a good number of ahaadith that are attributed to the Prophet were narrated on the authority of women—including his wives and early *sahabiyat* (female companions)—these women did not fully participate in developing the theology of the sunnah. That is, they may have narrated, according to the collectors of hadith, but they rarely were consulted in selecting the premises that formed the foundation of the sciences of Hadith or fiqh rules, particularly concerning issues related to participation in the public sphere—khilafa, imama, and so on—and personal matters—*zawaj/qaran* (marriage), *talaq* (dissolution of marriage or divorce), *hadhana* (child custody or guardianship in general), *irth* (inheritance), *mulk* (ownership), and *shahada* (legal testimony and witnessing). For example, Nadwi (2007: 20, 28, 30–34) discusses the controversy surrounding 'A'ishah's narrative on woman's nursing an adult male, or Fatima Bint Qays' narrative concerning woman's maintenance after divorce. Despite Nadwi's realization that they derived fiqh from their own narratives, it does not mean that their premises were accepted, or that they were involved in deriving the overall jurisprudence rules. This is evidenced in his proceeding discussion of the references that differentiate between narrative and testimony, the implication of which is that a woman's testimony is not the same as a man's. More problematic is the contemporary implications of such discourses (to be discussed further in Chapters 3 and 5).

## **Objectives and Thesis of this Book: Why Muslim Women are Absent in Shaping Islamic Thought?**

### *The Objectives of this Book*

The objectives of this book, therefore, are dramatically different from what has dominated Muslims' and non-Muslims' discussions of "Muslim women" and of Hadith during the last decade. Numerous books and articles were published to argue, whether intentionally or not, against my thesis—that Muslim women are mostly absent in shaping and developing Islamic thought. The arguments in these

publications, however, relied either on sunnah that in many instances contradicted the Qur'an (as we saw in the examples of adultery and khimar above), or on a few anomalous cases in which women voiced their opinion (Mattson 2008b: 21 fn 1). Though I distinguish between the Traditions of the Prophet (as reported in the books of Hadith) and traditions of his companions (as reported in history books and biographies), I remain concerned with the abuse and misuse of the different meanings of the genre "sunnah." Muslims not only use these sources before the Qur'an in some instances, but they often confuse the reported traditions of Prophet Muhammad with the traditions of his companions, as well as with the jurists' deductions from these traditions (as reported in jurisprudence collections), and with *fatwas* (edicts) of contemporary *Imams* (male prayer leaders in mosque) and *mufitis* (juris-consult). In addition, by wrongly lumping all of these sources under the genre "shari'a," or as erroneously known in the West "Islamic Law," Muslims in general, knowingly or unknowingly, abuse Islam as much as they have been abusing the women in Muslim majority societies and minority communities. As stated above, *Shari'ah*, with a capital "S," is the path that is guided by Qur'anic ethos {al Jathyah 45: 18}. It is, therefore, misleading to call the different practiced rules "Islamic shari'a" or "shari'a law" (Kamali 2008: 2).

My working definitions of Hadith and sunnah explain, in part, why it is important for Muslim women to reread the Hadith within the Qur'anic ethical framework. Despite the fact that studies are still being produced by Muslims and non-Muslims about the historicity of Hadith, rarely do any of these studies address the direct implications of these discussions on women. With the exception of a few, such as Asma Sayeed (2005, 2009, 2013), the majority of these studies on Hadith historicity are either concerned with whether or not the Prophet gave permission to document his sunnah in writing, or with *isnaad* and the trustworthiness of the narrator (to be discussed further in Chapter 2). I may also cite, in other parts of this book, some of these studies only to present a context for discussing some narratives and their corroboration (or the lack thereof) by the Qur'an.

My foremost objective is to understand why and how women were mostly excluded from developing Hadith sciences, just as they were (with few exceptions) excluded from Qur'anic exegesis and concomitant sciences, in order for us to modify the conventional process of reading Qur'an and Hadith. *I repeat what I stated above*, despite the fact that a good number of *ahaadith* that are attributed to the Prophet were narrated on the authority of women—including his wives ('A'isha, for example is reported to have narrated about one-third of *ahaadith*) and early *sahabiyat* (female companions), these women did not fully participate in developing the theology of the sunnah.

Qur'anic emphasis on woman's role in the process of reading the Qur'an is evidenced in (1) *Surat al Mujadilah* {the Qur'anic Chapter al Mujadilah (She who contests) 58:1} wherein Khawla Bint Tha'alaba pleads the Prophet to seek a revelation to solve a dilemma that has befallen her and her husband (Kahf 2013), and (2) in Asma bint Yazid's (ca late 6th and early 7th centuries) and Hind Bint 'Utbah's (ca late 6th and early 7th centuries) questioning the Prophet on the



comparative roles and rewards of men and women at the time these early women were giving their own *bay'ah* (vote/alliance) to the Prophet and acceptance of Islam (Ibn S'ad 1905, also cited in Barazangi 1997: 8). Even when one reads a reference to early female narrators who were also reported to have played the role of *faqihat* (pl. of *faqiha*, a female jurist/scholar)—such as the reference to 'A'ishah bint Abi Bakr, the beloved wife of Prophet Muhammad and the daughter of his close advisor, and the first Caliph, Abu Bakr [ca d. 634]—one wonders how much of these women's opinions were taken into consideration when the *fuqaha* (pl. of *faqih*, a male jurist/scholar) produced rulings that affected women's lives for centuries. Despite the repeated use of narratives attributed to those females, by exploring the derived juristic rules we can detect subtle evidence indicating a lack of real attention to these females' perspectives and rationales.

It seems to me that Muslim women often accepted Hadith at its face value because of their belief in the message of the Qur'an and its messenger, Prophet Muhammad. Not aware that the real world continued to be manipulated by patriarchy even during the Prophet's time (Mernissi 1987: 17–19), Muslim women, and men for that matter, often accepted the sunnah as a divine source (Van Doorn-Harder 2006). Even 'A'ishah bint Abi Bakr seems to have fallen to this patriarchal reality, intended or not, when she joined in the Battle of the Camel [ca 661] without issuing an edict explaining the Qur'anic stance on the matter. She seems to have acted out of conviction to save the Muslim community from being divided over the political and spiritual succession to Muslim community leadership when she joined the mission to investigate the killing of 'Uthman bin 'Affan (the third Caliph), that ended by fighting Ali bin Abi Talib [ca 600–661] (the Prophet's cousin and husband of his daughter Fatima). Ali was reported to have taken over the leadership (as the fourth Caliph) after being reluctantly endorsed by Talha and al Zubair (two very close companions of the Prophet) who later on called on 'A'ishah to join them in their march into Basra (Al Suyuti 2005, v. 3: 394; J. al Banna 2007a: 114).

Yet, 'A'ishah's action was seen as ill-conceived despite the fact that her conviction might have been based on her understanding of *khilafa* as an individual trust. That is why, in my assessment, she did not preempt her action with a juristic rule to explain her rationale (or the theory behind it), nor did she issue an edict that a Muslim woman have as much the right to lead as that of a man, because she probably thought that it was clearly stated in the Qur'an.

'A'ishah had taken for granted the Qur'anic teaching—that women and men are equal—apparently thinking that Muslims were acting within this framework: the creation of males and females from a single soul, the human pair:

{8} وَخَلَقْنَاكُمْ أَزْوَاجًا

And (have We not) created you in pairs {al Naba` 78: 8}

{189} هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا ...

It is God Who created you from a single soul (entity), and made her mate of like nature, in order that he might dwell with her (in tranquility) ... {al 'Araaf 7: 189}

{21} وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

And among His Signs is that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are signs for those who reflect {al Room 30: 21}.

Perhaps she, 'A`ishah, thought that Muslim men of the time were also acting in good faith. Yet, and unfortunately, she did not foresee that some of these men would strip her of her own right to join or even lead in a battle, and, more importantly, they stripped her of her right to state her own rationale behind her action. Less than 30 years after the death of Prophet Muhammad, by fabricating the narrative: “lan yuflihu qawm wallu amraham `imra` (a people who let a woman lead may not succeed)” (Bukhari 1991. *Sahih al Bukhari*, Kitab al Maghazi, Bab Kitab al Nabi ila kiswa wa Qaysar. V.4, p 1610, Hadith # 4163), the narrator and those few men who accepted his narrative did not realize that they had also stripped all women of their right to present their own perspective (to be discussed further under the next section, “Propositions of this Book,” and in Chapter 1). The fact that the narrative did not corroborate the Qur`an also makes us question, as J. al Banna (2005b: 63) does, the reliability of the claim that because a woman was allowed to lead, Muslims were inflicted with *fitna* (chaos/division/social unrest).

As I explained earlier (Barazangi 2010b), the Qur`an repeatedly emphasizes the same spirituality for men and women,

{195} فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَىٰ بَعْضُكُمْ مِنْ بَعْضٍ فَالَّذِينَ هَاجَرُوا وَأُخْرِجُوا مِنْ دِيَارِهِمْ وَأُوذُوا فِي سَبِيلِي وَقَاتَلُوا وَقُتِلُوا لَأُكَفِّرَنَّ عَنْهُمْ سَيِّئَاتِهِمْ وَلَأُدْخِلَنَّهُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ ثَوَابًا مِنْ عِنْدِ اللَّهِ وَاللَّهُ عِنْدَهُ حُسْنُ الثَّوَابِ

And their Lord has accepted of them, and answered them: “Never will I let to be lost the work of any of you, be the male or female: you are members, one of another” {Al 'Umran 3: 195},

with equal rights and responsibilities—spiritually {al Ahzab 33: 35}, and intellectually in trusteeship {al Baqara 2: 30} and:

{1} اِقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ {2} خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ {3} اقْرَأْ وَرَبُّكَ الْأَكْرَمُ {4} الَّذِي عَلَّمَ بِالْقَلَمِ {5} عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ

Proclaim! (Read!) In the name of your Guardian and Cherisher, Who Created, Created human, out of a (mere) clot of congealed blood; Proclaim! and your

Guardian is Most Bountiful, Who taught (the use of) the Pen, Taught human that which s/he knew not {al 'Alaq 96: 1–5};

and socially {al 'Alaq 96: 15–19} in leadership {al 'Isra 17: 7} and witnessing:

{21} وَجَاءَتْ كُلُّ نَفْسٍ مَعَهَا سَائِقٌ وَشَهِيدٌ

And there will come forth every soul: with each will be an (angel) to drive, and an (angel) to bear witness {Qaaf 50: 21}.

Furthermore, this narrative about women's leadership that is attributed to 'Abd Al Rahman bin Abi Bakara (J. al Banna states that there is disagreement about the way his (bin Abi Bakara) name is pronounced or cited (J. al Banna 2007a: 152)) is still used despite the fact that this reported hadith is classified as a *a'ahaad* (singular narrator), and was dismissed by the first Caliph, Abu Bakr, because there were no other two witnesses. Also, the next three caliphs followed the same approach of Abi Bakr, while early companions disputed its consideration in fiqh, especially if the narrator claimed to have heard or seen the Prophet in isolation. That is, an isolated communication with the Prophet is not considered as a public direction to warrant being considered ethically or legally sound (Fawzi 1994: 22–3, citing al Dhahabi's *Tadhkirat al Huffaz* 1980, 1: 7). Despite the above evidence, no Muslim today dares to question bin Abi Bakara's narrative because it is reported in *Sahih Al Bukhari* (one of the most referenced collection of Hadith). One should ask therefore: How is it possible for a Muslim woman to identify with the sunnah without rethinking the contents of those narratives that are documented mainly by men under similar circumstances? I also question the rationale that made Muslims accept this narrative for centuries given that other historical documents also tell us that the narrator Abd Al Rahman bin Abi Bakara who attributed such narrative to the Prophet was not a trustworthy man because he committed a false witnessing for adultery (J. al Banna 1998: 80–81; Mernissi 1991a). Even when Muslim scholars at a later era—after the first four caliphs may have accepted a single chain (a'ahaad hadith) in a specific occasion—looked into the credibility of the transmitters, in which consideration gave rise to an extensive biographical investigation, individual narrators were judged according to their personal qualities and professional achievements. Finally, it is well-known that a'ahaad narrative cannot be used to dispute a Qur'anic evidence (J. al Banna 2004a: 75) (see more discrepant use of a'ahaad in Chapters 2, 3, and 4). Furthermore, J. al Banna (2007a: 152) reminds us this narrative contradicts the Qur'an wherein Queen of Sheba was praised for sparing her people the tragedies of war:

{22} فَمَكَتْ غَيْرَ بَعِيدٍ فَقَالَ أَحَطْتُ بِمَا لَمْ تُحِطُ بِهِ وَجِئْتُكَ مِنْ سَبَإٍ بِنْتًا يَتِيمًا

But the Hoopoe tarried not far: he (came up and) said: “I have compassed (territory) which you have not compassed, and I have come to you from Saba with tidings true” {al Naml 27: 22}.

Other evidence that proves female absence in deriving jurisprudence rules is the poor attention given to an important feature in 'A'ishah's stance when a narrative was attributed to the Prophet. It is reported that she often tried to corroborate these narratives with the Qur'an, especially when the issue was of central value. For example, Hadith books give differing accounts of 'Umar bin al Khattab's attributing to the Prophet the following: “the dead will be punished by his family's cry” (Bukhari and Muslim, Kitab al Jana'iz # 11). These accounts also report on how 'A'ishah lamented on this narrative (Zarkashi 2001: 61). Regardless of their authenticity and whether or not they were in the *Sahihayn*, no special attention was given in these accounts to 'A'ishah's lamentation—namely her dispute that the Prophet could not have made such a statement, since he knew of the Qur'anic affirmation:

{38} لَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى

No bearer of burdens can bear the burden of another {al Najm 52: 38}.

Ibn 'Umar narrated that 'A'ishah contradicted a narrative by 'Umar (bin al Khattab) when she learned of 'Umar's above account. She said, no, by God, the Prophet had said: “the unbeliever would be punished more by his folks' cry” (al Bayan 1999: Kitab al Jana'iz # 498). This same hadith and 'A'ishah's lamentation is also quoted in Kamali (2003: 37), wherein he adds a similar Qur'anic verse:

{164} قُلْ أَعْيَزَ اللَّهُ أْبغِي رَبًّا وَهُوَ رَبُّ كُلِّ شَيْءٍ وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى  
ثُمَّ إِلَىٰ رَبِّكُمْ مَرْجِعُكُمْ فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ

Say: “Shall I seek for (my) Cherisher other than Allah, when He is the Cherisher of all things (that exist)? Every soul draws the meed of its acts on none but itself: no bearer of burdens can bear the burden of another. Your goal in the end is towards Allah: He will tell you the truth of the things wherein you disputed” {al An'am 6: 164}.

My argument, therefore, is that since Muslims in general have overlooked this seemingly important feature in 'A'ishah's narrative, how can we accept the claim that early women's perspectives were included in what became known collectively as the sciences of Hadith? (The near absence of early women in developing Qur'anic and Hadith sciences, as well as the corroboration process by the Qur'an will be further discussed in Chapters 2, 3, and 5).

*The Thesis of this Book is Twofold*

Firstly, Hadith literature is being abused when made an authoritarian source of Islam, contrary to Qur'anic guidance. Hadith, as stated earlier, is the second source after the Qur'an and represents an example of how to interpret the Qur'an in time and space, but only if it corroborates the Qur'an. Therefore, since the selective use of sunnah by male jurists often resulted in unjust rules against women, women need to reread Hadith and rethink the sunnah. I will outline my propositions on how women may proceed in rereading Hadith and rethinking sunnah under the next section, Propositions of this Book, and will discuss it further in Chapter 1.

Secondly, a Muslim woman, and a man for that matter, who identifies with sunnah may be considered a theologian, given the way s/he accepts and practices certain rules derived from it. Yet, the same Muslim woman cannot be considered a shaper of Islamic thought because she did not participate in the development of the theoretical base, the premises behind the juristic rules that shaped her daily practical life and the lives of Muslims for centuries. In other words, and as I stated above, even though a good number of early narrators of hadith were women, the scientific rules of authenticating Hadith were developed with the exclusion of women's perspectives. In addition to Qur'anic assertion, there is enough evidence to suggest that the prevalent moral atmosphere within which early Muslims were operating concerning gender was influenced by tribal customs and norms. Thus, the difficult quest for historical sources of that era, being rare and sometimes contradictory (Donner 2010: 50–51, 90–91), prevents us from documenting in detail the evidence of such attitudes (to be further discussed in Chapters 2 and 4). Even if male jurists used the female narratives, the procedural rules of jurisprudence were mainly shaped by the male elites' premises.

However, women, and men, still bear some responsibility when they practice these rules at their face value without questioning them as 'A'ishah and some early female companions had done. Therefore, I cannot claim women's complete absence in shaping the theology of sunnah because they are practicing the rules derived from it. Since practice among Muslims often became the "urf (norm)" and eventually the practice became part of the principle throughout the centuries, women have as much a responsibility to rethink the sunnah in order to identify with the Hadith and to reread it in corroboration with the Qur'an.

Hallaq (2009: 225), for example, discusses the *Shahadtayn* (the foundational theological pronouncement of faith—the double testimony that there is no god but God and that Muhammad is the Messenger of God,—that was “accompanied by neither substantive nor procedural rules.” The Muslim woman in general might have perfected this pronouncement of faith by performing the *sha'aa'ir* or *fara'idh* or *'ibadat* (the four obligatory rituals), but this does not mean that she was capable to understand the moral implication of this pronouncement—the full meaning of Tawhid—as the only moral authority and source of knowledge of the natural order of creation. Nor does such pronouncement mean that she was a participant in developing the rules of practicing these obligations. This is evidenced by the

exclusion of women from the first Muslim council meeting in history (known as the Saqifa Council that took place after the death of the Prophet [ca 632]), in which the decision on khilafa (spiritual and political succession in leadership) of the Prophet was made (Barazangi 1996, 2004b, 2009). The sad part is that, to my knowledge, no history books suggest that any of the early female companions protested such exclusion. Hallaq laments that the rules of practicing the four rituals as the foundations of Islam [instead of khilafa, 'adl, imama, and taqwa] shaped the thinking of Muslims in general. I must add that the majority of Muslim women also, sadly and to our knowledge, were not involved in developing the rules for practicing those four foundational obligations of Islam—*salat* (performance of prayer), *sawm* (fasting during the month of Ramadan, the ninth month of the Muslim lunar calendar), *zakat* (wealth tax), and *hajj* (performance of the annual pilgrimage to Makkah once in a lifetime). The lack of women's participation in shaping the rules to practice these foundations was also pronounced in shaping the rules of *Mu'amalat* (social interaction), including those rules concerning family relations. Furthermore, such absence is used as an excuse for not having a woman leader in general, and specifically in congregational prayer, with the rationale that “there is no precedent” in the Prophet's Seerah (as we will see in Chapters 1 and 2).

Women's absence in shaping the sciences of Hadith, *usul al fiqh* (the foundations and methodology of Islamic jurisprudence), and of “Islamic thought” in general, might be because they lacked the tools/skills, or because of the women's limited daily interaction with the “pragmatic” world. Yet, *the reality is that women's absence resulted mainly from being excluded from the decision-making process beginning with the formation of the early Muslim community, and hence the discussion of this absence constitutes one of the central themes of this book*. Other good evidence of this absence is the fact that the majority of Hadith studies introduce the female narrators and what was attributed on their authority, and yet, when the male scholars discuss the controversies surrounding some of these narratives, they do not present the *Muhaddithat* (female narrators') stance concerning these controversies. For example, again, Nadwi (2007: 29–31) discussed 'A'ishah bint Abi Bakr's and Fatima bint Qays's, a female companion of the Prophet, narratives about women's responsibility of lactation and the husband's accommodation after divorce, respectively, but he only presents the *Muhadditheen* (male narrators') or male jurists' opinions of these narratives (to be discussed further in Chapter 5).

A third example of Muslim women's absence in shaping Islamic thought is the apparent considerable disagreement among the majority of scholars about the role of gender in the formation of knowledge during the first two centuries of Islam. According to Asma Sayeed (2009: 118), while the formation of the discourse on the foundations and methodology of Islamic jurisprudence was taking place: “In the first two centuries of Islam, there was greater disagreement than there was in the classical period (ca fourth/tenth [AH]-tenth/sixteenth centuries) about the differences between [the] two types of knowledge [*riwaya* (the narratives of hadith), and *shahada* (the legal testimony)].” Sayeed suggests that gender is

among the issues used to evaluate legal testimony, so jurists at times extended this criterion to undermine their opponents' arguments (which drew on *hadith* narrated by women) (to be discussed further in Chapters 4 and 5).

When Muslim jurists accepted women's narratives, they could have been still thinking within the moral context of the time, wherein woman's role was understood within the tribal relations. Early Muslims might have overlooked Qur'anic basic change in social relation from the tribal to the family as the center, or they might have delineated the tribal patriarchal norms of leadership into the family structure, limiting the woman's role only to being a mother, sister, wife, daughter, or a slave by confusing the meanings of "ama," "jariyah," and *mulk al yameen* (to be discussed further in Chapter 4). It is possible that early Muslim jurists' mistake was subsequently made by the European reformation movements concerning women. European reformists paid attention to the legitimacy of the nuns' right to conduct business outside the abbey while forgetting that the nuns' privilege of spiritual and liturgical role would be lost when they give up their own choice against marriage. That is, the majority of European reformists continued to look at the female within the prism of the role of a wife or a daughter, whose moral and legal obligations and rights were decided by the male household (Lindberg 2010: 355–61). Hence, they did not realize the contradiction in their reformation. Similarly, contemporary Muslim "reformists" do not realize the given rights of women, to spiritual, intellectual, social, and political participation, regardless of their biological role.

### **Propositions of this Book: Changing Attitudes about Gender and Women—Woman-led Prayer**

The following three propositions summarize my approach to rereading Hadith and rethinking the sunnah.

#### *My First Proposition*

I am not as concerned with the authenticity of the sunnah as much as with its authority. Over many centuries, the sciences of Hadith were concerned mainly with the authentication of the narratives as a means to interpret the Qur'an. Even though some Western authors in Motzki (2004) limit Muslims' interest only to *isnaad*, Muslims were also concerned with the *matn* in determining the authenticity of a narrative, as we saw in Speight (2009) above and in others' work. This is the reason why early Muslims were concerned with the oral traditions of the Prophet mainly as an example of his praxis. *The evidence—that Prophetic traditions were viewed only as an example—lies in the reported variation of the Prophet's action on a certain issue at different times and places.* Although critics of Hadith historicity may consider this variation as evidence of fabrication or lack of authenticity (for example, Joseph Schacht 1953), when one realizes the plurality

of Islamic directives, s/he will understand the importance of these variations (to discuss further in Chapter 4).

Contrary to early Muslims' views, especially those of the Prophet's companions, concerning the place of the Prophet's oral traditions, today's Muslims generally emphasize Hadith as if it were a static authoritarian dogma. This emphasis could have resulted, perhaps unintentionally, in the debate over its historiography. That is, the consequences of documenting the Prophet's traditions in writing that eventually became "Hadith" at later times (about two to three centuries after the Prophet's death) seem similar to those resulting from the 4th-century AD process that selected, reduced, and restricted the different readings of the Bible into today's recognized four books (Allert 2007). Both processes, knowingly or unknowingly, imposed a unified pattern of meaning concerning the Prophets' behavior instead of preserving the plurality of interpretation as the *modus operandi*.

### *My Second Proposition*

It seems that Muslims in general have used the same premises of authentication of the narratives to determine the authority of a hadith. *I argue that we cannot reread Hadith and rethink the sunnah with the same set of premises that were used for the authentication process. These are two different processes and require two different sets of premises, regardless of whether or not the authentication process was accepted.* Therefore, when I discuss the debates concerning the authenticity of a particular narrative that took place centuries ago, I only use it as a context for analyzing the authoritative, dogmatic process that has been taking place within the last two to three centuries in Muslim-majority societies. *It seems that this authoritative process has led Muslims to bestow an absolute authority on the particular narrative by using the same process of authentication. Hence, I emphasize the need to rethink the theology of sunnah and its authority.*

### *My Third Proposition*

Contemporary emphasis on the number of female narrators and their existence in history books overlooks the fact that women were largely absent in both of these processes—the authentication and the authoritarian processes of the reported narratives. *The issue is not merely their narratives or their transmission of religious knowledge, but what premises did these women bring, if any, towards the development of the sciences of Hadith and/or to the determination of the authoritative value of these narratives. At issue also is how these premises were (or were not thereof) incorporated into the jurisprudence process, and what authority in doing so was or was not bestowed on women.*

In addition to being a base for how to reread Hadith and rethink the sunnah, the above three propositions form the basis for my adapting the list of historical facts that Fawzi (1994: 14–19) considered in evaluating the use of the genre "shari'a." He suggests that Muslims' general use of the term is misleading because of the



following seven facts (A-G, I am adding to Fawzi's list some Qur'anic citations while translating it):

A. The rule of the Caliph was absolute, despite the fact that Qur'anic guidance established mutual consultation as the norm:

{38} وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ

Those who hearken to their Sustainer, and establish regular prayer; who (conduct) their affairs by mutual consultation; who spend out of what We bestow on them for sustenance {al Shura 42: 38}.

B. The early Muslim community was divided between free and enslaved people, and between men and women folks, with no equal treatment of the two factions in each category, despite the Qur'anic emphasis on taqwa as the criterion in individual differences:

{12} أَوْ أَمَرَ بِالْتَّقْوَى

Or enjoins conscientious equilibrium? {al 'Alaq 96: 12}, also, verses: {al Baqara 2: 197; al A'raf 7: 26; al Tawba 9: 108; al hajj 22: 37; al Fath 48: 26; al Muddather 74: 56}.

C. The later Muslim community did not have a full-fledged legislative body, after the Qur'an and the sunnah.

D. *Ijtihad* (independent inquiry) took the place of a legislative body. As *Ijtihad* was the privilege of every individual without being binding for the other, many schools of thoughts evolved. Hence, divisions occurred when only a few of these opinions were given religiously binding authority, and were codified into documents representing the few dominating schools of thought.

E. Fuqaha (jurists) confused the foundational beliefs with the norms of social interaction and from them constructed an absolute static "shari'a" as a binding "Islamic" law for all people at all times and places.

F. The rules related to social interaction were limited to economic dealings, to family affairs, and to punishments. I must add that although most of the rules for economic dealings were revised to incorporate some of the modern Euro-American rules, family affairs and, to some extent, punishment *hudud* have not.

G. A good number of narratives were disputed among the different groups who adopted one school of thought or another, because it was not written during the Prophet's life, or during the life of his companions, contrary to what was done with the Qur'an. In addition, these narratives were not documented during the first century of Islam, which exposed them to further possible alterations.

By adapting Fawzi's seven reasons, I basically refute the genre "shari'a" as it is generally used in deriving rules for Muslims' daily affairs. Rather, I use Shari'ah (with capital S) in its Qur'anic context as the guidance. Consequently,

my rereading of Hadith is contingent mainly on its corroboration by Qur'anic guidance. Kamali (2008: 2–4) reminds us that: “[T]he bulk of the Qur'an, that is, 85 of the total 114 *surahs* (chapters), was revealed in Makkah and all of it focused on Islam as a faith and structure of moral values. *Law and government did not feature in the Qur'an during the Makki (Meccan) period*” (emphasis added). He also adds, “The Prophet himself consistently referred to the Qur'an as a source of authority and only in his latter days in Madinah did he refer to his own teachings and example as a guide to conduct.” That is, *there was no reference to shari'a, nor to fiqh, as we know them now.*

Just as I began this introduction with a central issue, that is, modesty, I will conclude it with another central issue to changing attitudes about women and gender, namely woman-led, co-ed, Muslim congregational prayer. The focus here is not on the prayer *per se*, but because it is being used as the main argument against woman's leadership in general or her public presence, in particular, I want to deconstruct the myth of only male leadership, just as I deconstructed the myth of male superiority over woman's morality and the assumption that the use of head-cover is an Islamic obligation (Barazangi 2004b).

Although the Qur'an emphasizes good knowledge of the Qur'an as the main condition for spiritual leadership, the practice of women leadership in prayer has often been dismissed as “not a subject for discussion” or as a marginal issue. And despite the 2005 controversies over a woman-led congregation prayer, it was as quick to die as it was to erupt when Amina Wadud, a well-known, self-identified American Muslim female scholar-activist, led a co-ed congregation in New York City. Although Mernissi (1991a) devoted an entire book to the issue of woman's leadership, very few Muslim scholars, such as J. al Banna (2005b below), paid attention to her analysis and synthesis. With the exception of few articles after the 2005 event (including Wadud's own analysis in 2006), the issue was mainly addressed through the media or on the pulpits. There was at the time no daring analysis that would put forward a comprehensive treatment of the subject and the sources that were invoked, except that of Jamal al Banna (2005b). In the following I will translate from Arabic a summary of the rationale used by J. al Banna in his book, *Jawaz Imamaat al Mar'ah al Rajul (The Permissibility of Woman's Leading the Co-Ed Prayer)* (2005b). This summary will serve as a prelude to set the framework for my procedure in rereading the Hadith, and for my rationale in rethinking the sunnah. Needless to say, my procedure and rationale will be different from those that Muslims in general have acquired and emulated over the centuries, and from those of other feminist scholars (to be discussed in Chapters 2 and 5).

J. al Banna (2005b: 4) states in the introduction to his book that all those who refuted Wadud's action based their rationale on the disputed hadith of ibn Abi Bakara on women's leadership (referenced above in the section, Objectives of this Book) as well as on a hadith of the four *A'imma* (leading collectors of Hadith)—who interpreted the Qur'anic verse of *Qawama* as if it meant male superiority over female, as in:

{34} الرَّجَالُ قَوَامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنِ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Men should take full care of women with the bounties that Allah has given more abundantly on some and not the others, and because they support them from their means. Therefore the righteous women are devoutly obedient (to God), and guard what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) *abandon them (in their dwellings)*; but if they return to obedience, seek not against them means (of annoyance): for Allah is Most High, Great (above you all) {al Nisa' 4: 34}.

J. al Banna adds, not realizing that Wadud's action did not happen in Pakistan or in Egypt, nor in the 8th or 9th centuries, those who disputed Wadud action in the 21st century seemed to have forgotten that the Qur'an is for all times and places, and that it should be reinterpreted accordingly.

J. al Banna interprets Wadud's *imama* (leading the co-ed congregation) as significant and that it was not a coincidence that it happened in the United States of America (USA), given that the USA has the most progressive attitude towards women, particularly in religion. After stating how American women have achieved the highest status in the world as equals in religious leadership, he states that Amina's action was, in part, to defend Islam against the claim following the 9/11 events—that America was liberating Muslim women from the backward Islam (2005b: 7). Using the photo of Wadud's imama on the cover of his book, he laments that we should respect and thank Wadud for her moral courage as a reformer and as the first woman to break the fear-barrier by breaking *sad al salafeen* (the Salafi's dam), and because she vehemently and determinately *tahaddat* (challenged) the last and 'a'ata (most fierce) patriarchal phenomenon (9) (the details of J. al Banna's argument will be discussed and analyzed in Chapter 1).

### Methodology of this Book

My framework for a different procedure in rereading the Hadith, and my rationale for rethinking the sunnah will become clear as I address the historical treatment of some other issues related to gender and women. I start the discussion of each issue by presenting the Qur'anic evidence first and the related narratives attributed to the Prophet second. I then synthesize some rules that Muslim interpreters and jurists generated by using the contents of the same set of narratives and their derivatives to formulate what is became known in Muslim majority societies as *al 'Ahwal al Shakhsiyah* (Muslim Personal Status Codes) or "Islamic personal law." Finally, I discuss the corroboration by Qur'anic principles (or the lack thereof) of these narratives, their interpretations, and the rules that were derived from them. Given

the limited space and objectives of this book, I may only allude to the reported narratives as presented by one or another of the four recognized Sunni schools of jurisprudence (Hanafi, Maliki, Shafi'i, and Hanbali) and may present some of the most cited Shi'a school, the Ja'afari's jurisprudence, as summarized in al Gharawi (2008). The purpose is to explain where the interpretations and rules of these scholars may or may not have done justice to women. *I conclude this book with an assessment as to whether or not we need today the same set of these conventional procedures that were followed by early Muslims in interpreting the Qur'an and the premises on which they fixed 'usul al fiqh, as well as the theology of sunnah.*

I cannot close this Introduction without alluding to the apparent similarity between Amina Wadud's leading the co-ed congregational prayer in the 21st century and 'A'ishah bint Abi Bakr's leading a campaign to seek justice with respect to the assassination of 'Uthman bin 'Affan, the third Caliph. Although these two courageous women acted differently and in different places and times, I am bringing them together because they are both revolutionaries in their moral courage, and because they both were/are agents of change by standing against the unjust common practices of the time. One might also interpret 'A'ishah's involvement in the Battle of the Camel as a means to restore her autonomous status given that Ali bin Abi Talib (the fourth Caliph) testified against her in *Hadithat al 'Ifk* (the event of slander) (to be discussed in Chapter 1), or as a struggle against the claimed hereditary khilafa in the 7th century. Thus, I begin Chapter 1 with a comparison of the two women's stance, each in her respective event in order to set the rationale for a change in attitudes, the rationale that was ignored or dismissed by most of those who recorded the narratives and actions of these two courageous women.

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## Chapter 1

Muslim Woman's Autonomous Authority in  
the Qur'an: Khilafa and Imama

## Introduction

Muslim women everywhere are still viewed as secondary and/or complementary in the structure of Muslim societies. In order to challenge and transform these un-Islamic views, some Muslim women, including myself, have retaken their principal role and have been reinterpreting the primary source of Islam, the Qur'an.<sup>1</sup> This silent revolution in the past two to three decades was intended to implement a fundamental aspect of the social justice contract between Muslims and Islam: that woman is an autonomous agent and equal partner with man.<sup>2</sup> Islam as documented in the Qur'an is a worldview that propagates a single pair, the human pair:

{189} هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا ...

It is God Who created you from a single soul, and made her mate of like nature, in order that he might dwell with her (in tranquility) ... {al A'raf 7: 189}.

Wherein women and men share equal rights and responsibilities—spiritually {'Al 'Imran 3:195; al Ahzab 33: 35}:

{35} إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّانِعِينَ وَالصَّانِعَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا

For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast, for men and women who guard their chastity, and for men and women who engage conscientiously in Allah's guidance, for them has Allah prepared forgiveness and great reward {al Ahzab 33: 35}.

1 The Muslim women's reinterpretation of the Qur'an movement began in the early 1990s with the works of, for example, Nimat Hafez Barazangi (1991a), Amina Wadud (1992), and others.

2 See Barazangi (2005b) for further discussion of this silent revolution.

Intellectually and socially {al 'Alaq 96: 1–6, 14–19}:

{14} أَلَمْ يَعْلَم بِأَنَّ اللَّهَ يَرَى . {15} كَلَّا لَئِن لَّمْ يَنْتَه لِنَسْفَعَا بِالنَّاصِيَةِ ... {19} كَلَّا لَا تَطِغُهَا وَاسْجُدْ وَاقْتَرِبْ.

Does he not know that Allah Dose See? Nay, heed him not: but bow down in adoration (to Allah) that will bring you the closer (to Allah) {al 'Alaq 96: 14–15, 19},

in trusteeship, witnessing, and leadership:

{30} وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ

Behold, your Guardian God said to the angels: “I will create a vicegerent on earth.” They said: “Will You place therein one who will make mischief therein and shed blood? Whilst we do celebrate Your praise and glorify Your holy (name)?” He said: “I know what you know not” {al Baqara 2: 30}.

{21} وَجَاءَتْ كُلُّ نَفْسٍ مَعَهَا سَائِقٌ وَشَهِيدٌ

And there will come forth every soul: with each will be an (angel) to drive, and an (angel) to bear witness {Qaaf 50: 21}.

The criterion is *taqwa* in the Qur`an {al Hujurat 49: 13}:

{13} يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنثَى وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقَاهُمْ  
إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

O humankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other (not that you may despise each other). Verily the most honored of you in the sight of Allah is (s/he who is) the most righteous or conscientious of Allah. And Allah Has full knowledge and is Well-acquainted (with all things).

Taqwa here reference the capacity of each individual to balance all the above roles and to be in peace with oneself and with societal needs, within the guidelines of the Qur`an, the only divine source of Islam:

{2} تَنْزِيلٍ مِنَ الرَّحْمَنِ الرَّحِيمِ {3} كِتَابٍ فُصِّلَتْ آيَاتُهُ قُرْآنًا عَرَبِيًّا لِقَوْمٍ يَعْلَمُونَ {4} بَشِيرًا وَنَذِيرًا فَأَعْرَضَ أَكْثَرُهُمْ عَنْهُمْ لَا يَسْمَعُونَ

A revelation from (Allah), Most Gracious, Most Merciful; A Book, whereof the signs are explained in detail; a Qur`an in Arabic, for people who understand; giving good news and admonition: yet most of them turn away, and so they hear not {Fussilat 41: 2–4}.

Indeed, this was the first essential step toward accomplishing comprehensive human rights for themselves as Muslim women, and to challenge the unwarranted and hijacked authority over Islam by Muslim men that has been ongoing for 14 centuries.<sup>3</sup> Yet, as Muslims often persist on using indiscriminately the reported traditions attributed to the Prophet of Islam, Muhammad, to produce “Islamic” legislation, they further marginalize the majority of Muslim women. Indeed, the Prophet was following Qur'anic principles of justice when he affirmed: “[t]o be just with one another and treat women kindly.”<sup>4</sup> But Muslims do not heed to invoke the Prophet's praxis when he himself affirmed what the Qur'an teaches first and foremost. Instead, Muslims often commit injustice towards women by using some reports attributed to the Prophet that do not corroborate the Qur'an even when they were reported in the same trusted source. For example, Ibn Hisham [d. ca 834], in his biography of the Prophet abridged from Ibn Ishaq (see Introduction), reports on the authority of the Prophet that the Prophet, during the farewell pilgrimage, reminded believing men of similar rights and responsibilities of women to theirs (quoted in the above verses). However, Ibn Hisham himself takes the liberty to extend the rights for men to hit their women who are *nashez* (this word means women who conduct sexual acts outside marriage, but is often misinterpreted to mean women who do not obey their husbands). Despite the fact that the Qur'an commands that such women should be left alone in their homes until they repent on their own (see the Introduction), Muslims want to punish a woman for simple contestation of her male household (Ibrahim and Abdalla 2010).

Given that moral agency of the woman, or any Muslim for that matter, is a mandate of the Qur'an,

{46} مَنْ عَمِلَ صَالِحًا فَلِنَفْسِهِ وَمَنْ أَسَاءَ فَعَلَيْهَا وَمَا رَبُّكَ بِظَلَّامٍ لِلْعَبِيدِ

Whoever works righteousness benefits his [her] own soul; whoever works evil, it is against his [or her] own soul: nor is your Guardian ever unjust (in the least) to His creatures {Fussilat 41: 46},

this moral agency and authority lies in her/his identification with Islam through God's light and guidance in the Qur'an:

{35} اللَّهُ نُورُ السَّمَاوَاتِ وَالْأَرْضِ مِثْلُ نُورِهِ كَمِشْكَاةٍ فِيهَا مِصْبَاحٌ الْمِصْبَاحُ فِي رُجَاةٍ الزُّجَاةِ كَأَنَّهُا كَوْكَبٌ دُرِّيٌّ يُوقَدُ مِنْ شَجَرَةٍ مُبَارَكَةٍ زَيْتُونَةٍ لَا شَرْقِيَّةٍ وَلَا غَرْبِيَّةٍ يَكَادُ زَيْتُهَا يُضِيءُ وَلَوْ لَمْ تَمْسَسْهُ نَارٌ نُورٌ عَلَى نُورٍ يَهْدِي اللَّهُ لِنُورِهِ مَنْ يَشَاءُ وَيَضْرِبُ اللَّهُ الْأَمْثَالَ لِلنَّاسِ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

3 It is sad, however, that Ingrid Mattson, a female scholar in her own right, still accepts the conventional claim that only a few have the authority to interpret Qur'an and Hadith (Mattson 2011b).

4 Ibn Hisham. *Sirat Rasool Allah*, V 2:139; “The Prophet's Farewell Sermon” (ca 632, near Mount 'Arafat).



Allah is the Light of the heavens and the earth. The parable of His light as if there were a niche and within it a lamp: the lamp enclosed in glass; the glass as it was a brilliant star: lit from a blessed tree, an olive, neither of the East nor of the West, whose oil is well-nigh luminous, though fire scarce touched it: Light upon Light! Allah does guide whom He will to His Light: Allah does set forth Parables for the people: and Allah does know all things {al Noor 24: 35}.

This agency and authority is not to be promoted or restricted by historical precedence as emphasized by Mattson (2011b) (whether it was the Prophet's reported tradition or any other tradition), by either social constructs, patriarchal repression, or feminist aspirations.<sup>5</sup> However, some recent scholarship concerning Muslim women (for example, Nadwi 2007; Mattson 1999, 2011a and 2011b) leads me to believe that Muslim women have no hope for reaffirming their autonomous authority and agency in a sustainable manner unless they also rethink the Prophetic reported traditions. That is, women, and men for that matter, need to reread the Hadith (reported narratives) and rethink the sunnah (reported practices) of the Prophet by themselves and with different premises. More focused efforts are also needed to address the events surrounding Muslim women in the global scene, even though there are other recent scholarly works by Muslim and non-Muslim women that are helping in presenting new images and views on Qur'an and Hadith (for example, K. Ali 2010; Sayeed 2005, 2009, 2011; Stowasser 2009). The positive reviews of the Muslim women scholar-activists' writing on the Qur'an also help.<sup>6</sup> Hammer (2008 and 2012), for example, in her emphasis on the authority of American Muslim women's approach to the Qur'an, takes the important step toward such a change in attitudes and premises and sheds new light on the topic. For instance, by reporting as well as analyzing these ideas, Hammer also furthers the dynamics of some ideas that I discussed in my work on Muslim woman's self-identity with the Qur'an and Islamic higher learning (Barazangi 2004a and 2004b, 2000, and 1997). Unfortunately, and contrary to her efforts to show how "Muslim women and men are increasingly conscious of the need to negotiate gender discourses among as well as between the sexes" (Hammer 2012: 5–6), some Muslim male scholars still patronize the same writings [of these self-identified Muslim women scholar-activists] when they suggest that the "individual Muslim woman needs to reaffirm her authority by developing a different representation of Islam and of herself," as if these women scholars-activists are not doing so.<sup>7</sup> Therefore, I strongly believe

<sup>5</sup> Here, I reaffirm and extend a statement made by Amina Wadud (2002).

<sup>6</sup> The term scholar-activists and/or scholarship-activism were adopted by some American Muslim women scholars in the edited volume *Windows of Faith* by Gisela Webb (2000: xi) to indicate a specific approach "because it originates in the conviction that to look at women's issues *from within* the Islamic perspective must include, and indeed unite, issues of theory and practice."

<sup>7</sup> See for example, Souaiaia's (2008) review of Barazangi (2004b); others' responses to Wadud's conducting congregational prayer in the year 2005; and some oral responses

and argue that the representation by the Muslim women scholar-activists who self-identify with Islam and with the Qur'an as the only divine source must overturn what has been circulating during the past two centuries, first, by orientalists—such as stereotypical images of the oppressed Muslim women that need rescuing from their culture that is also generalized in the contemporary trends of discussing Islam and Muslims—as Cesari (2010) summarizes,<sup>8</sup> and second, by the majority of Muslims who continue to reiterate, reinforce, and practice the image of the secluded, segregated Muslim female. For this purpose, it is important to use the singular form “woman” because both autonomous morality and agency in Islam are the right and the responsibility of each individual:

{97} مَنْ عَمِلَ صَالِحًا مِنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيَاةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

Whoever works righteousness, man or woman, and has Faith, verily, to him [her] will We give a new Life, a life that is good and pure, and We will bestow on such their reward according to the best of their actions {al Nahl 16: 97}.

This use of the singular is particularly critical when the Muslim community codifies Islam in the dogma of traditions and precedents, as suggested by Mattson (2011a: 2): “[People] must *rely on authority* when it comes to interpreting the Qur'an, and should be weary of careless interpretations that may twist the spirit of the religion to fit any fad or trend.”

Mattson further discusses the *reliability of the established body of scholarly knowledge* that represents a guide for understanding the Qur'an, and learning what it takes to lead a peaceful and prosperous life (emphasis added).

It is true that, as she stated, “[W]e should be weary of careless interpretations that may twist the spirit of the religion to fit any fad or trend.” Yet, as a Muslim scholar of Islam, she should have also realized that we cannot afford to rely only on “the established body of scholarly knowledge as a guide for understanding the Qur'an.” That is, because unfortunately the current established knowledge of Islam is a mix of misused or weak reported Prophetic traditions that often do not corroborate the Qur'an, codified jurists rules, personal edicts of Imams who do not have deep knowledge of Islam, and British, Swiss, Dutch, and French laws—the totality of which is erroneously called shari'a (as I explained in the Introduction).

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to my work on the absence of Muslim women in shaping and developing Islamic thought (Barazangi 2008–09 and 2009).

8 Jocelyn Cesari (2010) states: “Scholarly literature often echoes stereotypical images of Islam and Muslims. In some cases, headlines come directly from titles in academic journals and books: [like] ‘The Muslims Are Coming! The Muslims Are Coming!’ (Daniel Pipes 1990), ‘The Roots of Muslim Rage’ (Lewis 1990) [and] ‘*The Crisis of Islam: Holy War and Unholy Terror*’ (Lewis 2003).”

Furthermore, self-identity with Islam stems from the individual's intimate and direct understanding of the Qur'an, not from exclusive individualism, neither from any particular "established knowledge," nor from an affiliation with a homogeneous group:

{1} تَبَارَكَ الَّذِي نَزَّلَ الْفُرْقَانَ عَلَى عَبْدِهِ لِيَكُونَ لِلْعَالَمِينَ نَذِيرًا

Blessed is He Who sent down the Criterion to His creature, that it may be an admonition and forewarning to all inhabitants of the world {al Furqan 25: 1}.

Consequently, the challenge for the Muslim woman in her drive for autonomous authority is to ask: "What premises are being brought towards the process of 'rethinking' Islamic sources, and how these premises are (or not thereof) restructuring the main stream jurisprudence process in Muslim majority societies?" This questioning is essential in order to change attitudes about Muslim women and gender as well as to overthrow the unjust practices towards Muslim women as well as women in general. After presenting this and other challenges, I discuss in this chapter where the Muslim woman's autonomous authority and agency lies in relation to the two principles of *Khilafa* (human trusteeship) and *Imama* (leadership initiative). *Khilafa* defines the relationship of God, the only Deity, to the human pair (the male and female) as representative of God or the trustee. *Imama* defines the moral authority of the pair to lead towards the path that is guided by Qur'anic ethos, be it in prayer or in mundane affairs. Here, I use two examples to establish the framework for rereading the Hadith and the procedure for rethinking the sunnah. *The first*, 'A'ishah bint Abi Bakr, the wife of Prophet Muhammad and one of the major narrators of his reported traditions, is an example for the struggle to re-establish *khilafa* as the Qur'an intends. *The second*, Amina Wadud, the well-known self-identified scholar of Islam in North America and South Africa, is an example of the struggle to re-establish *imama* for women. These two women have in common the moral courage to contest the common practice of their time and to affirm their spiritual and intellectual authority as agents of change by reinterpreting the Qur'anic message and acting accordingly. Next, I briefly explore theories of Hadith as a science and the theology of sunnah as an authentic religious source by elaborating on Wadud's leading the congregational prayer. I conclude this chapter with the Prophet Muhammad example as an agent of change.

### Challenges to Woman's Autonomous Authority and Agency

I repeat here my earlier claim: *one of the core problems within the current globalization of democracy movement is the absence of Muslim women in shaping and developing Islamic thought* (Barazangi 2008–09, 2009). That is, there is no hope that Muslim women's interpretation of the Qur'an and rereading Hadith will help in the short run because the problem is not with Islamic primary texts,

but with the representation of Islam and Muslim women. In other words, the pathetic conditions for the majority of the approximately 800 million Muslim women require a change in perception, attitude, and on the ground, as stated in the Qur'an:

{11} ... إِنَّ اللَّهَ لَا يُغَيِّرُ مَا بِقَوْمٍ حَتَّى يُغَيِّرُوا مَا بِأَنْفُسِهِمْ .

... Verily never will Allah change the condition of a people until they change what is in themselves (with their own souls) ... {al Ra'd 13: 11}.

This change enjoins us, scholars of Islam and practicing Muslims, first and foremost to change the premises of understanding Islam, including the use of Hadith, and to move away from viewing Islam and Muslim woman as the "other." It is a change in understanding Islam from within the Qur'anic worldview. By reinterpreting the Qur'an, Muslim women have been striving to change the perception of the woman as subservient and of Islam as a dogma. The hope is that this change may consequently transform the Muslim societies and communities from within the Islamic worldview. *The majority of Muslims, however, have not awakened to the reality that human development is a process that is based on balancing a dynamic belief system with its interpretation in place and time, and not on a static value system that is handed down from one generation to the next.* Meanwhile, non-Muslims who are trying to help [the Muslim women] do not realize that they are adding to the problem because they often separate knowledge from the value system, ending up with further conflicts.<sup>9</sup> *It is fair to claim, therefore, that the true message of Islam concerning women has rarely been practiced for the past 14 centuries because most representations of Islam, by Muslim males and orientalists, are mainly based on the reported traditions and biographies without corroborating them by the Qur'an.* Jamal al Banna (2008b: 11) states:

What is important is the agreement of the Hadith with the Qur'an, whether or not we accept the *sanad* (chain of narrative) leading to the authority of the Prophet. If a particular narrative does not agree with the Qur'an, it becomes unbinding. Otherwise, by insisting that hadith is binding we will contradict our claim that we are bound by the Qur'an, something that no Muslim will accept.

This hijacking of authority to interpret the Qur'an through the use of precedent tradition by the majority male interpreters resulted over the centuries in segregating men and women, and especially secluding women in the name of modesty, often

9 I reference here the amalgam of conferences, studies and reports that address issues related to Muslim women from either a secular point of view (for example, Valentine Moghadam 2005), from a religious point of view (for example, Ingrid Mattson 2006), or from a political point of view (for example, Isabol Colman 2006).

preventing them from educational institutions, such as what is happening under the watchful eyes of the US in Afghanistan and parts of Pakistan (Leupp 2002), or when the head-cover is used as a leverage to ban women from entering educational or government institutions—as in France and Germany, or in Turkey.<sup>10</sup> This hijacking of authority also discourages and prevents women from participating in congregational prayers and communal activities because of the divides in mosques between males and females, and because women are often isolated in mosques and sometimes prevented from frequenting mosques. Furthermore, women often are prevented from conducting their own business autonomously by not being allowed to move around without a male companion—given prolonged minor status (World Report 2012). They are also stripped of their right to grant citizenship to their husbands and children,<sup>11</sup> and above all denied the authority of direct identification with the Qur'an, that is, interpreting it on their own with different premises from those of traditional interpreters.<sup>12</sup>

*There will never be a reformation movement in Muslim societies, like the reformation that happened in Europe, because the structure of Muslim societies and their aspirations are different, and the fact that the practice of this structure is often based on precedent.* The social structure of a Muslim family is built on the extended family social collaboration model ('Abd al 'Ati 1977), not on the nucleus, economic-based model, while its aspirations are mostly related to past history and religious and moral authority rather than nationalistic or ethnic morality (Hallaq 2005). The ideal Islamic social structure was hardly realized in practice, mainly because most Muslims still aspire to precedent history and familial or tribal affiliation, contrary to Qur'an guidance.<sup>13</sup> *Therefore, neither sociological theories nor political science or legal analyses can fully explain the current crisis in understanding Islam, or completely realize the core problem that Muslim women face, meaning their absence in shaping and developing Islamic thought.*

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10 As an example is the recommendation by the French government in 1995 that a law should be passed banning “conspicuous” religious symbols. That such symbols would include head scarves worn by Muslim girls is not only alarming but also presents striking evidence for my argument. Furthermore, the French Commission on Church-State Relations urged the passage of such a law while recommending “the teaching of the ideal of secularism and ‘solemn adoption’ of a character of secularism that will be distributed widely” (San Francisco Chronicle, December 12, 2003, A2); see also Murtagh, 2010.

11 Most of the Muslim countries do not allow women to grant citizenship to their spouse and children. However, there is a move through the UNDP and UNIFEM to overthrow these laws, such as in Jordan and Lebanon.

12 It was reported on the National Public Radio (NPR 2012c) that Saudi women were reinterpreting the Qur'an, but the question is: “what premises these women are using and how this interpretation is being incorporated in the country’s policies towards women?”

13 This regress in Muslim practice is evident from the time of the Prophet, particularly in issues of inheritance and women’s participation in war, wherein they may share in the spoils of war (Tabari; Ibn Sa’d; also cited by Karen Armstrong 2011).

Since reformation means retrofitting an old structure with some new elements that are external to the original scheme, and since most past reform movements have failed, the time has come for an open revolutionary movement to build a new structure for Muslim societies through a new and egalitarian interpretation of the Qur'an and the Hadith. *Such egalitarian interpretation must restore the religio-moral authority of interpretation to each individual Muslim by using two basic Qur'anic strategies: (1) observing the natural order of the world {al Ahzab 33: 35; al'Araf 7: 189} wherein the humans were created of a single feminine soul, and (2) developing action plans by means of educated reason and mutual consultation:*

{38} وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ

Those who hearken to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation; who spend out of what We bestow on them for sustenance {al Shura 42: 38}.

These two strategies are activated by relying first on the Qur'an's own principles of interpretation:

{23} اللَّهُ نَزَّلَ أَحْسَنَ الْحَدِيثِ كِتَابًا مُّتَشَابِهًا مَّثَابِي تَفْشِيرُ مِنْهُ جُلُودَ الَّذِينَ يَخْشَوْنَ رَبَّهُمْ ثُمَّ تَلِينُ جُلُودُهُمْ وَقَلْبُهُمْ إِلَىٰ ذِكْرِ اللَّهِ ذَلِكَ هُدَىٰ اللَّهِ يَهْدِي بِهِ مَنْ يَشَاءُ وَمَنْ يُضِلِلِ اللَّهُ فَمَا لَهُ مِنْ هَادٍ

Allah has revealed the most beautiful Message in the form of a Book, consistent with itself, (yet) repeating (its teaching in various aspects): the skins of those who fear their Guardian tremble there at; then their skins and their hearts do soften to the celebration of Allah's conscientiousness. Such is the guidance of Allah: He guides with it whom He pleases, but such as Allah leaves to stray, can have none to guide {al Zumar 39: 23}.

Consequently, the aim of rereading the Hadith is to transform Muslims' view from seeing it as a divinely binding source or a dogma that one should follow literally, to recognizing Hadith as a source for an additional strategy or a detailed action in time and place.

As I stated in the Introduction, most Muslims believe that by imitating the image and reported traditions of the Prophet Mohammad, they have mastered their religious duties. Muslims came to codify these reported actions and view them erroneously as if they were as sacred as the Qur'an to the point of missing the basic message that the Prophet carried for 22 years, between 610 and 632 AD—that they should follow the Qur'an. The reported traditions of the Prophet, essential as they may be, were often abused by male interpreters, like what is happening with regards to attire and seclusion, along with the punishment for adultery—as discussed in the Introduction—and with regards to khilafa and imama, as I will explain next.

## Muslim Woman's Autonomous Authority: *Khilafa and Imama*

I closed the Introduction of this book by alluding to the apparent similarity between the actions of 'A'ishah bint Abi Bakr in the 7th century and Amina Wadud in the 21st century. Thus, I follow in this chapter the discussion of these two leading figures to help describe Qur'anic attitude toward gender justice and women's trusteeship and leadership. Qur'anic attitude might have been ignored by those who recorded narratives of/about 'A'ishah, as well as other early Muslim women, because the dominating perception of these women has been limited to being the "Prophet's wives," or the wives/daughters of the companions. Early women, like Muslim women in general, are rarely viewed as autonomous entities who have chosen Islam on their own, and who could implement Islamic Shari'ah (with capital "S", Qur'anic ethos or guidance) on their own.

According to the biographer of the Prophet, Ibn Hisham, these women are regarded as moral exemplars for Muslim women. 'A'ishah and Umm Salama in particular (two of the Prophet's wives) reported numerous ahaadith on the authority of Prophet Muhammad and thus are said to *have played a decisive role in the shaping of the sunnah* (emphasis added). Despite his suggestion that the Prophet wives were regarded as moral exemplars and that 'A'ishah and Um Salama have played a decisive role in shaping the Prophet's sunnah, Ibn Hisham did not elaborate on the implication of that role nor on their own views of themselves and of Islam. My discussion of 'A'ishah bint Abi Bakr along with Amina Wadud, although these two courageous women acted differently and in different place and time, therefore, is intended mainly to develop a different framework of reporting on Muslim women and of studying Islam in general—a framework that is concerned with how to reread Hadith, particularly the ahaadith that are narrated on the authority of the Prophet's wives and other early Muslim women, and how to rethink the sunnah on the basis of the new reading of the Qur'an (for example, Wadud 1992; Barlas 2002; Barazangi 2004b). My procedure begins with a shift in addressing first the importance of the two basic principles (after the central principles of Tawhid (Oneness of Deity and humanity), and its concomitant principle, *'adl* (justice), and *qist* (fair play), in developing the autonomous authority for the Muslim woman in khilafa and imama. I reiterate the importance of these principles here because they define human relationship to God and the moral authority granted to each human to lead towards the path that is guided by Qur'anic ethos, respectively:

{30} وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ

Behold, your Guardian said to the angels: "I will create a vicegerent on earth." They said: "Will You place therein one who will make mischief therein and shed blood? While we do celebrate Your praise and glorify Your holy (name)?" He said: "I know what you know not" {al Baqara 2: 30}.

{18} ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيحَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

Then We put you on the (right) way of religion: so follow you that (way), and follow not the desires of those who know not {al Jathyah 45: 18}.

To make the connection between Amina's and 'A'ishah's visions, on the one hand, and exemplify the female struggle for autonomous agency from within Islam, on the other; I searched for a first-person account by each. I should note here that I am bringing these two women together because, as I stated above, they are both revolutionaries in their moral courage and because they both were/are agents of change by standing against the common practices of the time as unjust. History books hardly provide us with a first-person account of 'A'ishah, except what has been narrated on her authority. Thus, I will use Wadud's comment (below) about the era of 'A'ishah as a point of departure for both of them. Amina Wadud speaks of her own struggle under the title "'A'ishah's Legacy," discussing how she accepted Islam during the second wave feminist movement in the 1970s:

I saw everything through the prism of religious euphoria and idealism. Within the Islamic system of thought I have struggled to transform idealism into pragmatic reforms as a scholar and activist. And my main source of inspiration has been Islam's own primary source—the Qur'an. It is clear to me that the Qur'an aimed to erase all notions of women as subhuman (Wadud, 2002: 16–17).

She goes on, describing 'A'ishah as the one who "was sought after as an advisor to the early jurists." After establishing 'A'ishah's agency and leadership authority, Wadud adds:

*Unfortunately, this period [immediately following the death of the Prophet] passed before it could establish a pattern sustainable as historical precedent. And the name of 'A'ishah cannot erase what was to happen to the status of women in the following thousand years ... In particular, they [the jurists] moved away from the Qur'an's ethical codes for female autonomy to advocate instead women's subservience, silence and seclusion (emphasis added).*

Wadud then describes today's women scholar-activists as going back to the primary source, and removing the fetters imposed by centuries of patriarchy, concluding: "This moral agency [the woman's] is a mandate of the Qur'an, and *cannot be restricted by any amount of historical precedence, social custom or patriarchal aspiration*" (emphasis added).

Wadud's description of 'A'ishah's legacy presents us with the following instructional valuation:

1. 'A'ishah is an example for how female moral autonomy was inspired by Islam, and not only by the fact that she was the wife of Prophet Muhammad.



Young as she might have been, and despite the dispute about her age when she was wedded to the Prophet, the resources are almost unanimous about her courage, activism, and witnessing the message.<sup>14</sup>

For example, 'A'ishah is reported to have responded to the Prophet and her parents after the revelation that venerated her from wrong doing, historically known as *hadithat al 'Ifk* (the event of slander, or the accusation of infidelity) by saying:

فَوَاللَّهِ مَا رَامَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَجْلِسَهُ وَلَا خَرَجَ مِنْ أَهْلِ النَّبَيْتِ أَحَدٌ حَتَّى أَنْزَلَ اللَّهُ عَزَّ وَجَلَّ عَلَى نَبِيِّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَخَذَهُ مَا كَانَ يَأْخُذُهُ مِنَ الْبُرْحَاءِ عِنْدَ الْوُحْيِ حَتَّى إِنَّهُ لَيَتَحَدَّرُ مِنْهُ مِثْلَ الْجَمَانِ مِنَ الْعَرَقِ فِي الْيَوْمِ الثَّلَاثِ مِنْ ثِقَلِ الْقَوْلِ الَّذِي أَنْزَلَ عَلَيْهِ قَالَتْ فَلَمَّا سُرِّيَ عَن رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُوَ يَضْحَكُ . فَكَانَ أَوَّلَ كَلِمَةٍ تَكَلَّمَ بِهَا أَنْ قَالَ أُبَشِّرِي يَا عَائِشَةُ أَمَا اللَّهُ فَقَدْ بَرَأَكَ فَقَالَتْ لِي أُمِّي قُومِي إِلَيْهِ فَقُلْتُ وَاللَّهِ لَا أَقُومُ إِلَيْهِ وَلَا أَحْمَدُ إِلَّا اللَّهُ هُوَ الَّذِي أَنْزَلَ بَرَاعَتِي قَالَتْ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ ( إِنَّ الَّذِينَ جَاءُوا بِالْإِفْكِ عُصْبَةٌ مِنْكُمْ ) عَشْرَ آيَاتٍ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ هَؤُلَاءِ الْآيَاتِ بَرَاعَتِي .

By Allah, the Prophet did not leave his place [in my parents' house], nor anyone left the house until God sent a revelation to him. When this intense state of receiving revelation was over, the Messenger of Allah (may peace be upon him) smiled and the first words which he spoke to me were that he said: "'A'ishah, there is glad tidings for you. Verily, Allah has vindicated your honor," and my mother who had been standing by said: Get up (and thank him, that is, the Prophet). I said: "By Allah, I will not thank him and laud him but Allah Who has descended revelation vindicating my honor." She ['A'ishah] said: "Allah, the Exalted and Glorious, revealed: (Verily, those who spread the slander are a gang among you) (and) ten (subsequent) verses in regard to my innocence" (al Bayan: 1999: Kitab al Tawba # 1582).

What is of significance in this narrative is that 'A'ishah, despite her sensitive status and having been under special scrutiny at the time, was not demur of stating that her guide was the Qur'an even in the presence of the Prophet, and that the Qur'an has honored her and women in general by these verses against slander—a practice that was often used to silence women. In doing so, 'A'ishah had the moral courage to affirm her rights and responsibilities as a khalifa (a trustee) and as a witness to the truth, according to the Qur'an and the Qur'an only.

Yet, one of the most controversial stories, in history books, about 'A'ishah is *hadithat al 'Ifk*. The controversies surrounding this event might have been fabricated mainly to satisfy political ends—namely to discredit the reliability of 'A'ishah as a female trustee and a female witness to the truth, or as a "mother of the believers." However, despite several refutations of such controversies, these controversies did cause a lasting injustice by reinforcing the negative attitudes toward women. Instead of accepting a woman as an autonomous agent comparable to the man, the underlying premises of these controversies see woman's role in society as dependent and/or of lesser authority. *The issue that I am emphasizing*

14 See the discussion of 'A'ishah's age, for example, by Jamal al Banna (1998).

here is not merely maleness or femaleness. Rather, it is the attitude that was imposed on Islam by the tribal mentality of those who were involved in these controversies, as well as those who still accept such premises and narratives, and the resulting negative perceptions of women. And yes, this happened in the early days of Islam and by some companions of the Prophet, such as the fourth Caliph Ali as he testified against 'A'ishah in the event of the slander. We will see similar incidents that resulted in negative attitudes towards women in the second Caliph—'Umar bin al Khattab's stance about the narratives of Fatima bint Qays concerning her *sukna* (housing) and *infaq* (living expenses) (see Chapters 2 and 4)! More importantly, these controversies, and the historical records that keep referencing them without questioning their lack of concurrence with the Qur'an, have led to reducing the principle of the Qur'an as a guide for all humans into the practice of Islam as being mainly what males interpret it to be, and as if its public affairs only concerns males. These exclusionary views represent what is wrongly known and practiced as "sharia'a" (with small "s") (to be explained further in Chapters 2 and 5).

2. *Wadud herself represents another example* of a Muslim woman's autonomy and struggle for regaining that autonomy as a mandate of the Qur'an. This struggle, Wadud asserts, can happen, and is happening from within Islam, and it should continue as such in order to be sustained. Wadud's action, concerning Imama (woman's led co-ed congregational prayer) for example, is drawn from the Qur'an, and not because of historical precedence (including 'A'ishah's role in history or a supporting narrative of the Prophet), or necessarily because of the UN mandate that woman's rights in decision-making is a human right (UNWomen, 2011, cited in WLP 2011).

Yet, the majority of Muslims, including some women who defend women's human rights, do not seem to understand the depth of these two autonomous Muslim women's struggle, neither do they appreciate the significance of these struggles for changing attitudes and the procedure in rethinking Islamic sources. For example, Mattson (2006) discusses the event of 2005—wherein Wadud led a co-ed Friday congregational prayer—by questioning imamat al mar'ah (woman-led prayer) of a co-ed congregation in her "Can a Woman be an Imam?" even when she quotes the Qur'an:

{71} يَوْمَ نَدْعُوا كُلَّ أُنَاسٍ بِإِمامِهِمْ فَمَنْ أَؤْتِيَ كِتَابَهُ بِيَمِينِهِ فَأُولَئِكَ يَقْرَءُونَ كِتَابَهُمْ وَلَا يُظْلَمُونَ فَتِيلًا

One day We shall call together all human beings with their (respective) Imams: those who are given their record in their right hand will read it (with pleasure) and they will not be dealt with unjustly in the least {al Isra' 17: 71}.

Why? My answer is drawn mainly from the Qur'anic praxis: observe, act righteously, and reflect (see the verses listed below), and partially from Wadud's phrase that I emphasized earlier:

“This period immediately following the death of the Prophet passed before it could establish a pattern sustainable as historical precedent.”

When I first read this phrase [Wadud's], my reaction was that this is different from what is mandated by the Qur'an. That is, Qur'an's mandated Islamic behavior is the opposite of imitating ancestors. Islamic behavior is largely dependent on individual choice, leadership initiative, and *ijtihad* (independent inquiry and judgment after an intimate understanding of Qur'anic intention). When the Qur'an uses the example of past peoples and nations, it views historical precedent only as an example, including the example of the messenger who received the Qur'an, Prophet Muhammad:

{42} وَالَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ لَا نُكَلِّفُ نَفْسًا إِلَّا وُسْعَهَا أُولَئِكَ أَصْحَابُ الْجَنَّةِ هُمْ فِيهَا خَالِدُونَ

But those who believe and work righteousness—no burden do We place on any soul, but that which it can bear - they will be Companions of the Garden, therein to dwell [forever],

{43} وَنَزَعْنَا مَا فِي صُدُورِهِمْ مِنْ غَلٍّ تَجْرِي مِنْ تَحْتِهِمُ الْأَنْهَارُ وَقَالُوا الْحَمْدُ لِلَّهِ الَّذِي هَدَانَا لِهَذَا وَمَا كُنَّا لِنَهْتَدِيَ لَوْلَا أَنْ هَدَانَا اللَّهُ لَقَدْ جَاءَتْ رَسُولَنَا بِالْحَقِّ وَنُودُوا أَنْ تَتَّكُمُ الْجَنَّةُ أَوْ رَتَّمُوهَا بِمَا كُنتُمْ تَعْمَلُونَ

And We shall remove from their hearts any lurking sense of injury - beneath them will be rivers flowing—and they shall say: “Praise be to Allah, Who hath guided us to this (felicity): never could we have found guidance, had it not been for the guidance of Allah: indeed it was the truth that the Messengers of our Guide brought unto us.” And they shall hear the cry: “Behold! The Garden before you! You have been made its inheritors, for your deeds (of righteousness)” {al `A`raf 7: 42–3},

{17} قُلْ مَنْ ذَا الَّذِي يَعْصِمُكُمْ مِنَ اللَّهِ إِنْ أَرَادَ بِكُمْ سُوءًا أَوْ أَرَادَ بِكُمْ رَحْمَةً وَلَا يَجِدُونَ لَهُمْ مِنْ دُونِ اللَّهِ وَلِيًّا وَلَا نَصِيرًا ... {21} لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا

Say: “Who is it that can screen you from Allah if it be His wish to give you punishment or to give you mercy?” Nor will they find for themselves, besides Allah, any protector or helper! ... You have indeed in the Messenger of Allah a beautiful pattern (of conduct) for any one whose hope is in Allah and the Final Day, and who engages much in the praise of Allah {al Ahzab 33: 17–21}.

Furthermore, historical evidence as J. al Banna (2008b: 38) emphasizes, indicates strongly the Prophet's unambiguous stance in preventing his companions from recording his own sayings or actions (what became known about 200–300 years later as his ‘sunnah’) in order that these actions and or sayings may not be

used as a precedent.<sup>15</sup> The Prophet's stance was explained differently by different scholars, but the more logical explanation that is in line with Qur'anic view of "precedent" is that the Prophet himself did not want Muslims to emphasize the narratives nor actions on his authority (that were recorded in the books of Hadith or biographies about two to three centuries after his death), and as a result, neglect the narrative of the Qur'an that was recorded in writing as it was revealed to him (J. al Banna 2004a 90; 2008b: 8).

Similarly, Wadud seems to reiterate her stance concerning precedence when she concluded: "*This moral agency [the woman's] is a mandate of the Qur'an, and cannot be restricted by any amount of historical precedence, social custom or patriarchal aspiration.*"

I emphasize the issue of precedence here for the following two reasons:

First, if a precedent pattern was established after 'A'ishah, regardless of her historical status, contemporary Muslim women will make the same mistake that was made by male jurists who became fixated on the Prophet's example as a static pattern to be followed literally.

Second, perhaps unintentionally, Muslim women may also feel obliged to establish a similar pattern to that of the male jurors merely because they may think that there is no other pattern to emulate. Although patterns are examples that are not necessarily to be emulated, such emulation of the male jurors is happening, for instance, with the establishment of programs to train female imams in the same traditional manner that have been used in training male imams, stated under the title "Women, Islam, and the Twenty-first Century":

Today, Indonesia is home to thousands of institutions, including Pesantren (Islamic boarding schools), where women can specialize in Islamic studies. The *products of these schools include expert Qur'an reciters*, like Hajjah Maria 'Ulfah, the first woman to win the International Competition in Qur'anic Recitation in Kuala Lumpur, Malaysia (1980), as well as female imams, intellectuals, and activists with expertise in Islamic studies and Islamic law and interpretation (shari'ah and fiqh). Interpretation and the reinterpretation of Qur'anic texts is a critical aspect of social activism because of the powerful role religion plays in Indonesian society. Many Pesantren are run *and staffed by women for women* to assure that Islamic learning, particularly strong knowledge of the Qur'anic texts, is passed on to the next generation (DeLong-Bas 2011) (emphasis added).

The same is true with training *muftiyat* (female jurist-consult or female paid government religious monitors) in Egypt, Morocco, and the United Arab Emirates (Syrianews 2010), and with training female faqihaat (female author-jurists), as is done by Karamah:

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15 It was reported that Prophet Muhammad said: "I did not make lawful for you except what was made lawful by the Qur'an" (Tabari. *Tarikh al Rusul wa al Muluk*, 1982, IX: 182).

Karamah: Muslim Women Lawyers for Human Rights, founded in 2004 by Egyptian [al Hibri is, to my knowledge, a Lebanese-American]-American scholar Azizah al-Hibri, is also working to change the practice of shariah in countries where the shariah is not implemented in a balanced way. Noting a tendency of bias and discrimination toward women, this organization has established an international network of Muslim women jurists to support the rights of Muslim women both domestically and globally by developing gender-equitable *Islamic jurisprudence based on the foundational and classical sources* (De Long-Bas 2011) (emphasis added).

All these actions are happening despite the fact that, as Sayeed (2011) states: “Women, moreover, who do acquire higher Islamic education, are still denied membership in the prominent Islamic Research Council which has often spoken as an authoritative voice for Sunni Islam.”

Fortunately, we still have time to evaluate and reflect on these actions: Do we really want Muslim women movements that produce something similar to what Muslim men have been producing for the past 14 centuries? The answer in the Qur'an is “No”:

{4} فَذَكَرْنَا لَكُمْ أُسْوَةً حَسَنَةً فِي إِبْرَاهِيمَ وَالَّذِينَ مَعَهُ إِذْ قَالُوا لِقَوْمِهِمْ إِنَّا بُرَاءُ مِنْكُمْ وَمِمَّا تَعْبُدُونَ مِنْ دُونِ اللَّهِ كَفَرْنَا بِكُمْ وَبَدَا بَيْنَنَا وَبَيْنَكُمُ الْعَدَاوَةُ وَالْبَغْضَاءُ أَبَدًا حَتَّى تُؤْمِنُوا بِاللَّهِ وَخَدَّهَ إِلَّا قَوْلَ إِبْرَاهِيمَ لِأَبِيهِ لَأَسْتَغْفِرَنَّ لَكَ وَمَا أَمْلِكُ لَكَ مِنَ اللَّهِ مِنْ شَيْءٍ رَبَّنَا عَلَيْكَ تَوَكَّلْنَا وَإِلَيْكَ أَنَبْنَا وَإِلَيْكَ الْمَصِيرُ

There is for you an excellent example (to follow) in Ibrahim and those with him, when they said to their people: “We are clear of you and of whatever you worship besides Allah: we have rejected you, and there has arisen, between us and you, enmity and hatred forever, unless you believe in Allah and Him alone”: but not when Ibrahim said to his father: “I will pray for forgiveness for you, though I have no power (to get) aught on your behalf from Allah.” (They prayed): “Our Lord! In You do we trust, and to You do we turn in repentance: to You is (our) final Goal {al Mumtahanah 60: 3-4}.

That is, Muslim women, and men for that matter, need to remember that all these precedents are only examples. Contemporary self-identified Muslim women who are rethinking Islam from within the Qur'anic framework may ask: What, then, do the examples of 'A'ishah bint Abi Bakr and Amina Wadud affirm? How do we interpret their struggle to re-establish woman's khilafa, and particularly Wadud's leading the struggle to re-establish imama for woman in the contexts of time and place? To answer these questions, I first present Qur'anic evidence to affirm the actions of 'A'ishah and Amina as authoritative by the mere fact that they were/are working within the Qur'anic framework of khilafa and imama. I, then, discuss the reason for using these two leading women as examples. Since I have elaborately discussed khilafa as the first condition for accepting Islam and establishing justice, as the basic operating principle in Muslim affairs (in Barazangi 1996), and as the

first representation of female agency (in Barazangi 2004a), I will only present here the verses that establish this agency, not merely to establish political and/or spiritual leadership:

{30} وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ

Behold, your Lord said to the angels: "I will create a vicegerent on earth." They said: "Will You place therein one who will make mischief therein and shed blood? While we do celebrate Your praise and glorify Your holy (name)?" He said: "I know what you know not."

{35} وَقُلْنَا يَا آدَمُ اسْكُنْ أَنْتَ وَزَوْجُكَ الْجَنَّةَ وَكُلَا مِنْهَا رَغَدًا حَيْثُ شِئْتُمَا وَلَا تَقْرَبَا هَذِهِ الشَّجَرَةَ فَتَكُونَا مِنَ الظَّالِمِينَ

We said: "O adam [the primordial human race]! Dwell you and your partner in the Garden; and eat of the bountiful things therein as (where and when) you will; but approach not this tree, or you run into harm and transgression" {al Baqara 2: 30, 35}.

{71} وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

The Believers, men and women, are allies of one another: they enjoin what is just and righteous, and forbid what is evil: they observe regular prayers, practice regular wealth tax, and obey Allah and His Messenger. Allah will have His Mercy upon them: for Allah is Exalted in power, Wise {al Tawba 9: 71}.

By discussing 'A'ishah and Amina Wadud's struggles to re-establish khilafa and imama for women, I hope that I have begun to establish a framework for rereading the Hadith and a procedure for rethinking the sunnah. By elaborating on Wadud's example in leading the co-ed congregational prayer, I am merely facilitating this framework and its procedure. Otherwise, how do we expect the Muslim woman, collectively and individually, to identify with Islam's teachings and to act within its parameters, and to negotiate human knowledge—be it that of a local Mufti's injunction or a human rights advocate's recommendation—while neither Muslim societies nor human rights advocates recognizing her self-identity as an autonomous spiritual and intellectual entity? I argue that accessing Islamic higher learning (meaning 'deeper knowledge of the Islamic primary source, the Qur'an,' not 'higher Islamic education') is the means by which the Muslim woman who self-identifies with Islam is recognized as a trustee. Relying solely on others' interpretations to guide her spiritual and intellectual needs is by itself evidence that the Muslim woman's right to understand, to consciously choose and to actively act on her choice of Islam is being compromised:

{29} وَقُلِ الْحَقُّ مِنْ رَبِّكُمْ فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفُرْ

Say, "The Truth is from your God: Let him/her who will, believe, and let him/her who will, reject (it) ..." {al Kahf 18: 29}.

Muslim woman's deeper knowledge of the Islamic primary source is significant to defining her relationship to God and to others. As significant is Muslim woman's understanding of human rights documents within the Islamic worldview, based on pedagogical (the art of learning and teaching) and ethical reading of the Qur'an. Yet, without rereading Hadith and rethinking the sunnah, the Muslim woman may not sustain her inherent rights to khilafah and imamah. When I addressed Muslim woman's Islamic higher learning as a human right earlier (Barazangi 1997: 44–5), I derived the rationale behind the demand for woman's educational rights from the Islamic worldview. The methodologies of the discipline of education and the strategies to implement the platform for action—that define the parameters for the Muslim woman's human rights—are grounded in that worldview. Examining her role as a human entity in the Qur'an does not merely concern the Muslim woman's "free choice"; it concerns her ability to maintain the pedagogical dynamics of Islam to effect a sustainable change in history. Self-realization of the Muslim woman can only effect a sustainable change in history when that self-realization unfolds the meaning of trusteeship. The Qur'anic intention of trusteeship or vicegerency {2: 30} eliminates the individual trusteeship by proxy. One of the Qur'anic intentions in entrusting human beings with individual rights and responsibilities toward themselves, each other, and the universe is to bring a balance between the sexes. The interpretations of these rights and responsibilities, therefore, need to stem from efforts to exact the balance between polarized perspectives that have dominated, for instance, the fields of Muslim women's studies and of human rights activism.

### Amina Wadud Leading the Co-ed Congregational Prayer

In the Introduction of this book, I summarized the event where Wadud led a co-ed congregational prayer and the relevant reports, as well a summary of Jamal al Banna's (2005b) discussion. Now, I will present the detail of al Banna's assessment of the event because it is the most comprehensive treatment of the subject that I am aware of, with the exception of Wadud's (2006: 158–86) own account.

In the first part of his book, al Banna presents most of what has been said after the event. In the second part he presents the Salafis' (those who follow their predecessors) views concerning *Imamat al mar'ah al rijaal* (woman led prayer of co-ed congregation). He then begins the third part by asserting that there is no contradiction between *naql* (revelation) and *'aql* (rational discourse). He attributes the evidence—that *Imamat al mar'ah al rijaal* is not prohibited—to the fact that the Qur'an does not mention it, similar to the fact that the Qur'an does not mention

details for conducting prayers in general. He also emphasizes the equality of men and women in *shaa'a'ir* (rituals) (47–50), as evidenced in the following verses:

{195} فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَىٰ بَعْضُكُمْ مِنْ بَعْضٍ فَالَّذِينَ هَاجَرُوا وَأُخْرِجُوا مِنْ دِيَارِهِمْ وَأُودُوا فِي سَبِيلِي وَقَاتَلُوا وَقُتِلُوا لَأُكَفِّرَنَّ عَنْهُمْ سَيِّئَاتِهِمْ وَلَأُدْخِلَنَّهُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ ثَوَابًا مِنْ عِنْدِ اللَّهِ وَاللَّهُ عِنْدَهُ حُسْنُ الثَّوَابِ

And their God hath accepted of them, and answered them: "Never will I let to be lost the work of any of you, be the male or female: you are members, one of another; those who have left their homes, and were driven out there from, and suffered harm in My Cause, and fought and were slain, verily, I will blot out from them their iniquities, and admit them into gardens with rivers flowing beneath—a reward from the Presence of Allah—and from His Presence is the best of rewards" {Al 'Imran 3: 195};

{32} وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى الْبَعْضِ لِلرِّجَالِ نَصِيبٌ مِمَّا كَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا كَسَبْنَ وَاسْأَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا

And in no wise covet those things in which Allah has bestowed His gifts more freely on some of you than on others: to men is allotted what they earn, and to women what they earn: but ask Allah of His bounty. For Allah has full knowledge of all things;

{124} وَمَنْ يَعْمَلْ مِنَ الصَّالِحَاتِ مِنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ وَلَا يظَلْمُونَ نَفْسًا

If any do deeds of righteousness—be they male or female—and have faith, they will enter Heaven, and not the least injustice will be done to them {al Nisa` 4: 32, 124};

{72} وَعَدَّ اللَّهُ الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا وَمَسَاكِينٍ طَيِّبَةً فِي جَنَّاتِ عَدْنٍ وَرِضْوَانٍ مِنَ اللَّهِ أَكْبَرَ ذَلِكَ هُوَ الْفَوْزُ الْعَظِيمُ

Allah has promised to believers—men and women—gardens under which rivers flow, to dwell therein, and beautiful dwellings in gardens of everlasting bliss. But the greatest bliss is the Good Pleasure of Allah: that is the supreme felicity {al Tawba 9: 72};

{35} إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّامِتِينَ وَالصَّامِتَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا

For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women



who guard their chastity, and for men and women who engage much in Allah's praise, for them has Allah prepared forgiveness and great reward {al Ahzab 33: 35};

{12} يَوْمَ تَرَى الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ يَسْعَى نُورُهُمْ بَيْنَ أَيْدِيهِمْ وَبِأَيْمَانِهِمْ يَبْتَغُونَ الْجَنَّةَ الَّتِي جَاءَتْ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ذَلِكَ هُوَ الْفَوْزُ الْعَظِيمُ

One Day shall you see the believing men and the believing women; how their Light runs forward before them and by their right hands: (their greeting will be): "Good news for you this Day! Gardens beneath which flow rivers! to dwell therein for aye! This is indeed the highest Achievement!" {al Hadid 57: 12};

{5} لِيُدْخِلَ الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا وَيُكَفِّرُ عَنْهُمْ سَيِّئَاتِهِمْ وَكَانَ ذَلِكَ عِنْدَ اللَّهِ فَوْزًا عَظِيمًا

That He may admit the men and women who believe, to gardens beneath which rivers flow, to dwell therein for aye, and remove their ills from them; and that is—in the sight of Allah—the highest achievement [for human] {al Fath 48: 5}.

J. al Banna (2005b: 50–51) elaborates that the general opposition to a woman-led prayer is falsely based on the verse of Qawama. That is, because *qawamat al rajul* (the added responsibility of the man in the context of divorce in {verse 4: 34}) is limited to economic responsibility. Since I have discussed this term and related issues in chapter three of my earlier book (Barazangi 2004b), and since it is not the subject of discussion now, I will not present this argument now. I will only emphasize that the general meaning of "qawama" is to stand up for one's responsibility. J. al Banna (2005b: 54) also presents as extra evidence the text of Hadith that is attributed to Um Waraqa in which she states that the "Prophet used to visit her in her home and that he appointed *mua`dhdhen* (a caller to the prayer) and ordered her [Um Waraqa] to lead her people in prayer, wherein men were among her people," according to Bukhari (*Sahih al Bukhari*: Kitab al `Adhan, 10, Bab 1 Bida' al `Adhan'); and Muslim, (*Sahih Muslim*: Kitab al Salat, Bab 1 'Bida' al 'Adhan'). Finally, al Banna explains that the *priority to lead the prayer is for whoever knows the Qur'an well*, a condition that the Prophet also asserted (emphasis added).

J. al Banna (2005b: 71) emphasizes that the issue in his opinion is not merely the imama in prayer. *Rather woman's regaining her rights as equal in religious leadership is the most important issue.* I expound here on al Banna's latter rationale and the Qur'anic evidence because I strongly fear that if we do not clarify the issue of "imama," as I have attempted to do in the Introduction of this book and elsewhere (Barazangi 2010b, 2004a) along the issue of "khimar," it will be next to impossible to change attitudes concerning women and gender. In addition to changing attitudes towards the concept of khilafa, a change in understanding khimar and imama is, in my opinion, the first step toward changing the process in rethinking the theology of sunnah—from that of *taqlid* (imitating precedent acts)

to invoking the Qur'anic framework. *In other words, we need to assert that there is no difference in religious responsibility and its practice between the sexes just as the creation of the human pair (males and females) is of a single entity*, as the Qur'anic quotations above indicate, and as I summarize below:

[T]he intention of interpreting the Qur'an is not only to change the social structure, but mainly to change attitudes and perceptions, the process of which takes a long time. Qur'an interpretation process is not an "Islamic feminist" movement because feminism is a creative theory intended to regain women's rights in society by mainly analyzing the social construct of gender as the unit of analysis. Islam, on the other hand, is a worldview that propagates a single pair, the human pair "It is God who created you from a single entity, and made her mate of like nature, in order that he might dwell with her [in tranquility]" {al 'A'raf, 7:189}, with equal rights and responsibilities—spiritually {al Ahzab 33: 35}, intellectually {al 'Alaq 96: 1–6}, and socially {al 'Alaq 96: 15–19}, in trusteeship {al Baqara 2: 30} and leadership {al 'Isra 17: 7} "And there will come forth every entity: with each will be an angel to drive and an angel to bear witness" {Qaaf 50: 21}.

The unit of analysis for Qur'an interpretation is *taqwa*, which is a conscientious equilibrium by building the capacity of each individual to balance all these roles within the guidelines of the Qur'an, the only divine source of Islam (Barazangi 2010b: 1).

### **Theories of Hadith as a Science vs. Theology of Sunnah as an Authentic Religious Source**

Since Qur'anic authority is primarily a moral guide, neither legal as understood in the Western concept of law nor dogmatic as understood in the general meaning of religion, the legal and theological rules of its teachings apply once the individual has made the moral choice to accept its core principle of Tawhid and its concomitant principles of 'Adl, Khilafa, Imama, and Taqwa. Therefore, after the death of the Prophet and in the absence of the Prophetic authority (as well as the authority of his companions and their companions) of how to proceed in rulings concerning new issues, Muslims after the first century AH began using the reported Prophetic tradition (as passed in oral narrative from one generation to the next) mainly as the source of strategies to apply the Qur'an. Not realizing that they should have generated their own strategies in time and place, they selectively used these narratives, thinking of them as the Prophet's precedent. Interpreters and jurists sometimes did not make the extra effort to corroborate those narratives (what later was documented by different authors as Hadith) with the Qur'an, often producing unjust rules against women. Therefore, the need to reread Hadith and rethink the sunnah from the perspective of a woman who self-identifies with Islam, and is being identified with the Qur'an, is not needed only for women's and

gender issues, nor is it exclusive for women. By synthesizing some of the rules that Muslim interpreters and jurists generated while using the text (content) of a set of ahaadith as precedent, I also extrapolate (below and in the rest of this book) some indicators to explain why we cannot use these jurists' rules (mistakenly known as "shari'a") in the affairs of contemporary Muslim societies as follows:

1. *Early Muslim community was governed by one male (khalifa, or caliph)* who handed it down to companions or it was made hereditary in his family/tribe. Hadith documentation, authenticity, and authority are used to justify these different political goals, resulting in confusing women's narrative (of Hadith) with their legal validity as witnesses, and consequently as leaders.

Sayeed (2009) states that ahaadith are disputed among the different sects that are led by men who rely on the narrative and memory of men after two centuries, even when the narrative originated with a woman, such as the prominent wives of Prophet Muhammad, 'A'ishah bint Abi Bakr [d. ca 58/678] and Umm Salama [d. ca 59/679], as well as to more obscure women such as Um Qays bint Mihsan,<sup>16</sup> whose traditions occur in all the major Sunni canonical collections. Sayeed adds (2009: 123):

In view of this evidence, it seems defensible to assume that jurists always welcomed and incorporated women's narrations on par with men's. Yet, such extrapolations are unwarranted and obfuscate our understanding of a host of related issues in early Islam. For example, recent studies have noted the dramatic decline of numbers of female *hadith* transmitters from the late second [AH]/eighth [AD] to the early fourth/tenth centuries. Such historical patterns underscore the importance of differentiating between legal authority accorded to women's *hadith* and the historical incidence of their participation. In this vein, reports about gender-based disparagement of women's traditions are indispensable to our understanding and of the role of gender in legal epistemology.

2. *Sunnah as theological interpretation to justify jurisprudence of fuqaha.* Fuqaha confused the foundational beliefs with the norms of social interaction and from them constructed an absolute static "shari'a" as a binding law for all people at all times and places. The sad part is that they misused Hadith, intentionally or not, to that end. A good example lies in using Ibn Bakara's narrative about woman leadership, knowing him as not a credible source. Mernissi (1991a) deconstructed his narrative. Also, recently, Hilal and Abdallah (2011) deconstruct Bakara's evidence as well as other evidence that claim that women's leadership in general or the hiring of women as judges is forbidden or only permissible under certain conditions.

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16 Um Qays bint Mihsan is referenced in Kahhalah, (1959, V. 4: 224–2) as having narrated 24 hadiths. Kahhalah states, according to al Tabaqat of Ibn Sa'd or al Tahdhib of Ibn Hajar al'Asqalani, and others, Muslim and Bukhari only agreed on two of them [Um Qays's narratives]!

## Prophet Muhammad as an Agent of Change

The Prophet as an agent of change was willing to take risks by challenging the common-sense knowledge of the time. Yet the majority of today's Muslims are not willing to abandon the centuries-old representations and/or interpretations of Islam that are misleading and unjust, and replace them with the egalitarian intention of Islam as outlined in the only divine source, the Qur'an.

It is worth noting here that, according to al Suyuti (1854: 104), Muslims[incorrectly] often use the word "*wahi*" [revelation] to refer to other teachings that are not necessarily Qur'anic. Let us also remember that the Qur'an was the only written source of Islam for almost 100 years after the death of Prophet Muhammad, and before his biographies and his traditions were collected. In addition, some of these reported traditions on the authority of the Prophet were abused by male interpreters when they were used as the basis for interpreting modesty, for example. Being an essential source of the Prophet's strategies to interpret the Qur'an as they may be, these traditions cannot be used as a source instead of the Qur'an. That is, by using two hadiths (by 'A'isha, see the Introduction of this book) to emphasize the extreme seclusion of women behind the head-cover, erroneously called "hijab," Muslims ignored the basic teaching of the Qur'an about modesty that does not necessarily require a head-cover, in order to strip women of their moral right and responsibility to be involved in Muslim public affairs, and of their moral and legal rights to be an autonomous witness, a trustee, a leader, and an authority to interpret the Qur'an<sup>17</sup> The head-cover was practiced before Islam and continued to be practiced by Muslims for cultural or environmental reasons. Specifically and as I explained in the Introduction, verse 31 of Chapter 24 concerning the "*khimar*," incorrectly translated into English and other Western languages as "veil," talks about covering women's bosoms (as one of the *jujub* or body cleavages) and is intended to guard the lineage and protect inheritance (Barazangi 2004b). Thus, by secluding women from public affairs, Muslims also deprived women of their inalienable rights to inheritance, leadership, and, more importantly, participation in the development of Islamic thought.

Moreover, as Muslim jurists made the "sunnah" of the Prophet the second authoritative source of legislation, they tended to ignore the Qur'anic principles and mandates, particularly that of justice and the Qur'anic emphasis of individual responsibility (Jamal al Banna 2004a: 101). In a sense, as Shahrur (2009: 71) also emphasizes: "[T]hey [Muslims] regarded *the book* [the Qur'an] as incomplete and in need of the elaborations and specifications of the sunna[h], implying that a divine text needs to be completed and confirmed by a human source—which is a truly blasphemous thought!" I must add here that most Orientalists used such Muslim views of the Qur'an (as if it was incomplete and in need of sunnah) as representing Islam (see further discussion in Chapter 5)!

17 See also Shahrur's discussion of "Rajulat al-ra'y" (2009: 221, 274–5).

Since Qur'anic authority is primarily a moral guide, it also requires individual free will to accept its worldview. Free will is prerequisite to understanding the Qur'an, and to have an intimate, direct relation to its content in order to be fully practiced. Similarly, witnessing the Qur'an by each individual is a prerequisite to the individual's autonomous moral responsibility. However, when jurists questioned women's legal standing as a witness, or required a second female testimony (as they generalized from the specific conditions of witnessing a loan in the Qur'anic verse {al Baqara 2: 282} stating that the value of a woman's witnessing is ½ of that of the man, to be discussed further in Chapter 2), they implied something other than the Qur'an. Therefore, Muslim women need to reread Hadith and rethink sunnah because Hadith is still being used as a source for applying the Qur'an, even when the contents of some narratives are not corroborated by the Qur'an. This is particularly troubling when those ahaadith talk about the woman, beginning with her creation of Adam's "twisted" rib (Chapter 2) and her hijab with showing only one eye, and ending with those ahaadith that talk about marriage, and dissolution of marriage (Chapter 3), and the confusion with the rules for having contractual sexual interaction with mulk al yameen or slaves (Chapter 4), and so on. Jamal al Banna (2004a: 101-4) explains how these jurists' rulings often bring unjust edicts against women, and why it is simple to ignore these narratives, even when quoted in the Sahihayn (Bukhari's and Muslim's) [or any of the other seven referenced books of Hadith, such as al Turmudhi, al Nisa'i, Ibn Daoud, Ibn Maja, Ahmed, Malek, and al Daramy], without having moral quorum since they contradict the Qur'an.

For example, how could we accept the following narratives reported in *Sunan al Turmudhi* as being said by the Prophet?

حدثنا أحمد بن منيع حدثنا هشيم أخبرنا يونس : ... قال سمعت أبا ذر يقول : قال رسول الله صلى الله عليه وسلم إذا صلى الرجل وليس بين يديه كآخرة الرجل أو كواسطة الرجل قطع صلاته الكلب الأسود والمرأة والحمار ... قال أبو عيسى حديث أبي ذر حديث حسن صحيح

وقد ذهب بعض أهل العلم إليه قالوا يقطع الصلاة الحمار والمرأة والكلب الأسود قال أحمد الذي لا أشك فيه أن الكلب الأسود يقطع الصلاة وفي نفسي من الحمار والمرأة شيء قال إسحق لا يقطعها شيء إلا الكلب الأسود

(<http://al-islam.com.192&BookID=26&TOCID=259,338>).

The implication is that if a woman, a donkey, or a dog passed in front of a praying Muslim man, his prayer will be disrupted and, hence, will not be accepted!

حدثنا أحمد بن منيع حدثنا إسماعيل بن إبراهيم حدثنا أيوب عن أبي رجاء العطاردي قال سمعت ابن عباس يقول قال رسول الله صلى الله عليه وسلم اطلعت في الجنة فرأيت أكثر أهلها الفقراء واطلعت في النار فرأيت أكثر أهلها النساء

(<http://al-islam.com/Page.aspx?pageid=192&BookID=26&TOCID=1653>).

This narrative implies that the Prophet was given a glance at the Heavens, and found most of its residents were poor, and a glance at Hell and found most of its residents were women!

These reported narratives clearly contradict the basic teaching of the Qur'an—that men and women are treated similarly in reward and punishment for the same behavior.

### **In Summary**

I close by asserting that the implications of this new book and its Chapter 1 lie in presenting an ethical reading of Hadith and strategizing for an egalitarian rethinking of sunnah. As I suggested in my 1997 essay, the implications of a pedagogical and ethical paradigm in understanding Islam is to: (1) rethink and to act within the balanced perspective of Islam and its primary source, the Qur'an, away from the many layers of "taqlid" (following precedence) and from Western rationalization of Islam; (2) facilitate for Muslim women the strategies to realize their identity and to re-learn Islam in its clear, transforming meanings; and (3) to interpret human-rights activists' concerns within the Qur'anic concerns for a just human society, where justice means balance and fair play in the order of things, and a sustainable change of woman's role from that of a subservient to an agent of change.

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## Chapter 2

# Corroborating Hadith by the Qur'an: Self-Identity, Testimony, and Witnessing

### Introduction

As discussed in the Introduction and in Chapter 1 of this book, there is a crisis in the general interpretation and representation of Islam leading Muslim women, like the majority of Muslims, to fail to embrace the Islamic principle of *Tawhid* in practice. The concept of tawhid reminds Muslims of their humanness, that is, their ability to reason; the Qur'an provides the pedagogical and ethical guidance for the exercise of this ability. To alleviate this general problem of interpretation and representation, each woman needs to self-identify with Islam (Barazangi 1991a, 2000). The Muslim woman must realize three premises: (1) a woman's primary identity is with Islam as a worldview; (2) as an individual Muslim, she becomes legally bound by the guidance of Islam only after she ethically and consciously chooses its message as her worldview in its totality; (3) finally, she is not necessarily bound by most of the secondary sources beyond the Qur'an nor by the rules derived by jurors and interpreters throughout the centuries:

{52} وَكَذَلِكَ أَوْحَيْنَا إِلَيْكَ رُوحًا مِّنْ أَمْرِنَا مَا كُنْتَ تَدْرِي مَا الْكِتَابُ وَلَا الْإِيمَانُ وَلَكِن جَعَلْنَاهُ نُورًا نَّهْدِي بِهِ  
مَنْ نَّشَاءُ مِنْ عِبَادِنَا وَإِنَّكَ لَتَهْدِي إِلَى صِرَاطٍ مُسْتَقِيمٍ

And thus have We, by our command, sent inspiration to you: you knew not (before) what revelation was, and what faith was: but We have made the (Qur'an) a light, wherewith We guide such of our created people as We will; and verily you do guide to the straight path {al Shura 42: 52}.

Because the core message of Islam concerning women was rarely practiced throughout the past 14 centuries of Muslim history, Muslim women scholar-activists who self-identify with Islam have been taking it upon themselves to reinterpret the Qur'an to change attitudes about themselves, gender, and the representation of Islam (for example, Barazangi 1991a, 1996, 2000, 2004a, 2004b, 2009; M. al Faruqi 2000; Harris 2000; Hassan 1995, 2000; al Hibri 2000; Kahf 2000; McCloud 2000; Quraishi 2000; Simmons 2000; Wadud 1992, 1999, 2000; Webb 2000, and others). Muslim women's reinterpretation of the Qur'an was an urgent move in response to the crisis in understanding Islam, beginning on the university campuses in North America and other Western countries and reaching as far as the caves of the Taliban and other extremists. However, as Muslims in



general, and Muslim women in particular, often reference secondary sources to the Qur'an, including Prophet Muhammad reported traditions, they lose track of the original message of Islam and its premises as laid down in the Qur'an.

For example, the basic concept that is often used, though inaccurate, is the common English translation of "Islam" as "surrender" or "submission." The word "Islam" as *Deen* in the Qur'an,

{19} إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ وَمَا اخْتَلَفَ الَّذِينَ أُوتُوا الْكِتَابَ إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَغْيًا بَيْنَهُمْ ...

The belief before Allah is Islam: the people of the Book did not dissent therefrom after knowledge had come to them, except through envy of each other ... {Al 'Imran 3: 19},

is more accurately understood as a worldview of tawhid; being at peace with oneself, with society, and with the Guardian-God, the only Deity (see Chapter 1). Islam, being a religio-moral rational worldview, is neither a law nor a dogma of submission, because submission means a rejection of the responsibility for the awareness and understanding the deep meanings of the Qur'an required by verses {14–19 of *surah al 'Alaq* 96} to fully practice Islam. There are numerous implications of the lack of such awareness, and the consequential exclusion of Muslim women in developing and shaping Islamic thought (Barazangi 2009, 2008–09). For my purpose here, it is as problematic women's lack of self-identity with the Qur'an, the self-identity that is described by M. al Faruqi (2000: 73) as the primary identity, and women's lack of awareness that the Qur'an does not prescribe one timeless and unchanged social structure for men and women, as discussed by Wadud (1999).

Thus, in this chapter, I will reiterate with modifications and some changes that I have discussed elsewhere (Barazangi 2004b, 2013). I propose that a Muslim woman's (and a man for that matter) awareness and return to the concept of tawhid could alleviate the current crisis in understanding Islam, making way for an egalitarian approach wherein the Muslim woman herself may retrieve her place in history-making, instead of being merely the object of history. By investigating gender dissent within the basic order of Islam as a worldview of tawhid, I, first, consider central the concept of woman's self-identity with Islam being her primary identity, and her identification with the Qur'an, as her primary source. Second, my focus on the crisis in understanding Islam also explores the foundation of contemporary religious revivalism, not only among Muslims, but also among other religious groups that is affecting their perception of Islam. Third, I bring into the discussion *taqwa* (individual equilibrium) as the condition for equilibrated Muslim society. *Taqwa* complements the principles of Tawhid and *'Adl* that I explained in the Introduction, and the principles of Khilafa and Imama that I explained in Chapter 1. Muslims often limit the translation and meaning of *taqwa* as "piety," even though it occurs 52 times in the Qur'an in different contexts. Rather, within the ethical and pedagogical framework of the Qur'an, broadly *taqwa* means the ability to balance *ijtihad* (independent inquiry) and *ijma'*

(community consensus). Taqwa is also the unit of analysis in this work, and the main criterion that differentiates one individual from the other:

{13} يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقَاتُمْ  
إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

O People! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other (not that you may despise each other). Verily the most honored of you in the sight of Allah is (s/he who is) the most righteous (equilibrated) of you. And Allah has full Knowledge and is well-acquainted (with all things) {al Hujurat 49: 13}.

My hope in making the self-identity paradigm central to alleviating the problem of interpreting and representing Islam is to encourage the younger generation of Muslim women scholar-activists who self-identify with Islam to maintain a leadership initiative, especially in the on-going revolutionary movements in some of the Muslim-majority Arab societies. To maintain a leadership initiative beyond the initial protest stage, Muslim and Arab women must change negative attitudes and realities concerning gender, and reaffirm the necessity for their participation in developing Islamic thought (Barazangi 2010a), before others shape it for them. A good proof that this is happening is in the nature of the first elected governing bodies in Tunisia and Egypt (NPR 2012 a, 2012b). Failing (2011–12: xv) reminds us that “the protest, the dissent, the lone figure standing up to legal and political power has been a feature of religious narratives and theological controversy since the first recordings of sacred texts.” M. al Faruqi (2000: 72) also suggests that, in addition to being controversial, the conclusions of such narratives and theologies concerning gender by Muslims or non-Muslims have not been sustainable because they have defined the problem from the authors’ own perspectives. She adds: “[F] or Muslim women, the relativity of these perspectives is itself the problem, for by necessity; the adopted lens will provide a particular reading of the problems at hand. More importantly, the proposed solutions themselves are going to be determined by the way the problem is identified and defined.”

Thus, I focus on the following question. How can self-identified Muslim women scholar-activists facilitate a change in perceptions and attitudes about the Islamic belief system from the confused and confusing representations of “shari’a law,” or “Islamic law,” and “Islamic feminism”? I will rely in my investigation mainly on the primary and only divine source of the Islamic message—the Qur’an—within its own ethical and pedagogical framework:

{8} يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْبُدُوا اللَّهَ  
أَقْرَبَ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

O you who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice.

Be just: that is next to Taqwa: and be conscientious of Allah. For Allah is well-acquainted with all that you do {al Ma`ida 5: 8}.

*By synthesizing the way this message has been projected through reports attributed to its messenger, Prophet Muhammad, as his traditions, I expose the core problem of the Muslim's representation of Islam, specifically in the personal status codes.* These status codes, practiced in most Muslim-majority societies and also reflected in the behavior of some Muslim communities elsewhere, as well as being accepted by some Western legislators (*The Telegraph* 2014), affect the realities of Muslim women's personal affairs, including the interpretation of *Shahadah* (testimony and witnessing) of the message spiritually and in real life.

With the exception of few cases and unlike other political and economic laws in Muslim societies, Muslim personal status codes have not changed for centuries, and their practice have been most unjust to women. These codes also relate to testimony and witnessing (to be discussed below in this chapter), knowledge and autonomous authority, marriage and dissolution of marriage, sexuality and slavery, inheritance and child custody, domestic violence and legal authority (to be discussed in the following chapters).

I begin this chapter by redefining the problem from within the ethical framework of the Qur'an, outlining the context in which I am investigating it, and suggesting a solution. I offer a solution to the problem (the crisis in representing Islam), first by explaining the concept of self-identity and its relation to "Islamic feminism." Then, by synthesizing the different meanings of "*shaahed* (a witness, or a person who testifies)" in the Qur'an, in the reported Prophetic traditions, and in some Muslim male *tafaaseer* (exegesis) and *fiqh* (jurisprudence) as applied mostly in what is known as *al 'Ahwal al Shakhsiyah* (Muslim personal status codes).

The goal is to expose the suffocating attitudes and practices of interpretation and representation of Islam, especially in Islamic studies (M. al Faruqi 1998), and particularly in the representations of Muslim women, some of which are also discussed by Kahf (1999) and others. My solution complements the pedagogical model for reinterpreting the Qur'an (Barazangi 2004b) with a model for rereading the Hadith and rethinking the sunnah to achieve a transformative scholarship-activism and a sustainable modification and/or change to the Muslim's attitudes and to the personal status codes.

### **The Problem, the Context, and Suggested Solution**

I argue that the general problem is not with the primary text of Islam, nor is it limited to dictators and extremist groups, but with the representation of Islam in general. Therefore, I question the views that confuse ideals of Islam with its interpretations and practices as well as the premises that drive them. Jawdat Sa'id (2012) stated that our leaders and scholars have written most of their jurisprudence and interpretations of Islamic beliefs under the "shadow of the sword." This means

that those scholars were not necessarily writing their interpretations free from the desire to appease the rulers of the time.

### 1. The Problem

The main problem of interpretation and representation of Islam lies in two common confusions: confusing Qur`anic *Shari`ah* (with a capital “S”) with “Islamic law” or “Islamic sharia,” and confusing Muslim woman’s self-identity with “Islamic feminism.” I will present an example of such confusions in the context of the centuries-old moral, sociological, legal, and cultural phenomena—the issue of testimony and witnessing. To explain where the problem lies and why investigating the issue of testimony and witnessing is essential for woman’s self-identification, I place the above two confusions within the ethical framework of surah *Qaaf* {chapter 50 of the Qur`an} and particularly {verse 21} that affirms the “drive” as the intention of each individual as the *khalifa* (trustee) of *God*:

{21} وَجَاءَتْ كُلُّ نَفْسٍ مَعَهَا سَائِقٌ وَشَهِيدٌ

[A]nd there will come forth every soul: with each will have a drive and an agency to bear witness {Qaaf 50: 21}.

As the “witness,” the individual’s own action will lead toward fulfilling the *amana* (trust) through understanding and working with *sunan alkhalq* (the natural order of things, primarily the creation of the human pair from a single feminine *nafs* (soul, entity)) as set by the divine. According to J. al Banna (2004a: 60–61), the word “nafs” and its derivatives occur 260 times in the Qur`an, and in every occurrence some different aspect of it is presented. Hence, each individual’s active understanding and working with the natural order is essential to fulfilling the Qur`anic concept of “trust”—the responsible leadership—that only humans chose to undertake,

{72} إِنَّا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمَاوَاتِ وَالْأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْإِنْسَانُ  
إِنَّهُ كَانَ ظَلُومًا جَهُولًا

We did indeed offer the trust to the Heavens and the Earth and the mountains; but they refused to undertake it, being afraid thereof: but human undertook it; *human was indeed unjust and foolish* {al Ahzab 33: 72}.

The phrase “human was indeed unjust and foolish” represents the state of today’s Muslim male elites and leaders when they claim authority on the message of Islam, preventing the majority of individuals, particularly women, from intimately reading the Qur`an in order to develop and affirm the autonomous authority to testify on its meaning(s). These elite males also elevate interpretations to the level of the Qur`an by insisting on following past interpretations, despite

Qur`anic emphasis on each individual's responsibility to read and reflect in time and place:

{78} وَمِنْهُمْ أُمِّيُونَ لَا يَخْتَلِفُونَ إِلَّا أَمَانِيَّ وَإِنْ هُمْ إِلَّا يَخْتَلِفُونَ

And there are among them illiterates, who know not the Book, but (see therein their own) desires, and they do nothing but conjecture.

{79} فَوَيْلٌ لِلَّذِينَ يَكْتُمُونَ الْكِتَابَ بِأَيْدِيهِمْ ثُمَّ يَقُولُونَ هَذَا مِنْ عِنْدِ اللَّهِ لِيَسْتَوْرُوا بِهِ نَمَنَا قَلِيلًا فَوَيْلٌ لَهُمْ مِمَّا كَتَبَتْ أَيْدِيهِمْ وَوَيْلٌ لَهُمْ مِمَّا يَكْسِبُونَ

Then woe to those who write the Book with their own hands, and then say: "This is from Allah," to traffic with it for a miserable price! Woe to them for what their hands do write, and for the gain they make thereby {al Baqara 2: 78–9}.

The first set of verses revealed to Prophet Muhammad is {verses 1–5} in surah {al 'Alaq 96}, indicating that each individual is given the means to read (use his or her own reason) in order to understand the message of the Qur'an intuitively and intimately:

{1} اِقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ. {2} خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ. {3} اِقْرَأْ وَرَبُّكَ الْأَكْرَمُ. {4} الَّذِي عَلَّمَ بِالْقَلَمِ. {5} عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ

Read! In the name of your Guardian-God and Cherisher, Who created; [He] created human out of a clot of congealed blood. Read and your Guardian is Most Bountiful. Who taught (the use of) the pen. Taught human that which he knew not {al 'Alaq 96: 1–5}

However, the majority of Muslims instead set the Qur'an on a pedestal as an iconic symbol or for foolish myths:

{30} وَقَالَ الرَّسُولُ يَا رَبِّ إِنَّ قَوْمِي اتَّخَذُوا هَذَا الْقُرْآنَ مَهْجُورًا

Then the Messenger will say: "O my Guardian-God! Truly my people took this Qur'an for a forgotten symbol" {al Furqan 25: 30}.

The Qur'an gives each individual the choice, and, as detailed in Chapter 1 of this book, confirms that each individual is endowed with spiritual, intellectual, moral, social, political, and religious rights and responsibilities {al Ahzab 33: 35; Qaaf 50: 21; al 'Alaq 96: 1–5, 14–19} to refuse or to carry on its message.

Realizing the other side of human nature—namely the ability to transgress even in religiosity—however, the Qur'an warns:

{6} كَلَّا إِنَّ الْإِنْسَانَ لِرَبِّهِ لَكَنُفٍ

Nay, but human does transgress all bounds {al 'Alaqa, 96: 6}.

Yet, we still see this transgression in interpretation by some Muslim scholars, even in early exegeses, when they emphasize the agency of the angels over human reasoning despite the Qur'an's affirmation that only humans were given the power to know and to reason.

For example, the four most referenced exegeses of the Qur'an (Ibn Katheer [ca 1301–73] 1971, al Qurtubi [d. 1273] 1967, al Tabari [ca 838–923] 2003, and al Jalaleen [no date]) agree that “every soul” in {verse 21 of surah 50} indicates all humans, with no particularity among them. But, these same scholars vary as to who the witnessing agent might be—the self or the guardian angel. By relying on contradictory narratives attributed to some companions of the Prophet, Ibn Katheer, for instance, uses a narrative on the authority of Abi Hurayra (a well-known and often quoted narrator by Muslims, whose narratives are also critiqued by Mernissi (1991a)) as evidence. Perhaps unknowingly, Ibn Katheer contradicted the Qur'an when he deduced that the “driving agents” are the angels:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ السَّائِقُ الْمَلَكُ وَالشَّهِيدُ الْعَمَلُ وَكَذَا قَالَ الضَّحَّاكُ وَالسُّدِّيُّ وَقَالَ الْعَوْفِيُّ عَنْ  
إِبْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا السَّائِقُ مِنَ الْمَلَائِكَةِ وَالشَّهِيدُ الْإِنْسَانُ نَفْسَهُ يَشْهَدُ عَلَى نَفْسِهِ

It was narrated by Abi Hurayra that the drive is the angel, and the witness is the individual's action, (my translation from: Mawqi' al Islam: Qur'an—Tafseer Ibn Katheer = 519).

Ibn Katheer seems to have neglected that the Qur'an reminds each individual that he or she will be accountable for the responsibilities that they were entrusted as witnesses {96: 1–5}, as well as for the rights to testimonial leadership in justice {50: 21}.

As I stated in Chapter 1 of this book, the majority of Muslim societies have not awakened to the reality that human development is a process that is based on balancing a belief system with its interpretation. *But it is also a fact that non-Muslims who think they are helping Muslim women do not realize that they can exacerbate the problem by separating knowledge from the value system.* This separation is evident, for example, in the argument that Muslim women may assert their rights with the strategy of changing current laws through legislation without analyzing the values, the premises, and the attitudes on which these laws were based, or the “religious” and non-religious sources that were used to generate such laws (further discussion to follow in the Conclusions).

Eleanor Kilroy presents a fair analysis of the impact of the “Plan of Action” 1997 statement concerning the Network of Women Living Under Muslim Laws (2010: 540–543). Such a plan of action results, unknowingly, in more misrepresentations of Islam, confusing Qur'anic Shari'ah with what is known as “Islamic sharia” or “Islamic law,” and often more conflicts. Given the discrepancies in worldviews between those who are advocating political solutions—mainly the non-Muslims

who advocate a sweeping move to civil laws, on the one hand—and the majority of the population in Muslim societies—such as those taking place in Afghanistan (A. Ahmed, 2013)—on the other hand, one needs further steps to secure a balance in action.

We see an example of attempting such balance in a recent trend when, during a panel organized for Global Campaign to Stop Stoning, Wazhma Frogh, Co-founder and Executive Director of Research Institute for Women Peace and Security—Afghanistan, advocated “making women strong by improving their religious knowledge” (Network of Women Living Under Muslim Laws 2013).

## *2. The Context*

It is fair to state that as long as Islam is studied with the tools of orientalism, that is, treating Islam as an object of study, stamped with an otherness (E. Said 1979), the West will never be able to understand Islam, nor help Muslim women. The West does not see these women as citizens in their own right, or realize that such women and Muslims in general are also an integral element in the New West (incorporating the non-Anglo-Saxon and non-Judeo-Christian population). The assumption that Islam is a foreign religion that needs to be interpreted by others telling Muslims how to understand their own belief system (such as the Jewish male professor of Islamic studies at Cornell University who conducts a Qur'an study circle with Muslim students) further marginalizes Muslim women and gives rise to misunderstandings about their concerns. That is, because such acts mainly rely in general on patriarchal views of religion. These assumptions, though propagated by orientalists and supported by the colonials, are influenced by the Jewish view of the Talmud as a law (Barazangi 2004a, 2004b), and may have contributed to the confusion between Qur'anic Shari'ah and what is wrongly called “Islamic law” or “Islamic shari'a” (with a small “s”). These assumptions are also influenced by the Christian missionary emphasis on elite male leadership (Barazangi 2008, 2008–09). The present Muslim legal systems that apply Muslim personal status codes consist predominantly of centuries-old interpretations and customary practices by Muslim males that were made into law with the support of the colonials to subdue the conservative Muslim male leaders and to appease the leaders of minorities (Chitnis and Wright 2007). Shari'ah (with a capital “S”) is the path or the guidance of the Qur'an in its totality {al Jathyah 45:18}, and is not the collection of rules derived by jurors or interpreters that were solidified by Western colonials under the term “Islamic law” (Barazangi 1997, 2004b, 2008–09). As stated above, we need to examine critically the commonly used meanings of Islam, as well as of these terms. Asifa Quraishi (2011: 4) suggests that in order to defend Muslim women's rights, we should distinguish God's Shari'ah from fiqh—the man-made sharia (with a small “s”).

Given the on-going messy historical and political dynamics in Muslim societies and the confusions about Islam, Abu-Lughod's (2002) question: “Do Muslim Women Really Need Saving?” should be extended to the question, “[h]

ave the Afghan war or the multitudes of NGOs saved the Afghan women from the Taliban's and other extremists' interpretations?" The answer is: "No." This is evident in the Revolutionary Afghanistan Women Association (2010) statement that Afghan women are mourning for the gang-rape of many women, for being flogged, for being auctioned in open market, and for their young daughters who put an end to their miserable lives by their own hands.

We saw more harmful contemporary results of such messy dynamics, confusions and influence when the United States government interfered in drafting the Iraqi constitution in 2005, allowing extremist Muslim clerics to slip in specific "Marji'iyah Islamiya (Muslim rulings)" as one of the bases for developing any law in Iraq. Despite Paul Bremer's vow during the Interim Period of the Coalition Provisional Authority in Iraq to veto any constitution that incorporated Islamic law, claiming that he "feared that women's rights would be 'rolled back in the interim constitution' ... [through] Islamic restrictions" (Krane 2004), the US governing body allowed such roll back! Similarly, when the Archbishop of Canterbury suggested in 2008 that British lawmakers should come to some "accommodation with some aspects of Muslim law, as we already do with aspects of other kinds of religious law" (Madcap 2009), he exposed his misunderstanding of the difference between Islamic guiding principles of the Qur'an and what is known as "Islamic law." A recent approval to implement the traditional Muslim inheritance status codes in the British courts (*The Telegraph* 2014) sets a dangerous precedent. Those British lawmakers or judges do not seem to learn from the Canadian and Australian Courts who rejected the demands of some of their Muslim citizens to implement what they [the Muslims] claim to be an "Islamic law" (Doherty and Sharpe 2010).

### 3. Suggested Solution

As explained in Chapter 1, Europe's reformation as described in Lindberg (2010) will never be replicated in Muslim societies because of fundamental differences in the structure and aspirations of Muslim societies. The social structure in Islam is built on the extended family social collaboration model rather than Europe's nucleus, economic-based model ('Abd al 'Ati 1977). Hallaq (2004) suggests that the idea that Islamic law is a viable legal system is questionable in light of the changes in the conception of legal authority brought on by the advent of the nation state.

Therefore, I complement my earlier argument (Chapter 1, and Barazangi 2004a and 2004b), that the time has come for a transformative move to build a new structure for Muslim societies through an egalitarian interpretation of the Qur'an that restores the religio-moral rational authority of interpretation to each individual Muslim, with my argument for rereading the Hadith and rethinking the sunnah. As I stated then, two basic Qur'anic principles could ensure a peaceful and just Muslim society: observing the natural order of the world and developing action plans by means of knowledge-based ijihad (educated independent inquiry)



and community-based *shura* (mutual consultation). I have explained the Qur'anic basis of these two principles in Chapter 1, and I will elaborate on their applications in the conclusion of this chapter as I present the need to corroborate Hadith by the Qur'an. However, an illustration of the troubling ramifications of what is often claimed to be the liberation of Muslim women or the reformation of contemporary Muslim societies is in order here.

The reports on Afghani, Iraqi, and other Muslim women cited in the previous sections concern me also because of their overall negative ramifications. Given that the definition of the problem was based on premises other than those initiated by the women themselves, two aspects of their underlying perceptual and attitudinal stance are specifically troubling. The first troubling attitude is the stigmatization of Muslim women as a helpless group that needs outside help, ignoring the fact that their misery is also related to militarized politics grounded with the support of Western governments' think tanks, such as Daniel Pipes's Middle East Forum and Campus Watch Dog. The second troubling aspect about these reports is that the liberation of Muslim women who experience these situations is often measured by removing the veil, or by driving cars, or using other standards than those of Qur'anic parity (*Forbes Magazine* 2011; *The Guardian* 2014; *Perspectives on Global Issues* 2014). Thus, these women are not offered real solutions to their pathetic conditions or the capacity to change their lots, mainly because they are oppressed by their lack of skills and by the distorted knowledge of those who claim to protect their culture, or to liberate them from the same culture. Their pathetic conditions are further complicated by the fact that these women do not realize that their knowledge of Islam primarily relies on secondary conflicting sources instead of on the Qur'an. They may recite the Qur'an many times daily, asking for God's help, but they have been mostly absent from extracting meanings directly from the Qur'an by themselves and by their own initiative in order to challenge false hopes and false representations of Islam. Such false representations are those that resulted in segregating men and women, secluding women in the name of modesty, preventing them from accessing educational institutions, discouraging or preventing them from congregational prayer and communal decision-making, but above all denying women direct identification with the Qur'an as autonomous persons (Barazangi 2004b). In other words, women have been absent from the process through which representations of Islam and of Muslim women have been developed, largely by Muslim males and patriarchy in general, and partially by non-Muslims who reinforce such representations by accepting them as if they were the "authentic" Islam.

### **Self-Identification with Islam and Self-Liberation**

*A Muslim woman who self-identifies with Islam is not only concerned with feminism and/or gender issues. She is mainly reclaiming her primary identity with Islam—not as a cultural, nor ideological, but as a worldview that recognizes human*

reason above sex or gender. Therefore, we should not mistake official ideological position, nor a gender-sensitive interpretation of the Qur'an as the representative of Islamic worldview or principles. That is, the rules of interpretation or the methods of interpretation that were fixed by the Muslim male elites are different from reading the Qur'an individually and intimately, and should not prevent nor dictate any mandates in the name of Islam.

To answer the question, "Where does one draw the line when discussing gender justice and/or human rights specific to Muslim societies?" we should note the following:

First, human rights are neither gained by "free election," nor by the practice of "liberal democracy." A good example is *the Iraqi women* who lost their autonomy when the United States government interfered in drafting the Iraqi constitution of 2005, allowing extremist Muslim clerics to slip in specific *Marji'iyah* Islamiyah as one of the bases for developing any law in Iraq. Despite the fact that some of the women who participated in drafting the constitution were elected members of the Iraqi parliament, their voices were ignored or buried (Barazangi 2005a).

It is important to emphasize, as discussed above, that the present Muslim legal systems that apply Muslim personal status codes consist predominantly of centuries-old *marji'iyat* (pl. of *marji'iyah*, interpretations and customary practices mainly by Muslim male elites) that were made into law, wrongly called "Islamic law" or "Islamic sharia." These codes and labels are still being reinforced because these elites are still considered as the authority on Islam. Worse, yet, is that Western governments speak to major Muslim organizations that are predominantly ruled by such conservative males as if they are the only authority on Islam, such as is happening in Europe (Maier 2002), and in the USA and Canada (Barazangi 2009).

Second, "Women liberation" is not achieved through legislative changes, mandated by international or other laws. What is being promoted by the self-identified Muslim women scholar-activists is freedom of conscience, not only gender justice in legislation. These two goals are not the same; *gender justice is neither the same nor equal to freedom of conscience. Rather, it is the result of freedom of conscience.* The history of many grassroots women groups who self-identify with Islam as their primary identity attests to their self-liberation that comes from their freedom of conscience, not only from their self-realization and self-determination. These groups' scholarship-activism, including that of the collaborators in my scholarly-activist research, is only one example of freedom of conscience as explained in Barazangi (1997, 1999, 2000, 2005b). Therefore, we should question the views that confuse ideals of Islam with its interpretations and practices as well as the premises that drive them, using the first set of verses revealed to Prophet Muhammad in {surah al 'Alaq 96} as the evidence. In the rest of this section I will explain: (1) the meaning of self-identity with Islam; (2) where the development and transmission of Islamic knowledge are anchored; (3) why self-identity paradigm or discourse; and (4) how the self-identity paradigm helps women's agency and authority in rereading (interpreting) the texts of the Qur'an and Hadith and in the action-oriented leadership in rethinking the sunnah.

### 1. What is Self-identity with Islam?

Woman's self-identity with Islam is her primary identity. That is, a Muslim woman who self-identifies does not see herself either in relation to the *incidental identity with the female sex*, or to *the social or cultural identity of gender* (M. al Faruqi 2000: 72–91). Though we cannot deny that Muslim women often face difficult situations and real problems of oppression, M. al Faruqi asserts the problem is the relativity of the different perspectives on Muslim women. That is, I must add, because of the following four reasons:

*First, the adopted lens of each perspective* provides particular reading of the problem at hand, such as confusing the concept of modesty with the use of curtain (*hijab*) (Barazangi 2004b). Also, Muslim self-identity is conveniently ignored, and the Muslim woman's self-identification would be reformulated on the basis that has nothing to do with Islam. For example, *the Creation story* in the Qur'an as is generally discussed is made pertinent to who was created first, the male or the female, instead of being pertinent to *what was created and why*. The Qur'an states:

{1} يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا  
وَنِسَاءً ...

O humankind! Itaqu (reverence, or be equilibrated) towards your Guardian-God, who created you from a single person/entity, created, of like nature, her mate, and from them twain scattered (like seeds) countless men and women ... {al Nisa' 4:1}.

*Second, a woman who self-identifies with Islam* is that who takes Islam as the first source of identity, *not as an "additional" ideological superstructure*. For a Muslim, man or woman, there is only one source of definition and *one reference—Islam*. Also, a self-identified woman sees all natural and biological identities as incidental and irrelevant to the very meaning of her existence.

*Third, the starting point for a Muslim in—and only in—the system of beliefs* about the world and about self that the individual willingly and rationally chooses (not being borne into). *Central to the choice is the concept of woman's self-identity with Islam* being her primary identity.

*Fourth, a Muslim reason takes precedence over his/her sex*. For example, khilafa or imama are not mandated by the sex of the person, but by the ability to reason in order to carry the *amanah*, the trust:

{30} وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ  
وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ

Behold, your Guardian-God said to the angels: "I will create a vicegerent on earth." They said: "Will You place therein one who will make mischief therein and shed blood? While we do celebrate Your praise and glorify Your holy (name)?" He said: "I know what you know not."

{31} وَعَلَّمَ آدَمَ الْأَسْمَاءَ كُلَّهَا ثُمَّ عَرَضَهُمْ عَلَى الْمَلَائِكَةِ فَقَالَ أَنْبِئُونِي بِأَسْمَاءِ هَؤُلَاءِ إِنْ كُنْتُمْ صَادِقِينَ

And God taught adam the names of all things; then He placed them before the angels, and said: “Tell Me the names of these if you are right” (al Baqara 2: 30–31).

## 2. Where are the Development and Transmission of Islamic Knowledge Anchored?

*The development and transmission of Islamic knowledge is anchored in conceptions of parity and justice from the Qur`anic perspective.* Muslims consistently identified themselves with the Qur`an as the source of their faith. In other words, *their faith is textual.* It is the context of the text that defines all beliefs, including the divine authorship, God and its relations with humans.

Of course *all texts imply interpretation* and, hence, the possibility of diverse readings. Yet, interpretations cannot deny the *historical dimension of the text, or go beyond the text-specific grammatical and lexicographic rules*; these rules neither change nor can be nullified, regardless of the interpretation. *Also, new interpretations are always possible*, granted they do not ignore or contradict these specific basic rules of the Qur`an. *The given meaning of Qur`anic verses become objectified and legally tangible when the Qur`an becomes the reference.* Therefore, rights and obligations for each individual are *embedded in the concept of khilafa. Once accepted morally, it becomes binding legally.*

There is a difference between the *Qur`anic legal construct* and the legally derived norms in the system of partnership and interdependence of the male and the female. For example, M. al Faruqi further explains, *it is the individual who internalize and act on the Qur`anic legal construct*, not the legally derived norms by others that prompt the action of the individual. The Qur`an also reminds us that it is not because of the Prophet Muhammad that Muslims accept the Qur`an, *but because of the Qur`an that they have accepted the authority of the Prophet.*

Given the above distinctions, I emphasize throughout this book that *we need to examine developing and transmitting Islamic knowledge that is anchored in conceptions of equality and justice from the Qur`anic perspective before addressing gender-based understanding of Qur`anic Shari`ah* as stated in {al Jathyah 45:18}. Such understanding will also help us realize the discrepancies in what is erroneously known as “sharia laws” and, eventually, be able to replace these laws with Qur`anic Shari`ah. I repeat: Qur`anic Shari`ah is the path or the guidance of the Qur`an in its totality, and not the collection of rules or norms derived by jurors or interpreters under “sharia laws” that were solidified by Western colonials under the term “Islamic law.” Hence, I reiterate, each individual acts as a *Shahidah* or a witness to her own action {Qaaf 50: 21}, and is accountable for actualizing her rights and responsibilities as the trustee, endowed in all humans {al Baqara 2: 30}.

### 3. Why Self-Identity Paradigm or Discourse?

Barazangi (2004b: "Introduction") states: Self-identity paradigm is essential in order to understand Qur'anic perspective on gender. That is, this paradigm will help the individual in the following five elements:

A. *The lens of a woman who self-identifies with Islam* is that who understands Islam as a worldview that encompasses religio-rational and moral guidance grounded in the Qur'anic ethical and pedagogical framework, neither as dogma, nor as a static law. For example, the individual who realizes her identity with Islam also realizes that her *shahada* (testimony and witnessing) (al Baqara 2: 283; al Nisa` 4: 135; al Ma`ida 5: 106; al Talaq 65: 1–2; Noor 24: 4, 6–8) is a mandate of the Qur'an, and that the value of her witnessing and the authority of her testimony are the same as that of the male due to the fact that she was also created as a khalifa.

B. *A Muslim intellectual work is both 'Ibada and Ijtihad* (an act of faith and independent inquiry) to affirm the *autonomous spiritual and intellectual human* being through *Islamic higher learning*. That is, there is no separation of faith and reason; human mind and heart operate together.

C. *Human-endowed capacity to rationally internalize "aqli"* (the textual meaning) of "naqli" (the revelation) is prerequisite to *making conscientious moral choice* of Qur'anic worldview. For example, the traditional male interpretation of the concept of (*qawama*) in {Qur'an 4: 34} is problematic because it reads a legally derived norm out of Qur'anic legal construct, by extending the required male support for the female as a partner in marriage to the moral superiority of the male over his female household:

{34} الرَّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنِ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Men are the supporters of women, because Allah has given the one more (responsibility) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient (to God), and guard what Allah would have them guard. As to those women who you fear ill-conduct (protestation), admonish them, refuse to share their beds, and leave them (*in their place*); but if they return to their obedience (to God), seek not against them means (of annoyance): for Allah is Most High, Great (above you all) {al Nisa` 4:34}.

The general predominantly male interpretation of this verse is particularly problematic also because the expression "*idhrubuhun*" (leave them in their place) is erroneously interpreted as "hit" or "beat" them (I will further discuss "*idhrubuhun*" in Chapter 5). Further injustice is committed when such interpretation is generalized to include all women who may contest their husbands' or male household's biased or unjust behavior or attitude.

D. Separating the textual meaning from the ethical framework of the Qur`anic revelation resulted in two problems: first, Islamic higher learning did not fully take place among subsequent generations of Muslims who did not receive the message directly from the Prophet Muhammad. Second, Women were excluded from the entire process, and eventually from either component of Islamic higher learning, particularly the process of making meaning of the text.

E. Self-identity paradigm helps understanding gender-based approaches and “shari`a laws” (with small “s”) vs. Qur`anic Shari`ah as follows under the five items below:

(E.1) Self-Identity is not only an act of ‘ibada and ijtihad, but also a *mandate to understand and to communicate the “gift of the Qur`an” pedagogically*. For example, when a woman uses Qur`an as the reference, it becomes clear to her the differences between the *principles* (for examples, tawhid reminds the individual of her humanness as a rational being) and the *rules that jurists derive from the same principle* (such as the obligation to practice rituals in certain way). These rules, though not binding, are often imposed on the individual Muslim as if they were the principle.

(E.2) pedagogical reading involves a process of making the learner aware of and able to *theorize on Qur`anic principles* and to distinguish these principles from knowing Qur`anic rules of interpreting or practicing the principles.

(E.3) this ability to distinguish (the principles from the man-made rules of interpretation) facilitates interpretations and the conditions for full application. For example, the Qur`an always states “We have brought to you [Muhammad] *al dhikr* (the reminding message), so you may extrapolate for the people, and they [the people] (may think rationally)”:

{44} بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ

(We sent them) with clear signs and Scriptures and We have sent down unto you (also) the Message; that you might explain clearly to humans what is sent for them, and that they may reflect {al Nahl 16:44}.

(E.4) any other approach to understanding gender may result in different laws—wrongly known as “shari`a”—from the guidance of the Qur`an—Qur`anic Shari`ah. Thus, the paradigm of self-identification with Islam applies mainly, but not limited to discussing issues significant to Muslim women. The first step in application includes identification with and interpretation of the Qur`an from within its own framework, autonomous morality and modesty and political participation. For example, one cannot apply the Islamic principle of justice faithfully without knowing its basis in the Qur`an. Also, self-identity paradigm supports sound rational interpretation and leadership initiative to make the Islamic belief system practicable. That is, an autonomous woman agency, or a man for that matter, is the key to carrying the trust fully.

(E.5) and finally, *Qur'anic dynamics requires active participation* that has been denied to women in general. This denial means that these dynamics were not fully incorporated in societies that claim Islam as a way of life. That is, because: (a) Qur'anic dynamics move the perception of Muslim woman from the margins to that of an active agent, a believer who affects a change in history; (b) Qur'anic dynamics require *ta`ammul* (reflective reasoning) and *ta'amul* (action-oriented) learning and teaching; (c) this reflective reasoning, and action-oriented learning and teaching represent the scholarship-activism process that leads to change in attitudes and, eventually of policies; (d) the unit of analysis in such a process is the Qur'anic concept of *taqwa*, not gender; (e) the Qur'anic dynamics explain why individuals cannot change their views about the world without changing the structure and the context in which they live. Otherwise they will remain outside the structure, which will be maintained in its status quo; and (f) the status quo is what happened when Muslims did not actually change their perception about the meaning of "Lailah `illa Allah (no deity but God)" by accepting the authority of text interpreters as though their authority was as binding as the authority of the Qur'an. Hence, their practice of "no deity but God" has veered away, perhaps unknowingly, from its Qur'anic intent.

#### *4. How does Self-Identity Paradigm Help Woman's Agency and Authority in Interpretation and Leadership?*

Self-Identity paradigm is also used to discuss other issues significant to the Muslim woman. Hammer (2010: 33–52), for example, includes (A) intra-Muslim debates, (B) woman's authority in prayer, exegesis and leadership, (C) geographical contexts, and (D) the particular history of American Muslim women.

*A. Intra-Muslim debates:* Hammer states that Muslims rarely address the injustices that exist within our own communities. For example, the claim to ritual leadership is closely linked to other forms of leadership for women in Muslim communities. Hence, woman-led prayer is a symbolic watershed in Muslim debates on women and gender issues (p. 33). Hammer emphasizes that it is precisely within the North American context that some women have advanced to the ranks of prominent Muslim intellectuals (p. 37), meaning that they are more than capable of leading.

Yet, sadly, we saw (in Chapter 1 of this book) in the case of Amina Wadud leading the co-ed congregational prayer how Muslim male elites rushed to condemning this act as "unIslamic" and how the specific debate on the issue was muted in a very short time.

*B. Woman's authority in prayer, exegesis and leadership* are more significant than permissibility to pray in a co-ed congregation: in essence, Hammer laments throughout her article that the agents in these activities [those related to the co-ed congregational prayer in 2004 and 2005] are scholars, journalists, novelists, and poets and so on. Furthermore, the events triggered debates among Muslims worldwide, transcending the original focus on women's space and the issue of

woman's ritual leadership (unintended or intended consequences): from the definition of tradition, the authority to interpret, the participation of women in community affairs and most generally Muslim approaches to gender roles. The events, according to Hammer, revived the notion of activism as "embodied tafsiir" or "tafsiir of praxis": women think and speak in relation to the text, and engage God, ethics and religion through the realities of their suffering and oppression. The result is an understanding of Islam that provides a very different ethical and existential vision than that of traditional male scholars, their husbands and clerics around them.

Unfortunately, Mattson (2006) demurs from realizing the connection between the social and religious oppression, even as she acknowledges the suffering and oppression of Muslim women. Hence, she basically ignored the dynamics of Qur'anic pedagogy, claiming that there was no precedent practice of women's leading co-ed prayer. In my view, overlooking the Qur'anic dynamics that are bound by time and place is the basic reason as why Muslims' attitudes about the ethical framework of Islam in general have not changed.

A good example is what I explained in my (Barazangi 1996) article, proving that Friday congregation prayer is not a *faridha* (an obligation), and it is not limited for men only, rather the Qur'an considers Friday prayer as a *wajeb* (a duty) and addresses all humans:

{9} يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

O you who believe! When the call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the remembrance of Allah, and leave off business: that is best for you if you but knew! {al Jumu'a 62: 9}.

However, the practice of Friday prayer in Muslim societies has not changed. To the contrary, further alienation or separation is created among the sexes in conducting community-based rituals and gatherings.

C. *Geographical contexts* (social, political, and religious) matter: Hammer (2010: 52) states that the question of space in mosques is a larger debate about gender equality. Over two-thirds of North American mosques feature a physical barrier, and this number is a dramatic increase from the early 1990s. In addition, religious leadership is also a social leadership: "Tawhidic paradigm" dictates that men and women cannot be hierarchically situated because that would put those in power on par with God.

D. *The particular history of American Muslim women vis-à-vis* the dynamics of American feminism and religion in the public sphere is important: Hammer further states that there is a specifically American context to the events and the Muslim activists organizing them. Interpretation carried out by women from a specifically female perspective and with an eye toward a particular perspective on gender justice or equality is a relatively new phenomenon within the last two



to three decades. It's still being challenged ... *While not all are engaged with the term or category of gender*, their interpretations are based on the notion that gender distinctions exist (in practice) and are of significance for any understanding of the Qur'an. Hence, they are also challenging and changing existing interpretations and representations of Islam.

### Does "Islamic Feminism" Apply?

The term "Islamic feminism" does not apply to self-identified Muslim women scholar-activists as explained above and defined in Gisela Webb edited volume (*Window of Faith* 2000: xi), indicating a specific approach "because it originates in the conviction that to look at women's issues *from within* the Islamic perspective must include, and indeed unite, issues of theory and practice" (see also Chapter 1 and the above section). Therefore, to assume that "Islamic feminism" can be applied to any movements that use the "Islamic" paradigm to further gender justice is as simplistic as Mayer's (2013: 7-8) claim that the concept of "orientalism" was not developed for application in the field of law when discussing cultural relativism vs. "universal" human rights and Islam.

For instance, Badran (2002) defines "Islamic feminism" as a feminist discourse and practice articulated within an *Islamic paradigm* (p.1, emphasis added), but without specifying which Islamic paradigm? Although she states: "Islamic feminism, which derives its *understanding and mandate from the Qur'an*, seeks rights and justice for women, and for men, in the totality of their existence," Badran does not explain how the assumptions of "Islamic feminists," their definition of the question about "Muslim women's rights," and the results differ from other social and anthropological approaches.

Thus, it is problematic to categorize any movement that uses "Islamic paradigm" as "Islamic feminism." The issue is not the ambiguous use, or the objections to the term as being 'Western' categorization or labeling. Rather, the issue concerns the ontological and epistemological bases of the two parts of the term: "Islamic" and "feminism." These bases affect the lens by which one defines the problem of gender injustice within Muslim societies. Furthermore, as I stated earlier, the unit of analysis in Islam's perception of human relations is taqwa (translated as righteousness by Badran), not gender. Unfortunately, Badran also muddies the two unites of analysis, righteousness and gender, and, consequently, concludes: "Islamic feminism' is good for all" (p. 5)! Yes, there may be good for all in any paradigm related to gender, but we need to decipher the different units of analysis and the different premises and definitions in order to be able to apply the conclusions of such analysis for the right goal and with effective and sustainable results.

The assumption that "Islamic feminism" represents self-identified Muslim women's attempt to understand their own belief system from within the Qur'anic framework, even if it uses feminist tools to achieve parity, not merely equality, further marginalizes Muslim women and gives rise to misunderstandings about

their concerns because these concerns are defined from a different perspective. In addition, this assumption reinforces misunderstood concepts, such as the misuse of “feminist,” “equality,” and “Islamic.” It diverts completely from the Islamic principles that only the Qur'an states what is just or fair. Two contemporary examples that I used earlier in this chapter may help explain my point:

- The Afghan war or the multitudes of NGOs that are trying to implement the Universal Declaration of Human Rights did not save the Afghan women from the Taliban's and other extremists' interpretations.
- The Iraqi women also lost their autonomy because the US allowed extremist groups in 2005 to insert *marji'iyah Islamiyah* as a base in the “new” 2005 constitution.

Such false representations of women's liberation (in the above two examples and earlier examples presented at the beginning of this chapter) are those that resulted in (a) *women's absence from the process through which representations of Islam and of Muslim women have been developed*, and (b) *calling these representations “Islamic law” or “Muslim cultural norms,” especially when discussing violence against women*. Recent reports on Afghan women's rebellion against abuse indicate that some of these women had the moral courage to stand up for themselves and for their affairs only when they understood their rights from within (Rubin 2014).

Hence, we need to use the self-identity paradigm to discuss issues significant to Muslim society as a whole, not only to the Muslim woman. These issues have been often misinterpreted by Muslims as well, and were not seen as pertinent to each individual Muslim because the majority of Muslim male elites rely mainly on Hadith, and without corroborating it by the Qur'an.

### **Corroborating Hadith by the Qur'an: The Issue of Testimony and Witnessing**

In this section, I will present the basic Qur'anic directions concerning *shahaadah* (testimony and witnessing), followed by related Hadith narratives and the consequent personal status codes that are often used in most Muslim countries as summarized in al Gharawi (2008). My synthesis of these sources is intended to illustrate three mandates of the Qur'an. First, each sane adult is responsible for the trust. Second, in order to fulfill the trust, each individual needs to have full authority to bear witness to the trust in every aspect of life. Thus, the assumption of any particularity in the validity and value of witnessing contradicts the Qur'an, and causes injustice to the particular witness. One cannot emphasize enough the importance of woman's witnessing—beginning with witnessing on her own behalf against accusations of adultery, and ending with her full authority to interpret the text. Third, Muslims should be reassessing past and present interpretations,

to realize the misuse of Hadith in general, and to understand the necessity for each individual's participation in the process of exegeses. M. al Faruqi (2000: 78) states: "Muslims do not differentiate between the Qur'anic legal construct (as read by the Qur'anic Shari'ah itself, of course)—mandated to be read and enacted by each individual—and the legally derived construct (by jurors)."

### 1. Qur'anic Directions

As I stated in the introduction of this chapter and according to the Qur'an, each individual acts as a witness to her own action {Qaaf 50: 21}, and is accountable for actualizing her rights and responsibilities as the trustee, endowed in all humans {al Baqara 2: 30}.

By analyzing some contexts of the many passages in the Qur'an that relate to human witnessing, seeing, and testifying, I am also laying the groundwork for identifying the source of the confusion in interpreting the validity and value of woman's witnessing. A good example is when Muslims (and non-Muslims) only quote one verse below {2: 282} to argue that Islam gives women's testimony the value of one-half of the male's testimony, even though this verse was intended for a special circumstance at a particular time (al Imam 2012):

{282} يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَانَيْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ... وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَىٰ ...

O you who believe! When you deal with each other, in transactions to a certain time, reduce them to writing ... And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as you choose [for witnesses], so that if one of them errs, the other can remind her ... {al Baqara 2: 282}.

This verse is particular to witnessing a loan for a specified time; the requirement of having another woman with a female witness was to secure extra documentation to protect the lender's rights, since women generally were not in the market place (J. al Banna 2007b: 151). Understanding the problem in misinterpreting this "witness" requirement may also help us understand the difference between Qur'anic Sharia'h and sharia in general, and where the confusion lies in understanding Islam's moral and legal norms compared to the jurists' derived legal rules. The following five sets of occurrence of "witness" in the Qur'an illustrate:

First, several contexts speak of God's knowing what may come in the "Hereafter," *al ghayb* (the unknown), encompassing the totality of the natural order as ordained by the Guardian-God, and *al shahaadah* (the witnessed, or the seen), including human action. Yet few interpreters pay attention to the concept of "God the Knower" and its relation to human knowledge and action. For example, the four most popular exegeses (Tafaaseer of Ibn Katheer, al Jalaleen, al Tabari, and al Qurtubi) agree on the basic meaning of God's knowing the seen and unseen, of this world and the Hereafter, being the Only One who knows both:

{22} هُوَ اللَّهُ الَّذِي لَا إِلَهَ إِلَّا هُوَ عَالِمُ الْغَيْبِ وَالشَّهَادَةِ هُوَ الرَّحْمَنُ الرَّحِيمُ

Allah is Who there is no other god; Who knows both al ghayb (the unknown) () and al shahadah (the known); He is Most Gracious, Most Merciful {al Hashr 59: 22}.

However, only al Qurtubi states that “al ghayb” is that what humans do not know, and “al shahaadah” is that what they see and know. Since we are concerned with human right and responsibility to know (to testify or witness) in the broadest sense, reassessing the traditional interpretation that is based only on one verse {2: 282} is appropriate in order to change attitudes about the validity and value of female witnessing. But, we definitely do not need the assessment that was presented by al Imam (2012) above, even as he admits that woman’s testimony in {2: 282} cannot be generalized. That is, because he only emphasized traditional literature that concerns itself with the rights of the person who is making a loan, and not with the witness. Furthermore, he concludes with a claim that the word “dhalal” in the verse refers to the woman forgetting due to a lack of iron, invoking a study of 149 women at the University of Pennsylvania and another study that proved a woman’s pregnancy causes weakness in memory! The worst and the sad part of his conclusion is his implication that the Qur`an statement, “if one of the witnessing women forgot the terms of the loan, her female co-witness will remind her,” means that God intended this solution predicting the problem with women’s “feeble” memory. Although Ibn Katheer suggests the same conclusion (see below), at least he does not invoke a limited “scientific” study nor claim the Qur`an as a book of science!

Second, the Qur`an presents guidance concerning human testimony in several circumstances as follows: {surah al Baqara, 2} addresses witnessing economic contracts in general without specifying the gender; {surah al Nisa`, 4} addresses `Adl (witnessing justice); {surah al Ma`ida, 5} addresses *wasiyah* (the witnessing of bequest), that is instituting another trust in addition to one’s Will and Testament; {surah al Talaq, 65} addresses witnessing social contracts—namely matters of *qaran* (marriage) and *talaq* (dissolution of marriage). Remarkably, only in some English renditions of the Qur`an do we find the “two persons,” in the above cited verses (other than verse 2: 282), being specified as two males, even when no exegetist added such particularity. Even the most commonly-referenced collection of reported Hadith, *Sahih al Bukhari* [ca 810–70] (1991), emphasizes that there should be two witnesses when a separation and rejoining of the couple takes place, without specifying the gender of witnesses (Mawqi’ al Islam: Hadith, 2932).

Third, “shaahed (a witness)” appears in three places. Most relevant is in {surah Hood 11} in the context of God’s signs that can be used to witness the truth of revelation. It applies to all those who accept the message of the Qur`an, regardless of gender, race, or ethnicity:

{17} أَفَمَنْ كَانَ عَلَىٰ بَيْتِهِ مِنْ رَبِّهِ وَيَتْلُوهُ شَاهِدًا مِنْهُ وَمِنْ قَبْلِهِ كِتَابُ مُوسَىٰ إِمَامًا وَرَحْمَةً أُولَٰئِكَ يُؤْمِنُونَ بِهِ وَمَنْ يَكْفُرْ بِهِ مِنَ الْأَحْزَابِ فَالنَّارُ مَوْعِدُهُ فَلَا تَكُ فِي مِرْيَةٍ مِنْهُ إِنَّهُ الْحَقُّ مِنْ رَبِّكَ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يُؤْمِنُونَ

Can they be (like) those who accept a *clear (sign)* from their Guardian-God and whom a witness from himself does teach, as did the Book of Musa before it, a guide and a mercy? They believe therein; but those of the *sects that reject it*, the fire will be their promised meeting-place. Be not then in doubt thereon: for it is *the truth* from your Guardian-God: yet many among the people do not believe! {Hood 11: 17} (Mawqī' al Islam: Qur'an: page 217).

*Fourth*, the term “*shahiid* (is witnessing)” *appears in several contexts*. All but {2: 282} are in reference to God's knowledge of both the unknown and the known or seen. Relevant to our purpose is {surah 2, verse 282}, as cited above “O you who believe! when you deal with each other, in transaction” ...”, specifically because it includes women as valid witnesses. Ibn Katheer, unfortunately, interprets this verse suggesting that the two women witnesses are a sign of the woman's feeble mind. He caused further injustice by using a weak narrative attributed to the Prophet, in addition to the narrative of Abi Hurayra cited above under “the Problem,” concerning the drive being the angel instead of the individual, all of which are in *Sahih Bukhari*:

عن أبي سعيد الخدري رضي الله عنه عن النبي صلى الله عليه وسلم قال ليس شهادة المرأة مثل نصف شهادة الرجل قلن بلى قال فذلك من نقصان عقلها .

On the authority of Abi Sa'id al Khudari, the Prophet referred to woman's witnessing being equal to one-half of a man was because of her feeble mind. (Mawqī' al Islam: = 1682).

Furthermore, the jurist al Shafi'i ([ca 767–820] 1961) unjustly used a similar reported narrative to deduce that “woman” by default cannot be a trusted witness on her own in many other contexts or for any other purpose, without justifying his conclusion:

عن أبي هريرة عن النبي - صلى الله عليه وسلم - أنه قال “ يا معشر النساء تصدقن وأكثرن الاستغفار فإني رأيتكن أكثر أهل النار فقالت امرأة منهن جزلة وما لنا يا رسول الله أكثر أهل النار ؟ قال، “ تكثرن اللعن وتكفرن العشير ما رأيت من ناقصات عقل ودين أغلب لدي لب منكُن ”

Abu Hurayra narrated that the Prophet ordered women to give more charity and to ask forgiveness because, among other things, they are of feeble mind (Mawqī' al Islam: Qur'an, page 48).

*Fifth*, the term “*shuhada* (witnesses)” *in plural is also used in different contexts*. The most significant is in {surah al Noor 24: 4, 6–9} below, wherein Ibn Katheer overlooked the fact that woman's witnessing on her own behalf before God is accepted as valid:

{4} وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

And those who launch a charge against chaste women, and produce not four witnesses, (to support their allegations), flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors;

{6} وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ

And for those who launch a charge against their spouses, and have (in support) no evidence but their own, - their solitary evidence (can be received) if—they bear witness four times (with an oath) by Allah that they are solemnly telling the Truth.

{7} وَالْخَامِسَةُ أَنْ لَعْنَةُ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ

And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie.

{8} وَيَذَرُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ

But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allah, that (her husband) is telling a lie

{9} وَالْخَامِسَةُ أَنْ غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ

And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the Truth. {al Noor 24: 4, 6–8} (Mawqi' al Islam: Qur`an, 221&BookID=15&Page=350).

To summarize, there is no difference in the value and validity of witnessing and testimony between males and females, evidenced from the Qur`anic mandates above. Also, verse {2: 282}, as I explained above, relates only to special transaction, and is not the norm to decide on the female witnessing authority.

## 2. Hadith Narratives

I should note here that even as some of the contradictory narratives cited above are included in al Bukhari, I mostly use al Bukhari since his Sahih is the most quoted and supposedly is the most accurate source of Hadith. Six cases in the Book of Shahadat in Sahih al Bukhari are relevant to our analysis here. The same problem of selective meaning of the Qur`an discussed above is repeated here. Interpreters often use only the different variations of one reported hadith claiming women's feeble mind (the two narratives by Abi Hurayra and Abi Sa'id al Khudari above) in preference to others that often favor women. Yet, none of those who cite these narratives asked the following question, or at least to my knowledge there are no reports on the subject: How is it possible that the Prophet accepts the

testimony of his wife, Zaynab, and the testimony of a female slave concerning two very important women's affairs (infidelity and marriage, respectively), a blind man who could not have seen what happened, and a young boy (who was given a responsibility in a campaign even as he may not be mature enough to present a reasonable testimony) as reported below, while equating the value of woman's witnessing in general as one-half of a man's witnessing?:

- On the authority of 'A'ishah, and al Qasim bin Muhammad bin Abi Bakr that the Prophet asked Zaynab, his other wife, to testify, with reference to the accusation of 'A'ishah's infidelity, if she saw any wrong doing. Zaynab responded that she only saw goodness,
- On the authority of 'Uqba Ibn al Harith that when he married 'Um Yahay bint Abi Ihab, a black amah came and said that I have nursed both of you. Thus, 'Uqba mentioned that to the Prophet who then asked him to leave 'Um Yahya,
- On the authority of Qasim, al Hasan, Ibn Sreen, al Zahri, and 'Ata', that testimony of a blind person is accepted, but al Shu'bi added that shahadah is accepted on the condition that the blind man is sane,
- On the authority of Ibn 'Amr that the Prophet allowed him to participate in the Battle of al Khandq when he became 15, but refused his participation in the Battle of 'Uhud when he was still 14 (al Bayan 1999: # 946, 2516, 940, 2521).

The norm in the Qur'an is that the witness must be of a *just character* (*kateb bi al 'adl* or [*al shahada bi al qist*]) and the witnesses should not refuse when they are called on to witnessing (for evidence):

{282} يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَانَيْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلَأِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا... وَلَا يَأْب الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمَأُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَمْسَظُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَذْنَىٰ آلا تَرْتَابُوا

O you who believe! When you deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing *let a scribe write down faithfully* as between the parties; let not the scribe refuse to write: as Allah has taught him, so let him write. Let him who incurs the liability dictate, but let him fear his Lord Allah, and not diminish aught of what he owes ... The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is more just in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves {al Baqara 2: 282}.

The following narrative corroborates the norm in the Qur'an,

'Abd Allah bin 'Utabah stated that he heard Caliph 'Umar bin al Khattab saying: "We accept people's testimony by their action, if they were good, we consider them of just character" (al Bayan 1999: Kitab al Shahada # 2498).

Yet, we still see a discrepancy in accepting a female testimony (as evidenced in Caliph 'Umar's statement concerning Fatima bint Qays testimony on the authority of the Prophet (see Chapter 1)), even if Fatima bint Qays was known as having a just character! (Mawqi' al Islam: Fiqh, 173). I am still puzzled that even if we assume that all the above types of narratives of witnessing (on the authority of the Prophet's wife, Zaynab, and others) as documented in *Sahih al Bukhari* are corroborated by the Qur'an (whether or not they are considered valid by the majority of interpreters and jurists), why did the jurist al Shafi'i (d. ca 820) only accept the weak hadith that discuss the particular situation of a monetary loan {Qur'an 2: 282}, and suggested that a woman's testimony equals one-half of a man's? Also, on what basis could al Shafi'i justify his generalization of this particular context in {2: 282} across the board, stating that a woman's testimony is not accepted in *zina* (adultery) cases, a statement that contradicts the Qur'an wherein a woman could testify on her own behalf in a case of being accused of adultery:

{8} وَيَذْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ. {9} وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا  
إِنْ كَانَ مِنَ الصَّادِقِينَ.

But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allah, that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the Truth { al Noor 24: 8–9}.

Furthermore, how could al Shafi'i add his own words, "the just witnesses can only be men," something that is not in the Qur'an? (Mawqi' al Islam: Fiqh, 173). The wider and compounded problem is that al Shafi'i's jurisprudence is used by the majority of Muslims. In addition, although his jurisprudence opinions are the most restrictive among the other classical schools of fiqh (the Hanafi, after Abu Hanifa [d. ca 768] 2008, the Hanbali, after Ibn Hanbal [ca 780–855] 1984–90, the Maliki, after Malik Ibn Anas [d. ca 795] 1986, and the Ja'afari, after Ja'afar al Sadiq [ca 702–66] 2002), his views are revered, perhaps because it is believed that he wrote the principles of developing fiqh in his al Risalah (Islam House 2012). It should be noted here that Hallaq (2004: xxvii) questions this perception and argues that al Shafi'i's Risalah (1988) falls short of providing a theoretical scheme corresponding to the later works of legal theory (*usul al fiqh*)!

Regardless of all the above evidence and arguments, the Prophet Muhammad would be amazed at such perspectives of Islam and at the Muslims' practice of them, especially when they attribute to him some narratives or behavior that contradict the Qur'an. The sad reality is that most Muslims, regardless of their levels of university education, foil Islam in the image of their own beliefs. They



seem to have bought in to the idea that Islam is a routine practice of rituals and of particular interpretations with the assumption that such interpretations should be accepted as a given and that they cannot be investigated rationally.

True, verse 7 in surah 59 in the Qur'an instructs:

{7} ... وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

... so take what the messenger has brought to you, and leave what he prevented you from doing {al Hashr 59:7},

but the problem is that Muslims came to codify all reported sayings and actions attributed to the Prophet, whether authentic or not and even when they contradict the Qur'an. The contemporary M. al Ghazali (1988: 45) states that Muslims were worse affected by the misunderstood traditions than by the unauthentic ones. Yet, most of contemporary Muslim scholars still talk about weak narratives while ignoring the basic problem of the narratives that do not corroborate the Qur'an even if they were in the *Sahihayn* (Bukhari's and Muslim's). Compounded with viewing these reports as sacred as the Qur'an and citing these reports before the Qur'an, the majority of Muslims are missing the basic message that the Prophet carried for 22 years, between 610 and 632 AD. By elevating these reported traditions from their place as a secondary source of Islam to the same level of the primary source, the Qur'an, they have violated the message of the Qur'an of recognizing no deity but God, as well as the intent of the Prophet's message. According to J. al Banna (2004a: 90–92), the Prophet used to chastise his companions when they start referring to his sayings or actions, stating that they should only refer to the Qur'an. In addition, as I explained in Chapter 1, the Prophet prohibited his companions from writing his sunnah for fear that people may become involved in it, ignoring the Qur'an. Furthermore, J. al Banna continues, all the first four Caliphs and early Tabi'oon (the companions of the first companions of the Prophet or the second generation of Muslims) refused to document the Prophet's actions in writing.

Hence, *it is fair to reiterate that the core message of Islam, particularly concerning gender and women's parity, has rarely been practiced for the past 14 centuries, because most representations of Islam are based on the reported traditions and jurors' derived rules, often without being corroborated by the Qur'an.*

Only the Qur'an was being written during its revelation to Prophet Muhammad, and remained the only well-documented source of Islam for more than 100 years after his death. As discussed in Chapter 1 of this book, the Prophet's biographies and reported traditions, essential as they may be as the second source of Islam, were not fully documented until about the 3AH/10AD or the 4AH/11AD century. That is, after the death of al Bukhari (d. ca 870) and Muslim (d. ca 875). Furthermore, the majority of the secondary sources were abused by male interpreters, such as those regarding attire and seclusion, as well as those interpreting the "witness"

requirements discussed above. The issues of seclusion and segregation, like the issue of hijab (Barazangi 2004b), also has no basis in the Qur'an, because jurists' rulings often brought unjust edicts that also contradict the Qur'an. For example, many Muslim/Arab male elites deny women's participation on an equal footing by misinterpreting the rationale behind the Prophet's giving a special day for the women to vote. Instead of recognizing the Prophet's emphasis on woman's autonomous political rights and responsibilities, male elites claim that the special day was a model for segregating men and women (see also the related misrepresentation of the form of *bay'ah* in the Introduction). Thus, J. al Banna (2004a:104) states that it is simple to ignore their [the elites] narratives, even when quoted in the *Sahihayn*, without having moral quorum.

### Conclusions: Principles of Corroborating Hadith by the Qur'an

We would be able to ensure a peaceful and just Muslim society by using two Qur'anic principles: *observing the natural order of the world and developing action plans by means of educated reason and mutual consultation*. The crisis in understanding Islam among Muslims grew worse as Muslims began using the reported Prophetic traditions before the Qur'an and as they conflate Qur'an with its interpretations, particularly concerning women's role in the community, as I illustrated the claim that the validity of a female witnessing is one-half that of a male's witnessing. This misinterpretation of the Qur'an and misuse of the Prophetic traditions make it mandatory for Muslim women scholar-activists to reread and rethink the Hadith and the sunnah within the spirit and the guidance of the Qur'an. For instance, as discussed above, few Muslims pay attention to Qur'anic intention of "witnessing" in all the related cited passages, instead they cite only verse {282 in surah 2}. J. al Banna (2007a: 151) reiterates the overall equitable stance of the Qur'an, explaining the fallacy of the claim assigning a lesser value for female witnessing and governing, but sadly some scholars and lay people consider him an "apostate"!

The Qur'an teaches that all, including the prophets, have to guard against unjust interpretations {al Shura 42: 13}. When the community conflates an interpretation with the Qur'an, each individual has to stand up to upholding Qur'anic rules of interpretation {al Zumar 39: 23}. These two verses support my argument that there is a crisis in understanding Islam among Muslims, and that the crisis is mainly the result of Muslims' obscuring the first basic principle of Islam—Tawhid—and misusing the meaning of apostasy. A good example is the general rhetoric against Amina Wadud's leading a co-ed congregational prayer in 2005 as "unIslamic." As we saw in Chapter 1, Wadud herself commented on the context of this event and on another occasion (PBS Frontline 2005) that the question is to wrestle the eternal system away from its contextual foundation. The Prophet himself asserted: "I did not make lawful for you except what was made lawful by the Qur'an" (Tabari 1985, IX: 182).

Despite all these efforts, the crisis of understanding Islam has multiplied as the majority of Muslim women have lost their identity and identification with the Qur'an, to the point of losing the moral courage to stand up for their rights as autonomous entities. Even after they have reinterpreted the Qur'an, some of these women seem to be abdicating their responsibility of leadership for fear of controversy or of being stamped with apostasy. This situation is what prompted me to execute this project, hoping that by rereading and rethinking the Hadith and the sunnah, we, Muslim women scholar-activists who identify with the message and with the messenger, will also be able to put the fear of backlash behind us.

I am convinced that reinterpreting the Qur'an by us, Muslim women scholar-activists who self-identify with the Qur'an, has helped to raise the consciousness of some. Yet we still have a long way to go despite, or because of, the certain path that we chose to take—the path of Qur'anic Shari'ah. Reinterpreting the Qur'an is a time-consuming, difficult process that requires full awareness of its ramifications—from backlash by the conservatives to pitfalls in personal opinions—and special skills both in Arabic linguistics as well as in the history of the Qur'an. In addition, as I outlined in the Introduction and will elaborate in other chapters of this book (Chapter 5 and the Conclusions), there are other obstacles in our way.

Furthermore, unfortunately, Muslims and non-Muslims have become more conservative in response to the challenges from within or from without. From within, the current religious-right advocates and governing authorities in Muslim and non-Muslim countries are collaborating because they feel threatened by the new interpretations, despite the fact that the so-called “moderate” or “progressive” groups are still weak in vision, organization, and strategies. Some Muslim scholars are also hampered by the conviction that it is enough to solve social issues that are not necessarily specific to Muslim women, such as literacy, education, and domestic violence. These scholars do not see that the situation requires a change in perception and attitude concerning the meanings of Islam, in order to combat the ignorance among the public which fosters political corruption or brain-washing.

From without, ideas of reforming Muslim societies modeled after the European enlightenment or the American-European concept of democracy are creating further dichotomy between religious and civil affairs, causing popular unrest directed towards those who are different rather than honest self-reflection or a focus on changing corrupt systems, dogmatism, and ignorance. The Western governments' reaction to the “Arab Spring” mainly with providing force is a good example of their hypocrisy in claiming interest in democratic systems (Cornwell 2012). Western governments and private corporations further complicate matters by supporting dictatorships in most Muslim countries and male leadership in order to protect their own interests, producing further reactionary response by religious extremists on both sides who misuse traditions that do not corroborate the Qur'an to propagate their own ends (see reports, such as Moussaoui's (2011) on Islamists hijacking the “Arab Spring”).

Hence, the struggle will be difficult, long, and uncertain, but we, self-identified Muslim women scholar-activists, few as we may be, continue to lead the path by rethinking the Qur'anic message in the same Prophetic spirit of tolerating peoples' needs in time and place. By taking further steps to address the crisis in understanding Islam and to complement Qur'an reinterpretation with this new project of rereading the Hadith and rethinking the sunnah, I am only hoping to complement what began in the 1980s and 1990s. The theoretical and practical model of this project is exemplified in my analysis and synthesis of the issue of testimony and witnessing above, and will be crystalized by discussing the other pertinent issues to women's autonomy and parity in the rest of this book.

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## Chapter 3

# Qaran and Talaq in Qur'an, Hadith, Tafseer, and in Personal Status Code

### Introduction

As I stated in previous chapters, most Muslims believe that by practicing and imitating the image and reported sunnah of the Prophet Muhammad that they have mastered their religious duties. Muslims came to codify the reported sunnah, and view these traditions (the sunnah) erroneously as if they were as sacred as the Qur'an. Essential as they may be as the second source of Islam, interpreters abused some of these traditions with regards to attire, segregation, and seclusion (Introduction), with regards to trusteeship and leadership (Chapter 1), and with regards to self-identity, witnessing, and testimony (Chapter 2). In this chapter, I discuss *qaran* (marriage), *talaq* (dissolution of the marriage) and some pertinent issues; *infaq* (economic support), *'iddah* (the waiting period when a husband pronounces separation from his wife, after complete dissolution of marriage, or when the husband dies), and *sakan* (housing/shelter) of the wife during marriage, after separation, during reconciliation, and/or at the final steps in completing the dissolution of marriage, and after the husband's death.

*Here, I am trying to strongly emphasize the overarching Qur'anic message of justice, fairness and dignity for women and men.* My effort in discussing the discrepancies in the rules that were derived from the Qur'an in these specific issues (marriage and dissolution of marriage in this chapter) is intended as examples wherein Muslim commentators and jurists in general have missed this overarching message as they made these rules part of Qur'anic Shari'ah being the guided path. By doing so, they transformed Qur'anic Shari'ah into a rigid law. Hence, my concern is not with the concrete examples of how women's personal affairs are shortchanged, *per se*, as much as with the perceptual and attitudinal stance that surrounds, and often leads to women's abuse under these rigid laws that are unjustly attributed to Islam. That is because the Muslim woman is viewed in these perceptions and practices as a perpetual minor who is morally dependent and whose male household has a moral proxy over her. In addition, the majority of Muslim women may experience different types and levels of abuse in their marriage and related issues, but they often do not have clear solutions to these abuses mainly because their knowledge of Islam relies on secondary conflicting narratives and jurors' rules instead of intimate knowledge of the Qur'an. Even when they recite the Qur'an many times in daily prayers, Muslim women in general

have not extracted meanings directly from the Qur'an by themselves and by their own initiative. In other words, they have been absent from the decision-making process, wherein representations of Islam have been developed largely by Muslim males, and sometimes by non-Muslims. The absence (or near-total exclusion, incidental or deliberate) of women from developing and shaping the processes and the arguments concerning the Islamic message of fairness in general, and their rights within Islam, in particular, means that those rights are being compromised (Barazangi 2009). As long as Muslim males use and misuse Hadith and other sources to silence both the abused women and/or the outspoken women, and non-Muslims take the views of Muslim males as if they have the final authority on Islam, women have no chance of eliminating these abuses.

Thus, the search for understanding Muslim women's rights and responsibilities in the Qur'an and Hadith should be similar to the search for understanding history. It can never be completely secularized or viewed separately from the belief system it represents nor from the practices of that system, and the contexts in which it was interpreted and practiced. That is, it would be next to impossible for a non-Muslim mind to comprehend any Muslim phenomenon without trying to find a representation in his/her own belief system, even when s/he uses a "non-religious" model. Likewise, it will be next to impossible for a Muslim male to explain issues related to gender and Muslim women without retrieving past representations developed by male commentators, jurors, and imams.

Unfortunately, *I argue, the majority of unjust interpretations of the message of the Qur'an occurs because of reliance on these commentators' interpretations, on jurors' rules, and on religious edicts that were extracted from the reported biographies and traditions of the Prophet and those of his companions, often without being corroborated by the Qur'an.* Qaran and talaq and the pertinent issues are used here to explore how commentators and jurors (consciously or unconsciously) missed the Qur'an's own principles and its rules of interpretation:

{7} هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ يَقُولُونَ آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ

He it is Who has sent down to you the Book; in it are signs basic or fundamental (of established meaning); they are the foundation of the Book: others are not of well-established meaning. But those in whose hearts is perversity follow the part thereof that is not of well-established meaning. Seeking discord and searching for its hidden meanings, *but no one knows the true meanings except Allah.* And those who are firmly grounded in knowledge say: "We believe in the Book; the whole of it is from our Guardian-God?": and none will grasp the Message except people of understanding {`Al 'Imran 3: 7}.

Even when these Qur'anic principles of interpretation are reaffirmed in the following Hadith on the authority of 'A'ishah, the prophet's wife and the most prominent female narrator of Hadith, few are those who observe them:

حَدِيثُ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: فَلَا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؛ هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ يَقُولُونَ آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ } قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا رَأَيْتُمُ الَّذِينَ يَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ فَأُولَئِكَ الَّذِينَ سَمَّى اللَّهُ فَاحْذَرُوهُمْ.

'A'ishah reported: Allah's Messenger (may peace be upon him) recited these fundamental signs of the Qur'an: "It is He Who revealed to you (Muhammad) the Book (the Qur'an) wherein there are clear revelations these are the substance of the Book and others are allegorical signs ..." 'A'ishah (further) reported that Allah's Messenger said (in connection with these signs): *When you see those who go after allegorical signs, avoid them, for it is they whom Allah has pointed out* (in the above-mentioned verse) (al Bayan, 1999: Kitab al 'Ilm # 1529).

In other words, a self-identified Muslim woman needs to understand the Qur'an with the frame of reference—Qur'anic Islam—that does not propagate others' interpretations (classical or contemporary), be it by a female scholar (such as Wadud 1999; Barazangi 2004b; or Mattson 2008b), or a male scholar (such as Abou El Fadl 2005; An Na'im 2008; or J. al Banna 1998). She needs to identify with the message of the Qur'an, or self-reflect on Islam beyond religious rituals and beyond traditional methods of juristic reasoning as discussed by M. al Faruqi (2000) or K. Ali (2010), for example. By rethinking the message of "La ilah illa Allah (there is no god but God)," in the same Prophetic spirit of tolerating peoples' needs in time and place, the Muslim woman will realize that the reported traditions of the Prophet are exemplar strategies of extrapolating on the Qur'an, and not a binding dogma, as propagated by the majority of male interpreters. Hence, reinterpreting Qur'an guidance also calls for rereading the Hadith and rethinking the sunnah. *That is, placing the Hadith that are corroborated by the Qur'an back into its secondary place after the Qur'an.*

### Historic and Current Studies of Hadith

My working definitions of Hadith and sunnah (see Introduction) explain, in part, why it is important for Muslim women to reread and rethink the Hadith and the sunnah within the ethical framework of the Qur'an. Despite the fact that numerous studies are still being produced by Muslims and non-Muslims about the historicity of "Hadith," rarely do any of these studies address the direct implications of these studies on women. With the exception of a few, such as J. al Banna (2008a) and Sayeed (2005, 2009, 2013), the majority of these studies are concerned either



with the contradictions about (a) the Prophet's chastising (or the lack thereof) his companions from documenting his traditions in writing, or (b) with the *sanad* (chain of narratives) and/or the trustworthiness of the narrators (such as, Nadwi 2007 and others). In this book, I reference some of these studies, but only as the context in discussing some narratives and the corroboration of these narratives by the Qur'an. Even though gender is not the unit of analysis in my arguments, and despite the Qur'an's assertion against gender discrimination as in:

{35} إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَائِمِينَ وَالْقَائِمَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّانِمِينَ وَالصَّانِمَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا

For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast, for men and women who guard their chastity, and for men and women who engage much in Allah's consciousness, for them has Allah prepared forgiveness and great reward {al Ahzab 33: 35},

there is enough evidence to suggest that the prevalent moral atmosphere within which early Muslims operated was influenced by gendered tribal customs and norms (Sayeed 2009: 125–30; Armstrong 2006: 104–5).

As we will see while synthesizing the variation in narratives of a particular hadith, the difficult quest for historical sources of that era, being rare and sometimes contradictory, as Donner (2010: 90–91) suggests, prevent us from documenting in detail the evidence of such attitudes. Yet, it is evident that even when male jurists at later eras used narratives attributed to a female narrator, secondary commentaries on these narratives and the jurors' rules derived from them were mainly shaped by males' perceptions and premises of the time. Also, despite the fact that the majority of early narrators attributed their narratives to women, particularly the prominent wives of the Prophet (ʿA'ishah, Hafsa, and Um Salama), the rules of authenticating Prophetic traditions (the process of which became known at a later stage the sciences of Hadith) were largely developed with the exclusion of women's perspectives (Sayeed 2009).

For example, and as discussed in Chapter 1, Hadith documentation, authenticity, and authority are used to justify the different political goals, such as the hereditary *khilafa* discussed by Soufi (1997), resulting in confusing women's authority in narrating hadith with their legal credibility as witnesses. Sayeed also states that *ahaadith* [Pl. of hadith] are disputed among the different sects that are led by men who rely on the narrative and memory of men after two centuries, even when the narrative originated with women, whether the prominent wives of Prophet Muhammad or the more obscure women such as Um Qays bint Mihsan (Sayeed 2009: 121). The issue of woman's authority as a full witness was addressed in Chapter 2. In this chapter I will focus on qaran and talaq because the

common unjust practices of these critical personal affairs are directly related to the misconceptions of woman's moral autonomy, agency and authority. *Contrary to Qur'an guidelines, the woman in traditionally practiced marriage contracts was given neither the authority to execute the process of qaran nor that of talaq because her autonomy is viewed as a proxy to her male household during the evolution of the structure of Muslim societies.* To understand how the present process of qaran and talaq came about, we need to recognize the historical variation between the development of Hadith theories as an authentic science and the evolution of the theology of the Prophet's reported sunnah as a binding religious source.

Since my concern with the theories of Hadith is limited to being the contextual background for my arguments, I only list some earlier and contemporary references on the subject that I use (such as Azami 1978; J. al Banna 2008b; Motzki 2004; Sayeed 2005 and 2009) to affirm my main argument that Hadith is not as binding as the Qur'an, nor should it be considered at the same level of authority as the Qur'an. I discuss the theology of the sunnah as produced by *fuqaha* (contemporary or classical jurors), by *muftis* (juris-councils) who rely on different *mufasereen's* (Qur'an exegetists or commentators) use of sunnah that may not be corroborated by the Qur'an. More specifically, I analyze the dispute on gender role in valuing women's narratives that Sayeed allotted to in her 2009 work. *My goal is to point to the problem of how the contents of a particular set of ahaadith were used, resulting in juristic rules and religious edicts that contradict the Qur'an.*

By synthesizing the rules that Muslim interpreters and jurors generated while mostly relying on the secondary narratives instead of directly applying Qur'an principles, I hope to unravel indicators to be used as evidence for the following arguments: *only the Qur'an binds, and it should be reread in time and place.* All other sources outside the Qur'an do not bind, including a considerable portion of ahaadith that are not corroborated by the Qur'an, *tafaaseer* (exegeses), *fiqh* (jurors' derived rules), and *fataawa* (religious edicts by jurist-consult). That is, despite the fact that these extra sources are claimed to represent "Qur'anic *Shari'ah*" (with capital "S") in Muslim courts, their ethical and legal valuation is limited to the time and space of the era in which they were formulated and, hence, cannot *de facto* bind morally nor legally.

A significant example is the varied meanings of *talaq* that appear in the reported narratives in Sayeed (2009) while discussing the dispute of gender role both in the authentication of hadith narrative and in the legal validity of a witness. Though these varied meanings of *talaq* are often overlooked, I decided to investigate them as well as the many meanings of *qaran* to examine the *authority* (not the authenticity as generally practiced) of the reported narratives. In investigating meanings of *qaran* and *talaq* as appear in the Qur'an, I continue to use the Qur'anic expression in Arabic because the translation does not always express the actual meaning. For example, *qaran*, often expressed in contemporary Muslim sources, is translated in English as the practice of *nikah* (licit sexual intercourse). Both these meanings are secondary to what the Qur'an emphasized; that God created her *zawj* (spouse/or the other half) of the [same] *nafs* (the single entity [the feminine soul])

to live in *sakinah* (tranquility) and to procreate {al Nisa` 4:1; al 'Araf 7: 189} (to explain further below, section 1.A).

Similarly, talaq, K. Ali (2010) explains, does not mean “divorce” as understood in Western common laws. Talaq entails a complex process that is best expressed in the phrase “dissolution of marriage.” Ali’s analysis of the jurists’ rules of qaran and talaq vis-à-vis gender justice is also helpful, but it is not of my immediate concern here. My short-term goal from investigating the meanings of qaran and talaq at the primary source—the Qur’an—is to present a thematic understanding of women’s rights and responsibilities concerning the processes of moral and legal contractual agreement between a mature male and female to join their lives together (marriage) and the dissolution of such a contract. My ultimate goal from analyzing the conceptions and practices of qaran and talaq, however, is to further develop the framework of rereading the Hadith and rethinking the sunnah, the process that I began in Chapter 1.

### **Qaran (Marriage) and Talaq (Dissolution of Marriage)**

The Qur’an addresses qaran and talaq in different contexts and for varied purposes, and so do some of the narratives attributed to the Prophet Muhammad. Again, as I stated in Chapter 1, even if we accept the authenticity of the reported narratives, I consider their corroboration by the Qur’an as the only determinant for their authority. Also, even if we accept the variation in the narratives as a proof of the Prophetic intended strategies for different times and places, we need to be cautious about the context in which they are being used, because this variation in contexts and strategies could add confusion as how to apply Qur’anic guidance. An evidence of such cautious practice is Abu Bakr’s (the first Caliph) ordering Muslims immediately after the death of the Prophet not to write anything on the authority of the Prophet, but more importantly, he ordered them not to make a habit of narrating, especially in abundance:

إنكم تحدثون عن رسول الله أحاديث تختلفون فيها والناس بعدكم أشد اختلافاً، فلا تحدثوا عن رسول الله شيئاً، فمن سألكم فقولوا بيننا وبينكم كتاب الله فاستحلوا حلاله وحرموا حرامه

You narrate on the authority of the Prophet (PBUH) things that you disagree upon among yourselves, and people after you are in further disagreement. So do not narrate on the authority of the Prophet anything, and who ever asks you about an issue, say: “between you and us is the Book of Allah, permit what it [the Qur’an] permits, and forbid what it forbids.” (See the primary sources cited by J. al Banna 2008b: 32–49, especially *Sahaih Muslim and Musnad al Imam Ahmad Ibn Hanbal* (1998); also see al Tabari (1985) quoting the Prophet’s reported hadith concerning the issue in Chapter 2 of this book.)

As J. al Banna (2008b) explains, it should be noted that the early companions of the Prophet discouraged the average Muslim from attributing narratives to the

Prophet even as they (the companions) understood the intention behind the varied narratives for different strategies at different times and places. Furthermore, given the nature of the narratives—lengthy and repetitive—according to al Tabari's commentary on the Qur'anic phrase, "allaghu fi al hadith," this phrase means the general use of the unintended oaths that men were accustomed to using before Islam to enact separation from their wives (Mawqi' al islam: Qur'an, p. 36). The problem of the lengthy and repetitive narratives is that contemporary Muslims, particularly women, who have no intimate relationship with the Qur'an may become further confused about the different meanings of qaran, talaq, and the related conditions and issues. In other words, these narratives were not only troubling to those who were attempting to understand their authenticity, as well as the historicity of Hadith in general, but they continue to be a subject of dispute and are often the source for deriving varied and confusing jurisprudential rules and religious edicts, evidenced below. Therefore, I divided the discussion of qaran and talaq into four major components (1–4). There may be several elements (A–F) within some of the components. Under each component/element, I list the related Qur'anic verses most often also cited in Hadith, exegeses, and current personal status codes. Most Muslims generally consider the four authoritative exegeses: al Tabari, al Qurtubi, al Jalalyn, and Ibn Katheer. I, however, use Ibn Katheer interpretation because his is the most referenced among contemporary Muslims. The textual evidences under each element are presented as follows:

1. Qur'an guidelines
2. The primary narratives attributed to the Prophet
3. The secondary readings of narratives as presented by different commentators, including the Prophet's companions (*al sahabah*) and the companions of the companions (*al tabi'oon*), and
4. The tertiary derivatives of these narratives and commentaries in jurisprudence, represented in the practiced personal status codes or commonly known customs ("urf") in most Muslim societies. Note that I will refer to al Gharawi's (2008) summary of the most practiced personal status codes in most Muslim societies. Al Gharawi summarizes the stance of the five schools of fiqh (including the Ja'afari school). In listing the quotations from the above sources, I mainly reference the four schools, the Sunni schools. Also, I may list the Arabic quotation with a summary of its meaning in English when the Arabic phrase is essential for the argument, or just summarize in English the meaning of a particular quote to avoid unnecessary length.

### 1. Qaran and Talaq—Intention and Procedure

There are few intentions and several steps/procedures that relate to qaran and talaq. I summarize them in six elements (A–F): A. qaran intended for the couple—who were created of a single entity—to live in tranquility and to procreate; B. The Qur'an reminds both women and men that they have equal rights and responsibilities in

marriage and in the dissolution of marriage; C. the procedure of talaq and the waiting period is allowed only twice; D. following the initial pronouncement of talaq and the two procedures of the waiting period, men are required either to retain the marriage with *ma'rouf*, or let go of the relationship with *ihsan*; E. talaq is ordained final only after the third attempt of reconciliation has failed; and F. if a pregnancy is confirmed, the decision to divorce or to get a second chance to reconcile and resume living together is left between the parties.

I. A. *Qaran intended for the couple*—who were created of a single entity—to live in tranquility and to procreate. Thus, making wombs almost as sacred as reverencing God:

{1} يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

O humankind! Reverence your Guardian-God, who created you from a single entity, created, of like nature, *her* mate, and from them twain scattered (like seeds) countless men and women; reverence Allah, through Whom you demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you {al Nisa` 4: 1}.

{189} هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلًا خَفِيًّا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ دَعَوَا اللَّهَ رَبَّهُمَا لَئِنْ آتَيْتَنَا صَالِحًا لَنُكَوِّنَنَّ مِنَ الشَّاكِرِينَ

It is He Who created you from a single entity, and made *her* mate of like nature, in order that he might dwell with her (in tranquility). When they are united, she bears a light burden and carries it about (unnoticed). When she grew heavy, they both pray to Allah their Guardian-God, (saying): “If You give us a goodly child, we vow we shall (ever) be grateful” {al ‘Araf 7: 189}.

The Qur`an also instituted the *sadoqat*, free gifts (not sadaqat or charity), as a good-will condition to the women at marriage and a token of assurance that their well-being is the main goal in married life:

{4} وَأْتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُنَّ فَكُلُوهُ هَنِيئًا مَرِيئًا

And give the women (in marriage) their *sadoqat* as a *nihla* (*faridha* [obligatory condition for completing the marriage contact] with grace); but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right conscious and pleasure {al Nisa` 4: 4}.

Though *sadoqa* (sing. of *sadoqat*) may imply other meanings among different Muslims and at different times, given their perception of the woman as dependent, it is not intended as *mahr* (translated as dower or a bride-price) in return for the woman's licit sex. The word “*mahr*” does not exist in the Qur`an, yet it seems to

be picked up from Ibn 'Abbas when he explained the adjective "nihla" in {4: 4} to be "mahr". It is interesting how Muslims picked up a meaning of one companion over many others', even 'A'ishah's, explanation of "nihla" as "faridha" (see below in Ibn Katheer *tafseer*). Consequently, "mahr" often used [erroneously] instead of sadoqa (Fournier 2010: 153). It should also be noted that the marriage contract is not considered a guarantor for economic support, as commonly understood and practiced among Muslims. Also, sadoqa is not to be determined by fathers or families who take it instead of the bride herself as was practiced in pre-Islamic antiquated cultures.

In summary, marriage is a contractual agreement between the couple and, consequently, dissolution of the marriage should be by mutual decision of both parties as well. In addition, if the woman gives part of the sadoqa in good-will it does not mean that she is "selling herself off," as is wrongly practiced during *khul'* (the woman asking for talaq through an extra-judicial process with the consent of the husband) or *faskh* (the woman asking for dissolution of the marriage through a judge but with sufficient grounds to show the fault of the husband). In other words, sadoqa, being a secondary condition in the marriage contract (the primary being the offer of marriage by the groom and the acceptance of the offer by the bride), was not intended as part of the economic guarantor, otherwise the woman would not feel at ease giving some of it in good-will. Yet, sadly, this is the wrong attitude that women were inculcated with as a result of the abusing practices in which sadoqa is either wrongly translated as "dower" (see Yusef Ali 1993), or confused with "mahr" (the 'urf of the extra gift that was customary practice of the male family intended to prepare the household for the new bride). Hence, it is a misunderstanding to think that the woman has to give up her sadoqa (wrongly lumped with mahr) in order to get the consent of the husband to *khul'*. As I will discuss later, "fareedha" (a fixed sum of monetary or other gift {Qur'an 2: 236}, see Component # 3) and "*ujoor*" (compensation, in {Qur'an 4:24-25; 5: 5; 33: 50; 60: 10; and 65: 6}, see Component # 4) are also mentioned in different Qur'anic contexts and they may or may not be intended as sadoqa.

In view of verses (4: 1 and 7: 189) valuing the joining of the couple in marriage, talaq is considered undesired, though a necessary discourse when there is no chance for reconciliation between the couple to maintain equilibrium and tranquility. The Qur'an forgives good-willed intended oaths (used in pre-Islamic Arabia to enact talaq):

{225} لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا كَسَبْتُمْ قُلُوبِكُمْ وَاللَّهُ غَفُورٌ حَلِيمٌ

Allah will not call you to account for thoughtlessness in your oaths, but for the intention in your hearts, and He is Oft-Forgiving, Most Forbearing.

{227} وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

But if their intention is firm for dissolution of marriage, Allah hears and knows all things {al Baqara 2: 225, 227}.

For this latter point, the following two hadiths corroborate Qur'anic guidance:

- 'Umar bin Al-Khattab reported: Allah's Messenger said: Allah, the Great and Majestic, forbids you to swear by your fathers (al Bayan 1999: Kitab al Iman # 947).
- Ibn 'Abbas reported: regarding declaring one's wife unlawful, it is treated like an oath which must be atoned, and Ibn 'Abbas recited the Qur'anic verse: "Verily, there is in the Messenger of Allah a model for you" {al Ahzab, 33: 21}, in reference to the Prophet's abandoning his wives for 29 days (al Bayan 1999: Kitab al Talaq # 835).

Yet, talaq may not be enacted by the habitual swearing to refrain from sex with one's wife. Rather, it is conditioned by 'iddah (waiting period), to be explained below. Finally, the Qur'an reminds Muslims to shed off both their old habits of swearing by their fathers. Therefore, the customary pronouncements of oaths are not validated as credible pronouncements of talaq, also supported by multiple narratives on the authority of 'A'ishah:

'A'ishah stated that the Messenger of God said: customary pronouncements of oaths are habitual practice of a man in his house, when he invokes the name of God in any conversation (Mawqi' al islam: Qur'an—Tafseer Ibn Katheer = 36).

Though the above ahaadith are corroborated by the Qur'an, some commentators added their own reading and meanings to them as "a matter of fact." Tafseer Ibn Katheer (below) exemplifies how theological interpretation of sunnah is used to justify the jurisprudence that was later fixed in personal status codes:

وَقَوْلُهُ تَعَالَى { وَآتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً } قَالَ عَلِيٌّ بْنُ أَبِي طَلْحَةَ عَنْ ابْنِ عَبَّاسٍ النِّحْلَةُ الْمَهْرُ وَقَالَ مُحَمَّدُ بْنُ إِسْحَاقَ عَنِ الرَّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ نِحْلَةُ فَرِيضَةٍ وَقَالَ مُقَاتِلٌ وَقَتَادَةُ وَابْنُ جُرَيْجٍ نِحْلَةُ أَيْ فَرِيضَةُ زَادَ ابْنُ جُرَيْجٍ مُسْتَمَاءَةً وَقَالَ ابْنُ زَيْدٍ النِّحْلَةُ فِي كَلَامِ الْعَرَبِ الْوَأَجِبُ يَقُولُ : لَا تَنْكِحْهَا إِلَّا بِشَيْءٍ وَاجِبٍ لَهَا وَلَيْسَ يَتَّبَعِي لِأَحَدٍ بَعْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَنْكِحَ امْرَأَةً إِلَّا بِصَدَاقٍ وَاجِبٍ وَلَا يَتَّبَعِي أَنْ يَكُونَ تَسْمِيَةَ الصَّدَاقِ كَذِبًا بِغَيْرِ حَقٍّ.

. وَقَالَ هُشَيْمٌ عَنْ سَيَّارٍ عَنْ أَبِي صَالِحٍ كَانَ الرَّجُلُ إِذْ رَوَّجَ بِنْتَهُ أَخَذَ صَدَاقَهَا لُونَهَا فَهَاهُذُ اللَّهُ عَنْ ذَلِكَ وَنَزَلَ وَآتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً . رَوَاهُ ابْنُ أَبِي حَاتِمٍ وَابْنُ جُرَيْرٍ . وَقَالَ ابْنُ أَبِي حَاتِمٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الْخُمَيْدِيُّ ... : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَآتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً

(Mawqi' al islam: Qur'an—Tafseer Ibn Katheer = 77).

*Ibn Katheer* begins his tafseer with a narrative attributed to a companion, Ibn 'Abbas, that "*nihla*" is mahr. Thus, he (intentionally or not) creates confusion between sadoqa and mahr. The Qur'an uses "*nihla*" as an adjective to describe the state of mind and condition (of grace) in which a sadoqa is given. Although Ibn Katheer continues his *tafseer* by presenting two narratives on the authority

of 'A'ishah and others, in which "nihla" is explained as faridha (obligation) or *wajeb* (a duty), respectively, he contradicts {verse 4 in Qur'anic Chapter 4 or Surat al Nisa'} (above) by adding meanings to "nihla" that are not in the Qur'an. He inserts a weak narrative stating that the "nihla" indicates that the amount and conditions of *sadoqa* are determined by the families, even though the verse clearly states that *sadoqa* as *nihla* is to be agreed upon by the couple and is given to the bride.

Furthermore, Ibn Katheer adds another extra meaning to the swearing—the swearing by the idol, contradicting 'A'ishah's narrative (below):

وَقَوْلُهُ « لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ » أَي لَا يُعَاقِبُكُمْ وَلَا يَلْزِمُكُمْ بِمَا صَدَرَ مِنْكُمْ مِنَ الْإِيمَانِ اللَّاعِيَةِ وَهِيَ الَّتِي لَا يَقْصِدُهَا الْحَالِفُ بَلْ تَجْرِي عَلَى لِسَانِهِ عَادَةً مِنْ غَيْرِ تَعَقُّيدٍ وَلَا تَأْكِيدٍ كَمَا ثَبَتَ فِي الصَّحِيحَيْنِ مِنْ حَدِيثِ الزُّهْرِيِّ عَنْ حَمِيدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَعَلَى آلِهِ وَسَلَّمَ قَالَ : « مَنْ خَلَفَ فَقَالَ فِي خَلْفِهِ بِاللَّاتِ وَالْعُزَّى فَلْيَقُلْ لَا إِلَهَ إِلَّا اللَّهُ اللَّغْوُ فِي الْيَمِينِ

قَالَتْ عَائِشَةُ إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ « اللَّغْوُ فِي الْيَمِينِ هُوَ كَلَامُ الرَّجُلِ فِي يَمِينِهِ كَلًّا وَاللَّهُ وَبَلَى وَاللَّهُ » ثُمَّ قَالَ أَبُو دَاوُدَ رَوَاهُ دَاوُدُ بْنُ الْفَرَّاتِ عَنْ إِبْرَاهِيمَ الصَّانِعِ عَنْ عَطَاءٍ عَنْ عَائِشَةَ مَوْفُوفًا . وَرَوَاهُ الزُّهْرِيُّ وَعَبْدُ الْمَلِكِ وَمَالِكُ بْنُ مَعْمَرٍ عَنْ عَطَاءٍ عَنْ عَائِشَةَ مَوْفُوفًا أَيْضًا . « قُلْتَ » وَكَذَا رَوَاهُ إِبْنُ جَرِيرٍ وَابْنُ أَبِي لَيْلَى عَنْ عَطَاءٍ عَنْ عَائِشَةَ مَوْفُوفًا

(Mawqi' al islam: Qur'an—Tafseer Ibn Katheer = 36).

Unfortunately, and sadly, the majority of Muslims practice this confusing tafseer of Ibn Katheer in their personal status codes as if it was the last testament!  
*1. B. The Qur'an reminds both women and men that they have equal rights and responsibilities in marriage and in the dissolution of marriage.* Given that the social structure of society at the beginning of Islam viewed the woman at the mercy of the husband's whim in dissolving the marriage, the Qur'an *added an extra "degree of" responsibility for the man* [that is, he has to observe 'iddah]. If he intended to initiate the process of dissolution of marriage at pronouncing the oath, he is to abstain from approaching his wife, and he is also reminded that Allah's authority is highest:

{226} لِلَّذِينَ يُؤَلُّونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

For those who take an oath for abstention from their wives a waiting for four months is ordained if then they [the wives] return. Allah is Oft-Forgiving, Most Merciful.

{228} وَالْمَطْلَقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبِعَوَلْتَهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Women whose marriage was dissolved shall wait concerning themselves for three monthly periods. It is not lawful for them to hide what Allah has created in their



wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back after that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; *but men have an [added] degree [of responsibility] toward them.* And Allah is exalted in Power, Wise {al Baqara 2: 226, 228}.

Note that I added emphasis to the phrase “*but men have an [added] degree [of responsibility] toward them*” because it is often taken out of context and misused by interpreters and by Muslim men in general to support their false argument that men are *Qawwamun* “the moral guardian of women” (in al Nisa` 4: 34) because they have a *daraja* (an added degree) above women. Qawama, as explained in Chapters 1 and 2, is to stand up for one’s responsibility.

The abstention from approaching one’s wife with the intention of separation or dissolution of marriage is referenced in several ahaadith, but in different contexts and for different purposes and periods of waiting. Yet, interpreters, like Ibn Katheer (in his statement below) conflates the contexts and the purposes of qaran and talaq in general with other contexts and purposes, such as those contexts that only pertain to the Prophet and his consorts:

{28} يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكَ إِنْ كُنْتُمْ تُرِيدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسْرِكُنَّ  
سَرَّاحًا جَمِيلًا

O Prophet! say to your Consorts: “If it be that you desire the life of this world, and its glitter, then come! I will provide for your enjoyment and set you free in a handsome manner.”

{29} وَإِنْ كُنْتُمْ تُرِيدْنَ اللَّهَ وَرَسُولَهُ وَالذَّارَ الْآخِرَةَ فَإِنَّ اللَّهَ أَعَدَّ لِلْمُحْسِنَاتِ مِنْكُنَّ أُجْرًا عَظِيمًا

But if you seek Allah and His Messenger, and the Home of the Hereafter, verily Allah has prepared for the well-doers amongst you a great reward.

{30} يَا نِسَاءَ النَّبِيِّ مَنْ يَأْتِ مِنْكُنَّ بِفَاحِشَةٍ مُبِينَةٍ يُضَاعَفْ لَهَا الْعَذَابُ ضِعْفَيْنِ وَكَانَ ذَلِكَ عَلَى اللَّهِ يَسِيرًا

O Consorts of the Prophet! if any of you were guilty of evident unseemly conduct, the punishment would be doubled to her, and that is easy for Allah.

{31} وَمَنْ يَفْعَلْ مِنْكُنَّ لِلَّهِ وَرَسُولِهِ وِتْعَمَلْ صَالِحًا نُؤْتِهَا أَجْرَهَا مَرَّتَيْنِ وَأَعْتَدْنَا لَهَا رِزْقًا كَرِيمًا

But any of you that is devout to Allah and His Messenger, and does righteousness, to her shall We grant her reward twice: and We have prepared for her a generous Sustenance.

{32} يَا نِسَاءَ النَّبِيِّ لَسْتُنَّ كَأَحَدٍ مِنَ النِّسَاءِ إِنْ اتَّقَيْتُنَّ فَلَا تَحْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ وَقُلْنَ قَوْلًا مَعْرُوفًا

O Consorts of the Prophet! you are not like any of the (other) women: if you do fear (Allah), be not too complaisant of speech, lest one in whose heart is a disease should be moved with desire: but speak you a speech (that is) just.

{33} وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى وَأَقِمْنَ الصَّلَاةَ وَآتِينَ الزَّكَاةَ وَأَطِعْنَ اللَّهَ وَرَسُولَهُ  
 إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance: and establish regular prayer, and give regular charity; and obey Allah and His Messenger. And Allah only wishes to remove all abomination from you, you Members of the Family, and to make you pure.

{34} وَأَنْكُرْنَ مَا يُتْلَى فِي بُيُوتِكُنَّ مِنْ آيَاتِ اللَّهِ وَالْحِكْمَةِ إِنَّ اللَّهَ كَانَ لَطِيفًا خَبِيرًا

And recite what is rehearsed to you in your homes, of the Signs of Allah and His Wisdom: for Allah understands the finest mysteries and is well-acquainted (with them) {al Ahzab 33: 28–34}.

According to most recent references on what is known as “personal laws,” the husband’s pronouncement of “*Anti taliq*” (you are divorced) three times means that the process of dissolution of marriage is enacted (al Gharawi, 2008: 75). The application of such personal laws is prevalent in most Muslim countries even though they contradict the guidance in the Qur’an that each pronouncement of talaq is separated by a four-month waiting period: four lunar months and 10 days, or three *haydh* (menstruation) and three *tuhr* (purification) periods, the totality of which is known as *’iddah*. The following Hadith on the authority of Ibn ’Umar is often narrated, yet interpreters often ignore the conditions of the waiting periods as stated both in this Hadith and in the Qur’an.

Ibn ’Umar ... reported: I divorced my wife while she was menstruating during the lifetime of Allah’s Messenger. ’Umar bin Al-Khattab asked Allah’s Messenger about it, whereupon Allah’s Messenger said: Command him (’Abdullah bin ’Umar) to take her back (and keep her) and pronounce divorce when she is purified (after passing the period of menses), and she again enters the period of menstruation and she is again purified, and then if he so desires he may keep her and if he desires divorce her (finally) before touching her (without having an intercourse with her), for that is the period of waiting (*’iddah*) which Allah, the Exalted and Glorious, has commanded for the dissolution of the marriage (al Bayan 1999: Kitab al Talaq # 834).

I should add here that the Prophet’s encounter with his wives was not considered talaq as the ahaadith below indicate. This encounter should be seen only as an example for how the Prophet dealt with his consorts, since Muslims in general are not allowed more than one wife (to be explained later). Muslims are allowed to

marry no more than four from among the orphans and their widowed mother under their guardianship only, but preferably one and only under stringent conditions. J.al Banna (2007b: 138) states that Muslims did not abolish polygyny when they ignored the two stringent conditions for having more than one wife as follows:

{3} وَإِنْ خِفْتُمْ أَلَّا تَفْسِدُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْلَمُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ بَدَأَ اللَّهُ يُغْفِرَ لَكُمْ إِنَّهُ كَانَ لَدُونِ اللَّهِ ذَا فَضْلٍ بَاطِنًا

If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that *you shall not be able to deal justly* (with them), *then only one* (widow or the orphan), or those that your right hands possess. That will be more suitable, to prevent you from doing injustice {al Nisa' 4: 3} (to be discussed further in Chapter 4).

The following are two related hadiths:

- 'A'ishah, may Allah be pleased with her, reported that the messenger of Allah abstained from his wives for one month, then he came back to them on the 29th day, stating that the month is 29 days.
- 'A'ishah reported: Allah's Messenger gave us the option [to dissolve our marriage] but we did not deem it as dissolution (al Bayan 1999: Kitab al Talaq # 837).

Ibn Katheer conflates the context in the above verses and hadiths with the purpose of 'iddah in the Qur'an:

{226} لِلَّذِينَ يُؤَلُّونَ مِنْ نِسَائِهِمْ تَرِيصٌ أَرْبَعَةَ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

For those who take an oath for abstention from their wives a waiting for four months is ordained; if then they return, Allah is Oft-Forgiving, Most Merciful {al Baqara, 2: 226}, when he states:

الإبلاء الحلف، فإذا حلف الرجل أن لا يجامع زوجته مدة فلا يخلو إما أن يكون أقل من أربعة أشهر أو أكثر منها فإن كانت أقل فله أن ينتظر انقضاء المدة ثم يجامع امرأته وعليها أن تصبر وليس لها مطالبة بالفينة في هذه المدة وهذا كما ثبت في الصحيحين وقال، الشهر تسع وعشرون ... فأما إن زادت المدة على أربعة أشهر فللزوجة مطالبة الزوج عند انقضاء أربعة أشهر إما أن يعيء أي يجامع وإما أن يطلق فيجبره الحاكم على هذا وهذا لئلا يضر بها وللهذا قال تعالى: " لِلَّذِينَ يُؤَلُّونَ مِنْ نِسَائِهِمْ " أي يخلفون على ترك الجماع من نسائهم فيه دلالة على أن الإبلاء يختص بالزوجات ذوات الإمام كما هو مذهب الجمهور ... وقوله " فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ " فيه دلالة لأحد قولي العلماء وهو القديم عن الشافعي أن المولي إذ فاء بعد الأربعة الأشهر أنه لا كفارة عليه ويعتضد .

It is instructive to note from the above statement that Ibn Katheer also added something that is neither in the Qur'an nor in the Hadith. First, he generalized from

a particular incident between the Prophet and his wives (the Prophet abstained from his consorts' quarters for 29 days) by interpreting "the waiting period" as if it could be less than four months and 10 days. Second, he differentiated between the free woman and the "ama" (this word is often understood as the woman that the right hand possesses or a slave woman) by adding an outside meaning (to the Qur'an) when he said, "iddah is only required in a marriage with a wife, not for 'ima'a (pl. of "ama")," according to the *jumhur* (the majority of scholars). Ibn Katheer also contradicts another Qur'an guideline even when these guidelines specifically address the Prophet, further evident in the following phrase of {surah al Talaq 65, verse 1} that clearly indicates observing 'iddah, and further explained in Bukhari's book of Talaq:

{1} يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ

O Prophet! When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods {al Talaq 65: 1},

باب قول الله تعالى : يا أيها النبي إذا طلقتم النساء فطلقوهن لعدتهن وأحصوا العدة أحصيناها حفظناه وعدناه وطلاق السنة أن يطلقها طاهرا من غير جماع ويشهد شاهدين

(Mawqi' al islam: Hadith Sahih Bukhari = 2932)

That is, the dissolution of marriage, according to the Prophet's sunnah, is that the wife is not approached for three periods of menstruation and three periods of purification, that the husband does not approach her after the last purification, and that he should have two witnesses.

Furthermore, and despite the clear parity between the sexes according to the following:

{35} إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّانِعِينَ وَالصَّانِعَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا

For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise, for them has Allah prepared forgiveness and great reward {Al Ahzab 33: 35},

Ibn Katheer adds his own meanings when he interprets the earlier verse: ("*lil rijal alyhunna daraja*" for men an added degree [of responsibility]) at the time of initiating talaq {al Baqara 2: 228}, as if the man has a degree of preference above the woman. He also misread the verse: ("*al rijal qawwamun 'ala al nisa*"

men have the responsibility [of caring for] women) {al Nisa` 4: 34}, explained above and earlier in Chapters 1 and 2), conflating the two unrelated verses to give men advantage over women. He further diverts from the Qur'an by conflating two reports on the authority of the Prophet that discuss "idhrobuhun". The first report was specific to dealing with a wife who is rebellious, instructing the man to leave her in her house after he abandons her and lets her be isolated in bed. That is, the intention of the Qur'an from "idhrobuhun" is to leave such women in their place. The second report on the authority of the Prophet concerns how to care for the wife in general, prohibiting hitting or insulting the wife. Ibn Katheer also diverts from the Qur'an by using the word "fadhdhal" in {4: 34} as if it came from the root "fadheelah" (righteousness), implying that the man is better than the woman in creation, in morality, and in his status. Ibn Katheer extends these differences to the point of obliging the wife to obey her husband as if the latter is given the upper hand (as emphasized below), and as if her contestation of her husband's unjust behavior is at the same level of disobedience to God's guidance:

وَقَوْلُهُ { وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ } أَيَّ وَلَهُنَّ عَلَى الرَّجَالِ مِنَ الْحَقِّ مِثْلُ مَا لِلرِّجَالِ عَلَيْهِنَّ فَلْيُؤَدَّ كُلَّ وَاحِدٍ مِنْهُمَا إِلَى الْآخِرِ مَا يَجِبُ عَلَيْهِ بِالْمَعْرُوفِ ... وَقَوْلُهُ { وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ } أَيَّ فِي الْفَضِيلَةِ فِي الْخَلْقِ وَالْخُلُقِ وَالْمَنْزِلَةِ وَطَاعَةِ الْأَمْرِ وَالْإِنْفَاقِ وَالْقِيَامَ بِالْمَصَالِحِ وَالْفَضْلَ فِي الدُّنْيَا وَالْآخِرَةِ كَمَا قَالَ تَعَالَى : { الرَّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ }

Despite the fact that neither of these meanings (of obedience to the husband and/or treating the woman who does not obey) exists in the Qur'an, nor in Hadith, sadly the majority of male jurists use Ibn Katheer's interpretations of qawwamun {4: 34} and daraja {2: 228} as if they were binding for male-female relations in marriage (K. Ali, 2010: 100–101). Consequently, as these meanings were codified in "family laws," it became impossible to change perceptions and attitudes even as some contemporary legal changes were implemented. A good example is in the practice of the Egyptian law concerning khul', wherein men refuse to grant the woman the right to dissolve the marriage even under the order of a judge and after the woman gave up all her sadoqa or other gifts (BBC News 2000). Ironically, even after the Egyptian revolution of January 25, 2011, the regime of the Muslim Brotherhood appropriated this law [of khul'] as not admissible given that it was enacted by the deposed regime of Husni Mubarak (Women Learning Network, 2013).

1. C. The procedure of talaq and the waiting period is allowed only twice. Then the husband is mandated to complete the separation and dissolution of marriage unless he and his wife decide to reconcile. The male responsibility includes *infaq* (providing for the wife) and *sakan* (shelter) until after the passing of the waiting period. Men are not allowed to take back any of what they have given as the sadoqa and additional gifts unless the couple fear that they will not keep the marriage within the norms provided by Allah—tranquil life. In this case, the woman may dissolve the marriage by giving up some of the extra gifts, not the sadoqa, to gesture her intention not to continue married life.

The Qur`an states:

{229} الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Dissolution of marriage is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness. It is not lawful for you, (men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If you (judges) do indeed fear that they (the couple) would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah; so do not transgress them. If any do transgress the limits ordained by Allah, such persons do wrong (to themselves as well as others) {Al Baqara 2: 229}.

It should be noted here that the latter part of verse {2: 229} (the woman may give something for her freedom) is often used unjustly against the woman as a condition to dissolve the marriage. That is, often this part of the verse is interpreted as if the woman cannot initiate the process of talaq unless she gives something back, and that she has to go through the court in order to do so, contrary to what the Qur`an states in:

{19} يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا وَلَا تَعْضَلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

O you who believe! you are forbidden to inherit women against their will. Nor should you treat them with harshness, that you may take away part of the extra gifts you have given them, except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and parity. If you take a dislike to them it may be that you dislike a thing, and Allah brings about through it a great deal of good {al Nisa` 4: 19}.

M. al Faruqi (2000: 98) analyzes the jurists' unjustified methodology in deriving such ruling. Her analysis is revealing, especially given that the jurists use Ibn Kather's Tafseer above and below.

Ibn Kather adds confusion and creates further contention when he conflates the following narrative on the authority of 'A`ishah with others' narratives. 'A`ishah's narrative indicates that the third period of *tuhr* (purification) determines the end of 'iddah. Yet, Ibn Kather conflates 'iddah with the context of woman purification for prayer, using some weak, ambiguous *isnaad* (chain of narrators), causing a diversion from the main issue that is being discussed in this context—'iddah. He also diverts from the intention of the second 'A`ishah's narrative—namely the *infaq* and *sakan*.

Ibn Katheer states:

وَقَدْ اِخْتَلَفَ السَّلَفُ وَالْخَلْفُ وَالْاَئِمَّةُ فِي الْمُرَادِ بِالْاَقْرَاءِ مَا هُوَ عَلَى قَوْلَيْنِ : « أَحَدُهُمَا » أَنَّ الْمُرَادَ بِهَا الْأَطْفَارُ وَقَالَ مَالِكٌ فِي الْمُوطَأِ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أَنَّهَا اِنْتَقَلَتْ حَفْصَةَ بِنْتَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ حِينَ دَخَلَتْ فِي الدَّمِ مِنَ الْحَيْضَةِ الثَّلَاثَةِ فَذَكَرَتْ ذَلِكَ لِعَمْرَةَ بِنْتَ عَبْدِ الرَّحْمَنِ فَقَالَتْ صَدَقَ عُرْوَةَ وَقَدْ جَادَلَهَا فِي ذَلِكَ نَاسٌ فَقَالُوا : إِنَّ اللَّهَ تَعَالَى يَقُولُ فِي كِتَابِهِ « ثَلَاثَةَ قُرُوءٍ » فَقَالَتْ عَائِشَةُ : صَدَقْتُمْ وَتَذَرُونَ مَا الْأَقْرَاءُ ؟ إِنَّمَا الْأَقْرَاءُ الْأَطْفَارُ وَقَالَ مَالِكٌ عَنْ ابْنِ شِهَابٍ سَمِعْتُ أَبَا بَكْرٍ بْنَ عَبْدِ الرَّحْمَنِ يَقُولُ : مَا أَدْرَكْتُ أَحَدًا مِنْ فَتَاهِنَا إِلَّا وَهُوَ يَقُولُ ذَلِكَ يُرِيدُ قَوْلَ عَائِشَةَ وَقَالَ مَالِكٌ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ : إِذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ فَدَخَلَتْ فِي الدَّمِ مِنَ الْحَيْضَةِ الثَّلَاثَةِ فَقَدْ بَرِئْتُ مِنْهُ وَبَرِيَ مِنْهَا

In summary, Ibn Katheer seems to contradict 'A'ishah by presenting different narratives as attributed to different chains of narrators, despite the fact that the original source in some of them is not well known. In bringing such narratives into his tafseer, Ibn Katheer muddled the issue of determining the end of the waiting period—the third *haydh* (menstrual period) or the third *tuhr* (purification)—with the issue of determining the waiting period as one month—after the Prophet's case with his consorts—or three menstrual and purification periods, as ordained in the Qur'an and as 'A'ishah narrates (but was contradicted by 'Umar bin al Khattab's reported narrative). Ibn Katheer also confused the issue of the waiting period with the issue of *sakan*—as to whether or not the woman stays in her dwelling (in the same home of her husband) during the waiting period (as we will see in Component # 2, there is also discrepancy in other tafaseer [pl. of tafseer]).

It will be impossible in this context to summarize the variation in the personal status codes according to the four Sunni schools of jurisprudence, resulting in part from the above confusing interpretation of Ibn Katheer and others. Hence, I refer the reader to al Gharawi's (2008: 76–118). The most common abuse of these codes that are erroneously called “Islamic laws” is in completing the *talaq* procedure after only one pronouncement of *talaq* by the husband without observing the three waiting periods. This is exemplified in a recent incident in which a man used electronic text messaging, telling his wife that she was “divorced.” Worst yet is that a Saudi mufti ruled in favor of the husband's action (Mideastwire 2009). This mufti contradicted the Qur'an and the hadith, as we will see in the next element.

1. D. Following the initial pronouncement of *talaq* and the two procedures of the waiting period, men are required either to retain the marriage with *ma'rouf* (according to the instinct of human goodness) or let go of the relationship with *ihsan* (grace and good-will). According to the Qur'an, men are not allowed to keep the women hanging in between the status of *qaran* and *talaq*, and they should not abuse the signs of Allah when given the permission to dissolve the marriage:

{231} وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَّغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِنَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَظَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا وَالذِّكْرُ نِعْمَةٌ مِنَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ لِيُعْظِمَكُمْ بِهِ وَاتَّقُوا اللَّهَ وَاللَّهُ يَعْلَمُ أُنَّ اللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

When you “divorce” women, and they fulfill the term of their (*'iddah*), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if anyone does that, he wrongs his own soul. Do not treat Allah’s signs as a jest, but solemnly rehearse Allah’s favors on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well-acquainted with all things {al Baqara 2: 231}.

’A`ishah reported: When the Messenger of Allah was commanded to give option to his wives, he started it from me saying: I am going to mention to you a matter which you should not (decide) in haste until you have consulted your parents. She said that he already knew that my parents would never allow me to seek separation from him. She said: Then he recited verses {al Ahzab 33: 28–30} below. She is reported to have said [to the Prophet]: About what should I consult my parents, for I desire Allah and His Messenger and the abode of the Hereafter? She (’A`ishah) said: Then all the wives of Allah’s Messenger did as I had done (al Bayan 1999: Kitab al Talaq # 837).

It is instructive to compare ’A`ishah’s narrative with that of ’Umar bin al Khattab (contradicting another set of verses, below) as evidence of males’ perspectives of women at the time, something that determines the variation in the content of these narratives! In summary, ’Umar speaks to the Prophet (about his [the Prophet’s] wives who were protesting against their living conditions), urging him to dissolve his marriage with them, but the Prophet refuses, awaiting a revelation to that effect:

{28} يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكُمْ إِن كُنْتُمْ تُرِيدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسْرِكُنَّ سَرَاحًا جَمِيلًا. {29} وَإِن كُنْتُمْ تُرِيدْنَ اللَّهَ وَرَسُولَهُ وَالذَّارَ الْآخِرَةَ فَإِنَّ اللَّهَ أَعَدَّ لِلْمُحْسِنَاتِ مِنكُنَّ أَجْرًا عَظِيمًا. {30} يَا نِسَاءَ النَّبِيِّ مَن يَأْتِ مِّنْكُمْ بِفَاحِشَةٍ مُّبِينَةٍ يُضَاعَفْ لَهَا الْعَذَابُ ضِعْفَيْنِ وَكَانَ ذَلِكَ عَلَى اللَّهِ يَسِيرًا

O ye, Prophet, say to your wives: If you desire this world’s life and its adornment, then come, I will give you a provision and allow you to depart a goodly departing; but if you desire Allah and His Messenger and the abode of the Hereafter, then Allah has prepared for the doers of good among you a great reward. O Consorts of the Prophet, if any of you were guilty of evident unseemly conduct, the Punishment would be doubled to her, and that is easy for Allah {al Ahzab 33: 28– 30}.

It was narrated that ’Umar bin al Khattab said:

-حَدِيثُ عُمَرَ بْنِ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ : لَمَّا اعْتَزَلَ نَبِيُّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نِسَاءَهُ قَالَ دَخَلْتُ الْمَسْجِدَ فَإِذَا النَّاسُ يَنْكُتُونَ بِالْحَصَى وَيَقُولُونَ طَلَّقَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نِسَاءَهُ وَذَلِكَ قَبْلَ أَنْ يُؤْمَرَ بِالْحِجَابِ فَقَالَ عُمَرُ فَقُلْتُ لِأَعْلَمَنَّ ذَلِكَ الْيَوْمَ قَالَ فَدَخَلْتُ عَلَى عَائِشَةَ فَقُلْتُ يَا بِنْتَ أَبِي بَكْرٍ أَقَدْ بَلَغَ مِنْ شَأْنِكَ أَنْ تُؤْذِي رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ مَا لِي وَمَا لَكَ يَا ابْنَةَ الْخَطَّابِ عَلَيْكَ بَعْثِيكَ. قَالَ فَدَخَلْتُ عَلَى حَفْصَةَ وَبِنْتُ عُمَرَ فَقُلْتُ لَهَا يَا حَفْصَةُ أَقَدْ بَلَغَ مِنْ شَأْنِكَ أَنْ تُؤْذِي رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَاللَّهِ لَقَدْ



عَلِمْتُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يُجْبِكُ وَلَوْلَا أَنَا لَطَلَّفَكَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَبَكَتُ أَشَدَّ الْبُكَاءِ فَقُلْتُ لَهَا أَيُّنَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَتْ هُوَ فِي خِزَانَتِهِ فِي الْمَشْرِبَةِ فَدَخَلْتُ ... ثُمَّ قُلْتُ يَا رَبَّاحَ اسْتَأْذِنِي لِي عِنْدَكَ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَنَظَرَ رَبَّاحٌ إِلَى الْغُرْفَةِ ثُمَّ نَظَرَ إِلَيَّ فَلَمْ يَقُلْ شَيْئًا ثُمَّ رَفَعْتُ صَوْتِي فَقُلْتُ يَا رَبَّاحَ اسْتَأْذِنِي لِي عِنْدَكَ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَبَى أَنْ يَأْذِنَ لِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ طَرَفًا أَتَيْتُ جَنَّتَ مِنْ أَجْلِ حَفْصَةَ وَاللَّهُ لَئِنْ أَمَرَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِضَرْبِ عُنُقِهَا لَأَضْرِبَنَّ عُنُقَهَا وَرَفَعْتُ صَوْتِي فَأَوْمَأَ إِلَيَّ أَنْ ارْفَعِي فَدَخَلْتُ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ... جِئْتُ دَخَلْتُ وَأَنَا أَرَى فِي وَجْهِهِ الْغَضَبَ فَقُلْتُ يَا رَسُولَ اللَّهِ مَا يَشُقُّ عَلَيْكَ مِنْ شَأْنِ النِّسَاءِ فَإِنْ كُنْتُ طَلَّقْتُهُنَّ فَإِنَّ اللَّهَ مَعَكَ وَمَلَائِكَتُهُ وَجِبْرِيلَ وَمِيكَائِيلَ وَأَنَا وَأَبُو بَكْرٍ وَالْمُؤْمِنُونَ مَعَكَ وَقَلَمًا تَكَلَّمْتُ وَأَحْمَدُ اللَّهُ بِكَلَامِ إِلَّا رَجَوْتُ أَنْ يَكُونَ اللَّهُ يُصَدِّقُ قَوْلِي الَّذِي أَقُولُ وَنَزَلَتْ هَذِهِ الْآيَةُ آيَةُ التَّخْيِيرِ :

{4} إِنْ تَوَّابَا إِلَى اللَّهِ فَقَدْ صَغَتْ قُلُوبُكُمَا وَإِنْ تَظَاهَرَا عَلَيْهِ فَإِنَّ اللَّهَ هُوَ مَوْلَاهُ وَجِبْرِيلُ وَصَالِحُ الْمُؤْمِنِينَ وَالْمَلَائِكَةُ بَعْدَ ذَلِكَ ظَهِيرٌ

If you two [A'ishah and Hafsa] turn in repentance to Him, your hearts are indeed so inclined; but if you back up each other against him, truly Allah is his Protector, and Gabriel, and (every) righteous one among those who believe, and furthermore, the angels will back (him) up.

{5} عَسَىٰ رَبُّهُ إِنْ طَلَّقَنَّ أَنْ يُبَدِّلَهُ أَزْوَاجًا خَيْرًا مِنْكَ مُسْلِمَاتٍ مُؤْمِنَاتٍ قَاتِلَاتٍ تَابِيَاتٍ عَابِدَاتٍ سَابِحَاتٍ نُّبِيَّاتٍ وَأَبْكَارًا

It may be, if he divorced you (all), that Allah will give him in exchange Consorts better than you, who accept Islam, who believe, who are devout, who turn to Allah in repentance, who worship (in humility), who travel (for Faith) and fast, previously married or virgins. {al Tahreem 66: 4-5}:

-وَكَانَتْ عَائِشَةُ بِنْتُ أَبِي بَكْرٍ وَحَفْصَةُ تَظَاهَرَا فِي عَنِّي سَائِرَ نِسَاءِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ يَا رَسُولَ اللَّهِ أَطَلَّقْتَهُنَّ قَالَ لا ... فَلَمْ أَزَلْ أَحَدُهُنَّ حَتَّى تَحَسَّرَ الْغَضَبُ عَنْ وَجْهِهِ وَحَتَّى كَثُرَ فَضْحَاكُ ... ثُمَّ نَزَلَ نَبِيُّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَنَزَلَتْ فَقُلْتُ يَا رَسُولَ اللَّهِ إِنَّمَا كُنْتُ فِي الْغُرْفَةِ تِسْعَةَ وَعِشْرِينَ قَالَ إِنَّ الشَّهْرَ يَكُونُ تِسْعًا وَعِشْرِينَ فَقُمْتُ عَلَى بَابِ الْمَسْجِدِ فَنَادَيْتُ بِأَعْلَى صَوْتِي لَمْ يَطَّلِقْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نِسَاءَهُ وَنَزَلَتْ هَذِهِ الْآيَةُ :

{83} وَإِذَا جَاءَهُمْ أَمْرٌ مِنَ الْأَمْنِ أَوْ الْخَوْفِ أَدَّعَوْا بِهٖ وَلَوِ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ وَلَوْلَا فَضْلُ اللَّهِ عَلَيْكُمْ وَرَحْمَتُهُ لَاتَّبَعْتُمُ الشَّيْطَانَ إِلَّا قَلِيلًا

When there comes to them some matter touching (public) safety or fear, they divulge it. If they had only referred it to the Messenger or to those charged with authority [of knowledge] among them, the proper investigators would have received the right instruction from them (directly). Were it not for the Grace and Mercy of Allah unto you, all but a few of you would have followed Satan { al Nisa` 4: 38},

فَكَفَتْ أَنَا اسْتَنْبَطْتُ ذَلِكَ الْأَمْرَ وَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ آيَةَ التَّخْيِيرِ -

(al Bayan 1999: Kitab al Falaq # 840).

Ibn Katheer comment begins with a positive approach as follows:

هَذَا أَمْرٌ مِنَ اللَّهِ عَزَّ وَجَلَّ لِلرِّجَالِ إِذَا طَلَّقَ أَحَدُهُمُ الْمَرْأَةَ طَلَاقًا لَهُ عَلَيْهَا فِيهِ رَجْعَةٌ أَنْ يُحْسِنَ فِي أَمْرِهَا إِذَا انْقَضَتْ عِدَّتُهَا وَلَمْ يَبْقَ مِنْهَا إِلَّا مَقْدَارٌ مَا يُمَكِّنُهُ فِيهِ رَجْعَتُهَا فَإِمَّا أَنْ يُمَسِّكَهَا أَيَّ يَرْتَجِعُهَا إِلَى عِصْمَةِ نِكَاحِهِ بِمَعْرُوفٍ وَهُوَ أَنْ يَشْهَدَ عَلَى رَجْعَتِهَا وَيَتَوَيَّ عَشْرَتَهَا بِالْمَعْرُوفِ أَوْ يُسَرِّحَهَا أَيَّ يَتْرُكَهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا وَيُخْرِجَهَا مِنْ مَنزِلِهِ بِأَلْتِي هِيَ أَحْسَنُ مِنْ غَيْرِ شِفَاقٍ وَلَا مَخَاصِمَةٍ وَلَا تَقَالِبٍ . . .

Yet, he goes on (knowingly or unknowingly), contradicting the Qur`an, the hadith, and himself as follows: first, he states the content of verse that is clear concerning the dissolution of marriage:

{231} وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَّغْتُمْ أَجَلَهُنَّ فَامْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِعَنَتِكُمْ وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا وَاذْكُرُوا نِعْمَةَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ لِيُعْظِمَكُمْ بِهِ وَاتَّقُوا اللَّهَ وَالْعُلْمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

When you divorce women, and they fulfill the term of their ('iddah), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if anyone does that, he wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favors on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well-acquainted with all things {al Baqara 2:231},

and men should treat the woman fairly during the completion of talaq procedures. Yet, he adds that the man could send the woman out of her house once he seals the talaq, contradicting another verse {65: 1} (see Component # 2. A). Second, he narrates several examples wherein the Prophet scolded some companions for practicing the old custom of divorcing the woman and retaining her in order to prevent her from marrying someone else, but then, he (Ibn Katheer) accepts a narrative that is categorized as "gharib" (strange), stating that even if the husband was joking, his pronouncement of talaq is binding. How could Ibn Katheer affirm all these unjust practices despite what verse {2: 231} warn against, and despite the fact that the latter narrative was strange? Has he forgotten that the Prophet himself enjoined the believers not to "play" with God's book when he was informed that a man dissolved his marriage with a woman after pronouncing the oath three times in one sitting (documented by al Nasa`i, quoted in J. al Banna 1998: 8).

It is hard for me to discern how the four schools of thought, as reported in al Gharawi (2008: 73), accept the idea that a man may complete the talaq process in one sitting once he pronounces the phrase "anti taliq" (you are divorced) three times without observing the waiting periods in between each pronouncement. *Such jurists' opinions and their prevalent practices makes one wonder in what other ways and how far in their daily life Muslims have drifted away from Qur`an guidelines.* These diversions from the guidance also make it necessary to investigate all interpretations, even as we know that they are not binding.

1. E. Talaq is ordained final only after the third attempt of reconciliation has failed. Then, the couple cannot remarry unless the woman marries another man and divorces him. The Qur'an reminds men not to hold the women after divorce or prevent them from remarrying, or use the excuse of remarrying and divorcing as a means to harm the women:

{230} فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَتَّخِجَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

So if a husband divorces his wife (irrevocably), he cannot, after that, remarry her until after she has married another husband and he has divorced her. In that case there is no blame on either of them if they reunite; provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah which He makes plain to those who understand.

{232} وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضُوا بَيْنَهُمْ بِالْمَعْرُوفِ ذَلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَمْ كَرَمٌ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

When you divorce women, and they fulfill the term of their ('Iddah), do not prevent them from marrying their (former) husbands, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the Last Day. That is (this path is) most virtue and pure for you. And Allah knows, and you know not {al Baqara 2, 230, 232}.

There is no clear documentation of a related hadith on the matter, except what Ibn Katheer uses, in his tafseer below, as the reason behind the revelation of the verses {2: 230} and {2: 232}.

Ibn Katheer states:

قَالَ عَلِيُّ بْنُ أَبِي طَلْحَةَ عَنْ ابْنِ عَبَّاسٍ نَزَلَتْ هَذِهِ الْآيَةُ فِي الرَّجُلِ يَطْلُقُ امْرَأَتَهُ طَلْقًا أَوْ طَلْقَتَيْنِ فَتَنْقَضِي عِدَّتُهَا ثُمَّ يَبْدُو لَهُ أَنْ يَتَزَوَّجَهَا وَأَنْ يَرَاجِعَهَا وَتُرِيدُ الْمَرْأَةُ ذَلِكَ فَيَمْنَعُهَا أَوْلِيَاؤُهَا مِنْ ذَلِكَ فَهَيَّأَ اللَّهُ أَنْ يَمْنَعُهَا . وَكَذَا رَوَى الْعَوْفِيُّ عَنْهُ عَنْ ابْنِ عَبَّاسٍ أَيْضًا وَكَذَا قَالَ مَسْرُوقٌ وَإِبْرَاهِيمُ النَّخَعِيُّ وَالزُّهْرِيُّ وَالضَّخَّاکُ : إِنَّهَا أَنْزَلَتْ فِي ذَلِكَ وَهَذَا الَّذِي قَالُوهُ ظَاهِرٌ مِنَ الْآيَةِ . وَفِيهَا دَلَالَةٌ عَلَى أَنَّ الْمَرْأَةَ لَا تَمْلِكُ أَنْ تَزَوَّجَ نَفْسَهَا وَأَنَّهَا لَا بَدَّ فِي النِّكَاحِ مِنْ وَلِيِّ كَمَا قَالَهُ التِّرْمِذِيُّ وَإِبْنُ جَرِيرٍ عِنْدَ هَذِهِ الْآيَةِ . كَمَا جَاءَ فِي الْحَدِيثِ ” لَا تَزَوَّجُ الْمَرْأَةُ الْمَرْأَةَ وَلَا تَزَوَّجُ الْمَرْأَةُ نَفْسَهَا فَإِنَّ الزَّانِيَةَ هِيَ الَّتِي تَزَوَّجُ نَفْسَهَا“ .

It is perplexing that jurists still use the above interpretation of Ibn Katheer despite the fact that he contradicts the Qur'an on many levels. In addition, he inserted meanings that neither exist in the Qur'an nor are relevant to the issue, such as adding a *dha'if* (weak) hadith suggesting that a woman cannot execute another woman's marriage or her own marriage by herself without a male relative's consent. Though the different schools vary in their determination of talaq, they all agree, in contradiction to Qur'anic mandate, that talaq is *valid after three pronouncements in one sitting*, without considering the waiting period between each pronouncement,

even after recognizing that the act of making three pronouncements in one sitting is considered *haram* (forbidden) (al Gharawi, 2008: 75). Sadly, such ruling by the different schools has given license to men for centuries to divorce in a casual manner, giving themselves the license of paying *kaffara* (a monetary, or something of a kind), as a ransom for committing this forbidden act.

1. F. If a pregnancy is confirmed, the decision to divorce or to get a second chance to reconcile and resume living together is left between the parties. The male responsibility includes providing for the wife until after passing the waiting period or completing the pregnancy and delivering the child. The woman also has the right to provisions and shelter until she delivers and for two more years if she decides to nurse the child. If the father of the child decides to hire a wet-nurse, he is obliged to provide the same compensation for the ex-wife for that period, unless the couple agree in good-will to complete the severance of their relation. The Qur'an states:

{233} وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّئَهُنَّ وَالرِّضَاعَةُ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تُسْقِطُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ بِالْمَعْرُوفِ وَأْتَقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child, nor father on account of his child, and the heir shall be chargeable in the same way (that is, in the case of the husband's death, the heir has the same obligations to the wife), if they both decide on separation or to employ a wet nurse, by mutual consent, and after due consultation, there is no blame on them. If you decide on a wet nurse for your offspring there is no blame on you, provided you pay (the mother) what you offered, on equitable terms. Fear Allah and know that Allah sees well what you do {al Baqara 2: 233}.

The following narrative indicates that the Prophet allowed a widow to remarry as soon as she gave birth and was purified from the birth blood:

Subay'ah, [most likely is bint al Harith al Aslamiyah who attributed 12 narratives to the Prophet, according to *al Tahdhib* of Ibn Hisham (2000) and *A'lam* of Kahhalah (1959, Juz 2: 148)] ... narrated: 'Umar bin 'Abdullah wrote to 'Abdullah bin 'Utbah informing him that Subay'ah had told him that she had been married to Sa'd bin Khawlah and he belonged to the people of 'Amir bin Lu'ai, and was one of those who participated in the Battle of Badr, and he died in the Farewell Pilgrimage and she was pregnant at that time. And much time had not elapsed that she gave birth to a child after his death and when she was free from the effects of childbirth she embellished herself for those who had to give proposals of marriage. Abu al-Sanabil bin Ba'kak (from the Banu 'Abd Al-Dar) came to her and said: What is this that I

see you embellished; perhaps you are inclined to marry. By Allah, you cannot marry unless four months and ten days (of 'iddah are passed). When he said that, Subay'ah said: I dressed myself, and as it was evening I came to Allah's Messenger (may peace be upon him) and asked him about it, and he gave me a religious verdict that I was allowed to marry when I had given birth to a child and asked me to marry if I so liked (al Bayan 1999: Kitab al Talaq # 841)

The verses below confirm this rule. That is, the widow shall wait the prescribed time (four months and 10 days) and when the time is fulfilled (either delivering a child, or had the third menstruation and purifying periods), then she can be ready for another marriage:

{234} وَالَّذِينَ يَتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَإِذَا بَلَغَ أَجَلُهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

If any of you die and leave widows behind, they [the widows] shall wait concerning themselves four months and ten days: *when they have fulfilled their term*, there is no blame on you if they dispose of themselves in a just and reasonable manner. And Allah is well acquainted with what you do.

{235} وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْتَمْتُمْ فِي أَنْفُسِكُمْ عَلِيمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُوَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابَ أَجَلَهُ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ وَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ

There is no blame on you if you make an offer of betrothal or hold it in your hearts. Allah knows that you cherish them in your hearts: but do not make a secret contract with them except that you speak to them in terms honorable, nor resolve on the tie of marriage till the *term prescribed is fulfilled*. And know that Allah knows what is in your hearts, and take heed of Him; and know that Allah is Oft-Forgiving, Most Forbearing.

{236} لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدْرَهُ وَعَلَى الْمُقْتِرِ قَدْرَهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ

There is no blame on you if you divorce women before consummation or the fixation of their faridha (due gift); but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means; a gift of a reasonable amount is due from those who wish to do the right thing.

{237} وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَغْفِرَ الْوَالِدُ وَالَّذِينَ يَبْدُونَ إِلَيْكُمْ بِمَا تَعْمَلُونَ بَصِيرٌ

And if ye divorce them before consummation, but after the fixation of a faridha for them, then the half of the faridha (is due to them), unless they remit it or (the man's

half) it is remitted by the man in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness and do not forget liberality between yourselves. For Allah sees well all that you do.

{240} وَالَّذِينَ يَتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا إِلَى الْحَوْلِ غَيْرِ إِخْرَاجٍ فَإِنْ خَرَجْنَ فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي أَنْفُسِهِنَّ مِنْ مَّغْرُوفٍ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence; but if they leave (the residence of their husband), there is no blame on you for what they do with themselves, provided it is a reasonable goodness. And Allah is Exalted in Power, Wise.

{241} وَبِالْمُطَلَّاتِ مَتَاعٌ بِالْمَغْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

For divorced women, maintenance should be provided on a reasonable (goodness). This is a duty on the righteous (al Baqara 2: 234–7, 240–241).

These verses also confirm that 'iddah of the widow is intended mainly to insure no pregnancy from the deceased as evidence in verses {2: 233 above and 65: 4}:

{4} وَاللَّائِي يَيْسُنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحِضْنَ وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

Such of your women as have passed the age of monthly courses, for them the prescribed period, if you have any doubts, is three months, and for those who have no courses (it is the same): for those who carry (life within their wombs), their period is until they deliver their burdens: and for those who fear Allah, He will make their path easy,

and in the following two hadiths, and not as generally practiced for centuries, wherein 'iddah is misinterpreted for mourning the husband too:

حدثنا سعد بن حفص حدثنا شيبان عن يحيى قال أخبرني أبو سلمة قال جاء رجل إلى ابن عباس وأبو هريرة جالس عنده فقال أفتني في امرأة ولدت بعد زوجها بأربعين ليلة فقال ابن عباس آخر الأجلين قلت أنا {وأولات الأحمال أجلهن أن يضعن حملهن}.

قال أبو هريرة أنا مع ابن أخي يعني أبا سلمة فأرسل ابن عباس غلامه كريبا إلى أم سلمة يسألها فقالت : قتل زوج سبيعة الأسلمية وهي حبلى فوضعت بعد موته بأربعين ليلة فخطبت فأنكحها رسول الله صلى الله عليه وسلم وكان أبو السنابل فيمن خطبها

(Mawqi' al islam: Qur'an—Tafseer Ibn Katheer = 558)

The above hadiths as well as the Qur'an phrase “*wa 'ala alwarith mithla dhalika*” (and for the heir is the same, {2: 233}) designate 'iddah (be it in talaq or after

the death of husband) to verify pregnancy or the lack thereafter. According to the Qur'an, the woman observes the same period of three menstrual and purification periods, the proximate number of days equal to four lunar months and 10 days in order to prove or disprove pregnancy whether after talaq or after the death of the husband. However, the following narrative is often misused in actual practice, contradicting the Qur'an as well as the above hadiths, by emphasizing 'iddah as if it was intended for mourning the husband:

حَدِيثُ أُمِّ حَبِيبَةَ رُوحِ النَّبِيِّ رَضِيَ اللهُ عَنْهَا : عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ قَالَتْ دَخَلْتُ عَلَى أُمِّ حَبِيبَةَ رُوحِ النَّبِيِّ جِئْتُ تُوفِّيَ أَبُوهَا أَبُو سَفْيَانَ فَدَعَتْ أُمَّ حَبِيبَةَ بِطَيْبٍ فِيهِ صُفْرَةٌ خَلَقَتْ أَوْ غَيْرُهُ فَذَهَبَتْ مِنْهُ جَارِيَةً ثُمَّ مَسَّتْ بِعَارِضَتِهَا ثُمَّ قَالَتْ وَاللَّهِ مَا لِي بِالطَّيِّبِ مِنْ حَاجَةٍ غَيْرَ أَنِّي سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ عَلَى الْمَنْبَرِ لَا يَلِمُ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ تُحْدِ عَلَى مَيِّتٍ فَوْقَ ثَلَاثِ إِلَّا عَلَى رُوحِ أَرْبَعَةِ أَشْهُرٍ وَعَشْرًا

(al Bayan 1999: # 843)

Even though this latter narrative is to prevent mourning more than three days except for the husband, 'iddah here also confirms or disconfirms pregnancy. This latter meaning is affirmed by verse 4 of chapter 65 that designates 'iddah to be only three months for menopausal women or for those who doubt pregnancy (as we will see in Component # 2). Also, to claim that the verse was abrogated is unacceptable, as explained by J. al Banna (2004b).

Ibn Katheer, however, states:

هَذَا أَمْرٌ مِنَ اللَّهِ لِلنِّسَاءِ اللَّاتِي يَتَوَفَّى عَنْهُنَّ أَزْوَاجَهُنَّ أَنْ يَعْتَدِلْنَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرَ لَيَالٍ وَهَذَا الْحُكْمُ يَشْمَلُ الرُّوْحَاتِ الْمَدْخُولِ بِيَوْمِ غَيْرِ الْمَدْخُولِ بِيَوْمِ الْإِجْمَاعِ وَمُسْتَنْدَهُ فِي غَيْرِ الْمَدْخُولِ بِهَا عُمُومِ الْآيَةِ الْكَرِيمَةِ ... وَكَذَلِكَ يَسْتَنْتَى مِنْ ذَلِكَ الرُّوْحَةَ إِذَا كَانَتْ أَمَةً فَإِنَّ عِدَّتَهَا عَلَى النِّصْفِ مِنْ عِدَّةِ الْخُرَّةِ شَهْرَانِ وَخَمْسَ لَيَالٍ عَلَى قَوْلِ الْجُمْهُورِ لِأَنَّهَا لَمَّا كَانَتْ عَلَى النِّصْفِ مِنَ الْخُرَّةِ فِي الْحَدِّ فَكَذَلِكَ فَاتَّكَنَ عَلَى النِّصْفِ مِنْهَا فِي الْعِدَّةِ . وَمِنْ الْعُلَمَاءِ كَحَكَمِ بْنِ سَبْرِينَ وَبَعْضِ الطَّاهِرِيَّةِ مَنْ يُسَوِّي بَيْنَ الرُّوْحَاتِ الْحَرَارِ وَالْإِمَامَةِ فِي هَذَا الْمَقَامِ لِعُمُومِ الْآيَةِ . وَإِلَّا الْعِدَّةَ مِنْ بَابِ الْأُمُورِ الْجَبَلِيَّةِ الَّتِي تُسْتَوِي فِيهَا الْخَلِيقَةُ وَقَدْ ذَكَرَ سَعِيدُ بْنُ الْمُسَيْبِ وَأَبُو الْعَالِيَةِ وَغَيْرُهُمَا أَنَّ الْحِكْمَةَ فِي جَعْلِ عِدَّةِ الْوَفَاةِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا لِإِحْتِمَالِ إِشْتِمَالِ الرَّجْمِ عَلَى حَمْلِ قَائِدًا أَنْتَظِرَ بِهِ هَذِهِ الْمُدَّةَ ظَهَرَ إِنْ كَانَ مَوْجُودًا كَمَا جَاءَ فِي حَدِيثِ ابْنِ مَسْعُودٍ الَّذِي فِي الصَّحِيحَيْنِ وَغَيْرِهِمَا " إِنْ خَلَقَ أَحَدَكُمْ يُجْمَعُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا نَطْفَةٌ ثُمَّ يَكُونُ عِلْقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يَبْعَثُ إِلَيْهِ الْمَلَكُ فَيَنْفُخُ فِيهِ الرُّوحَ " فَهَذِهِ ثَلَاثُ أَرْبَعِينَ يَوْمًا نَطْفَةٌ ثُمَّ يَكُونُ عِلْقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يَبْعَثُ الشُّهُورَ ثُمَّ يَطْبُورُ الْحَرْكَةَ بَعْدَ نَفْخِ الرُّوحِ فِيهِ وَاللَّهُ أَعْلَمُ . قَالَ سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ سَأَلْتُ سَعِيدَ بْنَ الْمُسَيْبِ مَا بَالُ الْعَشْرَةِ ؟ قَالَ : فِيهِ يَنْفُخُ الرُّوحَ وَقَالَ الرَّبِيعُ بْنُ أَنَسٍ : قُلْتُ لِأَبِي الْعَالِيَةِ لِمَ صَارَتْ هَذِهِ الْعَشْرُ مَعَ الْأَشْهُرِ الْأَرْبَعَةِ ؟ قَالَ : لِأَنَّ يَنْفُخُ فِيهِ الرُّوحَ رَوْحًا مِنْ رَوْحِهَا وَإِنْ جَرِيرٌ وَهِيَ مِنْهَا ذَهَبَ الْإِمَامُ أَحْمَدُ فِي رِوَايَةٍ عَنْهُ إِلَى أَنَّ عِدَّةَ أُمِّ الْوَلَدِ عِدَّةَ الْخُرَّةِ هَاهُنَا لِأَنَّهَا صَارَتْ فِرَاشًا كَالْحَرَارِ وَاللَّحْدِ الَّذِي رَوَاهُ الْإِمَامُ أَحْمَدُ عَنْ يَرِيدِ بْنِ هَارُونَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ رَجَاءِ بْنِ خَيْوَةَ عَنْ قَبِيصَةَ بِنْتِ دُوَيْبِ عَنْ عَمْرِو بْنِ الْعَاصِ أَنَّهُ قَالَ : لَا تَلْبَسُوا عَلَيْنَا سِتَّةَ نَبِيْنَا : عِدَّةَ أُمِّ الْوَلَدِ إِذَا تُوَفِّيَ عَنْهَا سِتَّةَ أَشْهُرٍ وَعَشْرًا .

Ibn Katheer contradicts the Qur'an {33: 49} (below) when he generalizes that 'iddah for a widow is both after the consummation of the marriage or before the consummation. It is clear from the different verses that qaran is considered a valid marriage only after the consummation, *nikah* (the actual sexual intercourse)!

According to al Gharawi (2008: 101–8), the four schools of thought vary in their consideration for 'iddah's period and conditions—from six months (the minimum time of pregnancy) to a full year, whether after talaq or after the death of the husband. It is perplexing as to why the four schools made this rule given how clear Qur'an instructions are (as we saw above, and will see below).

## 2. Al Talaq: al 'Iddah, al Sakan

The Qur'an emphasizes the observance of 'iddah only after the consummation of marriage, and it should be observed while keeping women in their home, until the end of the waiting periods or until they deliver and nurse the child for two years:

{49} يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَخَلَّيْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَعَهُنَّ وَسْرُحُوهُنَّ سَرَاحًا جَمِيلًا

O you who believe! When you marry believing women, and then dissolve the marriage before you have touched them, no period of 'iddah have you to count in respect of them: so give them a present, and set them free in a gentle manner {al Ahzab 33: 49}.

{1} يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلَّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تَخْرُجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

O Prophet! When you do dissolve your marriage to women, execute the dissolution at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your guardian: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of lewdness, those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his/her (own) soul: you know not if per chance Allah will bring about thereafter some new order.

{2} فَإِذَا بَلَغَ أَجْلُهُنَّ فَاْمَسْكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذُوَيْ عَدْلِ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكَ يُوعَظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا .

Thus, when they fulfill their appointed term, either take them back on equitable terms or part with them on equitable terms; and take for witness persons from among you, endowed with justice, and establish the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the Last Day. And for those who are conscious of Allah, He (ever) prepares a way out.

{4} وَاللَّائِي يَيْسُنَ مِنَ الْمَحِيضِ مَنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحِضْنَ وَأُولَاتِ الْأَخْمَالِ أَجْلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا



Such of your women as have passed the age of monthly courses, for them the prescribed period, if you have any doubts, is three months, and for those who have no courses (it is the same): for those who carry (life within their wombs), their period is until they deliver their burdens: and for those who fear Allah, He will make their path easy.

{5} ذَلِكَ أَمْرُ اللَّهِ أَنْزَلَهُ إِلَيْكُمْ وَمَنْ يَتَّقِ اللَّهَ يَكْفُرْ عَنْهُ سَيِّئَاتِهِ وَيُعْظِمِ لَهُ أَجْرًا

That is the Command of Allah, which He has sent down to you: and if anyone is conscientious of Allah, He will forgive his ills, and will multiply his reward.

{6} أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجُوهِكُمْ وَلَا تُضَارُوهُنَّ لِتَضَيَّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أَوْلَاتٍ حَمْلًا فَانْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَارْضَعْنَ لَهُنَّ وَأَجُورَهُنَّ وَأَتَمَّرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمُ فُسِّرْضِعْ لَهُ أُخْرَى

Let the women live (in 'iddah,) in the same place as you live, according to your means: annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (of your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if you find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf {al Talaq 65: 1-2, 4-6}.

Furthermore, the following two hadiths that are narrated by Fatima bint Qays corroborate the Qur'an, despite others disputing her explanation of verse {al Talaq 65: 1}:

- حدثنا إسماعيل أن يحيى بن سعيد بن العاص طلق بنت عبد الرحمن بن الحكم , فانطلقها عبد الرحمن فأرسلت عائشة أم المؤمنين إلى مروان بن الحكم وهو أمير المدينة اتق الله واردها إلى بيتها قال مروان في حديث سليمان إن عبد الرحمن بن الحكم غلبنى وقال القاسم بن محمد أوما بلغك شأن فاطمة بنت قيس قالت لا يضرك أن لا تذكر حديث فاطمة فقال مروان بن الحكم إن كان بك شر فحسبك ما بين هذين من الشر

(Mawqi' al islam—Hadith = 2971).

Despite the Qur'an and Hadith evidence above, some interpreters raised doubts about the intended meaning of verse {65: 6}—whether or not it orders men to keep the women in their dwelling (see the discussion of Fatima Bint Qays' narrative in relation to the subject in Chapter 4). These interpreters based their doubt on the assumption that the verse was abrogated. Abrogation is a concept that J. al Banna 2004b: 78–9) argues against. It is clear from the verse and from the following narrative on the authority of 'A'ishah that men who do not want to abide by the Qur'an will manufacture an ambiguous meaning of a particular verse to suite their desires:

حَدِيثُ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ : فَلَا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ؛ هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ يَقُولُونَ آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ { قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا رَأَيْتُمُ الَّذِينَ يَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ فَأُولَئِكَ الَّذِينَ سَمَى اللَّهُ فَاحْذَرُوهُمْ

'A`ishah, may Allah be pleased with her, reported: Allah's Messenger recited (these verses of the Qur`an): "It is He Who revealed to thee (Muhammad) the Book (the Qur`an) wherein there are clear revelations these are the substance of the Book and others are allegorical (verses). And as for those who have a yearning for error they go after the allegorical verses seeking (to cause) dissension, by seeking to explain them. And none knows their implications but Allah, and those who are sound in knowledge say: We affirm our faith in everything which is from our Lord. It is only the persons of understanding who really heed". 'A`ishah (further) reported that Allah's Messenger said (in connection with these verses): When you see those who go after allegorical verses, avoid them, for it is they whom Allah has pointed out [in the above-mentioned verse] (al Bayan 1999: Kitab al `Ilm # 1529).

Ibn Katheer states:

خُوِطِبَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَوْلًا تَشْرِيفًا وَتَكْرِيمًا ثُمَّ خَاطَبَ الْأُمَّةَ تَبَعًا فَقَالَ تَعَالَى " يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ " وَقَالَ ابْنُ أَبِي حَاتِمٍ ثَنَا مُحَمَّدُ بْنُ ثَوَابٍ بِنِ سَعِيدِ الْهَيْثَارِيِّ ثَنَا اسْتَبَاطُ بْنُ مُحَمَّدٍ عَنْ سَعِيدٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ : طَلَّقَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَفْصَةَ فَأَثَّتْ أَمْلَهَا فَأَنْزَلَ اللَّهُ تَعَالَى { يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ } فَقِيلَ لَهُ رَاجِعْهَا فَإِنَّهَا صَوَامَةٌ قَوَامَةٌ وَهِيَ مِنْ أَرْوَاجِكُمْ وَنِسَائِكُمْ فِي الْجَنَّةِ وَرَوَاهُ ابْنُ جَرِيرٍ عَنْ ابْنِ بَشَّارٍ عَنْ عَبْدِ الْأَعْلَى عَنْ سَعِيدٍ عَنْ قَتَادَةَ فَذَكَرَهُ مُرْسَلًا وَقَدْ وَرَدَ مِنْ غَيْرِ وَجْهٌ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ طَلَّقَ حَفْصَةَ ثُمَّ رَاجِعَهَا .

It is not clear what Ibn Katheer wants from this commentary. First, he states that the daughter of 'Umar bin al Khattab, Hafsa, went back to her family when the Prophet "dissolved" his marriage with her, and as a result, Qur`anic {verse 1 of al Talaq chapter 65} was revealed, as if the verse was particular to the Prophet! Yet, Ibn Katheer contradicts the same verse and contradicts himself when he adds that someone told the Prophet that he (the Prophet) "should reconcile with Hafsa as she was a pious woman who fasts and pray most of the night!" If the Qur`an intended a special treatment of Hafsa by the revelation of this verse because she was a pious woman, it implies that there are discrepancies in the Qur`an, which is not an acceptable implication.

In the personal status codes concerning sakan (dwelling or shelter), most of the rulings are connected to infaq (economic/financial support), though indirectly, as we will see in Component # 3. It is also instructive to note the example of Fatima bint Qays (Chapter 4) justifying the legality of her action, based on the Qura`nic {verse 1 of chapter 65}, even when it appears that she was contradicting the other reported narratives on the authority of the Prophet.

### 3. Al Talaq: al Infaq

The Qur'an mandates spending on the wives both in marriage and during the process of dissolving the marriage. Even when the wife deserts the believers' camp, Muslims are ordered to give them their due gifts. Also, Muslims are ordered to compensate the husbands from the non-believers' camp whose wife had deserted them and joined the believers' camp. In addition, Muslims are ordered to pay these women their due *ujoor* (monetary compensation) if they decided to marry these women after accepting Islam:

{7} لِيُنْفِقَ ذُو سَعَةٍ مِّنْ سَعَتِهِ وَمَنْ قَدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

Let the man of means spend according to his means: and whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. After a difficulty, Allah will soon grant relief {al Talaq 65: 7}.

{10} يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمْ الْمُؤْمِنَاتُ مِهَاجِرَاتٍ فَأَمْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ وَآتُوهُنَّ مَا أَنْفَقُوا وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ وَلَا تُمْسِكُوا بِعِصَمِ الْكُوفَارِ وَسَلَّوْا مَا أَنْفَقْتُمْ وَلَيْسَ أَلْوَا مَا أَنْفَقُوا ذَلِكَمُ حُكْمُ اللَّهِ يَخْتَلِمُ بَيْنَكُمْ وَاللَّهُ عَلِيمٌ حَكِيمٌ

O you who Believe! When there come to you believing women refugees, examine (and test) them: Allah knows best as to their faith: if you ascertain that they are believers, then send them not back to the unbelievers. They are not lawful (wives) for the unbelievers, nor are the (unbelievers) lawful (husbands) for them. *But pay the unbelievers what they have spent* (on their dower). And there will be no blame on you if you marry them on payment of their dower to them. But hold not to the guardianship of Unbelieving women: ask for what you have spent on their gifts, and let the (unbelievers) ask for what they have spent (on the dowers of women who come over to you). Such is the Command of Allah: He judges (with justice) between you. And Allah is most knowledgeable and Wise.

{11} وَإِنْ فَاتَكُمْ شَيْءٌ مِّنْ أَرْوَاجِكُمْ إِلَى الْكُفَّارِ فَعِاقِبَتُهُمْ فَاتُوا الَّذِينَ ذَهَبَتْ أَرْوَاجُهُمْ مِّثْلَ مَا أَنْفَقُوا وَاتَّقُوا اللَّهَ الَّذِي أَنْتُمْ بِهِ مُؤْمِنُونَ

And if any of your wives deserts you to the Unbelievers, and you have an accession (by the coming over of a woman from the other side), *then pay to those whose wives have deserted the equivalent of what they had spent* (on their dower). And fear Allah, in Whom you believe {al Mumtahana 60: 10–11}.

Although there is no clear record of related Hadith, Ibn Katheer again invokes the concept of abrogation of these two verses {60: 10–11} in relation to another verse {al Fath 48: 10} that concerns the treaty between the Prophet and Quraysh tribe:

{10} إِنَّ الَّذِينَ يَبَايِعُونَكَ إِنَّمَا يُبَايِعُونَ اللَّهَ يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ فَمَنْ نَكَثَ فِيمَا يَتَكْتَفَى عَلَى نَفْسِهِ وَمَنْ أَوْفَى بِمَا عَاهَدَ عَلَيْهِ اللَّهُ فَمُؤْتِيهِ أَجْرًا عَظِيمًا

Verily those who plight their fealty to thee do no less than plight their fealty to Allah: the Hand of Allah is over their hands: then anyone who violates his oath, does so to the harm of his own soul, and anyone who fulfils what he has covenanted with Allah, Allah will soon grant him a great Reward {al Fath 48: 10}.

Ibn Katheer states:

تَقَدَّمَ فِي سُورَةِ الْفَتْحِ فِي ذِكْرِ صَلْحِ الْخُدَيْبِيَّةِ الَّذِي وَقَعَ بَيْنَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَبَيْنَ كُفَّارِ قُرَيْشٍ فَكَانَ فِيهِ : عَلَى أَنْ لَا يَأْتِيكَ مِمَّنْ رَجُلٌ وَإِنْ كَانَ عَلَى دِينِكَ إِلَّا رَدَدْتَهُ إِلَيْنَا وَفِي رِوَايَةٍ عَلَى أَنَّهُ لَا يَأْتِيكَ مِمَّنْ أَحَدٌ وَإِنْ كَانَ عَلَى دِينِكَ إِلَّا رَدَدْتَهُ إِلَيْنَا وَهَذَا قَوْلُ عُرْوَةَ وَالصَّحَّاحِ وَعَبْدُ الرَّحْمَنِ بْنِ زَيْدٍ وَالزُّهْرِيُّ وَمَقَابِلُ بَنِي حَيَّانَ وَالسُّدِّيُّ فَعَلَى هَذِهِ الرِّوَايَةِ تُكُونُ هَذِهِ الْآيَةُ مَخْصُصَةً لِلنِّسَاءِ وَهَذَا مِنْ أَحْسَنِ أَمْثَلَةِ ذَلِكَ وَعَلَى طَرِيقَةٍ بَعْضُ السَّلَفِ نَاسِخَةٌ فَإِنَّ اللَّهَ عَزَّ وَجَلَّ أَمَرَ عِبَادَهُ الْمُؤْمِنِينَ ؛ إِذَا جَاءَهُمُ النِّسَاءُ مَهَاجِرَاتٍ أَنْ يَتَمَتَّحُوهُنَّ فَإِنْ عَلِمُوهُنَّ مُؤْمِنَاتٍ فَلَا يَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ } . وَقَدْ ذَكَرْنَا فِي تَرْجُمَةِ عَبْدِ اللَّهِ بْنِ [ أَبِي ] أَحْمَدَ بْنِ جَحْشٍ مِنَ الْمُسْتَدْرِ ... عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَحْمَدَ قَالَ : هَاجَرَتْ أُمُّ كَلْبُومَ بِنْتُ عَفِيَّةَ بْنِ أَبِي مُعَيْطٍ فِي الْهَجْرَةِ فَخَرَجَ أَخْوَاهَا عُمَارَةُ وَالْوَلِيدُ حَتَّى قِيمَا عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَكَلَّمَاهُ فِيهَا أَنْ يَرُدَّهَا إِلَيْهِمَا فَفَقَضَ اللَّهُ الْعَهْدَ بَيْنَهُ وَبَيْنَ الْمُشْرِكِينَ فِي النِّسَاءِ خَاصَّةً فَمَنْعَهُمْ أَنْ يَرُدُّوهَا إِلَى الْمُشْرِكِينَ وَأَنْزَلَ اللَّهُ آيَةَ الْإِمْتِحَانِ ... وَقَوْلُهُ تَعَالَى { فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ } فِيهِ دَلَالَةٌ عَلَى أَنَّ الْإِيمَانَ يُكْمِلُ الْإِطْلَاقَ عَلَيْهِ بَيِّنًا وَقَوْلُهُ تَعَالَى : { لَا هُنَّ حِلٌّ لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ } هَذِهِ الْآيَةُ هِيَ الَّتِي حَرَمَتْ الْمُسْلِمَاتِ عَلَى الْمُشْرِكِينَ وَقَدْ كَانَ جَائِزًا فِي ابْتِدَاءِ الْإِسْلَامِ أَنْ يَتَرَوَّجَ الْمُشْرِكُ الْمُسْلِمَةَ وَلِهَذَا كَانَ أَمْرُ أَبِي الْعَاصِ بْنِ الرَّبِيعِ زَوْجِ ابْنَةِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ زَيْنَبِ رَضِيَ اللَّهُ عَنْهَا وَقَدْ كَانَتْ مُسْلِمَةً وَهُوَ عَلَى دِينِ قَوْمِهِ فَلَمَّا وَقَعَ فِي الْأَسَارَى يَوْمَ بَدْرٍ بَعَثْتُ إِمْرَأَتَهُ زَيْنَبَ فِي فِدَائِهِ بِقِلَادَةٍ لَهَا كَانَتْ لَهَا مَعَهَا خَدِيجَةٌ فَلَمَّا رَأَاهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَقَّ لَهَا رَفَقَةً شَدِيدَةً وَقَالَ لِلْمُسْلِمِينَ ” إِنَّ رَأَيْتُمْ أَنْ تُطْلِفُوا لَهَا أُسْبِرَهَا فافْعَلُوا ” فَفَعَلُوا فَاطْلَقَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى أَنْ يُبْعَثَ ابْنَتَهُ إِلَيْهِ فَوَفَّى لَهُ بِذَلِكَ وَصَدَّقَهُ فِيمَا وَعَدَهُ وَبَعَثَهَا إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَعَ زَيْدِ بْنِ حَارِثَةَ رَضِيَ اللَّهُ عَنْهُ فَأَقَامَتْ بِالْمَدِينَةِ مِنْ بَعْدِ وَقَعَةِ بَدْرٍ وَكَانَتْ سَنَةً ائْتَمَّنَتْ إِلَى أَنْ أَسْلَمَ زَوْجُهَا أَبُو الْعَاصِ بْنِ الرَّبِيعِ سَنَةَ ثَمَانَ فَرَدَّهَا عَلَيْهِ بِالْكَفَّاحِ الْأَوَّلِ وَلَمْ يُحَدِّثْ لَهَا صَدَاقًا

(Mawqi' al islam: Qur'an = 512).

It is perplexing and confusing how Ibn Katheer reads the verse {60: 10} concerning women's deserting the believers' camp as if women do not have the freedom to abandon a certain belief system like men. He instead emphasizes the narrative concerning the return of women who desert the believers' camp to the *kuffar*'s camp (non-believers' camp) and forgets the rights of women to keep their *sadoqa* or 'ujoor. In a sense, he explains why women cannot be returned to the *kuffar*'s camp by stating that God might have revoked the Prophet's agreement with *mushrikeen* (those who associate another deity with God) during the Battle

of Badr. But Ibn Katheer does not present the historical evidence that the Prophet might have revoked such an agreement. The Prophet had signed a protocol with the mushrikeen, in which each party agreed to return any defector to his/her original camp. The Qur'an guides Muslims to give back the sadoqa (the free gift) to those who were returned if they happened to be married from the other side. Yet, Ibn Katheer claims that the Prophet considered Muslim women special in this context. He (Ibn Katheer) treats the special narrative concerning the daughter of the Prophet (Zaynab)—when she was separated from her unbelieving husband, *Abi al 'Ass ibn al Rabi'*, for six years—as if it was a case related to the *sunnah* without explaining whose *sunnah* and how. This is also perplexing because Ibn Katheer did not treat the Prophet's "divorce" of Hafsa (described above) and/or the Prophet's abstention from his wives as a case related to the *sunnah*! Also, how is it possible for the Prophet to contradict the Qur'an by keeping his daughter, Zaynab, away from her husband for six years, and then, return her to the husband when the latter accepts Islam, without sadoqa, without new contract, and without witnesses? Also, if the return of Zaynab to her convert husband was considered a new marriage, how is that possible since she did not marry another man during her separation from the non-believing husband? (The discussion of Zaynab in Chapter 2 is in reference to the wife of the Prophet, and not his daughter.) Furthermore, how could the Prophet revoke an agreement that he made earlier with the mushrikeen? The sad part is that Ibn Katheer also generalizes from this special narrative concerning the Prophet's daughter, Zaynab, stating that the verse was an indication to forbid Muslim women marriage to a non-believer, even when he admits that in early Islam women were allowed to marry non-believers, such as the case of Zaynab who apparently remained married to her unbelieving husband until he was captured by Muslims in the Battle of Badr (while fighting on the side of the non-believers)! Finally, Ibn Katheer, and most of those who write on the subject (for example, Nasir 2009: 69), confuse the word "kuffar" as it appears in the verse {60: 10} with "*Ahl al Kitab*" (the People of the Book), even as the Qur'an considers *Ahl al Kitab* believers! Such confusion leads later Muslims to claim that Muslim women may not marry from the People of the Book!

According to al Gharawi (2008: 109–12), the Hanafi School of jurisprudence is the only school that does not condone talaq when the husband was unable to support his wife. There are some variations between the schools on the conditions of infaq, but the main ruling is that once the marriage is consummated, the husband is responsible for economic support according to his means. It is, however, surprising that the four schools agree that the husband is not responsible for the medical treatment of his wife (p. 110), though they agree that he is responsible for infaq in general even if the wife was not a Muslimah (p. 112). It is striking that the four schools think that medical treatment for the wife, especially after giving birth and all related issues, is not the responsibility of the husband, given that the Qur'an clearly makes the husband responsible for economic support of the wife during the two years of lactation for their child, or the husband is to compensate the mother if he chose to hire a wet-nurse {al Baqara 2: 233}.

## 4. Al Talaq: Al `Ujoor

Al `ujoor (special monetary compensations) are paid even for *mulk al yameen* (what the right hand possess), to be discussed further in Chapter 4. In addition, a man has to take permission of their [mulk al yameen] household or relatives (*ahl*) before he makes a contract with her. Furthermore, punishment of a mulk al yameen who commits *fahisha* (adultery) is one-half of that for a free woman:

{24} وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Also (prohibited are) women already married, except those whom your right hands possess: thus has Allah ordained (prohibitions) against you: except for these, all others are lawful, provided you seek (them in marriage) with gifts from your property, desiring chastity, not lust. Seeing that you derive benefit from them, give them their `ujoor as prescribed; but if, you agree mutually (to vary the `ujoor), there is no blame on you, and Allah is All-Knowing All-Wise.

{25} وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فِتْيَانِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَأَتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ الْمُحْصَنَاتِ غَيْرِ مُسَافِحَاتٍ وَلَا مَخْذَلَاتٍ إِذَا أَحْصَيْنَ فَإِنَّ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ ذَلِكَ لِمَنْ خَشِيَ الْعَنَتَ مِنْكُمْ وَأَنْ تَصْبِرُوا خَيْرٌ لَكُمْ وَاللَّهُ غَفُورٌ رَحِيمٌ

If any of you have not the means wherewith to wed free believing women, they may wed believing girls from among those whom your right hands possess: and Allah has full knowledge about your faith. You are one from another: wed them with the leave of their owners, and give them their `ujoor, according to what is good and reasonable: they should be chaste, not lustful, nor taking paramours. When they are taken in wedlock, if they commit *fahisha*, their punishment is half that for free women. This (permission) is for those among you who fear sin; but is better for you that you practice self-restraint, and Allah is Oft-Forgiving, Most Merciful.

{26} يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّيبَةَ وَيُنَزِّلَ عَلَيْكُم مِّنَ السَّمَاءِ مَائِدًا مِّنْهُ لِيُقَرِّبَ إِلَيْكُمْ كَلِمَاتٍ مِّنْهُ لَعَلَّكُمْ تَهْتَكُونَ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Allah does wish to make clear to you and to show you the ordinances of those before you; and (He does wish to) turn to you (in Mercy) if you repent; and Allah is All-Knowing, All-Wise {al Nisa' 4: 24-6}.

There is no direct narrative attributed to the Prophet on the subject, except what Ibn Katheer indicates as the reason behind the revelation—that some Muslim companions asked the Prophet if it was permitted to have sex with the female spoils of war if they were already married. The verse prohibits intercourse with

married spoils, following the other prohibited categories listed in verse 23 of the same surah {al Nisa` 4: 23}:

{23} حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخْوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمْ اللَّاتِي أَرْضَعْتُمْ وَأَخْوَاتُكُمْ مِنَ الرِّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

Prohibited to you (for marriage) are: your mothers, daughters, sisters; father's sisters, mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom you have consummated the marriage, no prohibition if you have not consummated the marriage; those who have been wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-Forgiving, Most Merciful {al Nisa` 4: 23}.

However, Ibn Katheer states:

وَقَوْلُهُ تَعَالَى { وَ الْمَخْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ 24: 4 } ، أَيْ وَحُرِّمَ عَلَيْكُمْ مِنَ الْأَجْنَبِيَّاتِ الْمَخْصَنَاتُ وَهِيَ الْمُرُوجَاتُ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ بِعِنْيِ إِلَّا مَا مَلَكَتُمُوهُنَّ بِالسَّبْيِ فَإِنَّهُ يَجِلْ لَكُمْ وَطَوْهٌ إِذَا اسْتَبْرَأْتُمُوهُنَّ فَإِنَّ الْآيَةَ نَزَلَتْ فِي ذَلِكَ . وَقَالَ الْإِمَامُ أَحْمَدُ : حَدَّثَنَا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا سُفْيَانُ هُوَ الثَّوْرِيُّ عَنْ عُثْمَانَ بْنِ عَن أَبِي الْخَلِيلِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ : أَصَبْنَا سَبْيًا مِنْ سَبْيِ أُوطَاسٍ وَلَهُنَّ أَرْوَاحٌ فَكَّرْنَا أَنْ نَقَعَ عَلَيَّوْنَّ وَلَهُنَّ أَرْوَاحٌ فَسَأَلْنَا النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ فَنَزَلَتْ هَذِهِ الْآيَةُ { وَ الْمَخْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ } فَاسْتَحْلَلْنَا فَرُوجِهِنَّ وَهَكَذَا رَوَاهُ الثَّرْمِذِيُّ ... وَرَوَاهُ مُسْلِمٌ فِي صَحِيحِهِ مِنْ حَدِيثِ شُعْبَةَ عَنْ قَتَادَةَ كِلَاهُمَا عَنْ أَبِي الْخَلِيلِ صَالِحِ بْنِ أَبِي مَرْيَمَ ... عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ الْإِمَامُ أَحْمَدُ : حَدَّثَنَا إِبْنُ أَبِي عَدِيٍّ عَنْ سَعِيدِ بْنِ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ عَنْ أَبِي عُلْقَمَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ أَصْحَابَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ أَصَابُوا سَبْيًا يَوْمَ أُوطَاسٍ لَهُنَّ أَرْوَاحٌ مِنْ أَهْلِ الشَّرِكِ فَكَانَ أَنَّاسٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ كَفُّوا وَتَأَمَّلُوا مِنْ غَشِيَانِهِنَّ قَالَ : فَنَزَلَتْ هَذِهِ الْآيَةُ فِي ذَلِكَ ” وَهَكَذَا رَوَاهُ مُسْلِمٌ وَأَبُو دَاوُدَ وَالنَّسَائِيُّ مِنْ حَدِيثِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ زَادَ مُسْلِمٌ وَشُعْبَةُ وَرَوَاهُ الثَّرْمِذِيُّ مِنْ حَدِيثِ هَمَّامِ بْنِ يَحْيَى ثَلَاثَتَهُمْ عَنْ قَتَادَةَ بِإِسْنَادِهِ نَحْوَهُ وَقَالَ الثَّرْمِذِيُّ هَذَا حَدِيثٌ حَسَنٌ

(Mawqi' al islam: Qur'an—Tafseer Ibn Katheer = 82)

There are several contradictions in Ibn Katheer's interpretation. *First*, how is it that he suggests that Muslims were permitted to have *wata`* (intercourse) with a married woman for the mere fact that she was a *sabi* (taken as a spoil of war, a tribal norm), given the clear prohibition in the beginning of verse {4: 24} above? He seems to muddy the situation when he interprets the word “muhsanat” to mean married women in verse {24}, while he interprets it as free believing women in verse {25} of the same Qur'anic chapter {al Nisa` 4} (see his quote below). *Second*, the evidence in verse {25} states that *it was permitted to have a contract for licit sexual relations with believing girls from among mulk al yameen, but only if a man could not wed a free believing woman*. This conditional contract

for sexual relations, however, does not necessarily mean that the woman was a spoil who was already married to another. That is, how could a believing woman have intercourse with another man while still being married to another? *Third*, the Qur'an encourages to marry a believing woman who is already "possessed" (mulk al yameen) by the same man on the condition that he takes permission from the previous owner or father and that she is given her `ajr (monetary compensation). Such conditions (permission and monetary compensation) to wed the mulk al yameen (enslaved or not) are intended to indirectly prohibit the tribal tradition of *sabi* and to facilitate the abolishment of slavery when the slave accepts Islam and marries her Muslim owner. *The fourth* contradiction of Ibn Katheer is that he generalizes from the condition to take permission of the past owner before marrying mulk al yameen (enslaved or not), suggesting that a slave may not execute his/her own marriage by himself/herself, and that if the owner of a female slave was a woman, the latter may not execute the marriage of her own female slave, rather her (the woman who own the slave) husband will do so! The worst implication of such interpretation is that the required permission by the owner of the slave is generalized into the contemporary unjust practice of executing a marriage contract for a free woman by her father or any other male household:

يَقُولُ تَعَالَى { وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا } أَي سَعَةً وَقُدْرَةً { لَأَنْ يَنْكِحَ الْمُخْصَنَاتِ الْمُؤْمِنَاتِ } أَي الْحَرَائِرِ الْعَفَافِ قَالَ رَبِيعَةَ : الطَّوْلُ الْهَوَى يَعْني الأُمة إِذَا كَانَ هَوَاهُ فِيهَا رَوَاهُ ابْنُ أَبِي خَاتِمٍ وَابْنُ جَرِيرٍ ثُمَّ أَخَذَ يُسْتَع عَلَى هَذَا الْقَوْلِ وَيُرَدُّهُ { فِيمَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ } أَي فَتَرَوْجُوا مِنْ الْإِمَاءِ الْمُؤْمِنَاتِ اللَّاتِي يَمْلِكُهُنَّ الْمُؤْمِنُونَ وَلِهَذَا قَالَ { مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ } قَالَ ابْنُ عَبَّاسٍ وَغَيْرُهُ : فَلْيَنْكِحْ مِنْ إِمَاءِ الْمُؤْمِنِينَ وَكَذَا قَالَ السُّدِّيُّ وَمَقَاتِلُ بَيْنَ حَيَّانٍ . ثُمَّ أَعْرَضَ بِقَوْلِهِ { وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ } أَي هُوَ الْعَالِمُ بِحَقَائِقِ الْأُمُورِ وَسَرَائِرِهَا وَإِنَّمَا لَكُمْ أَيْهَا النَّاسِ الظَّاهِرُ مِنَ الْأُمُورِ ثُمَّ قَالَ : { فَانكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ } فَدَلَّ عَلَى أَنَّ السَّيِّدَ هُوَ وَلِيِّ أُمَّتِهِ لَا تَزُوجُ إِلَّا بِإِذْنِهِ وَكَذَلِكَ هُوَ وَلِيُّ عَبْدِهِ لَيْسَ لَهُ أَنْ يَتَزَوَّجَ بِغَيْرِ إِذْنِهِ كَمَا جَاءَ فِي الْحَدِيثِ " أَيَّمَا عَبْدٍ تَزُوجُ بِغَيْرِ إِذْنِ مَوْلِيهِ فَهُوَ عَاهِرٌ " أَي زَانٍ . فَإِنَّ كَانَ مَالِكُ الأُمةِ المرأةِ الَّتِي تَزُوجُ نَفْسَهَا " وَقَوْلُهُ تَعَالَى { وَأَتَوْهُنَّ أَجُورَهُنَّ بِالْمَعْرُوفِ } أَي وَادْفَعُوا مَهْرَهُنَّ بِالْمَعْرُوفِ أَي عَنْ طَيْبِ نَفْسٍ مِنْكُمْ وَلَا تَبْخُسُوا مِنْهُ شَيْئًا إِسْتِهَانَةً بِهِنَّ لِكُونِهِنَّ إِمَاءً مَمْلُوكَاتٍ

(Mawqi' al Islam: Qur'an—Tafseer Ibn Katheer = 82).

There are no listings of distinctive personal status codes to this effect in al Gharawi (2008).

## Conclusions

It became clear from the above discussion and through the different evidence that there were several discrepancies between the Qur'an guidelines and the presently used personal codes. I have analyzed how such discrepancies evolved from the narratives of different ahaadith through the generalized commentaries, ending up with the varied jurors' opinions of the time. As I synthesize in Chapter 4 other



issues that relate to the perceptions of free women vis-à-vis *mulk al yameen* and/or slave women, we will be able to further connect these discrepancies to the women's absence in the decision-making process, beginning in the early formation of the Muslim community to the present times. Such connection will also help us realize the need for women's rereading Hadith and rethinking the sunnah in addition to rereading and reinterpreting the Qur'an.

## Chapter 4

# Belief and Knowledge, Sexuality and Slavery, Inheritance and Custody

### Introduction

During the formative period of the early Muslim community, the perception or belief that females were secondary in the creation process was hardly replaced by the Qur'an assertion in al Nis' {4: 1} that the female entity is primary in creation. J. al Banna (1998: 111; 2004a: 124) states that jurists also obstructed Qur'anic gender justice by using weak or unauthentic *ahaadith*. In addition to these weak and several other ahaadith that I referenced earlier, some Jurists also suggest that “*al mar'ah 'awra*” (equating the woman as a whole to her private parts, hence declaring that the woman is prohibited [from being seen or touched] by others than next of kin). Such statements imply that the woman is a sex object. These general beliefs or dogmas and juristic practices continue to prevail to the point that women are still regarded as the property of their male household just as an owned slave or *mulk al yameen* was viewed before Islam. *Mulk al yameen*, instead of being interpreted as a trust in one's right hand, is often thought of as the possession of the right hand. That is, the unrelated persons, mainly women living under a male guardianship, are viewed as if they were property of the male, and the expression “*mulk al yameen*” often simplified or interpreted as a “slave” or “concubine.” With the hope of moving away from such antiquated perception of woman as “mulk” (property owned by her tribe, father, or husband), contemporary studies by Muslim women scholar-activists, especially in North America, brought back some awareness to the Qur'anic story of creation (for example, Barazangi 1991a; L. Ahmed 1992; Hassan 1994; Wadud 1992 and 1999). These studies also explained how the Qur'an story is different from the story in the Judeo-Christian traditions. In my own research and scholarly work, I wanted to go further to analyze woman's primary role in the creation story as the basic concept for understanding *khilafa* or trusteeship of humans (Barazangi 1996), and to affirm that for the woman to regain her identity and identification with the Qur'an, she needs to be clear about the Qur'anic concept of creation (Barazangi 2004b). Despite these and other scholars' efforts to change perceptions about gender in Islam from within the Qur'anic worldview (for example, M. al Faruqi 2000; al Hibri 2000; and Barlas 2002), some major lapses remain, often leaving room for ambiguity in the status of women and gender in Islam. Even unintended, these lapses open other doors for misreading Qur'an guidelines concerning women and gender in general.

In this chapter, I analyze some studies by Muslim and non-Muslim women concerning gender, belief and knowledge, sexuality and slavery, inheritance and custody, whether these studies depend on antiquated or new premises. *Investigating the interpretations of these issues and the related personal status codes in most Muslim societies constitute major elements in understanding how Islam's views on gender and Muslim women's rights have been misinterpreted and malpracticed.* The goal is to bring to the surface the direct or indirect impacts of such studies on understanding gender in Islam. In Chapter 3, I synthesized how the use and misuse of secondary sources, including hadith narratives (whether or not they corroborate the Qur'an), impacted the development of personal status codes for licit sexual relations (including qaran, nikah, and the related issues: talaq, 'iddah, infaq, and sakan). In this chapter, I first synthesize the interpretations of licit sexual relations with free women vis-à-vis mulk al yameen in the context of the creation story. I will then analyze the consequences of these interpretations for belief vis-à-vis knowledge, *irth* (inheritance), and *wisaya* (child custody or guardianship, not "wasiyyah" meaning bequest).

### The Creation Story and Sexual Relations

Spellberg (1996: 4–5) aptly explains how in later written sources (Hadith collections, the Prophet's Biographies, and the books of Akhbar) Muslims may have confused the Qur'an concept of female creation with the Judeo-Christian understanding of Eve. Her follow-up analysis of women's sexuality in Islam, however and perhaps unintentionally, added another ambiguity to Islam's stance on the subject. It seems that by not realizing the Arabic femininity of "*nafs*" (entity), and the masculinity of "*zawj*" (the other half/pair/spouse) in the related verses in {al Nisa' 4: 1; al A'raf 7: 189; al Zummar 39: 6; al Hijr 15: 26–9; al Baqara 2:30–35; and 'Al 'Imran 3: 59–60}, Spellberg missed the basic Qur'an premise—that creation began from a single feminine entity and her mate. By relying on English renditions of the Qur'an and by using the Muslim males' interpretations of these verses—in which gender markings of "*nafs*" and "*zawj*" were reversed (Barazangi 2004b)—Spellberg added new confusion in the relationship between the story of creation and women's status in Islam. In addition, and perhaps as a consequence of the English translations, she was not able to escape the general confusion between the creation of the first primordial human, the "*nafs*," the entity that is made of soil "*adima*" ('Abd al Hamid et al. 1934: 8), as stated in al Baqara {2: 30–35}, on the one hand, with the institution of the first Prophet, "Adam" as stated in 'Al 'Imran {3: 33–4; 59–60}, on the other. These two aspects of creation and their premises are explained in the following two sets of verses.

#### 1. The Creation of the First Primordial Human Pair

According to the Qur'an, the creation of "*nafs*," from which her first "*zawj*" was also created, constitutes the first human pair which procreated the "*bashar*" (humankind):

{1} يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

O humankind! Reverence your Guardian God, who created you from a single entity, created, of like nature *her mate*, and from them twain scattered (like seeds) countless men and women; fear Allah, through whom you demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you {al Nisa` 4: 1}.

{189} هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلًا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ دَعَا اللَّهَ رَبَّهُمَا لَئِن آتَيْتَنَا صَالِحًا لَنُكَفِّرَنَّ مِنَ الشَّاكِرِينَ

It is He Who created you from a single entity, and made *her mate* of like nature, in order that he might dwell with her (in tranquility). When they are united, she bears a light burden and carries it about (unnoticed). When she grew heavy, they both pray to Allah their Guardian-God, (saying): “If You give us a goodly child, we vow we shall (ever) be grateful” {al ‘Araf 7: 189}.

{6} خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ ثُمَّ جَعَلَ مِنْهَا زَوْجَهَا وَأَنْزَلَ لَكُمْ مِنَ الْأَنْعَامِ ثَمَانِيَةَ أَزْوَاجٍ يَخْلُقَكُمْ فِي بَطُونٍ أَمْهَاتِكُمْ خَلْقًا مِنْ بَعْدِ خَلْقٍ فِي ظُلُمَاتٍ ثَلَاثٍ ذِكْرُ اللَّهِ رَبِّكُمْ لَهُ الْمُلْكُ لَا إِلَهَ إِلَّا هُوَ فَاتَى مُصْرَفُونَ

He created you (all) from a single entity: then created, of like nature, *her mate*; and He sent down for you eight pairs of cattle: He makes you, in the wombs of your mothers, in stages, one after another, in three veils of darkness. Such is Allah, your Guardian-God and Cherisher: to Him belongs (all) dominion. There is no god but He: then how are you turned away (from your true Creator)? {al Zumar 39: 6}.

{26} وَلَقَدْ خَلَقْنَا الْإِنْسَانَ مِنْ صَلْصَالٍ مِنْ حَمَإٍ مَسْنُونٍ {28} وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي خَالِقٌ بَشَرًا مِنْ صَلْصَالٍ مِنْ حَمَإٍ مَسْنُونٍ

We created *human* from sounding clay, from mud molded into shape; Behold! Your Guardian-God said to the angels: “I am about to create *human* from sounding clay, from mud molded into shape” {al Hijr 15: 26, 28}.

{30} وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ {31} وَعَلَّمَ آدَمَ الْأَسْمَاءَ كُلَّهَا ثُمَّ عَرَضَهُمْ عَلَى الْمَلَائِكَةِ فَقَالَ أَنْبِئُونِي بِأَسْمَاءِ هَؤُلَاءِ إِنْ كُنْتُمْ صَادِقِينَ

Behold, your Guardian-God said to the angels: “I will create a vicegerent on earth.” They said: “Wilt Thou place therein one who will make mischief therein and shed blood? Whilst we do celebrate Your praise and glorify Your holy (name)?” He said: “I know what you know not” And He taught adam (the first adima, the human creature) the names of all things; then He placed them before the angels, and said: “Tell Me the names of these if you are right” {al Baqara 2: 30–31}.

{33} قَالَ يَا آدَمُ أَنْبِئْهُمْ بِأَسْمَائِهِمْ فَلَمَّا أَنْبَأَهُمْ بِأَسْمَائِهِمْ قَالَ أَلَمْ أَقُلْ لَكُمْ إِنِّي أَعْلَمُ غَيْبَ السَّمَاوَاتِ وَالْأَرْضِ وَأَعْلَمُ مَا تُبْدُونَ وَمَا كُنْتُمْ تَكْتُمُونَ ... {35} وَقُلْنَا يَا آدَمُ اسْكُنْ أَنْتَ وَزَوْجُكَ الْجَنَّةَ وَكُلَا مِنْهَا رَغَدًا حَيْثُ شِئْتُمَا وَلَا تَقْرَبَا هَذِهِ الشَّجَرَةَ فَتَكُونَا مِنَ الظَّالِمِينَ

He said: “O adam (human)! Tell them their names.” When adam had told them, Allah said: “Did I not tell you that I know the secrets of heavens and earth, and I know what you reveal and what you conceal?” ... We said: “O adam (human)! Dwell you and your partner (your zawj) in the Garden; and eat of the bountiful things therein as (where and when) you will; but approach not this tree, or you run into harm and transgression” {al Baqara 2: 33, 35}.

## 2. The Institution of Adam as the First Prophet among Others

{33} إِنَّ اللَّهَ اصْطَفَى آدَمَ وَنُوحًا وَآلَ إِبْرَاهِيمَ وَآلَ عِمْرَانَ عَلَى الْعَالَمِينَ

Allah did choose Adam and Nuh, the family of Ibrahim, and the family of Imran above all people.

{59} إِنَّ مَثَلَ عِيسَى عِنْدَ اللَّهِ كَمَثَلِ آدَمَ خَلَقَهُ مِنْ تُرَابٍ ثُمَّ قَالَ لَهُ كُنْ فَيَكُونُ

The similitude of 'Isa (Jesus) before Allah is as that of adam (the first human); He created him from dust, then said to him “Be”: and he was { 'Al 'Imran 3: 33, 59}.

Confusing these two concepts (the creation of the first primordial human pair, adam, and the institution of Adam as the first prophet), makes it hard for the average person to defy consequent misunderstandings of other verses that concern women and gender. By reinforcing the perception of women as secondary in the structure of human society, these confusions also led to a continued practice of patriarchy that was prevalent despite the intention of the Qur'an (and perhaps the intention of the Judeo-Christian revelations before it, as well) to change that practice. Unfortunately, the patriarchal view—that men have a “God-given” primary role above women—is also reinforced by some interpreters' argument that there was no female prophet. Worst yet, though, when some of those interpreters justify without any evidence that “The absence of women as prophets or ‘messengers of Allah’ in Prophetic history is because of the demands and physical suffering associated with the role of messengers and prophets and not because of any spiritual inferiority attributed to women” (Badawi 2011). Although the Qur'an speaks of Queen Sheba, the wife of 'Imran, and of Mary as leaders of their people in righteousness, Muslims rarely acknowledge that. This omission and the fact that we have no written history of a female prophet—this fact, according to Stabile (2013), is rarely articulated in the Judeo-Christian traditions as well—may have also resulted in the general negative beliefs about women's subservient or secondary role. These beliefs persist despite the numerous contemporary studies that intended to change

them and to change the unjust interpretations of the Qur'an. Even when few personal laws in some Muslim countries have been changed legally (for example, Tunisia, Morocco, Jordan, and Egypt, see AWID 2011), unjust interpretations of women's role in Muslim societies continue to be based on these confused beliefs and views.

Hence, as I asserted earlier in other parts of this book, women's rereading Hadith and rethinking the sunnah become essential and necessary because most of these false beliefs were based on history that is blended with exegesis generated from a few ahaadith, the majority of which do not corroborate the Qur'an (for example, the four narratives referenced in Spellberg 1996: 308–9). As the concept of "Eve" does not exist in the Qur'an, rereading Hadith becomes the second step (after reinterpreting the Qur'an) to obliterate the most glaring results of these customary beliefs and unjust interpretations. Lawful sexual relations is one of these glaring results and has been at the center of Muslim males' views of the creation story, as well as in unjustly deciding women's rights and responsibilities.

*I strongly argue that, in addition to, or because of confusion in the story of creation, the lack of understanding the difference between lawful sexual relations with a free woman vis-à-vis mulk al yameen or a slave woman has resulted in the larger and far-reaching confusion in the perception of female roles and the consequent unjust interpretation of the woman's autonomy and agency, modesty and leadership, as well as unjust personal status codes, especially in issues of inheritance, child custody, testimony and witnessing, and economic support and manumission.*

As I am concerned mainly with the politics of knowledge in relation to these issues, I discuss the Qur'an's categories of lawful sexual relations with free women vis-à-vis mulk al yameen and other permissible categories, and how they were interpreted through secondary sources. I also allude to the confusion between the sexual relations allowed for Prophet Muhammad and those allowed for Muslims in general. Next I analyze the concept of a "believing [slave]," and the views that made the believing [free] women the subject of study instead of being shapers of Islamic thought. I conclude this chapter with the assertion that unless Muslim women, and Muslim men for that matter, realize the confused understanding of Islam's stance on creation, gender, and lawful sexual relations, they will not be able to ameliorate the perceptions (by Muslims or non-Muslims) of Muslim women as secondary, dependent, or owned property. Neither will Muslims in general be able to abandon the practice of patriarchy—mainly a result of such perceptions—or Muslim women be able to regain their given rights in the Qur'an.

### **Qur'an's Categories of Lawful Sexual Relations**

When the Qur'an gave Muslims the license to have sexual relations with "mulk al yameen," it always uses the preposition "aw" (meaning "or," that indicates the permissibility of either of two choices [ʿAbd al Hamid et al. 1934: 23]) before

“*ma malakat aymanakum*” (what your right hands are entrusted with)—with the exception of the Prophet (see Item # 7 below)—to emphasize two things: (1) that Muslim men cannot combine *qaran* of *nisa`akum* (marriage contract with [free] women), on the one hand, and *nikah* (licit sexual intercourse) with entrusted women, on the other. This is contrary to what was allowed for the Prophet Muhammad, wherein the preposition “*wa*” (meaning “and,” indicating the permissibility of both [’Abd al Hamid et al. 1934: 559], is used in the related verses concerning the Prophet). I should add that this distinction is clear despite the fact that the meaning of “*mulk al yameen*” is ambiguous—is it *mulk* as in “*isma*” (making the entrusted woman unlawful to another man) or is it “*mulk*” as in “*jariya*” (possessed slave), or in “*sabiyah*” (a war spoil)?; (2) that lawful sexual relations belong to two different and separate categories with different conditions—a *free woman executes her own marriage contract, and a mulk woman or a slave accepts a contractual sexual relationship as a license to her complete emancipation or automatic/potential manumission if she bore a child from her trusted guardian or master*. Yet, it seems that because of the confusion in understanding the creation story, the antiquated perception/belief that men in general own “their” women remains prevalent. Also, Muslims often ignored the Qur’an’s differentiation between a marriage contract with “*nisa`akum*” that assumes *nikah* as part of the consummation of the marriage, on the one hand, and mere “*nikah*” (only the licit sexual intercourse) with “*mulk al yameen*,” on the other. Mattson (1999: 138) reports that early legal scholars discussed the term “*nikah*” to mean either “the act of intercourse” or “the marriage contract.” Also, the word “*nikah*” is still erroneously used in reference to a marriage contract mostly by South and Southeast Asian Muslims, in general! Such practices further confuse the differences in sexual relations with free and other categories of women. Despite the fact that slavery was abolished in all Muslim societies by the middle of the 20th century, the concept of having licit sexual relations in addition to being married to a free woman was not abolished as well. As a consequence of the antiquated views of women, this concept and its practice were not abolished even though they should have been long ago!

Furthermore, Muslims generalized the allowance to have licit sexual relations with the widowed mothers of the orphans or the female orphans who are under their trusted guardianship to license for themselves multiple marriages (polygyny) (to be discussed below in category # 1). These confusions and generalizations seem to result in the general misunderstanding of a marriage contract as if it were the same thing as the actual consummation of the marriage—*nikah*, on the one hand, and between the consummation of marriage and the contracted licit sexual relations with *mulk al yameen*, on the other. Verse {4: 22} instructs and, as we will see in category # 5, verse {60: 10} affirms the same principles:

22 { وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا }

And do not have sexual relation with women whom your fathers had- except what is past: it was shameful and odious—an abominable custom indeed {al Nisa` 4: 22}.

Although Muslim male elites interpret the above verse as prohibiting the marriage from the women that their fathers had married and divorced or left as widows, the intention of the verse goes beyond this specific case and orders the believers to abandon all past practices. These Qur'anic differentiations and orders intended to facilitate regaining dignity for (a) the free woman by executing her own marriage contract, and (b) the *mulk al yameen* and/or the slave woman by her potential emancipation or manumission. Yet, in the majority of practiced cases, neither of these intended dignifying conditions seems to have been achieved by Muslim women. Why? If we look at the verses concerning licit sexual relations with *nisa' akum* vs. *mulk al yameen*, and/or with the widowed mother of the orphans under the trusted guardianship of a man, we find the following seven categories (to be discussed in detail below) that were either neglected or misinterpreted: (1) the orphans and their widowed mother; (2) *al Nisa'* ([free] women) are given *sadoqatihn* (marriage gift) "*nihla*"; (3) Muslims who do not have the means to contract licit sexual relations with "*muhsanat*" may have contractual sexual relations with *mulk al yameen*; (4) the Qur'an resembles the way men treat *mulk al yameen* to those who associate with God (another god or idol); (5) Muslims are not to have sexual relations with *mushrikah/mushrik* (female/male unbeliever) until s/he becomes *mu`minah/ mu`men* (a female/male believer); (6) the food of "*ahl al kitab*" (the People of the Book, those Jews and Christians who were given a Book before Islam) is made lawful to Muslims, and so is marriage among them; and (7) the Prophet was given a different set of rules for sexual relations.

### 1. The Orphan Girls and their Widowed Mother

The Qur'an states: If you [men] feared that you may not be fair in giving the orphans under your guardianship their due inheritance, you may have licit sexual relations with the female orphans or their widowed mother two, three, or four of these women. But if a man fears injustice among these women or in offering each a fair treatment, then *only one* or what the right hands possess. The interpretation of "*nisa'*" in this context varies, as we will see later in *Tafseer Ibn Katheer*, even when verses {4: 3 and 4: 127} clearly state what to do with the orphans and their widowed mother. The meaning in these verses is corroborated by a narrative attributed to the prophet's wife, 'A'ishah, that further explains the context at the time (see the verses and complete narrative on the authority of 'A'ishah below). A clear and formidable condition was imposed in this category—that is, to *be fair* among the orphans and their widowed mother; otherwise they should have *nikah* with *only one*. If justice was not attainable among the orphans, then marry only one of the female orphans or one of the widowed mothers, *or engage with licit sexual relations with one* from among those whose your right hand possess:

{3} وَإِنْ خِفْتُمْ أَلَّا تَقْسُطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَنْتَىٰ أَلَّا تَغُولُوا



If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal fairly (with them), *then only one*, or one of those that your right hands possess. That will be more suitable; to prevent you from doing injustice and deviate from the right course {al Nisa` 4: 3}.

Verse {4: 127} explains further:

{127} وَيَسْتَفْتُونَكَ فِي النِّسَاءِ قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ وَمَا يُتْلَىٰ عَلَيْكُمْ فِي الْكِتَابِ فِي يَتَامَى النِّسَاءِ اللَّاتِي لَا تُؤْتُونَهُنَّ مَا كُتِبَ لَهُنَّ وَتَرْغَبُونَ أَنْ تَنْكِحُوهُنَّ وَالْمُسْتَضْعَفِينَ مِنَ الْوِلْدَانِ وَأَنْ تَقُومُوا لِلْيَتَامَى بِالْقِسْطِ ...

They ask [you Muhammad] for your instruction concerning the Women. Say: Allah does instruct you about them: and (remember) what has been rehearsed unto you in the Book, concerning the orphan women to whom you give not the portions prescribed, and yet whom you desire to have sexual relations, as also concerning the children who are weak and oppressed; that you stand firm for justice toward orphans ... {al Nisa` 4:127}.

Also, the Qur'an reminds Muslim men that justice is often unattainable among women (in multiple sexual relations):

{129} وَلَنْ تَسْتَطِيعُوا أَنْ تَعْلَمُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمِيلِ فَتَدْرُوهَا كَالْمَعْلُوقَةِ وَإِنْ تَصْلَحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

You will never be able to be fair and just as between women, even if it is your ardent desire: but turn not away (from a woman) altogether, so as to leave her (as it were) hanging (uncertain of her status). If you come to a friendly understanding, and practice self-restraint and equilibrium, Allah is Oft-Forgiving, Most Merciful {al Nisa` 4: 129}.

The following narrative in Bukhari, attributed to 'A'ishah with a confirmed chain of narrators in the two Sahihayn (*Bukhari and Muslim*), corroborates the above verses:

حَدِيثُ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا : عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّهُ سَأَلَ عَائِشَةَ عَنْ قَوْلِ اللَّهِ { وَإِنْ حَفِظْتُمْ أَلَّا تَقْسِبُوهَا فِي الْيَتَامَى فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ } قَالَتْ يَا ابْنَ أُمَّ هِيَ الْيَتِيمَةُ تَكُونُ فِي حَجْرٍ وَلَيْهَا تَشَارِكُهُ فِي مَالِهِ فَيُعْجِبُهُ مَالُهَا وَجَمَالُهَا فَيُرِيدُ وَلَيْهَا أَنْ يَنْزِلَ بِهَا بِغَيْرِ أَنْ يَقْسِبَهَا فَيُعْطِيهَا مِثْلَ مَا يُعْطِيهَا غَيْرُهُ فَهِيَ أَلَّا أَنْ يَنْكِحُوهُنَّ إِلَّا أَنْ يَقْسِبُوا لَهُنَّ وَيَتَلَعَّوْا بِهِنَّ أَعْلَى سُنْبَتِهِنَّ مِنَ الصَّدَاقِ وَأَمَرُوا أَنْ يَنْكِحُوا مَا طَابَ لَهُمْ مِنَ النِّسَاءِ سِوَاهُنَّ قَالَ عُرْوَةُ قَالَتْ عَائِشَةُ ثُمَّ إِنَّ النَّاسَ اسْتَفْتَوْا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعْدَ هَذِهِ الْآيَةِ فَيَهِنُ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ : { يَسْتَفْتُونَكَ فِي النِّسَاءِ : قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ وَمَا يُتْلَىٰ عَلَيْكُمْ فِي الْكِتَابِ فِي يَتَامَى النِّسَاءِ اللَّاتِي لَا تُؤْتُونَهُنَّ مَا كُتِبَ لَهُنَّ وَتَرْغَبُونَ أَنْ تَنْكِحُوهُنَّ } {4: 127} قَالَتْ وَالَّذِي ذَكَرَ اللَّهُ تَعَالَى أَنَّهُ { يُتْلَىٰ عَلَيْكُمْ فِي الْكِتَابِ } الْآيَةُ الْأُولَى الَّتِي قَالَ اللَّهُ فِيهَا { وَإِنْ حَفِظْتُمْ أَلَّا تَقْسِبُوهَا فِي الْيَتَامَى فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ } . قَالَتْ عَائِشَةُ وَقَوْلِ اللَّهِ فِي الْآيَةِ الْآخَرَى { وَتَرْغَبُونَ أَنْ تَنْكِحُوهُنَّ } رَغْبَةً

أَحَدِكُمْ عَنِ الْيَتِيمَةِ الَّتِي تَكُونُ فِي حَجْرِهِ جِئْنَا بِكُنُوزٍ قَلِيلَةٍ الْمَالِ وَالْجَمَالِ فَتُهَوِّا أَنْ يَنْكِحُوا مَا رَغِبُوا فِي مَالِهَا  
وَجَمَالِهَا مِنْ يَتَامَى النِّسَاءِ إِلَّا بِالْقِسْطِ مِنْ أَجْلِ رَغْبَتِهِمْ عَنْهُنَّ

'A`ishah's Hadith: 'Urwah bin Al-Zubair reported that he asked 'A`ishah about the words of Allah: {If you fear that you will not be able to maintain equity among the orphan girls, then marry (those) you like from among the women two, three or four} She said: O son of my sister, the orphan girl is one who is under the patronage of her guardian and she shares with him in his property and her property and beauty fascinates him, but her guardian makes up his mind to marry her without giving her due share of the marriage gift and is not prepared (to pay so much amount) which anyone else is prepared to pay. So, Allah has forbidden marriage with these girls but in case when equity is observed as regards the marriage gift wherein the guardian is prepared to pay them the full amount of the marriage gift. Otherwise, Allah commanded to marry other women [their widowed mother] besides them according to the liking of their heart. 'Urwah reported that 'A`ishah said that people began to seek verdict from Allah's Messenger (may peace be upon him) after the revelation of this verse [4: 3] about them (orphan girls), and Allah, the Exalted and Glorious, revealed this verse: {They asked you verdict about women; say: Allah gives verdict to you in regard to them and what is recited to you in the Book about the orphan woman, whom you give not what is ordained for them while you like to marry them} {4: 127} She said: The wording of Allah {What is recited to you in the Book} means the first verse, i.e. {And if you fear that you will not be able to maintain equity amongst the orphan girls, then marry (those) you like from amongst the other women} {4 : 3}. 'A`ishah said: And as for this verse, that is {And you intend to marry one of them}, it pertains to men who are in charge (of orphans) who have small amount of wealth and less beauty. Such men do not marry these orphans because of their disliking for their beauty, but also do not give these orphans in marriage [to other men] in order to keep the orphans' wealth. Hence the verse emphasize that such men are allowed to marry from among the orphans with equity (al Bayan 1999: Kitab al Tafseer # 170).

It is sad to state that all these conditions that were clearly laid out in the Qur'an {verses 4: 3, 127 and 129} were neglected and not applied. But more problematic is that Muslim men gave themselves the permission to marry more than one woman, forgetting the original context—that is only in the case of the orphans and their widowed mother. Hence multiple marriage or polygyny became generalized, whether or not it was related to orphans and their widowed mother!

2. *al Nisa` ([free] Women) are Given Sadoqatihn (marriage gifts) Nihla (in goodwill) {4: 4} and Mulk al Yameen Girls are Given`Ujoor (monetary compensation) as an Obligation {4: 24}:*

{4} وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا

And give the women (on marriage) their free gift in good-will; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with goodness {al Nisa` 4: 4}.

Also the virtuous singles should be helped to get married, if they were poor {24: 32}:

{32} وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَانِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُعْطِهِمُ اللَّهُ مِنْ فَضْلِهِ ...

Join together those among you who are single, and the *virtuous ones among your males ('ibadikum) and females (ima`ikum)*: if they are in poverty, Allah will give them means out of His grace: for Allah encompasses all with his bounty ... {al Noor 24: 32}.

After listing all the forbidden categories of women that a man may not marry in {4: 23}, the Qur'an states in verse {4: 24}:

{32} حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَأَبْنَاؤُكُمْ وَأَخَوَاتُكُمْ وَعُمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمْ اللَّاتِي أَرْضَعْتُمْ وَأَخَوَاتُكُمْ مِنَ الرِّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمْ اللَّاتِي فِي خُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

Prohibited to you (for marriage) are: your mothers, daughters, sisters; father's sisters, mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives with whom you have consummated the marriage, no prohibition if you have not consummated the marriage; (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-Forgiving, Most Merciful.

{24} وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ ...

Also (prohibited are) muhsanat women (already married), except those *whom your right hands possess*: thus has Allah ordained (prohibitions) against you: except for these, all others are lawful, *provided you seek (them in monogamy) with compensation from your property, desiring chastity, not lust*. Seeing that you derive benefit from them, give them *their compensation as prescribed*; but if, after a compensation is prescribed, you agree mutually (to vary it), there is no blame on you ... {al Nisa` 4: 23-4}

I have kept the word "muhsanat" in {4: 24} in Arabic because it is neither clear why it was interpreted differently at different contexts nor how to translate it into English. As evidenced in Ibn Katheer's contradictory interpretations:

أَيِّ وَحْرَمَ عَلَيْكُمْ مِنَ الْأَجْنَبِيَّاتِ الْمُحْصَنَاتِ وَهِيَ الْمُرْجَوَاتُ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ يَعْنِي إِلَّا مَا مَلَكَتُوهُنَّ بِالْيَمِينِ فَإِنَّهُ يَحِلُّ لَكُمْ وَطَوْرُهُنَّ إِذَا اسْتَبْرَأْتُمُوهُنَّ . {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ} قَالَ : إِذَا كَانَ لَهَا زَوْجٌ فَبَيْعُهَا طَلَاقُهَا . وَرَوَى عَوْفٌ عَنِ الْحَسَنِ بَيْعَ الْأُمَّةِ طَلَاقُهَا وَيُبْعُهُ طَلَاقُهَا فَهَذَا قَوْلُ هَؤُلَاءِ مِنَ السَّلَفِ وَقَدْ خَالَفَهُمُ الْمُجْمُورُ قَدِيمًا وَحَدِيثًا فَرَأَوْا أَنَّ بَيْعَ الْأُمَّةِ لَيْسَ طَلَاقًا لَهَا لِأَنَّ الْمُشْتَرِي نَائِبٌ عَنِ الْبَائِعِ وَالْبَائِعُ كَانَ قَدْ أُخْرِجَ عَنْ مَلِكِهِ هَذِهِ الْمَنْفَعَةُ وَبَاعَهَا مَسْلُوبَةً عَنْهَا وَاعْتَمَدُوا فِي ذَلِكَ عَلَى حَدِيثِ بَرِيرَةَ الْمَخْرَجِ فِي الصَّحِيحَيْنِ وَغَيْرِهَا فَإِنَّ عَالِيشَةَ أُمَّ الْمُؤْمِنِينَ اسْتَبْرَأَتْهَا وَأَعْتَقَتْهَا وَلَمْ يَنْفَسَخْ نِكَاحُهَا مِنْ زَوْجِهَا مُعَيْتٌ ، بَلْ خَيْرُهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَ الْفَسْحِ وَالْبَقَاءِ فَاخْتَارَتْ الْفَسْحَ وَقَصَبَتْهَا مَشْهُورَةً فَلَوْ كَانَ بَيْعُ الْأُمَّةِ طَلَاقًا كَمَا قَالَ هَؤُلَاءِ مَا خَيْرَهَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ؛ فَلَمَّا خَيْرَها دَلَّ عَلَى بَقَاءِ النِّكَاحِ وَأَنَّ الْمُرَادَ مِنَ الْآيَةِ الْمَسْنُونَةِ فَقَطُّ وَاللَّهُ أَعْلَمُ وَقَدْ قِيلَ الْمُرَادُ بِقَوْلِهِ { وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ } يَعْنِي الْعَقَائِفَ حَرَامٌ عَلَيْكُمْ حَتَّى تَمْلِكُوا عَصَمَتَهُنَّ بِنِكَاحٍ وَشُهُودٍ وَمُجْمُورٍ وَوَلِيِّ وَاحِدَةٍ أَوْ اثْنَتَيْنِ أَوْ ثَلَاثًا أَوْ أَرْبَعًا .

Ibn Katheer seems to give the word “muhsanat” one meaning (married women) in verse {4: 24 above}, while another meaning (free, chaste women) in the next {4: 25 below}. Consequently, he interprets “except whose your right hands possess” as if to give license to having sexual relations with the war spoils even if they were married to non-believers. He cites Ibn Mas’ud who uses a narrative that has a *munqati*’ (broken) chain of narrators, and that is used by some “old and new *Salaf*” (“salafis” or followers of precedent practices), adding that once a slave is sold, it means that she became automatically divorced from her prior husband.

It is perplexing to see Ibn Katheer use such a statement by the salafis, knowing that it is not authentic. Furthermore, he later states that *al Jumhur* (the majority of the Muslim male elites of the time) opposed such an explanation [of the salafis] by refuting the idea that selling a slave makes her a divorcee, citing a narrative by Bareera in the *Sahihayn* (*Bukhari and Muslim*). Bareera states that ‘A`ishah had bought and freed her, and that the Prophet had given her the choice to stay married or to leave her husband, Mughyith.

Finally, Ibn Katheer retracts his earlier explanation, stating that the verse intends only the war spoils. He adds that it was said [without stating by whom] that “muhsanat” means that Muslims are prohibited to have sexual relations with [chaste] women unless the man has *’isma* (the rights to make the women unlawful to other men) and allow these men to have *nikah* (intercourse) with these women, conditioned by providing *shuhuud* (witnesses), *mahr* (dower), and *wali* (approval of a guardian). *Ibn Katheer further adds something that is not in these verses* {4: 4, 24, and 25; 24: 32}, the *permission to have one, two, three, or four* (Mawqi’ al islam: Qur’an—Tafseer = 82). I am also perplexed as to how Ibn Katheer rationalized all these explanations and conditions with regards to women who were already married or chaste!

3. *Muslims who do not have the Means to Contract Licit Sexual Relations* [in marriage, with the goal of both parties to remain chaste] with *Muhsanat* (free chaste believing women) are allowed to have licit sexual relations with *malakat aymanukum* (what your right hands possess) of believing females. The Qur’an makes sexual relations lawful with the latter category conditioned by taking permission from their folk (previous husband or previous owner, before the women became Muslims or before they were enslaved or captured), by giving

them `ujoor (monetary compensations) as is agreed upon in a customary kindness, and by having witnesses. The Qur'an adds that if these latter women committed *fahisha* (became unchaste), then their punishment is only one-half of that for a free woman, for fear of committing injustice toward them. The Qur'an laments that it is better to practice self-restraint and patience (than to have sexual relation with mulk al yameen):

{25} وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتْيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُم مِّن بَعْضٍ فَانكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَأَتُوهُنَّ بِالْمَعْرُوفِ مُحْصَنَاتٍ غَيْرٍ مُسَافِحَاتٍ وَلَا مُتَّخَذَاتٍ إِخْدَانٍ إِذَا أَحْصَيْنَ فَإِنَّ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ ذَلِكَ لِمَنْ خَشِيَ الْعَنَتَ مِنْكُمْ وَأَنْ تُصَيِّرُوا كَيْدًا لَكُمْ وَاللَّهُ غَفُورٌ رَحِيمٌ

If any of you have not the means wherewith to wed muhsanat (free) chaste believing women, you may have sexual relations with *believing females from among those whom your right hands possess*: and Allah has full knowledge about your faith; you are one from another: *Have relations with them after the leave of their folks, and give them their compensation, according to what is reasonable and customary. They should be chaste, not lustful, nor taking paramours.* When they are taken in chastity, if they fall into shame [became unchaste], their punishment is half that for free women, for fear of committing injustice. This (permission to have sexual relations with mulk al yameen) is for those among you who fear sin; but it is better for you that you practice self-restraint and patience. And Allah is Oft-Forgiving, Most Merciful {al Nisa`4: 25}.

Given that there has been confusion between the meaning of “mulk al yameen” with that of *jariya`/ama/fatat/sariya*, according to Mattson (1999: 140–141) and her lengthy discussion (138–45) concerning the ambiguity of heterosexual unions during pre-Islamic and early Islamic Arabia, in addition to the ambiguity as to who could be considered to fit under the condition of being “muhsan” (chaste/married), as Ibn Katheer interprets (below), I am more inclined to consider any of these categories of women to fit under the status of “muhsan.” Ibn Katheer states in his interpretation of {4: 25}:

يَقُولُ تَعَالَى { وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا } أَي سَعَةً وَقُدْرَةً { أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ } أَي الْحَرَائِرِ الْعَلَفَائِفِ . وَقَالَ ابْنُ وَهْبٍ : أَخْبَرَنِي عَبْدُ الْجَبَّارِ عَنْ رَبِيعَةَ { وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ } قَالَ رَبِيعَةَ : الطَّوْلُ الْهَوَى يُعْنَى يَنْكِحُ الْأُمَّةَ إِذَا كَانَ هَوَاهُ فِيهَا رَوَاهُ ابْنُ أَبِي حَتْمٍ وَابْنُ جَرِيرٍ ثُمَّ أَخَذَ يُشَنِّعُ عَلَى هَذَا الْقَوْلِ وَيُرَدِّدُهُ { فَمِمَّا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتْيَاتِكُمُ الْمُؤْمِنَاتِ } أَي فَتَرَّوَجُوا مِنَ الْإِمَاءِ الْمُؤْمِنَاتِ اللَّاتِي يَمْلِكُهُنَّ الْمُؤْمِنُونَ وَلِهَذَا قَالَ { مِنْ فَتْيَاتِكُمُ الْمُؤْمِنَاتِ } قَالَ ابْنُ عَبَّاسٍ وَغَيْرُهُ : فَلْيَنْكِحْ مِنْ إِمَاءِ الْمُؤْمِنِينَ وَكَذَا قَالَ السُّدِّيُّ وَمُقَاتِلُ بْنُ حَيَّانٍ . ثُمَّ اعْتَرَضَ بِقَوْلِهِ : { وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ } أَي هُوَ الْعَالِمُ بِحَقَائِقِ الْأُمُورِ وَسَرَائِرِهَا وَإِنَّمَا لَكُمْ أَيْهَا النَّاسِ الظَّاهِرُ مِنَ الْأُمُورِ ثُمَّ قَالَ : { فَانكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ } قَدْ قَالَ عَلَى أَنَّ السَّيِّدَ هُوَ وَلِيِّ أُمَّةٍ لَا تُرْوَجُ إِلَّا بِإِذْنِهِ وَكَذَلِكَ هُوَ وَلِيُّ عَبْدِهِ لَيْسَ لَهُ أَنْ يَتَرَّوَجَ بِغَيْرِ إِذْنِهِ كَمَا جَاءَ فِي الْحَدِيثِ ” أَيَّمَا عَبْدٍ تَرَّوَجَ بِغَيْرِ إِذْنِ مَوْلَاهِ فَهُوَ غَايِرٌ “ أَي زَانٍ . فَإِنْ كَانَ مَالِكُ الْأُمَّةِ امْرَأَةً زَوْجَهَا مِنْ يَرْوَجُ امْرَأَةً بِإِذْنِهَا لِمَا جَاءَ فِي الْحَدِيثِ ” لَا تُرْوَجُ امْرَأَةٌ إِلَّا بِإِذْنِهَا وَلَا امْرَأَةٌ تَنْفَسُهَا فَإِنَّ الرِّبَاةَ هِيَ الَّتِي تُرْوَجُ نَفْسُهَا

That is, in view of Qur`anic instructions, the man who has a trusted guardianship (over orphan girls, widowed women, or female slaves) should be responsible for their well-being, so they will not need to sell their sexuality for livelihood, and remain chaste. Given that the concept of slavery (at least in theory) has been long abolished and should have been abolished in practice, I see no need now (at this time of age or in the context of this book) to go through the lengthy discussion that Mattson presented about the different meanings of “being owned.” Whether or not “mulk al yameen” includes or means jariya/ ama/fatat/sariya, it is clear why the Qur`an obliges men who want to have lawful sexual relations with any of these categories to execute a “nikah” contract, a special contract for sexual relations that should not be considered like a “qaran” (marriage contract) with a free woman.

That is, within the pedagogical and ethical framework of the Qur`an, and based on the concepts of *’adl* (justice) and *qist* (fairness), one must realize that the state of a free woman’s choosing a belief system (with an equilibrated, conscientious agency) and/or choosing a husband in marriage, on the one hand, is different from the state of a mulk al yameen who only has constrained choices and agency, on the other. This is evident in Qur`anic stipulation that the punishment of mulk al yameen who became unchaste is only one-half that of a free woman {al Nisa` 4: 25}.

My discussion of slavery in the context of the issue of licit sexual relations is intended mainly to explain where the confusion concerning the contemporary conditions for marriage with free women might have come from. Hence, ’Umar bin al Khattab’s, or any legal scholar of early Islam, contemplation to give different status for the different categories of jariya/ ama/fatat/sariya may have had merit at the time, but may or may not be relevant for our purpose here, nor for contemporary marriage contracts. For example, the narratives within which pregnancy was considered as the only evidence of sexual relations with a slave or with a free woman (Mattson 1999) are irrelevant for our purpose now. That is, because of the following reasons:

(a) *The Qur`an clearly establishes the concept of al Li’an* (each party swears four times that s/he is telling the truth, and the fifth swearing that s/he should be cursed by Allah, if s/he were not telling the truth) to secure each party’s truthful testimony in case of dispute over chastity (see also Chapter 2 for another related discussion):

{6} وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ {7} وَالْخَامِسَةَ أَنَّ لَعْنَةَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ {8} وَيَذَرُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ {9} وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ

And for those who launch a charge against their spouses, and have (in support) no evidence but their own – their solitary evidence (can be received) if – they bear witness four times (with an oath) by Allah that they are solemnly telling the Truth. And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie. But it would avert the punishment from the wife, if

she bears witness four times (with an oath) by Allah that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the Truth {al Noor 24: 6–9}.

These verses also establish that the value of a woman's testimony is equal to that of a man (see also full description of the woman's witnessing and testimony on her own behalf in Chapter 2). Furthermore, the Qur'an stipulates special punishment for those who unjustly or falsely accuse women of being unchaste:

{4} وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ {5} إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

And those who launch a charge against chaste women and do not produce four witnesses, (to support their allegations), flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors. Unless they repent thereafter and mend (their conduct): for Allah is Oft-Forgiving, Most Merciful {al Noor 24: 4–5}.

{23} إِنَّ الَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ لُعُنُوا فِي الدُّنْيَا وَالْآخِرَةِ وَلَهُمْ عَذَابٌ عَظِيمٌ {24} يَوْمَ تُشْهَدُ عَلَيْهِمْ أَسِنَّتُهُمْ وَأَيْدِيهِمْ وَأَرْجُلُهُمْ بِمَا كَانُوا يَعْمَلُونَ {26} الْخَبِيثَاتِ لِلْخَبِيثِينَ وَالْخَبِيثُونَ لِلْخَبِيثَاتِ وَالطَّيِّبَاتِ لِلطَّيِّبِينَ وَالطَّيِّبُونَ لِلطَّيِّبَاتِ أُولَئِكَ مُبَرَّغُونَ مِمَّا يَقُولُونَ لَهُمْ مَغْفِرَةٌ وَرِزْقٌ كَرِيمٌ

Those who slander chaste women, indiscreet but believing, are cursed in this life and in the Hereafter: for them is a grievous Penalty, On the Day [of judgment] when their tongues, their hands, and their feet will bear witness against them as to their actions, Women impure for men impure, and men impure for women impure and women of purity are for men of purity, and men of purity are for women of purity: these are not affected by what people say: for them there is forgiveness, and an honorable provision {al Noor 24: 23–4, 26}.

(b) *For contemporary ethical and pedagogical purposes*, to use pregnancy as the only proof of having extramarital or illicit sexual relations is neither credible nor fair for many obvious reasons that cannot be explained here, the least of which is the possibility that the woman might be barren, menopausal, or her pregnancy was a result of her licit sexual relations with her own husband.

(c) *If the goal of using pregnancy was to determine fatherhood of the fetus*, then today's available means, such as blood tests, overrides any doubts and does not anymore require invoking the lengthy process of jurisprudence opinions! These potential solutions, however, do not preclude us from analyzing some studies that use historical debates about issues related to licit sexual relations, as I will do in the sections below on "Belief, Knowledge, and Slavery" and "Believing women are being subjects in the process of knowledge development instead of being shapers of knowledge." The goal is to reveal where misunderstandings and injustices to women in general might have taken place.

4. The Qur'an Resembles the Way Men Treat Mulk al Yameen to those Who Associate with God (another god or idol). God asks if those who associate with Him would consider their slaves as if they were a commodity to be shared among business partners—knowing that s/he cannot be shared nor share in the trustee wealth {al Room 30: 27–8}. Also, the Qur'an reminds people that the trustee may not fear that the believing mulk al yameen may ask for a share in the wealth since there is no mandate in the Qur'an for that. So, Qur'an affirms: stay the natural course of belief, and reverence God [your Guardian]:

{28} ضَرَبَ لَكُمْ مَثَلًا مِنْ أَنْفُسِكُمْ هَلْ لَكُمْ مِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ شُرَكَاءَ فِي مَا رَزَقْنَاكُمْ فَأَنْتُمْ فِيهِ سَوَاءٌ تَخَافُونَهُمْ كَخِيفَتِكُمْ أَنْفُسَكُمْ كَذَلِكَ نُفَصِّلُ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ ... {30} فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَةَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الْقِيَمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ {31} مُنِيبِينَ إِلَيْهِ وَاتَّقُوهُ وَأَقِيمُوا الصَّلَاةَ وَلَا تَكُونُوا مِنَ الْمُشْرِكِينَ

He does propound to you a similitude from your own (experience): do you have partners among those *whom your right hands possess*, to share as equals in the wealth We have bestowed on you? Do you fear them as you fear yourselves and each other? Thus do We explain the Signs in detail to a people who understand ... So you set your face steadily and truly to the Faith: (establish) Allah's handiwork according to the pattern on which He has made humankind: no change (let there be) in the work (wrought) by Allah: that is the standard Religion: but most among humankind understand not. Turn you back in repentance to God, and reverence Him: establish regular prayers, and do not be among those who join gods with Allah {al Room 30: 28, 30–31}.

Yet, all the above detailed differentiation in the Qur'an concerning having lawful sexual relations with free and/or other women did not seem to change the tribal attitude about women in general! The variation in the following narratives may have contributed to the confusion about the intention of these verses:

حَدِيثُ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ أَعْتَقَ شِرْكَاءَ لَه فِي عَبْدٍ فَكَانَ لَهُ مَا لِي بِعْدَ ثَمَنِ الْعَبْدِ قَوْمٌ عَلَيْهِ قِيَمَةُ الْعَدْلِ فَأَعْطَى شُرَكَاءَهُ حِصَصَهُمْ وَعْتَقَ عَلَيْهِ الْعَبْدَ وَإِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ

Ibn 'Umar reported: Allah's Messenger (may peace be upon him) said: If anyone emancipates his share in a slave and has enough money to pay the full price for him, a fair price for the slave should be fixed, his partners given their shares, and the slave be thus emancipated, otherwise the slave is emancipated only to the extent of the first man's share (al Bayan 1999: Kitab al 'Utuq # 852).

حَدِيثُ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا: عَنِ ابْنِ عُمَرَ عَنْ عَائِشَةَ أَنَّهَا أَرَادَتْ أَنْ تَشْتَرِيَ جَارِيَةً تُعْتِقُهَا فَقَالَ أَهْلُهَا نَبِيغُهَا عَلَى أَنْ وَلَاءَهَا لَنَا فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَا يَمْنُوكِ ذَلِكَ فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ

Ibn 'Umar reported that 'A'ishah decided to buy a female-slave and then set her free, but her (the slave) masters said: We are prepared to sell her to you on the



condition that her right of inheritance would vest with us. She ('A'ishah) made a mention of that to Allah's Messenger (may peace be upon him), whereupon he said: This should not stand in your way. The right of inheritance vests in one who emancipates (al Bayan 1999: Kitab al 'Utq # 854).

It is hard to believe that the Prophet will allow only partial emancipation, while at the same time affirms that the right of inheritance vests in the one who emancipates! It is actually against the ethical spirit of justice in Islam to deal with a slave as if s/he was a commodity where price and ownership, as well as her inheritance, could be shared by more than one person, or remains the vest of her ex-master.

The following narrative shows how the meaning of "jariya" varies in different contexts and may add to the confusion in the meaning of "jariya" in the following narrative:

حَدِيثُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ : عَنْ عَلْقَمَةَ قَالَ كُنْتُ أَتَشِي مَعَ عَبْدِ اللَّهِ بِمَنْى فَلَقِيَهُ عُثْمَانُ فَقَامَ مَعَهُ يُحَدِّثُهُ فَقَالَ لَهُ عُثْمَانُ يَا أَبَا عَبْدِ الرَّحْمَنِ أَلَا نُرْوُجُكَ جَارِيَةَ شَابِيَةً لَعَلَّهَا تُذَكِّرُكَ بَعْضَ مَا مَضَى مِنْ زَمَانِكَ قَالَ فَقَالَ عَبْدُ اللَّهِ لَيْنُ ذَلِكَ لَقَدْ قَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضَى لِلْبَصْرِ وَأَحْصَنَ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءُ

'Abdullah bin Mas'ud's Hadith: 'Alqamah related: While I was going along with 'Abdullah in Mina, 'Uthman happened to meet him. So he walked and talked with him. Then 'Uthman asked him: Abu 'Abdul-Rahman, should we not marry you to a young virgin girl (*jariya*) that your past may be recalled to your mind?' 'Abdullah said: If you say so, Allah's Messenger said to us: O young men, those among you who can afford it should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford it should observe Fasting, for it is a means of controlling the sexual desire (al Bayan 1999: Kitab al Nikah # 792).

The expression "jariya", though translated here as a "young virgin girl" is also used in different sources to mean a "slave girl"! Such variations in usage may have also created confusion between free and slave women, particularly when the usage concerns lawful sexual relations.

5. Muslims are not to Have Sexual Relations with Mushrikah/Mushrik (female/male unbeliever) until she or he Becomes *Mu`minah/Mu`men* (a female/male believer):

{221} وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ وَلَا مَآءَةَ مُؤْمِنَةٍ خَيْرٌ مِنْ مُشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنْكَحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُؤْمِنٌ خَيْرٌ مِنْ مُشْرِكٍ وَلَوْ أَعْجَبَكُمْ أُولَئِكَ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Do not have sexual relations with unbelieving women until they believe: an *ama* (a woman) who believes is better than an unbelieving woman, even though she allures you. Nor give the hands of (your girls) to unbelievers until they believe: an *abd* (a man) who believes is better than an unbeliever even though he allures you.

Unbelievers do (but) beckon you to the Fire. But Allah beckons by His Grace to the Garden (of Bliss) and with His will grants forgiveness, and makes His Signs clear to people: that they may remember {al Baqara 2: 221}.

Although Mattson (1999: 138–45) has a lengthy discussion concerning the ambiguity of heterosexual unions during pre-Islamic and early Islamic Arabia, she uses the word “‘ama” and “‘abd” as if they mean “slave.” I have deleted the word “slave” in the English rendition because the Arabic use of “‘ama” and “‘abd” may not mean “slave,” rather a mere reference to a young female or male, respectively. Such possibility could be affirmed by the following narrative:

حدثنا يحيى بن أيوب وقتيبة وابن حجر قالوا حدثنا إسماعيل وهو ابن جعفر عن العلاء عن أبيه عن أبي هريرة أن رسول الله صلى الله عليه وسلم قال لا يقولن أحدكم عبدي وأمّتي كلكم عبيد الله وكل نساءكم إماء الله ولكن ليقال غلامي وجاريّتي وفتاتي وفتات

On the authority of Abi Huryara that the Prophet stated: do not call your slaves as ‘abdi or ‘amati, as you are all ‘abiid (pl. of ‘abd) of Allah, and all your women are “‘imaa” (pl. of ‘ama) of Allah. He should say: “gulami” and “jariyati” or “fatay” and “fatati” (al Bayan 1999: Kitab al Tafseer # 2249).

Thus, one needs to be careful when interpreting this and similar verses, particularly when it concerns the act of (giving the hand) of the believing female to a believing male slave or to a man from among the People of the Book! That is, as we will see below, such exchange in the meanings of “‘ama” and “‘abd” also affects the interpretation of permissibility for a free woman’s licit sex with her own male slave and/or with a man from among the People of the Book.

6. *Just as the Food of Ahl al Kitab (the People of the Book) Made Lawful to Muslims, and the Latters’ Food Made also Lawful to Ahl al Kitab, it is Lawful for Muslims to Have Sexual Relations with Muhsanat (chaste/not married) from among the Mu`minat and from among the People of the Book* (those Jews and Christians who were given a Book before Islam). The Qur`an made this relationship lawful with the condition of giving them their `ujoor (monetary compensations) and for the intention of chastity (to discuss further in section on “Belief, Knowledge, and Slavery” below).

{5} الْيَوْمَ أَحَلَّ لَكُمْ الطَّيِّبَاتِ وَطَعَامَ الَّذِينَ أَوْلُوا الْكِتَابِ حَلَّ لَكُمْ وَطَعَامَكُمْ حَلَّ لَهُمْ وَالْمُخَصَّنَاتِ مِنَ الْمُؤْمِنَاتِ وَالْمُخَصَّنَاتِ مِنَ الَّذِينَ أَوْلُوا الْكِتَابِ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُخَصَّنِينَ غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ

This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. Lawful unto you [in sexual relations] are chaste/not married women who are Believers, and chaste women from among the People of the Book that was revealed before your time, when you give them their due `ujoor, and you both desire chastity, not

lewdness, nor secret intrigues. If anyone rejects faith, fruitless is his work, and in the Hereafter he will be in the ranks of those who have lost (all spiritual good) {al Ma'ida 5: 5}.

The above two verses {2: 221 and 5: 5} indicate two basic conditions in licit sexual relations for Muslims in general. That is, the partner, whether for a man or a woman, should be both a believer (mu`minah/mu`min) and chaste (muhsanah/muhsan). Although in {5: 5}, the chaste women from among the People of the Book were made lawful to Muslims, it is not clear why the Qur`an only talks about lawful women from among the People of the Book (and not about lawful men) and why it stipulates the condition of giving these women their `ujoor (monetary compensations), similar to what it stipulates for "mulk al yameen"! The relevant questions also are: Was the Qur`an treating the women of the People of the Book as free women or as those "mulk al yameen" and was the Qur`an referring to the women from among the People of the Book who defected to the Muslims camp or those who were enslaved after a war between the Muslims and some tribes from the People of the Book? If the Qur`an intended the women of the Book who defected by choice to the Muslims camp, then the Qur`an seems to consider their status similar to the believing women who defect from non-believers' camps. The Qur`an stipulates that these latter women should not be returned to the non-believers' camp, and that Muslim men may have licit sexual relations with them, conditioned by giving them their "ujoor." In addition, the Qur`an warns not to hold on to the defecting women as ransom for their monetary compensation, to whichever camp they may belong, as I discussed earlier concerning verses {60: 10-11} in Chapter 3:

{10} يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمْ الْمُؤْمِنَاتُ مَهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ وَآتُوهُنَّ مَا أَنْفَقُوا وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ وَلَا تُمْسِكُوا بِعِصَمِ الْكُوفَارِ وَاسْأَلُوا مَا أَنْفَقْتُمْ وَلَيْسَ أَلَا مَا أَنْفَقُوا ذَلِكَ كَيْفَ اللَّهُ يُحَكِّمُ بَيْنَكُمْ وَاللَّهُ عَلِيمٌ حَكِيمٌ {11} وَإِنْ فَاتَكُمْ شَيْءٌ مِنْ أَرْوَاجِكُمْ إِلَى الْكُفَّارِ فَعاقِبْتُمْ فَاتُوا الَّذِينَ ذَهَبَتْ أَرْوَاجُهُمْ مِثْلَ مَا أَنْفَقُوا وَاللَّهُ الَّذِي أَنْتُمْ بِهِ مُؤْمِنُونَ

O you who Believe! When there come to you believing women refugees, test them: Allah knows best as to their Faith: if you ascertain that they are Believers, then do not send them back to the unbelievers. They are not lawful (wives) for the unbelievers, nor are the (unbelievers) lawful (husbands) for them. But pay the unbelievers what they have spent (on their dower). And there will be no blame on you if you have sexual relations with them on payment of their `ujoor to them. But do not hold to the guardianship of unbelieving women: ask for what you have spent on their `ujoor, and let the (unbelievers) ask for what they have spent (on the `dowers of women who come over to you). Such is the command of Allah: He judges (with justice) between you. And Allah is of utmost knowledge and wisdom. And if any of your spouse desert you to the unbelievers, and you have an accession (by coming over of a married woman from the other side), then pay to those whose

spouses have deserted the equivalent of what they had spent (on their dower). And be conscientious of Allah, in Whom you believe {al Mumtahanah 60: 10–11}.

Although the Qur'an did not explicitly forbid sexual relations of a Muslim woman with a man from among the People of the Book, the practice of such prohibition seems to come mainly from an apparent confusion about the definition of "mu'min" (believer) and the consequent interpretations. Shahrur (2009: 9) presents an elaborate explanation as to the difference between *mu'min* (a believer) and *muslim* (a Muslim), but I will not use his arguments here because the subject is beyond the scope of this analysis. However, it is important to keep his differentiation in mind for further synthesis of the issue of marriage to the People of the Book in general! That is, it is evident in Ibn Katheer's exegesis that Muslims at later times were also confused about the definition of "mu'min"—whether it includes *Ahl al kitab* (the People of the Book), or whether it refers only to "Muslims." Regardless, Ibn Katheer (below) continues to *assume that only a male Muslim may have lawful sexual relations with a woman from among Ahl al kitab and only a male Muslim may have lawful sexual relations with his believing mulk al yameen.*

It seems that Ibn Katheer's interpretation is the result of his giving a meaning to "'ama" and "'abd" in {2: 221} as if they meant slaves (to be discussed further in the section on "Belief, Knowledge, and Slavery"). Therefore, and as a result of such interpretation by Ibn Katheer and others of verses {2: 221 and 5: 5}, the customary practice became that only Muslim men are allowed to have licit sexual relations with women from among the People of the Book, and only Muslim men were allowed to have licit sexual relations with their mulk al yameen. The other result of Ibn Katheer interpretation is that only the trusted guardian males were given the permission to execute sexual relation agreements between other men and their (the trusted guardians') mulk al yameen or slaves! Consequently, and in a stark contradiction with the Qur'an, the general practice now is that a free woman's qaran (marriage contract) became conditioned by the approval and agreement of her male household or guardian, to the point that some of these males even execute the marriage contract without the consent of the free women, be it a sister, a daughter, or a niece!

Such confused particularism in interpretation and unjust biased practices became the norm among the majority of Muslims even when the practice contradicts the Qur'an or has no explicit stipulation in the Qur'an, and despite the fact that, as we saw earlier (in Ibn Katheer's report on Zaynab, the daughter of the Prophet Muhammad, Chapter 3), in the early days of Islam, Muslim women remained married to non-Muslims (Mawqi' al islam: Qur'an—Tafseer Ibn Katheer =82).

What is perplexing about Ibn Katheer's interpretation is the confusion between being a believer and being chaste, between being a free and being a slave woman or mulk al yameen, and between being Mu'min and being Muslim. All the narratives that he refers to seem to also present confusing accounts of the relationship between all these statuses, let alone that the majority of these narratives are classified either as "*dha'if*" (weak) or as "*hasan*" (accepted).

### 7. The Prophet was Given Different Set of Rules for Marriage and Licit Sexual Relations with Mulk al Yameen.

As we saw earlier in Chapter 3, the following were the rules for the Prophet's treatment of his wives:

{28} يَا أَيُّهَا النَّبِيُّ قُلْ لِلأَزْوَاجِ إِن كُنْتُمْ تُرِيدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْن أَمْتَعْنَكُمْ وَأَسْرَحْنَكُمْ سَرَاحًا جَمِيلًا

{29} وَإِنْ كُنْتُمْ تُرِيدْنَ اللَّهَ وَرَسُولَهُ وَالدَّارَ الْآخِرَةَ فَإِنَّ اللَّهَ أَعَدَّ لِلْمُحْسِنَاتِ مِنْكُمْ أَجْرًا عَظِيمًا {30} يَا نِسَاءَ النَّبِيِّ مَنْ يَأْتِ مِنْكُمْ بِفَاحِشَةٍ مَبِينَةٍ يَصْغَفْ لَهَا الْعَذَابَ ضِعْفَيْنِ وَكَانَ ذَلِكَ عَلَى اللَّهِ يَسِيرًا {31} وَمَنْ يَفْعَلْهُ مِنْكُمْ اللَّهُ وَرَسُولُهُ وَتَعَمَلْ صَالِحًا نُؤْتِيهَا أَجْرَهَا مَرَّتَيْنِ وَأَعْتَدْنَا لَهَا رِزْقًا كَرِيمًا {32} يَا نِسَاءَ النَّبِيِّ لَسْتُنَّ كَأَحَدٍ مِنَ النِّسَاءِ إِنْ اتَّقَيْتُنَّ فَلَا تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ وَقُلْنَ قَوْلًا مَعْرُوفًا {33} وَفَرِّقْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى وَأَقِمْنَ الصَّلَاةَ وَآتِينَ الزَّكَاةَ وَأَطِعْنَ اللَّهَ وَرَسُولَهُ إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا {34} وَأَذْكُرْنَ مَا يُكَلِّمُنَّ فِي بُيُوتِكُنَّ مِنْ آيَاتِ اللَّهِ وَالْحِكْمَةِ إِنَّ اللَّهَ كَانَ لَطِيفًا خَبِيرًا

O Prophet! say to your consorts: "If it be that you desire the life of this world, and its glitter, then come! I will provide for your enjoyment and set you free in a handsome manner. But if you seek Allah and His Messenger, and the Home of the Hereafter, verily Allah has prepared for the well-doers amongst you a great reward." O Consorts of the Prophet! if any of you were guilty of evident unseemly conduct, the punishment would be doubled to her, and that is easy for Allah. But any of you that is devout to Allah and His Messenger, and does righteousness, to her shall We grant her reward twice: and We have prepared for her a generous sustenance. O consorts of the Prophet! you are not like any of the (other) women: if you do fear (Allah), be not too complaisant of speech, lest one in whose heart is a disease should be moved with desire: but speak you a speech (that is) just. And stay quietly in your houses, and make not a dazzling display, like that of the former *times of ignorance*: and establish regular prayer, and give regular charity; and obey Allah and His Messenger. And Allah only wishes to remove all abomination from you, you the Members of the [Prophet] Family, and to make you pure and spotless. And recite what is rehearsed to you in your homes, of the Signs of Allah and His Wisdom: for Allah understands the finest mysteries and is well-acquainted (with them) {al Ahzab 33: 28–34}.

{50} يَا أَيُّهَا النَّبِيُّ إِنَّا أَعْلَمْنَا لَكَ أَزْوَاجَكَ اللَّائِي آتَيْتَ أَجُورَهُنَّ وَمَا مَلَكَتْ يَمِينُكَ مِمَّا أَفَاءَ اللَّهُ عَلَيْكَ وَبَنَاتِ عَمِّكَ وَبَنَاتِ عَمَّاتِكَ وَبَنَاتِ خَالَكَ وَبَنَاتِ خَالَاتِكَ اللَّائِي هَاجَرْنَ مَعَكَ وَامْرَأَةً مُؤْمِنَةً إِنْ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ إِنْ أَرَادَ النَّبِيُّ أَنْ يَسْتَنْكِحَهَا خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِي أَزْوَاجِهِمْ وَمَا مَلَكَتْ أَيْمَانُهُمْ لِكَيْلَا يَكُونَ عَلَيْكَ حَرَجٌ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا {52} لَا يَحِلُّ لَكَ النِّسَاءُ مِنْ بَعْدِ وَلَا أَنْ تَبَدَّلَ بِهِنَّ مِنْ أَزْوَاجٍ وَلَوْ أَعْجَبَكَ حَسَنَهُنَّ إِلَّا مَا مَلَكَتْ يَمِينُكَ وَكَانَ اللَّهُ عَلَى كُلِّ شَيْءٍ رَقِيبًا

O Prophet! We have made lawful to you your wives to whom you have paid their `ujoor; and those whom your right hand possesses out of the prisoners of war whom Allah has assigned to you; and daughters of your paternal uncles and aunts, and

daughters of your maternal uncles and aunts, who migrated (from Mecca) with you; and any believing woman who dedicates herself to the Prophet if the Prophet wishes to wed her; this is *only for you, and not for the believers* (at large): We know what We have appointed for them as to their wives and the those whom their right hands possess; in order that there should be no difficulty for you, and Allah is forgiving and merciful. It is not lawful for you (to marry more) women after this, nor to change them for (other) wives, even though their beauty attract you, except any that your right hand should possess, and Allah doth watch over all things {al Ahzab 33: 50, 52}.

Yet, interpreters like Ibn Katheer conflate the context and the purpose of “qaran and talaq” (marriage and dissolution of marriage) in general with the contexts of the above verses that only pertain to the Prophet and his consorts. Note that only in addressing the Prophet does the Qur’an license to combine multiple marriages to free women, on the one hand, with having licit sexual relations with mulk al yameen, on the other hand (using the proposition “*wa*” (and) in verse {33: 50} as I explained above in category # 1). I should add here that, considering the Prophet’s special position, his particular encounter with his wives (as described in {33: 28–34}) was not talaq, as I explained in Chapter 3. The narratives below corroborate the Qur’an:

كَمَا ثَبِتَ فِي الصَّحِيحَيْنِ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - آلَى مِنْ نِسَائِهِ شَهْرًا فَنَزَلَ لِتِسْعِ وَعِشْرِينَ وَقَالَ ” الشَّهْرُ تِسْعَ وَعِشْرُونَ“

حدثنا ابن سلام حدثنا الفزاري عن حميد الطويل عن أنس رضي الله عنه قال ”آلى رسول الله صلى الله عليه وسلم من نisائه شهرا وكانت انفكت قدمه فجلس في عليه له فجاء عمر فقال أطلقت نساءك قال لا ولكني آليت منهن شهرا فمكث تسعا وعشرين ثم نزل فدخل على نisائه

It was reported in Sahihayn on the authority of ‘A’ishah that the *Prophet had separated himself from his consorts for 29 days* (and then he said: the month is 29 days).

Also, in [Sahih] Bukhari, ‘Umar asked the Prophet who was sitting in his contemplation place if he had executed talaq of his wives. The Prophet answered: No, *I only separated myself from them for 29 days*, and then he stepped down and went back to his domestic quarters (al Bayan 1999: Kitab al Talaq # 874).

So, the prophet’s encounter should be seen only as an example for how he dealt with his consorts, since Muslims in general are not allowed to wed more than one with the exception of orphans and their widowed mothers who are under their guardianship. They may keep up to four together only under stringent conditions {verse 4: 3} as explained above (# 1).

*To summarize*, the following misunderstandings may have resulted from the secondary and tertiary sources as follows:

1. Confusing “mu`min”(believing person) with “*muhsan*” (chaste person).

2. Creating a jurisprudence about allowing only Muslim males to have licit sexual relations with women from among Ahl al Kitab although the Qur`an does not explicitly limit that. That is, Muslim jurists claim that Muslim women are forbidden to have licit sexual relations with a male from ahl al kitab even when the jurists themselves disputed about considering ahl al kitab believers (mu`mineen) or Muslims (muslimeen)! They often rely on a narrative with an ambiguous authenticity, developing a custom upon which they agree. Such a process is what is considered as a consensus among *al jamhur* (the community of jurors), which often is understood and practiced by the public as a consensus among the whole community and not only the community of jurors. Jurists also confuse narratives about ahl al kitab with narratives concerning mushrikeen, as Ibn Katheer states:

حَدَّثَنَا تَمِيمُ بْنُ الْمُنْتَصِرِ أَخْبَرَنَا إِسْحَاقُ الْأَزْرَقِيُّ عَنْ شَرِيكَ عَنْ شُعْبَةَ بْنِ سَوَّارٍ عَنْ الْحَسَنِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " نَتَزَوَّجُ نِسَاءَ أَهْلِ الْكِتَابِ وَلَا يَتَزَوَّجُونَ نِسَاءَنَا " ثُمَّ قَالَ وَهَذَا الْخَبَرُ وَإِنْ كَانَ فِي إِسْنَادِهِ مَا فِيهِ فَالْقَوْلُ بِهِ لِإِجْمَاعِ الْجَمِيعِ مِنَ الْأُمَّةِ عَلَيْهِ كَذَا قَالَ ابْنُ جَرِيرٍ رَجَمَهُ اللَّهُ وَقَدْ قَالَ ابْنُ أَبِي حَاتِمٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الْأَحْمَسِيُّ حَدَّثَنَا وَكَيْعٌ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عُمَرَ أَنَّهُ كَرِهَ نِكَاحَ أَهْلِ الْكِتَابِ وَتَأْوَلَ { وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا } وَقَالَ الْبُخَارِيُّ: وَقَالَ ابْنُ عُمَرَ لَا أَعْلَمُ شَرِيكًا أَكْبَرَ مِنْ أَنْ تَقُولَ: رَبِّهَا عَيْسَى .

(Mawqi' al islam, Qur`an—Tafseer Ibn Katheer = 82).

Sadly, “al Jamhur” is predominantly constituted of male elites with the exclusion of women, and such rulings often are stretched beyond the particular subject and are generalized to other cases.

3. Adding unintended differences between a free and a slave, such as mentioning the black skin for a slave, even when not indicated in the two related verses {4: 24–5}. These verses only emphasize the condition of being believers. Beside, historical sources often indicate that slaves or mulk al yameen were of a different color or breed (Fay, 2012: 69–90). Also, Muslim jurists claim that women cannot have licit sexual relations with their slave even when it was not explicitly mentioned in the Qur`an.

4. Adding a differentiation between males and females in contracting licit sexual relations, even when no differentiation is made in the Qur`an, except in the sadoqa (marriage gift) and `ajr (monetary compensation), as an extra obligation for the male. It is worth noting that the word “*muhsanah*” in the Arabic dictionary (‘Abd al Hamid et al. 1934: 107) is given the meaning of “keeping her chaste.” That is, her husband is given the agency of making and keeping her chaste when he marries her. Meanwhile, in the same dictionary, the word “*muhsan*” is given the meaning of a “married man.” Similarly, as we saw in Chapter 3 and above, Ibn Katheer gives the word “*muhsanaat*” different meanings in the context of women vs. men, and when interpreting {verse 4: 24} vs. {verse 4: 25}.

5. Generalizing the responsibility of males to execute the marriage of their girls (the girls that the right hands possess) to mandating that males should execute the

marriage of free women (daughters, sisters, and even their widowed or divorced mothers). Even though the verse licenses for free women to execute their own marriage contract, such generalizations muddied these conditions.

Consequently, the agency of executing a marriage contract of a free woman is given to a male relative instead of the woman retaining her Qur'anic right to give her own hand in marriage. However, the silence of a girl does not mean approval of a marriage proposition, according to the Qur'an, and contrary to customary practice.

6. Associating perception/belief with knowledge. Consequently, confusing knowing/learning/interpreting the Qur'an with the antiquated perception that the males have authority over women, but they themselves have more freedom in contracting and executing licit sexual relations.

7. Confusing the rules for lawful sexual relations of the Prophet Muhammad with the rules for lawful sexual relations of Muslims in general.

### **Belief, Knowledge, and Slavery**

*“A believing `ama (female person) is better than unbeliever”*

Mattson (1999) used the above phrase from the Qur'an {al Baqara 2: 221} in the title and the theme of her Ph.D. dissertation. However, she translated the word “`ama” as a slave. As I alluded to earlier (in Chapter 3 and in the section on “Qur'an's Categories of Lawful Sexual Relations” of this chapter), the translation of the words “`ama” and “`abd” as “female slave and male slave,” respectively, is paradoxical and generates confusion. This translation or interpretation by Ibn Katheer and others, contrary to the hadith cited above in Category #4, is problematic for two reasons:

*The First Reason*, if the words imply “slave,” one assumes that either (a) the slave had accepted Islam before he or she were captured or sold to the Muslim owner (neither of which is accepted in Islam), or (b) the slave accepted Islam after his or her captivity.

(a) *In the case if the slave had accepted Islam before captivity*, one cannot assume that the slave will be able to practice his or her belief with full agency since they may not be able to do so with free conscious under captivity. Moreover, how could a true Muslim with a full knowledge of the basic principle of *Tawhid* (Oneness of Deity and humanity) accept enslavement of another believer, except what was practiced before the revelation of the related verses? Since tawhid in Islam, as a state of mind that was expected of early Muslims, especially during the revelation of the Qur'an, was intended to eliminate the concept of a human submission to another, we cannot but wonder why those Muslims, including some of the Prophet's companions, did enslave others?

It is instructive that such practice of enslavement was happening despite the following hadith, in which the Prophet is reported to have resembled manumission of a Muslim to saving oneself from the Hell fire:



-عن أبي هريرة عن النبي صلى الله عليه وسلم قال : من أعتق إمرأ مسلماً أسْتَنْقَذَ اللهُ بكل عضو منه عضواً من النار

On Abi Hurayra: on the authority of the Prophet, said: whoever gives a Muslim slave freedom, s/he will save each part of her/his body from hell fire (al Bayan 1999: Kitab al Tafseer # 2263).

(b) *In the case wherein the slave accepted Islam after captivity*, how could a slave have the choice to accept and practice Islam with full agency under captivity? This is rarely possible, given that a primary condition to understanding Islam is free conscientious choice:

{256} لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِنْ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ لَا انْفِصَامَ لَهَا وَاللَّهُ سَمِيعٌ عَلِيمٌ

Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects Evil and believes in Allah has grasped the most trustworthy hand-held that never breaks. And Allah hears and knows all things {al Baqara 2: 256},

According to historical sources, the story of the slave Bilal al Habashi (ca 580–640) who received harsh treatment by his non-believing owner because he refused to denounce Islam may explain my argument here. When Abu Bakr paid for Bilal's manumission (Musnad Ibn Hanbal V. 14: 148, quoted by J. al Banna 2004a: 126–7), he was both satisfying the condition of free conscientious choice for a believer and setting an example for Muslims to follow the Qur'anic stance. I should add that Bilal's case took place in the early period of Islam when the Prophet was still in Mecca, and before migrating to Medina. Furthermore, the Qur'an, in addition to enjoining kindness to slaves, also encouraged the act of freeing slaves by instituting manumission as one means for a person who wants to repent after breaching certain forbidden acts, such as making false oaths:

{89} لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَدْتُمْ الْأَيْمَانَ فَكَفَّارَتُهُ إِطْعَامُ عَشْرَةِ مَسْكِينٍ مِنْ أَوْسَطِ مَا تَطْعَمُونَ أَوْ هَلِيكُمُ أَوْ كِسْوَتُهُمْ أَوْ تَخْرِيرُ رَقِيبَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَشْكُرُونَ

Allah will not call you to account for what is futile in your oaths, but He will call you to account for your deliberate oaths: for expiation, feed ten indigent persons, on a scale of the average for the food of your families; or clothe them; or give a slave his freedom. If that is beyond your means, fast for three days. That is the expiation for the oaths you have sworn. But keep to your oaths. Thus does Allah make clear to you His Signs, that you may be grateful {al Ma`ida 5: 89}.

*The Second Reason for a problem resulting from translating “ama” and “abd” as “slave” is the status of the children of mulk al yameen (slaved or not).*

Since Mattson was especially addressing the controversies in the reports that concern slaves' sexual relations with their owners {Qur'an 2: 221; 24: 32-3}, the status of their children from the owner, and the use of slaves in a power struggle among elites and high-class leaders, her use of this translation or interpretation (of the words "ama" and "abd") may have added to the confusion between the free woman ('ama) and a slave woman (jariya)! Had she realized such potential confusion in the translation of these words as "slave female or slave male" in verse {2: 221} below, she might have avoided such translation. That is, because the verse actually intended to forbid marrying from among the unbelievers, period:

{221} وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ وَلِأَمَةٍ مُؤْمِنَةٍ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا تُعْجِبْتُمْ وَلَا تُنْكَحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلِعَبْدٍ مُّؤْمِنٍ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَا تُعْجِبْتُمْ أَوْلِيَّكُمْ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ

Do not have sexual relations with unbelieving women until they believe: a woman who believes is better than an unbelieving woman even though she allures you. Nor give (your girls) to unbelievers until they believe: a man who believes is better than an unbeliever even though he allures you. Unbelievers do (but) beckon you to the Fire. But Allah beckons by His Grace to the Garden (of Bliss) and forgiveness, and makes His Signs clear to the people: that they may remember and reflect {al Baqara 2: 221}.

Also, the translations of "ama" and "abd" as "slave" put this verse in contradiction with the other verses {4: 24 and 24: 32}, cited above, that emphasize men and women being equally allowed licit sexual relations with a believing partner. Furthermore, such translations contradict the Qur'an allowance for both the mushrikah (unbelieving female) and the mushrik (unbelieving male) after accepting Islam to have licit sexual relations with a believing spouse of the opposite sex. Finally, to translate "ama" and "abd" in {2: 221} as slave female and slave male, respectively, may imply that a believing woman could have sexual relations with her believing slave, something that interpreters like Ibn Katheer claim that al Jumah prohibited.

I realize that to differentiate between believer (mu'min) and chaste (muhsan), and between "ama" and "abd," on the one hand, and "mulk al yameen," or slave on the other, requires deep knowledge of Arabic language and linguistics in addition to understanding the totality of the Qur'anic spirit and its basic principles. In addition, one needs to understand other secondary literatures that use these terms loosely. Though this learning and understanding are very tedious and lengthy tasks, they are very important for making it possible to see where the confusion has taken place when the above issues and terms (mu'min, muhsan, 'ama, 'abd) are discussed. Similarly, (as will be discussed below), issues of irth (inheritance) and wisaya (child custody or guardianship, not wasiyyah or bequest) for free women vis-à-vis for mulk al yameen or slave may also be confused. Also, the importance of these tasks, that I am only alluding to (and hardly beginning to

address here), is to realize the importance of the implications of such confusions for determining the rights and obligations of free vis-à-vis slave women, as stated in the Qur'an. I will focus now on the issues of irth and wisaya only, leaving the discussion of their implications and relation to the politics of knowledge for the next section, "Believing Women are Subject of Knowledge Development Instead of Being Shapers of Thought."

### 1. Irth (Inheritance)

The Qur'an states:

{12} وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يَوْصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يَوْصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَهِيَ آخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يَوْصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

In what your wives leave, your share is a half, if they leave *no child*; but if they leave a child, you get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave *no child*; but if you leave a child, they get an eighth; after payment of legacies and debts. If a man or a woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third [of the inheritance]; after payment of legacies and debts; so that no loss is caused (to anyone). Thus, it is ordained by Allah; and Allah is All-Knowing, Most Forbearing {al Nisa` 4: 12}.

In a hadith quoted by Ibn Katheer:

وَقَوْلُهُ تَعَالَى { وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً } الْكَلَالَةُ مُشْتَقَّةٌ مِنَ الْإِكْلِيلِ وَهُوَ الَّذِي يُحِيطُ بِالرَّأْسِ مِنْ جَوَانِبِهِ وَالْمُرَادُ هُنَا مَنْ يَرِثُهُ مِنْ حَوَاشِيهِ لَا أَصُولَهُ وَلَا فُرُوعَهُ .

وَوَرَدَ فِيهِ حَدِيثٌ مَرْفُوعٌ قَالَ أَبُو الْحُسَيْنِ بَيْنَ اللَّبَّانِ : وَقَدْ رَوَى عَنْ ابْنِ عَبَّاسٍ مَا يُخَالِفُ ذَلِكَ وَهُوَ أَنَّهُ مَنْ لَمْ يَلِدْ لَهُ وَالصَّحِيحُ عَنْهُ الْأَوَّلُ وَلَعَلَّ الرَّأْيَ مَا فَهِمَ عَنْهُ مَا أَرَادَ . وَقَوْلُهُ تَعَالَى { وَلَهُ أَوْ أُخْتُ } أَيُّ مِنْ أُمَّ كَمَا هُوَ فِي قِرَاءَةِ بَعْضِ السَّلَفِ مِنْهُمْ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَكَذَا فَسَّرَهَا أَبُو بَكْرٍ الصَّدِيقُ فِيمَا رَوَاهُ فَتَأْتِي عَنْهُ { فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ } وَإِخْوَةَ الْأُمِّ يُخَالِفُونَ بَقِيَّةَ الْوَرَثَةِ مِنْ وَجْهِ أَحَدِهَا : أَنَّهُمْ يَرِثُونَ مَنْ أَدْلُوا بِهِ وَهِيَ الْأُمُّ " وَالثَّانِي " أَنَّ ذُكُورَهُمْ وَإِنَاتِهِمْ فِي الْمِيرَاثِ سَوَاءٌ " وَالثَّالِثُ " لَا يَرِثُونَ إِلَّا إِنْ كَانَ مِيتَتُهُمْ يُورَثُ كَلَالَةً فَلَا يَرِثُونَ مَعَ أَبٍ وَلَا جَدٍّ وَلَا وَلَدًا وَلَا ابْنَ " الرَّابِعُ " أَنَّهُمْ لَا يَرِثُونَ عَلَى الثُّلُثِ وَإِنْ كَثُرَ ذُكُورُهُمْ وَإِنَاتِهِمْ - وَقَالَ ابْنُ أَبِي خَاتِمٍ حَدَّثَنَا يُونُسُ حَدَّثَنَا ابْنُ وَهْبٍ أَخْبَرَنَا يُونُسُ عَنْ الزُّهْرِيِّ قَالَ : قَضَى عُمَرُ أَنَّ مِيرَاثَ الْإِخْوَةِ مِنَ الْأُمِّ يَبْدِيهِمْ لِلذَّكَرِ مِثْلَ حِظِّ الْأُنثَى قَالَ الزُّهْرِيُّ : وَلَا أَرَى عُمَرَ قَضَى بِذَلِكَ حَتَّى عَلِمَ ذَلِكَ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهَذِهِ الْآيَةُ هِيَ الَّتِي قَالَ اللَّهُ تَعَالَى فِيهَا { فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ }

Ibn Katheer explains further:

يَقُولُ تَعَالَى { وَلَكُمْ أَيُّهَا الرِّجَالُ نِصْفَ مَا تَرَكَ أَزْوَاجُكُمْ إِذَا مَاتْنَ عَنْ غَيْرِ وُلْدٍ . فَإِنْ كَانَ لَهُنَّ وَلَدًا فَلَكُمْ الرُّبْعَ مِمَّا تَرَكَنَّ مِنْ بَعْدِ الْوَصِيَّةِ أَوْ الذِّينِ } وَقَدْ تَقَدَّمَ أَنَّ الذِّينَ مُقَدَّمٌ عَلَى الْوَصِيَّةِ وَبَعْدَهُ الْوَصِيَّةُ ثُمَّ الْمِيرَاثُ وَهَذَا أَمْرٌ مُجْمَعٌ عَلَيْهِ بَيْنَ الْعُلَمَاءِ ، وَحُكْمٌ أَوْلَادِ النَّبِيِّينَ وَإِنْ سَقَلُوا حُكْمَ أَوْلَادِ الصُّلْبِ ثُمَّ قَالَ { وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ } إِلَى آخِرِهِ وَسَوَاءٌ فِي الرُّبْعِ أَوْ الثُّمْنِ الرَّوْجَةِ وَالرُّوْجَتَانِ الْإِثْنَتَانِ وَالثَّلَاثُ وَالْأَرْبَعُ يَشْتَرِكُنَّ فِيهِ وَقَوْلُهُ { مِنْ بَعْدِ وَصِيَّتِهِ } إِخْرَاجُ الْكَلَامِ عَلَيْهِ كَمَا تَقَدَّمَ وَقَوْلُهُ تَعَالَى { وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً } الْكَلَالَةُ مُشْتَقَّةٌ مِنَ الْإِكْلَالِ وَهُوَ الَّذِي يُحِيطُ بِالرَّأْسِ مِنْ جَوَانِبِهِ وَالْمِرَادُ هُنَا مِنْ يَرِثُهُ مِنْ حَوَاشِيهِ لَا أَصُولَهُ وَلَا فُرُوعَهُ كَمَا رَوَى الشُّعْبِيُّ عَنْ أَبِي بَكْرٍ الصَّدِيقِ أَنَّهُ سِئِلَ عَنِ الْكَلَالَةِ فَقَالَ : أَقُولُ فِيهَا بَرَأَيْتِي فَإِنْ يَكُنْ صَوَابًا فَمِنْ اللَّهِ وَإِنْ يَكُنْ خَطَأً فَمَنْئِي وَمِنْ الشَّيْطَانِ وَاللَّهُ وَرَسُولُهُ بَرِيئَانِ مِنْهُ : الْكَلَالَةُ مَنْ لَا وُلْدَ لَهُ وَلَا وَالِدَ . فَلَمَّا وَلِيَ عُمَرَ قَالَ : إِنِّي لَأَسْتَحْيِي أَنْ أَخَالَفَ أَبَا بَكْرٍ فِي رَأْيِ رَأَاهُ . كَذَا رَوَاهُ ابْنُ جَرِيرٍ وَغَيْرُهُ وَقَالَ ابْنُ أَبِي حَتْمٍ فِي تَفْسِيرِهِ حَتَّنَا مُحَمَّدُ بْنُ زَيْدٍ عَنْ سَفْيَانَ عَنْ سُلَيْمَانَ الْأَخْوَلِ عَنْ طَلُوسٍ قَالَ : سَمِعْتُ ابْنَ عَبَّاسٍ يَقُولُ : كُنْتُ آجِرَ النَّاسِ عَهْدًا بِعُمَرَ فَسَمِعْتَهُ يَقُولُ الْقَوْلَ : مَا قُلْتُ وَمَا قُلْتُ وَمَا قُلْتُ قَالَ : الْكَلَالَةُ مَنْ لَا وُلْدَ لَهُ وَلَا وَالِدَ . وَهَكَذَا قَالَ عَلِيُّ وَابْنُ مَسْعُودٍ وَصَحَّ عَنْ غَيْرِ وَاجِدٍ عَنْ ابْنِ عَبَّاسٍ وَزَيْدِ بْنِ ثَابِتٍ وَبِهِ يَقُولُ الشُّعْبِيُّ وَالنَّخَعِيُّ وَالْحَسَنُ وَقَتَادَةُ وَجَابِرُ بْنُ زَيْدٍ وَالْحَكَمُ وَبِهِ يَقُولُ أَهْلُ الْمَدِينَةِ وَأَهْلُ الْكُوفَةِ وَالْبَصْرَةِ وَهُوَ قَوْلُ الْفُقَهَاءِ السَّبْعَةِ وَالْأَئِمَّةِ الْأَرْبَعَةِ وَجُمْهُورِ السَّلَفِ وَالْخَلْفِ بَلْ جَمِيعِهِمْ وَقَدْ حَكَى الْإِجْمَاعَ عَلَيْهِ

It is clear from the Qur'an, Hadith, and Tafseer that the word “walad” means “child.” Also, even though the personal status codes concur with the Qur'an, with the Hadith, and with the Tafseer above—that the presence of any child brings the wife's share of her husband's inheritance from 1/4 to 1/8—in practice the most problematic issue in dividing the inheritance is that often the word “walad” in verse {4: 12} above is misinterpreted as a “son,” instead as a “child.” The result of this misinterpretation is that the girls of the deceased get less than the deceased's brothers and their sons, if the girls did not have a brother or the brother was deceased before his father. Furthermore, the children of a daughter are not entitled to inheritance even though the children of a son are (al Gharawi 2008:160–165).

Relevant to this discussion is Mattson's analysis of “*umm walad*” (pl. *ummahat al awlad*) which literally means “the mother of a child/children” and signifies in “Islamic law” as a slave woman who has given birth to her master's child or children. According to Mattson,

By the time the four so-called “orthodox” Sunni schools of law had formed ... there was near consensus that becoming *umm walad* gave slave women certain rights that other slaves did not have. Most importantly, the *umm walad* could not be given away or sold, and she was freed upon the death of her master (1999: 126).

Although Mattson goes on to state that “the reasons why the manumission of the *umm walad* became part of Islamic law are sometimes unclear, and certainly complex,” it seems to me that the concept of “*umm walad*” was influenced by, and to a certain extent did influence, the issues of inheritance, in general. In this regard, if we further investigate the confusion and ambiguity concerning the status of some slaves/concubines (whether they were freed, or whether they had contractual licit sexual relations with their masters), one is more likely to find

that the confusion was directly or indirectly related to the dispute over economic rights for the women slaves or for their children! Whether these rights were for inheritance, or for entitlement to financial support from *diwan* (the Muslim public treasury at the time), the matter was mainly economics. Therefore, I suspect that the concept of “umm walad” has affected the interpretation of the term “walad” in verse {4: 12} above into “son” instead of “child” for the free wife as well. Although the investigation of this relationship is not possible here because of lack of space and to avoid diversion from the main theme of this section on inheritance and of this chapter as a whole, there is no doubt that such a concept played a role in Muslims developing the personal status codes and the way they apply them to inheritance laws.

For example, we know that historically, and according to Mattson, the term “umm walad” was the invention of the second Caliph, 'Umar b. al Khattab, who also insisted “on the imposition of the veil” for the free women to ensure “that there was a clear visible sign of the separation between free and slave women.”

Mattson adds:

[C]ertain people were entitled to more than others because of their status. For example, slaves were not entitled to a place in the *diwan*. All these actions show that 'Umar had a strong desire to impose a clear structure upon his community, and that this structure was often based on his personal status [as a caliph] (Mattson 1999: 127–9).

## 2. *Wisaya (Custody or Guardianship)*

It is agreed by the five schools of jurisprudence that the mother has the rights to nurse her child; hence, implicitly she has the custody or guardianship over the child, wherein the father has the obligation to support her and the child even after dissolution of the marriage. It is also clear that even if the father decided to hire a wet-nurse, he is obliged to compensate the mother with similar support to that of the wet-nurse. The Qur'an states:

{233} وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بَوْلِهَا وَلَا مَوْلُودٌ لَهُ بَوْلُهُ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا اتَّيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, and heir shall be chargeable in the same way, if they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If you decide on a foster-mother for your offspring there is no blame on you, provided you

pay (the mother) what you offered, on equitable terms. But fear Allah and know that Allah sees well what you do {al Baqara 2: 233}.

However, there are many disagreements among the five schools concerning child custody after the two years of nursing. The only thing that they agreed upon is that the mother has the right of custody unless she remarries, after *talaq* or after the death of the father (al Gharawi, 2008: 54–9). Furthermore, although some of the schools (the Hanafi and the Maliki) agree that the daughter may remain in the custody of her mother until puberty or marriage, the general practice in most Muslim countries is that the girl is returned to her father's custody at the age of seven or nine! Why? There is no logical explanation. It is, therefore, evident from the jurors' rules and the general practice by their followers that Muslim male elites created arbitrary rules that have no basis in the Qur'an nor in Hadith. These arbitrary rules, despite all the lengthy explanations for the circumstances that may have dictated them, often result in illogical practices that cause injustice to women. Therefore, these rules should be changed or dropped completely.

### Believing Women are Subject of Knowledge Development Instead of Being Shapers of Thought

The Qur'an emphatically addresses the relation between belief and knowledge:

{19} إِنَّ الَّذِينَ عِنْدَ اللَّهِ مِنْكُمْ لَخَشِعُونَ أَعْيُنَهُمْ وَهُمْ يُبَيِّنُ لَكُمْ آيَاتِهِ وَاللَّهُ عَلِيمٌ خَبِيرٌ  
يَكْفُرُ بِآيَاتِ اللَّهِ فَإِنَّ اللَّهَ سَرِيعُ الْحِسَابِ

The Deen (belief) before Allah is Islam (accepting God as the only Deity). The People of the Book did not dissent therefrom except through envy of each other, after *knowledge* had come to them. But if any deny the Signs of Allah, Allah is swift in calling to account {Al 'Imran 3: 19}.

Thus, what is needed here is to clarify that not all aspects in the message of Islam were fully practiced by Muslims, despite the fact that the mission of the Prophet Muhammad had liberated women in ancient Arabia. Shahrur (2009: 221) states that Prophet "Muhammad's political and legal decisions were deliberately positioned between *Allah's limits and constantly adapted to the spirit of his time*" (emphasis added). That is, despite the mandates of the Qur'an, the Prophet had to mind the circumstances of the time and place. Shahrur precludes this statement with the assertion: "Just as the sudden abolition of slavery would have destroyed the social fabric and the prevalent means of production in Arabian society, a radical repositioning of women's roles would have undermined the social stability that Muhammad so desperately wanted to achieve with his new state" (220). Shahrur footnotes his statement with the following facts: the slave trade was first banned in 1847 from the Arabian/Persian Gulf Region; however, the last Muslim countries to

outlaw slavery in practice were Qatar (1952), Saudi Arabia (1962), and Mauritania (1980) (p. 220 n. 2) Though Shahrur's explanation does not justify Muslims behavior in contradiction with the intent of the Qur'an, we still need to investigate further the roots of such behavior.

That is, according to Sayeed (2009), "since the early Muslim community was divided into free and enslaved people, and into men and women, the latter continued to be treated according to tribal laws—wherein women were like slaves." To document her statement, Sayeed further brings the example of the rejection of Fatima bint Qays' specific report about her talaq, in which she states that the Prophet decreed that she was not entitled to *sakan* or *infaq*. She (Fatima) justifies this decree and accepts it because it seems that it concurs with {verses 65: 1–2} (see Chapter 3, the second section, *Al Talaq: al 'Iddah, al Sakan*).

Here, I am reiterating a good part of Sayeed's section on Fatima (2009: 123–9) to document the case. I am, however, making some modification, as well as excluding her footnotes (20–30) for easy reading. Also, I have listed some of her references in my "List of References" in order not to clutter the discussion in this section. My objective is to show how females were gradually excluded from the process of knowledge-generation and meaning-making.

Sayeed wrote:

The best attested case of gender-based disparagement of female narratives occurs with respect to the *hadith* of the companion Fatima bint Qays concerning Prophet Muhammad's ruling about her divorce case.

Sunni *hadith* collections record approximately fourteen *hadith* on the authority of Fatima bint Qays. [According to Kahhalah (1959, v. 4: 92), Fatima bint Qays is an early immigrant to Madinah, who is reported to have narrated 34 *hadith*.] Twelve of these [fourteen *hadith*] are about her divorce case from Abu 'Amr b. Hafs b. al-Mughira, who *irrevocably divorced her while he was away on a campaign*. Accounts from biographical dictionaries and anecdotal evidence gleaned from *hadith* paint a picture of Fatima as an assertive woman who was aware of the legal implications of the Prophet's *fatwa* in her case. As such, she is said to have presented her divorce case as valid precedent on several occasions in spite of vociferous opposition by a number of leading authorities in the early Muslim community (123–4).

Sayeed goes on to state that

[T]he controversy over Fatima's *hadith* is recorded in four canonical Sunni *hadith* collections: the *Sahih* of Muslim (d. 261/875) and the *Sunan* of Abu Dawud (d. 275/889), al Tirmidhi (d. 279/892), and al Nasa'i (d. 303/915). The non-canonical *Musannaf* of Ibn Abi Shayba (d. 235/849) also contains accounts of the dispute over the legal validity of Fatima's *hadith* (124).

In the following section of her article, Sayeed introduces the four main variants which record gender-based disparagement of Fatima's *hadith*. "Three of them

speak of 'Umar b. al-Khattab's criticism of Fatima's *hadith*. The fourth asserts gender-based rejection by Marwan b. al Hakam (d. 65/685) when he was the governor of Medina."

Sayed asserts:

These reports clearly indicate that in the earliest period of Islamic history, gender could indeed be a factor in assessing the legal validity of a *hadith*. Examining this controversy over Fatima's report clarifies the contexts in which gender played a role in early juristic discourse.

Before turning to this matter, however, it is important to address the issue of authenticity and dating of the traditions at hand. Due to concerns about the authenticity of the *hadith*, scholarship on the earliest decades of Islam must often be content with very tentative statements about the historicity of the events being studied. Fortunately, my own study stands on firmer ground. The cluster of Fatima's traditions that I focus on are among ones scrutinized and dated to the earliest decades of Islam in Harald Motzki's pioneering study *Origins of Islamic Jurisprudence*. Building on Motzki's work allows us to examine Fatima's report and the related controversy as accurately reflecting juristic debates in the first century of Islam (125–6).

Whether we accept or reject the authenticity of Fatima bint Qays' Hadith and/or the juristic debates in the early Islamic period, and the recorded "gender-based disparagement of Fatima's *hadith*" (as Sayeed suggests), the content of Fatima's narrative is worth reflecting upon for our purpose here.

First, although Fatima's narrative on the authority of the Prophet seems to contradict the Qur'anic verses {al Talaq 65: 4–6} that mandate *infaq* and *sakan*, whether or not Fatima's marriage was consummated, as the Qur'an specifies in {2: 236–7}, remains the unanswered question.

{236} لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدْرَهُ وَعَلَى الْمُقْتَرِ قَدْرَهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ {237} وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَيَصِفْ مَا فَرَضْتُمْ إِلَّا أَنْ يُغْفُونَ أَوْ يُغْفَوْا الَّذِي بِيَدِهِ عَقْدَةُ النِّكَاحِ وَأَنْ تَغْفُوا أَقْرَبَ لِلتَّقْوَى وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

There is no blame on you *if you dissolved your marriage of women* before consummation or the fixation of their *faridha/sadoqa*; but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means; a gift of a reasonable amount is due from those who wish to do the right thing. And if you dissolved your marriage with them before consummation, but after the fixation of a *faridha* for them, then half of the *faridha* (is due to them), unless they remit it, or unless the man in whose hands is the marriage contract remits his (the man's half); and the remission (of the man's half) is the nearest to righteousness, and do not forget liberality between yourselves. For Allah sees well all that you do {al Baqara 2: 236–7}.



We have to consider Fatima's rationale that the Prophet might have intended that when the separation process is taking place, the woman may not receive compensation if she decided to move outside her husband's dwelling as verses {65: 1–2} indicate.

*Second*, is it possible that Fatima bint Qays was insisting on affirming the Prophet's fatwa in her talaq if she was aware of the implications of his fatwa on interpreting talaq verses {65: 2, 4–6}? If Fatima was aware of such implications, she would have realized that accepting the Prophet's fatwa would disadvantage her and will cause hardship for her and for all women thereafter in the short run. That is, under this fatwa, she would be refused infaq and sakan from a husband who irrevocably divorced her while on a campaign. Also, and consequently, her narrative would be taken as evidence for future legal rulings against Muslim women in general. In my view, whether or not she was aware of the fatwa's implications concerning these talaq verses and/or the negative consequences of the Prophet's fatwa (if we accept her narrative), Fatima's persistence on her narrative was because either she was avoiding the stigma of admitting that her marriage was not consummated, or she was concerned over the long-term effects of her stance: Fatima, it seems, was insisting that her narrative be taken seriously, because (a) if Muslim authorities of the time accepted her narrative, she would have established women in general as credible authorities in narrating the Prophetic traditions; I should note here that the fact that 'A'ishah, the Prophet's wife, had many narratives, Muslims may have accepted her authority as a narrator because she was closest to the Prophet, and not as a woman *per se*, and (b) to be accepted as [trusted] female narrator would also authenticate the value and validate the credibility of women's testimonies, in general, as we saw in discussing woman's shahaada (witnessing and testimony) in Chapter 2.

My rationale above, whether or not it was the drive behind Fatima's insisting on her narrative, cannot override the knowledge that the *fatwa of the Prophet*, if true and assuming that Fatima's marriage was consummated, contradicts Qur'anic mandates for infaq and sakan {al Talaq 65: 2, 4–6} as discussed in Chapter 3. Therefore, whether or not Fatima knew, the implication of her narrative on the interpretation of these verses should be the issue here, regardless of the authenticity of her narrative, and whether or not the Prophet had intentionally postponed the application of these verses in her case. *Given the flexibility and the purpose of Qur'anic teaching as a moral guide*, even if Fatima knew the implications of the fatwa on these verses, she must have been aware that it is possible to postpone the application of some Qur'anic text for the benefit of society in the long run. J.al Banna (2004a: 54) asserts this flexibility in Qur'anic Shari'ah, as well as the permissibility to modify the meanings of the text for the overall benefit of the people. *He adds that such modifications are not a transgression of the text, rather an application of the spirit of Islam—to institute 'adl (justice) (emphasis added).*

Since we have other reports that early female narratives were disputed by 'Umar bin al-Khattab and others (Fawzi 1994: 21), we may rationalize these disputes by 'Umar's overall stance on different issues (see the section on

“Belief, Knowledge, and Slavery” above). ‘Umar is also known for not applying some Qur’anic teachings—the most famous his refusing to pay “*al Mu’alafatu Qulubuhm*” (those who are recent converts to Islam) from the *Zakat* (wealth tax) money (J. al Banna, 2004a: 56) for the benefit of the society. This rationale, however, does not prevent us from stating that ‘Umar was also known to be harsh with women. The three narratives on his authority that were reported by Sayeed (2009) are a good example:

- Mughira said: “[When] I mentioned the *hadith* of Fatima bint Qays to Ibrahim [al-Nakha ‘i], he said: ‘Umar [b. al-Khattab] said that *we will not abandon the Book of God and the sunna of His Prophet for the saying of a woman*. We do not know if she accurately remembers (the situation) ....”
- ‘Umar said, “*We do not give preference to the words of women in matters of religion*. The thrice-divorced woman is entitled to lodging and maintenance.”
- Abu Ishaq reported, “I was sitting with al Aswad b. Yazid in the Great Mosque of Kufa. We were with al-Sha‘bi, who related the *hadith of Fatima bint Qays that the Prophet did not award her lodging and maintenance* (in her divorce case). Al-Aswad grabbed a handful of stones, pelted al-Sha‘bi and declared, ‘Shame on you! Why do you pronounce such judgments?’ ‘Umar said [with respect to Fatima’s report], ‘If you bring me two witnesses to testify that they heard this report from the Prophet [I will accept it] and if not, *we will not abandon the Qur’an for the saying of a woman ...*”

It is quite possible that ‘Umar assumed that women were not capable of transmitting a Prophetic tradition, thus he would not accept their narrative even when he himself was legislating over and above what the Qur’an states. J. al Banna (2007a: 144) also states that ‘Umar’s and Abu Bakr’s views of women were less fair than that of the Prophet.

## Conclusions

I conclude this chapter with the *argument that unless Muslim women realize the confused understanding of Islam’s stance on women’s rights and gender justice, they, and Muslim men for that matter, will not be able to change the perceptions of women as secondary, dependent, or owned property*. Neither will Muslims in general be able to change the practice of patriarchy—mainly a result of such perceptions—nor will Muslim women be able to regain their given rights in the Qur’an. This confusion in understanding gender in Islam is part of the crisis in understanding and interpreting Islam, in general, as discussed in Chapters 1 and 2. Hence, I made the core issues in this chapter “belief” in relation to the creation story and its impact on understanding “sexuality” and “slavery” in relation to the politics of knowledge—with the consequent misinterpretation of irth and

wisaya—in order to develop the analytic capabilities of deciphering the difference between (a) belief and knowledge, (b) a marriage contract with a free woman and licensed sexual relations with mulk al yameen or a slave woman, (c) a believing and a chaste person, and (d) believers and non-believers. I intentionally did not dwell on the licensed sexual relations between a Muslim and a person from among the People of the Book because the definitions and debates concerning the latter category require another chapter by themselves. *It should be stated, however, that we could not limit our interpretation and analysis of these issues with tools that were available to early exegeses and juristic exercises.* Hence, my synthesis of the Prophetic and other narratives in parallel to Qur'anic verses allowed me to discern where these narratives and their consequent applications in most Muslim personal codes and/or customary practices may have contradicted the Qur'an. These tools and findings help us, ultimately, to understand where injustice towards gender issues and women may have come from, and how to eliminate or at least put a halt on applying them.

## Chapter 5

# Rereading the Making of Hadith and Rewriting a New Perspective on Sunnah

### Introduction

As stated earlier in this book, “hadith” could reference a single narrative in a collection, could be used generically to mean all or any of the canonized collections, could reference the sciences of making the present collection of *ahaadith*, and/or the science of studying the historicity of the transmission and collection processes. When referencing a single hadith, however, one needs to allude to its two parts: (1) *sanad* (the chain of the persons who orally transmitted the narrative through history, attributing it to Prophet Muhammad), and (2) *matn* (the actual content of the narrative). Although Muslims have made considerable efforts in checking and classifying the quality of *isnaad* (the process used by Muslims in determining the chain of a narrative, on the authority of particular person(s) and ensuring his/her trustworthy character, as well as the historical authenticity of the content), they did not pay similar attention to corroborating the content of each narrative by the related Qur’anic text. This is evident in the examples that I used throughout the previous chapters, and that I will discuss further below.

My interest in the premises, procedures, and rationales of hadith collections, however, is different from the views that the majority of Muslims have acquired and emulated throughout the centuries. By intimately reading hadith, I want to reread my identification with the messenger, Prophet Muhammad, just as I reread my identification with the primary Islamic message, the Qur’an. My immediate objective is *tafaquh* (an active reflection) on the content of the Prophet’s reported traditions to assess their authority as the second source of Islam. My overall goal, and that of my cohort female Muslim scholar-activists who self-identify with the message of the Qur’an and with its messenger, is to develop a different perspective of Hadith (as noted in the Introduction, I use hadith with a capital “H,” only to indicate the totality of the corpus of *ahaadith*) from that of the predominantly male-generated history of it. The balancing criterion for such a development is to insist on corroborating the individual hadith content (*matn*) by the Qur’anic text. This concern with the content is neither new nor foreign to past and current Muslim thinkers, from Ibn Khaldun’s [ca 1332–1406] *Muqaddimah* (1967), to Jamal al Banna’s [1920–2013] “Ali, Mu’awiya, Ibn Khaldun, al Hadith al Nabawi” (2009), including a few remarks by other contemporary male and some female scholars, such as Mernissi (1991b) and Barlas (2002). This concern was renewed by Asma Sayeed (2005), devoting her Ph.D. dissertation and other works (2009, 2013) to the subject.

Ibn Khaldun (1967: 161), for instance, reminds us that when the Prophet [following Qur'anic guidance] instituted some limits on individual desires, he did not want human desires to be abolished, for a complete abolition of the will in a person would make him or her defective and inferior. The Prophet, in Ibn Khaldun's opinion, wanted the desires to be used for permissible purposes to serve the public interests, so that the human becomes an active agent of God who *willingly* accepts the divine commands. Though Ibn Khaldun states the importance of the matn, he does not mention its corroboration by the Qur'an. Jamal al Banna (2009) makes a reference to Ibn Khaldun's *Muqaddimah* in the course of addressing the permissibility of not acting on certain verses of the Qur'an in a certain place and at a certain time. He states that Ibn Khaldun reached out to the content of Hadith, and in doing so he was the only thinker who liberated himself from the mental state of his era by omitting the details of the authentication process and instead focusing on the authority of the content (my translation from Arabic).

Sayeed in her (2009) article suggests: "[G]ender is among the issues used to evaluate legal testimony, so jurists at times extended this criterion to undermine their opponents' arguments (which drew on *hadith* narrated by women)."

These jurists' premises and actions, in my view, were also one of the causes of abuse and misuse of Hadith, be it authentic or not. In other words, traditional Muslim jurists and contemporary scholars of Hadith not only confused female narratives of ahaadith with legal testimony, as I quoted Sayeed's statement earlier (Chapter 4), but often ignored the female narrators' explanations and opinions concerning the jurisprudential rationale and validity of their own narratives. *Traditional Muslim jurists, throughout the centuries, may have used the females' narratives as a means to support their arguments and at times for the public interest as they saw fit, but they often ignored or dismissed the females' jurisprudence of their (the females') own narratives.* With the exception of mentioning a few female *faqihat* (female jurists/thinkers/scholars), some of whom were often referenced as narrators (as Sayeed emphasized in her 2005 and 2009 works), we have very little evidence that women's jurisprudence was a significant part in the development of Islamic thought and the existing legal rules. *This is an indication that Muslim scholars, in general, seem to have forgotten the basic condition/premise of accepting and practicing Islam—the active participation of the free, independent individual, male or female, in the exegesis process.* Muslims do not apply the Qur'anic principle that each individual's responsibility and rights to professing Islamic identity lie in her/his full participation in understanding of and reflecting on the message of the Qur'an, before emulating the praxis of its messenger.

Nadwi (2007: 29–31), as one example of such Muslim male scholars, discusses the contents of 'A'ishah bint Abi Bakr (wife of the Prophet) and Fatima bint Qays (the female companion of the Prophet, both were discussed in Chapters 3 and 4) narratives about women's responsibility of lactation and the husband's responsibility for accommodation after divorce, respectively, but he emphasizes the opinions of *muhadditheen* (male narrators) or male jurists who disagree with these narratives and the generated rationales. That is, he discusses

the controversy surrounding 'A'ishah's narrative on a woman's giving her milk to an adult male, but he does not realize the importance of her participation (or lack of thereof) in deriving jurisprudence from her own narratives (32–4)! Thus, despite his efforts and despite the fact that he titled his book "*al Muhaddithat: The Women Scholars in Islam,*" his conclusions do not seem to differ much from those of his predecessors because the premises are almost the same—as if women's jurisprudential perspectives have no significance, and as if the lack of corroboration of narratives by the Qur'an are not important. More problematic is that some contemporary preachers or *muftis* (Juris-consults) use the same narrative that is attributed to 'A'ishah to profess an edict that a woman who works in a co-ed office may nurse her male coworkers in order to make their mixing lawful (R. Ibrahim, 2012). Ironically, even though 'A'ishah's particular rationale and narrative were dismissed by the majority of jurists throughout history, they are being quoted now to satisfy the wrong cause!

Therefore, I will focus this chapter on the general exclusion and negligence (intended or not) of female narrators' derived jurisprudence and, consequently, the exclusion of women from shaping and developing Islamic thought. It is plausible that such exclusion might be the result of Muslims' gendered views of authority in religious and other scholarship of Islam. But more problematic is that because of this exclusion, Muslim elites might have reinforced the view that gender issues and women's perspectives do not matter. Whether these gendered views ignored possible hidden historical evidence of women's participation (as presented by the few studies in Sadiqi 2013) or merely saw women as lacking analytic capacity to be *faqihat* (jurists/thinkers/scholars) is not the issue here. *I am more concerned with analyzing how the lack of women's full participation in the development of Islamic thought has resulted in a consistent pattern of dismissing the gender gap and shortchanging Muslim women's rights throughout Islamic history, and in misrepresenting Islam as a whole for many centuries.* To investigate this phenomenon, I will make a brief reference to certain studies of Hadith in order to analyze some important issues that were ignored. Primary among these issues are the absence of Muslim women's perspective in developing "Islamic" ethical and legal theories and practices. *As canonizing Hadith authority without corroborating it by the Qur'an dominated the process of developing Islamic jurisprudence, the absence of Muslim women left the field open for male elites to further marginalize women's perspectives.* Thus, I will synthesize my findings from these studies of Hadith into a module for an egalitarian rereading of Hadith and rethinking the Prophet's reported sunnah to achieve gender justice (as noted in the Introduction, I use small "s" for the Prophet's sunnah to differentiate it from the Qur'anic Sunnah).

### **Hadith Studies: Premises and Procedures for Making and Using Hadith**

Throughout Chapters 1–4 I have cited the canonical collections of Hadith as well as some premises and views of hadith by Muslim and non-Muslim scholars. Now,

I will only address the most pertinent premises to my objectives in this chapter. Sayeed (2009) praises Motzki (2002) for being helpful in that his pioneering study, *Origins of Islamic Jurisprudence*, has scrutinized and dated to the earliest decades of Islam Fatima bint Qays' traditions (see Chapter 4). I also benefited from Motzki's (2004) *Hadith: Origins and Developments*, outlining the premises on which the majority of Western scholars of Hadith had based their studies. According to him, "[t]he first decisive Western studies of Hadith, which were all published in the third quarter of the nineteenth century" (for example, Goldziher [1850–1921], 1967; Schacht [1902–69], 1953 and 1964; and Juynboll 1996), "described their subject more or less as follows":

It was only natural that the person, words and deeds of the prophet ... were central topics of conversation ... This custom continued ... after his death, not only because of fascination and respect for the departed but above all *because the Qur'an proved to be insufficient as a source of guidance* for the practical life of the community as it spreads beyond the confines of Arabia (Motzki, 2004: xiv).

I have highlighted the phrase "because the Qur'an proved insufficient as a source of guidance" in order to use it as a base for my argument here. Notwithstanding that most of these Orientalist/Western studies were questioning some aspects of the historicity of the Hadith; they also seem to have different premises for understanding the principles of Islam. Instead of basing their premises on what the Qur'an states, they rely on observing Muslims' practice—how Muslims use and abuse the reported ahaadith. That some of these scholars referred to Islam as "Muhammadan law" (for example, Schacht 1953)<sup>1</sup> is an indication that they either did not understand the basic principles of Islam—assuming that the way Muslims canonized and practiced Hadith was an Islamic mandate—or that they thought of Islam as merely an extension of Judaism and Christianity. As a matter of fact, Muslims using Hadith as if there was a "need [for] other sources of guidance" is a sign of Muslims' diversion from the two basic Islamic principles: the Qur'an as its own best interpreter and *Tawhid* (the Oneness of the Deity and humanity). Yet, when some Western scholars emphasize such a "need" it becomes a self-fulfilling prophecy. That is, these Western scholars do not realize that Muslims, even at the early stages of building the Muslim community, disregarded the mandate that the Qur'an is its best interpreter. *True, Muslims might have needed Hadith for details in applying some Qur'anic guidance, but they transgressed the guidance when they canonized Hadith and made it primary in deriving juristic rules*, as we will see below in the example of Nasir al Din al Albani.

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1 Joseph Schacht (1953: iv–vi; 1964: 2–3) confused the guidance in the Qur'an with the Prophet's and early companions' sunnah, as well as with jurists' rulings and customary practices, and lumps all of them under "Islamic law." In addition, he also mislabeled "Islamic" as "Muhammadan" which is counter to the Qur'anic message of *Tawhid* (Oneness of Deity).

To the contrary, other contemporary Western scholars captured the plurality of hadith narratives through their different premises about Islam. For example, Brown (2007: 8) writes about how the two most prominent canonized collections, Bukhari and Muslim Sahihayn, became “synecdochic representation of the Prophet himself,” making his role essential as a liminal figure and medium of blessing. Brown’s elaborate study of the canonization of the Sahihayn, and the Hadith in general, opens an important window on the detailed history of this movement. *What makes this movement important for my project is to realize how Muslims have misused Hadith by extending the Prophet’s praxis from being an example into an undisputed revered source, and by elevating Hadith to the level of the Qur’an after canonizing it* (Brockopp 2010: 132–3). This shift in the process of making the Hadith collection and in its use and misuse is what led Muslim societies to continue living with the mentality of humans as masters and servants. Al Ansari calls such mentality a “slaving oppression” that is worse than actual slavery (al Ansari, 2001: 5). Hence, whether or not we agree with the different theories of the Hadith authenticity and historicity, my focus is on the current state of Hadith authority when the contents of some narratives are not corroborated by Qur’anic text.

The special focus of this chapter is the absence of Muslim women in developing Islamic thought, particularly when some of their narratives were used as a base for juristic rules that deprive the women themselves of a fair and just share in the decision-making process. Therefore, I need to question and address the place of Hadith studies in Islamic scholarship, be it Western or Muslim, conventional or contemporary. Also, an essential part of my investigation is whether or not missing the Qur’an’s two basic principles as stated above was a reason behind the crisis in understanding Islam and its gender justice in general. It is important to emphasize here that I am not claiming to be a scholar of Hadith in the conventional sense, but I am only synthesizing some of its use and abuse, based on my ethical and pedagogical reading of the Qur’an. Likewise, I am not questioning nor refuting the importance of Hadith as “the richest source for investigating early Islamic history” (‘Azami, 1978: xvii), but I am questioning the rationales behind its canonization, misuse, and abuse when it was made a primary instrument in deriving meanings and rules from the Qur’an to the point that sometimes it was used before the Qur’an.

Since I am concerned with the politics of knowledge, and more so the historicity of Hadith than with the actual collection of the knowledge concerning isnaad, my assertions above also reflect *my deep concern for how the debates about Hadith authenticity, particularly by non-Muslim scholars, have largely overlooked the dominance of Muslim males’ premises that might have also shaped its content*. For example, Juynboll devotes a special chapter (1996: VI: 343) to investigating and developing an analytical method to the study of isnaad. By only using several “woman-demeaning sayings from the hadith literature” as an illustration of his method, obviously he was not concerned with corroborating the contents of these sayings by Qur’anic text. Neither was he concerned with the overall development of Islam’s ethical and legal systems that were based mainly on Muslim males’ premises and methods of isnaad.



Given the state of the Hadith studies as described above, I have argued elsewhere (Barazangi 2008–09) that we scholars of law and religion, scholars of Islam, policymakers, and social justice researchers would do better if:

1. we thought of Islam as a dynamic religio-moral rational worldview, rather than a set of static laws that can be understood by certain methodologies developed for other contexts than Islam;
2. we recognized Muslims as subject to historical transformation, like any other religious groups, and understood how they developed their present views of Islam that may or may not represent Islam; and
3. we considered our own real responsibilities to address the forms of global injustices as powerful shapers of world politics and the politics of knowledge, particularly the politics of difference—the view that the “other” is inferior and women’s role as mostly complementary to men.

I have extensively discussed elsewhere (Barazangi 2009: 163–73) the necessary issues for how to reinterpret Islam and its sources for *muttaqi* (an equilibrated) Muslim society, and how they have been ignored and may have led to the specific methods in making the historicity of Hadith as complex and confusing as it is (including the misuse of its content). I will, therefore, reiterate only some of these issues here, expanding on a few ideas and updating some examples with their current implications.

### **Reinterpreting Islam for a Muttaqi (Equilibrated) Muslim Society**

Instead of seeing Islam as a subject of contestation, reinterpreting it requires systematic deeper knowledge of the Qur’an’s own method, analysis of sources, including reported hadith narratives, particularly those attributed to Muslim women. With the exception of extreme sensational cases, feminist perspectives of Muslim women who self-identify themselves with Islam and the Qur’an as its moral guide seem to be either misunderstood (and often discredited or hailed as “Islamic feminism,” Chapter 2) or denied full credit in the process of studying Islam, as Hammer (2012) eloquently suggests. By addressing these perspectives [the perspectives of Muslim women who self-identify with Islam and who happened to also use some of the feminists’ tools] I am affirming their existence and emphasizing their importance and that they should be taken into consideration as valid views because they reread Islam from within its own framework. Although the conditions for the majority of Muslim women have not changed (Economic and Social Commission for Western Asia 2011–12 Report), despite the significant contributions of some Muslim female scholars to the reinterpretation of the Qur’an, I attributed this lack of change primarily to the fact that most scholars of Islam continue to use the patriarchal (by Muslims or Westerners) readings of the Qur’an and Prophet Muhammad’s reported sunnah (Barazangi 2004b, chapter

2). My past affirmation does not contradict my argument in this book (Chapter 2) against the categorization of Muslim women's feminist perspectives (that is, perspectives of the self-identified Muslim women who also use feminists' tools) as "Islamic feminism." To the contrary, my argument was developed exactly because such categorization indicates a misrepresentation of Islam even by those who sincerely attempted to acknowledge the feminist perspectives of Islam by Muslim women themselves. Reinterpreting the Qur'an within the Islamic gender neutral framework does not lend itself to be labeled as "Islamic feminism" and, hence, should be addressed for what it is, a "feminist reinterpretation of the Qur'an." *That is, the works of these Muslim scholars who identify themselves with the Qur'an began by changing the premises and paradigms of studying Islam from those of the dominant social sciences and humanities to Qur'anic hermeneutics.* Similarly, I am emphasizing here the need to view reforming Muslim societies, particularly the claimed liberation of women that is based outside the Islamic lenses, from within the Qur'anic framework. *I am also addressing the need to reread the Hadith, setting the criterion as the corroboration of its content by the Qur'an, and rethinking the sunnah, by shifting the paradigm of positivist analysis to the paradigm of self-identity and identification with the message first, then with the messenger and early Muslim women.*

The Qur'an provides the ethical and the pedagogical framework for liberating Islam from its interpreters and patriarchal readings in general, whether they are from the east or the west, males or females:

{7} إِنَّ أَحْسَنَكُمْ أَحْسَنْتُمْ لِأَنْفُسِكُمْ وَإِنْ أَسَأْتُمْ فَلَهَا ... {9} إِنَّ هَذَا الْقُرْآنَ يَهْدِي لِلَّتِي هِيَ أَقْوَمُ وَيُبَشِّرُ الْمُؤْمِنِينَ الَّذِينَ يَعْمَلُونَ الصَّالِحَاتِ أَنَّ لَهُمْ أَجْرًا كَبِيرًا

If ye did well, you did well for yourselves; if ye did evil, [you did it] against yourselves ... This Qur'an guides to that which is most stable, and gives the glad tidings to the believers who work deeds of righteousness, that they shall have a magnificent reward {al Isra` 17: 7, 9},

I elaborated on this framework in my 2004 book and alluded to some of its basic and central principles in other chapters of this book (*Tawhid, Khilafa, 'Adl, Imama, and Taqwa*); thus in this section, I will only explain the need and the how to change the conventional premises and paradigms, closing the section by addressing why we need alternative understanding of Islam and of women's rights from within the Qur'an. In the next section, I will elaborate on the equilibrated module for rereading hadith and rethinking the sunnah, emphasizing why the need for women's perspectives, and, in particular, the perspectives of those who self-identify with the Qur'an, is the first step towards gender justice in Muslim-majority societies. I will conclude this chapter by stating why I blame Muslims in general for misunderstanding Islam and for confusing Islamic sources and meanings. This confusion might have added to the ignorance and the misrepresentation of Islam and of Qur'anic Shari'ah by non-Muslims.

### 1. *The Need of, and the How to Change Conventional Premises and Paradigms*

Historical events require us to reconnect what is ethical with the political and legal in the analysis of Muslims' perceptions of Islamic sources and the consequent behavioral manifestations in the majority Muslim societies. Despite many attempts to reform Muslim societies during the past two centuries, the painful living conditions for the majority of Muslims, particularly the women among them, remain pathetic and far from justice (*'adl*)—the goal of Islam. These attempts might have been ineffective because of their being fixated on certain symptoms, overlooking one core of the problem—Muslim women's absence in shaping Islamic thought. Muslim reformers, from al Afghani ([1838–97], 1958) and 'Abduh ([1849–1964], 1964) to An Na'im (1990) and Arkoun ([1928–2010], 1994), despite their egalitarian visions, mainly use Western frameworks and analytical tools, thus creating discontent and sometimes distrust among Muslims who follow the literal meanings of the texts. Other reformers, from Taha ([1909–85], 1987) to Shahrur (1990), used the Qur'anic framework and produced radical interpretations of the Qur'an that were questioned and often refused by those who follow the traditional interpretations of texts. At times, all these views were considered by extremists as against Islam and their proponents as apostates—to the point of calling for violent action against them. Meanwhile, traditionalists, from Abu al 'Ala al Maudoodi ([1903–79], 1967), Sayeed Qutb ([1906–66], 1952), and Hasan al Banna ([1906–49], 1983) to al Qaradawi (1986), generated more stringent interpretations as they relied on jurisprudence, and mostly used Hadith in a processed form as quoted in *fiqh* texts without corroborating them by the Qur'an. The above reform attempts seem to be polarized mainly because they suggest different roles for women, but without addressing the Qur'anic premises on a deeper level. More problematic in my opinion is that in these reform attempts, knowingly or unknowingly, women are made more dependent on the governing body's or the male elites' rhetoric or action up to this century—whether religious or secular.<sup>2</sup>

It is evident that every time women were discussed, new waves of patriarchal interpretations shrouded in claims for gender equity were generated, such as in Badawi (1995). Even Ingrid Mattson (2007), the first female president of the Islamic Society of North America (ISNA), the largest Muslim organization in North America, was still talking about “gender equity,” in resonance with the patriarchal perspective of male leaders. Most unfortunate is that she also did not lead the congregational prayer when she was elected as president of ISNA, with the excuse that there was no precedent of female leadership and that Hadith orders the traditional practice of male leadership (Mattson, 2006). These traditional

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2 First Lady of Syria, in a conference on developing the role of Syrian and Turkish women, stated that the main point is how to change the role of women from a follower to a complementary role [Online]. Was available at: <http://www.tishreen.info/default.asp?Filename=8215762502008102220203> [accessed: 10 October, 2008]. The site is no longer available. A paper copy is available with the author.

patriarchal views are being used by “*salafis*” (followers of precedent practices), or by those who are called or call themselves “Islamists,” to keep women from taking leadership positions, even to the point of justifying domestic violence and/or state punishment. Since women’s role has been mostly viewed as secondary and/or complementary in the structure of all Muslim societies, it seems that every reform attempt, intentionally or unintentionally, reinforces the inferior status of women, thereby adding to the injustices they suffer. For example, a Saudi Mufti stated on a Saudi TV show that “women were entitled to get education and assume all positions except leading political positions.” His rationale was that men are exhausted by politics, which is why women should be spared from handling this burden and should abstain from doing so (*Mideastwire*, February 4, 2009).

I emphasize again that to be in a leadership position is not the solution by itself. *Rather, Muslim women need to self-identify with Islam and rethink by themselves and on their own initiative.* In addition, there is a need to look into what sources Muslims use since most of them indiscriminately view all of these sources as sacred, as shown in the Indonesian women’s interpretations. Doorn-Harder (2006) discusses why traditionalists, like the Indonesian women whom she studied, view all sources of Islam, including jurisprudence books as holy text, mainly because of the way “*shari`a*” is interpreted. Furthermore, we need to understand the complex methodological issues in verifying the validity and reliability of a Hadith. For example, Muslim “reformists” or “salafis” quote a Hadith with ease, but the general public is not able to validate its authenticity and/or corroboration by the Qur’an. Therefore, uninformed Muslims tend to accept these rationales as valid, both because of their inability to verify the validity of a Hadith or because of their fear of being stamped as “infidel” if they argue against the rationale drawn from it. In essence, I focus my arguments on how some Muslims have come to interpret some religious sources to license their patriarchal interpretations that assert men’s guardianship over women. One of these sources is Hadith, and since Hadith is used more often than the Qur’an, we need to investigate the historical evolution of this reversed process—the canonization and misuse of Hadith and consequent interpretations of the Qur’an. *Thus, I am calling for returning the Hadith to its secondary place after the Qur’an, as the Qur’an is still the primary source of the moral guidance, the development of jurisprudential rules, and for re-examining Islamic thought.* This first step, eventually, may help to change the problematic premises and paradigms.

## 2. The Need for Muslim Women’s and Feminists’ Perspectives

This need constitutes the next step for changing premises and paradigms. This need can be attributed to several factors, but most pertinent to my arguments here are the following three.

*First*, Muslim women are the most obvious target for prejudice, discrimination, stereotyping, and violence. Since Islam is being perceived as a dogma and a law, and is frequently viewed as a political force and more recently as a “threat” (Waltzer

1997, quoted by Mansson McGinty 2006), women bear most of the brunt of such negative views. In addition, since these women are made to believe they actually are victims, and are viewed as such by an oppressive society and a patriarchal culture that they cannot change, rarely are they considered as authoritative thinkers and contributors to the development of Islamic thought.

Although it is obvious that religious extremism is the result of ignorance, blindly following precedent, or misinterpretation of the primary source, the Qur'an, a large majority of traditional Muslim male scholars tend to ignore reforming this malaise, either because they are not ready to accept it as such, or because they prefer to keep the public ignorant. J. Sa'id (2000–01: 83) also talks about "the world sheltering the intellectual viruses that destroy us." Furthermore, given the effect of imposed nationalism, Hallaq (2004) suggests that the idea that "Islamic law is a viable legal system" is questionable in light of the changes in the conception of legal authority that were brought about by the advent of the nation state. Because of this change in the conception of authority, most Muslims practice Islam as a dogma (Barazangi 2008–09). As a result, the foundational principles of Islam—as stated in the revealed Qur'anic text that was documented and sealed in the 7th century AD—are confused with the Prophet Muhammad's contextually bound extrapolations, on one hand, and with the socially based jurisprudential rules, on the other. By calling the totality of these sources "Islamic shari'a," or as is known in the West, "shari'a law" (Sonn 2008), ordinary people, including the majority of Muslims, confuse the levels of the moral and legal binding of these sources (Barazangi 1996). By replacing obsolete, unjust interpretations and ruling with new interpretations, including Muslim feminist scholar-activists' interpretations, it is possible to reform Muslim societies from within. *In other words, the new interpretations should help in developing a community-based jurisprudence that is egalitarian and just, or at least help facilitating a critical thinking of these and other interpretations in light of the Qur'anic ethical and pedagogical framework* (Barazangi 2002).

Second, examining the historical evolution in the misuse of Hadith as the main challenge facing the process of rethinking Islam for equilibrated Muslim societies, most critical to my thesis is that despite the involvement of some self-identified Muslim female scholars in the religious/political/legal leadership and the decision-making process in Western countries, their views are hardly recognized and mainstreamed in these societies as well as in the majority-Muslim societies. For instance, on July 11, 2001, the executive director of KARAMAH (a well-known organization in the United States, Muslim Women Lawyers for Human Rights) testified before the Department of State on behalf of Muslim women's religious rights against the French government and other European countries (including Turkey) that were discriminating against Muslim women wearing headscarves.<sup>3</sup>

3 Hijab (Department of State, 01-H461-95 Testimony No: 2, July 11, 2001: 35–87 [Online]. Available at: [http://web.lexisnexis.com/congcomp/document?\\_m=4ae49d2facb64ac0470a3312b09a500f&\\_docnum=1&wchp=dGLbVzz-zSkSA&\\_md5=2a42f8233317dbaf24b08c5fdb60f799](http://web.lexisnexis.com/congcomp/document?_m=4ae49d2facb64ac0470a3312b09a500f&_docnum=1&wchp=dGLbVzz-zSkSA&_md5=2a42f8233317dbaf24b08c5fdb60f799) [accessed: March 26, 2009].

Yet, neither the US government nor the other European governments paid much attention to such and other testimonies. To the contrary, and as an evidence, after September 11, 2001, some American Muslim women were either confined to their homes or forced to remove their head-cover, erroneously called “hijab” because of the misuse of Hadith (as explained in Chapter 1), for fear of being harassed or viewed as a threat to security. Meanwhile, and to my knowledge, neither KARAMAH nor other Muslim women’s organizations that I know of have addressed the problem of some Muslim societies forcing certain forms of dress on women, such as in Saudi Arabia, Iran, and Afghanistan. Why is that the case?

Muslim individuals, particularly women, are not exercising their own agency fully, and even when they are actively involved in seeking justice for themselves or for other women, they often use others’ interpretations and evidence instead of developing their own interpretation. As I explained in *Woman’s Identity and the Qur’an* (Barazangi 2004b: Introduction), we know that the head-cover for women was practiced before Islam, and that what is propagated as “Islamic” *hijab* is produced by Nasir al Din al Albani and Sayeed Abu al ‘Ala al Maudoodi’s interpretations, confusing the verse that instructs women to use the *khimar* for covering their bosoms in surah {al Noor 24: 31} with the guidance concerning the privacy of the Prophet Muhammad wives in surah {al Ahzab 33: 53 and 59} below. Al Albani and Maudoodi seem to have interpreted the narrative by Anas relating the event at which {verse 33: 54} was revealed (see Introduction) as if it was intended for women’s attire and seclusion:

{31} وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهُنَّ وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَائِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَىٰ عَوْرَاتِ النِّسَاءِ وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتَوْبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهَا الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ

And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should *draw their veils over their bosoms* and not display their beauty except to their husbands, their fathers, their husbands’ fathers, their sons, their husbands’ sons, their brothers or their brothers’ sons, or their sisters’ sons, or their women, or those whom their right hands possess, or male servants free of physical needs, or small children who have no sense of sexual differences; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O you Believers! turn all together towards Allah, that you may attain Bliss {al Noor 24: 31}.

{53} يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتَ النَّبِيِّ إِلَّا أَنْ يُؤْذَنَ لَكُمْ إِلَىٰ طَعَامٍ غَيْرِ نَظِيرِ مَا تَسْأَلُونَ وَإِنِ اتَّخَذَ النَّبِيُّ مِنْكُمْ نِكَاحًا فَلَا يَكُنْ مِنْكُمْ خَائِفَةٌ عَلَىٰ النَّبِيِّ فَمَا تَأْتِيهِمْ مِنَ اللَّهِ فَسَبِّحُوا بِحَمْدِ اللَّهِ كَمَا سَبَّحَهُ الرَّسُولُ وَالَّذِينَ آمَنُوا مِنْكُمْ يُسَبِّحُونَ بِحَمْدِ اللَّهِ أَكْثَرَ مِنْ ذَلِكَ وَالَّذِينَ آمَنُوا سُبْحَانَ اللَّهِ عَمَّا يُشْرِكُونَ وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَسَأَلْنَهُنَّ مِنْ وَرَاءِ حِجَابٍ ذَلِكُمْ أَطْهَرُ لِقُلُوبِكُمْ وَقُلُوبِهِنَّ وَمَا كَانَ لَكُمْ أَنْ تُؤْذِنُوا رَسُولَ اللَّهِ وَلَا أَنْ تُتَخَذُوا زَوَاجَةً مِنْ بَعْدِهِ أَبَدًا إِنَّ ذَلِكُمْ كَانَ عِنْدَ اللَّهِ عَظِيمًا

O you who believe! Enter not the Prophet's houses—until leave is given you—for a meal (and then) not (too early as) to wait for its preparation: but when you are invited, enter; and when you have taken your meal, disperse, without seeking familiar talk. Such (behavior) annoys the Prophet: he is ashamed to dismiss you, but Allah is not ashamed (to tell you) the Truth. *And when you ask (his consorts) for anything you want, ask them from behind a curtain:* that makes for greater purity for your hearts and for theirs. Nor is it right for you that you should annoy Allah's Messenger, or that you should marry his widows after him at any time. Truly such a thing is in Allah's sight an enormity.

{59} يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

O Prophet! Tell your wives and daughters, and the believing women, that they *should cast their outer garments over their persons* [when outside their home], so they should be known (as such) and not molested. And Allah is Oft-Forgiving, Most Merciful {al Ahzab 33: 53, 59}.

Anas narrated that he witnessed the celebration of the Prophet's marriage to Zaynab. He states that people disbursed after they finished eating, except for two men who remained chatting in Zaynab's quarter. The Prophet was waiting for them to exit, and then as he was entering the quarter, he received {verses 33: 53 and 59}, so he let the door's curtain (hijab) of the quarter fall behind him (al Bayan 1999: Kitab al Nikah # 809).

K. Ali (2003: 163–9) critiques the Muslim women's reformist work of al Hibri, Wadud, Hassan, and Barlas because it highlights the egalitarian texts of the Qur'an and Hadith but ignores the cultural influence that shaped the fiqh. She states: "The reality is that many women in Muslim countries continue to suffer injustices within their marriage because their husband's frame of reference about marriage adheres mainly to the *Fiqh*." I should add that most of that fiqh is produced for men and by men under certain circumstances that do not apply now, but husbands and the society at large use it as a textual evidence, confusing it with Qur'anic Shari'ah.

*It seems that Muslim women in general have lost the moral courage to declare that certain hadiths used to justify certain fiqh rules are not corroborated by the Qur'an.* Thus, the current debates on reforming Muslim societies and of their "democratization" are, in my view, based on the wrong premises, and hence, I question their rationales and effectiveness (further discussed in the Conclusions). Western governments and policymakers, and those scholars who act as expert witnesses rely mainly on a biased understanding of Islam and Muslims, and given the Judeo-Christian views of religion, Islam is perceived as a static religious law that needs reformation in the same manner as the European reformation—that separated state and church—by separating facts and values. Arkoun (1994: 4) explains that the European ecumenical reading has endorsed the Orientalists' image of Islam as if it

were a monolithic, solid unit ideally and in practice, adding that Europeans tend to renew their emphasis on their “enlightenment” thinking, as if it cannot be touched. Sadly, I must add, these perceptions of Islam are perpetuated by the majority of non-Muslims who teach or consult about Islam, including some of those who claim to be concerned with women’s liberation. Similarly, women’s movements which only address Muslim women’s rights from human rights perspectives are only addressing the symptoms and not the roots of the patriarchal backlash towards such movements: confusing religious sources and related authority (see Conclusions).

*Third*, contemporary laws (erroneously known as shari’ah) practiced in Muslim societies are neither morally binding, nor legally valid in space and time. Qur’anic Shari’ah (with a capital “S”) is the only divine, binding source concerning the principles of Islam, as I will further explain in the next section below. It means the path that is guided by Qur’anic ethos (Barazangi 2004b: 103–4). Yet, generations of Muslims have been affected by the confused views, and the majority of them believe shari’ah (with a small “s”) to be directly revealed from God. One outcome of confusing Qur’anic Shari’ah with the Prophetic extrapolations and interpretive jurisprudence has been the biased views toward women. L. Ahmed (1992: 85) discusses the jurists being influenced in their elaboration of a system of marital rights and obligations by the norms governing slavery. Thus, women also need to critically study the Qur’an and the Hadith in order to change their own perceived role from being assumed as complementary (to men) to the Qur’an-stated role as primary (documented in the creation story that was discussed in Chapters 2 and 4 of this book).

### 3. Alternative Understanding of Islam and Muslim Women’s Rights

To rethink Islam as a dynamic religio-moral rational worldview, one needs to understand the Qur’an, and its major principles. The first principle stated in the Qur’an is that the mature individual Muslim is not bound legally by Islam unless s/he has conscientiously accepted its moral principles as stated in the Qur’an itself:

{1} أَفَرَأَىٰ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ. خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ ...

Read in the name of your Guardian, the Creator, created humankind from a clot ...  
{al ‘Alaqa 96: 1–5}

Islam, as Deen (worldview), is basically textual, not based on an event—as, for example, with Christ’s resurrection in Christianity—or on a law—as with the law of the Torah in Judaism. The content of the text, that is, the Qur’an, is what defines all Islamic beliefs. The Qur’an also reminds us that it is not because of the Prophet Muhammad that Muslims accept the Qur’an, but because of the Qur’an, they accept the authority of the Prophet (M. al Faruqi 2000). Therefore, the Qur’anic verse:

{59} يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ...



Oh, Believers, obey God, and obey the Messenger and those of authority [in knowledge] from among you. And if you disagree, then retract to God's [guidance] and then, the messenger's [example], if you believe in God and the Hereafter ... {al Nisa` 4: 59},

is intended to take the Qur'an as the first source of guidance, followed by the extrapolations of the Prophet as an example of his praxis, and then refer to those of knowledge, not necessarily those governing. The evidence lies in the phrase, "and if you disagree, then, retract to God's [guidance] and the messenger's [example]."

Paul Powers (2006: 1) discusses how classical Muslim jurists thought that "an actor's 'intent' affected the 'legality' of his actions." Citing the popular Hadith that is reported in Bukhari, Muslim, al Turmudhi, and Ibn Maja:

-إنما الأعمال بالنيات ولكل امرء ما نوى

Actions are defined by intention, and to every person what s/he intends.

Powers goes on to explain the historic discussions of individual moral intention and its legality. Clark Lombardi, in his review of Powers (JLR 2007: 607–61, ft.1), clarifies "legality" as Muslim jurists worked with a "five-part typology of actions: required, prohibited, recommended, reprehensible, or neutral." That is, it is neither possible for an individual to self-recognize the meanings of Islam nor to practice it in a comprehensive manner without the individual being a Muslim by choice (Barazangi 2004b: 44–5).

What has happened is that, in addition to dismissing the individual's intimate reading of the Qur'an (not just simple recitation and or memorization), Muslims have, to a large extent, reversed the order when they idealized the Prophet and his traditions more than the Qur'an, as did al Albani, when he made the Hadith central to the jurisprudence process, instead of the Qur'an. Lacoix (2008) states that Nasir al Din al Albani makes Hadith the central pillar of the juridical process by rationalizing that to be a proper "*salafi in fiqh*," Hadith alone may provide answers to matters not found in the Qur'an. Most contemporary Muslims even forget that the reported extrapolations on the authority of the Prophet do not supersede the Qur'anic text that states:

{6} وَالَّذِينَ اتَّخَذُوا مِنْ دُونِهِ أَوْلِيَاءَ اللَّهُ حَفِيظٌ عَلَيْهِمْ وَمَا أَنْتَ عَلَيْهِمْ بِوَكِيلٍ

And those who took as guidance someone else besides God, God is the Most Protector, the Most Knowledgeable, and you [oh Prophet] are not their proxy guardian {al Shura 42: 6}.

The Prophetic extrapolations should come after the Qur'an mainly because they are bound by contextual applications of the message. It seems that the use of

Hadith before the Qur'an results from a misuse of the following narrative that is attributed to the Prophet:

حَدِيثُ عَمْرُو بْنِ الْعَاصِ رَضِيَ اللَّهُ عَنْهُ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ جَهَارًا غَيْرَ سِرٍّ يَقُولُ  
 أَلَا إِنَّ آلَ أَبِي يُعْنِي فُلَانًا لَيْسُوا لِي بِأَوْلِيَاءَ إِنَّمَا لِلَّهِ وَصَالِحِ الْمُؤْمِنِينَ

'Amr bin al 'As reported: I heard Allah's Messenger (may peace be upon him) say: Behold! The posterity of my fathers ... are not my friends. Verily Allah and the pious believers are my friends (al Bayan 1999: Kitab al Iman #116).

Perhaps Muslims confused the meaning of friendship with guidance. Even when we acknowledge the relationship between the ideal and its application (that is, the Qur'an and sunnah), our knowing that the Qur'an is its best interpreter {al Zumar 39: 23} should remind us, as Muslims, that we should not be rigid in applying the Prophetic extrapolation and its practices literally.

*Therefore, I repeat, it is not simply the perspective of women that matters. Rather, their self-understanding of the Qur'an from within its own framework, and their acceptance of the message of Tawhid, that is of utmost importance.* As I stated earlier (Barazangi 2004b: 46–7 and Chapter 4 of this book), tawhid means that the authority lies only with God, whose guidance is in the text of the Qur'an {al Isra` 17: 9}. Yes, it is possible for each individual to reasonably deduce behavioral applications from the Qur'anic guidance if they set their minds to fully understand the Qur'an from within. And, yes, it is not a simple order to assign the responsibility of intimate reading of the Qur'an to each individual Muslim, but this is exactly the point. Muslims continue to forgo their own responsibility by taking others' interpretation in place of the Qur'an. That is, a Muslim cannot profess to be practicing Islam fully, if s/he does not read intimately and understand the Qur'an first hand, and without the intermediary of others.

What is also important here is Muslims' self-identification with Islam as the *Deen of Tawhid*, and thus the first revealed five verses of the Qur'an {al 'Alaq 96:1–5} *affirm reading in the name of God, emphasizing the divine source of the book, and reminding humans that they were created as moral beings who have a choice to carry out or refuse the message.* Hence, each individual Muslim has the responsibility of reading and making meaning of the Qur'an in order to be able to carry his/her rights justly. *Since the participation of Muslim women in meaning-making or interpreting the text has been very limited or nil, it means that Muslims contradict the above verses and especially what verse 9 of surah 17 and verse 23 of surah 39 indicate—that the Qur'an is its best interpreter,* as I emphasized earlier (Barazangi 2004b: 48–9 and Chapter 2 of this book). Fazlur Rahman (1995: 1) states, after examining most Muslim interpretations, social habits, and emulations of early traditions: “The way of building a consensus among these interpretations makes the problems in such solutions clear in any reading that is missing the educational dynamics of the Glorious Qur'an.”

Rahman also explains the confusion between what is intended of the Prophetic sunnah and the sunnah of a society in a certain era. I specifically focus on the implications of such confusion and shortcomings for the women and the generations that they have raised or are still raising. Contemporary Muslims often limit the meaning of religion as if it were only to execute some rituals. They also confuse the Qur'anic principles with the rules that are applied routinely and in a passive manner, on the one hand, with the dynamic universal worldview of Islam, on the other (Barazangi 2004b: 53).

Traditional Muslims talk about the ideals of Islam as a just and peaceful religion, but they often do not accept or develop *anew* parity solutions for women's participation in developing Islamic thought. J. Sa'id affirms that the issue is to create a balanced society (his comment on one of my lectures in Damascus, Syria, March 6, 2009). It seems that the exclusion of women is because traditional Muslims, according to Martin Van Bruinessen (2006: 165), "rely on the teachings of jurisprudence, or *Fiqh*, and mostly use Hadith in a 'processed form' as quoted in the *Fiqh* texts without carefully examining its context." I must add, Muslims often rely on Hadith without corroborating it by the Qur'an {al Mumtahana 60:12}, such as the fatwa for not shaking the hand of "strange" women (Lebanese Dar al Ifta' 2009), even though it is based on a *dha'if* (weak) hadith (J. al Banna 1998: 169). Verse {60:12} below is addressing a very critical guidance, wherein it is instituting the right and responsibility of each individual woman to individually and in person pledge a loyalty to the message of the Qur'an that the Prophet was carrying:

{12} يَا أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يَبَايِعُكَ عَلَى أَنْ لَا يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلَا يَسْرِفْنَ وَلَا يَزْنِينَ وَلَا يَقْتُلْنَ أَوْلَادَهُنَّ وَلَا يَأْتِينَ بَبْهَتَانِ يَفْتَرِينَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلَا يَعْصِينَكَ فِي مَعْرُوفٍ فَبَايِعْهُنَّ وَاسْتَغْفِرْ لَهُنَّ اللَّهُ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

O Prophet! When believing women come to you to take the oath of fealty to you, that they will not associate in worship any other thing whatever with Allah, that they will not steal, that they will not commit adultery (or fornication), that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and that they will not disobey you in any just matter; then do you receive their fealty, and pray to Allah for the forgiveness (of their sins): for Allah is Oft-Forgiving, Most Merciful {al Mumtahanah 60: 12}.

Yet, Muslims only pay attention to a weak hadith on the authority of 'A'ishah (al Bayan 1999: Kitab al Imarah #1805), suggesting that the Prophet did not touch any of these women's hands while he was receiving them as each was taking the oath of accepting the ethical guidance in the Qur'anic verse above.

It is perplexing to see Muslims paying attention to such shallow, and perhaps unauthentic, details, ignoring the main event wherein each individual woman was given the rights and the responsibility to vote, choosing Islam as her worldview!

Meanwhile, instead of rationally correcting non-Muslims' biased views of Islam, conservative Muslims indiscriminately denounce all non-Muslims as unbelievers and

their solutions as unacceptable (Qutb 1952). Some extremists even react by forcing women's seclusion in the name of protecting them from the influence of the "non-believers" (H. al Banna 1983). These harsh measures, including violent behavior against the "infidel others," result from rationales based on the following Hadith that basically describes Jihad (in the face of starvation and hard work) at the time:

حدثنا عبد الله بن محمد ... قال سمعت أنسا رضي الله عنه يقول: خرج رسول الله صلى الله عليه وسلم إلى الخندق فإذا المهاجرون والأنصار يحفرون في غداة باردة فلم يكن لهم عبيد يعملون ذلك لهم فلما رأى ما بهم من النصب والجوع قال: اللهم إن العيش عيش الآخرة، فاغفر للأنصار والمهاجرين. فقالوا مجيبين له: نحن الذين بايعوا محمدا، على الجهاد ما بقينا أبدا

(Mawqi' al islam: hadith = 1806).

By using this meaning of Jihad for self-defense as if it was intended for *qital* (fighting), contemporary extremists contradict the Qur'anic verse:

{32} مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا ...

On that account: We ordained for the Children of Israel that if anyone slew a person—unless it be for murder or for spreading mischief in the land—it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people ... {al Ma'idah 5: 32}.

Thus, rereading hadith content also helps us refute, as Tibi (2008) has done in a different discourse, the extremists' sweeping notion of "others" as infidels, when they invoke the following verse in surah al Ma'idah:

{33} إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ جَزَاءُ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter {al Ma'idah 5: 33}.

The Qur'an clearly shuns violence in all forms as a means to achieve justice or righteousness. It distinguishes the struggle for justice (jihad) from fighting (qital) (Shahrur 2008: 20). Since Islamic behavior is a manifestation of the moral intent of the individual on fulfilling his/her obligations (*taklif*) (Fakhri 1991: 151), we need to understand how certain moral essentialism was fabricated to exaggerate the meaning of qital and to separate rights from responsibility, contrary to what is stated in the Qur'an:

{286} لَا يَكْلَفُ اللَّهُ نَفْسًا إِلَّا وَسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إَصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ وَاعْفُ عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ

On no soul doth Allah place a burden greater than it can bear. It gets every good that it earns, and it suffers every ill that it earns. (Pray to God): "Our Guardian! Condemn us not if we forget or fall into error; our Guardian! Lay not on us a burden like that which You did lay on those before us; our Guardian! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us. You are our Protector; help us against those who stand against Faith" {al Baqara 2: 286}.

In order to change attitudes about martyrdom, or violent struggle to attain justice, or the conceptions concerning women's seclusion and the violence inflicted on them (including "light hitting" as it may be) as interpreted by Badawi (1995), for example, we need to understand how such essentialism and sanitization has evolved away from the Qur'anic rationality that emphasizes the relation between rights and responsibility. *This understanding will help us recognize the contradiction in the practice wherein the majority of Muslims emphasize responsibility while ignoring the basic right to knowledge before carrying out any obligation:*

{28} لَنْ يَسْطُرَ إِلَيَّ يَدُكَ لِتَقْتُلَنِي مَا أَنَا بِبَاسِطِ يَدِي إِلَيْكَ لِأَقْتُلَكَ إِنِّي أَخَافُ اللَّهَ رَبَّ الْعَالَمِينَ

"If you do stretch your hand against me, to slay me, it is not for me to stretch my hand against you to slay you: for I do fear Allah, the Cherisher of the Worlds" {al Ma'ida 5: 28}.

This verse reminds us, as Jawdat Sa'id reiterates in his avid writings and lecturing on non-violence, that the meaning of Tawhid is not limited to the metaphysical, but is mainly an instruction on human relations and social interaction.

### An Equilibrated Module for Rereading Hadith and Rethinking the Sunnah

The challenges facing the process of rereading hadith and rethinking the sunnah are many. I will focus on a few that are relevant to changing persistent negative attitudes and practices of Islam, particularly toward women. In my book, *Woman's Identity and the Qur'an: A New Reading* (2004b) and in Chapter 2 of this book, I discuss self-identity with the Qur'an being the primary and basic source of Islam both as a faith and as a guide for religio-moral rationality. *Self-Identity and identification with the Qur'an is both a means for the woman to read the Qur'an intimately, and a goal for the woman to regain her rights from within and to reassert her authority in reinterpreting Qur'an to achieve gender justice.* My book and other similar works, as mentioned earlier (Introduction, Chapters 1 and

2), have begun to take hold among some intellectual Muslims, but some elitist males and females and the masses of Muslims still use, or misuse, the reported “prophetic traditions” to justify the existing biased practices, as we saw above when a woman leader supports male privilege in leading prayers, based on a conventional understanding of the sunnah.

It is, therefore, necessary to divide this section into two sub-sections. First, redefine specific terms concerning Islam in order to show Muslims’ mistranslating or misreading of their meanings from Arabic. Although I defined most of these terms in different contexts within the previous chapters of this book, I am reiterating them here for the sake of rebuilding an equilibrated module of rereading the Hadith and rethinking the sunnah. Second, after defining these terms, I analyze how some of them, as well as the issues discussed in the previous section, ought to be considered as *a priori* to ensure that Muslims are ready to change what is in themselves, as stated in the Qur’an:

{11} ... إِنَّ اللَّهَ لَا يُغَيِّرُ مَا بِقَوْمٍ حَتَّىٰ يُغَيِّرُوا مَا بِأَنفُسِهِمْ وَإِذَا أَرَادَ اللَّهُ بِقَوْمٍ سُوءًا فَلَا مَرَدَّ لَهُ وَمَا لَهُمْ مِنْ  
نُورِهِ مِنْ وَالٍ

... Verily never will Allah change the condition of a people until they change what is in themselves (with their own souls). But when (once) Allah wills a people’s punishment, there can be no turning it back, nor will they find, besides Him, any as a Guardian {al Ra’ad 13: 11}.

### 1. Redefining Specific Terms

*Islam*: comes from the Arabic word “aslama,” meaning to be at peace with oneself, with others, and with Shari’atu Allah (God’s Shari’ah or Qur’anic Shari’ah). It does not come from the root “sallama,” meaning “submission”. That is, submission means desolation of the individual from responsibility to consciously understand the deep meaning of the Qur’an and to practice it fully without external pressure. In a sense, Islam restores to individual humans their self-governing, but under the condition of being just to others. As stated earlier in this chapter, the word “Deen” in the Arabic Qur’an indicates a worldview that encompasses religio-moral and rational guidance, stated in the only divine and primary source of Islam, the Qur’an:

{19} إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ

The religio-moral, rational guidance before Allah is Islam (being at peace with the Will of God) {Al ’Umran 3: 19}.

Thus, *Islam* is a belief system and a way of life following the guidance of the Qur’an, neither a law nor a dogma of submission. The commonly used adjective “Islamic” when speaking of an individual “Muslim” is misleading. The adjective

“Islamic” refers to the guidance in the Qur’an, while the adjective “Muslim” refers to the individual who professes to practice Islam, but her/his action may not be fully Islamic. Despite the fact that the individual identifies himself or herself as a Muslim, s/he may lack a clear understanding of Islamic guidance and, hence, may not practice it fully. Muslims need to start thinking for themselves and learn the difference between Qur’anic guidance, on the one hand, and the social practice of the guidance that is open to different interpretations, on the other.

*Shari’ah*, with a capital “S,” is the path that is guided by Qur’anic ethos. This word appears only once in this specific context of the Qur’an:

{18} ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيحَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

Then, We put you on the path: so follow that (Way), and follow not the desires of those who know not {al Jathiyah 45: 18}.

*Thus, Shari’ah is the guidance of Allah as stated in the Qur’an in its totality as a means to achieve justice.* This Shari’ah is what is in the Qur’an only. It does not include the reported extrapolations on the authority of the Prophet Muhammad or his companions. Neither is it the collection of rules derived by jurists under “Islamic shari’a” (with small “s”), nor the interpretations that were solidified by Western colonial and missionary powers under the term “shari’a law” or “Islamic law.”

*Hadith: collection of reports on the authority of the Prophet of Islam, Muhammad.* These orally reported words and actions were gathered in different collections about 200–300 years after the death of the Prophet (between 9th and 11th centuries AD), and are known as his traditions (or sunnah). However, as emphasized earlier in this book, we need to distinguish between the Prophet’s reported traditions and the historical or natural laws that the Qur’an references as “*Sunnah*” with a capital “S” or *Sunnatu Allah*:

{62} سُنَّةَ اللَّهِ فِي الَّذِينَ خَلَوْا مِن قَبْلُ وَلَنْ تَجِدَ لِسُنَّةِ اللَّهِ تَبْدِيلًا

(Such was) the practice (approved) of Allah among those who lived aforetime: no change will you find in the practice (approved) of Allah’s natural laws {al Ahzab 33: 62}.

Unfortunately, Muslims confuse *Sunnatu Allah* with the sunnah reported on the authority of the Prophet. Later generations of Muslims also confused the Prophet’s reported sunnah with the traditions of his companions, and often elevated all these traditions to the level of the Qur’an.

It is also important to reiterate here what was stated earlier in this chapter—that *although there were numerous female narrators who reported on the authority of the Prophet, hardly any of these females were involved in setting the standards for documenting these narratives, a process that eventually developed into the sciences of Hadith.* Although scholars, such as Nadwi (2007), reported that several

of the early female narrators were consulted by jurists concerning some rulings at the time, their opinions are often dismissed, as we saw in Chapters 3 and 4. Just as women's exclusion in developing Qur'anic sciences resulted in the lack of female perspectives in *tafaaseer* (the exegeses) (Barazangi 2008–09, 2009), the exclusion of women narrators in developing the sciences of Hadith resulted in their absence from determining the standards by which Muslim male elites of the time investigated the authority of the narrator or the content of the narrative. *Consequently, women's role in Muslim societies on all levels was determined by others.*

*Tertiary Sources/Instruments used to Generate Jurisprudence Rules:*

'*Ulema*, scholars of Islam (scholars of tafseer, of Hadith, or of fiqh): in contemporary Muslim societies, 'alim (singular male scholar of Islam) is mainly thought of as one who studied in one of the traditional Muslim institutions (for example, al Azhar in Egypt, Deoband in India, and Qum in Iran). Some contemporary female scholars of Islam may not be considered 'alimat (feminine plural of 'alima) also, because the title 'alim' has been thought to refer only to elite male.

I should add that despite the multiplicity of the *tafaaseer* and opinions in the early periods of Islam, the rules that were derived from such opinions were limited in later periods to only a few scholars. Eventually, these rules were documented under five schools of jurisprudence (Hanafi, Hanbali, Maliki, Shafi'i, and Ja'afari) that dominated Islamic thought, were frozen in time, and were often elevated to the level of the Qur'an by considering them as part of Shri'ah (with a capital "S"). Furthermore, these rules were codified by colonial and missionary governing bodies in the 19th and early 20th centuries as "communal or religious laws" to satisfy conservative male religious leaders in the colonized Muslim-majority countries. Sadly, the rules about marriage, dissolution of marriage, inheritance, and child custody are still being used unjustly by most of the 55 Muslim States under the title: "Personal Status Codes." Despite the fact that most Muslim states adopted Western civil laws in other matters, they continue to use these personal status codes, erroneously calling them "Islamic laws" or "shari'a laws" (small "s"). The personal status codes are still enforced by contemporary Muslim-majority governments, including the new governments of Afghanistan, Iraq, Tunisia, Libya, and Egypt, even when they claim democracy (Warrick, 2012). Worst yet, most of these "new" governments are still being supported by Western governments, who claim that they are advocating women's rights! In addition, even when the personal code pertains to non-Muslim minorities, according to what is taking place in Syria (A.H. Ali 2014), the law still requires that marriage and related issues be registered under the religious court of the individual's creed, otherwise it will not be accepted if it was only registered under civil court.

*Tafaaseer*, exegeses or interpretations of the Qur'an that are mainly based on Hadith and biographies of the Prophet Muhammad and his companions: traditionally there are four generally recognized interpretations (al Tabari, al Qurtubi, al Jalalyn, and Ibn Katheer). Unlike the later and contemporary periods



in the development of Islamic thought, Muslim philosophers, theologians, and intellectuals in the early period of Islam had the freedom to openly discuss and accept each other's interpretations even when they differ in their conclusion (J. al Banna 2004: 55). Also, only recently do we find female scholars of Islam producing new readings of the Qur'an. These female scholar-activists are multiplying, but as they were pioneered at the end of the 20th century in the United States—for instance, by Amina Wadud addressing the totality of the Qur'an in her *Qur'an and Woman*—they are often ignored or dismissed as the product of “Western thinking” or as “Islamic feminism”!

*Fiqh*, jurisprudence opinion rules that are based mainly on Qur'anic exegeses and Hadith: the *faqih* (jurist/thinker) is the one who determines the standard and, hence, doctrinal rules on his own authority and the authority of the school of jurisprudence that he belongs to (Hallaq 2001: xii). Although some *faqihat* (female jurists/thinkers) were consulted in the early periods of Islam by interpreters and male jurists, we do not find an Islamic school of thought named after any of them. Recently, we find female professors of philosophy or law in North America who also write about Muslim jurisprudence, such as Aziza al Hibri, Asifa Quraishi, and Kecia Ali. Yet, the majority of Muslim and non-Muslim policymakers still consult male professors as their primary resource.

*Mufti* or the juris-consult, is the one who creates a link between social practices and the law (Hallaq, 2001: xii): this position is a relatively recent phenomenon in modern Muslim-majority states. There are attempts to train women in this profession, but the trainers and these female trainees still follow the traditional interpretations, as discussed in Chapter 2.

*Shura* or the mutual consultative process among the Muslim community: this process often became exclusive to certain group(s) of Muslim rulers and scholars who are largely made up of males.

*Ijma'* or consensus of the ummah (Muslim universal community): often *ijma'* is unjustly limited to elite males as well.

## 2. Issues Hardly Considered as a priori to Ensure that Muslims are Ready to Change

To ensure that Muslims are ready to change, I will elaborate here on what I stated earlier (in the section on “Reinterpreting Islam for Muttaqi (Equilibrated) Muslim Society”) to further develop my argument. I will address the following four points as part of a module of an equilibrated rereading of Hadith and rethinking of sunnah. We need to discuss: (a) how the limitations of the debates on the issue of shari'a, and where the confusion about its meanings might have come from. *I argue that these limitations were affected by the misrepresentation of Islam as “Muhammadan” religion, and were influenced by the process of using and abusing Hadith.* We also need: (b) to sort the sources of Islam and their meanings; (c) to distinguish the principles of the Qur'an from their extrapolations in the reported Prophetic traditions; and (d) to reiterate and emphasize the effects of

Muslim women's absence on shaping and developing Islamic thought from the time of the first Muslim community.

(a) *The limitations of the debates on shari'a*: in his autobiography, Thomas Jefferson recounted his strong desire that the bill that was enacted in 1786 for the establishment of religious freedom should not only extend to Christians of all dominations but should also include "within the mantle of its protection, the Jews and the Gentile, the Christian and Mahometan [Muslims], the Hindoo [Hindus], and infidel of every denomination" (US Government "Charter of Freedom"; ARAMCO, 2011: 7). Some authors suggest that Jefferson's attitude to religious pluralism might be influenced by his reading the Muslim Holy Book, the Qur'an, before he drafted the Declaration of Independence in 1776. This historical probability eliminates the myths that Islam is foreign to the United States and that Islam and "its law" is an Eastern religion being imposed on the Western Judeo-Christian religions and laws. Hence, one should not rely on some scary statements concerning the meaning of shari'a, like that of Newt Gingrich (2010, "[S]tealth jihadists' are manipulating our legal system so shari'a can creep in, slowly and steadily eroding our secular laws until shari'a has overtaken the Constitution as the supreme law of the land," nor on pundits' opinions, such as the former fighter pilot Rick Womick who may have participated in bombing and destroying Iraqis' way of life, and yet, he warned the Tennessee Statehouse in July 2011 that "Islamic law is a threat to [my] constituents' way of life." It seems that Womick, in addition to his ignorance of the different meanings of shari'a, has not read what Thomas Jefferson stated in his autobiography.

Sadly, part of this confusion in understanding Islam might be attributed to Jefferson's categorization of the Qur'an among his books on law, following what George Sale, a British translator, had branded certain statements in the Qur'an. The 1764 English edition of the Qur'an that Jefferson purchased was George Sale's rendition from Arabic. Even when it was reported that Sale had used the utmost care in his translation, when he wrote his *Introduction to Islam* he erroneously branded sections on marriage, divorce, inheritance, lawful relation and the rules of warfare as "Islamic civil law." Sale's branding of Qur'anic guidance (confusing it with the different interpretations and practices) as law may have resulted from the fact that he paralleled these personal matters to comparable Jewish legal precepts.

Also, although a well-intended gesture, it appears that Rowan Williams, the Archbishop of Canterbury, in a statement in February 2008 (discussed earlier in Chapter 2), represents the same misunderstanding of the difference between the Islamic guiding principles of the Qur'an and what is known as "Islamic law." When he suggested that British lawmakers should come to some "accommodation with some aspects of Muslim law, as we already do with aspects of other kinds of religious law," he made a gross miscalculation because his statement represents dire implications not only for England, but for Muslims and non-Muslims around the globe. He basically confused Qur'anic Shari'ah with juristic rules. As discussed earlier (Chapter 2), such confusion is creating further chaos and confusion in Western courts with regards to Muslims who want to apply "shari'a."

In addition, as I am preparing the final draft of this manuscript in the late 2014, the consequences of such confusions and miscalculation are showing in the behavior of the different groups of extremist Muslims mainly in Syria and Iraq, whose effects are stretching to the rest of the globe.

What is problematic concerning such confusion now is that through such misrepresentations more harmful results are generated when Muslims in the West think of importing those “laws” that are pertinent to personal status codes, mistaking them a representation of Shari’ah (with capital “S”). It is bad enough the harm that has been done when outside governments interfered in the name of liberating Muslim women, as Laura Bush claimed that the American government was doing in Afghanistan, but it is worse when Muslims themselves react to these claims by retracting to old edicts/customs. Laura Bush stated on November 2001 that “Because of our recent military gains in much of Afghanistan, women are no longer imprisoned in their homes. The fight against terrorism is also a fight for the rights and dignity of women.” Despite this claimed liberation, in November 2, 2002, Reuters reported that the Afghan Supreme Court dismissed a female judge (Marzia Basil) for not wearing a headscarf during a meeting with President George W. Bush and his wife, First Lady Laura Bush, in October of the same year. At the time of writing the first draft of this chapter (2011), Judge Basil, to my knowledge, was still a refugee between the United States and Canada, seeking asylum for fear that her life is in jeopardy.

The other harmful example is the claim by the United States administration to help in drafting a democratic constitution for Iraq in 2005, as I discussed in Chapter 2. The US government allowed extremist Muslim clerics to slip in specific “Muslim rulings” as the basis for developing any law in Iraq. Such rulings are those that have harmed women in the past and what motivated Iraqi women earlier in 1959 to struggle in order to remove them from Iraqi personal law (Barazangi 2005a). The 1959 law was upheld even by the dictator Saddam Hussein, though for his own pragmatic reasons (al Ali and Pratt 2009). Yet the US government gave itself the privilege of facilitating and allowing such a change in order to protect its own interests. Recently, the Iraqi Council of Ministers on February 25, 2014 approved a draft law, called the “Ja’afari Personal Status Law,” allowed for some of the pre-1959 personal status codes to be applied, including marrying a girl as young as nine years of age (Human Rights Watch 2014).

It is, therefore, erroneous to call the guidance of the Qur’an “Islamic law,” just as it is misleading to call jurists’ rules that were derived from the Qur’an and/or Hadith “Shari’a” (with capital “S” or with a small “s”). The Arabic word, “Shari’ah” (with a capital “S”) in the Qur’an carries a broad meaning of divine guidance for justice, while the practiced jurists’ rules in Muslim-majority societies over the past 14 centuries are exclusively the opinions of male interpreters and jurists that often resulted in more injustices to women. So how is it possible to alleviate this confusion about shari’a without essentially changing the perception and the misuse of the term?

Qur'anic revelation to the Prophet Mohammad was intended to guide toward the path of monotheism (Shari'ah) to achieve justice. The path of monotheism, as stated earlier, is expressed in Arabic as Shari'atu Allah (God's Shari'ah or God's way). Hence, and contrary to another myth about Islam being mainly imposed by the sword, and despite the recent (mid-2014) fanatics' practices of forcing minorities to convert to Islam, no one should be or could be coerced into this path:

{256} لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِنْ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ  
الْوُثْقَىٰ لَا انْفِصَامَ لَهَا وَاللَّهُ سَمِيعٌ عَلِيمٌ

Let there be no compulsion in belief: Truth stands out clear from Error: whoever rejects Evil and believes in Allah has grasped the most trustworthy source that never fails. And Allah hears and knows all things {al Baqara 2: 256}.

Unfortunately, the majority of today's Muslims erroneously believe that all male-generated rules are legally and morally binding like the Qur'an. The truth is that even though called shari'a (with small "s"), and even though these rules are derived from an interpretation of the Qur'an, these man-made rules are not morally or legally binding and should not be confused with Shari'atu Allah or the guidance of the Qur'an. I repeat: Islam is neither a law, nor a dogma of rules. *Islam* is the individual *conscientious acceptance of the way of God*.

(b) *Confusing sources and meanings*: Islam's primary source is the written Qur'an.

As the first source, the Qur'an consists of oral guidance revealed to Prophet Muhammad in the 7th century. This guidance, according to the Qur'an, was dictated—as it was revealed—by the Prophet to his scribes, and was also organized in 114 chapters according to a revealed order. The dictated revelations, also according to the major historical sources, were eventually gathered in one single book within 10 years after the Prophet's death without any change (J. al Banna [1920–2013] 2004a; al Rusafi [1875–1945] 2002). The totality of the guidance is also referenced as “Islamic Shri'ah” or “Islamic Sunan.”

The second source after the Qur'an, used by Muslim scholars to derive rules concerning daily affairs, constitutes mainly the books of Hadith. Hadith is understood as the collection of the narratives reported on the authority of the Prophet, but sometimes it includes narratives reported on the authority of early or later companions of the Prophet. According to many historians and scholars, the Prophet forbade his companions from writing down his words and actions lest Muslims take them while ignoring Qur'anic guidance (J. al Banna 2004a: 90). That is, knowing that his words and actions represent his own interpretation of the Qur'an for the specific time and place, he even chastised those who try to quote him.

However, after about 100 years (8th century AD), Muslims disregarded the Prophet's order and began documenting these narratives in a written form (developing what has become known as the sciences of Hadith) that resulted in

several collections. Consequently, according to Motzki (2004) and others, these collections were reduced to six and were adopted as authentic sources. Later on, scholars based their opinions and generated rules concerning daily matters of Muslims using these narratives (referring to them as the Prophet's sunnah, or the sunnah) often without corroborating them with the Qur'an. Even when some of the narratives contradicted Qur'anic guidance, such as the narratives that confused sunnah with al *Hikmah* (philosophy or wise statement) as stated in the Qur'an {al Jumu'ah 62: 2; al Ahzab 33: 34; and al Baqara 2: 151, 129}, Muslim jurists used them to generate personal status codes (J. al Banna 2004a: 98). Hadith had hitherto become almost as valid as the Qur'an, even when the collections contained texts that contradict the spirit of Qur'anic justice, including some narratives that degrade and humiliate women (as evidence in Juynboll's 1996 use of such narratives) and as exemplified in the following incident.

Fatima, the daughter of Prophet Muhammad, was reported to have questioned the first Caliph, Abu Bakr, when he refused to give her the due share from her father's estate. Though the report may represent a form of egalitarian process affirming Muslim women's agency, this representation has been altered by Muslim patriarchs in the way they use another narrative attributed to Prophet Muhammad:

نحن الأنبياء لانورث ...

"We [prophets] do not have heirs" (Ibn Sa'd, 1904, 8:18).

The majority of Muslims view this narrative as referring to the material inheritance of the Prophet in order to justify Abu Bakr's behavior, as if the fact of being a companion of the Prophet makes him immune to mistakes. Such justification further resulted in excluding what seems to be the intent of the narrative to forbid inherited leadership (as I explained in Barazangi 2004b: 41, and in Chapters 1 and 4 of this book) or to recognize Muslim women's agency from within Islamic framework.

(c) *Distinguishing Islamic principles in the Qur'an from their extrapolation in the reported Prophetic tradition.* Although these opinions and rules were made in good faith and have been the cornerstone of legal standing in Muslim-majority societies for centuries, they were influenced by biased attitudes of the time, and often resulted in unjust and confusing meanings, particularly so towards women. Jamal al Banna states that all narratives about women should be suspended because they were narrated in a special period of Islam that ended long ago (2004a: 101). He adds that we should not have quorum about leaving such ahaadith because they contradict the Qur'an (104), and because fuqaha dissent justice that the Qur'an endorsed (124). Hence, these opinions and rules should be separated from the original guidance of the Qur'an or Shari'ah (with a capital 'S'), and their validity for today's affairs should be questioned.

A glaring example of such confused and unjust interpretations of Qur'anic guidance that should be questioned concerns woman's attire and modesty. As

stated earlier (in this chapter and in Chapter 3 and the Introduction) the two reported narratives that are related to woman's modesty are often confused with Qur'anic guidance to respect the privacy of Prophet Muhammad's household. Thus, the term "hijab" is inauthentic to the core message of Islam concerning modesty. According to J. al Banna (2007a: 126), the Prophet in a period of great stress and turmoil "gave in" to the advice of the sterner Caliph 'Umar who urged for the adoption of secluding the Prophet's wives and for the khimar and *jilbab* (over garment) to be reinforced on the free women to separate them from the slave women.

(d) *Affect of Muslim women's absence in shaping Islamic thought*, from the time of the first Muslim community about 14 centuries ago: the majority of Muslim interpreters emphasized the extreme seclusion of women behind the head-cover, even though verse 31 in surah 24 (al Noor) allows woman's appearance without the head-cover in front of 100 categories [of male relatives] (J. al Banna 2007a: 188; 1998: 108–9). Erroneously calling the head-cover "hijab," Muslim interpreters ignored the basic teaching of the Qur'an about modesty that does not necessarily require a head-cover. *In essence, these male interpreters stripped women of their moral rights and responsibility to decide for themselves the meaning of modesty, and more importantly to participate in the interpretation of the Qur'an.* Consequently, *jurists also stripped the woman of her legal rights to be an autonomous witness and an equal partner in developing rules for implementing Qur'anic guidance in Muslim public affairs.* By keeping women out of the public sphere, Muslim jurists also deprived women of their alienable rights to the Qur'anic mandated share of inheritance (equal to that of a male), leadership initiative, and, more importantly, to participate in the development of Islamic thought.

Though his views are rooted within traditional Islam, Jamal al Banna (2007a: 12) affirms that the head-cover was practiced before Islam and continued to be practiced by Muslims for cultural or environmental reasons. More specifically, as I explained earlier (Barazangi 2004b), verse 31 of surah 24 in the Qur'an talks about the "khimar" (shawl), incorrectly translated into English as "veil," to cover *jujub* (women's bosoms) in order to guard the areas of lactation (that determine lineage and inheritance) from molestation. The Qur'an emphasizes modesty for both men and women, *but this added verse was intended to change the old tribal tradition of considering the woman part of the man's property.* Thus, the Qur'an, with this added guidance to protect areas of lactation (the bosoms) and reproduction (private parts), *gave woman the primary role in matters of blood and lactation relations.* Now, as some female Muslim scholars try to deconstruct the other myth that the woman has a secondary role in the structure of Muslim society, we find the majority of Muslim women reiterating the traditional interpretation of modesty by becoming more rigid in the practice of a specific form of dress that could not have been permitted even during the Prophet era, like the *niqab* (the face cover). Though some Bedouin women used to practice different forms of niqab to protect themselves from the elements in the desert, Muslim women were not allowed to enter the great mosque with their face covered (J. al Banna 2007a: 130).

The problem with the contemporary defenders of “Muslim women’s rights” who reject everything Islamic in the name of rejecting shari’a is that they are actually taking issue with the generated rules, but they erroneously confuse the totality of Qur’anic guidance with the derived rules that are called by male elites “shari’a” (with small “s”). Given the ontological and philosophical basis of Islam, Qur’anic statements concerning personal matters and other daily affairs cannot be considered laws in the legal sense as we know it in Western languages. *Rather, Qur’anic statements represent moral guidance that bind each mature and sane individual only when the individual intentionally and autonomously understands and accepts the basic principle of Islam—Tawhid—and its path, Shari’atu Allah.* The principle of tawhid, as I explained earlier (Chapter 4) and above, also means that no human being has the right to control another human being’s life, neither does he or she override what is morally lawful beyond what the Qur’an teaches. Incidentally, this principle is the root of the Universal Human Rights Declaration, and I hope those who advocate human rights for Muslim women check their sources and rethink their premises and meanings of the different Islamic terms (to discuss further in the Conclusions).

### Summary

I blame Muslims for misunderstanding Islam and for confusing Islamic sources and meanings. This confusion might have added to the ignorance and the misrepresentation of Islam and of Shari’ah by others. Ignorance leads to bigotry when combined with prejudice. Worse still, our insistence on following precedence even lead women to further ignorance that crippled the entire society: thus, we need to rethink our own understanding of Islam, as al Tahir al Haddad (2008: 21) suggests, before we ask others to do so. He states that we, Muslims, will not emancipate without women retrieving their rights as stated in the Qur’an first.

## Conclusions

# Will Conscientious Self-Identified Muslim Women Become Active Agents?

### Introduction: Why Have I Written this Book?

It is evident that throughout Muslim history, especially the past few centuries, there were numerous and diversified attempts to reform and to address issues of injustice especially toward women. Most of these attempts have failed or were not sustainable, and actually for the majority of Muslim women the situation became more pathetic. Why?

As I have been researching, writing, and revising this manuscript between 2005 and 2014, the Muslims of the Middle East and North Africa (MENA) have been going through major political, economic, and social upheaval via revolutionary movements or due to fabricated wars from outside the region that are claimed to be against dictators and “terrorism.” As time progressed it became clear that despite Muslim women’s heavy involvement in most of these movements, they were being marginalized again and again even as the protestation was going on (Choucair 2013). Worse yet, most of them lost more ground in the decision-making process, particularly as new constitutions are drafted (for example, Iraq and Afghanistan), and new governing bodies are put in place (for example Tunisia, Libya, Egypt, and Yemen). From Afghanistan to Morocco, the majority of Muslim male extremists and the so-called *salafis* (followers of precedent interpretations) are taking hold in the name of reform and democracy. Though the dust has not yet settled, all indications suggest that women are being pushed to the margins (Women Learning Partnership, March 2013). Painfully, 2014 brought further injustice in the form of violence and enslavement against women of the opposite groups in ethnicity, religion, creed, ideology, or political views. The question is: “Why have reform movements of the 19th, 20th and the 21st century resulted in more marginalization of and violence against women, particularly Muslim women?” This book is an attempt to address the why?

*I strongly argue and believe that the fundamental factors in shortchanging Muslim women’s role, contrary to Islam’s call for justice, are misreading Qur’an and Hadith. My rereading the Hadith and rethinking the sunnah was not intended in any way to minimize the importance of Hadith and the Prophet’s traditions for the welfare of Muslims, including women, as evident in the body of this book. However, as I repeated throughout the book, Muslims’ focus has been on the authenticity of Hadith and imitation of the traditional interpretations, instead of*



*focusing on the content of Hadith and its authority as it corroborates the Quran's core theme, 'Adl (justice) and qist (fair play).* In his explanation of the difference between *fiqh* and *Shari'ah*, Jamal al Banna (2011: 350) asserts that the purpose of *Shari'ah* is 'adl. Kamali (2008: 2–4) also reminds us that the Prophet was preoccupied with values, and that only in later dates that the concepts of *shari'ah* vs. *fiqh* became part of the Muslim discourse.

As important, other questions need to be discussed further because, in addition to the male-dominated views, Hadith literature still plays a central role in governing the lives of Muslims, especially with respect to social and family life. Hence, I also attempted to answer the question: *“What role ahaadith, including those that corroborate the Qur'an, did have in the formulation of the belief system of the Muslims?”* It was as important to investigate in as much detail as possible the attitude about hadith, including those of the companions and early scholars. It became apparent from such investigation that even as they revered the Prophet, the companions, particularly the females, were extremely careful and continuously questioning some of the reported traditions that were being blindly practiced by the Muslims of the time. That is, because such practices were without assessing the authority of the narratives in time and space. *For this very reason, the reports indicate, the Prophet himself discouraged his companions from writing his actions and sayings, as did the early Caliphs.* Not until about 100 years after the death of the Prophet did some jurists feel the need to document these narratives as they decided on some practical needs of the community. Ironically, the process of documentation began while Muslims were going through one of the worst political upheavals in the history of Islam. Those circumstances have definitely affected the nature of the collection and documentation processes, as well as the content of the reported traditions. *Hence, my attempt to address the above questions is to learn what Muslim women might do to bolster their authority and leadership initiatives,* as Hammer (2012) recorded, before the emergence of another trend in “Islamic” thought that further marginalizes them. Unfortunately, such a trend has been fabricated during the last decade, and is being crystallized in late 2014, as the majority of the so-called Muslim 'ulama are keeping silent about the extremists' abhorrent practices against women. I am certain that, with the exception of few faint cases, these 'ulama are silent for fear of having to question and/or reject the authority of the textual evidence of sunnah and hadith that is being used and abused by both parties, the 'ulama and the extremists.

I will focus on charting the possibilities of active agency for the Muslim woman who identifies first with the message of Islam, as documented in the Qur'an, and second with the messenger and his consorts. As emphasized throughout this book, *each individual Muslim has the right and the responsibility to intimately reread the Qur'an and the Hadith, and to rethink the sunnah.* Yes, it is not a simple order to assign the responsibility of intimate reading of the Qur'an and Hadith, as well as rethinking the Prophet's sunnah to each individual Muslim, particularly females who have been largely excluded from the decision-making process, and especially in developing the sciences of Qur'an and Hadith. *But this is exactly the point of*

*this book. That is, a Muslim cannot profess to be practicing Islam fully if she or he does not read and understand the Qur'an and Hadith firsthand, and rethink the sunnah without the intermediary of others.*

What is further important to my argument is Muslims' self-identification with Islam as the *Deen of Tawhid*. Kenneth Cargg (2002–04: 3–9) reminds us of the Qur'anic phrase, “*afla yatadbroon* (do they not seek to understand)” in {47: 24} in order to rethink what the phrase “*Inn al deen 'inda Allah al Islam*” {3: 19} means:

{24} أَفَلَا يَتَذَكَّرُونَ الْقُرْآنَ أَمْ عَلَى قُلُوبٍ أَقْفَالُهَا

Do they not then earnestly seek to understand the Qur'an, or are their hearts locked up by them? {Muhammad 47: 24}

{19} إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ وَمَا اخْتَلَفَ الَّذِينَ أُوتُوا الْكِتَابَ إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَغْيًا بَيْنَهُمْ ...

The belief before Allah is Islam (conscientiously accepting Tawhid): nor did the People of the Book dissent therefrom except through envy of each other, after knowledge had come to them ... {Al 'Imran 3: 19}.

The point here is that by identifying with the inclusive Islam, the inclusive acceptance of the concept of Tawhid, and not the Islam that most Muslims came to think of as the exclusive religion, Muslim women will be able to lead themselves and all Muslims back to reflect on the meaning of Islam.

The first five verses of the Qur'an {al 'Alaq 96:1–5} affirm reading in the name of God, emphasizing the divine source of the text, and reminding humans that they were created as moral beings who have a choice to carry out or refuse the message. *Thus, each individual Muslim has the responsibility of reading and internalizing the Qur'an in order to be able to carry his/her rights and duties justly as an active agent, but within the framework of the Qur'an, as explained throughout the book.* Since the participation of Muslim women in interpreting the text has been very limited or nil, it means that when Muslims enforce traditional interpretations, even if they relied on hadith, they are actually contradicting the above five verses, and especially what {verse 9 of surah 17 and verse 23 of surah 39} state—that the Qur'an asserts active agency for the good of all and that the Qur'an is its best interpreter:

{9} إِنَّ هَذَا الْقُرْآنَ يَهْدِي لِلَّتِي هِيَ أَقْوَمُ وَيُبَشِّرُ الْمُؤْمِنِينَ الَّذِينَ يَعْمَلُونَ الصَّالِحَاتِ أَنَّ لَهُمْ أَجْرًا كَبِيرًا

Verily this Qur'an does guide to that which is most right (or stable), and gives the glad tidings to the believers who work deeds of righteousness, that they shall have a magnificent reward {al 'Isra 17: 9}.

{23} اللَّهُ نَزَّلَ أَحْسَنَ الْحَدِيثِ كِتَابًا مُتَشَابِهًا مَثَابِي ... ذَلِكَ هُدَى اللَّهِ يَهْدِي بِهِ مَنْ يَشَاءُ وَمَنْ يُضَلِلِ اللَّهُ فَمَا لَهُ مِنْ هَادٍ

Allah has revealed (from time to time) the most beautiful Message in the *form of a book*, consistent with itself, (yet) repeating (it's teaching in various aspects) ... Such is the guidance of Allah: He guides there with whom He pleases, but such as Allah leaves to stray, can have none to guide {al Zumar 39: 23}.

That is, as I stated earlier (Barazangi 2009, and in Chapter 5 of this book), the verse in surah al Nisa` {4: 59}, that speaks about obeying Allah (God) and obeying *al Rasool* (the messenger), intended to emphasize obeying the Qur`anic message of justice and fair play as narrated by the messenger (al Rasool) Muhammad. However, and despite the Prophet's agency as the messenger of change, Muslims' general attitudes towards women remained unjust. It seems that Muslims confused the obedience to Muhammad as the messenger with the obedience to the person of Muhammad as a human who acts in space and time:

{99} مَا عَلَى الرَّسُولِ إِلَّا الْبَلَاغُ وَاللَّهُ يَعْلَمُ مَا تُبْدُونَ وَمَا تَكْتُمُونَ

The Messenger's duty is but to proclaim (the Message). But Allah knows all that you reveal and you conceal {al Maida 5: 99}.

The narrative on the authority of Abdullah bin 'Umar explains: "When we were giving our words to the Prophet that we will hear and obey, he used to repeat: 'as you can'" (al Bayan 1999: Kitab al Ijarah # 1086).

Thus, the Qur'an asserts that there is only one single narrative, being the Qur'an that is revealed to all those who accept the message that Muhammad carried for 23 years:

{6} تِلْكَ آيَاتُ اللَّهِ نَتْلُوهَا عَلَيْكَ بِالْحَقِّ فَبِأَيِّ حَدِيثٍ بَعْدَ اللَّهِ وَآيَاتِهِ يُؤْمِنُونَ

Such are Signs of Allah, which We rehearse to you in truth: then in what exposition will you believe after (rejecting) Allah and His Signs? {al Jathyah 45: 6}.

Given Muslims' apparent confusion about the message of the Qur'an vis-à-vis the Prophet's role as the messenger and hence their unchanged attitude towards women, subsequently they also saw the Prophet's consorts in such biased lenses despite idealizing them as "the mothers of the believers." Even with reports that Prophet Muhammad's consorts and early female companions were among the primary narrators of his sayings and actions, and even when some acted as counsels to early companions and scholars, Muslim women in general were excluded during the documentation, development, and shaping of Islamic thought. Therefore, we, Muslim women scholar-activists of the late 20th and early 21st century, hoped to retrieve our own place in history by self-identifying with the Qur'an as the message of Islam. *This book attempts to complement this earlier journey of identifying with the Qur'an by identifying with the message and with the messenger, and particularly with his consorts as the active agents who seem*

to have understood the *Qur'an* intimately. As discussed in the five chapters of this book, the criterion and the means to identify with the messenger have been corroborating the reported narratives attributed to him by the *Qur'an* both contextually and linguistically, following specific grammatical and lexicographic rules within the ethical framework of the *Qur'an*.

Thus, the arguments and conclusions of this manuscript are not necessarily bound by different perspectives on Hadith, nor by different interpretations of the *Qur'an*. Rather, the arguments and the results are evaluated by satisfying the central principle of Islam: Tawhid, and the concomitant four basic principles: *Khilafa*, *Imama*, *'Adl*, and *Taqwa* as each individual is striving to lead and to fully apply them in pursuit of justice and fair play. The four principles require each individual to have the rights and to carry the responsibilities of every aspect of life, ritualistic or mundane. *These rights include the self-identified females' authority and leadership to intimately read and interpret the Qur'an, and to investigate the authority of the reported narratives.* Yet, the majority of jurisprudence and tribal practices over the centuries, and even at the time of writing these words, have invoked gender-biases that limit women's roles on many levels, including the acceptance of their (the females') narratives or the validity of their witnessing a tradition or a transaction. For example, in his recent article, al Imam (2012: 72) claims to correct the view concerning verses {2: 282–3} with regards to testimony and witnessing (discussed in Chapter 2). He affirms that the verses do not express the general legal ruling concerning women's witnessing (that a woman's testimony is ½ that of a man), but he concludes his article by citing some "scientific" findings, the implications of which is that *dhalal* (woman's forgetting), mentioned in these verses, is due to her reproductive system!

Such rationales and conclusions make me reiterate that according to the *Qur'anic* message of Tawhid, these opinions along with the resulting rules and practices (collectively and erroneously called *shari'a* (with small "s") or Islamic law) are not binding either morally or legally, hence, they could be ignored. *Even if the opinions were based on "scientific" evidence and were accepted as the norm at some point in history, they should be challenged and changed in time and place.* Sayeed (2009: 125) confirms: "[R]eports clearly indicate that in the earliest period of Islamic history, gender could indeed be a factor in assessing the legal validity of a *hadith*. Examining the controversy over Fatima's [bint Qays] report clarifies the contexts in which gender played a role in early juristic discourse."

I have discussed Fatima's narrative and legal argument earlier (Chapters 3 and 4), suggesting throughout that we need to rethink the process of authenticating Hadith and distinguish it from the process of validating the authority of different narratives. Sayeed made a similar suggestion, and having focused on the historicity of the process and the variations in the jurisprudence methodology, she concludes:

Before turning to this matter [gender role], however, it is important to address the issue of authenticity and dating of the traditions at hand. Due to concerns about the authenticity of the *hadith*, scholarship on the earliest decades of Islam must

often be content with very tentative statements about the historicity of the events being studied.

*Since my goal and means in this book is to have an ethical and pedagogical reading of Hadith, I focused the rethinking process mainly on validating the authority of the traditions at hand through corroborating them by the Qur'an.* Thus, using the history of authentication as the context, I will address in the first section of this concluding chapter four questions under pedagogical and ethical validation of Hadith authority. Next, I summarize the implications of the Self-Identity paradigm in discussing women's human rights and gender justice in Muslim societies in general, especially the relation of the works of Muslim women scholar-activists who self-identify with the Qur'an, to the on-going movements at the heart of Muslim-majority societies.

### **Pedagogical and Ethical Validation of Hadith Authority**

In this section I attempt to answer each of the following four questions with different historical examples: (1) who were the primary narrators of ahaadith, (2) how were legal constructions generated of the Qur'anic principles during the classical periods of Islam, (3) how have the social practices contaminated the ideals, and (4) will the conscientious self-identified Muslim woman become an active agent?

#### *1. Who Were the Primary Narrators of hadith?*

The Prophet's consorts and female companions were among the primary sources of the narratives. Yet, *why were they (these females) excluded in constructing the legal methodology and rules of jurisprudence that would have facilitated their authority as resources of Islamic thought?*

Sayeed (2009: 149) suggests that the roots of the issue might be when al Shafi'i presented unprecedented treatment of *aahaad* ahaadith (traditions of a single narrator) by a woman, adding:

In presenting such precedents, al Shafi'i aims to highlight the inconsistencies of legal methodology, which sometimes allowed that a woman's isolated *riwaya* (narrative) is as probative as that of a man and at other times discriminated against her reports on the basis of gender. The "successful" efforts of al Shafi'i and other traditionalists who insisted on the value of authenticated Prophetic traditions, be they isolated or more widely attested reports, as sources of law second only to the Qur'an had profound implications for Islamic legal methodology. By the classical period, one by-product of these efforts was an unambiguous distinction between *shahada* [witnessing] and *riwaya* [narrative] which in turn resulted in the consistent application of discrete criteria for female witnesses and female *hadith* transmitters.

I have italicized Sayeed's "successful" to emphasize that what is viewed as success of al Shafi'i by the majority of Muslims at the time and now is actually a complete failure of the majority of Muslims to realize that al Shafi'i was actually misreading the Qur'an, as explained above, by adding another source to the Qur'an as a base for legal action. Sayeed's historical analysis also leads me to conclude that the historical examples below (1. A–C) could be the result of the discrepant methodological approach to the Qur'an and sunnah among generations of companions and scholars. Though these discrepancies may have been also affected by gender attitude of the time and place, we still need to ask: *why? I strongly believe that these glaring discrepancies in the methodological approach suggest that not all companions, jurists and scholars corroborated the narratives by the Qur'an, nor did they use this corroboration criterion in deciding on the method to validate the authority of the particular narrative.*

1. A. For example, early companions of the Prophet may have understood that some temporal instructions of the Qur'an to the Prophet as legislation specific only to him and his consorts, and yet, they may have applied in various degrees the Qur'an's permission for the Prophet to keep more than one wife or contracting with *mulk al yameen* {al Ahzab 33: 50} to themselves:

{50} يَا أَيُّهَا النَّبِيُّ إِنَّا أَحَلَّلْنَا لَكَ أَزْوَاجَكَ اللَّاتِي آتَيْتَ أُجُورَهُنَّ وَمَا مَلَكَتْ يَمِينُكَ مِمَّا آفَاءَ اللَّهِ عَلَيْكَ وَبَنَاتِ عَمِّكَ وَبَنَاتِ عَمَّاتِكَ وَبَنَاتِ خَالَاتِكَ وَبَنَاتِ خَالَاتِكَ اللَّاتِي هَاجَرْنَ مَعَكَ وَامْرَأَةً مُؤْمِنَةً إِنْ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ إِنْ أَرَادَ النَّبِيُّ أَنْ يَسْتَنْكِحَهَا خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِي أَزْوَاجِهِمْ وَمَا مَلَكَتْ أَيْمَانُهُمْ لِكَيْلَا يَكُونَ عَلَيْكَ حَرَجٌ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

O Prophet! We have made lawful to thee your wives to whom you have paid their *ujoor*; and those whom your right hand possesses out of the prisoners of war whom Allah has assigned to you; and daughters of your paternal uncles and aunts, and daughters of your maternal uncles and aunts, who migrated (from Makkah) with you; and any believing woman who dedicates herself to the Prophet if the Prophet wishes to wed her; *this only for you, and not for the Believers* (at large): We know what We have appointed for them as to their wives and those whom their right hands possess; in order that there should be no embarrassment for you. And Allah is Oft-Forgiving, Most Merciful {al Ahzab 33: 50}.

That is, even though the verse clearly was particular to the Prophet at the specific time and for a specific purpose, the companions did permit multiple marriages, perhaps because they did not want to fully dismantle the habitual practices of the time! *Obviously, within the context of today's social norms, but specifically given the purpose of the Qura'nic mandate to change attitudes about human relations, I cannot, nor do I intend to, justify the early companions' behavior.* However, I cannot understand or justify later interpreters (such as Sayeed Abu al 'Ala al Maudoodi and Nasir al Din al Albani, see Chapter 3) ignoring the specificity of these and other verses to the Prophet and his consorts. For example, al Maudoodi and al Albani interpreted an adjacent verse in the same surah {al Ahzab 33: 53 "talk

to them from behind a curtain (*hijab*)”} as a mandate for all Muslim women to be secluded and segregated, using two weak hadiths to support their interpretation of woman’s modesty while also imposing a certain way of dress. Jamal al Banna (2007b: 108–9, 114–20) explains where such errors occur in considering the word “hijab” (curtain) in the verse {al Ahzab 33: 53} as a reference to women’s clothing in general and/or to her appearance in public and/or her being in the public sphere (discussed in Chapter 3). Had al Maudoodi and al Albani corroborated the reported hadiths by the Qur’an, they would have realized the discrepancies in their methodology!

*I. B.* Also, some early companions took certain narratives by females, especially of the Prophet’s wives, as authoritative, accepting them as a general practice and allowing them as part of the Islamic *’urf* (norm) or as a historical fact, including an *’aahaad* narrative by *’A’ishah*, stating that she was married to the Prophet at nine years of age (Fawzi 1994: 33). Despite the fact that this narrative by *’A’ishah* was *aahaad*, Muslims took it as an authoritative one. Yet, as we saw earlier (Chapter 4) and we will further discuss (below), Caliph *’Umar* refused the narrative by *Fatima bint Qays* because there was no other witness to the narrative. *My emphasis here is on the discrepancy in the premises and the methodology among the different companions and among the different generations of interpreters, and their long-lasting implications.* One sad implication of this example is that many generations of Muslims still use the reported *’A’ishah*’s narrative at its face value to justify marrying their girls at a very early age, even though further historical investigations suggest that the actual marriage was not consummated at the age of nine (J. al Banna 2007b; El Baghdadi 2012). I am also sad to report that a recent decree by the Saudi courts allowed under-age foreign girls (the majority of whom are Syrian refugees) to be married, especially if the husband was also a foreigner (*al Hayat* June 12, 2014), obviously using the same narrative on the authority of *’A’ishah* as an excuse.

Furthermore, *al tabi’un* (the next generation of Muslims after the companions) refused the validity of woman’s leadership, basing their opinion on an *aahaad* narrative by a male who was known *not to be a trustworthy person* since he made a false testimony in another matter. How could *al tabi’un* and the many generations of Muslims that follow accept this man’s, *ibn Abi Bakara*’s narrative after the Battle of the Camel, claiming that the Prophet had said: “*la yuflihu qawm wallu ’umurahum ’imra’h*” (no people become victorious if they are governed/led by a woman)? More problematic is that this narrative is reported in *Sahih al Bukhari* which is considered the best authority on Hadith. Since I discussed this event earlier (Barazangi 2004b) and explained the problem with this narrative (Chapters 2 and 4), I want only to emphasize here that *’A’ishah* neither intended to fight *Ali* (the fourth Caliph, and the cousin of the Prophet) in that battle, nor did she initiate or lead the battle (J. al Banna 2007b: 113–4). Hence, the use of this event positively or negatively to suggest that early Muslim women were leaders on their own rights, or that they have caused *fitna* (chaos), does not present strong, fair evidence to argue for or against women in active, conscientious leadership!

I. C. Believing women were reported and recognized as transmitters, but not as meaning-makers of their own narratives, even when they presented different rationale. Sayeed states in her detailed study on the subject: “These sources [Arabic biographical dictionaries] were composed by men, and we have no self-narratives of women’s experience in the arena” (2005: 3). Sayeed (2009: 126–7) further elaborates that according to Fatima’s [bint Qays] tradition concerning *sukna* (living quarters/house) and *nafaqa* (living expenses), she [Fatima] presented her own experience as legal precedent on at least two occasions when the question of the rights of a divorced woman arose. Even such legal precedent was not accepted by ‘Umar and others because it appeared to them as if it contradicted the Qur’anic verse:

{6} أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجُوهِكُمْ وَلَا تُضَارُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلًا فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بِبَنِيكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُم فَسُدُّوا لَهُنَّ الْأُخْرَىٰ

Let the women live (in ‘iddah,) in the same place as you live, according to your means: annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if you find yourselves in difficulties, let another woman suckle (the child) on the (father’s) behalf {al Talaq, 65: 6}.

Actually Fatima explained her insistence on her narrative by citing another relevant verse of the same surah in the Qur’an {al Talaq 65: 1}:

{1} يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعْنَ اللَّهِ بَعْدَ ذَلِكَ أَمْرًا

O Prophet! When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his/her (own) soul: you know not if perchance Allah will bring about thereafter some new situation {al Talaq 65: 1} (to be discussed further below).

Sayeed goes on to report that some later scholars explained Fatima’s stand by her narrative (that the Prophet did not assign her *sukna* [living quarters/house] and *nafaqa* [living expenses] from her ex-husband) as a sign of Fatima’s emphasis on having her autonomy away from her ex-husband. My understanding from Sayeed’s report is that those scholars assumed that Fatima may be affirming her own autonomy by neither wanting to live in her ex-husband’s house, nor by accepting



compensation of living expenses from him. As I have suggested (Chapter 4), Fatima could have intended to emphasize the authority of women's narratives and the validity of those narratives as legal resources, particularly as she argued that the wording of the verse {65:1} limits the obligation of providing nafaqa and sukna only to cases of divorce that are not final, and in which it is possible that "something new" [that is, reconciliation] will come about, according to the Qur'an. Yet, despite these explanations and suggestions, I should note that my measuring stick here is the corroboration of the hadith by the Qur'an. Therefore, in addition to Fatima's rationale that was based on {verse 65: 1}, we also need to investigate whether or not Fatima's marriage was consummated before her husband went to war:

{49} يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَكَخْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عَدَةٍ تَعْتَدُونَهَا فَمَعَّوهُنَّ وَسَرَوهُنَّ سَرَاحًا جَمِيلًا

O you who believe! when you marry believing women, and then divorce them before you have touched them, no period of 'iddah have you to count in respect of them: so give them a present, and set them free in a handsome manner {al Talaq 65: 49}.

This possible condition might also explain the apparent discrepancy between Fatima's narrative and Qur'anic verse {65: 6}. It is also possible that verse {1 of surah 65}, that Fatima uses as evidence of her rationale, might be only to address the Prophet's personal affairs with his consorts!

## 2. How Were Legal Constructions Generated of the Qur'anic Principles during the Classical Period of Islam?

Since the Prophet's wives, particularly 'A'ishah, were reported to have narrated a large number of ahaadith, why and how did they [the wives] become the subject of the rules derived from these ahaadith instead of interpreters of principles? And how did the believing women in general become blindly obedient to these legal rules as preservers of the Muslim culture, instead of generators of the rules and shapers of the culture? Historical record suggests the following:

2. A. Prophet's wives were subject to the rules, not interpreters of principles, mainly because of the way verses {al Ahzab 33: 28-9} were interpreted. Instead of emphasizing the Prophet's wives' status as different from all women, the general sentiment is that they were given the choice between obedience to the Prophet as their husband (not as the messenger), or a comfortable daily life:

{28} يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكِ إِنْ كُنْتُمْ تُرِيدْنَ الْحَيَاةَ الدُّنْيَا وَزَيَّنَّتْهَا فَتَعَالَيْنَ أُمَتَّعْنَ وَأَسْرَحْنَ سَرَاحًا جَمِيلًا

O Prophet! Say to your consorts: "If it be that you desire the life of this world, and its glitter, then come! I will provide for your enjoyment and set you free in a handsome manner."

{29} وَإِنْ كُنْتُمْ تُرِيدُونَ اللَّهَ وَرَسُولَهُ وَالذَّارَ الْآخِرَةَ فَإِنَّ اللَّهَ أَعَدَّ لِلْمُحْسِنَاتِ مِنْكُمْ أَجْرًا عَظِيمًا

But if you seek Allah and His Messenger, and the Hereafter, verily Allah has prepared for the well-doers amongst you a great reward {al Ahzab 33: 28–9}.

Historical sources on *Asbab al Nuzul* (reasons of revelation) suggest that these verses were revealed when the Prophet's wives complained about their poor living conditions. As they protested, the Prophet abandoned them for 29 days, returning to them with these two verses. The problem is that Muslims generalized these verses as if they apply to all Muslim women, demanding that the women blindly obey their husbands! *Thus, the more critical result of such generalizations is that Muslims see the consorts' protestation as an act of disobedience rather than as an act of moral courage to stand against perceived injustice even when the person of the Prophet was involved.*

2. B. Believing women were made obedient to the rules and preservers of tradition, not generators of culture, given the way the verse {al Talaq 65: 6} on dissolution of marriage was interpreted, and is still being practiced on the basis of such interpretation. As discussed above, we already saw how Fatima bint Qays considered her narrative as a legal source, given the content of the verse {al Talaq 65: 1}. Hence, we need to go the extra step beyond the conundrum of the social context of Fatima's assertion, *if historical records on the subject could be found*, and investigate as to whether or not Fatima's marriage was consummated!

### 3. How Have the Social Practices Contaminated the Ideals?

Since existing social practices of the time might have contaminated the ideals of the Qur'an by attempting to make dogma out of Prophet Muhammad's character and egalitarian practices, I will discuss how community hegemony took over individual reasoning and limited autonomous intellectual skills that are necessary for active agency. *In effect, Muslims paid considerable attention to social practices instead of focusing on reasoning.* For example, the Prophet's wives were made prototypes instead of exemplars. Also, believing women were divested into free and slave objects, instead of being viewed as autonomous humans who are capable of reasoning and who could be full witnesses. Finally, *fuqaha* excluded what they called "thawabit," or "premises of the faith," from being discussed as part of *ijtihad* (independent inquiry). Jamal al Banna (2007c: 6) states that such exclusions are what made Islamic thought and practice stagnant. This is further evident in what Sayeed (2009: 128–30) wrote concerning the narrative of a woman [Fatima bint Qays]. Sayeed explains how pre-classical legal discourse was not always bound by the methodological principle in which a hadith can provide interpretive frameworks for Qur'anic verses. Thus, 'Umar is said to have unequivocally rejected Fatima's hadith, primarily on the grounds that it was the report of a woman, and [according to him] women's authority in matters of religion was uncertain. 'Umar's rejection of Fatima's report invoked the specific Qur'anic requirements for witnesses during

a transaction [echoing verse 2: 282]. Thus, he reportedly asked for two witnesses to certify Fatima's report.

I am certain that Caliph 'Umar may have, perhaps unknowingly, committed an injustice when he asked for two witnesses to verify Fatima's narrative. He used verses {2: 282–3} that pertain only to witnessing financial transactions in a case that cannot be any closer to matters related to feminine issues, that Fatima rationalized using the Qur'anic verses {65: 1–2} below:

{1} يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تَخْرُجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعْنُ اللَّهِ يَحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

O Prophet! When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his (own) soul: you know not if perchance Allah will bring about thereafter some new situation.

{2} فَإِذَا بَلَغَ أَجْلُهُنَّ فَاُمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوِي عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ إِنَّكُمْ يَوْمَئِذٍ تُعْظَمُونَ مِنْ كَانِ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا

Thus when they fulfill their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endowed with justice, and establish the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the Last Day. And for those who are conscientious of Allah's guidance, He (ever) prepares a way out {al Talaq 65: 1–2}.

Despite the fact that Fatima's narrative may be interpreted as if it were against the rights of women in terms of maintenance and dwelling, she most likely was defending the autonomy of the woman after triple divorce (that is considered final) in deciding on her dwelling and accepting or rejecting the maintenance of her ex-husband (see Sayeed citation of Hawting's, 1989: 440, whose explanation supports this analysis). As I stated earlier, perhaps Fatima also wanted to assert the validity of a woman's narrative as an authentic and authoritative source and resource for general legal reconstruction! Such overlap in the functions of *riwaya* (narrative) and *shahada* (witnessing), Sayeed suggests, "... would have been plausible in the unregulated, largely *ad hoc* narration of *hadith* which is likely to have prevailed in the decades after the death of Muhammad." Sayeed goes on to assert, that "[i]n these contexts, it is more understandable that 'Umar would not construe *riwaya* and *shahada* as disparate legal categories and would selectively apply gendered criteria to diminish Fatima's *hadith*—especially if he perceived that his own decision represented the only correct understanding of the Qur'anic verses on lodging and maintenance."

#### 4. Will the Conscientious Self-Identified Muslim Woman Become an Active Agent?

To chart that hope, the possibilities of active agency for the Muslim woman who identifies first with the message of the Qur'an and second with the messenger and his first and foremost disciples, his consorts, we need to discuss the matter in the context of the realities of Muslims who passively revere the Prophetic household. *That is, since the Prophet and his household have been the conscious models for Muslims, how could we change this consciousness from a passive into an active one?* In my assessment, the first step is to explore how the contemporary Muslim woman may become an active agent and, hence, change this reality. Since some Muslim women have become conscientious about their role and began the process of self-identification with Islam (Chapters 1 and 2), then I will now summarize the implications of the self-identity paradigm for gender justice and for active agency, by expanding on my earlier discussion of human rights in the contexts of Muslim societies.

#### Implications of the Self-Identity Paradigm

One implication of the self-identity paradigm is by relating the works of self-identified Muslim women scholar-activists to the on-going movements at the center of Muslim-majority societies. Hence, I summarize the conclusions of each of the five chapters of this book that were based on the self-identity paradigm, while discussing some relevant current events and/or scholarship.

In *Chapter 1*, I asserted that the implications of this new book lie in presenting an ethical reading of Hadith and strategizing for a *muttaqi*, an equilibrated rethinking of sunnah that lies in: (a) presenting a pedagogical paradigm to rethink and to act within the balanced perspective of Islam and its primary source, the Qur'an, away from the many layers of "taqlid" (imitating precedence) and from Western rationalization of Islam, (b) facilitating for Muslim women the strategies to realize their identity and to re-learn Islam in its clear, transforming meanings through the higher Islamic learning module (Barazagni 2000), and (c) interpreting human-rights activists' concerns within the Qur'anic mandates for a just human society wherein justice means balance and fair play, and a sustainable change of women's role (Barazangi 1997) in the natural order of things, as the Qur'an suggests in {al Baqara 2: 119, 176, 213; 'Al 'Imran 3: 3; al Nisa 4: 105; al A'raf 7: 43; al Anfal 8: 7-8; al Tawbh 9: 29, 33; and others}. J. al Banna (2011: 351-3) also asserts that by claiming to apply shari'a in recent movements of "islamization," while actually applying certain *fiqh hudud* (rulings), Muslims are acting against the message in these verses—*that each individual is responsible for his/her faith and action, and that the Prophet was only a bearer of the message and not responsible for others' actions:*

{119} إِنَّا أَرْسَلْنَاكَ بِالْحَقِّ بَشِيرًا وَنَذِيرًا وَلَا تُسْأَلُ عَنْ أَصْحَابِ الْجُبَيْنِ

Verily, We have sent you in truth as a bearer of glad tidings and a warner: but of you no question shall be asked of the companions of the blazing fire {al Baqara 2: 119}.

In Chapter 2, I discussed the two Qur'anic principles that could ensure an equilibrated peaceful and just Muslim society: observing the natural order of creation and developing action plans by means of educated reason and mutual consultation. The crisis in understanding Islam among Muslims grew worse when Muslims began using the reported Prophetic traditions before the Qur'an and as they conflated the Qur'an with its interpretations, particularly concerning women's role in the community, like the fallacy that the validity of a female's witnessing is one-half that of a male's witnessing. This misinterpretation of the Qur'an and misuse of the Prophetic traditions make it mandatory for Muslim women scholar-activists who self-identify with the Qur'an to rethink sunnah within the spirit and the guidance of the Qur'an. For instance, few Muslims pay attention to Qur'anic intention of "witnessing" in all the related cited passages; instead they cite only verse {282 in surah 2} that limits the validity of the woman's testimony (as discussed above). Although J. al Banna (2007b: 151) reiterates the overall equitable stance of the Qur'an, explaining the fallacy of assigning a lesser value for female witnessing and governing, his opinion was not refused by some scholars and people, sadly because they see him as an anomalous or radical thinker!

As I further explained (in Chapter 2), the Qur'an teaches that all, including the prophets, have to guard against unjust interpretations:

{13} شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ اللَّهُ يَجْتَبِي إِلَيْهِ مَنْ يَشَاءُ وَيَهْدِي إِلَيْهِ مَنْ يُنِيبُ

The same religion has He established for you as that which He enjoined on Nuh—that which We have sent by inspiration to you—and that which We enjoined on Ibrahim, Musa, and 'Isa: namely, that you should remain steadfast in *Deen*, and make no divisions therein: to those who worship other things than Allah, hard is the (way) to which you call them. Allah chooses to Himself those whom He pleases, and guides to Himself those who turn (to Him).

{14} وَمَا تَفَرَّقُوا إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَعْثًا بَيْنَهُمْ وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ إِلَى أَجَلٍ مُسَمًّى لَفُضِّبَ بَيْنَهُمْ وَإِنَّ الَّذِينَ أُورِثُوا الْكِتَابَ مِنْ بَعْدِهِمْ لَفِي شَكٍّ مِنْهُ مُرِيبٍ

And they became divided only after knowledge reached them, through selfish envy as between themselves. Had it not been for a Word that went forth before from your Guardian, (tending) to a term appointed, the matter would have been settled between them: but truly those who have inherited the Book after them are in suspicious (disquieting) doubt concerning it.

{15} فَلَذَلِكَ فَادَعُ وَاستَقِمْ كَمَا أَمَرْتُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَقُلْ آمَنْتُ بِمَا أَنْزَلَ اللَّهُ مِنْ كِتَابٍ وَأَمَرْتُ لِأَعْدِلَ بَيْنَكُمْ اللَّهُ رَبُّنَا وَرَبُّكُمْ لَنَا أَعْمَالُنَا وَلَكُمْ أَعْمَالُكُمْ لَا حِجَةَ بَيْنَنَا وَبَيْنَكُمْ اللَّهُ يَجْمَعُ بَيْنَنَا وَإِلَيْهِ الْمَصِيرُ

Now then, for that (reason), call (them to the Faith), and stand steadfast as you are commanded, and do not follow you their vain desire; but say: “I believe in the Book which Allah has sent down; and I am commanded to judge justly between you. Allah is our Guardian as well as your Guardian: for us (is the responsibility for) our deeds, and for you for your deeds, there is no contention between us and you. Allah will bring us together, and to Him is (our) final goal” {al Shura 42: 13–15},

I asserted that when the community conflates an interpretation with the Qur`an, *each individual has the moral obligation to stand up to upholding Qur`anic rules of interpretation as in:*

{23} اللَّهُ نَزَّلَ أَحْسَنَ الْحَدِيثِ كِتَابًا مُتَشَابِهًا مَثَابِي تَقْشَعِرُّ مِنْهُ جُلُودُ الَّذِينَ يَخْشَوْنَ رَبَّهُمْ ثُمَّ تَلِينُ جُلُودُهُمْ وَقُلُوبُهُمْ إِلَىٰ ذِكْرِ اللَّهِ ذَلِكَ هُدَىٰ اللَّهِ يَهْدِي بِهِ مَنْ يَشَاءُ وَمَنْ يُضِلِلِ اللَّهُ فَمَا لَهُ مِنْ هَادٍ

Allah has revealed (from time to time) the most beautiful Message in the form of a Book, consistent with itself, (yet) repeating (its teaching in various aspects): the skins of those who fear their Guardian tremble; then their skins and their hearts do soften to the celebration of Allah’s praises. Such is the guidance of Allah: He guides there with whom He pleases, but such as Allah leaves to stray, can have none to guide.

{33} وَالَّذِي جَاءَ بِالصِّدْقِ وَصَدَّقَ بِهِ أُولَئِكَ هُمُ الْمُتَّقُونَ

And he who brings the truth and he who confirms (and supports) it, such are the people who do right {al Zummar 39: 23 and 33}.

These two verses support my argument that there is a crisis among Muslims in understanding Islam, and that the crisis is mainly the result of Muslims obscuring the principles of Islam—Tawhid, Khilafa, Taqwa, `Adl, and *Imama*—and misusing the meaning of shari`ah, as exemplified in the Salafis’ general branding of Amina Wadud’s 2005 leading of co-ed congregational prayer as “unIslamic” even though the Qur`an did not forbid it:

{52} وَلَقَدْ جِئْتَهُمْ بِكِتَابٍ فَصَّلْنَاهُ عَلَىٰ عِلْمٍ هُدًى وَرَحْمَةً لِّقَوْمٍ يُؤْمِنُونَ

For We had certainly sent unto them a Book, based on knowledge, which We explained in detail, a guide and a mercy to all who believe.

*This crisis of understanding Islam has multiplied as the majority of Muslim women have lost their identity and identification with the Qur`an, to the point of losing the moral courage to stand up for their rights as autonomous entities.* Even after they have reinterpreted the Qur`an, some of these women seem to be abdicating their

responsibility of leadership for fear of being stamped with apostasy, or for fear of sexual harassment (Rizzo et al. 2012). In addition, they are also being excluded in the contemporary political deliberation (Hafez 2012: 38).

I am convinced that reinterpreting the Qur'an by us, Muslim women who self-identify with the Qur'an, has helped to raise the consciousness of some. Yet we still have a long way to go despite, or because of, the certain path that we chose to take—the path of Qur'anic Shari'ah. Reinterpreting the Qur'an is a time-consuming, difficult process that requires full awareness of its ramifications—from backlash by the conservatives who think that only an authoritative male-dominated institution like al Azhar can give the green light to reinterpreting the Qur'an (Finding Dulcinia 2008), to pitfalls in personal opinions—and special skills both in Arabic linguistics as well as in the history of the Qur'an. In addition, as I outlined in the Introduction and elaborated in Chapter 5 of this book and in earlier work (Barazangi 2009), there are other obstacles in our way.

For example, and unfortunately, Muslims and non-Muslims have become more conservative in response to the challenges from within or from without. From within, the current religious-right advocates and governing authorities in Muslim and non-Muslim countries are collaborating because they feel threatened by the new interpretations. Some Muslim scholars are also hampered by the conviction that it is enough to solve social issues, even though these issues are not necessarily specific to Muslim women, such as literacy, education, and domestic violence.

*These scholars do not see that the situation requires a change in perception and attitude concerning the meanings of Islam in order to combat the ignorance among the public which fosters political corruption or brain-washing in addition to ignorance of the core message of the Qur'an.* From without, ideas of reforming Muslim societies modeled after the European enlightenment or the American/Western concept of democracy are creating further dichotomy between religious and civil affairs, causing popular unrest directed towards those who are different (such as the minorities in Muslim-majority societies who have been living in harmony with each other and with the majority Muslims for centuries) rather than honest self-reflection or a focus on changing corrupt systems, dogmatism, and their own ignorance. Western governments and private corporations complicate matters by supporting dictatorships in most Muslim countries and male leadership in order to protect their own interests, producing further reactionary response by religious extremists on both sides who misuse weak traditions to propagate their own ends. A good example is the Saudi mufti who states that driving is bad for women's reproductive system. Meanwhile, when asked about such fatwa after a meeting between the King of Saudi Arabia, *Abdullah bin Abdulaziz*, and the *President of the United States, Barack Obama*, "both king and president loudly condemned the regime of gender terror that currently rules Iran, where women are exposed to the deleterious effects of driving, voting, working, and holding public office" (Mikdashy 2013). Hence, the struggle will be difficult, long, and uncertain, but we, Muslim women scholar-activists who self-identify with the Qur'an, few as we may be, need to reorganize and coordinate our efforts in order to continue

leading the path of rereading the Qur`anic message in the same Prophetic spirit of tolerating peoples' needs in time and place.

*It became clear from the discussion and through the different evidence in Chapter 3 that there were several discrepancies between the Qur`anic guidelines and the presently used personal status codes concerning marriage and dissolution of marriage. I have analyzed how such discrepancies evolved from the narratives of different ahaadith concerning sukna, infaq, and 'iddah, and related issues, through the generalized commentaries, ending up with the varied jurors' opinions of the time. Such generalizations and discrepancies in methodological approach is more pronounced currently in the disputes over women's role and presence in the public square and the unprecedented number of sexual assaults they experience during their political activism.* More problematic is when the conservative Muslim parties, who won elections mainly via brainwashing the ignorant populous, claim those women are bringing assault on themselves by being in the public square (El Sheikh and Kirkpatrick 2013).

*In Chapter 4, I synthesized other issues that relate to the perceptions of free women vis-à-vis slave women to further help us connect the discrepancies discussed in Chapter 3 to the women's absence in the decision-making process, beginning in the early formation of the Muslim community to the present time. Such connection was also supposed to have helped us realize the need for women's rereading the Hadith and rethinking the sunnah. Yet, analysis of current scholarship in the subject suggests that the active women are either still living in the ideal past or are drifting with the current of Western media, especially social media (Feminism Without Borders 11 June, 2013).*

*I concluded Chapter 4 with the argument that unless Muslim women realize the confused understanding of Islam's stance on women's rights and gender justice, they, and Muslim men for that matter, will not be able to change the perceptions of women as secondary, dependent, or 'owned property' of the male household or tribe. Neither will Muslims in general be able to change the practice of patriarchy—mainly a result of such perceptions—nor will Muslim women be able to regain their given rights in the Qur`an. This confusion in understanding gender in Islam is part of the crisis in understanding and interpreting Islam, in general, as discussed in Chapters 1 and 2. Hence, I made the core issues in Chapter 4 “belief” in relation to the creation story and its impact on understanding “sexuality” and “slavery”. In relating these issues to the politics of knowledge, I explained the consequent misinterpretation of “irth” and “wisaya” (not *wasiyyah*, or bequest). The goal of this synthesis was also to develop the analytic capabilities to decipher: (a) the difference between belief and knowledge, (b) between a marriage contract with a free woman and licensed sexual relations with *mulk al yameen*, (c) between a believing and a chaste person, and (d) between believers and non-believers. It should be stated, however, that we could not limit our interpretation and analysis of these issues with the same tools that were available to early exegetists and jurists. Hence, my synthesis of the reported Prophetic and other narratives in parallel to Qur`anic verses allowed me to discern where these narratives and their consequent applications in most Muslim*



personal status codes and/or customary practices may have contradicted the Qur'an. These findings help us, ultimately, to understand where injustice towards gender and women may have come from, and how to eliminate or at least put a halt on applying them, especially in the current state of civil unrest that is making many women destitute to the point of selling themselves and or being sold for few dollars (UNWomen 19 June, 2013). As the political crisis in Syria and Iraq unfolded in the middle of 2014, we began to see more abhorrent cases of women being enslaved and sold, yet neither the UN nor the Muslim 'ulama have effectively acted to stop such breach of human dignity and of Qur'anic mandates! That is, because we are still asking the wrong question, namely, instead of asking "how to stop those extremists through a military intervention?" we should be asking what are the roots of these extremists behavior, and how to reject those antiquated interpretations of Islam that are being used to justify their abhorrent actions?

*In Chapter 5 and in this chapter (Conclusions), I blame Muslims, including some of us Muslim women scholars-activists, for misrepresenting Islam in our practice and for confusing Islamic sources and meanings. This confusion might have added to the ignorance and the misrepresentation of Islam and of Shari'ah by others. Ignorance leads to bigotry when combined with prejudice. Worst, Muslims' insistence on following precedence even led to further ignorance among the majority of women that crippled the entire society. Thus, we, Muslim women scholar-activists who identify with the Qur'an, need to rethink our own understanding of Hadith and of Islam in general before we ask others to do so, as al Tahir al Haddad (2008: 21) suggests. He states that we, Muslims, will not emancipate without women retrieving their rights as stated in the Qur'an first. I should add, we also need to realize that Sunnan in the Qur'an means the path and the way to understanding the Qur'an, in order to be able to govern ourselves first and foremost. These Sunnan are not to be confused with the sunnah (with small "s") of the Prophet:*

{2} ذَلِكَ الْكِتَابُ لَا رَيْبَ فِيهِ هُدًى لِّلْمُتَّقِينَ

This is the book; in it is guidance, sure, without doubt, to those who are in equilibrium with Allah's message,

{179} وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

In the guidance of equality there is (saving of) life to you, O you people of understanding; that you may live in equilibrium [and restrain yourselves] {al Baqara 2: 2, 179}.

## In Summary

There is a need to remind those "expert" Muslim or non-Muslims who speak in the name of Islam and claim to defend Muslim women's rights *to let the Muslim women*

*think for themselves in order that they may speak for themselves.* While I was trying to facilitate some of these women's higher Islamic learning, I also wanted to present their voices in the context of teaching a course about their own perception of Islam. I was basically reiterating their narratives that I learned while doing Participatory Action Research with the different grassroots Muslim women's groups in North America and in Syria (Barazangi 2002, 2005b). Unfortunately, the chair of the Department of Near Eastern Studies at Cornell University, then, did not approve cross-listing my course—that I was teaching at the Women's Studies Program—for the next semester, with the claim that the course was about “proselytizing Islam”!

This comment reflects not only ignorance of the need of women's perspectives on gender and all related issues and of Participatory Action Research, but the arrogance of those who claim ownership of Islamic studies. Such comment also explains why Orientalists' views of Islam and Muslims, in general, failed to produce clear and sustainable understanding of Muslims, and especially of women's issues. I am sad to say that such comment also represents the arrogance of Western academy in general when it claims that only non-believers could teach about certain belief systems “objectively.”

Of course, I still blame us Muslims, including women, for our own ignorance of how to be educated in Islam and how to educate the next generation of Muslims. Our conventional assumptions are still the dominant lens through which we develop our curricula as well as our public and media interaction. *If Muslim women (and men for that matter) cannot think critically for themselves, we should not expect the next generation to be any different!* We, self-identified Muslim women scholar-activists, need not only to provide the detailed information that we acquire from our research-activism for people to understand the context of Islam and our views—as part of the scholarly community, but we should also apply that knowledge in real-life situations—as conscientious citizens. Thomas Jefferson is quoted to have said: “An educated citizenry is a vital requirement for our survival as free people.” I should add here: the Qur'an also emphasizes that for a believer who is facing hardship, her/his reflective and educated action is better than her/his spending the night in worship:

{8} وَإِذَا مَسَّ الْإِنْسَانَ ضُرٌّ دَعَا رَبَّهُ مُنِيبًا إِلَيْهِ ثُمَّ إِذَا خَوَّلَهُ نِعْمَةً مِّنْهُ نَسِيَ مَا كَانَ يَدْعُو إِلَيْهِ مِنْ قَبْلُ وَجَعَلَ  
لَهُ آتِدَادًا لِّيُضِلَّ عَنْ سَبِيلِهِ ...

When some trouble touches human, s/he cries unto her/his Guardian God, turning to Him in repentance: but when He bestows a favor upon her/him as from Himself, (human) dose forget what s/he cried and prayed for before, and s/he dose set up rivals unto Allah, thus misleading others from Allah's Path ...

{9} أَمْ مَنْ هُوَ قَانِتِ آنَاءَ اللَّيْلِ سَاجِدًا وَقَائِمًا يَحْذَرُ الْآخِرَةَ وَيَرْجُو رَحْمَةَ رَبِّهِ قُلْ هَلْ يَسْتَوِي الَّذِينَ يَغْلُمُونَ  
وَالَّذِينَ لَا يَغْلُمُونَ إِنَّمَا يَتَذَكَّرُ أُولُو الْأَلْبَابِ

Is one who worships devoutly during the hours of the night prostrating himself/herself or standing (in adoration), who takes heed of the Hereafter, and who places

his hope in the Mercy of his Guardian-God, like the one who has knowledge? Say: “Are those equal, those who know and those who do not know? It is those who are endowed with understanding and reflection that receive admonition” {al Zumar 39: 8–9}.

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